

No. _____

In the
Supreme Court of the United States

Michael Burciaga,

Petitioner,

v.

United States of America,

Respondent.

On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Petitioner Michael Burciaga's Appendix

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Appendix A

2025 WL 3187361

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United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff - Appellee,

v.

Michael BURCIAGA, Defendant - Appellant.

No. 23-2663

|

Argued and Submitted June 4,

2025 San Francisco, California

|

FILED NOVEMBER 14, 2025

Appeal from the United States District Court for the District of Nevada, Miranda M. Du, District Judge, Presiding, D.C. No. 3:20-cr-00060-MMD-CLB-1

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Before: CALLAHAN, BADE, and KOH, Circuit Judges.

MEMORANDUM *

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

*1 Following the killing of Amanda Davis (“Davis”) and her unborn child, a jury convicted Michael Joshua Burciaga (“Burciaga”) of first-degree murder within Indian Country (18 U.S.C. §§ 1111, 1151, 1152), causing the death of an unborn child within Indian Country (18 U.S.C. §§ 1841(a)(1), 1111, 1151, 1152), and domestic assault by a habitual offender within Indian Country (18 U.S.C. § 117(a)(1)). Burciaga appeals his conviction and sentence. We presume the parties’ familiarity with the facts and discuss them only as necessary

for context. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742. We affirm.

1. First, Burciaga argues that the evidence was insufficient to convict him of first-degree murder and that the district court erred in denying his motion for judgment of acquittal. We review the district court’s denial of a motion for judgment of acquittal de novo. *United States v. Aubrey*, 800 F.3d 1115, 1124 (9th Cir. 2015). To determine whether evidence is sufficient to support a conviction, the court views the evidence in the light most favorable to the government and must affirm if “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *United States v. Nevils*, 598 F.3d 1158, 1163–64 (9th Cir. 2010) (en banc) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (original emphasis in *Jackson*)).

Burciaga first asserts that the evidence is insufficient to prove he acted with premeditation and deliberation. Premeditation is a necessary element of first-degree premeditated murder under 18 U.S.C. § 1111(a). *See United States v. Begay*, 673 F.3d 1038, 1042 (9th Cir. 2011) (en banc). The question here is whether there was enough time “after forming the intent to kill, for [Burciaga] to have been fully conscious of the intent and to have considered the killing.” Model Crim. Jury Instr. 9th Cir. 16.1 (2024); *see also United States v. Reza-Ramos*, 816 F.3d 1110, 1123 (9th Cir. 2016). We conclude that a rational juror could find that in the time between leaving the bedroom after stabbing Davis with a knife from next to the bed, going to the kitchen to grab another knife, returning to the bedroom, and breaking through the barricaded bedroom door, he became fully conscious of his intent to kill Davis, considered it, and acted upon it when he re-entered the room and began stabbing Davis.

Burciaga next argues that there is insufficient evidence to prove malice aforethought. We disagree. A person acts with malice aforethought when they kill “either deliberately and intentionally or recklessly with extreme disregard for human life.” *United States v. Houser*, 130 F.3d 867, 872 (9th Cir. 1997). As this court explained in *United States v. Pineda-Doval*, 614 F.3d 1019 (9th Cir. 2010), malice aforethought requires a quantum of risk that is very high and requires that the nature of the risk concern injury to others. *Id.* at 1038 (explaining that malice aforethought requires conduct creating “a very high degree of risk of injury to other persons” and that the defendant “be aware of that risk” (quotation marks and alterations omitted)).

*2 Here, a rational juror could conclude that stabbing Davis with knives created a very high risk of injury to Davis and that Burciaga was aware of that risk. Therefore, we conclude that there is sufficient evidence to sustain the jury's conclusion that Burciaga acted intentionally or recklessly and with extreme disregard for human life when he used multiple knives to stab Davis 18 times and to inflict over 20 additional incision wounds.

2. Second, Burciaga argues that the district court erred in failing to instruct the jury that the government had to prove beyond a reasonable doubt that Burciaga did not act in the heat of passion or upon a sudden quarrel to convict him of first-degree murder. The standard of review for an alleged jury instruction error “varies based on the nature of the alleged error.” *United States v. Cortes*, 757 F.3d 850, 857 (9th Cir. 2014) (quoting *United States v. Keyser*, 704 F.3d 631, 641 (9th Cir. 2012)). Because Burciaga challenges the district court's legal determination not to give a defense instruction, we review the alleged error de novo. *United States v. Mincoff*, 574 F.3d 1186, 1192 (9th Cir. 2009) (citation omitted).

