

DA #17-13507

RPD RP17-023530

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Sep 22 2021 01:59 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE JUSTICE COURT OF RENO TOWNSHIP
IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No.: RCR2017-094324

v.

Dept. No.: 4

RICHARD ABDIEL SILVA
and
YIOVANNIE GUZMAN,

Defendants.

CRIMINAL COMPLAINT

MATTHEW LEE of the County of Washoe, State of Nevada,
verifies and declares upon information and belief and under penalty
of perjury, that RICHARD ABDIEL SILVA and YIOVANNIE GUZMAN, the
defendants above-named, have committed the crime of:

MURDER WITH THE USE OF A DEADLY WEAPON, a violation of NRS
200.010, NRS 200.030, NRS 193.165 and NRS 195.020, a category A felony,
(50001) in the manner following, to wit:

That the said defendants, RICHARD ABDIEL SILVA and
YIOVANNIE GUZMAN, on or about November 2nd, 2017, within the County
of Washoe, State of Nevada, did willfully, unlawfully, and with
malice aforethought, deliberation, and premeditation, kill and murder
LUZ LINAREZ-CASTILLO, a human being, by means of shooting LUZ
LINAREZ-CASTILLO in the head and body with a deadly weapon, to wit: a
9mm handgun, at or near Parkview Street and Mazzone Avenue, thereby
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1 inflicting mortal injuries upon the said victim from which she died
2 on or about November 2, 2017; the defendants being responsible under
3 one or more of the following principles of criminal liability; to
4 wit:

5 (1) By the defendant directly committing the aforementioned act;
6 and/or;

7 (2) By the defendants willfully and unlawfully aiding or abetting
8 each other in the commission of the crime of murder with a deadly
9 weapon as set forth above, in that the defendants counseled and/or
10 encouraged each other throughout by actions and words, assisted each
11 other in searching for and locating LUZ LINAREZ-CASTILLO, accompanied
12 each other to the crime scene, waited and watched for LUZ LINAREZ-
13 CASTILLO to exit a residence, and/or YIOVANNIE GUZMAN drove RICHARD
14 ABDIEL SILVA away from the scene wherein RICHARD ABDIEL SILVA shot
15 LUZ LINAREZ-CASTILLO; and/or

16 (3) By the defendants willfully and unlawfully conspiring with each
17 other in the commission of the crime of murder with a deadly weapon
18 as set forth above, whereby both defendants are each liable for the
19 foreseeable acts of the other conspirator when the acts were in
20 furtherance of the conspiracy, to wit: the defendants agreed to kill
21 LUZ LINAREZ-CASTILLO, and in furtherance of this agreement, the said
22 defendants planned and discussed the murder, awoke early to locate
23 LUZ LINAREZ-CASTILLO before she left for work, accompanied each other
24 to multiple locations searching for LUZ LINAREZ-CASTILLO and to the
25 crime scene, waited and watched for LUZ LINAREZ-CASTILLO to exit a
26 ///

1 residence and/or YIOVANNIE GUZMAN drove RICHARD ABDIEL SILVA away
2 from the scene wherein RICHARD ABDIEL SILVA shot LUZ LINAREZ-
3 CASTILLO.

4
5 AFFIRMATION PURSUANT TO NRS 239B.030

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

8 DATED this 21st day of November, 2017.

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12 MATTHEW LEE
13 DEPUTY DISTRICT ATTORNEY
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24 PCN: RPD0015200C-SILVA RPD0031917C-GUZMAN

25 Custody: X
26 Bailed:
Warrant:

District Court Dept:
District Attorney: LEE
Defense Attorney:
Bail NO BAIL-EACH DEFENDANT
Restitution:

*

DA #17-13507

RPD RP17-023530

FILED

18 JUN 29 AM 7:45

IN THE JUSTICE COURT OF RENO TOWNSHIP
IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

DESTER THOMAS
RENO JUSTICE COURT
BY AA DEPUTY

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No.: RCR2017-094324

v.

Dept. No.: 4

RICHARD ABDIEL SILVA (A)

and

YIOVANNIE GUZMAN (B),

Defendants.

AMENDED CRIMINAL COMPLAINT

MATTHEW LEE of the County of Washoe, State of Nevada,
verifies and declares upon information and belief and under penalty
of perjury, that RICHARD ABDIEL SILVA and YIOVANNIE GUZMAN, the
defendants above-named, have committed the crime of:

MURDER WITH THE USE OF A DEADLY WEAPON, a violation of NRS
200.010, NRS 200.030, NRS 193.165 and NRS 195.020, a category A felony,
(50001) in the manner following, to wit:

That the said defendants, RICHARD ABDIEL SILVA and
YIOVANNIE GUZMAN, on or about November 2nd, 2017, within the County
of Washoe, State of Nevada, did willfully, unlawfully, and with
malice aforethought, deliberation, and premeditation, kill and murder
LUZ LINAREZ-CASTILLO, a human being, by means of shooting LUZ
LINAREZ-CASTILLO in the head and body with a deadly weapon, to wit: a
9mm handgun, at or near Parkview Street and Mazzone Avenue, thereby

///

1 inflicting mortal injuries upon the said LUZ LINAREZ-CASTILLO from
2 which she died on or about November 2, 2017; AND/OR

3 The said defendants did willfully and unlawfully aid or
4 abet each other and/or act as conspirators with each other in
5 committing the crime of Murder with the Use of a Deadly Weapon as set
6 forth above in that the defendants counseled and encouraged each
7 other to kill LUZ LINAREZ-CASTILLO, and conspired and agreed to kill
8 LUZ LINAREZ-CASTILLO, and thereafter in furtherance of their
9 agreement, the defendants planned and discussed the killing, stayed
10 together at the same residence and awoke together in the early
11 morning hours, armed themselves with a 9mm handgun, set out together
12 with YIOVANNIE GUZMAN driving and assisting each other in searching
13 for LUZ LINAREZ-CASTILLO at multiple locations before she left for
14 work, and upon finding her, while YIOVANNIE GUZMAN waited in the
15 vehicle as a lookout and getaway driver, RICHARD SILVA approached LUZ
16 LINAREZ-CASTILLO while she was inside her vehicle and shot her

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1 multiple times about the head and body, thereby causing her death,
2 and further, as previously planned, did drive away at regular speeds
3 so as not to arouse suspicion.
4

5
6 AFFIRMATION PURSUANT TO NRS 239B.030

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

9 DATED this 29th day of June, 2018.
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13 MATTHEW LEE
14 DEPUTY DISTRICT ATTORNEY
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23 PCN: RPD0015200C-SILVA RPD0031917C-GUZMAN

24 Custody: X
25 Bailed:
26 Warrant:

District Court Dept:
District Attorney: LEE
Defense Attorney:
Bail _____
Restitution:

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DA #17-13507
RPD RP17-023530

FILED
Electronically
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2018-07-03 03:45:32 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6760078 : nmason

CODE 1800
Christopher J. Hicks
#7747
P.O. Box 11130
Reno, NV 89520
(775) 328-3200

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No.: CR18-1135

v.

Dept. No.: D15

YIOVANNIE GUZMAN (A)
and
RICHARD ABDIEL SILVA, (B)

Defendant.

INFORMATION

CHRISTOPHER J. HICKS, District Attorney within and for the
County of Washoe, State of Nevada, in the name and by the authority
of the State of Nevada, informs the above entitled Court that
YIOVANNIE GUZMAN, and RICHARD ABDIEL SILVA, the defendants above-
named, have committed the crime(s) of:

MURDER WITH THE USE OF A DEADLY WEAPON, a violation of NRS
200.010, NRS 200.030, NRS 193.165 and NRS 195.020, a category A felony,
(50001) in the manner following, to wit:

That the said defendants, RICHARD ABDIEL SILVA and
YIOVANNIE GUZMAN, on or about November 2nd, 2017, within the County

1 of Washoe, State of Nevada, did willfully, unlawfully, and with
2 malice aforethought, deliberation, and premeditation, kill and murder
3 LUZ LINAREZ-CASTILLO, a human being, by means of shooting LUZ
4 LINAREZ-CASTILLO in the head and body with a deadly weapon, to wit: a
5 9mm handgun, at or near Parkview Street and Mazzone Avenue, thereby
6 inflicting mortal injuries upon the said LUZ LINAREZ-CASTILLO from
7 which she died on or about November 2, 2017; AND/OR

8 The said defendants did willfully and unlawfully aid or
9 abet each other and/or act as conspirators with each other in
10 committing the crime of Murder with the Use of a Deadly Weapon as set
11 forth above in that the defendants counseled and encouraged each
12 other to kill LUZ LINAREZ-CASTILLO, and conspired and agreed to kill
13 LUZ LINAREZ-CASTILLO, and thereafter in furtherance of their
14 agreement, the defendants planned and discussed the killing, stayed
15 together at the same residence and awoke together in the early
16 morning hours, armed themselves with a 9mm handgun, set out together
17 with YIOVANNIE GUZMAN driving and assisting each other in searching
18 for LUZ LINAREZ-CASTILLO at multiple locations before she left for
19 work, and upon finding her, while YIOVANNIE GUZMAN waited in the
20 vehicle as a lookout and getaway driver, RICHARD SILVA approached LUZ
21 LINAREZ-CASTILLO while she was inside her vehicle and shot her
22 multiple times about the head and body, thereby causing her death,
23 and further, as previously planned, did drive away at regular speeds
24 so as not to arouse suspicion.

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1 All of which is contrary to the form of the Statute in such
2 case made and provided, and against the peace and dignity of the
3 State of Nevada.

4
5 CHRISTOPHER J. HICKS
6 District Attorney
7 Washoe County, Nevada

8 By: /s/ Matthew Lee
9 MATTHEW LEE
10 10654
11 DEPUTY DISTRICT ATTORNEY
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1 The following are the names and addresses of such witnesses
2 as are known to me at the time of the filing of the within
3 Information:

4 RENO POLICE DEPARTMENT:

5 MICHAEL BARNES
6 RON CHALMERS
7 KEVIN COLLINS
8 NICK DURALDE
9 RON FIELD
10 ANDREW HICKMAN
11 ERICH HULSE
12 ALLISON JENKINS
13 ERNIE KAZMAR
14 STEVEN LEHR
15 KEITH PLEICH
16 BENJAMIN RHODES
17 JOHN SILVER
18 EVAN THOMAS
19 REED THOMAS
20 JOSHUA WATSON
21 CHRISTOPHER JOHNSON
22 JENNIFER MUNN
23 NICHOLAS SMITH
24 CHARLES BUROW
25 JENNIFER TINSLEY
26 ANTHONY DELLA

WASHOE COUNTY SHERIFF'S DEPARTMENT:

ELVIRA "ELLIE" KOEDER, WCCL
SHAUN BRALY, WCCL - FORENSICS
ASHLYN ZIARNOWSKI
KINDRA BAUM

BERNICE GOMEZ, 1190 PARKVIEW ST RENO, NV 89502

ARTURO MANZO-REYES, 3515 MAZZONE AV Reno, NV 89502

MEGAN LIJA MARIE SALZIRNIS, 5449 PEARL DR SUN VALLEY, NV 89433

EDGAR ADAN-BARAJAS, 3555 MAZZONE AVE #3 RENO, NV 89502

SONIA CONDE-MARTIN, 3555 Mazzone #6 Reno, NV 89502

HERMALINDA MARTIN, 3555 Mazzone Ave #6 Reno, NV 89502

JOSE JUAN GONZALEZ-GARCIA, 1120 PARKVIEW ST #3 RENO, NV 89502

JUANA MARTINEZ-MINERUA, 1120 PARKVIEW ST #3 RENO, NV 89502

1 LINDSEY GILBERT, 3589 MAZZONE AVE #D RENO, NV 89502
2 JOSE JUAN GONZALEZ-GARCIA, 1120 PARKVIEW ST #3 RENO, NV 89502
3 LAURA LINARES, 1877 EL RANCHO DR #99 Sparks, NV 89431
4 BERNARD OMAR SILVA-GUZMAN, 1440 SBRAGIA WAY SPARKS, NV 89431-3072
5 THOMAS DOMINIC JR. POMPOSELLO, 4600 MIRA LOMA DR #17R RENO, NV 89502
6 HEATHER CHRISTINE WHITE, 3515 CARLOS LN 3 RENO, NV 89502-4834
7 ANTHONY ALEXANDER JUAREZ, 460 Penny Way Sparks, NV 89431
8 HECTOR CASTRO, 555 S VIRGINIA ST RENO, NV
9 KIMBERLY VASQUEZ, 1196 PARKVIEW ST RENO, NV 89502
10 VINCENT VASQUEZ, 50 SMITHRIDGE PARK Reno, NV 89502
11 ANDREW LOPEZ, 1194 PARKVIEW ST RENO, NV 89502
12 DAVID SMITH, 1150 PARKVIEW ST RENO, NV 89502
13 ARRIANA MARTINEZ, 1150 PARKVIEW ST RENO, NV 89502
14 HEATHER LARSON, 499 CAPITOL HILL AV #21 RENO, NV 89502
15 CASSANDRA MANZO, 3515 MAZZONE AV RENO, NV 89502
16 ALMA MUGIA, 4695 NEIL RD #396 RENO, NV 89502
17 J FELIX RANGEL-DIAZ, 3595 MAZZONE AV RENO, NV 89502
18 JOSE PALACIO-GONZALEZ, 1201 PARKVIEW ST RENO, NV 89502
19 NATASHA COLLINS, 3589 MAZZONE AVE #c RENO, NV 89502
20 MARIO CANO, 1240 PARKVIEW ST RENO, NV 89502
21 ELIZABETH TORRESILLAS, 1262 PARKVIEW ST RENO, NV 89502
22 JUANA RODRIGUEZ, 1262 PARKVIEW ST RENO, NV 89502
23 ISELA HERNANDEZ, 1275 PARKVIEW ST RENO, NV 89502
24 MARIO ROBLES, 1275 PARKVIEW ST RENO, NV 89502
25 ALFREDO BECERRA, 1130 PARKVIEW ST RENO, NV 89502
26 CILESS NEIHART, 1132 PARKVIEW ST RENO, NV 89502

