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9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF WASHOE

11 THE STATE OF NEVADA,

12 Plaintiff,

13 v.

Case No. CR15-1674

14 LUIS ALEJANDRO MENENDEZ-CORDERO, Dept. No. 7

15 Defendant.

16 **SUPPLEMENT TO THE DEFENDANT'S OPPOSITION TO STATE'S MOTION TO**
17 **INTRODUCE EVIDENCE OF LUIS ALEJANDRO MENENDEZ-CORDERO'S**
18 **CONSCIOUSNESS OF GUILT**

19 COMES NOW, Defendant LUIS ALEJANDRO MENENDEZ-CORDERO, by and
20 through his counsel of record, Jeremy T. Bosler, Washoe County Public Defender, LINDA M.
21 NORDVIG and RICHARD M. VILORIA, Deputy Public Defenders, and hereby serves his
22 Supplement to Defendant's Opposition to the State's Motion to introduce evidence of Mr.
23 Menendez-Cordero's consciousness of guilt and other evidence prohibited by NRS 48.045 and
24 construing case law, subject to trial court determination of admissibility at a hearing outside the
25 presence of the jury, in accordance with the law referenced in the attached Points and
26 Authorities. This Supplement to Defendant's Opposition is based upon the Fifth, Sixth and
Fourteenth Amendments to the United States Constitution, Article 1, Section 8 of the Nevada
Constitution, NRS 48.045, and the following points and authorities.

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 Luis Alejandro Menendez-Cordero is accused of two counts of Murder in the first
4 degree with the use of a deadly weapon which, if convicted, carries a maximum conviction of
5 life without the possibility of parole. He was indicted by the Washoe County Grand Jury on
6 October 28, 2015, and arraigned in this Court on November 18, 2015. The State filed an
7 emergency motion for protection order, et al., which included sealed documents, on August 31,
8 2017, opposed by the defense on September 5, 2017, and ruled upon by this Court on
9 September 11, 2017, granting the State's motion. The Motion for protection order, as well as
10 multiple other pending motions, including this Motion to introduce evidence regarding Mr.
11 Menendez-Cordero's consciousness of guilt, relies upon the contents of several I-web and
12 telephonic communications beginning on August 30, 2017, which allegedly contain threats
13 and/or requests by Mr. Menendez-Cordero to intimidate, dissuade or otherwise convince
14 certain witnesses not to appear and testify at his trial. Trial is scheduled to commence October
15 2, 2017.
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18 STATEMENT OF THE FACTS

19 The State has dedicated a portion of its pleading to include what it refers to as a
20 "Statement of Facts." The contents of this section contain allegations and a recitation of
21 communications of Mr. Menendez-Cordero compiled by the State that have been discovered to
22 the defense to date. Consistent with other pleadings on file, Mr. Menendez-Cordero disputes
23 the State's rendition of the "facts" as alleged.
24

25 ARGUMENT

26 The use of other acts evidence in criminal trials is heavily disfavored. The Nevada
Supreme Court in recent cases has repeatedly urged caution in permitting introduction of other

1 acts evidence before juries. The Court has also expressed concerns with consciousness of guilt
2 and flight evidence and instructions. The State's motion indicates it is seeking admission of the
3 evidence to show "consciousness of guilt."

4 In what appears at the time of this writing to be its most recent address of the issues, the
5 Nevada Supreme Court on July 14, 2003, in Tabish v. State, 119 Nev. 293 (2003), determined
6 that joinder of counts regarding a weaker case was inappropriate, citing unfair prejudice. The
7 Court restated an earlier holding regarding the burden of proof for admission of other acts
8 evidence, pursuant to NRS 48.045.

10 As this court held in Tinch v. State, to deem a prior bad act admissible,
11 the district court must first determine outside the presence of the jury that "(1)
12 the incident is relevant to the crime charged; (2) the act is proven by clear and
13 convincing evidence; and (3) the probative value of the evidence is not
14 substantially outweighed by the danger of unfair prejudice." Id.

15 The Tabish court concluded that both the relevance and proof elements were satisfied by the
16 proffered evidence, but that the prejudice prong was not. The Court's ruling in Tabish was not
17 a surprise in light of its recent rulings.

18 In Tavares v. State, 117 Nev. 725, 730, 30 P.3d 1128, 1131 (2001) the Court held that it
19 is "heavily disfavored" to use prior bad act evidence to convict a defendant "because bad acts
20 are often irrelevant and prejudicial and force the accused to defend against vague and
21 unsubstantiated charges." Similarly in Flores v. State, 116 Nev. 659, 662-63, 5 P.3d 1066,
22 1068 (2000) the Court held that the probative value of evidence of a prior murder to show
23 identity and motive for another murder was far outweighed by the danger of unfair prejudice.

24 The statements attributed to Mr. Menendez-Cordero differ from those reviewed by the
25 Nevada Supreme Court in Abram v. State, 95 Nev. 352, 594 P.2d 1143 (1979), and cited by the
26 State. In Abram the Defendant objected to two types of other act testimony. The first, an

1 unresponsive answer from a detective, suggested one of the witnesses was afraid of the
2 defendant. The Supreme Court found that the statement should not have been admitted.
3 Insufficient foundation existed in the record. The second other act evidence admitted was from
4 a jailhouse informant, who claimed the defendant threatened the witness with violence, noting
5 "everything would have been fine if she would have kept her mouth shut." Thus, the threat
6 accepted in Abram differs from those alleged in the State's Motion because the Abram threat
7 specifically tied to the testimony. Here, the State claims Mr. Menendez-Cordero made threats
8 to the prospective witnesses. It has not presented any evidence that the witnesses know of the
9 alleged threats or that their decision to testify or not has been impacted.

11 The Supreme Court, in analyzing the appropriate use of other bad acts evidence, has
12 tended to admit evidence of acts while limiting the use of statements. In Honeycutt v. State, 56
13 P.3d. 362 (2002), the Supreme Court ruled admissible the defendant's soliciting a third person
14 to kill a witness in a case that had previously ended in a mistrial. Conversely, a defendant's
15 statements, without more, have often been found lacking for 48.045 purposes. In both Tavares
16 v. State, 117 Nev. 725, 30 P.3d 1128 (2001) and Walker v. State, 116 Nev. 442, 997 P.2d 803
17 (2000), the Supreme Court held that statements of the defendants regarding a desire to flee
18 (Tavares) and a desire to harm or kill the victim (Walker) were improperly admitted. In each
19 case the defense argued the quantum of proof presented, and the probative value of the
20 proffered evidence, and was overruled. The charges faced by both Tavares and Walker were
21 murder charges, similar charges to those filed against Mr. Menendez-Cordero. Despite the
22 seriousness of the charges, however, the Supreme Court determined that the proffered
23 statements (unaccompanied by acts in their furtherance) were insufficient. The situation
24 appears to be analogous to the conspiracy doctrine. While group plans to commit unlawful acts
25 may be objectionable, it is only plans coupled with overt acts that become criminal. It is

26 ///

1 respectfully submitted this Court should reach a similar conclusion here and advise the State
2 that the evidence is not admissible.

3 Even if sufficiently proven for NRS 48.045, a point the defense does not concede, the
4 State's Motion if granted, would substantially prejudice Mr. Menendez-Cordero, and should
5 not be permitted. The allegations are based upon conversations in Spanish and alleged "code
6 words" which are subject to interpretation. The State has had at least one of the conversations
7 translated by a law enforcement officer who has not been certified by the court, who worked on
8 this case beginning in 2012, and who is definitely biased in favor of the State's position.
9 Different interpretations of the conversation are possible. The State has offered no proof in the
10 form of a certified transcription, affidavit or offer of proof to support unsubstantiated
11 allegations.

12 Even if this Court finds that the alleged conversations constitute threats made to deter a
13 witness to testify, the State would still require a showing that the allegations were more
14 probative than prejudicial. There have been no additional charges filed against Mr. Menendez-
15 Cordero. The State cannot provide evidence that the threats prove anything. Assuming that the
16 State has subpoenaed the targeted witness and he appears and testifies, the allegations mean
17 nothing and have had no effect on the witness or the trial. The allegations would be moot. At
18 the very least, the allegations are premature.

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CONCLUSION

Based on the foregoing, Mr. Menendez-Cordero respectfully requests this Court to deny the State's motion to allow the alleged evidence of his consciousness of guilt. The allegations are substantially outweighed by the danger of unfair prejudice.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 25th day of September, 2017.

JEREMY T. BOSLER
Washoe County Public Defender

By /s/ Linda M. Nordvig
LINDA M. NORDVIG
Deputy Public Defender

By /s/ Richard M. Vilorio
RICHARD M. VILORIA
Deputy Public Defender

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KELLY KOSSOW
Chief Deputy District Attorney
Via ECF System

/s/ Linda Gray
LINDA GRAY

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4 Attorney for Plaintiff

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR15-1674

11 v.

Dept. No. 7

12 LUIS ALEJANDRO MENENDEZ-CORDERO,

13 Defendant.

14
15 STATE'S REPLY TO DEFENDANT'S OPPOSITION AND SUPPLEMENT TO DEFENDANT'S
16 OPPOSITION TO STATE'S MOTION TO INTRODUCE EVIDENCE OF DEFENDANT'S
CONSCIOUSNESS OF GUILT

17 COMES NOW, the State of Nevada, by and through CHRISTOPHER J.
18 HICKS, District Attorney of Washoe County, and Kelly Ann Kossow,
19 Chief Deputy District Attorney, and hereby files the following reply
20 to the defenses opposition and supplemental opposition to the State's
21 original motion to introduce evidence of the Defendant's
22 consciousness of guilt. This motion is based upon the attached
23 Memorandum of Points and Authorities, and testimony and/or arguments
24 adduced at a hearing on the matter.
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1 and Lay the direct evidence, by way of I-Web, is relevant to
2 demonstrate MENENDEZ-CORDERO's guilt in the current charges and
3 should be admitted absent analysis or discussion under a prior bad
4 acts theory.

5 However, even in an abundance of caution if the State were to
6 present evidence of consciousness of guilt under NRS 48.045(2), the
7 State could meet all of the *Tinch* factors. First, the evidence is
8 relevant to show the consciousness of guilt of the defendant in
9 trying to cover up his crime by intimidating a witness not to show up
10 in court and testify regarding the Defendant's presence at the murder
11 scene. The evidence is also relevant to show identity in that
12 MENENDEZ-CORDERO is the person who shot and killed Kevin Melendez and
13 Moises Vasquez. If MENENDEZ-CORDERO is not the shooter, then there
14 would be no reason to threaten a witness not to show up at trial and
15 testify. Second, the State can prove the threat by clear and
16 convincing evidence as the statements made by the Defendant are
17 contained on a recorded I-Web visit between the Defendant and other
18 males. Third, the probative value of the evidence is not
19 substantially outweighed by the danger of unfair prejudice.

20 The defense contends, that even if the State can meet the
21 factors for admission of evidence under NRS 48.045(2) the evidence
22 would "substantially prejudice Mr. Menendez-Cordero, and should not
23 be permitted."¹ Of course the evidence that the Defendant threatened
24 the witness who brought him to the party where the shooting occurred
25
26

¹ Defense Motion, p. 5, ll. 4-5.

1 is prejudicial as it implicates his guilt in the crime but such
2 evidence is not unfairly prejudicial. "Unfair prejudice as to a
3 criminal defendant, speaks to the capacity of some concededly
4 relevant evidence to lure the fact finder into declaring guilt on a
5 ground different from proof specific to the offense charged." Old
6 Chief v. United States, 519 U.S. 172, 180, 117 S.Ct. 644, 136 L.Ed.2d
7 574 (1997). That is simply not the case here. Evidence of a threat
8 to a witness versus the actual conduct in the underlying charges
9 pales in comparison. The mere fact of the threat will not lure a
10 jury into convicting MENENDEZ-CORDERO of double murder but is
11 extremely probative in demonstrating his identity as the killer as
12 well as his consciousness of a guilty mind.

13 The defense also argues that the evidence is prejudicial because
14 it can be interpreted in differing ways and that the State plans to
15 introduce the evidence through law enforcement "who has not been
16 certified by the court..."² The defense cites no authority for its
17 position that the translation of the Defendant's statements must be
18 introduced through a certified interpreter. In fact, the Nevada
19 Supreme Court has held contrary in Baltazar-Monterrosa v. State, 122
20 Nev. 606, 137 P.3d 1137 (2006). In Baltazar the defendant argued
21 that the police interpreters were biased and that police interviews
22 should be conducted by independent interpreters. The court disagreed
23 and held that police interviews need not be conducted by an
24 independent interpreter and no presumption of police bias should
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2 ² Defense Motion p. 5, l. 7.

1 apply absent a showing in the record. Id at 613. The Court then set
2 out a procedure for determining the admissibility of disputed
3 statements, finding:

4 First, each party should have its own interpreters review
5 any translated statements for discrepancies. If
6 discrepancies exist, the admissibility of the statements
7 should be raised in a pretrial motion to suppress. The
8 party seeking suppression of the statements has the burden
9 of demonstrating the inaccuracy of the statements and that
10 it fundamentally alters the substance of the statements.
11 Second, the District Court should appoint an independent
12 and, if available, certified court interpreter to review
13 the translations. The District Court must then consider
14 the disputed versions of any statement to determine whether
15 alleged inaccuracies or omissions fundamentally alter the
16 context of the statement. If the District Court concludes
17 that the statement is admissible, counsel may raise any
18 discrepancies through direct and cross examination of
19 officers who took the statement. The District Court should
20 also admit all versions of the statements and instruct the
21 jury regarding the disputed translation issue and that they
22 may consider the issue in deciding what weight to give the
23 statements. Finally, the district court should ensure that
24 a copy of each translation is preserved for the record on
25 appeal. Id at 616-617.

17 The defense has provided no alternate translation nor has it proven
18 or demonstrated on the record that Special Agent Blaine Freestone is
19 biased in some way and that therefore his translation of the threat
20 is invalid.

21 Finally, the Defense cites to Tavares v. State, 117 Nev. 725
22 (2001) to prove that a defendant's threatening statement is not
23 enough to allow the introduction of such without more. In Tavares
24 the Court addressed prior bad act evidence, having nothing to do with
25 threatening witnesses, and also evidence of flight. The two were
26 completely separate issues and the court found, as to the prior bad
act evidence, a limiting instruction should have been provided. As

1 to the flight evidence, the Court found "a desire to flee" does not
2 reflect consciousness of guilt, but a "plan to flee" could. Id at
3 734. Tavares has absolutely no bearing on this case other than to
4 prove, flight, if supported by actual flight or an actual plan, is
5 consciousness of guilt evidence that is admissible and that
6 consciousness of guilt evidence is not analyzed under NRS 48.045.

7 Next, the defense cites to Walker v. State, 116 Nev. 442 (2000)
8 for the proposition that "statements of a defendant...regarding...a
9 desire to harm or kill the victim were improperly admitted." ³ Walker
10 had to do with admitting prior bad act evidence that on two
11 occasions, 10 and 6 years prior, the defendant held a gun to the
12 victim and threatened him. These facts have no bearing on the case
13 at hand. The threat introduced by MENENDEZ-CORDERO is not remote in
14 time and the threat is being introduced as consciousness of guilt,
15 not to prove intent at the time of the killings, which was what the
16 State in Walker attempted to do with the prior bad act evidence. The
17 court determined that the 6 and 10 year old incidents were too remote
18 in time to be relevant and that as such the prior bad act evidence
19 was improperly admitted. Again, completely inapposite of our case.

20 CONCLUSION

21 The State is moving to admit evidence in its case in chief that
22 the Defendant made statements that amounted to a threat against a
23 current State's witness. That threat was broadcast to several men on
24 an I-Web visit on August 30, 2017 and again on a phone call on August
25

26 ³ Defense Motion p. 4, 11. 17-18

1 31, 2017. The statement is direct and relevant to demonstrate
2 MENENDEZ-CORDERO's consciousness of guilt as to his actions in
3 murdering Kevin Melendez and Moises Vasquez and is therefore
4 admissible evidence.

5
6 AFFIRMATION PURSUANT TO NRS 239B.030

7 The undersigned does hereby affirm that the preceding document
8 does not contain the social security number of any person.

9 Dated this 28TH day of SEPTEMBER, 2017.

10
11 CHRISTOPHER J. HICKS
12 District Attorney
13 Washoe County, Nevada

14
15 By/s/KELLY ANN KOSSOW
16 KELLY ANN KOSSOW
17 8221
18 Chief Deputy District Attorney
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1 CERTIFICATE OF SERVICE BY E-FILING

2 I certify that I am an employee of the Washoe County
3 District Attorney's Office and that, on this date, I electronically
4 filed the foregoing with the Clerk of the Court by using the ECF
5 system which will send a notice of electronic filing to the
6 following:

7
8 WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
9 LINDA NORDVIG, D.P.D.
 RICHARD VILORIA, D.P.D.

10 DATED this 28TH day of SEPTEMBER, 2017.

11
12 /s/KELLY ANN KOSSOW
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1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11 STATE OF NEVADA,)
12 Plaintiffs,)
13 vs.)
14 LUIS ALEJANDRO MENENDEZ)
15 CORDERO,)
16 Defendant.)

Case No. CR15-1674
Department 7

17
18 TRANSCRIPT OF PROCEEDINGS

19 PRETRIAL MOTIONS

20 September 29, 2017

21 2:00 p.m.

22 Reno, Nevada
23

24 Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

1 APPEARANCES:

2 For the State:

3 OFFICE OF THE DISTRICT ATTORNEY
4 By: KELLY ANN KOSSOW, ESQ.
5 By: ZELALEM BOGALE, ESQ.
6 P.O. Box 30083
7 Reno, Nevada

8 For the Defendant:

9 OFFICE OF THE PUBLIC DEFENDER
10 By: LINDA NORDVIG, ESQ.
11 350 S. Center
12 Reno, Nevada

1 RENO, NEVADA, September 29, 2017, 2:00 p.m.

2

3 --oOo--

4 THE CLERK: Case number CR15-1674, State versus
5 Luis Alejandro Menendez Cordero. Matter set for pretrial
6 motions. Counsel, please state your appearance.

7 MS. KOSSOW: Good afternoon. Kelly Ann Kossow and
8 Zelalem Bogale representing the State.

9 MS. NORDVIG: Good afternoon, your Honor. Linda
10 Nordvig on behalf of Luis Alejandro Menendez Cordero, who is
11 not present in court, nor is he present by video and we will
12 make an objection of that fact.

13 THE COURT: The objection is noted and overruled.
14 We have before us an emergency motion to prohibit the
15 defendant's non-attorney-client communication and a request
16 for hearing. Mr. Bogale, your motion.

17 MR. BOGALE: Thank you very much, your Honor. So
18 first, I appreciate the Court taking this up on an expedited
19 time line. I understand everyone has other things to do.

20 THE COURT: This is important. Take your time.

21 MR. BOGALE: But I just want to say thank you.
22 Second, the nature of this expedited hearing is such that the
23 quantity and the quality of evidence the State can produce
24 today this afternoon may not be as good as it would be on

1 Monday morning or Monday afternoon, perhaps, when there are
2 other witnesses available.

3 And just to pin that down, there have been three
4 individuals who have been assisting the State in translating
5 the defendant's jail calls, one of which is here this
6 afternoon, and he'll be assisting the State in presenting
7 certain evidence. So that's what I mean. We were able to
8 get one person here.

9 THE COURT: Just a minute.

10 MR. BOGALE: Yes, your Honor.

11 THE COURT: Go ahead, Mr. Bogale.

12 MR. BOGALE: Just as a way of setting the table,
13 so to speak, your Honor, I wanted to note that there was only
14 one of the three who has actually heard the calls the State
15 intends to present, but is only one of three that has been
16 helping the State translate the calls. With that, if I could
17 call my first witness?

18 THE COURT: Please.

19 MR. BOGALE: The State calls Jose Zendejas.

20 MS. NORDVIG: Just to make a record, your Honor,
21 with the short notice we had for the hearing today, the
22 interpreters that are available to my office, none of them
23 were able to appear today.

24 THE COURT: How many interpreters do you have in

1 your office?

2 MS. NORDVIG: We have none in the office. All of
3 ours are independent contractors.

4 THE COURT: Okay.

5 MS. NORDVIG: And that depends on who is available
6 at whatever time, so I can't give you a set number.

7 THE COURT: All right. That's fine.

8 (One witness sworn at this time.)

9 THE COURT: Mr. Bogale.

10 MR. BOGALE: Thank you, your Honor.

11 JOSE ZENDEJAS

12 called as a witness and being duly sworn did testify as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. BOGALE:

16 Q. Could you please state your name and spell it for
17 the transcriber, please?

18 A. Jose Zendejas, J-o-s-e, Z-e-n-d-e-j-a-s.

19 Q. What is your current occupation?

20 A. I'm a detective with the Sparks Police Department.

21 Q. How long have you been a detective with the Sparks
22 Police Department?

23 A. A year.

24 Q. Have you previously held positions at the Sparks

1 Police Department before becoming a detective?

2 A. I have.

3 Q. What were those?

4 A. I was in the undercover unit, CSU, and I was a

5 patrol officer before that.

6 Q. How long total have you been with the Sparks

7 Police Department?

8 A. Ten years.

9 Q. As part of your duties as an officer or a

10 detective with the Sparks Police Department, have you been

11 involved in the investigation of defendant named Luis

12 Alejandro Menendez Cordero?

13 A. I have.

14 Q. And what has been your role in that investigation?

15 A. My role has been to monitor his jail calls.

16 Q. You obviously speak English, is that correct?

17 A. That's correct.

18 Q. Do you speak any other languages?

19 A. I speak Spanish.

20 Q. How long have you spoke Spanish?

21 A. It's my first language.

22 Q. So English is your second language?

23 A. Yes.

24 Q. On the jail calls -- how many have you listened

1 to, approximately?

2 A. Approximately well over 80.

3 Q. How do you access the jail calls themselves?

4 A. We have a program called GTL that allows us to

5 listen to what the inmates are talking.

6 Q. And how do you associate a call with an inmate?

7 A. So normally, the GTL will give you the inmate's

8 pin and also the inmate's name.

9 Q. And are his calls made from pin numbers or names

10 or both?

11 A. Both.

12 Q. So as a police officer, you have the access to a

13 system called GTL and you can look up calls made by specific

14 inmates?

15 A. That's correct.

16 Q. If you search for their pin or for their name?

17 A. Correct.

18 Q. Is that how you accessed the defendant's calls in

19 this case?

20 A. Correct. By his first and last name.

21 Q. Now, you said you listened to approximately 80

22 calls, is that correct?

23 A. That's correct.

24 Q. Does that include calls from earlier this week?

1 A. It does.

2 Q. Specifically, September 26th, 2017?

3 A. I did.

4 MS. NORDVIG: Could you repeat that, please?

5 BY MR. BOGALE:

6 Q. September 26th, 2017. And through your experience
7 listening to these calls, have you become familiar with the
8 defendant's voice?

9 A. I have.

10 Q. And on the calls that you listened to from earlier
11 this week on September 26th, 2017, did you recognize the
12 defendant's voice in those calls?

13 A. I did recognize his voice.

14 MR. BOGALE: Your Honor, may I mark an exhibit,
15 please?

16 THE COURT: Yes, you may.

17 THE CLERK: Exhibit 1 marked for identification.

18 MR. BOGALE: Your Honor, may I approach the
19 witness?

20 THE COURT: You may.

21 BY MR. BOGALE:

22 Q. Detective Zendejas, I have in front of me what's
23 been marked as State's Exhibit 1. Can you look at that?

24 A. Yes.

1 Q. Do you know what that is?

2 A. That is recordings of jail calls that Mr. Cordero
3 has made specifically on September 26th.

4 Q. How do you know that?

5 A. I initialed and dated it.

6 Q. Okay. So does your initials and the date signify
7 that you listened to what's on that CD?

8 A. That's correct.

9 Q. And what's on that CD you said are calls from
10 September 26th, 2017?

11 A. Correct.

12 Q. When did you listen to those?

13 A. I listened to those on the -- would be on the
14 27th, the next day, probably after the defendant made the
15 calls.

16 Q. So you first listened to them on September 27th,
17 2017?

18 A. Yes.

19 Q. Did you listen to them sometime after that?

20 A. I then listened to them today.

21 Q. And today is September 29th, 2017?

22 A. That's correct.

23 Q. And is that the date that's on the CD?

24 A. Yes.

1 Q. So the last time you listened to them was today?

2 A. Correct.

3 MR. BOGALE: Your Honor, the State moves to admit

4 Exhibit Number 1.

5 THE COURT: Ms. Nordvig.

6 MS. NORDVIG: No objection for the purposes of

7 this hearing. I don't know what's on there. I haven't had

8 the privilege.

9 THE COURT: Exhibit 1 is admitted, Ms. Clerk.

10 THE CLERK: Thank you.

11 MR. BOGALE: Your Honor, permission to --

12 THE COURT: Granted.

13 MR. BOGALE: -- play some of these calls. Thank

14 you, your Honor.

15 MS. NORDVIG: Your Honor, I would inquire, I was

16 under the understanding that it was one call from the 26th,

17 is that correct?

18 THE COURT: I believe so.

19 MS. NORDVIG: Because counsel just said some

20 calls. It's a little confusing.

21 THE COURT: Clear that up.

22 BY MR. BOGALE:

23 Q. Detective Zendejas, how many calls on this CD are

24 from September 26th, 2017?

1 A. Two.

2 THE COURT: Thank you.

3 MS. NORDVIG: May I, your Honor?

4 THE COURT: Go ahead?

5 BY MS. NORDVIG:

6 Q. How many calls total are on the CD?

7 A. I believe on the CD there's a total of three.

8 MS. NORDVIG: Thank you.

9 THE COURT: All right.

10 MR. BOGALE: Thank you very much, your Honor.

11 BY MR. BOGALE:

12 Q. Detective Zendejas, as I load this up, I'm going
13 to play you two calls, both from September 26th, 2017. The
14 first call will be the call that was made at 18:05 hours.

15 A. Uh-huh.

16 Q. Just so you're aware, Detective Zendejas, I'm not
17 going to play the entire call. I'm going to start it at a
18 certain point and I'll note it on the record and then I'll
19 stop at a certain point and we'll talk about what just
20 transpired on the call.

21 A. Okay.

22 Q. Detective Zendejas, I'm going to move the timer
23 here to approximately ten minutes. I'm going to move it to
24 10:09. Okay? I'll press play and then I'll stop it. That's

1 not loud enough.

2 THE COURT: Can we use the video screens?

3 MS. KOSSOW: It's worst on the screen sometimes.
4 Sometimes it's better on the cart.

5 BY MR. BOGALE:

6 Q. I'll start over, Detective Zendejas, make sure we
7 can hear it. We'll start it at 10:10.

8 (CD played at this time.)

9 I've stopped it now at 10:29. Could you describe
10 what that conversation was about?

11 A. So that conversation that he's having with someone
12 in El Salvador, he's telling him -- the defendant is telling
13 him that there's a guy that's coming.

14 MS. NORDVIG: Your Honor, I'm going to object.
15 It's either going to be a literal translation or a summary.
16 And if it's going to be a summary, I would ask that this be
17 continued so I can get an interpreter here to verify the
18 detective's translation. No offense to the detective, but as
19 we've heard in other hearings, the El Salvadorian language is
20 not straight Spanish, there are several dialects and
21 different inflections. And if this is something related to
22 some kind of gang language, then that complicates things
23 more.

24 THE COURT: The objection is overruled. Go ahead,

1 Mr. Bogale.

2 BY MR. BOGALE:

3 Q. You can continue your answer there, detective.

4 A. So the defendant tells him that there's a guy
5 whose brother is Nesio from the Centrales and ultimately that
6 he's coming to testify.

7 Q. Let me understand this. There's a potential
8 witness in this case that is, you said, Nesio's brother?

9 A. Correct.

10 Q. That's what the defendant says?

11 A. Correct.

12 Q. And how does he describe this person?

13 A. I'm sorry. Can you clarify that?

14 Q. Does he call him by a specific name or does he
15 call him a potential witness? How does he describe him?

16 A. He describes him just as this guy whose brother
17 is, once again, Nesio.

18 Q. And what's Centrales?

19 A. Centrales is what I believe to be a clique in
20 El Salvador.

21 Q. Does the defendant refer to this witness, Nesio's
22 brother, by a derogatory term?

23 A. He says mother fucker.

24 Q. Okay. And then do they further talk about making

1 contact with this witness or not?

2 A. They further continue to communicate and says that
3 he doesn't specifically say who, but that he will -- the
4 defendant says he will give him a number to a guy.