“A defendant is entitled to an instruction upon his theory of the case if the record contains evidentiary support for the theory and the theory is supported by law.” *United States v. Lesina*, 833 F.2d 156, 160 (9th Cir. 1987). Burciaga presented only three statements by Davis that he alleges constitute sufficient evidence of provocation to warrant a provocation jury instruction. Words alone, however, generally do not make for adequate provocation. *See Allen v. United States*, 164 U.S. 492, 497 (1896); *see also United States v. Roston*, 986 F.2d 1287, 1291 (9th Cir. 1993); *United States v. Wagner*, 834 F.2d 1474, 1487 (9th Cir. 1987). Therefore, we find that the statements in this case are insufficient evidence of provocation to warrant a defense theory instruction on heat of passion.

3. Third, Burciaga argues the evidence was insufficient to convict him of causing the death of an unborn child within Indian country. To determine whether evidence is sufficient to support a conviction, the court views the evidence in the light most favorable to the government and must affirm if “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Nevils*, 598 F.3d at 1163–64 (quoting *Jackson*, 443 U.S. at 319 (original emphasis in *Jackson*)).

Here, the jury was presented with evidence that the fetus died due to lack of blood flow through the placenta after

Davis's death, and importantly, with evidence that there was fetal movement the night prior to Davis's death. Burciaga presented the jury with alleged inconsistencies, contradictions, and challenges to this evidence, but the jury nonetheless convicted. Viewing the evidence in the light most favorable to the government, we find that the evidence was sufficient for a rational trier of fact to find Burciaga guilty of causing the death of an unborn child within Indian country.

4. Fourth, Burciaga argues that the district court constructively amended Count Two in violation of his Fifth Amendment right. We review whether the district court constructively amended an indictment de novo. *United States v. Tuan Ngoc Luong*, 965 F.3d 973, 984 (9th Cir. 2020). Here, despite the indictment specifically alleging first-degree murder as the predicate offense to Count Two causing the death of an unborn child within Indian Country, the district court instructed the jury that either the crime of murder or manslaughter can be the predicate offense. This, Burciaga says, was error because it expanded the *mens rea*. We disagree.

*3 Because the *mens rea* for both murder and voluntary manslaughter is the same, the district court did not expand or modify the *mens rea* requirement by instructing that voluntary manslaughter could form the predicate offense for Count Two. *See United States v. Draper*, 84 F.4th 797, 803 (9th Cir. 2023). Additionally, because involuntary manslaughter is a lesser-included offense to murder, the district court did not err by instructing that involuntary manslaughter could form the predicate offense for Count Two. *See United States v. Hansen-Sturm*, 44 F.3d 793, 794 (9th Cir. 1995); *see also United States v. Carlson*, 533 F. App'x 743, 744 (9th Cir. 2013).

5. Fifth, Burciaga argues the district court abused its discretion by shackling him during trial. The district court's decision to shackle a defendant is reviewed for abuse of discretion, *United States v. Cazares*, 788 F.3d 956, 963 (9th Cir. 2015), and underlying factual findings for clear error, *Spain v. Rushen*, 883 F.2d 712, 717 (9th Cir. 1989). Shackling orders are governed by the following test: “(1) the court must be persuaded by compelling circumstances that some measure was needed to maintain the security of the courtroom; and (2) the court must pursue less restrictive alternatives before imposing physical restraints.” *Cazares*, 788 F.3d at 963 (citation and quotations omitted).

Here, the district court did not abuse its discretion in placing nonvisible leg-restraints on Burciaga. As Burciaga concedes,

the district court ordered him shackled based on the U.S. Marshal's conclusion that he presented as a risk in court and as an escape risk. Based on this compelling circumstance, the district court imposed a less restrictive form of shackling—leg shackles—to secure the courtroom. This was not error.

Additionally, there is no evidence that any of the jurors saw the leg shackles. Indeed, Burciaga cites no evidence that any juror saw or was even aware of the leg shackles. Therefore, even if the district did err in shackling Burciaga, it was harmless. See *Rhoden v. Rowland*, 172 F.3d 633, 636 (9th Cir. 1999) (“[W]hen the defendant's shackling was not actually seen by the jury during the trial, we have held that the shackling was harmless error.”).

