

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD ABDIEL SILVA

Appellant,

v.

STATE OF NEVADA

Respondent.

CASE NO. 81627

Appeal from a Judgment of Conviction After Jury Verdict
in Case CR18-1135(B)
Second Judicial District Court of the State of Nevada, Washoe County
Honorable David A. Hardy, District Judge

APPELLANT'S APPENDIX VOLUME 2

VICTORIA T. OLDENBURG, ESQ.
OLDENBURG LAW OFFICE
P.O. Box 17422
Reno, NV 89511
Tel. (775) 971-4245

ATTORNEY FOR APPELLANT

JENNIFER P. NOBLE, ESQ.
CHIEF APPELLATE DEPUTY
P.O. Box 11130
Reno, NV 89502
Tel. (775) 337-5750

ATTORNEY FOR RESPONDENT

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1 MS. RISTENPART: Objection.

2 THE COURT: Let me hear the question first before
3 I rule on it.

4 BY MR. LEE:

5 Q Is the fact that someone is not detained are they
6 usually free to go then? Is that a correct recitation of
7 the law, as you understand it?

8 THE COURT: The objection is overruled because the
9 question was rephrased. You may answer.

10 THE WITNESS: Yes.

11 BY MR. LEE:

12 Q After Mr. Silva told you that he was, he didn't
13 want to talk, you and Detective Kazmar left, right?

14 A Yes. His brother Noe, a younger brother, was in
15 another part of the building and we needed to go get him to
16 put them together, and we asked him to just wait while we go
17 get his brother, because they aren't allowed to wander the
18 building on their own.

19 Q Where is that interview room at?

20 A It's, there is a hallway on the, or actually an
21 aisle way on the north side of the Detective Division where
22 there are three consecutive interview rooms going west to
23 east and that is an additional, like I said, more of a
24 conference room that is along that corridor.

25 Q Okay. And I'm going to jump back to the

1 beginning. You had asked Mr. Silva to put his phone in
2 airplane mode; is that accurate?

3 A Yes. We just didn't want to be disturbed during
4 the interview.

5 Q Did he comply with that?

6 A Yes, as far as I know.

7 Q You said you left and then you came back in a
8 short time later, right?

9 A Uh-huh.

10 Q Sometime at that point did you place Mr. Silva
11 under arrest?

12 A We did.

13 Q And then where was he moved to?

14 A He was moved to one of the other interview rooms
15 that I explained that actually have, that doors are locked
16 or can be locked. There are floor monitor scanning devices.

17 Q Well, that leads me to another question. The room
18 you had just been in with the round table, does that door
19 lock?

20 A Does it lock?

21 Q Yeah.

22 A I don't believe so, but I can't be sure.

23 Q Was it locked when you interviewed him?

24 A No.

25 Q But now after this he is in custody, correct?

1 A Yes.

2 Q He is chained even to the floor?

3 A Yes.

4 Q If I say that he sat there for about 3 1/2,

5 3 hours, 40 minutes or so; is that about accurate?

6 A Yes.

7 Q What was going on during that time?

8 A Primarily what was going on is the detectives were

9 working with you to get a search warrant for his telephone,

10 his cellphone.

11 Q Was that search warrant obtained?

12 A Yes.

13 Q Was there a seizure order obtained as well with

14 regard to his print to open up the phone?

15 A Yes.

16 Q Also at that time was other, were other detectives

17 and other police officers working other areas?

18 A Yes.

19 Q Briefly tell us about that.

20 A Again, interviewing other family members who were

21 present, mom and dad were there, brother Bernard was there,

22 Noe was there, and, of course, all of the activity that goes

23 on in the Detective Division on a given day or night. There

24 may have been some other cases being worked as well.

25 Q And I appreciate that. I'm asking specifically on

1 this case were search warrants being served, also?

2 A Yes.

3 Q Where at?

4 A I believe his residence and also at Yiovannie's

5 vehicle and residence, I believe.

6 Q Was there also another residence that had been

7 linked to Bernard, Mr. Silva's brother, that was also being

8 searched on Richards Way?

9 A Yes.

10 Q And then you mentioned other detectives working

11 other cases, but were there specifically in this case

12 multiple interviews going on in this case with different

13 detectives?

14 A Yes.

15 Q Including Yiovannie?

16 A Yes.

17 Q So when you come back into that room, now let's

18 call this for the second segment, okay, after 3 hours, 40

19 minutes or so, when you come back in that room, you had some

20 papers with you or Detective Kazmar did. What were those

21 papers?

22 A The search warrant.

23 Q Okay. And what was that search warrant for?

24 A His cellphone.

25 Q Okay. Is that the purpose of going back in that

1 room?

2 A Yes.

3 Q Explain what happened then when you provided that
4 search warrant to Mr. Silva and told him about it.

5 A Detective Kazmar began to explain what it was. He
6 asked to read it and was given some time and he did.

7 Q After that did he cooperate with you in regard to
8 the search warrant?

9 A Yes, apparently when he was satisfied with what he
10 read. I don't know how much of it he read, but --

11 MS. RISTENPART: Objection; speculation.

12 THE COURT: Overruled.

13 THE WITNESS: Whenever he was done reading the
14 search warrant, at some point he reached over to the phone,
15 which was lying on the desk, and attempted to use his
16 fingerprint and that didn't work and needed the number to
17 unlock and he punched that in and verified that Detective
18 Kazmar had gotten that.

19 BY MR. LEE:

20 Q And later did he even give Detective Kazmar again
21 the passcode?

22 A Yes.

23 Q Now, after that time that you received the
24 passcode for the phone, is it your intent at that point to
25 talk to Mr. Silva about things?

1 A Detective Kazmar just kind of characterized where
2 we were at in the investigation, told him that we had some
3 information and we would love to have a conversation with
4 him if he wanted to do that and asked if he had any
5 questions.

6 Q We just watched the video. Detective Kazmar
7 Mirandized him; do you recall that?

8 A He did.

9 Q Why was that?

10 A He was under arrest.

11 Q Before in that other conference room on segment
12 one, he was not Mirandized, correct?

13 A That's correct.

14 Q Why was that?

15 A He was not under arrest.

16 Q Now that he is Mirandized does Mr. Silva state
17 that he doesn't care to talk to you anymore at some --

18 A Yes.

19 Q -- point during that?

20 A At some point he does, yes.

21 Q Okay. So now in between -- and you and Detective
22 Kazmar leave, correct?

23 A Yes.

24 Q Now, in between segment 2 and segment 3, which
25 happens approximately an hour later; is that fair?

1 A That's correct.

2 Q What's going on in that time?

3 A Detective Jenkins is conducting an interview with

4 Yiovannie Guzman.

5 Q Are you paying attention to anything or were you

6 paying attention to that interview?

7 A I'm in and out. The interview is going on. There

8 is a video player in a conference room where we can watch

9 the interview. I'm getting bits and pieces of it, but we

10 are doing other things as well.

11 Q Did you, what did you ultimately, if you could sum

12 it up in just a few sentences, what did you ultimately learn

13 from the interview with Yiovannie Guzman?

14 A That he basically told us what happened that night

15 with the shooting of Lucy.

16 Q Did you learn information as it related to

17 Mr. Silva having been involved in that?

18 A Yes.

19 Q Directly?

20 A Yes.

21 Q After learning that, and so now an hour after

22 segment 2, at the start of segment 3 what happens?

23 A Again, we go back in and make contact with

24 Mr. Silva. I think Detective Kazmar was pretty direct and

25 tells him that Yiovannie, I think his words were gave it up.

1 Detective Kazmar then proceeded to kind of go
2 through some of the details that Yiovannie had given
3 regarding the shooting, quite a few details, actually. And,
4 you know, obviously, Detective Kazmar ultimately tells him
5 we are just trying to make sure there is nobody else
6 involved in this and, you know, again love to have that
7 conversation with you and answer any questions that you have
8 and just basically trying to give him an update on where we
9 are at.

10 Q With regard to whether no one else was involved,
11 was that a legitimate concern at the time?

12 A Absolutely.

13 Q And so was a lot of the information that was
14 gleaned, that was gleaned from the Yiovannie Guzman
15 interview new information that you wanted to then get
16 Mr. Silva's take on it?

17 A Yes.

18 Q If you could tell us about that segment 3 then,
19 what was the demeanor of the entire interview?

20 A It was not confrontational. He actually asked us
21 a question and he asked us if we had gotten into Lucy's
22 phone and we told him, no, that we hadn't done that yet. We
23 were just having a conversation.

24 Q When he ultimately confessed, was that pretty
25 early on in segment 3?

1 A Yes.

2 Q And then throughout the rest of the interview was
3 it just like that that you described, non-confrontational?

4 A Yes. He was, appeared to be very candid. My
5 impression was he was trying to protect Yiovannie by
6 indicating that, you know, he didn't know what was going to
7 happen, but, yeah, he was very candid and, again, there was
8 just, there was no confrontation whatsoever.

9 Q And even harkening back now to segment 2, was it
10 the same kind of conversation, the tone?

11 A Yes. Again, Detective Kazmar did most of the
12 talking there and just tried to kind of lay out where we
13 were at and what our goal was in trying to be sure that
14 there were no other family members involved.

15 Q Were you guys ever, throughout that interview,
16 ever in his face, so to speak, yelling, raising voices,
17 standing up over him or anything?

18 A Never.

19 Q After that interview happened, segment 3, what
20 happens following that?

21 A We allowed Bernard, his brother, to go in and talk
22 to him and they had a conversation.

23 Q Did you also allow then other members of his
24 family to go in and talk to him?

25 A Eventually, yes, we did. The whole family was in

1 the room at some point.

2 Q And then Mr. Silva still after that even, didn't
3 he remain at the police station for some time?

4 A Yeah, for some time. I'm not sure how long.

5 Q But the information gleaned that was relevant to
6 you, was that, at least as far as your questioning of him,
7 did that occur in segment 3?

8 A Yes.

9 Q Were there any subsequent interviews of Mr. Silva
10 by you or Detective Kazmar after that?

11 A No.

12 Q Why wasn't he, in between segment 1 and 2 during
13 those 3 1/2, 4 hours, why wasn't he transported to the jail?

14 A I think it was a matter of convenience probably
15 more than anything and we needed him available because we
16 were actively trying to get that search warrant for that
17 cellphone at night and after hours, so I think that's what
18 took most of that time up.

19 MR. LEE: If I can have just a moment, Your Honor.

20 THE COURT: Yes.

21 MR. LEE: I'm almost done.

22 BY MR. LEE:

23 Q Detective Thomas, harkening back to segment 2,
24 when Mr. Silva was read his rights under the Miranda v.
25 Arizona case did he indicate he understood those rights?

1 A Yes.

2 Q Before that did he indicate that he would try to
3 answer the questions you had?

4 A Yes.

5 Q Any reason that you had that you thought he may
6 not have understood his rights?

7 MS. RISTENPART: Objection; speculation.

8 THE COURT: Overruled.

9 THE WITNESS: No.

10 MR. LEE: That's all I have. Thank you.

11 THE COURT: To the defense.

12 MS. RISTENPART: Thank you, Your Honor.

13

14 CROSS EXAMINATION

15 BY MS. RISTENPART:

16 Q Detective, why did you call back Mr. Silva for a
17 follow-up interview on November 16th of 2017?

18 A Why did we call him back, because we had
19 additional information and we wanted him to come back down
20 and interview.

21 Q In fact, in that time between November 8th and
22 November 16th of 2017, you developed information that led
23 you to believe that Mr. Silva was a prime suspect in this
24 case, correct?

25 A Yes.

1 Q Particularly DNA information?

2 A Yes, yes.

3 Q And you went into this interview with that

4 information and knowledge, correct?

5 A Yes.

6 Q Why did you ask him to bring his little brother

7 Noa?

8 A Noe?

9 Q Noe, excuse me. Thank you.

10 A Again, we were wanting to do interviews with the

11 family.

12 Q And Noe is 15 years old, correct?

13 A I believe at the time he was, yes.

14 Q So unable to drive legally?

15 A Yes.

16 Q Now, when they first arrived, you placed them

17 together in an interview room. I will call it interview

18 room 1, correct?

19 A They actually weren't placed together, because

20 when we are conducting interviews we like to conduct them

21 independently. I think he was in a different interview

22 room, so they weren't placed in the same room, I don't

23 believe. Maybe they were initially, but not for the

24 interview.

25 Q So at some point you separated Mr. Silva from Noe?

1 A Yes.

2 Q And that is the interview room, I will call it

3 interview room number 2, which has a circular table and a

4 door with a curtain over it, correct?

5 A You are talking about the one that Mr. Silva was

6 in?

7 Q Correct.

8 A Yes.

9 Q And immediately upon entering that room, you asked

10 Mr. Silva to turn his phone onto airplane mode, correct?

11 A I asked if he would turn it to airplane mode, yes.

12 Q Which you testified for the State that's because

13 you just didn't want any interruptions, right?

14 A Yes.

15 Q It also actively cuts off any communication to

16 Mr. Silva, right?

17 A If he, in fact, turns it into airplane mode, yes.

18 I didn't verify that he did or didn't.

19 Q Can't receive text messages, right?

20 A If it's in airplane mode, that's correct.

21 Q Can't receive incoming phone calls, correct?

22 A That's correct.

23 Q Actually, can't make outgoing calls either?

24 A That's correct.

25 Q Nor text messages or anything?

1 A That's correct.

2 Q Now, approximately 6 minutes after moving

3 Mr. Silva to that room asking him to turn it off or, excuse

4 me, turn his phone to airplane mode, Mr. Silva indicates

5 that he wants to leave, right?

6 A Yes.

7 Q And you and Mr. Kazmar, excuse me, Detective

8 Kazmar both stand up, right?

9 A Yes, Detective Kazmar.

10 Q Thank you. And Mr. Silva stands up with you?

11 A Yes.

12 Q And Detective Kazmar tells Mr. Silva to sit back

13 down?

14 A I think he says just wait here while we go get

15 Noe.

16 Q And is it your recollection that you told

17 Mr. Silva to sit down?

18 A Again, I think we were just trying to indicate

19 that he can't leave the room, because we can't have him

20 wandering the station. I think I specifically said that.

21 Q Why didn't you just take Mr. Silva with you to his

22 brother?

23 A Because we didn't know exactly what the status was

24 of Noe, whether he was in the midst of an interview, whether

25 he was available, that type of thing, so it was going to be

1 easier just to go get him because we knew that Mr. Silva was
2 no longer busy.

3 Q Why did you not bring Noe back to Mr. Silva?

4 A Because we determined that we were probably going
5 to arrest him at that point.

6 Q And when you entered 4 minutes later to that same
7 room and started questioning Mr. Silva again, that was the
8 mindset you walked in with?

9 A We were leaning that way, yes.

10 Q Now, in addition, back to that time frame,
11 Mr. Silva indicated specifically that he did not want to
12 talk, correct? That was -- I will clarify.

13 A Okay.

14 Q When you went back in, after he gets asked to
15 leave and you went back in, Mr. Silva very quickly said I
16 don't want to talk to you?

17 A I believe so, yes.

18 Q And at that point you continued to question him,
19 didn't you?

20 A Well, what I did is I initially told him about the
21 picture that we had of him at the 7-11 showing that he had
22 left the house that night, which he had denied doing, and
23 confronted him with that, and that's when he said, yeah, I
24 don't want to talk to you guys.

25 Q In fact, he repeated it. He said I don't want to

1 talk?

2 A I believe so. I would have to see the video again
3 to be sure.

4 Q And then you leave Mr. Silva in that room for --
5 excuse me, no, at that point you actually arrest Mr. Silva,
6 correct?

7 A That's correct.

8 Q For clarification. And you take his jacket,
9 right?

10 A Uh-huh.

11 Q You take his shoes?

12 A Uh-huh.

13 Q You also move him to a third interrogation room?

14 A Yes, right down the hall.

15 Q Handcuff him?

16 A I don't recall if he was handcuffed, because we
17 were going such a short distance, but ultimately he was
18 restrained in that interview room with a floor-mounted
19 device, no handcuffs. So if we did handcuff him in the
20 conference room, we took them off.

21 Q And when you arrived in what I'm going to call the
22 third interrogation room, you left Mr. Silva there for
23 several hours?

24 A I believe it was about 3 hours and 40 minutes.

25 Q But you testified that was while you were trying

1 to go seek a search warrant, correct?

2 A That's correct. I was not doing that personally.

3 The detectives were doing that.

4 Q But your collective knowledge?

5 A Yes, yes.

6 Q And that was specifically a search warrant to

7 obtain permission to use, possibly by force, to obtain

8 Mr. Silva's fingerprint to unlock the phone?

9 A Yes. We wanted to access his phone.

10 Q And, in fact, what happened is that the

11 fingerprint wasn't working, so you asked for the passcode,

12 correct?

13 A Didn't ask for it. He just did it. It didn't

14 open when he put his fingerprint down, as phones do. I

15 don't recall exactly what kind of phone he had. For

16 instance, an iPhone will do that. After a certain period of

17 time, it will lock out and you have to punch in physically

18 the passcode.

19 So it appeared to me that's what he tried to do.

20 He tried to use his fingerprint. When that didn't work, he

21 punched in the code and then he verified with Detective

22 Kazmar that he saw the code.

23 Q So Detective Kazmar indicated that he, or asked

24 what was the code?

25 A Well, he confirmed, he confirmed what he saw as

1 the code and Mr. Silva confirmed that.

2 Q And before this occurred did either of you read
3 Mr. Silva his Miranda rights?

4 A This -- no.

5 Q The State asked you a lot of questions regarding
6 Yiovannie Guzman and his interview. When did that start?

7 A When did the interview start? I don't recall
8 exactly when it started, but it was going on roughly the
9 same time that we were interviewing other members of the
10 family.

11 Q When did Mr. Guzman actually make the statements
12 implicating Mr. Silva?

13 A I don't know that.

14 Q When was Mr. Guzman actually placed under arrest?

15 A I don't know that either.

16 Q Now, detective, you have had extensive training in
17 interview techniques, correct?

18 A Some training.

19 Q How much training?

20 A Your definition of extensive and mine, I don't
21 know, but I have been a detective for quite sometime.

22 Q How much training have you had in interview
23 techniques?

24 A Over the years are you talking experience and
25 educational classes, that type of thing? I probably had

1 three or four classes over the years.

2 Q And based upon experience?

3 A I'm sorry?

4 Q Based upon experience?

5 A Based upon experience?

6 Q How many interviews have you conducted in your
7 career?

8 A Hundreds.

9 Q So we are moving forward to -- I apologize, let me
10 back up.

11 After reading Mr. Silva his constitutional rights
12 under Miranda versus Arizona, Mr. Silva invoked his right to
13 remain silent, correct?

14 A No, I don't recall that he invoked his right to
15 remain silent immediately. Detective Kazmar was explaining
16 to him that we wanted to have a conversation with him and
17 answer his questions and tell him what we knew and that he
18 needed to read him his rights and he did. At that point,
19 the conversation continued. He said that he was willing to
20 talk to us.

21 Q And then immediately after that Mr. Silva said I
22 would rather not talk?

23 A We are talking about after number 2, yes.

24 Q And after Mr. Silva states that, both you and
25 Detective Kazmar continue to question him, correct?

1 A This is interview number 2?

2 Q Yes.

3 A I don't recall that.

4 Q Do you recall stating things and making statements
5 in regards to we want your brother to get your kids back, or
6 his kids back?

7 A We did say that, but I don't remember what context
8 that was in or where exactly that was said.

9 Q And do you remember Detective Kazmar also stating
10 that he has a lot of family court experience and that it
11 wasn't looking so good?

12 A Who has a lot of family court experience, I'm
13 sorry?

14 Q Detective Kazmar claiming that he had a lot of
15 family court experience?

16 A I don't recall if he said that or not, but he was
17 talking about the family and about the CPS and that type of
18 thing, yes.

19 Q And Mr. Silva again stated I would rather stay
20 quiet?

21 A I believe so. I don't recall specifically where
22 you are talking about.

23 Q And at that point both you and Detective Kazmar
24 finally got up and left the room?

25 A Sure. Do you have a transcript? I can kind of

1 give you some context if I can look at the transcript, but
2 you are kind of asking me to pick things out of thin air
3 when they happened exactly during the interview and, like I
4 said, Detective Kazmar was doing a lot of the talking then,
5 so I'm not quite clear on that.

6 Q I know you just testified for the State that about
7 an hour later both you and Detective Kazmar went back into
8 the interrogation room?

9 A Approximately an hour, yes.

10 Q And at that point Detective Kazmar initiated
11 another interview with Mr. Silva?

12 A Initiated a conversation with him explaining to
13 him that Yiovannie had just told us what happened and that,
14 again, we would like to have a conversation with him, if he
15 was willing, to make sure no other family members were
16 involved.

17 Q And Detective Kazmar uses the phrase in that third
18 interview portion where he reinitiates the interview with
19 Mr. Silva, and this is about the same issue that we had
20 concerns about previously?

21 A Are you quoting him?

22 Q Do you recollect that?

23 A I don't recollect that specifically, no.

24 Q Well, let me ask a better question, then.

25 Throughout the entire parts of the interview 2 and 3, you

1 and both, both you and Detective Kazmar repeatedly brought
2 up the kids and custody of the kids, right?

3 A Detective Kazmar brought it up. I didn't bring it
4 up.

5 Q And what kids are we talking about?

6 A We are talking about Bernard's kids.

7 Q And what were you referring to about custody of
8 the kids?

9 A We were referring to the fact that, again, we are
10 trying to determine that no other family members were
11 involved because that would be problematic, especially in
12 light of the fact that their mother had just been murdered.
13 There was one parent left.

14 Q Detective, through your training and experience
15 there is many ways to elicit information from suspects,
16 correct?

17 A Uh-huh.

18 Q And it doesn't always have to be yelling or
19 screaming in someone's face, correct?

20 A Sure.

21 Q In fact, most detectives are taught that there is
22 better alternative methods to elicit information, right?

23 A Most detectives are taught that there are lots of
24 alternatives, yes, and I think most detectives are
25 encouraged to use their strengths.

1 Q And what is your strength, Detective?

2 A I'm just asking questions and trying to get to the
3 bottom of it. I don't really consider myself as having a
4 particular strength.

5 Q Is one of Detective Kazmar's strengths to use
6 extrinsic techniques to elicit statements?

7 A Such as?

8 Q Talking about custody of kids?

9 A I don't know. You would have to ask Detective
10 Kazmar that.

11 MS. RISTENPART: No further questions, Your Honor.
12 Thank you.

13 THE COURT: To the State.

14

15 REDIRECT EXAMINATION

16 BY MR. LEE:

17 Q The statements about the desires to get the kids
18 back with a parent, if that was appropriate, were those
19 legitimate concerns that you had?

20 A Yes.

21 Q There was no fabrication of that?

22 A No.

23 MR. LEE: Thank you. That's all I have.

24 MS. RISTENPART: No questions based on that.

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

1 and leave the courtroom.

2 To the State, what other witnesses do you have?

3 MR. LEE: I'm sorry, Your Honor?

4 THE COURT: What other witnesses do you have?

5 MR. LEE: Your Honor, for the suppression that's

6 all the witnesses we are calling.

7 THE COURT: Do you have witnesses present for

8 the --

9 MR. LEE: Bad acts.

10 THE COURT: -- prior bad acts?

11 MR. LEE: Yes.

12 THE COURT: Who?

13 MR. LEE: I would have Arturo-Manzo, Jessica

14 Macias, Louise Roberts, and again Detective Thomas.

15 THE COURT: Okay. Ladies and gentlemen, we are

16 going to take a seven-minute break. Feel free to stand,

17 shake it out, visit facilities if you need, and then we will

18 go through the end of the hearing.

19 I think we ought to go right to the witnesses who

20 are present, reserving arguments for after hours or when we

21 reschedule. During this recess, I'm going to do a sidebar

22 with counsel and the State's investigator, if you will see

23 me in the jury room.

24

25 (Whereupon a break was taken from 4:12 p.m. to 4:23 p.m.)

1 THE COURT: To the State, next witness.

2 MR. LEE: The State will first call Louise
3 Roberts. I lost my investigator. Can I go retrieve her?

4 THE COURT: Yes.

5

6 LOUISE ROBERTS,
7 called as a witness, having been duly sworn,
8 testified as follows:

9

10 DIRECT EXAMINATION

11 BY MR. LEE:

12 Q Ma'am, could you please state your first and last
13 name and spell those for us.

14 A Louise Roberts, L-O-U-I-S-E, Roberts,
15 R-O-B-E-R-T-S.

16 Q Ms. Roberts, where were you formerly employed at?

17 A The State of Nevada, Department of Motor Vehicles.

18 Q Were you so employed in 2017?

19 A Yes.

20 Q In November of 2017?

21 A Yes.

22 Q At some point during the course of your employment
23 were you asked to run a search to see if certain information
24 had been looked up on a DMV computer?

25 A Yes, I was.

1 MR. LEE: May I approach the witness, Your Honor?

2 THE COURT: Yes.

3 BY MR. LEE:

4 Q Showing you what has been marked as State's

5 Exhibit 1 and 2.

6 A Uh-huh.

7 Q What -- actually, let me ask you a few pointed

8 questions. Are those printouts of the result of your search

9 or your inquiry?

10 A Yes, they are.

11 Q Those were generated by you?

12 A Yes, they were.

13 Q And do they tend to show things involving names of

14 Jessica Macias, Richard Silva, and Arturo Manzo, and a

15 Luz Linarez-Castillo?

16 A I don't see the Jessica one, but the others, Luz,

17 Arturo -- oh, I'm sorry, yes.

18 MR. LEE: Your Honor, I move to admit Exhibits 1

19 and 2.

20 MS. RISTENPART: Your Honor, these are purported

21 business records which are not certified, so, therefore,

22 there are multiple objections, including hearsay.

23 THE COURT: The objection is overruled. They are

24 admitted, Ms. Clerk.

25 THE CLERK: Thank you.

1 (Exhibit Numbers 1 - 2 were admitted into evidence.)

2

3 BY MR. LEE:

4 Q If I could, Ms. Roberts, I'm going to first hold
5 up Exhibit 2 here. At the top it -- Actually, explain this
6 for us here. At the bottom what appears on this document?

7 A So what they do is they normally call me and give
8 me a name, can you look up this person's information and see
9 if anyone else looked it up and, you know, they give me some
10 kind of a date range. So I start with the first name and
11 last name that are entered here, individual first name,
12 individual last name. Then I give the birth date and the
13 information that I'm going to look to see if it was
14 searched.

15 So in this case I found for the names they gave me
16 these birth dates, these plates, these VINS, the individual
17 ID, the individuals that were searched, the driver's license
18 or the SSN. The reason we do that is because they could
19 have entered any piece of information to find the person, so
20 we can't just look for the name and say did you look for
21 this? We have to look at all of these pieces to see if a
22 search was done and who did that search.

23 In this case on this exhibit, it has at the top
24 the login for the individual who looked it up, the person
25 who did the search in our database, the date time stamp that

1 they did that search, the employee ID for the person doing
2 the search, the IP address for the PC where the search was
3 done.

4 The piece of information that I found, we record
5 every search into our database through any means. So what
6 we are saying is they searched for this plate on this PC and
7 it was the person's full name who did the search. So in
8 this case it's Jessica Macias who did the search on
9 October 26, 2017, and it's got the military date time stamp.

10 Q Now, what was the search run? What did that
11 person enter using that terminal?

12 A Okay. They entered the plate UNR21305.

13 Q Okay. Now, if you have the name Jessica Macias,
14 is that the person who is logged in to that terminal?

15 A Yes, that was the employee who was logged in.

16 Q Okay. Now, on this search was there any
17 transactional purpose for the search?

18 A No, there was not. That's why at the bottom, in
19 the middle I show the transactions run at that time, because
20 sometimes you search two or three things to do your
21 transaction, so I show what they searched and there was no
22 transaction completed.

23 MR. LEE: Thank you. That's all the questions I
24 have.

25 THE COURT: To the defense.

1

CROSS EXAMINATION

2 BY MS. RISTENPART:

3 Q Ms. Roberts, you stated that you were asked to
4 look up this information, correct?

5 A Correct.

6 Q Who asked you?

7 A It was our Deputy Director Amy. I don't know
8 Amy's last name, but the request, because these searches are
9 very sensitive, the tables are actually locked down because
10 they have the full SSN in them and other information, so
11 these tables are locked down. There is only certain people
12 who can access them.

13 If we access them, we have to have, it records the
14 fact that I searched the search log, so it has to come from
15 the director or the deputy director. Sometimes it will come
16 from our security coordinator. Those are the three people
17 who normally request it.

18 Q And who requested it from Deputy Amy?

19 A Amy, I do not know. These searches come to me. I
20 do maybe 10 a year, maybe more. How they get to me is the
21 director, the deputy director or the head of security, the
22 IT security.

23 Q So sitting here today testifying you have no idea
24 who was seeking this information?

25 A No, I do not.

1 Q And do you have an idea if it was law enforcement?

2 A I would suspect law enforcement is generally why.

3 We do some internal investigations, but generally the

4 request for this kind of information comes from law

5 enforcement or the individual themselves whose information

6 was given out. One of those two reasons are behind those

7 searches.

8 Q And did you receive this request orally or in

9 writing?

10 A I would have received, normally what happens is

11 they send an e-mail to the IT administrator, my boss

12 Mark Froese, and then he would bring them to me. He doesn't

13 usually know what I'm searching, though. It's just we have

14 a private search. And then I would receive from Amy the

15 details, look for this individual person and their

16 information, and who searched it.

17 Q Were you ever shown a search warrant executed by a

18 Court instructing you to find this information?

19 A No, I have never seen one. And, like I said, I

20 do, you know, 10 a month maybe. I have never seen a search

21 warrant for one. It's always, from my part, it doesn't mean

22 the DMV didn't receive one, but from my part I get that

23 directly from those three people.

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

25 THE COURT: Any redirect?

1

REDIRECT EXAMINATION

2 BY MR. LEE:

3 Q What does the search show? So in this case if you
4 look up a plate, what information would be available?

5 A What you can see in the database from a search?

6 Q Yes.

7 A Okay. If I searched by plate, I could know your
8 name, your address, your product. So the products are the
9 plate, the registration. I could see, I have to, I have
10 been retired for a year, but you come to the search screen,
11 you search for a plate, which is what we had on that one
12 form.

13 It would show you the person, all of the
14 registered owners, the registration, the title, and I could
15 go to the address screen after that with the results and it
16 would give me all of the products associated.

17 MR. LEE: Thank you. That's all I have.

18 THE COURT: Recross.

19

20

RECROSS EXAMINATION

21 BY MS. RISTENPART:

22 Q You just said you had to go to a separate screen,
23 correct?

24 A When you go through our search, what happens is
25 you type in the search information that gives you the,

1 excuse me, it gives you the search results. The search
2 results have five tabs on it, but the first tab usually it
3 has the name and the address, I believe, and then the tabs
4 you can go through and see the related products or whatever
5 you are looking for. You have to select something, a
6 product, to continue on to a transaction.

7 Q And in this case did you actually redo the search
8 that was perpetuated or I believe --

9 A No, no. The results of a search could be hundreds
10 of records depending on what you put in. What I look at,
11 I'm an IT person and I look at the database table to say has
12 anyone searched this information that they gave me, and then
13 I look for transactions to go with it. There were no
14 transactions in this case and there is various reasons, but
15 the search was done.

16 It continued to the results page where they could
17 see that information, the addresses, products, whatever, but
18 they didn't do a transaction. They would have exited out at
19 that point. So they could have either gone to where there
20 is no transaction or they could have gone into a transaction
21 and deleted it not completing any work.

22 MS. RISTENPART: Understood. Thank you. No
23 further questions.

24 THE COURT: Thank you. You are free to step down
25 and leave.

1 To the State, your next witness, please.

2 MR. LEE: Jessica Macias.

3

4 JESSICA MACIAS,

5 called as a witness, having been duly sworn,

6 testified as follows:

7

8 THE COURT: To the State.

9

10 DIRECT EXAMINATION

11 BY MR. LEE:

12 Q Miss, could you please state your first and last
13 name and spell your last name for us.

14 A It's Jessica Macias, M-A-C-I-A-S.

15 Q Do you know Mr. Richard Silva?

16 A Yes.

17 Q How do you know him?

18 A I have known him for maybe 10 years.

19 THE COURT: Will you go closer to that microphone,
20 please.

21 THE WITNESS: I have known him for about 10 years.

22 BY MR. LEE:

23 Q Did you used to work with him at a location?

24 A Yes.

25 Q Where at?

1 A I worked with him at two locations, at Wells Fargo
2 Bank and the DMV.

3 Q Okay. Where was the DMV location that you worked
4 with him at?

5 A The only one in Reno.

6 Q On Galletti there?

7 A Yes.

8 Q Okay. Who got who the job or did anyone get
9 someone the job?

10 A Well, we, his sister and I referred him.

11 Q Okay. And then at the DMV how long -- are you
12 still there?

13 A Yes.

14 Q How long have you been employed at the DMV?

15 A Four years.

16 Q When you were at the DMV are you assigned a spot
17 to work on a given day?

18 A Yes.

19 Q Is it the same spot every single day or does it
20 rotate around?

21 A No, it rotates.

22 Q When you are at a different spot are you able to
23 login on whatever computer is there?

24 A Yes.

25 Q Is each computer protected with -- well, can

1 anyone go and access these computers or do you have to have
2 a specific login from the DMV?

