Volume 15

Pages 1 - 181

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Edward M. Chen, Judge

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	**NO. CR 12-00144 EMC**
	)	
MIKAL XYLON WILDE,	)	
	)	
Defendant.	)	
	)	

San Francisco, California
Friday, February 27, 2015

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff:

MELINDA HAAG
United States Attorney
450 Golden Gate Avenue
San Francisco, California 94102

BY: WILLIAM FRENTZEN
KIMBERLY HOPKINS
ASSISTANT UNITED STATES ATTORNEYS

For Defendant:

LAW OFFICE OF J. TONY SERRA
506 Broadway
San Francisco, California 94133

BY: J. TONY SERRA
BRIAN GREGORY
ATTORNEYS AT LAW

Reported By: Rhonda Aquilina, CSR No. 9956, RMR, CRR,
Pro Tem Reporter

I N D E X

Friday, February 27, 2015 - Volume 15

Friday - February 27, 2015 **8:20 a.m.**

P R O C E E D I N G S

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(Proceedings were heard out of presence of the jury:)

THE COURT: Good morning, everyone.

ALL COUNSEL: Good morning, your Honor.

THE COURT: Let me just confirm a couple things with you-all. I issued the final instructions, and we did not highlight -- there were some minor corrections that I just wanted to bring to your attention to make sure you knew about it. So let me tell you what those are.

Instruction number 12, there was a request, I think, by the Government to use the full name, and so, for instance, inserted the full name in instruction 12 and say: "You've heard evidence that Pedro Fernando Lopez-Paz," so that there's no ambiguity. And I think there may be some other places where there's names and we use the full name.

Then on instruction number 23, after I had proposed removing the multiple cause issue, the "no sole purpose primary cause language" I've decided to put it back, for reasons stated by the Government.

MR. SERRA: Your Honor, as we objected previously --

THE COURT: Right.

MR. SERRA: -- and when the Court decided previously to excise that portion of the instruction, we believe the Court

was correct, and so we persist in our objection with respect to the last paragraph.

THE COURT: All right. So noted. Your objection is preserved on that.

Number 26. Firearms - use/possession of a firearm during and in relation to a crime of violence. I substituted the word -- it used to say "murder," I think, "committed the crime of murder," which is not accurate. It's actually "intentional killing." That's the accurate wording of the statute. And I think it cross-references more accurately back to the actual Count Three. And it was in Count Three, wherever the word we debated, "intentional killing." So I replaced "murder" with "intentional killing," basically.

And then I, notwithstanding the Government's objection, I am going to give the instruction on legal excuse. I understand the Government's position that there's no real plausible argument in their view. But it is an argument, and there was evidence presented, and I think I'm going to keep that in. So the defendant can't argue that. You all can argue that.

So I replaced that. Those are the four changes I've made.

The Government has a proposed jury form that was amended because of the realization that the jury has to unanimously agree on whether there was a brandishing or discharge of a firearm for Counts Four and Five -- Four and Five, so I've accepted that, unless I hear otherwise.

MR. SERRA: I would object to that, because one, it really doesn't restate the requirements in totality, and therefore it's almost a, how would I call it, a subliminal comment on evidence, because the crime is knowing -- well, the portion relevant is knowingly used, carried, discharged or brandished. So we have here only two of the four: Used, carry, discharge, or brandish. Clearly we have brandish and discharge. I think the prosecution changed it, because they believe they have a better prospect of convincing a jury of the two. But if you're going to do that, you really should put all four. It should track the requirement of the charge, your Honor.

THE COURT: All right. What about that?

MR. FRENTZEN: Your Honor, our only intention was to include specifically the -- in other words, you can't really brandish or discharge the firearm unless you're carrying it and using it.

And so generally when we've done these special verdict forms for a 924(c), it's the additional activity of brandishing and discharging it that triggers the increased penalties.

So counsel's suspicions are just way off base. If he wants to reword it, I'm happy to read any rewording that he wants to make to it and consider that.

I don't see a problem with including something along the lines of, you know, if you find the defendant guilty, please

indicate below the activities that you all unanimously agree on, and there include use a firearm, carry a firearm, brandish a firearm, discharge a firearm.

THE COURT: They could check one or more of those.

MR. FRENTZEN: Yeah, please check all that apply. Something like that would be fine with me. I would have no objection.

THE COURT: All right. Is that --

MR. SERRA: Well, I don't see the necessity for it. I see it as an unnecessary surplusage.

THE COURT: Well --

MR. FRENTZEN: He's going to say it was necessary when I say it's now a ten-year mandatory minimum versus a five-year mandatory minimum.

MR. SERRA: That's a sentencing issue, not a jury issue.

MR. FRENTZEN: After *Aprendi* it's a jury issue, your Honor.

THE COURT: I'm now told that because of *Aprendi*, that's why we have to have the jury make this determination. So if the jury is going to make -- unless you have contrary authority. The jury has to make that determination, so we have to have it in here.

But your point is well taken, Mr. Serra, that if we're going to do it, let's get all four elements in there, and let

them check whichever boxes.

You want to -- maybe during a break, the language you just stated, please indicate which of the following activities you unanimously agree on, or whatever you said is the gist of it, and we have them -- the four categories for both Count Four and Five.

MR. FRENTZEN: I'll try to scribble something out here at the table, your Honor. And then certainly before we send the verdict form back, turn something around.

THE COURT: All right. Other than that, the verdict form remains the same, and I think there was no objection to the rest of the form.

MR. FRENTZEN: That's correct, your Honor.

THE COURT: One other thing I want to ask you about before we give the exhibits to the jury. There is a matter of the videos, that we suppress the sound because of the hearsay issue. I don't know if you've made up a new video without it or we just don't -- if they want to hear it, they'll have to come into the Court, and with our technology here to play it without the sound.

MR. FRENTZEN: Your Honor, we do apparently have muted CDs to replace with. But I think typically when they want to do a playback, or something like that, we usually bring them into the -- I bring them into the courtroom to do that. And there's actually some Ninth Circuit authority that I think is

not good for the Government on letting them replay things back in the back, which for the life of me I can't comprehend why, but, you know, the Ninth Circuit has spoken.

THE COURT: All right. So --

MR. SERRA: My preference is to bring them in.

THE COURT: All right. So if they want to view something, they'll have to -- or see a video or something, they'll have to come in, and we'll all be here.

MR. FRENTZEN: I believe, for some reason, rather than other exhibits, like physical exhibits and documents, it's a confrontation issue. So we would agree that if they want to watch something like that, we'd have to bring them back in and replay it for them.

THE COURT: All right. Well, then I should probably mention it to them as they're going in, that they're going to get all exhibits except things that may be played on a computer, or sound as well; right? I don't remember. This is not a wire tap case, so I don't remember if there's any just audio --

MR. FRENTZEN: I don't believe any -- I'm sorry, your Honor. I didn't mean to cut you off.

THE COURT: Yeah, I don't think there is; right?

MR. FRENTZEN: No, I think the parties agreed to replace some of the audio recordings with transcripts, so they've got it on paper.

THE COURT: All right. But anything that needs electronic playback, they'll have to let us know, and we'll --

MR. FRENTZEN: Yes, Your Honor.

MR. SERRA: Your Honor, just as a matter of procedure, I think I'll be about an hour and-a-half, really, you know, I don't know.

THE COURT: Okay.

MR. SERRA: But, if I start at 10:30, that would be nice. But if I start close to 11:00 or after 11:00, I see -- and which I don't want to go, I'll have to break right in the middle. Therefore, depending on the time, maybe we have either an early lunch or maybe -- but I can't compete with lunch.

THE COURT: Yeah, how long -- let me find out how long the Government thinks your close will be.

MR. FRENTZEN: I am just now informed that we will start with about an hour, your Honor.

THE COURT: Okay. So what I should do is just break at each natural -- rather than going by the clock, I'm going to break by activity. So after your close, even though it's only an hour, we'll break for 15 minutes, and then I'll let them know that we may then be going another 90 minutes, and that whenever that takes us through, we'll break then.

MR. FRENTZEN: That's fine.

THE COURT: And then give you a chance to close. I could combine with my reading of instructions, and that should

take us about an hour and-a-half, and that will be a natural break point anyway.

So yes, I agree, I don't want to break up anyone's arguments. We'll take natural breaks.

MR. SERRA: Yes, Your Honor. My colleague reminds me that there is, I believe, a computer that might be active, and that -- in evidence, and perhaps there's extraneous material. I don't know.

MR. FRENTZEN: We're not sending the computer back. We talked -- we already had an agreement on this, your Honor, that we're not sending the computer back.

MR. SERRA: Okay.

THE COURT: All right.

MR. FRENTZEN: We agreed to that several weeks ago, as best that I can recall.

THE COURT: All right.

MR. FRENTZEN: Your Honor, just one last thing, and that is the pending Rule 29 motion. I mean, I know that by now they've probably got to make another one which, you know, you can defer after. But the first one at the close of the Government's case, I didn't know if the Court had --

THE COURT: I issued a minute order saying that it's taken under submission, reserved ruling on that.

MR. FRENTZEN: Okay.

THE COURT: All right. Well, if you're ready, I'm

ready.

And I'm going to -- it is my practice to have Betty put on the screen the text of the instructions so that people can see it as well as hear it, all right.

MR. FRENTZEN: Your Honor, can we move this just in preparation for Ms. Hopkins' argument?

THE COURT: Yes.

(pause in proceedings.)

(Proceedings were heard in the presence of the jury:)

THE COURT: All right. Good morning, ladies and gentlemen.

ALL COUNSEL: Good morning.

THE COURT: Okay. We're now at the stage where I'm going to give you final instructions, after which you will hear closing arguments from the parties. And then after that I will give you final-final instructions, and then direct you to deliberate.

I am also asking Betty to put on the screen the text of the instructions, so those of you who are visual as opposed to auditory learners will benefit from that. Plus if I make a mistake, you can catch me. So let's get started here.

JURY INSTRUCTIONS

DUTIES OF THE JURY TO FIND FACTS AND FOLLOW LAW

THE COURT: Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the

law that applies to this case. A copy of these instructions will be available to you in the jury room for you to consult.

It is your duty to weigh and to evaluate all of the evidence received in the case and, in the process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law and must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. You will recall that you took an oath promising to do so at the beginning of this case.

You must follow all of these instructions and not single out some and ignore others; they are all important. Please do not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return - that is a matter entirely up to you.

CHARGES AGAINST THE DEFENDANT

NOT EVIDENCE - PRESUMPTION OF INNOCENCE - BURDEN OF PROOF

The Indictment is not evidence. The defendant has pleaded not guilty to the charges. The defendant is presumed to be innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charges beyond a reasonable doubt.

THE DEFENDANT'S DECISION TO TESTIFY

The defendant has testified. You should treat this testimony just as you would the testimony of any other witness.

REASONABLE DOUBT - DEFINED

Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

WHAT IS EVIDENCE

The evidence you are to consider in deciding what the facts are consists of:

(1) The sworn testimony of any witness;

(2) The exhibits received into evidence; and

(3) Any facts to which the parties have agreed.

WHAT IS NOT EVIDENCE

In reaching your verdict you may consider only the testimony and exhibits received in evidence. The following things are not evidence and you may not consider them in deciding what the facts are:

1. Questions, statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. Although you may consider a lawyer's questions to understand the answer of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers have said in their opening statements, will say in their closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory controls.

2. Any testimony that I have excluded, stricken, or instructed you to disregard is not evidence.

3. Anything you may have seen or heard when the court is not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

JURY TO BE GUIDED BY OFFICIAL ENGLISH TRANSLATION/INTERPRETATION

The Spanish language has been used during this trial. The evidence you are to consider is only that provided through the official court interpreters and translators. Although some of you may know the Spanish language, it is important that all jurors consider the same evidence. Therefore, you must accept

the evidence presented in the English interpretation and translation and disregard any different meaning.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

1. The witness's opportunity and ability to see or hear or know the things testified to;

2. The witness's memory;

3. The witness's manner while testifying;

4. The witness's interest in the outcome of the case, if any;

5. The witness's bias or prejudice, if any;

6. Whether other evidence contradicted the witness's testimony;

7. The reasonableness of the witness's testimony in light of all the evidence; and

8. Any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

ACTIVITIES NOT CHARGED

You are here only to determine whether the defendant is guilty or not guilty of the charges in the Indictment. The defendant is not on trial for any conduct or offense not charged in the Indictment.

STATEMENTS BY THE DEFENDANT

You have heard testimony that the defendant made a statement. It is for you to decide (1) whether the defendant made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all the evidence about the statement, including the circumstances under which the defendant may have made it.

IMPEACHMENT EVIDENCE - WITNESS

You have heard evidence that Pedro Fernando Lopez-Paz, a witness, was convicted of a crime. You should consider this evidence only in deciding whether or not to believe this witness and how much weight to give to the testimony of this witness.

TESTIMONY OF WITNESSES INVOLVING SPECIAL CIRCUMSTANCES - IMMUNITY, BENEFITS, ACCOMPLICE

You have heard testimony from various witnesses who either:

A. Received immunity. That testimony was given in exchange for a promise by the government and/or by Humbolt County that the witness will not be prosecuted or the testimony will not be used in any case against the witness; or

B. Received benefits or favored treatment from the government in connection with this case; or

C. Admitted being an accomplice to the crime charged. An accomplice is one who voluntarily and intentionally joins with another person in committing a crime.

For these reasons, in evaluating the testimony of such witnesses, you should consider the extent to which or whether his or her testimony may have been influenced by any of these factors. In addition, you should examine the testimony of these witnesses with greater caution than that of other witnesses.

EYEWITNESS IDENTIFICATION

You have heard testimony of eyewitness identification. In deciding how much weight to give to this testimony, you may consider the various factors mentioned in these instructions concerning credibility of witnesses.

In addition to those factors, in evaluating eyewitness identification testimony, you may also consider:

(1) The capacity and opportunity of the eyewitness to observe the offender based upon the length of time for observation and the conditions at the time of the observation, including lighting and distance;

(2) Whether the identification was a product of the eyewitness' own recollection or was a result of subsequent influence or suggestiveness;

(3) Any inconsistent identifications made by the eyewitness;

(4) The witness's familiarity with the subject identified;

(5) The strength of the earlier and later identifications;

(6) Lapses of time between the event and the identification; and

(7) The totality of circumstances surrounding the eyewitness' identification.

OPINION EVIDENCE, EXPERT WITNESS

You have heard testimony from persons who, because of

education or experience, were permitted to state opinions and the reasons for their opinions.

Such testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.

CHARTS AND SUMMARIES IN EVIDENCE

Certain charts and summaries have been admitted in evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

SEPARATE CONSIDERATION OVER MULTIPLE COUNTS - SINGLE DEFENDANT

A separate crime is charged against the defendant in each count. You must consider each count separately. Your verdict on one count should not control your verdict on any other count.

POSSESSION - DEFINED

A person has possession of something if the person knows of its presence and has physical control of it, or knows of its presence and has the power and intention to control it. More than one person can be in possession of something if each knows of its presence and has the power and intention to control it.

KNOWINGLY - DEFINED

An act is done knowingly if the defendant is aware of the act and does not act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

CONSPIRACY TO MANUFACTURE, DISTRIBUTE, AND POSSESS WITH INTENT TO DISTRIBUTE MARIJUANA PLANTS

The defendant is charged in Count One of the Indictment with conspiracy to distribute, manufacture, and possess with intent to distribute marijuana in violation of section 841(a) and 846 of Title 21 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, beginning on or about June of 2010 and ending on or about August 25th, 2010, there was an agreement between two or more persons to distribute or to manufacture or to possess with intent to distribute marijuana;

Second, the defendant knew the agreement had an unlawful object or purpose; and

Third, the defendant joined in the agreement with the intent to further its unlawful object or purpose.

"To distribute" means to deliver or transfer possession of

marijuana to another person, with or without any financial interest in that transaction.

"To possess with intent to distribute" means to knowingly possess marijuana with intent to deliver or transfer possession of it to another person, with or without any financial interest in the transaction.

A conspiracy is a kind of criminal partnership - an agreement of two or more persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful; it does not matter whether the crime agreed upon was committed.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. You must find that there was a plan to commit at least one of the crimes alleged in the Indictment as an object or purpose of the conspiracy with all of you agreeing as to the particular crime which the conspirators agreed to commit.

One becomes a member of a conspiracy by willfully participating in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy, even though the person does not have full knowledge of all of the details of the conspiracy. Furthermore, one who willfully

joins an existing conspiracy is as responsible for it as the originators. On the other hand, one who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person does not become a conspirator merely by associating with one or more persons who are conspirators, nor merely by knowing that a conspiracy exists.

MANUFACTURE OR POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

The defendant is charged in Count Two of the Indictment with manufacture or possession with intent to distribute marijuana in violation of Section 841 (a)(1) of Title 21 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly manufactured marijuana plants; and

Second, the defendant knew that it was marijuana or some other prohibited drug;

OR

First, the defendant knowingly possessed marijuana, and

Second, the defendant possessed it with the intent to distribute it to another person.

"To possess with intent to distribute" means to knowingly possess marijuana with intent to deliver or transfer possession of it to another person, with or without any financial interest

in the transaction.

The government is not required to prove the amount or quantity of marijuana. It need only prove beyond a reasonable doubt that there was a measurable or detectable amount of marijuana.

DETERMINING AMOUNT OF CONTROLLED SUBSTANCE

If you find the defendant guilty of the charges in Counts One or Two of the Indictment, you are then to determine whether the government proved beyond a reasonable doubt that the amount of marijuana equaled or exceeded 1,000 plants. All marijuana plants should be included in the quantity, regardless of gender. Your decision as to quantity must be unanimous. The government does not have to prove that the defendant knew the quantity of marijuana.

KILLING DURING NARCOTICS OFFENSE

The defendant is charged in Count Three with killing a -- with killing during a narcotics offense in violation of Section 848(e)(1)(A) of Title 21 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant committed the crime charged in Count One of the Indictment or the crime charged in Count Two of the Indictment, and you have determined that the quantity of marijuana was 1,000 plants or more;

Second, the defendant intentionally killed or caused the intentional killing of Mario Roberto Juarez-Madrid;

Third, that the killing is substantively and meaningfully connected to the offenses charged in Count One or Two of the Indictment (*i.e.*, the killing occurred because of and as a part of the defendant's participation in or working to further the drug offenses charged in Count One or Count Two of the indictment); and

Four, the defendant intended that a killing would result.

As to the third element of Count Three, the government must prove beyond a reasonable doubt that the killing was related in some meaningful way to one of the drug offenses. The government must prove beyond a reasonable doubt that one motive for the killing was related to one of the drug offenses. The government has no burden to establish that a drug-related motive was the sole purpose, the primary purpose, or even that it was equally important to any non-drug-related purpose, as long as it was one purpose.

FIREARMS- USE/POSSESSION OF FIREARM DURING AND IN RELATION TO A DRUG TRAFFICKING CRIME

The defendant is charged in Count Four of the Indictment with using or carrying a firearm during and in relation to a drug trafficking crime or possessing a firearm in furtherance of a drug trafficking crime in violation of Section 924(c) of Title 18 of the United States Code. In order for the defendant

to be found guilty of that charge, the government must prove the following elements beyond a reasonable doubt:

First, the defendant committed the crime of narcotics conspiracy as charged in Count One of the Indictment OR the crime of manufacturing or possessing marijuana with intent to distribute as charged in Count Two of the Indictment, both of which I instruct you are drug trafficking crimes; and

Second, the defendant knowingly used, carried, discharged, or brandished a firearm during and in relation to the crime charged in Count One or Count Two, or knowingly possessed, discharged, or brandished a firearm in furtherance of the crimes charged in Count One or Count Two.

The defendant" used" a firearm if he actively employed a firearm during and in relation to committing the crimes charged in Count One or Count Two.

A defendant "carried" a firearm if he knowingly possessed it and held, moved, conveyed or transported it in some manner on his person or in a vehicle.

A defendant "used" or carried a firearm during and in relation to the crime if the firearm facilitated or played a role in the crime.

A person "possesses" a firearm if the person knows of its presence and has physical control of it, or knows of its presence and has the power and intention to control it.

AIDING AND ABETTING

Defendant may be found guilty of the crimes charged in either Counts Two or Four, even if he personally did not commit the act or acts constituting the respective crime(s) but aided and abetted in its/their commission. To prove a defendant guilty of aiding and abetting, the government must prove beyond a reasonable doubt:

First, the crimes charged in either Counts Two or Four was/or were committed by someone;

Second, the defendant aided, counseled, commanded, induced or procured that person with respect to at least one element of the crimes charged in Counts Two or Four;

Third, the defendant acted with the intent to facilitate one of the crimes charged in Counts Two or Four; and

Fourth, the defendant acted before the crime was completed.

It is not enough that the defendant merely associated with the person committing the crime(s), or unknowingly or unintentionally did things that were helpful to that person, or was present at the scene of the crime(s). The evidence must show beyond a reasonable doubt that the defendant acted with the knowledge and intention of helping that person commit a crime or crimes charged in Counts Two or Four.

A person acts with intent to facilitate the crime when a defendant actively participates in a criminal venture with advance knowledge of the crime(s) and having acquired the

knowledge when the defendant still has a realistic opportunity to withdraw from the crime(s).

The government is not required to prove precisely which defendant actually committed the crime(s) and which defendant aided and abetted.

FIREARMS - USE OR POSSESSION OF A FIREARM DURING AND IN RELATION TO A CRIME OF VIOLENCE

The defendant is charged in Count Five of the Indictment with using or carrying a firearm during and in relation to a crime of violence or possessing a firearm in furtherance of a crime of violence in violation of Section 924(c) of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove the following elements beyond a reasonable doubt:

First, the defendant committed the crime of intentionally killing during a narcotics offense as charged in Count Three of the Indictment, which I instruct you is a crime of violence; and

Second, the defendant knowingly used, carried, discharged, or brandished a firearm during and in relation to the crime charged in Count Three, or knowingly possessed, discharged, or brandished a firearm in furtherance of the crime charged in Count Three.

A defendant "used" a firearm if he actively employed the firearm during and in relation to committing the crimes charged

in Count Three.

A defendant "carried" a firearm if he knowingly possessed it and held, moved, conveyed or transported it in some manner on his person or in a vehicle.

A defendant "used or carried a firearm during and in relation to the crime" if the firearm facilitated or played a role in the crime.

A person "possesses" a firearm if the person knows of its presence and has physical control of it, or knows of its presence and has the power and intention to control it.

NECESSITY (LEGAL EXCUSE) AS TO COUNTS FOUR AND FIVE

The defendant contends that he acted out of necessity in connection with the offenses charged in Counts Four and Five of the Indictment. Necessity legally excuses the crime charged.

The defendant must prove necessity by a preponderance of the evidence. A preponderance of the evidence means that you must be persuaded that the things the defendant seeks to prove are more probably true than not true. This is a lesser burden of proof than the government's burden to prove beyond a reasonable doubt each element of the crimes charged in Counts Four and Five.

A defendant acts out of necessity only if at the time of the crime charged:

1. The defendant was faced with a choice of evils and chose the lesser evil:

2. The defendant acted to prevent imminent harm;

3. The defendant reasonably anticipated that his conduct would prevent such arm; and

4. There were no other legal alternatives to violating the law.

If you find that each of these things has been proved by a preponderance of the evidence, you must find the defendant not guilty of the crimes charged in Counts Four and Five.

