

APPENDIX "1"
Judgment of Conviction

1 JOC
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Steven D. Grierson

6 DISTRICT COURT
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8

9 CLARK COUNTY, NEVADA
10
11

12 THE STATE OF NEVADA,
13
14

Plaintiff,

15 CASE NO. C-13-293029-1
16
17

-VS-

18 DEPT. NO. XII
19
20

EMILIO EVALIO ARENAS
#2733413
21
22

Defendant.

23 JUDGMENT OF CONVICTION
24
25

(JURY TRIAL)

26
27
28 The Defendant previously entered a plea of not guilty to the crimes of **COUNT 1**
– CONSPIRACY TO COMMIT MURDER (Category B Felony) in violation of NRS
199.480, 200.010; **COUNT 2** – CONSPIRACY TO COMMIT KIDNAPPING (Category
B Felony) in violation of NRS 199.480, 200.310; **COUNT 3** – CONSPIRACY TO
COMMIT ROBBERY (Category B Felony) in violation of NRS 199.480, 200.380;
COUNT 4 – FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON
RESULTING IN SUBSTANTIAL BODILY HARM (Category A Felony) in violation of
NRS 193.165, 200.310, 200.320, 0.060; **COUNT 5** – MURDER WITH USE OF A

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APR 02 2019

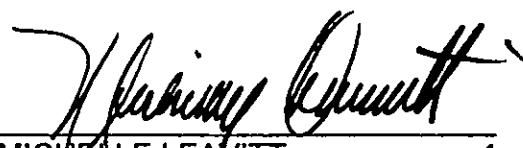
DEPT. 12 065863

1 DEADLY WEAPON (Category A Felony) in violation of NRS 193.165, 200.010,
2 200.030; and **COUNT 6 – ROBBERY WITH USE OF A DEADLY WEAPON** (Category
3 B Felony) in violation of NRS 193.165, 200.380; and the matter having been tried
4 before a jury and the Defendant having been found guilty of the crimes of **COUNT 1 –**
5 **CONSPIRACY TO COMMIT MURDER** (Category B Felony) in violation of NRS
6 199.480, 200.010; **COUNT 2 – CONSPIRACY TO COMMIT KIDNAPPING** (Category
7 B Felony) in violation of NRS 199.480, 200.310; **COUNT 3 – CONSPIRACY TO**
8 **COMMIT ROBBERY** (Category B Felony) in violation of NRS 199.480, 200.380;
9 **COUNT 4 – FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON**
10 **RESULTING IN SUBSTANTIAL BODILY HARM** (Category A Felony) in violation of
11 NRS 193.165, 200.310, 200.320, 0.060; **COUNT 5 – FIRST DEGREE MURDER WITH**
12 **USE OF A DEADLY WEAPON** (Category A Felony) in violation of NRS 193.165,
13 200.010, 200.030; thereafter, on the 20th day of March, 2019, the Defendant was
14 present in court for sentencing with counsel RANDY PIKE, SUSAN BUSH, and
15 CHARLES CANO, Special Public Defenders; thereafter, on the 28th day of March, 2019,
16 the Defendant was present in court for sentencing as to COUNT 5 with counsel
17 ROBERT ARROYO, Special Public Defender, and good cause appearing,
18

19 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
20 addition to the \$25.00 Administrative Assessment Fee, \$13,382.37 Restitution to be
21 paid Jointly and Severally with Co-Defendants, and \$150.00 DNA Analysis Fee
22 including testing to determine genetic markers plus \$3.00 DNA Collection Fee, the
23 Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:
24 **COUNT 1 – a MAXIMUM of TEN (10) YEARS with a MINIMUM parole eligibility of**

1 FOUR (4) YEARS; COUNT 2 – a MAXIMUM of SEVENTY-TWO (72) MONTHS with a
2 MINIMUM parole eligibility of TWENTY-EIGHT (28) MONTHS, CONCURRENT with
3 COUNT 1; COUNT 3 – a MAXIMUM of SEVENTY-TWO (72) MONTHS with a
4 MINIMUM parole eligibility of TWENTY-EIGHT (28) MONTHS, CONCURRENT with
5 COUNT 2; COUNT 4 – LIFE WITHOUT the possibility of parole, plus a CONSECUTIVE
6 term of TWENTY (20) YEARS with a MINIMUM parole eligibility of EIGHT (8) YEARS,
7 CONCURRENT with COUNT 3; COUNT 5 – LIFE WITHOUT the possibility of parole,
8 plus a CONSECUTIVE term of TWENTY (20) YEARS MAXIMUM with a MINIMUM
9 parole eligibility of EIGHT (8) YEARS for the Use of a Deadly Weapon, CONSECUTIVE
10 with COUNT 4; with TWO THOUSAND FORTY (2,040) DAYS credit for time served.
11 COUNT 6 DISMISSED pursuant to verdict.

14 DATED this 2 day of April, 2019.

15 
16 MICHELLE LEAVITT
17 DISTRICT COURT JUDGE
18 *ML*

28

APPENDIX "2"

Order Affirming in Part, Reversing and Remanding in Part

AA2

IN THE SUPREME COURT OF THE STATE OF NEVADA

EMILIO EAVALIO ARENAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78673

FILED

SEP 15 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

*ORDER AFFIRMING IN PART,
REVERSING IN PART AND REMANDING*

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of first-degree murder with the use of a deadly weapon, first-degree kidnapping resulting in substantial bodily harm, conspiracy to commit murder, conspiracy to commit kidnapping, and conspiracy to commit robbery. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Emilio Arenas, codefendant Peyton Hemingway, and a third co-conspirator Theresa Allen participated in battering, robbing, and murdering the victim. The two men stuffed the victim into a suitcase after beating him and submerged it in a bathtub. After several minutes the men removed the suitcase and placed it in Arenas' vehicle. Law enforcement recovered the victim's body, still in the suitcase, from a dumpster. Arenas raises several issues on appeal.

Motion for severance

Arenas argues that the district court erred in denying his motion to sever his trial from Hemingway's. Although the law favors trying

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SUPREME COURT
OF
NEVADA

10/19/2021 *CB*

21-26729

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6615 19813 5517

jointly-indicted defendants together, *Jones v. State*, 111 Nev. 848, 853, 899 P.2d 544, 547 (1995), severance may be proper if joinder prejudices either party, NRS 174.165(1); *Marshall v. State*, 118 Nev. 642, 646, 56 P.3d 376, 378 (2002) ("The decisive factor in any severance analysis remains prejudice to the defendant.").

Here, Arenas contends that Hemingway's counsel made improper comments during the joint trial that resulted in prejudice. The record shows that Hemingway's counsel made antagonistic comments in the sense that he tried to lessen his client's culpability by suggesting that Arenas was more culpable because he faced a death sentence; however, the defense theories in this case were neither mutually exclusive nor irreconcilable with one another. *Cf. Marshall*, 118 Nev. at 648, 56 P.3d at 380 (determining that defenses were antagonistic where one codefendant testified to exonerate himself and to inculpate the other codefendant). Any prejudice was minimal as the improper comments occurred in opening statements, the district court sustained Arenas' objection and instructed the jury to disregard the comment, and the State presented overwhelming evidence of Arenas' guilt, including Allen's testimony and the victim's DNA in Arenas' vehicle.

Arenas also asserts that Hemingway created a hostile environment during trial that prejudiced him. However, Hemingway's threats to harm Arenas occurred outside the presence of the jury. Accordingly, there is no possibility that the comments "undermined the jury's ability to render a reliable judgment as to [Arenas'] guilt." *Marshall*, 118 Nev. at 648, 56 P.3d at 380. Therefore, we conclude that Arenas has not shown the joint trial resulted in prejudice and the district court did not

abuse its discretion.¹ See *Jones*, 111 Nev. at 853, 899 P.2d at 547 (reviewing a district court's decision to sever joint trials for an abuse of discretion).

For-cause challenge

Arenas contends that the district court erred in granting the State's for-cause challenge to prospective juror no. 207 because the State improperly sought to dismiss her based on a language barrier. "District courts have broad discretion in deciding whether to remove prospective jurors for cause." *Weber v. State*, 121 Nev. 554, 580, 119 P.3d 107, 125 (2005) (internal quotation marks omitted), *overruled on other grounds by Farmer v. State*, 133 Nev. 693, 405 P.3d 114 (2017).

Here, the State challenged prospective juror no. 207 for cause after she expressed strong religious beliefs against the death penalty and remained hesitant when Arenas tried to rehabilitate her. When discussing

*1*We also discern no prejudice in the jury returning inconsistent verdicts by convicting Arenas of first-degree murder while convicting Hemingway of second-degree murder. See *Bollinger v. State*, 111 Nev. 1110, 1116-17, 901 P.2d 671, 675 (1995) (explaining that "there is no reason to vacate respondent's conviction merely because the verdicts cannot rationally be reconciled" (quoting *United States v. Powell*, 469 U.S. 57, 69 (1984))); *see also People v. Stembridge*, 221 P.2d 212, 217 (Cal. Dist. Ct. App. 1950) ("There was no inconsistency in the verdict as it was within the jury's province to find one defendant guilty and the other not guilty."). Additionally, the district court did not err in denying Arenas' request for additional peremptory challenges. See NRS 175.041 (providing that codefendants must share in use of peremptory challenges); NRS 175.051(1) (providing that a defendant is allowed eight peremptory challenges when facing a sentence of death or life in prison); *Burnside v. State*, 131 Nev. 371, 386, 352 P.3d 627, 638 (2015) ("[T]here is no constitutional right to peremptory challenges; they arise from the exercise of a privilege granted by the legislative authority." (internal quotation marks omitted)).

*Reva Hause
& inconsistent
- Jury did
- find guilty
- guilty
- 1st Degree
- 2nd Degree
- under
- my instruction
?*

the challenge, the State made a passing remark about prospective juror no. 207 potentially having a language barrier. However, the record shows that the State's primary concern was prospective juror no. 207's views about the death penalty. Therefore, we conclude the district court did not abuse its discretion. *See Browning v. State*, 124 Nev. 517, 530-31, 188 P.3d 60, 69-70 (2008) (concluding the district court did not abuse its discretion in removing a prospective juror for cause who opposed the death penalty on religious grounds); *see also Preciado v. State*, 130 Nev. 40, 44, 318 P.3d 176, 178 (2014) (stating that “[a] prospective juror should be removed for cause only if [their] views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath” (internal quotation marks omitted)).

Batson objection

Arenas argues that the district court erred in denying his *Batson* objections to the State's use of three peremptory challenges. The Equal Protection Clause forbids a prosecutor from striking potential jurors solely on account of their race. *Batson v. Kentucky*, 476 U.S. 79, 89 (1986); *McNair v. State*, 108 Nev. 53, 61-62, 825 P.2d 571, 577 (1992). A *Batson* objection to a peremptory challenge is assessed using a three-step framework. *See Batson*, 476 U.S. at 93-98; *Kaczmarek v. State*, 120 Nev. 314, 332, 91 P.3d 16, 29 (2004); *see also Williams v. State*, 134 Nev. 687, 689-92, 429 P.3d 301, 305-07 (2018) (explaining the three-step framework for district courts to utilize in resolving *Batson* objections). In this case, the district court denied the objection at the first step, which requires “the opponent of the peremptory strike [to] make a *prima facie* showing that a peremptory challenge has been exercised on the basis of race.” *Williams*,

134 Nev. at 689, 429 P.3d at 305 (internal quotation marks omitted). The burden at the first step “is not onerous and does not require the opponent of the strike to meet his or her ultimate burden of proof under *Batson*.” *Watson v. State*, 130 Nev. 764, 775, 335 P.3d 157, 166 (2014). “Rather, the opponent of the strike must provide sufficient evidence to permit the trier of fact to draw an inference that discrimination has occurred.” *Id.* (internal quotation marks omitted).

Here, Arenas argued that his case was sensitive to racial bias because some veniremembers expressed racial animus during voir dire and the State’s key witnesses were Caucasian while he was African American and Hispanic. Additionally, he argued that the State engaged in disparate treatment of some veniremembers by asking them about their ability to understand the proceedings. *See id.* at 776, 335 P.3d at 167 (providing that, along with a pattern of strikes against a cognizable group, “circumstances that might support an inference of discrimination include, but are not limited to, the disproportionate effect of peremptory strikes, the nature of the proponent’s questions and statements during voir dire, disparate treatment of members of the targeted group, and whether the case itself is sensitive to bias”). After hearing argument, the district court found that Arenas had not met his burden and denied his *Batson* objections.

Neither of Arenas’ contentions show the district court clearly erred at the first step. *See Cooper v. State*, 134 Nev. 860, 863, 432 P.3d 202, 205 (2018) (reviewing a district court’s step one determination for clear error). First, this case was not particularly sensitive to racial bias. The fact that witnesses and defendants were of different races or that prospective jurors expressed racial animus does not make Arenas’ case sensitive to bias

as these circumstances could occur in any trial. Additionally, we conclude that Arenas' disparate treatment argument lacks merit. The record shows that the State had a reasonable basis for asking each of the veniremembers cited by Arenas about their ability to understand the proceedings. Therefore, we conclude the district court did not err in finding that Arenas had not made a *prima facie* case and denying his *Batson* objection. See *Williams*, 134 Nev. at 688, 429 P.3d at 305 (explaining that this court “give[s] great deference to the district court’s finding and will only reverse if the district court clearly erred”).

Amendment to the indictment

Arenas argues that the district court abused its discretion by allowing the State to amend the indictment during trial. We review the district court’s decision to allow the State to amend the indictment for an abuse of discretion. See *Green v. State*, 94 Nev. 176, 177, 576 P.2d 1123, 1123 (1978).

Under NRS 173.095(1), “[t]he court may permit an indictment or information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.” The use of the conjunctive “and” means that if either condition is not satisfied, the district court cannot permit the amendment. See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 116 (2012) (“Under the conjunctive/disjunctive canon, *and* combines items while *or* creates alternatives.”); see also *Jennings v. State*, 116 Nev. 488, 490, 998 P.2d 557, 559 (2000) (concluding that district court erred in allowing amendment of an information during

trial where amendment did not charge an additional or different offense but did prejudice the defendant's substantial rights).

Here, the original indictment charged Arenas with first-degree kidnapping with the use of a deadly weapon. The amended indictment added the resulting-in-substantial-bodily-harm enhancement. NRS 200.320 distinguishes between a first-degree kidnapping that results in substantial bodily harm and one that does not. *Compare* NRS 200.320(1)(a)-(c) (providing that first-degree kidnapping resulting in substantial bodily harm is punishable by a term of 15 to 40 years, life with the possibility of parole after 15 years, or life without the possibility of parole), *with* NRS 200.320(2)(a), (b) (providing that first-degree kidnapping not resulting in substantial bodily harm is punishable by a term of 5 to 15 years or life with the possibility of parole after 5 years). Thus, the addition of substantial bodily harm aggravated the charge of first-degree kidnapping and increased the potential punishment. *Cf. Benitez v. State*, 111 Nev. 1363, 1364, 904 P.2d 1036, 1037 (1995) ("A superseding indictment charging an offense that is a lesser included offense of an offense contained in the original indictment does not broaden or substantially amend the original charges.").

Given that the amended charge contained an additional allegation (substantial bodily harm) and subjected Arenas to a greater range of punishment, we conclude the district court abused its discretion because the amendment resulted in a "different offense" under NRS 173.095(1). *See State v. Sharpe*, 304 N.W.2d 220, 223 (Iowa 1981) (providing that amending a second-degree murder charge to first-degree murder constituted a "wholly new and different offense" because it contained an

additional element and a significantly greater penalty). Accordingly, the amendment failed the first condition in NRS 173.095(1), and we reverse the judgment of conviction as to count 4 and remand for the district court to resentence Arenas for first-degree kidnapping without the substantial-bodily-harm enhancement.²

Motion to suppress evidence

Arenas argues the district court erred in denying his motion to suppress evidence found in his vehicle and in finding that he legally abandoned his vehicle and the automobile exception applied. “A motion to suppress presents mixed questions of law and fact.” *State v. Lloyd*, 129 Nev. 739, 743, 312 P.3d 467, 469 (2013). When reviewing a district court’s resolution of such motions, we examine the factual findings for clear error and the legal conclusions *de novo*. *Id.*

“In order to assert a violation under the Fourth Amendment, one must have a subjective and objective expectation of privacy in the place searched or items seized.” *State v. Taylor*, 114 Nev. 1071, 1077, 968 P.2d 315, 320 (1998). As a result, “[v]oluntarily abandoned property is not subject to Fourth Amendment protections.” *State v. Lisenbee*, 116 Nev. 1124, 1130, 13 P.3d 947, 951 (2000). Here, Arenas drove his vehicle to Mexico, and law enforcement subsequently arrested him crossing the United States/Mexico border on foot. Under these facts, we conclude that

²We have also considered Arenas’ contention that the district court erred by permitting the State to amend the type of property identified in the robbery charge and conclude that the district court did not abuse its discretion. *See Caffey v. State*, 765 S.W.2d 891, 892-93 (Tex. App. 1989) (providing that amending the type of property stolen did not create a new charge or prejudice the defendant’s substantial rights).

*(REASONS
application
of Ramirez)*

the district court did not err in finding that Arenas abandoned his vehicle and therefore the district court properly denied his motion to suppress. See *United States v. Ramirez*, 145 F.3d 345, 353 (5th Cir. 1998) (explaining that where a defendant "had in fact fled the [United States to Mexico], the officers had a good faith reason to believe that the car had been abandoned," and the defendant could not "successfully challenge the search of the car"). Additionally, we conclude that the automobile exception applied. Under the automobile exception, "a police officer who has probable cause to believe the car contains contraband or evidence of a crime must either seize the vehicle while a warrant is sought or search the vehicle without a warrant. Given probable cause, either course is constitutionally reasonable." *Lloyd*, 129 Nev. at 750, 312 P.3d at 474. And we decline Arenas' invitation to revisit *Lloyd*'s holding that exigency is not a separate requirement for the automobile exception because he has not shown a compelling reason to do so. See *Armenta-Carpio v. State*, 129 Nev. 531, 535, 306 P.3d 395, 398 (2013) ("Under the doctrine of *stare decisis*, we will not overturn precedent absent compelling reasons for doing so." (quotation marks and alterations omitted)). Therefore, Arenas is not entitled to relief.³

*(WHAT
NOT CORRECT
BENEFIT OF SUE)*

³Arenas also argues that the district court erred in denying his request for an evidentiary hearing based on alleged intentional or reckless material falsehoods contained in the search warrant affidavit. Having reviewed Arenas' claims and the record, we conclude the district court did not err. See *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978) (providing that a defendant must make "a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit").

Prosecutorial misconduct

Arenas argues that prosecutorial misconduct warrants reversal. In reviewing claims of prosecutorial misconduct, we must determine whether the prosecutor's conduct was improper and, if so, whether the conduct warrants reversal. *Valdez v. State*, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008).

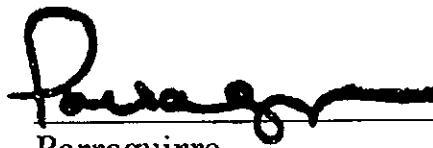
Arenas contends that the State improperly disparaged the defense during rebuttal argument. This court has been "critical of the prosecution for disparaging legitimate defense tactics." *Barron v. State*, 105 Nev. 767, 780, 783 P.2d 444, 452 (1989). Here, during closing argument, Arenas drew the jury's attention to inconsistencies between Allen's version of events and the physical evidence. In rebuttal, the State read excerpts from the defense closing argument and made sarcastic comments. We agree that the State acted inappropriately. *See id.* ("The appropriate way to comment, by the defense or the State, is simply to state that the prosecution's case or the defendant is not credible and then to show how the evidence supports that conclusion."). However, we conclude the prosecutor's comments did not result in an unfair trial and do not warrant reversal.⁴ *See Anderson v. State*, 121 Nev. 511, 516, 118 P.3d 184, 187 (2005) ("This court must consider the context of such statements, and a criminal conviction is not to be lightly overturned on the basis of a prosecutor's comments standing alone." (internal quotation marks omitted)).

