

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD ABDIEL SILVA

Appellant,

v.

STATE OF NEVADA

Respondent.

CASE NO. 81627

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

APPELLANT'S APPENDIX VOLUME 7

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4 Reno, Nevada 89511
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6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 HONORABLE DAVID A. HARDY, DISTRICT JUDGE

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR18-1135B

11 vs.

Department No. 15

12 RICHARD ABDIEL SILVA,

13 Defendant.
14 -----/

15 TRANSCRIPT OF PROCEEDINGS

16 CRIMINAL JURY TRIAL

17 DAY 5

18 FEBRUARY 28, 2020

19 Reno, Nevada
20
21

22 STENOGRAPHICALLY REPORTED BY:

23 DEBORA L. CECERE, NV CCR #324, RPR

24 JOB # 609479

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NUMBER	DESCRIPTION	MARKED	ADMITTED
142	Photo of Vehicle	12	13

1 FEBRUARY 28, 2020, FRIDAY, 9:03 A.M., RENO, NEVADA

2 -oOo-

3
4 (Whereupon the following proceedings
5 were had in the presence of the jury.)

6 THE COURT: Good morning. Please be seated,
7 everyone.

8 Ladies and gentlemen of the jury, Juror Number
9 13 is not with us this morning. I have discharged her from
10 jury service, not through any fault of hers. She served
11 admirably. But to the, to reflect on the undue hardship
12 and extreme inconvenience associated with her weekend
13 plans. Please don't speculate beyond what I've said.
14 That's all there is to say.

15 Juror Number 14, you are now Juror Number 13.

16 If you would move over, please. And with that,
17 the defense would call its next witness.

18 MS. RISTENPART: Thank you, your Honor. The
19 defense calls Officer Kimberly Hodge.

20 THE COURT: Thank you.

21 ///

22 ///

23 ///

24 ///

1 KIMBERLY HODGE,

2
3 called as a witness in said case,
4 having been first duly sworn, was
5 examined and testified as follows:
6

7 DIRECT EXAMINATION

8
9 BY MS. BRECKENRIDGE:

10 Q Officer, would you please state and spell your
11 name for the record?

12 A Kimberly Hodge. Kimberly, K-I-M-B-E-R-L-Y;
13 Hodge, H-O-D-G-E.

14 Q And do you work?

15 A Yes.

16 Q What do you work as?

17 A I work for the City of Sparks. I'm a police
18 officer.

19 Q And how long have you been a police officer for?

20 A 13 years.

21 Q In the entire time at Sparks?

22 A Yes.

23 Q Taking you directly to October 20th of 2017,
24 2019, were you on call that day?

1 A Yes.

2 Q By on call, you were on duty?

3 A Yes.

4 Q And what were you actually -- were you on patrol
5 that day?

6 A Yes.

7 Q Earlier in the day on October 20th, 2017, were
8 you called to respond to a report of a domestic violence?

9 A Yes.

10 Q And where was that?

11 A 1440 Sbragia.

12 Q And who were the individuals involved in the
13 allegations of domestic violence.

14 A Bernard Silva and Luz Silva.

15 Q Now when you arrived on scene, was Ms. Luz Silva
16 there?

17 A No, she was not. At this address.

18 Q Did you go to another address to talk to Ms. Luz
19 Silva?

20 A Yes, I did.

21 Q Through your investigation in the domestic
22 battery allegation, was there a report that Bernard tried
23 to kill Luz?

24 MR. LEE: Objection, your Honor.

1 THE COURT: Can you -- it's overruled.

2 THE WITNESS: She reported a domestic battery.

3 BY MS. BRECKENRIDGE:

4 Q Is part of that allegation is that Bernard tried
5 to kill her?

6 A Yes.

7 Q Now at that time, were you called away to a
8 different scene after talking to Ms. Castillo?

9 A Yes.

10 Q And unrelated to Bernard or Ms. Castillo,
11 right -- Ms. Silva, I'm sorry.

12 A Oh, I, sorry, I would have to review my report.
13 I don't remember that specific part.

14 Q Do you remember responding to a different
15 domestic violence case that had nothing to do with this in
16 between talking to Ms. Silva and then going to a different
17 location?

18 A I don't remember that. I apologize.

19 Q That's okay. It's been two years.

20 A Yeah.

21 Q But later that day, did you and Officer
22 Hammerston go in response to a different location to make
23 an arrest?

24 A Yes.

1 Q And where was that?

2 A Well, originally -- are we talking about
3 Bernard?

4 Q Yes.

5 A Okay. Sorry.

6 Q Yeah.

7 A We responded to 1440 Sbragia so that I could
8 talk to Bernard then.

9 Q What happened when you arrived?

10 A He wasn't home.

11 Q And what was your next plan of action?

12 A I was going to go to the Sheffield address.

13 Q And is Sheffield address, in your investigation,
14 was that another home that Bernard Silva was related to?

15 A Yes.

16 Q And what happened when you arrived at the
17 Sheffield address?

18 A Well, when we were at the 1440 Sbragia address,
19 we got a medical call at the Sheffield address, and Bernard
20 had shot himself in the chest.

21 Q When you responded to the Sheffield address what
22 did you first see when you arrived on scene?

23 A Bernard was upstairs, and he had a gunshot wound
24 to his chest.

1 Q Were there other family members on scene?

2 A Yes.

3 Q At some point did Ms. Silva show up to the

4 Sheffield address?

5 A Yes.

6 Q And what happened when she showed up?

7 A She was upset. She wanted to see him,

8 obviously. He had gone in the ambulance, so she couldn't

9 see him.

10 And she showed me her phone. She had a bunch of

11 missed calls from him. One of which she heard the shots on

12 the phone. So I just took a picture of her call log on her

13 phone, and she went to the hospital.

14 Q At some point during this investigation, on

15 October 20th, 2017, did you call CPS?

16 A I believe so, yes. I would have to review my

17 case to see who I talked to.

18 Q Would looking at your report refresh your

19 memory?

20 A Yes.

21 MS. RISTENPART: May I approach?

22 THE COURT: Yes.

23 THE WITNESS: Yes, I did call them. I didn't

24 put the name of the social worker that I talked to, though.

1 MS. RISTENPART: No further questions. Thank
2 you.

3 THE COURT: To the state.

4 MR. LEE: No questions.

5 THE COURT: Thank you. You're free to step down
6 and leave.

7 (Where upon the witness was excused.)

8 MS. RISTENPART: Benjamin Rhodes, if he is out
9 there.

10 (Whereupon the witness was sworn.)

11 BENJAMIN RHODES,

12
13 called as a witness in said case,

14 having been first duly sworn, was

15 examined and testified as follows:

16
17 DIRECT EXAMINATION

18
19 BY MS. RISTENPART:

20 Q You already testified obviously in this case?

21 A I did.

22 Q State your name for the record again.

23 A Ben Rhodes, R-H-O-D-E-S.

24 Q Detective Rhodes, you have a lot of

1 investigatorial work in this case, correct?

2 A I did.

3 Q You were pretty active in it?

4 A Yes, I was.

5 Q At any time during your investigation were you
6 asked to go to a McDonald's to try to get some video
7 surveillance?

8 A McDonald's? I do not recall.

9 Q Does that sound familiar to you?

10 A I don't remember.

11 Q And in this particular case, also, you assisted
12 in the search of the Toyota Sequoia that we already talked
13 about?

14 A That's correct.

15 Q I'm showing you what's already been admitted.
16 Showing the state Exhibit 34, and that's the
17 Toyota Sequoia that you searched?

18 A Yes.

19 Q I'm going to show you another picture.

20 MS. RISTENPART: This is going to be marked as
21 Exhibit Number?

22 THE CLERK: Exhibit 142, marked for
23 identification.

24 ///

1 (Exhibit Number 142 was marked
2 for identification.)
3 BY MS. RISTENPART:
4 Q Do you recognize that?
5 A Yes, I do.
6 Q What do you recognize that to be?
7 A It's the back of the same vehicle.
8 Q The Toyota Sequoia?
9 A Yes, it is.
10 Q Does that fairly and accurately represent it?
11 A Yes.
12 MS. RISTENPART: We move for admission, your
13 Honor.
14 MR. LEE: Can I take a look at it?
15 No objection.
16 THE COURT: 142 is admitted, Ms. Clerk.
17 (Exhibit Number 142 was
18 admitted into evidence.)
19 BY MS. RISTENPART:
20 Q This image, it is taken with the lights behind
21 the car, correct?
22 A Are you talking about the one that's up, or the
23 one that you just showed me?
24 Q The one in front of you right now.

1 A I'm sorry. Repeat the question.

2 Q This picture is showing the car with the light
3 behind it so it's shining through the windows, right?

4 A I believe so.

5 Q Okay. Showing you Exhibit 142. That's taken
6 from a different angle, correct?

7 A Yes.

8 Q And it's showing the nature and how dark the
9 tinted windows, correct?

10 A Yes.

11 Q And that is a more accurate depiction of how
12 dark the car was with the windows tinted, right?

13 A I do not know that.

14 Q Okay.

15 MS. RISTENPART: No further questions. Thank
16 you.

17 MR. LEE: No questions.

18 THE COURT: You're free to step down. Thank
19 you.

20 (Whereupon the witness was excused.)

21 MS. RISTENPART: Defense rests.

22 THE COURT: Will there be a rebuttal case?

23 MR. LEE: Can I have just a quick moment?

24 THE COURT: Yes.

1 MR. LEE: There will not, Judge. Thank you.

2 THE COURT: Ladies and gentlemen, it's 9:15.

3 The evidence in this case is now closed.

4 The lawyers in the Court will meet out of your
5 presence for some time to settle the jury instructions.
6 These written instructions will govern your deliberations.

7 After the court and lawyers meet to settle
8 instructions, the Court staff takes some time to produce
9 them, re-paginate, copy, and so forth.

10 I don't want you to have to sit in the jury
11 deliberation room during this process.

12 During this court recess, you are instructed not
13 to discuss this case amongst yourselves. Please don't form
14 or express any opinion about this matter until it is
15 finally submitted to you.

16 It is fair to both the state and Mr. Silva that
17 you will wait, any conversation, any decisions of your
18 mind, until you have the legal instructions and the
19 attorneys have been able to argue the evidence that is
20 before you.

21 We will stand for our jury, asking that you
22 return to the jury deliberation room at 11:30.

23 Now I'm saying 11:30 intentionally, because
24 hopefully you'll eat before 11:30, because we're going to

1 be in arguments for probably -- well, through the lunch
2 hour undoubtedly, and so you won't have a chance to eat
3 until this evening or whenever you request during your
4 deliberations, whether it be midafternoon or not.

5 We'll stand for our jury.

6 (Whereupon the jury was excused.)

7 THE COURT: Okay. We will go into closed
8 session. It is an informal session in which we begin
9 talking about instructions. The public will be invited to
10 leave during this closed session. I'll return to counsel
11 in about five minutes.

12 Good day to all of you. We'll see you at 11:30.

13 (The public was excused.)

14 (Closed session.)

15 THE COURT: Ms. Ristenpart, do you have your
16 instructions before you?

17 MS. RISTENPART: My assistant is grabbing them
18 right now, your Honor.

19 (Whereupon a recess was taken.)

20 (The following proceedings were had
21 outside the presence of the jury.)

22 THE COURT: All right. We'll go on the record.

23 On the record in CR18-1135B. We are out of the
24 jury's presence.

1 I am with counsel. Mr. Silva is present.

2 We will not be on the record the entire time,
3 but begin on the record to frame the instructions
4 conversation.

5 Counsel, do each of you have a matrix that our
6 staff would have given to you a few days ago?

7 MR. LEE: I do.

8 MS. RISTENPART: I do.

9 THE COURT: All right. It appears to me that
10 there are a few competing instructions, some defense
11 objections, and some that appear to the Court duplicative
12 and unnecessary.

13 I begin with my general concern that we have 48
14 competing instructions, which exceed the number of
15 instructions that I am comfortable giving.

16 I don't have a maximum number of instructions,
17 but my experience is that generally we keep these
18 instructions to somewhere in the neighborhood of 30 to 40,
19 sometimes in the range of 35. So you'll hear from me some
20 requests to be more economical.

21 All right. I now have instruction -- what I'm
22 going to do is just flip through the instructions so that I
23 can identify the work I do in chambers and the work we'll
24 do together.

1 The first is:

2 Ladies and Gentlemen of the Jury.

3 That's the cover instruction. There's no
4 problem with that.

5 Number 2 is:

6 If in these Instructions.

7 There does not appear to be a problem with that.

8 If during this trial I have said or done
9 anything is Instruction Number 3. There does not seem to
10 appear to be a problem with that.

11 By the way, the order of these instructions is
12 subject to my final review. I am reading them as presented
13 by the state, but I often rearrange the sequence to make
14 logical sense to me.

15 The next instruction is the information. The
16 instruction that I have is the one the state modified. And
17 my preference is to replace the state's proffered
18 instruction with the actual charging document in this case.

19 Ms. Ristenpart, do you agree to that?

20 MS. RISTENPART: That's what we objected, your
21 Honor, and agreed to your proffer.

22 THE COURT: The state argued, indicated it
23 wasn't the largest tail that it wanted to plant its flag
24 on, so over the state's objection that's likely what I will

1 do.

2 Instruction Number 5:

3 An information is a formal method of
4 accusing.

5 By the way, the matrix indicates a defense
6 objection.

7 Have I stated what your objection would be as to
8 the previous instruction?

9 MS. RISTENPART: It was just that we wanted the
10 information as read to the jury.

11 THE COURT: Okay.

12 It is not necessary for the
13 prosecution to prove each and every
14 factual element.

15 That is Instruction Number 6. Does not appear
16 to be any concerns.

17 To the jury alone belongs the duty of
18 weighing the evidence and determining
19 credibility.

20 That's proposed instruction 7.

21 By the way, just for our record, these
22 instruction numbers relate only to the matrix that the
23 Court has provided to counsel. They do not relate to the
24 order of instructions that will be finalized.

1 All right. What is identified as a competing
2 instruction, number 7, is from the defense.

3 So the state's instruction is two paragraphs,
4 and the defense is a page and a half.

5 I say that only for identification purposes.
6 Not as a value.

7 Do either of you wish to be heard on competing
8 instructions number 7?

9 MS. RISTENPART: Your Honor, I always proffer
10 the longer instruction, which the Federal jury instructions
11 have used over and over again. I think it is more
12 instruction to a jury that's never been placed in this type
13 of situation before, making judgment calls on credibility.

14 So I ask that you consider our longer
15 instruction which gives a little more definition to the
16 jury.

17 THE COURT: Thank you.

18 MR. LEE: Two things. One, I think -- I don't
19 like bullet points. It seems like they point out and
20 emphasize some, and telling the jury a little more not any
21 others.

22 I think ours is a little more freedom for the
23 jury. It gives them all these things to consider and more.
24 But the bullet points seem to exclude others.

1 Plus, I have citations. I don't know what this
2 is cited to.

3 THE COURT: Thank you. That is one I will
4 review in chambers.

5 Now Instruction Number 8:

6 Although you are to consider only the
7 evidence in reaching a verdict,
8 everyday common sense and judgment.

9 There does not appear to be a problem with that
10 one.

11 The next is number 9. There is this kind of
12 poetic narrative.

13 In our lives we look upon the facts and conclude
14 another set of facts exists and so forth. That is a state
15 instruction. I have a question about why it is necessary
16 in light of Instruction Number 10. It appears duplicative
17 and unnecessary.

18 I'll have you to prepare for comments, either
19 now or when we go back on the record to make arguments.

20 Do you want to be heard now or later?

21 MR. LEE: I can be heard now, your Honor.

22 THE COURT: Please.

23 MR. LEE: I'm sorry. When we go back to make
24 arguments? I don't want to waste your time. But if I have

1 to argue it again --

2 THE COURT: I don't want to waste your time,
3 either, Counsel. This is already evolving for me because
4 I'm going to have to have time to make decisions, and we
5 often -- I'm going to do it now, while we're on the record.

6 Would you like to be heard, please?

7 MR. LEE: I would. I think the inference
8 instruction is beneficial to both parties. There's
9 certainly inferences we're going to have to ask the jury to
10 make and draw, and this just gives a easy, understandable
11 definition of that. That's all.

12 THE COURT: Does the defense have a position
13 about this instruction?

14 MS. RISTENPART: Your Honor, we did object to it
15 because the state does point out their -- this case is
16 based upon inferences on both the state's theory and
17 defense theory.

18 But I think that there is the possibility to
19 combine Juror Instruction Number 9 with Juror Instruction
20 Number 10. And also maybe take out the poeticism, for lack
21 of a better word, as the state's instruction does seem very
22 theoretical, which takes away from the beyond a reasonable
23 doubt standard.

24 MR. LEE: We could remove the first two

1 sentences.

2 THE COURT: All right. So I will think about
3 that in chambers. Thank you.

4 The next is Instruction Number 10, which is a
5 standard instruction that the defense -- it's an
6 instruction I regularly see.

7 The defense has proposed a competing -- no, the
8 state objects.

9 What's the basis of your objection? This is:

10 There are two kinds of evidence,
11 direct and circumstantial.

12 I just have a note on the matrix that says:

13 Defense objects.

14 MS. RISTENPART: For 10?

15 THE COURT: Right, yes.

16 MS. RISTENPART: Thank you, yes.

17 I'm looking at your page numbers, and it's
18 throwing me off, your Honor.

19 THE COURT: There are instruction numbers on the
20 left and page numbers on the right.

21 MS. RISTENPART: Okay. Your Honor, I believe
22 that we gave a formulated proffer competing instruction.
23 And my computer is dead, your Honor, so I can't look that
24 up.

1 THE COURT: I'm so embarrassed that I have to
2 say I didn't hear everything you said.

3 MS. RISTENPART: No, that's okay. I said my
4 computer is dead. So I can't look up what my instructions
5 were. if I had a copy of that, that would make this faster
6 and easier.

7 THE COURT: Do you need a charge?

8 MS. RISTENPART: Well, I need a charge and a
9 copy.

10 THE COURT: All right.

11 MS. RISTENPART: I do need a charge, yes.

12 THE COURT: Remain seated, please.

13 (Whereupon a recess was taken.)

14 THE COURT: Back on the record for a moment.

15 My understanding is the defense objects to
16 Instruction Number 10 and proffers a competing instruction.

17 And we will be there in a moment.

18 Instruction No. 11 is submitted by the defense,
19 and begins:

20 The state must prove not only the
21 defendant did the act charged, but
22 the act with particular intent and
23 mental state.

24 Is that your competing instruction,

1 Ms. Ristenpart?

2 MS. RISTENPART: That is. I think we
3 essentially kind of merged three together, for lack of a
4 better term.

5 But we'd be asking that you give our instruction
6 because, again, a lot of these circumstantial and direct
7 instructions that are commonly proffered by the state
8 really seem to abuse the beyond a reasonable doubt
9 standard, and the fact that it's the state is the only one
10 who has to prove anything.

11 And my instruction reiterates that, that they
12 have to prove also that -- and they can't prove direct or
13 circumstantial evidence. It's the state's burden to prove.

14 THE COURT: My concern when I read this the
15 first time was that your reference was to CALJIC and a 1955
16 single decision.

17 Do you want to be heard on the role of CALJIC in
18 this state and this department?

19 MS. RISTENPART: Judge, until we get our own
20 model instructions, CALJIC has really formed a lot of our
21 jury instructions, and they continually update it as new
22 laws come in and new Supreme Court cases get published.

23 And in this particular case, there is a lot of
24 burden as to circumstantial evidence. I mean, we have one

1 accomplice testimony, but the rest is built upon
2 hypotheticals.

3 So that's why any kind of jury instruction that
4 gives a hint that there is some kind of reduced burden for
5 the state is very worrisome for the defense. That's why
6 we're objecting.

7 THE COURT: From the state?

8 MR. LEE: Yes, your Honor.

9 THE COURT: Please.

10 MR. LEE: So the first sentence is repetitive
11 with Instruction Number 19.

12 The second paragraph is confusing. I think it's
13 not necessarily accurate. I don't think the support cited
14 supports that.

15 And in the third paragraph there's a decision
16 right on point in the Nevada Supreme Court, Bails v. State,
17 92 Nev. 95 as a 1976 decision where the Court said if a
18 reasonable doubt instruction is being given -- it's quoting
19 the U.S. Supreme Court -- if a reasonable doubt instruction
20 is being given, then this is quote, confusing and
21 misleading.

22 So this is a rewording of an instruction that I
23 often see, and the Bails case shoots it out.

24 THE COURT: The next instruction is -- the

1 problem is I'm flipping through instructions without
2 authority and flipping through instructions with authority,
3 and so I just want to make sure.

4 The next instruction is number 12, offered by
5 the state.

6 Neither side is required to call as
7 witnesses.

8 I sometimes hear objections to that instruction.
9 There is no defense objection. I don't have an opinion
10 about whether there should or should not be.

11 MS. RISTENPART: Traditionally, I will object,
12 and I always get overturned on this one.

13 But I do, for the record, want to state that
14 defense has no burden to call any witnesses or any, present
15 any evidence. I have seen one judge in this courthouse
16 actually acknowledge that and put in the sentence before
17 the neither side and say the burden is completely on the
18 state, and the defenses has no burden or no obligation to
19 call any witnesses or present any evidence. Neither side,
20 da-da-da-da.

21 THE COURT: So I regularly modify this
22 instruction at the defense request.

23 MS. RISTENPART: So you're the one judge that
24 typically does that.

1 THE COURT: So far it does, it does subtly
2 suggest that the defense has a burden to call witnesses
3 when it says neither side is required to call all
4 witnesses. I mean, so, Mr. Lee, how would you like me to
5 proceed?

6 MR. LEE: This is one that I often see modified,
7 and I don't have a problem with it. I agree with all that.
8 It's fine.