6. Sixth, Burciaga argues the government engaged in prosecutorial misconduct by failing to meet its disclosure obligations. We review claims of prosecutorial misconduct for harmless error. *United States v. Alcantara-Castillo*, 788 F.3d 1186, 1190 (9th Cir. 2015). Error is harmless unless “it is more probable than not that the prosecutor's conduct materially affected the fairness of the trial.” *United States v. Hermanek*, 289 F.3d 1076, 1102 (9th Cir. 2002). Burciaga argues that the government engaged in prosecutorial misconduct by failing to disclose an unrecorded and undocumented statement by Davis's mother that she felt fetal movement the night before Davis's death.

The district court noted that the “prosecutors' decision to intentionally not take note of this material evidence is concerning, particularly when viewed in the context of this case.” *United States v. Burciaga*, No. 20-CR-60-MMD-CLB-1, 2023 WL 6197335, at *2 (D. Nev. Sept. 22, 2023). We share this concern. However, we ultimately agree that the government did not commit prosecutorial misconduct in this instance. We also agree with the district court that neither the Jencks Act nor Federal Rule of Criminal Procedure 16 required the disclosure of this statement. See 18 U.S.C. § 3500; Fed. R. Crim. P. 16(E).

*4 7. Seventh, Burciaga argues that the district court erred by denying his motion for a mistrial based on an outburst by the victim's son during trial. We review the district court's denial of a motion for a mistrial for abuse of discretion. *United States v. Ubaldo*, 859 F.3d 690, 700 (9th Cir. 2017). A “mistrial is appropriate only where there has been so much prejudice that an instruction is unlikely to cure it.” *United States v. Escalante*, 637 F.2d 1197, 1203 (9th Cir. 1980).

Burciaga argues that the district court abused its discretion in denying his motion for a mistrial following a spontaneous outburst from Davis's son after Davis's son's testimony. We disagree. Here, there was not such overwhelming prejudice that the district court's instruction could not cure the outburst. We presume that the jury followed the district court's curative instruction “to disregard inadmissible evidence inadvertently presented to it,” and we further find that there is no indication that the prejudice here was so great to be “devastating” to Burciaga. *Greer v. Miller*, 483 U.S. 756, 766 n.8 (1987). Accordingly, the district court did not err in denying the motion.

8. Eighth, Burciaga argues that the district court abused its discretion by denying him an evidentiary hearing for his motion to suppress evidence. We review the district court's denial of an evidentiary hearing on a motion to suppress for abuse of discretion. *United States v. Cook*, 808 F.3d 1195, 1201 (9th Cir. 2015).

Burciaga argues that the district court erred in denying him an evidentiary hearing on his motion to suppress because there was a question of fact as to whether the combination of Dilaudid, alcohol, methamphetamine, and severe pain influenced his *Miranda* waiver. To determine the validity of a *Miranda* waiver, a court looks to the totality of the circumstances surrounding the interrogation. See *Moran v. Burbine*, 475 U.S. 412, 421 (1986). Here, the district court engaged in this totality analysis without the need for an evidentiary hearing. A review of the record demonstrates that the district court had complete evidence of the circumstances surrounding the *Miranda* waiver, including multiple recordings of Burciaga. The district court accepted certain facts regarding substances and medication consumed by Burciaga and folded those facts into its waiver analysis. There were no factual disputes remaining that would require the district court to hold an evidentiary hearing. See *United States v. Pedroni*, 958 F.2d 262, 267 (9th Cir. 1992). Accordingly, the district court did not abuse its discretion in denying Burciaga an evidentiary hearing on his motion to suppress.

9. Ninth, Burciaga argues that the district court committed five evidentiary errors resulting in prejudice and warranting a new trial. We review the district court's decision to admit or exclude evidence for abuse of discretion. *United States v. Alvirez*, 831 F.3d 1115, 1120 (9th Cir. 2016). Evidentiary rulings will be reversed for abuse of discretion only if the

error more likely than not affected the verdict. *United States v. Reyes*, 660 F.3d 454, 463 (9th Cir. 2011).

Burciaga argues the district court erred in (a) admitting five prior acts of domestic violence, (b) admitting statements made by Davis's children that the district court concluded were excited utterances, (c) admitting Burciaga's statement to the investigating FBI Agent without the accompanying transcript, (d) declining to admit statements Burciaga made to his psychiatrist, and (e) declining to admit jail medical and psychiatric records.