FIREARMS- USE/POSSESSION OF FIREARM DURING A MURDER

The defendant is charged in Count Six with use of a firearm during and in relation to a drug trafficking crime or crime of violence and possessing a firearm in furtherance of a drug trafficking crime or a crime of violence resulting in murder, in violation of 924(j) of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove the following elements beyond a reasonable doubt:

First, the defendant committed the crime charged in Count One, Count Two, or Count Three, each of which I instruct you is either a drug trafficking crime or a crime of violence;

Second, the defendant knowingly used a firearm during and in relation to the crime charged in Count One, Count Two, or Count Three, or the defendant knowingly possessed a firearm in furtherance of the crimes charged in Count One, Count Two, or Count Three;

Third, in the course of the crime charged in Count One, Count Two or Count Three, the defendant caused the death of Mario Roberto Juarez-Madrid through the use of a firearm;

Fourth, the defendant unlawfully killed the victim;

Fifth, the defendant killed the victim with malice aforethought; and

Sixth, the killing was premeditated.

A defendant "used" a firearm if he actively employed the firearm during and in relation to committing the crimes charged in Count One, Count Two, or Count Three.

A defendant "carried" a firearm if he knowingly possessed it and held, moved, conveyed or transported it in some manner on his person or in a vehicle.

A defendant "used or carried a firearm during and in relation to the crime" if the firearm facilitated or played a role in the crime.

A person "possesses" a firearm if the person knows of its presence and has physical control of it, or knows of its presence and has the power and intention to control it.

To kill "with malice aforethought" means to kill either deliberately or intentionally or recklessly with extreme disregard for human life.

Premeditation means with planning or deliberation. The amount of time needed for premeditation of a killing depends on the person and the circumstances. It must be long enough,

after forming the intent to kill, for the killer to have been fully conscious of the intent and to have considered the killing.

SECOND DEGREE MURDER AS TO COUNT SIX.

If you find the government has proved all of the other elements of the offense charged in Count Six beyond a reasonable doubt, but has not proved premeditation, then you should indicate that you have found the defendant guilty of second degree murder as to Count Six.

SELF-DEFENSE AS TO COUNT SIX.

The defendant has offered evidence of having acted in self-defense in connection with the offense charged in Count Six. Use of force is justified when a person reasonably believes that it is necessary for the defense of oneself or another against the immediate use of unlawful force. However, a person must use no more -- a person must use no more force than appears reasonably necessary under the circumstances.

Force likely to cause death or great bodily injury is justified in self-defense only if a person reasonably believes that such force is necessary to prevent death or great bodily harm. To claim self-defense, the defendant must not have provoked the use-of-force.

The government must prove beyond a reasonable doubt that the defendant did not act in reasonable self-defense.

VOLUNTARY MANSLAUGHTER AS TO COUNT SIX.

If you find that the government has failed to prove malice aforethought then you should indicate that the defendant committed voluntary manslaughter as to Count Six if the government has proved beyond a reasonable doubt either:

(A)

First, that the defendant unlawfully killed Mario Roberto Juarez-Madrid; and Second, while in a sudden quarrel or heat of passion, caused by adequate provocation:

(i) The defendant intentionally killed Mario Roberto Juarez-Madrid; or

(ii) The defendant killed Mario Roberto Juarez-Madrid recklessly with extreme disregard for human life.

Heat of passion may be provoked by fear, rage, anger or terror. Provocation, in order to be adequate, must be such as might arouse a reasonable and ordinary person to kill someone.

OR

(B)

First, the defendant unlawfully killed Mario Robert -- should be Roberto Juarez-Madrid; and

Second, that the defendant committed the killing under an actual and honest, but unreasonable, belief that he was in imminent danger of being killed or suffering serious bodily injury and that the defendant actually believed that immediate use of deadly force was necessary to defend against the danger.

IGNORANCE OF THE LAW

Federal law prohibits the manufacture and cultivation of marijuana for any purpose. A belief, even if held in good faith, that the manufacture or cultivation of marijuana is legal under state law is not a defense under federal law. The government is not required to prove that the defendant knew that his acts were unlawful.

All right. With that, I'm going to invite the government to make its closing argument.

MS. HOPKINS: Thank you, your Honor.

CLOSING ARGUMENT

MS. HOPKINS: Good morning. We've now come to that part of the trial where the attorneys get to talk about the evidence that's been presented and the law that applies to the case.

And there was quite a bit of testimony and evidence presented throughout this trial. So on behalf of Mr. Frentzen and Mr. Costello and Special Agent Collar and me, we thank you for your attentiveness during this trial.

Now, from the beginning, you've known that this case involves a murder on a marijuana grow. And in this case, the defendant, Mikal Wilde, intentionally shot and killed Roberto Juarez-Madrid on his marijuana grow in August -- on August 25th, 2010.

And the evidence that you've seen and heard during the past four weeks of trial establishes that the defendant is

guilty of the six crimes with which he's been charged; and that is: Conspiracy to manufacture, distribute, and possession with intent to distribute marijuana, manufacture and possess with intent to distribute marijuana plants, killing during a narcotics offense, use and possession of a firearm during and in relation to a drug trafficking crime, use and possession of a firearm during and in relation to a crime of violence, and use and possession of a firearm during and in relation to a drug trafficking crime or a crime of violence resulting in murder.

Now, the evidence provided proof that in July and August of 2010, the defendant was operating a marijuana grow. And the grow was approximately 800 acres and contained more than 1500 marijuana plants spread out over four different sites.

And the defendant was growing marijuana for distribution. He hired three men to work on the grow. He hired Christopher Bigelow, Fernando Lopez-Paz, and Fernando Juarez-Madrid. And Fernando and Roberto were both from Guatemala and were legally residing in the United States. And the defendant armed the workers on the grow for protection. He gave them a shotgun, a .44 caliber revolver, and a .357 revolver.

And things were going well for a while on the grow. But by August of 2010, the defendant was strapped for cash, and he was stressed out. He stopped gassing the truck. He stopped putting diesel in the equipment, and he took away the keys to

the truck and told the workers to water the plants by hand. He also took the guns away from the workers, leaving them unprotected on the grow.

And needless to say, the workers were not happy about this. They told the defendant that they wanted to leave, and they wanted to get paid for the work that they had done so far. And the defendant was angry. He didn't want them to leave, but he also knew that he couldn't pay them. He was depending on the money from the harvest. And soon, he would have no one to work on the grow. And to appease the workers, he told them that he would pay them, and that he'd find them a ride back to Sacramento. But the defendant had no intention of paying them, and he had no intention of letting them go.

And on the evening of August 25th, 2010, the defendant drove his green Ford truck to site one. He pulled out the .357 revolver, and he shot Fernando Lopez-Paz in the face. He then shot Roberto Juarez-Madrid in the back. Roberto fell to the ground, but he was not immobilized, and he was able to get back up and keep running.

Both Fernando and Roberto ran in different directions to get away from the defendant. So the defendant shoots Roberto again in the back, and it was another non-fatal shot. And Roberto runs through the marijuana grow and down a steep slope to escape.

Now, the defendant chose to go after Roberto, and he

followed him, and he pursued him, and he hunted him. And Roberto gets about 300 yards out, and he could no longer run anymore, and he sits down. And he has blood dripping down onto the front area of his pants. And the defendant comes up behind him and presses the gun to the back of his head and shoots him. That final shot, that close-range execution-style shot to the back of Mr. Juarez-Madrid's head is the shot that killed him instantly. This is the essence of the case - an intentional killing and a premeditated murder on a marijuana grow. This is what the evidence established beyond a reasonable doubt.

Now, you, the jury, know, as well as anybody, how long this trial has taken to get to this stage and the amount of evidence that's been presented over the last four weeks. And frankly, it's a lot of information, and information that didn't necessarily come in the best order to tell a story, but we had to go witness by witness.

So this closing argument is the government's opportunity to tie up all the evidence that's been presented to you, to show you how all the evidence fits together to establish the guilt of the defendant.

And I'm going to touch upon a few of the following topics. And first some ground rules to keep in mind, and then a summary of the charges, and then a discussion of the evidence proving the charges, and finally a wrap-up.

So let's start with the ground rules that I would ask you

to keep in mind.

First, pay attention to the Court's instruction on the law. The law is as the Court gives it. It's not what I say, and it's not what the defense may say it is. The law will determine how you should view the evidence and how to make your factual findings.

Second, the burden is on the government to prove the guilt of the defendant beyond a reasonable doubt. And nothing I say is intended to change that. It's a burden that we welcome and embrace.

The defendant enjoys the presumption of innocence, and don't forget that. They didn't have to provide any witnesses or question any witnesses. They didn't have to provide any evidence, and they don't have to make any sort of closing argument. With that said, however, I expect that the defendant will address you after I do, and they will present their view of the evidence to you.

Which brings up a third point. Use your common sense. Use your common sense when you consider any arguments that the lawyers make to you, and use your common sense when you evaluate the evidence. It's your recollection of the evidence and your assessment of witness credibility and the weight of the evidence that controls. It's your recollection of the evidence that controls in this situation. So please make a determination, and use your common sense when you do so. And

if you do, you will conclude that the evidence presented to you during this trial has established the defendant's guilt beyond a reasonable doubt for each and every charge.

So now let's talk about the charges. The Court's instructed you on the law. But for purposes of our present discussion, let me break down the charges and apply the evidence to the elements. So I'd like to start with the first two counts, which are the drug charges.

Count One is the conspiracy, and I think we have a Power Point that's going to be loaded in one second. And as to conspiracy, the defendant is charged in Count One with that, and it's conspiracy to manufacture, distribute, and possession with intent to distribute marijuana plants. And a conspiracy is basically an agreement between two or more people to violate the law. You don't need a formal agreement, and the members don't have to agree on every detail of the conspiracy, and the members don't have to have full knowledge of all the details of the conspiracy either. But more importantly, the crime is the agreement itself. No one need do anything or attempt anything or succeed in committing the crime. And agreeing to commit the crime is the crime itself, the crime of conspiracy.

Now, in order for the defendant to be guilty of conspiracy, the government must prove the following: The defendant conspired or agreed to manufacture or distribute or possess with intent to distribute marijuana. He knew the

agreement had an unlawful purpose or object, and he joined the agreement with the intent to further that unlawful purpose or object.

Now, the unlawful object or purpose here is the manufacture to distribute and possession with intent to distribute marijuana.

Now, as to Count Two, the defendant is charged with manufacture or possession with intend to distribute marijuana plants. And in order for the defendant to be guilty of Count Two, the government must prove that first the defendant knowingly manufactured marijuana plants; and second, that the defendant knew that it was marijuana or some other prohibited drug. Or the defendant knowingly possessed marijuana; and second, the defendant possessed it with the intent to distribute it to another person.

And as the judge told you, distributing means delivering or transferring possession of marijuana to another person, with or without financial interest in that transaction.

So as to Count Two, you'll also be instructed that the government is not required to prove the amount or quantity of the marijuana. The government only needs to prove beyond a reasonable doubt that there was a measurable or detectable amount of marijuana.

But if you do find the defendant guilty of Counts One and Two, then you're to determine whether the government proved

beyond a reasonable doubt that the marijuana equaled or exceeded a thousand plants. And you also -- you were instructed that the marijuana plants, that all of the marijuana plants should be included in the quantity, regardless of gender.

So that's a summary of the drug charges and the elements the government needs to prove. So let's go over the evidence.

As to Count One, the defendant, without question, conspired with numerous people to distribute, manufacture and possess with intent to distribute marijuana plants. And the defendant does not dispute this. In fact, when he testified, he told us who the members of the conspiracy was or he identified it as his circle. He testified that the other people involved in his marijuana grow were Chris, Fernando, Roberto, Ruben Childs, and Tom Tuohy, and he admitted that they agreed that they were going to grow marijuana, and that was the goal.

And the defendant's testimony is corroborated also by the facts. And first, and the most obvious of the other members of the conspiracy, are the workers on the grow. And you heard testimony from Chris and Fernando about their agreement to live on the grow and tend to the marijuana plants in exchange for payment. And Chris and Roberto had an agreement with the defendant that they would get paid $10,000 for three months of work on the marijuana grow. And the defendant agreed to pay

Fernando $500 a week and a $10,000 bonus after the harvest of the marijuana plants.

Now, while Chris and Fernando and Roberto were all considered victims, they were participants in the marijuana grow operation.

Now, second, Tom Tuohy and Ruben Childs were members of the conspiracy. They were both close friends of the defendant. Both toured the property with the defendant, and the defendant's real estate agent Charlie Tripodi; and they both invested money in the grow, and that went towards the down payment. And there was an expectation or an agreement that they would get a piece of the property, cash, or a little bit of both.

Tom Tuohy also loaned the defendant the equipment that was used on the grow. And as you could see in the photograph, he provided the diesel water truck, the water trailer, the travel trailer, and the tractor.

And Tuohy also found and recommended the three men that the defendant ultimately hired to work on the grow. And he also purchased the .357, the murder weapon, from Tuohy for protection for the grow.

Now, while the defendant tried to leave his sister Daisy Wilde out of his circle, the evidence proves that she may well have been a member of the conspiracy as well. And as of June 2010, she was listed as a manager on the incorporation

documents for Ashfield Ranch LLC. And you remember Ashfield Ranch LLC is the company that purchased the Kneeland property, which was where the marijuana grow was. And if you take a look, back when you're deliberating, at Exhibit 162, you'll see the North Valley Bank records for Ashfield Ranch.

And on August 10th of 2010, Daisy and Mikal Wilde open an account for Ashfield Ranch with that bank. And the bank records reflect that she was a managing member of Ashfield Ranch LLC.

And by August of 2010, Daisy knew, and she testified as such, that the defendant was growing marijuana on the property owned by Ashfield Ranch. And that's the evidence that proves up Count One.

So let's move to Count Two; and it's the evidence of manufacture or possession with intent to distribute marijuana.

And again, the defendant does not dispute that. He testified that he agreed with members of his circle to grow marijuana, and that was the goal. And the defendant is also not disputing that he possessed, with intent to distribute, the marijuana. He testified that when they had enough marijuana, they were going to sell it to the collective. And assuming he was growing it for a collective rather than for some other reason, growing marijuana for a collective in and of itself proves that the marijuana was intended for distribution to others.

He also testified that he believed the marijuana grow was legal under California state law. And just keep in mind the Ignorance of the Law Instruction that the judge talked to you about, which says a belief, even a good faith belief, that the manufacture or cultivation of marijuana is legal under state law, it's not a defense under federal law.

So that's the evidence that proves up Count Number 2.

And once you find the defendant guilty of Counts One and Two, you're then to determine whether the government proved beyond a reasonable doubt that the amount of marijuana equaled or exceeded a thousand plants.

So how do we know that there were more than a thousand plants on the grow? Well, you heard from Humbolt County Sheriff's Office or Humbolt County Sheriff's Office Deputy Cyrus Silva, and he testified that in 2010 he was a member of the Drug Task Force, and he testified that he knew of the Wilde property, and that he had done a fly-over back in July of 2010 and had taken photographs of that property.

And on the day of the homicide, he was asked to process the marijuana grow. He was designated the case agent. And he testified that there were four separate grows, and he went to each site and obtained samples from the grows. And he testified that while at each site, he, along with other members of the Drug Task Force, counted the number of plants, and they found a total of 1,586 marijuana plants.

And second, you saw the photos, which are on your screen right now, and that is, as to site one, he testified that there were 372 marijuana plants. On site two, there was 359. On site three, there was 467; and on site four, there was 388 plants - for a total of 1,586.

Now, the photographs were meant to show parts of the grow, so please don't try to count all the plants in the picture, because Deputy Silva was not asked to photograph every single plant on the grow.

So third, the defendant does not dispute that there were more than 1,000 plants on the grow, and he testified that he actually didn't even know how many plants were on the grow. He said he lost track of how many there were back in July of 2010. And while he was surprised when he was told that there was 1500 -- more than 1500 plants on the grow, he also said there could have been that many.

Lastly, you were instructed that all of the marijuana plants found on the grow should be included in the quantity regardless of gender, so don't get distracted by seeds versus clones and male versus female plants. All the marijuana plants are included.

So that's the evidence that proves that there were more than a thousand plants on the grow. And as the evidence establishes, the defendant is guilty of Counts One and Two.

So now let's get to the heart of the case, the killing of

Roberto Juarez-Madrid.

Now, again, the Court instructed you on the law, and I'm going to break down the charges for you. The first of these charges is Count Three, which is killing during a narcotics offense.

And the government must prove the following elements beyond a reasonable doubt: First, that the defendant committed the crime charged in Count One or Count Two, and you have determined that the quantity of marijuana was 1,000 plants or more.

Second, the defendant intentionally killed or caused the intentional killing of Roberto Juarez-Madrid.

Third, the killing is substantially and meaningfully connected to the offenses charged in Count One or two.

And four, the defendant intended that a killing would result.

Now, the government has already proved up the first element, so let's focus on intent and the substantial connection to the marijuana grow.

So first, there can be no reasonable doubt about what happened on August 25th of 2010. The defendant shot Fernando in the face, and he killed Roberto. And the defendant does not dispute this. In fact, he testified that he shot them. He claims he shot them in self-defense. And it's important to note that self-defense is not a defense to Count Three.

And while the defendant testified that he couldn't recall a lot of things after the first shot, there's -- or that he went into some sort of cave after he did that first shot, there's no evidence and no instruction as to mental defect, and that's because that is not an issue here.

However, the evidence overwhelmingly proves the killing was intentional and directly connected to drugs.

So what's the evidence? Well, first and foremost, you have the testimony of the two eyewitnesses and victims of the shooting. Both Chris and Fernando testified before you as to what happened that evening. Chris saw the murder unfold from inside the trailer. And he testified that in the early evening of August 25th, 2010, the defendant drove to site one. And the defendant got out of his truck, and he asked Roberto and Fernando if they were ready to go, and he said his girlfriend was at the gate. And as Roberto and Fernando turned to get their belongings, the defendant pulled out a gun and started shooting.

Chris testified that Roberto and Fernando didn't do anything or say anything threatening to the defendant. And he also testified that the defendant had taken the guns back from the workers, so none of the workers were armed with weapons.

Now, Chris described the defendant's gun as a .357 revolver. It was black with a brown handle - the same gun that the defendant took back the day before the shooting. And he

saw Roberto and Fernando run into the woods, and he saw the defendant chasing after them and firing at them, and a short time later he heard additional shots.

Now, Fernando provided similar testimony. He testified that the defendant pulled up to site one, and he was talking on the phone, and the defendant called Fernando over to the truck. And as soon as he got near the truck, the defendant pulled out a gun and shot him in the face.

Now, Fernando says the defendant possessed a .44 caliber revolver. Fernando then testified that he ran to the front part of the trailer and went left across the trailer. And as he was running, he saw the defendant shoot Roberto, and Roberto fell, and then he got back up and ran down the hill. He also testified that none of the workers had weapons.

Now, you have testimony from two eyewitnesses who independently testified that the defendant came to site one with a loaded gun. And there's some minor inconsistencies between the two witnesses, but that's to be expected with a fast-moving event being perceived by two people from different viewing points. But they are both rock-solid that Roberto and Fernando were not armed, and the defendant started shooting at them.

And without any provocation, and without any warning, he shot Fernando in the face, and he killed Roberto.

The evidence shows the defendant then chased and hunted

Roberto until he made sure he was dead.

The defendant knew the workers were unarmed when he came to the grow that evening with a loaded gun, and he had no intention of paying them. The only intent that he had was to kill the workers who wanted to go home and get paid for their work on the marijuana grow. That's proof beyond a reasonable doubt.

And of course there's more corroboration. There's testimony corroborated by physical evidence. And you heard testimony from Dale Cloutier from Cal DOJ Regional Crime Lab, and he processed the scene at the marijuana grow, and he found two trails of blood leading away from the trailer.

So if you take a look at Exhibit 166, which is on your screen right now, this is the diagram that he drew. And he testified that he found a trail of blood on the landing, which is indicated as Path 1 right near the trailer. And the closest stain to the trailer was a bloodstain on the rock which was marked as B1, and the blood trail continued to the end of that flat landing area, and he identified another red-brown stain on a leaf, and he marked that as B8. Now, B13 was a blood-stained leaf that was located above where the body was found. And they followed the blood trail down a steep slope to Roberto's body. Roberto was on his back, arms at his sides, head facing uphill, and he was wearing jeans, the shoes that you see on this table right here, and no shirt.

Now, he also testified that he found another trail of blood that crossed to the left of the trailer and down the hillside. And he discovered a leaf with a bloodstain on the top edge of the hill, and he marked that as B14. And he continued down the hillside. He testified that he found a Corona flip-flop that was in the leaf area, amongst the leaves, and then he found a rock with red-brown bloodstains in two different spots.

And of course there's more corroboration. There's forensic evidence. And you heard testimony from DNA expert Gary Harmor. And he conducted DNA analysis on the items collected from both trails of blood. And he testified that the blood-stained items that were collected on Path 1 that led to Roberto's body was the blood of Roberto Juarez-Madrid. And he testified that the blood-stained items that were collected on Path 2 was the blood of Fernando Lopez-Paz.

Now, the physical evidence here shows that Roberto ran down a steep slope almost 300 feet, believing, trying to run away from the defendant, and trying to survive. And isn't it telling that the blood patterns and the DNA matched the statements made by Chris and Fernando immediately after they survived and long before the testing happened. It corroborates their version of who fled where, and that's part of how you can tell that they were being truthful.

Now, Mr. Harmor also examined the black pair of boots that

are on counsel table in front of you, and they were seized from the defendant's vehicle. He testified that he swabbed a small group of blood spots located above the front right sole of the boot, and he testified that the blood spots located from the right boot belonged to Roberto Juarez-Madrid and not the defendant and not Fernando.

And the statistical probability that the blood belonged to another person was 1 in 2 quintillion, which is way more people than are living on the earth right now.

He testified that he conducted further testing as he swabbed the inside of the sole of the right and left boots to determine the wearer's DNA profile. And he testified that the major contributor to the right boot matched the genetic profile of the defendant, and the genetic marker profile of the left boot matched the profile of the defendant as well.

Roberto and Fernando were excluded. And the statistical probability that an unrelated person would have the same major donor profile was 1 in 406 trillion.

Now, you also heard testimony from Forensic Medical Examiner Dr. Marcella Fierro. And she testified that she reviewed the autopsy and toxicology reports, the autopsy photographs, and the crime scene reports regarding the murder of Roberto Juarez-Madrid. And she testified about the three gunshot wounds that he suffered on August 25th of 2010, and she analyzed the gunshot wound to the defendant's back, which had

to be one of the first of the two gunshot wounds, and she testified that it was a straight-forward gunshot wound. He was upright when the bullet entered, and it exited about the same height.

Now, she concluded that the gunshot wound was not a contact shot, because there was no soot in the wound or stippling on his back, and that indicates that the shot occurred with the muzzle of the gun at a distance, likely more than three feet away. She also testified it was not an immediate and disabling wound, and you'd have to bleed almost a liter of blood before having a disabling effect.