9 So oftentimes I see it worded:

10 The state is not required, etc.

11 And then the last sentence is: The defense has
12 no requirement or burden or whatever.

13 I'm comfortable with any of those languages. I
14 think the majority of courts are modifying that now.

15 THE COURT: I'm reading aloud.

16 (Reading.)

17 The state is not required to call as
18 witnesses all persons who may have
19 been present at any of the events,
20 disclosed by the evidence, or who may
21 appear to have some knowledge of
22 these events, or to produce all
23 objects or documents mentioned or
24 suggested by the defense -- excuse me

1 -- by the evidence. The defense has
2 no burden to call any witnesses --

3 MR. LEE: (Reading.)

4 -- or present any evidence.

5 THE COURT: I'm satisfied with that.

6 Next is Instruction Number 13.

7 Questions and objections by lawyers
8 are not evidence.

9 That is the first sentence.

10 Ms. Clerk, I'm happy that you can retrieve that,
11 but will you be sure it goes back?

12 THE CLERK: I will.

13 THE COURT: Okay.

14 I think that, first of all, there is a defense
15 objection.

16 What is the defense objection?

17 MS. RISTENPART: I always object, your Honor.

18 THE COURT: Okay. On what basis?

19 MS. RISTENPART: Because it's a stupid
20 instruction. And I'm just throwing that out there every
21 time.

22 THE COURT: Well, it's not going to come in as
23 proposed. At the very least I will modify it. You'll have
24 a copy of the modification to object if you want.

1 I think that there's some overlap with number
2 14. And I'm not sure that it will come in.

3 Do you want to be heard before we turn to 14?

4 MR. LEE: Your Honor, you said you'll give it in
5 some modified fashion.

6 THE COURT: No, I will not give it as proposed.
7 If I give it, it will be modified in some way.

8 I've already written some modifications on it
9 before hearing from Ms. Ristenpart. I think this business
10 about questions and objections by lawyers are not evidence,
11 it's, it's similar to the next statement, arguments and
12 statements by lawyers are not evidence.

13 And so I'm going to be economical, if I
14 instruct, I'm going to modify it.

15 MR. LEE: My only concern is just simply from
16 what happened yesterday. I'll be watching carefully and
17 guarding during the defense close with regard to what the
18 argument is made about the presence of a third person that
19 there's zero evidence of, and whatnot, because that was the
20 phrasing of the question posed to Mr. Guzman.

21 And so anticipating that, that's why I put in
22 this instruction.

23 THE COURT: Well, I, I understand. I'm not
24 showing you efficacy, but I'm thinking aloud about what you

1 said.

2 I don't know what the defense is going to argue,
3 but the defense can take a whole bunch of circumstantial
4 facts and, and argue an emphasis to those facts, a tinted
5 window was something that came in last. Whatever inference
6 she wants to argue she can argue.

7 MR. LEE: Except they wouldn't be able to say
8 from anything heard today that there was a third person
9 there. She can argue no one knows. But if there was an
10 argument there was a third person there, I'll be objecting,
11 or similar.

12 THE COURT: All right.

13 MR. LEE: Would the Court be sustaining or not?
14 I don't want to interrupt Ms. Ristenpart if it's worthless.

15 THE COURT: A few days ago you expressed some
16 concern about Ms. Ristenpart specifically, and I responded
17 by a general observation. I'm going to keep that general
18 observation.

19 Lawyers will choose to object during closing
20 arguments at their own appearance peril. My response
21 typically to objections to argument, are to overrule them
22 unless they violate a specific instruction from the Nevada
23 Supreme Court.

24 For example, a Golden Rule argument or an

1 Ultimate Fact Opinion argument or something of that nature.

2 So object if you wish, I don't know if I will
3 sustain it or overrule it.

4 MR. LEE: Thanks for the guidance.

5 MS. RISTENPART: Your Honor, in regards to 13
6 and 14, you're going to merge the two together?

7 THE COURT: Maybe.

8 MS. RISTENPART: Maybe.

9 THE COURT: I'm going to look at that --
10 Counsel, I'm best at reflection. I don't like thinking
11 with my words, because I always make things up when I do
12 that.

13 So I'm going to go in chambers and -- 13 and 14
14 are under advisement.

15 MS. RISTENPART: So just for the record, we'd
16 also object to 14, simply because it's a continuing
17 objection for 13 and 14.

18 THE COURT: Okay.

19 13 and 14 under advisement. Okay.

20 The next is 15.

21 You should not decide any issue
22 merely by counting the number of
23 witnesses.

24 That seems to me a close relative of:

1 The state is not required to call as
2 witnesses all persons who may have
3 been present.

4 This one's under advisement, too, for economy.
5 Do you wish to be heard, Mr. Lee?

6 MR. LEE: This is one I normally put in because
7 defense usually wants it.

8 MS. RISTENPART: I do want it. I don't object.

9 THE COURT: You do want it.

10 I will correlate that to instruction -- what
11 number is this, Ms. Clerk? You retyped it, but I lost the
12 number.

13 Oh, here it is. 12.

14 If defense wants it, I'm inclined to give it.
15 But I will correlate it to number 12. Okay.

16 Next is 16. Expert. Seems to be standard.

17 17: Inconsistencies or discrepancies.

18 To the defense.

19 MS. RISTENPART: Your Honor, we proffered an
20 instruction do not reject testimony just because -- do not
21 automatically reject testimony just because of
22 inconsistencies and conflicts.

23 It does go on and gives more instruction as to
24 the third paragraph:

1 If you decide that a witness deliberately lied
2 about something significant in this case you should
3 consider not believing anything that witness says, or if
4 you think the witness lied about some things but told the
5 truth about others, you may simply accept the part that you
6 think is true and go with the rest.

7 THE COURT: I'm aware of these competing
8 instructions, which will be under advisement.

9 Do you have any comment upon the defense
10 proffered instruction. Mr. Lee?

11 MR. LEE: Judge, it's essentially CALJIC versus
12 Federal authority. The Federal authority don't approve the
13 state's proffered instruction, and I think that would be a
14 little more controlling in the first place.

15 MS. RISTENPART: But I don't believe anywhere in
16 the state's packet was where you can disregard all of the
17 witness's testimony if you find that he willfully lied.

18 MR. LEE: It's in there. It's one of the ones
19 that the defense objected to.

20 THE COURT: I saw it, but I can't put my finger
21 on it.

22 Would you please put your finger on it so
23 Ms. Ristenpart and I can both see it?

24 MR. LEE: Instruction 7, that's:

1 To the jury alone belongs the duty.

2 THE COURT: Okay. Thank you.

3 I am now on Instruction Number 18:

4 Every person charged with a
5 commission of the crime.

6 It is submitted by the defense. Excuse me.

7 There are two competing 18s. The first is submitted by the
8 state. I presume the defense objects because the defense
9 has submitted a separate instruction, which includes the
10 final sentence -- I'm reading from the defense instruction:

11 In the case of a reasonable doubt
12 whether the defendant's guilt is
13 satisfactorily shown, the defense is
14 entitled to be acquitted.

15 Do you want to be heard on that?

16 MS. RISTENPART: Your Honor, I've asked for this
17 to be in every single one of my jury cases here in northern
18 Nevada. The first is we take out the word "shall," and put
19 in "is." That is the standard. Mr. Silva is obviously
20 presumed innocent until the contrary is proven.

21 And then also the last sentence that is -- I'm
22 blanking on the case law right now, your Honor, but that is
23 the standard, and unless it is proven there's doubt.

24 THE COURT: So I, I thought about your last

1 sentence and read it during trial, the statutes. I think
2 it was in Chapter 175.

3 MR. LEE: 175.191. Word for word.

4 THE COURT: Thank you, Mr. Lee.

5 And so I am tempted, intrigued by giving the
6 instruction consistent with Nevada statute, which would be
7 in the defense favor. I'm taking this under advisement.

8 Do you want to be heard, Mr. Lee?

9 MR. LEE: Judge, in a trial I did last week in a
10 different department, my argument about this is that that
11 statute is very confusing.

12 I think ours sums it up better. The Judge said,
13 I agree, but I'm going to give the statute.

14 I think the state's proffered is a correct
15 statement of law. If you want to change the "shall" to
16 "is" I presume, that's fine with me, and then add the
17 175.191 language at the end. And we'll confuse the jury as
18 much as we can.

19 THE COURT: Counsel, I confuse the jury every
20 time I talk. That's why you're still advocates in the well
21 of the court and I'm not.

22 Under advisement.

23 I am now on Instruction Number 19:

24 In every crime, union, or joint

1 operation.

2 20: Reasonable doubt.

3 21: In arriving at a verdict do not discuss
4 penalty or punishment.

5 22: The defense objects.

6 You gave me a teaser about your argument,
7 Ms. Ristenpart. I've since read the case decision cited by
8 the state in support of this instruction. This is the time
9 to make your record.

10 MS. RISTENPART: Your Honor, as I alluded to --
11 case law regarding showing pictures. I know it's not in
12 compliance on this request, I've actually never seen this
13 instruction until this case, and this particular case.

14 They're citing Fifth Circuits, a circuit case,
15 and also United States versus Ash, which dealt with agents,
16 I believe, if I remember the facts correctly. This was not
17 the prosecutor himself or herself.

18 It's really -- you're instructing the jury as to
19 trial tactics. And more importantly, you're kind of like
20 giving a blessing to the state, which has been an argument
21 in this case, that, you know, what he did was totally okay.
22 That's for the jury to decide.

23 And yet if you allow this instruction, you're
24 saying it's total okay, that it's practice to interview

1 witnesses and talk with them.

2 Accomplice testimony puts a different kind of
3 shadow on this case. And I'm not saying this because I
4 don't have a lot of respect for Mr. Lee. I do.

5 But this instruction goes far and beyond what
6 the Court should be instructing the jury to decide upon,
7 especially the accomplice testimony that they're relying
8 their state case on.

9 THE COURT: Mr. Lee.

10 MR. LEE: The problem is, Judge -- this is
11 correct. It is legal for witnesses to be interviewed by
12 the attorneys on both sides.

13 If we do not give it, then it calls in favor,
14 draws credence to the defense argument that I did something
15 improper by meeting with somebody. That is not true. That
16 is not the law.

17 She can argue what she's going to argue. But
18 there is nothing illegal with what I have done. In fact, I
19 met with probably 60 witnesses in this case. So to not
20 give it lets the jury think, Gee, Mr. Lee did something
21 illegal here by meeting with these people, how dare he. So
22 that's not the law. This is, is a correct statement, and
23 it should be given, especially in light of their
24 accusations.

1 MS. RISTENPART: I'm just confused because you
2 keep saying in response, it's the law. He's using a
3 jumbled mix of cases that it was proper for an attorney to
4 have done this in this case when they're arguing
5 prosecutorial misconduct.

6 That's an after-the-case fact situation as to
7 influencing juror -- excuse me -- witnesses by their
8 actions.

9 To give an instruction that's literally for the
10 judge to say to the jury, I am sanctioning what the
11 prosecutor did here and giving it the okay, is completely
12 against what jury instructions are for, and coupled with it
13 is part of the defense theory that I get to argue. Why did
14 this witness change his story? What happened in between?
15 And for you to say it's proper for them to have interviewed
16 them, it's just bolstering the state's case through a jury
17 instruction that they're requesting.

18 THE COURT: But if I remain silent -- I know
19 what your argument is going to be. I invite your argument.
20 I don't have a problem with your argument.

21 By knowing what it is, if I remain silent, I
22 then give strength to your argument by my silence. And I
23 want it to be neutral. And, and I'm struggling to find how
24 I can preserve that neutrality, because if I --

1 MS. RISTENPART: Okay. Here's what I propose.

2 In the instruction regarding credibility of
3 witnesses, put in a line that witnesses could be
4 interviewed by attorneys.

5 And then there's no commentary as to whether
6 it's proper or not. And the state can use that in their
7 argument if they want to, that this is what they did.

8 I'm going to read into law some excerpts. Each
9 case presents its own unique facts but there are common
10 legal threads that weave throughout decisional authorities.

11 From the Fifth Circuit in 2009, Banks v. Fagor:

12 There's absolutely nothing improper
13 about the prosecutors here having
14 interviewed a witness prior to trial.
15 We nevertheless observe again there's
16 absolutely nothing improper about the
17 prosecutors having interviewed a
18 witness prior to trial.

19 Indeed, not having done so, would
20 have been extremely questionable.

21 This pretrial interview practice was
22 in existence long before the murder
23 trial in this case -- referring to
24 the case from the Fifth Circuit.

1 Continuing with the quote:

2 As the Court noted in *The United*
3 *States vs. Ash*, a case that
4 specifically dealt with prosecutorial
5 pretrial preparation, the
6 interviewing of witnesses before
7 trial is a procedure that predates
8 the Sixth Amendment.

9 I'm now not quoting but paraphrasing. It's
10 traceable all the way back to the 16th and 17th centuries,
11 where counsel regularly interviewed before trial.

12 There is little, if any, impeachment
13 value to a mere showing that a
14 witness had met with prosecutors
15 before trial. Such a meeting is
16 expected. It's completely proper.

17 Turning to the Eighth Circuit, 2003:

18 Defendant points to meetings between
19 prosecutor and the witnesses prior to
20 their appearances in court,
21 suggesting their testimony was
22 tainted by improper government
23 coaching, meeting with a witness
24 before trial, suggests no

1 impropriety. Furthermore, these
2 pretrial meetings were discussed
3 during cross-examination, and the
4 jury is free to consider their impact
5 on the witnesses' credibility.

6 Turning to United States versus Ash, United
7 States Supreme Court decision from 1973:

8 The interviewing of witnesses before
9 trial is a procedure that predates
10 the Sixth Amendment.

11 Commentary about traceable to the 16th and 17th
12 centuries.

13 The traditional counterbalance in the
14 American adversary system to these
15 interviews arises from the equal
16 ability of the defense to seek and
17 interview witnesses.

18 So it's not just this Court editorializing, the
19 concept is well-grounded in our decisional authorities.

20 I'll look at this and take it under advisement,
21 particularly your suggestion to maybe add it in a different
22 instruction. I am open to that.

23 But I am going to offer some instruction that
24 allows the state to argue in response to your arguments.

1 You can make whatever arguments you want, and the state can
2 make its arguments.

3 MS. RISTENPART: I think, your Honor, the phrase
4 that you just stated and read directly from case law -- I
5 think you were quoting from Banks -- that the jury, or you,
6 are free to consider the impact of that meeting or
7 interview on the witness. And that's really what the jury
8 is to decide, and that's the instruction part of this.

9 THE COURT: Let me find it. Okay.

10 Next is 23.

11 MS. RISTENPART: Just ask that you add the word
12 "and" after number 2.

13 THE COURT: Is that the extent of your
14 objection? Because -- oh, excuse me. There is no other
15 objection.

16 24: 24, express malice.

17 25: Malice aforethought.

18 26: Murder divided into two degrees.

19 27: Murder of the first degree.

20 28: Murder of the second degree.

21 29 and 30 are manslaughter, voluntary.

22 I may combine and shorten. I may not.

23 Do you want to be heard, Mr. Lee?

24 MR. LEE: On which one?

1 THE COURT: 29 and 30. Both dealing with
2 voluntary manslaughter.

3 MR. LEE: I would ask that it be combined, your
4 Honor.

5 MS. RISTENPART: I ask to keep it separate, your
6 Honor. This is a murder charge.

7 THE COURT: I'm going to yield to the defense
8 request.

9 31: Involuntary.

10 32: Proximate cause.

11 33: Open murder.

12 And the progression of deliberations.

13 34: Deadly weapon.

14 35: Definition of deadly weapon.

15 I now turn to 36. I understand from the
16 information that the state has charged in the disjunctive
17 that Mr. Silva actually killed, and that he is
18 conjunctively guilty of murder because of aiding and
19 abetting a conspiracy.

20 I'm going to be very delicate on this, because I
21 want your theories to come in. I'm having a hard time
22 understanding that charging document in light of
23 Mr. Guzman's plea.

24 Is it still your argument to the jury today that

1 Mr. Guzman, if not being the shooter, killer -- I'm using
2 these words descriptively, not to make any conclusions
3 myself, Mr. Silva.

4 That he's conspired and aided and abetted
5 Mr. Guzman in the killing of Ms. Linarez?

6 MR. LEE: The defense is going to, I'm
7 expecting, blame this on Bernard. I have to be able to
8 argue even if, ladies and gentlemen -- and that's what this
9 does. That's how the charging document is going to be read
10 in, based on the defense objection. And whatever their
11 defense is, I need to be able to give an arguendo argument.

12 THE COURT: Because the abetting -- aiding and
13 abetting instruction has now become a little tedious for me
14 as I read them in light of the evidence. They kind of wear
15 me out.

16 MR. LEE: They do, but just for the same reason.
17 I think I have to have it. It's a plausible theory.
18 They're in a position to put evidence, saying essentially
19 that's what he did, I've got to be able to give an even-if
20 argument.

21 THE COURT: I'm trying to understand. I'm not
22 pushing back, Mr. Lee. But the charging document is aiding
23 and abetting Mr. Guzman.

24 How does that relate to what may be the defense

1 argument that it was Mr. Bernard?

2 MR. LEE: I'm sorry?

3 THE COURT: You have just told me that you
4 anticipate that the defense will argue that Bernard is
5 responsible for this crime. But the charging document
6 alleges that Mr. Silva aided and abetted Mr. Guzman.

7 MR. LEE: But, again, that's the specific
8 charge. That's not an element.

9 The aiding and abetting is the element. The
10 factual scenario is not something that has to be proved up,
11 the notice provision of the charge.

12 So I put them on notice that he's liable under
13 different theories of conspiring, of aiding or abetting.

14 THE COURT: So he's liable for murder, under
15 alternate theories. One theory is that he aided and
16 abetted Mr. Guzman in the killing?

17 MR. LEE: Correct.

18 THE COURT: And does the plea agreement and
19 state's acceptance of different charges for Mr. Guzman
20 affect your arguments or the, the allegation also of this
21 charge?

22 MR. LEE: The amended information on Guzman
23 specifies that he aided or abetted Silva in killing,
24 certainly.

1 THE COURT: Ms. Ristenpart, do you have anything
2 to say?

3 MS. RISTENPART: Your Honor, I did include in
4 the request that being an accessory for aiding or abetting
5 after the fact is not the same as aiding and abetting,
6 conspiring to plan a murder.

7 THE COURT: Let me turn to 36.

8 The state has included: Where two or more
9 persons are accused of committing a crime.

10 And then I have a competing number 36 from the
11 defense that -- excuse me -- I have the state's with
12 authority, not competing.

13 Mr. Lee, will you look at your 36, please.

14 MR. LEE: Yes.

15 THE COURT: What is the sentence that begins
16 your 36?

17 MR. LEE: (Reading.)

18 Or two or more persons.

19 THE COURT: And what is the sentence that ends
20 your 36?

21 MR. LEE: It's on the second page. It says:

22 3B, the particular crime.

23 THE COURT: Okay. What I need to do is just
24 remove a second, page 36, from this thing. Got it.

1 Ms. Ristenpart, I don't fully understand your
2 objection to this 36.

3 MS. RISTENPART: So the state has proffered
4 evidence as to the gun and this jail phone call.

5 And it's not put into any kind of context, but
6 it was the I got rid of the gun. I don't want them to
7 conflate that into being an accessory after the fact, or,
8 or aiding and abetting after is also -- what I'd like to
9 clarify is that they have to prove beyond a reasonable
10 doubt that Mr. Silva aided and abetted knowingly and
11 conspired, whatever it's going to be, prior to the killing.

12 THE COURT: So have you proposed an alternate
13 36, or are you suggesting a specific modification to the
14 state's 36?

15 MS. RISTENPART: If you take my proffered, it
16 starts with the state must show that an aider or abettor
17 intended, facilitated, or encouraged the target offense
18 before or during its commission.

19 THE COURT: Okay.

20 MS. RISTENPART: And if the defendant -- if the
21 defendant formed the intent to aid after the crime was
22 completed, then he -- we can take out the word she -- may
23 only be liable as an accessory after the fact.

24 THE COURT: Right. So what is marked as 37 is

1 your competing or proposed addition to the state's
2 instruction?

3 MS. RISTENPART: To 36?

4 THE COURT: Yes.

5 MS. RISTENPART: Yes.

6 THE COURT: Okay. Now I understand.

7 Turning now to instruction 38:

8 A conspiracy is an agreement.

9 Mr. Lee, is this your stated instruction?

10 MR. LEE: Yes.

11 THE COURT: And where does it end, any member or
12 members?

13 MR. LEE: Yes, on page 2.

14 THE COURT: Okay. So I'm not sure why -- I've
15 got a formatting problem here.

16 And then, Mr. Lee, it is your state instruction
17 that includes all of those references -- let me just come
18 down to you.

19 Ms. Reporter, for a moment, let's go off the
20 record, please.

21 (Whereupon an off-the-record
22 discussion was had.)

23 THE COURT: And to the defense, are you okay
24 with 38? There's nothing noted.

1 MS. RISTENPART: There's nothing noted. But,
2 your Honor, I don't know why they pulled out first degree
3 and kept it separate. It should just say a person is
4 liable for co-conspirator, first, second, voluntary
5 manslaughter.

6 THE COURT: I agree, and I'll adjust that
7 somehow.

8 MS. RISTENPART: Also the aiding and
9 abetting the same way.

10 THE COURT: From the state.

11 MR. LEE: I would love that, but I'm afraid
12 we're inviting error. There is a different standard for a
13 first versus a second.

14 First degree is a specific intent crime.
15 Therefore, I have to prove that at the time they did the
16 conspiracy, that they had the specific intent to kill, and
17 that, and with the intent that the crime be accomplished,
18 whereas the second-degree, voluntary, those are general
19 intent crimes, and they have to be reasonably foreseeable.

