

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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RICHARD ABDIEL SILVA

Appellant,

v.

STATE OF NEVADA

Respondent.

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**CASE NO. 81627**

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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

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**APPELLANT'S APPENDIX VOLUME 6**

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1 place, that on Thursday I said you get to have your  
2 captions. And I did that over the defense objection.  
3 And then when I realized that there were two segments,  
4 one of which was captioned, one of which wasn't, that's  
5 when I directed the removal of the caption. So there  
6 were two different days when I discussed the captions  
7 and I discussed them and arrived at different  
8 conclusions. Is that consistent with your memory?

9 MS. RISTENPART: No, Your Honor. My memory is that  
10 when you saw the State's proffered exhibit that had the  
11 captions underneath that clearly stated Bernard or  
12 Richard as identifying the speaker and that it was only  
13 certain portions of it, it wasn't like every single  
14 word that they had translated was up on the screen,  
15 that you stated that you needed a clean copy.

16 THE COURT: Okay.

17 MS. RISTENPART: With that, Your Honor, beyond  
18 trying to reopen the argument that's already in front  
19 of the Court, the State makes the argument that it  
20 would not -- I'm going to start with just the  
21 translated statements with Bernard and Richard and then  
22 move into the 911 calls. Okay, Your Honor?

23 In regards to the record of completeness and that I  
24 had argued under the rule of completeness, we're

1 requesting the remainder, which is less than two  
2 minutes longer of a conversation between Bernard and  
3 Richard, to put it into context. Your Honor is at a  
4 disadvantage because you don't know what the rest of  
5 the translated statements refer to or what they're even  
6 talking about because you haven't had any evidence in  
7 regards to that.

8 And as we had talked about on Friday -- excuse  
9 me -- Monday, it was my thought that I would put it on  
10 through the State's expert who I was not questioning  
11 her expertise in Spanish. She has a long CV that was  
12 tendered under the notice of witness experts, that she  
13 is a dual language interpreter and translator and does  
14 have court experience in translating on the fly.

15 We are looking at the remaining two minutes, Your  
16 Honor. And I think the best way to make a record of  
17 this is for me to just to read in what the State is  
18 wanting to put in, the English version, and then  
19 continue on with what the rest of the conversation is  
20 and our interpretation of it. So I'm making a proffer,  
21 Your Honor.

22 THE COURT: Yes.

23 MS. RISTENPART: And M1 and then M2, so I'll keep  
24 it that way, because that's the way they actually have

1 their translation, instead of trying to identify the  
2 speakers as they have on their caption video.

3 THE COURT: What does the "M" stand for?

4 MS. RISTENPART: Male I'm assuming.

5 "M2 enters room, walks over and hugs M1. Crying.  
6 Unintelligible.

7 "M1: What's up?

8 "M2: (Crying) (Unintelligible)

9 "M1: (Unintelligible) There is one thing that you  
10 don't know."

11 "M2: (Crying) (Unintelligible)

12 "M1: Me." Some kind of space. "Me and Lucy dot  
13 dot dot.

14 "M2: What?

15 "M1: Me and Lucy also had an affair, dude.

16 "M2: Okay. Dot dot dot.

17 "M1: (Unintelligible) That is why I did it.

18 "M2: Okay. (Crying) (Unintelligible)

19 "M1: I'm sorry, dot dot dot.

20 "M2: (Crying) (Unintelligible)

21 "M1: (Crying) (Unintelligible)

22 "M2: Promise me! Promise me!

23 "M1: What?

24 "M2: Promise?

1           "M1: Promise me what?

2           "M2: I want to see you out, okay? Promise I'm

3 going to see you out, okay? Promise me!

4           "M1: (Crying) (Unintelligible) I'm sorry about

5 that! I am going to kill myself, dude.

6           "M2: No, no, dot dot dot.

7           "M1: (Unintelligible)

8           "M2: (Unintelligible) I am going to find you an

9 attorney, okay? You don't have to talk, okay?

10          "M1: I didn't tell anybody, dot dot dot, nobody

11 but you about me and Lucy, dot dot dot.

12          "M2: Nobody knows and no one will ever know, dot

13 dot dot.

14          "M1: I don't want to tell anyone else but you,

15 dude.

16          "M2: No one will know. Don't worry. I mean, I

17 knew, don't worry.

18          "M1: I didn't want to kill her, dude. I wanted to

19 kill the dude.

20          "M2: I know, brother, but it's okay, it's okay,

21 brother, it's okay."

22          That's the end of what the State wants to proffer.

23 It continues on.

24          MR. LEE: That's different than what I'm proffering



1 just so you know. That is the time, but the  
2 translation is different. I'll just leave it at that.

3 MS. RISTENPART: "M1: My parents!

4 "M2: No.

5 "M1: (Unintelligible)

6 "M2: But I have my brother, dot dot dot, but I  
7 have my brother, dot dot dot, friends come and go, dot  
8 dot dot. Do you understand? Do you understand me?

9 "M1: I got you, dot dot dot.

10 "M2: (Crying) Do you understand me? Friends come  
11 and go. Brothers don't come and go. Brothers don't  
12 come and go, bro. (Crying hysterically) I love you.  
13 I'll do everything, okay? I'm going to start working  
14 and I will send you money and we will get out of here.

15 "M1: (Unintelligible)

16 "M2: No. I promise you. Okay?

17 "M1: Yeah.

18 "M2: Eh?

19 "M1: Yeah.

20 "M1: Okay. (Unintelligible)

21 "M2: Who?

22 "M1: (Unintelligible)

23 "M2: No. They will never know.

24 "M2: (Crying) I'm going to say that it was an

1 accident.

2 "M1: (Crying)

3 "M2: I'm going to tell them it was an accident.

4 Do you understand me?

5 "M1: (Crying)

6 "M2: Brother, calm down.

7 "M1: (Crying)

8 "M2: Calm down.

9 "M1: (Crying)

10 "M2: Calm down. Calm down. I'm going to work,

11 okay? Look, it was you who told me.

12 "M1: Get my parents, dude.

13 "M2: Eh?

14 "Get my parents, dude," from M1.

15 "M2: Your clothes?

16 "M1: No, my parents.

17 "M2: Mom and dad?

18 "M1: Yeah (Unintelligible) sent me money, dude.

19 "M2: Okay.

20 "M1: Thanks, bro.

21 "M2: I would like to be you, dude.

22 (Unintelligible) Okay?

23 "M1: I don't know.

24 "M2: What?

1 "M1: I don't know.  
2 "M2: Don't say anything.  
3 "M1: (Unintelligible)  
4 "M2: What?  
5 "M1: I need to know it's worth it.  
6 "M2: What?  
7 "M1: I need to know it's worth it.  
8 "M2: I'm sorry.  
9 "M1: Tell Luis -- call Luis and tell him to tell  
10 Maria to help you, to have you added to --  
11 "M2: No, nothing, nothing, nothing.  
12 "M1: Have him close my account.  
13 "M2: Okay.  
14 "M1: I have to pay all of the -- and everything,  
15 dude.  
16 "M2: We're not going to say anything. Everything  
17 will stay as it is because you are coming out, brother,  
18 nothing, because you are not going to pay anything  
19 except your attorney.  
20 "M1: The car is already paid off but the  
21 registration.  
22 "M2: No, my mom is going to pay everything.  
23 "M1: My mom sold it. My mom sold the car and paid  
24 off.

1 "M2: Right now, brother, we are going to be there  
2 for you, okay?

3 "M1: I'm sorry.

4 "M2: No, don't be. I knew it brother, you can't  
5 do anything about it.

6 "M1: (Unintelligible)

7 "M2: What? (Unintelligible) Eh?

8 "M1: That if we left it that way, they were going  
9 to get you as a conspirer, man.

10 "M2, "What's that?

11 "M1: I was going to tell you what we planned it,  
12 but then they take away your kids.

13 "M2: That he got raped?

14 "M1: No, that I told you it was going to happen  
15 and they were going to take away your kids.

16 "M2: I know. I know. (Unintelligible (Crying)  
17 It's cool. It's cool. You're my bro. You're my  
18 brother, brother.

19 "M1: (Unintelligible)

20 "M2: Stay strong! Stay strong, okay? I promise  
21 every day I'll come see you whenever I can. Okay?

22 "M1: Take care. I'll see you.

23 "M2: Stay strong."

24 And then Bernard walks out and the rest of his

1 family walks in referring to Mr. Silva.

2 THE COURT: What is the source of your translation?

3 MS. RISTENPART: Your Honor, we did our own  
4 translation and then I also had Monica Sandoval who  
5 does not testify in court anymore -- she's taking care  
6 of an elderly mother in California -- do the  
7 translation when I realized they were going to use the  
8 translated statement.

9 THE COURT: So how do you intend -- okay.

10 MS. RISTENPART: Through the State's expert.

11 THE COURT: But, Mr. Lee, you told me your State's  
12 expert never translated that second portion. That's --  
13 I believe you and Ms. Ristenpart are honest advocates,  
14 but that doesn't sound right to me. So there must be a  
15 gap. This prosecution or the law enforcement must have  
16 inquired as to what that conversation was about to know  
17 not to use it, because they chose to use a portion of  
18 it. And I thought you told me yesterday that that  
19 second portion had never been translated.

20 MR. LEE: It had never been translated by us or  
21 Reno R.P. that I know of. She would have had it, and  
22 she doesn't have it either, Your Honor.

23 THE COURT: So there was a conversation between  
24 Mr. Silva and his brother. You are aware of that

1 conversation?

2 MR. LEE: Yes.

3 THE COURT: And nobody wondered what was said  
4 between the two of them, for example, "I killed her. I  
5 put the gun underneath the culvert pipe"? I mean, it  
6 could have been any inculpatory statement and you never  
7 bothered --

8 MR. LEE: So if I could. I'm sorry. I don't mean  
9 to interrupt you. I don't recall how it all came  
10 about, but we had a translation that was done of those  
11 two minutes. Without having looked at the entire  
12 thing, I thought that was the entirety of it. That  
13 translation we had Suli, our interpreter, look at, that  
14 translation. And she on her own went through and  
15 translated as we have now in evidence. There is more,  
16 but we never had it translated.

17 THE COURT: Doesn't that worry you that -- doesn't  
18 it worry you that there's more conversation that could  
19 be profoundly inculpatory but nobody bothered to look  
20 at it?

21 MR. LEE: I can tell you as well, we received a  
22 piece from I believe CPS. The timing is all off on a  
23 lot of it, but they hit some points all throughout all  
24 of it. And this was available, Your Honor. We had it

1 before. So I don't know why it got cut off at two  
2 minutes or not. But this is not a full translation by  
3 any means, but it does have something -- such as "Bring  
4 my parents. Don't talk anymore."

5 This is the extent of it beyond what I have. It  
6 says, "I'm going to start working and send you money."

7 Bernard says, "I will tell them it was an  
8 accident."

9 Bernard says, "Calm down."

10 Richard: "Bring my parents."

11 Bernard says, "Don't talk anymore."

12 Richard says, "Call Luis and Maria and they can  
13 help you and add you. I still have to pay. Tell them  
14 to close my account."

15 Bernard says, "Nothing is going to get paid, only  
16 your lawyer."

17 And Richard said, "If I didn't confess, they would  
18 put you down as a suspect and take your kids away."

19 THE COURT: Okay. Well, that makes sense then. At  
20 least somebody looked at that second portion that you  
21 have chosen not to seek the admission.

22 MR. LEE: Correct.

23 MS. RISTENPART: Your Honor, I would like to make a  
24 record. Reno Police Department, that's why I called

1 Detective Herrera on the very first day before trial.  
2 You need to remember I asked him a question about did  
3 you translate regarding the accident. And Detective  
4 Herrera couldn't remember specifically, but then the  
5 Court kind of asked what was the whole point of this  
6 and then we went to the rule of completeness.

7 In Supplement 13 of Detective Thomas's report who  
8 is the lead detective on this, on page 26 Detective  
9 Herrera is summarized in that report as making a  
10 translation to Reno Police Department and he does state  
11 specifically, Detective Thomas, "Bernard told Silva I  
12 will tell them it was an accident," which as you know  
13 from my proffer was after the cutoff portion as to what  
14 the State is asking for you to admit. That CPS  
15 reference I've never seen, because CPS has never turned  
16 over their records to me in this case.

17 THE COURT: You would agree, Ms. Ristenpart, that  
18 generally your client does not have the privilege of  
19 choosing which of his recorded statements go in front  
20 of the jury? Would you agree with that?

21 MS. RISTENPART: Your Honor, in the rule of  
22 completeness there is the case law that says hearsay  
23 doesn't trump that, right, and that unfortunately the  
24 way our laws are written and the rules of evidentiary



1 is that the statement against interest is a very  
2 powerful weapon under evidentiary rules that the State  
3 is allowed to use and pick and choose the statements  
4 that they want to put in.

5 In regards to this particular translated statement,  
6 Your Honor, there's a couple multiple layers. When the  
7 State announced their lineup for today -- maybe they're  
8 changing it, but their lineup of witnesses, I did not  
9 hear Bernard Silva's name.

10 And how they're going to proffer Mr. Silva's,  
11 Bernard Silva's hearsay statements in this translated  
12 statement without putting Mr. Silva on and violating  
13 Mr. Silva's Sixth Amendment confrontation rights as to  
14 what were the other portions of this, the  
15 unintelligibles, was that exactly what he said --  
16 again, this is an interpretation of what they think  
17 they said from a very difficult video recording as to  
18 what is being said and who is saying what. So how  
19 they're going to get past that hearsay and Sixth  
20 Amendment confrontational. But then even to go further  
21 than that is that that statement, "I will tell them  
22 it's an accident," they're talking right in reference  
23 to this alleged affair that they're alleging  
24 Mr. Richard Silva confessed to his brother.

1           And that is directly under the rule of  
2   completeness, that it puts it into context, they're  
3   continuing on a conversation about it. And, yes,  
4   there's some unintelligible about what else -- there's  
5   so much unintelligible in this that a lot of things do  
6   seem out of context, but under the rule of completeness  
7   he specifically states as far as we can tell through  
8   translation --

9           "M2: No, they will never know.

10          "M2: (Crying) I'm going to say it was an  
11   accident.

12          "M1: (Crying.)

13          "M2: I'm going to tell them it was an accident.  
14   Do you understand me?"

15          And "that they will never know" is referencing the  
16   conversation the State wants to put in as to Lucy and  
17   Mr. Richard Silva supposedly having an affair and that  
18   he was worried that he didn't want anyone else to know.

19          THE COURT: Do you have any arguments related to  
20   the recorded telephone call?

21          MS. RISTENPART: With that, Your Honor, the bank  
22   statement, and I know what the State is trying to keep  
23   out, is that after Mr. Richard Silva speaks with his  
24   mother and they're trying to bring in what they believe

1 the inculpatory statement is, "I got rid of the gun,"  
2 that Mr. Silva states to his mom on the jail recorded  
3 phone call. What happens next is Mr. Bernard Silva  
4 gets on the phone and Mr. Bernard Silva says, "I am the  
5 guilty one."

6 That, Your Honor, under the rule of completeness, I  
7 would have to be very pretty frank that it's far  
8 removed from the gun portion of it, if I remember  
9 correctly. I would have to go back and look at the  
10 exact translation. There's some other conversation.  
11 But, Your Honor, it's a hearsay exception. That's a  
12 statement against interest.

13 With that, Your Honor, the other statements that  
14 Mr. Silva tells Bernard, back to the translated  
15 statement, is that "I need to know it was worth it" and  
16 reply by Bernard, "I'm sorry," and then Richard telling  
17 Bernard that if he left it that way they were going to  
18 get you as a conspirer, man, and Richard saying, "I was  
19 going to tell you that we planned it, but then they  
20 would take away your kids," those statements, Your  
21 Honor, I -- even though I could still argue it's under  
22 the rule of completeness, unfortunately I think under  
23 the case law that it is just trumped unless Mr. Richard  
24 Silva takes the stand for those particular statements.

1 The other I'm arguing does and also the statement  
2 against interest in the jail phone call. Thank you.

3 THE COURT: I appreciate your candor. Sometimes  
4 when lawyers on both sides of the courtroom contest  
5 nothing and argue everything they lose credibility.  
6 And you have a charge to zealously with spirit defend  
7 your client's interests, but you're also not -- but  
8 you're recognizing that there are some -- I just  
9 appreciate your candor and your zeal.

10 MS. RISTENPART: Thank you, Your Honor.

11 THE COURT: Mr. Lee, let's begin with your memory  
12 of my oral pronouncements regarding the transcript,  
13 because Ms. Ristenpart and I have a different  
14 recollection.

15 MR. LEE: What I recall is -- was it Friday? I  
16 think you had given some preliminary indication that I  
17 could use the captions.

18 THE COURT: Right.

19 MR. LEE: And that's what the plan was. On Monday  
20 she made the argument about rule of completeness, you  
21 ordered it, and then we were talking about that Bernard  
22 and Mr. Silva conversation. And so she argued there  
23 should be an extension of this interview and you said,  
24 "Well, if there's an extension, I'm not going to have

1 captions on one part and not the other part." And so  
2 at that point you said no captions on that.

3 THE COURT: But you then requested that as a  
4 compromise I allow captions on the closing argument.

5 MR. LEE: Yes. And then I think you had stood up,  
6 if I remember right, and we brought up the jail call  
7 and you said same ruling with the jail call.

8 THE COURT: Any argument you want to make in  
9 response to Ms. Ristenpart?

10 MR. LEE: A few. There is -- as far as the jail  
11 calls, I'll start there, there's really no context that  
12 is offered by Bernard 12 pages later in the transcript  
13 saying, "I'm the guilty one." We don't have Bernard.  
14 We don't know where Bernard is. We've tried getting  
15 Bernard. And so he's not here, he's not a part of it.  
16 But those don't give any context to Mr. Silva saying,  
17 "They're not going to find the gun, I already got rid  
18 of it."

19 I do want to let the Court know that in part of the  
20 translation offered by the State and captioned it  
21 deletes one small portion of that. Again, this is all  
22 that was -- this was provided to defense, but I  
23 deleted -- the total phrase is this: "They told me" --  
24 in talking about a search warrant for his car, "They

1 told me because they're trying to find the gun, but I  
2 already told them they aren't going to find it, I  
3 already got rid of it."

4 I deleted the part "I already told them." I think  
5 that references a conversation that Your Honor  
6 suppressed, so I got rid of the quote "I already told  
7 them."

8 Other than that, again -- so that's the talking, "I  
9 already got rid of the gun." Bernard's statements have  
10 nothing to do with that. They don't give any context,  
11 and I think I should be able to play that file alone.

12 As far as the interview with Richard and Bernard,  
13 again, this is something that was provided long ago.  
14 The translation was provided long ago. The captioned  
15 copy, meaning that translation now inputted into the  
16 copy, was provided a month in advance of trial, 31 days  
17 I think it was. And so there's really no argument of  
18 surprise here.

19 And the conversation later in that two minutes  
20 after the State's proposal ends where Mr. Silva says --  
21 I mean, all of this -- apparently -- again, I believe  
22 what he said according to the defense translation, "If  
23 I didn't confess they would put you down as a  
24 suspect" -- I don't think they said "suspect" though --

1 that really doesn't give context again to him saying  
2 what our translation has such as "I didn't want to kill  
3 her. I wanted to kill the dude. Me and Lucy were  
4 having an affair, dude." Those are really the main  
5 points that I'm after.

6 I will give one caveat. I would have to agree with  
7 the defense, the captions that include the identities  
8 of Bernard and Richard, I think I could make that  
9 argument in closing, but I think for probably the trial  
10 itself I think it shouldn't be there. I'm going to be  
11 brutally honest, because that's not what the  
12 translation entails. I'll have evidence frankly of  
13 who's talking and how, so I think that would be  
14 something I could argue, and I would still ask to be  
15 able to at closing include the captioning.

16 THE COURT: I very much appreciate having both of  
17 you in Department 15. I just spent a moment  
18 complimenting Ms. Ristenpart and I also appreciate your  
19 candor, Mr. Lee.

20 I developed the practice of including in every  
21 order in limine an escape clause, because trial always  
22 unfolds with its own personality. And when  
23 Ms. Ristenpart made the argument Monday I did the best  
24 with the information at the time that I had. Judges

1 don't typically like motions for reconsideration  
2 because it is typically over-argument, reargument of  
3 what is already over-argued. This presents a different  
4 fact pattern in that upon reflection and legal analysis  
5 Mr. Lee invited me to be more thoughtful about my  
6 decision.

7 There are two statutes. The first is 51.035 which  
8 defines hearsay and excludes from the hearsay rule the  
9 statement of a party offered against that declaring  
10 party. That's not hearsay.

11 NRS 47.120 provides that if part of a recorded  
12 statement is introduced by a party, that party may be  
13 required to introduce another part that is relevant to  
14 the part introduced and the non-introducing party may  
15 introduce other relevant parts. That's a lot of words.  
16 It's kind of complicated and circular. But what I know  
17 from the decisional authority is that NRS 47.120 is  
18 patterned after the Federal Rule 106. It is designed  
19 to establish context so that the portion not offered  
20 may be admitted to explain the portion first offered.

21 The State has offered a portion of Mr. Silva's  
22 recorded statement in its case in chief. That is a  
23 statement against Mr. Silva. Mr. Silva now asks that  
24 other portions of his recorded statement be admitted.



1 The tension is that Mr. Silva cannot himself offer any  
2 portion of his recorded statement. If he wishes to  
3 present his own words or voice to the jury, he must do  
4 so under oath subject to cross-examination. I'm not  
5 requiring that under any circumstances that he do so,  
6 but that's the choice that he needs to make.

7 Having read Torres-Banuelos versus State, there the  
8 defendant sought to admit his exculpatory statement to  
9 the police under NRS 47.120 and the court held that  
10 47.120 does not compel admission of otherwise  
11 inadmissible hearsay evidence. And unless the State  
12 offers it, it is inadmissible hearsay evidence. And  
13 this applies regardless of the rule of completion.

14 That same analysis was set forth in Robles versus  
15 State where the State only offered a portion of the  
16 defendant's statement and indicated upon review that  
17 the rule of completeness does not compel the admission  
18 of otherwise inadmissible hearsay evidence.

19 The State does not have an obligation to translate  
20 any portion of the recorded statement that it does not  
21 intend to introduce. It produced the entire recording  
22 during discovery. The defense has some form of  
23 translation. It has been proffered into evidence. I  
24 do not find that that new proffered evidence

1 contextualizes and answers a portion introduced --  
2 first sought by the State to be introduced. There's no  
3 cause for me to conclude that the State's portion  
4 creates confusion or it is incomplete and can only be  
5 clarified and made complete through the second portion  
6 that Mr. Silva seeks to introduce.

7 I am granting a rule for reconsideration, but I am  
8 not allowing the transcription to be attached to the  
9 video evidence. You may alter -- excuse me. You may  
10 not alter the evidence that is admitted into the case.  
11 You may present arguments during closing that include  
12 some form of demonstration. And that will be my  
13 ruling.

14 MS. RISTENPART: Your Honor, I do have to ask in  
15 regards to the Sixth Amendment right to confrontation,  
16 Mr. Bernard Silva being an unavailable declarant and  
17 also, Your Honor, the statement against interest in  
18 regards to Mr. Bernard Silva stating, "I am the guilty  
19 one," now that the State has confirmed that Bernard is  
20 unavailable because they can't find him, a statement  
21 against interest pursuant to NRS 51.345, a statement  
22 against penal interest is admissible if, one, at the  
23 time of its making the statement tends to subject the  
24 declarant to civil or criminal liability; two, a

1 reasonable person in that position would not have made  
2 the statement unless he believed it to be true and;  
3 three, the declarant is unavailable as a witness at the  
4 time of trial.

5 Based upon that, Your Honor, we're asking that you  
6 admit that one statement Mr. Bernard Silva stated, "I  
7 am the guilty one," on that recorded jail phone call  
8 which we know the State has very clearly recorded and  
9 that Mr. Bernard Silva did have everything to know that  
10 he had some criminal liability in this case, he was a  
11 suspect, as the Court has elicited and heard from  
12 testimony and also that we have a declarant unavailable  
13 as even the State confirmed that they cannot get  
14 Mr. Bernard Silva.

15 THE COURT: So you are asking that during your  
16 defense case you be allowed to introduce that single  
17 statement from Mr. Bernard Silva?

18 MS. RISTENPART: Yes.

19 THE COURT: "I am the guilty one."

20 MS. RISTENPART: Correct.

21 THE COURT: I'll have to think about that, because  
22 Monday I made a quick decision and then upon reflection  
23 I revisited my decision. I want to think about that,  
24 and I will during trial, because there are a couple of

1 things going on. I don't understand what the statement  
2 means, "I am the guilty one." Guilty of what? I don't  
3 understand without cross-examination what was intended  
4 by that. And I'm sure that the three of us might have  
5 three different interpretations of what that means. So  
6 there's an unreliability that attaches to it. I just  
7 want to think about that. I want to think about  
8 whether a witness can create his or her own  
9 unavailability.

10 MS. RISTENPART: I'm giving a puzzled face, Your  
11 Honor, because if they're unavailability, they're not  
12 here. And that's what the State just said, that  
13 they've been trying to find him.

14 THE COURT: Right. So I don't have any evidence as  
15 to the State's attempts to make him available, but I  
16 regularly -- I am sensitive to gamesmanship. I'm not  
17 suggesting that's happened here, but it is a pattern  
18 that I've seen over the past 15 years.

19 If Mr. Silva has evaded service, for example, if  
20 there have been exhaustive efforts, for example, then  
21 it would be unjust initially -- I would have to think  
22 about it -- to let a benefit inure to his evasion.  
23 Again, I don't have any idea what the State's efforts  
24 have been, but that unavailability needs to be reviewed

1 within the context of evidence and not in isolation.  
2 You did have a puzzled face. That's why I took some  
3 time to try and explain it.

4 MS. RISTENPART: Well, no, I feel that the illusion  
5 the State is giving is somehow the defense has engaged  
6 in gamesmanship in this case. That's what I was  
7 hearing from --

8 THE COURT: Not the defense. I don't think Mr. Lee  
9 suggested that you are doing anything. I could infer  
10 from the video that Mr. Silva and -- that Mr. Bernard  
11 is hostile to the prosecution, that he is in favor of  
12 his brother. I could infer that. And so I don't know  
13 what "unavailability" means. I just don't know what  
14 the State's attempts are. So I want time to look at  
15 51.345.

16 MS. RISTENPART: And then in regards to Sixth  
17 Amendment confrontational right, Your Honor?

18 THE COURT: So it is true that Mr. Silva's  
19 statements are not hearsay when offered by the State  
20 against him. You'll have to find an exception if it  
21 exists that would allow Mr. Bernard's comments to come  
22 in.

23 MR. LEE: Judge, there is case authority that when  
24 it is context it can come in for these limited

1 purposes. And here Mr. Bernard is really not saying  
2 anything. What I have is "Me and Lucy" --

3 Bernard says, "What?"

4 "Me and Lucy were having an affair, dude."

5 Bernard says, "Okay."

6 Richard says, "That's why I did it."

7 Bernard says, "Okay," and cries.

8 Mr. Silva says, "I'm sorry."

9 Then Bernard says, "Promise me! Promise me!  
10 Promise me!"

11 Richard says, "Promise me what?"

12 "I want to see you out."

13 And it says some more, "Promise me I'm going to see  
14 you out, okay?"

15 And then Bernard's other thing is "I'm going to  
16 find a lawyer, okay? A lawyer, okay?"

17 Richard says, "I didn't tell anyone, anyone but you  
18 about me and Lucy."

19 Bernard says, "No one knows and no one will ever  
20 know."

21 And Richard says, "No one -- I just want to tell  
22 you, dude."

23 Bernard says, "No one will know. Don't worry. I  
24 knew. Don't worry."

1           And then Richard, "I didn't want to kill her, dude.  
2 I wanted to kill the dude."

3           Bernard, "I know. It's okay. It's okay, bro."

4           THE COURT: So I need some law. You just read the  
5 transcript, but I have somebody who is going to be --  
6 whose voice is going to be presented to this -- whose  
7 voice you want to present to the jury who is not  
8 available to confront or cross-examine. There is  
9 either an exception or a lawful pathway to get it in or  
10 there is not. And you'll have to have time to present  
11 that and whatever conclusion the Court reaches the  
12 Court reaches.

13          MR. LEE: A couple other issues, Your Honor, that  
14 you've raised. I had talked about with regard to the  
15 captions that I agree that identifying Bernard and  
16 Richard is an argument. And Your Honor ordered that I  
17 can't use the captions in the presentation. What about  
18 the jail call? That to me is much different. Here  
19 we've clearly got Silva and a woman talking. And so  
20 those captions would say "Silva" and "woman." And that  
21 I have not -- from the portion I want to use it's the  
22 full translation, nothing missing from it.

23          THE COURT: I think you need to get it in through  
24 your witness.

1 MR. LEE: I'm sorry?

2 THE COURT: I think you need to get it in through  
3 your witness.

4 MR. LEE: I would get it in, but as far as the  
5 presentation goes I would like to then -- so I can lay  
6 a foundation through my witness through video that  
7 she's seen it, that the entire caption appears, it's  
8 accurate. And then when I admit it into evidence, then  
9 I would like the translator to go through with the  
10 video caption. Otherwise I play the video in silence  
11 and then I try to admit a translation and then she  
12 reads from the translation.