Now, the gunshot wound would not prevent someone from running or moving, and a person could survive at least a few minutes. And she testified that the death of Roberto was not due to that gunshot wound.

She also analyzed another gunshot wound to the back area of the neck and the ear, which was also one of the first two shots. And she testified that the bullet entered the right ear and exited the left upper lip, and that the victim was likely standing straight up when he was shot. And she stated that the gunshot wound would cause extensive bleeding to the throat and the airway. And she also testified that that second gunshot wound was non-fatal in and of itself, but had lethal potential if untreated.

She analyzed the third and final gunshot wound, the

gunshot wound to the back of Roberto's head. And she testified that that third gunshot wound was a contact wound, meaning the muzzle of the gun was pressed against the victim's head. And she noted while the victim's black curly hair kept the muzzle marks from forming, the gunshot wound was surrounded by a star-like laceration, and there was soot underneath the scalp.

She testified that without question, this third gunshot wound was a contact wound because of the star shape. And she explained that the bullet lacerated the base of the brain, and was sufficient to immediately immobilize him and kill him rapidly. She testified that this gunshot wound would cause instantaneous loss of motor function, and the victim could possibly survive for a few minutes, but this is a very serious brain injury.

Dr. Fierro also noted that the blood depicted on the top fold of the victim's jeans indicates that he was sitting down and blood was dripping from his nose and mouth, and this is an important fact, because it corroborates that Roberto was likely sitting down when the defendant came up and shot him in the back of his head.

Now, you also heard from blood spatter expert Craig Ogino, and he examined the bloodstains located on the black boots seized from the defendant's vehicle. He testified that the spatter on the defendant's right boot was created by high-velocity impact, and that indicates that the proximity of

the boots were close to the area of contact, and it was within about 3 feet. He also opined that the second gunshot wound under the right ear was a distant shot. So this is the evidence that the defendant intentionally killed Roberto Juarez-Madrid, and that by shooting him in this manner, the defendant intended that a killing would result.

Now, you also heard testimony from Susan Marvin. She was the expert in forensic metallurgy, and she examined the bullet fragments retrieved from Roberto's body. And based on her training and experience and the examination of the fragments, she testified that it was unlikely that the bullet fragments from Roberto's body came from the RP .44 caliber ammunition, and it only could have been -- and only could have been that RP .44 caliber ammunition if the manufacturer had somehow screwed up and used the wrong lead.

This evidence corroborates the testimony that the defendant shot at Fernando and Roberto with a .357, and disputes the defendant's claim that Fernando was the one holding a .357.

Now, let's turn to the evidence that shows that the killing was connected to a narcotics offense.

And the Court instructed you that the government must prove beyond a reasonable doubt that the killing was related in some meaningful way to one of the drug offenses. And the government must prove that one motive for the killing was

related to one of the drug offenses. Now, the government has no burden to prove that the drug-related motive was the sole or primary purpose.

So what's the connection to the drug offense? Well, first, the killing had everything to do with drugs. It occurred on the defendant's marijuana grow, and the entire reason that the defendant's workers were there was because of the marijuana plants.

So what's one motive? Well, the killing was directly related and in response to the workers telling the defendant that they wanted to get home and they wanted to get paid.

And the defendant had a lot of problems. His workers were unhappy. He was strapped for cash, and he needed to make money off of that marijuana grow. He testified that he owed Ruben Childs $200,000. He owed Tom Tuohy $200,000. He owed Charlie Tripodi $10,000, and his workers at least $30,000.

He shot Roberto and Fernando because he did not want to pay them. He couldn't pay them, because he didn't have any money, and it was easier for the defendant to kill his workers than to pay them.

And when he emailed Tom Tuohy, his partner and circle member, on the marijuana operation and asked if anyone would notice if Fernando went missing, he was not joking. Now, this is the evidence that the murder of Roberto was intentional and directly connected to the marijuana grow.

Now, the last three counts relate to the firearms, and they're similar to each other but not identical. So Count Four is the use and possession of a firearm during and in relation to a drug trafficking crime. And in order for the defendant to be guilty of that, the government must prove the following: That first the defendant committed Count One or Count Two, both of which are drug trafficking crimes; and second, the defendant knowingly used, carried, discharged or brandished a firearm during and in relation to Count One or two, or knowingly possessed, discharged or brandished a firearm in furtherance of the crimes charged in Count One or Count Two.

Now, Count Five is very similar, but it's use or possession of a firearm in furtherance of a crime of violence. And in order for the defendant to be guilty of that, the government must prove beyond a reasonable doubt that: First, the defendant committed Count Three, which is a crime of murder during a narcotics offense, which is a crime of violence; second, the defendant knowingly used, carried, discharged or brandished a firearm in relation to Count Three, or knowingly possessed, discharged, or brandished a firearm in furtherance of Count Three.

Now, the government's already proved up the first element for Counts Four and Five, so I'll focus on the second element, which is whether the defendant knowingly used or possessed a firearm in furtherance of the underlying crimes.

Now, the Court also instructed you on possession, and it's defined as a person possesses a firearm if the person knows of its presence and has physical control over it or knows of its presence and has the power and intention to control it.

Now, as to Count Four, the defendant and the workers on the marijuana grow, without question, used and possessed firearms during and in relation to a drug trafficking offense, and there's no dispute that the defendant and the workers possessed the guns and ammunition for use and protection while on the marijuana grow. And the defendant testified that he provided the weapons to them, and he provided it to them to protect the grow, and he admitted this.

And both Chris and the defendant testified that on the way to the grow, they made a stop in Fortuna and picked up a .44 caliber revolver, and they made another stop in Eureka and they picked up a shotgun. And the defendant testified that he made the arrangements to pick up those two weapons. And the defendant and Tom Tuohy both testified that the defendant purchased a third gun from Tuohy, which was the .357.

The defendant admitted that he brought the weapons on the property for the protection of the grow and the workers.

Now, it's also clear that the defendant and the workers used, carried, and discharged the weapons while on the grow. And the evidence shows that Roberto and Fernando were in charge of carrying the weapons.

You also heard testimony from Chris and the defendant that they also carried the guns at one point or another while on the grow, and Chris and Fernando testified that the workers and the defendant carried the guns while they were watering plants, and admittedly used to discharge the guns while they were target shooting for fun on the grow. And Chris also testified that they kept the guns and the ammo in the trailer while they were sleeping, and that trailer was on site one.

The evidence is clear that the defendant and the workers used and possessed firearms while on and to protect the marijuana grow.

Now, as to Count Five, the defendant, without question, used and possessed a firearm and ammunition during and in relation to a crime of violence. And the crime of violence at issue here is the shooting of Fernando and the killing of Roberto. And the defendant does not dispute that he shot them. And Chris and Fernando testified as eyewitnesses to this incident.

The defendant brought a loaded weapon to the grow. He got out of his truck, and without any provocation, and with full knowledge that the workers were not armed, he shot Fernando and ended up shooting, chasing, and killing Roberto - all because he did not want to pay them.

The defendant used the .357 revolver, and it played a role in the crime. He murdered Roberto on that marijuana grow. And

the evidence proves that the defendant used and possessed the firearm and ammunition during and in relation to a crime of violence.

Now, the defendant will argue that he had to arm the grow and himself out of necessity or protection. A necessity, as you were instructed, can be used as a legal excuse as to Counts Four and Five. But the defendant has the burden of proving necessity by a preponderance of the evidence, and you must be persuaded that the things the defendant seeks to prove are more probably true than not true.

And there's certain elements that the defendant needs to meet, and he needs to meet all of those elements: First, that the defendant was faced with a choice of evils, and he chose the lesser evil; the defendant acted to prevent imminent harm; the defendant reasonably anticipated his conduct would prevent such harm; and that there were no other legal alternatives to violating the law.

The defense of necessity does not apply here. First, the defendant did not choose the lesser harm. There were only vague possibilities of robbery against the marijuana grow operation. And as to Count five, he chose the greatest evil possible, which was murder.

Second, there was no imminent threat of harm. Imminent means immediate, happening then, and not any possible harm in the future. Fernando was robbed at gunpoint in July. By the

time the defendant had brought the guns to the property, the imminent harm had subsided. Then the defendant continued to arm his workers for more than a month. The defendant even testified that he knew it was a huge no-no to have weapons on his marijuana grow. And in the event that the defendant argues that he carried a firearm on August of 2010 to prevent imminent harm from his workers, please use your common sense. If there was any imminent harm in that instance, it would be by the defendant when he brought a loaded gun to the grow when he knew that the workers were not armed.

Third, the defendant did not act reasonably by arming his grow and arming himself to attack the workers.

And fourth, there were legal alternatives to arming the workers and himself. One legal alternative is that when the defendant -- or when Fernando had mentioned that he had been robbed, he could have called the police to investigate. Or when he decided he wanted his workers off the property, he could have called the police to have them removed.

And the second alternative is don't grow marijuana.

Now, based on the evidence, the defendant's argument on necessity is an absolute failure.

Now, the last gun charge relates to use and possession of a firearm during a murder, and it's Count Six, which is in order for the defendant to be guilty of that, the government must prove the following:

That, first, the defendant committed the crime charged in Count One, Two or Three, each of which is a drug trafficking crime or a crime of violence.

Second, that the defendant knowingly used a firearm during and in relation to Count One, Two, or Three, and the defendant knowingly possessed a firearm in furtherance of the crimes charged in Count One, Two, or Three.

Third, in the course of the crime charged in Count One, Two or Three, the defendant caused the death of Roberto Juarez-Madrid through the use of a firearm.

Fourth, the defendant unlawfully killed the victim.

Fifth, the defendant killed the victim with malice aforethought; and

Sixth, the killing was premeditated.

So what's the difference between Counts Four, Five and Six? Well, Counts Four and Five involve the use of possession of a firearm in furtherance of a drug trafficking crime, a crime of violence, but it doesn't require that the use or possession result in murder. But Count Six, on the other hand, involves use of possession of a firearm that causes a murder. So Count Six essentially boils down to two things: Whether the defendant killed Roberto with malice aforethought, and whether or not the killing was premeditated.

So let's discuss some of these terms real quick. There's malice aforethought, and you were instructed that malice

aforethought means to kill either deliberately, intentionally, or recklessly with extreme disregard for human life. And premeditation was defined as with planning or deliberation; the amount of time needed for premeditation of a killing depends on the person and the circumstances; and it must be long enough, after forming the intent to kill, for the killer to have been fully conscious of the intent to have considered the killing.

The killing was premeditated, and this is why.

It's premeditation when you approach a man sitting on the ground from behind and place a muzzle of a gun to the back of his head and shoot him.

It's premeditation to shoot someone in the back and blow the ear and pursue him for 300 feet so you can finish him off.

It's premeditation to drive to the grow with loaded weapons when you have no intention of paying your workers, and you haven't arranged any transportation for them as promised.

It's premeditation to tell the workers that you will pay them, and that your girlfriend will drive them back to Sacramento when the defendant clearly didn't have the money, and he didn't make the request to Kyla to drive them back to Sacramento.

It's premeditation to text your girlfriend "stop the phone logs" on the day of the murder.

It's premeditation to text a made-up story to your girlfriend hours before the shooting that your house had been

ransacked, and that a gun had been taken off your nightstand when there's no evidence to corroborate that the workers could have physically made it to the house in that time frame, and there's no evidence that they broke in the house.

It's premeditation to take the .357 from the workers the night before the shooting, and to lie about why you were taking the gun back.

It's premeditation to ask Chris whether or not Fernando and Roberto had any guns on the grow while going on a hike to the Mad River the day before the shooting.

It's premeditation to take back the .44 caliber gun and the shotgun a week before the shooting.

It's premeditation to take the keys to the truck so that your workers have no meaningful way to escape.

It's premeditation to take the cell phones from your workers and only allow them to make supervised calls.

And it's premeditation to email your business partner and ask if Fernando or if anyone would notice if Fernando went missing.

This was clearly a case of premeditated murder.

And as to Count Six, if you don't find premeditation, that at a minimum the government has proved second degree murder. And this was an intentional murder, and that satisfies malice aforethought.

Now, furthermore, as to Count Six, the defendant will

argue that he shot and killed Roberto in self-defense. And the judge instructed you on the law as to self-defense, and self-defense is justified when a person reasonably believes it's necessary for the defense of oneself or another against immediate use of unlawful force. And a person must use no more force than appears reasonably necessary.

Force likely to cause death or great bodily harm is justified in self-defense only if a person reasonably believes that such force is necessary to prevent death or great bodily harm. And to claim self-defense, a defendant must not have provoked the use of force.

Self-defense is not supported in this case at all. First, it's not reasonable to believe that the defendant feared Roberto and Fernando. He was twice their size. Take a look at this photo. This is a picture. It depicts his physical size on the day of his arrest. Kyla testified that the defendant told her that Roberto and Fernando, that he was scared of them, but she thought he was exaggerating. And you also heard from his sister Daisy who testified that the defendant told her that he was afraid of Roberto and Fernando also, but she's not credible. She, when she testified to you, she lied about small little things. She lied about knowing who Nessa was. She was not truthful about being a manager of Ashfield Ranch LLC, and she would say anything to help her little brother.

Second, the workers weren't armed on the day of the

shooting. The defendant had taken the guns from the workers prior to the shooting. And he knew that they didn't have weapons, and he knew that they didn't have cell phones, and that they didn't have access to any of the trucks to leave the property. The defendant set them up, and the workers were trapped.

The defendant is the one who came to the grow with a loaded gun. He didn't suffer any bullet wounds. There were no bullet holes in his truck. The only bullet holes were in Fernando and Roberto's bodies. He was the aggressor, and there was no immediate use of unlawful force towards him.

And his actions after the murder were not consistent with self-defense. Immediately after the shooting, he did not call the police. Immediately after the shooting, he ditched the evidence. He claims that he threw the guns and the cell phone out of his car, and both of those items are nowhere to be found.

Now, if you're acting in self-defense, there would be no reason to hide evidence. And the text messages after the murder depict someone who is trying to cover up a murder. Take a look at the sequence of text and phone calls on your screen, and note that between 5:56 and 6:46 p.m. there were no initiated phone calls or text messages by the defendant, and that is an unexplained gap in time.

Now, his first message after that gap in time was a text

to Kyla at 7:07: "Babe, hurry up, please. I wanna get back home soon, dinner." Smiley face.

Kyla responds, at 7:11: "At CDF. Come open gates."

At 7:14 Kyla responds -- or sends him another email: "Kind of worried about driving in alone with those crazy fucks."

At 7:15, the defendant responds to Kyla and says: "By the time I would get there, take forever."

She responds: "Whatever."

7:17, he sends a message to Kyla: "I want to eat you as soon as I see you." Smiley face.

At 7:18, Kyla texts the defendant: "They didn't walk."

And at 7:19, the defendant responds with: "LOL." Laugh out loud.

These text messages are not consistent with someone that was victimized. These text messages are consistent with someone trying to cover up a murder. And when he got home, the toll records show he made a slew of phone calls to people in his circle, but he never called the police to report the shooting. And you can take a look at your screen. There were numerous phone calls between 7:19 and 10:37. This is not a case of self-defense. This was cold. This was calculated. This was a premeditated murder by the defendant of Roberto Juarez-Madrid.

So that's the principal evidence in this case, the

evidence that establishes the defendant's guilt beyond a reasonable doubt. That's the evidence. Look at the evidence. Consider it.

But before I give the floor to the defense, let me ask you to keep a few things in mind when you consider any of the arguments that they may make.

First, distractions. Don't get distracted by red herrings. Everything the defense has done at trial was to try to distract you from evidence of the defendant's guilt. The defense attacked Roberto and Fernando and essentially put them on trial, the victims on trial. They tried to distract you with an owl surveyor who ended up testifying that he's never even been on Mountain View Road. They tried to distract you by giving you a lesson in botany. Do not get distracted. Focus on the evidence of the defendant's guilt.

Second, consider all the evidence together. You should consider how the witnesses corroborate each other, and how they are corroborated by all the other evidence in this case. The defense will try to get you to focus on the little things and to stare at the leaves at the expense of missing the forest. Don't do that. Consider all of the various pieces of evidence together. Consider how they fit together like puzzle pieces, and how they corroborate each other. Don't lose the forest for the leaves, and don't let the defense put blinders on you.

And finally, as I mentioned before, use your common sense.

Use your common sense when you consider the evidence. The standard to apply here is proof beyond a reasonable doubt. It's not proof beyond all possible doubt. It's not proof beyond any speculation. It's proof beyond a reasonable doubt. That's the standard based on the real world, based ultimately on common sense. And if you apply your reason and common sense to the evidence, you will see that all of the elements of the crimes charged have been established beyond a reasonable doubt, and that the defendant is guilty as charged.

Thank you.

THE COURT: All right. Thank you, Ms. Hopkins.

We're going to go ahead and take our morning break, 15-minute break, and then we'll hearing closings by the defendant. Thank you.

(Proceedings were heard out of presence of the jury:)

THE COURT: All right. We'll go ahead and take a break. I think I have language for the verdict form that I will do, unless you already have something.

MR. FRENTZEN: I didn't. I was going to scribble and try to send it downstairs. But if the Court doesn't need that, then --

THE COURT: Well, I scribbled it, and I'll get it back to you-all so you can look at it, okay?

MR. FRENTZEN: Thank you, your Honor.

(Recess taken at 10:00.m.)

(Proceedings resumed at 10:15 a.m.)

(Proceedings were heard in the presence of the jury:)

THE COURT: Okay. Welcome back, ladies and gentlemen. We'll now hear from Mr. Serra.

MR. SERRA: Thank you, your Honor.

CLOSING ARGUMENT

MR. SERRA: Your Honor, Judge Chen, all counsel and other officials, Mr. Mikal Wilde, and ladies and gentlemen of the jury.

I have obviously an outline and a planned presentation. It's going to be a little less methodical than the first presentation of the prosecution.

Let me start by this, which intercepts the method I'm less willing to start.

What is the most poignant, most impactful, most insightful, most penetrating image of the entire trial? What will all of us carry away ultimately as a resonating metaphor of this litigation, all of us? It was Mikal Wilde, a youngish, big, strong man crying as he tried to recall what had occurred after he saw Fernando with a gun approaching him, and he fired blindly.

Does anyone dare infer that he was perjuring himself? My God. That is the symbolic episode of this entire trial. No one could feign the emotion that he, in his testimony at that moment, manifested: I swear to God I saw a gun. And he cried.

Do you think he was lying? Do you think he was faking? He has no guile. I do not represent some kind of an ogre, some kind of, I don't know, a rageful, you know, mindless human being. I represent a good person, a hardworking person, a thoughtful person, a person where in this trial there has been testimony from all perspectives: He's not aggressive; he's non-violent; he's non-threatening; he's non-assaultive; he's non, you know, physically aggressive.

You can't -- you can't just discard his testimony at that vital moment. You cannot. Oh, they won't. They won't comment on it. That's the beginning, and that's the end, and that's reasonable doubt, and that pertains, you know, to all of the homicide allegations in whatever form they appear.

This is the way I thought I would start. Thank you. Thank you once again for my anticipation of your objectivity, my anticipation that you will truly fulfill the responsibility of jurors throughout the country, to be utterly fair and impartial judges of the facts, that you will not be swayed by ultimately -- because we're going to see it in the final closing -- the passion of the prosecution, and that you will transcend the passion of the advocates.

Do not be swayed ultimately by the horrific images of death that are present in the case which cause any human being an upheaval of deep instinct, revenge, retribution, the horror of the death. You have to transcend that. You have to give

the justice that you would want for a loved one of yours poised in the same form of dilemma.

It's a great tragedy. It's a terrible, horrible event. Everyone who touched it, including us, some distance from the actuality, in a form becomes a victim of it, everyone. Everyone. Everyone participates in the pain and the loss and the tragedy and the aftermath, we all do, and certainly the families of the victims in this case. They had no malice. We extend our deepest most reverent regret that this occurred. It's a terrible, terrible, sad situation.

In the words of Omar Khayyám:

"The moving hand writes; and, having writ, moves on: Nor all your piety or wit can lure it back to cancel half a line, nor all your tears wash out a word of it."

We'd all like to go back. We'd all like to start it fresh again, but we have to, as a civilized society, address it objectively. We can't go back.

Mind you, whatever arguments you're going to hear, if my client did not see a gun in Fernando's hand, we would not be here. There's not one wit of premeditation and deliberation in this case. Not one wit.

I want to trace for you ultimately the text, the emails, some of the phone messages which give really a very clear picture of the consciousness of my client. And also I want to trace for you some of the testimony of those persons who were

percipient, knowledgeable, and in contact with his consciousness through statements and his behavior that preceded the event. You will see that none of them, none of them, nothing indicates premeditation and deliberation.

Allow me to, though, intercept, let's just say, my narrative by pointing something out that probably for the most part hasn't been apparent. It's huge. It's overwhelming. It's uncanny. It's inexplicable. Do you understand there's no murder charges here. Count Three is the intentional killing of a human being during the course of a drug conspiracy. You've heard them now twice. Maybe I'll refer to it. There's a number of criteria. But the criteria do not include premeditation and deliberation.

A killing, in essence, during the course, connected, they have to show, in some meaningful way to a drug transaction. That's Count Three. Count Six is a gun charge. But to get to Count Six, you have to decide what the offense was. But it's essentially a gun charge. In deciding that, it can be murder -- you'll see the form for verdict -- it can be manslaughter, and it can be not guilty because of self-defense. You have -- the gun charge is inapplicable if the latter is your decision.

But my God. How absurd. There's no charge like attempted murder against Fernando. There's no charge. There's no charge of murder against Roberto. There's no charge, the central

theme of the case. She's saying premeditation, premeditation. I'm saying, with all the vigor I can muster, that this is a case of self-defense.

And then of course his mind went into a cave. And using your common sense, that's not so unusual. Trauma produces extreme stress. Traumatic stress induces, using your common sense and your knowledge, on many, many occasions an episode of amnesia with regard to the traumatic event. You see it mostly in war. You see it in car accidents. It's not unusual. And this obviously was a stress and a trauma that broke my client's mind after he saw the gun, and after he fired. And if there was any dispute in that issue, they would have presented evidence with respect to his claimed going into cave, going into darkness, not remembering, trying, trying, four years in prison, trying, trying four years in a locked cage trying, trying to remember. They would have said, oh, that's all phony. That's not consistent, you know, with the episode.

MR. FRENTZEN: Objection, your Honor, based on --

MR. SERRA: There is no evidence.

MR. FRENTZEN: These are closing arguments.

THE COURT: Hold on. Overruled.

MR. SERRA: Let's for a moment now ponder. It started as a state case. There was a preliminary hearing at the state level. It was only after that preliminary hearing that the feds took over the prosecution. You see with what diligence

and what resources they bring to this litigation. Mature, sophisticated prosecutorial minds looked over everything you can imagine before they made the charges. Why didn't they charge murder? Why didn't they charge attempted murder? Why did they choose Count Three, a charge that doesn't require premeditation and deliberation? Simple answer: They themselves believed that they could not prove beyond a reasonable doubt premeditation and deliberation, so they circumvented the issue by charging intentional killing during the course of a drug conspiracy.

