

Exhibit E: Closing Arguments Re: Identity;

Prosecutor:

RT 2665 L 12 This case is about identity. And that's all it is about. If you believe Ms. Rhoads when she says I immediately recognized the defendant when he walked in the door. I knew it was Nathan Medina, and then he pepper sprayed me. If you believe her when she says that, then you can't go back in the jury room and say, well what if he had a twin brother. There is no evidence of that. That's speculation and conjecture.

RT 2667 L 7 But you can bet that if there was other information that would be helpful to you in making your decision making process that either counsel or myself would have brought it out during trial.

RT 2668 L 1 Ms Rhoads was honest she told you what happened what she saw...

RT 2672 L 25- 2673 L 3-There is certainly a lot of corroborating evidence as to the story from each of the witnesses. Ms, Rhoads describes similar clothing, from the waist up at least.

RT 2680, L 23 He immediately pepper sprayed her...

RT 2692 L 2 Ms. Rhoads came in and testified that she immediately recognized him as Nathan Medina...

Counsel:

RT 2751- I'll play Ms. Rhoads statement to Detective McColgin, but she says I know it was him that threw those rocks through the window...

RT 2751 L 20- So – So the government's position is that... walks in, wanted to kill Ms. Rhoads, he has got a gun in his hand, wanted to kill Ms. Rhoads right there. Didn't – pepper sprays her as you will hear on that tape immediately. (This was never transcribed or played to the jury).

RT 2752- Sprays her in the face, not down the chest. There is no conversation, there is no – she doesn't walk towards him and confront him. She walks around that corner, sees a guy in a cap big dark sunglasses that many people say, yeah, pretty hard to say, big dark sunglasses, a cap and a black jacket in a dark hallway, she has already said it's a dark area there in that foyer, and says when I came around the

corner, yeah what was he doing, his hands were like this, and started spraying. A fraction of a second is what she had to view the intruder...

RT 2780 L 18 These are the witnesses. I know it's him. I know it's him (Tape played) I couldn't see. Let's get one thing very clear, that when the government tries to tell you that what she is saying there is I can't see right now, at that's what they are saying. That that's what the examination was.

RT 2780-2781 I can't see right now versus I couldn't see when the detective first meets her trying to find out what happens, you have someone in the background saying she has been pepper sprayed. She has been pepper sprayed and she says – (taped played) I know Nathan threw that river rock through my door. Not I believe, I think, you know, what makes sense is I know it was Nathan. Not Tony, not anyone else, not the persons that vandalized Mr. Mendell's truck a number of times, I know that it was Nathan Medina, because when something bad happens, it's Nathan Medina. (tape played) Listen to that she knows it's Nathan Medina who threw the rocks.

RT 2781 L 20 And then when they are talking about it and the detective is going so he had a mask on, and she goes, well, maybe not a mask, maybe not quite a mask, but I know it was Nathan Medina. And, of course, the detective, yeah, right, because there are some parts of his face you could see, right. Listen to the way the detective interviews her. But that's her. Couldn't see. I know its him.

RT 2782 L 26 Ms Rhoads at best, before she is pepper sprayed, is a second. Listen to the way she described it, what she said here. The person came around the corner and was already like this when she first sees him, held her arm up, demonstrated, and started spraying. In a dark hallway with these glasses on and a coat, with these glasses on and another witness who has seen him outside and said, you know, kind of tough to tell. She had no immediately, that's the key. It's not that you know what, after I was able to look at him, you know, it was immediately. And it's Nathan Medina. I don't know if it's a mask, I couldn't really see him that well. I know it's him, I know it's him.

How much time did she really have before she is pepper sprayed? Seconds? No A second? Maybe.

RT 2786 L 27 ...the mom positively identified. She said it was Nathan, what the detective says. What does Mendell say? She said it was Nathan for sure? Yes she did. Wasn't wearing a mask it was just a hat, a hat. A beanie rolled up and then the detective says he said, hey man, it's him, it was him. She positively ID'd him. Then they take him to the lineup.

RT 2805 L 17 When they got that call it's Nathan Medina. I saw him for a quarter of a second. I couldn't see, I couldn't see, I know it's him, though, this case was over.

Prosecutor:

RT 2832 - 2833 Counsel played you a tape of Ms. Rhoads and this is the other point I was getting to about the three dimensional versus the two dimensional. Plays you a tape, a portion of a tape where she says I really couldn't see, I couldn't really see, is my son alive?

What does she say on the stand? She says as I was laying in laundry room the odor from the pepper spray was getting to me and I couldn't see.. RT 2833

RT 2833 L 6 What are we missing from that quotation on that tape? Reference to time. She said that when I was laying on that counter top for an hour, that's when I couldn't see. Could you see the man who sprayed you with pepper spray? Yes. Did you have trouble? No.