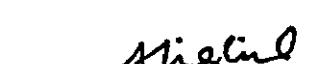
⁴To the extent Arenas claims the prosecutor improperly cited religious language during the penalty hearing, Arenas did not provide any relevant authority supporting the claim. Therefore, we decline to address this issue. *See Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

Cumulative error

Finally, Arenas argues that cumulative error warrants reversal. *See Valdez*, 124 Nev. at 1195, 196 P.3d at 481 (providing the relevant factors to consider for a claim of cumulative error). We disagree. While the erroneous amendment to the kidnapping count warrants remand for resentencing, we have identified only one other error regarding prosecutorial misconduct. Thus, there is nothing to cumulate. *See Lipsitz v. State*, 135 Nev. 131, 140 n.2, 442 P.3d 138, 145 n.2 (2019) (concluding that errors did not cumulate as there was only one error). Accordingly, we

ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Parraguirre


_____, J.
Stiglich


_____, J.
Silver

cc: Hon. Michelle Leavitt, District Judge
Special Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

APPENDIX "3"
Pro Se Petition for Rehearing



SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
ELIZABETH A. BROWN, CLERK
201 SOUTH CARSON STREET, SUITE 201
CARSON CITY, NEVADA 89701-4702

Telephone
(775) 684-1600

October 19, 2021

Emilio Eavalio Arenas
Inmate ID: 1051999
Ely State Prison
PO Box 1989
Ely, NV 89301

Re: Arenas (Emilio) vs State, Case No. 78673

Dear Mr. Arenas:

We are returning, unfiled, the "Petition for Rehearing" received in this office on October 19, 2021, in the above-entitled matter.

Pursuant to NRAP 40 (a)(1), a petition for rehearing may be filed within eighteen (18) days after the filing of the court's decision pursuant to Rule 36 unless the time is shortened or enlarged by order. The three day mailing period set forth in Rule 26(c) does not apply to the time limits set by this Rule.

Sincerely,

M. Mercier
Deputy Clerk

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2 PO. BOX 1989
3 ELY, NEVADA 89301

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5 RETURNED
6 UNFILED
7 OCT 19 2021
8 ELIZABETH A. BROWN
9 CLERK OF SUPREME COURT
10 BY DEPUTY CLERK

11
12 THE SUPREME COURT
13 OF THE STATE of NEVADA

14 NAME, THE STATE of NEVADA

15 Plaintiff(s),

16 -vs-

17 NAME, Emilio Evaro Ayacnis, ID
18 1051999

19 Defendant(s).

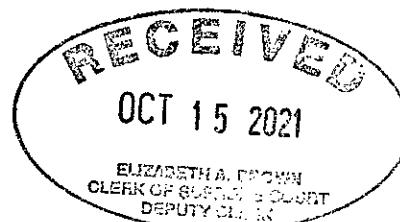
20 CASE NO.

21 78 673

22 COMES NOW, Emilio Ayacnis, 1051999 in PRO PER and herein above respectfully

23 Moves this Honorable Court for a PETITION FOR REHEARING AND
24 MOTION FOR AN EVIDENTIARY HEARING

25
26 The above is made and based on the following Memorandum of Points and Authorities.



MEMORANDUM OF POINTS AND AUTHORITIES

JURISDICTION

Pursuant to Nevada Revised Statute 34.722, and NRS 34.724 - As used in NRS 34.720 to 34.830, inclusive unless the context otherwise requires, "petition" means a post-conviction petition for habeas corpus filed pursuant to NRS 34.724.

Because the Supreme Court retains jurisdiction over an appeal until the remittitur is filed, Glawson v State, 107 Nev. 428, 813 P.2d 1001, 1007 Nev. Adv. Rep. 77, 1991 Nev. LEXIS 124 (Nev. 1991), this instant petition - mailed from Ely, Nevada on Wednesday, October 13, 2021 - is in fact the Petitioners pro se Petition for Rehearing.

This Court has jurisdiction, under Article 1, Section 8 of the Nevada Constitution,

The United States District Courts have jurisdiction under: 42 USC § 1981 and 42 USC § 1981(a); the Criminal Justice Act of 18 USC § 3006A; 28 USC § 1654, and Rule 52(b) of the Federal Rules of Criminal Procedure. The Jury-Trial Clause of the Sixth Amendment, and Due Process Clause of the Fourteenth Amendment of the U.S. Constitution.

1 BECAUSE the Petition is authored by a pro se
2 litigant it should be construed with liberality,
3 pursuant to the United States Supreme Court's
4 decision in Haines v Kerner, 404 US 519, 92 S.
5 Ct. 594, 30 L. Ed 2d 652.

6

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8 STATEMENT OF THE CASE

9

10 ON February 1, 2019, Emilio Evalio Arenas, ID 108-
11 1999 ("the Petitioner") was found guilty by a Clark
12 County jury, and convicted of five counts in the
13 Eighth Judicial District Court; Clark County; Mich-
14 elle Leavitt, Judge:

- 15 ° CONSPIRACY TO COMMIT ROBBERY
- 16 ° CONSPIRACY TO COMMIT KIDNAPING
- 17 ° CONSPIRACY TO COMMIT MURDER
- 18 ° FIRST DEGREE KIDNAPING W/ USE OF A DEADLY
19 WEAPON, RESULTING IN SUBSTANTIAL BODILY HARM
- 20 and ° FIRST DEGREE MURDER W/ USE OF A DEADLY WEAPON

21 PETITIONER'S Appellate Counsel, JONEL THOMAS,
22 and NAMO AFSHAR, of the Clark County Special
23 Public Defender's Office, filed the Direct Appeal
24 in Nevada Supreme Court Case No. 78673.

25 On September 15, 2021, the Nevada Supreme Court
26 filed an ORDER AFFIRMING the Petitioner's conviction in
27 part, REVERSING IN PART and REMANDING.

1 IN a letter to the petitioner, dated September
2 21, 2021, Navid Afshar notified Emilio Arenas
3 that, in Mr. Afshar's opinion, there were no reasonable
4 grounds for reconsideration (see Exhibit A, attached).

5 Arenas, therefore, has authored this instant
6 petition- pro se- praying that this Honorable
7 Court will reconsider its Order Affirming in
8 Part, Reversing in Part and Remanding, on the
9 two grounds enumerated herein.

10
11
12
13 QUESTIONS PRESENTED

14
15 (1) Did the Eighth Judicial District Court's denial
16 of the Petitioner's Motions to Sever the Trial
17 in C-13-293029-1 from co-defendant RAYTON
18 HEMINGWAY prejudice Arenas's Sixth Amendment
19 right to a trial by an impartial jury; and,
20 Fourteenth Amendment right to Due Process of
21 Law?

22
23 (2) Does the Nevada Supreme Court's Order Reversing
24 Arenas's conviction in Count 4 in No. 78673, and
25 Remanding the petitioner to be resentenced
26 to a charge the jury never found Arenas
27 guilty of, deprive Arenas of his 6th Amendment
28 right to a trial by jury; and 14th Amendment

right to Due Process?

STATEMENT OF FACTS

Petitioner Arenas submits that the following facts support his claims that he was deprived of the rights to trial by an impartial jury, and to substantive Due Process guaranteed by Article 1, Section 8 of the Nevada Constitution; and, by the Sixth and Fourteenth Amendments of the United States Constitution, during a critical stage in the proceedings.

(1) In June of 2015, Arenas filed a pro se Motion to Sever Trials in Department C of the Eighth Judicial District Court. The Motion was DENIED by the Hon. Judge Glissa F. Cadish.

(2) In 2017, attorney's for Arenas, CHARLES CAND and RANDALL H. RAKE filed another Motion to Sever Trials. The Motion was DENIED by the Hon. Douglas Herndon.

(3) During preliminary stages of jury trial, co-defendant Hemingway's counsel, GABRIEL GRASSO Moved to Sever trials, on the ground that his client would be unduly preju-

1 duced by the joinder to Arenas
2 Judge Michelle Leavitt indicated
3 that she would be inclined
4 to grant the Motion.

5 Hemingway, however, declined
6 and waived his right to have the
7 trial severed.

8 (4) The jury found Arenas NOT GUILTY of
9 Count 5, Robbery With the Use of a
10 Deadly Weapon. Arenas was found GUILTY,
11 however, of Count 4: Kidnapping With
12 the Use of a Deadly Weapon, Resulting
13 in Substantial Bodily Harm; and, Count 6,
14 First-Degree Murder With the Use of a
15 Deadly Weapon.

16 Peyton Hemingway was found GUILTY
17 of Count 5, Robbery With the Use of a Dead-
18 ly Weapon, but was only found guilty of
19 Second-degree murder on Count 6.

20 (5) Arenas's original indictment charged
21 the petitioner with First-Degree Kidnapping With
22 the Use of a Deadly Weapon. NRS 200.320 dis-
23 tinguishes between a first-degree kidnap-
24 ping that results in substantial bodily harm
25 and one that does not.

26 The State's amendment of the charge,

1 during pre-trial deliberations, to First-
2 Degree Kidnapping With Use of a Deadly
3 Weapon, Resulting in Substantial Bodily
4 Harm aggravated the charge of First-
5 Degree Kidnapping and increased the
6 potential punishment. Cf. Penitez v. State,
7 111 Nev. 1363, 1364, 904 P.2d 1036 (1995).

8
9 (6) The Nevada Supreme Court ruled, "Given that
10 the amended charge contained an additional
11 allegation (substantial bodily harm) and sub-
12 jected Arenas to a greater range of pun-
13 ishment, we conclude the district court
14 abused its discretion because the amend-
15 ment in a "different offense" under NRS
16 173.095(1)." See State v. Sharpe, 304 NW 2d
17 220, 223 (Iowa 1981).

18
19 (7) The Court reversed the judgment of convict-
20 ion as to Count 4 and remanded to the dis-
21 trict court to resentence Arenas for First-
22 Degree Kidnapping, without the substantial
23 bodily harm enhancement.

1 GROUND (ONE), THE EIGHT JUDICIAL DISTRICT COURT'S
2 DENIALS OF THE PETITIONER'S MOTIONS TO SEVER
3 ARENATO'S TRIAL IN C-13-293829-1 DEPRIVED THE
4 PETITIONER OF HIS SIXTH AND FOURTEENTH AMENDMENT
5 SUPPORTING FACTS: RIGHTS.

6 Nevada Rev. Stat. 173.115 provides that multiple
7 offenses charged as one are based either "on the
8 same act or transaction" or "two or more acts or
9 transactions connected together or constituting parts
10 of a common scheme or plan". Also if evidence of
11 one charge would be cross-admissible in evidence
12 at a separate trial on another charge, then both
13 charges may be tried together and need not be
14 severed. Jones v State, 111 Nev. 848, 853, 899 P.2d 544,
15 547 (1998), severance may be proper if joinder preju-
16 dices either party, NRS 174.165(1); Marshall v State,
17 118 Nev. 642, 646, 86 P.3d 376, 378 (2002) ("The decisive
18 factor in any severance analysis remains preju-
19 dice to the defendant.")

20
21 The Court concluded that the petitioner had not
22 shown that the joint trial resulted in prejudice
23 and the district court did not abuse its discre-
24 ion. Jones, 111 Nev. @ 883.

25
26 The Court also discerned no prejudice in the
27 jury returning inconsistent verdicts.

28 The Petitioner urges that the Court's reli-

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ance on People v Stenbridge, 22 P.2d 212, 217 (Cal. Dist. Ct. App. 1950), is misplaced.

The Stenbridge court concluded that there was no inconsistency in the verdict as it was in the jury's province to find one defendant guilty and the other not guilty.

That is not what happened in the case at bar. In the instant case, the jury found the petitioner's co-defendant, Hemingway, guilty of all six counts. But the jury either did not understand, or simply chose to ignore, the language in jury instructions No. 29, No. 33, and No. 39.

JURY INSTRUCTION No. 29 (see the Documents in Supreme Court Case No. 78673, hereafter referred to as "the Documents," pg. 005242) reads:

Murder of the first degree is murder which is (1) perpetrated by any kind of willful, deliberate and premeditated killing; or (2) committed in the perpetration or attempted perpetration of any robbery and/or Kidnapping; or (3) perpetrated by means of torture.

JURY INSTRUCTION No. 33 (pg. 005246 in the Documents) provides, in lines 4 through 7:

[A] Killing which is committed in the perpetration or attempted perpetration

1 of a robbery and/or Kidnapping is
2 deemed to be Murder of the First
3 Degree, whether the killing was in-
4 tentional or unintentional or acci-
5 dental. This is called the Felony-
6 Murder Rule.

7
8 In lines 10 and 11 of Ibid., one reads that the
9 intent to commit the robbery and/or Kidnapping
10 must have arisen before or during the conduct re-
11 sulting in death.

12 Because the jury heard testimony from State
13 witness THERESA ALLEN that the decedent was robbed,
14 by Hemingway, of Hemingway's driver license paper-
15 work and ten dollars, before Simon was killed,
16 this precludes the finding that the robbery was an
17 afterthought.

18
19 JURY INSTRUCTION No. 39 provides:

20 The felony murder rule encompassing
21 Killings in the course of a robbery:

22 Robbery is a general intent crime.

23 As such, claimed incapacity to
24 form a specific intent based on
25 voluntary intoxication does not
26 shield a Defendant from culpability
27 for robbery and the accompanying
28 culpability for first-degree murder.

1 under the felony-murder rule.
2

3 It was not in the jury's purview even if they
4 thought Hemingway was intoxicated - to find him
5 guilty of Second-Degree Murder once they found
6 that the murder occurred during the commission
7 of the robbery Hemingway was convicted of. That,
8 by definition, is the gist of Nevada's Felony-Mur-
9 der rule.

10 The Nevada Supreme Court's intimation, in the
11 September 15, 2021 Order, that it was "in the jury's
12 province" to misread and misapply jury instruc-
13 tions in a manner that prejudiced Arenas com-
14 ports to a lack of judicial impartiality.

15 That the jury failed to comprehend the jury
16 instructions, or simply failed to comply with them,
17 is settled.

18 Also settled is the fact that Arenas was acquit-
19 ted of the Robbery charge in Count 5.

20 The Nevada Supreme Court has correctly deter-
21 mined that the district court abused its discre-
22 tion when it permitted the State to amend
23 Count 4 in Arenas's indictment.

24 Thus the petitioner was acquitted of Count 5,
25 and his conviction in Count 4 was dismissed.
26 Yet Arenas is sentenced to life without possi-
27 bility of parole under the felony murder rule.

1 Aronas's co-defendant meanwhile, was convicted
2 on all six counts in the indictment, yet was only
3 convicted of second-degree murder

4
5 The test is whether a joint trial was so prejudicial to a defendant as to require the exercise
6 of the trial judge's in only one way, that is by ordering a separate trial. United States v Thomas,
7 483 F.2d 141 (9th Cir. 1973), cert. denied, 405 US 1069,
8 S.Ct. 1516, 31 L.Ed.2d 801 (1972).

9
10 This burden of demonstrating prejudice is a difficult one, and the ruling of the trial judge will rarely be disturbed on review. Tillman v United
11 States, 406 F.2d 930, 934 (5th Cir. 1969).

12 The ultimate question is whether under all the circumstances of the particular case, as a practical matter, it is within the capacity of the jurors to follow the court's admonitory instructions and accordingly to collate and separate the independent evidence against each defendant solely upon that defendant's own acts... Peterson v. United States, 344 F.2d 419 (8th Cir. 1965) citing with approval United States v Kahaner, 203 F. Supp. 78 (S.D.N.Y. 1962), aff'd, 317 F.2d 459 (2nd Cir. 1963) cert. denied, 375 US 836, 31 L.Ed.2d 84 S.Ct. 74 (1963)

13
14 The jury in the petitioner's case did not properly distinguish between the defendants, because

1 they accumulated evidence of crimes committed by
2 Hemingway to convict Arenas under the felony
3 murder rule. Floyd v State, 115 Nev. 156, 42 P.3d
4 249 (Nevada 2002).

5
6 Petitioner asserts that he was prejudiced,
7 both by the joinder to Hemingway, and the
8 court's abuse of discretion in allowing the
9 State to amend the indictment in Count 4.

10 But for the Court's errors, which infected
11 the proceedings with unfairness, Donnelly v
12 De Christoforo, 416 US 637, 40 L. Ed 2d 431, 94 S.Ct.
13 1868 (1974), there is a reasonable probability
14 that the outcome of the proceedings would
15 have been different.

1 GROUND (TWO, THE NEVADA SUPREME COURT'S ORDER DIS-
2 MANDING ARENAS TO DISTRICT COURT TO BE SEN-
3 TENCED TO A CHARGE THE JURY DID NOT FIND HIM
4 GUILTY OF VIOLATING THE DEFENDANT'S 6TH AND
5 SUPPORTING FACTS: 14TH AMENDMENT RIGHTS

6
7 In Ring v Arizona, 536 US 584, 122 S.Ct. 2428, 183
8 L.Ed.2d 556, the United States Supreme Court recog-
9 nized that "capital defendants are entitled to
10 a jury determination of any fact on which the
11 legislature conditions an increase in the maxi-
12 mum punishment. See also 147 So. 3d @ 445.

13 The relevance is that Arenas was tried under
14 Nevada Supreme Court Rule 250. Pursuant to the
15 felony murder rule, the jury had the option to
16 sentence the petitioner to death, if found
17 guilty.

18 Per its ruling in the instant Order of Affirm-
19 ance, the Court has determined that the district
20 court abused its discretion when it allowed
21 the State to amend Count 4 to a "different
22 offense".

23
24 THE U.S. CONSTITUTION'S 6th AMENDMENT PROVIDES
25 "In all criminal prosecutions, the ac-
26 cused shall enjoy the right to a speedy
27 and public trial, by an impartial
28 jury..." This right, in conjunction

1 with the Due Process Clause, re-
2 quires that each element of a
3 crime be proved to a jury (em-
4 phasis added) beyond a reasonable
5 doubt." Alleyne v. United States, 570
6 US 99, 104 S.Ct. 2151, 186 L.Ed 2d 304
(2013).

7
8 In Apprendi v. New Jersey, 536 US 466, 120 S.Ct. 2346, 147
9 L.Ed 2d 435 (2000), the nation's highest court held that
10 any fact that "expose[s] the defendant to a greater
11 punishment than that authorized by the jury's guilty
12 verdict" is an element that must be submitted
13 to a jury.
14

15 IN THE CASE AT BAR, the jury did not find Arenas
16 guilty of first-Degree Kidnapping With the Use of a
17 Deadly Weapon - the charge this Court's Order man-
18 donates that the petitioner be sentenced for.
19

20 The charge the jury in fact found Arenas
21 guilty of was a "different offense" than Count 4
22 in the grand jury indictment.

23 The petitioner asserts, therefore, that any
24 sentence the district court would impose for first-
25 Degree Kidnapping With the Use of a Deadly Weapon
26 would be contrary to, or involve an unreasonable
27 application of the US Supreme Court's decisions in
28 Alleyne, Apprendi, and United States v. Booker, 543 US

1 220, 125 S.Ct. 738, 160 L.Ed. 2d 621 (2008).

2 Moreover, the imposition of such a sentence
3 would violate the petitioner's substantial rights
4 under Article 1, Section 8 of the Nevada Constitu-
5 tion; and, the Jury-Trial Clause of the Sixth Amend-
6 ment; and the Due Process Clause of the Fourteenth
7 Amendment.

8 IN Lane v. Noren, 2017 U.S. Dist. LEXIS 133774 (2017),
9 the Ninth Circuit concluded that the Nevada Supreme
10 Court correctly identified the "rational fact-finder"
11 standard in Jackson v. Virginia (citation omitted)
12 as the federal law standard as to whether suf-
13 ficient evidence supports a State conviction...
14 Under that standard, the Court inquires as to
15 whether, after viewing the evidence in the light
16 most favorable to the prosecution, any rational
17 trier of fact could have found the essential
18 elements of the crime beyond a reasonable
19 doubt."