Think of it. Think about how profound that is. Why did they do that? Why did they omit Fernando as a victim on a new charge? Why didn't they charge murder, premeditation, deliberation, malice aforethought if that's what they really believed? Think about that throughout, you know, all reasonable inferences. I argue to you most ardently they have conceded by their failure to file that this is not a case of premeditation, deliberation, and malice aforethought or they would have charged it.

Transcending all evidence and all exhibits in every criminal case really lies the most brilliant jewel of our criminal jurisprudence system, something that's strong and good for free society, something that's been adopted by many, many other countries, something that overreaches ultimately and applies ultimately to all evidence in all criminal cases. What

is that? That is the pillar of our system of jurisprudence. It is the presumption of innocence, and the burden on the prosecution to prove its case beyond a reasonable doubt.

My client's testimony in the heart of this matter raises reasonable doubt. You can't avoid it. But reasonable doubt, as his honor has indicated, it comes from evidence. It comes from lack of evidence. It comes from the totality of evidence. It comes from common sense. It comes ultimately from logic. And ultimately common sense comes from your life experiences. It's a very high standard. It's the highest standard that we have in any system of law. Let me try to be explicit.

I'm going to pretend that there's certain circles in front of you, and I'm going to occupy each one with just a little argument. Pretend you all, or any jury faced with a criminal case -- I'm going to stand in the first circle -- you come to a conclusion, oh, he might have had premeditation and deliberation; he could have premeditated it; he could have. What's your verdict on that kind of a deduction or conclusion? It's so easy, so simple: Not guilty. Because the criterion is not conjecture, speculation. The criterion is beyond all reasonable doubt.

Let's go to the next circle. The jury says it's possible. It's possible that he premeditated. It's possible it wasn't self-defense. It's possible that he didn't see the gun, but he did. What is the jury's verdict? Not guilty. Possibility is

not the criterion. Guilt beyond a reasonable doubt.

Let's go to the next circle. And I don't endorse this. This is for argument. That he probably, says the jury, premeditated. Probability, once again, is not the standard. Your vote has to be not guilty. It's guilt beyond a reasonable doubt.

Let's go to the next circle. Preponderance of the evidence. You've heard that. We have, under necessity defense doctrine, we have to show proof by a preponderance of the evidence, but mostly it's civil law, more evidence for than against, a tilting of the scale 51 percent versus 49 percent. Let's say a jury says oh, that evidence preponderates against you. What is your verdict? Your verdict is not guilty. Preponderance of the evidence is not the standard. It's guilt beyond a reasonable doubt.

Let's go to the next circle. Clear and convincing, a very high standard. Clear and convincing. It's one of the standards applicable in our legal realm. If you found it's clear and convincing, even then it's not guilty, because the standard is beyond a reasonable doubt.

And that, ladies and gentlemen, is the last circle.

You must find, with regard to all of the material allegation of every count that they have proved beyond a reasonable doubt the charges that exist. And when it comes to self-defense, we don't have to prove it. They have to show

beyond a reasonable doubt that it wasn't present. And I argue with all the passion I can muster this is an honest case of self-defense that never would have occurred -- this would not have occurred -- if he didn't see a gun in that hand this would not have occurred.

Count Three requires -- we're talking now about the killing in connection with the drug conspiracy. Count Three requires that it be a meaningful connection, a meaningful connection. Then there's another word there. They say a substantive connection, and we can maybe translate that into a substantial connection, so that the killing in self-defense has no connection at all. You see, if the killing really was as they, in my mind, pretend it was, because they know differently, otherwise they would have charged it.

MR. FRENTZEN: Objection to his mind, your Honor.

THE COURT: All right. Sustained.

MR. FRENTZEN: Counsel's opinions are not evidence.

THE COURT: All right. I'm going to remind the jury that counsel's statement is not evidence.

MR. SERRA: Notice his objection there.

If the evidence showed that the killing was oh, I don't know, connected to the marijuana somehow (*i.e.*, he went up there to his lazy workers; I'm going to make an example, bah, bah, bah, next workers will work harder.) It was, like, you know, you weren't working, you know, fast enough. You're not

doing the right kind of work, et cetera, et cetera. It's got to be connected to the marijuana in a meaningful and substantial way.

You see, they mischarged it here. There's -- if reasonable doubt is predicated on self-defense, then it isn't connected to the marijuana grow. It's not part of the narcotic conspiracy. It's pure and simple. Someone pulled a gun on him, and with all the evidence that you've heard that was in his mind and what had occurred, he believed he was in imminent peril that he was going to be shot, that he was going to be robbed, that great bodily injury was going to occur momentarily from his perspective.

Thank God the gun accidentally, fortuitously was in the car. Don't discount that. That's the heart of the case. That's why we're here. That makes it a killing done in self-defense, not a killing connected to the marijuana grow. I'd have a different argument, obviously, if they had charged murder, but they didn't. They've got to prove beyond a reasonable doubt that it doesn't have any -- they've got to prove beyond a reasonable doubt that it does have a substantial and meaningful nexus connection to the marijuana grow, the shooting, the killing wouldn't have happened. My guy is up there to end the controversy, end the power struggle. He's not up there to kill.

I want to just take a little time and go through some of

the evidence that exists in those emails to show you what I think you already know, but to re-ring the bell, so to speak, in that area.

You're going to have this exhibit. My paper has wings. It flies off the podium.

(Laughter)

You're going to have the entire exhibit, but for purposes of closing, I want to read you some of the -- I think they're all texts, text messages.

Bear with me. I don't like reading them. For me, it's a no-no. Nobody likes reading, but I can't memorize all of it.

I'm only going to talk about August 25th for purposes of this presentation, but please look at it all.

So how does it start? 9:09. Wilde: "Goddam it. You drove away with fucking guns loaded in your car. My chew in your car. Plants dying at Ranch. I am F'd today. F'd. Peace out."

Then very quickly, 9:20. "Hahaha," says Wilde, a message to his girlfriend: "Hahaha, just kidding mama. Just waiting to see if or how respond. Always hope you're okay, and miss you. Text you later. Coming to town." Then it's "xoxoxoxo," which sometimes means, I don't know, you know, kisses.

So in the morning at 8:25, and I'm going to keep going, but it doesn't start out like "where is those guns? I got to use them today." Or "I need them today." Or "I'm going to

bring them to the ranch today." It just they're talking, and at one point he's saying "hahaha." It's a different state of mind.

Then next, these are all to his girlfriend: "Enzo," that's the dog, "sleeping in, little sleeper. He's doing yoga stretches across the living room," and it says "LMAO," which I don't know what that means.

So these are like chats. This is his mind. This is his mind on the 25th. This is the mind that the prosecution is indicating had malice and had deliberation and had premeditation at that day, that hour, formed previously.

Next, Wilde: "Just left house, dear. Going to collect what's in Eureka, then heading to Shawn's."

Then she texts back: "Okay. I have put the guns in your truck. You scared me with that first text."

And I'm leaving out the "F" words.

"I was like oh, no, not again. Where is Shawn? Haven't heard of him before."

Then right after that she says: "Aww, our dogs are so cute. If you're in town at lunch, let me know. I'll buy you something yummy to eat."

Next she says, with these xoxoxo, which I think means love signal, "xo heart," so maybe it's like love your heart, "xoxoxoxo, heart, you hope you have an amazing -- hope you have an amazing sunny day."

You see, this is a window into his mind. This is circumstantial evidence of what his thought processes were. Was he angry? Was he rageful? Was this the day he was going to kill someone? Was this a day he was going to assault someone?

Let's go further. There's no utterly manifestation of it. And then understand what kind of person he is. You saw him on the stand. He thinks deeply on everything. And with regard to the marijuana grow, he confided endlessly. He wasn't the boss out there. How many times, count them, count them, over and over he's calling Tom Tuohy. Tom, you know, silent partner, 200,000, all the equipment, grows marijuana himself, worth $28 million. He's the one supplying the workers. He's the one making the decisions. And also, obviously, Ruben calls him over and over again, calls his girlfriend over and over again. Do you understand he is, at that level, a simple, good human being seeking advice on almost everything he does before he makes a decision with painstaking detail.

Let's go on. I'm at now 11:18 on 8/25.

Kyla calls: "Hey, handsome. Where did you get those money grams from so I could go to the same store to deal with?"

He says: "Arcata Safeway."

So that is in the mind. That is when he testifies that there was going to be some money, because she was going to the Safeway to try to cash the money grams.

We're going to hear later that she was going to borrow money. It's not like they're lying. And he says it over -- you'll see it over and over again, that Ruben will be bringing money, and therefore he's not lying to you. He had a strong belief there would be some money. That's why he went there, to deal with it, not to hurt anyone.

And down below at 11:33: "There's much more people threatening the same, and yes, it's real, and the house needs locked up. Pits all times alone." That's his dogs. "With my," here it is my friends, "revolver bedstand. Welcome to the reality of a gangster life."

Do you think when he texts her and he specifies "my revolver bedstand" that he's so brilliant, he's so foreseeing, his mind, you know, is so gifted that he says, well, I'm going to say revolver bedstand so that later I have a defense at trial that they took the revolver on my bedstand. Do you think that was in his mind? No, this is honest. This is an honest reflection. Revolver bedstand. Dear friends, that's reasonable doubt per se as it develops.

Down at 1:19: "Just dealt with money order. Call me if you have minutes."

What's in his mind? Great. I'm going to have, you know, several hundred dollars. At least I'll have something. Remember he calls her up there. We'll get to that. Did he call her up there to witness a murder? Did he call her up

there so that after he murdered he could show her the bloody hands? Just the fact that he wanted her there corroborates his perspective. He wanted her there because she would have some money. See it. "Just dealt with money order. Call me if you have minutes."

Next one at 2:59: "Those Fs said they are ransacking our house. Enzo inside. I'm stuck at ranch again."

Do you think that he made this up as some kind of a defense thought? No, he believed that they ransacked the house. You've heard all the evidence that there was on it, the photographic evidence, the clothes in the closet that was on the floor, the heaped up items that, you know, destroyed the harmony of their dwelling. You know from Kyla that she cleaned the house up. She put it in order. You saw pictures of it completely disheveled.

But let's go further. At 3:00 o'clock in the afternoon, here's Wilde to his girlfriend. And you could see his pattern. He documents -- he calls every minute. That's his mind. That's what he does.

Wilde: "They demand payment after quitting, and on the terror," T-E-R-R-O-R, "they may have got that off our nightstand."

There's no other interpretation. He's saying they got the gun off the nightstand. What more corroboration could there be? What more documentation could there be? What, you know,

in terms of seeing what he's thinking, what he's doing could there be? At this point what does he believe? And yet he manifests no aggression. Remember, the girlfriend: He's not aggressive. He's not violent. He's never threatened me. He's never struck me. I've never seen him with an angry outburst. My guy is one, non-violent, and two, incapable, incapable of guile. I submit that to you from the evidence.

"They may have got that off our nightstand."

And then "on the terror." Terror. That's a look into his mind. He's terrified. Terror. Terrified. Scared. Bewildered. They all say he was scared. They all say he was afraid of them.

Then she said: "What got them all heated? Have you talked to Tom" (*i.e.*, have you consulted with your boss?)

Then the last one: "I'll borrow money tonight." Go back and look at it. "I'll borrow money tonight." It fortifies his view. One, in his mind, she's cashed the money orders at the Safeway. Two, she's borrowing money tonight. Why does he want her up there? As a witness to a killing? That he anticipates a killing? That he's going to be dragging bodies all over? Of course not. He wants her up there because he truly believes she's got money.

Next, Wilde: "Either they ransomed Chris," that's his mind-set, ransomed Chris, "or cuz they are claiming Chris walked with them and says same thing."

Now, you got to couple that with the episode at the river. Remember he goes with Chris to the river, and Chris tells him that when you leave here, I'm their slave. I do all the work. They march around with their guns. They provide the security, but they don't work. They won't even let me eat. I get the scraps, you know, off of their table. And, and, while you were gone, they took the black truck and they tried to run me over.

Do you remember that's in my client's mind? That's startling. That's overwhelming. That's threatening. That's terrible.

So when he says "either they ransomed Chris," he's aware that there is a feud, a domination by the two, Fernando and Roberto, over Chris, so he can't understand that Chris would be with them. He thinks, as he thinks later, that -- here he uses the word "ransom." Later, he believes Chris is captive, remember, and in the trailer, and he had a basis to believe that.

Next, I don't know what this means, "WTF." This is from the girlfriend. It's at 3:37: "I'm crossing my fingers that the house and Enzo are okay. How are they calling you?"

So she's alarmed. She's alarmed because of the dog. She's alarmed because they have gone into the house and ransacked it. She's alarmed because they've got a gun now. She's alarmed, as she said, because she believes there's a power struggle going on for dominance between the two workers

and my client. She's alarmed. "I'm crossing my fingers," she says.

Next one, I'm now at 5:33. "Ruben coming up about a half hour with payment for them. Said I can just pay him back end of year."

Do you think he's lying to her? May or may not be true ultimately, but he believed -- remember, she's been calling Ruben. Ruben has got 200,000 invested in it. Ruben wants it to go on. Ruben knows ultimately, if the workers leave, it's going to maybe be difficult to get more workers around the harvest season, which is going to come up shortly. So "Ruben coming up in about a half hour with payment for them." So he doesn't say Ruben is coming up with payment, but I'm not going to give it to them, I'm going to kill them, or anything like that.

Don't you see this supports a state of mind that has no physical threat to the workers in it, not one scintilla, not one logical inference, not one statement that he's going to get them.

Next: "At house waiting for Ruben. Charging cell in truck."

Look at this one. Oh God. "Going bathroom, number 2." Well, my God. What it shows, the intimacy of how he details everything, that he says it honestly, that he says it in detail, that he communicates everything to her in a sense, you

know, she's his auxiliary brain, as obviously Ruben and Tom Tuohy are.

Next. And this has to be, from my perspective, and I invite your perspective on it, this is at 7:07, and I have -- I present to you that the shooting occurred between 7:07 and 7:14. But there, remember, it's corroborated that he was on the phone to his girlfriend at the gate. And he says: "Babe, hurry up, please. I want to get back home soon, dinner."

Then down below she says: "At CDF. Come open gate." That's at 7:11.

Next: "Kind of worried about driving in alone with those crazy fucks."

So right here, right around the moment of the shooting, before and after, I submit to you what is on his mind: "Hurry up, please, I want to get home soon for dinner." I think this is before the shooting, because later she said, "come open the gate," but it could overlap.

And she says: "I'm kind of worried driving in alone with those crazy fucks," excuse me for the word. That's her state of mind. She's absorbed everything he says. She's afraid of being there alone with them. She has the same fear as he has.

Then later, this has to be, you know, afterwards: "I want to eat you soon as I see you," and then it has a smiley face after that. So this is at 7:17. I think this is right after the shooting. What's on his mind? His mind is scattered. His

mind is blown. His mind is disintegrated.

Pretend your a soldier and you're in a foxhole and a bomb has just exploded. Your mind becomes, you know, fragmented, splintered. That was the state of his mind. Otherwise, how could he, how could he, if he consciously did what we see circumstantially occurred, how could he be saying, you know, smiley face, "I want to eat you soon as I see you." And I don't know quite what that means, but it might mean I want to make love. It might mean I want to eat dinner with you. I don't know. But it sure isn't a reflection of the calamity, the monstrosity that has just occurred. This is, you know, unadulterated evidence that his mind was scattered.

Then she said: "They didn't walk."

Then he says, "LOL." This is at 7:19, right after it happened. "LOL." Laughing out loud. Along, you know, with the preceding one, which had a smiley face. Who would be laughing out loud? Who participated consciously in this terrible, terrible, tragic ordeal, this bloody gore ordeal? Who would be laughing out loud saying I want to get home to dinner, saying I want to eat you soon as I see you, sending smiling faces. Who? A person who is in a cave. It's a metaphor, in a cave: Oh, there's a shaft with light. You can see a little. There's a splintered reflection of the outside, but mostly it's dark, and it's murky, and you're feeling your way. Your consciousness is impeded. Your clarity is obscured.

Your ability to think is devastated. My God. This is consistent with this traumatic stress. This isn't something that is all lies or fabrications.

Then he says: "Damn, you're driving fast." They're going back to the ranch, or strike that to the house. He says, "Hey, you're driving too fast."

She says: "Anxious to get home with you for dinner." She -- remember at the gate he has said to her, and she probably hasn't even absorbed it: "They came at me. I shot them," or words to that effect. He does let that out: "Babe, babe, I thought you'd never see me again." It's there. You know, there's a splintered moment there. Thereafter: "I love you." And she says it's the first time he ever told her that. See, there's part of him that's numb, that's non-functional.

The brain is so fragile, ladies and gentlemen of the jury. It's so fragile at one level, and so, you know, strong in terms of analysis in shaking memory and all that at another level. But when something overwhelming occurs, something that the consciousness cannot absorb, the mind protecting itself from immeasurable pain cuts it out. It cuts it out. That is natural, you know that. We have all read or have had friends who have experienced that. That happens in ordinary automobile accidents. It happens in fires. It happens, you know, on bad interpersonal relationships, if a woman is raped. It happens frequently. The mind cannot sustain it. The memory is too

painful. It cuts it out.

After he shot, after he shot, remember how he explained it: Bang. Bang. It happened so fast. They're coming at me. Bang. Bang. His mind disintegrated. It wasn't a conscious human being that followed and finished the decedent --

MR. FRENTZEN: Objection.

MR. SERRA: I'm arguing it was not a conscious person. There's nothing wrong with that.

MR. FRENTZEN: Objection. It's an affirmative defense which he has not raised in this case, your Honor.

THE COURT: All right. I'm going to remind the jury that the defenses and that the issues for you to decide are in the instructions only.

MR. SERRA: Yes, I'm arguing that, honestly, when he told you his mind was in a cave, it went in a cave. That's all I'm saying.

"Anxious to get home with you for dinner." And then there's a number of landline calls all the way up to 10:37 p.m. on the 25th. Wilde. Landline. That means he's got to be home. Understand, he's got to be home. So I got a landline at 9:14. I got a landline, you look it up, at 9:42. I got a landline at 9:54. I got a landline at 9:55. I got a landline at 9:56, and I got a landline at 10:37.

What does that mean? It means he's still home. Why is that important? Because we have two people -- and it's sad.

I'm not -- in this case, my friends, nobody -- my perspective. But for the email, boloney, BS, that Tuohy has testified to, that -- that person, nobody is lying. Everyone has exploded. Nobody here is lying. They're all telling it the best that they recall.

Let me give you -- you probably have heard it before, but kind of an allegory on that.

There's seven wise men in India. They're holy men, and they are religious men, but they're all blind. And then the centerpiece of their religion is the mighty elephant, the great elephant, the elephant that is an image both of heaven and earth. But these holy men coming from diverse parts of Indian have never been in the presence of an elephant before, although it is the centerpiece of their religion. So they're all brought unto the presence of the elephant. The first one goes up and touches the side of the elephant: Oh, he says, the elephant is like a mighty wall. He goes back and preaches to his people: I have been in the presence of the all-mighty elephant. It's like a wall. Well, the next one, he grabs the leg. Oh, grabs the leg: The elephant is like a tree. The next one grabs the ear: The elephant is like a banana leaf. The next one touches the tusk: Oh, the elephant is like a sword. The next one touches the tail: The elephant is like a rope. And they all believe it, and they go home and preach it.

But what the allegory stands for is that perception is

always partial. The synoptic view only occurs when the totality of the event or the totality of the image is presented.

Thus, it occurred in this case much like the holy men. They all saw parts of it. They all remember bits of it. But it was an explosion, a dynamic event, an overpowering event, so their memories, all of their memories have been affected, even though they may well be in good faith.

And I submit to you I'm not here to derogate what Chris said. I'm going to point out how inconsistent his view was with contrast and comparison to the other eyewitness Fernando. They couldn't have been on the same planet in terms of their mutually exclusive description. But they're not lying. It was just too large of an event for any mind to absorb.

The landline until 10:37 p.m. means, ladies and gentlemen of the jury, he was in his house until 10:37 p.m., so he could not have been out there looking for them. He was not out there driving after them. He was not out there with a flashlight or spotlight. That's not him.

And, you know, someone testified, oh, I think I saw Kyla's car. Well, she's got an absolute alibi. You can read it. She went to dinner, I don't know, had somebody over her house with another person. She's not out there either when they saw what they think they saw. I don't know if it was owl people. There was owl people out in the general large area, and they did have

flashlights, but I don't know. I infer that nobody saw ten bears. They don't travel in packs. They're solitary, unless they got cubs, then it's some mother and cubs.

So there is some room when your mind has been blown for -- big words -- confabulation which borders on hallucination that put paranoia, delusions, I don't know. But there's no evidence my client was out there, based on the landlines. It provides him an ironclad alibi. It speaks for itself. She couldn't have been out with him, because she has an ironclad alibi. She's with three different people after she leaves his house that night.

So all this evidence stacked: He's chasing after them, and they see him and all that, it's not valid.

Now, they're in a state of mind that is, you know, grossly affected. I'm not saying they're lying, but they're dead wrong. They're dead wrong based on the evidence.

Now, I want to go over a little bit the inconsistencies. The big one, obviously, is the truck location. You have, from Chris, this reenactment. He puts the truck, you know, facing, I don't know, facing the -- parallel with the trailer facing forward. And then remember the window view. You got this kind of uncanny thing about -- he says it was cracked and then we see it half open the next day when they did the reenactment. I just ask you to take that into account, that somehow a window got opened for the reenactment more than a crack.

But the point is he says it's this way (indicating), parallel, you know that. And quite clearly, Fernando, and by the way my client, but not in the same thing, say no, it was perpendicular, and they backed up. So one sees it this way (indicating), and the other sees it backed up this way (indicating). They're not seeing the same thing. They're not on the same planet. It's mutually exclusive.

And then going on, you know, in terms of how -- what the distance was, you know, Fernando, 15 feet and the other one 6 to 8 feet, small, small, you know, position.

Here's a big one: Chris says two hands on the gun; remember? He did it. Two hands on the gun. Fernando says no, it was only the right hand.

And the gun itself is a big one. You can recall that Chris says it's a .357, and Fernando says it's a .44. And mind you, they had been in very close proximity to those weapons.

This is a big one. Fernando said -- when I said you wouldn't be surprised if your fingerprints were on the .357; would you? And then he made up like a little story. Oh, because he had said at one point I was target shooting, then he says, oh, no, I wasn't target shooting. And then he says, oh, yeah, well, I touched it, I touched it before, or something like that. So he conceded that if there were fingerprints on it -- see, he didn't know, there aren't any, but he didn't know, but he conceded that his prints could be there. That's a

big one. Why would he concede that? Because he had a .357 in his hand, and he thought maybe there would be prints, and he had to cover.

And one says that my client's vehicle comes, you know, right up to site one, another one says no, site two and back. One says he was told that it was -- where's Chris? Oh, he's down at site two. The other one says no, he's in the trailer. Their statements, my friend, in germane, material respects are wholly inconsistent. I'm going to say they're not lying. But when Fernando says he didn't have a gun in his hand, he's darn lying. But I'm talking about where the vehicles were. It's just all messed up. It just shows how messed up they were, how terribly messed up they were.