1 RAYMOND SALIGA, 1132 PARKVIEW ST RENO, NV 89502
2 PAULA RODRIGUEZ, 3555 MAZZONE AVE #11 RENO, NV 89502
3 ANGEL RUBIO, 3589 MAZZONE AVE #1 RENO, NV 89509
4 SERGIO MANZANO, 3564 MAZZONE AVE RENO, NV 89502
5 PRISIEDA LONZANO, 3592 CARLOS LN RENO, NV 89502
6 BRITTANY PARRISHA, 1131 PARKVIEW ST RENO, NV 89502
7 ALYSSA KYLA PITTS, 3555 MAZZONE AVE 12 RENO, NV 89502-6812
8 TIM SMITH, 3589 MAZZONE AVE #D RENO, NV 89502
9 SILVIA AYALA, 1235 PARKVIEW ST RENO, NV 89502
10 LUIS MONTEZUMA, 1235 PARKVIEW ST RENO, NV 89502
11 VIVIANA SILVA, 1282 PARKVIEW ST RENO, NV 89502
12 MIGUEL GONZALEZ-BARBOZA, 3601 NEIL RD Reno, NV 89502
13 SALVADOR GONZALEZ, 3601 NEIL RD RENO, NV 89502
14 ROBERTA GONZALEZ, 3601 NEIL RD RENO, NV 89502
15 YANETH GOMES, 1120 PARKVIEW ST #2 RENO, NV 89502
16 JAZMIN PONCE, 1110 PARKVIEW ST #2 RENO, NV 89502
17 MARIA TELLO, 1110 PARKVIEW ST #2 RENO, NV 89502
18 JOSE PONCE, 1110 PARKVIEW ST #2 RENO, NV 89502
19 LETICIA SALGADO, 1110 PARKVIEW ST #1 RENO, NV 89502
20 ALBERT JIMENEZ, 1110 PARKVIEW ST #1 RENO, NV 89502
21 RICARDO SILVA, 1440 SBRAGIA WAY SPARKS, NV 89431
22 IRMA SILVA-GUZMAN, 1440 SBRAGIA WAY SPARKS, NV 89431
23 FERNANDO LEONEL CASTILLO, 931 LESTER AVE RENO, NV 89502-2607
24 JESSICA MACIAS, 1553 DELUCCHI LN RENO, NV 89502
25 BRIANA SEGURA, 1390 CASTLE WY RENO, NV 89512
26 VERONICA SEGURA, 1390 CASTLE WY RENO, NV 89512

1 ARTURO GUZMAN, 2700 STINE WY SPARKS, NV 89431
2 GENESYS GUZMAN, 2700 STINE WY SPARKS, NV 89431
3 SYLVIA GONZALEZ, 2700 STINE WY SPARKS, NV 89431
4 JUAN GONZALEZ, 3601 NEIL RD RENO, NV 89502
5 RAMAN ARORA, 7-ELEVEN, 425 GREENBRAE DR SPARKS, NV 89431
6 BERNARDO SILVA, 1440 SBRAGIA WY Sparks, NV 89431
7 CONNIE MORENO, 615 E LINCOLN WY @249 Sparks, NV 89431
8 BERNARD GUZMAN-SILVA, 1440 SBRAGIA WY Sparks, NV 89431
9

10 AFFIRMATION PURSUANT TO NRS 239B.030
11

12 The party executing this document hereby affirms that this
13 document submitted for recording does not contain the social security
14 number of any person or persons pursuant to NRS 239B.030.
15

16 CHRISTOPHER J. HICKS
17 District Attorney
Washoe County, Nevada

18 By: /s/ Matthew Lee
19 MATTHEW LEE
20 10654
DEPUTY DISTRICT ATTORNEY

21
22
23 PCN: RPD0031917C-GUZMAN
24 RPD0015200C-SILVA
25
26

1 RISTENPART LAW, LLC
2 Theresa Ristenpart, Esq.
3 464 South Sierra Street
4 Reno, Nevada 89501
5 Attorney for Mr. Richard Silva

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

9 STATE OF NEVADA,

10 Plaintiff,

Case No. CR18-1135(B)

11 v.

Dept. No. 15

12 RICHARD ABDIEL SILVA,

13 Defendant.
14 _____/

15 **MOTION TO SUPPRESS**

16 **(EVIDENTIARY HEARING REQUESTED)**

17 COMES NOW, Defendant RICHARD ABDIEL SILVA (“Mr. Silva”), by and through his
18 Counsel THERESA RISTENPART, Esq., and hereby moves this Court for an Order suppressing
19 the evidence seized from the person of Richard Abdiel Silva, to wit: Statements made during
20 interrogation interviews.

21 This Motion is based upon the following Points and Authorities and attached exhibits.
22 Defendant requests an evidentiary hearing before this Court as some material facts may be in
23 dispute.
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POINTS AND AUTHORITIES

STATEMENT OF RELEVANT FACTS

On November 2, 2017, Reno Police Department, in responding to a report of shots fired, found Luz Linarez-Castillo (“Ms. Linarez-Castillo”) deceased in her vehicle. A witness reported seeing a light-colored silver Toyota Sequoia driving away from the area shortly after hearing the gunshots. Law enforcement later identified Arturo Guzman, Yiovannie Guzman’s (“Mr. Guzman”) father, as the owner of the vehicle.

During Reno Police Department’s investigation of the alleged homicide of Ms. Linarez-Castillo, detectives Reed Thomas (“Detective Thomas”) and Ernest Kazmar (“Detective Kazmar”) conducted multiple interviews with Mr. Silva. On November 16, 2017, Detective Thomas called Mr. Silva around 3:00 p.m. requesting that he and his younger brother, Noe Silva (“Noe”), come back to the Reno Police Department main station for a second interview. At 5:00 p.m., both Mr. Silva and Noe were placed in Interview Room #4. Detectives Kazmar and Thomas requested consent to temporarily seize Mr. Silva’s and Noe’s phone. Mr. Silva denied consent. After some hesitation, Noe consented and gave the detectives his phone.

Subsequently, Mr. Silva was separated from his brother and placed in Interview Room #3 at 5:53 p.m. At approximately 6:00 p.m., both detectives re-entered the room to begin their interview with Mr. Silva. Neither Detective Thomas nor Detective Kazmar read Mr. Silva his *Miranda* rights. Rather, in the first part of this interview, Detective Thomas asked Mr. Silva to put his phone on airplane mode. Detective Thomas explained the progress in their investigation emphasizing on the inconsistencies. Mr. Silva was adamant and repeatedly stated that he did not

1 leave his house the evening of November 1, 2017, and that he had slept in Noe's room.

2 Immediately after stating he knew where he slept, at 6:06 p.m., Mr. Silva stated:

3 **I'm going to tell you guys, man, you guys are saying that you're helping my**
4 **brother out with all this. I don't feel comfortable talking to you anymore. Right**
5 **now, it seems like I'm being interrogated. I don't feel comfortable talking to**
6 **you guys, and if I'm not being detained at this moment, I just want to leave now**
7 **with my brother.**

8 (Exhibit 1 November 16, 2017 Interview 2, Video 1 (5:53:37-6:06:40). Both Detective Thomas
9 and Detective Kazmar immediately stop questioning and stand up. Mr. Silva also stands up as
10 both detectives, but the detectives ordered him to remain seated in the interview room. After
11 approximately four minutes, both detectives re-entered the interview room and resume
12 questioning.

13 DETECTIVE THOMAS: Alright. Here's the deal, Richard. We know you left the
14 house that night. Okay? Bernard's on his way down here right
15 now. And, we're probably going to arrest him. Because we can
16 put you on scene, but who has the better motive? I would say
17 Bernard. He's the one going through this shit. Was that –

18 MR. SILVA: **I already said that I don't want to talk to you guys.** [6:11:00]

19 Then, Detective Thomas showed Mr. Silva a still photograph of himself at 7-Eleven on the
20 evening of November 1, 2017.

21 DETECTIVE THOMAS: Okay, that's fine. That's fine. You telling me that you didn't leave
22 the house that night? There you are, Silva.

23 MR. SILVA: **I already said that I'm not going to talk to you guys.** [6:11:06]

24 DETECTIVE THOMAS: Okay. So, you got nothing to say?

25 MR. SILVA: **I got nothing to say to you.** [6:11:11]

26 DETECTIVE THOMAS: Okay. Good enough. Stand up.

(Exhibit 1 Interview 11/16/2017 Video 1 (6:10:34-6:11:15).

1 Mr. Silva was immediately placed under arrest, in which Detective Thomas took pictures
2 of him. Detective Kazmar seized Mr. Silva's phone, and Detective Thomas took his shoes, hat,
3 and jacket before placing handcuffs on Mr. Silva. Mr. Silva was then transported to another
4 Interview Room #3. Detective Thomas took off his handcuffs and further detained Mr. Silva by
5 an ankle cuff mounted to the floor. For more than three hours, Mr. Silva was left, detained, in this
6 interview room, in which he spent most of the time sleeping either in his chair or on the floor. At
7 9:42 p.m., both detectives entered the interview room to continue their interrogation of Mr. Silva.
8 (Exhibit 1 Interview 11/16/2017 Video 2 (6:18:05-9:41:57)).
9

10 DETECTIVE KAZMAR: A couple things I wanted to go over with you, been wanting to go
11 over with you. Uhm, I'm sure you're tired, (inaudible). There
12 are several different ways that this can go in the end. So, first
13 off. For starters, let me explain to you part of what's been going
14 on, okay? Uhm, you've probably guessed, you know, the rest of
15 the family, your mom, dad are back down here. Bernard is back
16 down here. Other members of the family are back down here.
17 We're just doing what we got to do, right? And I'm sure you
18 understand that. Part of that is, uh, we got a warrant for your
19 phone, okay? To search it. Uh, we also got a seizure order to
20 compel you to give us the fingerprint to get into the phone.
21 Okay? And it says right in here, I'll let you read it if you want to,
22 that the judge told us, flat out, if we need to use force to compel
23 you to give us the fingerprint, we can, okay? We're authorized to
24 do that. Obviously, we don't want to do that. I know you don't
25 want to do that. Uhm, so, after that uhm, you got some time to
26 think and uh, there's a conversation that we'd love to have with
you, and it's not what you think it is.

20 MR. SILVA: **I really don't want to talk**, but if I could read this real quick, I'll
21 give you the fingerprint. [9:43:12]

22 DETECTIVE KAZMAR: Okay.

23 (Exhibit 1 Interview 11/16/2017 Video 2 (9:42:00-9:43:17)).
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1 After providing Detective Kazmar with access to his phone, Mr. Silva asked if he could
2 use the restroom. The detectives left the interview room at 9:45 to get the key to remove Mr.
3 Silva's ankle cuff. One minute later, Detective Kazmar re-entered the room asking for Mr. Silva
4 to show him the phone's passcode again. Then, Detective Thomas re-entered the room to remove
5 the ankle cuff and escorted Mr. Silva to the restroom. Mr. Silva was re-cuffed at the ankle at 9:48
6 p.m., and Detective Kazmar began to interrogate Mr. Silva again.

7 DETECTIVE KAZMAR: So, like I said. Uh, there's a lot of things that we were willing to
8 share with you tonight. Uh, if you want to have that conversation.
9 It's one hundred percent up to you.

10 MR. SILVA: I'll answer what I can. [9:53:20]

11 DETECTIVE KAZMAR: Okay, so here's the deal. You don't have any shoes. We took
12 those from you. We took your jacket. We took your hat.
13 Because it's evidence, okay? You're sitting here. You got a cuff
14 around your ankle, okay? You are in custody right now, okay?
15 And there's a lot of things, we'll get into that. And, uh, my
16 promise to you is that we will answer, truthfully and honestly, all
17 the questions that we can. Okay, but my caveat that I always
18 throw out there, the kind of disclaimer, is that there might be
19 something you ask me, and I might not be able to answer that.
20 Okay? We are going to share stuff from the investigation with
21 you, but you might ask me a question and I can't answer that.
22 And I'm not going to try and blow smoke up your ass or, you
23 know, get tricky with you or anything like that. I'll just tell you,
24 like look, I can't answer that.

19 MR. SILVA: Okay.

20 DETECTIVE KAZMAR: Okay, but because you are in custody, we're going to read you
21 your rights. And then, we'll go from there. At any point that you
22 want to stop talking to us, that's completely on you, okay?
23 [9:54:03]

23 MR. SILVA: Okay.

24 DETECTIVE KAZMAR: You have the right to remain silent. Anything you say can be
25 used against you in a court of law. You have the right to have an
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attorney present prior to and during questioning if you want. If you cannot afford one, one will be provided to you at no cost by the court. Do you understand those rights? [9:54:13]

MR. SILVA: Yes, sir.

DETECTIVE KAZMAR: Okay. Having those rights in mind, like I said, I'd like to have a conversation with you.

MR. SILVA: I'm okay with it.

DETECTIVE KAZMAR: Okay. So, do you want to start off with questions?

MR. SILVA: Nah, you go ahead, man.

DETECTIVE KAZMAR: We know that you were there when Luz was killed. We can prove it now. We have physical evidence. Okay? We have forensic physical evidence, uh, among other things, okay? Now, like I said, uhm, the easiest way for us to know that, for all intents and purposes, that our investigation is over, and we don't need to continue looking for any additional suspects who may have say had knowledge beforehand that this was going to occur. Basically, this was some type of conspiracy, aka Bernard. Uhm, to be honest with you, I've had some questions about your mom. I'm not sure. To alleviate that on our side, the only way that can happen tonight is if we have an honest frank conversation and you put us at ease, and we leave here knowing that nobody else is responsible. That is one hundred percent on you. You have to make the decision and decide if you are going to stand up and take responsibility for what happened and talk to us about it honestly, or if you want to roll the dice and risk something else happening to your family. I can't... can't spell it out any clearer than that for you, and I can't make a decision for you. That's something that only you can do.

MR. SILVA: **I'd rather stop talking now.** [9:56:03]

Mr. Silva invoked his right to remain silent within two minutes of Detective Kazmar verbally giving these warnings. However, Detective Thomas and Detective Kazmar continued to interrogate him. Less than two minutes later, Mr. Silva repeated that he wanted to invoke his right to remain silent, thereby indicating that he wanted the interrogation to cease.

1 DETECTIVE KAZMAR: Okay.

2 DETECTIVE THOMAS: You know, you said something earlier when we were in the other
3 room. That you said you didn't think this was, you thought it
4 was an interrogation and that we weren't trying to help your
5 brother. And you couldn't be more wrong. Uh, trust me. We
6 want your brother to get his kids back. They've already lost a
7 parent, right? We want your brother to get his kids back. I can
8 tell you that from the bottom of my heart that has not been fake
9 from the get-go. But like Detective Kazmar said, we have to do
10 our jobs and we have to fill the squares and...and check off
11 things appropriately. So, I just hope you understand that.

12 MR. SILVA: Yep.

13 DETECTIVE KAZMAR: I have a legitimate concern, Richard. I, honestly, I do that no
14 matter how this, well not no matter how this shakes out, but if
15 this shakes out a certain way, that the kids are gone. I really do.
16 I mean, I... I absolutely, I can look you in the eye and tell you if
17 it works out a certain way, that I believe one hundred percent,
18 that he gets custody of those kids. And like I told him the first
19 time I met him, and we were talking about the custody issue and
20 the fact that Fernando is not his biological son, but he's been
21 there since day one. I've had a lot of experience in the family
22 court, and I think that he's got a very strong chance of even
23 getting custody of him over grandma. Uh, but like I said, if
24 there's too many question marks that are still out there at the end
25 of the day, then there's no way that that is going to happen with
26 CPS. There's not.