3 A No, anyone can.

4 Q So could I come around the counter at the DMV?

5 A Well, you are not an employee, so, no, you
6 couldn't.

7 Q Okay. So each computer is password protected?

8 A Yes.

9 Q Okay. As an employee do you have a login and a
10 password to get on the computer?

11 A Yes.

12 MR. LEE: May I approach, Your Honor?

13 THE COURT: Yes.

14 BY MR. LEE:

15 Q Showing you Exhibit 2 here, do you recognize this
16 document?

17 A Yes.

18 Q At the top here, does it show your name?

19 A Yes.

20 Q First of all, I guess is your login user name
21 Jmacias?

22 A Yes.

23 Q Okay. Back on October 26 of 2017 do you recall
24 events that happened that day?

25 A No.

1 Q Okay. Do you recall running a search for a
2 license plate of UNR, excuse me, I don't have that here,
3 UNR21305?
4 A No, I don't.
5 Q Okay. I don't care in any great detail for a
6 response, but do you know Lucy Linarez?
7 A I know her, yes.
8 Q Okay. Do you remember roughly the time when she
9 was killed?
10 A Yes.
11 Q Do you also remember a time that, or do you know a
12 Bernard, Mr. Silva's brother?
13 A Yes, I do.
14 Q Do you remember Bernard being hospitalized for a
15 gunshot wound?
16 A Yes.
17 Q So I'm going to ask you about a time in between
18 then. Okay. Is it a matter of just a couple of weeks?
19 A Okay.
20 Q Is that right?
21 A Yes.
22 Q Okay. So in between that time do you recall, did
23 Mr. Silva ask you to run the license plate that I just
24 described, the UNR license plate?
25 A Not to my knowledge.

1 Q Okay. Do you recall Mr. Silva ever on your
2 computer in that time frame?

3 A Yes.

4 Q Explain how that came about.

5 A We were working together and I left my computer
6 open and we were both looking at the computer and that's
7 what I recall.

8 Q Okay. Was your distraction -- was your attention
9 drawn towards somewhere else?

10 A I mean, we were at the camera section, so I was
11 taking pictures. We were both taking pictures.

12 Q Okay. Were you helping a customer? How did you
13 notice Mr. Silva at your computer?

14 A Well, there is two computers to take pictures, and
15 there is one computer to look at the internet or whatever
16 you want to look at or to log on. I was logged on and we
17 were both taking pictures and I guess -- I don't know.

18 Q Well, I don't want you to guess. Do you recall
19 seeing him specifically sitting at your computer?

20 A Yes.

21 Q Is that normal?

22 A I mean, it was, yes, it is normal.

23 Q It's normal for someone else to sit at your
24 computer that you --

25 A That computer doesn't have an assignment for

1 anybody in particular. It is just a computer that is
2 placed. It's not even a computer that should be used to
3 work. It's just a computer that they put there specifically
4 to help the overflow.

5 Q Okay. But you were logged in on that computer,
6 right?

7 A Correct, yes.

8 Q And is there a rule at the DMV that you are not
9 supposed to use someone else's terminal if they are logged
10 in?

11 A Yes.

12 Q Okay. Did it surprise you to see Mr. Silva on
13 your logged in terminal?

14 A No.

15 Q Not at all?

16 A No.

17 Q Had he done that before?

18 A I mean, everybody does it. Everybody just, you
19 don't -- Typically, you can be using someone else's computer
20 without being logged in to the main, the main program, I
21 would say. You could just be looking at the internet. You
22 can be looking at your e-mails. We are supposed to log off
23 of the system, but not necessarily the computer.

24 Q Okay. Do you recall telling Detective Thomas that
25 Mr. Silva had that day asked you to look up a plate for him

1 and you told him no?

2 A I don't remember.

3 Q Do you remember telling Detective Thomas that one

4 day Mr. Silva asked you to help a customer and as you turned

5 around you saw him on your computer, but you weren't sure

6 what he was doing?

7 A I don't -- I mean, we were both at the camera, so

8 I'm positive that, you know, throughout the day we were

9 telling each other to take a picture, because we both didn't

10 want to help the customers.

11 Q Okay. But you don't recall that that same day he

12 had already asked you to look up a plate and you said no?

13 A No. It was over two years ago. I don't recall

14 that, I'm sorry.

15 MR. LEE: Okay. Thank you. That's all the

16 questions I have.

17 THE COURT: To the defense?

18 MS. RISTENPART: No questions, Your Honor.

19 THE COURT: All right. You are free to step down

20 and leave. Thank you.

21 To the State, next witness.

22 MR. LEE: I would call Arturo Manzo.

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ARTURO MANZO-RAMIREZ,
called as a witness, having been duly sworn,
testified as follows:

THE COURT: Mr. Manzo, have a seat, please, and
remember to speak into that microphone.
To the State.

DIRECT EXAMINATION

BY MR. LEE:

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

A Arturo Manzo-Ramirez. First last name is
M-A-N-Z-O.

Q Excuse me one moment.

Sir, were you, in 2017 in November, were you in a
relationship with anybody?

A Yes.

Q Who was that?

A Lucy Castillo.

Q How long had you been together?

A About 5 months.

Q And, again, in November 2017 was she pregnant?

A Yes.

Q With whose baby?

1 A My baby.

2 Q Do you know an individual who Ms. Linarez or

3 Ms. Castillo was involved with named Bernard?

4 A Can you repeat the question again?

5 Q Do you know an individual named Bernard?

6 A Yes.

7 Q Was Lucy involved with Bernard in some fashion

8 when you met her?

9 A No. Well, she was, but then they, they were like

10 in the process of divorcing and everything.

11 Q Okay. They had kids together, right?

12 A Yeah, they had kids together.

13 Q Did you ever speak to Bernard?

14 A One time.

15 Q Was that a couple weeks before the time that Lucy

16 was killed?

17 A Yes.

18 Q What was that conversation like?

19 A Well, because they had, like Bernard had hit Lucy,

20 so like she called me and then I called -- She called me, so

21 I went to Bernard's house to see why he hit her, so after I

22 saw the Sparks Police was there, I left to go meet up with

23 Lucy. And then Bernard called Lucy like a few minutes later

24 and like started telling her all kinds of stuff, that he

25 want to like --

1 MS. RISTENPART: Objection; hearsay.

2 THE COURT: Is there an exception, Mr. Lee?

3 MR. LEE: No. That's fine, Your Honor.

4 THE COURT: All right. So it is sustained. Ask

5 the next question, please.

6 BY MR. LEE:

7 Q Did you, when you conversed with Bernard, did you

8 let him know that you and Lucy were together?

9 A Yes.

10 Q Do you know an individual known, identified to you

11 as Willo?

12 A Yes, I know him.

13 Q Do you know who Willo is?

14 A It was Bernard's brother.

15 Q Was that Richard?

16 A Yes, Richard.

17 Q Did you ever have a conversation with Richard?

18 A Yes.

19 Q When was that?

20 A October '17, the same night that I had a

21 conversation with Bernard.

22 Q Do you remember the date?

23 A October 16th or 17th. It was on a Friday.

24 Q Okay.

25 A So I don't remember exactly the date.

1 Q Okay. What was that conversation like?

2 A With?

3 Q With Willo or Richard.

4 A Oh, he just told me to -- He wanted to know, so he

5 could calm his brother down, to see if it was true that me

6 and Lucy were together, so I told him like to mind his own

7 business, that he had nothing to do with it. That I already

8 talked to Bernard, so for him to stay out of it.

9 Q Okay. And, lastly, sir, at the time did you own a

10 red Jeep Cherokee?

11 A Yes.

12 Q I'm going to show you what's been marked as

13 Exhibit 3. Is this your red Jeep Cherokee?

14 A Yes.

15 MR. LEE: Your Honor, I move to admit Exhibit 3.

16 THE COURT: Yes. Let me hear from the defense.

17 MS. RISTENPART: No objection.

18 THE COURT: Exhibit 3 is admitted.

19 (Exhibit Number 3 was admitted into evidence.)

20 BY MR. LEE:

21 Q What is the license plate on that red Jeep

22 Cherokee that you have?

23 A UNR21305.

24 Q In fact, on Exhibit 3 that's the license plate

25 that shows up there, right?

1 A Yes, still the same.

2 MR. LEE: Okay. Mr. Manzo, thank you.

3 Your Honor, that's all the questions I have.

4 THE COURT: To the defense.

5 MS. RISTENPART: Thank you, Your Honor.

6

7 CROSS EXAMINATION

8 BY MS. RISTENPART:

9 Q You just testified for the State that you were
10 having an affair with Ms. Castillo for over 5 months before
11 her death?

12 A Yes, approximately 5 months.

13 Q And that at some point Ms. Castillo was present
14 or, excuse me, pregnant?

15 A Yes.

16 Q When did you find out?

17 A Right around September.

18 Q And how did you know whose baby it was?

19 A Well, at that time she was with me, though, so
20 what kind of question is that? For example, if you end up
21 being pregnant and you left your husband, whose is it going
22 to be, your husband or your new partnership? Your new
23 partner.

24 Q When, in fact, did Ms. Castillo leave
25 Bernard Silva?

1 A I can't remember the dates.

2 Q And Ms. Castillo was not telling anyone about her
3 pregnancy, correct?

4 A Well, we wanted it to be that way. We both agreed
5 to that, because it was going to look like, you know, bad,
6 but we both agreed. She told me and I told my sister, but
7 nobody else knew.

8 Q So just the three of you?

9 A Yes.

10 Q And no one told Bernard Silva?

11 A I don't know about that.

12 Q No one told Richard Silva?

13 A I don't know.

14 Q But you guys, specifically you and Ms. Castillo,
15 had agreed to keep it a secret?

16 A Yes.

17 Q That red Jeep Cherokee, that's actually your
18 vehicle, correct?

19 A I'm the one who is driving it.

20 Q Red is your color, right?

21 A What was that?

22 Q Red is your color?

23 A Yeah. Well, not really, but I just like it.

24 Q When you had that conversation with Mr. Richard
25 Silva, who you know as Willo, after you had a confrontation

1 with Bernard Silva, Mr. Silva here in the courtroom was
2 talking to you in a conversational tone, right?

3 A Yes.

4 Q He wasn't yelling at you?

5 A No, he wasn't. He was talking to me like a
6 professional, you know, so I was like, wait, well, who is
7 this, you know? So he was talking to me real professional
8 and everything. No incident, nothing. I just told him to
9 stay out of it. That I already talked to his brother, so he
10 had nothing to do with it.

11 MS. RISTENPART: No further questions. Thank you.

12 THE COURT: To the State.

13 MR. LEE: I have nothing further.

14 THE COURT: Thank you. Sir, you are free to step
15 down and leave.

16 THE WITNESS: Thank you.

17 MR. LEE: Your Honor, our last witness would be
18 retired Detective Thomas.

19 THE COURT: Sir, you remain under oath from your
20 prior testimony.

21 MR. THOMAS: Yes, sir.

22

23 REED THOMAS,

24 called as a witness, having been previously sworn,

25 testified as follows:

1 THE COURT: Thank you. You may begin.

2

3 DIRECT EXAMINATION

4 BY MR. LEE:

5 Q Detective, do you remember in mid-December of 2017
6 speaking with a DMV employee Jessica Macias?

7 A Yes.

8 Q Do you recall what she told you about whether
9 Mr. Silva had asked her to look up a certain plate?

10 A She said that he had.

11 Q What was her response to him at that request?

12 A She told him no.

13 Q Did she tell you what happened that same day
14 afterwards?

15 A Yes.

16 Q What was that?

17 A She characterized it as he distracted her by
18 asking her to help a customer at the window that she was
19 working, and when she was done she turned and found him at
20 her computer.

21 Q Did she seem surprised by seeing this?

22 A Yes.

23 Q Did she tell you the time frame that the search
24 was done was between the time of Bernard being shot and then
25 Lucy's murder on November 2nd?

1 A Yes.

2 Q And was Bernard's time of being shot mid, towards
3 the latter end of mid October 2017?

4 A Yes.

5 Q If there is a search from the DMV on October 26
6 relevant to this case would that comport with that time
7 frame?

8 A Yes.

9 Q I should clarify, of 2017, correct? October 26 of
10 2017?

11 A Yes.

12 Q Thank you. I'm going to, I asked you a few
13 questions before, Detective, about November 8th of 2017,
14 that first interview with Mr. Silva; do you recall that?

15 A Yes.

16 Q Did you have a discussion with Mr. Silva regarding
17 his knowledge of Lucy's affair with Arturo Manzo?

18 A Yes.

19 Q What did he say to you just in general terms?

20 A I believe he said he had been, he had spoken to
21 Bernard and knew of Lucy seeing Mr. Manzo.

22 Q Did he state when he learned that information from
23 Bernard?

24 A I believe it was a few weeks prior.

25 Q Prior to what?

1 A Her death.

2 Q Okay. Thank you. That's -- excuse me, one more.

3 That is all the questions I have.

4 THE COURT: To the defense.

5

6 CROSS EXAMINATION

7 BY MS. RISTENPART:

8 Q Detective, when you had a conversation with
9 Mr. Silva on November 8th, he didn't really show any emotion
10 when talking about the affair, did he?

11 A No.

12 Q Wasn't hysterical, upset, crying?

13 A No.

14 Q And, in fact, throughout your investigation you
15 had no information that Richard Silva was upset about the
16 affair, did you?

17 A No.

18 MS. RISTENPART: No further questions. Thank you.

19 THE COURT: To the State.

20 MR. LEE: I don't have any follow-up.

21 THE COURT: Thank you, sir. You are free to step
22 down and leave.

23 Counsel, as you look at your calendars for oral
24 arguments, Monday at 2:00, Tuesday any time between 11:00
25 and 3:00, Wednesday afternoon.

1 MS. RISTENPART: I'm sorry, Your Honor, I was
2 pulling up my calendar. You said Monday morning?
3 THE COURT: Monday afternoon between 2:00 and
4 4:00.
5 MS. RISTENPART: Okay.
6 THE COURT: Tuesday any time between 11:00 and
7 3:00.
8 MS. RISTENPART: I would ask for Tuesday,
9 September 10th at 11:00, Your Honor.
10 THE COURT: Mr. Lee? I can also do Wednesday
11 afternoon.
12 MR. LEE: Judge, the Tuesday works fine with the
13 State, too.
14 THE COURT: So I have a civil case that starts at
15 I believe 8:30. I think I will be ready by 11:00. Tuesday
16 morning at 11:00. Do you have any witnesses that are here
17 that we should hear from tonight?
18 MR. LEE: That's all of them. Thank you.
19 THE COURT: Anything besides oral arguments from
20 you?
21 MS. RISTENPART: No, Your Honor. Just to clarify,
22 we will be arguing the Motion to Suppress, and the
23 allegation of bad acts, and also Mr. Silva's motion, the
24 three pending?
25 THE COURT: All right. So we haven't talked about

1 Mr. Silva's motion. We have run out of time. Let me just
2 find my sheet. That's the Motion in Limine, yes, I will
3 entertain oral arguments on that.

4 MS. RISTENPART: Understood, Your Honor.

5 THE COURT: If there is nothing else, I'll wish
6 all of you a good night.

7 (Whereupon the proceedings concluded at 4:56 p.m.)

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STATE OF NEVADA)
) ss.
WASHOE COUNTY)

I, CORRIE L. WOLDEN, an Official Reporter of the
Second Judicial District Court of the State of Nevada, in
and for Washoe County, DO HEREBY CERTIFY;

That I am not a relative, employee or independent
contractor of counsel to any of the parties; or a relative,
employee or independent contractor of the parties involved
in the proceeding, or a person financially interested in the
proceeding;

That I was present in Department No. 15 of the
above-entitled Court on September 4, 2019, and took verbatim
stenotype notes of the proceedings had upon the matter
captioned within, and thereafter transcribed them into
typewriting as herein appears;

That the foregoing transcript, consisting of pages 1
through 95, is a full, true and correct transcription of my
stenotype notes of said proceedings.

DATED: At Reno, Nevada, this 29th day of June, 2021.

/s/Corrie L. Wolden

CORRIE L. WOLDEN
CSR #194, RPR, CP

4185

IN THE SECOND JUDICIAL DISTRICT COURT
STATE OF NEVADA, COUNTY OF WASHOE
THE HONORABLE DAVID HARDY, DISTRICT JUDGE

STATE OF NEVADA, Department No. 15
Plaintiff, Case CR18-1135B
vs.

RICHARD ABDIEL SILVA,
Defendant.

Pages 1 to 48, inclusive.

TRANSCRIPT OF PROCEEDINGS
ORAL ARGUMENTS
Tuesday, September 10, 2019

A P P E A R A N C E S:

FOR THE PLAINTIFF: MATTHEW LEE
DEPUTY DISTRICT ATTORNEY
1 So. Sierra St., So. Tower
Reno, NV 89502

FOR THE DEFENDANT: THERESA RISTENPART, ESQ.
RISTENPART LAW
464 So. Sierra Street
Reno, NV 89501

REPORTED BY: Christina Amundson, CCR #641
Litigation Services 323.3411

1 RENO, NEVADA -- TUE 9/10/19 -- 11:20 A.M.

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3 THE COURT: Nice to see all of you again.

4 MS. RISTENPART: Good morning, your Honor.

5 THE COURT: Will you please do better than
6 the Court in slowing the cadence of your
7 conversations.

8 MS. RISTENPART: Yes, your Honor.

9 THE COURT: We have been in court since
10 8:30. I have left my moving papers and notes in
11 chambers and I don't want to go get them.

12 Ms. Clerk, can you call the case with the
13 case number.

14 THE CLERK: Calling Case No. CR18-1135-B,
15 State v. Richard Silva, matter set for oral
16 arguments. Counsel, please state your appearances.

17 MR. LEE: Matt Lee on behalf of the state.
18 Good morning.

19 THE COURT: Good morning.

20 MS. RISTENPART: Theresa Ristenpart on
21 behalf of Mr. Richard Silva, who is present in court
22 this morning.

23 THE COURT: Good morning.

24 Good morning, Mr. Silva.

1 THE DEFENDANT: Good morning.

2 THE COURT: I've now heard all witnesses
3 and I invite arguments. Ms. Ristenpart.

4 MS. RISTENPART: Thank you, your Honor.
5 Just for clarification, we did receive yesterday a
6 supplemental to the motion to continue that was
7 filed by the state yesterday.

8 THE COURT: I have not seen it.

9 MS. RISTENPART: Okay.

10 THE COURT: Thank you for bringing it to my
11 attention.

12 MS. RISTENPART: And so I do know that will
13 be something the Court may want to address also
14 today.

15 THE COURT: It has not been included in our
16 internal electronic binder yet. I won't read it
17 until after court.

18 MS. RISTENPART: Okay. In addition, your
19 Honor, I think it may be most beneficial to start
20 with the biggest issue to the motion to suppress and
21 then alternatively leave that for the end. I do
22 have a Power Point in regard to the motion to
23 suppress.

24 THE COURT: I'd like to begin with the

1 motion to suppress.

2 MS. RISTENPART: Okay. So, your Honor,
3 when we are looking at -- and keeping in mind your
4 guidance last week as to what the Court was most
5 interested in prior to hearing witness testimony and
6 also seeing clips from the interview and
7 interrogation itself, the first question was when
8 did this turn into a custodial situation.

9 Your Honor, when they are looking at what
10 the Court should evaluate as to a custodial
11 situation or when it turns custodial, that the
12 pertinent question is when a reasonable person does
13 not feel at liberty to be free or to leave. When
14 you look at the interview, part two, video one at
15 6:06:40 p.m., there is a very clear demarcation and
16 distinction from the hour before.

17 (Video played.)

18 MS. RISTENPART: Your Honor, the pertinent
19 issue -- sorry. The pertinent issue is whether this
20 was custodial from a reasonable man free-to-leave
21 standpoint. What we know, in fact, is they
22 separated Mr. Silva from his little brother Noe, who
23 he had driven there, Noe being 15 years of age who
24 couldn't drive himself. In addition, you also saw

1 that he was put in a separate room, the door was
2 closed. There were two detectives there and in the
3 video you'll see they're both armed with badges on,
4 coupled with as soon as Mr. Silva indicates he wants
5 to leave, that he stands up to leave with the
6 detectives and he's directed to sit back down and
7 stay in the room and they closed the door behind
8 them. Also, that he's told to wait there.

9 THE COURT: Okay.

10 MS. RISTENPART: That, your Honor, is that
11 he was not free to leave. But also besides just the
12 reasonable man standard and the fact that this was a
13 custodial situation at 6:06 p.m., you had Detective
14 Thomas tell you on the stand the reason that he
15 didn't let him just go get Noe or the reason he
16 didn't bring Noe back to him is because he admitted
17 Mr. Silva was not free to leave at that point.
18 Detective Thomas told us that when he came back in
19 during that time frame, the four minutes from when
20 they said, Oh, yeah, we'll go get Noe, to when he
21 came back in, Well, why didn't you bring Noe back to
22 him? Because that's because he wasn't free to
23 leave -- or "We're not going to let him leave," was
24 the exact orders from Detective Thomas.

1 MR. LEE: Your Honor, I object that's not
2 relevant to this Court's consideration.

3 THE COURT: I'll give you the chance to
4 argue the case, Mr. Lee. I'll ask you to refrain
5 from evidentiary objections until after the
6 substance has been presented.

7 MR. LEE: Thank you.

8 MS. RISTENPART: So right there at 6:06
9 p.m. we have a custodial situation, and what do we
10 have right after that? They come back in four
11 minutes later, both detectives, and start
12 interrogating Mr. Silva without giving him a Miranda
13 warning.

14 (Video played.)

15 THE COURT: This the four minutes later.

16 MS. RISTENPART: Four minutes later, your
17 Honor.

18 (Video played.)

19 THE COURT: Can you pause it, please.

20 This the point that causes some questions
21 for the Court, because it is here that they now
22 arrest him.

23 MS. RISTENPART: Correct.

24 THE COURT: Okay. So, whatever probable

1 cause they had to arrest occurred -- was realized
2 before the proceeding colloquy. They had already
3 decided to arrest. Is that your understanding?

4 MS. RISTENPART: Your Honor, the defense
5 would even take it one step further, that this
6 entire second interview starting on November 17th
7 is -- the entire purpose was to arrest Mr. Silva.

8 THE COURT: So, what was the purpose in
9 having him come for the first-phase interview
10 without the Miranda, which the state alleges is
11 noncustodial, if they already had the probable cause
12 and intended to arrest him at the time?

13 MS. RISTENPART: Because they didn't want
14 to have to inform him of his Miranda rights.

15 THE COURT: I'm sure the state has a
16 different response.

17 MS. RISTENPART: But this is a pattern,
18 your Honor, which is what we'll be arguing
19 continuously, the pattern of conscious disregard for
20 constitutional rights in this interrogation by the
21 detectives.

22 What's also critical, your Honor, is 6:10
23 p.m. that you just witnessed, not only just
24 reading -- or refusing or not reading any kind of

1 Miranda warnings before interrogating, is that you
2 note even after Mr. Silva says, I'd rather not talk
3 to you, or, I don't want to talk to you, what does
4 Detective Thomas do? He immediately plants down a
5 picture and starts interrogating again.

6 (Video played.)

7 MS. RISTENPART: And that's what we're
8 talking about, your Honor, is that there's clear
9 throughout this by both detectives a pattern for
10 conscious disregard for constitutional rights, for
11 failing to warn him after a clear custodial
12 situation and also before interrogating him to then
13 also, after even invoking the right to remain
14 silent, the detectives continued to interrogate
15 Mr. Silva, not just in this one clip, your Honor,
16 but in other clips.

17 Because we know that Mr. Silva did invoke
18 his right to remain silent seven different times in
19 this interrogation. This is the second part of the
20 video, your Honor, where he's been moved to the
21 third room. This is after he's been arrested, after
22 he's been Mirandized.

23 (Video played.)

24 MS. RISTENPART: Your Honor, that was at

1 9:55 p.m. And what the real question is whether or
2 not the police scrupulously honored Mr. Silva's
3 right to remain silent after he invoked. They did
4 not.

5 When you were looking at the factor that
6 the Nevada Supreme Court in Dewey adopted from the
7 Ninth Circuit Hsu, H-s-u, you see that there's four
8 factors that the court kinda leans on as guidance.
9 Given the totality of the circumstances, it's an
10 overwhelming umbrella to look at the type of
11 situation to whether the government scrupulously
12 honored a defendant's right after invoking the right
13 to remain silent.

14 The first was the amount of time elapsed
15 between interrogations. You have, your Honor, here
16 less than an hour. If we're going with just after
17 the formal arrest and the reading of Miranda,
18 Mr. Silva invokes within two minutes of being read
19 his Miranda rights. They continue to interrogate
20 him for less than what you saw before he has to
21 invoke again. Detectives get up and leave, leave
22 him alone in the room. They come back in 54 minutes
23 and proceed to start interrogating again.

24 The second factor is whether there was

1 fresh Miranda warnings given. Mr. Silva at 10:55
2 when the detectives reentered never gave Mr. Silva a
3 fresh Miranda warning. In Dewey the Nevada Supreme
4 Court, just like Hsu, found that to be a very, very
5 prevalent, if not the most important, factor in
6 regards to whether the police scrupulously honored a
7 suspect's right to remain silent before trying to
8 reinitiate questioning.

9 In addition, your Honor, the scope and
10 subject matter of the subsequent questioning is
11 exactly the same as the prior five hours. They're
12 asking direct questions about the exact same thing,
13 Ms. Castillo's death and the circumstances around
14 it. It's the same detectives, it's the same exact
15 room coupled with it is the same scope and subject
16 matter.

17 This wasn't something -- questioning like
18 in a lot of cases like specifically in Mosley where
19 it was a different interrogation that they were
20 doing on a whole different topic. This was exactly
21 the same coupled with -- and I know the state will
22 argue this third point and say, Well, but the
23 detectives had no information at this point. They
24 had Mr. Guzman's full confession. That's not

1 actually the standard, your Honor. The standard is
2 whether they're questioning him on the same exact
3 scope of prior interrogation before he invoked, and
4 they are.

5 Not even that, though, but you heard
6 Detective Thomas couldn't tell you any information
7 about what was going on with Mr. Guzman's interview
8 except that it was going on. He couldn't give you
9 any information about whether or not Mr. Guzman had
10 been arrested by this point. So, that argument,
11 besides not even being a factor that this Court
12 should consider, doesn't help because Detective
13 Thomas did not have any of that information when he
14 went back in at 10:55 to reinitiate the
15 interrogation without reading a fresh set of Miranda
16 warnings.

17 And the fourth factor, your Honor, the
18 zealousness of the interrogating officers in
19 continuing the investigation. This was six hours
20 later, your Honor, and there is clearly this pattern
21 of violations from not reading Miranda even after
22 determining -- even in their own mind that Mr. Silva
23 was detained, coupled with the continuing to
24 disregard even after invoking and continuing to

1 question shows and exemplifies the zealousness of
2 these two detectives in trying to obtain inculpatory
3 statements from Mr. Silva.

4 Under the totality of the circumstances,
5 your Honor, given the entirety of the situation here
6 and also the police action, it just shows that
7 Mr. Silva after invoking his right to remain silent
8 that the police did not scrupulously honor that.
9 When they come back in at 10:55 ...

10 (Video played.)

11 MS. RISTENPART: Your Honor, when the
12 detectives came back in, again, not reading or
13 refreshing the Miranda, but the first thing
14 Detective Kazmar states to Mr. Silva is, "Are you
15 still all right" and the second question is, "This
16 is really the last opportunity to talk to us, okay?"
17 And then they go into a long colloquy. And this
18 Court is very aware that interrogation doesn't have
19 to be actual questions. It could be statements
20 meant for the detectives to elicit inculpatory
21 statements, and that's exactly what was going on
22 here, that this long, almost four-minute speech by
23 Detective Kazmar as to, We know all this, so give it
24 up already, without scrupulously honoring

1 Mr. Silva's right is a complete violation of his
2 constitutional rights.

3 Lastly, your Honor, after invoking you saw
4 that they continued to question him at 9:56 and
5 again at 10:55. But the state makes this argument
6 that, well, even if that occurred and they didn't
7 really scrupulously honor it, Mr. Silva waived
8 ultimately when he started talking to the police
9 after all these constitutional violations. Your
10 Honor, it's very well settled in Smith vs. Illinois
11 by the U.S. Supreme Court that if a suspect has
12 already invoked a right to remain silent, in that
13 situation a waiver is not effectuated just because
14 the suspect responds to subsequent questioning from
15 the police.

16 They can't try to argue that all of the bad
17 before this is just swept away because Mr. Silva
18 talks six hours later after the conscious disregard
19 for Mr. Silva's constitutional rights. And, your
20 Honor, these are tough decisions for any court, but
21 when we are talking about constitutional rights and
22 the safeguards of our civilization as Passama v.
23 State and the Nevada Supreme Court is quoting
24 Justice Frankfurter from Watts vs. Indiana, that

1 "civilization needs to be kept by focusing on
2 rights," and not -- and the fact is that when you're
3 arguing a motion to suppress, the shocking nature of
4 this and the allegation itself shouldn't be the
5 deciding factor.

6 Everything that has been presented by the
7 state and by the defense shows that Mr. Silva
8 invoked his right to remain silent and that it was
9 not scrupulously honored. As such, his statements
10 should be suppressed.

11 With that, your Honor, I'll wait for the
12 state to make any kind of counter argument.

13 THE COURT: I have a recollection that I
14 need to refine, to research, that an interview can
15 be noncustodial even if the police have sufficient
16 evidence for arrest, even if they're interviewing
17 their prime subject, and even if they intend to
18 arrest, that the interview can still be
19 noncustodial.

20 Do you agree or disagree with my vague
21 recollection?

22 MS. RISTENPART: Your Honor, I believe
23 you're referring to a case, actually, that arose out
24 of the U.S. Forest Service. Some rangers had pulled

1 someone out of a tent to question them momentarily
2 for about five minutes and that individual -- and I
3 can't -- for the life of me I forget the name of the
4 case, your Honor. But the Ninth Circuit decided
5 that it was not a custodial situation because they
6 were in an open, public area being questioned, which
7 is significantly different here, your Honor.

8 You have case facts that are not anywhere
9 near that. He was not in a public area. He was in
10 a police station. And if we're just focusing on the
11 555, what we're arguing was a custodial situation
12 because as a reasonable man he would not feel free
13 to leave, then we're looking at the fact that the
14 totality of the circumstances, the fact that they
15 knew he came with his little brother and that he
16 couldn't leave without his little brother or else
17 he'd be leaving his little brother there.

18 Also, additionally the fact he's asked to
19 put his phone in airplane mode, they separate the
20 two, they put him in a room by himself. And, you
21 know, I'm sure the state will jump up and argue,
22 Well, the door was unlocked, but in this situation
23 look what occurred. Mr. Silva stood up to leave
24 with the detectives and he was directed to sit back

1 down and stay there. So, a reasonable person would
2 not feel free to leave given the directives by two
3 armed officers with badges and given the totality of
4 the circumstances, being separated from his little
5 brother who he arrived with.

6 THE COURT: Thank you.

7 MS. RISTENPART: Thank you, your Honor.

8 THE COURT: To the state.

9 MR. LEE: Your Honor, let me argue first to
10 the custodial aspect of it. We'll call it "Segment
11 1," if that makes sense.

12 I raised this somewhat tangentially in my
13 opposition simply because, one, there was no
14 evidence gathered from that first interview, nothing
15 that the state would intend to use from Segment 1.
16 The only reason I brought it up in the first place
17 was simply to counter any arguments that he said
18 this, I don't want to talk to you, a number of
19 times. We know if an individual is not in custody,
20 the police can ask them a number of times without
21 violating any constitutional rights.

