

No._____

In the
Supreme Court of the United States

Sergio Moises Ochoa,
Petitioner

v.

State of Wisconsin
Respondent

On Petition for Writ of Certiorari to the Supreme Court of
Wisconsin

Appendix

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Appendix 1

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November 16, 2022

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You are hereby notified that the Court has entered the following order:

No. 2020AP1981-CR State v. Ochoa, L.C. #2017CF478

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of defendant-appellant-petitioner, Sergio Moises Ochoa, and considered by this court;

IT IS ORDERED that the petition for review is denied, without costs.

Sheila T. Reiff
Clerk of Supreme Court

Appendix 2

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 30, 2022

Sheila T. Reiff
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See WIS. STAT. § 808.10 and RULE 809.62.*

Appeal No. 2020AP1981-CR

Cir. Ct. No. 2017CF478

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

SERGIO MOISES OCHOA,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sheboygan County: REBECCA L. PERSICK, Judge. *Affirmed.*

Before Gundrum, P.J., Neubauer and Grogan, JJ.

¶1 GROGAN, J. Sergio Moises Ochoa appeals from a judgment entered after a jury found him guilty of two counts of first-degree reckless

homicide, contrary to WIS. STAT. § 940.02(1) (2019-20).¹ Ochoa argues the trial court violated his constitutional right to present a defense when it: (1) excluded evidence about the victims' past violent acts; (2) excluded three of his proposed expert witnesses; and (3) limited his testimony about why he returned to the home of one of the victims in the middle of the night. He further contends the trial court erroneously exercised its discretion when it refused to modify WIS JI—CRIMINAL 1016 to include within it a portion of WIS JI—CRIMINAL 805. We affirm.

I. BACKGROUND

¶2 In August 2017, the State charged Ochoa with two counts of first-degree intentional homicide arising out of an incident that occurred in the early morning hours of July 30, 2017. The victims were Luis Garcia, who was Ochoa's cousin, and a friend, Fernando Lopez. Ochoa pled not guilty and asserted at trial that he shot both men in self-defense when an argument arose about why Ochoa changed his mind about having Garcia act as the godfather for Ochoa's son's First Communion. As a part of his self-defense case, Ochoa argued that the combination of the alcohol and cocaine in Garcia's and Lopez's blood caused them to act erratically and threaten Ochoa, which caused Ochoa to believe he needed to shoot them to survive.²

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

² The toxicology reports run as part of the autopsies showed Garcia's blood alcohol concentration was .108 and showed he had both cocaine and THC in his system. Lopez's blood alcohol concentration was .16 and showed he had cocaine in his system.

¶3 Ochoa filed thirty-eight motions in limine. As material here, in support of his self-defense theory, Ochoa filed a motion seeking to introduce evidence that “related to past acts of violence” of both victims, which is commonly referred to as *McMorris* evidence.³ The State objected to Ochoa’s *McMorris* evidence, asserting that Ochoa had failed to provide sufficient information to establish its relevance and that even if it was relevant, it should be excluded under WIS. STAT. § 904.03 because any probative value was outweighed by its unfairly prejudicial nature. The trial court allowed Ochoa “to introduce reputation evidence” “regarding the decedents’ reputation for violence” but excluded “testimony regarding specific instances of violent conduct.” Ochoa filed a motion asking the trial court to reconsider its decision denying the *McMorris* evidence. The trial court denied the motion for reconsideration as untimely and for failing to meet the legal standard for reconsideration.

¶4 Ochoa also filed a notice of his intent to present the testimony of ten expert witnesses.⁴ In response, the State filed a motion seeking to exclude seven of Ochoa’s expert witnesses because each witness was either irrelevant or unreliable “under the *Daubert*^[5] Standard” set forth in WIS. STAT. § 907.02(1), and it later submitted a brief laying out its objections to five of Ochoa’s expert witnesses. After conducting a three-day *Daubert* hearing, the trial court excluded

³ See *McMorris v. State*, 58 Wis. 2d 144, 205 N.W.2d 559 (1973). “Evidence of a victim’s violent character and past violent acts is often referred to as *McMorris* evidence.” *State v. Head*, 2002 WI 99, ¶24 n.5, 255 Wis. 2d 194, 648 N.W.2d 413.

⁴ The ten witnesses were: (1) Lorraine Edwards; (2) Amy Miles; (3) William Johnson; (4) Michelle Burns; (5) Glenn Hardin; (6) Alfonso Villaseñor; (7) Dr. Phillip Trompetter, Ph.D., ABPP; (8) William Wilson; (9) Conrad Zvara; and (10) Marty Hayes.

⁵ See *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993).

three of Ochoa's proffered expert witnesses—Marty Hayes, Alfonso Villaseñor, and Conrad Zvara—based on concerns about relevance and/or reliability.

¶5 Ochoa's jury trial took place over the course of seventeen days in October 2019. On days thirteen and fifteen, Ochoa testified in his own defense. During his testimony, Ochoa described his friendship with his cousin Garcia over the years, including how Garcia allowed Ochoa to live with him in California when Ochoa first moved to the United States from Mexico in 1997 or 1998 and how after visiting Garcia in Oostberg, where Garcia had relocated, Ochoa moved his family to Oostburg in 2011. Garcia allowed Ochoa's family to live with him in Oostburg for six-to-eight weeks until Ochoa found an apartment. Ochoa testified that at that time, his relationship with Garcia was “[v]ery good[,]” and they were “more than cousins”—they “were brothers”—and that Garcia was his closest friend. They continued to have a good relationship when Ochoa moved away from Oostberg for a period of time before ultimately returning to the area.

¶6 Ochoa testified that he asked Garcia to be his son's godfather prior to his son's April 2017 First Communion and that Garcia was “very joyful” about this request. In March 2017, while Garcia and his family were at Ochoa's house to plan for the First Communion celebration, Ochoa believed Garcia and Lopez, who was also present, were consuming cocaine at his house. Ochoa, upset because his son almost saw the drug use, asked Garcia and Lopez to leave. There was no “big argument or fight”—Garcia understood Ochoa's concern, gathered his family, and left.

¶7 Ochoa testified that after the March 2017 incident, he decided to choose a different godfather; however, Ochoa did not have a chance to tell Garcia about the change at that time because Garcia “went to live [in] Milwaukee.” In

May 2017, Ochoa and Garcia were hanging out together, and Ochoa planned to tell Garcia that a different family member was chosen to be his son's godfather at the April First Communion. However, Ochoa did not get a chance to do so because Garcia was "really sad" and "crying and telling [Ochoa] about this personal problem." Ochoa testified he did not tell Garcia "[b]ecause [Garcia] was really worried about something serious, so compared with what he was facing, [the godfather change] was really insignificant." Ochoa testified his son's First Communion had occurred in April 2017 without Garcia and that after May 2017, he did not see Garcia again until July 2017.

¶8 Ochoa told the jury that on July 29, 2017, his sister and her husband were visiting from Mexico and had brought asthma inhalers from Mexico. At about 10:30 or 11:00 p.m., Ochoa and his brother-in-law went over to Garcia's house to deliver some of the inhalers. Ochoa also brought a bucket of beer and rum as a gift for Garcia. Ochoa, his brother-in-law, Garcia, and Lopez all had a beer together. After about twenty or thirty minutes, Ochoa told Garcia he needed to get back home. Ochoa testified that he went home and slept for about two or three hours and then woke up because he remembered that his cousin Garcia "had been very insistent" about wanting to talk to Ochoa that night. The parties then argued about whether Ochoa could testify about statements Garcia had made to Ochoa that caused him to return to Garcia's home when Ochoa woke up at 2:00 a.m. that morning. Ultimately, the trial court allowed Ochoa to testify about his reason for returning to Garcia's home in the middle of the night.

¶9 Ochoa also told the jury he had recently obtained his concealed carry permit and had grown up learning how to use guns. The jury also learned that Ochoa did not take his gun into Garcia's home when he went there with his brother-in-law, but he did take the gun into the Garcia home when he went back at

2:00 a.m. on July 30th. Ochoa testified this was out of concern about a recent robbery in the area since he was going alone. Ochoa told the jury that when he first arrived at the Garcia home at 2:00 a.m., Garcia and Lopez were happy to see him but that things got heated when they began to argue about Ochoa's decision to not have Garcia as his son's First Communion godfather. Ochoa said Lopez had a pocketknife that he opened and closed "[m]aybe four or five times" and made threats that Ochoa felt meant they were going to kill him. The threats, spoken in Spanish, were interpreted as "you are so screwed," but Ochoa testified that he had interpreted them to be death threats, more like, "I'm going to kill you. You're going to die" or "[y]ou're gonna get screwed."⁶

¶10 Ochoa also testified that he began walking into the kitchen and then looped back through the living room about five times. He then tried to open the back door once but testified Garcia came up behind him with a knife and said he was not leaving. Ochoa walked back to the living room where he felt that he was about to be attacked. Ochoa shot Lopez first and then Garcia when Garcia lunged at him. Ochoa then left the home with the intent to go directly to the police department but did not arrive at the Sheboygan Police Department until about an hour after the shootings. During the drive, Ochoa tossed his gun holster out the window.

¶11 Garcia's son, J.G., was upstairs playing video games with two friends at the time of the shooting. J.G. and his friends heard the shots and got

⁶ The Spanish words were: "Te va a llevar la verga" and "Ya te llevó la verga[.]". In his "Summary of Expert Opinions of Alfonso Villaseñor," one of the excluded experts, Ochoa posited that Villaseñor would testify that these phrases meant "[y]ou're gonna get fucked up" or "[y]ou're fucked, now[.]". Spanish interpreters were utilized throughout the course of the trial.

scared. They were afraid to go downstairs in case the shooter was still present, but eventually one of J.G.'s friends went out through the window and jumped down to the ground. The friend saw Garcia and Lopez lying on the living room floor, presumably shot to death, and then called J.G. to report what he saw before driving home. J.G. and the remaining friend then went downstairs, and J.G. woke up his uncle who lived with them and had been sleeping in his bedroom located on the main floor of the house. The uncle attempted CPR and called 911 because J.G. had not already done so.

¶12 When EMTs arrived, they determined both Garcia and Lopez were deceased. The Sheboygan Sheriff's Department and Police Department conducted an investigation. They located multiple bullets and multiple casings that were eventually connected to Ochoa's gun. Both Garcia and Lopez were shot multiple times. The police did not find any weapons in the living room at the Garcia home aside from the pocketknife recovered from a pocket in Lopez's cargo shorts.

¶13 When Ochoa arrived at the Sheboygan Police Department, he asked for a Spanish-speaking officer, but one was not immediately available. Ochoa told police that he was "sad" and that he "didn't mean to hurt anybody," that he had done something "bad," and that the gun was in his car. Police impounded Ochoa's car, retrieved the gun, and obtained a search warrant for Ochoa's home. Police recovered additional handguns and ammunition from Ochoa's home.

¶14 After the close of testimony, the trial court determined which jury instructions would be given to the jury. The only jury instruction issue Ochoa raises on appeal is whether the trial court erred in denying his request that pattern jury instruction WIS JI—CRIMINAL 1016 be modified to include language from

WIS JI—CRIMINAL 805 that incorporates the definition of “reasonably believes” found in WIS. STAT. § 939.22(32).

¶15 The trial court expressed its preference to use the pattern jury instructions without modifications but explained that if Ochoa’s counsel provided it with authority to make the modification to the pattern instruction, it would consider doing so. Ochoa’s counsel pointed to the statutory definition of “reasonably believes,” but the trial court gave the pattern jury instruction to the jury without adding the modification.

¶16 The jury returned guilty verdicts on the lesser-included crime of first-degree reckless homicide on both counts.⁷ The trial court sentenced Ochoa to twelve years and six months’ initial confinement followed by five years’ extended supervision on each count, to run consecutively for a total of twenty-five years’ initial confinement and ten years’ extended supervision. Ochoa appeals.

II. STANDARD OF REVIEW

¶17 Although a trial court’s admission or exclusion of evidence is reviewed for an erroneous exercise of discretion, we analyze *de novo* whether a trial court’s exclusion of evidence deprived a defendant in a criminal case of his

⁷ The jury was instructed that first-degree reckless homicide requires the jury to find that the defendant caused death by criminally reckless conduct and that “[c]riminally reckless conduct means the conduct created a risk of death or great bodily harm to another person, and the risk of death or great bodily harm was unreasonable and substantial, and the defendant was aware that his conduct created the unreasonable and substantial risk of death or great bodily harm.” *See* WIS JI—CRIMINAL 1016. The jury was further instructed “that it must find that the defendant acted recklessly “under circumstances which show utter disregard for human life.” *Id.* As discussed later, the jury was also instructed on the interplay between these charges and Ochoa’s assertion of self-defense.

constitutional right to present a defense. *State v. Wilson*, 2015 WI 48, ¶47, 362 Wis. 2d 193, 864 N.W.2d 52.

¶18 “[A] trial court has wide discretion in instructing the jury based on the facts and circumstances of each case.” *State v. Wenger*, 225 Wis. 2d 495, 502, 593 N.W.2d 467 (Ct. App. 1999). A “trial court has wide discretion in choosing the language of jury instructions and if the instructions given adequately explain the law applicable to the facts, that is sufficient and there is no error in the trial court’s refusal to use the specific language requested by the defendant.” *State v. Herriges*, 155 Wis. 2d 297, 300, 455 N.W.2d 635 (Ct. App. 1990).

III. DISCUSSION

A. *Constitutional Right to Present a Defense*

¶19 Ochoa argues that three evidentiary exclusions violated his constitutional right to present a defense. He contends the trial court: (1) should have allowed him to introduce evidence about the victims’ prior violent acts; (2) should have allowed him to call three additional expert witnesses; and (3) erred in excluding testimony explaining his reasons for returning to the victim’s home in the middle of the night. Ochoa contends the exclusion of this evidence violated his constitutional right to present a defense under article I, section 7 of the Wisconsin Constitution and the Sixth Amendment of the United States Constitution.⁸

⁸ Article I, section 7 of the Wisconsin Constitution provides as relevant: “In all criminal prosecutions the accused shall enjoy the right ... to meet the witnesses face to face; [and] to have compulsory process to compel the attendance of witnesses in his behalf[.]” WIS. CONST. art. I, § 7.

(continued)

¶20 “Every defendant in a criminal case has the right under the Sixth Amendment to present his or her defense.” *State v. Ward*, 2011 WI App 151, ¶16, 337 Wis. 2d 655, 807 N.W.2d 23 (citing *Washington v. Texas*, 388 U.S. 14, 18-19 (1967)). The right is not absolute, however, as the evidence the defendant seeks to introduce must be relevant. *See Crane v. Kentucky*, 476 U.S. 683, 689-90 (1986); *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982) (“mere absence of testimony” is insufficient to establish constitutional violation; defendant must show the excluded “testimony … would have been *relevant* and *material*, and … *vital* to the defense” (citation omitted; second omission in original)). The admission of evidence is subject to “the application of evidentiary rules that themselves serve the interests of fairness and reliability—even if the defendant would prefer to see that evidence admitted.” *Crane*, 476 U.S. at 690. Trial courts have “‘wide latitude’ to exclude evidence that is ‘repetitive …, only marginally relevant,’ or poses an undue risk of ‘harassment, prejudice, [or] confusion of the issues.’” *Id.* at 689-90 (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986) (alteration and omission in original)). The relevance of the proffered evidence must not be “substantially outweighed by its prejudicial effect.” *State v. Pulizzano*, 155 Wis. 2d 633, 646, 456 N.W.2d 325 (1990). For the reasons explained below, the trial court did not violate Ochoa’s constitutional right to present a defense.

The Sixth Amendment of the United States Constitution provides as relevant: “In all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him; [and] to have compulsory process for obtaining witnesses in his favor[.]” U.S. CONST. amend. VI.

1. Victims' Prior Acts of Violence—*McMorris* Evidence

¶21 Ochoa's first contention is that the trial court erred in refusing to allow him to introduce evidence about the victims' prior specific acts of violence—namely *McMorris* evidence. As noted, the trial court *did* allow testimony that the victims had a *reputation* for being violent. Our review is therefore limited to whether the exclusion of testimony regarding *specific acts* of violence was error.

¶22 In his motions in limine, Ochoa asked the trial court to allow the *McMorris* evidence if Ochoa chose to testify. Ochoa filed a brief in support of his motion, which specifically asserted that he “wishes to introduce evidence of his knowledge of prior specific acts of violence committed by” the victims to show that the victims “were the first and primary aggressors.” His brief provided the following information about these prior specific acts of violence:

[B]etween the years of 1993 and 1998 or 1999, Mr. Ochoa personally observe[d] approximately three-to-four instances of [Garcia and Lopez] engaging jointly in what he learned to be pre-emptive, violent and brutal attacks against third parties that involved kicking and punching the third parties to the ground during a night of drinking alcohol at Plaza Santa Maria de Torres in their home community in Mexico during rodeo events. During the same period of time and place, Mr. Ochoa personally observed [Garcia] in two-to-three separate instances launch similar style of attacks against third parties. Mr. Ochoa observed third parties, including the relatives of the owners of the Plaza Santa Maria de Torres, Chino Morales, intervene to break up the fights, and red cross workers attend to the injured third parties, whose faces were often cut and who were sometimes left unconscious, after [Garcia and/or Lopez] fled. Mr. Ochoa was aware that [Garcia and Lopez] would provoke the fights by intervening with a male who was dancing with his girlfriend to provoke him to fight, or threw Model beer cans at one or more males. In one instance, Mr. Ochoa recalls that [Garcia] stole a <<chicharra>>, or an electrical wire used to shock bulls that would sometimes be used by those trying to break up

fights, and used it to shock the person who he was fighting to inflict additional carnage. Mr. Ochoa would indicate that although other males in his peer group would also pick fights at these types of events, he was aware of [Garcia and Lopez's] reputation for behaving extremely violently and aggressively when drinking. Mr. Ochoa was also aware during the same relevant years that [Garcia and Lopez] would fight with others at annual fiestas, including festivals at San Sebastián el Grande in San Agustín and in Santa María in Tlajomulco, as well as Santa Anita in Tlaquepaque. Mr. Ochoa indicates that he was aware that [Garcia and Lopez] would use unconventional weapons such as rocks and broken beer bottles during these fights to inflict maximum carnage. From 1999 through 2017, both [Garcia and Lopez] on various occasions would reminisce in Mr. Ochoa's presence about their violent exploits in Mexico, ganging up and beating people in tandem, as well as fights they had been involved in while living in the United States, including California and Wisconsin. Mr. Ochoa never witnessed any of the fights in the United States, which [Garcia and Lopez] described themselves as having been violent and successfully ganging up on and beating up other individuals in a manner similar to what Mr. Ochoa had personally observed or been told about third hand.

¶23 The State objected to the admission of this *McMorris* evidence, noting it is proper to exclude when it is too remote, *see McMorris v. State*, 58 Wis. 2d 144, 151, 205 N.W.2d 559 (1973), or if the application of the WIS. STAT. § 904.03 balancing test shows the evidence should be excluded. *See State v. McClaren*, 2009 WI 69, ¶21, 318 Wis. 2d 739, 767 N.W.2d 550 (trial court has the “responsibility to vet the evidence prior to admission to be sure it is valid *McMorris* evidence”).

¶24 The State asserted that:

[E]vidence of the decedent's actions between 1993 and 1997 or 1998 is not relevant given the significant time that elapsed between the dates and the charged offense in 2017. Further, the claimed reminiscing testimony should be denied without more explanation because the court is unable to identify the dates, circumstances, frequency or other indicia of reliability or reasonableness of the offered

testimony. Without more information the court is not in a position to evaluate the probative value of the evidence as opposed to its danger of unfair prejudice, nor to evaluate whether the offered testimony would confuse the issues, mislead the jury, delay the case, or waste the jury's time.

In ruling on the *McMorris* motion, the trial court addressed the pertinent case law and relied specifically on *State v. Head*, 2002 WI 99, ¶128, 255 Wis. 2d 194, 648 N.W.2d 413, which held that “[a]dmissibility is not automatic.” *Head* provides:

If the court determines that the [*McMorris*] evidence is relevant, the [trial] court should admit it as it would any other relevant evidence, excluding it only if its “probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” WIS. STAT. § 904.03.

Head, 255 Wis. 2d 194, ¶129.

¶25 The trial court then applied the precedential case law to Ochoa’s case. It said:

In this case the defendant wants to introduce three to four instances of [Garcia and Lopez] engaging in preemptive violent attacks against someone else between the years of 1993 and 1998 or ‘99. He wants to introduce an additional two to three similar acts by [Garcia] alone during that same time period. All of those acts occurred in Mexico during a night of drinking.

And then he further wants to introduce that between 1999 and 2017 both [Garcia and Lopez] would reminisce about ganging up on people in Mexico as well as in the U.S., but the defendant doesn’t provide any time frame for the incidents which allegedly occurred in the U.S.

¶26 The trial court then addressed whether the *McMorris* evidence was relevant, specifically “whether the evidence relates to a fact of consequence and whether the other act makes the consequential fact more or less probable.” The

trial court noted that the case law provides “a way to measure the probative value,” which “is to look at the similarity in time, place, and circumstance between the other act and the current incident.” The trial court first looked at the three or four specific acts of violence Ochoa claimed he personally observed in Mexico. First, the trial court noted these acts occurred:

- “18 or more years prior to the homicides”;
- “in Mexico … in public places, such as rodeos or bars”;
- “None of them occurred in private homes or to family members”; and
- “There’s no allegation that [Garcia and Lopez] in those prior incidents ever threatened anyone with death or actually used deadly force against anyone.”

¶27 The trial court ruled these prior acts of violence were “of questionable probative value” because they were too remote, too dissimilar, and would not “reasonably bear on the defendant’s apprehension of danger.” Even if these acts were “arguably relevant,” the trial court found that “admitting them would be more prejudicial than probative” under WIS. STAT. § 904.03.

¶28 With respect to admitting evidence about the victims bragging about the specific violent Mexico acts and the alleged similar violent acts occurring in the United States, the trial court found “there are no details provided about time, place, or circumstance. Nor is there any detail about how often or at what intervals these alleged recent attacks occurred.” The trial court said that “without that information, there’s no way for me to determine the repeated admissions about new assaults remained sufficiently constant over the years as alleged by Mr. Ochoa.” Additionally, the trial court found there was insufficient specificity

from which “a reasonable jury could find by a preponderance of the evidence that the other acts occurred.”

¶29 We conclude the trial court’s decision to exclude the *McMorris* evidence was not erroneous. The trial court considered the applicable law, applied the pertinent facts, and reached a reasonable determination. *See State v. Payano*, 2009 WI 86, ¶51, 320 Wis. 2d 348, 768 N.W.2d 832. The “three or four” Mexico violent acts that Ochoa sought to admit were not relevant for the reasons expressed by the trial court. First, the Mexico acts were too remote from the present act. These were acts by the victims almost twenty years before the homicides—before Ochoa and Garcia moved to the United States and lived together first in California and then in Oostburg where they were raising their families. Ochoa, his wife, and three children moved into (and shared) Garcia’s home multiple times, and Ochoa described Garcia as “a brother.” Their families were close and celebrated birthdays together where both Garcia and Ochoa drank, and although Ochoa argues that Garcia’s drug use in front of his children distanced them in 2017, for almost twenty years after the Mexico acts purportedly occurred, even Ochoa had no concerns about the “three or four” violent incidents by Garcia and Lopez after these men moved to the United States. Second, the Mexico acts were dissimilar to what transpired the night Ochoa shot Garcia and Lopez. The Mexico events were at public places—not Garcia’s home—the targeted subjects were strangers—not family—and there were no threats to kill. The trial court’s decision to exclude the Mexico events was reasonable.

¶30 The alleged United States-specific violent acts and Garcia and Lopez’s alleged “bragging” were also properly excluded. Ochoa failed to provide any specific information on these acts, and the trial court found that based on the information Ochoa offered, a reasonable jury would not be able to find that those

acts occurred. **McMorris** evidence must be relevant and not unduly prejudicial. If the jury had no basis to find the proffered acts occurred, then they could not be relevant. Excluding **McMorris** evidence that was irrelevant does not violate Ochoa's right to present a defense.⁹

2. Excluded Expert Witnesses

¶31 Ochoa next complains that the trial court violated his right to put on a defense when it excluded three of his expert witnesses: (1) Marty Hayes; (2) Alfonso Villaseñor; and (3) Conrad Zvara. Ochoa asserted that Hayes would offer his opinion about:

(1) the dynamics of violent encounters, including the risk of an armed defender having his weapon disarmed when he is outflanked; (2) the use of spent cartridge casings and other physical evidence to infer shooter location; and (3) the analysis of the trajectory of bullets, and other ballistic evidence, to infer the manner in which the two deceased individuals were shot.

⁹ Ochoa asserts the trial court's decision does not stand up against the five-factor test set forth in *State v. Pulizzano*, 155 Wis. 2d 633, 656, 456 N.W.2d 325 (1990):

(1) that the prior acts clearly occurred; (2) that the acts closely resembled those of the present case; (3) that the prior act is clearly relevant to a material issue; (4) that the evidence is necessary to the defendant's case; and (5) that the probative value of the evidence outweighs its prejudicial effect.

Id. at 656. The State points out that *Pulizzano* is not specifically a **McMorris** evidence case, but instead addresses the rape shield law. See *Pulizzano*, 155 Wis. 2d at 638. The State is correct. *Pulizzano* does not mention **McMorris** evidence and only addresses the constitutional right to present a defense in the context of "excluded evidence of a child complainant's prior sexual conduct for the limited purpose of proving an alternative source for sexual knowledge[.]" *Pulizzano*, 155 Wis. 2d at 656. Even if we applied the *Pulizzano* test, we would still uphold the trial court's rulings. The Mexico acts do not "closely resemble[] those of the present case[.]" and the prejudice of admitting such testimony outweighs the probative value. See *id.* The alleged acts in the United States and the "bragging" likewise do not satisfy the *Pulizzano* factors because there was insufficient information to show that the prior acts clearly occurred. See *id.*

At the ***Daubert*** hearing, Hayes testified that he is a firearms expert, he was retained to review the crime scene photos and do a crime scene reconstruction, and that he uses forensic mannequins to determine bullet trajectory. Ochoa indicated that Alfonso Villaseñor “is a certified federal interpreter in Spanish-to-English and English-to-Spanish” and would give his opinion as to the slang meaning of the phrases Lopez used that Ochoa understood to be a death threat. Ochoa filed a summary of Villaseñor’s anticipated testimony stating that Villaseñor would testify that “Te va a llevar la verga” best translates to “You’re gonna get fucked up” or “You’re gonna get fucked” and that Villaseñor would explain that “the speaker’s emotion when using the tone can have an affect [sic] on how the listener interprets the phrase, such as whether he or she may be joking or serious.” According to Ochoa, Conrad Zvara “is a retired Lieutenant of the Milwaukee Police Department and Captain in the United States Coast Guard who is a certified Self-Defense and Deadly Force instructor.” Ochoa indicated that Zvara planned to testify about the use of deadly force and help the jury assess the reasonableness of Ochoa’s actions given the circumstances in the Garcia living room at the time of the shooting. Zvara testified at the ***Daubert*** hearing that he relied on “some of the opinions” in other “defense expert reports,” including Hayes’s to write his report.

¶32 In determining whether the exclusion of a defendant’s expert witness violated his constitutional right to present a defense, our supreme court has established a two-part inquiry. *See State v. St. George*, 2002 WI 50, ¶53, 252 Wis. 2d 499, 643 N.W.2d 777. The first part requires that the defendant satisfy four factors: (1) the expert’s testimony must meet the standards of WIS. STAT. § 907.02; (2) the testimony must be “clearly relevant to a material issue”; (3) the testimony must be “necessary to the defendant’s case”; and (4) “[t]he probative value of the testimony of the defendant’s expert witness outweigh[s] its prejudicial

effect.” *St. George*, 252 Wis. 2d 499, ¶54. If the four factors of the first part are satisfied, then the court moves on to the second part of the inquiry, namely “whether the defendant’s right to present the proffered evidence is nonetheless outweighed by the State’s compelling interest to exclude the evidence.” *Id.*, ¶55. “[W]hether to admit proffered expert testimony” “is within the [trial] court’s discretion[.]” *State v. Dobbs*, 2020 WI 64, ¶27, 392 Wis. 2d 505, 945 N.W.2d 609. If the trial court’s decision “‘had a reasonable basis’ and ‘was made in accordance with accepted legal standards and in accordance with the facts of record[,]’” we will not reverse the trial court’s decision. *Id.* (citation omitted). The trial court excluded these three witnesses under § 907.02—the first factor of the first part of the *St. George* inquiry. Because we conclude the trial court’s decision was proper on that basis, we need only address the first factor of part one of the *St. George* inquiry.

¶33 After the *Daubert* hearings, the trial court rendered an oral decision excluding Hayes, Villaseñor, and Zvara under the first *St. George* factor because these three experts did not meet the standards of WIS. STAT. § 907.02. Section 907.02(1) provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if the testimony is based upon sufficient facts or data, the testimony is the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case.

The trial court acknowledged that its role is to act as “a gatekeeper” to determine whether the expert testimony is both reliable and relevant. It noted that “a trial judge is to determine whether an expert is proposing to testify to scientific

knowledge that will assist the trier of fact to understand or determine a fact of issue, whether the reasoning or methodology underlying the testimony is scientifically valid, and whether the reasoning or methodology can be applied to the facts in issue.”

¶34 The trial court explained why it was excluding Hayes. First, it “had some real concerns about the basis of his opinions.” Although Hayes had “some experience as a former member of law enforcement,” it was “very dated” and “didn’t involve analysis of crime scenes to the degree he’s being called -- would be called to testify in this case.” Second, the trial court had concerns that Hayes did not have sufficient education to offer opinions about “crime scene reconstruction, forensic pathology, or the movement of bullets in the human body,” as he based “a lot of his conclusions on his own experiments firing weapons and using mannequins and rods to trace the trajectory of the bullets.” The trial court saw this as “troubling” “because mannequins don’t have bone that can change the trajectory of bullets” and because “people’s bodies may be moving as they’re being shot, unlike a mannequin’s, which is stationary.” It concluded that Hayes’s methodology was unreliable because “comparing how a bullet travels through a mannequin versus a human body” is “vastly different. It’s comparing apples to oranges.”

¶35 The trial court’s decision as to Hayes was not erroneous because it reached a reasonable determination after considering the specific facts and applying the correct law. It had valid concerns about the reliability of Hayes’s opinions and acted within its gatekeeper function to exclude this witness.

¶36 In addressing Villaseñor, the trial court explained that it found his testimony to be irrelevant. It reasoned:

There's no need for an expert to testify about meanings of words or phrases because the only person the meaning mattered to was Mr. Ochoa [who] was the hearer of those statements. So it's also excluded on relevance grounds.

I know the defense argued that it would help establish Mr. Ochoa's credibility if it re-enforced -- if this witness re-enforced Mr. Ochoa's perceptions of the words that were used. But I don't think that's necessarily true because it would require the jury to believe Mr. Ochoa was reciting the words accurately. So they're going to need to believe Mr. Ochoa one way or the other anyway. And if they believe him, then they'll believe his take on those words. So I just don't think it's relevant. I think it would be cumulative, and it's not necessary.

¶37 Excluding Villaseñor under WIS. STAT. § 907.02 as irrelevant was a reasonable decision by the trial court. No one except Ochoa knew exactly what Lopez said that night, and no one except Ochoa knew the tone or context of those statements. The only relevance of the slang translation was what Ochoa understood the phrase to mean. Ochoa told the jury what the phrase Lopez used meant to him: "With the tone of voice and the manner of which he was saying it, it was like a threat to me. He said -- he was telling me I'm going to kill you. You're going to die." The jury is charged with assessing credibility. It could have chosen to believe Ochoa's account of what happened. And if the jury believed Ochoa's account, it had no reason to doubt Ochoa's testimony about the meaning of Lopez's statements. Presenting Villaseñor's translation would have been a waste of time and potentially created confusion. Moreover, the words "You're gonna get fucked up" or "You're gonna get fucked" do not necessarily equate to "I'm going to kill you" or "You're going to die"—further supporting the trial court's exclusion as reasonable.

¶38 The trial court made the decision to exclude Zvara's testimony because it was "based in part on information from Mr. Hayes," which it had

already found to be unreliable. It therefore concluded that Zvara's opinions based on that information would likewise be unreliable. In addition, the trial court found Zvara's opinions to be irrelevant: "Mr. Zvara's observations aren't relevant to those of the defendant and whether he was reasonable in his thoughts and actions. The jury needs to consider the defendant's thoughts and actions. So testimony about typical use of force situations just isn't relevant. So I'm going to exclude his testimony on those grounds."

¶39 The trial court's decision on Zvara was reasonable. Zvara's testimony relied on Hayes's opinion, which was excluded as unreliable. It logically follows that any opinion Zvara formed based on Hayes's opinion is also unreliable. As for Zvara's testimony that did *not* rely on Hayes's opinion, the trial court saw it as irrelevant. Zvara focused on use-of-force principles. Here, the jury was tasked with assessing whether Ochoa's thoughts and actions were reasonable. The trial court acted reasonably in excluding testimony it found to be both unreliable and irrelevant. As noted, it had "wide latitude to exclude evidence that is repetitive ..., only marginally relevant or poses an undue risk of harassment, prejudice, [or] confusion of the issues." *Crane*, 476 U.S. at 689-90 (alteration and omission in original; citation and internal marks omitted).

¶40 In summary, the trial court's determination that three of Ochoa's expert witnesses did not meet the standard under WIS. STAT. § 907.02(1) was not erroneous, and Ochoa has therefore failed to establish their exclusion was a violation of his constitutional right to present a defense.

3. Reason-for-Returning Testimony

¶41 Ochoa also argues that the trial court improperly prohibited him from testifying about the *reason* he returned to Garcia's home when he awoke

during the middle of the night. Specifically, Ochoa wanted to tell the jury that Garcia made statements asking Ochoa to return that night to talk about something important and that it needed to be that night because Garcia was leaving for Milwaukee the next day and did not know when he would be returning to Oostburg. Although the admissibility of Garcia's statements to Ochoa that prompted Ochoa's return that night was the subject of much debate, the record demonstrates that although the trial court did not allow Ochoa to testify as to the specific *content* of Garcia's request, it nevertheless allowed Ochoa to explain that he returned to Garcia's house in the middle of the night specifically because Garcia had asked him to return to talk about something important that night because Garcia was leaving for Milwaukee the next day. We set forth exactly what the record reflects.

¶42 Ochoa testified that after returning home from his first visit to Garcia's house that evening, he slept for about two or three hours and then woke up because he remembered that his cousin, Garcia, "had been very insistent" about something. At that point, the prosecutor objected on hearsay grounds, and after a sidebar, the trial court sent the jury out of the courtroom. The trial court recounted the sidebar discussion for the record, explaining that the defense "wanted to introduce testimony of what the decedent, Luis Garcia, had said that led Mr. Ochoa to return to the house that evening in the middle of the night or the middle of the morning, early morning."

¶43 Ochoa's trial lawyer argued that "the jury is entitled to hear the actual account of the person who was there and understand the reason why he returned to the house[.]" The defense wanted to offer something to dispel the inference that Ochoa "had some kind of intent to kill based on using a firearm and having it with him and going back to a house late at night." In response to the

prosecutor's concern that testimony about what Garcia said would be inadmissible hearsay if offered for the truth of the matter asserted, Ochoa's trial lawyer argued that Ochoa had a constitutional right "to explain his intent and motive, to explain the background why that statement had an effect on him, enough to get him out of bed in the middle of the night[.]"

¶44 The trial court did not make an immediate decision because it wanted to research the issue. After considering relevant case law, the trial court ruled that *Ochoa could testify about his reason for returning to Garcia's home* in the middle of the night. Specifically, the trial court concluded Ochoa could testify: "that when he left the house, he was under the impression that Luis Garcia wanted him to return that evening, later that evening. And he can certainly testify to his own statement that he said he would if he could." The trial court explained:

I am not trying to limit his defense. I am trying to follow the law to the best of my ability, which is why I think it is fair to allow some explanation of why he returned, but the entirety of the conversation is nothing that the jury needs to hear. For you to present a complete defense, the jury needs to know that your client was under the impression that Luis Garcia wanted him to come back that evening and that he said he wouldn't be.

The trial court added:

And the other thing I just wanted to put on the record regarding my decision on what can come out about why Mr. Ochoa returned to the residence, is that he could have gone over there for any number of reasons, none of which involved the intent to commit a homicide.

What happened after he got there, I think, as I already said, that would be relevant, but going over even at the victim's insistence isn't in my opinion relevant, because there are too many interceding possibilities for the intent to commit a homicide to form after that to come into play.

¶45 Ochoa filed a motion to reconsider the trial court's decision on what Ochoa could testify to regarding Garcia's statement instructing Ochoa to "come back" to Garcia's home the night of the shooting. In addressing Ochoa's reconsideration motion, the court clarified its ruling:

Most of my decision was based on the *Wilson*^[10] case and the *Nieves*^[11] case and how I perceive these statements. I'm having difficulty understanding why the defense keeps asserting that I'm not allowing the defendant to testify to the effect of these statements on him because I've already said that he can certainly testify that he was under the impression that he was to come back.

He can certainly testify as to Luis Garcia's demeanor, that he seemed upset or that he seemed however his demeanor appeared because that's not hearsay. He can certainly testify to his own statements. So I don't understand where the defense is coming from when they're saying I'm denying the defendant the ability to fully present his defense or to present that part of the defense.

What I'm trying to do is comply with the law as I understand it on hearsay. I don't know that the specific statement by the defendant has actually -- that the defendant wants to offer that Luis Garcia made was ever specifically imparted to me. What it says in the motion is that the statement is come back, cousin. If that's the statement, I think that he can testify to that as to effect on listener, come back, cousin. But to get into all the extra stuff, the discussion about plans, et cetera, I think that would be a violation of the hearsay rule for the reasons I already went into yesterday.

¶46 When Ochoa resumed his direct testimony, the following exchange occurred between Ochoa and his trial counsel:

¹⁰ *State v. Wilson*, 160 Wis. 2d 774, 777, 467 N.W.2d 130 (Ct. App. 1991) (a court may properly admit statements, not for their truth, but rather to show their effect on the listener's state of mind).

¹¹ *State v. Nieves*, No. 2014AP1623-CR, unpublished slip op. (Apr. 5, 2016), *rev'd*, 2017 WI 69, 376 Wis. 2d 300, 897 N.W.2d 363.

Q We talked about during the night you woke up during the middle of the night because you were worried about something?

A Yes.

Q What were you worried about?

A Well, because of my cousin Luis. Hours prior he had insisted that I go to his house because he wanted to talk about something with me.