13 She could do that, but, again, there's nothing that  
14 really precludes that one coming in. I mean the  
15 caption on there. It's the full translation.

16 MS. RISTENPART: Your Honor, the woman on that jail  
17 phone call is Mr. Richard Silva's mother. We're still  
18 having a Sixth Amendment confrontation issue because  
19 there is statements made by Mrs. Silva to Richard that  
20 they're wanting to proffer. I know they're not calling  
21 Mrs. Silva because they've not subpoenaed her and she  
22 has been in court every single day to support her son.  
23 I don't know how they're going to do that also with  
24 Mrs. Silva's statements in that jail phone call.



1 In regards to the translated portion, Your Honor,  
2 my understanding from yesterday is also that they want  
3 to play the full -- this is a jailhouse recording.  
4 Everything you say can and will be recorded, obviously  
5 inferring that Mr. Silva is in custody which is under  
6 the guise of what we try very hard to not have the jury  
7 know during jury trial. And then also the fact of  
8 Mrs. Silva's comments and statements they also want in  
9 without having to put Mrs. Silva on the stand.

10 THE COURT: Have you subpoenaed Mr. Bernard Silva?

11 MS. RISTENPART: Your Honor, we have. And, Your  
12 Honor, there's still an open CPS case, so I don't know  
13 this inference that's he ducking service. I mean,  
14 there's many avenues that are available to the State.

15 THE COURT: I only constructed a hypothetical. I  
16 was in no way suggesting that's what's happened in this  
17 case. I identified why I would want to be thoughtful  
18 about my decision, because there's a lot of different  
19 influences.

20 Did you ever get a subpoena served?

21 MR. LEE: No.

22 THE COURT: And was your subpoena served?

23 MS. RISTENPART: Yes.

24 THE COURT: I didn't hear you respond to the

1 State's request to present Mr. Bernard's statement,  
2 "I'm the guilty one," in isolation because he's an  
3 unavailable witness, she subpoenaed and served him and  
4 he's chosen not to be here.

5 MR. LEE: Has he chosen not to be here?

6 THE COURT: I'm anticipating that during the  
7 defense case he will not arrive. It changes things, I  
8 guess, if he does.

9 MR. LEE: I don't know that that necessarily --  
10 again, I have to revisit the new issue too. I've got  
11 to research it and look it up. So I don't know that,  
12 Your Honor.

13 THE COURT: Okay. I've written what I think the  
14 issues are for me to decide. I've already announced  
15 that I have granted the motion to reconsider and the  
16 State will introduce what portions it chooses and the  
17 second portions are not necessary under the rule of  
18 completion because they do not contextualize in a way  
19 that would rise to a level to equal or overtake NRS  
20 51.035.

21 There will not be a transcription of the video  
22 recording during the State's case in chief, but the  
23 State is authorized to create demonstrative aids in  
24 support of its closing arguments.

1           The Bernard video is subject to the defense  
2 argument that Mr. Bernard's participation violates the  
3 right of cross-examination and confrontation because  
4 Mr. Bernard on the video is providing a hearsay  
5 declaration. The State is going to respond to that  
6 before it introduces the evidence. You'll need time, I  
7 guess, to put it together. You told me there's case  
8 authority, but I need more than that. So whether the  
9 State can bring in the Bernard video in violation of  
10 cross-examination and confrontation, we're going to --  
11 we'll revisit.

12          Mother's participation in a telephone recording  
13 from the jail. First, the recording that begins the  
14 conference, the conversation, it's that typical  
15 admonition, this call is being recorded. There's two  
16 sides to look at that. One, it's not -- the State  
17 doesn't want to allow the defense to infer that there's  
18 some unfair strategy or gamesmanship in which it's been  
19 surveilling telephone calls but instead Mr. Silva was  
20 on notice that anything he said was subject to  
21 presentation, subject to being evidence.

22          On the other side, Mr. Silva indicates that it  
23 indicates he was in custody. I regularly allow that  
24 recording to come in, because it is not a surprise to

1 this jury that Mr. Silva would have been arrested at  
2 some point. Mr. Silva has not presented in any way in  
3 custody during this trial, but the fact that he has  
4 been arrested is not so prejudicial that it will  
5 influence the outcome of this proceeding. So the  
6 recording admonition is allowed.

7 Mr. Silva argues that his rights of confrontation  
8 and cross-examination are violated because his mother  
9 presents hearsay statements in that recorded call.  
10 Whatever legal pathway you present to the Court  
11 regarding Bernard, if pervasive, will equally apply to  
12 mom. So my decision will be consistent. Either  
13 Bernard and mom are out because of cross-examination  
14 and confrontation or Bernard and mom are in because of  
15 some exception.

16 And then I also have the issue of Bernard's  
17 telephone call participation where he says, "I am the  
18 guilty one," whether that can be presented by the  
19 defense in its case in chief which we'll talk about out  
20 of the jury's presence.

21 Those are all the issues before me. Did I miss  
22 anything?

23 MR. LEE: Two clarifications, if I could. As far  
24 as the jail call, the part that I provided to counsel,

1 just so everyone knows -- again, I don't think it's any  
2 surprise that he's in jail. In fact, the only phone  
3 call I'm trying to use is within a day of his arrest,  
4 and so that's going to come out. However, I did redact  
5 certainly the jail call references. So it usually says  
6 "an inmate at the Washoe County Jail." I've redacted  
7 that. And so the call itself makes no reference to him  
8 being in custody.

9 THE COURT: Does the call -- does your -- the  
10 portion you intend to admit, does it include that  
11 prerecorded statement?

12 MR. LEE: It does. Could I read it?

13 THE COURT: Yeah.

14 MR. LEE: So the part that I have -- again, it  
15 deletes any reference to the jail, but it says, "Please  
16 wait while your call is being recorded. Please hold.  
17 Hello. This is a free call from Richard. To accept  
18 this free call press zero. To refuse this free  
19 call" -- and then he accepts it. "This call is subject  
20 to monitoring and recording. Thank you for using GTL."

21 However, to admit this and lay the foundation I do  
22 have to call Deputy Moreno who is the custodian of  
23 records at the jail for these calls. And so it will  
24 come up, but, again, I've tried to make this --

1 THE COURT: Unless the defense stipulates, which  
2 I'm not suggesting it should, but that's the two-edge  
3 sword, because I appreciate that you've redacted  
4 references to the county jail, but as soon as you bring  
5 Ms. Moreno in it's going to reveal that he was in jail.  
6 So you'll have to decide which is less worse.

7 MR. LEE: And then my other point, what I'm  
8 speaking clarification on -- your Honor, you said no  
9 transcription. Did you mean no captioning  
10 transcription?

11 THE COURT: No captioning transcription embedded  
12 into video that the jurors see.

13 MR. LEE: Okay. I may still seek a translation on  
14 paper that would say --

15 THE COURT: Yeah. You'll have to lay a foundation  
16 for that.

17 MR. LEE: Of course. Thank you.

18 THE COURT: Any clarification from you?

19 MS. RISTENPART: No, Your Honor.

20 THE COURT: We'll see Juror No. 13 in five minutes.

21 (A recess was taken.)

22 THE COURT: Good morning. Just have a seat in the  
23 courtroom. We're in the presence of Juror No. 13.

24 Everyone be seated, please.

1 I just want you to know that I remain aware of your  
2 scheduled weekend where your cousin is being married in  
3 Las Vegas. And your intention is to leave tomorrow at  
4 noon and depart Las Vegas Monday morning?

5 JUROR NO. 13: Right.

6 THE COURT: I just want you to know I continue to  
7 think about that. Has anything changed in that  
8 schedule?

9 JUROR NO. 13: No, not yet.

10 THE COURT: That is still your intention?

11 JUROR NO. 13: Well, I'm waiting to see what  
12 happens here, yeah.

13 THE COURT: Has any flexibility developed that I  
14 should now about?

15 JUROR NO. 13: I mean, we can leave later in the  
16 day tomorrow. That's not an issue. So that's  
17 something I could do. And if I have to cut it short,  
18 then I have to cut it short.

19 THE COURT: Thank you. I'm sure that we'll revisit  
20 the schedule sometime today.

21 JUROR NO. 13: Okay.

22 THE COURT: Go ahead back into the room.

23 See you in five minutes.

24 THE CLERK: Exhibit 136 marked for identification.

1 (Exhibit 136 was marked.)

2 (A recess was taken.)

3 THE COURT: I understand that you've got a late  
4 witness.

5 MR. LEE: We're checking.

6 THE COURT: Please don't stand up. The deputy and  
7 I regularly negotiate about who stands and who doesn't  
8 stand when I come in the room. It feels so awkward to  
9 me, yet I respect the law that we all stand in court.

10 MR. LEE: He's in the basement right now. Do you  
11 want him on the stand when the jurors come out?

12 THE COURT: It doesn't matter to me. Why don't we  
13 await him and we'll have him on the witness stand.

14 Good morning. You'll return to your place here and  
15 we will now invite the jury in.

16 (Proceedings within the presence of the jury.)

17 THE COURT: Good morning. Everyone be seated,  
18 please. Mr. Guzman is on the witness stand.

19 Sir, you remain under oath from yesterday.

20 To the defense, you may begin.

21 MS. RISTENPART: Thank you, Your Honor.

22 YIOVANNIE GUZMAN,  
23 having been previously duly sworn, was  
examined and testified further as follows:

24 /////



CROSS-EXAMINATION

BY MS. RISTENPART:

Q November 16th of 2017 you were arrested; right?

A Correct.

Q For murder?

A Correct.

Q With the use of a deadly weapon?

A Correct.

Q And just a few months before you had turned 18;  
right?

A Correct.

Q Graduated high school?

A Yes.

Q Had been working at a pizza place?

A Jeep.

Q Before that you had been working at a pizza  
place?

A Right.

Q You had just gotten a better job at Jeep;  
right?

A Right.

Q As a porter?

A Right.

Q Working there for a couple months?

1           A     Right.

2           Q     And you have a large, loving family; right?

3           A     Correct.

4           Q     In high school you were popular? You had a lot

5 of friends?

6           A     Right.

7           Q     And you have a tight group of close friends,

8 don't you?

9           A     Correct.

10          Q     And as we talked about yesterday, Mr. Guzman,

11 your relationship to Richard is that you're cousins?

12          A     Correct.

13          Q     Your moms are sisters; right?

14          A     My dad.

15          Q     Dad and his mom are brother and sister?

16          A     Correct.

17          Q     And you grew up with Richard?

18          A     Correct.

19          Q     In fact, you refer to him as Willo; right?

20          A     Correct.

21          Q     And that's a nickname that he got as a little

22 kid?

23          A     From family.

24          Q     And you know Willo to be a hard worker?

1 A Correct.

2 Q He worked at a bank for several years; right?

3 A Yes.

4 Q After he graduated high school?

5 A Yes.

6 Q And then worked at the DMV?

7 A Correct.

8 Q And you also knew that Richard loved Bernard's

9 kids?

10 A Right.

11 Q Helped take care of them a lot?

12 A Right.

13 Q In fact, his whole family helped take care of

14 Bernard's kids?

15 A Right.

16 Q And when your older brother was away for a few

17 years Richard stepped in to help?

18 A Correct.

19 Q Had you wash his car for some extra cash for

20 you?

21 A Right.

22 Q Had you wash like his fish tank?

23 A Correct.

24 Q For some extra cash?

1           A     Yes.

2           Q     And you were frequently over to his house?

3           A     Yes.

4           Q     His family home?

5           A     Yes.

6           Q     In fact, during the summer there were times

7 where you would be over at the family home like every

8 week?

9           A     Yes.

10          Q     Now, yesterday you told us a story. And you

11 told us that you ran into Richard on Halloween?

12          A     Yes.

13          Q     At Paul's Market?

14          A     Right.

15          Q     And you told us that Richard said that he

16 wanted to body someone?

17          A     Correct.

18          Q     Which to you meant kill somebody?

19          A     Right.

20          Q     And in response you told us that you were like,

21 "Okay"; right?

22          A     Right.

23          Q     And in response you said, "You could use my

24 car"?

1           A     Right.

2           Q     And you told us yesterday that you met him

3 later.

4           A     Right.

5           Q     At a friend's house?

6           A     Yes.

7           Q     And that there were other people there?

8           A     Yes.

9           Q     And the purpose was to switch cars?

10          A     Yes.

11          Q     But then when you got there you realized you

12 couldn't drive a stick; right?

13          A     Right.

14          Q     And so therefore it wasn't switching cars, it

15 would just be that you would just drive Richard?

16          A     Correct.

17          Q     To commit murder?

18          A     Correct.

19          Q     And you told us that you didn't go then, you

20 decided to go later; right?

21          A     Right.

22          Q     But that you went home?

23          A     Right.

24          Q     Fell asleep?

1 A Right.

2 Q In fact overslept?

3 A Right.

4 Q And missed the time for the murder?

5 A Correct.

6 Q So that you planned to go later in the next  
7 night?

8 A Right.

9 Q And that day you went to work?

10 A Right.

11 Q And that you told us you went over to the  
12 Sbragia house around like -- I think you said around  
13 8:00, 8:45.

14 A Around.

15 Q And you told us yesterday that Richard's  
16 parents who live at that house were not there.

17 A That's what I was told.

18 Q That's what you were told?

19 A Right.

20 Q Did you search the entire house for them?

21 A No.

22 Q And that you then drove Richard to get  
23 cigarettes?

24 A Right.

1           Q     And you told us yesterday that also Richard was  
2 making a plan to get gloves or a mask while at the  
3 7-Eleven?

4           A     One of the two. I can't quite remember.

5           Q     And that you then claim that you drove over to  
6 Luz's mothers's house?

7           A     Right.

8           Q     Over by the Nissan dealership?

9           A     Correct.

10          Q     And that then you guys drove back to Richard  
11 and Bernard's house?

12          A     No, not after -- not after we went to Luz's  
13 mom's house.

14          Q     So you didn't go back to the Sbragia house?

15          A     Later on, yes.

16          Q     That's right. You told us yesterday that you  
17 then went to Arturo's house?

18          A     Right.

19          Q     To see if Luz was there?

20          A     Right.

21          Q     And then decided to return back to the Sbragia  
22 house?

23          A     Correct.

24          Q     And that's when you told us that you talked

1 with Bernard?

2 A Yes.

3 Q And talked about the plan of how to kill Luz?

4 A Right.

5 Q And Bernard told you, "You're doing this for  
6 me"?

7 A I can't quite remember his phrase, like how he  
8 said it, but yes.

9 Q And you told us yesterday that he seemed a  
10 little sad?

11 A Right.

12 Q Bernard?

13 A Right.

14 Q And you told us yesterday that Richard kept  
15 telling you, "Don't get cold feet"?

16 A Correct.

17 Q Now, you woke up; right?

18 A Yes.

19 Q Warmed up your car?

20 A Yes.

21 Q And you and Richard drove over to Luz's again?

22 A Yes.

23 Q Then drove over to Arturo's house again?

24 A Correct.



1 Q And then just waited?

2 A Correct.

3 Q Down the street?

4 A Correct.

5 Q And you played on your phone?

6 A Right.

7 Q And Richard smoked outside?

8 A Right.

9 Q And you told us the plan was to pick that spot

10 because there was a stop sign where Luz's car would

11 stop?

12 A Right.

13 Q At that intersection?

14 A Correct.

15 Q And you saw Luz's car stop at a stop sign;

16 right?

17 A Correct.

18 Q And you saw Richard shoot?

19 A Right.

20 Q And you believe it was a revolver?

21 A I thought so.

22 Q But you told us yesterday, well, you never

23 really saw it?

24 A Right.

1 Q And that then you guys just drove off?

2 A Correct.

3 Q And you just dropped him off down the street  
4 from his house?

5 A Right.

6 Q And you just went home?

7 A Right.

8 Q And you also told us that you met up with  
9 Richard to clean his car?

10 A Right.

11 Q But you don't believe that you guys talked  
12 about the murder that one time?

13 A Not at that time I believe.

14 Q But then you also told us that you claimed you  
15 met Richard at McDonald's; right?

16 A Right.

17 Q And that was just a couple days before you were  
18 arrested on 11/16?

19 A Correct.

20 Q And that's when you guys talked about the  
21 murder?

22 A Correct.

23 Q And then you were interviewed by police on  
24 November 16th?

1 A Correct.

2 Q You told them a story?

3 A Correct.

4 Q And was arrested?

5 A And was arrested, right.

6 Q Now, that interview with police that occurred

7 on November 16th of 2017, you were interviewed by a

8 female detective; correct?

9 A Correct.

10 Q In fact, I think you referred to her as

11 Mrs. Jenkins yesterday.

12 A Yes.

13 Q That would be Detective Jenkins; correct?

14 A Yes.

15 Q And that interview was quite lengthy; right?

16 A Very.

17 Q It's almost eight hours?

18 A Right.

19 Q Right?

20 A Right.

21 Q And at first you denied everything?

22 A Right.

23 Q And they kept questioning you?

24 A Right.

1           Q    I say "they," but it was really Detective  
2 Jenkins; right?

3           A    Right.

4           Q    Kept questioning you, showed you pictures of  
5 your car at the 7-Eleven?

6           A    Right.

7           Q    And even though you kept trying to deny it,  
8 after they showed you the pictures and they kept  
9 questioning you, you then said it was Richard who shot?

10          A    No.

11          Q    So let's go through some of your statements  
12 that you told Detective Jenkins versus what you told us  
13 yesterday.

14          A    Right.

15          Q    You told us yesterday that when you went to the  
16 Sbragia house that the parents were not there?

17          A    Right.

18          Q    And you just kind of qualified that a little  
19 bit by saying, "Well, I don't know if they were there."  
20 When I asked you did you look for them, you said, "No";  
21 right?

22          A    Right.

23          Q    You told Detective Jenkins that you ate dinner  
24 with the whole family, didn't you?

1           A     I don't remember.

2           Q     You told Detective Jenkins that your tia and  
3     tio which is Spanish for aunt and uncle --

4           A     Right.

5           Q     Which would be Richard's parents?

6           A     Right.

7           Q     -- were there. You told Detective Jenkins  
8     that?

9           A     I don't remember.

10          Q     You told Detective Jenkins that Noe was there,  
11     the little brother?

12          A     I don't remember.

13          Q     And the babies?

14          A     I know the babies were there.

15          Q     And you told Detective Jenkins that you  
16     remember eating steak with some squished-up potatoes?

17          A     I don't remember.

18          Q     At the -- regarding what you told us about  
19     meeting up at the market, Paul's Market, you told us  
20     you ran into Richard; right?

21          A     Right.

22          Q     And you listed some people that he was with?

23          A     Right.

24          Q     But you never told Detective Jenkins that he

1 was with anyone, did you?

2 A I don't remember.

3 Q And you told us that he claims to have said  
4 that he wanted to body someone?

5 A As I remember it.

6 Q You told Detective Jenkins that Richard  
7 actually asked to borrow your car?

8 A Correct.

9 Q Or asked whether you wanted to go with him?

10 A I don't remember.

11 Q You told Detective Jenkins it was because  
12 Richard said that he had some business to take care of?

13 A Correct.

14 Q And that in reply you asked him what business?

15 A Correct.

16 Q And you told Detective Jenkins that Richard  
17 replied, "Dirty business"?

18 A I can't quite remember.

19 Q Now, also you told us yesterday that you didn't  
20 really ask a lot of questions after Richard told you  
21 allegedly that he wanted to body someone which you took  
22 as meaning he was going to kill someone?

23 A Right.

24 Q But you didn't even really ask who?

1           A     I don't remember.

2           Q     When you talked to Detective Jenkins you told  
3 her that you and Richard planned it all out in a couple  
4 of minutes; right?

5           A     I don't remember.

6           Q     Are you saying you don't remember?

7           A     I don't remember.

8           Q     And you told Detective Jenkins that you asked,  
9 "Who are we going to kill"?

10          A     Right.

11          Q     And this all happened in the parking lot of  
12 Paul's Market?

13          A     No, not that I can remember, not like that.

14          Q     And that you told and agreed with Detective  
15 Jenkins that you planned the day by opening your  
16 calendar and saying, "Thursday is good"?

17          A     No, I don't remember that.

18          Q     You don't remember agreeing with Detective  
19 Jenkins about that?

20          A     No.

21          Q     And you told us yesterday with the State's  
22 questions that you were doing coke on Halloween?

23          A     Right.

24          Q     But you never told Detective Jenkins that part

1 of your story, did you?

2 A Right.

3 Q You never told her?

4 A I never told her.

5 Q You added that part of the story for this  
6 trial, didn't you?

7 A Well, when I was being interviewed by Detective  
8 Jenkins I didn't want to say I was because I thought I  
9 would get into more trouble. That's why I didn't say.

10 Q And --

11 THE COURT: Hold on. Hold on.

12 Deputy, we just had our first cell phone event.  
13 I'm going to overlook it. The next cell phone event  
14 will result in a \$100 sanction and removal from this  
15 courtroom. So if you haven't listened to the deputy's  
16 instructions about your cell phone, you've now heard  
17 mine.

18 You may continue.

19 MS. RISTENPART: Thank you, Your Honor.

20 THE COURT: And, by the way, ladies and gentlemen,  
21 I have paid a \$100 sanction myself when my phone went  
22 off after that admonition. It applies to everybody in  
23 this room.

24 Continue, please, counsel.



1 BY MS. RISTENPART:

2 Q And you told us that you met up with Richard  
3 after Paul's Market to switch cars?

4 A I met up with Richard after Paul's Market later  
5 on that night.

6 Q To switch the cars?

7 A That was the plan, because he had asked to  
8 borrow my car.

9 Q But you never told Detective Jenkins this part  
10 of the story, did you?

11 A I can't quite remember.

12 Q Mr. Guzman, you have reviewed your interview  
13 that you gave to Detective Jenkins, haven't you?

14 A I haven't.

15 Q Do you remember yesterday stating for the State  
16 that you had looked at your interview?

17 A I had not like looked at my interview like  
18 since prelim, since preliminary.

19 Q You reviewed the police reports, though?

20 A No, ma'am.

21 Q Do you remember yesterday telling us that you  
22 have?

23 A I don't. I don't remember.

24 Q So you're claiming you don't remember

1 telling -- or not telling Detective Jenkins about this  
2 alleged plan to switch up cars later that night?

3 A I don't remember.

4 Q Okay. In fact, you never told Detective  
5 Jenkins that at first you were only going to let  
6 Richard borrow your car, did you?

7 A Right.

8 Q You added that part, that you were just going  
9 to let him borrow it, for trial?

10 A I what? Can you repeat?

11 Q You never told Detective Jenkins what you told  
12 us, that your original plan was you would just let  
13 Richard borrow the car, did you?

14 A If I told Ms. Jenkins that, is that what you're  
15 asking?

16 Q Correct.

17 A I believe I did. I don't remember.

18 Q And you told us this whole story about meeting  
19 Richard at a McDonald's after the murder to talk about  
20 the murder.

21 A Correct.

22 Q But you never told Detective Jenkins that you  
23 had met Richard at McDonald's a couple days before?

24 A Correct.

1 Q You added that part to the story?

2 A Correct.

3 Q And you never told Detective Jenkins that

4 Richard wanted to get a mask or gloves at 7-Eleven?

5 A I don't remember.

6 Q And you never told Detective Jenkins that

7 Richard kept telling you all night, "Don't get cold

8 feet," did you?

9 A I don't remember.

10 Q Now, the way you stated your story is that the

11 plan was to park there because there is a stop sign and

12 that you knew that Luz would stop at the intersection,

13 right?

14 A Correct.

15 Q I'm showing you what has been marked as 138.

16 MS. RISTENPART: May I approach?

17 THE COURT: Yes.

18 MS. RISTENPART: Move for admission, Your Honor.

19 MR. LEE: No objection.

20 THE COURT: 138 is admitted, Ms. Clerk.

21 THE CLERK: Thank you.

22 (Exhibit 138 was admitted.)

23 BY MS. RISTENPART:

24 Q Showing you 138. And I'll point out the stop

1 sign that you're talking about.

2 A I see that right there.

3 Q Well, let's just zoom in for you. The stop  
4 sign.

5 A Right.

6 Q You're claiming there's a stop sign there?

7 A No, there's not.

8 Q And you told us that you thought it was a  
9 revolver that was used.

10 A Right.

11 Q But you told us yesterday that you never saw  
12 it.

13 A Right.

14 Q You told Detective Jenkins that it was a .44;  
15 right?

16 A I was pretty sure that's a revolver, correct.

17 Q You told her specifically it was a .44?

18 A I believe so. I can't quite remember.

19 Q And you told Detective Jenkins that you had  
20 touched the gun a few months before?

21 A Correct.

22 Q So, Mr. Guzman, a lot has happened between your  
23 November 16th interview and yesterday and the story you  
24 told us; right?

1 A Okay.

2 Q Would you agree with me a lot has happened?

3 A Correct.

4 Q You signed a plea deal; right?

5 A Correct.

6 Q To cooperate with Mr. Lee?

7 A Correct.

8 Q Who has met with you at least twice?

9 A Correct.

10 Q And your attorney who is also in the courtroom

11 was there also with you; right?

12 A Correct.

13 Q And also an investigator who works for Mr. Lee?

14 A Correct.

15 Q And you have a lot of family here that has been

16 here every single day; correct?

17 A Correct.

18 Q Watching trial?

19 A Correct.

20 Q And you talk with them at night?

21 A Correct.

22 Q While trial has been going on?

23 A Correct.

24 Q And in one of your phone calls you told your

1 mom, "I wish I could tell you everything, but I can't  
2 on the phone"; right?

3 A At a point I believe I did. I don't remember.

4 Q Mr. Guzman, I asked to meet with you; right?

5 A Correct.

6 Q And wanted to talk to you; right?

7 A Correct.

8 Q But you refused?

9 A Correct.

10 Q And you have in fact been negotiating with the  
11 State for months; right?

12 A I would assume, yes, that my attorney was.

13 Q There's in fact been different offers presented  
14 to you; right?

15 A I don't quite know.

16 Q The first offer was plead to a second degree  
17 murder; right?

18 A I don't know. I never saw it, but I heard  
19 about it.

20 Q And a second degree would be ten years in  
21 prison?

22 A Correct.

23 Q To life?

24 A Correct.

1           Q     But then Mr. Lee made you a better offer the  
2 closer we got to trial; right?

3           A     Correct.

4           Q     And the better offer was plead to a conspiracy  
5 to commit murder with a deadly weapon?

6           A     Correct.

7           Q     And also that would have carried somewhere  
8 between two to 20 years in prison; right?

9           A     Right.

10          Q     So better than the ten to life?

11          A     Correct.

12          Q     But then just last week Mr. Lee made an even  
13 better offer; right?

14          A     Correct.

15          Q     For what we talked about, conspiracy to commit  
16 murder and a BDW, a battery with a deadly weapon?

17          A     Correct.

18          Q     And that's just one to 16 years; right?

19          A     I believe so. I don't know that it was the  
20 same.

21          Q     But with this deal, the one that was given to  
22 you last week, you could actually get probation; right?

23          A     Correct.

24          Q     You could walk out a free man?

1           A     Correct.

2           Q     And the trick is, Mr. Guzman, you're not a free  
3 man right now?

4           A     Correct.

5           Q     The truth is you're in jail?

6           MR. LEE:   Objection.

7           THE COURT:   Overruled.

8           THE WITNESS:   Correct.

9   BY MS. RISTENPART:

10          Q     And yesterday and today you're wearing some  
11 nice clothes; right?

12          A     Correct.

13          Q     Court clothes?

14          A     Correct.

15          Q     And you don't have on your handcuffs or belly  
16 chain or leg shackles; right?

17          A     Correct.

18          Q     And people from Mr. Lee's office brought you  
19 these clothes to wear; right?

20          A     Correct.

21          Q     And you changed out of your jail uniform and  
22 they dressed you up?

23          A     Correct.

24          Q     And took off your handcuffs and your shackles?



1 A Correct.

2 Q And brought you in to testify; right?

3 A Correct.

4 Q And this deal, this deal for probation, for  
5 freedom is based upon --

6 MR. LEE: Objection. That's not the deal.

7 THE COURT: Sustained.

8 BY MS. RISTENPART:

9 Q This deal with the potential for probation and  
10 freedom is based upon cooperating with the State, with  
11 Mr. Lee?

12 A Correct.

13 Q And that is a lot of pressure; huh?

14 A Correct.

15 Q You don't want to be here?

16 A Correct.

17 Q And it's a lot of pressure to stick with the  
18 story; right?

19 A Well, the story is true.

20 Q The story that Richard planned to kill Luz and  
21 this pressure to stick with the story that Richard shot  
22 Luz?

23 A Correct.

24 Q And you're sticking with this story because

1 this is the story Richard told you to come up with  
2 after November 2nd of 2017; right?

3 A After November 2nd? The story, the story that  
4 he told me, the plan, was before Lucy's death.

5 Q This is a story that Richard told you to tell  
6 the police if they started asking you questions?

7 A We never really discussed in detail what story.

8 Q This is a story Richard told you to tell the  
9 police so that the police would stop suspecting  
10 Bernard?

11 A No, I don't remember him ever telling me that.

12 Q This is a story that Richard told you to tell  
13 so the kids could come back home again?

14 A That Lucy had evidence on Bernard, is that what  
15 you're talking about?

16 Q This is a story that Richard told you to tell?

17 A Right, what I just said, yes.

18 Q On November 2nd, 2017, when you drove -- you  
19 and Richard drove over to Parkview and Mezzanine, there  
20 was a third person in the car, wasn't there?