5 Q. Okay. So the defendant will give who a number?

6 A. Will give the recipient of the call a number.

7 Q. And does he explain what for?

8 A. That he doesn't go into details.

9 Q. Does he say how he'll give it to him?

10 A. That he will call him at a later time.

11 Q. He'll make an additional call?

12 A. Correct.

13 Q. You said earlier this was El Salvadorian number,
14 is that correct?

15 A. That's correct.

16 Q. How do you know that?

17 A. Because the area code is very unique. All the
18 calls to El Salvador that I've noted start with 011 followed
19 by the area code 503.

20 Q. Is it your understanding that the 503 is the
21 country code for El Salvador?

22 A. Yes.

23 Q. Do you know who this witness is that he's talking
24 about?

1 A. Do I know?

2 Q. Yes.

3 A. Yes.

4 Q. Is he, to your knowledge, a confidential
5 informant?

6 A. Yes.

7 Q. And so the defendant knows that Nesio's brother is
8 a confidential informant, is that correct?

9 A. That's correct.

10 Q. Does the defendant refer to this witness, Nesio's
11 brother, as a member of the MS-13 gang?

12 A. Yes.

13 Q. Does he refer to him as an active member or
14 passive member?

15 A. He refers to him as an active.

16 Q. That's on the call that you heard?

17 A. Yes.

18 THE COURT: Can I just ask a question? Just a
19 minute.

20 THE WITNESS: Yes, your Honor.

21 THE COURT: What's the language that he was using
22 to identify him as an active member of the MS-13.

23 THE WITNESS: At one point, the caller asked him
24 is he active or is he not active? And then the defendant

1 replied that he was active.

2 THE COURT: Okay. All right. Thank you.

3 MS. NORDVIG: Your Honor, I'm going to object. I
4 don't even know if that was played. Counsel's question was
5 at some point during the call. He played, I believe,
6 19 seconds of a conversation and the testimony has gone on
7 for several minutes now.

8 THE COURT: Okay.

9 BY MR. BOGALE:

10 Q. Detective Zendejas, was that conversation about
11 being an active member in MS-13 played during those
12 19 seconds that I just played?

13 A. Not during the 19 seconds.

14 Q. Do you know where in that clip that it said that?

15 A. I don't have it documented exactly at what time
16 that was said.

17 Q. But you've listened to this entire call?

18 A. I have.

19 Q. And you said you first listened to it on
20 September 27th, 2017?

21 A. Yes.

22 Q. And is the clip I just played a portion of the
23 entire call?

24 A. It is.

1 MS. NORDVIG: I'm still going to object, your
2 Honor. It wasn't played in court. We don't know if this is
3 the same phone call. I don't know what it's saying. I will
4 defer to the detective, but I don't even know if he speaks
5 the right dialect of Spanish or --

6 THE COURT: You can ask him.

7 MS. NORDVIG: I will. Thank you.

8 THE COURT: Objection is overruled. Go ahead.

9 BY MR. BOGALE:

10 Q. Would it refresh your recollection, Detective
11 Zendejas, about where the active MS-13 conversation occurred
12 in this call if you looked at your notes?

13 A. Yes.

14 Q. Okay.

15 THE COURT: How long is this telephone call?

16 MR. BOGALE: Your Honor, it's approximately 12 and
17 a half minutes.

18 THE COURT: Let's play it all.

19 MR. BOGALE: Okay. I'm happy to do that.

20 THE COURT: Then we can ask the detective all the
21 questions --

22 MR. BOGALE: Thank you, your Honor.

23 THE COURT: -- you need to ask relating to the
24 entire call.

1 MR. BOGALE: Okay. Detective Zendejas, I'm going
2 to start the call and play it all.

3 THE WITNESS: Okay.

4 (CD played at this time.)

5 MS. NORDVIG: Your Honor, I would suggest we can
6 skip the first two minutes of the formal jail process.

7 THE COURT: All right. We can skip that, Mr.
8 Bogale.

9 MR. BOGALE: Starting at 1:09.

10 (CD played at this time.)

11 BY MR. BOGALE:

12 Q. I'm going to stop it at 3:13. Can you describe
13 for us what they've been talking about?

14 A. So far, he's talking to the caller and the caller
15 basically tells him that right now everything is -- he's
16 heading in the mountains, because everything -- there's
17 certain things happening in the neighborhood where they play.
18 But he says balone, which is basically a game. And he says,
19 the cops, which he refers to as the azules are all over the
20 neighborhood.

21 The defendant tells him, I need you to -- it's
22 urgent that you capture this. And so the guy says, okay, and
23 they -- he starts telling him about basically what's going on
24 with the trial or the case, and that there's this guy from

1 side that is -- that's potentially testifying against him.

2 Q. Okay. And him is testifying against the
3 defendant?

4 A. Correct.

5 Q. And the guy from side, do you know what that
6 means?

7 A. I don't.

8 MR. BOGALE: Start up again at 3:13.

9 (CD played at this time.)

10 THE WITNESS: Could you pause it?

11 BY MR. BOGALE:

12 Q. Pause it at 3:22.

13 A. At that moment is when the caller actually -- the
14 receiving asked him if the guy is still active or not, and
15 that's when the defendant says he is active.

16 Q. Okay. Thank you very much. I'm going to move to
17 a second call. Okay. This is another call from
18 September 26th, 2017, and it starts at 18:27 hours.

19 MR. BOGALE: Your Honor, if I might ask, this is
20 14 minutes and 27 seconds, do you want me to play the whole
21 thing as well?

22 THE COURT: Yes.

23 MR. BOGALE: Detective, let me start this call
24 from when the conversation starts.

1 (CD played at this time.)

2 BY MR. BOGALE:

3 Q. Let me stop it there. What are they talking
4 about?

5 A. The defendant says he really doesn't want to burn
6 himself too much, but tells the person receiving the call
7 that he doesn't know if his family is going to come referring
8 to what I imagine is the trial.

9 Q. Is this call to the same person as the call we
10 just listened to?

11 A. No. It has a different area code, which is a U.S.
12 area code.

13 Q. Do you know what part of the United States?

14 A. New York.

15 Q. So I stopped it at 1:27. I'll start it there
16 again.

17 (CD played at this time.)

18 Stop there at 2:12. What were they talking about
19 in that clip?

20 A. So the person he is talking to refers -- is
21 talking about this particular subject, and you can hear on
22 the audio where he says boom, boom, at first he's asking the
23 defendant if he understands who he's talking about.
24 Initially, the defendant doesn't understand. And then he

1 says, oh, I know what you're talking about. So what he's
2 referring to when he says boom, boom, is Sonic, which is one
3 of the MS members.

4 Q. And to your knowledge, is Sonic a local MS member
5 here in Washoe County?

6 A. Yes. And they go on to continue to talk about
7 paper work being picked up and delivered from one person to
8 another place, which we know is true.

9 Q. Do you know what paper work they're talking about?

10 A. Whatever court paper work that the defendant has
11 received.

12 Q. So let's start it again at 2:12.

13 (CD played at this time.)

14 THE WITNESS: The defendant is telling him --

15 BY MR. BOGALE:

16 Q. Let me stop. We stopped at 2:26.

17 A. The defendant is telling the caller that he
18 already told his lawyer this and that he doesn't have any
19 family here, so he had this particular person, which is
20 Sonic, pick up the paper work to send it to his girlfriend.

21 Q. To the defendant's girlfriend?

22 A. Correct.

23 Q. Does he say where it was sent?

24 A. He doesn't.

1 Q. Let me start again at 2:26.

2 (CD played at this time.)

3 Stopped it at 2:51. What were they talking about?

4 A. The defendant is telling the other gentleman that
5 that person, referring to Sonic, fucked up, because he has
6 asked him to talk to like his lawyer and he hasn't.

7 Q. Sonic hasn't talked to the defendant's lawyer?

8 A. Correct. Yes.

9 Q. Start it at 2:51.

10 (CD played at this time.)

11 Stopped at 3:39. What are they talking about
12 there?

13 A. The defendant is telling the other person that
14 they're getting everyone involved, people that aren't even
15 active, so that bothered him. So he says, even if they call
16 my dad, are they going to get him involved? He continues to
17 say that at this point he's not even being transported to
18 court.

19 Q. Start again at 3:39.

20 (CD played at this time.)

21 Stop it at 4:15.

22 A. The defendant continues to tell the other person
23 that obviously he's not being transported to court. He's
24 having to do court from like a video and that, you know,

1 getting ready for trial and just basically complaining about
2 the process of how he's not being transported over to the
3 Courthouse.

4 Q. So just to be clear, there's a -- sort of a
5 fainter voice in volume and a louder voice. Which one is the
6 defendant's?

7 A. The defendant is the one actively talking right
8 now, which -- he's the one doing all the talking right now.

9 Q. So 4:15 we start it again.
10 (CD played at this time.)

11 Let me stop it at 4:31. I'll ask you that
12 question again. There's a louder voice and a softer voice?

13 A. The softer voice is the defendant.

14 Q. The softer voice is the defendant's. Okay.
15 (CD played at this time.)

16 Stop it at 5:26. What was going on there?

17 A. There is a phrase and I personally can't
18 understand, but the -- not the defendant, but the other
19 person basically gives him a phrase like talking about an
20 individual. And he says the person, he says something to the
21 effect the thing I stand on and the thing that when I'm -- he
22 says, the thing that's on the floor with the thing that I
23 stand on, which I obviously don't know what he's saying. So
24 they're talking about a particular person, I just don't know

1 what person. And the defendant obviously captures and
2 understands what the caller is referring to. I don't, so I
3 can't tell you what he said there.

4 Q. Is it fair to say, Detective Zendejas, there's
5 some phraseology in these calls that are slang terms in
6 El Salvador that you don't understand?

7 A. Correct.

8 Q. But there's obviously Spanish being spoken, is
9 that correct?

10 A. Correct.

11 Q. And that's what your understanding is?

12 A. Yes.

13 Q. And that's the reason you're able to give a
14 summary of these calls, because it's spoken in Spanish?

15 A. Correct.

16 MS. NORDVIG: I'm going to object. If he doesn't
17 understand the whole thing, then the subject matter could be
18 confused and not accurate. So I'm going to object at this
19 point.

20 THE COURT: Objection is overruled.

21 BY MR. BOGALE:

22 Q. Starting at 5:26.

23 (CD played at this time.)

24 What did the defendant say right there?

1 A. He's just saying that he's not going to stop
2 talking. He wants to talk to his friends, his family.
3 Basically insinuating that they're messing with him, not
4 because what he was arrested for, but because he says a gang
5 member.

6 Q. Start it again at 6:04.
7 (CD played at this time.)
8 Stopped it at 6:50.

9 A. He's just saying they're bringing up other things
10 that aren't relevant to the case. He's just saying they're
11 bringing things that have occurred other places, like I
12 believe he said South Carolina. And the guy tells him, well,
13 have you told him that you haven't even been there? And he
14 said, yes, yes, yes. And then that's what they're talking
15 about.

16 Q. Start it again at 6:50.
17 (CD played at this time.)
18 Stop at 7:11.

19 A. He's telling them, he's saying this, he's saying
20 that. He says a few words that I don't understand. But then
21 the defendant says they know everything. And the other --
22 the person talking to him says, oh, so they're talking like
23 us? And the defendant says yes.

24 Q. Who is they that he's referring to, if you know?

1 A. They're referring to the people that are listening
2 to the phone calls.

3 Q. Start again at 7:11.
4 (CD played at this time.)

5 Stop it at 7:53.

6 A. He's telling him that he gave his lawyer a phone
7 number to a female and goes on to say something to the effect
8 that the girl that we -- that I got tatted with and says
9 something about the shield.

10 Q. And do you know what the shield means?

11 A. I believe they're referring to that they
12 supposedly both got a shield tattoo type, but I can't testify
13 to exactly what he's referring to.

14 Q. Starting again at 7:43.
15 (CD played at this time.)

16 Stop it at 8:13.

17 A. He's talking about him and his lawyer are having a
18 conversation about tattoo and this person did this tattoo and
19 somebody is -- basically, he's indicating that it's been
20 discussed that someone did some type of a tattoo to him. And
21 then he's basically saying, no, it wasn't him. It was some
22 Filipino guy that did, referring, again, to the tattoo that
23 he received or got.

24 Q. Let me clear that up. So some Filipino guy that

1 got what?

2 A. So he's basically saying that a conversation has
3 come up about someone doing the tattoo on him. And he's
4 saying that wasn't the person that did the tattoo on him.
5 That it was some Filipino guy that did that tattoo.

6 Q. Let's start again at 8:13.

7 (CD played at this time.)

8 Stop it at 8:36.

9 A. So the guy says it's -- everything is basically
10 fucked up right now. And the defendant says the same thing.
11 And then he goes on to say that the police have the people,
12 basically, what he's saying is intimidated or scared.

13 Q. The police have who scared? Does he refer to who
14 he's talking about?

15 A. He does. He says la gente, which is the people.

16 Q. Start again at 8:36.

17 (CD played at this time.)

18 Stop there at 9:08.

19 A. Again, he just referring to -- the conversation
20 continued on from like the police intimidating the people.
21 Continues to say, you know, they could be, ultimately, the
22 witnesses that will testify on my behalf, but referring to
23 the police have them intimidated. And then he says, but
24 these people, once again, which I believe he's referring to

1 the witnesses, are people that the police can easily
2 intimidate, because they could be doing drugs or doing
3 something, something along those lines.

4 Q. Does he anywhere in the call give specific
5 examples of this?

6 A. No.

7 Q. Start again at 9:08.

8 (CD played at this time.)

9 Stop there at 9:44.

10 A. So the other person on the phone basically says,
11 yeah, these people are on drugs and stuff like that,
12 referring to la gente, which is the people. And then they
13 start talking about when the trial is going to start. And
14 the guy asked him, when does it start? And that's where it
15 kind of left off.

16 Q. We'll pick it up there again at 9:44.

17 (CD played at this time.)

18 Let me stop it at 10:05.

19 A. So they're talking about when trial starts and he
20 says, is it going to be every day? The defendant says, yes.
21 And then he asked him, what about Monday? The defendant
22 says, that's when evidence, witnesses, everything starts.

23 Q. Start again at 10:05.

24 (CD played at this time.)

1 Stop it at 10:31.

2 A. So the caller is asking the defendant, when does
3 the trial start? And the defendant says, it's on the 2nd.
4 And then he says, is -- the caller says -- the other person
5 says, is that on a Tuesday? The defendant says, no, that's
6 on a Monday. And then the defendant says, it's going to go
7 Monday, Tuesday, Wednesday, Thursday. The next week will
8 be Monday, Tuesday, Wednesday, Thursday, Friday -- I'm sorry.
9 He basically mentions all five days.

10 Q. Start again at 10:31.

11 (CD played at this time.)

12 Stop there at 10:47.

13 A. So the other person says that they'll be to there
14 on what he says the 1st, but he says, I'll be there on the
15 3rd, referring to the trial.

16 Q. The 3rd of October?

17 A. They don't say month, but based on they said, the
18 dates that the defendant has given, I believe it's October.

19 Q. Starting at 10:47.

20 (CD played at this time.)

21 Stop it at 11:27.

22 A. Just talking about the case and he mentioned
23 something about federal and this and that, and then he goes
24 on to say, I can't even help my lawyer, because I'm not

1 allowed to even receive my paper work.

2 Q. So the clip we just listened to in the last minute
3 or so where the caller is saying -- they're picking out dates
4 when he should come, does he -- does the caller mention or
5 the recipient of the call mention how many people will be in
6 court?

7 A. He indicates that one -- once again, he's not
8 clear, but what I understood on the first day, two will be
9 there, and then he will be there on the 3rd.

10 Q. So two individuals will be here --

11 A. Correct.

12 Q. -- and the recipient of the call will be here on
13 the 3rd?

14 A. Correct.

15 Q. So you've listened to this entire call, Detective
16 Zendejas, correct?

17 A. Yes.

18 Q. It's now stopped at 11:27 on the timer. Is there
19 anything else on the remainder of the call that you think is
20 of evidentiary value?

21 MS. NORDVIG: Your Honor, I would note for the
22 record that the detective is referring to his notes. I don't
23 know what they say and if he's having to refresh his
24 recollection or what.

1 THE COURT: All right.

2 THE WITNESS: There's nothing else.

3 THE COURT: Thank you.

4 MR. BOGALE: I have no further questions at this
5 time, your Honor. Thank you.

6 THE COURT: Ms. Nordvig.

7 MS. NORDVIG: Thank you.

8 CROSS EXAMINATION

9 BY MS. NORDVIG:

10 Q. Detective, what's your first language?

11 A. Spanish.

12 Q. And is there a specific dialect that you have as
13 your first language?

14 A. My father's Mexican and my mother is El
15 Salvadorian.

16 Q. So did you speak a combination of both at home or
17 Mexican?

18 A. I can tell you, I just spoke the way my parents
19 talked to me.

20 Q. Where was that?

21 A. Where was what, ma'am?

22 Q. Where did you grow up?

23 A. Here in Reno.

24 Q. And you stated on direct that you had listened to

1 plus or minus 80 calls, is that correct?

2 A. Yes, ma'am.

3 Q. Since what time period? What time period does
4 that include?

5 A. May I look at my notes? I can give you a date.

6 Q. Yes.

7 A. I began listening to his phone calls August 20th,
8 2017.

9 Q. To the present?

10 A. Yes, ma'am.

11 Q. When was the last call that you listened to? What
12 date was that call made?

13 A. The last call I listened to was September 28th,
14 2017 at 0758 hours, which is a.m..

15 Q. Were both of these calls made with the same pin
16 number?

17 A. It was made with the same name, the defendant's
18 first name and last name.

19 Q. Have you been assigned to the gang unit?

20 A. I have not.

21 Q. Are you familiar with the El Salvadorian gang
22 language?

23 A. I'm not.

24 Q. Are you familiar with MS-13 and how it's formatted

1 and its foundations?

2 A. I wouldn't say the foundation, but I have an
3 understanding of how it is formatted.

4 Q. Okay. And you want to explain that?

5 A. Well, based on the presentation I received,
6 it's -- the gang was originally started in Los Angeles.

7 Q. Stop right there. What presentation are you
8 referring to?

9 A. Presentation that I received through our gang --
10 I'm going to say a gang conference, but the gang training
11 that I received.

12 Q. When was that?

13 A. That was a couple of years ago. I can't give you
14 a specific date.

15 Q. And how long was that training?

16 A. It was a one day course.

17 Q. Where was that?

18 A. Here, ma'am.

19 Q. One day as in eight hours, six hours, four hours?

20 A. I believe it was an eight-hour class.

21 Q. How many gangs were covered in that eight-hour
22 period?

23 A. We had a number of gangs. We had MS, some of our
24 local gangs to include some of the biker gangs, which is the

1 Hells Angels, Mongols and whatnot.

2 Q. So you have no idea when he said, guy from the
3 side, you don't know what that means?

4 A. I don't know what that means, ma'am.

5 Q. And you don't know if it's Mexican, El
6 Salvadorian, Ecuadorian?

7 A. No, I don't.

8 Q. During the second call, you refer to boom, boom as
9 Sonic?

10 A. That's correct, ma'am.

11 Q. Is that what the people on the phone call said or
12 is that your interpretation?

13 A. That's my interpretation.

14 Q. You don't really know if it's Sonic?

15 A. I don't.

16 Q. And you talked about some paper work?

17 A. Yes, ma'am.

18 Q. Do you know what paper work that was?

19 A. I don't know exactly what paper work that was, but
20 I know based on listening to all the conversations since
21 August to the present day that --

22 Q. Do you know what paper work he was referring to?

23 A. I don't.

24 Q. Thank you. Are you aware that one of the FBI

1 translators stated that it was from the Daly City discovery
2 packet?

3 A. I do not.

4 Q. Do you know if Sonic has talked to me?

5 A. Excuse me?

6 Q. Do you know if sonic has talked to me?

7 A. I have no clue, ma'am.

8 Q. You said something about I'm standing on or I'm
9 standing upon?

10 A. Correct.

11 Q. Can you go back to that? I'm sorry. I didn't
12 quite understand what you were trying to say.

13 A. It's what he's saying. I don't understand what he
14 said.

15 Q. What exactly is he saying, do you know, verbatim?

16 A. Not verbatim, I don't.

17 Q. Okay. And you didn't understand the reference to
18 shield, is that correct?

19 A. Correct.

20 Q. But it was something about a tattoo?

21 A. That's right, ma'am.

22 Q. Or you think it's something about a tattoo?

23 A. Yes, ma'am.

24 Q. So most of this phone call was that he was unhappy

1 about the way he was being treated up at the jail?

2 A. Which call, ma'am?

3 Q. The second call. Or in the process?

4 A. The first call is the one where he's complaining
5 about that, yes, ma'am.

6 Q. Do you recollect what the reference to the federal
7 stuff was?

8 A. I don't, ma'am.

9 MS. NORDVIG: Nothing further. Thank you.

10 THE COURT: Thank you. Mr. Bogale.

11 REDIRECT EXAMINATION

12 BY MR. BOGALE:

13 Q. Detective Zendejas, let's talk about a few
14 specific points. You testified earlier that the defendant in
15 the first call referred to a potential witness, who is a
16 confidential informant in this case, and referred to him as a
17 mother fucker, is that correct?

18 A. That's correct.

19 Q. Is that something you are sure of or is that in
20 slang?

21 A. It's a slang, but it's translated -- it translates
22 to mother fucker.

23 Q. In Spanish?

24 A. Yes.

1 Q. And when you testified that the defendant said he
2 would give the recipient of the call some numbers at a later
3 time, was that in Spanish as well?

4 A. Yes.

5 Q. Right. And was there any slang used in that?

6 A. He said -- no.

7 Q. In the second call when the defendant was talking
8 to the recipient of the call, who mentioned that two will be
9 at trial, two individuals will be at trial, was that in
10 Spanish?

11 A. That was in Spanish.

12 Q. And you verbatim translated that into two people
13 will be here?

14 A. Yes.

15 MR. BOGALE: I have nothing further, your Honor.

16 THE COURT: Does that raise any questions?

17 MS. NORDVIG: Briefly, your Honor.

18 RECROSS EXAMINATION

19 BY MS. NORDVIG:

20 Q. Also during the second call, wasn't he speaking
21 about his family not being able to be at the trial?

22 A. Yes.

23 Q. Or not knowing if his family was going to come?

24 A. Correct.

1 Q. So the reference to two people could be referring
2 to two family members?

3 A. He says individuals. It could be.

4 Q. It could be. Do you know the identity of the
5 recipient of the telephone call?

6 A. Which call, ma'am?

7 Q. The second one.

8 A. The 1827 call?

9 Q. Yes.

10 A. Yes, I do now.

11 Q. You do now?

12 A. Yes, ma'am.

13 Q. Is it a family member?

14 A. Not that I know of.

15 Q. Can you say who the caller is?

16 A. I believe it's Christian Maldonado.

17 Q. And that's from a New York number, correct?

18 A. Yes. Can I elaborate on that or do you want just
19 a yes or no?

20 Q. Yes or no.

21 A. Yes.

22 MS. NORDVIG: Nothing further. Thank you.

23 THE COURT: Can I ask the detective a question?

24 MR. BOGALE: Of course, your Honor.

1 THE COURT: The identification of the call, I'm
2 focusing on the second phone call, is made by the area code,
3 correct?

4 THE WITNESS: Yes, your Honor.

5 THE COURT: And that's from the telephonic device
6 that is used to make the call to the jail, correct?

7 THE WITNESS: Correct.

8 THE COURT: So you're not testifying that the call
9 itself came from New York. You're testifying that the device
10 or the phone had a New York number associated with it?

11 THE WITNESS: That's correct.

12 THE COURT: And that could be anywhere?

13 THE WITNESS: Correct, your Honor.

14 THE COURT: Thank you very much.

15 MS. NORDVIG: Your Honor, can I ask the Court one
16 question?

17 THE COURT: After we get finished with the cross.
18 Just make a note. Thank you, detective. Watch your step
19 going down. All right. Mr. Bogale, do you have another
20 witness?

21 MR. BOGALE: Yes, one more, your Honor. Stephanie
22 Shuman.

23 (One witness sworn at this time.)

24 STEPHANIE SHUMAN

called as a witness and being duly sworn did testify as follows:

DIRECT EXAMINATION

BY MR. BOGALE:

Q. Would you please state your name and spell it for the court reporter, please?

A. Stephanie Shuman, S-t-e-p-h-a-n-i-e, S-h-u-m-a-n.

Q. What is your current occupation?

A. I'm a supervising investigator with the District Attorney's Office.

Q. And how long have you been a supervising investigator at the District Attorney's Office?

A. For three years. I've been an investigator there for seven.

Q. Have you been involved in the investigation and prosecution of the defendant Luis Alejandro Menendez Cordero?

A. Yes, I have.

Q. And, generally, what are your duties and responsibilities in that case?

A. Typically, it's the responsibility of investigators in our office to follow up on witness location, subpoenaing witnesses that we need for trials, conducting follow-up interviews or follow-up investigation that needs to be done for clarification on information that was received

1 from the originating law enforcement agency.

2 Q. Do your duties also include -- well, not your
3 duties, but as part of the scope of your responsibility as an
4 investigator, do you have access to jail calls as well?

5 A. Yes, I do.

6 Q. The same access Detective Zendejas spoke about
7 earlier?

8 A. Correct.

9 Q. Through the GTL system?

10 A. That's correct.

11 Q. You're familiar with pin numbers of inmates, names
12 of inmates, et cetera?

13 A. Yes, I am.

14 Q. Have you pulled and listened to the calls I was
15 just talking to Detective Zendejas about?

16 A. I have pulled them, yes, and listened to them. I
17 don't understand the content of the calls.

18 Q. But you've pulled them from a pin number and a
19 name?

20 A. That's correct.

21 Q. And to your knowledge, are those calls made by the
22 defendant, Luis Alejandro Menendez Cordero?

23 A. To my knowledge, yes.

24 Q. I want to talk about the second call Detective

1 Zendejas was referring to with the New York area code?

2 A. Correct.

3 Q. And for the record, that number is 516 --

4 A. 606-6108.

5 Q. Thank you very much. Do you know whose number
6 that is?

7 A. I do.

8 Q. How do you know whose number that is?

9 A. Through the course of my investigation, I was able
10 to confirm that number belongs to Christian Maldonado, who is
11 currently residing here in Sparks, Nevada.

12 Q. How did you determine that?

13 A. I actually spoke to Christian on that number. He
14 identified himself and indicated to me that is his number and
15 that he shares that phone number with his wife, Johanna Reyes
16 Duras.

17 Q. And as part of your duties as an investigator in
18 this case, did you actually serve Christian Maldonado with a
19 subpoena for trial?

20 A. I did.

21 Q. Did he call you from this number or did you call
22 him at that number?

23 A. He called me from that number.

24 Q. So he called from that number to your cell phone?

1 A. Correct.

2 Q. And that number appeared on your phone?

3 A. Correct.

4 Q. And on that phone call, he identified himself as
5 Christian Maldonado?

6 A. That's correct.

7 Q. And you said he lived in Sparks?

8 A. That's correct.

9 Q. Do you know if he has a relationship with the
10 defendant?

11 A. Based on my involvement in this case, Christian
12 Maldonado is known as Bullet, and, yes, Bullet is loosely
13 associated to this case.

14 Q. Bullet, is that his nickname?

15 A. That's correct.

16 Q. Do you know if he's an active MS-13 member?

17 A. I do not know his current status.

18 Q. Do you know if he ever was?

19 A. Yes, he was.

20 Q. Do you know if he had a relationship with the
21 defendant back in November of 2010?

22 A. Yes, I do.

23 Q. And did he have a relationship with him?

24 A. Yes, he did.

1 MR. BOGALE: I have nothing further, your Honor.
2 Thank you.

3 THE COURT: Thank you. Ms. Nordvig.

4 CROSS EXAMINATION

5 BY MS. NORDVIG:

6 Q. You said you didn't understand the content of the
7 calls that were previously played at this hearing?

8 A. That's correct, ma'am.

9 Q. Is it correct that you do not understand the
10 Spanish language?

11 A. I understand some, but not enough to give a
12 legitimate response.

13 Q. It fair to say you're not conversational?

14 A. No, I'm not.

15 Q. Were these the only two calls you pulled?

16 A. No. I pulled several calls over the course of my
17 involvement in the case.

18 Q. How many times have you spoken with Mr. Maldonado?

19 A. Once.

20 Q. Was that in English?

21 A. Yes, it was.

22 Q. When you said, loosely associated with this case,
23 can you explain what that meant?

24 A. It's my understanding through my involvement in

1 the case that Bullet resided here in Washoe County during the
2 2010 time. It's my understanding that he is the cousin of a
3 witness in the case. And through the course of that
4 investigation, it has been confirmed that the defendant was
5 residing or having interactions with Bullet.