¶47 After Ochoa's answer, the prosecutor interrupted, stating: "Judge, the State previously objected to hearsay." Although the trial court responded by asking Ochoa's trial lawyer if he "need[ed] clarification on the decision[,]" the trial court did not ultimately rule on the objection or strike Ochoa's answer. Defense counsel continued questioning Ochoa:

Q Sergio, did Luis tell you, cousin, come over to my house?

A Yes. He insisted that I go back to him. And I was under the impression that he had something really important to tell me.

Q Do you remember what time he insisted to you to come back or where you were when he was with you?

This drew another objection from the prosecutor as to "the first part of that multipart question." The trial court sustained the objection but did not direct the jury to disregard any part of the question or the previous answer. The jury then heard the following exchange:

Q Where was Luis when he told you to come back?

A We were at his house the first time that I went with him.

Q And when you saw him, without saying more about what he said to you, what kind of demeanor did he have at the time? Was he joking, serious?

A Well, when he insisted me to go back later, he was being serious.

Q When you woke up in the middle of the night, why did it bother you so much that he said come back to the house?

A I thought that he had something really important to tell me.

The trial court then sustained an objection to defense counsel's question about whether Ochoa “[knew] why [Garcia] wanted [him] to come back to the house[,]” but the trial court allowed the following:

Q Without using any words about what Luis has previously said, had you ever seen your cousin make a request with that type of serious demeanor before?

A No. I have never seen him.

Q Were you able to go back to sleep after you woke up?

A After? No.

Q What did you do?

A I got dressed. I got out of my house and got going to [Garcia's] house.

¶48 During re-direct, Ochoa testified that Garcia wanted him to return to his house that night because he (Garcia) “said that he wanted to talk with me because the next day very early he was going back to Milwaukee” and that “he was gonna be there for two or three weeks.” Ochoa also testified that Garcia did not live in Oostburg anymore because he had moved to Milwaukee for work.¹²

¹² According to other testimony, Garcia “stayed” in Milwaukee during the week for his job but came home to Oostburg on the weekends.

¶49 Thus, although the jury did not hear what Garcia specifically said, the statements that Ochoa asserts were erroneously excluded were not actually excluded.¹³ The jury heard the reason why Ochoa returned to Garcia's house in the middle of the night and that Garcia had insisted that Ochoa come back that night before Garcia left for Milwaukee. Accordingly, we cannot conclude that the trial court's rulings in this regard violated Ochoa's constitutional right to present a defense.

B. Jury Instruction

¶50 Ochoa's final contention is that an error in the jury instructions warrants a new trial. Specifically, he argues the trial court erroneously exercised its discretion when it failed to modify WIS JI—CRIMINAL 1016 to include WIS. STAT. § 939.22(32)'s definition of "reasonably believes[.]" Ochoa points out that while the definition of "reasonably believes" is present in WIS JI—CRIMINAL 805, the definition is absent from WIS JI—CRIMINAL 1016.

¶51 As relevant here, Wisconsin law provides the following as to self-defense:

A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person *reasonably believes* to be an unlawful interference with his or her person by such other person. The actor may intentionally use only such force or threat thereof as the actor *reasonably believes* is necessary to prevent or terminate the interference. The actor may not intentionally use force which is intended or likely to cause

¹³ Ochoa does not develop any argument that what Garcia wanted to discuss was relevant, nor does he provide substantive information as to what was allegedly erroneously excluded. In any event, as the State points out, Ochoa later testified that they discussed why Ochoa had not visited Garcia and why Ochoa did not want Garcia to be the godfather to his son.

death or great bodily harm unless the actor *reasonably believes* that such force is necessary to prevent imminent death or great bodily harm to himself or herself.

WIS. STAT. § 939.48(1) (emphases added). WISCONSIN STAT. § 939.22 defines “words and phrases” as used in WIS. STAT. chs. 939 to 948 and 951, and subsection (32) provides: “‘Reasonably believes’ means that the actor believes that a certain fact situation exists and such belief under the circumstances is reasonable even though erroneous.” Sec. 939.22(32).

¶52 WIS JI—CRIMINAL 1016 is the pattern jury instruction used in a case such as this involving first-degree intentional homicide, second-degree intentional homicide, first-degree reckless homicide, and self-defense. *See* WIS JI—CRIMINAL 1016 cmt. i. (“This instruction is for a case where first degree intentional homicide is charged, there is evidence that the defendant acted in self-defense, and the lesser included offenses of second degree intentional homicide and first degree reckless homicide are to be submitted to the jury.”). WIS JI—CRIMINAL 805 is the general self-defense instruction and provides as relevant:

A belief may be reasonable even though mistaken. In determining whether the defendant’s beliefs were reasonable, the standard is what a person of ordinary intelligence and prudence would have believed in the defendant’s position under the circumstances that existed at the time of the alleged offense. The reasonableness of the defendant’s beliefs must be determined from the standpoint of the defendant at the time of the defendant’s acts and not from the viewpoint of the jury now.

(Emphasis added; footnotes omitted.)

¶53 Because this case involved the charged first-degree intentional homicides, the lesser-included offenses of second-degree intentional homicide and first-degree reckless homicide, and Ochoa’s claim that he acted in self-defense, the State requested WIS JI—CRIMINAL 1016 because it instructs the jury on the

elements of the charged crime (first-degree intentional homicide) and its relationship to the two lesser-included offenses (second-degree intentional homicide and first-degree reckless homicide). This instruction also explains the self-defense privilege and sets forth how self-defense applies to each of these three homicide offenses. Ochoa proposed modifying WIS JI—CRIMINAL 1016 to include the portion of WIS JI—CRIMINAL 805 instructing the jury that “[a] belief may be reasonable even though mistaken.”

¶54 The trial court considered both positions before deciding how to instruct on the lesser-included offenses. It “looked at the proposed language that was submitted by both parties” and concluded that “if the lesser included is requested, my inclination would be to follow” the pattern instruction, WIS JI—CRIMINAL 1016, as requested by the State “because I think it does most closely match the statutes and the case law.” The trial court also expressed that it was “always leery to use any sort of instruction that is drafted by either party as opposed to being a pattern instruction” because “[t]he pattern instructions have been very well vetted.”

¶55 At the final jury instruction conference, the State argued the evidence supported instructing the jury on the lesser-included offenses of second-degree intentional homicide and first-degree reckless homicide and therefore requested the pattern jury instruction WIS JI—CRIMINAL 1016 because it addressed the original charge, the lesser-included crimes, and self-defense. Ochoa objected to instructing on the lesser-included crimes and proposed a modification of the pattern jury instruction to include WIS. STAT. § 939.22(32)’s definition of “reasonably believes” as set forth in WIS JI—CRIMINAL 805 (“A belief may be reasonable even though mistaken.”).

¶56 The trial court agreed the evidence supported submitting the lesser-included crimes to the jury. The State also argued against Ochoa's request for an instruction that added a definition of "reasonably believes":

As far as the language of the instruction that would be necessary, I have offered to the Court the pattern instruction. The Court's observation about using pattern instructions because they have been vetted is very appropriate. The instruction combines the three offenses with self-defense, and I think it does an excellent job of being clear as to how the jury is to consider self-defense and the definition of self-defense for these offenses.

I do not see, much like the pattern instructions have not seen the need, to add additional language including that which the defense is offering. So I ask that you read the standard pattern instruction for the offenses as drafted by the instruction committee.

Ochoa's lawyer responded:

The language that has been requested to be added is actually language that comes from a different pattern instruction. I think that when you look at what the law requires, you look at the two statutory definitions; first, the affirmative privilege of self-defense talking about what reasonable beliefs mean under those circumstances and specifically the statutory defined meaning by the legislature.

And that was incorporated for some reason into 805 but not into I believe it's 1016. This is a substantive part of self-defense whether there was a mistake. There's been testimony on that particularly from Dr. Trompetter that a portion of cases of legitimate self-defense can be mistake, can be mistaken beliefs of the actor. There is no reason other than to undermine someone's rights to keep out language that's statutory, not by a drafting committee, but that came directly from the legislature.

So our position is that the Court should follow what the legislative statutory language proscribes when presenting to the jury as fact finder what they need to do to understand that key term, reasonable belief. And part of that definition is that that belief can be reasonable albeit mistaken. There is only prejudice to someone to take away a portion of the

definition that relates to their rights for no good reason in terms of prejudice to the other party.

I think that is a compelling reason to follow the statute and not to follow what was done by a drafting committee in this very long instruction and change what they previously did that undermines and omits the statutory definition that the Court and all the parties turn to when there's any ambiguity about an operational phrase on a key issue such as self-defense.

¶57 The trial court asked Ochoa's lawyer if he had "any case law to support that because self-defense ... is commonly used as a defense to homicide" and noted that the modification Ochoa was requesting had not been added to WIS JI—CRIMINAL 1016. Ochoa's lawyer responded that "the plain language of the statute speaks for itself" but that he would nevertheless "try and pull up additional case law that stands for that proposition in the context of self-defense." The trial court replied: "All right. If you can provide any case law, I'll take a look at that. Otherwise my inclination is not to change the pattern instruction."

¶58 After addressing other jury instructions, the trial court returned to WIS JI—CRIMINAL 1016 and indicated it would accept 1016 "absent any case law in support of defense's argument." Ochoa's counsel responded that they were "still looking for that. There's only one case that talks about the instruction on self-defense being inappropriate, so we're reviewing that." The trial court eventually adjourned the jury instruction conference and advised the parties that "it's going to take some time for my judicial assistant to try and assemble these packets. Hopefully we can clean up any last-minute issues at that point. Anything else from anybody?" Ochoa's lawyer said he was "just going to keep looking at case law on the issue of why the statutory language should be incorporated" and that he would "let the Court know" if he found anything. Nothing was submitted

and the trial court charged the jury with the pattern instruction WIS JI—CRIMINAL 1016.

¶59 “A trial court has broad discretion in instructing a jury but must exercise that discretion in order to fully and fairly inform the jury of the applicable rules of law.” *State v. Ellington*, 2005 WI App 243, ¶7, 288 Wis. 2d 264, 707 N.W.2d 907. “A circuit court properly exercises its discretion when it fully and fairly informs the jury of the law that applies to the charges for which a defendant is tried.” *State v. Ferguson*, 2009 WI 50, ¶9, 317 Wis. 2d 586, 767 N.W.2d 187. “The purpose of a jury instruction is to fully and fairly inform the jury of a rule or principle of law applicable to a particular case.” *State v. Hubbard*, 2008 WI 92, ¶26, 313 Wis. 2d 1, 752 N.W.2d 839 (citation omitted). Whether an instruction is supported by the underlying facts is a legal question we review independently. *Ferguson*, 317 Wis. 2d 586, ¶9. In reviewing a challenge to jury instructions, we must view the instructions “in the context of the overall charge.” *Ellington*, 288 Wis. 2d 264, ¶7 (citation omitted). “Relief is not warranted unless the court is ‘persuaded that the instructions, *when viewed as a whole*, misstated the law or misdirected the jury.’” *Id.* (emphasis added).

¶60 Here, the trial court chose to give the pattern jury instruction that specifically applies to the homicide crimes and self-defense assertions at issue here. *See* WIS JI—CRIMINAL 1016, cmt. i. It is unclear why WIS. STAT. § 939.22(32)’s definition of “reasonably believes” was added to WIS JI—CRIMINAL 805 but omitted from WIS JI—CRIMINAL 1016. What is clear, however, is that the trial court’s decision to give the pattern instruction was not an erroneous exercise of discretion because this instruction, *as a whole*, provided the jury with an accurate instruction as to the law of self-defense under the facts of this case.

¶61 As set forth above, the statutory definition provides that “[r]easonably believes” means that the “actor believes that a certain fact situation exists and such belief under the circumstances is reasonable even though erroneous.” WIS. STAT. § 939.22(32). As the State points out in its Response brief, Ochoa did not provide the trial court with any *fact situation* about which Ochoa claimed he had an erroneous or mistaken belief that would make the modification applicable, nor did he do so in his Appellant’s brief. It is only in his Reply brief, that Ochoa points to *possible* mistaken perceptions that he could have had, but his hypothetical examples are devoid of any cite to the record identifying a fact about which he was mistaken, either that he provided to the trial court or to this court on appeal. As the party requesting it, Ochoa had the burden of production to show that the modification was appropriate in the context of the facts of the case. *See State v. Pettit*, 171 Wis. 2d 627, 640, 492 N.W.2d 633 (Ct. App. 1992). He failed to do so.

¶62 As noted, even on appeal, Ochoa has not identified a mistake of fact relating to his alleged belief in an unlawful interference with his person by the others, a mistake of fact relating to his alleged belief that his actions were necessary to prevent or terminate the interference, or a mistake of fact relating to his alleged belief that the force used was necessary to prevent imminent death or

great bodily harm to himself.¹⁴ This is not a case, for example, in which a defendant testified to a mistaken belief that a victim held a gun when she did not.

¶63 Thus, since there was no identified mistake of fact, the instruction would have had no effect on the jury's deliberation. Thus, it is clear that an additional jury instruction advising the jury that a belief can be reasonable even if mistaken would not have changed the outcome. *See State v. Langlois*, 2018 WI 73, ¶48, 382 Wis. 2d 414, 913 N.W.2d 812 (an erroneous jury instruction warrants reversal only when the error is prejudicial).

¶64 As it stands, Ochoa's examples of "mistaken" beliefs are not based on mistakes of fact, but rather, present questions about whether his perception of

¹⁴ Ochoa sets forth hypothetical examples based on arguments the State made in its closing argument. For example, Ochoa argues he could have been mistaken about the need to return to Garcia's home that evening. Even if this somehow relates to his beliefs relating to the danger posed or his use of force, Ochoa did not testify that he was mistaken about the need to return; rather, he emphasized his belief about his need to return and indicated no uncertainty about his cousin's insistence. He also testified that he could not leave because Garcia was behind him with a knife and he could not open the back door. However, these examples present issues of fact, and his conclusion that he was in danger is based on these facts. But there is no mistaken fact identified, such as for example that he could not open the door because it was locked when it actually was not or that Garcia was behind him when he actually was not. His testimony that the door handle spun and was "tricky to open" was undisputed, as was his testimony about Garcia's location.

As another example, Ochoa contends he could have made a mistake of fact as to where Lopez's knife was or whether Lopez was reaching for a knife. But at trial, Ochoa testified that he took out his gun and shot Lopez when Lopez reached toward his waist as though he were going to draw a weapon. Ochoa never suggested that he was mistaken about Lopez's movement, and he argued that it was Lopez who was mistaken about where the knife was (counsel argued to the jury that Ochoa testified that Lopez reached toward his left pocket when it was ultimately found to be in his right pocket). In short, Ochoa did not testify that he was factually mistaken. These are issues of credibility and Ochoa's denial that his perception of the danger was unreasonable. Again, he has not identified any mistake of fact that factored into that analysis.

the danger was reasonable. To that end, the jury heard the following proper instructions, given the facts of this case:¹⁵

- “The Criminal Code of Wisconsin provides that a person is privileged to intentionally use force against another for the purpose of preventing or terminating what he reasonably believes to be an unlawful interference with his person by the other person. However, he may intentionally use only such force as he reasonably believes is necessary to prevent or terminate the interference. He may not intentionally use force which is intended or likely to cause death unless he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself.”
- That Ochoa was “not guilty of any homicide offense” if he “reasonably believed that he was preventing or terminating an unlawful interference with his person and reasonably believed the force used was necessary to prevent imminent death or great bodily harm to himself.”
- That “[t]he reasonableness of the defendant’s belief must be determined from the standpoint of the defendant at the time of his acts and not from the viewpoint of the jury now” and that “[t]he standard is what a person of ordinary intelligence and prudence would have believed in the position of the defendant under the circumstances existing at the time of the alleged offense.”
- How to consider the applicability of self-defense as it related to each charge (first-degree intentional homicide, second-degree intentional homicide, and first-degree reckless homicide).
- That in regard to first-degree reckless homicide, it should “consider the evidence relating to self-defense in deciding whether the defendant’s conduct created an unreasonable risk to another” and that if a defendant acts “lawfully in self-defense, his conduct did not create an unreasonable risk to another.”
- That it is the State’s burden to “prove beyond a reasonable doubt that the defendant did not act lawfully in self-

¹⁵ For the purpose of brevity, we set forth only select parts of WIS JI—CRIMINAL 1016. The trial court read this entire instruction to the jury.

defense” and that the jury “must be satisfied beyond a reasonable doubt from *all the evidence* in the case that the risk was unreasonable.” (Emphasis added.)

¶65 In summary, under the facts of this case the jury properly heard that self-defense must be based on a reasonable belief, that whether Ochoa’s belief was reasonable as to self-defense must be considered from the perspective of an ordinary, reasonable person in Ochoa’s position at the time of the offense, and how the self-defense privilege specifically applied to the charged and lesser-included offenses. When viewed as a whole, and under the facts of this case, the instruction given is in accord with the self-defense privilege codified in WIS. STAT. § 939.48(1). Moreover, in addition to instructing the jury as to the circumstances in which the self-defense privilege applies, the instruction it heard also accurately stated the law of self-defense as it relates to first-degree intentional homicide, second-degree intentional homicide, first-degree reckless homicide, and self-defense.

IV. CONCLUSION

¶66 The trial court’s evidentiary rulings did not violate Ochoa’s constitutional right to present a defense. The right to present a defense is not absolute and may be constrained by evidentiary rules that “serve the interests of fairness and reliability—even if the defendant would prefer to see that evidence admitted.” *Crane*, 476 U.S. at 690. Likewise, the trial court’s decision to give the pattern jury instruction specifically applicable to the circumstances of this case did not constitute an erroneous exercise of discretion.

By the Court.—Judgment affirmed.

Recommended for publication in the official reports.

No. 2020AP1981-CR

Appendix 3

FILED
 03-13-2020
 Sheboygan County
 Clerk of Circuit Court
 2017CF000478

BY THE COURT:

DATE SIGNED: March 13, 2020

Electronically signed by Christine M Koenig
 Circuit Court Deputy Clerk

STATE OF WISCONSIN	CIRCUIT COURT BRANCH 4	SHEBOYGAN COUNTY
State of Wisconsin vs. Sergio Moises Ochoa	Judgment of Conviction	
	Sentence to Wisconsin State Prisons and Extended Supervision	
Date of Birth: 12-13-1975		Case No. 2017CF000478

List Aliases: AKA Sergio Moises Ochoa

The defendant was found guilty of the following crime(s):

Ct. Description	Violation	Plea	Severity	Date(s) Committed	Trial To	Date(s) Convicted
1 1st-Degree Reckless Homicide	940.02(1)	Not Guilty	Felony B	07-30-2017	Jury	10-29-2019
2 1st-Degree Reckless Homicide	940.02(1)	Not Guilty	Felony B	07-30-2017	Jury	10-29-2019

IT IS ADJUDGED that the defendant is guilty as convicted and sentenced as follows:

Ct. Sent. Date	Sentence	Length	Agency	Comments
1 03-13-2020	State Prison w/ Ext. Supervision	17 YR 6 MO	Wisconsin Prison System	
2 03-13-2020	State Prison w/ Ext. Supervision	17 YR 6 MO	Wisconsin Prison System	

Total Bifurcated Sentence Time

Ct.	Confinement Period			Extended Supervision			Total Length of Sentence			
	Years	Months	Days	Comments	Years	Months	Days	Years	Months	Days
1	12	6	0		5	0	0	17	6	0
2	12	6	0		5	0	0	17	6	0

Ct. Sent. Date	Sentence	Length	Agency	Comments
1 03-13-2020	Firearms/Weapons Restrict			
2 03-13-2020	Firearms/Weapons Restrict			

Sentence Concurrent With/Consecutive Information:

Ct. Sentence	Type	Concurrent with/Consecutive To	Comments
1 State Prison	Consecutive	Count 2	
1 Extended Supervision	Consecutive	Count 2	
2 State Prison	Consecutive	Count 1	
2 Extended Supervision	Consecutive	Count 1	

Conditions of Extended Supervision:

Obligations: (Total amounts only)

Fine	Court Costs	Attorney Fees	☐ Joint and Several Restitution	Other	Mandatory	5% Rest. Surcharge	DNA Anal. Surcharge
					Victim/Wit. Surcharge		
	1,878.20		6,905.00	716.50	184.00		500.00
Ct.	Condition	Agency/Program		Comments			
1	Restitution			If Probation is revoked or discharged with outstanding financial obligations, a civil judgment shall be entered against the defendant in favor of restitution victims and or governmental entities for the balance due. All available enforcement actions will be used to collect the debt.			
1	Costs			If revoked and sent to prison, DOC shall withhold 25% of all inmates monies to pay fines/costs with the balance due as a condition of extended supervision/parole.			
1	Employment / School			Good faith effort to seek/maintain employment - at agents discretion			
1	Prohibitions			No contact directly or indirectly with the victims family members.			
1	Other			Not possess any dangerous weapons			
2	Costs			Counseling/assessments/treatment deemed appropriate by agent.			
2	Other			Provide DNA sample.			
				Same conditions as Count 1			

Pursuant to §973.01(3g) and (3m) Wisconsin Statutes, the court determines the following:

The Defendant is is not eligible for the Challenge Incarceration Program.

The Defendant is is not eligible for the Substance Abuse Program.

IT IS ADJUDGED that 958 days sentence credit are due pursuant to §973.155, Wisconsin Statutes

IT IS ORDERED that the Sheriff shall deliver the defendant into the custody of the Department.

If the defendant is in or is sentenced to state prison and is ordered to pay restitution, **IT IS ORDERED** that the defendant authorize the department to collect, from the defendant's wages and from other monies held in the defendant's inmate account, an amount or a percentage which the department determines is reasonable for restitution to victims.

If the defendant is placed on probation or released to extended supervision, **IT IS ORDERED** that the defendant pay supervision fees as determined by the Department of Corrections.

THIS IS A FINAL ORDER FOR THE PURPOSE OF APPEAL.

Distribution:

Rebecca L. Persick, Judge
 Joel N Urmanski, District Attorney's Office
 Corey Mehlos, Defense Attorney

Appendix 4

Wis. Stat. § 940.02

This document is current through the 2021-2022 Legislative Session.

LexisNexis® Wisconsin Annotated Statutes > Criminal Code (Chs. 939 — 951) > Chapter 940. Crimes Against Life and Bodily Security (Subchs. I — II) > Subchapter I Life (§§ 940.01 — 940.16)

940.02. First-degree reckless homicide.

(1) Whoever recklessly causes the death of another human being under circumstances which show utter disregard for human life is guilty of a Class B felony.

(1m) Whoever recklessly causes the death of an unborn child under circumstances that show utter disregard for the life of that unborn child, the woman who is pregnant with that unborn child or another is guilty of a Class B felony.

(2) Whoever causes the death of another human being under any of the following circumstances is guilty of a Class C felony:

(a) By manufacture, distribution or delivery, in violation of s. 961.41, of a controlled substance included in schedule I or II under ch. 961, of a controlled substance analog of a controlled substance included in schedule I or II under ch. 961 or of ketamine or flunitrazepam, if another human being uses the controlled substance or controlled substance analog and dies as a result of that use. This paragraph applies:

1. Whether the human being dies as a result of using the controlled substance or controlled substance analog by itself or with any compound, mixture, diluent or other substance mixed or combined with the controlled substance or controlled substance analog.

2. Whether or not the controlled substance or controlled substance analog is mixed or combined with any compound, mixture, diluent or other substance after the violation of s. 961.41 occurs.

3. To any distribution or delivery described in this paragraph, regardless of whether the distribution or delivery is made directly to the human being who dies. If possession of the controlled substance included in schedule I or II under ch. 961, of the controlled substance analog of the controlled substance included in schedule I or II under ch. 961 or of the ketamine or flunitrazepam is transferred more than once prior to the death as described in this paragraph, each person who distributes or delivers the controlled substance or controlled substance analog in violation of s. 961.41 is guilty under this paragraph.

(b) By administering or assisting in administering a controlled substance included in schedule I or II under ch. 961, a controlled substance analog of a controlled substance included in schedule I or II of ch. 961 or ketamine or flunitrazepam, without lawful authority to do so, to another human being and that human being dies as a result of the use of the substance. This paragraph applies whether the human being dies as a result of using the controlled substance or controlled substance analog by itself or with any compound, mixture, diluent or other substance mixed or combined with the controlled substance or controlled substance analog.

History

1987 a. 339, 399; 1995 a. 448; 1997 a. 295; 1999 a. 57; 2001 a. 109.

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Appendix 5

Wis. Stat. § 939.48

This document is current through the 2021-2022 Legislative Session.

LexisNexis® Wisconsin Annotated Statutes > Criminal Code (Chs. 939 — 951) > Chapter 939. Crimes — General Provisions (Subchs. I — VI) > Subchapter III Defenses to Criminal Liability (§§ 939.42 — 939.49)

939.48. Self-defense and defense of others.

(1) A person is privileged to threaten or intentionally use force against another for the purpose of preventing or terminating what the person reasonably believes to be an unlawful interference with his or her person by such other person. The actor may intentionally use only such force or threat thereof as the actor reasonably believes is necessary to prevent or terminate the interference. The actor may not intentionally use force which is intended or likely to cause death or great bodily harm unless the actor reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself.

(1m)

(a) In this subsection:

1. “Dwelling” has the meaning given in s. 895.07 (1) (h).
2. “Place of business” means a business that the actor owns or operates.

(ar) If an actor intentionally used force that was intended or likely to cause death or great bodily harm, the court may not consider whether the actor had an opportunity to flee or retreat before he or she used force and shall presume that the actor reasonably believed that the force was necessary to prevent imminent death or great bodily harm to himself or herself if the actor makes such a claim under sub. (1) and either of the following applies:

1. The person against whom the force was used was in the process of unlawfully and forcibly entering the actor’s dwelling, motor vehicle, or place of business, the actor was present in the dwelling, motor vehicle, or place of business, and the actor knew or reasonably believed that an unlawful and forcible entry was occurring.
2. The person against whom the force was used was in the actor’s dwelling, motor vehicle, or place of business after unlawfully and forcibly entering it, the actor was present in the dwelling, motor vehicle, or place of business, and the actor knew or reasonably believed that the person had unlawfully and forcibly entered the dwelling, motor vehicle, or place of business.

(b) The presumption described in par. (ar) does not apply if any of the following applies:

1. The actor was engaged in a criminal activity or was using his or her dwelling, motor vehicle, or place of business to further a criminal activity at the time.
2. The person against whom the force was used was a public safety worker, as defined in s. 941.375 (1) (b), who entered or attempted to enter the actor’s dwelling, motor vehicle, or

place of business in the performance of his or her official duties. This subdivision applies only if at least one of the following applies:

- a.** The public safety worker identified himself or herself to the actor before the force described in par. (ar) was used by the actor.
- b.** The actor knew or reasonably should have known that the person entering or attempting to enter his or her dwelling, motor vehicle, or place of business was a public safety worker.

(2) Provocation affects the privilege of self-defense as follows:

- (a)** A person who engages in unlawful conduct of a type likely to provoke others to attack him or her and thereby does provoke an attack is not entitled to claim the privilege of self-defense against such attack, except when the attack which ensues is of a type causing the person engaging in the unlawful conduct to reasonably believe that he or she is in imminent danger of death or great bodily harm. In such a case, the person engaging in the unlawful conduct is privileged to act in self-defense, but the person is not privileged to resort to the use of force intended or likely to cause death to the person's assailant unless the person reasonably believes he or she has exhausted every other reasonable means to escape from or otherwise avoid death or great bodily harm at the hands of his or her assailant.
- (b)** The privilege lost by provocation may be regained if the actor in good faith withdraws from the fight and gives adequate notice thereof to his or her assailant.
- (c)** A person who provokes an attack, whether by lawful or unlawful conduct, with intent to use such an attack as an excuse to cause death or great bodily harm to his or her assailant is not entitled to claim the privilege of self-defense.

(3) The privilege of self-defense extends not only to the intentional infliction of harm upon a real or apparent wrongdoer, but also to the unintended infliction of harm upon a 3rd person, except that if the unintended infliction of harm amounts to the crime of first-degree or 2nd-degree reckless homicide, homicide by negligent handling of dangerous weapon, explosives or fire, first-degree or 2nd-degree reckless injury or injury by negligent handling of dangerous weapon, explosives or fire, the actor is liable for whichever one of those crimes is committed.

(4) A person is privileged to defend a 3rd person from real or apparent unlawful interference by another under the same conditions and by the same means as those under and by which the person is privileged to defend himself or herself from real or apparent unlawful interference, provided that the person reasonably believes that the facts are such that the 3rd person would be privileged to act in self-defense and that the person's intervention is necessary for the protection of the 3rd person.

(5) A person is privileged to use force against another if the person reasonably believes that to use such force is necessary to prevent such person from committing suicide, but this privilege does not extend to the intentional use of force intended or likely to cause death.

(6) In this section "unlawful" means either tortious or expressly prohibited by criminal law or both.

History

1987 a. 399; 1993 a. 486; 2005 a. 253; 2011 a. 94.

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Appendix 6

FILED**10-01-2019****Sheboygan County****Clerk of Circuit Court****2017CF000478**

STATE OF WISCONSIN

SHEBOYGAN COUNTY

CIRCUIT COURT

State of Wisconsin,

Plaintiff,

ORAL RULING

v.

Sergio Moises Ochoa,Case No. **2017 CF 478**

Defendant.

Court Official: Honorable Rebecca PersickDate of Proceeding: **August 30, 2019**APPEARANCES

The Plaintiff appears by

District Attorney Joel Urmanski

The Defendant appears in person with

Attorney Corey Mehlos

E-FILED TRANSCRIPT OF PROCEEDINGS

1 regarding specific instances of conduct.

2 The next motion is the motion, the defendant's
3 motion to introduce reputation evidence for 904.04(1) (b)
4 regarding the decedents' reputation for violence. This was
5 filed May 8th, and it relates to the defendant's motion in
6 limine number 13 regarding admitting *McMorris* evidence.

7 904.04(1) (b) specifically allows for the defendant
8 to introduce a pertinent character of the victim, pertinent
9 character trait of the victim. In this case whether the
10 decedents had a reputation for violence would certainly be
11 pertinent to the defendant's claim of self-defense. So,
12 again, provided a proper foundation can be laid to establish
13 the witness knows the decedents' reputations, a witness can
14 testify to that.

15 Whether or not to allow testimony regarding specific
16 instances of violent conduct is governed by 904.04(2). And
17 in general, other acts are not admissible. Whether to admit
18 them, as we previously discussed, is governed by the
19 three-step *Sullivan* analysis.

20 The defendant also cites the *McMorris* case in
21 support of their motion. In *McMorris* the Court held that
22 when the issue of self-defense is sufficiently raised, proof
23 should be admitted as to both the reputation of the victim
24 and the defendant's personal knowledge of prior relevant
25 conduct.

1 In allowing testimony regarding prior conduct,
2 *McMorris* clarified that it wasn't primarily to show the
3 deceased's character but to explain the defendant's motive,
4 which, again, is one of those permissible purposes
5 specifically outlined in 904.04. So I think the evidence
6 would certainly pass the first prong of the *Sullivan*
7 analysis.

8 *McMorris* states that there's no substantial reason
9 for the exclusion of a particular violent act of the victim.
10 And it puts no qualifications on that statement. So *McMorris*
11 really appears to create pretty much an open door policy to
12 any violent act of the victim.

13 However, *McMorris* did cite *State v. Gordon*, which
14 noted the admissibility of such evidence is subject to
15 exclusion and a proper case for remoteness. In
16 *State v. McLaren*, the Court held that *McMorris* evidence is
17 subject to a balancing test weighing its probative value
18 against the danger of unfair prejudice, undue delay, waste of
19 time, and needless presentation of cumulative evidence just
20 as with any other acts evidence.

21 I don't know if either party specifically cited the
22 case of *State v. Head*, but while I was preparing for this
23 motion, that's one of the cases I reviewed. So I don't know
24 if I just followed a link on Westlaw from the *McMorris* case,
25 or this is one that one of the parties cited. I can't recall

1 right now.

2 But in that case, the Court noted admission of
3 *McMorris* evidence is not automatic. It's not to be used to
4 support an inference about a victim's actual conduct during
5 an incident. It is admitted because it "'bears on the
6 reasonableness of the defendant's apprehension of danger at
7 the time of the incident.'"

8 In *State v. Head*, a wife who killed her husband
9 claimed self-defense. The incident happened in 1998, and she
10 sought to introduce multiple acts throughout the '90s. In
11 this case the defendant wants to introduce three to four
12 instances of L.G. and F.L. engaging in preemptive violent
13 attacks against someone else between the years of 1993 and
14 1998 or '99. He wants to introduce an additional two to
15 three similar acts by L.G. alone during that same time
16 period. All of those acts occurred in Mexico during a night
17 of drinking.

18 And then he further wants to introduce that between
19 1999 and 2017 both L.G. and F.L. would reminisce about
20 ganging up on people in Mexico as well as in the U.S., but
21 the defendant doesn't provide any time frame for the
22 incidents which allegedly occurred in the U.S.

23 I think when you view *McMorris* and *Gordon* and
24 *McClaren* all together, and the *Head* case as well, they
25 support the idea of using a *Sullivan* analysis to determine

1 admissibility. The defendant's motive is an acceptable
2 purpose, as I said, so that would pass the first prong of the
3 *Sullivan* analysis.

4 The second prong requires the Court to determine if
5 the evidence is relevant. And to do that, the Court looks at
6 whether the evidence relates to a fact of consequence and
7 whether the other act makes the consequential fact more or
8 less probable.

9 And the case law sets out that a way to do that, a
10 way to measure the probative value is to look at the
11 similarity in time, place, and circumstance between the other
12 act and the current incident. In this case the other acts
13 actually identified by the defendant -- and I'm going to
14 handle 'em separately, so I'll handle the things he observed
15 in Mexico between 1993 and '98 or '99 separately than the
16 other acts that the decedents allegedly reminisced about.

17 So the other acts actually identified by the
18 defendant all occurred 18 or more years prior to the
19 homicides, the alleged homicides in this case. They occurred
20 in Mexico. They all occurred in public places, such as
21 rodeos or bars. None of them occurred in private homes or to
22 family members, that was identified in the defense motion
23 anyway. There's no allegation that the decedents in those
24 prior incidents ever threatened anyone with death or actually
25 used deadly force against anyone.

9 To be admissible, other acts evidence need be such
10 that a reasonable jury could find by a preponderance of the
11 evidence that the other acts occurred. Regarding the other
12 acts that occurred since 1998 or '99, I don't believe a
13 reasonable jury could find those acts occurred. They're not
14 even clearly identified.

15 This case is a very different situation than the
16 other acts that were allowed in in *State v. Head* where the
17 acts were fairly constant in the years leading up to the
18 incident. In that case the victim's death occurred in 1998.
19 The defendant sought to introduce other acts which occurred
20 between herself and the defendant, or the victim, rather, in
21 1991 and '96.

22 She sought to introduce the fact that he threatened
23 to kill her in 1982 and repeated that threat throughout the
24 marriage. That he threatened a supervisor at work in 1995
25 and was involved in a road rage incident in 1997. That he

1 had altercations with two neighbors in the 1990s and also got
2 in an altercation with a six-year-old boy who had called him
3 a name in '96 or '97. All of those acts are clearly
4 identified in terms of time, place, and circumstance.

5 In this case the other acts that are clearly defined
6 occurred almost two decades ago. The defendant cited
7 *State v. Mink* for the proposition that evidence of other acts
8 that occurred 20 years ago is still admissible. However,
9 *Mink* is also a very different case from this one. That case
10 also involved first-degree sexual assault of a child under
11 12, so the greater latitude applies. And second, the other
12 acts that were admitted also involved the sexual assault of
13 children.

14 There are often large lapses in time between known
15 sexual assaults of children. Children are often groomed by
16 predators in such a way that they remain silent about those
17 assaults. So those factors don't apply here.

18 In addition, as I think I already went over, those
19 other acts occurred in another country in public places.
20 They didn't involve family. And so under all those
21 circumstances, I think those acts that occurred 18-plus years
22 ago are of questionable probative value. I don't believe
23 they reasonably bear on the defendant's apprehension of
24 danger.

25 So even if they're arguably relevant, I think

1 admitting them would be more prejudicial than probative. I
2 don't think they pass the third prong of the *Sullivan*
3 analysis or 904.03. So although the victims' reputations for
4 violence may have reasonably impacted the defendant's
5 apprehension of danger and those are admissible, the specific
6 acts he seeks to admit are not.

7 **THE INTERPRETER:** Your Honor, could I have a
8 five-minute break please?

9 **THE COURT:** Sure. We'll take a break.

10 **THE INTERPRETER:** Thank you.

11 (Brief pause in proceedings.)

12 **THE COURT:** We're back on the record in
13 17 CF 478. Ms. Hernandez, you're still under oath.

14 We may have covered this already. The defense filed
15 a motion dated April 30th to exclude DNA evidence. That
16 motion was filed when the trial was still set for May 20th
17 through 29th. It's not an issue any longer because the
18 notice of intent was filed April 22nd, and the new trial date
19 is in October, so more than 45 days later. So I think that's
20 a nonissue.

21 The next motion was filed April 30th, Notice of
22 Motion and Motion for Prosecution to Transcribe Audio of
23 Electronic Recordings. I don't think the State ever
24 specifically responded to that. But Attorney Mehlos moved
25 for an order to require the State to transcribe by use of a

1 I think a mistrial at this stage when the case is already
2 over two years old and memories are fading would prejudice
3 the State. I also think it would be an added expense to the
4 taxpayers. So I'm just going to deny that motion.

5 The next series of motions all relate to expert
6 testimony that's being proffered by the defense. We had a
7 number of evidentiary *Daubert* hearings. In *Daubert* the Court
8 decided that a trial judge is to determine whether an expert
9 is proposing to testify to scientific knowledge that will
10 assist the trier of fact to understand or determine a fact of
11 issue, whether the reasoning or methodology underlying the
12 testimony is scientifically valid, and whether the reasoning
13 or methodology can be applied to the facts in issue.

14 In that *Daubert* case, the Court supplied a
15 nonexhaustive list of factors for the trial court to consider
16 when acting as a gatekeeper. The Rules of Evidence and the
17 Federal Advisory Committee all added additional factors to
18 consider. But ultimately the case law establishes that the
19 trial judge must determine whether the testimony is reliable
20 based on the knowledge and experience of the expert being
21 proffered; and it must be satisfied that the testimony is
22 reliable by a preponderance of the evidence. And a Court --
23 of course, the evidence also has to be relevant.

24 So the two primary factors that the Court looks at
25 when deciding whether *Daubert* evidence should come in is

1 reliability and relevance. The defense has moved to admit
2 the testimony of Marty Hayes. He is being offered to testify
3 about the location of people within the crime scene at the
4 time of the shooting, about bullet hole entry and exit wounds
5 and trajectory in the bodies of the decedents.

