

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS ALEJANDRO MENENDEZ-
CORDERO,

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 NINE

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JUDITH ANN SCHONLAU
CCR #18
75 COURT STREET
RENO, NEVADA

COPY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

-o0o-

THE STATE OF NEVADA,)	
)	
Plaintiff,)	
)	
vs.)	CASE NO. CR15-1674
)	DEPARTMENT NO. 4
LUIS ALEJANDRO)	
MENENDEZ-CORDERO,)	
)	
Defendant.)	

TRANSCRIPT OF PROCEEDINGS
TRIAL
THURSDAY, OCTOBER 12, 2017, 10:30 A.M.
Reno, Nevada

Reported By: JUDITH ANN SCHONLAU, CCR #18
NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
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A P P E A R A N C E S

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY

 BY: KELLY ANN KOSSOW, ESQ.

 ZELALEM BOGALE, ESQ.

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 WASHOE COUNTY COURTHOUSE

 RENO, NEVADA

FOR THE DEFENDANT: OFFICE OF THE PUBLIC DEFENDER

 BY: LINDA NORDVIG, ESQ.

 RICHARD VILORIA, ESQ.

 DEPUTY PUBLIC DEFENDER

 350 S. CENTER STREET

 RENO, NEVADA

1 RENO, NEVADA; THURSDAY, OCTOBER 12, 2017; 9:00 A.M.

2 -oOo-

3 THE COURT: Let the record reflect we are convened
4 outside the presence of the jury for the purpose of settling
5 Instructions we started yesterday. One question I wanted to
6 ask you all about to start is the defense has not offered any
7 lesser included.

8 MS. NORDVIG: That's correct

9 THE COURT: I would like to make a record about
10 that, you can do it.

11 MS. NORDVIG: Your Honor, after several conversations
12 not only with peers and other attorneys in our office
13 discussing regarding how to best defend this case, we have
14 decided not to offer any lesser included.

15 THE COURT: So it is a strategic decision on your
16 part. You're specifically requesting I not instruct as to any
17 lesser included?

18 MS. NORDVIG: That's correct.

19 THE COURT: You discussed that with your client and
20 he agrees?

21 MS. NORDVIG: I believe so, yes.

22 THE COURT: You have to stand up, sir. Do you agree
23 with what she just told me?

24 THE DEFENDANT: Yes.

1 THE COURT: Okay. Thank you. You may be seated. So
2 have you all found anymore in addition that you want to give
3 me now? Any changes?

4 MS. KOSOW: Yes. I think we conferred on some and
5 fixed some. I think we are in agreement basically on
6 everything at this point.

7 MR. VILORIA: May I approach with those? Would you
8 like me to approach the law clerk, Your Honor?

9 THE COURT: How many copies do you have?

10 MR. VILORIA: I just have one for the Court.

11 THE COURT: Okay. You may approach me.

12 MS. VILORIA: I believe there is just one
13 outstanding.

14 THE COURT: Every person charged with the commission
15 of a crime shall be presumed innocent. I think that is
16 number four-ish. Okay. So we now have every person charged
17 with the commission of a crime shall be presumed innocent
18 unless the contrary is proved by competent evidence, and the
19 burden rests upon the prosecution to establish every element
20 of the crime with which the defendant is charged beyond a
21 reasonable doubt. In case of a reasonable doubt whether the
22 defendant's guilt is satisfactorily shown, the defendant is
23 entitled to be acquitted. That is fine. That is the
24 Instruction I usually give believe it or not.

1 MR. VILORIA: Totally.

2 THE COURT: So defense is specifically requesting
3 that, correct?

4 MR. VILORIA: Well, I requested the last portion.
5 It is a combination of 175.190 and 211.

6 THE COURT: You wanted me to say the last part, that
7 if the defendant's guilt -- If there is a reasonable doubt
8 whether the defendant's guilt is satisfactorily shown the
9 defendant is entitled to be acquitted.

10 MR. VILORIA: Yes.

11 THE COURT: The State wanted me to say every element
12 of the offense charged needs to be proven beyond a reasonable
13 doubt.

14 MS. KOSSOW: Yes.

15 THE COURT: You're both comfortable with this
16 Instruction?

17 MS. KOSSOW: Yes, Your Honor.

18 MR. VILORIA: Yes, Your Honor.

19 THE COURT: And then is this one a substitution or
20 in addition to that starts: To hold the defendant criminally
21 liable for a charged offense, the State must move beyond a
22 reasonable doubt not only the offense was committed but it was
23 the defendant who committed it. Thus, before a defendant may
24 be convicted of the charged offense, the State must prove

1 beyond a reasonable doubt the person is the person who
2 committed the charged crime. If you find the State has failed
3 to prove beyond a reasonable doubt the defendant is the person
4 who committed the charged offense, you must find him not
5 guilty. This is the theory of the defense; is that right?

6 MR. VILORIA: Yes, Your Honor.

7 THE COURT: Is it in lieu of a different one?

8 MR. VILORIA: In lieu of the Instruction I proposed.
9 It is somewhat the same. Ms. Kossow worked on how to narrow
10 it, how we wanted to present it to the Court. I think we are
11 both in agreement with that.

12 MS. KOSSOW: But it is in addition to the reasonable
13 doubt Instruction. Is that what you are asking, Judge? It is
14 not taking anything out other than the original proposed by
15 Mr. Viloria.

16 THE COURT: What we have is a reasonable doubt is
17 based on reason, which is the definition of what is 175.211.
18 Then you would add this next in order, is that what you are
19 saying?

20 MS. KOSSOW: No. I was just thinking whether it
21 would be here or by the elements. The case cited by
22 Mr. Viloria, the Crawford case, really talked about, they had
23 run it as an example of this sort of negative self-defense
24 Instruction. So I will submit it to the the Court either

1 behind the reasonable doubt or somewhere behind the elements
2 of the crime almost as a defense.

3 MR. VILORIA: I tend to agree with Ms. Kossow
4 towards the elements.

5 MS. KOSSOW: I don't have an objection to that.

6 THE COURT: Okay. Let me find where that might be.

7 MS. KOSSOW: Possibly after the definition of a
8 deadly weapon which is the last element Instruction.

9 THE COURT: These are mixed up. Before to the jury
10 alone belongs the duty of weighing?

11 MS. KOSSOW: Yes.

12 THE COURT: Okay. And then there is a modified
13 Constitutional right of the defendant.

14 MR. VILORIA: Yes, Your Honor. I presented that in a
15 gender neutral fashion as you requested.

16 THE COURT: I didn't mean that you had to do that. I
17 was mostly giving everyone a bad time not just you about
18 gender neutrality. This is fine. That will be Instruction --
19 we might have to renumber these.

20 I have a couple of other questions for you. I don't
21 know if you saw the modification that we made in a different
22 case where there are two kinds of evidence direct and
23 circumstantial.

24 MR. VILORIA: We did address that.

1 THE COURT: So do you want the changes or not? It
2 would be the second paragraph would read: If you are
3 satisfied of the defendant's guilt beyond a reasonable, it
4 does not matter whether your judgment of guilt is based upon
5 direct evidence or upon circumstantial evidence or both.
6 Instead of the language that talks about upon direct evidence
7 or upon sorry-- direct or positive evidence? There is no
8 discussion of positive evidence in the top part of Instruction
9 and there is direct and circumstantial. So we just changed
10 positive evidence to circumstantial if you think that is okay.

11 MR. VILORIA: No objection.

12 MS. KOSSOW: State has no objection, Your Honor.

13 THE COURT: Okay. And then I think you decided, I
14 wanted to make sure that you have no objection to changing the
15 Instruction that the prosecution is not required to call as a
16 witness to use the language that was proposed by the defense
17 which was "neither." I am sorry. The prosecution submitted
18 neither side is required to call, and I think the defense
19 submitted the prosecution is not required.

20 MS. KOSSOW: State is not objecting to the defense
21 proposed change.

22 THE COURT: That is what I thought. I just wanted
23 to make sure.

24 Then with regard to the Indictment, I think you all

1 agreed that we could say that the defendant entered a plea of
2 not guilty though we know the Court entered the plea for him.

3 MS. KOSSOW: That is fine with the State, Your Honor.

4 MR. VILORIA: No objection.

5 THE COURT: Okay. We have two Instructions that you
6 all offered with regard to the confidential informant. The
7 State offered: You have heard testimony that a witness has
8 received a benefit from the State in connection with this
9 case. You should examine such witness' testimony with greater
10 caution than that of other witnesses in evaluating the
11 testimony. You should consider the extent to which it may have
12 been influenced by the receipt of the benefit. This does not
13 mean you may arbitrarily disregard such testimony but should
14 give it the weight to which you find it to be entitled. After
15 examining it with care and caution in light of the evidence in
16 the case.

17 The defense: You have heard testimony from SA 1290
18 a witness who received a benefit from the State in exchange
19 for his testimony. Accordingly, you should evaluate SA 1290's
20 testimony with greater caution than that of the other
21 witnesses in this case. In evaluating the testimony, you
22 should consider the extent to which it may have been
23 influenced by the receipt of the benefit. Have you all agreed
24 on which one?

1 MR. BOGALE: Mr. Viloría provided additional I
2 believe Instructions where he added two of these into one
3 Instruction and took out the name SA 1290.

4 MR. VILORIA: I have a copy.

5 THE COURT: You agree to what the defense proposes?

6 MR. BOGALE: Not necessarily, but when he gives them
7 to you, I can tell you what is disagreed with.

8 MR. VILORIA: Actually, I am going to provide you
9 with both that I provided to the State when the State is done.

10 THE COURT: Thank you. Do you have anymore copies of
11 that?

12 MR. VILORIA: Well, I personally do.

13 THE COURT: You could give the law clerk a copy if
14 you have one.

15 MR. VILORIA: And I am giving the law clerk the
16 copies with the citation on it.

17 THE COURT: Okay.

18 MR. BOGALE: Mr. Viloría has provided the Court with
19 two Instructions. They both start you have heard testimony
20 from a witness. The only beef really the State has with the
21 longer Instruction one it has two paragraphs. The other one
22 the one with two paragraphs, first line of that at line six:
23 The testimony of a Confidential Informant ought to be viewed
24 with distrust. I just think it is overkill. It is a quote

1 from Howard, but we already say that in that Instruction, it
2 says lines two and three: You should examine such testimony
3 with greater caution. Then later lines 8 and 9: You should
4 give it the weight to which you find it should be entitled
5 after examining it with care and caution. I just don't think
6 line 6 is necessary. So if the Court accepts that, then the
7 State's fine with that Instruction taking out that first
8 sentence, if the Court does not like that argument, in the
9 alternative, the State's okay with the second Instruction
10 provided by the defense which is just the one paragraph.

11 THE COURT: Which is exactly what they offered. No,
12 it is a little different than what you offered yesterday.
13 Okay. Are you comfortable with the shorter version?

14 MR. VILORIA: Thank you, Your Honor. Briefly, as the
15 State argued, the reason why I incorporated that language is
16 because it is directly from the case law that they cited. I
17 thought that would be more -- it would be the best
18 representation of that area of law the State is relying on. I
19 am fine with the shorter paragraph, because I think that is
20 what the case really points to. It is just giving them a
21 cautionary Instruction not telling them how to examine the
22 testimony. I would have no objection to using the shorter.

23 THE COURT: I think that is what we'll do. We'll
24 give the shorter version and not the one the State offered.

1 Are you going to want anything marked? Does the
2 State want anything marked?

3 MS. KOSSOW: No, Your Honor.

4 THE COURT: So that Instruction that the defense
5 offered will be given.

6 THE COURT: Okay. The next question I have for you
7 is about the expert witnesses and hypothetical question. You
8 all were debating that yesterday.

9 MS. KOSSOW: Yes, Judge. I did find some Nevada law
10 that had very similar language, so I am not going to object to
11 that. State v. Rimer. I am sorry, it is Rimer v. State,
12 R-I-M-E-R v. State 351 P.3d. 697.

13 THE COURT: Okay. Would counsel approach, please? I
14 have modified the Bowman Instruction to match what I give and
15 I want you all to read it. You did get copies. Do you have
16 any objection to that?

17 MR. VILORIA: No, Your Honor.

18 MS. KOSSOW: No, Your Honor.

19 THE COURT: Okay. Those were the only things you
20 had. Let's go through and number these then I will ask if you
21 have any additional Instructions to offer. And do you have
22 any additional Instructions to offer?

23 MR. VILORIA: I do. I think it might be helpful if
24 I get a copy of the packet in the order Your Honor has it.

1 THE COURT: I don't think we have time for that. It
2 is 20 after.

3 MR. VILORIA: The only Instruction that I wanted to
4 offer unrelated to motive -- Court's indulgence.

5 THE COURT: How about I read them in the order and
6 when I get to the one you have a related one you say Judge I
7 would like to be heard. I am just concerned. We really want
8 to keep it moving. We do have a little time on Friday morning
9 that we can do this, too.

10 MS. NORDVIG: Your Honor I know timing is important
11 today but if maybe once we are done --

12 THE COURT: Once we are done, you get a set, no
13 problem.

14 MS. NORDVIG: Today?

15 THE COURT: I think so. We'll have time to do that.

16 MS. NORDVIG: Thank you. I won't write frantically.

17 THE COURT: Ladies and gentlemen of the jury would
18 be one.

19 If in these Instruction any rule, direction or idea.

20 If during this trial I have said or done anything.

21 Every person charged with the commission of a crime
22 shall be presumed innocent.

23 A reasonable doubt is one based on reason. I am
24 sorry, that is five.

1 There are two kinds of evidence, direct and
2 circumstantial is 6.

3 The evidence consists of the testimony of a
4 witnesses, 7.

5 The prosecution is not required to call as witnesses
6 all persons who may have been present will be 8.

7 The defendant in this matter has been charged upon
8 an Indictment will be 9.

9 An Indictment is a formal method of accusing a
10 defendant of a crime will be 10.

11 In every crime there must exist a union or joint
12 participation of act and intent will be 11.

13 Intent may be proved by circumstantial evidence 12.

14 The elements of the crime of murder are 13.

15 I think you gave me this morning, a new express
16 malice, or yesterday afternoon express malice aforethought.

17 MR. VILORIA: The State did.

18 THE COURT: The defense had no objection.

19 MR. VILORIA: No objection.

20 THE COURT: That's 14.

21 Murder in the first degree is murder perpetrated,
22 that is 15.

23 The true test is not duration.

24 MR. VILORIA: I think that is the second part of 15.

1 THE COURT: That is the second page, right.

2 MS. KOSSOW: Yes.

3 THE COURT: Okay. 16 is to constitute the crime of
4 murder there must be in addition to the death. Right?

5 MS. KOSSOW: Yes.

6 THE COURT: 17, if you find the defendant committed
7 the offense of first degree murder. To hold the defendant
8 criminally liable we just marked today will be 18.

9 To the jury alone belongs the duty of weighing the
10 evidence 19.

11 Inconsistencies and discrepancies in the testimony
12 will be 20.

13 You have heard testimony from a witness who received
14 a benefit. That is 21.

15 The fact that a witness has been convicted of a
16 felony is 22.

17 A witness whose special knowledge and skill is 23.

18 An expert witness may be asked a hypothetical
19 question. That is 24.

20 You should not decide any issue is 25. Have we
21 gotten there yet, Mr. Vilorio?

22 MR. VILORIA: No.

23 THE COURT: Evidence has been received which may tend
24 to show the defendant may have committed acts other than for

1 which he's on trial.

2 MR. VILORIA: Here it is. May I?

3 THE COURT: Yes.

4 MR. VILORIA: Your Honor, I would ask that you
5 provide the following Instruction pursuant to NRS 48.045
6 subsection 2 in addition to CALJIC 2.51 regarding motive. May
7 I approach?

8 THE COURT: Yes. So you are asking for this in lieu
9 of the one --

10 MR. VILORIA: No. I am asking this in addition to.
11 The reason why -- Would you like a copy? I don't have a copy
12 without the citation.

13 THE COURT: You can give me with. But I am going to
14 need it without.

15 MR. VILORIA: I will do that.

16 MS. KOSSOW: Is this the same Instruction we
17 previously talked about?

18 MR. VILORIA: Yeah.

19 THE COURT: Is this the one that starts: To hold
20 the defendant criminally liable?

21 MR. VILORIA: No. Motive is not an element of the
22 crime charged. I thought yesterday we were making our formal
23 record. Now I know it is today.