6 Q. During the 2010 time period?

7 A. Correct.

8 Q. Okay.

9 MS. NORDVIG: Nothing further.

10 THE COURT: Mr. Bogale.

11 MR. BOGALE: Just one question, your Honor.

12 THE COURT: Certainly.

13 REDIRECT EXAMINATION

14 BY MR. BOGALE:

15 Q. Who is Christian Maldonado's family member that
16 you referred to as a witness?

17 A. Elder Rodriguez.

18 Q. To your knowledge, was that the individual that
19 was with the defendant on November 20th, 2010?

20 A. Yes.

21 MR. BOGALE: No further questions, your Honor.

22 THE COURT: Does that raise any questions,
23 Ms. Nordvig?

24 MS. NORDVIG: No, thank you, your Honor.

1 THE COURT: Thank you, you may step down.

2 MR. BOGALE: Your Honor, at this point, the State
3 has no further witnesses, so the State will close its
4 presentation of evidence. And if the Court wants to hear
5 argument, the State is prepared to do so.

6 THE COURT: Okay. Let me just get my notes up to
7 speed here. Ms. Nordvig, any witnesses?

8 MS. NORDVIG: I have one question for the Court,
9 but we were unable with four hours notice to get witnesses
10 here today.

11 THE COURT: Mr. Bogale.

12 MS. NORDVIG: Your Honor, my question is relevant
13 to the proceedings.

14 THE COURT: Okay. Let me hear from Mr. Bogale and
15 you relative to the reasonableness of any restrictions. What
16 I need to know, Mr. Bogale, is whether there are any
17 alternative means that remain open to the defendant in
18 communicating with those other than his lawyer. And whether
19 or not your proposal represents an exaggerated response to
20 these phone calls.

21 MR. BOGALE: Thank you, your Honor. It appears
22 that the Court is referring to the Turner factors outlined in
23 Turner versus Safley, which is in State's reply that's
24 located 482 United States 78.

1 THE COURT: I'm also looking at Pope versus
2 Hightower 101 F. Third 1382.

3 MR. BOGALE: Thank you, your Honor. So as the
4 Court noted, in the State's reply, the State sort of modified
5 its request in light of the caselaw that came about as a
6 result of Ms. Nordvig's First Amendment challenge.

7 The cases, including Valdez that the State cited,
8 Turner, the Pope case the Court cited, the factors of Turner
9 require there to be a reasonable alternative, alternative
10 means of exercising their free speech. And in most of those
11 cases, the courts have found that personal visits are
12 reasonable accommodations. Cutting them off completely with
13 no telephone, no video, no personal visits appears to be,
14 although I haven't found it the case, it appears to be an
15 impingement of someone's constitutional rights.

16 But if there is an alternative means, such as
17 personal visits, the Court in Pope, as well as the Court in
18 Turner said that that amounts to a reasonable alternative
19 means of exercising their free speech rights.

20 That's the State's request here is to cut off
21 telephone calls, cut off iWeb visits, but permit personal
22 visits from family and friends.

23 The reason this is reasonable is because the
24 courts have applied what is called rational basis review to

1 these claims, because prisoners have limited constitutional
2 rights. They have different constitutional rights within the
3 context of the prison environment and that's been the law for
4 a very long time.

5 And so all the State has to do is to show that the
6 restriction is reasonable and it's rationally related to a
7 legitimate government interest, not even an important
8 government interest, not a compelling government interest,
9 but just a legitimate governmental interest.

10 And here, the State argues that the legitimate
11 governmental interest is to protect the integrity of these
12 proceedings, protecting the confidentiality and safety of
13 witnesses. Because it appears from the phone calls, it's
14 pretty clear the defendant knows who SA-1290 is and he's
15 supposed to be confidential.

16 He knows his familial relationships. He also has
17 been communicating with a local, at least former member of
18 the MS-13 gang, Christian Maldonado, who intends to come to
19 court with two other people and they're coordinating their
20 presence here. To what end, the State doesn't know, but I
21 don't want to be too late and I don't want the State not to
22 have been on the record attempting to shut down the
23 defendant's coordination if he is up to something that is
24 sinister or that endangers the safety of the witnesses.

1 We've only listened to a couple of calls here, but
2 the Court knows of the long history. The State filed an
3 emergency motion to preclude the dissemination of discovery
4 and a protective order for the witnesses in this case. That
5 was back in August, August 31st. The Court granted that.
6 And it appears that the defendant is violating that when he's
7 referring to Nesio's brother as a mother fucker who is going
8 to testify against him. Those are his words.

9 So the bar isn't very high here, your Honor. It's
10 rational basis review. And I think the State has proven or
11 has shown to the Court through Detective Zendejas and
12 Investigator Shuman that this is a reasonable restriction
13 that furthers a legitimate governmental interest, your Honor.

14 THE COURT: Thank you. Ms. Nordvig.

15 MS. NORDVIG: Your Honor, I know that Mr. Bogale
16 is not familiar with the visiting process at the jail, but
17 they no longer allow personal visits. Everything is done by
18 video. So, unfortunately, his modification is not available
19 to us.

20 THE COURT: They don't have that bank of glass
21 with the stools and the phone on the other side?

22 MS. NORDVIG: They haven't had that for several
23 years. Everything is done by video visit now, except for
24 professional visits where we are still able to go into a

1 either contact room or a noncontact room is what they call
2 them and have one-on-one or face-to-face.

3 Obviously, in this case, it's not one-on-one,
4 because we at least need an interpreter, but personal visits
5 have not been allowed for several years.

6 THE COURT: Okay.

7 MS. NORDVIG: However, even if they were, that
8 would have been an extreme limitation in this case. As the
9 Court has heard through a couple of hearings now through the
10 phone calls or translations of the phone calls, Mr. Menendez
11 Cordero does not have family here. His family is in El
12 Salvador. He has a sister, I believe, in the Bay Area, but I
13 think she's the closest one here.

14 So the only way they have been able to speak with
15 him is by either telephone or the video, which is called the
16 iWeb system that they use in the Washoe County Jail.

17 I would also point out to the Court that through
18 the telephone calls today and the ones referenced at the last
19 hearing, there have been no threats. There has been no
20 person or people singled out. The closest it's gotten was
21 Nesio's brother is an MF, and no offense to my brother, but I
22 could say he was one, too. That doesn't mean I'm threatening
23 him in any way or targeting him with anything.

24 Mr. Maldonado does not point out who is coming.

1 It could be Mr. Menendez Cordero's sister or cousin if
2 they're in the Bay Area. There's a girlfriend from El
3 Salvador that has been flying back and forth. It may be her.
4 There's no indication of any real threat. There's no
5 indication of any plan. There's no indication of anything.
6 He wants to have some family members here to support him
7 during trial, as most people on trial do.

8 And, your Honor, with that, there's really no
9 specific or even general indication that anything is going to
10 happen. And we would ask that you allow Mr. Menendez Cordero
11 continued opportunities, as limited as they are at the jail.
12 I would point out to the Court that he's currently in the SHU
13 segregated unit where he doesn't get all of the benefits that
14 he did in general population.

15 So that talking to this person, whoever it was on
16 the first phone call, who was not a witness was not a
17 violation. It wasn't a threat. He was just saying that
18 somebody was an MF. So with that, we would ask the Court not
19 to grant the State's motion.

20 THE COURT: Mr. Bogale.

21 MR. BOGALE: Just briefly reply to a couple of
22 points, not all of them. So in terms of the personal visits,
23 what the State is referring to is visits by people on site at
24 the jail. So if they have to do it through video or in

1 person, that's what the State is okay with. Individuals
2 showing up, showing their ID, checking in and then doing a
3 video visit with the defendant at the jail, that's fine. The
4 State just wants to restrict telephone calls and video chats
5 with people not present at the jail. I think that's what the
6 State meant.

7 In terms of additional evidence of threats, your
8 Honor, the State is prepared to give the Court additional
9 evidence of actual threats in this case. We weren't able to
10 do it today, because we couldn't get all of our witnesses
11 here. There have been direct threats in this case to
12 witnesses and we with sufficient time could present those
13 witnesses to testify about that.

14 THE COURT: Would you be able to have them by
15 Monday?

16 MS. KOSSOW: Yes, your Honor. Kelly Kossow. It
17 was the same threat that was alleged in the State's first
18 dissemination motion, as well as the consciousness of guilt
19 motion that we were saving until Monday in order to give the
20 defense enough time. So that's, I believe, what Mr. Bogale
21 was referring to.

22 THE COURT: I appreciate that. Go ahead.

23 MR. BOGALE: I think that's it, your Honor. I'll
24 submit on the papers.

1 THE COURT: All right.

2 MS. NORDVIG: If I might, your Honor, just
3 briefly?

4 THE COURT: Yes.

5 MS. NORDVIG: When you go up to the jail for a
6 video in person as a civilian, it's labeled a walk up. They
7 don't get an e-mail address, they don't get a telephone, they
8 don't get contact information. They verify that the person
9 is who they are. They don't write a Nevada driver's license,
10 California ID, whatever, you don't get any information at all
11 about that person, except for the name.

12 When you do an iWeb call or a telephone call, you
13 get the calls that they're going to, the e-mail addresses
14 that the communications are going to, it's all available on
15 the visitors web log. So you get more information for off
16 site visits than you do for visits where people have to come
17 and check into the jail. Just for the Court's edification.

18 THE COURT: Thank you. Mr. Bogale, would you set
19 out those conditions you wish to be impose?

20 MR. BOGALE: Yes, your Honor.

21 THE COURT: Should the Court grant this motion.

22 MR. BOGALE: No telephone access, no iWeb video
23 visits with people not on site, and no written communication.

24 THE COURT: With the exception of his attorney.

1 MR. BOGALE: Of course.

2 THE COURT: And members of the attorney's office,
3 investigator or co-counsel.

4 MR. BOGALE: That's correct, your Honor.

5 THE COURT: All right. The Court is required to
6 consider several factors that channel the reasonableness
7 inquiry of a government's effort to restrict the exercise of
8 the -- an inmate's exercise of their First Amendment rights.
9 It's a four-part factor.

10 The first is whether there is a valid, rational
11 connection between the restriction and a legitimate
12 government interest put forward to justify it.

13 Second, whether there are alternative means of
14 exercising the asserted constitutional right that remains
15 open to the inmates.

16 Third, whether and the extent to which
17 accommodations of the asserted right will have an impact on
18 the prison staff, inmates and the allocation of prison
19 resources generally.

20 And fourth, whether the restriction or regulation
21 of that right represents an exaggerated response to prison
22 concerns.

23 Previously, this Court has entered an order
24 restricting the dissemination of discovery material to the

1 defendant based upon the telephonic intercept of
2 conversations between the defendant and unknown individuals
3 in El Salvador, which reference the discovery material in
4 this case. That discovery material appears to have provided
5 the defendant with enough information to identify at least
6 one of the confidential informants scheduled to testify in
7 this case.

8 There has been reliable information provided to
9 the Court in the course of that proceeding and this
10 proceeding, which raises a significant concern in this Court
11 as to the safety of the witnesses and the jury and the
12 integrity of these proceedings.

13 So the Court finds that the -- strike that. There
14 is a legitimate governmental interest in the integrity of
15 judicial proceedings. Both sides, defense and the State, are
16 entitled to a fair trial and that means a trial conducted in
17 an open and fair manner without a cloud of intimidation
18 and -- well, strike that -- without a cloud of intimidation
19 changing over these proceedings.

20 So restricting the defendant's ability to
21 communicate with others outside of his attorney and his
22 attorney's office is justified under these circumstances.

23 Secondly, there appears to be an alternative means
24 of allowing Mr. Menendez Cordero to communicate with family

1 members or friends on site and so it's not as if he will be
2 totally cut off from the world and he still will be able to
3 exercise that First Amendment right.

4 The third factor doesn't appear to apply in this
5 particular case. Accommodating Mr. Cordero's First Amendment
6 right is already in place through the iWeb, as Ms. Nordvig
7 had pointed out.

8 And, finally, this Court finds that in this
9 limited circumstance for this short period of time, and we're
10 talking probably less than two weeks, this restriction does
11 not represent an exaggerated response to the State's concerns
12 about the safety of their witnesses and this Court's concerns
13 about the integrity of these proceedings.

14 And so the Court will grant the motion of the
15 State. The Court will grant the State's motion to --

16 MS. NORDVIG: With his ability to video visit from
17 the site?

18 THE COURT: I haven't finished yet.

19 MS. NORDVIG: I'm sorry, your Honor.

20 THE COURT: The Court will grant the State's
21 motion to prohibit the defendant's non-attorney-client
22 communication with the exception of, one, visits or
23 communication by his attorneys, and, two, visits or
24 communications by his attorneys' investigators or experts,

1 and, three, any on site visits, whether in person or by iWeb,
2 by any family member or friend, so long as it's conducted on
3 site. And all other restrictions remain in place until
4 further order of this Court. That is will be the order. Mr.
5 Bogale, will you draft the order?

6 MS. NORDVIG: Just clarification, your Honor.
7 Because our interpreters are independent contractors, are you
8 considering them able to assist us in both investigation and
9 trial prep?

10 THE COURT: I'll expand it to include that. That
11 certainly is appropriate.

12 MS. NORDVIG: Thank you. Also, your Honor,
13 regarding his communication with people inside of the jail,
14 they use what are called kiosks. Those are e-mail-like
15 machines that produce what we used to call kites for the
16 infirmary, for classification, various parts throughout the
17 jail. Is he still able to use those? They cannot speak with
18 other inmates is my understanding through those, just
19 professional members from the jail.

20 THE COURT: Let me hear from the State. I'm
21 unfamiliar with that process.

22 MS. NORDVIG: I'm sorry. If he had a toothache,
23 he would send a kite for medical care.

24 THE COURT: I understand.

1 MR. BOGALE: The State has no problem with him
2 communicating with staff at the jail, your Honor, as long as
3 it doesn't allow the defendant to contact other inmates and
4 have them be third parties to contact additional people
5 outside the jail.

6 THE COURT: I imagine Mr. Menendez Cordero is
7 being monitored in that respect. He certainly is entitled to
8 contact staff. That's not restricted. But the focus of this
9 is anybody that would pose a threat. And as the law is
10 stated, it's got to be reasonable, and I know the sheriff
11 isn't going to be unreasonable in his ability to access
12 medical treatment during his stay, as well as communicate
13 with his lawyers.

14 But the Court has found that the State has a
15 legitimate interest and that this is a reasonable restriction
16 on Mr. Menendez Cordero's constitutional rights. All right.

17 MS. NORDVIG: And, your Honor, I would advise the
18 Court that I will not be able to relay the Court's order from
19 today to my client until tomorrow afternoon at approximately
20 1:30, 1:15 when visiting hours open.

21 THE COURT: Okay. Mr. Bogale.

22 MR. BOGALE: I'll prepare the order and send it
23 over to the Court.

24 THE COURT: Terrific. Thank you very much.

1 Ms. Clerk, our next hearing is 9:30?

2 THE CLERK: 9:00 on Monday, your Honor.

3 MS. NORDVIG: Your Honor, I did have one question
4 of the Court.

5 THE COURT: Yes.

6 MS. NORDVIG: While we were listening to the
7 telephone calls involved in this hearing, you appeared to be
8 understanding some of them. Can I ask about your
9 understanding of the Spanish language?

10 THE COURT: Nada. Okay.

11 MS. NORDVIG: Thank you.

12 THE COURT: Court's in recess.

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1 STATE OF NEVADA)
2) ss.
3 County of Washoe)

4 I, STEPHANIE KOETTING, a Certified Court Reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, do hereby certify;

7 That I was present in Department No. 7 of the
8 above-entitled Court on September 29, 2017, at the hour of
9 2:00 p.m., and took verbatim stenotype notes of the
10 proceedings had upon the pretrial motions in the matter of
11 THE STATE OF NEVADA, Plaintiff, vs. LUIS ALEJANDRO MENENDEZ
12 CORDERO, Defendant, Case No. CR15-1674, and thereafter, by
13 means of computer-aided transcription, transcribed them into
14 typewriting as herein appears;

15 That the foregoing transcript, consisting of pages 1
16 through 60, both inclusive, contains a full, true and
17 complete transcript of my said stenotype notes, and is a
18 full, true and correct record of the proceedings had at said
19 time and place.

20 DATED: At Reno, Nevada, this 9th day of October 2017.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.
8

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR15-1674

11 v.

Dept. No. 7

12 LUIS ALEJANDRO MENENDEZ-CORDERO,

13 Defendant.
14 _____/

15 LADIES AND GENTLEMEN OF THE JURY:

16 It is my duty as judge to instruct you in the law that applies to this case, and it is
17 your duty as jurors to follow the law as I shall state it to you, regardless of what you may think
18 the law is or ought to be. On the other hand, it is your exclusive province to determine the
19 facts in the case, and to consider and weigh the evidence for that purpose. The authority thus
20 vested in you is not an arbitrary power, but must be exercised with sincere judgment, sound
21 discretion, and in accordance with the rules of law stated to you.
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26 Instruction No. 1

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

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26 Instruction No. 2

1 If, during this trial, I have said or done anything which has suggested to you that
2 I am inclined to favor the position of either party, you will not be influenced by any such
3 suggestion.

4 I have not expressed, nor intended to express, nor have I intended to intimate,
5 any opinion as to which witnesses are or are not worthy of belief, what facts are or are not
6 established, or what inference should be drawn from the evidence. If any expression of mine
7 has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard
8 it.

1 Every person charged with the commission of a crime shall be presumed
2 innocent unless the contrary is proved by competent evidence, and the burden rests upon the
3 prosecution to establish every element of the crime with which the defendant is charged
4 beyond a reasonable doubt. In case of a reasonable doubt whether the defendant's guilt is
5 satisfactorily shown, the defendant is entitled to be acquitted.
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26 Instruction No. 4

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

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26 Instruction No. 5

1 There are two kinds of evidence: direct and circumstantial. Direct evidence is
2 direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect
3 evidence, proof of a chain of facts from which you could find that another fact exists, even
4 though it has not been proved directly. Such evidence may consist of any acts, declarations or
5 circumstances of the crime. You are entitled to consider both kinds of evidence. The law
6 permits you to give equal weight to both, but it is for you to decide how much weight to give to
7 any evidence.

8 If you are satisfied of the defendant's guilt beyond a reasonable doubt, it matters
9 not whether your judgment of guilt is based upon direct evidence or upon circumstantial
10 evidence or upon both.

11 It is for you to decide whether a fact has been proved by circumstantial evidence.
12 In making that decision, you must consider all the evidence in the light of reason, common
13 sense and experience.

14 You should not be concerned with the type of evidence but rather the relative
15 convincing force of the evidence.
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26 Instruction No. 6

1 The evidence consists of the testimony of the witnesses, the exhibits admitted in
2 evidence, and stipulations.

3 Certain things are not evidence. Any document used to refresh the recollection
4 of a witness is not evidence, unless it has been admitted in evidence.

5 Arguments and statements by lawyers are not evidence. The lawyers are not
6 witnesses. What they say in their opening statements, closing arguments, and at other times
7 is intended to help you interpret the evidence, but it is not evidence. If the facts as you
8 remember them from the evidence differ from the way the lawyers have stated them, your
9 memory of them controls.

10 Questions and objections by lawyers are not evidence. Lawyers have a duty to
11 their clients to object when they believe a question is improper under the rules of evidence.
12 You should not be influenced by the objection or by my ruling on it. When the Court has
13 sustained an objection to a question you are to disregard the question and may draw no
14 inference from the wording of it or speculate as to what the witness would have said if
15 permitted to answer.

16 Anything that I have excluded from evidence or ordered stricken and instructed
17 you to disregard is not evidence. You must not consider such items.

1 The Prosecution is not required to call as witnesses all persons who may have been
2 present at any of the events disclosed by the evidence or who may appear to have some
3 knowledge of these events, or to produce all objects or documents mentioned or suggested by
4 the evidence.
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26 Instruction No. 8

1 The defendant in this matter, LUIS ALEJANDRO MENENDEZ-CORDERO, is
2 being tried upon an Indictment charging the said defendant, LUIS ALEJANDRO MENENDEZ-
3 CORDERO, with:

4 COUNT I. MURDER OF THE FIRST DEGREE WITH THE USE OF A DEADLY
5 WEAPON, a violation of NRS 200.010, and 200.030 and NRS 193.165, a felony, in the manner
6 following:

7 That the said defendant, LUIS ALEJANDRO MENENDEZ-CORDERO, on or
8 about the 20th day of November, 2010, at Sparks Township within the County of Washoe,
9 State of Nevada, did willfully, unlawfully and with malice aforethought, deliberation and
10 premeditation, kill and murder 19 year old KEVIN MELENDEZ, a human being, by means of
11 shooting said victim with a .22 caliber pistol, thereby inflicting mortal injuries upon the said
12 KEVIN MELENDEZ from which he died on November 20, 2010.

13 COUNT II. MURDER OF THE FIRST DEGREE WITH THE USE OF A DEADLY
14 WEAPON, a violation of NRS 200.010, and 200.030 and NRS 193.165, a felony, in the manner
15 following:

16 That the said defendant, LUIS ALEJANDRO MENENDEZ-CORDERO, on or
17 about the 20th day of November, 2010, at Sparks Township within the County of Washoe,
18 State of Nevada, did willfully, unlawfully and with malice aforethought, deliberation and
19 premeditation, kill and murder 21 year old MOISES VASQUEZ, a human being, by means of
20 shooting said victim with a .22 caliber pistol, thereby inflicting mortal injuries upon the said
21 MOISES VASQUEZ from which he died on November 20, 2010.

22 To the charges stated in Indictment, the defendant has pled "NOT GUILTY".
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26 Instruction No. 9

1 An Indictment is a formal method of accusing a defendant of a crime. It is not
2 evidence of any kind against the accused, and does not create any presumption or permit any
3 inference of guilt.
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Instruction No. 10

1 In every crime there must exist a union or joint operation of act and intent, and
2 the burden is upon the prosecution to prove both act and intent beyond a reasonable doubt.
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26 Instruction No. 11

1 Intent may be proved by circumstantial evidence. It rarely can be established by
2 any other means. The prosecution is not required to present direct evidence of a defendant's
3 state of mind as it existed during the commission of a crime.

4 While witnesses may see and hear and thus be able to give direct evidence of
5 what a defendant does or fails to do, there can be no eyewitness account of a state of mind
6 with which the acts were done or omitted, but what a defendant does or fails to do may
7 indicate intent or lack of intent to commit the offense charged. You may infer the existence of
8 a particular state of mind from the circumstances disclosed by the evidence.

9 In determining the issue as to intent, you are entitled to consider any statements
10 made and acts done or omitted by the accused, and all facts and circumstances in evidence
11 which may aid in the determination of state of mind.

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26 Instruction No. 12

The elements of the crime of Murder are:

1. The defendant did unlawfully;
2. kill a human being;
3. with malice aforethought.

1 Express Malice Aforethought is that deliberate intention to unlawfully take away
2 the life of a fellow creature, which is manifested by external circumstances capable of proof.

3 Malice aforethought, as used in the definition of murder, means the intentional
4 doing of a wrongful act without legal cause or excuse, or what the law considers adequate
5 provocation.

6 "Aforethought" does not imply deliberation or the lapse of considerable time. It
7 only means the required mental state must precede rather than follow the act.
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1 Murder of the first degree is murder which is perpetrated by means of any kind of willful,
2 deliberate, and premeditated killing. All three elements--willfulness, deliberation, and
3 premeditation--must be proven beyond a reasonable doubt before an accused can be
4 convicted of first-degree murder.

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

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

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

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

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

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

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1 The true test is not the duration of time, but rather the extent of the reflection. A
2 cold, calculated judgment and decision may be arrived at in a short period of time, but a mere
3 unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and
4 premeditation as will fix an unlawful killing as murder of the first degree.

1 To constitute the crime of Murder there must be in addition to the death an
2 unlawful act which was a proximate cause of the death. The proximate cause of a death is a
3 cause which, in natural and continuous sequence, produces the death, and without which the
4 death would not have occurred.

5 There may be more than one proximate cause of a death. When the conduct of
6 two or more persons is a substantial factor in bringing about the death of the victim, each
7 person is a proximate cause of the death. A criminal defendant will not be relieved of criminal
8 liability for Murder when his action was a substantial factor in bringing about the death of the
9 victim, even if the actions of another person also contribute to bringing about the death.

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2 If you find the defendant committed the offense of First Degree Murder, then
3 you must further determine whether a deadly weapon was used during the commission of the
4 offense. You should indicate your finding by checking the appropriate box on the verdict form.

5 The burden is on the State to prove beyond a reasonable doubt that a deadly
6 weapon was used during the commission of the offense. However, the State is not required to
7 prove that the specific deadly weapon at issue was recovered, nor is the State required to
8 produce the subject deadly weapon at trial.

9 A deadly weapon is defined as follows:

- 10 1. A firearm, meaning any device from which a metallic projectile, including any
11 ball bearing or pellet, may be expelled by means of spring, gas, air or other
12 force;
13 2. Any instrument which, if used in the ordinary manner contemplated by its
14 design and construction, will or is likely to cause substantial bodily harm or
15 death; or
16 3. Any weapon, device, instrument, material or substance which, under the
17 circumstances in which it is used, attempted to be used or threatened to be
18 used, is readily capable of causing substantial bodily harm or death.
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1 To hold a defendant criminally liable for a charged offense, the State must
2 prove beyond a reasonable doubt not only that the offense was committed but that it
3 was the defendant who committed it. Thus, before a defendant may be convicted of
4 the charged offense, the State must prove beyond a reasonable doubt that the
5 defendant is the person who committed the charged crime.

6 If, you find the State has failed to prove beyond a reasonable doubt that the
7 defendant is the person who committed the charged offense, you must find him not
8 guilty.

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26 Instruction No. 18

1 To the jury alone belongs the duty of weighing the evidence and determining the
2 credibility of the witnesses. The degree of credit due a witness should be determined by his or
3 her character, conduct, manner upon the stand, fears, bias, impartiality, reasonableness or
4 unreasonableness of the statements he or she makes, and the strength or weakness of his or
5 her recollections, viewed in the light of all the other facts in evidence.

6 If the jury believes that any witness has willfully sworn falsely, they may disregard
7 the whole of the evidence of any such witness.
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1 Inconsistencies or discrepancies in the testimony of a witness, or between the
2 testimony of different witnesses, may or may not cause the jury to discredit such testimony.
3 Two or more persons witnessing an incident or transaction may see or hear it differently; an
4 innocent misrecollection, like failure to recollect, is not an uncommon experience. In weighing
5 the effect of a discrepancy, consider whether it pertains to a matter of importance, or an
6 unimportant detail, and whether the discrepancy results from innocent error or willful
7 falsehood.

1 You have heard testimony from a witness who received a benefit from the
2 State. Accordingly, you should examine such testimony with greater caution than that
3 of other witnesses in this case. In evaluating this testimony, you should consider the
4 extent to which it may have been influenced by the receipt of the benefit.

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26 Instruction No. 21

1 The fact that a witness has been convicted of a felony may be considered by you
2 only for the purpose of determining the credibility of that witness. The fact of such a conviction
3 does not necessarily destroy or impair the witness' credibility. It is one of the circumstances
4 that you may take into consideration in weighing the testimony of such a witness.
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Instruction No. 22

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

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

8 The opinions of experts are to be considered by you in connection with all other
9 evidence in the case. The same rules apply to expert witnesses that apply to other witnesses
10 in determining the weight or value of such testimony.

1 An expert witness may be asked a hypothetical question, and you may have
2 heard a hypothetical question asked to an expert witness in this case. In a hypothetical
3 question, the expert witness is told to assume the truth of certain facts, and the expert
4 witness is asked to give an opinion based upon those assumed facts. You alone must
5 decide if all of the facts assumed in the hypothetical question have been established
6 by the evidence. You can determine the effect of that admission upon the value of the
7 opinion.

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26 Instruction No. 24

1 You should not decide any issue merely by counting the number of witnesses
2 who have testified on the opposing sides.

3 The final test in weighing conflicting testimony is the relative convincing force of
4 the evidence and not the relative number of witnesses who have testified on different sides of
5 an issue.

1 Evidence has been received which may tend to show that the defendant may have
2 committed acts other than that for which he is on trial.