6 And while he was testifying, I had some real
7 concerns about the basis of his opinions. And I think the
8 State did a good job of summarizing those in their reply
9 brief. He does have some experience as a former member of
10 law enforcement, but that's very dated. It didn't involve
11 analysis of crime scenes to the degree he's being called --
12 would be called to testify in this case.

13 He doesn't have a formal education about crime scene
14 reconstruction, forensic pathology, or the movement of
15 bullets in the human body, except he did attend a few
16 seminars, and he's read books and articles. He bases a lot
17 of his conclusions on his own experiments firing weapons and
18 using mannequins and rods to trace the trajectory of the
19 bullets.

20 And that latter basis is particularly troubling to
21 me because mannequins don't have bone that can change the
22 trajectory of bullets. Also people's bodies may be moving as
23 they're being shot, unlike a mannequin's, which is
24 stationary. There's little value, in my opinion, in
25 comparing how a bullet travels through a mannequin versus a

1 human body because the makeup of the two are vastly
2 different. It's comparing apples to oranges.

3 And although Mr. Hayes acknowledged that, it wasn't
4 clear to me from his testimony how he accounted for that
5 difference in forming his opinions. And I just don't believe
6 that his methodology of using a mannequin and rods as opposed
7 to a human body and rods is reliable. So I don't think his
8 testimony is permissible for that reason, and I'm going to
9 keep it out.

10 Regarding Dr. Trompetter, he's a board certified and
11 licensed psychologist specializing in police and forensic
12 psychology. The State doesn't appear to contest his
13 qualifications as an expert, but I think their objection is
14 relevancy grounds. Dr. Trompetter testified that he's worked
15 with law enforcement for many years including providing
16 treatment to officers involved in shootings since 1981, so
17 well over 35 years. He's testified as an expert in quite a
18 few cases including two cases where civilians were involved
19 in shootings rather than officers like we have here.

20 He's being offered to testify about how armed
21 individuals who kill others in self-defense act and think,
22 including possible distortions of perception and memory as
23 well as emotional and physical responses. During his
24 testimony, my concern was the difference between law
25 enforcement and citizens and whether his experience primarily

1 testimony in.

2 Conrad Zvara is being offered by the defense to
3 explain the dynamics of deadly force decisions, threat
4 assessment, danger zones, and disparity of force. The
5 testimony's based in part on information from Mr. Hayes,
6 whose testimony I'm excluding for the reasons I've already
7 stated on the record.

8 The defense did point out in their reply brief that
9 many of his opinions do not involve input from Mr. Hayes.
10 But beyond that reliability issue, I agree with the State
11 that Mr. Zvara's observations aren't relevant to those of the
12 defendant and whether he was reasonable in his thoughts and
13 actions. The jury needs to consider the defendant's thoughts
14 and actions. So testimony about typical use of force
15 situations just isn't relevant. So I'm going to exclude his
16 testimony on those grounds.

17 Regarding Mr. Alfonso Villaseñor, he's being offered
18 to testify about Spanish, Mexican Spanish slang. And the
19 State isn't conceding -- I'm sorry -- isn't challenging his
20 knowledge or experience. They concede that. But they do
21 object on relevance grounds. And I agree with the State.

22 There's no need for an expert to testify about
23 meanings of words or phrases because the only person the
24 meaning mattered to was Mr. Ochoa was the hearer of those
25 statements. So it's also excluded on relevance grounds.

1 I know the defense argued that it would help
2 establish Mr. Ochoa's credibility if it reenforced -- if this
3 witness reenforced Mr. Ochoa's perceptions of the words that
4 were used. But I don't think that's necessarily true because
5 it would require the jury to believe Mr. Ochoa was reciting
6 the words accurately. So they're going to need to believe
7 Mr. Ochoa one way or the other anyway. And if they believe
8 him, then they'll believe his take on those words. So I just
9 don't think it's relevant. I think it would be cumulative,
10 and it's not necessary.

11 I think we already handled the request regarding
12 Bill Wilson, right? Is there anything outstanding regarding
13 that individual? He's the medical-legal investigator in Cook
14 County.

15 **ATTORNEY URMANSKI:** My recollection is that
16 the Court already made some findings and rulings even in the
17 midst or pre-*Daubert*.

18 **THE COURT:** Yeah, I believe that's correct.
19 I don't think there are any outstanding issues with that.
20 Attorney Mehlos?

21 **ATTORNEY MEHLOS:** No.

22 **THE COURT:** Jury instructions I'll come back
23 to.

24 The defendant's motion for an evidentiary hearing.
25 The defense is seeking an evidentiary hearing to determine

Appendix 7

FILED**10-01-2019****Sheboygan County****Clerk of Circuit Court****2017CF000478**

STATE OF WISCONSIN

SHEBOYGAN COUNTY

CIRCUIT COURT

State of Wisconsin,

Plaintiff,

ORAL RULING

v.

Sergio Moises Ochoa,Case No. **2017 CF 478**

Defendant.

Court Official: Honorable Rebecca PersickDate of Proceeding: **September 9, 2019**APPEARANCES

The Plaintiff appears by

District Attorney Joel Urmanski

The Defendant appears in person with

Attorney Corey Mehlos

E-FILED TRANSCRIPT OF PROCEEDINGS

1 then I certainly think she would be subject to
2 cross-examination including on any information she provided
3 to law enforcement related to this case.

4 Regarding the defendant's letter regarding
5 Mr. Conrad Zvara, again, I have not had time to fully review
6 that issue, and so I am not prepared to respond to it.

7 Attorney Urmanski, did you have a chance to review
8 the defendant's letter, and did you want an opportunity to
9 respond?

10 **ATTORNEY URMANSKI:** I received it yesterday
11 as well. I read it this morning. And I'd be happy to
12 provide the Court some brief insights. It appears my trial
13 for this week will be settling tomorrow, so I can do so
14 whenever the Court would like me to.

15 **THE COURT:** I'm not sure what you're
16 contemplating. If you want to respond in writing that's
17 fine. If you want to respond orally, you can do that right
18 now if you're prepared.

19 **ATTORNEY URMANSKI:** While I've reviewed a few
20 cases already this morning, my preference would be to place
21 something in writing for the Court.

22 **THE COURT:** Regarding the second issue in
23 Attorney Mehlos's letter requesting the Court to rule on the
24 admissibility of Mr. Villaseñor's third expert opinion,
25 translating a Spanish phrase, I don't know -- I didn't have

1 it committed to memory, and I didn't have access to the
2 complete file yesterday, so I don't know what the third
3 expert opinion is, Attorney Mehlos. I can certainly look
4 that up. Otherwise if you're willing to tell me what that is
5 right now, we may be able to dispose of it right now.

17 And we are using it to corroborate evidence that we
18 are asserting shows a reputation for violence and that these
19 two would, according to Sergio, have acted in concert on the
20 date of the incident and particularly to explain to the jury
21 why Fernando Lara Lopez would have aggressively advanced his
22 friend's interest during an argument that turned into an
23 attack.

1 what the defendant could give himself. For Mr. Villaseñor's
2 testimony to matter to the jury, they're going to have to
3 believe Mr. Ochoa about what the decedents said to him and
4 what they said previously. If they don't believe that
5 testimony from the defendant, then Mr. Villaseñor's testimony
6 isn't going to make a difference one way or another. And if
7 they do believe that testimony, then there's no reason to
8 believe they would not also believe how the defendant
9 interpreted that testimony, or that statement.

10 **ATTORNEY MEHLOS:** May I respond?

11 **THE COURT:** Sure.

12 **ATTORNEY MEHLOS:** *State v. Daniels*, spelled
13 D-A-N-I-E-L-S, cited as 160 Wis.2d 85, explained that it is
14 important to corroborate a defendant's statement in a
15 self-defense case even if the jury is inclined to believe the
16 defendant because the jury will understand that the
17 defendant's statement is potentially self-serving. And
18 therefore it is critical that the accused be allowed to
19 objectively corroborate his account of the aggressive nature
20 of the other parties because otherwise the jury will be left
21 to assume that there is no independent support for the
22 defendant's self-serving statement, and he may be lying.

23 And on page 640, the quote says (as read) "Evidence
24 corroborating the defendant's self-serving testimony on the
25 only issue in the case, the defendant's state of mind, would

1 be highly persuasive to the fact finder. The mere fact that
2 the State does not contest the defendant's testimony about
3 the victim does not obviate the defendant's need to bolster
4 his own testimony with testimony of other witnesses,
5 especially that of the victim himself.

6 "As McAllister, M-C-A-L-L-I-S-T-E-R, makes clear,
7 the defendant should not be limited merely to his own
8 assertion but should be allowed to produce supporting
9 evidence to prove the reality of the particular acts of which
10 he claims knowledge."

11 And therefore in this case, because the alleged
12 victim himself, Fernando Lara Lopez, made the statement, it
13 is corroborating evidence that allows Sergio to show that he
14 wasn't lying based on a self-serving interest but rather the
15 reality of what he perceived of Fernando's aggression to
16 advance his co-attacker's interest was actually something
17 Fernando had publicly broadcast as his motive or intention to
18 protect his friend.

19 But our argument is that under *Daubert* that the
20 expert should be allowed because he's qualified to make the
21 statement if the foundation is established.

22 **THE COURT:** Well, unless Mr. Villaseñor is
23 the one who heard one of the decedents making the statement
24 in the past, then his testimony is just cumulative. I'm not
25 persuaded by anything you've said.

1 I've had a chance to review the *Daniels* case
2 quickly. The issue is whether the circuit court abused its
3 discretion when it ruled the defendant could not present
4 evidence other than his own testimony of the victim's prior
5 violent acts of which the defendant was aware. So it sounds
6 like this is an end around to try and get around my ruling on
7 other acts evidence that I've already made.

8 So I don't know if the defendant or another witness
9 is planning to testify that one of the decedents made this
10 particular or said this particular expression at another
11 time. And it really doesn't matter. Whoever heard it can
12 testify about what they believed the meaning was. How a
13 translator interprets it is irrelevant. So, again, I'm not
14 going to allow the testimony of Mr. Villaseñor.

15 The third issue Attorney Mehlos raised in his letter
16 was the admissibility of Mr. Hayes' first and second expert
17 opinions on the "Principles and Dynamics of Violent
18 Encounters" and "Using Physical Evidence to Infer Shooter
19 Location." I excluded the testimony of Mr. Hayes finding it
20 was not reliable, but I didn't specifically apply that to the
21 first and second expert opinions.

22 But I do believe his testimony is unreliable on
23 those issues as well. I simply -- given his lack of any sort
24 of formal training, the dated nature of the training he does
25 have, and other issues, which I think I already identified

1 when I ruled originally; I do not think his testimony is
2 reliable, and I do not believe it passes a *Daubert*
3 gatekeeping test.

4 I think we still need to finish defendant's motions
5 in limine starting with number 23 or 24. That's where we
6 left off, I believe. Attorney Urmanski?

7 **ATTORNEY URMANSKI:** Judge, I'm just opening
8 up that document again. I know last time the Court provided
9 the date upon which it was using those motions. There were,
10 I believe, some supplements filed.

11 **THE COURT:** I'm just looking at the motions
12 in limine filed April 30th labeled Defendant's Notice of
13 Motion and First Motion in Limine.

14 **ATTORNEY URMANSKI:** Judge, did you want to
15 address 23?

16 **THE COURT:** I believe that's where we left
17 off.

18 **ATTORNEY URMANSKI:** As I shared, I'm waiting
19 to hear back from a witness in Madison. I still haven't
20 heard back but should this week. At this point I do not
21 intend any other experts than those that have been named and
22 reports given to the defense other than this person from
23 Madison.

24 **THE COURT:** Moving on to number 24?

25 **ATTORNEY URMANSKI:** I have no objection to

Appendix 8

FILED**10-01-2019****Sheboygan County****Clerk of Circuit Court****2017CF000478**

STATE OF WISCONSIN

SHEBOYGAN COUNTY

CIRCUIT COURT

State of Wisconsin,

Plaintiff,

ORAL RULING

v.

Sergio Moises Ochoa,Case No. **2017 CF 478**

Defendant.

Court Official: Honorable Rebecca PersickDate of Proceeding: **September 24, 2019**APPEARANCES

The Plaintiff appears by

District Attorney Joel Urmanski

The Defendant appears in person with

Attorney Corey Mehlos

E-FILED TRANSCRIPT OF PROCEEDINGS

6 I understand, Attorney Mehlos, you were in another
7 court since 10:30 this morning. So are you prepared to
8 proceed, or do you need a few minutes?

11 | THE COURT: As far as I know.

12 | ATTORNEY MEHLLOS: Yes. Then I'd be prepared.

13 | THE COURT: Okay.

14 **INTERPRETER CHWASZCZEWSKI:** Do the
15 interpreters need to be sworn, Your Honor?

16 | **THE COURT:** Yes. Thank you.

17 | (Interpreters sworn.)

18 **COURT CLERK:** State your name for the record.

19 **INTERPRETER HERNANDEZ:** Martha Hernandez.

20 **INTERPRETER CHWASZCZEWSKI:** Sarah
21 Chwaszczebski, certified interpreter.

25 **ATTORNEY MEHLLOS:** Zvara, Your Honor.

THE COURT: Mr. Hayes. Marty Hayes?

ATTORNEY MEHLLOS: I believe we didn't file a motion to reconsider Mr. Hayes, but we asked the Court to rule on the basis for Mr. Zvara's testimony.

THE COURT: Let me get the letter out because I think at the end of the letter you also asked that I reconsider allowing Mr. Hayes to testify regarding the first two issues, "Principles and Dynamics of Violent Encounters" and "Using Physical Evidence to Infer Shooter Location."

ATTORNEY MEHLOS: I believe the Court ruled on that last time, if I'm not mistaken, so I apologize if I am not remembering correctly.

THE COURT: I know I did cover it, but I just as well go over it again because I'm not sure I made the best record. I'm not sure going over it again will actually assist the record, but I'm going to try.

And I want to contrast Mr. Hayes' qualifications against those of other experts offered by the defense. For example, the defense cited Dr. Trompeter's extensive education. He's board certified. He does recognized research and work with hundreds, if not more, officers involved in police shootings as well as other trauma survivors. And the defense referred to him as superiorly qualified.

And I agree that Dr. Trompetter qualifies as an

1 expert, and so his testimony is obviously reliable. And for
2 the reasons I already went over at the last hearing, I think
3 his testimony's also relevant.

4 But I don't think the same is true of Mr. Hayes. He
5 does have dated training as a law enforcement officer. I
6 don't think that alone would qualify him to testify reliably
7 regarding inferring shooter location or bullet trajectory.
8 And the rest of his qualifications really relate to his
9 experience as a firearms and ballistics instructor and his
10 self-described review of virtually all of the professional
11 literature in his field regarding shooting incident
12 reconstructions.

13 The defense indicates he's been qualified as an
14 expert in other courts and also argues that trajectory rods
15 can be reliable. And I think trajectory rods certainly can
16 be reliable, especially through some sort of static
17 environment like a wall, or as Mr. Hayes uses, mannequins.
18 But there is no evidence that I heard that suggests he's
19 qualified to testify about bullet trajectory when a bullet's
20 shot through a nonstatic human body.

21 I did point that out last time. Almost all of his
22 research that I recall him testifying about involve static
23 environments. And the scene itself was not static either.
24 And that's not something I pointed out at the last hearing.

25 There were people in the house at the time. There

1 was a delay between the time the shooting occurred and the
2 time it was reported. And we don't know what was going on in
3 the household during that time. Obviously paramedics had to
4 come in. And I think that that's the real difference in this
5 case.

6 And as to the "Principles of Dynamic and Violent
7 Encounters," my analysis of that testimony is really the same
8 as it is regarding Mr. Zvara's testimony on use of force
9 situations for comparison purposes. So I'll turn to that.

10 The defendant argues that that evidence is relevant
11 because it makes a fact of consequence, the reasonableness of
12 the defendant's beliefs and whether his account is consistent
13 with the evidence, more probable than without the evidence.
14 And the defendant supports that argument by contrasting it
15 with the State offering evidence in DV cases to explain a
16 victim's recantation or lack of bruising. And by DV I mean
17 domestic violence.

18 But DV cases are very different. They're part of a
19 line of cases addressing why greater latitude in admitting
20 comparison testimony is necessary to bolster a victim's
21 credibility. The greater latitude rule specifically applies
22 to DV and sexual assault cases. It does not apply to
23 homicide cases, at least not homicide cases without those
24 components of domestic violence or sex assault.

25 The defendant has not cited any authority specific

1 to this type of case that would support their claim.
2 Although the *Richardson* case cited by the defense letter
3 dated September 8th is a homicide case, the comparison
4 testimony allowed in that case related to the defendant's
5 profile as a battered woman. And that's the same type of
6 situation that also applies in a greater latitude case. It's
7 not the same type of situation we have in this case.

8 It was a use of force by a battered woman. And
9 there's no reason to believe Mr. Ochoa's credibility needs to
10 be bolstered by comparison testimony. So although it may
11 technically be reliable and also relevant, it's excludable
12 under 904.03 as the needless presentation of evidence which
13 will unduly delay the case.

14 In the defendant's letter dated September 8th in
15 footnote 9, the defendant references page 7 of his May 21,
16 2019, *Daubert* brief in support of his claim that the
17 defendant has a constitutional right to offer expert
18 testimony to present a complete defense. That *Daubert* motion
19 from May 21st cites *Crane v. Kentucky* and *U.S. v. Hall* as
20 well as *State v. George* [sic].

21 The first two cases relate to voluntariness of the
22 defendant's confession; the latter to a recantation in a
23 child sex assault case. And so those situations are clearly
24 distinguishable from the case where the issues are very
25 straightforward.

10 Despite the large number of gun homicides in this
11 country, defendant has not provided any on-point case law
12 that indicates comparison testimony is necessary in a case
13 like this to assist the trier of fact. So I'm going to
14 exclude both Conrad Zvara's testimony as well as Mr. Hayes'
15 testimony regarding the "Principles of Dynamic Encounters" as
16 being not admissible.

17 Regarding Mr. Villaseñor's third expert opinion, the
18 defense indicated that I excluded that because it's not
19 relevant to what Mr. Ochoa understood the words to mean. But
20 I don't think it's relevant for any other purpose either just
21 to be clear about that. So I think it's excludable for that
22 reason.

1 testimony about what was said. And if so, then there's no
2 reason they wouldn't also believe his testimony as to what it
3 meant. So I think it would just be cumulative under those
4 circumstances and, again, can be excluded under 904.03.

5 I want to take a break here because I'm going
6 chronologically, and the defendant sent a letter
7 September 9th just raising the issue that the State may still
8 be intending to name an expert and raising a concern about
9 that.

10 Attorney Urmanski, are you able to comment on that?

11 **ATTORNEY URMANSKI:** I am, Judge. I had
12 reached out to the crime lab in Madison in response to the
13 offered testimony from Mr. Hayes. I learned after material
14 was sent to the analyst in Madison that they apparently do
15 not or are not capable of performing an analysis of materials
16 given to them in an attempt to try and place where people may
17 have been pre or even during the shooting. And that there
18 was really only one bullet hole or marking that would have
19 provided any value for any type of trajectory, et cetera,
20 because those in the couch would not provide any value since
21 the entry could have been from any different or number of
22 angles. So they have not provided any reports, and I do not
23 intend to call anyone in case in chief from the lab since
24 they have not rendered any reports giving me opinions.

25 **THE COURT:** All right. Attorney Mehlos, does

1 that address the defendant's concern regarding that limited
2 issue?

17 The next filing I received was the defendant's
18 letter dated September 13 asking the Court to reconsider my
19 decision on the marital privilege waiver. Part of my
20 decision was based on the fact that Mrs. Ochoa voluntarily
21 disclosed the communication. And I believe the defendant's
22 correct in saying that's not a valid basis for the decision
23 because the privilege wasn't Mrs. Ochoa's to waive; it was
24 Mr. Ochoa's.

25 But that doesn't change the other basis for my

1 decision, which I believe still stands. Mr. Ochoa can
2 maintain his privilege by not calling his wife to testify.
3 And it's correct that the State cannot compel Mrs. Ochoa's
4 testimony by subpoenaing her or calling her as a witness.
5 But if the defendant chooses to call her, then she's subject
6 to cross-examination, which is unlimited in Wisconsin.

7 And I guess another way to say that is the defendant
8 can't have his cake and eat it too. If he wants to preserve
9 that privilege, he can choose not to call his wife as a
10 witness. There's been no case law provided by the defense to
11 support its argument that once Mrs. Ochoa's called to testify
12 by the defense she can't be cross-examined by the State
13 regarding communications that would otherwise be privileged.

14 The examples or the hypotheticals provided by the
15 defense don't correlate to this scenario. For example, the
16 defendant argued that if I allow Mrs. Ochoa to be
17 cross-examined about private communications, it would be like
18 saying a victim who testifies about a sexual assault --

19 **INTERPRETER CHWASZCZEWSKI:** I'm sorry. The
20 interpreter cannot keep up, Your Honor.

21 **THE COURT:** The defendant argues that if I
22 allow Mrs. Ochoa to be cross-examined about private
23 communications, it would be like saying a victim who
24 testifies about a sexual assault would be considered to have
25 waived any therapist/counselor privilege. And that's not an

1 analogous situation.

2 Just as in this case the defendant could not compel
3 the therapist to testify, but if the State voluntarily called
4 the therapist, that person could be cross-examined. And the
5 same logic applies to the defendant's other hypotheticals.
6 So the defense is correct that the State can't compel
7 Mrs. Ochoa to be called as a witness, but if the defendant
8 chooses to call her, she's subject to cross.

9 I'm not aware of any case law to the contrary. Just
10 as the defendant has a right and a privilege against
11 self-incrimination, and he can maintain that by not
12 testifying; if he chooses to testify, that privilege is
13 waived, at least to issues related to the charged offense.
14 And I think that that's the better analogy.

15 Regarding the defendant's September 23rd letter, the
16 defendant first argues that the State did not address the
17 fact that Mr. Zvara's testimony was being offered as
18 comparison testimony in its initial reply. So they're
19 arguing the State should not be allowed to reply to that now.

20 But I think the defendant waived that argument when
21 they asked the Court to reconsider that issue via their
22 letter brief on September 8th. The State's entitled to reply
23 to that letter brief, and they did so in their letter brief
24 dated September 13th.

25 I don't know if this makes a difference to the

1 defense, but to be honest, I had not read the State's letter
2 brief when I formulated my decision on the motion for
3 reconsideration. So some of their reasoning mirrors mine,
4 but not all of it. In any event, I don't think I could
5 reasonably preclude the State from having an opportunity to
6 reply to a motion for reconsideration.

7 The defendant then addresses the State's argument
8 that Mr. Zvara's opinion invades the province of the jury --

9 **INTERPRETER CHWASZCZEWSKI:** One more time for
10 the interpreter?

11 **THE COURT:** Invades the province of the jury
12 to determine the defendant's thoughts or credibility, or the
13 State's argument that comparison testimony only applies to
14 cases relating to a witness's mental state.

15 I don't think I really need to address those
16 arguments since my decision wasn't based on those arguments
17 or those issues. And I guess just to supplement what I've
18 already said about Mr. Zvara, as I previously said at other
19 hearings, some of his opinion was based on information from
20 Mr. Hayes, which I don't think is reliable.

21 He's offering to testify on the three principles
22 that apply to self-defense or use of force cases, and those
23 are that the aggressor had the ability to inflict injury, the
24 aggressor had the opportunity to attack immediately, and that
25 the defender perceived that threat. But these aren't

1 complicated concepts. I think they're common sense.

2 The self-defense jury instruction will alert the
3 jurors to the issues they need to consider, and the rest of
4 it boils down to whether the jurors believe the defendant is
5 credible or not. He'll have an opportunity to testify about
6 the decedent's ability and opportunity to attack him as well
7 as his perception of that threat.

8 And I don't think that Mr. Zvara's testimony is
9 necessary, as I said earlier, to bolster his credibility, and
10 it won't assist the jury in understanding the issues
11 presented in any way that I think is necessary or compelling
12 in this case.

13 Regarding the proposed jury instructions offered by
14 the defense, which I don't think have been covered yet, jury
15 instruction number 1 I'm going to disallow. There are
16 pattern instructions that address the charged offense and the
17 right of self-defense.

18 In addition, the instruction proposed by the
19 defendant is entitled Theory of the Case. The defendant can
20 educate the jury as to its theory of the case in opening and
21 again argue it in closing just as the State can. There's no
22 right to a jury instruction as to the theory of the case.
23 And I think presenting it to the jury that way would be
24 confusing to them since it's the defendant's theory of the
25 case, not the State's.

Appendix 9

FILED
05-08-2019
Sheboygan County
Clerk of Circuit Court
2017CF000478

**STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY
BRANCH IV**

STATE OF WISCONSIN,

Plaintiff,

v.

Case No.: 17 CF 478

SERGIO OCHOA,

Defendant.

**DEFENDANT'S BRIEF IN SUPPORT OF MCMORRIS EVIDENCE
DEFENDANT'S MOTION IN LIMINE NO. 13**

TO: District Attorney Joel Urmanski
Sheboygan County District Attorney's Office
615 North Sixth Street
Sheboygan, Wisconsin 53081

NOTICE OF MOTION

PLEASE TAKE NOTICE that the Defendant, Mr. Sergio Ochoa, appearing specially by Kaehne, Cottle, Pasquale & Associates, S.C., specifically Attorney Corey G. Mehlos, and reserving the right to challenge the court's jurisdiction, will move the Sheboygan County Circuit Court, Branch IV, before the Honorable Rebecca Persick, presiding judge, on a date and time to be set, for an order to allow the defense to introduce reputation testimony from witnesses that the decedents had a reputation for violence.

MOTION

NOW COMES, the Defendant, Mr. Sergio Ochoa, appearing specially by Kaehne, Cottle, Pasquale & Associates, S.C., specifically Attorney Corey G. Mehlos, and reserving the right to challenge the Court's jurisdiction, hereby moves the Court for an order to allow the defense to introduce reputation testimony from witnesses that the decedents had a reputation for violence.

IN SUPPORT OF THIS MOTION, it is asserted:

1. That Mr. Sergio Ochoa is charged with two (2) counts of First-Degree Intentional Homicide, contrary to Wis. Stat. § 940.01 (1)(a). Such charges are essentially the most serious crimes known to Wisconsin law. The penalty, upon conviction of either count, or both, is mandatory life imprisonment. See Wis. Stat. § 939.50 (3)(a).
2. The primary issues of consequence in this case related to Mr. Ochoa's claim of self-

defense are:

- a. Whether Mr. Ochoa used deadly force against L.G. (D.O.B.: 04/24/75) and F.L. (D.O.B.: 10/20/73) without a legal privilege or justification; or
- b. Whether Mr. Ochoa reasonably used deadly force to terminate an imminent and actual unlawful interference with his person by L.G. (D.O.B.: 04/24/75) and F.L. (D.O.B.: 10/20/73) and that the amount of force used was necessary to terminate such interference, and thus he acted in self-defense.

3. In resolving these issues, the jury will necessarily be required to evaluate Mr. Ochoa's claim that both L.G. and F.L. were the first and primary aggressors in any conflict which resulted in Mr. Ochoa's asserted acts of self-defense.
4. In support of such claims that L.G. and F.L. were the first and primary aggressors and that both L.G. and F.L. engaged in unprovoked acts, individually and collectively, that manifested an intent to then and there cause great bodily harm to and/or the death of him, Mr. Ochoa wishes to introduce evidence of his knowledge of prior specific acts of violence committed by L.G. and F.L.
5. Specifically, between the years of 1993 and 1998 or 1999, Mr. Ochoa personally observe approximately three-to-four instances of L.G. and F.L. engaging jointly in what he learned to be pre-emptive, violent and brutal attacks against third parties that involved kicking and punching the third parties to the ground during a night of drinking alcohol at Plaza Santa Maria de Torres in their home community in Mexico during rodeo events. During the same period of time and place, Mr. Ochoa personally observed L.G. in two-to-three separate instances launch similar style of attacks against third parties. Mr. Ochoa observed third parties, including the relatives of the owners of the Plaza Santa Maria de Torres, Chino Morales, intervene to break up the fights, and red cross workers attend to the injured third parties, whose faces were often cut and who were sometimes left unconscious, after L.G. and/or F.L. fled. Mr. Ochoa was aware that L.G. and F.L. would provoke the fights by intervening with a male who was dancing with his girlfriend to provoke him to fight, or threw Model beer cans at one or more males. In one instance, Mr. Ochoa recalls that L.G. stole a <chicharra>, or an electrical wire used to shock bulls that would sometimes be used by those trying to break up fights, and used it to shock the person who he was fighting to inflict additional carnage. Mr. Ochoa would indicate that although other males in his peer group would also pick fights at these types of events, he was aware of L.G. and F.L.'s reputation for behaving extremely violently and aggressively when drinking. Mr. Ochoa was also aware during the same relevant years that L.G. and F.L. would fight with others at annual fiestas, including festivals at San Sebastián el Grande in San Agustín and in Santa María in Tlajomulco, as well as Santa Anita in Tlaquepaque. Mr. Ochoa indicates that he was aware that L.G. and F.L. would use unconventional weapons such as rocks and broken beer bottles during these fights to inflict maximum carnage. From 1999 through 2017, both L.G. and F.L. on various occasions would reminisce in Mr. Ochoa's presence about their violent exploits in Mexico, ganging up and beating people in tandem, as well as fights they had been involved in while living in the United States, including California and Wisconsin. Mr. Ochoa never witnessed any of the fights in the United States, which L.G. and F.L. described themselves as having been violent and successfully

ganging up on and beating up other individuals in a manner similar to what Mr. Ochoa had personally observed or been told about third hand.

6. As further grounds, Mr. Ochoa would cite the same legal authority contained in his *Motion In Limine No. 13. McMorris v. State*, 58 Wis. 2d 144, 205 N.W.2d 559 (1973).

WHEREFORE, the Defendant, Mr. Sergio Ochoa, by and through counsel, respectfully requests that the Court grant Mr. Ochoa's *Motion*.

Dated this 8th day of May, 2019.

Respectfully Submitted,
KAEHNE, COTTLE,
PASQUALE & ASSOCIATES, S.C.
Electronically signed by:

/s/ Corey G. Mehlos

Corey G. Mehlos
Attorney for Defendant
State Bar No.: 1088417

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Appendix 10

FILED
10-02-2019
Sheboygan County
Clerk of Circuit Court
2017CF000478

**STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY
BRANCH IV**

STATE OF WISCONSIN,

Plaintiff,

v.

Case No.: 17 CF 478

SERGIO OCHOA,

Defendant.

**DEFENDANT'S NOTICE OF MOTION AND MOTION TO
RECONSIDER MOTION TO ADMIT MCMORRIS EVIDENCE**

TO: District Attorney Joel Urmanski
Sheboygan County District Attorney's Office
615 North Sixth Street
Sheboygan, Wisconsin 53081

NOTICE OF MOTION

PLEASE TAKE NOTICE that Mr. Sergio Ochoa, Defendant, appearing specially by Kaehne, Cottle, Pasquale & Associates, S.C., specifically Attorney Corey G. Mehlos, and reserving the right to challenge the court's jurisdiction, will move the Sheboygan County Circuit Court Branch, IV, before the Honorable Rebecca Persick, presiding judge, on October 4, 2019 at 2:30 p.m., for reconsideration of the *Defendant's Motion In Limine*, specifically Paragraph 13, filed April 30, 2019, whereby the court denied the admission of *McMorris* evidence and, further, for an order to reverse the court's prior ruling and for a grant of such motion to allow such evidence to be admitted at trial.

MOTION

COMES NOW, Mr. Sergio Ochoa, Defendant, appearing specially by Kaehne, Cottle, Pasquale & Associates, S.C., specifically Attorney Corey G. Mehlos, and reserving the right to challenge the Court's jurisdiction, hereby moves the Court for reconsideration of the *Defendant's Motion In Limine*, specifically Paragraph 13, filed April 30, 2019, whereby the court denied the admission of *McMorris* evidence and, further, for an order to reverse the court's prior ruling and for a grant of such motion to allow such evidence to be admitted at trial.

AS GROUNDS FOR THIS MOTION, Mr. Sergio Ochoa asserts:

1. That Mr. Ochoa previously filed in this case a *Defendant's Motion In Limine*, specifically Paragraph 13, filed April 30, 2019, together with the *Defendant's Brief in Support of McMorris Evidence [In] Defendant's Motion In Limine No. 13*, filed May 8, 2019 ("Defense Motion in Limine No. 13").
2. Defense Motion in Limine No. 13 sought to admit *McMorris* Evidence, that is, past acts of violence by LG. (D.O.B.: 04/24/75) and F.L. (D.O.B.: 10/20/73) which were personally known to Mr. Ochoa during the events that form the basis of the charges in this matter. See generally *McMorris v. State*, 58 Wis. 2d 144, 205 N.W.2d 559 (1973).
3. For the sake of brevity, Mr. Ochoa incorporates his prior filings concerning Defense *Motion In Limine* No. 13 herein, including all factual offers of proof and supporting legal arguments, as if setout fully herein.
4. The court, on August 30, 2019, denied the Defense Motion in Limine No. 13. The primary bases of the court's ruling was that the proffered *McMorris* evidence by Mr. Ochoa was temporally remote, factually dissimilar to the alleged event in this case, and admission of the *McMorris* evidence was "more prejudicial than probative." Oral Ruling, trans. pp. 24-30.
5. The standard for a motion for reconsideration is that a party must either present newly discovered evidence or establish a manifest error of law or fact. *Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶44, 275 Wis.2d 397, 685 N.W.2d 853. A manifest error of law occurs when the circuit court disregards, misapplies, or fails to recognize controlling precedent. *Id.* A motion for reconsideration may also present a "new issue." *State v. Edwards*, 2003 WI 68, ¶ 6, 262 Wis. 2d 448, 453, 665 N.W.2d 136, 139.
6. The Wisconsin Supreme Court encourages litigants to request the trial courts for reconsideration as a method of correcting errors. *Kochel v. Hartford Accident & Indemnity Co.*, 66 Wis.2d 405, 418, 225 N.W.2d 604, 611 (1975).
7. Under both the federal and state constitutions, a fundamental element of due process of law is the accused's right to present the testimony of witnesses in his own defense and a right to testify in his or her own behalf. See *State v. Boykins*, 119 Wis. 2d 272, 279, 350 N.W.2d 710, 714 (Ct. App. 1984); U.S. Const. amends. VI and XIV; Wis. Const. art. 1, § 7; *Chambers v. Mississippi*, 410 U.S. 284, 302, 93 S.Ct. 1038, 1049, 35 L.Ed.2d 297 (1973); *Washington v. Texas*, 388 U.S. 14, 19, 87 S.Ct. 1920, 1923, 18 L.Ed.2d 1019 (1967).
8. The accused right to testify in his or her own behalf includes the right present his own testimony which concerns prior violent confrontations with the decedents. *Boykins*, 119 Wis. 2d at 279.
9. Mr. Ochoa relies on both the federal and state constitutions and contends that the court committed constitutional error when it excluded the *McMorris* evidence in this case. In *Boykins*, the court held, inter alia, that the trial court had deprived the defendant of his right

to present a defense when it precluded him from presenting his own complainant's prior violent and assaultive acts. 119 Wis.2d at 277-80. **The Boykins court reversed the trial court and ordered a new trial.** *Id.* at 279-80.

10. The Court excluded the *McMorris* evidence on the grounds that it was temporally remote. In reaching this ruling, the court noted that the *McMorris* case cited the Delaware case of *State v. Gordon*, 37 Del. 219, 222, 223, 181 A. 361, 362 (1935), for which made passing reference to the notion that such evidence may be excluded in the “proper case for remoteness.”
11. Firstly, there is no express indication that the *McMorris* court intended to include temporal remote in the analysis or, even if it did, what would constitute a “proper case for remoteness.” However, the *McMorris* court did explicitly observe:

The past conduct of a person markedly affects what others may reasonably expect from him in the future. **When the accused maintains self-defense, he should be permitted to show he knew of specific prior instances of violence on the part of the victim.** It enlightens the jury on the state of his mind at the time of the affray, and thereby assists them in deciding whether he acted as a reasonably prudent person would under similar beliefs and circumstances.

Id. at 151 (emphasis supplied). And also:

When self-defense is asserted in a prosecution for assault or homicide, **there is no substantial reason for the exclusion of particular violent acts of the victim**, known to the defendant prior to the incident from which the charges arose.

Ibid. (emphasis supplied).

12. The *McMorris* court made these broad statements without any qualification. The *McMorris* court’s “no substantial reason for the exclusion” of the evidence language must be given effect by this court. This language, viewed inversely, means that *McMorris* evidence should *not* be excluded but for a “substantial reason.” In turn, *McMorris* evidence should not be treated the same as an ordinary “other acts” motions but rather it must be analyzed under a liberal standard of admission. *Cf. State v. Head*, 2002 WI 99, 255 Wis. 2d 194, 253, 648 N.W.2d 413, 442 (holding *McMorris* evidence relating back as much as 16 years was admissible and, in doing so, the court never once addressed the notion of temporal remoteness as a possible basis for exclusion).
13. While the *Head* court noted that “[a]dmissibility is not automatic,” the court made such comment in the context of providing a basis when such evidence is not admissible: “As a general rule, *McMorris* evidence may not be used to support an inference about the victim's actual conduct during the incident.” *Id.* at ¶128. Rather, it may be admitted when “it bears on the reasonableness of the defendant's apprehension of danger at the time of the incident.” *Ibid.* (citing *McMorris*, 58 Wis.2d at 149, 205 N.W.2d 559. In other words, in order to be admissible, the *McMorris* evidence, quite simply, should be **“probative of the defendant's beliefs in relation to [his] defense[]”** and “the court should admit it as it would any other relevant evidence, excluding it only if its “probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” *Head*, ¶129. (emphasis added).