20 THE COURT: Let me read this carefully.

21 So 1 through 5 are different. The first
22 includes the specific intent language, and the second omits
23 that.

24 MR. LEE: Yes.

1 THE COURT: I understand --

2 MR. LEE: I'm sorry, the second includes the
3 possibility, but also the reasonably foreseeable
4 possibility.

5 THE COURT: Well, if you look at your
6 subparagraph 4, first degree, it says:

7 With the specific intent to kill the victim;
8 semi-colon, and I turn the page, subparagraph 4 doesn't
9 have a reference to specific intent.

10 MR. LEE: I guess it's just wording, but it's
11 with the intent of the crime being accomplished. It's
12 certainly specific, or it can be a reasonably foreseeable
13 consequence.

14 I believe it's Chad, that's the decision on
15 that, your Honor. I'm afraid by joining them it -- or, I'm
16 sorry, Bolden is the case. Sorry.

17 By joining them, we're changing or reducing the
18 burden for the state, and it's just inviting error. And I
19 don't think we should go there.

20 THE COURT: Thank you.

21 The next is 39:

22 Evidence of a conspiracy.

23 40:

24 In the information the State has

1 alleged alternate theories.

2 41:

3 If you believe that at the time of
4 the shooting the defendant intended
5 to kill any person.

6 Why is that in here, Mr. Lee? Just transferred
7 intent instruction.

8 MR. LEE: Because of his statement saying, I
9 didn't mean to kill her, Dude, I meant to kill the Dude.

10 THE COURT: 42:

11 Mere presence at the scene of the
12 crime,

13 The defense objects.

14 MS. RISTENPART: We just ask that you include in
15 over conspiracy -- so we're talking about just aiding and
16 abetting, the mere presence in a conspiracy, you still have
17 to show -- the case law is specific that even if it's a
18 conspiracy theory, that mere presence isn't enough, they
19 have to show the implied agreement.

20 THE COURT: So where would you suggest I add
21 that?

22 MS. RISTENPART: (Reading.)

23 Sufficient to establish that the
24 defendant conspired and/or aided and

1 abetted a crime.

2 THE COURT: I'm sorry. Will you start again?

3 I'm looking at Instruction Number 42 that begins

4 mere presence.

5 What line did you just start reading from?

6 MS. RISTENPART: I, I started reading from line

7 3.

8 THE COURT: Okay. Would you do it over slowly?

9 MS. RISTENPART: (Reading.)

10 That the defendant conspired and/or

11 aided and abetted the crime.

12 MR. LEE: I agree.

13 THE COURT: Thank you.

14 Next is 43, a state:

15 A conviction should not be had on the

16 testimony of an accomplice.

17 44:

18 You have heard testimony that a

19 witness received a plea negotiation.

20 45 appears duplicative to me.

21 If you -- it reads:

22 If you find that before this trial

23 the defendant made false or

24 deliberately misleading statements

1 concerning the charge upon which he
2 is now being tried.

3 It's less duplicative as I think about it now
4 than when I was listening with one ear and reading with one
5 eye.

6 Do you have a position about this one,
7 Ms. Ristenpart?

8 MS. RISTENPART: I do, your Honor. Just the
9 fact that they're highlighting a defendant. We already
10 have the witness credibility testimony. And the case law
11 doesn't accurately state -- they're looking at
12 consciousness of guilt after the fact. And the conduct.
13 So I'll object.

14 THE COURT: Mr. Lee.

15 MR. LEE: That's a correct statement of law,
16 Judge. And in this case where he says, I've never been to
17 that area before, he makes other statements in that
18 November 8th interview that are clearly a consciousness of
19 guilt.

20 THE COURT: 46:

21 Motive is not an element of a crime.

22 47:

23 You are not called upon to return a
24 verdict.

1 48 is the famous Bowen instruction.

2 Ms. Ristenpart, were you the attorney who
3 successfully obtained relief from Department 15?

4 MS. RISTENPART: That was us, your Honor.

5 THE COURT: I couldn't remember who that was,
6 but I thought it was.

7 So I've struggled with giving this instruction
8 immediately before deliberations.

9 And then this -- so, I haven't, even though I
10 understand Bowen, and I understand and I support Bowen.
11 Bowen is the law in our state. And then I thought maybe it
12 does apply during the deliberations themselves, because
13 Bowen was an overnight event, and I've given that
14 Bowen-modified instruction every night at the close of the
15 case when I say no investigation, experimentation, field
16 research, so forth.

17 Is it your understanding, Ms. Ristenpart, that
18 this instruction should be given so that they will not do
19 any of these things during deliberation?

20 MS. RISTENPART: Well, they obviously can't
21 consult outside resources, right, but we know the reality
22 is jurors do do experiments in the jury room as they're
23 talking, not so much as going out to a scene or anything
24 like that, but that's what we're trying to prevent them

1 from doing, overnight experiments that, yeah, we do want to
2 have a free and vigorous deliberation, which would include
3 drawing pictures, scenes, you know, things like that.

4 THE COURT: So do you want this instruction or
5 not?

6 MS. RISTENPART: I think we can modify this
7 instruction, your Honor. I think the biggest part is
8 recreate any aspect of the case on their own or in any
9 other way. It's just so vague the way it's written in this
10 particular instruction.

11 THE COURT: My concern is they will not have
12 their cell phones with them during deliberations, so
13 they're not going to read, watch, or listen to any news or
14 media accounts.

15 It is very appropriate to give this instruction
16 whenever they break and have their phones and go to their
17 homes.

18 I'll think about it. We'll do something.

19 Mr. Lee, I like an instruction that you did not
20 include, which is:

21 It is your duty as jurors to consult
22 with one another, to deliberate until
23 reaching an agreement.

24 MR. LEE: I have it, Judge.

1 THE COURT: We have it, too. I'm just wondering
2 if you object if I include that?

3 MR. LEE: I don't object.

4 THE COURT: To the defense?

5 MS. RISTENPART: No.

6 THE COURT: The last one should be: Upon
7 retiring, select a foreperson and so forth, return to the
8 courtroom after you've reached a verdict.

9 MS. RISTENPART: Also, I would be requesting a
10 Do not consider that. Mr. Silva has not testified.

11 THE COURT: Yes, do you have a specific
12 instruction you wish to give?

13 MS. RISTENPART: I don't at this time.

14 THE COURT: Let's do this. Ms. Court Clerk,
15 we'll just pull the defense instruction on the defendant's
16 silence for our last open murder. Bailey.

17 You'll have the chance to approve it.

18 Mr. Lee, will you approach, please, with the
19 proposed verdict forms, look at these, have Ms. Ristenpart
20 look at them, after I leave the courtroom.

21 So here's what we're going to do. We're going
22 to break. I'm going to read and think, and then do
23 document production.

24 You'll each have a copy of the final

1 instructions. You'll have 10 or 15 minutes to see what
2 decisions I've made, and we'll go on the record. And you
3 can lodge your objections, if any. And then we'll check
4 our time after that.

5 Thanks, everybody.

6 (Whereupon a recess was taken.)

7 THE COURT: It is 1:18. At 1:15 I invited the
8 jury into the courtroom in the presence of the attorneys
9 and Mr. Silva.

10 I never took a seat nor did counsel or
11 Mr. Silva. Instead I explained to the jury that we were
12 having production process problems, that I alone was
13 responsible for the delay. I apologized.

14 I gave a new estimate of the time that they
15 should return to the Court, and I directly attempted to
16 exonerate counsel from any delay, and I asked the jury to
17 hold me responsible for the frustrations and inefficiencies
18 of this day.

19 And I did it all without a reporter present.

20 Counsel, would you clarify anything that I said?

21 MR. LEE: Judge, you recessed until 2:00 o'clock
22 and admonished the jury appropriately.

23 THE COURT: Thank you for that.

24 MS. RISTENPART: I agree with that.

1 THE COURT: Thank you.

2 (Whereupon a recess was taken.)

3 (The following proceedings were had

4 outside the presence of the jury.)

5 THE COURT: I did show form objections on the

6 record, please, beginning with the state.

7 MR. LEE: Judge, I'm not going to make any

8 objections on the record.

9 Thank you. We have discussed them outside and

10 are comfortable with that.

11 MS. RISTENPART: Judge, I'm objecting to

12 Instruction Number 5. It doesn't mirror the language that

13 was read in the information.

14 THE COURT: Could you tell me exactly where we

15 my be wrong?

16 MS. RISTENPART: The defendant in this matter --

17 (indiscernible.)

18 THE COURT: I'm sorry. I didn't hear you. And

19 it wasn't your fault.

20 MS. RISTENPART: No problem.

21 When we read the information it was actually

22 defendants in this matter, and both names --

23 THE COURT: Plural?

24 MS. RISTENPART: -- and this one just has

1 defendant in this matter and then goes into plural
2 defendants.

3 So we're talking about the very first paragraph,
4 lines 1 through 4.

5 THE COURT: Is the rest consistent with the
6 charging document?

7 MS. RISTENPART: The rest is consistent with the
8 charging document.

9 THE COURT: Your objection is noted.

10 MS. RISTENPART: In addition, your Honor, on
11 when less circumstantial evidence, number 14, I still am
12 requesting that you consider putting in that you've already
13 offered and rejected from defense, that if you can draw two
14 or more reasonable conclusions from the circumstantial
15 evidence, and one of those reasonable conclusions supports
16 a finding that the defendant did not have the required
17 intent and mental state, and another reasonable conclusion
18 supports a finding that the defendant did not, you must
19 conclude the required intent and mental state was not
20 proved by the circumstantial evidence. When considering
21 circumstantial evidence you must accept only reasonable
22 conclusions and reject any that are unreasonable.

23 THE COURT: Thank you. Next.

24 MS. RISTENPART: With that, your Honor, I still

1 have an ongoing objection to:

2 It's not improper for attorneys to
3 interview witnesses.

4 THE COURT: Thank you.

5 MS. RISTENPART: And with that I submit.

6 THE COURT: Thank you. We'll stand for our jury
7 and the public.

8 (Whereupon the following proceedings
9 were had in the presence of the jury.)

10 (Open session.)

11 THE COURT: Please be seated. The jury is
12 present.

13 Ladies and gentlemen, I'm about to instruct you
14 on the law as it applies to this case. Because the
15 instructions are of such importance, I will read them
16 aloud.

17 The instructions could be considered by some to
18 be long and complicated. Because we each learn
19 differently, both audibly and visually, I've asked a lawyer
20 who works in chambers to flip through the written
21 instructions as I read them so you can follow along on the
22 screen.

23 You will also have several copies of these jury
24 instructions with you in the jury deliberation room.

1 Ms. Reporter, you are not required to write the
2 instructions.

3 (Whereupon the jury instructions
4 were read to the jury by the Court.)

5 THE COURT: Everyone stand. Juror Number 13, go
6 real quick.

7 (Whereupon Juror Number 13 was
8 excused from the courtroom.)

9 THE COURT: Be seated, please.

10 (Whereupon Juror Number 13
11 returned to the courtroom.)

12 (Whereupon the reading of the
13 jury instructions continued.)

14 THE COURT: You will now hear the arguments of
15 counsel. To the state, you may begin.

16 MR. LEE: Thank you.

17
18 CLOSING ARGUMENT BY MR. LEE

19
20 MR. LEE: Ladies and gentlemen of the jury, make
21 no doubt about it, on November 2nd, 2017, Richard Silva
22 killed, murdered, Luz Linarez Castillo with the use of a
23 deadly weapon.

24 You've heard a lot of evidence over the last

1 several days. We appreciate your deliberation. We
2 appreciate your listening, your attentiveness. At this
3 point what I intend to do is walk you through these
4 elements that the state has proven.

5 You recall at the beginning, I introduced you to
6 a number of individuals, Luz Linarez Castillo, the victim
7 in this case, the victim of Richard Silva's actions.

8 She's married to Bernard. And she and Bernard
9 had a rocky relationship. She and Bernard were not living
10 together. They were estranged.

11 Bernard's brother was Richard Silva, Willo.
12 Unbeknownst to most people, Willo had a romantic
13 relationship with his sister-in-law, Lucy.

14 Now Lucy had, after being estranged from
15 Bernard, had been staying at the Lester Street address
16 where her mother lived. But every now and then she would
17 stay with Arturo Manzo as well, who she was romantically
18 involved with.

19 And of course Yiovannie Guzman, who you have now
20 heard from and are well-acquainted with, you know as well,
21 from the evidence and testimony, that Richard Silva and
22 Yiovannie Guzman entered into a conspiracy on the night of
23 Halloween of 2017.

24 You also know that Lucy, according to their

1 plan, was to have been killed in the early morning of
2 November 1st, 2017. However, Yiovannie Guzman slept
3 through his alarm, buying one more day of life for Lucy.

4 You'll see the text messages that you've already
5 seen. The call: You awake, Bro?

6 That brings us to November 2nd. The early
7 morning. Lucy gets into her car to go to work as was not
8 unusual working at Cintas.

9 Entered her car, drove down the street.
10 Unbeknownst to her, and waiting at the intersection of
11 Parkview and Mazzone, was Mr. Richard Silva, dressed in
12 black or dark clothing, wearing a hoodie, armed with a 9mm
13 firearm.

14 As Lucy pulls up to the intersection and makes
15 an appropriate stop, Mr. Richard Silva is right there.
16 There's not even much time. Seconds. Within seconds
17 Richard Silva fires his 9mm handgun six times, striking
18 Lucy about the forehead, the face, her back shoulder.
19 Killing her.

20 You'll recall as well, Mr. Silva smokes. He
21 likes to buy Marlboro NXT cigarettes, and at least once
22 he's purchased them at 7-11.

23 As you know, Mr. Silva left cigarettes at the
24 scene. As he's pacing, as he's waiting, he's smoking.

1 Throws them onto the ground. Leaving them for detectives
2 to find.

3 The DNA profile is found, developed on the
4 cigarette butt. It's compared ultimately with, first, the
5 water bottle, the surreptitious DNA sample that was
6 obtained by the detectives and then confirmed ultimately
7 with a sample of Mr. Richard Silva's DNA. The cigarette
8 butts belonged to Mr. Richard Silva.

9 Now, the interesting thing is Mr. Silva denied
10 ever being there. Never been to that neighborhood.

11 That brings us to the next slide. As you look
12 at the next slide, in realtime, which is a few buildings
13 down from Mazzone and Parkview, think about what is about
14 to happen in a few seconds.

15 Lucy is pulling up to the intersection. She's
16 stopping her car. Mr. Silva, who had been waiting,
17 anticipating, had just finished telling Yiovannie Guzman,
18 okay, she's coming. Don't get cold feet. And as she pulls
19 up to that stop sign, here's what the video from Jose
20 Ponce's security uncovered.

21 Lucy's car rolled forward, slowly, striking a
22 pole in front of the building at Parkview and Mazzone.

23 Now you've heard from a first responder, Officer
24 Kevin Collins, who was outside of his beat, but in the

1 area, and responded to a call of shots fired. It was dark,
2 the cars were warming up, he had a little trouble finding
3 the car. But after a second call came in involving a 1050,
4 the car had struck the building, he then looks up Mazzone,
5 comes back to Parkview, and then there he sees the red
6 Charger.

7 Obviously this isn't daylight, but what he sees
8 in the dark is a red Charger vehicle, its lights on,
9 appearing to be warming up, but with 6 bullet holes in that
10 side window.

11 Upon peering in, he calls out, Subject down.
12 Now he and another officer, Chris Johnson, are able to
13 smash out a back window on the passenger side, gain entry
14 into the car. And Kevin Collins, Officer Collins, is able
15 to determine and see that it appeared that Lucy was
16 unresponsive.

17 Those six bullet holes, six holes in the window,
18 six bullet holes in Lucy's body. Officers found her
19 slumped over.

20 You heard from supervising EMT Andrew Massey,
21 who appeared at the scene, and after staging was allowed in
22 the area, checked the pulse, unresponsive, she was dead.
23 He called out her time of death.

24 Lucy had been murdered in cold blood, sitting in

1 the front seat of her vehicle, driving to work that
2 morning.

3 There we can see the window that was smashed to
4 gain entry. And here is Lucy, who had already passed away,
5 sitting in that front seat.

6 One instruction is there has to be a proximate
7 cause. Okay. The shooting, striking Lucy, has to have
8 caused her death for there to be a murder. That's an
9 instruction and a determination you must find.

10 So here do we have a proximate cause? It's
11 within -- a proximate cause is a cause which, as you see in
12 the natural and continuous sequence produces the death, and
13 without, death would not have occurred -- that which the
14 death would not have occurred.

15 So that brings us to our medical examiner.
16 Dr. Katherine Callahan performed an autopsy on Lucy a day
17 later on November 3rd, 2017.

18 There she received the body of Lucy with
19 multiple bullet holes about her face and head and on her
20 back.

21 She described for you the defects she called --
22 identifying her with the letter A. She told you the travel
23 of, of that bullet.

24 She was able to obtain a piece of that bullet

1 from the cranial cavity of Lucy which identified two other
2 bullet holes, C and D as she identified. C was a
3 through-and-through, smashing bones as it went through and
4 exited out her right cheek.

5 D as well, smashing bones.

6 The exit wound in B.

7 And then about Lucy's left shoulder, rear area,
8 back, upper back.

9 Dr. Callahan described the path of these
10 bullets, how she recovered these bullets, from where she
11 recovered these bullets. The damage the bullets did. One
12 of them striking a lung and resulting in multiple, multiple
13 millimeters of blood having to be drained from Lucy's chest
14 cavity.

15 Ultimately, Dr. Callahan determined two things,
16 the cause of death and the manner of death.

17 The cause of death is multiple gunshot wounds.
18 There's your proximate cause. What caused Lucy's death?
19 It wasn't a natural consequence. It was multiple gunshot
20 wounds. The manner of death that Dr. Callahan described,
21 homicide.

22 Which brings us to elements. Instruction Number
23 17, that was just read to you. A murder -- and you were
24 told there was two degrees of murder, let's talk about

1 murder in the broad sense -- is a willful and unlawful
2 killing of a human being with malice aforethought, either
3 express or implied.

4 Malice aforethought. It's an
5 intentional doing of a wrongful act
6 without legal cause or excuse.

7 It can arise not alone from anger,
8 hatred, revenge, or from particular
9 ill-will, spite, or grudge, but it
10 may also result from any
11 unjustifiable or unlawful motive or
12 purpose to injure another.

13 It may be inferred from the intentional use of a
14 deadly weapon. That was certainly used here. You can
15 infer malice aforethought simply by the fact that Richard
16 Silva killed her with a 9mm handgun. You don't have to
17 rely upon that alone. We know the reasons. We'll talk
18 about that more.

19 The two degrees of murder. First degree and
20 second degree. What sets them apart is this. First-degree
21 murder is a willful, deliberate, and premeditated murder.

22 A second degree doesn't require a specific
23 intent to kill somebody but encompasses every other kind of
24 murder, that's not willful, premeditated, deliberate.

1 Ladies and gentlemen, make no doubt about it.
2 I'm not here to ask for a conviction on the second-degree
3 murder. I'm here to ask for a conviction on first-degree
4 murder. This was a murder with a lot of cold blood. There
5 was time to think, to plan, it was premeditated,
6 deliberated, it was willful, it was motivated.

7 Instruction Number 21. Murder in the first
8 degree, willful, deliberate, and premeditated killing.

9 And let's define these. Willful is an intent to
10 kill. It's something that I'll encourage you to deliberate
11 when you go back in the jury room. Did Mr. Silva intend to
12 kill Lucy?

13 Deliberation, determining a course of action to
14 kill. Okay. It can be almost instantaneous as long as
15 things happen before the murder. Here it was two days in
16 the planning, at least.

17 And then premeditation, a design, a
18 determination to kill, distinctly formed in the mind by the
19 time of the killing.

20 You'll see in the next paragraph below that it
21 doesn't matter. It need not be for a day, an hour or even
22 a minute that premeditation, but, again, it's not an issue
23 here. We have days, days for this premeditation.

24 This was a cold and calculated judgment and

1 decision by Mr. Silva. This was first-degree murder.

2 Let's consider some of the evidence. You heard
3 from Detective Rhodes, you heard from Ashlyn Burke,
4 formerly Ziarnowski, who were at the scene, who pulled out
5 the contents of Lucy's purse. And amongst all of these
6 things, there was something particular. It was just this.
7 Two credit cards, one in the name of Bernard Silva that was
8 in her purse, and one in the name of Richard, Richard Silva
9 Guzman on the left.

10 That forms, at this point in the investigation,
11 at least a suspicion. What's going on.

12 Let's talk about placards 1, 2, 3, 4. You saw
13 the pictures. You heard from Detective Sergeant John
14 Silver, who upon gaining information from Vincent Vasquez,
15 Kimberley Vasquez, that they had seen that morning an
16 individual at the corner of the street, wearing dark, and
17 when they approached, had walked back towards this gray
18 SUV, parked wrong, parked the wrong way, on the north side
19 of the street, facing Neil Road, but parked here in the
20 front of this walkway.

21 Sergeant Silver then decided to walk the area.
22 They had the crime scene extended. And what do they find?
23 They find four cigarette butts. Linked to this, they don't
24 know at the time, but it's evidence. They're going to take

1 it.

2 They mark it, photographs are taken. It's
3 packaged, sealed, delivered taken up to the Washoe Crime
4 Lab for further testing.

5 After examining these, Detective or Sergeant
6 Silver found them appearing to be fresh, fresh ash around
7 these. They weren't discolored, and they appeared to be
8 pretty fresh. And that's why he paid attention to them.

9 Cigarettes, placard 4, same thing. They were
10 distinct, because, one, they were the same, and, two, they
11 were Marlboro NXTs. They had on them this little dot here
12 on the body. That was peculiar as well. These were all
13 the same here. Marlboro NXTs.

14 So as part of their investigation, one of the
15 things that Detective Barns did was sought for a needle in
16 a haystack. He want to start hitting up stores. Do you
17 guys keep records of NXT sold? He talks with Graham
18 Twidell with 7-11, loss prevention, and is able to pull any
19 customer purchasing Marlboro NXTs cigarettes, receipts and
20 video. And we have know what Detective Barns finds here.