3 Such evidence was not received, and may not be considered by you, to prove that he is
4 a person of bad character or that he has a disposition to commit crimes. This evidence has
5 been received and may be considered by you only for the limited purpose of showing motive
6 regarding the charged crimes. For the limited purpose for which you may consider such
7 evidence, you must weigh it in the same manner that you do all other evidence in the case.
8 You are not permitted to consider such evidence for any other purpose.
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Instruction No. 26

1 Motive is not an element of the crime charged and need not be shown.
2 However, you may consider motive as a circumstance in this case. Presence of motive
3 may tend to establish guilt. Absence of motive may tend to establish innocence. You
4 will therefore give its presence or absence, as the case may be, the weight to which
5 you find it to be entitled.

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26 Instruction No. 27

1 The flight of a person after the commission of a crime is not sufficient in itself to
2 establish his guilt. However, if flight is proved, it may be considered by you in the light of all
3 other evidence in deciding the question of guilt or innocence.

4 The essence of flight embodies the idea of deliberately going away with
5 consciousness of guilt and for the purpose of avoiding apprehension or prosecution. The
6 weight to which such circumstance is entitled is a matter for the jury to determine.

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

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

1 It is a constitutional right of a defendant in a criminal trial that he or she may not
2 be compelled to testify. Thus the decision as to whether he or she should testify is left
3 to the defendant on the advice and counsel of his or her attorney. You must not draw
4 any inference of guilt from the fact that he or she does not testify, nor should this fact
5 be discussed by you or enter into your deliberations in any way.

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26 Instruction No. 30

1 On arriving at a verdict in this case, you shall not discuss or consider the subject
2 of penalty or punishment, and it must not in any way affect your decision as to the guilt or
3 innocence of the defendant.
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26 Instruction No. 31

1 Except for discussing the case with your fellow jurors during your deliberations:

2 Do not communicate with anyone, including members of your family, friends,
3 coworkers, or people involved in the trial, any matter having to do with this case. This includes
4 discussing the case, or anything to do with it, the parties, or attorneys, verbally, in person, by
5 phone, in writing, or on the internet through any internet features, such as internet chatrooms,
6 internet blogs, internet bulletin boards, such as Facebook or Twitter, emails, instant
7 messenger, text messaging, websites, or any other electronic method of communicating with
8 others.

9 You are not to read, look at, or listen to any news media accounts, or any other
10 accounts or commentary, including any online information, about the trial, or anyone or thing,
11 associated with it.

12 You are required to decide all questions of fact in this case from the evidence
13 received in this trial and not from any other source. Do not make any independent investigation
14 into or about the case, or the subject matter of the case. This means, for example, that you
15 must not do any research, such as consulting dictionary, searching the internet, or using other
16 reference materials, visit the scene or conduct experiments.

17 Should any person attempt to discuss the case with you or in any manner
18 attempt to communicate with you or influence you with respect to it, except your fellow jurors
19 while you are deliberating, you must advise the bailiff immediately who will, in turn, advise the
20 Court.

1 It is your duty as jurors to consult with one another and to deliberate, with a view
2 of reaching an agreement, if you can do so without violence to your individual judgment. You
3 each must decide the case for yourself, but should do so only after a consideration of the case
4 with your fellow jurors; and you should not hesitate to change an opinion when convinced that
5 it is erroneous. However, you should not be influenced to vote in any way on any question
6 submitted to you by fact that a majority of the jurors, or any of them, favor such a decision. In
7 other words, you should not surrender your honest convictions concerning the effect or weight
8 of evidence for the mere purpose of returning a verdict or solely because of the opinion of the
9 other jurors.

1 You were permitted to take notes during this trial. Notes are only to assist your
2 memory. Whether or not you took notes, you should rely on your own memory of what
3 was said and not be overly influenced by your notes or the notes of your fellow jurors.

4 Accordingly, you must not rely upon your respective notes in case of a conflict
5 between your notes and the notes of other jurors, as the court reporter's transcription
6 contains the complete and authentic record of this trial.

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26 Instruction No. 34

1 Each count charges a separate and distinct offense. You must decide each
2 count separately on the evidence and the law applicable to it, uninfluenced by your
3 decision as to any other count. The defendant may be convicted on any or all of the
4 offenses charged. Your findings as to each count must be stated in a separate verdict.
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Instruction No. 35

Upon retiring to the jury room you will select one of your number to act as foreperson, who will preside over your deliberations and who will sign a verdict to which you agree.

When all twelve (12) of you have agreed upon a verdict, the foreperson should sign and date the same and request the Bailiff to return you to court.

Connie J. Steinheimer
DISTRICT JUDGE

Instruction No. 36

1 CODE 4245
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR15-1674

11 v.

Dept. No. D7

12 LUIS ALEJANDRO MENENDEZ-CORDERO,

13 Defendant.
14 _____ /

15 VERDICT

16 , We, the jury in the above-entitled matter, find the defendant, LUIS ALEJANDRO
17 MENENDEZ-CORDERO, as to Count I., GUILTY of FIRST DEGREE MURDER

18 Was a deadly weapon used in the commission of the offense?

19 Yes ☒
(check one)

NO ☐

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21 DATED this 13 day of October, 2017

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FOREPERSON NUMBER

1 CODE 4245

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR15-1674

11 v.

Dept. No. D7

12 LUIS ALEJANDRO MENENDEZ-CORDERO,

13 Defendant.

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15 VERDICT

16 We, the jury in the above-entitled matter, find the defendant, LUIS ALEJANDRO
17 MENENDEZ-CORDERO, as to Count II., GUILTY of FIRST DEGREE MURDER

18 Was a deadly weapon used in the commission of the offense?

19 Yes ☒
(check one)

NO ☐

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21 DATED this 13 day of October, 2017

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR15-1674

11 v.

Dept. No. 7

12 LUIS ALEJANDRO MENENDEZ-CORDERO,

13 Defendant,
14 _____ /

15 It is my duty as judge to instruct you in the law that applies to this penalty
16 hearing. It is your duty as jurors to follow these instructions and to apply the rules of law to the
17 facts as you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these
19 instructions, regardless of any opinion you may have as to what the law is or ought to be.
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26 Instruction No. 1

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

6 The order in which the instructions are given has no significance as to their
7 relative importance.
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26 Instruction No. 2

1 There are two kinds of evidence: direct and circumstantial. Direct evidence is
2 direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect
3 evidence, that is, proof of a chain of facts from which you could find that another fact exists,
4 even though it has not been proved directly. You are entitled to consider both kinds of
5 evidence. The law permits you to give equal weight to both, but it is for you to decide how
6 much weight to give any evidence.

7 It is for you to decide whether a fact has been proved by circumstantial evidence.
8 In making that decision, you must consider all the evidence in the light of reason, common
9 sense and experience.

10 You should not be concerned with the type of evidence but rather the relative
11 convincing force of the evidence.

1 The evidence presented both during the trial and during this hearing may be
2 considered by the jury in deciding the proper and appropriate sentence in this case.

3 This evidence consists of the sworn testimony of the witnesses, both on direct
4 and cross-examination, regardless of who called the witness; the exhibits which have been
5 introduced into evidence and any facts to which the lawyers have agreed or stipulated.
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Instruction No. 4

1 You have found the defendant in this case to be guilty of Murder in the First
2 Degree. Therefore, under the law of this state, you must determine the sentence to be
3 imposed upon the defendant.

4 First Degree Murder is punishable by imprisonment in the Nevada State
5 Department of Corrections for:

- 6 1) life without the possibility of parole; or
- 7 2) life with the possibility of parole, with eligibility for parole beginning when a
8 minimum of 20 years has been served; or
- 9 3) a term of 50 years, with eligibility for parole beginning when a minimum of 20
10 years has been served.

11 The sentence for the deadly weapon enhancement will be determined by the
12 Court at a later date.

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26 Instruction No. 5

1 A term of 50 years is a sentence of imprisonment which provides that the
2 defendant would be eligible for parole after a period of 20 years. This does not mean that he
3 would be paroled after 20 years, but only that he would be eligible after that period of time.

4 Life imprisonment with the possibility of parole is a sentence of imprisonment
5 which provides that the defendant would be eligible for parole after a period of 20 years. This
6 does not mean that he would be paroled after 20 years, but only that he would be eligible after
7 that period of time.

8 Life imprisonment without the possibility of parole means exactly what it says,
9 that the defendant shall not be eligible for parole.

10 The Pardons Board cannot commute a prison term of life without the possibility of
11 parole to a sentence allowing parole.

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25 Instruction No. 6
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1 In reaching your verdict you may consider only the testimony of witnesses and
2 the exhibits received into evidence. Certain things are not evidence and you may not consider
3 them in deciding what the proper and appropriate sentence should be in this case.

4 Arguments and statements by lawyers are not evidence. The lawyers are not
5 witnesses. What they have said in their opening statements, closing arguments and at other
6 times is intended to help you interpret the evidence, but is not evidence. If the facts as you
7 remember them differ from what the lawyers have stated, then your memory controls.

8 Questions and objections by lawyers are not evidence. Attorneys have a duty to
9 object when they believe a question is improper under the rules of evidence. You should not
10 be influenced by the objection or the court's ruling on it.

11 Testimony excluded or stricken by the court or testimony which you have been
12 instructed to disregard is not evidence and must not be considered.

13 Anything you may have seen or heard when the court was not in session is not
14 evidence. You are to decide the proper punishment solely on the evidence received at the trial
15 and at this hearing.

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26 Instruction No. 7

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

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

1 Now you will listen to the arguments of counsel who will endeavor to aid you to
2 reach a proper verdict by refreshing in your minds the evidence and by showing the application
3 thereof to the law; but whatever counsel may say, you will bear in mind that it is your duty to be
4 governed in your deliberations by the evidence as you understand it and remember it to be and
5 the law as given you in these instructions.

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26 Instruction No. 9

Upon retiring to the jury room you should deliberate as to a penalty verdict to which you agree.

When all twelve (12) of you have agreed upon a verdict, the foreperson should sign and date the same and request the Bailiff to return you to court.

DATE this 16 day of October, 2017.

Connie J. Steinheimer
DISTRICT JUDGE

Instruction No. 10

1 CODE
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 LUIS ALEJANDRO MENENDEZ-CORDERO,

13 Defendant.
14 _____/

Case No. CR15-1674

Dept. No. 7

15 DEFENSE REJECTED INSTRUCTION - A
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1 The deadly weapon enhancement as applied to the sentence you impose in this
2 case will impose a minimum one year to a maximum twenty year, consecutive
3 sentence. Either of the parole eligible alternatives have twenty-year minimum
4 sentences before parole eligibility begins. The enhancement means that if you impose
5 a parole-eligible sentence, the defendant could not become eligible for parole
6 consideration before he served the minimum sentence imposed in prison.

7 Nevada enacted truth in sentencing laws in 1995. Those laws require that a
8 defendant sentenced to a year in prison, or a term of years, serve 365 days for each
9 year imposed. The defendant will not be given a reduction in his sentence for "good
10 time" credits or "work time" credits. He will be given credit for time served since his
11 arrest in this case. However, no credits other than for the time already spent in custody
12 will be deducted against the minimum sentence which you impose.

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25 Defendants offered and refused - A

26 Instruction No. _____

CR15-1674 DC-09900085381-002
STATE VS. LUIS ALEJANDRO MENEZES Page
District Court 10/16/2017 07:34 PM
Washoe County 4245
MTRABERT
WDOC

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

7 THE STATE OF NEVADA,

8 Plaintiff,

Case No. CR15-1674

9 v.

Dept. No. 7

10 LUIS ALEJANDRO MENENDEZ-CORDERO,

11 Defendant,

12 _____
13 LIFE WITHOUT THE POSSIBILITY OF PAROLE

14 We, the jury in the above-entitled action, having found the defendant, LUIS
15 ALEJANDRO MENENDEZ-CORDERO, guilty of Murder in the First Degree with the Use of a
16 Deadly Weapon as to Count I, set the penalty to be imposed at life without the possibility of
17 Parole in the Nevada State Prison.

18 DATED this 16 day of October, 2017

19
20 14
FOREPERSON NUMBER

21
22 FOREPERSON SIGNATURE
23
24
25
26

CR15-1674 DC-0900085381-001
STATE VS. LUIS ALEJANDRO MENE 1 Page
District Court 10/16/2017 07:35 PM
Washoe County 4245
MTRBERT

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

THE STATE OF NEVADA,

Plaintiff,

Case No. CR15-1674

v.

Dept. No. 7

LUIS ALEJANDRO MENENDEZ-CORDERO,

Defendant,

LIFE WITHOUT THE POSSIBILITY OF PAROLE

We, the jury in the above-entitled action, having found the defendant, LUIS ALEJANDRO MENENDEZ-CORDERO, guilty of Murder in the First Degree with the Use of a Deadly Weapon as to Count II, set the penalty to be imposed at life without the possibility of Parole in the Nevada State Prison.

DATED this 16 day of October, 2017

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FOREPERSON NUMBER

FOREPERSON SIGNATURE

1 CODE 1850

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 STATE OF NEVADA,

10 Plaintiff,

Case No. CR15-1674

11 vs.

Dept. No. 7

12 LUIS ALEJANDRO MENENDEZ-CORDERO,

13 Defendant.

14
15 JUDGMENT

16 The Defendant, having been found guilty by a Jury, and no sufficient cause
17 being shown by Defendant as to why judgment should not be pronounced against him, the
18 Court renders judgment as follows:

19 That Luis Alejandro Menendez-Cordero is guilty of the crime of Murder of the
20 First Degree with the Use of a Deadly Weapon, a violation of NRS 200.010, NRS 200.030
21 and NRS 193.165, a category A felony, as charged in Counts I and II of the Indictment,
22 and that he be punished by imprisonment in the Nevada Department of Corrections for the
23 term of Life without the Possibility of Parole, with credit for one thousand twenty-nine
24 (1,029) days time served, for Count I, with a consecutive term in the Nevada Department
25 of Corrections for the maximum term of two hundred forty (240) months with the minimum
26 parole eligibility of ninety-six (96) months, with credit for zero (0) days time served, for the
27 use of a deadly weapon in the commission of the crime; and by imprisonment in the
28 Nevada Department of Corrections for the term of Life without the Possibility of Parole,

1 with credit for zero (0) days time served, for Count II, with a consecutive term in the
2 Nevada Department of Corrections for the maximum term of two hundred forty (240)
3 months with the minimum parole eligibility of ninety-six (96) months, with credit for zero (0)
4 days time served, for the use of a deadly weapon in the commission of the crime, to be
5 served consecutively to sentences imposed in Count I. The Court, having imposed
6 multiple sentences of Life in the Nevada Department of Corrections without the Possibility
7 of Parole, to be served consecutively, finds that the maximum aggregate term of
8 imprisonment is Life in the Nevada Department of Corrections without the Possibility of
9 Parole and the minimum aggregate term of imprisonment is Life in the Nevada Department
10 of Corrections without the Possibility of Parole. Further, the Defendant must pay restitution
11 in the amount of Ten Thousand Dollars (\$10,000.00) to Victims of Crime and pay
12 attorney's fees in the amount of One Thousand Dollars (\$1,000.00) for reimbursement of
13 legal expenses. Defendant is further ordered to pay a Three Dollar (\$3.00) administrative
14 assessment for obtaining a biological specimen and conducting a genetic marker analysis,
15 a Twenty-Five Dollar (\$25.00) administrative assessment fee and a One Hundred Fifty
16 Dollar (\$150.00) DNA analysis fee to the Clerk of the Second Judicial District Court.

17 The fees and restitution are subject to removal from the Defendant's inmate
18 accounts at the Washoe County Jail and/or Nevada Department of Corrections.

19 Dated this 19 day of December, 2017.

20
21
22 
23 DISTRICT JUDGE
24
25
26
27
28

1 CODE NO. 2515
2 WASHOE COUNTY PUBLIC DEFENDER
3 JOHN REESE PETTY, State Bar Number 10
350 South Center Street, 5th Floor
4 P.O. Box 11130
Reno, Nevada 89520-0027
5 (775) 337-4827
Attorney for Defendant

6
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

Case No. CR15-1674

12 LUIS ALEJANDRO MENENDEZ-CORDERO,

Dept. No. 7

13 Defendant.
14 _____/

15 **NOTICE OF APPEAL**

16 LUIS ALEJANDRO MENENDEZ-CORDERO, the defendant above named, appeals to
17 the Supreme Court of Nevada from the judgment of conviction entered in this action on December
18 19, 2017.

19 The undersigned hereby affirms, pursuant to NRS 239B.030, that this document does not
20 contain the social security number of any person.

21 DATED this 16th day of January 2018.

22 JEREMY T. BOSLER
23 WASHOE COUNTY PUBLIC DEFENDER

24 By: /s/ John Reese Petty
25 JOHN REESE PETTY, Chief Deputy
26

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Public Defender's Office,
Reno, Washoe County, Nevada, and that on this date I forwarded a true copy of the foregoing
document addressed to:

LUIS ALEJANDRO MENENDEZ-CORDERO (#1190081)
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

TERRENCE P. McCARTHY
Chief Appellate Deputy
Washoe County District Attorney's Office
(E-mail)

ADAM LAXALT
Attorney General State of Nevada
100 N. Carson Street
Carson City, Nevada 89701

DATED this 16th day of January 2018.

/s/ John Reese Petty
JOHN REESE PETTY

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 16th day of August 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Jennifer P. Noble, Chief Appellate Deputy
Washoe County District Attorney's Office

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Luis Alejandro Menendez-Cordero (#1190081
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

John Reese Petty
Washoe County Public Defender's Office

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS ALEJANDRO MENENDEZ-
CORDERO,

Electronically Filed
Aug 16 2018 03:37 p.m.
No. 74901 Elizabeth A. Brown
Clerk of Supreme Court

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Appeal from a Judgment of Conviction in Case Number CR15-1674
The Second Judicial District Court of the State of Nevada
Honorable Connie J. Steinheimer, District Judge

JOINT APPENDIX VOLUME ONE

JEREMY T. BOSLER
Washoe County Public Defender

CHRISTOPHER J. HICKS
Washoe County District Attorney

JOHN REESE PETTY
Chief Deputy
350 South Center Street, 5th Floor
P.O. Box 11130
Reno, Nevada 89520-0027

JENNIFER P. NOBLE
Chief Appellate Deputy
One South Sierra, 7th Floor
P.O. Box 11130
Reno, Nevada 89520

Attorneys for Appellant

Attorneys for Respondent

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4. Jury Instructions (Guilt) (1-36) <u>filed</u> on October 13, 2017	1JA 198
5. Jury Instructions (Penalty) (1-10) <u>filed</u> on October 16, 2017	1JA 237
6. Notice of Appeal <u>filed</u> on January 11, 2018	1JA 253
7. Opposition to State's Motion to Introduce Evidence of Luis Alejandro Menendez-Cordero's Consciousness of Guilt <u>filed</u> on September 18, 2017	1JA 10
8. State's Motion to Introduce Evidence of Defendant's Consciousness of Guilt <u>filed</u> on September 9, 2017	1JA 4
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17.	Transcript of Proceedings: Trial <i>held</i> on October 5, 2017	4JA 537
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19.	Transcript of Proceedings: Trial <i>held</i> on October 9, 2017	6JA 870
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- 25. Verdicts (Guilt) filed on October 13, 2017 1JA 235, 236
- 26. Verdicts (Penalty) filed on October 16, 2017 1JA 249, 250

CR15-1674
DC-09900071302-094
STATE VS. LUIS ALEJANDRO MEN 3 Pages
District Court 10/28/2015 05:00 PM
Washoe County
MPURDY 1795

DA #13-61115

SPD 10-11637

ORIGINAL

CODE 1795

Christopher J. Hicks

#7747

P.O. Box 11130

Reno, NV 89520

(775) 328-3200

FILED

OCT 28 2015

JACQUELINE BRYANT, CLERK

By: M. Conway
DEPUTY CLERK

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No.: CR 15-1674

v.

Dept. No.: D07

LUIS ALEJANDRO MENENDEZ-CORDERO,

Defendant.

INDICTMENT

The defendant, LUIS ALEJANDRO MENENDEZ-CORDERO, is accused by the Grand Jury of Washoe County, State of Nevada, of the following:

COUNT I. MURDER OF THE FIRST DEGREE WITH THE USE OF A DEADLY WEAPON, a violation of NRS 200.010 and NRS 200.030, and NRS 193.165, a felony, in the manner following, to wit:

That the said defendant, on or about the 20th day of November, 2010, at Sparks Township within the County of Washoe, State of Nevada, did willfully, unlawfully, and with malice aforethought, deliberation, and premeditation, kill and murder 19 year old KEVIN MELENDEZ, a human being, by means of shooting said victim with a .22

1 caliber pistol, thereby inflicting mortal injuries upon the said
2 KEVIN MELENDEZ from which he died on November 20, 2010.

3 COUNT II. MURDER OF THE FIRST DEGREE WITH THE USE OF A
4 DEADLY WEAPON, a violation of NRS 200.010 and NRS 200.030, and NRS
5 193.165, a felony, in the manner following, to wit:

6 That the said defendant, on or about the 20th day of
7 November, 2010, at Sparks Township within the County of Washoe, State
8 of Nevada, did willfully, unlawfully, and with malice aforethought,
9 deliberation, and premeditation, kill and murder 21 year old MOISES
10 VAZQUEZ, a human being, by means of shooting said victim with a .22
11 caliber pistol, thereby inflicting mortal injuries upon the said
12 MOISES VAZQUEZ from which he died on November 20, 2010.

13
14
15 AFFIRMATION PURSUANT TO NRS 239B.030

16 The undersigned does hereby affirm that the preceding
17 document does not contain the social security number of any person.

18 Dated this Feb 28th day of October, 2015.

19 CHRISTOPHER J. HICKS
20 District Attorney

21
22 By Kelly Ann Kossow
23 KELLY ANN KOSSOW
24 8221
25 CHIEF DEPUTY District Attorney

1 The following are the names of witnesses examined before
2 the Grand Jury:

3 *William KT*
4 SCOTT VALENTI
5 T. GINCHEREAU
6 B. RUSSELL
7 DR. PIOTR KUBICZEK
8 CI# 15-08
9 ELDER RODRIGUEZ
10 Y. R.
11 KERRI HEWARD
12 ~~D. JAMES~~ *KT*
13 E. CHAVEZ
14

"A TRUE BILL"

K. J. Scan
FOREMAN

"NO TRUE BILL"

FOREMAN

1 CODE
CHRISTOPHER J. HICKS
2 #007747
P.O. Box 30083
3 Reno, NV 89520-3083
(775) 328-3200
4 Attorney for Plaintiff

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR15-1674

11 v.

Dept. No. 7

12 LUIS ALEJANDRO MENENDEZ-CORDERO,

13 Defendant.

14 _____ /
15 STATE'S MOTION TO INTRODUCE EVIDENCE OF DEFENDANT'S
16 CONSCIOUSNESS OF GUILT

17 COMES NOW, the State of Nevada, by and through CHRISTOPHER J.
18 HICKS, District Attorney of Washoe County, and Kelly Ann Kossow,
19 Chief Deputy District Attorney, and hereby files the following motion
20 to introduce statements made by the Defendant which indicate
21 consciousness of guilt as to the murder charges. This motion is
22 based upon the attached Memorandum of Points and Authorities, and
23 testimony and/or arguments adduced at a hearing on the matter.

24 ///

25 ///

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **STATEMENT OF FACTS**

3 On August 30, 2017 at 11:00 a.m. MENENDEZ-CORDERO had a
4 prearranged I-Web with a person named Ana Rojas. A review of the I-
5 Web revealed the recipient was Bertha Arias who appeared to be
6 speaking to the Defendant from El Salvador. During this I-Web
7 MENENDEZ-CORDERO speaks to several men and at one point asks them for
8 a favor and provides them a phone number which he reads off of a
9 piece of paper. He asks the men to buy a cellphone and send a
10 message to the number. MENENDEZ-CORDERO then tells the men to tell
11 the "guy" that his wife/mother will be gone and asks them to tell him
12 not to show up on the day of his trial. One of the men records the
13 cellphone number in his phone. MENENDEZ-CORDERO tells the group of
14 men that the "son of a bitch" keeps coming around and if he doesn't
15 show up, it could change the outcome of the jury. One of the men,
16 referred to as "Sideway" tells MENENDEZ-CORDERO that he will take
17 care of it beforehand and that he will call "Gordo" and ask him what
18 the process was last time and then he'll talk to the "brothers." The
19 number MENENDEZ-CORDERO provided is that of Elder Rodriguez, the
20 witness who took MENENDEZ-CORDERO to Kristine Yost's house on the
21 evening of the gathering where the murders took place. Elder
22 Rodriguez testified at Grand Jury and did identify MENENDEZ-CORDERO
23 as the individual that he took to the party that evening where the
24 murders took place. Elder Rodriguez told police and the Grand Jury
25 that he left prior to the shooting to walk to the store and had no
26 idea where MENENDEZ-CORDERO went after he left for the store.

1 On August 31, 2017 MENENDEZ-CORDERO made a phone call to Bertha
2 Arias. During the phone conversation MENENDEZ-CORDERO told Arias to
3 remind the "los locos", the crazies, to send that guy the message.
4 While MENENDEZ-CORDERO makes the above statement Arias attempts to
5 stop him by speaking over him and telling him "yes, yes, I know, I
6 know, I know."

7 **ARGUMENT**

8 Evidence of threats or intimidation made by a defendant against
9 a witness are admissible to show the defendant's consciousness of
10 guilt. Ortiz-Sandoval v. Gomez, 81 F.3d 891, 897 (9th Cir. 1996)
11 (Admission of evidence regarding defendant's threat against two
12 witnesses did not render his trial fundamentally unfair because
13 threats are relevant to show consciousness of guilt) See also U.S. v.
14 Begay, 673 F.3d 1038, 1046, (9th Cir. 2011) (Evidence of witness'
15 testimony that defendant told him to keep quiet and to watch himself
16 was admissible to show defendant's consciousness of guilt.) The
17 conduct of an accused which shows consciousness of guilt is
18 admissible, even though it may in itself be criminal. Reese v.
19 State, 95 Nev. 419, 423, 596 P.2d 212 (1979) The Nevada Supreme
20 Court held in Evans v. State, 117 Nev. 609, 628, 28 P.3d 498, 512
21 (2001),

22 Evidence that a defendant threatened a witness after a
23 crime 'is directly relevant to the question of guilt' and
24 'is neither irrelevant character evidence nor evidence of
collateral acts requiring a hearing before it admission'.

25 ///

26 ///

1 In the current case, the State is moving to admit evidence that
2 on August 30, 2017 MENENDEZ-CORDERO participated in a recorded I-Web
3 visit with Bertha Arias and multiple males. During the I-Web
4 MENENDEZ-CORDERO, in Spanish, provided a phone number and asked the
5 men to write down the number. MENENDEZ-CORDERO then asked the men to
6 send a message to the guy to make sure he doesn't show up at trial.
7 He told the men to tell the witness that his wife or mother,
8 depending on the interpretation, could easily be killed. MENENDEZ-
9 CORDERO told the men that he [the witness] is the only one who can
10 change the outcome of the trial. Elder Rodriguez is the witness
11 attached to the provided cellphone number. The men listening to
12 MENENDEZ-CORDERO indicate that they understand what he is saying.

13 Further, the State is moving to admit evidence that on August
14 31, 2017 MENENDEZ-CORDERO spoke with Bertha Arias and reiterated the
15 same threat telling Arias to remind the "los locos" to send the guy
16 that message.

17 This very specific threat is made by MENENDEZ-CORDERO to make
18 sure that Elder Rodriguez does not appear at trial. This threat is
19 relevant to show that MENENDEZ-CORDERO was present at the party where
20 the murders of Kevin Melendez and Moises Vasquez occurred. In an
21 interview with police in 2015 MENEDEZ-CORDERO tells them that he was
22 not in the Reno area in 2010 but was last here in 2013. Elder
23 Rodriguez, who has previously provided testimony at grand jury
24 identifying MENENDEZ-CORDERO as the individual he picked up and took
25 to Kristine Yost's apartment on November 20, 2010, is key in
26 defeating MENENDEZ-CORDERO's claim that he was not in the Reno/Sparks

1 area when the murders occurred. This direct threat to a witness is
2 probative of the Defendant's consciousness of guilt of the murders of
3 Kevin Melendez and Moises Vasquez and is therefore admissible
4 evidence.

5
6 AFFIRMATION PURSUANT TO NRS 239B.030

7 The undersigned does hereby affirm that the preceding document
8 does not contain the social security number of any person.