MR. SILVA: **I'd rather stay quiet.** [9:57:36]

DETECTIVE KAZMAR: Okay.

(Exhibit 1 Interview 11/16/2017 Video 2 (9:49:25-9:57:52)).

After invoking his right to remain silent twice, the detectives ceased the interrogation at 9:57 p.m., in which Mr. Silva spent approximately fifty-seven minutes waiting and sleeping.

Both detectives re-entered Interview Room #3 at 10:55 p.m., in which they resumed interrogating Mr. Silva. Without re-issuing *Miranda*, Detective Kazmar informed Mr. Silva

1 that Mr. Guzman was in a separate interview room. He further stated that Mr. Guzman
2 incriminated Mr. Silva. Detective Kazmar summarized what Mr. Guzman stated in his
3 confession to directly induce Mr. Silva's confession. Subsequently, Mr. Silva confessed to
4 shooting Ms. Linarez-Castillo. After obtaining his confession, the detectives once again left
5 Mr. Silva in the interview room to get him a cigarette and a bottle of water. (Exhibit 1
6 Interview 11/16/2017 (10:55:00-11:26:05)). Approximately four minutes later, the detectives
7 returned with a bottle of water and resumed questioning for another four and a half minutes.
8 (Exhibit 1 Interview 11/16/2017 (11:30:00-11:34:30)).

9 ARGUMENT

10 **I. Police violated Mr. Silva's constitutional rights by failing to inform Mr. Silva of his** 11 **Miranda rights during an obvious custodial interrogation.**

12 A suspect in custody has the constitutional right to remain silent. U.S. Const. amend. V;
13 U.S. Const. amend. XIV; Nev. Const. art. 1, § 8. This right has been memorialized in what is
14 commonly known as *Miranda* rights. *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L.
15 Ed. 2d 694 (1966). The *Miranda* rights embody certain procedural safeguards that require the
16 police to advise a criminal suspect of his rights under the Fifth and Fourteenth Amendments
17 prior to commencing custodial interrogation. *Florida v. Powell*, 559 U.S. 50, 59-60, 130 S. Ct.
18 1195, 175 L. Ed. 2d 209 (2010).

19 Anyone can succumb to the pressures of an interrogation. Therefore, an individual
20 must be informed of his *Miranda* rights at the outset of the interrogation. *Miranda*, 384 U.S. at
21 467-68 ("At the outset, if a person in custody is to be subjected to interrogation, he must first be
22 informed in clear and unequivocal terms that he has the right to remain silent."). This is to
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1 overcome the “inherent pressures of the interrogation atmosphere.” *Id.* at 468. Furthermore,
2 informing the individual of this warning ultimately aims to show him that “his interrogators are
3 prepared to recognize his privilege should he choose to exercise it.” *Id.*

4 The four *Miranda* warnings include: (1) that the suspect has the right to remain silent;
5 (2) that anything he says can be used against him in a court of law; (3) that he has the right to
6 the presence of an attorney; and (4) if he cannot afford an attorney, one will be appointed to
7 him prior to any questioning if he so desires. *Miranda*, 384 U.S. at 444. In warning a suspect,
8 the Supreme Court has not dictated the words in which the essential rights must be
9 communicated; however, they have examined the given warnings to determine if the warnings
10 reasonably “convey to a suspect his rights as required by *Miranda*.” *Powell*, 559 U.S. at 60;
11 *see also California v. Prysock*, 453 U.S. 355, 359, 101 S. Ct. 2806, 69 L. Ed. 2d 696 (1981)
12 (*per curiam*) (“This Court has never indicated that the rigidity of *Miranda* extends to the
13 precise formulation of the warnings given a criminal defendant.”).

14 The warning of the right to remain silent must be accompanied by the explanation that
15 anything said can and will be used against the individual in court. This warning is needed in
16 order to make a suspect aware not only of the privilege to remain silent, but also the
17 consequences of foregoing it. *Miranda*, 384 U.S. at 469. It is only through the awareness of
18 these consequences that there can be any assurance of the individual’s real understanding and
19 subsequent intelligent exercise of the privilege. *Id.* Moreover, this warning may serve to make
20 the individual more acutely aware that he is faced with a phase of the adversary system, in
21 which he is not in the presence of persons acting solely in his interest. *Id.*

Miranda warnings are “required when a suspect is subjected to a custodial interrogation.” *Archanian v. State*, 122 Nev. 1019, 1038, 145 P.3d 1008, 1021 (2006). A defendant's statements made during a custodial interrogation may be admitted at trial only if *Miranda* rights were administered and validly waived. *Koger v. State*, 117 Nev. 138, 141, 17 P.3d 428, 430 (2001). A defendant is “in custody” under *Miranda* if he has been formally arrested or his freedom has been restrained to “the degree associated with a formal arrest so that a reasonable person would not feel free to leave.” *State v. Taylor*, 114 Nev. 1071, 1082, 968 P.2d 315, 323 (1998).

In this case, it is clear Mr. Silva was subjected to a custodial interrogation without *Miranda* warnings. Though Mr. Silva voluntarily arrived at the police station with his younger brother, police separate Mr. Silva from his brother and places him in a separate room. After separating the brothers, detectives question Mr. Silva for approximately ten minutes before Mr. Silva states:

I'm going to tell you guys, man, you guys are saying that you're helping my brother out with all this. I don't feel comfortable talking to you anymore. Right now, it seems like I'm being interrogated. I don't feel comfortable talking to you guys, and if I'm not being detained at this moment, I just want to leave now with my brother.

(Exhibit 1 November 16, 2017 Interview 2, Video 1 (5:53:37-6:06:40)).

In addition, Mr. Silva gets up to leave the room as the detectives stand up to exit, but is ordered to remain seated in the room. Mr. Silva's freedom had been restrained to "the degree associated with a formal arrest so that a reasonable person would not feel free to leave." *Taylor* at 1082, 323. Four minutes after ordering Mr. Silva to remain seated in the chair in the interrogation room, the detectives re-enter approximately four minutes later and being

1 interrogating Mr. Silva again. No *Miranda* warning was provided, thereby violating Mr.
2 Silva's constitutional rights.

3 **II. Mr. Silva unequivocally invoked his right to remain silent during the November 16,**
4 **2017 interrogation.**

5 Mr. Silva was never properly advised of *Miranda* despite being interrogated while in
6 custody. The detectives, after Mr. Silva states he does not want talk to them, place handcuffs
7 on Mr. Silva, take his coat, shoes, and hat. Detectives move Mr. Silva to yet another
8 interrogation room, whereupon they place an ankle cuff on Mr. Silva which is bolted to the
9 floor of the interrogation room. Detectives demand access to Mr. Silva's phone and after that
10 verbally inform Mr. Silva of his *Miranda* rights. Though Defense maintains that the entire
11 November 16, 2017 interrogation must be suppressed due to the detectives' failure to
12 administer *Miranda* warnings after detaining Mr. Silva, Defense will continue to analyze the
13 other constitutional violations.
14

15 After receiving a *Miranda* warning, an individual has control in deciding whether he
16 will speak to the interrogating officers. However, interrogating officers have "no obligation to
17 stop questioning a suspect under *Miranda* unless the suspect exercises the right to remain silent
18 or makes an unambiguous and unequivocal request for an attorney." *Dewey v. State*, 123 Nev.
19 483, 488, 169 P.3d 1149 (Nev. 2007) (internal quotations omitted). Essentially, if interrogating
20 officers elicit a confession, the State has the burden of proving that the statement was
21 voluntarily given under the totality of the circumstances. *Id.* at 492; *see also Moran v. Burbine*,
22 475 U.S. 412, 421, 106 S. Ct. 1135, 89 L. Ed. 2d 410 (1986) (A waiver must be the product "of
23 a free and deliberate choice rather than intimidation, coercion, or deception" and "made with a
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1 full awareness of both the nature of the right being abandoned and the consequences of the
2 decision to abandon it.”); *see also North Carolina v. Butler*, 441 U.S. 369, 373, 99 S. Ct. 1755,
3 60 L. Ed. 2d 286 (1979) (holding that an implied waiver of *Miranda* is given if the warning is
4 given and is understood, then a statement after constitutes an implied waiver).

5 The United States Supreme Court, has made clear that once a person being questioned
6 indicates in any manner, at any time prior to or during questioning that he wishes
7 to remain silent, the interrogation must cease. At this point he has shown that he
8 intends to exercise his Fifth Amendment privilege; any statement taken after the
9 person invokes his privilege cannot be other than the product of compulsion,
10 subtle or otherwise. Without the right to cut off questioning, the setting of in-
custody interrogation operates on the individual to overcome free choice in
11 producing a statement after the privilege has been once invoked.
12 *Michigan v. Mosley*, 423 U.S. 96, 100-01 (1975) (*quoting Miranda v. Arizona*, 384 U.S. 436,
445 (1966)). “The mere fact that he may have answered some questions or volunteered some
13 statements on his own does not deprive him of the right to refrain from answering any further
14 inquiries.” *Miranda*, 384 U.S. at 445. The Supreme Court has extended its holding, that one’s
15 right to counsel during interrogations must be invoked unambiguously, to the right to remain
16 silent. *Berghuis v. Thompkins*, 560 U.S. 370, 371, 130 S. Ct. 2250, 176 L. Ed. 2d 1098 (2010)
17 (*citing Davis v. United States*, 512 U.S. 452, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994)); *see*
18 *also Solem v. Stumes*, 465 U.S. 638, 648, 104 S. Ct. 1338, 79 L. Ed. 2d 579 (1984). Therefore,
19 “if the accused makes an ambiguous or equivocal statement [or remains silent], then the police
20 are not required to end the interrogation” or seek clarification of the suspect’s intent to end
21 questioning. *Berghuis*, 560 U.S. at 371.

22 Unequivocal or unambiguous language is language that is clear and free from doubt.
23 *Ballentine’s Law Dictionary* (2010), available at LexisAdvance. Language that is ambiguous
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1 has more than one interpretation. *Anderson v. Terhune*, 516 F.3d 781, 787 (9th Cir. 2008). A
2 suspect does not need to specifically reference his constitutional rights nor use any specific
3 technology to invoke his rights; however, merely remaining silent is not an effective way to
4 invoke these rights either. *Davis*, 512 U.S. at 452; *Berghuis*, 560 U.S. at 371-72. While there
5 is not a definitive way or magical phrase to invoke the right to remain silent, invocation is
6 construed liberally requiring the interrogated suspect to “articulate his desire sufficiently
7 clearly that a reasonable police officer in the circumstances would understand the statement to
8 be an invocation of his constitutional rights.” *United States v. Shirley*, 2015 U.S. Dist. LEXIS
9 168075, 13 (D. Ariz. 2015); *see also Davis*, 512 U.S. at 452 (holding that a suspect must
10 invoke his rights “sufficiently clearly that a reasonable police officer in the circumstances
11 would understand the statement to be [such] a request”). In determining whether a suspect
12 invoked this right, courts look to the “entire context in which the claimant spoke.” *Shirley*,
13 2015 U.S. Dist. at 13 (*citing Bradley v. Meachum*, 918 F.2d 338, 342 (2nd Cir. 1990)).

14
15 Many courts, both state and federal, have addressed what language satisfies the
16 unequivocal standard in invoking the right to remain silent. In *Jones v. Harrington*, the Ninth
17 Circuit held that a defendant’s statement, “I don’t want to talk no more,” was an unambiguous
18 invocation of his right to remain silent. 829 F.3d 1128, 1140 (9th Cir. 2016). While explicitly
19 stating that one does not want to talk is unequivocal, coupling it with words such as “maybe,”
20 “I think,” and “might” can directly change a once unequivocal assertion of one’s right to
21 remain silent to an ambiguous statement allowing police officers to continue questioning. *See*
22 *Jones*, 829 F.3d at 1139-40 (*citing Anderson v. Terhune*, 516 F.3d 781, 788 (9th Cir. 2008))
23 (holding that “I have nothing to say” and “I plead the fifth” are unequivocal assertions of the
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1 right to remain silent, whereas usage of “maybe,” “I think,” and “might” add ambiguity)); *see*
2 *also Arnold v. Runnels*, 421 F.3d 859, 865 (9th Cir. 2005) (finding that words such as “maybe”
3 and “might” can render unequivocal statements ambiguous).

4 Multiple courts have considered whether the term “rather”¹ is unequivocal. In the Ninth
5 Circuit, Washington courts have repeatedly upheld that a defendant’s statement, “I’d rather not
6 talk about it,” similar to the statement, “I don’t want to talk about it,” was an unequivocal and
7 unambiguous invocation of their right to remain silent. *State v. Ballentine*, 2018 Wash. App.
8 2207, 10-11 (Wash. App. 2018); *see also State v. Gutierrez*, 749 P.2d 213, 217-18 (Wash. App.
9 1988) (holding that “I would rather not talk about it” was an unequivocal assertion of the
10 defendant’s right to remain silent).

11
12 In this case, Mr. Silva was informed of his *Miranda* rights after he was arrested.
13 Detective Kazmar asked if Mr. Silva would be willing to have a conversation with himself and
14 Detective Thomas, in which Mr. Silva stated that he would answer what he could. Detective
15 Kazmar stated, “because you are in custody, we’re going to read you your rights. And then,
16 we’ll go from there. At any point that you want to stop talking to us, that’s completely on you,
17 okay?” Then, Detective Kazmar orally recited *Miranda* and asked if Mr. Silva understood his
18 rights. Mr. Silva verbally responded that he understood his rights and proceeded to waive
19 them, thereby consenting to the interrogation.
20

21 However, two minutes after Detective Kazmar began questioning, Mr. Silva
22 unequivocally invoked his right to remain silent when he stated, “**I’d rather stop talking**
23

24 ¹ Rather is defined as “in preference to, or as a preference”.
25 *Rather*, Cambridge Dictionary (2019), can be found at
26 <https://dictionary.cambridge.org/us/dictionary/english/rather>.