21 A When we drove where?

22 Q Over to Parkview and Mezzanine, to Arturo's  
23 house car.

24 A Okay.

1 Q There was a third person in the car?

2 A Wrong.

3 Q Three weeks prior to that you knew that Bernard  
4 had shot himself?

5 A Correct.

6 Q And you knew that was after getting into a  
7 fight with Luz?

8 A I would assume. I believe. I can't quite  
9 remember.

10 Q And you were telling Detective Jenkins that you  
11 knew it was because Bernard had gotten into a fight  
12 with Luz?

13 A I knew it had something to do with Luz. I  
14 don't know if it was a fight.

15 Q And it was because Luz was cheating on him?

16 A That part I do know, yes.

17 Q In fact, you visited Bernard at the hospital,  
18 didn't you?

19 A Correct.

20 Q And even before that you knew that things were  
21 bad between Bernard and Luz?

22 A Somewhat.

23 Q You described to Detective Jenkins that Luz was  
24 breaking your family?

1           A     Correct.

2           Q     Tried to steal your cousin Bernard away?

3           A     Correct.

4           Q     And that you saw Luz hurting Bernard

5     spiritually?

6           A     Correct.

7           Q     Saw Luz hurting Bernard emotionally?

8           A     I would assume, yes.

9           Q     And felt Luz was hurting Bernard physically?

10          A     Correct.

11          Q     And frankly during that time Bernard was kind

12     of a mess; right?

13          A     Correct.

14          Q     He tried to end his life because of Luz?

15          A     Correct.

16          Q     And you knew -- you knew Bernard was angry?

17          A     Correct.

18          Q     And you did talk to Richard on Halloween,

19     didn't you?

20          A     At Paul's Market.

21          Q     You ran into him at Paul's Market, October

22     31st, Bernard had just been released from the hospital;

23     right?

24          A     I don't know quite what day, but yes.

1 Q And you talked with Richard about Bernard  
2 having issues; right?

3 A I don't remember.

4 Q You talked about not letting -- Bernard not  
5 letting the Arturo thing go?

6 A I don't remember.

7 Q And there was a plan in the market?

8 A Right.

9 Q But the plan was Richard asked for your help  
10 because Bernard wanted to go confront Arturo?

11 A He asked for my help so he could confront  
12 Arturo?

13 Q Because Bernard wanted to confront Arturo.

14 A As in how?

15 Q And that Bernard -- the family knew that Arturo  
16 was part of some motorcycle club?

17 A I didn't know that he was part of a motorcycle  
18 club.

19 Q But the family knew?

20 MR. LEE: Objection.

21 THE WITNESS: I don't know.

22 MR. LEE: Calls for speculation.

23 THE COURT: Sustained.

24 /////

1 BY MS. RISTENPART:

2 Q And Richard talked about how he didn't know  
3 what Arturo would be capable of and was worried for  
4 Bernard?

5 A I don't quite remember.

6 Q And there was concern that Bernard may just go  
7 out on his own to confront Arturo?

8 MR. LEE: Objection. Calls for speculation.

9 THE COURT: Ladies and gentlemen, during this  
10 recess please do not discuss this case amongst  
11 yourselves, please do not form or express any opinion  
12 about this matter until it has been submitted to you.  
13 We'll be in recess for about seven minutes.

14 We'll stand for a minute.

15 (Proceedings outside the presence of the jury.)

16 THE COURT: Please be seated.

17 Counsel, I wanted your advice before I start making  
18 additional decisions. My thought is to begin  
19 sustaining objections as they are presented, because  
20 the cross-examination questions are intended, designed  
21 to impeach, clarify the testimony presented on direct.  
22 I am hearing questions in which a defense story is  
23 presented in the form of a question. And defense  
24 counsel can't testify in the form of questions and at

1 some point there has to be evidence the defense intends  
2 to present to justify the nature of the questions being  
3 asked. So those are my thoughts as I'm hearing this  
4 examination. And I now invite your response if I'm  
5 going down the wrong direction. First to Mr. Lee and  
6 then to Ms. Ristenpart.

7 MR. LEE: No, that's exactly correct. So I've been  
8 watching carefully with that and that is where it's  
9 trying to be led to. She certainly has some right to  
10 challenge his statements as far as what Richard told  
11 him. I get that. But as far as creating her own  
12 narrative under the guise of cross-examination to put  
13 in her defendant's own statements or her client's own  
14 statements, she can't do that.

15 THE COURT: To the defense.

16 MS. RISTENPART: Your Honor, on cross-examination  
17 we have wide latitude as the Court is well aware and  
18 coupled with we do some have evidence regards  
19 Bernard -- in regards to his statement that "I am the  
20 guilty one" coupled with the coconspirator statements  
21 after the translated statement that the Court was  
22 already talking about.

23 THE COURT: Well, let me out of the jury's presence  
24 then examine this statement ascribed to Bernard that

1 you hope to have admitted during the defense case  
2 because Mr. Bernard is a declarant unavailable.

3 As I read 51.345(1), "A statement which at the time  
4 of its making," and then there are three sub-elements,  
5 contrary to pecuniary or proprietary interests, tending  
6 to subject the declarant to civil or criminal  
7 liability, intended to render invalid a claim by the  
8 declarant against interest, and then the relevant  
9 dispositive provision, subparagraph (d), "So far tended  
10 to make the declarant an object of hatred, ridicule or  
11 social disapproval, that a reasonable person in the  
12 position of the declarant would not have made the  
13 statement unless the declarant believed it to be true,  
14 a statement tending to expose the declarant to criminal  
15 liability and offered to exculpate the accused in a  
16 criminal case is not admissible unless corroborating  
17 circumstances clearly indicate the trustworthiness."

18 It appears to this Court that Mr. Bernard --  
19 Mr. Bernard's statement, "I am the guilty one," will  
20 not be admitted to this jury. I cannot get past this  
21 last provision of the evidence code, "A statement  
22 tending to expose the declarant to criminal liability  
23 and offered to exculpate the accused in a criminal case  
24 is not admissible unless corroborating circumstances



1 clearly indicate the trustworthiness of the statement."

2 I indicated before the jury was impaneled that this  
3 statement, "I am the guilty one," is susceptible to  
4 many different interpretations. It is not reliable to  
5 me. If you have other corroborating evidence that  
6 Mr. Bernard is guilty, I would revisit my decision, but  
7 unless such corroboration is presented I cannot allow  
8 Mr. Silva's statement in. So to the extent that  
9 governs this cross-examination, I wanted to make that  
10 evidentiary decision.

11 MR. LEE: Judge, could I just offer -- on the  
12 previous matter I do have some case authority if I  
13 could provide that.

14 THE COURT: Does this go to what we did between  
15 8:30 and 9:30?

16 MR. LEE: Yes, sir.

17 THE COURT: I don't want to do that now.

18 MR. LEE: Thank you.

19 THE COURT: Does anybody need to take a break as  
20 long as the jury is out?

21 MS. RISTENPART: Yes, Your Honor.

22 THE COURT: Okay. Let's extend this break.

23 Deputy, summons me when everybody is available.

24 (A recess was taken.)

1 THE COURT: The State's objection based upon  
2 speculation is sustained.

3 The jury, please.

4 (Proceedings within the presence of the jury.)

5 THE COURT: Please be seated.

6 To the defense, you may continue.

7 BY MS. RISTENPART:

8 Q Mr. Guzman, when you were being interviewed by  
9 Detective Jenkins she asked you point-blank did Richard  
10 shoot and in response you just remained silent; right?

11 A For a moment.

12 Q And in fact she then stated, "It was Richard;  
13 right?" and you still remained silent; right?

14 A I believe so.

15 Q And then she just went on assuming it was  
16 Richard?

17 MR. LEE: Objection. Calls for speculation.

18 THE COURT: Sustained. No, I'm going to overrule.  
19 I'm going to overrule that objection. It's  
20 appropriate. You may answer the question.

21 THE WITNESS: Can you repeat, please.

22 BY MS. RISTENPART:

23 Q And then she went on and Detective Jenkins just  
24 assumed it was Richard?

1           A     I can't quite remember, but the only reason why  
2 I was hesitant that I remember was because she had came  
3 into the room that I was being interviewed in and said  
4 that Richard had already said he had done this, so  
5 that's why I was that one moment.

6           Q     And in fact you told Detective Jenkins that you  
7 were angry at the police; right?

8           A     I don't remember.

9           Q     You told Detective Jenkins that you felt that  
10 they lied to you about what they claimed Richard had  
11 said?

12          A     I don't remember, but I believe so.

13          Q     And those times before Mr. Silva when you  
14 talked about this, you were never under oath, were you?

15          A     When I talked to Silva?

16          Q     When you talked with Mr. Lee.

17          A     Okay.

18          Q     Right?

19          A     I was never under oath.

20          Q     When you talked to the police?

21          A     Correct.

22          Q     You're under oath here today?

23          A     Correct.

24          Q     And I know the State will come back up and ask

1 you a lot of your questions about are you being  
2 truthful with the story that you told them, but the  
3 truth is Bernard was in the car; right?

4 A No, ma'am.

5 MR. LEE: Objection.

6 THE COURT: Sustained.

7 MR. LEE: I ask that be stricken.

8 THE COURT: It is stricken.

9 BY MS. RISTENPART:

10 Q The truth is that Bernard shot?

11 MR. LEE: Objection.

12 THE COURT: Overruled. I have a consistent  
13 analytical process that may not appear consistent, but  
14 I'm overruling that.

15 You may answer the question.

16 THE WITNESS: Can you repeat one more time, please.

17 BY MS. RISTENPART:

18 Q The truth is that Bernard shot?

19 A No.

20 Q And the truth is that there was no plan to kill  
21 Luz; right?

22 A I was told there was.

23 Q The truth is that Bernard surprised you  
24 shooting; right?

1           A     He was never there.

2           MR. LEE:  Objection.  Same grounds.

3           THE COURT:  I really dislike having you leave the  
4 courtroom again, but I am thinking to my inner voice  
5 and I want to interact with counsel.  I am at fault for  
6 not clarifying one thing in your absence the last time.  
7 Please hold this inefficiency against me.  This will  
8 only be a minute or two, but during this recess please  
9 do not discuss this case amongst yourselves, please do  
10 not form or express any opinion about this matter until  
11 it has been submitted to you.

12          We'll stand for the jury.

13          (Proceedings outside the presence of the jury.)

14          THE COURT:  Be seated, everyone.

15          Ms. Ristenpart, I didn't hear your argument in  
16 response to what I said, and so I feel like I'm not as  
17 fully informed.  I indicated -- well, you heard what I  
18 said.  And one of the examples I wrote down was your  
19 question to Mr. Guzman, "There were three people in the  
20 car, weren't there?" to which he said, "No."

21          I'm accustomed to having questions that are  
22 grounded in evidence.  And so do you have evidence of  
23 any type that there are three people in the car or --  
24 and that's one example of many.  I think you're

1 entitled to ask this witness ultimate questions, but  
2 you can't plant facts, defense facts, in the form of  
3 questions. Would you please respond and help me so I  
4 know how to make these evidentiary decisions.

5 MS. RISTENPART: Your Honor, again,  
6 cross-examination is given wide latitude, and I'm  
7 reiterating that, because there is some factual basis  
8 as we just talked about with Detective Jenkins. And I  
9 hate discussing this in front of the witness, Your  
10 Honor.

11 THE COURT: Well, we'll clear the courtroom,  
12 including Mr. Guzman. Everyone is invited to leave,  
13 please. We'll all stand as the public leaves and  
14 Mr. Guzman leaves and stretch.

15 Mr. Routsis, you may remain if you like.

16 MR. ROUTSIS: Thank you.

17 THE COURT: All right. Be seated, please.

18 What I don't want to do is create an appearance of  
19 regularly sustaining objections in front of a jury.  
20 I'm seeking to find balance in what the jury perceives.  
21 I understand that cross-examination is given some  
22 latitude, but there must be some connection to the  
23 scope of direct examination. And my opinion is that  
24 the defense cannot present facts in the form of

1 questions.

2 Do you have facts that you're going to present in  
3 your defense case that there were three witnesses in  
4 the car, for example?

5 MS. RISTENPART: So, Your Honor, first and  
6 foremost, there actually is no evidence there were only  
7 two witnesses. You had one witness who then was  
8 impeached by his own statements. He'll be further  
9 impeached by Thomas Reed that he never actually saw who  
10 was in the car or how many people, coupled with, Your  
11 Honor, all of the case evidence that the Court has  
12 heard is that Bernard was the primary suspect, that  
13 there was motive for Mr. Bernard, there was a long  
14 history of a volatile relationship with Luz, that there  
15 had been a build-up and that Mr. Bernard Silva had  
16 access to firearms and that there was a 9 millimeter.  
17 We have conflicting testimony from Mr. Guzman that it  
18 was a .45 revolver, but yet he didn't see the firearm.

19 And also in regards to -- even though the Court  
20 ruled the statement -- and I know that you ruled it  
21 inadmissible at this point. So with all that, Your  
22 Honor, defense does have for cross-examination purposes  
23 evidence to ask these questions that there was a third  
24 person in the car, Bernard.

1           THE COURT: I think cross-examination can include  
2 ultimate questions. Isn't it true that Mr. Bernard  
3 Silva was there and he shot the decedent? Yes or no.  
4 But then there are a series of facts that make me  
5 uncomfortable. That's why I appear to be incoherent in  
6 my two different decisions.

7           So, Mr. Lee, how do you respond to the defense  
8 argument that she's asking questions based upon facts  
9 that are in record?

10          MR. LEE: So those -- any facts that are in record  
11 or defenses or suppositions are far from claiming  
12 there's a third person in the back. And I can't off  
13 the top of my head what the other things were.

14          Your Honor, there's a decision out of Florida,  
15 quote, "For a defendant to make statements in questions  
16 to introduce a theory of the possibility that someone  
17 else committed a crime, there must be sufficient  
18 evidence on the record to support that underlying  
19 theory," Cohen v. State, 581 So.2d 926. It's a Florida  
20 Court of Appeals but quoted by the Florida Supreme  
21 Court in 2012.

22          Also "No attorney" -- this is the United States  
23 Seventh Circuit Court of Appeals, "No attorney may ask  
24 questions of a witness if he does not have a good faith



1 basis to ask it. Attorneys cannot take a  
2 shot-in-the-dark approach to their questions."

3 And so that appears -- I agree with Your Honor.  
4 There is a difference between just asking the ultimate  
5 question but inferring these facts around it. And so  
6 she's crossed the line a few times unless there's a  
7 good faith basis. The evidence she just told about  
8 does not support any good faith basis.

9 THE COURT: But how do I make that decision at this  
10 point in the trial? because I don't know what the  
11 defense case will be. I don't know if she has a good  
12 faith basis to form the cross-examination questions.

13 MR. LEE: Well, then I think she needs to make a  
14 proffer to you.

15 THE COURT: Well, I invited that essentially and  
16 she went back to what has already been in the State's  
17 case in chief.

18 MR. LEE: If that's all that she's relying on  
19 there's no good faith basis and those questions should  
20 be shut down and I'll ask for an instruction.

21 THE COURT: Ms. Ristenpart.

22 MS. RISTENPART: Your Honor, the good faith basis  
23 is look at the totality of this case. Bernard  
24 Guzman-Silva was a suspect from day one, had motive and

1 means. Everything that applies to the State's theory  
2 also applies to our defense theory that Bernard was the  
3 one who shot Luz. In fact, it applies even more  
4 because either it was an affair or there was drug  
5 dealing going on which still has not been proven up  
6 before the Court. So at this juncture our good faith  
7 basis for our defense theory is everything that also  
8 goes to their theory. And therefore we are asking that  
9 you give us the right to proceed forward in  
10 cross-examination under our defense theory.

11 THE COURT: I'm ready for the public and the jury.

12 (Public returned to the courtroom.)

13 THE COURT: All right. My general admonition is  
14 that I will confine consideration to the scope of  
15 direct examination. This witness is available for  
16 recall in the defense case if I determine that there is  
17 some good faith basis for the questions that assert  
18 facts in the form of a question. I am going to sustain  
19 some objections. You're on notice of that. I'm not  
20 automatically sustaining them. I really want this  
21 cross-examination to be vigorous and thorough, but it  
22 cannot be a form of evidence presentation. So that  
23 will be my general approach as I entertain these  
24 questions.

1 The jury, please.

2 (Proceedings within the presence of the jury.)

3 THE COURT: If everyone will be seated, please.

4 The jury is entering the courtroom and will soon settle  
5 in. And to the defense, you may continue.

6 BY MS. RISTENPART:

7 Q On November 16th of 2017 you knew that the  
8 three kids had been taken by CPS; right?

9 A I don't remember, but I believe that  
10 Ms. Jenkins did mention that in the interview.

11 Q You actually told Ms. Jenkins that you knew  
12 that the babies had been taken by CPS?

13 A I can't remember.

14 Q And Richard loved those kids like they were his  
15 own; right?

16 A Right.

17 Q And you know that Richard would never testify  
18 against his brother; right?

19 A I wouldn't know.

20 MR. LEE: Objection. Calls for speculation.

21 THE COURT: The question was "You know that Richard  
22 would never testify against his brother?" It is  
23 sustained. It is speculative unless you have some  
24 basis to lay a foundation for how he could answer that

1 question.

2 THE WITNESS: I wouldn't know.

3 BY MS. RISTENPART:

4 Q Based upon your conversations after  
5 November 2nd?

6 A One more time.

7 Q Based upon the conversations you had after  
8 November 2nd with Richard?

9 A The conversation that we had never went into  
10 that.

11 MS. RISTENPART: No further questions.

12 THE COURT: Thank you.

13 Is there any redirect?

14 MR. LEE: Yes, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. LEE:

17 Q Sir, let's talk about again your deal that you  
18 made with the State of Nevada. Okay? In fact, do you  
19 recall that we admitted these items of evidence, the  
20 Information, the charging document and your contract;  
21 correct?

22 A Correct.

23 Q Exhibits 134 and 135?

24 A Correct.

1           Q    So Exhibit 134, Count I, conspiracy to commit  
2 murder; is that correct?

3           A    Correct.

4           Q    Is that what you did?

5           A    Correct.

6           Q    And let's look at it. That you did willfully,  
7 unlawfully and with malice of forethought, deliberation  
8 and premeditation conspire with Richard Silva to kill  
9 and murder Luz Linares-Castillo.

10          A    Correct.

11          Q    And, sir, it goes on -- correct? -- such as in  
12 the furtherance of the conspiracy that you did -- that  
13 Richard Silva contacted you to plan and carry out the  
14 murder of Luz Linares-Castillo; correct?

15          A    Correct.

16          Q    That you agreed to use your gray Sequoia;  
17 correct?

18          A    Correct.

19          Q    That you drove to multiple locations the day  
20 before to find locations where Luz may be staying;  
21 correct?

22          A    Correct.

23          Q    To identify locations for the murder; correct?

24          A    Correct.

1           Q    And to familiarize yourself with the area;  
2 correct?

3           A    Correct.

4           Q    And that you two agreed to stay and actually  
5 did stay the night at Richard Silva's residence on  
6 Sbragia; right?

7           A    Correct.

8           Q    You awoke together that morning together;  
9 right?

10          A    Correct.

11          Q    And you awoke together and stayed there in  
12 order to murder Luz Linares-Castillo; right?

13          A    Correct.

14          Q    Now, this part, it says, "Richard did arm  
15 himself with a 9mm handgun with Yiovannie Guzman's  
16 knowledge thereof." Now, explain that to us. Because  
17 I think you said today that it was -- or yesterday and  
18 today that he normally had a revolver with him; right?

19          A    Correct.

20          Q    I think you said you assumed that he had a gun  
21 this time; correct?

22          A    Correct.

23          Q    But is it true you never saw the gun?

24          A    I never saw the gun.

1 Q You drove together in that gray Sequoia?

2 A Correct.

3 Q You went to the location where the boyfriend  
4 resided?

5 A Correct.

6 Q Mr. Silva discovered that information via his  
7 employment at the DMV?

8 A Correct.

9 Q When you found the vehicle, Lucy's vehicle, you  
10 guys waited together on Parkview and Mazzone; correct?

11 A Correct.

12 Q I think a question was asked to you about  
13 Mezzanine before and you looked a little confused. Do  
14 you recall that question?

15 A I do.

16 Q Was that Mazzone?

17 A That was Mazzone.

18 Q And at that intersection of Parkview and  
19 Mazzone did Richard Silva approach Luz Linares-Castillo  
20 and shoot her multiple times?

21 A Correct.

22 Q Continuing on with that factual basis to which  
23 you entered your plea, and afterwards, as you  
24 previously planned, you drove together away from the

1 scene obeying all traffic laws; correct?

2 A Correct.

3 Q Now, let's talk about something else. Were you  
4 ever -- a question was asked whether you were offered a  
5 second-degree murder. Do you recall that question?

6 A I do recall that question.

7 Q Were you ever offered to plead to a  
8 second-degree murder?

9 A I was never shown it and never offered.

10 Q You were offered to plead to a charge and in  
11 fact you even looked over documents prepared by your  
12 counsel and the State; correct?

13 A Correct.

14 Q To a conspiracy to commit murder with a deadly  
15 weapon; correct?

16 A Correct.

17 Q Documents prepared, but that didn't go through;  
18 right?

19 A Correct.

20 Q Were you aware that was because that charge  
21 learned through later research was actually not  
22 sustainable, you can't have a deadly weapon to a  
23 conspiracy?

24 A Correct.



1 Q Was that your understanding?

2 A Yes.

3 Q That charge, however -- again, you had  
4 documents about it -- correct? -- a drawn-up contract  
5 on it?

6 A Correct.

7 Q Before the State corrected its error; right?

8 A Correct.

9 Q That charge carried a two-to-ten-year sentence?

10 A Correct.

11 Q Plus a deadly weapon enhancement of a  
12 one-to-ten-year?

13 A Correct.

14 Q So a total of 20 years, is that your  
15 understanding?

16 A Correct.

17 Q So it could be anywhere from three to 20?

18 A Correct.

19 Q And with that probation was still eligible;  
20 right?

21 A Correct.

22 Q And it's all in the discretion of who is  
23 sentencing you; correct?

24 A Right.

1 Q However, later you were -- and shortly later --  
2 correct? -- you were presented with a new contract?

3 A Correct.

4 Q Was the reason of that because of that legal  
5 error?

6 MS. RISTENPART: Objection. Speculation.

7 THE COURT: Sustained.

8 BY MR. LEE:

9 Q Were you told it was because of a legal error  
10 that had to be corrected?

11 A Yes, sir.

12 Q And that is why it went to a conspiracy to  
13 commit murder, and then a second count is added,  
14 battery with a deadly weapon; is that correct?

15 A Correct.

16 Q So your first negotiation went from three to  
17 20; right?

18 A Correct.

19 Q Did the defense ask you on cross-examination  
20 just a moment ago that now you're only pleading up to  
21 16 years? Do you remember that question?

22 A Correct.

23 Q That's not correct, is it?

24 A No.

1 Q In fact, paragraph 6 of our negotiation lays  
2 that out. Count I carries a range of two to ten years  
3 in prison; correct?

4 A Correct.

5 Q Count II carries a range of sentence of two to  
6 ten years in prison; correct?

7 A Correct.

8 Q You're still facing 20 years?

9 A Right.

10 Q And now you could face a minimum of four years  
11 to 20; correct?

12 A Correct.

13 Q And let's be frank too. Again, it is still  
14 probation eligible at the discretion of your sentencing  
15 judge; correct?

16 A Correct.

17 Q And then these can run consecutive or  
18 concurrent, so a judge could say serve them at the same  
19 time, is that what you understand as well?

20 A Yes, sir.

21 Q There's been no other negotiations beside this  
22 with me or any representative of the State; correct?

23 A Right.

24 Q There's been no promises for, well, if you

1 testify well, then we're going to do something else?

2 A Right.

3 Q It's always been just this; correct?

4 A Correct.

5 Q And then going back to that -- we talked about  
6 conspiracy. You didn't pull the trigger, did you?

7 A No, sir.

8 Q But you did conspire?

9 A Yes, sir.

10 Q You agreed?

11 A Yes, sir.

12 Q And you assisted?

13 A Yes, sir.

14 Q And then that forms the basis of Count II, not  
15 that you committed battery but that you aided or  
16 abetted or conspired with him to use unlawful force or  
17 violence; is that accurate?

18 A Yes, sir.

19 Q Because you didn't pull any trigger that night;  
20 is that right?

21 A Correct.

22 Q I want to clear up a couple of things based on  
23 the questions that you had asked at -- asked upon you  
24 on the cross-examination. You were never told by

1 Richard Silva to keep Bernard out of it, were you?

2 A I was never told by Richard Silva to keep  
3 Bernard out of it, that's what you said? Correct?

4 Q Is that correct?

5 A Yes.

6 Q When you gave your confession to Detective  
7 Jenkins back on November 16th of 2017 was I present?

8 A No, sir.

9 Q Was there any deal made at that time?

10 A No, sir.

11 Q That confession therefore wasn't contingent on  
12 something happening to your case later on?

13 A Right.

14 Q And you were still arrested and charged with  
15 the murder of Luz Linares-Castillo that day; correct?

16 A Correct.

17 Q Based upon your conspiracy of that?

18 A Correct.

19 MR. LEE: Thank you, Your Honor.

20 THE COURT: Recross.

21 MS. RISTENPART: The Court's indulgence.

22 RECROSS EXAMINATION

23 BY MS. RISTENPART:

24 Q Mr. Guzman, that plea deal he just showed you

1 again to have you agree with everything or that you  
2 agreed with everything that he showed you, that plea  
3 deal is the difference between you spending life in  
4 prison or potentially walking out a free man on  
5 probation; right?

6 A Correct.

7 MS. RISTENPART: No further questions.

8 THE COURT: Thank you. You're free to step down  
9 and leave the courtroom. You are subject to recall  
10 which means that upon request you shall return to  
11 court.

12 Let's all stand as we await the State's next  
13 witness.

14 MR. LEE: Judge, can we have a sidebar?

15 THE COURT: Yes.

16 Remain standing.

17 Counsel, please.

18 (Discussion off the record.)

19 THE COURT: Please be seated.

20 THE CLERK: Please raise your right hand.

21 (The oath was administered.)

22 THE WITNESS: I do.

23 THE CLERK: Thank you.

24 THE COURT: Proceed, please. Remember to speak

1 loudly so everyone can hear.

2 To the State.

3 MR. LEE: Thank you.

4 DEBORA MORENO,  
5 having been first duly sworn, was  
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. LEE:

9 Q Good morning, ma'am.

10 A Good morning.

11 Q Could you please give us your first and your  
12 last name and spell your last name for us.

13 A Debora Moreno, M-o-r-e-n-o.

14 Q Ms. Moreno, how are you employed?

15 A I'm employed by the Washoe County Sheriff's  
16 Department.

17 Q In what capacity?

18 A I work in the Inmate Management Unit.

19 Q What does that mean? What are your duties?

20 A The Inmate Management -- excuse me -- the  
21 Inmate Management Unit -- anytime anybody is booked in  
22 the Washoe County Jail our department handles the  
23 security level of -- actually it's called the  
24 classification level of the inmate, where they're going  
to be housed. Anything that has to do with the custody

1 of the inmate while they're in custody, our department  
2 handles that, their housing, security levels, whether  
3 there's going to be programs, no programs. We also  
4 assist other agencies along with our own agency in  
5 monitoring the mail, phone calls, email, iWeb visiting.

6 Q So that's what I'm -- I'm going to ask you  
7 about that. You said you are involved in monitoring of  
8 those systems?

9 A Yes.

10 Q What do you mean by that?

11 A We listen to phone calls or iWeb visits or  
12 monitor the mail for various reasons. Some are for  
13 security reasons inside the facility; some is to assist  
14 law enforcement with cases.

15 Q So if there's an inmate that's brought into the  
16 jail, say right after arrest even, are they generally  
17 allowed to make a phone call?

18 A Yes, they are. They'll make a phonecall in the  
19 intake area.

20 Q Are those phone calls recorded?

21 A Yes, they are.

22 Q All of them? For every inmate?

23 A Yes, all calls are recorded. It even states  
24 that at the beginning of the phone call.



1 Q Are they -- I'm sorry. It states that in the  
2 beginning of the phone call?

3 A Yes, it does.

4 Q And are those all kept just in the regular  
5 course of business there of what you do?

6 A Yes, they are.

7 Q And they're stored?

8 A At the jail.

9 Q Access to these calls, are they available to  
10 the public?

11 A No, they're not.

12 Q Password protected?

13 A Yes, they are.

14 Q And you have such a password?

15 A Yes, I do.

16 Q Are you aware of a phone call placed on  
17 November 17th, 2017, at 1431 hours by Richard Silva?

18 A Yes, I am.

19 Q Was that a call that was recorded and stored in  
20 the system you've described?

21 A Yes, it was.

22 Q At the beginning of that call is Mr. Silva and  
23 whoever he's speaking with told that this is subject to  
24 recording and monitoring?

