

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

2 No. 82740

3
4 **JORGE MENDOZA,**

5
6 Appellant,

7 vs.

8 **THE STATE OF NEVADA,**

9 Respondent.

10
11
12 **Appeal from the Postconviction Denial of Relief for Writ of Habeas**
13 **Corpus - Eighth Judicial District Court, Clark County**
14 **The Honorable Judge Bita Yeager 8th Judicial District Court Judge**
15 **Department 1, Presiding, Findings of Fact, Conclusions of Law and**
16 **Order Issued April 2, 2021, District Court Case No. A-19-804157-W**

17 **APPELLANT'S APPENDIX VOLUME XIII**

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Dated July 25, 2021
BY /s/ DIANE C. LOWE
DIANE C. LOWE, ESQ
Nevada Bar #14573

1 make?

2 MR. LANDIS: Let me let Mr. Wolfbrandt go there.

3 THE COURT: Okay.

4 MR. WOLFBRANDT: I'm trying to find the instruction
5 that was actually given to the jury by number --

6 THE COURT: Okay.

7 MR. WOLFBRANDT: -- and that's not happening right
8 quick.

9 MR. DiGIACOMO: It's going to be right around 26.

10 THE COURT: Yeah. I found it.

11 MR. DiGIACOMO: 27. And I'll give the Court back
12 your copy.

13 THE COURT: Thank you.

14 MR. WOLFBRANDT: Right. It is 27. I think 27,
15 instruction 27, that was given to the jury is sufficient for
16 them to make a determination.

17 THE COURT: So 27 --

18 MR. WOLFBRANDT: -- but I've also --

19 THE COURT: Excuse me.

20 MR. WOLFBRANDT: -- as the Court said --

21 THE COURT: I didn't mean to interrupt you. What
22 were you going to say?

23 MR. WOLFBRANDT: But I also recognize that
24 instruction number 57 that was given, as you pointed out to
25 me, gives the language of, "If you desire to be further

1 informed on any point of law," and that's what their question
2 is is exactly on a point of law so --

3 THE COURT: Correct. And so --

4 MR. WOLFBRANDT: -- I think instruction 27 is
5 sufficient as it was given, but I recognize that there's
6 language in Echavarria that probably should have been added in
7 the first place.

8 THE COURT: It may have been, you know, as far as
9 the robbery question. But don't forget their question
10 involves not just the robbery, but also the burglary and the
11 home invasion. So I think it's clear, and this instruction
12 further clarifies that because nothing in the instructions
13 would help them with that.

14 But this number 27, "The robbery may spread over
15 considerable and varying periods of time all matters prior to
16 and having direct causal connection with the robbery as well
17 as acts immediately following it or deemed so closely
18 connected with it to be a part of the occurrence," probably
19 should be enough, but apparently, they're still confused, and
20 so if we give them some further guidance and --

21 MR. DiGIACOMO: And for the record, the language was
22 taken directly from Echavarria v. State 108 Nevada 734 in
23 1992.

24 MR. LANDIS: My concern, I guess, is this. I think
25 as to burglary and home invasion, those statements are clear,

1 they're assisting to the jury, and I have no problem with
2 that.

3 The one as to robbery, I just don't know if that's
4 -- how much help that's providing them, I guess I'm saying. I
5 don't think it's a wrong statement of the law. I'm reading
6 straight from Payne. Payne has this section that says
7 something along the lines of, whether the chain's been broken
8 is a question for the jury. Here's the exact line, "The chain
9 of events between the attempt crime or completed felony is
10 broken with the question usually being a fact determination
11 for the jury." Would a further instruction like that help
12 them? I just, I don't know.

13 MR. DiGIACOMO: Well, that's the question is, is
14 that the Payne instruction is -- is it the causal connection,
15 and that's why it was a question of fact. The issue for them
16 is what does that mean and Echavarria clears that up that the
17 effort to escape is covered within that. I think it's a
18 correct statement of the law and I think it's appropriately
19 given. And it doesn't mean that it doesn't help them in the
20 sense that if he's shot and now he can't escape, then he's not
21 committing it within facilitating escape.