1 **now.** Detective Kazmar immediately responded, “okay,” indicating that he understood that
2 Mr. Silva invoked his right to remain silent; however, he and Detective Kazmar continued to
3 talk expressing concern regarding Mr. Silva-Guzman’s chances of re-gaining custody of his
4 children. In his response, Mr. Silva repeated his previous statement and re-invoked his right to
5 remain silent by stating, “**I’d rather stay quiet.**”

6 As in both *Ballentine* and *Gutierrez*, Mr. Silva used the term “rather” when he invoked
7 his right to remain silent. However, Mr. Silva’s statements are in no way ambiguous. Before
8 Mr. Silva was even *Mirandized*, he invoked his right to remain silent on four separate
9 occasions. After repeatedly stating in clear, unambiguous terms that he did not feel
10 comfortable talking, that he did not want to talk to Detectives Kazmar and Thomas, that he had
11 “nothing to say,” and that he “really didn’t want to talk,” the detectives continued to question
12 and speak to him. However, despite his two subsequent invocations even after being
13 *Mirandized*, both Detective Kazmar and Detective Thomas continued to interrogate him
14 causing Mr. Silva to make incriminating statements. Therefore, all of his statements must be
15 suppressed.
16

17 **III. Detective Thomas and Detective Kazmar did not scrupulously honor Mr. Silva’s**
18 **invocation of his right to remain silent.**
19

20 When a suspect invokes his right to remain silent, the interrogation must cease. *Jones*,
21 829 F.3d at 1132 (*citing Miranda*, 384 U.S. at 444). This directly conveys the principle that
22 once a suspect invokes his right to silence, subsequent questioning by interrogating officers
23 violates *Miranda*. *Id.* (*citing Smith v. Illinois*, 469 U.S. 91, 98-99, 105 S. Ct. 490, 83 L. Ed. 2d
24 488 (1984) (per curiam)); *see also Davis*, 512 U.S. at 458; *see also Miranda*, 384 U.S. at 444.
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1 Furthermore, a suspect's subsequent statements after invoking *Miranda* cannot be interpreted to
2 "cast retrospective doubt on the clarity of [his] initial request itself." *Id.* (quoting *Smith*, 469
3 U.S. at 98-99); *see also Anderson*, 516 F.3d at 791 (holding that after invoking the right to
4 remain silent, all questioning must cease and "any subsequent statements by the defendant in
5 response to continued interrogation cannot be used to find a waiver or cast ambiguity on the
6 earlier invocation").

7 "A defendant's invocation of his right to remain silent does not preclude the police from
8 all further questioning. The police may reinitiate questioning so long as the defendant's right to
9 remain silent was 'scrupulously honored.'" *United States v. Pere-Quiroz*, 2016 U.S. Dist.
10 LEXIS 110013, 9 (D. Nev. 2016) (citing *Mosley*, 423 U.S. at 96 (holding that the right to
11 remain silent also confers the right to stop the interrogation)). However, "to permit the
12 continuation of custodial interrogation after a momentary cessation would clearly frustrate the
13 purposes of *Miranda* by allowing repeated rounds of questioning to undermine the will of the
14 person being questioned." *Mosley*, 423 U.S. at 103.

16 "The admissibility of statements obtained after the person in custody has decided to
17 remain silent depends under *Miranda* on whether his 'right to cut off questioning' was
18 'scrupulously honored.'" *Mosley*, 423 U.S. at 104. Under the totality of the circumstances,
19 courts consider the following factors to determine whether an interrogating officer scrupulously
20 honored a suspect's invocation of the right to remain silent: (1) the amount of time elapsed
21 between interrogations; (2) fresh *Miranda* warnings; (3) scope and subject matter of subsequent
22 questioning; and (4) "zealousness" of the interrogating officers in continuing the interrogation.
23 *United States v. Hsu*, 852 F.2d 407, 410 (9th Cir. 1988) (citing *Mosley*, 423 U.S. at 102).

1 However, the *Hsu* Court adopted that the most important factors to consider were whether the
2 defendant was re-advised of *Miranda* and whether the defendant had validly waived his rights a
3 second time. *Dewey*, 123 Nev. at 490-91 (citing *Mosley*, 423 U.S. at 103-06; *Hsu*, 852 F.3d at
4 410 (holding that the time elapsed between each interview and interview subject matter was not
5 as important as subsequent *Miranda* warnings and validity of waivers)).

6 In this case, the RPD detectives did not scrupulously honor Mr. Silva's invocation of his
7 right to silence. Although Mr. Silva initially waived his *Miranda* rights, he unequivocally
8 invoked his right to remain silent two minutes later. Detective Kazmar indicated that he
9 understood that Mr. Silva invoked this right; however, both he and Detective Thomas
10 immediately continued to voice their concerns regarding the custody of his brother's children.
11 Mr. Silva re-invoked his right to remain silent. Not even sixty minutes later, the detectives re-
12 entered the interview room to continue questioning Mr. Silva. Neither Detective Kazmar nor
13 Detective Thomas re-advised Mr. Silva of his *Miranda* warnings or told him that he could stop
14 the interview at any time before they continued to question him about Ms. Linarez-Castillo's
15 murder, the exact subject that Mr. Silva's repeated previous invocations protected.

16 Mr. Silva's interrogation is vastly distinguished from that of Dewey's interrogation. In
17 *Dewey*, the court determined that the interrogating officers had scrupulously honored Dewey's
18 right to remain silent because the second interrogation occurred two hours later, she was re-
19 advised of *Miranda*, she read and signed a *Miranda* waiver, and was repeatedly reminded that
20 she could end the interview at any time. *Dewey*, 123 Nev. at 491. Over the course of
21 approximately five and a half hours, Mr. Silva unequivocally invoked his right to remain silent
22 a total of seven times, including both instances where he invoked after being advised of
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1 *Miranda*. Regardless of the few breaks during the interrogation, Mr. Silva still gave an
2 involuntary confession. This is because despite his repeated invocations, both detectives
3 continuously blatantly disregarded his request to cease the interrogation by pressing for his
4 confession through the showing of the 7-Eleven still photograph, through the detailed summary
5 of Mr. Guzman's confession incriminating Mr. Silva, and by repeatedly expressing their
6 concerns over the pending custody dispute for Mr. Silva-Guzman's children. They also
7 continuously failed to re-*Mirandize* Mr. Silva or to remind him that he was able to end the
8 interview at any time, like in *Dewey*. Therefore, the RPD detectives failed to scrupulously
9 honor Mr. Silva's invocation of his right to remain silent ultimately violating *Miranda*.
10

11 Since Mr. Silva's incriminating statements occurred after he invoked his right to remain
12 silent, and because both Detective Kazmar and Detective Thomas repeatedly failed to
13 scrupulously honor his invocation of this right to silence, all of Mr. Silva's statements must be
14 suppressed and cannot be used to by the Government to indicate a subsequent waiver of
15 *Miranda*.
16

17 **CONCLUSION**

18 RPD detectives continually violated Mr. Silva's constitutional rights on November 16,
19 2017. First, detectives failed to warn Mr. Silva of his *Miranda* rights despite being in an obvious
20 custodial interrogation. Mr. Silva unequivocally invoked his right to remain silent. Furthermore,
21 both RPD detectives failed to scrupulously honor Mr. Silva's repeated invocations of this right and
22 continued to interrogate him, thereby eliciting incriminating statements.

23 WHEREFORE, Mr. Silva requests that this Court order the suppression of the November
24 16, 2017 statements from the person of Mr. Richard Abdiel Silva.
25
26

AFFIRMATION PURSUANT TO NRS 239B.030

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

DATED this 6th day of August, 2019.

By /s/ Theresa Ristenpart
THERESA RISTENPART, Esq.
Attorney for Mr. Richard Silva

CERTIFICATE OF SERVICE

I, Lisa Dee, an employee of Ristenpart Law, LLC, do certify that I e-filed through
Washoe County E-Flex a copy of this Motion to:

DDA Matt Lee
Washoe County District Attorney's Office

Dated this 6th day of August, 2019.

/s/ Lisa Dee
Lisa Dee, CP

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EXHIBIT LIST

Exhibit No.	Description	Pages
1	Video November 16, 2017 Interrogation	2 (placeholder – thumbdrive provided to the Court)

EXHIBIT 1

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EXHIBIT 1



1 CODE 3880
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4 One South Sierra Street
5 Reno, NV 89501
6 (775) 328-3200
7 Attorney for Plaintiff

8
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
10
11 IN AND FOR THE COUNTY OF WASHOE.

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No.: CR18-1135 (B)

15 v.

Dept. No.: 15

16 RICHARD ABDIEL SILVA,

17 Defendants.

18 _____/
19 OPPOSITION TO MOTION TO SUPPRESS

20 COMES NOW, the State of Nevada, by and through CHRISTOPHER J.
21 HICKS, District Attorney of Washoe County, and MATTHEW LEE, Chief
22 Deputy District Attorney, and hereby opposes the defendant's motion
23 to suppress filed August 8, 2019. This opposition is made and based
24 upon the attached points and authorities and incorporates by
25 reference the statement of facts of the defendant's motion and the
26 attached Exhibit "1" of the defendant's motion, assuming it contains
the complete interview from November 16, 2017.

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1 POINTS AND AUTHORITIES

2 **I. STATEMENT OF FACTS**

3 In the early morning of November 2, 2017, officers from the Reno
4 Police Department were dispatched to the area of Parkview and Neil on
5 reports of multiple shots fired. Preliminary Hearing Transcript
6 ("PHT") 39:15-18 (June 29, 2018). In the dark, responding officers
7 located a red Dodge Charger sedan with its lights on and engine
8 running stopped nose-in against the building of 1192 Parkview Street.
9 Id. at 40:3-41:5. Luz Linarez-Castillo was found unresponsive inside
10 the vehicle with multiple gunshot wounds to her face, back and
11 shoulder. Id. at 41:10-42:20. She was later pronounced dead at the
12 scene. Id. at 43:12-22.

13 As pertaining to the "Statement of Relevant Facts" contained
14 within the defendant's motion and Exhibit "1" of that motion, the
15 State incorporates the times and transcriptions therein into this
16 motion, but with one exception. In the defendant's motion, at 3:8.5,
17 it states that following the initial discussion, the detectives
18 "ordered [Silva] to remain seated in the interview room." In
19 reality, at the conclusion of the first discussion, the defendant
20 stood up to leave and Detective Ernest Kazmar stated, "Just hang out
21 here for a second" with Detective Reed Thomas immediately following
22 up with "Just sit tight, you can't wander around the station. We'll
23 go get Noe (defendant's brother)."

24 ///

25 ///

26 ///

1 **II. ISSUE STATEMENT**

2 Whether the defendant knowingly and intelligently waived his
3 rights afforded under the Fifth Amendment at the time of his
4 confession?

5 **III. THE DEFENDANT'S CONFESSION WAS KNOWINGLY AND INTELLIGENTLY MADE**
6 **UNDER THE TOTALITY OF THE CIRCUMSTANCES; IT IS THEREFORE**
7 **ADMISSIBLE**

8 The defendant was not in custody during the first interview
9 section on November 16, 2017, where he first told detectives that he
10 did not want to talk to them.¹ Nor was he in custody when moments
11 later they again tried to discuss matters with him, but the defendant
12 refused. And as we already know, a person who is not in custody is
13 not entitled to the Fifth Amendment Miranda rights. Silva v. State,
14 113 Nev. 1365, 1370, 951 P.2d 591, 594 (1997) (stating that police may
15 continue questioning a suspect during a consensual interview even
16 when that suspect asks for an attorney). Thus, the first section of
17 the questioning is not relevant to the defendant's motion. Rather,
18 the issue begins with the second part, which begins approximately
19 three-and-a-half hours following the defendant's arrest, at
20 approximately 9:41 p.m.

21
22 ¹ To determine custody, the "ultimate inquiry is simply whether there
23 is a 'formal arrest or restraint on freedom of movement' to the
24 degree associated with a formal arrest." California v. Beheler, 463
25 U.S. 1121, 1125 (1983) (*quoting Oregon v. Mathiason*, 429 U.S. 492, 495
26 (1977)). A person is not in custody simply because the questioning
 takes place at a police station, especially when that person
 voluntarily went to the police station on his own. See id., 463 U.S.
 at 1125 (Miranda not required when defendant voluntarily accompanied
 police to the station). The subjective views of the suspect or the

1 By this time, the State concedes that the defendant is in
2 custody and being questioned. Miranda is therefore applicable. It
3 is unquestionable that the defendant is properly read his Fifth
4 Amendment rights as set forth in Miranda, which he indicates he
5 understands and that he is "okay with [having a conversation]."²
6 Approximately two minutes later, the defendant states, "I'd rather
7 stop talking now" and after some follow up the defendant largely
8 repeats himself and the conversation ends.

9 Approximately 58 minutes later, and now after receiving a full
10 confession of Yiovannie Guzman, the detectives re-enter, ask if the
11 defendant is doing okay, and give him one "last opportunity" to tell
12 his story.³ The detectives do not read the Miranda rights again. The
13 detectives tell the defendant what they now know, including the fact
14 of the affair, and the defendant confesses.

15 With this specific timeline in mind, it is important to note
16 that the defendant was, only an hour before, fully apprised of his
17 Miranda rights. The defendant argues that since he told
18 investigators that he wished to not talk, then any re-initiation of
19 the conversation must have been done with Miranda. While that would
20 have been a factor in the State's favor, it is not dispositive.

21 The central question in matters of Fifth Amendment waivers is
22 best stated by the Supreme Court in Wyrick v. Fields, 459 U.S. 42, 46
23

24 officers is irrelevant. Stansbury v. California, 511 U.S. 318, 323
25 (1994).

26 ² Def. Mot. Suppress at 5:24-6:6 (Aug. 8, 2019).

³ Id., Exhibit "1" at Video 2, 10:55:10.

1 (1982): "...whether the purported waiver was knowing and intelligent
2 and found to be so under the totality of circumstances."⁴

3 "Where the accused has been fully and fairly apprised of his
4 Miranda rights, there is no requirement that the warnings be repeated
5 each time the questioning is commenced." Taylor v. State, 96 Nev.
6 385, 386, 609 P.2d 1238, 1239 (1980). Likewise, there is no
7 requirement "that an accused be continually reminded of his rights
8 once he has intelligently waived them." Biddy v. Diamond, 516 F.2d
9 118, 122 (1975).⁵ The requirement is only that an accused be
10 "initially advised of his rights" and then "that he understands them
11 at the time of the interrogation. Taylor, 96 Nev. at 387, 609 P.2d
12 at 1239 (where incriminating statements were made three hours after
13 Miranda warnings given). And, a proper waiver of rights "may be
14 inferred from the actions and words of the person interrogated."
15 Mendoza v. State, 122 Nev. 267, 276, 130 P.3d 176, 182 (2006) (where a
16 defendant never expressed difficulty understanding his rights or the
17 content of the questioning, and he continued with the conversation
18 and answered questions).

19 Therefore, the failure to re-advise an accused of his rights
20 under the Fifth Amendment when reinitiating questioning does not, by
21 itself, constitute a violation of *Miranda*⁶ and is not dispositive of
22 ///

23
24
25 ⁴ Quoting Edwards v. Arizona, 451 U.S. 477, 486, n.9 (1981).

26 ⁵ Quoting U.S. v. Anthony, 474 F.2d 770, 773 (5th Cir. 1973).

