

TRAN
CASE NO. C-12-283700-2
DEPT. NO. 25

DISTRICT COURT
CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,)
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Plaintiff,)
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vs.)
)
JOSE GONZALES,)
)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT
OF
SENTENCING

BEFORE THE HONORABLE KATHLEEN DELANEY
DISTRICT COURT JUDGE

DATED: MONDAY, MAY 22, 2017

REPORTED BY: SHARON HOWARD, C.C.R. NO. 745

1 APPEARANCES:

2 For the State: MARC DIGIACOMO, ESQ.

3 HETTY WONG, ESQ.

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5 For the Defendant: ALZORA JACKSON, ESQ.

6 CLARK PATRICK, ESQ.

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1 LAS VEGAS, NEVADA; MONDAY, MAY 22, 2017

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

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5 THE COURT: Good afternoon. This is the date and
6 time for sentencing in State of Nevada vs. Jose Gonzales.

7 MR. DIGIACOMO: Marc DiGiacomo and Hetty Wong on
8 behalf of the State.

9 MR. PATRICK: Clark Patrick and Alzora Jackson for
10 Mr. Gonzales.

11 THE COURT: Prior to coming in here today I had
12 received one victim speaker notice and then I was informed
13 by staff there was at least one additional witness. I don't
14 want to assume I have the full picture here today in terms
15 of what's going to be occur, so I wanted to reach out to
16 counsel and see.

17 MR. DIGIACOMO: The procedure is they want to call
18 Dr. Forrester -- which we don't object -- after they call
19 Dr. Forrester and anybody else -- I don't know that they
20 plan to call anybody other than Dr. Forrester -- the two
21 sides argue. Then there is a witness notice for upwards of
22 10 people, but we have it to two per family of each victim.
23 Two for Mr. Headrick, two for Mr. Morales' to testify at the
24 end of the hearing, then making your sentencing
25 determination.

1 THE COURT: I need to have counsel at the bench,
2 please.

3 (Discussion held at the bench.)

4 THE COURT: What I have informed counsel, so the
5 folks in the courtroom are aware, we are going to commence
6 sentencing with the doctor, at that point we'll take a
7 recess in the sentencing matter. I have a matter that has
8 been pending jury deliberations. The jury informed the
9 court through the marshal the verdict is available. I would
10 like to complete that verdict and complete that process,
11 which will not be lengthy, then resume the sentencing after
12 that.

13 So if the witness will take the witness stand and
14 be sworn.

15 THE CLERK: You do solemnly swear the testimony
16 you are about to give in this action shall be the truth, the
17 whole truth, and nothing but the truth, so help you God.

18 THE WITNESS: I do.

19 THE CLERK: Be seated. State and spell your name
20 for the record.

21 THE WITNESS: Dr. Sharon Jones-Forrester,
22 J-O-N-E-S -- F-O-R-R-E-S-T-E-R.

23 MR. PATRICK: As a housekeeping matter Mr.
24 DiGiacomo has stipulated to Dr. Forrester's qualifications
25 as a neuropsychologist for today's hearing. I wasn't going

1 to go through all of her qualifications, as we would
2 normally do. If the court has any questions about her
3 qualifications or -- I don't know how familiar the court is
4 with Dr. Jones-Forrester, you have that opportunity,
5 otherwise we'll go into the questions.

6 THE COURT: I'm not familiar with
7 Dr. Jones-Forrester, but I am prepared for today's hearing.
8 I think with the stipulations we can proceed right to the
9 substance of her testimony.

10 MR. PATRICK: Thank you.

11 THE WITNESS: Thank you.

12 BY MR. PATRICK:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. You met with Jose several times over the course
16 of preparing for his trial?

17 A. I have, yes.

18 Q. After that you completed a report?

19 A. I did.

20 Q. Did you bring a copy of that report with you
21 today?

22 A. Yes, I did.

23 Q. In answering the questions would referring to
24 that report help refresh your recollection?

25 A. It would, yes.

1 Q. Very good.

2 Also in preparation for today's testimony you were
3 provided me with a list of questions, correct?

4 A. Correct.

5 Q. Did you bring a copy of those with you?

6 A. Yes.

7 Q. Would that help refresh your recollection to
8 refer to those as you are testifying today?

9 A. It, would yes.

10 MR. PATRICK: For the record, the State had been
11 provided with Dr. Jones-Forrester's report and a copy of the
12 questions.

13 THE COURT: That's fine.

14 I appreciate the acknowledgment for the record. The
15 only thing I would ask, Dr. Jones-Forrester, is if you are
16 testifying to do the best of ability to testify from your
17 recollection, if you do need to refer to the report, I want
18 to make sure there is record of that in our written record.

19 THE WITNESS: Certainly.

20 THE COURT: Mr. Patrick, when you are ready.

21 MR. PATRICK: Thank you, Judge.

22 BY MR. PATRICK:

23 Q. In what context did you see Jose?

24 A. I was asked to see Jose to complete a
25 psychological evaluation and to complete a psycho social

1 history to determine mitigating factors that may be
2 pertinent to this case.

3 Q. What did you do in that context. Tell us what
4 is involved in a neuropsychological evaluation.

5 A. I began my neuropsychological evaluation by
6 administering 58 separate neuropsychological measures.
7 These begin with 10 measures that look at IQ. I then
8 proceed to look at several neurocognitive factors that are
9 pertinent to neuropsychological functioning.

10 They include measures of language skills, spacial
11 skills, attention, concentration, mental tracking and
12 processing speed, as well as memory and executive
13 functioning skills.

14 Executive functioning covers a broad range of skills
15 including organization, planning, problem solving, impulse
16 control, and set-shifting skills. Then I look at motor
17 skills and reading comprehension.

18 Q. What were your results?

19 A. My results were that Jose has was low average
20 IQ. He reads at the 8.9 grade level. He has some
21 inefficiency with regard to attention, concentration, mental
22 tracking and processing speeds. He has good language skills
23 with the exception of some difficulty with naming and
24 vocabulary that is due to a lack of formal education.

25 He has some inefficiency with spacial skills, that

1 are exacerbated by his fine motor functioning. His memory
2 is generally quite good, with a couple of exceptions. The
3 exceptions are he's given very unstructured verbal
4 information he tends to struggle. His highly structured
5 verbal information is quite good.

6 With regard to executive functioning, he has some
7 difficulty with cognitive flexibility and set-shifting,
8 otherwise has good impulse control, reasoning, problem
9 solving skills.

10 Q. Thank you.

11 Now in all these tests you gave, how do you know
12 that the answers he gave were valid.

13 A. Validity is critical to my work as a
14 neuropsychologist. We look at both stand-alone and embedded
15 measures of validity. This is critical in the context of
16 forensic work. We're always concerned that someone is
17 putting forth a good effort. Jose performance on both
18 stand-alone and imbedded measures of validity was within
19 normal ranges. That means from an objective perspective he
20 didn't try to appear more or less impaired than he is. His
21 validity was well within acceptable ranges.

22 Also in the context of validity, I am very mindful
23 about completing the testing before I begin to collect a
24 psycho social history, in regard to any bias.

25 Q. You did, as part of your report, also do a

1 psycho social history?

2 A. Correct.

3 Q. What is involved in that?

4 A. I look at psycho social functioning across the
5 life span. So I want to collect information from literally
6 before we was born, so I look at collateral interviews,
7 records in terms of prenatal development all the way to the
8 present day. We're looking at educational, psychological,
9 social and medical factors across the life span.

10 Q. Do you remember how long you spent
11 face-to-face?

12 A. I began my evaluation with Jose -- may I refer
13 to the date in my report.

14 My beginning date was January 30, 2015. I then saw
15 Jose for 7 visits. Between then and my last visit with him
16 was March 23 of this year. I spent 17 hours directly and
17 many additional hours in collateral interviews with family
18 members and also reviewing records and literature pertinent
19 to his case.

20 Q. Without listing all of them, did you review
21 several records in preparing Jose's evaluation?

22 A. Yes.

23 Q. Those are all listed in the report provided to
24 the court and to the State?

25 A. Correct.

1 Q. What kind of things do you cover in the psycho
2 social history?

3 A. Looking across the life span, so as much as
4 possible I collect information about prenatal development.
5 I then go on to look at factors in early childhood
6 development, later childhood and adolescent up to the
7 present day.

8 Q. What do you think are the factors most important
9 to consider in understanding Jose?

10 A. I think that when you look across the life span
11 what's really important is to look as bio-psychosocial
12 factors that impact a person at each stage of their life
13 span. They are constantly interdependent, so starting at
14 prenatal development and moving onto present day allows us
15 to get the best possible understanding of the individual
16 before us.

17 Q. Did you find out anything in his prenatal
18 development?

19 A. I did. I found out through collateral
20 interviews his mother was exposed to domestic violence
21 during her pregnancy with him. Also was unable to get
22 adequate prenatal care.

23 Q. Why is domestic violence important?

24 A. This is important in the context of prenatal
25 development because or scientific literature shows us it can

1 have a negative effect on prenatal brain development.
2 Children exposed to domestic violence later in life
3 unfortunately domestic violence continued after he was born,
4 children who witness violence throughout early childhood
5 have been shown in the literature to have increased rates of
6 behavior problems academic problems, conduct problems,
7 emotional problems, and alcohol and substance abuse later in
8 life.

9 Q. Did Jose have any of these problems later?

10 A. Yes. He had all of these difficulties later in
11 life.

12 Q. Did you find any other factors that you felt
13 with important to consider in his early childhood?

14 A. I did, yes. May I refer to my notes briefly
15 here.

16 MR. PATRICK: Yes.

17 THE WITNESS: I found that there were several
18 other factors in his early childhood that are important to
19 note.

20 First of these was early and persistent truancy, so
21 Jose was engaging in truancy from about first grade on. He
22 would often skip school and go to the beach or park with his
23 siblings. Although he was in special education he had
24 significantly inadequate structure, support, and supervision
25 in order to support him in meeting his academic goals.

1 BY MR. PATRICK:

2 Q. So you frequent truancy in first grade. Can you
3 tell us more about that?

4 A. Sure. Absolutely.

5 What is difficult about this at such an early age is
6 children inherently have a developmental need for a high
7 level of structure, support, and supervision. Particularly
8 around this age. That's why, simply put, we generally don't
9 think it's appropriate to leave children unsupervised that
10 early.

11 It also puts him at increased risk of being exploited
12 by adults and older peers in the community.

13 Q. What kind of impact would that have had on
14 Jose?

15 A. Well, unfortunately it started from a very early
16 time to really I believe undermine his self-esteem that he
17 learned that adults both within his family and at school and
18 in the enlanger community were not going to step in and
19 impose the level of structure and support he required.

20 This has to really undermine his self-esteem. Someone
21 is not stepping in and setting up a high level of structure,
22 support, and supervision, kids left to their own devices
23 tend to not make good developmental decisions about their
24 behavior.

25 Q. Did these issues improve as he went through

1 school?

2 A. Unfortunately no. Although he was in special
3 education from 3 grade on, he did -- although he had an
4 individualized education plan, as all kids do who are in
5 special education, he unfortunately wasn't getting the
6 extra level of structure and support he needed in order to
7 attain academic goals, including attendance, school
8 performance, meeting those needs. And he continued
9 throughout school, despite his special education, to have
10 significant academic and learning problems, attention
11 problems and behavior problems.

12 Q. So why does it matter he did not do well in
13 school?

14 A. It speaks to a mismatch between his ability and
15 his performance. When I look at his neuropsychological
16 functioning, he could have done incredibly well with very
17 few interventions. He was bright although he had attention
18 difficulties and learning difficulties, we have a system in
19 place to support kids. That's what special education is.
20 It allows them to have the structure, support necessities to
21 succeed. He did not have adequate structure and support to
22 meet those goals, despite his abilities.

23 As an adult when I look at his neuropsychological
24 abilities, he could have done much better than he did given
25 adequate support and supervision.

1 Q. Was part of that due to his academic and/or
2 residential instability?

3 A. Both of those factors greatly complicate
4 learning problems.

5 When we look at the scientific literature as a whole,
6 we find that both academic and residential instability --
7 defined for us as multiple moves from school to school,
8 multiple moves from home to home -- the higher level of
9 instability the more it suggests that kids are at exposed
10 and increased risk of developing attention problems,
11 learning problems, behavior and conduct problems and early
12 and more severe alcohol and substance abuse.

13 Q. So there is a lot of children who move schools,
14 move homes, military children, why does this matter in
15 Jose's case?

16 A. It speaks to an increased need for structure.
17 You are correct. A lot of kids move schools and move homes.
18 But those kids rely on a high level of structure, support
19 and supervision in order to be able to adapt in a positive
20 way to those change. Unfortunately, Jose didn't have that
21 level of structure and support.

22 Q. What did you learn about Jose's alcohol and
23 substance abuse?

24 A. Jose began drinking at age 8. He was given
25 alcohol fairly frequently at age 8 and by 12 was drinking on

1 a daily basis. Alcohol use continued unabated for several
2 years after and -- may I refer to my notes briefly here.

3 MR. PATRICK: Yes.

4 THE WITNESS: When we look at the early alcohol
5 abuse also complicated by marijuana use starting at age 11.
6 Referring to my notes with the time line in term of the age
7 it started.

8 So marijuana use by 11, continuing frequently. He
9 began using multiple inhalants by 12 and using multiple
10 inhalants daily from 12 to 13. Then using inhalants less
11 but continuing, not daily, but frequently, several times a
12 week inhalant use until 15.

13 Then began using heavy methamphetamine at 15 and would
14 use heroin in order to self-medicate from over stimulation
15 from methamphetamine.

16 he had cardiac surgery at 15. After cardiac surgery he
17 was prescribed pain medication and continued to abuse those
18 in combination of alcohol and methamphetamine and heroin.

19 BY MR. PATRICK:

20 Q. It was Jose's choice to use these substances?

21 A. At age 8 Jose has a strong family history of
22 alcohol and substance abuse. When you give a child alcohol
23 at age 8 and when they are drinking frequently by 12, just
24 in terms of brain development they don't have the
25 developmental capacity to make reasonable and practical

1 decisions about their own use.

2 Unfortunately, that starts to escalate a level and
3 pattern of addiction that continues unabated. He did not
4 get significant treatment even after he entered the juvenile
5 system when his abuses were well-known.

6 Q. Would treatment have made a difference in
7 Jose?

8 A. Treatment makes a huge difference. Treatment is
9 critical. One of the things that's critical in the context
10 of premature brain development, our brains continue to
11 mature until about 25. Early in life, in adolescence
12 particularly, treatment is what allows kids to be protected
13 from themselves. Kids with untreated alcohol and substance
14 abuse at this very high level are at extreme risk of
15 behavior problems, legal problems, and risk of multiple head
16 injuries.

17 Q. Did you find any instances of head injuries or
18 concussions in Jose's case?

19 A. Jose had his first concussion at 5 or 6. He had
20 a moderate traumatic brain injury from a closed head injury
21 at 12. This occurred in the context of being severely
22 intoxicated on alcohol. He was on the street. Was hit by a
23 street sweeper and was found at the scene with a blood
24 alcohol level of 142 and a Glasgow Coma Scale of 9.

25 A Glasgow Coma Scale of 9 is consistent with moderate

1 brain injury. He was transported to the hospital and was
2 hospitalized for 10 days.

3 Q. After that he had other notable injuries between
4 13 and 17?

5 A. He had 20 additional subsequent concussions
6 after his moderate traumatic brain injury. Unfortunately
7 they occurred within his first year of recovery after he was
8 hit by the street sweeper. What is really critical about
9 that is the first year after a traumatic brain injury is
10 extremely critical in terms of recovery. Children and
11 adults for that matter who have subsequent head injuries
12 after a brain injury particularly in that first year window
13 have poor prognosis, longer rates of recovery and are more
14 vulnerable to additional head injuries.

15 Q. What would we expect from these brain
16 injuries?

17 A. When we look at the scientific literature we
18 find that multiple head injuries lead to escalating rates of
19 emotional and behavior problems, conduct disorder, legal
20 problems, and higher rates of alcohol and substance abuse.

21 Q. Did Jose experience any of those?

22 A. Unfortunately he did. He experienced all of
23 those. Most particularly with regard behavior difficulties
24 and escalating alcohol and substance abuse. Unfortunately,
25 it also leads to increased risk of further head injury as

1 the substance abuse escalates the higher risk of additional
2 injuries occurs.

3 Q. Did these problem persist into his teen years?

4 A. Unfortunately, yes. He continued to have
5 multiple concussions up to 17. And he also continued to
6 have significant alcohol and substance abuse.

7 Q. What about adulthood?

8 A. Yes. Unfortunately they continued into
9 adulthood. And continued in the context of not having
10 appropriate treatment either from a medical perspective to
11 address the underlying traumatic injury and multiple
12 concussions, nor a medical or psychological perspective to
13 actively treat the problem of substance abuse.

14 Q. Why does this matter?

15 A. It matters for several key reasons. First and
16 foremost, it matters because these are treatable. That
17 without treatment they tend to escalate and have a poor
18 prognosis. They tend to get more medically complex.

19 Q. Were there other factors that can complicate
20 this?

21 A. There were other factors. I'll refer to my
22 notes briefly.

23 The other factors that I think are slightly more
24 nuances but individual and cultural variables. Jose has
25 consistently been extremely protective of his family and

1 very reluctant to reach out for support and supervision and
2 intervention. So for Jose to himself developmentally reach
3 out and say, hey, I need some help with this. I need help
4 with alcohol or substance abuse, would I believe he would
5 have perceived it as being disrespectful of his family and
6 was very reluctant to reach out for support outside of his
7 family.

8 Q. Were any of them a concern in the present
9 offence?

10 A. Yes. A few were concerns. One, was a lack of
11 mature brain development at the time of the offence. The
12 other was that the offence was occurring in the context of
13 multiple brain injury and multiple additional concussions.
14 And given long time severe poi-substance abuse being under
15 the influence during the commission of the crime was likely
16 an additional factor.

17 Q. Do you think Jose is effected by his head
18 injuries and concussions and poi-substance abuse?

19 A. I do. We actually have MRI evidence to support
20 that. I ordered an MRI from him and received that in October
21 of 2015. His MRI shows severe hippocampus atrophy and
22 decreased corpus functioning consistent with history of
23 multiple head injuries.

24 Q. The positive results on the MRI besides the
25 concussions and head trauma, is there a component that may

1 be from the poi-substance abuse?

2 A. It's quite difficult to tease that a part in the
3 context of the MRI. We know that definitely there is
4 evidence of multiple head injuries, so his finding are quite
5 consistent with multiple concussions. Neurological changes
6 with such long term alcohol and substance abuse across the
7 life span is somewhat more difficult to find in the context
8 of imaging.

9 Q. At the conclusion of your evaluation were you
10 able to come up with a diagnosis for Jose?

11 A. I would and for that I'll refer to my notes as
12 well, just because he has multiple ones. I would like for
13 the court to be as organized as possible in that regard.

14 Currently he meets the criteria ICD 10, for
15 unspecified neurocognitive disorder, depression and anxiety
16 disorders and multiple substance abuse disorders which I'll
17 list -- amphetamine abuse disorder, severe; which consists
18 of meth abuse which is now in a controlled environment.

19 Alcohol use disorder, severe; in a controlled
20 environment.

21 Cannabis use disorder, severe; now in a controlled
22 environment.

23 Opioid abuse, which consists of past daily heroin and
24 opiate paramedicals; now in a controlled environment.

25 Cocaine abuse, mild; which was past use of cocaine

1 that the now resolved.

2 Past inhalant disorder. And each of those diagnoses
3 are also occurring in the context of moderate traumatic
4 brain injury, multiple concussions, and then residential and
5 academic instability -- TBI -- and multiple concussions and
6 a lack of adequate medical and psychiatric treatment to
7 address these concerns.

8 Q. We have talked about multiple factors here. Are
9 some, in your opinion, more important than others?

10 A. This really gets to the complexity of human
11 development and why it's important to look across the life
12 span. Simply put, we are all impacted by everything that
13 happens to us throughout our life from prenatal development
14 on. From my perspective what's key to note is there were
15 several points in Jose's life where very simple early
16 intervention could have prevented us from being here
17 today.

18 Simply put early intervention in terms of early
19 domestic violence, prenatal violence toward him, early
20 interventions in terms of truancy in first or second grade,
21 should have been obvious to his family to school and even to
22 members of the community a child in first and second grade
23 shouldn't be unsupervised.

24 When a child is drinking heavy amounts of alcohol at
25 8, and drinking daily at 11 or 12, early intervention might

1 have prevented the traumatic brain injury, which occurred
2 when he was intoxicated. Stepping in at any of those points
3 could have made a huge difference in his life.

4 Those interventions become more complex as he spirals
5 into more extreme alcohol and poi-substance abuse. Even
6 then understanding a traumatic brain injury, understanding
7 how to prevent additional injuries is a very easy and quick
8 intervention. Unfortunately he got no medical follow up
9 after his brain injury or subsequent concussions. That
10 medical intervention could have prevented the rapid
11 spiraling into further poi-substance abuse. At any one of
12 those points, intervention might have prevented us from
13 being here today.

14 Q. In your opinion after doing this evaluation how
15 is Jose's ability to adjust to long-term incarceration?

16 A. When we look at Jose, there is a couple of
17 factors to consider. One is that he is now reached a level
18 of mature brain development. He's at an age where his brain
19 has now reached maturity. He responds well to structure and
20 has a high appreciation for structure. When I look at his
21 neuropsychological testing with regard to executive skills
22 it shows he has the ability to have good reasoning and
23 problem solving skills, good impulse control as long as he's
24 not under the influence of alcohol and substances.

25 He has an openness and willingness to participate in

1 rehabilitative programming that would be available to him in
2 another facility.

3 All speak well to a high level of resilience and good
4 adaptation in other facilities.

5 MR. PATRICK: Thank you, Doctor. That's all I
6 have.

7 THE COURT: We'll -- go ahead and consult with
8 Ms. Jackson.

9 MR. PATRICK: Court's indulgence.

10 BY MR. PATRICK:

11 Q. After all the time you spent with Jose, would it
12 surprise you he would have told the Department of Parole and
13 Probation, he was not under the influence of substances at
14 the time of this offence?

15 A. It wouldn't surprise me for a couple of reasons,
16 It speaks to that more nuance piece of individual cultural
17 and extreme protective nature of his family and protective
18 of others close to him. I think also that all people who
19 experience heavy long-term poi-substance abuse have a
20 tendency to minimize the impact it has on them on a daily
21 basis.

22 MR. PATRICK: Thank you. That's all I have, your
23 Honor.

24 THE COURT: Does the State have questions for
25 Dr. Forrester.

1 MR. DIGIACOMO: Briefly.

2 BY MR. DIGIACOMO:

3 Q. I want to go back to that last area of
4 questions. What did you review to make the conclusions you
5 did. You spoke with the family. I assume you talked to Mr.
6 Gonzales quite a bit?

7 A. Yes.

8 Q. You did some testing?

9 A. Yes.

10 Q. Did you have any of the police reports?

11 A. I have a list of everything I reviewed at the
12 back of my report, so I can walk you through that list if
13 you'd like.

14 Q. My main question is did you have a synopsis of
15 the offence?

16 A. Yes.

17 Q. You know what Mr. Gonzales is accused of and now
18 has pled guilty to doing?

19 A. I do.

20 Q. When you talk about who Mr. Gonzales is you talk
21 about the TBI. There is some evidence that establishes he
22 had some brain injuries since youth?

23 A. And later. Not just in his youth, but
24 adolescence and early adulthood as well.

25 Q. He discussed with you his substance abuse

1 problems.

2 A. Yes.

3 Q. You accepted those substance abuse problems?

4 A. I reviewed medical information.

5 Q. Sure. So there was questions asked, would it
6 surprise you if Mr. Gonzales denied being on drugs at the
7 time of the offence. You'd said, no, because they are not
8 necessarily the best historians about certain things they
9 want to protect themselves, right?

10 A. Not entirely accurate.

11 One is poi-substance abuse and minimizing use is
12 common. But more importantly is this individual and
13 cultural piece that is highly protective.

14 Q. Okay.

15 A. I think both work in tandem.

16 Q. Would it surprise you he admitted to almost
17 everything you said about substance abuse to the Department
18 of Parole and Probation?

19 A. No.

20 Q. He admits to using alcohol at 8. He admits to
21 addicted to methamphetamine. Those are all of those facts.

22 In fact the only thing that he says to the Department
23 of Parole and Probation that's different from what you said
24 is, I wasn't high that day I committed this crime. In your
25 discussions with him did he admit to you he was high that

1 day?

2 A. No. Although we did not discuss that
3 specifically.

4 Q. Did you discuss the crime at all specifically?

5 A. We discussed in the context of psycho social
6 history. I didn't ask if he was under the influence during
7 the commission of the crime.

8 Given his long-term substance abuse it would be
9 surprising to me if he wasn't under the influence on a daily
10 basis given his daily use.

11 Q. Sure. But you have no other facts to say that
12 on this particular occasion --

13 A. On that particular day, no.

14 Q. -- he was high as a kite when he committed this
15 crime?

16 A. No.

17 Q. His word, and his word is, no, I wasn't?

18 A. Correct.

19 Q. I don't want to get into this -- your
20 conclusions about his decisions to make bad behavior is not
21 specific to why he committed what could have been a
22 quadruple homicide, right?

23 A. It would be pertinent to any offence.

24 Q. If he stole a car, might be able to explain,
25 maybe he shouldn't have stolen that car?

1 A. Correct.

2 Q. Might be relevant to any crime, but he made poor
3 decisions in his life?

4 A. Yes.

5 Q. But you acknowledge he's highly intelligent?

6 A. I don't believe I used the word highly
7 intelligent. I said he's quite bright.

8 Q. Quite bright means what?

9 A. It means he doesn't have any cognitive
10 disability that would lead to adaptive functioning. He
11 doesn't meet criteria for disability. He has a low average
12 intellectual functioning on his IQ performance.

13 Q. His IQ performance is -- part of what could be
14 effective of that is he had limited schooling?

15 A. Correct. That's why we don't just test you
16 regarding neuropsychological we look at neurocognitive
17 functioning broadly across multiple cognitive domains rather
18 then relying on IQ alone.

19 Q. His IQ scale is around 85 or so?

20 A. Let me double check his records on that. It's
21 85 full scale.

22 Q. The way I understand the way full scale IQ works
23 is average is 100 and a single deviation is approximately 15
24 points?

25 A. Correct.

1 Q. He's within one standard deviation from a
2 hundred?

3 A. Low average range, yes.

4 Q. You talked about you've done Atkins before?

5 A. Correct.

6 Q. And those people that the law doesn't allow us
7 to execute. And those individuals have to be 2 standard
8 deviations below the norm, correct?

9 A. Also have to have significant adaptive
10 functioning in order to have a diagnosis of intellectual
11 disability.

12 Q. You read the studies that suggest the entire
13 criminal population has a lower average IQ then the average
14 population in the country?

15 A. I have. Although that's a matter of some
16 debate.

17 Q. Some debate, but somewhat makes sense, right.
18 Poor up bringing. You have poor decision making, You have
19 drugs that can reduce your IQ. All of those factors go into
20 bad behavior which results in people getting arrested which
21 results in the criminal population?

22 A. Correct.

23 Q. That all makes sense to you?

24 A. Yes.

25 Q. Did you do testing on Mr. Gonzales to figure out

1 if he has empathy?

2 A. No. That's not part of neurocognitive
3 functioning. Neurocognitive functioning is looking at
4 cognitive functioning broadly. Executive skills do tap
5 indirectly on empathy in the sense they look at impulse
6 control, planning, organization, problem solving. All of
7 those things, all of those areas are areas where people with
8 sociopathy for example who have no empathy tend to perform
9 poorly and Mr. Gonzales performs well in those areas.

10 Q. Mr. Gonzales seems to suggest he has empathy for
11 his fellow person?

12 A. Correct.

13 Q. Which means he understands the harm he's
14 committing?

15 A. Correct.

16 Q. And would have understood it on the day of the
17 offence?

18 A. I believe so.

19 MR. DIGIACOMO: Thank you. Nothing further,
20 Judge.

21 THE COURT: Mr. Patrick, anything further.

22 MR. PATRICK:

23 Q. Dr. Jones-Forrester, does Jose have a tendency
24 to minimize the trauma that's happened in his life?

25 A. Yes.

1 MR. PATRICK: Thank you. That's all I have, your
2 Honor.

3 THE COURT: Thank you. Dr. Jones-Forrester, we
4 appreciate your time today.

5 We'll excuse you at this time.

6 THE WITNESS: Thank you, very much.

7 THE COURT: Thank you.

8 Ladies and gentlemen, as I mentioned we are going
9 to briefly recess the sentencing in State of Nevada Jose
10 Gonzales so that we can bring in the counsel and the
11 individuals here and jurors to take a verdict in a case
12 that's been pending resolution. As soon as we can recall
13 you, we'll do so. Thank you.