9 Dated this 10TH day of SEPTEMBER, 2017.

10
11 CHRISTOPHER J. HICKS
12 District Attorney
13 Washoe County, Nevada

14
15 By/s/KELLY ANN KOSSOW
16 KELLY ANN KOSSOW
17 8221
18 Chief Deputy District Attorney
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1 CERTIFICATE OF SERVICE BY E-FILING

2 I certify that I am an employee of the Washoe County
3 District Attorney's Office and that, on this date, I electronically
4 filed the foregoing with the Clerk of the Court by using the ECF
5 system which will send a notice of electronic filing to the
6 following:

7
8 WASHOE COUNTY PUBLIC DEFENDER'S OFFICE
9 LINDA NORDVIG, D.P.D.
 RICHARD VIOLORIA, D.P.D.

10 DATED this 10TH day of SEPTEMBER, 2017.

11
12 /s/KELLY ANN KOSSOW
13
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1 CODE 2645
2 WASHOE COUNTY PUBLIC DEFENDER
3 LINDA M. NORDVIG, #5084
4 RICHARD M. VILORIA, #13273
5 P.O. BOX 11130
6 RENO, NV 89520-0027
7 (775) 337-4800
8 ATTORNEY FOR DEFENDANT

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF WASHOE

11 THE STATE OF NEVADA,

12 Plaintiff,

13 v.

Case No. CR15-1674

14 LUIS ALEJANDRO MENENDEZ-CORDERO, Dept. No. 7

15 Defendant.

16 **OPPOSITION TO STATE'S MOTION TO INTRODUCE EVIDENCE OF LUIS**
17 **ALEJANDRO MENENDEZ-CORDERO'S CONSCIOUSNESS OF GUILT**

18 COMES NOW, Defendant, LUIS ALEJANDRO MENENDEZ-CORDERO, by and
19 through his counsel of record, JEREMY T. BOSLER, Washoe County Public Defender,
20 LINDA M. NORDVIG and RICHARD M. VILORIA, Deputy Public Defenders, and hereby
21 serves his Opposition to the State's Motion to introduce evidence of Mr. Menendez-Cordero's
22 consciousness of guilt and other evidence prohibited by NRS 48.045 and construing case law,
23 subject to trial court determination of admissibility at a hearing outside the presence of the jury,
24 in accordance with the law referenced in the attached Points and Authorities. This Opposition is
25 based upon the Fifth, Sixth and Fourteenth Amendments to the United States Constitution,
26 Article 1, Section 8 of the Nevada Constitution, NRS 48.045, and the following Points and
Authorities.

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III. ARGUMENT

The use of other acts evidence in criminal trials is heavily disfavored. The Nevada Supreme Court in recent cases has repeatedly urged caution in permitting introduction of other acts evidence before juries. The Court has also expressed concerns with consciousness of guilt and flight evidence and instructions. The State's Motion indicates it is seeking admission of the evidence to show "consciousness of guilt."

In what appears at the time of this writing to be its most recent address of the issues, the Nevada Supreme Court on July 14, 2003, in Tabish v. State, 119 Nev. 293 (2003), determined that joinder of counts regarding a weaker case was inappropriate, citing unfair prejudice. The Court restated an earlier holding regarding the burden of proof for admission of other acts evidence, pursuant to NRS 48.045.

As this court held in Tinch v. State, to deem a prior bad act admissible, the district court must first determine outside the presence of the jury that "(1) the incident is relevant to the crime charged; (2) the act is proven by clear and convincing evidence; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice." Id.

The Tabish court concluded that both the relevance and proof elements were satisfied by the proffered evidence, but that the prejudice prong was not. The Court's ruling in Tabish was not a surprise in light of its recent rulings.

In Tavares v. State, 117 Nev. 725, 730, 30 P.3d 1128, 1131 (2001) the Court held that it is "heavily disfavored" to use prior bad act evidence to convict a defendant "because bad acts are often irrelevant and prejudicial and force the accused to defend against vague and unsubstantiated charges." Similarly in Flores v. State, 116 Nev. 659, 662-63, 5 P.3d 1066, 1068 (2000), the Court held that the probative value of evidence of a prior murder to show identity and motive for another murder was far outweighed by the danger of unfair prejudice.

1 The statements attributed to Mr. Menendez-Cordero differ from those reviewed by the
2 Nevada Supreme Court in Abram v. State, 95 Nev. 352, 594 P.2d 1143 (1979), and cited by the
3 State. In Abram the Defendant objected to two types of other act testimony. The first, an
4 unresponsive answer from a detective, suggested one of the witnesses was afraid of the
5 defendant. The Supreme Court found that the statement should not have been admitted.
6 Insufficient foundation existed in the record. The second other act evidence admitted was from
7 a jailhouse informant, who claimed the defendant threatened the witness with violence, noting
8 “everything would have been fine if she would have kept her mouth shut.” Thus, the threat
9 accepted in Abram differs from those alleged in the State’s Motion because the Abram threat
10 specifically tied to the testimony. Here, the State claims Mr. Menendez-Cordero made threats
11 to the prospective witnesses, but makes no reference to which witness or the veracity of the
12 testimony. It is not claimed that the witnesses know of the alleged threats or that their decision
13 to testify or not has been impacted. The State alleges that Mr. Menendez-Cordero “tells the
14 men to tell the guy that his wife/mother will be gone and asks them to tell him not to show up
15 for his trial.” Whether or not these allegations are accurate the defense is unable to determine
16 based upon the short period of time to facilitate transcribing the referenced calls and the issues
17 referenced in the Motion to Continue the Motion’s Hearing filed September 15, 2017. This is
18 not consistent only with a consciousness of guilt, but also of innocence. Being falsely accused
19 should be at least as frustrating as being accurately accused. The alleged threats themselves do
20 nothing to discern between false accusations compared with consciousness of guilt.

21
22
23 The Supreme Court, in analyzing the appropriate use of other bad acts evidence, has
24 tended to admit evidence of acts while limiting the use of statements. In Honeycutt v. State, 56
25 P.3d. 362 (2002), the Supreme Court ruled admissible the defendant’s soliciting a third person
26

1 to kill a witness in a case that had previously ended in a mistrial. Conversely, a defendant's
2 statements, without more, have often been found lacking for 48.045 purposes. In both Tavares
3 v. State, 117 Nev. 725, 30 P.3d 1128 (2001) and Walker v. State, 116 Nev. 442, 997 P.2d 803
4 (2000), the Supreme Court held that statements of the defendants regarding a desire to flee
5 (Tavares) and a desire to harm or kill the victim (Walker) were improperly admitted. In each
6 case the defense argued the quantum proof presented and the probative value of the proffered
7 evidence, and was overruled. The charges faced by both Tavares and Walker were murder
8 charges, similar charges to those filed against Mr. Menendez-Córdero. Despite the seriousness
9 of the charges, however, the Supreme Court determined that the proffered statements
10 (unaccompanied by acts in their furtherance) were insufficient. The situation appears to be
11 analogous to conspiracy doctrine. While group plans to commit unlawful acts may be
12 objectionable, it is only plans coupled with overt acts that become criminal. It is respectfully
13 submitted this Court should reach a similar conclusion here and advise the State that the
14 "noticed" evidence is not admissible.
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16

17 In addition to the many issues presented by other acts evidence, as discussed above, the
18 Motion herein interjects Constitutional issues beyond the norm. The Motion alleges that Mr.
19 Menendez-Cordero's alleged threats to the witnesses and family members on August 30, 2017,
20 were made in communications in Spanish or El Salvadorian languages, which the defense has
21 been unable to confirm through its contracted interpreters.
22

23 The Sixth Amendment to the United States Constitution guarantees that an accused in a
24 criminal case should enjoy the opportunity to be assisted by competent counsel. The right has
25 traditionally encompassed that the client and counsel be able to communicate effectively, fully,
26 and privately. In this case, that required the services of an interpreter, which due to the short

1 time period and other issues, have not been available to translate and/or transcribe the contents
2 of all of the communications upon which the State is basing its Motion. Although Mr.
3 Menendez-Cordero has been shown some of those communications, defense counsel has been
4 unable to adequately discuss those, as well as the potential new issues that are involved in his
5 case. Admission of the evidence proffered by the State will substantially prejudice Mr.
6 Menendez-Cordero. Even if sufficiently proven for NRS 48.045, a point the defense does not
7 concede, the State's Motion seeks to interject other issues which may never be properly heard
8 before this jury, including alleged gang affiliation and a potential motive for the alleged
9 offenses. Their belief in either allegation substantially prejudices Mr. Menendez-Cordero, and
10 should not be permitted. The effective assistance issue should not be interjected into this case at
11 all. Neither Mr. Menendez-Cordero nor his counsel should be put in a position to proceed with
12 the inability to discuss the allegations against him, nor should either of them have to do so.
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IV. CONCLUSION

Based on the foregoing, Mr. Menendez-Cordero respectfully requests this Court to DENY the State's Motion to allow the alleged evidence of his consciousness of guilt. The allegations are substantially outweighed by the danger of unfair prejudice.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 18th day of September, 2017.

JEREMY T. BOSLER
Washoe County Public Defender

By /s/ Linda M. Nordvig
LINDA M. NORDVIG
Deputy Public Defender

By /s/ Richard M. Vilorio
RICHARD M. VILORIA
Deputy Public Defender

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DISTRICT ATTORNEY
1 SOUTH SIERRA STREET
RENO, NV

/s/ Wendy Lucero
WENDY LUCERO

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10			
11	STATE OF NEVADA,)	
)	
12	Plaintiffs,)	
)	
13	vs.)	Case No. CR15-1674
)	
14	LUIS ALEJANDRO MENENDEZ)	Department 7
	CORDERO,)	
15)	
	Defendant.)	

PRETRIAL MOTIONS
September 19, 2017

Reno, Nevada

018

1 APPEARANCES:

2 For the State:

3 OFFICE OF THE DISTRICT ATTORNEY
4 By: KELLY KOSSOW, ESQ.
5 By: ZELALEM BOGALE, ESQ.
6 P.O. Box 30083
7 Reno, Nevada

8 For the Defendant:

9 OFFICE OF THE PUBLIC DEFENDER
10 By: LINDA NORDVIG, ESQ.
11 By: JAY SLOCUM, ESQ.
12 350 S. Center
13 Reno, Nevada
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1 RENO, NEVADA, September 19, 2017, 1:30 p.m.

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4 THE CLERK: Case number CR15-1674, State versus
5 Luis Alejandro Menendez Cordero. Matter set for motion to
6 confirm trial. Counsel, please state your appearances and
7 the name of the interpreters.

8 MS. KOSSOW: Good morning, your Honor. Kelly
9 Kossow and Zelalem Bogale appearing on behalf of the State.

10 MS. NORDVIG: Good afternoon, your Honor. Linda
11 Nordvig appearing for Mr. Menendez Cordero in the courtroom.
12 In the courtroom at the Washoe County Detention Facility is
13 Mr. Jay Slocum from my office, as well as the defendant who
14 is present at the jail in custody.

15 THE COURT: Thank you. Mr. Slocum, can you hear
16 us?

17 MR. SLOCUM: We can hear you. Thank you, your
18 Honor.

19 THE COURT: All right. We have a number of
20 pretrial motions and I thought we'd pick the low hanging
21 fruit first.

22 MS. NORDVIG: Your Honor, if I might, if the
23 interpreters could identify themselves, please?

24 THE COURT: All right. Mr. Slocum, would you

1 please have the interpreters identify themselves?

2 MR. SLOCUM: Yes, your Honor.

3 THE INTERPRETER: Maria Davis, certified court
4 interpreter for the State of Nevada.

5 MR. MILLER: Joseph Miller.

6 THE COURT: Thank you.

7 MR. MILLER: Court interpreter.

8 THE COURT: Thank you, Ms. Nordvig, for catching
9 that.

10 MS. NORDVIG: Thank you.

11 THE COURT: We have filed on September 11th, 2017
12 the defense invocation of rule of exclusion. Ms. Kossow, any
13 objection to that?

14 MS. KOSSOW: No, your Honor.

15 THE COURT: That motion is granted, Ms. Clerk.

16 THE CLERK: Thank you.

17 THE COURT: On September 12th, we have filed the
18 defense motion regarding custody during trial, seeking to
19 minimize or essentially shield the jury's view of the
20 defendant in custody. Ms. Kossow, any objection to that?

21 MS. KOSSOW: No, your Honor.

22 THE COURT: That is granted. We have filed
23 earlier the defense motion for equal access to jury
24 information filed January 25th. The State opposed it

1 February 8th. There was a reply February 12th. It wasn't
2 submitted, but that motion is denied pursuant to the Nevada
3 Supreme Court case, I believe it's Arias.

4 MS. KOSSOW: Artega versus Morales, your Honor.

5 THE COURT: Ms. Nordvig.

6 MS. NORDVIG: When it's appropriate, I'd like to
7 make an objection to the defendant's not being present in the
8 courtroom.

9 THE COURT: Okay. The objection is noted.

10 MS. NORDVIG: Thank you.

11 THE COURT: So that motion is denied, Ms. Clerk.

12 THE CLERK: Thank you.

13 MS. NORDVIG: Your Honor, just for the Court's
14 information, during my prior use of the video equipment from
15 either this building or Reno Justice Court's building to the
16 jail, there is sometimes a delay in the proceedings. It
17 doesn't last very long, but sometimes there is a brief delay
18 in transmission.

19 THE COURT: All right. Thank you.

20 MS. NORDVIG: Just for the interpreters' sake.

21 THE COURT: So with that, Ms. Nordvig, let's --
22 well, strike that. Let's start with the State's motions.
23 Ms. Kossow.

24 MS. KOSSOW: Thank you, your Honor. The State has

1 four witnesses to present, your Honor. I ask that we do that
2 first so we can get them out of here.

3 THE COURT: Fine with me.

4 MS. KOSSOW: The State would first call Detective
5 Valenti.

6 MS. NORDVIG: Can I ask which motion or motions?

7 MS. KOSSOW: They're going to go to a multitude of
8 motions. I would do the testimony and argue it specifically.
9 It will be for the other act evidence of the defendant, the
10 admission.

11 THE COURT: Could you just be seated.

12 MR. SLOCUM: If I may, this is Mr. Slocum, the
13 interpreter is having difficulty with the speed of
14 Ms. Kossow's speech. If we can ask her to slow down. And
15 there's also apparently some noise that is causing
16 difficulties as well. So if she could speak up a little bit
17 and she could speak slower, that would be helpful.

18 MS. NORDVIG: May I ask where the microphone is?

19 THE COURT: We're off the record.

20 (Discussion off the record.)

21 THE COURT: We're back on the record. Ms. Kossow,
22 let's try this arrangement. If that doesn't work, what I'd
23 like the attorneys to do is use the podium and I'll just move
24 the mic to the podium.

1 MS. KOSSOW: Okay.

2 THE COURT: Mr. Slocum, speak up if you can't hear
3 us, all right?

4 MR. SLOCUM: Yes, we will, your Honor. Thank you.

5 MS. KOSSOW: Thank you. The testimony would
6 really go to the State's two motions or the State's motion of
7 the other act evidence and then it go to the defense's motion
8 to exclude expert testimony of Agent Freestone.

9 THE COURT: All right. Thank you.

10 MS. KOSSOW: The State would call Detective
11 Valenti.

12 (One witness sworn at this time.)

13 MS. KOSSOW: Can I have one moment, your Honor?

14 THE COURT: Certainly.

15 MS. NORDVIG: May I briefly for my co-counsel,
16 your Honor?

17 THE COURT: Certainly.

18 MS. NORDVIG: Mr. Slocum, the exhibits in the
19 envelope you took up to the jail, the first 16 beginning with
20 this one, check one and two, they might be reversed. They're
21 all backwards. We'll take it as we go.

22 MR. SLOCUM: Okay.

23 MS. NORDVIG: It's all the photographs.

24 THE COURT: Ms. Kossow, your witness.

1 MS. KOSSOW: Thank you, your Honor.

2 WILLIAM VALENTI

3 called as a witness and being duly sworn did testify as
4 follows:

5 DIRECT EXAMINATION

6 BY MS. KOSSOW:

7 Q. Sir, could you please state your full name and
8 spell your last for the record?

9 A. William Valenti, V-a-l-e-n-t-i.

10 Q. What is your current occupation?

11 A. A detective with the Sparks Police Department.

12 Q. How long have you been with the Sparks Police
13 Department?

14 A. 15 years.

15 Q. Were you assigned as the case agent on the Luis
16 Alejandro Menendez Cordero case from November of 2010?

17 A. I was the co-case on it, yes.

18 Q. I want to jump to December 17th of 2015. Was that
19 the date that Mr. Menendez Cordero was extradited back from
20 El Salvador?

21 A. Yes.

22 Q. Was he brought to the Sparks Police Department?

23 A. Yes, he was.

24 Q. Did he undergo an interview when he was at the

1 Sparks Police Department?

2 A. Yes.

3 Q. After that interview, had you secured a seizure
4 order to obtain his buccal swab as well as photographs of his
5 body?

6 A. Yes.

7 Q. And were those photographs taken to memorialize
8 his tattoos?

9 A. Yes.

10 Q. Did that actually occur?

11 A. Yes.

12 Q. Who took the photographs?

13 A. Mike Ivers from forensic investigative services.

14 Q. Mike Ivers?

15 A. Yes.

16 Q. And were you present or observing the entity of
17 the interview as well as Mr. Ivers conduct his work?

18 A. Yes.

19 Q. I want to show you what has been marked as
20 Exhibits 1 through 16. I'll just have you look through these
21 generally. Sir, in general, do you recognize what is shown
22 in the photographs, Exhibits 1 through 16?

23 A. Yes. Those are the tattoos that were on
24 Mr. Menendez Cordero when he came back.

1 Q. On December 17th, 2015?

2 A. Yes.

3 MS. KOSSOW: Your Honor, I move for admission of
4 Exhibits 1 through 16.

5 THE COURT: Any voir dire?

6 VOIR DIRE EXAMINATION

7 BY MS. NORDVIG:

8 Q. Is it detective or officer?

9 A. Detective, ma'am.

10 Q. Thank you, sir. You were present when all of
11 these were being taken?

12 A. Yes.

13 Q. Did you --

14 THE COURT: Could you speak up a little bit,
15 detective?

16 THE WITNESS: Sorry, your Honor. Yes, I was.

17 BY MS. NORDVIG:

18 Q. Did you direct Mr. Ivers, then, as far as what
19 kind of photographs that you wanted taken?

20 A. Yes. It's just overall photos of the tattoos and
21 markings.

22 MS. NORDVIG: No objection for the purposes of
23 this hearing only.

24 THE COURT: Thank you very much. Exhibits 1

1 through 16 are admitted, Ms. Clerk.

2 THE CLERK: Thank you.

3 BY MS. KOSSOW:

4 Q. Sir, you previously stated that you were one of
5 the case agents in this case?

6 A. Yes, ma'am.

7 Q. Have you been on the case since 2010,
8 November 20th, when the incident actually occurred?

9 A. Yes.

10 Q. As part of your -- so have you reviewed all the
11 interviews in the case?

12 A. Most of them, yes.

13 Q. And were witnesses interviewed in regards to an
14 identification of the suspect in the case?

15 A. I'm sorry. Can you rephrase that?

16 Q. During these interviews with witnesses, were they
17 asked to give descriptions of the possible suspect in the
18 case?

19 A. Yes, they were.

20 Q. And based on all of the descriptions, did you
21 begin to look for a suspect in this case?

22 A. Yes.

23 Q. And at the time that you were looking for a
24 suspect, did you have any information that the suspect had

1 tattoos on the top of his forehead?

2 A. No.

3 MS. KOSSOW: I have no further questions, your
4 Honor.

5 THE COURT: Ms. Nordvig.

6 CROSS EXAMINATION

7 BY MS. NORDVIG:

8 Q. Do you recall any of the specific interviews that
9 you did not review?

10 A. No, ma'am. Some of the peripheral ones, I have
11 not.

12 Q. That you determined to be peripheral or someone
13 else did?

14 A. That said they didn't have any knowledge of what
15 was going on.

16 Q. So that was your determination?

17 A. Yes.

18 Q. Do you remember the ones that you did review?

19 A. Yes.

20 Q. Can you list those for us, please?

21 A. Christine Yost, Terrell Wagner, Yesenia Rios,
22 Charles Payne. I believe that's it.

23 Q. So four of the interviews, is that correct?

24 A. Yes.

1 Q. And how many interviews were there total?

2 A. I don't know, ma'am.

3 Q. You said co-case agent?

4 A. Yes, ma'am.

5 Q. Who was the other case agent?

6 A. Detective Begby was the lead on the case.

7 Q. Was he also from Sparks PD?

8 A. Yes, ma'am.

9 Q. Is he still assigned to the case?

10 A. He's in patrol now, ma'am.

11 Q. Were you part of the extradition team?

12 A. I brought him from the Reno Sparks Airport to the
13 station.

14 MS. NORDVIG: Nothing further for the hearing.

15 THE COURT: That raise any questions, Ms. Kossow?

16 MS. KOSSOW: Just one, your Honor.

17 REDIRECT EXAMINATION

18 BY MS. KOSSOW:

19 Q. You names Ms. Yost, Ms. Rios and Mr. Terrell
20 Wagner. Were all three of those witnesses percipient
21 witnesses? Were they there during the shooting in this case?

22 A. Yes.

23 MS. KOSSOW: Thank you. I have nothing further.

24 THE COURT: Raise any questions, Ms. Nordvig?

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Q. You also raised the name Charles Payne?

A. That's correct.

Q. And he was not present at the time of the alleged offense?

A. No, ma'am.

THE WITNESS: Thank you, your Honor.

(One witness sworn at this time.)

MS. KOSSOW: Thank you, your Honor.

called as a witness and being duly sworn did testify as follows:

BY MS. KOSSOW:

A. Charles Payne, P-a-y-n-e.

Q. Thank you, sir.

1 THE COURT: Mr. Slocum, can you hear Mr. Payne?

2 MR. SLOCUM: So far so good.

3 THE COURT: Go ahead, Ms. Kossow.

4 MS. KOSSOW: Thank you.

5 BY MS. KOSSOW:

6 Q. Sir, I want to take you back to the end of 2010,
7 November of 2010. Do you recall where you were working at
8 the time?

9 A. Diapers.com.

10 MS. NORDVIG: Can you say that again?

11 THE WITNESS: Diapers.com.

12 BY MS. KOSSOW:

13 Q. Sometime in November of 2010, do you recall being
14 asked to perform tattoo work?

15 A. Yes.

16 Q. And tell me a little bit about that. Do you have
17 a history of performing tattoo work?

18 A. I've been tattooing 23 years. I owned a shop down
19 here for three years in Fernley.

20 Q. Do you recall who asked you to perform this tattoo
21 work?

22 A. My ex-wife's sister's boyfriend at the time,
23 Carlos.

24 Q. Do you know Carlos' last name?

1 A. No.

2 Q. And how exactly did he ask you? And by that, I
3 mean in person, did he call you?

4 A. He called me.

5 Q. Do you remember a day of the week that he called
6 you?

7 A. It was the same day that the tattoo happened. I
8 don't remember offhand.

9 Q. So he called you and asked you to perform some
10 tattoo work?

11 A. Uh-huh.

12 Q. You have to answer out loud.

13 A. Yes.

14 Q. What was your response when he asked you?

15 A. I had them -- they offered me \$500 to do a tattoo
16 for him and I told him to come on over and I'll do the
17 tattoo.

18 Q. I think you already said this, but did the -- did
19 Carlos and any other persons come over and get the tattoo
20 work done that same day?

21 A. Carlos, this gentleman, and one more person. I
22 don't remember his name.

23 Q. Where did they come to?

24 A. They came to my house.

1 Q. You would perform the work at your house?
2 A. Yes. I had a full shop in my house.
3 Q. And any idea what time of day it was?
4 A. Before dark, because I know when we finished it
5 was dark time.
6 Q. And you had met Carlos?
7 A. Just through my ex-wife's sister.
8 Q. And just so we're clear for the record, who was
9 your ex-wife's sister?
10 A. Francis Fernandez.
11 Q. I think you mentioned two gentleman?
12 A. All I knew was Carlos.
13 Q. And tell me what happens when Carlos and these two
14 other men show up?
15 A. We just -- they just came in, we discussed what
16 they wanted for the tattoo. We got everything ready for
17 them. The gentleman here and Carlos stayed out of the room.
18 Another gentleman came in to translate for us, because he
19 didn't speak English. We proceeded and did the tattoo, and
20 when we were finished, they just left.
21 Q. So the person that you performed the tattoo on, if
22 that's the right language?
23 A. Uh-huh.
24 Q. Are you saying that he did not speak English?

1 A. No.

2 Q. And so another individual that was with him had to
3 translate?

4 A. Yes.

5 Q. As to what he wanted?

6 A. Yes.

7 Q. And what was your understanding of what he wanted?

8 A. Basic lettering.

9 Q. I want to show you Exhibit 1.

10 MS. KOSSOW: Your Honor, may I approach the
11 witness?

12 THE COURT: You may.

13 BY MS. KOSSOW:

14 Q. I'm going to show you Exhibit 1, and let me ask
15 you, do you recognize the individual who is shown in
16 Exhibit 1?

17 A. Yes, I do.

18 Q. How do you recognize him?

19 A. I did the tattoos, the MS.

20 Q. What you just told me about the person coming to
21 your house?

22 A. Uh-huh.

23 Q. What is this person in relationship to the story
24 you just told? That was a bad question.

1 A. He's just a customer. That's the way I think of
2 it.

3 Q. He came over with Carlos?

4 A. Yes.

5 Q. This is the individual who wanted the tattoo?

6 A. Yes.

7 Q. And tell me exactly what kind of tattoo you
8 performed on this individual?

9 A. I did the MS on his forehead and then the CLCS in
10 the center here.

11 Q. Was there anything attached -- attached to that M
12 and S?

13 A. I think there was a 13, if I remember right. I
14 didn't take any pictures or anything.

15 Q. You recognize your work in Exhibit 1?

16 A. Yes.

17 Q. Was the location of the requested tattoo, did that
18 stand out in your mind at all?

19 A. Oh, yeah. I might have tattooed one piece on
20 somebody's forehead in 22 years.

21 MS. NORDVIG: Could you repeat that, please?

22 THE COURT: Just ask the Court.

23 MS. NORDVIG: I'm sorry.

24 THE COURT: Don't talk to the witness. Go ahead.

1 THE WITNESS: In the last 23 years, I've only done
2 two head tattoos like that.

3 MS. NORDVIG: Thank you.

4 BY MS. KOSSOW:

5 Q. One of those tattoos is the individual depicted in
6 Exhibit 1?

7 A. Yes.

8 MS. KOSSOW: I have no further questions.

9 THE COURT: Ms. Nordvig.

10 MS. NORDVIG: Thank you, your Honor.

11 CROSS EXAMINATION

12 BY MS. NORDVIG:

13 Q. Do you recall what time of the year in 2010 this
14 happened?

15 A. That's just what she said was November.

16 Q. Do you independently recall?

17 A. No, I don't. I thought it was a few years ago. I
18 didn't think it was that long ago.

19 Q. I'm a little confused about Carlos, Francis, your
20 ex-wife and sister. Can you explain to me again who those
21 people are and their relationship?

22 A. My ex-wife is Michelle Fernandez. So I was
23 married to her for six years. Her sister was Francis
24 Fernandez.

1 Q. Fernandez or Hernandez?
2 A. Fernandez.
3 Q. With an F?
4 A. Yes.
5 Q. Thank you. And then Carlos was married to
6 Francis?
7 A. No. They were just dating.
8 Q. Okay. Thank you.
9 A. You're welcome.
10 Q. And you said there was a 13 attached to the --
11 A. If I remember right, because I know it's MS 13.
12 Q. And they came to your home located in which town?
13 A. Fernley, Nevada.
14 Q. During the day or at night?
15 A. It was like before dark.
16 Q. Approximately how long did your work take you?
17 A. About an hour and a half.
18 Q. Have you done similar tattoos to other people?
19 A. No gang tattoos, no.
20 Q. And you were paid \$500?
21 A. Yes.
22 Q. Is that or was that at the time the going rate?
23 A. No, not at all. He just called me and offered me
24 that money.