⁶ Miranda v. Arizona, 384 U.S. 436 (1966).

1 the issue herein.⁷ Rather, whether an accused was re-Mirandized is to
2 be considered a part of the totality of circumstances to determine
3 whether the defendant knowingly and intelligently waived his rights
4 at the time of the interrogation.

5 Here, when examining the totality of the circumstances, it is
6 clear that the defendant's confession was made while knowingly and
7 intelligently understanding his Fifth Amendment rights. First, he
8 was just read his rights less than an hour before and even stated he
9 understood them. In fact, he then invoked his right to not speak.
10 There were not any intervening actions that would have drawn his
11 attention elsewhere and caused him to suddenly forget his rights an
12 hour later when he confessed.

13 And second, as further evidence that the defendant knows and
14 understands his rights, at the outset of the evening, after he
15 arrives at the police station, he demonstrates a strong understanding
16 of the Fourth and Fifth Amendment principles:

17 I'm going to tell you guys, man, you guys are saying
18 that you're helping my brother out with all this. I
19 don't feel comfortable talking to you anymore. Right
20 now, it seems like I'm being interrogated. I don't
21 feel comfortable talking to you guys, and if I'm not
22 being detained at this moment, I just want to leave
23 now with my brother.

24 Def. Mot. to Suppress at 3:3-5.

25 ///

26 ⁷ As noted in Biddy, *supra*, "A great many courts, state and federal,
have likewise held that repeated warnings are not necessary to a
finding that a defendant, with full knowledge of his rights,
knowingly and intelligently waived them." (citations omitted).

1 This statement clearly evinces that he understands terminology,
2 he understands that unless he is being detained he must be free to
3 leave, and he understands that he does not have to talk to the
4 detectives.

5 Of note also, the detectives had just learned about the co-
6 defendant's confession. They now had a reason to clear up facts and
7 matters associated with his statements which primarily blamed the
8 defendant for the murder. Thus, they had reason to inquire further,
9 with new information.

10 The issue remains: did the defendant knowingly and intelligently
11 waive his rights under the Fifth Amendment at the time that he
12 ultimately confessed to killing the victim? Despite having elected
13 to remain silent previously, the defendant demonstrated a clear
14 understanding of his rights throughout the entire evening. In this
15 particular case, with this particular defendant, the fact of the
16 detective's failure to re-Mirandize the defendant is not dispositive.
17 The defendant knew and understood his rights. His waiver was knowing
18 and intelligent.

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 **IV. CONCLUSION**

2 Based on the foregoing, the defendant did knowingly and
3 intelligently waive his Fifth Amendment rights when, with an
4 understanding of them, he agreed to a conversation now involving
5 information of his co-defendant's confession. His confession should be
6 admissible.

7 AFFIRMATION PURSUANT TO NRS 239B.030

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

10 Dated this 21st day of August, 2019.

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

14 By Matthew Lee
15 MATTHEW LEE
16 1065
17 Chief Deputy District Attorney
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1 CERTIFICATE OF SERVICE BY E-FILING

2 Pursuant to NRCP 5(b), I certify that I am an employee of
3 the Washoe County District Attorney's Office and that, on this date,
4 I electronically filed the foregoing with the Clerk of the Court. A
5 notice will be sent electronically to the following:

6
7 THERESA RISTENPART

8
9 Dated this 21st day of August, 2019

10
11 /s/DANIELLE RASMUSSEN
12 DANIELLE RASMUSSEN

1 RISTENPART LAW, LLC
2 Theresa Ristenpart, Esq.
3 464 South Sierra Street
4 Reno, Nevada 89501
5 Attorney for Mr. Richard Silva

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

9 STATE OF NEVADA,

10 Plaintiff,

Case No. CR18-1135(B)

11 v.

Dept. No. 15

12 RICHARD ABDIEL SILVA,

13 Defendant.
14 _____/

15 **REPLY TO STATE'S OPPOSITION TO DEFENSE MOTION TO SUPPRESS**

16 COMES NOW, Defendant RICHARD ABDIEL SILVA ("Mr. Silva"), by and through his
17 Counsel THERESA RISTENPART, Esq., and hereby replies to the State's Opposition to Defense
18 Motion to Suppress filed on August 21, 2019.

19 This Reply is based upon the following Points and Authorities and original exhibits
20 attached to the Motion filed on August 8, 2019.

21 **POINTS AND AUTHORITIES**

22 **REPLY**

23 **I. Mr. Silva was "in custody" being interrogated once he was directed to a separate**
24 **interrogation room separate from his younger brother.**
25
26

1 The State argues that Mr. Silva was simply told to Mr. Silva to “sit tight” in the
2 interrogation room and therefore, detectives did not have to advise Mr. Silva of his constitutional
3 rights under Miranda until three and a half hours later when detectives formally placed Mr. Silva
4 under arrest. State’s Opposition pg. 2 lines 22; pg. 3 lines 15-19.

5 A defendant is “in custody” under *Miranda* if he has been formally arrested or his
6 freedom has been restrained to “the degree associated with a formal arrest so that a reasonable
7 person would not feel free to leave.” *State v. Taylor*, 114 Nev. 1071, 1082, 968 P.2d 315, 323
8 (1998).

9
10 The Ninth Circuit has held that an individual is in custody once a "reasonable innocent
11 person in [the individual's] circumstances would conclude that after brief questioning he or she
12 would not be free to leave." *United States v. Cazares*, 788 F.3d 956, 980 (9th Cir.
13 2015) (quoting *United States v. Booth*, 669 F.2d 1231, 1235 (9th Cir. 1981)); *United States v.*
14 *Wauneka*, 770 F.2d 1434, 1438 (9th Cir. 1985) (same).
15 Custody analysis "is objective and is not based upon 'the subjective views of the officers or the
16 individual being questioned.'" *Cazares*, 788 F.3d at 980 (quoting *United States v. Kim*, 292
17 F.3d 969, 973 (9th Cir. 2002).

18
19 If there is no formal arrest, the pertinent inquiry is whether a reasonable person in the
20 suspect's position would feel "at liberty to terminate the interrogation and leave." *Rosky v.*
21 *State*, 121 Nev. 184, 191, 111 P.3d 690, 695 (2005) quoting *Thompson v. Keohane*, 516 U.S.
22 99, 112, 116 S. Ct. 457, 133 L. Ed. 2d 383 (1995)); *see also Alward*, 112 Nev. at 154, 912 P.2d
23 at 252 (stating the pertinent inquiry focuses on "'how a reasonable man in the suspect's position
24 would have understood his situation'" (quoting *Berkemer v. McCarty*, 468 U.S. 420, 442, 82 L.
25

1 Ed. 2d 317, 104 S. Ct. 3138 (1984) (“A court must answer this question by taking an objective
2 look at "all of the circumstances surrounding the interrogation.").

3 In this case, it is obvious that Mr. Silva in custody as any reasonable person in his
4 position would feel he could not terminate the interrogation and leave. Detective Thomas
5 called Mr. Silva and requested that he come to the station for an interview and requested that
6 Mr. Silva bring his younger fifteen-year-old brother Noe Silva. Mr. Silva arrived at the station
7 with his younger brother at the police station. After arriving, detectives directed Mr. Silva to
8 go with them to a separate interview room, thereby separating Mr. Silva from his brother and
9 isolating Mr. Silva.
10

11 Detectives placed Mr. Silva in an interrogation room and Detective Thomas directed
12 Mr. Silva to turn his phone on airplane mode, further isolating Mr. Silva from outside contact
13 prohibiting Mr. Silva from communication. There were two detectives in the room both of
14 whom purposely position themselves in between Mr. Silva and the door to exit the room,
15 blocking Mr. Silva from voluntarily leaving.
16

17 Critically, Mr. Silva tells the detectives **“If I’m not being detained at this**
18 **moment, I just want to leave now with my brother.”** (Exhibit 1 November 16, 2017
19 Interview 2, Video 1 (5:53:37-6:06:40). Instead of allowing Mr. Silva to leave the room,
20 the detectives inform him that he must “just hang here for a second” and must “sit tight, you
21 can’t wander around the station. We will go get your Noe.” Both detectives exit the room
22 and close the door behind them as they leave. But instead of bringing Noe to facilitating
23 Mr. Silva leaving, the detectives re-enter the room approximately four minutes later and
24 aggressively confront Mr. Silva on his whereabouts on the night in question. Mr. Silva
25
26

1 informs the detectives repeatedly that he did not want to talk to them, whereupon they
2 formally arrest Mr. Silva. Even at this juncture, the detectives fail to inform Mr. Silva of his
3 constitutional rights under *Miranda*.

4 The detectives knew that Mr. Silva arrived with his younger 15-year-old brother and
5 would not be able to leave without his brother. They purposely separated and isolated Mr.
6 Silva. When Mr. Silva stated he wanted to leave, the detectives instructed him to wait in the
7 interrogation room and closed the door to the interrogation room, never bringing his brother
8 or allowing Mr. Silva to leave. Any reasonably person in Mr. Silva's position would not
9 feel free to leave and as such, Mr. Silva was "in custody" once the detectives moved him to
10 the second interrogation room away from his brother at 5:53 p.m. Detectives violated Mr.
11 Silva's constitutional rights by failing to inform him of his right under *Miranda* before
12 interrogating him.
13

14 **II. The detectives did not scrupulously honor Mr. Silva's right to remain silent**
15 **once invoked.**

16 The State argues that Mr. Silva "knowingly and voluntarily waived his rights at the time of the
17 interrogation." Opposition pg. 7 lines 17-18. The State does not even bother to address the
18 detectives' behavior and the issue of once Mr. Silva invoked yet again his right to remain silent,
19 whether the detectives scrupulously honored Mr. Silva's invocation.
20

21 Over the course of approximately five and a half hours, Mr. Silva unequivocally
22 invoked his right to remain silent a total of seven times, including both instances where he
23 invoked after being advised of *Miranda*. The detectives blatantly and deliberately ignored Mr.
24 Silva's request to leave and repeated invocations of his right to remain silent.
25
26

1 If a suspect has already invoked his right to remain silent. In that situation, a waiver is
2 not effectuated just because the suspect responds to subsequent questioning from the
3 police. "[U]nder the clear logical force of settled precedent, an accused's postrequest responses
4 to further interrogation may not be used to cast retrospective doubt on the clarity of the initial
5 request itself." *Smith v. Illinois*, 469 U.S. 91, 100, 105 S. Ct. 490, 83 L. Ed. 2d 488 (1984);

6 After finally being informed of his rights under *Miranda*, Mr. Silva initially waived his
7 *Miranda* rights, but then two minutes later he unequivocally invoked his right to remain silent.
8 Instead of immediately ceasing the interrogation, both detectives continue to confront and
9 question Mr. Silva forcing Mr. Silva to yet again tell the detectives that he did not want to talk.
10 Not even sixty minutes later, the detectives re-entered the interview room to confront Mr. Silva
11 with his co-defendant's confession with the obvious purpose of getting Mr. Silva to abandon
12 his self-imposed silence. See *United States v. Barnes*, 432 F.2d 89 (9th Cir. 1970). Neither
13 Detective Kazmar nor Detective Thomas re-advised Mr. Silva of his *Miranda* warnings or told
14 him that he could stop the interview at any time before they continued to question him.
15 Therefore, the RPD detectives failed to scrupulously honor Mr. Silva's invocation of his right
16 to remain silent ultimately violating *Miranda*.
17

18 It is also clear that the persistent coercive efforts by the detectives was to wear down
19 Mr. Silva's resistance and make him change his mind. See *United States v. Olof*, 527 F.2d 752,
20 754 (9th Cir. 1975). The improper behavior by the detectives had a continuing effect upon Mr.
21 Silva's will and eventually caused Mr. Silva to render statements.
22

23 Since Mr. Silva's incriminating statements occurred after he invoked his right to remain
24 silent, and because both Detective Kazmar and Detective Thomas repeatedly failed to
25
26

1 scrupulously honor his invocation of this right to silence, all of Mr. Silva's statements must be
2 suppressed and cannot be used to by the Government to indicate a subsequent waiver of
3 *Miranda*.

4 **CONCLUSION**

5 RPD detectives continually violated Mr. Silva's constitutional rights on November 16,
6 2017. First, detectives failed to warn Mr. Silva of his *Miranda* rights despite being in an obvious
7 custodial interrogation. Mr. Silva unequivocally invoked his right to remain silent. Furthermore,
8 both RPD detectives failed to scrupulously honor Mr. Silva's repeated invocations of this right and
9 continued to interrogate him, thereby eliciting incriminating statements.
10

11 WHEREFORE, Mr. Silva requests that this Court order the suppression of the November
12 16, 2017 statements from the person of Mr. Richard Abdiel Silva.

13 **AFFIRMATION PURSUANT TO NRS 239B.030**

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

16 DATED this 27th day of August, 2019.
17

18 By /s/ Theresa Ristenpart
19 THERESA RISTENPART, Esq.
20 Attorney for Mr. Richard Silva
21
22

23 **CERTIFICATE OF SERVICE**

24 I, Lisa Dee, an employee of Ristenpart Law, LLC, do certify that I e-filed through
25
26

1 Washoe County E-Flex a copy of this Reply to:

2 DDA Matt Lee
3 Washoe County District Attorney's Office

4 Dated this 27th day of August, 2019.

5 /s/ Lisa Dee
6 Lisa Dee, CP
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1 Code #4185
SUNSHINE LITIGATION SERVICES
2 151 County Estates Circle
Reno, Nevada 89511
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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE
7 HONORABLE DAVID A. HARDY, DISTRICT JUDGE

8 -o0o-

9 THE STATE OF NEVADA, Case No. CR18-1135B
10 Plaintiff, Dept No. 15
11 vs.
12 RICHARD ABDIEL SILVA,
13 Defendant.

14 _____ /

15

16

17 TRANSCRIPT OF PROCEEDINGS

18 ORAL ARGUMENTS

19 SEPTEMBER 4, 2019

20 RENO, NEVADA

21

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23

24 REPORTED BY: CORRIE L. WOLDEN, NV CSR #194, RPR, CP

25 JOB NO. 571529

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A P P E A R A N C E S

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I N D E X

WITNESSES

PAGE

SULI SCHEHR	
DIRECT EXAMINATION BY MR. LEE	22
CROSS EXAMINATION BY MS. RISTENPART	25
REED THOMAS	
DIRECT EXAMINATION BY MR. LEE	40
CROSS EXAMINATION BY MS. RISTENPART	54
REDIRECT EXAMINATION BY MR. LEE	66
LOUISE ROBERTS	
DIRECT EXAMINATION BY MR. LEE	68
CROSS EXAMINATION BY MS. RISTENPART	72
REDIRECT EXAMINATION BY MR. LEE	74
RECROSS EXAMINATION BY MS. RISTENPART	74
JESSICA MACIAS	
DIRECT EXAMINATION BY MR. LEE	76
ARTURO MANZO-RAMIREZ	
DIRECT EXAMINATION BY MR. LEE	83
CROSS EXAMINATION BY MS. RISTENPART	87
REED THOMAS	
DIRECT EXAMINATION BY MR. LEE	90
CROSS EXAMINATION BY MS. RISTENPART	92

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMITTED</u>
Exhibit 1	Search Log DMV	4	70
Exhibit 2	Search Log DMV	4	70
Exhibit 3	Photograph	4	86
Exhibit 4	Photograph	4	--
Exhibit 5	Flash Drive	21	22
Exhibit 6	Flash Drive, Duplicate of Exhibit 5	29	29
Exhibit 7	Photograph	37	38
Exhibit 8	Photograph	37	38

1 RENO, NEVADA, WEDNESDAY, SEPTEMBER 4, 2019, 2:00 P.M.

2 -o0o-

3 (Exhibit Numbers 1 - 4 were marked for identification)

4

5 THE COURT: Good afternoon. We will go on the
6 record in State versus Guzman and Silva. Both captions are
7 CR18-1135. Guzman is the A defendant and Silva is the
8 B defendant. By order of Court, this matter has previously
9 been severed for trial. Are we missing somebody?

