

courtroom.)

THE COURT: Good afternoon, ladies and gentlemen. My apologizes for the delays that we had this afternoon, but at least you got to appreciate the outdoors again when we had the delay.

It's now time for closing argument. I ask people in the courtroom to be courteous of the attorneys giving closing argument. It's not mandatory that you remain in the courtroom, however, I would appreciate it if you could limit the ingress and egress from this courtroom because it's distractive to the attorneys and distractive to the jury as well. Attorney Cutruzzula, you may close to the jury.

ATTORNEY CUTRUZZULA: Thank you, very much. Good afternoon, Your Honor, Mr. Kelley, Mr. Montalvo, Mr. Arcuri, and ladies and gentlemen of the jury.

I think we can all take a big sigh of relief that as the case, as it sounds about now, is about over. As I told you in my opening statement, when I stood up here before you and argued to you why you can find Noel Montalvo not guilty. I would be confident in making that argument to you and be able to point out specific pieces of evidence as to why you should find him not guilty.

Well. I just want to go back a little bit to make sure that you understand this whole system. You see, from the very beginning Tom Kelley, as the assistant district attorney prosecuting this case for the Commonwealth of Pennsylvania, took on a high burden. He took on a burden of proof beyond a reasonable doubt and it's their job, the state's job, to firmly convince every one of you 12 people that when you go back in that jury room that on April 19th, 1998, my client purposely murdered Miriam Ascencio and Nelson Lugo, also known as Manuel Santana.

Or in the alternative, because they're going to argue in the alternative, you'll hear there was a first degree murder charge of intentional killing and the Judge will instruct as a second degree murder charge of a killing while an accomplice or a principal of, another during the commission of a felony. And the state is going to argue that the felony is the burglary, that my client and his brother broke into this house and killed these people.

Well, ladies and gentlemen, you've had seven days to listen so the testimony here. I would, submit to you that the last three days of the forensic evidence, here's what's been marked Commonwealth 12, the map of the apartment, I didn't ask Detective Hose if,

there were 30 dots here because I was taking a shot in the dark. I counted.

You count as you read the legend whose blood is in this apartment, Milton Montalvo. Who took their time while they were executing these two people to stop and wipe his hands clean, Milton Montalvo. All of the forensic scientific evidence points to Milton Montalvo. He created the blood bath. He slaughtered these people. He butchered them.

Nothing from the experts say that my client was even there, not a trace of blood, not a piece of hair, not a piece of cloth, not a fiber, no semen, nothing. In fact, ladies and gentlemen, they haven't even proved to you the time of death.

If you remember from the opening instructions read to you by Judge Dorney, she said that the time of death occurred between 12:30 and 2:30 a.m. How many different witnesses took the stand and said, well, Miriam and Manuel were out drinking until 1:30. Some witnesses say, I heard the fight start at 11:00, and some witnesses say, I heard it at 4:00. I heard it at 3:00. I heard it at 2:00. No one knows the exact time, and in fact, the forensic scientist never gave you an opinion as to the exact time of death.

Well what can we infer? You see, because

that's part of this case too. It's not just the direct evidence that came from this stand, it's the substantial evidence. You see, I would be remiss if I didn't comment to you or to try and anticipate what Mr. Kelley is going to argue to you in his closing.

Well, if you believe Heriberto, okay, who was the guy who was a friend of Miriam and Manuel, and I believe he worked for Fypon, when he went to Swizzles late in the evening at 11:00 on the 18th, he said Miriam and Manuel were there and they were drinking and having a good time and hanging out. And according his testimony, they left at 1:30 and they were still there. So if you believe him, then obviously the time of death could not have taken place between 11 and 12:30.

No one has testified as to what time Miriam and Manuel left that bar. You know, from the toxicology report of Miriam and Manuel, they were drinking. In fact, Miriam had a .20 blood alcohol content, so she was out and double the legal limit.

But we still don't know what time they got home, because if you listen to Mr. Rice, who testified here on direct, he says that he normally goes to bed at 12:30 or 1:30, and at the preliminary hearing he said 10:30, 11:30. And Officer Daniels in her report, when she spoke to both of them, together Mr. Rice says it

happened 12:30 at night to 5:00 in the morning. It's a big window and a lot of time.

You see, one of the things that you have to understand from this case, and I think it's born when you decide who actually committed the crime, listen to what all of the neighbors say about Milton Montalvo. They didn't call the police. They weren't worried. They didn't run out and think nothing was happening because this was something that was common at 233 East Philadelphia Street back at their apartment.