20 Jury instruction No. 21 (pg. 005234 in the Doc-
21 uments) reads:

22 You are instructed that if you
23 find a Defendant guilty of first
24 Degree Kidnapping you must also
25 determine whether or not a deadly
26 weapon was used in the commission
27 of this crime and if the crime re-

sulted in substantial bodily harm.

Jury instruction No.24 (pg. 005237 in the Documents) provides:

Substantial bodily harm means:

(1) Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or

(2) Prolonged physical pain.

Although the State provided the controlling definitions of First-Degree Kidnapping and Second-Degree Kidnapping in Jury instruction No. 20 (pg. 005283 in the Documents), the petitioner was unduly prejudiced by the mere introduction of the language in jury instruction No. 24.

There wasn't a word in any single line of Jury instruction No. 24 that permitted jurors the option to omit the substantial bodily harm amendment from consideration.

Under Nevada's law, a plain error affects a defendant's substantial rights when it causes actual

1 prejudice or a miscarriage of justice (defined as
2 "grossly unfair" outcome) Valdez v. State, 124 Nev. 1172,
3 1189, 196 P.3d 465, 476 (2008) ("If the error is not of
4 a constitutional dimension, we will reverse only if
5 the error substantially affects the jury's verdict.")

6 It is inconsistent - and unconstitutional - for
7 the Court to hold, on the one hand, that the pet-
8 itioner was actually prejudiced; then, on the
9 other, to sentence the petitioner for a charge
10 the jury never found him guilty of

11 THE FAILURE TO preserve an error, even an er-
12 ror that has been deemed structural, forfeits
13 the right to assert it on appeal. US v. Olano, 507
14 US 725, 731, 113 S.Ct. 1770, 123 S.Ct. 2d 508 (1993).

15 It is plain error (FRCP Rule 52(b)) for the Ne-
16 ada Supreme Court to presume that the jury would
17 have found Arenas guilty of Count 4 as it appeared
18 originally in the indictment, without first having
19 been exposed to, and influenced by, the preju-
20 dicial language in Jury instruction No. 24.

21 It is a well-established proposition that a
22 single instruction to a jury may not be judged in
23 artificial isolation, but must be viewed in
24 the context of the overall charge. Boyd v. United
25 States, 271 US 104, 107, 70 L.Ed 857, 46 S.Ct. 442 (1926).

26 As THE NEVADA Supreme Court wrote in Connor v.

1 State, 130 Nev. 457, 130 Nev. Adv. Rep. 49, 327 P.3d 503, 507
2 (2014) ("It is the jury's function, not that of the Court,
3 to assess the weight of the evidence and deter-
4 mine the credibility of the witnesses (internal
5 quotations omitted.)

6
7 WHEREFORE, the petitioner respectfully prays
8 that this Honorable Court will Amend its Order
9 in Supreme Court Case No. 78673, and VACATE
10 Arenas's convictions in C-13-293029-1, forthwith,
11 and remand the case to the district court
12 for a new trial.

13 In the alternative, petitioner prays that
14 the Court will dismiss the conviction in Count
15 4 with prejudice instanter.

16
17 Respectfully submitted,
18
19
20
21
22
23

24 Dated this 13th day of October, 2021

25
26 By: EMILIO E. ARENAS,
27 PRO SE

EXHIBIT A

Copy of attorney's letter to Arenas



A CENTURY OF SERVICE

COMMISSIONERS

Marilyn Kirkpatrick, Chair
James B. Gibson, Vice Chair
Justin Jones
William McCurdy
Ross Miller
Michael Naft
Tick Segerblom

COUNTY MANAGER
Yolanda King

SPECIAL PUBLIC DEFENDER
JoNell Thomas

**ASSISTANT SPECIAL
PUBLIC DEFENDER**
Jordan Savage

Office of the Special Public Defender

330 S. Third Street, 8th Floor, Las Vegas NV 89101
(702) 455-6265/6266 Fax (702) 455-6273

September 21, 2021

Emilio Arenas, ID 1051999
Ely State Prison
P.O. Box 1989
Ely NV 89301

Re: Arenas v. State

Dear Mr. Arenas:

Please find enclosed a copy of the Order Affirming in Part, Reversing in Part and Remanding. Unfortunately, the Court affirmed your convictions on all counts except the first-degree kidnapping. The Supreme Court reversed the judgment of conviction as to Count 4, and your case has been remanded back to the district court for re-sentencing as to Count 4 only. Specifically, the Court dismissed the addition of "with substantial bodily harm" to the kidnapping charge but affirmed kidnapping with use of a deadly weapon.

After careful review of the Order, it is my opinion that there are no reasonable grounds to file a Petition for Rehearing. The remittitur will issue 30 days from the Order and that will conclude your case in the Nevada Supreme Court. Thereafter, we expect that the district court will place your case on calendar for a re-sentencing as to Count 4 within the next several weeks. Your assigned attorneys for the sentencing will be your trial attorneys, Charles Cano and Susan Bush.

If you are reclassified by the Department of Corrections based on the remand for sentencing and moved to a different prison, please contact our office as soon as possible to let us know. Upon receipt of this letter, please call me to discuss this matter further.

Very truly yours,

A handwritten signature in black ink, appearing to read "Navid Afschar".

NAVID AFSHAR, DEPUTY SPECIAL PUBLIC DEFENDER

NA:kf

CERTIFICATE OF SERVICE BY MAIL

Pursuant to NRCP Rule 5 (b), I hereby certify that I am the Petitioner/Defendant named herein and that on this 13th day of October, 2021, I mailed a true and correct copy of this foregoing Petition for Rehearing to the following:

Attorney General Aaron Ford
100 North Carson Street
Carson City, Nevada 89701-4717

BY: Emilio E. Arenas,
Pro Se

AFFIRMATION

Pursuant to NRS 239b.030

The undersigned does hereby affirm that the preceding document, Petition for

Requesting and Motion for an Evidentiary Hearing
(Title of Document)

Filed in case number: 78673

Document does not contain the social security number of any person

Or

Document contains the social security number of a person as required by:

A Specific state or federal law, to wit

Or

For the administration of a public program

Or

For an application for a federal or state grant

Or

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230, and NRS 125b.055)

DATE: October 13, 2021

Patti E. Anna
(Signature)

Emilis Arenas, ID 1051999
(Print Name)

Pro Se
(Attorney for)

APPENDIX "4"

Pro se Petition for Enlargement of Time



SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
ELIZABETH A. BROWN, CLERK
201 SOUTH CARSON STREET, SUITE 201
CARSON CITY, NEVADA 89701-4702

Telephone
(775) 684-1600

November 30, 2021

Emilio Arenas # 1051999
HDSP
PO Box 650
Indian Springs, NV 89070

Re: Docket No. 78673, Arenas (Emilio) vs. State

Dear Mr. Arenas:

This is in response to the documents received in our office on November 29, 2021. A decision has been reached in your case and the remittitur issued on October 11, 2021. Therefore, we are returning the documents, unfiled. Please do not resubmit these documents, no action will be taken on them.

Sincerely,

Amanda Ingersoll
Deputy Clerk

cc:

P.O. Box 656
Indian Springs, NV 89078
22 November 2021

SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
Elizabeth A. Brown, CLERK
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4782

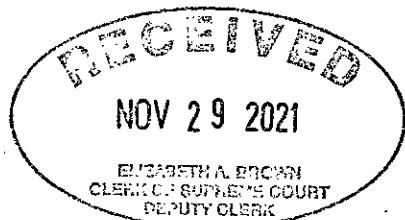
Dear Ms. Brown:

Greetings. My name is Emilio Evalio - not E-A-V-A-L-I-O - Arenas, ID 1051999. I am currently incarcerated at High Desert State Prison in Indian Springs.

Enclosed is a Pro Se Petition for Enlargement of Time in Case No. 78673.

Please file the enclosed petition upon receipt.

Thank you.



Respectfully,
Emilio Evalio Arenas
Emilio Arenas, ID 1051999
Indian Springs, Nevada

1 PFET
2 E. ARGNAS, #1081999
3 P.O. Box 650
4 INDIAN SPRINGS, NEVADA 89070
5
6
7
8
9

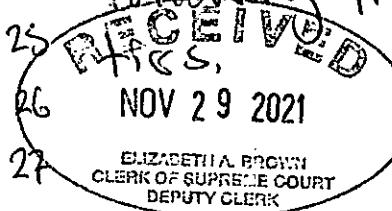
10 RETURNED
11 UNFILED
12 NOV 30 2021
13 ELIZABETH A. BROWN
14 CLERK OF SUPREME COURT
15 BY DEPUTY CLERK

10 The STATE of NEVADA
11 Plaintiff
12 vs
13 Emilio EVALIO ARGNAS, #1081999
14 Defendant

15 CASE NO.
16 78673

17
18 Comes Now, Emilio EVALIO ARGNAS, #1081999,
19 in Pro per and herein respectfully Petitions
20 this Honorable Court for an Enlargement of
21 Time to File a Petition for Rehearing.
22

23 This petition is made and based on the
24 following Memorandum of Points and Authori-
25



POINTS AND AUTHORITIES

3 Pursuant to NRAP 40(b)(1), a petition for
4 rehearing may be filed within eighteen days
5 after the date of the filing of the Court's de-
6 cision pursuant to Rule 36 unless the time is
7 enlarged by order.

8 Petitioner Emilio Arenas, ID 1081999, is
9 a layman, and is unfamiliar with the Nev-
10 ada Rules of Appellate Procedure. Haines v Ker-
11 ner, 404 US 519, 92 S.Ct. 594, 30 L.Ed.2d 652.

12 When Arenas's direct appeal in C-13-293-
13 029-1 was Affirmed in Part, Reversed in Part,
14 and Remanded by the Nevada Supreme Court
15 on September 15, 2021 (Case No. 78673), Arenas's
16 counsel, NAVID AFSHAR, did not inform the peti-
17 tioner that he had only 18 days to file a
18 petition for rehearing.

19 Petitioner received the Court's Order at Ely
20 State Prison, in Ely, Nevada, on September 22, 2021.
21 That meant that, effectively, Arenas had only
22 twelve days to submit his petition.

23 Notwithstanding, the petitioner completed
24 his petition and mailed it to the Court on
25 October 13, 2021 - a mere two days past the
26 18 day deadline.
27

POINTS AND AUTHORITIES

3 On October 12, 2021, the Eighth Judicial District
4 Court filed a Notice of Rehearing for Arenas's
5 resentencing on Count 4 in C-13-293029-1. The
6 hearing was scheduled for Thursday, November 4,
7 2021.

8 On Tuesday, November 2, 2021, Arenas was trans-
9 ported from Ely State Prison to High Desert State
10 Prison in Indian Springs. At the time of his trans-
11 fer, the petitioner had not received notice of
12 the Nevada Supreme Court's disposition of his
13 petition for rehearing.

14 On November 4, 2021, Clark County District
15 Court Judge MICHAEL VILLANI - sitting in for the
16 Hon. Judge MICHELLE LEAVITT, who was presiding
17 over a trial - continued the resentencing date
18 until November 30, 2021.

19 On November 19, 2021, Arenas received notifi-
20 cation at High Desert State Prison that the
21 Nevada Supreme Court had returned his petition,
22 unfiled, because it was received after the
23 18 day time limit.

25 WHILE ARENAS concedes that his own igno-
26 rance does not excuse his failure to comply
27

1 POINTS AND AUTHORITIES

2

3 with the rules of appellate procedure, the peti-
4 tioner urges that his counsel ultimately left
5 Arenas to "shift for himself." This denied the
6 petitioner fair process, and the opportunity to
7 comply with the State's procedures and obtain
8 an adjudication on the merits of his claim.

9 Coleman v. Thompson, 501 U.S. @ 734, 111 S. Ct. 2846,
10 118 L. Ed. 2d 640; Eritis v. Lucy, 469 U.S. 387, 396,
11 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985); Douglas,
12 *supra* @ 357-358, 83 S. Ct. 814, 9 L. Ed. 2d 811,

13 "In all criminal prosecutions, the accused
14 shall enjoy the right to a speedy trial, and
15 public trial, by an impartial jury ... This
16 right, in conjunction with the Due Process
17 Clause, requires that each element of
18 a crime be proved to a jury beyond a
19 reasonable doubt."

20 Alkeyne v. United States, 570 U.S. 99, 104 S.Ct
21 2151, 186 L. Ed. 2d 314 (2013)

22 The Nevada Supreme Court's Order that the peti-
23 tioner be remanded to the district court to be
24 "resentenced" to a "different charge" than
25 the jury found him guilty of (NRS 173.095(1)),
26 violates both Arenas's right to Due Process; and,
27

1
2 POINTS AND AUTHORITIES

3 to his 6th Amendment right to a jury trial.
4 The Petitioner's failure to preserve what he
5 perceives as an error would forfeit his right to
6 assert it on appeal. US v Olano, 507 US 725, 731,
113 S.Ct. 1770 (1993).

7
8 WHEREFORE, the petitioner respectfully
9 prays that the Nevada Supreme Court will
10 forthwith issue an Order Enlarging the Time
11 for Arenas to submit a petition for rehearing,
12 to ninety days from the date the Order
13 Affirming in Part, Reversing in Part, and Remand-
14 ing in Case No. 78673 (September 15, 2021) was
15 issued.

16 Respectfully submitted on this 22nd day
17 of November, 2021.

18
19 Emilio Esteban Arenas, Pro Se
20 Emilio E. Arenas, ID 1051999
21 P.O. Box 650
22 Indian Springs, Nevada 89070
23
24
25
26

1
2
3 CERTIFICATE OF SERVICE BY MAIL

4
5 Pursuant to NRCP Rule 5(b), I hereby certify that
6 I am the Petitioner/ Defendant named herein and
7 that on this 22nd day of November, 2021, I
8 mailed a true and correct copy of this foregoing
9 petition for Enlargement of Time to:

10 The Supreme Court of Nevada
11 Office of THE CLERK
12 Elizabeth B. Brown, Clerk
13 201 South Carson Street, Suite 201
14 Carson City, Nevada 89701-4782

15
16
17 By: Emilio E. Arenas
18 Pro Se
19
20
21
22
23
24
25
26
27

1 AFFIRMATION

2 Pursuant to NRS 239 b.030

3

4 The undersigned does hereby affirm that the
5 preceding document, PETITION FOR ENLARGEMENT
6 of Time, filed in case number 78673,

7 DOES NOT CONTAIN THE SOCIAL SECURITY
8 NUMBER OF ANY PERSON.

9

10 Date: November 22, 2021

11

12

13

14

15

Emilio Evilio Arenas
SIGNATURE

16

17 Emilio Arenas, ID 1051999
18 PRINT NAME

19

PRO SE

20

21

22

23

24

25

26

27

Nevada Supreme Court Docket Sheet

Docket: 78673

ARENAS (EMILIO) VS. STATE

Page 1

EMILIO EAVALIO ARENAS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Case No. 78673

Consolidated with:

Counsel

Special Public Defender, Las Vegas, NV \ Navid Afshar, JoNell Thomas, as counsel for Appellant, Emilio Eavalio Arenas

Attorney General/Carson City, Carson City, NV \ Aaron D. Ford, as counsel for Respondent, The State of Nevada
Clark County District Attorney, Las Vegas, NV \ Alexander G. Chen, as counsel for Respondent, The State of Nevada

Case Information

Panel: SNP21

Panel Members: Parraguirre/Stiglich/Silver

Disqualifications: Elissa Cadish, Douglas W. Herndon

Case Status: Remittitur Issued/Case Closed

Category: Criminal Appeal Type: Life

Subtype: Direct

Submitted:

Date Submitted:

Oral Argument:

Sett. Notice Issued:

Sett. Judge:

Sett. Status:

Related Court Cases:

68963, 69606, 78605

District Court Case Information

Case Number: C293029

Case Title: STATE VS. EMILIO EVALIO ARENAS

Judicial District: Eighth

Division:

County: Clark Co.

Sitting Judge: Michelle Leavitt

Replaced By:

Notice of Appeal Filed: 04/23/19 Appeal

Judgment Appealed From Filed: 04/03/19

Docket Entries

Date	Docket Entries
------	----------------

04/30/19	Appeal Filing Fee Waived. Criminal. (SC)
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04/30/19	Filed Notice of Appeal. Appeal docketed in the Supreme Court this day. (Docketing statement mailed to counsel for appellant.) (SC)	19-018835
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05/03/19	Filed Certificate of No Transcript Request. (SC).	19-019484
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05/21/19	Filed Docketing Statement Criminal Appeals. (SC).	19-022258
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06/20/19	Justice Elissa Cadish disqualified from participation in this matter. Disqualification Reason: Sat in District Court Proceedings. (SC)	
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08/28/19	Filed Appellant's Motion for Extension of Time to File Opening Brief (1st Request). (SC)	19-035917
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Nevada Supreme Court Docket Sheet

Docket: 78673	ARENAS (EMILIO) VS. STATE	Page 2
09/04/19	Filed Order Granting Motion. Appellant's Opening Brief and Appendix due: November 26, 2019. (SC).	19-036956
11/25/19	Filed Appellant's Motion for Extension of Time to File Opening Brief (2nd Request). (SC)	19-048190
12/05/19	Filed Order Granting Motion. Appellant's Opening Brief and Appendix due: January 27, 2020. (SC).	19-049316
01/27/20	Filed Appellant's Motion to Transmit JAVS and Extension of Time to File Opening Brief (3rd Request). (SC)	20-003711
02/06/20	Filed Order Granting Motion. The district court clerk shall have 7 days from the date of this order to transmit to this court the JAVS recordings for January 11, 2019, and for January 25, 2019. Appellant's Opening Brief and Appendix due: 30 days. (SC).	20-005119
02/12/20	Filed Documents from District Court Clerk. JAVs recordings for January 11, 2019 (2 Confidential CDs) and January 25, 2019 (1 Confidential CD). (SC)	
03/09/20	Filed Appellant's Appendix Vol 1 of 28. (SC)	20-009192
03/09/20	Filed Appellant's Appendix Vol 2 of 28. (SC)	20-009193
03/09/20	Filed Appellant's Appendix Vol 3 of 28. (SC)	20-009194
03/09/20	Filed Appellant's Appendix Vol 4 of 28. (SC)	20-009195
03/09/20	Filed Appellant's Appendix Vol 5 of 28. (SC)	20-009196
03/09/20	Filed Appellant's Appendix Vol 6 of 28. (SC)	20-009197
03/09/20	Filed Appellant's Appendix Vol 7 of 28. (SC)	20-009198
03/09/20	Filed Appellant's Appendix Vol 8 of 28. (SC)	20-009199
03/09/20	Filed Appellant's Appendix Vol 9 of 28. (SC)	20-009200
03/09/20	Filed Appellant's Appendix Vol 10 of 28. (SC)	20-009201
03/09/20	Filed Appellant's Appendix Vol 11 of 28. (SC)	20-009202
03/09/20	Filed Appellant's Appendix Vol 12 of 28. (SC)	20-009203
03/09/20	Filed Appellant's Appendix Vol 13 of 28. (SC)	20-009204
03/09/20	Filed Appellant's Appendix Vol 14 of 28. (SC)	20-009206
03/09/20	Filed Appellant's Appendix Vol 15 of 28. (SC)	20-009207
03/09/20	Filed Appellant's Appendix Vol 16 of 28. (SC)	20-009208
03/09/20	Filed Appellant's Appendix Vol 17 of 28. (SC)	20-009210
03/09/20	Filed Appellant's Appendix Vol 18 of 28. (SC)	20-009212
03/09/20	Filed Appellant's Appendix Vol 19 of 28. (SC)	20-009213
03/09/20	Filed Appellant's Appendix Vol 20 of 28. (SC)	20-009215
03/09/20	Filed Appellant's Appendix Vol 21 of 28. (SC)	20-009216
03/09/20	Filed Appellant's Appendix Vol 22 of 28. (SC)	20-009217
03/09/20	Filed Appellant's Appendix Vol 23 of 28. (SC)	20-009218
03/09/20	Filed Appellant's Appendix Vol 24 of 28. (SC)	20-009219
03/09/20	Filed Appellant's Appendix Vol 25 of 28. (SC)	20-009220
03/09/20	Filed Appellant's Appendix Vol 26 of 28. (SC)	20-009222