24 THE COURT: Okay. I don't know if you gave me that

1 yesterday.

2 MR. VILORIA: We did address it.

3 MS. KOSSOW: We do have it, Your Honor.

4 THE COURT: So approach and let me have it. I think
5 I threw it away.

6 Okay. Does the State object to this Instruction?

7 MS. KOSSOW: The State objected yesterday based on
8 the law provided. So the law provided the other acts evidence
9 statute which does not define motive and does not give this
10 language. That was the State's objection.

11 THE COURT: I don't think I agree. The authority
12 offered may not be the right authority, however ~~motive is not~~
13 an element. So it is a correct statement of the law even
14 though the defense hasn't cited the correct authority.

15 MR. VILORIA: I also have the CALJIC from which --

16 THE COURT: That wouldn't be the authority either.
17 I think there is a case.

18 MR. VILORIA: Candidly, Your Honor, I scoured last
19 night. The Nevada Supreme Court law regarding the language of
20 this proffered Instruction I couldn't find. The only one it
21 was addressed in I believe Jeffreys v. State where it was
22 cited to during the analysis but was never dis positively
23 ruled upon. I can also show the State the CALJIC I was relying
24 on, but I do understand the State's objection.

1 MS. KOSSOW: I, as the Court said, I don't believe
2 it is incorrect how you can use motive in this case, it is
3 just a little concerning there is no authority to use it. The
4 State is certainly going to argue motive. We did a motion to
5 get motive evidence in.

6 THE COURT: Well, if the defense is asking for it, I
7 am going to give it. I think it is a correct statement of law.
8 I just don't know where to put it because we have the
9 elements. We gave the elements and so perhaps it should be
10 back there, because we are talking about motive not being an
11 element. Or I can give it before or after 26 which is evidence
12 has been received which would intend to show.

13 MS. KOSSOW: I don't have objection to it going
14 after 26. Motive evidence is going to come in under other act
15 evidence. I am assuming Mr. Vilorio was presuming where when
16 he stopped you, right where he stopped you. So I don't have
17 any objection to that and 26 does discuss motive.

18 THE COURT: Okay. So I will give the offered
19 Instruction, so 26 is: Evidence has been received which may
20 tend, and 27 will be motive. And you need to give us a clean
21 copy. So the defense requested it. It will be given.

22 Then we have 28 will be the flight of a person.

23 29 although you are to consider only the evidence.

24 You have given me a new Constitutional right of the

1 defendant which I will give which is 30.

2 31 will be upon arriving at a verdict.

3 Okay. And then 32 is the modified Instruction that
4 starts with: Except for discussing the case with your fellow
5 jurors during deliberation, that is 32.

6 33 it is your duty to consult with each other, with
7 one another and to deliberate.

8 34 you are permitted to take notes. You all talked
9 about this yesterday. Are we still okay with this?

10 MS. KOSSOW: I don't have an objection. That is
11 fine.

12 THE COURT: Each count charges a separate, will be
13 35.

14 36 will be upon retiring to the jury room you will
15 select one of your number to act as Foreperson.

16 And do you have verdict forms?

17 MS. KOSSOW: Yes, Your Honor.

18 MR. VILORIA: We have no objection. The State has
19 shown those forms to us previously.

20 MS. KOSSOW: Do you want them, Your Honor?

21 THE COURT: Please.

22 MS. KOSSOW: I submitted two that I had to change.

23 THE COURT: So did the defense -- Did you do the
24 other two, the not guilty one?

1 MS. KOSSOW: Yes.

2 THE COURT: I just remember seeing them yesterday.

3 MR. KOSSOW: I brought them back over.

4 THE COURT: Just e-mail them. You have seen those
5 not guilty?

6 MR. VILORIA: I have, Your Honor.

7 THE COURT: We all agreed we are going to leave
8 Department 7 on here.

9 MR. VILORIA: Yes.

10 THE COURT: Okay. So we have 1 through 36 marked.
11 Does the State have any additional Instructions to offer to
12 this packet?

13 MS. KOSSOW: No, Your Honor.

14 THE COURT: Does the defense have any additional
15 Instructions to offer to this packet?

16 MR. VILORIA: No thank you, Your Honor.

17 THE COURT: Does the State have any objection to the
18 packet as now constituted?

19 MS. KOSSOW: No, Your Honor.

20 THE COURT: Does the defense of have any objection?

21 MR. VILORIA: No, Your Honor.

22 THE COURT: Okay. Then we have the packet of
23 Instructions. We'll give you copies this morning and you have
24 the verdict forms. I am trying to remember what else I had in

1 my mind that I wanted to discuss with you I plan on doing.
2 You stipulated yesterday to reading the Instructions before
3 you do closing, then you will do closings. We will then begin
4 deliberation on Friday, okay?

5 Now if there is a need for a penalty hearing, we'll
6 deal with that on Monday. That will be no matter when the
7 verdict comes back.

8 MS. KOSSOW: When would you like to deal with the
9 penalty Instructions?

10 THE COURT: I would like to talk about the penalty
11 Instructions while the jury is deliberating. It doesn't
12 presuppose that we are going to need them, but I would rather
13 have the discussion before, especially if the verdict comes in
14 late or on Saturday I would have them done. We can always not
15 use them.

16 MS. KOSSOW: Yes.

17 THE COURT: So what I will do, after you have done
18 your closings, the jury begins its deliberation, I will give
19 you like an hour to decompress. I know both sides will need a
20 little time. Then I will ask you to come back and settle
21 those Instructions. I understand the defendant will want to
22 be present for that. It is important we kind of do it at the
23 regular time of day so he can be present for both the
24 preliminary discussion and the formal settling. Yesterday was

1 the preliminary discussion we normally do in chambers. Today
2 is the formal settling of the Instructions. So you all
3 stipulate we have formally settled the Instructions on the
4 record?

5 MS. KOSSOW: State does, Your Honor.

6 MR. VILORIA: Yes, Your Honor.

7 THE COURT: Is there anything else that you want to
8 bring up to the Court before we proceed to recess for the day?

9 MS. KOSSOW: Nothing from the State, Your Honor.

10 MR. VILORIA: I do have something, Your Honor.
11 Yesterday Ms. Kossow appropriately approached me with an
12 issue. During the informal argument, I made a statement
13 relating to I believe it was the motive evidence in which I
14 couched my argument in saying that the testimony from SA 1290
15 as a whole encapsulated motive evidence. After the State told
16 me their intention to use the portion of SA 1290's testimony
17 relating to an admission or confession of guilt. I was
18 concerned about it and I raised my concern with Ms. Nordvig
19 and our appellate counsel, John Petty. The issue I have is
20 after SA 1209 testified, Your Honor instructed him or
21 instructed the jury pursuant to the Taveras motion.

22 THE COURT: At your request.

23 MR. VILORIA: At our request and with no objection by
24 the State. If the State intends to argue before the jury that

1 there was substantive evidence of guilt by virtue of his
2 admission to SA 1290, then. I think that is going beyond what
3 you instructed them which may confuse them how to
4 appropriately analyze that evidence. You told them his
5 testimony is motive testimony which cannot be used as
6 substantive evidence of guilt.

7 THE COURT: How do you want to fix this problem,
8 because he clearly testified about admissions made by your
9 client.

10 MR. VILORIA: He clearly did. I simply would like to
11 make a record. I would ask this Court to limit or narrow the
12 State's utilization of that ~~evidence~~. Formal objection.

13 THE COURT: Because that seems horribly unfair the
14 one who submitted that cautionary Instruction knowing that I
15 did not know all the content of your prior arguments before
16 Judge Flanagan and you offered that with the word "motive" in
17 it which is the prior bad act, but there was no requirement to
18 have a cautionary Instruction about statements made by your
19 client.

20 MR. VILORIA: Well, Your Honor, this is why I raised
21 the issue. The pretrial order by Judge Flanagan which we have
22 a transcript, identified certain statements of
23 Mr. Menendez-Cordero. That was the purpose of that hearing.
24 There was no definitive evidence which statements are motive

1 evidence, which statements are not motive evidence. Candidly,
2 I had no idea Mr. SA 1290 would say what he said, and that
3 wasn't addressed by any of the pretrial rulings.

4 THE COURT: Do you think there had to be a pretrial
5 ruling about the admissions?

6 MR. VILORIA: Well there were, because there were
7 additional statements like for example, if I recall, it is
8 alleged Mr. Menendez-Cordero said something to the equivalent
9 of "I killed those two rats."

10 THE COURT: Well that was in the offer of proof.

11 MR. VILORIA: Right. But that wasn't introduced
12 during the testimony, ~~either the~~ preliminary testimony or the
13 testimony presented to the jury.

14 THE COURT: I agree.

15 MR. VILORIA: What we anticipated was the subject of
16 the order would include everything that the State made a
17 proffer of, because that is what Judge Flanagan rules. And
18 then you, in limited fashion, addressed credibility. We
19 didn't anticipate that, hence, we didn't know the nature of
20 what his testimony would be which is why we asked for it to be
21 subsequent to his testimony.

22 THE COURT: But you did hear his testimony and then
23 you offered the limiting Instruction you offered.

24 MR. VILORIA: We offered it to you and asked that

1 you read it after. We had no idea.

2 THE COURT: But you had already heard the testimony
3 when you asked me to read it.

4 MR. VILORIA: I don't think -- I don't recall
5 candidly if during the preliminary testimony outside the
6 presence he said those exact same words that he admitted to
7 going in there.

8 THE COURT: I am not talking about that. I am
9 talking about the witness came and testified. We had a
10 discussion at the bench about whether or not you wanted me to
11 give that Instruction. Ms. Nordvig had a discussion with you
12 and your client and she gave me ~~the nod~~ that she wanted me to
13 read it as you had submitted it to me. That was after the
14 witness had testified. You certainly could have modified the
15 cautionary Instruction after you heard his testimony. So you
16 didn't. It sounds to me like now, because the cautionary
17 Instruction dealt with motive, you want to somehow preclude
18 the State from arguing the part of witness' testimony that
19 would never have been precluded under prior or subsequent acts
20 or the gang issues.

21 MR. VILORIA: I wouldn't argue that there is no
22 intent behind the defense position in doing that. The issue
23 just came to me yesterday after Ms. Kossow raised it. The way
24 the jurors were instructed in the context of it, they are

1 instructed to consider his testimony in the entirety as motive
2 evidence. I don't know how to fix that.

3 THE COURT: I do. I could declare a mistrial. You
4 all offered the Instruction. If it was wrong, you offer a
5 wrong Instruction, I can declare a mistrial, and we can start
6 all over. I am very concerned. I mean if I had given an
7 Instruction the State had offered or I created it, that would
8 be a different story. But you asked for that, and I gave it
9 as you requested it. And now to preclude the State from
10 arguing about what that testimony meant based on your mistake
11 of offering the Instruction that didn't encompass all of the
12 testimony, that seems to be very, very concerning to me.

13 MR. VILORIA: I appreciate that, Your Honor. I don't
14 think we made a mistake. I think both parties addressed the
15 issue numerous times.

16 THE COURT: Why don't we talk about, Ms. Kossow, why
17 don't you tell me what is the testimony of the Confidential
18 Informant that came during the trial that was not subject to
19 pretrial determination by a judge pursuant to Petrocelli and
20 Taveras as to admissibility?

21 MS. KOSSOW: It might be easier to do the opposite,
22 because the only statements that the State did the pretrial
23 motion concerning other act evidence was the "fuck MS"
24 statement. All the other statements were admissions by this

1 defendant to SA 1290. The State didn't do a pretrial motion
2 to get statements of admissions in because they were coming
3 in. So the State limited it to that "fuck MS."

4 THE COURT: And calling them "rats".

5 MS. KOSSOW: Which again in his original statement he
6 did. That is what officer Woodard, when he was interviewed,
7 those are the three statements officer Woodard put in his
8 report. That is what the State expected as to the motive for
9 him to testify to. He did talk about putting in work for the
10 gang, and that's one of the things that he said. But it was
11 really the "fuck MS" was the statement that we did the
12 pretrial motion concerning. The State never told this Court
13 or the defense that was the only statement that he was going
14 to testify to, and he was only going to be testifying to
15 Motive. He obviously had a lot more information other than
16 that. Remember we did a pretrial hearing where he said almost
17 the same exact thing, maybe not as expanded as his actual
18 testimony, but that came in before we even heard his actual
19 testimony.

20 THE COURT: So I need to think about what that
21 cautionary Instruction that I read was. Was that B or C? C-1,
22 right? No C, the first one that you offered.

23 MS. KOSSOW: I just want to make the record I don't
24 think this Instruction says you are going to hear testimony as

1 to motive and no other evidence. It says you are going to
2 hear evidence that shows he committed acts other than that for
3 which he's on trial. That doesn't say every single thing this
4 witness testifies to is only going to be other act evidence.
5 That is not what it says. It basically says you are going to
6 hear some testimony. That testimony was included in the
7 substance of his testimony.

8 THE COURT: Okay. I have just reviewed C and I don't
9 think C says the only testimony with regard to motive.

10 MR. VILORIA: I agree, Your Honor. As we know,
11 jurors are not well versed in the law, and we can't tell them
12 how to interpret the law as given. What my concern was after
13 Ms. Kossow appropriately approached me, okay, what is the
14 impact of the way it was said. It was after he testified. It
15 said this evidence has been received for X purposes. That is
16 my only concern. I truly don't -- I am asking it be narrowed
17 or limited. I don't think, based on the discussion today, we
18 can say you can't say that he didn't say that. They heard it.
19 But my concern is the legal impact of the words that were used
20 in the Instruction based on the context.

21 THE COURT: Let me have it back. Evidence has been
22 received tending to show that the defendant committed acts
23 other than that for which he's on trial. Such evidence was
24 not received and may not be considered by you to prove that he

1 is a person of bad character or he has a disposition to commit
2 crimes. The evidence was received and may be considered by
3 you only for the limited purpose of showing motive regarding
4 the charged crimes. For the limited purpose for which you may
5 consider such evidence, you must weigh it in the same manner
6 that you do all other evidence. You are not permitted to
7 consider such evidence for any other purpose. This is the one
8 you gave me, and you asked that I read this after the
9 testimony. You can't strategically gain an advantage by doing
10 that and now argue that the State can't argue what the witness
11 said because your Instruction wasn't fully encompassing all of
12 ~~the~~ the witness' testimony. That is what it sounds like. ~~I~~ I don't
13 know if you are asking for a strategic advantage, because I
14 read the Instruction that you gave me. But either way, the
15 testimony that goes to motive as I understand it was the gang
16 affiliation. That was the testimony that went to gang motive
17 which was the reason that he shot he said was because they
18 disrespected his gang. And that's what you heard Judge
19 Flanagan rule on in terms of motive. If the defendant made
20 other statements to the Confidential Informant that are
21 admissions or admissions against interest, or confessions not
22 made to a police officer, those would not be contained in the
23 cautionary Instruction. And I think the cautionary
24 Instruction is broad enough that you certainly could argue

1 either side what evidence came in and whether or not it goes
2 to motive.

3 MR. VILORIA: I appreciate that. I just want to say I
4 would reject any notion it was strategic. The only reason I am
5 bringing it up, Ms. Kossow came to me and talked to me about
6 it, so I thought it was incumbent to make a record. That is
7 our position. I will defer to this Court.

8 MS. KOSSOW: Just for the record, Judge, I went to
9 Mr. Viloria based his statement yesterday during the
10 preliminary Jury Instructions settling, I believe it was to
11 the motive Instruction. I can't remember what he was talking
12 about. He said something to the Court about limiting SA
13 1290's statements only as to motive. So I did approach him
14 afterward and say you are admitting that evidence, obviously,
15 for admissions as well as the motive evidence. I just want to
16 make sure that they weren't going to object in the middle of
17 my closing when I started arguing that. That is how it came
18 up.

19 MR. VILORIA: That is exactly why I am making my
20 objection now. I do not want to interrupt the State during
21 its presentation regarding that issue. I will submit.

