

1 what Marcus Wesley did, what he had control over, and what  
2 he had the power to control.

3 It's not fair to do anything else though Delarian  
4 Wilson chose not to be here.

5 The bottom line is:

6 Marcus Wesley was forced into a scenario, and he  
7 did the best he could with the tools he had, and that's the  
8 bottom line.

9 Now, by saying that, please understand, this table  
10 here is not denying what happened that night.

11 As the State said, and they are correct, Danielle  
12 Browning was raped. Many of these kids were robbed. One  
13 of those kids was kidnapped. They were terrorized for an  
14 upwards of two hours. They had guns waved in their faces.

15 I'm not disputing that. Mr. Banks is not disputing  
16 that, and Mr. Wesley is not disputing that.

17 That should not happen to anybody. That's shameful,  
18 it's despicable, and it's deplorable. No one should have to  
19 go through that in their lives.

20 Please don't take anything that comes from this  
21 table during this trial from myself or from Mr. Banks to  
22 show a lack of sympathy because I promise you in our hearts  
23 we have the same sympathy and compassion for these victims  
24 as does the State and as will each one of you when you hear  
25 this case.

1 But this isn't about feeling sympathy.

2 Your job, your duty here today as jurors, and  
3 your duties next week as jurors, is to separate your sympathy  
4 from the compassion you will feel, and I promise you you  
5 will from the real issue, and the real issue, the only  
6 issue is the responsibility of one Marcus Wesley.

7 People say, people often say that criminal law  
8 attorneys or especially criminal defense attorneys get numb.

9 Well, I promise you, not here, and not in this  
10 case.

11 Marcus Wesley is not responsible for what happened  
12 that night.

13 Marcus Wesley did not have a gun in his possession  
14 at any time that night, and you will hear that evidence.

15 I assure you when this case is over, you will  
16 realize the truth, and the truth is Delarian Wilson is the  
17 one who is responsible for what happened. Delarian Wilson  
18 is the monster.

19 What the State chose not to point out to you  
20 throughout their entire opening statement, what you will  
21 hear from each one of these witnesses when they take this  
22 witness stand, Delarian Wilson was in control. Delarian  
23 Wilson was the main guy.

24 Marcus Wesley was nervous, apprehensive, hesitant,  
25 kind of standing off in the background.

1 I ask you to ask yourselves during this trial,  
2 why didn't the State mention that during opening statement?

3 Do you think they would have taken that same  
4 approach if Delarian Wilson was sitting on trial? Do not  
5 do what they want you to do, which is to lump these two men  
6 together because they are not the same.

7 Narcus Wesley was placed in a bad situation by  
8 Delarian Wilson, and he did the best he could.

9 Here is what the evidence will show in this case.

10 Narcus Wesley, who lives here in Las Vegas, unlike  
11 Delarian Wilson, was at home with his father working.

12 Delarian, who he used to play football with, gave  
13 him a phone call and said, hey, I'm in town, if you want  
14 to catch up and maybe go out. Narcus asked his father for  
15 permission, and then set out to meet Delarian.

16 They met up, they talked what they wanted to do,  
17 and like a lot of young men do, they decided to go and try  
18 and buy some marijuana.

19 Delarian said, I know a guy, and Narcus said, all  
20 right. So they go to this house that we have heard about,  
21 the house on Great Dane, and when they walked up to that  
22 door, it was Narcus's sole intent to go there and buy  
23 marijuana. That was a choice he made.

24 He had no idea that Delarian Wilson intended to  
25 go into that house and rob those kids. That's a choice that

1 Delarian Wilson made.

2           Narcus Wesley was just as shocked as those six  
3 kids were when that door was opened, and Delarian Wilson  
4 chose to take out a firearm.

5           He did not choose that scenario. He had no control  
6 over that scenario.

7           At that point, when Delarian had a gun, when  
8 Delarian was barking out orders, when Delarian was ordering  
9 these kids to the ground, Narcus just stood there. He was  
10 shocked. He did not even know what was going on.

11           You will hear from each one of these kids. Narcus  
12 wasn't ordering these kids to the ground. Narcus wasn't  
13 asking for wallets. Narcus wasn't asking for pin numbers.  
14 Narcus didn't ask for the ARM. He just kind of stood there.  
15 He didn't know what was going on. He was in shock.

16           That was Delarian Wilson's choice. That was  
17 Delarian Wilson's choice, and it was Delarian Wilson's  
18 choice alone.

19           Narcus Wesley didn't have a say. He did the best  
20 he could in that scenario, and the evidence will show you  
21 that.

22           Narcus Wesley didn't want to rob these people.  
23 Narcus Wesley did not rob these people.

24           What the evidence will show you in this case, and  
25 I am confident that it will, is that Narcus Wesley did not

1 want these crimes to occur. That was not his choice.

2 At the end of this trial, all we ask you to do  
3 is hold Narcus Wesley responsible for what he did, nothing  
4 more, and certainly nothing less.

5 Thank you.

6 THE COURT: Thank you, counsel.

7 Before we start taking evidence, we are going  
8 to take a couple minute break. So it's about 20 after 10,  
9 we are going to reconvene at say, 10:30.

10 So during the next 10 minute break, for the  
11 umpteenth time already, I am going to admonish members of  
12 the jury, I don't want you to talk, or converse, or discuss  
13 anything having to do with this trial with anyone, including  
14 each other.

15 I don't want you to watch, listen or read any  
16 reports or commentaries about anything having to do with  
17 this trial, or any persons having anything to do with this  
18 trial through any medium, including television, radio,  
19 newspapers, or the internet.

20 Don't form or express any opinions on anything  
21 having to do with this trial until such time as this case  
22 has been finally submitted to you.

23 Ladies and gentlemen, go with Joe. You have got  
24 10 minutes.

25 (After the jury and alternates were excused,

1 the following proceedings were had outside the presence  
2 of the jury, and alternates:)

3 THE COURT: All right. We are off the record.

4 (Discussion off the record.)

5 THE COURT: I will address that about the --

6 MR. LANDIS: I'll get it done.

7 THE COURT: Well, I am going to tell him.

8 MR. LANDIS: Okay, I'm going to admonish him,  
9 that's fine.

10 THE COURT: We are going to have a little discussion  
11 with him, and I am going to tell you right now, I am going  
12 to tell him, as he sits there, and I am watching him, you're  
13 not. I am. (Referring to Narvies Wesley, father of  
14 Defendant.) He sits there, and he becomes very animated  
15 about what everybody is saying, and I am going to tell him  
16 that if he is going to sit in this courtroom during the  
17 course of this trial, the next time I see him moving his  
18 head in any fashion, I am kicking him out of here.

19 MS. KOHLINS: Well, Judge, you know, Mr. Banks  
20 and Mr. Landis weren't there at the prelim, but it was  
21 beyond difficult.

22 They were, you know, mad dogging him, kind of  
23 staring down the victims, a lot of disruption, and I am  
24 being candid. I'm not trying to start anything, but they  
25 were really problematic.

1 THE COURT: And I, you know, I am going to give  
2 him a chance, if he wants to sit in here, I am going to  
3 give him a chance, but I am going to tell him what the  
4 ground rules are, and he is going to sit there and listen,  
5 and he is going to listen.

6 And he is going to listen without doing any  
7 type of animation whatsoever. And if I see him moving  
8 his head because he is back there and doing, you guys  
9 aren't watching, you can't see him, but I'm telling you,  
10 he is going to get one chance, and the first time I see  
11 him moving his head, agreeing, nodding, putting his head,  
12 doing anything, I am going to tell him, he is out of here,  
13 okay?

14 MR. LANDIS: Yes, Your Honor.

15 (After a short recess, the following proceedings  
16 were had outside the presence of the jury, and alternates:)

17 THE BAILIFF: Remain seated. Court is back in  
18 session.

19 MS. KOLLINS: Do we need to show you guys these  
20 one at a time?

21 MR. BANKS: No.

22 THE BAILIFF: So, are you going to put these  
23 up on that overhead?

24 MS. LUZAICH: I will.

25 THE COURT: Get them set up.

1 MS. LUZAICH: Oh yeah, yeah.

2 THE BAILIFF: Are you going to use this one,  
3 too?

4 THE COURT: Go ahead.

5 MS. LUZAICH: No, I am not going to use this.  
6 I won't use that again until closing.

7 MS. KOLLINS: And if I am going to need a screen  
8 for closing. Is that something that I get from you guys,  
9 or do I need to arrange it from my office?

10 THE COURT: No. A screen in what -- what are  
11 you talking about?

12 MS. KOLLINS: Well, like a monitor for closing.

13 THE COURT: Are you going to use this, I mean,  
14 are you going to use your laptop?

15 MS. KOLLINS: I am going to have a power point  
16 presentation. I need a monitor for them here so I need it  
17 to put an exhibit on that.

18 THE COURT: Are you sure you can't -- can you use  
19 this?

20 MS. KOLLINS: Well, I can, but then the jury is  
21 going to be looking over here and not listening to me.

22 THE BAILIFF: We can order one.

23 THE COURT: We can schedule a screen. We get  
24 that from Javs, don't we?

25 THE BAILIFF: Yeah.



1 MS. LUZAICH: Yes, Judge, I need to order one.

2 THE COURT: Okay.

3 THE BAILIFF: You don't need it right now so lay  
4 it right there.

5 MS. LUZAICH: Not right away though.

6 THE BAILIFF: Okay. I will just -- you just  
7 pull it out here.

8 THE COURT: And it is all plugged in, Joe?

9 THE BAILIFF: It's all set up.

10 THE COURT: But you won't be using laptops in  
11 addition to that?

12 MS. KOLLINS: Not today, but for closing, yes.  
13 But I always set that up here.

14 MS. LUZAICH: Although I have a 911 call. I  
15 kind of have to listen to it yet, and, therefore, the  
16 Defense has not either. It would not be this morning.  
17 It will be this afternoon. I have a laptop here with  
18 me so that we can listen to it when we break for lunch.

19 THE COURT: Okay.

20 MS. LUZAICH: And decide if we are going to  
21 use it, and if so, play it, and so, but that won't be  
22 until the afternoon witness.

23 THE COURT: Okay, all right.

24 We are on the record in the State of Nevada v.  
25 Marcus Wesley.

1 For the record, Mr. Wesley, that's you, correct?  
2 Is that right?

3 MR. NARVIEZ WESLEY: Yes.

4 THE COURT: Okay. Throughout the course of the  
5 trial, at least during the State's portion of the trial,  
6 I am going to ask that you guys and families sit over on  
7 the right side as you come in rather than the left side  
8 only because there is a line of sight issue for the  
9 witnesses.

10 MR. NARVIEZ WESLEY: Okay.

11 THE COURT: So one other thing I want to say,  
12 Mr. Wesley.

13 I watched you so far during the opening arguments,  
14 and you are certainly welcome to be here and listen to  
15 this trial. This applies to you, and everybody.

16 But you are not allowed to be animated in any  
17 manner whatsoever. I am only going to tell you this once.

18 MR. NARVIEZ WESLEY: Yes.

19 THE COURT: Because these folks, these attorneys,  
20 have their back to you but I don't.

21 If I see you nodding your head, shaking your head,  
22 making any kind of hand motions, gestures, or if you are  
23 animated in any manner, or in any respect, I will exclude  
24 you from the courtroom.

25 So, welcome. Listen to the trial. But that's it.

1 Are we clear?

2 MR. NARVIEZ WESLEY: Yes.

3 THE COURT: All right. Anything we need to address?

4 MS. KOLLINS: No, Your Honor.

5 THE COURT: All right. Bring in the jury.

6 We anticipate like noonish, the break from like  
7 noon to 1:30.

8 MS. LUZAICH: Ish? Yeah, we have two witnesses  
9 here this morning. I mean it would be lovely if we could  
10 get through both of them before we broke for lunch. I just  
11 have no idea how long they are going to take.

12 THE COURT: If we are getting close, and it means  
13 we need to stay until 12:30, that's fine, I mean, we are  
14 not on any kind of absolute schedule.

15 MS. LUZAICH: Okay.

16 THE COURT: We will try to accommodate everybody  
17 the best we can.

18 MS. LUZAICH: Okay, thank you.

19 \*\*\*\*\*

20 (Whereupon, the following proceedings were had  
21 in the presence of the jury, and alternates:)

22 \*\*\*\*\*

23 THE BAILIFF: Please be seated.

24 THE COURT: Will the parties stipulate to the  
25 presence of the jury?

1 MS. LUZAICH: Yes, sir.

2 MR. LANDIS: Yes, Judge.

3 THE COURT: All right. The State may call your  
4 first witness.

5 MS. LUZAICH: The State calls Danielle Browning.

6 THE CLERK: Come forward, please.

7 Take the witness stand, remain standing, and  
8 raise your right hand. Raise your right hand, please.  
9 Whereupon,

10 DANIELLE BROWNING,  
11 called as a witness herein by the State, having been first  
12 duly sworn, was examined and testified as follows:

13 THE CLERK: Thank you very much.

14 You may be seated, and then state your name,  
15 spell your first and last name for us.

16 THE WITNESS: Danielle Browning, D-a-n-i-e-l-l-e  
17 B-r-o-w-n-i-n-g.

18 THE CLERK: Thank you.

19 THE COURT: Go ahead.

20 DIRECT EXAMINATION

21 BY MS. LUZAICH:

22 Q. Good morning, Danielle. How are you doing?

23 A. Pretty good. How are you?

24 Q. I'm fine, thanks. Are you a little nervous?

25 A. Yes.

1 Q. Okay, speak up. Danielle, do you live down  
2 here in Las Vegas?

3 A. Yes.

4 Q. All the time?

5 A. No.

6 Q. Do you kind of move commute periodically  
7 from somewhere else?

8 A. Yes.

9 Q. Up north?

10 A. Yes.

11 Q. Okay.

12 Do you live up north with your parents when you  
13 are up there?

14 A. Yes.

15 Q. And when you come down to stay down here,  
16 who do you come down to be with?

17 A. Justin.

18 Q. Who is Justin to you?

19 A. My boyfriend.

20 Q. And what is Justin's last name?

21 A. Richardson.

22 Q. And how long have you and Justin been  
23 together?

24 A. Almost two years.

25 Q. Okay. Were you and Justin together, therefore,

1 on February 18, of 2007?

2 A. Yes.

3 Q. And that weekend, were you down here visiting  
4 with Justin?

5 A. Yes.

6 Q. Now, back in like February, of '07, did you  
7 come down here more often or less often than you do now?

8 A. Less often then.

9 Q. Okay. And you come here more often now why?

10 A. Because I partially live with him and because  
11 we are having a baby.

12 Q. Okay. Back in February, of 2007, did you  
13 work?

14 A. Yes, part-time.

15 Q. Up north?

16 A. Yes.

17 Q. And are you working now?

18 A. No.

19 Q. Because of the baby?

20 A. Yes.

21 Q. Okay. Does Justin work?

22 A. Yes.

23 Q. What does Justin do?

24 A. He is a driver.

25 Q. For?

- 1 A. For UPS.
- 2 Q. Back in February, of 2007, where did Justin
- 3 live?
- 4 A. Great Dane. We lived in a house.
- 5 Q. And in that house, did he have roommates?
- 6 A. Yes.
- 7 Q. Who were his roommates?
- 8 A. David, Ryan and Justin Foucault.
- 9 Q. Okay, David?
- 10 A. Motchinbaucher.
- 11 Q. Can you spell that?
- 12 A. No.
- 13 Q. Okay. You say Justin Foucault?
- 14 A. Yes.
- 15 Q. Ryan, what's his last name?
- 16 A. Tognotti.
- 17 Q. And he is going to come here later, right?
- 18 A. Yes.
- 19 Q. And Justin Foucault?
- 20 A. Uh-huh.
- 21 Q. Okay. Is that a yes?
- 22 A. Yes.
- 23 Q. Back in February, of 2007, were you down
- 24 here Allstar Weekend?
- 25 A. Yes.