Nevada Supreme Court Docket Sheet

Docket: 78673	ARENAS (EMILIO) VS. STATE	Page 3
03/09/20	Filed Appellant's Appendix Vol 27 of 28. (SC)	20-009224
03/09/20	Filed Appellant's Appendix Vol 28 of 28. (SC)	20-009225
03/09/20	Filed Appellant's Opening Brief. (SC)	20-009333
03/09/20	Filed Appellant's Motion for Opening Brief to Exceed Word Limit. (SC)	20-009335
03/16/20	Filed Order Granting Motion. Appellant's motion for leave to file an opening brief in excess of the type-volume limitation is granted. NRAP 32(a)(7)(A)(ii), (D). The opening brief was filed on March 9, 2020. Respondent shall have until April 8, 2020, to file and serve the answering brief. (SC).	20-010273
04/08/20	Filed Respondent's Answering Brief. (SC).	20-013191
04/08/20	Filed Respondent's Motion to Transmit JAVS. (SC).	20-013192
04/08/20	Filed Respondent's Appendix. (SC).	20-013193
04/15/20	Filed Order Directing Transmission of JAVS Recordings. The district court clerk shall have 14 days from the date of this order to transmit to this court the JAVS recordings dated January 24, 2019. (SC)	20-014219
04/21/20	Received *** Exhibit (original). Exhibit: State's Exhibit JAVS Recordings, dated April 15, 2020.*** (SC)	
05/08/20	Filed Appellant's Motion to Transmit JAVS. (SC)	20-017461
05/08/20	Filed Appellant's Motion for Extension of Time to File Reply Brief (1st Request). (SC)	20-017462
05/13/20	Filed Order Granting Motions. The district court clerk shall have 14 days from the date of this order to transmit to this court the JAVS for closing argument and rebuttal of penalty phase in District Court Case No. C-13-293029-1, trial Day 17, January 31, 2019. Appellant shall have 14 days from the date of this order to file and serve the reply brief. (SC)	20-018260
05/27/20	Filed Appellant's Motion for Reply Brief to Exceed Word Limit. (SC)	20-020029
05/27/20	Filed Appellant's Reply Brief. (SC)	20-020030
06/01/20	Filed Order Granting Motion. Appellant's motion for leave to file a reply brief in excess of the type-volume limitation is granted. See NRAP 32(a)(7)(D). The reply brief was filed on May 27, 2020. (SC).	20-020571
06/01/20	Briefing Completed/To Screening. (SC).	
06/04/20	Received ***Exhibit (original). JAVS CD dated January 31, 2019.*** (SC)	
01/19/21	Justice Douglas W. Herndon disqualified from participation in this matter. Disqualification Reason: Sat in District Court Proceedings	
09/15/21	Filed Order Affirming in Part, Reversing in Part and Remanding. "ORDER the judgment of conviction AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order." SNP21 - RP/LS/AS (SC)	21-026729
10/11/21	Issued Remittitur. (SC).	21-029049
10/11/21	Remittitur Issued/Case Closed. (SC).	
10/19/21	Returned Unfiled Document Petition for Rehearing. (SC)	21-029996
10/19/21	Filed Remittitur. Received by District Court Clerk on October 12, 2021. (SC)	21-029049

APPENDIX "S"
State's Motion to Amend Indictment

1 MR. AFSHAR: No, Your Honor is correct. I have
2 in my notes as well. She said she would try to reschedule it,
3 and she thought she could.

4 THE COURT: Okay. Okay.

5 MR. CANO: The other issue I think that kind of came
6 up this morning, the State wanted to try to file an amended
7 indictment. They had emailed that. It came to all parties
8 this morning.

9 MR. PESCI: Yes, Your Honor. In speaking with the
10 witnesses and then reviewing this pleadings -- Mr. Hamner and I
11 both inherited this case. It was someone else's before, but
12 what I would point out too is in the defense's opposition they
13 were talking about how it's going to affect the defendant's
14 substantial rights to a fair trial.

15 Here's what I would point out to you, Judge. This is
16 in essence just a title issue. If you go to the current
17 Indictment on file, filed on October 2nd, 2013, page 2, Count
18 4, if you look at lines 25 and then 26, it says, To inflict
19 substantial bodily harm, on 25, and then 26, Said defendants
20 inflicting substantial bodily harm.

21 If you go to the next page, page 3, line 5, it says,
22 To inflict substantial bodily harm. So --

23 THE COURT: What indictment are you reviewing?
24 Because I'm going to have the clerk print that one out for me.

25 MR. PESCI: I apologize.

1 THE COURT: What date was it filed?

2 MR. PESCI: It's the only one on file. It was filed
3 on October 2nd, 2013.

4 THE COURT: October 2nd, 2013.

5 MR. PESCI: And so while that's printing, if I can,
6 Your Honor --

7 THE COURT: Sure.

8 MR. PESCI: -- I'll make the arguments that within
9 the pleadings of that very case, the specificity portion of the
10 pleadings, it specifically says substantial bodily harm. So
11 they have been on notice since 2013 that substantial bodily
12 harm is at issue.

13 Now, I will concede that page 1, the caption doesn't
14 say substantial bodily harm, and even the charge itself on
15 page 2, line 4, in the title it doesn't say substantial bodily
16 harm, but undoubtedly they've known from the exact pleadings
17 the specificity of substantial bodily harm, and since he's
18 dead, it's pretty inherent that it's substantial bodily harm.

19 Switching now, pivoting to amending Count 5, the
20 murder with use of a deadly weapon and looking at the
21 specificity of the things that were taken --

22 Can I give you mine, Your Honor?

23 THE COURT: Sure. Apparently they can't --

24 MR. GRASSO: Count 5 is the robbery you mean?

25 MR. PESCI: Count 5 is the murder. Count 6 is the

1 robbery.

2 Can I approach? This is kind of a bad print job.

3 THE COURT: Thank you. Thank you.

4 MR. PESCI: I did that at home while I was looking at
5 this over the weekend.

6 MR. GRASSO: I'm looking at the Amended Indictment.

7 MR. PESCI: Well, that's what's proposed.

8 MR. GRASSO: Oh, okay.

9 MR. PESCI: So what you have in yellow is the
10 proposed changes.

11 THE COURT: Okay.

12 MR. PESCI: So if you look at the robbery with use
13 language, it talks about -- it talks about property, and you'll
14 see there it says what personal property, but it doesn't
15 specify at the beginning of -- sorry, page 4, Count 6,
16 lines 2 and 3, to take personal property. All right. So
17 they're on notice that this is personal property.

18 Then it says, To wit, with specificity, right,
19 clothing and/or suitcase and its contents and/or identification
20 in the name of Peyton Hemingway. Okay. So those are the
21 items. What the State is seeking to add is at the very
22 beginning of that string of specific things, money.

23 Now, there might be some concern if they didn't
24 realize that that's what we intended, but when you go back to
25 Count 4, first-degree kidnapping with use of a deadly weapon,

1 we actually tell them on page 3, line 7, to take -- force him
2 to provide money. So they've actually been on notice that it's
3 been our theory on the kidnapping charge, again -- page 3, line
4 7 -- that they were intending to take money. So it's not as if
5 it was never there. It was actually there. It wasn't with
6 specificity in the actual robbery charge.

7 We can amend, the statute allows, up until the jury
8 starts to deliberate. It's whether the substantial rights of
9 the defendant have been prejudiced. They can't say they've
10 been prejudiced when we're using language that's found in the
11 charging document itself under the kidnapping. We're just also
12 putting it there in the robbery charge.

13 So they've known all along we intended to show that
14 robbery occurred because items were taken, and then the
15 kidnapping charge specifically shows that it was including
16 money. And as far as substantial bodily harm, the pleading
17 itself has said substantial bodily harm in numerous locations.
18 So it's not as if they're caught unawares.

19 Now, State V The Eighth Judicial District Court was
20 utilized by the State in a case back in 2000 in front of Judge
21 Pavlikowski. I don't have the cite right now, but I'll get it,
22 and on the day of trial the State walked in with an amended and
23 said, you know what, we're going to add a theory of criminal
24 liability of aiding and abetting, and we're going to add a
25 felony murder theory.

1 And then that was appealed when Judge Pavlikowski
2 denied that to the State Supreme Court, who said, listen, you
3 cannot add aiding and abetting because the defense hasn't been
4 on notice of that. That affects the substantial rights
5 because, I mean, up until the day of they didn't know that was
6 going to happen, but in the context of adding the felony
7 murder, they said you can because there's been a robbery charge
8 in the pleadings the whole time. So they've been on notice
9 here's the robbery, and now we're going to add it for a felony
10 murder theory. So they allowed that amendment. They did not
11 allow the aiding and abetting.

12 We are not adding aiding and abetting or a
13 conspiracy. Those are already in there. We are just changing
14 some more specificity, taking it from one charge, putting it
15 into the other, and then changing the title of the kidnapping
16 so that the title says substantial bodily harm because the body
17 of it already has that.

18 And while defense counsel is responding, I'll try to
19 find that exact cite for you, Your Honor. Thank you.

20 THE COURT: So you want Count 4 to be first-degree
21 kidnapping with use of a deadly weapon resulting in substantial
22 bodily harm?

23 MR. PESCI: Yes, Your Honor.

24 THE COURT: You know your amendment doesn't say that.

25 MR. PESCI: It didn't in the title?

1 THE COURT: It does in the title. It just doesn't
2 under Count 4.

3 MR. PESCI: Yeah. I shouldn't quit my day job, huh?
4 I'm not really good at these amendments.

5 THE COURT: I just wanted to make sure because on the
6 first page, on the caption, it does say resulting in
7 substantial bodily harm.

8 MR. PESCI: Right. I just didn't on the count --

9 MR. GRASSO: Another point is the reason I was saying
10 Count 5 and you guys were saying, no, Count 6, the amended one,
11 is just a typo. There's two Count 2s.

12 MR. PESCI: Right. If you look, there's a later
13 email. The later email has the most recent update.

14 MR. GRASSO: Oh, okay.

15 MR. PESCI: And those numbers are fixed.

16 THE COURT: I don't have two Count 2s. So they must
17 have fixed mine before I got it.

18 MR. CANO: If I could, Your Honor.

19 THE COURT: Mr. Cano.

20 MR. CANO: Thank you. And there's a difference
21 between information and indictment because indictment has been
22 presented in front of the grand jury, as Your Honor well knows,
23 and they are making some material alterations to the indictment
24 here.

25 You know, they're changing the count of resulting --

1 the charge of first-degree kidnapping with use of a deadly
2 weapon resulting in substantial bodily harm. Although those
3 may have been mentioned in the original indictment, preparing
4 for defending against those allegations is much different than
5 having it included in the indictment, and so our position is
6 that the Court could amend the indictment if at any time before
7 the verdict no additional or different offense is charged and
8 if the substantial rights of the defendants are not prejudiced,
9 and that's per NRS 173.095, Subsection 1, Your Honor.

10 Our position is that it is substantially affecting
11 the rights of our client. It's his rights to due process, a
12 fair trial and that the charge should be brought through the
13 proper grand jury process itself. This type of alteration
14 should've been presented in front of the grand jury if that's
15 what their intention was, and they've had five years to do
16 this, I mean, since the inception of this case.

17 And I can appreciate the fact that Mr. Pesci
18 inherited this case as well as Mr. Hamner, but Mr. Pesci is a
19 veteran attorney, and if this is what his theory was, then he
20 should have re-presented this in front of the grand jury and
21 done it through the proper channels.

22 So our position is that obviously this is affecting
23 our client's substantial rights. It's not just a question of a
24 clerical error because it is a material change to the
25 indictment itself. Additionally, there were no allegations

1 that monies were being taken prior from any of -- you know,
2 although it stated personal property originally from the
3 robberies, it was identification, a suitcase and clothing is
4 what we were under notice of property that was being taken, as
5 originally alleged, not money. So there's insufficient notice
6 as to that aspect regarding the robbery count, Your Honor.

7 So we would ask the Court to prohibit the State from
8 allowing them to amend the indictment and go forward with the
9 original indictment.

10 THE COURT: Mr. Grasso.

11 MR. GRASSO: My only addition to that argument,
12 Judge, would be I adopt the -- my codefendant Mr. Arenas's
13 motion and opposition, and my only addition to the argument
14 Mr. Cano just made is having been involved in trial where
15 somebody tried to get their property back a few years ago, the
16 issue is this.

17 The way I looked at this case, knowing the facts of
18 this case is the allegation is that both of these individuals
19 or one of these individuals gave Mr. Simon money to go buy
20 drugs. I think it may have been either Theresa Allen was also
21 involved in that. They gave him pocket change basically, what
22 you would consider, to go buy drugs, 20, 25 bucks, and to go
23 buy drugs, and there was never an allegation anywhere that
24 Mr. Simon had his own money.

25 So now we're talking about these people, him coming

1 back, and there's this allegation of a bag of sugar and all
2 this stuff, that he tried to fake them out, and Mr. Simon --

3 THE COURT: But you know you can't rob your own money
4 either.

5 MR. GRASSO: Well, but that's the thing. You know,
6 like there is a whole -- having gone through this, you can rob
7 your own money, okay, because that's what happened. OJ was
8 trying to --

9 THE COURT: I knew he was going to do it.

10 MR. GRASSO: -- get his property back; right? Or he
11 thought was his property, and you can still rob your own money.
12 So the problem --

13 THE COURT: That's what I meant to say if I said it
14 opposite.

15 MR. GRASSO: Right. The problem is that creates a
16 whole another -- you know, we would have -- you know, there
17 were maybe motions or even writs to be filed if that were the
18 case, you know, to fight that out. Because even though the
19 Court found that in that case, it isn't really super
20 established in Nevada that you can actually rob your own -- I
21 mean, there's arguments to be made. So there's a lot of
22 litigation that could have taken place if money was involved in
23 it. That's my only --

24 You know, because unless there's something we don't
25 know that Mr. Simon had his own money, the problem is that's a

1 whole another allegation basically if he did, and so I don't
2 know. I'm just saying maybe it wasn't in the discovery, and
3 now maybe these witnesses that they spoke to said it.

4 That's a whole another problem. So that money causes
5 a problem in the robbery count is what I'm saying.

6 THE COURT: Thank you.

7 MR. CANO: We would add -- Mr. Arenas would join in
8 with Mr. Grasso's argument.

9 THE COURT: Thank you.

10 MR. PESCI: Judge, if I could respond. As pointed
11 out by defense counsel, NRS 173.095 allows the Court to permit,
12 the indictment or information -- and it says indictment, not
13 just information -- to be amended at any time before verdict or
14 a finding if no additional or different offense is charged --
15 we haven't done that -- or substantial rights of the defendants
16 are not prejudiced. We haven't done that as well.

17 And looking at the specific case, it is State of
18 Nevada --

19 Today has been a heck of a day. Court's indulgence.

20 -- State of Nevada versus The Eighth Judicial
21 District Court, and the exact cite is 116 Nevada 374, also
22 listed at 997 P.2d 126.

23 As far as the last argument that was just made, I'm
24 confused because we have specifically put them on notice that,
25 directly pointing to Peyton Hemingway, we would be seeking to

1 introduce evidence that it was Peyton Hemingway's
2 identification that was taken from the victim. All right. So
3 clearly they know anything about taking your own property.
4 They've been on notice about that.

5 But if you come away from that and you talk about
6 clothing, well, that's his clothing. So I don't know the
7 difference between his clothing versus cash as far as motion
8 work or preparation or anything of that nature. It's just a
9 specific item, which again is specifically alluded to or stated
10 in the kidnapping charge.

11 THE COURT: Anything further?

12 MR. CANO: Yes, Your Honor. The State is trying to
13 say that it's not a different charge. It's a different charge.
14 It's first-degree kidnapping with use of a deadly weapon that
15 was originally charged in the indictment. It was presented in
16 front of the grand jury. That's what they had approved of and
17 returned a true bill on.

18 First-degree kidnapping with use of a deadly weapon
19 resulting in substantial bodily harm is a different charge.
20 There's more allegations that we have to defend against with
21 the substantial bodily harm allegations, Your Honor. Though
22 they might have included that language in the original charges
23 itself, we don't have to defend against the substantial bodily
24 harm.

25 Now that they're trying to amend it, we do have to

1 defend against it. That changes that. That's why it's a
2 material change, Your Honor. It's not just a simple clerical,
3 you know, clarification of what their intent was. If their
4 intent was to charge it originally as a first-degree kidnapping
5 with use of a deadly weapon resulting in substantial bodily
6 harm, that's what should have been presented to the grand jury.
7 That's what they would have returned as a true bill. They did
8 not do that.

9 So we are completely objecting to this, Your Honor.

10 MR. PESCI: And, Judge, I can totally understand
11 counsel's position if it were a situation where we didn't have
12 within the body of the pleadings reference substantial bodily
13 harm three times, and then, not to be facetious, if we didn't
14 also have a murder charge. So if we were adding substantial
15 bodily harm in the absence of someone being dead, which clearly
16 meets substantial bodily harm, that would be a much more
17 compelling argument.

18 THE COURT: Okay. At this time I'm going to allow
19 the Indictment to be filed, the Amended Indictment.

20 [Pause in the proceedings]

21 THE COURT: Does the State want this one to be
22 filed --

23 MR. PESCI: If we could wait. You know, it'll be
24 before we get to openings. I can get one where I make sure
25 that I don't screw it up seven more times.

1 THE COURT: Okay.

2 MR. PESCI: Like I have so far.

3 THE COURT: All right. And you'll present it to the
4 clerk?

5 MR. PESCI: Yes.

6 THE COURT: Okay. Then we'll just take a recess
7 until those other two jurors get here.

8 [Proceedings recessed 10:46 a.m. to 10:55 a.m.]

9 [Outside the presence of the prospective jury panel]

10 THE COURT: They're both here. Ms. Kaminski is here.
11 I think I'm going to have the court marshal bring Ms. Kaminski
12 in so I can make sure there's nothing involving her health.

13 MR. PESCI: Thank you, Your Honor.

14 MR. HAMNER: Yes, Your Honor.

15 THE COURT: If you don't mind bringing in
16 Ms. Kaminski.

17 It'll be Stacy Kaminski, Badge Number 463.

18 MR. PESCI: I'm sorry. Could you repeat it. Did you
19 ask me something?

20 THE COURT: No. I just wanted to make a record of
21 who was coming in.

22 [Prospective Juror Number 463 entered]

23 THE COURT: Good morning, Ms. Kaminski. Thank you
24 very much for being here. I just want to make sure that there
25 is not something going on or interfering with your ability to

APPENDIX "C"
Notice of Appeal

1 NOAS
2 JONELL THOMAS
3 SPECIAL PUBLIC DEFENDER
4 NSB No. 4771
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7 NSB No. 14465
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14 Attorneys for Arenas

15

16 DISTRICT COURT

17

COUNTY OF CLARK, STATE OF NEVADA

18

19 THE STATE OF NEVADA, } CASE NO. C-13-293029-1
20 Plaintiff, } DEPT. NO. 12
21 vs. }
22 EMILIO ARENAS, }
23 Defendant, }
24

NOTICE OF APPEAL

25 TO: THE STATE OF NEVADA, Plaintiff;
26 TO: CLARK COUNTY DISTRICT ATTORNEY, Plaintiff's attorney; and
27 TO: DEPARTMENT 12 OF THE EIGHTH JUDICIAL DISTRICT COURT
28 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK:
29
30 NOTICE is hereby given that Emilio Arenas hereby appeals to the Nevada Supreme
31
32
33
34
35
36
37
38

1 Court from the Judgment of Conviction (Jury Trial) filed April 3, 2019.

2 DATED April 23, 2019.

3 SUBMITTED BY:

4 /s/ NAVID AFSHAR

5
6 BY _____
7 NAVID AFSHAR
8 JONELL THOMAS
Attorneys for Arenas

9 **CERTIFICATE OF MAILING**

10 The undersigned does hereby certify that on 4/23/19, I deposited in the United States Post Office
11 at Las Vegas, Nevada, a copy of the Notice of Appeal, postage prepaid, addressed to the following:

12 District Attorney's Office
13 200 Lewis Ave., 3rd Floor
14 Las Vegas NV 89155

15 Nevada Attorney General
16 100 N. Carson
17 Carson City, NV 89701-4717

18 Emilio Arenas ID 1051999
19 High Desert State Prison
20 P.O. Box 650
21 Indian Springs NV 89070

22 Dated: 4/23/19

23 /s/ KATHLEEN FITZGERALD

24
25 KATHLEEN FITZGERALD
26 An employee of The Special Public
27 Defender's Office

Appendix "7"

Transcript of proceedings; Count 4 sentencing;
Amended Judgment of Conviction

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Electronically Filed
3/21/2022 9:35 AM
Steven D. Grierson
CLERK OF THE COURT
Steven D. Grierson

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,) CASE NO.: C-13-293029-1
Plaintiff(s),)
vs.) DEPT. NO.: XII
EMILIO EVALIO ARENAS,)
Defendant(s).)