*5 The district court properly relied on *United States v. Berckmann*, 971 F.3d 999 (9th Cir. 2020) to find that these instances of domestic violence are “textbook examples of evidence admissible under 404(b)” and thus did not err in admitting them. *Id.* at 1002. The district court did not abuse its discretion in determining that statements made by Davis's two children, who were ages six and seven at the time, were made while they were still under the stress of this violent and exciting event. *See United States v. Rivera*, 43 F.3d 1291, 1296 (9th Cir. 1995). And the district court did not abuse its discretion by declining to admit the certified transcript of Burciaga's conversation with the investigating FBI Agent because although a district court may admit certified transcripts into the record, it is not required to do so. *See United States v. Tisor*, 96 F.3d 370, 377 (9th Cir. 1996).

Further, the district court did not err in declining to admit the statements Burciaga made to his psychiatrist because the statements were made almost two months prior to the killing and they lacked a nexus to Burciaga's state of mind at the time of the killing. And finally, the district court did not err in excluding portions of Burciaga's medical and psychiatric records while he was in jail after the killing of Davis occurred.

The district court was within its discretion to evaluate these jail records, assess the relevance, and make a determination on that basis, and Burciaga cites no authority to the contrary.

Because the district court did not err in any of the evidentiary rulings discussed above, there was no cumulative error. *See United States v. Preston*, 873 F.3d 829, 835 (9th Cir. 2017).

10. Lastly, Burciaga argues the written judgment does not comport with the district court's oral pronouncement. We review discrepancies between the oral sentencing pronouncement and the written judgment de novo. *United States v. Montoya*, 82 F.4th 640, 646 (9th Cir. 2023) (en banc). “When there is a discrepancy between an unambiguous oral pronouncement of a sentence and the written judgment, the oral pronouncement controls.” *United States v. Hernandez*, 795 F.3d 1159, 1169 (9th Cir. 2015) (citation omitted).

Here, Burciaga correctly points out that the written judgment and the oral pronouncement do not match. The government agrees but argues that the written judgment resolved an ambiguity from the oral pronouncement. We agree with Burciaga. Here, the oral pronouncement and the written judgment say two different things, and the latter does not work to clarify the ambiguity of the former. Therefore, we “remand so that the district court can make the written judgment consistent with the oral pronouncement.” *Id.*

AFFIRMED and **REMANDED** for the district court to make the written judgment consistent with the oral pronouncement.

All Citations

Not Reported in Fed. Rptr., 2025 WL 3187361

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 3 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL BURCIAGA,

Defendant - Appellant.

No. 23-2663

D.C. No.

3:20-cr-00060-MMD-CLB-1

District of Nevada,

Reno

ORDER

Before: CALLAHAN, BADE, and KOH, Circuit Judges.

The panel has voted to deny appellant's petition for rehearing and petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

The petitions for rehearing and rehearing en banc (Dkt. No. 57) are
DENIED.

Appendix C

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL JOSHUA BURCIAGA,

Defendant.

Case No. 3:20-cr-00060-MMD-CLB

JURY INSTRUCTIONS

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law. Do not allow personal likes or dislikes, sympathy, fear, public opinion, prejudices, or biases, including unconscious bias, to influence you. Unconscious biases are stereotypes, attitudes, or preferences that people may consciously reject but may be expressed without conscious awareness, control, or intention. Like conscious bias, unconscious bias also can affect how we evaluate information and make decisions.

You also should not be influenced by any person's race, color, religion, national ancestry, or gender, sexual orientation, profession, occupation, celebrity, economic circumstances, or position in life or in the community. You will recall that you took an oath promising to do so at the beginning of the case.

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

1 Mr. Burciaga is charged in Count One of the indictment with murder in the first
2 degree in violation of Section 1111 of Title 18 of the United States Code. For Mr. Burciaga
3 to be found guilty of that charge, the government must prove each of the following
4 elements beyond a reasonable doubt:

5 First, Mr. Burciaga unlawfully killed A.D.;

6 Second, Mr. Burciaga killed A.D. with malice aforethought;

7 Third, the killing was premeditated;

8 Fourth, the killing occurred within the exterior boundaries of the Pyramid Lake
9 Indian Reservation of Nevada, which I instruct you is in Indian Country of the United
10 States;

11 Fifth, A.D. was an Indian; and

12 Sixth, Mr. Burciaga did not act in reasonable self-defense.

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

15 Premeditation means with planning or deliberation. The amount of time needed for
16 premeditation of a killing depends on the person and the circumstances. It must be long
17 enough, after forming the intent to kill, for a killer to have been fully conscious of the intent
18 and to have considered the killing.