Let me give you an example of the mind of Fernando. Do you remember how I questioned him with respect to his calls to the District Attorney of Humbolt County? This is what he said. I want to refresh your recollection:

"Please help me. I want Tom Tuohy to be arrested for ordering to keep me quiet and having me kidnapped at the hands of Mikal Wilde."

Next. "Tom Tuohy ordered to have me killed. Carlos Salazar, Yosef Tuohy, son of Tom Tuohy, are his accomplices.

"I ask that Chris also be arrested for complicity, and Kyla too.

"Chris attempted to kill me 15 days after I arrived at

Rancho Cordova.

"Chris is lying in his version.

"I know they're going" -- these are all different ones.

"I know they're going to kill me, and that is why I need your help in suing Tom Tuohy for the pain and suffer from the bullet wound that is irreparable, because the narcos will kill them. Please help me.

"Tom Tuohy is a money launderer for drug traffickers.

"Don't let him kill my family.

"Tom Tuohy belongs to Mexico's narcos, known as 'templarios.'

"Tom Tuohy used to sell marijuana to youngsters who were perhaps 17 or 19 years old. That's when Tom decided to become a drug wholesaler in Rancho Cordova.

"I want Tom Tuohy and his son Yosef, who moved to Montana, and Carlos Salazar, Chris Mondo, and Mark Surrey to pay for their crimes."

Well, it's the rant, I think it was established, of an alcoholic. He fell off the wagon. Do you remember he had a drinking problem, fell off the wagon, and he's ranting. But he's ranting what he thinks. He ain't ranting lies. He's asking the DA, you know, in an exuberant moment of alcohol grandiosity, help! help! this is what's happening. And he's blaming, you know, everyone around.

Why do I bring it up? I bring it up to show his state of

mind, to show that this here destroyed, I don't know, his reason, his logic. Unless it's all true. I don't know. I don't think so. I don't think Tom Tuohy is a part of some Mexican cartel, but I don't know. Unless it's all true, this rant, which shows he's out of his mind, and he's been reflecting back, and his reflection back comes up with those conclusions, and those conclusions are, I think, from a general common sense perspective, absurd.

The ranting, you know, of a mental disordered alcoholic? Not quite. Because sometimes when you're disinhibited, draw upon your common sense, you speak fundamental truths that you believe. They come pouring out. You restrain them. You, you know, you repress them, and when you're drunk they come out. And that's what he's been thinking. And if that's what he's thinking, it shows how his mind also got spattered, and why ultimately his recollection of what occurred at the scene is so different than the other, Chris Bigelow. And Chris Bigelow's, also, mind. Remember, he's seeing everything at night that, in retrospect, that wasn't there. So this is a case where all minds are scattered to certain degrees.

Now, I want to go over very briefly and very quickly some of the salient points made by a few witnesses. Please bear with me. I've taken these from my notes. If I took it down wrong, your memory controls. I give it to you honestly and in earnest.

Tom Tuohy, he said that Mikal seemed afraid. He said he told me he was afraid of these guys. He told me they reached into a bag, but he didn't understand what it was meaning. And Mikal appears to him as a nice, clean-cut guy. Well, the bag thing, see, that corroborates the bag thing. Remember he wasn't reaching in the bag. He's reaching to show the gun. Remember how when my client goes up there, all of these episodes that frighten him and are calculated to frighten him. Remember how Roberto, he's sometimes carrying two weapons. He's always pulling his shirt or whatever, so that it can be seen.

Let me -- on this, let me digress. There's two really symbolic events that occur to show there was a power struggle, and to show the mentality of the two Guatemalans. One, let's call it the onion allegory: You bought the wrong onions? Go back, you know, to town and buy the correct onions. We don't eat that kind of onion. We take this kind of onion. I'm exaggerating, but man, it was something. He bought the wrong onions. And my guy, he don't know what to do. He's calling around, so I can get him the right onions or not. But don't you understand that's dominance. That is power struggle. That is them exercising their virility, their masculinity, their -- you know, it's like animals. They're showing that they are the alpha dogs, and he is not an alpha dog. My guy is big, but he's not a violent guy. He's a soft guy. He's a softie, and

most of the time he doesn't know -- he confirms he doesn't really know what to do. He's asking everyone's advice.

Okay. Second symbolic event. They've got the guns. Oh, they've been target shooting. They've been parading around. It looks like they're not doing any work. It looks like they're wearing the guns. They're shooting out there in the forest. My God. That would be enough to scare anyone. They're supposed to be up there, you know, working marijuana fields.

So then he comes in. The guy comes in -- this is not the 25th. This is weeks before. My guy drives in. Mikal drives in. He gets out of his car. Oh, where are they? They come charging at him out of the bushes. Fernando, not Roberto, got the handgun. They point it at his head. He points it at his head just like he did, you know, on the 25th, and says like "hahaha, you know, if you were with the cartel, you'd be dead now." It scared the living daylights out of my client.

It's symbolic, ladies and gentlemen. It's symbolic of what the true state of affairs that was going. I'm only saying that it ultimately shows my client's fear. Fear. Fear. Fear. And you heard the instruction. Fear is the first, the primary passion that is involved in heat of passion. Heat and passion reduces murder to voluntary manslaughter. But I'm not really arguing heat of passion, although he was in a heat of passion for a month. I'm arguing what the case truly is, bona fide

self-defense, and then a blackout. Self-defense. Self-defense. Self-defense. He didn't lie to you.

And Kyla -- these are my notes again. "Mikal was really freaked out." She's talking about what's going on. And this was before the 25th. Again, before the 25th. He said he had a gun held to his head. That's what I just recounted. She says Roberto and Fernando did not believe defendant had no money. And I think that's been introduced in a number of ways, that they really believed it. Oh, they believed when they ransacked the house they were going to come away with a hundred thousand dollars. They believed that they were going to rob him, you know, of whatever he had on him, which could be a hundred thousand dollars.

MR. FRENTZEN: Objection. That actually was not admitted for the truth, your Honor.

THE COURT: Sustained.

MR. SERRA: I'm talking state of mind.

MR. FRENTZEN: Well, then it should be phrased that way.

MR. SERRA: I'm talking state of mind. State of mind is not offered for the truth of the matter asserted, but it's offered for what's in the client's mind, which here it's very relevant.

Kyla said: "He was scared of them and felt pressured."

Kyla said: "He said he was scared of Roberto. Roberto

would show gun tucked in his back."

Kyla said that my client said they had gone to his house and ransacked it.

Kyla said that my client said that they got something off his nightstand.

Kyla said that my client said they're quitting and demanding money immediately.

Kyla said my client said Ruben will lend the money.

Kyla said that my client said Fernando and Roberto are demanding money and ransacking the house.

Kyla said "at the gate."

My client said he's hungry. "Let's go to dinner."

Kyla said defendant, my client, snapped. She used the word "snapped," at his house, first one at dinner and sex.

Kyla said he never violent or bossed her around or jealous or showed temper to her.

Kyla said that he said Roberto is aggressive when he wants something.

She said that there was no spotlight on her car or any other car of my client.

She says my client told her that Roberto does the shirt tuck thing, and that's the showing of the gun, while on occasion he has a shotgun around his chest. And mind you, these guys, you know, they're not what would you would call, I don't know what, frail people. You've seen pictures of them.

They're pretty strong-looking people, pretty, how would I call it, potentially, you know, physical strength there, coupled with guns. They provide, from my perspective, a harrowing image.

Kyla said that Mikal wanted the guns back because he was scared of them.

Kyla said the defendant told her four times he felt threatened or intimidated.

Kyla said there was a power struggle between Mikal and them, and they had the guns.

Kyla says "at the gate."

My client said: "You almost lost me. You almost didn't see me again. They came at me. I shot them. Something happened like what happened to my sister's boyfriend of 12 years ago who was shot." And she interpreted that he, Mikal, had been shot at.

She says he was lost, in tears, and scared. "Lost, in tears, and scared."

You saw him on the stand the same way. Mikal told her that he loved her. This was the first time.

She said that he didn't know this would happen. She said: "He asked for gun back and used the dog story to explain." She said he asked her to come with him. This is when he's getting the gun back and giving the phony dog story, "because he didn't want to go there alone."

Sister Daisy. The calls that she got from her brother during the critical time on the 25th, from her perspective, were incomprehensible, never heard him like that ever before. Had expressed previously fear of them to her. This corroborates his state of mind. She had never heard him like that before. His mind was fragmented. She didn't delete anything.

And recall there's this lifestyle up there. The lifestyle for many is the hills, and nature, and growing pot, and it is a sub culture, and it is the early stages of what ultimately will be legal and will become ultimately a million-dollar, a billion-dollar industry, and it's starting all over.

Think of this case. My God. On those over sites you see the marijuana. It's open and notorious. He ain't hiding it. He's growing it all open and notorious. He's not, you know, doing anything covert. And from the beginning, practically, helicopters coming daily, and they're going around. They're not busting him. They're not seizing the pot. They're not coming in with a search warrant. They're not even coming in for a compliance check. Do you understand it's de facto legal up there? They have 99 plants per patient. I suggest to you that nobody needs 99 plants, but that's the law, and they grow 99 plants, and they can have a collective, and they can distribute it legal and nobody cares up there. He comes out of that milieu.

So in order, you know, to perfect this entity, he cheated, put his sister's name on a bunch of stuff she didn't even know. She didn't participate. This one here (indicating) she argues oh, she's involved up to her neck. You know, she's the one that is on the document. She's the one, you know, who is the, I'm forgetting the word, the manager, or whatever it was. No. She didn't know anything about it. He put it -- her name on it, because it satisfied the legal requirement, and he was going to change it later. It never happened. So don't punish her for that. She gave you her honest view. And the important part is that she never deleted anything, and that his mind, when she contacted it in this critical period of time, was incomprehensible.

MR. FRENTZEN: Your Honor, I'm sorry, there's a hand up from a juror.

A JUROR: Could we have a bathroom break, please?

THE COURT: All right. We'll take a 15-minute break.

MR. SERRA: Sure.

(Proceedings were heard out of presence of the jury:)

MR. FRENTZEN: One very brief issue, your Honor, that now I'm apparently going to have to address is counsel has argued that they could infer all kind of stuff from the fact that we didn't charge certain statutes. I'll give counsel a chance to retract that, but there are no -- there is no attempt murder in the federal code.

THE COURT: Right.

MR. FRENTZEN: And there is no murder other than the murders we have charged. That part perplexes me. And I can get into that with the jury, because we did charge murder, but there's no other sort of like, you know, generic murder.

Counsel can retract that if he wants, but if not, I'm going after him in my rebuttal, and I don't want to hear any objections about it.

THE COURT: All right. Well, that's a fair point. If you're going to make the argument that the government is conceding something because they haven't charged straight murder, that conflates state and federal law. So unless that's retracted, I think the government can fairly point out there's a jurisdictional requirement, whatever the explanation is legally.

MR. FRENTZEN: Thank you, your Honor.

THE COURT: Okay. I don't know how much longer you're going to be, and I got to time the break.

MR. SERRA: I'll go beyond the noon recess.

THE COURT: So should I -- I got to time when they're going to break for lunch. I don't know how much more --

MR. SERRA: I think -- let's do it on the natural, at 12:00 we'll break, and I'll come back at 12:30.

THE CLERK: If they're coming back at five to 12:00 --

THE COURT: We'll go a little longer than 12:00,

because that means they're only going to be here five minutes, so let's go a little longer than that.

MR. SERRA: I think we will break.

THE COURT: So you're okay with breaking up your closing?

MR. SERRA: I don't see any alternative.

THE COURT: Well, if you're going to go like 12:15 or something, we could keep them in, but if you're going to --

MR. SERRA: There will be some looking at the clock at 12:00.

THE COURT: All right. Okay.

MR. FRENTZEN: Just so the Court knows, then, if I'm going to go, and I don't mind going right after Mr. Serra, I just have got -- I'm going to have to pull some things together. And it was probably my preference to get rid of that podium, but maybe I'll just deal with it, we'll see. Maybe if I could have a short, you know, break of some kind just to put stuff in order.

THE COURT: Short, I'm afraid -- I don't want to run out of time.

MR. FRENTZEN: Nor do I, your Honor.

THE COURT: So --

MR. FRENTZEN: Oh, I'm not going to go as long as Mr. Serra. Well, I don't know what I'm going to do yet, so we'll see, but I don't think I'm going to.

THE COURT: All right. I may tell the jurors to compress their lunch today to like 20 minutes instead of 30 minutes, so we can make sure we get done, at least with closings and final instructions.

MR. SERRA: I think that's a good idea.

THE COURT: Yeah.

THE CLERK: We'll be back five minutes before 12:00, counsel.

(Recess taken at 11:42 a.m.)

(Proceedings resumed at 11:50 a.m.)

(Proceedings were heard out of presence of the jury:)

THE COURT: All right. I'm going to go, just so we're not here for ten minutes, I'll go here for another 20 minutes or something.

MR. SERRA: I'll be finished in that time. I think 20 minute is all I'll need.

THE COURT: All right. Then that makes a natural break. They can hang out for 10 or 15 minutes more.

(Proceedings were heard in the presence of the jury:)

THE COURT: All right. Mr. Serra, you can resume.

MR. SERRA: Thank you, your Honor.

Thank you for your patience. We may go just a little over 12:00, so don't let hunger deter you.

I was arguing at one point how there's almost a separate lifestyle amongst the cannabis subculture in Northern

California. It impacts strongly every time -- they did it over and over again about calling the police. Remember, you didn't call the police. You didn't call the police. You didn't call the police. That subculture -- you had my client testify, oh, maybe in a little bit of an oblique manner, but they don't call the police. They try to settle things themselves. If you've got a civil matter, you're not going to call the police. If you're growing a bunch of pot that might be a little bit too much, you're not going to call the police.

So can we analogize somehow. Remember, old-fashioned, when during prohibition up in the Ozark Mountains, I think, in -- I think there's another mountain down there. But they were all making alcohol up there. You don't call the police.

Mikal Wilde said something about handshake on a dusty road. Remember him referring to it? So it's kind of informal, and it's kind of like elemental, a different perspective on many things.

And I've obtained the song, which is like a poem, where "handshake on a dusty road" occurs. This is not evidence. This is just argument, but I want to just read you this poem. It's the song from where that's taken.

"County Blues. Camouflage Cowboys.

Handshake on a dusty road. The eagle dips a wing. Winter's headed out the door, and the hills are turning green. Another day in paradise. We break the sacred

ground. Summer's hot, but man it's hard to turn the money down.

Now one man steals the whiskey, and the other grows the weed. One man's heart is giving, and the other's filled with greed.

Everyone must choose a path, wherever it may lead. I tend to hand with those who tend the soil and plant the seed. We do it all again and the circle never ends. The years just make us quicker on the draw. Partners once again. A little business between friends. Always just a step ahead of the law.

Now, the law man does his duty upholding all the laws. But the war he thinks he's winning has only been our cause."

And it goes on, but it's a glimpse into my client's mentality and why no one up there, including himself, doesn't call the police.

I want to take a brief time and go with you, then I will conclude, over to the verdict forms, because obviously we have our recommendations.

Count One, conspiracy to manufacture, distribute and possess with intent to distribute marijuana. We've never denied it. It's only an issue of how much. So is he guilty? Yes, he grew pot. It was legal in this state, it's not legal in the federal.

But then where you have to, below that, indicate the amount of plants -- so it says a thousand or more, a hundred plants or more, less than a hundred -- I argue ardently that it is not a thousand plants or more, because this is a conspiracy charge, and the conspiracy here, as the evidence indicates, does not envisage more than a thousand plants. They can say what they want to say, but all of the males -- and 20 to 30 percent were males -- would be killed. So in a conspiracy, the objective of the conspiracy would be to harvest the buds of female. So that's one.

My client, quite on the contrary, he says there was less than a thousand. So on a conspiracy charge, no, it would be less than a thousand, because the males would be gone. And who knows if a deer came or a bunch of deer came in and ate it. A lot of times before your harvest you get all kinds of things that occur. So you really have to wage the harvest.

But the way that they got the plants was very suspect, because they put on a person who didn't count the plants. He went around and pulled up one or two and looked at the roots or had someone else pull them, and then he got the tallies from other people. He didn't personally count them. It was hearsay. He got the tallies. And I'm asking him on cross, well, where's the tallies? Where's the notes? You know, I want to see it. And we never got that.

So you understand how many times and how many ways we've

objected to hearsay, so this is one of those situations where he says he's relying on the other counts, but we never got the people who counted. That's one. And two, I didn't get any notes or, you know, whatever way they did it. Usually you take notes and you write down how many plants, et cetera, et cetera. And we don't have the underlying data, so you're stuck with, you know, what he says.

But I argue that's not the most reliable evidence. Why didn't they put on the people who counted the plants? Why do we have to rely on hearsay? Where is the documentation of the count? Contrast that to my client, you know, who says there's less than a thousand ultimately to be harvested.

So first count. Guilty of growing pot. Under a thousand.

Second count is manufacture and possess with intent. Well, likewise, the possession that he had intent would ultimately be the budding female plants, not the male plants.

MR. FRENTZEN: Objection at this point, your Honor. It's not a legal argument. It's irrelevant. He's trying to mislead the jury.

MR. SERRA: It's a relevant argument into what his intent was.

THE COURT: Well, the instruction is clear. The jury will have a copy of the instructions with respect to specifically, for instance, the quantity amount. I've already read the instruction, how that's relevant or not relevant. So

you are bound by instructions and not counsel's interpretation of instructions.

MR. SERRA: I rely on my previous argument to support the position with respect to Count Two, although he'd be guilty of ultimately, you know, possessing marijuana. It would be less than a thousand plants.

Count Three really is the most serious offense, and you're going to see that, first, you got to determine whether it was over a thousand plants. That's why it's so important; secondly, that there was an intentional killing. And I argue that he was in the fugue state, and therefore was without mind and --

MR. FRENTZEN: Objection, your Honor, that was actually a defense that counsel abandoned.

MR. SERRA: You know, I get to argue. Does he get to argue while I argue?

THE COURT: Overruled. You can continue.

MR. SERRA: You have to find there was an intentional killing. And I persist in arguing that based on his testimony alone he was in a fugue state, and therefore there was no consciousness, no intentionality.

Lastly, in respect to this count, the killing, they have to prove beyond a reasonable doubt, is substantively, which means substantially, and meaningfully connected to the offenses charged in Count One or Two (*i.e.*, the killing occurred because

of and as a part of the defendant's participating in or working to further the drug offenses.) That's not why. That's not why this occurred. This occurred because the gun was drawn on him. He was fearful that he was in imminent peril, and the first few shots were completely self-defense, and after that he blacked out. So it's not in furtherance of a drug conspiracy.

Then down below, the government prove beyond a reasonable doubt that one motive for a killing was related to one of the drug offenses. It just doesn't exist here; therefore, he's not guilty as this charge is articulated in respect to what the ultimate requirements are.

With respect to Count Four and Count Five, as the prosecutor has indicated, we proffered the necessity defense, and you have seen that instruction. It pertains to Count Four and Five. Both of those are so-called arming allegations or gun charges.

And so the heart of it, the defendant was faced with a choice of evils and to choose the lesser evil. Well, what's he faced with? You heard testimony and know, sadly, there's cartel up there. Sadly, there's robbers up there. Sadly, in this case, you know, Fernando was robbed, so that's an evil. The evil of robbery with arms is serious. Defendant acted to prevent the imminent harm. Well, that harm was always present. That arm was always poised. That harm was always close at hand. They -- I don't know. You can read the papers.

Unfortunately, there's robberies up there of these marijuana growers. So I argue defendant acted to prevent imminent harm.

Three, defendant reasonably anticipated his conduct would prevent some harm. Remember, they wanted to harm. Remember, he never armed a marijuana grow ever before. In fact, I think he said he was 12, or I forget how old he was, he was very young when he ever even had a gun in his hands. He's not that kind of a guy.

So it was at the request of Fernando and Roberto, and it was to prevent harm. And the law allows that where there's no other legal alternatives -- well, yes, you can call the police, but I don't think they're going to guard the place up there for 24 hours. They're not going to guard it for one hour. Call the police and say, hey, we're afraid of robbers. They came last week. They're going to come back. They got guns. They're dangerous. They're part of the cartel. What do you think the police are going to do? Sure, ma'am, we hear a lot of that. What do you want us to do? Sit there on your ranch and wait for them to come?

So I argue there's no other legal alternatives. I argue that the necessity doctrine applies. So therefore, with respect to Count Four and Count Five, it should be not guilty.

Count Six is using the firearm during and in relation to drug trafficking crime of violence. I'm shortcutting it. And you're given an opportunity to say first degree, second degree,

voluntary manslaughter, and not guilty.

I've argued strenuously that there's no premeditation and deliberation, no malice aforethought, and that eliminates murder. Manslaughter it could be if we didn't have self-defense based on heat of passion. And I've argued, and you probably see, that he was in a heat of passion because of his fear for a long time, and fear is defined as really the first emotion applicable to the heat of passion defense.

But Count Six he should be not guilty, because what occurred was self-defense, and that's where you have a self-defense instruction, which is applicable and particularly apt in this case on this count.

And I want you to recall in the instructions, which I'm not going to go into, but that Fernando had been convicted of two felonies, one in Guatemala and one in California. Those obviously have to be taken into account by you.

Secondly, because he -- where he was, there was never an opportunity to see if he handled the gun by gunshot residue. Of course we're not contending he fired the gun, but sometimes in proximity to a gun you will have some residue, but he was never tested for that.

Lastly, from my perspective, there are two red herrings. One red herring is Tuohy's alleged email. My client denies it. His sister denies having anything to do with it. They could not find it. They put their expert, you know, on it. He

sought retrieval. There's no evidence that it was deleted. This here, from my perspective, is false. This is created false by Tom Tuohy, because he feared my client would turn state's evidence and involve him as the mastermind behind the grow, and it was a way of putting, you know, kind of a bad mark on him.

I ask you to consider Tom Tuohy in terms of his ultimate credibility in this case, and I ask you to reject that out of hand. There is no hard evidence that it ever existed, and there's utterly no evidence that it was deleted. They would have had to delete, remember, two different presentations, one relating to my client, one relating to his alleged response, which was racist, you know, and degrading, and ugly, and it doesn't exist in any documented fashion.

And from my perspective, the next red herring is the one who examined the antimony and the lead percentages in the bullet fragments in the skull of the deceased. As you know, the expert in that field did not give an absolute identifying opinion. The best she could say is consistent with, and that was because there are many factors. She talked, you know, to an individual involved at Remington. She, therefore, came to only telephone hearsay. He did not have the material. He had to obtain the material. She doesn't know what batch. She doesn't know quality control. She doesn't know the source of the information, whether it be flawed or not. Her best

statement, it's consistent with, not as an identification. She indicates that millions of bullets from multiple manufactures have two and-a-half to three percent antimony, or antimony, however it's pronounced. You know from the evidence here there was bullets all over the place. They were target shooting. They, you know, had multiple forms of ammunition, that all of the ammunition wasn't even collected. And she can't know, therefore, precisely whether it was Remington or otherwise.

Therefore, although, you know, I think prosecution is going to hammer that at the close, I call it a red herring. It's inconclusive. Consistent with millions of other bullets does not make it absolute in any fashion. It's not the kind of evidence that is reliable, even according to their witness. Therefore, it should not be utilized in your analysis.