1           A     Yes, it is.

2           Q     First of all let me show you Exhibit 98. Do  
3 you recognize what that is?

4           A     Yes, I do. This is a call sheet of the calls  
5 that were made by Richard Silva.

6           Q     And is it an accurate statement of those calls?

7           A     Yes, it is.

8           MR. LEE: And I move to admit 98.

9           MS. RISTENPART: No objection.

10          THE COURT: 98 is admitted, Ms. Clerk.

11          THE CLERK: Thank you.

12                         (Exhibit 98 was admitted.)

13 BY MR. LEE:

14          Q     Showing you Exhibit 98, I draw your attention  
15 to the first column that I'm circling here with the  
16 number 1. Okay. So explain the process to us. What  
17 is this row? I said "column." Excuse me. What does  
18 this row indicate to us?

19          A     The site ID represents a call coming out of  
20 Washoe County. The dial number is the number that is  
21 being called.

22          Q     And let me ask you a question about that dial  
23 number. So it's (775) 356-6031?

24          A     Yes, it is.

1 Q Do you have information about whose call that  
2 is -- whose number that is?

3 A Yes.

4 MS. RISTENPART: Objection.

5 THE COURT: No, the question is do you have  
6 information about whose call that is. If you have the  
7 information, yes or no.

8 THE WITNESS: Yes.

9 BY MR. LEE:

10 Q Where did you get that information?

11 A That information is listed in Richard Silva's  
12 bio information.

13 Q And is it information that Richard Silva  
14 provides --

15 A Yes, it is.

16 Q -- as to the identity of that number?

17 A Yes.

18 Q And whose identity is that number?

19 A Irma Guzman.

20 Q And do you know that to be his mother?

21 A Yes.

22 Q Okay. Okay. So let me carry on. So the next  
23 column, date, that's obvious; right?

24 A Yes, November 17th, 2017.

1 Q And this is our time at 1431?

2 A Yes.

3 Q What does this mean now, the inmate phone?

4 A That's the phone in the intake lobby. They are  
5 numbered 1 to 8. So that's the phone where the phone  
6 calls are placed.

7 Q And so where the phone call took place, that's  
8 where -- the location, physical location?

9 A The location, yes.

10 Q Intake, what is that?

11 A Intake is the intake lobby where everybody  
12 comes into. And it's divided. Males sit in one area,  
13 females sit in the other. There's no talking. They  
14 have to sit there. There's orientation videos played.  
15 So it's an intake area before somebody goes back to  
16 housing if they're going to be housed at the jail.

17 Q So is that where someone would go shortly after  
18 arrest?

19 A Yes.

20 Q And by this being a number 1, does this  
21 indicate it's the first phone call by Richard Silva?

22 A Yes, it does.

23 Q And then what is this PIN?

24 A The PIN is the booking number. Anytime anybody

1 comes into custody there's a generated booking number  
2 given. It's the first -- the first two numbers are the  
3 last two numbers of the year. And then it generates a  
4 total of five additional numbers so that a booking  
5 number has seven numbers to it.

6 Q Is that booking number -- and that booking  
7 number is the same as this PIN?

8 A Yes, it is.

9 Q Is that unique in this case to Richard Silva?

10 A Yes, it is. It's his identifier as well.

11 Q Are there rules regarding that PIN, about the  
12 sharing of it?

13 A Yeah, you're not allowed to share your PIN  
14 number with other inmates in the facility to place  
15 calls or to use your booking number. There's also  
16 attached -- with that PIN, that booking number, there's  
17 also attached a four-digit PIN number. That is  
18 security so somebody, even if they were to punch in  
19 that booking number, they're not going to be able to  
20 really access that without the four-digit PIN.

21 Q So if an inmate is going to make a call,  
22 identify himself as an inmate, say Richard Silva, he  
23 has to put in his PIN and the four digit?

24 A He has to put that PIN number in and then the

1 four digit PIN as well.

2 Q Sometimes inmates do share those; right?

3 A Yes, they do.

4 Q But at this point based on where this location  
5 is coming from, intake -- I think you said before you  
6 can't talk at intake?

7 A No, you're not allowed to talk in intake. And  
8 the likeliness of somebody sharing somebody's PIN, I've  
9 never seen somebody share somebody's PIN in intake in  
10 the 17 years I've been doing this.

11 Q So that's just because it's so early in the  
12 process?

13 A It's so early in the process and they're not  
14 allowed to converse with each other.

15 Q And then at the beginning of the phone call --  
16 I think we already -- we talked about that. It  
17 warns -- right? -- that it's monitored and it's  
18 recorded?

19 A Yes, it does.

20 Q Does the person identify themselves?

21 A Yeah, they usually either state their first  
22 name or last name.

23 Q In this case did you provide a recording -- or  
24 are you familiar with a recording from this phone call

1 we've been talking about?

2 A Yes, I am.

3 Q And the contents of this phone call?

4 A Yes, I am.

5 Q Did the caller using this PIN indicate his name  
6 was Richard?

7 A Yes, he did.

8 Q I'm showing you Exhibit 99. Just one moment.  
9 Okay. Exhibit 99. Do you see on the tag that's  
10 linked to that thumb drive?

11 A Yes, I do.

12 Q Do you recognize anything on that?

13 A Yeah, it has my signature saying that I  
14 listened to the phone call and the date and stuff is on  
15 there.

16 Q What is the date that appears on it?

17 A February 20th.

18 Q Is that the date you listened to that phone  
19 call to verify it?

20 A Yes.

21 Q And so does that thumb drive include the  
22 contents or part of the contents of that phone call?

23 A Yes, it does.

24 Q In fact, that thumb drive is two files;

1 correct?

2 A Yes, it is.

3 Q The introductory part?

4 A Yes.

5 Q And then one portion of the phone call later?

6 A Yes, it is.

7 Q And is that phone call or at least the portion  
8 of it that we talked about, the second file, in that in  
9 primarily Spanish?

10 A Yes, it is.

11 Q Do you speak Spanish?

12 A No, I don't.

13 MR. LEE: Your Honor, that's all the questions I  
14 have. Thank you.

15 THE COURT: Cross-examination.

16 CROSS-EXAMINATION

17 BY MS. RISTENPART:

18 Q Ms. Moreno, looking at Exhibit No. 98, there's  
19 another little column here that says "Duration"; right?

20 A Yes.

21 Q And that call that we've been talking about  
22 lasted 14 minutes and 14 seconds; right?

23 A Yes.

24 Q And in fact there was a female speaker on the



1 phone; right?

2 A Yes.

3 Q And also another male besides the inmate who  
4 was also on the phone?

5 A Yes.

6 MS. RISTENPART: I have no other questions.

7 THE COURT: Redirect.

8 MR. LEE: I have nothing off that.

9 THE COURT: Thank you. You're free to step down  
10 and leave.

11 Your next witness, please.

12 MR. LEE: Ms. Kindra Baum.

13 THE COURT: This is the witness who will provide  
14 some explanation of science?

15 MR. LEE: Yes.

16 THE COURT: Okay. So is everybody okay or does  
17 anybody need a break? Would you like a break?

18 MR. LEE: No, but I thought I saw a hand go up.

19 THE COURT: Does anybody need a break?

20 So what we'll do is we revisit a break in 20 to 30  
21 minutes or so.

22 THE BAILIFF: Just step all the way up and face the  
23 clerk, please.

24 THE CLERK: Please raise your right hand.

1 (The oath was administered.)

2 THE WITNESS: I do.

3 THE CLERK: Thank you.

4 THE COURT: Please don't focus so exclusively on  
5 the jury that your face is away from me or your mouth  
6 is not close to the microphone. So you'll have to  
7 balance. I know you're answering questions, you're  
8 speaking to the jury, but I need to be able to hear  
9 things as well.

10 THE WITNESS: Sure.

11 THE COURT: Thank you.

12 KINDRA BAUM,  
13 having been first duly sworn, was  
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. LEE:

17 Q Good morning.

18 A Good morning.

19 Q Could you give us your first and last name and  
20 spell both of those for us.

21 A It's Kindra Baum. First name is spelled  
22 K-i-n-d-r-a. My last name is spelled B-a-u-m.

23 Q What do you do for a living?

24 A I work at the Washoe County Sheriff's Office in  
the Forensic Science Division.

1           Q    Are you -- do you work in a specific unit  
2 within the Forensic Science Division?

3           A    Yes.  I'm a criminalist.  I work in the biology  
4 unit which includes the primary examination section and  
5 a DNA section.

6           Q    Do you have any -- how long have you been doing  
7 that?

8           A    Approximately ten years.

9           Q    Do you have any education that qualified you  
10 for that job?

11          A    Yes, I do.  I have a bachelor's degree in  
12 biochemistry from the University of Nevada, Reno.  I  
13 also took 11 courses from the President's DNA  
14 Initiative.  These covered crime scene basics to  
15 advanced and emergent DNA technologies.  I attended a  
16 Y chromosomal DNA lecture presented by Jack Valentine  
17 for the National Center of Forensic Sciences.  I  
18 obtained DNA training at the Las Vegas Metropolitan  
19 Police Department and a National Institute of Standards  
20 and Technology webcast and at the 21st International  
21 Symposium on Human Identification.

22          Q    As part of your employment at the sheriff's  
23 office are you required to maintain certain standards  
24 and go through quality assurance or other trainings as

1 you go along?

2 A Yes, I am.

3 Q Could you explain that briefly?

4 A Sure. I passed two formal in-house training  
5 programs, one specific to primary examination and the  
6 other specific for DNA analysis. In the primary  
7 examination section I observed qualified primary  
8 examiners screen evidence for the presence of  
9 biological fluids or presumptive and confirmatory  
10 testing.

11 I then completed practical exercises that mimicked  
12 actual case work. I read previous reports. I wrote  
13 reports. I passed both written and oral exams and a  
14 competency test.

15 In the DNA section I obtained DNA results from mock  
16 items commonly left at crime scenes getting the  
17 expected results. Again, I read previously written  
18 reports, wrote reports, read scientific literature  
19 relevant to forensic DNA analysis and passed both  
20 written and oral exams and a competency test.

21 Q Have you testified in the area of DNA in the  
22 Second Judicial District Court previously?

23 A Yes, I have.

24 Q How about in other jurisdictions as well?

1 A Yes, I have.

2 Q And is the crime lab here in Washoe County  
3 accredited?

4 A Yes, it is.

5 Q Ms. Baum, did you perform examinations under  
6 FSD17326?

7 A Yes, I did.

8 Q That number is a number assigned to the  
9 Forensic Science Division of a given case; correct?

10 A That's correct.

11 Q And in this -- in a case such as this do police  
12 or perhaps even others gather evidence and submit it to  
13 the crime lab and request testing?

14 A Yes, that's correct.

15 Q Is that how it gets to you?

16 A Yes, it is.

17 Q And then are there multiple individuals,  
18 criminalists, in the crime lab who do testing similar  
19 to what you did in this case?

20 A Yes, there are.

21 Q And so how did you get assigned to this  
22 particular case?

23 A My supervisor came to me and said we had a rush  
24 case and she asked me to perform analysis on this case.

1 Q So given the rush nature of it was there just a  
2 few items that you examined at the start?

3 A That's correct.

4 Q What were those in a general sense?

5 A Cigarette butts.

6 Q Okay. Ms. Baum, going on in this case did you  
7 perform analysis involving -- you said cigarette butts?

8 A Yes, that's correct.

9 Q You identified those items as well --  
10 correct? -- in your work?

11 A Yes, that's correct.

12 Q Have you prepared a PowerPoint slide that  
13 defines a little bit more of which items you tested?

14 A Yes, I did.

15 Q It talks about your results?

16 A Yes, it does.

17 Q And does it explain briefly the DNA process and  
18 how it works?

19 A Yes, it does.

20 Q Would you take a look at Exhibit 102. If you  
21 can turn it over, there's a tag on the thumb drive; is  
22 that right?

23 A Yes, that's correct.

24 Q Does that have your initials and a date on it?

1           A     It does.

2           Q     Does that mean you've looked at the contents?

3           A     I have looked at these contents.

4           Q     And is this a PowerPoint prepared by you to  
5 help explain your testimony today?

6           A     Yes, it is.

7           MR. LEE:   Move to admit for demonstrative purposes.

8           MS. RISTENPART:   No objection.

9           THE COURT:   It is admitted, though I did not write  
10 down the number, so I'm sorry.

11          MR. LEE:   102.

12          THE COURT:   102 is admitted, Ms. Clerk.

13          THE CLERK:   Thank you.

14                        (Exhibit 102 was admitted.)

15          THE COURT:   As you begin speaking without questions  
16 please monitor your pace.   Your vocabulary and the pace  
17 will make it difficult for the reporter.

18          THE WITNESS:   Okay.

19 BY MR. LEE:

20          Q     So looking at Exhibit 102, this PowerPoint,  
21 this is it?

22          A     Yes, that's correct.

23          Q     Okay.   Can you walk us through how it works,  
24 the process.   And then once the process stops, then

1 I'll ask you a few more questions. Okay?

2 A Sure. So the Washoe County Sheriff's Office  
3 Forensic Science Division is currently accredited by  
4 ANAB which is the American National Standards  
5 Institute, National Accreditation Board. And we have  
6 been accredited since December 1994.

7 All living things are made up of cells which in  
8 each cell is a control center called the nucleus. The  
9 nucleus contains chromosomes which are structures  
10 composed of DNA. We have 23 pairs of chromosomes which  
11 in each chromosome pair one chromosome is inherited  
12 from our father's sperm and the other chromosome is  
13 inherited from our mother's egg.

14 There are many sources of biological evidence.  
15 These can include blood, semen, saliva, urine, hair,  
16 teeth, bone, tissue and sweat. All the DNA from one  
17 person will be the same regardless of what cells it  
18 comes from.

19 Some typical items used as evidence include blood  
20 stains, semen stains, licked areas, handled items,  
21 cigarette butts, bottles and cans, chewing gum and even  
22 food.

23 In the lab the evidence is placed into a tube.  
24 Chemicals are added to the tube to pop open the cells



1 to release the DNA. The amount of DNA that's isolated  
2 may be very small. We need to make copies of it so it  
3 can be analyzed. And this is done through a process  
4 called the polymerase chain reaction or PCR for short.

5 Through multiple copies of the polymerase chain  
6 reaction the isolated DNA is exponentially copied so at  
7 the end of the process we have many copies. Think of  
8 this as like making copies on a copy machine.

9 That DNA is called amplified DNA. We can then  
10 analyze it for short tandem repeats or STRs for short.  
11 To understand what STRs are let's take a closer look at  
12 DNA.

13 So DNA is shaped like a twisted ladder and the  
14 rungs of the ladder have bases and we have four bases  
15 that make up our DNA. We have adenine, thymine,  
16 guanine and cytosine.

17 Specific locations on our DNA have repeated units  
18 of bases. For example, here you have an adenine and an  
19 adenine and a thymine and a guanine. This unit is  
20 repeated three times.

21 Everyone will have the same repeat units at  
22 specific locations on the DNA. The number of times the  
23 unit is repeated is variable among individuals. STR  
24 analysis looks at the number of repeat units at

multiple locations on the DNA to obtain a DNA profile.

For example, let's take a look at Jack. So Jack inherited four AATG repeats from his father and six AATG repeats from his mother. So Jack's DNA profile at this location is a 4-6.

Now, let's take a look at Jill at that same location. So Jill inherited two AATG repeats from her father and three AATG repeats from her mother. So Jill's DNA profile at this location is a 2-3.

So just by looking at Jack and Jill you can see that the number of repeats is highly variable between individuals. And that's one chromosomal pair. Remember we have 23 pairs of chromosomes.

So let's say 1 in 10 people wear purple shoes. So 1 in 10 is pretty common. It doesn't help me identify someone. So let's say 1 in 10 people wear glasses. Again, that's pretty common. Well, you don't have to be wearing purple shoes to be wearing glasses. That means these events are independent of each other.

So I can multiply the frequency of the first event times the frequency of the second event to get the frequency of both events occurring at once. So the number of people who are wearing purple shoes and wearing glasses is 1 in 10 times 1 in 10 is 1 in 100.

1 So the more information I have the easier it is to  
2 identify someone.

3 Well, this same principle applies in DNA analysis.  
4 So let's say I have DNA results from a piece of  
5 evidence. And I look at that first location, and let's  
6 say that is a 2-3 at that first location. I can go in  
7 a DNA database and see how many people have a 2-3 at  
8 that first location. And for ease of math let's just  
9 say 1 in 10. So 1 in 10 have a 2-3 at that first  
10 location.

11 And a population database is simply a collection of  
12 DNA profiles. So 1 in 10 is pretty common. It doesn't  
13 tell me much. But I can go to the second location.  
14 Let's say the evidence at that second location is a  
15 3-4. I go into that DNA database and let's just say 1  
16 in 10 people have a 3-4 at that second location.  
17 Because these chromosomes are independently inherited,  
18 I can multiply the first event times the frequency of  
19 the second event to get the frequency of both events  
20 occurring at once.

21 So the number of people who have a 2-3 at that  
22 first location and a 3-4 at the second location is 1 in  
23 10 times 1 in 10 is 1 in 100. And you can multiply  
24 all those frequencies across and you may hear a really

1 large number. So the larger the number the more rare  
2 that profile is in a population.

3 So back in the lab that DNA is injected into this  
4 instrument to obtain a DNA profile. And this is an  
5 example of what a DNA profile can look like. So the  
6 gray bars are areas where STR testing is performed.  
7 And the peaks represents the number of repeats.

8 So at that first location you can see you have two  
9 peaks, one labeled a 12 and the other labeled a 15.

10 Q Ms. Baum, can I interrupt up? You say that  
11 "first location." Is this the first location that  
12 we're looking at?

13 A That's correct.

14 Q And that's a location on a chromosome that  
15 you're looking at?

16 A That's correct.

17 Q And so if you go into the second location -- is  
18 this the second location?

19 A Yes, it is.

20 Q And, again, it's the -- what is it, a VWA?

21 A Yes.

22 Q That's a specific location on the chromosome?

23 A That's correct.

24 Q Okay.

1           A     So looking at that first location you have two  
2 peaks, one labeled a 12 and the other labeled a 15.  
3 That means that this person inherited 12 repeats from  
4 one parent and 15 repeats from the other parent.

5           Going to the second location, you can see there's  
6 one peak and it's labeled a 17. That means that this  
7 individual inherited 17 repeats from both mom and dad.

8           So these DNA results can be put into a table form.  
9 And these DNA results are meaningless unless a  
10 comparison can be made. And that's why we ask for  
11 reference samples to be submitted to our laboratory.  
12 So reference samples are samples taken from known  
13 individuals.

14          So let's say we get a reference sample in and this  
15 is their DNA profile. You can see that these numbers  
16 do not match. That means that this person is excluded  
17 as being the source of the DNA on the item of evidence.

18          Let's say that we get another reference sample in  
19 and this is their DNA profile. You can see that these  
20 numbers match. That means that this person cannot be  
21 excluded as being the source of the DNA on the item of  
22 evidence.

23          When the evidence DNA profile matches the reference  
24 DNA profile, that DNA profile is entered into a

1 population database to determine how common or rare  
2 that profile is in a population. If the most common  
3 profile frequency is rarer than 1 in 8 trillion  
4 individuals, I can say that that person is the source  
5 of the DNA obtained from the item of evidence.

6 So this is an example of what a full profile looks  
7 like. A full profile means I get results in all areas  
8 tested. When I get results in all areas I would expect  
9 this profile to be extremely rare in the population.

10 Sometimes more than one person will leave their DNA  
11 on an item of evidence, and this is called a mixed  
12 pattern. And you can tell that based on the number of  
13 peaks. So at that first location on your left-hand  
14 side you see four peaks. That means that there's at  
15 least two people that contributed to this mixture,  
16 because one person can only have a maximum of two  
17 peaks.

18 And sometimes just due to a low level of DNA we  
19 can't make any conclusions at all. And this is an  
20 example of what a low level DNA profile would look  
21 like.

22 Q Thank you.

23 In this case, Ms. Baum, did you test -- the lab  
24 assigns item numbers as they come into the lab in

1 evidence; correct?

2 A That's correct.

3 Q In this case did you test Item No. 1 which was  
4 identified to you as an NXT cigarette butt collected on  
5 the sidewalk just east of the Parkview Street and  
6 Mazzone Avenue intersection and identified with a  
7 placard 1?

8 A Yes, that's correct.

9 Q Did you also analyze Item No. 4 which was the  
10 same description but identified by Placard No. 4?

11 A Yes, that's correct.

12 Q Then Item No. 12 which is an NXT cigarette butt  
13 collected on the asphalt in the parking lot of 3574  
14 Mazzone Avenue identified as placard 13?

15 A Yes, I did.

16 Q Did you also use that -- use a reference sample  
17 from a Bernard Silva-Guzman?

18 A Yes, I did.

19 Q Did you use a reference sample from an Arturo  
20 Manzo as item 36?

21 A Yes, I did.

22 Q Did you also have a reference sample as item 82  
23 from Richard Silva-Guzman?

24 A Yes, I did.

1           Q    And as item 37 did you have a Kirkland water  
2 bottle with a cap?

3           A    Yes, I did.

4           Q    Now, let me first ask you about with regard to  
5 the cigarette butts, items 1 and 4. You didn't analyze  
6 all four cigarette butts found at that specific  
7 location, did you?

8           A    No, I did not.

9           Q    Why is that?

10          A    My supervisor told me to pick three.

11          Q    Okay. And is that just part of -- based on how  
12 much workload you have there?

13          A    That's correct, and the fact that it was a rush  
14 case. So the least amount of samples means I can give  
15 those results quicker to an agency.

16          Q    So with those cigarette butts, placard 1,  
17 placard 4, you cut them first? Or what do you do first  
18 with the cigarette butts?

19          A    So I look at them, I note the condition of  
20 them. And then cigarette butts, I like to cut the  
21 filter paper off where someone might have put their  
22 lips, and I use that for DNA analysis.

23          Q    Based on those cuttings as well as the placard  
24 13 cigarette butt as well, were you able to create a



1 DNA profile?

2 A Yes, I was.

3 Q On all three of those cigarette butts?

4 A I got DNA results for all three cigarette  
5 butts.

6 Q Okay. Focusing on placards 1 and 4 cigarette  
7 butts, I think you called placard 1 an A1 butt; is that  
8 correct?

9 A That's correct.

10 Q Is that just to help you in tracking?

11 A That's the name of my sample. Yeah, it helps  
12 me track it through the analysis process.

13 Q Placard 4 you called a B1 butt?

14 A That's correct.

15 Q So you had a profile. Were you asked by police  
16 on a rush request to compare those with a sample from  
17 Bernard Silva-Guzman?

18 A Yes, I was.

19 Q Were you able to draw any conclusions from  
20 that?

21 A Yes, I was.

22 Q Do you recall what that was?

23 A Yes, I do.

24 Q Please, if you could tell us what that was.

1           A     Sure.  So Bernard Silva-Guzman is excluded as  
2 being a source of the DNA obtained from the A1 butt and  
3 B1 butt cuttings.

4           Q     Were you asked also to analyze with Y-STR?

5           A     Yes, I was.

6           Q     Explain briefly, if you could, what the Y-STR  
7 means.

8           A     Sure.  So Y-STR is just short tandem repeats on  
9 the Y chromosome only.  And the Y chromosome is  
10 inherited directly from father to son.  There is no  
11 recombining of the Y chromosome.  So father, sons,  
12 paternal relatives all have the same Y chromosomal DNA  
13 profile.

14          Q     And how about with looking at the Y-STR  
15 analysis of those two cigarette butts, A1 and B1, were  
16 you able to draw any conclusions?

17          A     Yes, I was.

18          Q     What was that?

19          A     That the comparison of the Y chromosomal DNA  
20 profile showed that Bernard Silva Guzman and any of his  
21 paternal biological-related relatives could not be  
22 excluded as being the source of the Y chromosomal DNA  
23 results obtained from the A1 butt and B1 butt cuttings.

24          Q     And so on a rush request does that mean you did

1 it pretty quick for them?

2 A I try my best.

3 Q Normally there's a pretty long waiting period  
4 just based on the caseload; right?

5 A That's correct.

6 Q And doing this on a rush request, did you then  
7 notify detectives with the Reno Police Department  
8 homicide division of your initial findings?

9 A Yes, I did.

10 Q Do you remember who it was just by chance?

11 A I worked with three detectives, Detective  
12 Kazmar, Detective Rose and Detective Reed. I believe I  
13 told Detective Kazmar initially.

14 Q Okay. You said Detective Reed. Is that Reed  
15 Thomas?

16 A Yes, that's correct.

17 Q They later provided you item 36, this Kirkland  
18 water bottle; is that correct?

19 A Yes, that's correct.

20 Q Did you do any testing of that water bottle?

21 A Yes, I did.

22 Q What was that?

23 A So I swabbed the inside of the cap and the  
24 inside and outside of the rim of the bottle where

1 someone might have taken a drink out of the bottle.  
2 And I also swabbed the sides of the bottle where  
3 someone might have handled the bottle.

4 Q So from the rim and the cap area where someone  
5 might have drank were you able to develop a DNA  
6 profile?

7 A Yes, I was.

8 Q Were you able to make -- again I think on a  
9 rush request was it with the bottle?

10 A I believe it was, yes.

11 Q Did you make a comparison of the DNA profile  
12 from the bottle with the DNA profile on the cigarette  
13 butts?

14 A Yes, I did.

15 Q And what was the result?

16 A That those profiles were the same.

17 Q Now, to quantify that and be able to testify,  
18 you still need a reference sample from the person  
19 themselves; correct?

20 A That's correct.

21 Q And so you still don't have an identity at that  
22 point either; right? You have a DNA profile from a  
23 bottle and from a cigarette that match, but no name to  
24 it necessarily?

1           A     Well, I was told that the bottle was used by  
2 Richard Silva-Guzman, but, yes, I just have these  
3 matching profiles.

4           Q     But to testify then you're going to need a  
5 sample from Richard Silva?

6           A     Absolutely.

7           Q     Was one obtained and provided to the lab?

8           A     It was.

9           Q     If we could go on forward then in your  
10 presentation.  Oops.  I'm sorry.

11          Now we're talking specific to this case now --  
12 right? -- involving Richard Silva; correct?

13          A     That's correct.

14          Q     All right.  Explain what we're looking at here.

15          A     So I received an NXT cigarette butt collected  
16 on the sidewalk just east of the Parkview Street and  
17 Mazzone Avenue intersection.  And this was from placard  
18 1.  A portion of the cigarette butt was utilized for  
19 DNA analysis as A1 butt.  Richard Silva-Guzman is the  
20 source of the DNA profile obtained from the A1 butt  
21 cutting.  The estimated frequency of this matching DNA  
22 profile is approximately 1 in 8.217 octillion  
23 individuals.

24          Q     Is octillion a 10 with 27 zeros behind it?

1           A     It's a 1 with 27 zeros behind it.

2           Q     Thank you.

3           Now, help us understand. What does this statement  
4 mean, the estimated frequency? Is there another way to  
5 explain that that's easier to understand?

6           A     Sure. So if I were to go out on the street and  
7 randomly pull 8.217 octillion individuals that were  
8 unrelated, I would expect to see this profile in  
9 approximately one individual.

10          Q     Okay. Let's move on to the B1 butt.

11          A     So I received an NXT cigarette butt collected  
12 on the asphalt just east of the Parkview Street and  
13 Mazzone Avenue intersection from placard 4. And this  
14 cigarette butt was utilized for DNA analysis as B1  
15 butt. Richard Silva Guzman is the source of the DNA  
16 profile obtained from the B1 butt cutting. And the  
17 estimated frequency of this matching DNA profile is  
18 approximately 1 in 8.217 octillion individuals.

19          Q     Okay. Let's move on and talk about the placard  
20 13 cigarette.

21          A     I received an NXT cigarette butt collected on  
22 the asphalt in the parking lot of 3574 Mazzone Avenue.  
23 And this is from placard 13. This cigarette butt was  
24 utilized for DNA analysis as C1 butt. But due to a low

1 level of DNA no conclusions can be offered for the  
2 results obtained from the C1 butt cutting.

3 Q If you could just very briefly tell us what  
4 that means when there's too low level of a DNA.  
5 Explain that, if you could.

6 A So it's just too low to make any comparisons.  
7 If it's not -- the quality isn't there in the DNA  
8 profile, then we just can't use the DNA results and  
9 we'll say, you know, this is low level, we're not  
10 making any comparisons.

11 Q So no conclusions on that one?

12 A That's correct.

13 Q Okay. You can move on.

14 A And I received an NXT cigarette butt further  
15 south of trees and also an NXT cigarette butt closest  
16 to trees. The NXT cigarette butt furthest south of  
17 trees was utilized for DNA analysis as E1 butt. And  
18 that's just the name of the sample I gave it. And the  
19 NXT cigarette butt closest to trees was utilized for  
20 DNA analysis as F1 butt. The same unknown female DNA  
21 profile I termed as female B was obtained from the E1  
22 and F1 butt cuttings.

23 Q Thank you. And then the last.

24 A So I received a Kirkland water bottle with a

1 cap reported as being used by Richard Silva-Guzman.  
2 The interior rim of the cap and the interior and  
3 exterior rim of the bottle were swabbed together as D1  
4 bottle. And the exterior sides of the bottle were  
5 swabbed together as D2 bottle.

6 The D1 and D2 bottle swabs were utilized for DNA  
7 analysis. Richard Silva-Guzman is the source of the  
8 DNA profile obtained from the D1 bottle swabs. The  
9 estimated frequency of this matching DNA profile is  
10 approximately 1 in 8.217 octillion individuals.

