APPENDIX

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United States Court of Appeals
For the First Circuit

Nos. 18-1687
19-1750

UNITED STATES OF AMERICA,

Appellee,

v.

NOE SALVADOR PÉREZ-VÁSQUEZ, a/k/a Crazy,

Defendant, Appellant.

Nos. 19-1027
19-1745

UNITED STATES OF AMERICA,

Appellee,

v.

LUIS SOLÍS-VÁSQUEZ, a/k/a Brujo,

Defendant, Appellant.

Nos. 18-1975
19-1734

UNITED STATES OF AMERICA,

Appellee,

v.

HECTOR ENAMORADO, a/k/a Vida Loca,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. F. Dennis Saylor, IV, U.S. District Judge]

Before

Lynch, Lipez, and Barron,
Circuit Judges.

H. Manuel Hernández for appellant Noe Salvador Pérez-Vásquez, a/k/a Crazy.

Ian Gold for appellant Luis Solís-Vásquez, a/k/a Brujo.

Rosemary Curran Scapicchio for appellant Hector Enamorado, a/k/a Vida Loca.

Sonja Ralston, Appellate Section Attorney for the Department of Justice, with whom Andrew E. Lelling, United States Attorney, Donald C. Lockhart, Assistant United States Attorney, Brian C. Rabbitt, Acting Assistant Attorney General, and Robert A. Zink, Acting Deputy Assistant Attorney General, were on brief, for appellee.

July 26, 2021

LYNCH, Circuit Judge. In 2016, the government indicted sixty-one alleged members of the MS-13 gang for participation in a Racketeer Influenced and Corrupt Organization Act ("RICO") conspiracy and other crimes. The district court divided the sixty-one defendants into four trial groups. This appeal concerns some of the defendants in group two. The defendants in group three are the subject of our opinion in United States v. Sandoval, Nos. 18-1993, 18-2165, 18-2177, 19-1026, 2021 WL 2821070, at *2 (1st Cir. July 7, 2021).

Three defendants from group two proceeded to trial. After a nineteen-day trial, a jury convicted each of the defendants of RICO conspiracy with a special finding that defendant Noe Salvador Pérez-Vásquez participated in the murder of Jose Aguilar Villanueva and special findings as to each that they had participated in the murder of Javier Ortiz. The defendants allege a number of errors in both their trial and sentencings. We carve out to be discussed in a later opinion defendant Luis Solís-Vásquez's challenge to the district court's restitution order. Having determined that the remaining challenges do not have merit, we affirm.

I. Facts

Because the defendants have challenged the sufficiency of the evidence, we recite the facts "in the light most favorable

to the jury's verdict." United States v. Leoner-Aguirre, 939 F.3d 310, 313 (1st Cir. 2019).

A. MS-13

La Mara Salvatrucha, commonly known as MS-13, is a transnational gang headquartered in El Salvador and with extensive operations in the United States, including in Eastern Massachusetts. The gang is organized into "programs" and "cliques." Cliques are local groups that each belong to a regional program. Within each clique, the primary leader is called the "first word" and the second in command is called the "second word." Full members are known as "homeboys." Individuals generally progress from "paro" to "chequeo" before becoming homeboys.[1] Chequeos often must perform a violent crime to earn a promotion to homeboy, though the requirement has varied over time and between cliques. They are then beaten or "jumped" in as full members.

MS-13 has defined its primary mission as killing rivals, especially members of the 18th Street gang. If possible, a homeboy is supposed to kill a rival gang member, known as a "chavala," on sight. MS-13 members are also required to help out fellow gang members whenever they are asked.

[1] There has been some variation over time and between cliques as to the ranks below homeboy, but that variation is not important to this case.

MS-13 members are forbidden from cooperating with law enforcement. A member who cooperates with law enforcement will have a "green light" put on him, which means he will be killed by other MS-13 members. MS-13 associates are not permitted to kill other MS-13 associates unless leadership, usually in El Salvador, puts a "green light" on the individual.

B. Defendants' Roles in MS-13

In 2014 and 2015, at the time of the events at issue in this case, each of the defendants was a full MS-13 member in a clique near Boston. Noe Salvador Pérez-Vásquez, a/k/a "Crazy," claimed to be the second in command of the Everett Locos Salvatrucha clique. Luis Solís-Vásquez, a/k/a "Brujo," was a homeboy in the Eastside Locos Salvatrucha clique. Hector Enamorado, a/k/a "Vida Loca" was a homeboy in the Chelsea Locos Salvatrucha clique.

C. Cooperating Witnesses

Law enforcement investigations of crimes by MS-13 members often use confidential sources, some of whom become witnesses in later prosecutions. In 2012 the FBI began working with a source to infiltrate the MS-13 cliques in the Boston area. This informant is known as cooperating witness 1 ("CW-1") or by his street name, "Pelon." The government gave CW-1 a car with recording equipment inside, which he used to work as an unlicensed taxicab driver. CW-1 posed as a drug dealer and began spending

time with various MS-13 members. He was eventually beaten in as a homeboy in the Eastside Locos Salvatrucha Clique. To advance the investigation he would regularly give rides to MS-13 members and record their conversations with him and each other. Additional details of CW-1's involvement were discussed in this court's opinion in United States v. Sandoval. 2021 WL 2821070, at *1-2.

CW-1 did not testify at the defendants' trial. CW-1 was the source of two types of evidence introduced by the government. First, the government introduced recordings and transcripts from CW-1's recording device of both conversations between MS-13 members and CW-1's conversations with MS-13 members. Second, some of the government's law enforcement witnesses testified about statements that CW-1 made to them in the course of their investigation.

D. The Murder of Jose Aguilar Villanueva

German Hernandez-Escobar, a/k/a "Terible," the leader of the Everett Locos Salvatrucha clique, was arrested in March 2015. Members of the clique, including second-in-command Pérez-Vásquez, believed that someone in the gang had "snitched" on Terible, and began an investigation. They concluded that Jose Aguilar Villanueva, a sixteen-year-old associate of MS-13 known as "Fantasma," had cooperated with the police and was responsible for Terible's arrest. MS-13 leaders in El Salvador issued a green

light to kill Villanueva and Pérez-Vásquez began planning that murder with others in MS-13.

Pérez-Vásquez told Josue Alexis De Paz, a/k/a "Gato," a chequeo seeking promotion to homeboy and Villanueva's roommate, that he would have to "participate" in Villanueva's death. Another MS-13 member nicknamed "Inocente" called De Paz and told him to bring Villanueva to a restaurant in Somerville. The plan was to take Villanueva from the Somerville restaurant to an MS-13 meeting place in Malden called "the Mountain" and murder him there. Inocente was arrested before he could execute this plan.

After the arrest of Inocente, another homeboy told De Paz that the Everett clique wanted Villanueva murdered soon, and that De Paz would have to murder Villanueva with the help of a chequeo, Manuel Diaz Granados, a/k/a "Perverso." On the day of the murder, Pérez-Vásquez spoke to De Paz and told him to plan the murder carefully.

On July 5, 2015, De Paz and Granados met at the home De Paz shared with Villanueva and waited for Villanueva to return from a day trip to the beach. When he returned, De Paz told Villanueva that the three of them needed to go out to look for a man who had broken into their house several days earlier. The three went to a park, De Paz "grabbed [Villanueva] from behind," and Granados began stabbing Villanueva with a large green-handled knife. Moments later, De Paz dropped Villanueva, took out a

folding knife, and stabbed Villanueva as well. Villanueva died from his injuries.

Afterward Pérez-Vásquez told De Paz that he would be promoted to homeboy for his participation in Villanueva's murder.

E. The Cocaine-Trafficking Operation

In early December 2014, CW-1 asked Pérez-Vásquez and other MS-13 members if they were interested in performing a "protection detail" for drugs being moved from Boston to New Hampshire. Pérez-Vásquez and four other MS-13 members volunteered. On December 8, 2014, a government agent gave the MS-13 members five kilograms of cocaine and they delivered it to another undercover agent in New Hampshire. Each was paid $500 for this work.

F. The Murder of Javier Ortiz

The defendants were also each involved in the planning and execution of the murder of Javier Ortiz, a reputed member of the 18th Street gang. Early in the morning on December 14, 2014, Enamorado went to an apartment in Chelsea where a woman sold tamales after the bars closed. There he saw Ortiz and some friends, who Enamorado believed to be 18th Street gang members and who had beaten him and burned his face with a cigarette the night before. Enamorado left the apartment and called Pérez-Vásquez repeatedly. When Pérez-Vásquez answered, Enamorado asked him to bring a clique-owned gun to him in Chelsea. Enamorado told Pérez-

Vásquez that he had encountered several 18th Street gang members, that they had beaten him the night before, and that he wanted the gun because he was going to kill them. Pérez-Vásquez, who was at a garage in Everett where MS-13 members would gather, relayed this information to Solís-Vásquez and two other gang members at the garage. Pérez-Vásquez decided that he would bring the clique gun to Enamorado, and Solís-Vásquez decided that he would go as well because he had another clique gun stored in the garage.

Pérez-Vásquez and Solís-Vásquez met Enamorado in Chelsea, where he was sitting on the steps outside the apartment. Pérez-Vásquez asked Enamorado where the "chavalas" were. Enamorado said he would go inside alone with the gun Pérez-Vásquez had brought, and told Solís-Vásquez to stay at the door of the apartment with the other gun so that no one could leave. Solís-Vásquez waited at the door for a brief time, but then went to the porch to smoke a cigarette with another MS-13 member. At the same time, Enamorado entered the apartment and walked over to the bathroom where Ortiz was. He shot Ortiz three times in the back, emerged from the bathroom and then shot Saul Rivera, another visitor to the apartment. Ortiz died from his injuries.

The apartment's owner and Saul Rivera both identified Enamorado in photographic lineups as the perpetrator within hours of the shootings.

G. The Arrest and Interrogation of Enamorado

After the murder of Ortiz, Pérez-Vásquez offered CW-1 $400 to drive Enamorado out of the state. CW-1 agreed and told the police about the plan. On December 16, 2014, CW-1 picked up Enamorado, Pérez-Vásquez, and Pérez-Vásquez's girlfriend to drive out of Massachusetts. The police pulled them over and arrested Enamorado.

Chelsea Police Officer David Delaney booked Enamorado in English. Enamorado's first language is Spanish. Delaney testified that Enamorado appeared to understand him. Delaney marked on an intake form that Enamorado did not appear to be under the influence of drugs or alcohol. In response to Delaney's questioning, Enamorado told Delaney that he had not consumed drugs or alcohol that day.

After booking, Chelsea Police Detective Steven Garcia and State Trooper Timothy O'Connor interviewed Enamorado in Spanish. Detective Garcia testified that he did not observe any signs that Enamorado was intoxicated. Garcia gave Enamorado a written form in Spanish that described his Miranda rights. Garcia read the form aloud and Enamorado signed a waiver of his Miranda rights under the name Jesus Gonzales.

During the interrogation, Enamorado admitted to being a member of MS-13, that his name was Hector Enamorado, and that his nickname was Vida Loca. He said that on the day before the murder of Javier Ortiz, he had gotten into an altercation with several

18th Street gang members. He claimed to have forgotten everything that happened on the night of the murder, but said that if he went back to the apartment, it would have been for revenge.

At the start of the interview, Trooper O'Connor pressed a button on the recording system to begin recording. A green light on the recording system lit up to indicate that the interview was being recorded. However, in February 2017, the officers learned that the audio recording had failed about 20 seconds into the interview. The entirety of the video recording was preserved.

II. Procedural History

A. Pre-Trial

In 2016, the defendants were each charged with conspiracy to conduct affairs through a pattern of racketeering activity (RICO conspiracy) in violation of 18 U.S.C. § 1962(d). Pérez-Vásquez was also charged with conspiracy to distribute five kilograms or more of cocaine in violation of 21 U.S.C. § 846, possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1), and conspiracy to distribute marijuana in violation of 21 U.S.C. § 846. Each was convicted of all charges, except that Pérez-Vásquez was acquitted on the firearms charge.

The defendants filed various motions in limine asking to limit or exclude expert testimony before trial. During the final pretrial conference, the district court said it would "permit

expert testimony as to things such as symbols or colors or slang or the organization or structure of MS-13." The district court would not permit "an overview of the evidence or a broad description of the investigation." It also instructed that the defendants "may have to object to preserve a[ny] particular point."

