

1 THE CLERK: Romeo Samblero.  
2 JUROR SAMBLERO: Here.  
3 THE CLERK: Elisa Scarone.  
4 JUROR SCARONE: Here.  
5 THE CLERK: Bruce Leal.  
6 JUROR LEAL: Present.  
7 THE CLERK: Alice Barnes.  
8 JUROR BARNES: Here.  
9 THE CLERK: Mario Barela.  
10 JUROR BARELA: Here.  
11 THE CLERK: Roy Fish, Jr.  
12 JUROR FISH: Here.  
13 THE CLERK: Catherine Beta.  
14 JUROR BETA: Present.  
15 THE CLERK: Enei Trie.  
16 JUROR TRIE: Here.  
17 THE CLERK: Timothy D. Thompson.  
18 JUROR THOMPSON: Here.  
19 THE CLERK: David Zeamer.  
20 JUROR ZEAMER: Here.  
21 THE CLERK: John Scrutchens.  
22 JUROR SCRUTCHENS: Here.  
23 THE CLERK: Doc Wiener.  
24 JUROR WIENER: Here.  
25 THE CLERK: Gary Morris.

1 JUROR MORRIS: Here.

2 THE CLERK: Andrea Adams.

3 JUROR ADAMS: Here.

4 THE CLERK: Diana Henry.

5 JUROR HENRY: Here.

6 THE CLERK: Lawrence Kinsler.

7 JUROR KINSLER: Here.

8 THE CLERK: Maryann Russo.

9 JUROR RUSSO: Here.

10 THE CLERK: Robert J. Skinner, Sr.

11 JUROR SKINNER: Here.

12 THE CLERK: Robert Golechen.

13 JUROR GOLECHEN: Here.

14 THE CLERK: Priscilla Rivera.

15 JUROR RIVERA: Here.

16 THE CLERK: Melissa A. Celeste.

17 JUROR CELESTE: Here.

18 THE CLERK: Ellen Mackey.

19 JUROR MACKEY: Here.

20 THE CLERK: Mackey, I'm sorry. They are all

21 here.

22 THE COURT: Is there anybody present whose name  
23 was not called? I don't know how that could happen. We've  
24 got every seat full.

25 All right. We are about to start the process of

1 jury voir dire questions to test for qualifications to see  
2 if you are going to be able to serve as a juror.

3 It's important that you understand that it's  
4 imperative you be truthful and you be honest, and you be  
5 open about this, the questions -- the answers to the questions  
6 that I am about to ask you.

7 We are not prying into your personal lives, but  
8 it's important for everybody -- the State, the Defense, the  
9 Court, that we determine whether or not there are such a  
10 bias or prejudice that you may harbor from things that have  
11 happened to you in the past that you would not be able to  
12 sit as a fair and impartial juror, which is the only thing  
13 that we are trying to find.

14 We are trying to find persons who can be fair  
15 and impartial both to the Defense and the State in this  
16 case.

17 We realize that everyone comes here with life  
18 experiences. You can call them whatever, baggage, however  
19 you want to approach it, but we don't live in a bubble,  
20 we realize that we all come with a certain amount of life  
21 experiences.

22 But what we want to know is if something so  
23 traumatic, dramatic has occurred in your past, if there  
24 is something about your background that you simply cannot  
25 leave out in the hallway, and approach your job as a juror

1 fairly and impartially, that's all we are trying to do is  
2 to find out.

3 So, with that in mind, as we say repeatedly, we  
4 want you to leave all of those things out in the hallway,  
5 and we want you to bring your good common sense here in  
6 your service as a juror.

7 Now, with that in mind, we do this questioning,  
8 this voir dire under oath.

9 So the first -- the next step is I am going to  
10 have everybody stand, raise your right hand, and Teri Lee  
11 is going to swear you all in as members of this prospective  
12 jury pool.

13 (Jury panel duly sworn.)

14 THE CLERK: Thank you, you may be seated.

15 THE COURT: Later on, at some point during the  
16 selection process, there will be what is referred to as  
17 challenges that each side in the case are allowed a certain  
18 number of exemptions.

19 They just simply say for whatever reason they  
20 ask a particular juror to step down, and they will be  
21 replaced.

22 I don't want you, when we get to that point, I  
23 don't want anybody to get offended because you are just  
24 asked to step down. It is just a part of the selection  
25 process to make sure that everybody is treated fairly.

1           So don't get -- get upset if you sat through here  
2 for hours, and then you get towards the end, and somebody  
3 says, just please step down for no reason. That's just  
4 the way the system works.

5           I am going to ask everybody in the jury pool a  
6 certain number of basic foundational, qualifying questions.

7           It's important that we make a record of these  
8 questions and answers.

9           If there is nobody that raises their hand, first  
10 of all, if your answer is affirmative, yes, I want you to  
11 raise your hand and just kind of hold it until I get to you.

12           When I get to you, we will start from your right,  
13 my left in the back row, and we will kind of sweep around  
14 the room in this direction until I have gotten to everybody,  
15 all right?

16           If there is no affirmative answer by anybody,  
17 then I will make the answer so the answer is complete and  
18 will say that there was no answer and the answer was no,  
19 all right?

20           Here are the basic under foundational, qualifying  
21 questions.

22           Is there anyone here in this jury pool who has  
23 ever been convicted of a felony?

24           Okay. All right. In the middle. I need you  
25 to stand up, identify yourself by name, and then the last

1 three numbers of your jury badge.

2 Okay.

3 JUROR HOFFMAN: My name is Robert Hoffman,

4 242.

5 THE COURT: What were you convicted of?

6 JUROR HOFFMAN: A DUI.

7 THE COURT: A felony?

8 JUROR HOFFMAN: I do believe, in 1990.

9 THE COURT: Where, here in Clark County?

10 JUROR HOFFMAN: Here in Vegas.

11 THE COURT: Was it a third offense or what

12 made it a felony?

13 JUROR HOFFMAN: They just charged me with a

14 felony.

15 THE COURT: Was somebody -- was there an  
16 accident and somebody hurt?

17 JUROR HOFFMAN: No.

18 THE COURT: Was it a third --

19 JUROR HOFFMAN: No accident.

20 THE COURT: Was it a third offense?

21 JUROR HOFFMAN: Well, I have had several of

22 these DUI's in the past so --

23 THE COURT: Okay. That's part of what happened  
24 in Clark County. And you have never had your civil rights  
25 reinstated or restored in any fashion?

1 JUROR HOFFMAN: Not that I know of, no.

2 THE COURT: Okay. Go on back down to the third  
3 floor to the Jury Commissioner's office and let them know  
4 that, okay?

5 JUROR HOFFMAN: Okay.

6 THE COURT: Thank you very much.

7 JUROR HOFFMAN: Thank you.

8 (Juror Hoffman excused.)

9 THE COURT: And then beside him, I saw another  
10 hand?

11 JUROR CARNEY: Yeah, Everett Carney, juror number  
12 232.

13 THE COURT: Okay. What were you convicted of?

14 JUROR CARNEY: You name it, other than killing  
15 somebody.

16 I'm serious, armed robbery, burglary, and grand  
17 theft auto. As a juvenile, in the State of California,  
18 I was expunged, and I worked with kids in the system for  
19 many years.

20 THE COURT: Did you have your civil rights  
21 restored?

22 JUROR CARNEY: That's the expungement I believe  
23 took care of that.

24 THE COURT: Well, not exactly. Expunging your  
25 record just simply means that it is sealed, but there is

1 a different process to have, when you actually have your  
2 civil rights reinstated.

3 JUROR CARNEY: I believe they were. I had a  
4 paper made. This was 40 some years ago, I mean, it was  
5 so far -- I had a wife and kid. I'm a decent and knowing  
6 citizen. That's all I said. I sat on jury duty in this  
7 County before.

8 THE COURT: You have?

9 JUROR CARNEY: Yes, sir.

10 THE COURT: And they -- you told them what you  
11 just told us?

12 JUROR CARNEY: Yes, sir.

13 THE COURT: Have a seat.

14 JUROR CARNEY: I told them when they called me  
15 this time so, yeah, I asked them every time because I don't  
16 want to mess up anybody's time.

17 THE COURT: Okay. You are all right then.

18 JUROR CARNEY: Okay?

19 THE COURT: Anybody else? No. Oh, I see another  
20 hand.

21 JUROR SAMBLERO: It's Romea Samblero, it's 384.

22 THE COURT: All right. What were you convicted  
23 of?

24 JUROR SAMBLERO: I got a DUI in '91, and this is  
25 the first time. That's the only thing I had.



1 THE COURT: What happened to you as a result of  
2 your DUI?

3 JUROR SAMBLERO: There was an accident that I hit  
4 a pole. 19 --

5 THE COURT: Did you get fined?

6 JUROR SAMBLERO: I got fined. I went to classes.

7 THE COURT: You went to DUI classes?

8 JUROR SAMBLERO: Yes.

9 THE COURT: AND you got fined?

10 JUROR SAMBLERO: Yes.

11 THE COURT: You're all right.

12 Anybody else?

13 Okay. Is there anybody in this jury pool who  
14 is not a citizen of the United States?

15 All right. There is no responses. The answer  
16 is, no.

17 Is there anyone here who has such a sympathy,  
18 or a prejudice, or a bias that relates to age, race,  
19 religion, gender, national origin that they feel it would  
20 affect their ability to be open-minded, and fair and  
21 impartial to both sides in this case?

22 No, there is no response. So the answer is  
23 no.

24 Are there any persons in this jury pool who  
25 know any of the attorneys, any attorneys for the State?

1 No.

2 Any of the attorneys for the Defense?

3 No.

4 The Defendant?

5 No.

6 Any of the witnesses that were named by the State  
7 or the Defense?

8 We have a couple of hands here.

9 All right. Then next, stand and identify yourself  
10 with your juror number.

11 JUROR WAGNER: Barbara Wagner, and my number is  
12 275.

13 THE COURT: Okay. Who did you know?

14 JUROR WAGNER: If IT'S Brian Murray that was  
15 a coach at Western High School, I worked at Western High  
16 School with him, and my kids have also.

17 THE CLERK: I can't hear you. You have to speak  
18 up, I'm sorry.

19 JUROR WAGNER: I'm sorry. Brian Murray, who was  
20 on the Defense list, he was a teacher at Western High School,  
21 a coach. I don't know if it is the same Brian Murray or  
22 not.

23 MR. LANDIS: It is, Judge.

24 THE COURT: Did you know him -- do you know him  
25 personally, I mean --.

1 JUROR WAGNER: Well, I worked at the school with  
2 him.

3 THE COURT: Did you -- was he a personal friend  
4 of yours? Did you socialize with him.

5 THE COURT: No not out of school.

6 THE COURT: But was there -- is there anything  
7 about the fact that you know him, I mean, did you know him  
8 so well that if you saw him here on the witness stand, you,  
9 I mean, you may have had a pleasant experience knowing him,  
10 or maybe unpleasant, but is there anything about your  
11 experience of knowing him if you saw him on the witness  
12 stand you would give his testimony any greater or lesser  
13 weight than any other witness?

14 JUROR WAGNER: I don't think so.

15 THE COURT: That's fine. You're fine. There was  
16 another hand that I saw.

17 Yes?

18 JUROR FALCONE: Salvatore Falcone, 377.

19 There were two next door neighbors who were with  
20 the Henderson Police Department. One was an officer and  
21 the other one is a detective.

22 THE COURT: Do you remember their names?

23 JUROR FALCONE: I don't remember their names.  
24 I might remember their faces, but they moved about a year  
25 and a half ago. I met them at a few neighborhood community

1 associations, but that's about all.

2 THE COURT: Well, my question to you is the same  
3 basic question.

4 You don't know their names, but you might recognize  
5 them if they would walk in, and you see them get on the witness  
6 stand?

7 JUROR FALCONE: Yes.

8 THE COURT: You might recognize them?

9 JUROR FALCONE: Yes.

10 THE COURT: Again, not knowing if you had pleasant  
11 experiences or unpleasant experiences with them, if you saw  
12 one or both of them on the stand, and it turns out that they  
13 were people that you actually recognized, as being a neighbor,  
14 would you treat their testimony any differently than anybody  
15 else's testimony that you didn't know?

16 JUROR FALCONE: No.

17 THE COURT: Would you give it more or lesser  
18 weight than to anybody else?

19 JUROR FALCONE: No.

20 THE COURT: Okay, good enough. Anybody else?

21 Okay, that was it for that.

22 THE COURT: All right. Before I ask this next  
23 question, I need to kind of give you a little explanation.

24 This trial is expected to last the rest of this  
25 day, Thursday, Friday, into Monday and then Tuesday, but

1 it won't go any further than that, and it may only be a  
2 little bit of Tuesday, as a matter of fact.

3 So, in the big picture of what goes on in this  
4 Courthouse, this trial isn't going to last too long.

5 Some trials last weeks. Unfortunately, some of  
6 them last longer than that.

7 So the next thing I am going to ask you that I  
8 want you to be careful about bailing out of here too easily  
9 or too quickly because if you got something that you absolutely  
10 have to do that you can't get out of over the next five days,  
11 then I will consider letting you off. But be careful what  
12 you ask for because you might get recycled onto a real long  
13 trial. So like I say, be careful what you ask for.

14 Now, with that having been said, this case is going  
15 to last for the next five days possibly.

16 Is there something in your life over the next five  
17 days that is of such an emergency type of a matter that would  
18 prevent you from being able to serve as a juror over the  
19 next five days, from now until possibly Tuesday, and the  
20 kinds of things that I am referring to.

21 If you have a paid ticket to someplace that you  
22 cannot get a refund on, and if you miss, you are going to  
23 be out a bunch of money, or if you have a doctor's appointment  
24 that you have been waiting six months or eight months for,  
25 and it will take another six or eight months if you have to

1 reschedule it.

2 If you have something of that nature that you  
3 simply cannot make arrangements to reschedule, or to move,  
4 and you just can't serve, because what will happen is if  
5 you are in that category, if it qualifies, I will excuse  
6 you and send you down to the third floor, but again, they  
7 will recycle you, and you don't get out. You just get  
8 moved.

9 Economic reasons, economic hardships are in and  
10 of themselves not enough to excuse somebody.

11 Almost everybody here will in some fashion or  
12 another incur some kind of an economic hardship from serving  
13 on a jury.

14 We try to minimize that by paying you a lot of  
15 money to be here.

16 Sometimes it's not enough, but I just want you  
17 to know, economic hardship reasons alone are not going to  
18 get you off, okay?

19 Now, who has something of an emergency nature  
20 between now and next Tuesday that would absolutely prevent  
21 them from being able to serve as a juror?

22 All right. Stand up.

23 JUROR POLK: Yes, sir.

24 THE COURT: Who are you, and what is your badge  
25 number?

1 JUROR POLK: Badge number 0077.

2 THE COURT: What's your name?

3 JUROR POLK: Ron Polk.

4 THE COURT: Okay.

5 JUROR POLK: I don't know if this is important  
6 enough, but I work for the Department of Defense out at  
7 Nellis Air Force Base, and we have Pentagon inspection  
8 next week.

9 THE CLERK: I can't hear him.

10 THE COURT: He works for the Department of  
11 Defense. He has a Pentagon inspection.

12 JUROR POLK: Yes, sir.

13 THE COURT: And when is it, is that over the  
14 weekend?

15 JUROR POLK: It starts Friday, Saturday, Sunday,  
16 Monday and Tuesday.

17 THE COURT: But you are not in the Air Force?  
18 You are just a contractor?

19 JUROR POLK: I work for the Department of Defense.

20 THE COURT: Oh, okay, all right.

21 Actually, that's probably just exactly what I'm  
22 talking about. They probably don't come out very often.

23 JUROR POLK: Okay.

24 THE COURT: Here's the deal.

25 You need to, when you go down to the third floor,

1 let them know that you are off because you got a Department  
2 of Defense inspection, and give them a better time frame.  
3 I don't know if you have them, what, every six months or  
4 so?

5 JUROR POLK: Sure, every six months.

6 THE COURT: All right. Well, tell them when  
7 your next one is scheduled and say, you know, can you recycle  
8 me in like 90 days, or something.

9 JUROR POLK: Sure.

10 THE COURT: And they will fix you up, okay?

11 JUROR POLK: Thank you sir.

12 THE COURT: All right.

13 (Juror Polk excused.)

14 THE COURT: Now, anybody else.

15 THE CLERK: We need to replace Mr. Polk.

16 THE COURT: Yeah, and we are going to replace --  
17 he is in the number four position.

18 THE CLERK: Yeah, and that will be John Eshelman,  
19 badge 190.

20 THE COURT: John, you are coming in the one odd  
21 seat right there so you go ahead and take that fourth seat.  
22 We are going to have somebody try and keep everybody  
23 straight.

24 Okay. Now, anybody else? And we will start  
25 over here, you, sir.



1 JUROR ARNONE: Charles Arnone, 228.

2 THE COURT: Okay.

3 JUROR ARNONE: I have litigation settlement Friday  
4 afternoon at one o'clock.

5 THE COURT: A civil litigation settlement?

6 JUROR ARNONE: Correct.

7 THE COURT: You are with your attorney, or something,  
8 on Friday afternoon?

9 JUROR ARNONE: Well, we are settling a class action  
10 lawsuit, and all the people are receiving their checks that  
11 we have coming.

12 THE COURT: Well, you have got to be able to get  
13 your check.

14 JUROR ARNONE: It's a big check.

15 THE COURT: All right, that's fine.

16 That would be right in the middle of what we are  
17 doing, and that is probably going to be too distracting,  
18 so that's fine.

19 When you go down to the third floor Jury  
20 Commissioner's office, you let them know, and they will  
21 recycle you. Just tell them when it is going to be convenient  
22 because then they have -- the pools are coming in every  
23 single week, you know, so tell them 90 days, whatever,  
24 okay?

25 JUROR ARNONE: Okay.

1 THE COURT: Okay?  
2 JUROR ARNONE: Thank you.  
3 THE COURT: All right. Thank you very much.  
4 JUROR ARNONE: Thank you.  
5 (Juror Arnone excused.)  
6 THE CLERK: There's a hand way in the back.  
7 THE COURT: Oh, okay, sorry.  
8 JUROR Special occasions.  
9 THE COURT: Well, like your anniversary?  
10 JUROR well; not quite. It's my little brother's  
11 first birthday, and I got a couple of rooms reserved in  
12 Laughlin, and if I don't make the reservation, it will  
13 be charged to my card.  
14 THE COURT: When is it?  
15 JUROR BUTLER: It's tonight, Thursday and Friday.  
16 THE COURT: No, go ahead and go.  
17 JUROR BUTLER: Thank you.  
18 THE COURT: What is your name?  
19 JUROR BUTLER: Eric Butler.  
20 THE COURT: All right. Go ahead and go down.  
21 Again, let them know what a good time frame would  
22 be, and they will recycle you back in, say, like anywhere  
23 from 90 to 180 days, okay?  
24 JUROR BUTLER: All right. Thanks.  
25 (Juror Butler excused.)

1 THE CLERK: And Wayne Daley, badge 192 to take  
2 that chair, please.

3 THE COURT: Mr. Daley, if you will take that  
4 second chair right there, please.

5 Okay, there was somebody in that -- we'll take  
6 the first row. Right there, you are up, ma'am.

7 JUROR CHAPKIS: Kim Chapkis, badge 209. I have  
8 child care issues. I have to pick up my child home from  
9 school.

10 My husband cannot do it because he is in a one  
11 person office. He works solely on commission, and my  
12 husband leaves for work at 5:30 every morning until 4:30  
13 in the afternoon.

14 THE COURT: Here is how we kind of do this. Do  
15 you have any other family in town?

16 JUROR CHAPKIS: No.

17 THE COURT: All right. We will let somebody  
18 off once, but the next time that you get subpoenaed down  
19 here, you are going to have enough of a lead time, and I  
20 will be telling you right now, make some arrangements  
21 because this is one of those things that a lot of women  
22 have, whether they are married or single, if they are  
23 single, obviously, it's different, but if they are married,  
24 you have got a husband that works, the child care issues  
25 that are very touchy and difficult. But they will have

1 to have some kind of arrangements made.

2 So the next time, ask them to give you enough  
3 lead time so that you can make some other arrangements to  
4 handle that.

5 JUROR CHAPKIS: Okay.

6 THE COURT: Because, like I say, it would only  
7 be for a few days so it won't be impossible or difficult  
8 to make arrangements for a few days.

9 So let them know. Go ahead and go on down to  
10 the third floor, and then tell them that you will need  
11 enough lead time next time so that you can make some  
12 arrangements.

13 JUROR CHAPKIS: Okay.

14 THE COURT: Okay?

15 JUROR CHAPKIS: Thank you.

16 THE COURT: All right.

17 (Juror Chapkis excused.)

18 THE COURT: All right. We were in the first row.

19 All right. In the second row, let's go, start  
20 with the end. Did somebody down at the end have their  
21 hand up?

22 JUROR FRANKLIN: Hi, my name is Frances Franklin,  
23 and my number is 258.

24 THE COURT: What's wrong, Frances?

25 JUROR FRANKLIN: I'm up here because one of the

1 reasons you said that I could be up here, but I really  
2 cannot afford to miss that many days from work.

3 I live by myself, and I live from paycheck to  
4 paycheck, and today I am not getting paid.

5 THE COURT: Where do you work?

6 JUROR FRANKLIN: The silver Nugget.

7 THE COURT: What do you do there?

8 JUROR FRANKLIN: Work in the bowling alley.

9 THE COURT: And like I said, let's do this,  
10 because we are not supposed to let you go because, you  
11 know, you are off work and don't get paid. There is a  
12 lot of people that fall into that category.

13 Let's, let's see how we are doing. If we run  
14 out of people, then we got to start this whole thing all  
15 over again. So let's just kind of put you on hold here.  
16 See how far we get, okay?

17 JUROR FRANKLIN: Okay. Thank you, sir.

18 THE COURT: Somebody right next to her. Yes,  
19 sir, you.

20 JUROR MARTIN: Daniel Martin, 250.

21 I'm a student, and I have class tomorrow and  
22 classes all next week, and it would be very difficult to  
23 reschedule those lectures.

24 THE COURT: What -- where do you go to school?

25 JUROR MARTIN: UNLV.

1 THE COURT: They are not finals yet. Finals don't  
2 start until another month.

3 JUROR MARTIN: Yeah, but that's tomorrow, if  
4 I miss the lectures, they are hard of difficult to make  
5 up.

6 THE COURT: Well, that's probably true. Are you  
7 out of school in the summer?

8 JUROR MARTIN: Yeah.

9 THE COURT: All right. Go on down foot to the  
10 Jury Commissioner's office and tell them to reschedule you,  
11 say, in about 60 days when you will get out of school, and  
12 you won't have that problem.

13 THE CLERK: Is your badge 210, sir?

14 JUROR MARTIN: 250.

15 THE CLERK: 2?

16 JUROR MARTIN: 250.

17 THE CLERK: Thank you.

18 THE COURT: Okay.

19 (Juror Martin excused.)

20 THE COURT: Yes.

21 JUROR GLEASON: I'm Julie Gleason, 247. I also  
22 have child care issues.

23 My husband is out of the country so I am kind  
24 of a single mom for the next couple of weeks.

25 THE COURT: How old are your kids?

1 JUROR GLEASON: They are 10 and 12, Your Honor.

2 THE COURT: Well, you don't pick them up and  
3 take them to school, do you?

4 JUROR GLEASON: Oh yeah, I do. We -- they go  
5 to a private school, and I don't live close to the school,  
6 and they have after-school activities, and things that  
7 go on, so they get picked up at different times and --

8 THE COURT: When are they out of school?

9 JUROR GLEASON: One is out in --

10 THE COURT: No, no, I mean, they are not in  
11 year around school at that age, are they?

12 JUROR GLEASON: No, they are not.

13 THE COURT: Are they off for the summer?

14 JUROR GLEASON: Yeah, and I can do it at another  
15 time. I just don't have any help right now.

16 THE COURT: Then we will do that. We will schedule  
17 you -- we will go ahead and I'll excuse you, and let them  
18 know and say, please recycle me during June, July, August,,  
19 something like that, okay?

20 JUROR GLEASON: Okay.

21 THE CLERK: Is that badge 247?

22 JUROR GLEASON: Yes.

23 THE COURT: YES.

24 THE CLERK: Thank you.

25 JUROR GLEASON: Thank you.

1 (Juror Gleason excused.)

2 THE COURT: Okay. That's the second row. Third  
3 row, right down at the end. Yes, you?

4 JUROR GUIDO: My name is Emily Guido. My number  
5 is 259.

6 THE COURT: What's wrong?

7 JUROR GUIDO: It's my birthday tomorrow, and my  
8 sister already made an arrangement for starting tomorrow  
9 into the whole weekend for us to go away to California.

10 THE COURT: Again, Joe will make you a birthday  
11 cake. Okay, that's fine.

12 JUROR GUIDO: I'm sorry, Your Honor.

13 THE COURT: No, that's fine, that's fine.

14 Just go down, just tell them that it's your  
15 birthday tomorrow, and that we said you could come back  
16 and recycle later.

17 JUROR GUIDO: Okay.

18 THE COURT: That's fine.

19 JUROR GUIDO: Thank you, Your Honor.

20 (Juror Guido excused.)

21 THE COURT: There was another hand in that row  
22 right there.

23 Okay. Yes, sir, and I will come back to you in  
24 just a second.

25 Yes, sir.



1 JUROR GONZALEZ: My name is Jesus Gonzalez, 227.  
2 I got to take care of my kids.

3 THE CLERK: Take care of who?

4 THE COURT: You have to take care of who?

5 JUROR GONZALEZ: My kids. I have got two.

6 THE COURT: Where is your wife?

7 JUROR GONZALEZ: She works swing shift.

8 THE COURT: What time is that shift, what time  
9 does she have to work?

10 JUROR GONZALEZ: She works from 12 o'clock to  
11 ten o'clock.

12 THE COURT: And where are your kids that you have  
13 to --

14 JUROR GONZALEZ: My --

15 THE COURT: You will be home by 5, 5:30 every  
16 day, I can promise you.

17 JUROR GONZALEZ: Okay, but I need to take my  
18 kids to the training yet. I don't know if I can explain.

19 THE COURT: Well, if I let you go this time,  
20 are you going to be able to make arrangements for the,  
21 say, in about three months?

22 JUROR GONZALEZ: Yeah.

23 THE COURT: Okay. I will let you go, but you  
24 need, the next time you get subpoenaed, let them know  
25 that like maybe over the summertime, and then you tell

1     them you need a little time to make some arrangements,  
2     okay?

3             JUROR GONZALEZ: No problem, I can do that.

4             THE COURT: All right. Go on down to the third  
5     floor.

6             JUROR GONZALEZ: Okay, thank you.

7             (Juror Gonzalez excused.)

8             THE COURT: The last row back there.

9             JUROR RIVERA: My name is Sheila Rivera, my  
10     badge number is 301.

11             I am raising my granddaughter. She is 11. She  
12     has been with me since she was five years old.

13             My husband is not healthy, so I have to take  
14     her to activities after school. I do take her to school  
15     in the morning, but I am willing to serve in June or July  
16     when she is off to her other grandmother's house.

17             THE COURT: All right. Go down and let them  
18     know that you have got a time frame, a window that you  
19     don't have that problem through the summer, okay?

20             JUROR RIVERA: Yes, thank you.

21             (Juror Rivera excused.)

22             THE COURT: And then two over. Yes? I don't  
23     mean to be pointing.

24             JUROR GIBSON: I don't mind you pointing.

25             THE CLERK: We need you to speak up.

1 JUROR GIBSON: Okay. Badge number 9-- or 298,  
2 okay. I also have a child care issue but mainly, my husband  
3 is going to go ballistic if you say like only four days,  
4 how early do you have to be here in the morning?

5 THE COURT: We won't be starting before ten  
6 o'clock.

7 JUROR GIBSON: Oh, okay. He can handle either  
8 taking them in or taking them out. That would be fine.

9 THE COURT: One or the other he can handle?

10 JUROR GIBSON: But I think he will growl at  
11 the picking up, but that should work.

12 THE COURT: Okay, all right.

13 And so you know, we have matters that start  
14 like before the trial starts. So the trial really won't  
15 ever start before 10, and we try to be done by 5, 5:30, and  
16 so that's kind of the time frame.

17 JUROR GIBSON: I don't have that much because  
18 they can't even get into their school until 8:40 because  
19 of the law now.

20 THE COURT: That won't be a problem.

21 JUROR GIBSON: Thank you.

22 (Juror Gibson excused.)

23 THE COURT: Did I see somebody else back there  
24 or not?

25 Okay. Are we on this side? The front row.

1           You, sir.

2           JUROR CHOE: My name is Kyu Choe my badge number  
3 is 332. I have a problem.

4           THE COURT: What's your number again?

5           THE CLERK: 332.

6           JUROR CHOE: 332, sir. I have a problem with  
7 the English, sir.

8           THE COURT: You have a problem with what?

9           THE CLERK: English.

10          JUROR CHOE: I just speak little English, but I  
11 cannot, you know, documents, and I don't understand.

12          THE COURT: There won't be any technical testimony  
13 involved here.

14          MS. LUZAICH: Sexual assault exam. Fingerprints.  
15 Sorry.

16          THE COURT: Well, do you think that that language  
17 barrier would cause a problem?

18          MR. BANKS: We have no objection to his being  
19 excused.

20          THE COURT: Okay.

21          Maybe, maybe for purposes of this, there is going  
22 to be some technical information that might be difficult  
23 to grasp.

24          All right. Go down there.

25          They have got plenty of litigation going on.

1           Go down to the third floor and tell them what  
2 happened, and they will recycle you back into another kind  
3 of a case, okay?

4           JUROR CHOW: Yes. Thank you.

5           (Juror Choe excused.)

6           THE COURT: All right. First row, I am looking  
7 at. Yes, you right there.

8           JUROR SANCHEZ: Carmen Sanchez, badge number 272.

9           I have the same issue with child care. I don't  
10 have anybody to pick up my daughter and take her. My husband  
11 works at --

12          THE CLERK: Did you say 272?

13          JUROR SANCHEZ: 272, I'm sorry, 372.

14          THE CLERK: I was going to say, I don't have a  
15 272. Okay, thank you.

16          JUROR SANCHEZ: My husband works at night, and  
17 I work during the day, so I would be able to serve on a  
18 jury in the summertime when my husband works in the morning  
19 as well as I do, then he could take our daughter and pick  
20 her up.

