

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

IVONNE CABRERA,)
)
Appellant,)
)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)
_____)

Case No. 74341

APPENDIX TO APPELLANT'S OPENING BRIEF VOLUME IX

**Appeal from Judgment of Conviction
Eighth Judicial District Court**

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1 enter, Jose Gonzales enter, with the intent to commit battery,
2 which is the willful and unlawful use of force or violence on
3 another person.

4 If he did that, then did Ivonne knowingly aid
5 him in doing that? Not only did she knowingly aid him, but did
6 she intend for him to do that?

7 And then, finally, entering with the intent to
8 commit murder, which is the unlawful killing of a human being
9 with malice aforethought, whether express or implied.

10 So what does all that mean?

11 If you look at it, it requires that the State
12 prove beyond a reasonable doubt that: One, Ivonne knew that
13 Jose Gonzales was going to enter the residence; and that Jose
14 Gonzales intended to commit the crimes of assault and/or
15 battery and/or murder, and, not or, and each step has to be
16 proven, not just one, but every single one of these steps; and
17 Ivonne aided Gonzales's entrance, entrance, not once inside,
18 aided his entrance, because the crime of burglary is the
19 entrance with the intent to commit the battery, assault or
20 murder.

21 But the crime burglary is entering, and we know
22 that Jose Gonzales entered that room -- that house -- just a
23 second -- Jose Gonzales entered through the bathroom window.
24 He used this headboard to go in there (indicating).

25 What evidence is there that when Ivonne arrived

1 at the Webster apartment, she knew and intended and helped Jose
2 Gonzales crawl up and through this window and fall in the
3 bathtub? Because that's what she told you she heard, he fell
4 in the bathtub.

5 There isn't any evidence of that, because he
6 made her go in front of him with a gun (indicating). She
7 didn't intend to knowingly aid him in getting into that
8 bathroom. He got back there and decided, hey, look, I'm going
9 to go up that way and jumps in the bathroom and lands in the
10 tub.

11 So did Ivonne Cabrera aid Jose Gonzales's
12 entrance into the residence through the bathroom? No.

13 He had a gun. We're not going to be talking
14 about that is one of the elements that she would know he had it
15 and he used it. Obviously, there was a gun and a gun is a
16 deadly weapon. We're not going to be arguing about that.

17 But, finally, the State also has to prove that
18 Ivonne herself intended the crime of burglary occur.

19 So, again, her mental state, not just the fact
20 that there's an intent to enter, but did she intend for him to
21 enter the building with the intent -- with his intent to commit
22 larceny, assault or murder?

23 If you find one of these is not established
24 beyond a reasonable doubt, she's not guilty of burglary while
25 in possession of a firearm.

1 If you find that she didn't know he was going to
2 go enter the bathroom and that he intended to commit a crime,
3 she's not guilty.

4 If you find that she did not aid him in any
5 manner to enter through the bathroom window using this bed
6 post, she is not guilty.

7 And if she did not intend herself for these
8 crimes to occur, she is not guilty.

9 That's why you have to make sure and go through
10 each of these mental states and the acts.

11 We're not arguing about the acts per se. We're
12 arguing about what was the intention.

13 The defense of this case or the -- the -- even
14 the guilt in this case requires the State to prove those --
15 these aspects of the crime of burglary while in possession with
16 a -- while in possession of a firearm (indicating).

17 And, again, the instructions define the acts.
18 You know, they tell you that burglary is -- the crime is the
19 entrance and that -- it's the entering a structure with an
20 intention to commit a crime, and in this case the assault, the
21 battery, the murder, and what those crimes -- what -- what
22 battery is and what murder is.

23 And, again, we now have not even -- first we had
24 a pattern instruction that was about conspiracy. So there's a
25 -- there's a mere presence, mere association, mere knowledge,

1 mere acquaintance defense to conspiracy itself, and there's the
2 same defense to the commission of aiding and abetting a
3 burglary.

4 So if she was merely present when Jose Gonzales
5 committed this burglary, or she knew, because he jumped in a
6 window, that he was going to do something inside, he was
7 entering with an unlawful purpose, but if she just knew by
8 seeing him do that or by associating with him, she is not
9 guilty of being an aider and abettor to the crime of burglary
10 while in possession of a firearm, because, again, presence,
11 knowledge, association, those are not the mind frames, the
12 specific intents that she must have, which is knowingly aid and
13 intend a crime to occur.

14 The same goes for attempt murder. In attempt
15 murder, the mens rea, the state of mind, is the deliberate
16 intention to take away the life of another, and the wrongful
17 deed is the -- is the performance of an act, which would tend
18 to but fail to kill a person.

19 This requires the State with regard to Ivonne to
20 prove beyond a reasonable doubt that she knew Jose Gonzales
21 intended -- was going to try and kill someone in that house.

22 Now, yes, she told you that she drove over there
23 -- he jumped in her car, he had a gun, he sat there with it
24 pointed at her (demonstrating). Okay. Is she supposed to know
25 for sure -- is she supposed to know that once they get to the

1 place that he's going to get out and kill somebody, or attempt
2 to kill somebody?

3 She can be afraid for herself, which also
4 negates her decision -- her -- any intent to have someone
5 killed; but she can be there -- I mean, so -- excuse me.

6 So he jumps in the car. He has a gun. That
7 doesn't mean that she should know or that she intends to, by
8 driving him over, knowingly aided him in committing attempt
9 murder of the two people, Ashley Wantland and Melissa Marin.

10 And so that also goes to something that she --
11 did she drive over there intending for them to -- intending for
12 Jose Gonzales to attempt to kill them?

13 If you say no, then she's not guilty.

14 And, again, finally, you have to -- the State
15 has to prove beyond a reasonable doubt that Ivonne herself
16 intended and wanted the crime of attempt murder to occur
17 against Ashley and Melissa.

18 And, again, mere presence, mere knowledge, mere
19 association, does not make Ivonne Cabrera guilty as an aider
20 and abettor of the attempt murder, because the State must prove
21 beyond a reasonable doubt that she was an actual participant
22 and not a knowing spectator.

23 We're almost through the crimes.

24 So first degree premeditated murder, the state
25 of mind, willfulness, deliberation and premeditation. So for

1 Ivonne Cabrera to be guilty of premeditated -- first degree
2 premeditated murder, the State has to prove beyond a reasonable
3 doubt that she knew Jose Gonzales was -- intended to kill a
4 person, determined by weighing and -- weighing the reasons for
5 and against killing and formed a determination to kill a
6 person.

7 So she had to know that he made those deliberate
8 thought processes. He -- she had to know he did that; and she
9 had to do something to aid in his willfulness, deliberation,
10 and premeditation.

11 What did she do to aid it?

12 She didn't give him a gun. She didn't give him
13 a silencer, which there's absolutely no evidence exists, except
14 for the State's state- -- you know, the State's words about
15 this weird stuff, this white stuff found in the room that
16 wasn't taken into custody, that no one noticed it really meant
17 anything, and so there is no evidence at all of a ghetto
18 silencer.

19 So what did she do to aid him in those intend --
20 in those thought processes?

21 And did Ivonne herself intend that the crime of
22 first degree premeditated, deliberate, willful murder occur?

23 And, again, her presence there, her knowledge
24 that murder was -- first -- oh, this is attempt murder, but
25 it's the same for murder, her presence, her knowledge, her

1 association with the person, does not make her an aider and
2 abettor, because those aren't -- these facts are not intent to
3 premeditation, deliberation, and willfulness.

4 And why is that?

5 Because, again, the State must show -- the State
6 must establish that she was a knowing participant, rather than
7 just a knowing spectator.

8 And for the first degree murder, by -- first
9 degree felony murder through the commission of a burglary while
10 in possession of a firearm, you have to go back to the elements
11 of burglary. You have to go back. Was it intended to do the
12 larceny or the murder or -- so you have to go all the way back
13 to the beginning what those elements are, what those intents
14 are, what those states of minds are, and then you have to say:
15 Fine, did she know he was going to enter and intend to commit
16 those crimes? Did she aid him in entering? Did she herself
17 intend for him to enter and commit the crimes? And did an
18 intentional or unintentional or accidental killing occur?

19 Well, obviously that worked, two people died.
20 There's no doubt about that. But did Ivonne Cabrera have the
21 state of mind that has to be proven by the State beyond a
22 reasonable doubt?

23 So how are you supposed to make these decisions?

24 Well, you look at the facts, you look at the
25 evidence, and there's an instruction -- oh, yeah, sorry, one

1 more thing on flight.

2 Again, even flight, the State has told you, you
3 know, Ivonne was at her -- at the Bassler house, loading up her
4 stuff to leave. Even in flight, you have to -- it has to
5 embody the idea of deliberately going away for the purpose of
6 avoiding apprehension or prosecution.

7 I submit to you that the evidence is she was
8 going away to keep the people who lived at that house, Jan, who
9 drove her back from the 7-Eleven, Alyssa and her mother,
10 Heather, and Felicia, to keep those people from being thought
11 to have been -- to have learned anything about Smokey
12 Gonzales's activity, Smokey Gonzales's killing, Smokey
13 Gonzales's burglary, and Smokey Gonzales's battery.

14 So if she got her things to go somewhere else to
15 keep others from being drawn in in any way, then she did not
16 deliberately go away for the purpose of avoiding apprehension
17 or prosecution.

18 And you also know that the police even told you
19 that when the car was stopped, she cooperated. She got out,
20 she sat down, she didn't run. She didn't do anything.

21 If a person is -- has the mind frame of avoiding
22 prosecution, I would submit that they would do some of those
23 things.

24 Instruction Number 42 tells you that the
25 evidence which you are consider -- are to consider in this

1 case, consists of the testimony, the witness -- testimony of
2 the witnesses, the exhibits, and any facts agreed -- admitted
3 or agreed by counsel.

4 There are no facts that have been admitted or
5 agreed by counsel.

6 So the evidence is the testimony of the
7 witnesses and the exhibits.

8 There's different kinds of -- there's different
9 kinds of evidence: Direct and circumstantial. They -- they
10 talked about that.

11 But what they didn't talk about is that
12 statements, arguments and opinions of counsel are not evidence
13 in the case. And that you must not speculate to be true any
14 insinuations suggested by a question asked a witness. A
15 question is not evidence.

16 So how did that occur in this case?

17 Well, we had that inter- -- interchange with the
18 prosecution and -- and Ms. Cabrera about nicknames. So the
19 prosecution said: Smokey, smokes, that suggested of someone
20 who likes to shoot; right? That's the question.

21 The evidence is -- the evidence is: I thought
22 it was that he smoked. That's the evidence, that's the answer.

23 The evidence is the testimony. It's not the
24 question.

25 So, again, the question by the prosecution:

1 Chinola on the street means boss; right? That's a question.

2 That's not a fact. That is not what the evidence is.

3 The evidence is: No. And then where did you
4 get Chinola from? That's a question. It's not evidence.

5 The answer: Chinola is sweet fruit.

6 And then again, try a third time: Drug culture,
7 Chinola doesn't have that, that's a question. There's been no
8 evidence proven about anything on the street what Chinola
9 means.

10 She says: I was not called that because of that
11 reason.

12 So we try a fourth time: Would you agree with
13 me in the drug culture, Chinola is someone who is sort of a
14 boss? That's an insinuation. That is not evidence.

15 The evidence is Chinola actually, people from
16 the State of Sinaloa in Mexico, they -- they call them
17 Chinolas. So anybody from Sinaloa, they even call my mom that.
18 She's from Sinaloa, also kids, children. And it goes Chinola
19 for both men and women.

20 And then we try again, in the street, in the
21 drug culture, is Chinola a boss?

22 That's an insinuation. It is not evidence. The
23 evidence is: I never heard of that.

24 And then the next insinuation, somebody who has
25 the authority to tell somebody what to do. The testimony and

1 evidence is: How can that be? A boss is a jefe.

2 So the evidence is uncontroverted, the testimony
3 of Ivonne. It is not the multitude of questions trying to make
4 her into a boss in the drug culture. There is no evidence of
5 that. And that's what that instruction tells you.

6 And we had it happen again. This time I put it
7 with the instruction. Highlighted part, testimony of the
8 witness or the exhibits is the evidence. Statements,
9 arguments, opinions of counsel are not evidence in the case.
10 You must not speculate to be true any insinuations suggested by
11 a question asked a witness.

12 A question is not evidence and may not -- and
13 may be considered only as it supplies meaning to the answer.

14 So in our last -- in our last discussion, the
15 question never provided meaning to the answer. The answer
16 provided all of the evidence about that issue.

17 So now during the Cross-Examination of Ashley
18 Wantland, this was a particularly telling non-evidence issue.
19 During the Cross-Examination the State said -- asked: Then you
20 said something about the unemployment card for payment.

21 And her answer was: I remember her, Ivonne,
22 saying that Loka was going to get James if they, if they,
23 didn't get the unemployment card.

24 If you're talking to someone and you say: I'm
25 going to get you unless you give me or us the card, that would

1 include me. But if I'm talking and I say, you know, you need
2 to give the card to Loka or them, Smokey and Loka, the brother
3 and sister, you need to give the card to them or Loka's going
4 to do something.

5 Amazingly, she had just said that the evidence
6 was Loka was going to get James if they didn't get the
7 unemployment card.

8 So how does that change?

9 Well, the next question: So Loka was going to
10 get James. So it wasn't Ivonne. It was Loka. And that's what
11 she said.

12 Then the next question seems to be -- you have
13 to notice the difference, question: Loka is going to get James
14 if you don't give us the unemployment card.

15 That's not the evidence. The evidence was going
16 to get Loka -- Loka's going to get James, if they don't get the
17 unemployment card.

18 MR. DIGIACOMO: Judge, I apologize, I object.
19 The answer was: Yes. She's misstating the evidence. The
20 witness acknowledged that Chinola wanted the card.

21 MS. ERICKSON: And that's --

22 MR. DIGIACOMO: I object to that argument.

23 MS. ERICKSON: It's right there, and I could
24 make the argument --

25 THE COURT: What are you reading, Ms. Erickson?

1 Unfortunately, the brightness of it is not available. I can't
2 read it myself. So you can zoom in maybe. Okay, that's
3 enough. Okay. I just needed to see.

4 MR. DIGIACOMO: Keep going.

5 MS. ERICKSON: Yes. Do you want me to do it
6 while --

7 THE COURT: Ms. Erickson, I can't see it. Can
8 you, please, play it so the Court can see it.

9 MS. ERICKSON: Yes.

10 THE COURT: Thank you.

11 Pay attention, please, to the Court's direction
12 and disregard Mr. Digiacomo at this point, please.

13 MS. ERICKSON: Question --

14 THE COURT: Okay.

15 MS. ERICKSON: -- and then you said something
16 about the unemployment card for payment.

17 Answer: I remember her saying that Loka was
18 going to get James if they didn't get the unemployment card.

19 Question: So Loka was going to get James?

20 Answer: That's exactly what she said.

21 Question: Loka is going to get James if you
22 don't give us the unemployment card?

23 Answer: Yes.

24 I'm sure, Ms. Wantland didn't notice that.

25 MR. DIGIACOMO: I object to that.

1 THE COURT: Sustained.

2 MS. ERICKSON: You were sitting here listening
3 to the testimony very well, very intently on Ms. Ashley -- on
4 Ms. Wantland. Did you notice it?

5 So there's been no testimony at all about a
6 ghetto silencer, just questions about that, but no evidence to
7 sustain it.

8 There's no evidence -- Ms. Wong said she brought
9 the crowbar. There is no evidence of that.

10 There's no evidence that they brought the
11 crowbar either. There was a crowbar there. Nobody was asked
12 about the crowbar.

13 So you have a -- then, the credibility of a
14 witness, the credibility and believability of a witness, the
15 opportunity to observe what she testifies about.

16 Witnesses are witnesses. They're all in the
17 same field -- playing field unless the evidence shows that
18 there's a reason to look at them differently.

19 During the State's Cross-Examination of Jan
20 Pierce, she was asked about her daily usage, and she agreed she
21 was a daily user.

22 She was asked: Would you agree with me that
23 methamphetamine has the ability to sort of affect your
24 perception?

25 She says: Yes.

1 It affects your knowledge of time, would you
2 agree with that?

3 Yes.

4 Have you ever heard about the term "tweaker
5 time" before?

6 Again, these are all, again, questions, with no
7 evidence sustaining them but the question, but she does answer:
8 Absolutely.

9 And tweaker time is hard to figure out what day
10 it is, what time it is, anything like that; correct?

11 She answered: Correct.

12 Well, if we're going to -- if you are going to
13 apply tweaker time to Jan Pierce's testimony as a witness,
14 there was nothing else that was adduced as to why she would
15 come in and lie, why she would come in and change the facts,
16 what she -- you know, there was nothing but this tweaker time.
17 Well, that applies equally to Ashley Wantland.

18 If you remember the testimony of Jan Pierce,
19 she -- her boyfriend was getting .4 grams of methamphetamine.
20 Ashley said, she and James were using seven grams a week.

21 Methamphetamine use, tweaker time, im- --
22 impacts on Jan's credibility, it has to impact on the testimony
23 for Ashley Wantland. You cannot change the standard for
24 witnesses unless there's other evidence adduced to make you
25 think they're less believable on that basis.

1 Then, of course, there's Ivonne's credibility,
2 and, of course, she has every reason to fabricate, do things,
3 make things different. That's in agreement, everybody knows
4 that, but there were things that the State tried to make you
5 question her credibility.

6 She testified, during Direct Examination, that
7 she had not seen her witness statement, the transcript of her
8 audio statement, until just before trial, about two and a half
9 weeks before she testified.

10 She also testified that she had not seen the
11 chronology or the vast majority of the records, the cell phone
12 records, from her own phone until after trial began.

13 So the State says: You testified earlier you
14 haven't seen that until very recently. Why is that?

15 Getting ready -- prepared for trial.

16 So in the ensuing five years you've never looked
17 at that statement?

18 No.

19 You also testified it was this week you saw the
20 cell phone records. You testified to them being generated back
21 in 2015. No evidence they were generated in 2015.

22 MR. DIGIACOMO: I object to that. Detective
23 Ehlers testified to that.

24 THE COURT: Sustained. If you want to make a
25 certain statement, Ms. Erickson, you need to show us.

1 MS. ERICKSON: Yes, don't look at -- you didn't
2 look at them this week?

3 Right.

4 Is there any reasonable answer for why
5 Ms. Cabrera would not have looked at her discovery until the
6 week -- until the trial started, so that the inference could
7 not be made that she was manipulating her facts and testimony
8 to fit the evidence?

9 Very reasonable inference to be made as to why
10 would she not look at this, because if she had looked at it for
11 the last five years, they'd stand up here and go: Well, look,
12 she said this, and she said this, and this fits this and this
13 fits that. That's exactly the common sense reason of why she
14 did not look at those materials but at the beginning of this
15 trial.

16 And then, again, the State attempting to infer
17 that her believability is suspect, question: Would you agree
18 with me that while you might have worked in a law firm, you
19 didn't know much about the law before you got arrested in this
20 case?

21 She says: Right.

22 Question: I'm assuming you didn't know much
23 about the elements of burglary -- what the elements of burglary
24 are; correct?

25 The answer: No.

1 Question: You didn't know much about what the
2 elements of murder and felony murder were?

3 No.

4 You didn't know what the elements of defense --
5 duress defense were?

6 No.

7 You didn't know any of those things when you
8 told your story to Jesus Prieto?

9 Correct.

10 Implying that she now knows what those elements
11 are and how to make her testimony fit them.

12 We've gone through the elements. It took
13 40 minutes. Do you think she learned all of that, you know,
14 over this five years, so that she could make her testimony fit
15 when she only saw her -- the evidence of her own statement and
16 her own cell phone records two and a half weeks ago?

17 Then, I'm getting to the final end.

18 Jesus Prieto was called by the defense to
19 testify, even though he was the lead homicide detective. And
20 you heard the entire -- well, you heard the -- the audio with
21 the written words of the statement as it was played for you
22 from beginning to end because that was the evidence, all of it,
23 not just portions of it.

24 And you're allowed to go back and listen to it
25 again and look at, you know -- and figure out what is being

1 said, not just portions, but the whole thing. The whole thing
2 gives, you see, the overall view of what's going on in this
3 interview.

4 And I would submit to you that listening to it
5 here in Court and if you listen to it again you'll find that
6 Mr. Prieto's interview techniques clearly establish that he did
7 not want Ivonne to tell him what happened on April 26th.

8 You can see that by the number of times that --
9 that Mr. Prieto told her: Wait, wait. She's trying to say he
10 had a gun. Wait. He made me go there. Wait. I'm making
11 examples, the wait is in the important sections of when she's
12 trying to tell him what she knew occurred.

13 He does the same thing, he does that
14 approximately 56 times: Wait, wait.

15 And then he also tells her: Listen, listen,
16 this is it, listen, this is it, and when she goes off what he
17 wants: Wait.

18 He's not allowing her to tell what she -- what
19 happened, what she thought, how it went down, what was going
20 on.

21 He said "listen" approximately 39 times,
22 interrupted: Listen.

23 The more times she told her -- he told her:
24 You're not going to lead here. She's just trying to tell him
25 what occurred.

1 You're not going to lead here. I'm telling you
2 and you're going to agree because I don't want to hear what you
3 say.

4 And I'm not saying he's a bad detective. I'm
5 not saying he's, you know, doing the -- this is what happened.
6 And it's your job, as jurors, to look at it because that is the
7 evidence at the time, the clear evidence at the time.

8 I'd submit that Mr. Prieto's attitude during his
9 interview of Ivonne was no different than what he displayed
10 while testifying here.

11 Mr. Prieto testified that he went down to
12 San Diego, California, to interview Jose Alejandro Gonzales.
13 He saw him. He had uninterested Mr. Gonzales -- an
14 uninterested demeanor, but he saw him and then he came back
15 with Mr. -- -- Smokey was extradited back, he came back and was
16 arrested here in Nevada. But why was it that detective -- that
17 Mr. Prieto didn't want to agree that this picture, State's
18 Exhibit B, was Smokey Gonzales?

19 Remember the interaction? I said, well, you
20 know, I'm showing you this exhibit that's marked as -- for
21 introduction -- marked for identification as Defense Exhibit B.
22 I was standing over here. I handed it to him. He looked at it
23 and he said -- and I said: Is that Jose Smokey Gonzales?

24 And he said: Um, I don't know.

25 I walked back, thinking to myself, okay, well,

1 let's see, what evidence -- what's the information on this
2 booking photo? I asked him: Do people, when they get
3 arrested, get assigned identification numbers?

4 And he said: Yes.

5 And he had tab 6, which was some information
6 that he received from Officer Knickerbocker.

7 And I said: Well, if you look at that, what's
8 Mr. Gonzales's identification number?

9 And he read: 2636822.

10 And I said: Well, isn't that the identification
11 number on Exhibit B?

12 Well, yeah.

13 And I said: And he -- Smokey Gonzales came back
14 to Las Vegas and was arrested sometime around July 6th, 2012?

15 And he said: Well, yeah.

16 I said: So that's him.

17 Well, you know, I've seen a lot of things in my
18 career.

19 Why would you not just say, of course, that's
20 Smokey Gonzales? What is this?

21 You don't -- you don't want the picture to come
22 in because he's got tattoos all over his neck. You don't want
23 the picture to come in because there's black tattoos.

24 What is the issue here?

25 Nobody said that Smokey Gonzales didn't kill the

1 people and didn't attempt to kill them and didn't enter and
2 burgle. Why are we having a problem getting a photograph of
3 the actual murderer in?

4 What was Ivonne's state of mind when she was
5 interviewed by Mr. Prieto?

6 She had been held in captivity for, say -- well,
7 since about 6:15 until about 8:00 P.M. that night. She told
8 you about how, you know, Smokey and Loka had told her that she
9 was going to be, you know -- basically, witnesses were going to
10 be exterminated and we didn't want -- so she listened to all of
11 this.

12 But she also told you that Smokey -- that after
13 Loka left, that Smokey became more, you know -- more
14 reasonable, I guess, for a man that's, you know, having a gun,
15 waving it around and using methamphetamine and, you know,
16 telling someone, basically, I'm going to kill you because
17 you're a witness.

18 But he, you know -- over that time frame, he did
19 decide that she could leave. So she leaves and gets picked up
20 at the 7-Eleven, and then she gets stopped in the car after
21 leaving Jan's house. So what is her state of mind when she's
22 being interviewed?

23 She's confused, obviously. She's conflicted
24 because she's been told that her family and her -- he'll reach
25 out and get her family if she starts saying that he was the one

1 involved.

2 So she's trying to tell what happened, he's
3 saying: Wait, wait, listen, listen; and she's trying not to
4 say stuff that's going to get her family in trouble.

5 So, you know, the -- this is not a chronological
6 recitation of facts. You know, these are not -- she doesn't
7 say: Okay. Well, when we got in the car Smokey told me that
8 he wanted to -- you know, he was tired of people taking
9 advantage; and he said: No, I'm going to do this and I -- you
10 know, I'm going to scare them. That is not the way this went.

11 This jump from situation to situation and she's
12 providing information, not only from the time of the murder --
13 the crime, but from the time that she's been with them until
14 she gets arrested. That's how that's going.