The last thing I want to bring up, before closing, ultimately, my closing remarks, is that there's going to be a closing argument by prosecution. Prosecutors can even be very -- I'm anticipating, very vivacious, very animated, very, you know, passionate, very articulate. He's a good lawyer, and jurors are swayed by images of authority.

The U.S. Attorney is, in the hierarchy of law enforcement, the highest, so they come, you know, into a court with the aura of believability. Remember always, none of the lawyers were there. I wasn't there, neither was the prosecutor. So I submit to you that the greatest miscarriages of justice in the

criminal world, you know, in litigation, in trials, the very source is where jurors, how would I call it, succumb, you know, to the passion of the prosecutor. Oh, they stand for law and order. They're the thin line that protect us ultimately from the terrorists and, you know, from the drive-bys and the kidnappers and the rapers. And so there's just an instinct, ultimately, to go with them, especially when the prosecutor is dogmatic, especially when the prosecutor is emotional, especially when the prosecutor is, how would I call it, articulate.

And I beg you, I beg you, forget about what I say, forget about what he says. You know the issues now. You're the beautiful fresh breeze in this system. You've come. You have listened. You've been very attentive. You've been beautiful. And don't be swayed by lawyers. You analyze this case yourself. You ask yourself, was he telling the truth on the stand? Does his testimony, especially as I describe it, the most poignant moment of the whole case? Does it raise a reasonable doubt? I submit to you that it does.

Lastly, I want to say that the law requires, and it's easy to understand, that there be 12 individual verdicts. And you see the beauty and the strength of the system that you all come from different backgrounds, different walks of life, different work experience, different family context, different educations. That's the strength of our system. That's the

beauty of it, so that -- and I think I said it during the voir dire, just let me repeat it, is that on a jury, youth does not defer to age, and in a jury age does not defer to youth, in a jury man does not defer to woman, and in jury woman does not defer to man, and a jury there is no sexism, there is no racism, everyone is equal.

Please, please, give us your individual verdict. Stand -- if you believe there's reasonable doubt, and the hour is late and there's more persuasive, you know, voice loud, you know, assertive, don't cave in. Do what you believe is right. You're going to have to -- we're all going to have to live with it for the rest of the life. You don't want to think, you know, in a week you did the wrong thing. So if you find under the law and the facts reasonable doubt, and you're not persuaded by others who may or may not have the same view, please, I beseech you that the system really, you know, endorses your strength. This is the time to show what they call moral courage.

I thank you, in closing. You've been a great jury. You've been attentive. You've taken notes. You look at everything. You ask questions. You've always been timely. There's never been, you know, any delays in the case from your side. You don't get to see yourself. I get to look at you, and you are what I'll call, you know, an American rainbow. I see, you know, various ethnic groups. I see male and female.

I see various ages. You're beautiful. You, you know, are really the heart of the system.

I please ask you for justice in this case, and I ask you for, you know, unadulterated, what would I call it, you know, reason, not passion and not sympathy, and not any form of revenge.

The true judges of the facts, I salute you. My client salutes you. Thank you very much.

THE COURT: Thank you very much, Mr. Serra.

We will go ahead and take our lunch break. I'm going to ask that rather than 30 minutes, we do 20 minutes, because I want to make sure we get this done for you today, so we'll come back in 20 minutes.

(Proceedings were heard out of presence of the jury:)

MR. FRENTZEN: Your Honor, I'll be brief, but I now have to deal -- I mean, I just got sandbagged. Counsel just argued exactly what he told the Court and me he wasn't going to argue. He did it anyway. I objected. The Court overruled me.

I don't want to hear any arguments about burden shifting when I get into now his fugue state, and how he couldn't form intent because he was in a fugue state, for which there's zero evidence, and there's no instructions to the jury. That's exactly the argument he said he wasn't going to make when I let my, you know, mental expert go. That was on the record. I don't understand -- I mean, unless the Court is going to tell

them that that part of the argument is stricken, they shouldn't consider that.

Now I've got to figure out some way to undue what was -- what we all agreed was not going to be done but was permitted to happen.

MR. SERRA: I said there was not going to be a mental defense, to wit, insanity, to wit, any kind of mental disorder that led ultimately to either diminished capacity or diminished actuality. That's as far as I went. The evidence here, from my client's lips, is that he blacked out, and he went into a black cave. That's all I argued.

MR. FRENTZEN: That's not accurate. That's not what he agreed to. He said he wasn't going to argue any sort of mental defect such that it would, you know, affect his intent.

THE COURT: Well, and that's what it was. It was a mental defect or condition --

MR. SERRA: I didn't mention a mental defect.

THE COURT: -- like insanity or some kind of mental condition or defect.

MR. FRENTZEN: What the heck is a fugue state? I don't even know what a fugue state is, but I'm pretty sure it's a mental defect such that you can't form specific intent.

THE COURT: Well, that's not -- that wasn't how I interpreted the argument.

MR. FRENTZEN: That's exactly --

THE COURT: It's not that there was something wrong with his brain or that there was any defect in his brain, but this was, as he had argued for, that it was a state of stress that caused him to go into this, quote, cave.

MR. FRENTZEN: That's exactly what that is. That's exactly what he would have been examined for. I mean, that's precisely what part of the examination would have been. That is a mental defense. That's exactly what he said he wasn't going to argue. That's what there's no instruction for them to try to sort out about that had we done this the right way, they would have had some sort of an instruction.

And so I'm going to -- yeah, it's a dissociative disorder. It's in the DSM. I mean, this is exactly what our guy, you know, was prepared to testify about, but they said they weren't going to go there.

MR. SERRA: Fugue is an addiction. I never used it as an psychiatric analysis.

MR. FRENTZEN: It's the same argument. It's an argument he said he wasn't going to make. He was clearly not being truthful with me or with the Court. I objected.

MR. SERRA: I said I wouldn't make that argument.

THE COURT: I didn't understand -- I did not understand the argument and the agreement to be that he would comment on his ability to form *mens rea*.

MR. FRENTZEN: Of course, that's the only thing I care

about. All he was testifying to was that he couldn't remember. The flip side of that is I couldn't form *mens rea*. That's a mental defect, which is exactly what he said he wasn't going to get into, which is what we were going to have him examined for.

I mean, this is precisely what he had agreed he wouldn't get into, instead of rather than calling it, you know, whatever he blacked out. He called it fugue state, and somehow he got it past the goalie.

MR. SERRA: You know, I said in my opening statement that he blacked out, or words to that effect.

MR. FRENTZEN: He said --

MR. SERRA: I've never withdrawn from that, but it's not a psychiatric defense.

MR. FRENTZEN: Of course it is. The inability to form the intent is a psychiatric defense. I mean, that's all it is. That's what we fight about. It's either that or insanity. That's -- every time we evaluate somebody, it's for that exact thing.

THE COURT: My understanding of the heart of the discussion was that it wasn't the kind of thing that an expert on mental illness, insanity, some kind of mental defect could be called to the table, and if he was going to assert something that was of that nature as opposed to a lack of consciousness, because of stress or whatever, that is something that is within the common experience that the jury could discern.

MR. FRENTZEN: No, he had -- no, this is exactly -- we had a guy here. We had a guy who was prepared to say that this is not -- well, in any event, for him to do it in the first place, he would have had to have submitted to an evaluation, and the Court -- because the Court said if you're going to raise a mental defect or some sort of mental disorder, that we've got to have him evaluated.

THE COURT: Well, 12.2.

MR. FRENTZEN: And we didn't get him evaluated for precisely this -- I mean, because he withdrew it.

I mean, you know, I'm now put in a position where I don't want to hear any arguments about burden shifting when I go after him.

THE COURT: What do you mean by burden shifting?

MR. FRENTZEN: I don't want to hear that I'm burden shifting when I make my argument.

THE COURT: Which is what?

MR. FRENTZEN: Which is that there's absolutely no evidence of any fugue state, that the Court has given them zero instruction on that, and that it's the ultimate red herring, and they're not to consider it.

THE COURT: Well, you can certainly argue that there's been no testimony, other than he can't remember -- obviously, if he can't remember, he can't argue that he was --

MR. SERRA: He said it was a black cave, Judge.

THE COURT: -- that he cannot state -- I mean, there is no evidence, other than his saying he went into a cave and he can't remember. So they have no expert. They have nobody to testify. It's only something that the jury is going to have to infer. You can certainly point out that there's no evidence that he went into an unconscious state other than by inference. There's been no testimony to that effect.

MR. FRENTZEN: Well, I'm going beyond that, your Honor. There is no instruction on it, and there is no instruction on it because it's not part of this case, and it's not something that they should even consider. I mean, that's exactly where we were when he withdrew his 12.2 and we didn't have him evaluated.

I mean, this is the ultimate sandbagging right here, and unfortunately I'm getting, you know, I'm getting it -- well, anyway.

THE COURT: Well, the 12.2 requires a notice of an insanity defense.

MR. FRENTZEN: Also, any mental -- any expert opinion on any form of mental defect.

THE COURT: If there is going to be expert evidence, he then has to give notice. If he doesn't -- if he's going to try to get in some kind of mental status without an expert, then there is no notice required under 12.2, unless it's 12.2(a) where it's an actual insanity, and that's what he gave

up.

MR. FRENTZEN: No, no, no, he gave up arguing any kind of mental defense, and obviously it wasn't insanity. But at this point the only thing left is the ability to form specific intent. That was exactly the conversation we had the other day. This is exactly what he said he wasn't going to do, and he went ahead and did it.

MR. SERRA: I say no.

THE COURT: Well, unfortunately, that was not clarified to that level, and that wasn't my understanding.

MR. FRENTZEN: What else would it be? I don't even -- I mean --

THE COURT: That there was some kind of actual --

MR. FRENTZEN: Forget it. Forget it, your Honor. I'll argue it. But this is, you know, this is not the way things should be done.

THE COURT: All right. Back in ten minutes.

(Recess taken at 12:25 p.m.)

(Proceedings resumed at 12:35 p.m.)

(Proceedings were heard out of presence of the jury:)

THE COURT: All right. Ready to bring the jury in?

MR. FRENTZEN: Yeah. Betty, I need the ELMO once I get going.

THE COURT: Oh, the verdict form, are we okay on the verdict form?

MR. FRENTZEN: The government is fine, your Honor.

MR. SERRA: I haven't seen the --

THE COURT: The one I gave you.

MR. FRENTZEN: I hope so, because I'm about to use it.

THE COURT: The only change is I'm putting those four categories, page 3 and page 4.

MR. SERRA: Yes, Your Honor.

THE COURT: Okay.

MR. SERRA: Yes.

(Proceedings were heard in the presence of the jury:)

THE COURT: All right. Thank you, ladies and gentlemen. I appreciate your cooperation in the truncated lunch.

The government does have the right of rebuttal, which we're about to start now. And that's why I wanted to try to get going quickly, to make sure that we conclude the argument portion today.

So Mr. Frentzen, you have the floor.

MR. FRENTZEN: Thank you very much, your Honor.

CLOSING ARGUMENT

MR. FRENTZEN: And just so everyone -- I sure hope I'm going to finish early.

May it please the Court and counsel, ladies and gentlemen of the jury, good morning -- good afternoon. Sorry.

I want to start out with this. Chances are when Mr. Serra

was building up to his most poignant memorable moment of trial, which we would all take with us, chances are you were thinking about something other than whether or not his defendant -- his client was crying during the course of his testimony. Chances are pretty good that things like the image of a man murdered from behind might be one of the images that will stick with you, and that was poignant in the course of this trial.

And I'm not going to again show those photographs. You've all seen them. You saw the state in which Mario Roberto Juarez-Madrid was left, and the state in which he was found.

Mr. Wilde's presentation, whether you think those were tears or not, was remarkable for the point at which he teared up. It was about him. It was not about anybody else. It wasn't about Mr. Juarez-Madrid or Mr. Lopez-Paz, who got shot in the face and miraculously survived, though he had to run and hide all night to make it out. That speaks volumes in this case, ladies and gentlemen.

Counsel ended with a couple of his red herrings, and I'd like to jump into a couple of huge red herrings. First of all, counsel for Mr. Wilde tried to indicate that if we really believed in our case, we would have charged attempted murder as to Mr. Lopez-Paz and murder as to Mr. Juarez-Madrid. That is, first of all, mystifying, and second of all just incorrect.

The reason why it's mystifying, ladies and gentlemen, is because we are in federal court. We are not in state court.

There is no general generic attempt murder charge in federal cases unless you are on federal property or you are a federal employee carrying out your job. There is no generic murder charge in federal court unless you are on federal property or maritime jurisdiction or you are a federal employee carrying out the duties of your job.

Mr. Wilde was charged with the offenses that he committed that exist in federal court. And I will allow Mr. Serra an opportunity, during the course of my argument, to point out to me how I got that wrong, and what else we should have charged his client with. It's simply misleading. It was not true what he argued to you.

I take it he agrees with me.

MR. SERRA: I don't agree with you, ever.

MR. FRENTZEN: We did -- what makes it even more confusing and even more misleading is we did charge him with murder. We charged Count Three, which is an intentional killing during the course of a narcotics offense. But we also charged Count Six, and Count Six, as you've already seen, both from the Court and from Ms. Hopkins, is a murder charge. It alleges a premeditated murder with malice aforethought.

Yes, the federal jurisdictional hook, if you will, is that the firearm was utilized in the course of other federal crimes, but it is plain and simple a murder, premeditated with malice aforethought. That is what the government believes that it's

evidence showed, and that is what the evidence showed. So Mr. Wilde was charged with what Mr. Serra tried to indicate was not charged.

Another huge red herring for you from Mr. Serra's argument is this notion that somehow his client went into a fugue state, as Mr. Serra called it, such that he was incapable of making decisions for himself. Let me be clear about this. There is not one scintilla or shred of evidence in this case to that effect. There is no instruction in the jury instructions about that topic. Mental defect, mental condition - the defendant would have to present to you some evidence of that to get an instruction about that.

Go ahead. When you get back there, take the instructions out. Take a look through them. Nothing. Nothing. And there was no evidence on that. There was no evidence on that, because the defendant himself doesn't even claim that. He did not tell you that is what occurred. Even if you believe him, and it is the most incredible testimony possible, but even worse, and I'll get to that later, he didn't say I was in some state in which I could not. He just simply says I can't remember. And no one, no one said that he could have been in any kind of state where he was not making meaningful, rational choices for himself. No one. Not one witness in this case.

So that's a huge red herring. It's not part of this case or the Court would have instructed you on it.

Why did Mr. Serra go there to those two places that were completely misleading? He went to misleading places because he doesn't want to deal with the evidence. His client certainly doesn't want to deal with the evidence. And as I said, we'll get to that in a minute.

Mr. Serra threw out another sort of more minor red herring, but he told you that there was evidence in this case that his client was, you know, a non-violent person and a peaceable person going way back. That's not accurate. If you recall, the only witness who testified as to whether or not, you know, Mr. Wilde was a peaceable person during any particular period of time was Ms. Tripodi. And if you recall, Ms. Tripodi knew the defendant for all of about two months. She said she doesn't recall him to be violent. But this is two months during which he and she got involved in this property growing marijuana, bringing in workers, arming the workers, getting her to help him fill out these money orders so that he could try to get money into the bank without anybody really knowing what's going on, fraudulently putting other people's names on it that had nothing to do with the money that had been gotten. That's the relationship between Ms. Tripodi and Mr. Wilde in the course of about two months.

So that's it. That's all that they've presented to you on that issue. That's all that you have on that particular issue. So don't let him stretch that into some sort of testimony or

evidence beyond that.

Just before I go through the counts to sort of argue count by count, and I'm not going to repeat everything, obviously, that you've heard before. I'm just going to try to deal with Mr. Serra's arguments briefly.

One of the other very incredibly remarkable thing about Mr. Serra's argument, what didn't he talk about in his entire discussion of self-defense? Mario Roberto Juarez-Madrid.

Assume for a minute, and I don't think it will be long if you do assume it, but assume for a moment that Mr. Lopez-Paz had a firearm. And I'll get into all that, and the reasons why he couldn't and didn't, and why certainly it's not credible that he did. But assume that he did for a moment. According to the defendant -- even according to the defendant, and according to them, everybody who was there at the scene, Mario Roberto Juarez-Madrid was unarmed. He was unarmed. He was unarmed, and he was gunned down from behind.

Mr. Serra spent his entire time up here, basically -- other than the elephant thing, which I got to admit I don't get -- and some other stuff talking about how there was a gun, and therefore we were talking about self-defense. He did not explain, because it's unexplainable, which explains his client's testimony, he did not explain how or why that alleged self-defense claim allowed him to shoot the actual murder victim in this case from behind. He didn't even try, ladies

and gentlemen. That's because you can't explain it, and that's why the defendant testified in the manner in which he did.

Briefly, I'd like to go through -- so ladies and gentlemen, I'd like to go to Count One just briefly. Mr. Serra complains that, you know, you heard from Deputy Silva about what the plant count was. If you recall, Deputy Silva, he testified that he was the case agent, that he was present at every site, and that he was present for the plant counts, although he had other people assisting in the count, and that he then tallied up all of the results in his report.

I guess Mr. Serra wants whatever sheets he used before he created a report. But that's it. It is irrefuted. There is no contrary testimony in the case that the plants were 1586 plants, so don't get, you know, misled by that.

Now, if you really wanted, we could have called in ten more cops to each say, "and I counted some plants too." But what you had was the admissible evidence by Deputy Silva that he collected up and reported in his report, which everybody in the case had, the plant count. So it's irrefuted that there were 1800 -- I'm sorry, 1586 plants.

The only contrasting testimony is from the defendant. He says "I don't believe that's right." I say, "When did you stop counting?" He says about -- or "when I met Ms. Tripodi," which is about two months before he gets arrested. So that's pretty much almost the entire duration of the grow.

At one point he literally slips into his mode of blaming other people, and tries to blame Mr. Lopez-Paz for the number of plants when he's the boss and he's running the place. But he, at the end of the day, says, "No, I cannot contradict or refute what was counted there, because I lost track about two months before I was arrested," which is basically when the grow starts.

So it's irrefuted that the marijuana conspiracy existed. And I'll just do what Mr. Serra was indicating, and go quickly through the verdict form as we go through this.

So as to Count One: Yes, guilty. As to the second question: It is irrefuted -- and, again, he slipped into this thing about the plants, and so on.

And just so we're all crystal clear on this, as the Court has already instructed you, all marijuana plants should be included in the quantity regardless of gender, so there you go. So as to this question two as part of Count One: A thousand plants or more.

Count Two is basically the same type of charge. It's the same evidence that supports it. Count One is the conspiracy, which is the agreement among the co-conspirators or, as the defendant referred to them, his circle, to grow and distribute the plants. Count Two is the actual substantive act of moving forward with the plan.

This is the same evidence. As to Count Two: Yes. And

again, for the same reasons, a thousand plants or more.

Just briefly, I want to touch on this notion about the subculture of Humbolt County, as the defendant has characterized it. Even if you sort of believe the defendant about a certain subculture of Humbolt County, it should be plain that this is not a case about the legalization of marijuana - a perfectly appropriate social, maybe medical movement that has its own obviously legal arguments to make. Mr. Serra says it will soon be the law of the land. That may well be true. But for right now you've taken an oath as jurors. We have the facts before you. We have the laws that exist currently. And I think as all of you know, Mr. Wilde could have been growing rutabagas on his property, and he would still -- we would still be here or in a court of law determining this issue.

But do not let Mr. Serra attach this defendant, Mr. Wilde, to an appropriate and property legal medical movement that has views, is expressing those views, and is trying to proceed with their own legal ways of dealing with that. He's not part of that.

Just one other issue. You know, there was a lot of talk about collectives, and how it was for the collective, and this and that. The evidence in this case has shown, ladies and gentlemen, that this was a -- this was a cash crop. This was a business venture. Collectives, as Mr. Wilde himself conceded,

he shouldn't be having firearms. You're not supposed to be hiring any illegal workers. It's not supposed to be for profit. This was not established as a nonprofit. This was established as an LLC with two members and one CEO. And this was 400-something thousand dollars in debt from its inception, so it had to make money.

And remember when he talked about his circle, the circle of people on the property that were involved in the property, that were working on the property, that were involved in making this move forward and happen. Not one of them -- and I'm not asking you to go back and do this, but not one of them was any of the folks that he had recommendations for that were listed in the binder that he had as the members of this particular collective. Where he got those photographs and IDs, who knows. But none of those folks, not one of them, the 20-some-odd -- Mr. Serra said I got to stop counting, it was too many of them -- was in his circle or involved in this in any way such that it was a collective growing medicine for the members of the collective. That was nonsense.

I'd like to jump ahead very briefly, and that's just to address Counts Four and Counts Five. And I just want to clarify that Count Four really relates to this period of time from the time that Mr. Bigelow and Mr. Juarez-Madrid arrive at the property up until the night of August 24th. And Count Four relates to carrying, possessing, using, brandishing,

discharging firearms in connection with protecting the grow.

It's -- at times, I think by Mr. Serra, I'm sure unintentionally, slightly conflated with the events of August 25th. But just to be clear, that's -- these are two separate crimes because of the break, and because of the underlying crime that's charged. In other words, Count Four relates to Counts One and Two, which are the narcotics charges and having guns there to protect the grow and to protect the property, which is illegal. Count Five relates back to Count Three, which is the illegal killing in connection with the narcotics activity. And Count Five also actually relates to the shooting of Fernando Lopez-Paz.

The argument was made that there is no count here related to the shooting of Mr. Lopez-Paz. That is not true. Because Count Five covers the use of the firearm, the brandishing of the firearm, and discharge of the firearm on August 25th, specific to when he arrived at the property there with the intention of killing the workers and shot Mr. Lopez-Paz in the face before murdering Mr. Juarez-Madrid. So Count Five relates to that.

The defendant, his only -- I mean, that's been proved every which way, Count Four and Count Five, in terms of him having and using firearms. He claims this necessity. If you recall back, I think Ms. Hopkins blew that out of the water. But he went back through it, so just to touch on it.

The elements include choosing the lesser evil. And so here, the issue is Mr. Lopez-Paz was robbed once and, as a result, Mr. Wilde elects to arm his drug operation. That is not the choice of two lesser evils as it -- certainly not as it plays out, and it's not the choice of two lesser evils period. It is not. And I'll move now into the second part of it. It is not an imminent risk. It not an imminent harm. Imminent harm -- and this will relate to the self-defense instruction also -- it's something immediate. It's not something that you fear in the distant future. Something you fear in the distant future is not imminent, and that relates to the self-defense claims that Mr. Serra makes as well.

But certainly the prospect of potentially being robbed is not an imminent harm, a risk of imminent harm. That's something where there's somebody there in front of you, and you immediately have to choose to do something that you otherwise don't want to choose to do.

The defendant did not act reasonably, and certainly not as to Count Five.

And then finally, the defendant had an unlimited number of lawful choices. Mr. Serra scoffs about calling the police, and he reads to you from a song. The standard here is whether or not there is a reasonable, lawful choice to be made, not one that he doesn't want to do, but whether or not there's a lawful choice of something else you can do.