Enamorado also moved to suppress the statements he made in custody on December 16, 2014, arguing that he did not knowingly, intelligently, and voluntarily waive his Miranda rights because he was under the influence of drugs and alcohol at the time and because he was not "intellectually, emotionally, or physically able to understand his rights." He added that the failure to make a full audio recording rendered the statements inadmissible. The district court denied the motion, stating that there was insufficient evidence Enamorado was intoxicated or failed to understand the officers, and that the failure of the audio equipment did not justify suppression.

B. Trial

The trial was conducted over nineteen days from March 27 to April 23, 2018. Through the reading of exhibits and the testimony of both law enforcement and MS-13 members, the government offered evidence both as to the murders and trafficking described above and as to a host of other crimes. The defendants presented no witnesses and did not testify.

The government's first witness was George Norris, a gang investigator analyst for the state attorney's office in Maryland. Based on his professional experience, Investigator Norris testified as to MS-13's history, structure, rules, symbols, and practices. Investigator Norris did not participate in the investigation of this case.

Investigator Norris explained that his knowledge of MS-13 was gained through "interviews and interrogations, both in custody and out of custody of gang members or associates, interviewing witnesses of crimes that involve MS-13, interviewing family members of MS-13 members or associates, interviewing other law enforcement officers, . . . interviewing victims of gang crimes, reading books, watching documentaries . . . [and] social media monitoring and harvesting intelligence off of social media." He also was trained at several conferences about gangs in general and MS-13 in particular.

Agent Jeffrey Wood, an FBI supervisor for the gang squad and the lead investigator during part of the investigation of the MS-13 cliques in Boston, testified next. He first spoke about the transnational structure of the gang and then about its structure in Massachusetts. He next testified about his investigations into the broader East Coast Program and his work with CW-1.

Agent Wood also testified as to various pieces of evidence his team recovered during a large scale "sweep" of arrests

of MS-13 members in January 2016. He described an MS-13 "rule book" found at a gang member's house and a set of WhatsApp messages between Pérez-Vásquez and other gang members that listed additional guidelines for proper conduct in MS-13.

Agent Wood next testified as to his work with another cooperating witness, CW-5. He arranged for CW-5 to pose as an MS-13 member and record a conversation with Inocente while he was being held at the Essex House of Corrections. Inocente described what he knew about the murder of Villanueva and the roles played by Enamorado and Pérez-Vásquez in the Ortiz murder. The transcript of this recording was admitted into evidence. Agent Wood also described his role in organizing the drug "protection detail" that Solís-Vásquez participated in and his role in the investigation of the Villanueva murder.

Massachusetts State Trooper Brian Estevez read into evidence a number of transcripts of recorded phone calls between MS-13 members, introduced evidence extracted from Villanueva's and others' cellphones, and explained how the FBI wiretapped CW-1's phone. He also introduced various recordings made by CW-1, and explained his involvement in Enamorado's arrest.

Several MS-13 members who had pled guilty testified for the prosecution. They each described their roles in MS-13, the "rules" of the organization, and crimes they had personally

committed as part of MS-13.[2] They also testified as to conversations between them and other MS-13 members about the ongoing activities of the gang and the various crimes other MS-13 members had committed.

At the close of evidence all of the defendants moved for a directed verdict based on the sufficiency of the evidence. The district court denied the motions.

In Pérez-Vásquez's closing statement, his lawyer conceded that Pérez-Vásquez was part of MS-13, that MS-13 was a criminal enterprise, and that he had brought a gun to "Vida Loca." Pérez-Vásquez's lawyer then argued that he could not be found guilty of the Ortiz murder because he "didn't share the intent that Mr. Enamorado had at the time he discharged that weapon into Mr. Javier Ortiz."

After Pérez-Vásquez's closing argument, Enamorado's counsel moved for a mistrial, arguing that "[t]he co-defendant has just become a witness against my defendant without notice in violation of Bruton, and there's no way this jury now is going to be able to give Mr. Enamorado a fair verdict after what just happened." The district court summarily denied the motion. Enamorado's counsel did not request a limiting instruction.

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[2] De Paz testified as to his involvement in the murder of Villanueva, and that Pérez-Vásquez had ordered the murder. Jose Hernandez-Miguel, a/k/a "Muerto," testified about the murder of Javier Ortiz.

On April 17, 2018, the district court conducted a jury charge conference. The district court told the defendants that as to the murders of Villanueva and Ortiz, it would only give a second-degree murder instruction, not a first-degree murder instruction. The defendants said they did not object. The defendants also did not object to the proposed instructions as to the RICO conspiracy. After the finalized instructions were read to the jury on April 18, the district court asked the defendants if they had "[a]nything further on the jury instruction[s]." Each defendant said no.

The jury convicted all three defendants of RICO conspiracy, with special findings that each was guilty of murdering Javier Ortiz as a part of the conspiracy. The jury also found that Pérez-Vásquez had participated in the murder of Villanueva. Pérez-Vásquez was convicted of conspiracy to possess with intent to distribute more than five kilograms of cocaine, and conspiracy to possess with intent to distribute marijuana. He was found not guilty of the firearms charge.

C. Sentencing

The United States Probation Office calculated Pérez-Vásquez's advisory guidelines sentence as life imprisonment based on an offense level of 50 (revised downward to the maximum offense level of 43) and a criminal history category of IV. Pérez-Vásquez did not object. The district court sentenced Pérez-Vásquez to

concurrent terms of life imprisonment on the RICO conspiracy and cocaine conspiracy charges.[3]

The district court calculated Enamorado's guideline offense level as 44 (revised downward to a maximum offense level of 43) based on an underlying offense of first-degree murder and determined that his criminal history was category II. The guidelines recommendation was life imprisonment. Enamorado challenged the calculation of the guidelines range, arguing that because the jury had not specifically found that Enamorado was guilty of first- rather than second-degree murder, his guidelines base offense level should have been 38. He also argued that the evidence did not support that he had committed first, rather than second-degree murder, and that a criminal history category of II was inappropriate given that his previous offenses were "fairly minor." The district court rejected the first argument, stating that the degree of murder was "a matter of guideline interpretation for the Court, not something that the jury would find." It then found that, given the evidence presented, it was appropriate to apply the first-degree murder guideline. It did not address the criminal history category. The district court sentenced Enamorado to life imprisonment.

[3] He was also sentenced to a concurrent term of five years for the marijuana charge and a five-year term of supervised release.

The district court calculated that Solís-Vásquez's guidelines offense level was 43 for the murder of Javier Ortiz. It then increased the offense level to 45 based on Solís-Vásquez's involvement in the Rivera shooting, two other assaults, and one other murder. The offense level was then revised downward to the maximum of 43.

Solís-Vásquez objected that there was insufficient evidence to show that he had committed first-degree rather than second-degree murder.[4] The district court rejected this challenge, explaining that "it's a fair inference from the evidence by a preponderance standard that there was a joint venture here to commit premeditated murder, that [Solís-Vásquez] knew exactly what the purpose of this was, [and that it was] intended to further that enterprise. The purpose was that 'Vida Loca' was going to kill a [rival gang member]."

The district court sentenced Solís-Vásquez to 420 months' imprisonment and five years of supervised release. The sentence was a below-guidelines sentence imposed after consideration of the relevant factors under 18 U.S.C. § 3553(a).

[4] Solís-Vásquez also challenged the portions of the guidelines calculation concerning the incidents other than the Ortiz murder.

The district court also ordered Pérez-Vásquez and Enamorado to pay $32,984.03 in restitution to Saul Rivera, and Solís-Vásquez to pay $16,492.01.

III. Analysis

The defendants asserted a variety of claims as to their trial and sentencing. We address each in turn.

A. Sufficiency of the Evidence

Enamorado and Solís-Vásquez each argue that the evidence was insufficient to support their convictions. "[W]e review preserved challenges to the sufficiency of the evidence by asking 'whether, taking the evidence in the light most favorable to the jury's verdict, a rational jury could have found the defendant guilty beyond a reasonable doubt.'" Leoner-Aguirre, 939 F.3d at 318 (quoting United States v. Hicks, 575 F.3d 130, 139 (1st Cir. 2009)).

1. Enamorado's Sufficiency Claim

To secure a conviction for committing the "pattern of racketeering" RICO conspiracy charge at issue, the government was required to prove beyond a reasonable doubt that Enamorado knowingly joined the MS-13 conspiracy and "agreed that at least two acts of racketeering would be committed in furtherance of the conspiracy." Sandoval, 2021 WL 2821070, at *2 (quoting Leoner-Aguirre, 939 F.3d at 317). Racketeering acts include "any act or

threat involving murder . . . [or] dealing in a controlled substance." 18 U.S.C. § 1961(1).

Enamorado argues that the evidence was insufficient to support his RICO conspiracy conviction because (1) there was no evidence he participated in, knew about, or agreed that others would commit any predicate acts of racketeering other than the murder of Javier Ortiz; (2) there was no evidence that the Chelsea clique, to which Enamorado belonged, was part of the larger MS-13 conspiracy or that members of the Chelsea clique had agreed to commit racketeering acts; and (3) there was insufficient evidence that the shooting of Ortiz was done in furtherance of the MS-13 conspiracy.

Each of these arguments fails. As to Enamorado's first two contentions, in addition to Trooper Estevez's testimony that Enamorado had admitted during his post-arrest interview to being a member of MS-13, the jury heard testimony from multiple witnesses who testified that they had met Enamorado at MS-13 gatherings before the Ortiz murder, that they understood him to be "from the Chelsea Locos clique" or that he had identified himself as such, and that he had also introduced himself as a homeboy. The jury could thus conclude that Enamorado had agreed to join the "Chelseas." So, too, could the jury conclude that the "Chelseas" were part of MS-13, in light of the witnesses' testimony describing that group as a "clique." The jury heard evidence that MS-13's

mission is to kill rivals, and a jury could also conclude that an individual who joined a gang with this mission therefore agreed that a member of the group would commit racketeering acts. To the extent Enamorado argues that joining the Chelsea clique would not have established this agreement in light of the lack of evidence as to activities of that clique and whether it was involved in a broader MS-13 conspiracy, the jury was not required to believe him on that score, particularly in light of evidence that Enamorado was involved with members of other MS-13 cliques who clearly understood Enamorado to have been part of an MS-13 clique.

As to Enamorado's third argument, there was sufficient evidence that the Ortiz murder was done in furtherance of the MS-13 conspiracy. Multiple MS-13 members identified Ortiz as an 18th Street gang member, the murder was committed with MS-13 weapons and help from two MS-13 members, and the murder fit in with the conspiracy's purpose of killing rivals.

2. Solís-Vásquez's Sufficiency Claim

Solís-Vásquez does not challenge the sufficiency of the evidence for his RICO conspiracy conviction, but he does argue that the evidence was insufficient to support the jury's special finding that he participated in the murder of Ortiz because there was no evidence he had the requisite intent for second-degree murder under Massachusetts law. To convict a defendant of second-degree murder under Massachusetts law, the government must show

that the defendant acted with "intent to kill; the intent to cause grievous bodily harm; or the intent to commit an act that, in the circumstances known to the defendant, created a plain and strong likelihood of death." Commonwealth v. Tavares, 30 N.E.3d 91, 99 (Mass. 2015).

There was sufficient evidence for the jury to conclude that Solís-Vásquez acted with the requisite intent for second-degree murder. Solís-Vásquez brought a gun to Enamorado after Enamorado said "he was going to kill" the 18th Street gang members at the after-hours bar. Mauricio Sánchez, a/k/a "Tigre," also testified that Solís-Vásquez said Enamorado "had gone inside to murder the guy he had come for" and that Solís-Vásquez "was ready for what he was going to do."

B. Suppression of Enamorado's December 16th, 2014 Statements to Police

Enamorado renews his argument on appeal that his December 16, 2014 statements to the police were inadmissible because Enamorado did not validly waive his Miranda rights. See Miranda v. Arizona, 384 U.S. 436, 498-99 (1966). He argues he was intoxicated during his interview and that the officers sometimes spoke to him in English, which is not his first language.[5] "In

[5] Enamorado also argues that the audio equipment's malfunction "supports suppression." But he does not explain why and "there is no federal constitutional right to have one's custodial interrogation recorded." United States v. Meadows, 571

reviewing the denial of a motion to suppress, we review the district court's findings of fact for clear error and conclusions of law de novo." United States v. Mumme, 985 F.3d 25, 35 (1st Cir. 2021).

A Miranda waiver must be both voluntary and "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." Moran v. Burbine, 475 U.S. 412, 421 (1986). The district court did not err in concluding that Enamorado voluntarily and knowingly waived his rights. Enamorado read and signed a waiver form in Spanish, and the record supports the district court's conclusion that he was not intoxicated at the time of arrest. See United States v. Mejia, 600 F.3d 12, 18 (1st Cir. 2010) (holding that waiver of Miranda rights was knowing and voluntary where Spanish-speaking defendant was given waiver form in Spanish).