11 Q Now, with the Kirkland water bottle, again you  
12 were told that he had drank from it; right?

13 A That's correct.

14 Q So this is what you expected?

15 A That's correct.

16 Q Are there any more slides?

17 A Yes.

18 Q Please.

19 A So the DNA results from the D2 bottle swabs  
20 indicate at least two sources of DNA consisting of at  
21 least one male contributor. And due to a low level of  
22 DNA and the number of contributors, no further  
23 conclusions can be offered.

24 Q And so this is on the -- around the bottle



1 where someone might hold the bottle generally?

2 A That's correct.

3 Q And then is this the -- I think this is the  
4 final slide.

5 A Yes, it is.

6 Q Ms. Baum, thank for your time and testimony  
7 today.

8 THE COURT: Cross-examination.

9 CROSS-EXAMINATION

10 BY MS. RISTENPART:

11 Q Ms. Baum, the way it actually works is that the  
12 detectives who are investigating the case send you  
13 requests to test certain things; right?

14 A They send a request and it's analyzed by a  
15 supervisor to determine if we're capable of doing that  
16 type of testing. And then the supervisor will come to  
17 an analyst and ask them to do the testing.

18 Q And in this case you were requested by the  
19 detectives to do a rush to look at the cigarette butts  
20 and compare it to Bernard Silva?

21 A So my supervisor is the person that determines  
22 if a case is a rush or not. I think that's her  
23 decision. And if it is, she will assign it to us and  
24 tell us it's a rush.

1 Q It was assigned to you as a rush; right?

2 A Yes, it is.

3 Q And your knowledge was that you were testing it  
4 only against Bernard Silva at first?

5 A Actually I received information from the  
6 detectives that their suspect was Bernard Silva or  
7 possibly a family member and that's why they wanted me  
8 to perform STR analysis and Y-STR analysis.

9 Q You got that information from the detective  
10 after it came back Bernard Silva was not matching the  
11 cigarettes; right? Then the request came in, oh, can  
12 you do familial testing?

13 A I actually received that information upfront  
14 and that's why I did STR analysis and Y-STR analysis  
15 upfront on the A1 butt and E1 butt cigarette butts.

16 Q You're claiming you did the testing the same  
17 day?

18 A No, that's not correct. Sorry.

19 Q You did the DNA testing first to compare it to  
20 Bernard Silva; right?

21 A That's correct.

22 Q Then you did this like familial Y-STR whatever  
23 you're calling it next?

24 A So I did my STR analysis and Y-STR analysis

1 prior to looking at the reference samples.

2 Q Ms. Baum, you did the DNA testing against  
3 Bernard first; right? Then you did the Y-STR testing;  
4 right?

5 A May I refer to my case packet?

6 Q Do you not remember sitting here?

7 A I believe I did the STR and Y-STR results and  
8 then compared that to the Bernard Silva reference  
9 sample.

10 Q Would it be in your packet?

11 A It would be.

12 Q Do you have it with you?

13 A I do.

14 Q Go ahead. And, Ms. Baum, what you're looking  
15 at is your communications with the detectives, because  
16 they're communicating with you about the case; correct?

17 A Oh, I'm actually looking at my analysis, if I  
18 did STR analysis and Y-STR analysis.

19 So I did STR analysis and Y-STR analysis at the  
20 same time.

21 Q In this case you were never requested by any  
22 law enforcement to do DNA testing on casings or bullets  
23 found at the scene; correct?

24 A That's correct.

1 Q And you can actually get DNA off of bullets and  
2 casings; right?

3 A I'm sorry. Can you repeat that?

4 Q You can test for DNA -- I'll rephrase it. You  
5 can test for DNA on bullets and casings; correct?

6 A That's correct.

7 Q Just merely swab the casing, the outside?

8 A Swabbing is one method, yes.

9 Q And on the bullet itself?

10 A Yes, you could.

11 Q And that could give identification as to who  
12 actually handled the bullet or loaded the firearm;  
13 correct?

14 A It's possible, yes.

15 Q But once the bullets and casings go to the  
16 firearm section, you can no longer really test for DNA  
17 because they manipulate it; right?

18 A That's correct. We do our DNA before it goes  
19 to the firearms department.

20 Q Now, in this case we heard some testimony that  
21 some of the NXT cigarettes had female DNA on it?

22 A That's correct.

23 Q And those cigarettes were provided to you by --  
24 or booked in by Detective Rhodes?

1 A May I refer to my case packet?

2 Q Sure.

3 A So I'm referring to my case packet and it looks  
4 like Detective Rhodes did book in the cigarette butt  
5 for the south of trees and the NXT cigarette butt  
6 closest to the trees.

7 Q The ones that came back with female DNA?

8 A That's correct.

9 Q Were you ever asked to check or reference the  
10 female DNA to Esmeralda Castillo? Do you need to look  
11 at your report again?

12 A Yes, may I look at my report?

13 Q Go for it.

14 A No, I was not.

15 MS. RISTENPART: I have no further questions.

16 Thank you.

17 THE COURT: Redirect.

18 REDIRECT EXAMINATION

19 BY MR. LEE:

20 Q Ms. Baum, with regard to casings, has that been  
21 done by you ever, getting DNA off casings?

22 A Yes, I believe I have analyzed casings for DNA.

23 Q Were you able to create a profile off of that?

24 A I don't recall. Typically they're not the best

1 evidence under our current laboratory guidelines, so it  
2 would not be our first evidence of choice because  
3 casings might have -- like multiple people might handle  
4 it and it's also -- but if it's the only item of  
5 evidence, yes, we'll test casings.

6 Q Does the heat play into it too from a casing?

7 A It could.

8 Q And does your lab currently test DNA on  
9 casings?

10 A Yes, we do.

11 Q Thank you. That's all I have.

12 MS. RISTENPART: Nothing based on that.

13 THE COURT: Thank you. You're free to step down  
14 and leave.

15 Ladies and gentlemen, let's stand for a moment.  
16 I'm not sure if we're going to break now or break in a  
17 while. You're invited to the jury deliberation room to  
18 hydrate and refresh.

19 During this break please do not discuss this case  
20 among yourselves, please do not form or express any  
21 opinion about this matter until it is submitted to you.  
22 I'm not sure if we're going to take an early noon  
23 recess. If we do, I'll just send Deputy Coss in to  
24 invite you to return at a specific time. Or you may

1 return to the courtroom. I'm just not sure. Thank  
2 you, ladies and gentlemen. You're free to go.

3 (Proceedings outside the presence of the jury.)

4 THE COURT: You may be seated, please.

5 Who's next, Ms. Lee?

6 MR. LEE: Reed Thomas.

7 THE COURT: How long will he be?

8 MR. LEE: He'll probably be a half hour to 45 on  
9 direct.

10 THE COURT: Should we break now for lunch or should  
11 we do 30 minutes and interrupt his examination?

12 MR. LEE: I never like to interrupt, so I guess I  
13 want to avoid the chance.

14 THE COURT: And I want some arguments. You've  
15 indicated at sidebar that you may be prepared to  
16 present some authorities about confrontation and  
17 cross-examination and hearsay.

18 MR. LEE: Yes.

19 THE COURT: And that would be an important  
20 conversation before Mr. Thomas testifies?

21 MR. LEE: Yes.

22 THE COURT: Is it through Mr. Thomas that you  
23 intend to introduce the video recording?

24 MR. LEE: I would still need the interpreter before

1 I can do that, so no.

2 THE COURT: So no.

3 MR. LEE: He may provide some foundational  
4 evidence, but that's all.

5 THE COURT: Okay. Ms. Ristenpart, do you have any  
6 thoughts about whether we should break now or break in  
7 a half hour?

8 MS. RISTENPART: Your Honor, it's been a long  
9 morning. We can break now.

10 THE COURT: What they don't know is we've been  
11 going since 8:30. Is 1 o'clock okay or should I say  
12 1:15?

13 MS. RISTENPART: I would ask for 1:15, Your Honor.

14 MR. LEE: That's fine.

15 THE COURT: All right. Deputy Coss, if you would  
16 go into the jury deliberation room and just announce  
17 that they shall return for entry in the courtroom at  
18 1:15.

19 THE BAILIFF: Understood.

20 THE COURT: Thank you.

21 Would you like to do arguments now or would you  
22 like to do it after the lunch hour?

23 MR. LEE: Judge, I think I'm prepared now.  
24 However, before we do that I would ask if we could



1 memorialize our sidebar.

2 THE COURT: Oh, please.

3 MR. LEE: I had asked for the sidebar prior to  
4 Debbie Moreno's testimony. It seemed to me that at our  
5 hearing's conclusion this morning it was up in the air  
6 as to whether the defense wanted the issue of custody  
7 in or out, and so that's why I did it. I don't think  
8 we ever -- ultimately I had to prove it up, and that  
9 was fine. So Debbie Moreno then testified and told  
10 where she works and what she does with the jail calls.

11 THE COURT: Any clarification to that summary of  
12 the sidebar?

13 MS. RISTENPART: Defense continues to object to the  
14 evidence that Mr. Silva was in custody and that it  
15 violates his right to be appearing free before the  
16 jury.

17 THE COURT: Thank you.

18 Ms. Ristenpart, do you want to -- I could close  
19 this session and go to legal arguments now about  
20 confrontation and cross-examination. We can do that at  
21 1:05. We could also do that sometime this afternoon as  
22 the schedule continues to unfold.

23 MS. RISTENPART: Mr. Lee indicated he had some  
24 cites and notations. I would just request that he give

1 those to me so I can research that and be prepared also  
2 instead of blindly arguing in the dark.

3 THE COURT: I think that's fair.

4 Mr. Lee, would you either recite them to Ms. --  
5 after we go off the record and close the session give  
6 them to Ms. Ristenpart either orally or write them  
7 down.

8 MR. LEE: Yes. Do you want them too?

9 THE COURT: I do, yes.

10 All right. Ladies and gentlemen, you're free to  
11 leave the courtroom. We are now going to go off the  
12 record. I'm going to keep the attorneys for a moment  
13 and Mr. Silva for a moment. See you this afternoon.

14 (Discussion off the record.)

15 THE COURT: We will be on the record, Ms. Reporter.

16 I continue to think about Juror No. 13 since I  
17 visited with her in your presence. I have reviewed NRS  
18 175.071, NRS 16.080 and appellate decisions from the  
19 State of Nevada, Cozzie v. State, Westlaw 3,493, and  
20 Haberstroh v. State, Westlaw 5554576.

21 The summary is that I have great discretion to  
22 release a juror whether intended to deliberate or be an  
23 alternate if during the course of the trial I conclude  
24 that there is undue hardship or extreme inconvenience.

1           It appears that we will settle instructions,  
2 instruct the jury, argue and that the jury will  
3 deliberate tomorrow. I don't know that I would have  
4 seated two alternates if I knew this case was going to  
5 be within the first week. I might have because it's a  
6 category A, but I might not have. I would have excused  
7 this juror for cause if there was a motion.

8           I don't want to inconvenience her, but I don't want  
9 the trial to be adjusted for her convenience. I am  
10 comfortable and could exercise my discretion to  
11 discharge her keeping one alternate, and I just want  
12 you to know that's what I'm thinking about. I'm not  
13 making that decision now, but I'm thinking about it as  
14 the schedule unfolds. This afternoon I'm going to talk  
15 with her again and ask her specifically about undue  
16 hardship and extreme inconvenience.

17           Does anybody want to say anything? I'm just giving  
18 you a heads-up is all.

19           MR. LEE: Nothing.

20           MS. RISTENPART: No, Your Honor.

21           THE COURT: Okay. See you at 1:15.

22                   (The lunch recess was taken.)

23                           --o0o--

1 RENO, NEVADA; THURSDAY, FEBRUARY 27, 2020; 1:14 P.M.

2 --o0o--

3 (Proceedings outside the presence of the jury.)

4 THE COURT: Thank you, Deputy. Do we have the  
5 jury?

6 THE BAILIFF: We did not the last I checked.

7 THE COURT: Be seated, please. We will await the  
8 jury.

9 (Proceedings within the presence of the jury.)

10 THE COURT: Please be seated.

11 Present are Mr. Silva and trial counsel, the State.

12 You may call your next witness.

13 MR. LEE: Detective Reed Thomas.

14 THE BAILIFF: Please step all the way up and face  
15 the clerk, please.

16 THE CLERK: Please raise your right hand.

17 (The oath was administered.)

18 THE WITNESS: I do.

19 THE CLERK: Thank you.

20 REED THOMAS,  
21 having been first duly sworn, was  
22 examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. LEE:

Q Sir, could you give us your first and last name

1 and spell it for us.

2 A Reed Thomas, R-e-e-d, T-h-o-m-a-s.

3 Q You're retired now; correct?

4 A Yes, sir.

5 Q What did you retire?

6 A February 14th of 2018.

7 Q What was your profession before that?

8 A I was assigned at that time to the  
9 Robbery/Homicide Unit.

10 Q Were you a police officer, though, in general?

11 A Yes.

12 Q How long were you a police officer?

13 A Almost 24 years.

14 Q All with the City of Reno?

15 A Yes.

16 Q So at the time of retirement you were I think  
17 you said a detective with the Robbery/Homicide Unit?

18 A Yes.

19 Q How about before that?

20 A Do you want a synopsis of the career?

21 Q Yeah, if you could just give us an idea of  
22 things you did in your career.

23 A First five years in patrol. After that I  
24 worked a career criminal unit called the Repeat

1 Offender Program for about 12 years. Back to patrol  
2 for a couple of years and then into detectives,  
3 ultimately finishing in Robbery/Homicide.

4 Q Were you involved in the investigation of Reno  
5 Police Case No. 1723530 involving the death of Lucy --  
6 or Luz Linares-Castillo?

7 A Yes.

8 Q What was your role in the case?

9 A I was assigned as a lead detective along with  
10 Detective Kazmar.

11 Q Worked together?

12 A Yeah.

13 Q And did you work -- when you are investigating  
14 a case such as this do you work as a team?

15 A Yes, the entire unit.

16 Q The entire unit?

17 A Sometimes additional units give us a hand with  
18 some of the things that need to be done.

19 Q How about with this case, did you have  
20 additional units even helping?

21 A Yes, we did, from burglary and fraud.

22 Q And you have patrol officers?

23 A Yes.

24 Q Let me just bring you to November 2nd of 2017.

1 Detective Thomas, how did you become involved in this?

2 A I was on my way to work that morning about  
3 4:45, 4:40, right in there. I got a call from my  
4 sergeant, Ron Chalmers, who had told me about the  
5 shooting that occurred at Parkview and Mazzone. He  
6 asked me to respond there.

7 Q Now, the shooting is at 4:45-ish; right?

8 A Yes, roughly.

9 Q So that's not when you got your call; right?

10 A Actually I did. I was pretty close. I was on  
11 the freeway heading in and my next exit was Moana.

12 Q Did you respond initially to the scene?

13 A Yes.

14 Q What did you do there? Just generally what did  
15 you see?

16 A Generally, as I first got there, I began to  
17 look at the scene, where the car, the victim's car, had  
18 impacted the building. I didn't really get too far  
19 into it until I was called to meet with an individual  
20 that claimed to be the boyfriend of the victim.

21 Q Who is that?

22 A Arturo Manzo.

23 Q Did you talk to him?

24 A I did.

1 Q Where at?

2 A It was actually very close to the scene. It  
3 was north of the intersection of Mazzone and Parkview  
4 on Mazzone.

5 Q Okay. Did you interview him further at the  
6 Reno police station?

7 A I did.

8 Q When you first came in contact and early in the  
9 interview how was his demeanor?

10 A Initially out on the street he was very upset,  
11 I would say somewhat uncooperative, but after a time he  
12 settled down. He was really frustrated because the  
13 patrol officers that were there weren't answering his  
14 questions. That frustrated him.

15 Q So when he's on scene does he see the red Dodge  
16 Charger?

17 A Yes.

18 Q Was there a large police presence?

19 A Yes.

20 Q And he appeared to you not to be able to get  
21 his answers?

22 A Correct.

23 Q Is that pretty normal? Do police hold that  
24 information until later on?



1 A Yes.

2 Q Did you that day, November 27th, interview a  
3 person by the name of Bernard?

4 A Yes.

5 Q Who was he in relation to a Richard Silva?

6 A The brother.

7 Q How did that all come about?

8 A Well, as the investigation progressed we were  
9 starting to identify family members, had knowledge  
10 of -- you know, somehow obtained the fact that he was  
11 the husband of the decedent, so we attempted to make  
12 contact with him.

13 Q And was he -- did you make contact with him at  
14 the Reno Police station?

15 A That's where my first contact was. I believe  
16 patrol officers met him at an elementary school where  
17 he was picking up his kids.

18 Q But your first contact at Reno Police?

19 A Yes.

20 Q Did you notice anything about his physical  
21 condition?

22 A Yes.

23 Q Tell us about that.

24 A He was very unstable, had difficulty walking,

1 breathing, had a cane, appeared to have suffered an  
2 injury or was sick or something.

3 Q Did you know what that injury came from?

4 A Eventually I did.

5 Q What was that?

6 A Self-inflicted gunshot.

7 Q To what part of his body?

8 A I believe it was his upper chest.

9 Q Did you spend actually some time with him?

10 A I did.

11 Q So it wasn't just observing him walking about,  
12 you spent actual time talking to him?

13 A Sure.

14 Q At some point did you or maybe others in the  
15 Robbery/Homicide Unit decide it was appropriate to call  
16 an ambulance to stand by?

17 A Before he actually came to the station we  
18 discussed that and determined that that was probably a  
19 good idea based on his condition.

20 Q Okay. And was it in conjunction with news  
21 you're about to tell?

22 A Yes.

23 Q What news was that?

24 A That his wife had been killed.

1 Q During the course of your interview did you  
2 provide -- or did Mr. Bernard Silva-Guzman provide a  
3 voluntary DNA sample?

4 A Yes.

5 Q "Voluntary" meaning you asked and he freely  
6 gave?

7 A Yes.

8 Q How did you collect it?

9 A The way we typically collect it. Don rubber  
10 gloves. We have a little kit with swabs that are  
11 sealed in paper, a paper container with boxes. After  
12 the paper is broken we take the swab from the interior  
13 of the mouth, two swabs actually, and place them inside  
14 of the box. It's a long box that comes with it. We  
15 notate the name, the date and the case number on the  
16 box and submit that to evidence or the crime lab.

17 Q And then that's used for what purposes?

18 A To determine a DNA profile.

19 Q Okay. And then with that profile can it be  
20 tested against other items of evidence that you may  
21 come into contact with or find?

22 A Sure.

23 Q How about -- going back to Mr. Arturo Manzo,  
24 did he provide a DNA swab?

1 A He did.

2 Q By consent?

3 A Yes.

4 Q Meaning his agreement?

5 A Yes.

6 Q How about did you search his Jeep Cherokee?

7 A Yes.

8 Q How did that come about?

9 A Well, he was the boyfriend of the victim and  
10 doing our due diligence we wanted to make sure there  
11 wasn't anything of evidentiary value in the Jeep.

12 Q So you asked --

13 A He could potentially be a suspect.

14 Q So you asked him if you could search?

15 A Yes.

16 Q And he said?

17 A Yes.

18 Q And then his residence as well? You didn't  
19 search his residence on Mazzone; right?

20 A I did not.

21 Q Are you aware of that search?

22 A I am aware that it was searched, yes.

23 Q Did you request of him for a search?

24 A Manzo?

1 Q Yes.

2 A I don't know if I asked or if somebody else had  
3 already accomplished that.

4 Q Are you aware that that was by consent as well?

5 A I am aware of that.

6 Q And then did -- Manzo had an ex-girlfriend by  
7 the name of Esmeralda Castillo; correct?

8 A That's correct.

9 Q Were you made aware as part of your  
10 investigation that she had a fight or a tiff or  
11 something with Lucy?

12 A Yes.

13 Q What was that that you understood it to be?

14 A Exactly that, that some time in the past couple  
15 of weeks they had gotten into an argument or a  
16 disagreement over some sort of confrontation, but that  
17 was really all I knew.

18 Q And so was that something that you considered  
19 in the course of the investigation?

20 A Sure.

21 Q And ultimately as the investigation unfolded  
22 were you able to rule her out as a suspect?

23 A Yes.

24 Q And, Detective, there were some cigarette butts

1 found at the scene; correct?

2 A Correct.

3 Q Specifically if I'm looking at Parkview and  
4 Mazzone, there were four cigarette butts; is that  
5 accurate?

6 A Yes. Placards 1 through 4, I believe.

7 Q So if I'm showing you Exhibit 5 -- I get that  
8 the writing is upside down. But north is up, though;  
9 correct?

10 A That's correct.

11 Q And are the placards you were just talking  
12 about where the cigarette butts were found?

13 A Yes.

14 Q And we've heard from Detective Kazmar you were  
15 involved in the November 8th interview of Mr. Silva  
16 with Detective Kazmar.

17 A Yes.

18 Q Both of you asking questions?

19 A Yes.

20 Q And at that point did you learn that the  
21 cigarette butts had some evidentiary value to you, to  
22 your investigation?

23 A Yes.

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

1 A Yes.

2 Q Could you please identify him for us.

3 A He's sitting right there at the defendant's  
4 table with it looks like a light-colored or pink shirt.

5 MR. LEE: Your Honor, may the record reflect the  
6 identification of Mr. Silva?

7 THE COURT: Yes.

8 BY MR. LEE:

9 Q During that interview with Mr. Silva at that  
10 point, November 8th, was he a prime, prime suspect for  
11 you?

12 A Yes. He was -- he was our first priority at  
13 that point.

14 Q And that's partly why this interview is set up?

15 A Yes.

16 Q I'm showing you Exhibit 46. Who is that?

17 A That's the defendant.

18 Q Was that as he appeared at the time of his  
19 arrest?

20 A That's correct.

21 MR. LEE: Move to admit.

22 MS. RISTENPART: Your Honor, it's not relevant,  
23 but --

24 THE COURT: Is it Exhibit 46? It is not relevant.

1 It is -- the objection is sustained.

2 BY MR. LEE:

3 Q With that interview on November 8th you locked  
4 him into a few things?

5 A Yes.

6 Q What was that?

7 A That he --

8 THE COURT: Hold on. May I see the proposed  
9 exhibit? I may invite -- I'll now invite response, not  
10 argument. The only reason I would return to my  
11 decision is if there was any clothing indicia that was  
12 connected to evidence in this case. Can you make that  
13 proffer? Or is it simply to identify what he looked  
14 like at the time?

15 MR. LEE: Identify at the time.

16 THE COURT: My decision remains the same. It is  
17 sustained.

18 BY MR. LEE:

19 Q All right. So, Detective, locked him in I  
20 think was the question we were at.

21 A Yes.

22 Q Couple of things. What were the main things  
23 that you felt like the interview did?

24 A We wanted to know if he was ever in the area of



1 Mazzone and Parkview.

2 Q And according to Mr. Silva what?

3 A He was not.

4 Q After that interview happened where did  
5 Mr. Silva go?

6 A He left.

7 Q Okay. And then you were able to obtain the  
8 water bottle from the interview room?

9 A That's correct.

10 Q Had you personally prepared that trash can, put  
11 a new fresh bag in it?

12 A Yes.

13 Q Did you pick the water bottle up with gloves?

14 A Yes.

15 Q And detectives had that submitted to the lab?

16 A Yes, the following day, I believe.

17 Q Tell us about the arrest of Yiovannie Guzman.  
18 Let me bring you to November 16th now of 2017. If you  
19 would, please, set the stage. Did you know about  
20 Yiovannie Guzman at that point?

21 A No. We learned about him that night.

22 Q Why did detectives come into contact with him?

23 A He was the defendant's cousin. We had been  
24 looking for a Toyota Sequoia that belonged to Arturo

1 Guzman who is Yiovannie's father, registered to him.  
2 Detectives went to the house to speak with the family  
3 and speak to them about the location of that vehicle.

4 My understanding is that Yiovannie showed up at the  
5 house during that investigation and detectives  
6 ultimately asked the family if they would come down to  
7 the station for voluntary interviews, and they did.

8 Q Were you at the station when Mr. Guzman was  
9 there being interviewed?

10 A Yes. There were a lot of interviews going on,  
11 but it was all happening at the same place, yes.

12 Q Now, before that time you mentioned you knew  
13 the involvement of the gray-colored Toyota Sequoia.

14 A Correct.

15 Q But at the time did you know whether anyone  
16 else was really involved in the murder other than  
17 Richard Silva?

18 A No.

19 Q Six hours before that time, something at  
20 7-Eleven; right?

21 A Yes.

22 Q What was that?

23 A Well, Mr. Silva was a passenger in that vehicle  
24 according to the videotape that we obtained from

1 7-Eleven six hours before the murder.

2 Q Okay. So you would like to have talked to  
3 someone involved with that Toyota Sequoia; right?

4 A Sure.

5 Q But that was six hours before, still not  
6 necessarily sure if someone else was involved in the  
7 murder?

8 A Correct.

9 Q During the course of his interview -- who  
10 interviewed Mr. Guzman?

11 A Detective Jenkins, Allie Jenkins.

12 Q You were made aware that he had confessed to  
13 his participation?

14 A Yes.

15 Q He explained details of the conspiracy?

16 A That's my understanding, yes.

17 Q Where it took place?

18 A Yes.

19 Q These are all things you learned later; right?

20 A Yes.

21 Q You weren't watching the interview at the time?

22 A No.

23 Q Did he tell the place of the conspiracy?

24 A Yes.

1 MS. RISTENPART: Objection. This is all hearsay.  
2 He's trying to get the statements from Detective  
3 Jenkins in through this detective.

4 THE COURT: That's an accurate statement of the  
5 evidence code. If all of this witness's testimony is  
6 coming from what Officer Jenkins said, it would be  
7 sustained. Did I use the word "Jenkins" correctly?

8 MR. LEE: Yes.

9 MS. RISTENPART: Correct, Your Honor.

10 MR. LEE: Could I offer an exception, Your Honor?

11 THE COURT: Yes, you may.

12 MR. LEE: Specifically it gives -- he's going to  
13 explain next what he did. So it's simply effect on the  
14 listener just with this one statement.

15 THE COURT: Well, then ask the next question,  
16 because I want you to move on, let me see if we need to  
17 come back to it.

18 MR. LEE: Fair enough.

19 BY MR. LEE:

20 Q Did you learn from part of that interview that  
21 a discussion had taken place between Mr. Yiovannie  
22 Guzman and Mr. Silva at Paul's Market?

23 A Yes.

24 Q Was videotape obtained from Paul's Market?

1           A     Not to my knowledge.

2           Q     Explain that to us, if you could.

3           A     That was two weeks afterward. I was not  
4 personally involved in any of the canvassing of the  
5 video canvassing. I think we had a discussion about  
6 obtaining video there, but at some point the decision  
7 was made not necessarily by me that we probably  
8 wouldn't get video because it had been that long.  
9 Typically they --

10          MS. RISTENPART: Objection. Speculation.

11          THE COURT: Unless he knows specifically about  
12 Paul's Market and their video retention policies, then  
13 I'm going to sustain the objection.

14          MR. LEE: I think he can talk in a general sense,  
15 Your Honor, about generally these smaller stores.

16          THE COURT: Lay the foundation.

17 BY MR. LEE:

18          Q     Sir, you've as an officer for 23 and a half  
19 years --

20          A     Yes.

21          Q     -- obtained many video surveillance from  
22 different stores?

23          A     Yes.

24          Q     Some larger businesses?

1 THE COURT: Let me interrupt for a moment. This  
2 witness has already testified that it wasn't his  
3 decision, that somebody else decided not to obtain the  
4 video from Paul's Market. Did I hear that correctly?

5 MR. LEE: I think you heard that correctly.

6 THE COURT: All right. So you're having this  
7 witness explain somebody else's decision?

8 MR. LEE: As the lead detective.

9 THE COURT: Okay. You may continue.

10 BY MR. LEE:

11 Q So in your 23 years' experience you've obtained  
12 surveillance from different stores?

13 A Yes.

14 Q A smaller store like a Paul's Market, generally  
15 in your experience would they generally keep video for  
16 a long time?

17 MS. RISTENPART: Again, speculation as to Paul's  
18 Market.

19 THE COURT: It's overruled. This witness cannot  
20 describe what Paul's Market's video retention policies  
21 are.

22 MR. LEE: I agree.

23 THE COURT: Okay. But he can answer the question  
24 based upon his experience as a detective in the Reno

1 Police Department.

2 BY MR. LEE:

3 Q So, Detective, let me be clear. I'm not asking  
4 you about Paul's Market. I'm asking generally a  
5 smaller market.

6 A Correct.

7 Q What's your experience?

8 A Generally it's difficult to get video after  
9 that time, after a period of time. Generally a week  
10 seems to be typical.

11 Q Of how long a place retains video?

12 A Correct.

13 Q Were you involved in the arrest of Richard  
14 Silva?

15 A Yes.

16 Q Directly?

17 A Yes.

18 Q I'm showing you Exhibit 94. You've seen this?

19 A Yes.

20 Q This comes from that 7-Eleven where he  
21 purchased cigarettes; right?

22 A That's correct.

23 Q He has a hat on there that is not very  
24 distinguishable perhaps by this picture; is that fair?

1 A Yes.

2 Q However, have you seen that hat?

3 A Yes.

4 Q Did you see that hat in person?

5 A Yes.

6 Q When did you see that hat?

7 A The night he was arrested.

8 Q On November 16th?

9 A He was wearing it.

10 Q What kind of hat was it?

11 A A 49ers hat.

12 Q Were you made aware that a day or two after the

13 murder there was a call regarding destruction of

14 property on some of Mr. Manzo's property?

