

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 8

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SUNSHINE LITIGATION
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THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF WASHOE
 BEFORE THE HONORABLE DAVID A. HARDY, DISTRICT JUDGE

- o O o -

STATE OF NEVADA,	:	
	:	
Plaintiff,	:	
	:	
vs	:	Case No. CR18-1135B
	:	
RICHARD ABDIEL SILVA,	:	Dept. No. 15
	:	
Defendant.	:	
	:	

=====

TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - PENALTY PHASE

MONDAY, MARCH 2ND, 2020

Reno, Nevada

Reported By: ERIN T. FERRETTO, CCR #281

** SUNSHINE LITIGATION **

A P P E A R A N C E S

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FOR THE DEFENDANT:

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SUNSHINE LITIGATION

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2 RENO, NEVADA, MONDAY, MARCH 2ND, 2020, 8:30 A.M.

3 -o0o-

4
5
6 THE COURT: Good morning. Please be seated.

7 This is CR18-1135B, State versus Richard Silva,
8 who is present -- good morning, Mr. Silva -- with
9 counsel, Ms. Ristenpart, and for the State is Mr. Lee.

10 On Saturday I received an email from our Assistant
11 Court Administrator in which she disclosed that there had
12 been some issue involving Juror No. 1. He felt that he
13 had been followed, targeted, identified by somebody that
14 he had recognized in the courtroom. He identified the
15 correct clothing.

16 I did not respond to the Assistant Court
17 Administrator. Apparently the Sparks Police Department
18 has been involved over the weekend and I asked that the
19 Assistant Court Administrator come into the courtroom
20 this morning to tell me, in your presence, on the record
21 whatever it is that she knows or has heard.

22 And then Sergeant Cook of the Washoe County
23 Sheriff's Office has been involved in some way. I've
24 asked that he too arrive. I have not spoken to him, and

1 that's one thing we'll address this morning.

2 Counsel, yesterday, the Court Clerk e-mailed a
3 proposed packet of jury instructions that should have
4 been divided in two; one, the instructions that I'm
5 comfortable giving; the second, two instructions that I
6 wanted to hear from counsel about their applicability.

7 As I arrived on the bench this morning, I see an
8 email from Ms. Ristenpart to the Court Clerk proposing an
9 instruction related to the constitutional right to not
10 testify during the penalty phase.

11 My first reaction when I read this proposed
12 defense instruction is, I need to read the *Brake* case,
13 and I need to have a few minutes of research and
14 reflection because I'm aware of the general concept that
15 a judge, and presumably also a jury, cannot punish a
16 defendant for maintaining innocence at the sentencing
17 hearing or by choosing not to address the court. That
18 seems slightly different from the jury discussing his
19 penalty hearing silence. So I'm not saying you're wrong,
20 I just don't know this issue, because I want to be sure
21 that I distinguish what is a guilt versus not guilt
22 adjudication trial versus a sentencing.

23 Mr. Lee, have you had any experience with this?

24 MR. LEE: Yes, your Honor. I think the statement

1 that that proposes is a correct statement of law, and it
2 clearly states they can't infer anything -- they can't
3 make a judgment based on remorse or lack thereof simply
4 because he doesn't testify. So I agree with the concept,
5 there's just parts of the wording I don't love. That's
6 all.

7 THE COURT: You don't like.

8 MR. LEE: I don't like.

9 THE COURT: Well, there's nothing wrong with the
10 word love, it's legally supported, but the language
11 itself you would want to edit?

12 MR. LEE: Yes.

13 THE COURT: Okay. All right. So what do you have
14 for me, counsel?

15 Is this Sergeant Cook?

16 THE BAILIFF: Yes.

17 THE COURT: Sergeant Cook, would you come forward,
18 please?

19 SERGEANT COOK: Yes, sir.

20 THE COURT: I'll have you be sworn and take the
21 witness stand, please.

22 SERGEANT COOK: Yes, sir.

23 (Witness sworn.)

24 THE COURT: The extent of my knowledge about Juror

1 No. 1, Sergeant Cook, came to me from Deputy Coss in
2 about a 10-second conversation in which he said Sergeant
3 Cook is involved. That's all I know.

4 So would you tell me and the attorneys and Mr.
5 Silva what's been happening this last weekend?

6 SERGEANT COOK: We received an email from the
7 Sparks PD stating that -- and I'm not a hundred percent
8 it was Juror No. 1. I believe in our conversation with
9 Deputy Coss that we believe that it may have been Juror
10 No. 1, but there was a juror that claimed that he was
11 followed home. So he contacted Sparks PD and Sparks PD
12 did a house watch for the remainder of the weekend, and
13 that is all the information that I have at this time.

14 THE COURT: So your information comes from an
15 email from Sparks to you?

16 SERGEANT COOK: Yes, sir.

17 THE COURT: Do you know who our Assistant Court
18 Administrator, Alicia Lerud, was coordinating with?

19 SERGEANT COOK: She was notified --

20 THE COURT: Hold on. She's here. Would you step
21 out for just a moment until it's your turn. I didn't see
22 you, Ms. Lerud. I want to maintain the Rule of
23 Exclusion. Thank you.

24 SERGEANT COOK: Basically she was notified by

1 Sergeant Hippert, and I was also notified by Sergeant
2 Hippert on the email. And -- but Sergeant Hippert is in
3 Michigan so, therefore, Alicia Lerud and I were trying to
4 coordinate this. And she was trying to get ahold of you
5 over the weekend just to advise you of the situation.

6 And so since we had not gotten to talk to you, I
7 asked Deputy Coss if you would like to discuss the matter
8 with you this morning before things started. So that's
9 where we're at.

10 THE COURT: Counsel, any questions?

11 MR. LEE: I have no questions.

12 MS. RISTENPART: Throughout the weekend there was
13 no incident?

14 SERGEANT COOK: I'm sorry, what?

15 MS. RISTENPART: Throughout the weekend there was
16 no incident?

17 SERGEANT COOK: No, ma'am.

18 MS. RISTENPART: And who at SPD was investigating?

19 SERGEANT COOK: I do not know the officer. I
20 could get that information and let you know. I do not
21 recall the officer, but they did draw a case number and I
22 could also find out that case number for you.

23 MS. RISTENPART: Was it through a 9-1-1 phone call
24 or like a non-emergency phone call from the juror?

1 SERGEANT COOK: That I don't have. I just have
2 the email from Sparks putting it -- the Sparks officer
3 putting out to his agency that they were conducting a
4 house check for the remainder of the weekend looking for
5 a certain described person and a certain type of vehicle
6 so...

7 MS. RISTENPART: No further questions.

8 THE COURT: Thank you for being here.

9 SERGEANT COOK: Yes, sir.

10 THE COURT: You're free to leave.

11 SERGEANT COOK: Thank you.

12 THE COURT: Deputy, we'll have Ms. Lerud,
13 Assistant Court Administrator.

14 I'm going to grab my computer so I can read into
15 the record the email she sent to me. Please be seated.

16 (Judge exited courtroom; pause in proceedings.)

17 Ms. Lerud, come forward and be sworn and have a
18 seat in the witness stand, please.

19 (Witness sworn.)

20 THE COURT: Good morning.

21 MS. LERUD: Good morning, your Honor.

22 THE COURT: Did you send a text or an email to me?

23 MS. LERUD: I did not, your Honor. I left you a
24 voicemail.

1 THE COURT: Oh. I'm looking for an email. Right.
2 So I don't have my phone. Sometime on Saturday,
3 Ms. Lerud left a voicemail with me. My summary
4 recollection is that there had been an event involving a
5 juror. It went on for 20 or 30 seconds. I chose not to
6 speak to Ms. Lerud over the weekend. I did not want to
7 have any communications outside of your knowledge.

8 You did nothing wrong by contacting me, but I
9 chose to stop it at that point because in the event the
10 jury is unable to reach a unanimous verdict, I may be
11 involved in sentencing and I know I will be involved in a
12 portion of the sentencing for the deadly weapon
13 enhancement, and so any information I receive should be
14 available, known to trial participants.

15 Would you just start at the beginning, summarizing
16 that phone message and anything that's happened to you
17 involving this case over the weekend?

18 MS. LERUD: Yes, your Honor.

19 At approximately 1:00 p.m. on Saturday, I called
20 you on your cell to notify you that there had been a
21 report that one of your jurors had called into Sparks
22 Police Department at some point on Friday night to report
23 that he believed he had been followed home by a white
24 vehicle, and that he was then observed by an individual

1 in a red hoodie speaking on a cell phone.

2 THE COURT: Who contacted you?

3 MS. LERUD: I was contacted by Sergeant Janet
4 Hippert via text.

5 THE COURT: Did you do anything beyond reading her
6 text and then calling me?

7 MS. LERUD: I read -- I was originally contacted
8 via text by Sergeant Hippert. She had then forwarded an
9 email to me that I believe was from Sparks PD discussing
10 that they had put a house watch on this juror's home.

11 THE COURT: Do you have that email?

12 MS. LERUD: I do, your Honor.

13 THE COURT: Would you forward it to the Court
14 Clerk, please?

15 MS. LERUD: Yes, your Honor.

16 THE COURT: And upon receipt, Ms. Court Clerk,
17 make it a part of the court record. I'll have to hear
18 from counsel. I may file it under confidential seal
19 depending on what private information it has about Juror
20 No. 1. It's appropriate that defense counsel at least go
21 to the earliest source that we are aware of.

22 Mr. Lee, do you have any questions?

23 MR. LEE: I don't have questions but I have
24 information when you're done with this witness, your

1 Honor.

2 THE COURT: Ms. Ristenpart?

3 MS. RISTENPART: Do you know which juror it is?

4 MS. LERUD: It is Mr. Gonzales Escobar.

5 THE COURT: Which is Juror No. 1.

6 MS. LERUD: I apologize.

7 MS. RISTENPART: Did Juror No. 1 ever contact your
8 office at all?

9 MS. LERUD: Not to the best of my knowledge.

10 MS. RISTENPART: And he hasn't checked in with you
11 today either yet?

12 MS. LERUD: I have no personal knowledge of that.

13 THE COURT: Thank you. I appreciate your work
14 over the weekend.

15 Ms. Lerud is our Assistant Court Administrator,
16 and she spells her name L-E-R-U-D, there's no *E*.

17 MS. LERUD: There is not.

18 THE COURT: There is or is not?

19 MS. LERUD: There is not an *E*.

20 THE COURT: Thank you. Nice to see you this
21 morning.

22 MS. LERUD: Thank you, your Honor.

23 To the State.

24 MR. LEE: Judge, at Friday night, the 28th, at

1 10:30 p.m., I received an email from Sparks Police. I
2 did not see it until approximately 8 o'clock Saturday
3 morning. I'll just simply read the email in that I
4 received, leaving out one name, if that's all right. It
5 was forwarded to me by -- excuse me -- Officer James
6 Hammerstone, who actually testified in this case on
7 Thursday afternoon.

8 THE COURT: Will you remind me, is his name Hammer
9 --

10 MR. LEE: Hammerstone.

11 THE COURT: Hammerstone.

12 MR. LEE: One word. It says:

13 RP.

14 *Meaning Reporting Party.*

15 -- had jury duty today. After he got
16 out of jury duty, 10 to 15 minutes ago,
17 he thought he was being followed but lost
18 the vehicle. RP knew a family member of
19 the defendant, parentheses, he doesn't
20 know their name, close parentheses. This
21 person works with the RP's wife, which
22 the judge knew. The case was for murder.
23 RP has to report Monday for sentencing --
24 And then it identifies the RP with a phone number.

1 And defendant is Richard Silva. And the identity of RP
2 is Juror No. 1.

3 So with that information, when I awoke and saw
4 that email, I forwarded it to our investigative staff,
5 Michelle Bais, who is our Chief Investigator, as well as
6 Joel Reynolds, and they went from there.

7 I was contacted later by Ms. Bais, but I didn't
8 have any other information besides that.

9 THE COURT: Do you have any thoughts, counsel,
10 about how I shall proceed?

11 MS. RISTENPART: Your Honor, to be very clear, for
12 the record, defense counsel, despite getting emails from
13 Mr. Lee, was never notified about this issue, though he
14 obviously had knowledge Saturday at 8:00 a.m. That being
15 said, your Honor, I understand that they sent out an
16 investigator, they had an investigator from their office
17 do something, Michelle Base. I'd like to know exactly
18 what. Did they try to contact the juror reporting party?
19 They did get involved in the investigation? I think
20 we're missing some information from there, your Honor.

21 THE COURT: Ms. Clerk, please print out additional
22 copies or make copies, and I'll first have you review the
23 email thread. There's one email from Adam Robertson to
24 SPDsworn. Then a forward from a Mike McCreary to

1 Michelle Base. So I'll hear from you about how I cause
2 it to be filed before we file it, Ms. Clerk.

3 Do you have any additional information based on
4 what Ms. Ristenpart has asked?

5 MR. LEE: Mr. Reynolds is stepping out to contact
6 Ms. Base. She was out of town when she called me
7 Saturday, and she simply said she was going to forward it
8 to the sheriff in case they hadn't heard it yet. I would
9 be very surprised if she did anything more than that, but
10 we're going to confirm right now.

11 THE COURT: Is it your understanding or inference
12 that Hammerstone talked to Juror No. 1? And a second
13 question, did anybody in person talk to Juror No. 1 other
14 than his telephone call in to SPD?

15 MR. LEE: I have no idea, your Honor. I would
16 assume someone from Sparks talked to Juror No. 1.

17 THE COURT: Dispatch or sworn officer?

18 MR. LEE: Obviously dispatch, but I'm assuming. I
19 would assume a sworn officer but I couldn't confirm that.
20 I've never heard that. I never heard that they did. I
21 would just make an assumption.

22 THE COURT: Deputy Coss, you have Juror No. 13's
23 contact information in the event that he needs to be
24 brought into service?

1 THE BAILIFF: Yes.

2 THE COURT: Any other thoughts on how I should
3 proceed?

4 MS. RISTENPART: I think that Juror No. 1 needs to
5 be questioned as to the interactions. I do have, of
6 course, the same concern that the witness who testified
7 in this case, Officer Hammerstone, as most likely had
8 some kind of contact with the reporting party. And the
9 nature --

10 THE COURT: Hold on. Mr. Lee needs to be able to
11 listen to you or listen to this investigator, one of the
12 two.

13 Go ahead.

14 MS. RISTENPART: Also, of course, the contact from
15 the District Attorney's Office or as part of the
16 investigation, I'd like to know the nature of that.

17 THE COURT: So I agree with Juror No. 1. We're
18 going to have to hear from him on our record in the
19 presence of everyone, who he talked to at Sparks,
20 probably Hammersmith, I believe, is also appropriate.

21 MS. RISTENPART: Hammerstone, your Honor.

22 THE COURT: Hammerstone. I wrote it down. And
23 then maybe, maybe not Base depending upon -- but
24 certainly I'm with you on two-and-a-half.

1 All right. Let me hear from --

2 MS. RISTENPART: Your Honor, I'd also ask for the
3 record that I'd be wanting Officer Hammerstone's body
4 camera if he did report and speak with the juror.

5 THE COURT: Okay. Mr. Lee?

6 MR. LEE: Judge, the information I learned is that
7 Michelle Base received this information, she contacted
8 Sparks -- excuse me -- Washoe County, Janet Hippert. So
9 it looks like that's probably the email that the court
10 provided, and that's it.

11 THE COURT: All right. So we need to find where
12 Hammerstone is. If you'll have your investigator begin
13 those effort, please. Thank you.

14 Mr. Lee, anything in addition to what Ms.
15 Ristenpart has suggested?

16 MR. LEE: I'm all in favor of talking to Juror
17 No. 1. I think it really ends there. I don't see how --
18 we'll find out if Officer Hammerstone is even the one who
19 did this, or talked or took a report. But even if he
20 did, I don't see how it matters about anything. I think
21 we definitely need to talk to Juror No. 1.

22 THE COURT: I am not feeling any inclination to
23 remove Juror No. 1. It would be far too premature for me
24 to have any thoughts in that direction. But I also want

1 to have some assurance that we have efficiency today. So
2 my thoughts, subject to your response, counsel, is that I
3 have Deputy Coss text Juror No. 13, writing as follows --
4 and I've written it down:

5 On behalf of Judge Hardy, comma, be
6 prepared to appear for jury service, if
7 necessary, today at approximately noon.

8 The text preserves the conversation, it is defined
9 by me, and we can limit the contact in that way. Any
10 thoughts to the State?

11 MR. LEE: Isn't the whole jury coming at 11:00?

12 THE COURT: Oh. I thought it was 11:30.

13 MR. LEE: I had 11:00.

14 MS. RISTENPART: 11:00.

15 THE COURT: Besides that, any concerns with that
16 text?

17 MR. LEE: No. That's fine.

18 THE COURT: Ms. Ristenpart?

19 MS. RISTENPART: No, your Honor.

20 THE COURT: At approximately 11:30, Deputy Coss,
21 would you come -- do you have a cell phone number?

22 THE BAILIFF: I --

23 THE COURT: Yes.

24 THE BAILIFF: -- don't know.

1 THE COURT: Do you want to use your personal cell
2 to be texting or shall we have the jury manager do that?
3 It doesn't matter to me. We just need to make sure that
4 we have a record of all communications with Juror No. 13.

5 THE BAILIFF: I'll figure it out.

6 THE COURT: You figure it out.

7 MR. LEE: Judge, I'm sorry. I think it still says
8 11:30 so that would be after the jury comes?

9 THE COURT: If I say, *if necessary today at*
10 *approximately 11:30*, because if Juror No. 1 arrives at --
11 oh. Thank you.

12 Is the jury coming today at 11:00, Ms. Clerk?

13 THE CLERK: Yes, your Honor.

14 THE COURT: All right.

15 MR. LEE: Then, Judge, I could share with your
16 deputy and counsel what the phone number provided in the
17 email was for Juror No. 1, if that helps any.

18 THE COURT: We're not communicating with Juror
19 No. 1 as of yet. Let me think about that next.

20 The text to Juror No. 13 will read:

21 On behalf of Judge Hardy, comma, please
22 be prepared to appear for jury service,
23 if necessary, today at approximately
24 11:15. I will contact you by text if

1 your service is required.

2 Then separately a text to Juror No. 1.

3 Please arrive at the courthouse at
4 10:30, comma, if possible.

5 Objections?

6 MR. LEE: None.

7 MS. RISTENPART: No, your Honor.

8 THE COURT: Thank you, Deputy Coss.

9 THE BAILIFF: Judge, I'm not going down to the
10 Commissioner because I have a number but I don't know if
11 it's a cell phone number. She also has an email address
12 that she might want to use as well.

13 THE COURT: Any other issues before I turn to the
14 instructions?

15 MR. LEE: Nothing from the State.

16 THE COURT: All right.

17 MS. RISTENPART: There's some issue in regards to
18 what the State wants to present. I don't want to do jury
19 instructions first.

20 THE COURT: Let's hear from that.

21 MS. RISTENPART: Okay. Last night I received two
22 emails from the prosecution which I was able to see this
23 morning. The prosecutor informed me -- well, let me back
24 up.

1 On Saturday I received an email stating that they
2 were going to try to bring in evidence of a misdemeanor
3 conviction against Mr. Silva from an original discharging
4 a firearm from 2016. It was pled to a misdemeanor and
5 that sentence was a CCW class, obey the laws for six
6 months, then it was done, concluded.

7 THE COURT: What was the crime conviction?

8 MS. RISTENPART: It was actually for, if I
9 remember correctly -- after consultation with Mr. Silva,
10 discharging a firearm, misdemeanor, within city limits.
11 That means also, your Honor, if the State is trying to
12 use it as an aggregator, then that's limited to felonies
13 and felony convictions, pursuant to case law and also
14 pursuant to statute, 200.033.

15 If -- in addition to that, I request -- they
16 informed me that they were going to use a report of a
17 battery by a prisoner that occurred in December -- in
18 December of 2019. In fact, that battery by prisoner,
19 Mr. Silva was the victim. There was no issue by the
20 State. I've requested the pictures from that because
21 Mr. Silva was hurt and beat up, and I have not received
22 those pictures to date. Obviously I don't have access to
23 that case, but the District Attorney does because it was
24 their office.

1 The third thing, your Honor, is that they do plan
2 to bring up Ms. Luz Linarez-Castillo's pregnancy despite
3 the fact that we don't have any evidence that Mr. Silva
4 or anyone in his family was aware of that pursuant to Mr.
5 Arturo Manzo's testimony. And also that allegedly
6 Mr. Silva was looking at pornography at 5:06 a.m. the
7 morning on the night of the murder.

8 THE COURT: 5-0 --

9 MS. RISTENPART: 6 a.m.

10 I understand the sentencing is very different than
11 trial and the rules of evidence are very different, but
12 even in this penalty phase there has to be some semblance
13 of relevance to the charge itself instead of just
14 throwing mud up and seeing where it sticks.

15 The fact is, and the State is well aware, that all
16 the evidence shows that Mr. Silva was not aware of this
17 pregnancy, and they're using it as merely a method to
18 inflame the jury in the penalty phase, because I know
19 they're going to ask for life without the possibility of
20 parole. I know that's what he's gunning for.

21 Also, the fact is that the other discharging the
22 firearm, again, it's not an aggravator pursuant to law
23 because it's not a prior felony, and the pornography
24 search they have no evidence that it was Mr. Silva doing

1 those searches.

2 So, with that, your Honor, I'm asking that the
3 court, even during this penalty phase, structure it so
4 that it has to be relevant to the charges and the crimes,
5 instead of just trying to muddy up Mr. Silva without
6 having any basis for that evidence. Thank you.

7 THE COURT: Thank you.

8 To the State.

9 MR. LEE: Judge, we know from case law, such as
10 *McKenna v. State* from 1998, that evidence of a
11 defendant's character, record and/or specific instances
12 of conduct is admissible in the penalty hearing, the
13 penalty phase. We are not limited solely to the NRS
14 200.033 aggravators for a capital case. So what the
15 State plans to present is the following.

16 His 2016 conviction, the charge was for
17 discharging a firearm where persons may be endangered, a
18 gross misdemeanor. The conviction was drawing a deadly
19 weapon in a threatening manner, a misdemeanor. I'd
20 present this via Lieutenant Chris Rowe, Sparks Police,
21 who was a detective at the time who investigated that
22 matter. There a few photographs along with that, that I
23 also forwarded to counsel. One of those -- I also found
24 a photograph this morning from our case wherein when they

1 performed the search warrant of the Sbragia address, they
2 found a letter from the sheriff revoking Mr. Silva's
3 concealed weapons permit pursuant to that discharging
4 case.

5 From the cell phone, what we have is a cell phone
6 search of Mr. Silva's phone. Again, this was provided
7 all in the original discovery with the case. Even the
8 phone number 771-7590 linked to Mr. Silva shows,
9 beginning November 2nd, 2017, at 5:06 and then there's
10 five searches ending at 5:07, was the last search
11 entered, looking at different pornography portals, looks
12 like all from Snapchat linking to pornhub.com.

13 THE COURT: What's the relevance of that?

14 MR. LEE: So this, along with the next piece, your
15 Honor, which would be the fact that he went to work as
16 normal the next morning at DMV, just shows his lack of
17 caring, lack of remorse, his coldness towards this
18 victim. So as I understand now, last week was all about
19 Mr. Silva, from my perspective. This week is all about
20 Ms. Luz Linarez-Castillo, so it matters not whether he
21 knew about her pregnancy. This is about her. She was
22 pregnant. She had three other kids. And all the other
23 facts about her, whether he knew about them or not,
24 doesn't matter. It's about her at this point so

1 certainly her pregnancy is relevant.

2 I can say it, the defense can say it, we have no
3 information to say that he knew about it. Again, that
4 does not matter. It's information about our victim that
5 is relevant for the jury to consider.

6 At any other sentencing, those would certainly all
7 be things I would be arguing in front of the judge.
8 Really, there's not much difference here to a jury.
9 These are not highly suspect or impalpable materials.

10 I'm not going to bring up the jail battery
11 character. Originally, I sent that email. After looking
12 into it, I agree. I'm the one who no-issued it actually,
13 but certainly there's nothing there for me to argue any
14 inference on bad acts on Mr. Silva's part so I'm not
15 going to touch that one bit.

16 The other, frankly, evidence I plan to bring up
17 is -- and I noticed this as well -- Yiovannie Guzman
18 stated that the plan was if they saw Arturo Manzo, the
19 plan was to take him out, too. That's also supported by
20 that conversation with Bernard that was presented to the
21 jury that, *I didn't want to kill her, dude. I wanted to*
22 *kill the dude*, and that's -- besides the victim impact
23 statement, that's really largely the --

24 THE COURT: Who do you anticipate will make victim

1 impact statements?

2 MR. LEE: I anticipate the mother and a sister.
3 Maybe two sisters, but right now one sister.

4 And then evidence-wise, some of my argument but
5 I'll have Lieutenant Rowe and also Detective Thomas here.

6 THE COURT: I'll ask each of you, what do you
7 believe the sequence of evidence presentation should be?

8 MS. RISTENPART: Your Honor, before we go there,
9 the State, I neglected to inform the court, they are also
10 going to try to bring in a statement by my client
11 regarding gang affiliation, which actually the statement
12 itself is a recorded jail phone call and my client is
13 talking about the intake process, they asked, "Are you
14 part of a gang?" He was like, "No." I don't know how
15 they're going to try to spin that, that there is some
16 kind of gang affiliation. There's been no evidence of
17 that. We've not been privy to any of the gang, if there
18 is even a gang file, which I don't think there is, your
19 Honor, and there's no self-identified gang affiliation in
20 this case.

21 So that puts a whole other level without any
22 evidence, which in fact is all enhancement if the State
23 can prove it, that we're asking that you -- it's very
24 suspect again -- again, just trying to stir mud up on the

1 wall by the State.

2 MR. LEE: We're not doing that.

3 THE COURT: Thank you.

4 And then my question, what do you anticipate the
5 sequence of the evidence presentation to be?

6 In a normal -- in a sentencing that I conduct, I
7 ask the defense attorney to speak first. Then I --
8 excuse me. I ask if the defendant wishes to be heard. I
9 ask for the defense attorney. The defense will then
10 bring in sometimes information through third parties.
11 Then it's the State. Then it's the victim. That's
12 typically what I do.

13 MS. RISTENPART: So, your Honor, I actually
14 researched this very issue, as to see if there was a
15 difference in the penalty phase before a jury. Despite
16 what happens before a judge, I think the burden still
17 rests on the State as to what they're requesting and I'll
18 be asking that they go first in regards to their kind of
19 preplanned argument. Then defense goes, and then victim
20 impact at the very end, because I do think that pursuant
21 to Marsy's Law the victims have the last speak, or those
22 affected by the case, so the mom and the sister.

23 THE COURT: Under your scenario, this is what
24 would happen. The State would call witnesses. The

1 defense would call witnesses.

2 MS. RISTENPART: Right.

3 THE COURT: I'd ask Mr. Silva if he wishes to be
4 heard. I would do so in the presence of the jury. And
5 then, under your scenario, the State argues. You argue.
6 Then the State argues again.

7 MS. RISTENPART: No.

8 THE COURT: You said the State had the burden of
9 proof.

10 MS. RISTENPART: Right. I would say that they
11 make their argument first. Then defense goes. Then the
12 alleged victim impact statements go very last.

13 THE COURT: But then I instruct the jury and the
14 attorneys argue. There's witnesses --

15 MS. RISTENPART: Uh-huh.

16 THE COURT: -- instructions, attorney arguments.

17 MS. RISTENPART: Then if the court wants to do it
18 that way, the State goes first, the defense goes second,
19 and the State gets a rebuttal. Because otherwise it
20 would be the opposite way. We go first, the State gets
21 to make an argument, I'd be proffering the right to rebut
22 anything they're trying to bring in, specifically those
23 facts that we just talked about.

24 THE COURT: Do you have a different understanding

1 of how this will proceed?

2 MR. LEE: Judge, there is no case authority for
3 it. You control the mode and manner with regard -- with
4 one exception. The victim does get to speak last, by all
5 accounts.

6 My suggestion would be the defense goes first.
7 The State presents. We make argument. And then judge --
8 your Honor instructs -- we could instruct and then make
9 argument. Then victims speak and leave it at that. It's
10 a little simpler. It's in line with what your Honor
11 normally does. Really, there's no defined mode or order.
12 That makes the most sense and I think the most
13 streamlined. But there's no burden in this sentencing.

14 THE COURT: The information about discharging a
15 firearm misdemeanor is admissible.

16 Information about the pregnancy is admissible.
17 But, Mr. Lee, you should tell this jury that you have no
18 evidence that Mr. Silva knew about the pregnancy. But I
19 believe it presents a holistic -- a rounded presentation
20 of who the victim is.