14 (Brief recess taken.)

15 THE COURT: Resuming in the matter of State of
16 Nevada vs. Jose Gonzales for sentencing.

17 I appreciate the opportunity to take that recess so we
18 could conclude that matter. I'm ready to resume.

19 Anything before we begin with you argument.

20 MR. DIGIACOMO: No.

21 THE COURT: Let me hear the State's argument.

22 MR. DIGIACOMO: Thank you, Judge.

23 MR. DIGIACOMO: I'm not going to belabor much.

24 I'm only going to touch on Dr. Forrester.

25 In Clark County when we discuss apportionality it

1 is rare we have a case we have a quadruple homicide. The
2 only reason it's not a quadruple homicide is a medical
3 miracle for lack of a better term.

4 There's no dispute who the individual with the gun is.
5 There's no dispute there is no provocation for the event.
6 He broke into this house with the intent to execute 4
7 separate individuals and he pulled the trigger. You have to
8 ask yourself what sentence does that individual deserve.

9 Let's be honest about it. In front of 12 people he had
10 a high likelihood of receiving the death penalty, and he
11 received the benefit of the bargain where he was able to
12 avoid that sentence. The question for the court is should
13 you give him anything less the life without the possibility
14 of parole. What you have to ask yourself is first from a
15 question of punishment sake.

16 You know, if it were a single homicide and you heard
17 the evidence you heard today, maybe you'd consider life with
18 the possibility of parole for a guy who broke into
19 somebody's house while they were asleep and shot them to
20 death. This isn't that case.

21 This is a two-time convicted felon that spent the
22 majority of his life in prison. He was out for a brief
23 period of time before committing a violent offense. A guy
24 who admits his job was to rob dope dealers to get drugs.
25 The idea we should accept everything else he says about his

1 history but denying that he wasn't on drugs doesn't make any
2 sense to me. I can't make any sense of this crime. Over
3 the car, some dispute over the car. Is it over the
4 employment card because there was money on it. The only
5 thing that makes sense to me is he was going in to execute
6 them to get something of value in order to supply his drug
7 habit. Which suggests to me he is not on drugs.

8 Another thing I would note is here's a guy who's low
9 average intellectual on the IQ scale, but he only went
10 through the eighth grade. You'd expect somebody who was a
11 low IQ and only went to the eighth grade to be farther down
12 that range. He's a fairly intelligent that we come in
13 contact with in the criminal justice system. Most
14 importantly, he's somebody who has empathy.

15 What Dr. Forrester said about that, he has empathy,
16 tells you one thing. He knew what he was doing. He knew
17 the pain he was inflicting on 4 separate individuals when he
18 fired rounds into their torsos killing two and horribly
19 wounding 2 others that by some miracle survived their
20 wounds.

21 What possible punishment do you give that person.
22 There is one possible punishment in this case. If it was
23 one body, a maxed out life with a 28 years to life. But
24 then you get to the second body, what's the punishment
25 there. Give him a consecutive 28 to life, now he's got 56

1 to life. Then you'll add 8 to 20 for the attempt murders,
2 with each consecutive. Doesn't each victim deserve their
3 own punishment.

4 What point do we get to a number that makes sense.
5 What statement are you giving the community if you don't
6 give life without for this Defendant. If you don't give
7 life without to this Defendant there isn't a Defendant that
8 has earned life without who's entered a plea of guilty in
9 Clark County.

10 I submit to the court.

11 THE COURT: Ms. Jackson or Mr. Patrick, who wishes
12 to speak first.

13 MR. PATRICK: I would, your Honor.

14 THE COURT: Mr. Patrick.

15 MR. PATRICK: I think the biggest thing that
16 Dr. Jones-Forrester had to tell us that throughout her
17 evaluation of Jose, and I can say throughout my knowing Jose
18 for the last 5 years, is that, yes, he absolutely minimizes
19 the trauma he's suffered through in his life.

20 The court is well-aware that he does that. The court
21 as well-aware he is a stand up man. That was shown when he
22 entered his plea. And that the plea as written had
23 co-conspirator language in it that he insisted be taken out
24 because he was willing to stand up and say what he did wrong
25 and was not willing to rat on anybody else. That is what

1 the doctor meant when she said he minimizes the trauma in
2 his life.

3 You know, and what 12 year old, to begin with, has a
4 blood alcohol level of .142. That's twice the limit of a
5 DUI. What 12 year old has that level of alcohol in their
6 system and is out on the street alone and gets run over by a
7 street sweeper. That speaks volumes about where Jose was at
8 12, and yet when he talks to Ms. Jackson and talked to me
9 and talks to Dr. Jones-Forrester he minimizes how he got
10 there.

11 You know, the MRI shows brain injury. It shows brain
12 injury from multiple concussions. It shows maybe as
13 Dr. Jones-Forrester said we can't tell how much the
14 poi-substance abuse had in that MRI, but we know for a fact
15 the numerous, numerous concussions Jose has suffered shows
16 organic brain damage in the MRI. As we all know, an MRI is
17 not something that can be faked. It's not something that
18 can be changed. It is what it is. And it doesn't take
19 much to look at when you have a 12 year old run over by a
20 street sweeper to correlate that with brain damage on an
21 MRI. That's an easy jump.

22 Mr. DiGiacomo asked you why you should give Jose life
23 without. And I don't think that just because there was 4
24 victims you have too give Jose life without. While P&P in
25 the PSI from their numbering system, whatever numbers they

1 give to their questions, they recommended life without. But
2 the interesting thing is on both the weapon enhancements
3 they did not recommend a maximum sentence. On the two
4 attempts, they did not recommend a maximum sentence. They
5 recommended the two attempts run concurrent.

6 Granted if you get a life without parole it doesn't
7 matter what you do with the rest of the sentences, so
8 therefore it would have been easy for P&P to say maximum and
9 run everything consecutive. They didn't do that. That
10 makes me think that somewhere along the line, this isn't
11 really worth a life without.

12 And the court is aware, Jose is aware no matter what
13 sentence this court hands down it's going be a very, very
14 long time. Why give him an out date.

15 You know, an out date number, even if it's 40, 50 years
16 from now, it make as difference. It makes a difference in
17 how he behaves in prison. Life without means he's never
18 getting out. He has no incentive to do the things
19 Dr. Jones-Forrester said he had the ability to do. To be is
20 a good prisoner. Be a good inmate. To take classes. Those
21 are things that somebody does when they have a chance to get
22 out and to show that they are worthy of getting out. This
23 court knows the Department of Parole and Probation isn't
24 going to give him a free pass when it's 20 years from now,
25 40 year from now, when he comes up for parole. They are

1 going to look at everything that happened in this case.
2 They are going look at everything that happened at the plea
3 hearing. They are going to look at everything that happened
4 today. And the court knows that chance of him making his
5 first parole board is slim to none.

6 I think -- hope is a strange thing. Completely taking
7 away somebody's hope of everything they have gives them no
8 incentive to be a model citizen and to show that they
9 deserve a chance somewhere down the line. Jose with an out
10 date will older then myself, older than Ms. Jackson, if he
11 gets the chance to get out. It's important to give him
12 incentive to do well in prison to finish his education.

13 He got his GED. He can move on and get an actual
14 diploma. He can go and get college classes, learn a trade.
15 Things he can do to keep out of trouble in prison with a
16 life tail no matter how long it is, rather then life
17 without. Then there is no incentive to do anything in
18 prison.

19 Thank you.

20 THE COURT: Thank you, Mr. Patrick.

21 Ms. Jackson.

22 MS. JACKSON: Briefly, your Honor.

23 MR. DIGIACOMO: Can I go to your marshal for a
24 moment.

25 THE COURT: Sure.

1 Ms. Jackson, when you are ready.

2 MS. JACKSON: Life is a progression, your Honor.
3 Everything is a progression. You know, to bring everything
4 to what does it look like in real life, obviously we are
5 here because this young man did a horrific thing, and he
6 accepted responsibility. I'm so grateful for this court
7 allowing us an opportunity to speak to the court. This is a
8 very important decision.

9 I wish the court could have had a little more
10 opportunity to get to know Jose. He's not the same person.
11 And I also know a little bit about how this works.

12 I know, based upon my experience, that when you look at
13 the facts of the case -- Mr. DiGiacomo is correct. It could
14 very easily have been a quadruple homicide. Although it was
15 not. I don't want to get into a comparison situation
16 because this court I know sentenced for example the
17 Defendant who stabbed a seven-year-old child, lost track of
18 how many times, for no good reason. So when you start
19 comparing human life there is no comparing.

20 I think we have to look at things in some type of
21 continuum. I know that the easy solution if I were sitting
22 in your Honor's position you look at the facts of this case
23 and this court I greatly admire, this court reads and
24 studies everything. This court gives sound reasoning and
25 great consideration to every decision. This court listens.

1 One of the things I told Jose in there, he and I agreed
2 upon, is that this court will listen to us. I know this
3 court wrote down when the court made its notes, life without
4 the possibility of parole. I also believe this court is
5 willing to listen and can be moved by appropriate items.

6 At 9 years old, the man of the house. I have been
7 practicing law since 1974. I have never met an individual
8 who was so unwilling to cast blame on anyone. Defendants
9 blame their mothers, their fathers, their lawyers, the
10 prosecution, siblings, their first grade teacher. I have
11 known Jose since April 2012. He's unwilling even in the PSI
12 to even -- we know if, we know nothing else, thank God for
13 that blood alcohol test that was ran at the time of the
14 street sweeper -- .142. We know he has a long history of
15 drug and alcohol abuse.

16 We know that he's a walking -- this court did drug
17 court for many years. I attended a couple graduations.
18 This court is familiar with the level of addiction,
19 marijuana, alcohol, inhalant, cocaine, methamphetamine. Of
20 course our fine doctors in this country who hand out pain
21 medication like it's candy -- Vicodine and Morphine -- on
22 top of everything else, is there any doubt in anyone's mind
23 that Jose was a severe drug addict, alcoholic.

24 I look at his life. Starting at 8 -- this court was so
25 grateful for the opportunity it gave us to research this

1 case. We talked to his uncle. The uncle who made him. He
2 talked about being in Mexico and going out to work and
3 oldest giving liquor and watching him fall down. This is
4 endemic in this family. Part of what to tell the court the
5 whole truth -- part of why he accepted the negotiations to
6 accept responsibility -- I'll talk about empathy in a minute
7 -- is because he does not want to have all of the things
8 that we as a society we tell our children and we tell
9 ourselves we have to do this for the this child we have to
10 give this child a fair opportunity to be a good citizen.
11 That's what why we have our own children. We as a society
12 do that, we protect children, we have laws. This young man
13 was never afforded those protections by anyone, but his
14 make-up is such that he would not sit here and allow us to
15 do our job which is to tell the court about a lot of things
16 that are in the neuropsychology evaluation. I'm going to
17 respect and honor because he has respected and honored not
18 only me but this court and this whole process.

19 To look at the lack of resentment that he has toward
20 the system, I have some clients that are so low down and
21 resentful they would have forced a trial because they
22 dislike everyone so much. That is not this man. The man
23 who did what he did April 2012 is not same person sitting
24 here. That's the problem we have.

25 Mr. DiGiacomo is correct. A large segment of the

1 population that we criminal population that keeps all of us
2 in jobs, they have the same types of issues. This is not
3 your garden variety defendant. You want to talk about
4 empathy, a person who has changed. Last year this case was
5 set for trial, and I was unable to go forward because of
6 some very devastating personal issues. Before I came to
7 this court, before I went to my partner, before I talked to
8 the State, I went to this man. Consider this -- the
9 Detention Center is a hell hole compared to prison. I
10 represent clients in a lot of trouble. I need to get the
11 prison. This is hell. This young man, before I could even
12 finish telling him -- I felt he deserved explanation why I
13 couldn't in this case -- he says take all the time you want.
14 You have given me everything you've got. He was so
15 concerned about me, and that type of concern remains to
16 today. What is my point. He's not the same person. Had I
17 met Jose April 2012, he would have cared less about my
18 issues. It would have been all about I need to get up out
19 of here. This is not the same person.

20 So we take a look at what brought him to that day.
21 That's really the real focus. What is the measure of
22 justice being meted out for this family. And my heart goes
23 out to them. I have children. There's nothing he can do to
24 take that back. He has done everything he can. The court's
25 focus has to necessarily be what brought him to that date.

1 And a large part of it is the drug culture. I have
2 drug addicts in my family. I'd walk on hot coals for them.
3 But let's talk about the risk, if you will. The court is
4 going hear from them last. I won't get a chance to respond.
5 I see these individuals have wives. They were with
6 girlfriends. They were using drugs. They were doing all of
7 these things. That doesn't take away or diminished their
8 value as human beings. I don't mean to say that. I am
9 focusing on how did that day in time come to be.

10 I think that looking at Jose's family history and
11 everything that he has done throughout the -- this court is
12 very observant. He's been in here many, many times. You
13 have been able to watch the progression. He denies any
14 abuse or neglect to the therapist while telling her at age
15 5, 6 hit in the head with a platter and getting stitches.
16 That starts a pattern. Who has heart surgery at 15. Well,
17 there is a reason why, your Honor, we as the doctor said,
18 that we try to protect our children. Why we go out of our
19 way to make sure they go to the right school or at least go
20 to school. Why we try to keep them away from alcohol and
21 drugs.

22 I find it so interesting that even despite his
23 struggles with school when he was there in 2013, May of '13,
24 this case he got his GED. Those are types of things that I
25 urge the court to take a look at. You look at what is this

1 person done in the interim of this case. We had almost 5
2 years. We know what instability is.

3 Your Honor's focus of my comments to take a look at his
4 criminal history, your Honor. The time he was 12, 13 Jose
5 was in the system. I read all of his juvenile records. I'm
6 not going to belabor the point. It was petty stuff -- petty
7 larceny, stealing cars. Didn't harm anybody, despite the
8 ranging addiction that he was clearly dealing with.

9 Goes to prison soon as he's old enough. Gets out
10 around 2 months. This speaks to the character of a man. He
11 meets Crystal his wife. He is arrested in July, I think it
12 was. And we again want to thank the court for all of the
13 accommodations, but it was his love for his wife, his love
14 for his mother and concern for others that also had a
15 cumulative effect of allowing us to take an afternoon rather
16 than three weeks to talk to the court about what should
17 happen to Jose Gonzales.

18 Also based upon my experience talking with people like
19 E.K. McDaniel when a man has hope, when a man has something
20 to work for, even though it may be a long time, I'm not
21 going to ask this court to do anything that would dishonor
22 any of the value of this life. If just give him --
23 you're going to give him -- I believe justice will require,
24 at least 20, for each of the decedents in this case, plus
25 something on top of the young women who survived, that's a

1 long, long, long, long time. But when you take a man and
2 you put him in an institution and take away all hope, you
3 create a very dangerous situation for the guards, for the
4 other inmates. Your Honor, for someone who has demonstrated
5 the ability to love, the ability to change, the ability to
6 care, the ability to -- in the way that is extraordinary, to
7 accept responsibility not only for his actions for other's
8 actions, I think we as a society we have a chance to teach
9 Jose something that we're not all talk.

10 There is a failure here. It doesn't just start with
11 his parents. Dr. Forrester said where was the school system
12 when he's on the beach in first grade. Where is the
13 intervention when he's in and out of -- he hadn't been out
14 of custody a whole year in his entire life, and he's what
15 27.

16 UNIDENTIFIED PERSON: 27.

17 MS. JACKSON: 22 -- it's just ridiculous, your
18 Honor. Where was the fail-safe, the intervention that could
19 have made a difference. That is not an argument I would
20 make any other courtroom, but I think in this one it's
21 appropriate.

22 Don't we have some responsibility as a society. Why
23 don't we contribute to the overall good. Jose is an
24 extraordinary young man. People who do have a chance to get
25 out for a short period of time, he can influence those

1 individuals. He can be a good citizen inside. And I
2 believe that for all parties involved, including and
3 especially the institution, people who are charged with
4 watching the people that we have to put away. That it makes
5 a safer environment for them. I think that it's the right
6 thing to do, not to -- Jose wants to slough off all the
7 responsibility of everything that ever happened to him on
8 his shoulder. That's not right either.

9 I would suggest and urge the court that if you give him
10 an opportunity to one day be free, and it is a way for us to
11 stand up, and to say to him that there are some of us who do
12 the right thing and we stand behind it.

13 Thank you.

14 THE COURT: Thank you, Ms. Jackson.

15 Do you have your individuals who want to speak to the
16 court.

17 MR. DIGIACOMO: I was just going to call them by
18 each of the victims. We have an interpreter here. I was
19 going to call the one that needs to be first with the
20 interpreter.

21 THE COURT: Advise the speaker she can give
22 testimony there at counsel table or at the witness stand.

23 THE CLERK: You do solemnly swear you will
24 interpret from Spanish into English and from English into
25 Spanish the questions to be propounded from counsel to the

1 witness, to the best of your ability, so help you God.

2 THE WITNESS: I do.

3 THE CLERK: You do solemnly swear the testimony
4 you are about to give in this action shall be the truth the
5 whole truth and nothing but the truth, so help you God.

6 THE WITNESS: I do.

7 THE CLERK: Be seated. State and spell your name
8 for the record.

9 My name is Claudia Bernal, C-L-A-D-I-A,
10 B-E-R-N-A-L.

11 THE CLERK: Thank you.

12 THE COURT: When you are ready.

13 MR. DIGIACOMO: Something you want to tell the
14 court today.

15 THE WITNESS: Yes.

16 MR. DIGIACOMO: Tell the court.

17 THE WITNESS: Okay.

18 Well, ever since Erik -- this happened I have been
19 his wife. We have been married 14 years. At the time this
20 happened I was pregnant. And you can just imagine how it
21 was for me to have to get through the rest of that
22 pregnancy. Even now I still have 3 of his children.

23 Than this whole situation personally has caused a
24 tremendous amount of depression, anixety, panic attacks. I
25 was -- after this happened I was absolutely depressed for

1 over 3 years. Even my children have been tremendously
2 effected. I don't know what to do with them anymore. It's
3 like they have turned into totally different beings.

4 My 12-yeafr-old son is very depressed. He seems
5 rageful at life because life took his father away from him.
6 I truthfully don't know what to do with him anymore.
7 There's no way I can get him to pay attention to what I ask
8 him or tell him to do. He doesn't pay attention to anything
9 anymore. Even though 5 years has still gone by he still
10 cries all the time. He's totally depressed, very sad.

11 Sometimes -- a lot of times he gets rageful at himself,
12 rageful at me, like it was my fault. He doesn't understand
13 whose fault it was.

14 I also have my 17-yea-rolld daughter. She's got the
15 same sort of issues that the other one has. Ever since this
16 happened to Erik I don't know a way to move forward in life,
17 even though it has been 5 years. I truthfully don't know
18 how to move forward in life, and I can honestly say that if
19 it hadn't been for the support of my family I don't know
20 what would have happened to us as a family.

21 The sad thing for me is I would like you to know, your
22 Honor, is how much -- my 4 year old never got to meet his
23 father. I don't know what to do. I don't understand all of
24 this. This whole incident has truly effected my life. Just
25 seeing and watching my children, seeing how radically have

1 changed. It's 100 percent change to their life.

2 The main thing I'm asking your Honor for is justice. I
3 know that even though this is all happening there is no way
4 that I can get my children's father or my children can get
5 their father back, I'm asking for justice. The man who did
6 this, I ask that he pay.

7 Even though 5 years have gone by my children are still
8 suffering daily. We're still suffering daily. I ask for
9 justice. I'm also asking if there is any type of help I can
10 get for my son I don't want to see him sitting in that chair
11 where this man is now. That's all.

12 Thank you.

13 THE COURT: Thank you, Ms. Burnal. You may retake
14 your seat.

15 MR. DIGIACOMO: Court's indulgence, please.

16 MR. PATRICK: For the record, defense has no
17 questions for the witness.

18 THE COURT: Thank you. I wasn't anticipating
19 questions for the witness. I apologize if I made that
20 assumption without inquiring of counsel first.

21 At this time Mr. DiGiacomo, I think you indicated that
22 was the only speaker that needed an interpreter. Can you
23 checking now.

24 Come to the seat and remain standing.

25 THE CLERK: You do solemnly swear the testimony

1 you are about to give in this action shall be the truth the
2 whole truth and nothing but the truth, so help you God.

3 THE WITNESS: I do.

4 THE CLERK: Be seated. State and spell your name
5 for the record.

6 THE WITNESS: Beeza Gonzales, B-E-E-Z-A.

7 MR. DIGIACOMO: Who is your father.

8 THE WITNESS: My father is Erik Armando Quezada.

9 MR. DIGIACOMO: Old are you.

10 THE WITNESS: 17 years old.

11 MR. DIGIACOMO: Tell me about your father.

12 THE WITNESS: A little about my father. I will
13 say a lot, but you know, he was a good man. I would see him
14 as a family guy. A guy that would always want to be with
15 family and always, you know, have a good life. He would be
16 -- how would I explain it -- I wouldn't see him as hurting
17 anybody. He was always trying to help out everybody. He
18 had an amazing heart. He had to look out for me and my
19 brother when we were younger. I don't know what to say.

20 MR. DIGIACOMO: Let me ask you this. how did you
21 find out about your father's death.

22 THE WITNESS: When I found out I was only 12. I
23 found out by my mom telling me that he had -- they had taken
24 his life away. Me and my brother were like in shock. We
25 would never think that our father would be taken away in

1 such a brutal way. We never thought it would go that far.
2 And it was a really, really sad moment.

3 MR. DIGIACOMO: How has it effected you.

4 THE WITNESS: It effected me in so many ways, as I
5 have to look out for my brothers now because they don't have
6 a dad. I have to do everything that dad my dad should be
7 doing. He should be there to be with them and it's really
8 hard to wake up every morning and not see him anymore, to
9 actually not be there. And like we are family. It's really
10 hard to see little brother asking how my dad was. I have to
11 tell him how he was when he could have seen it himself, but
12 that had to happen. Having my brother wake up in the
13 morning saying I wish he was here. We miss him so much. He
14 took a part of us, our soul. He turned my life around.
15 It's been to bad ever since he left. It's really hard to be
16 without him. He would be always there.

17 MR. DIGIACOMO: You mentioned you were 12 when you
18 found out your father was killed. Your little brother was 5
19 or 6.

20 THE WITNESS: 5 or 6.

21 MR. DIGIACOMO: Have you seen -- you sort of
22 mentioned a little bit, have you seen the effects on him.

23 THE WITNESS: He used to be a loving boy. Now he's
24 full of anger. He doesn't want to do the kinds of -- like
25 having revenge in a way. I don't see him as the same person

1 anymore.

2 When he was little he used to be so loving and
3 adorable, now he's full of hate. He doesn't want to be with
4 nobody. He's isolated.

5 MR. DIGIACOMO: Have you seen the effects on your
6 youngest -- is it a boy or a girl.

7 THE WITNESS: A boy.

8 MR. DIGIACOMO: He never knew his father.

9 THE WITNESS: Never knew his father. He know,
10 like, that's my dad. He speaks a lot. He says that's my
11 dad but he's dead. I never got to meet him. That is sad
12 not being able to meet your dad, growing up without him.
13 Really so sad to actually see him like that and sometimes
14 cry about it.

15 MR. DIGIACOMO: You think you and your two
16 brothers are going to be effected forever.

17 THE WITNESS: Yes. We are. I still hurts to this
18 moment.

19 MR. DIGIACOMO: Anything else you want to tell the
20 court.

21 THE WITNESS: Anything else to tell the court.

22 Why take someone's life away in such a brutal way. You
23 know, why give him less time then he should deserve. He
24 should get life for taking another person's life. It is not
25 right. If they would have done that to you, wouldn't it

1 hurt. The same thing. I don't know how to explain it. I
2 don't know how to say it in my own words, but to me he
3 should deserve what he did. He shouldn't get less than
4 life.

5 I don't understand. Why would you take someone's life
6 away and you be just like, you know, I want less time. You
7 get what you give, you know.

8 MR. DIGIACOMO: I think we do. Thank you.

9 THE COURT: Questions.

10 MR. PATRICK: No questions.

11 THE COURT: Thank you, Ms. Quezada.

12 THE COURT: Who is next.

13 Daniel Castle.

14 THE COURT: Come up, ma'am.

15 THE CLERK: You do solemnly swear the testimony
16 you are about to give in this action shall be the truth the
17 whole truth and nothing but the truth, so help you God.

18 THE WITNESS: I do.

19 THE CLERK: Be seated. State and spell your name
20 for the record.

21 THE WITNESS: Danielle Cassley,
22 D-A-N-I-E-L-L-E, C-A-S-S-L-E-Y.

23 THE CLERK: Thank you.

24 THE WITNESS: I've known James since my freshman
25 year of high school. We had a daughter in 2009. We moved

1 down here and I was pregnant with his son. He is 5 now. He
2 was 6 months when it happened. He will never get to meet
3 his dad. I mean he was 6 months, he's not going to
4 remember.

5 My daughter is still effected by it. She always asks
6 me where is my dad. I don't know if you have seen pictures
7 of James at all. This is his son. He is 5 now. Our
8 daughter who was 2 at the time, she is now about to be in
9 second grade. She's 7.

10 We had a lot of dreams, and I don't understand why did
11 you it, but you took away a husband, a father, and they'll
12 never have their father anymore. And I think he deserves a
13 life for a life. I don't think he deserves anything less.
14 My kid's dad is never going to be there.

15 I don't really -- I have anything else to say. I think
16 he deserves what he gets. He does not deserve life with
17 parole -- or should I say, he deserves life without
18 parole.

19 THE COURT: I understand what you said.

20 Mr. DiGiacomo any questions.

21 MR. DIGIACOMO: I don't.

22 THE COURT: Mr. Patrick or Ms. Jackson.

23 MR. PATRICK: No.

24 THE WITNESS: Would like the pictures. Thank
25 you.

1 THE COURT: Step down and take your seat.

2 Come to the witness stand, please.

3 THE CLERK: You do solemnly swear the testimony
4 you are about to give in this action shall be the truth the
5 whole truth and nothing but the truth, so help you God.

6 THE WITNESS: I do.

7 THE CLERK: Be seated. State and spell your name
8 for the record.

9 THE WITNESS: Lori Headrick.

10 THE CLERK: Thank you.

11 THE WITNESS: I died April. It killed me too. I
12 was in my chair, 1,300 miles away. I was asleep. I heard
13 crying, mom, mom. I got up and walked. I thought it was my
14 son in the other room who had a sleeping disorder. I
15 thought I was having a heart attack. I felt my heart shoot
16 out of my chest. I went to work that day. My son was okay.
17 My daughter comes screaming down the hallway, 10 hours later
18 he's dead.

19 What, mom, he's dead. She died that day too. They
20 were best of friends. They were 22 months apart. I gave
21 birth to James, 4 pounds 11 ounces. He had heart problems.
22 He had ADHD. He had several things. He was raised with an
23 alcoholic brother. I was an alcoholic when I gave birth to
24 him. He made it through school, the 9th grade.

25 Nobody expected him to ever be great in society. He

1 was a rough child to raise. I loved that child with all my
2 heart. He was the best brother you could ask for. His
3 little brother, 12 years apart, different fathers, you know.
4 He loved his brother. His best friend's sister, loved her
5 with all her heart. He would do anything for his siblings,
6 anything. She died that day.

7 I watched her for the next 5 years after his death
8 struggle every day. She had two kids. He was the uncle.
9 She gave birth at 16 to her children. It was hard life for
10 us. But we had fun. We met every day we could. We lived
11 every day.

12 They look a lot of like, 22 months apart. He loved
13 them. Then he became a father. He struggled. He was a
14 good father. He couldn't support them very well. He didn't
15 have much education. We talked a lot about you today, sir.
16 We spent a lot of time with the doctor and the lawyer. We
17 never talked much about my son today. He didn't know you.
18 I talked to my son a week before he died. You know what our
19 conversation was about. He apologized for being such a hard
20 child to me. He really was going to turn his life around.
21 He was struggling with drugs and alcohol. He was ready to
22 turn it around.

