

APPENDIX B

18-10083

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JUAN CARLOS BURNS,

Defendant-Appellant.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA (CR-17-00445-DGC-1)**

**DEFENDANT - APPELLANT'S EXCERPTS OF RECORD
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**JON M. SANDS
Federal Public Defender
District of Arizona**

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Assistant Federal Public Defender
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09:52:27 1 four factors in declining order of importance as follows:

2 First, enrollment in a federally recognized tribe;

3 Second, government recognition formally and
4 informally through receipt of assistance reserved only to
5 individuals who are members or are eligible to become members
6 of a federally recognized tribe;

7 Third, enjoyment of the benefits of affiliation with
8 a federally recognized tribe;

9 And, fourth, social recognition as someone affiliated
09:53:03 10 with a federally recognized tribe through residence on a
11 reservation and participation in the social life of a
12 federally recognized tribe.

13 You are instructed that the Salt River Pima-Maricopa
14 Indian Community is a federally recognized Indian tribe and
09:53:23 15 was so at the time of the instant offense.

16 The defendant is charged Count 2 of the indictment
17 with discharge -- with discharging a firearm during and in
18 relation to a crime of violence causing death in violation of
19 Section 1924(c)(1)(A)(i) through (iii) and Section (j) of
09:53:53 20 Title 18 of the United States Code.

21 In order for the defendant to be found guilty of that
22 charge, the government must prove each of the following
23 elements beyond a reasonable doubt:

24 First, the defendant committed the crime of first
09:54:08 25 degree murder as charged in Count 1 of the indictment or the

09:54:12 1 lesser offense of second degree murder, which I instruct you
2 are both crime of violence.

3 And, second, the defendant knowingly discharged the
4 firearm during and in relation to that crime.

09:54:27 5 A defendant discharges a firearm during and in
6 relation to a crime if the firearm facilitated or played a
7 role in the crime.

8 An act is done knowingly if the defendant is aware of
9 the act and does not act through ignorance, mistake, or
09:54:51 10 accident. The government is not required to prove that the
11 defendant knew that his acts or omissions were unlawful. You
12 may consider evidence of the defendant's words, acts, or
13 omissions along with all the other evidence in deciding
14 whether the defendant acted knowingly.

09:55:13 15 Evidence has been admitted that the defendant may
16 have been intoxicated at the time of the crime charged -- at
17 the time the crime charged was committed.

18 You may consider evidence of the defendant's
19 intoxication in deciding whether the government has proved
09:55:30 20 beyond a reasonable doubt that the defendant acted with the
21 intent required to commit first degree murder.

22 Voluntary intoxication is not a defense to second
23 degree murder or involuntary manslaughter.

24 Mere presence at the scene of a crime or mere
09:55:55 25 knowledge that a crime is being committed is not sufficient to