22 THE COURT: It is an interesting argument that
23 somehow the cautionary Instruction that you requested somehow
24 limits the evidence that the State could utilize in the trial.

1 The evidence came in without objection from the defense. There
2 was no objection as to its relevance or as to its evidentiary
3 value. There was no objection, so all the evidence that came
4 in is free to be argued. Certainly that portion of the
5 evidence that came in for motive can only be argued and should
6 be without presented by you as saying that was just for motive
7 and you shouldn't consider it. But other statements the
8 Confidential Informant said were statements against interest
9 that your client was making that were not subject to bad act
10 evidence and were not necessarily evidence prejudicial to your
11 client except what your client said made it prejudicial. But
12 motive evidence came in as ruled by Judge Flanagan. That was
13 the gang affiliation evidence. But other statements that had
14 nothing to do with that are not part of the motive. So I don't
15 think there is any problem with this. I will certainly listen
16 during closings, and you said you had a transcript.

17 MR. VILORIA: I was relying on the transcript of the
18 oral adjudication for the motion. We had a hearing or Ms.
19 Nordvig did where there were several motions disposed, and in
20 those the offer of proof by the State included statements
21 against interests, like "I killed those F'n rats." So my
22 concern was that testimony went outside the scope of what was
23 addressed at a pretrial motion and what was adjudicated on.

24 THE COURT: What evidence though? What are we

1 talking about? What did you say you're worried about her
2 arguing?

3 MR. VILORIA: Well, the statements in the pleadings
4 related to the "Fuck MS-13."

5 THE COURT: What did the witness say?

6 MR. VILORIA: The witness said that he admitted he
7 went into the apartment and shot everybody up with an intent
8 to kill everyone, but somehow didn't complete it. And that
9 wasn't really the nature of the pretrial.

10 THE COURT: Why would you have to have a ruling from
11 the Judge for the admissibility of that?

12 MR. VILORIA: Similar to the analysis --

13 THE COURT: And if you did, why didn't you object?

14 MR. VILORIA: Similar to the analysis of the "rat"
15 statement where he's admitting to killing people. The
16 argument is who are the "rats?"

17 THE COURT: I think the problem isn't that he was
18 admitting certain people. I think it is the fact there was a
19 comparison between people and rats which is derogatory and
20 very, very, highly inflated plus the relation calling somebody
21 in another gang a rat. That was the purpose of that. But
22 assuming that you felt that should have been, that testimony
23 the Confidential Informant gave should have been part of
24 pretrial, why didn't you object?

1 MR. VILORIA: Your Honor, I think I didn't expect
2 the witness to testify differently than from what we heard
3 previously.

4 THE COURT: I understand that, but you still have to
5 object.

6 MR. VILORIA: I am lodging an objection now. I ask
7 it be made part of the record.

8 THE COURT: You can't object after the witness has
9 testified and say that I should preclude it now unless you
10 have some legal basis for that statement not to be allowed in
11 this case.

12 MR. VILORIA: I would just say it is the defense
13 position that SA 1290's testimony related to the subject of
14 this objection fell outside the scope of what was let in in
15 the pretrial hearings. Because of that.

16 THE COURT: No. I understand your argument. My
17 question is why didn't you object?

18 MR. VILORIA: As I said, Your Honor, I don't think we
19 expected the witness to testify in that manner when he hadn't
20 done it previously.

21 THE COURT: Come on. This is a trial. Witnesses
22 frequently testify differently than you think they're going to
23 testify. Why do you think we have the rule that you have to
24 object when it comes in? I could have fixed it. We could

1 have had a hearing if it needed to be fixed. I could have
2 fixed it if you had objected, but you did not object. That
3 evidence came in without objection.

4 MR. VILORIA: I will submit, Your Honor.

5 MS. KOSSOW: I want to be clear, in our pretrial
6 motion the State never put forth this is the only testimony
7 you are going to hear from SA 1290. We never said that. As
8 to the other act evidence, we expected the tattoos. We
9 expected defendant's own statements which was part of the
10 pretrial order as well as statements made to SA 1290. Never
11 did we say his testimony is limited, literally, to three
12 questions, did he say this statement, this statement, this
13 statement. That was never part of pretrial motions.

14 THE COURT: My memory also was some of the
15 statements that were not beneficial to the defendant were
16 actually elicited in cross-examination. I think one of the
17 most damaging comments came out in cross-examination. I'm
18 sure you didn't expect it, but it did come out in
19 cross-examination. Again, no objection, no request for a
20 limiting Instruction, no request for me to strike it. Nothing
21 came. So I think after the State has closed their evidence it
22 is too late to ask me to start striking or limiting this
23 evidence. And the remedy would not be just to strike it now
24 after the fact. The remedy is a mistrial. If truly there was

1 something wrong and you didn't object, that is the best you
2 can ever get. I am not even saying I would give it to you, but
3 that would be the alternative. I certainly couldn't, at this
4 stage of the proceedings, limit the State's argument since
5 there was no objection.

6 MR. VILORIA: I understand, Your Honor.

7 THE COURT: So if you decide you want to do
8 something else, let me know and we'll try to get these copies
9 to you. Anything else for today?

10 MS. KOSSOW: Not from the State, Your Honor.

11 THE COURT: Okay. Then I will see you Friday.
12 Thank you. Court's in recess.

13 (Whereupon, the proceedings were concluded.)

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1 STATE OF NEVADA,)
2 COUNTY OF WASHOE.) ss.

3 I, Judith Ann Schonlau, Official 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 as such reporter I was present in Department
7 NO. 4 of the above-entitled court on Thursday,
8 October 12, 2017, at the hour of 10:30 a.m. of said day and
9 that I then and there took verbatim stenotype notes of the
10 proceedings had in the matter of THE STATE OF NEVADA vs. LUIS
11 ALENJANDRO MENENDEZ-CORDERO, Case Number CR15-1674.

12 That the foregoing transcript, consisting of pages
13 numbered 1-36 inclusive, is a full, true and correct
14 transcription of my said stenotypy notes, so taken as
15 aforesaid, and is a full, true and correct statement of the
16 proceedings had and testimony given upon the trial of the
17 above-entitled action to the best of my knowledge, skill and
18 ability.

19 DATED: At Reno, Nevada this 15thst day of February, 2018.
20
21

22 /s/ Judith Ann Schonlau
23 JUDITH ANN SCHONLAU CSR #18
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JUDITH ANN SCHONLAU
CCR #18
75 COURT STREET
RENO, NEVADA

COPY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

-o0o-

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.)
)
LUIS ALEJANDRO)
MENENDEZ-CORDERO,)
)
Defendant.)

CASE NO. CR15-1674
DEPARTMENT no. 4

TRANSCRIPT OF PROCEEDINGS

TRIAL

FRIDAY, OCTOBER 13, 2017, 9:30

Reno, Nevada

Reported By: JUDITH ANN SCHONLAU, CCR #18
NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
Computer-aided Transcription

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A P P E A R A N C E S

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY

 BY: KELLY ANN KOSSOW, ESQ.

 ZELALEM BOGALE, ESQ.

 DEPUTY DISTRICT ATTORNEY

 WASHOE COUNTY COURTHOUSE

 RENO, NEVADA

FOR THE DEFENDANT: OFFICE OF THE PUBLIC DEFENDER

 BY: LINDA NORDVIG, ESQ.

 RICHARD VILORIA, ESQ.

 DEPUTY PUBLIC DEFENDER

 350 S. CENTER STREET

 RENO, NEVADA

1 RENO, NEVADA; FRIDAY, OCTOBER 13, 2017; 9:30

2 -oOo-

3
4 THE COURT: Thank you. Please be seated. Counsel
5 the packet was completed last night, yesterday, so are we
6 still comfortable with the packet as you received it this
7 morning?

8 MS. KOSSOW: State is, Your Honor.

9 MR. VILORIA: Defense is. Your Honor.

10 THE COURT: You will notice you also got a new set
11 of proposed verdict forms, and that is to handle the issue we
12 talked about last night with regard to the Information and
13 person's number.

14 MR. VILORIA: Yes, Your Honor.

15 THE COURT: Also, because we may need to have a
16 penalty hearing in this case, I have arranged with the
17 bailiffs to keep the alternates here in the building while the
18 jury is deliberating so the alternates will not be excused and
19 allowed to go about their business which is what we frequently
20 do. They will be held with an officer at all times and
21 separate and apart from the jury so that once we have a
22 verdict, if it is necessary to have a penalty hearing, they
23 will go back into the jury room again and be part of the jury.
24 In case we have a problem with one of the jurors who decided

1 guilt, we still have a set of jurors who heard all of the
2 evidence and can decide the penalty. So that is the process
3 we'll do. I just want to make sure we do that. Does anyone
4 have any objection to that?

5 MS. KOSSOW: No, Your Honor.

6 MS. NORDVIG: No, Your Honor.

7 THE COURT: Are we ready?

8 MS. KOSSOW: Yes, Your Honor.

9 THE COURT: Bring the jury in, please. Counsel will
10 you stipulate to the presence of the jury?

11 MS. KOSSOW: State would so stipulate.

12 MS. NORDVIG: Defense stipulates. --

13 THE COURT: Thank you. Please be seated. Good
14 morning ladies and gentlemen. We have come to the stage in the
15 proceedings when it is my opportunity to instruct you on the
16 law that applies to this case. Now I wish that I could just
17 discuss the law with you, but the law does not permit me to do
18 that. I must read specific written Instructions to you.

19 Now as I read these Instructions, do not be
20 concerned if you get lost in a particular Instruction and
21 don't worry about taking notes, because you will have a
22 complete set of the Instructions with you in the jury room, so
23 you can just sit back and listen to the Instructions as I read
24 them to you. You will have an opportunity to review them

1 again for yourself while you're in the jury room.

2 (Whereupon the Instructions were read by the Court.)

3 THE COURT: Thank you. Counsel, will you stipulate
4 the Instructions having been read to the jury?

5 MS. KOSSOW: State would stipulate.

6 MS. NORDVIG: Defense stipulates, Your Honor.

7 THE COURT: Thank you. Ladies and gentlemen, I
8 apologize for my voice. I thought I would get through that a
9 little easier, but thank you for your patience.

10 The time has come now to hear closing argument. The
11 law permits the State to go first with an opening closing
12 argument, and then the defense may make their closing
13 argument, and then the State is allowed to make their
14 concluding closing argument. We'll proceed at this time with
15 the State.

16 MS. KOSSOW Ladies and gentlemen, this case is not
17 about MS-13. This case is not about tattoos. This case is
18 about this defendant sitting right there at that table and the
19 mental decisions that he made coupled with the physical acts
20 he took on November 20, 2010 which extinguished the life of
21 Kevin Melendez and Moises Vasquez. And that is what we are
22 here to talk about today. And based on those actions, the
23 State is asking you to find him guilty on two counts of first
24 degree murder.

1 How do you take all of the law the Judge just read
2 to you and all of the facts that you heard over the last two
3 weeks and come to a verdict? That is exactly what the State
4 is asking you to do. Your road map is always the elements of
5 the two charges before you. They are exactly the same
6 charges. Don't forget there are two separate victims. We are
7 going to talk about the same actions over and over which you
8 apply to two victims. There are two separate and distinct
9 counts, both murder with the first degree and murder with a
10 deadly weapon.

11 First of all, let's talk about murder? What is
12 ~~murder?~~ The State must prove to you ~~beyond a reasonable doubt~~
13 that this defendant did unlawfully kill a human being with
14 malice aforethought. Express malice is the deliberate
15 intention to take away the life of another person. It is an
16 intentional wrongful act without legal cause or excuse. And in
17 this, because we are going to talk about a couple of different
18 intent elements, malice aforethought does not require any
19 deliberation. It requires a deliberate intention, but no
20 deliberation. Once you reach a conclusion that a murder has
21 occurred in this case, you are next asked to affix the degree
22 to that murder.

23 First degree murder is, again, additional intent
24 elements which are: Willful, deliberate and premeditated and

1 all three of those are intent elements that must be met before
2 you can convict this defendant of first degree murder. Jury
3 Instruction 15 read to you encompasses all the definitions of
4 these three terms we are going to talk about.

5 First of all willful is the intent to kill. Again,
6 it is an intent element that must be formed in the mind of a
7 defendant prior to the killing. We are going to talk a lot
8 about timing. The Jury Instruction tells you there needs to
9 be no appreciable space of time between the formation of an
10 intent to kill and the actual act of deliberation.

11 The second intent element of first degree murder
12 ~~talks~~ about the process of determining a ~~course of action~~ to
13 kill as a result of thought including weighing the reasons for
14 and against and a consideration of the consequences of your
15 actions. When you look at that, you might think that's a lofty
16 sentence, but the truth is every person does this on a daily
17 basis. I want to use two examples, very common. Every morning
18 when you're getting ready to go take your child to school to
19 go to work, you get halfway to your destination and you think
20 in your head oh, oh, did I leave my garage door open? Did I
21 leave my curling iron on? And it begins this deliberation
22 process in your head weighing the consequences for and against
23 it. Do I go back and risk being late or risk having my child
24 late for school, or do I go to work or to school and risk

1 maybe somebody breaking into my house or something happening
2 because I left my curling iron on? Again, this act of
3 deliberation is done all day every day and in everyone's mind
4 without even thinking about it. The law goes on to tell you
5 again about the time requirement that deliberate determination
6 may be arrived at in a short period of time, but in all cases
7 the determination must not be formed in passion or, if formed
8 in passion, it must be carried out after time for the passion
9 to subside and deliberation to occur.

10 The third intent requirement is premeditation, and
11 that is straightforward. It is a design, a determination to
12 ~~kill~~ kill distinctly formed in the mind by the time of the killing.
13 So it has to be formed in your mind that you are going to
14 commit this act prior to the act. And, again, the law tells us
15 about what is enough time for this to happen. And it says not
16 for a day, an hour, or even a minute. It may be as
17 instantaneous as successive thoughts of the mind.

18 If the jury believes that the evidence, that the act
19 of killing has preceded and is the result of the
20 premeditation, again how rapidly those thoughts are occurring
21 in the defendant's mind, then it is premeditation. And this
22 specific law goes on even further talking about the timing.
23 There is no specific requirement of a minute, a day. It says
24 there is no undertaking by the law to provide an exact period

1 of time upon which a thought must be pondered before it can
2 ripen into an intent to kill which is truly deliberate and
3 premeditated, and the time will vary in every individual and
4 in every case. The true test is not duration but extent of the
5 reflection. A cold calculated judgment and decision may be
6 arrived at in a short period of time. And so how does one
7 begin to understand what those intent elements in someone's
8 head are? How do you get to what is going on in someone's
9 head? And the law tells us that, how you may determine that
10 which is it can be proved by circumstantial evidence. It
11 rarely can be established by any other means unless the
12 defendant makes a specific statement as to his intent. We are
13 not required to present direct evidence of a defendant's state
14 of mind as it existed during the commission of the crime,
15 because, as I stated, there can be no eyewitness account of
16 what is going on inside somebody's head. But what you can
17 look at are the actions of the defendant, what do his actions
18 tell you he was thinking when he did this act, and you are
19 entitled to consider statements made and acts done and all
20 facts and circumstances in evidence which can aid you in
21 coming to a determination as to what he was thinking.

22 I am going to talk briefly about the deadly weapon
23 in this case. It is charged in both counts. The definition
24 is very straightforward. There are actually three alternate

1 definitions, but the State would put forth to you the first
2 one should convince you beyond a reasonable doubt that the
3 weapon used in this case absolutely qualifies as a deadly
4 weapon. And so after you have the elements of the crime that
5 you are trying to apply these facts to, how do you apply the
6 facts?

7 You heard from several what we call lay witnesses
8 meaning not police officers, and your job along with the
9 police officers, is to judge their credibility. Are they
10 telling you the truth? Are they being honest when they tell
11 you what happened, or is there something else going in their
12 testimony. ~~And~~ that's for you to decide, and the law gives--
13 you some things you can look at. Manner, conduct upon the
14 stand. Those are all things you can look at plus look at all
15 the other evidence to decide if that witness is credible and
16 if you believe what they are saying.

