

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 82918

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~~Elizabeth A. Brown~~
Clerk of Supreme Court

SHELBE RIVERA

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Appeal from Guilty Verdict
Eighth Judicial District Court, Clark County
The Honorable, District Court Judge Michelle Leavitt
District Court Case No. C-18-333893-1

APPELLANT'S APPENDIX - VOLUME THREE

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DATED this 14th day of September, 2021

/s/

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1 that will be argued in closing.

2 THE COURT: Okay. I'll allow it.

3 [Bench conference ends.]

4 THE COURT: Does the State stipulate to the presence of the panel?

5 MS. MOORS: Yes, Your Honor, the State does.

6 THE COURT: And Mr. Marchese?

7 MR. MARCHESE: Yes, we do, Your Honor.

8 THE COURT: Okay. You may continue with your examination.

9 MS. DUNN: Thank you, Your Honor.

10 BY MS. DUNN:

11 Q So Dr. Coard, in examine -- or in reviewing the transcript from the
12 interview with police, what signs, if any, did you see that indicated the defendant's
13 delusional state of mind at that point?

14 A There are elements within the transcript that suggest that he's having
15 some paranoia about what has transpired. There -- I would describe it more in the
16 mild category related to delusions.

17 Q Thank you. Now, when you conducted your interview with the
18 defendant, were you aware of his intelligence level?

19 A I was.

20 Q And how would you describe that?

21 A As I indicated earlier, he is functioning in the mild range for intellectual
22 disability suggesting that his ability to kind of -- you know, overall functioning you
23 might not see a whole lot of difference, he probably needs some support in more
24 complex or difficult activities. And he also may -- because of the intellectual
25 disability, we kind of think about the ability, kind of, to process information is much

1 more kind of rudimentary, more in a concrete way versus abstract kind of abstract
2 thinking. So that's certainly a consideration factor that I took as part of the interview
3 and part of the evaluation.

4 Q Okay. So you took that into consideration, did it impact how you
5 conducted your interview?

6 A Yes.

7 Q In what way?

8 A Well, basically one of the things is is that I'm going to be very careful in
9 monitoring the language that I'm using. I'm not going to ask very complex
10 questions. I'm going to try to stick to one particular area and not kind of go all over
11 the place, but kind of get him to focus on that particular thing. I'm also not going to
12 give him, you know, multiple -- I -- typically in interviews in general, I typically don't
13 follow a linear process. So I don't say, okay, this happened, this happened, this
14 happened. I talk a little bit about this, then go and talk about something else, and
15 then come back to that other component. With somebody who has intellectual
16 disability, it's a little bit more linear in nature, just simply because I need him to have
17 the context for the questions, how they're leading to the next question.

18 I also have less concern in an individual that has intellectual disability,
19 that they're going to try some level -- the level of manipulation typically in an
20 individual with intellectual disability is usually significantly less.

21 Q Can you explain what you mean by that?

22 A Sure. So if you think about the process of lying, we'll just talk about
23 lying for a second, and the idea that in order to lie you have to have a level of
24 complexity in order to be able to think about it and kind of plan and stick to a story.
25 Individuals who have intellectual disabilities, it's not that they can't lie, but it's much

1 more difficult for them, and it's also easier to kind of detect because they're not
2 typically thinking in much more abstract ways. It's usually very concrete. And so
3 from that standpoint it's typically a little -- from my experience, it's a little bit easier in
4 the interview because I'm usually less concerned that they're trying to malingering or
5 trying to give me a false story.

6 Q Thank you. Now, I want to talk to you a little bit more about defendant's
7 time at Lake's Crossing.

8 A Yes.

9 Q I know that we spoke about this before, you said that he ended up
10 being prescribed a medication, what was the name of that?

11 A Clozaril.

12 Q Clozaril. And I believe you said that that's on the higher end of an
13 anti-psychotic medication?

14 A Well, they're all equivalent. It is -- it's kind of the medication of last
15 choice because of the significant side effects that are associated with its use.

16 Q Okay. But so before being prescribed that your -- your prior testimony
17 was that he would have to take two medications?

18 A That is the standard national protocol.

19 Q Okay.

20 A Failure of two medications prior to initiating Clozaril.

21 Q And so with each of those it would take time to increase the dosage?

22 A Yeah, typically we don't start somebody at a high dose, typically we
23 start them in small amounts because all of these medications have pretty significant
24 side effects.

25 Q So is it your opinion that figuring out his medications and finally landing

1 on the Clozaril could be why he was at Lake's Crossing for so long?

2 A I believe that that's what the medical records at Lake's --
3 Lake's Crossing suggest.

4 Q Okay. But again, I want to reiterate, his time at Lake's Crossing, is it
5 your understanding that that was due to a competency evaluation?

6 A It was. It was purely a competency evaluation. Once he was found to
7 be -- once -- once the court found that he was competent he was transported back
8 to this jurisdiction for the purposes of standing trial.

9 Q And is competency the same or different than what we're talking about
10 here today, legal insanity?

11 A Competency is a completely different matter. It has nothing to do with
12 the crime -- it has nothing to do with the crime except for that the defendant is able
13 to name the crime and understand what the punishments might be associated with
14 that crime.

15 Q Now, in coming to your conclusions in this case, which did you rely on
16 more, the transcript from the interview with police or your own interview with him?

17 A As I said before, I rely on the information that's closest to the -- to the
18 crime. So the transcript did get more weight simply because it was in closer
19 proximity to the time of the alleged offense.

20 Q Now, I just want to clarify your conclusions with regard to legal insanity
21 and the process that we go through. So you determined that it's likely defendant
22 was under a delusion?

23 A Correct.

24 Q And that that was likely caused by a disease or defect of the mind?

25 A Correct, schizophrenia.

1 Q And what was that -- I'm sorry, go ahead.

2 A Schizophrenia.

3 Q Schizophrenia. And Dr. Chambers agreed with you?

4 A Yes.

5 Q Okay. Now, did you come to a conclusion about whether defendant

6 knew what he was doing?

7 A I did.

8 Q And did he?

9 A I concluded that he did understand what he was doing.

10 Q And just so I'm crystal clear, did he know, in your opinion, that he was

11 stabbing a human with a knife?

12 A Yes, he did.

13 Q And Dr. Chambers agreed with you on that as well?

14 A That is correct.

15 Q Okay. And can you give us an example of what it would look like if

16 somebody didn't know what they were doing?

17 A Well, using the knife, it's -- if he thought that -- if he thought that the

18 alleged victim in this case was a pumpkin and he was taking a knife and carving a

19 pumpkin, then that would be an example that I would find.

20 Q But that's not the situation here in your opinion?

21 A That's not even close to the situation in this case.

22 Q Now, in your opinion, did the defendant know that what he was doing

23 wrong -- that what he did was wrong, and by that I mean, did he know that what he

24 was doing was not authorized by law?

25 A Yes.

1 Q What led you to that conclusion?

2 A One, his conduct afterwards, so discharge or getting rid of the knife in
3 the Dumpster, running away --

4 MR. MARCHESE: I'm going to object. There's no testimony that he ran
5 away.

6 THE COURT: Right. The objection's sustained.

7 BY MS. DUNN:

8 Q Getting rid of the knife, what other things led you to that conclusion?

9 A That -- that distant from the -- distant from the crime scene, he also
10 disposed of the bloody shirt.

11 Q And so would it be fair to say that this point is actually the only thing
12 that you and Dr. Chambers disagree on?

13 A Correct.

14 Q Okay. Now, speaking a little bit more about defendant knowing that
15 what he did was wrong, let me ask you for a second, we kind of talked about the
16 soldier, you know, hypothesis earlier, here, if we take all of the defendant's beliefs
17 as true, so if we believe that he got a dirty look, if we believe that there was some
18 sort of east coast/west coast dispute and if we believe that the victim asked him
19 about the knife, were the defendant's actions legally justified?

20 A Well, based off of what the defendant said -- I mean, he said that he
21 thought that he might be in danger. He answered very differently with me than he
22 did with Dr. Chambers, but --

23 MR. MARCHESE: I'm going to object as to asks for legal conclusion.

24 THE COURT: The objection's sustained.

25 ///

1 BY MS. DUNN:

2 Q Well, let me ask you this, did the defendant tell you that he understood
3 his conduct was unlawful?

4 A Yes.

5 MS. DUNN: Pass the witness, Your Honor.

6 THE COURT: Any cross?

7 **CROSS-EXAMINATION OF HERBERT F. COARD, III, ON REBUTTAL**

8 BY MR. MARCHESE:

9 Q As you sit here today in front of this jury, you could not tell them when
10 Mr. Rivera did or did not take his medication last, can you?

11 A That's all based off of his self-report to --

12 Q That's a "yes" or "no," sir. "Yes" or "no"?

13 A I cannot, no.

14 Q And part of his self-report, as you indicate, is that he told the Las Vegas
15 Metropolitan Police Department on page 34 of his voluntary interview, that it's been
16 some days, correct?

17 A Yes.

18 Q They never asked for a clarification as to what "some days" is, correct?

19 A That's correct.

20 Q Now, you indicated that Mr. Rivera got rid of the -- the shirt; is that
21 correct?

22 A That's correct. That's what --

23 Q All right.

24 A -- was in the evidence.

25 Q And that -- and that part of that is, you're correct, there's a picture of it

1 on the side of the highway that you've seen, correct?

2 A You showed it to me.

3 Q And in addition, he mentioned that shirt in his interview to the
4 Las Vegas Metropolitan Police detectives, correct?

5 A He did. Yes.

6 Q And his answer -- the reason he got rid of the shirt, excuse me, his
7 explanation, was that, I quote, "He wanted to be clean."

8 A Correct.

9 MR. MARCHESE: No further questions.

10 THE COURT: Any redirect?

11 MS. DUNN: No, Your Honor.

12 THE COURT: Anything else for this witness?

13 Okay. We have a question.

14 [Bench conference transcribed as follows:]

15 THE COURT: Okay. The record will reflect the hearing's taking place outside
16 the presence of the jury panel. Court's Exhibit 10, Does the defendant have a
17 history of violence? Can you explain more about the head injuries, age and extent?
18 And did defendant admit to belonging to a gang?

19 I don't think any of them are appropriate.

20 MS. MOORS: Lindsey Moors on behalf of the State. There's various reasons
21 why I believe that all three of them are inappropriate and I would object to all three
22 of them.

23 THE COURT: Okay.

24 MR. MARCHESE: Yeah, I would object. And also, as to Number 2, I don't
25 think -- there's some tangential mention, but I really don't know why.

1 THE COURT: Okay. I'm not going to ask any of the questions on Court's
2 Exhibit Number 10.

3 Number 11, is Mr. Okeefe, do you believe there is a -- I don't know --

4 MS. MOORS: There is no -- I'm assuming that means no chance with a
5 circle --

6 THE COURT: Oh, okay, you're good at this. Do you believe there is no
7 chance he was insane at the time of the incident? Is it possible? And Number 2,
8 could defendant have not known act was unlawful at time of act but knew after the
9 act it was unlawful?

10 MS. MOORS: Lindsey Moors on behalf of the State. So with regards to the
11 first question the objection is it's the ultimate issue. No, we cannot answer that, so
12 we'd be objecting.

13 I do also believe that the second one is a speculative question and I
14 would be objecting as well.

15 MR. MARCHESI: I would agree and I would object to both on the same
16 grounds.

17 THE COURT: Okay. They'll be marked and made part of the record, but I
18 won't ask them, but both sides can ask follow up if they need to.

19 [Bench conference ends.]

20 THE COURT: Does the State stipulate to the presence of the jury panel?

21 MS. MOORS: Yes, Your Honor.

22 THE COURT: And the defense?

23 MR. MARCHESI: Yes, Your Honor.

24 THE COURT: Okay. Thank you very much. At this time the Court has
25 marked Court's Exhibit 10 and 11. The Court is not going to ask the questions. Is

1 there anything else from the State?