21          THE COURT: Okay.

22          Again, you will need to tell them.

23          I will let you go, and you will need to tell  
24 them that you have some time periods during the summertime  
25 where you won't have this particular issue.

1           Otherwise, if they can't get you back in the  
2 next time you have to tell them, I need enough lead time  
3 to get some other arrangements made, okay?

4           JUROR SANCHEZ: Okay, thank you.

5           THE COURT: All right.

6           (Juror Sanchez excused.)

7           THE COURT: In the second row, let me go this  
8 way. Third down. You, sir.

9           JUROR SAMBLERO: Romea Samblero, 384.

10          I really got two issues.

11          The first issue is I work with six employees,  
12 and I am, and where I am behind right now with my car  
13 payment for one month, and secondly, I turned 50 yesterday,  
14 and the celebration at my house. I don't know if I can  
15 have another 50, or so.

16          THE COURT: You probably only get one of those  
17 but when is the party?

18          JUROR SAMBLERO: Actually, my wife started cooking  
19 this morning, and I have got a lot of friends from out of  
20 town and everyone is coming over.

21          THE COURT: Will you be able to -- let me do  
22 this. We are getting rid of a lot of a lot of people  
23 here.

24          Let's wait and see how this goes, see how many  
25 people we have got left. We are going to be getting a

1 little short here.

2 Yes, right next to him.

3 JUROR SCARRONE: My name is Elisa Scarrone. My  
4 badge number is 389.

5 I have issues with my parents. My father just  
6 had a heart attack, and I have to go back to work to take  
7 care of him.

8 THE COURT: What about your mom?

9 JUROR SCARRONE: And when you mentioned 5:30,  
10 it's a bit late.

11 THE COURT: Well, 5:30 is the latest. Most of  
12 the time, we are out of here by five o'clock. Is that going  
13 to be impossible?

14 JUROR SCARRONE: Well, I finish work at three,  
15 and I always go over there after three and help them out.

16 THE COURT: Can you make some other arrangements  
17 for a couple days? Who does it when you --

18 JUROR SCARRONE: It's pretty hard. I have brothers,  
19 but they work. Everybody works. I have nobody going over  
20 there. I'm the only one that can go over there.

21 THE COURT: What about your mom?

22 JUROR SCARRONE: My mother? She works, too.

23 THE COURT: Well, again, just -- we are getting  
24 kind of borderline here only because there are some other  
25 people for a few days, you might have to just have to make

1 some arrangements. It's only for an hour or two. Let's  
2 see -- let's see how we are doing here.

3 JUROR SCARRONE: Okay.

4 THE COURT: We are getting -- we are starting  
5 to get kind of thin here on the number of jurors.

6 JUROR SCARRONE: All right, whatever.

7 THE COURT: Yes?

8 JUROR BARNES: I'm Alice Barnes, 402.

9 I work every Tuesday morning. I'm a manicurist.  
10 I have a large convention coming in tomorrow, and people  
11 coming, and they are doing an investigation on my assistant  
12 manager. So I can't miss.

13 THE COURT: Is this something you have to be there  
14 for? Well, all right. I will let you go but you need to --  
15 you are going to be recycled fairly quickly.

16 JUROR BARNES: Yes, I can understand that.

17 THE COURT: All right. You know, let them know  
18 so you have got something outside from work that you can't  
19 get away from.

20 All right. Let them know if you want like 30  
21 days, 90 days, whatever, and they will recycle you.

22 JUROR BARNES: Okay. They might arrest her  
23 tomorrow. That's the only thing.

24 THE COURT: Okay. I understand.

25 (Juror Barnes excused.)



1 THE COURT: All right. Down that same row.  
2 The row behind you, there on the end. Yes.

3 JUROR THOMPSON: Timothy Thompson, 412.

4 My daughter goes to Las Vegas Academy, and at  
5 two in the morning, she is going to a college fair in San  
6 Diego, and I have to take her, and I have to pick her up  
7 at two o'clock tomorrow night.

8 I am not going to get any sleep. I am also in  
9 commission sales. I have a lot of appointments Friday.  
10 If I miss those, I could lose thousands of dollars.

11 THE COURT: Well, again, that's -- the economic  
12 part is something that we are just not -- we can't do  
13 anything about, I mean, grin and take it, but the fact  
14 that you need to take somebody to --- is it like two in  
15 the morning?

16 JUROR THOMPSON: Yes.

17 THE COURT: The next day at two in the morning?

18 JUROR THOMPSON: Two at night tonight, in the  
19 morning, gets back tomorrow night at two in the morning.  
20 It could be later. I could be sitting there, depends on  
21 her bus and the traffic, I could be sitting there until  
22 four in the morning.

23 THE COURT: Your wife can't do it?

24 JUROR THOMPSON: No, she is medically ill. She  
25 just had to take a medical retirement from the City of

1 Las Vegas.

2 THE COURT: All right. This is probably not  
3 something that comes up very often.

4 JUROR THOMPSON: This does not come up very  
5 often. This is the first one.

6 THE COURT: Okay. Again, go ahead and go down  
7 to the third floor, but make sure you don't -- you understand,  
8 they are going to recycle you probably on a very short  
9 basis in only 30 to 60 days.

10 JUROR THOMPSON: That's fine, the timing of it was  
11 everything.

12 THE COURT: Yeah, all right, all right.

13 JUROR THOMPSON: Thank you.

14 (Juror Thompson excused.)

15 THE COURT: All right. And then next to him, I  
16 saw another hand.

17 JUROR SCRUTCHENS: John Scrutchens, 419.

18 I'm like the first gentleman. I work out at  
19 Nellis Air Force Base, and we are being inspected. I'm  
20 the ad-com trainer and the hazardous manager monitor.

21 THE COURT: All right. I will let you guys, I  
22 mean, I understand when you have those kind of inspections.  
23 There is not too much you can do about it.

24 But let them know downstairs so you don't run  
25 into a conflict.

1 JUROR SCRUTCHENS: Yeah, I'll tell them.

2 THE COURT: 30 to 90 days down the road, you  
3 won't have that problem.

4 JUROR SCRUTCHENS: Right.

5 THE COURT: All right, go on.

6 JUROR SCRUTCHENS: Thank you, sir.

7 (Juror Scrutchens excused.)

8 THE COURT: All right. In that third row, same  
9 row, in this last row.

10 JUROR HENRY: My name is Diana Henry. My number  
11 is 432, and my husband is across the street in the Detention  
12 Center, and he goes to court in the morning.

13 I don't know if they are going to send him back  
14 to California or not. I have two kids, and I am the only  
15 one working right now since he is being prosecuted.

16 THE COURT: You mean that he's --

17 JUROR HENRY: He was arrested two days ago  
18 because he bailed in California, we lived in California,  
19 but we moved here, we moved here two years ago, and he  
20 has been fine here, but we just failed to tell them, and  
21 so they picked him up at work, and he has court tomorrow  
22 morning.

23 THE COURT: You have got -- you have got other  
24 kinds of problems. I am going to let you go but you are  
25 a resident of Nevada?

1 JUROR HENRY: Yeah, we are residents, and he  
2 registered here for two years, but he just failed to tell  
3 California that we came out here. So that's why they  
4 arrested him.

5 So I don't know if he will be sent back to California  
6 tomorrow or they have --

7 THE COURT: No, he won't be sent back to California  
8 tomorrow, but they are going to start the process of doing  
9 something with him. I am going to let you go because I can  
10 see that you have got something, you are going to be a little  
11 distracted here.

12 JUROR HENRY: Yes, correct.

13 THE COURT: Go back downstairs, let them know on  
14 the third floor. They will recycle you to some other day.  
15 You better tell them you need about six months,  
16 all right?

17 JUROR HENRY: Yes. Thank you.

18 (Juror Henry excused.)

19 THE COURT: Those of you -- yeah, anybody else in  
20 that back row?

21 Did I see another hand there? Yes?

22 JUROR RIVERA: My name is Priscilla Rivera, badge  
23 number 449. It has nothing to do with economics, but I do  
24 own a house, and I am the only one working at home, and I  
25 sell time shares for a living so when I don't go to work

1 I get no money. I have to work.

2 THE COURT: That's something that happens to a  
3 lot of us.

4 Unfortunately, that's --

5 JUROR RIVERA: (Interposing) I have to pay a  
6 mortgage for next month.

7 THE COURT: I'm sorry?

8 JUROR RIVERA: I got to pay my mortgage for  
9 next month.

10 THE COURT: It will only be a couple of days.  
11 The next couple of days aren't going to make or break  
12 anybody.

13 JUROR RIVERA: Did you say five days, Your Honor?

14 THE COURT: I'm sorry?

15 JUROR RIVERA: Didn't you say five days?

16 THE COURT: Well, not till Tuesday. That's the  
17 latest.

18 JUROR RIVERA: That's five days, Your Honor.  
19 That's hard.

20 THE COURT: You won't have to work Saturday and  
21 Sunday. You will have to add that on.

22 JUROR RIVERA: No, My schedule is Tuesday through  
23 Saturday.

24 THE COURT: Tuesday to Saturday.

25 Well, let's see how we are doing here because,

1 I mean, those reasons aren't normally good enough.

2 All right. Now, I am going to explain real  
3 quickly the function of a jury, and I am going to ask  
4 and make sure that everybody can do what I am explaining  
5 to you.

6 In jury trials, there are actually two judges.  
7 There is the jury that acts collectively as the judge of  
8 the facts of the case, and there is myself, who is the  
9 Judge that presides over the proceeding and instructs the  
10 jury on the law of the case.

11 So I need to make sure that anybody on this  
12 jury understands their role as a fact finder, and their  
13 responsibility to listen and follow the instructions on  
14 the law that the Court gives you.

15 So I need to know:

16 Is there anybody who could not follow those  
17 instructions, even if though those instructions differ  
18 from what you believe the law is or ought to be?

19 In other words, you have got to follow my  
20 instructions on the law even if you don't like them.

21 Is there anybody that would be unable to do  
22 that?

23 Okay, the answer is no.

24 There are a few principles of law in criminal  
25 cases that I am going to explain to you real quickly, and

1 I need to understand those principles, and you don't have  
2 a problem with them.

3 The -- this is an information, right?

4 THE CLERK: Yes, Your Honor, second amended.

5 THE COURT: There is -- the information is the  
6 document that is used to charge a Defendant with a crime.

7 It is simply an accusation.

8 It is not evidence of guilt in any fashion.

9 The Defendant, as he sits here today, is innocent.

10 The purpose of this trial is to determine whether or not  
11 the State of Nevada can meet their burden of proof.

12 They must prove that the Defendant is guilty  
13 beyond a reasonable doubt.

14 As he sits here right now, no evidence has been  
15 admitted. He is innocent.

16 Is there anyone in this jury pool who does not  
17 understand that concept or believe in those legal principles?

18 The answer is no.

19 Is there anybody that knows anything at all about  
20 this case?

21 No.

22 All right. We are going to start now what is a  
23 little more pointed voir dire, voir dire, however you want  
24 to say it, and I will now start to ask persons here in the  
25 jury box questions.

1 They will be the same questions.

2 Everybody is going to be asked the same questions.

3 All right.

4 VOIR DIRE EXAMINATION OF JUROR MAGURA

5 BY THE COURT:

6 A. Yes.

7 Q. You are going to be the first one, and I  
8 will give you freedom so that you kind of have a little  
9 bit of an idea of what I am going to be asking you.

10 I am going to ask you how long you have been in  
11 Las Vegas, where you work, what kind of training you have,  
12 if you are married, what your husband or your wife do, if  
13 they work.

14 Do you have children, or do you have adult  
15 children?

16 What do they do for a living?

17 Have you ever been trained in law enforcement?

18 I'll ask if you have ever been on a jury.

19 I will ask if you have ever been on a jury. I  
20 will ask if you have ever been the victim of or accused  
21 of a sexual related crime, in fact, I am going to ask you  
22 that first.

23 And then we will ask if you have ever been the  
24 victim of or charged with a crime in general.

25 Is there anything in your background that would



1 cause you to give the testimony of a police officer more  
2 or less weight than anybody else?

3 If you can withhold forming an opinion about  
4 any aspect of this case until after you have heard all  
5 of the evidence in the case, and one real important  
6 question I am going to ask you, the very last question  
7 will be this:

8 If you were sitting over here as the Defendant  
9 or as a prosecutor, would you be comfortable with somebody  
10 being on the jury that has your frame of mind, okay?

11 And I am going to ask everybody as we go those  
12 same basic questions.

13 So, Molly, before we get into all of that other  
14 kind of stuff, have you ever been the victim of or accused  
15 of a sexual related offense?

16 A. No.

17 Q. Okay. How long have you been in Las Vegas?

18 A. Three years.

19 Q. Three or 30?

20 A. Three.

21 Q. Three years. Where did you come from?

22 A. Ohio.

23 Q. Ohio?

24 A. Yes.

25 Q. Are you working?

1 A. Yes.

2 Q. Where do you work?

3 A. I work for the Clark County School District.

4 I am a teacher.

5 Q. What about, are you married?

6 A. No, divorced.

7 Q. Do you have grown children?

8 A. Grown children.

9 Q. So nobody is employed?

10 A. My children?

11 Q. Yes.

12 A. They are all employed.

13 Q. Oh, good. All right. What do they do?

14 A. One works for the Department of Justice in

15 D. C.

16 Q. What does he do?

17 A. He is an antitrust economics counselor.

18 Q. Not an attorney?

19 A. No.

20 Q. Okay. Who else?

21 A. My other son works in Asia. He is a

22 consultant for computers.

23 My daughter is a librarian at Ashville, part of  
24 the County, and my other son is in Vancouver, Washington.

25 He's a nurse.

1 Q. Well, good for you.

2 Have you ever had any kind of specialized training  
3 in law enforcement?

4 A. No.

5 Q. Anybody close to you?

6 A. No.

7 Q. Can you think of any reason in your background  
8 that would make it difficult for you to give a police officer's  
9 testimony any greater or lesser weight than anybody else?

10 A. No.

11 Q. And you would treat him just like any other  
12 witness?

13 A. Yes.

14 Q. No problem?

15 A. No problem.

16 Q. Would you -- have you ever been on a jury  
17 before?

18 A. Yes, actually, in the early '80's.

19 Q. In Ohio?

20 A. In Ohio.

21 Q. Where in Ohio are you from?

22 A. Lima. I am not from there, I shouldn't say  
23 that.

24 Q. Okay.

25 A. I got stuck in Ohio for 36 years, sorry.

1 Q. So you were on a jury in the early '80's?

2 A. Yes.

3 Q. In Ohio?

4 A. Yes.

5 Q. What kind of case, was it criminal or in  
6 civil court?

7 A. It was criminal but it was --

8 Q. Okay. Let me ask the question.

9 A. Okay.

10 Q. So it was a criminal trial?

11 A. Yes.

12 Q. Were you actually on the jury or were you  
13 in like a jury pool?

14 A. No, I was on the jury.

15 Q. You were on the jury. Were you the foreman  
16 of the jury?

17 A. No.

18 Q. Did -- without telling us what happened,  
19 did that jury deliberate and reach a verdict?

20 A. No, it was settled out of court.

21 Q. Okay, all right.

22 Is there anything about having participated in  
23 that jury service that would make it difficult for you to  
24 sit on a jury in this case and be fair and impartial to  
25 both sides?

1 A. No.

2 Q. I need to kind of put -- whatever the  
3 instructions, whatever you remember about it, I need you  
4 to kind of forget that.

5 A. Well, it was easy to forget.

6 Q. It was easy to forget?

7 A. Of course.

8 Q. All right. Well, that's good.

9 Let me see here. I think we pretty much got all  
10 the good stuff here.

11 Can you withhold forming an opinion about anything  
12 having to do with this case until you have heard all the  
13 evidence, and I have instructed you on the law?

14 A. I can do that, yes.

15 Q. Okay.

16 A. Yes.

17 Q. Do you think that you have a nice, neutral  
18 kind of frame of mind? You don't have any biases or  
19 prejudice towards or against anybody, or anything, that  
20 would cause you any different in sitting as a fair and  
21 impartial juror to both sides?

22 A. Your Honor, I have no problem with that.  
23 I could be fair.

24 Q. As I said, if you were sitting over here  
25 as one of the litigants in this case, either for the

1 prosecution or the defense, would you be comfortable  
2 with a juror on the jury that has your frame of mind?

3 A. Yes.

4 THE COURT: Okay. Questions?

5 MS. LUZAICH: Thank you.

6 VOIR DIRE EXAMINATION OF JUROR MAGURA

7 BY MS. LUZAICH:

8 Q. Ms. Magura, how are you doing?

9 A. Fine.

10 Q. You said you were divorced. What does the  
11 ex do?

12 A. He is retired.

13 Q. What did he retire from?

14 A. He was a university professor.

15 Q. Okay. So nothing to do with -- he wasn't  
16 a police officer, or anything like that?

17 A. No.

18 Q. What did he teach?

19 A. Economics.

20 Q. Okay. And what -- you are a teacher here  
21 in town?

22 A. Yes, I am.

23 Q. What grade do you teach?

24 A. I teach art from grades three through five.

25 Q. Okay.

1 Do you know anybody that had ever been either  
2 the victim of or accused of a sex offense?

3 A. No, I don't.

4 Q. Do any of your kids have kids?

5 A. Yes.

6 Q. Grandkids? How many?

7 A. Five.

8 Q. Okay. If you sit on a case like this,  
9 the charges you heard involved robbery, but it also involved  
10 sexual assault.

11 Well, obviously, a girl is going to come in here  
12 and talk about having been sexually assaulted. She is in  
13 her, you know, mid to late teens.

14 You have a daughter who is older than that, you  
15 know, you will be able to put that aside, right?

16 A. Yes.

17 Q. Okay. If you serve as a juror in this case,  
18 you are going to have to evaluate the testimony of all the  
19 people who come in to testify.

20 Is that something that you feel comfortable doing?

21 A. Yes.

22 Q. Would you consider yourself to be a fair  
23 and impartial person?

24 A. Yes.

25 Q. Do you have common sense?

1 A. Hope so.

2 Q. You will bring it into the courtroom with  
3 you. You won't leave it outside just because there is a  
4 Judge, and a robe, and a flag?

5 A. No, I won't.

6 Q. Knowing what you know about yourself, is  
7 there anything that would prevent you from being able to  
8 sit in judgment of someone?

9 A. No.

10 Q. So, if you listen to all the testimony, see  
11 any evidence, if you are convinced beyond a reasonable doubt  
12 that the Defendant committed the crimes he is charged with,  
13 would you be able to say, guilty?

14 A. I would.

15 MS. LUZAICH: Thank you. Pass for cause.

16 THE COURT: The Defendant, who is going to go  
17 first?

18 Mr. Banks. .

19 MR. BANKS: Yes, sir.

20 VOIR DIRE EXAMINATION OF JUROR MAGURA

21 BY MR. BANKS:

22 Q. Ms. Magura?

23 A. Yes.

24 Q. How do you do.

25 You said, and you said, and I don't want to



1 misquote you here, but if I heard you, 36 years you were  
2 stuck in Ohio?

3 A. I don't know, I don't know how I was but I  
4 was in Ohio. I'm sorry.

5 Q. No, I -- my boss, I just, you know.

6 A. He said that's where we moved from. I like  
7 the ocean.

8 Q. Okay. You are not a landlocked kind of  
9 person?

10 A. Right.

11 Q. So you came right to Las Vegas, Nevada?

12 A. For a different reason.

13 Q. A different reason, and, I mean, I don't  
14 mean to pry.

15 A. No.

16 Q. And there are no right or wrong answers to  
17 any of this stuff, everybody, we are just trying to get  
18 the most fair jurors for both sides.

19 What -- what was the situation that you left?  
20 Why did you leave Ohio?

21 A. I retired from teaching in Ohio. I came  
22 here. I'm a teacher.. I thought I could make more money.

23 Q. And you are teaching here?

24 A. Yes.

25 Q. And how long did you teach in Ohio?

1 A. I spent 21 years in Ohio, three years in  
2 Massachusetts, two years in Pennsylvania.

3 Q. What ages did you teach generally?

4 A. I taught elementary.

5 Q. Okay, like one through six?

6 A. A through six except second grade.

7 Q. Okay. And you raised -- you raised your  
8 kids yourself, and so you have had a lot of experience  
9 with a lot of different kinds of kids?

10 A. I didn't raise them by myself. They were  
11 in college when I worked.

12 Q. Not by yourself.

13 A. Yes.

14 Q. I meant, you yourself have raised children,  
15 I'm sorry?

16 A. That's okay.

17 Q. I will be more clear. And you got a lot of  
18 experience with a lot of kids over the years?

19 A. Yes.

20 Q. Okay. A lot of different personalities with  
21 those kids?

22 A. 29 years of teaching, yes.

23 Q. Okay. Some behavioral problems with some of  
24 those kids?

25 A. That's for sure, some problems with some of

1 the kids.

2 Q. What about bullying?

3 A. Bullying?

4 Q. Did you ever -- bullying? Was there ever  
5 bullies at school that you know of?

6 A. There is usually a couple of bullies, yes.

7 Q. Okay.

8 A. We have bullies every day in school.

9 Q. Is that here or is that in Ohio or is that --

10 A. That's here.

11 Q. Really?

12 A. Every classroom, yes, bullies in the classroom.

13 Q. Oh, wow, I didn't know that.

14 A. Yes.

15 Q. I guess because bullying is -- becomes so  
16 much of a problem that everybody is raising their hand saying  
17 I won't be a bully.

18 A. No, it's not so much of a problem. It is just  
19 a problem with some of them.

20 Q. Okay, okay. The kids that get bullied, not  
21 that they are weaker personalities, but maybe the bully is  
22 able to, I don't know, get them to do things, or they pick  
23 on them in certain ways, or scare them, or --

24 A. Yes, sometimes that happens. They pick on  
25 someone, things like that.

1 Q. All right. Have you ever been in a real  
2 stressful situation?

3 A. Such as?

4 Q. Where you are really, really scared for you,  
5 or for somebody else?

6 A. You mean in my family?

7 Q. Anywhere, just in your lifetime?

8 A. I suppose I have. I am pretty old. There  
9 is stress out there.

10 Q. Yeah.

11 A. But I don't what you are -- I don't know  
12 exactly what you mean, I mean, we have everyday stresses.  
13 We have stresses.

14 Q. Okay. Well, let me ask you this.

15 I heard you say, I think I heard you say divorce.

16 A. Yes.

17 Q. Was that kind of a stressful thing for you?

18 A. Yes, it is.

19 Q. Okay.

20 Have you known other folks that have gotten  
21 divorced over the years?

22 A. Yes.

23 Q. Okay. And that's a pretty stressful situation,  
24 I would imagine?

25 A. Yes.

1 Q. Is everybody at their best in thinking  
2 rationally and clearly in stressful situations like that?

3 A. Some people are, some people aren't.

4 Q. Okay.

5 It just kind of depends on perhaps what you  
6 bring to the table, and the severity of the stress in the  
7 situation, is that fair?

8 A. That's fair I would think.

9 MR. BANKS: I think that's all I have. Thank  
10 you so much.

11 Pass for cause, Your Honor.

12 THE COURT: Wayne, is it --

13 JUROR DALEY: Daley.

14 THE COURT: Daily.

15 VOIR DIRE EXAMINATION OF JUROR DALEY

16 BY THE COURT:

17 Q. Wayne, first of all, important question,  
18 have you ever been THE victim of or accused of any kind  
19 of a sexually related offense?

20 A. No, sir.

21 Q. Anybody close to you?

22 A. No.

23 Q. Okay. How long have you been in Las  
24 Vegas?

25 A. Seven and a half years.

1 Q. Are you married?

2 A. Yes, sir.

3 Q. Do you work?

4 A. Yes, I do for the Coast Casinos Bowling  
5 Centers.

6 Q. What about your wife? Does she work?

7 A. She is disabled.

8 Q. Okay. Do you have grown children?

9 A. No children at all. I have a stepson.

10 Q. Okay. Is he old enough to be to be employed?

11 A. Yes, he's 30.

12 Q. Okay. What does he do for a living?

13 A. He is an electrician for Pisk Electric here.

14 He works at the City Center.

15 Q. Okay. Have you ever received or been employed  
16 in any kind of a law enforcement capacity?

17 A. No, sir.

18 Q. Have you received any training in law  
19 enforcement?

20 A. No.

21 Q. Okay.

22 Can you think of anything that has happened to  
23 you because of people that are close to you, family, friends  
24 that are in law enforcement that would cause you to give  
25 the testimony of a police officer any greater or lesser

1 weight than any other non police officer or witness?

2 A. No, Your Honor.

3 Q. Okay. Have you ever been on a jury before?

4 A. No, this the first time.

5 Q. Have you ever or anybody close to you ever  
6 been the victim of or accused of any kind of a crime?

7 A. No.

8 Q. Okay. You are pretty easy.

9 Do you think you would have any trouble withholding  
10 the formation of an opinion about anybody, or anything having  
11 to do with this trial until after you have heard all the  
12 evidence, and I have instructed you on the law?

13 A. No, sir.

14 Q. Can you do that?

15 A. Yes, sir.

16 Q. Okay.

17 Do you think that you have a good, healthy, neutral  
18 frame of mind so that if you were one of the litigants, and  
19 you were sitting over here at one of these tables either as  
20 a prosecutor or a Defendant, would you be comfortable with  
21 somebody being on the jury that has the frame of mind that  
22 you have?

23 A. Yes, I would.

24 THE COURT: Okay. Counsel?

25 MS. KOLLINS: Thank you, Judge.

## VOIR DIRE EXAMINATION OF JUROR DALEY

1  
2 BY MS. KOLLINS:

3 Q. Good afternoon, Mr. Daley.

4 A. Hi.

5 Q. Where did you come from before you came to  
6 Las Vegas?

7 A. Southern California.

8 Q. What did you do when you lived in Southern  
9 California?

10 A. I worked in the bowling center business  
11 for about 37 years.

12 Q. And when you say "the bowling center business",  
13 in what capacity do you work there?

14 A. As the coordinator, the public relations.

15 Q. Okay. Tournaments, stuff like that?

16 A. Yes.

17 Q. You have a stepson. Has he resided with  
18 you -- have you been together with his mother since he was  
19 small or --

20 A. Since he was 16.

21 Q. Okay. So did he go to college or any technical  
22 school when he lived with you or --

23 A. Yeah, he moved up to Northern California to --  
24 he went to some college up there for like a semester. That  
25 was it.



1 Q. Okay. And now he is back in Vegas?

2 A. Yeah, he moved from Pennsylvania to Vegas to  
3 get work because of the weather out here so --

4 Q. So much for that empty map, huh?

5 A. Yeah, really.

6 Q. You are going to hear from some kids here  
7 in this case that went through some pretty traumatizing  
8 events. Do you have any expectation of what, say, a victim  
9 of sexual assault should sound like when they testify?

10 A. Not really, no.

11 Q. Do you think everyone reacts the same to  
12 every situation?

13 A. Oh no.

14 Q. Would this person have to be crying for you  
15 to find her credible?

16 A. No, not at all.

17 Q. You have never known anyone that has been  
18 accused of a crime, arrested for a crime?

19 Never had any interaction with law enforcement,  
20 managing bowling centers?

21 A. Well, yes, one of the guys I worked with  
22 at the Orleans actually is a Metro police officer right  
23 now.

24 Q. Okay. And a Metro police officer full-time  
25 and works with you part-time?

1 A. No, he works with them full-time. He is  
2 now with the Clark County School District.

3 Q. Do you socialize with him?

4 A. I talk to him about once every two weeks.

5 Q. Do you talk about what he does for a living,  
6 what he does as a Metro officer, or anything like that?

7 A. We do every once in a while, but mostly we  
8 are just really good friends.

9 Q. Okay.

10 Would you let your friendship with him in any  
11 way influence what decision you might make in here?

12 A. No, I don't think so at all.

13 Q. You wouldn't feel a need to justify your  
14 verdict to him one way or the other?

15 A. No.

16 Q. How did you feel when you got your jury  
17 summons, having not ever served before?

18 A. I said I guess they finally caught up to  
19 me after 56 years.

20 Q. Yeah, they found you. I know.

21 After you sit here, and you listen to the  
22 evidence, and if you believe the Defendant is guilty as  
23 charged, based -- beyond a reasonable doubt, based on  
24 what you hear, can you return a verdict of guilty?

25 A. Yes, I could.

1 Q. Anything that prevents you from sitting  
2 in judgment of another?

3 A. No, not really. I mean, I'm not really --  
4 I don't have a prejudice. I guess it would be called a  
5 prejudice. I just don't like people that come into our  
6 country and disrespect our country, not any certain, you  
7 know, background, race, or anything, but anybody that  
8 would come in here and disrespect what the United States  
9 is built on.

10 Q. Okay. But that has nothing to do with --

11 A. Nothing to do with, yeah.

12 Q. -- with this case?

13 A. Right. No.

14 Q. So, in other words, it's not sitting in  
15 judgment, just anybody that would commit a crime in the  
16 United States, you have a problem with, not just -- I  
17 guess I don't understand your response. Maybe it's my  
18 question.

19 A. No, not as a crime like this, no.

20 Q. Do you have a problem sitting and receiving  
21 evidence and --

22 A. Oh no.

23 Q. And working with a group of your peers and  
24 coming to a conclusion?

25 A. No, not at all.

1 MS. KOLLINS: All right, pass for cause.

2 THE COURT: Okay. Mr. Landis?

3 VOIR DIRE EXAMINATION OF JUROR DALEY

4 BY MR. LANDIS .

5 Q. Good afternoon, sir.

6 The Judge said, you are pretty easy, and I will  
7 tell you a story.

8 When I was about 16 years old, I was with a  
9 bunch of my friends, and we were in my parents' garage,  
10 and we were talking about school, and we may have been  
11 talking about a certain female, and one of my friends may  
12 have said something along the lines, well, she's easy.

13 Mom busts through the door, and she says, you  
14 never say, anybody is easy. So I am not going to repeat  
15 that.

16 We talked a little bit about -- the Judge talked  
17 a little bit about the standard of proof, and it's the same  
18 standard of proof in every criminal trial in this country,  
19 and it's beyond a reasonable doubt. It's the highest standard  
20 we have.

21 A. Right.

22 Q. Do you think that standard is a good measure?  
23 Do you think it's too high, possibly too low?

24 A. No, I think it's good.

25 Q. Do you think that standard may make it too

1 hard for the State or prosecutors to sometimes convict  
2 guilty people?

3 A. No.

4 Q. No?

5 A. No.

6 Q. Another principle we have in this case, and  
7 in every case is criminal Defendants have the right to  
8 remain silent.