21 The State may present information about
22 Mr. Silva's activities after the shooting. There will be
23 no references to gang affiliation.

24 The process will be first the State will call

1 witness -- there will be no opening statements. The
2 State will call its witnesses. The defense will call its
3 witnesses. I will ask Mr. Silva if he wishes to be
4 heard. The State will call victim impact. I will then
5 recite the instructions that govern deliberations. Then
6 the State will argue. The defense will argue. And the
7 State will be entitled to an extraordinarily brief
8 rebuttal.

9 I'm trying to replicate the trial process as close
10 as possible, and that's the basis for my sequence.

11 Okay. Anything else before I turn to the
12 instructions?

13 MR. LEE: Judge, I just -- I would just urge the
14 court to allow the victim last. I really do think under
15 the statute and Marsy's Law she has -- they have a right
16 to go last, very last.

17 THE COURT: I have the victim as the last witness
18 in the penalty proceeding.

19 MR. LEE: But I would argue that even after
20 closing, after anything, because if we're in a normal
21 sentencing, I will make an argument, defense -- whatever
22 order -- and then after everything, the victim would then
23 speak.

24 THE COURT: There's a statute right on point. I'm

1 going to have to look at it.

2 MR. LEE: It's 176.015.

3 MS. RISTENPART: You said 176.175?

4 THE COURT: 015.

5 MS. RISTENPART: 015. Thank you.

6 MR. LEE: Subsection (3).

7 THE COURT: So do you anticipate questioning the
8 victim impact witnesses? Because I don't want witness
9 examinations after instructions and argument. If your
10 intention is to just sit and remain silent during that
11 narrative, that might change my mind.

12 MR. LEE: I think I would need to guide her in
13 some fashion. I think they get an opportunity to ask
14 questions as well.

15 THE COURT: Here's what the statute says.

16 Before imposing sentence, the court
17 shall afford counsel an opportunity to
18 speak on behalf of the defendant, address
19 the defendant personally and ask if the
20 defendant wishes to make a statement in
21 his or her own behalf and to present any
22 information in mitigation of punishment.
23 After hearing any of those statements and
24 before imposing sentence, the court shall

1 afford the victim an opportunity to
2 appear personally, by counsel or personal
3 representative, reasonably expressing any
4 views concerning the crime, person
5 responsible, impact on the victim and
6 need for restitution.

7 Just feels unwieldy, to me. I'm going to have
8 sentencing evidence presented to this jury, the jury is
9 going to be instructed, the attorneys are going to argue
10 the sentence, and then after all that is done, victim
11 impact witnesses are going to appear and be examined and
12 cross-examined?

13 Ms. Ristenpart?

14 MS. RISTENPART: Your Honor, I think that the
15 State is interpreting 176.015 very broadly. In fact, it
16 doesn't say anything that the victim has to speak last.
17 It just says after the defendant and after mitigation on
18 behalf of defendant.

19 In regards to the way the State is presenting,
20 let's just say the defense is surprised by what
21 Ms. Linarez's mother or sister states, and then I'm
22 asking to reopen my argument to reargue whatever they're
23 asking. As reframed, I don't think that Marsy's Law was
24 written with the intent or knowledge of the penalty phase

1 on the first degree, or even contemplated.

2 So, again, the court has the right to formulate it
3 how you like to pursuant to case law.

4 MR. LEE: So, Judge, this is the clear wording.

5 After hearing any statements presented
6 pursuant to subsection (2) --

7 That is -- subsection (2) is when they argue,
8 after counsel has an opportunity to speak on behalf of
9 the defendant, so clearly it's after that.

10 Now, her statement -- her impact statement is not
11 necessarily one of broad evidence based and bringing in
12 new facts and whatnot. It is an impact statement. And
13 so it's kind of the questions, such as, *Tell us about Luz*
14 *Linarez-Castillo, Tell us what her hopes and dreams were,*
15 those kind of things. It's a regular impact statement.

16 Again, she can question her, I think that's fair,
17 but the statute is very clear that after her argument,
18 they get to make a statement. *They* meaning --

19 THE COURT: So when under the statute do you
20 speak?

21 MR. LEE: I don't.

22 THE COURT: In the statute?

23 MR. LEE: But 175.552 clearly contemplates me
24 presenting.

1 THE COURT: 177.552?

2 MR. LEE: 175.552.

3 THE COURT: Where does your statute contemplate
4 jury instructions?

5 MR. LEE: It doesn't necessarily say, "jury
6 instructions," your Honor. And it's not my statute.
7 17 -- 176.015 primarily discusses the part I'm asking the
8 court to pay attention to or focus on, is the victim
9 impact statement. Any procedural issues as far as the
10 penalty hearing are 175.552.

11 I think it's appropriate to give them instructions
12 because they need to know what the law is and things that
13 they cannot consider, such as Mr. Silva not making a
14 statement if he chooses to not do so.

15 So I don't know that this spells out a jury
16 instruction portion, that they must be there, but I think
17 it's certainly appropriate and that's been done in the
18 past. There's some precedence for it.

19 THE COURT: This statute just isn't clear to me.
20 I understand that it clearly provides that after -- after
21 defense counsel speaks on behalf of the defendant, the
22 victim personally or through representative appears. But
23 what's not to clear is when your voice is heard in this
24 process.

1 And I -- I generally agree with what you said,
2 that last week was about Mr. Silva's guilt and this week
3 it's much broader than that and it involves
4 Ms. Linarez-Castillo. You have the right to represent
5 those interests. But I don't know where in this statute
6 you speak. And that seems unfair to me to have defense
7 attorney, defense witnesses, victim, and then the State.
8 That doesn't seem fair. I either need to have both of
9 you after the victim impact testimony or both of you
10 before.

11 MR. LEE: So clearly I can present evidence. It's
12 contemplated under 175.552, that I'm going to be able to
13 present evidence. What the order is, I can tell you,
14 typically it would go defense, State, argument, victim.
15 The first part, I'm not necessarily fighting over. Your
16 Honor can use your discretion. It is a purely
17 discretionary call. Whether you want me to go first,
18 that's fine. Then defense, instructions, argument. But,
19 no matter what, it's got to be victim last. I think
20 that's clear by the statute.

21 I mean, don't get me wrong, I would prefer if the
22 defense gets to go and then I make an argument, and then
23 we present impact statements and all that. However, the
24 court decides that first part. Again, my only argument

1 here is that the victim goes very last after any
2 argument, and I think that's clear based on the 176.015
3 because it's clearly after any statement of the defense
4 and so, by implication, I would agree that's mine as
5 well.

6 THE COURT: All right.

7 MS. RISTENPART: Your Honor, if I may?

8 THE COURT: Yes.

9 MS. RISTENPART: In the annotated notes, your
10 Honor, for this section, the 176.105 --

11 THE COURT: 105?

12 MS. RISTENPART: 015. Thank you, your Honor.

13 *Hardison vs. State*, 104 Nevada 530, decided 1988,
14 states that that section does not apply if the death
15 penalty is imposed. And during the penalty phase of a
16 case that the death penalty is sought, pursuant to NRS
17 175.552, that is with regards the admissibility of
18 evidence. So even though, of course, this is not a death
19 penalty, penalty phase, it is a first-degree murder, and
20 that case law -- this is annotated notes that I'm reading
21 very quickly, your Honor -- but I think really says that
22 this statute, 176.015, is not to supersede 175.552. And
23 in 552 the court has total discretion as to how you
24 wanted to do the penalty phase.

1 THE COURT: It was 104 Nevada --

2 MS. RISTENPART: 104 Nevada 530, decided 1988.

3 So I'm going to read and think, and then I'll
4 announce the order before the jury arrives.

5 As to jury instructions on the penalty phase, to
6 the State, you've seen my proposed packet?

7 MR. LEE: I have. And I printed the wrong one so
8 I'm pulling it up right now, your Honor.

9 Thank you, Judge.

10 Judge, they are certainly concise, which I like.
11 I have two suggestions. One is including the
12 instruction, *If in these instructions any rule, direction*
13 *or idea is repeated or stated in different ways, no*
14 *emphasis is intended*, and it goes on. I think that's
15 important just simply because of the continuing notice to
16 the jury that the court is not making any emphasis on
17 anything and it's up to them to decide.

18 And then, lastly, I think the instruction of *Your*
19 *verdict as to the sentence to be imposed must be*
20 *unanimous* is appropriate as well.

21 THE COURT: Wait a second.

22 Look at the last instruction, paragraph -- third
23 paragraph, line 7.

24 MR. LEE: Thank you. I see that.

1 THE COURT: Okay. To the defense, do you have any
2 objections?

3 MS. RISTENPART: Thank you, your Honor.

4 Just for the circumstantial evidence instruction,
5 could you offer that one, also?

6 THE COURT: I struck it because we just instructed
7 the jury on Friday --

8 MS. RISTENPART: That's what I thought.

9 THE COURT: -- and I don't think it's necessary.
10 If you can persuade me it is --

11 MS. RISTENPART: No, I don't want it. I wanted to
12 make sure that it is out.

13 THE COURT: Once again, this courtroom has hearing
14 challenges. Yes, I have stricken it and it is not in.

15 MS. RISTENPART: Just to clarify, your Honor, the
16 email sent by the court, we're looking at Packet No. 1 is
17 the one that you are wanting to put in?

18 THE COURT: I don't know. Ms. Clerk?

19 THE CLERK: That's correct, your Honor.

20 MS. RISTENPART: Thank you.

21 So, your Honor, on Instruction No -- I think it's
22 going to be 3 -- that starts with, *Although you are to*
23 *consider only the evidence in the case in reaching the*
24 *penalty verdict, you must bring into consideration of the*

1 *evidence, your everyday common sense and judgment as*
2 *reasonable men and women?*

3 THE COURT: Yes, I'm looking at it.

4 MS. RISTENPART: Your Honor, the last sentence on
5 line 12, *However, you may consider all mitigating*
6 *evidence presented*, there is some case law for and
7 against defining what *mitigation* is since that's legal
8 terminology that lay people don't normally use.

9 In *Middleton vs. State*, that was actually an
10 argument because the court defined *mitigating evidence*
11 using the *Black's Law Dictionary* as to what that is, and
12 the Supreme Court stated that that was a fine definition
13 for that purpose in that case, that ultimately the
14 Supreme Court would like trial courts to steer clear of
15 limiting what is *mitigation*.

16 THE COURT: So your request is that I strike that
17 sentence?

18 MS. RISTENPART: No. I'm asking the court's
19 guidance because *mitigation*, again, is a word that we
20 don't normally use in everyday parlance, but we don't
21 have actual guidance as to how we define *mitigation* in
22 this purpose where it's not a death penalty case.

23 THE COURT: I don't think the sentence adds
24 anything and I don't want it. I think the two of you are

1 going to argue zealously and persuasively, and the jury
2 does what the jury does.

3 MS. RISTENPART: That's the only place we use
4 *mitigating* as a descriptor, your Honor.

5 Actually, you're correct, your Honor. I think it
6 was the other packet. That's the only place we used the
7 word *mitigating*.

8 THE COURT: I'm going to strike it.

9 All right. So -- I'm going to look at your --
10 excuse me.

11 Do you have any other comments upon this packet?

12 MS. RISTENPART: No, your Honor.

13 THE COURT: Okay. So I'm going to look at your
14 proposed instruction and I'm going to offer something --
15 I will offer it or something similar to it, but I need to
16 read, reflect in chambers.

17 There is another packet of two instructions. I
18 did not know if they would apply. The first is, quote:

19 "The fact that a witness has been
20 convicted of a felony, comma, if such be
21 the fact, comma, may be considered by
22 you."

23 Do we have any defense -- excuse me -- sentencing
24 witnesses who are felons?

1 MR. LEE: I sure hope the officers are not, no.

2 MS. RISTENPART: Your Honor, I do -- I do believe
3 that Ms. Roxanda does have a conviction. That's the
4 mother. That would be Roxanda Castillo.

5 THE COURT: Do you intend to impeach her victim
6 testimony based upon the felony status?

7 MS. RISTENPART: I would say I do not intend to do
8 that.

9 THE COURT: I will allow you, as an experienced
10 attorney, to decide whether to do that or not.

11 MS. RISTENPART: I don't think that evidence will
12 come in, your Honor, I'll put it that way.

13 THE COURT: I'm going to leave this instruction
14 out.

15 Next:

16 During this penalty hearing, certain
17 transcripts of prior witness testimony
18 have been read to you.

19 Do you anticipate reading transcripts to this jury
20 during the penalty phase?

21 MR. LEE: No.

22 MS. RISTENPART: The only thing would be in
23 relation to if the State doesn't bring up the fact that
24 Mr. Arthur Manzo clearly stated in a prior hearing that

1 he doesn't believe anyone else knew about the pregnancy.
2 That was at the motion hearing, your Honor.

3 THE COURT: I'm not going to have you read a
4 transcript of that.

5 Mr. Lee, you're going to make a disclosure to this
6 jury that there's no evidence that Mr. Silva knew of the
7 pregnancy, that's all.

8 So I'm about to leave the bench. I'm going to
9 read the defense proffered instruction, *Brake v. State*,
10 and others.

11 I'm going to insert the defense instruction into
12 the packet. I'm going to delete lines 12 and 13 of
13 Instruction No. 3, which I just have handwritten numbers,
14 you don't have that. And I'm going to read the decision
15 of 104 Nevada 530, do additional research, and think
16 about the order of witnesses.

17 Okay. Counsel, I'll see you at --

18 MS. RISTENPART: One more thing, your Honor.
19 Defense has numerous letters that we'd like to put in as
20 evidence from family members in mitigation. Because it's
21 a penalty phase, I don't want to stand there and read
22 every single letter to the jury. I don't know if the
23 court would prefer me to file them and then have a file
24 packet for the jury to be able to peruse if they want to

1 in deliberation.

2 THE COURT: How many?

3 MS. RISTENPART: Your Honor, we right now have 18
4 and I expect at least three more, your Honor.

5 THE COURT: Give yourself a moment. I understand
6 your question.

7 How many defense witnesses do you anticipate
8 calling?

9 MS. RISTENPART: Your Honor, I've weaned it down
10 to five, possibly only four. Also, I would like to note
11 that one of the defense witnesses is Janeth, who is
12 Mr. Silva's sister, who was the identified friend of
13 Juror No. 1's wife. So that also, of course, is going to
14 factor into what Juror No. 1 is claiming or going to tell
15 the court.

16 THE COURT: I am considering a new, separate
17 instruction which reads:

18 In addition to witnesses and attorney
19 arguments, you will have in the jury
20 deliberation room a packet of letters
21 written on behalf of Mr. Silva.

22 Then I'll have three copies of that packet made
23 and available to the jury to consider, and then the
24 packet will be made part of the court's record.

1 Objections, Mr. Lee?

2 MR. LEE: If it's not going to be presented, I
3 need to see it beforehand certainly.

4 THE COURT: I agree.

5 MR. LEE: Then I'll look something up on that. I
6 just have one hair on the back of my head that is
7 standing up, that's all. I think that sounds okay but
8 during the break I will look into it.

9 THE COURT: It feels unwieldy to have the defense
10 attorney read all of these statements because there's no
11 witness and there's no cross-examination. I do
12 understand the evidence rules that apply. I don't want
13 you to have to read them. I don't want to read them
14 aloud. My preference is to do it as I have indicated.

15 Ms. Ristenpart, do you have any objection?

16 MS. RISTENPART: Your Honor, I took the court's
17 heedance on Friday to the brevity of the penalty phase,
18 or you're encouraging brevity. I could call all these
19 witnesses that have written letters over the weekend and
20 are going to be present here today, but that's why I
21 wanted to give the court the option of me just putting in
22 the letters.

23 THE COURT: I don't want to make a -- I want to
24 know if there's a proposal or an objection, I'm not

1 afraid to make a decision I think is right. But are you
2 proposing that I put this packet of instructions [sic] in
3 or are you proposing that each of these 20 witnesses be
4 called?

5 MS. RISTENPART: No. I would like to put the
6 packet of the letters in for the jury to look at on their
7 own.

8 THE COURT: So that would be done without
9 objection by the defense.

10 MS. RISTENPART: That's correct, your Honor.

11 THE COURT: All right. And the State may have an
12 objection and wants a chance to look at them. All right.
13 See you hopefully in about 10, 15 minutes.

14 (Recess taken.)

15 THE COURT: Okay. Counsel, have you each had an
16 opportunity to review the court jury instructions?

17 MR. LEE: Yes.

18 MS. RISTENPART: Yes, your Honor.

19 THE COURT: Any objection, to the State?

20 MR. LEE: No.

21 THE COURT: To the defense?

22 MS. RISTENPART: Just objection to No. 5, your
23 Honor. We just ask that you strike on line 4, *and refuse*
24 *to admit his guilt.* Your Honor, I would just ask that

1 you strike *his* and *refuse to admit guilt*.

2 THE COURT: Okay. So I think that's fair. You
3 can imagine, I pulled this language directly out of the
4 law --

5 MS. RISTENPART: Absolutely, yes.

6 THE COURT: -- but as to the pronoun, I will make
7 that change. So the sentence will read:

8 It would be a violation for you to
9 impose a harsher sentence because the
10 defendant maintained his innocence and
11 refused to admit guilt.

12 Ms. Clerk, do you see this? Would you reprint
13 that for me and print three copies?

14 Any other objections?

15 MS. RISTENPART: No, your Honor.

16 THE COURT: Okay. Have you seen the verdict form?

17 MR. LEE: If it's the one that was e-mailed, then,
18 yes, I have seen it.

19 THE COURT: Any objection?

20 MR. LEE: None.

21 THE COURT: To the defense?

22 MS. RISTENPART: No objection, your Honor.

23 THE COURT: Thank you. So that takes care of the
24 *Brake* decision and *Brown* which I relied upon to extract

1 the language on Mr. Silva's choice to testify.

2 I now turn to the conflict between NRS 175 --
3 excuse me -- NRS 176.015 and NRS 175.552. The Nevada
4 Supreme Court has said repeatedly that NRS 175.552
5 predominates over NRS 176.015. 175.552 is a specific
6 statute, 176.015 is a general statute.

7 Quoting from Smith v. State, 1 Nevada -- excuse
8 me -- 110 Nevada 1094, a 1994 case, this is just
9 illustrative of the authorities I found. Quote:

10 "This court has held that NRS 176.015
11 is inapplicable to first-degree murder
12 cases," close quote.

13 Those same authorities vest great discretion in
14 this court to determine the method of the evidence
15 hearing. It is this court's conclusion that when the
16 jury enters the courtroom, we will begin with written
17 instructions. I will read them aloud. The defense will
18 then present its witnesses. The State will present its
19 witnesses. The State's last witnesses will be victim
20 impact witnesses. The defense will then argue. The
21 State will then argue. And the jury will deliberate.

22 Would you like to preserve any objections?

23 MR. LEE: I'll preserve it, your Honor. But,
24 again, I think it's very clear by Marsy's Law and that

1 statute and all the precedent that the victim gets the
2 last word.

3 Second point of clarification, if I may, I have
4 photographs and whatnot. Am I required to admit those
5 before I can have argument with the photographs?

6 I have photographs of the victim. Do I have to
7 present them in some fashion in my, I guess what we'll
8 call, case in chief?

9 THE COURT: Are these photographs that are not
10 admitted in the guilt phase of trial?

11 MR. LEE: Yes. Yes.

12 THE COURT: Let's present them to me now through
13 the defense and I will make a decision. I'm not going to
14 have you formally authenticate and seek the admission in
15 front of the jury.

16 MR. LEE: Let me just hand you the entirety of my
17 exhibits.

18 MS. RISTENPART: For the record, your Honor, I
19 just handed the packet of letters to the State.

20 THE COURT: Mr. Lee, I'm going to leave the bench
21 and give you a chance to read those when I'm gone. Give
22 me just five minutes here with all of three us again, and
23 then I'll leave.

24 MR. LEE: Thank you.

1 MS. RISTENPART: The court is looking at me. Are
2 you waiting for me to say something?

3 THE COURT: Yes.

4 MS. RISTENPART: Your Honor, with regard to the
5 pictures, we have no objection.

6 THE COURT: All right.

7 MS. RISTENPART: In regards to the certified copy
8 of the misdemeanor, the State has proffered the original
9 Criminal Complaint which is what he did not plead to,
10 coupled with the actual handwritten Judgment of
11 Conviction which is just a counter pleading.

12 What is missing, your Honor, is the fact that Mr.
13 Silva completed everything and concluded his case what we
14 call honorably, which would be in the court minutes that
15 the State did send over to me and I didn't print out
16 but assumed they would print it as part of the packet,
17 but we do have a copy, your Honor. I would ask -- it is
18 certified from the State, I would ask if we can add that
19 in.

20 THE COURT: Okay. It is appropriate for those
21 minutes showing successful completion to be included.
22 Approach the clerk.

23 Cause those to be marked, Ms. Clerk. They are
24 admitted now into the penalty proceeding and you may use

1 them at will.

2 Mr. Lee?

3 MR. LEE: Again, we will have a separate argument
4 time? It's not just our presentation and argument, it is
5 a completely separate thing?

6 THE COURT: Let me go through it again so we have
7 no question.

8 The jury will arrive and I will instruct them. I
9 will turn to the defense to present witnesses. I will
10 turn to the State to present witnesses. The last
11 witnesses will be the victim impact witnesses.

12 I will then turn to the defense for argument. I
13 will then turn to the State for argument. On completion
14 of the State's argument, the jury will be invited into
15 the jury deliberation room to deliberate.

16 MR. LEE: Thank you.

17 MS. RISTENPART: Your Honor, before we return to
18 Juror No. 1, which is what I think it is going to do, I
19 still have not received anything from the State regarding
20 the Sparks Police Department and their investigation.

21 Also, I did note in reviewing that email, that you
22 gave -- that you filed under seal in this case, from an
23 Adam Robertson for extra patrol requested. If you look
24 at paragraph, your Honor, it says -- I'm just going to

1 refer to Juror No. 1 even though it says his name --

2 THE COURT: Yes, please.

3 MS. RISTENPART:

4 -- believes or thinks the defendant may
5 know him and his family based on the fact
6 Juror No. 1's wife works with the
7 defendant's sister.

8 That's extremely concerning, your Honor. When you
9 went through the voir dire with him, he did not identify
10 that as being Mr. Silva's sister, nor did he even know
11 her name. And none of us have identified that person to
12 be Mr. Silva's sister in the courtroom. So either he
13 received that information later on from talking to his
14 wife or from some other means.

15 THE COURT: I think that's an appropriate line of
16 inquiry with Juror No. 1. I can't answer that.

17 MS. RISTENPART: And without having that actual
18 report the SPD has that the State has access to, I'm at a
19 loss as to some information that may become relevant
20 later on before I question him.

21 MR. LEE: I don't have access to them. I can make
22 a formal request just like anyone else and try to get
23 them but --

24 THE COURT: Has Hammersmith -- Hammerstone been

1 contacted?

2 MR. LEE: It is attempt to contact but he hasn't
3 gotten back to anybody.

4 THE COURT: Let's start with Juror No. 1 and we'll
5 see where we go from there.

6 Juror No. 1, please.

7 THE BAILIFF: Rise for the jury.

8 (Juror No. 1 entered courtroom.)

9 THE COURT: Please be seated.

10 It doesn't matter. How about right in the middle?

11 JUROR NO. 1: I'm already here.

12 THE COURT: Good morning.

13 JUROR NO. 1: Good morning.

14 THE COURT: Be seated, please.

15 Juror No. 1 is present. No other member of the
16 jury is present.

17 This proceeding is closed to the public. Present
18 in the spectator gallery is a representative of the DA's
19 office and two representatives from Ms. Ristenpart's
20 office.

21 Juror No. 1, I have received some information that
22 you engaged with law enforcement sometime Friday?

23 JUROR NO. 1: Right.

24 THE COURT: I want you to describe in your own

1 words what you did and why you did it. And then you'll
2 be available for questions.

3 Go ahead, please. Loudly.

4 JUROR NO. 1: So basically I called non-emergency
5 services. And I did this because once we left, the
6 second light that I had was a red light. And usually I
7 leave, you know, at least a car of space in front of me,
8 between me and the first car, and I noticed a young
9 Hispanic man wearing a red hoodie, and he was on his
10 phone and he had his back partially towards me but he was
11 looking at me. So I didn't think much of it.

12 I pulled up a little closer, and I kind of locked
13 eyes with him. At this point, he noticed that I was
14 looking at him, and he turned to me fully and kept
15 talking on his phone.

16 And so, you know, after the light turned green I
17 slowly continued down the street and he was just, you
18 know, just locked eyes, looking at me. And so something
19 told me to, you know, look in my rear-view mirror, see if
20 there's anything kind of fishy going on.

21 So I turned to the left, I got in the other lane,
22 and, you know, a block later I see a car -- a white car
23 behind me turn left as well.

24 And so I kept going, I turned right. And I

1 noticed that that same car turned right again. And it
2 was almost getting to the freeway where I kind of was
3 going slower, and I let the light turn yellow and I
4 continued. So at this point that car got stuck on a red
5 light.

6 And so, you know, I went the opposite direction, I
7 kind of went around just to make sure no one was
8 following me or anything like that, and then I just kept
9 going. Eventually I went home and when I was -- you
10 know, when I arrived, I told my wife. And she felt and I
11 felt that just because of the tensions of emotions on all
12 sides, right, it was safe for us to notify law
13 enforcement that possibly it appeared, considering the
14 variables, that someone was -- might have been trying to
15 follow me.

16 And so at that point, you know, later on, law
17 enforcement showed up. I explained to them what
18 happened.

19 THE COURT: Who showed up at your house?

20 JUROR NO. 1: Sparks PD. I actually have --

21 THE COURT: Was there one or more officers?

22 JUROR NO. 1: There was three officers at one
23 point.

24 THE COURT: Do you remember their names?

1 JUROR NO. 1: I have here Adam Robertson, and he
2 told me -- you know, they told me that -- basically he
3 confirmed with me like, okay, you know, it was a good
4 idea that you called. He gave me a case number, which
5 was on here. He told me to go ahead and let everyone
6 know. So, yeah, that's pretty much all that happened.
7 And they basically had extra police presence that evening
8 in the area.

9 THE COURT: Did you recognize the driver of that
10 vehicle as someone who had been in this courtroom, or did
11 you just recognize an article of clothing that could have
12 been worn by someone in this courtroom?

13 JUROR NO. 1: I did not recognize anyone in that
14 vehicle, not in the vehicle. I noticed there was two
15 people in the vehicle from the rear-view mirror but I
16 didn't see any faces. They were like three cars behind
17 me.

18 THE COURT: There have been a few emails about
19 this incident that I have shared -- I never keep
20 information so I shared it with the attorneys, and in one
21 of the emails there was a reference to your wife's
22 employment and the -- and the employment of somebody who
23 has been in this courtroom.

24 Do you know what I'm talking about?

1 JUROR NO. 1: Yes, I believe I do. It was one of
2 the officer's asked if I knew anybody relating to the
3 defendant. And so I shared, well, yes, there's a person
4 that knows my wife that I believe is family of the
5 defendant. And so --

6 THE COURT: Did you disclose anything different to
7 law enforcement than what you disclosed to us during jury
8 selection?

9 JUROR NO. 1: No.

10 THE COURT: Do you remember you had a note and we
11 brought you in?

12 JUROR NO. 1: Right. Right. Right. So, yeah,
13 all I said was here and there, the same thing, is that
14 she knows my wife.

15 THE COURT: Who is *she*?

16 JUROR NO. 1: The lady that was here who I had --
17 you know, that you called me -- like, I don't even know
18 her name; right? Like, my wife does because my wife
19 worked with her, but I have not told my wife who -- you
20 know, the details.

21 THE COURT: Is there anything about your
22 experience over the weekend that causes you to be
23 concerned about your continued service?

24 JUROR NO. 1: No. No. No. I mean, Saturday was

1 a day of rest. We were stocking up on stuff. Sunday was
2 the same thing. I haven't encountered any issues. I was
3 simply going off Friday evening, the emotions, the
4 variables that I was noticing, and so in that moment, for
5 Friday evening, we felt that it was appropriate.

6 THE COURT: Does the State have any questions?

7 MR. LEE: Can I just ask a conclusory question,
8 your Honor?

9 Can you still be fair and impartial today with the
10 duties that you're going to be asked?

11 JUROR NO. 1: Can I still be fair? Absolutely.
12 Absolutely.

13 THE COURT: Thank you. That's all. I didn't mean
14 to cut you off.

15 JUROR NO. 1: No. You're fine.

16 MR. LEE: Thank you, your Honor. That's all I
17 have.

18 THE COURT: To the defense.

19 MS. RISTENPART: Sir, when you believe that you
20 were being followed or you made eye contact with the
21 person in the red hoodie, did you immediately assume it
22 was someone in regards to this case?