15 It's not chronological. It doesn't mean that it
16 didn't happen at -- you know, that the statements were made
17 during the crime or at the time of the crime. She's testified
18 when they occurred.

19 And this interview, when you listen to it,
20 you'll see, it goes back and forth and all over the place.

21 It's not, like, ask the question: Okay. What
22 time did you arrive? What exactly happened? Where did you go?
23 How did this occur? What was Smokey doing? Did he have a gun?
24 Did he point a gun at you? Did he point and make you go
25 around? Did he jump in a window?

1 It's not. It's broad, broad, and then over
2 here, and then broad, and then over here, (indicating) and
3 that's why it's important to listen to the CD again to see that
4 it's not a chronological recitation.

5 It's a recitation of information that's happened
6 over the last 18 -- 12 -- 12 hours, 15 hours.

7 And then what was Ivonne's state of mind when
8 she drove over to pick up Loka and Smokey got in the car and
9 pointed a gun at her and everything ensued?

10 She told you she was scared. You know, some
11 people don't get scared. Fright makes them close down. Fright
12 makes them try to protect themselves.

13 And when you've got somebody who has a gun on
14 you, you've never seen -- you know, you've never had someone
15 point a gun at you before. What was her state of mind?

16 They will do what the guy that has the gun says.
17 They will try to get some help out, go to there because there's
18 more people there, they can -- you know, if I go there, they'll
19 come out and he'll go away, basically, thinking how can -- you
20 know, what can I do?

21 Not the best idea, true; definitely not.

22 Had she thought of something else maybe all of
23 these crimes would not have occurred, but that doesn't make her
24 guilty of any of them. Only if you decide that she had the
25 mental state, the mens rea, of each crime.

1 Finally, the burden of proof does not shift. We
2 place -- we put on evidence, but that does not mean that we
3 have to now prove things that didn't occur.

4 I think some of you were here during the voir
5 dire where we talked about, you know, having to prove three
6 facts, the State having to prove three facts. The first fact,
7 you know, call one witness and if that witness tells you about
8 that one fact. So they have established a period. The next
9 witness comes up and testifies about, or you know, shows an
10 exhibit that proves fact number two.

11 But they never called someone, though, where
12 evidence comes up for fact number three. She's not guilty if
13 fact number three has not been proven.

14 So even though we brought in evidence to you, it
15 is to help you do your analytical job that would be required if
16 I didn't do anything.

17 We had that discussion how it would be difficult
18 to, you know, be analytical about the evidence and how it had
19 to be looked at, if I or the defense did nothing.

20 Well, we did something, and you can -- you know,
21 the State can challenge it, but you cannot change it to make us
22 have to prove that she didn't do something or she didn't intend
23 something. It remains on them to prove her mental state for
24 each and every crime that they charged her with.

25 And one more point, I think at the end of

1 Ms. Cabrera's Cross-Examination or Direct Examination, she told
2 you how fearful she was for her family and that she had to get
3 this out even though, you know, things could happen from that.

4 The State asked her: Isn't Mr. Gonzales's case
5 over?

6 Is there a single person sitting in this room
7 that thinks that this person (indicating), with his black
8 tattoos and his indifferent manner about a murder case, could
9 not reach out and touch her family?

10 Common sense, we know these things happen. We
11 know they can happen. And to sit -- she has a right to be
12 fearful from this man (indicating), but she still got up there
13 and told you what happened.

14 And at the end of the case, Mr. Whipple and I
15 and Ivonne are going to ask you to find her not guilty of every
16 crime because she never had the mental state required to commit
17 a crime.

18 Thank you.

19 THE COURT: Thank you, Ms. Erickson.
20 Mr. Whipple.

21 MR. WHIPPLE: Thank you, Your Honor. Could we
22 flip this over to my slide show, please.

23 CLOSING ARGUMENT

24 MR. WHIPPLE: Guys, you've been absolutely
25 amazing. You know it's been a long trial and a long afternoon,

1 but yet each and every one of you has paid attention to the
2 facts of this case. And on behalf of all of us, I want you to
3 know that we all appreciate it and we don't take it for
4 granted.

5 You know, there are trials sometimes when people
6 start nodding off, that people are not paying attention, but
7 guys have been very mindful.

8 I'm going to be very -- very quick. Again, I
9 want you to know how much we appreciate your time.

10 I just want to touch on a few things in this
11 case because I am here, and Ms. Erickson has already touched on
12 most of the issues that we've already discussed.

13 The one thing I really want to talk about,
14 though, is, folks, there's really no evidence. The issue of
15 the crowbar jumped out at me when Ms. Wong spoke to that issue.

16 You know, there was never any discussion
17 regarding crowbar during this three-week trial. All of a
18 sudden in their Closing, it's a big part of the evidence.

19 And I think that's important. I think what
20 Ms. Erickson is trying to do is point out to you how important
21 it is to clear up the evidence in this case.

22 What is -- what value did that crowbar have?

23 We know there was an apartment full of tools.
24 We know that Smokey went through the window and we know he left
25 his fingerprint on the tub. Okay?

1 What does a crowbar have to do with it?

2 There's no fingerprints from either Smokey or
3 Ivonne. There's no DNA.

4 The detective, why did we bring in all the CSI
5 people and all these detectives?

6 If that crowbar would have forced up the window,
7 don't you think there would be some scraping on the window?
8 Don't you think there would be some paint on the crowbar? But
9 none of that existed.

10 None of that existed. There's just a crowbar
11 laying on the bathroom floor, it seems out of order, but then
12 what real value does it have?

13 I'm using that crowbar as an example as to the
14 facts of this case, and I think that's what Ms. Erickson was
15 getting at, is you really need to look through and look at the
16 facts.

17 What does that crowbar mean?

18 I mean, did they ask Jan, when Jan was on the
19 stand: Hey, Jan did you -- did Ivonne leave your house with a
20 crowbar?

21 Did -- did they get -- maybe Patrick or Felicia
22 said: Hey, did you see that crowbar?

23 The -- the crowbar would have value if there was
24 some evidence to support something that tied to this case; like
25 paint on it, like DNA, like fingerprints, like a witness that

1 saw Smokey with that crowbar or somebody that saw them with a
2 crowbar together. Then you have some substance. Then you have
3 some evidence.

4 But for them to bring in this crowbar and all of
5 a sudden suggest that there's -- there's the smoking gun, it
6 simply mis- -- misstates the facts of this case and it really
7 is the reason that I want to speak to you and the significance
8 of evidence in this case.

9 Did they even ask Ivonne on the stand: Hey,
10 Ivonne, is that your crowbar?

11 In other words, I want to point out is you have
12 incredible power in your hand, ladies and gentlemen.

13 The fact that -- the reason that you're here is
14 to be fair. You've taken an amazing amount of time to look at
15 all the evidence. We just want to make sure that you recognize
16 the significance of that evidence when you see it. And when it
17 comes to that crowbar, there is none, and to put that front and
18 center, really I think suggests the value of this case and that
19 is that they have nothing against my client.

20 Now, very quickly, I'm kind of repeating, you
21 know, what we've discussed in the beginning. Folks, they --
22 they proved that Smokey committed first degree murder. There
23 is no question.

24 They proved beyond a reasonable doubt that he
25 attempted to kill those two young ladies. There's no question

1 about that.

2 But at the end of the day, what does that have
3 to do with Ivonne Cabrera?

4 I mean honestly; right? I mean, everyone agrees
5 that this is an evil, horrible man who took two innocent lives,
6 in total, took four. He's a really bad dude. He's really bad.
7 But what does that have to do with Ivonne Cabrera?

8 At the end of the day, that's why we're here.

9 Ivonne was there; okay? Ivonne was there. All
10 right?

11 And what this really comes down to is why was
12 she there?

13 Ms. Erickson has gone into the state of mind,
14 the state of mind of what Ivonne was thinking.

15 Well, folks, she was thinking about protecting
16 her life. She took the stand. She told you what she was
17 thinking. This is not a duress defense. The only thing she
18 was thinking during the whole time is: How do I survive? How
19 do I live to see my kids another day? That's the only thing
20 that was going through her mind, through any person's mind.

21 April 26th, 2012, she gets a call from Loka.
22 We're going to go through the cell records briefly, very quick,
23 okay, because I think that really gives an insight as to this
24 case. She gets a call from Loka, right, we know at 4:00
25 o'clock she's not even sure if she's going to pick them up or

1 not. How is that part of a conspiracy?

2 She gets out to Patrick's place here
3 (indicating). We -- all of a sudden -- all of a sudden Smokey
4 jumps in, there's been a change of plans. She didn't know what
5 was going to happen. There's no conspiracy. There's no aiding
6 and abetting. She was going out to hang out and have a good
7 time.

8 We know they get to the apartment. She -- she
9 says: Well, I was going to divert him by saying: I have to go
10 to this apartment to return the car to try to get him out of
11 the car. That's not a crime. What's -- what's her process?

12 Ms. Erickson has pointed out to you the
13 significance of determining what a person is thinking, right,
14 because that goes as to whether a crime is committed or not.

15 When she tells Smokey: Hey, I'm just returning
16 the car, what is she thinking? She's thinking, I got to figure
17 out a way to get this guy out of my car who's holding a gun.

18 When she goes to the window and knocks on it,
19 what is she thinking? She thinks she's going to return the
20 key, so then Smokey can go do his own thing, that she can -- he
21 can leave. She doesn't -- she does not know what he's going to
22 do.

23 She's not part of this mastermind plan of
24 Smokey, this horrible crime that he's about to commit.

25 They go around the back, all the CSI people, all

1 the detectives, if there was any suggestion of forced entry
2 with that crowbar, you would have seen it. That would be
3 evidence.

4 They go to the sliding door first. The door is
5 closed. They can't get in.

6 He -- he climbs through. She's trying to get
7 away. There's no way out other than to come in the same way
8 that -- to go out the same way she came in. He meets her at
9 the front door again with a gun (indicating).

10 What's she thinking? She's thinking, I'm trying
11 to live. She's not thinking about any wrongdoing. She's
12 thinking about how she's going to protect herself.

13 What's the motive in this case, folks? Is it
14 really -- does this really come down to the fact that they
15 didn't get the car returned soon enough? Does that make sense?

16 I know they said that the motive seems so silly,
17 does it really come down to the fact that maybe Loka didn't get
18 enough money because of James's robbing WalMart, she didn't get
19 paid off enough?

20 Or does it come down to what most all crimes
21 are, and that is greed? This is a crime of opportunity.

22 James had been talking to the wrong people.
23 Smokey is a really bad dude, and now he's on drugs and he's
24 paranoid. What is he going to do? He's going to enrich
25 himself. It's a crime of opportunity. It's the oldest basis

1 for a crime in the world, benefit myself, a robbery gone bad.

2 That's what this is all about. It was a crime
3 of opportunity.

4 What do we know about this case?

5 Ivonne was forced to be there, she had no
6 choice, she was afraid for her life.

7 Now, in Opening and again in the Closing, they
8 testified that Ivonne walks into the -- they mention in Closing
9 that Ivonne walks into James's bedroom. There's -- so that's
10 what I want to talk to you about, is because it's you all who
11 make the determination of the facts of this case.

12 It's you that has this incredible power in your
13 hands to determine the future of Ms. Cabrera.

14 I'll suggest to you that there was never any
15 testimony from Ashley that Ivonne ever walked into her bedroom,
16 but that's what they said in Opening and that's what they said
17 in Closing.

18 Why would they say that? Because it suggests
19 that somehow she's part of a conspiracy. It suggests that
20 she's somehow part of aiding and abetting, but it never
21 happened. It never happened.

22 Just like the crowbar, all of a sudden became
23 important without fingernails -- or without fingerprints,
24 without DNA, without any paint chipping. All of a sudden,
25 they're giving you information that's not applicable to the

1 facts of this case.

2 That's your job to make a determination of the
3 value -- the value of the evidence in this case.

4 She didn't walk into James's room as they said
5 in the Opening and now in the Closing.

6 Why didn't she? Because she was there by
7 accident and being held against her will.

8 We know that all those four individuals from
9 their -- from the coroner records were obviously smoking meth,
10 so their credibility is very limited.

11 And we know Jose Gonzales was the person who
12 committed these horrible acts.

13 Again, Ivonne was there because she had no other
14 choice (demonstrating).

15 Now, I've asked you from the beginning if you
16 would be willing to wait until you hear all the evidence. I'm
17 going to ask that before you make a decision that you think
18 about all the evidence.

19 We, Ms. Erickson and myself, have attempted to
20 give you everything. Okay?

21 We had no problem bringing forth all the
22 pictures. We had no problem bringing forth all the statements.

23 MR. DIGIACOMO: Judge, I apologize, the picture
24 on the right and extremely to the left, it's not in evidence.

25 MR. WHIPPLE: What's that?

1 MR. DIGIACOMO: That photograph is not in
2 evidence.

3 MR. WHIPPLE: Which one?

4 THE COURT: The one on the right.

5 MR. WHIPPLE: I think it was.

6 MR. DIGIACOMO: It's not.

7 THE COURT: No, it's not.

8 MS. ERICKSON: It's the same picture.

9 THE COURT: I don't recall that one being
10 admitted. Can you point to which evidence it is?

11 MR. WHIPPLE: Sure. It's the State's evidence,
12 Your Honor, I will have to look at it or I'll just skip that.
13 I'm not going to --

14 MR. DIGIACOMO: For the record, that is not in
15 evidence as far as I'm aware.

16 THE COURT: The Court does not recall the
17 picture on the right being placed in evidence, only the one on
18 the left.

19 MR. WHIPPLE: Okay. All right.

20 So what did we try to get you? We tried to get
21 you everything.

22 Why did we get you everything? Because we want
23 you to have all the information before you make your decision.

24 When you read through the statements, when they
25 cross-examined Ivonne, they played bits and pieces. When you

1 came back in, we played the entire transcript. You have the
2 entire transcript to hear as many times as you choose because
3 we want you to have all the information before you make a
4 decision, because we want to make sure you have all the context
5 to make an understanding of why Ivonne would say the things she
6 did.

7 The cell phone records. The cell phone records,
8 the State brought in individual ones (indicating), piecemeal.

9 Our cell phone records were for not only the day
10 before, but for as long as the phone continued to work. Why
11 did we do that?

12 Why would we bring in all the information?
13 Because we're asking you all to make a very important decision
14 and it's important that you have all the evidence and all the
15 information in this case before you do it.

16 I'm going to finish up now. Okay? I'm not
17 going to take very -- I'm almost done.

18 What I think is very critical is the cell phone
19 records. All right? And that whole document provides you
20 insight as to communications and what's going on in
21 Ms. Cabrera's life at the time of this horrible incident.

22 Four hours, 4:00 o'clock in the morning, the
23 morning of the shooting, Loka texts, out of package (phonetic).

24 You know who that is. That is Patrick Robles:
25 Okay. I'll pick you up.

1 A little bit of time goes by, Loka texted again:
2 I'm with Smokey. Okay. That's her brother, the killer of this
3 case, okay. I'm with Smokey and, as Ivonne explained to you,
4 her sister-in-law, Smokey's wife. But he has -- but she has to
5 be home by 5:00, so she's not sneaking around.

6 4:10, the shooting happened a little before
7 4:00, so not quite two hours.

8 So don't pick you up then.

9 Ladies and gentlemen, I suggest to you that
10 that's probably the most important evidence of this case. Two
11 hours prior to the shooting she doesn't even know if she's
12 going to go pick up Loka, let alone have Smokey jump in her
13 car.

14 Two hours before the shooting she doesn't even
15 know if she's going to drive over to Patrick Robles's
16 residence.

17 5:40, about 20 minutes before the shooting,
18 she's out in front of Patrick's residence (indicating). She
19 said: Let's go. We're going to go hang out. That's why she's
20 there. If you look at that string, I want to hang out, that's
21 what she's doing.

22 It's not like we manufactured this type of
23 evidence. These are facts.

24 This goes to exactly what Ivonne Cabrera was
25 thinking at a specific time, 20 minutes before the shooting

1 happened.

2 It's only just minutes before the shooting that
3 we have any type of suggestion of anything insidious or
4 inappropriate and she explained to you why that happened, and
5 it happened to be the last communication that she ever had with
6 Loka again. Do you think that's a coincidence?

7 Folks, if this would have been a conspiracy when
8 Smokey went in the -- into the window in the bathroom, why
9 didn't he just come out and unlock the back door?

10 Right?

11 That's where he left her.

12

13 He goes in through the bathroom. He just tried
14 the sliding door. If she were really part of that, why didn't
15 she just hang a right, walk right outside, right back around to
16 the sliding glass door and let her in?

17 Because it wasn't a conspiracy. He knew that
18 she was going to be fleeing, and so he was able to intercept
19 her at the front door holding the gun (demonstrating).

20 You have absolutely uncontroverted evidence
21 through that cell phone string. You have absolutely hard
22 evidence to show that she had no idea what was going to happen
23 in this case. That presumption of innocence remains with
24 regard to my client.

25 Like Ms. Erickson said, just because we produce

1 evidence doesn't mean that all of a sudden that presumption of
2 innocence goes way. It's there.

3 The burden of this case remains with the State.
4 They have to prove to you, all of you, each and every element
5 beyond a reasonable doubt. They simply cannot do that.

6 Why can't they do that? Because Ivonne Cabrera
7 didn't commit a crime.

8 You've been an amazing group of folks. It's
9 been a long trial, a lot of information.

10 I'm going to end with where I started. I'm
11 going to thank you again. I'm going to ask you to take all the
12 information that we provided to you. Above all I am going to
13 ask you to be fair.

14 And I want to ask that you return to us the only
15 verdict that's supported by the evidence of this case, and that
16 is a verdict of not guilty.

17 THE COURT: Mr. Digiacomo, can you --
18 Mr. Whipple.

19 MR. WHIPPLE: Yes.

20 THE COURT: Can you --

21 MR. WHIPPLE: I'm going to move it right now.
22 Yes.

23 THE COURT: Thank you. I just want to make
24 sure.

25 MR. DIGIACOMO: I'll trade you, Mr. Whipple.

1 THE COURT: Okay. Mr. Digiacomo, State's final
2 remarks.

3 MR. DIGIACOMO: Thank you.

4 CLOSING ARGUMENT

5 MR. DIGIACOMO: In every criminal trial,
6 actually every trial that happens in this courthouse, there's
7 only one thing that we'll really doing. It's a search for the
8 truth. I mean that's all 12 people really need to do, is you
9 figure out what the truth is and then ultimately decide: Did
10 the State prove the charges against the defendant? And you
11 have to apply the law to do that.

12 And I'm going to talk to you about a number of
13 issues, and I do not want you to think in any way that I am
14 disputing the theory that Mr. Wong gave to you, that this is a
15 cold-blooded execution perpetrated by this woman and Smokey;
16 but from a legal standpoint it's irrelevant.

17 And what you've got to do is understand
18 Ms. Cabrera's defense the other day here in front of you versus
19 what her defense was to Jesse Prieto, because when you do that,
20 when you put those two together, you realize, oh, wait, now I
21 know why she's telling the story she's telling and why it is
22 the story she told Jesse Prieto can't be something that she
23 adopts here in Court.

24 Because when you look at the jury instructions,
25 the jury instructions tell you what?

1 That a burglary is the entry with the intent to
2 commit assault or battery, and anybody who knowingly aids
3 somebody to enter an apartment with the intent to commit
4 assault, a battery or a murder, is guilty of a burglary. And
5 any death that results during the course of that burglary,
6 felony murder kicks in and you are on the hook for first degree
7 murder. That's the law.

8 So what is it that Ms. Cabrera says? And it's
9 as plain as day in that statement to Jesse Prieto.

10 He got in the car. He had a gun. He told me he
11 wanted to go over to the apartment to scare them, and I took
12 him over to the apartment.

13 What's the answer?

14 I aided and abetted an individual to enter the
15 apartment to commit an assault.

16 Now felony murder kicks in.

17 So then you say: Oh, wait. There's duress.
18 Except for when you look at the duress instructions, where are
19 you at? Duress is not an offense for murder, attempt murder,
20 burglary with the intent to commit murder, conspiracy to commit
21 murder. It's only a defense to burglary on an assault or
22 battery theory.

23 But what do you have to prove to prove duress?

24 The defendant has to prove that she was in fear
25 of her own life. And so what's the ridiculousness of that

1 argument?

2 Why is it that she couldn't present to you: I
3 was scared for my life, so I took Smokey over there? Because
4 then she has to admit what she knows Smokey's going to do.

5 Was she legitimately going to make the argument
6 to you: I was so scared for my own life but I only thought he
7 was going to scare the poor people in that house I was helping
8 him burglarize? No. That's a terrible defense, and why it is
9 she now had to change her story when she got on the stand.

10 But let's back up and not talk about her
11 defense, because there isn't a defense. There is no defense in
12 this case to the burglary, the felony murder and the first
13 degree murder. Let's talk about what --

14 MR. WHIPPLE: I'm going to object to that.
15 That's not classified --

16 THE COURT: What's the basis of the objection,
17 Mr. Whipple?

18 MR. WHIPPLE: Improper -- improper -- facts not
19 in evidence, Your Honor.

20 THE COURT: Mr. Digiacomo?

21 MR. DIGIACOMO: Those facts are all in evidence
22 and it's argument.

23 THE COURT: It's argument. Overruled.

24 MR. WHIPPLE: Improper characterization of the
25 instructions then, Your Honor.

1 THE COURT: I can't hear you, Mr. Whipple.

2 MR. WHIPPLE: I'm sorry. Improper
3 characterization of the jury instructions, Your Honor.

4 THE COURT: All right. Overruled.

5 MR. DIGIACOMO: Thank you.

6 That's why it is she had to tell you the story
7 that she tried to tell you up here, and why it is that she
8 couldn't tell you: Well, I knew Smokey was going over there
9 to -- to scare them and I assisted him in those actions. That
10 is why she couldn't do it, but she told Jesse Prieto.

11 Now, back up and think about what she told Jesse
12 Prieto.

13 First thing: One, she was playing video games,
14 she wasn't crying, and she wasn't unhappy, and she was trying
15 to flee the jurisdiction.

16 But where was she going? Eastern and Bonanza.

17 What's at Eastern and Bonanza? Patrick's house.

18 What's at Patrick's house? Smokey.

19 Smokey got out of the state. She just wasn't
20 lucky enough to get out of there before she collected her
21 property. She's fleeing the jurisdiction.

22 What does that tell you about somebody? That's
23 not an innocent bystander.

24 And I have to ask this question: How the heck
25 are you merely present inside somebody else's apartment at 5:00

1 o'clock in the morning or 6:00 o'clock in the morning when
2 they're asleep in their locked apartment?

3 You're no longer merely present once you're
4 inside the apartment. You're no longer merely present when you
5 are knocking on the door asking people to come out so they can
6 confront an armed gunman. You're not merely present.

7 Merely present is she happened to be in the
8 parking lot when Smokey shot a bunch of people in the house.
9 Once she entered the house, mere presence is over. That's no
10 longer a defense in this case.

11 Why is it that she told you that she sent the
12 threat -- and I -- for the longest time I thought to myself,
13 that's a really bad thing for her to say.

14 Do you remember she said? I sent the text that
15 said I'm Smokey and we'll bring back the car in the morning.

16 Why would she say that? Let me get this
17 straight. It's just a coincidence that you threatened the
18 victims with the guy who actually shows up six hours later and
19 shoots them. Why would you say that?

20 Well, the answer is plain, and Mr. Whipple tells
21 you go to the cell phone records. But don't go to just one,
22 his BB1, because his BB1 starts at 10:00 o'clock at night on
23 April 25th. It doesn't start with the Loka text that occurred
24 earlier in the evening, where they are texting back and forth
25 about getting together and going to do an adventure.

1 Then suddenly Smokey has the car and now she's
2 going to go back to see Loka later, and then it's: Let's roll.

3 When Mr. Whipple put those up there, he forgot
4 to put out there the part where Loka says: Come through. We
5 got a really good thing to do. Let's go do something.

6 And what it is that you know that the threat is?

7 She can't tell you that she was with Smokey that
8 night because you know that means that her and Smokey had a
9 conversation about exactly what they were going to do.

10 And I'm going to suggest to you that she's not
11 that unlucky that she happened to threaten the person with
12 Smokey and then he happened to shoot them.

13 I'm going to suggest to you that that was
14 completely and absolutely made up, a complete and utter
15 falsehood in order to avoid her responsibility in this case.

16 The other thing is the motive in this case.
17 Look, trust me, it's hard to inject logic into an illogical
18 situation like shooting four people for no good reason; right?

19 But explain to me what Smokey's logic is. And
20 then you say to yourself: Wait, Chinola told us. It's because
21 he knew about James and the unemployment card.

22 Except if that was true, you would have heard
23 that from Detective Prieto. She told Detective Prieto there
24 was something to do with Melissa and a car ride.

25 Why doesn't she change that story?

1 Well, because that was a lie to Detective
2 Prieto, and she can't adopt it now because Melissa is a very
3 credible witness and would have remembered having to give the
4 guy that shot her and her boyfriend a ride at one point. So
5 now that's not going to work.

6 What is the other thing she's got to do?

7 Well, there's got to be an explanation for why
8 it is that Smokey would walk through the door and actually says
9 -- the first thing out of his mouth is the unemployment card.
10 Well, now she has to come up with a reason for why Smokey would
11 know about the unemployment card.