14. In this case, Mr. Ochoa sought to admit the *McMorris* evidence for state-of-mind and how it informed his beliefs when he allegedly acted in this case. Indeed, the State has never contended that Mr. Ochoa sought to admit the evidence for any other purpose other than state-of-mind. Mr. Ochoa has made a sufficient offer of proof that past acts of violence by LG. (D.O.B.: 04/24/75) and F.L. (D.O.B.: 10/20/73), which were personally known to him during the events that form the basis of the charges in this matter, informed and influenced his state-of-mind.
15. Second, Mr. Ochoa respectfully contends that the Court did not apply the governing legal standard of remoteness to the facts of this case. While the court acknowledged the *State v. Mink* case in its ruling, that is, a 22-year lapse in time between other acts was not remote, it only factually distinguished that case from this one and did not apply the applicable legal principle concerning remoteness in a substantive manner. As the *Mink* court succinctly stated: “[R]emoteness in time does not necessarily render the evidence irrelevant, but it may do so **when the elapsed time is so great as to negate all rational or logical connections between the fact to be proven and the other acts evidence.** 146 Wis. 2d 1, 16, 429 N.W.2d 99, 105 (Ct. App. 1988)(bolding supplied for emphasis).
16. Here, Mr. Ochoa has offered *McMorris* evidence and advised that it did, in fact, impact his state-of-mind and the evidence thus bears on the reasonableness of the defendant's apprehension of danger at the time of the incident. In fact, there has been no evidence presented on this record to the contrary. It was error for this court to rule that any gap in time was “so great as to negate all rational or logical connections” between Mr. Ochoa's state-of-mind when acting in self-defense and the prior violent and assaultive acts of the decedents, especially when Mr. Ochoa has contended otherwise (i.e. that Mr. Garcia and Lara-Lopez regularly reminded him of their violent assaults through the year prior to the incident), and there has been no competing evidence in this record to controvert that contention. To find otherwise, would mean that the Court is making a finding that Mr. Ochoa is lying when he indicates that he was aware of the other violent acts and that awareness impacted his apprehension of danger.
17. Moreover, in terms of evidentiary showing to be admissible, other acts evidence need only be such that a reasonable jury *could* find the acts by a preponderance of the evidence; it is improper for the trial court to engage in fact-finding or otherwise determine or weigh credibility or veracity of the defendant's version of events on other acts evidence. See generally *Huddleston v. United States*, 485 U.S. 681, 108 S. Ct. 1496, 99 L. Ed. 2d 771 (1988); and *State v. Landrum*, 191 Wis.2d 107, 117, 528 N.W.2d 36 (Ct. App. 1995). Thus, it was improper for this court to make a factual finding that “I don't believe [the proffered *McMorris* evidence] reasonably bear on the defendant's apprehension of danger.” Oral Ruling, trans. pp. 29. That is an issue for the jury to solely resolve, no different than the Court often indicates when finding sufficiency of the evidence following a preliminary hearing.
18. With all due respect to the Court, recognizing the volume of issues litigated in this matter and that other judges have commented to undersigned counsel that this Court has had a lot on its docket recently, Mr. Ochoa respectfully contends that reconsideration is warranted because the Court's prior rationale did not adequately examine the relevant facts, apply the proper standard of law, and use a demonstrated, rationale process to reach a conclusion that a reasonable judge could reach when it excluded the *McMorris* evidence on ground of temporal remoteness.

19. This court next excluded the *McMorris* evidence on the grounds that it was dissimilar from the circumstances of this case. However, the court did not explain how that matters in the context of *McMorris* evidence and the circumstances of this case. While similarity of acts might be highly important in some instances or when viewed under the proponent's theory of admissibility in other cases, it is not particularly important for *McMorris* evidence. For example, other acts evidence offered to prove modus operandi, intent, lack of mistake or accident would necessarily be tied to the charged crime by factual uniqueness and similarity. Such as, a burglary conviction in which the person used an extremely unique modus operandi may be relevant in a case where the evidence shows the charged burglary was committed in a same or similar manner; however, a prior burglary conviction with no unique facts would not be relevant to show a person now committed a burglary with no unique facts either.
20. *McMorris* evidence goes to state-of-mind, and that is its basis for admission and how it is to be examined for relevancy. When the known, prior violent and assaultive acts of the decedent's actually impact an accused's state-of-mind in a self-defense case, it necessarily bears on the reasonableness of his apprehension of danger at the time of the incident and is therefore relevant – no matter how factually dissimilar. This is so because reasonable persons know and understand that a person who has engaged in specific acts of physical violence in the past, irrespective of circumstances or context, is more likely to erupt in violent behaviors during a tumultuous confrontation than someone who has not. Comparatively, a reasonable person will view a violent threat or physically threatening behavior as a much more credible threat when it comes from someone who has previously engaged in violent acts than a person who has no history of violent acts. This knowledge and understanding informs a person's state-of-mind and his beliefs on danger or the chances of a violent attack, and thereby "enlightens the jury on the state of his mind at the time of the affray, and thereby assists them in deciding whether he acted as a reasonably prudent person would under similar beliefs and circumstances." *McMorris*, at 151.
21. Compare this case to the *McMorris* itself where the defendant's charge for assault stemmed from "fighting" with the complainant and ultimately stabbing her while at a card game at a private home. *Id.* at 146-47. The proffered prior violent acts of the complainant in that case consisted of the complainant "walking in taverns and bust[ing] people upside the head with beer bottles," shooting at her brother-in-law, pulling guns on her brother-in-law, and shooting her husband. *Id.*, at 147-48. Those proffered other acts, such as use of a beer bottle in a bar, pulling and shooting guns at family members, were indisputably factually dissimilar to the allegations of a physical fight during a card game in a private home. Nevertheless, the *McMorris* court held those prior violent acts admissible and granted a new trial. *Id.* at 152.
22. Also compare to *Head*, where the defendant's proffered prior violent acts included: her husband's 16-year-old threat to kill her should she file for divorce (i.e., a threat contingent on an event certain and for which was not present at the time); her husband's threat to a work supervisor; her husband's road rage; her husband's assault of a neighbor; and her husband's retaliation against a little boy who cursed at him. *Id.* at 137. There can be no legitimate argument that those other acts were highly factually dissimilar to the defendant's charges and her alleged version of events in that case. Nevertheless, *Head* court held those prior violent acts admissible and granted a new trial. *Id.* at 152.
23. In any event, while the court highlighted some of the factual dissimilarities between Mr. Ochoa's proffered prior acts evidence and the alleged victim's violent and threatening

behavior in this case, it did not address the similarities of the other acts. This would include but not be limited to Mr. Ochoa's knowledge of prior violent and assaultive acts of L.G. and F.L when they were *together* and would act in tandem, especially while under the influence of substances, such as alcohol. At a minimum, these factual features of the proffered *McMorris* evidence certainly share similarities to the alleged events in this case. It is worth emphasizing that it was known to Mr. Ochoa that L.G. and F.L. would engage in violence and substantially assault other persons when they were *together*; and a reasonable person would consider that fact highly important when presented with circumstances in which these men happened to be *together* and making threats of harm while *together*. Furthermore, the *McMorris* evidence explains *why* F.L., who is L.G.'s friend, would jointly participate in an attack against Mr. Ochoa during L.G.'s argument against Mr. Ochoa, who is L.G.'s cousin.

24. With all due respect, Mr. Ochoa respectfully contends that this court failed to examine the relevant facts, apply the proper standard of law, and use a demonstrated, rationale process to reach a conclusion that a reasonable judge could reach when excluded the *McMorris* evidence on ground of dissimilarity to guarantee his right to present a complete defense in a case alleging two counts of First Degree Intentional Homicide.
25. Lastly, this court excluded the *McMorris* evidence on the conclusory ground that admission of the *McMorris* evidence was "more prejudicial than probative." Mr. Ochoa respectfully contends that this is not the governing legal standard.
26. The governing standard is that the "probative value is substantially outweighed by the danger of unfair prejudice," rather than "more prejudicial than probative." Wis. Stat. § 904.03. Perhaps the Court misspoke; nonetheless, the difference in wording is legally and factually significant.
27. Secondly, whereas most evidence is prejudicial to the opposing party in a criminal trial, it is only the "unfair" variety that counts. Wis. Stat. § 904.03. This Court did not explain how *McMorris* evidence, in a self-defense case, is unfairly prejudicial to the extent that it substantially outweighs probative value, especially in light of the caselaw that provides the opposite conclusion.
28. With all due respect, it is respectfully contended that this court failed erred when it excluded the *McMorris* evidence on ground of prejudice.

WHEREFORE the Defendant, Mr. Sergio Ochoa, by and through counsel, hereby requests that the court reconsider its denial of the *Defendant's Motion In Limine, specifically Paragraph 13*, and, accordingly, reverse its prior ruling and grant the motion to admit *McMorris* evidence.

Dated this 2nd day of October, 2019.

Respectfully Submitted,
KAEHNE, COTTLE,
PASQUALE & ASSOCIATES, S.C.
Electronically signed by:

/s/ Corey G. Mehlos

Corey G. Mehlos
Attorney for Defendant
State Bar No.: 1088417

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Appendix 11

FILED
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Sheboygan County
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**STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY
BRANCH IV**

STATE OF WISCONSIN,

Plaintiff,

v.

Case No.: 17 CF 478

SERGIO OCHOA,

Defendant.

DEFENDANT'S NOTICE OF INTENT TO PRESENT EXPERT WITNESS TESTIMONY

TO: District Attorney Joel Urmanski
Sheboygan County District Attorney's Office
615 North Sixth Street
Sheboygan, Wisconsin 53081

PLEASE TAKE NOTICE that the Defendant, Sergio Ochoa, appearing specially by Kaehne, Cottle, Pasquale & Associates, S.C., specifically Attorney Corey G. Mehlos, and reserving the right to challenge the court's jurisdiction, hereby provides notice under § 971.23(2m)(am) of Expert Witnesses that the defense intends to call at trial, as well as the subject matter of their expert testimony:

1. Ms. Lorraine Edwards, see *State's Witness List*, will offer her expert opinion regarding the chemical tests performed on the samples of L.G. (D.O.B: 4/24/1975) and F.L. (D.O.B. 10/20/73) and the results of those tests regarding the presence of ethanol.
2. Ms. Amy Miles, see *State's Witness List*, will offer her expert opinion regarding the drug panel tests performed on the samples of L.G. (D.O.B: 4/24/1975) and the results of those tests regarding the presence of cocaine.
3. Mr. William Johnson, Wisconsin State Laboratory of Hygiene, Madison, Wisconsin, will offer his expert opinion regarding the drug panel tests performed on the samples of L.G. (D.O.B: 4/24/1975) and the results of those tests regarding the presence of cocaine in the blood of F.L. (D.O.B. 10/20/73).
4. Analyst Michelle Burns, see *State's Witness List*, will testify regarding blood samples collected from the scene that were identified as belonging to L.G. and F.L. using DNA testing.

5. Mr. Glenn Hardin, 2136 Ford Parkway #174, St. Paul, MN 55116, is a Board Certified Toxicologist (Fellow in Forensic Toxicology, American Board of Forensic Toxicology; American Board of Forensic Toxicology) and Professor of Practice, School of Criminal Justice and Forensic Science Department at Hamline University, who will offer his expert opinions concerning the toxicology results of L.G. (D.O.B: 4/24/1975) and F.L. (D.O.B. 10/20/73). Specifically, Mr. Hardin will offer his expert opinions related to the active presence of alcohol and cocaine in L.G. and F.L. at the time of their deaths as well as the impairing effects that these substances have on human reasoning and behavior in isolation and in combination.
6. Mr. Alfonso Villaseñor, Tucson, Arizona, is a certified federal interpreter in Spanish-to-English and English-to-Spanish, through the Administrative Office of the United States Courts, will offer expert opinions on three specific phrases consisting of Spanish Mexican slang contained in his separate *Summary of Expert Witness Opinions of Alfonso Villaseñor*.
7. Dr. Phillip Trompetter, Ph.D., ABPP, 1600 G Street, Suite 201, Modesto, CA 95354 is a Clinical Psychologist specializing in psychological aspects of the use of deadly force and currently serving as the President-Elect of the American Board of Police and Public Safety Psychology. Dr. Trompetter will offer three primary opinions: (1) describing common human perception distortions during use of force situations (i.e. tunnel vision, audio distortion, etc.); (2) common memory distortions regarding recollection following use of force encounters (i.e. source monitoring error); and (3) the range of emotional and behavioral responses following a traumatic use of force encounter.
8. Mr. William Wilson, 250 West Dundee Road #1148, Wheeling, IL 60090, is a Death Investigator for the Cook County, IL (Chicago) Medical Examiner's Office and Adjunct Professor for National Louis University School of Criminal Justice. Mr. Wilson will offer four opinions regarding the physical evidence:
 - (1) First, Mr. Wilson will offer his professional opinion that there are multiple indicators that suggest contamination of the crime scene prior to law enforcement documenting the physical evidence that affect the reliability of law enforcement's documentation of the physical evidence.
 - (2) Second, Mr. Wilson will offer his professional opinion that law enforcement used improper techniques to document the physical evidence, which presents problems for reliably analyzing the evidence.
 - (3) Third, Mr. Wilson will offer his professional opinion that law enforcement failed to perform on-scene reconstruction attempts to interpret the physical evidence, which present challenges for a reliable reconstruction.
 - (4) Finally, Mr. Wilson will offer his professional opinion that his three concerns related to evidence contamination, documentation, and on-scene reconstruction create challenges for reliably interpreting and/or reconstructing the physical evidence.

9. Mr. Conrad Zvara, P.O. Box 146, Muskego, WI 53150-0146, is a retired Lieutenant of the Milwaukee Police Department and Captain in the United States Coast Guard who is a certified Self-Defense and Deadly Force instructor who has trained civilians, law enforcement, and members of the coast guard in the use of deadly force and self-defense. Mr. Zvara will testify to the following:

- (1) Explaining the three factors for assessing when to use deadly force: ability, opportunity, and jeopardy;
- (2) Describe threat assessment based on the proximity of the possible attacker among other factors, including the number of possible attackers, exit route options, the angle of the attackers, and the risk of an attacker disarming the armed defender's weapon;
- (3) Identifying the "danger zone" of 21 feet, and extending up to 50 feet, in which the attacker poses a threat to an armed defender who has not yet unholstered his firearm;
- (4) The reasonableness of firing multiple shots at an attacker using a semi-automatic firearm such as a 9 millimeter pistol;
- (5) The time it takes to unholster a firearm and fire multiple rounds at an attacker;
- (6) The types of weapons that an attacker can rely upon to successfully launch an attack, including disarming the armed defender's firearm from his person, or even using his hands, feet, and body, to potentially cause death or great bodily harm; and
- (7) The factors that relate to disparity of force.

10. Mr. Marty Hayes, P.O. Box 400, Onalaska, WA 98470, is a former law enforcement officer who is certified in ballistics and the use of deadly force and serves as President and Director of the *Firearms Academy of Seattle, Inc.* and *The Armed Citizens' Legal Defense Network, Inc.* Mr. Hayes will offer his expert opinions in (1) the dynamics of violent encounters, including the risk of an armed defender having his weapon disarmed when he is outflanked; (2) the use of spent cartridge casings and other physical evidence to infer shooter location; and (3) the analysis of the trajectory of bullets, and other ballistic evidence, to infer the manner in which the two deceased individuals were shot.

Dated this 30th day of April, 2019.

Respectfully Submitted,
KAEHNE, COTTLE,
PASQUALE & ASSOCIATES, S.C.
Electronically signed by:

/s/ Corey G. Mehlos

Corey G. Mehlos
Attorney for Defendant
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Appendix 12

*Marty Hayes, J.D.
P. O. Box 400
Onalaska, WA 98570*

To: Corey Mehlos

From: Marty Hayes, J. D.

Date: 05-08-19

Subject: Expert Report--State v. Sergio Ochoa

Qualifications for rendering opinion

I have been involved in the field of firearms training for over 35 years, both as a law enforcement officer and a trainer in the private sector. I have worked as an expert consultant and court recognized expert in firearms, shooting incident reconstruction, blood stain pattern analysis, ballistics, use of force and dynamics of violent encounters within at least five (5) different states and federal courts over the past three decades. I have had specialized training in practical homicide investigation, advanced homicide investigation, forensic techniques of death investigation, blood stain pattern analysis, and medico-legal death investigation. I have been accepted as an expert and testified in over a dozen different courts regarding the above subject areas. I have attached my CV to this report for a detailed list of training, cases, jurisdictions and subject areas where I have been recognized as an expert in court.

Work requested

I have been asked to perform a shooting incident reconstruction and to render expert opinion regarding, (1) principles and dynamics of violent encounters; (2) using physical evidence to infer shooter location; and (3) analysis of trajectory of bullets.

Investigation

To prepare this report with the expectation of testifying as an expert in this case, I have done the following: reviewed all discovery submitted to me, consisting of police reports, police photographs, witness statements, autopsy reports, forensic and DNA reports, defense expert reports, video of shooting scene, not-to-scale sketch by defense investigator documenting the approximate location of evidence contained in the living room where the shooting occurred, and Total Station evidence.

Lastly, I consulted multiple textbooks and learned treatises, to refresh my knowledge of the above separate disciplines, and to give references for the opinions I have drawn herein.

Disclaimer:

In any shooting incident reconstruction, allowances must be made for the possibility that the scene was contaminated from the time of the incident, to the photographing, video-taping and otherwise memorializing of the scene. By contamination, I mean that evidence inadvertently or possibly intentionally moved prior to recording, either by emergency medical personnel, responding and

investigating officers, the subjects themselves or in this case by individuals in other parts of the house who had access to the scene before police arrived. This analysis takes into account that possibility.

I would further note that this opinion is based on the assumption that the information provided by law enforcement and Dr. Witeck are generally accurate, with the exception of possibly reversing the location of the entrance and exit wound on Mr. Garcia's arm in Dr. Witeck's autopsy report.

(1) Principles and Dynamics of Violent Encounters

Lethal force situations oftentimes involve highly fluid, dynamic events that can occur in an extremely short period of time. Many members of the general public are unaware how quickly bodies are capable of moving, how quickly a shooter can fire a pistol, or why a shooter may need to fire multiple rounds of 9 millimeter bullets in a lethal force situation to terminate a threat posed by an aggressor.

It is well established that an individual can move his or her body quicker than a person can shoot a pistol. For example, an individual can completely rotate his upper body in one half of a second, but when a shooter is facing a potentially deadly threat, it may take up to an average of approximately one to one-and-a-half seconds for an experienced shooter concealing a pistol to unholster the concealed gun and shoot at the intended target, and likely longer for an inexperienced shooter. During that time, the individual who is facing the shooter would have enough time to completely rotate his or her body 180 degrees and begin to flee from the shooter. Under this scenario, it is not uncommon for shooters, including police officers, to shoot the individual in the back or the side, even though the shooter decided to fire the pistol when the individual was facing him or her.

Additionally, a shooter can fire multiple shots far faster than the layman likely understands, and thus the time this incident could have taken can be compressed into a time of less than two seconds. To illustrate this, I performed a timed test where I shot at two targets in close proximity and spaced a couple yards apart. I was able to fire all seven shots and hit both targets in 1.64 seconds. I then had my administrative assistant, Belle McCormack repeat the test, and she was able to fire 7 shots in 1.93 sec.

Many times it takes multiple shots to create sufficient wounding to physically stop a person. There are three recognized situations where bullets stop people. The first is the "psychological stop", where the person, recognizing that they are being shot at, voluntarily stops the action that precipitated them being shot. The second way bullets stop people is for one of those bullets to strike the central nervous system, a "physiological stop". If the bullet enters the cranial vault, the person usually falls to the ground without further action. If the person is struck in the spine, the person falls to the ground but can continue action at least with the arms, (if they are struck below the shoulders in the spine). The third way a bullet can physiologically stop an individual is if the bullet or bullets create sufficient bleeding, (either internally or externally) for the person to lose consciousness from lack of blood to the brain. Under this scenario, the person may or may not immediately drop to the ground.

In both autopsy reports, I see no indication of a central nervous system shot. Both Luis Garcia and Fernando Lara Lopez did receive torso shots that cause extensive internal bleeding. A person can continue to be a threat until they lose consciousness. Even a shot directly in the heart does not cause immediate incapacitation, but instead, the person can continue to be a threat for many seconds.

Finally, the presence of two or more attackers increases the danger to the armed defender by more than twofold, if they get close enough to physically assault the defender. This is because a defender

cannot physically defend against two separate attackers at different locations at the same time. To defend, he would need to face one attacker, effectively defend himself and then rotate his body towards the other attacker, and then defend against that attacker. This is problematic, because when the attackers are outflanking the armed defender, (attacking from two wide angles on different sides of the armed defender), the armed defender is most vulnerable to being attacked, and/or having his weapon taken from him. Specifically, when the armed defender turns his body to confront the threat posed by one attacker, he is forced to expose the back of his head and his back to the other attacker, who would be able to strike the armed defender, knock him unconscious, and/or disarm the armed defender, rendering him defenseless against a potentially deadly attack.

(2) Using Physical Evidence To Infer Shooter Location

Ejection patterns for shell casings (spent cartridges) are more suggestive than absolute. Although many in the general public who have shot semi-automatic pistols understand that semi-automatic firearms generally eject to the right and/or backwards, many variables factor into the terminal location of the ejected shell casing. On hard surfaces such as the ceiling, walls and floor of the subject room, once the shell casing strikes the hard surface, it will react unpredictably. A shell casing could land on the base, on the side, or on the mouth of the case. The angle of the case will be random, resulting in bouncing in random directions. Additionally, when the shooter is aiming the pistol at multiple, potentially moving targets, oftentimes the pistol will not be perfectly stable, but instead, moving both at an arc and likely directionally, if two or more targets were shot. Likewise, if the pistol was held horizontally with ejection port up, the shell casings would likely eject upwards and over the top of the shooter. In addition, the power of the ammunition plays a factor in how far shell casings will eject from a firearm, with the more powerful ammunition ejecting farther. Finally, because shell casings are small, and have been known to have been kicked, stepped on, kneeled on, and picked up and otherwise relocated by law enforcement investigators and civilians with access to the scene, their location when police collected the evidence may not necessarily be indicative of their initial resting location after the shooting. Therefore while the location of spent shell casings has the potential to help inform investigators regarding shooter location, it should never be relied upon as the sole method of determining shooter location due to the variables described above.

In this shooting incident reconstruction, I evaluated the type of ammunition, the type of firearm, the type of surfaces in the living room, the angle of the rod placed in the bullet hole in the east wall of the living room where the shooting occurred, the position of the bodies, the location of blood spatter near the bodies, DNA evidence related to the blood spatter, evidence from the autopsy report regarding entrance wounds, exit wounds, and graze wounds on the body, the location of the shell casings and the position of bullets both within the bodies and within the room, and evidence that suggests possible contamination to determine whether the location of the seven (7) shell casings in the living room are suggestive of the shooter's location at the time he fired the shots.

The ammunition used in the incident was Aguila, 124 gr. 9mm FMJ. I made this identification by the presence of the Aguila head stamp on the base of the case, along with the presence of a cannelure (crimping) on the case. The purpose of the cannelure is to ensure that the bullet does not get pushed back into the case during the chambering of the round. The other Aguila offerings in 9mm do not have this cannelure, indicating a more powerful round than the others. This would result in a robust ejection of the casings from the gun.

There were seven shell casings discovered, all Aguila 9mm, and all matched to the firearm owned by Sergio Ochoa, a Sig Sauer P250 semiautomatic pistol, that he told law enforcement officers was in his vehicle following the shootings. These casings were located along the west wall, under the sofa and on the east side of the room, and one on top of a small wooden box on the southeast side of the room. This pattern of dispersal is consistent with an individual shooting seven shots while standing in the vicinity of the center of the north end of the room, as opposed to any other location. In modern semi-automatic handguns, such as the Sig Sauer P250, the shell casings once fired will generally eject to the right and either laterally or to the rear, depending on the design of the gun, power of the ammunition and how the gun is being held.

I identified the presence of hard surfaces within the room, including a glass coffee table near the center of the room, radiators along the east and west walls, hard-surfaced walls and ceiling, and a wooden floor that appears to have been partially covered by a carpet. All of these surfaces appear to be the type of hard surfaces that cause shell casings to bounce, roll and behave unpredictably.

I accounted for the presence of two individuals who appear to be shot in two different locations based on the isolated presence of blood spatter close to their respective bodies, and located at different locations within the room. Because their resting bodies are close to the blood spatter that matches their DNA, and there is not blood spatter in other locations, the most reasonable inference is that each individual was shot close to the location where blood spatter and their bodies were located. I also reviewed Dr. Witeck's autopsy findings for both Luis Garcia and Fernando Lara Lopez, both of which reveal multiple gunshot wounds in significantly divergent locations and angles that strongly indicate that both Mr. Garcia and Mr. Lopez's bodies were moving at the time of the shooting. As explained above, when shootings involve moving targets, oftentimes the pistol will not be perfectly stable, but instead, moving both at an arc and likely directionally, causing the type of dispersal spray revealed by the shell casings on the floor.

The location of discovered bullets in the room also provide some insight into the shooter's location at the time of the shooting. Based on law enforcement reports, I am aware that one bullet referenced as Evidence Item No. 28 penetrated the east wall of the living room, generally in the same vicinity as the two bullets that apparently penetrated into the couch on in the same general location on the east wall. The bullet hole in the east wall (below the right hand corner of the large picture) shows a bullet path through the wall, into the next room and continuing until it comes to rest in a closet wall. To make this bullet path, the bullet would have had to come from the general vicinity of the north/center part of the room. Although one bullet was recovered in Mr. Garcia and Mr. Lara Lopez's bodies, the precise location of these individuals at the time of the shooting cannot be discerned from this evidence except to suggest that both were likely to be close in proximity to where their bodies and blood spatter were identified by law enforcement upon arrival. Finally, the two loose bullets on the floor were found near Mr. Lara Lopez's head and feet, respectively. There is no discernable way to determine with any degree of certainty whether they passed through a specific wound track in Mr. Lara Lopez or Mr. Garcia's body due to the number of bullets and shell casings recovered and specific location of the gunshot wounds; therefore, they are not necessarily instructive.

Finally, I reviewed evidence that suggests the potential for scene contamination. I am aware that at least five (5) individuals, Fernando Lara Lopez, Luis Garcia, Sergio Ochoa, Jason Garcia, and Jose Garcia had access to the room shortly after the shooting before police arrived, and may have accidentally or

even potentially intentionally relocated evidence that affected shell casing location, including attempting to perform CPR on a body, and came into contact with a shell casing or bullet. Additionally, I am aware that there were at least two emergency medical personnel and multiple law enforcement officers inside the living room prior to photographs of shell casings and spent bullets being taken. To my knowledge, there is no video surveillance or hand-held camera video recording that captures post-shooting movement in the living room. Therefore although there is no specific evidence that contamination occurred, it certainly cannot be ruled out given the number of individuals within the room and the relatively small size of 9 millimeter shell casings and bullets.

Consequently, it is impossible to determine with absolute certainty where the shooter was standing at the time of the shooting with all these variables in play. But what is possible to determine from the study of the shell casing locations in the room, is that the shooter was likely not facing West, as no shell casings were discovered near the TV along the north wall. Certainly, the location of the cartridges is consistent with the shooter standing in the mid-center of the north side of the room location suggested by the bullet trajectory rod lodged in the east wall of the living room where Evidence Item No. 28 (a bullet) passed through. The one anomaly in this scene is the shell casing that was discovered sitting on top of a small wooden crate. How it got there is not discernable. While it certainly could have bounced and come to rest there, it also could have been set there by one of the many individuals in the room before the photos were taken.

(3) Analysis of Trajectory of Bullets

Shooting reconstructionist technicians commonly use rods to demonstrate bullet trajectory. In this case, because a suspected seven (7) bullets were fired at two bodies that were likely in motion, and the autopsy findings by Dr. Witeck account for the presence of eight gunshot wounds and two (2) possible graze wounds despite only one identified re-entrance wound, bullet trajectory cannot be known with certainty. Nonetheless, accounting for all the physical evidence, and using a rod can explain the most probable bullet trajectories.

(A) Fernando Lara Lopez

Mr. Lara Lopez's preliminary autopsy report indicates that Mr. Lara Lopez received gunshot wounds from three bullets. These bullet tracks are referred to in the autopsy report as I, II, and III. The roman numerals do not necessarily reflect the order in which the shots were fired.

(I) The first bullet track illustrates a gunshot wound to the upper chest, which passed through the skin and muscle of the chest, exiting the chest and re-entering the left arm before exiting the left arm. This was detailed in an autopsy photograph (DSC_1051.JPG), and Dr. Witeck's autopsy sketch. The bullet was not recovered at autopsy. The wound was a lateral wound, and slightly downward. In my professional opinion, the autopsy photograph described above accurately illustrates this bullet track so that it was not necessary to place a rod through a manakin.

(II) The second bullet track entered what appear to be the right lateral side of the body below the armpit based on a hospital photo (0061.CR2), travelling across the torso at a downward, right-to-left angle before exiting the left lateral side, seemingly slightly above the hip as depicted in Dr. Witeck's autopsy sketch, and shown in the hospital photo (043.CR2). The bullet was not recovered at autopsy. I was able to place a rod in a manakin to illustrate this bullet track and have no reason to believe that the hospital photographs and Dr. Witeck's autopsy sketch are not roughly accurate depictions of this second bullet track.

(III) The third bullet track consists of an entrance wound only (see autopsy photo DSC_1047.JPG), into the left lateral portion of the left buttock, which did not have a corresponding exit wound. A deformed bullet (depicted in autopsy photo DSC_1089.JPG) was recovered in the left thigh of Mr. Lara Lopez, and according to the autopsy report, had passed through the pelvis. Because the bullet's trajectory was not detailed in the Autopsy Report with a relative distance from the heel or with a precise description of the location (note: I assume but cannot confirm due to lack of written description that the bullet was recovered somewhere the left index finger was pointing in autopsy photograph DSC_1086.JPG), I was not able to place a trajectory rod through the manikin to accurately determine bullet track trajectory.

(B) Luis Garcia

Mr. Garcia received several gunshot wounds. The autopsy report indicates there were four entrance wounds, which does not include two possible graze wounds (Dr. Witeck's autopsy report indicates a one inch abrasion around the neck which may be associated with Wound A). Given that the bullet and shell casing evidence suggests that there were seven (7) shots fired in total, and at least three shots passed through Mr. Lara Lopez's body; therefore at least one shot, and possibly more, that struck Mr. Garcia would likely consist of a re-entrance wound. It is also possible that one gunshot wound passed through both Mr. Garcia and Mr. Lara Lopez's body; however, I am not aware of any evidence that would suggest that this happened. There was no known attempt to actually place rods through Mr. Garcia's body at autopsy to indicate visually how the different wounds occurred (with the exception of Wound D). After careful analysis, I was able to determine that there were likely three, possibly four, bullets fired at Luis Garcia that created three separate wound tracks.

The autopsy report for Mr. Garcia indicated five gunshot wounds. These five separate detailed wounds on the body of Mr. Garcia can be condensed to having been caused by three or possibly four bullets. I will explain, and reference the five wounds as A, B, C, D, and E consistent with Dr. Witeck's reports.

Wounds A and B. Wound A represents a grazing wound to the chest of Mr. Garcia, as depicted in autopsy photo DSC_1104.JPG. Dr. Witeck notes that the trajectory is front-to-back, right-to-left, and downward. No bullet was recovered at autopsy. Wound B depicts a gunshot wound through Mr. Garcia's right arm that Dr. Witeck also believes is front-to-back at a downward angle, but left-to-right (hospital photograph 0051.CR2). No bullet was recovered at autopsy.

It is my professional opinion that the most logical explanation consistent with the physical evidence is that the bullet that caused Wound A also produced the through and through gunshot wound to the upper right arm, Wound B. Re-entrance wounds related to gunshot

wounds that enter the arm and exit the chest are the most common type of re-entrance wounds. In the autopsy report, Dr. Witeck identified the wound closest to Mr. Garcia's right arm pit (Wound B) to be an entrance wound, and the wound nearer the elbow as an exit wound (Wound B). If this were the case, then I cannot explain how this wound could have occurred within the context of this event. But, if the entrance and exit wounds were identified in the reverse order, and the recipient had the arm outstretched towards the shooter, the wounds to the arm and the grazing wounds to the chest line up perfectly based on a similar right-to-left trajectory between the entrance and exit wounds depicted in the hospital photograph (0051.CR2) and autopsy photograph (DSC_1104.JPG). I verified this by placing a rod in a manakin, and confirmed this to be the case. Although I considered the possibility of an ascending bullet trajectory (low-to-high) that could cause the graze wound on the chest (Wound A), and wound to the arm (Wound B), this hypothesis is not consistent with the physical evidence, which generally shows descending bullet trajectory (high-to-low) for the vast majority of the gunshot wounds.

Wounds C and D. The autopsy report characterized these two wounds as having been made by separate bullets; based on my professional training and experience, my opinion is that these two wounds were caused by the same bullet, and therefore share the same bullet track. If Mr. Garcia were facing the shooter, with his knees and bent at the waist, then one bullet could have caused both entrance wounds. This bullet entered the upper back on the right shoulder (autopsy photo DSC_1128.JPG) and then traveled through the torso and exited the lower left abdomen (hospital photo 0034.JPG) (Wound C) before re-entering the upper left thigh and exiting the buttocks (autopsy photo DSC_1131.JPG) (Wound D). Note that the pelvis is conducive to redirecting bullet trajectory, due to the dense bone and curvature of the pelvis. I used a rod to demonstrate how the downward, right-to-left trajectory of Wound C is consistent with a re-entrance wound in the left thigh when the person's legs are bent at the waist with the left leg facing forward. For the purpose of this opinion, I accept Dr. Witeck's opinion that Wound D consists of an entrance wound that entered Mr. Garcia's left thigh and exited his right buttocks at a significant left-to-right angle, as depicted by the autopsy photograph that utilizes a rod (DSC_1131.JPG).

Wound E. As identified in the autopsy report, gunshot Wound E entered the lower left thigh near the knee (autopsy photo DSC_1107.JPG), and then impacted and stayed in the femur (autopsy photos DSC_1143.JPG and DSC_1144.JPG roughly depict the location where the bullet was recovered). Although I do not have sufficient information to accurately predict its trajectory due to the difficulty of determining a reference point from autopsy photos DSC1143.JPG and DSC_1144.JPG and the lack of measurement from Mr. Garcia's heel to where the bullet was recovered within Dr. Witeck's autopsy report, my professional opinion is not inconsistent with what Dr. Witeck wrote in his autopsy report that Wound E consisted of a front-to-back and slightly downward trajectory though I have no opinion on whether the bullet was traveling left-to-right or right-to-left.

The above analysis accounts for gunshot wounds A, B, C, D, and E. This leaves two additional bullet wounds to discuss. The first is the grazing wound on Mr. Garcia's neck. This could have been caused by the same bullet which caused wounds A and B (which is suggested in Dr.

Witeck's autopsy report), or it could have been caused by a fourth bullet. The second unaccounted wound is mentioned as a second wound on the abdomen. The autopsy report indicates that this was either a wound caused by a bullet fragment, or caused by a bone chip, that under Dr. Witeck's theory would be caused by the bullet that caused Wound C on the body.

Summary

It is my professional opinion that the shooter fired 7 shots while being involved in a dynamic violent encounter, with both of the individuals shot likely having been moving at the time, along with the shooter also moving the gun back and forth between the two individuals.

Conclusion

This concludes this expert report. In the event additional information is obtained which would change the analysis of the evidence, I reserve the right to modify this opinion.

Respectfully Submitted:



Marty Hayes, J.D.

References

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Curriculum Vitae for Marty D. Hayes

(Current as of Dec, 2018)

Current Position(s)

President and Director of the *Firearms Academy of Seattle, Inc.* (since 1990). Since 1990, Mr. Hayes and staff have taught firearms and self-defense courses to over 20,000 people, including civilians, law enforcement, military, security and executive protection. (www.firearmsacademy.com)

Mr. Hayes is also President and founder of *The Armed Citizens' Legal Defense Network, Inc.* (since 2008), a membership organization dedicated to providing education and legal assistance to armed citizens who have used firearms or other means of force in self-defense and are being wrongfully prosecuted for that act of self-defense. (www.armedcitizensnetwork.org)

Consultant and Court Recognized Expert in Use of Force, Firearms, Ballistics, Crime Scene Reconstruction, Bloodstain Pattern Analysis, Dynamics of Violent Encounters, Firearms Training and Firearms Range Construction.

Firearms/Use of Force/Death Investigation Related Personal Training and Certifications

Instructor Development, (Gunsite Training Academy), 2018
Advanced Defensive Pistol, (Gunsite Training Academy) 2018
Urban Rifle Instructor Certification, (Defense Training International), 2017
Intermediate Defensive Pistol 350, (Gunsite Training Academy), 2016
Precision Rifle, American Small Arms Academy, 2016
Defensive Pistol 250, (Gunsite Training Academy) 2015
Use of Deadly Force Instructor Certification, (Massad Ayoob Group) 2015
Advanced Defensive Handgun/Instructor Development, (DTI) 2015
Instructor Development-Handgun, (Rangemaster) 2012
Bloodstain Pattern Analysis Certification (Christman Forensics) 2011
Safety Officer Certification, (International Defensive Pistol Association) 2011
Medico-Legal Death Investigation, (St. Louis University) 2010
Annual Conference, Association of Crime Scene Reconstruction, 2009
Tactical Technology Specialist Course (Surefire Institute) 2008
Team Tactics, (Thunder Ranch) 2006
Patrol Rifle Instructor, (National Rifle Association) 2006
Sudden In-Custody Death Investigation Instructor, (IPICD) 2006
Taser Instructor, (Taser International), 2005
Understanding and Managing the Use of Force (Michael Brave) 2005
Crimson Trace Master Trainers Summit 2004
LFI-IV, (Lethal Force Institute) 2004
Handgun Instructor Recertification, (Washington State Criminal Justice Training Commission) 2004
3-Gun Master Prep Course, (American Small Arms Academy), 2004
Crimson Trace Master Trainers Summit 2003
Tactical Entries, Ken Hackathorn, Instructor 2003
OC Aerosol Projectors Instructor, (Defense Technology Corp.) 2003
Specialty Impact Munitions Instructor, (Defense Technology Corp.) 2003
Active Shooter Training, (Spokane Police Academy), 2003
Close Range Gunfighting, (Suarez International), 2003
Handgun Combat Master Prep. Course, (Master Rating Achieved) (American Small Arms Academy), 2003

Advanced Homicide Investigation, (Washington State Criminal Justice Training Commission), 2002
Practical Homicide Investigation, (P.H.I.) 2002
Firearms Instructor Training and Update (WSLEFIA) 2000
Judicious Use of Deadly Force Instructor, (Lethal Force Institute), 1998
Firearms Instructor Training and Update, (WSLEFIA) 1998
Sudden In-Custody Death Seminar, (Washington State Criminal Justice Training Commission), 1997
Firearms Instructor 3 Gun Training Event (WSLEFIA) 1997
Advanced Sniper, (Washington State Criminal Justice Training Commission) 1996
Precision Marksman (1) Heckler and Koch International Training Division) 1996
Firearms Instructor 3 gun Training Event (WSLEFIA) 1996
Soldier Of Fortune 3-Gun Training Event/Match (WSLEFIA) 1996
Police Rifle Instructor, (Washington State Criminal Justice Training Commission) 1995
Police Firearms Instructor Update, (Washington State Criminal Justice Training Commission) 1993
Handgun/Long Gun Retention Instructor Re-Certification, (N. L. E. T. C.) 1993
Lead Exposure at Firing Ranges Seminar, (U. of Wash) 1992
Security Officer Instructor Course, (Wash. State Criminal Justice Training Commission) 1992
Police Instructor Update, (Washington State Criminal Justice Training Commission) 1992
Advanced Defensive Handgun, (Defense Training International) 1991
Glock Instructors Workshop and Armorer's Course, (Peregrine Corp./Glock, Inc.) 1991
Police Instructor Update, (Washington State Criminal Justice Training Commission) 1991
2-Day Officer Survival Seminar, (Lethal Force Institute) 1991
Handgun/Long Gun Retention Instructor Certification (N.L.E.T.C.) 1991
Advanced Threat Management, LFI 3, (Lethal Force Institute) 1990
Threat Management for Civilians, LFI 2, (Lethal Force Institute) 1990
Judicious Use of Deadly Force, LFI 1, (Lethal Force Institute) 1990
Advanced Combat Shotgun, (Lethal Force Institute) 1990
Handgun Retention Certification, (National Law Enforcement Training Center) 1990
Glock Police Armorer's Course, Glock, Inc. 1988
Instructor Development, (Washington State Criminal Justice Training Commission) 1987
Law Enforcement Firearms Instructor, (Wash. St. Criminal Justice Training Commission) 1987
Hanford Patrol Training Academy, (Dept. of Energy, Hanford, WA) 1984
Spokane Police Academy, 1982
F.B.I. Hostage Negotiations, 1982
Forensic Techniques in Death Investigations, 1982
Kootenai County Reserve Academy, Coeur d' Alene, ID. 1977

EDUCATION

Juris Doctor, Concord Law School, 2007
Bachelor of Arts, Eastern Washington University, 1983 (Psychology and Communications)
Associate of Science, North Idaho College, 1980

EXPERT WITNESS/CONSULTANT EXPERIENCE,

2018 --- Expert and Consultant in Civil Rights Litigation, (Kenneth Shults et.al. v. Illinois Dept. of Children and Family Services), David Sigale, Attorney U.S. Dist. Court, Central Illinois

2017-2018 --- Expert and Consultant in Attempted Murder, (X3) case, (Erick Chapmon) Derek Smith, Attorney. Testified in Pierce County Superior Court.