C. The Admission of Coconspirator Statements

Pérez-Vásquez and Solís-Vásquez challenge the admission of various coconspirator statements.[6] Because they failed to renew

F.3d 131, 147 (1st Cir. 2009).

[6] The defendants' arguments are waived with respect to any statements not identified in their briefs on appeal as wrongly admitted. United States v. Perez-Cubertier, 958 F.3d 81, 88 n.6 (1st Cir. 2020) (explaining that in challenging the admission of evidence, the "failure to identify relevant portions of the trial transcript" "hamstrings" appellate review and may result in waiver (quoting González-Ríos v. Hewlett Packard PR Co., 749 F.3d 15, 20 (1st Cir. 2014))).

their objections at the close of evidence, the challenge is reviewed for plain error. See United States v. Ford, 839 F.3d 94, 106 & n.9 (1st Cir. 2016).

Statements made by a "coconspirator during and in furtherance of the conspiracy" are nonhearsay. Fed. R. Evid. 801(d)(2)(E). "[A] coconspirator's statement is considered to be in furtherance of the conspiracy as long as it tends to promote one or more of the objects of the conspiracy." United States v. Ciresi, 697 F.3d 19, 28 (1st Cir. 2012) (quoting United States v. Piper, 298 F.3d 47, 54 (1st Cir. 2002)). Statements made to "foster[] a relationship of trust" or keep coconspirators "abreast of current developments and problems facing the group" may further the conspiracy. United States v. Flemmi, 402 F.3d 79, 95 (1st Cir. 2005) (quoting United States v. Jefferson, 215 F.3d 820, 824 (8th Cir. 2000)); see also United States v. Sepulveda, 15 F.3d 1161, 1180 (1st Cir. 1993) ("[T]he reporting of significant events by one coconspirator to another advances the conspiracy."). It is

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The defendants also argue that the admission of statements made in furtherance of the conspiracy by non-testifying coconspirators violated the Confrontation Clause. This argument fails because "'[s]tatements made during and in furtherance of a conspiracy are not testimonial' and are, therefore, not subject to Sixth Amendment concerns." United States v. Rivera-Donate, 682 F.3d 120, 132 n.11 (1st Cir. 2012) (quoting United States v. Malpica-García, 489 F.3d 393, 397 (1st Cir. 2007)).

"immaterial" whether the statement was made to a government informant posing as a coconspirator. See Ciresi, 697 F.3d at 28.

Pérez-Vásquez and Solís-Vásquez argue that many of the admitted statements were "idle chatter" or "gossip" not in furtherance of the conspiracy. We address the coconspirator statements mentioned in the defendants' briefs in turn.

Three of the challenged statements were not admitted as coconspirator statements or for the truth of the matter asserted but for other reasons.[7] These challenges fail.

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[7] Trooper DeMeo's statements about what De Paz told him about the murder of Villanueva were admitted not for the truth of the matter asserted but as context to explain how Villanueva's statements affected his investigation. We have cautioned that the idea that "any statement by an informant to police which sets context for the police investigation" is admissible is "impossibly overbroad." United States v. Maher, 454 F.3d 13, 22 (1st Cir. 2006). In this case, however, the district court allowed the testimony because De Paz was the next witness and would testify as to the facts restated by Trooper DeMeo. Thus there was no significant risk of prejudice as required under the plain error standard.

Similarly, Trooper Estevez testified that he had received a call from CW-1 advising that MS-13 members were attempting to move Enamorado out of state. But the government immediately after that testimony introduced a transcript of a call between Pérez-Vásquez and CW-1 in which Pérez-Vásquez offered to pay CW-1 to take an MS-13 member out of state, and the officers did in fact arrest Enamorado in CW-1's car. Enamorado was not prejudiced by Estevez's testimony.

The statements of "La Diablita" in the jailhouse recording were also admitted not for their truth but for context as to what Terible told La Diablita. See United States v. Walter, 434 F.3d 30, 33-34 (1st Cir. 2016) (explaining that portions of discussion "were properly admitted as reciprocal and integrated utterance(s)" to make admissible statements "intelligible to the jury" (quoting United States v. McDowell, 918 F.2d 1004, 1007 (1st

The challenge to Sánchez's statement that Pérez-Vásquez told two other members of MS-13 to give him a ride to Lynn to buy drugs also fails, as it was clearly in furtherance of the conspiracy to purchase drugs for the gang's marijuana business. And as to Pérez-Vásquez, his own statement is admissible against him under Federal Rule of Evidence 801(d)(2)(A).

As to the admission of testimony from Sánchez, Jose Hernandez-Miguel, a/k/a "Muerto," and another codefendant, Julio Esau Avalos-Alvarado, describing conversations they had with other gang members about the Ortiz and Villanueva killings, we see no plain error in the district court's determination that these statements were coconspirator statements because "gang members informing each other after the fact about gang business further[s] the interests of the gang, among other things, [by] keeping them informed and advising them about enforcement of the rules and general state of affairs." Nor was there plain error in the district court's admitting the statements of "Inocente" to CW-5 because they served "to promote and encourage violence, to enforce gang discipline, and to inform gang members of ongoing events."

Cir. 1990))).

The admission of statements not admitted to prove the truth of the matter asserted also does not violate the Confrontation Clause. United States v. Occhiuto, 784 F.3d 862, 866 n.2 (1st Cir. 2015).

Enamorado separately challenges the admission of all coconspirator statements not discussing him or the Ortiz killing, arguing that because he was not a member of the wider MS-13 conspiracy, such statements could not be admitted against him under Federal Rule of Evidence 801(d)(2)(E). For the reasons explained in the discussion of the sufficiency of the evidence, this argument fails. He also argues that any statements made by coconspirators after his arrest were inadmissible against him because he was no longer a part of the conspiracy. As he made no showing that he had actually withdrawn from the conspiracy, this argument is foreclosed by Leoner-Aguirre, 939 F.3d at 318 ("Imprisonment alone does not satisfy a defendant's burden of proving withdrawal.").

D. The Admission of CW-1's Statements

Enamorado challenges the admission of all of CW-1's statements made to law enforcement or in the recordings submitted by the government.[8] He argues that CW-1 was not a coconspirator and thus that his statements are not nonhearsay under Federal Rule

[8] Pérez-Vásquez adopted this argument.

Pérez-Vásquez also adopted very similar arguments made by Erick Argueta Larios, a/k/a "Lobo." United States v. Larios, No. 18-2177. But Pérez-Vásquez does not explain how the specific statements by CW-1 challenged by Larios, many of which have little to do with Pérez-Vásquez's involvement with the conspiracy, prejudiced Pérez-Vásquez. The argument is waived. See United States v. Torres-Rosa, 209 F.3d 4, 7 (1st Cir. 2000) ("The party seeking to adopt an argument has a burden, at the very least, to ensure that it is squarely before the court and to explain how and why it applies in his case.").

of Evidence 801(d)(2)(E), and that their admission violated the Confrontation Clause. Because this argument was preserved, we review the admission of alleged hearsay evidence for abuse of discretion, United States v. Correa-Osorio, 784 F.3d 11, 24 (1st Cir. 2015), and the Confrontation Clause claim de novo, United States v. Veloz, 948 F.3d 418, 430 (1st Cir. 2020).[9]

Enamorado's brief focuses on Exhibit 214, the transcript of a conversation a few hours after the Ortiz murder between CW-1, Pérez-Vásquez, a woman named "Blanca," and another MS-13 member known as "Smiley." CW-1's statements in this transcript were mostly questions, exclamations, or statements not relevant to the Ortiz murder.

Enamorado's argument misses the point. CW-1's statements were admitted only to provide context for statements made by other MS-13 co-conspirators in the conversation and make them intelligible to the jury, not for their truth. And the district court did not err in admitting CW-1's statements in Exhibit 214 to provide context. See United States v. Walter, 434 F.3d 30, 33-34 (1st Cir. 2016) (holding that tape-recorded statements by non-testifying informants may be admissible to

[9] Enamorado challenges "all" of CW-1's statements, but his argument is waived as to any statements not identified in his brief. Perez-Cubertier, 958 F.3d at 88 n.6 (explaining that the "failure to identify relevant portions of the trial transcript" may result in waiver).

provide context for statements made by defendants); see also Sandoval, 2021 WL 2821070, at *19 (holding that there was no plain error in admitting cooperating witness's "reciprocal and integrated utterance(s)" in conversations with conspiracy members (quoting Walter, 434 F.3d at 34)). The admission of such statements also does not violate the Confrontation Clause. Walter, 434 F.3d at 34 ("[S]tatements . . . offered not for the truth of the matters asserted . . . do not implicate the Confrontation Clause.").

Enamorado also specifically challenges CW-1's "identification" of the speakers in Exhibit 214. It is unclear what identification Enamorado is challenging. If Enamorado is challenging the fact that CW-1 referred to various MS-13 members by their names in the recordings, this challenge is rejected because using someone's name in a conversation is not an assertion. See United States v. Weeks, 919 F.2d 248, 251 (5th Cir. 1990). If he is challenging the fact that CW-1 provided the identities of the speakers for the transcripts, it was Hernandez-Miguel, a coconspirator who testified at trial, not CW-1, who provided the voice identification for the recordings and their transcripts.

Enamorado also challenges the admission of CW-1's statements in Exhibit 240, a transcript of a recorded conversation between CW-1 and Pérez-Vásquez on October 13, 2015, in which they discussed the Ortiz murder. After reviewing the transcript we see

no reversible error in admitting CW-1's statements to provide context for Pérez-Vásquez's statements. Most of CW-1's statements are mere interjections or "reciprocal and integrated utterance(s)." Walter, 434 F.3d at 34. And we are satisfied that to the extent any statements could not be so understood, their admission was harmless. See United States v. Benitez-Avila, 570 F.3d 364, 372 (1st Cir. 2009) (rejecting hearsay argument on appeal because any error was harmless). For example, as to CW-1 saying "Look at [Enamorado]. You see how fast they had him on the news?," there was no dispute as to whether Enamorado was quickly identified as the shooter.

E. The Admission of Law Enforcement Testimony

1. Expert Testimony Founded on Hearsay

Pérez-Vásquez and Enamorado argue that elements of Investigator Norris's, Agent Wood's, and Trooper Estevez's expert testimony were improperly admitted and violated the Confrontation Clause because they were merely relaying improper hearsay evidence rather than providing expert analysis. This unpreserved challenge to the admission of testimony is reviewed for plain error. United States v. Laureano-Pérez, 797 F.3d 45, 63 (1st Cir. 2015).

As explained in United States v. Sandoval, "properly qualified experts whose work is based on reliable principles and methods may rely on inadmissible hearsay evidence in forming an expert opinion" as long as they "relay[] that opinion, once formed,

through their own testimony." 2021 WL 2821070, at *12; see also United States v. Rios, 830 F.3d 403, 418 (6th Cir. 2016) ("[I]t is the process of amalgamating the potentially testimonial statements . . . that separates an admissible [expert] opinion [on a criminal organization] from an inadmissible transmission of testimonial statements.").

As to Investigator Norris's testimony, he did not repeat improper hearsay evidence and the defendants do not explain how any of his statements were improper. Rather, based on his experience and synthesis of various materials, he provided evidence, helpful to the jury, about the structure and rules of MS-13.

As to Agent Wood, in most of the portions challenged by the defendants on this ground, Agent Wood is testifying as to what he personally observed during the investigation, not as an expert. And his testimony about the basic structure of MS-13 was based on a synthesis of his many years of experience investigating MS-13. See Sandoval, 2021 WL 2821070, at *12-13.

As to Trooper Estevez, most of the challenged testimony is a description of Trooper Estevez's personal involvement in the investigation or Trooper Estevez reading aloud already admitted transcripts of conversations between MS-13 members. As to the transcripts, we have already rejected the defendants' challenges to the statements in those transcripts. As to the statement

specifically challenged by Enamorado, that it was "common in some cliques" for members to try to hide the fact they were making money from illegal activities from their clique, Estevez made that statement on cross-examination by Pérez-Vásquez's lawyer to explain an admitted recording in which an MS-13 member was explaining that "[a]nother thing about [the drug protection details] is not to tell everyone . . . [b]ecause they get jealous, homie, and all that." The admission of Estevez's statement was not an abuse of discretion, much less plain error, because it was a permissible statement based on his experience investigating MS-13. See United States v. Belanger, 890 F.3d 13, 29 (1st Cir. 2018) (holding that agent's testimony commenting on meaning of recorded calls was property admitted where agent was "intimately involved in the investigation" and "well suited to contextualize individual affairs like [the] phone call").[10]

[10] Enamorado also argues that the court should not have admitted Estevez's statement that the Suffolk County District Attorney's Office had identified a suspect for the Ortiz killing because he did not have an opportunity to cross-examine someone from the District Attorney's Office. In fact, Trooper O'Connor, who was in the Suffolk County Detective Unit, had already testified that they had identified Enamorado as a suspect, and Enamorado had the opportunity to cross-examine him. Enamorado was not prejudiced by the admission of Estevez's statement and there was no plain error.