19 As to the fourth element, whether the crime alleged occurred at a particular location
20 is a question of fact for you, the jury, to decide. Whether the location is within the special
21 maritime and territorial jurisdiction of the United States or a federal prison is a question of
22 law for me to decide. The parties have stipulated in the government's Exhibit 2 that the
23 crime alleged occurred at 563 Tule Street; Nixon, Nevada, within the exterior boundaries
24 of the Pyramid Lake Reservation, designated as within Indian Country of the United
25 States.

1 Second degree murder is a lesser included offense of Count One. Second degree
2 murder is the killing of another person without premeditation. In order for Mr. Burciaga to
3 be found guilty of second degree murder, the government must prove each of the
4 following elements beyond a reasonable doubt:

5 First, Mr. Burciaga unlawfully killed A.D.;

6 Second, Mr. Burciaga killed A.D. with malice aforethought;

7 Third, the killing occurred within the exterior boundaries of the Pyramid Lake Indian
8 Reservation of Nevada, which I instruct you is in Indian Country of the United States;

9 Fourth A.D. was an Indian; and

10 Fifth, Mr. Burciaga did not act in reasonable self-defense.

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

13 As to the third element, whether the crime alleged occurred at a particular location
14 is a question of fact for you, the jury, to decide. Whether the location is within the special
15 maritime and territorial jurisdiction of the United States or a federal prison is a question of
16 law for me to decide. The parties have stipulated in the government's Exhibit 2 that the
17 crime alleged occurred at 563 Tule Street; Nixon, Nevada, within the exterior boundaries
18 of the Pyramid Lake Reservation, designated as within Indian Country of the United
19 States.

1 Voluntary manslaughter is also a lesser included offense of Count One.

2 In order for Mr. Burciaga to be found guilty of voluntary manslaughter, the
3 government must prove each of the following elements beyond a reasonable doubt:

4 First, Mr. Burciaga unlawfully killed A.D.;

5 Second, while in a sudden quarrel or heat of passion, caused by adequate
6 provocation: a) Mr. Burciaga intentionally killed A.D.; or b) Mr. Burciaga killed A.D.
7 recklessly with extreme disregard for human life;

8 Third, the killing occurred within the exterior boundaries of the Pyramid Lake Indian
9 Reservation of Nevada, which I instruct you is in Indian Country of the United States;

10 Fourth, A.D. was an Indian; and

11 Fifth, Mr. Burciaga did not act in reasonable self-defense.

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

15 As to the third element, whether the crime alleged occurred at a particular location
16 is a question of fact for you, the jury, to decide. Whether the location is within the special
17 maritime and territorial jurisdiction of the United States or a federal prison is a question of
18 law for me to decide. The parties have stipulated in the government's Exhibit 2 that the
19 crime alleged occurred at 563 Tule Street; Nixon, Nevada, within the exterior boundaries
20 of the Pyramid Lake Reservation, designated as within Indian Country of the United
21 States.

1 Involuntary manslaughter is also a lesser included offense of Count One.
2 Involuntary manslaughter is the unlawful killing of a human being without malice
3 aforethought and without an intent to kill. In order for Mr. Burciaga to be found guilty of
4 involuntary manslaughter, the government must prove each of the following elements
5 beyond a reasonable doubt:

6 First, Mr. Burciaga committed an act that might produce death;

7 Second, Mr. Burciaga acted with gross negligence, defined as wanton or reckless
8 disregard for human life;

9 Third, Mr. Burciaga's act was the proximate cause of the death of A.D. (A
10 proximate cause is one that played a substantial part in bringing about the death, so that
11 the death was the direct result or a reasonably probable consequence of Mr. Burciaga's
12 act.);

13 Fourth, the killing was unlawful;

14 Fifth, Mr. Burciaga either knew that such conduct was a threat to the lives of others
15 or knew of circumstances that would reasonably cause the defendant to foresee that such
16 conduct might be a threat to the lives of others;

17 Sixth, the killing occurred within the exterior boundaries of the Pyramid Lake Indian
18 Reservation of Nevada, which I instruct you is in Indian Country of the United States;

19 Seventh, A.D. was an Indian; and

20 Eighth, Mr. Burciaga did not act in reasonable self-defense.

21 A killing is unlawful within the meaning of this instruction if it was not justifiable or
22 excusable.

23 As to the sixth element, whether the crime alleged occurred at a particular location
24 is a question of fact for you, the jury, to decide. Whether the location is within the special
25 maritime and territorial jurisdiction of the United States or a federal prison is a question of
26 law for me to decide. The parties have stipulated in the government's Exhibit 2 that the
27 crime alleged occurred at 563 Tule Street; Nixon, Nevada, within the exterior boundaries
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1 of the Pyramid Lake Reservation, designated as within Indian Country of the United
2 States.