They said that they heard this often, that didn't bother them. In fact, I believe it was Fidelio Morell who said at about 2:30 or 2:20 to 2:30 he heard the noise and just raised his music up. And he said this is something that is always going on, and later he heard what appeared to be something--he heard something being dragged.

But what do all the people say? Did he blow the glass and forced himself in the apartment and did Noel say let me in? I saw a guy go in there with you Noel. They don't say that. Do you know who they say? They say Milton Montalvo, and they said that at the last trial and they said it here and they said it in the police reports. They have no reason to lie. They took the oath.

And yes, I'm not saying, ladies and gentlemen, my characteristics of the time frame, it really goes to show when this happened, because there is another piece of critical evidence that you're going to have to consider with respect to time and my client, whether Milton Montalvo killed these people at 11:00 or 5:00 in the morning, it is something for you to consider with respect to my client.

My argument to you is all of the people who were there in that building heard Milton fighting and heard Milton breaking the glass and heard Milton demanding to be left in because he was jealous and kicked out. Jaime Cancel, who testified as the state's first witness, testified what kind of man would work and not pay any of the bills for the apartment that he's living in, that this junk man had to come out of his own pocket doesn't that speak volumes of the type of man Milton Montalvo was--or is?

And you all know he's been convicted and sentenced to death based upon all of the forensic evidence and the testimonial evidence introduced at the last trial against him.

On April 19th, 1998, sometime in the afternoon hours when Detective--Officer Daniels and the other detectives, I believe Detective Comacho and maybe

Detective Miller who spoke Spanish, started talking to all of these people, what was the only name given to them, Milton Montalvo, not Noel Milton.

The warrant was issued for Milton sometime soon after those inquiries. But a warrant wasn't issued for Noel until December of 1998 when low and behold when they go--when Miguel Soto goes to get his van on November 30th, 1998. Based upon testimony from him and Detective Comacho, somebody entered the plate wrong in NCIC, it shouldn't have been Miguel Soto's van, it should be have been the Dodge car--van.

So Miguel can't get his van out and he went to the police and they asked him, and you heard Mr. Kelley cross-examine him on where the interview took place, well, it took place in Lancaster. It didn't take place here. And he told Detective Comacho on November 30th, 1998, Milton came to my house with his brother and Milton says I killed my wife and my client didn't say a word. And, in fact, Milton wanted my client to stay at his house because he was going to take off to Florida. No, Noel didn't say anything.

Approximately 12 days later, Esther Soto comes into the picture because now she's mad about the van. She wants the van back and that's when she's talked to by Detective Comacho.

Now, ladies and gentlemen, I would submit that if you believe Esther Soto, I should sit down and go back to the New Jersey. Okay. But here is a woman who sells whatever version that she wants for whatever reason that she wants to, yet, she's admitted to you under oath in January of 2000 that she committed perjury, that she, lied.

Now, she says today--or this trial she, lied or she doesn't consider it a lie when she said, I don't remember or I didn't say that. I don't remember. I don't remember. I don't remember 30 some times, that's how many times she said it during the last trial because as she yelled at me, the lawyer asking her questions.

You put yourself in my place. You put yourself in that position. I was scared. I was afraid. Okay. At first blush you might want to say, you know, that guy violently killed somebody and almost cut a lady's head off, you know, may be she was afraid. But guess what, this woman who was so afraid, never went to the police. Is there any evidence that she called Crime Stoppers? No. Any phone records about the Crime Stoppers call approximately two weeks later? Do you know why she said that, ladies and gentlemen, because she, wants to you believe her so badly that she'll make stuff, up for you. Okay.

Now, we go to point number two. She was afraid and she was threatened. Remember, when I cross-examined her? Did anybody threaten you on behalf of the Montalvo? Her answer, no. Anybody come to your store and threaten you not to testify? No. You were so afraid that you changed your phone number? No. You were so afraid that you changed your address? No. You were so afraid that you had to close the store and move to another location? No.

So I submit to you, was she afraid or was she lying? You'll hear an instruction from the Judge when you deliberate--or before you deliberate, about engaging the credibility of witnesses based upon their prior testimony and you should closely scrutinize the testimony of any person who actually gets up and admits that they perjured themselves under oath at another proceeding.