1 Q. And when was it that you were planning on  
2 going back?

3 A. It would be through the end of that week  
4 so it was about four days after that.

5 Q. Okay. So on Sunday, February 18, 2007,  
6 were you and Justin at his home in the evening?

7 A. Yes.

8 Q. And was Justin getting ready to go to work  
9 Monday morning?

10 A. Yes.

11 Q. But you were going to stay here, correct?

12 A. Yes.

13 Q. Do you know about what time it was that  
14 you guys went to bed that night?

15 A. Maybe around eight or nine. It was really  
16 early because he had to go to work that night, two to  
17 three o'clock in the morning.

18 Q. When you guys went to bed, was anybody  
19 else in the home?

20 A. Yes.

21 Q. Who was home?

22 A. Ryan Tognotti, Justin Foucault, Ryan's  
23 little brother, Clint, and Clint spent the night with  
24 us.

25 Q. And that house that you guys were -- or



1 that Justin was living in, is that a two story house?

2 A. Yes.

3 Q. Where in the house was Justin's bedroom?

4 A. The bottom story, right next to the entrance.

5 Q. Okay. And when you walk in the door, is  
6 there like a little hallway to go down there?

7 A. Yes.

8 Q. When you guys went to bed, what were Ryan,  
9 Clint, Justin and Aitor doing, do you remember?

10 A. Watching a movie.

11 Q. Okay. And where were they watching the  
12 movie?

13 A. In the living room.

14 Q. When you went into the bedroom, do you  
15 believe you guys actually fell asleep?

16 A. Yes.

17 Q. Okay. Did something happen that night?

18 A. Yes.

19 Q. Can you describe for me what happened?

20 A. We got a knock on the door, on the bedroom  
21 door, and we didn't answer it at first, and then we said,  
22 come in because we thought it was one of his roommates.

23 Someone came into the room and kept saying  
24 Justin's name, and we were just waking up, so Justin  
25 went to get up, and he didn't know who it was, and he

1 couldn't see because he wears contacts, and then the guy  
2 came in, and he told us to -- he told Justin, he asked  
3 who I was.

4 Justin said, his girlfriend.

5 He asked Justin to stand up, and put our hands  
6 on our heads, and walk to the front room.

7 Q. Can you describe the guy that came into  
8 the bedroom?

9 A. Yes.

10 Q. Describe him for me?

11 A. He was kind of short, stocky. He was African  
12 American.

13 Q. Did he have anything with him?

14 A. Yeah, he had a gun.

15 Q. Okay.

16 Now, when he came into Justin's bedroom, since  
17 you guys were sleeping, was it light or dark?

18 A. It was dark.

19 Q. Was the door opened, was it opened and  
20 bringing in at least enough light that you could see the  
21 person and the gun?

22 A. Yes.

23 Q. As you guys got out of bed, were you  
24 dressed?

25 A. Yes.

1 Q. And do you know what you were wearing?

2 A. Yes.

3 Q. What were you wearing?

4 A. I was wearing a pair of pajamas on and a  
5 tank top.

6 Q. And was Justin also dressed?

7 A. He had a tank top on and his boxer shorts.

8 Q. And did you do what the guy with the gun  
9 told you to do?

10 A. Yes.

11 Q. And where did you go?

12 A. We went to the living room.

13 He kept telling us to put our heads down, so we  
14 had our head down, and when we got out there, the rest of  
15 the boys were out there, and they were laying on the ground,  
16 and he told us to get down with them.

17 Q. Okay. Where on the ground were they?  
18 Describe the area.

19 A. As you walked into the front room, there  
20 is a staircase, and then there is carpet, and then there  
21 is wood panel. We were all on the carpet in front of  
22 the TV in there.

23 Q. Okay. You know, Danielle, I am going to  
24 show you some photographs marked State's Proposed Exhibits  
25 1 through 20.

1 Can you leaf through them to just tell me if  
2 you recognize them?

3 For the record, State's Proposed 20 have been  
4 shown to counsel.

5 A. Yes.

6 Q. Are State's Proposed Exhibits 1 to 20  
7 photographs depicting the house that you are describing?

8 A. Yes.

9 MS. LUZAICH: Move into evidence.

10 Q. Well, do they fairly and accurately depict  
11 the house as it looked that night?

12 A. Pardon?

13 Q. Do they fairly and accurately depict the  
14 house as it looked that night?

15 A. Yes.

16 MS. LUZAICH: Move into evidence.

17 MR. LANDIS: No objection.

18 THE CLERK: Is that all of them, 1 through 20?

19 MS. LUZAICH: Yes.

20 THE COURT: 1 through 20 is admitted.

21 MS. LUZAICH: Thank you.

22 Q. Now, I am going to show you on the monitor,  
23 State's Exhibit 3. Is the one in front of you on?

24 A. Yes.

25 Q. Okay. Is this the area that you just

1 described to me?

2 THE COURT: Wait a minute. We don't have a  
3 separate monitor, so the jurors, when you can look at the  
4 monitor over here across the room, but if you want to turn  
5 and look at that up here, it might be a little closer.

6 MS. LUZAICH: And they both show the same thing.

7 THE COURT: Right, exactly.

8 MS. LUZAICH: For the record.

9 Q. State's Exhibit 3, does this show the area  
10 that you are talking about?

11 A. Yes.

12 Q. And that would be the carpet inbetween,  
13 just for the record, the TV, and the coffee table like  
14 thing?

15 A. Yes.

16 Q. That's where everybody was laying?

17 A. Yes.

18 Q. Okay.

19 You got there, or as you walked down the hall,  
20 showing you State's Exhibit 5, is that the hallway that  
21 you were talking about, and then the door that leads  
22 to Justin's room?

23 A. Yeah, the double door is his room.

24 Q. Okay. So you walk down the hallway,  
25 correct?

1 A. Yes.

2 Q. And when you walk down the hallway, where  
3 was the guy with the gun that came into the bedroom?

4 A. He was behind us when we were walking  
5 down.

6 Q. Okay. And you had your hands up doing  
7 whatever it was that he told you?

8 A. Yes.

9 Q. Okay. Now, when you got to, showing you  
10 again State's Exhibit 3, when you got to the front room,  
11 you said you saw the four guys laying face down, the  
12 friends. Was there anybody else in that room?

13 A. Yeah, there was another guy.

14 Q. Can you describe the other guy that you  
15 saw, describe him for me.

16 A. He was taller; skinnier, and he was African  
17 American.

18 Q. And could you tell if he had anything with  
19 him?

20 A. Yes.

21 Q. What did he have with him?

22 A. A gun.

23 Q. How could you tell that he had a gun?

24 A. Because he kept saying I have a gun right  
25 here, don't move around, and he always had his hand up

1 like he had a gun.

2 Q. When you say he had his hand up like he had  
3 a gun, can you describe what you mean by that?

4 A. He was always holding his hand up.

5 Q. Can you show us with your hands what you  
6 mean by that?

7 A. Yeah, he had his hand out like this.

8 Q. For the record, your right arm is extended  
9 with your fingers being down, with your thumb to the side,  
10 correct?

11 A. Uh-huh.

12 Q. Yes?

13 A. Yes.

14 Q. He has a yes button, a no button, but no  
15 uh-huh button.

16 Okay. So the taller, thinner one also had a  
17 gun, and he had in his hands would you say?

18 A. Yes.

19 Q. Okay. When you got out -- and oh, I'm  
20 sorry, when the four guys were laying on the ground,  
21 as you came out, where was the taller, thinner guy with  
22 the gun?

23 A. He was standing more not by the right  
24 side, he was on this side of the coffee table like facing  
25 towards me.

1 Q. Do you know what if you touch the screen  
2 and put an X, it will show up, in theory, yeah.

3 A. (Witness complies with above request.).

4 Q. Can you put an X, just like move your hand  
5 so that we can see.

6 Okay. So are you describing for the record  
7 the bottom of the coffee table closer to the bottom of  
8 the photograph?

9 A. Yeah, because I am -- that was more where  
10 the front door was.

11 Q. Okay. What was he doing when you got  
12 there?

13 A. Just standing there.

14 Q. Now, I am showing you State's Exhibit 2.

15 THE COURT: Just touch the screen on the right-hand  
16 corner. That will get it out.

17 BY MS. LUZAICH:

18 Q. If you touch the bottom right corner, it  
19 should erase.

20 THE COURT: Touch that right corner.

21 BY MS. LUZAICH:

22 Q. Isn't technology great? I'm sorry.

23 Showing you State's Exhibit 2, does this depict  
24 the front door?

25 A. Yes.



1 Q. And the wooden floor that is the hallway?

2 A. Yes.

3 Q. And where the wooden floor meets the carpet,  
4 correct?

5 A. Yes.

6 Q. And I am making a record about everything  
7 you say, I'm sorry.

8 And then the coffee table where you showed that  
9 he was standing there, the taller thinner one, the guy?

10 A. Yes.

11 Q. And just so that everybody is clear, when  
12 you put an X again on there, on the screen?

13 A. Yes.

14 Q. Put an X on the screen.

15 A. (Witness complies with above request.)

16 Q. Okay. So he was standing on the wooden  
17 part of the floor?

18 A. Somewhere right there, I mean, the carpet  
19 area is not a very big area.

20 Q. Okay. But somewhere between the door and  
21 the coffee table?

22 A. Yeah, he wasn't behind the table.

23 Q. Okay. I am going back to State's Exhibit  
24 3 again, just for the record, you can touch the bottom  
25 right of the screen? ,

1 A. (Witness complies with above request.)

2 Q. Thank you.

3 So you get to this area, (indicating) and what  
4 do you and Justin do?

5 A. Get down in a circle with the rest of the  
6 boys.

7 Q. And you are saying that the shorter but  
8 heavier guy told you to do that?

9 A. Uh-huh.

10 Q. Is that a "yes"?

11 A. Yes.

12 Q. Okay.

13 Once you and Justin lay down, and there were  
14 six of you on the floor, what happened?

15 A. I guess they told him I need the other  
16 guy, they were for someone else that lived there  
17 previously.

18 Q. Did you personally ever hear a name  
19 mentioned?

20 A. Yeah.

21 Q. The person who previously lived there?

22 A. Yeah, afterward, after we were already out  
23 there for awhile.

24 Q. Okay, we will get there then. Okay, so  
25 what happened?

1           A.    The boys were giving them the cell phones,  
2           and the wallets, and everything else. They asked us if  
3           we had any money, and we didn't. So we told them, no.

4           Q.    When you say, "asked us", who is "us"?

5           A.    Me and Justin because they already asked --  
6           he already asked the boys previously before that, before  
7           we got there if they had any money.

8           We told them no, and he started talking to the  
9           other boys about their pin numbers, and stuff like that,  
10          because they wanted money. That's what they said.

11          Q.    Right. And what did the boys -- did the  
12          boys give up their pin numbers?

13          A.    Yes, Ryan Tognotti and Justin Foucault  
14          gave theirs because they were the only ones who had money  
15          in the account.

16          Q.    Okay. And what happened after they gave  
17          up their pin numbers?

18          A.    The stockier guy took Ryan to an ATM.

19          Q.    Did Ryan have to go somewhere to get his  
20          keys?

21          A.    Yes.

22          Q.    Where did he go?

23          A.    To his bedroom.

24          Q.    Where is Ryan's bedroom in the house?

25          A.    It would -- I don't know if they were --

1 when you showed the picture of the hallway to Justin's  
2 room, there is a little table there, and you can see that  
3 his keys were sitting on that table.

4 Q. Okay.

5 A. Because that's where all the boys put all  
6 their stuff down.

7 Q. Generally?

8 A. Yes.

9 Q. Okay. Did -- so did somebody actually leave  
10 the house?

11 A. Yes.

12 Q. Who left the house?

13 A. Ryan Tognotti and the stockier guy.

14 Q. Okay, the shorter, stockier one?

15 A. Uh-huh.

16 Q. Now, did -- is that a "yes"?

17 A. Yes.

18 Q. Did either one of them, the shorter stockier  
19 one or the taller, thinner one say anything other than what  
20 are your pin numbers before the shorter, stockier one left  
21 with Ryan?

22 A. I don't recall.

23 Q. Did they say -- do you remember anything  
24 said about what would happen while they were gone, or what  
25 you should do while they were gone?

1           A.    Yeah, the skinnier guy was going to stay  
2 there with us just to make sure that we didn't leave or  
3 call the cops, or do anything while they had Ryan.

4           He just said they would be gone for a little  
5 bit, and if we cooperate that everything will be okay.

6           Q.    Okay. Did the shorter, stockier guy actually  
7 leave with Ryan?

8           A.    Yes.

9           Q.    And what happened while they were gone?

10          A.    We basically just laid there, and he wasn't  
11 really talking to us that much.

12          He asked us where the ATM was because it was  
13 taking them a little bit to get the money, and he asked  
14 where the ATM was, and we told him -- I didn't know where  
15 it was. I didn't know my way around town.

16          Q.    Okay.

17          Did the taller, thinner one make any movements  
18 while you were there?

19          A.    No, he just stood above us, kind of pacing.

20          Q.    Okay. He didn't -- or did he let you just  
21 get up and walk around the house?

22          A.    No.

23          Q.    Did he let you go lay down?

24          A.    No.

25          Q.    Did he let you call the police?

1 A. No, we basically had to stay on the ground  
2 with our hands on our head on the carpet the whole time.

3 Q. Okay. Did he call the police?

4 A. No.

5 Q. Did he tell you, I'm sorry, I can't believe  
6 this is happening?

7 A. No.

8 Q. Did he have the gun out while you were laying  
9 on the ground?

10 A. Yes, I believe so.

11 Q. Do you know how long, about, Ryan and the  
12 other guy were gone?

13 A. About 20 minutes. It wasn't that long.

14 Q. When they came back, what happened?

15 A. Ryan got back down on the ground because  
16 the guy said, he told Ryan we have to get back down over  
17 and get back down on the ground. They told us that they  
18 got the money, and so the stockier guy came and stood  
19 over me and Justin, and he said, we are 90 percent of  
20 the way done.

21 Q. And then what did he do?

22 A. He told us the last 10 percent was up to  
23 me.

24 Q. And what happened?

25 A. He told me that basically they wanted me

1 to perform oral sex on Justin before they would leave.

2 So we did that.

3 And then they made Justin turn over on his back  
4 while I was above him. They made Justin put a pillow over  
5 his face so he couldn't look up to see any of them because  
6 my back was turned towards them, and they made me do that.

7 They made Justin perform oral sex on me.

8 They told us basically to get undressed, and so  
9 we did.

10 The stockier guy took my clothes, and he kind of  
11 threw them behind him.

12 They told us that they wanted us to have sex in  
13 front of them, that they wanted to see it before they left,  
14 or just, I don't know, and then we tried doing it, but  
15 Justin couldn't get hard because he was nervous. The rest  
16 of the boys were just kind of laying right next to us.

17 Q. Now, when you say that they were telling  
18 us to do all these things, were they both speaking or was  
19 one?

20 A. It was both of them, but the stockier guy  
21 was the main one. He was the one that took over.

22 Q. When they were telling you to do these  
23 things, were they saying what, if anything, would happen  
24 if you did not do it?