22 THE COURT: The question is whether he was
23 in custody, though.

24 MR. LEE: Absolutely. But, really, when we

1 look at why is this issue being argued right now,
2 it's really the pattern issue that Defense brought
3 up. Here he was not in custody. I heard a lot of
4 argument and I objected wrongfully. I objected in
5 the middle of her argument and I apologize for that.

6 But the subjective intent of the officers,
7 Detective Kazmar and Detective Thomas, even
8 Mr. Silva is of no relevance to this Court's
9 consideration. It's an objective standard.

10 THE COURT: Right. Let me chase that for a
11 moment.

12 They had interviewed him a few days earlier
13 and asked him to come back. They probably intended
14 to arrest him before he even -- when they invited
15 him to come back the second time, they probably had
16 it in mind that they would arrest him.

17 MR. LEE: But that doesn't matter.

18 THE COURT: Because it's the subjective
19 intent.

20 MR. LEE: Right.

21 THE COURT: Okay.

22 MR. LEE: But even probably maybe -- I
23 don't know. I don't know and I don't know if that
24 evidence was ever completely given.

1 THE COURT: No. It's not directed from me,
2 but there's some circumstantial because he asked to
3 leave, they said okay. He got up, they said, no, we
4 can't have him walk around the building. They came
5 back in and arrested him.

6 So, they had decided to arrest him at some
7 point. He didn't give anything to add to their
8 probable cause during conversation, so I'm allowed
9 to look at circumstantial events putting that chain
10 together. The important question, I think, is the
11 role of their subjective intent versus the objective
12 environment.

13 MR. LEE: And so what we have here --
14 there's cases that state that just because an
15 interrogation or interview, whatever you call it, is
16 happening at a police station, doesn't make it
17 custodial automatically. It can, certainly. But
18 here we have Mr. Silva who voluntarily came down.
19 In fact, he came down sooner than detectives were
20 interested in him coming down and they asked him to
21 come back.

22 He came down and brought his brother. Of
23 course, they're going to be interviewed separately.
24 I don't know of any interview like that that happens

1 together ever. So, that's not really a factor. The
2 door was shut and the detective told your Honor
3 where this interview is happening. It's just right
4 there in the detective division. These rooms are
5 right off of all the cubicles. The door is shut.
6 It was unlocked.

7 And then the airplane mode really isn't
8 anything. It's to secure some privacy during that
9 conversation. That's nothing strange either. And
10 so was he free to leave objectively. Would a
11 reasonable person feel free to leave? Well, one,
12 when he comes down on his own voluntarily to an
13 interview, that's a big factor in the state's favor.
14 Two, he's being questioned. Sure, but he's not even
15 in the main interview room. There's a round table
16 and chairs, multiple chairs around this table. It
17 is not very hostile, let's say. They've pointed out
18 some discrepancies but I wouldn't say that first
19 interview is hostile. The other two segments are
20 even less confrontational.

21 But you have those factors that are
22 involved and at some point, yes, he is arrested, and
23 that actually is another factor the Court can
24 consider that would fall against the state. But

1 there's actually a number of cases that define
2 custody and it lists a million factors, but those
3 are all factors the Court can consider.

4 In this case in that Segment 1 he was not
5 in custody. Therefore, the police were free to ask
6 him these questions. He was free to decline to
7 answer and the police were free to reengage.
8 There's no Miranda violation at that point because
9 there's no custodial interrogation.

10 Now, he's arrested and then we have the
11 interview, or Segment No. 2. He is arrested and
12 that's where the state would concede that he was
13 subject to a custodial interrogation. I'm not going
14 to waste this Court's time.

15 In response to whether the police
16 scrupulously honored that right to remain silent,
17 the police entered that room armed now with a search
18 warrant and a seizure order, search warrant for the
19 phone and seizure order to compel Mr. Silva to place
20 his thumbprint on the phone. Mr. Silva's
21 cooperative. In fact, he gives him his password.
22 They talk briefly, and now it's the first custodial
23 interrogation and he tells them, I'll tell you what
24 I know or -- I'm paraphrasing, but he says words to

1 that effect, I'll help you with what I can or tell
2 you what I can.

3 They then Mirandize him appropriately and
4 before any question's asked he states, I'd rather
5 stop talking now. Detective Thomas then interjects
6 himself, and simply just trying to correct him, Hey,
7 we are trying to make sure the kids have a home, in
8 essence. So, if you think we're lying about that,
9 you're wrong. And at that point the defendant then
10 says again something to the effect of he'd rather
11 stop talking. Again, I'm not here to argue whether
12 that was him invoking his rights. I think that's
13 pretty clear.

14 What we have, though, in this, your Honor,
15 is the central question, Was a waiver knowing and
16 intelligent. Voluntariness was never a part of this
17 motion. The defense argued briefly or they showed a
18 picture of him laying on the ground and said
19 something about voluntariness, but that never
20 appears in their motion or my opposition, so that's
21 not an issue.

22 Whether the waiver was knowing and
23 intelligent under a totality of the circumstances,
24 and in this case a Miranda warning is not some

1 telesmatic repetition of these words or phrases
2 that, frankly, everyone in society knows. In this
3 case they had just told him these rights an hour
4 before. He was advised and then did he understand
5 at the time of his interrogation. The answer to
6 that is yes, for a number of reasons.

7 First, the factor that goes against the
8 state in this case is was he re-Mirandized. That's
9 a factor for the Court to consider and, sure, it
10 goes against the state in this case, but that is not
11 dispositive of the issue. It still comes down to
12 under a totality of the circumstances, did he
13 knowingly and intelligently waive his rights by
14 speaking. The Mendoza case even says you can waive
15 rights for Miranda by simply cooperating and other
16 things rather than saying, I waive my rights, rather
17 than that phrase.

18 So, first, he stated he understood his
19 rights just an hour before and even said, I'll
20 answer what I can. The second part, he did invoke
21 his right only an hour before. That certainly
22 demonstrates an understanding that he knows what his
23 rights are. Three, there were no intervening acts,
24 anything in between the stopping of Segment 2 and

1 the beginning of Segment 3 that would cause him to
2 suddenly, let's say, forget these rights. Nothing
3 else happened that would distract his mind
4 elsewhere. And it was a short time, an hour, in
5 between Segment 1 and -- excuse me -- Segments 2 and
6 3.

7 And then, lastly, the part on Segment No. 1
8 is very telling. Mr. Silva's not dumb when it comes
9 to his constitutional rights. Almost textbook-like
10 he states what his rights are in a noncustodial
11 setting, a consensual encounter, when he says, I
12 feel like I'm being interrogated; if I'm not being
13 detained, I would like to leave now. I mean, this
14 is an individual who knows what his rights are. He
15 understands that aspect.

16 I mean, my experience is very few people
17 understand that part. That's a lot of how drugs are
18 found on roadside stops, simply because people don't
19 know those rights. But here there are reasons to
20 reinitiate. I get that this is not the controlling
21 factor, but it helps aid the Court in what's going
22 on, what's going on in the totality of this night.
23 So, first they enter that room in Segment 2 with
24 those search warrants. That's a big factor. That

1 was the purpose of going in that room. They start
2 talking. It's a calm interview where Mr. Silva
3 seems to be cooperative now. He says, I'll tell
4 what you I can.

5 They go into Segment 3 and now with
6 information, a confession from Mr. Guzman detailing
7 each little event that the officers would not
8 otherwise know. So, yes, was that an interrogation
9 in Segment 3, absolutely. Absolutely. But did
10 Mr. Silva at that time knowingly and voluntarily --
11 excuse me -- knowingly and intelligently waive his
12 rights? He sure did. He knew what his rights were.
13 In an objective standard looking at this and the
14 totality of what's going on, it was very clear he
15 knew what he was doing when he spoke to the
16 detectives that third time. And, really, the only
17 information the state's interested in using at trial
18 is gleaned certainly from that third segment, your
19 Honor.

20 And unless your Honor has questions, I
21 think I'll conclude my argument.

22 THE COURT: Thank you. You have the right
23 of rebuttal. I don't need much, if any, but I want
24 to give you that right. That's my cue.

1 MS. RISTENPART: Your Honor, I would like
2 to point out that the Court -- the actual analysis
3 under the invocation of the right to remain silent
4 that the state wants you just to skip Dewey and Hsu
5 and go, well, it was voluntarily waived later on.
6 Obviously, we already have case law that states the
7 exact opposite, that a waiver later on cannot wash
8 away the constitutional violations.

9 And right here again the state didn't
10 address under Hsu really was Mr. Silva's right
11 scrupulously honored. When you look at the totality
12 of the circumstances and the factors, it was all for
13 defense and for suppression.

14 With that, your Honor, we'll submit.

15 THE COURT: Thank you.

16 Counsel, what's next?

17 MR. LEE: Why don't we move right into the
18 other X motion, if we could.

19 THE COURT: Please.

20 MR. LEE: Your Honor, what the state is
21 interested in here is simply information about the
22 multiple affairs that are going on at the time of
23 the murder. I think there's some central questions
24 that the state would have to prove up by clear and

1 convincing. One, was Mr. Silva having an affair
2 with Lucy or had he had an affair with Lucy? Two,
3 were Arturo and Lucy having a relationship; and,
4 three, did Mr. Silva know of her relationship with
5 Arturo, who came in and testified?

6 So, as to the first one, he says it. He
7 says it. I left any statements he made during his
8 interrogation in Segment 3 out in my presentation of
9 evidence and just simply used what he had told his
10 brother afterwards, which stated, Me and Lucy had an
11 affair. As to all the Arturo and Lucy having an
12 affair, well, you heard testimony from Arturo
13 testifying as to that. He even testified that Lucy
14 was pregnant with his child.

15 And then, three, did he know of Lucy's fair
16 with Arturo? I think that's very clear as well.
17 One, November 8th, during his interview he told
18 Detective Thomas that he knew that relationship and
19 he learned of it from Bernard at the hospital, he
20 told Detective Thomas.

21 Two, Mr. Silva had called Arturo the day
22 that Bernard, his brother, had shot himself -- or
23 excuse me -- had learned of the affair and
24 confronted him about it as well in a calm, I think,

1 professional manner was the word Mr. Monzo used.
2 And then, No. 3, Mr. Silva ran, what I'll call or
3 paraphrase, as a surreptitious search of Mr. Monzo's
4 license plate which then would provide him the
5 address of where he could go.

6 THE COURT: And with that, we need to take
7 a recess.

8 Put a finger on that spot. I want return
9 right to it. This recess will likely be 20 minutes.
10 I want to give you all fair time. My morning has
11 run into a noon hour. I have a conference call
12 scheduled at noon. We've been attempting to
13 rearrange it and we've been unable to. I have to
14 attend to this.

15 I'll clear the courtroom and invite you all
16 back at 12:20. I don't have anything until 3:00,
17 but we certainly won't take anything else between.

18 (Matter adjourned at 11:59 a.m.)

19 -o0o-

20 (Proceedings resumed at 12:20 p.m.)

21 THE COURT: Be at ease.

22 Mr. Lee, back to you.

23 MR. LEE: Thank you, Judge. I was almost
24 done already.

1 So, really, these things that we've already
2 -- that I've already argued and presented by
3 evidence are important for a motive. They motivated
4 Mr. Silva to commit these crimes.

5 THE COURT: So, Mr. Lee, you have to prove
6 by clear and convincing evidence -- let me fly over
7 the sexual relationship between the decedent and
8 others and focus on the pregnancy.

9 Is it your position that you have
10 demonstrated Mr. Silva's knowledge of the pregnancy
11 by clear and convincing evidence?

12 MR. LEE: No. That's not what I'm --
13 that's not what my motion is about, actually.
14 That's the defense motion. My response to that is
15 merely that that would be used to prove Arturo's
16 relationship with her. I've never tried to state
17 Mr. Silva knew that. I don't believe any fact
18 points me that way.

19 THE COURT: Okay. And why is it relevant
20 or necessary to prove that she was pregnant even
21 through Arturo? It seems highly prejudicial,
22 inflammatory potentially. I want to strike a
23 balance.

24 MR. LEE: So, I can tell you this: That

1 there was some concern about cooperativeness of two
2 of our witnesses, but I think that's largely been
3 allayed, so I'm not worried about that. So, really,
4 if witnesses are not going to be cooperative, then I
5 would have needed that pregnancy to prove a certain
6 relationship. I'll just leave it -- I mean, that
7 can suffice my argument for the other motion.

8 But going to motive, intent, and plan, in
9 an ID case those are very probative issues for a
10 jury to consider. And here Mr. Silva had a great
11 motive. It's kind of the -- I don't know if
12 "historic" is the right word. But, I mean, we've
13 heard that since the beginning of time, a motive to
14 kill based on affairs of other people.

15 But the fact remains that the state would
16 prove at trial that Mr. Silva had an affair with
17 Lucy, that Lucy then had an affair with Arturo.
18 This angered Mr. Silva and ultimately he killed her
19 based on that issue alone, so it's highly probative
20 especially in an ID case.

21 Then, again, the plan to -- the motive,
22 intent, and plan are what I argued and certainly the
23 plan for the killing is very important in a
24 first-degree murder case, that he did plan this out,

1 running license plates, things like that.

2 So, for all those reasons, your Honor, I
3 ask the Court to grant the state's motion.

4 THE COURT: To the defense.

5 MS. RISTENPART: Thank you, your Honor.

6 In regards to whether the state has met its
7 burden under Petrocelli, clear and convincing
8 evidence, just going with the prior bad acts of the
9 affairs, there's actually two issues, your Honor.
10 One is Arturo's affair while with Ms. Castillo while
11 she was married to Bernard Silva, Mr. Silva's
12 brother. The second is Mr. Silva's affair of his
13 own with Ms. Castillo.

14 In regards to that specific issue of
15 Richard's affair, what does the Court actually have
16 information of? You heard that the affair through
17 Mr. Silva occurred -- the last time they had even
18 slept together was back in January or New Year's of
19 2017. Ten months later Ms. Castillo is dead. There
20 is not any relevance, your Honor, in regards to
21 Mr. Silva's prior affair because it's so remote in
22 time to the actual allegation here. And the state
23 hasn't even shown you any evidence saying that this
24 is the motive because Mr. Silva had an affair ten

1 months prior and he was very upset about this and,
2 therefore, went and killed Ms. Castillo.

3 The fact is that, one, it hasn't even been
4 proved by clear and convincing evidence. You have
5 merely an admission by Mr. Silva in a very suspect
6 interrogation.

7 Two, is that, even if it was proven by
8 clear and convincing evidence that Mr. Silva's prior
9 affair, it's too remote in time to be relevant and,
10 therefore, the prejudicial factor of that highly
11 outweighs any kind of probative value that would
12 have been given to that.

13 Turning to Arturo's affair with Ms.
14 Castillo while still married to Bernard, I see
15 that's a much closer call for the Court. It is
16 active, it is ongoing, and also you did have
17 testimony from Mr. Arturo stating that he had a
18 phone call from Richard Silva asking if it was true
19 that he was having an affair with Ms. Castillo.

20 You also heard the testimony that Mr. Silva
21 was calm, professional in his questioning and you
22 haven't heard any other evidence in regards to that
23 this somehow crazed Mr. Silva to the point of then
24 going out and plotting Ms. Castillo's murder. That

1 being said, your Honor, that is closer in time than
2 Mr. Richard Silva's affair with Ms. Castillo.

3 In regards to an analysis under Petrocelli,
4 we're still arguing that that fact has not been
5 proved by clear and convincing evidence coupled with
6 it is still too prejudicial versus the probative
7 value for Bernard and Arturo's affair.

8 In regards to the pregnancy, your Honor,
9 that was our motion, and I'm gathering from the
10 state that they're kind of feeling they may not use
11 that information anymore because they were concerned
12 that Mr. Arturo may be a hostile witness or not
13 cooperative, which was proven wrong by his own
14 testimony on the stand and his willingness to talk
15 about his affair with Ms. Castillo.

16 What you heard is that Mr. Arturo stated
17 that it was a secret, the pregnancy. As far as he
18 was aware, only that he, his sister, and Ms.
19 Castillo knew about the pregnancy. You also heard
20 the statement from Mr. Richard Silva in his
21 interrogation when confronted by the fact that Ms.
22 Castillo was pregnant, his response was like, I
23 didn't know that.

24 The fact is, as the Court accurately

1 pointed out, there's no evidence before the Court
2 that Mr. Silva knew about the pregnancy at the time
3 of Ms. Castillo's death coupled with that there's
4 just no relevancy. There's no relevancy to the
5 state's theory. They can get in the evidence of the
6 affair with Mr. Arturo through his own testimony and
7 also the prejudicial effect on a jury is enormous
8 given these types of case facts.

9 So, with that, your Honor, we're asking
10 that you grant our motion in limine to keep out any
11 mention of the pregnancy. Thank you.

12 THE COURT: Do you submit or do you have a
13 rebuttal?

14 MR. LEE: I'll submit.

15 THE COURT: Well done, Mr. Lee.

16 Counsel, what else do I have? I have now
17 read Mr. Lee's supplement, which was filed
18 yesterday. I think the defense has a motion.

19 MS. RISTENPART: That was the motion in
20 limine for the pregnancy, your Honor.

21 THE COURT: Okay. Well, Mr. Lee, thank you
22 for what you did, but it still doesn't answer the
23 question regarding the trial witness.

24 MR. LEE: So, maybe I misunderstood. I had

1 felt like the Court's concerns -- are you talking
2 about the continuance motion?

3 THE COURT: Yes.

4 MR. LEE: If the Court's concerns were how
5 long had she known about this vacation, had it been
6 planned, I think that was answered in talking to
7 her. It was planned a day after we set the trial
8 date.

9 THE COURT: Right. So, I don't know what
10 alternatives are available to the court. I'm
11 reluctant in the case where we may have fifty
12 witnesses to find a date that's convenient for
13 everyone. So, if I continue this trial, then who is
14 next? A police officer who has vacation scheduled
15 or a judge? You know, who knows.

16 So, what alternative methods do you have?

17 MR. LEE: Well, what we normally do --
18 again, I mentioned this last time -- is I'd follow
19 up with all my main-tier witnesses beforehand about
20 any trial dates and see if there's any conflicts, so
21 even on a case with fifty witnesses we can get
22 there.

23 But here, I mean, Ms. Baum is vital to the
24 state's case. It's hard to do the case without her,

1 especially considering I know where the Court's
2 gonna go on one of the motions today. It's nearly
3 impossible to do a case without her DNA testimony.

4 THE COURT: Do you know where I'm going to,
5 go, because I don't know where I'm going to go.

6 MR. LEE: I'll leave it at that. But it's
7 difficult to put a case on without DNA. That's a
8 vital piece in this case.

9 So, alternatives, I think your Honor's
10 question as to whether we can retest it, can someone
11 else testify as to findings, as to the first part,
12 retest, we'd run into a lot of trouble, problems
13 with that, of retesting.

14 THE COURT: Have you examined the
15 consumption of the material that's previously been
16 tested and whether it can be retested?

17 MR. LEE: So, we have examined that. In
18 fact, I discussed that with the lab extensively
19 since our last hearing. It's hard to say. I mean,
20 nothing was wholly consumed and so there are
21 percentages of things that are left, but whether
22 those percentages of a cigarette butt contains
23 Mr. Silva's DNA is something else.

24 They would have to -- if they were to

1 retest it, it runs into trouble with that. It runs
2 into trouble with, perhaps, conflicting things. I'm
3 not saying results. We would expect the same
4 results but details. It just opens up a whole new
5 gamut of issues with it.

6 And then the lab would then have to put
7 everything else off to focus on this one. DNA's
8 normally a year out. They will rush things at
9 times. Obviously, if this Court orders this, they
10 will do what they can.

11 THE COURT: I don't want to be insensitive
12 to that, but I also don't want to be the dog who's
13 wagged by the tail. Defendants have a
14 constitutional right to speedy trial.

15 So, what does the state do when a defendant
16 invokes speedy trial right but the state doesn't
17 have any DNA test for a year? It makes
18 accommodations. That's what it does.

19 MR. LEE: It does, but that's a first test.
20 Again, if we're retesting, we're just wasting all
21 those resources and time and pushing every other
22 case back. It's a little different if it's rushed
23 through for a speedy trial.

24 With the issue of can someone else come and

1 testify to it, possibly. The Court would have to
2 make a lot of findings regarding the confrontation
3 clause and hearsay and things of that nature. I can
4 recall it's been done in a DNA case now where the
5 tester had died and it was done under those
6 circumstances and because, frankly, of those
7 circumstances.

8 THE COURT: Was that the fact pattern -- if
9 you go to the logical extreme, what if the tester
10 dies? The state's case doesn't fold. It does
11 something else.

12 MR. LEE: Sometimes it does. That's a
13 fact-based decision as to the confrontation clause
14 and hearsay on those issues. So, we'll leave it at
15 that. I mean, it's tenuous at best, here where Ms.
16 Baum was the primary examiner and then ultimately
17 analyzed items for DNA.

18 THE COURT: Who is the decision-maker over
19 there?

20 MR. LEE: For what?

21 THE COURT: For retesting, for offering
22 conclusions about consumption and viability of the
23 testing and resources for retesting. Who is it that
24 you interact with?

1 MR. LEE: Who I talked to was Lisa
2 Smyth-Roam, who's the head of the biology unit at
3 the crime lab.

4 THE COURT: Okay. Just hypothetically --
5 I'm not making a decision -- the defense in a moment
6 is going to vigorously oppose the motion to
7 continue. I'm not willing to preserve trial and
8 continue trial in a way that creates strategic
9 advantage for either side because I think that there
10 is a justice concern that both sides have an
11 opportunity to present, the state has the
12 opportunity to present its best case and the defense
13 has an opportunity to defend the case.

14 If I were to deny the trial continuance
15 because I don't like the idea we're moving into next
16 summer or spring and have all these other witnesses,
17 if I deny it without prejudice causing the retesting
18 or substitute methods or some creativity and then if
19 at the very end the defense was still insisting on a
20 trial date without your evidence, well, then I can
21 revisit the continuance. Right now I'm not sure I
22 want to do it. I'm not sure we've exhausted all
23 possible options.

24 So, I'm thinking about having an

1 evidentiary hearing with Ms. Smith and Ms. Baum --
2 and I won't have her disclose personal details of
3 where she's going -- but I would need information
4 about why somebody else either retesting or
5 vicariously testifying is impossible.

6 MR. LEE: As you called it "testifying
7 vicariously," there are people who can review things
8 and testify, certainly. But, again, that requires
9 some legal determinations from your Honor and it
10 hampers the state in that I would be presenting
11 secondhand DNA evidence. The jury will say, This
12 isn't even the person who did the test and we're
13 supposed to rely on that?

14 THE COURT: Well, maybe. It depends on how
15 I fashion the instructions. If we had that
16 testimony, I would not allow the defense to impeach
17 the witness by saying, Isn't it true you didn't
18 conduct the tests? I wouldn't allow that to happen.
19 I can offer those curative responses once I have
20 more information.

21 MR. LEE: So, as far as the retesting,
22 again, the state -- the state's second choice would
23 be to have another person testify as to the results
24 of Ms. Baum's work. Again, the issues that the

1 defense would raise are likely confrontation and/or
2 hearsay.

3 If the Court's willing to have a hearing
4 within the next 30 days about that issue and get
5 that issue settled now, I'd be comfortable moving
6 forward.

7 THE COURT: I'm comfortable having a
8 hearing within seven days.

9 MR. LEE: We'll be ready as well.

10 THE COURT: Because the defense has an
11 opportunity to confront evidence against it. Yet,
12 if the defense -- based upon the defense, I may have
13 no choice but to continue.

14 MR. LEE: But if your honor's willing to
15 have that hearing sooner than later, we'd love that.
16 If we can get this matter settled -- I have not
17 subpoenaed people just based on the cost and
18 resources that go into that and knowing Ms. Baum was
19 vital. But if we could get that matter decided
20 soon, we could get going on that.

21 THE COURT: Ms. Ristenpart.

22 MS. RISTENPART: Thank you, your Honor.

23 It's tough to, again, make this argument
24 because I agree with the Court. I don't believe all

1 creative options have been explored here. The state
2 hasn't said anything about, Well, can we video-Skype
3 in Ms. Baum for her testimony? Can we do another
4 creative source of flying her back a day early from
5 her vacation?

6 I mean, it's just been this kind of it's
7 either continuance, your Honor, or we get to have
8 another witness come up and testify on her behalf.
9 There's so many other options from Point A to Point
10 B. I have done appellate work for many years now,
11 your Honor, and I've seen a lot of creative ways
12 that the state has got in evidence when critical
13 witnesses are not available, right?

14 And that's also the key here. This isn't a
15 deceased witness who is not available. This is a
16 witness who is on a prepaid vacation somewhere in
17 the noncontiguous U.S. That being said, I think
18 that there are a lot of different steps we can take
19 and that the defense would be willing to be more
20 compromising on. For example, a videoed-in or
21 live-feed questioning before the jury, because that
22 protects all of Mr. Silva's constitutional rights to
23 confrontation and coupled with also keeps our trial
24 date.

1 THE COURT: What about the optics of any
2 alternative witness presentation? In the years I've
3 done this, I've never had before a jury live
4 audio-visual participation. Have you seen that?

5 MS. RISTENPART: Your Honor, I haven't seen
6 it in a jury trial. Obviously, I've seen it in
7 motion hearings and I've done it for sentencing when
8 I have witnesses from out of country who cannot be
9 here.

10 I have read about one -- I think it was out
11 of D.C. -- and it was actually a military case.
12 They do it quite frequently. They Skype in
13 witnesses who are overseas or on active duty. With
14 your courtroom that may be some consideration as to
15 the technology available. But I'm just saying that
16 it hasn't been explored. There haven't been any
17 other alternatives besides the continuance.

18 In regards to the retesting, your Honor,
19 that, obviously, would be the most preferable way.
20 We're continuing to argue about this and we're now
21 wasting more time that could be going towards
22 retesting. We heard some discussion, Well, maybe
23 there's some percentages or maybe we're afraid that
24 it won't be exactly the same as the original

1 testing. That would be the same if the defense guy
2 DNA expert retested it, which maybe the defense
3 needs to get their own expert.

4 With that being said, right now we are
5 objecting to a continuance because this hasn't been
6 fully fleshed out as to concrete alternatives that I
7 think that this Court can fashion with the counsel
8 that maintains Mr. Silva's rights to confrontation
9 but also maintains the December 2nd trial date.

10 With all that, your Honor, I would ask for
11 the Court's consideration to either keep this in
12 abeyance or deny without prejudice at this time in
13 order to, essentially, light the figurative fire
14 underneath the Washoe County Sheriff's Office
15 Forensic Division to figure this out.

16 Will we have someone review this and try to
17 proffer that and then we can have an evidentiary
18 hearing about that, once we see who will do the
19 testimony, or we can just retest it and get to the
20 bottom of it and have another witness come in.

21 With that, your Honor, we would ask for
22 your consideration.

23 THE COURT: I practiced a fair amount of
24 appellate law. In fact, for four years I worked at

1 Nevada Supreme Court. It was criminal appeals and I
2 think about how attorneys parse every word the judge
3 says at the bench and argue what the judge meant. I
4 want to balance that with what I feel to say, hoping
5 that there is context.

6 I honor the defense's will and will join
7 with the state in preserving that sacred
8 constitutional role of defense. My experience is
9 that sometimes the defense picks and chooses what is
10 important and what is unimportant. Sometimes
11 defense concedes nothing and contests everything.

12 I do not suggest any strategic decision
13 upon you, Ms. Ristenpart. You are a welcomed
14 advocate and have proven your ability to research,
15 strategize and present a case. But I'm not gonna
16 let this case go to some technical advantage for
17 either side. If there is no option but to continue,
18 we will continue over your objection, if your
19 position has been there is no option and the state's
20 evidence cannot be presented. I think it's
21 important for the state to continue and increase its
22 efforts to figure it out, because I am super
23 disinclined to a continuance, but what I'd like to
24 do is have Ms. Baum and Ms. Roam -- I'm sorry --

1 MR. LEE: Smyth-Roam.

2 THE COURT: -- Smyth-Roam present. This
3 will not be an opportunity for a pretrial
4 cross-examination to explore the substance of the
5 witness testimony. It is procedural. I'll describe
6 it as procedural. I want to know that there are no
7 creative options. I need to be satisfied that
8 there's nothing that can be done.

9 And then I'll entertain the motion to
10 continue based upon that, but I think that that
11 ought to be done under oath and under the spotlight
12 of this courtroom because the criminal lab doesn't
13 determine this court's trial schedule. It's one
14 influence in this court's trial scheme.

15 So, we can do that in an hour. Ms. Clerk,
16 we'll have to set it for 4:00 sometimes within the
17 next, probably, two weeks out, two calendar weeks.
18 That gives you time to continue your efforts and get
19 everyone here. Do you need to coordinate with them?
20 I can have you schedule it by email.

21 MS. RISTENPART: Your Honor, just for the
22 Court's knowledge, I do start that
23 three-co-defendant trial with Judge Freeman on
24 September 23rd, which would fall right within your

1 two-week time frame. I do understand and I can ask
2 permission if the Court would allow me to leave
3 early at 4:00 to come down here for a hearing.

4 THE COURT: I wouldn't want to disrupt the
5 D-9 trial calendar. Can you be ready before the
6 23rd?

7 MR. LEE: Yes.

8 THE COURT: Can we do it next week?

9 MR. LEE: Yes.

10 THE COURT: Okay. I keep setting things in
11 the afternoon, so we begin a two-week civil trial
12 next week that's been going for four years and it is
13 going next Monday. I promised these attorneys they
14 get full trial days.

15 THE CLERK: Wednesday.

16 THE COURT: Counsel, will you respond to
17 the clerk's email later today. I have to sit down
18 with the clerk and administrative assistant. We
19 will have a new reporter so it doesn't take away
20 jury time.

21 Anything else, counsel?

22 MS. RISTENPART: Not from the defense.

23 MR. LEE: Do you intend to rule orally?

24 THE COURT: No. I intend to enter a

1 written decision. Is your Power Point entered?

2 Let's have it marked.

3 MS. RISTENPART: I have it here. I think
4 it will be Exhibit 7.

5 THE COURT: Thank you, counsel.

6 (End of proceedings at 12:47 p.m.)

7 -o0o-

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

STATE OF NEVADA,

Plaintiff,

Case No.: CR18-1135B

vs.

RICHARD ABDIEL SILVA,

Dept. No.: 15

Defendant.

ORDER GRANTING MOTION TO SUPPRESS

Before this Court is Defendant Richard Silva's opposed Motion to Suppress, dated August 8, 2019. On September 4, 2019, and September 10, 2019, this Court heard evidence and oral arguments on the motion. This Court has considered all moving papers and arguments; it now finds and orders as follows.

I. Background

Mr. Silva is charged with the offense of Murder with the Use of a Deadly Weapon, in violation of NRS 200.010, NRS 200.030, NRS 193.165, and NRS 195.020. The State alleges on or about November 2, 2017, Mr. Silva killed Luz Linarez-Castillo by shooting her in the head and body with a handgun. In the alternative, the State alleges Mr. Silva aided and abetted and/or acted as a conspirator with Yiovannie Guzman in planning and committing the killing of Ms. Linarez-Castillo.

1 Ms. Linarez-Castillo was shot multiple times while seated in her car, which was
2 parked near Neil Road in Reno. Neighbors witnessed a Hispanic male enter a silver or
3 gray Toyota SUV shortly after the shooting. Upon interviewing Arturo Manzo, whose
4 residence Ms. Linarez-Castillo visited prior to the shooting, Reno Police Department (RPD)
5 detectives learned she was going through a divorce from her husband, Bernard Silva-
6 Guzman. Members of Ms. Linarez-Castillo's family told police they were fearful of
7 Bernard and his family members, particularly his brother, Mr. Silva.

8 During a search of the crime scene, RPD detectives discovered four Marlboro NXT
9 cigarette butts lying on the sidewalk and in the gutter near where they believed
10 Ms. Linarez-Castillo's shooter had been standing. DNA extracted from the cigarettes did
11 not match a swab taken from Bernard, but Y-STR analysis indicated the DNA on the
12 cigarettes originated from another male in Bernard's family. Thus, RPD concentrated its
13 investigation on Mr. Silva, his 15-year old brother, Noe Silva, and their father.

14 First Interview and Intervening Period

15 On November 8, 2017, Mr. Silva consented to a voluntary interview with RPD
16 detectives. During the interview, Mr. Silva confirmed Ms. Linarez-Castillo had been
17 married to his brother. Mr. Silva indicated neither he nor Bernard left their parents' house
18 on the night of November 1, 2017, and he was not aware of the circumstances of
19 Ms. Linarez-Castillo's death aside from what he had seen on the news. Finally, he stated
20 he had not visited the Neil Road area in several years.