17 Inconsistencies -- I am sorry. Let me go back to
18 credibility. For example, there is another Instruction that
19 talks about a prior conviction. And you heard Charles Payne
20 during his testimony talk about that he had suffered a prior
21 felony conviction, and the law says that is something you can
22 take into consideration when assessing his credibility, but
23 the State would put forth, listen to his testimony, what is
24 corroborated by other witnesses when he told you he gave this

1 defendant a tattoo, and you see a tattoo on the top of the
2 defendant's head. That is what your credibility determination
3 is about.

4 The law goes further and talks to you about what you
5 can look at in regard to inconsistencies, and there were
6 inconsistencies in this case. Again, one pointing out with
7 Charles Payne, he testified on direct that he recalls being
8 paid \$500 for giving a tattoo to the defendant. But on
9 cross-examination, Ms. Nordvig showed him a transcript back
10 when he was interviewed. He talked about getting speakers
11 worth \$500. So there is inconsistencies, but what the law
12 tells you, it is for you to decide whether that was an
13 innocent error or did he willfully deceive you in some way.

14 Another example is Jose Garcia also known as Pudgy.
15 Listening to his testimony, was he innocently mis-recollecting
16 what he had told police back in 2010 or 2011 I think was his
17 interview, or was he being willfully false in his testimony?
18 That is for you to decide. We'll talk about that a little bit
19 later.

20 So what it comes down to is the State must show that
21 a murder occurred, and the State must also prove the degree,
22 first degree, those elements we just talked about. So let's
23 talk about them individually and the evidence that you
24 received in this case to meet each and every one of those

1 elements.

2 The unlawful part really just talks about no
3 self-defense, no justification. You didn't hear any evidence
4 in this case, nothing justified this defendant in killing
5 these two men, therefore, it is unlawful.

6 Malice aforethought, again it is that deliberate
7 intent to take away the life. And if you put aside whether
8 this defendant is the person who did it and you just look at
9 the facts of this case, you can absolutely find beyond a
10 reasonable doubt that these crimes were committed with malice
11 aforethought. We know a loaded gun was pointed at each of
12 those individuals. ~~The~~ gun was loaded with bullets capable of
13 causing death. Multiple shots and in very close proximity to
14 the victim when fired. So that absolutely demonstrates the
15 deliberate intention to take away the life of Mr. Melendez and
16 Mr. Vasquez.

17 The State is not going back to talk about malice
18 aforethought again, because it has been proven by the evidence
19 beyond a reasonable doubt.

20 The third requirement to show a murder occurred is
21 the killing a human being. Again, there are two counts in
22 this case. You heard from Dr. Kubiczek who conducted the
23 autopsies on Mr. Melendez being 19 years old and Mr. Vasques.
24 The cause of his death was multiple gunshot wounds to his back

1 so he absolutely was killed.

2 Count II, Mr. Vasquez, same thing. There should be
3 no question in your mind that two of those human beings,
4 Mr. Melendez and Mr. Vasquez died as a result of being shot.
5 Doctor Kubiczek told you again the caue of death for
6 Mr. Vasquez was a single gunshot wound to his face. You can
7 see it in the photograph there. I am not going to go back and
8 talk about this again because these fact, those elements have
9 been met beyond a reasonable doubt.

10 As I already stated, the deadly weapon in this case
11 which was recovered, I am not going to talk about that again
12 either because the law is very clear what a deadly weapon is,
13 and the State has proven that to you, provided you the weapon
14 used in this case, and the deadly weapon has been met beyond a
15 reasonable doubt.

16 So let's talk about the evidence that supports first
17 degree in this case, because, again, no doubt that a murder
18 occurred. Let's talk about can you find it to be first degree
19 murder and can you find this defendant is the one who did it.
20 We are going to talk about the eyewitness testimony, the
21 physical evidence, scientific evidence, motive, consciousness
22 of guilt and then the statements made by the defendant.

23 Let's talk again about the lay witnesses starting
24 with Ms. Yost last week. What did she tell you? I am going to

1 summarize. She told you she knew Primo, Mr. Rodriguez, from
2 prior occasions. She said from multiple prior occasions. And
3 she knew the defendant from prior occasions. Why is this
4 important? Because one could imagine if you have only met
5 someone one time, it makes it much more difficult to identify
6 that person. But when you have met someone on occasions,
7 occasions makes it much easier to identify that person. And as
8 put up on the screen, the defendant actually had pictures of
9 himself at Ms. Yost's apartment that she identified for you
10 close in time. She had only met him several times. A couple
11 of those times he came over to her apartment. And, again, we
12 know that because there are pictures of him there wearing that
13 blue beanie, blue shirt. What Ms. Yost also tells you is she
14 places Mr. Melendez and Mr. Vasquez at her apartment on the
15 night of the shooting. She also places Mr. Wagner, Ms. Rios-
16 Quintero and Mr. Gomez on the night of shooting and gave
17 explanation how everybody got there. She told you she had only
18 met Mr. Wagner and Ms. Rios-Quintera, Yesinia, that evening.
19 Everyone else she had known before. She described about
20 speaking with Elder Rodriguez or Primo earlier in the day,
21 inviting him over that night. He had only come over one time
22 that day. She also told you about how she met him in the
23 parking lot. She was leaving to go to Wal-Mart with Crystal
24 Moreno and Kevin Melendez when she sees them coming, Elder and

1 the defendant. She gets out of the car, goes over and meets
2 them. Again, why? That is important for a couple of reasons.
3 Number one, she describes she sees the defendant get out of
4 that passenger side door with no shirt on. Why is that
5 important? Because at that time, she noticed the M and S
6 tattoo on his stomach. Later that is one of the ways she
7 identifies the defendant. She talks about that the defendant
8 had grabbed this water bottle and handed it to her that we
9 talked about, and then most importantly, she provided you
10 details of the shooting, exactly how it occurred. She talks
11 about everyone being there playing cards which is corroborated
12 by other witnesses. And, again, ~~not~~ really noticing Elder
13 Rodriguez and the defendant had left her apartment. She
14 thought maybe they had gone out to smoke. And the next thing
15 she knew, she described for you how that door flung open. She
16 was seated at the table along with Mr. Melendez, Mr. Vasquez,
17 Ms. Rios-Quintero, Mr. Wagner, and described Kevin standing
18 up, throwing down his cards and saying some expletives. The
19 next thing she knows, she hears what she called fire crackers.
20 Ms. Yost and Mr. Wagner both thought it was some type of
21 practical joke, couldn't believe in their mind actually what
22 was happening when this actually occurred. She recollected
23 that Kevin and Moises actually ran into each other at one
24 point and then fell to the ground. She vividly described to

1 you how she got up to the table, went into the kitchen and
2 just stood there with her hands up staring exactly at the
3 shooter, at this defendant as he still held the gun, as smoke
4 was coming from the gun. And she said I could see his lips
5 moving but I couldn't hear what he was saying because my ears
6 were ringing from the shots. And then she describes him
7 running away, leaving the apartment. And I believe she said
8 that she ran over and shut the door, and then the aftermath of
9 what had just occurred.

10 (Whereupon the CD was played.)

11 MS. KOSSOW: The absolute chaos that occurs after
12 this defendant runs away from the apartment after just
13 shooting two people is contained in that exhibit and shows you
14 what these witnesses went through after this. And you can hear
15 Kristine Yost on there calling out Primo's name several times,
16 and she told you after the shooting she called 9-1-1 and for
17 whatever reason hung up. She called Primo hysterically
18 screaming, why, why, screaming into the phone and the answer
19 she receives from Primo, "I told him not to do it." She
20 identifies this defendant seated over at the table as the
21 person who shot and killed Kevin Melendez and Moises Vasquez,
22 and she does on a lineup on November 20th, the very same day
23 of the shooting later in the afternoon with detectives from a
24 California I.D. photo from I believe it was 2009 taken of this

1 defendant. And I want you to, as you're listening and
2 recalling the testimony of these witnesses, see how much is
3 corroborated by each other.

4 Mr. Wagner came after Ms. Yost. He told you he met
5 up with Kevin Melendez that night and Moises Vasquez. They
6 went to Kristine Yost's apartment twice that evening. Once
7 they went, the first time I believe he said Yesenia was not
8 there. They left, picked her up and came back with her.
9 Again, as what Ms. Yost told you, they were all sitting around
10 the table playing cards. Nothing eventful happens in that
11 evening prior to the shooting occurring. That was said by
12 Ms. Yost and Mr. Wagner. ~~They are playing cards,~~ Crazy 8's.
13 The two guys enter. He described one as friendly and the
14 other posting by the door which he told you was the defendant
15 stood up, and you have a picture of the love seat with
16 Mr. Rodriguez' jacket still left in the seat where he told you
17 he sat that night. He again, just like Ms. Yost, told you
18 these men come in, they leave what he believed for a smoke and
19 only one of them returned, the defendant shooting that gun at
20 Kevin and Moises, and then he believed he was the one that
21 went over and closed the door. He told you he tried to help
22 in the aftermath. You listened to that entire 9-1-1 call.
23 You can hear him at one point in there asking questions. When
24 he couldn't help anymore, he told you he hid in the closet

1 until police arrived. He was 17 years old at the time that
2 this shooting took place. So take that into consideration
3 even when he's testifying on the stand. And you saw how
4 emotional he was when he testified. He interviewed with police
5 again that same morning going into the morning hours of
6 November 20th of 2010, and he was able to I.D. Elder Rodriguez
7 as the person who brought the defendant. He originally
8 misidentified the defendant in the lineup with Elder
9 Rodriguez, and you have that exhibit. Later that day
10 detectives go back with him with the lineup that actually
11 contained the defendant this time and he's able to pick him
12 out of that lineup. He identified him here in court for you as
13 the person, again, who shot and killed Kevin Melendez and
14 Moises Vasquez.

15 Elder Rodriguez. Another I would call percipient
16 witness meaning he was there up until the time of the
17 shooting. He tells you important things. That he picked up
18 this defendant to take specifically over to Kristine Yost's
19 apartment. He knew him as Alex or Appo. Remember Kristine
20 thought his name was Apple. There was some miscommunication.
21 He describe him as light skinned Hipanic male with a goatee.
22 These photographs came from his phone of the defendant. He
23 identified in those photograph that beanie. He told you that
24 just like Kristine, he told you, he had been to her house

1 before and been to the house with the defendant. He again
2 corroborates what Ms. Yost told you. They actually met in the
3 parking lot. They go inside. He told you, Terrell told you
4 he went and greeted everybody and went and sat on the love
5 seat. He told you he left the apartment to go smoke a
6 cigarette, then he walked to 7-Eleven to buy more. As he's
7 walking there, he told you he gets this call from Kristine
8 Yost where she's hysterical and screaming at him. He tried to
9 return to the apartment but the police were already present.
10 I put in yellow up there what he told us on the night of the
11 murder this defendant did not have any tattoos on the top of
12 his forehead. That becomes important later. He identified
13 this defendant seated over here in court as the person he took
14 to Kristine Yost's on the night of the murder, again
15 corroborating Ms. Yost, corroborating Mr. Wagner, this is the
16 person that committed these murders.

17 You saw several times the playing of the 7-Eleven
18 video for two reasons: Number one, it shows you what Elder
19 Rodriguez looked like on the night of the murder, what he was
20 driving, what he was dressed in and more importantly it
21 establishes a timeline for this case because of witnesses who
22 weren't really paying attention to time. But we know from
23 Mr. Rodriguez' testimony he went to the 7-Eleven before going
24 to Ms. Yost's apartment. He could not remember when he was

1 seated here whether the defendant was in his car or not, but
2 he does remember going to the 7-Eleven before. And the time
3 stamp on this video, there is two different time stamps
4 because of the cameras, but it is about 1:40 and on November
5 20th. What that tells you, and he told you Kristine's
6 apartment is literally five blocks away. The timing
7 Mr. Rodriguez and the defendant were at Kristine Yost's
8 apartment is very short. This is 1:40 in the morning. And we
9 know through several of the officers the 9-1-1 call was
10 somewhere around 2:15 and officer ussell15th, or excuse me,
11 Sgt. Russell testified to that. So again, very short time
12 period. There wasn't hours and hours. This was a very short
13 time period. By everyone's account, nothing happened. Nothing
14 out of the ordinary happened.

15 So let's go back. We talked about the eyewitness
16 testimony in this case. Let's talk about the physical
17 evidence. There wasn't a lot of physical evidence. What you
18 did see were the crime scene photographs. And, again, as we
19 are going along, ladies and gentlemen, this case the State's
20 case is building. Every piece of evidence builds to beyond a
21 reasonable doubt. There is no one piece of evidence that is
22 more important than the other. It is all important and all
23 built to the standard of reasonable doubt.

24 We talk about the physical evidence. We talk about

1 evidence of the shooting. The red staining Ms. Margritier
2 told you appeared to be blood evidence. The recovered casings
3 and finally the gun. When I say evidence of a shooting, I
4 mean when the police arrived this scene appears to corroborate
5 what witnesses are telling them. You've got, again, blood
6 evidence. You have got in the lower right-hand corner at
7 placard 14 as well as placard 23 the teeth of Kevin Melendez
8 that were torn out basically by the travel of the .22-caliber
9 bullet. Doctor Kubiczek explained that to you when he saw the
10 photographs. Again, evidence a shooting occurred.

11 Physical evidence. Those casings, remember there
12 were three in the kitchen at 7, 8 and 9. There was one in the
13 living room at placard 10, four cases altogether, and then the
14 gun. The gun was collected almost four months later when a
15 citizen was walking by and saw this gun in the bushes. What
16 Sgt. Russell told you, it was actually on a raised planter
17 literally two blocks from the scene of this murder sort of
18 laying down in the bushes after the snow had sort of flattened
19 them down is how Sgt. Russell described them. He told you how
20 he took the gun, how he had to literally pry out the bullet
21 that was in the chamber as well as those bullets that were in
22 the magazine. And he told you there were six in the magazine
23 plus that one in the chamber which equal seven. We are going
24 to talk about this a little bit more in the scientific part.

1 Remember how Kristine Yost described the gun to you
2 as well? She said it had a long barrel. What it looked like
3 to her it got skinnier and bigger at the end. Look at this
4 gun that was actually located. So we talked about eyewitness,
5 about physical.

6 Let's talk about the scientific evidence or the lack
7 of scientific evidence in this case. Fingerprints were
8 attempted. None were found. DNA was attempted and again the
9 specific items that you heard supported by witnesses'
10 testimony as to maybe the shooter or the defendant touched
11 these items. So that is why you heard about this water bottle
12 ~~you see being~~ bought in the 7-Eleven video ~~because, according~~
13 to Kristine Yost, although Rodriguez handled it when they got
14 out of the car, the defendant took it and gave it to her. You
15 heard about the passenger side of the Eclipse and the swabs.
16 Unfortunately, there was a mixture on the water bottle and no
17 interpretation could be provided. Same thing with the car.
18 There were these mixtures and no interpretation and no match
19 to anyone in this case, even Elder Rodriguez, even though it
20 is his car.

21 The cigarette butts. People had reported the
22 defendant was smoker. They checked the cigarettes. They came
23 back only to the female. Does that mean he didn't smoke and
24 took them with him? We don't know. But we couldn't match it

1 with these cigarette butts.

2 Finally, the gun, low level DNA which is not
3 surprising because this gun was found outside in different
4 areas. Ms. Siewertsen told you you can imagine the snow on the
5 gun, the harsh winters that we have here, it is not surprising
6 no DNA was found anywhere on the gun.

7 Finally, the firearms examination. This is the
8 place where scientific evidence did come into play. We had
9 cartridge casings as well as the .22 Colt Woodsman. Ms. Heward
10 told you a couple different things I wrote down when
11 Mr. Bogale questioned her. She could tell you all four
12 casings at the scene were fired in the same firearm. Why is
13 that important? Because it corroborates and supports there
14 was only one shooter that night and it was this defendant. She
15 next told you all four cartridge casings were fired from the
16 Colt Woodsman. All from the same gun. All from this gun that
17 was recovered. And it was this weapon she said, the recovered
18 Colt Woodsman to the exclusion of all other Woodsmen. A gun
19 found two blocks from the murder scene matches the casings
20 that were found at the scene. This is the murder weapon,
21 ladies and gentlemen. Absolutely shouldn't be reasonable
22 doubt this is the murder weapon that killed Mr. Melendez and
23 Mr. Vasquez.