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

FRIDAY, MARCH 18, 2022

**RECORDER'S TRANSCRIPT OF PROCEEDINGS
SENTENCING: COUNT 4**

APPEARANCES:

For the State:

GIANCARLO PESCI
Chief Deputy District Attorney
via teleconference

For the Defendant:

CHARLES A. CANO
Chief Special Public Defender

RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 LAS VEGAS, NEVADA, FRIDAY, MARCH 18, 2022, 11:06 A.M.
2 * * * * *

3 THE COURT: Page 1, State of Nevada versus Arenas, C293029. Mr. Arenas
4 is present, he's in custody. Good morning. He's appearing via BlueJeans.

5 Go ahead. Do you want to make your appearance?

6 MR. CANO: Good morning, Your Honor. Charles Cano on behalf of
7 Mr. Arenas.

8 THE COURT: Thank you.

9 Who's here on behalf of the State of Nevada?

10 MR. PESCI: Giancarlo Pesci on behalf of the State.

11 THE COURT: Okay. Are we ready to proceed with sentencing on Count 4?
12 Counsel?

13 MR. CANO: Well, yes, we have an objection to it, but yes.

14 THE COURT: Okay. Do you want to --

15 MR. CANO: Yes.

16 THE COURT: -- state your objection now?

17 MR. CANO: Yes, Your Honor, if I could?

18 THE COURT: Absolutely, go ahead.

19 MR. CANO: Thank you. We're objecting to the sentencing based on the
20 remand. Our position is that Mr. Arenas should be retried by a jury and not
21 resentenced on Count 4 and that to resentence would be a violation of his due --
22 constitutional due process rights under the 14th Amendment.

23 THE COURT: Okay. Any response from the State?

24 MR. PESCI: Judge, it's not a requirement for the jury to be involved in this
25 process and you have the discretion to be able to do this.

1 THE COURT: Okay. I mean, and you agree, I mean, the order says what it
2 says?

3 MR. CANO: Yes.

4 THE COURT: I mean, you're stating the objection, but I am --

5 MR. CANO: Over our objection.

6 THE COURT: -- I am compelled to follow --

7 MR. CANO: I understand.

8 THE COURT: -- the Supreme Court's order.

9 Okay. Mr. Arenas, you understand we're here for sentencing on
10 Count 4?

11 THE DEFENDANT: I do, Your Honor.

12 THE COURT: Okay. Any reason why we shouldn't proceed?

13 THE DEFENDANT: Your Honor, if it please the Court, I just want to say one
14 thing for one minute and then I'll submit.

15 THE COURT: Okay.

16 THE DEFENDANT: The United States Supreme Court in Stirone versus
17 United States wrote that when a defendant is convicted of a crime where the grand
18 jury never charges the defendant with an essential element of that crime, a
19 constructive amendment of the indictment has occurred and reversal is warranted.
20 In a 2005 case of United States versus Milstein, the Second Circuit cited Stirone
21 when it vacated the petitioner's conviction on one of the five counts, he'd appealed,
22 Court held that constructive amendment of an indictment is a *per se* violation of the
23 Fifth Amendment and that the proper remedy for such violation is to remand the
24 defendant for a new trial on the reversed count.

25 So I'm stating for the record that the Nevada Supreme Court's order

1 that I be remanded to be resentenced to Count 4 without a new trial when the count
2 was reversed because of an abuse of discourse, discretion, violates my Fifth and
3 Sixth Amendment rights pursuant to the United States Supreme Court's decision in
4 Stirone and in Arendi versus New Jersey. Pursuant to the Nevada Supreme
5 Court's own decision in Bigpond versus State, it's plain error to presume that the
6 jury would have found me guilty of Count 4 as it originally appeared in the 2013
7 indictment had I not first been prejudiced by the Court's abuse of discretion and by
8 the amended language of Jury Instruction Number 33.

9 So I just want to thank you, Judge Leavitt, for allowing me to address
10 the Court and for allowing me the opportunity to express the reasons for the defense
11 objection. I just pray that the Court will forward me a transcript of this hearing at its
12 earliest convenience and with that I'll submit it.

13 THE COURT: Sure. Okay. Pursuant to the verdict reached in this matter, I
14 hereby adjudicate you guilty of first degree kidnapping with use of a deadly weapon.

15 Does the State wish to address the Court?

16 MR. PESCI: Judge, we would ask for the maximum under the statute.

17 THE COURT: Okay. Mr. Arenas, do you want to say anything?

18 THE DEFENDANT: I don't know if it's my place to say anything, Your Honor.

19 THE COURT: Sure. Go ahead.

20 THE DEFENDANT: Inasmuch -- inasmuch as I'm objecting, but I would ask
21 that the Court sentence me to 20 to 50 because I've already got the life without on
22 the murder case. Another life without is not going to -- I can't come back to life and
23 do the second sentence.

24 MR. CANO: But it's a different sentencing structure, Mr. Arenas.

25 THE COURT: Right. Right. It's a different sentencing structure.

1 MR. CANO: I'll address it.

2 THE DEFENDANT: I'm --

3 MR. CANO: I'll address it --

4 THE COURT: Okay. That's okay.

5 MR. CANO: -- on his behalf.

6 THE COURT: Okay. Go ahead.

7 MR. CANO: Yes, Your Honor. I had -- looking over the original judgment of
8 conviction, obviously, on, I believe it was Count 5, the murder count, he got life
9 without possibility of parole so sentencing him to the maximum I think is feudal in
10 this case. It's more ministerial than anything. I think a term of years, 5 to 15, would
11 be appropriate in this case. There's also going to be use of a weapon
12 enhancement, I had noticed that you previously had sentenced him to the maximum
13 on the weapon enhancement. You know, I think that that's at the discretion of the
14 Court.

15 We would ask for the minimums, obviously, you know, 1 to 2-and-a-
16 half, so for a total accumulation of 6 to 17-and-a-half years for the first degree
17 kidnapping with use of a deadly weapon. And we'd ask that Count 4, which we --
18 this count run concurrent with Counts 2, 3, and 1 as you had previously sentenced
19 him --

20 THE COURT: Right.

21 MR. CANO: -- previously, Your Honor.

22 And just for edification, I don't know if you need a new credit for time
23 date on this one, I did the calculations, at the time that we sentenced him he had
24 2,040 days credit, since then it's been another 1,094 for a total credit of 3,134 days
25 for Count 4.

1 THE COURT: So 3,134 days?

2 MR. CANO: Yes, Your Honor.

3 THE COURT: Mr. Pesci, do you agree? Do you have any objection?

4 MR. PESCI: I'll take him at his word, Judge. I didn't think we were going
5 forward today anyway because of an email that said that he wasn't coming, so I'm
6 sure he's calculated that appropriately.

7 THE COURT: The clerk's saying I didn't adjudicate -- I just want to make
8 sure, I did adjudicate him guilty of first degree kidnapping with use of a deadly
9 weapon and at this time the Court's going to sentence you to 5 to life in the Nevada
10 Department of Corrections plus a consecutive 5 to 20 for the deadly weapon
11 enhancement to run concurrent to Counts 3 and at this time he has 3,134 days
12 credit for time served. And an amended judgment of conviction will be prepared.

13 MR. CANO: It was that 3,000? Yes?

14 THE COURT: 3,134, correct?

15 MR. CANO: Yes. Yes, okay, yeah, that's right.

16 THE COURT: Okay. Thank you.

17 PROCEEDING CONCLUDED AT 11:12 A.M.

18 * * * * *

19
20
21
22 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
23 video recording of this proceeding in the above-entitled case.

24 
25 SARA RICHARDSON
Court Recorder/Transcriber

Electronically Filed
03/25/2022 3:17 PM

Alma D. Schmid
CLERK OF THE COURT

1 AJOC
2
3
4
5

6 DISTRICT COURT
7
8

9 CLARK COUNTY, NEVADA
10
11

12 THE STATE OF NEVADA,
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Plaintiff,

-vs-

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28
EMILIO EVALIO ARENAS
#2733413
Defendant.

CASE NO. C-13-293029-1

DEPT. NO. XII

AMENDED JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1
– CONSPIRACY TO COMMIT MURDER (Category B Felony) in violation of NRS
199.480, 200.010; COUNT 2 – CONSPIRACY TO COMMIT KIDNAPPING (Category
B Felony) in violation of NRS 199.480, 200.310; COUNT 3 – CONSPIRACY TO
COMMIT ROBBERY (Category B Felony) in violation of NRS 199.480, 200.380;
COUNT 4 – FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON
RESULTING IN SUBSTANTIAL BODILY HARM (Category A Felony) in violation of
NRS 193.165, 200.310, 200.320, 0.060; COUNT 5 – MURDER WITH USE OF A

1 FOUR (4) YEARS; **COUNT 2** – a MAXIMUM of SEVENTY-TWO (72) MONTHS with a
2 MINIMUM parole eligibility of TWENTY-EIGHT (28) MONTHS, CONCURRENT with
3 COUNT 1; **COUNT 3** – a MAXIMUM of SEVENTY-TWO (72) MONTHS with a
4 MINIMUM parole eligibility of TWENTY-EIGHT (28) MONTHS, CONCURRENT with
5 COUNT 2; **COUNT 4** – LIFE WITHOUT the possibility of parole, plus a CONSECUTIVE
6 term of TWENTY (20) YEARS with a MINIMUM parole eligibility of EIGHT (8) YEARS,
7 CONCURRENT with COUNT 3; **COUNT 5** – LIFE WITHOUT the possibility of parole,
8 plus a CONSECUTIVE term of TWENTY (20) YEARS MAXIMUM with a MINIMUM
9 parole eligibility of EIGHT (8) YEARS for the Use of a Deadly Weapon, CONSECUTIVE
10 with COUNT 4; COUNT 6 DISMISSED pursuant to verdict.

13 THEREAFTER, the Nevada Supreme Court remanded this case back to the
14 district court for re-sentencing on Count 4 only. Pursuant to the Nevada Supreme
15 Court decision, Count 4 is amended and the defendant is adjudged guilty of First
16 Degree Kidnapping With Use of a Deadly Weapon (F), in violation of NRS 193.165,
17 200.310 and 200.320. The defendant was present in court on the 18th day of
18 March, 2022, with his attorney CHARLES CANO, Deputy Special Public Defender,
19 and was re-sentenced on Count 4 as follows: Adjudged guilty of Count 4 –
20 MAXIMUM of LIFE with a MINIMUM parole eligibility of FIVE (5) YEARS, plus a
21 CONSECUTIVE term of a MAXIMUM of TWENTY (20) YEARS with a MINIMUM
22 parole eligibility of FIVE (5) YEARS for Use of a Deadly Weapon; CONCURRENT
23 with Count 3, with THREE THOUSAND ONE HUNDRED THIRTY-FOUR (3,134)
24 DAYS credit for time served.

25 Dated this 25th day of March, 2022
26
27



28 C6A A83 358B 23C0
Michelle Leavitt
District Court Judge

1 Susan Bush susan.bush@clarkcountynv.gov
2 Christopher Hamner christopher.hamner@clarkcountyda.com
3 Emilee Peterson emilee@grassodefense.com
4 Navid Afshar Navid.Afshar@clarkcountynv.gov
5 Dept 3 Law Clerk dept03lc@clarkcountycourts.us
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APPENDIX "8"
Arrest warrant

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS
FILED (N.R.S. 171.106)
(N.R.S. 53 amended 7/13/1993)

AUG 16 9 46 AM 43

Event Number: 130812-3063

JUSTICE COURT
STATE OF NEVADA VEGAS, NEVADA
BY EMILIO EVALIO ARENAS
ss: #B#U2733413
COUNTY OF CLARK) DOB: 9/16/1969

13F13347X
075
Declaration of Warrant/Summons (AM) dav1
2330852



Robert Rogers, being first duly sworn, deposes and says:

That he is a detective with the Las Vegas Metropolitan Police Department, being so employed for a period of 28 1/2 years, assigned to investigate the crime(s) of Murder and Conspiracy to Commit Murder committed on or about August 12, 2013, which investigation has developed EMILIO EVALIO ARENAS as the perpetrator thereof.

THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME, TO WIT:

That on August 12, 2013 at approximately 1700 hours, George Dodge was driving northbound on Ringe Lane when he observed a mattress and bed in a dumpster along the east side of the road. Dodge got into the dumpster to remove some of the items, when he felt the wheel to an unknown object. Dodge determined the wheel was covered with white and black sheets that were tied in a knot. Dodge cut the sheets with his knife and discovered the wheel was connected to a dark-colored suitcase. He unzipped the suitcase and found inside what he believed to be an adult male, naked, in a fetal position. Dodge then exited the dumpster and called for police assistance.

That Officers Bonner and Holloway responded to the scene, and looking inside the suitcase confirmed it contained what appeared to be the body of a deceased male adult. The area was secured pending the arrival of Homicide and Criminalistics. A canvas of the neighborhood revealed the dumpster belonged to Jorge Altamirano living at [REDACTED], Nevada. Altamirano rented the dumpster from Silver State approximately 5 months ago, and the trash pickup days were on Saturdays and Wednesdays. Altamirano stated on August 11, 2013 at approximately 1800 hours, he had placed two mattresses, a child's wooden bedframe

VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 130812-3063

and garbage into the dumpster which was located on the west side of his property. As Altamirano was putting these items into the dumpster he saw it was empty.

That in order to better search the dumpster and to remove the suitcase in a more controlled environment, the dumpster was secured with a tarp and transported to the LVMPD Crime Lab for processing. Once there the dark-colored suitcase was removed and better examined. The decedent appeared to be an adult male in a fetal position with black electrical tape around his ankles. There was apparent blood inside the suitcase, as well as on a black fitted sheet and a white plastic mattress cover. Adjacent to the body was a tan and brown leopard print comforter that also had apparent blood stains. The decedent was wearing a ring on his pinkie finger with the inscription of "peace" on the circular band. The decedent was kept inside the suitcase and transported to the coroner's office for autopsy.

That on August 13, 2013, an autopsy was performed on the body by Medical Examiner Doctor Lary Simms. The decedent appeared to be beaten as evidenced by injuries on the face. There were apparent defensive wounds on the decedent's palms and hands. There were also apparent stab wounds and circular marks to the buttocks, a fractured rib, and injuries associated with asphyxia. At the conclusion of the autopsy, Doctor Simms opined the decedent died from asphyxiation and multiple blunt force injuries, with the manner of death a homicide. During the exterior examination of the body, a soiled Walgreen's receipt was stuck to the decedent's torso and leg. The receipt was dated 08/11/13 for oxycodone and morphine, issued to a person with only a partial name visible. This person was later identified and will be hereafter referred to as witness #1 out of a concern for their safety.

That the decedent was later identified as Carl Rane Simon with a birthdate of [REDACTED]. According to his family, Simon had no permanent address but was known to frequent the apartments at Boulder Highway and Flamingo Road. Detective Bunting and your declarant visited the Budget Suites located at 4855 Boulder Highway and spoke with management. Although there was no record of Simon residing there, it was learned that witness #1 was staying in room #C2034 with another subject, hereafter referred to as witness #2. Detectives later made contact with witness #1 and witness #2, who both knew Simon as "Shorty", and stated he owned a dark-colored suitcase with wheels.

VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 130812-3063

That witness #1 and witness #2 stated several days prior two black male adults known only as "EJ" and "Payton" beat Allen in the kitchen of their apartment. Witness #2 stated "EJ" had recently been staying with them, and sleeping in their bed. The incident was allegedly over missing money or drugs, where Simon took their money and was supposed to return with narcotics. After an extended period of time Simon did not return and the two males became upset. When they heard that Simon had returned to the complex, the males left and later brought Simon back to the apartment. Witness #1 and witness #2 observed both black males beat up Allen in the kitchen area of their apartment. The beating was so extensive and long that the witnesses elected to leave for several hours.

That when the witnesses later returned to their apartment they inquired what happened. "EJ" responded, "Don't ask!" and made it clear the details of what transpired were not open to discussion. Witness #1 later realized the tan and brown leopard print comforter and the black sheet were missing from the bed. Witness #1 also stated the decedent had left a bag of clothing on top of the refrigerator, there was now a broken chair inside the apartment that had been undamaged the previous day, and there had been a new roll of black electrical tape inside a plastic tub in the bedroom closet.

That on August 14, 2013, Homicide Sergeant Darr applied for a telephonic search warrant for the residence, which was approved by the Honorable Judge Silver. During a search of the apartment, a Nevada identification card in the name of Emilio Evalio Arenas (Dob: 9/16/1969) was located in the bedroom closet. Your declarant showed the photo identification card to witness #2, who positively identified Emilio Evalio Arenas as "EJ." The broken chair and the bag of clothes were located in the same locations as had been previously described. The plastic tub was found in the closet; however, the roll of black electrical tape was now missing. A chemical test was conducted on the kitchen floor for the presence of possible blood, and a positive reaction was observed, consistent with the witnesses' account of the altercation.

That on August 15, 2013, your declarant assembled photo line-ups with Emilio Evalio Arenas in different positions. The line-ups were shown separately to witness #1 and witness #2, who both positively identified Emilio Evalio Arenas as one of the black males last seen beating Carl

VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION

Event #: 130812-3063

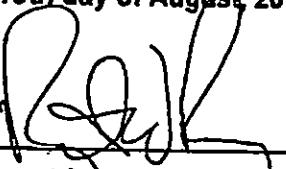
Simon in the kitchen of their apartment. Witness #1 suffered from medical maladies which limited mobility, and neither witness had any apparent injuries consistent with an altercation.

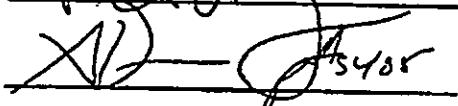
That there is sufficient probable cause to show Carl Simon was severely beaten by Emilio Evalio Arenas and "Payton" inside the residence at 4855 Boulder Highway #C2034. Afterward Simon's ankles were secured with black electrical tape, the body was placed inside presumably his own suitcase wrapped in bedding from the apartment, and disposed of inside the dumpster. Efforts to locate Arenas have been unsuccessful, with his vehicle located in Mexico suggesting flight, and the true identity of Peyton is still unknown.

Wherefore, Declarant prays that a Warrant of Arrest be issued for suspect EMILIO EVALIO ARENAS on the charge(s) of Murder and Conspiracy to Commit Murder.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed on this 16th day of August, 2013.