21 On November 9, 2017, RPD obtained a surveillance video from a Sparks 7-Eleven
22 store. The video showed Mr. Silva exiting a silver Toyota Tacoma SUV and purchasing
23 Marlboro NXT cigarettes at approximately 10:48 p.m. on November 1, 2017. He was also
24 wearing nondescript black clothing similar to the clothing worn by the male observed by
25 witnesses following the shooting. Detectives received confirmation on November 14, 2017,
26 that Mr. Silva's DNA matched the DNA found on the cigarettes at the scene of the
27 shooting.

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1 Detective Thomas: Alright. Here's the deal, Richard. We know
2 you left the house that night. Okay? Bernard's on his way down
3 here right now. And, we're probably going to arrest him. Because
4 we can put you on the scene, but who had better motive? I would
say Bernard. He's the one going through this shit. Was that -

5 Mr. Silva: I already said that I don't want to talk to you guys.

6 Detective Thomas: [Shows Mr. Silva a photograph of himself at 7-
7 Eleven on November 1, 2017.] Okay, that's fine. That's fine. You
8 telling me that you didn't leave the house that night? There you
are, Silva.

9
10 Mr. Silva: I already said that I'm not going to talk to you guys.

11 Detective Thomas: Okay, so you got nothing to say?

12 Mr. Silva: I've got nothing to tell you.

13 Detective Thomas: Good enough, stand up.

14
15 Detective Kazmar: Do we have enough people on scene to arrest
mom and dad too?

16 Detective Thomas: Yep, we do. We've got plenty. The car's
17 secured already. We've got people down in California on the SUV.

18 Following the above exchange, Mr. Silva was asked to remove everything from his
19 pockets and his phone was seized. Detective Kazmar again indicated he felt "bad about
20 arresting mom and dad." Mr. Silva was photographed, instructed to remove his hat and
21 shoes, and handcuffed. He was then moved to a third interview room.

22 Second Interview: Phase Three

23 Upon placement in the new interview room, Mr. Silva's handcuffs were removed
24 and he was placed in ankle cuffs mounted to the floor. He remained in the room alone for
25 approximately three hours, appearing to sleep in a chair and on the floor.

26 At 9:42 p.m., Detectives Thomas and Kazmar returned and informed Mr. Silva they
27 had obtained a warrant to search his phone. They asked him to place his finger on the
28 phone to unlock it. Detective Kazmar informed Mr. Silva "there's a conversation we'd

1 love to have with you, and it's not what you think it is." Mr. Silva stated, "I really don't
2 want to talk, but if I can read this real quick I'll give you the fingerprint."

3 Mr. Silva requested to use the restroom at 9:45 p.m. Minutes later, detectives
4 removed his ankle restraint and escorted him out of the room. When they returned,
5 Detective Kazmar began conversation by informing Mr. Silva, "we are basically going to
6 be compelled to make additional arrests on this case . . . if there is anybody else in this
7 family who ends up going to jail that doesn't need to, at all costs that's absolutely what I
8 want to avoid." Detective Kazmar discussed the nature of accountability and suggested
9 Bernard would never be able to see his children again if police concluded he was involved
10 in Ms. Linarez-Castillo's death. He continued by stating, "there's a lot of things that we
11 were willing to share with you tonight. If you want to have that conversation. It's one
12 hundred percent up to you." Mr. Silva indicated he would "answer what I can."
13 Detective Kazmar read Mr. Silva his Miranda rights for the first time at 9:54 p.m.
14 Following advisement, Mr. Silva stated he was "okay with" having a conversation with
15 detectives.

16 As he began questioning, Detective Kazmar informed Mr. Silva the RPD had
17 obtained physical evidence linking Mr. Silva to the crime scene and reiterated he had
18 concerns regarding Bernard and Mr. Silva's mother's involvement in Ms. Linarez-
19 Castillo's death. He asked Mr. Silva to confirm he was the only person responsible. At
20 9:56 p.m., Mr. Silva responded, "I'd rather stop talking now." At this point, both
21 detectives indicated it could be beneficial to Bernard's future child custody dispute if
22 Mr. Silva spoke with police. Mr. Silva responded, "I'd rather stay quiet." Both detectives
23 then ceased questioning and left Mr. Silva alone in the third interview room for
24 approximately 57 minutes.

25 Second Interview: Phase Four

26 Detectives Thomas and Kazmar returned to the interview room at 10:55 p.m. They
27 did not re-advise Mr. Silva of his Miranda rights, but informed him this was "really the
28 last opportunity." Detective Kazmar then notified Mr. Silva that Mr. Guzman had also

1 been interviewed and made statements implicating Mr. Silva in Ms. Linarez-Castillo's
2 death. Subsequently, Mr. Silva confessed to shooting Ms. Linarez-Castillo.

3 Mr. Silva argues the entirety of his November 16, 2017, interrogation should be
4 suppressed because police failed to advise him of his Miranda rights prior to questioning
5 and continued to question him after he unambiguously invoked his right to remain silent.
6 The State maintains suppression is not warranted as Mr. Silva's confession was voluntary
7 under the totality of the circumstances.

8 II. Principles of Law and Analysis

9 Right to Remain Silent

10 The Fifth Amendment to the United States Constitution, applicable to the states
11 through the Fourteenth Amendment, provides that "[n]o person . . . shall be compelled in
12 any criminal case to be a witness against himself." U.S. Const. amend. V; see also Malloy
13 v. Hogan, 378 U.S. 1, 6 (1964).

14 A suspect's statements during a custodial interrogation are not admissible unless
15 the procedural requirements set forth in Miranda v. Arizona have been followed. 384 U.S.
16 436, 478 (1966). Prior to any questioning, police must warn the suspect of his or her right
17 to remain silent, that any statement may be used as evidence against the person, and that
18 the person has a right to the presence of an attorney, either retained or appointed. Id. at
19 479. If a suspect "shows that she intends to exercise her Fifth Amendment privilege by
20 expressing her right to remain silent, any statement taken after that point cannot be used
21 against the suspect, unless she freely and voluntarily waives that right." Dewey v. State,
22 123 Nev. 483, 489-90, 169 P.3d 1149, 1153 (2007).

23 Custodial Interrogation

24 The obligation to administer Miranda warning attaches once a person is subject to
25 "custodial interrogation." 384 U.S. at 445. An interrogation refers not only to express
26 questioning, but also to "any words or actions on the part of police (other than those
27 normally attendant to arrest and custody) that the police should know are reasonably
28 likely to elicit an incriminating response from the suspect." Archanian v. State, 122 Nev.

1 1019, 1038, 145 P.3d 1008, 1022 (2006) (quoting Rhode Island v. Innis, 446 U.S. 291, 301
2 (1980)). "Custody" is defined as formal arrest or "a restraint on the free of movement to a
3 degree associated with formal arrest." Avery v. State, 122 Nev. 278, 286, 129 P.3d 664, 669
4 (2006). If there is no formal arrest, the pertinent question is "whether a reasonable person
5 in the suspect's position would feel at liberty to terminate the interrogation and leave."
6 Rosky v. State, 121 Nev. 184, 191, 111 P.3d 690, 695 (2005) (quoting Thompson v. Keohane,
7 516 U.S. 99, 112 (1995)). Such a determination is considered under the totality of the
8 circumstances. Alward v. State, 112 Nev. 141, 155, 912 P.2d 243, 252 (1996). The Nevada
9 Supreme Court has provided factors to consider in assessing the objective custody
10 determination, including: (1) the site of the interrogation; (2) whether the investigation was
11 focused on the subject; (3) whether the objective indicia of arrest are present; and (4) the
12 length and form of questioning." Id. No one factor is dispositive. Id.

13 A voluntarily interview may become a custodial interrogation when, in the course
14 of answering questions, the defendant shifts from being "a mere suspect," to "the focus of
15 the investigation." Krueger v. State, 92 Nev. 749, 753, 557 P.2d 717, 720 (1976); cf. Avery,
16 122 Nev. at 287, 129 P.3d at 670 (concluding suspect who became the focus of investigation
17 during questioning was not in custody because police were guests in his house and offered
18 to come back later).

19 In State v. Taylor, the Nevada Supreme Court provided a list of objective indicia of
20 arrest. They include whether: (1) the suspect was told questioning was voluntary or that
21 he or she was free to leave; (2) the suspect was formally under arrest; (3) the suspect could
22 move freely during questioning; (4) the suspect voluntarily responded to questions; (5) the
23 atmosphere of questioning was police dominated; (6) the police used strong-arm tactics or
24 deception during questioning; and (7) the police arrested the suspect at the termination of
25 questioning. 114 Nev. 1071, 1082 n. 1, 968 P.2d 315, 323 n. 1 (1998). All seven factors need
26 not be present to determine whether the suspect was in custody. Id.

27 It is apparent that Mr. Silva was formally arrested, and thus in custody, at the point
28 his clothing and phone were seized and he was photographed, handcuffed, and taken to a

1 separate interview room equipped with restraint devices to begin phase three of the
2 interrogation. However, this Court must also consider whether Mr. Silva was in custody
3 prior to formal arrest.

4 Mr. Silva drove himself to the RPD police station voluntarily after being asked by
5 phone to participate in a second interview. As this point, indicia of custody were absent.
6 However, the environment shifted significantly at the point when he was moved from the
7 first interview room to the second.

8 *Site of the interrogation.* The site of questioning was a room in the police station with
9 a covered window and closed door. This is the type of environment, where a suspect is
10 deprived of freedom of action, which is typically associated with custodial status.

11 *Whether the investigation was focused on the subject.* Between Mr. Silva's first and
12 second interview, the direction of the investigation shifted such that he was the focus and
13 not a mere suspect. Specifically, police obtained video of him purchasing cigarettes at 7-
14 Eleven the night of Ms. Linarez-Castillo's death while driving a car and wearing clothing
15 similar to the man witnesses observed leaving the scene following the shooting. Further,
16 police obtained DNA evidence linking Mr. Silva to the cigarette butts found nearby.
17 RPD's primary focus can be inferred from the available evidence, but was confirmed when
18 Mr. Silva was arrested without any new information having been obtained. A reasonable
19 person in Mr. Silva's shoes would have been at least partially aware of such a focus once
20 he was shown surveillance footage of himself at 7-Eleven. Thus, the focus of the
21 investigation points towards the existence of custody.

22 *Whether objective indicia of arrest were present.* When Mr. Silva was moved to the
23 second interview room, he was separated from his younger brother and instructed to place
24 his phone in airplane mode, cutting off his access to the world outside the police station.
25 He was not told he was permitted to leave or move around the room freely, and was in
26 fact prevented from leaving the room when he asked to be reunited with Noe. Mr. Silva
27 declined to voluntarily answer questions and was subsequently formally arrested. Thus,
28 there were multiple indicia of arrest present under the factors as set forth in Taylor.

1 *Length and form of questioning.* Prior to Mr. Silva's formal arrest, detectives
2 maintained a friendly tone and indicated they were simply seeking assistance clarifying
3 inconsistencies. Questions were not overly repetitive and detectives did not put words in
4 Mr. Silva's mouth. At this point, Mr. Silva had only been present at the police station for
5 approximately one hour. Thus, this factor weighs against a finding of custody.

6 A majority of the Alward factors point toward an objective finding that custody
7 occurred after Mr. Silva was placed into the second interview room but before he was
8 formally arrested. This Court concludes that, under the totality of the circumstances, a
9 reasonable person in Mr. Silva's position would not have felt free to terminate questioning
10 and leave.

11 In addition, this Court concludes interrogation began when detectives asked
12 Mr. Silva to clarify the inconsistencies between his prior interview and the video of his
13 parents' home. Clearly, raising these discrepancies and requesting an explanation was
14 likely (and intended) to result in an incriminating response.

15 Once Mr. Silva's interview developed into a custodial interrogation, detectives had
16 a constitutional imperative to advise Mr. Silva of his Miranda rights prior to eliciting
17 potentially incriminating responses. Because they failed to do so, all statements made by
18 Mr. Silva in the second interview room, including any denial that he left his home on the
19 night of November 1, 2017, or where he slept that night, are inadmissible at trial.

20 Reinitiation of Questioning

21 Once a suspect has "unambiguously" invoked his or her right to remain silent,
22 questioning must cease. Miranda, 384 U.S. at 473-74; Berghuis v. Thompkins, 560 U.S. 370,
23 381 (2010); see also Vazquez v. State, 2011 WL 1044900, at *2 (Nev. Mar. 17, 2011).

24 Mr. Silva invoked his right to remain silent during custodial interrogation on multiple
25 occasions, beginning when he told detectives in the second interview room that he did not
26 "feel comfortable talking to [them] anymore."

27 Whether the police may reopen questioning after a suspect invokes his or her
28 Miranda protections depends on the particular rights the suspect asserts. See Arizona v.

1 Roberson, 486 U.S. 675, 685 (1988). If the suspect asserts only the right to remain silent,
2 and does not assert the right to counsel, the police may subsequently initiate a new round
3 of interrogation so long as they have "scrupulously honored" the suspect's initial exercise
4 of the "right to cut off questioning." Michigan v. Mosley, 432 U.S. 96, 103-04 (1975)
5 (quoting Miranda, 384 U.S. at 474). The right to cut off questioning is fulfilled when the
6 person in custody "can control the time at which questioning occurs, the subjects
7 discussed, and the duration of the interrogation." Id.

8 The U.S. Supreme Court has applied a totality of the circumstances analysis for
9 determining when the police have scrupulously honored an invocation of the right to
10 remain silent. Id. at 105-06. In Mosley, the Court considered four factors in making this
11 assessment: (1) the zealotness of officers in pursuing questioning after the assertion of the
12 right to silence (they "immediately ceased interrogation" upon invocation); (2) the time
13 elapsed between interrogations (police resumed questioning after two hours, a "significant
14 period of time"); (3) the provision of new Miranda warnings before the second interview;
15 and (4) the scope of the second interview (police focused on a separate crime). Id.; see also
16 Dewey, 123 Nev. at 491, 169 P.3d at 1154 (summarizing four factors employed in Mosley).
17 In Dewey, the Nevada Supreme Court adopted the Ninth Circuit's approach, under which
18 the Mosley factors were relevant considerations, but not inflexible constraints. Id., see also
19 United States v. Hsu, 852 F.2d 407, 410 (9th Cir. 1988). As such, failure by police to comply
20 with one of the Mosley factors would not necessarily require the conclusion that a
21 suspect's right to remain silent had been violated. Id. (holding second interview regarding
22 the same crime was "not of great significance"). While no one factor is controlling, the
23 Ninth Circuit opinion adopted by the Nevada Supreme Court notes that the fresh
24 provision of Miranda warnings is the most "crucial factor." Hsu, 852 F.2d at 411. In
25 addition, use of psychological pressure by police may affect a determination of whether
26 the right to silence was scrupulously honored. Id. (citing United States v. Olof, 527 F.2d
27 752 (9th Cir. 1975)).
28

1 After Mr. Silva first invoked his right to remain silent, multiple rounds of
2 questioning and re-invocation occurred. Detectives left the second interview room,
3 indicating they were retrieving Noe, and returned only four minutes later without him.
4 When they reentered the room, they immediately informed Mr. Silva they knew he left his
5 parents' house on the night of the alleged offense and suggested Bernard had a better
6 motive to kill Ms. Linarez-Castillo than Mr. Silva. While they did not expressly ask
7 questions, they should have known these statements were likely to elicit responses
8 regarding Mr. Silva's involvement in the shooting. Mr. Silva quickly told detectives he did
9 not want to talk to them. Detective Thompson then showed Mr. Silva the photograph of
10 the 7-Eleven video, to the same effect. When Mr. Silva again declined to speak with
11 detectives, they began discussing the anticipated arrest of his parents, again with the likely
12 intent to convince Mr. Silva to confess to protect his family members. During this
13 exchange, detectives used multiple psychological tactics to encourage conversation, waited
14 only seconds to minutes between questioning, did not read Mr. Silva his Miranda rights,
15 and continued to question him regarding the same offense. Thus, this Court concludes
16 they failed to scrupulously honor his right to cut off questioning at all times following his
17 initial invocation of the right to remain silent in the second interview room.

18 Once Mr. Silva was moved to the third interview room, he was left alone for
19 approximately three hours. As this Court described above, he was also in custody in this
20 location. When detectives returned, they sought access to Mr. Silva's phone pursuant to a
21 search warrant, and told him there was a conversation they'd "love" to have with him.
22 However, Mr. Silva once again reiterated he "really [didn't] want to talk." Once Mr. Silva
23 was escorted to the restroom and returned, detectives again initiated interrogation by
24 suggesting they planned to arrest other, possibly innocent, members of Mr. Silva's family
25 and Mr. Silva could protect Bernard's relationship with his children if he admitted he
26 alone committed the murder. As with the discussion in the second interview room,
27 detectives should have known these topics were reasonably likely to elicit incriminating
28 responses. Although, as in Mosley, a significant period of time had passed, detectives

1 continued to zealously question, using psychological tactics, and discussed the same
2 crime. Only after Mr. Silva agreed to answer did Detective Kazmar read him his Miranda
3 rights. By getting Mr. Silva to commit to talking first, detectives undermined the practical
4 effect of subsequently notifying Mr. Silva of his right to remain silent. However, only
5 minutes after waiving his Miranda rights, and before making any substantive statements,
6 Mr. Silva stated he'd rather stop talking and be quiet. This Court finds this invocation of
7 the right to remain silent to be unequivocal, especially in light of Mr. Silva's previous
8 repeated assertions that he did not wish to speak to detectives.


9 Detectives again reinitiated questioning when they returned to the interview room
10 approximately one hour later. This time they informed Mr. Silva this was his "last
11 opportunity" to make a statement and recited facts they learned from interrogating
12 Bernard. By implying Mr. Silva had been implicated in the offense and had one last
13 chance to clarify his role, detectives should have known their statements were reasonably
14 likely to elicit an incriminating response. They did not re-advise him of his Miranda rights
15 and again began asking about the same offense. Mr. Silva then made the incriminating
16 statements that make up the bulk of evidence which he now requests be suppressed.

17 At this point in the interrogation, Mr. Silva had experienced a repeating pattern of
18 invoking his right to remain silent, being left alone in a room without the ability to leave,
19 and then having detectives return a short time later to confront him with more tactics to
20 encourage conversation on the exact same subject. A single Miranda warning given an
21 hour before, the content of which was largely ignored, is not sufficient to overcome the
22 impact of this continuous cycle. Mr. Silva's experience with detectives provided him with
23 little reason to believe any subsequent invocations would be respected or that he had any
24 control over the time at which questioning occurred, the subjects discussed, or the
25 duration of interrogation. As such, this Court concludes that, under the totality of the
26 circumstances, detectives did not scrupulously honor Mr. Silva's right to remain silent.
27 The resulting statements were obtained in violation of Mr. Silva's Fifth Amendment rights.
28

1 Because detectives failed to comply with the procedural requirements set forth in
2 Miranda v. Arizona, the statements made during Mr. Silva's November 16, 2017,
3 interrogation are inadmissible. Accordingly, Mr. Silva's Motion to Suppress is granted in
4 full.

5 IT IS SO ORDERED

6 DATED this 19th day of September, 2019.

7 
8 _____
9 DAVID A. HARDY
10 District Judge
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2490
Christopher J. Hicks
#7747
One South Sierra Street
Reno, NV 89501
districtattorney@da.washoecounty.us
(775) 328-3200
Attorney for Plaintiff
Attorney for Plaintiff

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(B)

v.

Dept: 15

RICHARD ABDIEL SILVA,

Defendant.

/

MOTION IN LIMINE SEEKING ADMISSION OF TRANSLATED STATEMENT
OF THE DEFENDANT, RICHARD ABDIEL SILVA, AND REQUEST FOR HEARING

The State of Nevada, by and through Christopher J. Hicks, Washoe
County District Attorney, and Matthew Lee, Chief Deputy District
Attorney, hereby files this Motion in Limine Seeking Admission of
Translated Statement of the Defendant and requests a pretrial
hearing. This Motion is based upon the attached Memorandum of Points
and Authorities, any papers and pleadings on file, and any oral
argument this Court may hear on this matter.

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POINTS AND AUTHORITIES

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

Following the defendant's arrest for the above-described shooting, on November 16, 2017, the defendant spoke with his brother, Bernard Silva-Guzman ("Bernard"), inside the Reno Police Department. The defendant made statements to Bernard in Spanish, which were video and audio recorded.

The State utilized the services of Zulema "Suli" Schehr, a certified court interpreter under the Administrative Office of the Courts, Certification No. NVSZ406.¹ Ms. Schehr interpreted approximately two minutes of conversation between the defendant and Bernard. Relevant interpretations include the following statements of the defendant:

- "Me and Lucy were also having an affair, dude."
- "*unintelligible* ...that is why I did it."
- ...

¹ For a current roster maintained online, see <file:///C:/Users/mlee/Downloads/Court%20Interpreter%20Roster%20January%202020.pdf.pdf>

- 1 • "I didn't want to kill her dude, I wanted to kill the dude."

2 A copy of this interpretation was provided to the defense in the
3 regular course of discovery on December 17, 2019, and it is attached
4 hereto as Exhibit "1." Furthermore, the State placed relevant
5 portions of this interpretation within captions on the video/audio
6 recording of this interaction. This too was provided to the defense
7 in the regular course of discovery on January 24, 2020. And finally,
8 a Notice of Additional Expert Witness was filed involving Ms. Schehr
9 on Feb. 4, 2020.

10 NRS 50.054 permits interpreters for persons with limited English
11 proficiency. And in Nevada, there is precedent for admitting the
12 interpretation of police interviews of Spanish-speaking defendants.
13 See Baltazar-Monterrosa v. State, 122 Nev. 606, 137 P.3d 1137 (2006).

14 Moreover, an abbreviated interpretation of this same
15 conversation, though not the entire two-minute segment, was already
16 admitted in this case at a pretrial hearing on September 4, 2019. At
17 that hearing, Ms. Schehr appeared and testified as to the accuracy of
18 the interpretation and testified as to the contents of the
19 interpretation.

20 Accordingly, the State seeks an order in limine permitting use
21 of the interpretation so as to more efficiently use the jury's time
22 to keep the trial moving forward.

23 The State seeks a pretrial hearing to determine the
24 admissibility of this translation, on Monday, February 24, 2020.²

25 ///

26


² Ms. Schehr will be out of State the week prior to trial.

1 AFFIRMATION PURSUANT TO NRS 239B.030

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

4 Dated this 4th day of February, 2020

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

8 By 
9 MATTHEW LEE
10 10654
11 CHIEF DEPUTY DISTRICT ATTORNEY

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, ESQ.

8 Dated this 4th day of February, 2020

9 /s/DANIELLE RASMUSSEN
10 DANIELLE RASMUSSEN

INDEX OF EXHIBITS

EXHIBIT 1 TRANSCRIPT
NUMBER OF PAGES: 2

1 2490
2 Christopher J. Hicks
3 #7747
4 One South Sierra Street
5 Reno, NV 89501
6 districtattorney@da.washoecounty.us
7 (775) 328-3200
8 Attorney for Plaintiff
9 Attorney for Plaintiff

10
11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
12
13 IN AND FOR THE COUNTY OF WASHOE.

14 * * *

15 THE STATE OF NEVADA,

16 Plaintiff,

Case No: CR18-1135(B)

17 v.

Dept: 15

18 RICHARD ABDIEL SILVA,

19 Defendant.
20 _____/

21 SUPPLEMENT TO STATE'S MOTION IN LIMINE SEEKING ADMISSION OF
22 TRANSLATED STATEMENT OF THE DEFENDANT, RICHARD ABDIEL SILVA, AND
23 REQUEST FOR HEARING

24 The State of Nevada, by and through Christopher J. Hicks, Washoe
25 County District Attorney, and Matthew Lee, Chief Deputy District
26 Attorney, hereby files this supplement to its previous Motion in
Limine Seeking Admission of Translated Statement of the Defendant and
requests a pretrial hearing. This supplement is made and based upon
the attached Memorandum of Points and Authorities, any papers and
pleadings on file, and any oral argument this Court may hear on this
matter.

///

1 On February 4, 2020, the State filed its motion in limine
2 seeking admission of translated statement of the defendant. The
3 State inadvertently omitted a second translated statement of the
4 defendant, this one appearing during a recorded jail phone call, on
5 November 17, 2017 at 1431 hours. The contents of this phone call and
6 the translation were included in the State's previously-filed
7 interpreter expert notice of Suli Schehr. In addition, the contents
8 of this call and the translation were previously provided in the
9 regular course of discovery.

10 From this single recorded phone call, the State finds relevant
11 and seeks admission of the following translated material (in .wmp
12 times, into English from Spanish):

13 • **1:58 - 2:35**

14 Female ...and son your card, where did you leave
15 your card.

16 Silva Uh it's in the - they were going to bring
17 it here, but when they bring it here, they
18 put it away until they transfer me or until
19 I leave, and instead I just told them to
20 leave it there, at Reno PD

21 Female Mmm-hmm

22 Silva Uh Reed, Thomas Reed has it

23 Female Mmm-hmm

24 Silva Because he was going to call you guys so
25 you can go and pick it up

26 Female Oh, okay, that's good so we can go.

 Silva ...my car keys, because they have a search
 warrant for my car.

 Female Mmm-hmm

1 Silva ...they told me because they are trying to
2 find the gun, but I already told them that
3 they aren't going to find it. I already
4 got rid of it (inaudible).

5 • 12:12 - 12:26

6 Bernard You know you are there because I'm the
7 guilty one

8 Silva Yeah...

9 Bernard No matter what bro...and you know we'll
10 never finish paying you off...

11 • 12:36 - 12:53

12 Silva And my uncle Arturo, because they thought
13 that you sent me and Yiovannie, I told them
14 no, that Bernard is the only one that knows
15 the truth, and now if you want to tell
16 them...

17 Bernard Huh?

18 Silva It's about you, if you want to tell my aunt
19 Celia and my uncle Arturo why I did it.

20 The recorded calls were originally translated by the Reno Police
21 Department, but the State utilized the services of Zulema "Suli"
22 Schehr, a certified court interpreter under the Administrative Office
23 of the Courts, Certification No. NVSZ406.¹ Ms. Schehr has listened to
24 and interpreted the above-stated portions of the recorded jail call,
25 as reflected herein.

26 ///

 ///

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¹ For a current roster maintained online, see <file:///C:/Users/mlee/Downloads/Court%20Interpreter%20Roster%20January%202020.pdf.pdf>

Accordingly, the State seeks a pre-trial order in limine permitting use of this additional interpretation so as to more efficiently use the jury's time to keep the trial moving forward.

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 11th day of February, 2020

CHRISTOPHER J. HICKS
District Attorney
Washoe County, Nevada

By

MATTHEW LEE
10654

CHIEF DEPUTY DISTRICT ATTORNEY

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, ESQ.

8 Dated this 11th day of February, 2020

9 /s/DANIELLE RASMUSSEN
10 DANIELLE RASMUSSEN

INDEX OF EXHIBITS

EXHIBIT 1 TRANSCRIPT
NUMBER OF PAGES: 2

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 PROHIBIT UNCORROBORATED ACCOMPLICE TESTIMONY**

16 COMES NOW, Defendant RICHARD ABDIEL SILVA (“Mr. Silva”), by and through his
17 Counsel THERESA RISTENPART, Esq., and hereby moves this Court for an Order prohibiting
18 uncorroborated accomplice testimony by co-defendant Yiovannie Guzman.

19 This Motion is based upon the following Points and Authorities, attached exhibits, and any
20 arguments at motion hearing currently set for February 21, 2020.

21 **POINTS AND AUTHORITIES**

22 **STATEMENT OF RELEVANT FACTS**

23 On November 2, 2017, Reno Police Department, in responding to a report of shots fired,
24 found Luz Linarez-Castillo (“Ms. Linarez-Castillo”) deceased in her vehicle. A witness reported
25

1 seeing a light-colored silver Toyota Sequoia driving away from the area shortly after hearing the
2 gunshots. Law enforcement later identified Arturo Guzman, Yiovannie Guzman's ("Mr.
3 Guzman") father, as the owner of the vehicle.

4 Reno Police Department requested an interview with Mr. Guzman, age eighteen. On
5 November 16, 2017, Reno Police Department Detective Allison Jenkins (Detective Jenkins)
6 interviewed Mr. Guzman for over eight (8) hours. Right in the beginning of the interview, Mr.
7 Guzman admits his memory is affected because he smokes a lot of marijuana and for a time had
8 been an alcoholic. Mr. Guzman informs police that his cousin Mr. Richard Silva (Mr. Silva)
9 approached him in a store asking for his help in getting rid of his sister-in-law Lucille. Mr.
10 Guzman informs police that he picked Mr. Silva up from his house, drove Mr. Silva to the area
11 that Ms. Castillo lived in, waited for Ms. Linarez-Castillo to drive by, and then watched Mr. Silva
12 shoot a handgun at Ms. Linarez-Castillo's car. Mr. Guzman states he drove off with Mr. Silva and
13 dropped Mr. Silva off at his house. Both Mr. Guzman and Mr. Silva were arrested and charged
14 with Murder with the Use of a Deadly Weapon.
15

16 On May 10, 2019, this Court severed Mr. Silva's trial from Mr. Guzman's trial at the
17 State's request. On February 6, 2020, Washoe County Deputy District Attorney Matt Lee
18 informed Defense Counsel that Mr. Guzman would be accepting a plea deal in exchange for
19 testifying against Mr. Silva. The exact nature of the plea deal has not been disclosed to Defense
20 Counsel at the time of this filing.
21

22 **ARGUMENT**

23 I. Mr. Guzman's testimony will not be sufficiently corroborated.

24 Nevada Revised Statutes 175.291(1) states:
25
26

1 “A conviction shall not be had on the testimony of an accomplice unless
2 the accomplice is corroborated by other evidence which in itself, and without the aid of
3 the testimony of the accomplice, tends to connect the defendant with the commission of
the offense; and the corroboration shall not be sufficient if it merely shows the
commission of the offense or the circumstances thereof.”

4 N.R.S. 175.291(2) defines “accomplice” as one who is liable to prosecution, for the
5 identical offense charged against the defendant on trial in the cause in which the testimony of
6 the accomplice is given. The underlying purpose of a statute requiring corroborative evidence
7 is to prevent false accusations as well as false convictions. *State v. Wyatt*, 84 Nev. 731, 732,
8 448 P.2d 827, 828 (1968).

9 In order for a defendant to be convicted on the testimony of an accomplice, the state
10 must present other independent evidence that tends to connect the defendant with the crime.
11 *Heglemeier v. State*, 111 Nev. 1244, 1245, 903 P.2d 799, 800 (1995). “Corroborating
12 evidence, however, must independently connect the defendant with the offense; evidence does
13 not suffice as corroborative if it merely supports the accomplice's testimony. If there is no
14 independent, inculpatory evidence -- evidence tending to connect the defendant with the
15 offense, ‘there is no corroboration, though the accomplice may be corroborated in regard to any
16 number of facts sworn to him.’” *Id.* at 1250 citing *Austin v. State*, 87 Nev. 578, 585, 491 P.2d
17 724, 728-29 (1971) (*quoting People v. Shaw*, 17 Cal. 2d 778, 112 P.2d 241, 255 (Cal. 1941)).
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20 “Where the connecting evidence ‘shows no more than an opportunity to commit a
21 crime, simply proves suspicion, or is equally consonant with a reasonable explanation pointing
22 toward innocent conduct on the part of the defendant, the evidence is to be deemed
23 insufficient.’” *Id.* at 125-051 citing *State v. Dannels*, 226 Mont. 80, 734 P.2d 188, 194 (Mont.
24 1987) (*quoting State v. Mitchell*, 192 Mont. 16, 625 P.2d 1155, 1158 (Mont. 1980)).
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1 Here, Mr. Guzman is an ‘accomplice’ as defined by N.R.S. 175.291(2) as he is liable for
2 prosecution and was charged with the identical offense charged against Mr. Silva, murder with
3 the use of a deadly weapon. As such, there must be independent corroborating evidence
4 against Mr. Silva. The State’s evidence will not suffice as corroborative as it merely supports
5 Mr. Guzman’s accomplice testimony.

6 The uncorroborated testimony of an accomplice has doubtful worth and incrimination
7 of another is not corroborated simply because an accomplice accurately describes the crime or
8 the circumstances thereof. *Austin v. State*, 87 Nev. 578, 584, 491 P.2d 724, 728 (1971). Here,
9 there was no independent eyewitness who describes seeing Mr. Silva on scene at the time of the
10 shooting. The gun used in the shooting was never identified. There is no gunshot residue on
11 Mr. Silva or the passenger seat of Mr. Guzman’s vehicle. Cigarette butts with Mr. Silva and
12 female DNA were found near the scene, but not in the area Mr. Guzman describes Mr. Silva
13 was standing and smoking while waiting to kill Ms. Castillo. There is no independent
14 corroborative evidence beyond Mr. Guzman’s story.