23 JUROR NO. 1: No. As I said, I first just noticed
24 him looking towards me kind of on the phone but, you

1 know, kind of back turned to me, so that's when I kind of
2 pulled up and locked in eyes to see if he was staring at
3 me. It felt like he recognized me. I didn't recognize
4 him.

5 Again, I'm here, you know, I'm not a witness, I
6 didn't bring any information, so I never feel that anyone
7 is trying to do anything towards me. But in that case,
8 it did feel out of the norm, you could say, the way he
9 was directly looking at me.

10 MS. RISTENPART: Did you feel threatened?

11 JUROR NO. 1: Absolutely, yeah. I felt something
12 might have been going on, yeah.

13 MS. RISTENPART: And when you made your report to
14 police, what we're looking at, it makes it seem that you
15 felt that the threat may have come from Mr. Silva or the
16 defendant's side?

17 JUROR NO. 1: My first thought was, *Do I know this*
18 *individual?* And the answer was no. So second thought
19 was, *We just finished deliberating, tensions are high, I*
20 *don't know who is who. I don't know who is friends, who*
21 *is family,* you know what I mean? So that came up after,
22 yeah. Okay, this might be due to this.

23 Because, honestly, I -- I work as a therapeutic
24 mentor, I try to help young men, specifically Latino men,

1 so I roam the streets free of fear because I know what I
2 do is trying to help others. That's what I go home to.
3 That's where I feel good at.

4 THE COURT: Let's wait for the next question.

5 MS. RISTENPART: At some point you had a
6 conversation with your wife about it; right?

7 JUROR NO. 1: Yeah. When I got home I told her
8 what happened, yes.

9 MS. RISTENPART: Okay. And did you discuss with
10 her your thought process -- I'll just ask pointblank. At
11 some point did you learn that the person you pointed to
12 in court was a family member of Mr. Silva's?

13 JUROR NO. 1: No. No one has confirmed to me that
14 she is a family member. I assumed that she was because
15 usually when things get bad in life, friends are not
16 around. It's usually family that's there. So that's why
17 I assumed she was family. No one has confirmed this to
18 me, the court even asked. It was never asked if she was
19 family, as far as I recall, when we were here. So I have
20 not confirmed that she is family. I was just assuming
21 she was.

22 THE COURT: Okay.

23 MS. RISTENPART: In regard to the threatening
24 nature, you obviously felt threatened on Friday, enough

1 that you and your wife decided to call the police after
2 discussing it. And then also over the weekend you noted
3 that there was extra patrol or you were told that there
4 was extra patrol?

5 JUROR NO. 1: Just that evening. Just that
6 evening.

7 MS. RISTENPART: Now going into today, do you have
8 some kind of unease as to what happened on Friday maybe
9 occurring again or something worse possibly happening?

10 JUROR NO. 1: It's definitely -- you know, I
11 always like to think of the worst and best, so
12 absolutely, yeah, I think of the worst. So it felt like
13 that Friday, so why can't it feel like that Saturday and
14 Sunday?

15 MS. RISTENPART: And today?

16 THE WITNESS: And today possibly, too.

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

18 THE COURT: Thank you. You are free to return to
19 the jury deliberation room.

20 Thank you, Juror No. 1.

21 (Juror No. 1 exited the courtroom.)

22 THE COURT: Please be seated.

23 To the State.

24 MR. LEE: Judge, I think he was open and honest

1 with us. Ultimately it comes down to, can he be fair?
2 He gave me no reason to believe he cannot be.

3 THE COURT: To the defense?

4 MS. RISTENPART: Your Honor, we're challenging for
5 cause. I don't know if it's the proper phrase to use.

6 First, Mr. Juror No. 1, I don't believe, was
7 completely truthful or honest based on what we have in a
8 police report or an email from a police officer. In
9 fact, for the record, the juror took out the officer's
10 card and actually was pointing to it to the court when he
11 was describing what officer responded. He remembered
12 three but he only had the card for one, Officer
13 Robertson, and also the case number. Coupled with the
14 statement in this email, at the very least, that Juror
15 No. 1 associated the person that he knew that worked with
16 his wife as the defendant's sister, despite him trying to
17 go around that saying he's still not quite sure who that
18 is.

19 Obviously, the police had some information on
20 scene that that person was identified as Mr. Silva's
21 sister, coupled with the statements, your Honor, as to he
22 felt threatened on Friday, continued on over the weekend
23 and is continuing on today, despite his statement that he
24 feels he can be fair. He never said that he could be

1 impartial, he just said that he could be fair. Based
2 upon an actual bias, your Honor, which would
3 substantially impair someone who feels they've been
4 threatened by a family member or followed, so there was
5 some kind of connection to Mr. Silva based upon his
6 decision on Friday. And that this court, pursuant to
7 *Sanders v. Sears-Page*, 354 P.3d 201, decided in 2015,
8 that the court should always err in favor of striking a
9 juror for cause if there's even a hint or an inference.

10 THE COURT: Tell me that case again.

11 MS. RISTENPART: 354 --

12 THE COURT: Is it a Nevada case?

13 MS. RISTENPART: It is.

14 THE COURT: Tell me the name.

15 MS. RISTENPART: *Sanders v. Sears-Page*.

16 THE COURT: And what year?

17 MS. RISTENPART: 2015, Nevada Appellate.

18 THE COURT: Unpublished or published?

19 MS. RISTENPART: Your Honor, I thought it was
20 published but I didn't have the Nevada cites so it may be
21 unpublished.

22 THE COURT: 354 P.3rd --

23 MS. RISTENPART: 201.

24 THE COURT: Well, I owe you the -- I owe this

1 process the courtesy of reading a case that you've cited.
2 I'm unfamiliar with its contents.

3 MS. RISTENPART: And, also, your Honor, I don't
4 see how this incident could not contaminate the juror's
5 thought process going into deliberations and asking
6 whether to send someone to prison for the rest of their
7 life or for a determinate amount of time. In this
8 particular case, with these case facts, we ask that you
9 strike Juror No. 1 based upon, I think, his answers and
10 his lack of forthcomingness.

11 THE COURT: Counsel, do your notes reflect if
12 Juror No. 1, last name Gonzales Escobar, self-identified
13 with a race other than white?

14 MR. LEE: I don't recall.

15 MS. RISTENPART: I note that came in the first day
16 that he identified as Latino.

17 THE COURT: Right. That's my memory. And he
18 somewhat emphasized that today by saying that he works in
19 the streets trying to mentor young Latino men. Okay.

20 I need to read the *Sanders* decision. We'll be in
21 recess.

22 (Recess.)

23 THE COURT: Please be seated.

24 Exhibit 157, which is the compilation of letters

1 submitted on behalf of Mr. Silva, is admitted. The State
2 has had an opportunity to review those letters in advance
3 and they are referenced in the court's instructions.

4 (Defendant's Exhibit 157 was admitted.)

5 THE COURT: Exhibit No. 156 is a certified copy of
6 the Criminal Complaint. There is now attached to that
7 exhibit the certified copy of the Case Summary which
8 includes Mr. Silva's post-sentencing performance. It is
9 admitted.

10 (Exhibit 156 was admitted.)

11 THE COURT: Exhibits 145 through 153 are a series
12 of photographs. They are admitted.

13 (Exhibits 145 through 153 were admitted.)

14 THE COURT: Exhibits 154 and 155, are these
15 offered by the defense? There is a photographic image of
16 two bullets in a shell casing and then a letter from the
17 sheriff.

18 MR. LEE: It's me.

19 THE COURT: That's you. So those are separately
20 marked as 154 and 155. They are admitted.

21 (Exhibits 154 and 155 were admitted.)

22 THE COURT: I have reviewed *Sanders v. Sears-Page*.
23 It was a civil case and the court examined for cause
24 challenges after the jury is impaneled. I concluded that

1 I will not discharge Juror No. 1 for the following
2 reasons.

3 First, throughout jury selection and again today,
4 he appeared fastidiously honest. That was this court's
5 observation. He appeared and spoke in a way that he
6 suggested caution, erring on the side of disclosure in
7 caution, and when I measure what has occurred in this
8 case with the fact pattern of *Sanders*, it is quite
9 dissimilar, so we need to be careful -- I need to be
10 careful that I don't extract case holdings without some
11 reference of facts.

12 In the *Sanders* decision, there was a question
13 about implicit bias. The juror had unequivocally stated
14 time and again impartiality but it was discovered that
15 the Juror No. 9 was directly related to the circumstances
16 of the case in that Juror No. 9 had experience with one
17 of the parties as a treating physician. In fact, this
18 court said that his experience was so similarly situated
19 to the case being tried, and so the court did some
20 analysis of implicit bias.

21 I don't find that any of those significant facts
22 suggesting implicit bias exist in this case. And in the
23 *Sanders* decision, the appellate court noted the trial
24 court contributed to the error by causing the attorneys

1 to argue for cause in the presence of Juror No. 9.

2 I acknowledge that Juror No. 1 in this case
3 expressed some unease. That expression alone does not
4 render him disqualified. All who participate in the
5 criminal justice system, whether it be at the guilt phase
6 or at the sentencing, experience some unease because of
7 the weighty affairs that are part of the decision.

8 Mr. -- Juror No. 1 has unequivocally stated his
9 ability to be fair. I find no reason to question that
10 unequivocal statement, especially in light of the facts
11 that we learned together from him directly.

12 The motion is denied.

13 Anything else?

14 MR. LEE: I have one more exhibit that I just got
15 handed back to me, I'd ask to have marked and admitted as
16 well.

17 THE COURT: Please.

18 THE CLERK: That will be Exhibit 158 marked for
19 identification.

20 (Exhibit 158 was marked.)

21 THE COURT: If there's nothing else, we'll stand
22 for our jury.

23 THE CLERK: Is it to be admitted?

24 THE COURT: It is admitted, Ms. Clerk.

1 (Exhibit 158 was admitted.)

2 THE CLERK: May Juror No. 13 be excused? He was
3 summonsed at 11:15.

4 THE COURT: Thank you for being here. He is
5 not -- bring Juror No. 13 in, please.

6 Yeah, he should not be with the group.

7 THE CLERK: I don't think he's with the group.

8 THE COURT: Oh. I misunderstood you.

9 Let me write out the specific instruction. I'll
10 direct the security and court staff to text as follows to
11 Juror No. 13.

12 Your service is not required at this
13 time. You are not discharged from
14 possible service.

15 Any objections?

16 MR. LEE: No.

17 MS. RISTENPART: No, Judge.

18 THE COURT: Deputy Coss, make sure this message is
19 communicated to Juror No. 13, please.

20 We'll stand for our jury.

21 MR. LEE: Your Honor, before they come out, could
22 I ask a quick question?

23 THE BAILIFF: All rise for the jury.

24 THE COURT: Hold on. Would you step in for just a

1 moment, please?

2 MR. LEE: Rule of exclusion is invoked; correct?

3 THE COURT: That is correct.

4 MR. LEE: Thank you. That's all I had.

5 THE COURT: Do you wish to be heard?

6 MS. RISTENPART: Your Honor, we were going to
7 invoke or continue to have the Rule of Exclusion before
8 sentencing. I don't know if there's any case law that
9 says we couldn't have Rule of Exclusion.

10 THE COURT: Do you know of any case law that says
11 we should?

12 MS. RISTENPART: Just that it's our statute, and I
13 believe it says during proceedings. We can do it during
14 motion hearings, as well as other hearings.

15 THE COURT: The Rule of Exclusion is lifted. It
16 does not apply during this penalty hearing.

17 Anything else?

18 MR. LEE: Thank you.

19 THE COURT: To the defense -- excuse me. To the
20 jury.

21 (At 11:15 a.m., the jury entered courtroom.)

22 THE COURT: Please be seated as you arrive to your
23 seats. Good morning.

24 The jury is present, as are counsel and Mr. Silva.

1 I will begin by reading 11 instructions that will
2 govern your penalty deliberations. Again, you'll have a
3 copy of these instructions with you in the jury
4 deliberation room.

5 And then, without argument, first, the defense
6 will introduce witnesses, followed by the State. At the
7 conclusion of the witness testimony, the defense will
8 make arguments on behalf of Mr. Silva, and the State will
9 conclude with arguments. You'll then be directed to
10 deliberate.

11 Whereupon, the jury instructions were read.
12 by the court.)

13 THE COURT: To the defense, you may call your
14 first witness.

15 MS. RISTENPART: Your Honor, we call Perla
16 Martinez.

17 THE COURT: Please follow the deputy's
18 instructions.

19 (Witness sworn.)

20 / / / /

21 / / / /

22 / / / /

23 / / / /

24 / / / /

PERLA MARTINEZ

called as a witness on behalf of the Defendant,
having been duly sworn, testified as follows:

+++ DIRECT EXAMINATION +++

BY MS. RISTENPART:

Q Ms. Martinez, would you state and spell your name
for the record?

A Yes. Perla Martinez.

Q And spell it for the record?

A First name is spelled P, as in *Peter*, E-R-L-A.
Last name, Martinez, M-A-R-T-I-N-E-Z.

Q Ms. Martinez, are you related to Mr. Richard
Silva?

A Yes. I am the oldest sister.

Q And you're a bit older than Mr. Silva; correct?

A That's correct.

Q How many years older?

A Oh. Well, I'm 32 and he is 29.

Q Generally, could you describe Mr. Silva for the
jury?

A Yes. He is a loving, caring person. Sorry.

Q Could you describe his childhood? How was your

1 childhood as a family with Richard?

2 **A** We're a very close family. There's -- we were
3 seven. Unfortunately, one of our little brothers passed
4 away. This has been -- I want to say he passed away in
5 2002 so it's been a while, but we are a close family.

6 Me, as the older sister, Richard always looked up
7 to me. He would come to me and talked to me with any
8 concerns or questions. For example, his nickname,
9 Willow, he got from my parents. As the -- Richard -- as
10 the years went by, Richard would not grow any taller and
11 my mom said that he reminded her of the Siberian willow
12 bird, which is a very tiny bird. And so since then my
13 parents said, "Oh, this is Willow," and ever since then I
14 recall that -- for so as long I can remember that's been
15 his nickname. That's how he got that nickname -- that's
16 how he got that nickname, Willow.

17 **Q** Does Richard help others in your family?

18 **A** Richard is very helpful. He, in fact, helped all
19 of us, took care of our kids. We all -- myself, my
20 sisters, my brother, we all have children, and so Richard
21 was the uncle go-to. He took care of all our children
22 regardless. We all attended school, we all worked hard,
23 and Richard as well, but Richard would be the one to go
24 to if we ever needed someone to take care of our

1 children. That included if we needed someone to take our
2 children to the doctor, to take them to school, to pick
3 them up, we knew we could count on him. And the kids
4 love him, and he did this so that we couldn't miss our
5 work, we wouldn't have to take any time off of work, off
6 of school.

7 **Q** Is Richard intelligent? Did he get far in school?

8 **A** Yes, Richard is very smart. He, in fact,
9 attended -- which I like to call it the gifted school,
10 the TMCC high school program. You have to pass -- he was
11 tested and he actually -- without even studying, he
12 passed with a high score. And he was always in honors
13 classes.

14 He was the guy to go to for any help. Myself, I
15 am still in college, and I sometimes had a hard time
16 understanding, and he was the one I went to in regards to
17 school. Math, he would help me with my homework. We
18 took classes together.

19 In fact, he -- at one time wanted to join the
20 military and he passed with a very high score, almost
21 perfect score. The sergeant and recruiter were amazed
22 that he almost had a nearly perfect score. And my
23 husband, who is a military veteran, disabled veteran,
24 kind of joked around and said, "Can we retest him again?"

1 I don't believe that he got an almost perfect score."
2 But that tells a lot, that he, without the need to study,
3 without the need to look and dig into the books like I,
4 myself, do. Takes me hours to even study to get a high
5 score. With him, I'm very surprised that he doesn't need
6 to study. He can just listen and you can test him and
7 he'll give that A. He'll give you the honors.

8 Q And when we talked about he's loving and he's hard
9 working, did Richard always have a job and help provide?

10 A Yes, he always had a job. Even as a young child,
11 he was attending high school while he was working at a
12 warehouse. In fact, there was a story that I always had
13 about him where him, a teenager, going to high school,
14 working at a warehouse, he -- my mom had a friend, that
15 we hardly saw even, named Yolanda, and one day she came
16 to see my mom. She was -- always saying she worked hard
17 to provide for her two daughters. At that time, her
18 daughters were very young. I believe the little one was
19 two years old, the oldest one was only five years old.
20 And Richard noticed the condition of the shoes that those
21 little girls were wearing. They were very worn out and
22 ripped. And I remember that Richard stood up, asked
23 Yolanda, "What size of shoe does your daughter wear" --
24 or, in fact, "both of your daughters wear," and she gave

1 the shoes size. And Richard -- I recall Richard telling
2 me, "Hey, can you come with me to the store?" We went to
3 the store and he asked me to choose two pairs of shoes
4 for each little girl. We chose the shoes, and within an
5 hour drove back home and we were hoping that the lady was
6 going to be there with the little girls, he surprised
7 them with those shoes. They were very happy. And, you
8 know, to me, seeing a young kid that goes to college --
9 or high school at that time, that works hard and that
10 spent his money on helping others meant a lot to me. You
11 don't see that act on young teenage kids. They actually
12 work hard to spend money on them, games, not him. He
13 went beyond. He cared for others and looked for other's
14 needs before himself.

15 MS. RISTENPART: No further questions, your Honor.

16 THE COURT: To the State.

17 MR. LEE: I have no questions. Thank you.

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

20 MS. RISTENPART: Thank you. We'd like to call
21 Nancy Mason.

22 (Witness sworn.)

23 / / / /

24 / / / /

NANCY MASON

called as a witness on behalf of the Defendant,
having been duly sworn, testified as follows:

+++ DIRECT EXAMINATION +++

BY MS. RISTENPART:

Q Ms. Mason, I notice you walked up with some
papers, did you write some notes?

A Yes, I did.

THE COURT: Go ahead and be seated.

THE WITNESS: Thank you.

BY MS. RISTENPART:

Q Ms. Mason, would you please state and spell your
name for the record?

A My name is Nancy Mason. First name, N-A-N-C-Y,
last name, M-A-S-O-N.

Q Do you know Mr. Richard Silva?

A Yes. I've know Richard Silva for approximately
ten years. I came in contact with him through his
mother.

Q And you knew Richard through his early teenage
years and also his 20s, it sounds like?

A I think he's about 29, so I want to say he had

1 just graduated from high school.

2 Q How would you describe Richard for this jury?

3 A I would describe Richard as someone who is calm,
4 collected, caring, hard working, and intelligent. I've
5 always observed him to be very friendly, attentive of all
6 nieces and nephews. You could walk in his house, he'd
7 offer you a bottle of water, *How are you? How have you*
8 *been?* Just amazing for someone that young.

9 Q Did Richard ever interact with your family and go
10 to your family events --

11 A Yes.

12 Q -- and vis-versa?

13 A Yes. Me and his mother became close friends, and
14 I was invited numerous times, with my children, my
15 husband at the time, to several of their family
16 functions.

17 One thing that I'm very impressed with is that
18 their family are a close-knit, hard-working, humble,
19 caring, generous individuals. I think you just heard the
20 story of Perla's that during high school he had bought
21 shoes for, you know, complete strangers because he felt
22 that they should be wearing something nice. That's
23 personally what I have always perceived of this family.

24 Q Do you have any particular remembrances of Richard

1 that you'd like this jury to know?

2 **A** I'm going to share a little story about Richard.
3 For a short period of time, for several years, I worked
4 with his sister Perla at a law firm. During one of our
5 many conversations, we were talking about Richard, and
6 during that time she was studying in college and she told
7 me, "I don't understand how my brother, Richard, is so
8 intelligent, gets straight A student -- is a straight A
9 student and doesn't have to crack open a book. I leave
10 the law firm and I don't go to bed until midnight trying
11 to study."

12 I asked her, "What is Richard doing right now?"

13 "He's working at a warehouse."

14 "Why would he be working at a warehouse if he's so
15 smart?" I said, "I'll tell you what. I'm going to call
16 it a favor, I'm going to call one of my friends at Wells
17 Fargo and ask her if she would grant him the opportunity
18 to give him an interview."

19 She said, "you'd do that for me?"

20 "I sure would. It's up to him to pass that
21 interview."

22 So they gave Richard the interview. And Richard
23 shows up, goes to the interview. I get a phone call a
24 couple hours later. My friend gives me a call and she

1 says -- immediately starts laughing and says, "Nancy, do
2 you know what he was wearing?"

3 I said, "Clothing?" I don't know. What was he
4 wearing?"

5 "He walked in here with a black dress-up shirt,
6 black slacks, wrinkled, with a pair of tennis shoes."

7 I said, "Oh, no."

8 She starts laughing. She says, "You know, we got
9 the chance to interview him and we realized how
10 charismatic and intelligent he is. He answered every
11 question very articulate for his age. Because of that,
12 we're willing to give him a second chance. So please
13 tell him that we're going to give him a second interview,
14 and I will call him, but please tell him to dress
15 accordingly."

16 I said, "Okay." I hung up the phone and I called
17 Richard. I said, "Oh, my goodness, Richard you made me
18 look bad," and he just started laughing.

19 "Well, what do you mean, Nancy? I went to the
20 interview."

21 I said, "I understand you went to the interview,"
22 I said, "but your clothing was not the proper business
23 attire they were looking for."

24 And he said, "You know" --

1 I said, "Why did you go dressed like that?"

2 He says, "What happened was that I was at work, we
3 have a lot of workload -- we have a heavy workload and I
4 didn't want to leave my co-workers with the burden of
5 having to do my job, so I did everything as quickly as
6 possible to help them out and then I went to the
7 interview."

8 And I said, "Richard, I'm -- that was very
9 thoughtful of you. I appreciate that. But next time
10 take a little more time, because I also called in a favor
11 for you."

12 He said, "I understand, Nancy."

13 Long story short, he became an employee of Wells
14 Fargo and made many friends there.

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

16 THE WITNESS: You're welcome.

17 THE COURT: To the State.

18 MR. LEE: I have no questions. Thank you.

19 THE COURT: Thank you. You're free to step down
20 and leave.

21 To the defense.

22 MS. RISTENPART: Thank you. We'd like to call
23 Pablo Silva.

24 (Witness sworn.)

PABLO SILVA

called as a witness on behalf of the Defendant,
having been duly sworn, testified as follows:

+++ DIRECT EXAMINATION +++

BY MS. RISTENPART:

Q Mr. Silva, would you please state and spell your
name for the record?

A Pablo Silva.

Q Spell it for the record.

A P-A-B-L-O, S-I-L-V-A.

Q Mr. Silva, do you know Richard Silva?

A Of course I know him. He's my nephew, known him
since he was born.

Q He's your nephew. Are you mom's brother or
father's brother?

A I'm his father's brother.

Q You say you've known him since he was born?

A I'm sorry? Yes.

Q Describe Richard, the Richard that you know, to
this jury.

A Well, since he was born I know him as a sweet
little kid. When he was a kid, he never got in trouble

1 at school or with anybody. He used to play with my
2 stepkids -- stepsons. They got on very well, never
3 having any trouble. So it's hard for me to believe that
4 this is happening so far.

5 **Q** Do you know Richard to be a hard worker?

6 **A** Yes. He did start working at a young age.
7 Because I don't live in Reno, but when I come and visit
8 my family I would see him. Every time I came for visits,
9 like weekends, we play cards together. The rest of his
10 brothers, we get together. We're very close.

11 **Q** Do you have a memory or a story about Richard that
12 you'd like this jury to know?

13 **A** Well, like I say, I only came, like, weekends here
14 and there. The stories that we always get along very
15 good, joke around, play always, you know.

16 MS. RISTENPART: No further questions, your Honor.

17 THE COURT: To the State.

18 MR. LEE: No questions.

19 THE COURT: Thank you. You're free to step down
20 and leave.

21 To the defense.

22 MS. RISTENPART: Thank you. Oscar Martinez.

23 (Witness sworn.)

24 / / / /

OSCAR MARTINEZ

called as a witness on behalf of the Defendant,
having been duly sworn, testified as follows:

+++ DIRECT EXAMINATION +++

BY MS. RISTENPART:

Q Mr. Martinez, would you please state and spell
your name for the record?

A Oscar Martinez; M-A-R-T-I-N-E-Z.

Q Mr. Martinez, do you know Mr. Richard Silva?

A Yes. I know him for about ten years.

Q And how do you know him?

A I've known him -- when I came back from Iraq, I
married his sister, his older sister. That's how I met
him.

Q Are you married to Perla Martinez, who we already
heard from today?

A Yes.

Q You say you met Richard when you came back from
Iraq. Are you a veteran?

A Army veteran, yes.

Q How would you describe the Richard that you know
to this jury?

1 **A** Richard helped me a lot. I went through several
2 surgeries. He took my spot doing the chores around the
3 house, doing my yard, helping out picking up the kids
4 from school. I was injured -- I mean, I went through,
5 like I said, several surgeries. He offered to move in so
6 he could help me and my kids while I was basically like a
7 vegetable. I couldn't do anything. He did everything
8 for me without asking.

9 **Q** And these surgeries related to combat --

10 **A** Yes.

11 **Q** -- from returning?

12 **A** Yes.

13 **Q** And how long was your recovery, Mr. Martinez?

14 **A** I was -- I went through four surgeries, so it was
15 about four years long.

16 **Q** How else would you describe Richard to this jury?

17 **A** Man, he's a great person, helped me -- helped me
18 when I needed it most. Which not even my own family has
19 offered to help me when he did. He was an amazing
20 person, never had any issues. Like I said, he lived with
21 me about two-and-a-half years. He was seeing, like any
22 marriage, me and my wife would argue. He wouldn't say
23 anything. He would say, "Oscar, let's go for a drive,"
24 that's what we did. He was there when I needed somebody.

1 He's a great person. Like I said before, never
2 had any issues with him at all. That's why it's kind of
3 hard being here.

4 **Q** You just referenced that you and Perla would get
5 in a fight and that Richard would kind of act to calm
6 things down?

7 **A** Definitely. He's like, "Hey, man, let's go out."
8 He knows I love driving. He would take me anywhere I
9 wanted to. I got to meet his co-workers as well, so I
10 could get out of the house for a bit.

11 I got him to play -- he was into sports a lot.
12 That's one of the things I'm proud of, that he was
13 watching football and doing fantasy football. He loved
14 sports after that, which that made it a plus on my part.
15 I say he's a great person, never had any issues.

16 MS. RISTENPART: No further questions, your Honor.
17 Thank you.

18 THE COURT: To the State.

19

20 **+++ CROSS-EXAMINATION +++**

21 BY MR. LEE:

22 **Q** Oscar, is there another Oscar in the family?

23 **A** No.

24 **Q** Are you close to Bernard as well?

1 **A** Yes.

2 **Q** Did you ever take any items of evidence related to
3 this case from either Bernard or Richard?

4 **A** Never.

5 **Q** So if there's a recorded statement where Richard
6 asked Bernard if he gave you the stuff, does that ring a
7 bell to you?

8 **A** Never heard about that.

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

10 THE COURT: All right.

11 MS. RISTENPART: Nothing based on that.

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

13 MS. RISTENPART: We call Janeth Silva.

14 (Witness sworn.)

15

16 **JANETH SILVA-GUZMAN**

17

18 called as a witness on behalf of the Defendant,
19 having been duly sworn, testified as follows:

20

21 **+++ DIRECT EXAMINATION +++**

22 BY MS. RISTENPART:

23 **Q** Would you please state and spell your name for the
24 record?

25 **A** My name is Janeth Silva-Guzman. Janeth,

1 J-A-N-E-T-H; Silva, S-I-L-V-A, hyphenated with Guzman,
2 G-U-Z-M-A-N.

3 Q Do you know Mr. Richard Silva?

4 A Yes, I do.

5 Q How do you know him?

6 A He's my younger brother. I am the third in the
7 family and he is the fourth child.

8 Q Are you close in age to each other?

9 A Yes. I am two years older.

10 Q Janeth, describe to the jury growing up with
11 Richard, how it was as a child.

12 A Absolutely. Growing up, as we were kids, I want
13 to say he was the kind --

14 THE COURT: Hold on. Hold on.

15 This may be the first time I ask someone to back
16 away from the microphone a little bit.

17 THE WITNESS: Yes, your Honor.

18 THE COURT: Find that sweet balance, please.

19 THE WITNESS: Is this perfect?

20 THE COURT: No. Maybe another -- there. Right
21 there is perfect. Thank you.

22 THE WITNESS: I am loud.

23 Growing up as kids, I was the kind of kid who was
24 very outgoing, loud, and at times didn't really have much

1 to do so I tried to find trouble. Willow was there to be
2 like, "Janet, calm down. What are you doing?"