10 MS. RISTENPART: Well, Your Honor, we are severed,
11 so I don't know if Mr. Routsis was going to be present
12 today.

13 THE COURT: Who is Mr. Guzman?

14 Well, until he has counsel, place Mr. Guzman in
15 the jury box. Ms. Law Clerk, if you will relocate against
16 the wall. Mr. Guzman will sit over here.

17 I'm not sure how far I'm going to go without
18 Mr. Routsis. I begin by reciting what I have reviewed in
19 preparation for the hearing. I do this not to be pedantic,
20 but I want you to catch it if I have missed something along
21 the way.

22 There is a Motion to Admit Other Bad Act Evidence.
23 It is filed in both cases, but the bad acts alleged
24 regarding romantic relationships involve Mr. Silva only.
25 There is no opposition by Guzman. There is an opposition by

1 Silva. There is a Motion in Limine filed by Silva opposed
2 by the State.

3 There is the Motion to Suppress with its
4 opposition and reply, a motion, an academic motion to exceed
5 page limitation, and then a Motion to Continue, which was
6 filed today.

7 Mr. Lee, on behalf of the State, I don't know
8 which of the motions before me directly involve Mr. Guzman.

9 MR. LEE: Your Honor, I had filed the Motion to
10 Admit Other Acts in both cases. It wasn't -- I actually did
11 not think Mr. Guzman would be here, nor his counsel with
12 him, and so I don't believe, he is certainly not a part of
13 the suppression or in limine. If Mr. Guzman's matter comes
14 to trial, maybe we could rehash the Motion to Admit the
15 Other Acts.

16 THE COURT: So if I withhold evidence and argument
17 on the prior bad act motion, Mr. Guzman's participation is
18 not required and his presence is not required. Do you agree
19 with that?

20 MR. LEE: I agree with that.

21 THE COURT: I am uncomfortable even addressing
22 Mr. Guzman other than to say good afternoon, sir, without
23 Mr. Routsis' presence. So, Deputy, let's take Mr. Guzman
24 out when you can. Just go ahead and during the course of
25 our proceedings just escort Mr. Guzman out.

1 If any of you are here on behalf of Mr. Guzman,
2 you are free to leave, too. You are also free to stay.

3 Counsel, how shall I proceed? I obviously intend
4 to focus on the Motion to Suppress. I don't know if it's
5 obvious or not, but it seems to be the substantive
6 concerning issue before the Court, and then I have this late
7 filed Motion to Continue. I don't believe that will stop
8 the evidentiary argument on the Motion to Suppress in any
9 way, but do any of you want to be heard on the Motion to
10 Continue?

11 MR. LEE: Judge, obviously, I just filed it this
12 morning. I don't even know if Ms. Ristenpart has even seen
13 it, so if we can just put that one back, down the road
14 meaning.

15 THE COURT: Have you seen it?

16 MS. RISTENPART: Your Honor, I did see the filing
17 and I did print out a copy for my client, who just saw it
18 right now. Your Honor, obviously -- actually, let me back
19 up.

20 Mr. Lee approached me approximately a month ago
21 regarding this issue and I indicated that we were opposing,
22 so, therefore, we will be filing a formal opposition, but
23 orally also opposing a Motion to Continue today.

24 Based upon all of that, I do believe that we can
25 go forward on the evidentiary portion in regards to the

1 Motion to Suppress and also potentially the other
2 outstanding Motion in Limine that was filed by Mr. Silva and
3 then based upon that decide where we go.

4 THE COURT: All right. So the majority of our
5 time will be focused on the Motion to Suppress, but I'm not
6 willing to let this Motion to Continue go away just that
7 quickly. I understand you have the absolute right to file
8 oppositional papers and I will not make a decision until I
9 read those oppositional papers, but I want to flesh this out
10 a little bit.

11 In April, there was a request to continue trial.
12 It was a defense request. It was based upon voluminous
13 discovery, which the State represented it reproduced as a
14 matter of caution. The State did not oppose the motion.

15 We had quite a conversation about trial dates when
16 we were in court, because I kind of planted my flag in the
17 middle of the courtroom asserting my relevance in trial
18 calendars and was somewhat disappointed that the first
19 available we could find was all the way in December, but I
20 yielded to the State, because the State did not push back
21 very aggressively against the long delay, and so I figured
22 well, if the two attorney's agree, that's fine, I will
23 yield.

24 And now I have a request to continue because the
25 Washoe County employee is scheduled, that's the first day

1 for a scheduled vacation. And I'm talking aloud. I'm not
2 making a decision. I want to better understand how all this
3 works on your side of the bench, because trial is
4 inconvenient essentially to all of us because we have far
5 more matters than the single case before us.

6 So there are all of these moving parts, lawyers'
7 calendars, Court's calendar, witnesses. Elsewhere in the
8 file Mr. Lee has represented there have been 50 subpoenaed
9 witnesses in this case, so it's impossible for the Court to
10 coordinate with all witnesses to make sure of their, to
11 ensure their availability, and I run into this regularly in
12 complex civil cases where if I just let, if I just let it go
13 until we all found a reasonable date, it puts us out a
14 decade.

15 So when do I say I'm sorry? We have been awaiting
16 trial since April, and because of one witness who is
17 unavailable for one day for what will be 60 minutes of
18 testimony, I can't cause her to rewrite her vacation plans.
19 Because what is next? Is it a law enforcement witness? Is
20 it my calendar? How do I collaborate in fairness but also
21 hold the line?

22 Do you have any thoughts, Mr. Lee?

23 MR. LEE: I do, Your Honor, and certainly we run
24 into this as well with large cases, such as this, where
25 there is a lot of witnesses. Oftentimes I tier our

1 witnesses, more important ones. Some that I would love to
2 have their evidence, but ultimately if they are on vacation,
3 I'm going to do without them and not seek a continuance.

4 But in this case Ms. Baum is a large witness. She
5 is crucial to the case. And so oftentimes when I have a
6 larger case with let's say tier 1 witnesses, I will reach
7 out to them and ask about any upcoming vacations and
8 whatnot.

9 If I remember right, we set this in court on
10 December 2nd at the Motion to Confirm last time. I just
11 didn't do that on this case and reach out to those
12 individuals.

13 THE COURT: So as I understand this witness, a
14 cigarette butt was located at a location in the community by
15 someone other than her and the cigarette butt was delivered
16 to her in the Crime Lab?

17 MR. LEE: Yes.

18 THE COURT: And she performed some type of
19 scientific analysis, some DNA analysis?

20 MR. LEE: Yes.

21 THE COURT: Is there any mechanism in the
22 criminology lab to accommodate these types of absences so
23 that, so that the science and the results can be presented
24 or is it always the single person who conducted the DNA
25 analysis on that single cigarette butt?

1 MR. LEE: I know in the breath alcohol section
2 they make some of those accommodations, and they do that
3 just because of the nature of DUI cases and how often they
4 have to testify, and so they have three people who do all of
5 the certain testing on those.

6 THE COURT: I'm familiar with that.

7 MR. LEE: But in DNA, I'm not aware of any. It's
8 one person doing these tests, in this case Kindra Baum doing
9 it.

10 THE COURT: She is doing every single DNA test for
11 the county?

12 MR. LEE: No, in this case. No, there is other
13 DNA certainly in the county, but on this particular case
14 Ms. Baum is the only one who did it.

15 THE COURT: So please don't infer anything from my
16 questions. I'm only trying to figure this out. Is there
17 not anybody who can review her work and provide testimony as
18 to the conclusions she reached?

19 MR. LEE: I'm sure someone could review it. The
20 trouble is I think at that point it becomes hearsay. She
21 didn't actually do the test, or this other person didn't do
22 the test. So, again, if the Court wanted to make an
23 accommodation in that way, in that fashion and we could
24 present and admit evidence that way, I'm all for it. I just
25 don't know of a legal mechanism to do so.

1 THE COURT: Can the test be reperformed by another
2 employee who is going to be here?

3 MR. LEE: I actually anticipated that question,
4 Your Honor. I don't know exactly. Certainly things can be
5 performed. I would have to look at what was used, if
6 anything was used up, what remains, in what condition the
7 items remain in, and then try to rush it through.

8 Normally, DNA is out about a year. In this case,
9 the murder happened in November. The DNA was ultimately
10 finished up with in April and that's on a rush case. We
11 don't certainly control the lab. They try to accommodate
12 case urgencies, but --

13 THE COURT: Well, it seems to me that I have, I
14 have a couple choices and none of them are good, because I'm
15 going to hear from Ms. Ristenpart in a moment, but she is
16 going to insist that I try this case in the absence of your
17 witness.

18 So I either try the case in the absence of your
19 witness, I continue the case which yields case management
20 for about 60 of us to that single vacation, or we find some
21 lawful accommodation, or I order that she be here regardless
22 of her vacation plans.

23 MR. LEE: So certainly those are all options
24 before Your Honor, but you are certainly able based on
25 especially a human decision that's a valid reason anyways, a

1 vacation of an important witness. Obviously, it's still a
2 discretionary call by Your Honor.

3 THE COURT: The case you cited referring to the
4 reasonableness of a continuance based upon an absent
5 witness, I think there was invocation of the 60 day right.

6 MR. LEE: There was.

7 THE COURT: Which puts it slightly factually
8 different than this case. I'm not sure that I understand
9 what that difference is. I need to reflect upon it, because
10 I, too, just got the motion a moment ago.

11 But it seems like some accommodation should be
12 made when the defendant insists upon trial within 60 days,
13 as is the right, no criticism or observation, I'm sorry, no
14 criticism in the observation, but it seems like that's
15 factually distinct from a case that's now been percolating
16 for sometime.

17 Because if I grant a continuance, you are not
18 going to get trial in January, counsel. You are going to go
19 right into the other cases this department has. And this
20 morning we tried, we had three people invoke this morning.
21 We are quadruple set in some weeks towards the end of this
22 year.

23 So if this case, I mean, if it's continued, I can
24 see it going into April to August of next year, and who
25 knows what police officer is going to be on a long-planned

1 vacation then.

2 MR. LEE: So I have one more wrench I can throw
3 in, Your Honor, just to make it easier. Based on what I
4 have learned about Ms. Baum, we have not subpoenaed anybody
5 else just because of the costs involved, and so obviously if
6 the Court is going to push the trial forward, we are going
7 to subpoena everybody we can and maybe there is others that
8 have vacations. I don't know. I'm completely speculating,
9 but this is the one I know about right now.

10 THE COURT: I desperately don't want to be the
11 czar sitting on the czar chair just boldly proclaiming what
12 happens. I want to be collaborative, but at some point
13 there is no way I can accommodate everyone's schedule.

14 And, counsel, I'm confident you have worked
15 weekends and cancelled your vacations in the course of your
16 careers, I know you have, as have I, because that's just
17 sometimes what happens.

18 Did you -- you were subtle in describing this
19 witness' vacation. You referenced twice that it was a long
20 distance away, and I don't even mind if we do this
21 in camera, because I don't think 40 people get to hear about
22 her vacation plans. The State flies witnesses in all the
23 time. Maybe the State flies her in for that one day. I
24 would have to know more about the circumstances.

25 MR. LEE: So I was subtle just because of that. I

1 didn't care for everybody to know about it.

2 THE COURT: Yeah, and I'm not asking you right
3 now, but I'm just saying that may be an inquiry I make. I
4 might need to have her here on the record to describe what
5 it is, what is planned, who is going to be there, what is
6 she going to be doing, because criminal justice is
7 inconvenient.

8 I say that to these jurors every single week that
9 I see them. I had a cardiologist last week who probably
10 lost 30 or \$40,000 to sit here and he was -- criminal
11 justice can be inconvenient.

12 So Ms. Ristenpart is going to file a written
13 opposition and then what do I do after that? Do I have
14 another hearing? Do I decide it on the paper? Because I'm
15 kind of identifying all of the unanswered questions.

16 MR. LEE: Judge, I think those are all
17 discretionary under the local rules, and so if Your Honor
18 wants a hearing on that, I think we ought to have a hearing.
19 We can bring in the witness and ask her these questions or I
20 can supplement obviously in a reply and try to answer some
21 of these questions.

22 THE COURT: Fair request. I always seek for new
23 information in the replies, because I hear from the opposing
24 party they didn't get a chance.

25 Ms. Ristenpart, any thoughts?

1 MS. RISTENPART: Thank you, Your Honor. Being a
2 little unprepared since we just got the motion, but knowing
3 of the issue and also the Court's kind of sentiments in
4 regards to possible options, Your Honor, the biggest concern
5 also that I just heard the State raise was that they haven't
6 subpoenaed any of the other witnesses, so they may
7 anticipate or there may be other witnesses that have similar
8 issues with regard to trial dates.

9 That seems like a very scary proposition that we
10 are going to have continued motions regarding other
11 witnesses along those lines. I do acknowledge, Your Honor,
12 that we are three months out from our trial date, which
13 seems ample opportunity for the state to kind of rectify
14 this issue before trial, which we, as you know, went through
15 a very painful process to try to get that court date
16 coordinating schedules.

17 With that, Your Honor, I would ask to reserve the
18 rest for opposition.

19 THE COURT: What about the propriety of a hearing
20 as soon as your reply is filed -- Counsel, I hope that you
21 put on your Kevlar protective clothing when I say things. I
22 don't mean it to be either personal or professional, but I
23 have to be a noun and a verb in this room.

24 I wasn't satisfied that good cause was reached
25 just in the motion that I read, but I'm disinclined to order

1 trial in the absence of a key witness. It seems like the
2 unfairness encroaches into the State's side. So do I have
3 an evidentiary hearing? Do I grant the State to just
4 subpoena her and see if she files a Motion for Protective
5 Order from the subpoena?