2. Overview Testimony

Pérez-Vásquez argues that much of the testimony by law enforcement officers was improper "summary overview" evidence.[11] Overview testimony refers to the use of a witness to "map out [the government's] case and to describe the role played by individual defendants." United States v. Flores-De-Jesús, 569 F.3d 8, 16 (1st Cir. 2009) (quoting United States v. Casas, 356 F.3d 104, 117 (1st Cir. 2004)). Such testimony is improper because it may describe evidence that never materializes and, if the witness is a government agent, may lend the imprimatur of government to a later-testifying witness. Id. at 16-17. "Where an officer testifies exclusively about his or her role in an investigation and speaks only to information about which he or she has first-hand knowledge, the testimony is generally . . . permissible." United States v. Meléndez-González, 892 F.3d 9, 18 (1st Cir. 2018) (alteration in original) (quoting United States v. Rose, 802 F.3d 114, 121 (1st Cir. 2015)). In describing his investigation, an officer may not make "conclusory statements about the defendant's

[11] Solís-Vásquez joined this argument.

Pérez-Vásquez also hints at an argument that it was impermissible for law enforcement witnesses to testify both as expert witness and fact witnesses. The argument is waived for lack of developed argumentation, and in any event "there is no per se prohibition against a witness testifying in both capacities." Sandoval, 2021 WL 2821070, at *12.

culpability." United States v. Rodríguez-Adorno, 695 F.3d 32, 38 (1st Cir. 2012).

Because no objection was made in the district court, we review this claim for plain error. United States v. Iwuala, 789 F.3d 1, 5-6 (1st Cir. 2015). We see no prejudicial overview evidence in the record. Some of the testimony the defendants identify as "overview" evidence is better described as expert testimony.[12] The remainder consists of Agent Wood's and Trooper Estevez's description of their own roles in the investigation or the reading of already admitted transcripts.[13]

3. Expert Methodology

Enamorado argues in one sentence that all of the experts' methodologies were inadequate. Because he failed to develop the argument, it is waived. United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990).

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[12] For example, the defendants characterize as overview evidence the expert testimony about "the [MS-13] organization, rules, and practices of MS-13, [and] the nomenclature and leadership structure of MS-13."

[13] The government concedes that Agent Wood's statement that he recognized the gang name "Crazy" as an MS-13 member from the Everett Loco Salvatrucha clique could be viewed as an improper conclusory statement about Pérez-Vásquez's guilt. But Pérez-Vásquez admitted his membership in MS-13, so any error in admitting this statement was harmless. See Flores-De-Jesús, 569 F.3d at 28, 30 (rejecting argument about overview evidence on appeal because any error was harmless).

Pérez-Vásquez also adopts, without elaboration, the argument of Herzzon Sandoval, a codefendant who was part of a different trial group, that Agent Wood's testimony was improperly admitted because the government failed to show that the evidence was based on a reliable methodology.[14] But the testimony challenged by Sandoval at his trial is entirely distinct from the testimony given by Agent Wood at Pérez-Vásquez's trial, and to the extent the circumstances are the same as in Sandoval, the Court rejected the argument. See Sandoval, 2021 WL 2821070, at *10. To the extent they are different, Pérez-Vásquez has not explained how and so has waived this argument. See United States v. Torres-Rosa, 209 F.3d 4, 7 (1st Cir. 2000).

F. Jencks Act

Enamorado argues that the government violated the Jencks Act, 18 U.S.C. § 3500, by failing to disclose all of Investigator Norris's prior testimonies as an expert witness. The Jencks Act requires, on motion of the defendant, the government to turn over any "statement" of a government witness "relating to the subject matter of that witness's testimony" after the witness has been called by the United States and has testified on direct

[14] Pérez-Vásquez also adopts Sandoval's argument that cross-examination of Wood was improperly limited and that a "Threat Assessment" should have been turned over under the Jencks Act. It is unclear how these arguments are relevant or can be applied in this case.

examination. United States v. Landrón-Class, 696 F.3d 62, 72-73 (1st Cir. 2012); see 18 U.S.C. § 3500(b). Enamorado's argument fails because transcripts of a witness's prior testimony, which are available in the public record, are not Jencks Act material. See United States v. Hensel, 699 F.2d 18, 39-40 (1st Cir. 1983); United States v. Chanthadara, 230 F.3d 1237, 1254-55 (10th Cir. 2000) (collecting cases).

G. Pérez-Vásquez's Closing Argument

Enamorado argues that Pérez-Vásquez's closing argument unconstitutionally prejudiced Enamorado and thus that he was entitled to a mistrial. Enamorado first argues that the closing argument was effectively a confession made by Pérez-Vásquez's attorney on behalf of Pérez-Vásquez and thus that it was allowed in violation of Bruton v. United States, 391 U.S. 123 (1968). He then argues that Pérez-Vásquez's closing argument made clear that Enamorado's defense was irreconcilable with Pérez-Vásquez's defense, and thus that he was entitled to a mistrial and severance. The denial of a mistrial is reviewed only for "manifest abuse of discretion." United States v. Chisholm, 940 F.3d 119, 126 (1st Cir. 2019). Bruton challenges are reviewed de novo. United States v. Padilla-Galarza, 990 F.3d 60, 75-76 (1st Cir. 2021).

As to Enamorado's first contention, "[a] defendant is deprived of his rights under the Confrontation Clause when his nontestifying codefendant's confession naming him as a participant

in the crime is introduced at their joint trial." Richardson v. Marsh, 481 U.S. 200, 201 (1987); see also Bruton, 391 U.S. 123. That is not what happened here. The challenged statements were made to convince the jury that Pérez-Vásquez was not guilty for lack of intent. We do not think a reasonable jury would have concluded that this argument was actually a confession by Pérez-Vásquez stating that a different defendant, Enamorado, was guilty of RICO conspiracy. Enamorado did not ask for any curative instruction, further evidencing that the jury did not need to be cautioned. And the jury was instructed that "[l]awyers are not witnesses. What they say in their . . . closing arguments . . . is not evidence." See United States v. Quintero, 38 F.3d 1317, 1342 (3d Cir. 1994) (stating that Bruton "does not apply when an attorney for a co-defendant implicates the defendant during closing argument"); United States v. Sandini, 888 F.2d 300, 311 (3d Cir. 1989) ("Bruton is directed toward preserving a defendant's right to cross-examination, and thus has nothing to do with arguments of counsel," which "are simply not evidence.").

We also reject Enamorado's argument that the closing statement rendered Enamorado and Pérez-Vásquez's defenses so irreconcilable as to require a severance. "[T]o gain a severance based on antagonistic defenses, the antagonism . . . must be such that if the jury believes one defendant, it is compelled to convict the other defendant." United States v. Floyd, 740 F.3d 22, 36

(1st Cir. 2014) (second alteration in original) (quoting United States v. Peña-Lora, 225 F.3d 17, 33 (1st Cir. 2000)). "Courts measure the level of antagonism by the evidence actually introduced at trial. And argument by counsel is not -- repeat, not -- evidence." Chisholm, 940 F.3d at 128 (cleaned up) (rejecting claim that drug-trafficking defendant was entitled to severance where codefendant's closing and opening statements repeatedly stated he was a "large-scale, sophisticated heroin trafficker"). Because closing arguments are not evidence, the district court did not manifestly abuse its discretion in denying the motion for a mistrial based on Pérez-Vásquez's closing argument.

H. The Government's Closing Argument

Enamorado argues that the government's statements during its closing argument were improper and prejudicial.

We review Enamorado's unpreserved challenges to the government's closing argument for plain error. United States v. Belanger, 890 F.3d 13, 34 (1st Cir. 2018). We must determine "whether the challenged comment [was] obviously improper," and, if so, "whether the comment 'so poisoned the well that the trial's outcome was likely affected.'" United States v. Walker-Couvertier, 860 F.3d 1, 10 (1st Cir. 2017) (quoting United States v. Mejia-Lozano, 829 F.2d 268, 274 (1st Cir. 1987)). In making this determination, we consider "(1) the severity of the prosecutor's misconduct, including whether it was deliberate or

accidental; (2) the context in which the misconduct occurred; (3) whether the judge gave curative instructions and the likely effect of such instructions; and (4) the strength of the evidence against the defendants." Belanger, 890 F.3d at 34 (quoting United States v. Wihbey, 75 F.3d 761, 772 (1st Cir. 1996)).

Enamorado first argues that the government falsely stated that Enamorado called Pérez-Vásquez "to be backup" because "[Enamorado] didn't have anyone from his clique available to do it." Even if that statement were not well-supported by the record, it was an "isolated and minor comment[] in the context of a much larger web of evidence pointing to [the defendant's] guilt" and does not cast doubt on the conviction. United States v. French, 904 F.3d 111, 125 (1st Cir. 2018).

Enamorado next argues that the government's statement that Ortiz was an 18th Street gang member was improper because it was inconsistent with testimony from FBI Special Agent Wood in a codefendant's prior trial that he did not know whether Ortiz was an 18th Street gang member. The importance of Ortiz's gang affiliation is that it supports the contention that the Ortiz murder was done in furtherance of MS-13's purposes. Because the government provided substantial evidence that Enamorado believed Ortiz was an 18th Street gang member, Ortiz's actual affiliation was unimportant to the outcome and there was no plain error.

Enamorado also argues that the government misstated the law by telling the jury that it could convict Enamorado based solely on his participation in the Ortiz murder. This argument fails. The government did twice state during closing arguments that the murder was enough to convict Enamorado. Those statements were incorrect, but in the remainder of the prosecutor's closing argument he properly stated that in order to be convicted for RICO conspiracy, the Ortiz murder had to be done in connection with the MS-13 enterprise. Further, the court properly instructed the jury as to the applicable law. See United States v. Gonzalez-Gonzalez, 136 F.3d 6, 9 (1st Cir. 1998) ("No juror would mistake a prosecutor for a judge.")

I. Enamorado's Challenge Under Federal Rule of Evidence 403

Enamorado argues for the first time on appeal that the admission of evidence regarding the wider MS-13 organization and crimes committed by members of other cliques of which Enamorado had no personal knowledge was unduly prejudicial. Federal Rule of Evidence 403 allows a court to "exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice . . . or needlessly presenting cumulative evidence." Unpreserved 403 challenges are reviewed for plain error. United States v. Casanova, 886 F.3d 55, 63 (1st Cir. 2018).

In United States v. DeCologero, we stated that where a defendant is engaged in a RICO conspiracy, evidence of crimes

committed within the scope of that conspiracy are relevant "to prove the existence and nature of the RICO enterprise and conspiracy," even if the defendant had no personal involvement in the crime. 530 F.3d 36, 54 (1st Cir. 2008). Further, it was "far from clear that the potentially prejudicial impact of [such] evidence would have rendered it inadmissible under Federal Rule of Evidence 403." Id. There was no plain error in admitting evidence against Enamorado of the crimes committed in furtherance of the broader MS-13 conspiracy.

J. Jury Instructions

Enamorado challenges two aspects of the jury instructions.[15] Because Enamorado failed to object in the district court, we review the instructions for plain error. United States v. González-Vélez, 466 F.3d 27, 34-35 (1st Cir. 2006).

The district court instructed the jury that to prove a RICO conspiracy the government must show that "the defendant or another member of the conspiracy agreed to commit at least two racketeering acts." (Emphasis added). It next stated that "[f]or each defendant, the government . . . must prove that the defendant agreed to participate in the conspiracy and that the conspiracy involved, or would involve, the commission of at least two racketeering acts." Enamorado argues that the first portion of

[15] Pérez-Vásquez adopted this argument.

these instructions improperly instructed the jury that it could convict Enamorado whether or not Enamorado knew the conspiracy would involve the commission of at least two racketeering acts.