15 CONCLUSION

16 Pursuant to N.R.S. 175.291(1), the State will fail to provide independent evidence to
17 corroborate Mr. Guzman’s accomplice testimony. WHEREFORE, Mr. Silva requests that this
18 Court prohibiting uncorroborated accomplice testimony from Yiovannie Guzman.
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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 11th day of February, 2020.

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 11th day of February, 2020.

/s/ Lisa Dee
Lisa Dee, CP

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 **OPPOSITION TO STATE’S MOTION IN LIMINE SEEKING ADMISSION OF**
16 **TRANSLATED STATEMENT OF THE DEFENDANT, RICHARD ABDIEL SILVA, AND**
17 **REQUEST FOR HEARING**

18 COMES NOW, Defendant RICHARD ABDIEL SILVA (“Mr. Silva”), by and through his
19 Counsel THERESA RISTENPART, Esq., and hereby files this Opposition to State’s Motion in
20 Limine seeking Admission of Translated Statement of the Defendant, Richard Abdiel Silva, and
21 request for hearing filed on February 4, 2020.

22 This Opposition is based upon the following Points and Authorities, attached exhibits, and
23 any arguments at motion hearing currently set for February 21, 2020.
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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 and requested that he come down to the police station for another interview. During that interview, Mr. Silva invoked his right to remain silent numerous times, all of which were ignored by the interrogating detectives. At the end of the interrogation and after confessing to killing Ms. Castillo, Mr. Silva asks detectives if he can talk to his older brother, Bernard Silva. Reno Police Department Detective Kazmar (Detective Kazmar) asks Mr. Silva, “What do you want to talk to them about?” In response, Mr. Silva states “I want to be the first to tell my brother what I really did.” Less than a minute later, detectives bring Bernard Silva into the interrogation room. Both brothers are crying hysterically and talk unintelligibly while hugging each other.

On September 19, 2019, this Court ruled that because detectives failed to comply with the procedural requirements set forth in *Miranda v. Arizona*, the statements made during Mr. Silva’s November 16, 2017 interrogation are inadmissible.

1 The State now seeks to circumvent the Court's Order and admit a State proffered
2 translation of what they believe the Silva brothers were saying in this portion of the interrogation.

3 **ARGUMENT**

4 **I. Mr. Silva's statements to Bernard Silva are fruit of the poisonous tree and**
5 **inadmissible.**

6 Confessions obtained in violation of a defendant's constitutional rights are excluded at
7 trial. *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 40 S.Ct. 182, 64 L.Ed. 319
8 (1920). Subsequent statements, confessions, or other evidence may be admitted if properly
9 obtained unless, under the "fruit of the poisonous tree" doctrine, they are derived directly from
10 the tainted confession. *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441
11 (1963). Where a statement is coerced, "the time that passes between confession, the change in
12 place of interrogations, and the change in identity of the interrogators all bear on whether that
13 coercion has carried over into the second confession." *Oregon v. Elstad*, 470 U.S. 298, 310,
14 105 S.Ct. 1285, 1293, 84 L.Ed.2d 222, 232-33 (1985); see *Bey I, supra*, 112 N.J. at 71-74,
15 548 A.2d 846.
16

17 Here, this Court found that Mr. Silva's confession was coerced, that the police had
18 repeatedly violated Mr. Silva's constitutional rights by failing to scrupulously honor Mr.
19 Silva's right to remain silent after he invoked it at different times. The State now argues that,
20 despite the coerced confession by Mr. Silva to police interrogators, he made a voluntary
21 statement to his brother Bernard Silva and that should be admissible.
22

23 In applying the factors considered in *Oregon v. Elstad*, in this case the taint of the
24 original coercion carries over into the second confession to Bernard Silva. 470 U.S. at 310
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1 (1985). Mr. Silva remains, in custody arrested, in the same interrogation room where the
2 coerced confession took place. Police send Bernard Silva into that room with Mr. Silva less
3 than one (1) minute after interrogators leave the room. Although Bernard Silva was not the
4 person who interrogated Mr. Silva, the connection and timing between the coerced confession
5 and the allegedly voluntary statements to Bernard Silva show that the second confession is
6 tainted. It is inescapable that such statements, made in the immediate aftermath of an
7 unconstitutionally coerced confession, are tainted by the constitutional violation that makes the
8 first confession inadmissible at trial. Even if Mr. Silva initiated the conversation with Bernard
9 Silva, he could not possibly have appreciated the evidential value of his new admissions,
10 independent of the detailed, explicit confession he had just completed with the detectives who
11 violated his constitutional rights. Mr. Silva himself, identified that he wanted to be the first one
12 to “tell his brother what he had done” referring to his coerced confession mere minutes before.
13

14 As such, the evidence of the second confession between Mr. Silva and Bernard Silva is
15 tainted and inadmissible.

16 **II. Mr. Silva’s statements to Bernard Silva are inadmissible as it is a continued**
17 **violation of Mr. Silva’s constitutional rights.**

18 Mr. Silva’s statements to Bernard Silva are tainted by the coerced confession and as
19 such, are inadmissible under the fruit of the poisonous tree doctrine. In addition, the statements
20 to Bernard Silva are inadmissible as the statements were obtained in continued violation of Mr.
21 Silva’s constitutional rights.
22

23 The *Miranda* safeguards come into play whenever a person in custody is subjected to
24 either express questioning or its functional equivalent. *Rhode Island v. Innis*, 446 U.S. 291,
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1 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980). The term "interrogation" under *Miranda* refers not
2 only to express questioning, but also to any words or actions on the part of the police (other
3 than those normally attendant to arrest and custody) that the police should know are reasonably
4 likely to elicit an incriminating response from the suspect. *Id.*

5 In *Arizona v. Mauro*, the United States Supreme Court indicated that a private third
6 party's questioning of a person in police custody may constitute the functional equivalent of
7 police interrogation. 481 U.S. 520, 526, 107 S.Ct. 1931, 95 L.Ed. 2d 458 (1987). In *Mauro*,
8 the defendant confessed to killing his son. *Id.* Police arrest him and bring him to a police
9 station for further interrogation. *Id.* After being informed of his rights under *Miranda*, the
10 defendant invokes his right to counsel. *Id.* Law enforcement immediately cease questioning
11 and leave the interrogation room. *Id.* The defendant's wife demands that she be allowed to
12 speak with the defendant. *Id.* In that conversation, defendant confesses to killing their son.
13 *Id.* At trial, the State wanted to introduce the taped confession to the wife to show defendant's
14 state of mind at the time. *Id.* Defendant argued that the police violated his invoked right to
15 counsel by sending in his wife to question him. *Id.* The United States Supreme Court focused
16 on the intent of the officers and whether they knew that allowing the wife to speak to the
17 defendant would reasonably likely elicit an incriminating response from the suspect. "There is
18 no evidence that the officers sent Mrs. Mauro in to see her husband for the purpose of eliciting
19 incriminating statements. As the trial court found, the officers tried to discourage her from
20 talking to her husband, but finally 'yielded to her insistent demands.'" *Id.*

21 While in *Mauro* the Court found "no evidence that the officers sent Mrs. Mauro in to
22 see her husband for the purpose of eliciting incriminating statements," *id.* at 528, in the present
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1 case there is compelling evidence that the detectives knew that sending in Bernard Silva to talk
2 to Mr. Silva would elicit incriminating statements. Mr. Silva told detectives that he wanted to
3 be the first to tell his brother what he had just confessed to the police. The detectives, after
4 repeatedly violating Mr. Silva's constitutional rights, knew that Mr. Silva wanted to speak to
5 his brother to confess to his brother what he had just confessed in violation of *Miranda* to the
6 detectives. The detectives sent Bernard Silva into the same interrogation room less than one (1)
7 minute after eliciting a coerced confession, knowing that Mr. Silva would continue to make
8 incriminating statements. As such, these statements to Bernard Silva are a continued part of the
9 police interrogation and Mr. Silva's invoked right to remain silent continued to be violated,
10 thereby making these statements also inadmissible.
11

12 **III. The statements between Mr. Silva and Bernard Silva are unintelligible.**

13 The State, through discovery, produced to Defense a clipped version of the video
14 recording of the conversation between Mr. Silva and Bernard Silva. The State also proffered a
15 State sponsored translation of words perceived to be spoken in Spanish during the conversation.
16 It appears that the State is seeking to admit their expert's translation of alleged statements made
17 by Bernard Silva and Mr. Silva. The conversation itself is unintelligible, and at times, it is
18 entirely unclear who the actual speaker is of the proffered statements. The portions of the
19 recording that are unintelligible are so substantial that the recording as a whole is
20 untrustworthy. *See. United States v. Lane*, 514 F.2d 22, 27 (9th Cir. 1975); *People v. Polk*, 47
21 Cal. App. 4th 944, 54 Cal. Rptr. 2d 921, 926 (Ct. App. 1996).
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CONCLUSION

Mr. Silva's statements to Bernard Silva are fruit of the coerced confession and inadmissible. Additionally, the police knowingly used Bernard Silva to elicit incriminating statements from Mr. Silva while continuing to violate his constitutional rights. Ultimately, the recording itself is so unintelligible that it cannot be deemed trustworthy. Wherefore, for this multitude of reasons, the statements made to Bernard Silva are inadmissible.

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 16th day of February, 2020.

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 Opposition to:

DDA Matt Lee
Washoe County District Attorney's Office

Dated this 17th day of February, 2020.

/s/ Lisa Dee
Lisa Dee, CP

Christopher J. Hicks
#7747
One South Sierra Street
Reno, NV 89501
districtattorney@da.washoecounty.us
(775) 328-3200
Attorney for Plaintiff
Attorney for Plaintiff

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: CR18-1135B

v.

Dept: 15

RICHARD ABDIEL SILVA,

Defendant.

/

REPONSE TO DEFENDANT'S MOTION TO PROHIBIT
UNCORROBORATED ACCOMPLICE TESTIMONY

COMES NOW, the State of Nevada, by and through CHRISTOPHER J.
HICKS, District Attorney of Washoe County, and MATTHEW LEE, Chief
Deputy District Attorney, and hereby responds to the defendant's
motion to prohibit uncorroborated accomplice testimony. This
opposition is made and based upon NRS 175.291 and the attached Points
and Authorities.

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POINTS AND AUTHORITIES

The State is well-aware of the provisions of NRS 175.291(1), which prohibit convictions on the testimony of an accomplice without other evidence which "tends to connect" a defendant with the crime. For purposes of this motion and response, the State concedes that Mr. Guzman is an accomplice as defined by NRS 175.291(2).

Corroborating evidence sufficient to satisfy the statute may be either direct or circumstantial and can be taken from the evidence as a whole, as opposed to being found on a single fact. Heglemeier v. State, 111 Nev. 1244, 1250, 903 P.2d 799, 803 (1995); Cheatham v. State, 104 Nev. 500, 504, 761 P.2d 419, 422 (1988). But, the corroborating evidence "need not in itself be sufficient to establish guilt." Cheatham, 104 Nev. at 504-05, 761 P.2d at 422.

In general terms, the State agrees with the statute: that the testimony of Mr. Guzman alone, without additional evidence, would be insufficient to support a conviction for the charge in the Information. Thus, the State would request that this be revisited, if necessary, at the time of Mr. Guzman's testimony. At this point, without the aid of evidence and testimony, the motion is premature and not yet ripe for decision.

However, in this case, sufficient evidence exists which would "tend to connect" Mr. Silva to the crime. As a sampling offer of proof, evidence will link Mr. Silva to cigarette butts found at the crime scene. Together with Mr. Silva's denial of ever being at the crime scene during his consensual interview on November 8, 2017, this cigarette butt evidence becomes even more damning. Also, Mr. Silva

1 is seen on video stepping out of the passenger side of a grey Toyota
2 Sequoia approximately six hours before the murder. This same color
3 and make/model was described by an independent witness as leaving the
4 area of the murder immediately after six gunshots rang out. DMV
5 evidence of Mr. Silva using his employment to look up locations of
6 the victim and the victim's new boyfriend will be heard. Ample
7 evidence of Mr. Silva's motive will also be put forth. And
8 additionally, Mr. Silva's recorded statements about getting rid of
9 the pistol, his instructions giving his brother permission to tell
10 others "why I did it," and his admission that "I didn't want to kill
11 her dude, I wanted to kill the dude" will be produced.

12 This sampling alone supports the State's position that the
13 accomplice's testimony will be supported by other evidence which
14 "tends to connect" Mr. Silva with the commission of the murder.
15 Therefore, it is admissible in its entirety.


16
17 AFFIRMATION PURSUANT TO NRS 239B.030

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

20 Dated this 17th day of February, 2020

21 CHRISTOPHER J. HICKS
22 District Attorney
23 Washoe County, Nevada

24 By


25 MATTHEW LEE
10654

26 CHIEF DEPUTY DISTRICT ATTORNEY

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, ESQ.

8
9 Dated this 17th day of February, 2020

10
11 
12 _____
 Matthew Lee

1 Christopher J. Hicks
#7747
2 One South Sierra Street
Reno, NV 89501
3 districtattorney@da.washoecounty.us
(775) 328-3200
4 Attorney for Plaintiff
5

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

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No: CR18-1135B

11 v.

Dept: 15

12 RICHARD ABDIEL SILVA,

13 Defendant.
14 _____/

15 REPLY TO DEFENDANT'S OPPOSITION TO THE MOTION IN
16 LIMINE SEEKING ADMISSION OF TRANSLATED STATEMENTS
OF THE DEFENDANT, RICHARD ABDIEL SILVA

17 COMES NOW, the State of Nevada, by and through Christopher J.
18 Hicks, Washoe County District Attorney, and Matthew Lee, Chief Deputy
19 District Attorney, and hereby files this Reply to the defendant's
20 opposition to the State's Motion in Limine Seeking Admission of
21 Translated Statement of the Defendant, filed February 17, 2020. This
22 Reply is made and based upon the attached Memorandum of Points and
23 Authorities, any papers and pleadings on file, and any oral argument
24 this Court may hear on this matter.

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POINTS AND AUTHORITIES

I. PROCEDURAL POSTURE

The State filed its Motion in Limine on February 4, 2020, seeking admission of a translated statement of the defendant. The Statement was one occurring after the interview was concluded, not in response to any police questioning, and at the request of the defendant, who was already under arrest regardless. On February 7, 2020, the State filed a supplement to its Motion in Limine, citing its inadvertent failure to include the translated contents of a recorded jail call from November 17, 2017, at 1431.

The defendant filed his opposition on February 17, 2020. Only in subsection III of his opposition does he challenge the translation, albeit without any support for his position. Instead, the defendant uses this opposition as a vehicle to raise a new challenge - that of constitutional grounds. His "motion" to suppress is untimely and non-responsive to the State's Motion in Limine.

II. FACTUAL STATEMENT

After litigating the matter, this Court entered its Order on September 19, 2019, suppressing the "statements made during Mr. Silva's custodial interrogation." *Order*, at 13:2-3 (Sept. 19, 2019).

After the interrogation concluded on November 16, 2017, and at Mr. Silva's request, he spoke to his brother, Bernard Silva. During the conversation, Mr. Silva made incriminating statements: "Me and Lucy were also having an affair, dude" and "unintelligible...that is why I did it" and "I didn't want to kill her dude, I wanted to kill the dude." The Statements were in Spanish but were translated

1 through the services of a certified court interpreter, Suli Schehr
2 ("Ms. Schehr"). Ms. Schehr also testified and translated the above
3 statements during the evidentiary hearing on the motions in September
4 4, 2019. The statements were admitted. Ms. Schehr is not an
5 employee of the Washoe County District Attorney's Office.

6 On November 17, 2017, at 1431 hours, Mr. Silva placed his first
7 telephone call from the Washoe County Jail to his mother. During
8 that call, Mr. Silva again made incriminating statements in Spanish,
9 which were translated into English with the services of Ms. Schehr.
10 The most relevant incriminating segment is as follows, "...they told
11 me because they are trying to find the gun, but I already told them
12 that they aren't going to find it. I already got rid of it
13 (inaudible)." The defendant has not challenged this translation.

14 **III. ARGUMENT**

15 A. The Translation's Accuracy is Uncontroverted.

16 The defendant does not adequately challenge or dispute the
17 accuracy of the translations. The recordings and the translations
18 were discovered to the defense long ago.¹ He does not provide an
19 alternative translation, nor has he not noticed an expert interpreter
20 to make such a challenge. See Baltazar-Monterrosa v. State, 122 Nev.
21 606, 614, 137 P.3d 1137, 1142 (2006).

22 The interpretations of Ms. Schehr are accurate, and she will
23 testify to the same. Ms. Schehr is a certified court interpreter in

24 ¹ The defendant misleadingly asserts that the State only produced a
25 "clipped version of the video recording." Def. Opp. at 6:13-14 (Feb.
26 17, 2020). Actually, the entire recording was discovered long ago.
In addition, an approximate two-minute segment of that longer
recording with translation subtitles was later provided to the
defense.

1 the State of Nevada. Small segments of the conversation are
2 unintelligible, and Ms. Schehr notes this in her interpretation.
3 But, the majority is able to be deciphered and interpreted.

4 The State moves for an order in limine admitting the
5 interpretations at trial.

6 B. The Defendant's Constitutional Challenge is Untimely.

7 The defendant provides no reason for his failure to challenge
8 the admissibility of the recorded statements on Miranda grounds. As
9 if to pass it unnoticed, he raises it for the first time in an
10 opposition, one week before trial. His motion is not timely. See
11 LCR 7(a).

12 However, for the sake of argument, the defendant's challenges
13 are addressed below.

14 C. 'Fruit of the Poisonous Tree' Doctrine is Not Applicable

15 In his challenge, the defendant conflates Fourth Amendment
16 jurisprudence with the Fifth Amendment, failing to recognize the
17 clear distinction between the two and erroneously ignoring long-
18 standing precedent by transferring the 'fruit of the poisonous tree'
19 doctrine from Wong Sun v. United States² into Fifth Amendment circles.
20 See United States v. Patane, 542 U.S. 630 (2004) ("[t]here is
21 therefore no reason to apply the 'fruit of the poisonous tree'
22 doctrine of Wong Sun" to the Fifth Amendment).

23 Although statements obtained in violation of Miranda may not be
24 admitted against a defendant in the case-in-chief of the State,
25 physical evidence derived as a result of the statements is not
26

² 371 U.S. 471 (1963).

1 inadmissible simply because of a *Miranda* violation, as we have in
2 this instant case. See id. Additionally, even the identity of a
3 witness learned from a voluntary statement without proper *Miranda*
4 warnings would not result in that witness's testimony being
5 suppressed. Michigan v. Tucker, 417 U.S. 433 (1974).

6 Nevada follows the federal Supreme Court authorities on the
7 issue. In fact, the same argument made by the defendant herein was
8 already rejected in Crew v. State, 100 Nev. 38, 675 P.2d 986 (1984).
9 In that case, the defendant gave incriminating statements in
10 violation of *Miranda* wherein he disclosed the location of the
11 deceased victims. He then immediately thereafter accompanied
12 detectives to the burial site. In pretrial litigation, the
13 defendant, like Mr. Silva, erroneously argued that such evidence and
14 testimony should have been ruled inadmissible "as fruit of the
15 violation of his constitutional rights." Id. at 43, 675 P.2d at 989.
16 But, a violation of *Miranda* under an otherwise voluntary statement
17 will not result in the exclusion of evidence derived from the
18 confession.³ In Crew, the evidence derived from the statements,
19 including the bodies, was not suppressed.

20 D. Mr. Silva's Statement to Bernard is Not Derivative of his
21 Statement to Police.

22 Mr. Silva asked to talk to his brother after the police
23 questioning ceased. This has never been, and cannot be, the
24 "functional equivalent" of an interrogation under Rhode Island v.
25 Innis, 446 U.S. 291 (1980). Detectives asked no questions of Mr.
26

1 Silva, nor is it suggested that detectives petitioned Bernard (Mr.
2 Silva's brother) to obtain inculpatory statements of the defendant.
3 The State urges this Court to join the reasoning of the Supreme Court
4 in Arizona v. Mauro, when it stated, "We doubt that a suspect, told
5 by officers that his wife will be allowed to speak to him, would feel
6 that he was being coerced to incriminate himself in any way." 481
7 U.S. 520, 529 (1987).

8 Mr. Silva was already placed under arrest before his un-
9 Mirandized confession. He acted under his own volition when he made
10 inculpatory statements to Bernard.

11 **IV. CONCLUSION**

12 For all the foregoing reasons, the State respectfully urges this
13 Court, following a pre-trial hearing with evidence from the
14 interpreter, to enter an order in limine admitting the translated
15 material as explained in the State's original motion and supplement.


16 AFFIRMATION PURSUANT TO NRS 239B.030

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

19 Dated this 20th day of February, 2020

20 CHRISTOPHER J. HICKS
21 District Attorney
22 Washoe County, Nevada

23 By


24 MATTHEW LEE
10654

25 CHIEF DEPUTY DISTRICT ATTORNEY
26

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, ESQ.

8
9 Dated this 20th day of February, 2020

10
11 
12 MATTHEW LEE

1 Code No. 4185

2
3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
4 IN AND FOR THE COUNTY OF WASHOE
5 THE HONORABLE DAVID A. HARDY, DISTRICT JUDGE

6 -oOo-

7 STATE OF NEVADA,)	
)	Case No. CR18-1135B
8 Plaintiff,)	
)	Dept. No. 15
9 vs.)	
)	
10 RICHARD ABDIEL SILVA,)	
)	
11)	
Defendant.)	
12 _____)	

13
14 TRANSCRIPT OF PROCEEDINGS

15 Oral Arguments

16 Friday, February 21, 2020

17 Reno, Nevada

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24 REPORTED BY: SUSAN KIGER, CCR NO. 343

A P P E A R A N C E S

For the Plaintiff: MATTHEW LEE, ESQ.
Deputy District Attorney
One South Sierra Street
Reno, Nevada 89501

For the Defendant: RISTENPART LAW
ATTORNEYS AT LAW
BY: THERESA RISTENPART, ESQ.
464 South Sierra
Reno, Nevada 89501

The Defendant: RICHARD ABDIEL SILVA

1 RENO, NEVADA, FRIDAY, FEBRUARY 21, 2020, 9:00 A.M.

2 -oOo-

3
4 THE COURT: Good morning. This is CR18-1135B, the
5 State versus Richard Silva.

6 Present on behalf of the State is Mr. Lee.
7 Mr. Silva is present in custody. Good morning, sir.
8 Ms. Ristenpart is present for Mr. Silva.

9 In addition to various orders and transcripts and
10 other filed materials, Counsel, I want to recite what I have
11 read specifically for this hearing to ensure that I haven't
12 missed anything.

13 There is the motion in limine regarding admission of
14 translated statement of the Defendant. There is an
15 opposition. There's a supplement the State just filed which
16 included additional jail telephone transcripts, and there is a
17 reply filed by the State.

18 It does not appear that Mr. Silva contests the
19 accuracy of the translation nor does Mr. Silva intend to
20 present an opposing expert but instead challenges the
21 admissibility of the statement Mr. Silva made to his brother
22 as a continuation of the conduct that this Court suppressed.

23 I have the motion in limine seeking admission of
24 AT&T and 7-Eleven business records filed by the State. I have

1 no opposition that I have read.

2 MS. RISTENPART: That's correct, Your Honor.

3 THE COURT: Perfect. I want to make sure I don't
4 miss anything because I have a stack.

5 I next have a motion to prohibit uncorroborated
6 accomplice testimony. There is a response filed by the State.

7 One of the things I want you to assist, Counsel, is
8 the State's suggestions -- it may be premature -- the State
9 proffers evidence it believes will corroborate the accomplice
10 testimony, essentially asked me to make a decision at some
11 point during trial. I don't know the sequence of trial and
12 when Mr. Guzman will testify. I'm inclined to grant the
13 State's request that Guzman comes in after all of the
14 proffered evidence the State intends to produce.

15 Finally, I have a motion to compel the State's
16 production of evidence. This relates to Brady and its
17 progeny. I have an opposition filed by the State and I have
18 a -- I do not have a reply. I have the motion and the
19 opposition.

20 Counsel, if I miss anything, please let me know.

21 MR. LEE: I think that's everything that I have.

22 THE COURT: How do you anticipate this morning's
23 hearing to go?

24 MS. RISTENPART: Your Honor, I think we could submit

1 the motion to the 7-Eleven, AT&T. We are fine. We've checked
2 the business records and we are okay with the submission of
3 that versus bringing up witnesses.

4 THE COURT: Thank you.

5 MS. RISTENPART: In regard to the rest of the
6 motions, Your Honor, we do have some more information on the
7 motion to compel on a Brady/Giglio from the District Attorney
8 from yesterday, so I would like to also address that because
9 we heard from the civil department in the Washoe County
10 District Attorney's office yesterday.

11 THE COURT: I'll need that information.

12 MS. RISTENPART: Absolutely.

13 THE COURT: It's not something I'm aware of.

14 MS. RISTENPART: In regard to the last portion, the
15 translated statements, I still need five minutes, Your Honor,
16 to set up the laptop to ensure that the Court can see what we
17 are actually talking about versus reading the moving papers.
18 I did arrive here early and was in the courtroom in a timely
19 manner and I need a few more minutes to make sure we get
20 through it.

21 THE COURT: So what I'm hearing from you,
22 Ms. Ristenpart, is you anticipate argument only, no witnesses
23 or evidence.

24 MS. RISTENPART: Your Honor, for the translated

1 statement, I had Detective Herrera who initially translated
2 through RPD the portion that we are in question of. There are
3 slight differences in everyone's translation as to the words.
4 The bigger argument is the unintelligibility and also whose
5 speaking issue as to what they are trying to bring in. And
6 the fact, obviously, is the State and defense are arguing
7 whether or not this is a circumventing of the Court's order.

8 THE COURT: So I'll get a -- I'll work through and
9 provide an answer on whether this is proper because it's
10 segregated from that which was suppressed or a continuation of
11 that which was suppressed. Leaving that aside, I'm not sure
12 what I'm doing here on the translated. You mentioned
13 Detective Herrera. If it's matter of a conflict between
14 translators, that's a jury question.

15 MS. RISTENPART: Right.

16 THE COURT: If it's challenging the State's expert
17 because she has failed to transcribe accurately, I think
18 that's a jury issue. So what am I doing with witnesses this
19 morning?

20 MS. RISTENPART: Your Honor, and Detective Herrera
21 has today off and would only be available for Monday just like
22 their expert.

23 I want to be clear, I'm not challenging their
24 Spanish speaking expert. I'm challenging the added layer of

1 not only is it unintelligible who's speaking, but on top of
2 that, someone making an interpretation as to what they think
3 they are hearing from this video.

4 THE COURT: Okay. I understand.

5 Mr. Lee.

6 MR. LEE: With regard to the motion to compel the
7 production of evidence, I think, again, I think we can argue
8 that today and take care of that.

9 The accomplice testimony, let me offer this: We've
10 just finalized a batting order of witnesses. There's a number
11 of witnesses. Mr. Guzman would not be coming in after all of
12 this but he would be coming at some point where I think
13 there's still enough to corroborate. So I think the Court
14 could decide off my proffer or it could decide at trial at
15 this point. But our intent would be to have Mr. Guzman
16 testify probably before the jail calls or the translated
17 statement from Mr. Silva to his brother.

18 THE COURT: What about evidence of the vehicle and
19 cigarette butts? Before or after?

20 MR. LEE: That will come in before.

21 THE COURT: It will come in before.

22 MR. LEE: Yes.

23 And I think -- again, I think alone that's enough
24 for the corroboration.

1 THE COURT: All right. So I'll have you argue then.
2 Anything else?

3 MR. LEE: And with regard to the translated
4 statement, I think we could argue the constitutional issues
5 brought up by the defense in the opposition today and just
6 simply take notice of the hearings we had months ago on the
7 same kind of issue without any further testimony. So I would
8 appreciate just settling that today, that would actually help
9 us quite a bit in our preparation this weekend.

10 And then as far as the translation goes, I don't
11 know anything about Detective Herrera. I don't know -- he's
12 not noticed. This is the first I've heard his name and that's
13 a new argument, frankly, that we don't know who's talking
14 when, and where, or why.

15 THE COURT: So wait a second. Ms. Ristenpart just
16 told me it was Herrera who first transcribed the conversation.
17 You're telling me you haven't heard the name Herrera until
18 this moment.

19 MR. LEE: I didn't know Herrera transcribed that.
20 It's the first I heard of that. Maybe he did. That wasn't my
21 understanding. But regardless, he's not noticed. This is all
22 new.

23 So anyways -- so we can take care of a lot of that
24 motion today. If we still need Ms. Sharer's testimony, I'll

1 still ask that we have that on Monday.

2 THE COURT: It sounds like we do not need Ms.
3 Sharer's testimony. I heard Ms. Ristenpart say she is not
4 challenging Ms. Sharer as a qualified interpreter or
5 challenging the work, the translation that she did.

6 MS. RISTENPART: Beyond cross-examination at trial,
7 Your Honor.

8 THE COURT: Of course, yes.

9 MR. LEE: And that was the whole point of my motion,
10 just to make sure all this happened before trial so Ms. Sharer
11 wouldn't have to come during trial, but we will make those
12 adjustments if we have to.

13 THE COURT: All right. So let me now begin with an
14 oral pronouncement. The motion in limine seeking admission of
15 AT&T and 7-Eleven business records and notice of intent to
16 introduce those records at trial, that is granted.

17 I'm intrigued by this conversation that happened
18 yesterday between the Washoe County District Attorney Civil
19 Division and Ms. Ristenpart. So let's begin there. What
20 happened?

21 MS. RISTENPART: Your Honor, if I may, with the
22 Court's permission, forward an email of a letter that the
23 civil department gave me approximately at 4:45 p.m. last night
24 and also cc'd Mr. Lee on it, if that's okay right now.

1 THE COURT: You don't get my email address.

2 MS. RISTENPART: No, I'm sorry, to Ms. Clerk, if
3 that's okay. Thank you.

4 And, Your Honor, this was from Brenna Bull who is
5 Keith Monroe's secretary as she identified herself to me
6 yesterday and I also spoke to Mr. Marone on the phone
7 personally yesterday, too.

8 THE COURT: Ms. Clerk, when that email arrives, go
9 ahead and print it off, if you would.

10 Mr. Lee, do you object to me reading that email?

11 MR. LEE: I haven't seen it, either, so it's news to
12 me.

13 THE COURT: I thought Ms. Ristenpart said it was
14 copied to you yesterday at 4:45.

15 MS. RISTENPART: Your Honor, it looks like
16 Brenna only copied Keith Monroe on it.

17 THE COURT: So do you need a minute to look at what
18 it is?

19 MR. LEE: I'd appreciate seeing what it is.

20 THE COURT: So I would like to then --

21 MR. LEE: I can look at it the same time as you,
22 Your Honor. I don't mind doing that.

23 THE COURT: Well, Ms. Ristenpart needs a couple of
24 minutes to work on the technology. That would be a good time

1 to read without having to listen.

2 Ms. Ristenpart, can you forward that to Mr. --

3 MS. RISTENPART: I just cc'd him on the same email.

4 THE COURT: Go ahead and start working on the
5 technology.

6 MS. RISTENPART: Thank you, Your Honor.

7 (Off the record.)

8 THE COURT: Are you ready to go, Ms. Ristenpart?

9 MS. RISTENPART: I am. Would you like me to argue
10 first.

11 THE COURT: Yes, please.

12 MS. RISTENPART: Regards to motion to compel?

13 THE COURT: Motion to compel, yes, please.

14 MS. RISTENPART: Thank you, Your Honor. As the
15 Court is aware, we filed that motion. The State has filed an
16 opposition. In our motion, Your Honor, we were pretty
17 specific as to why we felt we were, under Brady/Giglio,
18 allowed to have more than just some emails and also the Guilty
19 Plea Memorandum and also the Amended Information that was
20 filed yesterday on behalf of Mr. Guzman and his accomplice
21 testimony that the State is offering or proffering to the
22 Court.