2 MS. MOORS: There is not, Your Honor.

3 THE COURT: Okay. Anything else from the defense?

4 MR. MARCHESE: No, Your Honor.

5 THE COURT: Okay. Thank you very much for your testimony here today.

6 You may step down and you are now excused from your subpoena.

7 Okay. Can the lawyers just come up here real quick? You know what,
8 can you just meet me out in the hallway?

9 MR. MARCHESE: Oh, yeah. Sure.

10 THE COURT: Sorry, I should have asked you when we were out there.

11 [Bench conference -- not recorded]

12 THE COURT: Does the State stipulate to the presence?

13 MS. MOORS: Yes, Your Honor.

14 THE COURT: And the defense?

15 MR. MARCHESE: Yes, Your Honor.

16 THE COURT: Okay. At this time, ladies and gentlemen, we are going to
17 conclude for the day. I'm going to ask you to come back tomorrow at 10:00 a.m. at
18 which time -- you have heard all of the evidence that will be introduced in this case
19 from both sides, so both sides have -- well, let's see, does the State rest their case?

20 MS. MOORS: Yes, Your Honor.

21 THE COURT: Okay. Thank you.

22 Both sides have rested, so when you come back tomorrow, you'll come
23 in, you'll be instructed on the law and then both sides will have an opportunity to
24 speak to you in their closing argument and then you'll be excused to deliberate upon
25 your verdict.

1 During this recess you must not discuss or communicate with anyone
2 including your fellow jurors in any way regarding the case or its merits either by
3 voice, phone, e-mail, text, Internet or other means of communication or social
4 media; or read, watch, or listen to any news or media accounts or commentary
5 about the case; or do any research such as consulting dictionaries, using the
6 Internet or using reference materials or make any investigation, test a theory of the
7 case, re-create any aspect of the case, or in any other way investigate or learn
8 about the case on your own or form or express any opinion regarding this case until
9 it is finally submitted to you.

10 Thank you very much, and we'll see you tomorrow morning.

11 THE MARSHAL: All rise for the jury.

12 [Outside the presence of the jury panel]

13 THE COURT: I just need to do one more thing, the record will reflect the
14 hearing is taking place outside the presence of the jury panel. I have heard all of the
15 evidence from both sides now. And, Mr. Marchese, I know that you have submitted
16 a voluntary manslaughter instruction, and so I'll allow you to be heard on that at this
17 point.

18 MR. MARCHESE: Yes, Your Honor, I'll just submit it based on the arguments
19 that we made yesterday. I know the Court wanted to see the actual instruction. I
20 already made my record in reference to it.

21 THE COURT: Okay. But, again, I know that defense can take inconsistent
22 positions as far as a defense because it appears to me as though your theory is he's
23 not guilty by reason of insanity because he was insane at the time, correct?

24 MR. MARCHESE: Correct.

25 THE COURT: Okay. Is there a -- so that seems inconsistent with instructing

1 them on voluntary manslaughter.

2 MR. MARCHESE: Right. So that's why I'm just leaving it as is and I'm
3 submitting it to the Court.

4 THE COURT: Okay. So you don't -- you're not going to argue to the jury if
5 you don't believe he's insane then it's a voluntary manslaughter?

6 MR. MARCHESE: That's correct. I don't think there was a grave injury or
7 whatever the statute says, so.

8 THE COURT: Okay. So then the voluntary manslaughter will be offered, but I
9 won't give them in the final packet.

10 MR. MARCHESE: Okay.

11 THE COURT: Okay. And so we'll see you guys tomorrow morning. Thank
12 you.

13 MS. MOORS: Thank you.

14 THE COURT: And we'll do the -- we'll do them in here. Okay, 9:00 o'clock.

15 MS. MOORS: Great.

16 THE COURT: Thank you.

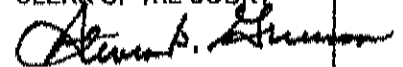
17 MS. DUNN: Thank you.

18 PROCEEDING CONCLUDED AT 4:45 P.M.

19 * * * * *

20
21
22 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
23 video recording of this proceeding in the above-entitled case.

24 
25 SARA RICHARDSON
Court Recorder/Transcriber



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

SHELBE RIVERA,

Defendant.

CASE NO. C-18-333893-1

DEPT. NO. XII

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

FRIDAY, MARCH 5, 2021

RECORDER'S TRANSCRIPT OF PROCEEDINGS
JURY TRIAL - DAY 5

APPEARANCES:

For the State:

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Chief Deputy District Attorney
ANN M. DUNN
Deputy District Attorney

For the Defendant:

JESS R. MARCHESE, ESQ.

RECORDED BY: SARA RICHARDSON, COURT RECORDER

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1 LAS VEGAS, NEVADA, FRIDAY, MARCH 5, 2021, 9:42 A.M.

2 * * * * *

3 [Outside the presence of the jury panel]

4 THE COURT: Okay. The record will reflect that the hearing is taking place
5 outside the presence of the jury panel. Is the State familiar with Court's Proposed 1
6 through 39?

7 MS. MOORS: Yes, Your Honor.

8 THE COURT: Does the State have any objections?

9 MS. MOORS: No, Your Honor.

10 THE COURT: Does the State have any further instructions that you would
11 like to propose at this time?

12 MS. MOORS: No, Your Honor.

13 THE COURT: Are you familiar with the verdict form?

14 MS. MOORS: Yes, Your Honor.

15 THE COURT: Any objection?

16 MS. MOORS: No, Your Honor.

17 THE COURT: Thank you.

18 Mr. Marchese, are you familiar with 1 through 39?

19 MR. MARCHESE: Yes, I am, Your Honor.

20 THE COURT: Any objection?

21 MR. MARCHESE: No, Your Honor.

22 THE COURT: Do you have any further instructions you would like to propose
23 at this time?

24 MR. MARCHESE: I think we've already put it on record the -- the ones that I
25 had asked but I -- no additional ones to those.

1 THE COURT: Okay. Remember, we weren't on the record when we did that.

2 MR. MARCHESE: Okay.

3 THE COURT: So I brought my copies of the voluntary manslaughter
4 instructions.

5 MR. MARCHESE: Correct.

6 THE COURT: Would you like those to be marked?

7 MR. MARCHESE: Yes, please mark those as a court exhibit.

8 THE COURT: Okay. Because your other instructions, most of them you
9 withdrew them.

10 MR. MARCHESE: That's correct.

11 THE COURT: With the exception of the voluntary manslaughter, so the clerk
12 has marked them.

13 THE CLERK: They're marked as Court's Exhibit Number 12.

14 THE COURT: All right. Do you want to make any argument?

15 MR. MARCHESE: No, Your Honor, just basically that the -- it's our opinion
16 that the facts and circumstances of this case would merit the instruction. Other than
17 that, we have no other record to make.

18 THE COURT: Okay. Anything from the State?

19 MS. MOORS: Your Honor, what I had reiterated previously, I don't believe
20 that any facts supported that assertion or that contention, and as such, that's why
21 we did not believe that they should be included.

22 THE COURT: Okay. The Court indicated I would not give those instructions,
23 but they're marked and made part of the record.

24 Anything else from the defense? Anything --

25 MR. MARCHESE: No, Your Honor.

1 THE COURT: Okay. And are you familiar with the verdict form?

2 MR. MARCHESE: I am, Your Honor.

3 THE COURT: Any objection?

4 MR. MARCHESE: No, Your Honor.

5 THE COURT: Okay. I think we're ready to go.

6 [Recess at 9:44 a.m.; proceedings resumed at 10:07 a.m.]

7 [In the presence of the jury panel]

8 THE MARSHAL: All rise. District Court Department 12 is now in session.

9 The Honorable Judge Leavitt presiding.

10 THE COURT: Does the State stipulate to the presence of the jury panel?

11 MS. MOORS: Yes, Your Honor.

12 THE COURT: And the defense?

13 MR. MARCHESE: Yes, Your Honor.

14 THE COURT: Okay. Thank you very much.

15 Good morning, ladies and gentlemen. It's now my duty as the judge to
16 instruct you on the law that applies in this case. You have been provided with a
17 copy of the jury instructions. I am required by law to read them. You will be able to
18 follow along. You each have a copy of the instruction. You will be able to put them
19 in your juror notebook and take them back when you deliberate upon your verdict.

20 [The Court read the jury instructions aloud]

21 THE COURT: And the State of Nevada may open and close the arguments.

22 MS. DUNN: Thank you, Your Honor.

23 If looks could kill, it's a saying that everyone's heard a hundred times.
24 It's almost kind of funny because it's so silly. Of course looks don't kill people. But
25 unfortunately for Juan Rincon a funny look did lead to the end of his life. I told you

1 in the beginning that this case is simple and it is. The facts of the killing in this case
2 really aren't disputed. You've heard the evidence. You've heard defendant
3 admitted that he disposed of the shirt that had his DNA and the victim's DNA on it.
4 You've heard that defendant disposed of the knife that had the victim's DNA on the
5 handle and the blade. You've heard that the defendant admitted to stabbing the
6 victim. So if all of that is not in dispute, why are we here? We all know it's because
7 of the not guilty by reason of insanity plea.

8 So I'm going to get to that and I'm going to cover it depth, but first I
9 want to talk about what the defendant is charged with in this case. Because setting
10 aside his mental state on July 1st of 2018, the State still has to prove to you two
11 things. We have to prove that a crime was committed and we have to prove that the
12 defendant committed that crime. It's our burden to prove these things beyond a
13 reasonable doubt and we've done that in this case.

14 So, what is murder? Murder is actually a pretty straightforward
15 concept. It's an unlawful killing of a human being with something called malice
16 aforethought. What is malice aforethought? Lawyers have to make everything so
17 complicated. But malice aforethought really just means the intentional doing of a
18 wrongful act. Did defendant intend to do this act? He did. He intended to stab
19 Mr. Rincon. He said it himself. So we know that a murder occurred here. There
20 was an unlawful killing of a human being with malice aforethought.

21 When you get your verdict form you'll see there are a lot of options on
22 there, and I'm going to help you try to narrow them down. But one thing you'll notice
23 is that there are two kind of broad categories of murder. There's first degree murder
24 and second degree murder. So what is first degree murder? First degree murder
25 has to be willful, deliberate, and premeditated. So we're going to talk about what

1 each of those things are.

2 So willfulness is, again, just the intent to kill. How do we know the
3 defendant intended to kill the victim in this case? Because he told his own expert
4 that he intended to kill the victim. He didn't tell Dr. Chambers that he intended to
5 scare Mr. Rincon or that he just wanted to hurt him, he said he intended to kill him
6 and I believe him. He stabbed and cut into his body 42 times. His brain stem was
7 cut. His liver was cut. His lungs were cut. His spleen was cut. The defendant
8 intended to kill the victim and he accomplished his goal.

9 Now, deliberation is the process of deciding on this course of action to
10 kill and weighing the reasons. How do we know that he did that in this case? I think
11 that the most significant piece of evidence is that he told Dr. Coard he could escape.
12 This is a question that I asked Dr. Coard kind of in the middle of his first testimony, I
13 don't know how much attention was paid to it at the time, but think about it, the
14 defendant said he could have escaped the situation.

15 He also said the victim didn't have a weapon, the victim didn't threaten
16 him, he didn't think the victim was going to kill him. He weighed all of these things,
17 he took into consideration all of these things, and he still decided to kill Mr. Rincon.
18 That process of looking at and saying I could have escaped, he doesn't have the
19 weapon, he didn't threaten me, I don't think he's going to kill me, that is deliberation,
20 that process of thinking and that's what happened here.

21 Now, premeditation, I think that a lot of people maybe have a -- a
22 misconception of what premeditation is. I think a lot of people think that
23 premeditation has to be something where it's planned out maybe weeks or even
24 months in advance and you have this big elaborate plan and you're waiting for just,
25 like, the perfect moment to -- to accomplish what you're going to do, but that's not

1 what premeditation is according to the law.

2 So premeditation is a determination to kill, but your instructions tell you
3 it need not be for a day, an hour, or even a minute. It may be as instantaneous as
4 successive thoughts of the mind. So a common example of that is if you're driving
5 and you see a yellow light and you think that light's yellow, I can make it through, I'm
6 going to go. Successive thoughts of the mind, go through that light. That is as fast
7 as premeditations can occur.

8 So in this case whether you believe that the defendant grabbed the
9 knife from his backpack and immediately started stabbing Mr. Rincon, or whether
10 you believe that the knife was on the backpack for a few minutes and then he picked
11 it up and started stabbing Mr. Rincon, by the time he picked that knife up and had it
12 in his hand he was determined to kill the victim. He had premeditated, he had made
13 his decision.