9 A. Right.

10 Q. They have the right to not testify?

11 A. Yeah.

12 Q. Even beyond that, we as defense counsel don't  
13 have any duty to present evidence to you?

14 A. Yes.

15 Q. You can hear the State's case, we could stay  
16 silent, and not say a word, and if you don't think that  
17 they've met that burden, it's your duty, as the instructions  
18 will tell you, to acquit that person.

19 How do you feel about those things?

20 A. I think it's a given right, you know, like  
21 you say, if he does not want to testify, and that they don't  
22 think they can prove it beyond, you know, a doubt, we can  
23 come to some type of verdict.

24 Q. I have never sat on a jury. I am not quite  
25 as experienced as you. I hope I get to your age without

1 having to, but I don't know, I mean, sitting on a jury with  
2 somebody sitting there hearing these accusations for day  
3 after day.

4 A. Yeah.

5 Q. Is there something that ticks and says, why  
6 doesn't this guy talk?

7 A. I, I don't know. Like I said, I have never  
8 done this. I really couldn't tell you.

9 Q. Are you comfortable with that?

10 A. I think I am, yes.

11 Q. Okay. I will ask you my very favorite  
12 question for juries in the whole world.

13 Do you think it's worse if a guilty person gets  
14 off or an innocent person gets convicted?

15 A. I really don't have an answer for that. I --

16 Q. It's a tough question, I know.

17 A. It is, it is.

18 Q. No one ever wants to answer it. I will let  
19 you off the hook, but nobody else is getting a free pass.

20 Thank you, sir.

21 A. You are welcome.

22 MR. LANDIS: I will pass for cause.

23 Pass for cause, Judge.

24 THE COURT: Very good.

25 VOIR DIRE EXAMINATION OF JUROR KENIEUTUBER

1 BY THE COURT:

2 Q. Is it Howard? And you are going to have to  
3 help me out here. Is it Kenieutubbe?

4 A. Kenieutubbe.

5 Q. Kenieutubbe.

6 A. Uh-huh.

7 Q. Tell me about yourself, Howard.

8 A. All right. I have been in Vegas about 15  
9 years. I am disabled.

10 Prior to coming here, I was -- I am from L. A.

11 Prior to my losing my leg, I was employed as a  
12 sheet metal mechanic for aircraft and label ships, and  
13 the only conviction I ever had was a DUI. That was back  
14 in '78, I believe, and that's about it.

15 Q. Are you married?

16 A. No, I'm not, single.

17 Q. Do you have children?

18 A. No kids.

19 Q. No kids. How did you lose your leg?

20 A. Diabetis.

21 Q. Okay. How long ago was that?

22 A. Right years ago.

23 Q. Have you ever -- were you ever employed in  
24 any kind of law enforcement in your --

25 A. No, I did serve four years in the Navy.

1 Q. Okay. .

2 Have you ever been accused of or the victim of  
3 any kind of a sexually related offense?

4 A. No.

5 Q. Anybody close to you?

6 A. No.

7 Q. Okay. You said you spent four years in the  
8 Navy. You didn't have anything to do with the shore patrol,  
9 did you?

10 A. I served a couple of times when we were in  
11 port on shore patrol.

12 Q. Okay. But did they give you any kind of  
13 special training in law enforcement?

14 A. Oh no, they just gave us a little helmet  
15 and a baton.

16 Q. Gave you a helmet --

17 A. And watch the boys.

18 Q. And then go hit them over the head.

19 A. Yeah, or get hit.

20 Q. Or get hit on the head?

21 A. Yes.

22 Q. All right. Have you ever been on a jury  
23 before?

24 A. No, I haven't, no.

25 Q. Have you ever been the victim of or accused



1 of any kind of a crime?

2 A. Just that DUI.

3 Q. That DUI?

4 A. Yes.

5 Q. Other than that, nothing else?

6 A. No, nothing else.

7 Q. Okay.

8 Have you had an experience of any sort that you  
9 could think of that would cause you to give greater or lesser  
10 weight to a police officer witness as opposed to a non police  
11 officer witness?

12 A. No.

13 Q. Can you treat a police officer as a witness?

14 A. Yes.

15 Q. Exactly the way you would treat any other  
16 non police officer witness?

17 A. Right.

18 Q. Okay. Do you have any friends in law  
19 enforcement?

20 A. No.

21 Q. Can you think of anything that we haven't  
22 touched on that would cause you to have difficulty in  
23 being fair and impartial to both sides in a case like  
24 this?

25 A. No.

1 Q. Do you think that you have a nice, healthy,  
2 neutral frame of mind that would make you an ideal juror  
3 if you were sitting here as either as the defense or the  
4 prosecution, would you be the kind of juror that you would  
5 want to have, sitting on the jury?

6 A. Yes, I believe so.

7 THE COURT: Okay. Sounds good to me.

8 MS. LUZAICH: Thank you.

9 VOIR DIRE EXAMINATION OF JUROR KENIEUTUBBE

10 BY MS. LUZAICH:

11 Q. So tell me, Mr. Kenieutubbe, what do you think  
12 about yourself would make yourself a good juror?

13 A. I would treat everybody fair, and I always  
14 listen to both sides whoever, you know, I listen to, you  
15 know, and kind of pick my own decision about the matter,  
16 whatever comes up.

17 Q. Okay.

18 As a juror, the Judge mentioned earlier that you  
19 would be the judge of the facts. You get to decide what  
20 happens in this case after hearing all the evidence and  
21 testimony from the witness stand.

22 Do you think that you could be comfortable evaluating  
23 people and making that determination?

24 A. I, not -- I would listen to the facts. I  
25 would listen to the facts, and then make my determination

1 on that.

2 Q. Okay.

3 Well, sometimes when you listen to facts, they  
4 conflict with each other. One person says, blue shirt, the  
5 other person says green shirt?

6 A. Right.

7 Q. Or whatever. That's what I mean by weighing  
8 conflicting testimony.

9 So do you think you would be able -- would you be  
10 comfortable doing that?

11 A. Oh yes, uh-huh.

12 Q. Okay. You would listen to what everybody  
13 has to say and see how it kind of comports to each other,  
14 right?

15 A. Right.

16 Q. So when there is some conflicting testimony,  
17 could it be as easy as maybe just somebody forgot something,  
18 or was mistaken?

19 A. It is possible, yeah.

20 Q. But it's also possible that somebody was  
21 being intentionally dishonest?

22 A. Right, that could arise, too, yeah.

23 Q. That wouldn't --

24 A. No.

25 Q. -- be out of the ordinary, right?

1 A. Right.

2 Q. Would it surprise you that it's possible  
3 that somebody could come in here, raise their right hand,  
4 swear to tell the truth, the whole truth, and nothing but  
5 the truth, and then not tell the whole truth?

6 A. It's possible.

7 Q. Do you think that when people do that, it  
8 is because they have a reason to?

9 A. They might, yeah.

10 Q. I mean, people don't come in and lie under  
11 oath just for the hell of it, right?

12 A. Well, it's a human -- it's in the human.  
13 To say where some people would kind of not tell the truth  
14 just because it's -- they think it's true.

15 Q. The truth appears different to different  
16 people?

17 A. Right.

18 Q. Based on perception?

19 A. Right..

20 Q. Okay.

21 Do you think that if you are serving as a juror  
22 in this case, and you go back into the deliberation room,  
23 and 11 people feel one way, and you feel a different way,  
24 what do would you do?

25 A. I would state my points on the matter and

1 kind of sit back and listen to them and as to why -- try  
2 to figure out why they are looking at the matter in a  
3 different way, and maybe I have to -- maybe I missed something  
4 along the road, you know, that would convince me to change  
5 my mind.

6 Q. So it's possible that if they pointed out  
7 something, you would be able to change your mind?

8 A. Right.

9 Q. But if you were convinced of your point of  
10 view, would you hang tough?

11 A. Right, I would.

12 Q. Okay. What if it's Friday, it's five to  
13 five, and you have been here for a really long time, and  
14 you want to go. Will you change your mind just because  
15 of that?

16 A. Oh no, oh no, I will sit here all night.

17 Q. Okay. Well, hopefully, we won't make you  
18 stay that long.

19 Is there anything about you that would prevent  
20 you from being able to sit in judgment of someone?

21 A. No.

22 Q. So if you do listen to all the evidence  
23 and testimony, and you are convinced beyond a reasonable  
24 doubt that the Defendant committed the crimes he is  
25 charged with, would you be able to say, guilty?

1 A. Yes.

2 MS. LUZAICH: Thank you.

3 Pass for cause, Your Honor.

4 THE COURT: Mr. Banks, your turn?

5 MR. BANKS: Thanks, Judge.

6 VOIR DIRE EXAMINATION OF JUROR KENIEUTUBBE

7 BY MR. BANKS:

8 Q. It's Mr. Kenieutubbe or tubbay?

9 A. Well, you can say Kenieutubbe.

10 Q. Kenieutubbe, okay, nice to meet you.

11 You were talking with Ms. Luzaich a little  
12 bit about truth, and how somebody may think something  
13 is the truth.

14 Would you agree that someone's version of  
15 the truth really depends on a couple of things, their  
16 perception of an event maybe?

17 A. Right.

18 Q. And what they bring to the table, their  
19 life experiences. Would you agree with that?

20 A. It depends on what their life experiences  
21 are.

22 Q. Okay. And that's a great point because  
23 as we -- as we get older, and, you know, necessarily, we  
24 have more life experiences?

25 A. Yes.

1 Q. Maybe more stressful situations that we've  
2 kind of been through?

3 A. Right.

4 Q. To maybe draw on?

5 A. Yes.

6 Q. In deciding, um, in deciding how we maybe  
7 approach a situation?

8 A. Right, yeah, aspects of life.

9 Q. Okay. Do you want to serve?

10 A. Oh yeah.

11 Q. Okay. .

12 What did you think when you heard sexual assault  
13 with use of a deadly weapon?

14 A. That don't sound good to me.

15 Q. Why?

16 A. Because I think if someone is taking advantage  
17 of someone against their will, and it's just my outlook on  
18 life as, you know, that's criminal to me.

19 And on the other side of the coin is they also  
20 have got to prove, you know, that he did it.

21 Q. Okay.

22 A. And that's the reason I think I would be a  
23 good on the jury because I have to listen to both aspects.

24 Q. Sure. .

25 A. And, like the lady said, I'm assuming a

1 little, but the innocent man and the guilty man went free  
2 or the innocent man went to prison.

3 Q. That was Landis.

4 A. I think that was a good question because  
5 he would have to really look at what was presented.

6 Like the prosecution is supposed to present the  
7 facts and prove the facts, and to me, that's something  
8 both sides would have to convince me of, of the party  
9 being guilty of that fact.

10 Q. What do you see my and Mr. Landis's job  
11 be? What do you -- what do you perceive our job to be?

12 A. Yours is to defend the innocent until  
13 proven guilty is the basis of the Constitution that I  
14 believe in.

15 Q. I think a lot of what you said here today,  
16 if everybody in the room would rely and probably agrees  
17 with a lot of what you've said here.

18 I don't want to ask, and I imagine, a lot of  
19 people would agree with you.

20 Do you feel that people should be held responsible  
21 for their actions?

22 A. Correct.

23 Q. Okay.

24 Do you think that people should be held responsible  
25 for more than their actions?



1 A. No.

2 Q. And why not?

3 A. Because, to me, I don't want to say the  
4 Defendant, but he is here on one matter, on that specific  
5 matter, and that's it, no more and no less. He is here  
6 for that one matter, and that's our job just to concentrate  
7 on that matter and decide guilty or not guilty.

8 Q. Okay. And I guess it may -- let me expand  
9 a little bit, life in general, I mean, somebody shouldn't  
10 be on the hook for something --

11 A. Right.

12 Q. -- that maybe somebody else did?

13 A. Right.

14 MR. BANKS: Okay. Thank you for your honest  
15 answers today.

16 Pass for cause, Your Honor.

17 MS. LUZAICH: Could we approach?

18 THE COURT: Sure.

19 (Whereupon, a brief, informal discussion was  
20 had at the bench between the Court and counsel.)

21 THE BAILIFF: Anybody who needs to go to the  
22 restroom can just go ahead and go.

23 THE COURT: No, no, Joe, we are going to take  
24 a break here in just a second. Everybody just relax.  
25 We are going to take a break.

1 THE BAILIFF: Hold on.

2 THE COURT: Okay. We are going to take a break  
3 for the next 10 minutes, give everybody a chance to go  
4 to the restroom, and I am going to admonish you, the  
5 first of about 500 times during the course of this trial.

6 We are going to take a 10 minute break, you can  
7 go outside, you can go to the restroom, meet outside, meet  
8 Joe outside, out here, and during the next 10 minutes, I  
9 don't want you to discuss with anybody, including amongst  
10 yourselves, anything having to do with this trial about  
11 anybody having to do with this trial.

12 I don't want you to watch, listen or read any  
13 reports or commentaries about anything connected with this  
14 trial through any medium of information, which includes  
15 newspapers, radio, television network, or internet.

16 Don't form or discuss any opinion on any subject  
17 relating to this trial until such time as this case has  
18 been submitted to the jury.

19 That having been said, you've got 10 minutes,  
20 and then meet Joe outside in 10 minutes.

21 There you go. We are on break. We are going  
22 to come back before the jury panel comes back in.

23 . \*\*\*\*\*

24 (Whereupon, a brief recess was had.

25 After recess, all parties present, the following

1 proceedings were had in open court in the absence of the  
2 jury panel:)

3 \*\*\*\*\*

4 THE BAILIFF: All right, remain seated. Court is  
5 back in session.

6 THE COURT: All right.

7 MS. KOLLINS: Judge, when we left, we were at  
8 the bench, and we had lodged the objection that the line  
9 of questioning to the jury as to on whether someone can be  
10 responsible for another's conduct is appropriate.

11 First of all, that's incorrect on the law.

12 You can be responsible for the actions or the  
13 actions of another can be is repeated to you either as a  
14 coconspirator or an aider and abetter, and that is how  
15 this case is charged.

16 And so, you know, if we are going to give them  
17 a primer on the law, then we are going to have to give  
18 them a primer on the whole law.

19 Our position is they shouldn't be able to  
20 prejudge the evidence, prejudge the case, and that line  
21 of questioning was inappropriate for purposes of jury  
22 selection.

23 THE COURT: I don't, you know, I don't -- I think  
24 that you are correct phraseology in terms of what somebody  
25 else does or that is -- it is probably not appropriate.

1 I think if you want to take that is appropriate  
2 to say, somebody tempted me, bullied, and if you want to  
3 take that kind of -- and so you are saying that somebody  
4 could be intimidated by somebody else, you can be bullied  
5 by somebody, blah, blah, blah, if you want to take that  
6 approach, I think that's fine.

7 I don't think there is anything wrong with  
8 questioning them if they understand the potential, have  
9 you ever known a bully, did they intimidate you, or did  
10 they do something that you wouldn't want to do, I think  
11 that that's fine, but I think that --

12 MR. BANKS: And the --

13 THE COURT: -- the legal concept of responsibility  
14 for somebody else's act is probably getting -- then we  
15 are going to have to start explaining all kinds of other  
16 things.

17 MS. JUZATICH: Well, not explaining, but they are  
18 asking him to prejudge the law, and prejudge the case, and  
19 when you look at the Eighth Judicial Court Rules, we are  
20 specifically prohibited from doing that.

21 THE COURT: Well, if we are not going to, then  
22 I am going to have to start explaining all the other stuff  
23 about, you know, when he said, if it is a conspiracy, to  
24 aid and abet somebody, and blah, blah, blah, and, you know,  
25 let's just not even get to that point.

1 Just kind concentrate on what you were doing,  
2 which wsa if someone is intimidated on something, or  
3 coerced, or intimidated, or threatened, or whatever,  
4 bullied. That's one thing.

5 MR. BANKS: And, you know, Judge, I was just  
6 exploring the mindset of that particular juror as far as  
7 how he feels about being held responsible for your actions,  
8 and that, you know, and I, I heard the Court's ruling, and  
9 I will limit it as the Court has indicated.

10 THE COURT: Okay, bring them in.

11 MR. BANKS: I won't get into all the other people's  
12 actions as to that.

13 THE COURT: Okay, perfect.

14 \*\*\*\*\*

15 (Whereupon, all parties present, the following  
16 proceedings were had in the presence of the jury panel.)

17 \*\*\*\*\*

18 THE BAILIFF: Please be seated.

19 THE COURT: All right.

20 Now, before we get started again, are there any  
21 empty seats that weren't empty before we left? So we  
22 don't have to go through the whole roll call again.

23 And will counsel stipulate to the presence of  
24 the jury pool?

25 MS. LUZAICH: Yes, we will.

1 MR. LANDIS: Yes, Your Honor.

2 MR. BANKS: Yes, Judge.

3 THE COURT: Okay. All right.

4 VOIR DIRE EXAMINATION OF JUROR Eshelman

5 BY THE COURT:

6 Q. Is it John Eshelman?

7 A. Eshelman.

8 Q. Eshelman. Mr. Eshelman, how long have you  
9 been here in Las Vegas?

10 A. Since 1974, about 32 years.

11 Q. Good for you. What do you do for a living?

12 A. I am retired.

13 Q. And what did you do before you retired?

14 A. When I first came to town, I was in the  
15 printing industry for about 20 years, and then I went  
16 into the food industry in sales. I was with Valley Food  
17 Distributors for 18 years.

18 Q. Really. Are you married?

19 A. Yes.

20 Q. Does your wife work?

21 A. Yes, she does.

22 Q. Where does she work?

23 A. She works at Southwest Company.

24 Q. Okay. Do you have grown children?

25 A. Yes, I have got a 36 year old and a 28 year

1 old.

2 Q. What do they do for a living?

3 A. The 36 year old works for setting up the  
4 convention and tearing them down, and the 28 year old son  
5 works with a lawn service.

6 Q. Okay. Have you or anyone close to you ever  
7 been accused of or the victim of any kind of sexual related  
8 event?

9 A. No.

10 Q. Have you or anybody close to you ever been  
11 the victim or or accused of any kind of a crime?

12 A. I have a friend that was convicted of dealing  
13 in drugs some years ago.

14 Q. Were you close to him?

15 A. I didn't know him at the time he was --

16 Q. Oh, after all that happened?

17 A. Right.

18 Q. Then you got to know him?

19 A. Right..

20 Q. Anything about that that would cause you  
21 difficulty in sitting on a jury in a criminal case like  
22 this and being fair and impartial to both sides?

23 A. No.

24 Q. Do you think that you could handle it all  
25 right?

1 A. I believe so.

2 Q. Okay. Have you ever had any training or  
3 employment in law enforcement?

4 A. No.

5 Q. Anybody close to you?

6 A. No.

7 Q. Have you ever been on a jury before?

8 A. No.

9 Q. Have you ever had any kind of a relationship  
10 with anybody in law enforcement such that it would cause  
11 you to treat the testimony of a police officer differently  
12 than the testimony of any non police officer witness?

13 A. Well, not really. I really don't have a  
14 high regard for the police as far as that goes.

15 Q. That's what I am asking you.

16 Did something happen to you in your background  
17 that causes you?

18 A. Well, there have been several incidents  
19 where I never thought that I was ever treated with any  
20 respect from a police officer.

21 Q. Well, like traffic stops?

22 A. Yeah.

23 Q. Or things like that?

24 A. Yes.

25 Q. Can you set aside those feelings, like a



1 police officer may have a good day, a bad day, and you  
2 may find that they --

3 A. It would be very hard.

4 There was an the incident that happened at my  
5 home some years ago when the police was looking for my  
6 older son, and I offered them to come into the house,  
7 and my younger son ended up standing in handcuffs out  
8 in front of the neighbors on a Sunday morning, and for  
9 no reason at all.

10 Q. How long ago was that?

11 A. Oh, probably 18 years ago, or so.

12 Q. But that's a long time -- a long time ago.

13 You don't think that enough time has passed that  
14 you can kind of let that go and --

15 A. Well, there have been other instances where  
16 I just don't hold the police in high regards.

17 Q. Here is what we are really getting at.

18 Can you, because the police testimony in this  
19 makes up only a portion of the testimony that is going to  
20 be heard. There is a lot of non police officer witnesses  
21 testifying.

22 Can you set aside any prejudices that you might  
23 have against policemen from what happened 18 years ago,  
24 can you leave that stuff out in the hallway and just look  
25 at the evidence and, in particular, a police officer witness,

1 and say, look, all right, you know, he has nothing to do  
2 with anything that has happened to me over the years.

3 I am going to judge his credibility based strictly  
4 on what I see and hear right here in the courtroom, and  
5 I am not going to attach any preconceived prejudices, or  
6 anything else, just because he is a police officer.

7 Do you think that you can do that?

8 A. It would be tough.

9 MS. LUZAICH: Challenge.

10 MR. BANKS: Submit it.

11 THE COURT: There is a lot of litigation going  
12 on in this Courthouse that doesn't have any police officers  
13 involved in it.

14 Why don't we send you down to the third floor,  
15 and they will reassign you in another kind of case, how's  
16 that, okay?

17 JUROR ESHELMAN: Okay.

18 (Juror Eshelman excused.)

19 THE COURT: We are going to replace Mr. Eshelman  
20 with?

21 THE CLERK: Donna Bella, badge 196.

22 JUROR ESHELMAN: Where do I go?

23 THE BAILIFF: Third floor, Jury Commissioner's  
24 office.

25 THE COURT: Donna, if you will take that fourth

1 seat right there, please?

2 JUROR BELLA: Okay.

3 THE COURT: All right.

4 VOIR DIRE EXAMINATION OF JUROR BELLA

5 BY THE COURT:

6 Q. Donna, have you been paying attention?

7 A. Yes, sir.

8 Q. All right, good.

9 Tell us a little about yourself. How long have  
10 you been in Las Vegas?

11 A. Five years as of May.

12 Q. And where did you come from?

13 A. San Francisco.

14 Q. San Francisco. Do you work?

15 A. Yes.

16 Q. What do you do for a living?

17 A. I own a marketing consulting agency, and  
18 working out of the home.

19 Q. Oh, you work out of your home?

20 A. Yes.

21 Q. Okay. Are you married?

22 A. No.

23 Q. Do you specialize in any particular kind  
24 of marketing?

25 A. Specific, well, technology, but a lot of

1 local districts are here so like real estate, and we also  
2 do rentals, advertising for rentals.

3 Q. Oh, okay, all right. What did you say your  
4 husband did? Did you say you were married?

5 A. No.

6 Q. Oh, okay. How about children?

7 A. No children.

8 Q. Okay.

9 Have you or anybody close to you ever been the  
10 victim of or accused of any kind of a sexually related  
11 offense?

12 A. Not that I know of.

13 Q. Okay.

14 Have you or anybody close to you ever been  
15 the victim of or accused of just any kind of a criminal  
16 offense?

17 A. Not that I know of.

18 Q. Okay. Have you ever been on a -- have  
19 you ever had kind of special training in law enforcement?

20 A. No.

21 Q. Anybody close to you ever been trained  
22 or employed in law enforcement?

23 A. No.

24 Q. Have you ever been on a jury before?

25 A. First time.

1 Q. First time.

2 Can you think of anything in your background  
3 that would make sitting as a juror in a case like this  
4 difficult in listening to the testimony and being fair  
5 and impartial to both sides, anything difficult about  
6 any of that?

7 A. Sometimes attention span, but I will try  
8 when I focus, and it is not a problem.

9 Q. Is there anything that would cause you  
10 difficulty in focusing on the evidence as it's produced  
11 over three or four days?

12 A. Well, no, Judge. I know that all would be  
13 crucial.

14 Q. Okay.

15 A. Right.

16 Q. So you can stay focused on what's going on  
17 here?

18 A. Yes.

19 Q. Okay, all right. Can you think of any  
20 special circumstances that would cause you to give the  
21 testimony of a police officer greater or lesser weight  
22 than any other police officer witness?

23 A. Not really. I will give it the same weight  
24 as anybody else.

25 Q. Okay.

1 Can you think of any reason why you would be  
2 unable to withhold forming an opinion about anything  
3 having to do with this trial, or anybody having to do  
4 with this trial until you have heard all the evidence,  
5 and I have instructed you on the law.

6 Can you do that?

7 A. I can do that.

8 Q. Do you think you have a healthy, neutral  
9 kind of mindset towards approaching your duty as being  
10 a juror in a case like this?

11 A. Yes, I would.

12 Q. Not lean toward one side or the other  
13 side?

14 A. I will remain centered all the time.

15 Q. Would you be comfortable if you were the  
16 Defendant or the prosecution in this case, if you were  
17 sitting over here, and somebody that has your mindset  
18 was on the jury, would you be comfortable with that?

19 A. Most comfortable, yes.

20 THE COURT: Okay, very good.

21 MS. KOLLINS: Thank you, Judge.

22 VOIR DIRE EXAMINATION OF JUROR BELLA

23 BY MS. KOLLINS:

24 Q. Ms. Bella, did you live most of your adult  
25 life in San Francisco?

1 A. Yes.

2 Q. And what were you employed as in San Francisco  
3 before you came to Las Vegas?

4 A. I was working for Wells Fargo Financial as  
5 the marketing manager in corporate.

6 Q. It indicates on here, it looks like you  
7 have college education, or some college. Where did you  
8 go to school?

9 A. San Pedro State.

10 Q. Did you receive your degree there?

11 A. Yes.

12 Q. What did you study there?

13 A. Psychology and negotiations, liberal arts  
14 degree.

15 Q. Did you hear ask me ask Mr. Daley some  
16 questions earlier about having expectations of a victim,  
17 did you hear me asking those questions or --

18 A. Yes.

19 Q. Do you have any like preconceived idea of  
20 what a victim should sound like on the stand?

21 A. Yes, I would think so because I have watched  
22 a lot of movies and TV.

23 Q. Do you realize this is real life and not  
24 movies?

25 A. This is real life.

1 Q. Not every -- would you agree with the  
2 statement that not everybody reacts the same to every  
3 situation?

4 A. No.

5 Q. You disagree with that? Why do you disagree  
6 with that?

7 A. Everybody is different and have different  
8 life experiences.

9 Q. And so while one person may come in here,  
10 and speak to you, and be very upset, it would be understandable  
11 if another person, who is a victim of the crime may be very  
12 guarded and very shy?

13 A. Yes.

14 Q. That doesn't mean that they are any less  
15 credible in the information they are delivering to you?

16 A. Of course not.

17 Q. How did you feel when you got your juror  
18 summons, having not served before?

19 A. I have in the distant past, but this is --  
20 it wasn't in Las Vegas? I was just not able to go because  
21 I was going to be out of the country so that's why I didn't.

22 Q. Okay. But you didn't actually sit on a  
23 case, and listen to evidence, and go deliberate?

24 A. No.

25 Q. Okay. Do you think that you can sit in



1 judgment of another?

2 A. In judgment of another?

3 I try not to judge, but if, of course, I have to  
4 hear all -- if I need to, then I will have to.

5 Q. I guess that was a bad question, and my  
6 apologies.

7 If called calls on to listen to the evidence in  
8 this case and to sit through the few days of this trial,  
9 and go back with, you know, your peers, and come to a  
10 decision, can you do that?

11 A. Yes.

12 Q. If you feel that the State has proved their  
13 case beyond a reasonable doubt, do you have any problems  
14 with returning a verdict of guilty against the Defendant  
15 for the crimes with which he is charged?

16 A. Not at all.

17 MS. KOLLINS: Thank you. Pass for cause.

18 THE COURT: Mr. Landis?

19 VOIR DIRE EXAMINATION OF JUROR BELLA

20 BY MR. LANDIS:

21 Q. Good afternoon?

22 A. HI.

23 Q. A few times today, drinking and driving,  
24 or driving under the influence has been mentioned, and  
25 would you agree that in the past 10, 20 years, we have

1 that those rights are communicated to that person, is that  
2 fair?

3 A. Like I said, if you are on a traffic stop,  
4 you are not free to leave. I don't think you need to read  
5 Miranda so it depends on the situation.

6 If I am going to interrogate about a crime, yes.  
7 They are not free to leave, and they are in custody, yes,  
8 I do read them.

9 Q. Okay. He was not free to leave?

10 A. Right.

11 Q. And he was in custody, that's fair?

12 A. Yes.

13 Q. It was like a zip tie?

14 A. Yeah, I believe they have those plastic  
15 ties, yes, sir.

16 Q. Okay. So at that point, it was of utmost  
17 importance that he be given those rights, is that fair?

18 A. Not at that point. At the point where  
19 I start my interrogation is where he needs to be read  
20 Miranda from my training and experience.

21 If you just come out of a house handcuffed, I  
22 am not going to read him his Miranda rights right then  
23 and there.

24 MS. LUZAICH: Well, Your Honor I am going to  
25 object to that whole line right there because whether or

1 not Miranda is required is a legal issue. It's not an  
2 opinion by the detective, I mean, what the detectives  
3 believes doesn't matter.

4 The bottom line is:

5 Did he or did he not do the right thing legally,  
6 and that's something the Court is going to decide, not  
7 the detective.

8 BY MR. BANKS:

9 Q. You gave him his Miranda rights one time in  
10 this whole interaction?

11 A. I believe so.

12 Q. Okay. And it was when he came out of the  
13 house, and he was in ties, and he was told he was not free  
14 to leave, is that fair?

15 A. Yes, I would have to look at the transcript  
16 of exactly when I read them to him.

17 MR. BANKS: Okay. May I approach?

18 THE COURT: Sure.

19 THE WITNESS: Okay.

20 BY MR. BANKS:

21 Q. Training and experience told you that that  
22 was the right time to communicate those rights to Mr.  
23 Wesley, is that a fair characterization?

24 A. After I made sure he was okay, yes.

25 Q. All right. And you said you believed

1 you were handed a card, and you don't carry a card with  
2 you?

3 A. No.

4 Q. Okay. So it is not like you have one as  
5 you sit here today on you?

6 A. That's correct.

7 Q. On your person?

8 A. Correct.

9 Q. The card exists, and it is very specific  
10 with those rights -- let me back up.

11 That card is very specific with the rights that  
12 are read to the accused, is that fair?

13 A. Yes.

14 Q. Okay. And it's very thorough?

15 A. Yes.

16 Q. Okay. And the card exists so when somebody  
17 doesn't have it all memorized, the card exists so when  
18 somebody doesn't have it all memorized, you say the right  
19 things to the accused, right?

20 A. Yes, sir.

21 Q. And we can agree that's of paramount importance  
22 when you read those rights to somebody, tell them what their  
23 rights are before they start talking, you want to be satisfied  
24 that they know what you are talking about, is that fair?