DECLARANT: 

WITNESS: 

DATE: 08/16/13

APPENDIX "Q"
Homeland Security Officer Report



U.S. CUSTOMS AND BORDER PROTECTION
Department of Homeland Security
San Diego Field Office
San Ysidro/Otay Mesa Passenger
Other Officer Report / Narrative Continuation



Narrative Continuation Report of Other Officer Involved in Incident
REPORTING OFFICER (Name/Title): Venegas, A / CBP Enforcement Officer
Subject's Name: ARENAS, Emilio Evalio DOB: [REDACTED]
Port-of-Entry: San Ysidro Incident No: 2013AR006517501 Date: 08/19/2013
TOPIC: Arrest of NCIC Wanted Person; Homicide

PAW-13-03-1131

NIC# W198110441

WNO: 13F13347X

Charge: Homicide

No Bail

Las Vegas Metropolitan Police Department; Las Vegas, Nevada

On 08/19/13 at approximately 9:25 P.M., Emilio Evalio ARENAS (DOB: [REDACTED]) presented himself for inspection to CBP Officer (CBPO) Urani, B. in the pedestrian area of the San Ysidro Port of Entry. ARENAS stated that he was a United States citizen, but had no form of identification on his person. CBPO Urani asked ARENAS where he was currently travelling to. ARENAS stated that he was travelling to San Diego, California after being arrested and being jail in Tijuana, Baja California Mexico. CBPO Urani then requested ARENAS' biometric information, and proceeded to query that information into his pedestrian primary computer terminal. Results of the query conducted upon ARENAS resulted in an Armed and Dangerous person alert, as well as a possible match to an NCIC wanted individual. CBPO Urani secured ARENAS' hands, and other CBP Officers arrived on scene and placed ARENAS into handcuffs for officer safety purposes. An immediate pat down was conducted with negative results. CBP Officers then escorted ARENAS into the Admissibility Enforcement Unit (AEU) area for further processing and warrant verification.

In AEU, CBPO Roca, C. obtained ARENAS' fingerprints and queried them through the Integrated Automated Fingerprint Identification System (IAFIS) confirming his criminal history under the given name ARENAS, Emilio Evalio with a date of birth of 09/16/1969. Further queries revealed that ARENAS was the subject of an outstanding felony warrant, with Federal Bureau of Investigation (FBI) #393724VA2. The Criminal Enforcement Unit was contacted; CBP Enforcement Officer Venegas, A. responded.

Further queries conducted by CBP Enforcement Officer Venegas confirmed that ARENAS was the subject of an outstanding felony warrant issued by the Los Vegas Metropolitan Police Department in Las Vegas, Nevada for Homicide and NIC #W198110441. YQ hit confirmation was sent to the originating warrant location;

Reporting Officer / Badge Number



U.S. CUSTOMS AND BORDER PROTECTION
Department of Homeland Security
San Diego Field Office
San Ysidro/Otay Mesa Passenger
Other Officer Report / Narrative Continuation



corresponding response indicated that the felony warrant issued for ARENAS was outstanding and valid with no bail, and that extradition of ARENAS had been authorized.

DISPOSITION: ARENAS was processed by the San Ysidro Port of Entry Criminal Enforcement Unit, and transported to the San Diego County Jail for booking and extradition. All personal effects in ARENAS' possession were taken with him to the San Diego County Jail at the time of transport.

Reporting Officer / Badge Number

Appendix "10"

Internal e-mail from FBI SA Coxon to BLO Agent Robleto

(BB) 202-230-9059

From: Robleto, Jose A.
Sent: Monday, August 19, 2013 11:26 AM
To: 'Daniel Quiñones De Anda'
Cc: 'eco manjarrez'; 'Alfredo Arenas'
Subject: FW: Murder Suspect from Las Vegas

Buenos dias Daniel,

Como platicamos, se anexa foto del sujeto que es buscado por homicidio en Las Vegas que ocurrió la semana pasada. El homicidio está relacionado con el narcotráfico. El sujeto rento un 1997 Landrover, color beige, sin placas. Según la agencia de renta, el GPS indica que el coche estaba el viernes en la noche por la calle **Baja California 448, Tijuana, BCS, 22000, Mexico.**

No hay confirmación si es cubano o si nació en Florida. El sujeto cuenta con parientes que viven en Pembroke, Florida (mencionado abajo). Ahorita el agente va a la agencia de renta para conseguir los "pings" del GPS mas reciente. No creo que vamos a poder conseguir una acta de nacimiento. No sé si hay manera de hacer una verificación migratoria con INAMI. El otro opción será pedir un orden de arresto provisional con SRE y PGR. Eso se tardara unos semanas y le corresponde al los AFI-INTERPOL trabajar el caso. Espero tu opinión si crees que nos esperamos o intentamos a detenerlo ahorita.

Saludos,

Tony Robleto

SSA Jose A. Robleto

BLO San Diego

(W) 858-320-8314

(BB) 202-230-9059

From: Coxon, Daniel G.
Sent: Monday, August 19, 2013 10:59 AM
To: Robleto, Jose A.
Subject: Murder Suspect from Las Vegas

Tony,

Please see attachments. Suspect (Emilio Arenas DOB 9/16/69) is wanted out of Las Vegas for Murder. The murder was drug related and it happened last week. Arenas and a unknown male beat, stabbed, and strangled a black male before putting him into a dumpster where his body was eventually recovered.

Suspect- Emilio Arenas *goes by EJ*

DOB: 9/16/69

SSAN: [REDACTED]

6'2"

250 lbs.

Suspects vehicle has GPS and it is currently in Tijuana. I am working on getting you the most current address. On Friday evening the vehicle was at **Baja California 448, Tijuana, BCS, 22000, Mexico**. Suspects vehicle is the following:

1997 Landrover, 4-door SUV, VIN SALJY124XVA730303, Biege in color. No plates

In Triple III - Arenas has a place of birth listed as Florida. To date we have not found a birth certificate to confirm he was born in Florida. Arenas has the following family in Pembroke Pines, Florida per CPClear:

JA Arenas, DOB 6/2/39, SSAN [REDACTED]

Maria Arenas, DOB 3/10/47, SSAN [REDACTED]

Ascellia Arenas, DOB 9/12/74, SSAN [REDACTED]

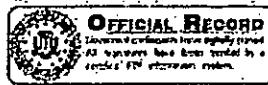
Please let me know if you need anything else. My cell is 702 [REDACTED]

Thanks. Dan

Appendix "II"

Agent Robleto contacts Tijuana Police Officer Lunes

UNCLASSIFIED

**FEDERAL BUREAU OF INVESTIGATION****Liaison with an Organization Outside of the FBI****Title:** (U) BORDER LIAISON PROGRAM; SAN DIEGO**Date:** 09/03/2013**To:** Edwin Rivera-Velez**Approved By:** A/ASAC Turner Suzanne**Drafted By:** ROBLETO JOSE A**Case ID #:** 800-SD-C2434113-ActivityReports (U) BLO Activity Reports**Responsible Organization:** SAN DIEGO**Agency Contacted:** SSP Municipal Tijuana on 08/21/2013 via Email,
Telephone, In Person**POC:** Director de Enlace Internacional Alejandro Lares**Mobile:** [REDACTED]**Work:** 664-688-5535**E-mail:** lares_75@hotmail.com**Follow-up Required On:** No Date Specified**Liaison Details:** (U) On 08/21/2013, SA Coxon requested BLO assistance in recovering the aforementioned Land Rover from Mexico. BLO Robleto contacted Tijuana Police Department (TJPD) Liaison Officer Lic. Alejandro Lares who agreed to have the vehicle towed to the Otay Mesa Port of Entry (POE). Additionally, BLOs Robleto and Garza arranged with Customs and Border Protection (CBP) to allow the transfer of custody within the secondary inspection area. At approximately 3:50 PM, BLOs Robleto and Garza took custody of the Land Rover and transported the vehicle, utilizing the services of Road One Towing, to the San Diego County Sheriff's Department (SDCSD) Laboratory located at 5255 Mt. Etna Drive, San Diego, California 92117. BLOs Robleto and Garza arrived at the SDCSD Laboratory at approximately 5:00 PM and transferred custody of the vehicle to Supervisor MIKE E. OTIS, Property Evidence Custodian, SDCSD Laboratory.

UNCLASSIFIED

002062

UNCLASSIFIED

Title: (U) BORDER LIAISON PROGRAM; SAN DIEGO
Re: 800-SD-C2434113-ActivityReports, 09/03/2013

♦♦

UNCLASSIFIED

Appendix "12"

Jose Antonio Robledo's trial testimony

1 A Uh-uh.

2 Q All right. And you never saw my client over there in
3 that area?

4 A No.

5 Q You've never seen him before?

6 A I never seen him before.

7 MR. CANO: Okay. Nothing further, Your Honor. Thank
8 you.

9 THE COURT: Mr. Grasso.

10 MR. GRASSO: No questions, Your Honor.

11 THE COURT: Any redirect?

12 MR. HAMNER: No further questions, Your Honor.

13 THE COURT: Okay. Thank you very much for your
14 testimony here today, sir. You may step down and you are
15 excused from your subpoena.

16 THE WITNESS: No problem.

17 THE COURT: Thank you for being here.

18 THE WITNESS: Thank you very much. Thank you, guys.

19 THE COURT: And you may call your next witness.

20 MR. PESCI: The State calls Jose Robleto.

21 May I approach your clerk?

22 THE COURT: You may.

23 **JOSE ANTONIO ROBLETO**

24 [having been called as a witness and being first duly sworn,
25 testified as follows:]

1 THE CLERK: You may be seated. Please state and
2 spell your first and last name for the record.

3 THE WITNESS: My name is Jose Antonio Robleto.

4 That's J-O-S-E Antonio, A-n-t-o-n-i-o. Robleto, R-o-b, as in
5 boy, l-e-t-o.

6 THE COURT: You may proceed.

7 MR. PESCI: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. PESCI:

10 Q Sir, I want to direct your attention to August of
11 2013. What was your job at that time?

12 A I was the border liaison officer of the FBI, which is
13 a special agent position where you're responsible for liaison
14 with our Mexican counterparts in Baja California.

15 Q All right. And where were you stationed or where
16 were you working at that time?

17 A I was stationed in San Diego.

18 Q Now, you said that you liaison with whom?

19 A With both the local, state and sometimes the federal
20 police agencies in Baja California.

21 Q Now, Baja California, is that still in California or
22 is that in Mexico?

23 A That is in Mexico.

24 Q Okay. And at that time in your capacity would
25 certain agencies or sometimes would agencies ask you to become

1 involved to try to facilitate things with law enforcement on
2 the other side of the border?

3 A Yes. Normally if it's a local case they would go to
4 the local office of the FBI, ask for their assistance. That
5 agent would then reach out to me if they had something of need
6 on the other side of the border.

7 Q All right. Speaking of an agent somewhere else with
8 something of need, did a Special Agent Coxon contact you from
9 the Las Vegas office?

10 A Yes, he did.

11 Q And then did you have a conversation with him about
12 something that he needed done?

13 A Yes, by, I believe, telephonic and by email.

14 Q And did he relay information that he had as far as an
15 individual that they were searching for?

16 A Yes, he did.

17 Q And do you recall the name of the individual that
18 they were searching for?

19 A The name was Emilio Arenas.

20 Q Okay. And sir, are you bilingual?

21 A Yes.

22 Q Do you speak Spanish?

23 A Yes.

24 Q Okay. So when you liaisoned with the individuals in
25 Mexico, were you able to speak with them in Spanish?

1 A Yes, I did.

2 Q Okay. Based on the information that you had been
3 given by Special Agent Coxon regarding this particular
4 individual, Emilio Arenas, did you contact somebody from
5 Tijuana's authorities?

6 A Yes. I contacted Daniel Quinones. He's a State
7 Police Officer who is part of their liaison team. He was based
8 out of Tijuana, but they cover the whole state.

9 Q Could you do me a favor and spell his name?

10 A Daniel, D-a-n-i-e-l. Quinones, Q-u-i-n-o-n-e-s.

11 Q Thank you very much, sir. So when you spoke with --
12 do you pronounce it Daniel?

13 A Daniel.

14 Q Daniel. When you spoke with Daniel, did you relay
15 the information that you had received from Special Agent Coxon
16 back from Las Vegas?

17 A Yes, I did.

18 Q All right. Was there information or focus on a
19 particular vehicle?

20 A Yes, there was.

21 Q And then do you recall the make of that vehicle?

22 A It was a Land Rover, if I recall, a beige Land Rover.

23 Q Did you have specific information to give to Daniel
24 as far as where to look for that Land Rover?

25 A I was given by Agent Coxon of Las Vegas the GPS

1 coordinates --

2 MR. PIKE: Objection, Your Honor. Hearsay.

3 THE WITNESS: I received the GPS --

4 THE COURT: Just a minute. Let me rule on the
5 objection. I want to hear from the State because it sounds
6 like --

7 BY MR. PESCI:

8 Q Were you given information about a location?

9 THE COURT: Thank you.

10 THE WITNESS: Yes, I did.

11 BY MR. PESCI:

12 Q Okay. Did you relay that specific information to
13 that -- to Daniel?

14 A Yes, I did.

15 Q All right. And when you relayed that specific
16 information to Daniel, did you do anything more at that point?
17 Let me word this differently. Did Daniel do something, as far
18 as you know, on the Mexican side of the border?

19 MR. PIKE: Objection, Your Honor. It calls for
20 speculation. Personal knowledge.

21 MR. PESCI: As far as he knows. It's not asking for
22 the hearsay statement.

23 THE COURT: Well, it's based on what he knows. So
24 overruled.

25 You can answer.

1 THE WITNESS: Yes. He went with his team to go look
2 for the vehicle.

3 BY MR. PESCI:

4 Q Okay. Were you then contacted by him and did he
5 relay information to you about that vehicle?

6 A Yes, by email, primarily.

7 Q Okay. And then based on the information that he,
8 Daniel, had relayed to you, did you go somewhere?

9 A No, I did not.

10 Q Okay. What did you do based on that information?

11 A Based on that information I asked the officers down
12 there to look for Mr. Arenas down in Tijuana.

13 Q Okay. And to your knowledge were they successful in
14 finding him in Tijuana?

15 A No, they weren't.

16 Q Okay. Eventually was that vehicle that we're
17 speaking of -- did you come into contact with it?

18 A I came into contact with it at the Otay Mesa Port of
19 Entry, is when I took possession of the vehicle.

20 Q Okay. And when you did that, explain to the jury
21 what it is that you do to take possession of it and who you got
22 it from.

23 A Because the vehicle had a parking ticket, it was
24 going to get towed by the Tijuana Police Department, I then
25 reached out to the liaison --

1 MR. PIKE: Objection, Your Honor. Nonresponsive. He
2 asked what did he do, not what other people did or what --

3 THE COURT: Okay. Just a minute. The objection is
4 sustained. You can ask the question again: What did he do?

5 BY MR. PESCI:

6 Q What did you do, based on the information that you
7 had obtained?

8 A What I did, I contacted the liaison officer of the
9 Tijuana Police Department.

10 Q And was that based on some of the information that
11 you had received and concerns of what could happen to the car,
12 based on the information that you had received?

13 A Yes.

14 MR. PIKE: Object.

15 MR. PESCI: What's the basis of the objection?

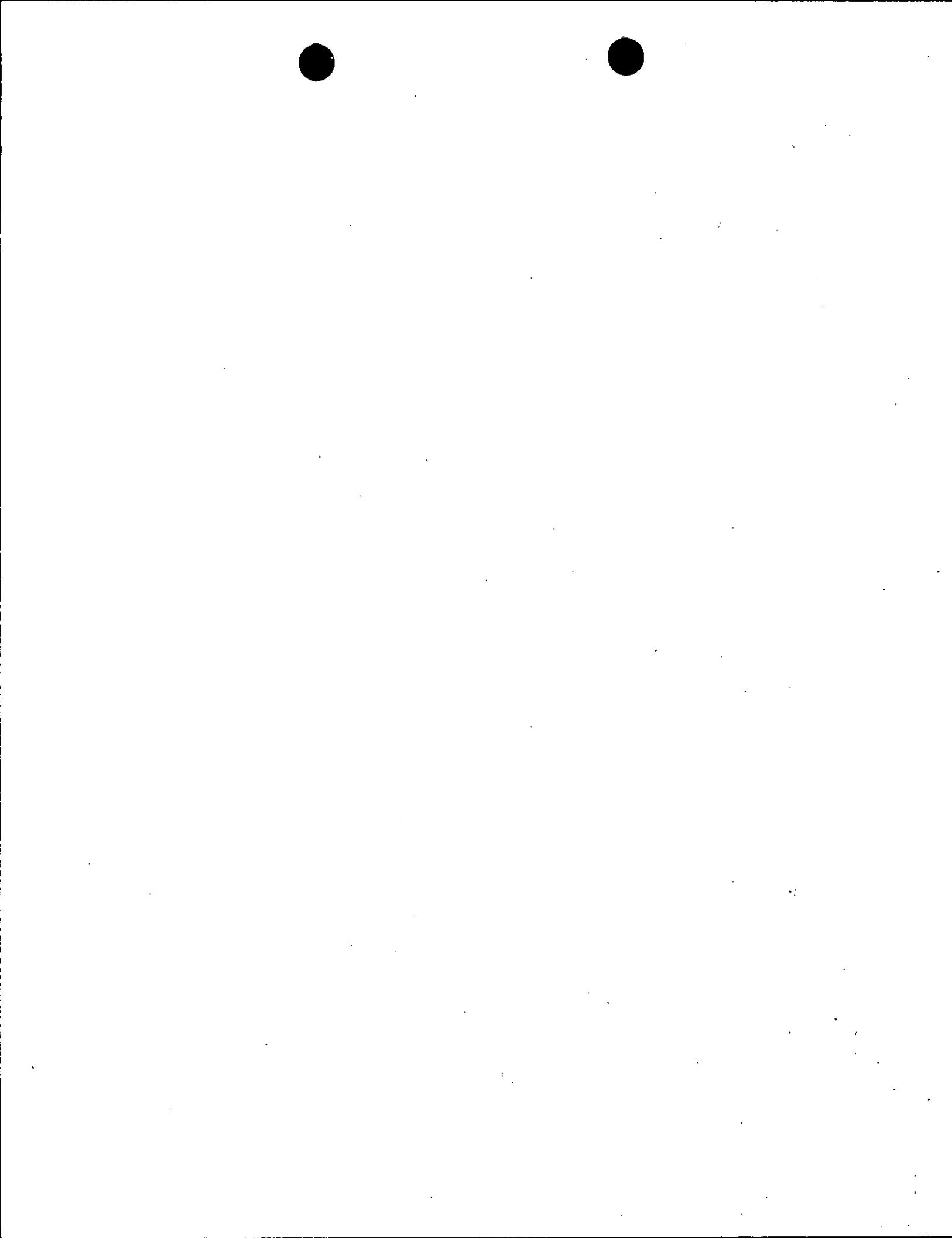
16 THE COURT: Well, is there an objection?

17 MR. PIKE: Yes.

18 THE COURT: Okay.

19 MR. PIKE: They just kept going. Sorry. Objection.
20 What we're calling for is not verified information. It's not
21 the best evidence. If there is some information that's being
22 provided to the agent at that point in time, that individual
23 could certainly come in and say this is what I saw, this is
24 what I did, but right now it is not the best evidence.

25 MR. PESCI: Judge, he's indicating what he did based



1 on the information that he received and the best evidence as to
2 why he did what he did is seated in that chair right there.

3 THE COURT: Okay. The objection is overruled.

4 And you may continue.

5 MR. PIKE: Well, just for clarification, Your Honor,
6 it's not what he heard but what he did.

7 THE COURT: That's what the question calls for.

8 MR. PIKE: Right.

9 MR. PESCI: And what I asked was based on the
10 information that he heard, without saying it, did he take .
11 action because of concerns?

12 MR. PIKE: Yeah -- [unintelligible] -- question.

13 BY MR. PESCI:

14 Q . Okay. Sir, based on information that you had
15 received, were you concerned what could happen with the
16 vehicle?