2017 --- Expert and Consultant in 2nd Degree Assault Case, (Eric Hodgson) John Black Attorney, Did not testify.

2017 --- Expert and Consultant in Unlawful Possession of Firearm Case (Michael Olsen) Chris Baum, attorney. Testified in Greys Harbor County Superior Court

2016-2017---Expert and Consultant in First Degree Murder case, (Jason Becktol) Testified in Skagit County Superior Court

2014-2016---Expert and Consultant in harassment with firearms case (Jackie Miller), (did not testify)

2015-2016---Expert and consultant in first degree assault case, (Barry Breimon, SR) Steve Thayer, Attorney (Did not testify)

2015-2016---Expert and consultant in first degree murder case, (Vannetta Richardson) Cathy Gormley, attorney (Did not testify)

2015 --- Expert and consultant in second degree assault case, (Joshua Moreland) (did not testify)

2015 --- Expert and consultant in Felony Harassment with Firearms case (Conner White) Mellissa Odama, attorney (did not testify)

2015 --- Expert and consultant in Excessive Use of Force Civil Action, Manuel Urrieta v. City of Fircrest. James White, attorney. (Did not testify)

2014-2015---Expert and consultant in first degree murder case, (Ronnie McDaniel) Richard Woodrow, Attorney (did not testify)

2014 --- Expert and consultant in Negligent Discharge civil action, (Ron Doss) (Did not testify)

2012-2014 --- Expert and consultant in first degree murder case, (James Rimmer), Richard Woodrow, Attorney. (Did not testify)

2014 --- Expert and consultant in first degree murder case, (Oscar Alden), Max Harrison, Attorney (Testified in Douglas County, WA. Superior Court)

2012-2013--- Expert and consultant in first degree murder case, (Christopher Deedy) Brook Hart, Attorney, Honolulu, HI Circuit Court (Did not testify)

2013---Expert and consultant in first degree murder case, (Daniel Baker) Adam Schultz, Attorney. (Testified in Pueblo County Tenth Judicial Court, CO)

2013---Expert and consultant in first degree murder case, (Spencer Newcomer) Chris Ferro, Attorney. (Testified in York County, PA, Court of Common Pleas).

2012---Expert and consultant in attempted murder case, (Martin Ivie) Jim Foley, Attorney. (testified in Mason County, WA Superior Court).

2012---Expert and consultant in "Harassment: Threat to Kill" case, (Robert Schoenkoph) Chris Ramsey, Attorney, Clark County, WA Superior Court (Did not testify)

2002-2012---Expert and consultant in Judicial Review of Coroner's Determination of Death of Ronda Reynolds, Royce Ferguson, Attorney (testified in Lewis County, WA Superior Court)

2011---Testified in Coroner's Inquest as expert in Death of Ronda Reynolds, Lewis County, WA

2011---Expert for civil suit, Kitsap County v. Kitsap Rifle and Revolver Club, (testified in Pierce County, WA Superior Court)

2011---Expert for Attempted Murder/1st degree assault case, (Dan Halverson) (testified in Mason County, WA Superior Court), Ron Sergi, Attorney

2010---Expert for 1st Degree Murder case, (Keira Barhart) Peter Mazzone, Attorney (Testified in Snohomish County, Superior Court)

2010---Expert for 1st degree murder case, (Bud Fraser) Royce Ferguson, Attorney (Testified in Snohomish County, Superior Court)

2009-2010--- Expert and consultant for Aggravated Assault case, (Larry Hickey) Pima County, AZ Public Defenders Office, Matthew Messmer, Attorney (Testified in P.C. Sup. Court)

2009---Expert for 1st Degree Assault case, (Edo Aslanyan), Stephan Smith, Attorney (Testified in King County, Superior Court)

2008---Expert for defense in 2nd Degree Assault case, (Colleen Edwards) Pro se (Testified in Kitsap County, Superior Court)

2008---Expert for defense in Unlawful Possession of Firearm case, (Gordon Hammock) Donald Blair, Attorney (Testified in Lewis County, Superior Court)

2008---Expert for defense in 2nd degree assault case, (Donald Lynch) Donald Blair, Attorney (Did not testify)

2007---Expert for defense, attempting to disarm police officer, (Rene' Garcia) Royce Ferguson, Attorney (Did not testify)

2004---Expert for defense in unlawful display of firearm, (Darrell Buell), Debbe Stein, Attorney (Did not testify)

2004---Use of Force/police procedures consultant in 4th degree assault case, (Keith Reyes) Royce Ferguson, Attorney (Did not testify)

2004--- Expert in ADA discrimination case, relating to firearms training, (Chris Lorenz V. Town of Steilacoom), Claudia Kilbreath, Attorney (Testified in Pierce County, Superior Court)

2004---Consultant in officer involved shooting, (Elvis Wayne Wilson), Royce Ferguson, Attorney (Did not testify)

2003---Expert in firearms related case in U.S. Fed. District Court, Tacoma, WA. (U.S. v. Todd Hallum), Peter Avenia, Attorney, (Did not testify)

2003---Consultant in 1st Degree Assault case, (Jennifer Dayle,) Royce Ferguson, Attorney (Did not testify)

2002---Use of Force/police procedures consultant in 4th Degree Assault case, (Scott Berg).
Royce Ferguson, attorney (Did not testify)

2001--- Consultant/expert in firearms related training/binding arbitration, (Patricia Noel-Johnson v. Lincoln County, OR Sheriff's Dept.) Jamie Goldberg, attorney (Testified in arbitration hearing)

1999---Consultant in wrongful death civil case, (Terry Nelson). Law Office of Royce Ferguson
Royce Ferguson, attorney (Did not testify)

1996---Defense expert in 1st degree manslaughter case, Office of Public Defender, King Country, WA
Aliki Recklitis, attorney (Did not testify)

1995---Defense expert in 1st degree assault case, Island County, WA Public Defender
Kina Vesser/ Craig Platt, attorneys (Did not testify)

1994/1995---Defense expert in two 1st degree murder cases, Office of Public Defender, King County, WA
Mike DeFelice/Theresa Olsen, attorneys (Did not testify)

1994---Defense expert including testifying in 1st degree manslaughter case, Office of Public Defender, King County, WA Elizabeth Calvin, attorney (Testified in King County, Superior Court)

TEACHING EXPERIENCE

Director/President, Firearms Academy of Seattle, Inc. 1990 - Present

Teach basic and advanced level firearms, self-defense and lethal threat management to Puget Sound area residents, including law enforcement, security and civilians. Supervise staff of ten part-time instructors, train approximately 800-1,000 people each year in some aspect of firearms or self-defense. Own and operate a police and civilian firearms training facility in Onalaska, WA.

Instructor for Armed Citizens' Legal Defense Network, Inc. Continuing Legal Education, *Understanding the Use of Deadly Force in Self-Defense.* (Present)

Instructor for Rangemaster Tactical Conference, (many years)

Instructor at American Society of Law Enforcement Instructors annual training conference in 1994, at Anchorage, AK, also at same national seminar in Atlanta, GA.

Instructor for Washington State Law Enforcement Firearms Instructors Association annual conference, Yakima, WA 1994, 1995, 1996, 2001

Instructor and host for International Law Enforcement Firearms Instructors Association regional conference, Onalaska, WA 1999

Instructor for International Law Enforcement Firearms Instructors Association regional conference, Bend, OR. 2009

Police Firearms Instructor, Granite Falls Police Department, 2006-2008

Police Firearms Instructor, Tieton Police Department, 2005-2006

Police Firearms Instructor, Vader Police Dept., 2001-2005

Police Firearms Instructor, Napavine Police Dept., 1995-1999

Developed and implemented firearms training program for department.

Staff Instructor, Lethal Force Institute, (Massad Ayoob), 1991 - Present

Since 1991, have worked with Mr. Massad Ayoob and The Lethal Force Institute, assisting with range and classroom instruction in Judicious Use of Deadly Force and Lethal Threat Management.

Firearms Instructor, Continental Sportsman Gun Range, Seattle, WA, 1987-1990

Developed and implemented a civilian firearms training program at local indoor gun range, teaching basic and firearms instruction to several hundred people per year.

Police Firearms Instructor, Carnation Police Dept., 1985-1987

Developed and implemented firearms training program for department.

Police Firearms Instructor, Medical Lake Police Dept., 1981-1983

Developed and implemented firearms training program for department

PUBLICATION CREDITS

Author, The Gun Safety Handbook (1990)

Author, Understanding Washington State's Gun Laws (1990, 1991, 1993)

Author, The Professional's Guide to Handgun Cleaning (1992)

Armed Citizens' Legal Defense Network educational video series

Title One: Presenter, Use of Deadly Force in Self Defense, (2008)

Title Two: Host, Handling the Immediate Aftermath of a Self-Defense Shooting, (2008)

Title Three: Host, Defending a Self-Defense Shooting, (2008)

Title Four: Host, Recognizing and Responding to Pre-Attack Indicators, (2009)

Title Five: Host, Additional Considerations When Using Deadly Force, (2010)

Title Six: Host, Understanding and Explaining Altered Perceptions of Witnesses and Participants in Violent Encounters, (2012)

Title Seven: Host, Emotional and Psychological Aftermath of a Self-Defense Shooting (2012)

Title Eight: Presenter, Legal Considerations of the Use of Non-lethal Defensive Force (2013)

Occasional author for SWAT Magazine

Since 2008, monthly column and feature articles for the official publication of the Armed Citizens' Legal Defense Network, Inc. < www.armedcitizensnetwork.org/e-journal >

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Appendix 13

**STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY
BRANCH IV**

STATE OF WISCONSIN,

Plaintiff,

v.

Case No.: 17 CF 478

SERGIO OCHOA,

Defendant.

**DEFENDANT'S SUMMARY OF EXPERT OPINIONS
OF ALFONSO VILLASEÑOR**

TO: District Attorney Joel Urmanski
Sheboygan County District Attorney's Office
615 North Sixth Street
Sheboygan, Wisconsin 53081

PLEASE TAKE NOTICE that the Defendant, Sergio Ochoa, appearing specially by Kaehne, Cottle, Pasquale & Associates, S.C., specifically Attorney Corey G. Mehlos, and reserving the right to challenge the court's jurisdiction, hereby provides supplemental notice under § 971.23(2m)(am) of Mr. Villaseñor expert opinion that the defense intends to introduce at trial.

A. Qualifications

- **Certifications:** Mr. Villaseñor is a certified Spanish-to-English and English-to-Spanish interpreter. His certifications include being a federal interpreter through the Administrative Office of the United States Courts.
- **Memberships:** Mr. Villaseñor is a member of the International Association of Conference Interpreters.
- **Professional Experience:** Mr. Villaseñor has been hired as a conference interpreter for English-to-Spanish and Spanish-to-English interpretations by numerous government agencies within the federal government, including the U.S. Department of State, the United States Consulate in Mexico, the United States Immigration and Naturalization Service, the United States 12th Air Force, and the United States Department of Homeland Security, as well as the Mexican federal government, and the Arizona Supreme Court.
- **Familiarity with Mexican Spanish Slang:** Mr. Villaseñor is a lifelong Spanish speaker who lived in Mexico for the first 20 years of your life, and has resided in the United States near the Mexican border since that time. He is intimately familiar with

Mexican slang. Mr. Villaseñor uses and listens to, Mexican Spanish slang on a regular basis while conversing with family, friends, and colleagues. Through Mr. Villaseñor's work as an interpreter, he engages in conversations with people from many regions of Mexico that use different slang expressions. He has an intimate understanding of not only Mexican culture, but also many nuances involved in Mexican slang.

- **Professional Experience Presenting On This Topic:** Mr. Villaseñor has been recognized by his colleagues as someone who specializes in the area of Mexican Spanish slang by virtue of having been invited to present on this topic at professional conferences and seminars for various interpreter and translator associations such as ATA – American Translators Association, CFI – California Federation of Interpreters, CAPI – Colorado Association of Professional Interpreters, MICATA – Mid-America Chapter of the American Translators Association, IITA – Iowa Interpreters and Translators Association, and ACIA - Arizona Court Interpreters Association. Mr. Villaseñor has been a guest faculty member and presenter on this topic at the University of Arizona's *Agnese Haury Institute for Court Interpretation (now known as CITI – Court Interpretation & Translation Institute)* every year since 2001, as well as a guest speaker for the Masters Degree Program in Translation Studies at Glendon College (Toronto, Canada).

B. Foundation of Expert Opinion

1. **Method of Interpretation:** There are three primary principles used to understand the meaning of slang.
 - a. **Register:** refers to the degree of sophistication of the language being used, and can range from high register (proper, socially accepted language) to low register (common language that can be crass and sometimes extremely vulgar).
 - b. **Tone:** refers to the speaker's emotional state while conveying the message. Tone relates to the speaker's meaning and intent. The exact same message using the exact same set of words can have a completely opposite meaning and intent depending on the tone and context.
 - c. **Content:** the actual text or language being used to convey the message.
2. **Objective of Interpretation:** In order to interpret slang faithfully and accurately, we must abstain from using literal word-by-word translations that frequently sound out of place or nonsensical and don't convey equivalent meaning. The meaning and intent of a message cannot be reduced to the mere sum of its parts; in this case, the individual meaning of the words it contains. Rather, it's imperative to find the equivalent meaning, within the same context, in the target language.
 - a. **Register:** To do so, understanding the degree of vulgarity of popular words and expressions used in both Mexican Spanish and American English is of the utmost importance.
 - b. Additionally, understanding the cultural and usage nuances related to the manner in which phrases are delivered is key. In English, for example, using the "C word" in the United States would be among the most vulgar things you could say; however, in England or Australia, it is not considered to be nearly as vulgar due to its ubiquitous use and the lower sensitivity that it elicits.

- c. Problematically, there are many more vulgar words in Spanish than in English, and some swear words simply have a much more loaded meaning within the culture that becomes lost in translation.
- d. Mr. Villaseñor has created a "Pinchi Line chart" that establishes a boundary between terms considered to be vulgar in Mexican Spanish slang from those that are not. The purpose of the chart is to attempt to correlate these expressions in Mexican Spanish with their approximate equivalent term in the English language.
- e. Mr. Villaseñor has classified the four crown jewels of Mexican Spanish slang, which are <<verga>>, <<culo>>, <<puto>>, and <<chinga>>.
- f. There are sometimes also generational and regional differences that can affect how a slang word is understood.
- g. Yet some words are simply so vulgar that any native Mexican Spanish speaker will know exactly how vulgar they are regardless of region, or generation, and some people simply will never use those words.
- h. For example, <<verga>> in Mr. Villaseñor opinion is the most vulgar word used in Mexican Spanish slang. Given its vulgarity, the most equivalent expression in English is the "F" word. The "F" word is the most vulgar term in American English, other than the "C" word, and it has a good number of derivations. The "C" word is not as ubiquitous in American culture. For that reason, it lacks practical value for interpreters because there aren't many recognizable idiomatic formulas for it in English that interpreters can use. Beyond that, interpreters have few choices when it comes to formulating equivalent solutions for all the Spanish terms operating above the "Pinchi Line". The key to equivalency is identifying a solution that is recognizable and makes sense in the target language whenever possible.

C. Phrases to be Interpreted/Translated

1. <<Te va a llevar la verga>> Future Tense – indirect reference
2. <<Ya te llevó la verga>> Past Tense – indirect reference
3. <<Asta lamuerte con miconpa cabrones>>

D. Interpretation/Translation

1. First, the phrase <<Te va a llevar la verga>> is a slang phrase in Mexican Spanish that includes a future tense indirect reference involving a third party.
 - a. The vulgar word used in the phrase is <<verga>>.
 - b. Register:
 - i. The word "verga" is the most vulgar word in Mexican Spanish.
 - ii. Regardless of geography, it is considered extremely vulgar across Mexico.
 - iii. Although it is difficult to come up with an equivalent word for verga because the "F" word is used so often that some people mistakenly assume it is not extremely vulgar, that is not the case. The most faithful interpretation of the word "verga" in this context requires determining the most vulgar equivalent word in United States English, which is the "F word."
 - c. Tone:

- i. Interpreters can derive meaning and register from an expression and, on occasion, even tone. When the content includes some detail into the context of a situation they can infer meaning more accurately. Absent that, interpreters may not make any inferences that go to intent or add specific content to the equivalent solution that is not reflected or implied in the original source language.
 - ii. Certainly, the speaker's emotion when using the tone can have an affect on how the listener interprets the phrase, such as whether he or she may be joking or serious.
- d. **Content:** In this case, the phrase is used in a future tense, indirect reference. This means that the speaker is predicting something very negative (indirect reference using "verga" that represents the worst possible outcome for the listener) will happen to the person to whom the phrase is directed (listener); hence he uses the verb <<te va a>>. The use of the word verga is an indirect reference that signifies that the worst possible outcome will occur to the listener. As explained above, the use of the word verga suggests something bad is going to happen to the listener. Accordingly, the best equivalent interpretation would be either "You're gonna get fucked up" or "You're gonna get fucked." Depending on the circumstances, this phrase can mean a threat, and certainly can mean a death threat.

2. Second, the phrase <<Ya te llevó la verga>> is a slang phrase in Mexican Spanish that is a past tense indirect reference to the worst possible outcome that can occur to the listener of the message.
 - a. **Register:** remains the same as described above.
 - b. **Tone:** Remains the same as described above.
 - c. **Content:** In this case, the phrase is used in a past tense, indirect reference. This means that the speaker is telling the listener that it has been determined that something has or will happen to the listener. Another way of saying this is that the listener's fate has been sealed with respect to the action or occurrence. Again, the use of the word <<verga>> suggests that the degree of the outcome is the worst possible given that it is the most vulgar expletive used in Mexican Spanish. The portion of the phrase <Ya te llevó> indicates that the outcome resulting from the circumstances that lead to it is inescapable, and that something bad has or will happen to the listener. Accordingly, the best equivalent interpretation would be <<You're fucked, now>> or <<Now you're fucked>>. If someone used this past tense, indirect reference following the future tense, indirect reference, it suggests that the bad thing that was predicted to happen is now guaranteed to happen. Depending on the circumstances, this phrase can mean a threat, and certainly can mean a death threat.
3. Third, the phrase <<Asta lamuerte con miconpa cabrones>> is a misspelled Mexican Spanish slang phrase that is correctly spelled as <<Hasta la muerte con mi compadre, cabrones>>.
 - a. **Register:** The vulgar word in this phrase is <<cabrones>>. It is a word that is moderately to highly vulgar. It is not quite in the same class as <<verga>>, but it does approach an approximate level of vulgarity.
 - b. **Tone:** Again, its meaning could change based upon the speaker's tone, including for example whether he is happy, angry, boasting, etc.

c. **Content:** Here, the content is limited to the words spoken by the speaker. This phrase could have a range of meanings. <<Compa>> is a common term used in Mexican Spanish slang that likely means compadre, which signifies an extremely close friend. An equivalent translation in English is “To the death with my bro, you fuckers.” This phrase can have a range of meanings depending upon the speaker’s intent and listener’s perception. It can, for example, suggest that the speaker is telling the plural third party listeners that s/he and her or his friend are extremely close, resembling variations of English slang used to describe extremely close friendships. It can also suggest that the speaker is trying to tell the listener that he and s/he and her or his friend have a type of friendship in which they have each other’s backs, or literally it could mean that the speaker is trying to tell the listener that he is so fiercely loyal to his friend that he would literally defend him to the death.

Dated this 1st day of May, 2019.

Respectfully Submitted,
KAEHNE, COTTLE,
PASQUALE & ASSOCIATES, S.C.
Electronically signed by:

/s/ Corey G. Mehlos

Corey G. Mehlos
Attorney for Defendant
State Bar No.: 1088417

Prepared by:

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ATTACHMENT A:

CURRICULUM VITAE

ALFONSO VILLASEÑOR
Professional Conference Interpreter - AIIC

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avotrans@aol.com/avotrans@gmail.com

EDUCATIONAL BACKGROUND:

University of Phoenix - Tucson, AZ
Major: Business Information Systems
Completed 45 credit-hours
(1996-1997)

University of Arizona
Major: Electrical Engineering (1993)
Completed 20 credit-hours

University of Arizona Summer Institute for Court Interpretation
Certificate (1992)
Principal topics: Simultaneous & Consecutive Interpretation, Translation,
Ethics and Court Procedures.

Pima Community College - Tucson, AZ
Associate of Science (1991)
Major: Electrical Engineering

Associate of Applied Science (1991)
Major: Digital Electronics Technology

QUALIFICATIONS

Member of
AIIC (International Association of Conference Interpreters
(English: A ◊ Spanish: A)

US Department of State
Contract Interpreter (Conference Level: English ◊ Spanish)

Administrative Office of the United States Courts
Federally Certified Court Interpreter (English - Spanish)

CLIENT LIST**Government Agencies:**

U. S. Department of State
 OAS – Organization of American States
 IDB – Interamerican Development Bank
 EPA - Environmental Protection Agency
 U. S. Immigration and Naturalization Service
 IBWC - International Borders and Water Commission
 U. S. Department of the Interior
 CILA - Comisión Internacional de Límites y Aguas
 EOIR - Executive Office for Immigration Review
 EEOC - Equal Employment Opportunity Commission
 U. S. Embassy in Argentina
 FHWA – Federal Highway Administration

U. S. Trade Development Agency
 U. S. District Court
 U. S. Customs
 Arizona Supreme Court
 U. S. 12th Air Force
 U. S. Consulate in Mexico
 Federal Public Defender's Office
 Agencia Consular de México
 SBA - Small Business Administration
 U. S. Border Patrol
 U. S. Department of Homeland Security
 USDA-APHIS
 SAGARPA

Corporations & Other Organizations:

Disney Inc.
 Caterpillar Corp.
 Mobil Oil Corp.
 Tupperware Inc.
 SONY Corp.
 Ingersoll-Rand Corp.
 Creative Memories Inc.
 CCC Information Systems, Inc.
 Deloitte Consulting
 The ASSURANT Group
 University of Arizona - Office of Arid Land Studies
 University of Arizona - Office of Latin American Studies
 International Association of Chiefs of Police
 Service Employees International Union - SEIU
 Hispanic Association of Colleges & Universities
 University of Arizona - College of Law
 Alliance Technical Corporation
 International Truck & Engine Corp.
 Challenger Inc.
 Pfizer, Inc.
 Intel Corp.
 Int'l Consortium for Education and Economic Development
 The National Watermelon Board
 Universidad de Sonora

Nike Inc.
 Komatsu Corp.
 Shell Oil Corp.
 Polaris Corp.
 Castrol Inc.
 Autotote Inc.
 Freightliner Inc.
 Pillsbury, Inc., etc.
 Border Health Foundation
 Muscular Dystrophy Association
 Pan American Sports Organization
 International Bottled Water Association
 International Plant Propagation Society
 Pan American Health Organization
 Western Area Health Education Centers
 Wyeth-Ayerst Pharmaceuticals
 U. S. Olympic Committee
 Basha's Food Stores, Inc.
 The National Mango Board
 North American Plant Protection Organization
 Liebert, Inc.
 AFSCME
 Child & Family Resources, Inc.
 Woodrow Wilson Center

Language Services Agencies:

Conference Systems, Inc Germantown, MD
 Clarus, Inc., Los Angeles, CA

A Bridge Between Nations, Phoenix, AZ,
INGCO, Inc., Minneapolis, MN

ASET Int'l Services Corporation, Washington, D.C.
US Translation Company, South Ogden, UT

Prolingo, Inc., Orlando, FL
World Congress Interp. Syst., Wash, DC

Selected Professional Experience

Conference Career: Events [506], Days [1287], & Countries [16]

1. April 23 & 24, 2019 – Washington, DC Provided simultaneous interpretation services for the IDB – Inter American Development Bank – “Fortalecimiento de la Transparencia”
2. April 12, 2019 – Washington, DC Provided simultaneous interpretation services for the IDB – Inter American Development Bank – IDB Group Mentoring .
3. April 11, 2019 – Washington, DC Provided simultaneous interpretation services for the OAS – Organization of American States – ??????????
4. April 10, 2019 – Washington, DC Provided simultaneous interpretation services for the IDB – Inter American Development Bank – “Lithium Sustainable Development” .
5. April 2 & 3, 2019 – Washington, DC Provided simultaneous interpretation services for the IDB – Inter American Development Bank – “Onboarding: Orientation Seminar for New Employees” 
6. March 18-20, 2019 – Antigua, Guatemala Provided simultaneous interpretation and technical support services for the National Mango Board - Board Meeting.
7. January 24, 2019 – Washington, DC Provided simultaneous interpretation services for the IDB – Inter American Development Bank – Cure Violence Program.
8. December 10 & 11, 2018 – Washington, DC . Provided simultaneous interpretation services for the IDB – Inter American Development Bank – OECD.
9. December 4 & 6, 2018 – Washington, DC Provided simultaneous interpretation services for the IDB – Inter American Development Bank – CMF Retiro de División.
10. November 27, 2018 – Washington, DC Provided simultaneous interpretation services for the IDB – Inter American Development Bank – “Advice for My Younger Self” Panel .
11. November 13-15, 2018 – Orlando, FL . Provided simultaneous interpretation and technical support services for the National Mango Board - Board Meeting.
12. October 15 & 16, 2018 – Guayaquil, Ecuador Provided simultaneous interpretation and technical support services for the National Mango Board – Media Farm & Packing House Tour.
13. October 1, 2 & 4, 2018 – Washington, DC . Provided simultaneous interpretation services for the IDB – Inter American Development Bank – Feria de Soluciones para Desafíos en la Ejecución .

14. September 20-22, 2018 – Cartagena de Indias, Colombia . Provided simultaneous interpretation services for the Sustainable Harvest “Let’s Talk Coffee” Conference .
15. September 11-13, 2018 – Nashville, TN Provided simultaneous interpretation and technical support services for the National Mango Board - Board Meeting.
16. May 21, 2018 – Washington, DC . Provided simultaneous interpretation services for the IDB – Inter American Development Bank – Diálogo Regional de Educación (Brookings Institute)
17. May 14-18, 2018 – Tucson, AZ Provided simultaneous interpretation and equipment services for the Sky Island Alliance Wilderness Conference .
18. May 7, 2018 – Washington, DC Provided simultaneous interpretation services for the IDB – Inter American Development Bank – Ciudadanía Digital: La Tecnología como Herramienta para la Cohesión Social .
19. April 17 – 19, 2018 – Washington, DC . Provided simultaneous interpretation services for the IDBFA - Inter American Development Bank Family Associations Summit.
20. March 12 -15, 2018 – Portland, OR Provided simultaneous interpretation and technical support services for the National Mango Board - Board Meeting.
21. December 6-8, 2017 – Tempe, AZ . Provided simultaneous interpretation and technical support services for the Arizona State University - ASU Innovation Leadership Program.
22. November 28 & 29, 2017 – Puerto Vallarta, Mexico Provided simultaneous interpretation and technical support services for the National Mango Board - Board Meeting.
23. October 29 – November 8, 2017 Provided simultaneous interpretation services for the USTDA – US Trade & Development Association during a Reverse Trade Mission on Energy Efficiency and Innovation in Airports.
24. October 24-26, 2017 – Washington, DC Provided simultaneous interpretation services for the IDB - Inter American Development Bank – Transforming Hospitals: Assuming a New Role in an Integrated Health Service Network.
25. October 21-23, 2017 – Philadelphia, PA Provided simultaneous interpretation services for the IACP – International Association of Chiefs of Police Convention.
26. October 10 & 11, 2017 – Orlando, FL Provided simultaneous interpretation and technical support services for the National Mango Board - Board Meeting.
27. August 24, 2017 – Tucson, AZ Provided simultaneous interpretation and technical support services for the ARI-SON MegaRegion Council Meeting.

28. June 29, 2017 – Washington, DC Provided simultaneous interpretation services for the IDB - Inter American Development Bank – Public / Private Partnerships in Infrastructure..

29. June 26 - 28, 2017 – Washington, DC Provided simultaneous interpretation services for the IDB - Inter American Development Bank – Onboarding: Orientation Seminar for New Employees.

30. June 12, 2017 – Los Angeles, CA Provided simultaneous interpretation services for the SONY PlayStation 4 Webcast during the E3 Conference.

31. May 23 - 25, 2017 – Dallas, TX Provided simultaneous interpretation services for the INTEL Solutions Summit Conference.

32. April 25 - 28, 2017 – Washington, DC Provided simultaneous interpretation services for the IDB - Inter American Development Bank – Meeting of Member Country Representatives.

33. April 19 & 20, 2017 – Washington, DC Provided simultaneous interpretation services for the IDB - Inter American Development Bank – "Meeting of Ministers of Finance & Central Banks."

34. April 17, 2017 – Washington, DC Provided simultaneous interpretation services for the IDB - Inter American Development Bank Conference – "Building a Digital Society."

35. March 20 - 23, 2017 – La Jolla, CA Provided simultaneous interpretation and technical support services for the National Mango Board - Board Meeting.

36. February 28 & March 1, 2017 – Tubac, AZ Provided simultaneous interpretation and technical support services for the FPAA - Fresh Produce Association of the Americas - Food Safety Seminar & Conference.

37. February 16 - 18, 2017 – Scottsdale, AZ Provided simultaneous interpretation services for the Major League Baseball Players Association Meetings.

38. November 15 - 17, 2016 – Orlando, FL Provided simultaneous interpretation and technical support services for the National Mango Board - Board Meeting.

39. October 31 - November 4, 2016 – Washington, DC Provided simultaneous interpretation services for the CSI - PAHO Manager's Conference .

40. October 25 & 26, 2016 – Montego Bay, Jamaica Provided simultaneous interpretation services for the IDB - FOROMIC .

41. October 21, 2016 – Washington, DC Provided simultaneous interpretation services for the IDB - "BID Inspiration" .

42. October 6, 2016 – Washington, DC Provided simultaneous interpretation services for the IDB - Financing the 4th Industrial Revolution Conference.

43. October 6 & 7, 2016 – Washington, DC Provided simultaneous interpretation services for the IDB - Biannual Partners' Meeting.

44. October 5, 2016 – Washington, DC Provided simultaneous interpretation services for the IDB - Board of Governors Meeting.

45. September 13-15, 2016 – Las Vegas, NV Provided simultaneous interpretation services for the National Mango Board Meeting.

46. September 9 & 10, 2016 – Washington, DC Provided simultaneous interpretation services for the AERA - Educational Conference.

47. September 7 & 8, 2016 – Washington, DC Provided simultaneous interpretation services for the IDB - Inter American Development Bank "Dialogo Regional de Política - Innovación, Estabilidad y Competitividad Financiera".

48. July 27, 2016 – Washington, DC Provided simultaneous interpretation services for the US Department of State – Voice of America.

49. July 25 - 29, 2016 – Quantico, VA Provided simultaneous interpretation services for the US Department of State – DEA Clandestine Laboratory Training Program.

50. July 10 - 20, 2016 – Washington, DC, Kalamazoo, MI, & Los Angeles, CA Provided simultaneous interpretation services for the US Department of State – Community Policing/Mexico Program.

51. June 14 - 18, 2016 – Santiago de los Caballeros, Dominican Republic Provided simultaneous interpretation services for the US Department of State – FDA Foreign Inspection Trip.

52. June 13, 2016 – Los Angeles, CA Provided simultaneous interpretation services for the SONY Playstation Live Internet Broadcast during the E3 Gaming Convention.

53. June 3, 2016 – Des Moines, IA Provided simultaneous interpretation services for the US Department of State - Foreign Agricultural Service (FAS) Cuban Minister of Agriculture Site Visits in the US with Secretary Tom Vilsack.

54. May 18 - 20, 2016 – Washington, DC Provided simultaneous interpretation services for the International Judicial Council Conference.

55. May 8 - 14, 2016 – Neuquén, Rio Negro, Argentina Provided simultaneous interpretation services for the US Department of State – FDA Foreign Inspection Trip.

56. April 9 - 30, 2016 – Washington, DC-Cincinnati, OH-Louisville, KY-Sacramento, CA & Corpus Christi, TX Provided simultaneous interpretation services for the US Department of State – Leadership Management and Standards in the Judicial and Law Enforcement Environment Program (Colombia)

57. March 18, 2016 – Dallas, TX Provided simultaneous interpretation services for the BristolMyersSquibb Pharmaceutical Conference.

58. March 14-17, 2016 – Ft. Lauderdale, FL Provided simultaneous interpretation and technical support services for the National Mango Board's Board Meeting.

59. February 12-24, 2016 – Neuquén, Argentina Provided simultaneous interpretation services for the US Department of State – FDA Foreign Inspection Trip

60. November 17-19, 2015 – Orlando, FL Provided simultaneous interpretation and technical support services for the National Mango Board's Board Meeting.

61. November 5, 6, 8 & 9, 2015 – St. Petersburg, FL Provided interpretation technical support services for the US Department of State - Edward R. Murrow Program Conference held at the Poynter Institute in St. Petersburg, FL.

62. September 29, 2015 – Washington, DC Provided simultaneous interpretation services for the IADB - Inter American Development Bank – ReachUp Early Childhood Intervention Program Conference.

63. September 28, 2015 – Washington, DC Provided simultaneous interpretation services for the IADB - Inter American Development Bank – Meeting of the IDB External Advisory Board.

64. September 22-25, 2015 – Richmond, VA Provided simultaneous interpretation services for the UCI World Road Cycling Championships.

65. September 15-17, 2015 – Washington, DC Provided simultaneous interpretation and technical support services for the National Mango Board's Board Meeting.

66. July 24-27, 2015 – Madison, WI Provided simultaneous interpretation services for the US Department of State - Women Leaders: Engines of Social Change Program.

67. June 25, 2015 – San Antonio, TX Provided simultaneous interpretation services for the US Department of State - TSA Canine Explosive Detection Training Program.

68. June 16 & 17, 2015 – Los Angeles, CA Provided simultaneous interpretation services for the SONY Corporation PlayStation Live Webcast during the E3 Gaming Convention.

69. May 14 & 15, 2015 – Nogales, AZ Provided simultaneous interpretation and technical support services for the Union Pacific "Hazardous Materials Training Program".

70. April 27 & 28, 2015 – Aguascalientes, Mexico Provided simultaneous interpretation services for the US Department of State – FDA Foreign Inspection Trip.

71. April 24, 2015 – Nogales, AZ Provided simultaneous interpretation and technical support services for the WholeSum Family Farms Strategic Planning Meeting.

72. April 13-17, 2015 – Tucson, AZ Provided simultaneous interpretation and technical support services for the Hexagon Mining, Inc. "MineQuest" Conference.

73. March 26, 2015 – Long Beach, CA Provided simultaneous interpretation and technical support services for the National Mango Board's "Conference on Ripe/Ready to Eat Mangos".

74. March 24 & 25, 2015 – Long Beach, CA Provided simultaneous interpretation and technical support services for the National Mango Board's Board Meeting.

75. March 16-20, 2015 – Charleston, SC Provided simultaneous interpretation services for the US Department of State – CBP ISIT Customs Inspection Training Program.

76. February 7-11, 2015 – Puerto Barrios, Guatemala Provided simultaneous interpretation services for the US Department of State – FDA Foreign Inspection Trip.

77. January 29 & 30, 2015 – Orlando, FL Provided simultaneous interpretation and technical support services for the National Mango Board (NMB) FMO Team Building Workshop.

78. January 14, 2015 – Orlando, FL Provided simultaneous interpretation and technical support services for the National Mango Board (NMB) New Board Member Orientation Meeting.

79. January 5 & 6, 2015 – Las Vegas, NV Provided simultaneous interpretation services for the SONY Corporation's "2015 Latin America Region Dealers and Distributors Meeting".

80. December 6 - 13, 2014 Provided simultaneous interpretation services for the US Department of State Program – "Confronting Cross Border Organized Crime".

81. December 1 & 2, 2014 – Washington, DC Provided simultaneous interpretation services for the US - Mexico Inter Parliamentary Group Meeting.

82. November 18 - 20, 2014 – Orlando, FL Provided simultaneous interpretation and technical support services for the National Mango Board (NMB) Board Meeting.

83. November 10 - 14, 2014 – Washington, DC Provided simultaneous interpretation services for the PAHO - Pan American Health Organization's "2014 Regional Managers' Meeting".

84. October 18, 2014 – Anaheim, CA Provided simultaneous interpretation and technical support services for the National Mango Board (NMB) Industry Reception Meeting.

85. September 16 - 18, 2014 – Washington, DC Provided simultaneous interpretation and technical support services for the National Mango Board (NMB) Board Meeting.

86. August 5 - 13, 2014 – Puerto Montt, Chile Provided simultaneous interpretation services for the US Department of State – FDA Foreign Inspection Trip.

87. June 9 - 12, 2014 – Los Angeles, CA Provided simultaneous interpretation services for the E3 Gaming Expo & Conference.