24 The firearms comparison also gave us some other

1 information that you can use when determining intent in this
2 case. She told us it was fully loaded. When it was fully
3 loaded, it would have eleven bullets. Eleven, yes. Compare
4 that to what officer Russell recovered which was six from the
5 magazine, one from the chamber, then we know there were four
6 casings found at the scene as well. As Ms. Heward told you
7 the bullets recovered from the bodies equaled an amount of
8 bullets so all of that together equals eleven, so that gun was
9 fully loaded at eleven. She also told you it was a
10 semi-automatic. What does that mean? It means that you pull
11 the trigger, release it, pull it again and release it and you
12 have to do that every time you fire one bullet from that gun.
13 That is what semi-automatic means. We are going to talk about
14 that a little bit later.

15 And, finally, she had intermittent firing problems
16 from the magazine into the barrel of the gun. And why is that
17 important? It is important because of Terrell Wagner's
18 testimony when he saw this defendant shoot, that he shot, that
19 he shot and he thought he pointed it at him, and he heard this
20 clicking noise. And that is corroborated by the gun found in
21 the planter and by Ms. Heward telling you there was actually
22 some type of firing problem with this gun. So we talked about
23 eyewitness, physical, scientific.

24 Let's get to the motive evidence in this case. You

1 have been told time and time again that -- Let me start with
2 the definition of motive. It is not an element of the crime
3 charged. It need not be shown, however you may consider it as
4 a circumstance in this case. The presence of motive may tend
5 to establish guilt and the absence of motive may tend to
6 establish innocence. You will, therefore, give it its
7 presence or absence as the case may be, the weight to which
8 you feel it is entitled. And you have heard over and over
9 again in this case by the Instructions read to you by the
10 Judge that the only way to consider motive in this case is for
11 that purpose. Not for any other purpose.

12 When I said this case isn't about MS-13, it is not
13 about tattoos is what I meant. The killing of Mr. Melendez and
14 Mr. Vasquez happened that evening. That is the first degree
15 murder. Why did it happen? That is what this evidence is.
16 Why? Why would it happen and what does it tell us? All of
17 the evidence that you heard in regards to this defendant's
18 MS-13 gang affiliation, the evidence you heard from SA 1290 as
19 well as Mr. Freestone or Agent Freestone in regards to what
20 does it mean to be disrespected. That is what plays into this
21 motive because, again, absent this evidence, you have no idea
22 why these killings happened.

23 And, finally, the motive goes to talking about the
24 pride and the tattoo after killing. That's why that is

1 important, because we learned from SA 1290 when he did speak
2 with the defendant after the crime, he said these two
3 individuals or one of the individuals at the party made the
4 statement "fuck MS". It was from that statement and whatever
5 else he perceived that he made the decision to kill these two
6 men. And we know it was motivated by MS-13 because he went and
7 got that tattoo afterwards. You heard Agent Freestone tell
8 you about first of all how respect or lack thereof plays into
9 the gang community. And I believe he said once you are
10 disrespected you have to retaliate. It is upon you to
11 retaliate. You can't just walk away. And that is what the
12 defendant did in this case. More than retaliation to prove
13 the motive was gang related, he went and got the tattoo. We
14 know that because of Elder Rodriguez. Mr. Payne who did the
15 tattoo November 20, 2010 and Agent Freestone identified again
16 why one would get a tattoo in the gang culture, MS-13. I put
17 those three pictures up there to show you the defendant prior
18 to the killing, the picture taken at SA 1290's house with the
19 fresh tattoo which is difficult to see. Finally, a more
20 clearer picture of Mr. Menendez-Cordero in September 2015 with
21 that tattoo and now something over the top of it. That tattoo
22 is his pride in killing the two men in this case. It goes to
23 prove that it was motivated by his gang affiliation and that
24 is the only way you can use that evidence. All right.

1 We talked about eyewitness, physical, scientific,
2 motive. We talked about consciousness of guilt. What evidence
3 did you receive about a guilty mind in this case? You
4 received flight evidence as well as the threats to
5 Mr. Rodriguez' family member. Let's talk about flight. There
6 is an Instruction that tells you what has to be proven and how
7 you are to consider it. It is number 28. It tells you it is
8 not sufficient within itself to establish a defendant's guilt.
9 However, if proved, it may be considered by you in light of
10 all other evidence in deciding the question of guilt. Just
11 one more block in those building blocks. The existence of
12 flight embodies the idea of deliberately going away with some
13 type of purpose or plan to avoid apprehension or prosecution.
14 And you decide what weight to give that evidence.

15 What evidence do you have of flight? Obviously, he
16 fled from the murder scene running away. We know Elder
17 Rodriguez' car was still on scene. He didn't take the car. He
18 fled. You know where that murder weapon was found, two blocks
19 from the scene. The State would certainly argue he ran north
20 on El Rancho discarding that weapon and kept going. We know at
21 some point he fled to Sacramento, met with SA 1290 about the
22 conversation they had. And you also learned that through
23 detective Woodard who had gone to Sacramento on an
24 investigative tip to try to find him there. Again,

1 corroborated by SA 1290, yes he did come and was meeting
2 somebody to take him to Los Angeles. We know the police went
3 to Los Angeles and tried to locate him there, couldn't find
4 him there either. Then 2015 you know he's brought to the
5 Sparks Police Department to be interviewed. So there
6 absolutely is evidence of flight in this case. Ladies and
7 gentlemen, we would ask you to use that again in your
8 consideration with whatever weight you determine it deserves.

9 Threats evidence. You heard this evidence sort of at
10 the end of the trial. The State would purport this evidence
11 shows you the guilty mind in this case and it also
12 demonstrates identity of who ~~shot~~ and killed these men. I took
13 a snapshot of the exhibit which is 135, the verbatim
14 transcript produced by the FBI in regards to this I-web. You
15 can see the defendant on the left. You can see the men who
16 Agent Freestone said were most likely in El Salvador. This
17 occurred August 30, 2017. You can read that transcript.
18 Remember Agent Freestone's transcription as well about what
19 exactly the defendant is saying. Some of these words are code
20 like when he says buy a brain. Agent Freestone told you that
21 is most likely a cellphone. And then he talks about sending a
22 message. Again, you determine in what context he's talking
23 about. And he identifies himself by saying that his name is
24 from the Bible and you tell that dude, reading from the

1 transcript, not to get there. That he don't get there to what
2 it is. Okay? The date that I am going to go in front of, in
3 front of the dude himself to see what the shit is about. Agent
4 Freestone told he was talking about coming to court in front
5 of the judge. Those men in El Salvador said he understood,
6 what is the number? He goes on to give them the number that's
7 not up there, but, again, he tells them again what to do with
8 this message. Reach out, contact him, tell him what is up lil
9 cousin. Why does he keep coming around? And then he makes
10 the threat. Look, we just don't want it because, yeah, right
11 there your boss, or you are going to see your boss or
12 something, and you will see that the piece of shit is broken
13 right away. The thing is that the son of a bitch is the one
14 that, yeah, well that will, that is arriving there, right?
15 You understand me? He's the only son of a bitch that if he
16 doesn't get there and not the whole problem. Well maybe it
17 changes the game man, right? And the men in El Salvador say
18 all right, we are going to do our part in advance. The State
19 certainly believes that the defendant on August 30, 2017 makes
20 this threat or tells them to communicate this threat to a
21 witness in order that this case will go away and that he won't
22 be here. It is followed up by an August 31st 2017 phone call
23 with a very short excerpt from Bertha Arias. Agent Freestone
24 told you in very simple terms he was asking her to please

1 remind the guys, remember this is a day later, remind the guys
2 to send a message to the guy showing up to the Court, just
3 reiterating the prior threat. This is the witness, and I put
4 this section of transcript where the defendant says the number
5 as he's reading it off the piece of paper. Then you heard
6 detective Valenti as well as Elder Rodriguez, himself told you
7 his current cellphone. And remember that last number. Agent
8 Freestone described for you how it is normal for MS-13 gang
9 members to refuse to say the letter 8 in Spanish because of
10 18th Street, their rival. So they say a word that translates
11 to whole in English. He told you that last number would be
12 eight. Ask yourself why would this defendant make those
13 threats in this case if he is not the person that did it?

14 That brings us to our last category of evidence in
15 this case which were the statements made by the defendant,
16 himself. Two occurrences of those, one in the police
17 interview on September 17, 2015 and then statements made to SA
18 1290 days after the murder. Let's talk about the police
19 interview first with Sgt. Chavez. He told Sgt. Chavez
20 basically he had been to Reno on prior occasions but that he
21 wasn't here at the time of the murder. He said he had read the
22 paperwork and he knew what the date was. He was absolutely
23 not here at the time of the murder. Weigh that with all of the
24 other testimony that you have heard from the witnesses in this

1 case and ask yourself again was the defendant being deceitful.
2 At one point when Sgt. Chavez tells him as he's walking out of
3 the room, and I put the still photo on from the interview
4 clip, by the way, we recovered the gun and
5 Mr. Menendez-Cordero's reaction is "I don't give a fuck." He's
6 shown the photo to Elder Rodriguez and asks if he remembers
7 him or knows him. He said not at all. Again in direct
8 contradiction to Mr. Rodriguez' testimony, to Ms. Yost's
9 testimony and even to Terrell Wagner as he described them
10 coming to the party together. He says Sgt. Chavez asked him
11 if his name is Appo. He basically says no. When Sgt. Chavez
12 enters the room, calls him Appo, asks if he wants a soda, he
13 basically says no thank you. Then Sgt. Chavez asked him is
14 your name Appo and he just shakes his head. In the end of the
15 interview he says when he's asked by Sgt. Chavez over and
16 over, he says I don't know anything, and if I knew something,
17 I won't snitch either. And he tells detective Chavez, do you
18 understand? And very lastly, in the last clip the State
19 played Sgt. Chavez asked him about Bullet, Christian
20 Maldonado, and he said "I don't even know them." He also asked
21 him about his wife or girlfriend and, again, that testimony is
22 in direct contradiction to Jose Garcia is impeached testimony
23 meaning what Jose Garcia told police back in 2011 when he
24 said, "yeah I met Appo. I was over at Christian Maldonado's,

1 Bullet's house having beers hanging out. Again, look at the
2 defendant's statements made in that interview and ask if he is
3 being deceitful. Ask yourself.

4 Finally, the statements to SA 1290. So SA 1290
5 provided you evidence of the motive in this case, and that
6 evidence is only to be used as motive evidence, but he also
7 told you admissions by this defendant. Those admissions being
8 one that he had come to -- he had called him up while he was
9 at work, "Can I come to your place? Somebody's coming to take
10 me up to, take me to L.A." SA 1290 says, "Sure. I am at work.
11 You go ahead. Once I get off work," he said he went home and
12 hung out with the defendant. It is at that point that the
13 defendant tells him that he committed a double murder. And
14 then he gives him some description of how it happened. He
15 says he was at Bullet's apartment. Primo invited him to a
16 party, didn't really want to go because he had just had this,
17 either some work done on his tattoo or something to do with a
18 fresh tattoo work, and he didn't want to go for that reason.
19 The reason that was important later when Kristine Yost tells
20 you when he got out of the car, he didn't have a shirt on. He
21 put on a sweatshirt and zipped it up. That is in
22 corroboration with what SA 1290 is telling you why he doesn't
23 want to go in the first place. He said the defendant told him
24 when he got to this party, there were some gang members

1 present, weapons. Then he told you that motive evidence about
2 the "Fuck MS" comment. He said he went to his car, got his
3 gun, came back in the house, shot one of the people in the
4 face. And he talked about the gun jamming. Ask yourself how
5 does he know about the gun jamming other than this defendant
6 told him that, because that's exactly what happened.

7 Finally, he made the statement, "He told me he was
8 going to kill as many people as bullets would allow."

9 Ladies and gentlemen, all of that evidence that I
10 just discussed, those building blocks over and over tell you
11 that the murder of these two men was willful, deliberate and
12 premeditated with the use of a deadly weapon. Again, I want to
13 talk just about that mental process and the actions that he
14 took on that night. I am at the end of this. His decision
15 that night to leave the apartment. Think about that when
16 you're looking at was it willful, was it deliberate and was it
17 premeditated. Think what he had to do to kill these two men.
18 He had to leave the apartment. He had to walk all the way, I
19 put the photograph up there, to Primo's car where that gun
20 was. He had to grab the gun. He either loaded it, which I
21 believe SA 1290 said or he had to make it ready. He then
22 grabs the gun, walks all the way back to the apartment, makes
23 the decision at that point from the point that he leaves the
24 house, actually the apartment. He opens that door. He takes

1 that gun. He walks towards the victims in a very small
2 apartment to begin with. He aims that gun. Think about that.
3 He aims that gun. What is going on in his head when he raises
4 that gun and points it at those two men? What does he do? He
5 pulls the trigger, pulls the trigger, pulls the trigger and
6 pulls the trigger four times. And we know that because of the
7 four casings. And we know he even pulled it one more time
8 maybe a couple times because of the click, click, click of
9 that gun. All of that done, every single pull of that trigger
10 done with the intent in his head to kill these two men. And
11 that is how you know that it is deliberate. It is intended to
12 ~~kill~~. It was deliberated walking out to that car and coming
13 back. It absolutely was in his head as to what he was going
14 to do before he did it. Remember that statement "kill as many
15 people as bullets in the gun." And look at those photographs
16 as to what he did to these two men.

17 Based on all the evidence in this case, ladies and
18 gentlemen, there should be no doubt that a murder occurred
19 with malice aforethought and with that willful, deliberate and
20 premeditated absoluteness to convict this man of two counts of
21 first degree murder. Thank you.

22 THE COURT: Thank you. Ladies and gentlemen of the
23 jury, the next stage of the process will be the closing
24 argument of the defense. However, we have been listening for

1 about an hour and a half. I think it is a good idea, we
2 started at 9:30, I am a little fuzzy with my cold, but I am
3 looking, it is a little before 11:00. I think it is a good
4 time to take a short recess. Remember that you have not
5 gotten this case for deliberation yet, so you may not discuss
6 the case among yourselves or with anyone else. You may not
7 form or express any opinion about the ultimate outcome of this
8 matter, and you may not consult any reference materials,
9 conduct any experiments or look into the facts or
10 circumstances surrounding the case. Go into the jury room for
11 a few minutes. Counsel, we'll take a short recess.

12 (Short recess taken.)

13 THE COURT: Counsel, will you stipulate to the
14 presence of the jury?

15 MS. KOSSOW: State so stipulates?

16 MS. NORDVIG: Defense so stipulates.

17 THE COURT: Defense may make your closing.

18 MS. NORDVIG: Thank you. May it please the Court.

19 THE COURT: Yes.

20 MS. NORDVIG: Ladies and gentlemen of the jury.

21 Counsel. On behalf of Luis, my partner Richard, I would like
22 to thank you for your time over the last two weeks. Not only
23 your time but your attention and your service. We all
24 understand, and I think I can speak for the State, that it is

1 a sacrifice that you made to put your lives on hold in order
2 to do jury duty. Not only is your participation important to
3 the judicial system, but it is important to everyone here. You
4 are the ones that make this work. All of us are here for you
5 to help us protect the rights that are guaranteed by the
6 Constitution of this country and this state.

7 As you heard during jury selection, this case is
8 charged as two counts of murder with a deadly weapon. You were
9 also told that it is the State's responsibility to meet its
10 burden of proof and to prove each and every element of each
11 offense beyond a reasonable doubt. And that is the issue that
12 you and only you get to determine.

13 Last Tuesday I believe it was during our
14 jury-selection process you were told three of the basic rules
15 that a juror needs to follow in a criminal case. This morning
16 the Judge read you the law and part of those are these three
17 rules: That Mr. Menendez-Cordero is presumed innocent until
18 proven guilty. You were also told that the burden of proof is
19 on the State. That Mr. Menendez-Cordero and through me his
20 counsel and Richard we didn't have to do anything.
21 Mr. Cordero didn't have to take that witness stand. He's
22 protected by the Constitution. And the law says you cannot
23 consider the fact that he did not testify in reaching your
24 verdict. The State must prove their case beyond a reasonable

1 doubt. This morning you heard the formal instructions of the
2 law read by the Judge that you must apply to this case. You've
3 taken your oath to apply that law to the evidence and only the
4 evidence that you have heard during this trial. Remember
5 Mr. Menendez-Cordero is presumed innocent and the State has to
6 do their job. And it's your job to determine whether or not
7 they have.