The first portion of the instruction accurately conveyed that if Enamorado agreed to join a conspiracy in which coconspirators had agreed to do two or more acts, then Enamorado himself need not have done those acts. Enamorado did not at any time propose a more artful phrasing. Any risk of the jury misunderstanding was eliminated by the very next sentence. Instructions are not viewed piecemeal. United States v. Paz-Alvarez, 799 F.3d 12, 23 (1st Cir. 2015). There was no plain error.

Enamorado next argues that the district court's murder instructions were error under Alleyne v. United States, 570 U.S. 99 (2013).[16] The district court told the jury "[i]n this case, the distinction between first-degree and second-degree murder is not relevant" and that it would "simply describe the elements of murder" to the jury. But at the charge conference the district court made clear that it would instruct the jury on second-degree murder "without calling it second-degree murder" to streamline the charge. And the instructions given to the jury clearly described second-degree murder.

[16] Pérez-Vásquez adopts this argument.

It is not clear what argument Enamorado is making. If he is arguing that the district court was required to instruct on first-degree murder in addition to second-degree murder, that argument fails because there was no prejudice to Enamorado. Enamorado argues there was prejudice because if both instructions had been given and the jury had only found him guilty of second-degree murder, the district court would have calculated a lower guidelines range. As explained in United States v. Gonzalez, 981 F.3d 11 (1st Cir. 2020), a district court may use the first-degree murder guideline if it finds by a preponderance of the evidence that the defendant committed first-degree murder, even if the jury only finds the defendant guilty of second-degree murder, id. at 16-17. And the district court said it thought the evidence was "overwhelming . . . that the murder of Ortiz was premeditated."

K. Responses to Jury Questions

Enamorado challenges the district court's responses to two jury questions asked during deliberations. The first question was: "Is it required to prove that the defendant is a gang member in order to be associated with MS-13? . . . [W]hat is the definition of an associate of MS-13?" The district court replied: "The answer to that question is no. The real issue is not whether a particular defendant is a full member of a gang, rather, the focus should be on the conspiracy and the agreement that is at the heart of the

conspiracy to conduct the affairs of an enterprise through a pattern of racketeering activity."

The second question was: "Does evidence of the defendant's association with MS-13 have to predate the specific racketeering acts charged in the indictment?" The district court replied: "[N]o. Again, the focus should be on the conspiracy and the agreement at the heart of the conspiracy. No specific racketeering acts need be committed at all."

Both answers were crafted in response to and in the presence of defense counsel. The district court read the final version of the instructions and asked the defendants "Does that work?" to which they replied "for the defendants, yes." This approval waived any later objection. United States v. Corbett, 870 F.3d 21, 30-31 (1st Cir. 2017) (explaining that a defendant waives any objection when says he has "no problem" with the proposed answer to a jury question).[17]

L. Sentencing Entrapment

Pérez-Vásquez argues his sentence was inappropriately enhanced due to sentencing factor manipulation. Because Pérez-Vásquez failed to raise this issue in the district court, we review

[17] Having rejected all of the defendants' claims of trial error, we reject their claim of cumulative error. Williams v. Drake, 146 F.3d 44, 49 (1st Cir. 1998) ("Absent any particularized error, there can be no cumulative error.").

for plain error. United States v. Sánchez-Berríos, 424 F.3d 65, 78 (1st Cir. 2005).

"Sentencing factor manipulation occurs 'where government agents have improperly enlarged the scope or scale of [a] crime'" during a sting operation. United States v. Rivera-Ruperto, 852 F.3d 1, 14 (1st Cir. 2017) (alteration in original) (quoting United States v. Lucena-Rivera, 750 F.3d 43, 55 (1st Cir. 2014)). In such cases, the sentencing court may impose a sentence below the mandatory minimum as an equitable remedy. Id. Because any sting operation involves manipulation, relief is available only in "the extreme and unusual case" such as in the case of "outrageous or intolerable pressure [by the government] or illegitimate motive on the part of the agents." Id. at 15 (alteration in original) (first quoting Lucena-Rivera, 750 F.3d at 55; and then quoting United States v. Navedo-Ramirez, 781 F.3d 563, 580 (1st Cir. 2015)). The burden is on the defendant to establish such manipulation by a preponderance of the evidence. Id.

Pérez-Vásquez argues that the drug protection detail in which he was asked to move five kilograms of cocaine to New Hampshire was improper because "the only purpose" for using five kilograms of cocaine rather than a lesser amount was to enhance the defendants' sentencing exposure. This argument fails, as the mere fact that agents could have but did not use smaller quantities of drugs in a sting operation "without more, does not establish

that the agents engaged in the kind of 'extraordinary misconduct' that is required of a successful sentencing manipulation claim." Id. (citation omitted) (quoting Sánchez-Berríos, 424 F.3d at 78).

M. Procedural Reasonableness of the Defendants' Sentences

The defendants make various challenges to the procedural reasonableness of their sentences.[18] We review the procedural reasonableness of a sentence under a "multifaceted" abuse of discretion standard. United States v. Flores-Quiñones, 985 F.3d 128, 133 (1st Cir. 2021). We review factual findings for clear error, the interpretation of the guidelines de novo, and judgment calls for abuse of discretion. Id.

All three defendants argue that the district court erred by calculating the guidelines range based on a judicial finding by the preponderance of the evidence that they were guilty of first-degree murder. They argue that a jury was required to decide whether the murder was first- or second-degree under Alleyne, 570 U.S. 99. This argument is foreclosed by our decision in Gonzalez, 981 F.3d at 16-17.

Enamorado argues that his criminal history category was miscalculated.[19] We reject this challenge. Because his base

[18] A heading in Enamorado's brief suggests he is challenging the substantive reasonableness of his sentence as well, but the argument was not developed and thus is waived. Zannino, 895 F.2d at 17.

[19] Enamorado also argues that there was insufficient evidence that his murder of Ortiz was premeditated or committed as

offense level was 43, the criminal history category had no impact on his guidelines range. See U.S.S.G. ch. 5, pt. A (sentencing table); United States v. Magee, 834 F.3d 30, 38 (1st Cir. 2016) (rejecting challenge to criminal history category determination because any error was harmless). We also reject Enamorado's argument that he was entitled to a downward adjustment to his offense level for playing only a "minor" role in the conspiracy. Not only did Enamorado kill Ortiz, but he was also identified by several witnesses as a homeboy. MS-13 associates only become homeboys after ongoing participation in the gang and its activities. The district court's determination that Enamorado's role was not minor was not clear error. See United States v. Montes-Fosse, 824 F.3d 168, 172 (1st Cir. 2016).

Solís-Vásquez challenges the calculation of his guidelines range on the grounds that there was insufficient evidence to support the district court's conclusion by the preponderance of the evidence that he was responsible for first-degree rather than second-degree murder of Ortiz. For much the reasons described in the discussion of the sufficiency of the evidence, we see no clear error in the district court's conclusion

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a part of the MS-13 conspiracy. We reject this argument for the same reasons we reject his sufficiency argument.

that Solís-Vásquez understood that the group was going to kill Ortiz and thus that the murder was premeditated.[20]

N. Effective Assistance of Counsel

Pérez-Vásquez argues that he was denied effective assistance of counsel because his counsel conceded some elements of the charged RICO conspiracy.

Ineffective assistance of counsel claims generally "cannot make their debut on direct review of criminal convictions, but, rather, must originally be presented to, and acted upon by, the trial court." United States v. Tkhilaishvili, 926 F.3d 1, 20 (1st Cir. 2019) (quoting United States v. Mala, 7 F.3d 1058, 1063 (1st Cir. 1993)). Further, Pérez-Vásquez has not shown that the record here was "sufficiently developed to allow reasoned consideration" of the issue. Id. (quoting United States v. Natanel, 938 F.2d 302, 309 (1st Cir. 1991)). We dismiss this claim of error without prejudice. Pérez-Vásquez may file a motion for post-conviction relief in the district court. See 28 U.S.C. § 2255.

[20] Solís-Vásquez also challenges whether there was sufficient evidence to support increasing his base offense level based on various other assaults and murders. Because there was no clear error in determining that Solís-Vásquez's base offense level was 43, the maximum, his base offense level was not affected by the other conduct and any error was harmless. See United States v. Acevedo-Hernández, 898 F.3d 150, 172 (1st Cir. 2018).

We have reviewed all additional claims made by the defendants and determined that each of them is without merit.

IV. Conclusion

Affirmed.

United States Court of Appeals
For the First Circuit

Nos. 18-1975
19-1734

UNITED STATES OF AMERICA,

Appellee,

v.

HECTOR ENAMORADO, a/k/a Vida Loca,

Defendant, Appellant.

JUDGMENT

Entered: August 20, 2021

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: Hector Enamorado's conviction and sentence are affirmed.

By the Court:

Maria R. Hamilton, Clerk

cc: Christopher John Pohl, Kelly Begg Lawrence, Donald Campbell Lockhart, Glenn A. MacKinlay, Kunal Pasricha, Sonja Ralston, James J. Cipoletta, Rosemary Curran Scapicchio, Hector Enamorado

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
vs.	)	Criminal Action
	)	
NOE SALVADOR PEREZ VASQUEZ	)	No. 15-10338-FDS
a/k/a "CRAZY,"	)	
	)	
LUIS SOLIS VASQUEZ	)	
a/k/a "BRUJO," and	)	
	)	
HECTOR ENAMORADO	)	
a/k/a "VIDA LOCA,"	)	

Defendants

BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

JURY TRIAL DAY 16

John Joseph Moakley United States Courthouse
Courtroom No. 2
1 Courthouse Way
Boston, MA 02210

April 18, 2018
9:00 a.m.

Valerie A. O'Hara
Official Court Reporter
John Joseph Moakley United States Courthouse
1 Courthouse Way, Room 3204
Boston, MA 02210
E-mail: vaohara@gmail.com

APPEARANCES:

For The United States:

United States Attorney's Office, by CHRISTOPHER J. POHL, ASSISTANT UNITED STATES ATTORNEY, and KELLY BEGG LAWRENCE, ASSISTANT UNITED STATES ATTORNEY, GLENN A. MacKINLAY, ASSISTANT UNITED STATES ATTORNEY, 1 Courthouse Way, Suite 9200, Boston, Massachusetts 02110;

For the Defendant Noe Salvador Perez Vasquez:

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For the Defendant Luis Solis Vasquez:

IAN GOLD, ESQ., 2 Clock Tower Place, Suite 260 EF, Maynard, Massachusetts 01754;

CHARLES HENRY FASOLDT, ESQ., 185 Devonshire Street, Boston, Massachusetts 02110;

For the Defendant Hector Enamorado:

JAMES J. CIPOLETTA, ESQ., Citizens Bank Building, Suite 307, 385 Broadway, Revere, Massachusetts 02151.

I N D E X

EXHIBITS	FOR I.D.	IN EVIDENCE
B	197	

country, spend less time in jail, and you should not permit them to do it.

I envy you in a way that you're going to be deliberating and participating in our system of justice in this way. I don't envy you the difficult task ahead of you at the same time, and I thank you very much for your attention.

THE COURT: All right. Thank you, Mr. Gold.

Okay. I think what probably makes sense is let's try to take a very quick break, as quick as we can make it, and then we'll come back, we'll hear from Mr. O'Hara, and then we'll break for lunch.

11:57AM

THE CLERK: All rise.

(JURORS EXITED THE COURTROOM.)

(A recess was taken.)

THE CLERK: All rise for the jury.

(JURORS ENTERED THE COURTROOM.)

THE CLERK: Thank you. You may be seated. Court is now back in session.

THE COURT: Mr. O'Hara, whenever you're ready.

12:10PM

MR. O'HARA: Thank you, your Honor.

CLOSING ARGUMENT

MR. O'HARA: Good afternoon again, ladies and gentlemen. I'd like to echo the comments that Mr. Gold made about how impressed, quite frankly, we all are with your punctuality, and I'm also impressed because this is the only

trial that I can recall in my too many years as an attorney where I haven't noticed anybody dozing off, and I hope I don't, you know, break the record here and put somebody to sleep because it's been a long day and a long three and a half weeks.

We're going to try to make your task a little bit easy for you in that we are acknowledging and we're not contesting that our client, Mr. Perez-Vasquez, had a membership in a criminal enterprise, and we agree that the legal definition of a continual enterprise is proper and fits in this case, although the common sense interpretation of an enterprise doesn't really apply here because there was no level or degree of sophistication within this group. But according to the legal definition, we are agreeing that it does qualify as a criminal enterprise and that our client was a member of the criminal enterprise, so those are two burdens that you're not going to have to struggle with when you receive this case and begin deliberation.