23 In regards to this particular portion of
24 Brady/Giglio, Your Honor, the federal courts, specifically the

1 ninth circuit, has made it very clear that anything that casts
2 a shadow on the government's witness's credibility is
3 Brady/Giglio material. And so, therefore, how many meetings
4 they've had with the State, who have they met with at the
5 State. And in addition, Your Honor, in this particular case
6 I'm well aware the State has met with Mr. Guzman. I'm well
7 aware they have talked to him either through Mr. Lee himself,
8 or someone else in the office, or through the investigator.
9 I'm also anticipating --

10 THE COURT: Is it your understanding it occurred in
11 the presence of Mr. Guzman's attorney?

12 MS. RISTENPART: I'm not sure if Mr. Guzman's
13 attorney was there or not. I do not know.

14 In addition, Your Honor, I would anticipate as I
15 have in prior accomplice testimony cases with this State and
16 also with other government agencies that part of it they would
17 have Mr. Guzman review his initial statements and also talk to
18 him about what he initially said, that he'd hear the
19 eight-hour recorded interview that Mr. Guzman gave on
20 November 14th of 2017.

21 Mr. Guzman is in custody and has been in custody
22 this entire time.

23 Under Brady/Giglio, Your Honor, that is all
24 information that casts a shadow on the credibility of the

1 accomplice testimony. And because of that, and because the
2 statute is very clear that -- and the case law in the State of
3 Nevada, and I'm referring to Sheriff vs Acuna, Your Honor, the
4 language of full disclosure of the bargain, full disclosure,
5 coupled with the Ninth Circuit, anything that casts a shadow
6 on the credibility, that is powerful language because this is
7 suspect testimony. That's why we have an accomplice testimony
8 jury instruction potentially later on. And that is why, under
9 our case law, we requested -- and we limit it, Your Honor. It
10 just doesn't say anything and everything. I was very
11 strategic and targeted as to what I would anticipate, based on
12 prior experiences and this particular prosecutor, what I would
13 anticipate would have happened or is happening as he is
14 prepping for trial and preparing to put Mr. Guzman on the
15 stand who is the key witness against Mr. Silva.

16 And I've asked for all reports, all emails, all
17 interviews, notes, and phone calls, because, Your Honor, I
18 know that there was some back and forth negotiations.
19 Mr. Guzman's attorney personally informed me that there had
20 been a previous offer. That there had been a counteroffer.
21 That there have been more than negotiations that led to this
22 point and the point of what you saw yesterday. Why we don't
23 have access to those communications but the State does, that
24 should fall under Brady/Giglio.

1 In addition, Your Honor, anything used to prepare
2 Mr. Guzman, not only through negotiations but for accomplice
3 testimony himself. Also we understand that Mr. Guzman's
4 mother, Sylvia Gonzalez, actually works for CAW which is a --
5 works very closely with the Washoe County District Attorney's
6 Office. In fact, a member of the Washoe County District
7 Attorney's Office, Christopher Day, sits on the board of
8 executive directors for CAW.

9 In regards to the last, anything that the Washoe
10 County District Attorney's Office wanted to, quote, distance
11 themselves from preparing the key witness and had a detective
12 go in and talk to Mr. Guzman, we'd ask that also be under
13 Brady/Giglio since they would be aware of it and within the
14 means to provide to us.

15 With that, Your Honor, we are asking that you deny
16 the opposition that this is some kind of attorney work product
17 and therefore privileged. This is a very different set.
18 Higher courts have really looked upon that Brady/Giglio is
19 even more important, especially accomplice testimony.

20 With that, Your Honor, I'll submit.

21 THE COURT: So Mr. Lee is about to tell me why that
22 request, among other things, is overbroad, that it's
23 privileged. If I look at page 5 of your motion, you just told
24 me that you strategically and narrowly defined the scope of

1 information you seek. Subparagraph C, "Any and all
2 information regarding Mr. Guzman's mother as she communicates
3 emails, phone calls, accesses connection to the Washoe County
4 District Attorney's Office and Reno Police Department through
5 her employment with CAW." That universe of communications
6 between Ms. Gonzalez, the DA, the RPD from her CAW cubicle?

7 MS. RISTENPART: And I apologize, Your Honor, that
8 should say, pertaining to her son. Because the rest is, of
9 course, not open for my investigation.

10 THE COURT: You and I both know what Mr. Lee is
11 about to argue. I'll give you a chance to rebuttal argue
12 because in your moving argument, you didn't address what we
13 anticipate that he's going to say which is you get the full
14 bargain. You get the Guilty Plea Memorandum, you have the
15 Court's process yesterday which is transcribed, you were
16 present and you had an opportunity to cross-examine him on the
17 bargain that was reached. That's what Mr. Lee is going to
18 say.

19 MS. RISTENPART: Lastly, I would like to address the
20 letter that was before the Court.

21 THE COURT: Yes.

22 MS. RISTENPART: As the Court can see, we did serve
23 a subpoena duces tecum upon Washoe County Sheriff's Office to
24 get the jail phone calls within the past 60 days since January

1 1st in regard to Mr. Guzman because I do believe that he has
2 spoken extensively with his family about these negotiations
3 and that's not privileged with Mr. Guzman.

4 THE COURT: So what's the -- I haven't had a chance
5 to carefully look at this. I've seen Mr. Monroe's letter to
6 you, but there's D-4 order --

7 MS. RISTENPART: Right.

8 THE COURT: -- that goes to this, close to ten pages
9 in length. Excuse me, seven pages in length. I haven't read
10 it.

11 MS. RISTENPART: I will clarify for the Court. When
12 I spoke to Mr. Monroe yesterday, he was like, This has already
13 been decided, Mr. Ristenpart. I was like, What are you
14 talking about? And I believe he actually unfortunately
15 confused Mr. Yiovanni who has been with the court case and
16 Mr. Guzman's case.

17 But you can see, Department 4 did make the decision
18 that jail visit logs are public record and able to be turned
19 over to everyone involved in the case.

20 In regards to procedures at the jail, I do know that
21 sometimes a jail visit is not logged in especially if it's
22 from a government agency who's looking to do substantial
23 assistance with someone. They will bring them down and
24 instead of going through visitation and logging in, they'll go

1 down near a special room they have near intake where they, for
2 lack of better words, keep it off the books so there's no log
3 of the visitation. And that's why this kind of Brady/Giglio
4 information as to how many times they met, what they reviewed
5 is key for accomplice testimony pursuant to case law.

6 That also being said, Your Honor, you can also see
7 the lengths defense is trying to -- we are not just relying on
8 the State giving us, we are actively going out and trying to
9 get that, too.

10 In regard to whether or not the subpoena is going to
11 be honored, that's a different story that Mr. Monroe and I are
12 working out, but I did want to bring that to the Court's
13 attention because we are also going through every means that
14 we know and have access to get our own impeachment material.

15 THE COURT: Okay. Thank you.

16 Mr. Lee, pause for a moment on your prepared
17 argument. I'm familiar with it, decisional authorities and
18 your argument. I am disinclined at this moment to have you
19 open your personal file, your work product, and so forth.

20 Let me focus on what may be extremely relevant and
21 that is information that the State, which is larger than
22 Matthew Lee, prosecutor in this case. The arm of our
23 government, that it may possess information related to
24 Mr. Guzman's decision to provide accomplice testimony. Would

1 you agree with me that if he had telephone calls with his
2 family in which he discussed whether he should enter a plea
3 and provide accomplice testimony, would you agree that that
4 could be relevant under Brady particularly if he makes
5 statements that could be used on the cross-examination?

6 MR. LEE: So there's a couple troubling points to
7 that and actually from the form of the question. "Could it
8 be," "if," things like that. The State has no obligation to
9 turn over things without any basis at all if there's any
10 exculpatory information.

11 THE COURT: I understand that. But this is a unique
12 circumstance because Mr. Guzman has been in custody. And so
13 the State is in possession separate from whether it should go
14 out and acquire from our community outside of the Washoe
15 County Jail. Has anybody in your office reviewed all of
16 Mr. Guzman's telephone records?

17 MR. LEE: I sure have not. I have not asked to have
18 them run.

19 Can I turn around for just a brief moment?

20 THE COURT: Of course.

21 MR. LEE: No.

22 THE COURT: Let's say hypothetically that Mr. Guzman
23 said to one of his family members, Listen, I'm going to go
24 ahead and do this. It's good for me. I'm going to lie and

1 I'm going to point my finger at Mr. Silva because I'm getting
2 a reduced deal. Wouldn't that be relevant for the defense to
3 know?

4 MR. LEE: If he says that he's going to lie? Yeah,
5 of course. I know it's a hypothetical, but of course.

6 THE COURT: I'm putting forward the most absurd
7 example I can. So the State has in its possession -- excuse
8 me. The State could have in its possession information
9 helpful to the defense. And you don't know.

10 MR. LEE: I don't know. And again, I don't know if
11 there's any exculpatory information, anything like that. We
12 would have access to jail calls. If defense would have just
13 frankly asked me for them -- this is the first I heard a
14 request for jail calls, we probably could have grabbed them
15 really quick for them.

16 THE COURT: Right.

17 MR. LEE: So that's not part of their motion and,
18 again, it just takes a simple phone call or email to me.

19 THE COURT: So it seems to me that a public log of
20 who visited Mr. Guzman should be produced. It seems to me
21 that somebody needs to listen to those telephones calls and
22 determine if a Brady disclosure is appropriate because just
23 having an unanswered question is unfair to Mr. Silva.

24 If, under my absurd example, Mr. Guzman said

1 something like that. So how soon can you make that happen?

2 MR. LEE: To grab a jail visit log?

3 THE COURT: Yes.

4 MR. LEE: Can I argue that point first, Your Honor?

5 THE COURT: Of course.

6 MR. LEE: So I don't see how my visiting somebody
7 has any relevance to someone's testimony.

8 THE COURT: I didn't say you, Mr. Lee.

9 MR. LEE: That's what she is requesting,
10 communications with the State and Mr. Guzman.

11 THE COURT: We'll get to that in a moment.

12 Ms. Ristenpart said through the lines, I know
13 Mr. Lee. He's prepared. I can expect that he will do what
14 he's done in the past and what other professional experienced
15 attorneys do. He's going to meet with his witness. I do want
16 to address that.

17 I'm looking specifically at the jail telephone
18 recordings in which Mr. Guzman may or may not have discussed
19 his decision to enter a plea and testify against Mr. Silva.

20 MR. LEE: Well, again, we can run them. There's
21 probably thousands. So to listen to them before Monday is
22 just frankly impossible.

23 THE COURT: Thousands within the last 60 days?

24 MR. LEE: Is that the timeline?

1 THE COURT: That's what Ms. Ristenpart requested.

2 MR. LEE: We can run the last 60 days. I'd be happy
3 to turn them over to her, Your Honor.

4 THE COURT: Well, you need to run them and then the
5 question of whether -- you have a duty at a break, I know what
6 it is, you know what it is, you can just give her wholesale
7 production of all of them or you can determine if there's
8 exculpatory information she's entitled to.

9 MR. LEE: So if the Court's ordering us to look
10 through material to go about a fishing expedition, we will
11 simply grab that information and turn it over to the defense.
12 To me it's a time issue at this late in the game that I'm
13 first hearing she wants jail phone calls.

14 THE COURT: I know, but we are balancing things.
15 Mr. Guzman entered a plea yesterday and so that's the
16 predicate act which lead to today's litigation.

17 MR. LEE: And I would just simply reiterate the only
18 thing that's required under any authorities, even the one she
19 cites, is just simply the deal. This is the deal. Whether
20 there were negotiations precedent to that deal is really not
21 relevant. And even factually as I stand here I couldn't tell
22 you anything about that because I don't recall exactly. I
23 don't remember there being a big back and forth on this. But
24 this is the deal. She has it. I've given it to her well in

1 advance, and that's really all she is entitled to, but I
2 will --

3 THE COURT: So folding --

4 MR. LEE: -- provide jail calls.

5 THE COURT: Excuse me for interrupting.

6 So now fold into your general opposition anything
7 you want to say. But I wanted to begin by lasering in on
8 those telephones calls in the last 60 days between in Guzman
9 and members of his family.

10 MR. LEE: No. Apart from that, Your Honor, I'll
11 rest on my opposition, Your Honor. Thank you.

12 THE COURT: Hold on. Let me think for a minute.

13 Ms. Ristenpart suggested that you're going to have
14 an outline for Mr. Guzman that you or your investigator is
15 going to go witness prep him and so forth. How do you respond
16 to her argument that becomes relevant?

17 MR. LEE: So first of all, I don't see how my
18 meeting with any witness casts a shadow on their credibility.
19 There's law that states it's normal -- or a jury instruction
20 that's fairly standard. It's normal for an attorney to meet
21 with witnesses and prepare them. And so that makes me wonder,
22 if for Mr. Guzman, why not for all 50 witnesses? Should I
23 turn over any notes I have in meetings with them? Of course I
24 met with witnesses. That's what I do. So it's really no

1 different, there's not authority for that position. So my
2 fact of meeting with the witness, any notes I derive from that
3 with the exception of any exculpatory information I gain or
4 information that would impeach his credibility, I have no
5 obligation to turn that stuff over under any authority,
6 statutory, constitutional, or decisional that I can find or
7 know of. And so, again, my meeting with anybody does not cast
8 a shadow on their credibility, and that argument is frankly
9 ridiculous because then every single witness has credibility
10 issues.

11 And so -- and again 174.234 clearly stated that my
12 notes are not discoverable material. There's an exception is
13 if Mr. Guzman tells me something that would bear on his
14 credibility, then I would turn that over.

15 THE COURT: Let's go back.

16 MR. LEE: And I haven't turned anything over.

17 THE COURT: You have or have not?

18 MR. LEE: I have not.

19 THE COURT: Let's go back to these telephone calls
20 between Mr. Guzman and his family. If you were to record them
21 and just deliver them without reviewing them, should there be
22 any boundaries on how Ms. Ristenpart can use them for
23 cross-examination of Mr. Guzman?

24 MR. LEE: Sure. I guess if she finds a call that

1 she thinks is relevant, I think we should have some type of
2 quick hearing about it and see what in the world it is.

3 So, Your Honor, we can provide within the last
4 60 days, we can probably do that today. In fact, I know we
5 would have to do it today.

6 THE COURT: Okay. Ms. Ristenpart, any rebuttal
7 argument?

8 MS. RISTENPART: Your Honor, I was just pointing
9 again to I don't know if I misheard the State, but I heard
10 that if they had come across information through their
11 interviews that would lead to impeachment or issues of
12 credibility, that they understand that that would have to be
13 turned over. Within that, Your Honor, especially -- I'm
14 harping again -- this is the key witness against Mr. Silva.
15 That is accomplice testimony who just received from a life
16 potential sentence to approximately seven years if the Court
17 even decides to max him out and run him consecutive to what he
18 pled to yesterday. And the fact of the matter under
19 Brady/Giglio, even if there are statements that Mr. Guzman
20 stated, I don't remember saying that, I don't remember that,
21 and they are giving him information from what he said in his
22 prior, to prepare him for that, that is part of what I can
23 impeach on and say that you were given an opportunity to
24 review your video and your entire -- with the State sitting

1 there next to you. Because they are not even just looking at
2 the general issue of credibility and impeachment, Your Honor,
3 they are also looking at the pressure of a young man who's now
4 being asked to testify and cooperate with the State pursuant
5 to his plea deal and the things that are at stake.

6 So the way that the State has created this situation
7 I think falls in favor of defense getting a broader
8 Brady/Giglio than what the State is very tightly trying to
9 control and hold onto.

10 With that, we'll submit Your Honor. Thank you.

11 THE COURT: Thank you. Let's turn to the next issue
12 which is the motion to prohibit uncorroborated accomplice
13 testimony.

14 I think we might have arrived at where I'm going,
15 but if you want to argue it, this would be the time. I
16 understand the governing law. I know what the State's proffer
17 is. If I had to make a decision right now, that proffered
18 evidence would constitute the type of corroboration that would
19 permit Mr. Guzman's testimony. But I don't want to do it on
20 paper. I want to have witnesses and I want to make a decision
21 in realtime.

22 So, Ms. Ristenpart, how should I proceed on that
23 motion?

24 MS. RISTENPART: Your Honor, of course today was the

1 time set for this, but the State did oppose and ask that you
2 hold it in abeyance until they proffer witnesses. They didn't
3 bring any today to this motion hearing as the Court is aware
4 and we are aware.

5 In regard to the case law of accomplice testimony, I
6 guess we'll have to see what comes in and what stays out in
7 trial, Your Honor, how they present their witnesses and the
8 order thereof. And coupled with, additionally, the fact that
9 just because there is him, Mr. Guzman, stating, This is
10 because of this, there still has to be independent
11 corroboration, not just him saying that, that's because of the
12 witness.

13 So I just I don't want to have a hearing in the
14 middle of trial. I always try to prevent that. That's why I
15 filed this in an abundance of caution coupled with the fact
16 that the defense will be arguing this throughout the trial.
17 And before we go further, Your Honor, I think it's also
18 because we don't frankly know what Mr. Guzman is going to say
19 when he testifies. He said one story when interviewed by the
20 police for eight hours and he had several inconsistencies
21 during that story and we don't have the privilege of being
22 allowed to interview people -- or interview him prior to trial
23 because he's represented by counsel who has not allowed us to
24 interview him. So with that, that's why we are also arguing

1 the uncorroborated accomplice testimony.

2 THE COURT: So are you submitting to me right now
3 your motion to prohibit Mr. Guzman's testimony? Because if
4 so, I'm going to deny it.

5 MS. RISTENPART: Your Honor, I would actually ask
6 and agree with the State that we watch as trial progresses and
7 then allow defense to argue it before putting Mr. Guzman on or
8 while Mr. Guzman is on to track how the trial goes or
9 proceeds.

10 THE COURT: All right. So my second oral
11 pronouncement which will be encapsulated by written order is
12 that the motion to prohibit uncorroborated accomplice
13 testimony is held in abeyance. This Court will have a
14 conversation out of the jury's presence but on the record with
15 counsel immediately before Mr. Guzman's testimony.

16 Do you want to argue the constitutional issues
17 related to the translated conversation between Mr. Silva and
18 his brother as a separate fifth amendment issue in contrast to
19 the fourth amendment issue that the Court previously resolved?
20 Do you want to argue that or do you want me to pronounce? I
21 have inclinations, but I'm also willing to hear arguments.

22 MS. RISTENPART: I would like to argue, Your Honor.

23 THE COURT: So this is the State's motion to seek
24 the admission of translated statement. As I understand it,

1 the qualifications of the translator are not at issue, the
2 translation itself is not an issue, but admission of the
3 translated statement has been challenged by the defense as a
4 continuation as fruit of what has been suppressed.

5 I'm going to invite Mr. Lee to argue it and then
6 Ms. Ristenpart.

7 And I have read, Counsel, your cited authorities,
8 Crew versus State, Mauro, Patane, and Fulkerson.

9 MR. LEE: So at a threshold issue, Your Honor, it
10 was never challenged as to the voluntariness of Mr. Silva's
11 statement. The challenge was purely Miranda as we know from
12 Patane and its progeny and many other cases. Miranda doesn't
13 necessarily hit the heart of the fifth amendment, meaning if
14 there's a Miranda violation, it doesn't equate to a fifth
15 amendment violation, that violation would be a voluntariness
16 issue. So was Mr. Silva's will overborne here?

17 So in this case I see the challenge in two ways that
18 the defense is making to this. First, I suppose that their
19 challenge is saying it wasn't voluntary, although I don't see
20 that in the opposition/motion. But it was clearly voluntary.
21 I can go into all of that but I don't know that we need to at
22 this point. But there is nothing there to suggest otherwise.

23 THE COURT: And didn't this Court already observe
24 that exchange between Mr. Silva and his brother at the

1 suppression hearing? It saw the video and heard the content
2 from the translator?

3 MR. LEE: It did, yes. And Ms. Sharer, the
4 translator, did testify about that.

5 THE COURT: I'm familiar with that.

6 MR. LEE: So anyways, the fruit of the poisonous
7 tree is not applicable to a fifth amendment. There would be
8 some problem of derivative evidence if the prior statement was
9 not voluntary. That would be the only what is called the
10 fruit of the poisonous tree argument. But here we don't have
11 that. And even if there was that suggestion or that finding,
12 this new conversation with the brother, Bernard, is completely
13 separate. The police didn't urge it, they didn't force him.
14 He asked to talk to his family.

15 THE COURT: Right. The only thing I anticipated
16 Ms. Ristenpart saying in response to that is it occurred at
17 the police station and was facilitated by the police officer
18 when the police officer brought the brother in.

19 MR. LEE: They brought him in, but the conversation
20 is Mr. Silva asking to talk to his family and specifically to
21 his brother first. Concerns with that were raised by the
22 detectives. I think it was more of a safety concern. They
23 weren't exactly sure what Mr. Silva or his brother would react
24 or how they would react. And so, therefore, they ended it

1 with simply saying, we'll go see if your brother wants to
2 talk. So about a minute and a half, two minutes later, the
3 brother walks in the room. But there is no suggestion of the
4 police telling the brother to do this or that, nor do I think
5 the brother would help the police, frankly.

6 And so, really, this was all on Mr. Silva's
7 volition. It was completely separate. It's not derivative of
8 any statement. He acted completely on his own. And citing
9 the Arizona/Mauro decision from the U.S. Supreme Court from
10 1987, quote, "We doubt that a suspect told by officers that
11 his wife would be allowed to speak to him would feel he was
12 being coerced to incriminate himself in any way." That's
13 exactly what we have here. Frankly, I see zero merit to this
14 argument by the defense which strangely enough comes a week
15 before trial in an opposition. But the merits are there from
16 the State's favor and so on many grounds I would ask the Court
17 to deny that sub motion that they filed and it should come in
18 on constitutional grounds.

19 THE COURT: Thank you.

20 Ms. Ristenpart.

21 MS. RISTENPART: Thank you, Your Honor.

22 So the State, despite the Court's order that
23 suppressed the interrogation and the statements from
24 November 14th of 2017, which was decided, Your Honor, back in

1 December, then files, right before court, a motion to admit a
2 translated statement under a guise to circumvent the Court's
3 order instead of litigating it and stating, even though the
4 Court decided this, we are asking that you treat this
5 individual portion of it differently than the suppression that
6 has already been granted by the State.

7 In regards to the Court's analysis of this
8 particular portion of it, I know the Court remembers it, but I
9 don't know if the Court, because it has been several months,
10 remembers, one, how unintelligible the conversation is, two,
11 also, it's not clear who's saying what as both faces are --

12 THE COURT: That's all cross-examination.

13 MS. RISTENPART: It can be, Your Honor. But the
14 Court has to make a threshold finding that it's not so
15 unintelligible that it destroys the actual interpretation with
16 the added layer of a Spanish interpretation on top of which --

17 THE COURT: I'm not equipped to do that, although I
18 have a translator who wrote unintelligible and in other places
19 ascribed comment to the speakers. If she's right or wrong,
20 cross-examine her on that and plant doubt in the jurors' minds
21 about whether the translation is appropriate or whether the
22 words were intelligible. But I'm not a fact finder to make
23 that decision.

24 MS. RISTENPART: Well, under case law, Your Honor,

1 the Court does have to make a threshold that it's intelligible
2 enough that someone could make an interpretation.

3 THE COURT: Well, then, I would have to rely on the
4 only witness that exists.

5 MS. RISTENPART: That's why this is such a complex
6 issue. It's not just a simple argument of, Well, we hear
7 something and then we have a State-sponsored expert saying
8 this is what they said and who said what.

9 THE COURT: Right. But I don't have competing
10 experts to tell me it's unintelligible, this expert is wrong,
11 and an opposing expert saying yes, it is intelligible and here
12 is what the speaker said. I don't have that.

13 MS. RISTENPART: I understand. And in regards to
14 that portion of it, I do -- I acknowledge a lot of it could be
15 cross-examination, but the issue is also threshold, how
16 unintelligible it is, and also the fact that the faces are
17 buried in each other's shoulders, there's hysterical crying
18 going on, it's not even clear who's saying what at times.
19 And, therefore, the State is trying to make this conclusionary
20 argument before of the Court that this is what it is, this is
21 what the statements say, we're asking for admission.

22 THE COURT: Right. I'm not trying to argue with
23 you.

24 MS. RISTENPART: I understand.

1 THE COURT: I'm trying to find out where my space is
2 because I remember it, but I have an expert witness who says
3 here it's unintelligible but here I know who's speaking.

4 MS. RISTENPART: It goes to the original argument,
5 Your Honor, is that the State, instead of asking and saying
6 that this is an exception to the Court's order is arguing
7 that, of course, it's apart and separate because it's a
8 different person and it's voluntary. Let's actually go
9 through that, Your Honor, with the case law. Because as I
10 wrote in my opposition, the case law is much clearer than what
11 the State wants to just kind of blanket this portion of. This
12 was not just a violation of Mr. Silva's rights that occurred
13 previously. This was a host of violations of Mr. Silva's
14 constitutional rights. If you remember, Your Honor, we had a
15 huge motion hearing on this. The officers, not less than five
16 different times, barrel over Mr. Silva's request to remain
17 silent and to stop talking and continue to violate that and
18 continue to talk to him. And the interview lasted for hours.

19 THE COURT: But I suppressed all of that finding in
20 your favor.

21 MS. RISTENPART: Correct, Your Honor.

22 THE COURT: That is the remedy for the police
23 conduct that I observed. And then, I have the police absent
24 while two brothers, at your client's request, embraced and

1 spoke to each other.

2 MS. RISTENPART: But you have to look at the
3 totality of the circumstances, Your Honor. This wasn't a
4 break like he went to a different room, that there was another
5 hour of time in between. The interview and the confession
6 literally finished with the officers after violating
7 Mr. Silva's constitutional rights, and then, yes, Mr. Silva
8 states, "I would like to talk to my brother to tell him first
9 what I just told you officers." Officers are well aware that
10 he is going to be making inculpatory statements to his brother
11 and they allow it. That is directly on point to my second
12 argument, Your Honor, that it's inadmissible because it's a
13 violation -- a continued violation of Mr. Silva's rights
14 besides what the detectives did. But then they knowingly send
15 in someone to talk to -- and yes, it's at his request, but the
16 case law is very specific. It's about what the officers'
17 intent was, and they sent him in knowingly with the knowledge
18 that Mr. Silva was going to give continued inculpatory
19 statements.

20 THE COURT: They didn't initiate the contact. They
21 didn't suggest the contact. They responded to your client's
22 request.

23 MS. RISTENPART: They allowed him in with the
24 knowledge that Mr. Silva would make inculpatory statements to

1 that individual.

2 THE COURT: Only after he requested to see his
3 brother.

4 MS. RISTENPART: And the case law doesn't focus on
5 who requests it, Your Honor. It focuses on what the officers'
6 intent was when they allowed that by third-party questioning.

7 In Mauro, I think the distinction is that in that
8 case, when that individual said, "I want an attorney. I want
9 to stop talking," Mauro, the officers scrupulously honored
10 that and immediately ceased questioning him, removed
11 themselves, time passed. They are interviewing the wife in
12 another room. Wife says, "I want to see him. I want to talk
13 to him." And the officers say, "Okay. But we have to be
14 present there." And there was no indication that the wife
15 would get inculpatory statements from the husband. It was a
16 conversation they had while the officer was just watching.
17 This is vastly different because the officers knew and
18 knowingly put Mr. Bernard Silva into the room with his brother
19 while recording the entire incident. And it's less -- less
20 than a minute after they just continually violated his
21 constitutional rights.

22 THE COURT: Okay.

23 MS. RISTENPART: With that, Your Honor, we would
24 submit the matter. I think the case law is very clearly

1 stating that this -- in this particular case, because this is
2 a case-by-case analysis for any court. And in this particular
3 case, given these case facts, given what happened before in
4 the same room in custody, and the fact that a statement to the
5 officers knew -- not even just reasonably believed, but knew
6 that Mr. Silva, the only intent to talk to his brother was to
7 tell him first what he had just told the police.

8 With that we would submit, Your Honor.

9 THE COURT: Mr. Lee, by my question I'm not
10 foreshadowing a decision in favor of the defense, but this
11 issue is not as clearly without merit as you suggest. You
12 have done a good job of citing decisional authorities, but any
13 authority within a vacuum is unhelpful. Let's go back to this
14 experience at the police station.

15 If the very first time Mr. Silva invoked and the
16 police would have scrupulously honored that invocation, would
17 there have been an emotional, tearful conversation between
18 Mr. Silva and Bernard or was that exchange predicated upon and
19 influenced by the police conduct that has been suppressed?

20 MR. LEE: So a couple of responses to that. One, he
21 was already under arrest. He was going to be arrested and he
22 already had been arrested for this crime.

23 Two, the law never requires us to have to speculate
24 as to what he would have done or what he would not have done.

1 What he did is what he did.

2 Really, I see the defense argument conflating so
3 many issues together in here. First, is this exchange between
4 the brother and Mr. Silva a functional equivalent to any
5 questioning by police? Clearly not. They didn't ask him to
6 do that. They didn't give him questions to ask. And again,
7 my inkling is that Bernard, the brother, would not have helped
8 the police anyways.

9 Two, is that statement -- is the previous statement
10 that he made voluntary? Again it was in violation of Miranda
11 but it never touches the issue of voluntariness. First of
12 all, if it's voluntary, we are done. The questions end there.
13 If it's not voluntary, then we have to decide is this embrace
14 by the brothers in conversation derivative evidence from that?
15 And again, that is to answer Your Honor's question. We don't
16 have to try to guess what Mr. Silva would or would not have
17 done. Nothing requires that. He was under arrest. He asked
18 to talk to his family. The police questioned him about that.
19 They ultimately talked to the family and the family wanted to
20 go in there. And so to try to question now would he or would
21 he not have is really not the issue. The authorities don't
22 ask us to do that. The officers' intent frankly is not
23 relevant. That is a functional equivalent argument. And so
24 in nothing else, in fourth or fifth amendment discussions is

1 the officers' intent relevant. It's always an objective
2 standard, unless, again, you're getting to that functional
3 equivalent issue because then it does play into that. But
4 here we have no suggestion. There's nothing that would show
5 there's a functional equivalent of questioning here with
6 Bernard and Mr. Silva.

7 So if we break it down as to what the authorities
8 require, not looking at each one in a vacuum, but certainly
9 building upon each other, it's clear that this was not in any
10 violation, police acted responsibly. They didn't do anything
11 in error in this instance, and it should all, frankly, be
12 allowed in.

13 THE COURT: So is this video up to show the police
14 interaction with Mr. Silva immediately before bringing the
15 brother in?

16 MS. RISTENPART: It is, Your Honor.

17 THE COURT: Okay. Let's watch that.

18 MS. RISTENPART: For the record I'm starting the
19 interview from Thursday, November 16, 2017, at 11:32.

20 THE COURT: Yeah. At some point we'll -- hold on.
21 It's important that we always have imbedded within the Court
22 record whatever evidence that's presented to the Court. So in
23 whatever form, before we close the hearing, I want to make
24 sure we have it.

1 MS. RISTENPART: The problem is, Your Honor, it's
2 the Reno Police Department player that we have that then you
3 have to play this upon. So I did attempt to bring it onto a
4 thumb drive, but it won't play. So I need to work on how to
5 get a workable copy to the Court.

6 THE COURT: So what is the answer to Mr. Lee? And
7 Ms. Ristenpart, I don't want any appellate argument that in
8 some way evidence considered by the Court is not part of the
9 Court's order.

10 MR. LEE: I mean, I agree. I know what the video
11 shows. I'm fine with the Court seeing it, but we do have to
12 have some record of that.

13 THE COURT: I'm going to watch it now because I've
14 watched it before and I will have counsel work with the court
15 clerk that at some point by close of today we have a copy of
16 what it is, what I'm going to see.

17 MS. RISTENPART: I don't know if it was also an
18 exhibit to our prior motion. I don't know if the State
19 actually put it in.

20 THE COURT: It would have been admitted in the prior
21 hearing.

22 MR. LEE: If it had been admitted, I think that
23 would work. The Court can take notice of that.

24 THE COURT: The problem is I don't know what

1 specific number it was to make specific reference to it.
2 After I leave the courtroom, I'll have you visit with the
3 court clerk to make sure. I don't mind pointing back to the
4 evidentiary hearing on the initial suppression and saying I
5 revisited the same evidence that's previously been admitted.
6 I don't mind doing that.

7 Go ahead and do that.

8 (Whereupon a video was played.)

9 THE COURT: I just can't hear it. Will you hit
10 pause for a moment, please.

11 MS. RISTENPART: Yes.

12 THE COURT: Deputy, do you have a microphone that we
13 can put in front of the computer? It somehow has to be
14 broadcast for me because I can't hear it. Let's try that as a
15 first step.

16 Start that over from the beginning, please.

17 MS. RISTENPART: Starting again at 11:22:38.

18 (Whereupon a video was played.)