25 A. Yes, that they understand their rights, yes.

1 Q. And that they understand those rights, is  
2 that fair?

3 A. Yes.

4 Q. Okay. And you want to be comfortable, at  
5 least in your mind, that they are knowingly and intelligently  
6 giving up those rights and talking to you, is that fair?

7 A. Yes.

8 Q. I have been told, you know, that I want --  
9 I want to make sure that he understands his rights, yes.

10 Q. Okay.

11 A. He has a right to know them.

12 Q. Okay. And we can agree on that card, you  
13 have seen the card?

14 A. Yes.

15 Q. You are familiar with the card?

16 A. Yes.

17 Q. We can agree on the card that there is  
18 part of the card that there is a question, do you understand  
19 these rights, and you waive them and give them up.

20 Is that -- is that fair based on what you have  
21 seen on the card?

22 MS. LUZAICH: Objection, that is not the card.

23 THE COURT: Well, we haven't seen the card for  
24 that matter, and I'm not quite sure exactly what your  
25 point is, but we got to get there quicker.

1 BY MR. BANKS:

2 Q. If you know.

3 A. Well, there is various cards.

4 Q. No, I don't. I am talking about the Henderson  
5 one.

6 A. The Henderson one.

7 Q. And if you don't know, you don't know?

8 A. I don't know what the bottom says.

9 Q. Okay. Where -- can you tell me where in  
10 the transcript you clarified it with Mr. Wesley whether  
11 he understood the rights that you read to him?

12 A. After each one I asked Mr. Wesley.

13 MS. LUZAICH: I ask him to just have him read  
14 the rights as he read them that day into the record.

15 THE WITNESS: The first thing that I say is the  
16 first thing is you have the right to remain silent. The  
17 first thing, you have the right to remain silent, do you  
18 understand that?

19 Yes, sir.

20 Anything you say can and will be used against  
21 you in a court of law. Do you understand that?

22 Oh-huh.

23 You have the right to have an attorney present  
24 when I am questioning you if you wish. If you cannot afford  
25 an attorney, one will be appointed to represent you before

1 you answer any questions. Do you understand that?

2 Yeah.

3 MR. BANKS: Okay.

4 THE WITNESS: And any time you can stop answering  
5 these questions.

6 BY MR. BANKS:

7 Q. Okay.

8 And can you show me where in that transcript that  
9 you -- that Mr. Wesley made it clear that he was waiving  
10 and giving up those rights?

11 A. No, it doesn't.

12 I won't ask him about waiving his rights. I asked  
13 him if he understood those rights.

14 Q. Okay. And just so your testimony is clear,  
15 you never did ask him if he waives them and gives them up,  
16 is that fair?

17 A. I just asked him if he -- right, I just asked  
18 him if he understood those rights.

19 Q. Okay. And one more quick question:

20 Did you ever explain to him -- I know you  
21 explained to him he has a right to an attorney before  
22 questioning.

23 Did you ever explain to him that he has the right  
24 to an attorney during questioning?

25 A. No, I said one will be appointed to represent

1 you at no cost to you before any questions. Do you understand  
2 that?

3 And he said: Yes.

4 MR. BANKS: Thank you. That's all I have, Judge.

5 MS. LUZAICH: I just have two.

6 THE COURT: All right.

7 REDIRECT EXAMINATION

8 BY MS. LUZAICH:

9 Q. Detective, did you ever intentionally leave  
10 any information out of your search warrant affidavit?

11 A. No, ma'am.

12 Q. Did you ever intentionally misstate any  
13 information in your search warrant affidavit?

14 A. No.

15 MS. LUZAICH: Thank you, nothing further.

16 MR. LANDIS: No further Recross-Examination.

17 THE COURT: Okay, thank you, Officer. I appreciate  
18 your testimony.

19 THE WITNESS: Thank you, Your Honor.

20 (Witness excused.)

21 THE COURT: Let's take a break until 12:30.

22 And we will come back, and you are going to call  
23 some people, and we are going to wrap this up.

24 We have got 80 people in the jury pool that's going  
25 to get here at one o'clock.



1 And I want to stay on schedule. But I don't have  
2 room for 80 people.

3 THE BAILIFF: We are not going to be able to use  
4 that. So they are going to have to use it.

5 MS. LUZAICH: There are no other courtrooms.

6 THE COURT: Apparently they are doing something  
7 next door. They've got enough seats.

8 MS. LUZAICH: Can we switch with them?

9 THE COURT: I don't know. What's going on with  
10 them?

11 MS. LUZAICH: Is 20 in trial, Wall.

12 THE COURT: What?

13 MS. LUZAICH: Is 20 in trial, Judge Wall's court?

14 THE COURT: We haven't checked.

15 MS. LUZAICH: I mean, check with him, because  
16 that's what Togliatti uses is his courtroom when she has  
17 a big panel.

18 THE COURT: Okay. Anyway let's take a break for  
19 30 minutes.

20 Can everybody eat in 30 minutes?

21 Okay. Let's take a quick break for 30 minutes.  
22 We will be back. We will be in recess until 12:30, and  
23 then do you feel we can get through your witnesses, Mr.  
24 Landis, between 12:30 and one?

25 MR. LANDIS: Short. They should be short. My

1 directs have been short.

2 THE COURT: Fine, very good. All right. We  
3 are in recess.

4 MR. BANKS: Thank you.

5 \*\*\*\*\*

6 (Whereupon, a recess was had until 12:35 p.m.  
7 April 9, 2008. Thereafter, after recess, all parties  
8 present, the following proceedings were had in open  
9 court:)

10 \*\*\*\*\*

11 THE BAILIFF: Everybody remain seated. We are  
12 back in session.

13 THE COURT: Back on the record in the matter of  
14 the State of Nevada v. Marcus Wesley.

15 Mr. Landis, your first witness?

16 MR. LANDIS: We are calling Donna Lamonte.

17 THE COURT: Okay.

18 THE CLERK: Come forward, please take the witness  
19 stand, remain standing, raise your right hand.  
20 Whereupon,

21 DONNA LAMONTE,

22 called as a witness herein by the Defendant Wesley,  
23 having been first duly sworn, was examined and testified  
24 as follows:

25 THE CLERK: Thank you very much. You may be

1 seated.

2 Please state your name and spell your first and  
3 last name for the record.

4 THE WITNESS: Donna J. Lamonte, D-o-n-n-a, last  
5 name is L-a-m-o-n-t-e.

6 THE CLERK: Thank you.

7 THE COURT: Go ahead.

8 DIRECT EXAMINATION

9 BY MR. LANDIS:

10 Q. How are you currently employed, Ms. Lamonte?

11 A. I am employed with Nevada Power Company.

12 Q. What do you do there?

13 A. I am a team investigator.

14 Q. What does that job entail?

15 A. Conducting internal investigations,  
16 conducting external investigations, subpoena process is  
17 done in my office. Some prosecution for the company is  
18 put together and submitted.

19 Q. Do you personally sometimes assist or directly  
20 assist in complying with subpoenas?

21 A. Sometimes I do, but it's not my main function  
22 though.

23 Q. Were you employed in that capacity in February  
24 of last year?

25 A. Yes, I was.

1 Q. And I assume that quite a few subpoenas come  
2 across your office desk in the course of a given week or  
3 month, right?

4 A. There was 1,896 last month.

5 Q. You don't remember every one?

6 A. No.

7 Q. The case we are talking about occurred in  
8 February, of 2007.

9 You don't remember the specific details of complying  
10 with this subpoena in this case, do you?

11 A. No.

12 Q. But you, when you do file subpoenas, tend to  
13 follow a procedure or a protocol, correct?

14 A. Yes.

15 Q. And can John Q. Public call you from off the  
16 street and get information about about power records?

17 A. No.

18 Q. Now, does somebody need a subpoena before  
19 you guys hand over information regarding power records?

20 A. You need a subpoena in order to obtain  
21 information, yes.

22 Q. Okay. Are you able to run power records a  
23 variety of different ways?

24 Let me be more clear. Can you draw power records  
25 by name?

1 A. Yes. .

2 Q. Can you run them by Social Security number?

3 A. Yes, I can.

4 Q. And can you run them by address?

5 A. Yes, I can.

6 Q. If a police officer calls you and asks you  
7 for information, is it normal procedure for them to send  
8 you a subpoena?

9 A. Yes.

10 Q. And that would occur before obviously you  
11 give them that information?

12 A. Yes, a subpoena is required.

13 MR. LANDIS: Can I approach, Judge?

14 THE COURT: Yes.

15 MR. LANDIS: Can I approach the witness?

16 THE COURT: Yes.

17 BY MR. LANDIS:

18 Q. I am going to show you State's Exhibit

19 1. In your normal course of business, do you ever receive  
20 that subpoena that has the name and the Social Security  
21 number, which of those items would you use to run a record?

22 A. We would run the Social Security number  
23 first.

24 MR. LANDIS: Okay, the Court's indulgence.

25 THE COURT: Certainly.

1 BY MR. LANDIS:

2 Q. About two weeks ago, did you personally  
3 receive a subpoena from my office?

4 A. Yes, I did.

5 Q. And did you comply with that subpoena?

6 A. Yes, I did.

7 Let me clarify, it wasn't myself. It was the  
8 other gentleman who worked in my office who actually bring  
9 the subpoena.

10 MR. LANDIS: Okay.

11 MS. LUZAICH: Can we get a copy of that?

12 MR. LANDIS: Judge, the State wants me to go  
13 copy this for them.

14 THE COURT: Two copies.

15 MR. LANDIS: Can I approach the witness?

16 THE COURT: Yes.

17 (Whereupon, documents were marked by the Clerk  
18 as Defendant's Exhibits B and C, respectively.)

19 BY MR. LANDIS:

20 Q. I'm showing you what has been marked as  
21 State's Proposed -- or Defense Proposed B and C.

22 Is B the subpoena that was sent to your office  
23 a week or so ago?

24 A. Yes, it appears so.

25 Q. And is C the information that you provided

1 to comply with that subpoena?

2 A. Yes.

3 Q. What information did I provide you referencing  
4 an individual on my subpoena?

5 Did I provide you with a name?

6 MS. LUZAICH: I object. She didn't get a copy of  
7 your subpoena.

8 THE COURT: Do you want to submit a copy of that?

9 MS. LUZAICH: Yeah, make a copy of that.

10 THE CLERK: Just the subpoena.

11 MR. LANDIS: Two pages, Judge.

12 THE COURT: There you go. Thank you.

13 BY MR. LANDIS:

14 Q. I provided you with a name on that subpoena,  
15 correct?

16 A. Yes.

17 Q. And what is that name?

18 A. Narcus Wesley.

19 Q. And without saying the full Social Security  
20 number, did I provide with you a Social Security number on  
21 that subpoena?

22 A. Yes, you did.

23 Q. Could you tell us the last four digits?

24 A. 8230.

25 Q. Okay. And running that subpoena, turning

1 to the State's -- or Defense Proposed C, was there any  
2 power records referencing Narcus Wesley?

3 A. Yes, there was.

4 Q. Before I ask you the next question, what  
5 dates did I ask you to run referencing Narcus Wesley?

6 A. You gave me the parameters of January 1,  
7 2006 through December 31, 2007.

8 Q. And did Narcus Wesley have power at any  
9 address in Clark County during that time?

10 A. Yes, he did.

11 Q. How many addresses?

12 A. One.

13 Q. What was that address?

14 A. The address was 1915 Simmons Street, building  
15 25, unit 2175.

16 Q. Were you able to determine the dates that he  
17 had power at that address?

18 A. Yes, and they were provided.

19 Q. And what were those dates?

20 A. He moved in on January 1 -- or excuse me,  
21 January 3, 2007, and he moved out on September the 12th,  
22 2007.

23 MR. LANDIS: Okay. I move for the admission of  
24 Defense B and C.

25 THE COURT: Any objection?



1 MS. LUZAICH: No.

2 THE COURT: Defense Exhibits B and C are admitted.

3 MR. LANDIS: May I approach the witness?

4 THE COURT: Yes.

5 MR. LANDIS: I have nothing further.

6 CROSS-EXAMINATION

7 BY MS. LUZAICH:

8 Q. Is it possible for a police officer to call  
9 you and say, I have an emergency, I need to know if this  
10 person has power. I will get you a subpoena as soon as we  
11 hang up?

12 A. In an emergency situation, an officer can  
13 call, but they are instructed and do know ahead of time  
14 that the subpoena needs to be obtained in order to achieve  
15 the information they are requiring.

16 Q. Right.

17 So is it possible that Detective Weske called  
18 you, and said I have an emergency situation, sexual assault  
19 with a weapon, robbery with a weapon, I am looking for  
20 power under the name of Narcus Wesley, and I will send  
21 you a subpoena as soon as we hang up. Is it possible that  
22 you would have sent him information?

23 A. It is possible.

24 Q. Okay. And is it possible that you would  
25 have sent him, or told him over the phone Narcus Wesley

1 has at X address, and, this is his Social Security number  
2 so that he could include the correct Social Security number  
3 on the subpoena that he sent to you?

4 A. Is it possible?

5 Q. Yes.

6 A. Normally, they would call up the office and  
7 express what the emergency is.

8 Q. Right. I just told you it was possible --

9 A. (Interposing) Right, and he expresses what  
10 the emergency is, and a subpoena was on its way, yes, we  
11 would be able to communicate information.

12 Q. Right. So is it possible that you answered  
13 his request saying, yes, Marcus Wesley has power at such  
14 and such address, and, this is his Social Security number,  
15 so that the detective could include the Social Security  
16 number in the subpoena that he sent to you?

17 A. I suppose it could be possible.

18 Q. Okay.

19 Now, have you seen any documents that indicate  
20 that you did send Detective -- or that Detective Weske did  
21 have a conversation with you?

22 A. Can you say that again?

23 Q. Can I have the other exhibit?

24 THE COURT: They are all up there. There is the  
25 one that had the handwritten notations on that fax, right,

1 or whatever it was?

2 BY MS. LUZAICH:

3 Q. Okay.

4 I am showing you State's Exhibits 1, 2, 3, 4, and  
5 it's random order, don't worry about the numbers. Does any  
6 of that look familiar?

7 A. Well, this is what I saw a minute ago.

8 Q. No. You haven't seen that yet in this  
9 courtroom.

10 MR. LANDIS: I did show her State's --

11 MS. LUZAICH: Oh, you showed her ours? Oh, I'm  
12 sorry. Okay, I'm sorry, I'm sorry.

13 THE WITNESS: But I didn't see the attachments  
14 here.

15 BY MS. LUZAICH:

16 Q. Right.

17 Could this be your -- I am pointing you to State's  
18 Exhibit 2.

19 Could that be your handwriting?

20 A. That is my handwriting.

21 Q. Okay. So do you believe that you sent this  
22 to Detective Weske?

23 A. Yes.

24 Q. Pursuant to that subpoena, Number 1?

25 A. Involving that subpoena, yes.

1 Q. Okay.

2 Q. And on the subpoena, it asks for Marcus Wesley,  
3 correct?

4 A. Correct.

5 Q. And it gives the essential Social Security  
6 number?

7 A. Correct.

8 Q. And so in response you did not send him  
9 Marcus Wesley information but you just discussed on Direct  
10 Examination.

11 Instead you sent him this (indicating)?

12 A. I sent him the information that involved  
13 the Social Security number that was provided on that  
14 subpoena.

15 Q. Okay.

16 Is there a reason that you would not have sent  
17 him this information that corresponded to the name?

18 A. We first run the Social Security number,  
19 and if there is a hit on it, that is the information that  
20 we provide.

21 If we notice that there is some differentiating  
22 information between what the subpoena is and what the  
23 information we are running is, sometimes people use their  
24 middle name as their first name.

25 We will note that on the subpoena so the officer

1 or the office, whoever is subpoenaing the information, is  
2 aware that there is some discrepancies in the information.

3 Q. Okay.

4 But what you did was you sent him the information  
5 pertaining to the Social Security number?

6 A. Correct.

7 Q. And said the name is different, as opposed  
8 to sending the information pertaining to the name?

9 A. Right, because I ran the Social Security  
10 number, and there was a hit and a match on that.

11 Q. Okay.

12 And this says, and I am talking again about  
13 Exhibit 2, where your handwritten individual's name is  
14 different, it says: "Move in 11/1/06."

15 A. Correct.

16 Q. But does that say that anywhere on here?

17 A. No, that is information that's printed  
18 out. It is always handwritten in. There isn't a screen  
19 that says and in-out date. That is always handwritten  
20 on the subpoena.

21 And if there is an in date, and it's stamped,  
22 "active", obviously there is not an out date because  
23 it's still a current surveyor.

24 MS. LUZAICH: Okay. The Court's indulgence  
25 one second.

1 Q. Is it possible that Detective Weske also  
2 told you, I'm looking for or asked you to look under an  
3 address, Valley Lane, Valley Avenue, Valley something,  
4 or other?

5 A. It is possible, but I don't remember.

6 Q. And you said that the power was off on  
7 Valley Lane under that name but turned on immediately  
8 thereafter on Gay Lane, and that was the information  
9 you sent to him?

10 A. Possible, but I don't remember.

11 Q. Because you have 1,900 subpoenas every  
12 month over the last year?

13 A. Well, 1,900 just last month.

14 Q. Right, just for the last month over the  
15 last year?

16 A. Yeah.

17 THE COURT: Can I -- can I ask her a question?

18 MS. LUZAICH: Can you? Of course. It is your  
19 court.

20 BY THE COURT:

21 Q. So is this a likely or a possible scenario  
22 that you are on the phone with the detective, who is  
23 requesting some information and telling you that a subpoena  
24 will follow. He gives you a name, a social, do you have  
25 power in that name, and maybe you even have an address,

1 and you could immediately look up the name, the address  
2 the social, however you are going to do it, but you could  
3 do it all three ways couldn't you?

4 THE WITNESS: Yes I could.

5 THE COURT: So you have a name, you have the  
6 social, you have an address. Whatever would be the  
7 easiest way, your computer will tell you immediately  
8 while you are on the telephone at that address and that  
9 name, and that Social Security, there is no power at that  
10 address in that name with that Social Security.

11 But you would also be able to tell immediately  
12 that there is power in that name, maybe with a different  
13 Social Security and a different address, that coincided  
14 with the out date, and the in date at the new address.

15 Can you tell all that information immediately  
16 while you are on the telephone?

17 THE WITNESS: I can see an out date when somebody  
18 moves, yes, I can, instantly when I pull up the record.

19 THE COURT: Okay.

20 THE WITNESS: With some research.

21 THE COURT: Right. And you are obviously putting  
22 in different information into the computer, but it gives  
23 you immediate feedback, and it tells you all this?

24 THE WITNESS: Yes, it does.

25 THE COURT: So even in a short conversation with

1 the police officer on the telephone, would it be possible,  
2 unlikely, likely, that if you look under here, you say, well,  
3 detective, the address and the name that you've given me  
4 are no longer active, but there is an active address and a  
5 different address with that name, maybe with a different  
6 Social Security number, or whatever?

7 THE WITNESS: That isn't something that I would  
8 be able to instantly see with a different Social Security  
9 number. When I'm pulling up a record, it's just a unique  
10 record about that Social Security number. I would be able  
11 to see if that Social Security moved to a different address.

12 I would not be able to see someone else's Social  
13 Security number onto that person's record, like any of  
14 these record lack a Social Security number.

15 THE COURT: Okay. So the base then to track this  
16 information is primarily the Social Security number?

17 THE WITNESS: Yes, it is.

18 THE COURT: Okay. And so, but you could while  
19 you are on the telephone say, well, that power that you  
20 have given me was shut off on that particular date, but  
21 I am seeing that the power on that same date was turned  
22 on at a different address with the same name?

23 THE WITNESS: Like a customer moved?

24 THE COURT: Right.

25 THE WITNESS: Correct, that's correct.



1 THE COURT: And you would be able at that -- and  
2 would that be -- if somebody said that that is what they  
3 were told on the phone, is there any reason to believe to  
4 say that that's true or not true, I mean, is that entirely  
5 possible or is it highly unlikely?

6 THE WITNESS: If a customer moved?

7 THE COURT: Yes, if you are talking to a police  
8 officer, and the police officer said that's what I said on  
9 the phone, is that -- is that likely?

10 THE WITNESS: It could be likely, and the subpoena  
11 was coming over, and it was an emergency situation, it could  
12 have come, that's fine.

13 THE COURT: Actually, what we are more concerned  
14 with here is the actual conversation that you had.

15 Is that information so readily available to you  
16 that that if the police officer said, that's what I was  
17 told that that it's probably accurate?

18 THE WITNESS: Probably accurate.

19 THE COURT: Okay.

20 BY MS. LUZAICH: (Continuing)

21 Q. Just in simple terms:

22 If a police officer calls you and says, I am  
23 looking for John Smith's power. I believe it is at Adams  
24 Drive, and you look up John Smith, and you say, yes,  
25 Officer, John Smith has power, but it was turned off on

1 Adams Drive on January 1 and turned on on Washington  
2 Drive on January 2, I mean, is that something that you  
3 could determine quickly?

4 A. Yes.

5 Q. And, Officer, John Smith's Social Security  
6 number is 123456789, or whatever, so that you can put that  
7 on the subpoena when you send it to me as soon as you hang  
8 up the telephone?

9 A. Normally under normal circumstances, the  
10 officer gives me a Social Security number.

11 Q. But if they don't have it?

12 A. If they don't have it, a common name would  
13 be too hard to --

14 Q. (Interposing) Well, no, I am just using  
15 John Smith, but if you see it there, you are looking at  
16 the screen, and it says John Smith has power on Washington  
17 Drive, his Social Security number would be on the screen  
18 also, correct?

19 A. If they gave me one, yes.

20 Q. If they gave you one?

21 A. Correct.

22 Q. So, during your conversation with the  
23 detective, so that he would get you the correct information  
24 on the subpoena, is it possible that you would have told  
25 him, yes, John Smith has power at Washington and his Social

1 Security is 132456, so that he can give you the correct  
2 information to make it easier to comply with the subpoena  
3 because it is easier for you to comply with the subpoena  
4 if you have the Social Security number, correct?

5 A. Correct.

6 MS. LUZAICH: Okay, thank you.

7 THE COURT: Anything else?

8 MR. LANDIS: Yeah, briefly, Judge.

9 THE COURT: Go ahead.

10 REDIRECT EXAMINATION

11 BY MR. LANDIS:

12 Q. As an investigator for Nevada Power, you  
13 have been trained in the importance of details?

14 A. Yes.

15 Q. Is it important that you pay attention to  
16 like numbers in the Social Security number?

17 A. Yes.

18 Q. Or names?

19 A. Yes.

20 Q. If an officer called you and said I want  
21 to know if John Smith has power at 444 Red Street, and  
22 you pull up that record, and it turns out that there was  
23 power at 444 Red Street, however, it wasn't John Smith,  
24 it was James Smith that had power.

25 Based on your training and experience, would

1 you notice that difference when you are talking to the  
2 officer?

3 A. Yes, I would.

4 Q. And would you inform the officer of that?

5 A. Yes.

6 Q. Is it normal practice or we are talking  
7 about possibilities, I want to talk about what you do.

8 Do you give Social Security numbers to police  
9 officers when they ask for them without a subpoena actually  
10 hitting your desk?

11 A. If it's an emergency situation, and the  
12 subpoena is on the way, information can be communicated,  
13 in an emergency, an extreme emergency situation.

14 Subpoenas need to be provided in order to obtain  
15 the information.

16 MR. LANDIS: The Court's indulgence. Nothing  
17 further, Judge.

18 THE COURT: Thank you very much for your testimony.  
19 I appreciate it.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 THE COURT: Do you want to call somebody else?

23 MR. LANDIS: I call Narvies Wesley.

24 MS. LUZAICH: Who?

25 MR. LANDIS: Narvies Wesley.

1 THE CLERK: Come forward, please, sir, take the  
2 witness stand, remain standing and raise your right hand.  
3 Whereupon,

4 NARVIEZ WESLEY,  
5 called as a witness herein by the Defendant, having been  
6 first duly sworn, was examined and testified as follows:

7 THE CLERK: Thank you very much. You may have  
8 a seat.

9 State your name, spell your first name and last  
10 name for the record.

11 THE WITNESS: My name is Narvyez Wesley. The  
12 first name is N-a-r-v-i-e-z, and the last name, Wesley,  
13 W-e-s-l-e-y.

14 THE CLERK: Thank you.

15 DIRECT EXAMINATION

16 BY MR. LANDIS:

17 Q. Mr. Wesley, where did you reside in February,  
18 of 2007?

19 A. 4232 Gay Lane, Las Vegas, Nevada.

20 Q. Do you know this guy?

21 A. Yes, I do.

22 Q. Who is this?

23 A. My son.

24 MR. LANDIS: Let the record reflect Mr. Wesley  
25 has I D'd the Defendant.

1 THE COURT: The record will so show.

2 BY MR. LANDIS:

3 Q. Were you home in February, of 2007 when  
4 Henderson SWAT entered your home?

5 A. Yes, I was.

6 Q. Who was at at that time?

7 A. My wife, myself, and my son.

8 Q. Narcus?

9 A. Yes.

10 Q. During the course of their search of your  
11 premises, did you have any conversations with members  
12 of either SWAT or the Henderson Police Department?

13 A. Yes, I did.

14 Q. What were those conversations?

15 A. When they came into our home --

16 MS. LUZAICH: Objection, foundation, I mean, who  
17 are we talking about?

18 THE COURT: We are talking about the witness  
19 and the --

20 MS. LUZAICH: Any officer in his home?

21 THE COURT: Well, I don't know. Did you ever  
22 get anybody's name of any of the SWAT as they came in?

23 THE WITNESS: No, sir.

24 THE COURT: Was there one particular person  
25 that appeared to be in charge?

1 THE WITNESS: Not at the moment.

2 We were asleep, and when they came in, they had  
3 guns in our face and lights shing, and they told me and  
4 my wife to put our hands up, and sit there, and we just  
5 sat there with our hands in the air, and then we asked  
6 them what's going on, and nobody said anything.

7 THE COURT: You don't know who you were talking  
8 to?

9 THE WITNESS: No, because they had on their  
10 helmets and everything so we didn't even see any faces on  
11 them.

12 THE COURT: Go ahead.

13 BY MR. LANDIS:

14 Q. Could you tell the difference between  
15 the initial SWAT officers that entered your house and  
16 other members of that Police Department?

17 A. Yes.

18 Q. How could you tell that difference?

19 A. The SWAT officers were all dressed with  
20 helmets, guns and the lights on, with the lights shining,  
21 and the other officers, the first officer that we really  
22 saw after they made us go in the living room, he had on  
23 just some regular clothes, like a pair of slacks and a  
24 shirt. He wasn't dressed up, or anything.

25 And then it was dark in the room so then another

1 officer came in, and they talked.

2 Then a few minutes later, a lady officer come  
3 in with another man, like four or five different officers,  
4 but they didn't have on any uniforms. They had on regular  
5 street clothes.

6 Q. Have you seen one of those officers who was  
7 wearing civilian clothes that day in the hallway of this  
8 Courthouse today?

9 A. Yes, I have.

10 Q. I want to first talk about the SWAT people  
11 who came into your house.

12 Did you have any direct conversations with them?

13 A. The only thing, no, well, we asked them what  
14 was going on, you know, what was happening because we didn't  
15 know.

16 And they said, just to be still, and then they sit  
17 there for a minute, and they went in Marcus's bedroom, got  
18 him and brought him out.

19 Then they brought us back up in the living room  
20 and set us down on the couch.

21 Then the SWAT team went outside with Marcus at  
22 first, and the Officer Weske, I remember him because he  
23 told us who he was, stood there in the living room with  
24 us in front of us, and wouldn't let us move. So we were  
25 just sitting there on the couch for like almost an hour,



1 15, 20 minutes.

2 Q. Did you have any conversations with any  
3 of those officers regarding the existence of a search  
4 warrant?

5 A. Yes, we did.

6 My wife asked them first, where was the search  
7 warrant?

8 And this Officer Weske told my wife that the  
9 search warrant was outside. He would go out and get it  
10 and bring it back.

11 So 10,15 minutes went by while the other officer  
12 entered the bedroom, searching all the back part of my  
13 house, and my wife asked him again for the search warrant.  
14 He said, don't worry about it. We have got it. We are  
15 going to go get it.

16 Then, I guess, about 30, 45 minutes later because  
17 we sat there a long time. My wife asked him, where is the  
18 search warrant? And he said something, and he then just  
19 kind of turned it off.

20 So I think it was about that time, I asked him,  
21 could I call my family attorney because we use one attorney  
22 for the whole family for certain, you know, little stuff.

23 MS. LUZAICH: Judge, can he answer the question?  
24 I am going to object as non responsive. Can he answer the  
25 question, did you review the search warrant?

1 THE WITNESS: Okay. I --

2 THE COURT: Go ahead and answer the question.

3 BY MR. LANDIS:

4 Q. About that attorney issue, who was present,  
5 what members of your family were present at that point in  
6 time?

7 MS. LUZAICH: Objection, relevance, as to --

8 THE COURT: Overruled. Let's get through this.

9 Let's get through this hearing. C'mon. Go ahead.

10 THE WITNESS: All three of us, my wife, my wife --

11 I was sitting here, my wife was in the middle, and Marcus  
12 was alongside when I asked about the attorney. So all  
13 three of us were there in the room.

14 BY MR. LANDIS:

15 Q. And what did you ask him?

16 A. I asked him could I call my family attorney  
17 because we wanted an attorney present because they wouldn't  
18 tell us nothing.

19 So I know that the law says you have the right  
20 to an attorney to be there or at least advised by an  
21 attorney. They told me that we didn't need an attorney  
22 there because he wasn't under arrest.

23 Q. Who told you that?

24 A. Officer Weske.

25 MR. LANDIS: Nothing further.

1 THE COURT: Go ahead.

2 MS. LUZAICH: The Court's indulgence.

3 THE COURT: Okay.

4 CROSS-EXAMINATION

5 BY MS. KOLLINS:

6 Q. Mr. Wesley, you have been at least twice  
7 convicted of felonies in this jurisdiction, is that correct?

8 A. Yes, but that doesn't have anything pertaining  
9 to this case.

10 Q. Well, that's not for you to decide. That's  
11 for the Court to decide.

12 A. Yes, I have been convicted of a felony, yes.  
13 Yes, I have. Assault with a deadly weapon and attempted  
14 murder, yes.