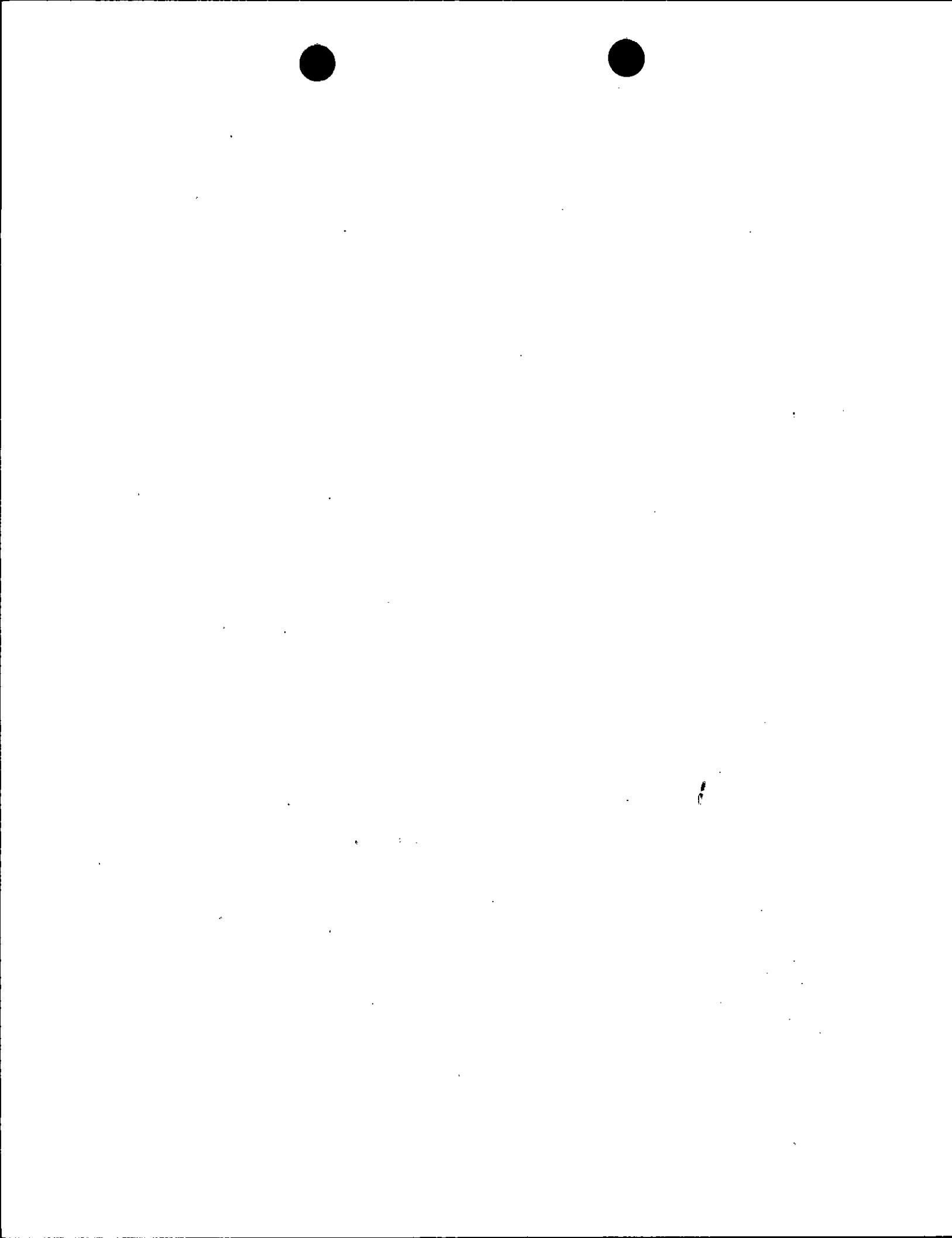
17 A My concern was to bring the vehicle back.

18 MR. PIKE: Objection. Calls for a yes or no answer.

19 THE COURT: Okay. I don't -- here's -- I don't
20 require witnesses to answer yes or no unless they tell me they
21 can answer it yes or no. If you can't, tell me, and then we'll
22 go from there. And, plus, it's the State's witness.

23 MR. PESCI: Yes. Thank you, Your Honor.

24 THE COURT: Are you requiring him to answer yes or
25 no?



1 MR. PESCI: No, Your Honor.

2 THE COURT: Okay. You may proceed.

3 THE WITNESS: Yes, I was concerned to get the vehicle
4 back.

5 BY MR. PESCI:

6 Q Okay. Based on that concern, what did you do?

7 A I asked the Tijuana Police liaison officer to assist
8 me in bringing the vehicle to the Otay Mesa Port of Entry.

9 Q Okay. So clearly you're not on the other side of the
10 border to tell us what happened, but based on the conversations
11 you just described, where did you go and what happened after
12 you got there?

13 A I went to the Otay Mesa Port of Entry. I coordinated
14 with the CBP, Customs and Border Protection, to allow the
15 transfer of the vehicle from Mexico into the U.S.

16 Q Okay.

17 A And --

18 Q Sorry, go ahead.

19 A There my liaison officer, Alex Latis [phonetic] met
20 me there with a tow truck and the vehicle in tow. CBP --

21 Q When you say in tow, what does that mean?

22 A I'm sorry?

23 Q When you say in tow, what does that mean?

24 A Towed. The vehicle was towed. They towed the car.

25 They didn't drive the car to the Otay Mesa Port of Entry. They

1 had it towed to the Otay Mesa Port of Entry --

2 Q Okay.

3 A -- to the secondary area of CBP.

4 Q And at the port of entry, what did you do with the
5 car?

6 A We then -- we had to go through CBP procedures where
7 they have to x-ray the vehicle for any contraband. Once
8 they're satisfied, then they can release -- then we can take
9 custody of the vehicle.

10 Q And then were you able to take custody of the
11 vehicle?

12 A Yes. I hired -- or the tow company that the FBI San
13 Diego office uses all the time, we paid them to go meet us
14 there and to tow the car to the Sheriff's Department Lab.

15 Q The Sheriff's Department where?

16 A Laboratory.

17 Q Okay. And do you know, is that the San Diego
18 Sheriff's Department?

19 A Yes.

20 Q Okay. And then did you physically in essence hand
21 over the vehicle to the San Diego Police Department?

22 A Yes. I handed it over to an evidence custodian at
23 the lab.

24 Q Did you have a key to the car to hand over to them?

25 A I didn't have a key to the car, that I recall.

1 Q You weren't able to drive that car -- even after it
2 was towed to you, when you got it were you able to drive it?

3 A I don't recall that we were able to drive the car or
4 anything.

5 Q Do you recall it being towed, like you just
6 testified --

7 A Yes.

8 Q -- to the San Diego Police Department?

9 A Yes. We followed the tow truck in our vehicle to the
10 San Diego lab.

11 Q All right. Thank you very much.

12 MR. PESCI: Court's indulgence.

13 Pass the witness, Your Honor.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 Q Good morning.

17 A Good morning.

18 Q I guess retired agent now?

19 A Yes, retired.

20 Q Congratulations.

21 A Thank you.

22 Q And am I pronouncing that correctly, Robleto?

23 A Yes.

24 Q Okay. My name is Randy Pike. I have a few questions
25 I'd like to ask you, if I may?

1 A Sure.

2 Q At the time that you were in this capacity, you would
3 communicate with FBI agents from various locations within the
4 United States and then you would communicate information across
5 the international border to Mexico?

6 A Yes.

7 Q And when you were giving information over to the
8 agencies or the officers that were located in Mexico, would you
9 generate notes as to what you were doing at that time?

10 A Yes, I probably would have generated notes, but I
11 would document all my notes onto reports.

12 Q Okay.

13 A One would be a monthly activity report. Since we
14 didn't open up cases as a border liaison, we documented our
15 activities on a monthly basis, everything we did for the whole
16 month. And then from that report what we do is we cut and
17 paste onto an FD999, which is what you guys have, which shows a
18 statistical accomplishment. In there it shows everything I did
19 on that particular request and who I met with and what were the
20 stats that were generated in each case. And in this case there
21 were the two --Daniel Quinones and Alex Latis of TJPD were the
22 two people I interacted with in this particular case.

23 Q Okay. Now, the item that you're talking about or the
24 identifier as far as the document you generate, would that be
25 considered an unclassified document?

1 A Yes.

2 Q Before it would be released to anybody, would you
3 have to do anything to unclassify that document?

4 A It was unclassified, so I was allowed to release it.

5 Q Were there, to your knowledge, any classified
6 documents that were generated in this case?

7 A Not that I'm aware of.

8 Q And you would be aware of them?

9 A If -- I can only speak for what I did in my -- as a
10 liaison officer we didn't generate any classified documents.

11 Q So as a liaison officer you were going through and
12 making communications and the person you were talking to with
13 the FBI here in Las Vegas, do you remember that agent's name?

14 A Yes.

15 Q And what was that?

16 A His name was Coxon.

17 Q C-o-x-o-n?

18 A Yes.

19 Q And when you were contacted by Mr. Coxon, he was not
20 employed by the Las Vegas Metropolitan Police Department, was
21 he?

22 A No.

23 Q Okay. He did not provide you a case file or a
24 declaration from the Las Vegas Metropolitan Police Department,
25 did he?

1 believe the Las Vegas agent or whoever he was interacting with,
2 they looked up those coordinates and said it was this address
3 in Tijuana.

4 Q Okay. And were you given information as to the last
5 time that that vehicle had moved from that -- from one location
6 to that location?

7 A I believe there was subsequent contact with Agent
8 Coxon, who stated that the car had not moved, that it was still
9 in the same location.

10 Q Would it be surprising to you if the vehicle had been
11 moved within a day or two of the time in which you were
12 provided that information?

13 A The car had a parking ticket that morning and it
14 probably was towed as a result of the parking ticket.

15 Q So you don't know exactly where the police picked
16 that vehicle up?

17 A Out of the TJPD Pound, where they impound vehicles.

18 Q You weren't there?

19 A You're correct, I was not there.

20 Q Okay. You as an agent understand the importance of a
21 chain of custody, don't you?

22 A Yes.

23 Q And so that's the reason you were there when the
24 vehicle came into the United States. You wanted to start the
25 chain of custody from where you were at?

1 A Correct.

2 Q Who examined the vehicle in Tijuana -- you weren't
3 there?

4 A No.

5 Q You didn't take any photographs in Tijuana?

6 A No, I did not.

7 Q You didn't impound or catalogue any of the items that
8 were located in the vehicle while it was in Tijuana?

9 A No, I did not.

10 Q And so the first time you came into contact with the
11 vehicle was simply when it showed up with the tow truck?

12 A Correct.

13 Q When you were there at the border when it came
14 through, you indicated that the vehicle was X-rayed?

15 A Yes.

16 Q Okay. And was it also subjected to any sort of
17 canine sniffing or anything to determine if there may be human
18 or drugs?

19 A I don't recall if they used a canine or not.

20 Q At the time that the vehicle came into your custody,
21 did you obtain the services of a forensic agent, either through
22 the FBI or through San Diego that photographed the vehicle as
23 it came across and the condition it was in?

24 A I don't think so.

25 Q Were there any officers from the Las Vegas

1 Metropolitan Police Department present at the time that the
2 vehicle was brought across?

3 A I don't recall that.

4 Q Now, were you -- did you have an opportunity to
5 review your reports in this case before you came to testify?

6 A Just the two FD99s and the emails with Agent
7 Quinones.

8 Q Okay. And do you recall that on the report that you
9 prepared on September 3rd, 2013, you were advised that on
10 August 21st Coxon contacted you requesting assistance in
11 recovering the vehicle?

12 A Yes.

13 MR. PESCI: Judge, I'm going to make an objection.
14 It appears he's referring to hearsay. Previously he was
15 objecting to the hearsay statements, but now he's asking for
16 hearsay statements.

17 MR. PIKE: Okay. I apologize.

18 BY MR. PIKE:

19 Q To your recollection and based upon the date that is
20 contained on your document, you were first contacted on August
21 21st?

22 A I believe that was an error on the 21st. Agent Coxon
23 first reached out to me on the 19th and then -- and I noticed a
24 discrepancy in my report, the second report, and the tow
25 receipt had the 20th and I had the 21st. I made the mistake on

1 the 21st, so that should have been the 20th.

2 Q And you didn't correct that?

3 A At the time I wasn't aware it was a mistake until
4 now.

5 Q Okay. And sometimes people make mistakes when
6 they're writing down information, times, dates, correct, even
7 FBI agents?

8 A Correct.

9 Q Did you ever prepare any documents that are called
10 302s?

11 A No. There were no 302s generated for this case.

12 Q Okay. And what is a 302, for the ladies and
13 gentlemen of the jury?

14 A A 302 is a standard FBI investigative report.

15 Q Are those 302s prepared in anticipation of appearing
16 in court?

17 A No. I mean, basically they're interview reports. If
18 I were to interview an individual on a case, it would be
19 documented on a 302.

20 MR. PIKE: Court's indulgence.

21 BY MR. PIKE:

22 Q Actually, Agent, did you work with another individual
23 by the name of Venegas, V-e-n-e-g-a-s, in this case?

24 A Venegas.

25 Q Venegas. I apologize.

1 A It doesn't ring a bell.

2 Q Okay. At the time that you were going through and
3 making a determination as to what was involved in your portion
4 of the case, did you ever have any contact with Mr. Arenas?

5 A No.

6 Q Were you provided a photograph of Mr. Arenas?

7 A I believe I was.

8 Q At the time that you had this information or were
9 performing these functions, did the Las Vegas Metropolitan
10 Police Department or your liaison agent through the FBI here
11 provide you the actual list of the coordinate times and
12 locations for the vehicle?

13 A I believe it was just an email. I don't have that
14 email, but the email. So did the GPS coordinates and the
15 address in Tijuana.

16 Q Was the payment for the towing from the Tijuana
17 location paid for by the FBI?

18 A No. That was a courtesy of the Tijuana Police
19 Department because it was in Tijuana Police custody.

20 Q Did you obtain any documents from the Tijuana Police
21 Department as to their actual physical possession of the
22 vehicle?

23 A I don't recall if I did or not.

24 MR. PIKE: Court's indulgence.

25 Okay. Thank you very much for coming out of

1 retirement for a few hours. I appreciate it.

2 THE WITNESS: Thank you.

3 THE COURT: Thank you.

4 Mr. Grasso, do you have any questions?

5 MR. GRASSO: No questions, Your Honor.

6 THE COURT: Okay. Any redirect?

7 MR. PESCI: Yes. May I approach the clerk?

8 THE COURT: You may.

9 MR. PESCI: Can I have marked as the next in order
10 this document, please.

11 MR. PIKE: No objection. We've been referring to
12 that document.

13 MR. GRASSO: Your Honor, I don't have an objection,
14 either.

15 [Pause in the proceedings]

16 MR. PESCI: May I approach the witness?

17 THE COURT: You may.

18 REDIRECT EXAMINATION

19 BY MR. PESCI:

20 Q Showing you what's been marked as State's Proposed
21 Exhibit 221, do you recognize that?

22 A Yes.

23 MR. PIKE: We have no objection to it being admitted
24 or it being published for the jury.

25 THE COURT: Mr. Grasso, any objection?

1 that on August 20th?

2 A Yes.

3 Q Okay. So in your report where it says August 21st,
4 that was a clerical error?

5 A Correct.

6 Q And this sheet helps us to clarify and to realize
7 that it's obviously on the 20th?

8 A Yes.

9 Q Okay. So your contact and interaction with this
10 vehicle is on the 20th?

11 A Yes.

12 Q All right. You were asked some questions about
13 getting some sort of an order to seize the vehicle. Do you
14 remember those questions?

15 A Yes.

16 Q All right. But the information that you had was that
17 the vehicle had already been towed because it had received a
18 parking ticket?

19 A Yes.

20 Q Okay. So based on that, you know it already had been
21 seized by the Tijuana authorities?

22 MR. PIKE: Objection, Your Honor. He had that
23 information. He had no personal knowledge of it then.

24 MR. PESCI: It's relevant based on his questioning of
25 this witness.

1 THE COURT: Overruled. You can answer.

2 | BY MR. PESCI;

3 Q So as far as having a need to go get some sort of a
4 seizure from a court in another country, the information you
5 already had was that the Tijuana Police had already seized the
6 vehicle because of a parking ticket?

7 A Correct.

8 Q All right. And thus you didn't go get some sort of
9 order from some court from some other country?

10 A No.

11 Q Okay. Thank you.

12 MR. PIKE: Wait, I need that.

13 A few questions, if I may?

14 THE COURT: Go ahead. Go ahead.

15 MR. PIKE: Thank you.

RE CROSS-EXAMINATION

17 Q Okay. I have a question. Do you recognize either of
18 those signatures or ID numbers at the bottom of that document?

19 A I don't recognize the signatures.

20 Q Do FBI agents have ID numbers like that or --

21 A Well, mine was 12592.

22 Q Okay. So --

23 A So that doesn't --

24 Q But you don't know if that was a police officer, an
25 agent or who that person or those individuals may be?

1 A I don't know.

2 Q Okay. And this towing occurred, at least according
3 to this document, on the 20th, is that correct?

4 A Yes.

5 Q And is that the correct date?

6 A Yes.

7 Q And so it was your report that had the wrong date?

8 A Correct.

9 Q Do you have access to your monthly activity report?

10 A No, I don't.

11 Q Where is that located?

12 A That would be in the FBI files.

13 Q And that's available if requested by a court?

14 A Yes.

15 Q And there is -- this document which is prepared here,
16 the vehicle says that it was towed from where? Is there an
17 address on there that you can see to say where it was -- where
18 this vehicle began?

19 A It doesn't show where it began.

20 Q But this was the document that -- well, you didn't
21 sign this document?

22 A It shows 28 miles that they charged, so my guess, if
23 you did a --

24 Q Somewhere 20 miles into Mexico --

25 A Well, if you went from the border to the lab, I bet

1 you that's 28 miles.

2 Q Okay. Was there a towing slip from Mexico that you
3 signed or paid?

4 A There's no towing slip from Mexico that I signed.

5 Q So you have no documentation as to where that vehicle
6 was actually towed from and to where you were at in the Ohay --
7 am I pronouncing that right?

8 A Otay.

9 Q Otay Port of Entry.

10 A I don't have that and it's possible that one was
11 generated, but I did not get a report like that. I don't know
12 what the circumstances on how my liaison contact brought the
13 vehicle to the border. That would be something to ask him
14 directly.

15 Q All right. And based upon -- so you have no
16 documentation as to where that vehicle actually was seized from
17 and who it was towed to and there's no documents that had been
18 generated and given to you saying we are the towing company
19 that brought it over here?

20 A Nothing from the Mexican side, other than the photo
21 of the car that Daniel sent when he located the car on that
22 street in downtown Tijuana.

23 Q Okay. So it was on a street when he sent you a photo
24 of it?

25 A When he first saw the car with the ticket on it.

Appendix "B"
Mutual Legal Assistance Treaty

Acuerdo

**APPENDIX A: TREATY ON COOPERATION
BETWEEN THE UNITED MEXICAN
STATES AND THE UNITED STATES
OF AMERICA FOR MUTUAL
LEGAL ASSISTANCE**

The Governments of the United Mexican States and the United States of America (the Parties),

Desiring to cooperate in the framework of their friendly relations, and to undertake mutual legal assistance to provide for the best administration of justice in criminal matters,

Have agreed as follows:

Article 1

Scope of the Treaty

1. The parties shall cooperate with each other by taking all appropriate measures that they have legal authority to take, in order to provide mutual legal assistance in criminal matters, in accordance with the terms of this Treaty and subject to the limitations of their respective domestic legal provisions. Such assistance shall deal with the prevention, investigation and prosecution of crimes or any other criminal proceedings arising from acts which are within the competence or jurisdiction of the requesting Party at the time the assistance is requested, and in connection with ancillary proceedings of any other kind related to the criminal acts in question.