21 So on the evening of November 1st of 2017, six
22 hours before Lucy was to be killed, with Yiovannie Guzman
23 driving, Richard Silva exits the passenger seat.

24 He's smoking a cigarette. He enters the 7-11.

1 He's not there initially to buy cigarettes. He goes to the
2 counter. He's asking for something.

3 That's consistent with Yiovannie Guzman's
4 testimony that he went there to buy either gloves or a mask
5 and cigarettes. He asks, he looks, but he doesn't find
6 them.

7 You heard from Raman Arora, the owner of this
8 7-11 who said at the time there was actually a promotional
9 going on on these Marlboro NXT cigarettes, and his
10 employees were instructed to encourage customers to buy two
11 packs. And so instead of one, now a second pack is brought
12 down.

13 Mr. Silva is wearing a 49ers hat. Red brim,
14 same hat he was wearing two weeks later at the time of his
15 arrest.

16 He enters the gray SUV. Now, what's interesting
17 here is that we now have cigarette butts at the scene,
18 Marlboro NXTs, we have Richard Silva buying Marlboro NXTs
19 six hours before the murder. Getting out of a gray Sequoia
20 that matches what witnesses at the scene saw parked the
21 wrong way on the scene on November 22nd.

22 You heard from Juan Gonzalez who followed, as he
23 was going to work, he was behind this Gray SUV as it left
24 the scene. So now we have Richard there, and we have

1 Richard with somebody else, at least 6 hours before the
2 murder.

3 Again, as provided by the 7-11, this receipt,
4 purchase of two Marlboro NXTs by Richard Silva. Almost
5 there, in fact, exactly 6 hours before Lucy's murder.

6 A subsequent search warrant obtained for
7 Mr. Silva's car, matching license plate of Willo, which is
8 his nickname, which is his nickname, in the back a Marlboro
9 NXT-like cigarette. Again, it doesn't say "NXT," but it
10 has the same green circle on it.

11 You also heard from Mr. Yiovannie Guzman, who
12 was paid to clean out Mr. Silva's car, and he knew what
13 kind of cigarettes Mr. Silver smoked, because they were
14 Marlboro NXTs, the black box, the green lettering.

15 Ultimately the crime lab tested NXT cigarettes
16 at placard 1 and also placard 4. And what did Criminalist
17 Kindra Baum inform you of? First, Richard Silva is the
18 source of the DNA profile obtained from the cigarette in
19 placard 1. Richard Silva is the source of the DNA profile
20 obtained from the cigarette butt also in placard 4.

21 The estimated frequency that she explained of
22 this matching profile is 1 in 8.217 octillion individuals.
23 You would not expect to see this matching profile again in
24 another 8.217 octillion individuals.

1 Make no doubt about it. Mr. Silva was at the
2 scene, and he left those cigarette butts there. No doubt.

3 Now what's more incriminating for Mr. Silva, and
4 the walls seem to be closing on him on at this time, is he
5 makes this statement on November 8th, denying ever being in
6 this area.

7 (Audio played.)

8 (Audio stopped.)

9 MR. LEE: So he denies ever being there because
10 he doesn't want to be the victim of a crime. Yet we know
11 he was there.

12 Instruction 42, why is this helpful to you?
13 One, again, the denial of being there, but the truth that
14 he was there tells us something.

15 If you find that Mr. Silva made a deliberately
16 false or misleading statement concerning the charge, such
17 as the denial of being at the scene when he was, you can
18 consider that as it tends to prove a consciousness of
19 guilt. Why would Mr. Silva state that he was never there
20 when he clearly was? It's consciousness of his own guilt.

21 Let's talk about motive. There's several
22 motives in this case for the killing of Lucy. Several.
23 Really what this case turned out to be was Mr. Silva found
24 an opportunity to take care of several things by killing

1 Lucy.

2 Several things.

3 So, again, presence of motive may tend to
4 establish guilt. It can't in and of itself establish guilt
5 but the presence thereof can tend to establish it. The
6 absence will tend to establish innocence. But here there
7 are multiple motives. Let's talk about those.

8 First of all, Arturo Manzo, the existence of
9 Arturo Manzo created a problem for Richard Silva. One, it
10 made him mad. This was his romantic lover. This was his
11 sister-in-law that he was in bed with. And now she's got a
12 new boyfriend. Well, that pissed him off. He's going to
13 get revenge on her for that.

14 Two, unbeknownst to Bernard, Bernard is pissed
15 off as well. Right? They knew about Arturo Manzo while
16 Bernard was in the hospital. They knew about it. Richard
17 admitted to it.

18 And so, Bernard is upset, too. So Richard takes
19 an opportunity, one, he can kill Lucy, hide his affair with
20 Lucy so Bernard doesn't find out, and two, help Bernard,
21 all at once.

22 But there is more.

23 (Recording playing.)

24 (Recording stopped.)

1 MR. LEE: Okay. So he knows about Arturo Manzo.

2 We know as well that Lucy at the time was
3 estranged. You've heard that from testimony. We see it in
4 mail that was in her vehicle. Her old address is Sbraiga
5 Way. Her new address, back home with her mom on Lester
6 Avenue.

7 She and Bernard were estranged, and she was now
8 with Arturo Manzo. Arturo had had conversation with
9 Bernard, he says stay away from my girl, don't lay hands on
10 my girl again, stay away. And who calls after that a few
11 hours later? Mr. Silva calls him as well, wanting, needing
12 to know, is Luz with Arturo Manzo. Demanding to know.

13 It was a professional, I think was his words,
14 professional conversation until the very end. But why
15 would Mr. Silva need to know that? Okay. It's because of
16 his affair. It's because he's pissed off, because now
17 she's cheating on him.

18 But there's more. You heard from Yiovannie
19 Guzman what Richard Silva had told him, and Richard hadn't
20 disclosed to him his affair with his sister-in-law.
21 Richard told him that Lucy wanted a divorce. She was
22 threatening to take the kids. She had dirt on Bernard.

23 Okay. So here again, Richard has another
24 opportunity. This all fits in. He can take care of Lucy

1 by killing her, hiding his own affair, revenge for his
2 brother. Protecting the kids that he loved so dearly so
3 that they wouldn't be taken away from his brother. And
4 also protecting his brother so that the information,
5 whatever it was that Lucy had, would be safeguarded down to
6 her grave.

7 So that brings us to the next thing. With
8 regard to premeditation, deliberation, willfulness, how did
9 he know, Mr. Silva know, where Arturo Manzo resides? He'll
10 tell you.

11 (Recording playing.)

12 (Recording stopped.)

13 Do you know where he lives? No, who, Arturo,
14 no. He doesn't know where he lives, he says. But we know
15 otherwise. Okay.

16 Mr. Silva knows Arturo lives here. Mr.
17 Yiovannie Guzman testified to that.

18 Mr. Silva is an employee at the DMV at the time.
19 A technician. Mr. Silva, and I've highlighted a few
20 things, had an individual Jessica Macias, run a license
21 plate on October 26th, just a week before the murder.
22 Whose license plate? Arturo Manzo.

23 You heard from Ms. Roberts, Louise Roberts, who
24 testified, that once you pull up information such as a

1 license plate, you have a whole wealth of demographic
2 information -- plates, cars, residences and addresses.

3 And that's exactly what he had Jessica Macias
4 do. So, how do we know that? You heard from Yiovannie
5 Guzman, that he, Richard knew the address because of his
6 work at the DMV and what Richard had told Yiovannie,
7 independent of anything, that some girl was able to look up
8 the plates for him.

9 So, again, the key part is Arturo Manzo's plate
10 looked up with no transactions run on this day. He wasn't
11 there to register, he wasn't there to get a licenses. That
12 was a, just a look-up for the sake of looking it up. In
13 this case she looked it up for Richard Silva.

14 (Recording playing.)

15 (Recording stopped.)

16 MR. LEE: So November 16th of 2017, shortly
17 after Mr. Silva's arrest for the murder of Lucy, he asks to
18 speak with his brother, after some hesitation, and some
19 guarantees by Mr. Silva for safety reasons, Detective Reed
20 Thomas, Detective Ernie Kazmar, allowed Bernard to go in
21 with his consent, certainly.

22 This is Bernard in the black shirt facing away
23 from the camera, and this is Richard, facing the camera.

24 Listen to the conversation. It's in Spanish.

1 And you'll see subtitles here.

2 THE COURT: Ladies and gentlemen, we're going to
3 take another recess, ladies and gentlemen.

4 During this break you're all invited to the jury
5 deliberation room. You are close but not authorized to
6 deliberate.

7 Please do not discuss this case amongst
8 yourselves.

9 Please do not form or express any opinion about
10 this matter until it's submitted to you.

11 We'll be in recess for about 10 minutes.

12 (Whereupon the jury was excused.)

13 (Whereupon a recess was taken.)

14 THE COURT: The jury, please.

15 Please be seated.

16 (The following proceedings were
17 had in the presence of the jury.)

18 THE COURT: You may continue.

19 MR. LEE: So, again, this is what Richard Silva
20 says moments after his arrest to his brother Bernard.

21 (Recording playing.)

22 (Recording stopped.)

23 MR. LEE: Me and Lucy were having an affair,
24 that's why I did it. That's what he tells Bernard.

1 Bernard is no innocent party in this. He knew what was
2 going on. He knew about it.

3 Yet, Bernard had just suffered a pretty
4 physical -- he shot himself, therefore, he was hampered
5 physically, big time. None of the evidence points to
6 Bernard as having pulled the trigger. But all the evidence
7 points to Bernard as being involved in this.

8 You are instructed by the Judge that today
9 you're only to consider the guilt or innocence of one man,
10 Mr. Richard Silva, not anybody else. So whether or not
11 Bernard is involved is not for your concern or deliberation
12 at this point. Your involvement is simply to decide the
13 fate of Mr. Richard Silva.

14 How does this work? Again, you saw that murder
15 is divided into two categories, and you also saw lesser
16 included offenses in that, manslaughter, voluntary, and
17 involuntary. So I want to walk through how this applies,
18 and how you're supposed to deliberate when you walk back in
19 there.

20 Instruction Number 27, do you see at the top?
21 Open murder. Includes first degree, second degree,
22 voluntary manslaughter, involuntary.

23 Mr. Silva could only be convicted of one of
24 those, of course. He could be convicted of none of them as

1 well. But one of them.

2 So the way you do this is you first look at the
3 evidence as it applies to a first-degree murder.

4 Consider the elements. Was it willful? Was it
5 premeditated? Was it with deliberation? Was it with
6 malice aforethought?

7 If you unanimously agree that this was a
8 first-degree murder, as it says here, you should sign the
9 appropriate verdict form, of first-degree murder and ask
10 the bailiff to return you to court, and you're done. This
11 is what the verdict form is going to like, and you'll check
12 that box, guilty of first-degree murder, and ask the
13 bailiffs to return you to court.

14 So that it makes sense here, what the rest of it
15 says as well. If you cannot agree that he is guilty of
16 first-degree murder, if you can't agree that this murder
17 was done with premeditation, deliberation, malice
18 aforethought, willfully, then you are to consider second
19 degree.

20 Okay. If this isn't first-degree, and you can't
21 unanimously agree, let's look at this as a second degree.
22 So was it a murder? Was it killing of a human being with
23 malice aforethought, but not premeditated, deliberated.

24 And so then you consider second degree. If you

1 find yes, this is second degree, you check the appropriate
2 box in the verdict form and return to court.

3 It goes on. Okay. If you can't agree as to
4 second degree then you're to look at voluntary
5 manslaughter. If you agree that it's voluntary
6 manslaughter, I think you get the picture, check the box
7 and return to court. And it goes so on for involuntary as
8 well.

9 Again, ladies and gentlemen, I'm not asking you
10 to come back with a verdict of guilty as to involuntary,
11 voluntary, or even second-degree murder. This is clearly a
12 first-degree murder, premeditated, deliberate, willful.

13 Instruction 30, there's alternative theories of
14 murder. One, that Mr. Silva actually killed Lucy. All the
15 evidence points to him actually killing Lucy. His
16 cigarette butts are there, he tells you later he got rid of
17 the gun, he tells you why I did it, he tells you even this
18 couched statement that I didn't mean to kill her, I want to
19 kill the Dude.

20 Or this, he conspired with someone else. All
21 right.

22 A coconspirator is liable for the crime itself
23 if he intended that the victim die, and if someone as part
24 of that conspiracy did kill.

1 We'll talk about that in just a moment. But he
2 certainly conspired with Yiovannie Guzman as well.

3 And this is how the conspiracy works. A person
4 is liable as a co-conspirator for first-degree murder if he
5 enters into an express or implied agreement, which we have,
6 with Yiovannie Guzman; part 2, to commit the acts, again, I
7 want to body somebody, you saw the text messages, clearly
8 they're planning this; commit the murder with the specific
9 intent to kill the victim. It was his idea. It was his
10 reasons for killing. And any member or members of the
11 conspiracy thereafter commit the murder. So in this case
12 he did the shooting. He did the killing.

13 However, there is an alternative theory
14 available, that because of his conspiracy with Yiovannie
15 Guzman, and the fact that someone in that conspiracy killed
16 her, he can be guilty for that reason, too.

17 So the conspiracy is established with
18 Yiovannie and Willo. They certainly were both participants
19 at 4:48 a.m. on November 2nd in the killing of Lucy.

20 Let's talk about Yiovannie. Yiovannie Guzman
21 pled guilty to the charge of conspiracy to commit murder,
22 exactly what he did, as well as battery with a deadly
23 weapon as a conspirator for an aider or abettor theory of
24 that charge. Not as pulling the trigger.

1 Did he conspire to commit murder? We went
2 through this before. I will only skim it here.

3 This charging document, he did willfully,
4 unlawfully, and with malice, deliberation, premeditation,
5 conspire with whom, Richard Silva, to kill Lucy, and all
6 these things, Richard contacted him to plan and carry out
7 the murder, he agreed to use a Toyota, they scouted
8 locations, they familiarized themselves with areas. They
9 stayed the night at Richards. And it goes on.

10 Now part of this agreement, and it's admitted
11 into evidence for your consideration, everything is done in
12 the open. He pleas to two counts. He's looking at 20
13 years on these two counts. And then his plea is contingent
14 upon this. Cooperation. And it's defined as this.

15 To respond truthfully and completely to all
16 questions. His failure to respond truthfully, as you
17 heard, will wipe out the deal. He could be charged again
18 with the murder.

19 Cooperation means to attend all meetings, grand
20 jury session, trials;

21 Part 3:

22 Provide all information and evidence
23 within my knowledge about the
24 shooting of the victim;

1 4: Produce all documents, records,
2 voluntarily, and;

3 5: Disclose to the state the
4 existence and status of all evidence,
5 property, records, other things,
6 involved in the shooting of Luz.

7 His deal was not contingent upon a specific type
8 of testimony. His deal is not contingent on the way he
9 says, what he says, how he says, his deal is contingent on
10 truthful testimony. And, again, it's all out in the open
11 for you.

12 You are certainly to consider the fact that
13 Yiovannie pled to two lesser charges in exchange for his
14 truthful testimony. Weigh that. Certainly. Look at it.

15 But in the end, I'm confident with all the
16 things that match up with what Yiovannie is saying, from
17 the text messages to the female at the DMV running the
18 license or information of Arturo Manzo. His testimony is
19 consistent. It's consistent throughout, and he can be
20 relied on. It's consistent work.

21 So let's talk about these text messages. If you
22 recall, this is from Yiovannie Guzman's phone. These were
23 not on Richard Silva's phone when it was run.

24 Taking the first 5 or 6, remember the murder was

1 supposed to happen on November 1st, 2017. So here we are,
2 Mr. Silva reaches out to Mr. Guzman because Mr. Guzman
3 slept in. Where you at, Bro? Okay. She was going to
4 work, Lucy was heading to work, and probably about 15 to 20
5 minutes from that time.

6 Just woke up. Alarm didn't wake me up. And
7 Mr. Silva calls it. Too late. We can't do it today. Too
8 late, Bro. Lucy is already at work most likely at this
9 time.

10 So Mr. Silva comes up with a plan to have you
11 stay with me, or I should have done this, and then the plan
12 comes next. Later on in those texts.

13 Yiovannie says: I'll head over, and you can
14 wake me up.

15 And then Mr. Silva later in the evening, Don't
16 forgot to sleep over. For what? A plan. They had a plan.
17 This is evidence of that conspiracy. Physical, documented
18 evidence that you can see. Objective evidence.

19 Yiovannie Guzman goes to his cousin, Richard,
20 who is awake, everyone, my parents should leave in an hour
21 or so, to the other house. What other house. Okay. Yeah,
22 they sleep over there. Okay. For sure.

23 Yiovannie told you the route he took. Oddie to
24 the freeway. South on the freeway. Getting off at Mill.

1 From Mill, south on Kietzke. He turned by the Nissan
2 dealership right off Kietzke. Turned on Taylor.
3 Ultimately finding his way to Lester.

4 Who is on Lester? They thought maybe her car
5 would be there, the red Charger, but it wasn't.

6 Remember, they had scouted this before, and now
7 when it's time to commit the murder, 3:45, 4:00 in the
8 morning, they go back to make sure that she's not at the
9 Lester address. She's not. So they head over to Mazzone
10 and Parkview.

11 Now, if you find that he committed the act of
12 first, second, or voluntary manslaughter, you must also
13 consider did he use a deadly weapon in the commission of
14 that offense. That's for you to decide as a juror. So
15 proof beyond a reasonable doubt, and we'll talk about that.

16 A deadly weapon is defined. Three alternative
17 definitions. Any device from which a metallic projectile,
18 including ball bearing or pellet, may be expelled by means
19 of spring, gas, air or other form; or 2, any instrument,
20 which in its ordinary manner contemplated by its design,
21 will or is likely to cause substantial bodily harm or
22 death.

23 A gun. The purpose of a gun is to kill. It
24 will or likely cause substantial bodily harm if used in its

1 ordinary manner. Pulling the trigger.

2 So either under 1 or 2, you can certainly find
3 that a 9mm gun is a deadly weapon. Even 3, I'm not going
4 to argue 3, though, which is anything which in the way it's
5 used is capable of causing harm. Okay. This is a gun.

6 We know that because there was 6 shell casings
7 found, first by Officer Evan Thomas arriving at the scene.
8 Those were marked. They were collected one by one. They
9 were found to be 9mm casings. Speer brand. All having
10 been fired from the same firearm according to criminalist
11 Steve Shinmei.

12 There were 6 bullet holes in the window of
13 Lucy's car. You had 6 bullets and fragments pulled from
14 the seat of Lucy's car, for one of them, and the others
15 from her body. Okay. All the bullets match one another.

16 The bullets, Mr. Shinmei may testify, are the
17 markings are consistent with being fired from a 9mm Smith &
18 Wesson M&P firearm.

19 The casings, it's a little more broad, but an
20 M&P firearm is within the group that they could be fired
21 from.

22 And all the bullets recovered and the pieces
23 thereof, he is able to state they are 9mms.

24 That's a firearm. So, but we don't have the

1 gun. The state does not have to produce a gun for there to
2 be, to be a deadly weapon, for you to find that there is a
3 deadly weapon.

4 Where is the gun? We don't know. But one
5 person does. Mr. Silva knows where that deadly weapon is.

6 But he already got rid of it, as he tells you.

7 (Recording played.)

8 (Recording stopped.)

9 The search warrant for his car, that blue Lexus
10 with license plate Willo, to look for a gun. They're not
11 going to find the gun, because he had already gotten rid of
12 it. Okay. He got rid of the murder weapon. That shows
13 several things, one, that it is a gun, a deadly weapon,
14 and, two, that he's involved. Okay. He pulled the
15 trigger.

16 So as to the question on the verdict form, this
17 will be I believe on page 2 of the verdict form: If you
18 find him guilty of one of these, first, second degree, or
19 involuntary manslaughter, do you find that he used a deadly
20 weapon in the commission of that crime? Yes.

21 We'll end at this. Mr. Silva knew what he was
22 doing. Again, make no doubt about it, that was
23 premeditated, it was deliberate it was willful, it was
24 certainly with malice aforethought for all the reasons

1 stated. Multiple motives.

2 Here he gives us a little insight. When asked
3 about his brother, do you believe your brother Bernard was
4 trying to commit suicide? No. Richard explains to you he
5 knows how to do a killing. If you're going to commit
6 suicide, you don't shoot yourself in the chest for a
7 suicide. You aim for the head.

8 (Recording played.)

9 (Recording stopped.)

10 MR. LEE: Mr. Silva knew how to kill Lucy that
11 day. He did shoot her in the head. Shot her in the
12 forehead. Shot her in the face. And she's falling down,
13 most likely, shoots her three times in the back shoulder.
14 Killing Lucy with premeditation, deliberation, and malice
15 aforethought.

16 Ladies and gentlemen, I ask you to consider all
17 the evidence. I'm confident you'll join with me that
18 Mr. Silva is guilty of the crime of first-degree murder
19 with a deadly weapon for the killing on November 2nd of
20 2017, almost on November 1st, 2017, of Luz Linarez
21 Castillo, driving in a car, defenseless, unsuspecting, and
22 killed her with premeditation, deliberation, and malice
23 aforethought. Thank you.

24 THE COURT: Let's stand for a moment.

1 To the defense.

2
3 CLOSING ARGUMENT BY MS. RISTENPART

4
5 MS. RISTENPART: Thank you, your Honor.

6 I need to set up, ladies and gentlemen. I told
7 you five days ago that this story was going to be much more
8 complex, that the relationships were going to be much more
9 complex than the state wanted you to believe or know or
10 see.

11 During the past couple of days we've had various
12 pieces of evidence for you to sort through because this is
13 now, when you get to deliberate, that we've been talking
14 about all week.

15 What's curious about this case, ladies and
16 gentlemen, is that it's called an open-murder case. And
17 what that means is that the state, despite their argument
18 right now that this is a first-degree murder with a deadly
19 weapon, find him guilty, they're actually asking you to
20 decide; they are asking you to decide if this is, as
21 they're claiming, first degree, or one of the lesser
22 offenses, second degree, manslaughter.