15 Q. Your son was escorted outside by Detective  
16 Weske?

17 A. No.

18 Q. By SWAT?

19 A. Yes.

20 Q. And then talked to by Detective Weske  
21 outside?

22 A. No. Detective Weske was in the house when  
23 they brought our son back into the house because they  
24 said it was cold outside so they brought him back into  
25 the house and set him down.

1 Q. Okay. And eventually your whole family was  
2 taken out of zip ties, correct?

3 A. No, we were never -- we were never tied  
4 up, no. We were just held that date, I guess you know  
5 they had guns right there so we couldn't move.

6 MS. KOLLINS: No more questions.

7 THE COURT: Is that it?

8 MR. LANDIS: Nothing further, Judge.

9 THE COURT: Okay. Thank you very much for your  
10 testimony, Mr. Wesley, I appreciate it.

11 (Witness excused.)

12 THE COURT: Is that going to be it?

13 MR. LANDIS: The Court's indulgence.

14 I call Angela Wesley, and while we are getting  
15 her, Judge, for the record, I do intend to call my client  
16 as to issues pertaining to this search warrant.

17 I do think the case law is clear, but I want to  
18 make sure we are all on the same page.

19 He can testify as to issues pertaining to his  
20 rights of counsel, and the search warrant.

21 The State, of course, has the right to cross  
22 him as to that, but subsequent issues dealing with the  
23 case cannot be inquired into, and further, it does not  
24 impact anything that would happen at the jury trial later  
25 today.

1 THE COURT: That's my understanding, just to  
2 make it quite clear.

3 MR. LANDIS: I just wanted to make sure before  
4 we had him take the stand.

5 THE COURT: All right.

6 THE CLERK: Would you come step forward, please  
7 ma'am, take the witness stand.

8 Remain standing, and raise your right hand,  
9 please.

10 Whereupon,

11 ANGELA WESLEY,  
12 called as a witness herein by the Defendant, having been  
13 first duly sworn, was examined and testified as follows:

14 THE CLERK: Thank you very much, you may be  
15 seated.

16 Please state your name and spell your first and  
17 your last name for the record.

18 THE WITNESS: Angela, A-n-g-e-l-a, the last name,  
19 Wesley, W-e-s-l-e-y.

20 THE CLERK: Thank you.

21 DIRECT EXAMINATION

22 BY MR. LANDIS:

23 Q. Ma'am, where did you live in February, of  
24 2007?

25 A. At 4232 Gay Lane.

1 Q. Did you live there with your husband?

2 A. Yes.

3 Q. And what's his name?

4 A. Narvies Wesley.

5 Q. Were you home in February, of 2007, when  
6 the Henderson Police Department SWAT served a search warrant  
7 at that residence?

8 A. Yes.

9 Q. As part of that execution, did there come  
10 a time when the three of you, and by the three of you,  
11 I mean Narvies, yourself and Narcus were in the living  
12 room?

13 A. Yes.

14 Q. Did you hear any communication between Narvies  
15 and members of the Henderson Police Department concerning  
16 a right to -- his intent to call his attorney?

17 A. To call our family attorney, yes.

18 Q. What was said?

19 A. They told us that we didn't need one at that  
20 time because Narcus was not under arrest.

21 Q. Slow down. What did Narvies say?

22 A. Narvies said could he call his family lawyer?

23 Q. And did one of the Henderson Police Department  
24 officials respond to that request?

25 A. Yes, he did.

1 Q. And what did they say?

2 A. That he didn't need a family attorney because  
3 Narvies wasn't under arrest -- or Narcus wasn't under arrest.

4 MR. LANDIS: Nothing further, Judge.

5 THE COURT: Cross?

6 MS. LUZAICH: Nothing.

7 THE COURT: All right, thank you.

8 Thank you for your testimony. I appreciate it.

9 (Witness excused.)

10 MR. LANDIS: We will call lastly, Judge, Narcus

11 Wesley.

12 THE COURT: Okay.

13 THE CLERK: Come forward, please, take the witness  
14 stand, remain standing, and raise your right hand.

15 Whereupon,

16 NARCUS WESLEY,

17 called as a witness herein by the Defendant, having been  
18 first duly sworn, was examined and testified as follows:

19 THE CLERK: Thank you very much. You may be  
20 seated.

21 State your name and spell your first and last  
22 name for the record.

23 THE WITNESS: Narcus, N-a-r-c-u-s, Wesley,  
24 W-e-s-l-e-y.

25 THE CLERK: Thank you.

## DIRECT EXAMINATION

1  
2 BY MR. LANDIS:

3 Q. Were you at that Gay Lane address we have  
4 heard about a few times today in February, of 2007 when  
5 a search warrant was executed?

6 A. Yes.

7 Q. Did there come a time when your father,  
8 your stepmother, and yourself were in the living room  
9 of that residence?

10 A. Yes.

11 Q. Could you hear everything that was being  
12 said amongst your family members and members of the  
13 Henderson Police Department?

14 A. Yes, because we were in the living room.

15 Q. Did you hear your father at any point  
16 talk to the Henderson Police Department regarding an  
17 attorney being present?

18 A. Yes.

19 Q. What did he say?

20 A. My dad asked him, he said, well, and he  
21 said, what's going on, and he said, we are going to call  
22 our family attorney, and the cop say, nobody is under  
23 arrest, so you guys don't need that.

24 Q. And you heard that at that time?

25 A. Yes.



1 MR. LANDIS: The Court's indulgence.

2 THE COURT: Sure.

3 MR. LANDIS: Nothing further, Judge.

4 CROSS-EXAMINATION

5 BY MS. LUZAICH:

6 Q. Well, in fact, you were not under arrest  
7 at that point, is that correct?

8 MR. LANDIS: Objection, legal conclusion.

9 BY MS. LUZAICH:

10 Q. Well, did anyone tell him --

11 THE COURT: Go ahead, overruled. Go ahead.

12 BY MS. LUZAICH:

13 Q. Okay. Is that correct? Did anybody tell  
14 you you were under arrest yet?

15 A. Uh-uh.

16 Q. Would that be a "no"?

17 A. No.

18 Q. Okay. And, in fact, you were at that house  
19 that day, correct?

20 A. Correct.

21 Q. Were you sleeping when SWAT got there?

22 A. I really can't recall because --

23 Q. Where were you when SWAT got there?

24 A. I was in my bedroom.

25 Q. So you have a bedroom there?

1 A. Uh-huh.

2 Q. And you were in that -- is that a yes?

3 A. Yes, yes.

4 Q. You always have to say yes or no, because  
5 our really nice court reporter here has a yes button, a  
6 no button but no uh-uh button?

7 A. Yes, ma'am.

8 Q. Is that fair? So you were at the house  
9 at least for a significant period of time that day,  
10 right?

11 A. Yes.

12 Q. And you drive that white Chrysler 300?

13 A. Yes, I bought it.

14 Q. And that was in the driveway that day?

15 A. Yes.

16 Q. And evening?

17 A. Yes.

18 Q. And you did, in fact, speak with police  
19 officers, just you and Detective Weske and Detective  
20 Hartshorn, correct?

21 A. No, not exactly.

22 Q. So you never talked to them?

23 A. Yes, I talked to them, but it wouldn't  
24 just go to that.

25 Q. Okay. Were you tape recorded?

1 A. I would assume. I didn't know I was being  
2 tape recorded.

3 Q. Did they remove -- did you have ties on  
4 your wrists when you talked to them?

5 A. Yes.

6 Q. And did they try and get the ties off?

7 A. Well, yes, but it certainly took a while.

8 Q. And it was hard, right?

9 A. Uh-huh.

10 Q. Okay. Did they -- is that a "yes"?

11 A. Yes.

12 Q. But they did try --

13 A. Yes.

14 Q. They did try to help you out because it  
15 was uncomfortable?

16 A. I guess.

17 Q. And they -- well, was it uncomfortable?

18 A. Yes, it was uncomfortable. I still have  
19 the marks on my hands.

20 Q. And they tried to --

21 MR. LANDIS: (Interposing) Well, that is  
22 speculation, Judge. He doesn't know what they were trying  
23 to do.

24 MS. LUZAICH: Well, he knows that they were trying  
25 to take them off.

1 THE COURT: Overruled, c'mon. Did they finally  
2 get those slip-ons --

3 MS. LUZAICH: Zip ties.

4 THE COURT: -- those ties, zip ties, did they get  
5 those finally off?

6 THE WITNESS: Yes, but they put cuffs on after.

7 THE COURT: All right.

8 BY MS. LUZAICH:

9 Q. Okay. And they read you your rights, correct?

10 A. I don't recall that.

11 Q. So if there is a tape recording of your  
12 rights being read to you, and you say you understand them,  
13 that was justly magically produced?

14 A. Well, if it's on the paper, I guess so, but  
15 at the time when they came in, I was half asleep and telling  
16 me a whole bunch of things, and I was just saying uh-huh,  
17 uh-huh, okay.

18 Q. But you remember your dad asking for a  
19 lawyer?

20 A. Yes, because we were standing there.

21 MS. LUZAICH: Okay, nothing further.

22 THE COURT: Anything else?

23 MR. LANDIS: No, Judge.

24 THE COURT: Okay. I appreciate very much your  
25 testimony. Go ahead and sit by counsel.

1 THE DEFENDANT: Okay.

2 (Witness excused.)

3 THE COURT: Does that conclude our evidentiary  
4 portion of our hearings.

5 MR. LANDIS: Yes, the Defense has no further  
6 witnesses.

7 THE COURT: All right. Let's wrap up your  
8 arguments here.

9 Any supplements to your written motion and  
10 opposition, this should be the time to wrap it up.

11 MR. LANDIS: Judge, contrary to what the State  
12 says two times in their opposition, the information provided  
13 by Detective Weske in his search warrant affidavit concerning  
14 the Nevada Power records which we heard about today, they  
15 did not concern statements made by codefendant concerning  
16 where this guy lived or that he lived with his parents.

17 They also concern the fact that he had a 300-M  
18 Chrysler that was registered to him.

19 So, in effect, it was those two facts and those  
20 two facts alone that the detective purported to tie Mr.  
21 Wesley to that residence.

22 The detective couldn't give good answers as to  
23 where he got that Social Security number from.

24 He couldn't give good answers as to why he didn't  
25 point out that information in the search warrant.

1 I think Donna Lamonte made it pretty clear  
2 that if he would have requested that name or even if  
3 he requested that name and that address if there was a  
4 discrepancy, she would have communicated that to him  
5 over the phone.

6 Further, as to how he got that Social Security  
7 number, which clearly was not Narcus's, he knew it wasn't  
8 Narcus's because he put Narcus's correct Social Security  
9 number throughout the same portion of the case he testified  
10 in putting on the search warrant itself.

11 I think it's pretty clear that he knew at the  
12 time he drafted that search warrant that Narcus Wesley could  
13 not have power at that address, that it was in fact Narvies  
14 Wesley, and he knew that sending that subpoena to that house  
15 with that Social Security number would get him information  
16 that he put in the search warrant.

17 That is, if not a knowingly false statement,  
18 it shows a reckless disregard, Judge. Those facts are  
19 important.

20 Further, as to the Chrysler as to where it was  
21 registered to, he said he got information concerning the  
22 fact that it was registered to Narcus, but if he would  
23 have gotten that information, he would have also found  
24 out that it was registered to Narcus at a different  
25 address.

1 He did not include that information in the  
2 search warrant.

3 Those two statements, which are the only basis  
4 for probable cause in that search warrant have some issues  
5 regarding their veracity.

6 As I say, Judge, we don't have to show that they  
7 were knowingly false. A reckless disregard for the truth  
8 is also as doubt.

9 What this Court needs to do is take out those  
10 statements made by Detective Weske concerning probable  
11 cause that you believe meet those standards, and they  
12 know will, there is no deference due to the magistrate  
13 in this situation, determine whether or not what is in  
14 there, which was not false, which was not submitted without  
15 reckless disregard for the truth, whether those statements  
16 afford a probable cause, Judge, and they just don't. They  
17 just don't.

18 Even if, even if you believe that he did not  
19 have the information regarding the car that he chose not  
20 to put in the search warrant, the fact that an individual  
21 has a car parked in front of the house is not enough to  
22 support probable cause to search that house.

23 If we are talking about an arrest warrant, that's  
24 one thing.

25 But Lord knows any time the cops sees a car

1 parked in front of the house, that does not give him  
2 probable cause to search that house for evidence of a  
3 crime.

4 That alone is not basis for probable cause,  
5 Judge. This was a bad search warrant.

6 You heard what they said. They were in a hurry.  
7 He cut corners, and he did not do a complete job.

8 Second, as to his confession, there is issues  
9 regarding right to counsel.

10 On behalf of his family with my client sitting  
11 there, his father asserted, at least asked if they could  
12 call their family attorney.

13 The answer was:

14 You don't need an attorney, he is not under  
15 the arrest.

16 That's not the law, and that's not the standard.  
17 If an individual wants to have an attorney present for  
18 questioning, or for that matter during the execution of  
19 a search warrant, they have that right.

20 With my client sitting there and hearing that,  
21 the reasonable inferences, the inferences he drew was  
22 that he could not have an attorney there at that time.  
23 Then questioning begins.

24 As to the Miranda warning, they were in quick  
25 succession if you look at the transcript, and the only



1 questions:

2 "Do you understand that?"

3 "Uh-huh, Uh-huh."

4 "Do you understand that?"

5 Detective Weske never went to the second step of  
6 asking:

7 Do you want to waive those rights and talk to us?

8 That's an important step in Miranda, and it's an  
9 important thing for a potential Defendant to hear before  
10 the further questions.

11 Based on that, we ask that you suppress the entire  
12 search, including the statement based on the search warrant  
13 alone.

14 If the Court is not inclined to do it, we would  
15 ask this that you suppress his statement for violation of  
16 Miranda.

17 MR. BANKS: And, Judge, I wanted just to add to  
18 that that there was no indication by Detective Weske that  
19 Narcus had a right to counsel during questioning, and I am  
20 relying on the case of Pope, P-o-p-e, v. Zenon, Z-e-n-o-n.  
21 That's at 69 F.3d 1018, page 1023.

22 That's a Ninth Circuit 1995 case, which indicates  
23 that before interrogation, police must make it clear to the  
24 suspect that he has a right to talk with an attorney before  
25 questioning and to have that attorney present during the

1 interrogation.

2 With that, we will submit it to the Court.

3 THE COURT: Your turn.

4 MS. LUZAICH: First of all, there is no evidence  
5 whatsoever to suggest that Detective Weske either intentionally  
6 misled the reviewing Judge, or that he was reckless in his  
7 disregard for the truth.

8 The way he described it, and the way that is very  
9 much more likely that it occurred, these guys had been up  
10 for two and a half days basically by the time he called Donna  
11 Lamonte, and he calls her and says that he has -- he is  
12 looking for power under the name of Narcus Wesley at Valley  
13 Lane, Valley Drive, whatever, and she looks it up, and she  
14 says, well, there is a Narcus Wesley, but it's not -- it  
15 was turned off at Valley, it's at Gay Lane.

16 Wilson had told him that Narcus drives the  
17 Chrysler 300, that's in the search warrant.

18 He goes to that address, and he immediately as  
19 soon as he hangs up the phone with her, he goes to that  
20 address to corroborate, and sure enough, the white Chrysler  
21 is in the driveway, and he goes, and he writes the search  
22 warrant and gets it done.

23 It's not until the next day after he hears from  
24 Narcus's dad about the power thing that he goes back, and  
25 he sees the subpoena, and it says:

1 "Please note. The individual's first name is  
2 different from your request."

3 And the note on here was indicating that she  
4 did not notice when she was on the phone with him that  
5 the name was different.

6 He knew that the person who committed the offense  
7 with Wilson was Narcus. Narcus's photograph was pointed  
8 out by Wilson. The vehicle is the same, I mean, under the  
9 case law, if there is an intentional misrepresentation, or  
10 reckless disregard, you re-review it, taking that out, and  
11 I think that even without that information, there is still  
12 enough.

13 But there is no evidence that it was an intentional  
14 misrepresentation or that it was reckless.

15 I think there is certainly sufficient probable  
16 cause for the search warrant, and he did everything in  
17 good faith.

18 When you think about it, they had two guys that  
19 commit this -- I mean, forcible guns into the house, kids  
20 on the ground, takes one to the ATM with a gun, with the  
21 other one staying with the others at gunpoint.

22 Then they gratuitously for no reason whatsoever  
23 cause the SA, the sexual assault to occur, and then this  
24 one actually sexually assaults the girl with the gun.

25 So that is something that they are dire trying

1 to find the individuals that committed the offenses.

2 These guys were working around the clock for  
3 two and a half days, and it is kind of a miracle that  
4 they were able to find the guys.

5 So I think that their intent is absolutely in  
6 good form..

7 So I think that as far as the search warrant,  
8 they're fine.

9 But as far as the Miranda, and invoking, first  
10 of all, daddy can't invoke on behalf of Narcus, absolutely,  
11 positively, the case law says that.

12 Even if he were a juvenile, daddy can't invoke  
13 on his behalf, but he's an adult so daddy can't invoke on  
14 behalf of him.

15 Furthermore, it was very clear. He read from  
16 the transcript. They read him his Miranda rights, and he  
17 understood them, and he chose to speak with them.

18 And then finally, you know, the case law says  
19 there is no teleonomic phrases that have to be put forth.

20 He just has to understand that he has got the  
21 right to an attorney, and he has got the right to an  
22 attorney now. He doesn't have to wait until he gets to  
23 court.

24 And the fact that they said that you have the  
25 right before questioning, dah, it means during questioning

1 as well.

2 What the Court is concerned about is when they  
3 don't say when the right attaches that people, even though  
4 they watch TV, think that they don't have the right until  
5 they get to court.

6 It was very clear that they told him that he  
7 has got the right to an attorney right then and there.

8 So there is no reason for the Court to suppress  
9 anything.

10 MR. LANDIS: Very briefly, Judge, two points.

11 Donna Lamonte made it very clear that she called  
12 with the address and the name and if the name was different,  
13 she would have let them know that.

14 She did not mix her words when she said that,

15 Judge.

16 And, secondly, to say that Detective Weske didn't  
17 lie, has no reason to lie, we all know very well that if he  
18 loses this motion because of bad police work, he is going  
19 to get in trouble for it.

20 To say that he doesn't have something to gain by  
21 getting out there and trying to fix what he did that day  
22 is a joke.

23 We all know in a case this serious, this guy has  
24 to to make sure the search warrant sticks or he is going  
25 to hear about it back at the station.

1           There is case law after case law where individual  
2 judges who had set against the exclusionary rule talk about  
3 how it support perjury. It puts officers in a spot where  
4 they have to lie to keep evidence in court. This is that  
5 case.

6           And, lastly, Judge, they say it is a miracle,  
7 they say it's a miracle that these people were found.

8           I don't think it's a miracle that these people  
9 were found when constitutional rights are violated.

10          THE COURT: All right. Here is my take, and  
11 I don't think it is very surprising.

12          First of all, I don't think that any of the --  
13 there is no question that there was some misinformation on  
14 that application, as I see it, and everybody understands  
15 it.

16          All right. The question is whether it was done  
17 intentionally or recklessly.

18          My conclusion is no, I don't think so at all  
19 under these circumstances. I think it's quite clear,  
20 the father's name, the son's name. I don't think there  
21 was by any stretch, by any stretch that it was done  
22 intentionally.

23          I think it was all business. If it had been  
24 noticed, I think that even just a minor explanation would  
25 have sufficed, and even if it was, which I don't believe

1 for an instant that it was, I think that the rest of the  
2 information still reaches the level of probable cause,  
3 and I think that it's the test that the Court applies  
4 is a substantial basis for concluding probable cause  
5 exculpatory was a small part of accuracy and clarity is  
6 going to be.

7 Just as importantly, let me address the Miranda  
8 warnings.

9 I am not aware that the complicity, the status  
10 of the law is such that you have to inform the Defendant  
11 not only of their right to an attorney before questioning,  
12 but that you have to go on to a further explanation that  
13 includes specifically the right to have an attorney present  
14 during questioning.

15 He did say that he could stop at any time that  
16 he directed him to stop.

17 The Defendant acknowledged that each one of those  
18 questions was clear.

19 There is nothing wrong with that argument, and the  
20 motion to suppress is denied.

21 Now, it's going to take about 10 minutes to get  
22 them -- we are going to move the courtroom, okay? We do  
23 have the courtroom available.

24 THE BAILIFF: It will take approximately 15 minutes  
25 to get it ready.

1 THE COURT: Okay.

2 So it will take about 15 minutes to get the jury  
3 pool up.

4 Now, let's discuss a few things here before we  
5 get the jury pool in here.

6 We are going to go back to the original process  
7 of putting 12 in the box, plus are we going to have two or  
8 four?

9 MS. LUZAICH: Alternates?

10 THE COURT: Yeah.

11 MS. LUZAICH: Two is fine.

12 THE COURT: Are you sure?

13 MS. LUZAICH: Yeah.

14 THE COURT: We can do that.

15 All right. So we are going to have 14 in the  
16 box, okay?

17 Everybody understands, it's like we have gone  
18 through this several times at least we are going to know  
19 exactly who, 13 and 14 are the two alternates.

20 We are not going to bring that up. The first  
21 12 are the jurors, 13 and 14 are the alternates. The  
22 alternates do not replace any of the first 12 if they  
23 get excused for whatever reason they have.

24 So 13 and 14 are just handled separately, okay?

25 You get your eight, you get your eight, and you



1 get your two.

2 MS. LUZAICH: One each for the alternates.

3 THE COURT: Just one each, and then because of  
4 the nature of the charges.

5 MS. LUZAICH: No, if there is a third and fourth  
6 alternate you get a second preempt.

7 THE COURT: Okay.

8 MS. LUZAICH: But not if we have two alternates.

9 THE COURT: Are there any -- are there any other  
10 aspects because of the potential life sentence that I am  
11 not thinking of right at the top of my head?

12 MS. LUZAICH: The jurors cannot know about the  
13 penalty --

14 THE COURT: Okay.

15 MS. LUZAICH: -- at all.

16 THE COURT: Yeah, we will be real -- we will be  
17 real careful. We have already had one faux pah in regards  
18 to that.

19 The questioning, I would like for you to let me  
20 do as much as possible. I am not going to deprive you of  
21 your right to, you know, voir dire the jury, but I would  
22 like to do as much of it as I can.

23 Is there anything in particular that you think  
24 needs to be queried, I mean, if we are going to go through  
25 their exposure to jury duty, the criminal -- there is the

1 charge, if they have ever been the victim, anybody close  
2 to them, all that kind of stuff.

3 MS. LUZAICH: Right, you know, I always ask the  
4 Court to ask anybody whether they have ever been the victim  
5 of a sexual offense.

6 THE COURT: The victim of or the --

7 MS. LUZAICH: The victim or accused of --

8 THE COURT: -- or accused of a sexual offense.

9 MS. LUZAICH: -- of a sexual offense.

10 But, you know, sometimes the Court gets kind of  
11 bored, and doesn't ask that question until the very end.

12 So we talk to a juror for seven minutes before  
13 discovering that there is no way they can serve.

14 THE COURT: Well, that will be the first question  
15 I ask them.

16 MS. LUZAICH: So maybe if you can ask that earlier  
17 on in your questioning.

18 THE COURT: I will ask that question immediately.

19 MR. BANKS: It would be the Defense request that  
20 if you ask that and hands go up, that whoever's hand goes  
21 up can approach the bench with the lawyers and explain the  
22 situation because I have been burned too many times with  
23 poisoning the well with the jury pool.

24 THE COURT: We will see.

25 If it becomes -- if they say something that, you

1 know, if they themselves, have personally been the victims  
2 of a sexual assault, i will probably stop right there and  
3 have them approach, but I don't think --

4 MS. LUZAICH: Then just -- is there any reason,  
5 based on that, is there any reason that you can't be fair?

6 Because if they say they can be fair, you don't  
7 just necessarily not pick them, I mean, people don't get  
8 picked just because they have been the victim.

9 THE COURT: I am going to tell you something that  
10 I don't want us to take so long picking this jury because  
11 we are trying to rehabilitate a juror.

12 We will all spend a whole bunch of time jerking  
13 around with jurors who have problems. I am much more  
14 inclined to just excuse them rather than screwing around  
15 and trying to make them -- rehabilitate them.

16 MS. LUZAICH: Yeah, but you know what? Then  
17 your -- then the Defense gets 27 peremptories instead of  
18 seven or eight.

19 THE COURT: How many victims of sexual assault  
20 are going to be in the jury pool?

21 MS. LUZAICH: One never knows. Sometimes one  
22 or two, sometimes 15 or 20. You just are going to have to  
23 ask them.

24 THE COURT: Well, realistically, they are never  
25 going to end up on the jury.

1 MS. KOLLINS: That's not true.

2 MS. LUZAICH: That's not true though.

3 THE COURT: I understand.

4 MS. LUZAICH: The last jury trial, your jury  
5 trial, I tried that case.

6 THE COURT: Okay, all right.

7 Look, we'll play it by ear, but I am telling  
8 you that I am not going to take an hour to rehabilitate  
9 a juror who has been a serious victim of a sexual assault  
10 when we --

11 MS. KOLLINS: (Interposing) But tha's like  
12 saying now on the State's behalf, every person that gets  
13 up there and says, I mistrust the police and hate the  
14 police is automatically gone unless we exercise our  
15 peremptory.

16 THE COURT: No, that's completely different.

17 MS. KOLLINS: No, really.

18 THE COURT: That is completely and entirely  
19 different.

20 MS. KOLLINS: No, I --

21 THE COURT: I mean, those kind of people are  
22 just being jerks, I mean, they were just being jerks  
23 because they want to make something up to let them go  
24 and don't have to serve jury duty.

25 Anything else?

1 I will move that up, and I will ask it, I  
2 will ask it right off at the get-go so that we can  
3 tell.

4 MR. BANKS: There is one other thing.

5 It's not really related to the jury selection,  
6 you know, jury selection.

7 THE COURT: That is one of the things right  
8 now, but go ahead, hurry up.

9 MR. BANKS: There is a toxicology report that's  
10 still outstanding.

11 The State is in the process of getting us copies  
12 of that.

13 THE COURT: Okay.

14 MR. BANKS: And we should be getting that fairly  
15 soon.

16 THE COURT: Okay.

17 MR. BANKS: There are also some jail phone  
18 calls from -- that are referenced in the police reports  
19 and from what I have seen in the police report, it's our  
20 client making phone calls, I believe, from the Clark County  
21 Detention Center.

22 MS. LUZAICH: Henderson.

23 MR. BANKS: Henderson, I'm sorry, to family  
24 members. I'm not exactly sure who.

25 We've requested those.

1           It's my understanding that whether -- the State  
2 is going to have to make an offer of proof as to why they  
3 are not available.

4           It is just my understanding that they are not  
5 available.

6           In light of the Court's ruling today, and I don't  
7 want to divulge any client confidences, but I believe that  
8 in light of the Court's ruling today, and in light of our  
9 theory of defense, that what's contained in those jail  
10 calls is some exculpatory information, and I --

11           THE COURT: (Interposing) Well, I want the Clerk --  
12 I don't know that I have been put in a position to have  
13 to examine the contents of any jailhouse calls that have  
14 occurred.

15           Is this any information that you are aware of?

16           Have you looked at any calls that were made  
17 to or from the Defendant from the Henderson Jail that  
18 are transcripts or recordings provided to you that have  
19 examined?

20           MS. LUZAICH: Well, we would have loved to.

21           Unfortunately, back when this happened both  
22 this Defendant and the Codefendant made phone calls to  
23 their families, and what the detectives told us is that  
24 both this Defendant and the Codefendant made serious  
25 admissions to their families.

1           They immediately had downloaded the codefendant's  
2 phone calls and put them on a disk.

3           For some reason, this Defendant's phone calls  
4 were not downloaded.

5           We have been trying all for the last two weeks  
6 to go back to the system and get them downloaded, but it's  
7 too late. They are gone.

8           MR. BANKS: And our position is that they have  
9 been in the possession of a State agency from the beginning.

10           What we have is an excerpt from a police report,  
11 a police officer's perception of what's contained in those  
12 phone calls, and while I respect law enforcement, I don't  
13 necessarily, I mean, I know what they are putting in the  
14 police report.

15           They are not putting the good stuff that we can  
16 use, they are putting stuff to lay a foundation for probable  
17 cause.

18           I think there is a whole -- I think there is  
19 probably two sides to the story in those phone calls, and  
20 I think the side that we are not getting, which is not  
21 contained in the police report is the exculpatory side,  
22 and that's based upon my investigation of the case, and  
23 my conversations with my client.

24           I'm kind of like, say, hesitant to divulge any  
25 confidences, but I feel comfortable making that record.

1 I think that we are -- I think there is some  
2 exculpatory stuff out there that's in the hands of the  
3 State agency that is now not available to my client, which  
4 could be used for his benefit under his theory of defense,  
5 and I am afraid to go on because I think it's going to  
6 impact his ability to get a fair trial.

7 I think it's going to impact his ability to  
8 confront under the Sixth Amendment the evidence that's --  
9 that can be used against him.

10 It's a good thought --

11 THE COURT: These are statements that were made  
12 by the Defendant on the telephone?

13 MR. BANKS: Yes, sir.

14 THE COURT: And you haven't been able to extract  
15 from your client those exculpatory statements?

16 MR. BANKS: Maybe I have, maybe I haven't, but  
17 if I have, I am not prepared to divulge those in open court.  
18 I am just --

19 THE COURT: Well, let me, just out of curiosity,  
20 sometimes I get lost and maybe I am not looking at it the  
21 same way somebody else is, but if these are exculpatory  
22 statements made by your client on the telephone, how does  
23 it deprive you of an opportunity to produce, discover, or  
24 whatever, the subject of those exculpatory statements if  
25 your client is the one who made them, and all of a sudden



1 for whatever reason, technology wise, they have been lost,  
2 but your client certainly still -- he's the one that made  
3 them.

4 MR. BANKS: And I appreciate that, Judge.

5 I don't want exculpatory evidence to be lost  
6 and have it impact my client's right to remain silent.

7 As a practical matter, the State is going to  
8 introduce what they have dubbed a confession of my client,  
9 and I think what's contained in those jail phone calls  
10 will directly rebut.