15 A Yes.

16 Q Showing you Exhibit 123, is this one of the

17 things that was damaged?

18 A Yes.

19 Q So how come the Robbery/Homicide Unit

20 investigated that?

21 A Because we thought that whoever did this, it

22 may be related to the murder.

23 Q As part of that investigation some cigarette

24 butts were obtained?



1 A Yes.

2 Q Do you recall where they -- from where they  
3 were obtained on this map, Exhibit 4?

4 A Yes.

5 Q Where were they?

6 A One up here. I think that's a 13 upside down.  
7 And another one that I don't see annotated that's  
8 farther all the way to the north end of Mazzone that  
9 would be next to some apartment buildings that are  
10 there on the west side of the street.

11 Q Let me show you with Exhibit 1. Is it easier  
12 to tell here?

13 A Yes.

14 Q So as I understand, there were -- there was  
15 a -- the four cigarettes were down here by the first  
16 house on Parkview; correct?

17 A Correct.

18 Q There was an NXT cigarette identified by  
19 placard 13 here?

20 A Correct.

21 Q And then two more further up Mazzone?

22 A Yes.

23 Q Where were those located? If you could try to  
24 draw a circle on this to give us a rough estimate.

1 A Right there, that last dot that I just put up.

2 Q So the furthest up dot?

3 A Yes. Sorry. I didn't realize how the street  
4 worked exactly.

5 Q Are you're aware that ultimately two unknown  
6 female -- or an unknown female profile DNA came back on  
7 that cigarette?

8 A I'm aware of that, yes.

9 Q Or those two cigarettes I should say.

10 A Yes.

11 Q Did that help you with the -- did that ever  
12 help you with the murder that occurred down on Parkview  
13 and Mazzone?

14 A No.

15 Q Now, on November 16th after Mr. Silva was  
16 arrested was a seizure order obtained for DNA from him?

17 A Yes.

18 Q You collected that DNA yourself?

19 A Yes.

20 Q Did you do it in the same manner you described  
21 before with the buccal swabs?

22 A Yes.

23 Q And was that submitted up to the lab?

24 A It was.

1 Q And was that -- the comparison -- that DNA swab  
2 that you collected, that was compared by the lab with  
3 the placards 1 and 4 cigarette butts?

4 A That's correct.

5 Q Also during that evening on November 16th  
6 multiple search warrants happening?

7 A Yes.

8 Q Sbragia Way?

9 A Yes.

10 Q I'm not sure if it was that day, but the blue  
11 Lexus was searched soon after?

12 A Yes.

13 Q The gray Toyota Sequoia?

14 A Yes.

15 Q A search warrant for Mr. Silva's phone?

16 A Yes.

17 Q And his phone, it was a search warrant, it  
18 wasn't by consent, was it?

19 A No.

20 Q And then with that search warrant, once you  
21 showed it to Mr. Silva did he actually comply and then  
22 give you the passcode to his phone?

23 A He did.

24 Q A search warrant for a cell tower dump?

1           A     Yes.

2           Q     At some point after the arrest of Mr. Silva did  
3 he ask to speak with his brother?

4           A     Yes.

5           Q     Which brother?

6           A     Bernard.

7           Q     Were you okay with that?

8           A     Initially we were a little hesitant. We  
9 weren't sure what was going to happen, whether there  
10 was going to be a confrontation because of what we had  
11 learned. He assured us that that was not why he wanted  
12 to talk to his brother.

13          Q     And then did you ask Bernard as well if he  
14 wanted to?

15          A     Yes.

16          Q     Ultimately was Bernard led into that room?

17          A     Yes.

18          MR. LEE: Your Honor, if I could ask the witness to  
19 step down just for authentication purposes to look at  
20 something on the computer.

21          THE COURT: Yes, if you'll please join the attorney  
22 in the well of the court.

23          BY MR. LEE:

24          Q     Detective, I'm going to show you Exhibit 137.

1 Come on around here. Now, I would note this is not on  
2 the screen being shown. Is that correct?

3 A Yes.

4 Q If you would -- if you need to scroll through  
5 that to look a little bit. You can skip ahead, or if  
6 you want to watch the whole two minutes, that's fine,  
7 too, whatever you prefer. But ultimately what I'm  
8 going to ask you is do you recognize this and what is  
9 it.

10 A Yes, it's Bernard and the defendant.

11 Q Okay. And is that what happened after he had  
12 asked to see Bernard?

13 A Yes.

14 Q Okay. Go ahead and return. Thank you.

15 MR. LEE: Your Honor, I would move to admit Exhibit  
16 137.

17 MS. RISTENPART: Objection, Your Honor.

18 THE COURT: Is it the video or is it a still  
19 photograph?

20 MR. LEE: Video.

21 THE COURT: It is overruled. Exhibit 137 is  
22 admitted. Wait. Is this a still image from the video  
23 or is this the video itself?

24 MR. LEE: It's the video itself.

1 THE COURT: All right. Ladies and gentlemen,  
2 during this recess please do not discuss this case  
3 amongst yourselves, please do not form or express any  
4 opinion about this matter until it has been submitted  
5 up to.

6 We'll stand for our jury. We'll be in recess for  
7 about 12 to 15 minutes.

8 (Proceedings outside the presence of the jury.)

9 THE COURT: You may return to your seat or to the  
10 rotunda, wherever you wish to be.

11 Be seated, everyone, please.

12 The defense has objected to the admission of this  
13 video asserting that it violates the defendant's right  
14 of confrontation and cross-examination. I postponed  
15 arguments on the issue until I could be better  
16 informed. Mr. Lee has handed two case citations to me  
17 and to Ms. Ristenpart. He did so before the lunch  
18 hour.

19 Ms. Ristenpart, do you wish to be heard?

20 MS. RISTENPART: Your Honor, it's still violating  
21 Mr. Silva's right to confrontation. He's trying to  
22 proffer in statements from Bernard Silva but not  
23 calling Bernard Silva as a witness. As the Court heard  
24 this morning, the State claims that it could not

1 subpoena or place Mr. Bernard Silva under subpoena, but  
2 we haven't heard any more information beyond that  
3 general statement.

4 In regards to the Sixth Amendment confrontation  
5 right and, of course, Mr. Silva's constitutional right  
6 and due process right, the State's cases that he has  
7 proffered both dealt with a proven declarant  
8 unavailability, specifically Wade versus State, and  
9 also the fact that it was involving a coconspirator  
10 under Carroll which are not either of the applicable  
11 circumstances in our particular case.

12 So I'm asking that you deny their request -- they  
13 have not given you a proper exception to the Sixth  
14 Amendment -- and that they cannot admit these  
15 statements and violate Mr. Silva's constitutional  
16 rights, particularly given this piece of evidence with  
17 its unintelligibility, the fact that there's multiple  
18 voices and conversation and whispering that you can see  
19 and hear, we just don't have any context to.

20 THE COURT: Doesn't that go to the weight of the  
21 evidence and whether it is persuasive or unpersuasive  
22 as a controlling fact -- or an informing fact?

23 MS. RISTENPART: No, because it goes towards our  
24 Sixth Amendment right to confront what's being said on

1 this. You can clearly hear Bernard saying something  
2 else. It's unintelligible, though. You can hear his  
3 voice. You can hear -- at points you can see him  
4 actually talking, but it's so unintelligible that even  
5 their interpreter could not make out what was being  
6 said. And that's now going to go before the jury.

7 So it's not even just the statements, there's this  
8 other added layer of the unintelligibility of  
9 conversation that we don't get a right to confront  
10 because they're not calling Bernard Silva.

11 THE COURT: Thank you.

12 MR. LEE: First of all, Judge, as far as hearsay  
13 goes, I think the states are pretty -- the cases --  
14 excuse me. I'm talking fast -- cited by the State are  
15 pretty dispositive of the hearsay.

16 THE COURT: Would you just recite them. I have  
17 them both in front of me, but make sure the record  
18 reflects what those two cases are. I will do it. It's  
19 Wade versus State, 114 Nevada 914, which is a 1988  
20 case, and Carroll versus State, 132 Nevada 269, a 2016  
21 case.

22 MR. LEE: Thank you.

23 So certainly the State is using these -- the  
24 entirety of this plus Mr. Bernard's statements to



1 provide context. It's not offered for the truth. But  
2 if you were to look at it even for the truth, he  
3 doesn't really speak much truth. He says, "What? I  
4 don't know. Okay. Promise me. I want to see you out.  
5 No. I'm going to find a lawyer. No one knows. No one  
6 will ever know. Don't worry. I know, bro, it's okay."

7 I mean, those are not testimonial statements just  
8 by looking at it, but certainly not testimonial  
9 statements, because this wasn't done with the primary  
10 purpose of being interviewed for court. We even know  
11 that 911 calls are not testimonial in nature. And even  
12 there the person on the -- the caller on the phone is  
13 describing events that are occurring or that recently  
14 occurred which are normally pretty decent evidence that  
15 the State uses at trial.

16 So by analogy those are not considered testimonial.  
17 Certainly when an individual who seeks to talk to his  
18 brother without police interaction, without police  
19 telling that brother what to say, they are not  
20 testimonial statements by any regard or any dream. And  
21 so because of that they do not violate any  
22 confrontation clause for that reason as well.

23 THE COURT: Thank you.

24 I believe an adequate record has been made. The

1 objection is overruled.

2 Does anybody need a break before bringing the jury  
3 back in?

4 MS. RISTENPART: Your Honor, is it the State's  
5 intention to play this video right now through this  
6 witness?

7 THE COURT: I don't know.

8 I asked that question earlier and you said it was  
9 through the translator that this was coming in, so I  
10 was a little surprised.

11 MR. LEE: No, I'm not trying to play it now. I  
12 actually just wanted to show it to say this is what it  
13 is and then I'm done actually with questioning. The  
14 translator is coming up next for the jail call.  
15 Perhaps we could discuss that now as well.

16 THE COURT: Go ahead.

17 MR. LEE: Let me grab the exhibit. So with regard  
18 to the jail call, Your Honor, again Wade and Carroll,  
19 the same citations, apply with regard to the hearsay  
20 challenge. And then lastly with regard to the  
21 testimonial, it's really the same argument.

22 THE COURT: Yes, and I am persuaded by the two  
23 authorities that I've read and I would overrule an  
24 objection based upon the failure of cross-examination

1 and confrontation. If we're talking about the mother,  
2 my ruling would be the same.

3 Is there any additional argument you want to make?

4 MS. RISTENPART: Yes, Your Honor. In regards to  
5 the proffered statement by the State where they claim  
6 that Mr. Richard Silva is admitting to having an affair  
7 with Luz, that's a corpus delicti issue, Your Honor.  
8 They have not shown you any independent corroboration  
9 of that beyond accomplice testimony which we know is  
10 circular. You can't corroborate with accomplice  
11 testimony something that they're trying now to use as a  
12 motive.

13 MR. LEE: Respond?

14 So corpus delicti is a completely different issue  
15 that's being conflated right now. Corpus delicti, the  
16 purpose is simply to keep an individual from confessing  
17 to a crime that hasn't happened. It has nothing to do  
18 with a specific detail or fact or even element of a  
19 crime.

20 The classic example would be if I confessed to a  
21 murder with no body, no one missing, anything like  
22 that. That would be a corpus delicti problem. But  
23 here it's not an issue of whether a crime was  
24 committed. We have a dead body. We have it by

1 homicidal means. That is what corpus delicti goes to,  
2 not towards each specific element or statement or  
3 anything. It is the broader sense of the crime in  
4 general and a confession in general, not each element  
5 of a confession.

6 THE COURT: At this point it's just to preserve the  
7 record if you have any additional arguments to make. I  
8 do agree with the State, but I want you to have a full  
9 opportunity to --

10 MS. RISTENPART: Your Honor, in regards to this  
11 particular statement, the State has not proffered any  
12 independent corroboration of this alleged affair beyond  
13 their accomplice testimony. And that's exactly what I  
14 was arguing before is the uncorroborated accomplice  
15 testimony which this Court allowed to put on. And now  
16 they're going to try to sandwich that in by saying,  
17 well, it was corroborated by a statement that actually  
18 corroborates the accomplice testimony.

19 Again, it's circular. That's exactly what I argued  
20 previously. I'm arguing it again. The State is  
21 leaving out context. And the Court has heard all my  
22 other arguments in regards to this particular  
23 translated statement. And with that we would submit.

24 THE COURT: Thank you. The exhibit will be

1 admitted over objection.

2 Let's bring the jury in.

3 (Proceedings within the presence of the jury.)

4 THE COURT: You're seeking the admission of 137?

5 MR. LEE: 137. The other one -- I'm going to lay  
6 some foundation for the phone call right now with  
7 Detective Thomas, but I will seek to admit that with  
8 the interpreter.

9 THE COURT: And that's 136?

10 MR. LEE: 136 or 37. I can look it up right now.

11 THE COURT: My understanding is 137 is coming in.

12 Please be seated, everyone.

13 137 is admitted.

14 (Exhibit 137 was admitted.)

15 THE COURT: We'll await the witness.

16 The State, you may continue.

17 MR. LEE: Thank you.

18 BY MR. LEE:

19 Q Detective Thomas, I'm showing you Exhibit 137.  
20 We're not going to play it all. I just want to give  
21 you an idea of what we're looking at here and have you  
22 tell us.

23 What is Exhibit 137? Obviously here we're just  
24 looking at a still image at 30 seconds into the player;

1 right?

2 A Yes. It's when we had allowed Bernard to come  
3 and speak with Richard.

4 Q So which one is Richard and which one is  
5 Bernard?

6 A Richard is facing us; Bernard has got his back  
7 to us.

8 Q They embraced obviously; right?

9 A Yes.

10 Q There's some conversation?

11 A Yes.

12 Q In what language?

13 A Mostly Spanish.

14 Q Detective, as well were you aware of a recorded  
15 phone call made by Richard Silva on November 17th,  
16 2017, at 1431 hours?

17 A Yes.

18 Q In fact, the first phone call made after his  
19 arrest; right?

20 A Correct.

21 Q Did you get -- I'm not going to ask you the  
22 content but only the fact. Did you get a general idea  
23 of what was stated in that from an interpretation you  
24 had made?

1 A Yes.

2 Q As well as this interview, same thing, you  
3 understood the general context?

4 A Yes.

5 Q Did these provide what you thought was  
6 evidence?

7 A Yes.

8 Q And had evidentiary value should be the real  
9 question.

10 A Yes.

11 MR. LEE: Your Honor, I believe I'm done if I can  
12 just have a moment.

13 Detective Thomas, thank you for your time.

14 Your Honor, I tender the witness.

15 THE COURT: To the defense.

16 CROSS-EXAMINATION

17 BY MS. RISTENPART:

18 Q Detective, you interviewed Bernard on November  
19 2nd of 2017?

20 A Yes.

21 Q And you actually interviewed him at  
22 approximately 4:35 p.m. in the afternoon?

23 A Yes.

24 Q So that was almost a good 12 hours after Luz

1 had been shot?

2 A Roughly, yes.

3 Q And in fact Detective Rhodes, one of your  
4 colleagues, went to a daycare center where their  
5 littlest daughter, Ruby, was in daycare in order to get  
6 Bernard to come down to the station; right?

7 A Yes, they met him there because I think he was  
8 there to pick up Ruby.

9 Q But Ruby wasn't there because Child Protective  
10 Services had already taken the kids; right?

11 A I believe so.

12 Q And the detectives brought Bernard down to the  
13 police station for questioning; correct?

14 A Yes. Are you asking if he transported himself  
15 or they brought him? Because I honestly don't know.

16 Q But you do claim that you remember that an  
17 ambulance was called because you guys were worried  
18 about how Bernard was going to take it?

19 A My understanding is from the police reports  
20 that the officers on scene did that at the school. And  
21 we also independently determined that we would do that  
22 at Robbery/Homicide as well based on the information we  
23 were about to give him.

24 Q Detective, you write reports in your case;



1 correct?

2 A I'm sorry?

3 Q You write reports for your case?

4 A Yes.

5 Q And the purpose of writing a report is exactly  
6 for days like today, two years later we're sitting in a  
7 courtroom arguing about things?

8 A Right.

9 Q And to refresh your memory?

10 A Sure.

11 Q And in your reports you didn't write anything  
12 about calling an ambulance because you were worried  
13 about Bernard and his health, did you?

14 A No, I don't think I did.

15 Q You brought that up when you met with Mr. Lee  
16 prior to trial before coming to testify today; right?

17 A He asked me about it.

18 Q So going back to November 2nd of 2017, you were  
19 the one who personally interviewed Bernard?

20 A Yes.

21 Q And right after you introduced yourself to  
22 Bernard you told him that this was -- that you were a  
23 detective and that this was a case about Lucy; right?

24 A Um-hum.

1 Q And there was no response from Bernard, was  
2 there?

3 MR. LEE: Objection. Hearsay.

4 MS. RISTENPART: Effect on the listener, Your  
5 Honor.

6 THE COURT: Counsel, you both know that  
7 manifestations of conduct in the form of communications  
8 fall within the hearsay rule. So the objection is  
9 appropriate. And then the question is whether there's  
10 an exception. I believe an exception has been offered.  
11 I overrule the objection.

12 THE WITNESS: Okay. I'm sorry.

13 BY MS. RISTENPART:

14 Q After you told Bernard that this was -- you  
15 were investigating a case about Lucy, there was no  
16 response from Bernard; right?

17 A I don't know if there was specifically no  
18 response, but we continued to talk.

19 Q You found it odd that there were no questions  
20 about what this is about, what is going on; right?

21 A I did. I did.

22 Q And in fact it wasn't until about 50 minutes  
23 later into that interview that Bernard first asked what  
24 happened?

1 MR. LEE: Objection. Hearsay.

2 THE COURT: Sustained.

3 BY MS. RISTENPART:

4 Q From your investigation, Detective, you learned  
5 that it was a very contentious relationship between  
6 Bernard and Lucy; right?

7 A Yes.

8 Q And you learned that there were allegations of  
9 physical violence?

10 A Yes.

11 Q You also learned that there were allegations of  
12 Bernard stalking Lucy?

13 A Yes.

14 Q And you also learned that there had been a  
15 fight or physical altercation with Luz and Bernard on  
16 October 20th of 2017?

17 A Yes.

18 Q And that Bernard shot himself in the chest on  
19 that day?

20 A Yes.

21 Q And that case was investigated by Sparks Police  
22 Department; right?

23 A That's correct.

24 Q And you also learned from your investigation

1     that Bernard knew about Arturo Manzo; right?

2           MR. LEE:  Objection.  Hearsay.

3           THE COURT:  Overruled.

4           THE WITNESS:  I believe so, yes.

5  BY MS. RISTENPART:

6           Q     And you also knew from your investigation that  
7     Bernard had found out about the affair with Arturo  
8     Manzo while he was in the hospital recovering from the  
9     gunshot wound?

10          A     I believe so, yes.

11          Q     You were also the one who interviewed Arturo  
12     Manzo; right?

13          A     Yes.

14          Q     And you interviewed him twice?

15          A     Yes.

16          Q     And you knew from your investigation that there  
17     was a phone call between Arturo and Bernard; right?

18          A     Yes.

19          Q     Prior to Luz being killed?

20          A     Yes.

21          Q     Now, that interview with Bernard on November  
22     2nd of 2017, that took place at the Reno Police  
23     Department station; right?

24          A     It did.

1 Q It was video and audio recorded, wasn't it?

2 A Yes.

3 Q And the State asked you a lot of questions  
4 about Bernard's perceived mobility pursuant to your  
5 observations; right?

6 A Yes.

7 Q But he was able to walk; right?

8 A He walked into the station, yes.

9 Q And at one point Bernard actually raised his  
10 hand to demonstrate holding a firearm; right?

11 A I believe so, yes.

12 MR. LEE: Objection. Hearsay. Move to strike.

13 THE COURT: Do you have an exception?

14 MS. RISTENPART: Your Honor, I will remove the  
15 holding up his hand like a firearm, but I am asking for  
16 the admission of a photograph of a still video showing  
17 his mobility with his arm.

18 THE COURT: All right. So I sustained the  
19 objection as a form of inadmissible hearsay. As I  
20 mentioned earlier, conduct can manifest communication.  
21 Mr. Bernard is an out-of-court declarant. It is  
22 sustained. You may proceed if you have other evidence  
23 to introduce through this witness.

24 /////

1 BY MS. RISTENPART:

2 Q In that interview, Detective, you observed  
3 Bernard raise his right hand up --

4 MR. LEE: Objection.

5 BY MS. RISTENPART:

6 Q -- over his shoulder?

7 MR. LEE: Objection. Same.

8 THE COURT: It is sustained.

9 MS. RISTENPART: May I be heard, Your Honor?

10 THE COURT: Yes.

11 MS. RISTENPART: It is relevant and it goes towards  
12 the State's claim that there's some lack of mobility by  
13 Bernard that has been proffered throughout the State's  
14 case.

15 THE COURT: Let me think for just a minute.

16 MR. LEE: I think that's fair. I'll withdraw that.

17 THE COURT: Right. And I agree with you  
18 withdrawing. I was about to overrule the objection,  
19 because I think the door has been opened and it's  
20 consistent with the scope of direct examination.

21 You may proceed.

22 MS. RISTENPART: May I approach with a picture,  
23 Your Honor?

24 THE COURT: Yes.

1 MR. LEE: Theresa, I'm not going to object, but  
2 it's not marked yet.

3 THE CLERK: Exhibit 139 marked for identification.

4 (Exhibit 139 was marked.)

5 BY MS. RISTENPART:

6 Q I'm showing you what has already been -- 139.  
7 Detective, is that a picture of Bernard Silva on  
8 November 2nd, 2017?

9 A Yes.

10 Q And is that in the interview room where you're  
11 interviewing him?

12 A Yes.

13 Q And is that a picture of him raising his hand?

14 A Yes.

15 Q His right hand?

16 A Yes.

17 Q And whole arm above his shoulder?

18 A Yes.

19 Q And also during this interview Bernard spoke  
20 English with you; correct?

21 A Yes.

22 Q Was it clear to you whether or not English was  
23 Bernard's first language?

24 A I don't think I even gave that a thought. His

1 English was just fine.

2 Q Do you know if Bernard speaks Spanish?

3 A Yes.

4 Q He does?

5 A He seems to, yeah.

6 Q Do you know if Mr. Richard Silva's mother,  
7 Bernard's mom, does she speak English?

8 A I don't know to what degree, but I do know that  
9 when her and her husband came down for interviews we  
10 determined that we needed translators for those  
11 interviews.

12 Q Also during this interview Bernard showed you  
13 text messages on his phone; correct?

14 A Yes.

15 Q And in fact you had Bernard's cell phone  
16 downloaded; right?

17 A Yes.

18 Q So you could look at it?

19 A Yes.

20 Q And what did you find?

21 A It was a phone. Lots of things, lots of text  
22 messages.

23 Q Detective, you found that there was a very  
24 large amount of text messages sent from Bernard to Luz;



1 right?

2 A Yes.

3 Q In fact, there was 325 text messages Bernard  
4 sent to Luz from October 24th to November 1st; right?

5 A I didn't count them, but that wouldn't surprise  
6 me.

7 Q And that there was a large amount of calls from  
8 Bernard to Luz from just even November 24th to November  
9 1st; right?

10 A Yes.

11 MS. RISTENPART: I'm just waiting for the music to  
12 go past, Your Honor.

13 THE COURT: It's not as bad as Street Vibrations  
14 which is very noisy.

15 BY MS. RISTENPART:

16 Q And you had Bernard Silva come back on November  
17 16, 2017, for another interview, didn't you?

18 A Yes.

19 Q And that interview was video and audio  
20 recorded; correct?

21 A Yes.

22 Q And when Bernard Silva showed up to that  
23 interview he was wearing a black hoodie, in fact, an  
24 all black outfit; correct?

1           A     I would need to see the video.  I don't know  
2 exactly what he was wearing.

3           Q     Would looking at a picture of a still of that  
4 video?

5           A     Sure.

6           MS. RISTENPART:  May I approach, Your Honor?

7           THE WITNESS:  You're right.  I remember seeing the  
8 back of him.  Yes, he was wearing a black sweatshirt,  
9 yes.

10          BY MS. RISTENPART:

11          Q     I'll show you so you can --

12          MS. RISTENPART:  Thank you, Ms. Clerk.

13          THE CLERK:  Exhibit 140 marked for identification.

14                         (Exhibit 140 was marked.)

15          MS. RISTENPART:  No objection?

16          MR. LEE:  No objection.

17          MS. RISTENPART:  Move for admission, no objection,  
18 Your Honor.

19          THE COURT:  Yes, it is admitted.

20          THE CLERK:  Thank you.

21                         (Exhibit 140 was admitted.)

22          BY MS. RISTENPART:

23          Q     I'm showing you what's already been admitted as  
24 140.  Detective, is this a picture from the interview

1 room on November 16th of 2017?

2 A Yeah, it's actually one of the interview rooms  
3 upstairs where other detectives work. It's not a  
4 robbery/homicide interview room, but, yes, it's an  
5 interview room.

6 Q And is that Bernard Silva dressed in all black?

7 A It is.

8 Q Wearing a hoodie?

9 A Yes.

10 Q And also there's some pretty distinctive little  
11 toggles. That's kind of my word for it. You know on a  
12 hoodie the little --

13 A The end of the strings are you talking about?

14 Q That's what I would call a toggle, yes.

15 A Okay.

16 Q Do you see those on there?

17 A Yes.

18 Q And they're a little bit square shaped?

19 A Um-hum.

20 Q Did you collect that hoodie?

21 A Did not.

22 Q Did you collect those pants?

23 A No.

24 Q And because you never collected them you

1 couldn't ask for gunshot residue testing on those,  
2 could you?

3 A No.

4 Q And, Detective, throughout your case Bernard  
5 was never arrested; right?

6 A No.

7 Q He was never charged with anything?

8 A No.

9 Q Now, you testified today that there was some  
10 decision just to never go to Paul's Market to try to  
11 find security. I'm not sure who made that decision,  
12 but there was a decision; right?

13 A Ultimately that's my responsibility and, yes, I  
14 did not make that determination. I don't know if  
15 anybody did. I'm just saying in terms of the time that  
16 had elapsed that that was the general feeling, that we  
17 probably weren't going to get video there anyway.  
18 Should we have tried? Sure.

19 Q And in fact sitting here today you don't know  
20 what Paul's Market's surveillance video retention  
21 policy is?

22 A I do not.

23 Q And you don't know what Paul's Market's video  
24 surveillance would have captured or has captured?

1           A     I do not. I know that according to Yiovannie's  
2 interview they were in the parking lot, and I don't  
3 know what their capability is there at the market.

4           Q     So you never checked if there was an outside  
5 camera; correct?

6           A     I did not.

7           Q     Detective, in your investigation -- I'm showing  
8 you 94. It's already been admitted. You never  
9 interviewed this cashier, did you?

10          A     I didn't personally, no. I don't know if  
11 anybody else did. I think they may have spoken to him  
12 to coordinate getting the video and how to go about  
13 doing that, because we needed obviously that videotape  
14 or a copy of that videotape. I don't know how that  
15 went about, what that process was.

16          Q     Detective, are you aware that Yiovannie claims  
17 that Richard asked or was looking for a mask and/or  
18 gloves at the 7-Eleven?

19          A     I'm not aware of that.

20          Q     Never heard that before?

21          A     I don't recall that.

22          Q     Because if you had you probably would have  
23 wanted to interview this cashier; right?

24          A     Probably.

1 Q In regards to the 49er hat that you collected  
2 from Richard on November 16th, 2017, you never got that  
3 tested for gunshot residue; correct?

4 A I don't believe so.

5 Q Also, a black hoodie was taken from Richard  
6 that same day too, right?

7 A I believe so, yes.

8 Q And you never got that tested for gunshot  
9 residue, did you?

10 A I don't believe so, no.

11 Q Now, showing you Exhibit No. 137, just the  
12 portion shown to the detective to identify, this is an  
13 interrogation room at Reno Police Department?

14 A That's correct.

15 Q And there's cameras in the room?

16 A Yes.

17 Q Visible; right?

18 A Yes.

19 Q In fact, you can see one right here?

20 A Correct.

21 Q And that entire portion of Bernard and Richard  
22 talking in that room, that lasted for a little over  
23 five minutes, didn't it?

24 A I think that's about right.

1 Q And that whole conversation, large parts of it  
2 are unintelligible; right?

3 A Large parts of it are in Spanish which I do not  
4 speak. Some of it was unintelligible, yes, but I don't  
5 speak Spanish so I can't tell what could be interpreted  
6 and what couldn't.

7 Q And by "unintelligible" I mean you just can't  
8 hear what the person is saying?

9 A Yeah.

10 Q English or Spanish, you just can't hear it?

11 A Yeah, there were some parts that were  
12 unintelligible, yes.

13 Q Muffled?

14 A Yes.

15 Q Because there's also hysterical crying?

16 A Sure.

17 Q And you testified that it was Richard who asked  
18 to speak to his brother Bernard?

19 A He asked to see his family and he preferred --  
20 he wanted to speak to Bernard first. The family joined  
21 him after he spoke to Bernard.