6 MS. RISTENPART: Or are there other legal remedies
7 the State hasn't explored in order to produce Ms. Baum for
8 what would essentially be 60 minutes and also preserve our
9 right to confrontation under the Sixth Amendment?

10 THE COURT: What about the alternative of
11 reconfirming the science and conclusions by someone else?

12 MS. RISTENPART: Your Honor, I do believe that
13 this particular matter, looking at Ms. Baum's DNA forensic
14 report, she did not have a supervisor sign off on it, which
15 would be frankly the practice on many of the forensic
16 reports we normally receive from the Washoe County Sheriff's
17 Office.

18 If someone were to just review her records and
19 then try to proffer evidence based upon a review of that, I
20 think the State is kind of downplaying the significance of
21 the cigarettes, Your Honor. This is a major part of the
22 State's theory of their case and also how they think it led
23 to Mr. Silva being the perpetrator.

24 So to have a person who did not perform the test,
25 nor actually reach the results that, Your Honor, I know

1 there is a lot of case law that discusses exactly that.

2 THE COURT: Except we do this DUI work around and
3 I see it all the time where we have these fungible experts.

4 MS. RISTENPART: And I think it could be. I think
5 that if DNA weren't such a huge part of the allegations in
6 the State's theory, it's a significantly different matter,
7 but I would like to actually give the Court more information
8 and case law on that, if the Court was inclined to hear more
9 in my opposition, of course, but also in an evidentiary
10 hearing.

11 THE COURT: Okay. While I have revealed my
12 thought patterns, counsel, you can respond accordingly and
13 persuade me one way or the other. I certainly want to know
14 whether this is a long-planned honeymoon, a cruise with
15 parents on their 50th wedding anniversary, whether there is
16 something one-off about this time away, or whether my order
17 adjusting the time away, what the consequences are of my
18 order adjusting this witness' time away, and whether the
19 State can recreate from the beginning the analysis
20 independent of this particular witness.

21 Okay. Shall we turn right to the Motion to
22 Suppress? So how did you intend to proceed, Ms. Ristenpart?
23 I have read everything, so I don't really want counsel to
24 recite at the beginning what they have already submitted to
25 the Court, although I will want emphasis through arguments

1 at the conclusion.

2 I have the exhibit flashes, which I have not
3 reviewed. Is it your intention to play some of that? Just
4 take it in my chambers to review? Are you going to call --
5 who will you call first? What do you intend to do?

6 MS. RISTENPART: Your Honor, generally on this
7 matter I ask for the Court's guidance. There were some
8 issues that we raised in our initial motion that were not
9 opposed by the State, and specifically the matter of the
10 fact that the State acknowledges that Mr. Silva invoked his
11 right to remain silent after being Mirandized in a custodial
12 interrogation. My understanding from their response is that
13 their argument is that then somehow it was waived later on.

14 I do understand that the State has witnesses
15 present to try to refute our argument. I think it may be
16 easiest to start with, because the Court has not seen the
17 actual recorded interview, to start with the very short
18 snippets of focus, and we do have it set up, Your Honor.

19 THE COURT: Just on one laptop?

20 MS. RISTENPART: It's actually projected.

21 THE COURT: I have seen that before. It's
22 wonderful.

23 MS. RISTENPART: Yeah, pretty old school, just so
24 the Court has an understanding alongside also what we typed
25 in in the transcript, because obviously the Court reviews

1 the totality of the circumstances as part of your review of
2 the matter, if that works for the Court, and then the State
3 if they want to call their witnesses and try to keep it in a
4 timely moving fashion.

5 MR. LEE: Judge, I have witnesses here on the
6 other acts motion. On that case I have the following
7 witnesses, or on that motion.

8 THE COURT: But that is the motion that I'm not
9 going to hear in Guzman's absence.

10 MR. LEE: Other acts?

11 THE COURT: Well, it's filed in both cases. Do
12 you intend to limit it?

13 MR. LEE: I guess I suppose that's fine. My
14 thought was we could deal today with Mr. Silva. If this is
15 a motion that is going to be contended later by Mr. Guzman,
16 then we would have the whole hearing over, but I don't think
17 it's that long of a hearing.

18 THE COURT: That may be fair, because Guzman did
19 not file an opposition. If you want to submit the evidence
20 as it relates to Mr. Silva alone and if Guzman wants to
21 reassert himself through counsel into the admission of this
22 evidence involving Mr. Silva, I think that's okay.

23 MR. LEE: Thank you.

24 THE COURT: I'm trying to be careful with
25 Mr. Guzman's rights in his absence.

1 MR. LEE: So I certainly don't want anything to be
2 ruled on against or for him today, so I would hope we could
3 just put that off and if we have to get there, then we will
4 have to present the evidence.

5 THE COURT: I will not rule for or against
6 Mr. Guzman in any way today, and because the trials are
7 severed, I think I can make a decision as it relates to
8 Silva in a procedurally permissive way.

9 MR. LEE: Thank you. And then I'm going to ask
10 for one accommodation because of a witness obligation to
11 another court right now, Your Honor. As part of the motion
12 for the other acts, the State is attempting to show that
13 Mr. Silva knew of the victim's relationship with another man
14 that motivated the killing.

15 As part of that evidence is a recording that
16 happened after the interview that's the subject of the
17 Motion to Suppress. So the interview is done and Mr. Silva
18 is present in the room and his brother Bernard enters the
19 room and they hug. They embrace. There is some emotions
20 and some words are said that are very relevant to that issue
21 of whether Mr. Silva knew about the other individual and
22 knew about and had information about the affair.

23 THE COURT: So what is your request?

24 MR. LEE: So my request is if we can put this
25 witness up who can translate that, it's in Spanish, who can

1 translate it. It is literally about a 20 or 30 second
2 snippet of that section, and then she can go to the Justice
3 Court.

4 THE COURT: I'm inclined to grant that.

5 MS. RISTENPART: That's fine, Your Honor.

6 THE COURT: I wish everyone to be heard.

7 MS. RISTENPART: Permission to exclude,
8 Your Honor.

9 THE COURT: Yes. So, Mr. Lee, if you will please
10 enforce the Rule of Exclusion. I don't know who is going to
11 testify, but I'm invoking, I'm granting the request to
12 exclude witnesses consistent with our evidence code, so make
13 that happen, please.

14 MR. LEE: Your Honor, I'm going to ask one item be
15 marked, if I could.

16 THE COURT: Yes.

17 THE CLERK: Exhibit 5 marked for identification.

18

19 (Exhibit Number 5 was marked for identification.)

20

21 MR. LEE: And then if I could call the first
22 witness, Your Honor, it would be Zulema Schehr.

23 SULI SCHEHR,

24 called as a witness, having been duly sworn,

25 testified as follows:

1 MS. RISTENPART: Your Honor, in regards to State's
2 Exhibit A, I believe it was, or 5, generally this would not
3 be the witness to lay the foundation for the recorded
4 interview of Mr. Silva. Based upon the fact it's for this
5 short piece, we will be waiving the objection to that since
6 we will also be using the same recording and showing the
7 Court.

8 THE COURT: Thank you. So are you stipulating
9 that it may be published to the Court?

10 MS. RISTENPART: Yes, we would, Your Honor, for
11 the limited purpose of that section for her to interpret.

12 THE COURT: Yes. 5 is admitted, Ms. Clerk.

13

14 (Exhibit Number 5 was admitted into evidence.)

15

16 THE COURT: Mr. Lee, go ahead.

17

18 DIRECT EXAMINATION

19 BY MR. LEE:

20 Q Ma'am, could you please state your full name and
21 spell it for us.

22 A Suli Schehr, S-U-L-I S-C-H-E-H-R.

23 Q And are you a Nevada Certified Court Interpreter?

24 A I am.

25 Q When did you receive that certification?

1 A In Nevada, two months ago, but I have been a
2 Certified Interpreter in Spanish for 20 years in Maryland.

3 Q Is your native language Spanish?

4 A Yes.

5 Q And how long have you spoken English?

6 A 38 years.

7 Q Did you watch previous to testifying a small
8 snippet of a video showing two individuals embracing who
9 were emotional and crying?

10 A I did.

11 Q And did I ask you to just listen to one small part
12 of that interview?

13 A Yes.

14 Q And were you able based on that to interpret that
15 small part?

16 A Yes.

17 Q Ma'am, can you see the projection screen over
18 there to your right?

19 A Yes.

20 Q Is that the video that you just saw?

21 A Yes.

22 Q Now, I'm going to play from 5 -- It lists a
23 Windows media time there at the bottom, okay, 5:17:32; is
24 that correct?

25 A Yes.

1 Q And at a particular point I'm going to stop it and
2 ask you some more questions.

3 (Whereupon the video was played.)

4 Stopping it at 5:18:16, is that the portion you
5 listened to carefully beforehand?

6 A Yes.

7 Q Were you able to listen to it and understand in
8 its entirety after multiple times listening?

9 A After multiple times, yes.

10 Q What did, what was just said in that short snippet
11 then starting with the part that starts with yo, yo?

12 A It means me, me and Lucy.

13 Q And what's next?

14 A Then the other guy says, "What?"

15 Q In English?

16 A Yes.

17 Q And what's the reply after that?

18 A What in English is, "Me and Lucy were also having
19 an affair, dude."

20 Q And is that part all in Spanish?

21 A Yes.

22 Q How about the word affair, is that in Spanish?

23 A Affair, which is French, yes.

24 Q I mean was affair in this video stated in
25 Spanish --

1 A Yes.

2 Q -- or English?

3 A Yes, he said affair, the word affair.

4 MR. LEE: Thank you. That's all I have for this
5 witness.

6 THE COURT: Do you have anything, Ms. Ristenpart?

7

8 CROSS EXAMINATION

9 BY MS. RISTENPART:

10 Q Ma'am, were you briefed by Mr. Lee before you
11 listened to the video?

12 A No, I was not briefed. I was just shown the
13 video.

14 Q And how many times did you have to listen to that
15 before you came to your conclusions?

16 A Five times.

17 MS. RISTENPART: No further questions, Your Honor.

18 THE COURT: Mr. Lee.

19 MR. LEE: I have nothing further. I would ask
20 that she be excused.

21 THE COURT: Thank you. You are free to step down.

22 MR. LEE: Your Honor, I suppose at this point I
23 will yield to however the Court wishes to proceed, and thank
24 you for that accommodation.

25 THE COURT: Counsel, I read everything available

1 to me before I take the bench, so I begin with some
2 inclinations that's not just an empty white board in my
3 mind, but I listen and analyze through the assistance of
4 counsel and evidence.

5 Did counsel want to hear the unanswered questions
6 from me or shall I just, and it's okay, or shall I just
7 remain silent awaiting the presentation of evidence and
8 arguments? Sometimes there is a benefit, because you can
9 emphasize, but I don't feel to speak, but I'm happy to begin
10 with my concerns, if you want.

11 MR. LEE: I would love to hear your concerns at
12 the outset.

13 MS. RISTENPART: Your Honor, as I indicated, I
14 feel like there is some target points that the Court may
15 want to hear some more information on, so if you want to
16 give us your thoughts first.

17 THE COURT: As I take the bench, I'm not persuaded
18 yet either way that the first series of conversations were
19 custodial or noncustodial. My experience is that law
20 enforcement and prosecuting attorneys, they develop a, boy,
21 and this is not a criticism, it's just my observation that
22 there is like this formulaic process, do you want water? Do
23 you know you are free to go? Do you need to use the
24 restroom?

25 It's almost as if they check off boxes, and I'm

1 not, I'm not persuaded yet that that is noncustodial and I'm
2 not persuaded yet that it is custodial and so your
3 assistance will be very helpful to me.

4 MS. RISTENPART: And, Your Honor, specifically,
5 I'm sorry, are we talking about the argument pertaining to
6 starting at 5:55 of the interview?

7 THE COURT: Without looking --

8 MS. RISTENPART: I just want to target the
9 argument.

10 THE COURT: I'm confident that it is.

11 MS. RISTENPART: Okay.

12 THE COURT: I mean, I haven't seen the video, but
13 I saw the references to the video times.

14 MS. RISTENPART: Thank you.

15 THE COURT: This is before the Miranda?

16 MS. RISTENPART: Correct.

17 THE COURT: All right. And then I'm uncomfortable
18 at the moment with my understanding about the duration of
19 the interview. It was a very long time and I just want to
20 know more about that, because sometimes the length of police
21 involvement informs the voluntariness of the statement and
22 the level of coercion that could exist and so I want to know
23 more about just why did it take so long. What was occurring
24 during all of that time?

25 Again, I read what you put forward, but it's just

1 a long time for me and I don't know what was happening
2 behind the scenes. I would like to know that from the
3 witnesses, why were there these long breaks?

4 And then to the State in particular, after it's
5 clearly a custodial interrogation, and there is a recitation
6 of Miranda, and there is an invocation of the right to
7 remain silent, not a waiver, but an invocation, and then
8 there is a time span and return to the interview without a
9 re-recital of Miranda, that seems to me a fact pattern
10 different than custodial interrogation, Miranda recital,
11 waiver, talk, talk, talk, talk, talk, then stop, a long
12 interval, and then returning to an interview without
13 re-Mirandizing.

14 I'm aware of the decisional authorities that don't
15 require re-Mirandizing every single time there is a break in
16 the interview, but when the first interview ends by invoking
17 the right to remain silent, I'm struggling to know can it be
18 recommenced without reinvoking the rights, and so that's
19 just something, Mr. Lee, that you should know that I'm
20 chewing on.

21 All right. Ms. Ristenpart, do you have any
22 witnesses?

23 MS. RISTENPART: Thank you, Your Honor. We don't.
24 I would like to again proffer some of the pointed parts of
25 the interview for the Court to put it into context and also

1 get the visual.

2 THE COURT: All right.

3 MS. RISTENPART: We do have Exhibit 1 that was
4 attached to our motion, Your Honor. We do have a duplicate
5 copy of that. The State has informed me that's exactly what
6 was just admitted as Exhibit Number 5.

7 THE COURT: Okay.

8 MS. RISTENPART: Your Honor, since this is set up,
9 I would ask that we could provisionally mark it as Exhibit
10 Number 6. It is a thumb drive. It is the video.

11 THE COURT: So let's mark it as 6.

12

13 (Exhibit Number 6 was marked for identification.)

14

15 THE COURT: And then, Mr. Lee, will you stipulate
16 to its admission?

17 MR. LEE: I will.

18

19 (Exhibit Number 6 was admitted into evidence.)

20

21 THE COURT: Is it the same or different thumb
22 drive?

23 MS. RISTENPART: It's a different program that
24 plays this, Your Honor, that has more accurate times that
25 match what is in the motion.