11 THE COURT: Are you going to introduce five  
12 witnesses?

13 MR. BANKS: Am I going to introduce five witnesses?

14 THE COURT: Are they going to introduce five  
15 eyewitnesses?

16 MR. BANKS: Five eyewitnesses?

17 MS. LUZAICH: Six.

18 THE COURT: Six.

19 MR. BANKS: That can identify my client? I'm not  
20 so sure.

21 THE COURT: I have no idea. You know more about  
22 the contents than I do. I'm just --

23 MR. BANKS: My guess is no, but in light of the  
24 Court's ruling today, the exculpatory nature, and the defense  
25 that we will be presenting in light of the Court's ruling

1 today, makes the contents of those phone calls that much  
2 more important, and gives his defense that much more ability  
3 to protect his rights without compromising his right to  
4 remain silent on the stand.

5 I guess the question is:

6 Well, gee, can't your client get up and just  
7 testify to what he said in the jail?

8 THE COURT: No, I mean, I certainly can understand  
9 that, but I don't understand that if the content of these  
10 statements is that which was made by your client, that your  
11 having been deprived of any of that information, because  
12 what you really want is an exculpatory evidence and your  
13 inability to produce or discover that kind of exculpatory  
14 evidence depriving your client and the right of a particular  
15 defense, or some aspect of the defense.

16 But I still find it hard to grasp that if that --  
17 if that is the subject matter of your client's own statements,  
18 how you can be deprived of any of that inasmuch as he should  
19 be tell tell you.

20 MR. LANDIS: Judge, it's not our argument that  
21 the statements made in the jail would open avenues and give  
22 us relative discovery or find evidence, the statements  
23 themselves.

24 THE COURT: Well, they are going to be hard pressed  
25 to introduce them, and I doubt seriously that they will.

1 MS. LUZAICH: No, we are not, I mean, I recognize  
2 them because I don't have the tape --

3 THE COURT: But you can't --

4 MS. LUZAICH: -- I lose the benefit of all of  
5 those admissions, which I am not going to offer.

6 THE COURT: As I was going to say, the way it  
7 looks to me is that the State is the one that has been  
8 deprived of that valuable evidence, but who knows, I mean,  
9 that's their perspective and your perspective is it was  
10 exculpatory, but we don't have them anyway so what difference  
11 does it make?

12 MR. BANKS: Well, the difference makes it --  
13 the difference now is, I've got to say look, Marcus, we  
14 are getting hosed here because we can't present your defense  
15 without you having to testify.

16 What it does is it impinges my client and puts  
17 him in a corner, and makes it a lot more difficult decision  
18 as to whether to maintain his right to remain silent or  
19 not.

20 MS. LUZAICH: Actually, I completely disagree  
21 with that.

22 It's my understanding that the theory of the  
23 defense, based on the Court's ruling today is direct,  
24 that he did all these things because he had to because  
25 the codefendant -- he was so scared of the codefendant,

1 or something along those lines.

2 In order for him to propound that defense, he  
3 has to take the stand.

4 MR. BANKS: Does he?

5 MS. LUZAICH: Yeah, he does. There is no other  
6 way --

7 THE COURT: We are not going to --

8 MR. BANKS: (Interposing) Why can't I play the  
9 phone calls that may get that defense on?

10 MS. LUZAICH: That would be hearsay. The Defense  
11 can't play the Defendant's statements.

12 MR. BANKS: Why can't I -- why can't I play phone  
13 calls to rebut the statement that the State is going to put  
14 in, which is my client's.

15 It's an inconsistent statement that is not hearsay.  
16 It is absolutely not hearsay.

17 It's to -- it's to confront the confession that  
18 they are going to put into evidence.

19 Now, I've got a goose egg because the State lost  
20 it. It's gone. Now, I have got nothing except putting my  
21 client on which my heart goes like (indicating) -- I mean,  
22 there is, if you --- there is things that I am going to  
23 have to advise him of in this life sentence case, and there  
24 is a huge, huge right that he is going to have to decide  
25 whether to invoke or to waive, and that's his right to

1 remain silent.

2 THE COURT: Well, this will be a strategic decision.  
3 I will make a ruling when it comes up..

4 MR. BANKS: And we just heard the prosecutor --  
5 and and I don't mean to interrupt the Bench, but we just  
6 heard the prosecutor say, hey, get that defense on, the  
7 guy has got to testify.

8 MS. LUZAICH: We were going to ask for an offer  
9 of proof regarding --

10 MR. BANKS: What kind of choice is that?

11 MS. LUZAICH: -- The duress defense anyway because  
12 the defense is I was scared of him, and, therefore, I did  
13 this.

14 It has got to be his own personal knowledge, I  
15 mean, if, for example -- and this is not true but just for  
16 purposes of argument -- if the Defendant had been arrested  
17 two years earlier for robbing -- I'm sorry, the codefendant,  
18 sorry, for robbery, but this Defendant did not know that  
19 personally at the time, he can't use that robbery as a  
20 defense to duress.

21 THE COURT: I understand.

22 MS. LUZAICH: Because it has got to be his  
23 personal knowledge.

24 So we were actually going to ask for an offer  
25 of proof from the Defense before they present that defense.

1           What are they going to show?

2           And I believe that the Defendant needs to take  
3 the stand because it needs to be his own personal knowledge,  
4 and the only person that can testify to his own personal  
5 knowledge is himself.

6           Unless the codefendant were to get on the stand  
7 and say, yeah, I told Narcus that I was convicted of robbery  
8 two years ago, which he wasn't, and he is not testifying  
9 so --

10          MR. BANKS: Whether he knew about the prior robbery  
11 is not the issue.

12          THE COURT: Okay.

13          MR. BANKS: The issue is what was the state of  
14 mind at the time, and those phone calls would give the context  
15 to that.

16          THE COURT: Okay. Here is -- here is the reality.

17          You don't have them. They are not going to introduce  
18 them.

19          You will have to at some point, if you are going  
20 to use this as the basis of your Defense, or you have to  
21 make some kind of a record, possibly even have to do it  
22 by way of a motion.

23          If the Defendant gets convicted with the basis  
24 of an appeal, you certainly are going to have to do a lot  
25 more than this, but just say, well, there is a possibility

1 of this and that, and we are being deprived because they  
2 lost it.

3 That will have to have a whole -- a whole  
4 foundation, an inclination that we will probably are never  
5 going to get to before this trial because this trial is  
6 starting in five minutes.

7 So we will keep that in mind but -- and you have  
8 made a record, and I am sure it will require that you make  
9 more of a record at some other point.

10 But we will just muddle through with what we have  
11 got?

12 Anything else?

13 MS. LUZAICH: I actually do have an issue, and  
14 this is more because of the area in which your court, Judge,  
15 is located.

16 Everything is very close and confined here.

17 The Defendant has a lot of family here, some  
18 outside as well, and I am going to ask the Court to  
19 admonish the family that one, they not have any contact  
20 with any of the jurors, but two, that they not speak  
21 about the Defendant, the family, the case, anything,  
22 anywhere in the vicinity of the jurors.

23 There was problems in Justice Court, I mean,  
24 I am not going to rehash that, but I would just ask the  
25 Court to admonish the Defendant and his family that that

1 can't happen.

2 THE COURT: And which I will do with everybody  
3 anyway just so that everyone understands this so that  
4 I'm not picking on you, I will tell everybody.

5 I am going to tell the jury just about a  
6 thousand times before this case is over with, not to  
7 have any contact with you, not to have any contact with  
8 you or with your family, or with anybody else that's in  
9 this courtroom, including court personnel, and especially  
10 any of the witnesses.

11 I will be advising you, I am going to ask you  
12 to make sure your family understands that, too, because  
13 violations of that only will cause you problems, I mean,  
14 you are the one who is on trial.

15 So if you have problems in that respect, you  
16 are the one who ends up, you know, who pays the bill  
17 for it. So don't -- don't let it happen.

18 MS. LUZAICH: Not only not have contact with  
19 but not talk about anyone or anything --

20 THE COURT: Don't talk about -- what this means  
21 is don't talk about the case --

22 MS. LUZAICH: -- anywhere near the jurors.

23 THE COURT: -- in front of anybody out there,  
24 who is not a community --

25 MS. LUZAICH: Or about the Defendant, and what



1 a great guy he is, or anything, I mean, just --

2 THE COURT: Anything, anything in that respect.

3 MS. LUZAICH: Yes, and --

4 THE COURT: Just one thing, that -- exactly.

5 The fact that we have mentioned outside the  
6 presence of the jury the seriousness of this and involves  
7 the potential for a life sentence is something that is  
8 not, not, not going to be mentioned anywhere close to  
9 any of the potential jurors.

10 That is something that they are not concerned  
11 with, and they are instructed that they are not to be  
12 concerned with, with any aspect involving the sentencing  
13 in this case so that is not to be mentioned in any  
14 respect.

15 All right. Let's take about five minutes,  
16 and we will reconvene next door in Department 23.

17 See you there in just a minute.

18 MR. BANKS: Judge, how long are we going to  
19 go tonight?

20 THE COURT: We will probably go maybe to 5:30,  
21 no longer than that.

22 MR. BANKS: Okay.

23 THE COURT: 5:30 tonight, that's the latest.

24 MR. BANKS: It's just 5:30 is --

25 THE COURT: Is that all right?

1 MR. BANKS: 'Yeah, I've got a child care thing  
2 but 5:30 works great.

3 \*\*\*\*\*

4 (Whereupon, a brief recess was had.

5 After recess, all parties present, the following  
6 proceedings were had in open court in the presence of the  
7 jury panel.)

8 \*\*\*\*\*

9 THE COURT: There you go, perfect.

10 You guys, as soon as get to your chair, go ahead  
11 and sit down. Everyone have a seat. There shouldn't be  
12 any extras.

13 All right. Ladies and gentlemen, you are in  
14 the Eighth Judicial District Court for the County of  
15 Clark, this is Department 24.

16 My name is James Bixler, and I am the presiding  
17 Judge in this Department.

18 There is a little confusion, we are actually  
19 in Department 23.

20 24 is my Department next door, but because of  
21 the large jury panel involved here, we are using this  
22 courtroom just for the purposes of selection, of jury  
23 selection.

24 So when the jury is selected, we will be moving  
25 next door, into Department -- actually Department 24.

1           This is the State of Nevada v. Narcus Wesley,  
2 this is Case Number C\*232494.

3           Ladies and gentlemen, what we are about to  
4 engage in is the process of selecting a jury, and a couple  
5 of bits of information to try to help you figure out where  
6 we are, and what we are going to be doing for the next  
7 period of time.

8           It's going to take a little while to pick this  
9 jury so we will be taking numerous breaks during this  
10 process.

11           If anybody has to go to the restroom, tell Joe,  
12 and go ahead and check out and come back.

13           I need to give you a little basic information  
14 about how this works until we get down to our actual  
15 jurors. A few bits of information.

16           Number one, we are going to explain to you in  
17 just a second what the case is all about, but I want you  
18 to pay close attention to where you are sitting. You  
19 have been placed in a strategic numerical order, having  
20 been assigned to you from the Jury Commissioner's office.

21           It is important that you stay in the order that  
22 you were assigned the numbers from the Jury Commissioner's  
23 office. That way everybody knows who is where without  
24 having to repeatedly ask you.

25           So we ask you that every time we take a break,

1 make sure you note where you are sitting, and then you will  
2 get back to the same spot, and then we'll be all right.

3 We can also easily tell if somebody is missing,  
4 and we will tell who it is if you are in numerical order.

5 The second thing about the breaks.

6 When we take breaks, until we actually get a  
7 jury, you will be going in and out of the front doors  
8 here. This is important. This is the most important  
9 thing which during the trial, I will repeat to the actual  
10 jurors many, many times.

11 It is imperative that you do not discuss with  
12 anybody anything having to do with this trial, and that  
13 includes, most importantly, with each other.

14 Do not discuss this trial, anybody having to do  
15 with this trial, any aspect of this trial with anybody  
16 including each other throughout the entire course of this  
17 trial. To do so you could compromise a jury's verdict,  
18 which would result in the possibility of a case having  
19 to be tried again. So don't do it.

20 It's primarily one of the major causes of having  
21 to have retrials.

22 So just follow that instruction carefully to  
23 the letter. We won't have a problem.

24 There will be in the early stages of this process  
25 of selecting a jury, you will be going in and out.

1           It's possible that you might see witnesses during  
2 this case. Do not engage anybody in any subject matter  
3 having to do with this trial, in fact, the best rule is  
4 don't engage anybody outside, including the court personnel  
5 with anything, anything. Don't discuss, don't talk to  
6 them.

7           If you overhear somebody outside saying anything  
8 about this case, or about anybody having to do with this  
9 case, vacate yourself from that area. Do not listen or  
10 overhear any discussions because that's a possibility of  
11 the people we don't have control over. They may say something  
12 out in the hallway.

13           Don't listen to any conversations that you overhear,  
14 and if you do hear it, come and report it to the bailiff,  
15 okay?

16           It's important that we separate the jury and the  
17 jury pool from witnesses and spectators, and the court  
18 personnel.

19           I am going to start off with a quick introduction  
20 of the people that are here that work for the Court, and  
21 I am going to have counsel introduce themselves. Give  
22 you a little, brief statement, explanation about what  
23 their case is about, and they can also introduce their  
24 witnesses.

25           It's important that you pay close attention

1 because in a few minutes, I am going to then come back  
2 and ask you if you know anybody.

3 As counsel has introduced themselves, or their  
4 witnesses are disclosed, pay attention to who they are  
5 so you can tell us if there is anybody there that you are  
6 familiar with.

7 This is Lee Bahr right here in front of me. He  
8 is the court reporter. Lee's job is to make a verbatim  
9 record of everything that is said during this trial  
10 proceedings.

11 In order to do that, he has to hear everything  
12 that is said in the courtroom. He has to hear a question.  
13 He has to hear an answer.

14 During this jury selection process, I will be  
15 doing a lot of the questions. So will counsel.

16 So there will be questions. There will always  
17 be questions and answers throughout this whole process.

18 You may hear him stop, he may even have to yell  
19 at some point if counsel may be talking on top of each  
20 other. He may be the one that you will hear yelling, stop,  
21 I can't hear you.

22 He is not being rude. He is just doing his job.  
23 So don't hold that against him if you see that happen.

24 Teri Lee is right here. She is the Court Clerk.  
25 Her function is to swear in the witnesses. She

1 will mark and take care of the exhibits as they are admitted  
2 into evidence.

3 She also makes the official minutes of what goes  
4 on throughout the court proceedings.

5 Here is Joe, Joe Downing, he is the bailiff.

6 He is the actual only person that the jurors  
7 are allowed to converse with.

8 You are not allowed to converse with the attorneys,  
9 or with the parties, with the witnesses, or with me, or  
10 with Lee, or with Teri. Nobody.

11 Joe is the only one that jurors are allowed to  
12 converse with.

13 So, keep that in mind. All these instructions  
14 that I give you, if you have questions, if you have problems,  
15 if you have issues of any sort, you raise your hand, you  
16 notify Joe, and Joe passes that information onto us, okay?

17 All right. Now, at this point, I am going to  
18 have the State introduce themselves, their witnesses, and  
19 then we will do the same thing with Mr. Landis and Mr.  
20 Banks.

21 Go right ahead.

22 MS. KOLLINS: Thank you, Your Honor.

23 Good afternoon, ladies and gentlemen.

24 My name is Stacy Kollins. I'm the Chief Deputy  
25 District Attorney here with the Clark County District

1 Attorney's office.

2 This is my co-counsel, Chief Deputy District  
3 Attorney, Lisa Luzaich. We have been assigned to prosecute  
4 the matter of State of Nevada v. Narcus Wesley.

5 These crimes occurred in February, of 2007, here  
6 in Henderson, Clark County, Nevada.

7 Mr. Wesley is charged with a series of crimes,  
8 and I am going to read those to you as well and a list of  
9 witnesses that will participate, you will hear from or hear  
10 about.

11 The list is rather long. We won't necessarily  
12 call all of these people, but it's our duty to inform you  
13 of anyone you might be aware of or have any relationship  
14 outside this case with.

15 On February 18, of 2007, Mr. Delarian Wilson was  
16 charged with committing the crimes of conspiracy to commit  
17 burglary, conspiracy to commit robbery, burglary while in  
18 possession of a deadly weapon, robbery with the use of a  
19 deadly weapon, sexual assault with the use of a deadly  
20 weapon, as well as first degree kidnapping with a deadly  
21 weapon.

22 Thank you, Ms. Luzaich.

23 The victim in this -- the named victims in this  
24 case are Danielle Browning, Justin Richardson, Aitor  
25 Eskandon, Justin Foucault, Ryan Tognotti, and Clinton



1 Tognotti.

2 The additional witnesses that the State anticipates  
3 you will hear from or about in this case, and again, this is  
4 kind of long, so bear with me:

5 The Henderson Police Department Officer Troy  
6 Herron (phonetically), Henderson Police Department Officer  
7 Rand Allison, Henderson Police Crime Scene Analyst Jennifer  
8 Ayers, Henderson Police Department Officer David Barnes,  
9 Henderson Police Department Officer Bakalas, Henderson  
10 Police Department Detective June Castro.

11 The custodian of records from three establishments,  
12 businesses here in town, Alta Wireless, Circus Circus Hotel  
13 and Casino, as well as Nevada Power Company.

14 Additionally, you may hear from or about Henderson  
15 Police Sergeant Brian Dunaway, sexual assault nurse examiner,  
16 Linda Ebbert, Detective, Henderson Police Department Detective  
17 Bryan Hartshorn, Henderson Police Detective Itzhak Henn, a  
18 resident of Henderson, Nevada, Grant Hieb, Henderson Police  
19 Sergeant Michael Johnston, Henderson resident Michael --  
20 excuse me, Victor Michalak, Henderson Police Department  
21 Detective Anthony Niswonger, security from the Wells Fargo  
22 Bank, Walter O'Neal, Henderson Police Department Detective  
23 Rodrigo Pena, Circus Circus Hotel Security, Gerald Piro,  
24 Henderson resident Brandon Preston, Henderson Police  
25 Department Detective Craig Ridings, Henderson Police Crime

1 Scene Analyst Joy Self, Joy Self, S-e-l-f, Wells Fargo  
2 Security, Veronica Silva, Henderson Police Department Officer  
3 Kevin Slattery, Henderson Police Department Amber Swartwood,  
4 Henderson Police Department Havon Tillmon, Henderson Police  
5 Department. Fingerprint Analyst Kent Timothy, Henderson --  
6 or, excuse me, Tricia Vincente, Henderson Police Department  
7 Detective Curtis Weske, and Delarian Wilson.

8 Thank you.

9 THE COURT: Thank you, counsel.

10 Mr. Banks, Mr. Landis, which one?

11 MR. BANKS: Hi everybody.

12 My name is Jeff Banks. This is Mr. Wesley.

13 This is my co-counsel, Casey Landis.

14 There is a lot of names on that list that was  
15 just read to you all, and everybody please listen carefully  
16 to those names because if the State chooses not to call  
17 them, so please, please take note of those names, and I  
18 have got a few more that the detective may call.

19 The first one is Narviez Wesley, Mel Washington,  
20 Brian Murray, Randy Morgan, Carlos Diaz, William Harrington,  
21 and Carolyn Merit (phonetically).

22 Thank you very much.

23 THE COURT: Thanks.

24 All right. The next step in this process is to  
25 have a roll call, and so I am going to have Teri Lee call

1 through the roll call of the jury pool that was sent to  
2 us from the Jury Commissioner's office, and as I said  
3 earlier, you are going to notice that it's in order.

4 I need for you to answer loud enough and clear  
5 enough, here, present, whatever you feel is appropriate,  
6 so that Lee can record on the record everyone's presence.

7 Teri?

8 THE CLERK: I apologize if I mispronounce your  
9 name.

10 Molli Magura.

11 JUROR MAGURA: Present.

12 THE CLERK: Eric Butler.

13 JUROR BUTLER: Here.

14 THE CLERK: Howard Kenieutubbe.

15 JUROR KENIEUTUBBE: Here.

16 THE CLERK: Ronald Polk.

17 JUROR POLK: Present.

18 THE CLERK: Debbie C. Deschaine.

19 JUROR DESCHaine: Here.

20 THE CLERK: Gary Orta.

21 JUROR ORTA: Here.

22 THE CLERK: Mary Jo Loretto.

23 JUROR LORETTO: Here.

24 THE CLERK: Eve Crossman-Keenan.

25 JUROR CROSSMAN-KEENAN: Here.

1 THE CLERK: Betty Fisher.  
2 JUROR FISHER: Here.  
3 THE CLERK: Nichole Dunmore.  
4 JUROR DUNMORE: Here.  
5 THE CLERK: Robert Franklin.  
6 JUROR FRANKLIN: Here.  
7 THE CLERK: Christine Foresta.  
8 JUROR FORESTA: Here.  
9 THE CLERK: John Oberweis.  
10 JUROR OBERWEIS: Here.  
11 THE CLERK: Melinda Wright.  
12 JUROR WRIGHT: Here.  
13 THE CLERK: John Eshelman.  
14 JUROR ESHELMAN: Here.  
15 THE CLERK: Wayne Daley.  
16 JUROR DALEY: Here.  
17 THE CLERK: Donna Bella.  
18 JUROR BELLA: Here.  
19 THE CLERK: Justin Gries.  
20 JUROR GRIES: Here.  
21 THE CLERK: Mark Snelling.  
22 JUROR SNELLING: Here.  
23 THE CLERK: Kim Chapkis.  
24 JUROR CHAPKIS: Here.  
25 THE CLERK: Michael Baird.

1 JUROR BAIRD: Here.  
2 THE CLERK: Denise Andalon.  
3 JUROR ANDALON: Here.  
4 THE CLERK: Jesus Gonzalez.  
5 JUROR GONZALEZ: Here.  
6 THE CLERK: C. Arnone.  
7 JUROR ARNONE: Here.  
8 THE CLERK: Everett Carney.  
9 JUROR CARNEY: Here.  
10 THE CLERK: John Little.  
11 JUROR LITTLE: Here.  
12 THE CLERK: Elizabeth Martin.  
13 JUROR MARTIN: Here.  
14 THE CLERK: Robert Hoffman.  
15 JUROR HOFFMAN: Present.  
16 THE CLERK: Julie Gleason.  
17 JUROR GLEASON: Here.  
18 THE CLERK: Kelly Russo-Winn.  
19 JUROR RUSSO-WINN: Here.  
20 THE CLERK: Danielle Martin or Daniel Martin.  
21 JUROR MARTIN: Here.  
22 THE CLERK: Bonnie Huerta.  
23 JUROR HUERTA: Here.  
24 THE CLERK: Frances Franklin.  
25 JUROR FRANKLIN: Here.

1 THE CLERK: Emily Guido.  
2 JUROR GUIDO: Here.  
3 THE CLERK: Becky Hansen.  
4 JUROR HANSEN: Here.  
5 THE CLERK: Susan Gregg.  
6 JUROR GREGG: Here.  
7 THE CLERK: Aminne Menghisteab.  
8 JUROR MENGHISTEAB: Here.  
9 THE CLERK: Barbara Wagner.  
10 JUROR WAGNER: Here.  
11 THE CLERK: Robbie Holley.  
12 JUROR HOLLEY: Here.  
13 THE CLERK: Stephanie Abernathy.  
14 JUROR ABERNATHY: Here.  
15 THE CLERK: Bonnie Brunson.  
16 JUROR BRUNSON: Here.  
17 THE CLERK: Joann Czerwinski.  
18 JUROR CZERWINSKI: Here.  
19 THE CLERK: Juaneta Gibson.  
20 JUROR GIBSON: Here.  
21 THE CLERK: Brenda Medeiros.  
22 JUROR MEDEIROS: Here.  
23 THE CLERK: Sheila Rivera.  
24 JUROR RIVERA: Here.  
25 THE CLERK: Kelly Bethel.

1 JUROR BETHEL: Here.  
2 THE CLERK: Kay McCary.  
3 JUROR MC CARY: Here.  
4 THE CLERK: Kyu Choe.  
5 JUROR CHOE: Here.  
6 THE CLERK: Paula Socha.  
7 JUROR SOCHA: Here.  
8 THE CLERK: Greg Middleton.  
9 JUROR MIDDLETON: Here.  
10 THE CLERK: James Vaughn.  
11 JUROR VAUGHN: Here.  
12 THE CLERK: Madilyn Shook.  
13 JUROR SHOOK: Here.  
14 THE CLERK: Barbara Anderson.  
15 JUROR ANDERSON: Here.  
16 THE CLERK: Richard Rehm.  
17 JUROR REHM: Here.  
18 THE COURT: Carmen Sanchez.  
19 JUROR SANCHEZ: Here.  
20 THE CLERK: Nicholis Morales.  
21 JUROR MORALES: Here.  
22 THE CLERK: S. Falcone.  
23 JUROR FALCONE: Here.  
24 THE CLERK: Patrick Mitchell.  
25 JUROR MITCHELL: Here.

IN THE SUPREME COURT OF THE STATE OF NEVADA

NARCUS S. WESLEY

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Nevada Supreme Court Case No.: 52127

District Court Case No.: C232494

District Court Dept. No.: XXIV

FILED

AUG 05 2009

THOMAS R. LUTHELMAN, JR.  
CLERK OF SUPREME COURT  
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APPENDIX VOLUME II

(Appeal from Judgment of Conviction and  
Sentence in the Eighth Judicial District Court)

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IN THE SUPREME COURT OF THE STATE OF NEVADA

NARCUS S. WESLEY

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Nevada Supreme Court Case No.: 52127

District Court Case No.: C232494

District Court Dept. No.: XXIV

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**Wesley v. State of Nevada Appendix, Volume II**

**District Court Case # C232494, Appeal # 52127**

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1 DATED this 28<sup>th</sup> day of July, 2009

2 Submitted by:

3 

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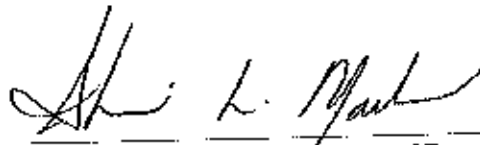
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that the foregoing APPELLANT'S APPENDIX  
VOLUME I thru. VI duly served by forwarding a copy of the same, this 29<sup>th</sup> day of July, 2009, by  
U.S. Mail, postage pre-paid, addressed as follows:

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An Employee of Law Office of Dan M. Winder, P.C.

1 "Do you understand that?"

2 Detective Weske never went to the second step of  
3 asking:

4 Do you want to waive those rights and talk to us?

5 That's an important step in Miranda, and it's an  
6 important thing for a potential Defendant to hear before  
7 the further questions.

8 Based on that, we ask that you suppress the entire  
9 search, including the statement based on the search warrant  
10 alone.

11 If the Court is not inclined to do it, we would  
12 ask this that you suppress his statement for violation of  
13 Miranda.

14 MR. BANKS: And, Judge, I wanted just to add to  
15 that that there was no indication by Detective Weske that  
16 Marcus had a right to counsel during questioning, and I am  
17 relying on the case of Pope, P-o-p-e, v. Zenon, Z-e-n-o-n.  
18 That's at 69 F.3d 1018, page 1023.

19 That's a Ninth Circuit 1995 case, which indicates  
20 that before interrogation, police must make it clear to the  
21 suspect that he has a right to talk with an attorney before  
22 questioning and to have that attorney present during the  
23 interrogation.

24 With that, we will submit it to the Court.

25 THE COURT: Your turn.

1 MS. LUZAICH: First of all, there is no evidence  
2 whatsoever to suggest that Detective Weske either intentionally  
3 misled the reviewing Judge, or that he was reckless in his  
4 disregard for the truth.

5 The way he described it, and the way that is very  
6 much more likely that it occurred, these guys had been up  
7 for two and a half days basically by the time he called Donna  
8 Lamonte, and he calls her and says that he has -- he is  
9 looking for power under the name of Narcus Wesley at Valley  
10 Lane, Valley Drive, whatever, and she looks it up, and she  
11 says, well, there is a Narcus Wesley, but it's not -- it  
12 was turned off at Valley, it's at Gay Lane.

13 Wilson had told him that Narcus drives the  
14 Chrysler 300, that's in the search warrant.

15 He goes to that address, and he immediately as  
16 soon as he hangs up the phone with her, he goes to that  
17 address to corroborate, and sure enough, the white Chrysler  
18 is in the driveway, and he goes, and he writes the search  
19 warrant and gets it done.

20 It's not until the next day after he hears from  
21 Narcus's dad about the power thing that he goes back, and  
22 he sees the subpoena, and it says:

23 "Please note. The individual's first name is,  
24 different from your request."

25 And the note on here was indicating that she

1 did not notice when she was on the phone with him that  
2 the name was different.

3 He knew that the person who committed the offense  
4 with Wilson was Narcus. Narcus's photograph was pointed  
5 out by Wilson. The vehicle is the same, I mean, under the  
6 case law, if there is an intentional misrepresentation, or  
7 reckless disregard, you re-review it, taking that out, and  
8 I think that even without that information, there is still  
9 enough.

10 But there is no evidence that it was an intentional  
11 misrepresentation or that it was reckless.

12 I think there is certainly sufficient probable  
13 cause for the search warrant, and he did everything in  
14 good faith.

15 When you think about it, they had two guys that  
16 commit this -- I mean, forcible guns into the house, kids  
17 on the ground, takes one to the ATM with a gun, with the  
18 other one staying with the others at gunpoint.

19 Then they gratuitously for no reason whatsoever  
20 cause the SA, the sexual assault to occur, and then this  
21 one actually sexually assaults the girl with the gun.

22 So that is something that they are dire trying  
23 to find the individuals that committed the offenses.

24 These guys were working around the clock for  
25 two and a half days, and it is kind of a miracle that

1 they were able to find the guys.

2 So I think that their intent is absolutely in  
3 good form.

4 So I think that as far as the search warrant,  
5 they're fine.

6 But as far as the Miranda, and invoking, first  
7 of all, daddy can't invoke on behalf of Narcus, absolutely,  
8 positively, the case law says that.

9 Even if he were a juvenile, daddy can't invoke  
10 on his behalf, but he's an adult so daddy can't invoke on  
11 behalf of him.

12 Furthermore, it was very clear. He read from  
13 the transcript. They read him his Miranda rights, and he  
14 understood them, and he chose to speak with them.

15 And then finally, you know, the case law says  
16 there is no teleonomic phrases that have to be put forth.

17 He just has to understand that he has got the  
18 right to an attorney, and he has got the right to an  
19 attorney now. He doesn't have to wait until he gets to  
20 court.

21 And the fact that they said that you have the  
22 right before questioning, dah, it means during questioning  
23 as well.

24 What the Court is concerned about is when they  
25 don't say when the right attaches that people, even though



1 they watch TV, think that they don't have the right until  
2 they get to court.