12 But what does she make the mistake of?

13 She doesn't tell you what happened at Jan's
14 house, which is the only place that Ashley has ever seen Smokey
15 in her entire life. She makes it up that it's down Maryland at
16 Smokey's house.

17 Except for you know Ashley has never been there
18 because that's something she would have remembered too. It was
19 Melissa who had been over to that house before and seen Smokey.

20 She can't keep the stories straight because
21 there is no story you can tell where you're just not a
22 cold-blooded, premeditated murderer, because that's who she is.

23 Don't be fooled by the fact that she's a woman.
24 Don't be fooled by the fact that she didn't have the guts to
25 hold the gun herself. She is that person.

1 And when the defense put up here and said she
2 didn't admit that Chinola, on the street, is a boss, notice
3 what Ms. Erickson didn't highlight, because I said to her:
4 Well, isn't it true that on the street, Chinola should all be
5 called a boss? She's, like: Yes, it is.

6 And then when I started to push her on it, she
7 backtracked off and said: Well, that's not me, and really
8 anyone from Chinola is.

9 But she got caught at first saying: Oh, that's
10 true, she's the boss.

11 Listen to the way Melissa talked about her.
12 Well, I didn't really want to be with Erik. Well, what
13 happened?

14 Well, she came over and she told me I had to
15 talk to Erik. I didn't want to, but she told me I had to, so I
16 went over there and talked to Erik.

17 Who is the leader of this group of individuals
18 but her, Chinola, Ivonne Cabrera?

19 And what is Smokey doing in that residence? He
20 has absolutely no reason to be there.

21 I do want to mention one other thing about that
22 statement that you have no evidence of, and that's whether or
23 not Detective Prieto is telling the truth when he made certain
24 statements to her.

25 Ms. Erickson suggested to you that Detective

1 Prieto didn't want to hear what she had to say. Well, I -- you
2 have no evidence that's what his motivations were.

3 The weight -- the listening -- because it
4 doesn't make any sense; right?

5 He keeps saying: Wait. That don't make sense.
6 You knew he had a gun. You knew he was going to scare these
7 people, but you still took him over there. So why don't you
8 tell me about it?

9 When he says things like: I know you got caught
10 up in something that you didn't really know was going to
11 happen, that was a tool he was using to get her to open up,
12 much like he said: Hey -- when she said: I wasn't even there,
13 hey, two people behind you that were in those apartments saw
14 you there.

15 You now know that's not true. There was no
16 witness who can identify Ivonne Cabrera. That was Detective
17 Prieto giving her a leash: Hey, listen. They saw you there.

18 So what does her story change to?

19 Okay. I didn't know. I didn't know what was
20 going to happen. I didn't know.

21 Where did she get that statement from?
22 Detective Prieto. She didn't make that up on her own.

23 And then it's: Well, I didn't know the guy.

24 Well, you knew the guy because of Melissa. She
25 did the classic thing that guilty people do all the time, they

1 admit what they can't deny, but they deny what they can't
2 possibly admit.

3 So here you are faced with these facts. You
4 have a woman who's not happy with the four people in that
5 house. You have a shooter that has no motive to shoot anybody,
6 and as far as you know has no idea where that residence is, has
7 never been to that residence before.

8 You have threats made by that woman that night.
9 You have those two individuals in a single car drive to that
10 residence together. You have that home burglarized.

11 And when they say she didn't directly commit a
12 crime, well, she directly committed a burglary. She directly
13 committed a conspiracy. She directly entered that house and
14 she knew at the time what was going to happen.

15 We say what she knew was going to be murder, but
16 even she says she knew what was going to happen was going to be
17 an assault.

18 So what facts do you have now once they're
19 inside?

20 She aids and abets these people coming to the
21 door and Smokey shoots them.

22 And the suggestion by Ms. Erickson that there
23 wasn't a ghetto silencer on this gun, look, let's -- the --
24 let's set aside everything else. Some cases are really easy.
25 You have a lot of witnesses who see everything. It's all

1 direct evidence --

2 MR. WHIPPLE: Judge, I'm going to object.
3 That's improper argument.

4 THE COURT: I haven't heard the argument yet.
5 Overruled.

6 MR. DIGIACOMO: But -- but let's talk about
7 circumstantial evidence.

8 You all know how a gun works. You pull the
9 trigger, a bullet comes out (demonstrating). If the bullet
10 hits nothing, when it hits a body, it's going to put a nice
11 little round hole.

12 You got round hole in James here. You got a
13 really round hole right up here (indicating). Tell me how it
14 is James got that mark to his face?

15 It wasn't like there was a big boulder and he
16 fell off a cliff and hit a rough surface on the way down to
17 cause all those injuries to the side of his face, the
18 lacerations.

19 But also the hand. He's got a single entrance
20 wound with just a piece of the copper -- copper jacketing of
21 the bullet and a bunch of abrasions consistent with the
22 abrasions on his face. So what do you know happened?

23 Well, you know what happened is the first shot
24 he's going like this (demonstrating) when the gun comes up.

25 What did the bullet go through?

1 It certainly wasn't anything in that room. So
2 it had to be something on the end of the gun, which tells you
3 something about this case completely.

4 It's not just that they got together, got in a
5 car, drove over to a place where she has problems with four
6 people and the shooter has no problems.

7 It's not just that they broke into a home that
8 was locked up.

9 It's not just that she lured them out to face
10 Smokey.

11 It's not just that there was nothing taken, a
12 crime of opportunity. He didn't take anything. He just shot
13 four people.

14 It's not just that they ran off together.

15 And it's not just that she was cleaning up her
16 property and fleeing from town.

17 But it's the person she helped get in had a
18 ghetto silencer on the gun.

19 And I understand you might want to go commit a
20 robbery with a gun in your hand and that gun may be loaded, but
21 you don't silence that weapon. And note Victor Santilla (sic),
22 the one witness from the outside, said the first two shots
23 sounded muffled.

24 You don't do that unless you are there to kill
25 somebody.

1 And if you say to yourself: God, you're just
2 making this up, there's no way that there's a ghetto silencer
3 on that gun, look closely at the photograph of James's head
4 with his hair before it's shaved. All those little pieces of
5 plastic from whatever he had on the end of the gun are melted
6 to the follicles of his hair at the autopsy after they wash all
7 that blood off.

8 So what happened?

9 The first shot goes through whatever it is,
10 small bleach -- plastic bleach bottle or some sort of small
11 white bottle, it shattered, it causes this injury, it causes
12 that injury.

13 He takes the second shot to his side and as he's
14 down on the ground, execution style, and he keeps blowing out
15 all this dust.

16 And then he shoots Ashley a couple more times.

17 Why don't you have any dust in the second room?
18 Because he's fired that gun so many times there's nothing left
19 to blow out.

20 And then he walks into that second room and he
21 kills him.

22 This is an execution, and she is the
23 executioner. She just happens to be pushing Smokey to pull the
24 gun -- to pull the trigger. And I ask you to held her
25 accountable.

1 Thank you.

2 THE COURT: Thank you, Mr. Digiacomo.

3 I need the Court officers to join us, but at
4 this time, we have completed the closing statements with regard
5 to this case.

6 That completes all of the information that we
7 need to provide to you before we now send you to deliberate.

8 I have both Court officers present. I'll ask
9 them to come forward in the courtroom.

10 The reason we have two Court officers to be
11 sworn because, of course, there are a number of you who will be
12 deliberating and there are two of you who will be alternates --
13 I'm sorry, three of you who will be alternates in this case,
14 and we need to identify and give you specific instructions as
15 to each group.

16 Let me go ahead and have the officers sworn in.
17 (The Court officers were sworn to take charge of the jury,
18 and both responded in the affirmative.)

19 THE COURT: Thank you.

20 At this time, the alternates, who will proceed
21 with Ms. Springburg, are Juror Delrosario, Juror Weaver, and
22 Juror Arango and jurors in the current seats 13, 14 and 15, you
23 will proceed with Ms. Springburg.

24 Everyone else will proceed with our Marshal and
25 we'll see you in a bit.

1 You are going to go out this way this time to
2 the back rooms.

3 THE MARSHAL: Yeah. Bring -- now you are going
4 to bring your pads.

5 THE COURT: Jurors, you are going to proceed
6 with the officers of the Court. Please take your notepads and
7 please proceed with the officers of the Court.

8 (The jury begins its deliberations.)

9 THE COURT: It doesn't matter what order you
10 proceed in. Thank you.

11 (The following proceedings were had in open
12 Court outside the presence of the jury panel:)

13 THE COURT: I never had them not leave the room
14 before. I wasn't sure what to do there.

15 So this is what I advised the Marshal. He's
16 going to let them get into the deliberation room. The
17 alternates are going to be kept separate, but not excused, not
18 let go yet. The Marshal will let them use the facilities and
19 whatnot, and then we'll ask them to let him know once they have
20 chosen a foreperson.

21 It is my intention that at that time to have him
22 inquire about what time they would like to start tomorrow and
23 return them for deliberation tomorrow.

24 I don't think it serves any purposes that are
25 beneficial to this case after 5:00 o'clock to ask them to begin

1 their deliberations.

2 So right now, because I don't think they ever
3 anticipated a morning start early in the week, my assumption is
4 they'll want to come back in the afternoon because they may
5 have been thinking that way. If they want to come back in the
6 morning, that's fine too. We're going to give them that
7 option.

8 But we want to let them get established, get the
9 foreperson picked, and then the Marshal will find out.

10 MR. DIGIACOMO: We have --

11 THE COURT: Anything else before we --

12 MR. DIGIACOMO: A couple things.

13 One for the record, I had a clean computer
14 delivered to your JEA. She tells me she has it for the jury in
15 their deliberations.

16 Two, is during Ms. Erickson's argument is she
17 was making an argument about the burglary. I went to look for
18 the definition of burglary for my rebuttal and for whatever
19 reason it was in our original package, there is no burglary is
20 the -- you know, anyone who enters any house, room, apartment,
21 tenement or other structure with the intent to commit assault
22 and/or battery.

23 THE COURT: I recall reading --

24 MR. DIGIACOMO: I thought you read it too. And
25 then we kept looking and it starts with -- I believe, the

1 burglary starts at --

2 THE COURT: I've got the consent to enter for a
3 crime of burglary, which is 15.

4 MR. DIGIACOMO: Yeah, 12 and 13 and 14 --

5 THE COURT: And I didn't remove any of yours. I
6 only added in their's, so --

7 MR. DIGIACOMO: I think it somehow got lost in
8 the mix because we went back and looked at the original
9 submittal that we had.

10 I don't necessarily have a problem because if
11 you read those in conjunction with the indictment, I just
12 didn't know -- and I wanted the Defense to make a decision if
13 they want to have the elements instruction in there or not
14 for -- for the record purposes, because I heard Ms. Erickson
15 sort of quote it, and then the one she was quoting isn't
16 actually in here.

17 MS. ERICKSON: I don't know how I could quote it
18 if I didn't have it in there. I didn't make it up.

19 THE COURT: I'm still looking too. I don't know
20 how we don't have it. Let me see.

21 MR. DIGIACOMO: And we went back to the one you
22 read on Thursday.

23 THE COURT: It's tied to the conspiracy.

24 MR. DIGIACOMO: And it was missing from the one
25 on --

1 (Sotto voce at this time.)

2 MR. DIGIACOMO: -- the final draft for Friday.
3 And I just didn't notice that it wasn't in there because it
4 wasn't one that I would --

5 THE COURT: Well, we have what is -- the State
6 needs to prove as far as it was just a burglary in. All right.
7 Well, again, they're going to pick their
8 foreperson.

9 One of the things that we can do, since they're
10 still here, is we can obviously pull that instruction, add it
11 to the list, and --

12 MR. DIGIACOMO: Basically I'm going to leave it
13 up to Defense --

14 THE COURT: -- and bring them back in and
15 reinstruct them.

16 MR. DIGIACOMO: -- essentially if they want it
17 or don't want it. It's just --

18 THE COURT: It did not occur to me, in reviewing
19 the final set, to then provide it to counsel on Friday that we
20 were missing an instruction; but as you pointed out now and as
21 we're looking for it, I'm not just seeing one that just
22 specifically says element.

23 We have that as to assault, we have that as to
24 battery. We have much discussion about burglary in the context
25 of which theory it is and how it applies to the conspiracy, but

1 I don't disagree that we do not appear to have a specific
2 simply elements of burglary instruction.

3 Can I get the position of Counsel for
4 Ms. Cabrera?

5 (Sotto voce at this time.)

6 MS. ERICKSON: What's which instruction is it?

7 MR. DIGIACOMO: It's instruction read in our
8 proposed: Any person who, by day or night, enters any house,
9 room, apartment, tenement, shop, warehouse, store, other
10 building, automobile or other vehicle with the intent to commit
11 assault, battery and/or murder is guilty of burglary.

12 For whatever reason, it didn't make that into
13 the package. I don't care if it's not in there, but I didn't
14 know if the Defense has a position or not.

15 MS. ERICKSON: We don't -- we don't want it
16 necessarily to be emphasized. We discussed the entry, the
17 burglary -- it gets to the burglary. It is entry. There is a
18 jury instruction that says that. So I think that they're fine.

19 THE COURT: Again, in the totality of the
20 instructions and the -- and the charging document in terms of
21 how it's charged, the detail of instructions, of how that
22 interplays with what is being alleged should be sufficient.

23 I'll think about it momentarily. I appreciate
24 the Defense is not requesting it, but let me think about it
25 briefly, and if I determine to still include the instruction we

1 will; if not, I'll make a record either way.

2 MR. DIGIACOMO: Okay. Either way, I just want
3 to make sure they are on the record. I don't want it later on
4 there to be, like, oh, we --

5 THE COURT: I just want everybody to stand by so
6 I have a minute to confer with my Marshal and figure out what
7 the timing of things are tomorrow, and then we will come back
8 and let you know. Okay?

9 MR. DIGIACOMO: Sure.

10 MS. WONG: Yes.

11

12 (Proceedings concluded.)

13

14 * * * * *

15

16 ATTEST: Full, true and accurate transcript of proceedings.

17

18

19 /S/Renee Silvaggio
20 RENEE SILVAGGIO, C.C.R. 122

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22

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24

25

JUL 18 2017

DISTRICT COURT
CLARK COUNTY, NEVADA

BY 
S. BOYLE, DEPUTY

THE STATE OF NEVADA,
Plaintiff,

-vs-

IVONNE CABRERA,
Defendant.

CASE NO: C-12-283700-1

DEPT NO: XXV

JURY INSTRUCTIONS

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.

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 of the instructions as a whole and regard each in the light of all of the others.

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

1
2
3 An Amended Information is but a formal method of accusing a person of a crime and
4 is not of itself any evidence of that person's guilt.

5 In this case, it is charged in an Amended Information that on April 26, 2012, within
6 the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in
7 such cases made and provided, and against the peace and dignity of the State of Nevada, that
8 the Defendant committed the following offenses:

9 COUNT 1 - CONSPIRACY TO COMMIT MURDER

10 did then and there meet with JOSE GONZALES and between themselves, and each
11 of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a
12 crime, to-wit: murder, and in furtherance of said conspiracy, Defendants did commit the acts
13 as set forth in Counts 2-6, said acts being incorporated by this reference as though fully set
14 forth herein.

15 COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

16 did then and there wilfully, unlawfully, and feloniously enter with intent to commit
17 assault and/or battery and/or a felony, to-wit: murder, that certain building occupied by
18 ERIK QUEZADA MORALES and/or JAMES HEADRICK and/or MELISSA MARIN
19 and/or ASHLEY WANTLAND, located at 2039 Webster, Apartment No. C, North Las
20 Vegas, Clark County, Nevada, the Defendants did possess and/or gain possession of a deadly
21 weapon consisting of a firearm during the commission of the crime and/or before leaving the
22 structure.

23 COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON

24 did then and there wilfully, feloniously, without authority of law, and with
25 premeditation and deliberation, and with malice aforethought, kill JAMES HEADRICK, a
26 human being, by shooting at the said JAMES HEADRICK multiple times, with a deadly
27 weapon, to-wit: firearm, and/or by the killing occurring in the perpetration or attempted
28 perpetration of a Burglary; Defendant JOSE GONZALES directly committing said crime,

1 Defendant IVONNE CABRERA aiding or abetting by counsel and encouragement and by
2 accompanying Defendant JOSE GONZALES to JAMES HEADRICK's residence and
3 knocking on doors to and within JAMES HEADRICK's apartment to allow Defendant JOSE
4 GONZALEZ to gain access to JAMES HEADRICK to facilitate shooting him, Defendant
5 IVONNE CABRERA also being criminally liable as a co-conspirator vicariously in that said
6 crime was a foreseeable act of the conspiracy set forth in Count 1 hereinabove.

7 COUNT 4 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

8 did then and there, without authority of law, and malice aforethought, willfully and
9 feloniously attempt to kill ASHLEY WANTLAND, a human being, by shooting at the said
10 ASHLEY WANTLAND multiple times, with a deadly weapon, to-wit: a firearm; Defendant
11 JOSE GONZALES directly committing said crime, Defendant IVONNE CABRERA aiding
12 or abetting by counsel and encouragement and by accompanying Defendant JOSE
13 GONZALES to ASHLEY WANTLAND's residence and knocking on doors to and within
14 ASHLEY WANTLAND's apartment to allow Defendant JOSE GONZALEZ to gain access
15 to ASHLEY WANTLAND to facilitate shooting her, Defendant IVONNE CABRERA also
16 being criminally liable as a co-conspirator vicariously in that said crime was a foreseeable
17 act of the conspiracy set forth in Count 1 hereinabove.

18 COUNT 5 - MURDER WITH USE OF A DEADLY WEAPON

19 did then and there wilfully, feloniously, without authority of law, and with
20 premeditation and deliberation, and with malice aforethought, kill ERIK QUEZADA
21 MORALES, a human being, by shooting at the said ERIK QUEZADA MORALES multiple
22 times, with a deadly weapon, to-wit: firearm, and/or by the killing occurring in the
23 perpetration or attempted perpetration of a Burglary; Defendant JOSE GONZALES directly
24 committing said crime, Defendant IVONNE CABRERA aiding or abetting by counsel and
25 encouragement and by accompanying Defendant JOSE GONZALES to ERIK QUEZADA
26 MORALES' residence and knocking on doors to and within ERIK QUEZADA MORALES'
27 apartment to allow Defendant JOSE GONZALEZ to gain access to ERIK QUEZADA
28 MORALES to facilitate shooting him, Defendant IVONNE CABRERA also being

1 criminally liable as a co-conspirator vicariously in that said crime was a foreseeable act of
2 the conspiracy set forth in Count 1 hereinabove.

3 COUNT 6 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

4 did then and there, without authority of law, and malice aforethought, willfully and
5 feloniously attempt to kill MELISSA MARIN, a human being, by shooting at the said
6 MELISSA MARIN twice, with a deadly weapon, to-wit: a firearm; Defendant JOSE
7 GONZALES directly committing said crime, Defendant IVONNE CABRERA aiding or
8 abetting by counsel and encouragement and by accompanying Defendant JOSE GONZALES
9 to MELISSA MARIN'S residence and knocking on doors to and within MELISSA
10 MARIN'S apartment to allow Defendant JOSE GONZALEZ to gain access to MELISSA
11 MARIN to facilitate shooting ^{HGR}him. Defendant IVONNE CABRERA also being criminally
12 liable as a co-conspirator vicariously in that said crime was a foreseeable act of the
13 conspiracy set forth in Count 1 hereinabove.

14 It is the duty of the jury to apply the rules of law contained in these instructions to the
15 facts of the case and determine whether or not the Defendant is guilty of one or more of the
16 offenses charged.

17 Each charge and the evidence pertaining to it should be considered separately. The
18 fact that you may find the Defendant guilty or not guilty as to one of the offenses charged
19 should not control your verdict as to any other offense charged.
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3 A conspiracy is an agreement between two or more persons for an unlawful purpose.
4 To be guilty of conspiracy, a person must intend to commit, or to aid in the commission of,
5 the specific crime agreed to. The crime is the agreement to do something unlawful; it does
6 not matter whether it was successful or not.

7 A person who knowingly does any act to further the object of a conspiracy, or
8 otherwise participates therein, is criminally liable as a conspirator. However, mere
9 knowledge or approval of, or acquiescence in, the object and purpose of a conspiracy,
10 without an agreement to cooperate in achieving such object or purpose, does not make one a
11 party to conspiracy.

12 Conspiracy is seldom susceptible of direct proof and is usually established by
13 inference from the conduct of the parties. In particular, a conspiracy may be supported by a
14 coordinated series of acts, in furtherance of the underlying offense, sufficient to infer the
15 existence of an agreement.

16 A conspiracy to commit a crime does not end upon the completion of the crime. The
17 conspiracy continues until the co-conspirators have successfully gotten away and concealed
18 the crime.
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3 It is not necessary in proving a conspiracy to show a meeting of the alleged
4 conspirators or the making of an express or formal agreement. The formation and existence
5 of a conspiracy may be inferred from all circumstances tending to show the common intent
6 and may be proved in the same way as any other fact may be proved, either by direct
7 testimony of the fact or by circumstantial evidence, or by both direct and circumstantial
8 evidence.
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Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators. Every conspirator is legally responsible for a specific intent crime of a co-conspirator, so long as the specific intent crime was intended by the conspirator. A conspirator is also legally responsible for a general intent crime that follows as one of the reasonably foreseeable consequence of the object of the conspiracy, even if it was not intended as part of the original plan and even if he/she was not present at the time of the commission of such act.

Evidence that a person was in the company or associated with one or more other persons alleged or proven to have been members of a conspiracy is not, in itself, sufficient to prove that such person was a member of the alleged conspiracy. However, you are instructed that presence, companionship, and conduct before, during and after the offense are circumstances from which a person's participation in the criminal intent may be inferred.

The State must prove beyond a reasonable doubt that the Defendant was a participant and not merely a knowing spectator.

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3 Whenever there is slight evidence that a conspiracy existed and that a defendant was
4 one of the members of the conspiracy, then the statements and the acts by any person
5 likewise a member of the conspiracy may be considered by the jury as evidence in the case
6 as to the defendant found to have been a member, even though the statements and acts may
7 have occurred in the absence and without the knowledge of the defendant found to have been
8 a member, provided that such statements and acts were knowingly made and done during the
9 continuance of the conspiracy, and in furtherance of some object or purpose of the
10 conspiracy.
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3 Every person concerned in the commission of a felony, whether he/she directly
4 commits the acts constituting the offense, or aids or abets in its commission, and whether
5 present or absent, and every person who, directly or indirectly counsels, encourages, hires,
6 commands, induces or otherwise procures another to commit a felony is a principal and
7 criminally liable for the commission of the offense.

8 A person aids and abets the commission of a crime if he/she knowingly and with
9 criminal intent aids, promotes, encourages or instigates by act or advice, or by act and
10 advice, the commission of such crime with the intention that the crime be committed.

11 The State is not required to prove precisely which person actually committed the
12 crime and which person aided and abetted.
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3 In order for a person to be held accountable for a specific intent crime that was
4 committed by a different person, under an aiding or abetting theory of principal criminal
5 liability, the person accused of aiding or abetting must have knowingly aided the other
6 person and intended that each of the crimes be committed.

7 You are instructed that First Degree Murder, First Degree Murder committed during
8 the commission of a Burglary as charged in the Amended Information, Attempt Murder, and
9 Burglary While in Possession of a Deadly Weapon are all specific intent crimes.
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3 Mere presence at the scene of a crime, which includes mere association with a person
4 who commits a crime or mere knowledge that a crime is being committed, is not sufficient to
5 establish that the Defendant aided and abetted in one or more of the crimes charged. The
6 State must prove beyond a reasonable doubt that the Defendant was a participant and not
7 merely a knowing spectator.
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3 When two or more persons participate in the commission of a Burglary, and one or
4 more of them enters the structure, it is not necessary to prove the other individual actually
5 entered, because one who aids and abets another in the commission of a Burglary is equally
6 guilty as a principal.
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The intention with which an entry was made is a question of fact, which may be inferred from the Defendant's conduct and all other circumstances disclosed by the evidence.

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3 It is not necessary that the State prove the Defendant actually committed an assault,
4 battery, or murder inside the house after the Defendant entered in order for you to find the
5 Defendant guilty of Burglary. The gist of the crime of Burglary is the unlawful entry with
6 criminal intent. Therefore, Burglary was committed if the Defendant entered the house with
7 the intent to commit an assault, battery or murder, regardless of whether or not that crime
8 occurred.
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Consent to enter is not a defense to the crime of Burglary, so long as it is shown that entry was made with the specific intent to commit an assault, battery, or murder therein. Moreover, force or a "breaking," as such, is not a necessary element of the crime.

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3 A person who unlawfully attempts to use physical force against the person of another
4 or intentionally places another person in reasonable apprehension of immediate bodily harm
5 is guilty of Assault.

6 To constitute an assault, it is not necessary that any actual injury be inflicted.
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Battery means any willful and unlawful use of force or violence upon the person of another.

Every person who, in the commission of a Burglary commits any other crime, may be prosecuted for each crime separately.