25 A. Yes.

1 Q. What did they say?

2 A. They said that they would shoot us if we  
3 didn't cooperate or if we didn't do what they were telling  
4 us to do..

5 Q. Were the guns visible while this was happening?

6 A. Not to me. I had my back turned towards  
7 them.

8 Q. Okay.

9 When you say that they made you perform oral sex  
10 on Justin does that mean that a part of his body entered  
11 a part of your body?

12 A. Yes.

13 Q. What part of his body?

14 A. His penis.

15 Q. Into what part of your body?

16 A. My vagina.

17 Q. And when you say that they made Justin  
18 perform oral sex on you, did a part of his body touch a  
19 part of your body?

20 A. Yes.

21 Q. What part of his body?

22 A. His penis.

23 Q. Touched what part of your body?

24 A. My vagina.

25 Q. Now, did you want that to happen at that



1 time under these circumstances?

2 A. No.

3 Q. Did you do what they wanted?

4 A. Yes.

5 Q. Why did you do what they wanted?

6 A. I was scared.

7 Q. Were you afraid? What were you afraid would  
8 happen if you didn't?

9 A. They would shoot us.

10 Q. When you said that they put a pillow over  
11 Justin's head, could you tell who it was who put the pillow  
12 there?

13 A. Yeah, the stockier guy.

14 Q. And could you see him physically when he  
15 did that?

16 A. He just kind of -- because the pillow was  
17 just on the floor, they just kind of threw it on top of  
18 Justin, and told him to put it on his face.

19 Q. You said that you tried to get Justin hard  
20 but he was not able to get hard so what happened?

21 A. They started to get very nervous. The  
22 stockier guy was getting kind of impatient, he was getting  
23 mad.

24 The taller man said, if he can't get it up that  
25 they would do it, or one of the other boys would have to

1 do it.

2 He picked Ryan out next, and he told Ryan to get  
3 hard so me and Ryan could have sex.

4 Q. When you say he told Ryan to get hard, did  
5 he tell him how to do it?

6 A. Yeah, he handed him a bottle of lotion.

7 Q. When he told Ryan to do that, and handed him  
8 the bottle, could you tell what position Ryan was in?

9 A. Yes, he was in the same position as Justin.  
10 They made him turn over on his back, and then they told  
11 him.

12 Q. And could you tell whether Ryan did what he  
13 was told to do?

14 A. And Ryan couldn't either.

15 Q. And then what happened?

16 A. And then Ryan couldn't do that, and then  
17 they were getting really impatient at that point, and they  
18 were just saying that none of them could do it, that they  
19 could do it so --

20 Q. Now, when you say "they were saying if  
21 none of them could do it, that they could do it," who said  
22 that?

23 A. Both of them. They were both just egging  
24 him on.

25 Q. Okay. What happened next?

1           A.    After Ryan couldn't do anything, they told  
2 him to turn back over: At that point, I was over by Justin  
3 again.

4           Q.    Were you dressed or undressed?

5           A.    Undressed.

6           Q.    Still?

7           A.    Yes.

8           Q.    When you say you were over by Justin, were  
9 you laying down on the ground by Justin?

10          A.    Yes.

11          Q.    With your head down?

12          A.    Yes.

13          Q.    Was everybody by now with their head down?

14          A.    Yes.

15          Q.    Then what happened?

16          A.    And then they told me to get up and sit on  
17 the staircase.

18          Q.    Who told you to get up and sit on the  
19 staircase?

20          A.    The stockier guy.

21          Q.    Did you get up and sit on the staircase?

22          A.    Yes.

23          Q.    And showing you and going back to State's  
24 Exhibit 2, is that the staircase that you are talking  
25 about?

1 A. Yes.

2 Q. Where on the staircase did you sit?

3 A. It was at the bottom. It was pretty close  
4 to the bottom.

5 Q. So it was something that was actually, or  
6 if you can see in that picture where you were sitting?

7 A. Yes.

8 Q. And I'm sorry to go back for a second,  
9 while you guys are on the floor, and whatever is going  
10 on between you and Justin, or Ryan, where were the two  
11 guys with the guns?

12 A. Behind. I didn't -- I didn't even go really  
13 over towards Ryan. I didn't really get up. I just kind  
14 of moved over to the other side of Justin while Ryan was  
15 doing what he was doing, and they were still behind me and  
16 Justin.

17 Q. Okay. Not like away from the door?

18 Were their backs to the door or were they facing  
19 the door?

20 A. Their backs were to the door. They were  
21 looking down at the carpet at us.

22 Q. Okay.

23 So then when you went to the stairs that we can  
24 see in State's Exhibit 2?

25 A. Uh-huh.

1 Q. Where were they?

2 A. The stockier guy was kind of close to the  
3 stairs, but he was right here (indicating), and towards  
4 the bottom, and the other guy was still kind of over here.  
5 He wasn't really close.

6 Q. Okay. For the record, you marked on the  
7 monitor with a mark at the bottom step, kind of halfway  
8 where the stockier guy was?

9 A. Uh-huh, yes.

10 Q. And then you made a mark in front door next  
11 to the kind of bluish chair where the taller, thinner guy  
12 was, is that correct?

13 A. Yes.

14 Q. Just for the record. Then what happened?

15 A. So I sat up on the stairs, and by that point,  
16 they were telling us that you know that he couldn't do  
17 anything about it, but they already gave him a chance to  
18 try to have sex with me so by then they were going to do  
19 that.

20 Q. Now, who was saying that?

21 A. The stockier guy.

22 Q. Okay. What happened?

23 A. And then I was up on the stairway. It was  
24 only for a couple of minutes, and then --

25 Q. (Interposing) Did the stockier guy touch

1 you while you were on the stairs?

2 A. Yes.

3 Q. Where did he touch you?

4 A. Just in my chest area.

5 Q. Okay.

6 A. And then the skinnier guy came over, and he  
7 was just making kind of like sexual comments like yeah, I  
8 could do it if he can't do it, all this stuff, and so by  
9 then he was walking over to the staircase, and he told me  
10 to get on the blue recliner chair.

11 Q. And is that the blue recliner chair that is  
12 depicted in the photo?

13 A. Yes.

14 Q. Okay. For the record, that's State's  
15 Exhibit 2 still.

16 When he told you, the taller, skinnier one, to  
17 get on the chair, did you?

18 A. Yes.

19 Q. What happened when you got on this chair?

20 A. Then that's when he started to touching me.

21 Q. Was he saying anything to you?

22 A. Just sexual comments like, well, your  
23 boyfriend couldn't do it, but I can do it. He asked me  
24 if I liked it.

25 Q. What did you tell him when he asked you if

1 you liked it?

2 A. No.

3 Q. What else did he say to you? Did he comment  
4 on any part of your anatomy?

5 A. Not that I remember. I was only over there  
6 for a couple of minutes, and then when he was touching me,  
7 that only went on for -- it went on for a couple of minutes  
8 I think it was.

9 Q. And where did he touch you when you say he  
10 was touching you on your body?

11 A. My vagina.

12 Q. Okay. Is your vagina the only part of your  
13 body that he touched?

14 A. Yes.

15 Q. At all?

16 A. Yes, I think so. The stockier guy was the  
17 one that was touching my chest area.

18 Q. Okay. You don't think the taller, thinner  
19 guy touched your chest?

20 A. No.

21 Q. Okay. You said he touched your vagina,  
22 the taller, thinner one?

23 A. Yes.

24 Q. How did he do that?

25 A. With his hand.

- 1 Q. Did it go inside your vagina?
- 2 A. Yes.
- 3 Q. Okay. Did he tell you to sit in any
- 4 particular position?
- 5 A. I had my legs up on a chair.
- 6 Q. And why did you have your legs up on a
- 7 chair?
- 8 A. That is basically what he told me to do.
- 9 Q. Okay. Were you nervous?
- 10 A. Yes.
- 11 Q. Did you do what they told you to do?
- 12 A. Yes.
- 13 Q. Why?
- 14 A. Because I was scared.
- 15 Q. While the second taller, thinner one was
- 16 touching you, did he have something in his hands when he
- 17 was touching you?
- 18 A. Yes.
- 19 Q. Could you tell what it was?
- 20 A. Yes.
- 21 Q. What was it?
- 22 A. The gun.
- 23 Q. Did he say anything about what would happen
- 24 if you didn't do what he wanted?
- 25 A. Basically, they were both saying that if I



1 didn't cooperate the last 10 percent they weren't going to  
2 leave, basically, if I would just cooperate, then they would  
3 leave sooner.

4 Q. Okay.

5 while the taller, thinner one was touching you,  
6 where was the other one?

7 A. Still kind of down below the staircase.

8 Q. And what was he doing?

9 A. Just keeping an eye on the boys and making  
10 sure that they didn't get off the floor.

11 Q. Did the shorter, stockier one touch your  
12 vagina at all?

13 A. No.

14 Q. How did that stop?

15 A. The stockier guy kind of was getting impatient,  
16 and it sounded like he wanted to get out of there pretty  
17 fast. So he told him to stop, and he gave me back my clothing  
18 and told me to lay back down on the carpet again. He told me  
19 to put on my pajama pants and my top.

20 Q. When the stockier one told the other to stop,  
21 did the other one -- do the other one -- what did the other  
22 one do?

23 A. He stopped.

24 Q. Okay. Did he seem perturbed that he had to  
25 stop?

1 A. Yeah. .

2 Q. Can you remember anything else that the taller,  
3 thinner one said while that was happening?

4 A. No.

5 Q. You said the stockier one gave you your clothes  
6 back, and then what?

7 A. And then I got dressed. I put my top and my  
8 bottom back on, and I laid back down on the carpet.

9 Q. Okay. So when all six of you were back on the  
10 ground together, did they do anything?

11 A. They basically -- that was it.

12 They talked to us for a little bit telling us that  
13 it wasn't our fault, that it was this other guy's fault. We  
14 were in the wrong place at the wrong time, they didn't mean  
15 for us to be there, and they are very sorry it happened to  
16 us.

17 Q. Did they mention a name?

18 A. For the other guy? The other guy's name was  
19 Grant.

20 Q. Grant?

21 A. Yes.

22 Q. Okay.

23 And did you hear them say anything about Grant,  
24 what they wanted or what they --

25 A. He owed them money.

1 Q. Okay.

2 So once they said, okay, you know, we are done,  
3 how did -- what happened when they were leaving?

4 A. Well, the boys kind of asked them if we  
5 could have our phones back.

6 I didn't know they had my phone because it was  
7 in Justin's room.

8 They wanted their phones back, you know, so they  
9 decided that he wasn't going to give them back at first,  
10 and then he said that he would put them outside after they  
11 left, and that if we called the cops, they knew where we  
12 lived, they would both come back, it was time to go, they  
13 would come back.

14 It was time to go, they would come back. It would  
15 just be easier if we didn't call the cops, and then they  
16 said that we had to count for two minutes before we could  
17 move. If we moved before the two minutes, they would shoot  
18 us.

19 Q. Okay. So did they leave?

20 A. They walked out, and then all of a sudden  
21 while we were waiting for the two minutes to be up, the  
22 stockier guy walked back through the door, and asked us  
23 who moved, but none of us had moved, and we told them no  
24 one had moved, then he said, he was just joking, and he  
25 said he put the phones outside, and then he shut the door,

1 and then we started counting again, then he shut the door,  
2 and they were off.

3 Q. Did you actually count the two minutes?

4 A. Yes.

5 Q. Okay. When the two minutes were up, what  
6 did you guys do?

7 A. Actually, we had done it just a little bit  
8 longer just to make sure, but after the two minutes were up,  
9 we kind of got up, and Ryan went and locked the front door,  
10 and then they made sure all the other doors were locked,  
11 and they were, and a couple of minutes later, Clint went  
12 out -- I think it was Clint -- he went out and got the cell  
13 phones.

14 I went into Justin's room to look for our phones,  
15 and neither of the phones were in there.

16 Clint found Justin's outside, and then mine was  
17 still gone.

18 Q. Okay. What did you guys do when you discovered  
19 that?

20 A. We didn't want to call just to see if they  
21 had it, we didn't want to just call the phone, so I just let  
22 it go, and waited long enough until after, and then we left  
23 the house.

24 Q. Okay. So was it yours was the only phone  
25 that was missing, everybody else got theirs back?

1 A. Yes.

2 Q. When you say you left the house, did everybody  
3 leave the house together?

4 A. Yes.

5 Q. Where did you go?

6 A. We went to Clint's and Aitor's apartment.

7 Q. And when you got to Clint and Aitor's apartment,  
8 what did you all do?

9 A. Well, before we left, we called the police  
10 already, and they told us to leave the house.

11 Q. Okay. Did the police come? Somebody told  
12 the police you were going to Clint's and Aitor's apartment?

13 A. Yes.

14 Q. So did the police show up at the apartment?

15 A. Yes.

16 Q. Did the patrol first, and then a uniform, a  
17 black and white of car kind of thing?

18 A. Uh-huh.

19 Q. Is that a "yes"?

20 A. Yes.

21 Q. You always have to answer out loud.

22 Did the patrol officer talk to you guys, and kind  
23 of get an idea of what had happened?

24 A. Yes.

25 Q. And then did the -- did it appear as though

1 he called other people?

2 A. Yes.

3 Q. Did a whole ton of other people come?

4 A. Yes.

5 Q. And would that be detectives, plainclothes, no  
6 uniforms?

7 A. Yes.

8 Q. Lots?

9 A. Yes.

10 Q. Did they then interview all of you guys?

11 A. Yes.

12 Q. Did somebody take you somewhere?

13 A. Yeah, I got taken to a hospital.

14 Q. Do you remember which hospital, to UMC?

15 A. Yes.

16 Q. When you went to the hospital, what happened?

17 A. They did a sexual assault kit on me, and I  
18 had to go to a sexual assault counselor that was there.

19 Q. Okay. And when you were at UMC, was it a  
20 nurse?

21 A. Yes.

22 Q. A little grandmother type lady that did the  
23 exam? Yes?

24 A. Yes.

25 Q. And then were you able to go home after that?

1 A. Yes, my parents drove down.

2 Q. When you say they took a -- did a sexual  
3 assault kit, is that where you, you know, actually lay down,  
4 put your legs up in the stirrup?

5 A. Yes.

6 Q. And they do a full examination?

7 A. Yes.

8 Q. And kind of unpleasant?

9 A. Yes.

10 Q. Did they ask you a bunch of questions?

11 A. Yes.

12 Q. Were you honest answering the questions?

13 A. Yes.

14 Q. They took blood, and all of that?

15 A. Yes.

16 Q. You said your parents came down and got  
17 you?

18 A. Yes.

19 Q. Did you have contact with police again  
20 after that?

21 A. Yes, Justin was staying with his parents  
22 in a hotel because they were going to take him home the  
23 next day because we both come from the same town. My  
24 parents came and got me, but they called us to come over  
25 after we had already left, and then we had to come back.

1 Q. And did you come back and meet detectives?

2 A. Yes.

3 Q. What did they want you to do?

4 A. Just to interview, and we had to point out  
5 people on a picture thing.

6 Q. Okay. They showed you what's calls a lineup?

7 A. Yes.

8 Q. And were they like just one picture, here,  
9 this is it, or was it --

10 A. No, it was six photos.

11 Q. Okay. Were you able to pick somebody out?

12 A. Yes.

13 Q. Was it just like -- like were they looking  
14 for one individual, or two separate individuals at that  
15 point?