22 If he's doing the act just to facilitate escape and
23 for no other purpose, then it does. So I think that does help
24 them.

25 MR. LANDIS: It becomes a tough question in that

1 "can escape" context. I mean --

2 MR. WOLFBRANDT: It sure does.

3 MS. McNEILL: Right.

4 MR. DiGIACOMO: I mean, that's what the law is. I
5 don't know how else to tell them.

6 MR. LANDIS: I'm not raising an objection, to be
7 honest with you.

8 MS. McNEILL: I'm not either, Your Honor.

9 THE COURT: Okay. All right. So I'm going to
10 number this as 59, and we'll send it -- do you want me to send
11 it back with a note that also says -- or I can actually write
12 it on their note that says, "Please see additional Instruction
13 Number 59," and we'll just give it to them? Shall we blue
14 back this?

15 MR. DiGIACOMO: But take all the instructions as a
16 whole or something --

17 THE COURT: Yes.

18 MR. DiGIACOMO: -- to that effect.

19 THE COURT: So please see additional --

20 (Off-record colloquy)

21 THE COURT: We'll go off the record.

22 (Off the record at 4:29 p.m. until 5:02 p.m.)

23 (In the presence of the jury)

24 THE MARSHAL: Your Honor, the jury is all present
25 and accounted for.

1 THE COURT: Thank you. Please be seated. And the
2 record will reflect that we are back within the presence of
3 all 12 members of the jury. The alternates were excused to go
4 home and be on call. And the defendants are present with
5 their respect tough counsel, the Chief Deputies District
6 Attorney prosecuting the case as are all officers of the court
7 present.

8 And so am I seeing that Ms. Yates is our foreperson?
9 Has the jury reached a verdict?

10 JUROR NO. 1: Yes.

11 THE COURT: And would you hand the Verdict forms to
12 the Marshal, please. All right. The Clerk will read the
13 Verdicts, please.

14 VERDICT RE: DEFENDANT JORGE MENDOZA

15 THE CLERK: District Court, Clark County, Nevada.
16 The State of Nevada versus Jorge Mendoza. Case C-303991,
17 Department 5.

18 Verdict. We, the jury in the above-entitled case,
19 find the defendant, Jorge Mendoza as follows:

20 Count 1, conspiracy to commit robbery; guilty of
21 conspiracy to commit robbery.

22 We the jury in the above-entitled case find the
23 defendant, Jorge Mendoza as follows.

24 Count 2, burglary while in possession of the a
25 deadly weapon; guilty of burglary while in possession of a

1 deadly weapon.

2 We, the jury in the above-entitled case, find the
3 defendant, Jorge Mendoza as follows.

4 Count 3, home invasion while in possession of a
5 deadly weapon; guilty of home invasion while in possession of
6 a deadly weapon.

7 We the jury in the above-entitled case find the
8 defendant, Jorge Mendoza as follows:

9 Count 4, attempt robbery with a deadly weapon;
10 guilty of attempt robbery with a deadly weapon.

11 We the jury in the above-entitled case find the
12 defendant, Jorge Mendoza as follows:

13 Count 5, attempt robbery with a deadly weapon;
14 guilty of attempt robbery with a deadly weapon.

15 We, the jury in the above-entitled case find the
16 defendant, Jorge Mendoza as follows:

17 Count 6, murder with a deadly weapon; guilty of
18 first degree murder with a deadly weapon.

19 We the jury in the above-entitled case find the
20 defendant, Jorge Mendoza as follows:

21 Count 7, attempt murder with a deadly weapon;
22 guilty of attempt murder with a deadly weapon.

23 Dated this 7th day of October, 2016, foreperson.

24 VERDICT RE: DEFENDANT JOSEPH LAGUNA

25 The State of Nevada versus Joseph Laguna. Case C-

1 303991, Department 5.

2 Verdict. We the jury in the above-entitled case
3 find the defendant, Joseph Laguna as follows:

4 Count 1, conspiracy to commit robbery; Guilty of
5 conspiracy to commit robbery.

6 We the jury in the above-entitled case find the
7 defendant, Joseph Laguna as follows:

8 Count 2, burglary while in possession of the a
9 deadly weapon; Guilty of burglary while in possession of a
10 deadly weapon.