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3 Every person who commits the crime of Burglary, who has in his/her possession or
4 gains possession of any firearm or other deadly weapon at any time during the commission
5 of the crime, at any time before leaving the structure, or upon leaving the structure, is guilty
6 of Burglary While in Possession of a Deadly Weapon.
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3 In this case, the Defendant is accused in an Amended Information alleging an open
4 charge of murder. This charge includes and encompasses First Degree Murder and Second
5 Degree Murder.

6 The jury must decide if the Defendant is guilty of any offense and, if so, of which
7 offense.
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3 Murder is the unlawful killing of a human being, with malice aforethought, whether
4 express or implied. The unlawful killing may be effected by any of the various means by
5 which death may be occasioned.
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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.

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

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3 The prosecution is not required to present direct evidence of a defendant's state of
4 mind as it existed during the commission of a crime, and the jury may infer the existence of a
5 particular state of mind from the circumstances disclosed by the evidence.
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3 First Degree Murder is murder that is perpetrated by means of any kind of wilful,
4 deliberate, and premeditated killing. All three (3) elements -- willfulness, deliberation, and
5 premeditation -- must be proven beyond a reasonable doubt before an accused can be
6 convicted of First Degree Murder.

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

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

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

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

19 Premeditation need not be for a day, an hour, or even a minute. It may be as
20 instantaneous as successive thoughts of the mind. For if the jury believes from the evidence
21 that the act constituting the killing has been preceded by and has been the result of
22 premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.
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3 The law does not undertake the measure in units of time the length of the period
4 during which the thought must be pondered before it can ripen into an intent to kill which is
5 truly deliberate and premeditated. The time will vary with different individuals and under
6 varying circumstances.

7 The true test is not the duration of time, but rather the extent of the reflection. A cold,
8 calculated judgment and decision may be arrived at in a short period of time, but a mere
9 unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation
10 and premeditation as will fix an unlawful killing as First Degree Murder.

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3 There are certain kinds of First Degree Murder that carry with them conclusive
4 evidence of malice aforethought. One of these classes of First Degree Murder is a killing
5 committed in the perpetration or attempted perpetration of a Burglary. Therefore, a killing
6 that is committed in the perpetration of a Burglary is deemed to be Murder in the First
7 Degree, whether the killing was intentional, unintentional, or accidental. This is called the
8 Felony-Murder Rule.

9 The intent to perpetrate or attempt to perpetrate a Burglary must be proven beyond a
10 reasonable doubt.
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3 Although your verdict must be unanimous as to the charge, you do not have to agree
4 on the theory of guilt or liability. Therefore, even if you cannot agree on whether the facts
5 establish the Defendant is guilty of Premeditated and Deliberate Murder or Felony Murder,
6 or is liable as a principle, aider and abettor, or co-conspirator, so long as all of you agree that
7 the evidence establishes the Defendant is guilty of First Degree Murder, your verdict shall be
8 First Degree Murder.
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3 All murder that is not First Degree Murder is Second Degree Murder. Second Degree
4 Murder is murder with malice aforethought, but without the admixture of premeditation and
5 deliberations.

6 The distinguishing feature between First and Second Degree Murder is the presence
7 or absence of premeditation and deliberation. If the killing is done with malice, but without
8 premeditation and deliberation, that is, without the premeditated and deliberate intent to take
9 life, which is an element of First Degree Murder, then the offense is Second Degree Murder.

10 In practical application, this means that the unlawful killing of a human being with
11 malice aforethought, but without a deliberately formed and premeditated intent to kill, is
12 Second Degree Murder.
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3 If you find that the State has established that the Defendant has committed First
4 Degree Murder, you shall select First Degree Murder as your verdict. The crime of First
5 Degree Murder includes the crime of Second Degree Murder. You may find the defendant
6 guilty of Second Degree Murder if:

7 1. You have not found, beyond a reasonable doubt, that the defendant is guilty of First
8 Degree Murder, and

9 2. All twelve of you are convinced beyond a reasonable doubt the Defendant is guilty
10 of the crime of Second Degree Murder.

11 If you are convinced beyond a reasonable doubt that the crime of murder has been
12 committed by the defendant, but you have a reasonable doubt whether such murder was of
13 the First or of the Second Degree, you must give the Defendant the benefit of that doubt and
14 return a verdict of Second Degree Murder.

Attempt Murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate intention unlawfully to kill.

It is not necessary to prove the elements of premeditation and deliberation in order to prove Attempt Murder.

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3 You are instructed that if you find the Defendant guilty of Murder and/or Attempt
4 Murder, you must also determine whether or not a deadly weapon was used in the
5 commission of this crime.

6 If you find beyond a reasonable doubt that a deadly weapon was used in the
7 commission of such an offense, then you shall return the appropriate guilty verdict reflecting
8 “With Use of a Deadly Weapon”.

9 If, however, you find that a deadly weapon was not used in the commission of such an
10 offense, but you find that it was committed, then you shall return the appropriate guilty
11 verdict reflecting that a deadly weapon was not used.

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3 A deadly weapon is any instrument which, if used in the ordinary manner
4 contemplated by its design and construction, will or is likely to cause substantial bodily harm
5 or death; or any weapon or device, instrument, material or substance which, under the
6 circumstances in which it is used, attempted to be used, or threatened to be used, is readily
7 capable of causing substantial bodily harm or death.

8 You are instructed that a firearm is a deadly weapon.
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3 The State is not required to have recovered the deadly weapon used in an alleged
4 crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon
5 was used in the commission of the crime.
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3 An unarmed offender "uses" a deadly weapon when the unarmed offender is liable as
4 a principal for the offense, another principal to the offense is armed with and uses a deadly
5 weapon in the commission of the offense, and the unarmed offender had knowledge of the
6 use of the deadly weapon.
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3 No act committed by a person while in a state of voluntary intoxication shall be
4 deemed less criminal by reason of the person's condition, but whenever the actual existence
5 of any particular purpose, motive or intent is a necessary element to constitute a particular
6 species or degree of crime, evidence of intoxication may be taken into consideration in
7 determining such purpose, motive or intent.
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3 To constitute the crime charged, there must exist a union or joint operation of an act
4 forbidden by law and an intent to do the act.

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

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

9 Motive is not an element of the crime charged and the State is not required to prove a
10 motive on the part of the Defendant in order to convict. However, you may consider
11 evidence of motive or lack of motive as a circumstance in the case.
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Every crime must contain an *actus reus* and a *mens rea*. The *actus reus* is the wrongful deed that is the physical component of the crime. The *mens rea* is the state of mind the State must prove that a defendant had when committing a crime.

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3 The flight of a person after the commission of a crime is not sufficient in and of itself
4 to establish guilt; however, if flight is proved, it is circumstantial evidence in determining
5 whether the Defendant is guilty or not guilty of one or more of the crimes charged.

6 The essence of flight embodies the idea of deliberately going away with
7 consciousness of guilt and for the purpose of avoiding apprehension or prosecution. The
8 weight to which such circumstance is entitled is a matter for the jury to determine.
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3 The Defendant is presumed innocent until the contrary is proved beyond a reasonable
4 doubt. This presumption places upon the State the burden of proving beyond a reasonable
5 doubt every element of the crime charged and that the Defendant is the person who
6 committed the offense.

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

13 If you have a reasonable doubt as to the guilt of the Defendant, she is entitled to a
14 verdict of not guilty.
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Duress is not a defense to Murder, Attempt Murder, Conspiracy to Commit Murder, or Burglary with the intent to commit murder, but duress may be a defense to Burglary with the intent to commit assault and/or battery.

The Defendant must prove duress by a preponderance of the evidence. A preponderance of the evidence means that you must be persuaded that the things the Defendant seeks to prove are more probably true than not true. This is a lesser burden of proof than the State's burden to prove beyond a reasonable doubt each element of the crime of Burglary where the entry was made with the intent to commit assault and/or battery.

The Defendant acts under duress only if, at the time of the crime charged:

1. The act or acts were performed under threats or menaces sufficient to show that the Defendant had reasonable cause to believe, and did believe, her life would be endangered if she refused, or that she would suffer great bodily harm;

2. The act or acts were committed only because of a fear of imminent death or great bodily injury, and for no other reason; and

3. Defendant had no reasonable opportunity to escape the threatened harm.

"Reasonable cause to believe" means a reasonable person in a similar situation would believe himself/herself to be in like danger.

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

5 There are two types of evidence; direct and circumstantial. Direct evidence is the
6 testimony of a person who claims to have personal knowledge of the commission of the
7 crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof
8 of a chain of facts and circumstances which tend to show whether the Defendant is guilty or
9 not guilty. The law makes no distinction between the weight to be given either direct or
10 circumstantial evidence. Therefore, all of the evidence in the case, including the
11 circumstantial evidence, should be considered by you in arriving at your verdict.

12 Statements, arguments and opinions of counsel are not evidence in the case.
13 However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation
14 as evidence and regard that fact as proved.

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

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

20 Anything you may have seen or heard outside the courtroom is not evidence and must
21 also be disregarded.
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3 The credibility or believability of a witness should be determined by his/her manner
4 upon the stand, his/her relationship to the parties, his/her fears, motives, interests or feelings,
5 his/her opportunity to have observed the matter to which he/she testified, the reasonableness
6 of his/her statements, and the strength or weakness of his/her recollections.

7 If you believe that a witness has lied about any material fact in the case, you may
8 disregard the entire testimony of that witness or any portion of his/her testimony that is not
9 proved by other evidence.
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3 Evidence that the Defendant committed offenses other than that for which she is on
4 trial, if believed, was not received and may not be considered by you to prove that she is a
5 person of bad character or to prove that she has a disposition to commit crimes. Such
6 evidence was received and may be considered by you only for the limited purpose of proving
7 the Defendant's motive or intent. You must weigh this evidence in the same manner as you
8 do all other evidence in the case.
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3 The fact that a witness had been convicted of a felony, if such be a fact, may be
4 considered by you only for the purpose of determining the credibility of that witness. The
5 fact of such a conviction does not necessarily destroy or impair the witness' credibility. It is
6 one of the circumstances that you may take into consideration in weighing the testimony of
7 such witness.
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3 A witness who has special knowledge, skill, experience, training or education in a
4 particular science, profession or occupation is an expert witness. An expert witness may
5 give his/her opinion as to any matter in which he/she is skilled.

6 You should consider such expert opinion and weigh the reasons, if any, given for it.
7 You are not bound, however, by such an opinion. Give it the weight to which you deem it
8 entitled, whether that be great or slight, and you may reject it, if, in your judgment, the
9 reasons given for it are unsound.
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3 The Defendant in this case has given a statement, which was memorialized in an
4 audio recording. Portions of this statement were redacted by the attorneys and agreed upon
5 by the court. The jury is not to consider or speculate on any of the portions of the statement
6 that have been removed.
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3 You are here to determine whether the Defendant is guilty or not guilty from the
4 evidence in the case. You are not called upon to return a verdict as to whether any other
5 person is guilty or not guilty. So, if the evidence in the case convinces you beyond a
6 reasonable doubt of the guilt of the Defendant, you should so find, even though you may
7 believe one or more persons are also guilty.
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3 Although you are to consider only the evidence in the case in reaching a verdict, you
4 must bring to the consideration of the evidence your everyday common sense and judgment
5 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
6 the witnesses testify. You may draw reasonable inferences from the evidence, which you
7 feel are justified in the light of common experience, keeping in mind that such inferences
8 should not be based on speculation or guess.

9 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
10 decision should be the product of sincere judgment and sound discretion in accordance with
11 these rules of law.
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3 In arriving at a verdict in this case as to whether the Defendant is guilty or not guilty,
4 the subject of penalty or punishment is not to be discussed or considered by you and should
5 in no way influence your verdict.

6 If the jury's verdict is First Degree Murder, you will, at a later hearing, consider the
7 subject of penalty or punishment.
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3 When you retire to consider your verdict, you must select one of your number to act
4 as foreperson, who will preside over your deliberation and will be your spokesperson here in
5 court.

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

9 Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it
10 signed and dated by your foreperson and then return with it to this room.
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3 Now you will listen to the arguments of counsel, who will endeavor to aid you to
4 reach a proper verdict by refreshing in your minds the evidence and by showing the
5 application thereof to the law; but, whatever counsel may say, you will bear in mind that it is
6 your duty to be governed in your deliberation by the evidence as you understand it and
7 remember it to be and by the law as given to you in these instructions, with the sole, fixed
8 and steadfast purpose of doing equal and exact justice between the Defendant and the State
9 of Nevada.

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11 GIVEN:
DISTRICT JUDGE12
13 DATE:14
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July 17, 2017

DISTRICT COURT
CLARK COUNTY, NEVADA

JUL 18 2017

BY,


S. BOYLE, DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-vs-

IVONNE CABRERA,

Defendant.

CASE NO: C-12-283700-1

DEPT NO: XXV

VERDICT

We, the jury in the above entitled case, find the Defendant IVONNE CABRERA, as follows:

COUNT 1 – CONSPIRACY TO COMMIT MURDER

(Please check the appropriate box, select only one)

- ☒ Guilty of Conspiracy to Commit Murder
☐ Not Guilty

We, the jury in the above entitled case, find the Defendant IVONNE CABRERA, as follows:

COUNT 2 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

(Please check the appropriate box, select only one)

- ☒ Guilty of Burglary While in Possession of a Deadly Weapon
☐ Guilty of Burglary
☐ Not Guilty

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1 We, the jury in the above entitled case, find the Defendant IVONNE CABRERA, as
2 follows:

3 COUNT 3 – MURDER WITH USE OF A DEADLY WEAPON (James Headrick)

4 *(Please check the appropriate box, select only one)*

5 ☒ First Degree Murder with Use of a Deadly Weapon

6 ***SPECIAL VERDICT***

7 *(Please check the appropriate box or boxes)*

8 ☒ The jury unanimously finds the murder willful, deliberate, and
9 premeditated.

10 ☒ The jury unanimously finds the murder was committed during the
11 perpetration of a burglary

12 ☐ The jury does not unanimously find the defendant guilty under a
13 single theory of murder of the first degree.

14 ☐ First Degree Murder

15 ***SPECIAL VERDICT***

16 *(Please check the appropriate box or boxes)*

17 ☐ The jury unanimously finds the murder willful, deliberate, and
18 premeditated.

19 ☐ The jury unanimously finds the murder was committed during the
20 perpetration of a burglary

21 ☐ The jury does not unanimously find the defendant guilty under a
22 single theory of murder of the first degree.

23 ☐ Second Degree Murder with Use of a Deadly Weapon

24 ☐ Second Degree Murder

25 ☐ Not Guilty

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1 We, the jury in the above entitled case, find the Defendant IVONNE CABRERA, as
2 follows:

3 COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Ashley Wantland)

4 *(Please check the appropriate box, select only one)*

- 5 ☒ Guilty of Attempt Murder With Use of a Deadly Weapon
6 ☐ Guilty of Attempt Murder
7 ☐ Not Guilty

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1 We, the jury in the above entitled case, find the Defendant IVONNE CABRERA, as
2 follows:

3 COUNT 5 – MURDER WITH USE OF A DEADLY WEAPON (Erik Quezada-Morales)

4 *(Please check the appropriate box, select only one)*

5 ☒ First Degree Murder with Use of a Deadly Weapon

6 ***SPECIAL VERDICT***

7 *(please check the appropriate box or boxes)*

8 ☒ The jury unanimously finds the murder willful, deliberate, and
9 premeditated.

10 ☒ The jury unanimously finds the murder was committed during the
11 perpetration of a burglary

12 ☐ The jury does not unanimously find the defendant guilty under a
13 single theory of murder of the first degree.

14 ☐ First Degree Murder

15 ***SPECIAL VERDICT***

16 *(please check the appropriate box or boxes)*

17 ☐ The jury unanimously finds the murder willful, deliberate, and
18 premeditated.

19 ☐ The jury unanimously finds the murder was committed during the
20 perpetration of a burglary

21 ☐ The jury does not unanimously find the defendant guilty under a
22 single theory of murder of the first degree.

23 ☐ Second Degree Murder with Use of a Deadly Weapon

24 ☐ Second Degree Murder

25 ☐ Not Guilty

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1 We, the jury in the above entitled case, find the Defendant IVONNE CABRERA, as
2 follows:

3 COUNT 6 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Melissa Marin)

4 *(Please check the appropriate box, select only one)*

5 ☒ Guilty of Attempt Murder With Use of a Deadly Weapon

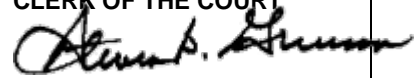
6 ☐ Guilty of Attempt Murder

7 ☐ Not Guilty

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9 DATED this 18 day of July, 2017

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11 
12 FOREPERSON

Steven D. Grierson
CLERK OF THE COURT



DISTRICT COURT
CLARK COUNTY, NEVADA

The State of Nevada,)
)
 Plaintiff,)
)
 vs.)
)
 IVONNE CABRERA, #1617623, aka Ivonne)
 CABRERA,)
)
 Defendant.)

Case No. C283700-1
Dept. No. XXV

Before the Honorable KATHLEEN E. DELANEY
Wednesday, July 19, 2017, 1:30 P.M.
Reporter's Transcript of Proceedings

PENALTY PHASE

APPEARANCES:

For the State: MARC DIGIACOMO, ESQ.
HETTY WONG, ESQ.
Deputies District Attorney

For the Defendant: BRET WHIPPLE, ESQ.
PATRICIA ERICKSON, ESQ.
Attorneys at Law

REPORTED BY: RENEE SILVAGGIO, C.C.R. No. 122

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1 Las Vegas, Clark County, Nevada

2 Wednesday, July 19, 2017, 1:30 P.M.

3 P R O C E E D I N G S

4 * * * * *

01:42PM

5 (The following proceedings were had in open

6 Court outside the presence of the jury panel:)

7 MS. ERICKSON: I'm renewing my objection to the
8 frankness of harm to more than one person, aggravated
9 circumstance that we litigated back in 2015. We challenged it
01:42PM 10 as any violation because Ms. Cabrera did not have control of
11 the gun.

12 It focuses on the mind -- the state of mind of
13 the actual killer, and to allow it to go to the jury when she
14 is not the actual killer, I believe, is a constitutional
01:42PM 15 violation.

16 We litigated it, you said -- you determined that
17 it would be admissible before a jury, but I wanted to make sure
18 that I made the record again that I'm objecting.

19 THE COURT: Can I just clarify one thing, is
01:42PM 20 that an additional objection to the ones that you e-mailed this
21 morning?

22 MS. ERICKSON: Yes, Judge.

23 THE COURT: Because I saw the two that you
24 e-mailed, but I just want to make sure I wasn't missing --

01:43PM

25 MS. ERICKSON: Yeah, that's in addition. I was

1 just -- I'm just really objecting to my -- I did a motion to
2 strike aggravating circumstances in 2016 -- 2015.

3 THE COURT: Right.

4 MS. ERICKSON: And it was an 8th amendment, 14th
01:43PM 5 amendment, constitutional challenge to the great risk of harm
6 to more than one person, and also to the -- whatever -- just
7 that one, and whatever else I objected to, I can't pronounce
8 it.

9 THE COURT: You had a concern with the burglary?

01:43PM 10 MS. ERICKSON: No, and I'm still concerned with
11 the burglary.

12 THE COURT: Okay. Well, we're going to
13 settle the instructions --

14 MS. ERICKSON: Yeah, but I also wanted to
01:43PM 15 make --

16 THE COURT: -- after today, but I just want to
17 make sure I was clear what you were raising now.

18 So I would defer this conversation. We have
19 that noted in the record, but I'd like to have that
01:43PM 20 conversation and those circumstances at the time that we're
21 resolving all the instructions --

22 MS. ERICKSON: Okay.

23 THE COURT: -- so that it's all in one place --

24 MS. ERICKSON: Okay.

01:43PM 25 THE COURT: -- in the record.

1 MS. ERICKSON: Okay. No problem.

2 THE COURT: Anything else?

3 MR. DIGIACOMO: Not from the State.

4 THE COURT: Okay.

01:43PM 5 MR. DIGIACOMO: Judge, I told the Defense that
6 we have James's father and James's sister, we have James's --
7 or -- or Mr. James. We have Eric's daughter, sister and wife
8 present. And that we also have Melissa Marin, but she has
9 chosen not to speak.

01:44PM 10 So I believe it will be five witnesses, and then
11 we will admit the records from the priors and some photographs
12 of James -- James and Erik and their family, and that's it.

13 THE COURT: Okay. Thank you.

14 And we already predetermined to not take any
01:44PM 15 Defense witnesses today and utilized the remainder of today to
16 do settling of the instructions, which I don't anticipate
17 taking long, but at least it gives us some time to make that
18 record, and then we can convene tomorrow with the Defense
19 witnesses.

01:44PM 20 Were you able to communicate the witnesses and
21 have everybody lined up for Thursday?

22 MS. ERICKSON: Excuse me? I'm sorry, ma'am.

23 THE COURT: The -- the witnesses.

24 MS. ERICKSON: Yes, I've spoken with our
01:44PM 25 witnesses, and we will start tomorrow. And I don't think that

1 we will go much past 2:00 o'clock, if we take a lunch break.

2 THE COURT: Yeah, I do anticipate taking a lunch
3 break, and it would be helpful to have a ballpark idea whether,
4 you know, it is that or not, because, as I mentioned, and this
01:45PM 5 is one of the things we'll settle later, I mentioned in my
6 e-mail this morning in response to the objections and the
7 request to hold off on identifying mitigators, or the proposed
8 mitigators, we'll settle that, like I said, later this
9 afternoon.

01:45PM 10 But my goal would be to have a brief recess
11 after the Defense has completed their testimony, and then come
12 back in and instruct and close, so that they have a reasonable
13 opportunity to deliberate tomorrow, if possible.

14 And I think that's doable, and would like to do
01:45PM 15 that, but I wouldn't be able to do that if I were starting from
16 scratch, having to admit three mitigators in the instruction.
17 So we'll talk about that later, too, but that was my goal there
18 so --

19 MR. DIGIACOMO: Judge, one other issue.

01:45PM 20 THE COURT: Yes.

21 MR. DIGIACOMO: Is it's my understanding, at
22 least from the representations of Counsel, they filed a
23 redacted version of their expert's report with an expert
24 notice?

01:46PM 25 I would request at this point to have an

1 unredacted version of that report this evening so that I can
2 prepare for any cross-examination of their witness.

3 MS. ERICKSON: If we call her, he'll get it.

4 THE COURT: Are you going to call her,

01:46PM 5 Ms. Erickson?

6 At this point I don't think we're playing hide
7 the ball. You're either calling her tomorrow or you're not.

8 MS. ERICKSON: No.

9 THE COURT: And if you're calling her tomorrow,
01:46PM 10 then you need to provide the unredacted report.

11 MS. ERICKSON: No, I'm not calling her tomorrow.

12 THE COURT: Okay. So it doesn't appear that
13 that will be necessary.

14 So if something should change, just to make the
01:46PM 15 record, if something should change, and it is going to be the
16 expert being called tomorrow, then I would order that the
17 unredacted version of the report be sent to Mr. Digiacomo
18 within least two hours notice.

19 So once you make that determination, we will let
01:46PM 20 him know and he will have an opportunity to review it.

21 Anything else?

22 MR. WHIPPLE: What time does it start?

23 THE COURT: 10:00 o'clock.

24 MR. WHIPPLE: Okay.

01:47PM 25 THE COURT: And, again, that's our intent.

1 I do have a morning calendar. My hope is to
2 have it completed so that we can start promptly at 10:00, but
3 it will be shortly after that.

4 MR. WHIPPLE: Thank you.

01:47PM 5 THE COURT: I want everybody ready to go. Okay?

6 MR. DIGIACOMO: Ready, Judge.

7 THE COURT: Let's have the jurors.

8 MS. ERICKSON: Well, Judge, may I have a moment
9 to count how many photographs we have of one victim? I'm
01:47PM 10 counting --

11 THE COURT: I wasn't aware what you were doing,
12 Ms. Erickson.

13 MR. DIGIACOMO: I believe there's 12 of one and
14 13 of the other.

01:47PM 15 THE COURT: Just let us know when you're ready.

16 MS. ERICKSON: If there's 12 of one and 13 of
17 the other, I object to having that many photographs admitted
18 regarding each victim.

19 THE COURT: I don't even know what they are.
01:47PM 20 Can you bring them forward?

21 MS. ERICKSON: Yes, Your Honor.

22 THE COURT: I know what they purport to be, but
23 I haven't seen them, so if somebody can show them to me.

24 MS. ERICKSON: I just saw them myself, Judge.

01:47PM 25 THE COURT: Thank you.

1 And the basis of the objection for the number of
2 photos is what?

3 MS. ERICKSON: It's overly prejudicial. It's
4 unnecessary.

01:47PM

5 The sentencing hearing is to sentence
6 Ivonne Cabrera, not to have an overly emotional jury if it
7 decides that the death penalty is appropriate because there's
8 13 photographs of somebody and 12 photographs of another, and
9 we have three witnesses from one and two witnesses from the
10 other. It becomes a hearing about the victims, and it's not.

01:48PM

11 This is a sentencing hearing, and the focus is
12 on the Defendant, and the State doesn't like it, but that is
13 what the US Supreme Court has said. That is what is the --
14 what is the determination to be made about the sentencing, and
15 it should not be based on an overly emotional decision.