And I would submit to you, ladies and gentlemen, that you should throw out all of Esther Soto's testimony. It smacks of lies and here's another couple for you to consider. If you believe her, then my client early in the morning hours of April 19th, admitted to actually killing Miriam Ascencio and he was so glad that he did it he said that he fucked her.

Now, you heard Detective Comacho this

afternoon and please, one of the things that we asked you in the beginning--or the Judge asked you in the beginning of the trial, when you walk in this courthouse, you're all people of different skills and backgrounds and level of education, it doesn't mean when you walk in here you hang your common sense at the door. You say, I'm going to listen to everything and put it together.

We are asking you to use all of that common sense and life experiences and to judge what people say by the way that they say it. Because you see, if you think that Esther Soto said my client said that he fucked her meant that he beat her up or that he beat her out of some coke or something, then again, I would submit that you're not listening closely.

You see, Mr. Kelley asked Detective Comacho by fucking her that means something else, that word could mean other things. Ladies and gentlemen, the evidence up until that point showed that this woman may have been sexually assaulted. How many times you did hear the forensic evidence and the Detectives say that a shoe was jammed inside of her thighs in her anal area?

So I would submit to you that when they said that she meant sex, well, guess what ladies and gentlemen, she's wrong. You see because there is some thread of truth that she might have been coached in her

testimony because you hear--you listen to the tape and you heard it today, and I'm not sure whether or not a transcript of that tape is going to go back with you, but you're going to have the actual tape.

Remember when I asked Detective Comacha what a leading question is versus an open ended question? Now, they tell you in law school that you shouldn't ask a question unless you know the answer to it, but I'm expecting a Detective who has been on the force for a number of years to tell you the difference and he does tell you a leading question is one where you suggest the answer. Listen to the tape.

Again, how much of his words are actually in the questions and how many times does Esther Soto say yes--yeah. And then listen so to a couple of subtleties when he says great, good. Listen to that when he's patting her on the back because she got the story straight.

You see, what you didn't hear, ladies and gentlemen, and what you didn't see is that they talked before they went on tape. There's no notes of that and there's no transcription of that happening, they spoke for some time.

And remember one thing, as I say things, ladies and gentlemen, one of the things important in a

trial, whatever I say my recollection of the testimony is
and what Mr. Kelley may say in his recollection of the
testimony is doesn't count. It's what you jurors--what
you jurors recall the testimony to be. So if I misspeak
and say something that doesn't jive with your
recollection, then your recollection controls.

The same thing with Mr. Kelley. And when
he gets up there and says no, this witness said this and
you think it's something else, and whatever you think is
what is going to determine the facts of this case.

So when I throw that in there, that I
think he said it's about 20 minutes, that's up to you to
remember the actual time, but there was a signature
period of time that he spoke to this woman not on tape.
And if you also listen closely to the testimony, he said
that he was there with himself and Esther--when the tape
goes on, he says who's there and he says it's myself and
Esther Soto. He doesn't say anything about Mr. Williams
being there, does he? No, he doesn't. And I'll get to
Detective Williams in a little while.

Let's talk about what contradicts her
testimony. For example, you could say well, Mr.
Cutruzzola, you know what, I believe her motive. I
believe the fact that she said that she was afraid and
that she had reason not to tell the truth the last time.

and I'll pay attention and listen to the Judge's, instructions and closely scrutinize the testimony, but I believe she said what she meant and I believe that she heard what she heard.

Well, Miguel Soto was interviewed November 30th, 1998 and he said, Milton--he came here today and said the same exact thing. Milton confessed to him. Milton said that he stabbed his wife and you saw the raw emotion of this man when he testified.

Did he want to be here? No. Was he afraid of testifying or he just didn't want to get involved? Sure. But he didn't say that anybody threatened him. The only people putting pressure on him were the cops, Camacho, that's what he said. And that Camacho was putting pressure on Esther and that's what he said that's unrefuted. That's his testimony.

Of course Camacho is going to get on the stand and say I didn't pressure anybody. Ladies and gentlemen, I just wanted facts. But what he says is that in the early morning hours, when Milton and Noel arrived at the house, Milton did all of the talking and he never puts Esther and Noel alone. Esther was there the whole time and Noel said nothing.

Did he say under my questioning, Did he say that he got on to her, meaning cutting her throat?