11 We the jury in the above-entitled case find the
12 defendant, Joseph Laguna as follows:

13 Count 3, home invasion while in possession of a
14 deadly weapon; Guilty of home invasion while in possession of
15 a deadly weapon.

16 We the jury in the above-entitled case find the
17 defendant, Joseph Laguna as follows:

18 Count 4, attempt robbery with a deadly weapon;
19 Guilty of attempt robbery with a deadly weapon.

20 We the jury in the above-entitled case find the
21 defendant, Joseph Laguna as follows:

22 Count 5, attempt robbery with a deadly weapon;
23 Guilty of attempt robbery with a deadly weapon.

24 With the jury in the above-entitled case find the
25 defendant, Joseph Laguna as follows:

1 Count 6, murder with a deadly weapon; Guilty of
2 second degree murder with a deadly weapon.

3 We the jury in the above-entitled case find the
4 defendant, Joseph Laguna as follows:

5 Count 7, attempt murder with a deadly weapon;
6 Guilty of attempt murder with a deadly weapon.

7 Dated this 7th day of October, 2016, foreperson.

8 VERDICT RE: DEFENDANT DAVID MURPHY

9 District Court, Clark County, Nevada. The State of
10 Nevada versus David Murphy. Case C-303991, Department 5.

11 Verdict. We the jury in the above-entitled case
12 find the defendant, David Murphy as follows:

13 Count 1, conspiracy to commit robbery; Guilty of
14 conspiracy to commit robbery.

15 We the jury in the above-entitled case find the
16 defendant, David Murphy as follows:

17 Count 2, burglary while in possession of a deadly
18 weapon; Guilty of burglary while in possession of a deadly
19 weapon.

20 We the jury in the above-entitled case find the
21 defendant, David Murphy as follows:

22 Count 3, home invasion while in possession of a
23 deadly weapon; Guilty of home invasion while in possession of
24 a deadly weapon.

25 We the jury in the above-entitled case find the

1 defendant, David Murphy as follows:

2 Count 4, attempt robbery with a deadly weapon;
3 Guilty of attempt robbery with a deadly weapon.

4 We the jury in the above-entitled case find the
5 defendant, David Murphy as follows:

6 Count 5, attempt robbery with a deadly weapon;
7 Guilty of attempt robbery with a deadly weapon.

8 With the jury in the above-entitled case find the
9 defendant, David Murphy as follows:

10 Count 6, murder with a deadly weapon; Guilty of
11 second degree murder with a deadly weapon.

12 We the jury in the above-entitled case find the
13 defendant, David Murphy as follows:

14 Count 7, attempt murder with a deadly weapon;
15 Guilty of attempt murder with a deadly weapon.

16 Dated this 7th day of October, 2016, foreperson.

17 Ladies and gentlemen of the jury, are these your
18 Verdicts as read? So say you one, so say you all.

19 THE JURY: Yes.

20 THE COURT: Counsel approach.

21 (Off-record bench conference)