So that -- this has to be something impending and huge, and it causes you to have to break the law. That's what these elements are about. And here, a lawful choice is you get out of the business. A lawful choice is four guys came and robbed my worker. I'm calling the police, and then we get the police out here to go look for these guys. Mr. Serra scoffs at that. He can't scoff at that. The defendant didn't even try. He didn't do a thing. He didn't make a lawful choice. At every turn he made an unlawful choice. He made the choice of the worst evils at pretty much every time.

Just one other issue here, this notion that nobody in Humbolt County calls the police. And I'm sure nobody in here believes that to begin with. But I believe Mr. Serra made a big deal on the day that they were looking for Mr. Wilde. How many cop cars did you see? Was there a lot of cop cars? There's like 26 cop cars. There was cops everywhere. Cops on this road. Cops on -- well, yeah, there's cops up there. There's sheriff's officers up there. You guys had to hear from countless number of folks who had to come down here and testify. They have cops, because people call the cops there. Maybe they don't call because somebody next door to them is growing pot in their backyard. But robberies? Murder? I had to kill somebody to protect myself? Folks call the police up there. That's why they have them.

So Counts Four (indicating) and Five were proved

(indicating).

I just want to point out something on each of these pages. There then are a variety of different specific uses of the firearm that you'll be asked to fill out if you all unanimously agree on them. As to Count Four, certainly they used and carried firearms. Pretty much everyone on the property at some point carried firearms.

And just one other thing I want to get -- I'm jumping around a little bit here, I'm sorry, but I'm dealing with a lot of different arguments.

Mr. Serra made this argument about how, you know, oh, Mr. Lopez-Paz, he admitted his fingerprints might be on that, you know, on that gun. Well, yeah, if you -- through the course of this, pretty much everybody on the property at some point or another handled or carried each of the three firearms that were on the property, either carting them around while they were out doing whatever they were doing, or having them at night worried about whatever might come onto the property, or the target practice.

And so Mr. Lopez-Paz says, yeah, you might find my fingerprints on there, because he handled the gun. He had handled each of those guns at some point during the course of the time that they were there.

In any event, so you got using firearm, carrying a firearm. Brandishing a firearm, this one may be questionable,

brandishing a firearm, whether or not they ever brandished a firearm during the course of the time that they were on the property. Really, the only testimony you have about that actually comes from the defendant. I want to get into that for a moment too. This relates to Mr. Lopez-Paz, and sort of the whole fear notion.

But, you know, the defendant said -- or first we had Ms. Tripodi say yes, the defendant was fearful because Mr. Lopez-Paz had held a gun -- Fernando had held a gun to Mikal Wilde's head. He said, you know, "Fernando held a gun to my head, and I'm afraid." The way that the actual testimony played out -- give me a moment to find this. If you recall, and this is -- you know, where he jumps around the trailer, and haha, had you been, you know, trying to rob us, you'd be in big trouble now, and so on. But just what actually was said: "And then out of nowhere, pow, you know, just like that's what he said, Fernando. And Berto came out from some trees over here (indicating), and Fernando came out from behind the trailer. Okay. The trailer is right, like, this desk (indicating). Fernando came out from behind here (indicating), and Berto came out somewhere over here (indicating). And they jumped, and Fernando had the .44 pointed at me, like, jokingly. Okay." And he said -- and he gets cut off by his own lawyer. "How close? How close?" Because he's saying, like, jokingly.

This is the defendant's own testimony about the supposedly

horrific experience of having a gun held to his head by Fernando, who is actually jokingly, and Mr. Serra didn't really want to listen to more of that, so he gets cut off.

But in any event, so this one is a maybe (indicating) -- this brandish, maybe. But, you know, certainly that happened.

Discharge a firearm. They were doing target practice. They were firing the guns while they were out there, so that they'd be better suited to take on the bears or robberies. They were all doing target practice, so you've got discharge.

Count Five relates to the August 25th and the shooting of both Mr. Lopez-Paz and Mr. Juarez-Madrid; and there, clearly, he carried a firearm, he used a firearm, he discharged the firearm, and he had to brandish the firearm, and these are all Mr. Wilde during the course of shooting Mr. Lopez-Paz and Mr. Juarez-Madrid.

So now let's get to the two counts that relate to the killing of Mr. Juarez-Madrid. And with respect to Count Three, I think that the evidence for the two sort of flows together and I want to deal with them both at the same time. The only thing I want to re-emphasize for you is legally, legally with respect to Count Three, self-defense is not part of the listed defenses. You don't have to consider whether there was premeditation. You don't have to consider whether there was malice aforethought, and there's no second degree or involuntary manslaughter as lesser includeds as to Count Three.

He either intentionally killed somebody in connection with his marijuana offenses, or he didn't.

If you decide, as Mr. Serra has argued, that, you know, potentially there's some other rationale for the shooting other than in connection with his marijuana operation, just note that the instruction says so long as one of the reasons that the shooting -- I mean that the killing, sorry -- occurred is related to a marijuana offense, then the government has proved that crime.

So, that's sort of Count Three. I'm going to argue Count Three. But I'm saying in terms of legally, that's a distinction between Count Three and Count Six that is potentially important, but only important if you buy the defendant's story. And here's why the defendant's story flat out doesn't fly, and I want to address it in basically two large chunks.

First, his main and really only -- you know, he's saying well, it's self-defense, but if it's not self-defense, it's heat of passion. You know, he was so overcome by something that, you know, he just felt like he had to do it. Well, those two are inconsistent, ladies and gentlemen. Self-defense is I have to kill somebody because I'm in fear of my own life, imminent, fear of imminent harm, and it's reasonable, and so on.

The heat of passion and that defense, to get to voluntary

manslaughter, is really I did it, I probably shouldn't have done it, but I was just so overcome by whatever it is that I just went ahead and did it. And those are two very different things. So he's arguing them both. But there's really no evidence for voluntary manslaughter. There is only evidence of self-defense, and again, only as to Mr. Lopez-Paz, which I'll get into later, for self-defense, and that's only if you believe the defendant.

So first of all, Mr. Fernando Lopez-Paz was not armed with a firearm. How does it come in that the evidence shows that he was not armed with a firearm? Well, first of all, Chris Bigelow says he wasn't armed with a firearm, and he himself, Mr. Fernando Lopez-Paz says he wasn't armed with a firearm. Mr. Serra says, oh, they're inconsistent. They got the truck pointed in two different ways. Okay. They're inconsistent because one of them saw one gun and one of them saw another gun. And I believe there are a couple other inconsistencies.

Ladies and gentlemen, please -- and this is, again, where common sense kicks in. On Monday we were all here. On Monday, I believe on Monday, I did some questioning. I think I questioned Daisy Wilde, and I think we started with the defendant, maybe we started there. Anyway, I think I questioned somebody on Monday. I was in front of you. Bare minimum I was sitting over at this table, and I'm pretty sure I was wearing a tie.

Now, if all of you went back into the jury room and started deliberating, and the important question of the day was what the heck was the color and pattern on Frentzen's tie, you'd probably get 16 different answers. Probably get some, you know, I think it was yellow, I think it was red, I think it was silver. You may all agree it was ugly, but you would have a serious contrast, and -- I forget if it had stripes. No, I had this weird, you know, whatever. And that's because whatever color and style of tie -- and by the way, if I went back there you'd probably get 17 different answers, because I don't even recall.

But the important thing is it wasn't important. It wasn't critical at that time, given what was going on. And that was a full day. That was, you know, whatever -- however many hours we put in in a day during the course of this trial, I don't know, five, six hours or so. And I was in front of you the whole darn time. But it just wasn't that important at that time.

Here, we're talking about moments. We're talking about a matter of seconds in which this confrontation occurs. The truck pulls up. The defendant gets out. He's on the phone, and he's off the phone. Then he gets out. Sorry. He's standing right outside the door of the truck. Mr. Bigelow has a vantage point from inside the trailer out. Mr. Lopez-Paz has a vantage point coming from a different angle, and both of

those witnesses agree that Mr. Juarez-Madrid is out there with him.

So they focus on what's important, you know. And like I said before, the fact that you guys all would say a different color or pattern of the tie doesn't mean we weren't here for hours. It doesn't mean the important stuff didn't happen, like witnesses were called to the stand or, you know, we all got to go to lunch for a moment, or something else that you all recall. It just means that's not the part of it that you were focused on.

Mr. Bigelow and Mr. Lopez-Paz were questioned about everything they possibly could have looked at at that particular little period of seconds. You know, where were the trees? Where was the -- was the marijuana over here? Where was the -- every possible question that they could be asked about. And so in the course of all of that, there are some minor inconsistencies, the things that they weren't fully focused on. But what was important is that they had in common there was no threat to Mr. Wilde. Nobody power walked at Mr. Wilde. Nobody rushed at him. Mr. Lopez-Paz and Mr. Juarez-Madrid were unarmed. That was the testimony by Mr. Bigelow and Mr. by Lopez-Paz, and they were absolutely rock solid on that. They were absolutely consistent.

And so these inconsistencies are about, you know, what direction the truck was facing. Well, when a guy gets out of

the truck and then pulls a gun and starts shooting at your friends, are you really focused on which way the truck was facing?

Now, they say two different firearms, and collectively they cover both firearms. But, again, (snap) this would have happened like that, not even like sitting all day and being able to examine something. So you would expect that there would be some minor inconsistencies, and that perhaps, hey, it looked like the .44 to me, it looked like the .357 to me. You know what, it's still a revolver. It was still him (indicating) who pulled it out, and it was him who shot at the other two guys. And the other two guys were turning and starting to walk away at the time that the shooting broke out. So these inconsistencies make sense.

And then, what does it take? What does it take to say, well, you know what, these two guys are lying, or that you can't believe them because they've got two versions with very minor inconsistencies. What does it take to accuse them of that when you won't even say you remember it? Your version of it is bang. And I went dark. I went into a cave. I don't want to be questioned about that. Please don't question me about that. I can't explain it. You know why I can't explain it? Because it's so horrible, it's so terrible, and it's so unexplainable that I can't explain it. Instead, let's throw aspersions at the testimony of the guys who did say what

happened, the guys who stepped up and said here's what happened. No, I don't remember anything. I'm sorry. Oh, please don't ask me that. How many times are you going to ask me that when I say I can't remember? I was in a cave. That's nonsense. That's garbage. Your common sense tells you that's a fabrication, and you fabricate something like that when what you did was so absolutely mind numbingly awful that it can't be explained, which is what occurred here. It's not self-defense.

The two individuals, Mr. Bigelow and Mr. Lopez-Paz, they told what happened right off the bat. Mr. Bigelow hid in the woods all night, and he saw what he thought was the defendant's truck with a flashlight driving around and looking in the woods. Maybe it was the defendant's truck, maybe it was somebody else's truck. I think it was established it was not the owl people. But maybe it was somebody else's truck. But that's what he believed.

He hides all night. And in the morning he finds this jogger, Donald Graham. I know it's been a while, but does everyone remember Donald Graham? The pretty awesome elderly jogger who was jogging there. And is Donald Graham making stuff up? Donald Graham sees him and goes "oh, my God, what's going on?"

And right then and there (snap) Mr. Bigelow isn't hiding from anybody. Well, he's hiding from one guy (indicating). But, I mean, in terms of his story, he tells it right away.

And they get him back. You know, Graham runs out -- and Graham told you what he said. He didn't say he was kidnapped for ransom in the trailer. It's a bunch of nonsense. Didn't say that there were these two guys who attacked his boss, and so his boss had to protect himself. No. He said this guy (indicating) started shooting and shot my two co-workers. Tells that right away.

Graham goes and gets the uncover guys that looked rough to him. He wasn't sure they were cops at first -- if this is ringing a bell -- and it turns out they're undercover drug guys, and they all go back. And (snap) Bigelow tells the story again. And Graham listens, says that's the same story that he's been told just right before that.

They get him out of the woods. They take him back. Next thing you know (snap) written statement Ms. Hopkins read to you to other day. Doesn't say I was kidnapped and then, you know, Fernando and Roberto attacked my boss. No. It says my boss showed up. He was angry. He didn't want to let us go. He was mad about the money, and then he shot.

That happened right away. After Mr. Bigelow was hiding in the woods all night, Mr. Lopez-Paz comes out of the woods. He's up at the fence line, remember, at the Cal Fire Station, the Cal Fire Station the defendant claims he doesn't remember, but then Kyla texts him and shorthands for the Cal Fire Station. And he says, but Fernando comes up, and they have to

get him medical treatment. But as soon as he's medically treated, (snap) he says here's what happened. And you know what, it fits with what Mr. Bigelow says happened. But they had no time to collude, come up with the same story that's completely the same, other than these minor inconsistencies about which way the truck was facing. I mean, this is absolute, right-off-the-bat here's what happened.

And in contrast, Mr. Wilde, Mr. Wilde wants you to believe that he was in fear for his life, that he had to protect himself such that he shoots one man in the face and kills another one by shooting him from behind, and then he wants to have dinner. He jokes around on texts, laughing out loud and smiley faces. He wants to go back home. He calls his friends, his circle. He doesn't call anybody. There's supposedly an armed killer on the loose on his property, and he doesn't tell anyone.

And then he tells you something completely incredible, ladies and gentlemen. He tells you that the next morning he wakes up, and then he sees on his cameras that there's an SUV rolled up, and he thinks that's probably the police. I really want to talk to them about my marijuana operation. Let me get all my laminates in line, and let me go out there and talk to them, because they're maybe going out to the property. So he says, oh, I really wanted to talk to the police. He concedes. He's not somebody who never calls the police. He wants to talk

to the police about his marijuana operation. But hey, having to save his own life, he doesn't want to talk about that. He hasn't bothered to call anybody. He hasn't reported it to anyone. In direct contrast to Mr. Bigelow and to Mr. Lopez-Paz who said exactly what happened as soon as they were safe.

In contrast, Mr. Wilde had years to come up with a story. He had all the discovery in the case, and he was able to put together what he, I suppose, thought was a way to try to tiptoe through the tulips, which you just could not do in a case like this. And what he comes up with was I went in a cave, and the rest of this incredible story. But he knew everything. He had access to everything. He was able to review it. He was able to consider it. He could fold that into his story, and even then it didn't stand up.

Mr. Bigelow and Mr. Lopez-Paz were corroborated by the forensic evidence. Corroborated. They were supported by the forensic evidence. You've seen it already a couple of times. But immediately, immediately upon being found out of the woods, Mr. Lopez-Paz says "I ran this way around the trailer. Roberto ran that way." Crime scene guys go out, blood trails, get DNA testing a year or two later, after they already told their story two, three times.

This (indicating) is Roberto Juarez-Madrid's blood trail going off onto the ridge and down the hill. This (indicating) is Mr. Lopez-Paz's blood trail peeling around the trailer, and

then going down that steep ditch to leave the flip-flop. The flip-flops that supposedly they got geared up for an attack in flip-flops, and, according to the defendant, were power walking at him in their flip-flops. Well, one guy in flip-flops. It simply supports Mr. Bigelow and Mr. Lopez-Paz. And if you believe them, either one of them or both of them, then the defendant clearly lied to you.

Now, I really -- I don't want to go through these texts again, but I just want to point out a couple, because as Mr. Serra rolled through them, he skipped a few or left some stuff out.

Very briefly. And it's just part of what makes his story incredible, and let's you know that there was no ransacking at the house, and there was no gun in Mr. Lopez-Paz's hand.

He skipped at 11:28; right? He was going along with the talking about how he had to put revolver bedstand, but he skipped the part about how this whole revolver bedstand and gangster life and pit bulls and everything out was about Nessa and her brothers with those voice mails; do you remember that?

The other part of it that he referenced, but he left part out, was this at 2:59, Mr. Wilde says: "Those fucks said they were ransacking our house. Enzo is inside. I'm stuck at ranch."

Well, on the stand Mr. Wilde admitted the workers, who he refers to as "those fucks," didn't say that to him. Tom Tuohy

didn't say that was going on when he talked to him. Tom Tuohy testified and said that isn't what was going on when he talked with -- or when the workers had called in, and he didn't convey that to Mr. Wilde. And Mr. Wilde admitted that's right. Tom Tuohy didn't say they were ransacking the house. And then he had to concede they had no way of calling him on the phone, so he had to concede that the workers didn't say they were ransacking the house. So that thing about "those fucks said they are ransacking our house," that was just made up. It was fabricated. He said who would fabricate that? Well, his client admitted he fabricated it.

Now, his fallback, when he realizes there's no phone call and Tom Tuohy doesn't back me up, his fallback is, well, I thought they went to the fire department -- or he said they walked to the fire department. But I didn't know about the fire department at the airport, which is later on pointed out to be absolutely false from the shorthand text from Ms. Tripodi to him about "at CDF. Come to gate." But, we'll skip over the small lie and get to the bigger lie.

I didn't know about the airport there, so I thought they must be talking about Freshwater. And if they're going all the way up to Freshwater, then they must have gone to my house. If you can follow this -- you know, anyway, but this is what he said, if you recall his testimony.

So then I realized, well, if they're going to walk all the

way up there, then they might as well just go in my house and use my house phone. And if they're in my house, then they're ransacking my house. I mean, this is literally what his story is. This is his support for the ransacking of his house or for him lying in his text saying "those fucks said they're ransacking our house," when he admits they never said that. They had never said that to him. This is the convoluted logic he tried to get away with on the stand. So it's false. It's not true.

And at this time, remember, he hasn't gone to his house. And remember what time this is, 2:59 p.m. By this point the defendant admits he talked to Tom Tuohy. He talked to Tom Tuohy about them wanting to quit and getting paid, and if they didn't get paid, they were going to go to the cops. And he can't have his property eradicated.

You know, Humbolt County, they got a lot of tolerance for marijuana. True. But there's a difference between being arrested and just having them come out and doing an eradication, and he couldn't handle either one. Remember, he's 400-something thousand dollars in the hole. He's got to get paid off, et cetera, et cetera. He needs to make money. If this crop goes down, how is he going to make the 10 grand payment a month on the property and whatever his house mortgage is?

So he comes up with this story. And recall, he's not at

home, so he's not checking out at home. He's just talked to Tom Tuohy, and now he's mad at him. And so all of a sudden he comes up with a story that they say they're ransacking the house. And the next part of it is "they demand payment after quitting and on the terror. They may have got that off our nightstand." So now he's -- this is what he's saying. And remember, he still has not gone by the house, according to him.

Now, Kyla's texts are telling, because she's saying, "what got them all heated? Have you talked to Tom? I'll borrow money tonight." We know this doesn't happen. He doesn't even actually ask her to hit up her father for money, as it turns out. And then she starts saying "how the F did they did down walk. Wonder where Chris is?" She's saying how did they get there? Because she knows the house is, like, 11 miles away, and she knows they don't have access to the trucks anymore. And I'll get to the trucks in a moment.

But she's punching holes in his story. "Either they ransomed Chris or cuz they're claiming Chris walked with them and says the same thing." So even then -- this is just -- down here she's saying "how are they calling you?" And this part Mr. Serra skipped. In fact, I think he skipped it when the defendant was on the stand, and he skipped it again in his -- as he was trying to spell out what was in his client's mind. "Stop the phone logs. Important." She's punching holes in his story. Nobody said they're ransacking his house. He hasn't

been home. He hasn't seen that anything has been ransacked. He doesn't know what is or isn't in the house. And she's going, hey, this doesn't make any sense. They can't call you. How are they going to get there? They can't get there. And he's saying, shut up. "Stop the phone logs. Important."

At 5:00 o'clock, there's the meeting at the Shell Station where, bizarrely, although he's now said his house is being ransacked, they don't talk about it. They certainly haven't called the police to go check the house. They haven't gone to the house to check the house, although they're both within, I think, you know, as it played out, 30, 35 minutes drive to just go check out the house.

Supposedly, his poor little puppy, poor little bull dog puppy is in the house, but he's not going to bother to drive over there and check it out. Why? Because it's nonsense. It's not happening. Nobody said that to him. He's coming up with stuff. They don't talk about it at all at the Shell Station. Does anyone find that credible on either of their parts. Right? It's incredible, unless they understand that this is nonsense.

Then supposedly he goes to the house. We all know about these texts. We went through them in excruciating detail with Mr. Wilde. He has zero explanation for this. He's talking about iPods. He's talking about Ruben -- oh, sorry, this is minor. But he's telling Tripodi that Ruben is coming, so she

doesn't bother asking her father for money. But meanwhile, between the time that he met with her in the Shell and right here, he's had absolutely zero conversation, text or phone, with Ruben. And as we pointed out, Ruben doesn't live there, so there's no way he could have actually talked to Ruben. So this is more fiction. The man with no guile who is incapable of guile, according to Mr. Serra, this is all guile.

So now he's, according to him, this is when he's at the house, and he's seeing that the gun is missing. Oh, my God. But this is what he's texting about: The iPod, the money with Ruben. Enzo, the bulldog puppy, he's okay. Thank God the ransackers didn't do anything to the puppy. And then unfortunately the number 2. So this is what he is actually texting about when supposedly he's discovering that his house has been ransacked. This is nonsense. This is fiction.

It goes on. And just another last significant part of the texts, obviously, is this. Kyla Tripodi: "They didn't walk." He recruited her into this. By this point in time he has shot Fernando Lopez-Paz in the face, and he's taking off around the side of that trailer and run, and he's murdered, Mr. Juarez-Madrid, and she's saying "they didn't walk." He's looking for them still. He's still hunting for them.

This is not the action of somebody in a cave with scattered whatever. This is somebody who is actively looking. He's recruited his girlfriend into it. She clearly didn't want

to admit that when she was here with you. But if you recall, Ms. Hopkins asked her a good, long series of questions about how any of this makes sense, for which she had zero answers. That's because she's somebody that doesn't want to get pulled into any further Mr. Wilde's conduct. And she clearly, she admitted to you -- and later on you can see all these texts where she's fake fighting with him just to try to create a ruse so that if her texts are ever discovered or his texts are ever discovered, she's got something to cover her as to why she's no longer around him anymore. She admitted to that. That was a ruse. That was fiction, so we know certainly they're capable.

But, "they didn't walk." He's laughing out loud. He says he must be in a fugue state, or whatever, in a cave, because he's laughing out loud. Ladies and gentlemen, I submit to you he's just that mindset, if you will.

Now, does Ms. Tripodi know why he's looking for them? Maybe, maybe not. That's entirely likely. Entirely likely he came up with some reason to be looking for them, but clearly he's recruited her into looking for them.

So those are the text messages.

I want to briefly run through the impossibility of obtaining that firearm, the impossibility of obtaining the .357. And remember I asked very specifically: Now, are you sure it was that .357? Yes, yes -- of the defendant: Yes, yes, it was Tom Tuohy's .357. The impossibility of him having

that .357 is this. According to him, he's at the house until 9:00-something in the morning, I think almost 10:00 o'clock. He then leaves, runs errands, does whatever, pretends he's going to return the .44, although somehow he never manages to meet up with the lady he's going to return the .44 to, so he unfortunately, as he puts it, still has it all the way through to the next day -- I mean till later that day.

But in any event, as we go through that, he shows up at the property at sometime around, like, say 2:00 o'clock, 2:00 or 3:00 o'clock. Now, by 2:00 or 3:00 o'clock -- let's say 2:00, because by 3:00 he's already talked to Tom Tuohy, and, you know, he's about to have his encounter with the workers returning from the airport. I'm going to try and keep all this condensed, but it's got some moving parts.