19 THE COURT: Will you pause, please. The officers
20 whose top of head I'm looking at said something and I didn't
21 hear what it was. Do either of you know well enough to tell
22 me?

23 MS. RISTENPART: Your Honor, he said, "What would
24 you like to talk to them about," when Mr. Silva asked to speak

1 to his family.

2 THE COURT: And that's when Mr. Silva said, "I want
3 to be the first to tell them"?

4 MS. RISTENPART: Correct.

5 THE COURT: Go ahead, please.

6 MS. RISTENPART: Do you want me to back up just a
7 little bit?

8 THE COURT: No, I'm good.

9 (Whereupon a video was played.)

10 THE COURT: I don't know what he's saying. The
11 officer whose top of head I'm looking at, whenever he is
12 speaking at, I can't hear.

13 MS. RISTENPART: I'm sorry. Is that Officer Thomas
14 Reid, the one with less hair?

15 MR. LEE: It is.

16 THE COURT: So what did he say?

17 MS. RISTENPART: Your Honor, he says -- in summary
18 because I don't know exactly what he's saying, but he's saying
19 "I'm concerned." It's a safety concern. They are concerned
20 whether Mr. Bernard would have a reaction to Mr. Silva telling
21 him what they just talked about.

22 THE COURT: So I'm getting back from Detective
23 Kazmar with the blue shirt, it's just Detective Reid. He said
24 something and I didn't exactly hear what it was.

1 MS. RISTENPART: I can play it again for the Court
2 if you would like.

3 THE COURT: Please.

4 MS. RISTENPART: It's running at 11:34:02.

5 (Whereupon a video was played.)

6 THE COURT: "Do you think he'll do anything to you,"
7 was the question?

8 MS. RISTENPART: That's correct.

9 THE COURT: Okay. Keep playing, please.

10 (Whereupon a video was played.)

11 MS. RISTENPART: Stopping at 11:34:28.

12 THE COURT: Thank you. All right. I believe I'm
13 fully informed.

14 Does anyone have anything else to say based upon the
15 evidence that I reviewed?

16 MR. LEE: I do have one more thing I forgot to argue
17 Your Honor, just one case. The Crew v State is exactly what
18 we have here. A confession given in violation of Miranda.
19 The Defendant telling the detective where the body is and
20 accompanying them to the scene of the burial site. And so
21 even that was allowed in with a violation of Miranda. It's
22 very similar to what we have here.

23 Given all of that, I think it's pretty clear and the
24 circumstances of this case it should come in. That's all.

1 MS. RISTENPART: Your Honor, I would like to note
2 that the motion contained two requests for translated
3 statements. One was a telephone conversation between
4 Mr. Silva and his mother and also his brother, Mr. Silva.
5 That took place several hours later, was recorded, and
6 Mr. Silva does make inculpatory statements against himself in
7 that interview. No, we are not arguing that, obviously, Your
8 Honor. That was a change in place. That was a change in
9 time. That was a change in all complete different
10 circumstances.

11 Here, based upon the totality, it is vastly
12 different than Crew which had a change in place, a change in
13 time, and also was very distinctively different where he's
14 going out and showing officers.

15 Here the totality of the circumstance shows that it
16 was -- officers knew, in fact repeatedly asked him, like, Why
17 do you want to talk to your brother? And then also stated it
18 has to take place in here, meaning the room, the interrogation
19 room, which they knew was being recorded.

20 With all of that, Your Honor, in this particular
21 case, given the totality of the violations before and the fact
22 that Mr. Silva informed police officers so they knew the
23 reason he wanted to talk to his brother was to tell him first,
24 to tell him exactly what he told the police, and make more

1 inculpatory statements.

2 Thank you.

3 THE COURT: So this is my third oral pronouncement.
4 As with all oral pronouncements, it's subject to change. On
5 this particular issue, I will include analysis in a written
6 order. But it is of some significance as you prepare over the
7 weekend for trial.

8 My inclination is to allow the statement that
9 Mr. Silva made to his brother, Bernard. I've read the
10 decisional authorities. I am intrigued by the defense
11 argument, but there are some fact elements that do not exist
12 here.

13 First, there is no indication to me that the police
14 initiated the idea of a conversation between Mr. Silva and his
15 brother. I could construct a continuation of their suppressed
16 conduct into Mr. Silva's conversation with Mr. Guzman if, for
17 example, they said to Mr. Silva, Okay, you told us what you
18 did, now, you know, do the right thing, be a man, tell your
19 brother. I can construct how this would be included in the
20 suppression order.

21 But the facts that are before the Court are that
22 Mr. Silva initiated the request. The police officers were
23 somewhat uncertain about the contact and were in no way
24 pushing the contact occur.

1 The contact between Mr. Silva and his brother,
2 Bernard, does not appear to be part of a strategic
3 interrogation beyond constitutional parameters, it's just a --
4 and though it was recorded and in the room, Mr. Silva was in
5 custody and there were legitimate safety concerns based upon
6 the fact of this case, who the -- who is deceased in the
7 relationship of Bernard to the deceased, the relationship of
8 Mr. Silva to the deceased. And so my inclination is to allow
9 that statement, that voluntary statement initiated by
10 Mr. Silva.

11 I'll have a written order sometime by the time trial
12 starts. I just wanted you to know as we prepare for trial.

13 Okay. What other issues do I have today?

14 MR. LEE: Judge, if we can just tidy up the
15 translation aspect of how we want to proceed from here. Do we
16 need to have that hearing Monday morning at this point?

17 THE COURT: I don't see a reason for a hearing
18 except, Ms. Ristenpart, I want to honor any defense theory and
19 I don't know what this officer who's not disclosed and will
20 not be participating in trial, I don't know --

21 MS. RISTENPART: Your Honor --

22 THE COURT: -- the relevance on it, but I want to
23 hear from you, Ms. Ristenpart.

24 MS. RISTENPART: The State represented to the Court

1 that they don't know about Detective Herrera. It is on
2 page 25 of Supplement 13 of the lead detective, Reid's police
3 report, and clearly states that he asked Detective Herrera to
4 translate what they were watching as they allowed Bernard into
5 the room with Mr. Silva. And they do have differences in that
6 translation to what the State is now proffering to the Court.
7 So I would like to put Officer Herrera who will be available
8 on Monday on the stand to testify about what he told in his
9 interpretation of, which is different than the State proffered
10 one.

11 THE COURT: So does that go to your request that I
12 make a threshold finding because I don't see Officer Herrera
13 testifying in trial. He's a non-disclosed witness.

14 MS. RISTENPART: Your Honor, I think we actually --
15 Your Honor, I thought we had disclosed him. I can triple
16 check.

17 THE COURT: Mr. Lee is not always right, but he's
18 always honest.

19 MS. RISTENPART: I'm not discounting that. We just
20 got an Amended Notice of Witnesses yesterday from the State.
21 So . . .

22 THE COURT: Have you disclosed Officer Herrera?

23 MR. LEE: I don't know. I don't have that here. I
24 can pull it up in a moment, but the argument that we just

1 disclosed yesterday, I can talk about that. I don't think
2 it's a quid pro quo or tit-for-tat issue. Ours is legitimate.
3 We had noticed "or other custodian of records." That person
4 had resigned and so we got a new custodian of records and so
5 there's no new witness.

6 THE COURT: I'm looking at a February 20th
7 Supplemental Notice of Witness.

8 You'll have time over the weekend to tell me if
9 Officer Herrera will testify at trial. I'm not opposed to
10 hearing from him on Monday if the defense theory is that it's
11 somehow relevant and will create an ability for the defense to
12 make arguments, I'm not opposed to hearing from the officer.
13 I'm quickly looking at all the witness names.

14 In my initial review, I don't see Officer Herrera,
15 but I'll let counsel confirm that.

16 MS. RISTENPART: Is that the State's Notice of
17 Witnesses?

18 THE COURT: I'm looking at both, yours and the
19 State's.

20 So what time do you want to begin with Herrera on
21 Monday?

22 MS. RISTENPART: Your Honor, I assume we'll be here
23 at 8:30 in the morning for a jury trial.

24 THE COURT: Ms. Clerk, what time does the jury come

1 upstairs?

2 THE COURT CLERK: At 10:00 a.m., Your Honor.

3 THE COURT: All right. We'll hear from Officer
4 Herrera at 8:30.

5 MR. LEE: We'll have Ms. Sharer here as well because
6 I don't know what's going to come of that testimony. And
7 then, frankly, the way our evidence is with the translation is
8 we have the video with captions on it, so I want to get at
9 least that part out before trial.

10 THE COURT: So again, I want to honor any defense
11 argument consistent with zealous defense and neutral judging.
12 I'm telling you right now I'm having a hard time understanding
13 how Herrera becomes relevant because whatever the State's
14 translator did is subject to cross-examination and argument.
15 I can make a finding already that there is a threshold of
16 accuracy that goes to the jury. The jury will decide where it
17 falls on the continuum. I'm not satisfied that Officer
18 Herrera is going to be a witness at trial and I don't want to
19 try the case before we try the case. So if you think there is
20 something that will change this Court's inclination, we'll go
21 and hopefully do it efficiently.

22 MS. RISTENPART: Your Honor, in regard to the
23 State's last statement that they have video prepared with
24 translated statements built into the video, that's for

1 argument. That is not to present before the jury because the
2 jury is the trier of fact with the assistance of an
3 interpreter as they go through it and can make their own
4 decisions as to what they are hearing and who's saying what.

5 When you allow the State to present with captions
6 that this is what is being said, that, again, is for closing
7 argument. That is not evidence to be admitted before the
8 trier of fact who are to make their own decisions as to who is
9 being liable, what is being said, and also in this particuclar
10 case with the assistance of an interpreter.

11 THE COURT: Well, I might agree with you in some
12 cases, but I tend to disagree right now. If, of course, there
13 is any demonstrative editorializing, I would agree 100
14 percent. If there was emphasis, if the -- the realtime
15 transcription had italices, or exclamation points, or anything
16 of that nature, I would agree. But I have what is in Spanish.
17 That has to be presented with what is in English. It's no
18 different than when I read a PSI and I have a Spanish
19 statement in my left hand and the English translation in my
20 right hand. So I tend to disagree with you on whether the
21 State can embed a translation of the Spanish. Otherwise,
22 you're asking the jury to make fact -- find facts based upon a
23 language it does not speak.

24 MS. RISTENPART: No, Your Honor. I am asking it be

1 presented in an evidentiary manner, that they have video
2 without their added labels and transcriptions which are
3 emphasized, Your Honor. They've only targeted one color for
4 one speaker. It is still a question. It's for the trier of
5 fact. And that they have a -- just a clean video that they
6 are allowed to present through their translator who can
7 translate it in realtime before the jury and the jury can make
8 their own conclusions without the proffered labels which is
9 altering the evidence as not the true picture. It's them
10 giving an additional layer of emphasis for what is for the
11 trier of fact to decide.

12 MR. LEE: Your Honor, my last question is what am I
13 to do about the --

14 THE COURT: Do you have a response to this because
15 whether I resolve it right now or at trial, it appears it's
16 going to be an issue?

17 MR. LEE: Yeah. There is -- I see no bounds as to
18 how we present our evidence. I can either put it up on the
19 overhead and show a picture of the Spanish versus English, or
20 I can put it simply on the video -- it makes no difference --
21 so the video is easier to see. She can challenge it all she
22 wants with the witness on the stand about it, but it is the
23 translation. I agree if we emphasize things or highlight,
24 that's a different story.

1 THE COURT: I agree with the State.

2 What's the next issue?

3 MR. LEE: As to the Giglio material. Does the Court
4 have an order for me?

5 THE COURT: I am not requiring the production of
6 work product, that I believe that the requests are overbroad.
7 There is the fundamental and enduring obligation the State has
8 to comply with the United States Supreme Court decisional
9 authority regarding disclosures of exculpatory information.
10 The State is not relieved of that burden, but I am troubled by
11 the State's possession constructively of information the State
12 does not know if it is inculpatory or exculpatory and the only
13 way the defense can get that information is through the
14 State's production. And, given the facts of this case, there
15 is a probability that the information could be helpful to the
16 defense and the defense should absolutely be given all jail
17 phone communications between Mr. Guzman and his family
18 beginning when negotiations first began. Ms. Ristenpart said
19 60 days. I'm not opposed to that. At some point he decided
20 to turn against family -- excuse me. He decided to enter a
21 plea and to provide testimony adverse to a family member.
22 That is -- it's easy to anticipate how that would be the
23 subject of conversations between Mr. Guzman and his family and
24 that ought to be available to the defense.

1 So you requested 60 days, that feels appropriate to
2 me. By close of business today, we need to have all jail
3 recorded jail communications between Mr. Guzman between his, I
4 guess, family and friends. I'm trying to exclude privileged
5 communications. I don't know that counsel talked over the
6 recorded telephone line. When I was in practice, I didn't,
7 but I don't want him implicating anything he said to his
8 attorney.

9 MR. LEE: If they do, we don't have access to them.

10 THE COURT: Produce them by close of business today.
11 I will have a hearing on any information you wish to use based
12 upon the recorded statements, meaning there is no reference in
13 opening -- in jury selection or in opening arguments until I
14 know what it is that you have gleaned and intend to use.

15 MS. RISTENPART: Thank you, your Honor.

16 MR. LEE: Then one last part with that, the visit
17 logs there's -- as I understand, there can be a couple -- we
18 can request of the Sheriff's office and we don't have access
19 to this directly. We can request of the sheriff any visits
20 had with Mr. Guzman including his counsel or we can do iWeb
21 visits and we can pull those ourselves.

22 THE COURT: Are those iWeb visits recorded?

23 MR. LEE: They are. I would assume that would be
24 part of the jail calls anyway, but that would give us a list

1 of who has talked.

2 THE COURT: Ms. Ristenpart.

3 MS. RISTENPART: We would be requesting the full
4 visitation jail log because that is public record as even
5 Department 4 stated in their court order.

6 From experience, Your Honor, as we discussed,
7 sometimes things can be off the books. There may not be an
8 iWeb notification. So let's say, for example, I go in person
9 to see my client. I later on get a notification from iWeb
10 saying I did an on-site visitation but some of those --
11 sometimes I don't get those, but they have a log in their
12 system that I was there and visited my client. So it's not
13 just iWeb. It's encompassing the entire jail log as
14 Department 4 talked about.

15 MR. LEE: We'll provide that, but what I would be
16 arguing against at trial is any inference of impropriety
17 simply because I visited Mr. Guzman, but that's an issue at
18 trial, Your Honor.

19 THE COURT: Well, hold on. Let me just pause. I
20 think the defense can make that argument.

21 MR. LEE: Okay.

22 THE COURT: I think it can. The defense goal is to
23 create reasonable doubt, and it does. So cross-examination
24 impeachment and the suggestion of alternate theories and

1 facts. You will get an instruction consistent with many of
2 the cases I've tried that and I can't remember it exactly, but
3 pretrial interviews and meetings with witnesses is
4 appropriate.

5 MR. LEE: Okay.

6 THE COURT: And through redirect examination, you
7 can rehabilitate whatever it is that occurs on
8 cross-examination. But if Ms. Ristenpart wants to argue, Oh,
9 well, there's something nefarious afoot, that something
10 nefarious is part of the Court's record. He's entered a plea
11 in exchange for truthful testimony, and your -- so I'm not
12 going to --

13 MR. LEE: Thank you.

14 THE COURT: I'm not going to prohibit her from
15 discussing the argument in the facts of the record.

16 What else?

17 MR. LEE: That's all I have, Your Honor. Thank you.

18 THE COURT: Ms. Ristenpart.

19 MS. RISTENPART: Your Honor, just housekeeping for
20 defense that we brought some clothes for Mr. Silva. I was not
21 allowed to bring them to the jail for him to try on. I have
22 them here. I want to ask if we can see if those fit so we can
23 get clothes for Monday.

24 THE COURT: Can we make that happen?

1 THE BAILIFF: Yes, Your Honor.

2 MS. RISTENPART: Thank you, Your Honor.

3 THE COURT: Now back to the never-ending question
4 the Court has about trial scheduling. We have caused the
5 appointment of the senior judge to try the other case that
6 begins on Monday. My civil jury trial which is scheduled to
7 begin on March 2nd, Monday, is supportive to this case but I
8 have not yet obtained a senior judge. Now, Mr. Lee, you've
9 been very clear that you expect the trial to go beyond next
10 week into the following week. I've heard you and I accept
11 that. I've scheduled the civil trial to begin on Wednesday.
12 Now, I can seat a jury while another jury is deliberating.
13 I've done that before. And however your trial unfolds, it
14 unfolds and I will push the civil trial back. We will not
15 compromise justice because of this other case. But I want you
16 to know that in the back of my mind will be efficiency.
17 NRS 48.035, we are going to be pushing this jury really hard
18 every day for -- I cleared my entire week including my
19 Wednesday criminal calendar. I'm asking you to make this
20 economical and fair. Okay?

21 I'm going to have one more thing to say in just a
22 moment. I want to read into the record, I just made reference
23 to NRS 48.035. Counsel, as trial attorneys you know what it
24 is, but I'm going to have 48.035 open and in front of me

1 during trial.

2 Although relevant, evidence is not admissible if its
3 probative value is substantially outweighed by dangers of
4 unfair prejudice, confusion, or misleading the jury.

5 Subparagraph two: Although relevant, evidence may
6 be excluded if its probative value is substantially outweighed
7 by consideration of undue delay, waste of time, or needless
8 presentation of cumulative evidence.

9 I rarely pull that authority out of my back pocket,
10 but it exists and I will monitor the presentation of evidence
11 in relation to that statute.

12 Finally, Counsel, I want to give you a background on
13 my pretrial jury selection order. I hope that what I say is
14 not traceable to any one prior attorney who was trying a case
15 in this department. That order is the -- is this Court's
16 reaction to years of jury selection in which there were just
17 incremental encroachments so that we -- at some point it all
18 came to a head for me last year when I had social justice, and
19 hypotheticals, and legal instructions. It just was completely
20 unmanageable. And so I read every decisional authority in the
21 State of Nevada where they had jury selection and I have set
22 forth a very tight pretrial jury selection order with
23 authority. If you want leave, seek leave. Otherwise I will
24 sustain an objection in the presence of the jury which I don't

1 want to do. I do not want to do it. But if you are creating
2 affinity, or beginning advocacy, or suggesting how a juror
3 should or will vote based upon hypothetical facts, I'm going
4 to cut it down. This jury should be selected in accordance
5 with that jury selection order.

6 I'm even known without objection to intervene if it
7 becomes too -- a problem. I've had lawyers think that's the
8 time to try the case. And from my perspective, it is not.

9 So does anybody seek leave now from that order
10 understanding, of course, that you may seek leave in realtime
11 as well? Does anybody have any concerns about that order and
12 how it will be enforced?

13 MR. LEE: Not from the State presently.

14 MS. RISTENPART: Not at this time, Your Honor.

15 THE COURT: Okay. Well, this will be good. I don't
16 have anything else.

17 Good day to you, Mr. Silva. We'll see you Monday.

18 Deputy, please accommodate Ms. Ristenpart and
19 Mr. Silva in any appropriate way.

20 And we'll see you at 8:30 on Monday morning. We
21 will be in recess.

22 (Proceedings concluded.)
23
24

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

3
4 I, SUSAN KIGER, an Official Reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, State of Nevada, DO HEREBY CERTIFY:

7 That I am not a relative, employee or
8 independent contractor of counsel to any of the parties, or a
9 relative, employee or independent contractor of the parties
10 involved in the proceeding, or a person financially interested
11 in the proceedings;

12 That I was present in Department No. 15 of the
13 above-entitled Court on February 21, 2020, and took verbatim
14 stenotype notes of the proceedings had upon the matter
15 captioned within, and thereafter transcribed them into
16 typewriting as herein appears;

17 That the foregoing transcript, consisting of
18 pages 1 through 58, is a full, true and correct transcription
19 of my stenotype notes of said proceedings.

20 DATED: At Reno, Nevada, this 7th day of June,
21 2021.

22 /s/ Susan Kiger

23 SUSAN KIGER, CCR No. 343
24

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

STATE OF NEVADA,

Plaintiff,

Case No.: CR18-1135B

vs.

RICHARD ABDIEL SILVA

Dept. No.: 15

Defendant.

ORDER AFTER HEARING

Before this Court are the following motions: (1) the State's unopposed motion in limine seeking admission of AT&T and 7-Eleven business records, and notice of intent to introduce same at trial via affidavit, dated February 4, 2020; (2) Mr. Silva's opposed motion to prohibit uncorroborated accomplice testimony, dated February 11, 2020; (3) Mr. Silva's opposed motion to compel state production of evidence, dated February 11, 2020, and (4) the State's motion in limine seeking admission of translated statement of the defendant, Richard Abdiel Silva, and request for hearing, dated February 4, 2020. On February 21, 2020, this Court heard oral arguments addressing these motions. This Court has considered all moving papers and the arguments presented at the hearing. Consistent with this Court's oral pronouncements, it now finds and orders as follows:

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Principles of Law and Analysis

As an initial matter, this Court exercises caution before granting any motion in limine, as in limine rulings weigh against this Court's capacity to consider evidence during trial. Trial is where this Court is "better situated . . . to assess the value and utility of evidence." Wilkins v. K-Mart, Corp., 487 F.Supp.2d 1216, 1218 (D. Kan. 2007); Sperberg v. Goodyear Tire and Rubber Co., 519 F.2d 708, 712 (6th Cir. 1975) ("A better practice is to deal with questions of admissibility of evidence as they arise"). This Court's limine orders are *pro tem* as they should not bind "the trial judge [who] may always change [his] mind during the course of trial." Ohler v. United States, 529 U.S. 753, 758 n.3 (2000) (citing Luce v. United States, 469 U.S. 38, 41-42 (1984) (limine rulings are subject to change, especially when the trial unfolds in an unanticipated way)). Likewise, the denial of a motion in limine merely means "without the context of a trial, the Court is unable to determine whether the evidence in question should be excluded." Indiana Ins. Co. v. Gen. Elec. Co., 326 F.Supp.2d 844, 846 (N.D. Ohio 2004). No court can fully anticipate all evidentiary issues at trial. As such, limine rulings should be understood to be only guideposts for the admissibility of specific evidence.

I. State's Motion Seeking Admission of Business Records

The State's unopposed motion seeking admission of AT&T and 7-Eleven business records with the intent to introduce the same at trial via affidavit is granted.

II. Mr. Silva's Motion to Prohibit Uncorroborated Accomplice Testimony

In accordance with the parties' agreement during oral arguments, this Court will decide this matter as trial progresses. Before Yiovannie Guzman testifies, this Court will conduct a hearing with counsel, outside the presence of the jury, to determine what corroborating evidence exists that is independent of Mr. Guzman's testimony. NRS175.291(2); See also Heglemier v. State, 111 Nev. 1244, 1250, 903 P.2d 799, 803 (1995) ("Corroborating evidence, however, must independently connect the defendant with the offense; evidence does not suffice as corroborative if it merely supports the accomplice's testimony. If there is no independent, inculpatory evidence – evidence tending to connect

1 the defendant with the offense, 'there is no corroboration, though the accomplice may be
2 corroborated in regard to any number of facts sworn to him.'" (quoting Austin v. State, 87
3 Nev. 578, 585, 491 P.2d 724, 728-29 (1971))).

4 *III. Mr. Silva's Motion to Compel State Production of Evidence*

5 Mr. Silva seeks to compel the State to produce all evidence regarding the
6 negotiations between the State and Mr. Guzman regarding his accomplice testimony.
7 Specifically, Mr. Silva seeks: (1) all information relating to the plea deal negotiations, (2) all
8 information regarding visits with Mr. Guzman during negotiations and in preparation for
9 his testimony for the State, (3) all information regarding Sylvia Gonzalez's (Mr. Guzman's
10 mother) communications regarding her son and her access and connection to Washoe
11 County District Attorney's Office and Reno Police Department through her employment
12 with CAAW, and (4) all information from the jail phone communications between Mr.
13 Guzman and his family and friends.

14 "A promise made by the prosecution to a key witness in exchange for the witness's
15 testimony constitutes impeachment evidence that must be disclosed under Brady." Rippo
16 v. State, 134 Nev. 411, 431, 423 P.3d 1084, 1103 (2018) (citing Giglio v. United States, 405
17 U.S. 150, 154-55 (1972)). The scope of that requirement is the actual promise made by the
18 prosecution – the bargain itself. Id. An accomplice's testimony made in exchange for
19 concessions by the prosecution "is generally admissible where the[re is] . . . full disclosure
20 of the bargain, opportunity for cross-examination and adequate instructions to the
21 jury Any concern over the credibility . . . of such testimony is . . . satisfied by allowing
22 the jury to evaluate the accomplice's testimony . . . in light of full disclosure of any plea
23 agreements" Sheriff, Humboldt Cty v. Acuna, 107 Nev. 664, 670, 819 P.2d 197, 200
24 (1991) (quoting United States v. Dailey, 759 F.2d 192, 196 (1st Cir. 1985)).

25 This Court finds the State has satisfied its Brady obligation by disclosing the
26 negotiation made to Mr. Guzman and Mr. Silva's request for production of evidence is
27 overbroad. As such, this Court denies Mr. Silva's motion except jail phone
28 communications Mr. Guzman made to his friends and family during the time he may have

1 been contemplating becoming a witness for the State. The State shall deliver the recorded
2 telephone conversations from the past 60-days to Mr. Silva. Mr. Silva may not refer to any
3 information obtained from the recordings until its contents are disclosed to this Court at a
4 hearing outside the presence of the jury. This includes any references during jury selection
5 and opening statements.

6 *IV. The State's Motion for Admission of Translated Statement by Mr. Silva*

7 The State seeks to admit Mr. Silva's conversation with his brother, Bernard Silva-
8 Guzman, immediately after Mr. Silva's confession to the police. The conversation is in
9 Spanish and will be translated for the jury. Mr. Silva objects to the admission of this
10 conversation, arguing it is fruit of the poisonous tree because his prior confession to the
11 police was suppressed due to repeated violations of his constitutional rights. Mr. Silva
12 argues his statements just after his coerced confession continued the violation of his
13 constitutional rights.

14 Although statements obtained in violation of Miranda may not be admitted against
15 a defendant in the State's case-in-chief, evidence derived as a result of the statement is not
16 inadmissible simply because of a Miranda violation. United States v. Patane, 542 U.S. 630
17 (2004); see also Crew v. State, 100 Nev. 38, 675 P.2d 986 (1984) (holding evidence obtained
18 from incriminating statements made in violation of Miranda would not be suppressed).
19 However, a private, third-party's questioning of a person in custody may constitute the
20 functional equivalent of a police interrogation if the police intend for the third-party's
21 questioning to elicit incriminating statements. Arizona v. Mauro, 481 U.S. 520 (1987).

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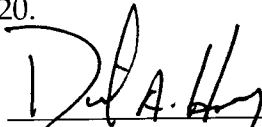
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1 This Court finds Mr. Silva voluntarily requested to speak to his brother after he
2 confessed to the alleged crime. There is no indication the police initiated the conversation
3 between Mr. Silva and his brother. To the contrary, the police seemed uncertain about
4 allowing the contact, asking Mr. Silva why he wanted to speak to his brother and
5 expressing concerns over Mr. Silva's safety. The police ultimately facilitated the
6 conversation at Mr. Silva's request. While Mr. Silva was in custody during his
7 conversation with his brother, it does not appear that the police intended to use this
8 exchange as a strategic interrogation technique or to elicit further incriminating
9 statements. Accordingly, the State's motion for admission of the translated statement by
10 Mr. Silva is granted.

11 **IT IS SO ORDERED**

12 **DATED** this 24 day of February, 2020.

13 
14 _____
15 DAVID A. HARDY
16 District Judge
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ORIGINAL

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. CR18-1135B

v.

Dept. No. D15

RICHARD ABDIEL SILVA,

Defendant.

VERDICT

We, the jury in the above entitled case, find the Defendant
RICHARD ABDIEL SILVA, as follows:

(Select only one box)

- ☐ Not Guilty of MURDER WITH THE USE OF A DEADLY WEAPON
- ☒ Guilty of FIRST DEGREE MURDER
- ☐ Guilty of SECOND DEGREE MURDER
- ☐ Guilty of VOLUNTARY MANSLAUGHTER
- ☐ Guilty of INVOLUNTARY MANSLAUGHTER

1 (If you find **RICHARD ABDIEL SILVA** not guilty of murder with the
2 use of a deadly weapon or guilty of involuntary manslaughter please
3 sign and date the verdict form. ONLY If you find **RICHARD ABDIEL**
4 **SILVA** guilty of FIRST DEGREE MURDER or SECOND DEGREE MURDER or
5 VOLUNTARY MANSLAUGHTER please proceed to and answer Question 1).

6 **Question 1:** If you find **RICHARD ABDIEL SILVA** guilty of FIRST
7 DEGREE MURDER or SECOND DEGREE MURDER or VOLUNTARY MANSLAUGHTER, do
8 you find that **RICHARD ABDIEL SILVA** used a deadly weapon?

9 (Select only one box)

10 ☒ Yes

☐ No

11 DATED this 28 day of FEBRUARY, 2020.

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15 FOREPERSON

1 CODE: 1892

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

9 STATE OF NEVADA,

10 Plaintiff,

Case No. CR18-1135B

11 vs.

Dept. No. 15

12 RICHARD ABDIEL SILVA,

13 Defendant.
14 _____/

15 JURY QUESTIONS - DURING TRIAL; NO COURT RESPONSE

16 SEE ATTACHED

17 ///

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2/25/20 @ 8:29 AM
during trial JVA Question #1 CR18-1135B/Silva

I believe I know some ^{or one} of the family of the
defendant. I also know the guard. wasn't til after
I was trying to recall the face. On my way home
She works or worked with my wife.

Gr. Angel Granzalet Escobar

Code #4185
SUNSHINE LITIGATION SERVICES
151 County Estates Circle
Reno, Nevada 89511

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

HONORABLE DAVID A. HARDY, DISTRICT JUDGE

-o0o-

THE STATE OF NEVADA,

Case No. CR18-1135B

Plaintiff,

Dept No. 15

vs.

RICHARD ABDIEL SILVA,

Defendant.

_____ /

TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - DAY 1

FEBRUARY 24, 2020

RENO, NEVADA

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

JOB NO. 608928

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A P P E A R A N C E S

FOR THE PLAINTIFF:

WASHOE COUNTY DISTRICT ATTORNEY'S
OFFICE
BY: MATTHEW D. LEE, ESQ.
P.O. Box 11130
Reno, Nevada 89520
775-328-3284
mlee@da.washoecounty.us

FOR DEFENDANT SILVA:

RISTENPART LAW, LLC
BY: THERESA ANNE RISTENPART, ESQ.
464 S. Sierra St.
Reno, Nevada 89501
775-200-1699
theresa@ristenpartlaw.com

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I N D E X

WITNESS

PAGE

SHORMANY HERRERA	
DIRECT EXAMINATION BY MS. RISTENPART	5
CROSS EXAMINATION BY MR. LEE	11

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMITTED</u>
Exhibit 104	Photo Camel Cigarette	--	31
Exhibit 105	Photo Scene Camel Cigarette	--	31
Exhibit 106	Close Up NXT Cigarette	--	31
Exhibit 107	Close Up NXT and Camel Cigarette	--	31
Exhibit 108	Far Away NXT and Camel Cigarette	--	31
Exhibit 109	Manzo Vest	--	31
Exhibit 110	RR Poster	--	31
Exhibit 111	11-3-17 Manzo Interview Still Photo	--	31
Exhibit 112	Thumb Drive: Full Video 11-16-17, Bernard and Richard	--	31
Exhibit 113	Thumb Drive: Translation of Full 11-16-17 Video, Bernard and Richard	--	31
Exhibit 114	Thumb Drive: Full Video Yiovannie Guzman Interview 11-16-17	--	31
Exhibit 115	Thumb Drive: Arturo Manzo Interview 11-3-17	--	31
Exhibit 117	Email Correspondence, Routsis	--	31
Exhibit 118	Original Information 7-3-18	--	31
Exhibit 119	Amended Information 2-14-20	--	31
Exhibit 120	Guilty Plea Memorandum 2-20-20	--	31

1 RENO, NEVADA, MONDAY, FEBRUARY 24, 2020, 8:30 A.M.

- o0o -

2 (Whereupon the following proceedings.
were outside the presence of the jury.)

3

4 THE COURT: Good morning, Ms. Ristenpart.

5 MS. RISTENPART: Good morning, Your Honor.

6 THE COURT: Mr. Silva, good morning.

7 This is CR18-1135B, the State versus

8 Richard Silva. We meet out of our jury panel's presence to
9 conduct any last-minute business before the panel arrives.