23 And that's because, even to this day, the state
24 doesn't really know what happened.

1 When we're looking at the actual circumstances,
2 the totality of what they actually heard, October 20th of
3 2017, we heard a lot of testimony about that. Right? But
4 what was going on before? Bernard and Luz had a volatile,
5 violent relationship.

6 There was stalking, there was some kind of
7 divorce proceeding occurring, or about to occur. And there
8 had been cheating.

9 You do know also from Arturo Manzo that there
10 was either a phone call before or on October 20th of 2017.
11 And remember that phone call between Bernard and Arturo,
12 his prior testimony was that it was heated and that there
13 was a follow-up phone call from Richard to Arturo that was
14 professional.

15 On October 20th you know there was an incidence
16 of domestic violence, and not just domestic violence, but
17 you heard Officer Hodge state that the allegation was that
18 Bernard tried to kill Luz.

19 You then have Arturo driving by because Luz had
20 told him what had occurred with Bernard, and Bernard
21 reaching underneath his seat in a manner that was so
22 threatening to Arturo that he drove away.

23 And you also have of course Bernard shooting
24 himself. With what gun, we don't know. The officer

1 couldn't remember.

2 You also had the information from Officer Hodge
3 that CPS was called that day on that incident. And you had
4 the information that Luz and Bernard were on the phone with
5 each other when Bernard shot himself, that Luz Castillo
6 heard the shots.

7 You then have, after October 20th, Bernard is in
8 the hospital. During that time Richard is picking up the
9 kids at Luz's mom's house on Lester Avenue and bringing the
10 kids to visit at the hospital to Bernard.

11 You then have October 26th, 2017, Arturo's
12 license plate is looked up at the DMV. Now the state just
13 made this huge argument that Jessica Macias looked it up,
14 and that's how they got Arturo Manzo's address.

15 But think through the actual facts here, ladies
16 and gentlemen. You had a car driving pursuant to Arturo's
17 testimony, with a threatening manner from Bernard, and then
18 you have a license plate being looked up. This isn't the
19 same as looking up a name.

20 And, also, that information and those -- or the
21 actual printouts we established through the DMV witness,
22 it's misleading. It doesn't bring up all the information
23 of Luz and Arturo. It was simply they looked up a license
24 plate number and then you don't know what information

1 actually came through.

2 They said there's different tabs. But we don't
3 know. Did you hear from Jessica Macias, do you even know
4 if there's a relationship between Jessica Macias and
5 Mr. Richard Silva?

6 Do you know why Jessica Macias looked up that
7 license plate number on October 26th of 2017? You don't
8 have any of that information. The state just wants you to
9 jump over, assume, and conclude.

10 You then have October 27th, and we have a
11 picture of Bernard in the hospital with his children.

12 And why that's important, ladies and gentlemen,
13 is the state kept trying to ask through their law
14 enforcement witnesses, well, you know, Bernard was, looked
15 like he wasn't walking very well, just wasn't mobile,
16 because they really, really want Bernard to be not well
17 enough, not physically able to shoot Luz on November 2nd,
18 2017.

19 But what do we have here, ladies and gentlemen?
20 We have a patch over his chest, he's upright. He's mobile.
21 You have other testimony, specifically from Yiovannie
22 Guzman himself, that he remembers Bernard walking with a
23 slight limp.

24 And all these claims of the ambulance being

1 called and that they were concerned because he was walking,
2 again, nothing in the original reports about that, only
3 added in in testimony after meeting with Mr. Lee.

4 We move forward, all this is going on, and then
5 we have October 30th, 2017. What happens? Bernard is
6 released from the hospital.

7 So we have October 20th, 2017, Bernard shooting
8 himself. You also heard from October 24th to November 1st
9 of 2017, Bernard sent Luz 325 text messages. Bernard
10 called Luz over 84 different times in that time span.

11 It's building, ladies and gentlemen. It was
12 building while he was at the hospital.

13 You also heard that he found out about Arturo in
14 the hospital, which doesn't seem to make a lot of sense
15 pursuant to Arturo's statements that he had driven by or
16 they talked on the phone, but if it occurred on
17 October 20th, the day he shot himself, then, yeah, Bernard
18 was in the hospital. Because that's when the building, the
19 violence, everything went on, the cheating.

20 Let's be frank, the motive, Bernard's motive to
21 hurt Luz. Everything else is built around
22 Yiovannie Guzman's changing story. And what they claim,
23 Yiovannie , before we even talk about his changing stories,
24 you saw Yiovannie Guzman's demeanor on the stand. You

1 heard the way he answered the questions here before you.

2 When the state asked him questions, it was very
3 much, yes, explanation. When I asked him questions, what
4 was the first thing that he would say, usually? I don't
5 recall. I don't remember.

6 But then when the state asked questions, he
7 readily answered those, and also the word language he used.
8 I went into my vehicle, I proceeded to this route. Whereas
9 they're expecting you to believe some 20 year old knew
10 before coming forward -- he sounded rehearsed, ladies and
11 gentlemen.

12 And what's -- besides his demeanor, he is
13 changing the stories. So Detective Jenkins, he told her
14 that the words were dirty business and that it was borrow
15 the car or you can come with me is what Richard Silva
16 allegedly said in the parking lot of Paul's Market.

17 And you have a change in the trial. It's the
18 words bag somebody, drove over to another house to switch
19 cars. Then you remember that he couldn't actually drive a
20 stick shift, so -- oh, and also did cocaine.

21 And, also, what seems even more incredulous
22 about Yiovannie's movement in the story, is that all of
23 this, he just went home, slept, in fact, oops, overslept.

24 They want you to believe that Yiovannie Guzman

1 just made a huge plan to kill somebody with Richard Silva
2 in the supermarket parking lot at Paul's Market, and then
3 he goes home and oops, oversleeps because his alarm didn't
4 go off?

5 And also what's crazy about this idea that this
6 was like some kind of conspiracy and plan that night is
7 that you heard Yiovannie Guzman say that the reason that we
8 were doing that is because the kids would not be home, or
9 the kids would not be home with Luz.

10 But you heard testimony that Luz had the kids
11 that night; that Luz actually dropped the kids off on
12 November 1st, during the day, and that Luz, and the kids
13 were at the Spragio home on the 1st or the 2nd.

14 You further have a change in story, Detective
15 Jenkins, Yiovannie says Arturo, an uncle, now we have the
16 kids, he talked about the squished up potatoes, and at
17 trial, the parent's not there, and why is that credible?
18 Because there was a text message talking about parents, and
19 now all of a sudden his trial testimony is now more
20 mirroring the text message.

21 And now there's some 7-11 that there was an ask
22 for a mask and/or gloves, and that they drove around that
23 night looking for Luz.

24 And you have the changing story from Yiovannie.

1 Detective Jenkins, he said it was a .44, a revolver, and he
2 had touched it before. And he also said we never talked
3 again. After the murder, we just never talked again.

4 But in trial we have a change that it wasn't,
5 well, it was a .44. I assumed it was a revolver, because I
6 had seen Richard with a revolver before, and I never
7 actually saw it at the scene, but then I cleaned out
8 Richard's car and, oh, yeah, I met Richard at McDonald's to
9 talk about the murder.

10 Yiovannie has been adding to the story, molding
11 the story. And what changed in between is the plea deal.

12 A plea deal that gave Yiovannie Guzman from life
13 in prison to the possibility of probation and walking out a
14 free man.

15 I mean, and when you look at that plea deal, the
16 state skips over the most important part. I agree to fully
17 cooperate with the state. With the state. That's not with
18 justice. It's not with whatever the facts are, I'm going
19 to testify to that, it is very specific, he has to
20 cooperate with the state.

21 And that's a lot of pressure. I asked him, and
22 he said he didn't want to be here. This is pressure to
23 stick with that story that there was some kind of plan,
24 some kind of conspiracy, and to stick, not even with that

1 story but add to it in order to match the state's story and
2 theory.

3 And we know that this plea deal occurred just
4 last week on the 20th of February. And it wasn't just that
5 prosecutor working with Yiovannie, it was this prosecutor,
6 knowing the trial was the next week.

7 And what's so telling is that the state and
8 Yiovannie Guzman, through their plea deal, they're so
9 wanting for this story to be believed, they're so wanting
10 this story to be the story, that they actually said Richard
11 and Yiovannie Guzman pled, saying that he admitted that he
12 knew Richard Silva armed himself with a 9mm. When we know
13 the exact opposite is true. But he signed this,
14 understanding that he's omitting the facts that support all
15 the elements of the offense by pleading guilty.

16 He's willing to say this even though he
17 testified completely differently on the stand.

18 We also have Arturo Manzo's changing story. He
19 had testimony, he had a conversation, but then had a
20 professional conversation with Richard.

21 In trial, well, I have a 30-minute conversation
22 with Bernard, the guy that had just been identified as
23 hitting or hurting my girlfriend? But we had a 30-minute
24 conversation. And then had an angry conversation, and that

1 should be with Richard, Arturo and Richard.

2 Completely different.

3 And the state wants you to use Arturo's changed
4 testimony to support some kind of idea that Richard was so
5 incensed that Luz was having an affair with Arturo that he
6 was going to plan this entire murder.

7 What changed in between? Arturo met with
8 Mr. Lee several different times. He told you that.

9 And ladies and gentlemen, I'm not saying that
10 Mr. Lee handed each one of these witnesses a script and
11 said here's what I want you to say. But I think through
12 conversations, showing pictures, and also discussing the
13 case with witnesses, can change a witness's perception of
14 things. But also the pressure of having met with someone
15 and then wanting to do what that person, or what they think
16 that person wants.

17 Because, and you also have Juan Gonzalez's
18 changing story. He told Detective Rhodes that he could not
19 see who was in the car or how many, in two interviews, on
20 November 2nd and also on the 5th.

21 But then after meeting with Mr. Lee, and also
22 being called as a witness to testify at trial, he's trying
23 to claim that he only saw two people in the car, in the
24 Sequoia. And that's also when he disclosed that he and Luz

1 worked together, despite you hearing from Detective Rhodes
2 that that was not ever known at the time that they talked
3 to him.

4 And also what's -- the Sequoia itself, you saw
5 pictures of, but you saw one picture the state put up over
6 and over again. And it was the picture that you saw,
7 Detective Rhodes, with the light shining in from behind,
8 where you could clearly see everyone in that car, but then
9 from a different angle without the light shining behind it,
10 what was it? Dark, tinted windows, which Detective Rhodes
11 confirmed that they were dark, tinted windows.

12 So in the 7-11 video, it shows nighttime, it's
13 more difficult to see, in fact, impossible. So how would
14 you know if someone was in the back seat of that car?

15 So then you know on November 2nd, 2017, you know
16 from the phone records that Bernard made a call to his
17 lawyer around 10:30 in the morning. You know that the kids
18 were taken by CPS. And you also know that Bernard wasn't
19 interviewed until 4:30 in the afternoon, after he went to
20 go pick up his youngest at day care.

21 And you heard Detective Thomas say that it was
22 odd, it was odd that he didn't ask questions or didn't ask
23 like what happened after being told there was an
24 investigation regarding Luz.

1 And all the suggestions by law enforcement that
2 Bernard was so immobile that there's no way he possibly
3 could have held a firearm or walked and killed someone, it
4 is displayed by the actual images themselves. He's able to
5 hold up his arm, he's walking, he's mobile, he's picking up
6 his daughter from day care.

7 And then you have November 8th. The interview
8 that we heard with Richard. And what did we hear repeated
9 over and over again in that interview with Richard? We
10 want to, we need to, we have to clear Bernard's name in
11 order for the kids to come back from CPS.

12 And then officers admitted, We used it as a
13 tool. We used the fact that their kids, their loved kids
14 were in CPS as a tool to get, I don't know, maybe get some
15 more information out of them.

16 Repeatedly Richard is told over and over again
17 we need to clear the name, we need to clear Bernard's name
18 in order for the kids to come home.

19 And what do we have? On November 16th Yiovannie
20 Guzman says it was Richard who planned and shot, clearing
21 Bernard's name.

22 And Detective Jenkins testified that when she
23 went into that interview with Yiovannie Guzman, Yiovannie
24 Guzman wasn't even a suspect. And then all of a sudden it

1 becomes there's this huge conspiracy between Yiovannie
2 Guzman and Richard to kill Luz.

3 But you also heard how Yiovannie told his mom
4 in that phone call, I wish I could tell the whole story.

5 What is the actual evidence of a conspiracy?
6 There's no details. There's no specifics. It's all been
7 very vague like, yeah, we just decided to kill her. This
8 young man, and that other young man in a parking lot, like,
9 yeah, let's just do this. No specifics, no details, no
10 this is exactly how we're going to do it. Nothing.

11 And also, the story you heard itself doesn't
12 even match the one detail like Yiovannie Guzman continued
13 to say was well, we picked that spot, or that was the spot
14 we were waiting because there was a stop sign, and that's
15 where we were going to kill her.

16 And there is not a stop sign. In fact, you even
17 saw Yiovannie Guzman when I handed him that picture, and he
18 kind of pointed to where he thought maybe the stop sign
19 should be, and then he admitted there is none.

20 And what else do you have? You have
21 Yiovannie saying that Bernard told him you're doing this
22 for me.

23 And you also had evidence that guns, a 9mm, and
24 ammunition for a 9mm was found in Bernard's room on

1 Spragio.

2 You also have the evidence that Speer
3 ammunition, different caliber, but same was found in
4 Bernard's room.

5 And the state just said Bernard was involved.
6 Yet he's never arrested, never charged. And they're going
7 to keep pointing to that jury instruction as to well, don't
8 consider other people, this is only about Richard. But yet
9 they want you to consider this is a conspiracy, that this
10 is some well-thought-out plan ahead of time.

11 How can it be a conspiracy but they never
12 charged Bernard? Can it be a conspiracy if the person who
13 they admit is involved is not sitting there right next to
14 Richard? It's because they didn't have enough evidence of
15 a conspiracy.

16 You also have text messages on October 31st that
17 the state keeps pointing to, saying this is evidence of a
18 conspiracy, ladies and gentlemen. And we have Yiovannie
19 Guzman saying, Well, yeah, that was the plan, and that's
20 the text message that's talking about the plan.

21 But did they really talk about a plan to kill
22 somebody in that? No. And all we have is
23 Yiovannie Guzman's claim that that is what the text
24 messages refer to.

1 And, again, going back to the point that the
2 kids were with Luz on the 31st to the 1st, and the kids
3 were not with Luz from the 1st to the 2nd, yet they want
4 you to say there was a two-day planned conspiracy to kill
5 Luz.

6 There may have been a plan, ladies and
7 gentlemen. But what evidence do you really have? It's a
8 plan or conspiracy to kill Luz?

9 Well, the state says, Well, we have it, the
10 motive. We have that Richard was having an affair with
11 Luz.

12 What evidence have you actually seen of that?
13 When did it start? How did it start? Who else knew about
14 it? All we have is Yiovannie saying yeah, there was an
15 affair. And you have Richard, which we'll get to, in a
16 translated statement claiming that he did it, or that he
17 had an affair, and that's why he did it.

18 They had Richard's cell phone. Yet you haven't
19 seen a single text message, you haven't seen anything that
20 even hinted of an affair.

21 And you go back to that October, November 8th,
22 2017, interview with Richard, they asked him all questions
23 about Luz.

24 And you see him responding. You know, we

1 weren't that close. Yes, my brother's wife, definitely.

2 But the demeanor also, they're trying to say
3 this man, this young man is so enraged by some kind of
4 affair with Luz, that he planned this whole murder. That
5 completely doesn't fit with the November 8th interview and
6 the way he answers those questions, and his demeanor when
7 he's talking about Luz.

8 They don't show you phone calls between Luz and
9 Richard. There's just no evidence of this alleged affair.

10 And/or the alternative theory the state is
11 throwing up against the wall, to see if it sticks, oh,
12 well, actually there was, Luz had some evidence that
13 Bernard was a drug dealer, and so therefore, you know, not
14 only was he going to kill Luz and Richard, because they
15 were having an affair, but also, you know, two birds with
16 one stone, because also she was threatening to get Bernard.

17 Have you seen any evidence to support that?
18 Have you seen anything that says that Bernard is a drug
19 dealer?

20 The state's going to come back out with
21 rebuttal, I'm assuming, with a motive isn't necessary for
22 you to find Richard guilty. It's not.

23 But absence of motive may tend to establish
24 innocence.

1 And just using our common sense, because that's
2 why we're here, who had the motive to kill Luz? Who had
3 the volatile relationship who had already charged to kill
4 Luz? Who was the one who found out about the affair while
5 in the hospital?

6 And the timing itself, ladies and gentlemen, a
7 couple of days after getting out of the hospital, and Luz
8 is dead. All the motive points to Bernard. And if you
9 remember in opening, the state actually said that Richard
10 had an affair, and unbeknownst to Bernard, those were the
11 exact words they used, but then you just saw a translated
12 statement where Bernard says, I knew, I knew, the affair
13 with Luz? Again, still no evidence to support those.

14 Because it's uncorroborated. And that's a big
15 legal term that we use because, unfortunately, that's also
16 in our instructions. But what we're saying is that when
17 you have a case built upon accomplice testimony, which that
18 is what Yiovannie Guzman is, he is charged as an
19 accomplice; he was charged with the exact same charge that
20 Richard had, and does have, and charged with the exact same
21 allegations against Richard, and they have to establish
22 beyond just, just his testimony that there's some kind of
23 corroboration for what he's telling you.

24 There isn't. There is no evidence of, of a

1 meeting at Paul's Market. Police officer said we didn't go
2 over there to go look at it. Didn't collect it, if there
3 was any.

4 There's no evidence of a meeting at another
5 house. A changing story that Yiovannie gave you. There's
6 no evidence of his driving around and scouting out
7 locations.

8 Remember all the testimony we had about the cell
9 phone towers and the dumps? Why did we not have cell phone
10 pings for all those locations in Yiovannie's phone?

11 Why didn't we have a phone pinged at Lester
12 Avenue where they're claiming to go over to see if Luz's
13 car was there?

14 Why don't we have an earlier ping at Arturo's
15 house, as Yiovannie is claiming, that they went over to
16 scout it out and then went home and then went back again.

17 Why don't we have a ping from the Lester address
18 or Luz's mom's home later in the night, as Yiovannie claims
19 that they went back over there first, and then they went
20 over to the park. Uncorroborated.

21 Further, you have no evidence of this meeting at
22 McDonald's, and Yiovannie is changing the story. You have
23 no evidence of the cleaning of the car.

24 And when you take away everything that is

1 uncorroborated, you are left with a shell of a theory. And
2 why is that, ladies and gentlemen?

3 There is no forensics proving who shot. We're
4 missing -- an incomplete investigation. We're missing --
5 never checked Paul's Market, never collected Bernard's
6 black hoodie. It seems like everybody wears a black hoodie
7 in this case. But when you're looking at it, this is him
8 from the November 16th, 2017 interview. Remember, I
9 pointed out those little toggles which look and match
10 exactly like the sweatshirt Bernard is wearing when he shot
11 himself on October 20th of 2017.

12 And of course it's not the same sweatshirt,
13 right? There's no hole in the sweatshirt on November 16th.
14 But it goes to what does Bernard regularly wear? A black
15 hoodie.

16 And you have that law enforcement never tested
17 the 49er hat, the hat they made a big production of showing
18 the match, the one on the 7-11 video surveillance, or the
19 black hoodie that was collected from Richard during his
20 arrest, on November 16th of 2017, and they never tested it
21 for gunshot residue. Which as we discussed with the
22 experts, especially Mr. Shinmei, is that when a firearm --
23 when you fire, you can get gunshot residue, not only on
24 your hand, your person, your arm, clothing, anything that

1 could have had blow back from the gunshot residue.

2 And they never tested the bullets or casings for
3 DNA. That opportunity lost forever because they sent it to
4 Shinmei, who touches it and manipulates the casings, and
5 therefore DNA testing can't be done after the fact.

6 And why is all this incomplete investigation
7 critical? Because it could have shown who actually shot
8 him. And why is that important?

9 Ladies and gentlemen, the state just said
10 Bernard was involved, but because of Yiovannie Guzman's
11 testimony, we don't -- he's not the shooter.

12 So therefore, he's not charged, he's not
13 arrested. He can be part of the conspiracy, but we're not
14 going to go there.

15 And then you have Yiovannie Guzman, who for his
16 testimony says well, I, even though he could have just
17 borrowed my car, I decided to go along, I was going to bag
18 somebody with him, with Richard, and that's why we did it.
19 You have the state not charging one person involved in a
20 conspiracy by their own admission, involved Bernard.

21 And you also have the state giving a plea deal
22 to another person involved in this conspiracy, Yiovannie, a
23 plea deal that potentially allows him to walk out a free
24 man from life in prison. But they want you to say Richard

1 is guilty of first-degree murder because he's the shooter.

2 And then they're going to talk about, and they
3 will come back and say he admitted to it, like they said in
4 the beginning. But what do we actually have? We have
5 parts of statements.

6 You heard that that two minutes that you saw of
7 the conversation between Bernard and Richard was actually
8 over five minutes, the entire conversation, Detective
9 Thomas told us. And you also saw that the state gave you
10 less than a minute of a 15-minute phone call on a
11 jail-recorded phone line.

12 And then of course, taking the fact that these
13 statements were made when it was obvious that Richard was
14 being recorded. It was obvious that Richard would know
15 what he was saying was being recorded.

16 The interrogation room, you can see the cameras.
17 He pointed them out. At one point you actually see, right
18 before Richard says a damning statement, a damning
19 statement, you see Richard look up and look at the camera
20 that's recording him.

21 You also have, of course, the fact that Richard
22 is the one who asked to talk to Bernard in the
23 interrogation room with the cameras on. You have the
24 announcement on the jail recorded phone call saying that

1 this is being recorded. It could be used against you. And
2 you have Richard making some kind of statement about
3 getting rid of a gun.