16 A. Two separate individuals.

17 Q. Okay.

18 Do you think that you would recognize the  
19 individuals again if you saw them by face?

20 A. Yes, mostly by body type.

21 Q. By body type. Okay, the short, stockier one,  
22 you would recognize him by body type?

23 A. Yes.

24 Q. What about his face?

25 A. Kind of, yeah. I could be able to tell.



1 Q. Do you see him here in court?

2 A. No.

3 Q. The taller, thinner one, would you recognize  
4 him by body type?

5 A. Yes.

6 Q. By face?

7 A. Kind of.

8 Q. Maybe. Do you see somebody with a similar  
9 body type here in court today?

10 A. Yes.

11 Q. Can you describe where that person is sitting  
12 in the courtroom?

13 A. Yes, he is sitting right there in the gray  
14 sweater.

15 Q. The record reflect identification of the  
16 Defendant, and his body type.

17 THE COURT: The record will so show.

18 BY MS. LUZAICH:

19 Q. Danielle, do you want to do those those  
20 things?

21 A. No.

22 Q. And why did you accede to those issues?

23 A. Because I was scared.

24 Q. Because of the gun?

25 A. Yes.

1 MS. LUZATICH: Thank you, I will pass the witness.

2 THE COURT: Cross-examination, please.

3 CROSS-EXAMINATION

4 BY MR. BANKS:

5 Q. Danielle, you were woken up that night?

6 A. Yes.

7 Q. By the stockier guy?

8 A. Yes.

9 Q. Okay. Not this gentleman?

10 A. No.

11 Q. Justin was woken up that night?

12 A. Yes.

13 Q. By the stockier guy?

14 A. Yes.

15 Q. It was dark in that room?

16 A. Yes.

17 Q. In that room were you, Justin, and the  
18 stockier guy?

19 A. Yes.

20 Q. The stockier guy has got the gun?

21 A. Yes.

22 Q. The stockier guy takes you and Justin at  
23 gunpoint down the hall?

24 A. Yes.

25 Q. The stockier guy orders you and Justin to

1 the floor with the others?

2 A. Yes.

3 Q. Not this gentleman?

4 A. No.

5 Q. There were some orders to remove wallets  
6 and that kind of thing. That was the stockier guy?

7 A. Yes.

8 Q. No words out of this fellow's mouth at  
9 that point?

10 A. No.

11 Q. Just kind of off in the background?

12 A. Yes.

13 Q. There is some orders --

14 A. Yes.

15 Q. -- from the stockier guy?

16 A. Yes.

17 Q. Ryan is asked to get his keys to the car,  
18 and that was the stockier year guy who ordered him to do  
19 that?

20 A. Yes.

21 Q. Ryan was taken -- there is a demand for  
22 some pin numbers? Of course, you need a pin number to  
23 use an ATM card?

24 A. Yes.

25 Q. And it was the stockier guy who asked for

1 those pin numbers?

2 A. Yes.

3 Q. Okay. This fellow didn't ask for the pin  
4 numbers?

5 A. No.

6 Q. He is still just kind of off in the background?

7 A. Yes.

8 Q. As I said earlier?

9 A. Yes.

10 Q. Ryan is taken at gunpoint to his car?

11 A. Yes.

12 Q. By the stockier guy?

13 A. Yes.

14 Q. A scary situation?

15 A. Yes.

16 Q. Terrifying?

17 A. Yes.

18 Q. You were 18 at the time?

19 A. Yes.

20 Q. Is it fair to say that's probably the  
21 scariest, most dramatic situation you had been in, in  
22 your life to that point?

23 A. Yes.

24 Q. Your perception of that situation, it  
25 seemed to you that the stockier guy was the one in charge

1 of that situation, right?

2 A. Yes.

3 Q. And not this gentleman, correct?

4 A. No.

5 Q. He was really just kind of off in the  
6 background?

7 A. Yes.

8 Q. There is a 15 to 20 minute wait?

9 A. Yes.

10 Q. From the time that the stockier guy takes  
11 Ryan at gunpoint in the car to use the ATM's to take money  
12 out of the machine at gunpoint?

13 A. Yes.

14 Q. It was the stockier guy who uttered the words  
15 if anybody moves, shoot them, right?

16 A. Yes.

17 Q. I want to talk to you about that 15 to 20  
18 minute window while the stockier guy had Ryan at gunpoint,  
19 at the ATM machine in the car.

20 Do you understand me, ma'am?

21 A. Yes.

22 Q. During that 15 to 20 minutes, this fellow is  
23 just kind of pacing around?

24 A. Yes.

25 Q. He didn't make contact with anybody in that

1 room?

2 A. No.

3 Q. He didn't make physical contact with anybody  
4 in that room?

5 MS. LUZAICH: Asked and answered.

6 THE COURT: All right.

7 THE WITNESS: No.

8 BY MR. BANKS:

9 Q. Technically not asked and answered but --

10 THE COURT: Go ahead, go ahead.

11 MR. BANKS: Okay.

12 Q. This gentlemen didn't order anybody to do  
13 anything?

14 A. No.

15 Q. Correct?

16 A. Correct.

17 Q. He didn't tell anybody to get up and move?

18 A. No.

19 Q. Ryan and the stockier guy come back?

20 A. Yes.

21 Q. And there is a statement made about 90 percent,  
22 10 percent?

23 A. Right.

24 Q. By the stockier guy?

25 A. Yes.

1 Q. That is probably a lot scarier for you when  
2 the stockier guy said that?

3 A. Yes.

4 Q. This gentleman didn't make any response  
5 whatsoever to that statement?

6 A. No, not then.

7 Q. He hadn't said anything?

8 A. No.

9 Q. He was still kind of off in the background?

10 A. Yes.

11 Q. It was the stockier guy who made statements  
12 that you have sexual context between you and Justin?

13 A. Yes.

14 Q. At that point you really don't know what  
15 this gentleman's intent?

16 A. His body wasn't moving.

17 Q. He never left the spot at all?

18 A. He was walking. He didn't go around the  
19 room, no.

20 Q. But you have a very specific recollection,  
21 as you sit here today, that he was in the same spot as when  
22 you entered the room?

23 A. Yes, he was.

24 Q. Do you remember testifying at your preliminary  
25 hearing in this matter?

1 A. Yes.

2 Q. That was on April 12, 2007?

3 A. Yes.

4 Q. And when you testified at that proceeding,  
5 you came into a courtroom, not this courtroom, but it was  
6 another courtroom?

7 A. Yes.

8 Q. In Henderson?

9 A. Yes.

10 Q. You took the witness stand?

11 A. Yes.

12 Q. And you raised your right hand?

13 A. Yes.

14 Q. Like today?

15 A. Yes.

16 Q. And you swore to tell the truth?

17 A. Yes.

18 Q. Page 46. And you were asked about this  
19 15, 20 minute window at that court?

20 A. Yes.

21 Q. And you were asked the question, line seven:  
22 "Where was my client when you first go in?"

23 A. Yes.

24 Q. And your response at that time was:  
25 "I don't remember."



1 A. He was pacing back and forth.

2 Q. Your answer at that time was:

3 "I don't remember."

4 A. Yes.

5 Q. And you were asked the question:

6 "He was not in the immediate vicinity of where  
7 you were stopped?"

8 And your response was:

9 "He might have been on the other side, I don't  
10 know."

11 A. Yes.

12 Q. And then you were asked:

13 "But nowhere you can see?"

14 And your response was:

15 "No."

16 A. Yes.

17 Q. Do you need some water?

18 A. No.

19 Q. All of the sexual acts between you and  
20 Justin --

21 A. Yes.

22 Q. -- were done because the stockier guy ordered  
23 those sexual acts?

24 A. Yes.

25 Q. This fellow said nothing during that time?

- 1 A. No, he didn't say nothing.
- 2 Q. This fellow said nothing during that time?
- 3 A. No.
- 4 Q. Is it your testimony that he did say something  
5 during that time?
- 6 A. No, he didn't say anything.
- 7 Q. Okay. He was silent during that time?
- 8 A. Yes.
- 9 Q. Thank you. Somebody gets a pillow?
- 10 A. Yes.
- 11 Q. He puts it to somebody's face?
- 12 A. Yes.
- 13 Q. And he puts the gun to somebody's head?
- 14 A. Yes.
- 15 Q. And that was scary?
- 16 A. Yes.
- 17 Q. And that was horrifying?
- 18 A. Yes.
- 19 Q. And that was traumatic?
- 20 A. Yes.
- 21 Q. And that was the stockier guy that did that?
- 22 A. Yes.
- 23 Q. That wasn't encouraged by this gentleman?
- 24 A. No.
- 25 Q. He is still kind of off in the background

1 not saying anything?

2 A. Yes.

3 Q. A scary situation the whole, the whole time?

4 A. Yes.

5 Q. But it did get scarier once the stockier guy  
6 returned and made the 90 percent comment?

7 A. Yes.

8 Q. It got a lot scarier when the stockier guy  
9 put the pillow over Justin's head and put that gun to his  
10 head?

11 A. Yes.

12 Q. It was scarier for everybody in that room,  
13 I imagine.

14 A. Yes.

15 Q. It was scarier still --

16 A. Yes. .

17 Q. When the stockier guy says, if someone does  
18 not perform, or get it on, someone is going to be killed.  
19 It got even scarier then, didn't it?

20 A. Yes.

21 Q. For everybody in that room, I imagine?

22 A. Yes.

23 Q. I am going to fast forward a little bit.  
24 There comes a time when the two fellows leave the house?

25 A. Yes.

1 Q. And I believe with Ms. Luzaich that they  
2 left, and then it was the stockier guy that burst back in,  
3 and makes some comment like, who moved? And freaks everybody  
4 out even a little bit more?

5 A. Yes.

6 Q. You guys leave that house?

7 A. Yes.

8 Q. Everybody is horrified?

9 A. Yes.

10 Q. Everybody is scared?

11 A. Yes.

12 Q. Sometimes, a little scary and traumatic  
13 situations, talking about it can help?

14 A. Excuse me?

15 Q. Talking about those scary, traumatic situations  
16 can help sometimes?

17 A. Yes.

18 Q. And once you guys left the Great Dane residence  
19 and went to the apartment over on Warm Springs?

20 A. Yes.

21 Q. There was some talk amongst you guys about  
22 what happened in that house, wasn't there?

23 A. Yes.

24 Q. I guess everybody was still probably really  
25 fraked out about that whole thing, correct?

1 A. Yes. .

2 Q. And everybody was discussing how horrified  
3 they were in discussing what went on in that house?

4 A. Yes.

5 Q. And the police were called?

6 A. Yes.

7 Q. And you all talked to the police?

8 A. Yes.

9 Q. Did the police sit you down as a group, or  
10 did they interview you one on one?

11 A. One on one.

12 Q. Okay.

13 And I am sure they explained to you that that's  
14 their procedure, and that's how they do those kinds of  
15 investigations?

16 A. Yes. .

17 Q. Okay. I want to talk to you a little bit  
18 about your testimony regarding this gentleman having a gun,  
19 okay?

20 A. Yes.

21 Q. I believe you gave a gesture, you knew it  
22 was a gun because he was holding it out like so (indicating)?

23 A. Yes.

24 Q. And because he was holding it out --

25 MS. LUZAICH: (Interposing) Well, I'm sorry, that

1 misrepresents. He has his index finger out. She did not  
2 when she was demonstrating.

3 THE WITNESS: Yes.

4 THE COURT: That's more accurate as to her  
5 testimony.

6 MR. BANKS: Okay, I'm sorry.

7 THE COURT: Sure.

8 MR. BANKS: And I don't mean to miss -- I want  
9 to be perfectly clear here.

10 Q. Notwithstanding the index finger, his arm  
11 was extended from his body?

12 A. Yes.

13 Q. Like this (indicating)?

14 A. Yes.

15 Q. Okay. And because it was out like this,  
16 and away from his body, that's how you knew that it was  
17 a gun?

18 A. Yes.

19 Q. Okay. It was dark in the house?

20 A. Yes.

21 Q. Dark in that hallway?

22 A. Yes.

23 Q. Dark in that room where you and your guy,  
24 Justin, were sleeping in?

25 A. Yes.

1 Q. You testified at that preliminary hearing?

2 A. Yes.

3 Q. And you were asked about the time that you  
4 first saw this gentleman with the gun?

5 A. Yes.

6 Q. Page 31, counsel, line four.

7 And you were asked at the time:

8 "How far..."

9 And we were talking about distance and how far  
10 away this gentleman was from you:

11 "How far away from you would that be?

12 Your answer was:

13 "The living room was really small like  
14 five feet."

15 And then you were asked the question:

16 It was your testimony that you could see he  
17 had a gun?"

18 A. Yes.

19 Q. And your answer was: "Yes."

20 And then the question was:

21 "Where was the gun?"

22 A. Yes.

23 Q. And your response at that time was:

24 "It was like he had it in his hands right  
25 by his chest."

1 A. Yes.

2 Q. You saw this gentleman for maybe two or  
3 maybe three seconds, is that correct?

4 A. When he had the gun.

5 Q. In a dark room?

6 A. Yes.

7 Q. And a dark hallway?

8 A. Yes.

9 Q. You testified that you were on a chair?

10 A. Yes.

11 Q. And that there was some touching going  
12 on?

13 A. Yes.

14 Q. And you said that that touching going  
15 on, there was something in your side?

16 A. Yes.

17 Q. And you testified that what was on your  
18 side was a gun?

19 A. Yes.

20 Q. And that's what you testified here to today?

21 A. Yes.

22 Q. At the preliminary hearing?

23 A. Yes.

24 Q. And you were asked about, about that gun in  
25 your side at that time frame?



1 A. Yes.

2 Q. At the preliminary hearing in --

3 A. April.

4 Q. April, of '07?

5 A. Yes.

6 Q. And you were asked about that, and the

7 question to you at that time was:

8 "You are saying you felt something on your side?"

9 A. Yes.

10 Q. And you didn't see it, correct?

11 A. No.

12 Q. And you were asked:

13 "You don't know if it was a gun?"

14 And your answer was:

15 "No."

16 A. Yes.

17 Q. And then the next question was:

18 "You felt something, correct?"

19 And your answer was:

20 "Yes."

21 A. Yes.

22 Q. And then you were asked:

23 "In fact, you don't even know what it was, do

24 you?

25 And your answer was:

1 "No."

2 A. Yes.

3 Q. Then you were asked:

4 "So when counsel asked you about a gun being  
5 pointed in your side during this altercation?"

6 A. Yes.

7 Q. "You don't even know if it was a gun at  
8 that point. It was something in your side,  
9 correct?"

10 And your answer was:

11 "Yes."

12 A. Yes.

13 Q. Ryan masturbating?

14 A. Yes.

15 Q. That was done at the direction of the stockier  
16 guy?

17 A. Yes.

18 Q. Okay. Did you ever hear the name, Grant,  
19 this entire evening?

20 A. Huh?

21 Q. The whole, during the episode, did you hear  
22 the name, Grant?

23 A. Yes.

24 Q. And Grant, the word, the name, Grant, came  
25 out of the stockier guy's mouth, right?

1 A. Yes.

2 Q. You didn't hear the phrase, "cough up the  
3 money", did you?

4 A. No.

5 Q. But if you did, it would have been the  
6 stockier guy?

7 MS. LUZARCH: Well, objection.

8 THE WITNESS: I didn't understand that.

9 THE COURT: Sustained, sustained.

10 BY MR. BANKS:

11 Q. You never heard this gentleman say anything  
12 even close to, "cough up the money", right?

13 A. No.

14 Q. Okay.

15 Would it be fair, based on your perception of  
16 the incident, if anybody was fixated on Grant, it would  
17 be the stockier guy?

