

murdered and you didn't do anything? No, I didn't want to get involved.

Well, you know what, his wife told him, I don't want to get the police involved, but she flips on the other side exactly opposite, you know, I didn't want to call the police, I spoke to them afterwards and that's a lie because Detective Comacho wrote the reports, when he met with the people, so the statement isn't dated December 12th, 1998. In fact, she doesn't come before her husband did.

Ladies and gentlemen, that's how big of a liar she is. She wants you to believe her story and what she volunteered and came forward for whatever reason because she was so nervous and afraid and all of this other stuff. She didn't come before the cops before her husband did on November 30th. Throw her testimony out and find Noel Montalvo not guilty and send him home. Thank you.

THE COURT: Attorney Kelley.

ATTORNEY KELLEY: Your Honor, may it please the Court, counsel.

ATTORNEY CUTRUZZULA: Mr. Kelley.

ATTORNEY KELLEY: Ladies and gentlemen, you've heard the closing argument from defense counsel and during the course of it he's characterized various

people's testimony and various people's characters and he's made light of a lot of things. And during the course of the trial, there was levity in the area and, jocularly.

I want you to remember when you go back there to decide this case, even though there has been a little bit of jocularly and levity that doesn't change the circumstances of what happened to this mother and this mother's paramour. This is a very, very serious thing, not something to joke about, not something to take lightly. So if I don't smile during the course of my closing argument, I hope you'll understand why.

Defense counsel has argued to you, you can't tell anything about this case other than the fact that Milton Montalvo killed this guy and this woman, that's the only thing that you can tell, Milton did it, but not my client because you don't know anything about my client. You know everything about Milton. My client had nothing to do with it. All they have is Esther Soto.

Well, we also have the Defendant's statement. And if you believe the Defendant told the truth to the police, then you believe that his brother could not have killed Miriam Ascencio because he said that he was with me all day, he couldn't have done it. That's exactly what he said to the detective, he couldn't

have done it. I didn't do it. And he didn't do it. I was with him all day.

So you're confronted with two options, either he lied or Milton Montalvo did do it and he was with him all day. We know that he was with him when they fled from the State of Pennsylvania down to Florida because he told you that he was.

We know that he was with Milton when they were down in Florida and lived in an apartment with his pregnant wife who went on the lamb with the two of them. Because he told you, not me. Not any of the witnesses, from the Commonwealth.

He told you he fled with his brother and his witness, Miguel Soto, told you he knew what his brother had done. His brother confessed in front of Miguel Soto and he stood there behind him and took off with him.

Milton Montalvo said, I just killed my wife, and you know what Milton Montalvo did, he and his brother just went and killed his wife, and what did Noel Montalvo do? He just stood there while Milton said that. My brother, he needs a place to stay. I've got to get out of here. We've got to get out of here. You can't stay here. You can't stay here. Okay. We're going to Florida. And where did they go? Where did Miguel know

where they were going? Where did Esther know where they were going? Florida. Where did they end up? Florida.

Esther said that in December months before Milton was even arrested, but she's a liar. Esther said that he came and Milton came right after the homicide and there was discussions about the murder, but Esther's a liar. But their witness told you essentially the exact same thing.

The only distinction that Esther says is that he said that I killed the woman and Miguel says that Milton I killed my wife. Noel didn't say anything. For 25 minutes there are discussions of these homicides and Noel doesn't say a word. Why is Noel even there? How did Noel learn to flee? Why was he with Milton just hours after the homicide?

Or if you give it the big window that the defense counsel wants you to give it, it was right after the homicide, it was still dark outside, it wasn't yet morning, how was he in the company of the Defendant, Milton Montalvo, when he claims that he didn't even learn about the homicides until Patricia Ascencio called. Think about that.

When you think about whether or not there is any evidence against this defendant, because there is evidence against this defendant and it's not just Esther

Soto, what is one of the key things that you heard about this crime scene? Doctor, how many weapons were used against those two victims? At least two.

Now, the male victim was only attacked with a knife, defensive wounds on his hand. One nice, efficient stab wound through the heart. Right in the kitchen, right where the glass was broken, right there that guy is dropped dead.

But what happens to Esther? Who is she fighting? What is she fighting off? Well, she had blunt force trauma all to her hands, all around both sides of her arms and her hands, traumatized by a blunt object. Do you remember what the Doctor said, two very distinct things, she's not hit with anything sharp. He is--the only thing that he fought off was a sharp instrument.