4 It all points to making statements strategically
5 and knowingly, knowing that they're going to be recorded.
6 Because, going back to that conversation between Bernard
7 and Richard, there's a lot that goes on that we can't
8 understand. How many times did you hear the word
9 inaudible? You've heard it over twice now.

10 And how much could you understand? And even
11 before they get to those statements to Luz and I having an
12 affair, there's a whole other conversation that we just
13 don't know about and what was said.

14 And you heard the translator say I had to listen
15 to that 20 to 30 different times with a really good set of
16 headphones on. That's how hard it was. And then even
17 then, this is what -- what the state is saying as
18 admissions is her interpretation of what she thought she
19 heard.

20 And there's a big difference, ladies and
21 gentlemen. It's almost like a horrible game of telephone.
22 Right? The state wants you to rely on these and say find
23 him guilty because of these statements. But then you have
24 inaudible portions in the middle, hysterical crying,

1 muffled sounds and voices.

2 It's a huge difference between me saying, me,
3 murder, did it, versus me saying me, I wasn't there, but
4 that part's inaudible, murder, someone else did it, but
5 that part's inaudible. They want you to take these little
6 bits and pieces and say that's enough. That's beyond a
7 reasonable doubt. Don't worry.

8 When we talked about this particular case, and
9 the fact that the state's decided, even though they think
10 Bernard was part of the conspiracy, every element that
11 would put Bernard at that table with Richard, they're just
12 not going to pursue charges against him.

13 And then the power of the state to give a plea
14 deal to someone who just kind of joined along for the ride,
15 jumped on board, is going to bag somebody. A plea deal for
16 probation, but they want you to say Richard, find him
17 guilty of first-degree murder.

18 That's a lot of power, ladies and gentlemen.
19 And that's power, and this is why we have jury trials.
20 Because it takes courage for a jury to say in this
21 particular case, Prosecutor, we don't agree with you.

22 It takes courage to say once you strip away that
23 uncorroborated testimony, once you strip away the evidence
24 that doesn't really quite match your theory, we're left

1 with the question still of we don't really know what
2 happened. We don't know what the details of this alleged
3 conspiracy was. We don't know the details of what you
4 think is the motive of affair or some kind of drug dealing.
5 We don't know.

6 Ladies and gentlemen, just as much you're
7 watching us, we also sometimes watch you, too, of course.
8 Right? And I saw your expressions when the defense rested
9 excuse me, when the state rested their case. I saw the
10 expressions of surprise like --

11 MR. LEE: Objection.

12 THE COURT: Overruled.

13 MS. RISTENPART: Like that's it? That's all
14 you're going to show?

15 When you take away all of the different
16 alternating theories when the state is asking you to make a
17 huge decision like this, but just to accept on a very
18 shallow level what I'm telling you, because, again, it's
19 the courage of a jury to say in this particular case, with
20 what you have shown us, state, you have not proven it
21 beyond a reasonable doubt.

22 And this is the last time I get to talk to you,
23 under the rules of the trial because the burden is on the
24 state to prove everything beyond a reasonable doubt, all

1 the elements of the charge. I don't get to talk to you
2 again. They get to come up and make their last argument.
3 And I can't say anything else.

4 And the question is, is that when you are
5 sitting there asking yourself what really happened in this
6 case, the evidence points to Bernard, the motive, the
7 firearms. And as I told you about this case, the truth is
8 much more complex, the relationships more complex, than the
9 state wanted you to know.

10 For them to throw a whole bunch of different
11 theories out and then also all these charges, just to see
12 what sticks, that's not justice, ladies and gentlemen. The
13 judge at the very beginning, before we sat you, said that
14 juries leave the fingerprints on justice.

15 And what I'm asking you is hard. I'm asking you
16 to have the courage to look and tell in this particular
17 case, this case, there's just not enough. And it doesn't
18 match.

19 Thank you, ladies and gentlemen.

20 THE COURT: Ladies and gentlemen, this will be
21 our last recess before your deliberations. You are still
22 not authorized to discuss this case amongst yourselves.

23 Please do not form or express opinion any
24 opinion about this matter until it's been submitted to you.

1 We'll be in recess for 15 minutes.

2 We'll stand for our jury.

3 (Whereupon the jury was excused
4 and the following proceedings were
5 had outside the presence of the jury.)

6 THE COURT: The evening is drawing near. The
7 reporter did not ask for a break, and she will be unhappy
8 that I am pointing at her a little bit, but she's been
9 writing fiercely for a while, and it's appropriate for her
10 to stand and rest. So that's the reason for the break.

11 Sorry for the interruption, but that's what
12 we'll do. See you in 15 minutes.

13 (Whereupon a recess was taken.)

14 THE COURT: To the state, you may proceed.

15 (Whereupon the following proceedings
16 were had in the presence of the jury.)

17
18 FURTHER ARGUMENT BY MR. LEE

19
20 MR. LEE: Ladies and gentlemen, what I intend to
21 do here is not play for you the 7-11 video, not to rehash
22 to you the statements he made on a recorded phone call, or
23 the statement he made to Bernard. We'll talk a little bit
24 about it, but I'm not going to play it. You've seen it.

1 This case involved a solid investigation. The
2 CPS was -- it was used as a means to talk to Richard.
3 That's what worked. Richard came in.

4 They use used the water bottle technique to get
5 the surreptitious DNA sample. That worked. That linked
6 Richard up to the crime scene. His cigarette butts were
7 there. That was not mentioned once by the defense.

8 Search warrants, phone records, translations.
9 It was a thorough investigation. And just like that,
10 ladies and gentlemen, you're to consider all the evidence
11 taken as a whole. And I'm confident, confident that you'll
12 return a verdict of guilty to the first degree. This was
13 willful, deliberate, and intentional -- premeditated.
14 Excuse me.

15 A few things I have to hit on. You'll have the
16 exhibits of Yiovannie Guzman's deal. It was all open.
17 It's there for you to see, every detail of it if you wish
18 to look at it. Exhibit 12 -- excuse me, Jury Instruction
19 12, contrary to what the defense infers on every single
20 witness it seemed like it talked about, there's nothing
21 legally improper about an attorney meeting with a witness
22 before trial.

23 With Yiovannie Guzman it was discussed as to
24 what was shown to Mr. Guzman, how it was shown, questions

1 asked.

2 What Mr. Guzman told you was that, the
3 following: No police reports were shown to him, no videos
4 were shown, no transcripts. Nothing. These were
5 open-ended that the state's attorney had with Mr. Guzman.
6 There's nothing coerced.

7 His testimony is what it is. Again consider,
8 consider the deal that he got. That is for you to
9 consider.

10 But I ask you as well to consider the
11 consistencies of Mr. Yiovannie Guzman's statement.

12 I think that the inconsistency that I see is
13 that he stated that a car stopped -- he saw her car stop at
14 a stop sign but the stop sign isn't there.

15 Well, it's a three-way intersection. Does that
16 mean the car didn't stop? I don't see the relevance of
17 this. The car stopped. Right then. And Richard was right
18 there. And he shot 6 shots into that window, striking and
19 killing Lucy.

20 Let's talk about Exhibit 45. Excuse me, again.

21 Jury Instruction 45: You're not
22 called upon to return the verdict as
23 to guilt or innocence of any other
24 person, other than Mr. Richard Silva.

1 THE COURT: Slow your pace.

2 MR. LEE: I'm sorry.

3 Other than Mr. Richard Silva. Okay.

4 There was a fact stated that's not in evidence.
5 Reed Thomas, Detective Thomas, that Mr. Bernard had not
6 been charged with a crime. But what was stated to you was
7 something different than that. That Mr. Bernard is not
8 going to be charged with a crime. That's a fact not before
9 you in evidence. I ask you not to consider that. He has
10 not been charged with a crime. That's what he testified
11 to. Nothing more.

12 All you are to consider today is not Bernard but
13 Mr. Silva.

14 Mr. Yiovannie Guzman is guilty of the crime of
15 conspiracy to commit murder. He has pled guilty to it.
16 That is what he did. That was his role in this case.

17 I'm not here to, to proclaim he's an angel of
18 some sort. Okay. He committed a crime. He participated
19 in this terrible crime.

20 However, his testimony was consistent. But I'm
21 not asking you to rely on his testimony. Again, all the
22 evidence, please consider that. Consider the consistent
23 text messages that were on his phone but not on Mr. Silva's
24 phone, because he deleted them.

1 Consider all the evidence. Consider the fact of
2 cigarette butts with Mr. Silva's DNA at the crime scene
3 even though he denied being there because of his guilty
4 conscience.

5 Consider the fact that Richard Silva gets out of
6 that gray Toyota Sequoia SUV on camera, 6 hours before the
7 murder, buying the same cigarettes found at the scene,
8 wearing the same hat he's later arrested in, with that same
9 Toyota Sequoia found at the scene by Vincent Vasquez, seen
10 by Kimberly Vasquez, and followed Juan Gonzalez. It was
11 there.

12 Richard Silva was tied to that. These are not
13 uncorroborated statements by Yiovannie Guzman.

14 Consider the 6 shots in the window. Consider
15 that Mr. Silva, and no one else, said: They're not going
16 to find the gun. I already got rid of it.

17 Consider as well that the argument was that the
18 state has zero evidence of an affair. You heard what
19 evidence was presented, but I'm just going to rely on
20 Mr. Silva himself. He said he and Lucy had an affair.
21 That's why I did it. That wasn't discussed by the defense.

22 The things that were not discussed are things
23 that link Mr. Silva to the crime.

24 As to the recordings and the translations, there

1 are no alternatives offered. That's what is before you.
2 You can consider Suli Schehr, the translator's testimony,
3 that she listened to this a lot. Especially the
4 conversation with Bernard was hard to hear. But what she
5 couldn't understand she said so. The things she wrote, her
6 testimony, she said, was a hundred percent competent as
7 that's what was said, and she translated it correctly.
8 That's uncontroverted.

9 And then this statement that the state doesn't
10 know what happened that day, again, there were thorough
11 investigations by the detectives of the Reno Police
12 Department of multiple units by many officers; we know that
13 Richard Silva conspired with Yiovannie Guzman to commit
14 this murder. We know that Richard Silva tried to commit
15 this murder on the 1st. We know because his text messages
16 corroborate that.

17 We know that Richard and Yiovannie scouted the
18 area. We know Richard had somebody look up information
19 about Arturo Manzo, to find this area. We know that
20 Richard and Yiovannie drove around scouting, they went to
21 7-11, they purchased things, and then later that night, 6
22 hours later, Richard Silva pulled the trigger 6 times that
23 killed Lucy.

24 Ladies and gentlemen, I'll end with this.

1 Inferences. The defense wants you to make some big jump
2 that Bernard did this crime. His DNA is not at the scene.
3 Again, I'm not shying away that Bernard knew about this. I
4 will tell you, though, that there is no fact in evidence
5 that Bernard will not be charged with the crime, Bernard
6 has not been charged with the crime.

7 But you cannot make reasonable inferences based
8 on speculation or guess. Maybe there's some third person
9 in this car. That's not a reasonable inference.

10 Reasonable doubt as well. Ladies and gentlemen,
11 it's this:

12 The entire comparison and
13 consideration of all of the evidence
14 are in such a condition that they say
15 they feel an abiding conviction of
16 the truth of the charge. Doubt to be
17 reasonable must be actual and not
18 mere speculation or possibility.

19 There is no reasonable doubt in this case. We
20 know what happened. The evidence corroborates it. The
21 testimony corroborates it. It happened.

22 Mr. Silva's own words corroborate this. And
23 then lastly, ladies and gentlemen, back to Instruction
24 Number 7. The strange thing that we see here, everything

1 you've heard, every admonition was saying don't take
2 anything into the deliberations, don't form any opinions,
3 don't do this, don't look at this; everything that you know
4 about this case needs to come from this witness stand.
5 That's totally correct. I agree with that.

6 However, you do take one thing in with you.
7 It's your common sense. You guys are all blessed and
8 endowed and born with this; you gained it throughout your
9 life, and that's why the laws and justice puts it on you,
10 collectively. You have more collective knowledge, wisdom,
11 than anyone else here. And that's why it's on you to
12 decide what justice means in this case.

13 Use your common sense and consider the evidence.
14 When you do so, you'll find that on November 2nd, 2017,
15 Richard Silva, with premeditation, with deliberation, with
16 malice aforethought, certainly willfully, certainly
17 motivated, killed and murdered Luz Linarez Castillo,
18 shooting her 6 times, knowing that the face shots, the
19 headshots were the way to do it, and he did it. And he did
20 it well. And it's up to you to hold him accountable.

21 Thank you, ladies and gentlemen.

22 THE COURT: In a moment I will dismiss Juror
23 Number 13 as our alternate non-deliberating juror.

24 I may not have a chance to speak with you

1 again -- I will not speak with you again, personally, ever,
2 but we as participants in this process will not have a
3 chance to speak with you, Mr. Juror.

4 I want to acknowledge your presence, the way in
5 which you conducted yourself. You have responded to the
6 call of service.

7 When the jury retires to the deliberation room,
8 you are not to join their conversation but instead collect
9 your belongings -- coordinate with Deputy Coss so that you
10 can be available should the need arise.

11 You remain under the same admonition that you
12 have heard throughout this week, until all of the other
13 jurors are discharged, you will not be discharged because
14 you could be called into service.

15 That admonition involves not doing any form of
16 personal research, investigation, experimentation, not
17 discussing this case with others, not seeking information
18 outside of this proceeding, and informing the Court should
19 anyone attempt to speak to you.

20 Ladies and gentlemen, it is approaching the late
21 hour. In a moment, in a moment when you begin your
22 deliberations, you control the process. And what you do in
23 that room is yours. There will be no time restrictions or
24 guidance on your deliberations.

1 But given the late day and the late hour, I
2 encourage you not to rush your deliberations because of the
3 late hour. Please be thorough.

4 Please follow your oath and the Court's
5 instructions of it.

6 At your request, and in the interest of justice,
7 I may allow you to recess your deliberations, returning to
8 your homes for the weekend to return Monday morning for
9 continuing deliberations.

10 I don't foreshadow that, I don't encourage that.
11 I just want you to know that this process requires your
12 good faith participation, and you will decide how that
13 unfolds.

14 I have ordered dinner. It will arrive shortly.

15 Deputy Coss, if you'll be sworn, please.

16 (Whereupon Deputy Coss was sworn.)

17 THE COURT: You may take with you into the jury
18 deliberation room all papers and other items that have been
19 received as evidence in this case, including the Court's
20 written instructions.

21 You may review personally and share with others
22 the notes that you have taken during this trial. You may
23 request through the Deputy Sheriff all further information
24 and instructions that will be done in writing by you.

1 After you have begun your deliberations, there
2 are different rules. And you will not have access to your
3 phones, and so before you give them -- you put them in a
4 basket. Before you put them in a basket, make whatever
5 last text messages or calls that you need to, because after
6 Deputy Coss shuts that door you will not have your phones
7 with you.

8 After you've begun to deliberate you may be
9 permitted to separate to take breaks, you may even be
10 allowed to walk around the building, walk around the block.
11 However you decide.

12 You will do so under the sight and sound
13 supervision of one of our deputies, not for security but
14 just for deliberation integrity. At no time can you
15 deliberate when there are fewer than 12 of you together.
16 So you can't caucus separately in different locations to
17 deliberate.

18 I'm available for any other requests. And we
19 will stand for the jury subject to its call.

20 (Whereupon the jury was excused to the
21 jury room for jury deliberations.)

22 (The following proceedings were had
23 outside the presence of the jury.)

24 THE COURT: If you'll be seated, please. Remain

1 seated until Deputy Coss returns.

2 That concludes the evidence and argument portion
3 of this trial.

4 The question has now been tendered to the jury.
5 And now for the first time I want to briefly and neutrally
6 address those who have been in attendance this week.

7 First, I want to ensure your public
8 participation throughout the -- your participation in this
9 public venue throughout the evening.

10 Our building typically closes on a Friday night.
11 It's probably closed now. But yet it should and will
12 remain open to the public at any time the jury is in the
13 courtroom in our presence.

14 I'm not sure how to accommodate that. But I
15 charge Deputy Coss with figuring it out.

16 Maybe we will make the jury assembly room
17 available. Maybe there can be a single number given to the
18 deputy who can alert you as to when the proceedings may
19 begin.

20 What I see and do not want is you just
21 encircling the block for hours not know what is happening.
22 And so Deputy Coss, we can coordinate about that if we need
23 to. Excuse me.

24 There's a high possibility you may be able to

1 stay in the rotunda, but Deputy Coss will figure that out.
2 Because I want to acknowledge your presence through this
3 week. I do not know who any of you are. I don't know why
4 you're here.

5 There are, there are interests on both side of
6 this question. Throughout this week, the name Luz Linarez
7 Castillo has been discussed. And for some, maybe all, the
8 reference to that name invokes someone now deceased, a
9 living, vibrant person.

10 And the way that you've conducted yourselves
11 this week has been honorable. I am delighted to have
12 presided over a public forum in which you have been
13 respectful and dignified despite the difficult
14 circumstances that bring you here.

15 I'm inspired to be part of your community
16 because of the way in which you have entrusted and acted
17 within the system.

18 We'll stand for recess subject to the jury's
19 call.

20 MS. RISTENPART: I would like to make a record.

21 THE COURT: Can we excuse the public?

22 MS. RISTENPART: Yes.

23 THE COURT: Good night, ladies and gentlemen.

24 (Whereupon the public was dismissed.)

1 MS. RISTENPART: Thank you, your Honor.

2 THE COURT: I'll just ask law enforcement to
3 stay, please, while everyone works their way out.

4 Yes.

5 MS. RISTENPART: Thank you, your Honor.

6 I don't have objections during opposing
7 counsel's closing, but I do want to make a contemporaneous
8 objection.

9 Mr. Lee stated that, and inferred that, Bernard
10 may be charged with the power of the state. I think his
11 direct comment was that he may not be arrested or charged,
12 but that doesn't mean he won't be charged in the future.
13 It's an improper argument. Thank you.

14 THE COURT: I want to acknowledge that at the
15 time Mr. Lee was making his argument -- which I will not
16 comment upon -- Ms. Ristenpart made eye contact with me and
17 non-verbally communicated a contemporaneous objection
18 without audibly interrupting. And it's appropriate that
19 you memorialized that in the way that you did.

20 MS. RISTENPART: Thank you, your Honor.

21 (Whereupon a recess was taken.)

22 (The following proceedings were had
23 outside the presence of the jury.)

24 THE COURT: The jury, please, Deputy. Hold on,

1 Deputy. Let's everyone be seated, please.

2 We are on the record in the Silva matter, which
3 is CR18-1135B.

4 Mr. Silva is present, as are counsel.

5 It is shortly after 9:00 o'clock on Friday
6 night. I have been informed by the deputy that the jury
7 has reached a verdict.

8 As I look around the courtroom I see
9 approximately 25 to 30 people. As I indicated before the
10 recess, you are welcome and I am grateful for the way that
11 you've conducted yourself during this trial.

12 The moment of verdict can be for some a
13 difficult moment. Of course, none of us know what this
14 verdict will be. And I encourage you to maintain the same
15 respectful presence and civility that you have demonstrated
16 all week.

17 I am required to be patient, dignified, and
18 courteous, while at the same time maintaining the order and
19 decorum of this proceeding.

20 I invite you to carefully measure any response
21 that you have, for I will maintain the dignity of this
22 proceeding through the assistance of law enforcement, if
23 necessary.

24 I certainly don't expect that, based upon my

1 experience with you this week. I do not want that. But I
2 want to end this trial with the same respectful tone that
3 has been demonstrated and which this venue deserves.

4 With that, we'll stand for our jury.

5 (Whereupon the following proceedings
6 were had in the presence of the jury.)

7 THE COURT: Please be seated.

8 I will describe what happens next.

9 When I am done talking, I will ask if you have
10 selected a foreperson. The foreperson will identify
11 herself, stand, and I will ask her if the jury has reached
12 a verdict.

13 She will either say "yes" or "no" without
14 disclosing the verdict.

15 If the jury has reached a verdict, the
16 foreperson will hand the verdict form to the Deputy Sheriff
17 who will bring it to me for review.

18 After I have reviewed it, Mr. Silva and his
19 attorney will stand, and the clerk will read the verdict
20 aloud.

21 In the State of Nevada, your verdict must be
22 unanimous.

23 The clerk will then, at my request, poll each
24 one of you individually. She will ask the same question,

1 beginning with Juror Number 1. She will ask Juror Number
2 1, is this your verdict as read? To which she will either
3 say yes or no. She will ask that same question
4 sequentially until we arrive at Juror Number 12.

5 I will then speak again.

6 Ladies and gentlemen, have you selected a
7 foreperson?

8 THE JUROR: Yes.

9 THE COURT: Number 4, is it?

10 Ma'am Foreperson, has your jury reached a
11 verdict?

12 THE JUROR: Yes, we have.

13 THE COURT: Would you please hand the verdict
14 form to Deputy Coss?

15 THE COURT: Thank you. I've been handed the
16 verdict form. I have not looked at it.

17 It's important to me that I reflect upon your
18 jury service without knowing your verdict. I want to
19 acknowledge the way that you have participated throughout
20 this week. I and the attorneys have watched you carefully.
21 I have been inspired by your service, by your response to
22 the call of service. I have no opinion about the verdict
23 that you have reached. It belongs solely to you. At no
24 time will I or anyone else criticize or compliment you for

1 the verdict.

2 What occurred within that room belongs to you as
3 the seated jury of this case.

4 Through this experience you have touched
5 important constitutional principles. I might reflect upon
6 them at the time you are discharged from service.

7 I want to acknowledge in your presence, what I
8 have acknowledged out of your presence a few times.

9 And that is that those members of the public who
10 have been present this week have conducted themselves with
11 dignity befitting this venue.