No, Mr. Cutruzzula. Did he say that he helped his brother kill these two people? No, Mr. Cutruzzula. And even on cross, So it was Milton, correct? Yes. And, in fact, one of Mr. Kelley's last questions, And this fellow said nothing to you the whole time? Yes. Husband and wife party to the same conversation for the same amount of time and the wife comes up with a totally different story diametrically opposed to the husband and that's the only evidence that you have against Noel Montalvo, Esther Soto.

So you see, we'll get to Detective Williams. Now, he took--or he was the detective in charge, but you know, he didn't look over everyone's statement and he admitted that there were some mistakes in some of the testimony versus what the statement said. But he wasn't in charge of questioning everybody, but he, was the boss of the investigation.

Commonwealth exhibit 57, you saw I went at great length about this. Well, if you hold it this way or depending on the way it sits, it could be front left corner or back right corner. You can see where the spot is, the amino black that they put on there to develop the blood prints. Do you see how defensive Detective Williams got when he testified under cross-examination about those prints?

You see in September of 1999 he fully, applied to a judge to get palm prints of Milton Montalvo, to compare to the palm prints or fingerprints on that exhibit. He then wrote a report and said he couldn't make the comparison in the report. He doesn't say that there was insufficient characteristics. He says that on the stand, ladies and gentlemen.

And as a matter of fact, he never requested anybody else's palm prints. So then I asked him, well, when you got the thing back you knew from looking at it that you can't make a comparison, when did you get the stove top back? I don't recall. But you did in September make an application for a warrant for Milton Montalvo's prints.

So, obviously, if you think logically or, you want to use circumstantial evidence, if Williams had the stove top prior to the November 27th, 1999, there would have been no reason for him to apply for a search warrant for Milton Montalvo's prints, so I think you can deduce that he did not have the stove stop until after November 27th, okay? And then he doesn't compare it to anybody else. Ladies and gentlemen, think about that for a second.

Now, let's get to Detective Hose, okay. He's not here today, wasn't in court all day, but you

heard the Judge admonish him not once, but twice for his smart remarks to me yesterday. Okav? In fact, we all ask you and we asked you in the openings when someone sits in this chair--Judge, may I? Thank you, Your Honor. You see, some people refer to this as the hot seat because, you know what, even when you're telling the truth, you're talking in front of a whole crowd of people, and you have a Judge sitting to your right and you have jurors over here (indicating), so some people get a little uncomfortable about being in this seat.

Well, Detective Hose really had nothing to offer incriminating against Noel Montalvo, did he? In fact, I have a number of pages of notes and he was directed to that diagram C-12 for a long time and was asked about all of the yellow dot and the green dots and the blue dots and a couple of red dots and how she looked, Ms. Ascencio, when she was placed on the pillow and the body was manipulated.

But during cross-examination when I asked him about certain items in his property report, he got taken back a little bit and then on redirect when Attorney Kelley starts questioning him, I didn't want him to look at them, referring to me, saying that I did something wrong that I didn't want him to look at reports.

And you heard me get up--and I apologize, sometimes, ladies and gentlemen, I'm Italian and speak with my hands and sometimes I get loud, and I don't mean to seem like I'm angry, but sometimes when a cop gets on the stand and says that I'm doing something wrong by merely asking questions, that ruffles my feathers and gets me angry because I'm here to ask questions, that is what my job is. I don't put any words in his mouth and he told me what is in his record.

And you know, what, Mr. Kelley and I have gone at it for last 8 days and it wasn't at his insistence that Detective Hose decides to be a smart guy. It was himself because they're losing.

You see, he understands the forensic expert, as the guy that gathered all the evidence, he's looking at that guy and he's saying, well, geez, I got 30 pieces of evidence and nothing comes back to this guy. I'm sitting here and testifying really against Milton Montalvo. I have nothing to say that Noel Montalvo did a thing. That's the motive, ladies and gentlemen. That's the reason why he threw in that gratuitous comment.

And then he made another comment which was told to you to be stricken from the record by the Judge. He knew when I asked him on cross, Isn't it a fact, sir, that of those 30 dots there's a not a single dot that

comes back to my client? And he says, excuse me, yes, but that's not uncommon. And that's when I started yelling at him and asking the Judge to strike it from the record.

And you should not consider that comment and that's what she told you to do. And you heard her tell him, Judge Dorney say, Detective, I'm only going to tell you once, answer the questions posed to you.

I submit to you, ladies and gentlemen, one of the things that we ask you and I said, you gauge the credibility of people that sit here and testify and their demeanor.