18 A. No, it would have been both of them. They  
19 were both there for the same reason.

20 Q. And that's because you heard this gentleman  
21 say the name, Grant?

22 A. Yes.

23 Q. That's because this gentleman burst in  
24 there asking for Grant?

25 MS. LUZARCH: Well, objection, she wasn't asked..

1 THE WITNESS: No, I wasn't there in the beginning.

2 THE COURT: That's great. From the bedroom to  
3 a point, you can explore it with her.

4 BY MR. BANKS:

5 Q. Well, let me ask you this, Danielle, and  
6 that's based on everything that you said, that you heard  
7 and saw on that evening, correct?

8 A. Yes.

9 Q. And including that the stockier guy seemed  
10 to you to be in charge of the entire situation?

11 A. Yes.

12 Q. Hard to say what is going on in everybody's  
13 mind in that room?

14 A. Yes.

15 Q. But it's pretty fair to say that everybody  
16 was scared and traumatized?

17 A. Yes.

18 MR. BANKS: All right. Pass the witness.

19 THE COURT: Any redirect?

20 MS. LUZAICH: Thank you.

21 MS. LUZAICH: Thank you.

22 REDIRECT EXAMINATION

23 BY MS. LUZAICH:

24 Q. Danielle, you had talked about being dark  
25 in the room but when you say, "dark", it was not pitch

1 black, correct?

2 A. Correct.

3 Q. Was the TV on?

4 A. Yes.

5 Q. And, again, showing you State's Exhibit 3,  
6 is that in State's Exhibit 3 the photograph, is that the  
7 TV?

8 A. Yes.

9 THE COURT: Go ahead.

10 BY MS. LUZATICH:

11 Q. Thank you. I lost my train of thought.  
12 So this is the TV here?

13 A. Yes.

14 Q. Fairly large, would you agree, for the  
15 record?

16 A. Yes.

17 Q. And it's right in front of where you guys  
18 were staying -- or laying?

19 A. Yes.

20 Q. So while it was dark, you were still able  
21 to see what was happening as you walked down the hall,  
22 and as you were laying there, correct?

23 A. Yes.

24 Q. And, I'm sorry, maybe I missed it, but I  
25 think on cross-examination you said that the stockier guy

1 tells this guy when the stockier guy was leaving with Ryan,  
2 if anyone moves, shoot them?

3 A. Yes.

4 Q. Okay.

5 Now, you said something to the effect of it  
6 appeared that the stockier guy was the one, you know, that  
7 was in control or in charge?

8 A. Yes.

9 Q. But did this one participate?

10 A. Yes.

11 Q. Did this one at any one time -- at any time  
12 tell the first one, stop, don't do that?

13 A. No.

14 Q. Did he at any time, did this one tell the  
15 stockier guy they did enough, let's go?

16 A. No.

17 Q. Did this Defendant, this person at any time  
18 tell the stockier one, you really don't need to make them  
19 do that?

20 A. No.

21 Q. Did this one at any time tell the stockier  
22 guy, now why would you want them to do that?

23 A. No.

24 Q. In fact. Is he the one who volunteered to  
25 touch you?

1 A. Yes.

2 Q. And did you tell the police -- well, the  
3 police knew you within hours of this occurring, right?

4 A. Yes.

5 Q. And did you tell the police that while,  
6 after Ryan was asked to masturbate himself while you are  
7 laying back face down in the carpet at that point, the  
8 second guy told the first guy that he, the second guy, was  
9 ready to have sex with you, and that he was hard, and that  
10 he could do it?

11 A. Yes.

12 Q. When you talked about seeing the gun, you  
13 said, you said in here that he was holding his arm extended,  
14 and there was a point in the preliminary hearing that you  
15 said that it was by his chest. I mean, did he move at certain  
16 times, his body?

17 A. Yes.

18 Q. I mean, he wasn't just standing still like  
19 a tin soldier, correct?

20 A. No.

21 Q. And when you say that there were times that  
22 you couldn't really tell that it was actually a gun, were  
23 you sure that there was something in his hand?

24 A. Yes.

25 Q. Okay. You are not familiar with guns, right?

1 A. No.

2 Q. In fact, do you even know the difference  
3 between a revolver and an automatic or semiautomatic?

4 A. No.

5 Q. Okay. Was he, he, that person, when you  
6 say he was standing behind you guys, showing you again  
7 State's Exhibit 2, when you say, "behind you guys", that  
8 would be kind of in the wood area while you were on the  
9 carpet?

10 A. Yes.

11 Q. And because it is such a close area, while  
12 you might not have been able to see him the whole time,  
13 could you hear?

14 A. Yes.

15 Q. Okay. And in moving --

16 A. Standing in the wood area, they were.

17 Q. Okay. And, in fact, when he was standing  
18 in that wooded area, he and his gun are blocking all six  
19 of you from the door, is that right?

20 A. Yes.

21 Q. And then when the stockier one and Ryan  
22 left, and he was still there?

23 A. Yes.

24 Q. Still blocking the five of you from the  
25 door with his gun?



1 A. Yes.

2 MS. LUZAICH: Okay, thank you, no further  
3 questions.

4 THE COURT: Anything else?

5 RECROSS-EXAMINATION

6 BY MR. BANKS:

7 Q. You indicated that this gentleman volunteered  
8 to touch you?

9 A. Yes.

10 Q. We can agree that that was after you heard  
11 the statement that if someone does not perform, or get it  
12 on someone is going to be killed, isn't that true?

13 A. Yes.

14 MR. BANKS: Pass the witness.

15 THE COURT: Is that it?

16 MS. LUZAICH: Yes.

17 THE COURT: Okay. Thank you very much for your  
18 testimony. We appreciate it.

19 You will be excused, and if it's necessary to  
20 have you come back, we will let you know by whatever party.  
21 You are excused, okay?

22 THE WITNESS: Yes.

23 THE COURT: Thank you very much.

24 (Witness excused.)

25 THE COURT: All right. It's about seven till.

1     What do you want to do?

2             MS. LUZAICH: The Court's pleasure.

3             THE COURT: Why don't we break. If I say 1:15,  
4     that is not quite an hour and a half, is that all right?

5             MS. LUZAICH: Yes.

6             THE COURT: All right. We are going to take an  
7     hour and 22 minute break until 1:15 is when we will come  
8     back.

9             So it is about a few minutes to go before 1:15,  
10    I want you guys as a group to meet outside of the double  
11    doors, and I will have Joe will bring you back here to the  
12    jury deliberation room, and then continue on our quest.

13            During the next hour and 22 minute break, I am  
14    going to admonish the members of the jury.

15            I don't want you to talk or discuss with anyone,  
16    including each other, any subject matter having to do with  
17    this trial, or anybody having to do with this trial.

18            I don't want you to watch, listen or read any  
19    reports or commentaries on anything having to do with the  
20    trial through any medium of information which includes  
21    radio, television, network, newspapers or the internet.

22            Don't form or express any opinion on any subject  
23    or about any person having to do with this trial until  
24    such time as the case has been finally submitted to you.

25            We are in recess for an hour and 22 minutes.

1 There is nothing we need to put on the record, is there?

2 MR. LANDIS: No, Judge.

3 MS. LUZATCH: I don't think so, Judge.

4 THE COURT: We are on break.

5 \*\*\*\*\*

6 (Whereupon, a brief recess was had.

7 After recess, all parties present, the following  
8 proceedings were had in open court in the absence of the  
9 jury, and alternates:)

10 \*\*\*\*\*

11 THE COURT: Did you get your stuff all straightened  
12 out?

13 MR. BANKS: Yes, sir.

14 THE COURT: Anything that you want to put on the  
15 record before we start?

16 MR. BANKS: Nothing for the Defense.

17 MS. LUZATCH: No.

18 THE COURT: Okay. Bring them in.

19 \*\*\*\*\*

20 (Whereupon, the following proceedings were had  
21 in open court in the presence of the jury, and alternates:)

22 \*\*\*\*\*

23 THE BAILIFF: All rise for the presence of the  
24 jury.

25 Please be seated.

1 THE COURT: Do the parties stipulate to the presence  
2 of the jury?

3 MR. BANKS: Yes, Judge.

4 MS. KOLLINS: Yes, Your Honor.

5 THE COURT: The State's next witness.

6 MS. KOLLINS: The State calls Justin Richardson.

7 THE CLERK: Come forward, please, sir, take  
8 the witness stand, remain standing and raise your right  
9 hand.

10 Whereupon,

11 JUSTIN RICHARDSON,

12 called as a witness herein by the State, having been  
13 first duly sworn, was examined and testified as follows:

14 THE CLERK: Thank you very much.

15 You may be seated, and then state your name and  
16 spell your first and last name for the record.

17 THE WITNESS: I'm Justin Richardson, J-u-s-t-i-n  
18 R-i-c-h-a-r-d-s-o-n.

19 THE CLERK: Thank you.

20 THE COURT: Go ahead.

21 DIRECT EXAMINATION

22 BY MS. KOLLINS:

23 Q. Good afternoon, Justin.

24 A. Hi.

25 Q. How are you doing today?

1. A. Doing good.
2. Q. Good. Justin, how old are you today?
3. A. 21.
4. Q. When is your birthday?
5. A. September 7.
6. Q. Okay. What do you do for a living right
7. now?
8. A. I'm a driver for UPS.
9. Q. So, in 2007, you were 19?
10. A. Yes.
11. Q. Do you have a girlfriend?
12. A. Yes, I do.
13. Q. What's her name?
14. A. Danielle Browning.
15. Q. She was here earlier today?
16. A. Yes.
17. Q. Back in February, of 2007, did you live
18. here in Las Vegas?
19. A. Yes.
20. Q. Where did you live?
21. A. 690 Great Dane Court.
22. Q. Is that here in Clark County Nevada?
23. A. Yeah.
24. Q. Specifically, in the township of Henderson?
25. A. Yes.

- 1 Q. Who did you live there with?
- 2 A. Ryan Tognotti, David Motchinbacher and Justin
- 3 Foucault.
- 4 Q. David, what's his last name?
- 5 A. Machenbacher.
- 6 Q. Do you know how to spell that?
- 7 A. M-o-t-c-h-i-n-b-a-u-c-h-e-r.
- 8 Q. Thank you. When did you move into that
- 9 residence?
- 10 A. It was the August before September, or
- 11 before February, I mean. So just six months.
- 12 Q. So August, of 2006?
- 13 A. Yeah.
- 14 Q. And in February, of 2007, how were you
- 15 employed?
- 16 A. I was with U P S but I was working in the
- 17 warehouse. Not a driver yet.
- 18 Q. Is that what you do now?
- 19 A. Yes.
- 20 Q. Had you also been attending school down
- 21 here in Las Vegas at some point?
- 22 A. Yes.
- 23 Q. Okay. And you moved here from another
- 24 jurisdiction?
- 25 A. Yes.

0879

1 Q. Did you move here in August, of '06?

2 A. No, I moved back here in '04, June, '04.

3 Q. Turning your attention to the weekend --  
4 Allstar Weekend back in 2007, August 17, 18, was Danielle  
5 visiting you?

6 A. Yes, she was.

7 Q. And why was she down here?

8 A. It was her birthday that weekend.

9 Q. Calling your attention to the Sunday evening  
10 of that weekend, what time did you go to bed?

11 A. It was early night. It had to be somewhere  
12 around eight, somewhere around eight, I think.

13 Q. And why did you retire so early?

14 A. I had to work the next morning, about three  
15 in the morning.

16 Q. Did Danielle go to bed with you at the same  
17 time?

18 A. Yes.

19 Q. Did you guys actually get to sleep?

20 A. Yes.

21 Q. Did something cause you to awaken?

22 A. Yeah, a loud knocking on my bedroom door.

23 Q. Okay. Was your bedroom door closed?

24 A. Yes.

25 Q. What did you do in response to the knocking

1 at first?

2 A. I just yelled out, yeah, you know, like  
3 it's okay to come on in.

4 Q. And when you yelled out, yeah, come on in,  
5 what did you think was going on at that time?

6 A. I just figured one of my roommates, just  
7 had some question, or something to tell me.

8 Q. When you yelled out, yeah, come on in,  
9 what happened next?

10 A. The door just kind of peeked open, cracked  
11 open, and at that time I had turned my bedroom light on  
12 with a lamp, I had a little remote for it, and like before  
13 he finished coming in, he kind of yelled out, you know,  
14 turn off the light.

15 And at that time I was reaching over, grabbing  
16 my glasses and putting them on but I was still confused.

17 Q. Okay.

18 A. And the only thing that was coming up from  
19 the door was like his hand with the gun, just kind of turned  
20 off the door -- or turn off the light.

21 Q. Okay.

22 So somebody knocks on the door, they come in,  
23 if I understand you correctly, you had some kind of remote  
24 that turned the light on in your room?

25 A. Yes.



1 Q. Is that an overhead light?

2 A. Yeah, it's connected with the fan.

3 Q. Okay. And you said you reached over and  
4 grabbed for your glasses?

5 A. Uh-huh.

6 Q. Is that a "yes"?

7 A. Yes.

8 Q. And he can spell yes and no, but uh-huh  
9 and uh-uh are spelled the same way.

10 A. Okay, all right.

11 Q. Did you get your glasses on?

12 A. Yes, I did.

13 Q. Okay.

14 Did you get a look at the person -- you said you  
15 saw a hand coming through the door with a gun.

16 Did you get a look at the person's face at that  
17 time?

18 A. No, I didn't.

19 Q. Okay.

20 Could you tell by looking at the hand that contained  
21 the gun the race or ethnicity of the person?

22 A. Yes.

23 Q. What was that?

24 A. It was black.

25 Q. You said the person screamed, turn out the

1 light?

2 A. Yeah.

3 Q. Once? Did he say that once or more than  
4 once?

5 A. He said it more than once.

6 Q. And I assume it was a male. Was it a male  
7 or a female?

8 A. Yes, it was a male.

9 Q. Okay. And did you listen to him and turn  
10 out the light?

11 A. At first, no, I really didn't know what was  
12 going on.

13 Q. Were you pretty sound asleep?

14 A. Yeah, I was in -- I was knocked out.

15 Q. Okay. What, did you eventually listen to  
16 them and turn out the light?

17 A. Yes, I did.

18 Q. Okay. And what happened after you turned  
19 out the light?

20 A. He came in, and he was saying my name, he  
21 said, Justin, get up, you need to stand up, and put your  
22 hands on your head, and come to the front of the bed.

23 Q. Up to this point, was this anyone you  
24 recognized, or had seen before, or had heard the voice  
25 of before?

1 A. No.

2 Q. Okay.

3 When the person told you to get out of the bed  
4 and put your hands on your head, and come to the front of  
5 the bed, did you listen to them?

6 A. Yes, I did.

7 Q. Okay. What were you wearing?

8 A. I was just in my boxers and a white beater --

9 Q. You mean a sleeveless?

10 A. A sleeveless shirt, you know.

11 Q. Was Danielle in the room at the time?

12 A. Yes, she was.

13 Q. And what was Danielle doing?

14 A. She was in the bed next to me. She wasn't  
15 saying nothing, so I figured she was still sleeping.

16 Q. Okay.

17 After you got up and out of the bed, what happened  
18 after that?

19 A. After that, he came into the room, and  
20 he walked over to the bed, and he asked me, who is this  
21 in your bed?