12 The attorneys have exemplified the
13 professionalism that we expect of our legal profession,
14 each zealously representing their different cause. And
15 doing so with civility, with ethics, with preparation, and
16 I'm proud to have these attorneys in the courtroom, and I'm
17 grateful that you had an opportunity to observe two of our
18 very best.

19 I now look at the verdict form.

20 Mr. Silva, Ms. Ristenpart, if you will please
21 stand.

22 Ms. Clerk, if you will please read the verdict.

23 THE CLERK: In the Second Judicial District
24 Court in the State of Nevada, in and for the County of

1 Washoe, the State of Nevada, plaintiff, versus Richard
2 Abdiel Silva, defendant, Case No. CR18-1135B, Department
3 No. 15.

4 Verdict. We, the jury in the above-entitled
5 case, find the defendant Richard Abdiel Silva as follows:

6 Guilty of first-degree murder.

7 Question 1: If you find Richard Abdiel Silva
8 guilty of first-degree murder or second-degree murder or
9 voluntary manslaughter, do you find that Richard Abdiel
10 Silva used a deadly weapon?

11 Yes.

12 Dated this 28th day of February, 2020, signed
13 Foreperson.

14 THE COURT: Thank you, Ms. Clerk. Please be
15 seated.

16 Ms. Clerk, will you please poll the jury?

17 THE CLERK: Juror Number 1, is this your verdict
18 as read?

19 THE JUROR: Yes.

20 THE CLERK: Juror Number 2, is this your verdict
21 as read?

22 THE JUROR: Yes.

23 THE CLERK: Juror Number 3, is this your verdict
24 as read?

1 THE JUROR: Yes.

2 THE CLERK: Juror Number 4, is this your verdict
3 as read?

4 THE JUROR Yes.

5 THE CLERK: Juror Number 5, is this your verdict
6 as read?

7 THE JUROR: Yes.

8 THE CLERK: Juror Number 6, is this your verdict
9 as read?

10 THE JUROR: Yes.

11 THE CLERK: Juror Number 7, is this your verdict
12 as read?

13 THE JUROR: Yes.

14 THE CLERK: Juror Number 8, is this your verdict
15 as read?

16 THE JUROR: Yes.

17 THE CLERK: Juror Number 9, is this your verdict
18 as read?

19 THE JUROR: Yes.

20 THE CLERK: Juror Number 10, is this your
21 verdict as read?

22 THE JUROR: Yes.

23 THE CLERK: Juror Number 11, is this your
24 verdict as read?

1 THE JUROR: Yes.

2 THE CLERK: Juror Number 12, is this your
3 verdict as read?

4 THE JUROR: Yes.

5 THE COURT: The jury being unanimous has reached
6 a verdict of guilt in which Mr. Silva has been found to
7 have committed first-degree murder.

8 The clerk will record the verdict into the
9 minutes of the court proceeding.

10 Ladies and gentlemen, I'm going to invite you to
11 return to the jury deliberation room. Your evening is not
12 yet over. This will be a brief recess.

13 There is no admonition or restriction regarding
14 what you say to one another. I suspect we'll be somewhere
15 in the neighborhood -- as you've learned this week, I'm
16 always wrong, somewhere in the neighborhood of 5 to 10
17 minutes.

18 We'll stand for our jury.

19 (Whereupon the jury panel was excused.)

20 (The following proceedings were had
21 outside the presence of the jury.)

22 THE COURT: Please be seated.

23 Ms. Clerk, may I have the verdict form, please?

24 NRS 175.552.

1 Ms. Ristenpart, I'm more than happy to give you
2 time, if necessary.

3 You know the nature of the inquiry I'm about to
4 make, and I want to give you time to consult appropriately.

5 MS. RISTENPART: Yes, I'd like some time, your
6 Honor.

7 THE COURT: Let me cite the authority before us,
8 and then I will give you that time.

9 Under NRS 175.552:

10 When there is a finding that the
11 defendant is guilty of murder in the
12 first degree, this Court shall
13 conduct a separate penalty hearing.
14 The hearing must be conducted as
15 follows:

16 Summarizing only the relevant
17 provisions as soon as practicable.

18 Subparagraph 2.

19 The parties may by stipulation waive
20 the separate penalty hearing required
21 in subsection 1.

22 Subsection 1 provides that the
23 separate penalty hearing must be
24 conducted by the trial jury unless

1 the parties stipulate in writing to
2 waive the jury's participation in
3 sentencing in which case entry of
4 judgment and imposition of sentence
5 would be imposed by this Court.

6 In the event that the jury is unable
7 to reach a unanimous verdict upon the
8 sentence to be imposed, the trial
9 judge shall impose the sentence,
10 citing 175.556.

11 Mr. Silva, you will tonight, very shortly, make
12 a decision about the penalty proceeding. My words do not
13 encourage or discourage your decision in any way. I want
14 you to have time to confer privately with your attorney.

15 If you choose to be sentenced by this jury, I
16 will not discharge the jury, but instead call them to
17 return Monday morning. The state may then present its
18 information, your attorney will present her information,
19 and the standards that govern counsel are set forth in NRS
20 175.552. Some of the highlighted standards are that we are
21 no longer in trial and the level of admissible evidence is
22 different.

23 For example, there may be evidence regarding
24 aggravating and mitigating circumstances.

1 Evidence may be permitted that is not ordinarily
2 admissible.

3 Evidence may be offered to refute hearsay
4 matters.

5 But importantly, quote:

6 No evidence which was secured in
7 violation of the constitution of the
8 United States or the constitution of
9 the State of Nevada may be
10 introduced.

11 Counsel, I believe you understand what I am
12 referring to.

13 In the event that you choose to be sentenced by
14 the Court, I would set your sentencing hearing
15 approximately 45 to 60 days from now.

16 During the interim you would meet with your
17 attorney. She would develop a sentencing presentation.

18 You would also meet with the division of parole
19 and probation who would prepare a presentence investigation
20 report which will include information about, such as your
21 life story, your family, your criminal history, if any,
22 your work history, a statement from you and so forth.

23 If we proceed to sentencing on Monday there will
24 not be a presentence investigation prepared.

1 Counsel, have I missed any of the highlights?

2 MS. RISTENPART: Your Honor, that's just for the
3 first degree.

4 THE COURT: I believe that's accurate. Mr. Lee,
5 on behalf of the state, is nodding yes.

6 MR. LEE: I concur.

7 THE COURT: So the jury would impose sentence on
8 the first-degree murder, and the sentencing hearing would
9 be continued until this Court imposed a sentence on the
10 mandatory consecutive term for the deadly weapon
11 enhancement.

12 Thank you, ladies and gentlemen. I'm ever more
13 grateful for your presence in this court.

14 At this point it is appropriate that Mr. Silva
15 and Ms. Ristenpart have a chance to meet together.

16 I think the best way to do that is to move the
17 public into the rotunda.

18 Those who are not part of the public, for
19 example, Mr. Lee, law enforcement, there's another public
20 member here who is not associated with this trial, they
21 will follow me into chambers and go out, leaving only
22 Ms. Ristenpart, Mr. Silva, and the security staff.

23 The court clerk and the court reporter will also
24 be excused from the courtroom and go into chambers.

1 We'll be in recess.

2 (Whereupon a recess was taken.)

3 THE COURT: I would like our record to reflect
4 that I went in the chamber's doors with the state's
5 attorney but immediately segregated myself and had no ex
6 parte communications of any type with the state's attorney.

7 Would you agree or disagree, Mr. Lee?

8 MR. LEE: I agree.

9 THE COURT: Everyone come in and please be
10 seated. Members of the public.

11 MS. RISTENPART: We're going to go with jury
12 sentencing, your Honor.

13 (Whereupon the following proceedings
14 were had outside the presence of the jury.)

15 THE COURT: Now if you'll stand.

16 Does the appearance of liberty still attach now
17 that a verdict has been delivered, or will it prejudice
18 this proceeding if the jury is still impaneled and will be
19 providing a sentence decision if Mr. Silva is seen in
20 custody?

21 Mr. Lee?

22 MR. LEE: Judge, honestly, off the top of my
23 head, I don't know the answer to that. The one I have done
24 was a re-sentencing of 20 years earlier, and we kept him

1 with the appearance of out of custody.

2 But I don't know if that was any different since
3 the jury was obviously not the guilt finders at the time.

4 THE COURT: I ask not because I want to
5 gratuitously show custody.

6 This jury has worked throughout the week and
7 this case now belongs to the jury. And I have found over
8 the years there is a symbolic closure of some type that is
9 an emotional and impactful end to the work.

10 If there's not a clear answer, I would rather
11 err on the side of caution and not reveal Mr. Silva's
12 custodial status.

13 Would you agree with that or argue against that?

14 MR. LEE: I would agree at this point. I will
15 certainly be doing a little research on that issue, but for
16 what I have, I'd agree.

17 THE COURT: Okay. We'll stand for our jury.

18 Hold on, Counsel.

19 And I intend to say nothing to the jury about
20 any details of the sentencing other than they are required
21 to be here Monday morning.

22 Do you agree with that?

23 MR. LEE: Do you want to talk about time right
24 now before they come out?

1 THE COURT: Yes.

2 MR. LEE: I think it would be helpful if we have
3 a little bit of time in the morning rather than start at
4 8:30.

5 I have people lined up, but I would need to
6 still touch base over the weekend, but it may be
7 challenging. They know there's a potential, but I'd love a
8 little bit of time in the morning to get some ducks in a
9 row.

10 THE COURT: How long would you anticipate the
11 state presentation?

12 MR. LEE: Very short. Half hour.

13 THE COURT: To the defense, how long?

14 MS. RISTENPART: Your Honor, we have several
15 witnesses who want to speak on Mr. Silva's behalf.

16 THE COURT: They are welcome to do so. I'm just
17 trying to work from 4:00 o'clock down in the day. Because
18 I will not keep this jury past 4:00 or 4:30 on Monday,
19 so . . .

20 MS. RISTENPART: Your Honor, then I say we start
21 at 9:00 o'clock.

22 THE COURT: Do you anticipate that your portion
23 of the sentencing is going to go for somewhere in the
24 neighborhood of 6 hours?

1 MS. RISTENPART: Are you also putting in
2 deliberations?

3 THE COURT: Oh, thank you.

4 MS. RISTENPART: That's a yes.

5 THE COURT: This jury may go past 4:30. None of
6 us will have any control.

7 Although I've reviewed the instructions for the
8 next phase and want to carefully work with counsel, because
9 I do not want to encourage my involvement which follows
10 their inability to be unanimous.

11 They need to gently know in some way that
12 it's -- I just, we need to think about it over the weekend,
13 what I'm going to say and not say, because it's different
14 than in an adjudication of anonymity.

15 Trial judge doesn't have the burden of finding
16 guilt when there's a hung jury. So we'll all be doing some
17 research over the weekend.

18 What time should the jury deliberate? Probably
19 2:30 or 3:00?

20 MS. RISTENPART: Your Honor, if you can get us
21 the jury instructions that you're talking about over the
22 weekend, then that could speed up when it goes to the jury.

23 THE COURT: We will email the instructions to
24 you, but they do not reflect my work product.

1 We acquired these from another department, and
2 I've just been reading them. I haven't researched
3 independently, and I haven't edited them at all. They do
4 provide a template.

5 MR. LEE: I provided some proposed as well,
6 previously.

7 THE COURT: Have I looked at the ones that
8 Mr. Lee proposed?

9 Okay. Some of them I did not feel comfortable
10 with, and others I did. So we'll just have to work through
11 it.

12 Right. So we need to set up instructions, have
13 the presentation and then have time for deliberation.

14 Okay. The jury, please.

15 (Whereupon the following proceedings
16 were had in the presence of the jury.)

17 THE COURT: Please be seated. The jury is
18 present.

19 Ladies and gentlemen, you are not discharged
20 from your jury service. We will transition to the next
21 phase of your service on Monday.

22 Monday you will observe a presentation from the
23 state and from the defense about imposition of sentence.

24 Monday will follow what you observed today, but

1 in an abbreviated form.

2 After the attorneys have made their arguments to
3 you, we will begin with some witness testimony. And then
4 the attorneys will make argument to you. And then I will
5 instruct you on the principles of law that govern your
6 penalty deliberations. You will then be directed to
7 deliberate punishment.

8 I'm ashamed of the time we spent today, and I'm
9 thinking about how I can prevent that Monday.

10 I would like you to appear in the jury
11 deliberation room for entry into the courtroom at 11:00
12 a.m. Monday morning. I will be meeting with the attorneys
13 much sooner than that. And hopefully we will be -- I will
14 be prepared for you.

15 Because we will begin at 11:00 o'clock on Monday
16 morning, please eat before you arrive, and bring a sack
17 lunch for you throughout the day.

18 The longest break we will take will be 30
19 minutes, sometime probably in the neighborhood and order of
20 1:30 or 2:00.

21 As you saw this evening, there are no time
22 restrictions for guidance on the length of your
23 deliberations, so you should make arrangements to be
24 available in the courthouse for all of Monday and possibly

1 Monday evening. And, if necessary, longer.

2 At the conclusion of the penalty phase you will
3 be discharged from service.

4 Because you remain impaneled, I read the same
5 admonition that you have heard now five nights.

6 You are admonished not to converse among
7 yourselves or with anyone else on any subject connected
8 with this trial. You will not read, watch, or listen to
9 any report of or commentary on the trial by any person
10 connected with this case or by any medium of information,
11 including, without limitation, newspaper, television,
12 Internet, or radio.

13 You are further admonished not to form or
14 express any opinion on any subject connected with this
15 trial until you are discharged from jury service.

16 You are not to conduct any form of legal or
17 internet research about sentencing issues in particular.

18 Everything you need to know will be given to you
19 in this room.

20 Ladies and gentlemen, this is your own moral
21 compass. It is self-reported -- it is self-directed
22 compliance. I trust you and encourage you, I admonish you
23 to follow this principle of law.

24 Now, as we exit the room we're going to do so in

1 some order. First, the public is going to leave the
2 courtroom and quickly work their way out of the building.

3 After the public has left by three or four or
4 five minutes, Mr. Silva and his attorney will leave the
5 courtroom.

6 Following Mr. Silva and his attorney, any other
7 member -- I know there are two people here who are not
8 connected to this case by familial or friendship relation,
9 they will leave -- they will stay.

10 What I'm going to do is the two people who work
11 with Ms. Ristenpart, I'm going to ask you to stay because
12 Mr. Ristenpart and Mr. Silva are not going to leave.

13 No, I'm changing my mind, ladies and gentlemen.

14 I don't want to be left with this jury without a
15 record and without the attorneys present. And I want to
16 get everyone out as soon as possible.

17 And so we are all going to remain in the
18 courtroom, and the jury will be the first group to leave.

19 Now, Deputy, it's late at night, and I don't --
20 I don't anticipate any problems, certainly not from this
21 group, but it's late at night.

22 Would you ensure that there are enough of your
23 colleagues to escort our jurors to their cars or to
24 wherever they may be headed, please?

1 THE BAILIFF: Yes, your Honor.

2 THE COURT: And then the public, the attorneys,
3 and Mr. Silva will follow by about five minutes.

4 I think that's the best way to do it.

5 We will stand for our jury as they depart.

6 I will see you Monday morning at 8:00 a.m.

7 (Whereupon the jury panel was excused.)

8 THE COURT: What we'll do now is we'll move the
9 public but into the rotunda.

10 Yes. If you do it quickly. Good night. I'll
11 see you Monday morning.

12 Counsel, I need you probably at 8:30.

13 Deputy, in about three minutes we'll invite
14 members of the public to either stay or go into the
15 rotunda, but they'll be held for probably 8 to 10 minutes
16 before you can get the jurors out.

17 THE BAILIFF: Yes, sir.

18 THE COURT: Two of you in the back go through
19 the chambers door. States attorney can go through the
20 chambers door.

21 And the Court will be in recess.

22 Good night.

23 (Whereupon the proceedings were concluded.)

24 -oOo-

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

4 I, DEBORA L. CECERE, an Official Stenographic
5 Reporter of the State of Nevada, in and for Washoe County,
6 DO HEREBY CERTIFY:

7 That I was present at the times, dates, and
8 places herein set forth, and that I reported in shorthand
9 notes the proceedings had upon the matter captioned within,
10 and thereafter transcribed them into typewriting as herein
11 appears;

12 That the foregoing transcript, consisting of
13 pages 1 through 151, is a full, true and correct
14 transcription of my stenotype notes of said proceedings.

15 DATED: At Reno, Nevada, this 2nd day of
16 March, 2021.

17
18
19 /s/ Debora Cecere

20 _____
21 DEBORA L. CECERE, CCR #324,
22 Certified Stenographic Court Reporter
23
24

1 **CODE: 3755**

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

9 **STATE OF NEVADA,**

10 **Plaintiff,**

Case No. CR18-1135B

11 **vs.**

Dept. No. 15

12 **RICHARD ABDIEL SILVA,**

13 **Defendant.**
14 _____/

15 **DEFENDANT'S OFFERED AND REJECTED JURY INSTRUCTION(S)**

16 **SEE ATTACHED**

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18 **///**

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25 **///**

26 **///**

27 **///**

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1 In our lives, we often look at one fact and conclude from
2 it that another fact exists. In law we call this "inference."
3 Inferences are simply deductions or conclusions that reason and
4 common sense lead the jury to draw from the evidence received in the
5 case. A jury is allowed to make reasonable inferences based on the
6 evidence in the case.

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26 Instruction No. _____

Neither side is required to call as witnesses all persons who may have been present at any of the events disclosed by the evidence or who may appear to have some knowledge of these events, or to produce all objects or documents mentioned or suggested by the evidence.

Instruction No. _____

1 Questions and objections by lawyers are not evidence. It
2 is the duty of the attorneys on each side of a case to object when
3 the other side offers testimony or other evidence which counsel
4 believes is not admissible.

5 You should not be influenced by the objection or by my
6 ruling on it. When the court has sustained an objection to a
7 question, the jury is to disregard the question and may draw no
8 inference from the wording of it or speculate as to what the witness
9 would have said if permitted to answer.

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26 Instruction No. _____

1 Every person charged with the commission of a crime shall
2 be presumed innocent unless the contrary is proved by competent
3 evidence, and the burden rests upon the prosecution to establish
4 every element of the crime with which the defendant is charged beyond
5 a reasonable doubt.
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Instruction No. _____

1 It is not improper for the attorneys to have interviewed
2 witnesses prior to trial in this case. The practice of interviewing
3 witnesses before a trial is expected and completely proper under
4 Nevada law.

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26 Instruction _____

1 **CODE: 3760**

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

9 **STATE OF NEVADA,**

10 **Plaintiff,**

Case No. CR18-1135B

11 **vs.**

Dept. No. 15

12 **RICHARD ABDIEL SILVA,**

13 **Defendant.**
14

15 **PLAINTIFF'S OFFERED AND REJECTED JURY INSTRUCTION(S)**

16 **SEE ATTACHED**

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1 You alone must judge the credibility or believability of
2 the witnesses. In deciding whether testimony is true and
3 accurate, use your common sense and experience. You must judge
4 the testimony of each witness by the same standards, setting
5 aside any bias or prejudice you may have.

6 You may believe all, part, or none of any witness's
7 testimony. Consider the testimony of each witness and decide
8 how much of it you believe. In evaluating a witness's
9 testimony, you may consider anything that reasonably tends to
10 prove or disprove the truth or accuracy of that testimony.

11 Among the factors that you may consider are:

- 12 • How well could the witness see, hear, or otherwise
- 13 perceive the things about which the witness testified?
- 14 • How well was the witness able to remember and describe
- 15 what happened?
- 16 • What was the witness's behavior while testifying?
- 17 • Did the witness understand the questions and answer them
- 18 directly?
- 19 • Was the witness's testimony influenced by a factor such as
- 20 bias or prejudice, a personal relationship with someone
- 21 involved in the case, or a personal interest in how the
- 22 case is decided?
- 23 • What was the witness's attitude about the case or about
- 24 testifying?
- 25 • Did the witness make a statement in the past that is
- 26 consistent or inconsistent with his or her testimony?
- How reasonable is the testimony when you consider all the
- other evidence in the case?
- Did other evidence prove or disprove any fact about which
- the witness testified?
- Did the witness admit to being untruthful?
- What is the witness's character for truthfulness?
- Has the witness been convicted of a felony?

Instruction No. _____

Offered + Rejected

1 The State must prove not only that the defendant did the
2 act charged, but also that he acted with a particular intent
3 and mental state. The instruction for the crime of murder
4 explains the intent and mental state required that must be
5 proven by the State beyond a reasonable doubt. The instruction
6 for the crime of manslaughter explains the intent and mental
7 state required that must be proven by the State beyond a
8 reasonable doubt.

9 Intent and mental state may be proven by circumstantial
10 evidence. Before relying on circumstantial evidence to
11 conclude that a fact necessary to find the defendant guilty has
12 been proven, you must be convinced that the State has proved
13 each fact essential to that conclusion beyond a reasonable
14 doubt.
15

16 Also, before you may rely on circumstantial evidence to
17 conclude that the defendant had the required intent and mental
18 state, you must be convinced that the only reasonable
19 conclusion supported by the circumstantial evidence is that the
20 defendant had the required intent and mental state. If you can
21 draw two or more reasonable conclusions from the circumstantial
22 evidence, and one of those reasonable conclusions supports a
23 finding that the defendant did have the required intent and
24 mental state and another reasonable conclusion supports a
25 finding that the defendant did not, you must conclude that the
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1 required intent and mental state was not proved by the
2 circumstantial evidence. When considering circumstantial
3 evidence, you must accept only reasonable conclusions and
4 reject any that are unreasonable.

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25 Instruction No. _____
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1 Do not automatically reject testimony just because of
2 inconsistencies or conflicts. Consider whether the differences
3 are important or not. People sometimes honestly forget things
4 or make mistakes about what they remember. Also, two people may
5 witness the same event yet see or hear it differently.
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7 If you do not believe a witness's testimony that he or she
8 no longer remembers something, that testimony is inconsistent
9 with the witness's earlier statement on that subject.