1 Q. Okay.

2 A. I wasn't going to turn it down.

3 Q. You're referring to he as Carlos?

4 A. Yes.

5 MR. SLOCUM: Could we just take a moment, your
6 Honor?

7 THE COURT: Yes.

8 MR. SLOCUM: We're all set. Thank you, your
9 Honor. Appreciate that.

10 THE COURT: All right. Ms. Kossow.

11 REDIRECT EXAMINATION

12 BY MS. KOSSOW:

13 Q. Sir, I just want to make clear, I'm going to
14 reshow you Exhibit 1. When the person identified in this
15 photograph came to you, did he have any tattoos on his
16 forehead?

17 A. No.

18 Q. And so just so we're clear, you talked about doing
19 the CLCS in the middle of his forehead and we see some other
20 tattoo sort of surrounding that.

21 A. He was all clean from tattoos.

22 Q. And you didn't do this other work?

23 A. No.

24 MS. NORDVIG: I'm sorry. Which other work,

1 please?

2 BY MS. KOSSOW:

3 Q. I'll have the witness describe that. Can you
4 describe what's surrounding it?

5 A. It looks like a cross with some dates and I can't
6 read what it says underneath. It looks like big something.

7 MS. KOSSOW: I have no further questions.

8 THE COURT: Thank you. Ms. Nordvig.

9 MS. NORDVIG: Just briefly.

10 CROSS EXAMINATION

11 BY MS. NORDVIG:

12 Q. You did not do the cross?

13 A. No.

14 Q. And you did not do whatever the cursive writing
15 underneath is?

16 A. No. I did the MS and then the CLCS in the center.

17 MS. NORDVIG: Thank you.

18 THE COURT: Thank you, Mr. Payne.

19 THE WITNESS: Thank you.

20 THE COURT: Ms. Kossow, next witness.

21 MS. KOSSOW: Thank you. The State would call
22 Deborah Moreno.

23 (One witness sworn at this time.)

24 MS. KOSSOW: May I begin, your Honor?

1 THE COURT: You may.

2 DEBORAH MORENO

3 called as a witness and being duly sworn did testify as

4 follows:

5 DIRECT EXAMINATION

6 BY MS. KOSSOW:

7 Q. Ma'am, can you state your full name and spell your

8 full name for the record?

9 A. Deborah Moreno, D-e-b-o-r-a-h, M-o-r-e-n-o.

10 THE COURT: Ma'am, could you just pull that mic

11 closer so that the interpreter can hear you clearly?

12 THE WITNESS: Sure.

13 THE COURT: Thank you.

14 BY MS. KOSSOW:

15 Q. And, ma'am, what is your current occupation?

16 A. I work at the Washoe County Sheriff's Department

17 in the inmate management unit.

18 Q. Inmate management?

19 A. Unit.

20 Q. And how long have you worked at the Washoe County

21 Detention Facility overall?

22 A. 17 years.

23 Q. And how long have you worked in that inmate

24 management division?

1 A. 15 years.

2 Q. And just very generally, what does your position
3 entail?

4 A. My position entails anyone that comes, gets booked
5 into the Washoe County Sheriff's Department, we handle all
6 the inmate, where we're going to house them, any special
7 facilities, transportation that they may need, or classify
8 them, anything that has to do with the needs of the inmates,
9 our department handles.

10 Q. Okay. So as part of that -- so are you familiar,
11 based on your position and your length of time, with the
12 classification process when a new inmate comes into the jail?

13 A. Yes.

14 Q. And is part of that process filling out or being
15 asked questions on a classification questionnaire?

16 A. Yes, it is.

17 Q. And is that form or is it a form?

18 A. Yes, it's a form.

19 Q. And is that asked of every inmate that comes into
20 the jail?

21 A. Yes, every inmate.

22 Q. And what is the purpose of that form?

23 A. The purpose of that form is to get as much
24 information regarding the individual who is booked into

1 custody so that our department can better classify them and
2 figure out their housing situation, sort of things that they
3 need while they're in custody.

4 Q. Does safety play into that form?

5 A. Yes. Safety plays a big part into that form.

6 Q. And could you just again explain in general how
7 the form is actually filled out?

8 A. So when somebody comes into the jail, the deputy
9 working at the session who is interviewing the inmate,
10 there's a series of questions there that the deputy asks.
11 The deputy fills out the response from the inmate. And if
12 the deputy notices anything in the criminal history that
13 maybe the inmate hasn't conveyed to that deputy, he may make
14 a note on that. That piece of paper comes back to our
15 department, the classification department, the inmate
16 management unit. We get that paper along with their triple I
17 and we go through and look at everything there.

18 And we take their classification level, where
19 they're housed at, safety issues that we need to put in play
20 for that individual.

21 Q. So I just want to make sure I understand what you
22 said. So an actual deputy from the jail will actually sit
23 down with the inmate and go over the form?

24 A. Yes.

1 Q. And there are boxes to be checked?

2 A. Yes, boxes to be checked. And if there's money,
3 notes are to be made there. So we're aware of anything else
4 the inmate is saying.

5 Q. And after the deputy is done with the form, what
6 happens to the form?

7 A. The form gets put into our -- a box down there or
8 a basket for the classification department and it comes back
9 to us with our triple I or whatever forms.

10 Q. When you're say triple I, is that a criminal
11 history?

12 A. Yes, their criminal history.

13 Q. Is the information from the form input anywhere?

14 A. The information from that form is inputted in our
15 department. Our department puts that information in.

16 Q. Into a computer system?

17 A. Into a computer system, yes, ma'am.

18 Q. Where does the actual original form go?

19 A. The original form goes into the inmate's file that
20 is also kept in our department.

21 Q. And I think you previously talked about this, but
22 the purpose of this form, is it to gather information in
23 regards to that particular inmate?

24 A. Yes, it is.

1 Q. And that information is then used by the jail to
2 make various decisions?

3 A. Yes. It's used by our department to figure out
4 where we're going to house the individual, their
5 classification levels, their security levels, if there's more
6 information we need to find out from that individual.

7 Q. Are you yourself familiar with the classification
8 questionnaire?

9 A. Yes, I am.

10 Q. I want to show you Exhibit 17 which is entitled
11 classification questionnaire. Do you recognize Exhibit 17?

12 A. Yes, I do.

13 Q. And just in general, what are you looking at?

14 A. It's a form. It has the inmate's name on it,
15 their booking number, the date that they came into custody,
16 and there's ten questions there that are asked of the
17 individual. And depending on the answers of the individual,
18 there may be a couple of other boxes or spaces to fill in
19 information.

20 Q. Okay. Is this the form that you were just
21 speaking about?

22 A. Yes, it is.

23 Q. These classification questionnaires, are they made
24 at or near the time the deputy is actually interviewing the

1 inmate?

2 A. Yes. When the -- this questionnaire is not filled
3 out until the deputy is actually interviewing the inmate.

4 Q. Basically at the same time they're interviewing
5 them, they're writing down information?

6 A. Yes.

7 Q. And are there actually signature -- places for
8 signatures on the form as well?

9 A. Yes. There's a signature at the bottom for the
10 inmate to sign as well as for the deputy to sign.

11 Q. This specific Exhibit 17, do you recognize that
12 specific exhibit?

13 A. Yes, I do.

14 Q. And have you reviewed that exhibit prior to today?

15 A. Yes.

16 Q. And, again, is that a classification questionnaire
17 from the Washoe County Detention Facility?

18 A. Yes, it is.

19 Q. And which inmate does it belong to?

20 A. It belongs to Coronado hyphen Menendez Luis.

21 Q. This particular document, Exhibit 17, is it housed
22 at your office at the Washoe County Detention Facility?

23 A. Yes, it is.

24 MS. KOSSOW: I would move to admit Exhibit 17 at

1 this time.

2 THE COURT: Ms. Nordvig.

3 VOIR DIRE EXAMINATION

4 BY MS. NORDVIG:

5 Q. Were you present when this form was filled out?

6 A. No, I was not.

7 Q. Did you see anyone specifically sign or attach
8 their signature to this document?

9 A. No.

10 MS. NORDVIG: Your Honor, I'm going to object
11 since she doesn't know who filled out the form, whether it
12 really goes to Mr. Cordero Menendez. In fact, she said
13 Coronado.

14 THE COURT: Ma'am, are you responsible for
15 maintaining these forms?

16 THE WITNESS: Yes, we are.

17 THE COURT: Is this form one of the forms you're
18 responsible for?

19 THE WITNESS: Yes, it is.

20 THE COURT: Are these forms kept in the normal
21 course of business?

22 THE WITNESS: Yes, they are.

23 THE COURT: Do you rely upon these forms in
24 conducting your duties?

1 THE WITNESS: Yes.

2 THE COURT: Exhibit 17 is admitted.

3 MS. NORDVIG: For the purposes of this hearing
4 only, your Honor.

5 THE COURT: I haven't made that determination yet,
6 but we'll get it -- it will be admitted at least for this.

7 BY MS. KOSSOW:

8 Q. Just so we're clear, Ms. Moreno, is there other
9 information besides an inmate's name there that would link
10 them to an individual at the jail?

11 A. Yes. It has their booking number as well.

12 Q. And that booking number, did you look up that
13 booking number before coming here today?

14 A. Yes.

15 Q. Does it correspond to Luis Alejandro Cordero
16 Menendez?

17 A. Yes, it does.

18 MS. KOSSOW: I have no further questions, your
19 Honor.

20 THE COURT: Thank you. Ms. Nordvig.

21 MS. NORDVIG: Thank you, your Honor.

22 CROSS EXAMINATION

23 BY MS. NORDVIG:

24 Q. And you were not present when this form was

1 completed, correct?

2 A. No.

3 Q. Is this form only available in the English
4 language?

5 A. No. It's also available in the Spanish language
6 as well.

7 Q. Was it available in both language in 2015?

8 A. Yes.

9 Q. Are you aware of any reason that a Spanish form
10 would not be used for a Spanish speaking inmate?

11 A. No.

12 Q. And the form that you're referring to that Ms.
13 Kossow just showed you, Exhibit 17, is written in English,
14 correct?

15 A. Yes.

16 Q. Do you know whether Mr. -- as far as your
17 records -- Cordero Menendez his primary language is English
18 or Spanish?

19 A. Spanish.

20 Q. You do know that?

21 A. The deputy that interviewed him said that on that
22 form.

23 Q. I'm asking you if you personally know that?

24 A. No, I do not.

1 Q. You weren't there at the time so you cannot judge
2 the accuracy of the responses or the notes, is that correct?

3 A. We rely upon the deputy to fill that out.

4 Q. But the notes on this paper -- may I approach,
5 your Honor?

6 THE COURT: Yes, you may.

7 MS. NORDVIG: Thank you.

8 BY MS. NORDVIG:

9 Q. I'm showing you what has been marked as Exhibit 17
10 that we've been referring to during your questioning. The
11 notations on that form, did you write those?

12 A. No. I did not.

13 Q. Thank you. Do you know who did?

14 A. The deputy who filled out the form when he came
15 into the intake was Deputy Chavez and the little notes on the
16 side were made by Eric Zabie.

17 Q. Excuse me. Were you there when those notes were
18 made?

19 A. No.

20 Q. Do you have personal knowledge as to who wrote
21 those notes?

22 A. Yes.

23 Q. Did you see them write them?

24 A. No.

1 Q. Are you familiar with their -- I would say
2 handwriting, but printing?

3 A. I'm familiar with Eric Zabie, whose notes are
4 there on the side. He works in our department. And so I
5 worked with him for the past 15 years, so I'm very familiar
6 with his handwriting. And the signature on the bottom of
7 that next, where the deputy signs, that deputy number I'm
8 familiar with.

9 MS. NORDVIG: May I approach again, your Honor?

10 THE COURT: You may.

11 MS. NORDVIG: Thank you.

12 BY MS. NORDVIG:

13 Q. It would appear that there are at least two
14 different types of handwriting or printing on the left hand
15 margin?

16 A. Yes.

17 Q. Are they from two different people, if you know?

18 A. It would appear to be that, yes, they are.

19 MS. NORDVIG: Thank you. Nothing further.

20 THE COURT: All right. Ms. Kossow, does that
21 raise any questions?

22 MS. KOSSOW: No, your Honor. I have nothing
23 further.

24 THE COURT: All right. Thank you very much. Next

1 witness, Ms. Kossow.

2 MS. KOSSOW: Thank you. The State's final
3 witness, your Honor, will be Special Agent Freestone.

4 (One witness sworn at this time.)

5 THE COURT: Agent if I would pull the mic closer.
6 They're having some trouble having us heard through the
7 interpreter. So do your best and speak into the mic.

8 THE WITNESS: Yes, your Honor.

9 THE COURT: Ms. Kossow.

10 BLAINE FREESTONE

11 called as a witness and being duly sworn did testify as
12 follows:

13 DIRECT EXAMINATION

14 BY MS. KOSSOW:

15 Q. Could you please state your full name and spell
16 your name for the record?

17 A. Blaine Freestone, B-l-a-i-n-e, F-r-e-e-s-t-o-n-e.

18 Q. Thank you. Sir, what is your current occupation?

19 A. I'm a Special Agent for the FBI, Federal Bureau of
20 Investigation.

21 Q. How long have you been in that position?

22 A. 11 years. It will be 12 years in March.

23 Q. Could you tell us a little bit about your training
24 with that agency?

1 A. Yes. In 2006, I performed 19 weeks of general
2 training. The training consisted of physical training, of
3 legal training, some investigative training with respect to
4 criminal activities, such as violent gangs and drug cartels,
5 as well as national security items, such as foreign
6 counterintelligence and terrorism.

7 Q. And that was the training that you underwent to
8 become a Special Agent with the FBI?

9 A. Yes. At the conclusion of the 19 weeks, I was
10 given my credentials as an FBI agent.

11 Q. Will you tell me a little bit about your language
12 experience as well prior to the FBI and what occurred once
13 you became an agent?

14 A. Yes, ma'am. I speak fluent Portuguese and I speak
15 fluent Spanish prior to entering the FBI. In the FBI, I took
16 the foreign language proficiency test, which is administered
17 through the Department of Justice, and I scored a three plus,
18 which is considered fluent.

19 Q. I want to go a little bit over your experience
20 while you were with the FBI. Can you tell me what your first
21 assignment was?

22 A. Out of the FBI academy in Quantico, Virginia, I
23 was assigned the El Paso Division and so I performed labors
24 as an FBI agent in the El Paso Division from 2006 to 2009.

1 Q. And exactly, just in general, what were your
2 duties while you were there?

3 A. I worked criminal enterprises, which in El Paso,
4 Texas consisted mostly of the Juarez cartels and some of the
5 street gangs that work along with the Juarez cartel.

6 Q. Did you utilize your Spanish language skills while
7 you were stationed there?

8 A. Yes, I did.

9 Q. What was your second assignment?

10 A. I was then assigned to the San Antonio field
11 division, in the McAllen, Texas resident agency.

12 Q. And, again, what were your duties in the second
13 assignment?

14 A. In that second assignment, which went from 2009 to
15 2012, I was also assigned to a criminal enterprise squad. We
16 worked investigations relating to the Gulf cartel and the
17 Zetas cartel.

18 Q. Can you spell the last name?

19 A. It's Z-e-t-a-s.

20 Q. Again, did you utilize your Spanish language
21 skills while you were at your second assignment?

22 A. Yes, I did.

23 Q. Tell me about your third assignment.

24 A. My third assignment was a promotion within the FBI

1 and it was as Supervisory Special Agent to the Transnational
2 Antigang Unit, abbreviated as TAG. That was the three years
3 from 2012 to 2015 were performed in San Salvador,
4 El Salvador.

5 Q. Can you tell me, again, just in general what type
6 of work you did while you were in San Salvador?

7 A. The transnational Antigang Unit works in
8 conjunction with what's called the Fiscalia and also with the
9 national police with El Salvador. We had approximately 20
10 task force officers from the national police in San Salvador,
11 as vetted task force officers for the FBI TAG force.

12 We looked at and investigated any criminal
13 activities that had a transnational nexus between the United
14 States and El Salvador. We also had a similar TAG task force
15 in Guatemala and in Honduras, but my particular duties were
16 with respect to criminal, primarily gang activity between
17 El Salvador and the United States.

18 Q. And what are the predominant gangs in El Salvador?

19 A. The two most numerous gangs and predominant gangs
20 are the Mara Salvatrucha, or MS 13 gang, and the Eighteenth
21 Street Gang.

22 Q. Were you specifically involved in investigations
23 involving MS 13 gang members?

24 A. Yes, I participated in transnational

1 investigations while there at the TAG.

2 Q. And, again, in general, what did that entail as
3 far as investigative duties?

4 A. It consisted of a lot of different
5 responsibilities. One of which was to coordinate with field
6 offices here in the United States on investigations, active
7 investigations that they had, which had a nexus or a tie to
8 El Salvador, whether it was telephonic communications,
9 whether it was -- whether it was possibly a fugitive that
10 committed a crime in the United States and fled to El
11 Salvador to avoid prosecution.

12 There's extortion investigations that we did in
13 which El Salvadorians extorted individuals that were living
14 in the United States. And there were various other criminal
15 investigations that have some kind of a tie between the
16 United States and El Salvador.

17 Q. And I know you talked about the two different
18 predominant gangs, but did those specifically include MS 13
19 gang members?

20 A. Yes, ma'am.

21 Q. Did you participate in interviewing MS 13 gang
22 members?

23 A. Yes. During my three years in El Salvador, I
24 interviewed numerous MS 13 and Eighteenth Street gang

1 members.

2 Q. What about the use of informants while you were
3 there? Did that occur?

4 A. Yes. I operated a number of informants while I
5 was in El Salvador as well.

6 Q. And specifically as to MS 13?

7 A. Correct. Yes.

8 Q. And, again, those informants would provide you
9 information about what was going on inside MS 13?

10 A. Yes, that's correct, ma'am.

11 Q. And you talked a little bit about working very
12 closely with the national police in El Salvador?

13 A. Uh-huh.

14 Q. Is that correct?

15 A. Yes.

16 Q. And is part of that working close with them,
17 again, are you undergoing these investigations, I'm going to
18 talk just about MS 13, in a coordinated effort?

19 A. Yes.

20 Q. What about any training? Did you give any
21 trainings while you were in San Salvador?

22 A. I did. The international law enforcement academy,
23 abbreviated as ILEA is located in San Salvador approximately
24 two miles from the United States embassy and I provided

1 several trainings as an instructor on MS 13, Eighteenth
2 Street and other violent gang -- violent U.S. gangs to
3 Central American and South American police officers.

4 Q. Based on your training and experience that you've
5 just described, could you tell the Court a little bit, again,
6 general description of what is MS 13?

7 A. Yes, ma'am. MS 13 originated in the mid 1980s to
8 late 1908s. There was a pretty horrible civil war going on
9 in El Salvador during that time frame and many people
10 migrated to the United States of America, typically to
11 Southern California, the Los Angeles area.

12 There was an area in Los Angeles called Rampart
13 and that was the area where a lot of these immigrants resided
14 during the time that the civil war was going on. When they
15 arrived in Los Angeles, there were many criminal street gangs
16 that preyed on them because they didn't know the environment
17 very well.

18 Well, it didn't take long for them to realize that
19 they needed more numbers to protect themselves against these
20 other criminal street gangs and so they formed what at that
21 time was called the MS Stoner gang, which then evolved into
22 the MS 13 gang. That was in the late 1980s.

23 It started out as a means of self-protection and
24 it evolved into an organization that was involved in numerous

1 illicit activities in the Los Angeles area and many of those
2 gang members were incarcerated and then they were deported by
3 the United States government. And so around early to mid
4 1990s, there was a mass deportation of Salvadorian MS 13 gang
5 members and the gang began to flourish in San Salvador as a
6 result of this influx of gang members from Los Angeles.

7 Q. And so based, again, on your training and
8 experience, does MS 13 have members in El Salvador as well as
9 the United States?

10 A. MS 13 has presence in a lot of the Western
11 Hemisphere and a very small portion of the Eastern
12 Hemisphere. Western Hemisphere, the primary area of MS 13
13 membership is El Salvador, Guatemala, Honduras, United
14 States, Mexico, Canada, and small numbers of MS 13 gang
15 members in Panama, Costa Rica, Nicaragua.

16 Q. Inside MS 13, are there different divisions or
17 cliques inside the organization?

18 A. Yes, ma'am.

19 Q. Can you describe a little bit that?

20 A. Yes. The MS 13 is hierarchical in nature and it
21 has a leadership structure. That leadership structure is
22 divided by what's called programs and cliques. So there's
23 various programs within the MS 13 and there's various
24 cliques. The number of cliques is probably in the hundreds,

1 where the programs is probably dozens.

2 Q. And what determines what type of clique you're in?

3 A. A lot of it is based on geography. The first
4 several cliques in Los Angeles, we talked about the late
5 1980s when it formed, some of the cliques were named after
6 areas in the Los Angeles area, like Fulton and Hollywood and
7 Normandy and there's various L.A. geographical based cliques.

8 In San Salvador, there's also geographic based
9 cliques. To form a new clique, you have to receive approval
10 from leaders, the Salvadorian leadership, and if they give
11 the blessing to form a new clique, then a new clique is
12 formed. But like I said, there's hundreds of cliques.

13 Q. Is there a gang culture within MS 13?

14 A. Yes.

15 Q. Let me ask you this, first of all, based on your
16 knowledge and training and experience, is MS 13 a recognized
17 transnational gang?

18 A. Yes.

19 Q. And can you describe how that is so?

20 A. The Department of Treasury -- let me backup. The
21 Federal Bureau of Investigation has recognized the MS 13 gang
22 as a transnational gang as far back as 2006 and 2007 when we
23 initiated the TAG initiative, the transnational antigang
24 unit. The Treasury Department officially designated the MS

1 13 an OFAC designated transnational criminal organization in
2 2016.

3 Q. Can you spell OFAC?

4 A. O-F-A-C.

5 Q. Do you know what it stands for?

6 A. I can't remember what those initials stand for.

7 Q. But it's part of the Treasury Department
8 designation?

9 A. Correct.

10 Q. And so then let me ask you, is there a gang
11 culture within MS 13?

12 A. Yes, ma'am.

13 Q. Can you describe a little bit what that culture
14 is?

15 A. I'm going to speak to MS 13 And Eighteenth Street,
16 the two Central American gangs, which I have experience.
17 There's a way of speech in the Spanish language and the
18 English language. There's a way of dress. Sometimes that is
19 as specific as the type of tennis shoes you wear. It also
20 can lead into tattoos that members of the MS 13 or Eighteenth
21 Street gang members, the tattoos that they receive, that's
22 all part of the culture. There's -- it bleeds into music as
23 well and various other cultural items.

24 Q. Let me ask you specifically, what about rules

1 within that gang culture?

2 A. Specifically what about rules?

3 Q. Meaning are members made aware of the rules?

4 A. Yes. There is a process by which members are
5 aware of rules.

6 Q. And I want to talk about disrespect. What does
7 that term mean within a gang culture, specifically MS 13?

8 A. And I'll speak to respect or disrespect in just
9 general terms of Hispanic gang sets. Respect is paramount
10 within the gangs, within the Hispanic gang sets, the Hispanic
11 gang sets that I've worked. And to be disrespected
12 necessitates retaliation, it necessitates earning the respect
13 of the person that disrespected you.

14 Q. And so that isn't specific as to MS 13?

15 A. MS 13 abides by the same rules of respect and
16 disrespect as the other gangs I referred to.

17 Q. Does that respect or disrespect go to other
18 members of MS 13 as well as?

19 A. Yes. If -- no one can disrespect you as an MS 13
20 or as a Surenos gang member. You need to retaliate against
21 the person who showed disrespect to earn your respect back.

22 Q. And does MS 13 have rival gangs?

23 A. Yes, ma'am, they do.

24 Q. And what makes a rival gang?

1 A. Ma'am, that depends on the geography. However, in
2 Central America, the principal rival or enemy of the MS 13 is
3 Eighteenth Street gang members. But in different localities,
4 the enemy or the rival may be of a different gang set.
5 Certainly Eighteenth Street is their primary rival. However,
6 in certain geographies, it might include the gang set Latin
7 Kings, it could be Nortenos gang sets or it might include
8 certain factions in the Surenos based gangs. It just depends
9 on the locality.

10 Q. What about Northern California and Nevada?

11 A. Generally speaking, Northern Nevada and Nevada,
12 it's Eighteenth Street. If there are members of Eighteenth
13 Street in the area and Nortenos are the principal rival.

14 Q. I forgot to ask you about your current assignment.
15 So you did leave San Salvador in 2015?

16 A. Yes.

17 Q. What is your current assignment?

18 A. My current assignment in February of 2015, I
19 reported to the Sacramento Division of the FBI.

20 Q. And what is your current duties in the Sacramento
21 area?

22 A. I'm an investigator on the violent gang squad in
23 Sacramento.

24 Q. Does that include investigating cases of MS 13?

1 A. Correct, yes.

2 Q. Let's talk a little bit about tattoos. You
3 brought it up as part of the gang culture. Again, can you
4 give us an overview of how tattoos play into MS 13 culture?

5 A. Yes, ma'am. Tattoos played an important role in
6 MS 13 gang culture, particularly in the late '80s, early '90s
7 and going into the early 2000s. It has evolved over the
8 years where members used to unilaterally make decisions to
9 tattoo themselves with gang paraphernalia. It recently
10 became a rule or a bylaw of the gang to ask permission from
11 leadership to get MS 13 related tattoos on your body.

12 Q. When you say recently, do you have any kind of
13 date range?

14 A. Approximately 2009, 2010 is the date range of when
15 I became aware of the necessity to require -- to ask
16 permission to get a tattoo.

17 Q. Is that still the rule today?

18 A. Yes.

19 Q. Again, when we talk about tattoos, are those
20 tattoos specifically related to MS 13 in some way?

21 A. The gang related tattoos on an MS gang member's
22 body in my training and experience have all -- all the MS
23 related tattoos have had MS related culture items.

24 Q. That was again not a very good question. What I

1 meant was, what they will tattoo on their body has some type
2 of connection to MS 13?

3 A. I'm not sure I understand the question.

4 Q. Meaning, the tattoos that they get inside MS 13
5 would have some type of significance to a gang member in MS
6 13?

7 A. Yeah. There's a number of different tattoos that
8 I've seen in relation to MS 13 investigations. Sometimes the
9 placement on the body can have significance. Certainly, the
10 images themselves have significance. But it totally depends,
11 case by case, where those tattoos are and of what.

12 Q. Have you or did you receive photographs in this
13 case of an individual by the name of Luis Alejandro Menendez
14 Cordero? And first of all, let me backup. Were you familiar
15 with Mr. Mendez Cordero before even being contacted on this
16 case?

17 A. Yes, ma'am.

18 Q. How did you get that familiarity?

19 A. When I was assigned to the transnational antigang
20 unit in El Salvador, I received a lead from the FBI Las Vegas
21 division and that lead was to locate the defendant,
22 Mr. Cordero.

23 Q. Because he was a fugitive?

24 A. Because -- if I remember the lead correctly,

1 because he was a person of interest in a homicide in Reno,
2 Nevada.

3 Q. And so were you asked to look at some photographs
4 of the person of Mr. Menendez Cordero?

5 A. At the time that I received that lead, it was --
6 my recollection is that it was just Mr. Cordero's bio data,
7 his full name, his date of birth. I don't recall seeing
8 pictures at that time.

9 Q. Let me be more specific. In the last few months,
10 were you contacted by the Washoe County District Attorney's
11 Office and asked to review photographs of Mr. Menendez
12 Cordero?

13 A. Yes.

14 Q. And what were you looking for in those
15 photographs?

16 A. I was looking for MS 13 related culture on the
17 skin of the defendant.

18 Q. And did you in fact review the photographs?

19 A. I did, yes.

20 Q. And were you able to locate any type of tattoos
21 based on your training and experience that are connected to
22 the MS 13 gang culture?

23 A. Yes.

24 Q. I'd like to go through a series of photographs

1 that have previously been admitted with you. And let's start
2 with Exhibit 1. And I'll ask you just to look at that
3 exhibit and tell me -- first of all, describe what we're
4 looking at.

5 A. We're looking at the defendant's face, a picture
6 of his face.

7 Q. And in Exhibit 1, do you see any tattoos or
8 markings based on your training and experience that would be
9 related to MS 13?

10 A. Yes, ma'am.

11 Q. And what do you see?

12 A. I see the letter M on the right side of his
13 forehead, S on the left side, which from my training and
14 experience is M for Mara and S for Salvatrucha.

15 Q. What does that mean? I didn't ask you.

16 A. Mara Salvatrucha is -- the word Mara -- they're
17 two separate words, Mara, space, Salvatrucha. Mara is slang
18 word in Central America which means gang. And Salvatrucha is
19 a contraction of Salva, referring to the country of El
20 Salvador, and trucha is a slang word which means alert or
21 vigilant.