23 I felt it in my heart he was going to really make life
24 great again for himself. He was a great father. He loved
25 that baby girl. Oh, my God, that was his baby and she loved

1 him. She loved him. She didn't have much time with him,
2 you know, maybe a couple of Christmases. Her first one at
3 my house. Yeah, my aunt, my sisters -- older than I am --
4 she helped me raise him a lot. They were best friends. He
5 loved her. He was -- he loved life.

6 He struggled too. He had a lot of teachers who loved
7 him. They told me he had ADHD. He was in special education
8 too, but you know what when it came down to it James knew
9 one thing. He knew it very well. He would not have taken a
10 gun and blown your head off, sir.

11 MS. JACKSON: I ask that comments be addressed to
12 the court and not to my client.

13 THE WITNESS: He would have helped you do
14 anything.

15 THE COURT: Counsel did impose an objection.

16 THE WITNESS: I'm sorry.

17 THE COURT: You can only converse with the court.
18 Don't address Mr. Gonzales.

19 THE WITNESS: James had a hard time. He knew it.
20 He didn't deserve to die. He would have been 30. I
21 expected him to be at my death bed. I expected him to be at
22 my side when I died not the other way around. I should
23 never have had to push his ashes down.

24 I'm -- but I can't forgive you. I'm sorry your
25 life is where it is now, but that is too bad. We all have

1 to raise ourselves and take care of ourselves. We are
2 responsible for our own doings in this world.

3 James would have done good. He would have turned it
4 around. He would have done good too, if he had the
5 opportunity to do so. He didn't get that chance. He didn't
6 get the chance to give him a chance to grow up together.

7 It's an eye for an eye a tooth for a tooth. I hope he
8 turns his life around in prison. I also hope he dies
9 there.

10 That's what I have to say.

11 MR. DIGIACOMO: Thank you, ma'am. May I show the
12 court the photos.

13 THE COURT: I was able to see those better. I
14 would like to see them. Why don'ts you grab them,
15 Mr. DiGiacomo.

16 Counsel can stay at the night table. If you don't
17 mind, if you are complete.

18 THE WITNESS: I'm done.

19 THE COURT: Thank you.

20 THE WITNESS: I spoke my peace. I'm sorry. I
21 over did it.

22 THE COURT: You may have your seat. Thank you for
23 your time.

24 Mr. DiGiacomo will return your photos after the court
25 had a chance to look at them. Okay.

1 The last speaker said something very compelling. I
2 can't think of the right word, but to say, I hope he turns
3 his life around in prison, but I also hope he dies there.
4 The reality is that no matter what sentence this court
5 gives, it's likely that Mr. Gonzales will die in prison.

6 If the court gives a life without the possibility of
7 parole, he will die in prison. If the court is to fashion
8 some reasonable form of term of life term sentence that
9 includes life with the possibility of parole under certain
10 terms and fashions them in any way to account for the 4
11 lives impacted here, it is very likely that time frame
12 before Mr. Gonzales would be considered for parole would be
13 well into the minimum sentence, well into his 70s -- late
14 60s, 70s.

15 The average life span of someone in prison is 50. It's
16 a scientific analysis of what a life it is to be in
17 prison.

18 Another speaker talked about justice in these cases and
19 in their particular circumstances and wanting justice. It
20 is perfectly understandable. Each individual came to speak
21 and each and every person effected by the losses of Erik and
22 James wants the punishment to fit the crime, wants what they
23 believe to be justice, which is Mr. Gonzales not to have a
24 life that their loved ones cannot. I think that's how I
25 would assume up these discussions.

1 One of the things we know is someone incarcerated with
2 life without the possibility of parole is that they really
3 aren't given any opportunities to do anything other than sit
4 in a cell. Again, for those who want the maximum
5 punishment, maybe that sounds attractive. But a human being
6 that is still alive with no -- hope was used multiple times
7 here today -- the sentence of life without the possibility
8 parole is referred to as life without hope.

9 The reason for that is because there aren't
10 opportunities given. There aren't circumstances that allow
11 for that individual to do things that they might otherwise
12 do to have some semblance of what life can be, whether
13 you're in a cell 23 hours a day.

14 I have spent a lot of time preparing for sentencing,
15 anticipating that we would hear from loved ones,
16 anticipating we'd hear very eloquent argument on behalf of
17 the Defendant. On to this idea of justice. One thing
18 that's clear from the court's perspective, as difficult as
19 this job is at times, I don't think it gets more difficult
20 than this. Is justice means justice for everyone concerned
21 in the case. It means justice for Erik and justice for
22 James. It means justice for the ladies, who, as Mr.
23 DiGiacomo pointed out, but for a miracle are still alive.

24 They didn't come here to speak, but I have heard from
25 them previously in this case. It also means justice for the

1 community, justice for the Defendant. We just had a break
2 in this sentencing because I had to receive a verdict in a
3 trial. One of the instructions read to the jury -- had
4 there been a trial -- was the fact finder, jury's duty to do
5 equal justice between the State of Nevada and the
6 Defendant.

7 We have a situation here where at sentencing there is
8 no less duty then to give equal justice. I have to look at
9 these circumstances and look at this from a standpoint of do
10 I -- what is perhaps the easy road -- there's nothing easy
11 about life without the possibility of parole, and say that's
12 it. Mr. Gonzales goes away, no programming, gets nothing
13 and deserves nothing under these circumstances.

14 One of the things that stood out to me was one of the
15 witness' testimony, one of the ladies who indicated that as
16 the door opened and Mr. Gonzales was firing that she said
17 and begged for her life for the life of the others and the
18 firing continued, so there isn't any doubt that this was
19 done with intent.

20 We also have objective evidence there is an individual
21 here who does not have the same mind that others do, that
22 did not in any way, shape, or circumstance have the same
23 upbringing that many people have. These are not excuses.
24 It's called mitigating circumstances. They are not excuses,
25 they don'ts excuse the crime. Nothing is going to the

1 change the fact that Mr. Gonzales is going to spend a very,
2 very long time in prison and very likely the rest of his
3 natural life in prison.

4 But what this court can do to do justice, to recognize
5 the loss of life, the harm to life and still ensure some
6 basic humanity in this case, whatever that remainder of
7 Mr. Gonzales' life is.

8 It is this court's determination to provide this
9 sentence in that record.

10 As to Count 1, the court will adjudicate Mr. Gonzales
11 guilty of first degree murder with use of a deadly weapon.
12 As to Count 1, his sentence will be a minimum of life with
13 the possibility of parole after 20 years is served.

14 The deadly weapon enhancement, the court does make the
15 findings that there needs to be a deadly weapon enhancement
16 in this case of some significant type in looking at the
17 factors. The court has considered all the facts and
18 circumstance of the crime, the criminal history of this
19 Defendant, the impact of the crime on these victims, having
20 heard about it today and having some understanding of it
21 coming into this sentencing today, mitigating factors that
22 have been presented, and there are many.

23 All of this information provided to the court today, I
24 think it's appropriate at this time for there to be a
25 consecutive sentence of a minimum -- this is the deadly

1 weapon enhancement -- a consecutive sentence to life with
2 the possibility of parole after 28 years. A minimum of 12,
3 maximum 48 months for the deadly weapon enhancement.

4 As to Count 2, the court adjudicates Mr. Gonzales
5 guilty of first degree murder with use of a deadly weapon.
6 The sentence to be imposed for Count 2, is life with the
7 possibility of parole after a term of 28 years is served.
8 The Count 2 to run consecutive with Count 1. The deadly
9 weapon enhancements for Count 1, again 12 minimum, maximum
10 48 months Nevada Department of Corrections.

11 In these circumstances what we then have is -- I'll
12 have to do the math, but these are to be consecutive, the
13 deadly weapon enhancements consecutive to the charge, Count
14 2 adjudication is consecutive to Count 1.

15 Circumstances of that sentence there, before I move on
16 to Count 3 and -- is 28 and 12 and 28 and 12.

17 MR. DIGIACOMO: Life is 20, if you give him 20 you
18 can only give him a 98 to 240.

19 MR. DIGIACOMO: Life, minimum 20, then 96 to
20 240.

21 THE COURT: 27 will work, so I understand that, but
22 I think at this point he is going to have to serve out these
23 sentences, these consecutive sentences, to get to the
24 others. The ultimate goal of the court was to have the life
25 with possibility of parole after 28.

1 MR. DIGIACOMO: Life to 28, life to 28,
2 consecutive.

3 THE COURT: That's it -- 96 to 240. I do
4 appreciate Mr. DiGicomo's assistance.

5 It's life with the possibility of parole after 20 years
6 is serve, with a consecutive deadly weapon enhancement of
7 maximum -- 96 months minimum, 240 maximum for each Count 1
8 and 2, total of life with the possibility of parole after 28
9 years served. That is a total of 56 years to life before
10 this individual can be considered for any consideration of
11 parole as to Counts 1 and 2, which just to be clear means
12 that individual would be 83 before that would be able to be
13 considered.

14 But I think again humanity of the idea of someone being
15 incarcerated with no hope versus some hope and the ability
16 to do things that would mean that that life could have
17 meaning to others and perhaps pay forward the life that was
18 taken in some fashion is worthy of this court's
19 consideration.

20 Adjudication as to Counts 3 and 4, not to in any way
21 minimize the harm that impacted these individual people but
22 the total sentence being what it is, the court will then as
23 recommended in the probation -- PSI report from Parole and
24 Probation adjudicate the Defendant guilty of attempt murder
25 and sentence him to a minimum 84 maximum 240 months in

1 Department of Corrections with that sentence as to Count 3
2 concurrent to Count 2.

3 As to Count 4, sentence the individual, adjudicate him
4 guilty of attempt murder minimum 84 maximum 240 in Nevada
5 Department of Corrections. The aggregate being life with
6 the possibility of parole after 56 years is served.

7 Credit time served -- at this time I show 1,807 days,
8 pursuant to the PSI, has already been served toward those
9 sentences.

10 Mr. Gonzales all the factors are is that the likelihood
11 is you will die in prison. It is not this court's intention
12 you die in prison without some opportunities to do something
13 good with your life, something good that will honor the
14 lives you took so callously in this case, to somehow right
15 the harms you have caused to these individual and countless
16 other individuals effected by actions who did not hear here
17 today. Mr. Gonzales, you can do something to pay forward
18 for the lives you took.

19 MR. DIGIACOMO: I apologize. There is a
20 \$48,418.25 to victims of crime.

21 MS. JACKSON: We have a strong problem with
22 that.

23 THE COURT: We'll set that to another date.

24 \$25.00 administrative assessment, \$150.00 DNA analysis
25 fee if not taken previously -- it looks like DNA was

1 previously taken so I won't order that.

2 I'll set this matter for hearing on the restitution for
3 2 weeks to the Wednesday to give the court time to review
4 the discussions on that.

5 MR. PATRICK: We'll waive his appearance.

6 THE COURT: Mr. Gonzales doesn't have to be
7 present at that time.

8 THE CLERK: August 2, at 9:00.

9 MS. JACKSON: Thank you.

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CERTIFICATE
OF
CERTIFIED COURT REPORTER

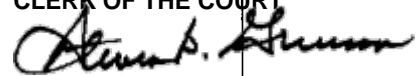
* * * * *

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



JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO. C-12-283700-2

DEPT. NO. XXV

JOSE ALEJANDRO GONZALES
#2636822

Defendant.

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNTS 1 and 2 – FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165; COUNTS 3 and 4 – ATTEMPT MURDER (Category B Felony) in violation of NRS 200.010, 193.330; thereafter, on the 22nd day of May, 2017, the Defendant was present in court for sentencing with counsel ALZORA JACKSON and CLARK PATRICK, Deputy Special Public Defenders, and good cause appearing,

00878

MAY 26 2017

1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
2 addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee
3 including testing to determine genetic markers (waived if previously collected) plus
4 \$3.00 DNA Collection Fee (waived if previously collected), the Defendant is sentenced
5 to the Nevada Department of Corrections as follows: **COUNT 1** – LIFE with the
6 eligibility for parole after serving a **MINIMUM** of TWENTY (20) YEARS plus a
7 **CONSECUTIVE** term of TWO HUNDRED FORTY (240) MONTHS with a **MINIMUM**
8 parole eligibility of NINETY-SIX (96) MONTHS for the Use of a Deadly Weapon;
9 **COUNT 2** - LIFE with the eligibility for parole after serving a **MINIMUM** of TWENTY
10 (20) YEARS plus a **CONSECUTIVE** term of TWO HUNDRED FORTY (240) MONTHS
11 with a **MINIMUM** parole eligibility of NINETY-SIX (96) MONTHS for the Use of a
12 Deadly Weapon, **CONSECUTIVE** to COUNT 1; **COUNT 3** - a **MAXIMUM** of TWO
13 HUNDRED FORTY (240) MONTHS with a **MINIMUM** parole eligibility of EIGHTY-
14 FOUR (84) MONTHS, **CONCURRENT** with COUNT 2; and **COUNT 4** - a **MAXIMUM**
15 of TWO HUNDRED FORTY (240) MONTHS with a **MINIMUM** parole eligibility of
16 EIGHTY-FOUR (84) MONTHS, **CONCURRENT** with COUNT 3; with ONE
17 THOUSAND EIGHT HUNDRED SEVEN (1,807) DAYS credit for time served.
18 Defendant to serve a **MINIMUM** of FIFTY-SIX (56) YEARS to LIFE before the
19 possibility of parole.
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24 DATED this 26th day of May, 2017

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27
28

KATHLEEN DELANEY
DISTRICT COURT JUDGE

ORIGINAL

1 AINF
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MARC DIGIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #006955
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLARK OF THE COURT

JUL 05 2017

By: Boyle
BOYLE, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

CASE NO: C-12-283700-1

11 -vs-

DEPT NO: XXV

12 IVONNE CABRERA, aka
13 Yvonne Cabrera, #1617623
14 Defendants.

AMENDED
INFORMATION

C-12-283700-1
AINF
Amended Information
4863443



16 STATE OF NEVADA }
17 COUNTY OF CLARK } ss.

18 STEVEN B. WOLFSON, Clark County District Attorney within and for the County of
19 Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the
20 Court:

21 That IVONNE CABRERA, aka Yvonne Cabrera, the Defendant above named, having
22 committed the crimes of CONSPIRACY TO COMMIT MURDER (Category A Felony -
23 NRS 199.480, 200.010, 200.030); BURGLARY WHILE IN POSSESSION OF A
24 DEADLY WEAPON (Category B Felony - NRS 205.060); MURDER WITH USE OF A
25 DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165) and
26 ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony -
27 NRS 200.010, 200.030, 193.330, 193.165), on or about the 26th day of April, 2012, within the
28 County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such

1 cases made and provided, and against the peace and dignity of the State of Nevada,

2 COUNT 1 - CONSPIRACY TO COMMIT MURDER

3 did then and there meet with JOSE GONZALES, aka Jose Alejandro Gonzales and
4 between themselves, and each of them with the other, wilfully, unlawfully, and feloniously
5 conspire and agree to commit a crime, to-wit: murder, and in furtherance of said conspiracy,
6 Defendants did commit the acts as set forth in Counts 2-6, said acts being incorporated by this
7 reference as though fully set forth herein.

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

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

15 COUNT 3 - MURDER WITH USE OF A DEADLY WEAPON

16 did then and there wilfully, feloniously, without authority of law, and with
17 premeditation and deliberation, and with malice aforethought, kill JAMES HEADRICK, a
18 human being, by shooting at the said JAMES HEADRICK multiple times, with a deadly
19 weapon, to-wit: firearm, and/or by the killing occurring in the perpetration or attempted
20 perpetration of a Burglary; Defendant JOSE GONZALES, aka Jose Alejandro Gonzales
21 directly committing said crime, Defendant IVONNE CABRERA, aka Yvonne Cabrera aiding
22 or abetting by counsel and encouragement and by accompanying Defendant JOSE
23 GONZALES, aka Jose Alejandro Gonzales to JAMES HEADRICK's residence and knocking
24 on doors to and within JAMES HEADRICK's apartment to allow Defendant JOSE
25 GONZALEZ, aka Jose Alejandro Gonzales to gain access to JAMES HEADRICK to facilitate
26 shooting him, Defendant IVONNE CABRERA, aka Yvonne Cabrera also being criminally
27 liable as a co-conspirator vicariously in that said crime was a foreseeable act of the conspiracy

1 set forth in Count 1 hereinabove.

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

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

15 COUNT 5 - MURDER WITH USE OF A DEADLY WEAPON

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

1 was a foreseeable act of the conspiracy set forth in Count 1 hereinabove.

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

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

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

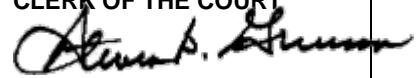
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18 MARC DIGIORGIO
19 Chief Deputy District Attorney
20 Nevada Bar #006955

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26 DA#12FN0864A-B/saj/MVU
27 NLVPD EV#1207466
28 (TK2)

7/6/2017 11:02 AM

Steven D. Grierson
CLERK OF THE COURT



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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 5, 2017, 1:30 P.M.
Reporter's Transcript of Proceedings

JURY TRIAL

APPEARANCES:

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

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

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

1 Las Vegas, Clark County, Nevada

2 Wednesday, July 5, 2017, 1:30 P.M.

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

4 * * * * *

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

7 THE COURT: Let's go on the record.

8 This is State of Nevada versus Ivonne Cabrera.

9 We have counsel for the State, counsel for the defendant and
01:45PM 10 Ms. Cabrera present with us. At this time, the jurors are not
11 present.

12 We are working out some technology issues, but
13 should have the Elmo set up and ready to function.

14 Usually, Elvis, if that camera isn't, like, flat
01:45PM 15 it doesn't work as well, but we can test it, I guess, if we've
16 got something to put on it. And I mean that -- yeah, that
17 piece, but let's test it.

18 So we're working out to make sure that we have
19 the -- and one of the things, I guess, I should mention because
01:45PM 20 this came up in our last trial, Mr. Digiacomo, and if we have
21 to correct it, we'll deal with it, when you set up this -- this
22 happened with Mr. Chen's computer when we were here in our
23 prior trial. And when the computer was set up there, as long
24 as it was linked in and we had it working on my screen

01:46PM 25 everything was fine, but then you shut it down and you re-upped

1 it or he shut it down and re-upped it, it somehow cut me off
2 again.

3 So there's something about the linkage and the
4 weakness of it and something. So we have to be careful that if
01:46PM 5 you are taking it down, I'm not losing my view up here.

6 MR. DIGIACOMO: Did you have my view earlier?

7 THE COURT: What's that?

8 MR. DIGIACOMO: Did you have my view earlier?

9 THE COURT: I don't know because I wasn't in
01:46PM 10 here, so I can't tell you. Right now it just says searching,
11 so I don't think we're on left.

12 MS. ERICKSON: We're trying to --

13 MR. DIGIACOMO: Well, we're on this one.

14 THE COURT: I know. Well, we're not on the doc
01:46PM 15 cam yet either. Renee, can you put it on the doc cam, please.

16 MS. ERICKSON: We're just -- we have technology
17 issues.

18 THE COURT: That's why we're supposed to come
19 here early enough to get all that worked out, so we can start
01:46PM 20 at 1:30, but that's how that goes sometimes.

21 MR. DIGIACOMO: We're good.

22 THE COURT: All right. It looks like the doc
23 cam is working.

24 So now let's switch over to left to see if we
01:47PM 25 are connected to you. I have nothing on my screen.

1 MS. ERICKSON: You have nothing?

2 MR. DIGIACOMO: You still have nothing?

3 THE COURT: Hold on. Right, so what's happening
4 now is it's coming up on that screen; right?

01:47PM 5 MS. ERICKSON: Yeah.

6 THE COURT: And I can see it if I have to on my
7 reporter's screen in front of me, but mine is not connected and
8 it has something to do with the computer. And I don't remember
9 how they fixed it last time, but it had to be connected to mine
01:47PM 10 and then, again, if you take it down, you can't, like, take it
11 off. We have to just switch off of it. I can't remember
12 exactly what it was.

13 MS. ERICKSON: Judge, is it showing on the
14 witness screen?

01:47PM 15 MR. DIGIACOMO: It's on the witness screen.

16 THE MARSHAL: No, it's too high of an output.

17 MR. DIGIACOMO: That needs to be a 1024 to run
18 on the screen.

19 THE COURT: AV fixed it before, but I don't
01:47PM 20 remember how to do it now. I don't really care. I can watch
21 it over my reporter's shoulder, if I need to, but --

22 MS. ERICKSON: Does it come up on ours? It's
23 not on ours either.

24 THE COURT: It should be on everybody's but
01:48PM 25 mine.

1 Is yours on?

2 MS. ERICKSON: Well, that would be a good
3 question. It -- that's yours.

4 MR. DIGIACOMO: Did it show up on yours then?

01:48PM 5 Is yours on?

6 THE COURT: Yes. I'm getting a signal that says
7 input not supported and this is what happened before.

8 THE MARSHAL: Go back to 1024 and then tell them
9 okay. There we go. See, it has to make the change.

01:48PM 10 MR. DIGIACOMO: It's not going to mess up my
11 screen.

12 THE MARSHAL: No.

13 THE COURT: Now I have it.

14 MS. ERICKSON: All right. We still don't.

01:48PM 15 MR. DIGIACOMO: We just need to confirm that it
16 didn't screw up this part.

17 Oh, so we can't use the extended display because
18 of yours, that's fine.

01:48PM 19 THE COURT: But it doesn't appear to be showing
20 on defense counsel's screen either, so we need to fix that.

21 That was not a problem we ever had before. It was only my
22 screen based on the cables and how they're connected.

23 MR. DIGIACOMO: I don't know if their screen is
24 on.

01:49PM 25 THE COURT: I don't think it's on. It's been

1 working fine. We just need to double check it.

2 THE MARSHAL: Hang on.

3 MS. ERICKSON: I'm not going to touch it.

4 (Sotto voce at this time.)

01:49PM

5 THE COURT: This would be the first time we've
6 had a problem with that screen in here. So I'm going to assume
7 somehow it's just not on at the moment and then if we have to
8 call AV, we will.

9 MR. DIGIACOMO: It doesn't appear to have power.

01:50PM

10 (Sotto voce at this time.)

11 THE COURT: All right. Ms. Erickson, back on
12 the record now. It appears that we have the technology
13 working, although, I don't know if that's the view we want to
14 be looking at. Mr. Digiacomo, is that it?

01:51PM

15 MR. DIGIACOMO: I can blank it out when they
16 walk in. I just don't want the computer to shutdown.

17 THE COURT: Got you.

18 MS. ERICKSON: And did we make sure -- I'm
19 sorry.

01:51PM

20 THE COURT: We did.

21 MS. ERICKSON: Okay.

22 (Recess in proceedings.)

23 THE COURT: Okay. Ms. Erickson, we're back on
24 the record in State of Nevada versus Ivonne Cabrera. It looks
01:51PM 25 like we have our technology issues resolved, although, we do

1 have one of the screens at the defense table not working.
2 We'll get AV in to work on that at the first available
3 opportunity.

01:52PM 4 You mentioned before we got started with the
5 jurors that you had something you wanted to put on the record.

6 MS. ERICKSON: Yes, Judge. We received a copy
7 of an Amended Information on Tuesday -- Monday after -- Monday,
8 from the State, saying that they were going to amend the
9 Information.

01:52PM 10 But the only thing that they've done is in
11 Count II, when it used to say: Did then and there willfully,
12 unlawfully and feloniously enter with the intent to commit a
13 felony, to-wit: Murder, now they've added: Willfully,
14 unlawfully and feloniously entered with the intent to commit
01:52PM 15 assault and/or battery and/or a felony, to-wit: Murder.

16 THE COURT: Which count are we looking at now?

17 MS. ERICKSON: Number two.

18 MR. DIGIACOMO: The burglary count.

19 MS. ERICKSON: Burglary.

01:52PM 20 MR. DIGIACOMO: Correct.

21 THE COURT: I don't know that I have the current
22 one. That's what I'm trying to see. I've got one that was
23 filed in open court on the 3rd.

24 MR. DIGIACOMO: That's -- that's -- it should be
01:53PM 25 the 5th because we filed it this morning, so I think their

1 stamp is off, but it's Count II, the burglary count.

2 THE COURT: Yeah, I see it. I'm just not
3 recognizing what Ms. Erickson is telling me is in it. That's
4 my problem.

01:53PM 5 MR. DIGIACOMO: It's line nine and ten.

6 MS. ERICKSON: Line ten, added the words:
7 Assault and/or battery and/or a felony, but felony was there
8 before.

9 THE COURT: Okay.

01:53PM 10 MS. ERICKSON: So they've added: And/or --
11 assault and/or a battery.

12 I object to it being changed because we -- the
13 State, on Wednesday, announced that they were not going to seek
14 to amend the Information. I don't know why we are now. I
01:53PM 15 haven't had time to figure out how this change interacts with
16 us, and I believe that given the fact they said they weren't
17 going to change anything, I -- I don't understand it. So I'm
18 objecting to the change.

19 THE COURT: Mr. Digiacomo?

01:53PM 20 MR. DIGIACOMO: Thank you.

21 I don't know what Ms. Erickson is talking about
22 as it relates to making representations to her about changing
23 it.

24 Your clerk had asked me, hey, do we need an
01:54PM 25 amended? And my response being, no, normally I just read the

1 co-conspirator.

2 In preparation of the case, I realized that for
3 whatever reason, Mr. Staudaher, when he made this, didn't
4 include the full statute in there. The lesser related crimes
01:54PM 5 of assault and battery are lesser included of murder, State v.
6 Eighth Judicial District Court, saying there are knowledge of
7 these facts of when they allowed the felony murder theory to be
8 added to murder because we had previously already had a robbery
9 charge involved in the case.

01:54PM 10 And there's Randolph to say if you -- you know,
11 if you are going to defend on a theory that is still a crime,
12 the State's entitled to that jury instruction. And thus,
13 assault and battery are part of the statute itself.

14 There is no additional notice. You have to
01:54PM 15 either assault or batter someone to either kill them or attempt
16 to kill them. It's a lesser related and, thus, there's no
17 change to the indictment, other than providing the notice to
18 the full statute.

19 MS. ERICKSON: The Information.

01:55PM 20 And I don't know what Mr. Digiacomo is talking
21 about. We previously had a robbery.

22 The first Information filed on August 27th,
23 2012, had -- did not have robbery. It was conspiracy to commit
24 murder, a burglary while in possession of a deadly weapon,
01:55PM 25 murder with use of a deadly weapon, and attempt murder with the

1 use of a deadly weapon.

2 So I don't know why we had -- we would have been
3 given notice of robbery at some point, and, therefore, battery
4 and assault.

01:55PM 5 I maintain --

6 MR. DIGIACOMO: I apologize, I didn't mean to
7 cut you off. That's the ruling of State v. Eighth Judicial
8 District Court, that if you are on notice of the acts, the
9 State is entitled to amend the morning of trial.

01:55PM 10 MS. ERICKSON: That's what I --

11 MR. DIGIACOMO: And that was a robbery case that
12 included a felony murder. This does not have a robbery.

13 MS. ERICKSON: And I'm just making my record.
14 This is a capital case. I'm objecting to the change.

01:55PM 15 THE COURT: All right. The Court has noted your
16 objection, heard argument, and the Court does agree with the
17 State that it is able to and the Court will allow the Amended
18 Information to be filed as of today's date.

19 And that is the Amended Information that will be
01:56PM 20 read, that will be inclusive of the language: Assault and/or
21 battery, that has been added because that is within the
22 State's purview to make that change.

23 There is notice of the charges, obviously,
24 inclusive within the murder charge and I think that is
01:56PM 25 appropriate. But I appreciate you making a record.

1 MS. ERICKSON: And given the Court's ruling, I
2 am now asking that the Court's prior ruling that we could not
3 use a duress defense for the burglary charge because the Court
4 ruled that they had to -- had to prove the murder to -- and
01:56PM 5 that made it so duress was not an appropriate defense to this
6 charge.

7 MR. DIGIACOMO: I don't want to cut her off, but
8 I agree. They can have the duress defense to the assault
9 and/or battery section to the burglary charge. We're going to
01:56PM 10 have to work it out during the instructions. But I don't
11 dispute that duress is a defense to assault and/or battery if
12 they present that defense, which is an affirmative defense.