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

23 THE COURT: Thank you.

24 Any redirect?

REDIRECT EXAMINATION

BY MR. LEE:

Q Sir, when Bernard had his arm raised up, what was he showing you?

A I'm not sure.

Q Did he discuss to you how he shot himself?

A He did, yes.

Q As well -- in your investigation I believe that Bernard knew about this murder?

A Do I believe that?

MS. RISTENPART: Objection.

THE COURT: Hold on. Let me think about that. The question is in your investigation do you believe Bernard knew about the murder. Overruled.

MS. RISTENPART: I'm going to withdraw. I'll withdraw, Your Honor. Thank you.

BY MR. LEE:

Q Did Bernard know about this murder?

A Yes.

Q Whose DNA was at the scene?

A Mr. Silva's.

Q Who pulled the trigger six times at the scene?

A Mr. Silva.

MR. LEE: That's all I have.



1 MS. RISTENPART: Your Honor, that is completely  
2 inappropriate. A motion to strike, because that's for  
3 the jury to decide.

4 THE COURT: Do you have any recross? You've made  
5 the contemporaneous objection, which is appropriate,  
6 but I will address it out of the jury's presence. Do  
7 you have any recross examination questions?

8 RECROSS EXAMINATION

9 BY MS. RISTENPART:

10 Q Detective, you weren't there, were you?

11 A At the scene of the murder, no.

12 MS. RISTENPART: No further questions.

13 THE COURT: All right. Thank you.

14 Ladies and gentlemen, during this recess please do  
15 not discuss this case amongst yourselves, please do not  
16 form or express any opinion about this matter until it  
17 has been submitted to you.

18 We'll be recess for about 10 minutes.

19 (Proceedings outside the presence of the jury.)

20 THE COURT: Be seated, please.

21 Well, the redirect ended with this witness  
22 providing a conclusion, an opinion. Right now I have  
23 an objection, and I would like you to be heard and then  
24 I'll allow you to argue. If indeed I sustain it, then

1 there may be cause to cure. I'm not sure. But it  
2 seems to be very unusual.

3 MR. LEE: It's my question that who pulled the  
4 trigger that killed Lucy, that's the question; right?

5 THE COURT: I don't remember the exact question.  
6 Would you read it back, please.

7 (The following question was read:)

8 "Who pulled the trigger six times at the scene?"

9 MR. LEE: So I'm really struggling to find any  
10 impropriety in that, Your Honor. I think this is a  
11 lead detective. He managed the investigation. He had  
12 information from Yiovannie Guzman saying this, just  
13 like he had information about DNA at the scene. He can  
14 make those statements which he testified to. That is  
15 the whole purpose.

16 THE COURT: Right. So within his opinion based  
17 upon his investigation --

18 MR. LEE: Absolutely.

19 THE COURT: -- that can be answered, but it was a  
20 very declarative question. He answered it, and then  
21 the redirect which caused the defense objection,  
22 because it did speak to a fact conclusion that's left  
23 to the province of the jury.

24 MR. LEE: I agree, but we're telling them facts

1 throughout the whole trial. I'm not going to argue  
2 with you, Your Honor. I'll hold that back. I'll leave  
3 it at that.

4 THE COURT: So let me see if defense wants to make  
5 a record.

6 MS. RISTENPART: Your Honor, it was the form of the  
7 question and also a conclusionary statement and the way  
8 he stated it also, that it was leading the detective  
9 into making an ultimate conclusion which is for and in  
10 the purview and only in the purview of the jury. So  
11 that's why I'm asking you to strike that last  
12 statement, question and answer.

13 THE COURT: Okay. Thank you. That concludes your  
14 testimony. You're free to step down and leave.

15 MR. LEE: Judge, if you're inclined to strike it, I  
16 would like to ask it in another way then.

17 THE COURT: Well --

18 MR. LEE: But if not, then certainly we're done  
19 with Detective Thomas.

20 THE COURT: I was just going to write out some of  
21 my thoughts, because I've got to respond to this in  
22 some way in front of the jury. So let me just think.

23 THE WITNESS: Stand by?

24 THE COURT: It doesn't matter. Yeah, stand by, if

1 you would, please, here, there or wherever you want.  
2 It will just take a moment.

3 (Pause in the proceedings.)

4 THE COURT: It's my intention to say the following  
5 to the jury when they return. The defense objected at  
6 the end of Detective Thomas's -- I put Detective T.  
7 Let me make sure it's Thomas.

8 THE WITNESS: Thomas is my last name, yes, sir.

9 THE COURT: The defense objected at the end of  
10 Detective Thomas's redirect examination. The detective  
11 may testify about his opinion based upon his  
12 investigation, but you as the jury have the  
13 responsibility to decide the facts. The objection is  
14 sustained.

15 That's as far as I'm going to go. If that causes  
16 you to want to keep the witness on the stand to  
17 rephrase, to reform the question, you may do so.

18 MR. LEE: So the objection is sustained so they are  
19 not to consider his answer; correct?

20 THE COURT: That's correct.

21 MR. LEE: I would like to have him up on the stand  
22 then.

23 THE COURT: Bring in the jury, please.

24 (Proceedings within the presence of the jury.)

1 THE COURT: Please be seated.

2 The defense objected at the end of Detective  
3 Thomas's redirect examination. The detective may  
4 testify about his opinion based upon his investigation,  
5 but you as jurors will have the responsibility of  
6 deciding the facts. The objection is sustained.

7 Any other questions to the State?

8 MR. LEE: Yes, Your Honor.

9 FURTHER REDIRECT EXAMINATION

10 BY MR. LEE:

11 Q Detective, based upon your entire  
12 investigation, including DNA evidence, including this  
13 recorded conversation with Bernard that we haven't  
14 heard yet, including phone calls recorded from the jail  
15 that we haven't heard yet -- but you certainly heard  
16 those; right?

17 A Yes.

18 Q -- Yiovannie Guzman's testimony, considering  
19 motives, do you have an opinion about who pulled the  
20 trigger?

21 A No. Oh, do I have an opinion? Yes.

22 Q Who pulled the trigger on November 2nd then  
23 that killed -- based on all of that that killed Lucy?

24 MS. RISTENPART: Objection again, Your Honor.

1 THE COURT: It's overruled.

2 THE WITNESS: Richard Silva.

3 MR. LEE: Thank you.

4 THE COURT: Do you have any recross examination?

5 FURTHER RECROSS EXAMINATION

6 BY MS. RISTENPART:

7 Q Detective, you have that opinion, but you  
8 didn't do a thorough investigation, did you?

9 A I think it was thorough.

10 Q Well, in your opinion, of course -- right? --  
11 because it's your case?

12 A Sure.

13 Q And you retired shortly thereafter, didn't you?

14 A I did.

15 Q And you didn't collect evidence like Paul's  
16 Market; right?

17 A No.

18 Q You didn't test for gunshot residue; right?

19 A On the items that you specifically mentioned,  
20 no.

21 Q You didn't even collect the hoodie, the black  
22 hoodie, that Bernard showed up with on his interview?

23 A No.

24 MS. RISTENPART: No further questions.

1 THE COURT: Thank you. You're free to step down  
2 and leave the courtroom.

3 Your next witness.

4 MR. LEE: Suli Schehr.

5 THE BAILIFF: Please step all the way up and then  
6 face the clerk, please.

7 THE CLERK: Please raise your right hand.

8 (The oath was administered.)

9 THE WITNESS: I do.

10 THE CLERK: Thank you.

11 SULI SCHEHR,  
12 having been first duly sworn, was  
examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. LEE:

15 Q Good morning.

16 A Good afternoon.

17 Q Good afternoon, Ms. Schehr. Could you give us  
18 your first and last name and spell it for us.

19 A Suli Schehr, S-u-l-i, S-c-h-e-h-r.

20 Q Ms. Schehr, do you speak multiple languages?

21 A Well, I speak Spanish very well. I speak  
22 English and French.

23 Q Are you in fact a certified court interpreter  
24 in the state of Nevada?

1           A     I am.

2           Q     How does that process work?

3           A     It was pretty easy, because I was an  
4 interpreter in Maryland for 20 years. So when I came  
5 here, I apply for it and they called Maryland, I guess,  
6 and they gave me the license.

7           Q     And so to be a certified court interpreter  
8 means you have a license to do so?

9           A     Yes.

10          Q     And is it run by the office of the  
11 administration of the courts?

12          A     Yes.

13          Q     And have you testified or interpreted in the  
14 state of Nevada?

15          A     Interpreted, yes; testified, a time before, one  
16 time.

17          Q     And so interpreting meaning you could interpret  
18 for a witness called by the State?

19          A     Yes.

20          Q     You could interpret for a witness called by the  
21 defense?

22          A     Yes.

23          Q     Or you could interpret at the request of a  
24 court?



1           A     Yes.

2           Q     And have you done all of those things?

3           A     Yes, sir.

4           Q     You're not employed by the State of Nevada;

5     correct?

6           A     No, I'm not.

7           Q     You're not employed by the District Attorney's

8     Office?

9           A     No, sir.

10          Q     But in this particular case you were hired or

11     retained by the District Attorney's Office?

12          A     Yes.

13          Q     Was that for the purpose of what?

14          A     Doing some transcription from a video and a

15     telephone call.

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

17     Exhibit 97. Take a look at those two pages.

18          A     Yes.

19          Q     Do you recognize that?

20          A     Yes, I do.

21          Q     What is that?

22          A     This is the transcription I did of a video.

23          Q     Does that video have two individuals in it?

24          A     Yes, two males.

1 Q During that video do they hug, embrace?

2 A Embrace.

3 Q What language are they speaking?

4 A Some of it is Spanish and a lot of it English.

5 Q Now, as we listen to it in here -- actually let  
6 me back up. When you listened to it, tell us about  
7 what you did to be able to interpret it.

8 A Say it again.

9 Q What did you have to do to be able to listen to  
10 it, understand and interpret?

11 A I had to listen to it -- I don't know -- 20, 30  
12 times until I could get some parts of the tape which is  
13 what I transcribed, because the rest I couldn't  
14 understand.

15 Q Did you have the aid of any speakers or special  
16 speakers or anything?

17 A Yeah, I have a very good set of headphones,  
18 very good.

19 Q And you wore those while you transcribed?

20 A Indeed, yes.

21 Q Now, do you consider yourself cavalier in your  
22 transcriptions or are you conservative in your  
23 transcriptions?

24 A I think it's good.

1 Q Meaning if there's something you're not sure  
2 about, are you going to put it in your transcription  
3 and testify to it?

4 A If I couldn't hear it, I couldn't understand  
5 it, like I cannot understand, I do not transcribe.

6 Q So the parts that you translated and  
7 transcribed, are those only parts that you are sure you  
8 understood?

9 A Yes.

10 MR. LEE: Okay. Your Honor, I move for admission  
11 of Exhibit 97.

12 MS. RISTENPART: Your Honor, it's hearsay. The  
13 witness is here to testify to a hearsay document.

14 THE COURT: 97 is admitted over objection.

15 (Exhibit 97 was admitted.)

16 BY MR. LEE:

17 Q Showing you Exhibit 97, is this a document that  
18 you prepared?

19 A Yes.

20 Q Is this your signature that appears at the  
21 bottom?

22 A Yes.

23 Q And is that your -- on the right side here is  
24 that your certification number with the State of

1 Nevada?

2 A Yes.

3 Q Now, when this -- you listened to approximately  
4 two minutes of conversation; correct?

5 A Correct.

6 Q And so to give us some context, when you said  
7 that you couldn't hear or understand something, you  
8 would say so; correct?

9 A Yes. I would write "unintelligible."

10 Q So such as about midway through you said, "Says  
11 something unintelligible"?

12 A That's right.

13 Q But if I have something that says "me and  
14 Lucy," that means you could hear it and comfortable  
15 translating it?

16 A Yes.

17 Q I'm going to pull this for just a moment and  
18 play for you Exhibit 137. You in fact looked at  
19 Exhibit 137 just prior to coming into court this  
20 afternoon; correct?

21 A Yes.

22 Q Is this the video of the translation on Exhibit  
23 97 we just looked at?

24 A Yes. I have not heard it, but I saw it

1 immediately before, yes.

2 Q Thank you.

3 (Exhibit 97 played.)

4 BY MR. LEE:

5 Q So at this point I'm going to go back to  
6 Exhibit 97, Ms. Schehr. We had some experience in this  
7 courtroom yesterday of hearing an interview. Would you  
8 say it's harder to hear in here than it is with your  
9 headphones?

10 A Yes. The first part here is very difficult.  
11 The end of the tape to me that I heard it so many times  
12 is quite clear, but the first part is almost impossible  
13 to understand here what they say.

14 Q So here you've identified the individuals as M1  
15 and M2; correct?

16 A Correct.

17 Q So looking at this, the left side is what you  
18 hear in Spanish; correct?

19 A Yes.

20 Q And the right side is your English  
21 interpretation?

22 A Yes.

23 Q So as I circle things would you mind reading  
24 them in?

1           A     In Spanish and in English?

2           Q     No, we can just go English. So how about this

3 first line?

4           A     "Me, me and Lucy."

5           Q     M2 responds how?

6           A     Male 2 says "What?" in English.

7           Q     M1?

8           A     Says, "Me and Lucy were also having an affair,

9 dude."

10          Q     M2 says what?

11          A     "Okay."

12          Q     And M1?

13          A     The first part of what he says he's crying, but

14 the second part, the second part is "That's why I did

15 it."

16          Q     The part I'm circling on the second page, M1

17 says what?

18          A     "I didn't tell anyone, anyone but you about me

19 and Lucy."

20          Q     And how does M2 respond?

21          A     "No one knows and no one ever will know."

22          Q     After that, M1.

23          A     "No one will know. Don't worry."

24          I'm sorry.

1 "No one. I just wanted to tell you, dude."

2 Q And M2's response?

3 A "No one will know. Don't worry. Don't worry."

4 Q And then M1.

5 A "I didn't want to kill her, dude. I wanted to  
6 kill the dude."

7 Q How does M2 respond?

8 A "I know, bro, but it's okay. It's okay, bro,  
9 it's okay."

10 Q Ms. Schehr, you also translated and transcribed  
11 a recorded phone call?

12 A Yes.

13 Q And about how long would you say the part is  
14 that you translated?

15 A Well, at first I was asked to do three parts,  
16 one a bit longer and two very, very short ones.

17 Q The longer one, is it about a minute long  
18 roughly?

19 A I would say so.

20 MR. LEE: Your Honor, may I ask the witness to step  
21 down just for purposes of foundation?

22 THE COURT: Yes. You may join the attorney in the  
23 well of the courtroom.

24 /////

1 BY MR. LEE:

2 Q I'm going to insert Exhibit 99. And at this  
3 point it's not being shown on the screen to the  
4 audience; correct?

5 Thank you.

6 I've also shown you Exhibit 136 as you looked at  
7 Exhibit 99; correct?

8 A Yes.

9 Q What is 136?

10 A It's the transcription of a very short part  
11 that this is a telephone call that is your evidence 99.

12 MR. LEE: Your Honor, I move to admit Exhibit 99.

13 MS. RISTENPART: Objection. Hearsay.

14 THE COURT: 99 is admitted over objection.

15 THE CLERK: Thank you.

16 (Exhibit 99 was admitted.)

17 MR. LEE: And I move to admit 136 as well.

18 THE COURT: What is 136? Will you show it to me?

19 MS. RISTENPART: Same objection.

20 THE COURT: 136 is admitted.

21 THE CLERK: Thank you.

22 (Exhibit 136 was admitted.)

23 BY MR. LEE:

24 Q Ms. Schehr, Exhibit 136 is your translation and



1 transcription; correct?

2 A Yes.

3 Q Is this all embedded in the recorded phone call  
4 that's contained in Exhibit 99?

5 A Yes.

6 Q As a caption?

7 A Yes.

8 Q And let's be clear. This record is not the  
9 entirety of the phone call, it's only a portion of it;  
10 right?

11 A Yeah, very small.

12 Q There's two files on Exhibit 99. For the  
13 record I'm going to play the first file.

14 (Exhibit 99 was played.)

15 Q And now the second file.

16 (Exhibit 99 was played.)

17 Q Now, at this point I'm pausing it at 26  
18 seconds. The bottom, what does Silva say?

19 A Something I didn't get, because the mother or  
20 the woman -- I think it's the mother -- was talking,  
21 and then it says "my car keys because they have a  
22 search warrant for my car."

23 (Exhibit 99 was played.)

24 /////

1 BY MR. LEE:

2 Q And how does Silva end that? What does he say?

3 A "They told me because they are trying to  
4 find" -- he says "the pistol, and they aren't going to  
5 find it. I already got rid of it."

6 Q Ms. Schehr, thank you for your testimony today.  
7 That's all the questions I have.

8 THE COURT: Cross-examination.

9 CROSS-EXAMINATION

10 BY MS. RISTENPART:

11 Q Ma'am, you said you've been doing this for how  
12 many years again?

13 A Twenty years.

14 Q Twenty years. And in an interpretation,  
15 translation -- right? -- context is critical; right?

16 A Context as to the people you know?

17 Q Meaning you can't just pick and choose pieces  
18 of a conversation to then translate and get a full  
19 contextual idea of what's going on?

20 A Yes and no. It depends. Usually they gave me  
21 the first -- for example, in this case they gave me the  
22 first translation I did, they gave me the whole tape, I  
23 saw it whole. The second part they gave me some parts  
24 to read. They told me that it was a conversation. And

1 I had an idea what it was because the second part, the  
2 one we just saw, is pretty clear. The Spanish is very  
3 clear. You can understand anyway.

4 Q So let me get this straight, ma'am. The State  
5 gave you a longer portion of this conversation between  
6 the two males that you listened to; correct?

7 A Yeah, not complete, but a bit longer, yes.

8 Q And then from that you used that to use for  
9 context to the statements that you just -- we just saw  
10 that you translated?

11 A Yes. I didn't need much context. I could  
12 translate what I hear.

13 Q But you used it for context?

14 A Yeah.

15 Q Because it is hard to hear as you said. You  
16 had to listen 20 to 30 times with great earphones on?

17 A Only the first one. The second one is very  
18 clear. The telephone conversation is very clear.

19 MS. RISTENPART: Your Honor, I would like a hearing  
20 outside the presence.

21 THE COURT: I understand, and it will be granted,  
22 but I need to hear more to include redirect, because  
23 right now I have just the witness's testimony in  
24 isolation and I need to hear more. So continue

1 cross-examination if you would, please.

2 BY MS. RISTENPART:

3 Q So as we were talking about, context is part of  
4 what you were using to interpret what you thought you  
5 were hearing in that very difficult video of the two  
6 males; right?

7 A In the video of the two males I didn't use any  
8 context.

9 Q I asked a really difficult question. Let me  
10 rephrase.

11 You had a longer portion than what was shown;  
12 correct?

13 A Which one are you talking about, the first one  
14 or the second one?

15 Q The first one.

16 A No, I just got that.

17 Q Are you aware that it is from a larger  
18 conversation?

19 A No. No.

20 Q Through your interpretation experience wouldn't  
21 it be necessary to look at the entire context of the  
22 conversation, especially when you're trying to  
23 interpret words?

24 A No. No.

1 Q And this is after you listened to it 20, 30  
2 different times?

3 A Say it again.

4 Q The first one after you listened to it 20 to 30  
5 different times with really good headphones on?

6 A Yes.

7 Q And this document, the one that had your  
8 translation on it, that's what you believe that you  
9 heard; right?

10 A Yes. The things that I transcribed I am  
11 100 percent sure that I heard them very well.

12 Q And then the parts that are unintelligible --

13 A I didn't hear anything.

14 Q Right. But you could hear that they were  
15 talking?

16 A Mostly crying, yes.

17 Q So words were being spoken, you just -- it's  
18 just too bad of a recording for you to understand?

19 A Yeah.

20 Q So with that, the unintelligible portions that  
21 you couldn't hear anything, that would put context as  
22 to what you say you heard translated; right?

23 A Not really. I just transcribed what I heard.

24 THE COURT: It's time to move on.

1 BY MS. RISTENPART:

2 Q And in that last -- in the phone call, there  
3 are portions that were inaudible to you; right?

4 A No, it was pretty clear. Some words at the  
5 beginning when they were talking, you know, on the  
6 phone, but it was a very clear conversation.

7 Q You actually wrote in your translation the word  
8 "inaudible"; right?

9 A In some parts, yes, very few.

10 Q And that phone call was -- number two I'll call  
11 it for you -- that was part of a larger phone call?

12 A Yes.

13 Q Almost 15 minutes?

14 A I have no idea.

15 MS. RISTENPART: Nothing further.

16 THE COURT: Any redirect?

17 MR. LEE: None.

18 THE COURT: Thank you. You're free to step down  
19 and leave.

20 THE WITNESS: You're welcome.

21 THE COURT: To the State.

22 MR. LEE: Judge, I believe I'm going to rest my  
23 case. Before I do so could I have five minutes just to  
24 review the evidence list?

1 THE COURT: Of course that's an appropriate  
2 request, and I would grant that. I'm thinking about  
3 the logistics, because should the State rest there will  
4 then be a lengthy recess.

5 MR. LEE: I can look over it pretty fast. We can  
6 do it right here.

7 THE COURT: Yes, if you can just do it now. I just  
8 want to send the jury out once. I don't want to send  
9 them out for five minutes and then send them out again.

10 Ladies and gentlemen, let's stand and be at ease.

11 (Pause in the proceedings.)

12 MR. LEE: Your Honor, thank you for that time.

13 THE COURT: All right. Be seated, everyone,  
14 please.

15 MR. LEE: Your Honor, I've considered all the  
16 exhibits. I'm in agreement, and the State is resting  
17 its case.

18 THE COURT: Thank you.

19 Ladies and gentlemen, during this recess please do  
20 not discuss this case amongst yourselves, please do not  
21 form or express any opinion about this matter until it  
22 has been submitted to you. We'll be in recess until  
23 3:30. You're free to leave the jury room and go  
24 outside and walk for a couple minutes if you want.

1 I'll see you back in the courtroom at approximately  
2 3:30.

3 (Proceedings outside the presence of the jury.)

4 THE COURT: Be seated, please.

5 Is there anything that either attorney wants to  
6 discuss on our record about the last witness?

7 MS. RISTENPART: Your Honor, I thought you were  
8 looking at the State to start.

9 I'm going to renew my request for the Court's  
10 consideration to admit the other portion of that  
11 recording based upon the expert's -- the State's  
12 expert. She first testified that it was in context,  
13 that she listened to it, listened to a longer recording  
14 and then saw what she referred to. Upon some other  
15 questions she did say, "Oh, no, that's all I saw was  
16 this portion of this recording."

17 Mr. Lee had made statements to the Court that he  
18 had not shown this expert the rest of that five-minute  
19 conversation between Bernard and Richard. Her  
20 testimony is conflicting at best and also opens the  
21 door for us to bring in the rest of the statement,  
22 because she talks about context and how first context  
23 was important. And that's exactly what our argument  
24 was under the rule of completeness.



1 THE COURT: To the State.

2 MR. LEE: I didn't get that at all. Her answers to  
3 the many, many context questions were consistent that,  
4 no, I translate what I hear. With regard to anything  
5 more, I think Ms. Ristenpart was confused, that she did  
6 have the jail call and she had the whole transcription  
7 of that before from the Reno Police Department. But  
8 when a clarifying question was asked by Ms. Ristenpart,  
9 she said no, I just had that first part and that's all  
10 that she translated. And so, again, no door was  
11 opened.

12 THE COURT: I think the word "context" can mean  
13 different things. Under NRS 47.120 it is a legal  
14 construct which is dependent upon substantive content,  
15 whereas with this witness it is more a linguistic and  
16 translation context. I believe those two meanings of  
17 the word "context" differ. And this witness's  
18 testimony does not cause the Court to revisit its  
19 decision under 47.120 which is embedded and entwined  
20 with the statute 51.035.

21 Mr. Silva, if you and your attorney will stand,  
22 please. I am required at this point to have a  
23 conversation with you. And you'll have an opportunity  
24 to visit privately with your attorney.

1           Mr. Silva, do you understand that under the  
2           Constitution of the United States and the State of  
3           Nevada you cannot be compelled to testify in this case?

4           THE DEFENDANT:   Correct.

5           THE COURT:   Do you understand that?

6           THE DEFENDANT:   Yes, sir.

7           THE COURT:   Okay.   You may of your own choice give  
8           up this right and take the witness stand.   If you do,  
9           you will be subject to cross-examination by the State's  
10          attorney and anything you say, whether it be on direct  
11          or cross-examination, will be the subject of fair  
12          comment by the district attorney during argument and  
13          will be available for the jury to consider during  
14          deliberations.   Do you understand that?

15          THE DEFENDANT:   Yes, sir.

16          THE COURT:   If you choose not to testify, this  
17          Court will not allow the State's attorney to make any  
18          comment to the jury about your choice to remain silent.  
19          And if you choose not to testify, I would instruct the  
20          jury not to consider your constitutional silence or  
21          discuss it in any way.   That instruction would be  
22          provided by your attorney.   Do you understand that?

23          THE DEFENDANT:   Yes, sir.

24          THE COURT:   All right.   Counsel, I'm not aware of

1 any impeachable felonies. That just has not been a  
2 part of this case record. Should I include my canvass  
3 as to --

4 MS. RISTENPART: There are none, Your Honor.

5 THE COURT: All right. Do you have any questions  
6 of me?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: All right. Thank you. You may be  
9 seated.

10 We'll be in recess until 3:30 at which time I will  
11 call for the defense to begin its case.

12 (A recess was taken.)

13 THE COURT: All right. The jury, please, Deputy.

14 (Proceedings within the presence of the jury.)

15 THE COURT: Please be seated.

16 To the defense.

17 MS. RISTENPART: Thank you. The defense will call  
18 Detective Jenkins from Reno Police Department.

19 THE BAILIFF: Step all the way up and face the  
20 clerk, please.

21 THE CLERK: Please raise your right hand.

22 (The oath was administered.)

23 THE WITNESS: Yes, I do.

24 THE CLERK: Thank you.

1 THE COURT: Counsel, you may proceed.

2 MS. RISTENPART: Thank you.

3 ALLISON JENKINS,  
4 having been first duly sworn, was  
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. RISTENPART:

8 Q Detective, would you please state and spell  
9 your name for the record.

10 A I can. It's Allison Jenkins. And the last is  
11 J-e-n-k-i-n-s.

12 Q And, Detective Jenkins, we saw that you brought  
13 up a large black binder. Does that have some case  
14 information it in?

15 A It does not actually.

16 Q Detective, where do you work?

17 A I am employed by the Reno Police Department.

18 Q And how long have you worked there for?

19 A A little more than 12 years now.

20 Q And I've been calling you detective. What does  
21 that mean at the Reno Police Department?

22 A I am currently assigned as a detective or an  
23 investigator to the Robbery/Homicide Unit at the Reno  
24 Police Department.

Q Detective, taking you back to November 16th of

1 2017, were you asked by fellow detectives to do an  
2 interview?

3 A I was.

4 Q And why were you asked to do an interview?

5 A I was told they were trying to interview family  
6 members of the people involved. They had identified an  
7 18-year-old who they didn't think had much involvement.  
8 I had actually been out of town when this case  
9 happened. And so I think they thought I would be a  
10 good fit as this was initially thought to be more of a  
11 peripheral interview.

12 Q And the individual, the 18-year-old we're  
13 talking about, what was the name of the individual?

14 A Yiovannie Guzman.

15 Q And that interview took place at Reno Police  
16 Department?

17 A Yes, it did.

18 Q And was it audio and video recorded?

19 A Yes, it was.

20 Q And it was a pretty lengthy interview; correct?

21 A I believe it was a few hours, yes.

22 Q In that interview did Mr. Guzman ever tell you  
23 that the original plan was just to allow Richard to  
24 borrow his car?

1           A     That's not exactly what he told me. I would be  
2 happy to explain further if you'd like me to.

3           Q     In fact, he told you that the plan was either  
4 Richard could take the car or they could go together;  
5 right?

6           A     Yeah, it was something to that extent.

7           Q     In that interview Mr. Guzman explained -- well,  
8 let me put it -- I don't want to jump around.  
9 Mr. Guzman said that he ran into Richard Silva at a  
10 market, Paul's Market; right?

11          A     Yes, ma'am.

12          Q     And in his interview Mr. Guzman claimed that  
13 they didn't make any -- excuse me -- that they made  
14 plans while standing at Paul's Market; right?

15          A     Actually he told me that they briefly discussed  
16 it but that he didn't feel that they had actually  
17 formulated a plan while at the market.

18          Q     At one point you asked him, "While standing in  
19 the market did you ask who was going to be killed"? Do  
20 you remember that?

21          A     Not specifically.

22          Q     And do you remember asking Mr. Guzman the  
23 question that "Did you just pick the day by opening  
24 your calendar and saying Thursday is good"?

1           A     I don't remember asking that specifically.

2           Q     Would looking at an unofficial transcript of  
3 your interview refresh your memory?

4           A     Sure.

5           MS. RISTENPART:   With the Court's indulgence.

6           THE COURT:   Yes.

7 BY MS. RISTENPART:

8           Q     While I'm looking for that, Detective, as we're  
9 all sitting here watching me, part of that conversation  
10 about Mr. Guzman and that night, and specifically we're  
11 talking about Halloween, did Mr. Guzman ever tell you  
12 that he then after Paul's Market went to another  
13 location to go meet up with Richard to switch out the  
14 cars?