3 I'm like, "Well, I want to play. I want to go do
4 this."

5 He'd be like, "Well, why don't you just draw
6 something?"

7 I'm like, "Okay."

8 So any time I want to argue with someone within
9 the family, he'd be the one saying, "Janeth, what is
10 going on?" He'd be the peace calmer. He'd find a
11 perfect balance where, you know, I put myself in other's
12 shoes and be like, "All right, I do need to calm down."

13 I remember we were kids, I think he was like four
14 or five years old, and he and my younger sister are close
15 in age, approximately, I want to say, 10, 11 months, and
16 there was this story where I remember he came home
17 starving. And we were like, "You were in kindergarten,
18 mom packed you a sandwich," and so he and my younger
19 sister, Irma had lunch together. And I guess there was a
20 kid across from where they sat who sneezed and mucous
21 came out and went into her sandwich, so Willow gave my
22 younger sister his sandwich so that she could eat and
23 came home hungry. So I thought, you know, when this kind
24 of arises when you're young, you keep it with you as you

1 grow.

2 In fact, he was so intelligent that Perla and I
3 and Willow went to TMCC together. We all were admitted
4 for good GPA and excellent conduct. And Perla and I
5 studied so hard that summer that we were like, we're
6 going to get higher than 101 English, higher than 101
7 math. Willow refused to study because he wanted to work
8 in construction.

9 So during that summer, so that my parents could
10 save money to afford our books and not have to pay for
11 his books, and that summer I said, "Gosh, I hope Willow
12 passes because you and I studied." Perla and I tested
13 into 101, which we wanted to exceed that, we wanted to
14 get into higher classes. Here's Willow, without studying
15 a book, testing into calculus. And we looked at each
16 other, like, "What? He didn't open a book through the
17 summer."

18 BY MS. RISTENPART:

19 Q How old was he when he decided to get into
20 construction to pay for his own books?

21 A Willow started working construction when he was
22 like 13 or 14 years old. He worked during the summer,
23 during weekends. We knew we were a lot of kids and we
24 all wanted to go to school, so the males -- which was

1 Bernard and Willow -- they worked super hard during the
2 summer to go with my father and my uncles in construction
3 to make money so that they could afford their own books,
4 their own clothing so that my parents would just have to
5 worry about the females.

6 Q Were you there during the time when Richard was
7 enlisting in the military?

8 A I was.

9 Q Could you describe that and what happened?

10 A I'm very proud of him. We both had a dream to
11 enlist in the Army and he beat me to it, to enlist. And
12 he tested almost a 100 score, which everyone was
13 impressed. How can -- you know, how can he be so
14 intelligent? No one tests that high. And I went -- I
15 was so happy that he was going to live that dream, to
16 continue to go but, unfortunately, in the military the
17 legal status of the family affects what secrecy you get
18 into, so the position he was offered was changed due to
19 he needed citizenship instead of residency for close
20 immediate family, so he ended up not going.

21 Q To clarify, because some of your family members
22 were residents at the time, lawful residents, he was not
23 able to pursue that position that he was offered?

24 A Yes, that's correct.

1 I would say that my kids have missed him very
2 much, because let me tell you that I'm not into
3 electronics. I'm kind of that old person who loves to
4 read and doesn't watch TV, and my kids love Willow very
5 much. He's the uncle to go to. As Willow walked through
6 the doors, they were like, "Willow is here," and kids
7 running to jump into his arms for him to hold them.
8 Because they knew that when Willow was there, things that
9 they wanted had a chance of being met.

10 For example, he bought my kids a Play Station
11 which I refused to buy, to spend \$300, \$400 on a device
12 that wasn't going to give them any intelligence. Willow
13 talked to me and said, "Hey, why not? Use that in your
14 favor. Don't let them play until they do their
15 homework."

16 I said, "No. They'll play when I'm not around.
17 They'll cheat the system."

18 And he saved up money that summer for my kids, for
19 my sister's kids, for my brother's kids, to buy each one
20 a Play Station. And until this day, every time they see
21 their Play Station, they're like, "Mom, where is Willow?
22 When can we play with him?" He would do matches with
23 them -- with the kids as he walks through the door. Kids
24 want pizza, "I have money, let's buy pizza." He's that

1 uncle that brings the joy to the house, that brings that
2 positivity and motivation that inspires them to go beyond
3 what they feel they can do.

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

5 THE COURT: To the State.

6 MR. LEE: No questions.

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

8 MS. RISTENPART: Luis Cruz.

9 (Witness sworn.)

10

11

LUIS CRUZ

12

13

called as a witness on behalf of the Defendant,
having been duly sworn, testified as follows:

14

15

16

+++ DIRECT EXAMINATION +++

17

BY MS. RISTENPART:

18

Q Mr. Cruz, would you please state and spell your

19

name for the record?

20

A Luis Cruz. L-U-I-S; last name, C-R-U-Z.

21

Q Do you know Mr. Richard Silva?

22

A I do.

23

Q How do you know him?

24

A Well, it's actually in accordance to his

1 interview. I was one of the managers at Wells Fargo that
2 held the interview for him. And then we became friends
3 after that so I've known him about eight -- about eight
4 or nine years.

5 **Q** Was that the interview that we heard Nancy speak
6 about where he showed up in tennis shoes?

7 **A** Yes. And she forgot that he wore a clip-on tie as
8 well.

9 **Q** So you were a manager at Wells Fargo, ultimately
10 you hired Mr. Silva?

11 **A** Yes.

12 **Q** And how long did he work with you -- how long were
13 you guys colleagues for?

14 **A** I was his manager for about a year-and-a-half, and
15 then he had aspirations to -- at the time he was a
16 teller. Then he had aspirations to grow and further his
17 career, so he wanted me to help him become a banker. So
18 I spent some time with him. I knew exactly what his
19 skills were, and he interviewed on his own and so he
20 became a banker in 2015.

21 **Q** How would you describe Richard in the work
22 environment as a colleague?

23 **A** He was definitely with his -- with his clip-on tie
24 and his shoes, I thought, "Oh, my gosh, what is" -- you

1 know, "is he really ready for this environment?" Well,
2 on that follow-up interview, he actually wore dress
3 shoes, his pants were pressed, and his -- he had an
4 actual tie that he tied on.

5 But he actually became a stand-out. He always
6 balanced. He helped -- he helped a lot of clients in our
7 community with -- he always wanted to do the right thing.
8 And at that time Wells Fargo had a very bad rep as far as
9 having pressure on sales, and something that I admired
10 about him was he always thought about the customer. And
11 if the checking account and if the credit card didn't
12 make sense for the customer, he would tell them, "Not at
13 this time." So he always upheld ethics and honesty in an
14 environment where there wasn't a lot of that. So he
15 really stood out to me.

16 **Q** How was Richard's demeanor with clientele or
17 customers who were not happy being at the bank or for
18 some reason?

19 **A** Well, they always -- they always came back as his
20 friend. As his manager, he would tell me, "Well, they
21 weren't really happy," and they would come back with a
22 gift for him or they would come to me and say, "Are you
23 his manager?"

24 I would say, "Yes, I am," and a lot of times they

1 would compliment on how he would always do the right
2 thing.

3 Q Was Richard also ever called in to, like, calm
4 down a situation?

5 A Yeah. I actually had to ask him a few times to
6 help me out. There was -- in that industry, you're
7 dealing with money and so there's a lot of high tension
8 and, you know, overdraft accounts and stuff like that.
9 But I would definitely lean on him because of his
10 demeanor and how well he knew people, and so he would --
11 he would actually calm me down.

12 There was a few times where I would get upset and
13 he would say, "It's okay. Just let it go."

14 Q How long did Richard work at Wells Fargo?

15 A I believe it was four years, I believe, and then
16 he went to work at the DMV.

17 Q The reason he left was to go work at DMV --

18 A That's correct, yes.

19 Q -- is that right?

20 A Uh-huh.

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

22 THE COURT: To the State?

23 / / / /

24 / / / /

+++ CROSS-EXAMINATION +++

BY MR. LEE:

Q Mr. Cruz, is it?

A Yes.

Q Were you his boss at the Northtowne Wells Fargo?

A I was, yes.

Q Was he permitted to wear a firearm during work?

A Absolutely, no. It is not allowed.

Q Would it surprise you if he was wearing one during some time of his employment?

A It would surprise me, yes.

Q Were you there when officers with the Sparks Police Department in 2016 arrested Mr. Silva for a firearms charge?

A No.

MR. LEE: That's all I have.

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

MS. RISTENPART: With that, your Honor, I'd pass.

THE COURT: Let's all stand, ladies and gentlemen. To the State.

MR. LEE: First call Lieutenant Chris Rowe.

(Witness sworn.)

THE COURT: Ladies and gentlemen of the jury, I've

1 thought of something. It does not relate to this witness
2 at all, but I need to invite you to the jury deliberation
3 room. This -- today is different than last week but each
4 time you leave the courtroom, you will not discuss the
5 penalty until all witnesses and arguments are presented
6 to you. Please do not form or express any opinion about
7 penalty until the time of deliberations.

8 We'll stand for our jury. Ten minutes.

9 (At 12:00 p.m., jury exited courtroom.)

10 THE COURT: During the guilt phase of trial, the
11 court must canvass the defendant on the record about his
12 right to remain silent and his voluntary choice to remain
13 silent. In the cases that I read this morning, there was
14 one in which the defendant alleged error because he was
15 denied the right to be heard at his sentencing. I didn't
16 want to do it in front of the jury but I think it's
17 appropriate just to confirm.

18 Mr. Silva, have you had an opportunity to discuss
19 this sentencing proceeding with your attorney?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that you have the
22 right to address the jury, present any information in
23 mitigation of punishment before they pronounce sentence?

24 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand that?

2 THE DEFENDANT: (No audible response.)

3 THE COURT: Is it your desire not to speak to the
4 jury?

5 THE DEFENDANT: That's correct, sir.

6 THE COURT: Thank you. I appreciate that.

7 And the jury is out, so let's take the remaining
8 seven minutes and then we'll reconvene.

9 MS. RISTENPART: Thank you, your Honor.

10 (Recess taken.)

11 THE COURT: The jury, please.

12 (At 12:11 p.m., the jury entered courtroom.)

13 THE COURT: To the State.

14

15 **CHRIS ROWE**

16

17 called as a witness on behalf of the State,
18 having been duly sworn, testified as follows:

19

20 **+++ DIRECT EXAMINATION +++**

21 **BY MR. LEE:**

22 **Q** Thank you, sir. Could you please give us your
23 first and last name? And spell your last name for us.

24 **A** My name is Chris Rowe; R-O-W-E.

Q What do you do for a living?

1 **A** I work for the Sparks Police Department.

2 **Q** In what capacity?

3 **A** I'm currently a lieutenant.

4 **Q** And how long have you been a police officer?

5 **A** For 15 years.

6 **Q** Back in 2016, did you have a different assignment?

7 **A** I did.

8 **Q** What was it?

9 **A** I was assigned to the Detective Division as an
10 investigator.

11 **Q** Were you involved in an investigation of a Sparks
12 Police Department Case No. 16-1723?

13 **A** Yes.

14 **Q** Was that involving an incident on February 28,
15 2016, at a nightclub at 1825 Prater Way?

16 **A** Yes.

17 **Q** Do you remember the name of that nightclub?

18 **A** Aquitas.

19 **Q** You didn't respond initially; correct?

20 **A** That's correct.

21 **Q** But later you were assigned to the case?

22 **A** Yes.

23 **Q** If you could, just explain to us what the nature
24 of the call was. What had happened at that nightclub?

1 **A** At about 1:00 in the morning, patrol officers
2 responded to the nightclub on a report of a fight that
3 happened out in the parking lot where shots had been
4 fired.

5 **Q** At the scene, were casings located?

6 **A** Yes.

7 **Q** And then how did you -- sorry. Did you eventually
8 come into contact with Richard Silva?

9 **A** I did.

10 **Q** Do you see him in the courtroom today?

11 **A** I do.

12 **Q** Please identify him for us.

13 **A** He's seated there with the white shirt with the
14 tie on.

15 **Q** Thank you.

16 MR. LEE: Your Honor, may the record reflect that
17 identification?

18 THE COURT: Yes.

19 BY MR. LEE:

20 **Q** In fact, you interviewed Mr. Silva; correct?

21 **A** I did.

22 **Q** As part of that case, were you -- were you under
23 the understanding -- excuse me -- that there was an
24 individual named Bernard involved in a fight?

1 **A** Yes.

2 **Q** And he had a younger brother?

3 **A** Yes.

4 **Q** Was that brother Mr. Silva?

5 **A** It was.

6 **Q** So in your investigation, what did you find out as
7 to how a gun was used?

8 **A** Excuse me. The investigation revealed that after
9 the fight had occurred, Mr. Silva retrieved a firearm
10 from his car and fired two rounds prior to leaving the
11 scene.

12 **Q** Was there any information or evidence to you that
13 his life was in danger?

14 MS. RISTENPART: Objection; speculation.

15 THE COURT: Overruled.

16 THE WITNESS: No.

17 BY MR. LEE:

18 **Q** Was it told to you what kind of car the two
19 brothers had left in?

20 **A** Yes.

21 **Q** What was that?

22 **A** I believe it was a dark blue Lexus.

23 **Q** You interviewed Mr. Silva on March 2nd of 2016;
24 right?

1 **A** That's correct.

2 **Q** Was that at his place of work at the Wells Fargo?

3 **A** Yes.

4 **Q** Was he wearing a firearm that day?

5 **A** He was.

6 **Q** Where was it at?

7 **A** He had it concealed on him while at work at Wells
8 Fargo.

9 **Q** Now, was it your understanding later on that you
10 learned that he had an actual permit to carry a gun
11 concealed?

12 **A** Yes.

13 **Q** To get a concealed weapon permit, is there
14 training that goes on?

15 **A** Yes. I believe you have to attend a certified
16 course and pass that course to receive the certification.

17 **Q** You actually talked to Mr. Silva about that as
18 well; right?

19 **A** I did.

20 **Q** Including asking if a person should call the
21 police after an incident involving the gun?

22 **A** Yes.

23 **Q** What did he say to that?

24 **A** He said that he didn't shoot at anyone, that they

1 didn't want to press charges on anyone, so he didn't need
2 to call the police.

3 Q When he said "they" didn't want to press charges,
4 meaning him and Bernard?

5 A That's how I understood it, yes.

6 Q Was it your understanding that these shots were
7 fired into the ground?

8 A Yes.

9 Q How about, was it in the middle of the fight that
10 the shots were fired? Or what was your understanding
11 from your investigation?

12 A The investigation revealed that the shots were
13 fired after the fight concluded.

14 Q Also, as part of the training with the CCW, in
15 that line of questioning to him did you ask him what is
16 he supposed to do if he perceives a threat, how he is
17 supposed to shoot?

18 A *In the head. Shoot them in the head.*

19 Q Lieutenant, I'm showing you first Exhibit 154.
20 Did you ever see or know about the casings that were
21 found?

22 A I did not see them but I read about them.

23 Q Here there was two spent casings; is that right?

24 A Yes.

1 **Q** What were the ones that appear to be unspent?

2 **A** They're unfired casings or bullets.

3 **Q** Those were found at the scene as well?

4 **A** That's what I understand, yes.

5 **Q** Exhibit 155, you had mentioned -- we just talked
6 about a concealed weapon permit. You had interviewed Mr.
7 Silva on March 2nd of 2016; correct?

8 **A** The first interview, yes, sir.

9 **Q** Then interviewed him again on March 4th?

10 **A** Yes.

11 **Q** After that interview, was he arrested?

12 **A** He was.

13 **Q** Was that for a gross misdemeanor charge of
14 discharging a firearm where persons might be endangered?

15 **A** It was.

16 **Q** Now, this is a letter from the sheriff's office;
17 correct?

18 **A** Yes.

19 **Q** And does this also give notice, based on this
20 middle paragraph that I'm circling, that his concealed
21 weapons permit is revoked?

22 **A** It does.

23 **Q** And does it appear to be based on the arrest by
24 the Sparks Police Department based on your case?

1 **A** Yes.

2 **Q** Then showing you -- excuse me -- part of
3 Exhibit 156, were you aware that ultimately he pled
4 guilty -- Mr. Silva pled guilty to drawing a deadly
5 weapon in a threatening manner, a misdemeanor crime, out
6 of the Sparks Justice Court?

7 **A** Yes.

8 **Q** Are you aware he finished his probationary period
9 just fine and everything?

10 **A** I did not know that.

11 **Q** Lieutenant, thank you so much. That's all the
12 questions I have?

13 THE COURT: To the defense.

14 MS. RISTENPART: Thank you.

15

16 **+++ CROSS-EXAMINATION +++**

17 BY MS. RISTENPART:

18 **Q** Detective, with regard to that statement, *Shoot*
19 *them in the head*, that is part of a larger statement that
20 Mr. Silva told you when you were interviewing him;
21 correct?

22 **A** That's correct.

23 **Q** In fact, you were talking to him about his CCW or
24 carrying a concealed weapon permit; right?

1 **A** Yes.

2 **Q** And you asked him, "Well, what do they teach in
3 the CCW class"; right?

4 **A** Yes.

5 **Q** His response was that:

6 If your life is in danger or immediate
7 danger, to like shoot them in the head or
8 something.

9 That was the actual statement; right?

10 **A** I don't remember specifically if that's what was
11 said, you know, the *or something* part. But, yes, that
12 was part of the context of the conversation.

13 **Q** As part of your conversation, you reviewed video
14 surveillance of the parking lot; right?

15 **A** I believe I did.

16 **Q** You never reviewed the video surveillance of what
17 occurred inside prior to what occurred outside in the
18 parking lot; did you?

19 **A** I don't know if I did or not.

20 **Q** Now, through your investigation, Mr. Silva told
21 you that he did fire his firearm; correct?

22 **A** Yes.

23 **Q** And he told you that he aimed at the ground when
24 he fired; right?

1 **A** Yes.

2 **Q** And he aimed, after firing at the ground, because
3 there were people who were attacking his brother,
4 Bernard; correct?

5 **A** That's what he alleged.

6 **Q** And also that they were being chased?

7 **A** That's what he alleged, yes.

8 **Q** And also you photographed injuries to Mr. Richard
9 Silva's back; didn't you?

10 **A** I did.

11 **Q** And throughout your investigation, you never
12 actually even interviewed the security officers from that
13 club; did you?

14 **A** I interviewed employees from that club, yes.

15 **Q** You never checked their tasers to see if they had
16 been discharged?

17 **A** No.

18 **Q** But Mr. Richard Silva did have injuries to his
19 back?

20 **A** He had an injury to his back, yes.

21 **Q** And are you aware that after Mr. Silva
22 successfully completed his sentence for the misdemeanor
23 that he pled to, which was just to take a CCW class
24 again, that he was then reinstated with the proper permit

1 for carrying a concealed weapon?

2 **A** No.

3 MS. RISTENPART: No further questions.

4 MR. LEE: No questions.

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

6 THE WITNESS: Thank you.

7 THE COURT: Go ahead, please.

8 MR. LEE: The next witness will be Detective Reed
9 Thomas.

10 THE COURT: Be seated, please.

11 To the State.

12 MR. LEE: Thank you.

13

14 **REED THOMAS**

15

16 called as a witness on behalf of the State,
17 having been duly sworn, testified as follows:

18

19 **+++ DIRECT EXAMINATION +++**

20 BY MR. LEE:

21 **Q** Detective Thomas, for this proceeding I just have
22 a few extra questions beyond what we talked about last
23 week. Okay?

24 **A** Okay.

1 **Q** You were the lead detective on this case, along
2 with Detective Kazmar; correct?

3 **A** Yes.

4 **Q** Were you aware of an additional plan involving
5 Arturo Manzo?

6 **A** Yes.

7 **Q** Between Mr. Richard Silva and Yiovannie Guzman?

8 **A** Yes.

9 **Q** What was that plan?

10 **A** It was a discussion that they apparently had that
11 Yiovannie stated with his interview with Detective
12 Jenkins to where if Manzo came out of the apartment or
13 was in the car or was otherwise present, that they would
14 take him out as well.

15 **Q** Does that match up with any portion of the
16 conversation between Mr. Richard Silva and Bernard?

17 **A** Yes.

18 **Q** What part, do you recall?

19 **A** That part, that they talked about taking him out
20 as well.

21 **Q** Is that the part where he said I didn't want to
22 kill her, I wanted to kill the dude?

23 **A** Yes, I believe that's what was said.

24 **Q** As part of your investigation, is it of importance

1 to you what Mr. Silva does after the murder?

2 A Sure.

3 Q So what kind of stuff did you guys look into?

4 A Where he went, you know, immediately following.
5 Obviously we would have been looking for a weapon that
6 was used in the murder. So he may go somewhere that, you
7 know, to get a weapon of that type of thing, just a host
8 of things that we would look for.

9 Q You're familiar with the telephone call from Mr.
10 Silva, the first one he made after his arrest, to his
11 family?

12 A Yes, I believe he spoke to his mother.

13 Q Do you recall also the part where he spoke to
14 Bernard?

15 A Yes.

16 Q Do you recall the portion where it's stated that
17 Mr. Silva said, "Just make sure you take everything to
18 Oscar."

19 And the response from Bernard, "Oh, yeah. Yeah,
20 it's done. It's in another place. Don't worry about it.
21 He came and I already put everything where it belongs"?

22 A Yes.

23 Q That day after committing the murder at
24 approximately 4:48 a.m., where did Mr. -- did Mr. Silva

1 have work that day?

2 A He did.

3 Q Did he go to work?

4 A He did.

5 Q Did you actually obtain video of him at the DMV?

6 A We did.

7 Q Anything unusual about how he acted at work?

8 A No.

9 Q Business as usual?

10 A Appeared to be.

11 Q How about at 5:06 a.m., 18 minutes following
12 Lucy's murder, was there any activity on Mr. Silva's
13 phone?

14 A There was.

15 Q What was that activity?

16 A He was --

17 MS. RISTENPART: Objection; speculation.

18 THE COURT: Overruled.

19 THE WITNESS: He was searching porn sites on the
20 web.

21 BY MR. LEE:

22 Q Detective, Exhibit 158, is it your understanding
23 that is the download from Mr. Detective Watson on
24 Mr. Silva's phone?

1 **A** Yeah, this looks like the first page of an
2 extraction report which shows a lot of technical
3 information as far as the phone number, serial number,
4 and that type of thing.

5 **Q** Okay. Including an Apple ID of
6 richardsilvaguzman@gmail.com?

7 **A** Yes.

8 **Q** Including a phone number of 771-7590, that being
9 Mr. Silva's as well?

10 **A** That's correct.

11 **Q** Looking at page two, in a narrowed search of web
12 history just for times immediately after the murder, does
13 this show what Mr. Silva had been looking at on his
14 phone?

15 MS. RISTENPART: Objection; speculation again as
16 to who was searching.

17 THE COURT: It's overruled.

18 THE WITNESS: Searching for, again, porn websites.

19 BY MR. LEE:

20 **Q** So on the left would be the Snapchat foreign
21 videos?

22 **A** Yes. Pornhub.com.

23 **Q** And then on the right -- towards the right it
24 shows a date of 11/2 at 5:06 a.m.?

1 **A** Yes, it does.

2 **Q** Is that approximately 18 to 20 minutes after the
3 murder?

4 **A** Yes.

5 **Q** Detective, did Lucy have children?

6 **A** Yes.

7 **Q** Do you recall their names?

8 **A** Fernando, Disani and Ruby.

9 **Q** Fernando was her child alone, not with Bernard;
10 correct?

11 **A** Yes. Bernard was not the biological father.

12 **Q** Was he the oldest of the three children?

13 **A** Yes, Fernando was.

14 **Q** And then Dasaniy was next?

15 **A** Yes.

16 **Q** And that was with Bernard?

17 **A** Yes.

18 **Q** And then Ruby was the little one?

19 **A** The youngest, yes.

20 **Q** And also with Bernard?

21 **A** Yes.

22 **Q** Do you know who has custody of those children now?

23 **A** Currently?

24 **Q** Yes.

1 **A** Bernard.

2 **Q** Was there another fact about Lucy that until now
3 we don't know about?

4 Let me ask in a different way.

5 There was a fact that came out about Lucy as part
6 of the investigation; correct?

7 **A** Yes.

8 **Q** And it was a fact that it was never known that
9 Mr. Silva knew this fact; correct?

10 **A** Yes.

11 **Q** Meaning, the investigation never revealed that
12 Mr. Silva would have known about this; right?

13 **A** Yes.

14 **Q** What was that fact about Lucy?

15 **A** Lucy was pregnant.

16 **Q** During the time of her murder?

17 **A** Yes.

18 **Q** How far along?

19 **A** The Medical Examiner's office reported
20 approximately six to eight weeks.

21 **Q** What kind of baby?

22 **A** Its gender was female.

23 **Q** Who was the father?

24 **A** Arturo Manzo.

1 **Q** Based on tests from the Crime Lab?

2 **A** Yes.

3 **Q** Thank you. That's all I have.

4 THE COURT: To the defense.

5

6 **+++ CROSS-EXAMINATION +++**

7 BY MS. RISTENPART:

8 **Q** To be a little clear, Detective, through your
9 investigation, there was not any evidence that Richard
10 Silva knew about Lucy's current pregnancy or pregnant
11 state; correct?

12 **A** Not as far as I know, that's correct.

13 **Q** There was no evidence throughout your
14 investigation that Bernard Silva knew about the pregnancy
15 or the current state of pregnancy?

16 **A** Not as far as I know, that's correct.

17 **Q** Yiovannie also went to work the next day on
18 November 2nd; didn't he?

19 **A** I believe so.

20 **Q** In regards to these phone records, you don't know
21 who was actually searching at 5:06 a.m.; do you?

22 **A** Do I know whose hand the phone was in? No, I
23 don't know that.

24 **Q** And in your investigation, there were no cell

1 tower pings from Richard's phone anywhere near the site
2 of Lucy's killing; correct?

3 A Yes. That's not surprising.

4 Q Because you had information from Yiovannie that
5 Bernard had told them to leave their phones at home, or
6 something like that?

7 A Correct.

8 Q And that recorded phone conversation that you just
9 spoke about with the State between Mr. Bernard Silva and
10 Mr. Richard Silva, there was more to that conversation
11 that was disclosed at trial; wasn't there?

12 A I believe so, yes.

13 Q And, in fact, in that recorded conversation,
14 Mr. Bernard Silva stated, "I am the guilty one"; right?

15 A Yes.

16 Q And stated that it was all because of him; right?

17 A I believe he said that, yes.

18 MS. RISTENPART: No further questions.

19 THE COURT: To the State.

20 MR. LEE: No questions.

21 THE COURT: Thank you. You're free to step down.
22 Your next witness.

23 MR. LEE: Could I have a brief moment, your Honor?

24 Your Honor, for our next witness, we have an

1 impact statement to offer. We'd ask that it be read by
2 Gigi Sefchick in the District Attorney's Office in her
3 role as a victim advocate.

4 THE COURT: Yes.

5 (Witness sworn.)

6
7 **GENEVIEVE SEFCHICK**

8
9 called as a witness on behalf of the State,
10 having been duly sworn to read the victim
11 impact statement and testified as follows:

12 **+++ DIRECT EXAMINATION +++**

13 BY MR. LEE:

14 **Q** Could you please state your first and last name,
15 and spell that for the record?

16 **A** Yes. It's Genevieve Sefchick; G-E-N-E-V-I-E-V-E,
17 S-E-F-C-H-I-C-K.

18 **Q** Ms. Sefchick, how are you employed?

19 **A** I'm a victim advocate at the Washoe County
20 District Attorney's Office.

21 **Q** What does that role entail?

22 **A** Just assist victims throughout the process with
23 any expenses or counseling, or court accompaniment, among
24 other things.

1 **Q** Now, in this matter, have you been working with
2 Roxanda?

3 **A** Yes, I have.

4 **Q** How is Roxanda related to Lucy?

5 **A** She's Lucy's mother.

6 **Q** Is Roxanda here today?

7 **A** Yes, she is.

8 **Q** Has Roxanda asked you to read a statement for her?

9 **A** Yes, she has.

10 **Q** And is this a statement that Roxanda prepared?

11 **A** Yes, she did.

12 **Q** Ms. Sefchick, go ahead and read that for the jury.

13 **A** Yes.