14 Now, as to second degree murder, your instructions tell you that all
15 murder that's not first degree is second degree. That's not what we have here, here
16 we have first degree. It was willful. It was deliberate. It was premeditated. So
17 when you go to your verdict form, you can start by getting rid of anything that says
18 second degree murder because that doesn't fit in this case. This is a first degree
19 murder case.

20 And I promised I was going to try to help you clean it up, so let's look at
21 a couple more. I would submit to you that you can also get rid of the simple not
22 guilty. We know that he killed the victim. It's going to be up to you to decide
23 whether he was insane and therefore can't be held accountable for that and not
24 guilty for that reason, but we know that he killed him. So if he was sane, he's guilty.

25 Now, these two right here, these are first degree murder and guilty but

1 mentally ill of first degree murder. These two options don't include with use of a
2 deadly weapon. So let's talk about what is a deadly weapon. A deadly weapon is
3 basically anything that can be used to kill someone, so that's not super helpful. But
4 it can be either if it's used in the way that it was intended to be used and can cause
5 death or if it -- in the way that it is used it cause -- it can -- can or does cause death,
6 then that's a deadly weapon. So in this case, the sharp knife plunged into
7 Mr. Rincon 42 times, he died from being stabbed, that's a deadly weapon. So these
8 two options that don't include a deadly weapon, you can get rid of those.

9 Which, of course, leads us to the elephant in the room, not guilty by
10 reason of insanity, and I do want to reiterate as we start this talk that the -- to prove
11 that the defendant was insane, that is the defense's burden. The State has to prove
12 that he committed this crime, and the defense has to prove that he was insane.
13 They have to meet that burden by a preponderance of the evidence. If they don't
14 prove to you that he was insane, then you have to presume that he was sane.

15 So I know that there was a lot of testimony yesterday and a lot of talk
16 about what is not guilty by reason of insanity and I hope that it was somewhat
17 cleared up throughout the testimony, but I know that when I first heard the definition
18 I was like, what, what does that mean? I had to see it written out and kind of broken
19 down, so that's what I've tried to do for you here and I hope that it's helpful.

20 So the first thing is the defendant had to have been in a delusional
21 state. That delusional state had to have been due to a disease or defect of his
22 mind, in this case the schizophrenia. So he has to have both of those and then one
23 of these other things, he has neither, but you have to have one to be insane. He
24 would either have to not know what he was doing or not know that what he was
25 doing was wrong. So we're going to run through each of these one at a time.

1 So was the defendant in a delusional state? You heard both experts
2 opine that he was. You are the triers of fact, you get to decide if the defense has
3 proven to you that the defendant was actually in a delusional state. Because think
4 about this, if what he said has happened, what he thought happened actually did
5 happen, if the victim did look at him funny, if there was some sort of east coast/west
6 coast dispute, if defendant really was freaked out because the victim knew that he
7 had a knife, it's not a delusion, it's just facts. So you get to decide if he was actually
8 in a delusional state or not.

9 Next you get to decide if he was in a delusional state was that caused
10 in this case by his schizophrenia. So you heard Dr. Coard testify that because of
11 defendant's mental illness his use of marijuana very likely could have caused this
12 delusional state. Dr. Chambers disagreed. Dr. Chambers said no because he's
13 been delusional before in situations where he didn't have access to marijuana so it
14 couldn't have been the marijuana.

15 Frankly, I don't care about other times that he's been delusional and
16 that's not what you're here to decide either. Is it possible that sometimes his
17 delusions are caused by his schizophrenia and sometimes they're caused by the
18 marijuana? You have to decide if the defense has proven to you that on July 1st,
19 2018, if defendant was in a delusional state that it was caused by his schizophrenia.

20 So you have -- both of those things have to exist and then again one of
21 these other things has to exist. So the next one is he had to not know what he was
22 doing. And both experts agree here that he did know what he was doing. And if you
23 think about it this kind of makes sense because we don't want to punish people or
24 hold people accountable for things that they don't know they're doing, we want to
25 hold people accountable for their choices. So if, like Dr. -- Dr. Coard's example, if

1 defendant had thought he was stabbing into a pumpkin, that's not necessarily
2 something that we want to hold him accountable for. He doesn't know what he's
3 doing.

4 But that's not the situation here. Here he knew exactly what he was
5 doing. He knew he was stabbing a human being with a knife. He had had a
6 conversation with Mr. Rincon, they had walked down the street, they had smoked
7 some weed, they had planned to go do something later. He didn't think he was
8 walking down the street with a pumpkin. He knew that Mr. Rincon was a person, he
9 knew that he had a knife, he knew he was stabbing Mr. Rincon. He knew what he
10 was doing.

11 Now, the next thing is did he not know that it was wrong and this is
12 where the experts disagree. So my recollection of Dr. Chambers' testimony was
13 that defendant didn't know that what he was doing was wrong, and the way that he
14 got to that was because defendant did such a bad job of covering his tracks, that
15 that shows that he didn't know that it was wrong. Honestly, I don't follow that logic.
16 It didn't make a lot of sense to me because what's the first thing that someone does
17 when they know they've done something wrong? They try to hide it. And I'm not
18 going to stand up here and say that defendant did a good job of covering his tracks.
19 But the question isn't did he do a good job, the question is why did he try to cover
20 his tracks at all. It's because he knew that what he did was wrong.

21 And -- and you heard testimony that defendant is operating at a lower
22 intelligence level, so let's think about maybe someone with a lower intelligence, how
23 they might think. Let's think about how a kid might think. I know when I was a kid
24 and I did something wrong, I tried to hide it. I remember one time I was playing with
25 this little figurine that my mom had and I had been told so many times, Don't play

1 with that. Of course I broke it. And what did I do with it? I hid it in my closet, in my
2 own closet. That is not a good hiding place. I didn't do a good job. But I knew that
3 it was wrong and so I hid it, and that's what defendant did. He put the knife in the
4 Dumpster, not the trash can as he -- as he corrected Detective Ravelo, in the
5 Dumpster, and he disposed of the shirt. It was nearby the crime scene. I would say
6 he probably did a decent job at that though because you heard Detective Ravelo
7 say they couldn't find that shirt until he told them that he left it there. So I wouldn't
8 say he did a terrible job at that.

9 What else do kids do when they've done something that was wrong?
10 They lie about it. Before I went to law school I was a nanny and the amount of times
11 I heard it wasn't me, it was my brother. Now in this case defendant took a slightly
12 different approach with Officer Martinez at Best Buy. He said it wasn't him, it was
13 me, that's my blood on my pants. I had a nose bleed. Why did he lie about it?
14 Because he knew that he had done something, he knew that he had done
15 something unlawful, he was not about to tell a cop that.

16 We also know that he knew that it was unlawful because he told
17 Dr. Coard that. He told Dr. Coard that he knew it was unlawful, and you can see
18 from his actions from trying to hide it and from lying about it that he knew that it was
19 wrong and unlawful.

20 Now, some of you might be thinking but was it unlawful. The defense
21 hasn't affirmatively raised self-defense, but we're all thinking it and you have a jury
22 instruction that tells you, If the delusional facts would not amount to a legal defense,
23 then he's not insane. And again this kind of makes sense, right, because this is like
24 the soldier example that we had with Dr. Coard. So if somebody is in a delusion and
25 they think that they're a soldier and they are shooting someone who's an enemy in

1 battle, that's not necessarily something that we want to punish them for because
2 they think in their delusion that they're doing something right. They think that what
3 they're doing is justified.

4 But if somebody thinks that they're a soldier, and they're shooting a
5 civilian, even in their delusion, even in their mind, they know that it was wrong and
6 so society says we're okay with punishing those people because you still knew that
7 it was wrong, even in your delusion, even taking what you thought as true, you knew
8 that you were doing something wrong, your mind is still guilty. So in order to -- to be
9 considered a legal defense for self-defense your instructions tell you that the law
10 does not justify the use of a greater degree of force than is reasonably necessary.

11 So think about that. The defendant admits the victim did not threaten
12 him, victim did not have a weapon, he didn't think the victim was going to kill him, he
13 could escape, and in spite of all of that, he stabs the victim, cuts the victim 42 times.
14 Is that a reasonable degree of force necessary in the situation? No. And it is not
15 lawful.

16 So going through this one more time, was he in a delusional state? It's
17 up to you to decide if the defense has proven that. Was that delusional state
18 caused by his schizophrenia? It's up to you to decide whether the defense has
19 proven that. But did he not know what he was doing? No, of course he knew what
20 he was doing. Did he not know that it was wrong? No, of course he knew that it
21 was wrong. That's why he covered it up, that's why he lied about it. So when you
22 look at your verdict form, not guilty by reason of insanity isn't the appropriate choice
23 here. So you're left with two things.

24 There's guilty of first degree murder with use of a deadly weapon and
25 guilty but mentally ill of first degree murder with use of a deadly weapon. So let's

1 talk a little bit about what guilty but mentally ill means. I promise I'm almost done,
2 contrary to popular belief, not all lawyers like the sound of their voice. So guilty but
3 mentally ill is what we've already kind of discussed with not guilty by reason of
4 insanity. It's you have the first two, you have the defendant was under a delusion
5 caused by a disease or defect of the mind, caused by his schizophrenia. But you
6 don't have either of the second two. So if you decide that he did know what he was
7 doing and that he did know it was wrong but that he was under a delusion caused by
8 schizophrenia, then he could be guilty but mentally ill.

9 July 1st, 2018, the last day of Juan Rincon's life, now I don't know what
10 Mr. Rincon thought that day was going to be like when he woke up, but I can all but
11 guarantee that he did not expect it to end the way that it did. He met the defendant,
12 they agreed to smoke some weed, maybe get some lunch, go fishing, do whatever it
13 is they're going to do. There's this look, and Mr. Rincon ends up stabbed and cut 42
14 times.

15 Ladies and gentlemen, looks should not kill and we are asking that you
16 return the appropriate verdict of guilty of first degree murder with use of a deadly
17 weapon. Thank you.

18 THE COURT: Thank you.

19 Mr. Marchese.

20 MR. MARCHESE: Thank you, Your Honor.

21 After five days you'd think I'd get this right, sorry.

22 If we could get the Elmo on possibly. Thank you.

23 THE RECORDER: You're welcome.

24 MR. MARCHESE: Ladies and gentlemen, very simple case, Shelbe Rivera
25 was insane on July 1st, 2018. I'm going to start kind of with the law because

1 unfortunately it's probably one of the more difficult and confusing parts for laymen,
2 and even lawyers for that matter, and then I'm going to get into the facts of the case.

3 I'm only going to pick out some certain jury instructions. They're all
4 important. You will be provided with a copy of them, so we're an open book here.
5 We are 100 percent transparent with you as a defense team and if you want to go
6 look at any one of them more than once, more than twice, focus on them, they're all
7 important. Okay? But just for purposes of my closing argument, I just want to point
8 a few of them out.

9 So I'm going to start with Instruction Number 22. And Ms. Dunn went
10 into this a little bit previously and that is -- it's a little bit different in this case, I'm sure
11 we've all seen television shows or movies or whatever and you hear, you know,
12 innocent until proven guilty. And that is in fact true in this case in some
13 circumstances. The circumstances it is not true is when we as the defense, proffer
14 to you a defense of not guilty by reason of insanity. Then when the burden is
15 normally on the prosecution, it now shifts to us as the defense in order to prove and
16 show you with the evidence, with testimony, with all the questions we've asked by a
17 preponderance of the evidence that that defense is in fact valid and does have
18 merit.

19 So it's a little bit different and you have a -- a definition of
20 preponderance of the evidence in your jury instructions, but it's a little bit different
21 because the State has the burden of beyond a reasonable doubt, whereas the
22 defense with our affirmative defense of not guilty by reason of insanity is
23 preponderance of the evidence. And it's a little bit of actually a lower standard for
24 the defense. But you have an instruction there and I welcome you to go look at it if
25 you have any questions as to what our burden is.

1 Now, we've heard a lot of testimony about insanity through the week.
2 And we'll get back to this and Ms. Dunn went over it as well. Really we're only here
3 on one of these prongs, right? At the end of the day you heard both of the experts
4 agree, I mean, I guess you could technically just throw out everything that they said,
5 but just for argument sake, let's just assume that we agree with both the State's
6 expert, Dr. Coard, and my expert, Dr. Chambers.