So from 9:00-something, almost 10:00 o'clock, until about 2:00 o'clock, there's -- no, I'm sorry -- until 11:00-something, my apologies, because 11:00-something is when he says "those fucks said they ransacked the house," which we already know, according to his own admission, is false; right? But, so at that point they had to have, right, supposedly ransacked the house.

So you've got from, when he leaves -- oh, no, I'm sorry, that is 2:59. My bad.

So when he leaves -- he gets to the property around 2:00. There's no way. It's physically impossible. We put in what's

the distance from the property to the house. Oh, it's about 11 miles, if I recall correctly, Special Agent Collar's testimony. Well, you can't walk 11 miles. So the defense's theory is, well, they must have driven. And, you know, there was a key in the water truck, and there was supposedly we hear at the last moment a key in the console. Why you would take the keys away from them but then leave one in the console is -- makes no sense, but whatever.

Just briefly, ladies and gentlemen, let's start with the water truck. The water truck, had it been driven, the state in which it's found -- take a look. There's a hose hanging over the back end of it, so somebody didn't drive that, unless it was brought back and then more watering was done with it. But there's just not time for that; right? Because later on that day is when the defendant does the shooting, so they would have had to have driven it, come back, and then hung the hose back over it, which is nonsensical.

This isn't a huge point, but there's some leaves up on top of the truck, leaves and other little things. Could have happened within the span of a day, I suppose.

Another photograph of the hose hung over the back, and then this (indicating). There's this huge fire looking hose, water hose thing on the passenger's seat of the front seat. Nobody's been driving that thing or two guys have not been driving that thing around. One guy has been driving it. If

you recall, too, both Tom Tuohy and Mr. Lopez-Paz testified that that thing had a broken rear end, and it wasn't at that point in time operable.

Sorry. Now, the black truck, the black truck is worse for them, because the black truck's got -- somebody would have had to come back and stick these things in there. You got trash, so it's almost impossible to get in the front passenger's seat. You got Bigelow's sleeping bag still in the back from when he was sleeping in there. You got Bigelow's bag in the front seat, because that's where he crashed for the night. This truck has not been moved.

And just one other, sorry, key piece of this. I can't find it. Sorry.

(pause in proceedings.)

I'll argue it, if Mr. Costello can find it for me, if my brain can find it for me. You got the photograph, if you remember, with the trailer, the trailer hitch of the water trailer on the back end of the black truck, and it's got Mr. Bigelow's shoes sitting on there from the night. Remember he said they hiked to the river and his shoes were all wet, so he stuck his shoes up on the trailer.

So somebody has got to have driven this thing all over the place and then come back and tried to make it look the same as it was when Mr. Bigelow was sleeping in it and drying out his shoes. It's nonsensical. They couldn't have driven. They

didn't drive. So if they didn't drive, were they supposedly walking? They couldn't walk. It takes too long. You can't walk there in between -- in the time that they had to be able to walk there and walk back.

And here's the other reason how you know that they didn't drive over there. They didn't drive over there, because they walked to the airport. We know they walked to the airport, because the fire guy saw them walk up to the airport, and that was right smack dab at 1:30. So really, given the walk to the airport, they've got to drive to the house, ransack the house, get back in time to then go get Chris Bigelow, and then walk to the airport. Plus if you're going to go drive and ransack the house, and so on, why aren't you just going to drive wherever else or make whatever phone call you're going to make while you're driving? Why do you come back, park, walk over, and then walk back?

And even by the defendant's own admission -- and remember I asked: When you got to the property around 2:00 or 3:00, did you go look -- were the trucks there? Were the trucks still there? Yeah, they were there. The water truck was there. The black truck was there. Had these guys been driving it around, he would have noticed, oh, that truck's been moved or that truck's been moved. Neither of the trucks had been moved.

And then at the meeting, at the meeting after the Tom Tuohy phone call, remember, even the defendant admits he sees

the workers come walking back from the airport. So they had to spend at the airport, I think they estimated, somewhere between an hour to an hour and-a-half to walk over to the airport.

So you've got that whole chunk of time missing. So that takes you back to noon. I'm sorry. That was the noon time period. So somehow between 9:50-something and noon, they got to be able to get over to the house. It's nonsense.

Mr. Serra talked about the condition of the house. You have the photographs in evidence. Take a look at the condition of that entire property. See if the condition of that house is any different than any other part of the house, the outside of the house, the back of the house. Every single part of the house there's just garbage and junk everywhere. That house, as Karen Quenell told you, "I've investigated I don't know how many different burglaries, and this didn't look like a burglary. This was just a trashed house." Fernando Lopez-Paz told you "I went into the house. The house was trashed." Tom Tuohy told you the house was always trashed. Kyla Tripodi complained about it. I mean, yeah, she claims she cleaned it up once, but she claimed that it was trashed, and so on. That was not a ransacked house.

So they can't -- they don't go to the house. They don't ransack the house. They don't get the .357. He can't possibly have the .357 at the time that the defendant shows up back on the property. They certainly didn't have enough time after he

left. And after he left, when he goes to the property and then he comes back, as we showed, there's only one way basically to go and come back, so he would have passed them in transit. And furthermore, the same photographs still demonstrate that those were not used to go get the .357. So he didn't and couldn't have that .357.

The other part of this that's significant, ladies and gentlemen, is the metallurgy, which Mr. Serra first hears a red herring. And please just recall. There's two kinds of ammunition that were in the trailer. There's two kinds of ammunition that the defendant had in his truck: The Remington .45 S&W Special -- .44, sorry, S&W Special, it's the RP Remington Peters, and the CCI .38 Special caliber. Based on the metallurgy testing, the ammunition that they had for the .44 was not used. It was not used unless, unless somehow in the manufacturing process Remington Peters screwed up and let out a bullet with the wrong amount of lead in the nose. But based on the way they manufactured, based on the way they screen it, and so on, based on the way that this ammunition is designed to be -- and this is the one she actually broke apart --

MR. SERRA: Your Honor, I have to interpose an objection. He's misstating the evidence.

MR. FRENTZEN: I'm not at all, your Honor.

THE COURT: The jury is reminded that their memory of

the evidence controls.

MR. FRENTZEN: That absent a manufacturer defect, it was not the RP .44 S&W Special. It was consistent, however, with the .38 Special ammunition that they were all using and that was on the property, and that was in the defendant's truck. And this is Government's -- I'm sorry. What is this exhibit number? Government's 119. This is the GPS tracker that the defendant said he used when he and Chris went to the river on 8/24 to be able to get back.

In this pouch, in the console of the defendant's truck, right between the driver's seat and the passenger seat is where that pouch was found and where that ammunition was found. If you take a look, this is between the seats, and this is Government's 50-50. This is that day planner. Remember the one Mr. Serra pulled out and said, "aha, he's got, like, eight seeds in here, so he must be seeding." That just didn't pan out. It was right underneath this that that pouch was found, so right between the two seats.

And by the way, ladies and gentlemen, if you take a look at all the photographs of the defendant's green truck, you will not see a console. In fact, the console is out, and there's nothing stuck in between the seats. Remember the gun is right -- I'm sorry. Mr. Lopez-Paz is walking up and holding the gun, and he reaches in and has time somehow super humanly to get the .44 off of the console and then flip around and just

start firing without taking any bullets himself or any bullets in his truck, which was a fiction, I submit to you.

But there's not a console here. And then underneath you can see this is the Bushnell Backtrack, and then two rounds of the .38 Special CCI ammo right between the driver and passenger seats. Here's it with the day planner pulled off of it (indicating).

The defendant also had .44 ammunition in his back -- in the back of his truck, ladies and gentlemen. And this is yet another sort of -- there's a lot of -- they had to remove -- they took photographs sort of as they took junk off. But you can see, if you go through this, that there was a lot of stuff piled on top. But eventually if you peel down, you find that .44 S&W caliber RP ammo. That's this Government's 118 that was in the back seat, but under a bunch of junk.

So the defendant had ammunition for the .357. He had ammunition for the .44, and he had it in his truck when he went out there on August 25th.

The defendant had both the guns, ladies and gentlemen. What gun he used to shoot Mr. Lopez-Paz in the face, what gun he used to shoot Mr. Juarez-Madrid in the back, and what gun he used to shoot him in the back of the neck that exited out of his mouth is not forensically demonstrated. It could not be. They were through-and-through shots. There were no projectiles recovered at the scene. But certainly, certainly by the time

that he walks up and shoots Mr. Juarez-Madrid in the back of the head, he is not, unless lightning struck and the wrong kind of lead got into this particular -- and recall, what Ms. Marvin checked was from the same box that was in the truck.

MR. SERRA: That's not the testimony, your Honor.

MR. FRENTZEN: It is.

MR. SERRA: Objection.

MR. GREGORY: The same boxes?

THE COURT: Well, again, objection --

MR. FRENTZEN: Your Honor, what I'm saying is --

THE COURT: Objection overruled.

MR. FRENTZEN: What I'm saying is the box in the back of the truck.

THE COURT: The jury will, again, abide by its own memory of the evidence.

MR. FRENTZEN: -- that had the same level of lead and antimony that was expected, according to the manufacturer. This is the box in the back of the defendant's truck (indicating). And from the pouch, she tested -- the individual round that she tested on the CCI ammunition was one of the two from the pouch on the floorboard of his seats, and that was what the manufacturers recommended and intended the levels of lead in antimony respectively was.

So that .357 most likely was used, absent some manufacturer defect, was used in order to kill

Mr. Juarez-Madrid based on the universe of ammunition that they had in the defendant's truck and in the trailer.

Now, the defendant, he wants to talk about other ammunition. He had other ammunition in the house. That's true. I think there may have been a .45 round that was found in the driveway all rusty, and there might have been one or two others, but that's it, ladies and gentlemen. If you check that's it. And so it's absolutely inconsistent that the .44 was used for that final shot.

So with that, you have a situation where the defendant was not acting in self-defense. They couldn't have gotten another gun. He utilized that gun. He probably, ladies and gentlemen, utilized both guns. And the reason for that, perhaps not, but you're talking about four shots connecting; right? In a .44 that carries five shots. And remember what the defendant said before he went in his cave, his convenient cave? What he said was, "and I closed my eyes and boom" -- no, he didn't say that. I'm sorry. That's what he did. But what he said, he didn't know if his eyes were closed or not, but he went "boom, boom, boom, boom."

Ladies and gentlemen, there is no way -- well, he gets off one shot. Mr. Lopez, it hits him square in the face, and by miracle he doesn't die, and he's able to run away. He then shoots Mr. Juarez-Madrid twice at that point in the back of the chest and in the back of the neck, and then he has to have

another shot for the kill shot where he walks all the way up on him and murders him. So he's only got one shot out of that .44 that he can miss with.

Remember his reenactment, not mine, "boom, boom, boom, boom, boom." By some miracle chance he gets off three shots, four shots, hits three times with that .44 as an act of fear, as an act of just, oh, my God, with two different individuals, one of whom is certainly running by the time that he shoots him. Question whether or not he only had five shots to fire. Question whether or not he only had that .44. It's not supported by the evidence. It's not supported by the forensic evidence, and it's not supported by any of the credible testimony in this case, ladies and gentlemen.

So that's Count Three. That was an intentional killing. That's Count Six.

You've heard Ms. Hopkins talk to you about premeditation and talk about malice aforethought. Malice aforethought, again, is an intentional and deliberate killing.

Premeditation, I just want to say one word about that, two words about that, which is it is -- it can be formed in an instant, so long as the perpetrator has the time to contemplate the murder and still determine that he's going to go forward with it.

You have much more evidence of premeditation. You have premeditation reaching back to at least the day before, and

perhaps before that. But certainly, certainly -- and you watched the video of the track between the trailer to the spot where Mr. Juarez-Madrid's body was found. Certainly between shooting Mr. Juarez-Madrid on the landing and then pursuing him down to that spot and walking down that hill and standing as the defendant had to stand, you recall the blood spatter on the right edge of the boot, stand on that hill and reach down and push that gun to the back of his head, that is premeditation, ladies and gentlemen. That is 310 feet of pursuit to consider exactly what it is that you're doing.

Premeditation was proved here. And so with respect to both Count Three and Count Six, given all of the evidence in the case, he certainly killed in connection with the marijuana offense, and he certainly premeditated a first degree murder.

Finally, ladies and gentlemen, the reason why he's guilty of those two crimes is, as I addressed at the very beginning of this, he has no self-defense claim as to Mr. Juarez-Madrid. Mr. Juarez-Madrid was clearly in a state of flight. He shot him three times from behind. He shot him in the upper back. And the shot to the back of the neck -- well, I don't have it, but you can recall it. You'll have the evidence back there. But if you recall the shot showing the angle into the back of the neck with a little to the side and exiting out of the mouth is of a man running and perhaps looking behind, because he was being chased. Take a look at the angle of that shot if you

need to. It's from behind no matter what. But that's somebody being pursued, and there is no self-defense claim in the world to that. It can't possibly be.

Don't let him translate -- even if you believe Mr. Lopez-Paz had the .357, and again, there's no evidence of that, no credible evidence, and certainly not the defendant in this case -- but even if you believe that, you cannot hunt another man down who was, by all descriptions, unarmed. You can't do it because you claim you're afraid of him because he one time told you you got the wrong onions or all this other nonsense about how, you know -- and if you recall the testimony from Ms. Tripodi and Ms. Wilde: Well, he was afraid of them. Well, why was he afraid of them? Well, they made demands. What? The workers wanted food? They wanted an onion? Those were the demands? If you recall back to the testimony, it was pathetic.

But even if you take those as threats, which they certainly were not as they played out and were fleshed out, that's not an imminent harm. That's not an imminent risk of death or great bodily injury such that you can kill a man, and you certainly can't kill him by walking up behind him and shooting him in the head.

So the defendant, if you followed the evidence, ladies and gentlemen, is guilty of all the charges. Thank you very much for your patience.

FINAL JURY INSTRUCTIONS

THE COURT: All right. Thank you, Mr. Frentzen. Let me give the jury the final instructions.

Ladies and gentlemen, regarding your duty to deliberate.

When you begin your deliberations, elect one member of the jury as your foreperson who will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

CONSIDERATION OF EVIDENCE

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you

that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during deliberations.

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any internet chat room, blog, web site or other feature. This applies to communicating with your family members, your employer, the media or press, or people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you've been ordered not to discuss the matter and to report the contact to the Court.

Do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

The law requires these restrictions to ensure the parties have a fair trial based on the same evidence that each party has had an opportunity to address. A jury who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire trial

process to start over. If any juror is exposed to any outside information, please notify the Court immediately.

USE OF NOTES

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. The notes are to assist you in your memory. You should not be overly influenced by your notes or those of your fellow jurors.

JURY CONSIDERATION OF PUNISHMENT

The punishment provided by law for this crime is for the Court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

VERDICT FORM

The verdict form has been prepared for you. The form asks you to find the defendant either not guilty or guilty, for each of the six counts in the Indictment. If you find the defendant guilty of either Counts One or Two, you then must determine -- must also determine the amount of drugs involved in that count. After you have reached unanimous verdict -- unanimous agreement on a verdict, your foreperson should complete the verdict form according to your deliberations, sign and date it, and advise the Courtroom Clerk that you are ready to return to the courtroom.

If it becomes necessary during your deliberations to

communicate with me, you may send a note through the Courtroom Clerk Betty Lee, signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone - including me - how the jury stands, numerically or otherwise, on any question submitted to you, including the question of the guilt of the defendant, until after you have reached a unanimous verdict or have been discharged.

Betty will instruct you -- you're familiar with the jury room -- where you will be deliberating. The evidence will be available for you or to you, with one exception, and that is you will not have in the jury room the electronic evidence that requires some kind of playback or technology. If the jury wishes to view or hear that evidence, we will have to do so here in court through the equipment that I have approved. But otherwise I think you have access to all of the exhibits in this case. You will also have multiple copies of these instructions, and you will also have the jury verdict form which I will send back with you.

Now, at this point the alternate jurors, who have been

sitting very patiently with us, Mr. Luk, Mr. Wolinsky, Ms. Ringly, and Ms. Connor, you will not be participating in the deliberation unless one of the 12 jurors has to be excused for some reason, in which case we will call upon one or more of you to replace that juror. But it is important that you stay within reach and make sure that Betty has your phone number in case you are asked to participate. So you are still on an on-call basis, but you need not be here in the courthouse during deliberation.

When you are excused into the jury deliberation room, I ask, because we have four alternates who are not participating at this point in deliberations, not to discuss this case with or begin any discussion until the alternates have gathered up their belongings and left, and not to begin the deliberations until there's just the 12 jurors in the room.

With that, I will direct the jury to deliberations, and I guess you will -- first thing you have to decide is how long you want to stay today.

We are available, obviously, starting on Monday, if necessary, starting at 8:30.

(Proceedings were heard out of presence of the jury:)

MR. FRENTZEN: Should we stick around for a schedule, your Honor?

THE COURT: Yeah, we might want to wait and see. Betty will get some word as to whether they're going to hang

out today for longer or just recess until Monday. So why don't we stay.

And during the course, if people could stay within like a ten-minute radius in case there are questions, I'd like to be able to be back to the jury quickly.

MR. FRENTZEN: Sure. And just so we are clear with the agents, we have been taking back like ammunition and stuff like that, but that will go -- in other words, does the Court want that to go back with the jurors and then for us to collect it up at the end of the day or --

THE COURT: Yeah, all the exhibits, except for the electronics that we talked about, should be available to the jury. I don't know if we want to cart all that in or let them ask Betty to bring some of that back. There's not a whole lot of room back there, but we should have it all -- hopefully they're all clearly marked, so that if they want a particular item, we can retrieve that for them.

And I assume that you have a laptop or somebody has got a laptop or something in case they do ask for playback of a video or something.

MR. FRENTZEN: Kevin will handle it if they want a playback, yes, Your Honor.

THE COURT: All right. So let's see what the jury decides for the day.

Let me, without saying much more, commend counsel. This

has been a very hard-fought case, obviously, very serious case, and we've had lots of issues and disagreements, as we expect in such a case. But I want to commend counsel, all counsel for the quality of your presentation and the quality of your trial advocacy.

MR. FRENTZEN: Thank you, your Honor. It is been a pleasure.

MR. SERRA: Thank you, your Honor.

(Recess taken at 2:07 p.m.)

(Proceedings resumed at 2:15 p.m.)

(Proceedings were heard out of presence of the jury:)

THE COURT: The concern has been expressed about having the jurors have live cartridges, live ammunition, whether we should keep that out of there until they ask for it and just tell them it's available if they want to see it.

MR. SERRA: I agree. I think that's wise.

THE COURT: And we'll just make sure they know it's available, but if they need to ask for it --

MR. FRENTZEN: I'm fine either way. The only issue then, though, your Honor, is that so long as we could -- hang on one second.

I'm only wondering, because if we have it here in the courtroom, we have to be here with it. But if we have it some place such that if they ask for it, we could bring it -- in other words, we don't leave it in the courtroom either, because

it's live ammunition. We stash it at FBI. But I don't want to have a long delay, but I also don't want to have an agent here all day.

THE COURT: No, you could just bring it. If we get word that they need it, Betty will let you know. Bring it down, and Betty will be the one to deliberate in there. No party should go in there.

THE CLERK: They are here, and they plan to stay until 5:00 o'clock. I mean, if they take as long as 5:00, they will stay until 5:00. So I need to bring the evidence in to them. Any questions?

THE COURT: Well, we're just clarifying something. What won't be in there is the live bullets.

THE CLERK: Right.

THE COURT: That if they want it, we'll get it for them. That's all you have to tell them.

THE CLERK: Just the bullets themselves, not the drugs, because the agents are holding some of the items.

THE COURT: Is there anything else? You have the drugs?

MR. FRENTZEN: Ammo and drugs.

THE COURT: Live ammunition and drugs, if they want it, they'll tell you, we'll get it; all right?

MR. FRENTZEN: And we also have the computer, but I don't want to tell them about that, because we're not going to

let them --

THE CLERK: And the video.

THE COURT: And I did tell them about the video already, but I didn't tell them about the drugs.

MR. FRENTZEN: We'll have the drugs and ammo probably, I guess, at our office.

THE COURT: Minutes away.

MR. SERRA: Did they say they're staying until 5:00?

THE COURT: They're going to stay.

MR. FRENTZEN: Your Honor, sorry, we're sorting out -- we'll have it somewhere.

THE COURT: All right.

MR. FRENTZEN: We'll sort that out.

THE COURT: Do you need -- if they ask for like the drugs or the ammo, does counsel want to be notified when they ask for it?

MR. FRENTZEN: We'll have to be contacted.

THE COURT: You will have it, so I guess we'll let you know, Mr. Serra, and you could be here or not. We're not going to have them come out. I'm just going to have Betty bring it back there.

MR. FRENTZEN: Yeah, we'll deliver it to the Court.

THE COURT: But in transparent -- in the interest of transparency, I will let both sides know that they've made the request.

MR. FRENTZEN: Absolutely, yes, Your Honor.

MR. SERRA: Sounds good.

MR. FRENTZEN: Thank you, your Honor. Appreciate it.

(Deliberations)

(Proceedings were heard out of presence of the jury:)

THE COURT: Okay. Welcome back everyone. We have two notes. You have seen them?

MR. FRENTZEN: Yes, Your Honor.

THE COURT: So the first one, note number 6 -- we're already up to number 6:

"Why was Reuben Childs and Carlos Salazar not asked to testify?"

MR. FRENTZEN: I would just propose that the Court say something along the lines of there may be any number of reasons, and you shouldn't speculate about any witnesses not called to testify or something like that.

THE COURT: Well, I was going to suggest just a simple response that you are not to speculate as to why witnesses were not asked to testify. You are to base your verdict on the evidence presented in the courtroom.

MR. SERRA: Agreed, your Honor.

MR. FRENTZEN: That's agreed, your Honor.

THE COURT: What I will do is type up something, make sure it's okay, and then we'll send it in.

And then next one, note 7: "What evidence number is the

Cyrus Silva report?"

MR. FRENTZEN: I would just say it was not admitted into evidence.

MR. SERRA: I agree.

THE COURT: Okay.

MR. SERRA: These are the easy ones.

THE COURT: All right. So far, so easy. Let me type up something real quick and get it to you to make sure it's okay, and then we'll send it back.

MR. FRENTZEN: Thank you, your Honor.

(pause in proceedings.)

(Deliberations)

(Proceedings adjourned at 5:00 p.m.)

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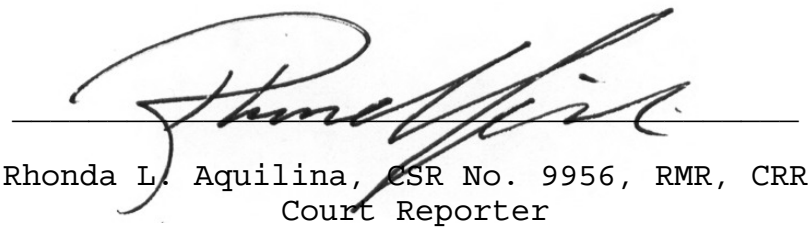
CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Saturday, February 28, 2015



Rhonda L. Aquilina, CSR No. 9956, RMR, CRR
Court Reporter