01:48PM

16 THE COURT: I've reviewed the photos. The
17 objection is overruled. And the photos will be allowed to be
18 used. I will return them to you, Mr. Digiacomo.

19 I don't think I changed their order, but I'm not
20 quite sure what order they're in.

01:48PM

21 MR. DIGIACOMO: Thank you, Judge.

22 THE COURT: Thank you.

23 All right. All right. Let's have the jurors.

24 THE MARSHAL: All rise for the jury.

01:49PM

25 (The following proceedings were had in open

1 Court in the presence of the jury panel:)

2 THE COURT: All right. Go ahead and take your
3 seats as you reach them.

01:49PM

4 Elvis, can I ask you a favor, can we make sure
5 that that screen is not in the way?

6 It seems to be a little further out. Do you
7 want to bring it like this, look at me, Elvis, Elvis. Elvis.

8 THE MARSHAL: Oh.

01:49PM

9 THE COURT: I just want it to go this way.
10 That's good. That's perfect. Right there.

11 THE MARSHAL: All right.

12 THE COURT: Thank you.

13 Please, make sure your cell phones are off or
14 silenced, if you have been using them earlier.

01:49PM

15 We are reconvening the trial in the State of
16 Nevada versus Ivonne Cabrera.

17 I have present in the courtroom Counsel for the
18 State, Counsel for Ms. Cabrera, and all of the jurors are
19 present at this time.

01:50PM

20 This is the second phase of the trial that we
21 are ready to proceed with. And at this time I will ask the
22 State if they are prepared to call their first witness.

23 MR. DIGIACOMO: Judge, I was intending to open
24 before --

01:50PM

25 THE COURT: I apologize. I've done it a couple

1 of different ways, and we had not discussed openings, we had
2 discussed closings.

3 If there is an opening, the State, that you wish
4 to make, please proceed.

01:50PM 5 MR. DIGIACOMO: Thank you.

6 OPENING STATEMENT

7 MR. DIGIACOMO: Justice it is a term that defies
8 definition. Philosophers, kings, people have been trying to
9 define what justice is for a very long time, and there really
01:50PM 10 isn't a good, succinct definition, but it's sort of like you
11 know it when you see it.

12 And I stood up here last time and told you in a
13 criminal trial or a civil trial, everything that happens in a
14 courtroom, that it's about a search for the truth.

01:51PM 15 And while there is some truth-finding function
16 to this proceeding, there is ultimately something unique about
17 this, which is: There's going to be nothing that is going to
18 tell you the answer to the question of what is justice; that in
19 the State of Nevada, the legislature has decided that in a
01:51PM 20 murder case, a first degree murder case, a jury shall impose
21 the punishment. And neither Ms. Wong or I am going to tell you
22 what the answer to that question is.

23 We are going to rely upon the 12 people in that
24 back room, who talk about it for a while and ultimately come to
01:51PM 25 a unanimous decision of what is justice in this case.

1 Justice for James, justice for Erik, justice for
2 Ivonne Cabrera, and, ultimately, we will respect whatever that
3 decision is. But there are some rules that we're going to play
4 by in a penalty phase.

01:51PM 5 If there are no aggravating circumstances,
6 there's only three choices that you heard about in jury
7 selection: The term of years, life, minimum 20 with the
8 possibility of parole after 20 years, or life without the
9 possibility of parole.

01:52PM 10 But if there are aggravating circumstances and
11 those circumstances outweigh whatever the mitigating
12 circumstances are, then you have four possible punishments.

13 And I'm going to suggest to you that in this
14 case the evidence is going to reflect that the aggravators
01:52PM 15 substantially outweigh whatever mitigation there will be, and
16 ultimately you should have four choices to choose from when you
17 make that decision as to what the answer to justice in this
18 case is.

19 So let's talk about the aggravators.

01:52PM 20 You have decided, by your verdict essentially,
21 all the aggravators in this case, that the State has to prove
22 these aggravators beyond a reasonable doubt that they're all
23 aggravated by the nature of the crime itself.

24 The first aggravator, being sort of, you know,
01:52PM 25 obvious, I would think, that the fact that somebody kills more

1 than one person is an aggravating circumstance in this case;
2 that the fact that this isn't about one murder, but two, makes
3 this case aggravated.

4 The second aggravator is, well, that the
01:53PM 5 Defendant's been convicted of a crime of violence, and what you
6 will learn, this conviction applies at the time the jury
7 returns the verdict.

8 So as Ms. Cabrera sits here, she's convicted of
9 the crime of violence of the attempt murder of Ashley Wantland,
01:53PM 10 that's an aggravator.

11 You have the attempt murder of Melissa Marin,
12 which, once again, is an additional aggravating circumstance.

13 You have the aggravating circumstance that the
14 murder was committed by a person who knowingly created a great
01:53PM 15 risk of death to more than one person by means of a weapon,
16 device, or course of action, which normally it has in the lives
17 of more than one person.

18 And, ultimately, we can't read into your
19 verdict, but by your verdict you at least implied that
01:54PM 20 Ms. Cabrera knew what was going to happen inside that house and
21 knew that there were four people's lives at risk, and, thus,
22 that aggravator seems to be established by the nature of the
23 verdicts.

24 The last aggravating circumstance is a murder
01:54PM 25 that occurs during the perpetration or attempted perpetration

1 of a burglary, and the person is the person who killed or had
2 known or had reason to know that life would be taken.

3 It's aggravated in this case that Ashley
4 Wantland, Melissa Marin, James Hendrik, and Erik Morales were
01:54PM 5 all sleeping in their home not knowing anything was wrong when
6 someone came in and killed two of them and shot two of them.

7 Once you get through the five aggravating
8 circumstances, you will hear the mitigation. I don't know what
9 that mitigation will be. The Defendant has no duty to present
01:54PM 10 some; and if they do, they do; and if they don't they don't.

11 And you will weigh those two, and ultimately if
12 you decide that the aggravating circumstances outweigh the
13 mitigating circumstances, you'll have four possible
14 punishments, and some additional information to rely upon.

01:55PM 15 First, you'll learn a little bit about the
16 criminal history of Ms. Cabrera. You'll learn that on
17 September -- or, sorry, February 22nd of 2008, her and a
18 friend, and I -- the Judgment of Conviction says Silvia Lopez,
19 you're going to learn that's one of her three akas.

01:55PM 20 You'll also learn that she has two different ID
21 numbers.

22 So when Detective Preto was being crossed
23 about, well, you can rely upon an ID number, no, no, not quite
24 necessarily. Ms. Cabrera is an example of that.

01:55PM 25 You will learn that her and her friend told a

1 guy that they were going to go to a room and have sex with him.
2 And they got in his car and stopped by a 7-Eleven, and he went
3 inside to purchase something. I think you can infer what he
4 went inside to purchase. And Ms. Cabrera and her co-defendant
01:55PM 5 drove off in the victim's vehicle.

6 They didn't get very far before the police
7 stopped them, and ultimately Ms. Cabrera tells the police,
8 yeah, I stole his car, and I intentionally set that guy up in
9 order to have his rims taken by a guy we know.

01:56PM 10 And that's February 28th of 2008, she goes to
11 jail. She's given as her first major offense in the criminal
12 justice system, a gross misdemeanor negotiation, meaning, she
13 pleads guilty to conspiracy to commit larceny.

14 She is sentenced to eight months in the
01:56PM 15 Clark County Detention Center, and that sentence is suspended,
16 and she's placed on probation on May 28th of 2008. It didn't
17 take her very long to violate.

18 You will hear that on July 18th of 2008, she's
19 stopped in possession of burglary tools in another guy's stolen
01:56PM 20 vehicle. And on October 7th, she's sentenced to prison. You
21 sort of heard a little bit about that during her testimony.

22 Her probation was revoked and -- but her
23 sentence was modified again, and she was given another break.

24 So you'll learn things about Ms. Cabrera.

01:57PM 25 She also had another case dismissed as part of

1 this negotiation. You will hear a little bit about her in
2 addition to whatever mitigation there is that she presents.

3 Finally you're going to hear what's called
4 victim impact testimony.

01:57PM 5 James and Erik have been named in this case.
6 Their photographs have been autopsy photographs and crime scene
7 photographs. That's not who they were.

8 And while they may have had problems, as you
9 sort of heard and can infer from the testimony in the case,
01:57PM 10 both of them had families, and they had mothers that loved
11 them. They had fathers that loved them. They had both had
12 children that no longer get to know them.

13 And you're going to hear a little bit about
14 the impact that these crimes had on the families of James and
01:57PM 15 Erik Morales.

16 And when it's all done, you're going to put
17 all of that information together, you're going to go back to
18 that room, and you're just going to define what justice is for
19 this case.

01:57PM 20 Thank you.

21 THE COURT: Ms. Erickson --

22 MS. ERICKSON: Yes.

23 THE COURT: -- would you like to make opening
24 remarks at this time or wait until tomorrow?

01:58PM 25 MS. ERICKSON: Could I have that off?

1 THE COURT: Please, Renee, the dock cam. It
2 should just take a moment to click over. There you go.

3 OPENING STATEMENT

4 MS. ERICKSON: Never, in the law, requires the
01:58PM 5 imposition of the death penalty, regardless of whether there's
6 aggravating circumstances, proof beyond a reasonable doubt,
7 never.

8 And that's because we, as a society, recognize
9 that someone might be convicted of murder, first degree, and
01:59PM 10 during -- and still be a person with worth, be a person that
11 others care about, be a person who tries to make her family's
12 life good, who does acts of kindness with no remuneration.
13 That's who Ivonne Cabrera is.

14 Yes, she's had some minor felony convictions:
01:59PM 15 Possession of a stolen vehicle. She has a drug addiction.
16 That's what people with drug addictions have.

17 She didn't attempt to murder anyone. She never
18 fled from a police officer. She never endangered anybody
19 else's life.

01:59PM 20 She was convicted of two property crimes, and
21 arrested for underlying possession of drugs in small amounts.

22 Does that make her unredeemable? Does that make
23 her not someone that can have an impact on society after being
24 convicted of first degree murder?

02:00PM 25 Well, that's what you're here to decide.

1 Ivonne comes from a very large family. This is
2 a portion of her siblings and parents, and the two people in
3 the middle, the man with the gray hair and the woman with the
4 sweater on, that's her mom and dad.

02:00PM 5 The two girls standing behind are her two
6 younger sisters, Cindy and Nancy.

7 This picture here is of her ex-boyfriend,
8 Alfonso.

9 There's a picture of her brother, Raul, junior.
02:01PM 10 Everyone but Miguel is younger than Ivonne.

11 You'll hear from some of them about the things
12 that they remember about growing up with her.

13 This is her Aunt Erica. She's present here in
14 Court today.

02:01PM 15 She had a number of other relatives that come
16 from California and had to go home today, but you'll hear about
17 them.

18 She -- this is her husband, Jasmine, and her
19 cousin Aracelli (phonetic). This is her Uncle Alberto.

02:01PM 20 So she has family, who are hurt, who have good
21 memories of her, who understand that you have convicted her,
22 but hope to give you a picture of her and illustrate her.

23 Do we want to judge a person by one day in their
24 life? Is that the appropriate way to sentence someone? I
02:02PM 25 suggest it's not.

1 As sentencers, it's important that you look at
2 all of Ivonne, because she had done things with her life that
3 are good.

4 We know that people that have drug addictions
02:03PM 5 can get over them and can do good things with their lives.

6 And the State focused on the major offenses of
7 possession of a stolen vehicle, but then she didn't have any
8 other felonies after getting out of prison in 2009.

9 She worked for a law firm. You'll hear from one
02:03PM 10 of the partners of that law firm about what kind of employee
11 she was. And that ultimately, in 2011, she was in a car
12 accident, a head-on, and she was injured, and she had -- took
13 pain pills and went downhill from there.

14 We all know about opioid addiction. Hers went
02:03PM 15 from that to back to use of methamphetamine and ended up here
16 today.

17 You are going to hear from her two boys. This
18 is Andres (indicating). He was -- he was ten-years-old when
19 Ivonne was arrested in 2012. And this is Erik, her younger
02:04PM 20 son. He was nine.

21 She has been in jail since 2012. She's
22 maintained contact with her boys through her parents, through
23 visits, and through telephone calls.

24 She's tried to encourage them to do the right
02:04PM 25 thing, to not end up where she is. Unfortunately, Andres just

1 is not going to know her, and you'll find out that he's on
2 House Arrest right now. But you'll also hear how much she
3 cares for him, and how much he cares for her. And it's not
4 just care because it's mom. It's care because of the person
5 that she is.

02:05PM

6 Jan Pierce will come back in and tell you that
7 Ivonne Cabrera is the best friend she's ever had. She is one
8 of the most compassionate and caring people. And Jan, you
9 remember, you met her, she was part of this group, she's going
10 to tell you that she cleaned up because of Ivonne. She became
11 clean and sober because of the things that she and Ivonne spoke
12 about while they were still doing drugs. And Jan is going to
13 tell you it's because of that.

02:05PM

14 Sheila Russel is going to come in and testify
15 about an incident where there is a three-year old girl, Ivonne
16 found her walking on the street without parents. She took the
17 little girl, walked around looking for the family. She found
18 the family. And then she went home, instead of being found by
19 somebody who might do something much worse. That's what I mean
20 by acts of kindness, without any reason, without any
21 remuneration, without obtaining something in response.

02:06PM

02:06PM

22 Does that person deserve the death penalty?

23 I would submit life with the possibility of
24 parole, in this case, would result in a sentence of at least
25 40 years incarceration, at least, because, of course, if that's

02:07PM

1 her sentence, she goes before the parole board after 40 years,
2 actually 35 in this case because she does get five years for
3 the time she's been in custody. But 35 years, that will make
4 her almost 70-years-old.

02:07PM

5 And going to the parole board, that doesn't mean
6 she will be released if she gets life with the possibility of
7 the parole, but the parole board has to grant it. She could go
8 to the parole board every three to five years and still not --
9 (inaudible).

02:07PM

10 The State always argues that the death penalty
11 is what should be given as justice.

12 Well, it's up to you to decide whether someone
13 like Ivonne, who has qualities, that show her to be a person,
14 that it's not who she was on one day of her life.

02:08PM

15 As a policy of social moral decision, which
16 punishment is best: The one where the person spends their life
17 rehabilitated and trying to make better because of it, trying
18 to do things that one can in prison? It's still moral.

02:08PM

19 It'll be up to you, but regardless of fact that
20 the aggravating circumstances, almost all of them, have already
21 been proven, death is never required, never.

22 THE COURT: Thank you, Ms. Erickson.

23 THE COURT: Does the State have its first
24 witness to call?

02:09PM

25 MR. DIGIACOMO: Carl Headrick.

1 THE COURT: Mr. Headrick.

2 Mr. Headrick, when you come forward, if you'll
3 just go around the podium there and come all the way up to this
4 witness stand here next to me.

02:09PM

5 When you reach the chair behind the stand there,
6 go ahead and put your paperwork down, and then my Clerk is here
7 to the right to swear you in.

8 CARL HEADRICK

9 called as a witness on behalf of the State,
10 having been first duly sworn,
11 was examined and testified as follows:

12 THE WITNESS: I do.

13 THE CLERK: Please take the stand.

02:10PM

14 And can you please state and spell your first
15 and last name for the record.

16 THE WITNESS: Carl, C-A-R-L, Headrick,
17 H-E-A-D-R-I-C-K.

18 THE CLERK: Thank you.

19 THE COURT: Mr. Digiacomo, you may proceed.

02:10PM

20 MR. DIGIACOMO: Thank you.

21 Could I have it placed back on? It should be
22 over here.

23 DIRECT EXAMINATION

24 BY MR. DIGIACOMO:

02:10PM

25 Q. Mr. Headrick, did you know James Headrick?

1 A. Yes. He was my first son, my only son.

2 Q. How many children did you have?

3 A. I had two: My daughter Tasha, which she's in the
4 courtroom.

02:10PM 5 After I had a boy and a girl, I got cut so I wouldn't
6 have any more kids. So I had the perfect family. Unbeknownst
7 to me, my son was going to be killed while I was still alive.

8 Q. Where did James grow up?

9 A. In his younger years, probably until he was
02:11PM 10 five-years-old, it was New Mexico. And then he moved up to
11 Oregon when me and my wife split up. And shortly after that, I
12 moved up there to be close to the kids. And I stayed there
13 until they were more or less of age, and they were grown, and I
14 didn't feel they needed me no more. So I moved to Las Vegas,
02:11PM 15 Nevada, and I took my son, James, with me, and that's how he
16 wound up moving here.

17 Q. How long was James here before his death?

18 A. Actually, he had moved to California and then back up
19 to Oregon and then moved to -- back down here to Vegas.

02:11PM 20 He had met a gal in California and got married, and
21 so he was probably here five years total.

22 Q. Can you describe James for us as a kid.

23 A. A real energetic kid, loved to do things, loved to
24 spend time with me. I used to read him stories all the time,
02:12PM 25 just being a family.

1 Even though me and my wife weren't together no more,
2 we never got a divorce because we wanted -- basically we didn't
3 want the State to get involved and any restrictions coming
4 down. This way, me and my wife still get along to this day.
02:12PM 5 We could share the kids. They could come live with me if she
6 needed a break from them, or if I just felt like taking them
7 for a while; and we never had any conflict on which of us was
8 going to get them. We always worked it out.

9 Q. Is James's mom still alive?

02:12PM 10 A. Yes, she is. She's up in Keizer, Oregon, right next
11 to Salem.

12 Q. And did there come a point in time when you and
13 James's mom and other family members provided us some photos of
14 James from his youth all the way through pretty close to his
02:12PM 15 death?

16 A. Yeah. When we was at Court for Jose's conviction, we
17 -- my wife brought a bunch of pictures that showed him and
18 myself, I only was concerned with the four pictures that I
19 wanted the Court to see.

02:13PM 20 My son was killed two days before my 50th birthday.
21 So I spent my 50th birthday in Nevada, Las Vegas. I was living
22 in New Mexico at the time.

23 Q. I have not really gone through which one of the four,
24 but I'm going to come and show you some photos, and then I know
02:13PM 25 we have some to show your daughter as well.

1 MR. DIGIACOMO: May I approach, Judge?

2 THE COURT: You may.

3 BY MR. DIGIACOMO:

02:13PM

4 Q. Sir, I'm going to show you what's been marked as
5 State's Proposed Exhibits 175 through 178. You can still sit.
6 I just want you to go through those and flip through those and
7 tell me if you recognize the people in those photographs.

8 A. Yeah, this one is James and William. William is --

02:14PM

9 Q. Wait, hold on. Let me just stop you for just a
10 second.

11 Do you recognize all those photographs? Do you
12 recognize the people in those photographs? Just yes or no.

13 A. Yes.

02:14PM

14 MR. DIGIACOMO: Okay. I move to admit 175
15 through 178.

16 MS. ERICKSON: Noting the objection previously
17 entered.

02:14PM

18 THE COURT: Noting the objection, we will allow
19 those photos to be entered and you may publish them,
20 Mr. Digiacomo.

21 (State's Exhibit Numbers 175 through 178, respectively,
22 were admitted into evidence.)

23 BY MR. DIGIACOMO:

02:14PM

24 Q. What I'm going to do is go one-by-one. It's going to
25 pop up on that screen next to you. I know you have a copy of

1 it, but it's also going to pop up for the jury. So, then,
2 please put up 175 for you.

3 THE COURT: Sir, on your screen here.

4 THE WITNESS: Oh, all right.

02:14PM 5 BY MR. DIGIACOMO:

6 Q. So who is that?

7 A. I -- I believe that's James. It's kind of a hazy
8 picture, so I can't tell for sure.

9 Q. Well, I'll ask you about that one. Let me go back --
02:14PM 10 let me go to 176 -- oops. And I -- this is going to happen
11 with a bunch of these. So let me invert them for you. Do you
12 recognize the people in those photographs?

13 A. That is William and James.

14 Q. Who's William?

02:15PM 15 A. William is his half-brother. My wife had another kid
16 with another man.

17 Q. James looks pretty young there.

18 A. Yeah. He was probably 12.

19 Q. 177, let me invert those. Do you know the people in
02:15PM 20 those photographs?

21 A. That is my daughter Tasha, James, the one in the
22 background looks like my wife Lori, and William.

23 Q. And 178. I'm guessing, that's your wife Lori, James
24 and --

02:16PM 25 A. Jasmine.

1 Q. Do you know who the baby is?

2 A. Jasmine.

3 Q. Who is Jasmine? Who is Jasmine?

4 A. It's his first daughter.

02:16PM 5 Q. That's James's first daughter?

6 A. Yes.

7 Q. How many dau- -- how many children did Jasmine- --

8 or, I'm sorry, how many children did James have?

9 A. Two, Jasmine and Max.

02:16PM 10 Q. So a boy and a girl?

11 A. Yeah.

12 Q. Let me ask you this, sir: How did you find out about
13 James's death?

14 A. I was at my Ma's house down in Edgewood, New Mexico,
02:16PM 15 and my daughter Tasha called screaming and crying because James
16 had been shot and killed.

17 I found out later that she had learned that from
18 James's wife, who had called his number, and the police
19 answered it and explained to her that he'd been killed.

02:16PM 20 Q. How has the death of James affected you?

21 A. It hit me hard. I got the pictures -- the last
22 pictures I got of him was with a bullet hole in his head.

23 I -- as it first happened, I tried to spend as much
24 time as I could around his wife, my grandkids, stayed with my
02:17PM 25 daughter for a little over a year, helped taking care of my

1 grandkids by her, and constantly looking at pictures of him,
2 the ones that I have where he's got a bullet hole in his head.
3 I looked at him numerous times just to realize the injustice
4 that was done to him.

02:17PM 5 Q. How has it affected the other members of your family?

6 A. It hurt everybody. Luckily his cousins' too young to
7 really know James and his kids's cousins, so they never really
8 got to know him. They were too young.

9 Q. Thank you, sir.

02:18PM 10 MR. DIGIACOMO: Judge, I have no more questions
11 for the witness.

12 THE COURT: Any questions for Mr. Headrick?

13 MS. ERICKSON: No, Judge.

14 THE COURT: Thank you. Mr. Headrick, don't
02:18PM 15 forget to take the envelope that you brought.

16 You can leave the pictures there. Mr. Digiacomo
17 may retrieve those, but thank you. Please watch your step as
18 you exit the courtroom.

19 (Whereupon, at this time the Witness was excused.)

02:18PM 20 THE COURT: Do you want to take the pictures
21 back, Mr. Digiacomo?

22 MR. DIGIACOMO: We might use them with the next
23 witness, but I'll give them to Ms. Wong.

24 THE COURT: Yes, please.

02:18PM 25 And, Ms. Wong, you will be calling the State's

1 next witness?

2 MS. WONG: Yes, Your Honor, Tasha Hernandez.

3 THE COURT: Is there a Tasha Hernandez present
4 to give testimony?

02:19PM 5 Ms. Hernandez, same thing, if you'll go around
6 the right of the podium, come straight up to the witness stand
7 here. Once you reach the chair, if you'll just remain
8 standing, my Clerk here to the right will swear you in.

9 TASHA HERNANDEZ

02:19PM 10 called as a witness on behalf of the State,
11 having been first duly sworn,
12 was examined and testified as follows:

13 THE WITNESS: I do.

14 THE CLERK: Please, take a seat.

02:19PM 15 Can you please state and spell your first and
16 last name for the record.

17 THE WITNESS: Tasha Hernandez, T-A-S-H-A.
18 Hernandez, H-E-R-N-A-N-D-E-Z.

19 THE CLERK: Thank you.

02:19PM 20 THE COURT: Ms. Wong, whenever you're ready.

21 MS. WONG: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. WONG:

24 Q. Tasha, what is James to you?

02:19PM 25 A. James was my older brother.

1 Q. Okay. How much older was he than you?

2 A. Almost two years.

3 Q. How old were you when James passed?

4 A. I was 23 when he -- he would have been 25.

02:19PM

5 Q. What kind of a brother was James?

6 A. He was amazing.

7 Q. Was he protective of you? Was he the kind of brother
8 every younger sister wishes she had?

9 A. He was my best friend.

02:20PM

10 Q. Do you have any stories to tell us about how he
11 protected you, what he would do for you?

12 A. Yeah. He'd do -- one time he was baby-sitting my
13 kids, and some guy just busted through my door, we didn't know
14 who he was, and James just protected the kids and kicked him
15 out and called the police.

02:20PM

16 Q. I know your dad probably touched on this earlier, but
17 where were you when you found out James had died?

18 A. I was driving in my car. I had my kids in the car,
19 and I had gotten a phone call from his wife at the time, and
20 she had told me. So I immediately went to my mom and I told my
21 mom, and I had to call and tell my dad.

02:20PM

22 Q. And how has that affected your life?

23 A. It's hard.

24 Q. James was your only sibling, your full sibling?

02:21PM

25 A. Yeah, yeah, he was. I have a little brother, who is

1 ten years younger than I was.

2 Q. I want to show you some photographs.

3 MS. WONG: May I approach, Your Honor?

4 THE COURT: You may.

02:21PM 5 BY MS. WONG:

6 Q. I will first show you what's State's 175, this has
7 already been admitted, but I just want you to look at it. Do
8 you recognize the person in that photograph? Okay.