7 In order for us to meet our burden, we need to kind of check some
8 boxes. First box is that in order to show legal insanity, was that was there a disease
9 or defect of the mind, and in this case I think it's pretty much uncontroverted by the
10 parties that Mr. Rivera has been suffering from paranoid schizophrenia from at least
11 as far back as 2014. I didn't publish them yesterday because I didn't feel that this
12 necessarily, this is so much at issue, but I welcome you, I have a stack of CDs with
13 medical records and I'm going to highlight some of them later on in my closing
14 argument, but I have a stack that you can click them in, you'll have the opportunity
15 to do that, and if you want to go back and check and just kind of look at the medical
16 records. But I'll submit to you that they're rather extensive. We literally have
17 thousands of pages of medical records from far and wide, from everywhere from
18 New York to the Carolinas to Nevada, all over, plenty of medical records to show
19 that.

20 And we have the first prong, number one, which is he's in a delusional
21 state, and once again, that wasn't really at issue either. Both of the doctors agreed
22 on that particular point. And when you get to 2A, they both agreed on that point as
23 well. Actually Dr. Chambers, my expert, he said, no, you're not there, Mr. Rivera did
24 not meet that particular prong for a legal insanity defense. However, really what
25 we're here about is 2B, right? 2B what was you basically sat through all of

1 yesterday, battle of the experts going back and forth, direct examination,
2 cross-examination, and the comparing and the contrasting of the testimonies. So
3 that's the main issue that you as jurors need to decide here today.

4 And really what we need to get to, what we need as the defense, is to
5 show that Mr. Rivera, that he just wasn't able to understand the difference between
6 right and wrong at the time of offense. Now, there's another instruction, it's
7 Number 26, it's one of the longer instructions, and I bring this up to you because it is
8 important because this is the -- it's a little bit of a different case because this is an
9 affirmative defense that we have to put forward. And when you put on a defense of
10 legal insanity, if, and I would submit the evidence is there, but if you acquit my client,
11 it's not as if he just walks out the door and people are going to see him at Starbucks
12 tomorrow having delusions, yelling at some random person, and, you know,
13 stabbing them in the neck.

14 The State of Nevada, our laws, the Nevada Revised Statute, they have
15 a system in place wherein Mr. Rivera would need to be evaluated first, they basically
16 need to evaluate him and there's a process. I'm not going to get too far into the
17 process. But they need to evaluate him in order to make sure that he is first
18 competent before he is released. Okay? Now, that's the sum and substance of it.
19 Like I said, we're 100 percent transparent, it's Instruction Number 26, you'll get a
20 copy of it. So if you have any concerns about that and how it works, it's all
21 described in these two pages. Okay?

22 So as I said yesterday, there have been extensive medical records in
23 this particular case, and all week I've said, really. And I'm not really here to argue
24 that my client was suffering from delusions, that he had paranoid schizophrenic,
25 that's really not a doubt on part of this, okay. But I did want to go back and highlight

1 some of these records because I do think that these records are relevant in order to
2 show my client's inability to differentiate between right and wrong.

3 So one of the first records, this is going to be Exhibit A, was Bellevue
4 Hospital. That's back in October of 2015. And I even referenced this one in my
5 opening statement. And I'm now on page 32 he was found laying on the bathroom
6 floor, acting bizarrely with hospital staff, that was when he said that, you know, he
7 had the paranoid delusion that street n-word was out to kill him. There's also an
8 important part in there because the State and Dr. Coard had really harped on this
9 quite a bit, they're trying to claim that marijuana was the reason for this homicide.
10 And in that particular case, page 80, there's a doctor who had evaluated him and
11 found that his psychosis, that his delusions of acting suspicious of street n-words out
12 to kill him was not drug related. Now, obviously, this is 2015, this is about three
13 years before the incident in question. This individual who was evaluating Mr. Rivera
14 obviously did not have a time machine to go in the future and see and predict that
15 we would be here in a courtroom now in 2021 making this argument that because
16 Mr. Rivera smoked a joint on the day in question that it triggered his psychosis in
17 order to stab Mr. Rincon.

18 Again, Harlem Hospital, this is back in 2014, he had had actually a
19 couple times he was in there, so chronologically, this would actually be before
20 Bellevue, excuse me, again, unable to logically talk. They weren't able to make
21 sense of his sentences, several hospitalizations, but he doesn't even know why he
22 was there. That's right early on on page 2. And he was hearing voices, you know,
23 the delusions would keep coming, going to hell, people are after him on the street, et
24 cetera.

25 Again, I would argue to this is important to differentiate right from

1 wrong. If the evaluators can't even understand what the man is saying, if he's so
2 bizarrely speaking and completely irrational, I would argue to you this is an
3 individual unable to make the distinction between right and wrong.

4 In 2017, in October, this is S, Exhibit S, he was tested negative for
5 drugs, yet, once again, he had bizarre behavior, he was pacing around and on
6 page 48 he actually thought he was on drugs, but yet he had later tested negative
7 for it. Again, Charlotte Medical Center, March 2018, page 36, another negative drug
8 test; Bronx Lebanon, page 177, March 7th, 2018, another negative test; and Kirby,
9 Exhibit N, shows that he had an IQ of 65, obviously on the lower end as we had
10 previously discussed.

11 Now, we heard from Dr. Coard yesterday, and Dr. Coard's testimony is
12 very important. And it's very important chronologically, and I think I was able to
13 make this point, but if not I'm going to try to make it again. The date in question was
14 July 1st of 2018, Dr. Coard doesn't evaluate Mr. Rivera until much later, November
15 the 13th of 2020. Now what happened in that time frame? What do we know?
16 Mr. Rivera was found incompetent to stand trial, different evaluation than a not guilty
17 by reason of insanity, I think we were very upfront with you, I'm not trying to confuse
18 you guys as the jury. You have a very important job to do and I try to be as upfront
19 as possible. That's a different evaluation. But factually it is true that he was found
20 incompetent, Mr. Rivera.

21 He was sent up to Lake's Crossing which was described to you by both
22 Dr. Coard and Dr. Chambers as basically a facility where they try to get him right,
23 they try to get him in a situation where he can assist his defense and understand the
24 nature and the circumstances of the court process and he was there for an extended
25 period of time, about a year and a half. You heard Dr. Chambers testify that that's

1 actually on the longer end. Now, the State countered and said, well, they couldn't
2 get his meds right. I'll leave it up to you fine folks to make the determination as to
3 whether it was just a matter of not being able to get his meds right or maybe it was
4 just the fact that his head's not right.

5 So Dr. Coard evaluates him much later in time. Dr. Coard comes to the
6 same general conclusions as Mr. -- Dr. Chambers except the one issue. And he
7 comes to those conclusions based upon a set of questions, right, and the whole
8 case file, to be fair, he read all the reports and looked at some of the photos and
9 read the interviews, et cetera. You've heard all that testimony. So he concluded
10 that Shelbe was able to understand the nature and the capacity of his actions.

11 And a lot of it had to do with, you know, he said that the victim looked at
12 him that way. Now, we never actually found out what "that way" was, right? I think
13 we've asked Detective Ravelo, we asked Dr. Coard, there was no follow-up with
14 what that actually means, it's just "that way." I guess based on the facts and
15 circumstances, you're just going to have to leave it to your own thought process to
16 determine what looking at someone that way means.

17 And Mr. Rivera said that he was going to harm him. And we know that
18 was the case, right, because about nine days, I believe it was, after the date in
19 question, he was interviewed, that's Shelbe, by the Las Vegas Metropolitan Police
20 Department and he flat-out said, I felt like he was going to kill me. Now, that's nine
21 days later. However, Dr. Coard asked the same question a year and a half or so
22 later and this low IQ individual who has now been medicated, now been found
23 incompetent, finally competent to stand trial, and he said did you think the victim, the
24 alleged victim was going to kill you and he said no. There's a difference there,
25 there's a contrary answer, night and day, right? Yes and no, black and white.

1 But I would ask you, ladies and gentlemen, to focus more on the one
2 closer to the date in question, right. Listen, most people can't remember what they
3 had for breakfast last week. Do we really expect Dr. Coard's interview much, much
4 later than the date in question, can we expect his interview to bear more accurate
5 information or less accurate information than the interviews that were conducted
6 much closer in time? And I think it's -- I can make a very good argument that, no,
7 you should take what happened closer to the event. When we are trying to establish
8 Mr. Rivera's mental state on July 1st, 2018, we should take the closer event rather
9 than the farther event.

10 Now, we know that Mr. Rivera thought, had this illogical conclusion,
11 delusion, whatever you want to call it, that there was some sort of east coast/west
12 coast beef going on. It was an illogical, bizarre conclusion, delusion that somehow
13 Mr. Rincon knew that Shelbe had a knife even though he was unable -- he never
14 saw -- he never showed it to him. There's no evidence of that.

15 We also had a lot of talk yesterday about this -- this backpack, about
16 him allegedly lying about the backpack in his statement to the police. And the
17 State's argument there is that Shelbe lied about the backpack, about having the
18 backpack because he was trying to cover it up, right? Well, hopefully I articulated it
19 yesterday enough in my cross-examination that the detective started the interview
20 with Shelbe talking about him being at the Greyhound bus station, and I believe the
21 evidence and the testimony showed, that was about a day before the event that
22 we're here for today, and that's when he starts talking about the suitcase and the
23 backpack and we don't know exactly when he got the suitcase and the backpack, I
24 mean, I would imagine he had it with him, but I just don't know because we don't
25 have any video of that. I don't think it was anything that the State did or didn't do

1 there, it just -- we just don't have it. Quite frankly, obviously, the Molasky video is a
2 lot more important than that particular video.

3 My point is this, he wasn't trying to hide anything, he wasn't trying to lie
4 or cover anything up, he was just simply confused. This was an individual who's
5 insane, he's low functioning, never held a job, he's on SSI, he's homeless, bouncing
6 around state to state, doesn't know where he's going to sleep one night to the next.
7 This is not a cold and calculated individual who's really smart enough to do any of
8 this or is even logical enough or even able to rationalize enough to make these
9 decisions or cover any of his tracks. Because what he in his mind is doing is just
10 what he thinks is what should be done, and he's unable to weigh those
11 consequences.

12 Now, in reference to Dr. Coard, you know, he found that he was able to
13 weigh all the reasons to make a cost-benefit analysis, I guess, if you wish. He
14 talked about the shirt which was shown and then Shelbe disposed of it and he
15 flat-out told the police, [indiscernible] act, told them where to get it right there on the
16 side of the freeway, there's about three pictures of it. But what's interesting there is
17 what was Shelbe's response, what was his -- when the police asked him about it, he
18 said he wanted to be clean. Nothing, I wanted to cover up my tracks, I didn't want to
19 get caught, no, he said he wanted to be clean. And then I think Dr. Chambers even
20 mentioned some bizarre statement about a waterfall, something like that. I didn't --
21 I'll leave it up to you. We can only go off of what the evidence is, but I would submit
22 to you that it's a rather bizarre statement about a waterfall in Las Vegas.

23 So let's turn to Dr. Chambers' testimony, because obviously, you know,
24 we called him in our case-in-chief, and basically he comes down to this, you know,
25 he talks about the lack of rational motivation for this event. And he hinges a lot of

1 his testimony on that fact that it is bizarre, it is illogical for Mr. Rivera to do what he
2 allegedly did based on an east coast/west coast beef, you know, the knife delusion,
3 looking at someone a certain way, scheming against you, all those things, right?
4 And based upon that, that's where the difference in the two lie, right? Dr. Coard
5 feels that Shelbe was able to weigh his actions; Dr. Chambers feels like he was not
6 able to weigh his actions, he was unable to understand the nature and the
7 circumstance, the gravity of his actions.

8 If we could switch to Brian, if possible?

9 In every criminal trial, ladies and gentlemen, or almost every criminal
10 trial, there's always a saying that one side or the other says and that is don't leave
11 your common sense at the door, right, because I understand how it can get a little
12 bit dry and maybe even confusing to listen to two hired guns going back and forth,
13 you know, arguing about points that are really science, right? And I think you can
14 also argue, as I made the point yesterday, I think that, you know, when you're
15 dealing with therapy, it's -- it's not an exact science. So like -- like my gif says, Don't
16 leave your common sense at the door, right, let's look at the facts. Just for a second
17 let's take the experts aside, right, you-all -- I heard you all during jury selection,
18 you've been paying attention the whole time, you're asking questions, you're rational
19 people, okay. Don't leave your common sense at the door.