1 THE COURT: Okay.

2 MS. RISTENPART: Because this is an internal
3 playing machine or program. The other one was on Windows
4 Media that didn't have the correct timestamps.

5 THE COURT: Okay.

6 MS. RISTENPART: Your Honor, specifically in
7 reference to our motion, we would be looking at part 2 of
8 the interview. There were three parts of the interview, as
9 you can see that we kind of delineated. This also being
10 Mr. Silva's second time at the police station. The first
11 time ended with Mr. Silva leaving, which happened days
12 before, approximately a week before with no Miranda
13 warnings.

14 THE COURT: Where in time, I'm just trying to
15 contextualize this, when he says, no, I don't want to talk,
16 I would rather just leave if I can, where is this in
17 relationship to that statement?

18 MS. RISTENPART: Okay. So in the first portion,
19 Your Honor, Mr. Silva is requested by Mr. Reed to come to
20 the police station with his younger brother Noe who is
21 15 years old and can't drive himself.

22 In the beginning, the first 55 minutes they are in
23 this room before you, which I'm showing part 1 at
24 approximately 4:57, and Noe and Mr. Silva sit in this room
25 for approximately 55 minutes and this is at the Sparks

1 Police Station.

2 Then Mr. Silva is directed to a different room
3 apart and separate from Mr. Noe. That occurs at 5:55,
4 Your Honor, if I may fast forward.

5 THE COURT: Yes.

6 MS. RISTENPART: Court's indulgence. I don't see
7 it moving. With the Court's permission, not to make this
8 any more painful watching me click buttons, may I have my
9 assistant Natasha come up?

10 THE COURT: Yes.

11 MS. RISTENPART: Thank you.

12 Your Honor, we are just going to voluntarily
13 restart it, because I think we switched over.

14 While we are doing that, Your Honor, in relation
15 to the Court's first or, excuse me, the second point of
16 inquiry as to the totality or the length of time of this
17 entire interrogation, Your Honor, it started at, part one
18 started at 4:57 p.m. when they entered the room and the
19 entire interrogation took until 3:18 in the morning.

20 THE COURT: At what time did the, were the
21 inculpatory statements made?

22 MS. RISTENPART: Approximately after 10:55
23 detectives resumed, came back into the room after invocation
24 and resumed questioning Mr. Silva.

25 THE COURT: So 6 hours later?

1 MS. RISTENPART: Correct.

2 Your Honor, I'm starting it at 5:53 from Thursday,
3 November 16, 2017. And I believe I misspoke, Your Honor.
4 This is actually the second interview room, because we just
5 jumped straight to part 2.

6 So jumping forward just a little bit, Your Honor,
7 Mr. Silva is left in there from 5:53 until 6:00 p.m.
8 approximately. Starting at 5:59 --

9 THE COURT: Would you pause that for a moment?

10 MS. RISTENPART: Yes, Your Honor.

11 THE COURT: It is unfair to you, but you may want
12 to take notes, because I want to look at a third concern
13 that's unanswered and I want to do it before I forget, to
14 the State as well.

15 MS. RISTENPART: Yes.

16 THE COURT: Because I'm thinking about what you
17 said, Ms. Ristenpart, that there was a previous voluntary
18 interview after which Mr. Silva left. Days later he
19 returned for this interview. Good so far?

20 MS. RISTENPART: (Nods head.)

21 THE COURT: Okay. At somewhere along the way
22 during this day, Mr. Guzman is arrested. I think that one
23 of the facts influencing the voluntary statement versus
24 custodial interrogation may be law enforcement's focus on
25 the person being interviewed.

1 And I need to flesh that out in my own research,
2 but I have this intuition based upon some years of
3 experience that if the police intended to effect arrest,
4 regardless of what occurs before arrest that that defendant
5 is never leaving the police station, that I should know
6 that.

7 Now, I'm not announcing what its influence is, but
8 it seems relevant to me as a legal matter. Did the police
9 intend to arrest Mr. Silva before he even showed up that day
10 or did they effect that arrest based upon what I'm about to
11 see or information from others? Okay. Now you may show it.

12 MS. RISTENPART: Thank you, Your Honor. Just for
13 the Court's edification, this Detective Reed Thomas, who is
14 in the black shirt, and also Detective Kazmar, Edward Kazmar
15 from the Reno Police Department in the blue.

16 (Whereupon the video was played.)

17 Your Honor, stopping it at 6:05:40, because that
18 appears to have frozen on this computer.

19 Your Honor, reverting back just a little bit to
20 see if I can push it forward.

21 Your Honor, that is, of course, the critical
22 place.

23 THE COURT: What time of the day is that?

24 MS. RISTENPART: Your Honor, it's at 6:06 p.m.

25 Your Honor, loading video part 1, which is

1 actually 2 again. Court's indulgence.

2 THE COURT: Let's be in recess for about five
3 minutes. Ladies and gentlemen, if you need to use the
4 restroom, this would be a good time to do it. We are going
5 to invite our IT person in.

6 MS. RISTENPART: Thank you.

7 THE COURT: Ms. Clerk, will you make that happen?

8 MS. CLERK: Yes, Your Honor.

9

10 (Whereupon a break was taken from 2:57 p.m. to 3:20 p.m.)

11

12 THE COURT: Counsel, you may continue.

13 MS. RISTENPART: Thank you, Your Honor.

14 Starting again with part 1 at 6:05:19. With the
15 Court's permission, may I have my legal assistant Natasha
16 sit at counsel table to assist, or near counsel table just
17 to help manipulate in case we run into a problem?

18 THE COURT: Yes. I just don't want her
19 communicating with your client.

20 MS. RISTENPART: Of course, Your Honor.

21 (Whereupon the video was played.)

22 THE COURT: What is the real time mark of that?

23 MS. RISTENPART: We are stopping the video and the
24 real time mark is above. It says Thursday, November 16th,
25 2017, at 6:06:39 p.m. It's in the purple highlight,

1 Your Honor.

2 THE COURT: Oh, yes.

3 MS. RISTENPART: And that would be Pacific
4 Standard Time.

5 Your Honor, approximately 4 minutes later,
6 Mr. Silva is left in the room and 4 minutes later both
7 detectives reenter the room, if I can restart at 4 minutes
8 later after 6:06, so approximately 6:10.

9 THE COURT: Got it.

10 (Whereupon the video was played.)

11 THE COURT: Will you pause that?

12 I want to know what Detective Reed just said. I'm
13 catching most of the words, but did he just use the word
14 arrest?

15 MS. RISTENPART: Yes, Your Honor. If you look on
16 page 3 of our motion, line 12, we actually have our
17 interpretation of the transcript, and Detective Thomas per
18 our understanding states, "All right. Here's the deal,
19 Richard. We know you both left the house that night. Okay?
20 Bernard's on his way down here right now and we're probably
21 going to arrest him."

22 THE COURT: Okay.

23 MS. RISTENPART: Starting again at 6:10:59.

24 (Whereupon the video was played.)

25 MS. RISTENPART: Stopping at 6:11:27, Your Honor,

1 they then proceed to arrest Mr. Silva.

2 After that, Your Honor, directing you to
3 approximately 4 hours later, Mr. Silva is left in the
4 interrogation, excuse me, he is actually moved to a third
5 interrogation room and handcuffed and left in there. They
6 do take the handcuffs off, but they do place an ankle cuff
7 on his, one of his ankles that is connected to the floor.

8 In part 2, Your Honor, you can see obviously it's
9 a different interrogation room that we are showing you, and
10 at approximately 9:41 Detective Kazmar comes back in to
11 continue to talk to Mr. Silva.

12 The reason we are highlighting this aspect,
13 Your Honor, is not only because of the detective coming back
14 in obviously after already being arrested and continuing to
15 talk to him and not Mirandizing him, Mr. Silva again states
16 that he doesn't want to talk starting at 9:43:12 or right
17 before then.

18 (Whereupon the video was played.)

19 MS. RISTENPART: Your Honor, stopping at 9:43:21.
20 Your Honor, in addition I would also like to mark Exhibit
21 Number 7 and also 8, which are two still photographs. The
22 first one, Your Honor, depicts an image from 9:16 of the
23 interview, which is before this conversation, Your Honor,
24 and the other one has a different viewpoint of the same
25 interview room.

1 (Exhibit Numbers 7 - 8 were marked for identification)

2

3 MS. RISTENPART: Any objection?

4 THE COURT: Mr. Lee, any objection?

5 MR. LEE: None.

6 MS. RISTENPART: May I approach?

7 And 9:16 clearly shows that at some point while
8 waiting there alone in the room Mr. Silva was laying down
9 trying to sleep. In addition, the other viewpoint,
10 Your Honor, clearly shows the brown part of the door and
11 also shows Mr. Silva's position and where the detectives
12 were sitting in regards to blocking him at the door.

13 THE COURT: This is after his arrest?

14 MS. RISTENPART: This is after his arrest,
15 Your Honor, correct.

16 THE COURT: And he is shackled by the ankle?

17 MS. RISTENPART: Correct, Your Honor.

18 THE COURT: Why is that legally relevant to the
19 decision I make?

20 MS. RISTENPART: Your Honor, if the State is going
21 to try to argue that it was somehow voluntary later on, that
22 goes to the totality of the circumstances for a voluntary
23 waiver.

24 THE COURT: Okay.

25 MS. RISTENPART: Thank you.

1 THE COURT: They are admitted, Ms. Clerk.

2

3 (Exhibit Numbers 7 - 8 were admitted into evidence.)

4

5 MS. RISTENPART: Now, Your Honor, it's not until
6 9:54 that Detective Kazmar actually informs Mr. Silva of his
7 rights under Miranda. Going towards 9:54 to 9:56.

8 (Whereupon the video was played.)

9 MS. RISTENPART: 9:56:12.

10 THE COURT: Okay. And what is it that you believe
11 Mr. Silva just said?

12 MS. RISTENPART: "I would rather stop talking
13 now."

14 Your Honor, pausing at 9:57:41, the detectives do
15 get up and leave the room and Mr. Silva in there. For that
16 57 minutes, Mr. Silva is left in the room alone in the same
17 room. 57 minutes later the same detectives, Detectives
18 Kazmar and Thomas come back in and begin to speak to
19 Mr. Silva again starting at 10:55 p.m.

20 (Whereupon the video was played.)

21 MS. RISTENPART: We are stopping at 10:58:13,
22 Your Honor, and then it proceeds forward with Detective
23 Kazmar asking more pointed questions and Mr. Silva
24 responding and goes on for approximately another hour,
25 Your Honor, where he is left alone and they come back and

1 resume and ask him more questions with approximately a
2 4 minute break without re-Mirandizing him again.

3 Your Honor, with that, I can definitely point out
4 some highlights to you and do some argument, but I do know
5 that the State wanted to call Detective Thomas to refute and
6 I don't know if you want to hear that first before you want
7 to hear argument.

8 THE COURT: I do. I don't want to hear arguments
9 until I hear all of the witnesses.

10 MS. RISTENPART: Thank you.

11 THE COURT: Mr. Lee.

12 MR. LEE: Your Honor, the State would call
13 Detective Reed Thomas.

14 THE COURT: I think I made a mistake and referred
15 to him as Detective Reed, I apologize.

16 MR. LEE: I'm sure he doesn't mind.

17

18 REED THOMAS,
19 called as a witness, having been duly sworn,
20 testified as follows:

21

22 THE COURT: Counsel, go ahead, please.

23 MR. LEE: Thank you.

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DIRECT EXAMINATION

BY MR. LEE:

Q Sir, could you please state your first and last name and just spell your last name for us.

A First name is Reed. Last name is Thomas, T-H-O-M-A-S.

Q Sir, back in November of 2017 how were you employed?

A I was a detective with the Reno Police Department.

Q How about now what do you do?

A I'm retired.

Q When did you retire?

A February of 2017. I'm sorry, 2018.

Q Okay. What was your role in the case involving Mr. Richard Silva?

A I was the lead detective.

Q Do you see, do you see Mr. Silva in the courtroom today?

A Yes.

Q Would you please identify him?

A Sitting at the defense table with the green shirt on.

MR. LEE: Your Honor, may the record reflect that Mr. Thomas has identified Mr. Silva?

THE COURT: Yes.

1 BY MR. LEE:

2 Q Does Mr. Silva have a nickname he sometimes goes
3 by that you learned throughout the course of your
4 investigation?

5 A My understanding it was Willo.

6 Q Willo, like W-I-L-L-O?

7 A I believe so.

8 Q Does he have a -- how about his license plate on
9 his car, did it have that name as well?

10 A I believe so.

11 Q I'm going to bring you to November 8th of 2017.

12 On that day did you have an interview with Mr. Silva?

13 A Yes.

14 Q How did that interview come about?

15 A During the course of the investigation, we had
16 determined that we wanted to interview family members and he
17 was one.

18 Q And so did he come to the station for the
19 interview?

20 A Yes.

21 Q Was it -- did he come on his own?

22 A Yes.

23 Q Drive himself?

24 A Yes.

25 Q At any point in that conversation was he under

1 arrest in any way?

2 A No.

3 Q At the end of that conversation did he go home?

4 A Yes.

5 Q So then on November 16th of 2017, how did

6 Mr. Silva get to the station?

7 A Drove himself.

8 Q And at whose request?

9 A I had called him earlier in the day and asked if

10 he and his brother Noe would come in for an interview. And

11 I had actually left a message. He showed up a short time

12 later, said they were ready for the interviews, and I asked

13 him to come back because I was conducting an interview on a

14 non-related case.

15 Q Did he come back?

16 A So they came back, yeah, about 5:00 or so.

17 Q Did he and his brother Noe come back?

18 A Yes.

19 Q Is Noe N-O-E, just so we are getting it right?

20 A Yes.

21 Q Do you recall how that first -- If we were to

22 divide the interview into three sections, does that make

23 sense to you?

24 A Sure.

25 Q So that first interview, what room was that held

1 in?

2 A It was a, I don't know if you call it an interview
3 room. It was more of a conference room, a small conference
4 room with a round table, three or four chairs.

5 Q Was Mr. Silva under arrest at that time?

6 A No.

7 Q Any cuffs, anything like that?

8 A No.

9 Q You talked to him, correct?

10 A Yes.

11 Q What does he say to you?

12 A Well --

13 Q And, I'm sorry, that's a hard question, but just
14 in very general terms. Does he not want to speak with you?

15 A Yes, at some point he stated that he felt like he
16 was being interrogated and did not want to talk to us
17 anymore.

18 Q Did he use that word interrogate even?

19 A He did.

20 Q Did he use any other legal jargon words?

21 A He said something to the effect of if I'm not
22 being detained right now, then I would like to get my
23 brother and go.

24 Q Is your understanding of the law, is that accurate
25 according to your understanding of the law, that he --