3 It was very clear that they told him that he  
4 has got the right to an attorney right then and there.

5 So there is no reason for the Court to suppress  
6 anything.

7 MR. LANDIS: Very briefly, Judge, two points.

8 Donna Lamonte made it very clear that she called  
9 with the address and the name and if the name was different,  
10 she would have let them know that.

11 She did not mix her words when she said that,  
12 Judge.

13 And, secondly, to say that Detective Weske didn't  
14 lie, has no reason to lie, we all know very well that if he  
15 loses this motion because of bad police work, he is going  
16 to get in trouble for it.

17 To say that he doesn't have something to gain by  
18 getting out there and trying to fix what he did that day  
19 is a joke.

20 We all know in a case this serious, this guy has  
21 to to make sure the search warrant sticks or he is going  
22 to hear about it back at the station.

23 There is case law after case law where individual  
24 judges who had set against the exclusionary rule talk about  
25 how it support perjury. It puts officers in a spot where

1 they have to lie to keep evidence in court. This is that  
2 case.

3 And, lastly, Judge, they say it is a miracle,  
4 they say it's a miracle that these people were found.

5 I don't think it's a miracle that these people  
6 were found when constitutional rights are violated.

7 THE COURT: All right. Here is my take, and  
8 I don't think it is very surprising.

9 First of all, I don't think that any of the --  
10 there is no question that there was some misinformation on  
11 that application, as I see it, and everybody understands  
12 it.

13 All right. The question is whether it was done  
14 intentionally or recklessly.

15 My conclusion is no, I don't think so at all  
16 under these circumstances. I think [it's is quite clear,  
17 the father's name, the son's name. I don't think there  
18 was by any stretch, by any stretch that it was done  
19 intentionally.

20 I think it was all business. If it had been  
21 noticed, I think that even just a minor explanation would  
22 have sufficed, and even if it was, which I don't believe  
23 for an instant that it was, I think that the rest of the  
24 information still reaches the level of probable cause,  
25 and I think that it's the test that the Court applies

1 is a substantial basis for concluding probable cause  
2 exculpatory was a small part of accuracy and clarity is  
3 going to be.

4 Just as importantly, let me address the Miranda  
5 warnings.

6 I am not aware that the complicity, the status  
7 of the law is such that you have to inform the defendant  
8 not only of their right to an attorney before questioning,  
9 but that you have to go on to a further explanation that  
10 includes specifically the right to have an attorney present  
11 during questioning.

12 He did say that he could stop at any time that  
13 he directed him to stop.

14 The Defendant acknowledged that each one of those  
15 questions was clear.

16 There is nothing wrong with that argument, and the  
17 motion to suppress is denied.

18 \*\*\*\*\*

19 (End of excerpt of proceedings.)

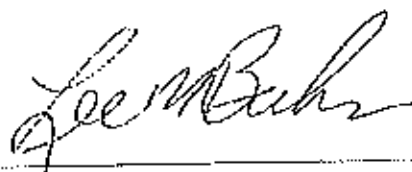
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## CERTIFICATE

STATE OF NEVADA       )  
                                  ) ss.  
CLARK COUNTY       )

I, LEE M. BAHR, CP, CCR 173, do hereby certify  
that I reported the foregoing proceedings; that the same  
is true and correct as reflected by my original machine  
shorthand notes taken at said time and place before the  
Hon. James M. Bixler, District Judge, presiding.

Dated at Las Vegas, Nevada, this  
10th day of April, 2008.



LEE M. BAHR, CP, CCR 173

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*E. J. ...*  
CLERK OF THE COURT

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7 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF CLARK

9 THE HON. JAMES M. BIXLER, DISTRICT COURT JUDGE, PRESIDING

10  
11 THE STATE OF NEVADA,  
12 Plaintiff,

13 v.

13 NARCUS S. WESLEY,  
14 aka NARCUS SAMONE WESLEY,  
15 Defendant.

Case No. 07-C-232494-C  
Dept. 24  
Volume I

16  
17 TRANSCRIPT OF PROCEEDINGS

18 JURY TRIAL

19 COURTHOUSE

20 April 9, 10 and 11, 2008

21 Las Vegas, Nevada

22  
23  
24 Reported by:

Lee M. Bahr, CP, CCR 173

CLERK OF THE COURT

RECEIVED  
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1 APPEARANCES:  
2

3 For the State:

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Las Vegas, NV. 89155

and

5 STACY L. KOLLINS, ESQ.  
6 Chief Deputy D. A.  
7 200 Lewis Ave.  
8 Las Vegas, NV. 89155  
9

10 Defendant present in court out of custody.

11 For the Defendant:

CASEY LANDIS ESQ.  
Deputy P. D.  
Las Vegas, NV.

and

13 JEFFREY BANKS, ESQ.  
14 Deputy P. D.  
15 Las Vegas, NV.  
16  
17  
18  
1920 No other appearances.  
2122 \*\*\*\*\*  
23  
24  
25

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## TRANSCRIPT OF PROCEEDINGS

(Whereupon, on April 9, 2008, the hearing on Defendant's Motion to Suppress was heard by the Court as follows:)

THE COURT: This is the time set for the State of Nevada v. -- this is Wilson, Delarion Wilson?

MS. LUZAICH: Wesley.

MR. LANDIS: Wesley.

THE COURT: Excuse me, Narcus Wesley, sorry.

All right. This is your motion to suppress, correct?

MR. LANDIS: Correct, Judge.

THE COURT: And I think that we have reached the point where we are going to call a detective, isn't that correct?

MR. LANDIS: Yes, Judge.

THE COURT: There is only one witness, right?

MR. LANDIS: No.

THE COURT: There is more than one witness. You are going to call a couple?

MR. LANDIS: Yes.

THE COURT: Okay.

THE COURT: The first witness then is?

1 MS. LUZAICH: First, Judge, I -- this all  
2 arises out of the service of the search warrant, and  
3 there is at least one individual here that was present  
4 during the service of the search warrant that I think  
5 should not be in the courtroom during the testimony.  
6 That would be the Defendant's mother, who is walking  
7 out of the room right now.

8 I don't know who the individual in the orange  
9 shirt is, but I am told that one of the Defendants and  
10 his mother and father were present.

11 MR. LANDIS: Two things, Judge.

12 One, I don't intend to call her as a witness.

13 Two, his stepmother was there. His biological  
14 mother, who that was, was not there during the search  
15 warrant. I do think they have a right to be here this  
16 morning.

17 THE COURT: Yes, if they aren't -- if they are  
18 not potential witnesses, they can, absolutely.

19 If they are potential witnesses, step outside.

20 Anybody that is a potential witness in regards  
21 to this case, and in specific, specifics, search the  
22 issuance -- the search, the actual search warrant as  
23 execution on the residence at -- what was the address?

24 MS. LUZAICH: Gay Lane, 1450 Gay Lane.

25 THE COURT: All right. Anybody who is a potential

1 witness in regards to that incident may step outside.

2 MR. LANDIS: And I can assure this Court that  
3 the witnesses I do intend to call have been asked to stay  
4 outside.

5 THE COURT: That's fine, all right. So --

6 MR. BANKS: And, Judge, I am going to tell mom  
7 that it is okay for her to be in here.

8 THE COURT: Sure, yeah, absolutely.

9 MR. BANKS: Thank you.

10 THE COURT: Absolutely. All right. We are going  
11 to call the detective, right?.

12 MS. LUZAICH: That's right. The State calls  
13 Curtis Weske.

14 THE CLERK: Come forward, sir.

15 Take the witness stand. Remain standing and  
16 raise your right hand,  
17 Whereupon,

18 DETECTIVE CURTIS WESKE,  
19 called as a witness herein by the State, having been  
20 first duly sworn, was examined and testified as follows:

21 THE CLERK: Thank you very much.

22 Please state your name, spell your first and  
23 last name for the record.

24 THE WITNESS: My name is Curtis Allen Weske,  
25 first name is C-u-r-t-i-s. The last name is W-e-s-k-e.

1 THE CLERK: And your middle name is A-l-a-n  
2 or A-l-l-e-n?

3 THE WITNESS: A-l-l-e-n.

4 THE CLERK: Thank you.

5 THE COURT: Go ahead.

6 DIRECT EXAMINATION

7 BY MS. LUZAICH:

8 Q. Sir, are you a police officer with the  
9 Henderson Police Department?

10 A. Yes, I am.

11 Q. How long have you been so employed?

12 A. Since August 30, of 1999.

13 Q. Of 1999?

14 A. Yes.

15 Q. And were you a peace officer before coming  
16 to the Henderson Police Department?

17 A. Yes, I was.

18 Q. And where was that?

19 A. In Juneau, Alaska.

20 Q. For how long were you a police officer  
21 there?

22 A. Almost five years.

23 Q. And while you were in Alaska, were you a  
24 patrol officer or were you a patrol officer and something  
25 else?

1 A. A patrol officer.

2 Q. Okay.

3 When you came to the Henderson Police Department,  
4 did you get in as a patrol officer?

5 A. Yes, I did.

6 Q. And did you become something else as well?

7 A. Yes.

8 Q. What else did you do?

9 A. I worked on the ATF Fighting Crime Task Force  
10 for a little while I was in the property section of the  
11 bureau. I went to robbery and major crimes, and now I  
12 am in what they call the Intel/Working to Target Repeat  
13 Offenders and gathering intelligence.

14 Q. Okay. Specifically, in February, of 2007,  
15 where were you assigned?

16 A. Major crimes.

17 Q. And the weekend of February like 17, 18,  
18 19, around there, was that what you believed to be All  
19 Star Weekend with NBA and their Allstar game?

20 A. Yes.

21 Q. And did you or were you asked to participate  
22 in an investigation of several offenses that occurred late  
23 at night, Sunday night, February 19, 18, whatever the Sunday  
24 night was was on Great Game Night?

25 A. Yes, ma'am.

1 Q. How was it that you particularly got involved?

2 A. Sergeant Dunaway called and asked me to  
3 respond to an apartment complex.

4 Q. Where was the the apartment complex that you --  
5 oh, and did you respond? Sorry.

6 A. I believe it was 2101 Warm Springs, Warm Springs  
7 is in the Green Valley area.

8 Q. Okay. That would be Henderson, Nevada, right?

9 A. Yes.

10 Q. And when you went to the Warm Springs  
11 Apartments, was that late at night, early in the morning?

12 A. Early in the morning.

13 Q. When you got there, were there other police  
14 officers already there?

15 A. Other police officers or other detectives,  
16 yes, ma'am.

17 Q. A lot of them, correct?

18 A. Yes.

19 Q. And were there also some young kids that  
20 you believed to be victims that were also there?

21 A. Yes, they were up in the apartment, I  
22 believe.

23 Q. And I swear when I say, "young kids",  
24 anybody younger than me is a young kid.

25 Did you personally contact with any of those

1 kids at that time?

2 A. No, I didn't.

3 Q. Was there a detective that was kind of in  
4 charge of the investigation at that point?

5 A. Yes, there was.

6 Q. Who was that?

7 A. Detective Niswonger.

8 Q. And could you spell for our wonderful court  
9 reporter Niswonger?

10 A. I believe it's N-i-s-w-o-n-g-e-r.

11 Q. If not, it's close enough, right?

12 A. Yes.

13 Q. Okay. And is it your understanding that  
14 Detective Niswonger kind of assigned certain tasks to  
15 certain detectives?

16 A. Yes.

17 Q. And is it your understanding that certain  
18 detectives were assigned to interview the victims of the  
19 offenses?

20 A. Yes.

21 Q. And that other detectives were asked to  
22 go find and do things?

23 A. Yes.

24 Q. And were you one of the detectives that  
25 were asked to go find and do things?

1 A. Yes.

2 Q. Did you find out the things by yourself  
3 or with somebody else?

4 A. With Detective Hartshorn, who was assigned  
5 to -- basically, we were riding together.

6 Q. And could you spell his name for the court  
7 reporter?

8 A. H-a-r-t-s-h-o-r-n, I believe. I believe  
9 that is right.

10 Q. Okay. And what were you and Detective  
11 Hartshorn assigned to do?

12 A. The first thing we were assigned to do is  
13 because information was passed on that they had went to  
14 two banks, were forced to take out money so they just  
15 tried to get ahold of the bank. They knew it was early  
16 in the morning, but there is numbers on the bank that  
17 we could call and try to get video surveillance lockdown.

18 Q. Okay.

19 Now, just for the record, and I'm not offering  
20 this for the truth, I'm just offering it to lay a foundation,  
21 and for purposes of what it was, what was your understanding  
22 of the offenses that had occurred?

23 A. One of the subjects had taken one of the  
24 victims around in a vehicle with a gun pointed at them and  
25 made them use their ATM card in the drive-through lanes,



1 and taken out money.

2 So we knew that most of these cams have cameras  
3 on there, so they were wanting to see, you know, if they  
4 can get that transaction lockdown and see if we could get  
5 photos.

6 Q. Okay.

7 And you talked about one suspect. How many  
8 suspects is it your understanding that there were?

9 A. I was told that there was two.

10 Q. And was there a description of the suspects  
11 given to you, generic descriptions?

12 A. Two black males, and one was taller and one  
13 was shorter.

14 Q. Okay. And in addition to going to the ATM,  
15 what else was your understanding?

16 A. As far as the crime?

17 Okay. I was told that they went into a house,  
18 held them at gunpoint, put them down at gunpoint, took  
19 one of them to the ATM to get cash. They wanted money.

20 And then after that, they attempted to make  
21 her perform sex on each other, and then actually one of  
22 them, or both of them may have touched one of the females  
23 when they couldn't perform sex. I asked for a guy named  
24 Grant.

25 It all happened at 690 Dane, and that's, based

1 on what we had at that point, it was kind of generic because  
2 they were still in the middle of the interviews, they were  
3 getting the sexual assault detectives to do what they were  
4 trained to do the interviews on that, and so then that's  
5 when we were assigned to go the first thing we were assigned  
6 to do at the bank.

7 Q. And when you were assigned to investigate  
8 the angle of the bank, did you have any idea who the suspects  
9 were other than that they were black males?

10 A. No.

11 Q. Okay. So, when you were assigned to investigate  
12 the bank, and go, what exactly did you do?

13 A. When I went to the bank, at that point all I  
14 had to do was get the numbers, and I got a recording on one --  
15 I can't remember which one -- and then the other one I talked  
16 to somebody, and said, hey, this is about the time it occurred  
17 but we would like it from this time, I think it was about  
18 midnight until five in the morning, and this probably was  
19 the number one lane, if you could just freeze everything,  
20 you should have a black male and a white male in the front  
21 seat, and I believe at that time they gave me the victim's  
22 name that used the ATM card.

23 I can't remember what his name was, but I believe  
24 I said this could be the account number that it was.

25 Q. Okay. Was the bank -- at the time that you

1 were specifically contacting the bank, was the bank open  
2 yet?

3 A. No, it was closed. It was just like an  
4 answering service that we used to check in on it, and then  
5 after that I had no more dealings with the bank.

6 Q. Okay. And about what time of the day was  
7 that?

8 A. Probably five o'clock in the morning, five,  
9 six o'clock in the morning. I think I got to the scene  
10 about three, something like that.

11 Q. Okay.

12 So after you called and left messages for the bank,  
13 what did you do?

14 A. After that the sergeant, Sergeant Dunaway  
15 said, hey, let's go up to 690 Great Dane. We want to get  
16 our crime scene continuum there so we need to clear the  
17 residence, we have got a protocol to make sure nobody else  
18 is in there. So that's what we did. We proceeded to 690  
19 Great Dane.

20 Q. Okay. And when you were at 690 Great Dane,  
21 did the crime scene come?

22 A. Yes, they did.

23 Q. And did they go in and do whatever it is  
24 that they do?

25 A. Yes, they did.

1 Q. Did you stay there the whole time at the  
2 crime scene or did you go do something else?

3 A. No, while they were in there, we knocked  
4 on doors to see if we could get any information which  
5 nothing really panned out, and then we looked up because  
6 we knew it was a rental, and we thought, okay, then maybe  
7 we would try to find where the renter lived before, so we  
8 had our laptop, and I think it was Hartshorn who looked  
9 up Clark County Assessor's file, looked up 690 Great Dane,  
10 and it came back to Victor Michalak, I'm not sure I'm  
11 saying it right.

12 But -- and he lived up near there in Southern  
13 Hills. So at that point we went up there and knocked on  
14 his residence door and talked with him.

15 Q. And when you talked with him -- when you  
16 talked with him, did you explain to him what had occurred  
17 and why you were there?

18 A. Yeah, we said that a pretty serious crime  
19 had occurred at that residence, and we were looking, you  
20 know, to see who rented the house before him, or if he  
21 knew a Grant.

22 At that time he said, well, the house was rented  
23 to a Brandon Preston, who worked for Country Insurance,  
24 or Countrywide, I believe, and that he had a roommate, he  
25 had some roommates, but he had a roommate that he believed

1 his name was grant.

2 Q. Okay.

3 While you were having this conversation with  
4 Victor whatever his name is, about what time of the day  
5 is it by now?

6 A. This is in the morning. This is getting  
7 closer, I think, to eight or nine.

8 Q. Okay.

9 And with the information about Brandon Preston,  
10 what did you then do?

11 A. We called Country -- Countrywide, and they  
12 told us they did have a Brandon Preston that worked there,  
13 and they gave us a phone number to contact him with, and  
14 so I called that phone number.

15 Q. Did you contact Brandon Preston personally?

16 A. Yes, I did.

17 Q. Did you have a conversation with him about  
18 what you knew?

19 A. Yes.

20 Q. And did you get information about an  
21 individual named Grant?

22 A. Yes.

23 Q. Did he give you actual like residence  
24 information, I know grant, and he lives at such and such?

25 A. Yes, he did. He told me he was still

1 roommates with him, however, they had moved, and so he  
2 gave me that address, and said that he should be at home  
3 right now, and so we proceeded over there.

4 Q. You physically went over to that location?

5 A. Yes.

6 Q. And is that still in Henderson?

7 A. Yes.

8 Q. And when you went to that location, what  
9 happened?

10 A. At the point we knocked on the door, I made  
11 a phone call because he gave me Grant's phone number. We  
12 knocked on the door, we called, and we saw his car in the  
13 driveway, and there was no answer.

14 And so I can't recall I called him back, and I  
15 said, well, this was actually targeted towards him so are  
16 you concerned for him, too, and he said, yes, he was.

17 Q. And, I'm sorry, when you say, "called him  
18 back", who is "him"?

19 A. Brandon.

20 Q. Okay.

21 A. And he said, yes, he should be there, and  
22 there is no reason why he shouldn't be answering the door.

23 So at that time we got the manager's key to open  
24 the door, stood at the bottom of the door and called out,  
25 "Henderson police, Brandon, are you okay? Henderson police,

1 Brandon, are you okay?"

2 At that time he woke up and came out, and he  
3 said, yeah, he was fine, and that is when we had our  
4 conversation.

5 Q. Okay. And about what time of the day is  
6 it by now?

7 A. Probably closer to noon, or so.

8 Q. Okay.

9 A. Or two o'clock.

10 Q. And did you talk to Grant about what you  
11 knew?

12 A. Yes.

13 Q. Were you trying to -- well, what were you  
14 trying to find out from Grant?

15 A. Trying to find out if he knew who would  
16 be asking for him, you know, who would be coming in there  
17 trying to use the bank. I go, you know, does he owe money?  
18 Is anybody after you?

19 Q. Did you give any description of the individual  
20 who could be after him?

21 A. Yes, I said there were two black males that  
22 came looking for you, and, you know, they called you by  
23 name, and they wanted some money. They said you owed some  
24 money.

25 Q. Did he give you a name?

1 A. Yes, he did.

2 Q. What name did he give you?

3 A. He said Delarian Wilson.

4 Q. Okay. And is that the only name that he  
5 gave you?

6 A. Yes.

7 Q. Okay. So he didn't know who potentially the  
8 second person could be?

9 A. No, he didn't.

10 Q. And when he gave you the names, well, did  
11 he give you the name of Delarian Wilson or was there also  
12 another?

13 A. Cameron.

14 Q. Okay. And did he give you other information  
15 about Delarian and Cameron Wilson?

16 A. He said that he -- he used to work at -- not  
17 used to work, he used to play football at UNLV, he said that  
18 he worked out with him at the gym, but he had heard that he  
19 had transferred down to Colorado and out-of-state.

20 Q. And, I'm sorry, you keep saying "he" and  
21 "him", he who heard that he had transferred --

22 A. (Interposing) Grant heard this stuff.

23 Q. Grant heard that Wilson played and transferred?

24 A. Yes.

25 Q. Okay.



1 A. Well, he was friends with --

2 Q. Wilson?

3 A. Wilson, and he said that he worked out with  
4 him at the gym, you know, but a while ago he knew that he  
5 had been transferred to Adam State.

6 Grant said that Wilson moved to Adam State, and  
7 was playing football there and then he said that, you know,  
8 it is kind of funny you say that, but one of my friends  
9 called me -- Grant said one of his friends called him and  
10 said that Wilson is back in town, and that he asked about  
11 Grant.

12 Q. Recently?

13 A. Yes.

14 Q. Okay.

15 A. Maybe a day or two.

16 Q. Okay. And with that information, what did  
17 you do?

18 A. I asked him if he could come down to the  
19 station and talk to Detective Niswonger because his name  
20 is in this case, and see if he had more questions since  
21 they were interviewing the victims, if he would come down  
22 and give a taped statement and, you know, identify photos  
23 if we could find one.

24 Q. And did he agree to come down with you?

25 A. Yes, he did.

1 Q. And did you learn during the course of this  
2 that there was stuff -- Grant told you that?

3 A. Yes.

4 Q. Was it marijuana?

5 A. Yes.

6 Q. And did you actually find some of that stuff  
7 at Grant's house?

8 A. Yes, I did.

9 Q. And some money?

10 A. Yes.

11 Q. And did you seize all that?

12 A. Yes, I did.

13 Q. Okay. Now, at the station, did he actually  
14 give a taped interview?

15 A. Yes, he did.

16 Q. And that was audio and videotape?

17 A. Yes, it was.

18 Q. Did you get any more information from him  
19 regarding the individuals who might have committed the  
20 crime that you were investigating?

21 A. Just I believe he identified a 2005 booking  
22 photo for Delarian, and we didn't get any other suspect  
23 information.

24 Q. Okay. While he was at the station, is it  
25 your understanding that one of the detectives found a

1 booking photo of Delarian Wilson?

2 A. Yes.

3 Q. And were you present when grant -- and what's  
4 Grant's name, just for the record, his last name?

5 A. Heib.

6 Q. Is that H-i-e-b?

7 A. I think it's H-e-i-b.

8 Q. Oh, that's either way.

9 Okay.

10 And were you present when Grant Heib was shown  
11 the photo and said whether or not that was the person?

12 A. I believe I was. I'm pretty sure I was.

13 Q. Okay. Was it your understanding that he  
14 did identify --

15 A. Yes.

16 Q. -- that person as Delarian Wilson?

17 A. Yes.

18 Q. Okay. And once you had that information,  
19 then what did you do?

20 A. At that point, we had other detectives  
21 working on different things so we were now trying to scour,  
22 you know, basically Las Vegas, looking for Delarian Wilson,  
23 and I understand that a narcotics team was working on that  
24 end of it.

25 Q. Okay.

1           Were there -- earlier I had asked you if  
2 Detective Niswonger was assigning people to do certain  
3 things.

4           All of these people that were participating  
5 in the investigation, were you communicating with each  
6 other?

7           A.   Communicating with each other and, basically,  
8 the sergeant was basically our liaison, Sergeant Dunaway.  
9 So if we didn't talk to these people directly we talked to  
10 the sergeant once we completed a task and so it was Tony  
11 Niswonger now, I'm sorry, Detective Niswonger to Sergeant  
12 Dunaway, what have you heard, and so he was kind of the  
13 liaison.

14          Q.   Okay. And you were sharing information with  
15 others that way?

16          A.   Yes.

17          Q.   Through maybe Detective Dunaway?

18          A.   Yes.

19          Q.   And did Detective Dunaway give you information  
20 regarding the location of Delarian Wilson?

21          A.   Yes.

22          Q.   And do you know about what time of day? Are  
23 we still in the same day, that Monday?

24          A.   Yes, yes, we are, we are in the afternoon.  
25 I think that we were at three or four o'clock in the

1 afternoon at this point.

2 Q. Okay.

3 And did you get information -- was there a time  
4 that Delarian Wilson was actually located?

5 A. Yes.

6 Q. And where was he located?

7 A. Circus Circus.

8 Q. Now, did you participate in actually locating  
9 Mr. Wilson?

10 A. No.

11 Q. Did you go to Circus Circus once you discovered  
12 covered that Wilson was located?

13 A. Later in the evening, yes.

14 Q. Did you do anything inbetween the time that  
15 you or that you recall inbetween the time that you had the  
16 conversation with Grant Heib and the time that you went to  
17 Circus Circus?

18 A. Yes.

19 Q. What did you do at that time?

20 A. They were trying to locate him, and once  
21 they said they located him, and they found out that he  
22 had a room there registered to him then I was assisting  
23 Detective Pena, and I believe Detective Hartshorn was  
24 there in gathering information to apply for a search  
25 warrant for that room at Circus Circus.

1 Q. Okay.

2 But you are not the one who actually authored  
3 the search warrant, correct?

4 A. Not that one.

5 Q. So was that Detective Pena?

6 A. I believe so.

7 Q. Okay.

8 Do you know about what time of day it was that  
9 you got to Circus Circus?

10 A. I am going to have to say five or six. I  
11 know it was getting dark.

12 Q. Okay.

13 And did you participate in serving the search  
14 warrant, in and -- I'm sorry -- was the search warrant  
15 for the room that Delarian Wilson was registered to?

16 A. Yes, it was.

17 Q. Okay.

18 And at this point you still have no idea who  
19 the other suspect is, is that correct?

20 A. Correct.

21 Q. You don't have the name, nothing?

22 A. No.

23 Q. Okay.

24 And, I'm sorry, I asked the question, I wasn't  
25 listening to the answer, did you participate in serving

1 the search warrant on Delarian Wilson's room?

2 A. No, I did not.

3 Q. Do you know while his room was being searched  
4 where he was?

5 A. Yes. At that point he was being detained  
6 at security downstairs, with security.

7 Q. Okay.

8 Was it it your understanding that one of the other  
9 detectives physically found him and took him into custody  
10 and brought him to security?

11 A. Yes, they took him into custody at a blackjack  
12 table.

13 Q. Okay. And when you went to security, was he  
14 there by himself or with others?

15 A. He was there with others.

16 Q. Police officers?

17 A. Police officers, and I think two others, a  
18 female and a male.

19 Q. Like friend type people?

20 A. Yes.

21 Q. As opposed to service type people?

22 A. Yes.

23 Q. Okay. And what did you do when you got  
24 there?

25 A. I talked to Detective Allison. He said he

1 was playing blackjack.

2           You know, we just kind of talked about, okay,  
3 the other detectives that were across the room from him,  
4 we will wait for him to come back. We are going to serve  
5 a search warrant with Detective Pena. That was approved  
6 and then myself and Detective Hartshorn were assigned to  
7 interview Delarian.

8           Q. And did you do that?

9           A. Yes, we did.

10          Q. And where did you do that?

11          A. In a like security room. It had tables in  
12 there. I don't know if it was a break room or a security  
13 room, but it was right next to it.

14          Q. But it was in the Circus Circus?

15          A. Right.

16          Q. Okay. And did you read him his rights per  
17 Miranda?

18          A. Yes, I did.

19          Q. And did he admit or deny that he had been  
20 at the residence at 690 Great Dane?

21          A. He admitted.

22          Q. Did you talk to him about whether or not  
23 he was there alone or with another individual?

24          A. He said that he was with somebody.

25          Q. Did he give you the name of the person he



1 was with?

2 A. Yes.

3 Q. What was the name he gave you?

4 A. Narcus.

5 Q. Did he give you any other information  
6 about Narcus?

7 A. He said that he played football for UNLV.  
8 He lived on the west side with his parents, and he drove  
9 a white Chrysler 300.

10 Q. Okay. When you had that information, what  
11 did you then do?

12 A. At that point, it was late at night, we  
13 wrapped up our interview.

14 We went through the details of everything, and  
15 wrapped up our interview, got with Sergeant Pena and took  
16 what he was going to take out of the room.

17 We had Delarian transported to the jail, took  
18 everything back to the station, and I completed my arrest  
19 report, and my witness stuff, and we were probably there  
20 until midnight, one o'clock in the morning.

21 Q. So you actually did arrest Delarian Wilson?

22 A. We arrested him, got all through the  
23 paperwork that we needed to have done that night so he  
24 was taken to jail, there was a certain amount that we had  
25 done. I believe we got done early in the morning, we were

1 told to get a couple of hours sleep, and come back, you  
2 know, mid morning, and so that's what we did. We come back  
3 mid morning.

4 Q. Now, I'm sorry, when you say you came back  
5 mid morning, would that by then be Tuesday?

6 A. The 20th, so this happened, I believe that's  
7 Tuesday, the 20th.

8 Q. Sunday night to Monday is the offense, and  
9 then Monday night you are working and come back Tuesday?

10 A. Right.

11 Q. Okay.

12 So when you came back Tuesday, you and Detective  
13 Hartshorn again?

14 A. Yes.

15 Q. And what did you do Tuesday when you came  
16 back?

17 A. Tuesday, I mean, the early detectives was  
18 already, Detective Niswonger, because he works the early  
19 shift, so they were already there, and then we briefed  
20 him on what we had, and what the second suspect we  
21 believed his name was, and so Detective Bakalas, who  
22 I work with, used to work at UNLV as a strength trainer  
23 for sports.

24 So he said he had somebody over there that he  
25 could talk to.

1           So he went over there, and he went down there  
2 and talked to, I believe, the director of athletics.

3           Q.   Okay. And can you spell his name for  
4 the court reporter?

5           A.   B-a-k-a-l-a-s.

6           Q.   Okay. And when he went down and talked  
7 to the athletic director at UNLV, or whoever it is that  
8 he talked to at UNLV, did he then give you information?

9           A.   Yes, a little while later he called and  
10 said they had a football roster in his hand, and he  
11 had the name Narcus Wesley.

12          Q.   Did he also give you information about  
13 where Narcus Wesley indicated at least to the football  
14 department where he was living at the time?

15          A.   Yes.

16          Q.   And where was that?

17          A.   I believe it was 2372 Valley Drive in  
18 Las Vegas.

19          Q.   Okay.

20               And did he give you any other information at  
21 that time, Detective Bakalas?

22          A.   Not at that time.

23          Q.   Okay. So what did you do once you had  
24 that information?

25          A.   Once I had that information, I called

1 Nevada Power and spoke to a Donna Lamonte, and I asked  
2 Donna, I would like to check a residence for power, and  
3 she said, okay.