20 The first thing I wanted to point out -- Brian -- is look at the -- the length
21 of the delay here, the length of time that Shelbe Rivera was at Lake's Crossing,
22 found incompetent, they're trying to get him competent, it's taking longer than
23 necessary, than normal I should say, they're fixing his meds, they're not fixing his
24 meds; regardless that's a big point, ladies and gentlemen, and I think you should
25 weigh that heavily in your deliberation when you go back.

1 In addition -- next one Brian -- we're in Las Vegas. This event is not too
2 far from the Molasky Building, that whole Mesquite, industrial area. It's very urban
3 area that this occurred in. What was Mr. Rivera carrying with him? A fishing rod.
4 Where on earth was this guy going fishing? He had no bait with him. There's no
5 fishing holes that I'm aware of in that general vicinity. The State even offered a
6 map, you know, go back and look at that exhibit. I would submit to you, there's no
7 blue in that area. Okay. It's illogical. This is not someone who's thinking rationally.

8 Next one, please.

9 Shelbe Rivera left his calling card, ladies and gentlemen, think about
10 the evidence here. Would we even be here right now had Shelbe Rivera not left his
11 backpack, his suitcase, and his fishing gear? There's no independent witnesses.
12 How did he become at first just a person of interest, right? Well, they found all his
13 identification and then slowly but surely things unraveled from there. But had he just
14 simply just took everything with him, we wouldn't even be here today probably.

15 I mean, yeah, they have a video at the Molasky Center, okay, well, a
16 video doesn't really help. I mean, it does a little bit, but you don't know who's on
17 that video. The detectives probably hit a dead-end unless they came up with some
18 other sort of forensic evidence. So I submit to you, this is not, you know, a rational
19 person who's trying to be some scheming criminal mastermind. Rather someone
20 that just didn't know what the hell he was doing at the time of the event.

21 And then what did he do right after that?

22 Next one, please.

23 He walks, he leaves all his -- probably all of his worldly possessions
24 back at the crime scene and he walks. Where did he go to? Went over by the
25 Red Rock Station Casino to the Best Buy, that's like, I don't know 15 miles or so. Is

1 this the thought process of a rational person? He just kept walking to presumably
2 get a phone charger. I mean, I would submit to you, I would imagine there's, I don't
3 know, probably a few dozen places that he could have got a phone charger in
4 between that walk from downtown Las Vegas all the way out to almost at Red Rock.

5 And, lastly, if we could play that, please.

6 [Video played]

7 MR. MARCHESE: Now, maybe it's a small point and maybe I'm picking on
8 the wrong things, but he wanted to get back to California, which my understanding
9 based on the facts is he just came from California, and he wants to get back and he
10 basically says two things to contradict himself, he wants to get back to see his baby
11 mama, but then he says that she's pregnant and he doesn't know her name and he
12 doesn't know her number, but he does know where she lives. I mean, Maury Povich
13 didn't even have episodes that are this ridiculous.

14 Ladies and gentlemen, this is one day after the events and I know that
15 he was less than forthright about the whole blood situation, but what's the motivation
16 there to lie? What is the motivation to make that up? He doesn't gain anything by it.
17 No, what we do -- what we're dealing with is a sick man, an insane individual that
18 really just doesn't know what's going on.

19 And, Brian, can I get that last one?

20 Almost done. Before I leave you, ladies and gentlemen, I added a little
21 part here in my closing because I wanted to make sure we're all on the same page
22 here. You have two options here, one is self-defense; the other is not guilty by
23 reason of insanity. And I don't think this was done intentionally at all. Ms. Dunn did
24 a fine job on her closing argument and everything that she said were accurate
25 statements of the law. Like, two things that she said were very close in time, and I

1 want to make sure that you understand that, there is a difference between a
2 self-defense, which is an option here, that's just not guilty, right? And you have the
3 jury verdict form, so this will all be listed out for you. And then there is also the
4 difference between not guilty by reason of insanity, okay.

5 So when you go back, make sure you don't confuse the two because
6 they are different standards of law. Okay? So just keep that in mind. I mean, we've
7 laid out the not guilty by reason of insanity and the prongs that need to be met, and
8 then there are the instructions as well on self-defense. And I ask you to just simply
9 follow the law and do what you think is right and do what you feel the evidence
10 supports, which I feel in this case is an acquittal.

11 So, lastly, I'm going to leave you with Instruction 24, okay, and I think
12 Ms. Dunn alluded to this in her closing argument, this is the one about Mr. Rivera
13 suffering from the delusional state. And the facts as he believed them to be in this
14 delusional state would justify his actions and he's insane and entitled to an acquittal.
15 And if the facts don't support it, then you should go against him. But here's a very
16 important sentence to me, I mean, it's all important, but at least to me I want to
17 highlight it for you, Persons suffering from a delusion that someone is shooting at
18 them, so they shot back in self-defense are insane under the law.

19 So in this case, I'm going to ask you to go back, look at all the facts, but
20 when the police, Detective Ravelo, I believe Detective Embry was there as well, but
21 regardless, when Mr. Rivera was asked if he thought that Juan Rincon was going to
22 kill him he said yes, and I would argue that that statement, coupled with all the
23 evidence that we have shown here throughout this past week certainly meets that
24 expectation, right?

25 If you remember, Dr. Chambers yesterday, he was talking about how

1 Mr. Rincon was actually nice to him, right, they were getting along, they were
2 smoking marijuana. We don't know how much, we don't know how potent, but we
3 know that they did, that they were maybe going to go get something to eat and go
4 fishing, all that.

5 There was no conflict there. It was simply -- the conflict was in
6 Mr. Rivera's mind. The conflict was the voices. The conflict was the scheming. The
7 conflict was the look. The conflict was east coast versus west coast. So when you
8 go back and deliberate, ladies and gentlemen, I submit to you there is no conflict.
9 There is no conflict between guilt and innocence. To me, the facts, the evidence,
10 the totality of the circumstances in this case is very straightforward and it points to
11 one thing, and that is an acquittal of Mr. Shelbe Rivera.

12 Thank you for your time.

13 THE COURT: Thank you.

14 The State may address the jury in your rebuttal.

15 MS. MOORS: Thank you.

16 Can I have the Elmo turned on, please?

17 Denying --

18 JUROR NO. 8: I'm sorry, to -- but I have to go to the restroom real quick.

19 MS. MOORS: Okay.

20 THE COURT: Okay. We need a break?

21 JUROR NO. 8: Yeah, I need to go to the restroom real quick, yeah.

22 THE COURT: Okay. All right.

23 During this recess you must not discuss or communicate with anyone
24 including fellow jurors in any way regarding the case or its merits either by voice,
25 phone, e-mail, text, Internet or other means of communication or social media; read,

1 watch, or listen to any news or media accounts or commentary about the case; do
2 any research such as consulting dictionaries, using the Internet or using reference
3 materials or make any investigation, test a theory of the case, re-create any aspect
4 of the case, or in any other way investigate or learn about the case on your own or
5 form or express any opinion regarding this case until it's finally submitted to you.

6 We'll be in recess for 15 minutes. Thank you.

7 THE MARSHAL: All rise for a 15-minute recess.

8 [Recess at 11:25 a.m.; proceedings resumed at 11:47 a.m.]

9 [In the presence of the jury panel]

10 THE MARSHAL: All rise for the presence of the jury.

11 THE COURT: Thank you. Does the State stipulate to the presence of the
12 panel?

13 MS. MOORS: Yes, Your Honor.

14 THE COURT: And the defense?

15 MR. MARCHESE: Yes, Your Honor.

16 THE COURT: Thank you.

17 You may begin your rebuttal.

18 MS. MOORS: Thank you.

19 Denying the truth doesn't change the facts. The defense would have
20 you believe their truth that the defendant is not guilty by reason of insanity. And
21 what I think we really need to focus on and I -- I get it, there has been evidence that
22 the defendant is mentally ill. If I were -- this were the trial of does Shelbe Rivera
23 have schizophrenia, I'd lose that trial everyday of the week. Differences between
24 being mentally ill; being mentally impaired, which we established the defendant was
25 mildly mentally impaired; and being criminally insane, very important distinctions.

1 Mr. Marchese showed you Jury Instruction Number 24. I think he read it. But he
2 didn't show you the whole thing. And what's interesting about this instruction is that
3 it basically encapsulates the issues in this particular case.

4 So Number 24, If you believe the defendant was suffering from a
5 delusional state and if the facts as he believed them to be in his delusional state
6 would justify his actions, he is insane and entitled to acquittal. If, however, the
7 delusional facts would not amount to a legal defense, then he is not insane.
8 Persons suffering from a delusion that someone is shooting at them so they shoot
9 back in self-defense are insane under the law. Persons who are paranoid and
10 believe that the victim is going to get them at some time in the future so they hunt
11 down the victim first are not insane under the law. That is the gist of this case,
12 ladies and gentlemen, if we presume all of his delusions, right, that there's east
13 coast/west coast beef, that the victim gave him a look, that the victim asked to see
14 his knife, if we believe all of these things, does it then legally justify his action. And
15 the answer is no.

16 Now, the reason for that is, and you had some instructions on
17 self-defense, self-defense is also what we would call an affirmative defense that
18 someone could raise on their behalf. So if someone's coming at me with a knife or a
19 gun or some sort of deadly force, I have the lawful authority to defend myself with
20 deadly force. It needs to be direct and proportional, right? If a five-year-old is
21 coming at me with a plastic hammer, I don't get to shoot them. That would not be
22 direct and proportional. But if someone of my similar size is coming at me with a
23 deadly weapon, absolutely I get to defend myself.

24 So had the defendant's delusion been that victim was about to stab me,
25 his knife was in his hand, he had a gun, he had rock, he had a stick, he had a

1 machete, anything to that nature, that delusion would have justified self-defense, so
2 it would have been legally justified for the defendant to respond in the manner he
3 did. However, what the defendant did is more analogous to the last sentence:
4 Persons who are paranoid and believe that the victim is going to get them some
5 time in the future, we don't get to preemptively kill people.

6 I cut someone off driving to work today, that person gave me a dirty
7 look. If in my mind I thought that means he's going to kill me, then I get to kill him
8 according to defense's theory. We can't have people killing people that cut them off
9 on the way to the freeway. Okay. I mean, we just can't. Right? I would be -- it
10 would not be a good day for me if that were the case. But that's the gist of this case,
11 ladies and gentlemen.

12 Now, Mr. Marchese also brought up some issues about, I guess, the
13 argument would be defendant is a bad criminal. I've been a prosecutor for ten
14 years, most of the people we prosecute are bad criminal because they end up being
15 caught. That's not a defense because he left behind his belongings with essentially
16 his calling card, not a defense; because he left behind his fingerprints on the bucket,
17 not a defense; because he left behind the knife in such an easy manner so as
18 allowing law enforcement to find it, not a defense.

19 None of that is a defense. It shows that, yes, he's a bad criminal. It
20 doesn't give any corroboration to what we're talking about. Was he legally insane
21 when he stabbed this victim 42 times? And the answer is no. We also heard
22 Mr. Marchese say, you know, he -- the defendant was at Lake's Crossings for a year
23 and a half and there's this discussion about competency. You heard from both of
24 the experts that that's an entirely different standard. Essentially, to determine
25 whether or not someone is competent, we need to show that they know the nature

1 of their crime and that they can assist in their defense. Get it, got it, good.

2 And this brings me to another saying. I don't want you, as the triers of
3 fact, to lose sight of the forest through the trees. So we don't want to lose track of
4 the big picture by getting distracted on these little tangents. It doesn't matter that he
5 was not competent a year and a half after the crime. It doesn't matter, quite frankly,
6 if he was legally insane two years after the crime. What we are talking about is
7 July 1st, 2018, was he or was he not legally insane. And I don't want us to get
8 distracted by all of this minutiae that comes in that does not have any effect on that
9 assertion.

10 I would also point out that Mr. Marchese mentioned that when our
11 expert, Dr. Coard, interviewed the defendant it was some time later, and I get it,
12 certainly, we have a better memory close to an event. But what did
13 Detective Ravelo tell us, the one that interviewed him nine days after, so even
14 before Dr. Chambers' interview. Well, he said that never once did the defendant tell
15 him that the victim had a weapon. And that's really important because to justify
16 deadly force, there needs to be deadly force on that other side. There would have
17 need to have been a display of deadly force by the victim either in real life or in
18 delusional state and there is not a single piece of evidence to that effect. Just
19 because in his brain, admittedly, a brain that suffers from schizophrenia, he thought
20 the victim was going to kill him, that doesn't change the fact that there's no evidence
21 of any weapon whatsoever on behalf of the victim.