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1 As to Count One and its lesser included offenses, the defendant has offered
2 evidence of having acted in self-defense. Use of force is justified when a person
3 reasonably believes that it is necessary for the defense of oneself or another against the
4 immediate use of unlawful force. However, a person must use no more force than appears
5 reasonably necessary under the circumstances.

6 Force likely to cause death or great bodily harm is justified in self-defense only if a
7 person reasonably believes that such force is necessary to prevent death or great bodily
8 harm.

9 The government must prove beyond a reasonable doubt, with all of you agreeing,
10 that the defendant did not act in reasonable self-defense.

1 Evidence has also been admitted that the defendant may have been intoxicated at
2 the time that the crimes charged were committed. Intoxication can result from being under
3 the influence of alcohol or drugs or both.

4 You may consider evidence of the defendant's intoxication in deciding whether the
5 government has proved beyond a reasonable doubt that the defendant acted with the
6 intent required to commit first degree murder as charged in Count One.

1 The defendant is charged in Count Two of the superseding indictment with
2 Protection of Unborn Children Within Indian Country, in violation of Sections 1841(a)(1),
3 1151, and 1152 of Title 18 of the United States Code. For the defendant to be found guilty
4 of that charge, the government must prove each of the following elements beyond a
5 reasonable doubt:

6 First, the defendant committed the crime of murder or manslaughter as alleged in
7 Count One;

8 Second, the defendant did thereby cause the death of a child, who was in utero,
9 at the time the conduct took place;

10 Third, the conduct occurred within the exterior boundaries of the Pyramid Lake
11 Indian Reservation of Nevada, which I instruct you is in Indian Country of the United
12 States; and

13 Fourth, A.D. was an Indian.

14 A child in utero is defined as a member of the species homo sapiens, at any stage
15 of development, who is carried in the womb.

16 The government need not prove that the defendant knew or should have known
17 that the victim of the underlying offense was pregnant, and the government need not
18 prove that the defendant intended to cause the death of the unborn child.

19 But in order to be found guilty of this charge, the government must prove beyond
20 a reasonable doubt that Mr. Burciaga's criminal conduct caused the death of the child in
21 utero.

22 As to the third element, whether the crime alleged occurred at a particular location
23 is a question of fact for you, the jury, to decide. Whether the location is within the special
24 maritime and territorial jurisdiction of the United States or a federal prison is a question of
25 law for me to decide. The parties have stipulated in the government's Exhibit 2 that the
26 crime alleged occurred at 563 Tule Street; Nixon, Nevada, within the exterior boundaries
27
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1 of the Pyramid Lake Reservation, designated as within Indian Country of the United
2 States.

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1 For A.D. to be found to be an “Indian,” the government must prove the following,
2 beyond a reasonable doubt:

3 First, A.D. had some quantum of Indian blood, whether or not that blood is
4 traceable to a member of a federally recognized tribe; and

5 Second, A.D. was a member of, or affiliated with, a federally recognized tribe at
6 the time of the offense.

7 I instruct you that the Pyramid Lake Paiute Tribe of the Pyramid Lake Indian
8 Reservation, Nevada, is a federally recognized tribe.

9 Whether A.D. was a member of, or affiliated with, a federally recognized tribe is
10 determined by considering four factors, in declining order of importance, as follows:

- 11 1. Enrollment in a federally recognized tribe;
- 12 2. Government recognition formally and informally through receipt of
13 assistance reserved only to individuals who are members, or are eligible to become
14 members, of federally recognized tribes;
- 15 3. Enjoyment of the benefits of affiliation with a federally recognized tribe; and
- 16 4. Social recognition as someone affiliated with a federally recognized tribe
17 through residence on a reservation and participation in the social life of a federally
18 recognized tribe.

1 The term “Indian Country” means all lands within the limits of any Indian
2 Reservation or Colony.

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Appendix D

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Case No. 3:20-cr-00060-MMD-CLB

Plaintiff,

VERDICT

v.

MICHAEL JOSHUA BURCIAGA,

Defendant.