What did she fight off while she was still alive? A blunt instrument and she's banged around and you can imagine it by what you see regarding the skull. She'd getting boom (indicating). Breaking her nose, breaking her skull and her head and the skull is evolving out, she's intoxicated, trying to defend herself. Call the police. Call the police. Call the police. She could have fought for minutes and she was battered about that apartment.

Ultimately, those injuries to her skull.

would have killed her and she would have been rendered unconscious. The hands would have no longer gone up to protect the head, they would have dropped and she would have been at the mercy of whoever had attacked her with a blunt object.

And then someone walked up to her while she was alive and took a knife, very key, put it right into the witness--the victim's eyelid, right in while she was alive. And then dragged the knife slowly across the neck 8 times, I think that the doctor said ultimately to the bone.

What do we know from that crime scene other than the fact that she was--other than the fact that there was a shoe in a very horrendous sexual situation shoved into her crotch, other than the fact that the panties that she had on were taken off of her and put over her head, other than the fact that the pantyhose that she would have worn and the girdle were stuffed under a pillow under her head? What we do know is that someone attacked that man with a knife and killed him with a knife.

Ultimately, someone attacked that woman with a blunt object and bludgeoned her, that would have resulted in the death had her jugular not severed, had she ultimately expired.

We know that a person with common sense would acknowledge that the efficient stab to the man would have felled him with a knife. If this was one man that Milton Montalvo defense counsel has been arguing to you, Milton Montalvo would have throw down the knife--

ATTORNEY CUTRUZULLA: Judge, objection. Assumes facts not in evidence. As a matter of fact, the expert was not asked how many people committed this offense, and it's an improper comment for Attorney Kelley to consider in--

THE COURT: Objection overruled and we note the exception for Defendant's argument.

ATTORNEY KELLEY: That individual who only attacked that individual with the knife would have then dropped that knife and picked up a blunt object while Miriam was running around screaming at the top of her lungs, someone call the police, call the police.

He was effective with that knife. And now this single person, Milton Montalvo, would have picked up another object and battered her into submission and gone back and picked up the knife and then gone and severed her throat.

I suggest to you that it's more likely that Milton Montalvo broke that window and said, I know there is someone in there and gained entry and went off

the male victim with the knife.

And another individual, the Defendant,  
came at Miriam who was screaming, call the police call  
the police, with a blunt object and bludgeoned her into  
submission. And then this defendant, after Milton had  
killed the male, took the knife, severed her major  
arteries in her throat and stabbed her in the eye.

We know two weapons were used. I suggest  
to you that those two weapons are indicative of two  
individuals. Which incidentally is exactly what Esther  
Soto tells you. He said the day after the homicides,  
I've got a--got to cut her, I broke her arms. Where does  
she come up with that? I got to cut her and broke her  
arms.

And you heard testimony from the Doctor  
that she was battered all up and down her arms. She got  
that from the one person who knew what he did to the  
female, him. Just as Milton said what he did to the guy,  
I killed the guy. Not only does Esther Soto's testimony  
tell you what he said, the forensic testimony tells you  
what the second person, this defendant did.

And his flight afterwards, fleeing the  
police so that he wouldn't get caught for this speaks  
volumes as to what was going through his mind April 19th,  
1998. I've got to get out of here.



Remember, even years after Milton is caught, he's still on the lamb. He's now living in New Jersey. And what name incidentally is he living under? Is it the last here, I fucked her and I'm glad of fucked her, Lugo. What did you see from the photographs and what are you going to see when you go back there that Detective Hose testified to? Someone had taken out the male victim's identification and it was in a stack on the sink and the name that the male victim was living under, Lugo, is the same name 4 or 5 years ago this defendant as a last (indicating) is living under Lugo.

And when the police come for him, I didn't do anything. What's he doing? He's hanging naked out the window in an attempt to get away because he doesn't want to go back to prison.

It's the same mentality that Esther Soto told you that he possessed the day that he and his brother decided to go and kill Miriam Ascencio. She knows too much about this. She knows too much about this. I don't want to go back to jail. Just like he told Detective Comacho, when he says that I fled because I didn't want to go back to jail.

But the Defendant will do anything not to go back to jail. He'll take his wife who is pregnant with his child on the lamb through the United States, so

he doesn't go to jail. He'll hang naked over two stories over a wrought iron fence, not to go back to the jail.

And you better believe on the 18th of April when he realized that Miriam and Milton were over with, and he realized that Miriam and her son knew that he was not on probation, that he had gotten out of jail and was on parole, and he left from being under parole--

ATTORNEY CUTRUZULLA: Judge, objection that's not the testimony of this officer nor was it the testimony of--and I'm--excuse me of Detective Comacho and the F.B.I. agent. Agent Edgers did not even address the issue of any warrants out of Puerto Rico. It wasn't until my own client's statement to Detective Comacho and it said probation and not parole.