22 THE COURT: Would anyone like the jury polled?

23 MS. McNEILL: Yes, Your Honor.

24 MR. DiGIACOMO: No, Your Honor.

25 MR. WOLFBRANDT: Yes.

1 THE COURT: The Clerk will poll the jury.

2 THE CLERK: Juror Yates, is this your Verdict -- are
3 these your Verdicts as read?

4 JUROR NO. 1: Yes.

5 THE CLERK: Juror White, are these your Verdicts as
6 read?

7 JUROR NO. 2: Yes.

8 THE CLERK: Juror Mruzek, these your Verdicts as
9 read?

10 JUROR NO. 3: Yes.

11 THE CLERK: Juror Palma-Garcia, are these your
12 Verdicts as read?

13 JUROR NO. 4: Yes.

14 THE CLERK: Juror Clark, are these your Verdicts as
15 read?

16 JUROR NO. 5: Yes.

17 THE CLERK: Juror Warren, are these your Verdicts as
18 read?

19 JUROR NO. 6: Yes.

20 THE CLERK: Juror Wood, are these your Verdicts as
21 read?

22 JUROR NO. 7: Yes.

23 THE CLERK: Juror Victorson, are these your Verdicts
24 as read?

25 JUROR NO. 8: Yes.

1 THE CLERK: Martinez, are these your Verdicts as
2 read?

3 JUROR NO. 9: Yes.

4 THE CLERK: Juror McDonald (sic), are these your
5 Verdicts as read?

6 JUROR NO. 10: Yes.

7 THE CLERK: Juror Coyle, are these your Verdicts as
8 read?

9 JUROR NO. 11: Yes.

10 THE CLERK: Juror Simmons, are these your Verdicts
11 as read?

12 JUROR NO. 12: Yes.

13 THE COURT: Thank you. And ladies and gentlemen, I
14 thank you very much for your jury service. I know it's been a
15 very long trial in this matter. I'm going to ask the Marshal
16 just to conduct you back to the jury room. We'll collect your
17 badges and I'll come and thank you personally. And then also,
18 I'll find out if any of you'd like to speak to any of the
19 lawyers because they often want to speak to the jurors
20 afterwards.

21 I know it's late and you may not wish to, but I'll
22 ask if anybody wants to and then come and -- come right back
23 and let them know. So Marshal, if you would --

24 THE MARSHAL: Certainly. All rise for the jurors,
25 please.

1 (Jury excused at 5:12 p.m.)

2 THE COURT: All right. So we will need to refer
3 this matter to the Division of Parole and Probation for
4 Presentence Investigation Reports and set it down for
5 sentencing.

6 THE CLERK: November 23rd, 9:00 a.m.

7 THE COURT: Thank you.

8 MR. DiGIACOMO: That's the week of Thanksgiving. I
9 think that is. Could we do a week later?

10 MR. LANDIS: It has to be at least six weeks.

11 THE CLERK: November 28th.

12 MR. DiGIACOMO: Thank you.

13 THE COURT: And I'll be right back to see if they
14 want to talk with you.

15 (Court adjourned at 5:13 p.m.)

16 * * * * *

17 ATTEST: I hereby certify that I have truly and correctly
18 transcribed the audio/visual proceedings in the above-entitled
19 case to the best of my ability.

20

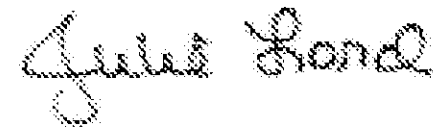
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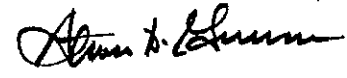
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25



JULIE LORD, INDEPENDENT TRANSCRIBER

1 JOC



CLERK OF THE COURT

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 THE STATE OF NEVADA,

6 *Plaintiff,*

7 -vs-

CASE NO: C-15-303991-1

8 JORGE MENDOZA
9 #2586625,

DEPT NO: V

10 *Defendant.*

11 JUDGMENT OF CONVICTION
12 (JURY TRIAL)

13 The defendant previously entered a plea of not guilty to the crimes of COUNT 1 –
14 CONSPIRACY TO COMMIT ROBBERY (a Category B Felony) in violation of NRS
15 199.480, 200.380; COUNT 2 – BURGLARY WHILE IN POSSESSION OF A DEADLY
16 WEAPON (a Category B Felony) in violation of NRS 205.060; COUNT 3 – HOME
17 INVASION WHILE IN POSSESSION OF A DEADLY WEAPON (a Category B Felony)
18 in violation of NRS 205.067; COUNTS 4 & 5 - ATTEMPT ROBBERY WITH USE OF A
19 DEADLY WEAPON (a Category B Felony) in violation of NRS 193.330, 200.380, 193.165;
20 COUNT 6 – MURDER WITH USE OF A DEADLY WEAPON (a Category A Felony) in
21 violation of NRS 200.010, 200.030, 193.165; and COUNT 7 – ATTEMPT MURDER
22 WITH USE OF A DEADLY WEAPON (a Category B Felony) in violation of NRS 200.010,
23 200.030, 193.330;