We are contesting our client's involvement in two murders, and our contesting his involvement in those two murders is going to be based upon the legal definition of what constitutes an act of malice in a murder, and it's not my job to explain to you what those instructions are.

You're going to receive them verbally and in a very emotive and concise fashion from Judge Saylor, and you're also going to receive written copies of it for your own purposes.

But let me just tell you, ladies and gentlemen, that there has been no evidence produced during this trial that shows that Noe Perez-Vasquez shared an intent to commit murder in this case.

And even if he had knowledge of a murder that could have been or was about to be committed and didn't act or do anything to prevent it, that's not enough to impute to him the intent to kill either Javier Ortiz, okay, or Fantasma, as he was commonly known.

12:13PM The burden of proof is on the government. Mr. Benzaken and I could have come to you during this trial and done nothing. We literally could have sat on our hands for three and a half weeks, as uncomfortable as that would have been, and said nothing. And if the evidence that the government produced was not enough to convince you beyond a reasonable doubt of each and every element of the crimes of which our client is accused, that you weren't convinced beyond a reasonable doubt, your duty would be to find him not guilty.

Now, I spoke to you three weeks ago about rules, and I 12:13PM gave you a trite example of the problem I was having following the rules going through the metal detector. During this trial, you witnessed the rules and effect, basically the rules of evidence and the rules of criminal procedure as it affects the attorneys.

We had to go to sidebar on many occasions to discuss

things. You were kept out of earshot. You had no idea what was going on, but we were conforming our behavior as lawyers with the rules as they apply to us.

When you get this case and when you start your deliberations, you will be explained by Judge Saylor that there's rules that you have to follow, and the two most essential rules, the two most essential precepts, actually, of our system of criminal jurisprudence is that we don't have to prove anything. There's no such thing as innocence. We don't need to present any evidence, they do.

12:14PM

And the other one, which separates our system from every other system in the world, is that we have a jury of peers, not professional jurors, who must be convinced beyond a reasonable doubt of each and every element of the crime, or your sworn duty will be to find the defendant in this case, Mr. Perez-Vasquez, not guilty of whatever crime you're not convinced beyond a reasonable doubt that he committed.

It's important to determine who was the leader of ELS in late 2014 through 2015, and you have heard a lot of testimony from the four horsemen of provocation, the four cooperating witnesses, the informants, the snitches, however you want to call them, who all said that Mr. Perez-Vasquez had the first word for ELS.

12:15PM

You've also heard statements and transcripts that were read to you where people were commenting on his position within

the clique, and we don't deny that at one point in time he may have played a leadership role within that clique, and we also don't deny that he had intentions of elevating himself at some time in the future to be a leader of that clique again, but I've put on the screen for you some comments that Mr. Benzaken and I found in the record of this case, which are comments on Mr. Perez-Vasquez' character within the group that came from other gang members.

As you recall, Tigre yesterday made the first comments on the top of the page referring to Mr. Perez-Vasquez as somebody who was unreliable, didn't pay his debts, tried to put the moves on other women within his clique and was generally disrespected.

Innocente, Mr. Pohl targeted for you the exhibit in your transcript book, which is 270. It's quite lengthy, and when you're going through the evidence at the end of the case, I know it's going to be burdensome. We have the same books that you have, but I suggest you'll read that, read the comments Innocente makes about Mr. Perez-Vasquez, the disparaging remarks about spending too much time with his women, the disparaging remarks that he's more in tune with his 17 year-old wife/girlfriend than he is with the business of the clique.

And you're also going to see a series of disparaging remarks that are made about him by Terible, and there's no

controversy in this case that in 2014 going through March of 2015, the unquestioned leader of the ELS clique was Terible.

And Terible, as you know, was arrested in March of 2015. He was incarcerated. He was held at the Nashua Street jail. And in your transcript binder, Exhibit 218, there are 18 telephone calls that were made from him, collect, out of that jail to people who were outside the prison system, friends of his, his girlfriend, and also his gang associates. And I rather inartfully, back in the beginning of this case, read through those phone calls with Trooper Estevez.

12:18PM

The point I was trying to make, ladies and gentlemen, those 18 telephone calls where he's making inquiry about who it was who ratted him out, who it was who snitched on him and got him into that problem, those 18 telephone calls were not made to Mr. Perez-Vasquez. He was so lowly thought of within that clique, Mr. Terible never bothered reaching out to him.

They do make reference to him, especially when he is talking to his girlfriend, and Terible does make remarks to people like go out and do your investigation and find out who it was who was involved in this thing.

12:19PM

And you'll see when you look at those telephone calls, the transcripts that he had his suspicions about who it was who had done it, who it was who had ratted him out, but not one of those phone calls is made to Mr. Perez-Vasquez. The majority were made to Inquieto, and when Inquieto receives the telephone

calls, Sayko and Innocente are there, and they all talk together.

And when you look at those calls, you will see -- if we could go back, you would see, for example, Exhibit 218.1 on pages 4 and 5. There's a complaint being made by Inquieto and he's saying, "Crazy says he had the word" and Terible's response is "No way, impossible."

The only way you can get the word is if you have a meeting, and there's a complaint about Crazy took the register of names, he has to give it back, he's not the leader, he's not the leader, he hasn't been elected. And you've learned through the testimony you've heard in this case that that's the way things work within these cliques. There's an air of democracy involved, so to speak, where they have to meet and elect their own leaders, and then sometimes the controlling group down in El Salvador will tell them this guy is the leader now, you can't be the leader anymore.

12:20PM

But these comments and these telephone calls are not comments made about somebody who's about to assume a leadership role within that clique, and why is that important?

12:21PM

It's important because once Terible reaches a conclusion about who it was who had ratted him out, he gets the order to have Fantasma killed.

And during this period of time, and there's a reference on your screen right now to two other telephone calls

that are in your binders at 218. There's discussions about Flaco. Trooper Estevez told you the first time he testified in this case that he was familiar with a case in 2009 where Terible was arrested with a man named Flaco, Terible got jail time, Flaco was let out. And from that day forward, Terible suspected that Flaco was an informant.

There's other information that came out through Muerto where Muerto indicates that Flaco is an informant, and there's information about other people who were suspected of being informants, so during all this time while Terible is in jail, he's trying to find out who the informant is. He's not calling Mr. Perez-Vasquez, and in a lot of his telephone calls, they don't even refer to Mr. Perez-Vasquez by name. They just call him the dude, and you're going to see during some of those phone calls Mr. Perez-Vasquez is placed on a GPS monitoring system.

12:22PM

And in that phone call, it's in 218 also, 218.11, Innocente remarks that he actually went and checked up on Mr. Perez-Vasquez. They're making fun of him. He was going to take off, he was going to flee. He was afraid he was going to get two years in jail, and it's like ha-ha-ha, what a jerk, look at that. He got put on electronic monitoring, and Innocente says yeah, I sent some dudes there to check him out. They're actually checking him out while he's making court appearances to make sure he's not lying and making stuff up

12:23PM

about what's going on with his cases.

So, my strong suggestion to you, ladies and gentlemen, was that he was not a candidate for promotion to a leadership person within the clique. He was somebody who was not respected at the time, and he was going nowhere.

But the rumors were floating around from the beginning of April until today that this kid named Fantasma up in Lawrence was the person who had turned informant, and the rumors kept circulating. And what you've learned, I would
12:24PM expect during this case is that these people love to talk. God, do they love to talk.

I mean, I had to listen to telephone calls inside a car and it's blah, blah, blah, blah, and, of course, they don't know they're being recorded, but the bragging and the bold talking about what they were doing on the street is constant, and it's also constant talk about who they're suspecting of this, who they're suspecting of that.

So the information that Fantasma may have been the informant was not a guarded secret, and he was up in Lawrence
12:25PM by himself, but you'll notice that in the phone call where they're making fun of Mr. Perez-Vasquez because he didn't have to take off because he only had to pay a fine and he was on the street, he was placed on electric monitoring, and that's important because the electronic monitoring went in effect from April 24th, and it terminated on September 2nd.

So for that period of time, he was under the scrutiny of the criminal justice system, and you've seen graphic representation of how that worked because he was obviously on foot around the so-called destroyer house in Somerville after Fantasma was killed, okay.

But he was wearing electric monitoring and electronic monitoring, as you know, has an ability to tell whoever is monitoring you where you are. And it was because of the electronic monitoring I suggest to you was another reason why he couldn't assume any kind of leadership role within the clique and why he had to back out of the clique because you've heard testimony from a variety of witnesses, expert and otherwise, that these people are paranoid.

They're afraid of the police, and in some of the clique meetings, the experts told you the members have to lift up their shirts to prove that they're not wearing any kind of electronic monitoring devices, whether it be a camera, a microphone, whatever. They have to take their cell phones out and in some cases remove the chips from the phone because the leadership doesn't trust the rank and file not to leave their phones on. Everybody is suspected of being an informant in one form or another, especially people with court cases pending, and Mr. Perez-Vasquez at that time was wearing electronic monitoring, and he was forced to go on calmado status, to cool it off until September when the monitoring was taken off.

Now, the key witnesses against him regarding the accusation that he knowingly participated in the murder of Mr. Villanueva, also known as Fantasma, are the informants. There's only one informant in this case who was actually present when Fantasma was killed, and that was the person who killed him, Gato, and Gato testified for you and he told you what happened.

And you'll learn that he had given various versions of what he was up to the day he killed Fantasma. At first, he denied it, then he denied he did anything, that he just held Fantasma while Perverso stabbed him, but the reality of the situation is that Fantasma was killed in Lawrence and Gato, at the very least, chose the location where the murder took place. That was his choice, and Perverso came out there by train and met with Fantasma to carry the murder out.

Now, you also know that Fantasma is facing life in prison for what he did, for committing a murder. And after he was arrested, he wasn't arrested for the murder, you remember that. He was at the destroyer in Somerville, and immigration officers went through and made a sweep, and they arrested all the people who were in that apartment who didn't have proper documentation, held them in immigration custody, and then days later it was discovered that Gato may have been involved in the murder, but Perverso had already left the scene, so his partner in crime had managed to escape to El Salvador by renouncing and

waiving his rights to an immigration hearing.

Gato wasn't able to do that, so he's looking at life in prison. He's looking at life in prison, and he's only 20 or 21 years old. So he decided to do something to help himself, and both my brother counsel before me have given you ample reason to look at anything that Gato said through -- with a lot of scrutiny because he has the most to gain by cooperating in this case against my client, Mr. Perez-Vasquez. And it's important to look at exactly what was going on during the
12:29PM period of late June into early July when Fantasma was killed.

Mr. Pohl pointed out to you a statement that was taken from Innocente, and you learned and I will point out to you again that for a period of time in 2015, according to Innocente himself, he was the leader of the ELS clique, but the statement is at Exhibit 270, and it's at page 14, and the statement that was highlighted for you was that the informant who was recording Innocente's conversation when they were in jail together asked him about the murder of Fantasma, and he asked him if the two people who had killed Fantasma, Perverso and
12:30PM Gato, had gotten permission, and Innocente said no, they asked for permission.

Crazy, you know what he told them? "Well, if the dudes from down below gave the light, you figure out what to do." That's what Gato told Innocente when they were in jail together, that Crazy basically said go ahead and do what you

want to do. And I suggest to you, ladies and gentlemen, that's not somebody who's planning a murder or instructing people how to commit a murder.

He's saying, look, if the green light came from El Salvador, you do what you want to do, I don't want any part of it, and there was testimony that Gato gave when he was in front of you indicating that on the day the murder was committed, he received a telephone call from another ELS member called Sayko telling him what was going to happen, telling him that Perverso was coming out, and you and Perverso commit the murder.

Whether Mr. Perez-Vasquez knew about it beforehand, we don't know, but the law tells you and the Judge will instruct you with much more detail that knowledge of a murder, but failing to act to prevent it, without more, is not enough to impute the shared intent to commit the murder.

Mr. Perez-Vasquez, for whatever reason, did not get involved in the murder. He was not active in the clique at the time the murder was committed. He didn't want any part of it.

There were other witnesses who testified who are also looking for benefits in return for their cooperation. They're seeking not to be given a lengthy prison sentence, and all of them in lock step almost by rote when they're asked who was the leader of ELS, Crazy, Crazy, Crazy. Who gave the order to kill Fantasma? Crazy, Crazy, Crazy. But not one of them, not one

of them were involved in any discussions within the clique to determine who the leader of the clique was.

And most of them are repeating information that they heard from other people who heard it from other people, and there's simply not enough truth and reliability to what they're saying to believe what they are saying.