8 The first thing you heard about was a party with a
9 bunch of underage kids drinking and doing drugs. The State
10 called them a motley crew, but it is not the State's job to
11 determine what they were. It is your job, because you have
12 been taking notes. You have been listening. You have been
13 paying attention. You have been engaged. It's your job to
14 determine the credibility of a witness. The Judge read it to
15 you earlier, it is Instruction 19. You will have all of these
16 back there with you. But to the jury alone belongs the duty
17 of weighting the evidence and determining the credibility of
18 witnesses. To the jury alone. You determine the degree of
19 credit due a witness. You can look at several things. His or
20 her character, conduct, manner upon the stand, fears, biases,
21 impartiality, reasonableness or unreasonableness of the
22 statements you have heard and the strength or weakness of his
23 or her recollections viewed in light of all the other factors.
24 If you believe any witness has sworn falsely you may disregard

1 the whole of the evidence of any such witness. That's your
2 call. It is your determination to make. Nobody can tell you
3 how to make that.

4 Now the State in their closing argument went through
5 the trial step by step. I'm not going to do that. We have
6 all been here for two weeks. We all heard the same thing.
7 I'm not going to tell you how to decide what to remember, what
8 was important, who to believe. But let me make some
9 suggestions. Kristine Yost, 20 at the time. How much does she
10 really remember? She testified that seven years ago she had a
11 severe daily methamphetamine pipe habit where she was using
12 multiple times a day. She started when she was thirteen. She
13 couldn't even remember her address. She had two friends
14 Crystal and Alex who stayed with her, smoked with her. And she
15 used drugs with Primo when he would come over. She invited
16 everybody over that night. I think she said she had an open
17 door policy for a few of them. And she specifically invited
18 Primo over. She knew that Moises Vasquez' family was
19 affiliated with TJ gang. She knew that Appo was MS, but she
20 wasn't concerned at all. They didn't know each other. They
21 had never met. There was no altercations, no words. Everybody
22 said "hi." Appo spent the time on his phone because he didn't
23 speak English. He was talking to his girlfriend. Ms. Yost
24 said that wasn't unusual from the time she had been around

1 him. The shots happened and she thought it was a joke. Then
2 she hid behind a kitchen cabinet. She called 9-1-1. And even
3 back then she couldn't say her address. Then she called Primo
4 screaming "Why, Primo, why?" When Primo testified, Mr. Elder
5 Rodriguez, he didn't say anything about I told him not to do
6 it. Didn't say anything at all. So instead of trying to help
7 her friends, she was calling friends and flushing stuff down
8 the toilet so she wouldn't get in trouble. Eventually after
9 her second call and after Mr. Wagner's call to 9-1-1 the
10 police finally got there. And what did they find? Hysterical
11 uncooperative witnesses. They wouldn't even come out of the
12 the apartment. And when they did, they had to be handcuffed
13 because of their other fear. The officers were concerned for
14 their safety. She didn't know very much or remember very much.
15 I didn't count how many times there was "I don't recall" or "I
16 don't remember." But at the end of my cross-examination she
17 admitted she got really confused and that everything was a
18 blur.

19 And Mr. Wagner. Seventeen years old at the time, now
20 approximately twenty-four. Cocaine was his drug of choice.
21 How many keys did he have that night, now that we all know how
22 to do a key? He spent the night or half the night driving
23 around looking for a party. He had a different story than
24 Ms. Yost. After the shots were fired, he did everything. He

1 got up and he called 9-1-1 from the living room. He moved the
2 dining room table in the kitchen, the same one that it took
3 two officers to move a couple minutes later. He couldn't tell
4 9-1-1 where he was. He went in the kitchen, got scared and
5 ran in the closet. When Sparks Police Department officers
6 finally arrived, what did he do? He charged at them and the
7 officer that was pointing a gun at him had to take him down
8 and handcuff him. I would suggest you're more than capable of
9 determining what credibility to give the witnesses there.

10 Then comes SA 1290 who has every reason in the world
11 to say what everybody else wants to hear and five years to
12 figure out how to say it. He's received a substantial benefit
13 because of his cooperation and testimony. He's not going back
14 to El Salvador again. There was nothing unique about his
15 testimony. Officer Woodard said it was consistent with the
16 facts. It was consistent with what everybody had heard through
17 the rumor mill, through the news, on the Internet. He had
18 access to everything. If Mr. Menendez-Cordero really told him
19 all of those things, why didn't he tell him where he put the
20 gun? Why didn't he tell him about the great tattoos he got as
21 trophies? SA 190 claimed they were merely acquaintances. He
22 only saw him once in a while. They weren't close. If that's
23 true, why would anyone tell him all those things? It doesn't
24 make sense. And if he had, why didn't he tell the officers on

1 December 6th the first time?

2 We are talking about motive, right? Motive is not
3 an element of the crime and need not be charged. Jury
4 Instruction 17. And evidence has been received which may tend
5 to show that the defendant may have committed acts other than
6 that for which he's on trial, number 26. Read those
7 paragraphs. I would submit to you that everything shows that
8 SA 1290 would do and say anything to stay in the United
9 States. If you believe what Agent Freestone testified to, the
10 last place he could go was home to El Salvador. He's MS-13.
11 Blood in, blood out, and no one who was at the party testified
12 to the statement made by ~~Mr.~~ Melendez or Mr. Vasquez to
13 Mr. Cordero. No one at the party who was there at the time
14 testified they heard anyone say "fuck MS-13." In fact,
15 Mr. Wagner testified that he heard Mr. Menendez-Cordero say
16 pinche puto. Doesn't sound like MS-13 to me. The State claims
17 that is motive, but whose motive is it? SA 1290?

18 Ms. Yost testified she thought Mr. Vasquez' family
19 were TJ gang members but didn't think Mr. Vasquez was. You
20 heard no testimony of any argument, any animosity or any
21 conversation between Mr. Vasquez and Mr. Menendez-Cordero. How
22 does that support anything being done for or furthering the
23 objective of the gang? It doesn't.

24 Then there was Mr. Payne, the tattoo guy. A

1 convicted felon for attempted murder with a deadly weapon. He
2 was just doing a favor for his sister-in-law's boyfriend seven
3 years ago. Was he sure it was November 20th? He was doing it
4 for a quick \$500 bucks maybe or a set of speakers maybe. He
5 testified he couldn't understand anything that was being said
6 and they were only there a couple hours seven years ago.

7 Elder Rodriguez said he took Luis to the party but
8 didn't really know him well. He went to 7-Eleven. We know
9 that. But he didn't tell the police the right one. But he's
10 the one on the video, no jacket on, walking around. He wasn't
11 there at the time of the shooting. He says he went to get
12 cigarettes, but he never got cigarettes. He testified that he
13 came back and he got a call from Ms. Yost. And we know they
14 talked because we can hear her screaming, "Primo, why Primo,
15 why?" He testified that the Sparks Police Department officers
16 were already there when he got back and wouldn't let him get
17 to his car, that he asked to do it. Now if you're at the scene
18 where people have been shot and someone comes up and says, hey
19 I need to get my car, it is right over there by the apartment,
20 don't you think they would have asked him some questions? He
21 said he had never seen Luis with a gun. The State says he went
22 to the car to get the gun. But whose car was it?

23 Reasonable doubt starts at the very beginning of
24 this case and goes all the way through. A reasonable doubt

1 Instruction is number five. Everybody always reads it in every
2 case. And we can't explain it to you. It is for you to
3 determine what reasonable doubt is and it gives you some
4 guidelines. Please review number five. But look at this case.
5 Dispatch sends officers to the wrong address for a shooting,
6 so we know people are coming. In fact, one of the officers
7 testified that it was a call where every available officer and
8 car came to the wrong address. By the time they got there, so
9 much time had passed. Officer Hopkins testified he kept the
10 witnesses separated while they were waiting to go to the
11 police station. Because that was important, he didn't want
12 them talking to each other before their interviews, right?
13 But then Sgt. Russell testifies that he transported Mr. Wagner
14 and Ms. Rios-Quintero in the same car.

15 What about the collection of all that evidence?
16 Supposedly everything happened about 2:15. The first person
17 on the scene was about 6:00 for collection. And what did they
18 look like? There was some condensation on the car so they
19 didn't even try to get anything off the outside. They took
20 prints off a Canada Dry bottle but not the bottle of men's
21 cologne right next to it and not the CD right next to that.
22 They tried to get prints off of one they think might have
23 contained some. Why this? Why not that? Why not the
24 seatbelt that someone would have worn? It is no wonder their

1 choice resulted in nothing. Was it due to inexperience or just
2 being sloppy?

3 During the autopsies one of the techs testified she
4 didn't change gloves in between each piece of evidence. But
5 you have seen here everybody wears gloves. We change them all
6 the time to cut down on the chance of cross contamination. And
7 then there is the processing of the gun four months later,
8 five months later. Sergeant Russell pulled the gun out of the
9 juniper bushes. He has to get up on a planter in order to see
10 it. He testified that he had to use a knife and a pen to pry
11 things out of the magazine and the chamber. Didn't even wear
12 gloves the second time because they ripped. How much damage
13 did that knife and pen do to the magazine or the slide in the
14 gun?

15 Ms. Heward testified that most of the guns they look
16 at are of very poor quality. It is not uncommon. It is no
17 wonder they have no physical evidence. It is no wonder they
18 have no usable fingerprints. It is no wonder they have no DNA
19 even though the gun was protected by these bushes. No. They
20 relied upon the description of two kids who were high flushing
21 things down the toilet before police got there, hysterical.
22 And they continued with more mere conjecture. So if it
23 happened the way the State suggests that people went running
24 down El Rancho two blocks with a gun in his hand and through

1 it with all those police cars coming in, why didn't anybody
2 see this? Officer Woodard didn't find Mr. Rodriguez until the
3 next day. Why not? He didn't get to Sacramento the first time
4 until December 1st, ten days later. And then he only stayed
5 for ten hours. Six days after that he found the person who
6 would eventually become SA 1290. He was uncooperative and was
7 eventually arrested. He was uncooperative until five years
8 later when he got a great deal for his story. And supposedly
9 they missed Mr. Menendez-Cordero by only hours. But 16 days
10 passed. If he was running, it wasn't very fast. He could have
11 walked to Sacramento by then. Is that flight? No. Want to give
12 me a ride? Didn't have a car. Sloppy, lazy, inadequate. Lots
13 of things were there. But remember, the State must prove each
14 and every element beyond a reasonable doubt. Don't get
15 confused by all those red herrings they put up there. They
16 want you to think things are important that really aren't.
17 Don't let them use the same scare tactics on you that officers
18 used on witnesses in other ways. It is used to try to distract
19 you from the main issue, because they can't prove what they
20 need to prove.

21 Instructions 4 and 30. Number 4: Every person
22 charged with the commission of a crime shall be presumed
23 innocent unless the contrary is proven by competent evidence.
24 And the burden rests upon the prosecution to establish every

1 element of the crime with which the defendant is charged
2 beyond a reasonable doubt. In case of a reasonable doubt
3 whether the defendant's guilt is satisfactorily shown, the
4 defendant is entitled to be acquitted.

5 It is the Constitutional right of a defendant in a
6 criminal trial that he or she may not be compelled to testify.
7 The decision whether he or she should testify is left to the
8 defendant and on the advice of counsel or his or her attorney.
9 You must not draw any inference of guilt from the fact that he
10 or she chooses not to testify. Nor should this fact be
11 discussed by you or enter into your deliberation in any way.
12 Instruction number 30. But for those of you who wanted to hear
13 from him, you did, through Sgt. Chavez and his interview on
14 2015. With all the training and interview and interrogation
15 techniques and his experience with the gangs over the five
16 years prior to that, gotten hundreds of people to confess to
17 crimes. Not in this case. Because there was nothing to confess
18 to. He answered the questions he was asked about his family,
19 about his background, education, address. He was cooperative
20 and polite. He didn't know what he was supposed to say. Said
21 he hadn't talked to anybody. And he was tired. How many hours
22 had he been up. Yeah they brought him a soda and a Carl's Jr.
23 They didn't let him rest. Didn't let him sleep. Sergeant
24 Chavez talked about his family in El Salvador. He used

1 deception. That is what they call lies to try and get
2 Mr. Menendez-Cordero to say something that would incriminate
3 him and he didn't. Even asked if he wanted to see his son. The
4 only confession Mr. Menendez-Cordero made at that point was
5 that he loved his son.

6 Agent Freestone, he has extensive training. He's got
7 a BA in accountancy and 19 weeks at the FBI school in
8 Quantico. And he took a Spanish proficiency test through the
9 Department of Justice. On a scale of zero to five he got a
10 three plus. Now when I was in school, on a scale of zero to
11 five a three plus was a C plus. And what didn't the test
12 cover? Normal every day slang. Agent Freestone, an expert in
13 everything gangs or a Jack of all trades and a master of none.
14 He gave a lot of lectures, very scholastic and very
15 theoretical, but how much are they truly reflective of the
16 street life in Santa Ana or San Salvador? The American
17 Embassy is not the same as the other neighborhoods. He had
18 training and experience, but it is hard to describe and
19 determine the demeanor of someone when you are not looking at
20 them face-to-face. He testified that he had never had any
21 direct contact with Mr. Menendez-Cordero. He only saw him on
22 video and heard his voice on telephone and not very many times
23 at that, two or three. Seven or eight. And from all this he
24 got a big threat against Elder Rodriguez.

1 Elder was here. He didn't testify to that. Was it a
2 credible threat or was it frustration, tired of being taken
3 away from his family and his friends and his home and his son?
4 Maybe it wasn't a threat at all. Maybe it was just about
5 buying a phone, getting a cim card then destroying it so it
6 couldn't be traced. We are talking about the streets of San
7 Salvador. Not the streets of Reno.

8 All the tattoos. It sounds like the tattoos went on
9 forever and ever and ever. He identified the same tattoo
10 multiple times. Rest in peace and tombstones. Lots of people
11 here have rest in peace for people they have lost, people they
12 ~~have~~ loved and lost. Tattoos of the shield taken from the flag
13 of El Salvador. We have -- What about all our military guys
14 that get Marine tattoos and Air Force tattoos and flag or the
15 pledge of allegiance tattooed on their arm? Tattoos that were
16 closest to Mr. Menendez-Cordero, rose, hearts, those were of
17 his children's feet. All of these things that the State wants
18 you to think are so horrible and so indicative of guilt they
19 are all distractions. They don't have any physical evidence.

20 They said that they don't have any fingerprints,
21 DNA, no admissions no context, just the confused memories of
22 two underage kids drinking and smoking. Hold the State to
23 their job and prove each and every element beyond a reasonable
24 doubt. Don't do it for them. Review all of the Instructions

1 carefully. Review your notes carefully.

2 Instruction 15, the State spent a little time on
3 that. It is a four pager. Each paragraph goes through and
4 tells you what certain words in the charges mean, willful,
5 deliberation, premeditation. Deliberation. It is a word used
6 in many contexts in this case even in the Instructions. When
7 we chose you, went through the process of choosing you to be
8 jurors, we talked a lot about deliberating into the jury room,
9 working together, not letting yourself be bullied, stand by
10 your convictions.

11 Jury Instructions 33 it is your duty as jurors to
12 ~~consult~~ with one another and to deliberate with a view of
13 reaching an agreement if you can do so without violence to
14 your individual judgment. You must each -- excuse me -- you
15 each must decide the case for yourself, but you should do so
16 only after a consideration of the case with your fellow jurors
17 and you should not hesitate to change an opinion when
18 convinced that it is erroneous. However, you should not be
19 influenced to vote in any way on any question submitted to you
20 by the fact that a majority of the jurors or any one of them
21 favor such a decision. In other words, you should not
22 surrender your honest convictions concerning the effect or
23 weight of the evidence for the mere purpose of returning a
24 verdict or solely because of the opinion of the other jurors.