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1 and the matter having been tried before a jury and the defendant having been found guilty of
2 said crimes, with a **FIRST DEGREE MURDER VERDICT** as to **COUNT 6**. Thereafter,
3 on the 28th day of November, 2016, the defendant was present in court for sentencing with
4 his counsel WILLIAM WOLFBRANDT, ESQ., and good cause appearing,

5 THE DEFENDANT IS HEREBY ADJUDGED guilty of said crimes as set forth in
6 the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee, an order and
7 judgment of Restitution in the amount of \$5,500.00 payable to and in favor of the State of
8 Nevada Victims of Crime for which the defendant is jointly and severally liable with his co-
9 defendants David Murphy and Joseph Laguna, a \$150.00 DNA Analysis Fee including
10 testing to determine genetic markers, and a \$3.00 DNA Collection Fee, the defendant is
11 sentenced to the Nevada Department of Corrections as follows:

12 on **COUNT 1** - to a MAXIMUM of SEVENTY TWO (72) MONTHS and a MINIMUM of
13 TWENTY FOUR (24) MONTHS;

14 on **COUNT 2** - to a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and a
15 MINIMUM of FORTY EIGHT (48) MONTHS, Count 2 to run CONCURRENTLY with
16 Count 1;

17 on **COUNT 3** - to a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and a
18 MINIMUM of FORTY EIGHT (48) MONTHS, Count 3 to run CONCURRENTLY with
19 Count 2;

20 on **COUNT 4** - to a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS and a
21 MINIMUM of THIRTY SIX (36) MONTHS, plus a CONSECUTIVE term of ONE
22 HUNDRED TWENTY (120) MONTHS and a MINIMUM of THIRTY SIX (36) MONTHS
23 for the Use of a Deadly Weapon, Count 4 to run CONCURRENTLY with Count 3;

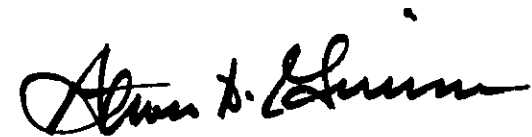
24 on **COUNT 5** - to a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS and a
25 MINIMUM of THIRTY SIX (36) MONTHS, plus a CONSECUTIVE term of ONE
26 HUNDRED TWENTY (120) MONTHS and a MINIMUM of THIRTY SIX (36) MONTHS
27 for the Use of a Deadly Weapon, Count 5 to run CONCURRENTLY with Count 4;

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1 on COUNT 6 - to LIFE with a possibility of parole after a term of TWENTY (20) YEARS
2 have been served, plus a CONSECUTIVE term of TWO HUNDRED FORTY (240)
3 MONTHS and a MINIMUM of THIRTY SIX (36) MONTHS for the Use of a Deadly
4 Weapon; Count 6 to run CONCURRENTLY with COUNT 5;
5 on COUNT 7 - to a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and a
6 MINIMUM of FORTY EIGHT (48) MONTHS, plus a CONSECUTIVE term of TWO
7 HUNDRED FORTY (240) MONTHS and a MINIMUM of THIRTY SIX (36) MONTHS
8 for the Use of a Deadly Weapon, Count 7 to run CONCURRENTLY with Count 6; with
9 EIGHT HUNDRED (800) days credit for time served. Defendant's AGGREGATE TOTAL
10 SENTENCE is LIFE with a MINIMUM of TWENTY THREE (23) YEARS.

11 DATED this 30th day of November, 2016,

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13 CAROLYN ELLSWORTH
14 DISTRICT JUDGE
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CLERK OF THE COURT

AMANDA S. GREGORY, ESQ.
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DISTRICT COURT

CLARK COUNTY NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JORGE MENDOZA,

Defendant.

Case No.: C-15-303991-1
Dept. No.: V

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Defendant, JORGE MENDOZA, by and through his attorney of record, AMANDA S. GREGORY, ESQ., of GREGORY & WALDO, LLC., appeals to the Supreme Court of the State of Nevada from the judgment of conviction entered against said Defendant on the 2nd day of December, 2016.

Dated this 22nd day of December, 2016

GREGORY & WALDO, LLC

/s/ Amanda Gregory

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