14 Lucy was nice, playful, intelligent,
15 and a charitable girl. She was always
16 looking out for me. She would call me
17 two or three times a day. Every day was
18 like a party to her. When she would come
19 home, she would always play music and
20 make me laugh. And she would always ask
21 for her favorite foods.

22 My girl with her red boots and braids.
23 She loved to dance when she was little.
24 I cannot understand how this tragedy

1 could have happened. Why turn out the
2 light that wanted to shine with its own
3 light? Someone with dreams who wished to
4 better herself? Someone who wanted to
5 change to provide a better future for her
6 children? I don't know how it all went
7 wrong.

8 With my heart broken, broken in
9 6,000 pieces, I could not understand the
10 meaning of forgiveness because I asked
11 God, "How can I go on?" And he responded
12 by telling me, "Do not fear, do not
13 falter. I will help you."

14 I looked around and I saw my family
15 destroyed, and my young grandkids. And
16 every hug, every kiss have been the glue
17 that has helped me piece my heart
18 together as a puzzle.

19 I ask myself, "How could they find the
20 courage of doing so much evil while
21 hiding under a mask of good and innocent
22 people? I can imagine the suffering of
23 these young men's mothers, the pain it
24 must cause them to see their children as

1 the accused. But they have a privilege
2 that I as a mother do not have, to be
3 able to hug my daughter, call her. But
4 they will be able to hear their voices,
5 see them through a window, or on a video
6 conference.

7 And I, where can I go? I don't even
8 have a place where I can go cry to her.
9 Not even her ashes that were kept by
10 them. The only thing I have is a memory
11 of that last beautiful hug she gave me
12 the last night. A hug that was different
13 from the other hugs, so hard that I
14 couldn't hold up and we ended up tumbling
15 on the bed.

16 And she asked me to forgive her for
17 everything, for all the good and bad that
18 she had done, but that she only wanted to
19 be happy. A little bit of happiness and
20 peace.

21 She said, "I only want to be respected,
22 valued. And no matter what happens,
23 please look after my children."

24 And I asked her, "What is going on?"

1 What was going on?"

2 And she said, "I'm going to fight hard
3 to get ahead. I have made mistakes but
4 I'm going to succeed for my children, who
5 I love the most." And she repeated,
6 "Forgive me. Help me."

7 And I told her, "Together we will get
8 ahead."

9 And she told me, "I love you a lot and
10 don't ever forget it."

11 And now, where can I look for her? And
12 where can I find her to hear her voice?
13 See her smile? To ever feel that hug
14 again? Where?

15 From deep down in my being, I tell you
16 young men that I forgive them in my
17 heart, that I hold no resentment towards
18 them, and I keep them in my prayers so
19 that they can repent from their hearts
20 and may God take care of them.

21 **Q** Ms. Sefchick, with working with Roxanda, were you
22 able to provide photographs as well of Lucy?

23 **A** Yes, she did.

24 **Q** Would you be able to walk us through some of

1 these?

2 A Yes.

3 Q Exhibit 153?

4 A This is a picture of Lucy when she was a child.

5 Q Taken in, looks like, year 2000; right?

6 A Yes.

7 Q Exhibit 152?

8 A This is a picture of Lucy with her sister, Leslie.

9 Q She had a couple of sisters?

10 A Yes.

11 Q Leslie is a younger sister?

12 A Yes. Then there's Laura.

13 Q Is Laura also a younger sister, or older?

14 A She's also younger.

15 Q Exhibit 151, who is this that Lucy is with?

16 A This is Lucy with Ruby, her youngest.

17 Q Exhibit 150?

18 A This is Lucy with Dasaniy, her second.

19 Q And Exhibit 145?

20 A This is a picture of the whole family. It's her
21 brother, who passed away a year before she did.

22 Q That's who is in the back?

23 A He's in the back holding the puppy. Then mom in
24 red standing next to her. Then Lucy is in the middle.

1 Laura is to her right. Lizzy to her left. Her son,
2 Fernando, is the only boy in the bottom. Then her niece,
3 Emily, is in the middle. And then her daughter, Dasaniy,
4 at the end. Ruby is not in the picture. She hadn't been
5 born yet.

6 Q Then you've already provided us a couple of
7 pictures looking like selfies; is that right --

8 A Yes.

9 Q -- of Lucy?
10 Exhibit 149?

11 A Yes.

12 Q Exhibit 148. Exhibit 147. And, lastly, 146.
13 Those are all Lucy as well?

14 A Yes.

15 Q Ms. Sefchick, thank you very much. That's all I
16 have.

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

18 MR. LEE: Thank you, your Honor. That's all.

19 THE COURT: All right. Counsel, are you ready to
20 move right to arguments, or do you want a few minutes?

21 MS. RISTENPART: I'd ask for a few minutes, your
22 Honor.

23 THE COURT: Ladies and gentlemen, during this
24 recess, please do not discuss this case. Please do not

1 form or express opinions about the matter until submitted
2 to you.

3 We'll be in recess for 20 minutes. We'll see you
4 at 1 o'clock.

5 Stand for our jury.

6 (At 12:40 p.m., jury exited courtroom.)

7 MS. RISTENPART: Your Honor, outside the presence?

8 THE COURT: Yes. Everyone be seated, please.

9 MS. RISTENPART: Your Honor, first I'd like to
10 preface this. I may need to apologize to the court. I
11 have pictures of Richard when he was younger that didn't
12 get into my argument PowerPoint, and also some honor roll
13 certificates and when he enlisted in the Army.

14 Based upon if this was a sentencing, normally we
15 don't do this kind of formality of putting it in evidence
16 that way, so I'd be asking the State -- I do have a
17 printout of my PowerPoint, if the State wants to
18 stipulate or if he's objecting to things, I can take it
19 out ahead of time, or we call the witness back in and --

20 MR. LEE: I'm not going to object to any photos or
21 things like that of that nature. I think that's fair
22 game here.

23 MS. RISTENPART: Thank you, your Honor.

24 THE COURT: Okay. One o'clock.

1 (Recess taken.)

2 THE COURT: Be seated please, the jury and the
3 public.

4 (At 1:00 p.m., jury entered courtroom.)

5 THE COURT: Please be seated.

6 To the defense.

7 MS. RISTENPART: Thank you, your Honor.

8 Ladies and gentlemen, Mr. Silva and I respect the
9 fact that you found him guilty of first degree murder.
10 We don't know how you decided it. Obviously, there's
11 some theories. We don't know if you thought that he was
12 the shooter. We don't know if you thought he was part of
13 the conspiracy or someone else actually did the shooting.
14 We don't know if you thought he aided and abetted
15 sometime in this.

16 The reason I bring that up is because I don't know
17 where you're coming from as we go into this penalty
18 phase, because what we're asking today and what the court
19 is instructing you pursuant to Instruction No. 8 is to
20 decide between three choices. The first being for life
21 without the possibility of parole --

22 Deputy, could we get some water?

23 THE COURT: Thank you.

24 MS. RISTENPART: Thank you.

1 -- for life without the possibility of parole or
2 for life with the possibility of parole only after
3 20 years have been served, at least, or for a definitive
4 term of 50 years as long as at least 20 years has been
5 served before someone can be considered for parole.

6 Now, what does this actually really mean? We're
7 throwing out numbers and legal terminology. Life without
8 the possibility of parole means that he will die in
9 prison. He will never be released, never be granted
10 parole, and that he will stay for the remainder of his
11 entire life in prison. We call this sometimes the other
12 death penalty, because even though you're not issuing
13 that, that's not an issue here, the fact that Richard, if
14 you gave him life without the possibility of parole, will
15 die in prison.

16 The option of life without the possibility of --
17 life with the possibility of parole is that at some
18 point, which is discretionary, that after Richard serves
19 20 years, that at some point after that he could request
20 the consideration of parole or parole compliance. And
21 what that means is that he would be on parole supervision
22 for the rest of his life. He would have an officer that
23 he would have to check in with. He would always know
24 where Richard is. He would have conditions that he would

1 have to abide by. And that if there's any issue with
2 him, Richard, not complying with these conditions, they
3 could revoke his bail -- which I'll talk about --
4 meaning, take it away and put him back in prison. Again,
5 this 20 years, that's not a hard deadline, it's just
6 discretionary.

7 The third is for a definitive term of 20 years and
8 that he would be on parole for the remainder -- if he was
9 granted parole at 20 years or sometime after that, he
10 would be on parole supervision until at least 50 years
11 from today. The reality is, even with the 20-to-50 --
12 Richard today is 29 years old -- he will be 49 years old
13 before he's even considered for parole. He'll be 79 on a
14 20-to-50 before he's even considered to be on parole
15 supervision. Almost 80.

16 When we're talking about life with the possibility
17 of parole, as I talked about, this is discretionary.
18 What happens is that Richard would go before a parole
19 board, who is made up of officers and people from the
20 Division of Parole and Probation, who then would make the
21 decision as to whether Richard would be granted the
22 opportunity for parole. And they look at different
23 considerations when they're making that decision.
24 Whether there's a reasonable probability that Richard

1 will remain at liberty without violating the laws;
2 looking at the welfare of society, they take that into
3 consideration; the seriousness of the offense and the
4 history of the conduct of the prisoner. So they look at
5 all his prison records to see how he was while he was in
6 custody; and also, of course, any and all documents and
7 testimony submitted by the victim. They take that all
8 into consideration before they even make their decision
9 as to whether Richard would be worthy of parole in
10 20-plus years.

11 Also, you should know that parole is not always
12 granted. In fact, on average, most people who are
13 convicted of a first degree murder do not get their first
14 request for parole. If it's denied they have to wait
15 another three years before they can ask again.

16 MR. LEE: Judge, I'm going to ask that --

17 THE COURT: Sustained. Sustained.

18 MS. RISTENPART: In addition, a prisoner only has
19 an 18-percent chance of being granted parole.

20 MR. LEE: Objection.

21 THE COURT: It's sustained.

22 MR. LEE: I move to strike the content of this
23 line.

24 THE COURT: It is stricken.

1 MS. RISTENPART: And also, as you know, because
2 you found him guilty, there is a deadly weapon
3 enhancement, which you are not deciding punishment on,
4 but you do get to know that it's a possible 1-to-20 years
5 consecutive to the sentence that you sentence him today.
6 What that means is that, on average, 25 years before he's
7 even considered for parole, if he's even granted parole
8 in that first, he would still have to serve time on the
9 consecutive weapon enhancement before being considered
10 for parole on that, and then possibly parole supervision.

11 As we talked about, parole has numerous conditions
12 which the parolee must follow, and it can be revoked if
13 the parolee does not abide by conditions, meaning place
14 him back into prison. And it can be revoked for the rest
15 of Richard's sentence. So on a 20-to-50, if Richard
16 should happen to do anything that violated his parole and
17 he was revoked, he could be revoked for the remaining
18 30 years and spend the rest in prison.

19 Deputy, if we could get more water?

20 There was a study done by Stanford University that
21 followed 860 California murderers paroled after 1995 --

22 MR. LEE: Objection; speculative. Move to strike.

23 MS. RISTENPART: Your Honor?

24 THE COURT: Yes, you may be heard.

1 MS. RISTENPART: This is relevant because of the
2 argument as to danger to society.

3 THE COURT: I am seeing a screen that I have no
4 knowledge of, it contains information that cannot be
5 verified from the evidence in this case. The standard
6 for sentencing argument is different than the standard
7 for a guilt phase. I think that this slide shall be
8 presented as a form of argument and subject to the
9 State's argument in response. It is overruled.

10 MS. RISTENPART: And you just heard me say "danger
11 to society" because I fully anticipate that the State is
12 going to come up here and ask you to sentence Richard to
13 life without the possibility of parole and to point to
14 what they'll describe as his heinous actions, and also in
15 regards to his potential threat based upon some 2016
16 misdemeanor conviction that you heard what the punishment
17 was, take a CCW class. And Richard did comply with that,
18 he completed that sentence.

19 In the study, it showed that less than one percent
20 of the parolees who had been convicted of a murder went
21 on to commit another crime. Less than one percent. And
22 none of them, of course, committed another murder.

23 And you heard from numerous witnesses today -- and
24 this isn't to be, you know, feel bad for Richard or we

1 feel sorry for him -- again, I'm respecting your
2 decision -- but we want you to know more of Richard than
3 you got to see in trial. That's what those witnesses
4 presented to you. Because we're all asking you to make a
5 judgment based upon an instant in this young man's life,
6 however you decided, whether shooter, conspiracy, or
7 aiding and abetting. And this young man, who graduated
8 from Truckee Meadows gifted high school, this young man
9 who grew up with a loving and huge, devoted family, this
10 young man, who consistently was on honor roll at his
11 school -- and you heard the testimony that he's very
12 intelligent, very smart, outstanding -- and as he aged
13 and grew, his family and siblings, you heard from many of
14 them, you also heard how he participated. He was a good
15 student. As you can see, numerous completion
16 certificates of success. And pictures of him as he grew
17 up.

18 And you also saw and heard, as you can see from
19 the certificate, his outstanding accomplishments through
20 education, through the Latino community as seen in the
21 Certificate of Academic Achievement.

22 And also, as you heard, his enlistment in the
23 military which did not come to fruition because of the
24 residency -- lawful residency of some of his family

1 members.

2 This young man, who grew up to be the young man
3 sitting before you today, and we're asking you
4 essentially how much punishment is enough punishment.
5 Because 20 years isn't about rehabilitation, it's about
6 punishment, and we recognize that. But at some point,
7 does this young man, because of what happened here and,
8 as we talked about, the truth being so much more complex,
9 does that wipe out everything else he's done in his
10 entire life that you heard about? The family we spoke
11 about? Buying shoes for someone who couldn't afford it?
12 Buying the Play Stations for nieces and nephews? His
13 work? His colleagues?

14 And, of course, the State will come back up and
15 point to what they want you -- what they want you to harp
16 on and only look at to inflame your passion. That Luz
17 was pregnant at the time that she was killed. But
18 remember, as Detective Thomas said, there's zero
19 evidence, none, that Richard Silva knew that Luz was
20 pregnant at the time of her death. There's no evidence
21 that Bernard knew of Luz's pregnancy at the time of her
22 death.

23 And they'll point to and say, what kind of callous
24 killer is looking at pornography 18 minutes later on

1 their phone? What evidence do you really have, ladies
2 and gentlemen? You have that there was a porn search,
3 but you also have contradictory evidence that there was
4 no cell phone of Richard's that was used that night. We
5 don't really know who had the phone at the time.

6 And, of course, they'll point to, he just went to
7 work the next day, referring to Richard. And you also
8 have, of course, that Yiovannie went to work the next
9 day.

10 Yiovannie. Yiovannie Guzman, who hasn't really
11 been talked about today, but as you're well aware, the
12 State, despite that Yiovannie went to work the next day,
13 despite the fact that Yiovannie went to sleep, woke up
14 and continued to allegedly plan this conspiracy with
15 Richard, the State deemed him, that it was okay. That
16 they're going to give him some options, a sentence that
17 he could contain the possibility of probation. Not
18 parole. Parole is after prison. Probation. So he would
19 never have to see more time in jail or prison.

20 So why Yiovannie Guzman gets a pass and Richard
21 Silva is now going to be labeled heinous and atrocious
22 and not worthy of a chance at parole, if that should ever
23 be granted, is, frankly, nonsensical. And as you also
24 heard, there were statements that were not admitted at

1 trial and you heard Detective Reed talk about Bernard in
2 that telephone call, but you only heard less than a
3 minute that the State showed you of a 15-minute phone
4 call, where Bernard stated that he was the guilty one.

5 (Audio recording played.)

6 MS. RISTENPART: And of the translated statement
7 of the conversation between Bernard and Richard in that
8 interrogation room, if you remember, you only heard about
9 two minutes out of the full five.

10 (Audio recording played.)

11 MS. RISTENPART: And even today, when you heard
12 evidence in regards to that 2016 shooting, you heard
13 cherry-picked statements that the State wanted you to
14 focus on, *I'll shoot him in the head*, because I
15 anticipate him getting up saying that's exactly what
16 happened here with Luz. But upon cross-examination, you
17 heard the detective state quite clearly that was part of
18 the bigger conversation about the CCW, and that the
19 statement was, *If my life was in immediate danger, I was*
20 *taught to shoot at the head*, in the CCW course, not
21 making some statement that his intent was to shoot
22 someone in the head from 2016.

23 Ladies and gentlemen, when you go back to the jury
24 room to deliberate, you're going to have a stack of

1 letters from family members, colleagues, almost everyone
2 on the side of the courtroom who has been in support of
3 Richard since day one, which speaks volumes, ladies and
4 gentlemen. A lot of people don't stand by someone who is
5 accused of first degree murder. A lot of people won't
6 stand by someone when they're found guilty of that. Yet,
7 he has a courtroom full of people, people who wrote
8 letters, people who sat and took the stand and described
9 the Richard that they knew, the Richard that was not
10 displayed or shown through jury trial.

11 In some of those letters, like Harvey Guzman, his
12 aunts, *Richard Silva is my favorite nephew because he*
13 *always knew when I needed something and he was always*
14 *there to lend a helping hand.*

15 *Since Richard was a child, he not only would be*
16 *helpful but he enjoyed helping others.*

17 From Richard's nephew, Fernando, *Willow was the*
18 *one who would help me with homework and push me to be the*
19 *best I can in school.*

20 From Marsha Gantt, his co-worker at the DMV, *At*
21 *work, he was the main go-to person for angry customers.*
22 *He was able to talk to people and get them calmed down.*
23 *People felt really relaxed around him.*

24 From Irma, his sister, *Richard always brought the*

1 *positive energy.*

2 From his niece, Nayeli, *Believe it or not, you*
3 *were the one that gave me motivation to do good in school*
4 *and now my good grades remind me of the times that you*
5 *had helped "Little" Lopez and Fernando to do their*
6 *homework, which I always find funny.*

7 Little Lopez, *Sometimes I played soccer and no one*
8 *wanted to play because they were too busy, but I know you*
9 *were there. You were, too, but still made time for me.*

10 From Dasaniy, his niece, *Without him, my heart is*
11 *broken in small pieces. He and my family put my heart*
12 *together. Willow will always make my day with a smile,*
13 *and without him smiling makes me sad not seeing his*
14 *smiling every day.*

15 From his younger cousin Uriel Ramirez, *If it*
16 *wasn't for him always encouraging me to do good in*
17 *school, I wouldn't be in university right now pursuing a*
18 *degree in engineering.*

19 And his friend, Elisua Ramirez, *When we needed to*
20 *place to stay, he welcomed us with open arms. If we*
21 *needed things or money, we wouldn't hesitate to lend a*
22 *hand. When my husband got a job but didn't have a*
23 *vehicle, my cousin would take him to work every day.*

24 These are just some of the letters that you'll

1 have back in the jury room that I ask you to look at and
2 read because, again, we are asking you to judge Richard.
3 But how much time is enough for punishment. How much
4 time, sitting here looking at this young man, who will
5 serve at least the next 25 years in prison --

6 MR. LEE: Objection; that's not factual.

7 MS. RISTENPART: At least the 20 years, I'll
8 correct --

9 THE COURT: It is sustained.

10 MS. RISTENPART: At least the next 20 years before
11 being considered for parole, when Richard will be
12 49 years old, if not older. Followed by the consecutive
13 weapon enhancements, which you don't know what the
14 sentence will be, but it has to come after any grant for
15 parole, and only then at possibly 63 years old, possibly
16 a parole supervision. We're asking for you to consider
17 that and to give Richard 20 years with a definitive term
18 of 50 years based upon his age, based upon what we just
19 discussed, based upon how you know him prior to this
20 incident, prior to before you walked into the courtroom.
21 We're asking that you give him the possibility of parole
22 at 20 years with a definitive term of 50 years.

23 And the question I think that we just keep coming
24 back to is that, would Richard even be here if it wasn't

1 this particular case? This particular victim? This
2 particular case facts? I ask you to think about that as
3 you go back and you weigh what you'd like to do and what
4 you think is right.

5 Thank you, ladies and gentlemen.

6 THE COURT: Let's all stand for a minute.

7 Please be seated.

8 Thank you, counsel.

9 To the State.

10 MR. LEE: Ladies and gentlemen, this last week was
11 about Richard Silva, what he did, his cold, calculated,
12 premeditated, brutal murder of Luz Linarez-Castillo.
13 This week, today, is about Lucy, but I have to address
14 some of the unpleasantries.

15 First of all, Richard was the shooter. Richard
16 pulled the trigger. Not once, not twice. Six times.
17 Richard is the one who shot through that window. Richard
18 is the one who stuck to this plan despite it falling
19 through the first night. Richard is the one that, with
20 his great intelligence, kept this plan alive. Found,
21 through the DMV, where her car might be. Scouted
22 locations, went to locations. Found her. Shot her.
23 Killed her.

24 If others were involved, they were to a lesser

1 degree from the person who pulled the trigger. Yiovannie
2 was involved. You heard from him. He was involved in
3 the planning and he was the driver. He faces up to
4 20 years in prison for that. But make no doubt about it,
5 Richard pulled the trigger.

6 So on that November 2nd, Lucy had this going on in
7 her life. She separated from Bernard. You heard in the
8 victim impact statement, she's trying to make a new life
9 for herself. She had been going to school. She was
10 making things better for her kids, so she had moved
11 herself away from this relationship, and the future was
12 bright.

13 She was pregnant, six to eight weeks. She had
14 three lively young children. And she was going to work
15 early in the morning, doing nothing wrong, going to work
16 when this person jumped out of nowhere, wearing all
17 black, and ended her life that morning.

18 With the testimony from the defense that Mr. Silva
19 was calm, collected, intelligent -- we heard *intelligent*
20 a lot, the State doesn't doubt any of that. I think
21 that's how he did this murder. How he carried it out.
22 How he remained as such. How he went to work that
23 morning acting like nothing happened. How he went on --
24 18 minutes later on his own cell phone and looked at

1 pornography, 18 minutes after it happened. How he had a
2 gun on him at the bank when he shouldn't be having a gun.
3 How he fired two bullets into the ground when a fight was
4 over involving his brother. He is calm. He's collected.
5 He's intelligent.

6 But his plan didn't end with Lucy. He had other
7 plans. His plan involved Arturo Manzo. Arturo wasn't in
8 the car with Lucy that morning. He planned to take him
9 out too if he was around. His actions following the
10 murder, his actions in the planning, his actions in
11 executing the murder, his actions involving Arturo Manzo
12 were just that, they were cold. They were calculated.
13 They were premeditated. They were motivated.

14 So this person who he shot, Lucy, who he shot and
15 killed, she's not just a person. Perhaps the most
16 offensive thing was she meant something to him. He had a
17 romantic relationship or involvement with this person,
18 with his sister-in-law. If nothing else, she was his
19 sister-in-law. If nothing else, she was a mother of
20 three kids who he adored. And yet, that didn't matter to
21 Richard.

22 You saw a letter, a quote from one of the
23 children, Dasaniy, about Richard, but it begs the
24 question: Does Dasaniy know who killed her mother?

1 There was a statement as well from Fernando about
2 missing his uncle. Does Fernando know who killed his
3 mother?

4 The kids are in Bernard's custody right now, so do
5 they know who killed their mother? And if they did,
6 would they write those letters?

7 But we do know one thing, that Fernando, that
8 Dasaniy, that Ruby will not get their mother back. She's
9 not coming home.

10 Don't be misled on this sentencing. Any crime
11 imposed is not, in this case, for the purpose of
12 rehabilitation. Mr. Silva has not been charged with
13 possessing methamphetamine or other drug. He's charged
14 with killing somebody. At this point, the State of
15 Nevada is not concerned with the rehabilitation of
16 Mr. Richard Silva.

17 There are theories of punishment, utilitarian type
18 theories such as deterrence or rehabilitation. There are
19 deterrent values to sentencing Mr. Silva. Deterrent in
20 the general sense to the community at large, that we will
21 not stand for this type of killing, this coldness and
22 calculated nature. Lock him away. You send a message to
23 the community. There's a specific deterrent effect as
24 well to Mr. Silva and to anyone in this room within

1 earshot that we will not stand for this type of crime.

2 There are other theories of punishment.

3 Incapacitation. Retribution. Right? Keep Mr. Silva
4 locked away so that the community is safer. Keep Mr.
5 Silva locked away because he took a life of a mother, of
6 a sister, a daughter. Again, the calculated nature, the
7 deliberative nature, the coldness of his actions
8 afterwards, these all tell us what Mr. Silva is like.
9 I'm sure he's done great things in his life, but
10 sometimes a defining moment in someone's life overcomes
11 all these things. And that's what we have here.

12 The way he acted on November 1st, November 2nd,
13 sticking with his plan, is too much. It was done with
14 his intelligence. It was absolutely brutal. It was
15 personal. And it was done in a cold and callous way.
16 This is as brutal a murder as there is and Mr. Silva
17 should be sentenced accordingly for it. Punish him for
18 the things he did. Punish him, perhaps more importantly,
19 for the things he took away.

20 On November 2nd at 4:40 a.m., with six simple
21 pulls of his trigger, he took away the life of a friend,
22 a sister, a mother, a daughter, three kids with one on
23 the making, who will never have a chance to hug their
24 mother again. Mr. Silva coldly, callously took it away.

1 There's only one sentence that's appropriate in this
2 case.

3 Because it was mentioned, I need to argue these
4 things. The sentence options are 20 to 50, and 50 years
5 with parole eligibility at 20 years. That's the law.
6 This 25-year-thing, I don't know where that comes from.
7 The law is at 20 years he's eligible.

8 The sentence about the deadly weapon enhancements
9 will come later. You don't sentence on that. The judge
10 will sentence on that in his good discretion. The eight
11 years, there's nothing definite about that. Okay? You
12 don't have to buy into that.

13 The sentence you are to determine is 50 years with
14 parole eligibility at 20, life with parole eligibility at
15 20, or life without the opportunity at parole. For a
16 murder of this nature, and for how personal it was and
17 who she was as a mother of these kids, nothing is more
18 appropriate than life without the possibility of parole.
19 Let's send a message to Mr. Silva, to all those in
20 earshot, send a message to the community that we do not
21 stand for this type of murder.

22 This was not just spur-of-the-moment. This was
23 planned. And it's these types that have an option of
24 life in prison without the possibility of parole. As you

1 deliberate and you consider all the facts that you've
2 heard in the last week, consider what you heard today.
3 Consider the guns. Consider the actions. And consider,
4 most importantly, Lucy. And I'd urge you, as you
5 deliberate, do so carefully with full knowledge, with
6 full facts, and return a sentence of life without the
7 possibility of parole.

8 Ladies and gentlemen, this -- Lucy, when she died
9 that day, was beautiful. She was vibrant. She had a
10 future. She had a family. She had good kids. And Mr.
11 Silva took that away. He should not deserve anything
12 less than to spend the rest of his life in prison, ladies
13 and gentlemen.

14 Thank you very much.

15 THE COURT: Thank you, counsel.

16 Ladies and gentlemen, you will now go into the
17 jury deliberation room to deliberate the sentence to be
18 imposed in this matter. You will have the court's
19 written instructions. You will have the packet of
20 letters. You will have available to you other
21 information upon any other documentary information at
22 your request. Those requests will be placed through the
23 court, which I will discuss out of your presence with the
24 attorneys. As with your deliberations on Friday, there

1 are no time restrictions or guidance. Everything you
2 should know is before you, to include the court's written
3 instructions.

4 We will stand for our jury.

5 (At 1:35 p.m., jury exited courtroom.)

6 THE COURT: Counsel, Mr. Silva, as always, ladies
7 and gentlemen, I appreciate the way you conducted
8 yourselves.

9 MS. RISTENPART: Your Honor, I would like to make
10 a record that defense -- I would like to object to the
11 State's statement that this is as brutal a murder as
12 there is. That's prosecutorial misconduct because he's
13 using the weight of the State to try to infer this is
14 more heinous than some other cases represented by the
15 Washoe County District Attorney's Office.

16 THE COURT: We'll be in recess.

17 (At 1:37 p.m., recess taken subject to the
18 call of the jury.)
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2 RENO, NEVADA, FRIDAY, MARCH 2ND, 2020, 4:24 P.M.

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6 THE COURT: Please be seated. We're out of the
7 jury presence.

8 Counsel, have you seen a copy of the note?

9 MR. LEE: Yes.

10 MS. RISTENPART: Yes, your Honor.

11 THE COURT: Mr. Lee, how do you want me to
12 respond?

13 MR. LEE: I'm sorry?

14 THE COURT: How would you like me to respond?

15 MR. LEE: Well, I guess there's a couple of ways.
16 One, I think the answer is, *No, you may not discuss the*
17 *weapons charge and it shall not enter into your*
18 *deliberations.*

19 The problem is, the defense rang that bell and
20 opened all that up and talked about it, and talked about
21 this, 25-to-50 and without talking about good time credit
22 and there's all this misconduct about that. I don't know
23 how to cure it, Judge. I really don't. But you can see
24 where their question is going, right down that road that

1 she led them. So I'm trying to fashion some curative
2 instruction about that given this question.