22 Detective Ravelo also heard the defendant say that at no time did the
23 victim fight back. When he was speaking with -- when the defendant was speaking
24 with Dr. Chambers, he said, in fact, the victim was friendly, that never actually
25 threatened him. These are all from the defendant's mouth at his interview with

1 Dr. Chambers which I believe was in August of 2018, all close in time.

2 And what I think is also important is Dr. Chambers' argument that if
3 there's a lack of rational motivation, that's not part of your analysis. It's simply not. I
4 understand that as humans we want to know why someone might kill another
5 human, but I can tell you this, in ten years of being a D.A., I have never been able to
6 answer that question when I handle a murder case.

7 MR. MARCHESE: Judge, I'm going to object as to bolstering and improper.

8 THE COURT: The objection is sustained.

9 MS. MOORS: There is no standard whatsoever that you have to establish a
10 rational basis for this killing. That's not based in law, that's not based in science,
11 that's purely Dr. Chambers' opinion. But it's not part of your standard. It's not
12 contained anywhere within the jury instructions, and it was just an incorrect
13 explanation.

14 Furthermore, Dr. Chambers' last answer that he indicated to me was,
15 and I wrote it down, he indicated that if the -- the defendant had said that if he, the
16 defendant, did not stab the victim, that the victim was going to stab him, and this is
17 this instruction. He never said the victim was about to stab him. He never said, I
18 saw a knife. He's talking about a future event. If I had not stabbed the victim, he
19 was going to stab me. Self-defense is not a preemptive defense.

20 MR. MARCHESE: Judge, I'm going to -- I'm going to argue -- I'm going to
21 object. They're melding together not guilty by reason of insanity and self-defense.
22 And I think this is confusing to the jury.

23 THE COURT: The objection's overruled.

24 You may proceed.

25 MS. MOORS: Thank you.

1 The reason for this is because when we have a not guilty by reason of
2 insanity, that delusion that the defendant was under must justify his actions. And
3 the only way that those conceptually could be justified is if it were self-defense.
4 That's why I'm explaining it in this manner.

5 Now, we already talked about self-defense, the fact that it needed to be
6 direct and proportional. And I also want to direct your attention, one of the further
7 instructions is Instruction Number 5, anything that I say is not evidence; anything
8 that Ms. Dunn said is not evidence; anything that Mr. Marchese said. As much as
9 we would love for it to be considered evidence, it's not. It's argumentation and
10 comments on the facts. It is your decision based on what you observed through the
11 witnesses and through the exhibits.

12 And I also wanted to point out another issue that kind of goes to what
13 Mr. Marchese was talking about in terms of the defendant sort of being a bad
14 criminal, and that's the State does not have to prove motive. This is Instruction
15 Number 4. So certainly if we watch any type of court TV we always hear what's the
16 motive, what's the motive. On the -- there's one sentence, a second sentence, and
17 then the third, it says, Do not confuse intent with motive. Motive is what prompts a
18 person to act. Intent refers only to the state of mind with which the act is done in.
19 Motive is not an element of the crime charged and the State is not required to prove
20 a motive on the part of the defendant in order to convict. However, you may
21 consider the evidence of motive or lack of motive as a circumstance in the case.

22 Mr. Marchese talked about this briefly, as did Ms. Dunn, but the gist of
23 what the State has to do is prove to you beyond a reasonable doubt that a crime
24 had occurred and that the defendant committed that crime. Now, Instruction
25 Number 8 is the reasonable doubt instruction and I'm skipping to the second

1 paragraph where it defines reasonable doubt. It says, A reasonable doubt is one on
2 reason. Helpful, right? It is not mere possible doubt, but is such a doubt that would
3 govern or control a person in the more weighty affairs of life. In the minds of the
4 jurors after the entire comparison and consideration of all the evidence are in such a
5 condition that they can say they feel an abiding conviction of the truth of the charge,
6 there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere
7 possibility or speculation.

8 And I would submit to you, ladies and gentlemen, that all of the
9 evidence present at the scene, the DNA, the fingerprints, the items of Mr. Rivera,
10 the statements that came out of his own mouth to both Detective Ravelo, to
11 Dr. Chambers, and to Dr. Coard has proven to you beyond a reasonable doubt that
12 the defendant is guilty of first degree murder with a deadly weapon.

13 I have one more that I want to point out, and that's Instruction
14 Number 34. This was where Mr. Marchese said, you know, we don't want you to
15 check your common sense at the door. But it also states further down on to the
16 second paragraph, A verdict may never be influenced by sympathy, prejudice, or
17 public opinion. Your decision should be the product of sincere judgment and sound
18 discretion in accordance with these rules of law.

19 Certainly we can have sympathy for the defendant's mental illness.
20 Certainly we can have sympathy for a variety of things. But sympathy has no place
21 in the jury deliberation room. You are instructed that, that is the law in the Nevada,
22 and as jurors you've all agreed to uphold that.

23 The bottom line is, ladies and gentlemen, one person in this room
24 knows for certain what happened July 1st of 2018, and when the 12 of you retire to
25 deliberate, it's my request that you come back here and you tell him, We know too,

1 and find the defendant guilty of first degree murder with a deadly weapon.

2 Thank you.

3 THE COURT: Thank you.

4 At this time the Clerk will now swear the officers of the court who will
5 take charge of the jury panel.

6 [The Clerk swears in the officers to take charge of the jury and alternates]

7 THE COURT: Okay. Thank you. Before I do excuse you, I want to let Mr. --
8 Mr. Raffy Tamita, you have been -- sorry, I'm sorry, I thought, I apologize -- you've
9 been selected to be our alternate juror, so I'm not going to require you to stay at the
10 courthouse. However, I'm not going to excuse you from your duty. You can leave,
11 you can stay, it's up to you. I'm not going to require you to stay, but I just ask that
12 you stay close by because if for any reason we need you to come back to the
13 courthouse, Pam would call you and I'd want you to get back here within 45
14 minutes. Do you live further than 45 minutes from the courthouse?

15 JUROR NO. 14: No.

16 THE COURT: Okay. So you would be able to get back here if we called you?

17 JUROR NO. 14: Yes.

18 THE COURT: Okay. And then, of course, my office will call you and let you
19 know when and if you have been discharged. But I won't require you stay.

20 And at this time, ladies and gentlemen, we're going to have to take a
21 short recess. You're all going to deliberate in here so we can maintain the COVID
22 protocol. So you're going to go out, take a break, the officers of the court will come
23 get you, when you're ready to deliberate, and they'll bring you back in. Obviously,
24 the courtroom will be empty so you can have the privacy for deliberation.

25 So during this recess you're admonished not to communicate with

1 anyone including fellow jurors in any way regarding the case or its merits either by
2 voice, phone, e-mail, text, Internet or other means of communication or social
3 media; read, watch, or listen to any news or media accounts or commentary about
4 the case; do any research such as consulting dictionaries, using the Internet or
5 using reference materials or make any investigation, test a theory of the case,
6 re-create any aspect of the case, or in any other way investigate or learn about the
7 case on your own or form or express any opinion regarding the case until it is finally
8 submitted to you.

9 I also have a couple more instructions about the evidence. All of the
10 evidence -- where is it -- okay -- all of the evidence will be in here for you to go
11 through. The CDs that have been introduced, you can take the CDs out and there
12 will be a laptop if you want to view any of the material on the CDs. All of the
13 evidence has -- they're in plastic sleeves, you can take it out of the plastic sleeves if
14 you want to.

15 THE CLERK: No, sorry, Judge. They can take -- they can take it out of the
16 binder but not out of the sleeve.

17 THE COURT: Okay. You can take it out of the binder but not out of the
18 sleeve. But all of the evidence has been wiped down and it is clean and so all of
19 that will be here when you come back and it'll be ready for you in your deliberation.

20 Also, Ms. Rocha will make sure that lunch is here.

21 And, sir, you're going to see Ms. Rocha too when you go out to take a
22 break, she's going to take your phone number so if we have to have you come back.
23 She'll take charge of your notebook. So you can take your notebook. Everybody
24 else leave your notebook here. Pam will take charge of your notebook. We will
25 keep it, and if for any reason we need you to come back to deliberate we'll have it

1 here and we'll return it to you.

2 Okay, at this time you all may -- about ten minutes -- we'll take a
3 ten-minute recess and then, again, these are the two officers of the court that have
4 been sworn in to take charge of you, one or both of them will come get you to bring
5 you back in to begin your deliberations. Thank you.

6 [Outside the presence of the jury panel]

7 THE COURT: I had them take a recess because we have to clear out so they
8 can come and deliberate in here.

9 MS. MOORS: Okay. Great.

10 [The jury retired to deliberate]

11 [Recess at 12:05 p.m.; Matter recalled at 1:51 p.m.]

12 [Outside the presence of the jury panel]

13 THE COURT: The record will reflect that the hearing's taking place outside
14 the presence of the jury panel. The defendant is present with his attorneys as well
15 as the district attorneys are all present.

16 I got a question from the jury and it has been marked as Court's Exhibit
17 Number 14. What is the definition of mentally ill in Item 6 of the verdict list? And it's
18 signed by Juror Number 3, the foreperson.

19 My practice is I generally do not answer their questions. So I have
20 prepared what is attached to Exhibit 14 is please refer to the jury instructions. Does
21 either side have any objection to that? The State?

22 MS. MOORS: Lindsey Moors for the State. No, I do not, Your Honor, and I
23 do believe that it is defined in there within the context of guilty but mentally ill.

24 THE COURT: Mr. Marchese?

25 MR. MARCHESE: I agree. I don't want any additional commentary.

1 THE COURT: Sure. Okay. So I'll have the officer of the court take this into
2 the jury, and I've numbered it Instruction Number 40. And it just says, Please refer
3 to the jury instructions. Thank you.

4 MS. MOORS: Thank you.

5 [Recess at 1:52 p.m.; Matter recalled at 3:29 p.m.]

6 [Outside the presence of the jury panel]

7 THE COURT: Okay. The hearing will reflect that the hearing's taking place
8 outside the presence of the jury panel. The defendant is present. Before I do bring
9 in the jury panel, depending on the verdict, I'm going to have to instruct them
10 whether they're excused or they're coming back. Have the parties reached any
11 agreement? Because if it's a guilty of first degree murder I've got to bring them back
12 for a penalty phase.

13 MS. MOORS: Court's indulgence for just a moment.

14 Your Honor, we -- I had spoken to defense prior to the beginning of the
15 case and had indicated that if there was a guilty verdict of first degree murder we
16 wouldn't be waiving penalty, but I would agree to seek the term of years and we
17 would jointly recommend that to Your Honor. So, certainly, that would be our joint
18 recommendation if that were the verdict.

19 THE COURT: Okay. So, I mean, I assume that that would be agreeable
20 because that would be the minimum sentence --

21 MR. MARCHESE: Of course.

22 THE COURT: -- that the jury could give.

23 MR. MARCHESE: Right.

24 THE COURT: Okay. So if it is that, I could still excuse them because the
25 parties have reached a stipulation regarding sentencing?

1 MS. MOORS: Yes, Your Honor.
2 THE COURT: Okay.
3 MR. MARCHESE: That's correct.
4 THE COURT: All right, we can bring them in.
5 [In the presence of the jury panel]
6 THE MARSHAL: All rise for the presence of the jury.
7 THE COURT: Does the State stipulate to the presence of the panel?
8 MS. MOORS: Yes, Your Honor.
9 THE COURT: And the defense?
10 MR. MARCHESE: Yes, Your Honor.
11 THE COURT: Okay. Thank you.
12 Ms. Russell, have you been selected to be the jury foreperson?
13 JUROR NO. 3: Yes.
14 THE COURT: Okay. Has the jury reached a verdict?
15 JUROR NO. 3: We have.
16 THE COURT: Can you hand the verdict form to the court officer?
17 The clerk will now read the verdict out loud.
18 THE CLERK: District Court, Clark County, Nevada, the State of Nevada,
19 plaintiff, versus Shelbe Rivera, defendant; C333893, Department Number 12;
20 verdict: We the jury in the above entitled case find the defendant, Shelbe Rivera, as
21 follows: Count 1, murder with use of a deadly weapon, guilty but mentally ill of
22 second degree murder with use of a deadly weapon. Signed by Foreperson
23 Kimberly Russell.
24 Ladies and gentlemen of the jury, is this your verdict as read, so say
25 you one so say you all?