10 Ms. Ristenpart, let me begin with you, because you
11 indicated you might want to elicit some witness testimony
12 this morning.

13 MS. RISTENPART: Correct, Your Honor. We have
14 Officer Herrera from the Reno Police Department. He is
15 present and is available to testify if you would like us to
16 call him.

17 THE COURT: Deputy, Officer Herrera, please.

18 MR. LEE: Judge, could I request the presence of
19 our interpreter?

20 THE COURT: Yes.

21 SHORMANY HERRERA,

22 called as a witness, having been duly sworn,

23 testified as follows:

24

25 THE COURT: Please remember to speak right into

1 the microphone. Ms. Ristenpart.

2 MS. RISTENPART: Thank you, Your Honor.

3

4 DIRECT EXAMINATION

5 BY MS. RISTENPART:

6 Q Would you please state and spell your name for the
7 record, Officer.

8 A Officer Herrera, Shormany Herrera.

9 Q Spell it for the record.

10 A Excuse me?

11 Q Spell your name.

12 A Last name, H-E-R-R-E-R-A.

13 Q And where are you employed?

14 A Reno Police Department.

15 Q And how long have you been employed there for?

16 A Approximately 14 years now.

17 Q Officer Herrera, are you bilingual?

18 A Yes, I am.

19 Q And by bilingual, what languages do you speak?

20 A Spanish.

21 Q And?

22 A English.

23 Q English. In cases are you frequently requested to
24 translate some Spanish-speaking phrases for other officers
25 who may not speak Spanish?

1 A Yes.

2 Q Officer, taking you back to November 16th of 2017,
3 were you requested by Detective Thomas from the Reno Police
4 Department to translate some conversations that he had in an
5 interrogation room?

6 A Yes.

7 Q And do you remember the nature of the request?

8 A Yes.

9 Q What was it?

10 A He asked me to listen to two people talking in a
11 room, in a detective's room, because they were speaking
12 Spanish.

13 Q Now, this conversation that you were asked to
14 listen to, was it recorded?

15 A Yes, it was.

16 Q And was it a video?

17 A Yes.

18 Q And did it also include audio?

19 A Yes.

20 Q Can you describe what the video showed, just the
21 visual?

22 A The video showed two people speaking and hugging
23 inside a room, sobbing.

24 Q Were the people male?

25 A Two males.

1 Q And based upon your review did you give Detective
2 Thomas a translation of, a rough translation of what you
3 heard?

4 A Yes.

5 Q And when I say rough, what do I mean by that?

6 A To me it means just what, what I could hear him
7 saying.

8 Q Now, just the video itself, was it difficult to
9 hear?

10 A Some parts.

11 Q Was there a lot of crying throughout the
12 conversation?

13 A Yes.

14 Q Were there parts that were unintelligible to you?

15 A Yes.

16 Q And in regards to your translation -- with the
17 Court's indulgence.

18 Did you ever tell Detective Thomas that you heard
19 one man say to the other, "I will tell them it was an
20 accident"?

21 A I can't recall speaking to the officer.

22 Q Would looking at a report from Detective Thomas as
23 to what you translated refresh your memory?

24 A I mean, that's his words, not mine, so I would
25 have to go by what he said. I would have to listen to the

1 video.

2 MS. RISTENPART: Your Honor, with the Court's
3 indulgence, may I use State's Exhibit number, I believe it
4 is -- I don't have the exhibit list.

5 THE COURT: The answer is yes, but with a
6 follow-up question. What is it, what relief do you intend
7 to ask the Court this morning --

8 MS. RISTENPART: Sure.

9 THE COURT: -- at the conclusion of this witness'
10 testimony?

11 MS. RISTENPART: Rule of completeness, Your Honor.
12 That, in fact, there was much more that was listened to and
13 translated by the Reno Police Department than the state is
14 actually asking to put in, including the statements that, "I
15 will say it was an accident," and talking about
16 co-conspirator.

17 THE COURT: Okay. Go ahead and play it, please.

18 MS. RISTENPART: Showing State's Exhibit 96 --

19 THE COURT: Thank you.

20 MS. RISTENPART: -- for the purposes of these
21 proceedings, Your Honor.

22 (Whereupon the video was played.)

23 BY MS. RISTENPART:

24 Q Officer Herrera, was that the entirety of the
25 recording that you were asked to review by the detective?

1 A I can't recall, but I think there was a little
2 more, because I stayed there until the other person left.

3 MS. RISTENPART: And I could play the entirety of
4 the recording, Your Honor, but it will take a little bit
5 more time, because we will have to put the DVD player onto
6 the laptop.

7 THE COURT: Let me just have some arguments for a
8 moment. I invited you to tell me what the relief is that
9 you will be requesting. You indicated the rule of
10 completeness.

11 Are you telling me now that there is additional,
12 there are additional exchanges between Mr. Silva and his
13 brother that are legible and that the state has omitted from
14 its exhibit?

15 MS. RISTENPART: Correct, Your Honor.

16 THE COURT: Mr. Lee.

17 MR. LEE: This goes on for some more time. I kept
18 the pertinent parts that are relevant to this. I left out
19 things within that, such as Mr. Silva saying, "I'm going to
20 kill myself, dude," things like that. So, sure, I didn't
21 include the entirety of the interview or anything like that.
22 I just --

23 THE COURT: All right. So you, I'm going to use
24 the word strategically, that does not imply any form of
25 gamesmanship, but at some point in preparation for this

1 case-in-chief you strategically included and excluded some
2 portions of this exchange; is that correct?

3 MR. LEE: Correct. I want to make sure we are
4 clear, though. There is stuff that goes beyond. It's not
5 like I excised things in the middle and cut them out.

6 THE COURT: Okay. And, Ms. Ristenpart, your
7 request is going to be to play the entire video?

8 MS. RISTENPART: Correct, Your Honor, because
9 under the rule of completeness the state can't cherry pick.

10 THE COURT: I understand. I understand. I just
11 want to be clear. You want to play from beginning to end?

12 MS. RISTENPART: Correct, Your Honor.

13 THE COURT: All right. And the state's response?

14 MR. LEE: Let's hear it.

15 THE COURT: Let's hear it then. Okay. So why do
16 we have to have this witness?

17 MS. RISTENPART: Your Honor, then we don't. We
18 can bring it in through the state's expert.

19 THE COURT: I agree with your legal theory and
20 your request. The state has chosen, I'm not suggesting bad
21 faith, but the state has chosen what is relevant to its
22 presentation, and upon the defense's request the entire
23 exchange between Mr. Silva and his brother will be admitted.
24 What do we need to do to clean up the evidence?

25 MS. RISTENPART: Your Honor, I just have the

1 request before we get to that portion that we also figure
2 out the dynamics with the laptop and the Reno Police
3 Department player as part of the laptop, but I can work that
4 out hopefully with the state's expert.

5 THE COURT: Mr. Lee, my decision extends the
6 duration of this video from how long to how long?

7 MR. LEE: I don't know, Judge. If we could --

8 MS. RISTENPART: Your Honor, it's approximately
9 from less than 2 minutes to less than 5 minutes.

10 THE COURT: Okay. Wonderful. All right.

11 Mr. Lee, do you have any questions of this
12 witness?

13 MR. LEE: I do have just one or two.

14 THE COURT: Okay. Then let me be clear. I
15 interrupted your witness examination. Do you have anything
16 else of this witness before we turn to the state?

17 MS. RISTENPART: I don't, Your Honor.

18 THE COURT: All right. Mr. Lee.

19

20 CROSS EXAMINATION

21 BY MR. LEE:

22 Q Did you make any written translation?

23 A No, I did not.

24 Q And were you watching it in real time?

25 A Yes.

1 Q So as it's going on you are translating?

2 A Yes.

3 MR. LEE: Okay. That's all I have. Thank you.

4 THE COURT: All right.

5 MS. RISTENPART: No further questions.

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

7 and leave.

8 MS. RISTENPART: And he is also released,

9 Your Honor?

10 THE COURT: Yes. You will not be called to return

11 to the courtroom.

12 THE WITNESS: Okay. Thank you, Your Honor. I

13 appreciate it.

14 THE COURT: Okay.

15 MS. RISTENPART: May I approach, Your Honor, and

16 remove the exhibit?

17 THE COURT: Yes, please.

18 I have a couple of matters I would like to

19 discuss, but let me make sure that neither of you have any

20 substantive evidence or arguments. I'm going to talk about

21 the charging document, among other things.

22 Counsel, what else do we need to talk about before

23 the panel arrives?

24 MR. LEE: Judge, I guess I need to know your

25 preference. This hearing was set at my request to admit

1 evidence such as this with the translation captioned on, as
2 well as one other item of evidence with the translation
3 captioned on.

4 I get that they are going to challenge the
5 translation, and so that's why I asked do we even need this
6 hearing on Monday morning, but Your Honor said yes. So our
7 witness is here. She is ready to testify that this is a
8 correct translation and the captions are correct.

9 THE COURT: So with my decision today to introduce
10 the entire conversation between Mr. Silva and his brother,
11 will those closed-caption sentences be excluded from a
12 portion and included?

13 MR. LEE: If it goes beyond what we just watched,
14 we don't have a translation for that.

15 THE COURT: Okay. So we need to have it
16 consistent. I'm not reversing myself, because I believe I
17 was wrong. I'm reversing myself because trial unfolds and
18 it takes its own direction.

19 It seems to me that it would be unfair to allow
20 some captioned language, closed captioned translated
21 language on the screen for the state's initial portion and
22 the absence during the duration. So I'm going to have you
23 just admit a clean copy without any text of closed caption.
24 Your witness is going to have to testify in real time. I
25 guess you will hit the pause and ask her what was said and

1 so forth.

2 MR. LEE: Judge, if I could, that's a key piece of
3 our evidence. Because they delayed and didn't file
4 anything, this was provided to them a year ago, and just now
5 it's coming up and so because of that we are somewhat
6 punished for it.

7 THE COURT: Hold on. Let me understand. Of
8 course I expected you would have produced the entire video.
9 When did Ms. Ristenpart know that you excerpted a portion of
10 it and added closed captioning?

11 MR. LEE: Over a month ago.

12 THE COURT: Over a month ago.

13 MR. LEE: I'm sorry, Judge, I'm trying to think.
14 She has had the translation of those, that small two-minute
15 segment. I would have to double-check about the actual
16 caption. I can really fast get you an answer, do you mind?

17 THE COURT: Please do.

18 MR. LEE: Thank you.

19 THE COURT: Because I'm going to compare it to the
20 date she filed her motion, because you are suggesting that
21 it's on the eve of trial at 8:45 on Monday and she filed her
22 motion sometime ago.

23 Ms. Ristenpart, will you help me find the date
24 that you filed --

25 MS. RISTENPART: Your Honor, the state filed their

1 request to admit these translated statements on February 4th
2 of 2020. I filed my opposition, Your Honor, on
3 February 17th of 2020.

4 THE COURT: Thank you.

5 MS. RISTENPART: And I filed a supplemental, also.

6 THE COURT: I got it in front of me. Thank you.
7 Let's go off the record.

8

9 (Whereupon a break was taken from 8:45 a.m. to 8:49 a.m.)

10 (Whereupon the following proceedings
11 were outside the presence of the jury.)

12 THE COURT: Back on the record.

13 MR. LEE: Sorry, that was released through
14 discovery January 23rd.

15 THE COURT: So I regularly hear, Judge, that's
16 prejudicial. Judge, that's a key part of my case. And I
17 understand that. All right. This is an adversarial
18 process.

19 I'm going to speak out loud here for a moment.
20 It's important to me that there be consistency so there is
21 no unintentional latent fact or event that the jury can
22 focus on in someway.

23 Now, the state unilaterally chose what evidence
24 was relevant and necessary for his case-in-chief. I'm
25 persuaded that the rule of completeness compels the

1 introduction of material beyond what you decided was
2 relevant and necessary for your case-in-chief.

3 And the problem is you altered the image to
4 include translated text at the bottom of the screen. So I
5 understand it's important to you.

6 I'm going to hear from Ms. Ristenpart. I may back
7 away a little bit and say, well, if you can do the same for
8 the additional 3 minutes between now and when you call the
9 translator, I will return to my prior ruling, which is it's
10 authorized.

11 But if you are just going to introduce some
12 portion of the video with text and other portions of the
13 video without text, that does not work for me. So with
14 that, go ahead and argue and push back if you want, and then
15 I will hear from Ms. Ristenpart.

16 MR. LEE: Again, the same argument, Judge. It's
17 just we could have done those things if we knew about a
18 challenge to it, if we knew anything about it rather than
19 the day of trial. Again, she has had this for a month.

20 That's kind of been a theme that we, I have seen
21 over and over. The stuff has been there and nothing happens
22 until the day of, which then prejudices us because we can't
23 do anything about it at this point.

24 There was never a translation of anything beyond
25 that time. That translation was provided long ago, over a

1 year ago, and so with the Court's order we would have to now
2 try to get it translated and caption it. We just can't do
3 it.

4 THE COURT: But that's not the Court's
5 responsibility and that's not Ms. Ristenpart's
6 responsibility. You chose what evidence was relevant with
7 an understanding that the Court may visit your choice with
8 the evidence code in hand.

9 MR. LEE: But it could have been decided long ago
10 when we had a chance to do something about it. As an
11 alternative, Judge, if we could do this, if we present the
12 entire thing, we can have our interpreter when she testifies
13 translate the part that she has translated. She hasn't done
14 anything else. We would have to pay her to do more things,
15 and then at closing I would like to be able to at least use
16 my portion.

17 THE COURT: Let me hear from Ms. Ristenpart.

18 MS. RISTENPART: Your Honor, I actually brought up
19 this argument on Friday when we were arguing the actual
20 admission, and I just do want to be clear that we are still
21 arguing and respect the Court's decision from Friday, but
22 for the confession that was elicited after a violation of
23 Mr. Silva's constitutional rights --

24 THE COURT: I signed an order about 30 seconds
25 ago.

1 MS. RISTENPART: Thank you, Your Honor. We would
2 not have this portion of asking to also confess to his
3 brother. That being said, on Friday I brought up my concern
4 that parts of the state's translations were highlighted and
5 also it goes further than just transcription, Your Honor.

6 They actually put in names of who they claim they
7 are identifying as the speaker, Richard or Bernard. And,
8 also, Your Honor, they don't put in a full translation.
9 They only put in highlights or emphasis of what they wanted.

10 If you look at that and compare that to Exhibit 1
11 of the state's motion for the admission of the supplemental,
12 you see their translation is much longer than what actually
13 was put onto this video.

14 But also on Friday I said, Your Honor, for the
15 purposes of trial anything with these kind of captions is
16 argument, and so, therefore, I don't see why he couldn't use
17 it in closing, just like I could use my own interpretation
18 in closing, if I so wished.

19 THE COURT: This Court entered its order of
20 suppression on September 19th. Subsequent to that
21 suppression order, on September 23rd this Court entered an
22 order addressing motions in which it clearly contemplated
23 the admission of the exchange between Mr. Silva and his
24 brother. The Court included some analysis as to, as to that
25 exchange and, in fact, I thought spoke to the admissibility.

1 MS. RISTENPART: Your Honor, I apologize, is that
2 in reference to the affair?

3 THE COURT: Among other things. That Mr. Silva
4 admitted to his brother that he was having a sexual
5 relationship with the decedent, and this is the order where
6 I excluded evidence of pregnancy.

7 You can review the order. I know how trial is,
8 counsel, but I have reviewed it this morning, because I
9 wanted to better understand whether I had somehow omitted
10 from my order a scope of suppression, because Ms. Ristenpart
11 argued on Friday that the state was attempting to circumvent
12 or do an end run around this Court's order.

13 First, it appears to me that all parties were on
14 notice since October 23rd that the exchange between
15 Mr. Silva and his brother would be coming in.

16 I have since, while Mr. Lee was looking at his
17 computer screen, did my final review and I signed an order,
18 you don't have it, of course, because it's being
19 electronically processed right now, in which I'm allowing
20 this testimony to come in, so I have done that in written
21 form.

22 Now turning to the mechanics of it, I think under
23 the rule of completion what will happen, Mr. Lee, is you
24 will introduce whatever portion of that video you think is
25 relevant for your case in chief, understanding that on cross

1 examination Ms. Ristenpart can ask questions about
2 additional portions of the interview that were not presented
3 in the state's case in chief and she can ask the witness
4 anything she wants.

5 But I don't think, I don't think it's your burden
6 to translate what you are not using now based upon the time
7 that you told me about the initial production a year ago and
8 the last production 30 days ago.

9 So you will introduce what you want to introduce.
10 The evidence is available to Ms. Ristenpart bringing it in
11 to ask the witness, who you are going to promote as an
12 experienced expert. She will either be able to translate it
13 on the fly or not, and the jury will make a decision about
14 her ability to respond to cross examination questions.

15 I am not going to allow the text during your
16 portion of direct examination with the translation expert,
17 but I will allow the text during your closing arguments.
18 Does that resolve the issue to everyone's dissatisfaction or
19 satisfaction?

20 MR. LEE: It does, Your Honor.

21 THE COURT: Meaning does anybody need to be heard
22 on something I missed?

23 MR. LEE: No, that's the complete part of that.
24 So we have one more item of evidence with translation that
25 was part of my moving papers.

1 THE COURT: Which is the jail calls. What I heard
2 from Ms. Ristenpart Friday was she was essentially conceding
3 to the admission of that evidence.

4 MS. RISTENPART: To the whole jail phone call,
5 Your Honor, yes. Again, they have cut part of the jail
6 phone call and added their own transcription on the bottom.

7 THE COURT: Well, the same rule will apply.
8 Introduce what portion of it you want without text and
9 during closing arguments you may add text as a form of
10 argument.

11 I'm told by the court clerk that there was some
12 disagreement between counsel as to the contents of the
13 charging document. Has that been resolved or do you want to
14 be heard?

15 MR. LEE: We need to hear it, Your Honor.

16 THE COURT: Okay.

17 MR. LEE: The disagreement was simply that
18 Ms. Ristenpart I believe wanted the case to read Yiovannie
19 Guzman and Richard Silva as defendants. It's my information
20 that Mr. Guzman has pled to an Amended Information. He is
21 not part of this Information or the charge itself, so I
22 would ask that it just be State of Nevada versus Richard
23 Silva.

24 THE COURT: Why don't you file an Amended
25 Information?

1 MR. LEE: I'm sorry?

2 THE COURT: Why don't you file an Amended

3 Information that now excludes Mr. Guzman?

4 MR. LEE: I did do so.

5 THE COURT: I didn't hear what you said.

6 MR. LEE: I filed an amended on CR18-1135A that

7 was dealt with on Thursday. He pled guilty to CR18-1135A.

8 THE COURT: Right. Is the charging document as of

9 this moment implicating Mr. Silva, does it include or

10 exclude Mr. Guzman?

11 MR. LEE: As this stands now, it's an Information.

12 As to 1135B, it only is Mr. Silva. Our trial is 1135B.

13 THE COURT: I understand that. What is the file

14 stamp date of the one you hold in your hand?

15 MR. LEE: July 3rd, 2018.

16 THE COURT: And the July 3rd, 2018, charging

17 document in CR18-1135 includes both Mr. Richard Silva and

18 Yiovannie Guzman. Is that the one you are referring to?

19 MR. LEE: It is.

20 THE COURT: And are you requesting the clerk read

21 something different than what's in the file right now?

22 MR. LEE: So our trial is 1135B. I'm requesting

23 that she read 1135B, not 1135A.

24 THE COURT: So is there a separate 1135B?

25 MR. LEE: I mean, it's a separate case,

1 absolutely.

2 THE COURT: I understand that. But the document
3 that I have in my hand includes Guzman.

4 MR. LEE: There is a separate Amended Information
5 that was filed last week.

6 THE COURT: Regarding Guzman?

7 MR. LEE: Yes.

8 THE COURT: Is there a separate one now involving
9 Silva that excludes Guzman?

10 MR. LEE: No.

11 THE COURT: Why not?

12 MR. LEE: I thought that was already done with the
13 filing in 1135B. Again, this is a 1135B document at this
14 point. That's all we have for Mr. Silva.

15 THE COURT: Well, you said that a couple of times.
16 But what I'm looking at, it doesn't refer to B. I'm looking
17 on the case number. I mean, I see the defendant B.

18 The problem I have is that you are asking the
19 clerk to read something that's different than is in the
20 Court's file. You are asking her to exercise some
21 discretion, to editorialize by deletion or omission some
22 portion of this. What are you going to do when the jury
23 wants to read this?

24 MR. LEE: I think you can, this should be deleted.
25 It's not in the jury instructions. They won't have this to

1 see per se, but we are here on a trial with B with Silva,
2 not with Guzman. He shouldn't be read as a defendant in
3 this case. He is not.

4 I think that does nothing but mislead and confuse
5 at best. He is not a defendant and they are not going to
6 hear anything about that.

7 THE COURT: So you are asking the court clerk to
8 read into the record something that is different than
9 exists?

10 MR. LEE: No, because he is not a part of B,
11 Your Honor. I understand what Your Honor is saying.

12 THE COURT: Mr. Lee, when I read lines 25 and 26
13 of this charging document.

14 MR. LEE: Yes.

15 THE COURT: Follow along with me, "That the said
16 defendants, Richard Abdiel Silva and Yiovannie Guzman, on or
17 about November 2nd, 2017," are you asking that she read it
18 that way verbatim?

19 MR. LEE: No.

20 THE COURT: Are you asking her to strike out
21 Guzman?

22 MR. LEE: I'm asking her to strike out Guzman.

23 THE COURT: So you are asking that she
24 editorialize or in some way modify the charging document as
25 she reads it aloud?

1 MR. LEE: I'm asking her to read it as per the
2 jury instructions I submitted that make it tailored to this
3 specific case.

4 THE COURT: Why not just file an Amended
5 Information after Guzman has pled out?

6 MR. LEE: So my thought is, I thought it wasn't
7 necessary because we are here only on the B trial, not
8 anything else, and so as far as reading to a jury, I didn't
9 think that would be anything that would be an issue.

10 THE COURT: We get that argument all the time, not
11 all the time, I don't want to overstate it, but there is
12 lots of times whether we include the felony designation and
13 so forth. But this charging document is available to the
14 jury, right?

15 MR. LEE: I don't know how. I mean, a public
16 record.

17 THE COURT: You are proposing a jury instruction
18 that's different than this?

19 MR. LEE: I'm proposing a jury instruction that
20 takes Mr. Guzman out that just has 1135B.

21 THE COURT: Right. Well, so turn to page 2, line
22 8 and continuing, that the defendants, plural, willfully and
23 unlawfully conspired, counseled and encouraged. You want
24 the clerk to read that in or exclude it out?

25 MR. LEE: Again, I would ask to read it according

1 to the jury instruction I submitted.

2 THE COURT: Well, the jury instruction is not
3 approved. It was submitted on Friday. I'm not required to
4 resolve jury instructions before jury selection. So you
5 have referenced it, but it's really of no interest to me
6 right now, because they haven't been settled.

7 What I care about is the clerk reads the charging
8 document after the jury is selected before opening
9 statements, and I'm just trying to understand what you want
10 her to do. You want her to read a document that does not
11 exist in the Court's file right now.

12 MR. LEE: Judge, look, this isn't my hill to die
13 on, but, number two, it's going to be confusing at the very
14 least. I want this tailored to what the case is, and so the
15 jury is going to hear two defendants and only see one
16 defendant and not have a clue what is going on.

17 THE COURT: I'm not inclined in any way to read
18 anything to the jury that includes Guzman. I agree with
19 you, but I'm inclined to have the clerk read the charging
20 document that exists.

21 MR. LEE: Okay.

22 THE COURT: I need an Amended Information.

23 Do you want to be heard, Ms. Ristenpart?

24 MS. RISTENPART: No, Your Honor.

25 THE COURT: Try to get an Amended Information by

1 noon today.

2 MR. LEE: Judge, we are not going to have an
3 amended. We will allow it. Again, it's not my hill to die
4 on. I just thought that was more relevant.

5 THE COURT: Ms. Clerk, you will read the entire
6 charging document as set forth on July 3rd, 2018. If the
7 state chooses to file an Amended Information between now and
8 when the jury is empaneled and sworn, I would quickly
9 arraign Mr. Silva on the Amended Information and I would
10 then read it so that it focuses solely on Mr. Silva and did
11 not have any reference as to Mr. Guzman. Anything else?

12 MR. LEE: Nothing from the state.

13 MS. RISTENPART: Not from the defense, Your Honor.

14 THE COURT: All right. Mr. Lee, I know you are
15 highly aware of things, but I'm looking at your box right
16 now, and there is a part right in the middle, there is a
17 manila folder that is sticking straight up, and I have a
18 sense and experience that these jurors are going to try and
19 look at everything you have. And we have even had a
20 mistrial based upon what the jury has read on the D.A.'s
21 box.

22 I'm a little uncomfortable having your box there
23 just as a matter of practice. I trust you to never
24 communicate with a jury unintentionally. So put the box
25 down or make sure it has a lid. Make sure there is no

1 writing around its exterior or anything of that nature.

2 MR. LEE: Judge, the box is going down. I don't
3 have a lid, but I will face it this way. I just had that
4 here for the hearing.

5 THE COURT: I'm just trying to preempt everything,
6 because this jury walks right by within just feet from both
7 of you.

8 Deputy, I have observed that in each court hearing
9 there have been many people in attendance. This is an open
10 proceeding and all shall be welcome, as long as they adhere
11 to the rules of court, all shall be welcome.

12 However, I don't know who is here on behalf of
13 Mr. Silva in contrast to the decedent. I authorize and
14 direct you to try and figure out how we can create some
15 spacial security if there are different camps involved.
16 Again, I have no idea.

17 Now, during jury selection itself, we are going to
18 have to compress everybody together and move some of them
19 against the wall, because the public will be subordinate to
20 our panelists' seating arrangements, so just kind of keep
21 your ears and eyes open as to how we can facilitate peace
22 and welcome into the courtroom.

23 THE DEPUTY: Understood.

24 THE COURT: All right. Anything else?

25 MS. RISTENPART: Your Honor, just because at my

1 last jury trial it was an issue, because there are so many
2 witnesses in this case, also, as to identifying witnesses
3 who may come into the courtroom unknowingly, I don't know if
4 your Court standard is the bailiff inquire as to everyone
5 that comes in generally or just we keep on the lookout to
6 see if we see someone.

7 THE COURT: So you are referring to the Rule of
8 Exclusion?

9 MS. RISTENPART: Correct, Your Honor, which I will
10 be invoking.

11 THE COURT: Right. And whether you invoke it now
12 or later, it will be granted, and I cannot police the rule
13 of exclusion because I don't know who the folks are who come
14 in and out so often.

15 My first request is that, counsel, you monitor it
16 as you understand it, especially with your investigator. I
17 don't like the deputy to have constant conversations with
18 people. It's distracting to me. It's distracting to the
19 jury. So that's not typically something he does.

20 Mr. Lee, do you intend to call as witnesses people
21 who might be here otherwise as supportive or antagonistic to
22 the prosecution, those that are family and friends?

23 MR. LEE: Yes.

24 THE COURT: And do you know who they are?

25 MR. LEE: For the most part.

1 THE COURT: All right. Do your best, please.

2 MR. LEE: I will.

3 MS. RISTENPART: Also, Your Honor, as my client is
4 in custody, but under the guise of being out of custody,
5 normally I walk with my clients up to the holding cell and
6 back down to the holding cell. I would like to double-check
7 with the bailiff that is the procedure here for your
8 courtroom, also.

9 THE COURT: My procedure ends at the well of the
10 court, excuse me, at the bar. I always defer without
11 question to the security on the other side of the bar.

12 I have seen counsel walk with their clients who
13 appear to be walking at liberty. We are really good about
14 counting for heads so we know where all of our jurors are
15 whether here or out of the building, but I invite you to
16 visit with Deputy Cos to see how you can best accommodate
17 his, first, security concerns and, second, whatever you
18 want.

19 MS. RISTENPART: And then, also, I do notice that
20 there are three uniform Washoe County Sheriff's Deputies
21 here in the courtroom all on the side nearest the defendant.
22 I don't know if that's anticipated for the rest of it or
23 just because it's jury selection today.

24 THE COURT: So we will have as many as three
25 throughout the week, although I do, I do invite you after

1 jury selection to disburse yourself a little bit more so
2 there is not a visual oversight as much as it appears to be
3 right now.

4 THE DEPUTY: Understood.

5 MS. RISTENPART: Thank you, Your Honor.

6 THE COURT: And Cos is always wandering back and
7 forth. We usually, we are accustomed to having two, not
8 three, so I do grant your request as to constant
9 observation.

10 MS. RISTENPART: Thank you, Your Honor.

11 THE COURT: Anything else? Stay close. I'm going
12 to start coordinating with the jury manager in case the jury
13 is just waiting until 10:00 because she doesn't think we are
14 ready. She has got three other juries, at least three
15 others. In fact, for the first time in my -- we will go off
16 the record.

17 (Whereupon a break was taken from 9:11 a.m. to 9:57 a.m.)

18

19 (Exhibit Numbers 104 - 115 were marked for identification)

20 (Exhibit Numbers 117 - 120 were marked for identification)

21

22 (Whereupon the following proceedings
23 were outside the presence of the jury.)

24 THE COURT: We will go on the record in
25 CR18-1135B. We expect the panel at 10:00. I'm told by the

1 clerk that the panel is not yet ready.

2 Over the weekend, I looked at the state's
3 instructions just to get a sense for what the instructions
4 arguments will be. I don't have any defense instructions.

5 MS. RISTENPART: Your Honor, I have just a few. I
6 will be very frank. I'm not going to be objecting to a vast
7 majority of the stock instructions that the state proffered.
8 There is some little changes that I would like to just clean
9 up and go through, and I had intended to do that tonight,
10 because I was listening to jail phone calls over the
11 weekend, because I did think we would have some argument as
12 to admissibility before Mr. Guzman testifies.

13 So with the Court's indulgence, and the Court has
14 worked with me numerous times, I would ask to give those to
15 the Court tonight, but, again, I don't have a lot of big
16 changes to the proposed.

17 THE COURT: Do you have separate instructions to
18 propose that are defense specific or do you have objections
19 to the state's?

20 MS. RISTENPART: Your Honor, there would be three
21 that would be defense specific that I would propose and then
22 the rest would be changes or modifications to the state's.

23 THE COURT: Okay.

24 MS. RISTENPART: Would you like me to type out my
25 changes and modifications or just make argument?

1 THE COURT: I would like you to first submit for
2 in camera review consistent with Rule 8 any unique defense
3 instructions you have by the time I arrive in the morning.

4 Separate, I don't want you to have to, I don't
5 want either attorney to have to try to settle instructions
6 during the heat of trial. I don't think it's a good use of
7 your time to be typing your objections, but I would like to
8 know which of the objections, which of the state's proposed
9 objections -- excuse me, which of the state's proposed
10 instructions you will have an objection. So what I really
11 need is just a list --

12 MS. RISTENPART: Okay.

13 THE COURT: -- without argument so I can begin
14 looking at those specific instructions to which you will
15 object.

16 MS. RISTENPART: And because the state's is not
17 numbered yet, would you like me just to kind of type the
18 first 3 lines of the instruction?

19 THE COURT: No. I want you to not do anything
20 until tomorrow when we get to our instruction matrix.

21 MS. RISTENPART: Okay.

22 THE COURT: We will prepare that in the
23 department. It will list and summarize the first
24 sentence --

25 MS. RISTENPART: Understand.

1 THE COURT: -- on each of the state's
2 instructions.

3 MS. RISTENPART: So proffer tonight what is unique
4 to the defense and then wait for tomorrow to do the
5 objections?

6 THE COURT: Yes.

7 MS. RISTENPART: Understood. Thank you.

8 THE COURT: So I would like to start on time, but
9 I also want to be very respectful of the jury manager who is
10 pushing a lot of citizens this morning. It is now 10:03.
11 Do we know anything, Ms. Clerk?

12 THE CLERK: Your Honor, I still do not have the
13 names of the jury panel, and I have not heard anything from
14 the Jury Commissioner this morning. Would you like me to
15 reach out?

16 THE COURT: At 10:05. Be gentle, please.

17 THE CLERK: Okay.

18 THE COURT: I'm going to leave the room, because I
19 think my presence changes the environment in the courtroom.
20 We will be in recess.

21 (Whereupon a break was taken from 10:03 a.m. to 10:11 a.m.)

22 (Whereupon the following proceedings were
23 outside the presence of the jury panel.)

24 THE COURT: Be seated for a couple of minutes. It
25 is my preference to have sidebar conversations reported,