3 But the short answer, *No, you may not discuss it*
4 *and it shall not enter into your deliberations.* I mean,
5 that's the short of it.

6 THE COURT: So I'll first note, is the PowerPoint
7 presentation marked and made part of the court's record?

8 MS. RISTENPART: It will be, your Honor, yes.

9 THE COURT: It will be, because there was a patent
10 error in that PowerPoint presentation where you indicated
11 25 years, plus eight years. And you had a little
12 timeline that rolled electronically forward that showed
13 Mr. Silva's age at the time that he would be earliest
14 released and it was factual -- it was legally incorrect.

15 MS. RISTENPART: Your Honor, I will disagree with
16 the *legally incorrect* portion of that.

17 THE COURT: How did you get the 25 years?

18 MS. RISTENPART: Because no one gets granted their
19 first time parole.

20 THE COURT: But there is no evidence whatsoever,
21 that is highly suspect and impalpable. That's why I
22 sustained and struck your comments, when you had
23 statistical representations, on behalf of the State of
24 Nevada of how long somebody would serve in prison. We've

1 come very far to have error at this point, and I just
2 overlooked it. But I didn't know there was going to be a
3 question. It is patently erroneous to tell this jury
4 that your client will be in prison for 25 years.

5 MS. RISTENPART: Your Honor, it's -- I'm not
6 trying to argue with the court, but for them to be
7 relayed into that at 20 years he's going to get parole,
8 it's not the truth either. It's discretionary and I made
9 that very clear in front of the jury.

10 THE COURT: But you don't have the right to
11 instruct the jury. I have the jury instruction that
12 listed the three statutory possibilities, and then we had
13 a second instruction --

14 Ms. Clerk, hand the instructions to me.

15 -- which defined exactly what each sentence would
16 be.

17 Instruction No. 8 provides the three choices and
18 Instruction No. 9 defines each of these -- those three
19 choices. You had no right to -- no legal cause to
20 suggest anything other to this jury. So I'm struggling,
21 too, to know how to fix it.

22 MS. RISTENPART: As a mitigator, the fact that he
23 does have a weapons enhancements, but they found him
24 guilty and they know that. That is what the question is,

1 in my opinion, about.

2 THE COURT: They know about the weapon enhancement
3 and the subsequent sentence because you told them that.
4 Where else does it come in?

5 MS. RISTENPART: But don't they have the right
6 under mitigation to know that he also is facing another
7 sentence for that?

8 THE COURT: I don't know. I have to spend some
9 time and look at it as opposed to orally pronouncing at
10 the moment now. This question has animated the error
11 that was perpetuated upon this jury when you had that
12 PowerPoint and the transcript -- or the paper -- the one
13 initial paper is not going to show how you had the
14 animated progression on a timeline where you indicated
15 25 years, plus eight years, equalling his chronological
16 age. And that was wrong to do, Ms. Ristenpart. There's
17 nothing whatsoever that authorized you to just guess that
18 it would be a 25-year sentence when I had an instruction
19 that tells them it's 20 years before parole eligibility.

20 MS. RISTENPART: Your Honor, I did research the
21 issue as to the weapon enhancement, and I cannot find any
22 case law that said I couldn't talk about it. And that's
23 what I was relying upon. If that is in -- wrong, then I
24 accept full responsibility for it, but please don't let

1 it reflect upon Mr. Silva.

2 At this point, your Honor, I did not go into
3 malicious intent for misconduct in regards to that. I
4 based it upon what I know of the system, it's not after
5 20 years. If that is wrong, I take full responsibility.
6 But that's based upon personal experience.

7 THE COURT: And the problem, Mr. Lee, is that you
8 made no contemporaneous objection so I wasn't able to --
9 you did to the 25 years, but to the references to the
10 weapon enhancement, which I don't believe is appropriate
11 before this jury because the statute doesn't direct
12 positively, affirmatively that it is.

13 Any response, Mr. Lee?

14 MR. LEE: Judge, I'm just -- I'm trying to fashion
15 something here. Again, I think -- I don't think this is
16 answered with an easy *no*, I think there needs to be some
17 explanation given the closing.

18 So I would suggest to the court, *You may not*
19 *discuss the weapons charge, it shall not enter into your*
20 *deliberations*, and then I think it's appropriate to
21 remind the jury -- this is what I'm trying to word. *You*
22 *may not consider the defense -- the defense PowerPoint*
23 *slide or argument about* -- again, I'm throwing things
24 together -- *the timing of the parole and how old he will*

1 *be. The only considerations you are to make are found in*
2 *Instructions 8 and 9, something along those lines.*

3 THE COURT: I know what my instinctive,
4 intellectual response is, which is typically pretty good
5 but not perfect, and there is an unsolved question for
6 me. Does a weapon -- subsequent weapon enhancement fall
7 within mitigation argument or not? I don't know the
8 answer to that question, as I sit here.

9 MR. LEE: Again, I don't know it either, but
10 really the jury's determination is purely 20 to 50, 20 to
11 life, life. That's where it should end. I guess I'd
12 have to research that a little more.

13 THE COURT: I didn't bring my computer to do my
14 research.

15 I need a few minutes to look at the law.

16 The problem is, when I researched NRS 175.522 this
17 morning, more than a hundred cases popped up because it's
18 a death penalty statute. So I'll -- counsel, I'm
19 inviting your responses.

20 MR. LEE: Judge, I'd ask that we have ten minutes.

21 THE COURT: Hold on. Let me tell you -- let me
22 make a statement to which I'm inviting a response.

23 Part of what you say is known to experienced trial
24 counsel but, upon review, this court's analysis should be

1 available for affirmance or correction. We try very hard
2 to keep a straight line as a judiciary. There is an
3 instruction which directs the jury not to consider or
4 even discuss Mr. Silva's choice not to address the jury.
5 In the same way, I'm inclined to tell this jury not to
6 discuss or even consider any possible sentence other than
7 the three set forth in the instructions with the next
8 instruction defining them. But I need a little time to
9 research that.

10 So what I may do is send this jury home with
11 admonition, because I'm not going to be rushed on this.
12 This is a big deal. Because I either tell them they
13 cannot consider it, which could tilt the sentence one
14 way, or I could tell them they can consider it, which
15 could tilt the sentence the other way. And I don't want
16 to be responsible for wrongly tilting. I don't know that
17 I can be done in ten minutes.

18 Counsel, do you have anything to say?

19 MR. LEE: Judge, I don't know either, so I wanted
20 to have a little bit of time to look it up and maybe it
21 can. I don't know. My initial thought in looking at
22 200.035, which lists mitigating factors in a death
23 penalty, along with the deadly weapon enhancement
24 statute, doesn't turn up anything relevant. But I will

1 certainly consult with others in my office and continue
2 research. But I would ask that we take 15 minutes and
3 see.

4 THE COURT: I see you're also researching quickly,
5 Ms. Ristenpart?

6 MS. RISTENPART: I do, your Honor. I have it open
7 on Lexus. I just want to run by the court, this
8 afternoon we were talking about the definition of
9 *mitigation*. I brought that up, that there is no
10 definition, the case law does not constrict it. That's
11 why they did not want that definition from the *Black's*
12 *Law* in the *Middleton* case.

13 The court's instruction -- I'd like to do a little
14 more research, your Honor, and maybe we could come back
15 and fashion something.

16 THE COURT: Ms. Clerk, please type the following
17 response.

18 This court is in receipt of your
19 question and is working on a written
20 answer, period.

21 See you back here in about 15 minutes, counsel.
22 (At 4:27 p.m., recess taken.)

23 THE COURT: First, we have -- Ms. Clerk, do you
24 have the correspondence from the jury?

1 I responded in writing to the jury.

2 This court is in receipt of your
3 question and it is working on a written
4 answer.

5 To which the jury responded in handwriting.

6 Thank you, comma, but we are able to
7 reach a decision without an answer to
8 this question.

9 The jury then told Deputy Coss that it had reached
10 a verdict, but I'm going to resolve this legal issue
11 before I interact with the jury.

12 Mr. Lee?

13 MR. LEE: Judge, I agree with that. First of all,
14 I see nothing that would say an enhancement is a
15 mitigating factor. On the contrary, I think an
16 enhancement is certainly an aggravating factor. I see no
17 support for any other penalties or enhancements or other
18 charges as being a mitigating factor under 200.033 and
19 035. So I hope that would answer that first question.
20 It's not. Legally or intuitively, it's not an
21 enhancement.

22 So, with that, I think the short answer is, *No,*
23 *you may not discuss the penalty other than the three*
24 *options set forth in Instructions 8 and 9.* And, again, I

1 think there needs to be some cure about the slide and the
2 PowerPoint, that, *You may not consider any part of the*
3 *PowerPoint slide which was stricken -- objected to,*
4 *sustained and stricken.*

5 THE COURT: So, ultimately, Mr. Lee, I am the
6 judge and I'm responsible for what occurs in this room.
7 And my work is susceptible to review. That's okay. But
8 you are more than an advocate in the well of this court.
9 You are an administer of justice. Are you prepared to
10 defend this record on the argument you just made?

11 MR. LEE: Well, look, there's no quick answer to
12 that because there's no quick -- I don't see any
13 precedent to what happened. And so I think it's fair to
14 say, *You are not to consider this section of the*
15 *PowerPoint and argument of defense which were stricken,*
16 *because that's true, and leave it at that. We wouldn't*
17 *define them any more, and leave it at.*

18 THE COURT: I drafted a possible response, which
19 I'll give in writing to both you and Ms. Ristenpart which
20 I want you to further reflect upon, but this is -- this
21 is a significant issue.

22 MR. LEE: I agree. Of course we'll stand ready to
23 defend anything.

24 THE COURT: Ms. Ristenpart?

1 MS. RISTENPART: Thank you, your Honor.

2 As well, while we were having our ten-minute
3 break, I did a quick search for *mitigation, consecutive,*
4 *hearing,* just to get some case law together. The only
5 thing I could see that was similar to this type of
6 situation is that in a retrial or re-penalty phase
7 hearing on a first degree case that the prosecutor was
8 allowed to refer to the prior sentence of the
9 co-defendant as being four consecutive life terms, that
10 there was some discussion as to what *consecutive* meant.
11 I believe it was *Johnson*, your Honor, but I just skipped
12 through and I can go back and look through it.

13 This particular case, I don't see any case law
14 prohibiting that from being decided as a mitigator, which
15 is, as I was very clear with the court, that's where I
16 was coming from, that this was a mitigation for them to
17 consider. Coupled with, of course, we know what the
18 definition of *mitigation* is in these proceedings.

19 THE COURT: But it was also advocacy and not a
20 statement of law. At no time did I hear you tell this
21 jury that he could get out after two years if this court
22 chose to impose --

23 Is the deadly weapon enhancement a 2-to-20?

24 MS. RISTENPART: It's --

1 MR. LEE: It's 1-to-20.

2 MS. RISTENPART: 1-to-20.

3 THE COURT: 1-to-20. So at no time did I hear
4 anybody tell this jury, subject to the judge's
5 discretion, it could be one year.

6 MS. RISTENPART: I will disagree politely with
7 your Honor. I did make that very clear that they were
8 not deciding that, it was going to be up to the judge as
9 to what that sentence was.

10 THE COURT: Did you use the minimums on the
11 consecutive or did you use the maximums on the
12 consecutive?

13 MS. RISTENPART: I used the maximum.

14 THE COURT: That's what I remember. You can
15 disagree all you want. Hopefully, we're both polite.
16 But that's why I say these things, because I want to be
17 sure that I'm getting it right. At no time did I hear
18 any attorney argue that the judge's discretion on the
19 deadly weapon enhancement is anywhere from 1 to 20. I
20 just heard, *He's going to serve an additional eight*
21 *years*. And that's not demonstrated; right? I might not.

22 MS. RISTENPART: There was one slide, your Honor,
23 where I did put 1 to 20 years for the weapons
24 enhancement.

1 THE COURT: May I see that, Ms. Clerk? Do you
2 have Ms. Ristenpart's PowerPoint?

3 MS. RISTENPART: She doesn't have a clean copy
4 that has my notes. May I approach?

5 THE COURT: Yes, please.

6 If you have your notes, I promise I won't look at
7 them.

8 I won't focus on your handwritten notes, that I
9 promise. I'm just looking for the text.

10 MS. RISTENPART: Thank you, your Honor.

11 THE COURT: It was in the same slide that I'm
12 going to start. *Punishment, 1 to 20 years consecutive to*
13 *first degree, maximum sentence eight years*, so that is
14 what your slide said.

15 MS. RISTENPART: Correct. And you did strike that
16 one, your Honor.

17 THE COURT: Well, I'm going to give you both a
18 proposed response, subject to your argument -- I'm sorry,
19 Ms. Ristenpart, would you grab both -- or one of you.

20 Ms. Clerk, my copy -- I'll just read it into the
21 record, and then I'll have counsel respond.

22 The arguments of counsel are not
23 evidence or statements of law. They are
24 designed to assist you to understand the

1 evidence and law. The defense broadcast
2 a PowerPoint presentation in which a
3 slide animated a lineal progression of
4 chronological time. The slide indicated
5 Mr. Silva would serve at least 25 years
6 before commencing a consecutive term of a
7 minimum eight years for deadly weapon
8 enhancement.

9 That's already wrong, that I can see. Returning.

10 The slide further projected Mr. Silva's
11 estimated age when he would be released
12 from prison. The PowerPoint slide is
13 stricken. You should not speculate upon
14 when Mr. Silva may be released from
15 prison. You are to consider Instructions
16 8 and 9 as the only statements from this
17 court related to the sentence. You are
18 not to discuss the possibility of a
19 deadly weapon enhancement during your
20 deliberations.

21 Look at that quietly and then I'll want your
22 comments, clarifications, objections.

23 Mr. Lee, when you're ready, look up. Take your
24 time. I've already begun editing myself to cut out some

1 of the language and modify it.

2 Are you ready to listen to Mr. Lee or are you
3 still working on --

4 MS. RISTENPART: I'll listen to him while I'm also
5 contemplating, your Honor.

6 THE COURT: Mr. Lee?

7 MR. LEE: I'm fine with the first paragraph.

8 Fine with the first sentence of the next
9 paragraph, and then this would be my suggestion.

10 The slide indicated Mr. Silva would
11 serve a number of years before commencing
12 a term for a deadly weapon enhancement.

13 THE COURT: *Would serve a number of years before*
14 *commencing a consecutive term for a deadly weapon*
15 *enhancement?*

16 MR. LEE: Yes. What I'm trying to avoid is
17 spelling out the years that were stated in the slide.

18 THE COURT: I agree with you. So let me just --
19 I'm just writing it down. I'm not adopting it because I
20 want to hear from defense counsel. *The slide indicated*
21 *Mr. Silva would serve a number of years before commencing*
22 *a consecutive sentence for a deadly weapon enhancement.*

23 Okay.

24 MR. LEE: I'm fine with that next sentence.

1 THE COURT: Which is what?

2 MR. LEE: *The slide further projected --*

3 THE COURT: I would change that, *The slide further*
4 *projected Mr. Silva's estimated age when he may be*
5 *released from prison, changing would to may.*

6 MR. LEE: The slide was stricken. If my memory
7 serves, your Honor did strike it contemporaneously.

8 THE COURT: No. I struck another one, earlier one
9 in which she -- Ms. Ristenpart provided stats, like
10 16 percent of some Nevada prison inmates and then --
11 that's the one I struck.

12 MR. LEE: I thought there were two.

13 THE COURT: But not this one.

14 MR. LEE: I thought it was this one but --

15 THE COURT: Okay.

16 MR. LEE: -- that's fine. That one could say, *The*
17 *PowerPoint slide is stricken because it is not accurate.*

18 THE COURT: Okay.

19 MR. LEE: The next sentence is fine.

20 THE COURT: *You are not to speculate upon when Mr.*
21 *Silva may be released from prison?*

22 MR. LEE: Yes.

23 THE COURT: Okay.

24 MR. LEE: Then I would say, *You are to consider*

1 *only the three sentencing options in Instructions 8 and*
2 *9, period.*

3 THE COURT: *You are to consider only the three*
4 *sentencing -- sentencing options in Instructions 8 and 9?*

5 MR. LEE: Yes.

6 THE COURT: The last paragraph?

7 MR. LEE: That's fine.

8 THE COURT: You want that? That's the pivotal
9 legal issue.

10 MR. LEE: That's what?

11 THE COURT: That is the pivotal legal issue, the
12 fourth paragraph.

13 MR. LEE: Let's make it safe and just leave it
14 out. I think it's safe just to say, *You can only*
15 *consider those three options in Instructions 8 and 9.*

16 THE COURT: All right. So this is quite in
17 editing. Do you want me to rewrite it and give it to you
18 before --

19 MS. RISTENPART: Your Honor, I think if I can make
20 my record also.

21 THE COURT: Okay.

22 MS. RISTENPART: One, I do think this issue is
23 moot as we have been informed they have a verdict with
24 regard to the penalty phase.

1 That being said, I do know that this court wants
2 to work through this. Your Honor, I'd ask for paragraph
3 one, *The arguments of counsel are not evidence or*
4 *statements of law, they are designed to assist you to*
5 *understand the evidence and law. See Instruction No. 10,*
6 *which you already have.*

7 Your Honor, in reference to the second paragraph,
8 I would ask instead of highlighting defense and
9 essentially telling them to disregard arguments, that
10 instead put in, *We do not know if Mr. Silva will be*
11 *paroled or when. Any arguments about time frame is pure*
12 *speculation as to time of release and if parole would be*
13 *granted.*

14 THE COURT: Would you read that -- say that again,
15 please? I'm writing as you say that.

16 MS. RISTENPART: *We do not know if Mr. Silva will*
17 *be granted parole and/or when. Any argument about timing*
18 *of a possible parole grant and/or age is purely*
19 *speculation.* And then I would ask that you not include
20 whether or not that particular PowerPoint slide was
21 stricken. I think we had some discussion as to whether
22 it was contemporaneously struck before the jury or now
23 that you're striking that. I think that if you can say
24 that it's speculative, that's argument essentially when

1 you're telling the jury.

2 But for the next sentence, *You are not to*
3 *speculate upon when Mr. Silva is released from prison,*
4 that's all we're asking them to do, your Honor. We're
5 giving them the time frame, 20 to 50, 20 to life, life
6 without, and we're asking them to speculate when he
7 should be released, what is the form of punishment that
8 they determine --

9 THE COURT: But, in fairness, you argued different
10 than what you just told me. You argued 25 years plus
11 eight.

12 MS. RISTENPART: I understand, your Honor, but
13 you're instructing them not to speculate about the very
14 issue that they're deliberating on.

15 And then, your Honor, in regards to, *You are to*
16 *consider Instructions 8 and 9 as the only statements from*
17 *this court relating to the sentence,* and then not
18 highlight by saying, *only because they should be read all*
19 *in conjunction with each other.*

20 THE COURT: Okay. I'm going to go to work on
21 this. I'll be right back. Thank you.

22 (Recess taken.)

23 THE COURT: Mr. Lee, would you please approach and
24 take one copy and hand one to Ms. Ristenpart?

1 This is the revised version of the instruction I
2 intend to give.

3 Mr. Lee?

4 MR. LEE: Judge, that middle paragraph I'm
5 concerned about just because -- it just reminds them of
6 the slide, it doesn't say anything about the slide. I
7 hate the back-and-forth. I apologize. I have one last
8 recommendation, if I may.

9 I would simply instruct, *You may not discuss the*
10 *weapon enhancement and it shall not enter into your*
11 *deliberations. You are to consider -- you are to -- and*
12 *then do your last paragraph, You are not to speculate.*

13 THE COURT: *You may not discuss the weapon*
14 *enhancement and it may not enter into your deliberations?*

15 MR. LEE: Yes.

16 MS. RISTENPART: Your Honor, just going off what
17 the State is requesting you put back in, we're objecting
18 that's not an accurate statement on the law because we
19 don't have any guidance on this matter, and the fact is
20 that there's nothing prohibiting this jury from bringing
21 into deliberations the fact there is a consecutive weapon
22 enhancement. They're well aware because they found him
23 guilty of it just last Friday.

24 THE COURT: They're well aware that he used --

1 that they were -- I don't know what they are well aware
2 of, but I know they were not well aware of a consecutive
3 weapon enhancement until the sentencing proceeding today.

4 MS. RISTENPART: So, your Honor, I'm asking that
5 you not bring in the fact that they're not supposed to
6 consider the weapon enhancement, because I think that
7 there is argument of its mitigation and that it is,
8 unless prohibited, which none of us can find case law
9 saying it's prohibited, it will be for them to determine.

10 In regards to the proffered instruction, your
11 Honor, the defense still has an issue with paragraph
12 No. 2 as it's highlighted and also instructing them to --
13 it's really more conjunctive with the first sentence in
14 the third paragraph, *You are not to speculate upon when*
15 *Mr. Silva may be released from prison.*

16 THE COURT: Okay.

17 MR. LEE: Judge, what if we just come all the way
18 back around then, just make it simple. *Your sentencing*
19 *considerations are only found -- are found in*
20 *Instructions 8 and 9.* Then it makes it simple. It's
21 accurate. And I would specify the three options in
22 Instructions 8 and 9 and leave it at that. Then we're
23 not messing with the slide, we're not talking about
24 minimum and maximum penalties, we're not speculating. It

1 answers their question, I think, appropriately.

2 THE COURT: So, Mr. Lee, you're kind of a moving
3 target here.

4 MR. LEE: I am.

5 THE COURT: That's no fault of yours because this
6 is -- that's not a criticism, but you represent the State
7 here, and now what you're telling me, let's walk back
8 from this error that you began with by simply reminding
9 them to read Instructions 8 and 9?

10 MR. LEE: The second paragraph is the hard part
11 for me, your Honor, because the way it's worded right
12 now, it just draws attention to it. It doesn't say it's
13 stricken, you're not to consider it, anything like that.

14 THE COURT: So what if I just answered paragraph
15 No. 1 and paragraph No. 2 -- I'm sorry -- and No. 3, and
16 delete all of paragraph No. 2?

17 MR. LEE: I think that's perhaps the safest way to
18 address the PowerPoint slide, because it asks them -- it
19 instructs them not to speculate.

20 THE COURT: On behalf of the State, the body
21 language tells me you're not happy but you're doing the
22 best you can here. You are satisfied if I responded to
23 the jury's question with paragraphs 1 and paragraph 3?

24 MR. LEE: Yes.

1 THE COURT: Paragraphs 1 and 3, please.

2 Defense, do you still want to maintain an
3 objection?

4 MS. RISTENPART: Yes, your Honor. To the
5 statement, *You are not to speculate upon when Mr. Silva*
6 *may be released from prison.*

7 Your Honor, Instruction No. 8 clearly states first
8 degree murder with the use of a deadly weapon, and you
9 just refer them back to 8 and 9 and not have any
10 commentary on whether they should speculate as to when
11 he's going to be released.

12 THE COURT: Yeah, that -- that doesn't -- your
13 argument doesn't help me, Ms. Ristenpart, because the
14 deadly weapon is an element that the jury found. But
15 they have no way of knowing, without your argument, that
16 there is a separate subsequent sentencing enhancement.
17 The mere existence of that language doesn't put them on
18 notice. And it's time to go so...

19 MS. RISTENPART: I'm going to object to the
20 statement, *You are not to speculate.*

21 THE COURT: Let me just look at it in light of
22 that objection.

23 Court will be in recess subject to the jury's
24 call.

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(Recess taken.)

**

SUNSHINE LITIGATION

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2 RENO, NEVADA, FRIDAY, MARCH 2ND, 2020, 5:30 P.M.

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6 THE COURT: The public, please.

7 Counsel, I would like your assistance, please.

8 First, the record will reflect that Deputy Coss
9 provided the court's written answer to the jury and
10 somewhere in the neighborhood of three to five minutes,
11 Deputy Coss came back to me and said the jury had a
12 verdict. It was ready -- you didn't use any words, you
13 just said they had a verdict. So it appears to me that
14 the verdict -- I just want that time space to be
15 reflected in the record, three minutes between the
16 delivery of the answer and the jury's notice to Deputy
17 Coss that there was a verdict.

18 My experience is that every person who goes to the
19 Nevada Department of Corrections travels with a
20 Presentence Investigation Report. Is it your
21 understanding that I will direct the Division of Parole &
22 Probation to prepare a Presentence Investigation Report
23 as it relates to the deadly weapon enhancement?

24 MR. LEE: It is.

1 THE COURT: Okay. So we should set this second
2 sentencing hearing in the normal course?

3 MR. LEE: Yes.

4 THE COURT: All right. Ms. Ristenpart, is that
5 your understanding?

6 MS. RISTENPART: That is our understanding, your
7 Honor. And I would like to note that I would like to be
8 present for any interviews with Mr. Silva. Sometimes
9 that's not relayed to the Division of Parole and
10 Probation when they're not personally here.

11 THE COURT: Ms. Clerk, if you'll ensure that this
12 court has ordered that Ms. Ristenpart be present during
13 all contacts between the Division of Parole & Probation
14 and Mr. Silva.

15 What is the length of the sentencing hearing that
16 we should set?

17 MS. RISTENPART: Your Honor, I'd ask if we can
18 keep it on regular calendar but put it at the end of the
19 hearing.

20 THE COURT: Okay. Mr. Lee, I agree with that.

21 MR. LEE: That's fine.

22 Judge, one more -- one last question. The answer
23 you gave them, is that made part of the record?

24 THE COURT: It is.

1 MR. LEE: And was it first paragraph and third
2 paragraph?

3 THE COURT: First paragraph and third paragraph.

4 MR. LEE: Thank you so much.

5 THE COURT: The jury, please.

6 Ladies and gentlemen, I again thank you for the
7 way you've participated in this proceeding and strongly
8 encourage you to maintain the decorum and dignity of this
9 proceeding as the sentence is announced.

10 Thank you.

11 (At 5:32 p.m., jury entered courtroom.)

12 THE COURT: Please be seated.

13 Ladies and gentlemen, the exact same process from
14 Friday will unfold.

15 Juror No. 4, it appears that you are still the
16 foreperson. And without telling me your jury's decision,
17 has your jury reached a verdict as to the sentence?

18 (No audible response.)

19 THE COURT: Would you please hand it to Deputy
20 Coss?

21 The Verdict form is in a folder. I have not
22 reviewed it. Again, I emphasize that what you have done
23 today belongs to you. I will not criticize, compliment
24 or discuss the verdict that you have reached.

1 After the verdict is announced, I will direct Mr.
2 Silva out of the courtroom. After just a very brief
3 moment, I will direct the public out of the courtroom.
4 And, finally, any remaining attorneys and members of
5 their staff. I will stay in the courtroom with you for
6 just a few minutes, but it's important for me to tell you
7 on the record what happens when I'm with you, for I must
8 be accountable to the words I use.

9 My work in this case is not over. It is,
10 therefore, improper for me to have any form of
11 communication from you about your deliberations. I will
12 not ask and you will not tell me. My experience is that
13 I usually answer a few questions about the process.
14 Sometimes there are questions about counsel. I'll keep
15 it to about seven minutes or so. It's really to give
16 space in the courthouse for other people to leave.

17 I will be attended to by a member of my staff, who
18 is also accountable to what happens. It is a safeguard
19 so that you and I do not have any improper conversations.

20 Ladies and gentlemen, regardless of outcome, I
21 acknowledge the fundamental right of jury trial, it is
22 embedded deep into our system of justice. I honor
23 Mr. Silva's choice to entrust this question to you.
24 Every person accused of a crime, every person is entitled

1 to an impartial, fair process. You have contributed to
2 that process. I thank you for your service.

3 Through this experience, I trust that in some
4 small way you have touched constitutional values by your
5 participation, deliberation, fairness, equality,
6 accountability, liberty in our common good. Your
7 fingerprints are now on that legacy of justice that
8 exists within our county. Thank you.

9 After the verdict is read, you will be discharged
10 from service, meaning that you are under no restrictions
11 of any type. You may discuss your experience with anyone
12 you want, except me. You may be contacted. Sometimes
13 counsel want to know how they did or what they could do
14 better. I don't anticipate it. It's neither encouraged
15 nor discouraged. You are in charge of your own voice and
16 may participate in any way you like.