We, the Jury in the above-captioned case, upon our oaths, do say:

COUNT ONE: We find the Defendant,

MICHAEL JOSHUA BURCIAGA, Guilty [Guilty / Not Guilty],

of the offense of *Murder in the First Degree Within Indian Country* as charged in Count One of the Indictment.

If you find the defendant not guilty of Count One, *Murder in the First Degree Within Indian Country*, or if you do not unanimously agree on a verdict for Count One, *Murder in the First Degree Within Indian Country*, you should proceed to consider the lesser included offense of *Murder in the Second Degree Within Indian Country*.

As to the lesser included offense of *Murder in the Second Degree Within Indian Country*, we the jury find the Defendant, MICHAEL JOSHUA BURCIAGA, [Guilty / Not Guilty], of the offense of *Murder in the Second Degree Within Indian Country*.

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1 If you find the defendant not guilty of *Murder in the Second Degree Within Indian*
2 *Country*, or if you do not unanimously agree on a verdict for *Murder in the Second Degree*
3 *Within Indian Country*, you should proceed to consider the lesser included offense of
4 *Voluntary Manslaughter Within Indian Country*.

5
6 As to the lesser included offense of *Voluntary Manslaughter Within Indian Country*,
7 we the Jury find the Defendant,
8 MICHAEL JOSHUA BURCIAGA, [Guilty / Not Guilty],
9 of the offense of *Voluntary Manslaughter Within Indian Country*.

10
11 If you find the defendant not guilty of *Voluntary Manslaughter Within Indian*
12 *Country*, or if you do not unanimously agree on a verdict for *Voluntary Manslaughter*
13 *Within Indian Country*, you should proceed to consider the lesser included offense of
14 *Involuntary Manslaughter Within Indian Country*.

15
16 As to the lesser included offense of *Involuntary Manslaughter Within Indian*
17 *Country*, we the Jury find the Defendant,
18 MICHAEL JOSHUA BURCIAGA, [Guilty / Not Guilty],
19 of the offense of *Involuntary Manslaughter Within Indian Country*.

20
21 **COUNT TWO:** We find the Defendant,
22 MICHAEL JOSHUA BURCIAGA, Guilty [Guilty / Not Guilty]
23 of the offense of *Protection of Unborn Children Within Indian Country* as charged in Count
24 Two of the Indictment.

25
26 DATED this 22 day of June 2023.

27 151
28 FOREPERSON

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Case No. 3:20-cr-00060-MMD-CLB

Plaintiff,

VERDICT

v.

MICHAEL JOSHUA BURCIAGA,

Defendant.

We, the Jury in the above-captioned case, upon our oaths, do say:

COUNT ONE: We find the Defendant,

MICHAEL JOSHUA BURCIAGA, Guilty [Guilty / Not Guilty],

of the offense of *Murder in the First Degree Within Indian Country* as charged in Count One of the Indictment.

If you find the defendant not guilty of Count One, *Murder in the First Degree Within Indian Country*, or if you do not unanimously agree on a verdict for Count One, *Murder in the First Degree Within Indian Country*, you should proceed to consider the lesser included offense of *Murder in the Second Degree Within Indian Country*.

As to the lesser included offense of *Murder in the Second Degree Within Indian Country*, we the jury find the Defendant, MICHAEL JOSHUA BURCIAGA, [Guilty / Not Guilty], of the offense of *Murder in the Second Degree Within Indian Country*.

///

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1 If you find the defendant not guilty of *Murder in the Second Degree Within Indian*
2 *Country*, or if you do not unanimously agree on a verdict for *Murder in the Second Degree*
3 *Within Indian Country*, you should proceed to consider the lesser included offense of
4 *Voluntary Manslaughter Within Indian Country*.

5
6 As to the lesser included offense of *Voluntary Manslaughter Within Indian Country*,
7 we the Jury find the Defendant,
8 MICHAEL JOSHUA BURCIAGA, [Guilty / Not Guilty],
9 of the offense of *Voluntary Manslaughter Within Indian Country*.

10
11 If you find the defendant not guilty of *Voluntary Manslaughter Within Indian*
12 *Country*, or if you do not unanimously agree on a verdict for *Voluntary Manslaughter*
13 *Within Indian Country*, you should proceed to consider the lesser included offense of
14 *Involuntary Manslaughter Within Indian Country*.