10 If you decide that a witness deliberately lied about
11 something significant in this case, you should consider not
12 believing anything that witness says. Or, if you think the
13 witness lied about some things, but told the truth about
14 others, you may simply accept the part that you think is true
15 and ignore the rest.
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Instruction No. _____

Offered + Rejected

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off + reject

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1 Every person charged with the commission of a crime is
2 presumed innocent unless the contrary is proved by competent
3 evidence, and the burden rests upon the prosecution to
4 establish every element of the crime with which the defendant
5 is charged beyond a reasonable doubt. In case of a reasonable
6 doubt whether the defendant's guilt is satisfactorily shown,
7 the defendant is entitled to be acquitted.

26 Instruction No. _____

1 CODE 1885

2 ORIGINAL

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

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

Case No. CR18-1135B

11 v.

Dept. No. D15

12 RICHARD ABDIEL SILVA,

13 Defendant.

14 _____ /
15 LADIES AND GENTLEMEN OF THE JURY:

16 It is my duty as judge to instruct you in the law that
17 applies to this case, and it is your duty as jurors to follow the law
18 as I shall state it to you, regardless of what you may think the law
19 is or ought to be. On the other hand, it is your exclusive province
20 to determine the facts in the case, and to consider and weigh the
21 evidence for that purpose. The authority thus vested in you is not
22 an arbitrary power, but must be exercised with sincere judgment,
23 sound discretion, and in accordance with the rules of law stated to
24 you.

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26 Instruction No. 1

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

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26 Instruction No. 2

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

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

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26 Instruction No. 3

1 An Information is a formal method of accusing a defendant
2 of a crime. It is not evidence of any kind against the accused, and
3 does not create any presumption or permit any inference of guilt.
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Instruction No. 4

1 The defendant in this matter, RICHARD ABDIEL SILVA, is
2 being tried upon an Information which was filed on the 3rd day of
3 July, 2018, in the Second Judicial District Court, charging the said
4 defendant, RICHARD ABDIEL SILVA, with:

5 MURDER WITH THE USE OF A DEADLY WEAPON, a violation of NRS
6 200.010, NRS 200.030, NRS 193.165 and NRS 195.020, a category A felony,
7 in the manner following, to wit:

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

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

17 The said defendants did willfully and unlawfully aid or abet
18 each other and/or act as conspirators with each other in committing the
19 crime of Murder with the Use of a Deadly Weapon as set forth above in
20 that the defendants counseled and encouraged each other to kill LUZ
21 LINAREZ-CASTILLO, and conspired and agreed to kill LUZ LINAREZ-
22 CASTILLO, and thereafter in furtherance of their agreement, the
23 defendants planned and discussed the killing, stayed together at the
24 same residence and awoke together in the early morning hours, armed
25 themselves with a 9mm handgun, set out together with YIOVANNIE GUZMAN
26 driving and assisting each other in searching for LUZ LINAREZ-CASTILLO

1 at multiple locations before she left for work, and upon finding her,
2 while YIOVANNIE GUZMAN waited in the vehicle as a lookout and getaway
3 driver, RICHARD SILVA approached LUZ LINAREZ-CASTILLO while she was
4 inside her vehicle and shot her and further, as previously planned, did
5 drive away at regular speeds so as not to arouse suspicion.
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8 To the charges stated in the Information, the defendant,
9 RICHARD ABDIEL SILVA, pled "NOT GUILTY".
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26 Instruction No. 5

1 It is not necessary for the prosecution to prove each and
2 every factual statement contained in the Information. So long as the
3 State proves all of the elements of the particular crime charged
4 beyond a reasonable doubt, then the evidence is sufficient to convict
5 regardless of whether every statement in the Information is proved.
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26 Instruction No. 6

1 Every person charged with the commission of a crime is
2 presumed innocent unless the contrary is proved by competent
3 evidence, and the burden rests upon the prosecution to establish
4 every element of the crime with which the defendant is charged beyond
5 a reasonable doubt. The defendant is entitled to be acquitted if
6 reasonable doubt is satisfactorily shown.

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26 Instruction No. 7

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

1 It is a defendant's constitutional right to not testify.
2 You must not draw any inference of guilt from the fact he did not
3 testify, nor should this be discussed by you or enter into your
4 deliberations in any way.

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26 Instruction No. 9

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

3 The final test in weighing conflicting testimony is the
4 relative convincing force of the evidence and not the relative number
5 of witnesses who have testified on different sides of an issue.
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26 Instruction No. 10

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

1 There is nothing legally improper about an attorney meeting
2 with a witness before trial. The jury may consider the impact of the
3 meeting upon witness testimony, if any.
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25 Instruction 12
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1 A person is qualified to testify as an expert if he or she
2 has special knowledge, skill, experience, training, or education
3 sufficient to qualify him as an expert on the subject to which his or
4 her testimony relates.

5 Duly qualified experts may give their opinions on questions
6 in controversy at a trial. To assist you in deciding such questions,
7 you may consider the opinion with the reasons given for it, if any,
8 by the expert who gives the opinion. You may also consider the
9 qualifications and credibility of the expert.

10 You are not bound to accept an expert opinion as
11 conclusive, but should give to it the weight to which you find it to
12 be entitled. You may disregard any such opinion if you find it to be
13 unreasonable.

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26 Instruction No. 13

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

10 If you are satisfied of the defendant's guilt beyond a
11 reasonable doubt, it matters not whether your judgment of guilt is
12 based upon direct or positive evidence or upon indirect and
13 circumstantial evidence or upon both.

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

17 Inferences are simply deductions or conclusions that reason
18 and common sense lead the jury to draw from the evidence received in
19 the case. A jury is allowed to make reasonable inferences based on
20 the evidence in the case.

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

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26 Instruction No. 14

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

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

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

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26 Instruction No. 15

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

8 If the jury believes that any witness has willfully sworn
9 falsely, they may disregard the whole of the evidence of any such
10 witness.

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26 Instruction No. 116

1 The elements of the crime of Murder are:

2 1. The defendant did willfully and unlawfully;

3 2. kill a human being; and

4 3. with malice aforethought, either express or implied.

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26 Instruction No. 17

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

4 Malice may be implied when no considerable provocation
5 appears or when all the circumstances of the killing show an
6 abandoned and malignant heart.

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26 Instruction No. 18__

1 Malice aforethought, as used in the definition of murder,
2 means the intentional doing of a wrongful act without legal cause or
3 excuse, or what the law considers adequate provocation. The
4 condition of mind described as malice aforethought may arise, not
5 alone from anger, hatred, revenge or from particular ill will, spite
6 or grudge toward the person killed, but may also result from any
7 unjustifiable or unlawful motive or purpose to injure another, which
8 proceeds from a heart fatally bent on mischief, or with reckless
9 disregard of consequences and social duty.

10 Malice Aforethought may be inferred from the intentional
11 use of a deadly weapon in a deadly and dangerous manner.

12 "Aforethought" does not imply deliberation or the lapse of
13 considerable time. It only means the required mental state must
14 precede rather than follow the act.

Murder is divided into two degrees.

MURDER OF THE FIRST DEGREE is murder which is willful,
deliberate and premeditated.

MURDER OF THE SECOND DEGREE is all other kinds of murder.

Instruction No. 20

1 MURDER OF THE FIRST DEGREE is murder which is perpetrated
2 by means of any kind of willful, deliberate, and premeditated
3 killing. All three elements--willfulness, deliberation, and
4 premeditation--must be proven beyond a reasonable doubt before an
5 accused can be convicted of first-degree murder.

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

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

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

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

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

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

6 The true test is not the duration of time, but rather the
7 extent of the reflection. A cold, calculated judgment and decision
8 may be arrived at in a short period of time, but a mere unconsidered
9 and rash impulse, even though it includes an intent to kill, is not
10 deliberation and premeditation as will fix an unlawful killing as
11 MURDER OF THE FIRST DEGREE.

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26 Instruction No. 21

1 MURDER OF THE SECOND DEGREE does not require a specific
2 intent to kill, and encompasses all kinds of murder other than first
3 degree murder.

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26 Instruction No. 22

1 Manslaughter is the unlawful killing of a human being
2 without malice express or implied, and without a mixture of
3 deliberation. Manslaughter may be voluntary, upon a sudden heat of
4 passion, caused by a provocation apparently sufficient to make the
5 passion irresistible; or, involuntary, in the commission of the
6 unlawful act, or a lawful act without due caution or circumspection.
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26 Instruction No. 23

1 In cases of VOLUNTARY MANSLAUGHTER, there must be a serious
2 and highly provoking injury inflicted upon the person killing,
3 sufficient to excite an irresistible passion in a reasonable person,
4 or an attempt by the person killed to commit a serious personal
5 injury on the person killing.

6 The killing must be the result of that sudden, violent
7 impulse of passion supposed to be irresistible, for, if there should
8 appear to have been an interval between the assault or provocation
9 given for the killing, sufficient for the voice of reason and
10 humanity to be heard, the killing shall be attributed to deliberate
11 revenge and punished as murder.

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26 Instruction No. 24

1 INVOLUNTARY MANSLAUGHTER is the killing of a human being,
2 without any intent to do so, in the commission of an unlawful act, or
3 in the commission of a lawful act which probably might produce such a
4 consequence in an unlawful manner.
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Instruction No. 25

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

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

1 The Information in this case charges Open Murder which
2 includes the offense of Murder in the First Degree and also
3 necessarily includes the lesser included offenses of Murder in the
4 Second Degree, Voluntary Manslaughter and Involuntary Manslaughter.
5 The defendant may only be convicted of one of these offenses.

6 You should first examine the evidence as it applies to
7 Murder in the First degree. If you unanimously agree that the
8 defendant is guilty of Murder in the First Degree, you should sign
9 the appropriate Verdict form and request the bailiff to return you to
10 court.

11 If you cannot agree that the defendant is guilty of Murder
12 in the First Degree, you should then examine the evidence as it
13 applies to Murder in the Second Degree. If you unanimously agree
14 that the defendant is guilty of Murder in the Second Degree, you
15 should sign the appropriate Verdict form and ask the bailiff to
16 return you to court.

17 If you cannot unanimously agree that the defendant is
18 guilty of Murder in the Second Degree, then you should examine the
19 evidence as it applies to Voluntary Manslaughter. If you unanimously
20 agree that the defendant is guilty of the crime of Voluntary
21 Manslaughter, you should sign the appropriate Verdict form and
22 request the bailiff to return you to court.

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1 If you cannot unanimously agree that the defendant is
2 guilty of Voluntary Manslaughter, then you should examine the
3 evidence as it applies to Involuntary Manslaughter. If you
4 unanimously agree that the defendant is guilty of the crime of
5 Involuntary Manslaughter, you should sign the appropriate Verdict
6 form and request the bailiff to return you to court.

7 The defendant, of course, can be found Not Guilty of all
8 the offenses enumerated.
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26 Instruction No. 27

1 If you find the defendant committed the offense of First
2 Degree Murder, Second Degree Murder, or Voluntary Manslaughter, then
3 you must further determine whether a deadly weapon was used during
4 the commission of the offense.

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

10 If you find that a deadly weapon was used in the commission
11 of any of the offenses, you should indicate your finding by checking
12 the appropriate box on the verdict forms.

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26 Instruction No. 28

1 A deadly weapon is defined as:

2 1. Any device from which a metallic projectile, including
3 any ball bearing or pellet, may be expelled by means of spring, gas,
4 air or other force; or

5 2. Any instrument which, if used in the ordinary manner
6 contemplated by its design and construction, will or is likely to
7 cause substantial bodily harm or death; or

8 3. Any weapon, device or instrument which, under the
9 circumstances in which it is used, attempted to be used or threatened
10 to be used, is readily capable of causing substantial bodily harm or
11 death.

12 The State is not required to prove all three of the
13 alternative definitions of set forth above. It is sufficient if the
14 State proves any one of the alternative definitions.

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25 Instruction No. 29
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1 In the Information the State has alleged alternative
2 theories of murder, as allowed by law. Specifically, the State has
3 alleged that the defendant committed murder by:

- 4 1. Actually killing the victim; or by
- 5 2. Aiding and abetting another person, counseling,
6 encouraging, hiring, commanding, inducing or otherwise
7 procuring another person, or conspiring with another
8 person in the commission of the crime.

8 In order to reach a verdict of guilt, you must unanimously
9 agree that the defendant is guilty of murder based upon one or more
10 of the above alternative theories. However, it is not necessary that
11 you unanimously agree upon the specific theory by which the crime was
12 committed.

13 In other words, if six of you agree that the defendant
14 committed the murder by actually killing the victim, and six of you
15 agree that the defendant committed the murder by aiding and abetting
16 another person, counseling, encouraging, hiring, commanding,
17 inducing, or otherwise procuring another person, or conspiring with
18 another person who committed the crime, then you may properly find
19 the defendant guilty of the crime.

20 The elements of each of the alternative theories of the
21 crime are set forth elsewhere in these instructions.

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26 Instruction No. 30

1 Where two or more persons are accused of committing a crime
2 together, guilt may be established without proof that each person did
3 every act constituting the offense charged.

4 A person is liable for the commission of an offense if he
5 directly commits the acts constituting the offense; if he aids or
6 abets another person in committing the acts constituting the offense,
7 whether he is present or absent when the offense is committed; or if
8 he directly or indirectly counsels, encourages, hires, commands,
9 induces, or otherwise procures another to commit the acts
10 constituting the offense.

11 In order to hold a defendant liable for aiding or abetting
12 another person or persons in committing an offense, the State must
13 prove, beyond a reasonable doubt, that each element of the offense
14 was committed, and that the defendant did some act to encourage or
15 assist in the commission of the offense. The state is not required,
16 however, to prove precisely which participant actually committed the
17 crime and which participants aided and abetted.

18 A person aids or abets in the commission of First Degree
19 Murder if he:

- 20 1. a. does any act to assist another in committing the
21 particular crime, or
22 b. directly or indirectly counsels, encourages, hires,
23 commands, induces, or otherwise procures another to
24 commit the particular crime;
- 25 2. before or during the particular crime;
- 26 3. with the intent to kill the victim.

1 A person aids or abets in the commission of Second Degree
2 Murder, Voluntary Manslaughter, or Involuntary Manslaughter if he:

3 1. a. does any act to assist another in committing the
4 particular crime, or

5 b. directly or indirectly counsels, encourages, hires,
6 commands, induces, or otherwise procures another to
7 commit the particular crime;

8 2. before or during the particular crime;

9 3. a. with the intent that the particular crime be
10 accomplished, or

11 b. the particular crime is a reasonably foreseeable
12 consequence of the undertaking aided or abetted.

13 The State must show that an aider and abettor intended to
14 facilitate or encourage the target offense before or during its
15 commission. If the defendant formed an intent to aid after the crime
16 was completed, then he may only be liable as an accessory after the
17 fact.
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1 Mere presence at the scene of the crime and knowledge that
2 a crime is being committed are not alone sufficient to establish that
3 the defendant conspired and/or aided and abetted the crime, unless
4 you find beyond a reasonable doubt that the defendant is a
5 participant and not merely a knowing spectator. The defendant's
6 presence, however, together with other circumstances may support an
7 inference that the defendant was a party to the offense.

1 A conspiracy is an agreement between two or more persons
2 for an unlawful purpose.

3 A person who knowingly does any act to further the object
4 of a conspiracy, or otherwise participates therein, is criminally
5 liable as a conspirator. The act of one conspirator pursuant to or in
6 furtherance of the common design of the conspiracy is therefore the
7 act of all conspirators. If one member of a conspiracy commits an
8 offense in furtherance of the conspiracy, each member who knowingly
9 participated in the conspiracy with the intent that the offense be
10 committed has also, under the law, committed the offense.

11 A person is liable for First Degree Murder as a conspirator
12 if he:

- 13 1. enters into an express or implied agreement;
- 14 2. with another person or persons;
- 15 3. to commit the acts which constitute murder;
- 16 4. with the specific intent to kill the victim; and
- 17 5. any member or members of the conspiracy thereafter
18 commit the murder.

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1 A person is liable for Second Degree Murder, Voluntary
2 Manslaughter, or Involuntary Manslaughter as a conspirator if he:

- 3 1. enters into an express or implied agreement;
4 2. with another person or persons;
5 3. to commit the unlawful acts resulting in the victim's
6 death;
7 4. a. with the intent that the particular crimes be
8 accomplished, or
9 b. the crimes are a reasonably foreseeable consequence
10 of the undertaking; and
11 5. any member or members of the conspiracy commit the
12 unlawful acts that result in the victim's death.

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26 Instruction No. 33

1 The existence of a conspiracy need not be demonstrated by
2 direct proof, and may be established by inference from the parties'
3 conduct. A conspiracy or agreement to violate the law, like any
4 other kind of agreement or understanding, need not be formal,
5 written, or even expressed directly in every detail. Evidence of a
6 coordinated series of acts furthering the underlying offense is
7 sufficient to infer the existence of an agreement.

8 However, absent an agreement to cooperate in achieving the
9 purpose of a conspiracy, mere knowledge or approval of that purpose
10 does not make one a party to conspiracy. It is the evidence of
11 conscious understanding and deliberate agreement by the alleged
12 members that should be central to your consideration as to whether
13 there is an existence to the conspiracy.

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26 Instruction No. 34

1 If you believe that at the time of the shooting in this
2 case that the defendant intended to kill any person, or to aid and
3 abet one of his co-defendants to kill any person, or to conspire to
4 kill any person, it is of no legal consequence that he or one of his
5 co-defendant or co-conspirators mistakenly injured a different
6 person. His intent to kill transfers to the person actually harmed.
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Instruction No. 35

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

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26 Instruction No. 36

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

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

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26 Instruction No. 37

1 You should not be influenced by the objection or by my
2 ruling on it. When the court has sustained an objection to a
3 question, the jury is to disregard the question and may draw no
4 inference from the wording of it or speculate as to what the witness
5 would have said if permitted to answer.
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26 Instruction No. 38

1 A conviction shall not be had on the testimony of an
2 accomplice unless the accomplice is corroborated by other evidence
3 which in itself, and without the aid of the testimony of the
4 accomplice, tends to connect the defendant with the commission of the
5 offense; and the corroboration shall not be sufficient if it merely
6 shows the commission of the offense or the circumstances thereof.
7 Therefore, if you find from the evidence that YIOVANNIE GUZMAN was an
8 accomplice in committing Murder with the Use of a Deadly Weapon, you
9 may consider his testimony only if you also find that it was
10 corroborated by other evidence in the case.

11 An accomplice is one who is liable to prosecution for the
12 identical offense charged against the defendant on trial. A person is
13 liable for the commission of Murder with the Use of a Deadly Weapon
14 if he does any act to assist another person in committing the acts
15 constituting the offense, whether he is present or absent when the
16 offense is committed, or if he directly or indirectly counsels,
17 encourages, hires, commands, induces, or otherwise procures another
18 to commit the acts constituting the offense with the specific intent
19 that the charged crime be committed.

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1 "Corroboration" refers to evidence supplementary to that
2 given by the accomplice and tending to strengthen or confirm it.
3 Corroboration need not come from a single fact or circumstance, but
4 may be found from several circumstances in combination. You may take
5 into account reasonable inferences from evidence independent of an
6 accomplice's testimony. The evidence necessary to corroborate an
7 accomplice need not in itself be sufficient to establish the
8 defendant's guilt, so long as it tends to connect the defendant with
9 the commission of the offense.

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26 Instruction No. 39

1 You have heard testimony that a witness has received a plea
2 negotiation from the State in connection with this case. You should
3 examine such witness's testimony with greater caution than that of
4 other witnesses. In evaluating the testimony, you should consider
5 the extent to which it may have been influenced by the receipt of
6 such plea negotiation. This does not mean that you may arbitrarily
7 disregard such testimony, but you should give it the weight to which
8 you find it to be entitled after examining it with care and caution
9 and in light of all the evidence in the case.

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

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26 Instruction No. 41

1 If you find that before this trial a defendant made false
2 or deliberately misleading statements concerning the charge upon
3 which he is now being tried, you may consider such statements as a
4 circumstance tending to prove a consciousness of guilt but it is not
5 sufficient of itself to prove guilt. The weight to be given to such
6 circumstance and its significance, if any, are matters for your
7 determination.

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26 Instruction No. 42

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

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

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26 Instruction No. 43

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

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26 Instruction No. ~~44~~

1 You are not called upon to return a verdict as to the guilt
2 or innocence of any other person than the defendant. If the evidence
3 convinces you beyond a reasonable doubt of the guilt of the accused,
4 you should so find, even though you may believe one or more other
5 persons are also guilty.

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26 Instruction No. 45

1 In arriving at a verdict in this case, you shall not
2 discuss or consider the subject of penalty or punishment, and it must
3 not in any way affect your decision as to the guilt or innocence of
4 the defendant.

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26 Instruction No. 46

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

3 Do not communicate with anyone in any way and do not let
4 anyone else communicate with you in any way about the case or its
5 merits. This includes discussing the case in person, in writing, by
6 phone or electronic means, via email, text messaging, or any Internet
7 chat room, blog, website or other feature. This applies to
8 communicating with your family members, your employer, and the media
9 or press. If you are asked or approached in any way about your jury
10 service or anything about this case, you must respond that you have
11 been ordered not to discuss the matter.


12 Do not read, watch, or listen to any news or media accounts
13 or commentary about the case. Do not do any research, such as
14 consulting dictionaries, searching the Internet or using other
15 reference materials. No juror is to make any investigation on your
16 own, test a theory of the case on your own, re-create any aspect of
17 the case on your own, or in any other way try to learn about the case
18 on your own.

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26 Instruction No. 47

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

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

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

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9 DISTRICT JUDGE

10 Given February 28, 2020
11 District Judge.
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26 Instruction No. 49