9 Now, I'm going to show you what's been marked as
02:21PM 10 State's Proposed Exhibits 179 through 188. Will you take a
11 look at them and let me know if you recognize the people in the
12 photographs?

13 A. I mean, with the exception of Santa Claus, yep.

14 Q. You recognize everybody in there?

02:22PM 15 A. Yes.

16 MS. WONG: The State moves for the admission of
17 State's Proposed Exhibits 179 through 188.

18 THE COURT: Noting the same objections from the
19 Defense, the State's Exhibits will be admitted and you may
02:22PM 20 publish them, Ms. Wong.

21 MS. WONG: Thank you, Your Honor.

22 (State's Exhibit Numbers 179 through 188, respectively,
23 were admitted into evidence.)

24 BY MS. WONG:

02:22PM 25 Q. Tasha, I'm going to show you State's Exhibit

1 Number 175. This was the photograph that we had showed your
2 father earlier. Do you recognize the person in that photo?

3 A. I do.

4 Q. And who is that?

02:22PM 5 A. It's James.

6 Q. How old is James in that photo?

7 A. Oh, maybe 13, 12.

8 Q. All right. I'll show you State's Exhibit 179, and
9 who -- and I assume that's James?

02:23PM 10 A. James and his daughter, Jasmine.

11 Q. Jasmine. And how old was Jasmine when James died?

12 A. Oh, may- -- maybe two.

13 Q. So is Jasmine about seven-years-old now?

14 A. Yeah.

02:23PM 15 Q. And where is Jasmine?

16 A. Jasmine is in Lebanon, which is about three hours
17 north of me --

18 Q. Okay.

19 A. -- in Oregon.

02:23PM 20 Q. In Oregon. Is she with her mother?

21 A. She's with her mother, yeah.

22 Q. And I'm going to show you State's Exhibit 180, and is
23 the one on the right, is that the mother of Jasmine?

24 A. Yes.

02:23PM 25 Q. Okay. And what's her name?

1 A. Danielle.

2 Q. Danielle.

3 I'll show you State's 181, and who's that lovely lady
4 with James?

02:24PM 5 A. That is his Aunt Sheila.

6 Q. Aunt Sheila.

7 And how about State's Exhibit 182?

8 A. It looks like a dork.

9 Q. And is there a reason why he was holding a
02:24PM 10 stethoscope?

11 A. I don't know.

12 Q. Okay.

13 A. No idea.

14 Q. Okay. I'll show you State's Exhibit 183.

02:24PM 15 A. That's James and our younger brother William.

16 Q. And let's go with State's 184?

17 A. That's James and I.

18 Q. When was that photograph taken?

19 A. I don't know.

02:24PM 20 Q. Don't know, okay.

21 A. No.

22 Q. Okay. Let's go to State's 185.

23 A. And that's James and -- and my little brother and
24 him.

02:25PM 25 Q. And who --

1 A. Oh, and me.

2 Q. Who's the one on the left?

3 A. Me.

4 Q. Is that you?

02:25PM 5 A. Yeah.

6 Q. And State's Exhibit 186?

7 A. That's me and my two brothers, James and William.

8 Q. How about State's Exhibit 187?

9 A. That's his son, Max.

02:25PM 10 Q. And how old was Max when James died?

11 A. Just a baby, I mean, maybe four-months-old.

12 Q. Okay. And State's Exhibit 188?

13 A. And that's his daughter, Jasmine.

14 (Sotto voce at this time.)

02:25PM 15 BY MS. WONG:

16 Q. How has James's death affected you and your family?

17 A. Don't talk about it because it gets me sad.

18 Q. How often would you see James when he was alive?

19 A. All the time. All the time. We talked all the time

02:26PM 20 on the phone, even when he was going through his hard times.

21 We were always so close.

22 Q. All right. Do you guys still have family gatherings
23 now?

24 A. Not as much now.

02:26PM 25 Q. Since James died, you guys don't get together that

1 much?

2 A. Yeah, not really.

3 (Sotto voce at this time.)

4 MS. WONG: No further questions, Your Honor.

02:26PM 5 THE COURT: All right. Ms. Erickson, any
6 questions?

7 MS. ERICKSON: No, Judge.

8 THE COURT: All right. Thank you. You are
9 excused at this time.

02:26PM 10 (Whereupon, at this time the Witness was excused.)

11 THE COURT: May I have Counsel at the bench just
12 briefly.

13 (Sidebar conference at bench, not reported.)

14 THE COURT: Thank you for the opportunity for
02:27PM 15 that clarification.

16 Mr. Digiacomo, does the State have any
17 additional witnesses to call at this time?

18 MR. DIGIACOMO: Yes. Ysbeyde Quezada Bernal.

19 THE COURT: Ms. Quezada Bernal, do we need the
02:27PM 20 services of the interpreter?

21 MR. DIGIACOMO: No. The next two do, but --

22 THE COURT: Ms. Quezada Bernal, if you could
23 just come around the podium as the other two witnesses have
24 done. When you reach the chair there behind the witness stand,
02:28PM 25 if you'll remain standing. Come on up.

1 THE WITNESS: Oh.

2 THE COURT: The Clerk here will swear you in.

3 YSBEYDE QUEZADA BERNAL

4 called as a witness on behalf of the State,

02:28PM 5 having been first duly sworn,

6 was examined and testified as follows:

7 THE WITNESS: I do.

8 THE CLERK: Please, take a seat.

9 Would you please state and spell your first and

02:28PM 10 last name for the record.

11 THE WITNESS: My first name is Ysbeyde,

12 Y-S-B-E-Y-D-E. My last name is Quezada, Q-U-E-Z-A-D-A.

13 THE COURT: All right. Ms. Quezada, thank you.

14 If you could speak up a little bit to make sure

02:28PM 15 that the Court Reporter and those in the courtroom can hear

16 you. Okay?

17 THE WITNESS: Okay.

18 THE COURT: Mr. Digiacomo, whenever you are

19 ready.

02:28PM 20 MR. DIGIACOMO: Thank you.

21 DIRECT EXAMINATION

22 BY MR. DIGIACOMO:

23 Q. Ma'am, did you know Eric Quezada?

24 A. Yes, I did. That was my father.

02:28PM 25 Q. And I apologize for asking this, but how old are you

1 now?

2 A. Me, I'm 17-years-old now.

3 Q. So you were 12 when your father died?

4 A. Yeah, I was.

02:29PM 5 Q. Can you describe your father for us.

6 A. My dad, I would say he was a happy man, a working
7 hard man. It doesn't matter how many money he had, if someone
8 knew that he would give them some, he was always generous. He
9 would say -- he would look after everybody else before he even
10 looked after himself. I would say he was, like, an amazing
11 dad.

12 Q. Who is your mother?

13 A. My mom is Claudia.

14 Q. Is she here today as well?

02:29PM 15 A. She is. She's right there (indicating).

16 Q. And what was her relationship to Erik?

17 A. She was his wife -- well, I mean, not, like, legally
18 his wife, but to him he was -- she was his wife. They spent so
19 many years together. They would have a good relationship, but
20 every relationship has it's ups and downs. But that's how it
21 was like, but I know she was very loving.

22 Q. How did you find out about the death of your dad?

23 A. How did I find out?

24 I remember a white man coming to the house one day,
02:30PM 25 and after that I don't remember anything else.

1 But I remember a month later I asked for my dad and I
2 said -- I haven't seen him for a while, and I would see him
3 almost every day. And I asked, when we were in California at
4 the time, I asked, I would say: Where's my dad? And she just
5 told me, you know: He's asleep.

02:30PM

6 And I'm, like, that's when I caught on to it, and I
7 asked her: Did he pass away? Did something happen to him?

8 And she told me: Yeah, he did.

9 And after that, me and my brother just went into
10 tears. I didn't really go into tears until I locked myself in
11 the bathroom. I wouldn't really want anybody to see me cry.
12 But when she told me that, I just went in the bathroom and I
13 cried and I didn't believe it.

02:30PM

14 You know, I was only 12 at the time, my brother was
15 seven, and my mom was pregnant. So imagine how that could be
16 to her, having three kids and while she's pregnant.

02:30PM

17 Q. So you have a brother and your --

18 A. I have another brother.

19 Q. So you have two younger brothers?

20 A. Uh-huh.

02:31PM

21 Q. And one's seven and one is basically five at this
22 point?

23 A. No. One is 12 and the other one is about to be five.

24 Q. Oh, yeah, sorry, I forgot to add the five years.

25 How has not having a father affected you?

02:31PM

1 A. It's affected me a lot, because my -- my dad was over
2 protective of -- he was a protective father to all of us
3 actually. He wouldn't let nobody hurt us.

4 And after he left, or he passed away, it's been hard
02:31PM 5 to, like, spend Father's Day without him; to, like, things,
6 like your birthday, that he won't be there celebrating how he
7 used to.

8 To not feel his vibes anymore, it's been really hard.
9 It's been really hard to have good grades, and to have the kids
02:31PM 10 come and be, like, oh, you see this, do you see this, this and
11 that, and I wish I could have shown that.

12 And it hurts. It hurts a lot to actually hear my
13 younger brother actually speak on the phone with my cousin and
14 he thought he was my dad, because he doesn't know how he is.

02:32PM 15 And I know every time he wants to see him or talk
16 about him, it's, like, really hard because we end up in tears
17 or he's just, like, oh, I just want to see him. I've never met
18 my dad.

19 And then he knows, it's like he knows that he passed
02:32PM 20 away because, like, oh, yeah, I know my dad's not here, my dad
21 died awhile ago. But it's really hard to go through that and
22 see that, the youngest one in your family, he doesn't have his
23 dad with him.

24 Q. Did my office ask you to bring, you and your family,
02:32PM 25 to bring a bunch of pictures of your father?

1 A. Yeah.

2 Q. Yes?

3 A. We did.

4 Q. Did you have one in particular that sort of all

02:32PM 5 rolled up that was special to you?

6 A. A special one, to me, would be the one where he's in
7 the red sweater and he's smiling.

8 Q. Let me see if we have that one that's -- we have a
9 number of pictures here. I don't think we have the one you're

02:33PM 10 talking about, so let me just approach with the one I do have
11 here.

12 This is State's Proposed Exhibit Number 200. Do you
13 know where that photo came from?

14 A. Yeah. My mom showed me this when I was in -- he did
02:33PM 15 too -- that's me and the baby.

16 MR. DIGIACOMO: Move to admit 200.

17 THE COURT: With the objection noted from the
18 Defense, we will admit State's 200, and you may publish.

19 (State's Exhibit Number 200 was admitted into evidence.)

02:33PM 20 BY MR. DIGIACOMO:

21 Q. Let me put up 200 for you. What are we looking at
22 here? Just describe it.

23 A. A very happy moment, having fun with me, laughing.
24 That's all I could remember with him, was his laugh, because he
02:34PM 25 would always be so goofy. He wouldn't show any meanness or

1 violence around us, but would always be really nice.

2 Q. And that's you as a baby?

3 A. Yeah.

02:34PM

4 Q. Your mom showed you that. Did your dad show it to
5 you, too?

6 A. Yeah. They both did. I really never took pictures
7 like that with my dad, but this one is really special, because
8 that's one of the pictures that I rarely had with him.

9 MR. DIGIACOMO: Thank you, ma'am.

02:34PM

10 I have no more questions.

11 THE COURT: Ms. Erickson, any questions for
12 Ms. Quezada?

13 MS. ERICKSON: No.

02:34PM

14 THE COURT: All right. Thank you for your time,
15 Ms. Quezada. Just watch your step as you exit.

16 THE WITNESS: Thank you.

17 (Whereupon, at this time the Witness was excused.)

18 THE COURT: Ms. Wong, State's next witness?

19 MS. WONG: Guadalupe Guterrez.

02:34PM

20 THE COURT: Guadalupe Guterrez, I believe we
21 have the assistance of an interpreter at this time.

22 Elvis, a chair for the interpreter.

23 THE MARSHAL: The chair is up there.

02:35PM

24 THE COURT: Is it already there? Okay. I can't
25 see it over there. I'm sorry.

1 Ms. Guiterrez, if you will just come through the
2 courtroom over to the witness stand. There should be two
3 chairs, one for you and one for the interpreter.

4 I'm going to ask you both to remain standing.

02:35PM 5 I'm going to have my Clerk swear the interpreter first and then
6 we'll swear you second.

7 THE CLERK: Please raise your right hand.

8 (The Spanish interpreter was duly sworn by the Clerk.)

9 THE INTERPRETER: I do.

02:35PM 10 THE CLERK: Thank you.

11 THE COURT: And, next, we now need to swear the
12 witness.

13 THE CLERK: Please raise your right hand.

14 GUADALUPE GUITERREZ

02:35PM 15 called as a witness on behalf of the State,

16 having been first duly sworn,

17 was examined and testified as follows:

18 THE INTERPRETER: Yes.

19 THE CLERK: Please take a seat.

02:36PM 20 Can you please state and spell your first and
21 last name for the record.

22 THE INTERPRETER: Guadalupe Guiterrez.

23 G-U-A- -- I can't -- I can't do it.

24 THE COURT: We'll just give Ms. Guiterrez a
02:36PM 25 moment and I'll see if she can compose herself.

1 THE INTERPRETER: This is too much of an impact.

2 THE COURT: Ms. Guiterrez, would you like to
3 have a little bit more time?

02:36PM

4 I understand that there is an additional witness
5 that we could call next.

6 THE INTERPRETER: I'm going to try to calm down.
7 I'll be fine.

8 THE COURT: Okay. You would like to stay on the
9 witness stand for a moment?

02:37PM

10 THE INTERPRETER: Yes.

11 THE COURT: All right.

12 Ms. Wong, Ms. Guiterrez, has indicated that she
13 believes that she can proceed with the questioning. So I will
14 ask you to proceed at this time.

02:37PM

15 MS. WONG: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MS. WONG:

18 Q. Ms. Guiterrez, who is Erik to you?

19 A. My brother.

02:37PM

20 Q. Was he your older brother or your younger brother?

21 A. He was the youngest.

22 Q. How many siblings were in the family?

23 A. It's only three of us.

24 Q. Can you tell us what kind of a brother Erik was to
25 you?

02:37PM

1 A. He was a good brother; but to me he was, like, my
2 brother and my son because I was always with him.

3 Q. How much older were you than -- than Erik?

4 A. Six years older than him.

02:38PM 5 Q. Where were you guys born?

6 A. In Mexico.

7 Q. When did you come here to the United States?

8 A. I came here when I was 17-years-old, and he came when
9 he was 14.

02:38PM 10 Q. And did you still have a close relationship with him
11 once he arrived here in the United States?

12 A. Yes. He lived with me.

13 Q. Oh, he did? How long did he live with you?

02:39PM 14 A. He lived for about six years with me, but he lived
15 near me.

16 Q. You mean after he moved out he still lived near you?

17 A. Yes. And he would come -- come and visit me every
18 day.

19 Q. I'm going to show you some photographs. Okay?

02:39PM 20 MS. WONG: May I approach, Your Honor?

21 THE COURT: You may.

22 BY MS. WONG:

23 Q. I want to show you what's been marked as State's
24 Proposed Exhibits 189, 191, 194, and 198. Will you let me know
02:40PM 25 if you recognize the people in these photographs?

1 A. Yes.

2 Q. Okay. Can you look at the next one?

3 A. Yes.

4 Q. How about the next one?

02:40PM 5 A. Yes. This is my brother with my son.

6 Q. And the final one, do you recognize that?

7 A. Yes. It's my brother.

8 MS. WONG: The State moves for the admission of
9 State's proposed Exhibits 189, 191, 194 and 198 into evidence.

02:40PM 10 THE COURT: The State's Exhibits will be
11 admitted noting the objections from the Defense. You may
12 proceed. You may publish.

13 (State's Exhibit Numbers 189, 191, 194, 198, respectively,
14 were admitted into evidence.)

15 BY MR. DIGIACOMO:

16 Q. I want to show you State's Exhibit 189. Can you tell
17 us who we're looking at in this photograph?

18 A. My brother and my children and my niece, his
19 daughter.

20 Q. Which one is his daughter?

21 A. The girl in the pink.

22 Q. In the pink, okay.

23 And what's her name?

24 A. It's Ysbeyde Quezada.

25 Q. And I will show you State's Exhibit 198. Who is

1 that?

2 A. My brother.

3 Q. And I will show you 194. And who is in that
4 photograph?

5 A. My brother and my children at my son's graduation.

6 Q. And I will show you State's Exhibit 191. Who are you
7 looking at in that photograph?

8 A. My brother, at my son's birthday, with my husband and
9 my uncle.

10 Q. I know you mentioned that this really impacted your
11 life. Can you explain to us how this affected you and your
12 family.

13 A. Too much, because my brother was a very good person,
14 not just with us, but with people. He would help people a lot.
15 He was a very good uncle, a very good son. And still up until
16 today's date, I can't recover from the loss of my brother. And
17 he was also a very good father.

18 Q. Is there anything that you can't do nowadays because
19 he's not here?

20 A. Too many, because this not only impacted us, but also
21 my mom.

22 Q. How so?

23 A. My mom, due to my brother's death, she got depressed
24 and she let herself go and she passed away. She also died.

25 Q. How -- how long after Erik died did your mom pass

1 away?

2 A. Two years.

3 MS. WONG: Nothing further, Your Honor.

4 THE COURT: Ms. Erickson, any questions for this
5 witness?

6 MS. ERICKSON: No, Your Honor.

7 THE COURT: Ms. Gutierrez, thank you for the
8 time. You are excused and just watch your step as you exit the
9 witness area.

10 (Whereupon, at this time the Witness was excused.)

11 MR. DIGIACOMO: Claudia Bernal.

12 THE COURT: And we need the interpreter as well?

13 MR. DIGIACOMO: We do.

14 THE COURT: All right. Claudia Bernal, if you
15 could come stand with the interpreter. Come on up to the
16 chair.

17 We won't readminister the oath at this time, as
18 the interpreter has already received her oath, but we will ask
19 for the witness to be sworn, please.

20 THE CLERK: Please raise your right hand.

21 THE INTERPRETER: I'm nervous.

22 CLAUDIA BERNAL

23 called as a witness on behalf of the State,

24 having been first duly sworn,

25 was examined and testified as follows:

1 THE INTERPRETER: I do.

2 THE CLERK: Please take a seat.

3 Can you please state and spell your first and
4 last name for the record.

5 THE INTERPRETER: My name its Claudia Bernal.
6 C-L-A-U-D-I-A, B-E-R-N-A-L.

7 THE CLERK: Thank you.

8 THE COURT: Mr. Digiacomo.

9 DIRECT EXAMINATION

10 BY MR. DIGIACOMO:

11 Q. Ma'am, did you know Erik?

12 THE INTERPRETER: I'm sorry, Counsel?

13 BY MR. DIGIACOMO:

14 Q. Did you know Erik?

15 A. Yes.

16 Q. How did you know him?

17 A. He was my husband.

18 Q. When did you guys get together?

19 A. When we were 18.

20 Q. How old was he generally when he died?

21 A. 33.

22 Q. Did you have children with him?

23 A. Yes, three.

24 Q. We've heard from Ysbeyde today. What are the names
25 of the other two again?

1 A. Okay. I have another son, whose name is Erik, and
2 he's 12. And the baby, since I was pregnant when this
3 happened, his name is Eddie, and he's about to turn five.

4 Q. Describe Erik for us.

5 A. Okay. Erik, honestly, was a very joyful person. He
6 was a hard-working person. He was always very much on top of
7 his children and nieces and nephews. He would work a whole
8 week, even weekends, but we would go out, you know, to eat. He
9 was a very good person.

10 Q. How did you learn about Erik's death?

11 A. Someone came to my house to tell me.

12 Q. Has that affected you?

13 A. Yes.

14 Q. How?

15 A. You have no idea how much.

16 Q. I recognize it's hard to verbalize or explain sort of
17 what someone means to you, but --

18 A. Well, okay. Since I learned that, can you imagine, I
19 was pregnant, I've been depressed, just to see my children that
20 -- they're the same as I am, because we still can't believe
21 that this has happened.

22 Do you understand me?

23 And it's been very difficult to be single with them,
24 and with the baby. He -- now he's very confused. He dreams
25 with him a lot. He -- he says he takes him out, you know, for

1 walks. And he only knows him in photographs, but he knows he's
2 his dad. And he thinks he's going to come and be with him.

3 Q. Ma'am, did you, along with the other family members,
4 bring a bunch of photographs of Erik to us?

5 A. Yes.

6 MR. DIGIACOMO: May I approach, Judge?

7 THE COURT: You may.

8 BY MR. DIGIACOMO:

9 Q. I'm going to show you what's been marked as 190, 192,
10 193, 195, 196, 197, and 199. Just briefly flip through those
11 and tell me if those are photographs that have Erik and the
12 family in them.

13 A. Yes.

14 MR. DIGIACOMO: I move to admit those numbers,
15 Judge.

16 THE COURT: State's Exhibits will be admitted
17 with the noted exception -- objection of the defense.

18 You may proceed.

19 (State's Exhibit Numbers 190, 192, 193, 195, 196,
20 197, and 199, respectively, were admitted into evidence.)

21 BY MR. DIGIACOMO:

22 Q. I'm going to kind of just go through some of these
23 photographs with the jury and just ask you to kind of just
24 describe what we're looking at. Okay?

25 A. Okay. That's fine.

1 Q. I'm going to start with 190, and I am going to have
2 to rotate that for you. What are we looking at here?

3 A. Okay. That's the wedding of Erik's brother.

4 Q. And are you in that photograph?

5 A. Yes, and my children.

6 Q. Who's Erik holding?

7 THE INTERPRETER: I'm sorry, Counsel?

8 BY MR. DIGIACOMO:

9 Q. Who is Erik holding?

10 A. My son, whose name is Erik, and he's 12 today.

11 Q. I'm going to put up 192 and ask you who are we
12 looking at?

13 A. That's Erik holding his little niece, who's just
14 born.

15 Q. 195. What about that?

16 A. That's Erik and I at the Christening of his niece
17 Vinnay (phonetic), because we were the -- the Godparents.

18 Q. 197. Who is that photograph?

19 A. It's my baby Eddie. It's the baby that I had that
20 has never known Erik.

21 Q. 199?

22 A. That's Erik with Viannay, his niece.

23 Q. 193. Who's Erik with in this photo?

24 A. That's Erik with another niece of his.

25 Q. And lastly, ma'am, I'm going to show you 196 -- oops,

1 what are we looking at in 196?

2 A. That's Erik with my daughter Ysbeyde, and me and my
3 brother.

4 Q. What's your brother's name?

5 A. Jonathan.

6 Q. Is it fair to say Erik had a pretty large extended
7 family?

8 A. Yes. He had a family.

9 Q. And would you say his death has affected all of them?

10 A. Yes, all of them.

11 MR. DIGIACOMO: Thank you, ma'am.

12 I have no more questions, Judge.

13 THE COURT: Are there any questions for this
14 witness?

15 MS. ERICKSON: No, Judge.

16 THE COURT: All right. Thank you, Ms. Bernal.
17 You are excused.

18 (Whereupon, at this time the Witness was excused.)

19 THE COURT: Just mind your step as you exit the
20 hearing stand.

21 Mr. Digiacomo, are there any additional
22 witnesses for the State?

23 MR. DIGIACOMO: No additional witnesses.

24 I have two exhibits, one that's marked as 173,
25 one's marked as 174. They are both downloaded records directly

1 from the Court's Odyssey system. So I'd ask the Court to take
2 judicial notice of them evidencing the prior criminal history
3 of Ms. Cabrera. And I'd offer them at this time.

4 THE COURT: Ms. Erickson?

5 MS. ERICKSON: And I have an objection.

6 THE COURT: All right. Why don't we have
7 Counsel at the bench just briefly and --

8 (Sidebar conference at bench, not reported.)

9 THE COURT: All right. Ladies and gentlemen of
10 the jury, I'm advised by Counsel that we might need a few
11 moments to discuss this, and we've been back in session now for
12 a period of time. We'll go ahead and give you a brief recess.

13 Again, appreciate this has a different phase of
14 the trial, but if you will remember that, again, until you are
15 to deliberate, you have an admonishment.

16 (The jury was admonished by the Court.)

17 THE COURT: We will give you about 15 minutes
18 and we'll see you back here after that. Okay?

19 THE MARSHAL: All rise.

20 MR. DIGIACOMO: Ms. Wong mentioned something to
21 you. May we approach as they walk out?

22 THE COURT: Yes. It's just a little hard to get
23 over here because they're leaving. Go ahead. You may proceed.

24 MR. DIGIACOMO: Now we can do it in open Court.

25 THE COURT: Okay.

1 (The following proceedings were had in open
2 Court outside the presence of the jury panel:)

3 MR. DIGIACOMO: Ms. Wong just mentioned that
4 maybe we should let them go because if the Court decides to do
5 a redaction or not do a redaction, we don't have any additional
6 witnesses.