15
16 As to the lesser included offense of *Involuntary Manslaughter Within Indian*
17 *Country*, we the Jury find the Defendant,
18 MICHAEL JOSHUA BURCIAGA, [Guilty / Not Guilty],
19 of the offense of *Involuntary Manslaughter Within Indian Country*.

20
21 **COUNT TWO:** We find the Defendant,
22 MICHAEL JOSHUA BURCIAGA, Guilty [Guilty / Not Guilty]
23 of the offense of *Protection of Unborn Children Within Indian Country* as charged in Count
24 Two of the Indictment.

25
26 DATED this 22 day of June 2023.

27 151
28 FOREPERSON

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
JUN 22 2023	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY: _____	DEPUTY

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BY: _____ DEPUTY

Case No. 3:20-cr-00060-MMD-CLB

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL JOSHUA BURCIAGA,

Defendant.

VERDICT

We, the Jury in the above-captioned case, upon our oaths, do say:

COUNT ONE: We find the Defendant,

MICHAEL JOSHUA BURCIAGA, Guilty [Guilty / Not Guilty],

of the offense of *Murder in the First Degree Within Indian Country* as charged in Count One of the Indictment.

If you find the defendant not guilty of Count One, *Murder in the First Degree Within Indian Country*, or if you do not unanimously agree on a verdict for Count One, *Murder in the First Degree Within Indian Country*, you should proceed to consider the lesser included offense of *Murder in the Second Degree Within Indian Country*.

As to the lesser included offense of *Murder in the Second Degree Within Indian Country*, we the jury find the Defendant, MICHAEL JOSHUA BURCIAGA, [Guilty / Not Guilty], of the offense of *Murder in the Second Degree Within Indian Country*.

///

///

1 If you find the defendant not guilty of *Murder in the Second Degree Within Indian*
2 *Country*, or if you do not unanimously agree on a verdict for *Murder in the Second Degree*
3 *Within Indian Country*, you should proceed to consider the lesser included offense of
4 *Voluntary Manslaughter Within Indian Country*.

5
6 As to the lesser included offense of *Voluntary Manslaughter Within Indian Country*,
7 we the Jury find the Defendant,
8 MICHAEL JOSHUA BURCIAGA, [Guilty / Not Guilty],
9 of the offense of *Voluntary Manslaughter Within Indian Country*.

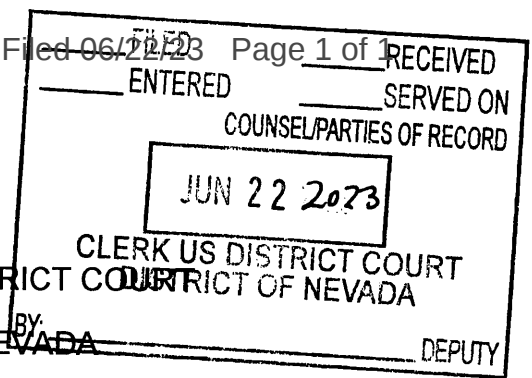
10
11 If you find the defendant not guilty of *Voluntary Manslaughter Within Indian*
12 *Country*, or if you do not unanimously agree on a verdict for *Voluntary Manslaughter*
13 *Within Indian Country*, you should proceed to consider the lesser included offense of
14 *Involuntary Manslaughter Within Indian Country*.

15
16 As to the lesser included offense of *Involuntary Manslaughter Within Indian*
17 *Country*, we the Jury find the Defendant,
18 MICHAEL JOSHUA BURCIAGA, [Guilty / Not Guilty],
19 of the offense of *Involuntary Manslaughter Within Indian Country*.

20
21 **COUNT TWO:** We find the Defendant,
22 MICHAEL JOSHUA BURCIAGA, Guilty [Guilty / Not Guilty]
23 of the offense of *Protection of Unborn Children Within Indian Country* as charged in Count
24 Two of the Indictment.

25
26 DATED this 22 day of June 2023.

27 151
28 FOREPERSON



UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DISTRICT OF NEVADA

DEPUTY

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL JOSHUA BURCIAGA,

Defendant.

Case No. 3:20-cr-00060-MMD-CLB

VERDICT

We, the Jury in the above-captioned case, upon our oaths, do say:

COUNT THREE: We find the Defendant,

MICHAEL JOSHUA BURCIAGA, Guilty [Guilty / Not Guilty],

of the offense of *Domestic Assault by a Habitual Offender Within Indian Country* as charged in Count Three of the Indictment.

DATED this 22 day of June 2023.

15/

FOREPERSON