13 MS. ERICKSON: Thank you.

14 THE COURT: Okay. You made your record.
01:57PM 15 Is that it for the parties?

16 MR. WHIPPLE: One other brief matter, very
17 quick.

18 This morning, Your Honor, I was in Federal
19 Court. I made accidental contact with one of the jurors. I
01:57PM 20 got on the elevator, recognized the face, said good morning, I
21 was walking out of a death penalty matter in Federal Court, so
22 I was a little preoccupied.

23 I think I looked up and I said, how are you?

24 And then, I realized it was a potential juror
01:57PM 25 and I said, are you on the jury? Because I wasn't sure if he

1 was one that was on the jury or was off it. And he said, yes,
2 I'm on the jury and then we stopped.

3 THE COURT: Do you know which one it was?

4 MR. WHIPPLE: I do.

01:57PM

5 MR. DIGIACOMO: He reported it this morning. He
6 is the employee, whose name is --

7 THE MARSHAL: Nelson Araujo.

8 MR. DIGIACOMO: He's the federal courthouse
9 employee. So he must have been working this morning.

01:57PM

10 We have no objection -- I don't see any need to
11 canvass the juror unless Mr. Whipple does.

12 MR. WHIPPLE: No.

13 THE MARSHAL: The juror informed me also, Your
14 Honor, of that.

01:57PM

15 THE COURT: It looks like he knew what his duty
16 was. And we've addressed it and put it on the record, so I
17 appreciate it.

18 We will not canvass the juror and we also know
19 from his positioning his role in the case as well.

01:58PM

20 So in this particular circumstance, I think we
21 can move on.

22 I wanted to make a record -- I don't think it
23 will be very lengthy, but why don't we just do it now so we can
24 just get going with the trial and not have to step out and make
01:58PM 25 you all think about anything else either.

1 On last Wednesday, when we completed the jury
2 selection in this case, there was a little bit of a lack of a
3 record made as to those who were excused out of the second and
4 third panels that we canvassed, also not a full complete record
01:58PM 5 as to all the no call, no shows, and how we were going to
6 handle those, and there was a bench conference related to the
7 lack of Batson challenges.

8 So I wanted to just take a minute. I took that
9 time on Wednesday after we were complete to summarize
01:58PM 10 everything, so I could just make one fast record and then I
11 could see if counsel has anything they wish to add.

12 To complete our record of jury selection before
13 we commence the trial and substance, there were 36 qualified
14 jurors, who were selected from a total of three panels of 20
01:59PM 15 that were canvassed.

16 Out of panel number one, we qualified 14
17 individuals. Out of panel number two, we qualified 11
18 individuals. And out of panel number three, we also qualified
19 11 individuals.

01:59PM 20 I won't go back over the numbers that
21 encompassed those panels because we have that already in our
22 record.

23 While I do want to make a record that out of the
24 panel number two, and I will make a record of the range of
01:59PM 25 juror numbers, included in panel number two was 21-0502 through

1 21-0653, there were a total, as I said, of 11 qualified, which
2 meant that there were -- and we had added a few individuals
3 because of some of the discussion we had with the additional
4 panel members that were available to us with jury services. So
02:00PM 5 one, two, three, four, five, six -- now we qualified 11. We
6 disqualified nine.

7 Very quickly, the nine that we disqualified
8 21-0534, Maher, was disqualified based on bias against the
9 defense, also had friends and family members who were victims
02:00PM 10 of crime and could not be objective.

11 Juror 21-0550, Honeck, was disqualified or
12 excused based on bias against the defense.

13 Juror 21-0571, Robles-Sanchez, was excused based
14 on bias against the defense, family members, victims of crime.

02:00PM 15 Juror number 21-0577, Wilde, was disqualified as
16 having worked previously in the DA's office and acquainted with
17 the District Attorney trying the case. This was all -- these
18 were all, by the way, stipulated excusals.

19 And juror 21, next in line, juror 21-0587,
02:01PM 20 Galaraga, was disqualified as, by his own testimony, could not
21 be attentive, he was on medications, he also had some
22 unavailability during the course of trial.

23 Juror 21-0594, Mott, was disqualified because he
24 testified he could not consider all four forms of punishment,
02:01PM 25 specifically, inclusive of the death penalty and life with the

1 possibility -- actually, I'm not sure which of the two he was
2 opposed to, whether it was in favor of death or in favor of
3 life with the possibility, but he could not consider all four
4 forms.

02:01PM

5 Juror 21-0602, Gimer, father recently passed
6 away, also had to travel in order to take care of funeral
7 and/or probate issues during the course of trial.

02:02PM

8 Jury 21-0632, Kirkland, was excused based on
9 having a family member recently a victim of a crime, also
10 family hardship had in another state, and was very emotional
11 during the course of the examination.

02:02PM

12 And last, but not least, out of panel number
13 two, juror 21-0639, Perkins, was excused because she could not
14 consider all forms of punishment, specifically, the death
15 penalty.

02:02PM

16 The third panel from which we selected the final
17 number of 11 jurors, that panel sequence was 21-0676 through
18 21-0871. We qualified 11. We excused the remainder nine,
19 three for specific excusal reasons and then the remainder
20 because we had qualified at that point the whole 36, but out of
21 panel number three, we excused 21-0676, Arriaza, because
22 Mr. Arriaza could not consider the death penalty.

23 We excused juror 21-0717, Parkerson, because he
24 would not consider any mitigation evidence.

02:03PM

25 Juror 21-0763, Reyes, could not consider all

1 four forms of punishment, specifically, the death penalty on
2 religious grounds.

3 And the remainder of the panel, 21-0799,
4 21-0801, 21-0811, 21-0822, 21-0843, and 21-0854, were all
02:03PM 5 excused because at that point we had qualified 36 and no longer
6 needed their services.

7 That is the completion of the record as far as
8 the jurors that were selected and those that were excused.

9 The second matter I wish to put on the record
02:03PM 10 regarding juror selection that we completed last week was that
11 we had a number of no call, no shows from the panel. A number
12 of the individuals had either forgotten or failed to call in a
13 timely manner, but did subsequently contact the Court and
14 provide reasonable excuses, and so they were excused.

02:04PM 15 But there were three remaining no call, no
16 shows. We have issued orders to show cause in the case and we
17 have set a date certain in the month of July, I don't recall,
18 it's not necessary for our record what that date is, but we
19 will be bringing forward jurors 21-0541, Kircher, 21-0869,
02:04PM 20 juror Dutcher, and 21-0881, Martinez, for orders to show cause
21 why they were not present for jury selection.

22 Last but not least, at the completion of the
23 preemption that the counsel did before we actually announced
24 the panel that would be sitting for the jury in this case, we
02:04PM 25 had a bench conference and I inquired because there were some

1 excusals by the State of individuals of the same ethnic
2 background as the defendant, whether there would be any Batson
3 challenges.

02:04PM 4 The defense indicated they had no Batson
5 challenges. As the State pointed out, there were also
6 excusals, perhaps even more so, by the defense of those in the
7 same ethnic background as the defendant; however, the Batson
8 could attach regardless if there was any concern with those
9 excusals by the State.

02:05PM 10 The defense raised none, and I just need to make
11 an official record that the Court inquired -- inquired and
12 there were no Batson challenges.

13 That's all I have as far as the jury selection
14 record to complete.

02:05PM 15 Does the State have anything to add?

16 MR. DIGIACOMO: No, Your Honor.

17 THE COURT: Does the defense have anything to
18 add?

19 MS. ERICKSON: No, Judge.

02:05PM 20 THE COURT: Okay. Are we then ready to bring
21 forward the jurors?

22 I'm being handed --

23 THE MARSHAL: I was just handed that outside by
24 one of the jurors, juror number four.

02:05PM 25 THE COURT: But he's here; right? Because he

1 just gave it to you.

2 THE MARSHAL: Yes, he's here.

3 THE COURT: I've just been handed a document by
4 my Marshal, who was provided a document by one of our jurors.

02:05PM 5 It is titled, Affidavit of Jake Brechlin. Just for the record,
6 Mr. Brechlin is juror number four. It is an affidavit that he
7 had notarized that has three things that he is duly swearing
8 and deposing and saying:

9 One, that he's over the age of 18 and a resident
02:06PM 10 of Nevada, personal knowledge of the fact and could testify if
11 called.

12 Number two is that he suffers no legal
13 disabilities, has personal knowledge of the facts.

14 And, number three, which is the key point, I am
02:06PM 15 requesting that I be excused from jury duty on July 5th, 2017,
16 due to severe financial hardship. I do not have enough hours
17 at my place of employment to be compensated for jury duty. I
18 am not able to pay my rent and bills without working.

19 I don't have any independent recollection of
02:06PM 20 Mr. Brechlin's testimony as far as hardship during the
21 canvassing. He's at the top of the trial list, jury list,
22 which tells me he was in panel number one.

23 I know we canvassed as to hardship, and at this
24 time the Court would be inclined to make a note of and perhaps
02:07PM 25 make Court's Exhibit Number 1 be this affidavit, but to

1 proceed, but I refer to counsel for any input they have with
2 regard to this juror.

3 We, obviously, have a number of alternates as
4 well.

02:07PM

5 (Sotto voce at this time.)

6 MR. DIGIACOMO: I -- I knew -- I do know that he
7 did put that -- something similar to that in his questionnaire.
8 I don't recall that he was ever asked anything about financial
9 hardship during the course of the individual questioning that
10 occurred.

02:07PM

11 I just suggest we get going and then if we
12 decide we need to canvass him for any reason. My only concern
13 is that it could become a problem at some point.

02:07PM

14 THE COURT: That's why I'd rather make a
15 decision now, either we're keeping him and he stays or he goes.

16 I mean, he's expressing a financial hardship.
17 He's expressing a significant financial hardship and the
18 inability to pay the rent and pay his bills.

02:07PM

19 I -- whether he expressed a financial hardship
20 in his questionnaire or not, you gave ample opportunity
21 throughout the questioning, I think, for everyone to raise
22 reasons and concerns why they could not serve. He's gone out
23 of his way now to do an affidavit. I would think that perhaps
24 this is just something that has come up for him subsequent to
25 being selected that he has thought better of and he's now

02:08PM

1 trying to relieve himself of jury duty, and I don't disagree
2 for that reason that he could potentially become a problem for
3 us. But I think we need to make that decision now whether we
4 cut him loose or not.

02:08PM

5 MS. ERICKSON: I questioned Mr. Brechlin. He
6 was not asked about his hardship, if I'm correct, he did put it
7 in his questionnaire.

02:08PM

8 But I didn't question him about it, because we
9 had so many people, we weren't really excusing anyone because
10 it was a financial hardship.

11 I mean, if it was a hardship to the extent that
12 they wouldn't be paying attention, they were released, but my
13 memory is that he did have it in his questionnaire, but I did
14 not question him about it.

02:08PM

15 THE COURT: Right. And I think we've
16 established, and I don't disagree, that the State didn't
17 question him, the defense didn't question him, and the Court
18 didn't question him.

02:09PM

19 We had what was in the questionnaire, but I
20 distinctly remember with that original panel saying to them is
21 there anything in the questionnaire that you need to update for
22 us, anything new that you need to tell us; and there were
23 individuals in that panel who raised their hand who indicated
24 difficulties, hardship or otherwise, that we then took them
25 into consideration.

02:09PM

1 I don't recall Mr. Brechlin bringing it up then
2 and certainly in other opportunities that he might have had to
3 bring it up, he didn't bring it up.

02:09PM 4 So, again, I appreciate that there may not have
5 been, in the record specific canvassing on his hardship further
6 than what was already known to us from the questionnaire and
7 his opportunity to add to the record if he had so chosen, which
8 he did not.

02:09PM 9 But that -- now, we move forward to today. He
10 has provided us an affidavit that he went out of his way to
11 obtain this morning, because it's signed by a notary public,
12 dated today, saying he cannot do service because of severe
13 financial hardship and that he will not be compensated and if
14 he's not compensated, he's concerned about paying his bills and
02:10PM 15 paying his rent.

16 Do we keep him or do we stipulate to allow him
17 to be released for hardship?

18 MS. ERICKSON: Could we confer with our client
19 for a moment and then make a decision?

02:10PM 20 THE COURT: Please, please.

21 (Sotto voce at this time.)

22 MR. DIGIACOMO: We might have four more
23 affidavits tomorrow.

24 THE COURT: I know. I don't disagree.

02:10PM 25 MR. DIGIACOMO: My inclination would be to

1 release him, but whatever the defense wants.

2 THE COURT: Elvis, for the record, when he gave
3 you this affidavit, did -- was he around other jurors? Do you
4 think other jurors observed it? Do you have any indication
02:10PM 5 that he talked to other jurors about it?

6 THE MARSHAL: No. I -- I didn't get any
7 indication he talked to others about it.

8 THE COURT: And he was --

9 THE MARSHAL: He was kind of quietly -- and I
02:11PM 10 just --

11 THE COURT: He just kind of gave it to you.

12 THE MARSHAL: I had him quietly talk to me and I
13 just then took it from him and told him I would --

14 THE COURT: All right. Thank you.

02:11PM 15 And, for the record, if Mr. Brechlin was
16 released, obviously, then as we all have an understanding of
17 who are serving as our alternate jurors and our alternates,
18 that would change obviously who the top 12 would be and
19 inclusive now of Mr. Pool.

02:11PM 20 MS. ERICKSON: Sorry, Judge, I'm just going
21 through my mind the two -- the differences.

22 THE COURT: You're fine.

23 MS. ERICKSON: Judge, unless something else
24 arises with Mr. Brechlin, we will keep him now.

02:12PM 25 THE COURT: Okay. I wasn't necessarily -- let

1 me just clarify this and I don't want to -- we've got to get
2 started. I wasn't necessarily leaving the decision to the
3 defense.

4 MS. ERICKSON: Oh, okay.

02:12PM

5 THE COURT: The State's inclination was to let
6 him go. The Court's inclination is to let him go. If the
7 defense's inclination is to keep him, then I think we need to,
8 I don't know, discuss it perhaps a little further and make a
9 record because at some point in time, you know, if we're going
10 to lose this juror anyway, do we lose this juror anyway?

02:13PM

11 I think, ultimately, it's the Court's call to
12 make and I'm not trying to get you all to make it.

13 MS. ERICKSON: I'm sorry, Judge.

14 THE COURT: I just -- I guess maybe can I

02:13PM

15 understand when you say your inclination is to keep him, I --
16 I'm trying to understand, I guess, why, without revealing any
17 conversations you may have just had.

18 MS. ERICKSON: Because we have -- we have a
19 defense concern about another alternate, and that would be part
20 of our -- our decision, and I did the questioning of both,
21 Mr. Brechlin and Mr. Pool, who had become part of the -- the
22 jury pool -- I mean, the jury, and I was equal on both of them.
23 They both, you know, were -- one -- Tyler is younger, Mr. Pool
24 is younger, Mr. Brechlin is young. He was a trainer. He was
25 -- I don't remember what he's employed as, but at this point,

02:13PM

1 we have a concern about the number of alternates and we don't
2 want to lose this one to move down in the order.

3 THE COURT: Does the State have anything else it
4 wishes to add? Because I know our conversation about the
02:14PM 5 inclination was sort of maybe off the record or informal.

6 Mr. Digiacomo, anything you want to add?

7 MR. DIGIACOMO: Yeah, I believe if we're going
8 to keep him, then he needs to be canvassed whether he can keep
9 his full-time and attention. If they're objecting to his
02:14PM 10 release, then the Court has to have a legal basis to release
11 him; but I have that severe concern.

12 If they have a concern with Mr. Pool, I -- I
13 might suggest to compromise to save us some time and just agree
14 that number 14 will be number 12.

02:14PM 15 MS. ERICKSON: No, we don't have a problem with
16 Mr. Pool -- we don't have a problem with Mr. Pool.

17 THE COURT: You were concerned about the number
18 of alternates that we have.

19 MS. ERICKSON: Correct.

02:14PM 20 THE COURT: I think if you're not -- and I'm not
21 trying to force the hand. Your inclination is to keep
22 Mr. Brechlin, then I think we need to canvass Mr. Brechlin at
23 this time for the Court to make a final decision. So let's
24 bring in Mr. Brechlin.

02:14PM 25 (The following proceedings were had outside the presence

1 of the jury panel but in the presence of Juror Brechlin.)

2 THE COURT: Mr. Brechlin, come on in and just
3 take a seat somewhere in that front row, so we can talk to you
4 and be able to hear you; okay? All right?

02:15PM

5 THE JUROR: Okay.

6 THE COURT: So, Mr. Brechlin, we are on the
7 record in the trial. We are ready to commence the trial and
8 the Marshal gave the Court, and the Court has now discussed
9 with counsel, an affidavit that you presented to us this

02:15PM

10 morning, that indicated your -- I believe you called it
11 yourself a severe financial hardship that would occur if you
12 were to remain in this trial.

13 I guess, the question that I have for you to
14 begin with, because I'm going to have some specific questions
15 about your ability to serve, but I guess the question I have
16 for you to begin with is, you, obviously, had the questionnaire
17 and we know that you referenced some concerns in the

02:15PM

18 questionnaire. But, I also know that when we were here in the
19 actual selection process, the Court offered the opportunity for
20 anyone to update or bring up information again that might have
21 been either addressed or not fully addressed or needed to be
22 addressed out of the questionnaire before we even got into the
23 substance. And then, there were ample opportunities, as the
24 Court would view it anyway, for these concerns to be raised and
25 we went through that selection with you on Monday. We had you

02:16PM

02:16PM

1 back on Wednesday, and now we're hearing about your hardship
2 today.

3 It is very difficult for the Court to understand
4 that this isn't just some sort of, I don't know if want to call
02:16PM 5 it, buyer's remorse, as opposed to a legitimate concern.

6 THE JUROR: So it is a legitimate concern. I've
7 never done this, so I don't know the process.

8 When we got brought back Wednesday, I thought we
9 were going to get spoken to or something.

02:16PM 10 THE COURT: You had already been spoken to, that
11 was the final selection process to determine who was going to
12 be the 16 to serve and you were one of them.

13 THE JUROR: Through my employer I actually -- I
14 got the run around, I got told two different things and I
02:17PM 15 finally got to -- to somebody in corporate, very up there in my
16 corporate office. And they said, we do reimburse you if you
17 are full-time, I am two hours under full-time, so I will not be
18 getting reimbursed by my employer.

19 So, I mean, at the time this -- you know, that
02:17PM 20 Monday I did not know that at the time. I was under the
21 assumption that I was going to, but I did not know I had to
22 become full-time in order to do that.

23 THE COURT: Okay. All right. So then, the
24 follow-up question that the Court has to ask is, you know, the
02:17PM 25 -- for every juror that gets selected, there is obviously

1 potentially some hardship involved.

2 THE JUROR: Right.

3 THE COURT: And financial hardship from missed
4 work is not in and of itself alone a basis for excusal.

02:17PM

5 So, you know, we need to understand if you can
6 tell us, and I appreciate you don't have a way to predict the
7 future, but we need to know if -- how this might actually
8 impact when you're here in the trial?

02:18PM

9 Because remember, we told you, it's going to be
10 half days most of the week, maybe not a half day, but
11 two-thirds of a day on Thursday, and then a full day on Friday.

12 THE JUROR: Uh-huh.

02:18PM

13 THE COURT: So, you know, I need to understand,
14 your -- between your work schedule, is there no other way for
15 you to pick up the hours you need around that time frame, when
16 you are basically only going to be here with us for four hours,
17 three, if not four, days of the week, and is there no other way
18 for you to pick up that time on Saturday and Sunday? Is there
19 no other way for you to make this work for yourself?

02:18PM

20 THE JUROR: Yes. So we do have set schedules.
21 I've been trying to switch shifts with people, but, you know,
22 other people need the money too.

23 Our front desk, unfortunately, we're -- we are
24 very low staffed to begin with.

02:18PM

25 THE COURT: Remind us where you work again.

1 THE JUROR: Lifetime Fitness in Summerlin.

2 THE COURT: Okay.

3 THE JUROR: My boss, she understaffs us, so
4 there isn't much, you know, payroll that has to get put out.
02:19PM 5 So, she just gets by with, you know, the minimal as possible.

6 But, I mean, I just got a paycheck June 30th,
7 that was my last paycheck. My next paycheck, which is probably
8 going to be the past two weeks will consist of four shifts, due
9 to being here. And I don't know what, you know, the future
02:19PM 10 looks like for the schedule of this trial, but most of my
11 shifts, Monday through Friday, are -- have been when I was
12 asked to come here. I do work Saturdays, but then again,
13 that's one day, and I don't know if I'm going to be able to
14 pick up shifts.

02:19PM 15 I got bills coming out the 11th that are going
16 to be getting paid with that last check that I got, which will
17 leave me with maybe a hundred dollars to spare. And then, I
18 need that to get me by, who knows, how long, four weeks or so,
19 to afford food and rent and --

02:20PM 20 THE COURT: I just have one last question for
21 you before we let you go out the door and then we'll make a
22 final determination for the record whether you will return with
23 us, is while you are here, even with those concerns, would you
24 be able to pay attention to and -- and be present in the trial?

02:20PM 25 THE JUROR: I -- I highly doubt it, just for the

1 fact that I -- I mean, I -- I like to pay my bills on time and
2 if I'm not able to, it's going to freak me out, especially
3 rent, car insurance.

02:20PM

4 THE COURT: Does the State have any questions
5 for Mr. Brechlin.

6 MR. DIGIACOMO: I don't, Judge.

7 THE COURT: Does Ms. Erickson have any questions
8 for Mr. Brechlin?

9 MS. ERICKSON: No, Judge.

02:20PM

10 THE COURT: All right. Thank you.

11 Go ahead and step out, Mr. Brechlin.

12 (The following proceedings were had in open

13 Court outside the presence of the jury panel:)

02:21PM

14 THE COURT: It is this Court's determination to
15 excuse juror number four, Jake Brechlin for hardship reasons.

16 I don't believe that he can, and will be able to
17 serve with full attention, given his concerns that it does
18 appear that he has thoroughly worked out where these hardships
19 are and they are severe.

02:21PM

20 So Mr. Brechlin will be excused. I will not
21 make any adjustments to who the panel are. That will then mean
22 that the juror seats will be moved up, and Mr. Pool will now be
23 juror number 12 and be a part of deliberations, with the three
24 remaining alternates after Mr. Pool.

02:21PM

25 The extra seat that Elvis had added will be

1 removed and we'll now have the 15 jurors that will proceed.

2 Other than that, what is our expectation of the
3 scheduling here today, opening statements?

02:22PM

4 MR. DIGIACOMO: We have three fairly short
5 witnesses. We've told them to come about 3:30.

6 THE COURT: Okay.

7 MR. DIGIACOMO: And then, when we are done with
8 those, we're through.

02:22PM

9 THE COURT: Okay. We do have to break at 5:00
10 today. I'm trying to do that every day, but I really have to
11 -- as close to 5:00 as possible, but I think that can work.

12 Opening statement estimates are, just don't
13 know?

14 MR. DIGIACOMO: Having --

02:22PM

15 MS. ERICKSON: I don't think anyone knows that.

16 THE COURT: We'll see where we are. All right.

17 MR. WHIPPLE: Not long, not long.

18 THE COURT: Let's get the jurors in and let's
19 get started.

02:22PM

20 (The following proceedings were had in open

21 Court in the presence of the jury panel:)

22 THE COURT: Go ahead, ladies and gentlemen, and
23 take your seats when you reach them, get your belongings stowed
24 away, make sure your cell phones are off or silenced.

02:23PM

25 I'll invite everyone else to have a seat. Once

1 you are all in place and ready, then we have a couple of
2 preliminary things we have to do.

3 THE MARSHAL: Ma'am, you should be in the seat
4 up here.

02:24PM

5 (Sotto voce at this time.)

6 THE COURT: I need in seat number five, Eric
7 Caffey.

8 Yeah, so here's what happened, so, that's it,
9 you are right, Mr. Caffey, you were right to begin with,

02:24PM

10 because we are -- do not have a juror, everybody has to move
11 around. So we'll move on around.

12 The front row is fine. You can have your seats.
13 It's just the middle and the first row.

14 No, now -- all right. I apologize, the front
15 row wasn't fine. Everybody move down one. Thank you.

02:24PM

16 It's okay. I blame the Marshal. It's not your
17 fault. He knows how to put people in seats. If he can't get
18 people in seats, that's not your problem.

19 Does everybody have a notepad?

02:25PM

20 (Affirmative response from the jury panel.)

21 THE COURT: Can everybody check their badge
22 numbers and make sure they correspond with their seats, one
23 through five on the top row, six through 11 in the middle row
24 -- wait, six, seven, eight, nine, and ten in the middle row,
25 and 11 through 15 in the front row. Everybody got what they

02:25PM

1 need?

2 (Affirmative response from the jury panel.)

3 THE COURT: All right. Now, I need everybody to
4 stand up and raise your right hand. There is another oath that
02:25PM 5 you now, as impaneled jurors, must take in order to proceed in
6 this trial.

7 My Clerk here to the right will administer your
8 oath right now.

9 (The jury panel was duly sworn by the Clerk of the Court.)

02:25PM 10 (Affirmative response from the jury panel.)

11 THE CLERK: Okay. All right. Thank you. Now,
12 please have your seats.

13 We're resuming the trial in the State of Nevada
14 versus Ivonne Cabrera.

02:25PM 15 I want to note the presence of counsel for the
16 State of Nevada, counsel for the defendant, Ivonne Cabrera, and
17 Ms. Cabrera.

18 I also have all jurors present at this time, who
19 will be presiding in this trial.

02:26PM 20 We have provided with you -- provided to you
21 your badges to correspond to your seats in the trial.

22 Also, notepads and pens. I will just remind you
23 that you have those notepads and pens for a couple of purposes.
24 One, to take notes throughout the course of the trial to a
02:26PM 25 degree that you are comfortable, making sure you are still

1 always paying attention to the evidence as it's being
2 presented.

3 One, is that is a method by which you can
4 communicate with the Court through the Marshal. If you have
02:26PM 5 something that occurs that you need to bring to the Marshal's
6 attention, you can write it down, always include your name and
7 your badge number for the corresponding seats that you are now
8 in.

9 And last, but not least, I'll remind you that as
02:26PM 10 we proceed with witnesses, that you will be given the
11 opportunity to ask questions of witnesses and you would use
12 those notepads and pens for that purpose as well, and we'll
13 call upon you at the end of the questioning by the counsel to
14 see if there are any questions from jurors. If you can,
02:26PM 15 please, have that question or questions prepared, again, with
16 your name and badge number on it and that will just expedite
17 the process.

18 You can use the whole piece of paper, no need to
19 tear off little portions and pieces, because whatever question
02:27PM 20 you do give us, if any, we have to put into the court record.
21 So, the whole piece of paper, you can, please, use that.

22 At this time, as I've indicated to you
23 previously during the jury selection process, there is a
24 charging document upon which Ms. Cabrera is here today to face
02:27PM 25 the charges in this trial.

1 It is just that, a charging document. It is not
2 any evidence of the information that it contains. But, for
3 purposes of this trial, my clerk will now read the charging
4 document to you in its entirety, and then we will begin with
02:27PM 5 the opening statements of counsel.

6 (The Clerk of the Court read the Information to the Jury in
7 open court.)

8 THE COURT: Before you start, I corrected the
9 Clerk because there is a word that follows malice that the
02:34PM 10 Clerk is pronouncing as malice afterthought and it is actually
11 malice aforethought, which is a different concept. So, go
12 ahead and proceed.

13 (The Clerk of the Court read the Information
14 to the Jury in open court.)

02:35PM 15 THE COURT: Again, I will just remind the jurors
16 that as that Information was read -- or as the charging
17 document was read to you, that charging document will be
18 included in its entirety in your jury instructions that you
19 receive from the Court at the end of trial. So, you will have
02:36PM 20 them to refer to, if needed.

21 And, of course, all of the instructions on how
22 to actually do your duty as jurors in relation to those charges
23 and weighing your evidence as you find the facts to be and
24 apply the instructions, will also be given to you by the Court.
02:36PM 25 So, I just want you to understand that.

1 At this time, I will call upon the State to make
2 their opening statement.

3 MR. DIGIACOMO: Thank you, Your Honor.

4 THE COURT: If your computer is up and running.

02:36PM 5 Mine is not.

6 MR. DIGIACOMO: It's going to be in a second.

7 Stop me if it doesn't come up.

8 THE COURT: Okay.

9 MR. DIGIACOMO: Is it running?

02:36PM 10 THE COURT: Nope.

11 MR. DIGIACOMO: My dear God.

12 THE COURT: I know. We've got to go through

13 that same exercise every time when it gets taken down,

14 unfortunately. Something about the wiring. I'm sorry.