ATTORNEY KELLEY: Your Honor, I'll read right from the statement and ferret out that statement.

THE COURT: Objection overruled. Ladies and gentlemen, in closing arguments don't mistake to what counsel testified to. It's your recollection that controls. Disregard what counsel says, if it does not coincide with your recollection.

ATTORNEY KELLEY: As he stated to Detective Comacho, he comes out of prison in 1995 and was on probation for car theft. Now, Detective Comacho put probation and when he came out on probation it means

parole. He left--

ATTORNEY CUTRUZZOLA: Judge, objection. Now he's reading the exact words and he's testifying as to what they mean. Detective Comacho didn't say that he didn't qualify it. He didn't changed it. Those are the words now. Mr. Kelley is saying that what he really meant was parole.

THE COURT: Objection sustained, put it on the record, Mr. Kelley, to indicate that is what it was.

ATTORNEY KELLEY: But he fled and he knew that Jaime and Miriam were aware of this situation. In fact, what he says to Detective Comacho was that they were aware of my situation and I was afraid that I was going to go back to prison.

And what did he do to ensure that he wasn't going to back to prison? He went on the lamb from 1998 until he was caught in August and he took a pregnant woman with him and assumed aliases to stay away from the authorities. This a very important thing for him, not to go back to prison. He'll essentially start life anew, leave families behind, jobs behind in order to evade capture.

Why would one do that? Why? Because he was guilty and he knew that if he was caught, he would sit before you folks and you folks would judge him.

according to the evidence. And the evidence tells you that this defendant went with his brother and killed Miriam and Nelson and specifically his hand killed Miriam. His words tell you that the forensic evidence tells you that and his actions after the fact tell you that.

Now, defense counsel has argued that the Commonwealth has made a great case against Milton Montalvo and you heard the testimony there is 30 dots here, but as the Detective indicated, these are not indicative of all the pieces of evidence that they are found. They are just showing patterns of things where he, in fact, told you hundreds of items of evidence were seized. There were hundreds of droplet's of blood throughout.

But if Milton Montalvo hadn't cut his finger, there would be nothing in the record to indicate that Milton Montalvo is guilty except for one hair. And Milton lived there, so that hair could have been there for any number of reasons. The only reason that there was evidence against Milton Montalvo is in the process of things, he cut his finger right on a little piece of glass he left some blood.

And contrary to what defense counsel has argued to you, he didn't wipe his gloves off to clean his

evidence of crime. He wiped his hands off and the only blood that ended up on that bag was his. He wiped his hands because his hands were cut after he already cut this guy.

He didn't get any blood on his hands from supposedly severing her neck because the only blood that you heard of on that white rag that was wiped and thrown on the bed was the Defendant, Milton Montalvo's, blood and that's it. Why? Because Defendant--Milton Montalvo didn't go like this (indicating) as all her blood came gushing out in order for her to die literally within 30 seconds. The Defendant did that.

Milton Montalvo cut his hand and cut it bad and you'll see pictures of scars on his hands that were taken when he was arrested. He was bleeding and that's what he put on his wound.

Now, of course, there have been a number of discrepancies in regard to the time that things happened prior to the homicides being committed. But what is safe to say is I suggest to you that the Defendant and his brother, Milton, were together during the course of at least a number of hours before the homicide. And if don't believe the Commonwealth's witnesses, believe Miguel Soto.

They were there at the grocery store

beforehand with the Defendant's wife. Miguel said that he left between 10 and 11. I asked him that twice. He left between 10 and 11 and the Defendant, his wife and Milton left hours before that. I didn't remember if Milton and the Defendant left together, but they left some time before that.

Now, at this point, Patricia Ascencio had her hair and nails done at the Defendant's home. When she was having her hair and nails done at the time, Milton came over and he was all flustered and the Defendant was there with his wife. Now, whatever time Patricia was having her hair and nails done, she left and about 15 minutes before she left, she said that she saw Milton go out and get in his car.

Now at some point also later that evening, the Defendant, his pregnant girlfriend, who had blond hair at the time, and Milton Montalvo were in Milton Montalvo's van and he was towed by Nici Negron and he said it was 12:30. He looked at the clock before he got off and towed them back to their house, he said somewhere about 12:50 or 1:00.