22 Q. So you said you observed the M and the S?

23 A. Correct. I also observed on the forehead in the
24 center, the letters CLCS, which from my training and

1 experience is -- could be one of two cliques within the Mara
2 Salvatrucha gang. One is the Coronado Little Cycos
3 Salvatrucha and the other Criminal little Cycos Salvatrucha.

4 Q. You talked earlier about these cliques. Is it
5 unusual for a gang member to not only tattoo M and S, but to
6 also tattoo the clique they're in?

7 A. It's very common. It's very usual for gang
8 members to tattoo their clique on their skin somewhere.

9 Q. And do you know where that specific clique, the
10 geographical area related to that clique?

11 A. So the Coronado Little Cycos Salvatrucha initiated
12 in Los Angeles, California, and it has presence really all
13 over. The geographic areas that I mentioned with MS 13, it
14 exists on the East Coast of the United States, it exists here
15 in -- excuse me -- it exists in the State of California and
16 all over Central America to include El Salvador.

17 The Criminal Little Cycos Salvatrucha is a smaller
18 clique in number and it has a heavy presence in El Salvador
19 and particularly in the western part of the country in a city
20 called Santa Ana, but it also has some small cliques here in
21 the United States as well -- I'm sorry -- some small presence
22 of that same clique in the United States.

23 Q. Based on your experience with Mr. Menendez
24 Cordero, does he have a relationship with Santa Ana in El

1 Salvador?

2 A. Yes. When the FBI and the task force, the task
3 force located Mr. Cordero, it was in the City of Santa Ana,
4 the western part of the country.

5 Q. Was there anything else on that Exhibit 1 that you
6 noted?

7 A. Yes. Above the M and above the S, there are what
8 appear to be some horns, and those are also indicative from
9 my training and experience of MS 13 gang members tattoo
10 themselves with those horns on the forehead.

11 Q. What do those horns mean or do they have any
12 significance?

13 A. The significance, according to my training and
14 experience, is the MS 13's obsession or even religious
15 beliefs of Satanism.

16 Q. Is there anything else on that first exhibit?

17 A. No, ma'am.

18 Q. Let me show you Exhibit 2. First of all, can you
19 describe what we're looking at in Exhibit 2?

20 MS. NORDVIG: Your Honor, I'm going to object at
21 this point. There's been no finding that Special Agent
22 Freestone qualifies as an expert. He's testifying as to
23 items that require an expertise. If he's part of the team
24 that is working on law enforcement on this specific case,

1 that would be different, but if it's just his expert
2 testimony, then I'm going to object.

3 THE COURT: Let me hear from Ms. Kossow.

4 MS. KOSSOW: Your Honor, I definitely think based
5 on Special Agent Freestone's qualifications, he certainly has
6 the specialized training and the skills and the knowledge to
7 qualify as a witness who has that specialized knowledge under
8 the State's expert statute, basically. And so based on his
9 training, his experience, the State certainly believes he
10 qualifies as an expert.

11 THE COURT: All right. Pursuant to 50.275, if
12 scientific, technical or other specialized knowledge will
13 assist the trier of fact to understand the evidence or to
14 determine a fact in issue, a witness qualified as an expert
15 by special knowledge, skill, experience, training or
16 education may testify to matters within the scope of such
17 knowledge.

18 Based upon Special Agent Freestone's education,
19 he's been a duly sworn Special Agent of the FBI for over
20 11 years, his work experience in El Paso, San Antonio, and in
21 El Salvador, specializing in criminal organizations, criminal
22 enterprises, drug cartels and transnational gangs, this Court
23 finds that Special Agent Freestone possesses that specialized
24 knowledge, experience, and training, which qualifies him as

1 an expert and the Court will overrule the objection and
2 permit Special Agent Freestone to testify as an expert. Ms.
3 Kossow.

4 MS. KOSSOW: Thank you, your Honor.

5 BY MS. KOSSOW:

6 Q. Exhibit 2, can you describe what we're looking at
7 in Exhibit 2?

8 A. In Exhibit 2, it is a from the waist up frontal
9 image of the defendant, Mr. Cordero. You can see from the
10 knuckles of his hands all the way up to his -- all the way up
11 to his head.

12 Q. I'd like to specifically ask you about the front
13 chest area. Can you tell us if you see any tattoos related
14 to MS 13 gang culture?

15 A. I see several.

16 Q. Go ahead and start sort of at the top, the
17 shoulder area, and work your way down.

18 A. Okay. On the right shoulder, you see another M,
19 you also see a pitch fork at the bottom of the M, again,
20 related to Satanism or Satan worship. And then on the left
21 shoulder is the letter S, again signifying Mara Salvatrucha.
22 Down in the stomach area, the abdominal area, the stomach
23 region is the letters M and S.

24 On the left of the S is, again, the abbreviation

1 of CLCS, which, again, upon first observation could either be
2 the Coronado Little Cycos Salvatrucha or the Criminal Little
3 Cycos Salvatrucha. Under the CLCS tattoo is the number 503.
4 503 is the international calling code for the country of El
5 Salvador.

6 On the right arm, there is the spelling of the
7 letter M, which is e-m-e, which in Spanish means M. On the
8 left arm, forearm region is the word ese, again, the Spanish
9 letter S. And so, again, MS on the for arms. Also on the
10 left arm around the elbow region, I can see the letters,
11 they're in cursive and they say eme ese, which is, again, is
12 MS in Spanish.

13 On the left shoulder, just to the left of the S
14 that was already described are the letters CLCS again. And
15 on the forearms, there are various tattoos of tombstones.
16 Those tombstones have RIP on each of the tombstones, as well
17 as nicknames to include, Hysteria, Salvatrucha and Vago, all
18 three of which they have their clique letters in that
19 tombstone as well. This all coincides with MS 13 gang
20 culture that we talked about earlier.

21 Q. So those tombstones with different names inside of
22 those, what relationship does that have to MS 13 culture?

23 A. That would signify that Hysteria, Vago and
24 Salvatrucha are fallen brothers within the MS 13 family.

1 Q. Did you see anything else on Exhibit 2?

2 A. No, ma'am.

3 Q. Let me show you -- I'm going to show you -- let's
4 start with Exhibit 3, and first of all, what's depicted in
5 Exhibit 3?

6 A. Exhibit 3 appears to be the right profile of the
7 face of the defendant, Mr. Cordero.

8 Q. And is there anything in that Exhibit 3 that
9 stands out to you as related to an MS 13 gang culture tattoo?

10 A. Yes, ma'am.

11 Q. What is that?

12 A. To the right of the right eye are the letters MS,
13 which, again, is Mara Salvatrucha. Also under the hair, you
14 can see there's a tattoo that starts with the letter S. It's
15 hard to say. It's hard to say what that says without
16 removing his hair.

17 Q. You also have Exhibit 4 with you. What is
18 depicted in Exhibit 4?

19 A. Exhibit 4 is the left profile of the defendant's
20 face.

21 Q. And do you see any tattoos in that Exhibit 4
22 related to MS 13 gang culture?

23 A. Yes.

24 Q. And what do you see?

1 A. I see the cursive letters M and S just to the left
2 of his left eye.

3 Q. Anything else in that Exhibit 4?

4 A. No, ma'am.

5 Q. I show you Exhibit 5 and ask you what we're
6 looking at in that exhibit.

7 A. Exhibit 5 consists of the defendant and his
8 forearms. It's a close-up of his forearms and the top part
9 of his hands.

10 Q. Do you see any tattoos on either one of those
11 forearms that are related to MS 13 gang culture?

12 A. Yes.

13 Q. Can you describe those for us?

14 A. On the right hand is the letter M. On the left
15 hand is the letter S. Again, signifying MS or Mara
16 Salvatrucha. On the left hand on the meaty part of his
17 forefinger is the letters MS again. Also on his forearms,
18 I'll start with the right forearm, it says criminals. On the
19 left side on the left forearm it says, little cycos, which,
20 again, helps me determine what clique he belongs to, what the
21 CLCS on the other tattoos signify is the Criminal Little
22 Cycos Salvatrucha.

23 Q. So you were going between two cliques when you saw
24 this tattoo on his forearms that made it clearer for you as

1 to which clique he was part of?

2 A. Yes, ma'am.

3 Q. Anything else on those forearms?

4 A. Again, the tombstones, but we've already discussed
5 those. There's also somewhat appear to be demonic faces and
6 some skulls and, again, that is very common within the MS 13
7 culture.

8 Q. I'm going to give you Exhibit 6 and 7. Let's look
9 at six first. What is depicted there?

10 A. It is a side view of -- it looks like it's the
11 right side from about waist up of the defendant.

12 Q. And do you see any tattoos related to MS 13 gang
13 culture in that exhibit?

14 A. Yes, ma'am. On the right biceps is the letter M.

15 Q. And let's go to Exhibit 7. Same thing, what are
16 we looking at in Exhibit 7?

17 A. It's the left profile of the defendant from the
18 waist up.

19 Q. And do you see any tattoos related to MS 13 gang
20 culture in that exhibit?

21 A. Yes, ma'am. On the left biceps is the letter S.

22 Q. I'm going to skip some of the exhibits. You
23 actually described them in one of the first exhibits.

24 Actually, I'm going to move forward to Exhibit 14. Let me

1 hand you Exhibit 14. What is depicted in Exhibit 14?

2 A. Exhibit 14 is from about waist up, the back side
3 of the defendant from the waist up.

4 Q. And do you see any tattooing on the defendant's
5 back related to MS 13 culture?

6 A. Yes, ma'am.

7 Q. And what do you see?

8 A. Between the shoulder blades I see the letters MS,
9 and within the MS is, again, the numbers 503. Below that I
10 see a large tattoo of M and S on the middle of the back, and
11 in between the M and S is a depiction of what is known within
12 MS 13 culture as La Garra in Spanish. We often refer to it
13 in law enforcement as the devil's hand.

14 Q. How do you spell La Garra?

15 A. L-a space G-a-r-r-a.

16 Q. Is that specific symbol, the La Garra, is that
17 specific to MS 13?

18 A. It is specific to the MS 13 gang. In fact, if you
19 take La Garra and you put it upsidedown, it looks like an M
20 for the MS. But they like to keep it up and actually they'll
21 grow their fingernails, gang members will grow their
22 fingernails out on the pointer finger and the pinky to give
23 the impression that it's longer and it's bigger.

24 Q. And you made a symbol with your hand and does MS

1 13 use gang signs or symbols with their hands?

2 A. It's very common for MS 13 members to use hand
3 signs.

4 Q. Have you reviewed some of the iWebs made by this
5 defendant in this case?

6 A. Yes, I have.

7 Q. Have you seen this defendant make any type of gang
8 signs while on the iWebs?

9 A. Yes, ma'am.

10 Q. What signs did he make?

11 A. I'm not able to do the gang signs. They're kind
12 of complicated. But MS 13 is the way the defendant talked to
13 some of his -- the folks he spoke to on the phone.

14 Q. All right.

15 A. On the iWeb.

16 Q. Do they occur at certain times in the
17 conversation?

18 A. Typically, at the beginning when they greet each
19 other, and oftentimes at the end when they say good-bye to
20 each other.

21 Q. I'm going to have two more exhibits to show you.
22 Let's start with Exhibit 15. And what are we looking at on
23 Exhibit 15?

24 A. Exhibit 15 consists of the front side of the

1 defendant's legs.

2 Q. Are there any tattoos related to MS 13 gang
3 culture?

4 A. Again, there's a tattoo on the left thigh that
5 shows a clown or a joker and there's a couple of dice, and
6 that's very common, not just in the MS 13 gang, but in
7 Surenos based gang sets, Hispanic gang base sets, that's
8 referring to the luck of the draw. And in this particular
9 image, it looks like the clown is smiling; in other words, he
10 received good luck as a result of rolling the dice.

11 On the lower legs, you see some, again, a picture
12 of a clown with a baseball cap on, which, again, is pretty
13 common within Hispanic gang sets. And also some demonic
14 images, which we've already discussed, and a skull.

15 Q. Last exhibit I want to show you, Exhibit 16, and
16 what is depicted in Exhibit 16?

17 A. Exhibit 16 consists of the back side of the
18 defendant's legs.

19 Q. Is there anything on the back side of the
20 defendant's legs related to MS 13 gang culture?

21 A. Yes, ma'am.

22 Q. What is that?

23 A. On the left calf is the picture of a clown, just a
24 clown's face. And in this particular depiction of the clown,

1 the clown appears to be in anguish or crying, which kind of
2 depicts the other side of gang membership, sometimes luck
3 will be good, sometimes luck will be bad.

4 Q. So it's related to the tattoo you talked about on
5 the front of his leg as well?

6 A. Yes.

7 Q. Special Agent Freestone, based on your training
8 and experience, is it unusual that an MS 13 gang member would
9 get a tattoo after committing some type of violent act?

10 A. No, that's not unusual.

11 Q. What is that based on?

12 A. Based on my training and experience, receiving a
13 tattoo can come through a multitude of situations, one of
14 which is the commission of an egregious crime. They at times
15 will either tattoo themselves or ask for permission to tattoo
16 themselves to denote something significant that they
17 accomplished.

18 Q. Does it have any bigger significance when the
19 crime was some type of crime of disrespect or the MS 13 gang
20 member perceived disrespect by another individual?

21 A. My training and experience has taught me when a
22 gang member is disrespected and if they retaliate that
23 disrespect and they earn that respect back, they oftentimes
24 will tattoo themselves to show who is boss.

1 Q. In this case, were you made aware that
2 Mr. Menendez Cordero tattooed his forehead with the M and the
3 S?

4 A. Yes, I was aware.

5 Q. And his clique in the middle of his forehead?

6 A. Yes.

7 Q. And would the fact that he got the tattoo on the
8 forehead location, does that have any significance?

9 A. In certain cases, it shows significance. In other
10 cases, it may not. In this particular case, from my training
11 and experience, the timeliness of receiving an MS and the
12 nickname on your forehead would be denoting to the world that
13 you will not be disrespected.

14 Q. And, finally, I wanted to ask you about a couple
15 of statements. You talked a little bit about within MS 13
16 there's a communications code, basically. Are there certain
17 phrases or terms that are used within either Hispanic gangs
18 or specifically MS 13?

19 A. Yes for both.

20 Q. I wanted to ask you about two specific statements.

21 A. Uh-huh.

22 Q. The term, putting in work, what does that mean in
23 sort of the gang context?

24 A. So, putting in work, is more of a general term and

1 I would apply that across Hispanic gang sets, not just MS 13.
2 But, putting in work, is showing your brothers or your fellow
3 gang members and your clique that you are a worthy gang
4 member, often times, and you will do what's asked of you and
5 more.

6 Q. And the statement, done a hit on two rats, does
7 that have any significance?

8 A. Based on my training and experience, that would be
9 the assassination of two individuals who are either of a
10 rival gang or an informant or someone who simply disrespected
11 you.

12 MS. KOSSOW: Thank you. I have no further
13 questions.

14 THE COURT: Thank you. Ms. Nordvig.

15 MS. NORDVIG: Court's indulgence. May I, your
16 Honor?

17 THE COURT: You may.

18 CROSS EXAMINATION

19 BY MS. NORDVIG:

20 Q. What did you do before 2006?

21 A. Before 2006, I worked in the field of accounting
22 and finance.

23 Q. Thus the bachelor in accountancy?

24 A. Yes, ma'am.

1 Q. Did you work for a government agency?

2 A. No, ma'am. I worked for private industry.

3 Q. So your first law enforcement job was with the
4 Federal Bureau of Investigation, is that correct?

5 A. Yes, ma'am.

6 Q. So the only training or experience you've had has
7 been starting with the FBI at Quantico?

8 A. Yes, ma'am.

9 Q. And then what we have discussed earlier in this
10 proceeding?

11 A. Yes, ma'am. Correct.

12 Q. Did you test three plus in both languages,
13 Portuguese and Spanish?

14 A. No, ma'am. I tested three in Portuguese and three
15 plus in Spanish.

16 Q. And when was the last time you were tested?

17 A. I would have to check my paper work. Depending on
18 the score, ma'am, your score has a useful life, if you will,
19 for a certain number of years. And as a three plus, I'm good
20 for a number of years. So I don't remember the test date.

21 Q. They would tell you if you needed to retest?

22 A. Actually, no.

23 Q. Okay.

24 A. I wish.

1 Q. Was there a reason you transferred back to the
2 United States in 2015?

3 A. Yes.

4 Q. What was that?

5 A. In the FBI, we have an office of preference or OP.
6 It's a one-time opportunity. Once you utilize that, you can
7 no longer use that card, if you will, again. And the
8 opportunity for me to come home to Sacramento, which is where
9 my kids live was the reason I came.

10 Q. Ms. Kossow asked you earlier about gang culture
11 within MS 13 and the first thing you mentioned was a way of
12 speech. Can you elaborate on that? Is it specifically
13 words, is it phrases, is it a dialect?

14 A. It's all of the above. There's some terminology
15 and some way of speech that through my training and
16 experience is utilized by MS 13 gang members.

17 Q. Would anyone who was fluent in Spanish be able to
18 understand that form of speech?

19 A. It's -- I've spoken with Spanish linguists from
20 the FBI who don't understand or don't have experience with
21 the MS 13 culture and they have a difficult time
22 understanding the entire context of conversations between two
23 MS 13 gang members.

24 Q. Would they be able to understand the words but not

1 necessarily the meaning? Is that --

2 A. Not necessarily. Sometimes they will understand
3 the word, but not the meaning. Other times it is a whole new
4 word that you won't even find in the dictionary.

5 MS. NORDVIG: Court's indulgence.

6 THE COURT: Certainly.

7 BY MS. NORDVIG:

8 Q. When you were discussing tattoos and their
9 evolution within any Hispanic gang from the late '80s to the
10 early 2000s, you said now they must ask permission, is that
11 correct?

12 A. Yes.

13 Q. As of 2009, 2010?

14 A. Correct.

15 Q. Who do they ask permission from?

16 A. There's a leadership structure within the cliques
17 and within the programs of the MS 13 gang. And my
18 understanding is that the permission has to be received from
19 the top leader within the clique.

20 Q. How do they do that?

21 A. Typically, if not in person, it's telephonic.

22 Q. And you said there were hundreds of cliques,
23 correct?

24 A. Correct.

1 Q. And how many programs?

2 A. My best estimate is dozens.

3 Q. Are there a certain number of cliques within a
4 program? Is that what we're talking about? Or are they
5 separate?

6 A. No. There are definitely cliques that roll into
7 programs. But program is more of a geographic thing.
8 Cliques can exist all over the hemisphere, all over the
9 world, but programs are geographic in nature for the most
10 part.

11 To give an example, there's a Los Angeles program
12 in the United States, there's an East Coast program and a New
13 York program which are all geographic in nature. There is an
14 El Salvador program. There's various programs within El
15 Salvador, within Guatemala, Honduras and Mexico.

16 Q. Is it safe to say that cliques and programs can
17 overlap?

18 A. Yeah.

19 Q. Did your work begin on this case when you were
20 contacted by the District Attorney's Office?

21 A. As mentioned by Chief Deputy District Attorney
22 Kossow, my initial involvement with this case dates back to
23 when I was in El Salvador and when I was given a lead to
24 locate the defendant. I departed El Salvador in 2015 prior

1 to the defendant being apprehended in El Salvador and I was
2 later contacted regarding MS 13 culture and the tattoos that
3 we discussed.

4 Q. Have you ever met Mr. Menendez Cordero?

5 A. No, ma'am.

6 Q. Have you ever seen him in person?

7 A. No, ma'am.

8 Q. Have you ever talked to him?

9 A. No.

10 Q. So your only way of identifying him is through the
11 pictures that you were shown earlier, Exhibits 1 through 16?

12 A. Yes, ma'am.

13 Q. And you also said, I believe, that the information
14 that you received while you were in El Salvador regarding
15 Mr. Menendez Cordero was only bio data, is that what you
16 said?

17 A. When I was working at the transnational antigang
18 units, I received hundreds of leads, so it's difficult for me
19 to remember the contents of the lead.

20 Q. Ms. Kossow went through a series of pictures,
21 Exhibits 1 through 7 and then 14 through 16, correct?

22 A. Yes, ma'am.

23 Q. And you discussed a series of tattoos that
24 indicated some kind of contact and/or affiliation with MS 13,

1 correct?

2 A. Yes, ma'am.

3 Q. Were there other tattoos that were not affiliated
4 with those?

5 A. Yes, ma'am.

6 MS. NORDVIG: Court's indulgence.

7 THE COURT: Certainly.

8 MS. NORDVIG: May I approach?

9 THE COURT: Yes.

10 BY MS. NORDVIG:

11 Q. I'm showing you what has been marked as Exhibit 1.

12 A. Yes.

13 Q. Do you see any tattoos on that that are not MS 13?

14 A. It's hard for me to say. I don't know the
15 significance of the cross on the forehead.

16 Q. And what about the cursive underneath?

17 A. Correct. I do not know the significance of that.

18 Q. So could be anything, correct?

19 A. Correct.

20 Q. I'm showing you what -- Exhibit 2. There's a
21 significant amount of tattoos on that photo that are
22 obviously non gang related, correct?

23 A. It appears, yes, ma'am.

24 Q. Includes baby's footprints?

1 A. Yes, ma'am.

2 Q. Writing along the collarbone?

3 A. Yes, ma'am.

4 Q. Writing on the left side of the neck, I believe?

5 A. It's hard to make out in this picture, but if I
6 remember from another picture, that's not related.

7 Q. Are there other things that are completely
8 unrelated?

9 A. On the right biceps, kind of the inside of the
10 biceps, it appears that there's a depiction of a female's
11 face and the letters that spell Sandra. I don't think that's
12 gang related.

13 Q. In general terms, would it be fair to say that
14 several of the tattoos in your opinion based on your training
15 and experience are not affiliated with MS 13?

16 A. Yes, ma'am.

17 Q. So this man may just like to get a lot of tattoos?

18 A. From the number of tattoos, it looks like he does
19 like a lot of tattoos.

20 Q. And there are some numbers underneath the small
21 footprints.

22 A. Yes, ma'am.

23 Q. And some writing above. Do those signify anything
24 to you?

1 A. From Exhibit 2, correct?

2 Q. Correct.

3 A. The lettering above on the right breast, it looks
4 to say Alejandra, and I can't make out the second word, and
5 underneath the footprints is date 23/3 of 13. So March 23rd,
6 2013, I'm guessing. I won't guess what that is.

7 Q. Would that be any kind of MS 13 -- carry any kind
8 of significance?

9 A. No, ma'am.

10 MS. NORDVIG: May I approach?

11 THE COURT: You may.

12 BY MS. NORDVIG:

13 Q. After reviewing all of the photographs, or excuse
14 me, when you were reviewing the devil's hand photo --

15 A. Yes, ma'am.

16 Q. -- Ms. Kossow asked you regarding other hand
17 signs?

18 A. Correct.

19 Q. And I believe you said that you couldn't do them,
20 they were too complicated?

21 A. Yes.

22 Q. Complicated in being able to do it physically
23 or -- I mean, your body parts don't work that way or?

24 A. From talking to a number of MS 13 gang members, it

1 requires a lot of practice to contort your hand in such a way
2 to make the letters MS and the numbers 13. It's something
3 that I haven't practiced.

4 Q. Okay. But for other people it might not mean MS
5 13, it --

6 A. From my training and experience and working a
7 number of years in the MS 13 culture, when a person makes the
8 M, the S, and the one, and the three, the MS 13 gang is the
9 first thing that comes to my mind.

10 Q. It could mean something else?

11 A. I suppose somewhere in the world it could mean
12 something else.

13 Q. In fact, clowns could mean anything else as well
14 or jokers?

15 A. From my training and experience, especially
16 alongside all the other MS 13 related images, the clown in
17 gang culture has the significance that I spoke to Ms. Kossow
18 about.

19 Q. Outside of gang culture, anybody can get a clown
20 or a joker, correct?

21 A. Yes, ma'am.

22 Q. If you worked a carnival, you might have a clown,
23 correct?

24 A. Correct.

1 Q. Or if you're a clown? Is there -- strike that.
2 Are there specific times where tattoos are required to be
3 purchased or put on someone's body in the gang culture?

4 A. Yes. I've become aware of situations where
5 leadership has required a member to put a tattoo on his or
6 her body.

7 Q. Are there both positive and negative connotations
8 to that?

9 A. Yes.

10 Q. So if somebody screws up and does something
11 against what the leadership would want, they would have to
12 get a tattoo indicating that?

13 A. The scenario that you have brought up, I have
14 become aware of a scenario like that.

15 Q. Getting to the phrases, putting in work, that's
16 for all gangs?

17 A. I have a hard time saying all gangs, because I
18 only have experience investigating some.

19 Q. The gangs that you're familiar with?

20 A. Yes.

21 Q. So if I put in my work at the Public Defender's
22 Office, do you think I'd get promoted?

23 A. The context under which --

24 MS. KOSSOW: Objection, it's argumentative.

1 THE COURT: Sustained.

2 BY MS. NORDVIG:

3 Q. Is it possible for that phrase to mean other
4 things outside of the gang culture?

5 A. Outside of the gang culture, I believe it can mean
6 other things.

7 Q. Is it possible that that phrase means the same
8 thing in and outside the gang culture?

9 A. My training and experience, I know the words,
10 putting in work, to mean the commission of delinquent acts.

11 Q. Within the gang culture?

12 A. Yes.

13 Q. You don't live completely within a gang culture?

14 A. No, ma'am.

15 Q. And the same could be true as far as, done a hit
16 on two rats?

17 A. I've never heard that sentence in any other
18 context.

19 Q. You're not familiar with exterminators, are you?

20 A. Yes, I am.

21 Q. Do they sometimes joke that they put out a hit on
22 some rats?

23 A. I've never heard of it. In my experience with an
24 exterminator, I've never heard that sentence.

1 Q. Is it possible?

2 A. Yes.

3 MS. NORDVIG: Nothing further. Thank you.

4 THE COURT: Thank you. Ms. Kossow, anything
5 further?

6 REDIRECT EXAMINATION

7 BY MS. KOSSOW:

8 Q. Special Agent Freestone, the person depicted in
9 the photographs you looked at, do you see that person, I
10 would say anywhere in the courtroom, but on the screen in
11 front of you?

12 A. Yes, ma'am, I do.

13 Q. And could you describe an article of clothing that
14 person is wearing, again, the person who was depicted in
15 Exhibits 1 through 16?

16 A. The person depicted in Exhibits 1 through 16 I
17 recognize as being the defendant dressed in red on the video
18 screen.

19 MS. KOSSOW: Your Honor, I would ask that the
20 record reflect the witness has identified the defendant.

21 THE COURT: The record will so reflect.

22 MS. KOSSOW: Thank you.

23 BY MS. KOSSOW:

24 Q. Are there consequences for getting MS 13 tattoos

1 on your body if you are in fact not an MS 13 gang member?

2 A. Yes, ma'am.

3 Q. And what could those consequences be?

4 A. Each clique holds meetings to determine the
5 consequences. The clique leaders will decide what that
6 consequence will be. So it is a case by case. However, from
7 my training and experience, that consequence is typically a
8 beat down for 26 seconds called a calentada, or more probably
9 it will result in a person being killed.

10 Q. What was the word you just used?

11 A. Calentada, c-a-l-e-n-t-a-d-a.

12 Q. I want to go back to the phrase, putting in work,
13 because Ms. Nordvig asked if it could have a different
14 meaning. Do you remember that?

15 A. Yes, ma'am.

16 Q. If it's one MS 13 gang member talking to another
17 MS 13 gang member, what would your take be on what that would
18 be?

19 A. In the MS 13 gang, I would understand the
20 commission of delinquent acts.

21 MS. KOSSOW: Thank you. I have nothing further.

22 THE COURT: Ms. Nordvig.

23 MS. NORDVIG: Just briefly, your Honor.

24 RECROSS EXAMINATION

1 BY MS. NORDVIG:

2 Q. From where you're sitting to the TV screen, which
3 I'm going to estimate to be a 36- or 40-inch screen, correct?

4 A. Yes.

5 Q. It doesn't appear to be high definition, correct?

6 A. I can't tell.

7 Q. You're approximately 15 feet away?

8 A. Maybe 12.

9 Q. 12 to 15?

10 A. Sure.

11 Q. How do you identify the person? You indicated the
12 one in the red as Mr. Menendez Cordero?

13 A. Because I can see the tattoos on his forehead.

14 MS. NORDVIG: May I approach briefly, your Honor?

15 THE COURT: You may.

16 BY MS. NORDVIG:

17 Q. Do you see specific images or blobs?

18 A. I can see what appear to be bold letters on both
19 sides of his forehead and what appears to be a blob or a
20 shadow on the center of his forehead.