1 THE JURY IN UNISON: Yes.

2 THE COURT: Okay. Does either side wish to have the panel polled? The
3 State?

4 MS. MOORS: Not from the State, Your Honor.

5 THE COURT: Mr. Marchese?

6 MR. MARCHESE: No, Your Honor.

7 THE COURT: Okay. At this time the clerk will now record the verdict in the
8 official record of the court. And at this time, ladies and gentlemen, I am going to
9 excuse you and discharge you from your service. Before I do, I just want to extend
10 my gratitude to you for your willingness to be here this week. I know this is probably
11 a -- I think it's been pretty strange for me, so it had to be for you all, thank you for
12 following the protocol and your patience and your courtesy. You are no longer
13 under the admonition to not discuss this case with anyone. When I discharge you,
14 you're free to discuss it with whomever you want. However, you're under no
15 obligation to discuss it with anyone.

16 I am going to excuse you to go out -- normally, I would let you go in the
17 back and I would let the lawyers come talk to you because I think that's a good
18 thing. What I'm going to do is I'm going to discharge you, you'll go out there, if the
19 lawyers, sometimes they want to talk to you, I think it's always good for lawyers to
20 be able to talk to the jury panel once they've been discharged. But, again, I just
21 want to make sure you understand, you don't have to talk to anybody. But you're no
22 longer under that admonition. So at this time, ladies and gentlemen, I am going to
23 discharge you from your service. Again, thank you very much for being here.

24 [Outside the presence of the jury panel]

25 THE COURT: Okay. The record will reflect that the hearing is taking place

1 outside the presence of the jury panel. The matter will be referred to Parole and
2 Probation and it will be set down for sentencing.

3 THE CLERK: Sentencing is going to be May 5th at 8:30. If we're still on
4 pandemic schedule, that'll be May 7th at 11:00 a.m.

5 MS. MOORS: Okay. I'm sorry, so what were the -- May 5th at?

6 THE CLERK: It'll be May 5th at 8:30 if we're back to normal schedule.

7 MS. MOORS: Okay.

8 THE CLERK: If we're still on the pandemic schedule, that'll be May 7th at
9 11:00 a.m.

10 PROCEEDING CONCLUDED AT 3:36 P.M.

11 * * * * *

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22 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
23 video recording of this proceeding in the above-entitled case.

24 
25 SARA RICHARDSON
Court Recorder/Transcriber

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAR 05 2021

BY, 
HALEY PANNULLO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

SHELBE RIVERA,

Defendant.

CASE NO: C-18-333893-1

DEPT NO: XII

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

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 ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

C-18-333893-1
INST
Instructions to the Jury
4948682



A.A. 00556

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

1
2 An information is but a formal method of accusing a person of a crime and is not of
3 itself any evidence of his guilt.

4 In this case, it is charged in an Information that on or about the 1st day of July, 2018
5 that SHELBE RIVERA, the Defendant committed the crime of MURDER WITH USE OF A
6 DEADLY WEAPON within the County of Clark, State of Nevada, contrary to the form,
7 force and effect of statutes in such cases made and provided, and against the peace and
8 dignity of the State of Nevada, through willfully, unlawfully, feloniously and with malice
9 aforethought, killing JUAN RINCON, a human being, with use of a deadly weapon, to wit: a
10 knife, by stabbing the said JUAN RINCON in the neck and/or chest with said knife, the said
11 killing having been willful, deliberate and premeditated.

12 It is the duty of the jury to apply the rules of law contained in these instructions to the
13 facts of the case and determine whether or not the Defendant is guilty of the offense charged.
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To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

1
2 The evidence which you are to consider in this case consists of the testimony of the
3 witnesses, the exhibits, and any facts admitted or agreed to by counsel.

4 There are two types of evidence; direct and circumstantial. Direct evidence is the
5 testimony of a person who claims to have personal knowledge of the commission of the
6 crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof
7 of a chain of facts and circumstances which tend to show whether the Defendant is guilty or
8 not guilty. The law makes no distinction between the weight to be given either direct or
9 circumstantial evidence. Therefore, all of the evidence in the case, including the
10 circumstantial evidence, should be considered by you in arriving at your verdict.

11 Statements, arguments and opinions of counsel are not evidence in the case.
12 However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation
13 as evidence and regard that fact as proved.

14 You must not speculate to be true any insinuations suggested by a question asked a
15 witness. A question is not evidence and may be considered only as it supplies meaning to
16 the answer.

17 You must disregard any evidence to which an objection was sustained by the court
18 and any evidence ordered stricken by the court.

19 Anything you may have seen or heard outside the courtroom is not evidence and must
20 also be disregarded.

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

1
2 A witness who has special knowledge, skill, experience, training or education in a
3 particular science, profession or occupation is an expert witness. An expert witness may
4 give his/her opinion as to any matter in which he/she is skilled.

5 You should consider such expert opinion and weigh the reasons, if any, given for it.
6 You are not bound, however, by such an opinion. You will give it the weight to which you
7 deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment,
8 the reasons given for it are unsound.

1
2 The Defendant is presumed innocent until the contrary is proved. This presumption
3 places upon the State of Nevada the burden of proving beyond a reasonable doubt every
4 element of the crime charged and that the Defendant is the person who committed the
5 offense.

6 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a
7 doubt as would govern or control a person in the more weighty affairs of life. If the minds of
8 the jurors, after the entire comparison and consideration of all the evidence, are in such a
9 condition that they can say they feel an abiding conviction of the truth of the charge, there is
10 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
11 speculation.

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a
13 verdict of not guilty.
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2 In this case the Defendant is accused in an Information alleging an open charge of
3 murder. This charge may include Murder of the First Degree and Murder of the Second
4 Degree.

5 It is your job to decide if the Defendant is guilty of any offense and, if so, of which
6 offense.
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INSTRUCTION NO. 10

Murder is the unlawful killing of a human being with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

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Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

1
2 Murder of the First Degree is murder which is perpetrated by means of any kind of
3 willful, deliberate, and premeditated killing. All three elements -- willfulness, deliberation,
4 and premeditation -- must be proven beyond a reasonable doubt before an accused can be
5 convicted of first-degree murder.

6 Willfulness is the intent to kill. There need be no appreciable space of time between
7 formation of the intent to kill and the act of killing.

8 Deliberation is the process of determining upon a course of action to kill as a result of
9 thought, including weighing the reasons for and against the action and considering the
10 consequences of the actions.

11 A deliberate determination may be arrived at in a short period of time. But in all
12 cases the determination must not be formed in passion, or if formed in passion, it must be
13 carried out after there has been time for the passion to subside and deliberation to occur. A
14 mere unconsidered and rash impulse is not deliberate, even though it includes the intent to
15 kill.

16 Premeditation is a design, a determination to kill, distinctly formed in the mind by the
17 time of the killing.

18 Premeditation need not be for a day, an hour, or even a minute. It may be as
19 instantaneous as successive thoughts of the mind. For if you believe from the evidence that
20 the act constituting the killing has been preceded by and has been the result of premeditation,
21 no matter how rapidly the act follows the premeditation, it is premeditated.

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2 The law does not undertake to measure in units of time the length of the period during
3 which the thought must be pondered before it can ripen into an intent to kill which is truly
4 deliberate and premeditated. The time will vary with different individuals and under varying
5 circumstances.

6 The true test is not the duration of time, but rather the extent of the reflection. A cold,
7 calculated judgment and decision may be arrived at in a short period of time, but a mere
8 unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation
9 and premeditation.
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INSTRUCTION NO. 15

The intention to kill may be ascertained or deduced from the facts and circumstances of the killing, such as the use of a weapon calculated to produce death, the manner of its use, and the attendant circumstances characterizing the act.

INSTRUCTION NO. 16

The prosecution is not required to present direct evidence of a defendant's state of mind as it existed during the commission of a crime. The jury may infer the existence of a particular state of mind of a party or a witness from the circumstances disclosed by the evidence.

INSTRUCTION NO. 17

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All murder which is not Murder of the First Degree is Murder of the Second Degree.
Murder of the Second Degree is Murder with malice aforethought, but without the admixture
of premeditation and deliberation.

1
2 If you find that the State has established the Defendant has committed first degree
3 murder you shall select first degree murder as your verdict. The crime of first degree murder
4 includes the crime of second degree murder. You may find the Defendant guilty of second
5 degree murder if:

6 1. You have not found, beyond a reasonable doubt, the Defendant is guilty of murder
7 of the first degree, and

8 2. You are convinced beyond a reasonable doubt the Defendant is guilty of the crime
9 of second degree murder.

10 If you are convinced beyond a reasonable doubt that the crime of murder has been
11 committed by the Defendant, but you have a reasonable doubt whether such murder was of
12 the first or of the second degree, you must give the Defendant the benefit of that doubt and
13 return a verdict of murder of the second degree.

1
2 If you find the Defendant guilty of first or of second degree murder, you must also
3 determine whether or not a deadly weapon was used in the commission of this crime.

4 If you find beyond a reasonable doubt that a deadly weapon was used in the
5 commission of such an offense, then you shall return the appropriate guilty verdict reflecting
6 "With Use of a Deadly Weapon".

7 If, however, you find that a deadly weapon was not used in the commission of such an
8 offense, but you find that it was committed, then you shall return the appropriate guilty
9 verdict reflecting that a deadly weapon was not used.

"Deadly weapon" means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

All persons are liable to punishment except those who committed the act charged in a state of insanity. To qualify as being legally insane, a defendant, due to a disease or defect of the mind, at the time of the alleged offense, must:

1. Have been in a delusional state, and

2.a The state was such that he did not know or understand the nature and capacity of his act;

or

2.b The state was such that he did not appreciate that his conduct was wrong, meaning not authorized by law.

If a defendant was suffering from a delusional state and if the facts as he believed them, while in that delusional state, would have justified his action, he is insane and entitled to an acquittal. If, however, the delusional facts would not amount to a legal defense, then he is not insane.

1 You are instructed that a defendant is presumed sane until the contrary is shown.

2
3 Insanity is an affirmative defense, and the defendant has the burden of proving his
4 legal insanity by a preponderance of the evidence.

5 By a preponderance of the evidence is meant such evidence as, when weighed with
6 that opposed to it, has more convincing force and the greater probability of truth.
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INSTRUCTION NO. 23

You are instructed that a person with a mind capable of knowing right from wrong must be regarded as capable of entertaining intent and of deliberating and premeditating.

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3 If you believe the Defendant was suffering from a delusional state, and if the facts as
4 he believed them to be in his delusional state would justify his actions, he is insane and
5 entitled to acquittal. If however, the delusional facts would not amount to a legal defense,
6 then he is not insane. Persons suffering from a delusion that someone is shooting at them, so
7 they shot back in self-defense are insane under the law. Persons who are paranoid and
8 believe that the victim is going to get them some time in the future, so they hunt down the
9 victim first, are not insane under the law.
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During a trial, upon a plea of not guilty by reason of insanity, the trier of fact may find the Defendant guilty but mentally ill if the trier of fact finds all of the following:

(a) The Defendant is guilty beyond a reasonable doubt of an offense; and

(b) The Defendant has established by a preponderance of the evidence that Defendant was in a delusional state due to a disease or defect of the mind;

(c) The Defendant has not established by a preponderance of the evidence that Defendant's delusion was such that he did not know or understand the nature and capacity of his act; or

(d) The Defendant has not established by a preponderance of the evidence that Defendant's delusion was such that he did not appreciate that his conduct was wrong, meaning not authorized by law.

Where a defendant is found not guilty by reason of insanity, the finding of the jury has the same effect as if he were regularly adjudged insane, and the judge must:

- (a) Order a peace officer to take the person into protective custody and transport him to a forensic facility for detention pending a hearing to determine his mental health;
- (b) Order the examination of the person by two psychiatrists, two psychologists, or one psychiatrist and one psychologist who are employed by a division facility; and
- (c) At a hearing in open court, receive the report of the examining advisers and allow counsel for the State and for the person to examine the advisers, introduce other evidence and cross-examine witnesses.