Now, am I suggesting to you that you should believe every single second of time that the Commonwealth has laid out for you? No. But what we again have is the Defendant and his brother and the

Defendant's girlfriend together in the van and whether it's 12:30, 12:40, 12:50, 1:00, 1:15, 1:30, and Nici Negron could be wrong, but we know that they're together, but we know at 1:30 the victim isn't even yet at her apartment because Mr. Rice said he didn't believe until 1:30, and he was sure of that because he left right before closing. And he said that the victim or the two victims were drinking when he left and they had been dancing and having a good time. The two victims are alive at 1:30, whatever time Nici Negron towed them, they're together at a point just before the victim has even gotten home.

Now, you heard the testimony of the Rice's. Mr. Rice testified--well, he usually goes to bed at a certain time on the night in question. He's not exactly sure what time he went to bed, and initially, when he first spoke to the police--it was some time between 11 and 5 and--I don't know, I was asleep.

And what he did tell you, he was awakened because he heard voices out on the porch and then he heard a voice that he recognized specifically as Milton Montalvo's and he said Milton--I know that a man went in there, opened the door. But what did he say first? He said, I heard voices inside.

And then when he gets inside or whether

they get inside, he hears the glass breaking and fighting going on inside. And he said that he hears more than one male voice screaming and he said, like a moan, like voices screaming. Like a bunch of them screaming over each other? And he says, yes.

Now, these two victims were being killed at this point and he's not exactly sure what time it was, but knows it's after 11 and before 5:00 and the one person who tells, you know, I know what time it was because I looked at the clock was--it was consistent with what he told the police back then was Fidelio Morell,

He told you, I looked up at the clock and it was 12:30 or 12:45 and I heard call the police--call the police and then I heard bang -- (indicating) on, (makes noise) on my ceiling and then I heard someone being dragged. Fidelio Morell told you that he was sure it was 12:30. And if it had been an hour later they would have finished their drinks and gotten back to the place and would have been caught by those seeking to kill, them the Defendant and his brother,

Now, Morell tells you, I recognize the voice upstairs as Milton, and that's consistent throughout. Milton's voice was known to these people because he lived there. They all testified, all the Commonwealth's witnesses, they didn't know the Defendant,



but Mr. Rice tells you there was more than one voice out on the porch. What are those voices talking about just before Milton Montalvo says, open up. I know there is someone in there. That was the Defendant and his brother talking about how they were going to gain entry just before they did.

Just before Milton broke that window and cut himself and left the evidence which would ultimately lead to his conviction for these murders, but just because the Defendant's brother has been convicted of these murders, does not mean that that would absolve your duty to determine whether or not this defendant was apart of those murders because we know about the forensic evidence that the two people killed these two individuals and only you can determine whether or not one of those people was this defendant right here.

I suggest to you, again, based upon the evidence, the Defendant's confession to Esther Soto and the Defendant's actions after the crime that he's telling the truth. I killed her. I killed him. I just don't want to go back to jail. Thank you.

THE COURT: Ladies and gentlemen, this is as far as we're going to go today. You've heard all of the evidence and closing arguments, there is nothing else to be said by the attorneys. And the only thing left is

to be said by me and that's your instructions, after which you'll go to the jury room to deliberate on a verdict.

As I had indicated I anticipate my concluding instructions to be an hour to an hour and a half and then you'll be required to deliberate. There is a possibility that you'll be sequestered tomorrow evening, if you cannot arrive at a verdict at a reasonable time. Reasonable, I mean, normally in cases like this it's into the evening hours. If you cannot arrive at a verdict, I have to determine whether or not that I'll be sequestering you overnight.

In such a case, we'll make the appropriate arrangements and you will be able to contact your family to let them know for sure whether or not you'll be sequestered. I don't think at this point we need to have you pack clothes and bring them along tomorrow.

If anybody doesn't have anybody to bring you clothes tomorrow night, perhaps you want to pack a bag of clothes, but we can contact or you can contact relatives to bring things that you would need, if we sequester you overnight so that you can deliberate. So that you're not contacted, not that I expect you to be contacted by anyone or influenced in any way by the media, while you are in deliberations.

So with that, I'm going to excuse you for this evening and ask you to be back in the jury room for this courtroom tomorrow morning and let's make it 9:00, and we can deal with concluding instructions and then I can say that you deliberate around early tomorrow.

There's been press in the courtroom, so again, I may sound like a broken record, please do not read anything or listen to anything about this case, and certainly, do not arrive at any decision this evening. I don't want you to do that until after you hear my instructions and you retire to deliberate tomorrow. And do not discuss this case with anyone this evening. So with that, I'll wish you a good evening and we'll see you back here at 9:00 tomorrow morning.

(Whereupon, the jury left the courtroom.)

(Whereupon, the proceedings adjourned until March 19, 2003.)