1 All of you said that you could knock on that door if there was
2 a problem.

3 The State spent a long time telling you how to
4 interpret all these Instructions. How to interpret the facts.
5 It is not their job. It is your job. You are the ones that
6 are interpreting the law as it is given to you and the facts
7 as you have heard them. Don't rush to judgment. Review
8 everything carefully.

9 We ask that you consider the evidence, weigh the
10 credibility of witnesses as to how you determine it should be
11 and the validity of the entire investigation. We think you
12 will see that the State hasn't met its burden and you should
13 find Mr. Luis Menendez-Cordero not guilty of the alleged
14 charges. Thank you for your time.

15 THE COURT: Ladies and gentlemen of the jury, it is
16 now time for the State to conclude their closing argument.
17 Ms. Kossow.

18 MS. KOSSOW: Thank you, Your Honor. I want to talk
19 about Jury Instruction 29. It talks about although you are to
20 consider only the evidence in the case in reaching a verdict,
21 you must bring your every day common sense and your judgment
22 as men and woman and may make reasonable inferences which are
23 justified in the evidence. Your common sense as to what you
24 have heard over the last two weeks, what you heard in argument

1 from counsel today, do not blame Kristine Yost for the killing
2 of these two men. That person over there is the person to
3 blame. Do not blame the police officers as they are going
4 through the situation of going to one apartment and then the
5 next for the killing of these two men. There is only one
6 person to blame why they are dead and that is this man seated
7 over at the table. Do not blame Terrell Wagner for the death
8 of these two men because he was 17 years old and because he
9 did drugs, any of that. When he explained to you on the
10 stand what he recollected, look at his credibility and look at
11 Kristine Yost's credibility. So did she remember every detail?
12 No. Did she remember that two people were shot and killed
13 directly in front of her? Yes. What did she tell you? She
14 identified the defendant the day after the shooting in the
15 lineup that you have in evidence. That is Exhibit 90. Look at
16 those pictures. See the one that she picked out. Ms. Nordvig
17 said in her closing at the end of cross-examination she was
18 saying everything was a blur. You know what? She didn't say
19 it was a blur. When I asked her how sure are you this
20 defendant is the person that shot and killed those two men,
21 what was her answer? One hundred percent. Not 99, not 95.
22 One hundred percent this is the man that did this crime.

23 Terrell Wagner again identified in the lineup the
24 very same day as the crime later in the afternoon. Again he

1 also identified this defendant as the person who shot and
2 killed Kevin Melendez and Moises Vasquez. Again, his lineup is
3 in evidence. Look at those lineups. You can see the person
4 that he picked out. It wasn't just Kristine Yost and it wasn't
5 just Terrell Wagner.

6 Elder Rodriguez played a role in this case. No, he
7 wasn't there to say, yes, this is the guy that shot, but what
8 he did tell you is this is the defendant he brought to the
9 party. So we know he was there. When the two people identified
10 him as the shooter, you absolutely know this is the person.

11 Corroboration of SA 1290. Ms. Nordvig talked about
12 he received a benefit, absolutely, and he told you that. I get
13 to stay in the United States until 2018. That was part of him
14 coming and testifying to the statements that he recalls the
15 defendant telling him. And how did the State corroborate what
16 he said? Several ways. Number one, by this photo that was
17 taken off his phone testified to by officer Woodard and
18 testified to by SA 1290, corroborating this defendant in fact
19 went to his home after receiving the tattoo on his head.
20 Remember he didn't have it prior to the murder. So you know,
21 based on this photo alone he went to the home of SA 1290, took
22 a picture of himself or someone took a picture of him. It was
23 still on SA 1290's phone. We already talked about there is no
24 shirt. Why? Where does that detail come from? From the

1 police? From the newspaper? They reported he wasn't wearing
2 a shirt, the defendant when he got out of Primo's vehicle.
3 Think about those small details he was able to tell you were
4 told to him by this defendant.

5 Then, finally, again the gun jamming. Who knew
6 about the gun jamming? Terrell Wagner, maybe he knew. It
7 went click. He knew he wasn't shot.

8 Sergeant Russell. Do you think Sgt. Russell told SA
9 1290 about the gun jamming or maybe Kerri Heward? Those were
10 the only three people who knew other than this defendant that
11 the gun jammed during the commission of this offense. Those
12 are what you can look at to say is he telling us the truth
13 when he tells us what the defendant told him after the murder.

14 Going back to common sense again, that first
15 Instruction number 29. Ms. Nordvig talked about
16 Mr. Freestone, questioning his training and experience. He
17 has an accounting degree. He went to the Academy for 19
18 weeks. What about the fact he spent three years in El
19 Salvador, three years working, living, investigating MS-13
20 cases. Do you really doubt his training and experience when he
21 tells you the history of the gang and these tattoos are
22 related to MS-13? Again all of that testimony was to say this
23 defendant is affiliated with MS-13. That the motive behind
24 this killing was disrespect. Whether it was "Fuch MS," whether

1 it was a dirty look, whether it was something going on between
2 these two groups of men, that was the motive for the killing.
3 Common sense.

4 Again the changing of the gloves at the autopsy.
5 Ask yourself how that would have changed the evidence in this
6 case. The only evidence to come from the autopsy other the
7 cause of death were the bullet fragments taken from the bodies
8 of the victims in this case. Taken from flesh and bone. Ask
9 yourself why is this important in this case? It is not. I
10 will read it to you. Jury Instructions 5: Reasonable doubt is
11 a reasonable doubt one based on reason. It is not mere
12 possible doubt, but is such a doubt as would govern or control
13 a person in the more weighty affairs of life. If the minds of
14 the jurors after the entire comparison and consideration of
15 all the evidence are in such a condition that they can say
16 they feel an abiding conviction of the truth of the charge,
17 there is not a reasonable doubt. Doubt to be reasonable must
18 be actual not mere possibility or speculation. That is the
19 definition of reasonable doubt. And, based on all the
20 evidence in this case and those lay witnesses that came in and
21 explained in detail what happened that night, again going back
22 to those building blocks one after the other, one after the
23 other, ask yourself whether you have a reasonable doubt.

24 The State has proven this case beyond a reasonable

1 doubt, and based again on those building blocks of each one of
2 those witnesses, the State asks you to find this defendant
3 guilty. Thank you.

4 THE COURT: Thank you. That concludes the argument
5 of counsel. At this stage in the proceedings we are going to
6 reduce your number from the 14 who heard this trial to the 12
7 that will deliberate. The method we use for doing that is the
8 last two jurors selected are our alternates, Juror 25 and
9 Juror 49. Sometimes we do a different process with alternate
10 jurors but because of the nature of this case, I am going to
11 keep you here. We have had a lot of colds and flu going
12 around, and I want to make sure you're still with us
13 throughout the day while the other 12 begin their
14 deliberations.

15 What is going to happen is you are going to go with
16 the bailiff, kept separate and apart from the other jurors.
17 The hard part for you is you may not begin deliberating, you
18 may not discuss the case or anything to do with it with each
19 other or with anyone else. You may not begin to form or
20 express any opinion about the guilt or innocence of the
21 defendant. You must not make any independent investigation
22 into the facts and circumstances of the case nor conduct any
23 experiments about it. And should any person attempt to
24 communicate with you in any manner about the case or anyone

1 associated with it, you must report it to the bailiff who is
2 with you. So this is going to be hard for you to do. I know it
3 is a difficult task. We also know you're up to it and we
4 appreciate it. If there is a vacancy on the jury, one of you
5 will be called upon to substitute on to the jury and the jury
6 will begin deliberating anew with you. So it is very
7 important you follow this admonition. In a few minutes, I am
8 going to let you go into the jury room, gather your personal
9 belongings and leave with the bailiff. But before that, I
10 would like to swear the officers to take charge of the jury.
11 Please come forward.

12 (Whereupon the bailiffs were sworn by the clerk.)

13 THE COURT: Thank you. Officers, you are admonished
14 at all times the alternates must be kept separate and apart
15 from the ladies and gentlemen of the jury.

16 Ladies and gentlemen of the jury, you will be going
17 into the jury room. You may have your notes with you in the
18 jury room. You may in a few minutes receive the evidence that
19 has been admitted into this case. We will have a computer
20 available for you so you can play any of the evidence that you
21 may wish to do so. So at this time, I would ask the
22 alternates to step into the jury room.

23 You have to tell me, deputy, when they are out of
24 the jury room. Ladies and gentlemen of the jury, at this time

1 you are going into the jury room and begin your deliberation.
2 We will be in recess subject to your call, so you may go into
3 the jury room at this time. Thank you.

4 (Whereupon the jury left the courtroom.)

5 Counsel, absent some other occurrence, I am thinking
6 that it would be good if you came back about a quarter to 2:00
7 about an hour and a half from now. Does that work for you?
8 We'll be in recess Court's in recess.

9 (Whereupon the Court adjourned for the noon recess)

10 THE COURT: Thank you. Please be seated. Let the
11 record reflect we are convened outside the presence of the
12 jury for purposes of ~~just reviewing the~~ packet of Instructions
13 in case they are needed for the penalty phase. So, counsel, I
14 have Mr. Viloria's no objections in the packet, right?

15 MR. VILORIA: Yes.

16 THE COURT: So I thought it would be good to go
17 through and just see. I don't have any idea what the State's
18 position is on the ones the defense has asked for. The first
19 one is, if in these Instructions.

20 MR. VILORIA: No objection.

21 THE COURT: It is my duty as Judge to instruct you
22 then two would be if in these Instructions.

23 MR. VILORIA: No objection.

24 THE COURT: And there are two kinds of evidence,

1 would be 3. You had no objection, Mr. Viloria?

2 MR. VILORIA: No objection to there are two kinds of
3 evidence.

4 THE COURT: The evidence presented both during the
5 trial and during this hearing may be considered by the jury
6 will be 4.

7 MR. VILORIA: No objection.

8 THE COURT: You found the defendant in this case to
9 be guilty of murder in the first degree which will be 5.

10 MR. VILORIA: No objection, Your Honor.

11 THE COURT: The term of fifty years is a sentence.

12 MR. VILORIA: Your Honor, the parties have come up
13 with a combination to alleviate further argument on the one
14 the defense proposed. I believe the State has that.

15 THE COURT: Is it involving the deadly weapon or
16 involving the Pardons Board?

17 MS. KOSSOW: Pardons Board. It was, the defense
18 cited --

19 THE COURT: I think it is the defendant's if you
20 impose a sentence of life.

21 MR. VILORIA: Yes, it was that one.

22 THE COURT: You cited Thomas.

23 MR. VILORIA: That one I will withdraw based on the
24 parties' agreement to the other one.

1 MS. KOSSOW: So at the end the last sentence on the
2 State's proposed which line? Imprisonment without the
3 possibility of parole means exactly what it is, that the
4 defendant shall not be eligible for parole. Then we took the
5 statement directly from Thomas that the defense cited. So the
6 added sentence would be the Pardons Board cannot commute a
7 prison term of life without the possibility of parole to a
8 sentence allowing parole.

9 THE COURT: Do you have a typed version?

10 MS. KOSSOW: I don't. I wrote it while we were
11 sitting there.

12 THE COURT: I have ~~got the~~ ~~Pardons~~ Board cannot
13 commute.

14 MS. KOSSOW: A prison term of life without the
15 possibility parole to a sentence allowing parole.

16 THE COURT: Okay. So that would be 6. And then 7 was
17 offered by the defense which is involving a deadly weapon. It
18 says a deadly weapon enhancement.

19 MS. KOSSOW: Judge, the State objects to that
20 Instruction. We did make a proposed amendment to the State's
21 that has the first degree murder penalties. I do have a copy
22 of one. I added the sentence for the deadly weapon
23 enhancement will be determined by the Court at a later date. I
24 can approach with that. It wasn't one of the original ones.

1 THE COURT: Okay.

2 MS. KOSSOW: Did I give you that?

3 MR. VILORIA: No.

4 MS. KOSSOW: Just add that last sentence.

5 THE COURT: Okay.

6 MS. KOSSOW: Based on what I believe the law to be,

7 the jury does not have the province to sentence or even

8 consider the deadly weapon enhancement. I think it is

9 improper to tell them what the law is, what the expected

10 sentence is. I don't think it is proper.

11 MR. VILORIA: Thank you, Your Honor. As the State

12 indicated, the previous Instruction they offered did not talk

13 about deadly weapon the enhancement. I think it is even more

14 necessary then to explain to the jury what it is. What is the

15 deadly weapon enhancement, how is it applicable, because if

16 they consider a sentence other than life without the

17 possibility of parole, I think the consecutive term of years

18 is relevant to their ultimate decision making. They should

19 know if they choose for example 20 to 50 years that in

20 addition to that he must then serve more additional time day

21 for day. That is our position, and we'll submit it to Your

22 Honor.

23 THE COURT: Okay. I will give the Instruction as

24 modified, but I'm not going to give the Instruction on how

1 much time the enhancement does just as I wouldn't if he had a
2 burglary conviction. I wouldn't say burglary carries the
3 penalty X that could or not be consecutive.

4 MR. VILORIA: Thank you, Your Honor.

5 THE COURT: But you do not have any objection to the
6 modification. You just wanted something more?

7 MR. VILORIA: Like I said, the one before did not
8 discuss deadly weapon and this one does. I understand the
9 purpose. I just didn't -- Truthfully, we were talking about
10 whether or not they decided that in the first place in
11 addition to concurring and consecutive sentencing which we now
12 realize is in the province of the Court, so I will submit,
13 Your Honor.

14 THE COURT: Okay. So we have a modification to the
15 5th Instruction you just gave me.

16 MS. KOSSOW: Was that number 5?

17 THE COURT: That was number 5.

18 MS. KOSSOW: Sorry. Yes.

19 THE COURT: Then 6 we have a modification. Then we
20 have 7 the deadly weapon enhancement which I am not going to
21 give, but did you want to offer that anyway?

22 MR. VILORIA: I would, Your Honor.

23 THE COURT: Okay. And then we have another defense
24 offered Instruction: In determining the appropriate sentence

1 you should consider a fact.

2 MR. VILORIA: Your Honor, the defense will withdraw
3 that particular Instruction as well as the sympathy,
4 sympathetic and moral value Instruction towards the end of the
5 packet as we believe it is more applicable to a capital case.

6 THE COURT: I agree. So we have, in reaching your
7 verdict, you may consider only the testimony of the witnesses.
8 I show no objection to that.

9 MR. VILORIA: No objection, Your Honor.

10 THE COURT: Then I have although you are to consider
11 only the evidence in the case in reaching a penalty verdict, I
12 wasn't exactly sure what the defense was requesting.

13 MR. VILORIA: Your Honor, when I was doing this, I
14 thought it prudent to have that particular Instruction
15 indicate a penalty verdict, but I think it is implied. I will
16 just withdraw the defense proposed and have no objection to
17 the State's.

18 THE COURT: Okay. So the State's was --

19 MS. KOSSOW: Just said verdict rather than penalty.

20 THE COURT: And then we have now you have listened
21 to the arguments of counsel, and I think the defense had an
22 objection.

23 MR. VILORIA: Yes, we object. I think this
24 particular Instruction is confusing. It is covered

1 substantially by the other Instruction regarding what is and
2 what isn't evidence. I think it is just redundant and
3 unnecessary.

4 THE COURT: If they are objecting, I don't think you
5 need it.

6 MS. KOSSOW: I looked at the cite we cited. I don't
7 really understand.

8 THE COURT: The Committee, statewide Committee on
9 Criminal Jury Instructions we are modifying this. That sole
10 fixed and steadfast purpose I don't think is really good
11 language we should still be using. If you have no objection,
12 I will just take it out.

13 MS. KOSSOW: I have no objection.

14 THE COURT: And the defense objected to it anyway.
15 So the next set, upon retiring to the jury room select one of
16 your number. That you offered but they already have a
17 Foreperson. The Foreperson doesn't change for penalty.

18 MR. VILORIA: I will withdraw then.

19 THE COURT: But I don't have a concluding
20 Instruction from the State.

21 MR. VILORIA: I just wanted to provide something that
22 indicated that verdict too must be unanimous.

23 THE COURT: Okay.

24 THE COURT: We can now listen to argument of counsel

1 without the last line.

2 MS. KOSSOW: That is what the State normally
3 presents as its last Jury Instruction.

4 THE COURT: And then upon retiring to the jury room
5 you should deliberate on the penalty. And then when 12 or
6 more of you have agreed.