88. May 16, 2014 – Rio Rico, AZ Provided simultaneous interpretation and technical support services for the CSG-Council of State Governments's "AZ - Sonora Regional Economic Competitiveness Forum".

89. April 12 - May 3, 2014 Provided simultaneous interpretation services for the US Department of State: "Combating International Crime" Western Hemisphere Regional Project.

90. April 1-3, 2014 – New Orleans, LA Provided simultaneous interpretation and technical support services for the Eighth Meeting of the CAFTA-DR Environmental Affairs Council.

91. March 31, 2014 – New Orleans, LA Provided simultaneous interpretation and technical support services for the CAFTA-DR Points of Contact Meeting.

92. March 12 & 13, 2014 – Tubac, AZ Provided simultaneous interpretation and technical support services for the FPAA - Fresh Produce Association's "America Trades Produce Conference".

93. March 6, 2014 – Philadelphia, PA Provided simultaneous interpretation and technical support services for the National Mango Board's "Mango Food Safety Conference".

94. March 3-5, 2014 – Philadelphia, PA Provided simultaneous interpretation and technical support services for the Board Meeting of the National Mango Board.

95. February 26, 2014 – Nogales, Sonora, Mexico Provided simultaneous interpretation and technical support services for the International Boundary & Water Commission (IBWC) Meeting.

96. February 15 - 21, 2014 – Retalhuleu, Guatemala Provided simultaneous interpretation services for the US Department of State – FDA Foreign Inspection Trip.

97. January 30 & 31, 2014 – Orlando, FL Provided simultaneous interpretation and technical support services for the National Mango Board "FMO- Foreign Mango Association Training Workshop".

98. January 22 & 23, 2014 – Orlando, FL Provided simultaneous interpretation and technical support services for the National Mango Board "New Member Orientation" Meeting.

99. December 2 & 3, 2013 – Washington, DC Provided simultaneous interpretation services for the US Department of State – CAFTA-DR Environmental Coordination Committee Meeting.

100. November 18-20, 2013 – Orlando, FL Provided simultaneous interpretation and technical support services for the National Mango Board Board Meeting.

101. November 4 & 5, 2013 – Los Cóbanos, El Salvador Provided simultaneous interpretation services for the Sustainable Harvest "Let's Talk Roya!" Conference.

102. October 31 - November 2, 2013 – Los Cóbanos, El Salvador Provided simultaneous interpretation services for the Sustainable Harvest "Let's Talk Coffee!" Conference.

103. October 27, 28 & 30, 2013 – Los Cóbanos, El Salvador Provided simultaneous interpretation services for the Sustainable Harvest Pre-Conference Staff Meeting.

104. October 9, 2013 – Washington, DC Provided simultaneous interpretation services for the IDB-Inter-American Development Bank "Meeting of the Ministers of Finance from Central America, Panama, & the Dominican Republic".

105. September 20, 2013 – Baltimore, MD Provided simultaneous interpretation services for the Pharmacopoeia Global Summit.

106. September 19, 2013 – Washington, DC Provided simultaneous interpretation services for the OAS - Organization of American States: Seminario "La Apuesta por la Paridad: Democratizando el Sistema Político de América Latina".

107. September 10-12, 2013 – Washington, DC Provided simultaneous interpretation and technical support services for the National Mango Board Board Meeting.

108. July 31, 2013 – Washington, DC Provided simultaneous interpretation services for the OAS – Organization of American States: Secretariat for Political Affairs' Meeting with Electoral Observation Missions' Donor Countries.

109. July 30, 2013 – Washington, DC Provided simultaneous interpretation services for the OAS – Organization of American States: Secretariat for Political Affairs' Meeting on Electoral Observation Missions and OAS Efforts in Promoting Political Dialogue in Paraguay.

110. July 22-26, 2013 – Washington, DC Provided simultaneous interpretation services for the US Department of State: Tariff Rate Quota Administration Study Tour / Dominican Republic and Panama.

111. June 13 & 14, 2013 – Washington, DC Provided simultaneous interpretation services for the IDB – Inter-American Development Bank: Development Challenges and Policies in Latin America and the Caribbean Conference.

112. May 1-3, 2013 – Edmonton, Alberta, Canada Provided simultaneous interpretation and technical support services for the CONAHEC - XV North American Higher Education Conference .

113. March 6, 2013 – McAllen, TX Provided simultaneous interpretation and technical support services for the National Mango Board "Mango Food Safety Conference" .

114. March 5, 2013 – McAllen, TX Provided simultaneous interpretation and technical support services for the National Mango Board Board Meeting .

115. February 21, 2013 – Orlando, FL Provided simultaneous interpretation and technical support services for the NMB - National Mango Board's "Crisis Communications Training Workshop" for NMB Board Members.

116. February 20, 2013 – Orlando, FL Provided simultaneous interpretation and technical support services for the NMB - National Mango Board's New Member Orientation Meeting.

117. February 15, 2013 – Orlando, FL Provided simultaneous interpretation and technical support services for the NMB - National Mango Board's "Crisis Management Workshop for Foreign Mango Organizations."

118. January 31 & February 1, 2013 – Washington, DC Provided simultaneous interpretation services for the IDB – Inter-American Development Bank: SAFE Framework for Secure Customs.

119. December 3, 2012 – Washington, DC Provided simultaneous interpretation services for the IDB – Inter-American Development Bank: Informal Mining Seminar.

120. November 29, 2012 – Washington, DC Provided simultaneous interpretation services for the US Department of State: US Trade Representative – Trade Promotion Agreement – El Salvador Meeting.

121. November 28, 2012 – Washington, DC Provided simultaneous interpretation services for the US Department of State: US Trade Representative – Trade Promotion Agreement – Peru Meeting.

122. November 26, 2012 – Washington, DC Provided simultaneous interpretation services for the OAS – Organization of American States: CIDI/GT/RM Ad Hoc Working Group - Mandates on Integral Development .

123. November 15, 2012 – Tampa, FL Provided simultaneous interpretation and technical support services for the PMA - Produce Marketing Association's "Food Safety Workshop" .

124. November 13 & 14, 2012 – Orlando, FL Provided simultaneous interpretation and technical support services for the National Mango Board Board Meeting .

125. November 7 & 8, 2012 – Washington, DC Provided simultaneous interpretation services for the US Department of State: DEA SOD – Special Operations Division Meeting.

126. October 27, 2012 – Anaheim, CA Provided simultaneous interpretation and technical support services for the National Mango Board – PMA Fresh Summit.

127. October 16 - 18, 2012 – Louisville, KY Provided simultaneous interpretation and technical support services for the NAPPO – North American Plant Protection Organization Conference.

128. October 4 - 7, 2012 – Rio Negro, Antioquia, Colombia Provided simultaneous interpretation and technical support services for the Sustainable Harvest Let's Talk Coffee Conference.

129. September 24 & 25, 2012 – Washington, DC Provided simultaneous interpretation for the IDB – Inter-American Development Bank: Agricultural Financial Risk Management.

130. September 17, 2012 – Washington, DC Provided simultaneous interpretation for the OAS – Organization of American States: CIDI/GT/RM Ad Hoc Working Group - Mandates on Integral Development.

131. September 11-13, 2012 – Washington, DC Provided simultaneous interpretation and technical support services for the National Mango Board Board Meeting.

132. September 6, 2012 – Washington, DC Provided simultaneous interpretation services for the North American Free Trade Agreement: NAFTA Review Panel.

133. July 29 - August 1, 2012 – Washington, DC Provided simultaneous interpretation services for the US Department of State: Ending Gender Based Violence Conference.

134. July 25 & 26, 2012 – Washington, DC Provided simultaneous interpretation services for the US Department of State: Division of Environment & Trade OES.

135. July 16-18, 2012 – Quantico, VA Provided simultaneous interpretation services for the US Department of State: DEA Sensitive Investigation Unit Training Program.

136. June 22, 2012 – Washington, DC Provided simultaneous interpretation services for the US Department of State: US – Mexico Joint Operations Planning Conference - Pentagon.

137. May 30 & 31, 2012 – Washington, DC Provided simultaneous interpretation services for the OAS – Organization of American States: CICAD/GEPLA - Meeting for the Group of Experts for the Control on Money Laundering.

138. May 29, 2012 – Washington, DC Provided simultaneous interpretation services for the US Department of State: US Panama Trade Promotion Agreement.

139. May 18 & 19, 2012 – St. Louis, MO Provided simultaneous interpretation services for the Monavie Corp. Convention.

140. May 17, 2012 – Washington, DC Provided simultaneous interpretation services for the Inter-American Development Bank – IDB: Seminar on Venture Capital.

141. May 15, 2012 – Washington, DC Provided simultaneous interpretation services for the OAS – Organization of American States: CP/CP - Permanent Council - Protoculary Meeting.

142. May 10 & 11, 2012 – Washington, DC Provided simultaneous interpretation services for the US Department of State: US-Mexico Defense Bilateral Working Group – Pentagon

143. May 9, 2012 – Washington, DC Provided simultaneous interpretation services for the OAS – Organization of American States: OSG/SCA - Summits of the Americas Secretariat.

144. April 20, 2012 – Portland, OR Provided simultaneous interpretation and technical support services for the Sustainable Harvest Coffee Meeting.

145. March 27-29, 2012 – Petrolina, Pernambuco, Brazil Provided simultaneous interpretation and technical support services for the National Mango Board Board Meeting .

146. March 22 & 23, 2012 – Tubac, AZ Provided simultaneous interpretation services for the America Trades Produce Conference .

147. March 11 & 12, 2012 – Tucson, AZ Provided simultaneous interpretation and technical support services for the Carrier Corp. Sales Conference .

148. February 16, 2012 – Washington, DC Provided simultaneous interpretation services for the OAS – Organization of American States: IIICA/IIASFDA - Third Annual Symposium for Facilitating the Development of Agricultural Insurance in the Americas .

149. February 10, 2012 – Washington, DC Provided simultaneous interpretation services for the OAS – Organization of American States: CEPCIDI/SPCSD - Subcommittee on Partnership for Development Policies

150. February 9, 2012 – Washington, DC Provided simultaneous interpretation services for the OAS – Organization of American States: OSG/SCA - Summits of the Americas Secretariat - Policy Dialogue Consultations with Social Actors on the themes of the VI Summit of the Americas. There will be working groups focused on each theme.

151. February 8, 2012 – Washington, DC Provided simultaneous interpretation services for the OAS – Organization of American States: SG/SRE/DAI Department of International Affairs Policy Roundtable in Preparation of the Americas

152. February 7, 2012 – Washington, DC Provided simultaneous interpretation services for the OAS – Organization of American States: SEDI/DSDE/CIMT - Planning Meeting 2012-2013 of the OAS Inter-American Conference of Ministers of Labor (IACML)

153. February 6, 2012 – Washington, DC Provided simultaneous interpretation services for the OAS – Organization of American States: CEPCIDI/GT/WG – Working Group of CEPCIDI to Strengthen the Inter-American Council for Integral Development .

154. December 1 & 2, 2011 – El Centro, CA Provided simultaneous interpretation services for the US Department of State – US Border Patrol CBSCAN Working Group .

155. November 14-16, 2011 – Orlando, FL Provided simultaneous interpretation and technical support services for the National Mango Board – Board Meeting .

156. November 7-9, 2011 – Washington, DC Provided simultaneous interpretation services for the OAS - Organization of American States SIRG Working Group Meeting .

157. November 3, 2011 – Tubac, AZ Provided simultaneous interpretation and technical support services for the FPAA-Fresh Produce Association of the Americas' Annual Conference .

158. October 15, 2011 – Atlanta, GA Provided simultaneous interpretation services for the National Mango Board during the Produce Marketing Association's Fresh Summit Event .

159. September 27-29, 2011 – Washington, DC Provided simultaneous interpretation services for the OAS - Organization of American States CICAD – XIII Demand Reduction Expert Group Meeting .

160. September 26, 2011 – Washington, DC Provided simultaneous interpretation services for the OAS - Organization of American States CEPCIDI – Joint Working Group of CEPCIDI on Existing Mechanisms for Disaster Prevention and Response and Humanitarian Assistance .

161. September 19-22, 2011 – Washington, DC Provided simultaneous interpretation and technical support services for the IEC – International Egg Council Conference .

162. September 11 – 15, 2011 – La Quinta, CA Provided simultaneous interpretation and technical support services for the National Mango Board – Board Meeting .

163. August 14 – 24, 2011 Provided simultaneous interpretation services for the Department of State – Biotechnology and Intellectual Property Program .

164. July 16 – 23, 2011 – Washington, DC & Oklahoma City, OK Provided simultaneous interpretation services for the Department of State – Aviation Accident Investigation Program .

165. July 14 & 15, 2011 – Rio Rico, AZ Provided simultaneous interpretation and technical support services for the IBWC-CILA San Pedro/Santa Cruz Rivers Trans-boundary Aquifers Meeting .

166. July 1, 2011 – Santa Fe, NM Provided simultaneous conference interpretation and technical support services for the Department of State – DHS Executive Steering Committee Meeting .

167. May 23 – June 3, 2011 – Monterey, CA Provided instruction services for CYRACOM Inc. as part of the Translation and Interpretation Training of Trainers Program for Military Linguists held at the Defense Language Institute.

168. April 18, 2011 – Washington, DC Provided simultaneous interpretation services for the OAS - Organization of American States – Seminario del Sector Privado sobre la Democracia - El Rol del Sector Privado y otros factores en el Apoyo a la Democracia Meeting

169. April 15, 2011 – Washington, DC Provided simultaneous interpretation services for the Organization of American States – XII Meeting of the Consultative Committee of the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Related Materials (CIFTA)

170. April 14, 2011 – Washington, DC Provided simultaneous interpretation services for the Organization of American States – Annual Meeting of the Board of External Auditors

171. March 28 – April 8, 2011 – Baltimore, MD Provided instruction services for CYRACOM Inc. as part of the Translation and Interpretation Program for Military Linguists held at the Maritime Training Institute.

172. March 15 & 16, 2011 – Antigua, Guatemala Provided simultaneous interpretation and technical support services for the National Mango Board's Board Meeting.

173. February 23, 2011 – Orlando, FL Provided simultaneous interpretation and technical support services for the National Mango Board's Board Orientation Meeting.

174. January 21, 2011 – Washington, DC Provided simultaneous interpretation services for the Organization of American States.

175. January 18 – 20, 2011 – Washington, DC Provided simultaneous interpretation services for the Organization of American States – Working Group to Prepare the Draft American Declaration on the Rights of Indigenous Peoples.

176. January 15 – 17, 2011 – Washington, DC Provided simultaneous interpretation services for the Organization of American States – Preview Meeting of the Indigenous Representatives - XIII Meeting of Negotiations in the Quest for Points of Consensus. November 27 – December 11, 2010

177. November 27 – December 11, 2011 Provided simultaneous interpretation services for the US Department of State's "Science Entrepreneurship Program".

178. November 16-18, 2010 – Orlando, FL Provided simultaneous interpretation and technical support services for the National Mango Board's Board Meeting.

179. October 25, 2010 – Washington, DC Provided simultaneous interpretation services for the OAS - Organization of American States – Meeting of the Permanent Executive Committee of the Inter-American Council for for Integral Development.

180. October 22, 2010 – Washington, DC Provided simultaneous interpretation services for the OAS - Organization of American States - Meeting of the Informal Working Group for the XXXV Assembly of Delegates of the Inter-American Commission of Women.

181. October 16, 2010 – Orlando, FL Provided simultaneous interpretation and technical support services for the NMB Mango Industry Reception and Meeting.

182. September 14 & 15, 2010 – Hoboken, NJ Provided simultaneous interpretation and technical support services for the National Mango Board's Board Meeting.

183. August 7 – 18, 2010 Provided simultaneous interpretation services for the US Department of State's "Economic Journalism in the US" Program.

184. July 3 – 24, 2010 Provided simultaneous interpretation services for the US Department of State's "STEM Education" Program.

185. May 16 – 26, 2010 – Dallas, TX / Chicago, IL / Washington, DC Provided simultaneous interpretation services for the AAAE-American Association of Airport Executives "Airport Modernization" Program.

186. April 3- 24, 2010 Provided simultaneous interpretation services for the US Department of State's "Maximizing Energy Efficiency" Program.

187. March 29, 2010 – Nashville, TN Provided simultaneous interpretation and technical support services for the APHIS Rabies Management Group Meeting.

188. March 10 & 11, 2010 – Guadalajara, Mexico Provided simultaneous interpretation and technical support services for the National Mango Board Board Meeting.

189. January 24, 2010 – February 5, 2010 Provided simultaneous interpretation and technical support services for the US Department of State's "Fighting Financial Crime" Program. Regional delegation comprised of representatives from Argentina, Paraguay, Costa Rica, Mexico, Venezuela, Colombia, Peru, Haiti & Dominican Republic met with counterparts in the US to discuss issues related to Money Laundering, Terrorism, Financial Crimes, Fraud, Identity Theft, etc.

190. November 24, 2009 – Puerto Vallarta, Mexico Provided simultaneous interpretation and technical support services for the National Mango Board Outreach Meeting.

191. November 17-18, 2009 – Orlando, FL Provided simultaneous interpretation and technical support services for the National Mango Board – Board Meeting.

192. November 13, 2009 – Piura, Peru Provided simultaneous interpretation and technical support services for the National Mango Board Outreach Meeting.

193. October 3, 2009 – Anaheim, CA Provided simultaneous interpretation and technical support services for the National Mango Board’s “Meeting and Reception for the Mango Industry” Event.

194. September 23, 2009 – Rio Rico, AZ Provided simultaneous interpretation and technical support services for the GNEB – Good Neighbor Environmental Board Meeting.

195. September 17, 2009 – Guayaquil, Ecuador Provided simultaneous interpretation and technical support services for the National Mango Board Outreach Meeting .

196. September 10 & 11, 2009 – Las Vegas, NV Provided simultaneous interpretation and technical support services for the National Mango Board – Board Meeting .

197. September 3, 2009 – Tamarindo, Costa Rica Provided simultaneous interpretation services for the 4life Distributors Conference .

198. July 25 – August 8, 2009 Provided simultaneous interpretation services for the US Department of State / Institute for International Education “Paraguay Biofuels Program”.

199. June 27-30, 2009 – Memphis, TN Provided simultaneous interpretation and technical support services for the National Civil Rights Museum Conference .

200. June 17 & 18, 2009 – Tempe, AZ Provided simultaneous interpretation and technical support services for the Woodrow Wilson Center for International Scholars “The US–Mexico Border” Conference .

201. April 22, 2009 – Phoenix, AZ Provided simultaneous interpretation and technical support services for the USDA-APHIS North American Rabies Management Team Meeting .

202. April 17, 2009 – Hermosillo, Sonora, Mexico Provided simultaneous interpretation and technical support services for the AALPUM Table Grape Producer Association Conference

203. March 24 & 25, 2009 – San Juan, Puerto Rico Provided simultaneous interpretation and technical support services for the National Mango Board – Board Meeting .

204. March 5, 2009 – Tamarindo, Costa Rica Provided simultaneous interpretation services for the 4Life Corporation Conference .

205. January 28 & 29, 2009 – Phoenix, AZ Provided simultaneous interpretation services for the USDA-APHIS BNC/Tick/TB Bi-National Committee Meeting .

206. November 19 & 20, 2008 – Orlando, FL Provided simultaneous interpretation and technical support services for the National Mango Board Annual Board Meeting .

207. October 25, 2008 – Orlando, FL Provided simultaneous interpretation and technical support services for the Produce Marketing Association’s Mango Industry Meeting and Reception .

208. October 15 & 16, 2008 – Scottsdale, AZ Provided simultaneous interpretation and technical support services for the Liebert-Emerson Network Power Corp. International Sales Conference.

209. September 23-26, 2008 – Dallas, TX Provided simultaneous interpretation and technical support services for the National Mango Board Committee and Board Meetings.

210. August 26, 2008 – Nogales, Sonora, Mexico Provided simultaneous interpretation and technical support services for the ITT Corporation's Employee/Management Meeting.

211. August 22, 2008 – Los Mochis, Sinaloa, Mexico Provided simultaneous interpretation and technical support services for the National Mango Board Industry Outreach Meeting.

212. July 26 to August 1, 2008 – San Francisco, CA Provided simultaneous interpretation services for the AFSCME National Convention.

213. July 9, 2008 – Guatemala, Guatemala Provided simultaneous interpretation and technical support services for the National Mango Board Industry Outreach Meeting.

214. June 28, 2008 – Tucson, AZ Provided simultaneous interpretation and technical support services for the Child and Family Resources' Child Care Conference.

215. June 14, 2008 – Sierra Vista, AZ Provided simultaneous interpretation and technical support services for the Child and Family Resources' Child Care Conference.

216. May 5-9, 2008 – Tucson, AZ Provided simultaneous interpretation and technical support services for the MINTEC Mining Software Solutions Conference.

217. April 18, 2008 – Hermosillo, Sonora, Mexico Provided simultaneous interpretation and technical support services for the Sonora Table Grape Producer Association's "Sonora Grape Summit" Conference.

218. April 2, 2008 – Rio Rico, AZ Provided simultaneous interpretation and technical support services for the EPA Border 2012 – AZ/Sonora Waste and Enforcement Task Force Meeting.

219. March 10-12, 2008 – Phoenix, AZ Provided simultaneous interpretation and technical support services for the Council of State Governments' – "Bi-National Forum Toward a Multidisciplinary Approach Addressing Smuggling".

220. March 5 & 6, 2008 – Houston, TX Provided simultaneous interpretation and technical support services for the National Mango Board's Board Meeting.

221. February 13, 2008 – Nogales, Sonora, Mexico Provided simultaneous interpretation and technical support services for the University of Arizona "Integrated Pest Management Program" Seminar.

222. February 10 – 12, 2008 – Orlando, FL Provided simultaneous interpretation services for the World Aquaculture Society's North America Convention .

223. November 28 & 29, 2007 – Tubac, AZ Provided simultaneous interpretation and technical support services for the Annual National Mango Board - Board Meeting .

224. November 12 & 14, 2007 – Puerto Vallarta, Mexico Provided simultaneous interpretation and technical support services for the National Mango Board Research Committee Meeting .

225. October 26, 2007 – Guayaquil, Ecuador Provided simultaneous interpretation and technical support services for the National Mango Board Outreach Meeting .

226. October 18 & 19, 2007 – Orlando, FL Provided simultaneous interpretation and technical support services for the National Mango Board Research Committee's Workshop .

227. October 13, 2007 – Houston, TX Provided simultaneous interpretation and technical support services for the National Mango Board Outreach Meeting at the Produce Managers Association's Convention .

228. October 1 & 2, 2007 – Phoenix, AZ Provided simultaneous interpretation and technical support services for the Regional Center for Border Health's "10th Annual Health Promotoras Conference" .

229. September 25-27, 2007 – Dallas, TX Provided simultaneous interpretation and technical support services for the National Mango Board's Committee Meetings .

230. August 23, 2007 – Phoenix, AZ Provided simultaneous interpretation and technical support services for the The BASHA's Family of Food Stores "Gear Up" Convention .

231. August 22, 2007 – Nogales, AZ Provided simultaneous interpretation and technical support services for the EPA Border 2012 - Air Quality in Ambos Nogales Task Force .

232. August 16, 2007 – Guatemala, Guatemala Provided simultaneous interpretation and technical support services for the National Mango Board Outreach Meetings .

233. August 15, 2007 – Comayagua, Honduras Provided simultaneous interpretation and technical support services for the National Mango Board Outreach Meetings .

234. July 12 & 13, 2007 – Miami, FL Provided simultaneous interpretation and technical support services for the National Mango Board's Board Meeting .

235. May 22 & 23, 2007 – San Juan, PR Provided simultaneous interpretation and technical support services for the National Mango Board's Board Meeting .

236. May 12, 2007 – Tucson, AZ Provided simultaneous interpretation services for the Child & Family Resources, Inc Childcare Conference .

237. May 8 - 10, 2007 – Phoenix, AZ Provided simultaneous interpretation services for the USDA - Animal and Plant Health Inspection Service (APHIS) Conference on “Cactoblastis Cactorum – The Cactus Moth” .

238. April 23-25, 2007 – Nashville, TN Provided simultaneous interpretation and technical support services for the International Truck & Engine Corporation’s Annual Convention .

239. April 20, 2007 – Hermosillo, Sonora, Mexico Provided simultaneous interpretation and technical support services for the Sonora Table Grape Producers Association’s Conference .

240. April 16 & 17, 2007 – Tucson, AZ Provided simultaneous interpretation and technical support services for the MINTEC Mining Corporation Conference .

241. March 28 & 29, 2007 – McAllen, TX Provided simultaneous interpretation and technical support services for the National Mango Board’s Research Committee Meeting .

242. February 27 - March 2, 2007 – San Antonio, TX Provided simultaneous interpretation services for the World Aquaculture Society’s North America Convention .

243. February 20 & 21, 2007 – Piura, Peru Provided simultaneous interpretation and technical support services for the National Mango Board’s Board Meeting .

244. February 14, 2007 – Nogales, Sonora, Mexico Provided simultaneous interpretation and technical support services for the EPA Border 2012: Arizona / Sonora Waste Management Task Force .

245. December 5 & 6, 2006 – San Francisco, CA Provided simultaneous interpretation and technical support services for the National Mango Board’s Annual Board Meeting .

246. November 16, 2006 – Puerto Peñasco, Sonora, Mexico Provided simultaneous interpretation and technical support services for the Arizona – Sonora Commission Economic Development Committee .

247. November 13 & 14, 2006 – Mexicali, Baja California, Mexico Provided simultaneous interpretation and technical support services for the EPA: Imperial Valley-Mexicali Emergency Preparedness and Response Task Force Meeting .

248. October 17-19, 2006 – Fort McDowell, AZ Provided simultaneous interpretation and technical support services for the 30th North American Plant Protection Organization (NAPPO) Conference on Phytosanitary Systems and Plant Health .

249. October 5-7, 2006, Guayaquil, Ecuador Provided simultaneous interpretation and technical support services for the National Mango Board’s Board Meeting .

250. September 28 & 29, 2006 – Fredericton, New Brunswick, Canada Provided simultaneous interpretation services for the International Consortium for Education and Economic Development .

251. August 23 & 24, 2006 – Mesa, AZ Provided simultaneous interpretation and technical support services for the BASHA'S Family of Food Stores “Round UP” Sales Meeting .

252. August 19, 2006 – Tempe, AZ Provided simultaneous interpretation and technical support services for the SYNERGY Worldwide Sales Conference .

253. August 15, 2006 – Tubac, AZ Provided simultaneous interpretation and technical support services for the Council of State Governments – CSGWest – “3rd Border Economic and Development Forum” .

254. August 10, 2006 – Tucson, AZ Provided simultaneous interpretation and technical support services for the Environmental Protection Agency’s Border 2012 AZ/SON Emergency Preparedness and Response Task Force .

255. July 6 & 7, 2006 – Miami, FL Provided simultaneous interpretation and technical support services for the National Mango Board’s Board Meeting .

256. May 31 – June 1, 2006 – Tucson, AZ Provided simultaneous interpretation and technical support services for the FHWA-Federal Highway Administration’s US/Mexico Joint Working Committee Meeting .

257. May 13, 2006 – Sierra Vista, AZ Provided simultaneous interpretation and technical support services for the Child & Family Resources, Inc. Child Care Conference .

258. May 6, 2006 – Puerto Peñasco, Sonora, Mexico Provided simultaneous interpretation and technical support services for the Estrategias S.A. de C.V. “Investing in Mexico” Seminar .

259. May 4, 2006 – Agua Prieta, Sonora, Mexico Provided simultaneous interpretation and technical support services for the Environmental Protection Agency’s Border 2012 AZ/SON Emergency Preparedness and Response Task Force .

260. April 10 – 12, 2006 – San Antonio, TX Provided simultaneous interpretation and technical support services for the International Truck & Engine Corporation Sales Meeting .

261. March 28, 2006 – Yuma, AZ Provided simultaneous interpretation and technical support services for the Department of State U.S.-Mexico Commission on Bridges and Border Crossings .

262. March 21, 2006 – Rio Rico, AZ Provided simultaneous interpretation and technical support services for the Sonora Grape Association Meeting .

263. March 12 – 15, 2006 – Scottsdale, AZ Provided simultaneous interpretation and technical support services for the Intel Sales Summit Meeting .

264. March 7, 2006 – Houston, TX Provided simultaneous interpretation and technical support services for the National Mango Board's Marketing Committee Meeting .

265. February 27 – March 3, 2006 – Denver, CO Provided simultaneous interpretation services for the HEADSTART HISPANIC INSTITUTE .

266. February 26, 2006 – Nogales, AZ Provided simultaneous interpretation and technical support services for the Mexican Consulate Border Liaison Mechanism Meeting .

267. February 25, 2006 – Tempe, AZ Provided simultaneous interpretation and technical support services for the Salt River Project Safety Training Course .

268. February 16 & 17, 2006 – Los Angeles, CA Provided simultaneous interpretation and technical support services for the National Mango Board Meeting .

269. February 14, 2006 – Nogales, AZ Provided simultaneous interpretation and technical support services for the International Boundaries & Water Commission Meeting .

270. February 7-10, 2006 – Carefree, AZ Provided simultaneous interpretation and technical support services for the Challenger Corporation Tractor Sales Seminar .

271. January 20 & 21, 2006 – Tucson, AZ Provided simultaneous interpretation and technical support services for the Joel M. Childers Annual Memorial Lecture Series – 4th Annual Advances in Gynecological Surgery & Women's Healthcare .

272. January 16-18, 2006 – Puerto Peñasco, Sonora, Mexico Provided simultaneous interpretation and technical support services for the Project Management Workshop sponsored by the Las Palomas Development Corp.

273. January 14, 2006 – Portland, OR Provided simultaneous interpretation services for the American Federation of State, County & Municipal Employees (AFSCME) Council 75 Workshop for Childcare Workers .

274. December 5 & 6, 2005 – Houston, TX Provided simultaneous interpretation and technical support services for the National Mango Board's Marketing Sub-committee Meeting .

275. November 30 – December 3, 2005 – Hermosillo, Sonora, Mexico Provided simultaneous interpretation and technical support services for the SyAqua Aquaculture Conference .

276. November 29, 2005 – Sells, AZ Provided simultaneous interpretation and technical support services for the Border 2012 Emergency Preparedness and Response Task Force .

277. November 9 & 10, 2005 – Atlanta, GA Provided simultaneous interpretation and technical support services for the National Mango Board's Board Meeting .

278. November 5 & 6, 2005 – San Jose, CA Provided simultaneous interpretation services for the AFSCME Regional Conference .

279. November 3, 2005 – Nogales, AZ Provided simultaneous interpretation and technical support services for the Dept. of Homeland Security's US VISIT Program Meeting .

280. October 27 & 28, 2005 – Scottsdale, AZ Provided simultaneous interpretation services for the Pfizer, Inc. Conference .

281. October 24 & 25, 2005 – Hermosillo, Sonora Provided simultaneous interpretation and technical support services for the University of Sonora's "Saltwater Intrusion into Coastal Aquifers" Workshop .

282. October 20, 2005 – Nogales, Sonora Provided simultaneous interpretation and technical support services for the International Boundary and Water Commission Meeting .

283. October 12, 2005 – Nogales, Sonora Provided simultaneous interpretation and technical support services for the Amphenol Optimize Mfg. seminar: "The 7 Habits of Highly Effective Families".

284. October 10-12, 2005 – Phoenix, AZ Provided simultaneous interpretation and technical support services for the Liebert Corp. Annual Sales Meeting .

285. September 20 & 21, 2005 – Houston, TX Provided simultaneous interpretation and technical support services for the The National Mango Board's Board Meeting .

286. September 7, 2005 – Nogales, Sonora Provided simultaneous interpretation and technical support services for the AZ/SON Emergency Preparedness and Response Task Force Meeting .

287. August 31, 2005 – Nogales, Sonora Provided simultaneous interpretation and technical support services for the Sonora Maquiladoras Association's Seminar on: The KAIZEN Production Model .

288. August 25, 2005 – Phoenix, AZ Provided simultaneous interpretation and technical support services for the Bashas Family of Stores Annual Conference .

289. August 24 & 25, 2005 – Phoenix, AZ Provided simultaneous interpretation and technical support services for the 8th Annual Health Layworkers / Promotores Conference .

290. August 23, 2005 – Nogales, Sonora Provided simultaneous interpretation and technical support services for the Ambos Nogales Air Quality Task Force .

291. August 11, 2005 – Nogales, AZ Provided simultaneous interpretation and technical support services for the Department of Homeland Security - US VISIT Program meeting .

292. August 3, 2005 – Nogales, AZ Provided simultaneous interpretation and technical support services for a meeting of the FPAA – Fresh Produce Association of the Americas .

293. July 23 – 31, 2005 Provided simultaneous interpretation services for the U.S. Department of State: American Council of Young Political Leaders' Venezuela Program .

294. July 13, 2005 – Nogales, AZ Provided simultaneous interpretation and technical support services for the Department of Homeland Security - US VISIT Program .

295. June 29, 2005 – Tucson, AZ Provided simultaneous interpretation and technical support services for the Pima Association of Governments' Bio-diesel Workshop .

296. June 16 & 17, 2005 – Tucson, AZ Provided simultaneous interpretation and technical support services for the Department of Homeland Security - US VISIT Program meeting .

297. June 8, 2005 – Nogales, Sonora Provided simultaneous interpretation and technical support services for the AZ/SON Emergency Preparedness and Response Task Force Meeting .

298. May 24, 2005 – Mexicali, BC Provided simultaneous interpretation and technical support services for the Signing Ceremony of the Imperial County/Mexicali Emergency Preparedness and Response Plan .

299. May 17, 2005 – Scottsdale, AZ Provided simultaneous interpretation and technical support services for the QWEST Executive Meeting .

300. May 14, 2005 – Sierra Vista, AZ Provided simultaneous interpretation and technical support services for the Child and Family Resources Child Care Conference .

301. April 21, 2005 – Nogales, Sonora Provided simultaneous interpretation and technical support services for the Ambos Nogales Air Quality Task Force .

302. April 19 & 20, 2005 – Cd. Obregon, Sonora, Mexico Provided simultaneous interpretation and technical support services for the State of Sonora Department of Agriculture “Business Opportunities in Sonora” Conference .

303. April 11 & 12, 2005 – Las Vegas, NV Provided simultaneous interpretation services for the International Truck & Engine Corporation Conference .

304. April 8, 2005 – Nogales, Sonora Provided simultaneous interpretation and technical support services for the AZ/SON Children's Environmental Health Task Force meeting .

305. March 8, 2005 – Nogales, AZ Provided simultaneous interpretation and technical support services for the Border 2012 Emergency Preparedness and Response Task Force Meeting .

306. March 2 & 3, 2005 – Dallas, TX Provided simultaneous interpretation and technical support services for the Home Depot Store Manager Convention.

307. February 22, 2005 – Nogales, Sonora, Mexico Provided simultaneous interpretation and technical support services for the US Consulate Border Security Meeting.

308. February 7-11, 2005 – Carefree, AZ Provided simultaneous interpretation and technical support services for the Challenger Inc. Sales Training Seminar.

309. January 31–February 4, 2005 – Albuquerque, NM Provided simultaneous interpretation services for the HEADSTART Hispanic Institute's National Conference on Migrant & Temporary Worker Families.

310. January 25, 2005 – Nogales, AZ Provided simultaneous interpretation and technical support services for the US VISIT Program's Stakeholders meeting.

311. January 18-20, 2005 – New Orleans, LA Provided simultaneous interpretation and technical support services for the AQUACULTURE AMERICA 2005 Conference.

312. December 18, 2004 – Tucson, AZ Provided simultaneous interpretation and technical support services for the JW MARRIOTT STARPASS RESORT Employee Orientation meeting.

313. December 6 & 7, 2004 – San Carlos, Sonora, Mexico Provided simultaneous interpretation and technical support services for the SyAqua Shrimp Farming Conference.

314. November 5, 2004 – Douglas, AZ Provided simultaneous interpretation and technical support services for the AZ-Mexico Commission – Border Issues Committee Meeting on the Department of Homeland Security's US VISIT Program.

315. November 4, 2004 – Nogales, Sonora, Mexico Provided simultaneous interpretation and technical support services for the AZ-Mexico Commission – Border Issues Committee Meeting on the Department of Homeland Security's US VISIT Program.

316. October 27 & 28, 2004 – Douglas, AZ Provided simultaneous interpretation and technical support services for the Good Neighbor Environmental Board Conference.

317. October 10-13, 2004 – Columbus, OH Provided simultaneous interpretation and technical support services for the LIEBERT CORP.'s "IT's Our Space" Sales Conference.

318. October 8, 2004 – Scottsdale, AZ Provided simultaneous interpretation services for the 2nd US-MEXICO Cross-Border Energy Workshop.

319. September 23 – October 2, 2004 Provided simultaneous interpretation and technical support services for the US Embassy In Argentina's "Building Citizens, Communities, Public Policy and Sustainable Leadership" Program. Eight leaders representing three different Tribal nations

from Argentina met with counterpart Tribal leaders in the U.S. to discuss a variety of issues including Tribal sovereignty, economic development, cultural tourism and preservation, land and water rights, etc.

320. September 23, 2004 – Nogales, AZ Provided simultaneous interpretation and technical support services for the BORDER 2012 AZ/Sonora Water Task Force Meeting.
321. August 31, 2004 – Tucson, AZ Provided simultaneous interpretation and technical support services for the “COJUMA VII” International Conference. Event consisted of meetings involving military representatives from member countries of the Military Legal Committee of the Americas (COJUMA - Consejo Jurídico Militar para las Américas). The general topic of discussion surrounded the completion of a manual of standard military codes of justice. Additionally, the group discussed the possibility of establishing itself as a formal advisory body to military forces all over the world.
322. August 27, 2004 – Sells, AZ Provided simultaneous interpretation and technical support services for the BORDER 2012 AZ/Sonora Water Task Force Meeting.
323. August 19, 2004 – Phoenix, AZ Provided simultaneous interpretation and technical support services for the BASHAS FOOD STORES “Make It Happen” Employee Annual Convention.
324. August 18, 2004 – Nogales, Sonora, Mexico Provided simultaneous interpretation and technical support services for the Ambos Nogales Air Quality Task Force Meeting.
325. June 25, 2004 – Agua Prieta, Sonora, Mexico Provided simultaneous interpretation and technical support services for the Border 2012 AZ/Sonora Water Task Force Meeting.
326. June 11 & 12, 2004 – Sierra Vista, AZ Provided simultaneous interpretation and technical support services for the Southeastern Arizona Government Organization’s “BORDER MAYORS CONFERENCE”.
327. June 5, 2004 – Sierra Vista, AZ Provided simultaneous interpretation and technical support services for the Child & Family Resources, Inc. “Child Care Providers Helping Children Discover the World of Books” Conference.
328. May 27, 2004 – Nogales, Sonora, Mexico Provided simultaneous interpretation and technical support services for the IBWC – CILA Bi-National Technical Conference on Border Water Issues.
329. May 21, 2004 – Bisbee, AZ Provided simultaneous interpretation and technical support services for the EPA Border 2012 Program’s Arizona – Sonora Water Task Force Meeting.
330. May 20, 2004 – Nogales, Sonora, Mexico Provided simultaneous interpretation and technical support services for the EPA Border 2012 Program’s Arizona – Sonora Children’s Environmental Health Task Force Meeting.