02:37PM 15 If we can't fix it quickly, though, I can view
16 it on my reporter's screen.

17 MR. DIGIACOMO: It will take me a few minutes, I
18 have to pull it all the way down and pull it back up. It's up
19 to you, Judge.

02:37PM 20 THE COURT: Go ahead and proceed.

21 MR. DIGIACOMO: Thank you.

22 OPENING STATEMENT

23 MR. DIGIACOMO: President Teddy Roosevelt once
24 said: No one is above the law, no one is below it, we do not
02:37PM 25 ask someone's permission when we ask them to follow it.

1 This case has all three of those concepts
2 contained within it.

3 The case is about the victimization of three --
4 four individuals: Ashley Wantland, James Headrick, Erik
02:37PM 5 Quezada Morales and Melissa Marin.

6 As we sort of discussed in our opening -- or in
7 our jury selection, they were not living the type of life that
8 you would want your children, your friends, your family members
9 to live.

02:37PM 10 They're all involved in use of narcotics and
11 they're all doing things that they shouldn't be doing in our
12 community.

13 But, on April 26th, 2012, at a little before
14 6 o'clock in the morning, they are truly the purest of victims.

02:38PM 15 They are people who are home, asleep, within a
16 locked apartment when they are executed by Jose Gonzales and
17 Ivonne Cabrera.

18 And I don't think those facts are going to be
19 completely disputed, only Ms. Cabrera's behavior during the
02:38PM 20 crime is really what this trial is going to be about.

21 But, in order to understand it, you're going to
22 have to understand a little bit about the background of what
23 happened this morning at this apartment.

24 This apartment is 2039 Webster, Apartment C,
02:38PM 25 it's a small apartment complex. It's sort of a multiple

1 four-plexes in an area at Civic Center and Lake Mead.

2 The apartment is actually owned -- owned, rented
3 by a guy named, Miguel Villeja. Miguel Villeja won't be a part
4 of this case because about ten days before April 26th, he went
02:39PM 5 to jail and he was in jail all the way through the crime, but
6 it's his apartment.

7 This apartment is, if -- if you go through this
8 front door, you're walking into the living room right here of
9 this apartment (indicating).

02:39PM 10 Ashley and Jane lived in the northeast bedroom.
11 They had been living there quite a while, several weeks, maybe
12 even several months.

13 Melissa and Erik had just moved into the
14 southeast bedroom a couple days before the crime occurred.

02:39PM 15 They are all sleeping in their bed at 5:50 in
16 the morning, Ashley and James in one bed in the north, Erik and
17 Melissa sleeping in their bed in the south.

18 What Ashley will tell you the first thing she
19 hears is James getting up and he makes some statement to her
02:39PM 20 related to Chinola must have brought the car back and he walks
21 to the door.

22 When he opens the door, standing at that door is
23 Ivonne Cabrera. She gets a short glimpse of Ivonne's face and
24 then as Ivonne backs out, the guy that she met one time before,
02:40PM 25 Smokey walks into the room.

1 As he walks in, James starts backing up. He
2 says something to James about a debit card or an unemployment
3 card, and before James can get an answer out, he draws a semi
4 automatic firearm, and he shoots James three times. Then, he
02:40PM 5 turns, while she's still lying in bed and shoots Ashley twice.

6 James has a wound that goes in his stomach, out
7 his back (indicating), he's got a wound right on the top of his
8 head (indicating), and he has a fragmentary wound to his right
9 hand.

02:40PM 10 Ashley is the first miracle in this case. She
11 has a gunshot wound that enters her neck, but lodges in her
12 tongue and never makes it to her brain. She has another
13 gunshot wound that goes through the right arm, through the
14 right breast, and then fragments through her body and shoots
02:41PM 15 out numerous holes on the left side of her body (indicating).

16 She lives and, eventually, is able to describe
17 to you what happened to her that morning.

18 As Mr. Gonzales is in the process of shooting
19 Ashley and James, Ivonne Cabrera is down here (indicating).

02:41PM 20 And what you will hear from Melissa is the first thing I hear
21 is someone trying to break into the room. And Melissa will
22 tell you this house was locked up, so I hear someone trying to
23 get into my bedroom and I know there is a problem.

24 The next thing she hears is someone knocking on
02:41PM 25 the door saying, hey, it's Chinola, open up. And you will

1 learn that Ivonne Cabrera is known on the street as Chinola and
2 she recognizes Ivonne's voice because she knows Ivonne.

3 She tells Erik something's wrong and don't open
4 it. But Erik gets out of bed, he walks to the door, he opens
02:42PM 5 the door, and then he walks right back to bed and lays back
6 down in the bed.

7 As he gets to the door and opens it, Melissa
8 says she hears the first set of shots happening in the bedroom
9 up north. This time, Ivonne stayed for the handy work because
02:42PM 10 she enters the room, Smokey enters the room, Smokey shoots Erik
11 laying on that bed three times, turns and shoots Melissa twice.

12 Erik never moved, lying dead on the bed.
13 Melissa, once again, miracle number two in this case, she's got
14 a gunshot wound that goes through her back and out the left
02:42PM 15 side of her body and another one that comes in through the left
16 side of her breast, right through her center mass, out the left
17 side of her body, but somehow she's able to survive
18 (indicating).

19 After that, Ms. Cabrera, Smokey, they run off
02:43PM 20 together.

21 Police arrive on scene and the first cop on
22 scene takes these pictures as he's trying to get information
23 from them.

24 Both Melissa and Ashley are able to tell the
02:43PM 25 police, hey, it's a baldheaded guy that we know as Smokey and

1 it's Chinola.

2 The first cop is going to tell you, I didn't
3 have any idea who Chinola was, I never heard that as a nickname
4 before.

02:43PM 5 And so, the -- he writes it down as, hey, the
6 baldheaded guy named Smokey and he's with a female accomplice,
7 and they go looking.

8 Well, detectives get there and they get the name
9 Ivonne Cabrera and within about eight to ten hours, Ms. Cabrera
02:43PM 10 is captured as she's loading a car trying to flee town.

11 I told you Melissa would say the house is locked
12 up and she's right because the point of entry is actually the
13 bathroom in this case.

14 The window was normally closed, has a wire where
02:44PM 15 the ceiling cable or electricity or something, but the wire --
16 but the window was normally closed.

17 When the police get there, the window's open.
18 The rod to the bathroom shower curtain is down in the tub.
19 There was a crowbar on the floor. And on the tub is the
02:44PM 20 fingerprints of Jose Smokey Gonzales.

21 The facts in this case are not going to be very
22 much in dispute. You heard sort of the defense say it, she was
23 there, but she didn't know what was going to happen.

24 But, when you hear about the motive, the poor
02:44PM 25 motive I would say, in this case, you will realize that all

1 roads run back to Ivonne Cabrera, that while Smokey Gonzalez,
2 may have been holding a nine-millimeter semiautomatic as his
3 weapon, Smokey is merely just Ivonne Cabrera's weapon.

02:45PM 4 I told you that Miguel went to jail about ten
5 days before. When he went to jail, he asked his roommate,
6 Ashley, and he actually releases his debit card, it's an
7 unemployment card from the State of Nevada. Apparently, that's
8 how you get your unemployment benefits these days.

02:45PM 9 He releases that card to Ashley in order for
10 Ashley to pay the rent, and her and James use it to pay the
11 rent, and when Smokey walks through the door, what he's
12 referencing is that debit card.

02:45PM 13 A few days before the homicide occurred,
14 Chinola, her girlfriend, a woman by the name of Loka, James and
15 Ashley decided to, for lack of a better term, steal. They go
16 to WalMart, James will go in, he'd steal some products, and
17 then the other people in the car would go back, return the
18 products and get either money or a card for WalMart, and that's
19 how they would earn cash to supply their dope habit.

02:46PM 20 What you will hear is that a few days before the
21 four of them drove around and Chinola's driving them around to
22 do this, and at the end of their little capering, Chinola is of
23 the opinion that she didn't get paid enough money or dope from
24 their little activity and she's mad at James and she's mad at
02:46PM 25 Ashley.

1 You'll also hear a story about this car
2 (indicating), gray Taurus.

3 So, sometime a few days before the homicide,
4 Erik and a guy named, Trigger, borrow a car that Chinola had
02:46PM 5 access to and they get into a car accident.

6 So, Erik then borrows a car from somebody else,
7 this gray Taurus and Chinola wants to use it, so he loans it to
8 her. And on the day before the homicide, he's asking Chinola
9 for the car back.

02:47PM 10 And they're sending text messages to Chinola
11 about this particular car, saying, hey, can we get the car
12 back? Melissa's got to get to the hospital.

13 And he sends a text in Spanish to Chinola,
14 saying: What's up, Chinola? I need the car. There's no
02:47PM 15 problem, but Melissa since a while ago got sick. I have to
16 take her to the hospital, now please answer me.

17 It's a loose translation of his Spanish texting
18 to Chinola.

19 In response to that text, from Chinola's phone
02:47PM 20 back to the phone that Erik was using is in English: Chinola
21 is sleeping. I'm Smokey. Do you have a problem?

22 Erik doesn't speak English, so then Melissa gets
23 on the phone: Hey, it's Melissa. I need the car, I have to be
24 in the hospital tomorrow in the morning. Chinola knows that.

02:47PM 25 And so, when they show up the next morning at

1 5:50, or 6 o'clock in the morning, everyone thinks that the car
2 is just being returned by Chinola.

3 But, you learn about the motive the day before
4 the murder when Ashley goes over to a guy named Old Man Bill's
02:48PM 5 house. She's over there for some reason and Chinola's present,
6 and that's when Chinola starts telling Ashley, hey, James
7 ripped us off, we didn't get nearly enough dope for driving
8 around and stealing all that money from WalMart.

9 And I want the debit card and Loka is pissed off
02:48PM 10 she didn't get what she wanted out of this driving around to
11 WalMart.

12 And the last thing she says to Ashley is, Loka
13 is going to get James.

14 Ashley will tell you she felt threatened, she
02:48PM 15 was scared and she went home and she talked to Melissa, James,
16 and Erik. And there was a decision at that point, okay, look,
17 we're going to get the car back from Chinola, but we're not
18 really going to be friends with her anymore because we're
19 really concerned about her behavior.

02:49PM 20 Well, guess what? Smokey turns out to be Loka's
21 brother. And what you will hear is that Smokey doesn't know
22 Erik, he doesn't know James, he met Ashley on that one occasion
23 when they were doing the WalMart thing. Ashley went back to a
24 house and saw Smokey there, but didn't really get introduced to
02:49PM 25 him and he doesn't really know Melissa. She saw him one time

1 in the back of the car when she got introduced to him as Loka's
2 brother.

3 He has no motive to shoot anybody in this case.
4 The person who's responsible for the unspeakable act of evil
02:49PM 5 that occurred in that apartment that morning, is this woman,
6 Ivonne Cabrera (indicating).

7 She went over there, she assisted Smokey in to
8 breaking into that house. She knocked on the doors to lure the
9 victims to open those doors, and she stood there and watched
02:50PM 10 him shoot all four of them.

11 And because of that at the end of this case,
12 we're going to ask you to hold Ivonne Cabrera responsible for
13 her behavior. Thank you.

14 THE COURT: Thank you.

02:50PM 15 Mr. Whipple, do we need a moment to change over
16 to --

17 MR. WHIPPLE: I'm ready to go, Your Honor. As
18 soon as it flips over.

19 THE COURT: You are going to be using the Elmo;
02:50PM 20 correct?

21 MR. WHIPPLE: With the Court's permission, yes.

22 THE COURT: Yes, then we'll switch over to the
23 doc camera.

24 I said the Elmo. You are going to be using
02:50PM 25 this?

1 MR. WHIPPLE: Yes.

2 THE COURT: I'm sorry. We need to switch over
3 to right law then. Renee, sorry for my confusion. There we
4 are.

02:50PM 5 You may proceed.

6 MR. WHIPPLE: Thank you, Your Honor.

7 OPENING STATEMENT

8 MR. WHIPPLE: A couple house cleaning -- or
9 housekeeping items, folks, we're -- I want to wish you a happy
02:51PM 10 belated 4th of July, I hope you enjoyed your Independence Day.
11 Thank you for being back here.

12 Second of all, I want to congratulate you for
13 being here, we spent three days going through a total of 60
14 jurors and between the two sides we believed that you folks
02:51PM 15 were the ones who would be most fair and most objective of the
16 folks who paid attention to this case.

17 As I stand here right now, one thing I'm going
18 to ask you consistently is that you listen to all the evidence
19 and that you be fair.

02:51PM 20 I believe when the evidence comes out and you
21 hear all the evidence, you will recognize my client did nothing
22 wrong.

23 Now, like Mr. Digiacomo said, this is not a case
24 of who done it. This is not, we're going to have to go out and
02:51PM 25 look at fingerprints or DNA to make a good determination who

1 did this horrible thing.

2 This is not a case of how it happened.

3 What happened in this case was a senseless
4 murder of Erik Morales and James Headrick. It was a senseless
02:51PM 5 murder of Melissa Marin and Ashley Wantland. And we know who
6 did it, it was a horrible senseless crime committed by an
7 individual named Jose Gonzales, Smokey.

8 Now, you are going to hear about motives and you
9 are going to hear a lot about Mr. Gonzales, Smokey. But, you
02:52PM 10 are going to hear one thing that's consistent across all
11 parties and that is he's a very violent and dangerous man.

12 And you're going to hear that he's already
13 accepted responsibility.

14 MR. DIGIACOMO: Judge, I apologize, but I
02:52PM 15 object. That's improper.

16 MR. WHIPPLE: It's goes to the facts,
17 Your Honor.

18 THE COURT: May I have counsel at the bench,
19 please.

02:52PM 20 (Sidebar conference at bench, not reported.)

21 THE COURT: All right. The objection is
22 sustained. The Judgment of Conviction was asked to be removed.

23 You are asked at this point to disregard that
24 Judgment of Conviction and whether or not that would be
02:55PM 25 appropriate evidence to be viewed by the Court -- by the jurors

1 would be determined by the Court at a later date.

2 However, Mr. Whipple, you may continue and you
3 may make commentary with respect to the testimony of
4 Mr. Gonzales should he be called.

02:55PM 5 MR. WHIPPLE: And his sentence, as well,
6 Your Honor?

7 THE COURT: I'm sorry?

8 MR. WHIPPLE: And his sentence, the fact that
9 he's pled, that's all admissible?

02:55PM 10 THE COURT: You may make reference to what you
11 expect his testimony to be.

12 MR. WHIPPLE: Yeah, okay.

13 So Smokey, as anticipated, he'll testify, will
14 come in here and tell you that he, in fact, did that alone,
02:55PM 15 that he, in fact, has been held accountable, and that he, in
16 fact, has pled guilty and been sentenced, and subject to life
17 in prison, where he should die behind bars. He has a
18 possibility of parole in 56 years, but at his age, it's
19 unlikely that he'll ever see it. That's part of the evidence
02:56PM 20 in this case.

21 But, folks, that's not why we're here today.
22 Okay?

23 Why we're here today is regarding Ms. Cabrera,
24 that's why we're here.

02:56PM 25 I represent Ms. Cabrera, I do not represent

1 Smokey.

2 And here's the thing, Mr. Digiacomo has it
3 right, it comes down to why Ms. Cabrera was out there on
4 April 26th; okay? Why?

02:56PM

5 That's the issue.

6 We recognize that she was there. And I'm going
7 to explain to you what the testimony is going to be and you'll
8 understand why she was there in a few minutes.

02:56PM

9 She was there because she had no choice. Mere
10 presence is an instruction that you will hear.

11 She was there not by her choice, but by
12 Smokey's, because this is what the testimony will show.

02:57PM

13 On April 26th, 2012, about 5 o'clock in the
14 morning, she got a text from a young woman named, Loka. Loka
15 was Smokey's sister. She communicates with her and says, hey,
16 would you come pick me up?

17 Ivonne, Ms. Cabrera, said, sure, I'll come pick
18 you up. She drives over and picks up Loka.

02:57PM

19 Now, this is just an anticipated girl's getting
20 together and having a day together, having some fun.

21 She didn't anticipate what happened.

02:57PM

22 When she got there, she found Loka, some other
23 folks, but she also ran into Smokey. And as Loka said, we have
24 a change of plans, and Smokey got in the car, in the passenger
25 seat, with Ivonne.

1 And you're going to hear that this is an
2 individual who is full of violence, who is acting crazy, and he
3 had a gun and he was waving it.

4 And he took that gun and he pointed it at Ivonne
02:58PM 5 and he told her where to go.

6 He was in the car with the gun acting crazy,
7 acting violent. She's going to tell you about the red eyes,
8 how out of ordinary he was looking. Again, she -- and you're
9 going to learn that this gentleman was not wildly known, he had
02:58PM 10 been in custody himself, had been recently released.

11 And he directed them to 2039 Webster. She drove
12 to 2039 Webster because he had a gun and he was pointing at
13 her. He was sitting in the passenger seat and he told them
14 where to go, they went there.

02:58PM 15 This is a little duplex. It's -- let's see,
16 this is Apartment C. There's some apartments across the little
17 sidewalk from it. It's a very small area (indicating).

18 It's important for us to convey to you how --
19 the size of this and the way it's structured, so you will under
02:59PM 20 what happened next.

21 Smokey had the gun, he directed Ivonne to this
22 apartment, and together the both of them, the two of them
23 knocked on the door. It was 5:30, 5:45 in the morning,
24 everybody was asleep. Nobody answered.

02:59PM 25 So what happened next? Smokey then directed

1 Ivonne and himself around to the back.

2 Now, I want you to recognize that the distances
3 in here because there's going to be a suggestion by the State
4 that she could have ran away or she could have somehow slipped
02:59PM 5 away at some point. But, this complex was like a dead end.
6 The way out was the same way that was in. In order to leave,
7 you had to go basically the same way you came in to the
8 complex.

9 You're going to hear that he forced her around
02:59PM 10 here, that he went around the back of it and look at some of
11 the locations, folks. Again, it's a dead end, there's no way
12 you can flee. There's no place you can run.

13 You're going to hear that he tried to go in the
14 sliding glass door, but it was locked, and all of a sudden, he
03:00PM 15 gets this bed frame and jumps through the bathroom window.

16 Again, it's not like she could run away.

17 So, what did she do when he jumped in the
18 window? Well, she started to back out, back out that same
19 place that she had come in.

03:00PM 20 What you are going to learn is that he walked
21 from the bathroom into the front room or to the front door,
22 opened the front door and met her in the front lawn with a gun
23 pointing at her again, because he knew that he was going to use
24 her in order to get access to those individuals.

03:00PM 25 Ms. Cabrera was trying to leave. He caught her

1 at the front door as she was trying to go to the car, the same
2 way out that she came in. He dragged her into the -- into the
3 house after he locked the front door.

03:01PM 4 You're going to hear testimony how these folks,
5 once they heard the commotion of somebody coming through the
6 bathroom door, they heard the breaking, they -- there was
7 sounds coming out, who's there, what's going on. And he had
8 Ivonne come up to the door with the gun at her head and
9 directed her by waving it to respond to those questions.

03:01PM 10 The gun that he used to kill those two
11 individuals and injure those two women was the same gun that he
12 had at Ivonne's head, directing her as to what to do
13 (demonstrating).

03:01PM 14 She did say, it's me, Chinola. You'll have the
15 opportunity to hear that that was said. But, again, the
16 question is not what happened, but why it happened?

03:02PM 17 It happened because this brutal man, with these
18 violent tendencies, who had the heart to take the life of these
19 two innocent men, was pointing that gun directly at Ivonne
20 Cabrera and dictating what she did.

21 After the shooting, they left. He took Ivonne
22 and kidnapped her. He stole her away for over a day. For over
23 a day, she thought that she was going to be killed, she thought
24 that she was the next one.

03:02PM 25 You're going to hear about this comment that

1 there should be no witnesses as to what happened, and she knew
2 that she was the next one that was going to go down.

3 She was terrified. She was scared, and she
4 didn't know how to handle it or what to do.

03:02PM 5 Eventually, he let her -- he released her. She
6 was initially -- immediately came in to contact with law
7 enforcement and immediately gave them a statement.

8 She immediately cooperated with law enforcement.
9 She immediately took a picture and identified Smokey as the
03:02PM 10 person who was the killer.

11 That is information that you need in order to
12 make a decision in this case.

13 There's two sides, and the only way that you can
14 be fair is if you listen to all the evidence.

03:03PM 15 I'm asking you to be objective, unbiased and
16 fair and wait until you hear all of the evidence in this case.
17 That's what you have sworn to do. That's what you are chosen
18 to do, and that's what you have to do in order to do your job
19 correctly.

03:03PM 20 Ms. Cabrera did nothing wrong. She was forced
21 to be involved with accidents and incidents that she saw, she
22 is presumed innocent.

23 The State of Nevada has the presumption of
24 beyond a reasonable doubt, or of proving all elements, and I
03:03PM 25 ask that after you have the opportunity to hear all the

1 evidence in this case, you objectively, the information that
2 you will receive, that you will return to Ms. Cabrera and
3 myself in this action the only verdict that's supported by the
4 evidence in this case, and that is a verdict of not guilty.

03:04PM

5 And we appreciate your time.

6 THE COURT: Thank you, Mr. Whipple.

7 What we'll do is, we'll take a brief recess at
8 this time and then we will begin with State's witnesses.

9 (The jury was admonished by the Court.)

03:04PM

10 We'll break for about ten minutes, return at
11 3:15. See you then. Please leave your notepads on your chair.

12 THE MARSHAL: All rise.

13 (The following proceedings were had in open

14 Court outside the presence of the jury panel:)

03:05PM

15 THE COURT: This will be about the time each day
16 that my reporters will be switching out as well, so we'll have
17 a few minutes for them to do that also. All right. See you
18 shortly.

19 MS. ERICKSON: Thank you, Judge.

03:05PM

20 (Recess in proceedings.)

21 (Proceedings concluded.)

22 * * * * *

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

24

25

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Aug 02 2018 10:32 a.m.
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 IV

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

Patricia M. Erickson, Esq.
Nevada Bar No. 3506
601 South Tenth St., Suite 108
Las Vegas, Nevada 89101
(702) 388-1055
pme@pmericksonlaw.com

Attorney for Appellant

Steven B. Wolfson
Nevada Bar No. 1565
Clark County District Attorney
200 Lewis Avenue, Third Floor
Las Vegas, Nevada 89155
(702) 671-2500

Attorney for Respondent

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12/26/2016 11:46:26 AM

TRAN
CASE NO. C-12-283700-1
DEPT. NO. 25



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
IVONNE CABRERA,)
)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT
OF
STATUS CHECK ON TRIAL
READINESS
250 RULE

BEFORE THE HONORABLE KATHLEEN DELANEY
DISTRICT COURT JUDGE

DATED: WEDNESDAY, JUNE 22, 2016

REPORTED BY: SHARON HOWARD, C.C.R. NO. 745

1 APPEARANCES:

2 For the State: MARC DIGIACOMO, ESQ.

3

4 For the Defendant: PATRICIA ERICKSON, ESQ.

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1 LAS VEGAS, NEVADA; WEDNESDAY, JUNE 22, 2016

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

3 * * * * *

4

5 THE COURT: Page 2, State of Nevada vs. Ivonne
6 Cabrera. I have been handed an opposition. I haven't had a
7 chance to look at it.

8 MS. ERICKSON: I was sent it by email yesterday
9 morning.

10 THE COURT: The opposition.

11 MS. ERICKSON: Yes. I received --

12 THE COURT: I was informed when I left court
13 yesterday there had been no opposition received, so I
14 apologize for whatever the miscommunication is. I don't
15 know why it would be your responsibility to provide us the
16 opposition, Ms. Erickson, but I appreciate you took on that
17 responsibility, but I have not read it yet.

18 MS. ERICKSON: Just for the record. I sent it
19 yesterday at 10:23 a.m. I have 3 receipts from everybody.

20 MR. DIGIACOMO: I believe she's discussing the
21 opposition to -- her opposition, not the motion to continue
22 an opposition to be filed.

23 THE COURT: I'm talking --

24 MR. DIGIACOMO: I have not filed an opposition.

25 THE COURT: That's what I was talking about, Ms.

1 Erickson.

2 MS. ERICKSON: I'm confused.

3 THE COURT: Listen, my primarily focus today is
4 whether or not we're continuing trial. If we're continuing
5 trial then these things will be addresses, but perhaps not
6 this morning -- or maybe this morning.

7 But, no, I have that in my hand but in the original
8 stamp today. I knew you were going to be original file
9 stamping these matters today, while they were not filed
10 sooner.

11 The State's position with regard to the motion to
12 continue trial, you want to orally argue today.

13 MR. DIGIACOMO: Yes.

14 Yesterday afternoon I received and reviewed their
15 motion to continue. Normally, after 4 years, I would be
16 standing here losing my mind about the fact that an expert
17 who is subject to subpoena -- I don't care if he has
18 vacation plans. He needs to be present. I have a greater
19 concern though, and that is the response to my motion in
20 limine related to the defense of duress. They specifically
21 say it's our only defense, and we'll be ineffective if we
22 can't present it. I'm pretty confident that when we are
23 done arguing the motion in limine they won't be allowed to
24 present that defense. At the very least to the two counts
25 of murder that are charged in this case.

1 I have deep concerns about the effectiveness if we
2 were to proceed to trial within 2 weeks. So I'm in a
3 quandary and would love to object to this motion to
4 continue, but I have deep concerns about the representations
5 that have been made concerning the defense of Ms. Cabrera.

6 THE COURT: All right.

7 The best way I can think of to address this matter
8 is if you want to make an oral argument here today and let
9 the court take it under advisement and reach a decision as
10 soon as possible because I'm not going to be in a position
11 to have read everything that has -- I have read what has
12 been submitted up to this point in terms of what was
13 forthcoming as far as the motion to continue, and then of
14 course the State opposed with the motion in limine to
15 preclude the duress defense. I've got the opposition that
16 just came in. We're now hearing argument, so if you want to
17 focus on that issue.

18 I understand why Mr. DiGiacomo, I think, not
19 having -- let me back up.

20 When we met on Monday in chambers my understanding --
21 And I'm not intending this as criticism, I'm just intending
22 this as to what the court's expectation was, was that that
23 day, Ms. Erickson, you would provide to Mr. DiGiacomo the
24 information related to your motion to continue, so that he
25 had it so that he had an opportunity, potentially, to

1 respond in writing before we came back today. We saw that
2 there was communication through my clerk that informed me
3 there's communication with you and Mr. DiGoacomo as of
4 yesterday afternoon about the motion to continue, so I
5 couldn't be sure when I came in here today, given the time
6 frame we're looking at, given the circumstances, I don't
7 disagree with you, Mr. DiGiacomo, people subject to subpoena
8 should be subject to subpoena. I also know the
9 practicalities of some of the circumstances, the holidays
10 and things. We started a little later in the week, because
11 I know everybody has time constraints that impacts on them,
12 including the court. So I wasn't sure if we were going to
13 come in here today and recognize that perhaps there was not
14 a strenuous objection being made to continue it versus what
15 we want to focus on. Not knowing in advance whether we want
16 to focus on this, I sort of had my head in the, I didn't see
17 any opposition in writing. I'm not sure if we'll have an
18 opposition. Maybe we are continuing this and addressing
19 this another time.

20 Now knowing that the intent here is to focus on the
21 motion in limine to see if duress remains in the guilt
22 phase, if you will. I'd spoken with you, Ms. Erickson,
23 Monday about the possibility that this was evidence we
24 needed this witness because it also became an issue that
25 needed to be addressed in the mitigation phase, the penalty

1 phase. So we have a lot of moving parts here.

2 I will tell you in all honestly, I'm not going to make
3 a decision in this calendar at this moment in time on the
4 duress issue because it is something I need to look at
5 further. So if we're not going to be looking at a
6 continuance, in terms of a form of agreement, I'll take your
7 arguments and I'll issue my decision as soon as I can.
8 Hopefully later today.

9 MS. ERICKSON: Just so you know, Judge, I did send
10 a copy of the motion to continue trial to everyone on the
11 20th, Monday, at 4:57. That was the earliest, given my
12 calendar already, that I could finalize it.

13 THE COURT: I didn't have any record of that. I
14 saw the communications -- I didn't see any of it, but my
15 clerk informed me of the communications from yesterday
16 afternoon. And as Mr. DiGiacomo is saying here in court he
17 got it yesterday afternoon. So that tied into what I had
18 seen of the communications.