2. This Treaty does not empower one Party's authorities to undertake, in the territorial jurisdiction of the other, the exercise and performance of the functions or authority exclusively entrusted to the authorities of that other Party by its national laws or regulations.

3. Subject to the provisions of paragraph 1 of this Article, requests for assistance under this Treaty will be executed, except that the requested Party may deny a request to the extent that:

- a) execution of the request would require the requested Party to exceed its legal authority or would otherwise be prohibited by the legal provisions in force in the requested State, in which case the Coordinating Authorities referred to in Article 2 of this Treaty shall consult with each other to identify alternative lawful means for securing assistance.
- b) execution of the request would in the judgment of the requested Party prejudice its security or other essential public policy or interest;
- c) the Executive of the requested Party regards the request as concerning an offense which is political or of a political character;
- d) the request relates to military offenses, except those which constitute offenses under ordinary criminal law; or
- e) the request does not comply with the provisions of this Treaty.

4. In conformity with this Article and in accordance with the other provisions of this Treaty, such assistance will include:

- a) the taking of testimony or statements of persons;
- b) the provision of documents, records and evidence;
- c) the legal execution of request for searches and seizures as ordered by the judicial authorities of the requested Party in accordance with its constitutional and other legal provisions;
- d) the legal execution of request for the taking of measures to immobilize, secure, or forfeit assets as ordered by the judicial authorities of the requested Party in accordance with its constitutional and other legal provisions;
- e) the voluntary transferring of persons in custody for testimonial or identification purposes;
- f) serving documents;
- g) locating or identifying persons;
- h) exchanging information; and
- i) other forms of assistance mutually agreed by the Parties, in conformity with the object and purpose of this Treaty.

5. This Treaty is intended solely for mutual legal assistance between the Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2 Coordinating Authorities

1. With the purpose of ensuring due cooperation between the Parties in providing to each other mutual legal assistance which falls within the scope of this Treaty, the United Mexican States designates as its Coordinating Authority its Procuraduria General de la Republica, and the United States of America designates as its Coordinating Authority the Central Authority of the United States Department of Justice. The Coordinating Authority of the requested State shall promptly comply with the requests or, when appropriate, shall transmit them to other competent authorities to do so. The competent authorities of the requested State shall take all necessary measures to promptly execute the request in accordance with Article 1.

2. The Coordinating Authorities shall consult regularly with each other in order to secure the most effective implementation of this Treaty and to anticipate and resolve problems that may arise in its application.

3. For those purposes, the Coordinating Authorities shall meet at the request of either one of them and at a time and place to be mutually agreed.

Article 3
Limitations on Assistance

1. Before refusing the execution of any request pursuant to this Treaty, the Coordinating Authority of the requested Party shall determine whether there are conditions whose satisfaction would make possible the rendering of assistance. If the requesting party accepts the assistance subject to those conditions, it shall comply with them.
2. The Coordinating Authority of the requested Party shall promptly inform that of the requesting Party of the reason for denying the execution of a request.

Article 4.
Contents of the Request for Mutual Assistance

1. Requests for assistance will be submitted in writing and translated into the language of the requested State. In urgent cases, the request may be submitted orally and the requested Party will take the necessary measures it is competent to undertake, with the understanding that as soon as possible the request will be formalized in writing.

2. The request will include the following data:

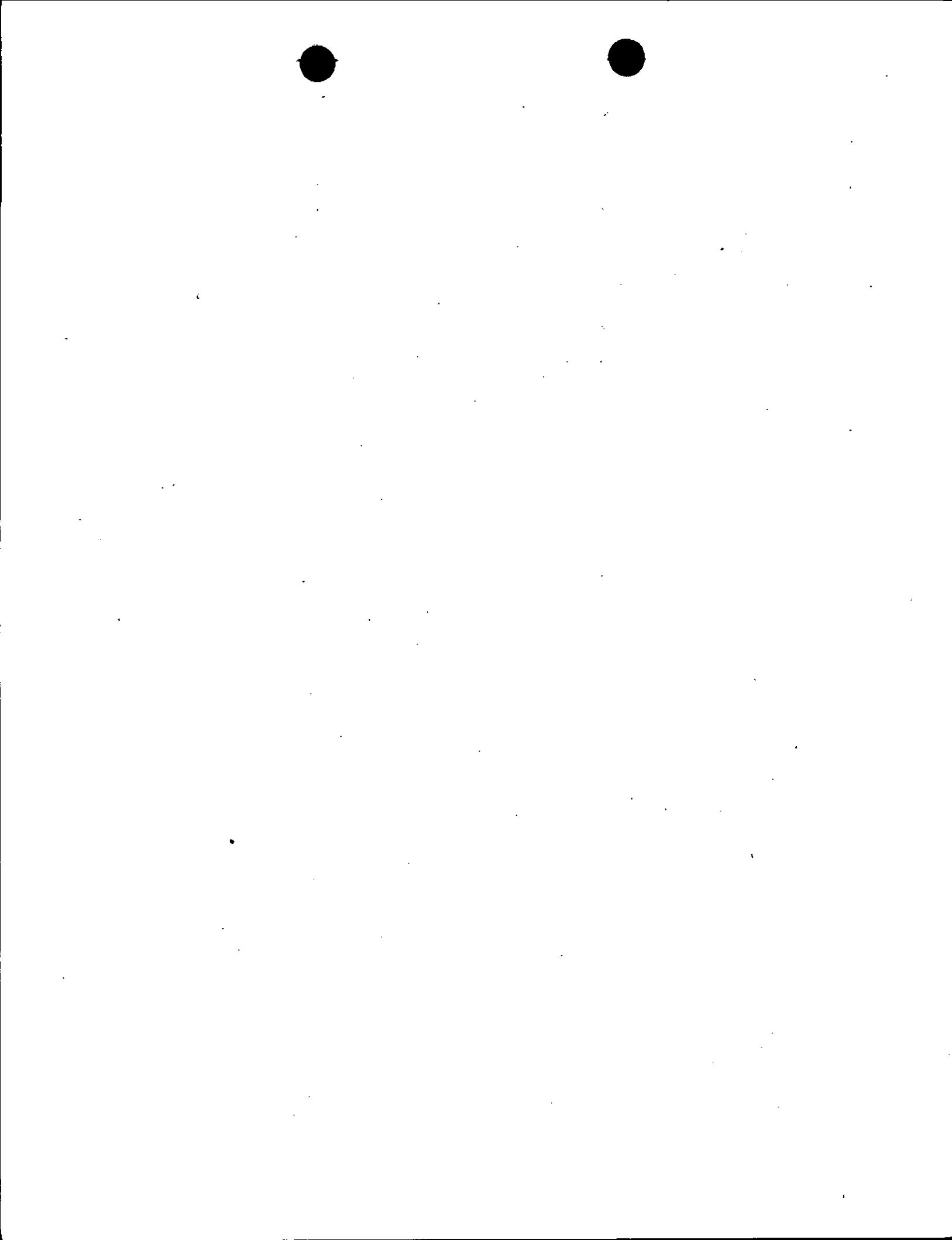
- a) the name of the competent authority conducting the investigation, prosecution or proceeding to which the request relates;
- b) the subject matter and nature of the investigation, prosecution or proceeding;
- c) a description of the evidence or information sought or the requested acts of assistance;
- d) the purpose for which the evidence, information, or other assistance is sought; and
- e) the method of execution to be followed.

3. To the extent necessary and possible, a request shall also include:

- a) available information on the identity or physical description and whereabouts of a person to be located;
- b) the identity or physical description and location of a person to be served, that person's relationship to the investigation, prosecution or proceeding, and the manner in which service is to be made;
- c) the identity or physical description and location of persons from whom evidence is sought;
- d) a precise description of the search to be conducted and of the objects to be seized; and
- e) any other information necessary under the laws of the requested Party to permit the execution of the request.

4. In cases of requested service of documents that are to be processed by the Coordinating Authority, those documents will be attached to the request and duly translated, certified, and authenticated.

5. The requested State shall keep confidential a request and its contents unless otherwise authorized by the Coordinating Authority of the requesting Party. If the request cannot be executed without breaching the required confidentiality, the Coordinating Authority of the requesting Party shall so inform the Coordinating



Authority of the requesting Party, which shall then determine whether the request should nevertheless be executed.

Article 5
Costs

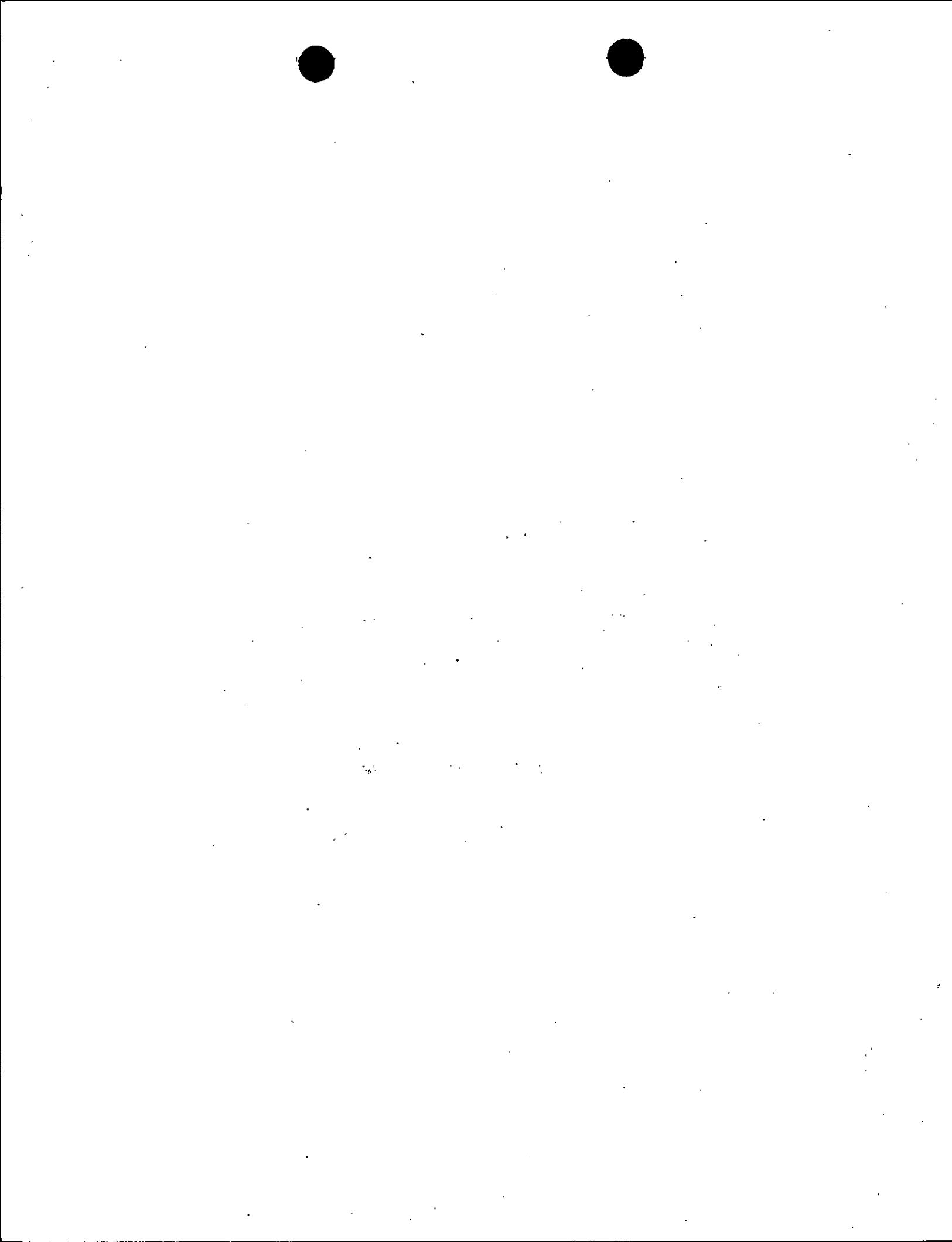
The requested Party shall pay all costs relating to the execution of the request, except for the lawful fees of witnesses and expert witnesses and the expenses related to travel of witnesses pursuant to Articles 8 and 9 of this Treaty, which fees and expenses shall be borne by the requesting Party.

Article 6
Limitations on Use of Information or Evidence

1. The requesting Party shall not use any information or evidence obtained under this Treaty for purposes other than those stated in the request without the prior consent of the Coordinating Authority of the requested Party.
2. When necessary, the requested Party may request that information or evidence furnished be kept confidential in accordance with conditions which its Coordinating Authority shall specify. If the requesting Party cannot comply with such a request, the Coordinating Authorities shall consult to determine mutually agreeable conditions of confidentiality in accordance with Article 1 of this Treaty.
3. The use of any information or evidence obtained under this Treaty which has been made public in the requesting State in a proceeding resulting from the investigation or proceeding described in the request shall not be subject to the restriction referred to in paragraph 1 of this Article.

Article 7
Testimony in the Requested State

1. A person in the requested State whose testimony is requested shall be compelled by subpoena, if necessary, by the competent authority of the requested Party to appear and testify or produce documents, records, and objects in the requested State to the same extent as in criminal investigations or proceedings in that State.
2. Any claim of immunity, incapacity, or privilege under the laws of the requesting State shall be resolved exclusively by the competent authorities of the requesting Party. Accordingly, the testimony shall be taken in the requested State and forwarded to the requesting Party where such claims will be resolved by its competent authorities.
3. The Coordinating Authority of the requested Party shall inform that of the requesting Party of the date and place for the taking of the testimony of the witness. When possible the Coordinating Authorities shall consult in order to secure a mutually agreeable date.
4. The requested Party shall authorize the presence in the taking of the testimony of such persons as specified by the Coordinating Authority of the requesting Party in its request.
5. Documents, records, and copies thereof shall be certified or authenticated in accordance with the procedures specified in the request. If certified or authenticated in such manner, they shall be admissible in evidence as proof of the truth of the matter set forth therein.



Article 8

Transferring Persons in Custody for Testimonial or Identification Purposes

1. A person in custody in the requested State who is needed as a witness or for purposes of identification in the requesting State shall be transported to that State if such person consents and if the Coordinating Authority of the requested Party has no reasonable basis to deny the request.

2. For purposes of this Article:

- a) the requesting Party shall have the authority and obligation to keep the person transferred in custody unless otherwise authorized by the requested Party;
- b) the requesting Party shall return the person transferred to the custody of the requested Party as soon as circumstances permit or as otherwise agreed between the Coordinating Authorities;
- c) the requesting Party shall not require the requested Party to initiate extradition proceeding to secure the return of the person in custody; and
- d) the person transferred shall receive credit for service of the sentence imposed in the requested Party for time served in the custody of the requesting Party.

Article 9

Appearing in the Requesting State

When the appearance of a person who is in the requested State is needed in the requesting State, the Coordinating Authority of the requested Party shall invite the person to appear before the appropriate authority of the other Party, and shall indicate the extent to which the expenses will be paid. The Coordinating Authority of the requested Party shall communicate the response of the person promptly to that of the requesting Party.

Article 10

Providing Records of Government Agencies

1. The requested Party shall provide the requesting Party with copies of publicly available records of government departments and agencies in the requested State.

2. If its legal provisions do not prohibit it, the requested Party may provide any record or information in the possession of a government office or agency, but not publicly available, to the same extent and under the same conditions as it would be available to its own law enforcement or judicial authorities.

3. Documents, records and copies thereof shall be certified or authenticated in accordance with the procedures specified in the request. If certified or authenticated in such manner, they shall be admissible in evidence as proof of the truth of the matters set forth therein.

Article 11

Immobilizing, Securing and Forfeiture of Assets

1. The Coordinating Authority of either Party may notify that of the other when it has reason to believe that proceeds, fruits or instrumentalities of crime are located in the territory of the other Party.

Article 16

Ratification and Entry Into Force

1. This Treaty shall be ratified by the Parties in accordance with their respective constitutional procedures and the instruments of ratification shall be exchanged at Washington, as soon as possible.
2. This Treaty shall enter into force on the date of the exchange of the instruments of ratification.

Article 17

Termination

Either Party may terminate this Treaty by giving written notice through diplomatic channels to the other Party at any time. Unless otherwise agreed by the Parties, termination shall become effective six months after the date such notice is given. The requests for assistance that may be pending at the termination of the Treaty may be executed if agreed by both Parties.

Article 18

Review

The Parties shall meet at least every two years from the date of entry into force of this Treaty, at a time and place to be mutually agreed upon, in order to review the effectiveness of its implementation and to agree on whatever individual and joint measures are necessary to improve its effectiveness.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

DONE at Mexico City, on the ninth day of the month of December of the year of nineteen hundred and eighty seven, in two originals, in the English and Spanish languages, both texts being equally authentic.

**FOR THE GOVERNMENT OF
THE UNITED MEXICAN STATES**

SERGIO GARCIA RAMIREZ

ATTORNEY GENERAL OF THE REPUBLIC

**FOR THE GOVERNMENT OF
THE UNITED STATES OF AMERICA**

CHARLES R. PILLIOD, JR.

AMBASSADOR

Appendix "H"
Jury Instruction No. 33

INSTRUCTION NO. 33

There is a kind of murder which carries with it conclusive evidence of premeditation and malice aforethought. This class of first degree murder is a killing committed in the perpetration or attempted perpetration of a robbery and/or kidnapping. Therefore, a killing which is committed in the perpetration or attempted perpetration of a robbery and/or kidnapping is deemed to be Murder of the First Degree, whether the killing was intentional or unintentional or accidental. This is called the Felony-Murder Rule.

The intent to perpetrate or attempt to perpetrate robbery and/or kidnapping must be proven beyond a reasonable doubt.

For the purposes of the Felony–Murder Rule, the intent to commit the robbery and/or kidnapping must have arisen before or during the conduct resulting in death. However, in determining whether the Defendant had the requisite intent to commit robbery and/or kidnapping before or during the killing, you may infer that intent from the Defendant's actions during and immediately after the killing. There is no Felony-Murder where the robbery and/or kidnapping occurs as an afterthought following the killing.

Very hard evidence that ~~Hemingway~~ robbed Simon of ~~Hemingway's~~ paperwork & \$10 after Simon was kidnapped & before he was killed. So no afterthought.

Frank Francis was prejudiced because (i) he did not understand instructions or in any event, did not follow them.

Appendix "IS"
DA Pesci's Power Point Deck

State v. Emilio Arenas

C293029

Accepted that he is criminally
responsible?

DEUTERONOMY?

DEUTERONOMY 19

- 15 One witness shall not rise up against a man for any iniquity, or for any sin, in any sin that he sinneth: at the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established.

How many witnesses did the
State call?

Witnesses

■ JORGE ALTAMIRANO	■ NOREEN CHARLTON
■ JOSE ROBLETO	■ JOEL ALBERT
■ NORMAN HUBBERT	■ SHANDRA LYNCH
■ RICHARD LEGLER	■ ERIN WILSON
■ LAUREN SAUTKULIS	■ BONNIE DICKINSON
■ CAITLIN KING	■ ANTHONY KORNICHUK
■ GEORGE DODGE	■ DANIEL SCHREFFLER
■ TRACY BONNER	

Court's
Exhibit 30
L-31-19
C293029

Witnesses

- ROBBIE DAHN
- JEFF SCOTT
- DEBORAH AGUILA
- CHRISTINA DI LORETO
- THERESA ALLEN
- DANIEL QUINONES
- MICHAEL BOSILLO
- KAREN SCIENSKI
- CHRYSSTAL JONES
- ROBERT ROGERS
- JENNIFER BROWN
- YVONNE BROWN
- KATHRYN AOYAMA
- CHRISTOPHER BUNTING
- FARID SHAHEDI

How many witnesses did the State call?

30

Exodus

- 13 Thou shall not kill.

**“But my Daddy wasn’t trash.
How could they put my Daddy
in a garbage can?”**

Individual Choice-Mitigation

Not a consensus?