Tigre, he testified yesterday. Tigre, as you have heard, is an alcoholic. He's a drug addict. He has serious mental health issues going back to his early adolescence. He
12:33PM tells you that for most of the time when he was active within the clique, he was drunk. He was drunk when he was beaten in. He somehow managed to get beaten in without having to do any kind of apprenticeship, without having to do any kind of violence.

They just liked him, so they beat him in and said, you know, "Welcome to the Mara, now you're one of us." And then the two and a half years when he was in the clique, he didn't commit any acts of violence. Just one. He was kind like Gandhi-ish. He would have you believe where he is leading
12:34PM Muerto and some of the more violent people on the clique on some devious path where they won't encounter anybody to beat up because he didn't want people to be beaten up.

Pelon, CW-1, star witness in this case who didn't testify, he was beaten in also, but keep in mind that Pelon had value to the clique. He's a drug dealer, and he was able to

involve the gang into drug dealing, and that's not my client's clique, that's the ESLS clique, but Tigre is, by his own words, worthless.

He gets a benefit from being in the clique, he gets his cocaine probably at wholesale prices so he can keep his habit going, but he denies getting involved in any violence, and I suggest to that doesn't make any sense at all. There's been witness upon witness upon witness, lay witnesses and expert witnesses, verifying the fact that this violent gang exists for two reasons. Number 1, to kill rivals, and Number 2, to support your fellow gang members.

12:35PM

And what does Tigre add to this group? Absolutely nothing. But he did tell you that he was sober in December of 2015, and he confirms for you what the procedures are when there is a change of leadership within a clique, and he did confirm that there's a form of democratic process where the members make a decision about who is going to have the leadership role, okay?

Because Muerto, who you saw testify, he's like the enforcer, he's the muscle for ESLS. He doesn't get along with Casper, who is the long-time leader of the clique, and they're getting pressured from El Salvador to do more hits, to be more active, and Muerto is all for that and Casper is not. I don't need that. You know, I'm old, I'm 30, I have children. I don't want to go to jail, and Muerto wants to take it over and

12:36PM

the group backs off and says no, you can't do it.

They didn't agree to allow him to do it, and whether Mr. Perez-Vasquez had similar designs on his own clique, he didn't have the right to take it over either.

So there's an important distinction to be made there. Also, you heard from Violento. He was the slim person with the little ponytail who sat in that chair for two days and swiveled back and forth and made sarcastic responses to simple questions, smirked occasionally. He's the one who admitted that he snuck into the United States illegally. As soon as he was picked up by immigration, he knew exactly what to say. I'm here for political asylum, if I get returned to my native country, I'm going to be killed.

12:37PM

So our immigration services allowed him to come in after they do some kind of cockamamy background check which resulted in nothing. They believed he was credible, and he's allowed to come up to New England, and where does he go? He goes to Providence, Rhode Island, and he's staying with a priest.

12:37PM

If he didn't want to continue with his gang activities, he had two ways out. First of all, he's a member of the Directos clique. There's no Directos clique up here, so he has no place to report to. Second of all, he's living with a priest. He can find religion. He can get out of the gang. That's the way you can get out, but his testimony was that he

didn't feel comfortable living with the priest in Rhode Island, you know, he wanted to be where the action was. He wanted to come to Boston. He wanted to realign himself with the clique. He wanted weed, wine, and women as the song goes, so he came to Boston. He lasted nine months before he was arrested by immigration authorities and indicted in this case.

And what was most annoying about him besides his person was the fact that while he goes through his cooperation meetings, four or five of them with law enforcement, he's 12:38PM lying. He's lying to them. He told them at one point in time that he had been beaten in in El Salvador. He had been beaten in as a homeboy, and he acknowledged that by being beaten in in El Salvador required a murder.

Things are much tougher down there if you want to get in the gang than they are up here. Then he denied on the stand ever saying that, and the FBI agent who was present acknowledged, yeah, he said that.

So you don't know how many people he killed down there. You don't know how many lies he told, and then after he 12:39PM goes through all these sessions, he's coming into court to testify after going through these proffer sessions with officers and agents and prosecutors and his own attorney, and he decides to let out of the bag the cat he'd had been hiding for so long, the fact that while he was up there in that nine-month period of time, he was on the streets shooting

people, shooting people from the back of a motor scooter, and he just kept that to himself.

And what was most important about what he said, I would suggest to you, was a comment and answer he gave to me. "In all the meetings that you had with law enforcement, your attorney, the prosecutors, you never brought that up, did you?" That being the fact that he was out shooting people on the street. And his answer was, "They never asked me about it. I always told them what they wanted to hear."

12:40PM And, ladies and gentlemen, that statement, "I always told them what they wanted to hear" is the truth of what was going on with all the informants in this case, they are telling you what they think you want to hear. They told law enforcement what they think law enforcement wants to hear. And all of them in a lock step said, if I tell the truth, I tell the truth, I tell the truth, and then who makes the decision on sentencing? The Judge, the Judge, the Judge. But who makes the decision on whether or not they can stay in this country? That's immigration authority and the U.S. Attorney's Office.

12:41PM So they have these expectations that if they keep telling them what they want to hear, they cannot only get a shorter jail sentence, they can stay in the country. They can go out and circulate in society, and I suggest to you that's disgusting.

Gato, when he testified, you saw him for a lengthy

period of time on the stand. Did he appear to you to have any remorse for the killing he committed? I suggest not, and why did he kill Fantasma? What was the reason? He had nothing against Fantasma, it was just a means to reach a higher state within his gang. He thought that if he killed the informant, he'd become a homeboy, and that was why he did it. When he testified here, he gave no indication that he matured to the point where he wants to become a productive member of this society or live in this country, like so many immigrants do, because our level of living is so much higher than it is, for example, in a country like El Salvador. It's just self-serving statements for their own benefit because they don't want to go to jail, and they sure as heck don't want to be deported.

12:42PM

Now, I told you earlier that when Mr. Perez-Vasquez had the electronic monitoring installed on his body, he had morphed back into a state, not of retirement, but of chilling, of calmado. And Gato acknowledged that that status is in existence among gang members in this area, and Mr. Perez-Vasquez had to take advantage of that and back off of gang activity, although he may have been aware of what was going on, but he couldn't do anything, he couldn't attend meetings, he couldn't be active with the gang, because he was being watched. He was being monitored by police.

12:42PM

Mr. Perez-Vasquez also was recorded in Pelon's car talking about what happens to somebody who makes a mistake, and

the date that he spoke within Mr. Pelon's car was October of 2015 after the electronic monitoring had been removed and after the word got out that the killing of Fantasma was a mistake, and I'm not going to read it to you now. It's on your screen. If you want to make a note of it to look at it, you may.

But what he's saying is that if you make the mistake, if you kill somebody, you better have proof because if you don't have proof, that's what's going to happen to you, and when you read his comments while you're deliberating, you'll see he's not expressing any concerns for himself, mainly because he didn't order the hit, and he's not subject to a green light himself. He was out of it at that time.

12:44PM

I am getting old, and I'm losing, gradually, a lot of my faculties. My eyes are not like they used to be. I looked yesterday at the videotape of the drug protection detail, and I'm not a juror in this case. I can't deliberate, but I have to confess I didn't see a gun in that car. I didn't see a shiny object.

I would urge you to look at that videotape if you can when you get the exhibits and look at it yourselves and if you see a gun in that car at any time, then you're warranted in finding him guilty, Mr. Perez-Vasquez, of using a firearm in furtherance of a drug conspiracy.

12:45PM

But if you don't see a gun, you can't guess and think, well, maybe there was a gun there, or maybe it was a toy gun,

or, you know, maybe it was a knife. If you're not convinced beyond a reasonable doubt that there was a gun on his person that he was using to protect the drug detail, then you can't guess about what may have been. As far as that count goes, you have to find him not guilty.

And who set up that protection detail? It was Pelon, the $500,000 man, the drug dealer for the Mexican cartel who happened to be from El Salvador who learned the art of informing when he was subjected to a federal indictment for major drug trafficking in Florida, and somehow he managed to talk his way out of a lengthier jail sentence, was eventually deported back to El Salvador and then somehow talked himself into coming up here.

And not only did he talk himself into coming up here, you've heard evidence that 17 of his family members were brought up here on our dime, and the total amount of benefits that cost the government to bring him and his family up here approached the area of $500,000.

And I'm not suggesting that he was given this money in cash, but what you did hear was that while he was gathering all this information, he managed to develop so much trust with law enforcement that he was given a second telephone for his own personal use and that he developed the ability to turn on and turn off monitoring systems that were being used to monitor the criminal activity that he was taking part in for the

government, and then you learned that while he was doing this, the leopard didn't change its spots, he ended up getting involved in a series of armed robberies, and he's been removed from the witness protection program.

But all these transcripts that have been come in here, all these transcripts could be verified by him, but he's gone. They didn't call him. It's not my burden, ladies and gentlemen, or Mr. Cipoletta, or Mr. Gold to call a witness. They have to prove guilt beyond a reasonable doubt.

12:48PM And they chose not to call Pelon to testify. So what we're stuck with are a bunch of transcripts without hearing the people speak on the transcripts, you're reading the translations. You don't have any live witnesses, in many cases, to verify what happened in the car especially when Pelon is there alone with my client or other people who have been indicted in this case.

So what happened? How many times was the recording device turned off? How many conversations were lost and what was he up to while he was getting all these benefits and then 12:48PM burning the candle on both ends because he was the one who organized the drug details. He was the one who placed people in the car so that they could be videotaped and recorded.

And, by the way, did you have any trouble recognizing the denomination of the bills that were used in that car when Pelon paid off my client? During the delivery of the kilograms

of cocaine? Did you have any trouble seeing the denominations? I didn't, but I didn't see a gun.

Now, let's talk about the murder of Javier Ortiz. Once again, you have to be convinced beyond a reasonable doubt that Mr. Perez-Vasquez shared the intent of the shooter who shot and killed Javier Ortiz back in December of 2014. Mr. Pohl directed you to look at Exhibit 214, which I believe he put a portion up on the screen. I may be mistaken. I have a little snippet on there also from page 5 of Exhibit 214.

12:50PM And if you read it, you can see that after the shooting took place, Mr. Perez-Vasquez was in a car with Pelon, and Pelon told him that the person who had been shot was a culero, and Mr. Perez-Vasquez, at that point in time, I'd suggest to you, learns that the person that was shot was a rival. He didn't know it until that point in time.

And you've heard testimony that Vida Loca was a homeboy, and when a homeboy asks a favor of another homeboy, you don't have the option of saying no, and you've heard testimony that Mr. Perez-Vasquez received numerous phone calls

12:50PM on December 14, 2014 from Vida Loca, and he returned the phone calls, but most of the phone calls were coming in because you have his phone log. You also heard that Vida Loca appeared with Mr. Perez-Vasquez, and he appeared to be crazy. He was so upset, he was so angry.

Now, I ask you a question. Given the rules that

pertain to this gang, what would have happened if Mr. Perez-Vasquez had told Vida Loca to go pound sand? "I'm not bringing you the gun." I suggest to you that he would have been killed, and you have that information from a variety of sources, including Muerto, who you know from testifying here. Muerto testified that a homeboy has to go to the aid of another homeboy regardless of the clique. When you reach homeboy status, that's like becoming a universal soldier, and you owe obedience to all your other homeboys, no matter where they are and no matter what they ask for.

12:52PM

And you also heard testimony earlier on in this case from Special Agent Jeffrey Wood from the FBI, and he was asked specifically would a homeboy who denies another homeboy suffer a green light? And he said yeah, probably could.

So Mr. Perez-Vasquez on December 14, 2014 was in a situation where he either could fish or cut bait, and the bait that would have been cut would have been his own and probably his own throat, so he gave him the gun.

I'm not suggesting that's anything he's proud of or he deserves a reward for. He's not asking for any reward, but, once again, when he provided that gun to Vida Loca, he didn't know that Vida Loca was going in to shoot a rival. He didn't know that there was a rival who had been shot until the following day.

12:52PM

So he could have given him the gun to commit an armed

robbery, he could have given him the gun for any kind of nefarious reason. I don't know, but you have to be convinced beyond a reasonable doubt that when he gave that gun to Vida Loca that evening, he shared the intent that Vida Loca had to kill somebody, to kill Javier Ortiz, or you can't find him guilty.

If I could just have a moment. Now, providing a ride to Mr. Enamorado after the murder happened is problematic for Mr. Perez-Vasquez, and we acknowledge that, and you should be concerned about that also, but there's a large difference between being an accessory after the fact of a murder and being an accessory before the fact of the murder.