19 MS. ERICKSON: Well, the motion to continue was
20 served on everyone on Monday, as you requested, at 4:57. I
21 have the read receipts from the prosecutor. Hetty Wong saw
22 it at 4:58. Mr. DiGiacomo did not read it until the next
23 day, but it was with the prosecution as you wanted on June
24 20th.

25 THE COURT: Mr. DiGiacomo, anything you want to

1 add to the pleadings that have been submitted on the motion
2 in limine.

3 MR. DIGIACOMO: Yes.

4 The response from the defense on we can present
5 the duress defense to murder is sort of multiple fold. The
6 first is we're entitled to present a defense. She's right.
7 She's entitled to present a defense. But she is not
8 entitled to have a defense.

9 The fact of the matter is duress is just not a
10 defense to murder. There's a statutory authority that says
11 it's not a defense to murder.

12 Their second argument is, well, all the cases you cite
13 to duress is not a defense to murder, in those cases those
14 individuals are the actual direct perpetrators and not the
15 aider or abettors. She failed to tell the court that every
16 court that's considered the aiding and abetting analysis has
17 found that duress is not an a defense to aiding and
18 abetting.

19 In fact, she specifically references the Anderson case.
20 And 3 years after Anderson came out the California Supreme
21 Court in addressing Anderson in an aiding and abetting
22 situation in People vs. Vieira, which is 35 Cal 4th, 464, a
23 2005 case specifically said, no. What we meant in Anderson
24 is it does not apply to aiding and abetting, which is
25 consistent with every other jurisdiction I was able to

1 locate last night.

2 The question in this case is could it possibly be a
3 defense to the 2 attempt murder counts and the burglary
4 count. That question I don't honestly know what the answer
5 is because the statute reads that the act is excused so long
6 as there is not a murder charge. That's basically how the
7 statute reads. In this case the acts, the aiding and
8 abetting acts for murder counts are the same aiding and
9 abetting counts for the attempt murder charges. And it's
10 the same acts that are the burglary charges, because the
11 burglary is only alleged as an entry with the intent to
12 commit murder.

13 So in this particular case I guess theoretically you
14 could submit to the jury I'm not guilty of all counts, but
15 the murder, under a duress theory. But you cannot submit to
16 the jury that I'm not guilty of the murder.

17 Now is there some authority, some minority rule that
18 the aiding and abetting -- sorry, the felony murder could be
19 defended against by way of duress. There is some authority
20 for that out there, but in those situations it made you not
21 guilty of the underlying felony; thus, you can't be held
22 liable by the felony murder rule.

23 In this case the only felony that's alleged in this
24 case is burglary with intent to commit murder. So in that
25 sense the burglary count does not make it a felony murder

1 rule because either way we're going to have to establish the
2 intent to commit murder.

3 So in this case this is my general concern is
4 theoretically you could submit to this jury conspiracy to
5 commit murder, burglary, attempt murder and attempt murder
6 can be defended by duress. But Counts (3) and (5), the two
7 murder counts cannot be defended by duress. And I can't
8 comprehend what effective assistance that would be in
9 submitting your client to two counts and hoping to avoid
10 conviction on the 4 -- 5 other counts that are associated
11 with the case.

12 The law does not allow her to present duress to defend
13 against these murder charges. Thus, I'm not sure that there
14 is being a defense presented in the case.

15 MS. ERICKSON: Well, of course that all relies
16 upon how this court rules. But in the case of La Plure the
17 rational for the choice of evils, which is why you cannot
18 have duress as a defense to murder, is because the person
19 killed, this co-defendant, he killed because the
20 co-defendant was going to kill, or he actually killed.
21 There's no idea with regard to, you know -- that's why it's
22 the lesser of the two evils to let the person that's going
23 to be killed say, okay, kill me.

24 When you are an aider and abettor, you have no intent
25 for some to get murdered and have no way to get away because

1 of duress, you cannot be precluded from presenting that
2 decision. No, she never had a gun. She never shot anyone.
3 She never intended anyone to die So the rational of choice
4 of evils doesn't work for the non-killer. How is it that
5 somebody who didn't kill, didn't shoot, didn't intend for
6 anyone to be die, be required to stand in court and say I
7 should have just died rather than having Mr. Gonzales shoot
8 down people that I never thought would happen. It just
9 doesn't work like that. And that's the reason why I
10 challenged it as a constitutional, federal 6th and 14th
11 Amendment right to present a defense.

12 The State has provided no authority that you can't -- I
13 can't defend against burglary, attempt murder, and
14 conspiracy to murder. Those are not murder charges. The
15 statute clearly says that for every other crime, but the
16 capital murder charge, you get to have a defense of duress.
17 Because it all has specific intent. You can't just say that
18 this is -- well, it's all a murder. It's not. It's all a
19 murder and just charge her with murder.

20 THE COURT: I think Mr. DiGiacomo's point, and
21 well taken, is if you have, this is the only defense there
22 is, and this defense is only available if the court were to
23 so find to these other Counts, not the 3 and 5 counts, then
24 what are we really looking at here in terms of this case.

25 MS. ERICKSON: They charged it that way. And

1 duress is a defense to every other charge. That's not my
2 problem on how they chose to charge, but when the defense is
3 by statute and authority available to every other crime that
4 she has been charged with, you get a jury instruction on
5 duress. The court can say, well, you can't use duress as a
6 defense. And I can certainly argue that she -- no specific
7 intent, and that she did not willfully commit any of these
8 crimes. There is a low threshold, but willfully behavior
9 has to be proven in all of the charges; therefore, duress
10 should be available, is available. No law from them saying
11 it's not. In our statute it absolutely is available to
12 every other crime, but the capital charged one.

13 THE COURT: Mr. DiGiacomo any final argument.

14 MR. DIGIACOMO: With regard?

15 THE COURT: Sorry. Ms. Erickson, go ahead.

16 MS. ERICKSON: With regard to the motion to
17 continue, as I said, I didn't write that I won't be able to
18 effectively defend her if you do not allow our duress,
19 because I was manipulating the court. That is actually
20 true. I can't review all of the discovery we've got
21 thinking about how to present a new defense within
22 2-and-a-half weeks. I just can't. I've had -- we have been
23 planning this defense as we told the prosecutor we were
24 planning this defense on October 1, 2012. If there was a
25 problem it should have been brought up.

1 It was my position that what I put in my pleading is
2 correct. So if the court does not allow duress, then I
3 don't have a clue how I could possibly come up with any
4 other defense in this short time frame. I'm very sorry for
5 that, but if there was a problem the State had notice
6 October 1, 2012.

7 MR. DIGIACOMO: Just for the record, I'm thinking
8 about 5 years down the road when I have Ms. Erickson on the
9 stand and the offer in the case was plead to 2 firsts with
10 use, right to argue. We're going to a jury trial where
11 that's the best you can get under the law of their defense,
12 which is duress. So my concern here is that why I didn't
13 oppose the continuance, she's correct. She cannot be ready
14 to go to trial because I believe the court should be
15 precluding the defense, at least as relates to Counts 3 and
16 5.

17 If the court does so, I don't believe they're going to
18 be ready to proceed.

19 MS. ERICKSON: I have also another issue.

20 THE COURT: Go ahead.

21 MS. ERICKSON: If the court does grant their
22 motion, I intend to take a writ. It's a significantly
23 serious issue that has never been addressed by our court.

24 MR. DIGIACOMO: I don't disagree with that. If
25 the court denies my motion, we intend to take a writ. So

1 someone is going to address this.

2 THE COURT: Fair enough. In coming in here today,
3 as I said, we looked at what was available to us and that is
4 why being candid looking at the motion to continue in terms
5 of whether that alleviates and gives us time to take a look
6 at this and figure it out, how to address this.

7 Didn't have the time for that. Won't take the time for
8 that today.

9 Here's what we are going to do. The court will take
10 this matter under advisement. We're still set to come on
11 calendar for calendar call on Monday. I will have a
12 decision for you if not later today, in the morning, where
13 we'll know where we stand on this issue. If it's going to
14 beg the writ, it seems to me the matter is likely to
15 continue regardless based on the writ, but sometimes the
16 Supreme Court shockingly when they know there is a trial it
17 does come back on these writs quickly. We can't presuppose
18 they will not be able to address this.

19 MS. ERICKSON: I have had them do that, but lesser
20 than a complete defense to a case.

21 THE COURT: One step at a time. Let's get the
22 decision to you first then see where we go.

23 MS. ERICKSON: Our jury -- our challenges are due
24 tomorrow. I'm court appointed. I have read all of them.
25 I'm in the middle of typing my summarization and then will

1 be contacting the prosecutor. I don't know where they are.
2 Mr. DiGiacomo said he hadn't read them.

3 THE COURT: As of Monday. Ms. Wong may be doing
4 the heavy lifting.

5 MS. ERICKSON: I have to be out of the
6 jurisdiction tomorrow -- today. I changed my plans from
7 yesterday to today through Monday. Mr. Whipple would have
8 to be doing the calendar. I'm trying to find out if the
9 court --

10 MR. DIGIACOMO: Can I suggest we move that to
11 Tuesday morning. If the court -- I have a feeling if the
12 court denies my motion -- if the court grants my motion,
13 you have to grant their motion to continue. If the court
14 denies my motion, you have to grant their motion to continue
15 because they have a witness that is now unavailable.

16 My guess is the motion to continue is granted either
17 way, no matter which way you rule on the motion.

18 THE COURT: That was -- in the back of my mind was
19 how to address that when I address the outcome of the motion
20 in limine, but that sums it up well. I don't see a scenario
21 where we're not continuing in that respect.

22 If we were to go the route where it's the witness
23 unavailable issue and now you are asking for a continuation
24 on that, there could be further argument of to bad for Ms.
25 Bradley. She needs to get here. If that's going to be her

1 choice, if she doesn't, then so be it. I was already not
2 necessarily inclined to go down that road as I revealed on
3 Monday, so we are probably looking at a continuance either
4 way.

5 The next available stack we have is September. It's
6 already quite full. I'm not sure how we'd address that
7 then. Otherwise we are looking at the November stack.

8 MS. ERICKSON: At this point I'm scheduled to
9 start a capital case in front of Judge Leavitt in November.
10 That would be a problem.

11 THE COURT: The court -- we're going to continue
12 regardless. There's going to be a determination as to
13 where, so we'll figure that out. We may figure that out on
14 Monday, what's technically the calendar. But at this time
15 I'm not going to require the responses on the jury
16 questionnaires by tomorrow. We will address the outcome of
17 the motion in limine as soon as possible so we all
18 understand what that outcome is. Then that gives the
19 opportunity for the writ to be determined.

20 One thing I guess that could assist us, Ms. Erickson
21 and Mr. DiGiacomo, is by the end of the day today if you
22 could please each e-mail, copy the other, to let us know
23 what your schedules look like. You know what our stacks
24 are. We have a September 5 week stack and mid-November 5
25 week stack.

1 Communicate with each other. We need to know, if not
2 by the end of today, as soon as possible tomorrow. But I
3 need to know what that looks like. Again I also have a
4 situation of, you know, what is now the bifurcated
5 co-defendant in this case and when that's there is a lot of
6 things to be looking at here.

7 MS. ERICKSON: Can we do it by tomorrow. I'm
8 driving to California as soon as I leave the court. I will
9 be able to do it tonight.

10 THE COURT: Tomorrow would be good. I've also got
11 availability issues next week as well.

12 My clerk is going to assist that by emailing you each
13 of the stacks and times we have, and you can look at those
14 and come back and tell us what you've got.

15 MS. ERICKSON: Since it's going to be continued,
16 can we move Monday to Wednesday.

17 THE COURT: I'm not here on Wednesday only Monday.
18 It doesn't mean -- senior Judge Becker is covering and could
19 do it. It's just advising what the court date is. We've
20 done the other issues. That's fine.

21 MS. ERICKSON: Thank you.

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* * * * *

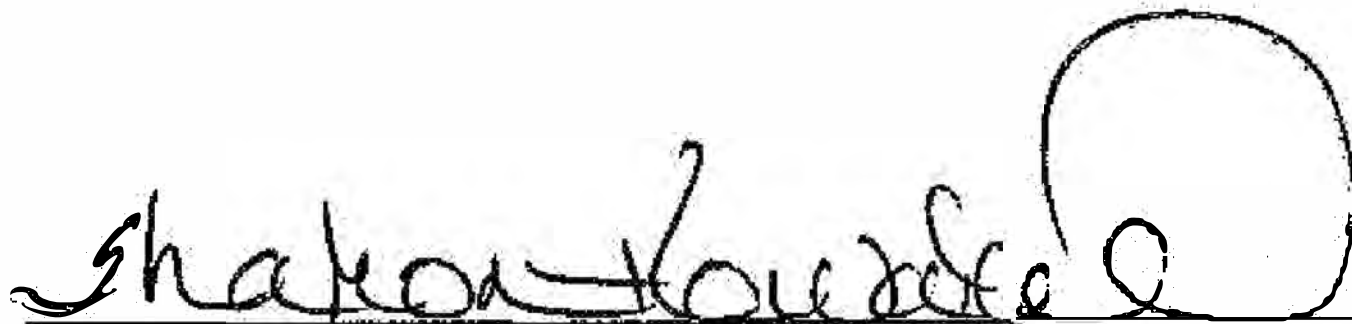
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CERTIFICATE
OF
CERTIFIED COURT REPORTER

* * * * *

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. To the right of the signature is a large, circular, hand-drawn mark.

Sharon Howard
C.C.R. #745

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Location : District Court Criminal Images Help

REGISTER OF ACTIONS

CASE No. C-12-283700-1

State of Nevada vs Ivonne Cabrera

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Case Type: Felony/Gross Misdemeanor
 Date Filed: 08/24/2012
 Location: Department 25
 Cross-Reference Case Number: C283700
 Defendant's Scope ID #: 1617623
 ITAG Case ID: 1379410
 Lower Court Case # Root: 12FN0864
 Lower Court Case Number: 12FN0864A

RELATED CASE INFORMATION

Related Cases
 C-12-283700-2 (Multi-Defendant Case)

PARTY INFORMATION

Defendant	Cabrera, Ivonne Cabrera , Yvonne Other Agency Numbers 1617623 Scope ID Subject Identifier	Lead Attorneys Bret O Whipple Retained 702-731-0000(W)
Plaintiff	State of Nevada	Steven B Wolfson 702-671-2700(W)

CHARGE INFORMATION

Charges: Cabrera, Ivonne	Statute	Level	Date
1. CONSP MURDER	200.010	Felony	04/26/2012
2. BURGLARY WHILE IN POSSESSION OF DEADLY WEAPON	205.060	Felony	04/26/2012
3. MURDER WITH A DEADLY WEAPON	200.030	Felony	04/26/2012
4. ATT. MURDER WITH A DEADLY WEAPON	200.030	Felony	04/26/2012
5. MURDER WITH A DEADLY WEAPON	200.030	Felony	04/26/2012
6. ATT. MURDER WITH A DEADLY WEAPON	200.030	Felony	04/26/2012

EVENTS & ORDERS OF THE COURT

06/22/2016 [Minute Order](#) (5:07 PM) (Judicial Officer Delaney, Kathleen E.)

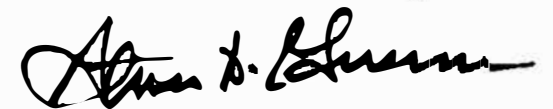
Minutes

06/22/2016 5:07 PM

- This matter, having come before the Court on June 22, 2016 for a hearing on Defendant's Motion for the Jury to be Taken to the Scene of the Crimes Alleged in the Information ("Motion for Jury View"), the State's Counter-Motion in Limine to Preclude Duress as a Defense to Murder ("Motion in Limine"), and the Defendant's Motion to Continue Trial ("Motion to Continue"), and after further review and consideration of the written pleadings and arguments of counsel at the time of the hearing, as well as all relevant case law, COURT ORDERS State's Motion in Limine is GRANTED; Defendant's Motion for Jury View is DENIED. COURT FURTHER confirms its oral ruling that Defendant's Motion to Continue Trial is GRANTED to allow Defendant the opportunity to seek writ relief based on the Court's ruling, as well as to consider and prepare additional defense(s). Defendant is charged with six (6) criminal counts, two (2) of which are Murder With Use of a Deadly Weapon, wherein the State asserts Defendant aided or abetted the co-Defendant in his direct commission of these crimes. Defendant argued in her Motion for Jury View that her guilt phase theory of defense is specifically based upon the alleged coercion and duress of her co-Defendant and that a view of the area was necessary to support her theory of defense. The State argued in opposition that duress is not a defense to murder, pursuant to NRS 194.010(8). NRS 194.010(8) is clear and unambiguous, and by its

own terms precludes a duress defense where the crime is punishable by death. As the State points out, the statute was enacted at a time when all murder was punishable by death, and, as common law has never recognized duress as a defense to intentional murder, the Court is confident that duress would not be an available defense to the Defendant even if she were charged with murder not punishable by death. The Court is also confident that because duress cannot, as a matter of law, negate the elements of a first degree murder, it would not be possible for it to negate the requisite intent for one charged with aiding and abetting a first degree murder. See, e.g., *People v. Vieira*, 35 Cal.4th 264, 290 (2005) (citing *People v. Anderson*, 28 Cal.4th 767, 784 (2002)). Accordingly, the State's Motion in Limine is GRANTED and Defendant is precluded from arguing duress as to Counts 3 and 5 of the Information, Murder With Use of a Deadly Weapon, during the guilt phase of the trial. The Court's review of persuasive case law from other jurisdictions also raises a concern regarding the availability of the defense of duress in the guilt phase of the trial as regards Count 1 of the Information, Conspiracy to Commit Murder (see, e.g., *People v. Vieira*, 35 Cal.4th at 290), and Counts 4 and 6 of the Information, Attempt Murder With Use of a Deadly Weapon (see, e.g., *State v. Mannering*, 150 Wash.2d 277, 282-283 (2003)), the State has not asked the Court to undertake this analysis at this time. The question of whether the defense of duress would be available to the Defendant as regards Count 2 of the Information, Burglary While in Possession of a Deadly Weapon, would be a question for the jury. See, e.g., *McMillan v. State*, 428 Md. 333, 355 (2012)). In light of the foregoing, the Court declines to exercise its discretion to allow the jurors to view the crime scene, and Defendant's Motion for Jury View is DENIED. The Court further declines to consider the Defendant's Motion to Continue based on the unavailability of the Defendant's expert regarding the duress defense as the Court already determined at the time set for hearing, and hereby confirms, Defendant's Motion to Continue is GRANTED based on oral representations of both counsel for the Defendant and counsel for the State that the Court's determination on the State's Motion in Limine would be subject to a writ challenge either way, as well as the understanding that counsel for the Defendant would need additional time to prepare the defense to Counts 3 and 5 of the Information, in the event the Court's ruling was unfavorable. COURT FURTHER ORDERS the TRIAL DATE vacated, matter set for status check on June 29, 2016 at 9:00 a.m. for purposes of re-setting trial. Counsel for Defendant to provide the Court with available trial dates no later than 12:00 noon on Monday, June 27, 2016. Mr. DiGiacomo is directed to prepare the Order in accordance with the Court's findings. CUSTODY CLERK'S NOTE: A copy of this Minute Order has been electronically mailed to Deputy D.A.s Hetty Wong and Marc DiGiacomo, Esqs.; and counsel for Defendant: Patricia Erickson & Bret Whipple, Esqs. /db 6.22.2016

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CLERK OF THE COURT

MOT
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

IVONNE CABRERA, aka
Yvonne Cabrera,
#1617623

Defendant.

CASE NO: C-12-283700-1

DEPT NO: XXV

NOTICE OF MOTION AND MOTION IN LIMINE TO PRECLUDE DURESS
AS A DEFENSE TO ALL THE CHARGES IN THE INFORMATION

DATE OF HEARING: _____
TIME OF HEARING: _____ AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MARC DIGIACOMO, Chief Deputy District Attorney, and files this Notice of Motion and Motion in Limine to Preclude Duress as a Defense to All the Charges in the Information.

This Motion is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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DATED this ____ day of July, 2016.

BY MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955

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As the Court has previously noted, the Nevada Statute specifically precludes the defense of duress to murder. The policy consideration is that the intent to kill should not be negated by duress as the harm to the suspect is not less than the harm to the victim. This policy, as well as the statute, should apply to any crime in which murder is an element of the crime.

1 In the instant case, Defendant is charged with conspiring to kill the victim, and
2 attempting to kill four victims, two of which survived. In order to complete the plan, it is
3 alleged that Defendant entered a structure with the intent to commit murder. Thus, in every
4 charge alleged, the State will need to establish the Defendant's intent to kill. As such, duress
5 should not be a defense to any of the charges.

6 In State v. Mannering, 48 P.3d 367, 112 Wn. App. 268 (2002), the Court engaged in a
7 very detailed analysis of whether duress should apply to attempt murder. Much like Nevada,
8 Washington has a statute which precludes duress as a defense to murder.¹ Compare NRS
9 194.010(80 and RCW 9A.16.060. In deciding the issue of whether duress would apply to
10 attempt murder, the Court began with basic statutory interpretation:

11 In this case of first impression, we begin our analysis using general rules of
12 statutory construction. A court's paramount duty in construing a statute is to
13 ascertain and give effect to the Legislature's intent. We give words used in the
14 statute their plain meaning, but we construe the statute to effect its purpose and
avoid "unlikely, absurd or strained consequences resulting from a literal
reading." The statute's purpose prevails over its "express but inept wording."

15 Id at 369 (*internal citations omitted*). The defendant argued that as the statute did not
16 specifically address attempt crimes. But much like Nevada, Washington did not have a
17 separate crime of Attempt Murder, but it is a combination of two statutes. See NRS 200.010
18 and 193.330. In finding that the legislative intent for the duress to not apply to attempt murder,
19 the Court analyzed the policy consideration. In making this determination, the Court noted
20 that the intent, which duress excuses, is the same in both crimes. Thus, the legislature did not
21 intend to excuse an attempt murder merely because it was unsuccessful.

22 ¹ (1) In any prosecution for a crime, it is a defense that:

23 (a) The actor participated in the crime under compulsion by another who by threat or use of force
24 created an apprehension in the mind of the actor that in case of refusal he or another would be liable
to immediate death or immediate grievous bodily injury; and

25 (b) That such apprehension was reasonable upon the part of the actor; and

26 (c) That the actor would not have participated in the crime except for the **duress** involved.

27 (2) The **defense** of **duress** is not available if the crime charged is **murder** or manslaughter.

28 See RCW 9A.16.060 (emphasis added).

1 This same analysis would apply to the other crimes included in the information,
2 Conspiracy to Commit Murder and the Burglary charge. Conspiracy to Commit Murder is a
3 combination of NRS 200.010 and NRS 199.480. As it is charged in the information, the
4 Burglary is a combination of NRS 205.060 and 200.010. In both of those charges, the state
5 needs to establish an intent to kill.

6 In the Court's order, the Court made reference to McMillan v. State, 428 Md. 333, 355
7 (2012) to support the conclusion that duress could apply to the underlying felony in a felony
8 murder situation. The State does not seek to dispute that area of law, while it is unsettled in
9 Nevada. However, in McMillan, the underlying felony was robbery. The argument was that
10 Defendant could present duress to the crime of robbery and thus a killing that occurred during
11 a robbery to which he was not guilty due to duress would excuse the felony murder rule.
12 Whether that is the law in Nevada is unknown and has not been decided. However, the
13 analysis of whether or not duress can be a defense to an underlying felony in a felony murder
14 situation is not an issue which is present in the instant case. This is due to the underlying
15 felony requiring the intent to kill. In the instant action, the burglary charged requires proof of
16 an entry with the intent to commit murder. Thus, the duress defense cannot be used to negate
17 the intent at entry, as the intent is the intent of murder. Therefore, under the fact of this case,
18 duress should not be a defense to any charge in the information.

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1 CONCLUSION

2 As all of the charges included in the information requires an intent to kill, the Court
3 should preclude the defense of duress to all the charges.

4 DATED this 13th day of July, 2016.

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

7 BY 
8

MARC DIGIACOMO
9 Chief Deputy District Attorney
Nevada Bar #006955
10
11
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13
14

15 CERTIFICATE OF SERVICE

16 I hereby certify that service of the above and forgoing, was made this 13 day of
17 July, 2016, by email to:

18 PATRICIA M. ERICKSON, ESQ.
19 E-mail Address: pme@pmericksonlaw.com

20 BRET O. WHIPPLE, ESQ.
E-mail Address: admin@justice-law-center.com
21 Fax#: 702-974-0524
(Attorneys for Defendant Cabrera)

22 ALZORA B. JACKSON, ESQ. and
23 CLARK W. PATRICK, ESQ.
E-mail addresses: cpatrick@clarkcountynv.gov,
24 ajackson@clarkcountynv.gov,
kfitzger@clarkcountynv.gov
(Attorneys for Co-Defendant Gonzales)

25 
26 Secretary for the District Attorney's Office
27

28 MD/tgd/MVU

1 Bret O. Whipple, Esq.
2 Nevada Bar No. 6168
3 JUSTICE LAW CENTER
4 1100 South Tenth St.
5 Las Vegas, NV 89101
6 (702) 731-0000
7 admin@justice-law-center.com

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CLERK OF THE COURT

5 Patricia M. Erickson, Esq.
6 Nevada Bar No. 3506
7 601 South Tenth Street, Suite 108
8 Las Vegas, Nevada 89101
9 (702) 388-1055
10 pme@pmericksonlaw.com

11 Counsel for Defendant:
12 IVONNE CABRERA

13 DISTRICT COURT

14 COUNTY OF CLARK, NEVADA

15 THE STATE OF NEVADA,

16 Plaintiff,

17 vs.

18 IVONNE CABRERA,

19 Defendant.

Case No.: C-12-283700-1
Dept. No.: XXV

20 **OPPOSITION TO STATE'S MOTION IN LIMINE TO PRECLUDE DURESS AS A**
21 **DEFENSE TO ALL THE CHARGES IN THE INFORMATION**

22 Hearing Date: August 1, 2016
23 Hearing Time: 9:00 a.m.

24 COMES NOW, Defendant, IVONNE CABRERA, by and through her counsel, Bret
25 O. Whipple and Patricia M. Erickson, and requests this Honorable Court enter an order
26 denying the state's motion to preclude duress as a defense to "any crime in which murder
27 is an element of the crime."

28 This Opposition is made and based upon Ms. CABRERA's federal constitutional
right to present a complete defense as protected by the Sixth and Due Process Clause
of the Fourteenth Amendment of the United States Constitution.

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1 Additionally, this opposition is based upon all of the documents filed in the case
2 at bar, the attached Memorandum of Points and Authorities and any oral argument this
3 Court will entertain on August 1, 2016.

4 DATED this 27th day July, 2016.

5
6 Respectfully Submitted,

7 /s/ Bret O. Whipple
8 Bret O. Whipple
9 Nevada Bar No. 6168
10 1100 South Tenth St.
11 Las Vegas, NV 89101
12 (702) 731-0000
13 admin@justice-law-center.com

/s/ Patricia M. Erickson
Patricia M. Erickson, Esq.
Nevada Bar No. 3506
601 South Tenth St., Suite 108
Las Vegas, NV 89101
(702) 388-1055
pme@pmericksonlaw.com

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 On June 14, 2016, the state filed a motion in limine to preclude Ms. CABRERA
14 from relying on duress to the murders she allegedly aided and abetted or conspired to
15 commit with co-defendant Gonzales. After review of all pleadings and consideration of
16 the arguments of counsel, this Honorable Court entered a minute order granting the
17 state's motion in limine, ordering that Ms. CABRERA is precluded from arguing duress
18 as to Counts 3 and 5 of the Information which charge Murder with Use of a Deadly
19 Weapon.

20 On July 13, 2016, the state filed another motion this time to preclude duress "as
21 a defense to all the charges in the information. Without reliance upon any authority, the
22 state asserts that the policy consideration that "it is better to suffer death than to kill an
23 innocent third party" "should apply to any crime in which murder is the element of the
24 crime." Therefore, according to the state, the fact that Ms. CABRERA is charged with
25 attempt murder and burglary while in possession of a weapon, and the word murder is
26 part of each crime, duress is not a defense to any crime charged in the Information.