22 And I told him, it was my girlfriend, and he told  
23 her to get up, and do the same thing, walk to the front of  
24 the bed with her hands up.

25 Q. Okay. And was Danielle clothed?

1 A. Yes, she had her pajamas on.

2 Q. All right. Indulge me for just a minute,  
3 Ryan, I'm sorry, Justin.

4 Of course, I put these upside down before you  
5 came in here.

6 Showing you what has been marked and admitted,  
7 Justin, as State's 9, do you recognize State's 9?

8 A. Yes.

9 Q. What's that?

10 A. That's my bed. That's the remote to my  
11 fan and light on the bed. That's my bedroom.

12 Q. In your bedroom where you and Danielle were  
13 that we just have been discussing?

14 A. Yes.

15 Q. And that is the light that you turned on  
16 to take a look at the person?

17 A. Yes.

18 Q. And you are positive that was a gun in his  
19 hand that you saw?

20 A. Yes.

21 Q. State's admitted 10, Justin, different  
22 shot, same bedroom area. You said he had you step to  
23 the dresser.

24 Where is the dresser in relation to the bed  
25 that we see in that photo?

1           A.    It's looking to the left of the picture,  
2 just in front of the bed.

3           THE COURT: Justin, you can take your finger,  
4 and just put it right on that screen, and draw a circle,  
5 and it will show up.

6           THE WITNESS: Oh, okay.

7           THE COURT: It will show up, you can put your  
8 finger to get rid of it in the lower right-hand corner.

9           THE WITNESS: It is right down there.

10 BY MS. KOLLINS:

11           Q.    Okay.

12                Now, did the person have you face away from  
13 them or towards them?

14           A.    I was facing straight ahead so he was  
15 to the left.

16           Q.    So you were facing towards the wall  
17 then?

18           A.    Yes.

19           Q.    Okay. Was Danielle facing the same way?

20           A.    Yes.

21           Q.    After you got up and out of bed, did you  
22 put your hands on top of your head?

23           A.    Yes.

24           Q.    Did Danielle do the same thing?

25           A.    Yes.

1 Q. What, if anything, did he have you do after  
2 you got your hands on your head?

3 A. After we were both standing next to each  
4 other, he told us to start walking out into the hallway,  
5 and he said walk to the living room and join your friends.

6 Q. I am going to show you, Justin, what has  
7 been marked State's Exhibit 11. Is this the dresser kind  
8 of that you are talking about?

9 A. Yes, that's it.

10 Q. Okay, to the left of State's 11? To the  
11 left of State's 11?

12 A. Yes.

13 Q. Okay. And the white mark that you put  
14 on the previous photos just happens to be almost in the  
15 same place?

16 A. Yes.

17 Q. You said he had you walk down the hallway.  
18 Where did that hallway lead to?

19 A. That leads to the living room and just the  
20 entrance way of our house.

21 Q. Okay.

22 And did -- when he had you walk to the living  
23 room, was he in front of you or behind you, or something  
24 different?

25 A. He was behind us.

1 Q. Behind the both of you?

2 A. Yes.

3 Q. Did you and Danielle walk single file?

4 A. Yes.

5 Q. What kind of doors exit your bedroom?

6 A. Double doors.

7 Q. I'm showing you what has been marked and  
8 admitted as State's 5.

9 The double doors depicted at the top of that  
10 photograph, are those the double doors that exit your  
11 bedroom?

12 A. Yes.

13 Q. And is that the hallway that you walked  
14 down?

15 A. Yes.

16 Q. And that leads to a common area of the  
17 house?

18 A. Yes.

19 Q. Showing you what has been marked and admitted  
20 as State's 4, the hallway that we just looked at in State's  
21 5, is that to the left in State's 4?

22 A. Yes.

23 Q. Leading into the living room area?

24 A. Yes.

25 Q. What -- while he was walking you down the

1 hallway, was he speaking to you?

2 A. Yeah, he was saying, keep your heads down,  
3 and don't look up. He said, just join your friends in  
4 the living room.

5 Q. When you and Daniello arrived in the living  
6 room, what did you see?

7 A. I seen all my roommates that were there,  
8 and then my friends on the ground in a semi circle pattern,  
9 with their hands in the middle.

10 Q. Can you tell me who was there and who was  
11 on the floor?

12 A. Yeah, there was Justin Foucault, Ryan Tognotti,  
13 Aitor Eskandon, and Clint Tognotti.

14 Q. Okay. Were they laying face down?

15 A. Yes.

16 Q. What else, if anything, did you see in the  
17 front room?

18 A. I saw when I was coming down the hallway  
19 before I hit the living room, just looking straight ahead,  
20 I seen another man standing there, just right in front of  
21 the woodpile on the carpet.

22 Q. Okay. And can you describe that other man  
23 for me?

24 A. Yes, he was also -- he was also African  
25 American. He was pretty slender, a lot more slimmer than



1 the first guy that came in my bedroom.

2 Q. Okay.

3 For purposes of our conversation today, can we  
4 call the guy that came into your bedroom number one, and  
5 the person you saw in the living room number two?

6 A. Yes.

7 Q. Did number two have anything in his possession  
8 that you could see when you entered the living room?

9 A. At this time, no, I couldn't tell of anything.  
10 As soon as I looked up at him, they yelled at me, you know,  
11 look back down, and I really didn't -- I wasn't staring.  
12 It was quick, a glance.

13 Q. Okay. .

14 If you had to compare the size and description  
15 of number one and number two, how would you distinguish  
16 them?

17 A. I would say number one was more stockier,  
18 more muscle definition, you know, and number two, he just  
19 seemed -- he might have been maybe a little taller, but  
20 just slimmer for the most part.

21 Q. Okay. Do you recall testifying at a  
22 preliminary hearing back in April of last year?

23 A. Yes, I did.

24 Q. Do you recall discussing what you saw when  
25 you entered the living room? Do you recall pointing out

1 anyone?

2 A. No, just what I said.

3 Q. Okay.

4 A. I'm a little fuzzy.

5 Q. Do you recall being asked the question of --

6 MR. BANKS: (Interposing) Judge, I think if she  
7 is going to refresh recollection, she needs to --

8 THE COURT: Needs to what?

9 MR. BANKS: Well, either indicate that his  
10 recollection has been exhausted, Judge. We need some  
11 confirmation.

12 MS. KOLLINS: Well, I am getting there.

13 THE COURT: All right. Go ahead.

14 BY MS. KOLLINS:

15 Q. And, I'm sorry, Justin, I misspoke.

16 Do you recall discussing this incident with two  
17 detectives shortly after it happened?

18 A. Oh, yes.

19 Q. Okay. Do you recall any questioning about  
20 whether you saw a weapon in the possession of the second  
21 person when you entered the living room?

22 A. Yes.

23 Q. Okay. Do you recall what you told them you  
24 saw as you sit there today or --

25 A. Well, yes, I do know -- he had something in

1 his possession, in his hand by his side. To me, with the  
2 situation I was in, you know, I would never imply anything  
3 else but, you know --

4 MR. BANKS: Objection, Your Honor.

5 THE COURT: Hold on.

6 MR. BANKS: Objection, speculation.

7 MS. KOLLINS: Well, he hasn't finished his answer  
8 so we don't know if we were to determine.

9 THE COURT: Yeah, I don't want you to guess,  
10 but you can certainly describe, you know, to the best of  
11 your recollection whatever you saw.

12 Go ahead.

13 THE WITNESS: Okay. I thought it was a gun.

14 MR. BANKS: Objection, speculation. Move to  
15 strike.

16 THE COURT: Overruled. Go ahead.

17 BY MS. KOLLINS:

18 Q. After you and Danielle got in the living  
19 room, did number one continue to speak to you?

20 A. Yeah, he told us to lay down with our  
21 friends and lay face down with our hands in the middle.

22 Q. Did number two say anything to you?

23 A. No, not at this time.

24 Q. What happened next?

25 A. They were asking for money. They were trying

1 to get money from all of us.

2 Q. Okay.

3 And I am going to ask, there is some distinction  
4 between number one and number two?

5 A. Okay. Number one was -- he started asking  
6 for the money. He was pretty much the only one talking at  
7 that time. He was just the only one concerned about the  
8 money really.

9 Q. Did number one or number two express a concern  
10 about where another individual was that was nowhere present  
11 in the home? Does that make sense?

12 A. Yeah, they were mentioning, there is nobody  
13 else there upstairs, you know.

14 Q. Did they ask, number one or number two, where  
15 somebody was that you did not know?

16 A. Yeah, they had. They asked -- I don't recall  
17 the name, but they did ask for a name that I never heard  
18 of before.

19 Q. Okay. Could it be Grant?

20 A. Yes, yes, I think that was it.

21 Q. Okay. Was that number one asking for Grant?

22 A. Number one.

23 Q. What about number two?

24 A. Number two didn't say -- I didn't hear him  
25 say anything.

1 Q. Okay.

2 You said number one was asking for money. Where  
3 was he in -- is he still in the living room?

4 A. Yes.

5 Q. Okay. Where is he in relationship to where  
6 you are laying on the floor?

7 A. Number one?

8 Q. Yes.

9 A. He's, when we first laid down, he was standing  
10 pretty much right behind me, where my foot were on the floor,  
11 and he kind of walked around the whole circle pretty much,  
12 like he made his way past number two and back to the other  
13 side.

14 Q. And where was number two?

15 A. Number two was still where I seen him when  
16 he first came in.

17 Q. Okay. Standing on the wood floor?

18 A. Yes.

19 Q. Showing you what has been admitted, Justin,  
20 as State's 3, kind of a fuller perspective of your living  
21 room, the carpeted area that's depicted in the bottom left,  
22 is that where everybody was laying on the floor?

23 A. Yes.

24 Q. What was your -- first of all, and the second  
25 man that you saw in the living room, was that anyone that

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 NARCUS S. WESLEY

3 Appellant,

4 v.

5 THE STATE OF NEVADA,

6 Respondent.

Nevada Supreme Court Case No.: 52127

District Court Case No.: C232494

District Court Dept. No.: XXIV

FILED

AUG 05 2009

8 APPENDIX VOLUME IV

9 (Appeal from Judgment of Conviction and  
10 Sentence in the Eighth Judicial District Court)

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2       NARCUS S. WESLEY

3                                   Appellant,

4       v.

5       THE STATE OF NEVADA,

6                                   Respondent.

Nevada Supreme Court Case No.: 52127

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District Court Dept. No.: XXIV

7  
8                                   **APPENDIX VOLUME IV**

9                                   (Appeal from Judgment of Conviction and  
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**Wesley v. State of Nevada Appendix, Volume IV**

**District Court Case # C232494, Appeal # 52127**

**INDEX**

<b>Date</b>	<b>Party</b>	<b>Title</b>	<b>Vol/ Case#</b>	<b>Pages</b>
12/05/08	Court	Cont. Transcript of Proceedings Jury Trial April 9,10, 11, 2008	4	716-894



1 DATED this 18<sup>th</sup> day of July, 2009

2 Submitted by:

3 

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Are you married?

A. No, not for quite a few years.

Q. Do you have adult children?

A. I do have adult children.

Q. Where do they live?

A. My son is 38, and he has his own business, he has got his own grader, and he is close to the name of this other company, but they changed it. He has got a service retention business from the builders, and my daughter works for another group. They are architects?

Q. Okay.

A. Is that right? All right.

Q. So nobody -- nobody close to you is involved in or employed in law enforcement?

A. No.

Q. Okay. And you have never been trained in law enforce?

A. No, absolutely not.

Q. Have you, or anybody close to you, ever been accused of or the victim of any sexual related offenses?

A. No.

Q. Have you, or anybody close to you, ever been charged with or the victim of any other types of criminal offenses?

A. No.

The only thing I can relate back to at all was my brother, who was a bit wild, and he was shot, he was with some friends in California,, and they had marijuana on them.

Q. That was how long ago?

A. Oh my gosh, I've got my years. That was a long time ago, and I think he was about, well, I guess he was about 17 or 18. I'm three years older than him.

Q. So there was nothing about that incident that would affect your ability to be a juror in this case?

A. No, it was a misdemeanor, and my mother made him pay the price, but other than that.

Q. Have you ever been called to jury duty?

A. I have, many times.

Q. And have you served?

A. Yes, I have.

Q. The last time, have you served on more than one jury?

A. Yes, I have.

Q. When was the last one? Let's start with that. How long ago did you serve?

A. The last one was probably 12, 14 years ago, and it was so nondescript. I think it was a civil case.

Q. It was a civil case?

A. No, it was criminal cases.

Q. Both of them were criminal cases?

A. Yes.

Q. The one, you didn't actually deliberate?

A. No, we didn't really get that far.

Q. They made some kind of resolution before they had you deliberate?

A. Yes.

Q. What about the trial before that, previously?

A. That one, my kids were small. That was a long time ago.

Q. Was it also a criminal trial?

A. It was a criminal trial.

Q. And do you remember if you deliberated?

A. Oh, yes, quite a while. It was frustrating.

Q. Okay. Now, we have something to talk about.

Were you the foreman?

A. I was.

Q. You were?

A. Yes, sir.

Q. Okay. So you were not only on the jury, and you deliberated, but you were in charge of deliberation?

A. Yes.

Q. Without telling us what happened, did the jury reach a verdict?

A. Yes.

Q. Okay.

So you said that a couple of times. It sounds like you deliberated a long time.

A. Yes, we did, and we didn't seem to hear the same things, and we called the reporter back in, and have things reread from the transcript.

Q. Okay. Do you remember how long it was that you deliberated/?

A. It was between five and six days.

Q. Between five and six days?

A. Yes.

Q. Okay. Now, and this was a long time ago?

A. This was a long time ago. My kids were -- my son was probably four -- well, I was still married so it was really a long time ago. He was under 16, and that was about it.

Q. So can you take that experience and keep it from interfering with your jury service here in this case?

A. Absolutely.

Q. Can you -- I know it was a long time ago so probably you are not letting any of the instructions on the law, or anything interfere with this case, just they tell you you remember?

A. Yes.

Q. Okay. But what we will ask you to do is to forget about anything that you might remember in regards to that jury service, and forget about it, and pay attention in this case, just to the evidence that you hear in this case, and the instructions that I give you on the law in this case and render a verdict on that, and nothing else.

Can you do that?

A. Of course.

Q. Okay, all right.

Can you think of anything that I haven't specifically touched upon, or asked you about, that might cause you difficulty in being a juror in a case like this?

A. No.

Q. Can you withhold forming an opinion about any aspect of this case until you have heard all of the evidence?

A. That's what we are supposed to do, and I would do that myself.

Q. I will tell you about 500 times before we get done. Can you follow that instruction?

A. Absolutely.

Q. Okay. If you were the Defendant or the prosecution in this case, would you be comfortable with somebody that had your frame of mind being on the jury?

A. Absolutely.

THE COURT: Ms. Luzaich, it is your turn.

VOIR DIRE EXAMINATION OF JUROR BRUNSON

BY MS. LUZAICH:

Q. Can you be fair to both sides?

A. Absolutely.

Q. Keep an open mind until all of the evidence is in?

A. That's what it has to be.

Q. And not scare the jurors into thinking they are going to have to stay four or five days to deliberate?

A. Well, if it needs to be done, it needs to be done, you know.

Q. That's very rare these days?

A. Yes.

Q. Is there any reason you can't sit as a juror?

A. No.

Q. Sit as a juror in this particular case?

A. No.

Q. Knowing what you know about yourself, you don't have a problem of sitting -- bless you -- in judgment of someone?

A. No.

Q. So if you aren't convinced beyond a reasonable doubt that the Defendant committed this crime as charged,



would you be able to say, guilty?