7 THE COURT: I wasn't sure if you were going to
8 want to publish these items or anything like that.

9 MR. DIGIACOMO: Right. That's what -- I should
10 have told you that we're just going to offer them at this
11 point.

12 THE COURT: I know that you had put them in your
13 opening, but you only had shown a first page and I wasn't sure.

14 So I -- I don't suppose there's anything to
15 address other than Ms. Erickson has some objections. And I
16 suppose that could affect what they receive, but we could
17 always address that tomorrow too.

18 MR. DIGIACOMO: Well, if there's going to be any
19 redaction, there is at least one thing I think that she will
20 ask to redact to that I won't necessarily object to.

21 THE COURT: Okay.

22 MR. DIGIACOMO: And so we probably won't have a
23 completed exhibit form until tomorrow morning anyway.

24 THE COURT: Let me see if I can -- I think Elvis
25 is just trying to keep an eye out, since everybody went out the

1 same time the jurors went out. They're probably using the
2 restroom and doing things. We'll release them, but we'll wait
3 until --

4 MR. DIGIACOMO: Perfect.

5 THE COURT: -- we're ready to take a break here.

6 Okay. So -- and I do want to take a break
7 between this discussion and the settling of the jury
8 instructions, because I also have my reporters to switch out
9 and it gives us a chance to use the restroom as well.

10 So, Ms. Erickson, Mr. Digiacomo indicated there
11 may be something you wish to redact that he would not oppose,
12 but in any order in which you want to address the documentation
13 here.

14 I've been handed two -- is it the same
15 document -- no, it's not the same document.

16 I've got one Criminal Complaint, State of Nevada
17 versus Mary Ann Garcia and Silvia Lopez, Case Number 08FN0433A
18 and B. And I've got a Criminal Complaint and attendant
19 documents, the supporting documents, to that case. And then I
20 have a Criminal Complaint in the State of Nevada versus Maria
21 Perez Cabrera and Ivonne, aka Ivonne, Cabrera, and that's case
22 number 08F1499X, and the documents related to that.

23 Those are marked for admission as State's
24 Proposed 173 and 174 respectively.

25 Why don't I let you do this, Mr. Digiacomo:

1 You've obviously, again, made reference to the fact that there
2 was criminal history here. I'm letting you have these
3 Judgments of Conviction that you were going to be placing into
4 evidence. This is obviously more documentation than just
5 simply a Judgment of Conviction.

6 I'm not trying to make commentary on what is or
7 is not appropriate. I just wanted you to make a record, for
8 instance, looking at State's Proposed 173, this exhibit would
9 be made up of the Criminal Complaint, the docket sheet, the
10 prebooking Declaration of Arrest, the Guilty Plea Agreement.

11 MR. DIGIACOMO: Two Judgments of Conviction.

12 THE COURT: Yeah. That's the last couple of
13 documents, which is -- inclusive in the Guilty Plea Agreement
14 is the information charging document and then the two -- the
15 Judgment of Conviction, the Order of Revocation and the Amended
16 Judgment of Conviction.

17 And so -- go ahead.

18 MR. DIGIACOMO: Correct.

19 What I downloaded was the bindover information
20 and removed from it extraneous information.

21 So the Criminal Complaint, which she's charged
22 with; the Court minutes of Justice Court; the Police Report
23 associated with the underlying offense, all of which is
24 admissible; the Guilty Plea Agreement; along with the
25 Information to which she pled to; the Judgment of Conviction;

1 and then the Amended Judgment that revoked her probation, all
2 of which are admissible.

3 What I will say about that document is there is
4 a paragraph in the Police Report that discusses what story the
5 co-defendant told.

6 I have had defense attorneys say they want that
7 in and I've had defense attorneys say they want that out.

8 I left it in for right now, but if Ms. Erickson
9 wanted the story told by the co-defendant, that is the only
10 area that is still subject to a deck word slash confrontation
11 clause in co-defendant cases. I'd be happy to redact that
12 paragraph from the Police Report.

13 As it relates to the 174, it's the exact same
14 thing. It's the Complaint, the charging document -- or the
15 Complaint; the Court Minutes; the Police Report; the Guilty
16 Plea Agreement; the Judgment of Conviction; as well as the PSI,
17 which Nunnery says is all admissible, unless there's something
18 in particular that Ms. Erickson wants redacted for -- because
19 it's highly improbable or suspect.

20 As of yet, depending on what she says she wants
21 removed, I may not have an objection.

22 THE COURT: Okay. All right. I'd appreciate to
23 have that background then, because with that background then,
24 Ms. Erickson, it might be helpful for the record to start and
25 do each exhibit in turn.

1 So State's proposed 173, which again relates to
2 the case -- the grand larceny/auto and possession of stolen
3 vehicle, conspiracy to commit larceny, and 08FN0433A and B.

4 MS. ERICKSON: And, just, Judge, could you just
5 tell me whether that's the North Las Vegas Justice Court --

6 THE COURT: It is.

7 MS. ERICKSON: -- or the Las Vegas?

8 THE COURT: It's the North Las Vegas
9 Justice Court.

10 MS. ERICKSON: Okay. In the North Las Vegas
11 Justice Court, I do want anything that the co-defendant said to
12 be redacted.

13 THE COURT: You do or do not?

14 MS. ERICKSON: I do.

15 THE COURT: You do, okay.

16 MS. ERICKSON: I want anything that the
17 co-defendant said that's in the Police Report to be redacted.

18 I don't remember if that -- that exhibit has two
19 sets of the Police Reports, as the Las Vegas Justice Court case
20 does.

21 I don't think it's appropriate to have both
22 versions of the event. Since they're the same, we don't need
23 the handwritten or we don't need the printed. One of the two
24 is sufficient.

25 THE COURT: This particular exhibit only has the

1 printed. Nothing in it is handwritten.

2 MS. ERICKSON: Okay.

3 THE COURT: What it has is a prebooking
4 Declaration of Arrest, and then it's got what appears to be two
5 narrative portion pages. So the -- the North Las Vegas
6 component of it, or part of it, is approximately -- is four
7 pages.

8 No, no. They're not all full pages. One is
9 about a half on the additional narrative and then one is about
10 a half on the Declaration of Arrest, but --

11 MS. ERICKSON: Well, and those two things are
12 repeating the same information is my -- without being able to
13 look at it, at this point, and I wasn't given a copy.

14 THE COURT: But your objection at this time is
15 two-fold objection, as I understand it, is anything from the
16 co-defendant's statements to be redacted, and you believe that
17 the documentation is redundant.

18 MS. ERICKSON: Yes. I mean, I just think that
19 one Police Report is appropriate, rather than two. That --
20 whatever -- you know, repetition is not necessary.

21 And as to the North Las Vegas -- or the
22 Las Vegas Justice Court, they've attached a PSI that I do not
23 have access to on Odyssey because I am not a prosecutor, nor --

24 THE COURT: This is, by the way, State's
25 Exhibit 74. I just wanted to make the note.

1 MS. ERICKSON: -- nor am I a Public Defender, so
2 I have never received a copy of that from anywhere.

3 And there is in it a -- there's a portion at the
4 very end where it discusses the victim information, and that
5 should be redacted because that's the same as if they called
6 another victim. And it's unrelated in the case to discuss the
7 prior conviction, which is not appropriate under our case law.

8 So anything that the victim said in that PSI
9 should be removed, as well as the conclusion, because, again,
10 that's going to be the probation officer testifying without
11 being present through a document that I don't have.

12 THE COURT: So a couple things about that.

13 I'll -- when we take our break, I will make
14 copies and you will have them so you can see them and then we
15 can make further record before we make any final
16 determinations.

17 I would note that the only information in the
18 victim information statement -- which is section nine of the
19 PSI, or page 5 of 7 of the PSI -- the only information in
20 there, I'm not saying, would affect your objection; but the
21 only information in there is related to the restitution. There
22 isn't anything with regard to impact otherwise that I can see
23 here, just restitution being requested and -- and what it was
24 for.

25 MS. ERICKSON: Right.

1 THE COURT: So I will give you that to see.

2 MS. ERICKSON: Without any backup documentation
3 to say that those items were actually missing or stolen, which
4 is required, as you know in sentencing in restitution
5 situations, that should not be on there.

6 MR. DIGIACOMO: The restitution ordered in the
7 JOC?

8 THE COURT: I'm assuming that it was, and I'm
9 going to check it out right now.

10 MR. DIGIACOMO: And I apologize. We put these
11 together quickly, so I didn't even get a copy of these
12 exhibits.

13 THE COURT: Yes. Restitution is ordered in the
14 JOC.

15 MS. ERICKSON: And I was not counsel. I have no
16 idea whether counsel at that time made an objection, whether
17 there was documentation or anything else.

18 In 2008, I think that's the judgment from, it
19 wasn't absolutely as the same as it is now with restitution,
20 which requires proof of documentation.

21 THE COURT: This was an -- October 2008 is the
22 date on the Judgment of Conviction, signed by Judge Glass.

23 Mr. Digiacomo, what is your position with regard
24 to --

25 Is that it, I'm sorry, Ms. Erickson, of the

1 objection?

2 MS. ERICKSON: In that section. In that one
3 also there's double reporting of police reports.

4 THE COURT: Okay. And you had mentioned that
5 before, there was some handwritten documentation.

6 MS. ERICKSON: Right. That's it.

7 THE COURT: And hold on. Let me just clarify
8 what I've got there for that.

9 So on the City of Las Vegas, I have a
10 Declaration of Arrest that's handwritten, that appears to be
11 two pages. And then I have an Arrest Report, which is
12 typewritten, that appears to be approximately two pages. So
13 four pages total there as well.

14 Mr. Digiacomo, what is your position with regard
15 to Ms. Erickson's objections as to Exhibits 173 and 174?

16 MR. DIGIACOMO: Judge, I haven't looked to see
17 if there is a duplication of those police reports. I didn't
18 look because that is the probable cause that was submitted to
19 the Judge. If there's a duplication in there, I'm not sure
20 exactly why.

21 I know why the handwritten and the typed one
22 will come in as a duplicate, because the handwritten one is
23 usually submitted and then a more fuller typewritten one is
24 submitted to the Court within 72 hours.

25 So I'm not sure that there is a difference

1 between those two reports. I'd have to read them to see if all
2 the information contained in one is contained in the other. If
3 so, I don't care about removing one.

4 THE COURT: They're not word-for-word, but they
5 do appear to overlap to a very significant degree.

6 And I'm not clear why the narrative portion,
7 which is the typewritten supplement, if you want to call it
8 that, of the prebooking Declaration of Arrest of
9 North Las Vegas is typewritten in what it is. But it does
10 appear to be -- it's not exactly the same -- substantially
11 similar. And then it does appear in the Las Vegas one that the
12 handwritten version is what was then turned into the
13 typewritten version. Although, again, there's some -- you
14 know -- some distinctions.

15 MS. ERICKSON: In my quick review of them, I
16 would agree with the Court's analysis that they are almost
17 identical to each other, with only -- with little missing from
18 either one.

19 THE COURT: So what I'll do is, I'll make copies
20 of both sets because the State will have to finalize their
21 determination on -- on whether they --

22 MR. DIGIACOMO: I don't really object then. If
23 that's true, I don't object to removing those two as it relates
24 to what seems to be suggestive of a notice, the notice of
25 evidence and aggravation specifically referenced that PSI

1 coming in.

2 If Ms. Erickson believes she didn't have it, she
3 should have told me, but she will have a copy of it now.

4 THE COURT: I'll get it now.

5 MR. DIGIACOMO: And the -- as it relates to
6 removing the victim -- or the victim impact, a victim can't
7 discuss, you know, how has the rape affected you.

8 But as a determination of restitution, which is
9 part of the JOC, I don't think it should be redacted, nor is
10 there a legal basis to redact to the conclusions of the -- of
11 the PSI writer, particularly since it's not highly suspect or
12 improbable, nor is it a violation of the confrontation laws
13 because that doesn't apply at this particular hearing.

14 But I will be willing to redact from whichever
15 police report we keep from 173, the co-defendant's version of
16 the story. I -- I have no problem with redacting that because
17 that is not appropriately -- it is highly suspect and
18 improbable what a co-defendant says.

19 THE COURT: Anything further, Ms. Erickson, for
20 the record?

21 MS. ERICKSON: No, Judge.

22 THE COURT: All right. I'll make the copies.
23 I'll have somebody bring them in. Let's go ahead and take an
24 additional five or so minutes to use the restroom, whatnot.

25 And then, Elvis, we do not need the jurors to

1 come back into the room.

2 I wasn't aware, and I should have asked when we
3 were at the bench, that the documents are not going to be
4 further published to them. They're just going to be admitted.

5 So if you want to go ahead and excuse the
6 jurors, I don't think we need to bring them back in. They just
7 need to know to be back here at 10:00 o'clock tomorrow.

8 THE MARSHAL: 10:00 o'clock.

9 THE COURT: And that we will begin with the
10 defense witnesses at that time.

11 THE MARSHAL: Okay.

12 THE COURT: Okay?

13 And we're going to take a quick break in here to
14 use the restroom. And then we'll come back and settle the
15 instructions and finish our discussion on the exhibits.

16 MS. ERICKSON: Thank you, Judge.

17 THE COURT: All right. Thank you.

18 (Proceedings concluded.)

19 * * * * *

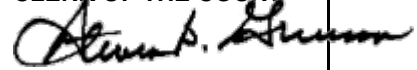
20

21 ATTEST: Full, true and accurate transcript of proceedings.

22

23

24 /S/Renee Silvaggio
25 RENEE SILVAGGIO, C.C.R. 122



TRAN
CASE NO. C-12-283700-1
DEPT. NO. 25

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

| | | |
|----------------------|---|-----------------------|
| THE STATE OF NEVADA, |) | |
| |) | |
| Plaintiff, |) | REPORTER'S TRANSCRIPT |
| |) | OF |
| |) | JURY TRIAL |
| vs. |) | |
| |) | |
| IVONNE CABRERA, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

BEFORE THE HONORABLE KATHLEEN DELANEY
DISTRICT COURT JUDGE

DATED WEDNESDAY, JULY 19, 2017

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

02078

1 APPEARANCES:

2 For the State:

MARC DIGIACOMO, ESQ.

3 HETTY WONG, ESQ.

4
5
6
7 For the Defendant:

PATRICIA ERICKSON, ESQ.

8 BRET WHIPPLE, ESQ.

9
10
11 * * * * *

1 LAS VEGAS, NEVADA; WEDNESDAY, JULY 19, 2017

2 P R O C E E D I N G S

3 * * * * *

4
5 THE COURT: On the record in State of Nevada vs
6 Ivonne Cabrera. Ms. Cabrera has been returned -- at her
7 request she made through the marshal, has been returned to
8 Clark County Detention Center. So she is not present. I do
9 have counsel present.

10 Let's pick up where we left off with the
11 question as regards to the State's Proposed 173, 174.
12 They are going to be admitted. The question is, what of
13 them will be redacted.

14 MR. DIGIACOMO: I can resolve 173.

15 In looking at 173, the prebooking form is the
16 prebooking form for MaryAnn Garcia. And the police report
17 is for Silvia Lopez, which is Ms. Cabrera's aka. So I am
18 happy to have removed from 173, that first two pages,
19 which is called the prebooking declaration.

20 THE COURT: I was more looking at the language
21 and the narrative.

22 MR. DIGIACOMO: From the second two pages, this
23 evening, I will have redacted any statements made by
24 MaryAnn Garcia to the police in that 2-page police report.
25 Which should satisfy defense request as to 173.

1 MS. ERICKSON: I only have one page.

2 MR. DIGIACOMO: What?

3 There is a second page. That is the second page.
4 Apparently -- you can look at mine for right now. What is
5 coming out -- that is the portion coming out.

6 MS. ERICKSON: I found it. It's behind the
7 beginning of the guilty plea agreement.

8 THE COURT: So what will remain in -- what I've
9 done is I've unclipped, taken out the staple for State's
10 173. I have removed the 2 pages that are titled North Las
11 Vegas Police Department, declaration of arrest. Which
12 appears to apply to MaryAnn Garcia and not Ms. Cabrera.

13 I removed that. What I'm going to do is leave it
14 unclipped. I'm still going to give it. I'll give the
15 marked one back to my clerk.

16 Once we have the redacted portion of the narrative --

17 MS. ERICKSON: We can stipulate when they refer
18 to Ivonne, but MaryAnn Cabrera is also on the docket
19 sheet. It's just going to be confusing. She already has
20 a different name. She doesn't need 3 different names.

21 THE COURT: Okay. Are we still talking about 173.

22 MS. ERICKSON: Yes, we are, Judge.

23 MaryAnn Garcia is named as the first Defendant in
24 this case. The first document after the 2-page complaint,
25 the justice court docket sheet states MaryAnn Garcia.

1 THE COURT: Any objection to that being removed.
2 We had it as a sub-part.

3 MR. DIGIACOMO: What I will do is there is one
4 on MaryAnn Garcia and there's one for Silvia Lopez. I
5 think we just drop the MaryAnn Garcia one in here.

6 I will bring the appropriate one when I bring the
7 redacted version.

8 THE COURT: If there is a docket sheet that can
9 be printed, Silvia Lopez, we'll do that. Then we'll have
10 exactly pages -- it looks like the -- you said it's the
11 second page of the narrative, or the first page of the
12 narrative.

13 MR. DIGIACOMO: It looks like it's -- even though
14 it says page 5, it's 6. You understand why it's 5 and 6,
15 because this is North Las Vegas and weird things happen
16 with them.

17 But it is the second page where they speak to Ms.
18 Garcia, it says 6 of 6 at the top.

19 THE COURT: I see it. I've advised Ms. Garcia
20 of her rights, and she told me --

21 MS. ERICKSON: The next paragraph says, you know
22 that both Lopez and Garcia admitted to stealing. Lopez
23 admitted to driving and admitted that Garcia was
24 driving.

25 THE COURT: Again, North Las Vegas.

1 MR. DIGIACOMO: I'll take out both. I'll say
2 Lopez admitting to stealing the vehicle. Lopez admitted
3 to driving and admitted that Garcia was driving. I placed
4 Garcia under arrest for conspiracy to commit grand larceny
5 auto. I placed Lopez under arrest for conspiracy to commit
6 grand larceny auto.

7 I'll take the statements of Ms. Garcia out.

8 THE COURT: We'll have a chance to see the final
9 redacted version before the exhibit gets fully admitted
10 and, of course, goes to the jurors. And we'll make
11 sure -- Mr. DiGiacomo, whatever you bring us or send us,
12 just make sure there's an extra copy for Ms. Erickson.
13 Okay.

14 MR. DIGIACOMO: I'll e-mail that over tonight.

15 THE COURT: That would be great.

16 I'm going to, in the meantime, hand back 173 to my
17 clerk so she can keep good track of that.

18 Now 174, have you had a chance to look at that.

19 MR. DIGIACOMO: I have no objection to taking
20 out the handwritten declaration of arrest.

21 MS. ERICKSON: Thank you.

22 THE COURT: That addresses one issue. I'm going
23 to actually physically pull that out now.

24 Then the only other issue of course was with regard
25 to the PSI. I didn't know if there was anything further.

1 I did, of course, give the handwritten portion of the
2 declaration of arrest or sort of redundant handwritten
3 portion is 2 pages. I have pulled these out of the
4 packet. I'll keep it unclipped, just like I did for 173,
5 for 174. Again, it will be admitted with the original
6 page, if there's to be redactions to either place. But
7 that's the end of the discussion with regard to redactions
8 of anything in the PSI.

9 Any further discussion on that.

10 MS. ERICKSON: No. Other than my initial
11 request that the victim information statement be removed.

12 It's just this is another crime I can't do anything
13 about. He's saying tools were in his car, that was
14 stolen. My client is saying she didn't steal them. And
15 it just doesn't seem appropriate or necessary to have this
16 in there.

17 If that person were called to testify -- that person
18 cannot be called to testify in this case, because you
19 cannot have witnesses testifying about other crime
20 evidence that's not related to the murder. And it just
21 makes no sense to have something in there when it's
22 unnecessary.

23 THE COURT: The only thing I would ask to sort
24 of qualify or understand better is, you know, she entered
25 a guilty plea. And presumably she entered a guilty plea

1 to the facts and circumstances, and we can go and look to
2 see what information there was. I wasn't there for the
3 canvass. Judge Glass did it. But the information --
4 possession of stolen vehicle.

5 MR. DIGIACOMO: And I would note that Ms.
6 Erickson is sort of misquoting Payne. I could call this
7 victim to say, my car was stolen and I requested and
8 received \$525.00 of restitution.

9 What I couldn't say is how has the crime effected
10 you, personally. Oh, well, you know -- whatever. Like
11 the victim of a sex assault. You can call the victim of a
12 sex assault to describe the assault that occurred to her,
13 the injuries she received, but you can't ask a victim of a
14 sex assault, how did that crime effect the rest of your
15 life.

16 That's what's inappropriate, the admission of the
17 consequence of the crime. He lost \$525.00 worth of tools
18 is completely admissible in a penalty phase.

19 THE COURT: There is a little more in here than
20 that. It's short, but it kind of falls into what you just
21 said because he says as a result of his working with those
22 tools, he lost his job.

23 MR. DIGIACOMO: That I have no problem taking
24 that part out. I'll be happy to redact that.

25 MS. ERICKSON: Judge, if I had been given this

1 PSI before today in court I could have done research. But
2 as far as I know, it is unnecessary to have that in there.
3 It doesn't make any changes to what she pled to. She
4 didn't plead to stealing his tools. The information is
5 possession of a stolen vehicle. And the complaint is
6 possession of burglary tools.

7 THE COURT: Then she pled to possession of
8 stolen vehicle.

9 The way I go back and forth in my mind is we have a
10 huge chunk of information redacted. Then it sort of begs
11 the questions what's been redacted. But on the other
12 hand, you know, I don't -- I'm trying to avoid, obviously,
13 anything that could seem minor but could be, upon further
14 review, found to be a larger issue.

15 I think to avoid any concern or consequence of there
16 being the victim of this crime testifying to something
17 that was inappropriate and somehow something can be
18 questioned in that regard, it does make sense to the court
19 to redact the bottom part of page 5 of the PSI, which is
20 inclusive of Section 9, victim information statement, and
21 that restitution total there. And to then -- I don't know
22 that we need to -- I know the question was asked whether
23 restitution was referenced in the judgment of conviction.
24 The judgment of conviction is a judgment of conviction. I
25 don't know why we wouldn't take that money out. That's

1 what was ordered by the court.

2 MS. ERICKSON: I'm not asking that.

3 THE COURT: I know. Mr. DiGiacomo made that
4 connection earlier that it was in there. We'll ask to
5 have redacted -- is that something you can do, Mr.
6 DiGiacomo, with your fancy equipment.

7 MR. DIGIACOMO: I can take out Section 9.

8 THE COURT: Section 9, and take out the
9 restitution total. If you can take that out of the PSI,
10 that will meet our needs. I'm going to hand you 174,
11 provisionally admitted, to the clerk so that those pages
12 can also be replaced. When you send them around make sure
13 everybody gets a copy of that.

14 So the only reason I was thinking of starting with
15 the verdict form was because you know that Ms. Erickson
16 came and was looking for a copy of a different one. I
17 don't know if that related to this.

18 MS. ERICKSON: Yes. It gave me some ideas of
19 what I needed to get in.

20 THE COURT: Can we start with that.

21 MS. ERICKSON: Sure.

22 THE COURT: The special verdict form -- so before
23 we do that, why don't you come up. I've got copies of how
24 the court sort of repaginated. I've got 4 copies.

25 So just to go quickly through with what the court did

1 so you can see. I made some sort of font changes, just to
2 try to make it easier to read. For instance, I
3 capitalized Count 3 and I capitalized title of the count.

4 I then bolded where it says instruction under Section
5 1, And any other place where instructions appear I bolded
6 it.

7 I moved over the check boxes to come underneath the
8 text. I created spacing where I thought appropriate to do
9 that.

10 I shortened the number of lines available for the
11 additional mitigating circumstances. The juror might
12 write that in. I added a little bit of language to
13 Section 3, balancing in the instruction. All it said was
14 proceed to Section 4 to record your final -- as if it
15 would be understood if you checked that box that's what
16 you do. I thought adding the language would be helpful.
17 If you checked the above box, proceed to Section 4 to
18 record. So minor but adjustments in the instructions just
19 to add clarity.

20 I'm trying to think if there is anything else. I
21 don't think there is anything else really other than under
22 spacing. Obviously that will change once we add in
23 mitigating circumstances, in terms of spacing and
24 everything else.

25 My goal was to simply try have it be as easy to read

1 as possible. I did add language in the titles of Section
2 4 and Section 5. So instead of it just saying Aggravators
3 or Mitigators, I changed it to aggravating circumstances
4 outweigh mitigating circumstances. Then in reverse.
5 Mitigating circumstances outweigh aggravating
6 circumstances. That really is how the instructions were
7 read and how the box above in Section 3, for balancing, is
8 worded. I thought it would be more consistent to word it
9 that way.

10 I'll give you a few more minutes to look at the
11 court's draft.

12 MR. DIGIACOMO: I have no objection to the
13 court's draft. We just need to correct the 15 and 20.

14 THE COURT: I hadn't done that yet. That change
15 will be made to Section 4, of each of the counts.

16 So whenever you are ready Ms. Erickson, for your
17 discussion of the verdict form, I'm ready.

18 MS. ERICKSON: Judge, I submitted my written
19 objections, requests. The court has not --

20 THE COURT: I haven't seen anything in regard to
21 the verdict form. I saw your objections to the
22 instructions. I saw your general request with regard to
23 the mitigators. I answered that by e-mail this morning.