17 I now look at the Jury Verdict form.

18 Mr. Silva, Ms. Ristenpart, if you'll please stand.

19 Ms. Clerk, please read the Verdict.

20 THE CLERK:

21 In the Second Judicial District Court
22 of the State of Nevada, in and for the
23 County of Washoe, The State of Nevada,
24 Plaintiff, versus Richard Abdiel Silva,

1 Defendant, Case No. CR18-1135B,
2 Department No. 15. Penalty Verdict.

3 The defendant, Richard Abdiel Silva,
4 having been previously found guilty by
5 Jury Verdict of murder of the first
6 degree with the use of a deadly weapon,
7 we, the jury impaneled to decide and set
8 penalty, now set the penalty to be
9 imposed as follows: Life with the
10 possibility of parole in the Nevada
11 Department of Corrections, with
12 eligibility for parole beginning when a
13 minimum of 20 years has been served.

14 Dated: This 2nd day of March, 2020.

15 Signed: Foreperson.

16 THE COURT: Mr. Silva, Ms. Ristenpart, please
17 remain standing.

18 Ms. Clerk, please poll the jury.

19 THE CLERK: Juror No. 1, is this your penalty
20 verdict as read?

21 JUROR NO. 1: Yes.

22 THE CLERK: Juror No. 2, is this your penalty
23 verdict as read?

24 JUROR NO. 2: Yes.

1 THE CLERK: Juror No. 3, is this your penalty
2 verdict as read?

3 JUROR NO. 3: Yes.

4 THE CLERK: Juror No. 4, is this your penalty
5 verdict as read?

6 JUROR NO. 4: Yes.

7 THE CLERK: Juror No. 5, is this your penalty
8 verdict as read?

9 JUROR NO. 5: Yes.

10 THE CLERK: Juror No. 6, is this your penalty
11 verdict as read?

12 JUROR NO. 6: Yes.

13 THE CLERK: Juror No. 7, is this your penalty
14 verdict as read?

15 JUROR NO. 7: Yes.

16 THE CLERK: Juror No. 8, is this your penalty
17 verdict as read?

18 JUROR NO. 8: Yes. Yes.

19 THE CLERK: Juror No. 9, is this your penalty
20 verdict as read?

21 JUROR NO. 9: Yes.

22 THE CLERK: Juror No. 10, is this your penalty
23 verdict as read?

24 JUROR NO. 10: Yes.

1 THE CLERK: Juror No. 11, is this your penalty
2 verdict as read?

3 JUROR NO. 11: Yes.

4 THE CLERK: Juror No. 12, is this your penalty
5 verdict as read?

6 JUROR NO. 12: Yes.

7 THE COURT: The verdict is unanimous.

8 Ms. Clerk, you will record it into the minutes of
9 this proceeding. It will be an official record of this
10 case.

11 Mr. Silva, I will see you again in approximately
12 45 to 60 days, at which time I will review a Presentence
13 Investigation Report. And I encourage you to participate
14 in that process as counseled by your attorney.

15 You are remanded to the custody of the Washoe
16 County Sheriff's Office in the interim.

17 Hold on, Deputy.

18 The date for that penalty hearing, Ms. Clerk?

19 THE CLERK: Will be Wednesday, February --
20 Wednesday, April 29th, at 9:00 a.m.

21 THE COURT: I need to go another week, please.

22 THE CLERK: Wednesday, May 6th, at 9:00 a.m.

23 THE COURT: Wednesday, May 6th, at 9:00 a.m.

24 Ladies and gentlemen, in a moment Mr. Silva is

1 going to be remanded to the Washoe County Sheriff. After
2 he exits the courtroom -- while he exits the courtroom, I
3 ask you to remain seated and remain quiet. Thank you for
4 your dignity in this proceeding. I will then excuse you
5 in very short term.

6 Deputy, Mr. Silva is remanded to your custody.

7 (Defendant exited courtroom.)

8 THE COURT: Next, any members of the public who
9 are not associated with Mr. Silva's family or friend
10 group.

11 If there is anyone here who is present for
12 Ms. Linarez-Castillo, you are thanked and excused.

13 Ladies and gentlemen --

14 I'm going to excuse the rest of the public but
15 just hold them only until the immediate preceding group
16 can make it to the elevators.

17 Ladies and gentlemen of Mr. Silva's family and
18 friend group, I stand for you in acknowledgment and
19 gratitude for the way you've conducted yourselves. You
20 are free to go.

21 I have no idea if Mr. Lee and Ms. Ristenpart like
22 each other, it matters not at all in this -- in this
23 room, but you might have noticed a moment ago that they
24 at least expressed a quick word and touch in recognition

1 of their respective roles. I am delighted to have these
2 attorneys in the courtroom. We have lots of
3 disagreements, ladies and gentlemen, and they are
4 spirited, and sometimes the disagreements continue. But
5 for a moment you observed two worthy advocates and
6 members of our profession. Remain standing for my
7 colleagues, Mr. Lee and Ms. Ristenpart.

8 Thank you.

9 MS. RISTENPART: Thank you, your Honor.

10 MR. LEE: Thank you, your Honor.

11 (At 5:45 p.m., court adjourned.)

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

4 I, ERIN T. FERRETTO, an Official Reporter
5 of the Second Judicial District Court of the State of
6 Nevada, in and for the County of Washoe, DO HEREBY
7 CERTIFY:

8 That I was present in Department No. 15 of
9 the above-entitled Court on MONDAY, MARCH 2ND, 2020, and
10 took verbatim stenotype notes of the proceedings had upon
11 the matter captioned within, and thereafter transcribed
12 them into typewriting as herein appears;

13 That the foregoing transcript is a full,
14 true and correct transcription of my stenotype notes of
15 said proceedings.

16 That I am not related to or employed by any
17 parties or attorneys herein, nor financially interested
18 in the outcome of these proceedings.

19
20 DATED: This 5th day of March, 2021.

21
22 /s/ Erin T. Ferretto

23 ERIN T. FERRETTO, CCR #281
24

1 **CODE: 1930**
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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

10 **STATE OF NEVADA,**

Case No. CR18-1135B

11 **Plaintiff,**

12 **vs.**

Dept. No. 15

13 **RICHARD ABDIEL SILVA,**

14 **Defendant.**
15 _____/

16 *****CONFIDENTIAL*** EMAIL REGARDING JUROR #1**

17 **SEE ATTACHED**
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19 **///**
20 **///**
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Dick, Amanda

From: Lerud, Alicia
Sent: Monday, March 02, 2020 8:46 AM
To: Dick, Amanda
Subject: Fwd: EXTRA PATROL REQUESTED / 20-1877

Get [Outlook for Android](#)

From: Hippert, Janet K <JHippert@washoecounty.us>
Sent: Saturday, February 29, 2020 11:47:01 AM
To: Lerud, Alicia <Alicia.Lerud@washoecourts.us>; Cook, Robert A. <RACook@washoecounty.us>; Mullen, Wade <WMullen@washoecounty.us>; bamafan1078@gmail.com <bamafan1078@gmail.com>
Subject: Fwd: EXTRA PATROL REQUESTED / 20-1877

Sent from my iPhone

Begin forwarded message:

From: "Bays, Michelle" <MBays@da.washoecounty.us>
Date: February 29, 2020 at 13:36:58 CST
To: "Hippert, Janet K" <JHippert@washoecounty.us>, "rcook@washoecounty.us" <rcook@washoecounty.us>
Subject: Fwd: EXTRA PATROL REQUESTED / 20-1877

Hi,
 SPD is keeping watch in the house. From what I gathered from them, they thought it was credible but not much to go on so they took report and are monitoring for now.

If anything changes, I will let you know. Give me a call if you have questions or need any further.

Hoping I have Cooks correct email. If not please forward.

M

Sent from my iPhone

Begin forwarded message:

From: "McCreary, Mike" <mmccreary@cityofsparks.us>
Date: February 29, 2020 at 11:24:43 AM PST
To: Michelle Bays <mbays@da.washoecounty.us>
Subject: Fwd: EXTRA PATROL REQUESTED / 20-1877

[NOTICE: This message originated outside of Washoe County -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Begin forwarded message:

From: "Robertson, Adam" <arobertson@cityofsparks.us>
Date: February 29, 2020 at 1:05:47 AM PST
To: SPD Sworn <spdsworn@cityofsparks.us>
Subject: EXTRA PATROL REQUESTED / 20-1877

Requesting Extra Patrol in the area of 2940 Kimberlite Court (2 beat) due to suspicious circumstances. The reporting party, Gamalier GONZALEZ-ESCOBAR, is a jury member in a murder trial in Reno in which a verdict of 'Guilty' was passed down today. After the trial GONZALEZ-ESCOBAR observed a Latino male subject wearing a red hoody watching him while speaking on a cell phone, and also observed a "white car" following him. GONZALEZ-ESCOBAR believes associates of the defendant may know him and his family based on the fact GONZALEZ-ESCOBAR's wife works with the defendant's sister. There is a white Toyota at the residence which GONZALEZ-ESCOBAR believes is registered to him. GONZALEZ-ESCOBAR has to reconvene for sentencing on Monday. A case was taken for information only. Thank you.

1 **CODE: 1930**
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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

10 **STATE OF NEVADA,**

Case No. CR18-1135B

11 **Plaintiff,**

12 **vs.**

Dept. No. 15

13 **RICHARD ABDIEL SILVA,**

14 **Defendant.**
15 _____/

16 *****CONFIDENTIAL*** EMAIL COMMUNICATION TO JUROR #1**
17

18 **SEE ATTACHED**
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20 **///**

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Dick, Amanda

From: Lane, Kaili
Sent: Monday, March 02, 2020 9:18 AM
To: Dick, Amanda
Cc: Barragan, Ludivina
Subject: FW: Jury Service - Second Judicial District Court

From: Lane, Kaili
Sent: Monday, March 02, 2020 9:17 AM
To: gamaliergonzalezescobar@gmail.com
Subject: Jury Service - Second Judicial District Court

Hello Mr. Gonzalez-Escobar – Please arrive at the Second Judicial District Court, 75 Court Street, at 10:30 a.m. today, if possible.

Thank you,

Kaili A. Lane
Jury Commissioner/
Language Access Services Manager
Second Judicial District Court
75 Court Street
Reno, Nevada 89501
Phone: 775.328.3152
Fax: 775.328.3188
www.washoecourts.com



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ORIGINAL

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR18-1135B

v.

Dept. No. 15

RICHARD ABDIEL SILVA,

Defendant.

JURY INSTRUCTIONS PENALTY PHASE

It is my duty as judge to instruct you in the law that applies to this penalty hearing. It is your duty as jurors to follow these instructions and apply them to the facts as you find them from the evidence and arguments presented.

You must not be concerned with the wisdom of any rule of law stated in these instructions, regardless of any opinion you may have as to what the law is or ought to be.

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 The evidence presented during the trial and during this
2 penalty hearing may be considered by the jury in deciding the proper
3 and appropriate sentence in this case.
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Instruction No. 3

1 In your deliberation you may not reconsider the subject of
2 guilt or innocence of the defendant, as that issue has already been
3 decided. Your duty is confined to a determination of the punishment
4 to be imposed.

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26 Instruction No. 4

1 The defendant has a continued constitutional right to not
2 testify during this penalty phase. It would be a violation of law
3 for you to impose a harsher sentence because a defendant maintained
4 his innocence and refused to admit guilt. If the defendant chooses
5 to remain silent, you shall not discuss that choice or allow it to
6 enter into your deliberations.

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26 Instruction No. 5

1 In addition to witness testimony and attorney arguments,
2 you will have in the Jury Deliberation Room a packet of letters
3 written on behalf of the defendant.
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Instruction No. 6

1 Although you are to consider only the evidence in the case
2 in reaching a penalty verdict, you must bring to the consideration of
3 the evidence your everyday common sense and judgment as reasonable
4 men and women. Thus, you are not limited solely to what you see and
5 hear as the witnesses testify. You may draw reasonable inferences
6 which you feel are justified by the evidence, keeping in mind that
7 such inferences should not be based on speculation or guess.

8 A penalty verdict may never be influenced by sympathy,
9 passion, prejudice, or public opinion. Your decision should be the
10 product of sincere judgment and sound discretion in accordance with
11 these rules of law.

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26 Instruction No. 7

1 The defendant in this case has been found guilty of Murder
2 of the First Degree with the Use of a Deadly Weapon; therefore, under
3 the laws of the State of Nevada, you must determine the sentence to
4 be imposed upon the defendant.

5 Murder of the First Degree is punishable:

- 6 1) by imprisonment in the Nevada State Prison for life
7 without the possibility of parole; or
8 2) by imprisonment in the Nevada State Prison for life
9 with the possibility of parole, with eligibility for
10 parole beginning when a minimum of 20 years has been
11 served; or
12 3) by imprisonment in the Nevada State Prison for a
13 definite term of 50 years, with eligibility for parole
14 beginning when a minimum of 20 years has been served.
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1 A prison term of 50 years with eligibility for parole
2 beginning when a minimum of 20 years has been served does not mean
3 that the defendant would be paroled after 20 years, but only that the
4 defendant would be eligible for parole after that period of time.

5 Life imprisonment with the possibility of parole is a
6 sentence to life imprisonment which provides that the defendant would
7 be eligible for parole after a period of 20 years. This does not
8 mean that the defendant would be paroled after 20 years but only that
9 the defendant would be eligible for parole after that period of time.

10 Life imprisonment without the possibility of parole means
11 exactly what it says, that the defendant shall not be eligible for
12 parole.

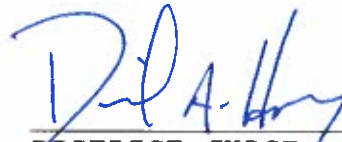
1 Now you will listen to witnesses and the arguments of
2 counsel who will endeavor to aid you to reach a proper penalty
3 verdict by refreshing in your minds the evidence and by showing the
4 application thereof to the law; but whatever counsel may say, you
5 will bear in mind that it is your duty to be governed in your
6 deliberations by the evidence as you understand it and remember it to
7 be and the law as given you in these instructions, with the sole,
8 fixed and steadfast purpose of doing equal and exact justice between
9 the defendant and the State of Nevada.

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26 Instruction No. 10

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 penalty
5 verdict, the foreperson should sign and date the same and request the
6 Bailiff to return you to court.

7 Your verdict as to the sentence to be imposed must be
8 unanimous. If, after thorough deliberations, you are unable to reach
9 a unanimous verdict as to the sentence, you shall return to court for
10 further instructions.

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14 DISTRICT JUDGE
15 Given March 2, 2020
16 District Ct.
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26 Instruction No. 11

1 **CODE: 1890**
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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **STATE OF NEVADA,**

10 **Plaintiff,**

Case No. CR18-1135B

11 **vs.**

Dept. No. 15

12 **RICHARD ABDIEL SILVA,**

13 **Defendant.**
14 _____/

15 **JURY QUESTION(S) - DURING PENALTY DELIBERATION; COURT RESPONSE**

16 **SEE ATTACHED**
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Question:

Are we allowed to discuss the penalty for the weapons charge and how it might relate to parole?

Answer:

This Court is in receipt of your question and is working on a written answer.

THANK YOU, BUT WE WERE
ABLE TO REACH A DECISION
WITHOUT AN ANSWER TO
THIS QUESTION

Question:

Are we allowed to discuss the penalty for the weapons charge and how it might relate to parole?

Answer:

The arguments of counsel are not evidence or statements of law. They are designed to assist you understand the evidence and law.

You are not to speculate upon when Mr. Silva may be released from prison. You are to consider Instructions 8 and 9 as the only statements from this Court relating to the sentence.

A handwritten signature in blue ink, appearing to read "Del A. Hany". The signature is stylized with a large initial "D" and a long, sweeping underline.

ORIGINAL

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR18-1135B

v.

Dept. No. D15

RICHARD ABDIEL SILVA,

Defendant.

PENALTY VERDICT

The Defendant, **RICHARD ABDIEL SILVA**, having been previously
found guilty by jury verdict of MURDER OF THE FIRST DEGREE WITH THE
USE OF A DEADLY WEAPON. We the Jury empaneled to decide and set
penalty, now set the penalty to be imposed, as follows:

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- ☐ Life in the Nevada Department of Corrections Without the Possibility of Parole.
- ☒ Life With the Possibility of Parole in the Nevada Department of Corrections, With Eligibility for Parole Beginning When a Minimum of 20 Years Has Been Served.
- ☐ Definite Term of 50 Years in the Nevada Department of Corrections, With Eligibility for Parole Beginning When a Minimum of 20 Years Has Been Served.


FOREPERSON

1 Code #4185
SUNSHINE LITIGATION SERVICES
2 151 County Estates Circle
Reno, Nevada 89511
3
4

5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 HONORABLE DAVID A. HARDY, DISTRICT JUDGE

8 -o0o-

9 THE STATE OF NEVADA, Case No. CR18-1135B
10 Plaintiff, Dept No. 15
11 vs.

12 RICHARD ABDIEL SILVA,
13 Defendant.
14 _____/

15

16

17 TRANSCRIPT OF PROCEEDINGS

18 SENTENCING

19 AUGUST 3, 2020

20 RENO, NEVADA

21

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23

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

25 JOB NO. 650291

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A P P E A R A N C E S

3

4

FOR THE PLAINTIFF:

WASHOE COUNTY DISTRICT ATTORNEY'S
OFFICE

5

BY: MATTHEW D. LEE, ESQ.

6

One South Sierra Street

Reno, Nevada 89520

7

775-328-3200

mlee@da.washoecounty.us

8

9

10

FOR THE DEFENDANT:

RISTENPART LAW, LLC

11

BY: THERESA ANNE RISTENPART, ESQ.

464 S. Sierra Street

12

Reno, Nevada 89501

775-200-1699

13

theresa@ristenpartlaw.com

14

15

16

FOR THE DIVISION OF
PAROLE AND PROBATION:

JILL BERRYMAN

17

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1 RENO, NEVADA, MONDAY, AUGUST 3, 2020, 10:48 A.M.

2 -o0o-

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4 THE COURT: This is CR18-1135B, the State versus
5 Richard Abdiel Silva. Mr. Silva is present. He is in
6 custody. Ms. Ristenpart is present for Mr. Silva. Mr. Lee
7 is present for the state.

8 We proceed by audiovisual means through Zoom
9 technology. We are in the midst of a COVID pandemic. I
10 proceed as instructed by the two Justice of the Nevada
11 Supreme Court and the Chief Judge of the Second Judicial
12 District Court.

13 I am bound by Administrative Orders. I do invite
14 you to place any objections on the record, if you are so
15 inclined. I sit in the courthouse alone at the county seat
16 of Reno. Any objections to proceeding?

17 MR. LEE: None from the State.

18 MS. RISTENPART: Your Honor, we continued out this
19 matter numerous times to see if we could do it in person,
20 and with the current restrictions and also speaking with
21 Mr. Silva, we have no objection proceeding forward through
22 video.

23 THE COURT: Thank you, Counsel.

24 Mr. Silva was adjudicated guilty of Murder With
25 the Use of a Deadly Weapon and that verdict was returned on

1 February 28th. I was the presiding Judge at trial. I have
2 reviewed the file materials and the Presentence
3 Investigation Report.

4 Mr. Silva, your attorney will speak for you in a
5 moment, but before she does, you are free to address the
6 Court. I invite you to do so, if you wish. Please remember
7 to speak loudly. You wear a mask and I want everybody,
8 including the court reporter, to hear what you say. After
9 your attorney speaks, Mr. Silva, I will turn to the state.

10 Beginning now with Mr. Silva, do you wish to say
11 anything, sir?

12 THE DEFENDANT: No, sir.

13 THE COURT: Okay. Ms. Ristenpart.

14 MS. RISTENPART: Thank you, Your Honor. We
15 received a copy of the Presentence Investigation Report that
16 is dated on April 14th of 2020. Mr. Silva has also had a
17 copy and a chance to review that.

18 There are objections we would like to make to this
19 Presentence Investigation Report. On page 4, Your Honor,
20 under the criminal history there is a separate section
21 labeled Institutional Adjustment.

22 THE COURT: Yes.

23 MS. RISTENPART: This is one of the first times I
24 have ever seen that on any kind of Presentence Investigation
25 Report, and the Division of Parole and Probation has failed

1 to turn over those documents to me to support their
2 allegations as to alluding to Mr. Silva's adjustment in
3 institution and so I would ask that that be struck from
4 page 4, that full paragraph.

5 In addition, Your Honor, we are also objecting to
6 the entire offense synopsis. As you see on page 4, sentence
7 two, the offense synopsis was taken directly from the
8 District Attorney's file, and based upon police reports,
9 victim statements, and other information all of that was
10 contained in the District Attorney's file. We are objecting
11 to the case facts as presented from that information.

12 But most specifically, Your Honor, on page 7 in
13 the third paragraph starting on the second line to the end
14 of that fourth paragraph, the Division of Parole and
15 Probation improperly, in my opinion, added in Mr. Silva's
16 statements that have been suppressed by this Court for being
17 involuntary and should not be used for any purposes, even
18 for sentencing in this case.

19 So we would ask that this be amended and that be
20 struck also starting from, "The defendant hung his head,"
21 well, I guess that could be in there. That's not quite a
22 statement, but starting with, "The defendant stated I shot,"
23 and then ended with the words, "Oh, S-H-I-T."

24 Lastly, Your Honor, we do understand that there
25 may have been some Victims of Crime payments towards death

1 benefits and funeral expenses. Those documents have not
2 been provided to my office and so we have no basis as to
3 whether or not that is the appropriate amount. That would
4 be on page 8.

5 And on page 9, Your Honor, the credit for time
6 served should be a different amount, and also we would be
7 asking that you consider not adding on the additional
8 \$25 administrative assessment fee or the \$3 DNA assessment
9 or the \$150 DNA assessment because that was ordered already
10 in this case.

11 With that, Your Honor, I would ask for the Court's
12 consideration to make those changes to the Presentence
13 Investigation Report that would follow him.

14 THE COURT: Sure. Let me just pause for a moment.
15 I want to further frame my participation this morning. The
16 jury did render sentence for the, for its verdict Murder of
17 the First Degree.

18 I am asked today to impose a sentence relating to
19 the Deadly Weapon Enhancement. The jury returned a verdict
20 of life with the possibility of parole, with eligibility for
21 parole beginning when a minimum of 20 years has been served.
22 That sentence has already been imposed and I only consider
23 the consecutive Deadly Weapon Enhancement. As it relates to
24 institutional adjustment, the request is denied.

25 To the State, I do want to hear your response to

1 the request to delete two paragraphs from page 7 which
2 suggest information this Court previously suppressed.

3 MR. LEE: Judge, in my preparation I had actually,
4 I was going to ask the same as the defense asked. I think
5 let's be cautious here and I'm fine striking those two
6 paragraphs.

7 THE COURT: So I most often make comments on the
8 record and sometimes handwritten interdelineations. I agree
9 with both attorneys and will strike the entirety of
10 paragraphs 3 and 4 on page 7.

11 And it seems to me that Mr. Silva should arrive at
12 the Nevada Department of Corrections with an amended PSI so
13 there aren't lines stricken through. So, Ms. Berryman, how
14 long will it take for you to open this up as a Word
15 document, delete paragraphs 3 and 4, save it as a pdf, and
16 re-file it as an amended Presentence Investigation Report?

17 MS. BERRYMAN: Your Honor, I will have to send it
18 to the office, but I can ask that it is done within a week,
19 if that's okay.

20 THE COURT: It should certainly be done that
21 quickly. Thank you, Ms. Berryman.

22 And, Ms. Berryman and to the State and also
23 Ms. Ristenpart, updated credit for time served. The PSI
24 reflects 903 days. Do we have some agreement on what the
25 current time served is?

1 MS. BERRYMAN: The way that I calculated it, it is
2 992 days.

3 THE COURT: Does the State have any reason to
4 object?

5 MR. LEE: That's what I calculated, too.

6 THE COURT: Very well. I will be heard at the
7 appropriate time on the \$25 administrative assessment fee
8 and the \$3 DNA assessment.

9 To the State, do you wish to be heard on the
10 Victims of Restitution -- Victims of Crime having paid
11 \$11,300 that the --

12 MR. LEE: I don't wish --

13 THE COURT: -- PSI recommends as restitution?

14 MR. LEE: Sorry to speak over you, Your Honor. I
15 don't wish to add anything to that or any further
16 documentation on that.

17 THE COURT: Do you ask the Court to impose that
18 amount as restitution?

19 MR. LEE: I don't think we provided you proof
20 today of that, Your Honor, so I will not be asking for that.

21 THE COURT: Thank you.

22 To arguments, Ms. Ristenpart.

23 MS. RISTENPART: Thank you, Your Honor. We do
24 have family members who are attending as participants who
25 would like to speak on Mr. Silva's behalf.

1 Your Honor, I will just preface that I will be
2 asking and requesting the Court to consider a 12 to 36 to
3 run consecutive. Your Honor, on a weapons enhancement we
4 already have quite a lengthy term of imprisonment for a
5 young man, this Court is quite well aware of the case facts
6 having sat through the jury trial, who had just a
7 misdemeanor previous to this.

8 I think that the weapons enhancement and the
9 legislation behind it, Your Honor, not to put it on a
10 figurative soapbox here, but it is distressing that someone
11 who strangles someone and kills them that way can actually
12 get less time than someone who uses a weapon, such as a
13 firearm.

14 I think that the weapons enhancement in this
15 particular case, even though I understand the State will
16 most likely be asking for significant more time and the
17 Court is considering that, that a 12 to 36 acknowledges the
18 fact that a weapon was used and it can be used for
19 statistical purposes.

20 But the true fact of the matter is the jury found
21 that 20 years was appropriate consideration with a life
22 sentence tail. Mr. Silva will be on supervision for the
23 rest of his life if he is ever considered for release. The
24 consecutive 12 to 36 doesn't change that in any way.

25 I would be requesting the Court to consider these

1 particular case facts, this particular case, Mr. Silva's
2 lack of criminal history, also keeping in mind previously
3 the family that spoke on Mr. Silva's behalf, his support,
4 his family that is with him.

5 He is a young man and has a lot of community
6 support, a lot of family support, and I think a 12 to 36
7 accomplishes the punishment range, but also acknowledges the
8 fact that he would be on supervision for the rest of his
9 life and the irony that someone can commit frankly a murder
10 with a much more horrific means and get less time.

11 With that, Your Honor, I would ask if we could
12 turn it over to Irma Guzman, who is present via attendee,
13 because I do know that they have at least three people that
14 would like to speak on Mr. Silva's behalf today.

15 THE COURT: Ms. Clerk, can you bring them in?

16 All right. Ms. Ristenpart, do you know the names
17 of the three people who want to address the Court and, if
18 so, please identify them by name.

19 MS. RISTENPART: Before us right now is
20 Janeth Silva, who would like to speak on behalf of
21 Mr. Silva. That is his sister.

22 THE COURT: First name?

23 MS. RISTENPART: Janeth, J-A-N-E-T-H. I also
24 believe that Irma would also like to speak, if that was
25 correct?

1 MS. SILVA-GUZMAN: Yes.

2 MS. RISTENPART: And that is also Irma Guzman, his
3 sister.

4 MS. SILVA-GUZMAN: Irma Silva-Guzman, sorry.

5 MS. RISTENPART: Irma Silva-Guzman. Thank you.

6 And I don't know if Perla wants to also speak.

7 MS. MARTINEZ: Yes.

8 MS. RISTENPART: Yes, so that would be Perla.

9 THE COURT: How do you spell that, please?

10 MS. RISTENPART: P-E-R-L-A.

11 THE COURT: Last name? I can inquire of the
12 witness.

13 All right. So beginning with Ms. Janeth Silva, if
14 you will sit in the front, please. Is that you?

15 MS. SILVA: Yes. Good morning, Your Honor.

16 THE COURT: Would you please face my Clerk and
17 raise your right hand and be sworn.

18 (Whereupon Janeth Silva was sworn.)

19 THE COURT: Yes, ma'am, what would you like to
20 say?

21 MS. SILVA: Good morning, Your Honor. I would
22 like to thank you for having me here today, and I would just
23 like to maybe refresh your memory on our last occasion that
24 we met, and I just wanted to say that Richard Silva, my
25 younger brother, has been very important to our family, has

1 done many things to help us all and I would like you to take
2 that into consideration.

3 We have a lot of, he has a lot of nieces and
4 nephews that have missed him, have missed his discipline in
5 helping them achieve better grades, helping them do better
6 and push themselves to the next level and become better
7 persons, and so I would just like you to know that he is
8 missed, and he is loved, and we know that he is a kind
9 person.

10 THE COURT: Thank you.

11 MS. SILVA: You are welcome, Your Honor.

12 THE COURT: If you will move seats so that
13 Ms. Irma Silva-Guzman can be heard.

14 MS. SILVA-GUZMAN: Yes, Your Honor.

15 THE COURT: If you will face my Clerk and raise
16 your right hand, please.

17 (Whereupon Irma Silva-Guzman was sworn.)