A. Yes.

Q. Okay. And just so say again, back when you served as a juror two times before, the law has changed a lot since then, so any instructions that you would have heard back then, you would forget and only follow the instructions that this Court reads to you?

A. Yes.

MS. LUZAICH: Okay, thank you.

Pass for cause, Judge.

VOIR DIRE EXAMINATION OF JUROR BRUNSON

BY MR. LANDIS:

Q. Yes, she's right, that's the second long deliberation we've heard of today, and I think people are getting lazy because you never hear of deliberations that long anymore.

Did the Defendant testify in either of those trials, do you remember?

A. One.

Q. And one, they did it?

A. In one, they did not.

Q. They didn't get far enough for him or her to have an opportunity?

A. Right.

Q. Were you expecting the Defendant to testify

in the case where they did?

A. It doesn't matter.

Q. It doesn't matter?

A. Well, it didn't matter in that case, I suppose. Do you want to know why?

Q. No, again, I am going to get in trouble. I am going to stop you.

Do you want that in this case?

A. What?

Q. The Defendant to testify?

A. I think that's up to the Defendant.

Q. Okay. Let me ask you this:

What has been your favorite question you've heard from one of the four of us so far?

A. My favorite one is the one you asked.

MR. LANDIS: Pass for cause, Judge.

THE COURT: All right. Counsel, approach the bench, please.

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

THE COURT: Okay.

We are going to ask the following jurors to go ahead and step down and report to the third floor, Jury Commissioner's office, call the office tomorrow.

Bonnie Huerta, and we will replace Bonnie Huerta

with Joann Czerwinski.

Thank you again very much for your service.

(Juror Huerta excused at this time.)

THE COURT: And, Joann, you will be in that second chair in the back row.

VOIR DIRE EXAMINATION OF JUROR CZERWINSKI

BY THE COURT:

Q. By this time, Joann, I suspect that there aren't too many surprises.

A. No.

Q. How long have you been in Las Vegas?

A. I have been in Las Vegas for 12 years.

Q. Okay. What do you do for a living?

A. I am an auditor with the Internal Revenue Service.

Q. Oh, my.

A. Still friends?

Q. Are you guys real busy right before the 15th, or it probably wouldn't have any effect on you guys?

A. I am not actually because I'm the auditor when we do those years like three years back, and so we are not dealing with the current year.

Q. How long have you worked for the IRS?

A. 31 years.

Q. So you worked for them way before you came

to Las Vegas?

A. Yes.

Q. Okay. And is it true that the actual number of IRS auditors in Las Vegas is about three times the number for income tax in the United States?

A. I used to work in Baltimore, and I think that there was a fair number each -- either place.

Q. So that's just a -- that's just an old wife's tail?

A. Yeah, it is a misconception.

Q. Okay. So what -- are you married?

A. I was. My husband died.

Q. Okay. And what did your husband do?

A. He was an auto mechanic.

Q. Okay. Do you have grown children?

A. No children. One dog.

Q. One dog? The dog is not employed?

A. No.

Q. All right. So have you ever been trained, being an auditor is not considered with the IRS, it is not considered in any fashion or form of law enforcement?

A. No.

Q. Have you ever had any training in law enforcement?

A. No.

Q. Has anybody, have you any other family members or persons close to you employed or trained in law enforcement?

A. No.

Q. Have you, or anybody close to you been the victim of, or accused of any type of sexually related offense?

A. No.

Q. Have you, or anybody close to you ever been accused of or the victim of any other type of criminal offense?

A. My house was burglarized back in 2001.

Q. Here, obviously, in Las Vegas?

A. Yes.

Q. Was anybody -- was a police report made?

A. Yes.

Q. To your knowledge, was anybody ever arrested or prosecuted?

A. Yes.

Q. And were they prosecuted for it?

A. I am thinking that they did.

What happened is they got to Oregon, and the police up there found the car with our belongings in it, and some got returned back to Las Vegas through the detectives, and we recovered most of our belongings.

Q. So it was an auto theft?

A. No, it was actually a -- these two guys were terrorizing the neighborhood. One of them was a neighbor, and they were watching peoples' houses, and they were stealing cars, or they were stealing stuff right in the people's houses and robbing them.

Q. So they did prosecute as far as you know?

A. As far as I know, but we were apprised of the date, but I don't know what happened. I never did find anything out.

Q. Is there anything about that incident that would cause you difficulty in dealing and being a juror on a case like this?

A. Not at all.

Q. Could you set that aside and not let it interfere with your jury duty?

A. Yes.

Q. You wouldn't hold that against the Police Department, or the other prosecution?

A. No.

Q. Or even the Defendant because of anything that happened with respect to that other criminal activity?

A. Not at all.

Q. Okay. You can sit as a juror in this case and render a verdict based strictly upon the evidence you

hear and the instructions on the law, and that's it, nothing else?

A. Yes.

Q. Okay. Have you ever been on jury duty before?

A. No.

Q. Can you think of any reason that I haven't specifically asked you about that would bear upon your ability to be a juror in this case?

A. No.

Q. Can you withhold forming an opinion about anything having to do with this case until you have heard all the evidence and my instructions on the law?

A. Yes.

Q. Do you think that you have a neutral, healthy, mental state of mind in regards to your jury duties in a case like this?

A. Yes.

Q. Would you be comfortable if you were the Defendant or the prosecution with a juror that has your frame of mind?

A. Yes.

THE COURT: I don't know, I can't think of anything else.

MS. KOLLINS: I'm sorry.

THE COURT: I'm done. I can't go any faster.

MS. KOLLINS: I will try to as well.

VOIR DIRE EXAMINATION OF JUROR CZERWINSKI

BY MS. KOLLINS:

Q. Ms. Czerwinski, is that how you pronounce your name?

A. Yes.

Q. Do you have brothers and sisters?

A. I have one brother and one sister.

Q. Do they have kids?

A. My brother has his dog.

Q. Any other relatives?

A. Well, they mostly live on the East Coast so I don't really see them that much. I have to see them before they see me. They don't come to the West Coast too much.

Q. What did you think when you got your jury summons?

A. I was pretty excited.

Q. And why?

A. I just want to do it.

Q. Not like you're an auditor?

A. It's a different field.

Q. The Judge is going to give you some instructions.



Do you think that you can follow those instructions even if you disagree with them?

A. Yes.

Q. Hold the State to our burden?

A. Yes.

Q. Give a fair trial to the victims?

A. Yes.

Q. And can you be fair to the Defendant?

A. Yes.

MS. KOLLINS: Thank you, pass for cause.

THE COURT: Counsel?

VOIR DIRE EXAMINATION OF JUROR CZERWINSKI

BY MR. BANKS:

Q. Is it Czerwinski? That's the --

A. You are correct.

Q. All right. In your years as an auditor, do you find a lot of honest mistakes?

A. Yes.

Q. Okay. Some are a lot softer.

Q. Okay.

A. A lot of times people are their own preparers, and they are not knowledgeable of tax law.

Q. Okay.

A. And as an auditor, I have to be aware of tax law. So I have to kind of educate them as to tell them where

the error was made, and to try to keep them more aware of what -- they should be more aware of the law.

Q. Okay. So you don't have repeat the same --

A. Yeah.

Q. So they don't repeat the same mistakes?

A. Yeah, yes, we try to stop it.

Q. Okay. I imagine some issues you see, and it's like oh, this again, and you kind of know what's going on?

A. Oh yeah, I have been doing it for 22 years now.

Q. Okay.

And I imagine some of the things you see are a lot more technical?

A. Yes.

Q. Is that fair?

A. Yes.

Q. Okay. Are you still learning new things everyday as the Tax Code code changes?

A. Oh yes.

Q. Okay.

A. The Code changes.

Q. Okay. I mean, you have got a lot of training in that area?

A. Yes.

Q. Okay. It could be daunting for somebody else who maybe not -- doesn't know what's going on?

A. Sure.

Q. Okay.

How did you feel about the charge when you heard what it was, the charges?

A. I didn't feel one way or the other. It's -- I am just wondering what precipitated what happened.

Q. Okay. It didn't scare you?

A. No.

Q. Or turn you off?

A. No.

Q. Or anything like that?

A. No.

Q. Make you sick?

A. No.

Q. Nothing like that?

A. No.

Q. Okay. How do you feel about this whole presumption of innocence thing? Is that something that you are comfortable with?

A. Yes, I am.

Q. Okay. Do you want to serve?

A. Very much.

MR. BANKS: Okay. Thank you so much for your

answers.

Pass for cause, Your Honor.

THE COURT: All right. Will you approach the bench? We are real close.

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

THE COURT: Okay. We are going to ask Stephanie Abernathy to step down, please, and she will be replaced by Juaneta Gibson.

Stephanie, we thank you very much for your participation, and Juaneta, you will be in the last chair in the back row.

We are almost done here.

(Juror Abernathy excused.)

VOIR DIRE EXAMINATION OF JUROR GIBSON

BY THE COURT:

Q. Juaneta?

A. Yes.

Q. Can I start asking you questions while you are still moving?

A. Yes, you can.

Q. All right. We will start at the top. How long have you been in Las Vegas?

A. I was born here. I am a native.

Q. Good for you. Do you live in Henderson?

A. No, I was born in Henderson actually, but then I came to Las Vegas.

Q. Okay. What do you do for a living?

A. I'm a homemaker.

Q. Okay. Have you ever worked outside the home?

A. Yes, I have been in retail for a time after high school, and part-time, but mostly I have been a homemaker for most of the time.

Q. Okay. Your husband?

A. He's a contractor, a commercial contractor.

Q. His own company?

A. Yes.

Q. What's the name of his company?

A. Gibson Construction.

Q. Okay. Do you have grown children?

A. Yes, I have one of three children, one of three children, two are adults, one a child. Both adults are working. My son, my only child is 27. He is an accountant..

Q. Okay. And what did you say the oldest one does?

A. Well, he is an accountant.

Q. Okay, all right. Anybody involved in law enforcement?

A. No.

Q. Have you ever been trained in law enforcement?

A. No.

Q. No close friends or relatives in law enforcement?

A. Not close. My husband has a cousin who is with Metro, we haven't seen him in years, so we see him very rarely, like every few years, very rare.

Q. Okay. Nothing about that relationship that would cause you difficulty in being a juror in a case like this?

A. No.

Q. It was Metro, not in Henderson?

A. No, it was Metro.

Q. Okay.

Have you, or anyone close to you, ever been the victim of, or accused of, any type of sexual related offense?

A. No.

Q. Have you, or anyone close to you, ever been the victim of, or accused of of any criminal offense?

A. No.

Q. Have you ever been on a jury?

A. I have never served on a jury. I have been called before, but usually was turned away.

Q. You never made it to --

A. I never made it this far.

Q. Okay, okay. Can you think of any reason that I haven't specifically touched broadly upon that may bear upon your ability to sit as a juror in a criminal case like this?

A. No.

Q. Do you understand the importance of not forming any type of an opinion?

A. Yes.

Q. About any aspect of the case until you have heard all the evidence, and I instruct you on the law. Do you understand how important that is?

A. Yes, I understand.

Q. And can you do that?

A. Yes, I can do that.

Q. Okay. Do you believe that you have a neutral, frame of mind in terms of your jury service today, and your duty as a juror?

A. Yes.

Q. As you approach this kind of a case, if you would be a juror in a case like this, you understand how important it is that you don't come with any leaning toward the prosecution or the defense?

A. Right.

Q. You have to keep a down the middle --

A. Open mind.

Q. Down the middle, neutral frame of mind,  
and listen to the evidence before you start making --  
forming any opinions. Do you understand?

A. Yes, Your Honor.

Q. Can you do that?

A. Yes.

Q. If you were the Defendant or the prosecution  
in this case, would you be comfortable with somebody on  
the jury that has your frame of mind?

A. Yes, I would.

MS. JUZAICH: Pass for cause.

MR. LANDIS: The Court's indulgence. We will  
pass.

THE COURT: Okay. Then approach the bench here.

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

THE COURT: Okay.

All right. We are going to ask Justin -- is it  
Gries?

JUROR GRIES: Gries.

THE COURT: Justin Gries, we are going to ask  
you to step down, and thank you very much for your  
participation.



(Juror Gries excused at this time.)

THE COURT: We are going to replace Justin with Brenda Medeiros. Brenda?

Thank you, Justin.

And Brenda, you are going to take the only open chair there.

VOIR DIRE EXAMINATION OF JUROR MEDEIROS

BY THE COURT:

Q. Now, Brenda, let me ask you something before you get even going you too from. You are from Sandy Valley, right?

A. Yes.

Q. How far is that?

A. From here to my work is 24 miles, and I work on the Strip, at Planet Hollywood, so probably another 10 miles maybe probably 10 miles maybe from where I live from here.

Q. All right. Here is how this works. There is a distance, and I am not positive what it is, if it's 50 miles or 60 miles, but I am pretty sure that it is one or the other, and you are going to be right on that borderline, and the borderline is this:

We pay to have you spend the night here if you want to stay in town.

But you might be five miles under the limit for

all I know. All I can tell you is, is this going to be a big problem commuting, and being here on time, and stuff?

A. No.

Q. Are you, if you had any the option, would you like to spend the night in town instead of going back and forth. You don't get to spend the weekend.

A. If I had to stay the night. Otherwise I would prefer just to go back home.

Q. Okay, and they pay -- I think they pay the mileage. They have a different arrangement, it's either spend the night or pay the mileage, something like that. But that wouldn't be a problem?

A. No.

Q. Okay. All right. So how long have you been in Las Vegas or in Sandy Valley? Have you always lived in Sandy Valley?

A. No, I just moved there a year ago.

Q. Okay and where did you live before then right here?

A. Vegas, for 17 years.

Q. Okay. And you work at --

A. Planet Hollywood.

Q. Planet Hollywood, doing what?

A. Waitress.

Q. Okay. Are you married?

A. I'm divorced.

Q. Do you have children?

A. I have two. My daughter is 18 and my son is 12.

Q. Does your 18 year old work?

A. No, she doesn't. They live in Florida with their father.

Q. Oh, okay.

A. Yeah, she is going to school. She graduates in May.

Q. And you you said in May? Okay. Have you ever been in law enforcement or trained in law enforcement?

A. No.

Q. Anybody close to you been trained or engaged in law enforcement?

A. My two cousins,, they live in Massachusetts. They are police officers, but I don't really talk to them too much.

Q. You don't talk to them too much?

A. No.

Q. Is there anything about the fact that you have got cousins that are police officers that would affect your ability to be a juror in a case like this?

A. No.

Q. Have you ever, you, or anyone close to you, ever been the victim of, or accused of any type of sexually related crimes?

A. My brother told me one time that an aunt, when he was a kid, did something to him, but he just mentioned it, and we never really talked about it.

Q. There was no criminal case?

A. No.

Q. As a result, or anything like that?

A. No.

Q. Anything -- well, how long ago was that?

A. Maybe 35 years ago.

Q. Okay. Is there anything about that incident that was involving your brother that would have any effect or bearing upon your jury duty here in this case?

A. No.

Q. You can set that all aside, and pay attention to this case, and render a verdict based upon this case?

A. Yes.

Q. The evidence and my instructions, is that right?

A. Yes.

Q. Okay. Can you think of anything that -- did I say -- did I ask you if you have been on a jury before?

A. No, you didn't.

Q. Have you?

A. And I haven't, no.

Q. Okay. Is there anything that you can think of that I haven't touched upon in a broad perspective here that would affect your ability to sit as a juror in a criminal case of this type?