21 MS. NORDVIG: Nothing further.

22 THE COURT: Thank you, agent. You may step down.
23 Watch your step going down.

24 THE WITNESS: Thank you.

1 THE COURT: Ms. Kossow, any further witnesses?

2 MS. KOSSOW: No, your Honor. At this time, the
3 State has no further witnesses to present.

4 THE COURT: Shall we take a break?

5 MS. KOSSOW: Yes, your Honor.

6 THE COURT: We're going to be in recess for about
7 ten minutes. Court's in recess.

8 (A short break was taken.)

9 THE COURT: All right. Ms. Kossow.

10 MS. KOSSOW: So, your Honor, with no further
11 testimony. I don't know if defense has testimony or not, but
12 the State has no further witnesses. We'd be ready to argue
13 the motions.

14 THE COURT: Ms. Nordvig, any witnesses?

15 MS. NORDVIG: No, your Honor.

16 THE COURT: All right. Argument.

17 MS. KOSSOW: Your Honor, I'm going to start with
18 the prior act motion, since that's what the majority of that
19 testimony was concerning.

20 The State believes as it said in its motion that
21 the motive for the killing of Mr. Melendez and Mr. Vasquez is
22 an important factor in this case and I think based on what
23 you look at the entire story of the killings, the gang
24 affiliation of the defendant becomes very important. Without

1 that, the jury is left with evidence that Mr. Menendez
2 Cordero came to a party, nothing happened, he leaves, opens
3 the door, and ends up shooting and killing two people. So in
4 a case where there is zero motive evidence, I think it
5 becomes further relevant.

6 There's no question it's relevant to why he killed
7 Kevin Melendez and Moises Vasquez and that's based on the
8 obtaining the tattoo close in time after the murders, that's
9 based on his gang affiliation in general, and then that's
10 finally based on SA 1290. He or she told police those
11 statements that are mentioned in the State's motion and reply
12 and the State --

13 MS. NORDVIG: I'm going to objection to SA 1290.
14 There's been no testimony provided to the Court as to SA
15 1290.

16 THE COURT: Objection overruled.

17 MS. KOSSOW: That's what I was going to say,
18 judge. If you see in the reply, you see SA 1290 is not here
19 to testify. That's based on logistical reasons, as well as
20 safety reasons. So what we would ask the Court to do at this
21 point with the offer of proof from the State of those
22 statements that I wrote in the motion, I would ask you to
23 either, A, make an anticipatory ruling, if you believe those
24 statements of SA 1290, so that both defense and State can

1 prepare for trial.

2 And if you don't want to do that, I'm asking just
3 to hold this ruling in abeyance. SA 1290 will be here. We
4 can get SA 1290 here the morning of trial to put on that very
5 small bit of testimony as to those statements.

6 THE COURT: Identify those statements for the
7 record.

8 MS. KOSSOW: Yes. I want to read it from the
9 police report so I get it exactly correct. SA 1290 met with
10 Detective Woodard and Detective Valenti on May 5th of 2015.
11 In that interview, SA 1290 told Detective Valenti and
12 Detective Woodard that he or she met up with the defendant
13 days after the murders and that Mr. Menendez Cordero made the
14 following statements to SA 1290. That he, referring to
15 Mr. Menendez Cordero, had done a hit on two rats and that
16 Menendez Cordero told SA 1290 that one of the people he had
17 shot made a statement to him before the shooting of, fuck MS.

18 SA 1290 also reported that Mr. Menendez Cordero
19 described the incidents in Spanish as him, referring to
20 Menendez Cordero, putting in work for the gang.

21 Those are the specific statements, judge, that the
22 State is producing that offer of proof and if you saw the
23 State's reply, that offer of proof has been approved by the
24 Nevada Supreme Court in both the Petrocelli case, as well as

1 the -- I'm forgetting the second case that upheld that offer
2 of proof. It would be Salgado, S-a-l-g-a-d-o, versus State,
3 114 Nevada 1039.

4 So in both of those instances, the Nevada Supreme
5 Court allowed the State to make an offer of proof and then
6 conformed that with the actual trial testimony in making that
7 ruling, the anticipatory ruling. And so the State is not
8 asking you to make that ruling -- we are asking you to
9 consider those statements and make an anticipatory ruling,
10 but we would be able to put SA 1290's testimony before the
11 Court prior to the start of trial.

12 THE COURT: All right. Thank you. Ms. Nordvig.

13 MS. NORDVIG: Thank you, your Honor. Your Honor,
14 it's the defense's position that an anticipatory ruling would
15 not assist anyone. It would basically tell the defense or
16 the defendant that SA 1290 doesn't even need to be here,
17 which we believe he does in order for you to make this
18 determination.

19 In order for you to consider whether his testimony
20 will be relevant, more probative than prejudicial, and
21 whether it's an act proven by clear and convincing evidence,
22 you need to hear testimony from someone who has been sworn to
23 tell the truth in this courtroom. Not only the words are
24 important, but his actions, his demeanor, his facial

1 expression, everything that we look at every day when people
2 testify and we think that's very important.

3 We would request that you completely reserve
4 ruling on this motion. If the State can get him here before
5 jury selection or before opening arguments or before the
6 first morning of testimony, I think both of us would be
7 prepared, both of us, meaning the defense and the State, to
8 go forward no matter what this Court's ruling is. And I
9 think in the long run that will be clear, more appropriate,
10 and better for the trial. So none of us want to do this
11 again.

12 THE COURT: Thank you, Ms. Nordvig.

13 MS. NORDVIG: Thank you.

14 THE COURT: The Nevada Supreme Court has made it
15 clear on a number of occasions that gang affiliation evidence
16 is relevant and probative when it is admitted to prove
17 motive. That's the slough of cases, Butler versus State, Lay
18 versus State, recent trial here in Department Four of
19 Gonzalez.

20 Under these particular facts, the shooting of the
21 two victims in this case is an enigma, and absent a motive,
22 these three statements, quote, I put a hit on two rats, close
23 quote; quote, the victim said, fuck MS, close quote; and,
24 quote, I was putting in work for the gang, is relevant to the

1 issue of motive.

2 Based on the testimony of Agent Freestone, it has
3 been proven by clear and convincing evidence that these are
4 gang related statements and the Court finds that their
5 admission is not more prejudicial than probative. Having met
6 the Tench factors, as well as Tavares and Petrocelli, this
7 Court will admit those three statements. Ms. Kossow, what's
8 next?

9 MS. KOSSOW: May I ask for clarification? So the
10 State is asking to put on evidence of his actual gang
11 affiliation, the fact that he went and got the tattoo as well
12 as the statements by SA 1290. Is your analysis as to all of
13 those items?

14 THE COURT: Correct.

15 MS. KOSSOW: Thank you, your Honor. I'm going to
16 let Mr. Bogale take the next motion, which was the decedent's
17 conduct or condition.

18 MS. NORDVIG: If I might just clarify the record,
19 your Honor?

20 THE COURT: Yes.

21 MS. NORDVIG: You're doing this even though a gang
22 enhancement has not been charged in this case?

23 THE COURT: Yes.

24 MS. NORDVIG: Thank you.

1 THE COURT: Go ahead, Mr. Bogale.

2 MR. BOGALE: Thank you very much, your Honor. So
3 I'll be referring to the motion that the State filed
4 regarding the decedent's condition or conduct filed on
5 August 31st, 2017. It was submitted for this Court's
6 decision yesterday.

7 I think the papers are pretty clear here, the
8 State has several grounds contained in the motion in limine
9 regarding several aspects of this case. So the first one is
10 the intoxication of these victims. It's clear they were
11 intoxicated to some degree. The toxicology reports, the
12 autopsy showed that they had cocaine and they had alcohol, as
13 well as some other substances in their system.

14 The State's asking the Court to exclude that,
15 because it's just not relevant. There's no facts in the case
16 that show that their intoxication played a role in the
17 shooting, that they were behaving in an intoxicated manner,
18 so as to compel the defendant to behave in a certain way.

19 And all the cases that the State cited require
20 those facts to be in evidence. They require a victim to be
21 behaving in a certain manner consistent with their
22 intoxication, known by the defendant, and then reacted to by
23 the defendant.

24 Here there is no evidence of that. There's no

1 evidence that Mr. Vasquez or Mr. Melendez were so intoxicated
2 that they put the defendant's life in danger or that they
3 picked a fight and caused the defendant to shoot them.

4 So I think referring to their intoxication at all
5 would just be prejudicial. It wouldn't have any role in the
6 facts of this case aside from impugning their character. So
7 the State asks the Court to exclude that as to ground one.
8 It's listed as A in the State's motion.

9 Ground two, listed as B, is the sales or drug use
10 of the victims. Again, this is kind of an anticipatory
11 motion. There's no evidence in this case that shows that the
12 two victims were selling drugs. And there's no evidence in
13 this case that draws a nexus between any drug sales and the
14 shooting itself as if this was a drug sale gone bad or that
15 the defendant shot them over drugs. There's none of that.

16 And so for the same reason why the intoxication
17 should not be presented to the jury, this shouldn't either.
18 And the State isn't saying that the State has information
19 that there were sales. The State does not have any. And so
20 the Court should preclude the defense from bringing it up if
21 they so choose. There's no evidence in this record that
22 shows Mr. Vasquez or Mr. Melendez even had drugs on them to
23 sell.

24 There were drugs in their system and there's

1 evidence that they were using them, but sales or use just has
2 no relevance to the shooting itself. So the State asks the
3 Court to exclude that.

4 THE COURT: What about the case cited by the
5 State, Arias, that's the Florida case.

6 MR. BOGALE: That's correct, your Honor.

7 THE COURT: In that case, the Court held that the
8 toxicology report was relevant and the exclusion of it was
9 error. How do you distinguish that case from this case?

10 MR. BOGALE: I think this case is distinguishable
11 in an important respect, your Honor. In that case, the
12 defendant testified. And the defendant testified that the
13 victim was behaving erratically, threatened to kill the
14 defendant and appeared to be intoxicated and under the
15 influence of cocaine. So there was a nexus. And the
16 defendant testified and claimed he acted in self-defense.

17 If those were our facts here, I think that case is
18 persuasive, but those are not the facts here. If the
19 defendant testifies and says the victims were behaving
20 erratically, threatened to kill him and appeared intoxicated
21 and under the influence of cocaine, that will be the first
22 time we have heard that. Right. That's nowhere in the case.
23 And if that comes up, well, we can deal with it then. But
24 the State does not expect that to come up. So I think that

1 case is distinguishable here.

2 THE COURT: All right. Thank you.

3 MR. BOGALE: In terms of the third ground, which
4 is labeled C, criminal history of the victims, this one is
5 pretty clear. This is the easiest one. They're not
6 testifying, right, so there's no reason to bring up their
7 criminal histories to impeach them, because they won't be
8 testifying. So I think C is clear.

9 In terms of the last ground, D, it kind of
10 overlaps between what Ms. Kossow was talking about with the
11 defendant's affiliation with MS 13. The State expects to
12 present some evidence that Mr. Vasquez was either associated
13 or loosely affiliated with the TJ gang. TJ gang is a
14 Nortenos based gang. According to Agent Freestone, you've
15 heard Surenos based gangs in certain geographic areas may
16 have rivals that are Nortenos based gangs and he mentioned up
17 north. That's more of a possibility.

18 And so the notion that Mr. Vasquez was a TJ member
19 or at least affiliated with a TJ gang is relevant, especially
20 in light of the statements that the Court has already let in,
21 which are somebody at the party said, fuck MS, right. And as
22 the State noted in its motion, that statement, fuck MS,
23 becomes more relevant if the jury hears that one of them was
24 a TJ gang member. It certainly has a tendency to make that

1 statement, fuck MS, more or less probative than it would be
2 without the evidence.

3 We don't know who said that statement, but I think
4 admitting the evidence that Mr. Vasquez was affiliated with
5 TJ gang sort of gives that statement more life and it
6 certainly has a tendency to show that it was -- that it could
7 have been Mr. Vasquez that said it and that the defendant was
8 reacting to that statement.

9 It's as simple as that. We're not going to hear
10 anything else about Mr. Vasquez, because he's not testifying.
11 We're not going to hear about any other person's gang
12 affiliation, because there isn't any. This fact about
13 Mr. Vasquez could be critical in explaining how the defendant
14 behaved in shooting the two victims.

15 And I think that's what the relevant evidence
16 statute, which is 48.045 -- excuse me -- 48.015 contemplates.
17 It says, relevant evidence is any evidence which has a
18 tendency to make more or less probable a fact of consequence
19 than it would be without the evidence. And here, I think,
20 the TJ gang affiliation meets that statute. So the State
21 would ask the Court to admit the evidence of Mr. Vasquez's
22 affiliation with TJ gang.

23 THE COURT: Ms. Nordvig.

24 MS. NORDVIG: Thank you, your Honor. In regards

1 to the victims' intoxication, I would submit to the Court
2 that is relevant, not only to their behavior during the
3 instant offense, but it could also be relevant as far as
4 impeachment or cross examination of several of the witnesses
5 that the State has listed in their witness list.

6 The first one that comes to mind would be Dr.
7 Kubiczek. I'm sure he relied upon that to determine cause of
8 death or at least discussed it in his report.

9 Whether other witnesses that the State has listed
10 who were present at the party noticed behavior that they
11 could testify to, to be behaving in a certain manner that
12 maybe was not respectful, it doesn't only mean that the two
13 victims can't testify. There are lots of other people there
14 and involved in this case.

15 If one of the witnesses that was at the party
16 describes behavior, say, of Mr. Melendez that was not
17 respectful or of gang signs that Mr. Vasquez threw because he
18 was a little less inhibited based upon his toxicology
19 results, that would not only come into play as far as
20 potential issues that may or may not support either case, but
21 it might also come in as impeachment to show or not show any
22 kind of bias, any kind of perception issues.

23 We have to remember this case, the actions that
24 are based in this case is one month short of -- well, a month

1 and a half short of seven years ago. Perception is going to
2 come into play in this case. Memory is going to come into
3 play. What we perceive when we're 17, 18, 19, when we look
4 back and we're 25, 26, 27 are two different things.

5 So a toxicology report showing that there was
6 intoxication, according to the State to some degree, both
7 cocaine and alcohol, we think is relevant and we should be
8 able to go into that.

9 THE COURT: Mr. Bogale. I'm sorry.

10 MS. NORDVIG: That's all right. Do you want to do
11 it one by one?

12 THE COURT: Go ahead.

13 MS. NORDVIG: Drug sales, we don't have any
14 evidence through police reports, however, in some of the
15 interviews, they do reference prior meeting with Ms. Yost and
16 the two decedents indicating that whether it was sales or
17 transfer of controlled substances happened and that's through
18 her statement or her interviews. So that, I think, is
19 important to note that she was there, she left, she came
20 back.

21 THE COURT: Uh-huh.

22 MS. NORDVIG: They left, they came back, they
23 brought in beer. All of these things go to the environment
24 that evening. And it's not just a momentary thing, it's

1 something that builds and I think we deserve to go into that.

2 Regarding the victims' criminal history, we
3 haven't been provided anything. It's hard to comment on
4 whether or not they have one, if it's important, if it's
5 relevant. We have no issues regarding -- no way to argue
6 that at this point since we have not been provided with a
7 criminal history. They were both young men at the time. I
8 don't know if they have a juvenile history, which we could
9 never find out. So I would leave that to the Court.

10 As far as the gang affiliation, no one at the
11 party in any of their statements, in any of their reports, in
12 any of the documents says anything about any -- either of the
13 two decedents, Mr. Melendez or Mr. Vasquez, saying anything
14 to my client. There will be no testimony from any of the
15 people that were there.

16 I think it's important that the only person that
17 heard anything about, fuck MS, was another MS person. He's
18 someone who is going to come in and be impeached. And I
19 think it's important for the Court to know that before it
20 makes its decision.

21 THE COURT: All right. Thank you. With respect
22 to the drug and alcohol use by the victims in the case,
23 courts have -- courts in other states have held that evidence
24 of drug use is inadmissible when it's intended only to impugn

1 a victim's character and has no relevance to any disputed
2 issues in the case.

3 In Bell versus State, a Georgia case, the Supreme
4 Court of Georgia held that we have determined that a
5 toxicology report showing the presence of cocaine metabolites
6 in the victim's blood was irrelevant where there was no
7 showing of what, if any, affect cocaine had on the victim at
8 the time of this fatal argument, and under circumstances such
9 as these, the evidence is speculative and irrelevant.

10 The Court also noted that in Lawrence versus
11 State, the Supreme Court of Wyoming held that evidence of a
12 shooting victim's methamphetamine intoxication at the time of
13 death was not relevant to the defendant's claim of
14 self-defense and therefore was inadmissible in the
15 prosecution for manslaughter. There was no evidence
16 indicating that the defendant knew the victim was under the
17 influence of methamphetamine when he shot him.

18 Now, in this case, there may be some testimony
19 that the person who pulled the trigger was present when
20 alcohol and drugs were being ingested, but until we see
21 evidence that that fact, if proven, resulted in aggressive
22 behavior that placed the defendant in reasonable fear of his
23 life, it's just not relevant. And I haven't seen anything in
24 the recitation of the facts that would lead me to believe

1 that that evidence exists.

2 Finally, the probative value of the evidence that
3 a murder victim had an illegal controlled substance in his
4 system at the time of death is substantially outweighed by
5 the prejudicial or the danger of unfair prejudice.

6 And as Mr. Bogale has pointed out in the single
7 case we were able to find as well, Arias versus State of
8 Florida, the defendant testified. The defendant was a
9 security guard and had dealt with people under the influence
10 of drugs and alcohol and he testified that the defendant was
11 acting in such a manner that he appeared to be under the
12 influence of alcohol and drugs. He had torn his shirt off,
13 he had thrown off his glasses, and he ran towards the victim
14 in the case. Under those circumstances and facts, the Court
15 found that the toxicology results of the victim were relevant
16 and should have been admitted.

17 The final case, which showed that the level of
18 drugs or alcohol of the victim in not relevant is Scherer vs.
19 State out of the Supreme Court of Kansas.

20 I think in this case, I'm going to withhold the
21 admission until I hear the actual testimony itself. If it
22 appears that there's no indication that these individuals
23 were doing anything other than playing cards at a card table
24 in a kitchen and there was no aggressive behavior exhibited

1 by the victims towards the defendant, clearly, the results
2 are inadmissible, irrelevant and more prejudicial than
3 probative.

4 Counsel, I've got to take a short break right here
5 for about ten minutes or so. So we can just stand in recess
6 for ten minutes.

7 (A short break was taken.)

8 THE COURT: All right. Ms. Nordvig.

9 MS. NORDVIG: Just for the record, your Honor,
10 Mr. Slocum is no longer at the courtroom in the Washoe County
11 Detention Facility. He could no longer stay.

12 THE COURT: All right. Thank you.

13 MS. NORDVIG: But Mr. Menendez Cordero is there
14 with both interpreters.

15 THE COURT: Mr. Bogale, next motion.

16 MR. BOGALE: Your Honor, I just had a quick
17 clarifying point on the intoxication part of my motion. The
18 Court said you're going to withhold your ruling unless, you
19 know, until you hear certain evidence. I guess I interpret
20 that as granting the motion to exclude it unless something
21 comes in that makes it relevant?

22 THE COURT: That's correct. There will be no
23 testimony until such time that I determine that the facts
24 elicited make it relevant. But as it stands now, it's not

1 admitted.

2 MS. NORDVIG: Your Honor, is that to A, B and C,
3 or just to A?

4 THE COURT: The drugs, the alcohol, the gang --
5 well, strike that -- not the gang, because the TJ evidence is
6 relevant and we just don't know about the criminal history.
7 Could you address that?

8 MR. BOGALE: Yes, your Honor. We do have the
9 criminal histories. As an officer of the Court, I'll tell
10 the Court there's nothing exculpatory.

11 THE COURT: That's easy for an officer of the
12 Court to say.

13 MR. BOGALE: Again, they won't be testifying.

14 THE COURT: That's true.

15 MR. BOGALE: So impeachment doesn't apply here.
16 So that's the State's primary argument, your Honor.

17 MS. KOSSOW: Just to add, your Honor, there are no
18 crimes of violence on there that could be used in a
19 self-defense case, which is the only way it would really be
20 relevant. There's no crimes of violence. I think there's
21 some misdemeanor convictions.

22 THE COURT: Can you give me the nature?

23 MS. KOSSOW: I believe it's a DUI, driving under
24 the influence.

1 MS. NORDVIG: Could we clarify as to which
2 decedent?

3 THE COURT: I'll let you do that off the record
4 between counsel here.

5 MS. NORDVIG: Thank you.

6 THE COURT: Let's go forward, Mr. Bogale, with
7 your next motion or Ms. Kossow.

8 MR. BOGALE: I believe the next one on the
9 exhibits --

10 THE COURT: I will look at those photographs prior
11 to trial. I understand that counsel is meeting with
12 Ms. Clerk for marking.

13 THE CLERK: Your Honor, we're scheduled to mark
14 exhibits on September 26th at 2:30.

15 THE COURT: At that time, Ms. Nordvig, if you
16 would just tag the ones you feel are either duplicative or
17 more prejudicial than probative, I'll look at those, and I'll
18 make a ruling before we pick the jury.

19 MS. NORDVIG: Thank you, your Honor.

20 THE COURT: So we will withhold ruling on the
21 prejudicial photographs. Next motion.

22 MS. KOSSOW: Judge, you might have made a
23 tentative ruling on this, which is the defendant's motion to
24 exclude expert testimony of Agent Freestone.

1 THE COURT: Correct.

2 MS. KOSSOW: Your ruling is he can testify?

3 THE COURT: That's correct.

4 MS. KOSSOW: Then I won't argue that one.

5 THE COURT: And we've ruled on the rule of
6 exclusion and I've granted the motion regarding custody
7 status.

8 MS. KOSSOW: So I believe the only motion left is
9 the defense motion for demonstrative evidence which the State
10 did oppose.

11 THE COURT: Correct.

12 MS. NORDVIG: Your Honor, we can submit on that.
13 I think the pleadings are clear as to the positions of both
14 sides.

15 THE COURT: The Court will deny that motion. I'm
16 sure counsel is more than aware about prohibition of putting
17 stamps of guilty over the face of the defendant in opening
18 statements, but I don't believe that -- well, strike that.
19 I've said enough. I will only permit items that have been
20 admitted prior to opening statements to be viewed and I'll
21 make those decisions after you've had a chance to mark them
22 with the clerk.

23 Now, that brings up a point here about jury
24 selection. There are a number of jurors scheduled for that

1 day and the jury commissioner has asked me to begin jury
2 selection in the afternoon at 1:30. So that gives us Monday
3 morning to deal with these evidentiary issues. And, of
4 course, we have Thursday morning and Friday as well and then
5 there will be Monday morning the 2nd of October. So we'll
6 have plenty of time to make a ruling on whatever exhibits
7 either side wish to use in their opening statements.

8 Motions, Ms. Kossow, I have a prior bad acts of
9 the defendant filed by you on October 31st, opposed the 8th,
10 submitted on September 18th.

11 MS. KOSSOW: Yes. And that is the first motion
12 the State argued this morning. After hearing testimony, you
13 granted it. That was to gang affiliation -- admitting gang
14 affiliation, admitting the defendant getting the tattoo on
15 his forehead and the statements to SA 1290.

16 THE COURT: Thank you. There was a motion by the
17 State to admit evidence of consciousness of guilt. I have
18 not -- I have not had the benefit to review the defense's
19 position on it, so I said I was not going to make a ruling on
20 it at today's hearing. If need be, we'll address it the
21 Thursday or Friday before trial.

22 MS. NORDVIG: We appreciate that, your Honor.

23 MS. KOSSOW: Most likely the State will be
24 offering testimony in support of that motion. We'll ask to

1 get a definite date and time for that so we can subpoena our
2 witnesses.

3 THE COURT: All right. That's only fair. I have
4 a defense motion, emergency motion for review of sealed
5 documents.

6 MS. NORDVIG: You ruled on that, your Honor.
7 Thank you.

8 THE COURT: The Court relies on NRS 174.275 in
9 denying that motion. All right. Ms. Clerk, I'm going to
10 read off the rulings. Counsel, correct me if I'm wrong.

11 From the State, the State filed an emergency
12 motion to limit dissemination of discovery and protection
13 order. That was granted.

14 Next, the State filed a motion to preclude
15 evidence of the decedent's conduct or condition. That is
16 granted.

17 The State filed a motion for the admission of
18 prior bad acts of the defendant. That motion was granted.

19 Next, the State filed a motion to admit evidence
20 of consciousness of guilt. The Court is withholding ruling.

21 Next, the State filed a motion to preclude witness
22 impeachment character as to the State's witnesses. The Court
23 denied in part and granted in part. I believe I identified
24 those witnesses that State -- that were subject to

1 impeachment.

2 As to the defense motions, the first one, equal
3 access to jury information. That was denied.

4 Next, emergency reviewing of sealed documents.
5 That was denied.

6 Next, motion to review demonstrative evidence
7 prior to jury view was denied.

8 Next, the defense motion to preclude prejudicial
9 photographs. The Court has withheld ruling until the Court
10 has had an opportunity to review those photographs.

11 Next, the defense filed a motion to exclude
12 nonparty witnesses from the proceedings until their
13 testimony. That motion is granted.

14 Next, the defense filed a motion to preclude the
15 jury view or any reference to the defendant's custody status.
16 That motion was granted.

17 Finally, the defense filed their motion to exclude
18 the expert testimony of Special Agent Blaine Freestone. That
19 motion was denied.

20 Ms. Kossow, Mr. Bogale, did I miss anything?

21 MS. KOSSOW: No, your Honor.

22 MR. BOGALE: No, your Honor.

23 THE COURT: Ms. Nordvig, did I miss anything?

24 MS. NORDVIG: Not that I know, except the ones

1 that are being withheld.

2 THE COURT: Withheld.

3 MS. NORDVIG: Or revisited. Put it that way.

4 THE COURT: Okay. Thank you very much. Work
5 closely with Ms. Clerk.

6 MS. NORDVIG: Your Honor, can I ask you a question
7 before we recess, as far as the jury panel and how many
8 prospective jurors may be called if we're starting in the
9 afternoon.

10 THE COURT: I generally have one alternate per
11 week. We're scheduled for two weeks. I was going to draw
12 two alternates.

13 MS. NORDVIG: Okay.

14 THE COURT: Because this is a cat A, each side
15 gets ten peremptories.

16 MS. NORDVIG: Okay. The only other question I
17 have, as far as any extraordinary security issues that may
18 come up, we would probably request a hearing regarding that.

19 THE COURT: As soon as I am fully briefed on that
20 matter, I'll make a decision as to what information should be
21 shared and I'll apprise everybody of that in advance of
22 trial.

23 MS. NORDVIG: Thank you.

24 THE COURT: While we're talking about jurors, I am

1 contemplating calling an anonymous jury in this case. The
2 prospective jurors will be identified by badge number only.
3 And I'm working with the jury commissioner to sift that
4 information out and we'll make a full record of that at the
5 same time we're meeting on those other pretrial matters,
6 probably the Friday before. I want to give everybody enough
7 time to make their record.

8 MS. NORDVIG: Friday the 29th, your Honor?

9 THE COURT: Yes, Friday the 29th.

10 MS. NORDVIG: Your Honor, as a personal request,
11 if we could have the hearing in the morning, I would
12 appreciate it.

13 THE COURT: We can.

14 MS. NORDVIG: Thank you.

15 THE COURT: Anything further, Ms. Kossow?

16 MS. KOSSOW: No, thank you, your Honor.

17 THE COURT: Mr. Bogale?

18 MR. BOGALE: No, thank you.

19 THE COURT: Ms. Nordvig?

20 MS. NORDVIG: No, thank you.

21 THE COURT: Thank you to the interpreters. This
22 Court's in recess.

23

24

1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on September 19, 2017, at the hour of
8 1:30 p.m., and took verbatim stenotype notes of the
9 proceedings had upon the pretrial motions in the matter of
10 THE STATE OF NEVADA, Plaintiff, vs. LUIS ALEJANDRO MENENDEZ
11 CORDERO, Defendant, Case No. CR15-1674, and thereafter, by
12 means of computer-aided transcription, transcribed them into
13 typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 105, both inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 DATED: At Reno, Nevada, this 21st day of September 2017.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
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