331. May 14, 2004 – Douglas, AZ Provided simultaneous interpretation and technical support services for the EPA Border 2012 Program's Arizona – Sonora Emergency Preparedness and Response Task Force Meeting.

332. April 30, 2004 – May 13, 2004 Provided simultaneous interpretation services for the US Department of State & American Council Of Young Political Leaders Exchange Program. The delegation was made up of City Councilmen, State Representatives and Political Party Advisors from Argentina and Uruguay who met with political operatives as well as with city, state and federal government officials to discuss a number of political topics. Foremost among them the upcoming presidential election in the U.S. Cities visited included Washington, D.C., Indianapolis, IN, Nashville and Memphis, TN.

333. March 29-31, 2004 – Hermosillo, Sonora, Mexico Provided simultaneous interpretation services for the Euro-Mexican Parliamentary Forum on Migration.

334. March 24, 2004 – Nogales, AZ Provided simultaneous interpretation and technical support services for the Joint Meeting of the Ambos Nogales Air Quality Task Force and the Border Liaison Mechanism Economic and Social Development Subgroup.

335. March 2-5, 2004 – Honolulu, HI Provided simultaneous interpretation services for the World Aquaculture Society's "AQUACULTURE 2004" International Convention.

336. February 24 & 25, 2004 – Yuma, AZ Provided simultaneous interpretation and Technical Support / Equipment services for the EPA Seminar on Emergency Response Preparedness.

337. February 9, 2004 – Nogales, Sonora, Mexico Provided simultaneous interpretation and technical support services for the Arizona / Sonora Chemical Emergency Preparedness and Response Task Force Meeting.

338. January 13, 2004 – February 7, 2004 – Albuquerque, NM Provided simultaneous interpretation services for the State Department Anti-Terrorism Assistance Program (ATAP) "Weapons of Mass Destruction" Training Course. A delegation from Colombia made up of Physicians, Firefighters, Nurses, Military Officials and Civil Protection personnel participated in an intensive four-week training seminar. The course focused primarily on the response to, handling and management of incidents involving weapons of mass destruction.

339. November 21, 2003 – Hermosillo, Sonora, Mexico Provided simultaneous interpretation and technical support services for the AZ – Mexico Commission Sub-committee on Transportation.

340. November 19, 2003 – Nogales, Sonora, Mexico Provided simultaneous interpretation and technical support services for the Bi-National Conference on Environmental Education, Training, and Communications.

341. November 1-15, 2003 Provided simultaneous interpretation services for the U.S. Department of State – Uruguay Program: FTAA and Regional Economic Integration. Economists from both

government and non-government organizations met with various organizations to discuss free trade, credit ratings, banking operations, etc.

342. **September 19 - October 11, 2003** Provided simultaneous interpretation services for the **U.S. Department of State – El Salvador Program: Gangs and Gang Violence** . Delegates from El Salvador representing all manner of agencies, government and non-government, visited the U.S. to meet with various counterparts who work with gangs both from an enforcement as well as from a rehabilitative perspective.

343. **September 14 & 15, 2003 – Tucson, AZ** Provided simultaneous interpretation and technical support services for the **“ARIZONA WOMENS CONFERENCE”** .

344. **August 21, 2003 – Nogales, AZ** Provided simultaneous interpretation and technical support services for the **AZ – Sonora Water Task Force Meeting** .

345. **July 20-23, 2003 – Las Vegas, NV** Provided simultaneous interpretation services for the **U.S. Department of State Program: Mexican Textile Workers Theatre Company** . Mexican textile workers from Puebla, Mexico, who successfully organized local factory workers to help them obtain a collective bargaining agreement with their employer, formed a theatre group that was invited to perform at the UNITE Labor Union’s National Convention in Las Vegas, NV.

346. **June 23-25, 2003 – Las Vegas, NV** Provided simultaneous interpretation and technical support services for the **Institute of Internal Auditors International Conference** .

347. **June 7, 2003 – Sierra Vista, AZ** Provided simultaneous interpretation and technical support services for the **Child & Family Resources’ “Child Care Worker” Conference** .

348. **June 4, 2003 – Rio Rico, AZ** Provided simultaneous interpretation and technical support services for the **“Emergency Response Plan Between Ambos Nogales”** .

349. **June 3, 2003 – Nogales, Sonora, Mexico** Provided simultaneous interpretation and technical support services for the **“U.S. – Mexico Bi-National Conference on Immigrant Protection”** .

350. **June 1 & 2, 2003 – Las Vegas, NV** Provided simultaneous interpretation and technical support services for the **International Truck & Engine Corporation’s “Parts and Service Managers Conference”** .

351. **May 28, 2003 – Nogales, AZ** Provided simultaneous interpretation and technical support services for the **Border Liaison Mechanism Subgroup on Social & Economic Development’s “Air Quality in Ambos Nogales” Meeting** .

352. **May 22, 2003 – Phoenix, AZ** Provided simultaneous interpretation and technical support services for the **“MARICOPA COMMUNITY COLLEGE BOARD” Meeting at South Mountain Community College** .

353. May 13, 2003 – Nogales, AZ Provided simultaneous interpretation and technical support services for the “BORDER LIAISON MECHANISM” Meeting.

354. May 3, 2003 – Tucson, AZ Provided simultaneous interpretation and technical support services for the “Grandparents Raising Grandchildren” Conference.

355. April 28 – 30, 2003 – Rio Rico, AZ Provided simultaneous interpretation and technical support services for the “BORDER INSTITUTE V” Conference conducted by SCERP. State and Federal agency representatives met to discuss various issues related to environmental problems and the impact they cause on public health.

356. March 13, 2003 – Nogales, Sonora, Mexico Provided simultaneous interpretation and technical support services for the US Consulate in Nogales’ “U.S.-Mexico Panel Discussion on Interdiction Cooperation”.

357. March 6, 2003 – Naco, AZ Provided simultaneous interpretation and technical support services for the US – Mexico Customs Meeting.

358. February 20, 2003 – Tucson, AZ Provided simultaneous interpretation services for the JD Edwards-IBM Conference on the Mining and Oil Industries.

359. February 9 – 15, 2003 – New Orleans, LA Provided simultaneous interpretation services for the U.S. Department of State Program: Guatemala Exchange Project. Event involved a weeklong training seminar for volunteers who work with the disabled in Guatemala. Topics included Occupational Therapy, NGO Management, Community Programs, etc.

360. January 14, 2003 – Phoenix, AZ Provided simultaneous interpretation services for the “PLATTS METALS” Conference on the Aluminum Industry.

361. December 7, 2002 – Tucson, AZ Provided simultaneous interpretation services for the University of Arizona Department of Women’s Studies Border Conference.

362. December 4, 2002 – Tijuana, Baja California, Mexico Provided simultaneous interpretation services for the “Preventing Substance Abuse: Risk and Protective Factors” Conference.

363. November 22, 2002 – Nuevo Laredo, Tamaulipas, Mexico Provided simultaneous interpretation services for the “Border Legislative Initiative” Conference.

364. November 4-6, 2002 – Columbus, OH Provided simultaneous interpretation services for the LIEBERT INC. Annual Sales Conference.

365. November 2, 2002 – Tucson, AZ Provided simultaneous interpretation services for the “Femenist Sexuality Project National Conference”.

366. October 30, 2002 – Nogales, Sonora, Mexico Provided simultaneous interpretation and technical support services for the US-Mexico Border 2012 Program” Meeting.

367. October 29, 2002 – Nogales, AZ Provided simultaneous interpretation and technical support services for the “US-Mexico Border 2012 Program” Meeting.

368. October 22, 2002 – Douglas, AZ Provided simultaneous interpretation and technical support services for the “US-Mexico Border 2012 Program” Meeting.

369. October 21, 2002 – San Luis, AZ Provided simultaneous interpretation and technical support services for the “US-Mexico Border 2012 Program” Meeting.

370. October 18, 2002 – Nogales, AZ Provided simultaneous interpretation and technical support services for the Border Liaison Mechanism Sub-group on Border Public Safety.

371. October 16, 2002 – Cocopah, AZ Provided simultaneous interpretation and technical support services for the “US-Mexico Border 2012 Program” Meeting.

372. October 15, 2002 – Sells, AZ Provided simultaneous interpretation and technical support services for the “US-Mexico Border 2012 Program” Meeting. Event was a forum to obtain comments and feedback from the local community with regard to various environmental impact problems occurring in areas that are located along the border with Mexico. Topics included solid waste and hazardous materials management, air quality, depleting water tables, etc. The purpose of the program is to establish a bi-national mechanism that would be made up of local, regional and national work groups to address and improve environmental conditions in border communities.

373. October 9 & 10, 2002 – Nogales, AZ Provided simultaneous interpretation and technical support services for the “Good Neighbor Environmental Board” Conference.

374. October 4, 2002 – Naco, Sonora, Mexico Provided simultaneous interpretation and technical support services for the Ceremonial Signing of “The Bi-National Prevention and Emergency Response Plan Between Cochise County and Naco, Sonora, Mexico.

375. October 4, 2002 – Bisbee, AZ Provided simultaneous interpretation and technical support services for the EPA Border 2012 “Tire Pile Work Group” Meeting.

376. September 26 & 27, 2002 – Nogales, AZ Provided simultaneous interpretation and technical support services for the HATB - Hands Across the Border - Teachers Conference.

377. September 20, 2002 – San Luis, Sonora, Mexico Provided simultaneous interpretation and technical support services for the U. S. - Mexico Customs Meeting.

378. September 18, 2002 – Bisbee, AZ Provided simultaneous interpretation and technical support services for the Bi-National Prevention and Emergency Response Plan Between Cochise County, Arizona and Naco Sonora, Mexico.

379. August 28, 2002 – Nogales, AZ Provided simultaneous interpretation and technical support services for the BORDER LIAISON MECHANISM SUBGROUP ON ECONOMIC AND SOCIAL DEVELOPMENT'S Meeting on “Air Quality Issues in Ambos Nogales” .

380. August 18 - 20, 2002 – Miami, FL Provided simultaneous interpretation and technical support services for the Morgan Business Associates' Management Training Seminar for INGERSOLL-RAND Distributors' Parts and Service Managers. Activities included team-building exercises, strategic business planning, goal-setting, sales training focused on service, follow-up techniques, customer support, inventory control, reduction of obsolescence, self-evaluation, etc.

381. July 24, 2002 – Nogales, Sonora, Mexico Provided simultaneous interpretation and technical support services for the U. S. - Mexico Customs Meeting .

382. July 18, 2002 – Lake Tahoe, NV Provided simultaneous interpretation services for the CGS WEST Annual Meeting . The main topics of interest were alcoholism and substance abuse along the border area.

383. July 12, 2002 – Louisville, KY Provided simultaneous interpretation and technical support services for the 12th National Cursillo Encounter . Conference consisted of religious gathering with guest speakers and testimonials.

384. June 26, 2002 – Bisbee, AZ Provided simultaneous interpretation and technical support services for the Bi-National Prevention and Emergency Response Plan Between Cochise County, Arizona and Naco Sonora, Mexico.

385. June 22, 2002 – Phoenix, AZ Provided simultaneous interpretation and technical support services for the 20th Border Governors Conference.

386. June 6 - 8, 2002 – Seattle, WA Provided simultaneous interpretation and technical support services for the SEIU - Service Employees International Union's “International Executive Board” Meeting.

387. June 4 & 5, 2002 – San Francisco, CA Provided simultaneous interpretation services for the Deloitte Consulting “Partners and Directors Conference” . Partners and Directors met to discuss alternative plans to secede from the parent company.

388. May 28, 2002 – Nogales, AZ Provided simultaneous interpretation and technical support services for the 2nd Meeting of the West Central Regional US/Mexico Customs Subgroup (Arizona-Sonora) .

389. May 23, 2002 – San Diego, CA Provided simultaneous interpretation and technical support services for the “NAFTA Transportation Conference” . Topics included U. S. Motor Carrier Safety Requirements, Taxation, Immigration and Customs Requirements for Motor Carriers, California State Regulations and Mexican Motor Carrier Safety Requirements.

390. May 20, 2002 – Sacramento, CA Provided simultaneous interpretation and technical support services for the "CAL EPA Wastewater Pretreatment and Monitoring Program" meeting.

391. May 18, 2002 – Sierra Vista, AZ Provided simultaneous interpretation and technical support services for the CHILD & FAMILY RESOURCES, INC. "19th Annual Child Care Conference".

392. May 14, 2002 – Nogales, AZ Provided simultaneous interpretation services for The XXV Nogales Border Liaison Mechanism Meeting.

393. May 2-4, 2002 – Colorado Springs, CO Provided simultaneous interpretation and technical support services for U. S. Olympic Committee's "Global Coaches Conference". Athletic coaches from all over the world met to discuss various subjects such as Long - Term Athlete Development, Over training, New Technology in Sport, etc.

394. April 24-26, 2002 – Tucson, AZ Provided simultaneous interpretation and technical support services for U. S. - MEXICO CUSTOMS WORK GROUP. High level customs officials from both countries met to discuss, analyze and formulate action plans to begin setting up a North American Security Perimeter mandated by the Presidents of both countries.

395. April 18 & 19, 2002- Reno, NV Provided simultaneous interpretation and technical support services for Tupperware Regional Convention.

396. April 17, 2002 – Nogales, AZ Provided interpretation and technical support services for the US-Mexico Customs Bi-national Meeting. Customs officials from both Mexico and the U. S. met with U. S. customs brokers to discuss issues related to border operations.

397. April 15, 2002 – Phoenix, AZ Provided interpretation and technical support services for the ALLIANCE TECHNICAL CORP. Management Seminar. Seminar consisted of techniques to improve production efficiency and profitability for a packaging materials company.

398. March 31 - April 11, 2002 Provided interpretation services for the U. S. Department of State's Program: U. S. - Mexico Partnership for Enhancing Border Security. Interpreted for a group of delegates from Mexico who participated in a three city tour where the core topics related to better border security between both countries. Delegates met with officials from various agencies such as Department of State, INS, Border Patrol and Office of Homeland Security. The cities visited by the delegates were Washington, D. C., Houston, TX and El Paso, TX.

399. March 15 - 17, 2002 – Scottsdale, AZ Provided interpretation services for the WYETH-AYERST "GLOBAL NEUROSCIENCE SUMMIT" Conference. Topics included Psychopharmacology, Psychogenetics, various studies conducted on medications, comparative analysis between combination medication-psychotherapy vs. mono-therapeutic treatments , GAD-Generalized Anxiety Disorder, SAD- Social Anxiety Disorder, MDD-Major Depression Disorder treatment options.

400. March 7, 2002 – San Diego, CA Provided interpretation and technical support services for the NESCAUM Tri-national Smoke Testing Workshop. Event focused on emissions inspections standards and procedures, measurement instrumentation, legal issues & sanctions, etc.

401. March 7, 2002 – San Diego, CA Provided interpretation and technical support services for the BIDS - Border Infectious Disease Surveillance System Conference. Topics covered included border infectious disease surveillance systems, emergency response protocols, standardized lab tests, procedures for transporting samples across the international border, etc.

402. March 8, 2002 – San Diego, CA Provided interpretation and technical support services for the Barrio Logan Community Meeting. Topics covered included chromium 6 contamination assessment, community concerns, possible resolutions, follow-up measures, etc.

403. February 26, 2002 – Bisbee, AZ Provided interpretation and technical support services for the Meeting regarding the “Bi-National Prevention And Emergency Response Plan Between Naco, Sonora and Cochise County, AZ”. Law enforcement and environmental agency officials from Mexico and the U. S. met to formulate a joint plan to deal with ecological and health emergencies affecting the border region. The group discussed a series of problems experienced by both border areas and formed a steering committee to oversee a series of meetings intended to develop the project to a successful conclusion.

404. February 7, 2002 – Nogales, Sonora, Mexico Provided interpretation services for the BORDER LIAISON MECHANISM SUBGROUP ON ECONOMIC AND SOCIAL DEVELOPMENT - Air Quality Issues in Ambos Nogales meeting. Environmental agency officials from the U. S. and Mexico met to discuss financing sources and methods to implement projects that would benefit communities on both sides of the border.

405. January 24, 2002 – Nogales, AZ Provided interpretation and technical support services for the US-Mexico Customs Bi-national Meeting. Customs officials from both Mexico and the U. S. met with U. S. customs brokers to discuss issues related to border operations.

406. December 11, 2001 – Nogales, Sonora, Mexico Provided interpretation and technical support services for the US-Mexico Customs Bi-national Meeting. Customs officials from both Mexico and the U. S. met with U. S. customs brokers to discuss issues related to border operations.

407. November 11 - 13, 2001 – Columbus, OH Provided interpretation services for the LIEBERT CORPORATION'S Annual Sales Conference. Interpreted for Liebert Corp. distributors and sales representatives from various countries in Latin America.

408. October 21 - November 10, 2001 Provided interpretation services for the U. S. Department of State's Program on Human Rights and Refugee Issues. Accompanied a delegation of Human Rights Activists from Venezuela on a five city tour throughout the United States. Delegates met with representatives from various organizations that work with refugees, immigrants and indigenous people. The cities visited during the tour included Washington, D. C., New York, NY, Seattle, WA, San Diego, CA and San Antonio, TX..

409. October 19 & 20, 2001 – Phoenix, AZ Provided interpretation services for the Society of News Design's Conference. Publishers, editors and journalists from the U. S., Latin America, Spain and other countries participated in this conference. Topics included Typographical print design and application, editing, art design, etc.

410. October 16, 2001 – Nogales, AZ Provided interpretation and technical support services for the US-Mexico Customs Bi-national Meeting. Customs officials from both Mexico and the U. S. met with U. S. customs brokers to discuss issues related to border operations.

411. August 16 - September 1, 2001 Performed Administrative Interpreter duties for the U. S. Department of State's "US Federalism" Program. Worked with a group of 13 politicians and government employees who traveled on a four city tour attending meetings and presentations relevant to the core subject. Tour cities included Washington, D. C., New York, NY, San Francisco, CA and Austin, TX.

412. August 9, 2001 – Tucson, AZ Provided interpretation and technical support services for the Bi-national Meeting on Border Safety sponsored by the U. S. Border Patrol.

413. July 31 - August 7, 2001 – Phoenix, AZ Provided interpretation services for the Immigration and Naturalization Service's Cuban Review Panel.

414. July 25, 2001 – Nogales, AZ Provided simultaneous interpretation and technical support services for the BI-NATIONAL LIAISON MECHANISM SUB-GROUP ON ECONOMIC AND SOCIAL DEVELOPMENT MEETING.

415. July 20-22, 2001 – Philadelphia, PA Provided simultaneous interpretation and technical support services for the SEIU - Service Employees International Union's Eastern Region Conference.

416. July 19, 2001 – Washington, D. C. Provided simultaneous interpretation services for the SONY GLOBAL MARKETING PARTNER'S CONFERENCE.

417. June 30, 2001 – Tucson, AZ Provided simultaneous interpretation and technical support services for the CHILD & FAMILY RESOURCES, INC. "18th Annual Child Care Conference".

418. June 14, 2001 – Tucson, AZ Provided simultaneous interpretation and technical support services for the U. S. Border Patrol's "Border Safety Initiative Conference".

419. June 5 - 7, 2001 – Tucson, AZ Provided simultaneous interpretation services for the "COJUMA VI" International Conference. Event consisted of meetings involving military representatives from member countries of the Military Legal Committee of the Americas (COJUMA - Consejo Jurídico Militar para las Américas). The general topic of discussion surrounded the presentation and adoption of a study regarding Status of Forces Agreements (SOFA). The purpose of the conference was to discuss the overall legal issues that can and do arise whenever a country's armed forces conduct operations (peace-keeping, rescue, humanitarian, etc.) on foreign soil at the request of the host country.

420. June 1 & 4, 2001 – Las Vegas, NV Provided simultaneous interpretation services for the Assurant Group's "2001 Agency International Sales Conference". Event consisted of training seminars and recognition segments for Insurance Industry representatives.

421. May 5, 2001 – Sierra Vista, AZ Provided simultaneous interpretation services for the "1st Annual District VI Child Care Conference".

422. April 30 - May 2, 2001 – Rio Rico, AZ Provided simultaneous interpretation and technical support services for the "BORDER III Conference". State and Federal agency representatives met to discuss various issues related to the energy industry. Topics covered included energy conservation, alternative energy sources, renewable energy sources, etc.

423. April 19 - 21, 2001 – Reno, NV Provided simultaneous interpretation and technical support services for Tupperware Regional Convention.

424. March 16 & 17, 2001 – Hermosillo, Sonora, Mexico Provided simultaneous interpretation services for XI TRANSBORDER LIBRARY FORUM "World Information: Knowledge without Boundaries".

425. March 5 & 6, 2001 – Phoenix, AZ Provided simultaneous interpretation services for GEAPS - GRAIN ELEVATOR AND PROCESSING SOCIETY - EXCHANGE 2001 CONFERENCE. Topics covered included: Outlook on World Grain, Mexico Grain - Trading Perspectives: Facing a New Millennium, Safety Training, Testing for Genetically Modified Oilseed, Identity Preservation, Customer Relations, etc.

426. February 21 - 24, 2001 – Phoenix, AZ Provided simultaneous interpretation and technical support services for NABE - NATIONAL ASSOCIATION FOR BILINGUAL EDUCATION - "GIVING CHILDREN THE WORLD" CONFERENCE.

427. February 20, 2001 – Phoenix, AZ Provided simultaneous interpretation and technical support services for COMMUNITY FORUM ON NEIGHBORHOOD REVITALIZATION STRATEGY FOR THE CITY OF EL MIRAGE, AZ.

428. February 9, 2001 – Nogales, AZ Provided simultaneous interpretation and technical support services for Border Liaison Mechanism Meeting.

429. January 31 - February 3, 2001 – Phoenix, AZ Provided simultaneous interpretation services for Castrol Corporation's "A WORLD OF OPPORTUNITY" Conference. Event focused on sales and marketing issues, the current competitive environment, introduction of new product line, etc.

430. January 29, 2001 – Nogales, AZ Provided simultaneous interpretation and technical support services for the BI-NATIONAL LIAISON MECHANISM ECONOMIC AND SOCIAL DEVELOPMENT SUB-GROUP MEETING. First of several scheduled meetings of this sub-group that has as its primary objective the analysis and improvement of air quality in the Nogales, AZ

& Nogales, Sonora area. Some of the topics of discussion included the aggravating factors that contribute to the decline in air quality in the region, potential mitigation measures, research of any and all legal and statutory ramifications, identification of potential funding sources, etc.

431. **January 19, 2001 – Tucson, AZ** Provided simultaneous interpretation and technical support services for **Meeting of the Consultation Mechanism to the Interior**. Topics included safe and orderly repatriation, newly ratified laws on immigration, interdiction efforts against border robbers, Dept. of Justice Office of the Inspector General's policies on handling complaints against government personnel, etc.
432. **January 16, 2001 – Phoenix, AZ** Provided simultaneous interpretation and technical support services for **COMMUNITY FORUM ON NEIGHBORHOOD REVITALIZATION STRATEGY FOR THE CITY OF EL MIRAGE, AZ**.
433. **December 7 - 9, 2000 – Tucson, AZ** Provided simultaneous interpretation and technical support services for **Planned Parenthood of Arizona's " Reducing the Risk " Training Seminar on Teenage Sexuality**. Event consisted of review and practice of an established curriculum being utilized by PPA to educate adolescents on issues related to teenage sexuality, sexually transmitted diseases, teen pregnancy, self image, gender roles, etc.
434. **November 10 - 15, 2000 – San Diego, CA** Provided simultaneous interpretation and technical support services for **IACP - International Association of Chiefs of Police - International Convention**. Event consisted of various training seminars and panel discussions focusing on a wide range of law enforcement issues. Keynote addresses were made by U. S. Attorney General Janet Reno and FBI Director Louis Freeh.
435. **November 5 - 9, 2000 – Miami, FL** Provided simultaneous interpretation and technical support services for **Morgan Business Associates' Management Training Seminar for KOMATSU Distributors' Parts and Service Managers**. Activities included team-building exercises, strategic business planning, goal-setting, sales training focused on service, follow-up techniques, customer support, inventory control, reduction of obsolescence, self-evaluation, etc.
436. **October 23 - 25, 2000 – Houston, TX** Provided simultaneous interpretation and technical support services for **U. S. Trade Development Association's "Power & Energy in the Americas" Conference**. Event consisted of various project proposals for the development of energy resources in many Latin American countries. Proposed projects included Hydroelectric Power plants, Oil, Natural Gas and Liquid Natural Gas pipelines, etc.
437. **October 20 - 22, 2000 – Colorado Springs, CO** Provided simultaneous interpretation and technical support services for **EL POMAR Foundation's Pan American Sports Organization Meeting**. PASO's Executive Committee met to discuss issues related to the 2003 Pan American Games to be held in Santo Domingo, Dominican Republic.
438. **September 21 & 22, 2000 – Scottsdale, AZ** Provided simultaneous interpretation services for **CCC Information Services' Conference on "Vision"**. Event consisted of two days of presentations

focusing on issues related to the insurance industry; specifically, the casualty and collision repair arenas. Keynote address was made by Senator John Glenn.

439. August 18, 2000 – Nogales, AZ Provided simultaneous interpretation and technical support services for **Border Liaison Mechanism Meeting**. Officials from the U. S. and Mexico met to discuss various issues related to the area located on the international border between both countries. Topics centered around the local area surrounding Nogales, AZ and Nogales, Sonora, Mexico.

440. July 16 - 21, 2000 – Portland, OR Provided simultaneous interpretation and technical support services for **Freightliner Corporation Technical Seminar**. Event consisted of week-long technical training for North, Central and South American Distributors and Representatives. Topics included: Engines, Brakes, Drive Trains, Cabs, Suspension Systems, Trailers, Electronic Systems, Hydraulic and Pneumatic Systems, etc. Seminar also included training sessions for conducting transactions on the **Freightliner On-line Parts Ordering System**. In addition to providing interpretation services, I performed the installation, support and break down of the interpretation equipment for the event.

441. June 13 - 16, 2000 – Phoenix, AZ Provided interpretation services for The U. S. Immigration and Naturalization Service during **Cuban Review Panel** interviews conducted at the Federal Correctional Institution in Phoenix, AZ.

442. June 2 & 3, 2000 – Minneapolis, MN Provided simultaneous interpretation and technical support services for the **Creative Memories, Inc. National Convention**. Event consisted of training sessions, superior performance recognition segments, testimonials and motivational speeches. CM specializes in the manufacture and sales of photo albums, scrap books and accessories.

443. May 20 - 24, 2000 – Pittsburgh, PA Provided simultaneous interpretation and technical support services for **SEIU - Service Employees International Union - National Convention**. Event activities included the election of the new National Governing Board members, training seminars, proposal and adoption of new policies and bylaws, testimonials and motivational speakers. Keynote addresses were made by Vice-president Al Gore, First Lady Hillary Rodham-Clinton, the Rev. Jesse Jackson and Congressman Richard Gephardt.

444. May 15, 2000 – Tucson, AZ Provided simultaneous interpretation and technical support services for **1st Meeting of the U. S. - Mexico Border Liaison Mechanism Sub-group on Immigration**. Meeting was attended by immigration officials from both countries. Discussions focused on several issues such as current repatriation agreements, expansion of a “ free zone “ within both countries and proposed agreements and treaties.

445. May 11 & 12, 2000 – Phoenix, AZ Provided simultaneous interpretation services for **Phoenix Sky Harbor Airport’s International Conference on Aviation**. Event consisted of presentations and discussions focused on a variety of issues relevant to the international airline industry.

446. April 25 - 27, 2000 – Tucson, AZ Provided simultaneous interpretation services for the **U. S. Air Force - SOUTHCOM “Securing the Airspace over the Amazon Basin” Conference**. Event consisted of meetings and briefings between Commanders of the various Air Forces of all the countries located in the Amazon basin and U. S. Air Force officials.

447. April 10 - 14, 2000 - Miami, FL Provided simultaneous interpretation and technical support services for Ingersoll-Rand Corporation "Latin American Dealers Technical Seminar". Event consisted of technical training sessions on the application and function of various examples of heavy equipment such as pneumatic hammers, rock drills, drill bits and other I-R drilling products.

448. April 6, 2000 - Tucson, AZ Provided simultaneous interpretation and technical support services for presentation made by a well known Mexican political columnist titled "Mexico's Political Forecast on the Eve of the Year 2000 Elections".

449. March 3, 2000 - Nogales, AZ Provided simultaneous interpretation and technical support services for Border Liaison Mechanism Meeting.

450. February 24 - 26, 2000 - Portland, OR Provided simultaneous interpretation and technical support services for Tupperware Regional Convention.

451. February 18 & 19, 2000 - Chicago, IL Provided simultaneous interpretation and technical support services for Tupperware Regional Convention.

452. December 12 - 15, 1999 - Tucson, AZ Provided simultaneous interpretation and technical support services for U. S. Department of Energy's - "African Energy Conference". Conference was attended by delegations from most of the countries on the African continent. Delegates participated in meetings and panel discussions that focused on the political, social, economic and cultural factors affecting the development of energy resources in Africa.

453. October 31 - November 4, 1999 - Charlotte, NC Provided simultaneous interpretation and technical support services for IACP - International Association of Chiefs of Police - International Convention. Event consisted of various training seminars and panel discussions focusing on a wide range of law enforcement issues. Keynote address was made by Attorney General of the U. S. Janet Reno.

454. October 14 - 16, 1999 - Portland, OR Provided simultaneous interpretation and technical support services for IPPS - International Plant Propagation Society - Conference. Topics covered included nursery management, grafting techniques, large scale production of plants and flowers, creation of new hybrids, etc.

455. October 10 - 12, 1999 - Miami, FL Provided simultaneous interpretation and technical support services for Morgan Business Associates' Management Training Seminar for Ingersoll-Rand Distributors' Parts and Service Managers. Activities included team-building exercises, strategic business planning, goal-setting, sales training focused on service, follow-up techniques, customer support, etc.

456. October 4 - 6, 1999 - Tucson, AZ Provided simultaneous interpretation and technical support services for Castrol Corporation of North America's Conference. Event focused on sales and marketing issues, the current competitive environment, introduction of new product line, etc.

457. September 20 & 21, 1999 – Tucson, AZ Provided simultaneous interpretation and technical support services for Border Health Initiative Conference. Event consisted of various panel discussions on issues related to the health field

458. September 5 & 6, 1999 – Los Angeles, CA Provided simultaneous interpretation services for MDA - Muscular Dystrophy Association - “Jerry Lewis Telethon”. Telethon was interpreted into Spanish and Japanese, and simultaneously broadcasted over the World Wide Web.

459. August 14 - 16, 1999 – Minneapolis, MN Provided simultaneous interpretation and technical support services for Creative Memories, Inc. National Convention.

460. July 11, 1999 – Tucson, AZ Provided simultaneous interpretation and technical support services for Border Health Foundation Conference.

461. July 7, 1999 – Phoenix, AZ Provided simultaneous interpretation services for SBA - Small Business Administration - Meeting “Promoting Development in Economically Deprived Urban Communities”. President Bill Clinton presided over a round table meeting that focused on initiatives being undertaken to attract private investment to economically disadvantaged urban communities. The purpose of said initiatives is to promote prosperity, reduce crime and improve education in those areas. Other participants included the reverend Jesse Jackson, state and local officials, and business and community representatives.

462. June 24, 1999 – Nogales, AZ Provided simultaneous interpretation services for Border Liaison Mechanism Meeting.

463. May 26 & 27, 1999 – Tucson, AZ Provided simultaneous interpretation and technical support services for 2nd Annual National Conference for Health Lay Workers / Promoters. Event consisted of several plenary sessions with various keynote speakers, as well as panel discussions covering a variety of health related topics.

464. May 5 & 6, 1999 – El Paso, TX Provided simultaneous interpretation and technical support services for Peter Lowe International Motivational Seminar. Speakers included: former President of the U. S. Gerald R. Ford, television journalist Deborah Norville, professional football star Emmitt Smith, actor Edward James Olmos and motivational speakers Peter Lowe and Zig Ziglar.

465. April 15 - 17, 1999 – Sparks, NV Provided simultaneous interpretation and technical support services for Tupperware, Inc. Regional Convention. Activities included training, recognition segments and motivational speeches.

466. February 9, 1999 – Phoenix, AZ Provided simultaneous interpretation and technical support services for Chevron Corporation Sales Meeting.

467. January 28, 1999 – Nogales, AZ Provided simultaneous interpretation and technical support services for Border Liaison Mechanism Meeting.

468. January 14 & 15, 1999 – Tucson, AZ Provided simultaneous interpretation and technical support services for WAHEC - Western Area Health Education Centers - Conference. Event consisted of panel discussions focusing on various health related issues.

469. November 15 - 20, 1998 – Houston, TX Provided simultaneous interpretation and technical support services for NIKE Latin America Distributors Meeting. Activities included sales & marketing training, introduction to new product line, development of new marketing and sales strategies, etc.

470. October 29, 1998 – Phoenix, AZ Provided simultaneous interpretation and technical support services for Pillsbury, Inc. Employee Training Seminar on “Sexual Harassment”.

471. October 23 & 24, 1998 – Denver, CO Provided simultaneous interpretation and technical support services for International Bottled Water Association Annual Convention. Conference was attended by bottling company representatives from all over the world. Topics of discussion included marketing strategies, image enhancement for the industry, industry lobby, recognition segments, etc.

472. October 20 - 22, 1998 – Las Vegas, NV Provided simultaneous interpretation and technical support services for “Mobil World ‘98” Convention. Activities included motivational speeches, sales training, recognition segments, marketing strategies, sales strategies and new product introduction. The keynote address was given by General Norman Schwartzkopf.

473. July 28, 1998 – Phoenix, AZ Provided simultaneous interpretation and technical support services for Output Technologies Corp. Employee Training Seminar. The main topic of discussion referred to the employee benefits program.

474. June 29, 1998 – Tucson, AZ Provided simultaneous interpretation and technical support services for Border Trade Alliance State Meeting.

475. June 25 & 26, 1998 – Nogales, AZ Provided simultaneous interpretation and technical support services for U. S. Customs Training Seminar on Hazardous Materials. Meeting focused on safety and necessary precautions required when encountering hazardous materials while conducting truck inspections. Also covered: corrective action, first aid, proper handling of k-9 units, equipment, documentation, etc.

476. June 23, 1998 – Nogales, AZ Provided simultaneous interpretation and technical support services for U. S. - Mexico Customs Border Working Group Meeting. Topics of discussion included free-trade zones, tariff schemes, expansion of Port of Entry operational schedules, executive lane, etc.

477. June 11, 1998 – Rio Rico, AZ Provided simultaneous interpretation and technical support services for XVIII Border Liaison Mechanism Meeting.

478. May 21, 1998 – Phoenix, AZ Provided simultaneous interpretation and technical support services for WAHEC National Conference for Women. Conference focused on women's issues and their relevance in the health arena.

479. May 14 - 20, 1998 - Beaverton, OR Provided simultaneous interpretation and technical support services for NIKE Inc. Latin American Distributor's Sales Seminar.

480. April 3 & 4, 1998 - Palm Springs, CA Provided simultaneous interpretation and technical support services for TUPPERWARE Sales Rally.

481. March 21, 1998 - Tucson, AZ Provided simultaneous interpretation and technical support services for Bilingual Education Conference.

482. March 13, 1998 - Nogales, AZ Provided simultaneous interpretation and technical support services for Maquiladora Association Seminar.

483. March 11, 1998 - Nogales, AZ Provided simultaneous interpretation and technical support services for International Boundaries & Water Commission.

484. February 26, 1998 - Green Valley, AZ Provided simultaneous interpretation and technical support services for Caterpillar Corporation Conference. Topics of discussion: Bulldozers, Wheel Loaders, Track Loaders, Pavers, Scrapers, Graders, etc.

485. January 30, 1998 - Nogales, AZ Provided simultaneous interpretation and technical support services for XVII Border Liaison Mechanism Meeting.

486. January 15, 1998 - Nogales, AZ Provided simultaneous interpretation and technical support services for U. S. - Mexico Bi-National Public Works Conference.

487. December 10 - 12, 1997 - Tucson, AZ Provided simultaneous interpretation and technical support services for National Thoroughbred Racing Association's National Convention. Topics of discussion: thoroughbred racing, harness racing, electronic tote boards and betting systems, dog racing, association image enhancement campaigns, premier track affiliations, marketing, etc.

488. November 18 & 19, 1997 - Phoenix, AZ Provided simultaneous interpretation services for BLM - Bureau of Land Management Television Broadcast. Event consisted of a live television broadcast via satellite to North, Central and South America of a series of panel discussions related to environmental issues.

489. November 17 - 20, 1997 - Tempe, AZ Provided simultaneous interpretation and technical support services for Hispanic Association of Colleges & Universities' Conference.

490. November 10 - 12, 1997 - Green Valley, AZ Provided simultaneous interpretation and technical support services for Caterpillar Corporation Conference. Topics of discussion: Wheel Loaders, Track Loaders, Scrapers, Bulldozers, asphalt pavers, dump trucks, etc. Distributor representatives from Latin America participated in training sessions that covered all manner of equipment and its applications, sand and gravel applications, load and carry, etc.

491. November 7, 1997 – Nogales, Sonora, Mexico Provided simultaneous interpretation and technical support services for XVI Meeting of the Border Liaison Mechanism.

492. November 5 & 6, 1997 – Phoenix, AZ Provided simultaneous interpretation and technical support services for Liebert Corporation Conference. Topics of discussion were related to uninterruptible power supplies (UPS) and their sub-assemblies.

493. October 23 - 24, 1997 – Phoenix, AZ Provided simultaneous interpretation and technical support services for Salt River Project Conference. Event consisted of presentations and project proposals to provide various locations in northern Mexico with electrical power supplied by different U. S. power companies.

494. October 14, 1997 – Phoenix, AZ Provided simultaneous interpretation and technical support services for “Opportunities in Mexico” Business Seminar.

495. August 27, 1997 – Nogales, Sonora, Mexico Provided simultaneous interpretation and technical support services for XV Meeting of the Border Liaison Mechanism.

496. August 15 & 16, 1997 – Palm Springs, CA Provided simultaneous interpretation and technical support services for Tupperware Regional Convention.