Who looked you in the eye between Mr. and Mrs. Soto? Whose demeanor spoke of candidness? Mr. Soto sat here and looked at the lawyers, looked at the jury and told you what happened. In fact, at one point the only reason why he turned around is because he couldn't hear out of his right ear and he had to turn around and face you ladies and gentlemen of the jury.

When being asked those questions, who looked like this the whole time? Who would be looking down and not making eye contact and whose body language was slumped over and who appeared to be lying? Esther Soto. This case rises and falls with Esther Soto.

You see, because, ladies and gentlemen.

even if you believe the prosecutors theory, you see Mr. Kelley opened to you and said my client took off--or, actually let's back track. The reason that my client butchered and slaughtered these people was because he was a fugitive from parole, that's not true. It was a probation violation according to Detective Comacho based upon on the statement that my client gave them.

But what happened on August 7th, 2002 that should be signature to you people deciding the fate of Milton Montalvo. On that date when think my client was questioned voluntarily, he voluntarily gave up his rights to an attorney and cooperated with the Detective Comacho. What did he say? I'm innocent. I didn't do it. And when asked would your blood, hair or fingerprints be found in that apartment? No, they won't. I wasn't even there, sir.

And on cross when I asked Detective Comacho the question, Sir, isn't it a fact that's true, that not a single piece of forensic evidence links my client to the crime? He had to say yes because that's the answer, that's the truth.

Ladies and gentlemen, you have a very, very difficult job. Two people were murdered on April 19th, 1998, they're dead and their killer is in jail and he's awaiting a death sentence and he deserves it because

all of the evidence in the case points to him.

There is absolutely nothing physical linking Noel Montalvo to this crime scene. The only thing that you can hang your hat on is the testimony of Esther Soto and by the way, the motive. they knew each other for a long time, there were some number of years. As a matter of fact, Milton came to this country with Miriam, they lived together in two different locations, and the brother came some time after that.

If he came some time after that from Puerto Rico, the warrant was still active from the time of '95 or whatever time frame that the testimony reveals. So it took 3 years for her to learn this information and that fateful day while she was out drinking and having a good time with her knew boyfriend sets him off the edge.

Speaking about that end, sending him off the edge and being this murderous butcher that the state wants you to believe, Patricia Ascencio, what does she testify to? Well, if you believe her version, she was at my client's apartment at 9:30 at night and stayed there until 11:30 getting her hair cut and possibly her nails done by my client's wife and her boyfriend and my client's boyfriend.

Mr. Santos was there and they were hanging out and having a good time. And I asked her, Was Noel in

a very bad mood, was he angry? No, he was happy. You know, fine. Did he say anything about Miriam or Manuel or anything? No, he was fine. Who comes in all hyped up and excited and angry? Milton comes in.

However, Officer Daniels testified that when she interviewed those two people and actually in her report she talks about them together, it's not until Ms. Ascencio takes the stand and she says, no, I didn't speak to Officer Daniels. My boyfriend did all the talking, but she was there when this happened.

It wasn't like they were in different locations, they were sitting next to each other, or however they were positioned next to each other, that they were saying that we got there at 12:30 and left at 1:00 in the morning and Milton came in and was excited, and asked for money and was turned down and my client then my client left.

And I point out the inconsistencies, ladies and gentlemen, because the time frame is critical because Angel Santo's time frame matches a little bit better with the state's case in terms of them being there until 2:00 and the temperament of my client. You see, no one testified that he was angry at all on that day. There was no reason for him to kill anyone, unless you believe Esther Soto and again a liar, a perjurer.

Listen to the instructions by Judge Dorney. I'm confident and I'm as confident as I was eight days ago which when I first started this process, when you listen to all of the evidence and you weigh it, it's--there's not a piece in all of these diagrams, all of these photos and the blinds and the glass and the tape, and you're going to have all of that in the jury room.

And you know what, if we were here on Commonwealth versus Milton Montalvo, probably my summation would have been about 10 minutes. But we're here to decide Commonwealth versus Noel Montalvo and the fact that they're brothers should not play a scintilla in your decision making process.

Okay. We're not responsible for the acts of our brothers, none of us are, unless they prove to you that they agreed to do it and that they helped each other. There is no evidence against Noel Montalvo. There is no plan.

There's one woman who came forward, and that's another point, ladies and gentlemen, you see she wants you to believe that she came forward immediately and you heard through the cross examination this afternoon and--late this morning, Mr. Soto, you didn't come forward for 9 months after these people were