7 MS. NORDVIG: You are attaching both Jury
8 Instructions together or two separate ones?

9 THE COURT: I can keep them separate if you want.

10 MS. KOSSOW: Where were you going to end the State's
11 original proposed?

12 THE COURT: I was going to say now you will listen
13 to the argument of counsel who will endeavor to aid you in
14 reaching a proper verdict by refreshing your mind of the
15 evidence and by showing the application thereof of the law.
16 But whatever counsel may say, bear in mind it is your duty to
17 be governed in your deliberations by the evidence as you
18 understand it, remember it to be and the law given to you in
19 these Instructions.

20 MS. KOSSOW: Perfect.

21 THE COURT: New Instruction, upon retiring to the
22 jury room you should deliberate as to a penalty verdict to
23 which you agree. When all 12 of you have agreed upon a
24 penalty verdict, the Foreperson should sign and date same and

1 return to court.

2 MR. VILORIA: No objection.

3 MS. KOSSOW: That is fine.

4 THE COURT: So we have 11. Any additional ones?

5 MS. KOSSOW: Nothing from the State, Your Honor.

6 MR. VILORIA: Not from the defense, Your Honor.

7 THE COURT: We need the verdict forms. I did get
8 proposed ones, but I think we also have to change it to the
9 Foreperson's number and signature like we did the others.

10 MS. KOSSOW: Okay. I can do that.

11 THE COURT: It is in our computer at this point.

12 MS. KOSSOW: Do you want to do it?

13 THE COURT: Why don't you e-mail it to us and we
14 just have to make these changes. That would be the only
15 changes. Do you have any changes, counsel?

16 MR. VILORIA: No, Your Honor. We are fine with
17 that, Your Honor.

18 THE COURT: Okay. So if we need them, they will all
19 be ready and we'll be using them. Do you want me --

20 Now we do want to make a record with regard to the
21 deadly weapon enhancement Instruction.

22 MR. VILORIA: Yes.

23 THE COURT: Go ahead.

24 MR. VILORIA: Yes, Your Honor. Do you have a copy of

1 that?

2 THE COURT: I do.

3 MR. VILORIA: I would ask that you give that based
4 on the State's presentation of its modified penalty
5 Instruction which makes specific reference to a deadly weapon
6 and this Court's adjudication of that issue at a later date.
7 I think, as a result of that, the jury may have questions
8 about what that is, and the Instruction I am offering provides
9 an explanation as to the penalty range for deadly weapon
10 enhancement as well as the practical effect upon an offender
11 if a deadly weapon is found to have been used. I think that
12 if the jury decides a verdict that is not life without
13 possibility of parole, they may have additional question as to
14 what is the impact of enhancement on the underlying penalty
15 such as 20 to 50 years. As a result, the defense believes they
16 should know that even if a 20 to 50 year term as an example is
17 imposed, there will be additional periods of incarceration.

18 THE COURT: Ms. Kossow.

19 MS. KOSSOW: Your Honor, I believe NRS 175.552 tells
20 the jurors or tells us what the jury is allowed to sentence on
21 and it is only first degree murder. So I don't believe it is
22 within the jury's province to obviously sentence on that
23 count, and, therefore, it is confusing to them to consider
24 other possible penalties when deciding the only penalty they

1 are allowed to. And also the defense has cited no authority
2 whatsoever to support instructing them on other crimes or the
3 enhancement.

4 THE COURT: Okay. Because it is not within the
5 province of the jury to consider the other crimes that the
6 defendant may have been convicted of and sentenced on anything
7 other than the murder, I think it is analogous they should not
8 consider the deadly weapon enhancement. There is all the
9 findings for a deadly weapons enhancement now the Court has to
10 find, so we would have to go through all of that to explain to
11 them all the things the Court would have to consider in order
12 to be a complete statement of the law. And because of that, I
13 think the proposed Instruction is not a complete statement of
14 the law and is confusing and unnecessary. I am going to ask
15 the clerk mark it defendant's offered Instruction A rejected.

16 Any objection to the packet as we now have it if it
17 is necessary to be used?

18 MS. KOSSOW: Nothing from the State, Your Honor.

19 MR. VILORIA: No, Your Honor.

20 THE COURT: Any additional Instructions to offer at
21 this time?

22 MS. KOSSOW: Nothing from the State, Your Honor.

23 MR. VILORIA: No, Your Honor.

24 THE COURT: Thank you, counsel. We'll be in touch

1 as soon as we hear from the jury. Thank you. Court's in
2 recess.

3 Thank you. Please be seated. Deputy, have you
4 heard from the jury?

5 THE DEPUTY: Yes, Your Honor. They have reached a
6 verdict.

7 THE COURT: Would you please ask the jury to come
8 in?

9 THE DEPUTY: I will.

10 THE COURT: Please be seated. The clerk will now
11 call the roll of the jury. Please answer here or present when
12 your number is called.

13 THE CLERK: Juror 27.

14 JUROR 27: Here.

15 THE CLERK: Juror 75.

16 JUROR 75: Here

17 THE CLERK: Juror 73.

18 JUROR 73: Here.

19 THE CLERK: Juror 32.

20 JUROR 32: Here.

21 THE CLERK: Juror 36.

22 JUROR 36: Here.

23 THE CLERK: Juror 24.

24 JUROR 24: Here.

1 THE CLERK: Juror 14.
2 JUROR 24: Here.
3 THE CLERK: Jury 43.
4 JUROR 43: Here.
5 THE CLERK: Juror 7.
6 JUROR 7: Here.
7 THE CLERK: Juror 91.
8 JUROR 91: Here.
9 THE CLERK: JUROR 34.
10 JUROR 34: Here.
11 THE CLERK: Juror 105.
12 JUROR 105: Here.
13 THE COURT: The clerk will record in the minutes of
14 the Court that the jury is all present. We ask that the
15 alternates be brought in at this time. The clerk will call
16 the roll of the alternates.
17 THE CLERK: Juror 25.
18 JUROR 25: Here.
19 THE CLERK: Juror 49.
20 JUROR 49: Here.
21 THE COURT: Juror 14, are you the Foreperson?
22 JUROR 14: Yes, Your Honor.
23 THE COURT: Has the jury reached a verdict?
24 JUROR 14: Yes, ma'am.

1 THE COURT: Would you hand the verdict to the
2 bailiff who will in turn hand it to the Court. The defendant
3 will please rise. The clerk will read the verdict to the jury.

4 THE CLERK: In the Second Judicial District Court of
5 the State of Nevada in and for the County of Washoe, the State
6 of Nevada, Plaintiff, versus Luis Alejandro Mendendez-Cordero,
7 defendant, Case No. CR15-1674 Department 7, verdict: We the
8 jury in the above entitled matter find the defendant, Luis
9 Alejandro Menendez-Cordero, as to Count I, guilty of first
10 degree murder. Was a deadly women used in the commission of
11 the offense? Yes. Dated this 13th day of October 2017
12 Foreperson Juror 14.

13 Verdict. We the jury in the above-entitled matter
14 find the defendant, Luis Alejandro Menendez-Cordero to Count
15 II guilty of first degree murder. Was a deadly weapon used in
16 the commission of the offense? Yes. Dated the 13th day of
17 October 2017. Foreperson juror number 14.

18 THE COURT: Thank you. You may be seated. Is this
19 you verdict, ladies and gentlemen of the jury not including
20 the alternates, say you one say you all?

21 THE JURY: Yes.

22 THE COURT: Does either party wish the jury polled?

23 MS. KOSSOW: State does not, Your Honor.

24 MS. NORDVIG: Defense would like the jury polled,

1 Your Honor.

2 THE COURT: The clerk will call the roll of the
3 jurors at this time.

4 THE CLERK: Juror 27, are these your verdicts as
5 read?

6 JUROR 27: Yes.

7 THE CLERK: Juror 75, are these your verdicts as
8 read?

9 JUROR 75: Yes.

10 THE CLERK: Juror 73, are these your verdicts as
11 read?

12 JUROR 73: Yes.

13 THE CLERK: Juror 32, are these your verdicts as
14 read?

15 JUROR 32: Yes.

16 THE CLERK: Juror 36, are these your verdicts as
17 read?

18 JUROR 36: Yes.

19 THE CLERK: Juror 24, are these your verdicts as
20 read?

21 JUROR 24: Yes.

22 THE CLERK: Juror 14, are these your verdicts as
23 read?

24 JUROR 14: Yes.

1 THE CLERK: Juror 43, are these your verdicts as
2 read?

3 JUROR 43: Yes.

4 THE CLERK: Juror 7, are these your verdicts as read?

5 JUROR 7: Yes.

6 THE CLERK: Juror 91, are these your verdicts as
7 read?

8 JUROR 91: Yes.

9 THE CLERK: Juror 34, are these your verdicts as
10 read?

11 JUROR 34: Yes.

12 THE CLERK: Juror 105, are these your verdicts as
13 read?

14 JUROR 105: Yes.

15 THE COURT: The clerk will record the verdicts of
16 the jury in the minutes of the Court.

17 Ladies and gentlemen of the jury and alternates, as
18 you know from your jury selection two weeks ago, the next
19 phase of this trial will be what we know as the penalty phase.
20 During this phase of the trial you will be given additional
21 Instructions. You will hear more evidence, and you will hear
22 closing arguments of counsel at the end. Because of the hour,
23 we are going to do this penalty phase on Monday morning, so I
24 am going to let you leave tonight, go home go on about your

1 business and come back Monday morning. When you come back,
2 you will come directly to the jury room. The alternates will
3 be with you at that time and all of you will be together. I
4 am charging the Foreperson of the jury to see that you do not
5 discuss the case amongst yourselves until later when it is
6 later submitted to you for penalty. So although you have been
7 talking about it all day today, you have to refrain from
8 discussing it anymore until you're back together and
9 discussing penalty on Monday. So the Foreperson is in charge
10 of making sure you all do this. But you all are in charge of
11 it also.

12 Before you leave today, I am going to give the
13 admonition I have given you at the end of breaks, because
14 although it was lifted from you while you were deliberating,
15 it is back on you now. And you must not discuss the case with
16 each other, members of your family, friends, co-workers or
17 people involved in the trial.

18 You may not discuss any matter having to do with the
19 case or the parties or the attorneys.

20 You may not do this verbally, in person or in
21 writing or on the phone. In addition, you may not communicate
22 through the Internet, using Internet features such as chat
23 rooms, blogs, bulletin boards, Facetime, twitter, e-mail
24 instant messenger, text messaging, websites or any other form

1 of communicating electronically.

2 You are not to look at, listen to review any news
3 media account or any other account of commentary including any
4 online information about the trial or anyone associated with
5 it. You are required to decide all questions here from the
6 evidence that you receive at the trial and not from any other
7 source. So do not make any independent investigation into or
8 about the case or the subject matter of the case or the law
9 that may apply. This means for example that you may not do any
10 research, consult dictionaries or conduct research on the
11 Internet. Should any person attempt to discuss the case with
12 you or in any manner attempt to influence you about it or
13 communicate with you, report it immediately to the bailiffs. I
14 think we have three that were sworn to take charge of you.
15 They will give you a phone number that they can be reached at
16 all weekend while they are gone. If you have any concerns you
17 may communicate with them.

18 I will see you back Monday morning at 10:00 a.m.
19 The bailiff will make arrangements, but you will be here in
20 the courtroom at 10:00 a.m., Monday morning. Thank you. Have
21 a nice weekend. We'll see you back Monday.

22 (Whereupon the jury left the courtroom.)

23 THE COURT: You may be seated. Counsel, do you have
24 anything for the court this afternoon?

1 MS. KOSSOW: Nothing from the State, Your Honor.

2 MS. NORDVIG: Nothing, Your Honor. Thank you.

3 THE COURT: Okay. The jury will be in the courtroom

4 at 10:00 on Monday. I would like to finalize the Jury

5 Instructions Monday morning before we start the penalty phase.

6 How long do you think the penalty phase will take? How many

7 witnesses, length of time, do you have any idea?

8 MS. KOSSOW: I think as far as the State, Your

9 Honor, I am going to say an hour, two hours.

10 THE COURT: Defense, do you know?

11 MS. NORDVIG: May we approach briefly. They are in

12 California. We have to play it kind of by ear right now to

13 see if they can leave. It is a relative. We don't want to

14 tell him right now, so I don't know. It will probably be

15 around an hour, maybe a little longer.

16 THE COURT: Are you thinking they may not be able to

17 get here?

18 MS. NORDVIG: They may not be able to come.

19 THE COURT: Then what do you want to do?

20 MS. NORDVIG: I am going to try to cross that bridge

21 tomorrow.

22 THE COURT: Are you going to send an investigator

23 out?

24 MS. NORDVIG: I don't know if we can. It is a

1 matter of getting there and getting back.

2 THE COURT: Well, I am sure if you need some help we
3 can help you, not me, but law enforcement can help you try to
4 find someone. I don't want to go forward with the penalty
5 hearing if that is the person you want to call. I need to know
6 more about it.

7 MS. NORDVIG: I have been talking to her since the
8 trial started. I know she's not there right now. They are
9 going to be back tomorrow. Hopefully, they can get back in
10 then we'll know for sure.

11 THE COURT: I think it would be a good idea if you
12 let me know about 8:30 at the latest Monday, because we have
13 to do something different in calling the jury later in the day
14 or on Tuesday. I want to know that.

15 MS. KOSSOW: Mine are family members. I have to
16 let them know. They have taken time off work.

17 MS. NORDVIG: There is nothing I can do about a
18 fire.

19 THE COURT: I think you better, we have to get more
20 information on that. Would that work for you?

21 MS. KOSSOW: Yes.

22 MS. NORDVIG: I will know as soon as we get back.

23 THE COURT: Okay. Mr. Menendez-Cordero, we were
24 discussing the logistics of witnesses and availability. Your

1 attorney will go over that with you.

2 There being nothing else today, if you have nothing
3 else for me, I will be in recess until Monday morning at 10:00
4 a.m. Anything further?

5 MS. KOSSOW: Judge I was just discussing with
6 Mr. Bogale, when we started this trial part of the pretrial
7 motions Judge Flanagan ordered this defendant to have no
8 communication during trial exactly the two week period which
9 expires today. We thought the entire trial would be done. So
10 the State would make the request to continue it through the
11 weekend until Monday, hopefully, the end of the penalty phase.

12 THE COURT: Okay. Any objection?

13 MS. NORDVIG: Mr. Menendez-Cordero indicates he'll
14 abide by the order until the penalty phase is completed. If
15 there is an issue with the length of that, we'll revisit.

16 THE COURT: Okay. I will then extend that order. It
17 will still be in effect until the penalty phase is concluded
18 and/or other order, subsequent order of the Court. I know we
19 have a written copy of the original order and the amended
20 order. We can enter that same order extending the time. Is
21 that what your reference would be?

22 MS. KOSSOW: Yes, Your Honor.

23 THE COURT: That will be what we do. I orally order
24 it and the defendant has agreed. Thank you.

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So that concludes our issues for today and we'll see
you on Monday morning at 10:00 a.m. Court's in recess.

(Whereupon, the proceedings were concluded.)

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1 STATE OF NEVADA,)
2) ss.
3 COUNTY OF WASHOE.)

4 I, Judith Ann Schonlau, Official 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 as such reporter I was present in Department
8 No. 4 of the above-entitled court on Friday, October 13, 2017,
9 at the hour of 9:00 a.m. of said day and that I then and there
10 took verbatim stenotype notes of the proceedings had in the
11 matter of THE STATE OF NEVADA vs. LUIS ALENJANDRO
12 MENENDEZ-CORDERO , Case Number CR15-1674.

13 That the foregoing transcript, consisting of pages
14 numbered 1-79 inclusive, is a full, true and correct
15 transcription of my said stenotypy notes, so taken as
16 aforesaid, and is a full, true and correct statement of the
17 proceedings had and testimony given upon the trial of the
18 above-entitled action to the best of my knowledge, skill and
19 ability.

20 DATED: At Reno, Nevada this 15th day of February, 2018.

21
22 /s/ Judith Ann Schonlau
23 JUDITH ANN SCHONLAU CSR #18
24

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