497. July 24, 1997 – Nogales, AZ Provided simultaneous interpretation and technical support services for XIV Meeting of the Border Liaison Mechanism.

498. June 7, 9 & 10, 1997 – Green Valley, AZ Provided simultaneous interpretation and technical support services for Caterpillar Corporation Conference.

499. June 2 & 3, 1997 – Phoenix, AZ Provided simultaneous interpretation and technical support services for U. S. - Mexico Bi-National Environmental Conference.

500. May 12 - 23, 1997 – Tucson, AZ Provided simultaneous interpretation and technical support services for Bureau of Land Management’s International Symposium and Workshop: “Combating Desertification: Connecting Science with Community Action”. Event consisted of a two-week seminar and field trip through southeast Arizona to discuss the effects that urban growth has had on the expansion of desert areas all over the world.

501. April 24, 1997 – Rio Rico, AZ Provided simultaneous interpretation and technical support services for XIII Meeting of the Border Liaison Mechanism.

502. April 3 - 5, 1997 – Tucson, AZ Provided simultaneous interpretation and technical support services for FORUM Library Sciences Conference.

503. February 25 & 26, 1997 – Green Valley, AZ Provided simultaneous interpretation and technical support services for Caterpillar Corporation Conference.

504. December 18, 1996 – Nogales, AZ Provided simultaneous interpretation and technical support services for XII Meeting of the Border Liaison Mechanism.

505. August 29, 1996 – Rio Rico, AZ Provided simultaneous interpretation and technical support services for XI Meeting of the Border Liaison Mechanism.

506. August 23 & 24, 1996 – Rio Rico, AZ Provided simultaneous interpretation and technical support services for Arizona / Sonora Judicial Relations Project - Juveniles Procedures Task Force Meeting. Juvenile Court authorities from bordering states met to discuss various ways of processing juveniles who are in the U. S. illegally and find themselves in the juvenile court system.

507. March 20, 1996 – Nogales, AZ Provided simultaneous interpretation and technical support services for X Meeting of the Border Liaison Mechanism.

508. February 16 & 17, 1996 – Tucson, AZ Provided simultaneous interpretation and technical support services for U of A College of Law Library's Library Sciences Conference.

509. June 9, 1995 – Rio Rico, AZ Provided simultaneous interpretation and technical support services for Arizona Supreme Court Meeting on Juvenile Justice Issues.

510. April 21, 1994 – Tucson, AZ Provided simultaneous interpretation and technical support services for Tucson Public Library's "International Special Librarians Day" Conference.

REFERENCES: Available upon request.

Appendix 14

EXPERT OPINION REPORT

Prepared by:

Conrad W. Zvara

P.O. Box 146
Muskego, WI 53150
414-630-2258

Subject: State of Wisconsin vs. Sergio Ochoa

Prepared for:

Attorney Corey G. Mehlos
Kaehne, Cottle, Pasquale, & Associates, S.C.
608 North 6th Street
Sheboygan, WI 53081

May 8, 2019

Introduction

I have been asked to discuss and explain the dynamics of deadly force decision making, threat assessment, danger zones, and disparity of force for legally armed citizens, specifically in the encounter between Sergio Ochoa, Luis Garcia and Fernando Lopez on July 30, 2017. In preparation for this report I have reviewed the State's discovery information including videos and photos of the scene, police reports, and witness interviews.

I have been recognized as an expert in self defense and the use of force in defense of oneself by Wisconsin circuit courts. Please see my attached curriculum vitae for details of my education, training, experience, qualifications and expertise in these areas.

Also, please note that I do not accept every case that is brought to me. When a defense attorney consults me on a case in which his client claims to have acted in self-defense, I request whatever information the attorney can provide, review it, and formulate my opinion of the use of force. If I determine there was an improper use of force I decline the case, which I have done five times out of the thirteen cases I've been asked to consult regarding self-defense.

Wisconsin Circuit Court cases for which I have been certified as an expert in self-defense.

2017 – Expert for defense in First Degree Reckless Homicide case (WI v. Randall Drescher), Attorney Christian Thomas; Provided written opinion & testified in Milwaukee Co. Circuit Court

2017 – Expert for defense in First Degree Reckless Homicide case (WI v. Jerad A. Jones), Attorney Aaron Nelson; Provided written opinion and testified in Dunn Co. Circuit Court

Two additional cases are still awaiting trial, and in no case has a Wisconsin circuit court, or any other court, determined that I was not qualified as an expert in self-defense.

Basis for Expert Opinions

My opinions are based both on my professional training as a use of deadly force and self-defense instructor, my professional experience having encountered and investigated deadly force situations, and my review of pertinent literature relevant to my role as a use of force and self-defense instructor.

The deadly force decision and when/how it should be made.

The proper decision to use deadly force will have multiple parts. Unfortunately, all too often those various parts must be sorted, reviewed, and decided upon within a very few, very brief seconds, and all while under tremendous stressors. Ultimately, the armed citizen must determine whether the threat immediately facing him or her is one which will very likely cost him his life or cause him great bodily harm. This applies equally to innocent third persons. That immediate threat must also possess three criteria simultaneously. Generally, the accepted terms for these criteria are **ability**, **opportunity**, and **jeopardy** (AOJ) (Ref. 1). “Ability” means the aggressor has the power to kill or cripple. “Opportunity” means the aggressor can deliver that power immediately. “Jeopardy” means the aggressor’s actions or words (or both) will lead any reasonable and prudent citizen to believe the aggressor *intends* to attack immediately. Note that Wisconsin’s Department of Justice (Ref. 2) uses the terms **weapon** (vs ability), **delivery system** (vs opportunity), and **intent** (vs jeopardy), with the same definitions.

The citizen must also decide what level of force he needs to use to stop the advancing threat. That decision is directly affected by the citizen's physical capabilities and the equipment he may or may not have available to him at that particular moment.

The threat assessment opportunity and how that information plays into the use of force decision.

When assessing a potential threat, the greater the distance between the citizen and the threat, the better. Greater distances allow the citizen time to evaluate the threat (is he really a threat?); issue verbal commands intended to warn the threat away, as well as inform others in the vicinity that the citizen perceives a threat approaching; mentally inventory one's tools/skills and decide which may be appropriate to use against the perceived threat if/as it continues to approach.

Conversely, the closer that threat is, or the faster that threat is moving towards the citizen, the less time there is for the citizen to make all or any of the necessary evaluations and actions. Sometimes the threat has managed to get so close, or move so quickly to within striking range that the targeted citizen perceives he must immediately use deadly force to terminate a threat of death or great bodily harm.

The AOJ triad discussed earlier comes into play here, as well.

The “danger zone” for a firearm user.

The “danger zone” applies to anyone who could be targeted for victimization, law enforcement officer (LEO) or otherwise, armed or not. Law enforcement officers have, for decades now, been trained in the Tueller Drill (Ref. 3). This exercise shows an attacker can advance from 21 feet away to touching/beating/stabbing distance from his victim within approximately 1.5 seconds. (Ref. 3). In real life, there are documented examples of where attackers armed with a knife have been able to stab and murder LEOs armed with firearms due to their close proximity, violent motivation, and ability to more easily manipulate a knife. (Ref. 4). Therefore 1.5 seconds is also the amount of time most people take to recognize the threat, react to it, AND *touch* their firearm, not necessarily draw it out. Add to that the amount of time required to draw a concealed weapon and chamber a round in a firearm carried with an empty chamber and one can see that 21 feet or less is not enough space to avoid an aggressive attacker. Today many law enforcement agencies now consider an LEO's “danger zone” to extend 32-50 feet in all directions (Ref. 5). That span is intended to give the LEO added time to issue commands, increase distance as needed, or gain access to a firearm. This same “danger zone” is perfectly applicable to any citizen, armed or not. Through my professional experience teaching self-defense in concealed carry courses, I am aware that myself and other instructors teach civilians about the Tueller Drill to instruct them on response times to defend oneself against an imminent threat. In my professional opinion, there is no reason why a civilian's response time to a threat would be any less than a trained LEO. The targeted citizen needs to be able to become aware of the attacker as far away as possible, allowing the citizen time to issue commands or warnings attempt to increase the distance from the attacker, escape if it is reasonably safe to do so, or as a last resort, access their available defense-weapon.

Of course, people (LEOs and private citizens alike) cannot expect to hold everyone in their vicinity to a distance of 50 feet. But what is taught in training courses nationwide, to LEOs and private citizens, is Colonel Jeff Cooper's color code for awareness and preparedness: conditions white, yellow, orange and red. Condition White indicates the person is unaware of his or her surroundings and the people therein. Condition Yellow indicates the person is aware of his surroundings and is relaxed, having noted no threats. Condition Orange indicates the person has identified a possible threat and is evaluating that threat for the need for further action. Condition Red indicates the person has identified what he believes to be a very real threat and has decided to take some form of action to mitigate that threat (Ref. 6).

Depending upon the imminence of the threat, mitigation strategy may be available, including flight. Yet flight can be dangerous when there is an opportunity for motivated aggressors to intercept the flight, and potentially inflict injury. Lt. Col. David Grossman's extensive study of how and why people kill people, *ON KILLING* (Ref. 7, pg. 173), explains, "We have seen before that when the [intended victim] is fleeing or has his back turned, he is far more likely to be killed. One reason for this is that in doing so he has provided both means [ability] and opportunity for his opponent to kill without endangering himself." Grossman preludes this (Ref. 7, pg 127) with the fact that often when intended victims "turn their backs and flee [is when] the killing truly begins, and at some visceral level the [intended victim] intuitively understands this and is very, very frightened." Therefore one need not take flight when doing so could likely put them at risk.

Is it reasonable to fire multiple shots at an aggressive assailant?

History has shown that a bullet fired from a handgun is a notoriously poor and inconsistent fight-stopper, contrary to what is seen in movies and television. (Ref. 8) Based on my professional training and experience, I am aware of individuals who were shot with the tiny .22LR (Long Rifle) caliber bullet who have occasionally been totally incapacitated, while some struck with a relatively large .45ACP (Automatic Colt Pistol) bullet have continued to carry on the fight. Because the energy exerted by a handgun round is relatively small, shot placement becomes extremely important. If the defender is able to place even the smallest handgun bullet into a vital organ or strike the central nervous system in some way (spine, cranium) the defender is more likely to stop the assault more quickly. However, even if a defender shoots an attacker in the heart the attacker may survive for up to 15 seconds to physically engage, or even carry out an attack against the defender before the assault can be terminated. (Ref. 9) In particular, the influence of cocaine and/or adrenaline can prevent incapacitation of the attackers by suppressing pain, eliminating concerns about injury, and spurring them to continue to their attack even after being mortally wounded. (Ref. 9).

However, accurate shot placement is arguably the most difficult aspect of firing a handgun in a defensive situation. This is because of the extreme stress experienced by the defender when faced with a deadly threat. This stress, exacerbated by the adrenaline-dump that accompanies the threat of death or great bodily harm causes several physiological reactions within the body including reduction of small muscle control, which negatively effects manual dexterity, which in turn makes it very difficult to deliver an accurate, fight-stopping shot to an assailant. Additionally, studies show that because an attacker can turn faster than a defender can pull the trigger of a firearm, the defender may not shoot the attacker in the same part of the body that he or she intended. (Ref. 10)

Civilian self-defense and law enforcement trainers have recognized this difficulty to place well aimed, accurate shots on an assailant in an emergency situation and have been training civilians and LEOs alike to fire as many rounds as are necessary as quickly and as accurately as possible to stop the aggressor, and then to stop shooting as soon as the defender recognizes the threat is no longer present. In my professional experience teaching self-defense using firearms, I train civilians to shoot multiple times, if necessary, until the threat has been terminated.

Moreover, research indicates that even when the threat has been terminated, a defender may continue to fire multiple rounds because it takes time to process the change in the threat. In 2009, William J. Lewinski, PhD and Director of the Force Science Research Center, wrote (Ref. 11):

“The delay in noticing any change in the nature of the threat and having the officer change his or her behavior in response to that threat could theoretically take the average officer a second to a second and a half in a dynamic, ‘real-world,’ life-threatening encounter if the officer did not expect that the threat would cease. This process alone could be the reason for an extra three to six rounds being fired by the officer after the threat ceased – particularly if the officer was shooting as quickly as possible, was focused on shooting to save his or her own life, or emotionally recoiling in response to that threat and also simultaneously involved in assessing the threat.”

These “number of rounds fired” and “stop shooting” issues are perfectly applicable to any citizen defending his or her life, or the life of another. Although the data referenced by Dr. Lewinski, above, indicates that in a live environment, it may take an officer up to one to 1.5 seconds to recognize that a threat has been terminated, and stop shooting, and there is no reason to believe that a civilian who does not have specialized training would have quicker reaction time than an officer. Therefore, for the reasons listed above, an individual who reasonably perceives an imminent risk of death or great bodily harm by an aggressive assailant may fire multiple rounds to terminate the threat, particularly when the attacker is under the influence of a stimulant such as cocaine, or adrenaline, and is not immediately incapacitated.

Can an unarmed person cause death or great bodily harm?

There is no question that an “unarmed” person, with the necessary mindset, can cause great bodily harm and even death. That kind of power to cause that kind of damage to a targeted citizen does not even require special training. Based on my professional experience as a law enforcement officer investigating cases, reviewing police reports, and my ongoing study of violent assaults, there are innumerable cases where victims have been beaten and/or kicked into comas and even killed by “unarmed” attackers. For a recent example, on January 25, 2019, video surveillance at Froedtert Hospital (Milwaukee) showed an “unarmed” attacker shove a Froedtert employee to the ground, stomp on and kick her neck and head approximately 40 times, causing blunt force trauma to her head that caused death according to the autopsy report, which also noted evidence of manual strangulation. (Ref. 12). Sometimes these “unarmed” attackers were under the influence of a drug or intoxicant of some type; sometimes they were emotionally disturbed; sometimes they were simply enraged beyond control at the time of the attack.

Now, consider the empty-handed attacker who sees and acknowledges his target has a firearm *in-hand* and still advances his attack. The targeted citizen must now consider what the attacker might do if he gains control of the citizen’s firearm. History has shown repeatedly that LEOs can be beaten badly with or shot with their own firearm when an attacker has managed to wrestle it away from the LEO. In a recent article in CONCEALED CARRY MAGAZINE (Ref. 13) author Schuyler P. Robertson wrote that a FBI Uniform Crime Report specified that, “between 2011 and 2015, 7.9 percent of police officers killed in the line of duty were slain with their own firearms.” Because most LEO’s are trained in weapon retention, but most private citizens are not, a reasonable person could rightly believe that private citizens are at a higher risk of being disarmed and their weapon being used against them. There is no reason an armed citizen should expect any different treatment from their attacker. Whenever an attacker clearly advances their assault against an obviously-armed citizen, he or she displays probable intent to disarm that citizen and potentially use that weapon against that citizen in some capacity, presumably without the citizen having a second weapon available to defend himself or herself against the attack.

What is disparity of force?

The matter of disparity of force is any situation that a reasonable person would conclude places him at an overwhelming disadvantage in his effort to protect himself against immediate and serious bodily injury or death. Some examples of disparity of force include: a large person against a small person; a young person against an aged person; an able-bodied person against a disabled person; a person known to have training in the martial arts against an untrained person; an experienced fighter against an inexperienced fighter; and two or more persons against one person. As explained by defense expert Marty Hayes, the disparity of force involving multiple attackers against an armed defender presents a particularly dangerous situation for the armed defender, who is outflanked and who risks turning his back and exposing himself to a second attacker in order to defend himself against the first attacker. Because the armed defender holding a firearm only has one hand (likely his weak hand), at best, to ward off two or more attackers, and because of the challenges of accurately shooting an attacker with a firearm as described previously, this scenario indicates an increased threat of death or great bodily harm, and that the joint attackers will together disarm the defender and use the now unarmed defender's own weapon to shoot him. [Ref 13].

Again, the attacker(s) (even in a disparity of force situation) must be demonstrating the *ability*, have the *opportunity*, and display *jeopardy* (a.k.a. *intent*) to inflict *immediate serious bodily injury or death* to the targeted citizen or those around him in order to justify the use of deadly force to stop the attack.

Professional opinion regarding crime scene observations.

Having worked at the crime scenes in numerous cases, including multiple homicide cases, during my decades with the Milwaukee Police Department, I have observed numerous examples where crime scenes have become inadvertently contaminated by the actions of those with access to the scene before evidence has been documented. Most commonly, I have observed emergency medical workers pick up and kick aside bullets or shell casings (perhaps unwittingly or instinctively) in several situations, placing the evidence in a different location. It can be very painful to kneel on a bullet or shell casing, which can be difficult to see, when someone is attempting to kneel and attend to those in need of attention.

Also, I have personally observed crime scenes where an individual was shot once and suffered multiple gunshot wounds. In one memorable example, the individual was shot with one (1) bullet, causing five (5) entrance and exit wounds based on his posture and the shooters position at the time of the shooting: entered into and exited an arm, entered the chest, exited the abdomen, and entered the thigh without a final exit wound, yet survived.

Conclusion.

I am not a lawyer and do not profess to speak for the court regarding the privilege to use force in self-defense in Wisconsin. However, I do have extensive training, education, and experience in the use of force with 25 years as a LEO as well as more than 22 cumulative years teaching courses on use of force (less-than-lethal and deadly) for self-defense, carrying concealed weapons, and firearms safety to both LEOs and civilians. Since 2011, I have taught firearms safety, handling and shooting techniques, the fundamentals of self-defense law, and what to expect if a citizen ever has to use a weapon in self-defense to more than 1,200 civilians in more than 120 classes. As an instructor, I tell students they must perceive the attacker is demonstrating the *ability*, *opportunity*, and *jeopardy* (a.k.a. *intent*) to inflict *immediate serious bodily injury or death* to the targeted citizen or those around him in order to justify the use of deadly force to stop the attack.

This concludes my report. I remain available to discuss any of the aforementioned points in greater detail, as needed.

Respectfully submitted,

Conrad W. Zvara

References.

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Curriculum Vitae for Conrad W. Zvara

Firearms/Use of Force/Self Defense-Training & Instructor Certifications:

Certified Law of Self Defense Program Instructor 2016
Certified Massad Ayoob Group (MAG) Deadly Force Instructor 2016
Certified US Concealed Carry Association (USCCA) CCW Instructor 2016
Graduate Front Sight Defensive Pistol Course 2015 & 2016
Certified National Rifle Association (NRA) Shotgun Coach 2012
Certified NRA Chief Range Safety Officer 2012
Certified NRA Range Safety Officer 2012
Certified NRA Home Firearms Safety Instructor 2012
Certified Glock Armorer 2012
Certified NRA Pistol Instructor 2011
Milwaukee Police Department (MPD) Inservice Training quarterly 1978-2002
US Secret Service Protective Operations 2000
MPD Field Training Officer Supervision 1989
Rapid Intense Specific Competencies (RISC) Impact Weapon Instructor Updates 1988 & 1989
Armament Systems & Procedures (ASP) Tactical Baton Instructor 1987
MPD Supervisory Development 1987
Calibre Press Tactical Edge Seminar 1986
MPD Law Enforcement Leadership 1985
Calibre Press Street Survival Seminar 1985
RISC Management Mechanics of Arrest Tactics Instructor 1985
RISC Management Impact Weapon Instructor 1984
US Coast Guard (USCG) Port Securityman Advanced 1983
USCG Port Securityman Basic 1982
USCG Annual Firearms Qualifications (rifle, pistol, shotgun), Expert 1980-2011
MPD Field Training Officer 1980
MPD First Aid & CPR Instructor 1978
Wisconsin Basic Law Enforcement Certification 1978
MPD Quarterly Inservice Firearm Qualifications, Distinguished Expert 1977-2002

Milwaukee Police Dept: Oct 1977 thru Nov 2002 (25 yrs); Rank: Administrative Lieutenant of Police

- Special Assignment Division: Mayoral & City Hall Complex Security Detail 2000-02
- Medical Section: included the management & enforcement of safety policies of a police department of 2,300 sworn and 700 civilian employees
- Patrol Sergeant and Police Officer: included duties as Police Academy Adjunct Trainer, Field Training Supervisor/Officer; Crime Analysis Section Supervisor

US Coast Guard Reserve: Enlisted Oct 1980, Retired Mar 2011 (30+ yrs); Rank: Captain (O6).

- Senior CG Officer & Squadron Safety Officer (US Naval Coastal Warfare Squadron 21, Naval Station Newport, RI, deployed to Kuwait)
- Chief, Office of Law Enforcement (Ninth CG District, Cleveland, OH)
- Commercial Vessel Inspector, Port Security Planner (CG Marine Safety Office Milwaukee)
- Administration-, and Training Officer (CG Reserve Unit Milwaukee)
- Unit Security Officer (Port Security Unit 303)
- Port Securityman, explosive loading supervisor, trainer (CG Reserve Unit Kenosha)

Education:

- Mount Senario College Graduated May 1998: BS Degree in Criminal Justice Administration
- Northwestern University School of Police Staff & Command 1990: Certificate of Completion

Teaching Experience:**Concealed Carry / Personal Defense / Use of Force / Firearms Safety Instructor 2011-Present**

- As a self-employed instructor have taught these regimens in more than 120 classes to more than 1200 students (as of 4/2018).

Impact Weapons / Arrest Tactics / Empty Hands Defense Techniques / First Aid / Cardio Pulmonary Resuscitation Instructor, Milwaukee Police Department & US Coast Guard Reserve 1984-1991

- Was assigned, as needed, as an adjunct instructor at the Milwaukee Safety Academy where I taught the various programs listed above to more than 100 police inservice and recruit classes.
- As a petty officer, and later the training officer, taught these same programs to several classes of USCGR law enforcement-tasked petty officers.

Expert Witness/Consultant Experience:

2017 – Expert for defense in First Degree Reckless Homicide case (WI v. Randall Drescher); Provided written opinion & testified in Milwaukee Co. Circuit Court

2017 – Expert for defense in First Degree Reckless Homicide case (WI v. Jerad A. Jones); Provided written opinion and testified in Dunn County Circuit Court

2017 – Expert for defense in Discharging a Firearm into a Building case (WI v. Kurt Gray); Provided written opinion & affidavit filed

2017 – Expert for defense in Reckless Use of a Weapon Endangering Safety case; Provided written opinion

2017 – Expert for defense in Recklessly Endangering Safety case; Consultation

2018 – Expert for defense in First Degree Intentional Homicide case (WI v. Sergio Moises Ochoa); Provided written opinion

2018 – Expert for defense in First Degree Intentional Homicide (two counts) in Wisconsin case; Consultation

2018 – Expert for the defense in Second Degree Intentional Homicide Wisconsin case; Consultation

2018 – Expert for defense in Second Degree Reckless Homicide case; Provided written opinion

2018 – Expert for defense in Battery to LEO & Resisting an Officer Wisconsin case; Consultation

2018 – Expert for defense in Attempt First Degree Intentional Wisconsin Homicide case; Consultation

2018 – Expert for defense in First Degree Intentional Homicide case; Provided written opinion

2019 – Expert for defense in First Degree Intentional Homicide case in Wisconsin; Consultation

END

Appendix 15

FILED
10-03-2019
Sheboygan County
Clerk of Circuit Court
2017CF000478

**STATE OF WISCONSIN CIRCUIT COURT SHEBOYGAN COUNTY
BRANCH IV**

STATE OF WISCONSIN,

Plaintiff,

v.

Case No.: 17 CF 478

SERGIO OCHOA,

Defendant.

**DEFENDANT'S NOTICE OF MOTION AND MOTION TO
RECONSIDER ADMISSION OF EXPERT TESTIMONY
AND OPINIONS OF CONRAD ZVARA**

TO: District Attorney Joel Urmanski
Sheboygan County District Attorney's Office
615 North Sixth Street
Sheboygan, Wisconsin 53081

NOTICE OF MOTION

PLEASE TAKE NOTICE that Mr. Sergio Ochoa, Defendant, appearing specially by Kaehne, Cottle, Pasquale & Associates, S.C., specifically Attorney Corey G. Mehlos, and reserving the right to challenge the court's jurisdiction, will move the Sheboygan County Circuit Court Branch, IV, before the Honorable Rebecca Persick, presiding judge, on October 4, 2019 at 2:30 p.m., for reconsideration of the court's prior ruling to exclude the expert testimony and opinions of Conrad Zvara and, further, for an order to reverse the court's prior ruling and for a grant of such motion to allow such evidence to be admitted at trial.

MOTION

COMES NOW, Mr. Sergio Ochoa, Defendant, appearing specially by Kaehne, Cottle, Pasquale & Associates, S.C., specifically Attorney Corey G. Mehlos, and reserving the right to challenge the Court's jurisdiction, hereby moves the Court for reconsideration of the court's prior ruling to exclude the expert testimony and opinions of Conrad Zvara and, further, for an order to reverse the court's prior ruling and for a grant of such motion to allow such evidence to be admitted at trial.

AS GROUNDS FOR THIS MOTION, Mr. Sergio Ochoa asserts:

1. That the State filed a May 8, 2019 *Motion To Exclude Defense Expert Witnesses*, July 1, 2019 *Challenge To Defense Experts* filed on July 1, 2019, and letter brief to the Court on September 13, 2019 outlining its objections to Mr. Zvara's expert opinions.
2. Mr. Ochoa has filed multiple pleadings, including *Defense's Reply To State's Motion To Exclude Expert Witnesses* filed on May 21, 2019, *Reply To State's Challenge To Defense Offered Opinions* filed on August 9, 2019, and letters to the Court filed on September 8, 2019 and September 23, 2019 outlining its response to the State's objections. Mr. Ochoa incorporates by reference these responses.
3. On August 30, 2019, the Court excluded Mr. Zvara's testimony because the Court reasoned that Mr. Zvara's expert opinions were not relevant to Mr. Ochoa's state of mind.
4. On September 24, 2019, the Court considered Mr. Ochoa's argument that Mr. Ochoa is offering Mr. Zvara's expert opinions to prevent jurors from making "false assumptions" when evaluating the physical evidence that bear upon the jury's assessment of Mr. Ochoa's credibility and the objective reasonableness of his conduct. *State v. Richardson*, 189 Wis. 2d 418, 425, 525 N.W.2d 378, 381 (Ct. App. 1994).
5. In excluding the evidence, the Court reasoned that whereas the evidence is relevant and reliable, it is "excludable under [Wis.Stat. §] 904.03 as the needless presentation of evidence which will unduly delay the case." 9/24/19 *Motion Hearing* Tr. Page 6, Lines 10-13. The Court also made finding that *State v. Richardson, supra*, did not apply because it was part of a line of cases relating to domestic violence (i.e. battered women) for which the "greater latitude" exception is needed to "bolster [a witnesses'] credibility." 9/24/19 *Motion Hearing* Tr. Page 5, Lines 10-24. Additionally, the Court reasoned that the cases cited by Mr. Ochoa concerning his Constitutional right to present a complete defense were factually distinct and did not present issues that were "very straightforward." *Id.*, Page 6, Lines 14-25. Finally, the Court reasoned that because Mr. Ochoa did not cite any self-defense cases specifically, Mr. Zvara's expert opinions are inadmissible. *Id.*, Page 7, Lines 10-13.
6. All of the Court's reasons for excluding Mr. Zvara's evidence were distinct from objections raised by the State's three briefs.
7. The standard for a motion for reconsideration is that a party must either present newly discovered evidence or establish a manifest error of law or fact. *Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶44, 275 Wis.2d 397, 685 N.W.2d 853. A manifest error of law occurs when the circuit court disregards, misapplies, or fails to recognize controlling precedent. *Id.* A motion for reconsideration may also present a "new issue." *State v. Edwards*, 2003 WI 68, ¶ 6, 262 Wis. 2d 448, 453, 665 N.W.2d 136, 139.
8. The Wisconsin Supreme Court encourages litigants to request the trial courts for reconsideration as a method of correcting errors. *Kochel v. Hartford Accident & Indemnity Co.*, 66 Wis.2d 405, 418, 225 N.W.2d 604, 611 (1975).

9. Evidence is cumulative when “where it tends to address ‘a fact established by existing evidence.’” *State v. Thiel*, 2003 WI 111, ¶ 78, 264 Wis. 2d 571, 665 N.W.2d 305; *State v. McAlister*, 2018 WI 34, ¶ 37, 380 Wis. 2d 684, 707, 911 N.W.2d 77, 88, reconsideration denied, 2018 WI 90, ¶ 37, 383 Wis. 2d 146, 918 N.W.2d 77, and cert. denied, 139 S. Ct. 824, 202 L. Ed. 2d 601 (2019).
10. Mr. Ochoa simply wants a fair trial in which jurors do not falsely assume his statement is inconsistent with the physical evidence, as the State intends to argue, simply because the jury has false assumptions about the physical evidence.
11. In response to the Court’s argument that Mr. Zvara’s expert opinions are “cumulative” under Wis.Stat. § 904.03, Mr. Ochoa respectfully contends that he has no other way to present Mr. Zvara’s expert opinions, including that an attacker who is shot by a pistol in a location that is not immediately incapacitating will not necessarily be stopped from further attack; the distance by which objectively an attacker can stab someone armed with a pistol, etc. Mr. Ochoa cannot testify himself to these opinions; hence he needs an expert to assist the trier of fact. Just as an alleged strangulation victim is not qualified to testify as to whether strangulation oftentimes does not leave bruises on one’s neck, Mr. Ochoa is not qualified to testify to the above-specified principles of dynamic use of force. Nor would the presentation of such evidence cause undue delay. As previously indicated in correspondence to the Court, it appears that there may be extra time to present witness testimony.
12. Responding to the Court’s argument that *State v. Richardson*, does not apply because it is part of a line of greater-latitude domestic violence cases, Mr. Ochoa respectfully contends that nothing within the *State v. Richardson* Court’s analysis suggests that. Whereas the Court correctly notes that the greater-latitude exception is a standard pertains to the admissibility of other-acts evidence needed to bolster witness credibility, it is the understanding of undersigned counsel that because *State v. Richardson* was published in 1994 when the greater latitude rule was limited to sexual assault cases, it would have been 20 years before the legislature passed Wisconsin Act 362 (2013) in April 2014, creating a greater latitude rule for domestic violence alleged victims under § 904.04(2)(b)1.¹
13. The *State v. Richardson* Court observed that the standard for admissibility of expert testimony is whether it meets the criteria contained in Wis.Stat. § 907.02, including whether the expert opinions “assist the trier of fact to understand or to determine a fact in issue,” and is not otherwise inadmissible for reasons such as making conclusions about a witnesses’ state of mind. 189 Wis. 2d 418, 423–24, 525 N.W.2d 378, 380–81 (Ct. App. 1994). Nothing within the plain language of the *State v. Richardson* case indicates that comparison testimony only assists the factfinder if it relates to alleged victims of domestic violence; rather, the *State v. Richardson* Court explained how comparison testimony assists the jurors without violating the *State v. Jensen* limitations of expert vouching for the witnesses’ credibility.²

¹ Undersigned counsel would cite a Wisconsin Court of Appeals per curiam decision to explain this; however, that is not permitted. So undersigned counsel would note that a *Comment* in the Wisconsin Law Review Journal entitled “Wisconsin’s Greater Latitude Rule: A Backdoor For Propensity Evidence,” published by Nicholas Hahn on February 3, 2013 provides a comprehensive history of how the greater latitude rule evolved in sexual assault cases and makes no reference to domestic violence cases.

² In *Richardson*, neither the trial court nor the State objected to the defense expert presenting expert opinions “generally about the battered woman’s syndrome without comparison to *Richardson*. *Id.* 422. Because the expert compared the

14. In this case, Mr. Zvara's opinion assists the fact finder to understand the physical evidence within the context of a dynamic encounter involving use of force. Nothing within the record refutes Mr. Zvara's expert opinion that civilians do not understand the principles involving use of force within dynamic encounters. Mr. Ochoa is not offering this evidence to simply "bolster his credibility," which the Wisconsin Supreme Court has indicated is necessary in other aspects of self-defense claims due to jurors' inherent skepticism of a defendant's self-serving statement in a homicide case.³ Mr. Zvara's opinions assist the jury to objectively understand the physical evidence so that jurors do not make false assumptions about Mr. Ochoa's credibility and the objective reasonableness of his actions. Furthermore, Mr. Zvara's expert opinions directly respond to the State's argument that Mr. Ochoa's account is inconsistent with the physical evidence. To allow the State on the one hand to suggest Mr. Ochoa is giving a false account that is refuted by the physical evidence while preventing him from admitting reliable testimony concerning the dynamics of use of force that explains the physical evidence and prevent the jurors from making false assumptions is fundamentally unfair for reasons previously articulated. Compared to the alternatives contained within Mr. Ochoa's *Third Motion In Limine*, which mitigate an unfair advantage that would be given to the State by excluding Mr. Zvara's expert testimony while allowing them to imply Mr. Ochoa's account is false, the fact finder should be allowed to consider actual testimony with the opportunity for direct and cross-examination so that they can make the most factually accurate findings in a case alleging two counts of First Degree Intentional Homicide.
15. Certainly, the Court is correct that the cases Mr. Ochoa cited supporting his constitutional right to present a complete defense are factually distinct. Yet Mr. Ochoa's application of the factors set forth in *State v. St. George* referenced on pages three and four of his September 23, 2019 letter to the Court establish why it is unconstitutional to deny someone the right to present evidence to counter the State's argument that his account is inconsistent with the physical evidence, particularly on issues where it is undisputed that jurors are likely to make false assumptions about the physical evidence. As far as this case being distinguishable because it is very straightforward, Mr. Ochoa contends that the governing standard is whether the expert opinions assist the factfinder. To the extent the Court would make a finding that the facts of this case are straightforward, Mr. Ochoa would offer District Attorney Urmanski's comment at the September 24, 2019 *Hearing* that the Wisconsin State Crime Lab consultant was unable to offer a reconstruction of the shooting scene due to challenges presented by the physical evidence. Mr. Ochoa would further offer that three of his experts have commented

profile of a battered woman to the defendant, the trial court excluded that comparison testimony and was reversed on appeal. *Id.*, 431. The *Richardson* Court explained that the comparison testimony assisted the factfinder understanding evidence offered "to 'prevent false assumptions on the part of the factfinder.'" *Id.*, citing, *State v. Jensen*, *State v. Jensen*, 147 Wis.2d 240, 254 & n. 3, 432 N.W.2d 913, 919 (1988). Specifically, the comparison testimony was offered for the permissible purpose² by "provid[ing] a context from which the jury could understand why [the defendant] might perceive herself to be in imminent danger at the time of the killing and could assess whether such a belief would have been reasonable. *Id.*, 427.

³ "A defendant should not be limited merely to his own assertion that he had knowledge of particular violent acts, but should be allowed to produce supporting evidence to prove the reality of the particular acts of which he claims knowledge, thereby proving reasonableness of his knowledge and apprehension and the credibility of his assertion." *State v. Daniels*, 160 Wis. 2d 85, 95–96, 465 N.W.2d 633, 636 (1991); *Quoting McAllister v. State*, 74 Wis.2d 246, 250-51, 246 N.W.2d 511 (1976).

that challenges with the physical evidence make this case one of the most difficult, if not the most difficult, that they have ever been involved in.

16. Finally, in response to the Court's rationale that Mr. Ochoa did not specifically provide a fact-specific case establishing that he has a right to present expert testimony on dynamic use of force in the context of a self-defense claim, Mr. Ochoa contends that imposes such a burden on the proponent of evidence exceeds the requirements set forth in Wis.Stat. § 907.02. Respectfully, this reasoning is inconsistent with *Seifert v. Balink*, 2017 WI 2, ¶ 59, 372 Wis. 2d 525, 554, 888 N.W.2d 816, 831, reconsideration denied, 2017 WI 32, ¶ 59, 374 Wis. 2d 163, 897 N.W.2d 54 (physician's entirely experience-based opinion concerning the reasonable duty of care for a family doctor satisfied the Wis.Stat. § 907.02 criteria even though there was no specific precedent nor literature to support the opinions was admissible). The Supreme Court of Wisconsin specifically explained:

Daubert makes the trial court a gatekeeper, not a fact finder. [Even when] credible, qualified experts disagree, a litigant is entitled to have the jury, not the trial court, decide which expert to believe. ¶ 59; *Citing Dorn v. Burlington N. Santa Fe R.R. Co.*, 397 F.3d 1183, 1196 (9th Cir. 2005).¹⁷

Mr. Ochoa has satisfied the Wis.Stat. § 907.02 standards for the reasons explained above. If the requirement were that the proponent of expert testimony were required to demonstrate that an appellate case was factually on point in all relevant respects, that rationale would prohibit the State from introducing any analysis of the absence of physical bruising in strangulation cases, because the State has not done so to date. Even though presumably there are far more strangulation than homicide allegations, no such case has previously been presented. Undersigned counsel is unaware of any legal authority that imposes such a requirement as a bar to expert testimony that satisfies the requirements of Wis.Stat. § 907.02 and is not otherwise inadmissible based on the rules of evidence.

17. Accordingly, Mr. Ochoa respectfully contends that it would be a manifest error for the Court to exclude reliable and relevant evidence that assists the trier of fact on grounds that it is cumulative. Indeed, Mr. Ochoa has no other way to offer evidence on his own behalf concerning Mr. Zvara's expert opinions, as explained described above. Although the Court did not exclude, nor did the State object to, Mr. Zvara's expert testimony on any other rule of evidence, even if the Court still were to find that Mr. Zvara's testimony were cumulative under Wis.Stat. § 904.03, Mr. Ochoa contends that it is nonetheless admissible because the record establishes that it assists the fact finder and is necessary to prevent false assumptions concerning the physical evidence and directly respond to the State's argument based on Mr. Ochoa's constitutional right to a complete defense under the *State v. St. George* factors.⁴

⁴ Mr. Ochoa respectfully contends that just as a litigant is "entitled" to present competing expert testimony in a civil case when a fact is in dispute as explained by the *Seifert Court*, or the State is allowed to present expert testimony to prevent the jurors from believing the alleged victim is lying about being strangled because her statement is inconsistent with the physical evidence, Mr. Ochoa (who is presumed to be innocent and whose liberty is at stake) has a constitutional right to directly respond to the State's argument that his account is inconsistent with the physical evidence. It would be fundamentally unfair to allow the jury to assume that the State's argument is correct, or rely on false assumptions, and not allow Mr. Ochoa the opportunity to present reliable testimony to explain the physical evidence to the fact finder.

WHEREFORE the Defendant, Mr. Sergio Ochoa, by and through counsel, hereby requests that the court reconsider its denial of its prior ruling to exclude the expert testimony and opinions of Conrad Zvara and, further, for an order to reverse the court's prior ruling and for a grant of such motion to allow such evidence to be admitted at trial.

Dated this 3rd day of October, 2019.

Respectfully Submitted,
KAEHNE, COTTLE,
PASQUALE & ASSOCIATES, S.C.
Electronically signed by:

/s/ Corey G. Mehlos

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