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1 In their motion, the state is requesting this Court enter unchartered and
2 unsupported waters. Not only has the Nevada Supreme Court never decided that NRS
3 194.010(8), when challenged as violating the Sixth and Fourteenth Amendment right to
4 due process and fair trial, precludes a defendant from presenting a duress defense to
5 murder, there has never been any reported or even unreported case that holds the policy
6 consideration precluding duress when an individual actually kills someone "should apply
7 to any crime in which murder is an element of the crime."

8 The reason the state is unable to offer a shred of Nevada authority in support of
9 this claim is clear: the language of the statute itself precludes duress only when the crime
10 is punishable by death. Conspiracy murder, attempt murder and burglary while in
11 possession of a firearm are not "murder" nor are these crimes punishable by death.¹ On
12 this ground, alone, it is submitted that this Court should deny the state's July 13, 2016
13 motion.

14 Second, the case relied upon by the state as support for this novel claim, State v.
15 Mannering,² is another state court interpretation of a state statute. It does not discuss nor
16 contain a Sixth and Fourteenth Amendments challenge to the statute.³ Additionally,
17 Mannering actually committed the crime of attempt murder - "she 'barreled in the door
18 with a knife'" and tried to stab the victim.⁴

19
20 ¹ See People v. Anderson, 28 Cal.4th 767, 784, 122 Cal.Rptr.2d 587, 50 P.3d 368
21 (Cal. 2002)(based upon a statute, like Nevada's in that it specifically states that duress is not a
22 defense if the crime be punishable with death, court recognized that duress is a defense to
manslaughter because that crime was never punishable by death).

23 ² The state cites the appellate court version of Mannering. The Washington
24 Supreme Court granted discretionary review and upheld the appellate court's duress
determination in State v. Mannering, 150 Wash.2d 277, 75 P.3d 961 (2003).

25 ³ Rather than repeat the Sixth and Fourteenth Amendment challenges to the
26 application of NRS 194.010(8), as enunciated in Ms. CABRERA's June 21, 2016 Opposition at
pp.3-4, it is requested that these federal constitutional challenges be incorporated into this
pleading.

27 ⁴ Mannering 75 P.3d at 962.

1 Moreover, the statute reviewed by the Washington Supreme Court, is not "like"
2 NRS 194.010(8). Our statute specifically precludes duress when the crime is punishable
3 by death which has been deemed to be the crime of murder. The Washington statute
4 specifies that duress is not a defense if the crime charged is murder or manslaughter.
5 Given the Washington statute's specification of the crime of "murder", it is understandable
6 that the Washington Court would find that duress was not a defense to the charge of
7 attempted first degree murder.⁵ As our statute is not "like" the Washington statute, the
8 analysis of that court does not support the state's request that Ms. CABRERA should be
9 precluded from asserting duress to the other crimes she allegedly committed as an
10 aider/abettor of conspirator. It is respectfully submitted that this Court should deny the
11 state's motion on this basis.

12 The state's motion ends with the assertion that because the felony murder liability
13 alleged in Counts 3 and 5 is based on the alleged burglary, which requires the state prove
14 the entry was to commit murder, that duress is also not available to this alleged basis of
15 criminal liability. According to the state, McMillan v. State, is limited to a case where
16 felony murder liability is based upon robbery. That assertion is not borne out by other
17 state courts' analysis of felony murder liability and duress.

18 Since 2002, not only has the California Supreme Court recognized that a killing
19 under duress, like any killing, may or may not be premeditated based on the legal
20 requirements of first degree murder, but it has also specified that,

21 duress can, in effect, provide a defense to murder on a felony-murder
22 theory by negating the underlying felony. ... If one is not guilty of the
23 underlying felony due to duress, one cannot be guilty of felony murder

24
25 ⁵ The Washington Court identifies the issue presented is "may a defendant use the
26 affirmative defense of duress to a charge of attempted first degree murder?" Nevada does not
27 have a crime of attempted first degree murder. This is an additional reason that Mannering does
28 not present any support for the state's request that Ms. CABRERA be precluded from presenting
a duress to defense to the rest of the crimes charged in the Information.

1 based on that felony.⁶

2 In the Anderson case, the defendant was charged with felony murder based upon the
3 felony of kidnapping. In other cases, the felony murder allegation was based upon
4 robbery.⁷ The California courts' conclusions were not premised on which predicate
5 offense was the basis for the felony-murder; they were premised on the availability of the
6 duress defense to the felony underlying the felony-murder allegation. The state's premise
7 that the felony-murder allegation of a burglary, which requires the state to prove entry with
8 intent to commit murder, precludes duress conflicts with the law which requires the state
9 to prove the underlying felony in order to establish felony-murder,

10 The Oklahoma Court of Criminal Appeals has also recognized that a person should
11 not lose the defense of duress when charged with felony-murder. That court specified
12 that,

13 [i]t is compatible with the common law policy of duress that the [duress]
14 defense should attach where the defendant consented, by duress, only to
15 the commission of the lesser crime and not to the killing, and, at the time of
16 his participation in the lesser felony, had reason to believe his life or the life
17 of another was immediately in danger unless he participated. LaFave and
18 Scott explain that "[t]he law properly recognizes that one is justified in aiding
a robbery if he is forced by threats to do so to save his life; he should not
lose the defense because his threateners unexpectedly kill someone in the
course of the robbery and thus convert a mere robbery into a murder." *Id.*
at 377. Accord *Hitchler*, *Duress as a Defense in Criminal Cases*, 4
Va.L.Rev. at 528-530 (1917).⁸

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20 _____

21 ⁶, Anderson, 28 Cal.4th at 784.

22 ⁷ See People v. Hinton, 37 Cal. 4th 839, 883, 126 P.3d 981, 1015 (2006), as
23 modified (Apr. 12, 2006) ("threats and menace do not constitute a defense to murder. Nothing in
24 these instructions barred the jury from considering whether these threats—or any other
facts—prevented defendant from premeditating and deliberating or rendered noncriminal his
25 participation in the attempted robbery"). See also People v. Callahan, 124 Cal. App. 4th 198, 205,
21 Cal. Rptr. 3d 226, 231 (2004), as modified on denial of reh'g (Dec. 16, 2004) (would have been
26 entitled to a duress instruction on the underlying felonies of robbery and kidnapping because "If
one is not guilty of the underlying felony due to duress, one cannot be guilty of felony murder
based on that felony").

27 ⁸ Tully v. State, OK CR 185, 730 P.2d 1206, 1210 (1986).

1 Additionally, the Court of Appeals for the Fourth District of Florida, after considering that
2 Oklahoma, Kansas and Virginia have all held that if duress is available for the underlying
3 felony it is also available to the felony-murder charge, concluded,

4 where the trial court finds that a defendant has presented evidence to
5 support a duress theory of defense to the underlying felony in a felony
6 murder case, the defendant is entitled to the duress instruction as a
7 defense to felony murder.⁹

8 After review of California's People v. Anderson and the Illinois Court of Appeal's People
9 v. Serrano,¹⁰ the Colorado Supreme Court joined those courts and the Florida court by
10 recognizing that a defendant cannot be convicted of felony murder if he or she committed
11 the predicate felony under duress.¹¹

12 In Nevada, a defendant must be convicted of the felony underlying the felony-
13 murder theory of liability. Based on this fact and the analyses enunciated by the courts
14 in California, Florida, Oklahoma, Kansas and Virginia, duress is defense to burglary and
15 must also be a defense to felony-murder liability as alleged in Ms. CABRERA's case.

16 Finally, the conspiracy to commit murder, burglary while in possession of a deadly
17 weapon and attempt murder charges all require the state to prove Ms. CABRERA
18 "willfully" engaged in each crime. Willful is defined as "committed voluntarily and
19 purposely, with the specific intent to do something; voluntarily and intentionally assisting
20 or advising another to do something."¹²

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23 ⁹ Rodriguez v. State, 174 So. 3d 502, 507 (Fla. Dist. Ct. App. 2015), reh'g denied
(Sept. 30, 2015).

24 ¹⁰ 286 Ill.App.3d 485, 222 Ill.Dec. 47, 676 N.E.2d 1011, 1015 (1997) (while
25 compulsion is not a defense to murder, a "defendant cannot be guilty of felony murder if he was
compelled to commit the underlying felony").

26 ¹¹ Doubleday v. People, 364 P.3d 193, 198 (Colo. 2016)

27 ¹² See <http://www.lectlaw.com>.

1 Further, as an aider/abettor, the state is required to prove that Ms. CABRERA "knowingly
2 aided" co-defendant Gonzalez "with the intent that" he "commit the charged crime(s)."¹³

3 Thus, in order to convict Ms. CABRERA of every crime alleged, the state must prove she
4 committed each crime voluntarily and purposely, with the specific intent to do the crime.

5 Ms. CABRERA did not voluntarily do anything on April 26, 2012 but rather was
6 present when co-defendant Gonzalez committed every crime, charged in the Information,
7 solely because she reasonably believed that Gonzalez would kill her if she didn't do what
8 he wanted. Ms. CABRERA's theory of defense refutes the wilfulness element of each
9 crime. This provides another basis for this Honorable Court to deny the state's motion
10 entirely.

11 DATED this 27th day July, 2016.

12 Respectfully Submitted,
13

14 /s/ Patricia M. Erickson
15 Patricia M. Erickson, Esq.
16 Nevada Bar No. 3506
17 601 South Tenth St., Suite 206
18 Las Vegas, NV 89101
19 (702) 388-1055
20 pme@pmericksonlaw.com
21 Counsel for Defendant:
22 IVONNE CABRERA
23
24
25
26

27 ¹³ Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002).
28

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 27th day of July, 2016, I emailed a true and correct
3 copy of the forgoing OPPOSITION TO STATE'S MOTION IN LIMINE TO PRECLUDE
4 DURESS AS A DEFENSE TO ALL CHARGES IN THE INFORMATION to the prosecutors
5 at the following email addresses:

6 Marc.DiGiacomo@clarkcountyda.com

7 Hetty.Wong@clarkcountyda.com

8 Further, I hereby certify that on the 27TH of July, 2016, I requested that a file
9 stamped true and correct copy of the forgoing OPPOSITION TO STATE'S MOTION IN
10 LIMINE TO PRECLUDE DURESS AS A DEFENSE TO ALL CHARGES IN THE
11 INFORMATION be served through the court's efilng service to counsel for the parties at
12 the below email addresses:

13 Counsel for the State:

14 Marc.DiGiacomo@clarkcountyda.com

15 Hetty.Wong@clarkcountyda.com

16 Counsel for Co-Defendant Gonzales:

17 cpatrick@clarkcountynv.gov

18 ajackson@clarkcountynv.gov

19 Co-counsel:

20 Bret Whipple

21 admin@justice-law-center.com

22 /s/ Patricia M. Erickson
23 Patricia M. Erickson
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CASE NO. C-12-283700-1

DEPT NO. XXV

DISTRICT COURT

CLARK COUNTY, NEVADA


CLERK OF THE COURT

THE STATE OF NEVADA,)

Plaintiff,)

vs.)

IVONNE CABRERA,)

Defendant.)

REPORTER'S TRANSCRIPT
OF
PROCEEDINGS

BEFORE THE HON. KATHLEEN DELANEY, DISTRICT COURT
JUDGE

AUGUST 8, 2016

9:00 A.M.

APPEARANCES:

For the Plaintiff: Marc P. DiGiacomo, Esq.
Hetty Wong, Esq.
Deputies District Attorney

For the Defendant: Patricia M. Erickson, Esq.
Bret O. Whipple, Esq.

Reported by: JoAnn Melendez, CCR No. 370

1 LAS VEGAS, CLARK COUNTY, NV, AUG. 8, 2016

2 9:00 A.M.

3 -oOo-

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

5
6 THE COURT: Bottom of page one I have
7 State of Nevada versus Yvonne Cabrera. Good
8 morning, Ms. Erickson.

9 MS. ERICKSON: Good morning, judge.

10 THE COURT: Mr. Whipple.

11 MR. WHIPPLE: Good morning.

12 THE COURT: Good morning, Mr. DiGiacomo
13 and Ms. Wong.

14 MR. DiGIACOMO: Good morning, Your Honor.

15 THE COURT: This is on calendar on the
16 State's motion in limine to preclude duress as a
17 defense to charges in the Information.

18 This stems from the prior hearing that we
19 had in this matter where the Court did determine
20 that duress would be an inappropriate defense to
21 some, but we did not specifically address, because
22 we had not been asked to, all of the charges or the
23 remainder charges.

24 The Court opined at the time that it felt
25 that duress would not be an appropriate defense to

1 other matters. This is now that challenge.

2 Mr. DiGiacomo or Ms. Wong, do you want to
3 go ahead and make any additional arguments for this
4 morning's record before I turn it to the defense?

5 MR. DIGIACOMO: Just briefly as after I
6 read the opposition. The concept of how the other
7 courts have analyzed this, and we all know that this
8 is gonna wind up in front of the supreme court
9 pretrial and we'll hear the other most likely, is
10 that it's the murder element. It's the intent to
11 kill which duress does not provide a defense to.

12 And in this case, each and every one of
13 the charges that has an intent to kill as a
14 requirement of the charge and thus duress doesn't
15 apply.

16 I recognize that if this was a robbery
17 situation you could defend on the robbery as hey, I
18 was under duress, I committed the robbery, and then
19 I wouldn't have the vicarious liability for the
20 felony murder. And then that's sort of the argument
21 they make about the burglary.

22 But in this case, the burglary isn't with
23 the intent to enter to commit a larceny or a robbery
24 or an assault even. There is a single element
25 that's included within the burglary, which is, to

1 wit: to commit murder, and thus err all five charges
2 or six charges in the Information requires an intent
3 to kill which duress does not resolve.

4 Their other arguments in their opposition
5 is is that our statute says it's not a crime to a --
6 a crime punishable by death. And as courts have
7 interpreted that, that means murder. And in courts
8 in which the statutes are not separate crimes like
9 ours, there's conspiracy, but the conspiracy crime
10 is to commit what? There's the murder count.

11 Then there's the attempt murder. You
12 have 193.330 that makes attempt a crime and then the
13 other crime of murder. And in burglary, it's the
14 entering with the intent to commit a felony. And in
15 this case the other felony, the felony is murder.

16 And thus duress does not provide a
17 defense to an element to each one of the offenses in
18 this case and thus duress is not a defense to any of
19 the charges. And that's how the courts have
20 interpreted it.

21 I realize our supreme court is somewhat
22 limited in their interpretations of the duress
23 offense, but I think clearly when you look at the
24 policy considerations, if it really is about intent
25 and the reduction of intent or the defense to

1 intent, there isn't one for these crimes. And I
2 would submit it to the Court.

3 THE COURT: All right. Thank you.

4 MS. ERICKSON: Judge, it's not the intent
5 to kill someone. It is statutorily defined as
6 punishable by death. And the courts have said under
7 common law that if, you know, capital punishment
8 moves to the murder. Our statute does not say oh,
9 by the way, you can preclude attempt murder or you
10 can preclude conspiracy to commit murder or you can
11 preclude burglary while in the possession of a
12 firearm.

13 All of those charges can be done -- all
14 of those -- first, all of the charges have a
15 willfulness requirement. Willfulness is refuted by
16 duress. Duress is acting on a compulsion of
17 another.

18 And the reason why the courts have held
19 that murder -- duress doesn't go to murder, which I
20 still say it has to be to the person. I've seen the
21 cases that are aiding and abetting murder, but the
22 courts are all over the place. But it has to be
23 the -- it's -- if you're acting under the compulsion
24 of another, you don't have the intent. But this
25 whole doctrine is not based on intent.

1 This is based on -- the doctrine is based
2 on the common law that you can't kill someone and
3 then say oh, but somebody else made me do it. The
4 policy is that you are precluded from gaining that
5 duress because you as a killer should be the one --
6 you should either let the other person kill you or
7 you should, you know, do something to preclude it.
8 That doesn't -- it has nothing to do with the
9 element of murder. It has to do with policy.

10 There is no way that the policy of I
11 should let someone kill me because that person is
12 attempting to murder another one, which is what the
13 State is saying, that therefore duress is not
14 available. There is no policy that says I should
15 let someone -- you know, I should aid and abet a
16 burglary because, you know, or I should allow myself
17 to be killed because I, you know, caused to aid and
18 abet another in a burglary.

19 The same thing goes for the conspiracy.
20 Conspiracy is, as we always instruct, the agreement
21 to commit a crime.

22 You don't have to prove murder in the
23 first place. The elements are the agreement to
24 commit an illegal act.

25 But again, the policy is that you should

1 allow yourself to be killed before you kill someone
2 else at the behest of someone.

3 Duress. There are -- it's a -- there are
4 conflicting court cases on attempt murder. Some of
5 them say yes, some of them don't.

6 The Washington case that they cite says
7 yes, but their statute says specifically murder
8 in -- duress is not to murder and manslaughter.

9 So attempt murder is -- that's the
10 analysis that Mr. DiGiacomo is making is that you
11 have to read the attempt statute with the murder
12 statute and we're gonna get there, but that's not
13 the analysis that the Washington court went through.
14 They said it's murder and manslaughter and that was
15 a voluntary manslaughter case. And attempt, but
16 they have a first degree attempted murder which has
17 different elements than our case. Our -- our
18 statute does. So that is not a reasonable
19 interpretation of how duress applies.

20 Under common law, the only case -- the
21 only crimes that duress is precluded is murder. And
22 it goes to the policy. You should -- I should let
23 someone kill me before I kill someone else. That
24 has nothing to do with all -- it has nothing to do
25 with the intent. They're adding an intent element.

1 There is no intent element there. And so I would
2 submit it on that.

3 THE COURT: Mr. DiGiacomo, any rebuttal?

4 MR. DIGIACOMO: The only thing I would
5 add to that is so the difference between the four
6 victims in this case is that while they were all
7 shot multiple times, two of them wound up surviving.
8 So she can't provide a defense of duress to the two
9 that died, but to the two that lived she could.
10 That doesn't make any policy sense or intellectual
11 sense.

12 And, you know, California has the same
13 statute, similar statute that we do, and they
14 interpret that language of may be punishable by
15 death as the crime of murder. And thus the analysis
16 is if you can't kill somebody, you can't attempt to
17 kill somebody and you certainly can't aid and abet
18 somebody to kill somebody, you have to let somebody
19 kill you. That's just what the law is. And that's
20 clearly the policy consideration behind the statute.
21 And I would submit it.

22 MS. ERICKSON: And, judge, I'd just like
23 to respond to just that point. In California, in
24 People versus Anderson, the Court said specifically
25 that duress is not a defense of crime to be

1 punishable by death, just like ours, but the Court
2 recognizes duress is a defense to manslaughter
3 because that crime was never punishable by death.

4 So what Mr. DiGiacomo is arguing is
5 absolutely not the law. He hasn't stated a single
6 case that says that that's the law.

7 And it's -- there are conflicting state
8 analysis of that on the attempt murder, but there is
9 no law on conspiracy or burglary. They're asking
10 you to add that in to something that should not be
11 added.

12 THE COURT: I have spent quite a bit of
13 time going over this obviously because I wanted to
14 refresh on what I had decided and what I indicated
15 before, went back over, reviewed the cases.

16 I agree. And I actually hoped that this
17 matter gets reviewed by one of our appellate courts
18 pretrial so that we have the clarity we need on this
19 issue. That may or may not occur, but one can hope.

20 But when I went back and I looked at my
21 review, and yes, of course much of what I'm looking
22 at are cases from other jurisdictions, and there's
23 been ample cases provided by both sides from other
24 jurisdictions, it is still this Court's
25 determination that it is a focus on the intent issue

1 which is underlying these causes of action which --
2 which if the duress were to excuse would only be
3 available for certain circumstances, and I do not
4 find that it would be available to negate the intent
5 as it would be the same in the other charges that
6 are filed here.

7 The closer call for me is the burglary.
8 But because of the way the State has alleged the
9 burglary, I find that the intent element is
10 available there which in turn precludes the duress
11 argument.

12 Again, it's -- it's a difficult call to
13 make, but I am looking at the -- not only these
14 other cases but the analysis therein.

15 And I'm persuaded that our supreme court
16 in where they have addressed these matters would
17 extend that analysis to preclude duress in these
18 circumstances.

19 So I am persuaded that the State's
20 motion, it should prevail under what I believe our
21 supreme court has decided and is likely to decide.

22 And for that reason -- and this is again
23 unique in the burglary situation as to how it has
24 been pled. I'm not thinking it would be unique in
25 the attempt or conspiracy of allegations. I think

1 the duress should be precluded there regardless, but
2 in the burglary because of how it's pled, I'm
3 persuaded, as I said, that all charges should be
4 precluded of the duress defense in this case.

5 MS. ERICKSON: And, judge, just because
6 it's not clear from the initial order or I don't
7 know that it is, the felony murder aspect, your
8 ruling is that would also not be allowed by duress
9 because your -- the underlying felonies are not --
10 are not defensive but duress is not a defense to the
11 underlying charge that they have to prove for a
12 felony murder.

13 THE COURT: Well, Mr. DiGiacomo also
14 pointed out in the pleadings that the Court had
15 discussed that it could apply there. And of course
16 we've referenced -- there was a reference to the
17 McMillan case with regards to that, and the State
18 indicated it wasn't raising that issue for this
19 motion.

20 Do you want to speak to Ms. Erickson's
21 request for clarification on that as far as --

22 MR. DiGIACOMO: Yeah.

23 THE COURT: -- that order?

24 MR. DiGIACOMO: If the Court had ruled
25 that duress was a defense to burglary, then

1 theoretically we could have had to craft some sort
2 of instruction that says if she burglarized it
3 without the intent to kill, then you wouldn't be
4 liable under the felony murder rule.

5 But because of the unique circumstances
6 of the burglary in this case, the intent to kill is
7 gonna have to be established to establish the
8 burglary, and thus it just makes the murder,
9 first-degree murder is still gonna be murder either
10 way.

11 So there is no defense here because they
12 cannot defend against the underlying felony in the
13 felony murder charge because that is the burglary
14 that is alleged in Count 6.

15 THE COURT: And what is the clarification
16 exactly that you were looking for, Ms. Erickson?
17 You know, as we -- as we made our -- I mean, I can
18 go back and look and see if we need to clarify that
19 from the original order, but I didn't focus on that
20 for today's purposes in all candor.

21 MS. ERICKSON: Well, yeah. It was
22 included in my response by multiple cases and that's
23 why I was asking about that because the -- you know,
24 our statute requires that they prove the underlying
25 felony. And if they're proving burglary as the

1 underlying felony for the felony murder rule, then
2 under your ruling I assume that it would mean that
3 we -- she can be held liable under felony murder
4 because she's -- Ms. Cabrera is aiding and abetting
5 conspiracy of liability and felony murder liability.

6 MR. DIGIACOMO: Correct. I don't think
7 the Court needs to address that anymore because you
8 ruled that the burglary -- had you ruled that the
9 burglary could be defended by duress, we would ask
10 to have subsequent argument. But because of the
11 nature of the way you're ruling, it's irrelevant at
12 this point.

13 THE COURT: I think it's irrelevant as
14 well. Let me have the State draft the order, Ms.
15 Erickson. You'll have the opportunity to weigh in.

16 And when the Court sees it, if the Court
17 needs to adjust it, whether you want to put it in
18 letter or an email through copy to the other side
19 about your concerns or whether you have some
20 language to propose, the Court will take an extra
21 look at that and make sure that we have not left
22 that issue unaddressed.

23 I do believe though that it is irrelevant
24 the way at least I ruled on these matters and which
25 is driven by --

1 MS. ERICKSON: Right.

2 THE COURT: -- been charged.

3 MS. ERICKSON: And I'm just clarifying
4 because I will be taking a step to the Nevada
5 Supreme Court. And I want to get up there and argue
6 that, you know, this felony murder should not be
7 also and then they'll say well, that's not the
8 ruling.

9 I believe that since the Court has ruled
10 that the burglary is -- that there's no defense
11 to -- the duress defense to the burglary, that you
12 would rule that under -- that she's liable under
13 felony murder and doesn't have a duress defense to
14 that. So that's what I'm trying to clarify.

15 THE COURT: The way the Court looked at
16 it was the same analysis that I previously weighed
17 on the attempt murder and the conspiracy charges.

18 And then in looking at the burglary
19 separately, it was the unique circumstance. Maybe
20 not unique, but in this particular case, facts,
21 specific circumstance that how the State charged
22 this burglary with that intent element is the reason
23 why it would be applicable here and it would not be
24 approaching the felony murder analysis, but --

25 MS. ERICKSON: And there was only one

1 other thing. I referenced it in my opposition
2 rather than repeat my fourteenth amended analysis,
3 the denial, the exclusion of a defendant's under
4 state evidentiary rule I was asking to incorporate.

5 I made that specific argument in the
6 first opposition to the denial under the murder.

7 THE COURT: Ask the question again. I
8 apologize, Ms. Erickson. I didn't -- I was a little
9 distracted and then I didn't catch what you were
10 pointing at.

11 MS. ERICKSON: Yes. Judge, I think
12 for -- I did it in footnote three and I said rather
13 than repeat the sixth and fourteenth amendment
14 challenges to the application of NRS 194.0108 that
15 was enunciated in the June 21st opposition, as
16 requested these federal constitutional challenges be
17 incorporated in this case.

18 THE COURT: I guess I'm just not
19 asking -- I mean I'm not understanding what you're
20 asking for right now as far as this order and what
21 the State's gonna prepare.

22 Are you asking to have some reference
23 that you made those arguments to the Court?

24 MS. ERICKSON: Yes.

25 THE COURT: Object to them?

1 MS. ERICKSON: Well, that was the purpose
2 of rather than including them again, they were in
3 the first motion and they sort of go along with the
4 way the Court has ruled.

5 I'm just making sure that this is -- this
6 was something that was considered. It was raised in
7 my opposition and I asked for the Court to
8 incorporate it.

9 THE COURT: I would -- I would -- I would
10 absolutely want it to be clear that all of the
11 arguments in the defense were considered.

12 MS. ERICKSON: Uh-huh.

13 THE COURT: And this was the outcome.
14 And again, I think that begs. Let's see what the
15 State prepares and then we'll see what you feel
16 might be missing from my order and then we can
17 consider how to address it.

18 MS. ERICKSON: And, judge, do we need a
19 new order for transcripts of hearings? Because they
20 haven't been coming. We need the one from the last
21 hearing and --

22 THE COURT: You would need an order for
23 each transcript because the Court has --

24 MS. ERICKSON: Okay.

25 THE COURT: -- sign off and make sure the

1 reporter gets paid.

2 MS. ERICKSON: Right.

3 THE COURT: My regular reporter is
4 sitting out today to catch up on some transcripts.
5 I don't know if that would be one of them or where
6 the status is, but just be in touch with her --

7 MS. ERICKSON: Okay.

8 THE COURT: -- about those circumstances.
9 If they're not ordered expedited, they'll get done
10 when they get done.

11 MS. ERICKSON: Uh-huh.

12 THE COURT: But I would need another
13 order needed for this one.

14 MS. ERICKSON: That you, judge.

15 MR. DiGIACOMO: Thank you, Your Honor.

16 THE COURT: It's a different court
17 reporter so just make sure that you let the office
18 know.

19 All right. Thank you all.

20

21 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF THE
22 PROCEEDINGS.

23 /s/ JoAnn Melendez

24 JO ANN MELENDEZ

25 CCR NO. 370



CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #06955
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

IVONNE CABRERA, aka Yvonne Cabrera,
#1617623

Defendant.