24 You haven't seen the court's e-mail.

25 MS. ERICKSON: No.

1 THE COURT: There were other e-mails that were
2 circulated after, so, the court was not aware you had not
3 seen it. I sent it in response to your e-mail.

4 MS. ERICKSON: I probably was in the shower.

5 THE COURT: Just trying to find it.

6 Did you receive Mr. DiGiacomo's response with regard
7 to reference to case law -- McConnell.

8 MS. ERICKSON: No.

9 MR. DIGIACOMO: I brought her a copy of the
10 case.

11 THE COURT: Okay.

12 So my response, just for the record, your request,
13 Ms. Erickson, that we wait to include any mitigating
14 circumstances in the jury instructions until after the
15 defense's presentation.

16 MS. ERICKSON: I saw that heading. I'm ready to
17 do that. I didn't read all of it.

18 THE COURT: I'm just making a record.

19 My response was that it was my intention to proceed
20 with instructions and closings following a short recess
21 after the completion of Ms. Cabrera's witnesses on
22 Thursday. And don't see how it's feasible for me to do
23 that because without a set of instructions that is as
24 complete as possible. For that reason -- I just would
25 note that my time is, you know, 8:49, for the record.

1 And for that reason I respectfully request you be
2 prepared this afternoon to make a proffer, either orally
3 or in writing, what mitigating circumstances you hope to
4 be able to show. It would be far easier and less time
5 consuming to delete any not proven by the evidence than it
6 will be to try to add in all that are. Thank you in
7 advance for your attention.

8 MS. ERICKSON: I have a list. It's not in a
9 form of a jury, but I can go back to my office --

10 THE COURT: I just want the information. I can
11 create the list. I just wanted -- that's why I said it
12 would be fine to have an oral proffer as well. You had
13 just indicated you wanted to wait to give information,
14 and I was hoping to have the information.

15 MS. ERICKSON: I do have that.

16 THE COURT: So why don't you go ahead and give
17 that oral information now.

18 MS. ERICKSON: First mitigator -- devoted mother
19 to her two sons -- Andres and Erick.

20 Was a trusted and responsible employee prior to trial
21 and 2001 accident.

22 THE COURT: So -- I'm sorry. I'm not going
23 to -- I can't write as fast as fast as you are reading.
24 I'm going to have to put this in so -- I didn't want to
25 burden you having to type them up. How many do you have

1 total.

2 MS. ERICKSON: I have -- 1, 2, 3, 4, 5, 6, 7, 8,
3 9, 10, 11.

4 THE COURT: I'm going to ask you to go ahead
5 then and just write them up and e-mail them at your
6 convenience when we conclude here today. If I can get
7 them sometime this evening, I would be appreciative.

8 I can't write that fast. And what I have had in the
9 past as far as list of mitigating circumstances were
10 usually 3 words. I have no objection. I don't know if
11 the State does -- to be more of a narrative type of
12 statement then just being, you know, great mom, good
13 worker. I get that. You want to have that kind of detail.

14 But since I can't write it down that quickly when
15 you've got that many, I am going to ask you to please
16 provide it. You don't have to provide it in the form.
17 You don't have to do anything special. Just e-mail me it
18 typed up and I will plug it into the form.

19 Then of course, anything absolutely not proven, we'll
20 take it back out.

21 MS. ERICKSON: Do you want it on Word -- on a
22 document.

23 THE COURT: You can put it in an e-mail. You
24 can put it in a Word document. I don't care how you do
25 it. Whatever is the easiest for you.

1 MS. ERICKSON: I'm not good with Word, so I'll
2 put it in an e-mail.

3 THE COURT: Put it in an e-mail. That's just
4 fine. I just need it where I can see it so that I can cut
5 and paste it over.

6 MS. ERICKSON: I'll get a copy to the State.

7 THE COURT: So that resolves that question. Is
8 there anything else about the verdict form that you'd like
9 to address. That's the only thing I saw that would have
10 impacted the verdict form in the e-mail you sent. I
11 apologize if I missed something else.

12 The verdict form contains the reference to the
13 aggravator issues you had. Of course I focused on those
14 in regard to the instructions.

15 MS. ERICKSON: Defense requests, I objected to
16 the burglary on page 3. Then I requested that in the
17 mitigating circumstances, Section 2, that the language
18 has -- the language it has in it is has established the
19 existence -- be changed to has provided evidence of --

20 Because it seems to me the established language
21 connotes a burden of proof and is not required by the law.
22 The use of the same exact language makes it look to
23 untrained, unknowing jurors that they should find them,
24 regardless of how we talk about it, the same way.

25 I believe it's using past provided evidence of makes

1 the lower standard -- I mean, because we know one juror
2 can find it -- the court does say that -- but when you use
3 the exact language, it's not necessary and connotes the
4 same burden of proof in the minds of other jurors.

5 THE COURT: Any objection with that language.

6 MR. DIGIACOMO: Other than the mandatory jury
7 instructions that are given, which is established. I
8 don't buy the argument because it says, nor is the
9 defendant required to establish any mitigating
10 circumstance for a sentence less than death.

11 Every time we talk about it, we talk about the
12 establishment. The fact that they presented some evidence
13 of, isn't it really the determination of the jury. The
14 jury's got to decide. There may be evidence presented
15 she's a good mother, but the jury can decide that. That's
16 not a mitigating circumstance. We don't think that
17 reduces the culpability. We're not going to consider it.
18 Even though there is evidence of that fact.

19 They have to determine that it's two-fold. Not just
20 that there is evidence of what the defense says is a
21 mitigating circumstance, but that, in fact, it is a
22 mitigating circumstance, as opposed to like what they said
23 about Ms. Cabrera having blonde hair. There's evidence
24 she has blonde hair. Yes. But does that a mitigating
25 circumstance. Well, that's a decision for -- I guess she

1 has brunette hair. That's a decision for the jury to
2 make. There's a jury instruction that specifically says
3 that.

4 THE COURT: Anything further, Ms. Erickson, on
5 this point.

6 MS. ERICKSON: No.

7 THE COURT: The language in the Section 2
8 instruction and other places where it reference the
9 mitigating circumstances will remain established or
10 establish the existence of. I will not alter what I
11 understand to be the appropriate and standard instruction
12 here, on the basis argued. I'm not comfortable with
13 making that change and creating some other, perhaps,
14 standard. And I think this is the appropriate language
15 for how the jurors need to understand and determine
16 mitigating circumstances.

17 Going back to Section 1, the aggravating
18 circumstances, you had posed objections both to No. 4, the
19 knowingly create a greater risk -- great risk. And No. 5,
20 the burglary -- murder committed while the person was
21 engaged in a burglary. You had posed objections to both
22 of those.

23 The court noted -- I wasn't anticipating the opening
24 statement from the State to encompass these. I probably
25 should have, as I said, it could go both ways, that the

1 State did, as it started to go through the aggravators,
2 the court could have stopped and asked to address this
3 issue before proceeding, but the court had -- was aware of
4 the argument, not only from the e-mail exchange but from
5 your additional statement today -- this morning before we
6 convened with the jurors of what your concerns were.

7 The court had determined these are appropriate
8 aggravators to be listed. The case law does support these
9 aggravators. So I did not stop Mr. DiGiacomo's
10 presentation of those aggravators in his opening, because
11 the court was aware of the argument and had determined
12 they were appropriate to remain in the verdict form.

13 I'm just trying to find my notes, because I thought
14 there was one more issue.

15 MR. DIGIACOMO: The verdict is the other one she
16 raised.

17 THE COURT: That's it. Thank you.

18 The concern about how that wording was utilized and
19 whether or not it makes clear that mitigating
20 circumstances do not have to be determined unanimously.

21 Would you like to speak to that, Ms. Erickson.

22 MS. ERICKSON: We are -- what are we on now.

23 THE COURT: I'm asking you. You had a concern
24 with regard to mitigating circumstances and the
25 utilization of language that may -- I think it appears

1 prior, in terms of unanimity.

2 MS. ERICKSON: I also have one on balancing.

3 THE COURT: I think that's where it is. Because
4 the -- again, the attachments to the e-mails were related
5 to the instructions.

6 MS. ERICKSON: I sent them all as one. I sent
7 everything I objected and request.

8 THE COURT: I guess, Ms. Erickson, as you missed
9 my e-mail, I did not connect to yours.

10 MR. DIGIACOMO: I didn't see anything. She has
11 a verdict form there with blue writing all over it. I
12 didn't see that either in the response.

13 THE COURT: I didn't connect to it. It's here.
14 It's fine.

15 What I'm trying to do my darndest to do and is to
16 have the record be clear. I'm trying not to talk back and
17 forth between the verdict form, instructions, and this
18 issue and that issue. So I think we've covered so far the
19 verdict form issue. To the extent we still have a verdict
20 form issue, let's address it. And then let's move over to
21 the instructions. To some degree, what we are addressing
22 in the verdict form issues will also impact the
23 instruction issues. So let's just go section by section
24 and make sure we are not missing anything. You have a
25 template for a road map.

1 In Section 1, aggravating circumstances; you have
2 objections there we have not yet addressed. We addressed
3 No. 4 and 5, in terms of whether those are appropriate to
4 aggravators. The court determined they are and tended to
5 includes them.

6 Is there anything else in that section.

7 MS. ERICKSON: Other than McConnell, the State
8 provided a copy of Wilson. Wilson was a guilty plea, as
9 McConnell was. And the court specifically says that it
10 was based upon the circumstances of that case, pleading
11 guilty to both for premeditated murder and felony murder,
12 that therefore they could use it.

13 This is not that situation. Wilson is clearly
14 limited to guilty plea verdicts, where a person pleads
15 both to the premeditated and both the felony. That's the
16 language in Wilson. Therefore my objection is, as stated,
17 that it should not be able to use this. Murder was
18 committed during the -- McConnell's holding is if the jury
19 should determine that the murder occurred during any --
20 during a felony, alleged as the felony for the murder,
21 then they should not be relying on that felony for the
22 aggravating circumstance.

23 That is what that holding is. And this jury
24 unanimously found that the murder was committed during the
25 murder -- I mean the burglary. They found the murder

1 relied on the felony of burglary. It can't be used as a
2 felony aggravator.

3 MR. DIGIACOMO: All due respect, for the record,
4 McConnell in 2004 said, we are directing the State to do a
5 special verdict so that if there is both a unanimity of
6 the intent to kill -- which was the concern in
7 McConnell -- as well if there is a felony murder you can
8 rely upon it.

9 Mr. Wilson tried the exact same argument. While Ms.
10 Erickson is talking about a guilty plea, they actually do
11 that entire analysis and repeat it again, look, Mr.
12 Wilson, we already told the State that's why we're using
13 a special verdict form. We've been doing it for 13 years
14 now the exact same way. Which is, if there is a finding
15 of premeditation, deliberation unanimously, the aggravator
16 applies. If there wasn't a finding of premeditation,
17 deliberation, unanimously, the aggravator wouldn't apply.
18 That's the whole purpose of a special verdict form and the
19 way we've been doing it for 13 years. It's been affirmed
20 for 13 years doing it that way.

21 MS. ERICKSON: The basis of McConnell was not
22 that. The basis of McConnell was -- the argument is the
23 use of a felony as an aggravator in a case where the
24 felony underlies the felony murder rule, it makes
25 everybody eligible for the death penalty. It was an

1 Eighth Amendment analysis that if found everybody becomes
2 eligible for the death penalty. That is what the Eighth
3 Amendment requires. It has to be limited to -- in scope.
4 That's what McConnell is. Not what he just said.

5 THE COURT: I reviewed the case law -- are we
6 done making the record on this.

7 MR. DIGIACOMO: Yes.

8 THE COURT: I have reviewed the case law, and I
9 am persuaded that the case law stands for the proposition
10 that the aggravators are appropriate to be included. The
11 court will stand that the aggravators as proposed by the
12 State will be included.

13 Moving on to Section 2.

14 MS. ERICKSON: That discusses changing the
15 language from established to the evidence of. You've
16 ruled on that.

17 THE COURT: all right. Section 3, balancing.

18 MS. ERICKSON: Section 3, I requested there be
19 an additional box based upon the fact that the jury is
20 never required to impose a death sentence, even if the
21 aggravating circumstances outweigh the mitigating
22 circumstances. Therefore, there should be a box choice
23 that says, the aggravating circumstances outweigh any
24 mitigating circumstances, but the jury determines that the
25 sentence of death shall not be imposed, then you go to

1 Section of 4 or 5.

2 This doesn't give any kind of ability to make a
3 choice that they find the aggravators outweigh, and they
4 find that death is never required, and they don't want
5 that.

6 THE COURT: Well, what you just said there is
7 where you kind of lose me. They don't have to find that
8 death is never required. That's part of the instructions
9 you had that in your openings and they have that
10 understanding.

11 What this does is indicates to them that if they find
12 that the aggravators outweigh, they go to the section
13 where they choose, whether or not find that. But there's
14 no requirement they make a finding, as I understand it,
15 that death is never required. It's simply they understand
16 from the instructions that they are to go to one section
17 if they find one way and go to another section if they
18 find another way.

19 I just got lost a little bit in the argument there
20 that you would suggest there somehow needs to be a finding
21 inclusive of death is never -- like repeating, frankly,
22 the instructions in the verdict form in that regard.

23 Is that what you're suggesting.

24 MS. ERICKSON: I'm suggesting we have a box that
25 implements the jury instruction in balancing,

1 essentially.

2 THE COURT: Mr. DiGiacomo.

3 MR. DIGIACOMO: It's almost nonsensical, because
4 Section 3, if aggravators outweigh the aggravators don't
5 outweigh. If aggravators outweigh you go to the sections
6 and have 4 choices.

7 The law requires the jury pick one of the 4. They
8 are never required to pick death. They can pick one of the
9 4. If you check box No. 2, and say the mitigators
10 outweigh the aggravators, then you go to Sub-Section 5, in
11 which there is no option for death.

12 The only way there's no option for death is if you
13 pick off the second box here. There is no third box here.
14 That's confusing to me and makes no sense to me. Because
15 you go to these boxes and then make your final sentencing
16 decision. The instruction says death is never required.
17 If the aggravators outweigh, you don't have to pick death.
18 You can pick one of the 4 -- or one of the other 3. That's
19 what the verdict form does.

20 THE COURT: Anything further, Ms. Erickson.

21 MS. ERICKSON: No.

22 THE COURT: The Section 3, balancing, will not
23 be revised to be inclusive of any further instructions as
24 to the -- related to the instructions that the jurors are
25 never required to find death. I believe the instructions

1 are clear, or where I've added in to indicate better
2 directional information as to them as to finding one way
3 versus the other and where to go to complete. And the
4 fact that there are alternatives they can choose from, one
5 of which includes death. I believe it's the appropriate
6 methodology to instruct and have them complete this
7 from.

8 Section 4, the final decision related to where
9 aggravating circumstances outweigh mitigating
10 circumstances. I did note I added that language in the
11 entitle. Rather than just having aggravators, I filled
12 that in.

13 Then we'll be making the adjustment with the
14 corrected number of years, in term of the definite term,
15 or life without the possibility of parole. We'll make
16 those adjustments.

17 Any other items to addressed in Section 4.

18 MS. ERICKSON: I just noted, the 50 years not
19 100 and 20 years not 40.

20 THE COURT: We'll make that correction.

21 Section 5, is the circumstance where the mitigating
22 circumstances outweigh the aggravating circumstances.
23 Again, added that further language to the title.

24 I also added language here to make it more clear.
25 The original instruction was simply, if you have

1 determined a sentence under Section 4, do not go up a
2 section. I know it may be redundant, but -- it further
3 says, if you have not determined a sentence in Section 4,
4 fill out this section. It's converse, but it just -- I
5 didn't want there to be any confusion of maybe they need
6 to go back and do something under 4. If they skipped over
7 it, or anything like that. I just wanted it to be more
8 clear.

9 That's all I added there. Of course, the change in
10 the term of years. And possibility of life possibility
11 of parole at some time frame.

12 Anything in Section 5.

13 MR. DIGIACOMO: Not from the State.

14 THE COURT: Anything from, Ms. Erickson.

15 MS. ERICKSON: No.

16 THE COURT: So I think that then completes the
17 verdict form revisions and settling of that. To the
18 extent there will be some overlap with the instructions, I
19 think that's discussion, that's fine. I would like for
20 the record to be complete that we do have some objections
21 to the instructions. Again, I think they relate to what
22 we just talked about in the verdict form, but there was an
23 objection to the instruction based on NRS 200.033, which
24 is listing of factors, inclusive of the knowingly create
25 great risk and burglary.

1 I'm just confused about one thing, because -- I think
2 because the instruction doesn't name names that's why
3 there is 5 listed as aggravators in the verdict form, but
4 there's only 4 in the instructions. The number 2 being
5 the felony. Right.

6 I think we've had the discussion on this matter
7 related to McConnell v State and the Wilson case and how
8 the court interprets that.

9 Is there any further discussion you need with regard
10 to this jury instruction. I have not gone through and
11 numbered those yet. I don'ts have numbers to
12 correspond.

13 MS. ERICKSON: The same objection.

14 THE COURT: Okay.

15 Then the instruction related to during the
16 deliberations. This is where the unanimous discussion was
17 included that I had seen. It indicates the verdict must
18 be unanimous. If agreed upon a verdict have it signed and
19 dated by the foreperson.

20 You objected indicating that by saying the verdict
21 must be unanimous and knowing that the mitigating
22 circumstances can be found if only by one juror and do not
23 require to be done unanimously. This could be a misleading
24 instruction.

25 Do you have a proposal on how you wish it to be

1 revised.

2 MS. ERICKSON: I put in the e-mail the finding
3 regarding the existence of aggravating circumstance must
4 be unanimous. And the ultimate sentence to be imposed.

5 THE COURT: Hold on. You have actual language
6 for this.

7 MS. ERICKSON: In the defense objection.

8 The language I request is to be finding regarding the
9 existence of each aggravating circumstance or
10 circumstances, must be unanimous. And the ultimate
11 sentence imposed, must be a unanimous verdict.

12 THE COURT: I thought this was just your
13 argument. I didn't appreciate this is what you were
14 proposing.

15 MS. ERICKSON: Sorry. It was 5:30 in the
16 morning.

17 THE COURT: I'm not criticizing you, Ms.
18 Erickson. I'm just clarifying what my understanding was
19 that that's how I read it and that's why I didn't
20 appreciate you were proposing alternative language.

21 The rest of that proposal we'll go with your
22 language. The verdict must be unanimous if applying
23 mitigating circumstances and are ultimately found by the
24 jury -- that appears to be your argument again, so it's
25 two sentences.

1 MS. ERICKSON: Yes.

2 THE COURT: One sentence -- sorry.

3 MS. ERICKSON: What I would request is the
4 findings -- the finding regarding the existence of -- the
5 finding regarding the -- regarding the existence of each
6 aggravating circumstance must be unanimous and the
7 ultimate sentence to be imposed must be a unanimous
8 verdict.

9 THE COURT: Wouldn't it make more sense to -- if
10 we're going make some adjustments, clarify some language
11 in the instructions that relate to aggravators and
12 mitigators. My concern here is with the first sentence or
13 the first part of that sentence is that you're talking
14 about findings regarding aggravating circumstances and
15 mitigating circumstances, when this instruction just talks
16 about really generally about deliberations and reaching a
17 verdict and the verdict must be unanimous.

18 I'm not sure I understand the argument, ultimate
19 sentence must be unanimous. I'm just thinking of where we
20 can perhaps better clarify. I'm not opposed to better
21 clarifying, but I'm not sure that that is the solution. I
22 will consider that.

23 Anything from the State's perspective on how to make
24 sure that we don't -- I have to be candid. That was a
25 concern of mine at a prior trial the individuals

1 understand -- jurors understand that any one person can
2 find a mitigator, but isn't required they all find a
3 mitigator. So I want to be sure we have adequate language
4 to address that.

5 MR. DIGIACOMO: I believe, Judge, it's supposed
6 to be the evidence instruction, as well as the one right
7 before the Gerry instruction. Maybe even the one before
8 that. It's at least 3 times we tell them that anybody who
9 finds a mitigator and weighing and all the other stuff.

10 If you want it to say your ultimate decision as to
11 the punishment, must be unanimous. I don't care. I mean,
12 if that's what she is ultimately saying.

13 I don't want to craft any instruction that may
14 dispute some of the other mandatory -- Evans or Gerry --
15 instruction the court had to distract.

16 There's only one verdict here. They're only deciding
17 it one time. It's one verdict, which is the sentence.
18 The other ones are interrogatories, for lack of a better
19 term.

20 So if you want to say the ultimate sentence must be
21 unanimous. That's fine with me. If she doesn't want to
22 cause a confusion with the mitigator.

23 THE COURT: I will review this and look back as
24 you indicated to Gerry, et cetera, mandatory instructions
25 and consider some of the proposed language in revision of

1 this instruction. And will let you know tomorrow what I
2 decided. I think there is potentially some room to improve
3 upon the instruction. I'll consider that.

4 Is there anything else that we have not addressed as
5 far as --

6 MR. DIGIACOMO: Not from the State.

7 MS. ERICKSON: No, Judge. There is something.

8 THE COURT: Okay.

9 MS. ERICKSON: I'm going to be requesting that
10 Mr. Gonzales' criminal history, scope, convictions be
11 admitted. In the State's closing argument, guilt was that
12 Ms. Cabrera was the boss of Mr. Gonzales. I think that
13 opens up the admission of all of his violent acts to
14 contradict the argument that she is the boss.

15 They already think that because they found her
16 guilty. And if it's not true, it is not a true fact, then
17 they should be told about who this person is that the
18 State alleged was the tool in this murder.

19 MR. DIGIACOMO: All due respect, I have no
20 objection to Mr. Gonzales' judgment of conviction in this
21 case to be admitted pursuant to Flannigan. Every other
22 court that addresses it, if it's not related to the
23 defendant's character, the defendant's criminal history is
24 not admissible. As it relates to her claim that this
25 somehow defutes something guilty, the jury is instructed

1 that they are not allowed to consider the guilt any longer
2 and whether or not he is violent or not has nothing to do
3 with this particular situation and not relevant to the
4 determination of this jury. And completely
5 inadmissible.

6 THE COURT: Ms. Erickson.

7 MS. ERICKSON: They opened the door. That was
8 their argument. If they wouldn't have made it during
9 closing, in the guilt phase -- which the jury can't just
10 ignore now -- they wouldn't -- I wouldn't have a basis to
11 request this. They made that argument. They focused on
12 it. They said it over, and over again. And it is not
13 accurate and it is the picture that this jury now has. It
14 should not be allowed to remain in this seeking justice.

15 THE COURT: I don't perceive the criminal
16 history of Mr. Gonzales to be -- how do I say this --
17 directly proportional or the way it's being argued to
18 address those arguments with regard to Ms. Cabrera and
19 what her name might mean and how she might have been
20 --what her role might have been in the circumstances. I
21 think that they are two attenuated to justify the
22 inclusion of documentation which otherwise I believe is
23 not to be included.

24 So it's -- I don't perceive it as an opening of the
25 door scenario, where now something comes in. I think it is

1 inappropriate to be provided, other then, again, the State
2 has no objection, it's appropriate to have the JOC be
3 available and would allow that to be admitted.

4 Do you have a copy of that.

5 MS. ERICKSON: We already have one -- not
6 admitted.

7 THE COURT: Ask to have it admitted and we'll
8 admit it in this case, but any other criminal history with
9 regard to Mr. Gonzales is denied, as far as admission of
10 that.

11 Is that it. Anything else.

12 MS. ERICKSON: No.

13 MR. DIGIACOMO: Not from the State.

14 THE COURT: I only have two substantive matters
15 on calendar tomorrow. So we should be able to be done and
16 start promptly at 10 o'clock. I hope to keep to that.

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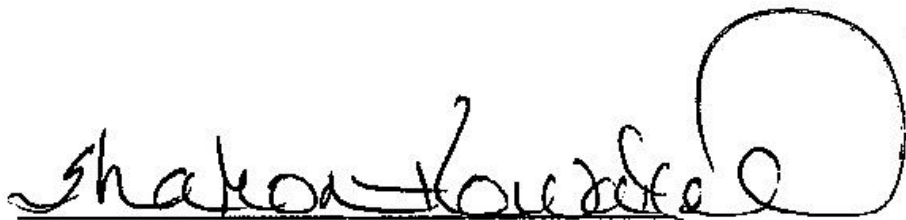
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CERTIFICATE
OF
CERTIFIED COURT REPORTER

* * * * *

I, the undersigned certified court reporter in and for the
State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the
time and place therein set forth; that the testimony and
all objections made at the time of the proceedings were
recorded stenographically by me and were thereafter
transcribed under my direction; that the foregoing is a
true record of the testimony and of all objections made at
the time of the proceedings.

A handwritten signature in cursive script, reading "Sharon Howard", is written over a horizontal line. The signature is fluid and includes a large, circular flourish at the end.

Sharon Howard
C.C.R. #745