4 I said it is 2372 Valley Drive, and I said the  
5 name that we are looking for is Narcus Wesley, and she  
6 said, okay.

7 A couple seconds later, a minute or two later  
8 she said, well, you know that power has been turned off  
9 there, hang on a second. Let me check another thing.

10 Okay. Well, that power is turned off, and now  
11 it's re-turned on at I think it's 4232, I would have to  
12 look at my notes, 4232 Gay Lane, if it was the same name.

13 I said, thanks a lot, we are sending you a  
14 subpoena, you know, I explained the case to her, you  
15 know, before, before we talked. I told her the seriousness  
16 of it, and so I faxed off a subpoena, and Detective Hartshorn  
17 immediately left and went to Gay Lane.

18 Q. And why did you go to Gay Lane?

19 A. Because that's where the power was turned  
20 on with that same name, and we wanted to go over and confirm  
21 if he lived there.

22 Q. Okay.

23 Was it your intention to get a search warrant for  
24 that location?

25 A. Yes.

1 Q. And if by confirming that he lived there,  
2 what were you looking for?

3 A. His vehicle, him out in the front yard, or  
4 anything, you know.

5 Q. About what time of day is it that you  
6 physically went there?

7 A. It was in the afternoon.

8 Q. So it was still light out?

9 A. Right, right.

10 Q. Okay. And when you went to Gay Lane, what  
11 did you see?

12 A. I saw his white Chrysler 300-N that I ran  
13 the registration on, and it came back to Narcus Wesley and  
14 a female that I can't recall.

15 Q. And a female's name?

16 A. Yes.

17 Q. Did you get any other information at that  
18 point?

19 A. I believe that the registration came back  
20 to the Valley address, but we sat there for a little while,  
21 watched the car. It didn't move, and at that time, I  
22 immediately called Sergeant Hart, H-a-r-t, who is the SWAT  
23 Sergeant, and I said, I think we have located the second  
24 suspect.

25 I have a vehicle here. I have got the house,

1 and I am going to fill out an affidavit for a search  
2 warrant. If you guys wanted to start to recon so when  
3 we get it done, you guys can decide what you want to  
4 do.

5 Q. Okay.

6 And did you then go and fill out an affidavit  
7 for a search warrant?

8 A. Yes.

9 Q. And where did you go to do that?

10 A. I went to the Henderson Police Department.

11 Q. Okay. And did you actually prepare a search  
12 warrant?

13 A. Yes, I did.

14 Q. Did you take it to get it signed by a  
15 Judge?

16 A. Yes, I did.

17 Q. And when you got it signed by a Judge,  
18 what did you do?

19 A. I notified Sergeant Hart that it was signed,  
20 we are good to go.

21 I believe we went back and made copies, and we  
22 have to leave one with the residence, and then after we  
23 did that, we went down and met -- I can't remember the  
24 name of the place, but it was a bar. We met behind a bar  
25 close to the residence with SWAT.

1 Q. What was the purpose of that?

2 A. To brief it, you know, they do the recon,  
3 and do all the briefing.

4 Q. Okay. Had you asked them to be on the  
5 lookout for anybody who comes and goes from the residence?

6 A. Yes.

7 Q. And did they indicate to you whether or  
8 not anybody came or went from the residence while you  
9 were gone?

10 A. They didn't indicate that they had anybody  
11 leaving or not. But once we got to the scene with the  
12 police, then we immediately, Detective Hartshorn and I  
13 immediately went and sat, sat at the residence and put  
14 eyes on there, took up the surveillance and the vehicle  
15 was still parked there, and so we just sat there.

16 Q. Okay.

17 A. And we saw SWAT serve the warrant.

18 Q. And did you have SWAT serve the warrant?

19 A. Because of the nature of the crime, because  
20 there was a gun involved, that we had information that  
21 there was a gun involved, sexual assault, robbery.

22 Q. Did you watch SWAT serve the warrant?

23 A. Yes.

24 Q. And when they served the warrant, did  
25 they knock, announce and enter?

1           A.    Yeah, we watched it from afar, I mean, we  
2 stayed away.

3           Q.    Right, but you could see --

4           A.    Yes.

5           Q.    -- that it was happening?

6           A.    Yes.

7           Q.    Okay. And then what did you do?

8           A.    Waited for them to clear the residence,  
9 and once they say it is okay, you know, then we go in.

10           And, basically, at that time, I was getting my  
11 stuff ready. I was out of the vehicle. I just pulled the  
12 vehicle up closer to the house, and I was at our car getting  
13 our stuff ready, and Narcus came out. They brought Narcus  
14 out, and that's where I began to do our interview, and  
15 everybody else went in and searched.

16           Q.    Okay, you are pointing somebody out.

17           Was there an individual in the residence that  
18 physically walked outside that you see here in court  
19 today?

20           A.    Yes.

21           Q.    Can you describe where he is sitting and  
22 what he is wearing?

23           A.    He is wearing a pants and suit jacket, a  
24 brown gray tie, sitting at the Defendant's table in the  
25 middle.



1 MS. LUZAICH: Your Honor, may the record reflect  
2 identification of the Defendant?

3 THE COURT: The record will so show.

4 MS. LUZAICH: Thank you.

5 Q. Was it your understanding that there were  
6 also other individuals in the house?

7 A. Yes.

8 Q. And did you ultimately speak with them as  
9 well?

10 A. Yes, I did.

11 Q. Okay. You spoke with the Defendant?

12 A. Yes.

13 Q. Did you give him his rights per Miranda?

14 A. Yes, I did.

15 Q. Did you do it by memory or from a card?

16 A. I believe I was handed a card.

17 Q. Okay. And did he express to you that he  
18 understood his rights?

19 A. Yes, he did.

20 Q. And then did he talk to you?

21 A. Yes, he did.

22 Q. Okay. Now, did some -- after you spoke  
23 with the Defendant, did something happen?

24 Did you find something out, relating to his  
25 father?

1           A.   Okay. With his father, you know, once we  
2 went back in there --.

3           Q.   Okay. Maybe I should rephrase that. I  
4 don't know if it was after.

5           A.   Right.

6           Q.   Did something happen with his father?

7           A.   Yes.

8           Q.   What?

9           A.   Well, his father demanded -- his father  
10 and mother, I believe it's his mother, demanded a copy  
11 of the search warrant; and I said it's out in the car, I  
12 will get it in just a second, went out to the car and got  
13 it, gave it back to them, and while he was reading it,  
14 you know, I asked if there is any guns in the house, he  
15 said his nephew used to have them, and all of a sudden,  
16 he said:

17                "This is wrong. The power is in my name. It's  
18 not in Nascus's name."

19           And I got his name, and his name is Narbis.

20           Q.   Could you spell that?

21           A.   Well, it's spelled two different ways, I  
22 mean, on record, in scope, it's N-a-r-b-i-s, or b-i-z,  
23 and I believe in Nevada Power it was N-a-r-b-i-z.

24           Q.   Okay.

25                So the Defendant's daddy indicated to you that

1 there was some incorrect information in the search warrant?

2 A. Yes.

3 Q. Once you found that out, did you do anything?

4 A. Not right at that moment.

5 We finished what we had there, got his stuff,  
6 and then transported him to the jail, booked him into the  
7 jail, and then the next morning when I came back in, I  
8 looked in my mailbox. We have a box there, and there was  
9 a copy of the subpoena. So I looked at that, and that's  
10 where it said:

11 An asterisk: "Please note..." I have to look  
12 at my notes, something to the effect:

13 "Please note. Individual's first name is  
14 different from your request."

15 Q. Okay.

16 Now, when you say there was a copy of the subpoena  
17 in your box, would that be the subpoena that you had sent  
18 to Nevada Power?

19 A. It was her reply. Her reply, I'm sorry.

20 Q. But pertaining to the subpoena?

21 A. To my subpoena.

22 Q. Okay. That you sent to Nevada Power?

23 A. Yes.

24 MS. LUZAICH: May I approach the Clerk?

25 THE COURT: Sure.

1 (Whereupon, four exhibits were marked for  
2 identification by the Clerk as State's Exhibits 1, 2,  
3 3 and 4, respectively.)

4 MS. LUZAICH: For the record, the Clerk is  
5 marking four pieces of paper State's Proposed Exhibits  
6 1, 2, 3, 4.

7 They have been shown and are reshowed to defense  
8 counsel, and I don't know that they are in the correct  
9 order, so 1, 2, 3, 4 are kind of just random number.

10 Q. Detective, I am showing you what has been  
11 marked as State's Proposed Exhibits 1, 2, 3, 4, and can  
12 you tell me, do you recognize these?

13 A. Yes, I do.

14 Q. What are they, understanding that 1, 2, 3,  
15 4 may be out of order?

16 A. A subpoena I sent, and her reply, Ms.  
17 Lamonte, I believe Ms. Lamonte sent them from Nevada Power.

18 MS. LUZAICH: Move into evidence.

19 MR. LANDIS: No objection.

20 THE COURT: Admitted.

21 THE CLERK: Which one?

22 MS. LUZAICH: All four.

23 THE CLERK: All four?

24 BY MS. LUZAICH:

25 Q. And for the record, on State's Proposed

1 Exhibit 2, is that where the asterisk with the note that  
2 you just described is?

3 A. Yes.

4 Q. And can you read it into the record for  
5 me?

6 A. "Please note. Individual's first name is  
7 different from your request."

8 Q. And on it -- okay. So from the time  
9 that you spoke with her on the phone, you immediately  
10 left, went, did your surveillance, for want of a better  
11 word, you looked to see what was there, and you were  
12 just doing things until you served the search warrant?

13 A. Yes.

14 MS. LUZAICH: Okay, thank you. I will pass the  
15 witness.

16 THE COURT: Cross.

17 MR. LANDIS: The Court's indulgence..

18 THE COURT: Sure.

19 CROSS-EXAMINATION

20 BY MR. LANDIS:

21 Q. Good morning.

22 A. Good morning.

23 Q. We can agree that throughout this process  
24 from when you got involved until your investigation  
25 concluded, that time was of the essence, yes?

1 A. Yes.

2 Q. And you proceeded in that fashion, with  
3 pretty much everything you did, correct?

4 A. Yes.

5 Q. And that included the drafting and issuance  
6 of the search warrant for Gay Lane?

7 A. Yes, I was gathering information from other  
8 detectives as well.

9 Q. To put it another way, you didn't want  
10 to wait three days to get that search warrant, is that  
11 correct?

12 A. Right.

13 Q. And before we get into that search warrant,  
14 I want to talk a little bit about the order of events  
15 involving the interrogation of Mr. Wilson, and the trip  
16 to UNLV, or at least you receiving the information from  
17 UNLV, the football roster, okay?

18 A. Yes.

19 Q. I think you testified on direct, and correct  
20 me if I am wrong, that the first of those two events was  
21 the interrogation of Wilson?

22 A. Yes.

23 Q. And then thereafter, sometime thereafter,  
24 a short matter later, you got the roster, correct?

25 A. Yes.

1 Q. Page 82 of the interrogation of Wilson,  
2 lines five and six.

3 Do you recall Detective Hartshorn saying during  
4 that interrogation:

5 "We already know who Narcus is, bro. He was  
6 on your football team. He played...  
7 (incomprehensible) right?"

8 A. We were going in and out of the room there  
9 so he may have said it, I may have been there. I'm not  
10 sure.

11 Q. All right. He did say it or he may have  
12 said it?

13 A. No, if it's in there, he said it.

14 Q. Okay.

15 A. But you would have to ask him.

16 Q. Would you agree that it is indicative that  
17 he knew Narcus was on the UNLV football roster during that  
18 interrogation?

19 A. He could have been lying, you know, because  
20 at that time Grant said that he played football, and so we  
21 were guessing that he was a football player with him. I  
22 mean, I don't know.

23 Q. Well, as to your search warrant, I only  
24 want to talk about what's in the search warrant. I don't  
25 want to talk about what you do that was not in the search

1 warrant, okay?

2 A. Yes.

3 Q. You said that somewhere during the interrogation  
4 of Wilson he told you guys that Narcus lived somewhere on the  
5 west side of town with his parents?

6 A. Yes.

7 Q. And that's during the interrogation that  
8 occurred at Circus Circus, correct?

9 A. No, there was a time when I went and showed  
10 him his picture at the jail, and that's when he told me.

11 Q. A little different than what you testified  
12 on direct, correct?

13 A. As far as what?

14 Q. Receiving that information, and let me  
15 clarify:

16 During the interrogation at Circus Circus, that  
17 was recorded, correct?

18 A. Yes.

19 Q. At that time, he didn't tell you where  
20 Narcus lived, did he?

21 A. I'm not sure if he told us on that or not.  
22 I have to look at the transcript.

23 Q. Would that refresh your recollection?

24 A. If I read the whole transcript, yes.

25 Q. May I approach, Judge?



1 THE COURT: Yes.

2 BY MR. LANDIS:

3 Q. When is it where you talked about Narcus?

4 A. Yeah, right here he says:

5 "Somewhere on the west side but I really don't  
6 know."

7 Q. But definitely not on the west side of  
8 town with his parents, correct?

9 A. No, I believe that the parents were probably  
10 at the jail.

11 Q. Very well. Well, we can agree nowhere in  
12 that statement, that recorded statement that occurred at  
13 Circus Circus did he say Narcus lives on the west side of  
14 town with his parents, is that right?

15 A. Just right here, right now.

16 Q. Okay.

17 A. We have Vegas, somewhere on the west side.

18 MS. LUZAICH: What page?

19 THE WITNESS: Page 83, page 82 and page 83. I  
20 believe that's it. Yes, sir.

21 BY MR. LANDIS:

22 Q. Reading that refreshes your recollection?

23 A. It refreshes that, you know, like I said,  
24 we were both in there, you know, he said, west side of  
25 Vegas on this.

1 Q. Okay. But nowhere in there does he say  
2 west side of town with his parents?

3 A. Not that I saw, no, sir.

4 Q. And you would agree this is accurate?

5 A. Yes, yes.

6 Q. Now, you mentioned a possible second time  
7 that you spoke to Mr. Wilson, correct?

8 A. Yes.

9 Q. You didn't talk about that on direct.  
10 Could you give me a little background of what occurred,  
11 why that occurred, and where it occurred?

12 A. It occurred at the Henderson jail, and I  
13 took a picture of Narcus's DMV photo over there and  
14 identified him.

15 Q. When did that occur in the order of events?

16 A. That occurred before the search warrant,  
17 and just before he went to the station or went to the  
18 jail.

19 Q. Was that before or after you conducted  
20 your first surveillance of the Gay Lane address and saw  
21 the white Chrysler?

22 A. That was after that.

23 Q. All right. And it's your testimony here  
24 that during that second interrogation or second interview  
25 with Wilson at the jail he told you that?

1 A. Yes.

2 Q. Was that interview transcribed? Was it  
3 recorded?

4 A. No, it wasn't. He was still up in booking.

5 Q. Did that second interrogation of Wilson  
6 occur before or after you drafted your search warrant?

7 A. That occurred before.

8 Q. Before?

9 A. Yes.

10 Q. In that search warrant, you go through a  
11 lot of the events that you testified to today, correct?

12 A. Yes.

13 Q. Do you inform the reviewing magistrate that  
14 Wilson said Wesley lived on the west side of town?

15 A. I would have to look at the search warrant.  
16 Yes, it is in the search warrant.

17 Q. What page?

18 A. It doesn't have a number. Next to the end.

19 MR. LANDIS: May I approach?

20 THE COURT: Yes.

21 BY MR. LANDIS:

22 Q. Does reviewing that refresh your recollection?

23 A. It says that I showed a photograph of Narcus  
24 Wesley to Wilson.

25 Q. I am going to keep that there. I understand

1 that's in there, but is the information about the location  
2 of where he lives and that he may live with his parents, is  
3 that in there?

4 A. No.

5 Q. So, obviously, the reviewing magistrate did  
6 not have that information at the time that he obviously  
7 reviewed the request?

8 A. No, sir.

9 Q. When you went to the Gay Lane address for  
10 the first time and observed that Chrysler, did you thereafter  
11 contact the DMV and check the registration?

12 A. Not DMV, our -- and I can't recall, this is  
13 a while ago, we either called dispatch at that point or we  
14 had laptops in our car, too.

15 Q. And that's where you gained the information?

16 A. Yes.

17 Q. And the information you gained was that that  
18 car was registered to Marcus?

19 A. Yes.

20 Q. And one other person?

21 A. Yes.

22 Q. And that it was registered to a Valley View  
23 address?

24 A. Yes, Valley, not Valley View.

25 Q. I'm sorry. Let me be more precise, Valley

1 Drive?

2 A. Valley Drive, yes.

3 Q. Okay. Did you learn at that time, communicating  
4 with whoever it is that you did communicate the dates of  
5 registration?

6 A. No.

7 Q. Did you learn that the car was currently  
8 registered?

9 A. Yes, I believe it was currently registered?

10 Well, if you will look right there, and I have no  
11 recollection of it being expired, that registration.

12 Q. Did you learn the date that that registration  
13 began, that most current registration?

14 A. No.

15 Q. And you had that information at the time you  
16 drafted your search warrant request?

17 Yes?

18 A. I didn't have it with me. We obtained it.  
19 It was accessible to me, yes.

20 Q. You knew that though at the time you drafted  
21 your search warrant?

22 A. Yes, I knew that that vehicle was registered  
23 to him..

24 Q. And you knew it was to that Valley Drive  
25 address?

1 A. Yes, I believe so.

2 Q. And your search warrant request, you informed  
3 the magistrate --

4 A. Yes.

5 Q. Let me be more clear.

6 You informed the magistrate that the car is  
7 registered to Narcus, correct?

8 A. Yes.

9 Q. You informed the magistrate that the car was  
10 registered to Narcus at that Valley Drive address?

11 A. No, sir.

12 Q. There is police procedure on how you request  
13 information from administrative agencies, correct?

14 A. Sometimes, yes.

15 Q. And you know I couldn't call Nevada Power  
16 and get any information I wanted, correct?

17 A. I don't know. Some people can get it if  
18 they have contacts, and so forth, and once again, others  
19 can't get it.

20 Q. I understand. But we can agree that it  
21 is under the subpoena power that you get that information?

22 A. Sometimes. If there is emergencies, there  
23 are setup ways, where, hey, they get it to us within 72  
24 hours.

25 Q. Okay. You know people at Nevada Power is

1 what you are saying?

2 A. This is the second time I ever talked with  
3 Donna.

4 Q. Okay. At the time that you called Donna  
5 at Nevada Power, had you drafted your Nevada Power subpoena  
6 yet?

7 A. No.

8 Q. How long after you communicated with Donna  
9 did you draft that subpoena?

10 A. Right after I phoned.

11 Q. As soon as you hung up the phone?

12 A. You just go on the computer, you have got  
13 a shell, and you turn it on, and print it, and that's it.

14 Q. And in relation to that, when did you send  
15 or fax a subpoena to Ms. Lamonte?

16 A. I believe I went and faxed it over to her  
17 before we left.

18 Q. All right. On that subpoena, you did send  
19 to Donna Lamonte, you list Narcus Wesley's name?

20 A. Yes.

21 Q. And you list a Social Security number?

22 A. I believe I had his Social Security and  
23 birth date on there, I believe.

24 MR. LANDIS: If I might approach, Judge?

25 THE COURT: Yes.

1 BY MR. LANDIS:

2 Q. Would reviewing your subpoena refresh your  
3 recollection?

4 A. Yes.

5 MR. LANDIS: May I approach?

6 THE COURT: Sure.

7 MR. LANDIS: Could we approach very briefly,  
8 Judge?

9 Sorry.

10 (Discussion off the record at the bench between  
11 the Court and counsel.)

12 THE COURT: All right. We are going to take a  
13 break at noon for at least 20 or 30 minutes, but right  
14 now, we are going to take a five minute break so we all  
15 can run to the restroom real quick. So we are going to  
16 be in recess for five minutes.

17 \*\*\*\*\*

18 (Whereupon, a brief recess was had.

19 After recess, all parties present, the following  
20 proceedings were had in open court:)

21 \*\*\*\*\*

22 THE COURT: All right. We are back on the record  
23 on the State of Nevada v. Narcus Wesley.

24 Go ahead.

25 MR. LANDIS: Thank you, Judge.



1 Whereupon,

2 DETECTIVE CURTIS WESKY,

3 resumed the witness stand, having been previously duly  
4 sworn, was examined and testified further as follows:

5 CROSS-EXAMINATION

6 BY MR. LANDIS: (Continuing)

7 Q. You got that subpoena, that you sent to  
8 Ms. Lamonte, correct?

9 A. No, the one I received I got. I don't  
10 have the -- you gave me this one.

11 Q. Okay, the Court's indulgence. Well, can  
12 we agree --

13 A. I'm sorry, yeah, you are right. This is  
14 the one, yes.

15 Q. It might be her fax return, but it is  
16 more or less the exact same thing as that, sir, right?

17 A. Right, yes, yes.

18 Q. And on that you have a name, you put  
19 Narcus Wesley, correct?

20 A. Yes.

21 Q. You put a Social Security number, correct?

22 A. Yes.

23 Q. Could you to protect identity just give us  
24 the last four digits of that Social Security number that  
25 you left on that subpoena?

1 A. 3280.

2 Q. Do you list an address on that subpoena?

3 A. No, I don't.

4 Q. There is a number of vowels in Mr. Wesley's  
5 name, which is his D R number?

6 A. Yes.

7 Q. What is that?

8 A. That's our report number.

9 MR. LANDIS: Okay. May I approach, Judge?

10 THE COURT: Yes.

11 BY MR. LANDIS:

12 Q. Where in the world did you get that Social  
13 Security number from?

14 A. I believe it was given to me by Detective  
15 Bakalas.

16 Q. Detective Batkins?

17 A. Bakalas.

18 Q. Okay.

19 A. I believe from the UNLV records, I'm not --  
20 I'm not positive but --

21 Q. In your search warrant application, you  
22 also list a Social Security number, correct?

23 A. Yes, I believe so.

24 MR. LANDIS: May I approach, Judge?

25 THE COURT: Yes, of course.

1 BY MR. LANDIS:

2 Q. I assume you don't remember that Social  
3 Security number offhand?

4 A. No.

5 MR. LANDIS: May I approach the witness, Judge?

6 THE COURT: Yes.

7 (Whereupon, Defendant's Exhibit A marked for  
8 identification by the Clerk.)

9 BY MR. LANDIS:

10 Q. Showing you what has been marked as Defendant's  
11 Proposed A?

12 A. Yes, sir.

13 Q. Does reviewing that refresh your recollection  
14 as to what Social Security number you listed in the search  
15 warrant?

16 A. Yes, it's a different one.

17 Q. Could you tell us the last four digits that  
18 you listed in your search warrant?

19 A. 8230.

20 MR. LANDIS: May I approach?

21 THE COURT: Yes.

22 BY MR. LANDIS:

23 Q. Where did you get that Social Security number  
24 from?

25 A. I said I thought I got it from Detective

1 Bakalas, and there was a lot of papers and stuff, and I  
2 may have picked up the wrong one.

3 Q. Okay.

4 Now, I want to talk a little bit about your  
5 communications with Ms. Lamonte?

6 A. Okay.

7 Q. You testified on direct that the first thing  
8 you asked her for was an address?

9 A. Yes.

10 Q. Did you give her an address and a name, an  
11 address with a Social Security number or just an address?

12 A. I just gave her the address, and I said the  
13 name I am looking for is Narcus Wesley.

14 Q. And you gave her those two tidbits of  
15 information before she responded to any of your requests  
16 at all?

17 A. Yes.

18 Q. And that address you gave her was the Gay  
19 Lane address?

20 A. No, I gave her the Valley address.

21 Q. I'm sorry, the Valley Drive address?

22 A. Yes.

23 Q. What was her response to the best of your  
24 recollection to that?

25 A. The best of my recollection was, okay,

1 there is no power at that address. Let me check something.

2 And then took a second, and the power was turned  
3 on in the same at this Gay address, 4232 Gay Avenue.

4 Q. Between the time that she said the power  
5 was turned off up until the time she gave you the Gay Lane  
6 address, did you give her any further information?

7 A. I don't believe so.

8 Q. While on the phone, was there any further  
9 communications by you or by Ms. Lamonte?

10 A. I believe about the subpoena, I said I am  
11 sending her a subpoena.

12 Q. Okay. How long after you hung up the phone  
13 with Ms. Lamonte did you start drafting your search warrant  
14 on that occasion? Identification?

15 A. Hours probably, I think, you know, we went  
16 out there. We had to -- we went out there, checked the  
17 address, found the vehicle, made a call to SWAT, sat there  
18 for a little bit, and then, as I said, I showed that  
19 photograph to Wilson, and then I went and started my  
20 affidavit based on, I think, you know, based on because  
21 everybody had a section of what they did.

22 So I am going by some of what was going on the  
23 other line so it was probably a few hours.

24 Q. Would it be fair to say that you sent SWAT  
25 to begin recon in anticipation of the search warrant being

1 written?

2 A. Yes, I always call ahead of time and say I  
3 am applying for a search warrant.

4 Q. Okay.

5 When -- as a detective in Henderson, who do you  
6 tend to send your search warrants applications to, what  
7 Judge?

8 A. We have Judge George (phonetically) and Judge  
9 Berg (phonetically), and ideally, if they are not available,  
10 there is a Judge in Boulder City.

11 Q. Is it fair to say that the majority of them  
12 go to Burke or George, don't they?

13 A. Yes.

14 Q. This one went to George, correct?

15 A. I believe so.

16 Q. You were confident that the search warrant  
17 was being granted, and you sent SWAT out because George  
18 always grants your search warrant requests, doesn't he?

19 A. I have never had any declined. So, you  
20 know, that's not to say he won't.

21 Q. We are not talking about won't. He never  
22 has?

23 A. No.

24 MS. LUZAICH: Well, objection to the form of the  
25 question. I think Detective Weske hasn't had one declined,

1 but he certainly can't testify whether anyone else has.

2 THE COURT: I think that is probably correct.

3 At some time, you don't know whether he has declined anybody  
4 else's applications, do you? You just never had one that's  
5 been declined?

6 THE WITNESS: Listen, I will tell you something  
7 about Judge George. He reads every piece of information on  
8 that form. You are there for a while.

9 MR. LANDIS: And I would object to that on  
10 foundation, Judge.

11 THE COURT: Overruled.

12 BY MR. LANDIS:

13 Q. When you arrived at the address to execute  
14 the search warrant, how long was SWAT in the house before  
15 you entered?

16 MS. LUZAICH: Well, that assumes facts not in  
17 evidence. He didn't enter.

18 THE COURT: Rephrase that. You may have misled  
19 what you are asking.

20 MR. LANDIS: Right.

21 Q. Is it your testimony that SWAT brought  
22 Narcus out of the house?

23 A. Yes.

24 Q. And that's before you ever entered the  
25 house?

1 A. Yes.

2 Q. But there came a time that you entered  
3 the house?

4 A. Yes.

5 Q. When was that?

6 A. After our interview. I brought him back  
7 in there. We sat him on a chair, and someone sat and  
8 watched, and I gave dad the search warrant, and then I  
9 went back in the back bedroom.

10 Q. Who cuffed Narcus?

11 A. Well, I believe SWAT because he had zip  
12 cuffs on. We were trying to actually get those off but  
13 I don't carry cutters.

14 Q. Did you have any communications with SWAT  
15 about what occurred before you took custody of Narcus --?

16 A. Oh, they knew the case, yes.

17 Q. That's not what I am asking.

18 Did you have any conversations between -- with  
19 SWAT about what occurred in the house before you took  
20 possession of Narcus?

21 A. No.

22 Q. So you have no idea what may have been said  
23 between SWAT and Narcus?

24 A. No.

25 Q. Or what may have been said between SWAT



1 and members of Narcus's family?

2 A. No.

3 Q. Where did this interview take place?

4 A. Outside in the car. I believe it was concluded  
5 in the car.

6 Q. A police issue car?

7 A. Yes.

8 MR. LANDIS: The Court's indulgence.

9 THE COURT: Sure.

10 MR. LANDIS: With the Court's permission, I will  
11 hand the torch to Mr. Banks for a few questions.

12 THE COURT: Go ahead.

13 MR. BANKS: Thank you.

14 CROSS-EXAMINATION

15 BY MR. BANKS:

16 Q. Thank you. Detective Weske?

17 A. Oh yes.

18 Q. How do you do, I'm Jeff Banks?

19 A. I'm fine, thank you.

20 Q. I believe, and I want to be fair, and I  
21 think it's actually your words in the interview with Mr.  
22 Wesley, did you explain to him that he was not free to  
23 leave, is that -- is that fair?

24 A. Yes, I believe so.

25 Q. Okay. And I want to take you back to your

1 direct with Ms. Luzaich. I wrote it down. I don't want  
2 to misquote you, but she had asked you about some rights  
3 that were maybe relayed to Mr. Wesley?

4 A. Yes.

5 Q. And I think you said:

6 "I believe I was handed a card..."

7 When it came down to where when you were recalling  
8 the Miranda rights, is that fair?

9 A. I do it both ways, I mean, I don't carry a  
10 card with me.

11 Q. Okay.

12 A. I don't have a card with me. Sometimes it  
13 is handed to me, a card.

14 Q. Okay. And when somebody is not free to leave,  
15 it is very important at that point that those rights are  
16 communicated to that person, is that fair?

17 A. Before you do an interrogation, yes, sir.

18 Q. Okay.

19 And when somebody is not free to leave, it is  
20 of utmost importance that those rights are communicated  
21 to that person, is that fair?

22 A. It depends on the situation.

23 Q. Okay. And I am talking about the situation  
24 where someone is not free to leave, in a situation where  
25 somebody is not free to leave, it is of utmost importance

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \* \*

NARCUS WESLEY,

S.C. CASE NO. 57473

Appellant,

Electronically Filed  
Sep 22 2011 03:02 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

vs.

THE STATE OF NEVADA,

Respondent.

APPEAL FROM DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS  
(POST-CONVICTION)  
EIGHTH JUDICIAL DISTRICT COURT  
THE HONORABLE JUDGE JAMES BIXLER, PRESIDING

~~~~~  
APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME II  
~~~~~

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IN THE SUPREME COURT OF NEVADA

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Appellant,

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THE STATE OF NEVADA

Respondent.

APPELLANT'S APPENDIX

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**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on September \_\_\_, 2011. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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