CASE NO: C-12-283700-1

DEPT NO: XXV

ORDER GRANTING STATE'S MOTION IN LIMINE TO PRECLUDE DURESS AS A
DEFENSE TO ALL THE CHARGES IN THE INFORMATION

DATE OF HEARING: 8/8/16
TIME OF HEARING: 9:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the
8th day of August, 2016, the Defendant being present, represented by PATRICIA
ERICKSON, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District
Attorney, through MARC DIGIACOMO, Chief Deputy District Attorney, and the Court
having heard the arguments of counsel and good cause appearing therefor,

///

///

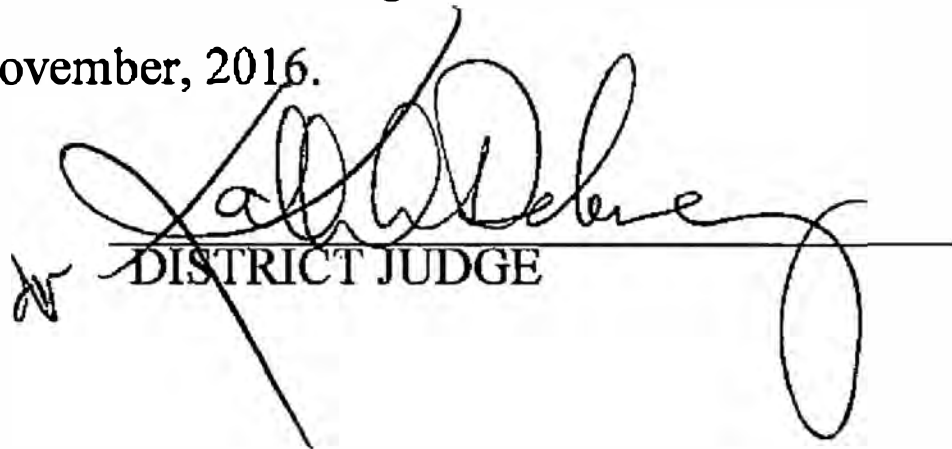
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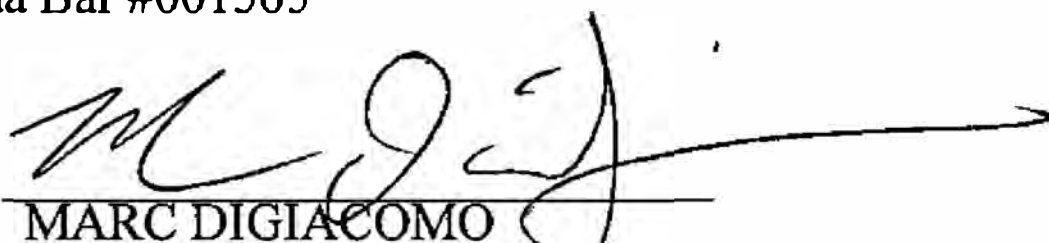
1 IT IS HEREBY ORDERED that the State's Motion in Limine shall be, and it is
2 Granted. The Court does not find that duress is available to negate the intent; and the intent
3 element is available. The Court's findings are as follows:

4 The State has asserted that each crime charged in the Information, underlying this case,
5 is associated with the allegation that Ms. Cabrera committed the crime of murder. Therefore,
6 the State will be required to prove an intent to commit murder in order to prove the intent
7 element of each crime charged. As the defense of duress is not available to the charge of
8 murder, it is not available to every criminal offense alleged in the Information.

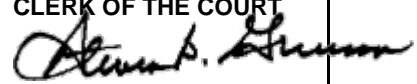
9 DATED this 17th day of November, 2016.

10 
11 DISTRICT JUDGE

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

14 
15 BY MARC DIGIACOMO
16 Chief Deputy District Attorney
17 Nevada Bar #06955

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TRAN
CASE NO. C-12-283700-2
DEPT. NO. 25

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
JOSE GONZALES,)
)
)
Defendant.)
_____)

REPORTER'S TRANSCRIPT
OF
PLEA

BEFORE THE HONORABLE KATHLEEN DELANEY
DISTRICT COURT JUDGE

DATED: WEDNESDAY, APRIL 12, 2017

REPORTED BY: SHARON HOWARD, C.C.R. NO. 745

00787

1 APPEARANCES:

2 For the State:

MARC DIGIACOMO, ESQ.

3

HETTY WONG, ESQ.

4

5 For the Defendant:

ALZORA JACKSON, ESQ.

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CLARK PATRICK, ESQ.

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1 LAS VEGAS, NEVADA; WEDNESDAY, APRIL 12, 2017

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

3 * * * * *

4
5 THE COURT: Good afternoon, everyone. Are we
6 ready to proceed or do you need a few more minutes.

7 MS. JACKSON: We're ready, your Honor.

8 MR. PATRICK: I'm sorry, before we're on the
9 record --

10 (Off the record.)

11 THE COURT: State your appearances.

12 MR. DIGIACOMO: Marc DiGiacomo and Hetty Wong on
13 behalf of the State.

14 MS. JACKSON: Alzora Jackson and Clark Patrick for
15 Mr. Gonzales.

16 THE COURT: Mr. Gonzales is present with us in
17 custody.

18 Who wishes to state the negotiations.

19 MR. PATRICK: I will.

20 This afternoon Mr. Gonzales has agreed to plead
21 guilty to Counts 1 and 2, first degree murder with use of a
22 deadly weapon and Counts 3 and 4, attempt murder. The State
23 has retained the right to argue at sentencing; however, the
24 client entry of plea the State will withdraw the notice of
25 intent to seek the death penalty.

1 THE COURT: No other stipulations or sentence
2 outcome and argument at time of sentencing.

3 MR. PATRICK: Correct, your Honor.

4 MR. DIGIACOMO: That's correct.

5 THE COURT: Mr. Gonzales, I do need to ask you
6 some questions. It's very important, the questions, it
7 might take some extra time. I wouldn't take lengthy time
8 with every person I speak with, sometimes time doesn't
9 permit me to do that.

10 Can I get your full true name for our record.

11 THE WITNESS: Jose Alejandro Gonzales.

12 THE COURT: How old are you.

13 THE WITNESS: 27.

14 THE COURT: How far did you get in your
15 schooling.

16 THE WITNESS: GED.

17 THE COURT: Do you read, write and understand
18 English.

19 THE WITNESS: Yes, I do.

20 THE COURT: We ask that question because I have
21 two documents, I have an amended information, which is the
22 charging document setting forth the 4 charges that I
23 understand you'll be pleading to today, as well as the
24 guilty plea agreement itself. That obviously is a longer
25 more involved document.

1 Did you get a chance to read these documents and go
2 over them with counsel.

3 THE WITNESS: Yes.

4 THE COURT: I have a question about the timing of
5 that, whoever wishes to answer that. I know we had
6 facilitated a meeting with Mr. Gonzales' family member last
7 week and I was under the understanding, but as I sit here
8 today I can't remember why, the guilty plea agreement was
9 prepared and may very well have been able to be discussed
10 even back then.

11 Did the first time Mr. Gonzales see these documents
12 occasioned today or was that last week or any idea of
13 that.

14 MR. PATRICK: First time he saw them was today,
15 your Honor. After he had a chance to talk to his mother
16 last week he was still undecided, which is why we asked he
17 be allowed to talk to his wife today.

18 MS. JACKSON: If I may, also part of the process
19 in our office in cases like this, Mr. Patrick and I go over
20 and we meet with Mr. Gonzales along with our appellate
21 deputy, Ms. JoNell Thomas. What we discuss is the
22 ramifications of the plea, what it looks like, what the
23 offer is. We also have discussions with Mr. Gonzales in
24 this case what the potential issues would be on appeal.

25 So Mr. Gonzales is actually client who understands the

1 legalities extremely well. The statistics and the
2 information that Ms. Thomas shared with him, he was able to
3 converse with her in a manner to let us see he had read the
4 cases and was very familiar with the process and was in
5 agreement with her as to the issues or lack thereof on
6 appeal.

7 So while he had not seen this document until today, the
8 concepts and ideas and the rights and waivers and so forth
9 have been discussed with him.

10 We knew this day was coming I least for the last 6
11 months.

12 THE COURT: Wanted to be sure of what happens on
13 what I would consider to be a typical criminal calendar.
14 Sometimes folks are handed documents -- and I know there was
15 much discussion, I just wasn't sure whether the documents
16 were reviewed.

17 So the first document Mr. Gonzales I want to talk to
18 you about is the amended information. Now, if you would
19 like I could read this word for word or you can waive that
20 reading at this time.

21 THE WITNESS: Waive it at this time.

22 THE COURT: I'm not going to read it word for
23 word, but I'll ask you to enter your plea as to the charges
24 set forth in just a moment. I want to be sure, I think Ms.
25 Jackson just said so, but I want to hear form you directly

1 you do believe you understand the nature of the charges, two
2 counts of first degree murder with use of a deadly weapon,
3 Category A felony and the two counts attempt murder,
4 Category B felony. You believe you understand what those
5 charges are.

6 THE WITNESS: Yes, ma'am.

7 THE COURT: I'm going to ask at this time as to
8 Counts 1 and 2, in the amended information filed today in
9 open court, first degree murder with use of a deadly weapon,
10 Category A felony, how do you plead to those counts.

11 THE WITNESS: Guilty.

12 THE COURT: Counts 3 and 4 as set forth in the
13 amended information filed in open court today, attempt
14 murder, Category B felony, how do you plead as to those
15 counts.

16 THE WITNESS: Guilty.

17 THE COURT: I'm going to come back, even though
18 you waived my reading and ask you factually the basis for
19 your plea entry to conclude our discussion here today, but
20 before I do that I want to talk a little about the guilty
21 plea agreement you signed.

22 I can see that you have signed it. Just to confirm
23 again did you have an opportunity to go over the guilty plea
24 agreement with your counsel and ask questions you had before
25 you signed it.

1 THE WITNESS: Yes.

2 THE COURT: I want to ask you, are you entering
3 your plea today to these 4 counts of your own choosing and
4 your own free will to do this today.

5 THE WITNESS: Yes.

6 THE COURT: Has anybody forced or coerced you in
7 any way to sign this document or enter your plea today.

8 THE WITNESS: No, ma'am.

9 THE COURT: Do you understand as the State has
10 retained the right to argue, of course, you and your counsel
11 will have right to argue at the final decision on what your
12 sentence will be as to these 4 charges and it's my decision
13 and mine alone, do you understand that.

14 THE WITNESS: I understand that fully.

15 THE COURT: You still want to proceed.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: In the guilty plea agreement it sets
18 forth all of the rights that you would have as an accused
19 person or do have as an accused person in the State of
20 Nevada. As the court would recognize you as you stand here
21 today you are innocent unless you were to be proven guilty
22 beyond a reasonable doubt as to any one or more of the
23 charges against you. By entering the guilty plea you are
24 removing that presumption of innocence. You are waiving the
25 right to have the State prove your guilt beyond a reasonable

1 doubt, waiving the right to cross-examine witnesses through
2 counsel, put on your own witnesses, possibly testify on your
3 own behalf if you choose. If you choose not to testify,
4 that is your right and your right alone. The court would
5 instruct the jury to disregard if you chose not to testify
6 and not allow that to enter into deliberations in any way.
7 If the outcome was unfavorable at trial you could appeal to
8 a higher court.

9 You understand you give up all those rights by entering
10 into your plea today.

11 THE WITNESS: I understand that fully.

12 THE COURT: Still wish to proceed.

13 THE WITNESS: Yes.

14 THE COURT: I don't recall if there was discussion
15 before, so I do apologize if we discussed this issue. Are
16 there any immigration consequences to Mr. Gonzales.

17 MR. PATRICK: No there are not. He's a citizen.

18 THE COURT: I want to ask the question because as
19 the case law has evolved there may be collateral
20 consequences during plea entry.

21 Do you have any questions Mr. Gonzales for your counsel
22 or for me as we stand here now in this discussion.

23 THE WITNESS: No, ma'am.

24 THE COURT: There is another pending trial related
25 to this matter. Has there been any negotiation or

1 discussion about any testimony to be given by Mr. Gonzales
2 or impact on that trial related to this one.

3 MR. PATRICK: No, there has not.

4 MR. DIGIACOMO: No.

5 THE COURT: What I'm going to do then Mr. Gonzales
6 at this time is summarize the information that is in the
7 factual basis for the charges. I'll ask you is these facts
8 are the facts you are pleading guilty to today.

9 As to the time frame, the incident in question occurred
10 on the 26th day of April 2012, in Clark County, State of
11 Nevada, the amended information indicates that contrary to
12 the laws of the State of Nevada, as to Count 1, first degree
13 murder with use of a deadly weapon, you willfully and
14 feloniously without authority of law with premeditation and
15 deliberation with malice aforethought kill James Headrick, a
16 human being, by shooting at James Headrick multiple times
17 with a deadly weapon, specifically a firearm, and the
18 killing occurring in the perpetration of a burglary.

19 In that circumstance it's alleged you directly
20 committed the crime, Ivonne Cabrera aided or abetted by
21 counsel, encouragement and by accompanying you to commit
22 that crime.

23 As to Count 2, the allegations are the same, that you
24 did willfully, feloniously and without authority of law with
25 premeditation and deliberation with malice aforethought kill

1 Erik Quezada Morales, a human being, by shooting at Erik
2 Quezada Morales, multiple times with a deadly weapon, again,
3 a firearm and/or killing occurring in the perpetration or
4 attempted perpetration of a burglary.

5 You directly committed the crime as is alleged, Yvonne
6 Cabrera aided or abetting by counsel or encouragement
7 accompanying you to the residence where the crime was
8 committed.

9 As to Count 3, the attempt murder the allegation
10 factual statement is that you without authority of law and
11 with malice aforethought willfully and feloniously attempted
12 to kill Ashley Wantland, a human being, by shooting at
13 Ashley Wantland multiple times. That you directly committed
14 that crime, Yvonne Cabrera, aiding and abetting by counsel
15 and encouragement and by accompanying you to that residence
16 and assisting you to gain access to that residence.

17 The last count, attempt murder without authority of law
18 with malice aforethought, willfully and feloniously attempt
19 to kill Melissa Marin, a human being, by shooting at said
20 Ms. Marin twice specifically, shooting at her having
21 directly committed the crime, Yvonne Cabrera aiding or
22 abetting by counsel and encouragement, and by accompanying
23 you to that residence to gain access to that residence.

24 That is my summary of the factual allegations. Are
25 those facts the basis upon which you are entering your plea

1 to the 4 counts here today.

2 THE WITNESS: May I after a moment with my lawyer,
3 please.

4 THE COURT: Yes.

5 MR. PATRICK: Court's indulgence.

6 THE COURT: Yes.

7 MR. DIGIACOMO: Judge, he wants to admit that he
8 directly committed the acts constituting the offense. The
9 State accepts that. He does not have to implicate anybody
10 else in his allocution.

11 THE COURT: Understood.

12 The factual underpinnings, that was not my intent to do
13 anything either. That is why I asked the question of what
14 you'd have to do with the other case.

15 Those are facts are set forth, but if the State is
16 willing to accept your allocution to the fact you directly
17 committed the crime, that date, the location, the
18 circumstances with regard to your involvement in the crime,
19 the murder of the two individual gentlemen, James Headrick,
20 Eric Morales and attempt murder of Ashley Wantland and
21 Melissa Marin, the State is willing to accept the allocution
22 absent the factual statements with regard to Ms. Cabrera, I
23 will.

24 MR. DIGIACOMO: No objection to that.

25 THE COURT: With that clarification, the court at

1 this time will find that you are freely and voluntarily
2 entering your guilty plea today to the 4 counts and that you
3 are doing so with knowledge and understanding of the
4 consequences and implications of entering your plea today, I
5 will accept your plea and I will set you over for sentencing
6 date which contemplate remaining in custody.

7 MR. PATRICK: We'd like a sentencing date as soon
8 as possible. May we have a special setting because
9 Ms. Jackson and I will have a couple of witnesses to bring
10 in and we'd prefer to do it something like an afternoon like
11 this where we have more time to present a sentencing
12 argument.

13 MR. DIGIACOMO: There may be multiple speakers as
14 well.

15 THE COURT: I was assuming we would have speakers.
16 I understand that. At this point -- so we don't need a
17 PSI.

18 MR. DIGIACOMO: We do.

19 MR. PATRICK: We'll need a PSI.

20 THE COURT: My intent -- here's what I've been
21 told, good or bad, true or not, is if I were to tell parole
22 and probation do something within 30 days, they'd do it. I
23 don't -- I very seldom do it because what I don't want to
24 have happen is have date and we're prepared, be ready to go
25 and we don't have what we need.

1 What they have told us is minimum 50 days would assure
2 to have a PSI. I don't have a problem saying 30 days,
3 setting it early on in my civil calendars where I'm unlikely
4 in my civil track stack where I'm unlikely to have a trial I
5 can give you an afternoon without impacting that and try it,
6 or if we want to be more careful we can do the end of May.

7 MR. PATRICK: We would request if we could get
8 closer to 30 days, Judge, if that's possible.

9 THE COURT: The first week of my civil stack would
10 be May 22. Now my last week of the criminal trial is May
11 15th week, which is about 30 days from now.

12 MR. DIGIACOMO: The 19th for P&P, they might be
13 able to do a PSV quickly.

14 THE COURT: The ones with --

15 MR. DIGIACOMO: The bigger cases. Let's give as
16 much time as possible. We'll get the file to them tomorrow
17 morning.

18 THE COURT: The morning of Friday, May 19.

19 MR. PATRICK: Fine.

20 THE COURT: Friday May 19th at 9:30, special
21 setting for sentencing.

22 MS. JACKSON: I apologize. Is it possible to do
23 it that Monday or the court needs a Friday I was thinking
24 the 22nd.

25 MR. DIGIACOMO: Fine with the State too.

1 THE COURT: We'll do Monday the May 22nd.

2 MR. PATRICK: What time.

3 THE COURT: 1:30.

4 Thank you. Monday, May 22, 1:30. Anything else to
5 cover.

6 MR. DIGIACOMO: Ms. Jackson agreed to give me
7 discovery on whatever mitigation the intend to present.

8 MS. JACKSON: Yes.

9 THE COURT: Does the State proceed to remove death
10 penalty notice.

11 MR. DIGIACOMO: It can be withdrawn at this
12 point.

13 THE COURT: The court will note that's part of the
14 negotiation it be withdrawn. Do you need to file something
15 separately to effectuate that.

16 MR. DIGIACOMO: No. He can't be sentenced to
17 death without a jury.

18 THE COURT: Thank you for your efforts.

19

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22 * * * * *

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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 dark ink, appearing to read "Sharon Howard", is written over a horizontal line. The signature is stylized with a large, circular flourish at the end.

Sharon Howard
C.C.R. #745

ORIGINAL

GPA

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR 12 2017

BY: AJAM. BROWN
AJAM. BROWN, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOSE ALEJANDRO GONZALES,
#2636822

Defendant.

CASE NO: C-12-283700-2

DEPT NO: XXV

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: COUNTS 1 & 2 – FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50006) and COUNTS 3 & 4 - ATTEMPT MURDER (Category B Felony - NRS 193.330, 200.010 - NOC 50029), as more fully alleged in the charging document attached hereto as Exhibit "1".

My decision to plead guilty is based upon the plea agreement in this case which is as follows:

The State agrees to retain the right to argue at sentencing. Upon plea of guilty, the State will withdraw the Notice of Intent to Seek Death.

I agree to the forfeiture of any and all weapons or any interest in any weapons seized and/or impounded in connection with the instant case and/or any other case negotiated in whole or in part in conjunction with this plea agreement.

//

C-12-283700-2
GPA
Guilty Plea Agreement
4640788



1 I understand and agree that, if I fail to interview with the Department of Parole and
2 Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate,
3 by affidavit review, confirms probable cause against me for new criminal charges including
4 reckless driving or DUI, but excluding minor traffic violations, the State will have the
5 unqualified right to argue for any legal sentence and term of confinement allowable for the
6 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have
7 to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without
8 the possibility of parole, life with the possibility of parole after ten (10) years, or a definite
9 twenty-five (25) year term with the possibility of parole after ten (10) years.

10 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
11 plea agreement.

12 CONSEQUENCES OF THE PLEA

13 I understand that by pleading guilty I admit the facts which support all the elements of
14 the offense(s) to which I now plead as set forth in Exhibit "1".

15 As to Count 1 & 2 - I understand that as a consequence of my plea of guilty the Court
16 must sentence me to life without the possibility of parole; life with parole eligibility beginning
17 at twenty (20) years, plus a consecutive one (1) to twenty (20) years for the use of a deadly
18 weapon or definite term of fifty (50) years with parole eligibility beginning at twenty (20)
19 years, plus a consecutive one (1) to twenty (20) years for the use of a deadly weapon **ON**
20 **EACH COUNT.**

21 As to Count 3 & 4 - I understand that as a consequence of my plea of guilty the Court
22 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
23 term of not less than two (2) years and a maximum term of not more than twenty (20) years
24 **ON EACH COUNT.** The minimum term of imprisonment may not exceed forty percent
25 (40%) of the maximum term of imprison.

26 I understand that the law requires me to pay an Administrative Assessment Fee.

27 //

28 //

1 I understand that, if appropriate, I will be ordered to make restitution to the victim of
2 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
3 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
4 reimburse the State of Nevada for any expenses related to my extradition, if any.

5 I understand that I am not eligible for probation for the offense to which I am pleading
6 guilty.

7 I understand that I must submit to blood and/or saliva tests under the Direction of the
8 Division of Parole and Probation to determine genetic markers and/or secretor status.

9 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,
10 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or
11 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation
12 and may receive a higher sentencing range.

13 I understand that if more than one sentence of imprisonment is imposed and I am
14 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
15 the sentences served concurrently or consecutively.

16 I understand that information regarding charges not filed, dismissed charges, or charges
17 to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

18 I have not been promised or guaranteed any particular sentence by anyone. I know that
19 my sentence is to be determined by the Court within the limits prescribed by statute.

20 I understand that if my attorney or the State of Nevada or both recommend any specific
21 punishment to the Court, the Court is not obligated to accept the recommendation.

22 I understand that if the offense(s) to which I am pleading guilty was committed while I
23 was incarcerated on another charge or while I was on probation or parole that I am not eligible
24 for credit for time served toward the instant offense(s).

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1 I understand that if I am not a United States citizen, any criminal conviction will likely
2 result in serious negative immigration consequences including but not limited to:

- 3 1. The removal from the United States through deportation;
- 4 2. An inability to reenter the United States;
- 5 3. The inability to gain United States citizenship or legal residency;
- 6 4. An inability to renew and/or retain any legal residency status; and/or
- 7 5. An indeterminate term of confinement, with the United States Federal
8 Government based on my conviction and immigration status.

9 Regardless of what I have been told by any attorney, no one can promise me that this
10 conviction will not result in negative immigration consequences and/or impact my ability to
11 become a United States citizen and/or a legal resident.

12 I understand that the Division of Parole and Probation will prepare a report for the
13 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
14 sentencing, including my criminal history. This report may contain hearsay information
15 regarding my background and criminal history. My attorney and I will each have the
16 opportunity to comment on the information contained in the report at the time of sentencing.
17 Unless the District Attorney has specifically agreed otherwise, the District Attorney may also
18 comment on this report.

19 WAIVER OF RIGHTS

20 By entering my plea of guilty, I understand that I am waiving and forever giving up the
21 following rights and privileges:

- 22 1. The constitutional privilege against self-incrimination, including the right
23 to refuse to testify at trial, in which event the prosecution would not be
allowed to comment to the jury about my refusal to testify.
- 24 2. The constitutional right to a speedy and public trial by an impartial jury,
25 free of excessive pretrial publicity prejudicial to the defense, at which
26 trial I would be entitled to the assistance of an attorney, either appointed
or retained. At trial the State would bear the burden of proving beyond
a reasonable doubt each element of the offense(s) charged.
- 27 3. The constitutional right to confront and cross-examine any witnesses who
28 would testify against me.

//

1 My attorney has answered all my questions regarding this guilty plea agreement and its
2 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

3 DATED this 12th day of April, 2017.

4
5 Jose A. Gonzalez
6 JOSE ALEJANDRO GONZALES
7 Defendant

8 AGREED TO BY:

9
10 M. DiGiacomo
11 MARC DIGIACOMO
12 Chief Deputy District Attorney
13 Nevada Bar #006955
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1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court
3 hereby certify that:

- 4 1. I have fully explained to the Defendant the allegations contained in the
5 charge(s) to which guilty pleas are being entered.
- 6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.
- 8 3. I have inquired of Defendant facts concerning Defendant's immigration status
9 and explained to Defendant that if Defendant is not a United States citizen any
10 criminal conviction will most likely result in serious negative immigration
11 consequences including but not limited to:
- 12 a. The removal from the United States through deportation;
 - 13 b. An inability to reenter the United States;
 - 14 c. The inability to gain United States citizenship or legal residency;
 - 15 d. An inability to renew and/or retain any legal residency status; and/or
 - 16 e. An indeterminate term of confinement, by with United States Federal
17 Government based on the conviction and immigration status.

18 Moreover, I have explained that regardless of what Defendant may have been
19 told by any attorney, no one can promise Defendant that this conviction will not
20 result in negative immigration consequences and/or impact Defendant's ability
21 to become a United States citizen and/or legal resident.

- 22 4. All pleas of guilty offered by the Defendant pursuant to this agreement are
23 consistent with the facts known to me and are made with my advice to the
24 Defendant.
- 25 5. To the best of my knowledge and belief, the Defendant:
- 26 a. Is competent and understands the charges and the consequences of
27 pleading guilty as provided in this agreement,
 - 28 b. Executed this agreement and will enter all guilty pleas pursuant hereto
voluntarily, and
 - c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant as
certified in paragraphs 1 and 2 above.

Dated: This 12 day of April, 2017.


ATTORNEY FOR DEFENDANT

mno/GCU

1 **AINF**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MARC DIGIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #006955
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 JOSE GONZALES,
14 aka Jose Alejandro Gonzales, #2636822
15 Defendant.

CASE NO: C-12-283700-2

DEPT NO: XXV

13 **A M E N D E D**
14 **I N F O R M A T I O N**

17 STATE OF NEVADA }
18 COUNTY OF CLARK } ss.

19 STEVEN B. WOLFSON, Clark County District Attorney within and for the County of
20 Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the
21 Court:

22 That JOSE GONZALES, aka Jose Alejandro Gonzales, the Defendant above named,
23 having committed the crimes of **FIRST DEGREE MURDER WITH USE OF A DEADLY**
24 **WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 – NOC 50006)** and
25 **ATTEMPT MURDER (Category B Felony - NRS 200.010, 200.030, 193.330 – NOC**
26 **50029)**, on or about the 26th day of April, 2012, within the County of Clark, State of Nevada,
27 contrary to the form, force and effect of statutes in such cases made and provided, and against
28 the peace and dignity of the State of Nevada,

1 COUNT 1 – FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON

2 did then and there wilfully, feloniously, without authority of law, and with
3 premeditation and deliberation, and with malice aforethought, kill JAMES HEADRICK, a
4 human being, by shooting at the said JAMES HEADRICK multiple times, with a deadly
5 weapon, to-wit: firearm, and/or by the killing occurring in the perpetration or attempted
6 perpetration of a Burglary; Defendant JOSE GONZALES, aka Jose Alejandro Gonzales
7 directly committing said crime, IVONNE CABRERA, aka Yvonne Cabrera aiding or abetting
8 by counsel and encouragement and by accompanying Defendant JOSE GONZALES, aka Jose
9 Alejandro Gonzales to JAMES HEADRICK's residence and knocking on doors to and within
10 JAMES HEADRICK's apartment to allow Defendant JOSE GONZALEZ, aka Jose Alejandro
11 Gonzales to gain access to JAMES HEADRICK to facilitate shooting him.

12 COUNT 2 – FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON

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

24 COUNT 3 - ATTEMPT MURDER

25 did then and there, without authority of law, and malice aforethought, willfully and
26 feloniously attempt to kill ASHLEY WANTLAND, a human being, by shooting at the said
27 ASHLEY WANTLAND multiple times, Defendant JOSE GONZALES, aka Jose Alejandro
28

1 Gonzales directly committing said crime, IVONNE CABRERA, aka Yvonne Cabrera aiding
2 or abetting by counsel and encouragement and by accompanying Defendant JOSE
3 GONZALES, aka Jose Alejandro Gonzales to ASHLEY WANTLAND's residence and
4 knocking on doors to and within ASHLEY WANTLAND's apartment to allow Defendant
5 JOSE GONZALEZ, aka Jose Alejandro Gonzales to gain access to ASHLEY WANTLAND
6 to facilitate shooting her.

7 COUNT 4 - ATTEMPT MURDER

8 did then and there, without authority of law, and malice aforethought, willfully and
9 feloniously attempt to kill MELISSA MARIN, a human being, by shooting at the said
10 MELISSA MARIN twice, Defendant JOSE GONZALES, aka Jose Alejandro Gonzales
11 directly committing said crime, IVONNE CABRERA, aka Yvonne Cabrera aiding or abetting
12 by counsel and encouragement and by accompanying Defendant JOSE GONZALES, aka Jose
13 Alejandro Gonzales to MELISSA MARIN'S residence and knocking on doors to and within
14 MELISSA MARIN'S apartment to allow Defendant JOSE GONZALEZ, aka Jose Alejandro
15 Gonzales to gain access to MELISSA MARIN to facilitate shooting him.

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

18
19 BY /s//MARC DIGIACOMO
20 MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955

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26 DA#12FN0864A-B/mmo-MVU
27 NLVPD EV#1207466
(TK2)