If, after this hearing, the court finds that:

- (1) There is not clear and convincing evidence that the person is a mentally ill person, the court must order his discharge; or,
- (2) That there is clear and convincing evidence that the person is a mentally ill person, the court must order that he be committed to the custody of the Administrator of the Division of Mental Health and Developmental Services of the Department of Human Resources until he is regularly discharged therefrom in accordance with law.

The Court shall issue its findings within 90 days after the defendant is acquitted.

The administrator shall make the reports and the court shall keep each person with mental illness committed to custody under observation. A person committed to the custody of the Administrator is eligible for:

- (a) Discharge from commitment if the person establishes by a preponderance of the evidence that the person would not be a danger, as a result of any mental disorder, to himself or herself or to the person or property of another if discharged; or

Conditional release from commitment if the person establishes by a preponderance of

1 the evidence that the person would not be a danger, as a result of any mental disorder, to
2 himself or herself or to the person or property of another if released from commitment with
3 conditions imposed by the court in consultation with the Division. If a person who is
4 conditionally released from the custody of the administrator fails to comply with any
5 condition imposed by the court, the court shall issue an order to have the person recommitted
6 to the custody of the Administrator.

The killing of another person in self-defense is justified and not unlawful when the person who kills actually and reasonably believes:

1. That there is imminent danger that the assailant will either kill him or cause him great bodily injury; and

2. That it is absolutely necessary under the circumstances for him to use, in self-defense, force or means that might cause the death of the other person, for the purpose of avoiding death or great bodily injury to himself.

A bare fear of death or great bodily injury is not sufficient to justify a killing. To justify taking the life of another in self-defense, the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person killing must act under the influence of those fears alone and not in revenge.

An honest but unreasonable belief in the necessity for self-defense does not negate malice and does not reduce the offense from murder to manslaughter.

1
2 The right of self-defense is not generally available to an original aggressor, that is a
3 person who has sought a quarrel with the design to force a deadly issue and thus through his
4 fraud, contrivance or fault, to create a real or apparent necessity for making a felonious
5 assault.

6 The original aggressor is only entitled to exercise self-defense, if he makes a good
7 faith endeavor to decline any further struggle before the mortal blow was given.

8 Where a person without voluntarily seeking, provoking, inviting, or willingly
9 engaging in a difficulty of his own free will, is attacked by an assailant, he has the right to
10 stand his ground and need not retreat when faced with the threat of deadly force.

INSTRUCTION NO. 29

The law does not justify the use of a greater degree of force than is reasonably necessary nor does it justify a person who has been acting in self-defense in the infliction of further injuries upon his assailant after there is no longer any apparent danger.

Actual danger is not necessary to justify a killing in self-defense. A person has a right to defend from apparent danger to the same extent as he would from actual danger. The person killing is justified if:

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that he is about to be killed or suffer great bodily injury; and
2. He acts solely upon these appearances and his fear and actual beliefs; and
3. A reasonable person in a similar situation would believe himself to be in like danger.

The killing is justified even if it develops afterward that the person killing was mistaken about the extent of the danger.

1
2 If a person kills another in self-defense, it must appear that the danger was so urgent
3 and pressing that, in order to save his own life, or to prevent him receiving great bodily
4 harm, the killing of the other was absolutely necessary; and the person killed was the
5 assailant, or that the slayer had really, and in good faith, endeavored to decline any further
6 struggle before the mortal blow was given.
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Evidence that does not rise to the level of legal insanity may, of course, be considered in evaluating whether or not the prosecution has proven each element of an offense beyond a reasonable doubt. For example, in determining whether a killing is first or second degree murder.

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2 It is a constitutional right of a Defendant in a criminal trial that he may not be
3 compelled to testify. Thus, the decision as to whether he should testify is left to the
4 Defendant on the advice and counsel of his attorney. You must not draw any inferences of
5 guilt from the fact that he does not testify, nor should this fact be discussed by you or enter
6 into your deliberations in any way.
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2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind such inferences should not
7 be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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In your deliberation you may not discuss or consider the subject of punishment. Your duty is confined to the determination of whether the State of Nevada has met its burden of proof as to the Defendant.

1
2 It is your duty as jurors to consult with one another and to deliberate with a view
3 toward reaching an agreement, if you can do so without violence to your individual
4 judgment. Each of you must decide the case for yourself, but should do so only after a
5 consideration of the case with your fellow jurors, and you should not hesitate to change an
6 opinion when convinced that it is erroneous. However, you should not be influenced to vote
7 in any way on any question submitted to you by the single fact that a majority of the jurors,
8 or any of them, favor such a decision. In other words, you should not surrender your honest
9 convictions concerning the effect or weight of evidence for the mere purpose of returning a
10 verdict or solely because of the opinion of the other jurors. Whatever your verdict is, it must
11 be the product of a careful and impartial consideration of all the evidence in the case under
12 the rules of law as given you by the court.
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During your deliberations you are not to communicate with anyone, in any manner regarding the facts and circumstances of this case or its merits, either by phone, email, text messaging, internet, or other means.

You are admonished not to read, watch, or listen to any news or media accounts or commentary about the case. You are not permitted to do any independent research, such as consulting dictionaries, using the internet, or any other reference materials.

You are further admonished not to conduct any investigation, test a theory of the case, re-create any aspect of the case, or in any other manner investigate or learn about the case on your own.

1
2 When you retire to consider your verdict, you must first select one of your member to
3 act as foreperson who will preside over your deliberation, and will be your spokesperson in
4 court.

5 During your deliberation, you will have all the exhibits admitted into evidence, these
6 written instructions, and forms of verdict prepared for your convenience.

7 Your verdict must be unanimous. As soon as you agree upon a verdict, the
8 foreperson shall sign and date the verdict form and return with it to this room.
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Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:


DISTRICT JUDGE

@ 3:34 pm

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAR 05 2021

DISTRICT COURT
CLARK COUNTY, NEVADA

BY, 
HALY PANNULLO, DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-VS-

SHELBE RIVERA,

Defendant.

CASE NO: C-18-333893-1

DEPT NO: XII



VERDICT

We the jury, in the above entitled case, find the Defendant SHELBE RIVERA, as follows:

COUNT 1 – MURDER WITH USE OF A DEADLY WEAPON

(please check the appropriate box, select only one)

- ☐ Guilty of 1st Degree Murder With Use of a Deadly Weapon
- ☐ Guilty But Mentally Ill of 1st Degree Murder With Use of a Deadly Weapon
- ☐ Guilty of 1st Degree Murder
- ☐ Guilty But Mentally Ill of 1st Degree Murder
- ☐ Guilty of 2nd Degree Murder With Use of a Deadly Weapon
- ☒ Guilty But Mentally Ill of 2nd Degree Murder With Use of a Deadly Weapon
- ☐ Guilty of 2nd Degree Murder
- ☐ Guilty But Mentally Ill of 2nd Degree Murder
- ☐ Not Guilty By Reason of Insanity
- ☐ Not Guilty

DATED this 5th day of March, 2021


Foreperson

A.A. 00596

Heather L. Smith
CLERK OF THE COURT

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

SHELBE RIVERA
#8432832

Defendant.

CASE NO. C-18-333893-1

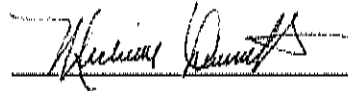
DEPT. NO. XII

JUDGMENT OF CONVICTION
(JURY TRIAL – BUT MENTALLY ILL)

The Defendant previously entered a plea of not guilty to the crime of MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165; and the matter having been tried before a jury and the Defendant having been found guilty but mentally ill to the crime of SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165; thereafter, on the 7th day of May, 2021, the Defendant was present in court for sentencing with counsel JESS R. MARCHESI, ESQ., and good cause appearing,

1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said crime as set forth in
2 the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee and
3 \$150.00 DNA Analysis Fee including testing to determine genetic markers plus \$3.00
4 DNA Collection Fee, the Defendant is SENTENCED to the Nevada Department of
5 Corrections (NDC) as follows: a MAXIMUM of TWENTY-FIVE (25) YEARS with a
6 MINIMUM Parole Eligibility of TEN (10) YEARS, plus a CONSECUTIVE term of
7 FIFTEEN (15) YEARS with a MINIMUM parole eligibility of FIVE (5) YEARS for the
8 Use of a Deadly Weapon; with ONE THOUSAND THIRTY-THREE (1,033) DAYS
9 credit for time served.
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15 Dated this 11th day of May, 2021

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18 32B 0F6 BEB9 4A39
19 Michelle Leavitt
20 District Court Judge
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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 State of Nevada

CASE NO: C-18-333893-1

7 vs

DEPT. NO. Department 12

8 Shelbe Rivera
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Judgment of Conviction was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 5/11/2021

15 Lindsay Moors

lindsay.moors@clarkcountyda.com

16 LINDSEY DEPUTY DA

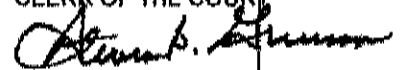
lindsey.moors@clarkcountyda.com

17 JESS ESQ.

marcheselaw@msn.com

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A.A. 00599



JESS R. MARCHESE, ESQ.
Nevada bar No. 8175
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Attorney for Defendant – RIVERA

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,)	Case No.: C-18-333893-1
)	Dept. No.: XII
)	
Plaintiff,)	
)	
v.)	
)	
SHELBY RIVERA,)	
)	
Defendant.)	

NOTICE OF APPEAL

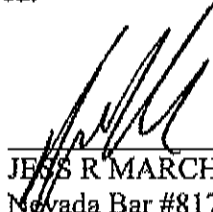
TO: THE STATE OF NEVADA

STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY, NEVADA and
DEPARTMENT NO XII OF THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK.

NOTICE is hereby given that Defendant, Shelbe Rivera, presently incarcerated in the Clark
County Detention Center, appeals to the Supreme Court of the State of Nevada from the jury
verdict wherein THE DEFENDANT IS HEREBY ADJUDGED guilty of said crime as set forth
in the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee and \$150.00
DNA Analysis Fee including testing to determine genetic markers plus \$3.00 DNA Collection
Fee, the Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:
a MAXIMUM of TWENTY-FIVE (25) YEARS with a MINIMUM Parole Eligibility of TEN

1 (10) YEARS, plus a CONSECUTIVE term of FIFTEEN (15) YEARS with a MINIMUM parole
2 eligibility of FIVE (5) YEARS for the Use of a Deadly Weapon; with ONE THOUSAND
3 THIRTY-THREE (1,033) DAYS credit for time served.

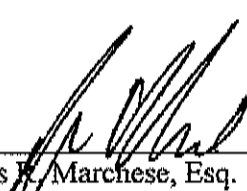
4 DATED this 12th day of May, 2021

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7 JESS R MARCHESE, ESQ.
8 Nevada Bar #8175

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11 **DECLARATION OF MAILING**

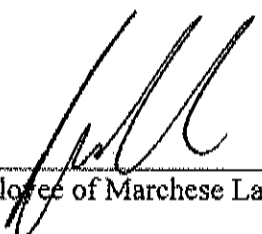
12 Jess R. Marchese, hereby declares that he is, and was when the herein described mailing
13 took place, a citizen of the United States , over 21 years of age, and not a party to, nor interested
14 in, the within action; that on the 12th day of May, 2021, declarant deposited in the United States
15 mail at Las Vegas, Nevada, a copy the Notice of Appeal in the case of the State of Nevada vs
16 Shelby Rivera, Case No. C-18-333893-1 , enclosed in a sealed envelope upon which first class
17 postage was fully prepaid, addressed to Shelbe Rivera #8432832 , 330 S. Casino Center Blvd.,
18 Las Vegas, Nevada 89101. That there is regular communication by mail between the place of
19 mailing and the place so addressed. I declare under penalty of perjury that the foregoing is true
20 and correct.

21 EXECUTED on the 12th day of May, 2021.

22
23 
24 Jess R. Marchese, Esq.
25 Nevada Bar #8175
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2 **CERTIFICATE OF ELECTRONIC SERVICE**

3 I HEREBY CERTIFY that a true and correct copy of the defendant's Notice of Appeal
4 was filed and served on the 12th day of May, 2021 to all registered recipients of the 8th Judicial
5 District Court's online filing system.

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8 By: 
9 Employee of Marchese Law Offices
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