15          A     Are you referring to that night?

16          Q     I'm referring to what Mr. Guzman told you in  
17 that interview on November 16th, 2017.

18          A     I guess I'm just asking for a little bit of  
19 clarification on the question.  Are you asking me if he  
20 switched out cars that night, on Halloween night, or  
21 any time?

22          Q     I'm asking did Mr. Guzman in your interview  
23 with him tell you that on Halloween after Paul's Market  
24 that he then went to another house to switch out the

1 cars?

2 A No, not that I recall.

3 Q At any time during your interview did  
4 Mr. Guzman tell you that he had been doing cocaine?

5 A I don't believe so, no.

6 Q During your interview Mr. Guzman told you that  
7 Richard at Paul's Market said that he had a mission;  
8 right?

9 A Yes, that was part of his initial statement.

10 Q But he then changed that and said actually it  
11 was what business? Or he had some business to do,  
12 referring to Richard?

13 A Yes. He later rephrased it.

14 Q And Mr. Guzman told you that Richard told him  
15 dirty business?

16 A Yes, that's correct.

17 Q During your interview on November 16th of 2017  
18 did Mr. Guzman ever claim that he and Richard had gone  
19 to Luz's mother's house and Arturo's house multiple  
20 times that night of November 1st, November 2nd?

21 A I believe he did.

22 Q Back and forth and back and forth?

23 A No, I don't recall him saying that they went  
24 back and forth, back and forth, but that they had



1 visited each location that night.

2 Q Multiple times?

3 A Yes.

4 Q During that interview did Mr. Guzman ever tell  
5 you that at the 7-Eleven that Richard was going to go  
6 ask for gloves or a mask?

7 A I certainly do not recall that.

8 Q At any time did your interview -- with your  
9 interview with Mr. Guzman did he ever tell you that  
10 repeatedly Richard told him "Don't get cold feet"?

11 A I don't recall that.

12 Q During your interview with Mr. Guzman he told  
13 you that the gun was a .44; correct?

14 A I don't recall him saying that.

15 Q Would looking at an unofficial transcript  
16 refresh your memory?

17 A Yes, it may.

18 MR. LEE: Judge, could I ask for clarification?  
19 Was it official or unofficial?

20 THE COURT: I believe that the first time counsel  
21 said unofficial. That was several minutes ago.

22 MS. RISTENPART: Correct, Your Honor.

23 THE COURT: This time I didn't hear whether you  
24 said official or unofficial.

1 MS. RISTENPART: Unofficial.

2 THE COURT: Still unofficial.

3 MS. RISTENPART: May I approach?

4 THE COURT: Yes.

5 MS. RISTENPART: Page 81.

6 THE WITNESS: Okay.

7 BY MS. RISTENPART:

8 Q Does that refresh your memory?

9 A It does.

10 Q In his interview Mr. Guzman said it was a .44;  
11 correct?

12 A Yes.

13 Q In your interview of Mr. Guzman did he ever  
14 tell you that he met up with Richard at McDonald's  
15 after the shooting?

16 A No.

17 Q Did he ever tell you that he had a conversation  
18 with Richard at McDonald's after the shooting?

19 A Not that I recall.

20 Q Mr. Guzman in his interview with you, he  
21 described Luz's breaking his family; right?

22 A Yes, he did.

23 Q And also described Luz trying to steal his  
24 cousin Bernard away?

1           A     I don't recall exactly how he phrased it, but  
2     yes.

3           Q     And that he believed Luz was hurting Bernard  
4     spiritually?

5           A     Yes, he did say that.

6           Q     Hurting Bernard emotionally?

7           A     Yes.

8           Q     Hurting Bernard physically?

9           A     Yes.

10          Q     And in his interview he disclosed to you and  
11     told you that he knew Bernard was angry about Luz  
12     cheating?

13          A     Yes.

14          Q     And also during your interview Mr. Guzman told  
15     you the original plan was to say nothing; right?

16          A     Yes.

17          Q     In your original interview with him -- excuse  
18     me. In your only interview with you -- because you  
19     just interviewed him once; right?

20          A     Correct.

21          Q     -- did Mr. Guzman use the words "vehicle"?

22          A     I would have to look at the transcript or  
23     listen to the audio to tell you for sure.

24          Q     Did he use the words "proceed"?

1           A     Again, I would have to look at the transcript.  
2     It was several years ago. I apologize.

3           Q     Did he ever use the words "I don't recall"?

4           A     It's possible, but I don't remember for sure.

5           Q     From your remembrance do you remember if  
6     Mr. Guzman had a very sophisticated way of speaking?

7           A     He seemed intelligent to me.

8           Q     And that's kind of a general question, but was  
9     he using big vocabulary when he was talking to you?

10          A     Honestly I don't recall. I can tell you he  
11     seemed, you know, to have -- he seemed intelligent to  
12     me. You know, I can't tell you if he used, you know,  
13     an extensive vocabulary or not off the top of my head.

14          Q     Did he use legal terminology with you at all?

15          A     Not that I recall.

16          Q     And at one point you asked Mr. Guzman  
17     point-blank who shot Luz; right?

18          A     I did.

19          Q     And Mr. Guzman did not say anything; right?

20          A     He eventually did.

21          Q     But he remained silent?

22          A     Only initially.

23          Q     And then you talked over him and started  
24     talking about Richard; correct?

1           A     You would have to show me the part of the  
2 interview you're talking about.

3           MS. RISTENPART:   With the Court's indulgence.  
4 There's a lot of pages.   I apologize.

5           May I approach, Your Honor?

6           THE COURT:   Yes.

7 BY MS. RISTENPART:

8           Q     Did that refresh your memory?

9           THE COURT:   Yes.

10          MS. RISTENPART:   Does it refresh her memory.

11          THE COURT:   I'm sorry?

12          MS. RISTENPART:   I'm sorry, what?

13          THE COURT:   I thought I heard you say -- you were  
14 turning around -- "May I approach?" which was the  
15 second time you requested that and I thought, well,  
16 yeah, of course you can.   Excuse me.

17          MS. RISTENPART:   I actually asked if that refreshed  
18 her memory.

19          THE COURT:   And I answered for her.   Well, it's  
20 your answer to give, not mine.

21          THE WITNESS:   I appreciate that.   Thank you.

22          THE COURT:   Thank you.

23 BY MS. RISTENPART:

24          Q     Does that refresh your memory?

1           A     It does about that very specific small part of  
2 the interview.

3           Q     And when you asked him did Richard shoot her,  
4 he remained silent; right?

5           A     At that portion of the interview, yes, he did.

6           Q     And to be fair, later on and after the lengthy  
7 interview he kept saying it was Richard; right?

8           A     Yes, he did.

9           Q     Thereafter did you ever interview Mr. Guzman  
10 again?

11          A     I did not.

12          Q     Why not?

13          A     This was not my case and I was never assigned  
14 to interview him again.

15          Q     In fact, in his original interview Mr. Guzman  
16 told you that he and Richard never talked about the  
17 murder after it happened; right?

18          A     I think he did tell me that, yes.

19          MS. RISTENPART: I have no further questions.

20          THE COURT: To the State.

21                               CROSS-EXAMINATION

22          BY MR. LEE:

23          Q     Detective Jenkins, would it be fair to call  
24 this interview as having multiple segments to it of

1        sorts?

2            A     Yes, I think so.

3            Q     Let me clarify.  When he first comes in was  
4        Yiovannie Guzman a suspect?

5            A     No, he was not.

6            Q     And were his initial details to you somewhat of  
7        a denial mode?

8            A     Yes.

9            Q     He wasn't giving you this information; right?

10          A     Correct.

11          Q     Did he start to give you information?

12          A     He did.

13          Q     I think he started by stating that he had  
14        possession of that vehicle all night?

15          A     Yes.

16          Q     And then little by little gave you some?

17          A     Correct.

18          Q     Until he flat out told you what his  
19        participation in the case was; right?

20          A     Yes.

21          Q     Told you what Richard Silva's participation  
22        was?

23          A     He did.

24          Q     He told you that Richard Silva pulled the

1 trigger?

2 A He did.

3 Q As far as the .44 magnum, explain that to us.  
4 What did he say about the gun or gun type?

5 A He actually told me that he was unaware of the  
6 specific gun used in this but that he assumed Richard  
7 used a revolver he was familiar with Richard owning.  
8 He guessed at a caliber, thought it was a .44. He said  
9 that he was not exactly sure where he had it on his  
10 person and never saw it or handled it that night.

11 Q And then you had a third -- you at some point  
12 concluded the interview? This was a long interview;  
13 right?

14 A It was a few hours.

15 Q But at some point you had concluded this  
16 interview?

17 A I did.

18 Q His family was allowed to see him?

19 A Yes, they were.

20 Q After his family saw him he asked to speak to  
21 you again?

22 A He did.

23 Q Was that only to show why he did what he did or  
24 you did what you did? Was it your understanding that



1 the family had told him to tell the truth, tell  
2 everything?

3 A Yes, that was my understanding.

4 Q And so he called for you, you went back in and  
5 talked to him some more?

6 A I did.

7 Q And did he give you additional details that had  
8 not come out before?

9 A He did provide several additional details, yes.

10 Q And then the interview concluded?

11 A It did.

12 Q And you never talked with Mr. Guzman again?

13 A No, I haven't.

14 Q Thank you. That's all I have.

15 THE COURT: Redirect.

16 REDIRECT EXAMINATION

17 BY MS. RISTENPART:

18 Q In that conversation with his family there was  
19 a lot of talk about Bernard; correct?

20 A I actually was not privy to the details of that  
21 conversation. I did not get to listen to it. I was  
22 made aware by a partner of mine who did listen to it  
23 who said, "Hey, he would like to talk to you again.  
24 They're telling him to tell the truth." And that was

1 all the information I got.

2 Q And you never went back and reviewed as to  
3 exactly what the family said to Mr. Guzman before he  
4 asked to speak to you again?

5 A Did I?

6 Q Um-hum.

7 A I did not.

8 MS. RISTENPART: No further questions.

9 THE COURT: Recross.

10 MR. LEE: None. Thank you.

11 THE COURT: Thank you. You're free to step down  
12 and leave.

13 THE WITNESS: Thank you.

14 THE COURT: To the State.

15 Excuse me. I'm so accustomed to saying that. I  
16 looked right at you, Ms. Ristenpart, as I said the  
17 wrong words. To the defense, please.

18 MS. RISTENPART: Officer Hammerstone, please.

19 THE COURT: Ladies and gentlemen, let's just stand  
20 for a minute as we await the officer.

21 All right. Be seated, please.

22 THE BAILIFF: If you'll step all the way up and  
23 face the clerk, please.

24 THE CLERK: Please raise your right hand.

1 (The oath was administered.)

2 THE WITNESS: I do.

3 THE CLERK: Thank you.

4 THE COURT: You may proceed, counsel.

5 MS. RISTENPART: Thank you, Your Honor.

6 JAMES HAMMERSTONE,  
7 having been first duly sworn, was  
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. RISTENPART:

11 Q Officer Hammerstone, would you please state and  
12 spell your name for the record.

13 A Officer James Hammerstone,  
14 H-a-m-m-e-r-s-t-o-n-e.

15 Q And are you employed?

16 A Yes, I am.

17 Q Where are you employed?

18 A City of Sparks.

19 Q And how long have you been employed there for?

20 A It's going on 13 and a half years.

21 Q And what's your job there?

22 A I am a police officer.

23 Q So going back to October 20th of 2017, were you  
24 a police officer?

25 A Yes.

1 Q Were you on duty that day?

2 A I was.

3 Q And when I say "duty," what kind of duty do you  
4 normally do or what were you doing back then?

5 A Patrol officer.

6 Q On October 20th of 2017 were you asked to  
7 respond to a certain location?

8 A Yes.

9 Q What location was that?

10 A I don't know the numbers, but the location was  
11 inside of Sheffield Court.

12 Q Would 645 Sheffield Court remind you?

13 A Possibly. I don't remember.

14 Q It's been a long time; right?

15 A It has been.

16 Q And just for the purposes of why you responded,  
17 what was the nature of the call?

18 A I believe it was a report of suicide or shots  
19 fired.

20 Q And when you arrived what did you observe?

21 A Some family members in distress, emotionally  
22 upset. And I eventually made my way up to a bedroom.

23 Q So before we get up there, you said there were  
24 some family members there present.

1 A Yes.

2 Q Do you remember how many family members?

3 A I believe three off the top of my head.

4 Q Was one a female?

5 A Yes.

6 Q And was it two males?

7 A I don't remember.

8 Q And in fact one of the family members that was

9 there, do you see him in the courtroom today?

10 A I don't recall now.

11 Q And, again, it's been a long time; right?

12 A Yes.

13 Q Does the name Mr. Richard Silva remind you of a

14 family member that was on scene?

15 A Possibly.

16 Q Now, once you arrived you said that you entered

17 the house. And then where did you go?

18 A I went upstairs to a bedroom.

19 Q And why did you go up there?

20 A That's where I was told that the injured party

21 was.

22 Q And what did you see?

23 A I saw a male holding a sweatshirt over a male

24 who was lying on the bed, pressing or putting pressure

1 on his chest.

2 Q And what did you do next?

3 A I asked him to step aside. I removed the  
4 sweatshirt and I saw what appeared to be or consistent  
5 with a gunshot wound to his chest and I began putting  
6 pressure on the chest and instructing the other  
7 officers of what they needed to do.

8 Q At this point, the person who had been shot,  
9 were they communicating to you, talking?

10 A They were talking. They mentioned some things,  
11 but they weren't really communicating.

12 Q And the person who was shot, you said it was a  
13 male?

14 A Yes.

15 Q And did you later identify who that male was  
16 who had been shot?

17 A Yes.

18 Q And who was that it?

19 A All I remember at this point is his name was  
20 Bernard.

21 Q Would the last name Silva refresh your memory?

22 A Possibly.

23 Q And then after you called for assistance did an  
24 ambulance shortly show up?

1           A     They were dispatched the same time we were.

2           Q     Now, at some point was the individual who had  
3 been shot, Bernard as you know him, he was taken away  
4 by the ambulance?

5           A     Correct.

6           Q     Did the family members remain on scene?

7           A     Yes.

8           Q     And did you do an investigation?

9           A     Yes.

10          Q     And through your investigation did you come to  
11 the conclusion that it was either self-inflicted or  
12 some kind of accident as to what happened?

13          A     It was determined more likely than not it was  
14 self-inflicted.

15          Q     And how did you come to that determination?

16          A     There was only one other person in the house as  
17 reported and there was gunshot powder residue on his  
18 clothing and chest, chest area.

19          Q     Did you also have some information from a  
20 fellow officer, Officer Hodge, that helped in your  
21 determination as to whether this was self-inflicted?

22          A     I don't recall if she gave me any additional  
23 information.

24          Q     Would looking at your report refresh your

1 memory?

2 A Sure.

3 Q Would looking at your colleague's report  
4 verify?

5 A That would.

6 Q Page 2, the second paragraph.

7 A Yeah. This is actually Officer Sheffield's  
8 report, not mine.

9 Q Does it refresh your memory as to part of your  
10 investigation, though?

11 A I do recall that he and his either wife or  
12 estranged wife were having some issues.

13 MS. RISTENPART: May I approach, Your Honor?

14 THE COURT: Yes.

15 BY MS. RISTENPART:

16 Q Now, Officer, as part of your investigation you  
17 took some photos; correct?

18 A I believe I did, yes.

19 Q And I'm showing you what is going to be marked  
20 as Exhibit No. --

21 THE CLERK: Exhibit 141 marked for identification.

22 (Exhibit 141 was marked.)

23 MS. RISTENPART: May I approach?

24 THE COURT: Yes.



1 BY MS. RISTENPART:

2 Q Showing you what's been marked as 141, do you  
3 recognize what's in that photo?

4 A I believe that is the shirt that Mr. Bernard  
5 Silva was wearing that we had located inside the  
6 bedroom.

7 Q Is it a black hoodie that's depicted in that  
8 picture?

9 A That seems right and that's what it appears to  
10 be, yes.

11 Q And does it also appear to have a gunshot  
12 bullet hole and blood surrounding it?

13 A Yes.

14 Q Does it accurately and correctly reflect what  
15 you saw that day?

16 A I believe so, yes.

17 MS. RISTENPART: Move for admission, Your Honor.

18 MR. LEE: No objection.

19 THE COURT: 141 is admitted, Ms. Clerk.

20 THE CLERK: Thank you.

21 (Exhibit 141 was admitted.)

22 BY MS. RISTENPART:

23 Q And this was from October 20th of 2017, just to  
24 clarify; right?

1 A Yes.

2 Q Showing Exhibit 141. And we were talking about  
3 that it is a black hoodie; correct?

4 A Yes.

5 Q And that we see unfortunately the circle left  
6 by a gunshot or a circle that has blood around it? I  
7 should say it that way. Right?

8 A A red substance, yes.

9 Q And this particular black hoodie had some  
10 little toggles that were square shaped or the end of  
11 the strings around the hoodie; right?

12 A That's what it appears to be, yes.

13 Q And you collected this as evidence; right?

14 A It was either myself or another officer who was  
15 on scene.

16 Q While you were on scene investigating do you  
17 remember a female who was identified as the estranged  
18 wife coming over?

19 A Yes.

20 Q In fact, that's kind of memorable to you  
21 because it was -- a lot went on; correct?

22 A Um-hum.

23 Q And what do I mean by "a lot went on"?

24 A I believe -- if I remember right, there was

1 some yelling and screaming between the different family  
2 members.

3 Q And specifically from the person -- the woman  
4 identified as the estranged wife and a female family  
5 member; correct?

6 A I believe so, yes.

7 Q And do you remember a male family member who  
8 tried to calm down the situation and separate them?

9 A I don't remember that.

10 Q What type of gun was used, do you know?

11 A I'm sorry. What?

12 Q What type of gun?

13 A I don't remember.

14 Q No further questions. Thank you.

15 THE COURT: To the State.

16 MR. LEE: I have no questions.

17 THE COURT: Thank you. You're free to step down  
18 and to leave.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Counsel, would you see me at sidebar  
21 real quick.

22 Ladies and gentlemen, feel free to stand and be at  
23 ease.

24 (Discussion off the record.)

1 THE COURT: Be seated, everyone, please.

2 Counsel, I did not ask if you anticipated a  
3 rebuttal case.

4 MR. LEE: I think you did yesterday outside of the  
5 presence, but I can just tell you probably not, but it  
6 depends on what I hear.

7 THE COURT: So we're done for the day. I'm going  
8 to read the overnight admonition and then I'm going to  
9 talk to you about what tomorrow looks like.

10 You are admonished not to converse amongst  
11 yourselves or with anyone else on any subject connected  
12 with this trial. You will not read, watch or listen to  
13 any report of or commentary on the trial by any person  
14 connected with this case or by any medium of  
15 information, including, without limitation, the  
16 newspaper, television, internet or radio.

17 You are not to perform any independent  
18 investigation, research or experimentation. You are  
19 not to do any site visits or field trips. You are  
20 further admonished not to form or express any opinion  
21 on any subject connected with this trial until the case  
22 is finally submitted to you.

23 When you return tomorrow morning there will be  
24 additional evidence presented and then we will be

1 breaking for a long period of time, probably two hours,  
2 while the Court and the attorneys meet out of your  
3 presence for a discussion of the principles of law that  
4 will govern your deliberations. We refer to those as  
5 jury instructions.

6 You will then return and you will hear me read the  
7 jury instructions aloud. And then you'll have closing  
8 arguments and then there will be deliberations. That  
9 could happen tomorrow. No guarantees, though, because  
10 depending upon how much of the day is taken by  
11 evidence, I might have deliberations begin Monday  
12 morning which means you would have most of the day  
13 tomorrow off. I'll need to work with the attorneys  
14 about that. But either tomorrow or Monday you will be  
15 deliberating this case.

16 And with that I will wish you a goodnight. I am  
17 going to visit with Juror No. 13 again if you will  
18 please stay. The rest of you are free to go and to  
19 leave the courthouse. We're starting tomorrow morning  
20 at 9 a.m. Thank you.

21 Deputy, I will now close the court session for the  
22 day and you're free to escort and wish those members of  
23 the public goodnight. Goodnight, everybody.

24 Oh, Deputy, grab them and have them return.

1 Deputy, bring them all back in. I forgot something.

2 I'm having them all come back in. I hope I didn't lose  
3 them.

4 All right. So let's begin. Be seated, please.

5 I wanted to talk about your food for tomorrow.

6 Be seated if you would, please.

7 Again, nothing I say should foreshadow when exactly  
8 you will given deliberations. It could be Monday, but  
9 it could be tomorrow.

10 Once you have begun your deliberations there are  
11 different rules about how you can break from each  
12 other, and so we provide food at our expense. Now,  
13 there are no time restrictions or guidance on the  
14 length of deliberations. I do not believe at all --  
15 well, it's not -- it's possible that deliberations  
16 could begin tomorrow before the noon hour if we push  
17 it, if we push the noon hour back, but I don't know.  
18 It's likely that if deliberations begin tomorrow it  
19 would be after the noon hour.

20 However, if the deliberations continue into the  
21 evening, we'll provide food. So if you don't like what  
22 we provide or you have nutritional requirements, you'll  
23 need to be prepared with your own food tomorrow. We  
24 will provide pub food, pizza and wings. And so if

1 that's not part of your lifestyle, bring your own food,  
2 please. And with that, goodnight.

3 (Proceedings outside the presence of the jury.)

4 THE COURT: Be seated, please.

5 I am in the presence of the attorneys, Mr. Silva  
6 and Juror No. 13.

7 Juror No. 13, you are an alternate juror which  
8 means that you will not be deliberating with the jury  
9 unless one of the 12 who sit in earlier positions is  
10 unavailable to deliberate. And so I've thought  
11 about -- and I sometimes say that at the beginning of  
12 the case and I sometimes say it at the end for  
13 different reasons and I just decided to tell you now.

14 You have been here all week consistent with your  
15 service requirement. If you had made arrangements to  
16 be here, I would like to know if your presence still  
17 creates undue hardship or extreme inconvenience. I  
18 would like you to tell me, because I release the  
19 alternate jurors as soon as deliberations begin, so  
20 it's possible that I would release you tomorrow  
21 afternoon, but it's possible that it would be Monday.  
22 So I just want to know where you are in your conflict.

23 JUROR NO. 13: I haven't changed any of my plans.  
24 Like I told you previously, my hotel is booked and paid

1 for and has been done since October, so it's been a  
2 while. I would -- should I cancel those plans I would  
3 be out a couple hundred dollars of it. But as of now I  
4 haven't changed my plans.

5 THE COURT: Do you believe that you can continue to  
6 serve as an alternate juror free of any distractions,  
7 fully engaged, or are you concerned about this trip  
8 such that it could affect your service? I don't care  
9 what the answer is. I'm just trying to get inside your  
10 mind.

11 JUROR NO. 13: My only concern is that I have  
12 committed to my cousin to assist her, so I'm kind of  
13 stuck in a hard place here and there.

14 THE COURT: Do you believe your presence tomorrow  
15 afternoon or maybe Monday is an undue hardship or  
16 extreme inconvenience?

17 JUROR NO. 13: Yes.

18 THE COURT: Counsel, we'll talk out of Juror No.  
19 13's presence, but do you have any questions?

20 MR. LEE: No. I think it's been clear from this  
21 and probably earlier, so I don't have any further  
22 questions.

23 MS. RISTENPART: No. Thank you.

24 THE COURT: All right. So I'm going to have you go



1 to the jury deliberation room, but I would like you to  
2 stay until I call you back in with my final decision.

3 JUROR NO. 13: Okay.

4 THE COURT: So we'll stand for Juror No. 13.

5 (Juror No. 13 left the courtroom.)

6 THE COURT: Please be seated.

7 I have twice indicated my concern about her  
8 continuing service. I've cited statutes and decisional  
9 authority. I believe it's a discretionary decision on  
10 my behalf. I would only add that I have observed Juror  
11 No. 13 throughout the week. She's participated  
12 virtuously as a member of our community, been  
13 attentive, timely, not created any distractions in any  
14 way. I am now inclined to discharge her based upon  
15 extreme inconvenience and undue hardship.

16 She has served a valuable purpose. She's been here  
17 all week in the event that something did happen to one  
18 of the 12, but now with an alternate juror behind her  
19 I'm ready to make that decision.

20 Is there agreement or disagreement?

21 MR. LEE: Agreement. Can I explain, though?

22 THE COURT: Yes, please.

23 MR. LEE: From the State's perspective we actually  
24 thought Juror 13 was a good juror and that's why we

1 didn't dismiss her. Her trip, though, to me seems --  
2 it's not just a trip to Sacramento or to Fallon. It's  
3 a Vegas trip for a wedding of someone close to her.  
4 And I think we kind of only hung onto her with the hope  
5 that if we finished earlier she would have a shot at  
6 this case. The trial hasn't progressed like that. I  
7 think we've kept her as long as we can keep her. And  
8 so I would be in agreement with letting her go at this  
9 point.

10 THE COURT: To the defense.

11 MS. RISTENPART: Your Honor, we would object.  
12 Ms. Ruiz was one of first self-identified Hispanic  
13 Latinos that she self-identified when the Court asked  
14 during voir dire who here identifies as Hispanic I  
15 think was your exact words or maybe of a different --

16 THE COURT: I was more general in my question  
17 because I wanted to be respectful. And in response I  
18 heard a lot of Hispanic, Latino, Hispanic, Latino.

19 MS. RISTENPART: She also identified that she is  
20 bilingual and does speak Spanish also as well as  
21 English. This is a jury of Mr. Silva's peers and there  
22 are less Hispanics and Latinos on our jury than there  
23 are people who were self-described as not being of a  
24 different ethnicity, however Your Honor phrased that

1 during voir dire.

2 With that, Your Honor, we're objecting to it. I  
3 understand the Court's concerns, but I think that she  
4 has already stated that she would change them if need  
5 be. And also the fact is that if she should -- if one  
6 of the 12 jurors right now, if something was to happen  
7 to them, if you release Ms. Ruiz, then the alternate  
8 juror would be a non-identified Hispanic, someone who  
9 is and perceives to be in front of us a young white  
10 male, Mr. Dyer. With that, Your Honor, I'll submit.

11 THE COURT: I like the record to be balanced, but I  
12 don't want to be part of the adversarial process.

13 Is there anything that you would say, Mr. Lee?

14 MR. LEE: Yes, Judge. Again, I think the undue  
15 hardship, she frankly gave you that and said yes, at  
16 this point it's an undue hardship. She's made  
17 commitments. She's in with some money commitment to  
18 that. She certainly qualifies under the statute.

19 As far as a fair balance of the jury, there are  
20 other jurors who identified themselves as Hispanic and  
21 Latino who sit on this jury currently, but that's not a  
22 main issue in the case at all or of the jury selection.

23 I recognize how she identified herself. She's a  
24 great cross-section of our community. Again, from the

1 State's perspective we liked her too. But at this  
2 point it's her undue hardship regardless of her race or  
3 ethnicity.

4 THE COURT: Juror No. 13, please.

5 (Juror No. 13 returned to the courtroom.)

6 THE COURT: Please be seated.

7 Juror No. 13, I have concluded that you have  
8 responded to the call of service, you have performed  
9 admirably as a member of our community. I'm grateful  
10 for your service and I'm now discharging you from  
11 further jury service. However, I don't know that I can  
12 discharge you just yet.

13 Let me think about it for a moment. Yes, I must  
14 discharge you. You will no longer be under the same  
15 admonition to not discuss this case with those in your  
16 own circle. However, it would be a profound violation  
17 of the other jurors' duty for you to have any  
18 interaction with them. No conversations of any type.

19 Should there be conversations between you and the  
20 other jurors it could contaminate this process and call  
21 you into personal inquiry. I just want you to go  
22 attend to the commitment that is fixed and  
23 nondiscretionary that has been on your calendar for  
24 several months and that is an event that can't be

1 replaced.

2 You will either be there or not there, and I have  
3 concluded that your absence does -- your continuing  
4 service does constitute undue hardship and extreme  
5 inconvenience. So thank you for your service. Collect  
6 your belongings, and you're free to go.

7 JUROR NO. 13: Okay.

8 (Juror No. 13 left the courtroom.)

9 THE COURT: You can be seated.

10 Let's stay off the record.

11 (The proceedings were concluded at 4:30 p.m.)

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

4 I, LORI URMSTON, Certified Court Reporter, in and  
5 for the State of Nevada, do hereby certify:

6 That the foregoing proceedings were taken by me  
7 at the time and place therein set forth; that the  
8 proceedings were recorded stenographically by me and  
9 thereafter transcribed via computer under my  
10 supervision; that the foregoing is a full, true and  
11 correct transcription of the proceedings to the best  
12 of my knowledge, skill and ability.

13 I further certify that I am not a relative nor an  
14 employee of any attorney or any of the parties, nor am  
15 I financially or otherwise interested in this action.

16 I declare under penalty of perjury under the laws  
17 of the State of Nevada that the foregoing statements  
18 are true and correct.

19 DATED: At Reno, Nevada, this 8th day of  
20 March, 2021.

21  
22 LORI URMSTON, CCR #51

23 -----  
24 LORI URMSTON, CCR #51