12:54PM

And, once again, if he didn't share the intent that Mr. Enamorado had at the time he discharged that weapon into Mr. Javier Ortiz, then you can't find Mr. Perez-Vasquez guilty of that crime.

Now, there was a lot of scuttlebutt after the crime happened about the room being filled with chavalas, the room being filled with culeros, but we all know that's not true. There was only one chavala that you heard about who was presented in that after-hours place. The second gentleman who was killed had absolutely nothing to do with any gang, and it's unfortunate that he was shot. But, once again, Mr. Perez-Vasquez had nothing to do with that, and he didn't share any intent to do harm to that person.

12:54PM

I told you in the beginning weeks ago that you need to follow the rules, and I mentioned to you earlier that you've been kind of kept in the dark about what we discuss when we go to sidebar to talk with the Judge. You're going to get this case now and now the roles are reversed. We're all going to be sitting out here wondering what you're discussing when you're deliberating this case.

All I can ask you to do is what I know you're going to do because I'll be very blunt with you, I've been a lawyer for 35 years. You are the most attentive jury I have ever seen in terms of your note-taking and just your general ability to focus on this case because I get tired and it's my case.

So I want to thank you for your attentiveness, and I ask you only to take your time, be fair, keep an open mind until you reach your final decision and parse through as much of the evidence you want to before you reach that decision. Thank you.

THE COURT: All right. Thank you, Mr. O'Hara. All right. What we're going to do now is --

12:55PM

12:56PM

Mr. Cipoletta, I'm sorry?

MR. CIPOLETTA: Can we go to sidebar, your Honor?

THE COURT: Let me discharge the jury for lunch, and then we can. We're going to break for lunch. What I'd like to do is to try to reconvene at quarter to 2:00, so 45 or 50 minutes, if we can accomplish that, and then we'll hear

Mr. MacKinlay. We'll be given a chance to hear rebuttal argument by the government, and then I'll instruct you on the law that you're to follow. So we'll take a recess. Again, you haven't heard even all the arguments yet, so please don't talk about the case among yourselves until you are -- until you get the case.

THE CLERK: All rise.

THE COURT: All right, counsel. I'll see you at sidebar.

12:57PM (THE FOLLOWING OCCURRED AT SIDEBAR:)

THE COURT: Yes, Mr. Cipoletta.

MR. CIPOLETTA: I need to move for a mistrial, Judge. The co-defendant has just become a witness against my defendant without notice in violation of brutant, and there's no way this jury now is going to be able to give Mr. Enamorado a fair verdict after what just happened.

THE COURT: You're referring to Mr. O'Hara's arguments, I presume?

MR. CIPOLETTA: I'm sorry.

12:57PM THE COURT: You're referring to Mr. O'Hara's arguments, I presume?

MR. CIPOLETTA: Yes.

THE COURT: Okay. The motion is denied. So we'll reconvene if we can at quarter to two. Mr. MacKinlay, I think under the circumstances given the way this has played out, I

think 15 or 20 minute, if that's what you want, is an appropriate time for rebuttal.

MR. MacKINLAY: Thank you, your Honor.

THE COURT: What I plan to do is go into -- I'll probably do the first 20 or 30 minutes of my instructions, then take a break at that point. Okay.

(SIDEBAR CONFERENCE WAS CONCLUDED.)

THE CLERK: All rise.

(A recess was taken.)

01:49PM THE CLERK: All rise. Thank you. You may be seated. Court is now back in session.

THE COURT: Mr. Gold.

MR. GOLD: Yes, your Honor, Mr. Solis-Vasquez has been complaining about a stomach condition all day, and he's been in discomfort, I've noticed. He's got a pancreatic condition that he -- even while at Wyatt, he's been treated in the hospital for, and he feels that pain which is familiar to him returning.

What he'd like to do, if it is all right with the Court, is to suffer through the argument and then be allowed to 01:50PM go back to Wyatt and see medical personnel there. He thinks he can hang on for another 20 minutes, and then he would consent to, obviously, the charge being --

THE COURT: Not being present during the charge?

MR. GOLD: Not being present during the charge.

THE COURT: Does the government have a view on whether

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UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I do hereby certify that the foregoing transcript was recorded by me stenographically at the time and place aforesaid in Criminal Action No. 15-10338-FDS, UNITED STATES vs. NOE SALVADOR PEREZ VASQUEZ, et al., and thereafter by me reduced to typewriting and is a true and accurate record of the proceedings.

Dated this 26th day of April, 2018.

s/s Valerie A. O'Hara

_____

VALERIE A. O'HARA

OFFICIAL COURT REPORTER

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
vs.	)	Criminal Action
	)	
NOE SALVADOR PEREZ VASQUEZ	)	No. 15-10338-FDS
a/k/a "CRAZY,"	)	
	)	
LUIS SOLIS VASQUEZ	)	
a/k/a "BRUJO," and	)	
	)	
HECTOR ENAMORADO	)	
a/k/a "VIDA LOCA,"	)	

Defendants

BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

JURY TRIAL DAY 16

John Joseph Moakley United States Courthouse
Courtroom No. 2
1 Courthouse Way
Boston, MA 02210

April 18, 2018
9:00 a.m.

Valerie A. O'Hara
Official Court Reporter
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E-mail: vaohara@gmail.com

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I N D E X

EXHIBITS	FOR I.D.	IN EVIDENCE
B	197	

Again, the government is not required to prove that any specific acts were racketeering acts, or that such acts occurred at all. However, the government must prove that the defendant agreed to join an enterprise that engaged in the particular types of racketeering acts alleged in the indictment. You must unanimously agree, as to each defendant individually, on which type or types of racketeering activity that the defendant agreed the enterprise would conduct -- for example, at least two acts of murder or at least two acts of drug trafficking, or both of them, or any combination of them.

03:25PM

One crime that qualifies as a type of racketeering act is the crime of murder.

Murder is the unlawful killing of a human being. Murder may be committed in the first degree or the second degree.

In essence, first degree murder requires either premeditation or extreme atrocity or cruelty, and second degree does not. In this case, the distinction between first-degree and second-degree murder is not relevant, and, therefore, I will simply describe the elements of murder.

03:26PM

To find a defendant guilty of murder, the government must prove that the defendant caused the victim's death and acted with malice.

A defendant's act "caused" the victim's death if the act, in a natural and continuous sequence, results in death,

and if the death would not have occurred without the act.

A defendant acted with "malice" if he intended to kill the victim, intended to cause grievous bodily harm to the victim, or intended to do an act which, in the circumstances known to the defendant, a reasonable person would have known created a strong and plain likelihood that death would result. Malice can be proved in any one of those three ways, and the government satisfies its burden of proof if it proves any one of the three.

03:26PM The first alternative is that the defendant intended to kill the victim. Intent refers to the defendant's objectives or purposes. A defendant must have had it in his mind to kill the victim. It involves concentrating or focusing the mind for some perceptible period. It is a conscious act, with the determination of the mind to do the act. It is contemplation rather than reflection, and it must precede that act. A defendant must have an actual, subjective intent to kill.

The second is that the defendant intended to cause

03:27PM grievous bodily harm to the victim. Grievous bodily harm means severe injury to the body.

The third is that the defendant intended to do an act which, in the circumstances known to the defendant, a reasonable person would have known created a strong and plain likelihood that death would result. You must first determine

whether the defendant intended to perform the act that caused the victim's death. You must then determine what the defendant himself actually knew about the relevant circumstances at the time he acted. You must then determine whether, under the circumstances known to the defendant, a reasonable person would have known that the act intended by the defendant created a plain and strong likelihood that death would result.

You are permitted (but not required) to infer that a defendant who intentionally uses a dangerous weapon on another person intends to kill that person.

03:28PM

You may consider a defendant's mental condition at the time of the killing, including any credible evidence of the affect on him of his consumption of alcohol or drugs in determining whether he had the necessary intent.

To prove the defendant guilty of murder, the government is also required to prove beyond a reasonable doubt that there were no mitigating circumstances that reduced the defendant's culpability.

A mitigating circumstance is a circumstance that

03:28PM

reduces the seriousness of the offense in the eyes of the law. The killing that would otherwise be murder is reduced to the lesser offense of voluntary manslaughter if the government has filed to prove that there were no mitigating circumstances. Therefore, if the government proves all the required elements of murder, but fails to prove beyond a reasonable doubt that

there were no mitigating circumstances, the defendant is not guilty of murder, although he may be guilty of voluntarily manslaughter.

Heat of passion, and reasonable provocation, may be a mitigating circumstance. Heat of passion includes the states of mind; passion, anger, fear, fright, and nervous excitement.

Reasonable provocation is provocation by the person killed that, 1, would be likely to produce such a state of passion, anger, fear, fright, or nervous excitement in a
03:29PM reasonable person as would overwhelm his capacity for reflection or restraint, and, 2, did actually produce such a state of mind in the defendant. The provocation must be such that a reasonable person would have become incapable of reflection or restraint and would not have cooled off by the time of the killing and that the defendant himself was so provoked and did not cool off at the time of the killing. In addition, there must be a causal connection between the provocation and the heat of passion and the killing. The killing must occur after the provocation and before there was
03:30PM sufficient for the emotion to cool, and must be the result of the state of mind induced by provocation rather than a pre-existing -- rather than by a pre-existing intent to kill or grievously injure, or an intent to kill formed after the capacity for reflection or restraint has returned.

Mere words, no matter how insulting or abusive, do not

by themselves constitute reasonable provocation.

Physical contact, even a single blow, may amount to reasonable provocation. Whether the contact is sufficient will depend on whether a reasonable person under similar circumstances would have been provoked to act out of emotion rather than reasoned reflection. The heat of passion must also be sudden; that is, the killing must have occurred before a reasonable person would have regained control of his emotions.

Intoxication or impairment by drugs or alcohol is not
03:30PM a mitigating circumstance. Although, as I told you, you may consider any credential evidence of intoxication or impairment in determining a person's intent.

If the government has not proved beyond a reasonable doubt the absence of heat of passion and reasonable provocation, the government does not prove that the defendant committed the crime of murder.

In order to be guilty of murder, it is not necessary that the defendant himself performed the act that caused the victim's death. A person may be guilty of murder if he
03:31PM knowingly participates with one or more persons -- one or more other persons to commit a murder, even if he himself did not kill the victim.

To establish that a defendant is guilty of murder under such circumstances, the government must prove two things beyond a reasonable doubt. First, the government must prove

that the defendant knowingly participated in the commission of a murder. Second, the government must prove that he possessed or shared the intent required for that murder.

The first requirement is that the defendant knowingly participated in the murder. Such knowing participation may take the form of any or all of the following:

1, the person committing an act of murder;

2, providing aid or assistance to another person committing the murder;

03:32PM 3, asking or encouraging another person to commit a murder;

4, helping the plan the commission of a murder;

5, agreeing to stand by, at, or near, the scene of the crime to act as a lookout; or

6, agreeing in advance of the murder to provide aid or assistance in escaping if such help becomes necessary.

The second requirement is that the defendant intended to commit or participate in a murder. You are permitted, but not required, to infer a defendant's mental state or intent 03:32PM from his knowledge of the circumstances or his participation in the crime. Any inferences you draw, however, must be reasonable. It is not necessary that the defendant enter into a formal or explicit written or oral plan or agreement to commit or participate in the murder.

Mere presence at the scene of the crime, without more,

is not sufficient to prove intent. Mere knowledge that a murder is to be committed is not sufficient, even if a person knew about the intended murder in advance and took no steps to prevent it; nor is mere association with the perpetrator of the murder either before or after its commission. To find the defendant guilty, there must be proof that he knowingly participated in the murder and that he intended to commit or participate in a murder.

In addition to murder, the following crimes also qualify as racketeering acts: Assault With Intent to Murder.

03:33PM

The crime of assault with intent to murder punishes the attempted commission of a murder. These elements of assault with intent to murder are, 1, that the defendant assaulted another person, and, 2, that the defendant possessed a specific intent to kill.

An assault is an attempted or threatened battery, which is a harmful or offensive touching of another. The assault must be committed with a specific intent to kill the victim, which may be inferred from the defendant's conduct.

03:34PM

Armed assault with intent to murder is an aggravated form of assault with intent to murder. The elements of armed assault with intent to murder are, 1, that the defendant assaulted another person, 2, that the defendant possessed a specific intent to cause the death of the person assaulted, and, 3, that at the time of the assault, the defendant was

C E R T I F I C A T E

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Dated this 26th day of April, 2018.

s/s Valerie A. O'Hara

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