18 THE COURT: Yes, ma'am, what would you like to
19 say?

20 MS. SILVA-GUZMAN: Good morning, Your Honor. I
21 didn't have the privilege to speak on the behalf of my
22 brother at the last court hearing, but I do want to let it
23 be known that I am his younger sister. We are currently
24 actually 11 months apart and I have always looked up to him,
25 to this point still do, and he has always motivated me to

1 push myself to do better.

2 And going to school, I actually considered taking
3 the tax course thanks to him. And him being in there, he
4 still pushed me from, you know, the iWeb visits and telling
5 me to do it to help my parents out.

6 He is a very kind person. He loves to help other
7 people, and I wish there was a way, besides all of this that
8 happened, there is a way you could have actually met him out
9 of where he is at so you could have actually seen how he
10 really is.

11 I know people from the court prosecutor found him
12 kind of not good, stuff about him in there, but he is the
13 opposite of that. His character is beyond more than that.
14 He is very helpful. He has helped my son on a lot of
15 occasions. My son actually looks up to him, always asking
16 for him to be out here.

17 There is, there is so many good things about him.
18 There is so many people out here where he used to work that
19 still currently ask me about him, how he is doing, because
20 they tell me their stories from every job where he worked,
21 the bank, the DMV, how helpful he was to them and how he had
22 the patience to help them. Where other people wouldn't help
23 them, how he would help him.

24 And I was just hoping, I mean, everyone is human,
25 everyone makes mistakes, and I just hope that you guys can

1 give him less time and take in consideration that he is
2 really loved and missed out here with all his family, like
3 my sister said, all of his nieces and nephews.

4 We all truly miss him. There is not one day right
5 now that we miss iWeb visits, unless they get cancelled for
6 some reason in there, but we always look up to that. By him
7 going now to prison, it's going to be really hard to
8 actually see him and hear him everyday, how he is constantly
9 calling right now and we see him.

10 THE COURT: Thank you. Ms. Perla, if you will
11 identify your last name, please.

12 MS. MARTINEZ: Yes. Thank you, Your Honor. My
13 last name is Martinez, M-A-R-T-I-N-E-Z.

14 THE COURT: Thank you. What would you like to
15 say?

16 MS. MARTINEZ: Thank you, Your Honor. I just --

17 THE CLERK: Would you like her sworn, Your Honor?

18 THE COURT: Yes. Would you please face my Clerk
19 and raise your right hand to be sworn.

20 (Whereupon Perla Martinez was sworn.)

21 THE COURT: Ms. Martinez, you may begin.

22 MS. MARTINEZ: Thank you, Your Honor. I just
23 wanted to thank you for allowing us to speak on behalf of my
24 brother today, and I also wanted to just kind of, I mean,
25 there is so much that I would love to say today, and I know

1 we are so limited and I get very emotional.

2 I apologize, I actually was trying not to get
3 emotional. I just want to let you know that we are a really
4 close family, and he is very missed. He is a loving,
5 caring, helpful guy that we have and he supported us in
6 every kind of way.

7 We are currently struggling with taking care of
8 our children, getting to work, helping our kids with
9 homework. He is the type of uncle that would sit there and
10 teach every one of our children and help them with homework.
11 Not only do the homework for them, but explain how they got
12 their answers.

13 And he was the one that no matter where he was, he
14 would make sure that our kids were dropped off at school
15 safely and picked up from school. If we didn't have a
16 daycare, he would be the first one to volunteer to help us
17 all.

18 And he is the type of guy that, as I mentioned
19 previously, he is the type of guy that if he sees a homeless
20 person, he wouldn't think twice. I remember we went through
21 a drive-through to pick up food for all of us, and we saw
22 this young guy asking for money and Richard right away said
23 grab all of the coins in the middle of my car and give them
24 to him. I think it was worth \$5. So he is, he would not
25 think twice to do anything for anybody before himself as

1 well.

2 Another occasion that I just wanted to bring up to
3 show the type of guy that he is, is we have Risonez, who was
4 at that point 3 years old, 2 or 3 years old and she got the
5 disease of foot and mouth disease. And Richard was working
6 at that time, but this baby, she would only want Richard to
7 feed her, and so Richard grabbed the spoon and she would not
8 eat unless Richard would try the food first.

9 So Richard tried the food and then she started
10 eating, knowing that he can be contagious with this disease.
11 He did not care. He wanted to make sure that the baby ate
12 and so he would do this for the whole week. Eventually, he
13 ended up catching that and had to miss work for a couple
14 days, more than two weeks because he had that disease.

15 But I just wanted to let you know a little bit of
16 what type of guy he is and take that in consideration. We
17 understand, like Ms. Ristenpart said, you know, 20 years, he
18 is a young guy and adding more years to that would be really
19 harsher for all of us.

20 I just wanted to let you know that we are a close
21 family and he is a great guy. We do miss him and we just
22 wanted to thank you for today's opportunity to let all of us
23 talk.

24 THE COURT: Thank you, Ms. Martinez, and others
25 who have spoken. At this time, Ms. Clerk, would you please

1 return the family to the gallery.

2 To the State.

3 MR. LEE: Thank you, Your Honor. Your Honor, I'm
4 going to simply focus my remarks today on NRS 193.165 and
5 subsection 1, specifically those 4 or 5 factors that the
6 Court is to consider.

7 I should state as well that Ms. Castillo, who
8 testified at the sentencing hearing, she is Ms. Linarez's
9 mother. She is not here today. Frankly, she is worried
10 about retaliation. She hasn't been allowed to see even her
11 grand kids since she testified before, so she for that
12 reason chose not to participate today and you will not be
13 hearing from her.

14 First of all, the Court is to consider the facts
15 and circumstances of the crime. In this case, Mr. Silva
16 used a gun. It is a deadly weapon. I'm not commenting on
17 the Legislature, but I will just say our Legislature chose
18 to make that an enhancement and for good reason. It's a
19 strong deterrent to use firearms in other crimes.

20 But he didn't just use a gun here once or twice.
21 He used it 6 times. He pulled that trigger 6 separate times
22 at close range after waiting for Ms. Linarez to appear.

23 And then along with that, that gun is still
24 outstanding. It's out there somewhere in the community. It
25 was never recovered.

1 I don't care to rehash any other facts. The Court
2 knows those. I will simply ask the Court to recall the
3 facts of the trial as to the circumstances leading up to
4 this and how it was done.

5 Second, as to the history of Mr. Silva, the
6 criminal history, he only has one prior conviction; however,
7 it's a gun charge again, using a gun in a place where he
8 shouldn't have used a gun. Even at that time he was
9 licensed and trained to use that gun according to the laws
10 in Nevada.

11 And then, three, the impact of the crime on the
12 victims. Ms. Linarez herself, obviously that impact, it's
13 obvious. It's the worst possible effect because it took her
14 life. As to Ms. Linarez's family, she left three children
15 motherless when Mr. Silva took her life. She left, when she
16 died she left her mother without a daughter, certainly
17 friends, family beyond that, a sister without a sister.

18 So the way in which the firearm was used in this
19 case had a huge ripple effect on Ms. Linarez's family and
20 our community in general. Those things alone, those factors
21 I would ask the Court to consider.

22 And it's no surprise the State is not going to be
23 asking for any minimal term or even a midrange term. The
24 State is asking for the maximum term of 8 to 20 on the
25 Deadly Weapon Enhancement considering those factors and

1 especially, again, focusing on the fact that it wasn't just
2 used once in this case. It was used, this enhanceable
3 mechanism was used 6 times.

4 Given all of that, I think I have exhausted all of
5 my notes here, Your Honor, and I would ask the Court to
6 return that penalty of an 8 to 20.

7 THE COURT: Mr. Lee, how do you reconcile your
8 request with the Division's recommendation of 36 months on
9 the bottom end?

10 MR. LEE: You know what, I scoured the PSI for any
11 notes about that finding and how they came to that 36 to 20,
12 or 36 to 240, and I don't see any notes about that. It's
13 not part of their rubric. It's not part of their standards
14 that they use, as far as I can tell; therefore, I don't
15 reconcile that.

16 I would simply ask the Court to, you know, not
17 disregard that, certainly consider that, but I would ask the
18 Court to find otherwise. The Court was present for the
19 entire trial. The Court knows exactly what came out and how
20 the testimony was presented and taken and what evidence was
21 adduced at the trial, and so the Court is in a much better
22 position than the writer of the PSI. No offense to the
23 writer of the PSI, but the Court is in a much better
24 position to certainly judge this case.

25 THE COURT: Ms. Ristenpart suggested that there

1 are more, these are my words, the record will reflect my
2 attempt to be fanatically consistent, but I'm using my own
3 words, there are more gruesome instruments of homicide than
4 what occurred here that do not result in enhancements, such
5 as strangulation. Do you have any response to that?

6 MR. LEE: Sure. So strangulation comes about
7 certainly by a deadly weapon sometimes, but generally by
8 hands, right, by manual strangulation. Again, my only
9 comment is what I said before, that the Legislature deemed a
10 deadly weapon to be a firearm and in this case they deemed,
11 they determined that that would be subject to an additional
12 penalty.

13 They have not mentioned the use of manual
14 strangulation or anything, and so that's not really a
15 consideration I would ask the Court to make in this case.
16 We are here on a deadly weapon. The manner in which it was
17 used was reprehensible in this case and I think it's
18 deserving of the maximum.

19 THE COURT: Thank you.

20 MR. LEE: Thank you.

21 THE COURT: Mr. Lee, what do you consider
22 mitigating factors to be, if any, in this instance?

23 MR. LEE: Well, I was trying to come up with some,
24 actually, so I could certainly address those, but I think
25 Your Honor has heard things from the family that could be

1 considered mitigating, but that alone doesn't necessarily
2 mean that the Court cannot or should not sentence to the
3 maximum.

4 Whatever Mr. Silva has done in his past of good
5 deeds, that's wonderful, and I think everybody has some of
6 that within them and they do good things. However, we are
7 here judging this horrible crime that happened almost three
8 years ago now.

9 And so as far as how the firearm was used, it was
10 used and, again, in a maximum manner, 6 shots, the fact that
11 the firearm is still outstanding, and all of those other
12 factors I stated, I don't think any mitigating circumstances
13 necessitate a lesser finding from Your Honor.

14 THE COURT: I'm required by statute to state on
15 the record that I have considered all of the information
16 that Mr. Lee just argued, and I deeply respect the jury work
17 longitudinally as part of my career and case-by-case as it,
18 as each jury carefully considers and renders a decision, and
19 I'm going to invite both of you to respond to what I'm
20 saying, counsel.

21 I don't want to, I cannot supplant or modify what
22 the jury here has done or what any jury does in my career.
23 The jury heard the exact same evidence the Court did, and I
24 wish to remain silent as to the jury's verdict allowing it
25 to be the only voice of judgment in this case. All right.

1 So that's one tension on one side.

2 And then when I consider each of these five
3 elements I am expressly directed to analyze, it takes me
4 back to the same information the jury considered; for
5 example, the facts and circumstances of the crime.

6 The evidence was overwhelming that Mr. Silva
7 decided to kill a woman who was a complicating influence in
8 both the family and his personal life and that he acquired
9 the assistance of somebody else, Mr. Guzman, to assist.

10 So I'm required to consider the facts and
11 circumstances, but I need to somehow put those facts and
12 circumstances in the deadly weapon bracket and not some form
13 of addendum to the verdict. The criminal history of
14 Mr. Silva certainly speaks for something above the minimums,
15 because his only prior history involves a firearm,
16 brandishing a firearm.

17 The actual conviction is Drawing a Deadly Weapon
18 in a Threatening Manner, a misdemeanor, but it followed the
19 arrest upon the gross misdemeanor Discharging or Other --
20 Discharge a Gun or Other Weapon Where a Person Might Be
21 Endangered. Of course, I go with the conviction, but
22 referencing the arrest is not highly suspect or impalpable,
23 so his criminal history speaks to something above the
24 minimum.

25 Going back to the facts and circumstances, the

1 frequency of the bullet shots, the proximity, the
2 assassin-type context of this crime, those all speak to
3 something above the minimum. But, again, I don't want to
4 supplant what the jury has done.

5 The impact of the crime is profound, right, the
6 way Mr. Lee has described three motherless children, a
7 daughterless mother, sisterless sister, further complicated
8 by the emotionally and physically intimate nature of the
9 families and Mr. Silva in particular.

10 So I will stop talking now. I hope to share my
11 concern for following the law as strictly as I can. Do all
12 of those facts and circumstances of the crime relate to
13 modifying the verdict punishment or do I confine those
14 strictly to the firearm itself? Beginning with Mr. Lee and
15 then Ms. Ristenpart, do you have any thoughts as you listen
16 to me?

17 MR. LEE: Judge, I'm not quite sure about your
18 last statement, modifying the judgment or the verdict, I'm
19 not sure about what that meant.

20 THE COURT: I must acidulously avoid modifying the
21 jury's punishment verdict. I don't want to do anything that
22 would somehow modify it by considering the overall general
23 facts and circumstances of the crime. I will if the statute
24 will allow me to, but I don't know if the facts and
25 circumstances of the crime relate to the firearm itself or

1 the entire crime from beginning to end.

2 MR. LEE: Thank you, and I appreciate that. And
3 so my thought on that is it's the facts and circumstances of
4 the crime. I mean, it's as clear as can be in the statute;
5 however, interesting in this case is really all of the
6 circumstances and facts of this crime do relate to the use
7 of a firearm.

8 All of those things led to his plan days before
9 the murder to use a firearm in the murder of Ms. Linarez.
10 And so in this case, I will speak only to this case and
11 avoid any, let's say, broader terms, but in this case those
12 facts and circumstances of the entire crime do inform his
13 use of that deadly weapon, and so I would argue that the
14 Court should consider all of those things.

15 I don't take that as supplanting the jury in their
16 province as to the decision they made, but they made that
17 decision independent of any influence of anybody else, and
18 now we are here just simply on the Deadly Weapon Enhancement
19 and so, again, the Court should consider everything because
20 it does all relate to how the weapon was used and why the
21 weapon was used.

22 THE COURT: Ms. Ristenpart.

23 MS. RISTENPART: Thank you, Your Honor. I think
24 if we follow the State's logic, though, I mean, it's very
25 difficult to separate, of course, the case facts and the

1 Court is just concerning the weapons enhancement here.

2 But the Court did acknowledge the fact that the
3 jury in this particular case felt that based upon the
4 entirety of the case facts, even the use of the weapon here
5 and the way the weapon was used, that Mr. Silva did not
6 deserve the maximum punishment of life in prison. They
7 believed that he deserved a chance to be rehabilitated and
8 look at something closer to 20 years if considered for
9 parole and then also with the supervision for the rest of
10 his life.

11 So for the Court to use the case facts beyond the
12 fact that a firearm was used here and that it was used in a
13 deadly manner and taking all of the other case facts that
14 the State argued, then I think that the Court also has to
15 consider the jurors' positions in having heard the same case
16 facts.

17 In this particular case, Your Honor, the use of
18 the firearm, a deadly weapon, it was, if you look at the
19 statute itself, the egregious parts of the statute as to,
20 you know, gas, mass deadly weapons, those kind of things
21 also are included in all the same statute versus a firearm
22 that was, yes, fired 6 times.

23 But because of the nature of the case, and I'm
24 trying to speak delicately here, Your Honor, but I'm going
25 to be very blunt also, if it had been not Ms. Linarez, we

1 never would be sitting here.

2 THE COURT: I'm sorry?

3 MS. RISTENPART: If it had not been this specific
4 victim, none of us would be here. This was a very specific
5 situation versus really the Deadly Weapons Enhancement,
6 which I think is a very far cry from an egregious drive-by
7 shooting and you hit an 8 year old because you are using a
8 weapon that has the range to hit someone outside your
9 target.

10 And, Your Honor, I'm just trying to put this in
11 context as to the actual weapons enhancement charge. The
12 maximum of 8 years, that is higher than even possibly doing
13 a voluntary manslaughter charge.

14 I mean, that is essentially a whole other sentence
15 on top of what we already have and that's why the
16 contention, of course, I'm arguing for minimums and the
17 State is arguing for maximums, but then the Division
18 recommends 36 months.

19 And for the Court to consider all of that and also
20 consider how the jury came to their decision based upon the
21 same case facts, I would ask the Court to consider that that
22 also falls into the weapons enhancement, that Mr. Silva is
23 worthy of lesser than the maximum in this particular case.

24 THE COURT: I want to understand what you just
25 said. I think you just said that the jury considered the

1 deadly weapon as part of its decision. Did you say that?

2 MS. RISTENPART: I did not, Your Honor. What I
3 said is that the jury clearly having heard all of the
4 evidence in mitigation, that they considered Mr. Silva
5 worthy of less than the maximum of life in prison, that they
6 considered him worthy of a chance for rehabilitation and a
7 chance to re-enter our society possibly at 20 years or
8 around 20 years, and I think that the jury also can, if we
9 are following the State's logic and argument, would carry
10 into the weapons enhancement for the Court to consider,
11 also.

12 MR. LEE: Judge, I don't want to speak over your
13 thinking, but I would love to respond if Your Honor would
14 give me an opportunity.

15 THE COURT: Go ahead and then I will think.

16 MR. LEE: First of all, I don't think it's up to
17 anybody to try to guess why or how the jury made its
18 determination. That's completely their province, completely
19 independent, and so I think whatever the jury did and how
20 they decided is completely independent of what this Court is
21 elected to do and that's to make your own independent
22 judgment based on these factors in 193.165.

23 And so if a jury convicted of second degree, it
24 doesn't mean the Court has to give then a lesser Deadly
25 Weapon Enhancement punishment. Again, it's totally

1 separate.

2 And, two, in this case there was that interesting
3 aspect of it that the jury was informed of the Deadly Weapon
4 Enhancement as a penalty. They were informed that there is
5 going to be an additional penalty that Your Honor is going
6 to find in this case, and I guess I can just leave it at
7 that, that because in this case that was brought out by the
8 defense, the fact of the jury's ultimate conclusion in this
9 case really should not be considered by the Court.

10 It should just, the Court should just make, I urge
11 the Court to just make an independent determination as to
12 the deadly weapon based on those factors and not consider
13 why or what or how the jury came to its conclusion.

14 MS. RISTENPART: Your Honor, if I may respond
15 briefly. The Court, as I understand it, the Court's concern
16 is that if we are just sentencing based upon the statute of
17 193.165, that there is very specific findings. There was a
18 firearm, it was used in this way, and that should shape the
19 Court's sentence.

20 The way the State has presented part of their
21 argument, and that is what I was responding to, is that that
22 has gone beyond that, and the Court was asking for guidance
23 as to can we consider all of the case facts besides just the
24 deadly weapon, and that's what I was responding to in
25 regards to the jury also decided those same factors.

1 So that is where I'm presenting to the Court that
2 argument as to they have taken that into consideration, too,
3 and heard all of the same case facts. Thank you.

4 THE COURT: I typically sign Judgments of
5 Conviction the day of the sentencing hearing or the next
6 following day. I will not sign the Judgment of Conviction
7 in this case until I have the amended PSI so that I can
8 confirm that they have been joined together in the packet
9 that goes to the Nevada Department of Prisons.

10 The facts and circumstances of the crime are
11 embedded in the record and apparent to any review. They are
12 deeply troubling and significant and this Court would
13 construe the facts and circumstances as an aggravator within
14 the range of time.

15 The criminal history, Mr. Silva's criminal history
16 also aggravates the range of time set forth by statute in
17 that his only prior crime involved the use, the presence,
18 the influence of a firearm.

19 The impact of the crime is deeply significant, and
20 those who mourn Ms. Linarez's loss not just know of her
21 absence by death, but also know of the instrumentality of
22 death, and it is not too speculative, highly suspect or
23 impalpable for the Court to consider that the fact -- the
24 instrumentality of death is a fact that those aggrieved by
25 the crime will carry with them for the duration of their

1 life.

2 I pause for a moment at mitigation because the
3 three factors so far have all spoken to something much
4 higher than the minimum, even the maximum, and that is
5 mitigating factors. The only mitigating factor that I am
6 aware of that implants into my analytical consciousness is
7 that Mr. Silva is deeply privileged to be within a close
8 family bonded by love.

9 I observed their support for him throughout the
10 proceedings. I was moved by the three victims, excuse me,
11 the three statements that I heard all presented in good
12 faith by family members who are endearing in presentation.

13 And the reason I'm pausing is that as I think
14 about that close family, I'm not sure whether that
15 constitutes mitigation, because in someway it can be
16 construed as an aggravator. Mr. Silva was born into
17 familial privilege and then there are the events of November
18 2nd, 2017, which stand in stark contrast to the other life
19 that Mr. Silva lived within his own family.

20 I have paused for a moment and reflected upon all
21 other relevant information that the Court may consider, to
22 include counsels' last round of arguments as it relates to
23 the jury's consideration during the sentencing proceeding.

24 This Court will enter a Judgement of Conviction on
25 the Deadly Weapons Enhancement. Mr. Silva will be given

1 992 days credit for time served. There will not be
2 restitution ordered in the amount of \$11,300. The \$25
3 administrative assessment fee and the \$3 DNA administrative
4 assessment will be imposed only once. The Court Clerk and I
5 will ensure that there is not a duplication.

6 I'm going to revisit something I said. I
7 indicated that the criminal history could be construed as
8 aggravating, because it involves the use of, the presence,
9 the brandishing of a firearm.

10 If I'm intellectually honest, I think that the
11 criminal history could also be a mitigator in that there is
12 no other criminal history other than the misdemeanor.

13 Mr. Silva was otherwise working, paying taxes, and
14 paying his bills. He had a job with the Department of Motor
15 Vehicles and I do not see, in contrast to other cases, a
16 long systematic pattern of criminal behavior involving
17 either violence, forms of weaponry, and so forth. So the
18 deadly weapon, excuse me, so the criminal history both
19 aggravates and mitigates and that's why I'm pausing.

20 It is the judgment of this Court that Mr. Silva be
21 sentenced for the Deadly Weapon Enhancement for a minimum of
22 60 months and a maximum of 240 months. That will be
23 consecutive to the life imprisonment that the jury has
24 previously imposed. Counsel, any questions?

25 MR. LEE: None from the State. Thank you for your

1 time, Your Honor.

2 MS. RISTENPART: No, Your Honor.

3 THE COURT: Good day, everybody. Court will be in
4 recess.

5 (Whereupon the proceedings concluded at 11:39 a.m.)

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2 STATE OF NEVADA)
3 WASHOE COUNTY) ss.

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

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

12 That I was present in Department No. 15 of the
13 above-entitled Court on August 3, 2020, and took verbatim
14 stenotype notes of the proceedings had upon the matter
15 captioned within, and thereafter transcribed them into
16 typewriting as herein appears;

17 That the foregoing transcript, consisting of pages 1
18 through 33, is a full, true and correct transcription of my
19 stenotype notes of said proceedings.

20 DATED: At Reno, Nevada, this 28th day of June, 2021.

21

/s/Corrie L. Wolden

22

23

CORRIE L. WOLDEN
CSR #194, RPR, CP

24

25

1 **CODE 1850**

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

8 **STATE OF NEVADA,**

9 **Plaintiff,**

Case No. CR18-1135B

10 **vs.**

Dept. No. 15

11 **RICHARD ABDIEL SILVA,**

12 **Defendant.**
13 _____/

14 **JUDGMENT OF CONVICTION**

15 1. Richard Abdiel Silva having been found guilty by a jury of the crime MURDER
16 WITH THE USE OF A DEADLY WEAPON, a violation of NRS 200.010, NRS 200.030, NRS
17 193.165 and NRS 195.020, a category A felony, as charged in the Information, and the jury
18 determined he should be punished by imprisonment in the Nevada Department of Corrections for a
19 term of Life With the Possibility of Parole after a minimum of 20 years has been served, with 992
20 days credit for time served.

21 2. This Court finds no legal cause being shown as to why judgment should not be
22 pronounced against Richard Abdiel Silva relating to the Deadly Weapon Enhancement. This Court
23 further found the presentence investigation report contained information that was obtained in
24 violation of the U.S. Constitution and suppressed by previous order of this Court. Upon review of
25 the presentence investigation report, this Court had certain inclinations about the sentence it might
26 impose—particularly the decedent's awareness that she would soon be shot by a firearm. During
27 the sentencing proceeding the attorneys acknowledged this Court should order an amended pre-
28 sentence investigation report to delete the information improperly obtained. This Court then

1 removed the improper information from its analysis, thus altering its inclination and the sentence it
2 imposed, this Court rendered judgment as follows:

3 3. That Richard Abdiel Silva having been found guilty by a jury of the crime
4 MURDER WITH THE USE OF A DEADLY WEAPON, a violation of NRS 200.010, NRS
5 200.030, NRS 193.165 and NRS 195.020, a category A felony, as charged in the Information, and
6 that he be punished for the Deadly Weapon Enhancement by imprisonment in the Nevada
7 Department of Corrections for a mandatory consecutive term of a minimum of 60 months to a
8 maximum of 240 months, with no credit for time served.

9 4. It is further ordered that Richard Abdiel Silva shall serve an aggregated sentence of
10 imprisonment in the Nevada Department of Corrections for a minimum term of 25 years to a
11 maximum term of Life.

12 5. It is further ordered that the Richard Abdiel Silva shall pay the statutory \$25.00
13 administrative assessment fee, \$3.00 as an administrative assessment for obtaining a biological
14 specimen and conducting a genetic marker analysis, and \$150.00 as a DNA testing fee, and submit
15 to a DNA analysis to determine the presence of genetic markers, if not previously ordered.

16 6. Richard Abdiel Silva is hereby advised:

17 **Any fine, fee or administrative assessment imposed today (as reflected**
18 **in this Judgment of Conviction) constitutes a lien, as defined in**
19 **Nevada Revised Statutes (NRS 176.275). Should you not pay these**
20 **finances, fees, or assessments, collection efforts may be undertaken**
21 **against you.**

22 Dated this 3 day of August, 2020.

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DISTRICT JUDGE

1 Mr. Richard Silva PRO PER

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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 STATE OF NEVADA,

9 Plaintiff,

Case No. CR18-1135(B)

10 v.

Dept. No. 15

11
12 RICHARD ABDIEL SILVA.

13 Defendant.
14 _____/

15 **NOTICE OF APPEAL**

16 NOTICE is hereby given that Defendant RICHARD ABDIEL SILVA, hereby appeals to
17 the Supreme Court of Nevada from the Judgment of Conviction entered in this action on August
18 7, 2020. I have requested that my original trial counsel, Theresa Ristenpart, Esq., file this Notice
19 of Appeal on my behalf.

20 FURTHERMORE, pursuant to NRS 239B.030, the undersigned hereby affirms this
21 document does not contain the social security number of any person.
22

23 DATED this 11th day of August, 2020.

24 Respectfully Submitted,

25 /s/ Theresa Ristenpart
26 THERESA RISTENPART, Esq.

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CERTIFICATE OF MAILING

I certify that on the 11th day of August, 2020, I electronically sent a true copy of
the attached document to:

WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE

s/Lisa Dee
Lisa Dee, ACP

ORIGINAL

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

* * *

THE STATE OF NEVADA,

Plaintiff,

Case No. CR18-1135B

v.

Dept. No. D15

RICHARD ABDIEL SILVA,

Defendant.

VERDICT

We, the jury in the above entitled case, find the Defendant
RICHARD ABDIEL SILVA, as follows:

(Select only one box)

- ☐ Not Guilty of MURDER WITH THE USE OF A DEADLY WEAPON
- ☒ Guilty of FIRST DEGREE MURDER
- ☐ Guilty of SECOND DEGREE MURDER
- ☐ Guilty of VOLUNTARY MANSLAUGHTER
- ☐ Guilty of INVOLUNTARY MANSLAUGHTER

1 (If you find **RICHARD ABDIEL SILVA** not guilty of murder with the
2 use of a deadly weapon or guilty of involuntary manslaughter please
3 sign and date the verdict form. ONLY If you find **RICHARD ABDIEL**
4 **SILVA** guilty of FIRST DEGREE MURDER or SECOND DEGREE MURDER or
5 VOLUNTARY MANSLAUGHTER please proceed to and answer Question 1).

6 **Question 1:** If you find **RICHARD ABDIEL SILVA** guilty of FIRST
7 DEGREE MURDER or SECOND DEGREE MURDER or VOLUNTARY MANSLAUGHTER, do
8 you find that **RICHARD ABDIEL SILVA** used a deadly weapon?

9 (Select only one box)

10 ☒ Yes

☐ No

11 DATED this 28 day of FEBRUARY, 2020.

12
13
14 
15 FOREPERSON