A. No.

Q. Okay. Nothing that you can think of in your background that would cause you to give the testimony of a police officer any greater or lesser weight/?

A. No.

Q. Than any other witness?

A. No.

Q. You would treat them all the same?

A. Treat them all the same.

Q. Okay.

Do you understand the importance and the necessity of not forming any kind of an opinion about anything that has to do with this case until you have heard all of the evidence?

A. Yes.

Q. Can you do that?

A. Yes.

Q. Okay. Do you think that you have a healthy

mindset, a healthy, neutral mindset so that if you were one of the litigants, you would be comfortable with somebody that has your mindset being on the jury?

A. Yes, I do.

THE COURT: Okay, Ms. Kollins?

MS. LUZAICH: Pass for cause, Your Honor.

THE COURT: Okay.

THE COURT: Fellows?

MR. LANDIS: We will pass, Judge, thank you.

THE COURT: Okay.

Now, we have a jury, and I am going to discharge the rest of you so here is how this works. Be real careful.

I want to thank you very much for your jury service. As you can see, we started off with 80 people, we went through over two-thirds of them so we needed way more than the number of people that we end up with, and so just because you didn't get picked, I really and truly appreciated your participation because we couldn't do this if you guys weren't here.

So thank you all very much.

And I think it's too late to go to the third floor, check in. You can just check in tomorrow. Give them a call and let them know that you were discharged, and that you weren't picked.

Hopefully, that will be the end.

Okay? And thank you all very much for your participation.

All right. While they are going down to the Jury Commissioner's office, I am going to tell you guys, I have a bunch of instructions for you, but I am not going to do them until tomorrow. We are going to do that the first thing in the morning.

Tomorrow, we are proposing to start at nine. I told you all we wouldn't start until 10. Is there anybody that can't be here at nine?

Can everybody be here at nine?

We want to get as full a day in tomorrow as we can. We will probably bring them in, and we want to get as full a day in as we possibly can.

I have some instructions to read to you about generally what you do as a juror and what to expect.

The first thing that is going to happen -- where did Joe go?

THE CLERK: Take the jury outside.

THE COURT: Oh, okay.

The first thing that is going to happen, Joe is going to give you actual juror badges instead of the badges that came from the Jury Commissioner's office, okay?

It is real important that you keep those juror badges on any time that you are close to the Courthouse,

I mean, and there is a reason for it because it identifies you as a juror in a case that is sitting in trial.

That's different than a prospective juror. It is from being in a jury pool.

It tends -- it is supposed to isolate you and keep you apart from everybody else.

Don't talk to anybody around here because you never know who you are talking to about anything having to do with this case, in fact, just don't talk to anybody about anything to do with this case period, which includes with each other.

From now on, you won't be going in and out that front door. From now on, you are going to go with Joe out the back door, and it is the jury deliberation room right back here, and if something happens, we have a conflict with the courtroom next door, we will find another spot. But for now, this is going to be your room.

So when you guys meet, you will meet outside the double doors over here, on the side. You will go in and out those doors so stay away from the front out here, because that's where all the witnesses are going to be, and that's where the people are going to be that we don't want you to be around, okay?

So you go running out those middle doors here.

When I tell you to congregate at a certain time,



you will as a group congregate over there, and meet with Joe, until he brings you back to the deliberation room. You will have a place to leave your purses, and stuff, they will be safe there. You shouldn't have to worry about anything.

At night, you leave your notebooks such over here in the jury deliberation room.

And next time we are going to do it right now, you need to give them their badges through Joe.

THE BAILIFF: Okay.

THE COURT: This is different than the jury pool. Being the real jury, there is a different oath that you have to take so the very next thing thing we do is everybody stand, and raise your right hand. We need to swear you all in.

(Jury and alternates duly sworn.)

THE CLERK: Okay. You may be seated.

THE COURT: Okay.

Overnight, here is what is going to happen in the morning.

You are going to meet at five till nine outside of the double doors, okay?

Make sure you keep your jury badges on, have them on at lunch, have them on in the evening, have them on when you are anywhere close to the Courthouse. Keep your juror

badges out and keep them visible.

During this next however many hours until we meet again, I am going to admonish all of you:

Do not talk or discuss this case with anyone, including each other.

Do not watch, listen or listen to any reports or commentaries about anything having to do with this case or any person having to do with this case until such time as the case has been finally submitted to you.

Don't watch, listen or read any reports or commentaries from newspapers, radios, internet.

Don't look anything up. For those of you who have computers, which should be just about every single one of you, don't get curious and start looking stuff up on the internet to see if you can find something out.

Don't do anything that would constitute some kind of an investigation on your own about anything having to do with this trial.

Everything that you should consider when you retire as a juror on this case should come right from this witness stand or the evidence that has been admitted into this case and no place else.

Okay?

When you converse with your family, your husband, your wives, or whatever, that I am on a jury, it's a criminal

trial, that's it.

Say, I have been instructed by the Judge not to discuss anything else about this trial until it is over with, okay?

You guys are in recess. See you tomorrow morning at nine o'clock. We will have all day long.

(Jury and alternates excused at this time.  
Thereafter, the following proceedings were had outside their presence:)

THE COURT: Would you make sure that door closes when you go out? Thank you very much.

Back on the record.

All right. We need to be on the record for just a second.

All right. Counsel, you wish to make a Batson challenge to the State's striking, challenging juror number five by the name of Stephanie Abernathy.

MR. BANKS: Yes, Judge, Stephanie Abernathy, badge number 284.

Defense's position is that Ms. Abernathy was part of a protected class that being that she was African American, coincidentally, the same protective class as my client.

Based on the answers that she gave in response to the Court's questions as well as answers from the prosecution as well as the Defense, my perception is that

she say anything out of the ordinary in fact, when pressed without any prior incidents with the Henderson police, she indicated that she was out of place where she was over that, that she completely set it aside, it wouldn't affect how she approaches this case at all.

And not only that, I believe she indicated that she was a freelance makeup artist, and that she does makeup for strippers, something like that. I don't know what a -- how the Court or how the State feels about that.

I know that I have clients prosecuted where strippers are accusers, and the State in those cases put a lot of stock in what strippers say.

So I don't think the fact that she does makeup for strippers is really a reason that, you know, what I am saying, Judge, is I don't see any reason besides the fact that she is African American, and I believe once we make that claim that the State is now in a position where they have to put forth a race neutral reason for this -- for the challenge.

MS. LUZAICH: Well, first of all, I wasn't convinced that she was actually African American when she sat down.

I thought is she Mexican or black? But she is 22, and as he said, she works with strippers. It only has to be a race neutral reason.

She talked about an arrest for domestic violence. That alone is enough. She talked bout how she doesn't, or

at least at one point didn't like the Henderson Police Department.

That alone is also enough.

The fact that she has said that she has gotten over that. So what, you know, I call bullshit on that.

But those are just a series of race neutral reasons, and that's why we kicked her.

THE COURT: I think that the State has identified a sufficient race neutral reason, and that I think that they have and responded appropriately to the Baston challenge, and identified they have designated a race neutral reason.

So you have made your record, she's gone, we've got our jury.

MR. BANKS: Thank you.

THE COURT: And gentlemen, see you at nine o'clock.

MR. BANKS: Thank you.

THE COURT: And I will read through the jury instructions.

We can go off the record, Lee.

(Discussion off the record.)

\*\*\*\*\*

(End of proceedings.)

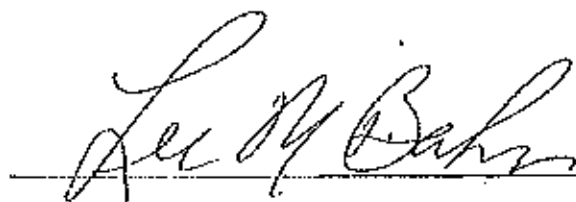
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## CERTIFICATE

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  
5th of December, 2008.



LEE M. BAHR, CP, CCR 173

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*E. M. Bahr*  
CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

HON. JAMES M. BIXLER, DISTRICT COURT JUDGE, PRESIDING

THE STATE OF NEVADA,  
Plaintiff,

v.

NARCUS S. WESLEY, aka  
NARCUS SAMONE WESLEY,  
Defendant.

Case No. C-232494  
Dept. 24  
Volume III

TRANSCRIPT OF PROCEEDINGS

Jury Trial

COURTHOUSE

April 9, 10 and 11, 2008

Las Vegas, Nevada

Reported by:

Lee M. Bahr, CP, CCR 173

CLERK OF THE COURT

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## Index of Witnesses

	NAME OF WITNESS	Page
1	Detective Curtis Allen Weske	
2	Direct Examination by Ms. Luzaich...	7
3	Cross-Examination by Mr. Landis...	40
4	Cross-Examination by Mr. Banks...	60
5	Redirect Examination by Ms. Luzaich...	68
6		
7	Donna Lamonte	
8	Direct Examination by Mr. Landis...	71
9	Cross-Examination by Ms. Luzaich...	77
10	Redirect Examination by Mr. Landis...	87
11	Narviez Wesley	
12	Direct Examination by Mr. Landis...	89
13	Cross-Examination by Ms. Kollins...	95
14	Angela Wesley...	
15	Direct Examination by Mr. Landis...	97
16	Narcus Wesley	
17	Direct Examination by Mr. Landis...	99
18	Cross-Examination by Ms. Luzaich...	100
19	*****	
20	After Jury Selection, the following witnesses were called by the State on 4/11/08 as follows:	
21	Opening Statement by Ms. Luzaich...	609
22	Opening Statement by Mr. Landis...	626
23	DANIELLE BROWNING	
24	Direct Examination by Ms. Luzaich	639
25	Cross-Examination by Mr. Banks...	678
	Redirect Examination by Ms. Luzaich...	696
	Recross-Examination by Mr. Banks...	701



## Index of Witnesses (page 2)

Name of Witness	Page
Justin Richardson	
Direct Examination by Ms. Kollins...	704
Cross-Examination by Mr. Landis...	762
Redirect Examination by Ms. Kollins...	784
Recross-Examination by Mr. Landis...	798

\*\*\*\*\*

1 APPEARANCES:

2

3 For the State:

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Las Vegas, NV. 89155  
and

5

STACY KOLLINS, ESQ.  
Deputy D. A.  
200 Lewis Ave.  
Las Vegas, NV. 89155

6

7

8

9 Defendant present in court in custody.

10 For the Defendant:

CASEY LANDIS, ESQ.  
Deputy Public Defender  
309 South Third Street  
Suite 226  
Las Vegas, NV. 89101  
and

11

12

13

JEFFREY BANKS, ESQ.  
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309 South Third Street  
Suite 226  
Las Vegas, NV. 89101

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16

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18 No other appearances.

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## TRANSCRIPT OF PROCEEDINGS

(Whereupon, at approximately nine a.m., April 11, 2008, the following proceedings were had outside the presence of the jury, and alternates:)

\*\*\*\*\*

THE COURT: Okay. We are on the record in the matter of the State of Nevada v. Narcus Wesley.

Do we have any matters to bring up before we bring in the jury?

MR. LANDIS: Not from the Defense.

MS. LUZAICH: No, Your Honor.

THE COURT: All right. Let's bring them in.

THE COURT: We have the amended information. When she reads it, we don't have any changes, do we?

MS. LUZAICH: No, I already changed it and brought it out, the other Defendant, and showed it to Defendant's counsel before so --

THE COURT: Have you got the right information when you read it?

THE CLERK: I have.

THE COURT: We swore them in already, right?

THE CLERK: Yes.

THE CLERK: You have got the jury list.

1           (Whereupon, the following proceedings were had  
2 in the presence of the jury.)

3           THE BAILIFF: Please be seated.

4           THE COURT: Do both parties stipulate to the  
5 presence of the jury?

6           MR. LANDIS: Yes, Judge.

7           MS. KOLLINS: Yes, Your Honor.

8           THE COURT: Okay.

9           Ladies and gentlemen of the jury, I am about  
10 to go over your general instructions with regards to  
11 your duties as a juror in this case.

12           I am going to be reading several pages of  
13 instructions. So just bear with me as I go through this  
14 information.

15           You are admonished that no juror may declare  
16 to a fellow juror any facts relating to this case of  
17 his or her own knowledge, and if any juror discovers  
18 during the trial or after the jury has retired that he,  
19 or she, or any other juror has personal knowledge of any  
20 fact in controversy in this case, he or she shall disclose  
21 such situation to myself in the absence of the other  
22 jurors.

23           This means that if you learn during the course  
24 of this trial that you were acquainted with the facts of  
25 this case or the witnesses, and you have not previously

1 told me of this relationship, you must then declare that  
2 fact to me. You must communicate to me through the  
3 bailiff.

4 During the course of the trial, the attorneys  
5 for both sides, the parties, the witnesses, the Court  
6 personnel, other than Joe, are not permitted to converse  
7 with members of the jury. These individuals are not  
8 antisocial but are simply bound by ethics and the law not  
9 to talk to you. To do so might contaminate your verdict.

10 You are admonished additionally that you are  
11 not to visit the scene of any of the facts or occurrences  
12 made mention of during the course of this trial unless  
13 specifically directed to do so by the Court, and I don't  
14 think that that's going to be happening.

15 Don't investigate this case, or anyone who has  
16 anything to do with this case, on your own.

17 Do not undertake any individual factual research  
18 on your own.

19 What I now say is intended to serve as an  
20 introduction to the trial of this case.

21 This is not a substitution for the detailed  
22 instructions on the law which I will give you at the close  
23 of the case and before you retire to consider your verdict.

24 This is a criminal case commenced by the State  
25 of Nevada, which may be referred to as the State, against

1 Narcus Wesley, and this case is based upon an information.

2 The Clerk is going to read this information,  
3 which is a charging document to you at this time, and then  
4 I will explain to you how this will work.

5 Go ahead and read that information.

6 THE CLERK: Filed in open court April 10, 2000,  
7 Charles J. Short, Clerk of the Court by Teresa Lee, Deputy.  
8 Information.

9 David Roger, Clark County District Attorney,  
10 attorney for the Plaintiff.

11 District Court, Clark County, Nevada.

12 The State of Nevada, Plaintiff, v. Narcus S.  
13 Wesley, also known as Narcus Samone Wesley, Defendant,  
14 Case Number C-232494, Department Number 24.

15 Second amended information.

16 The State of Nevada, County of Clark.

17 Davis Roger, District Attorney within and for  
18 the County of Clark, State of Nevada in the name and by  
19 the authority of the State of Nevada informs the Court  
20 that Narcus S. Wesley, also known as Narcus Samone Wesley,  
21 the Defendant, above-named, having committed the crimes of  
22 conspiracy to commit burglary, a gross misdemeanor, NRS  
23 199.480 and 205.060.

24 Conspiracy to commit robbery, felony, NRS 199.480,  
25 200.380.

1           Burglary, while in possession of a deadly weapon,  
2           felony, NRS 205.060.

3           Robbery with use of a deadly weapon, felony,  
4           NRS 200.380 and 193.165.

5           Assault with use of a deadly weapon, felony,  
6           NRS 200.471 and 193.165.

7           First degree kidnapping with use of a deadly  
8           weapon, felony, NRS 200.310 and 200.320, and 193.165.

9           Sexual assault with use of a deadly weapon,  
10          felony, NRS 200.364, 200.366, and, 193.165.

11          Coercion with use of a deadly weapon, felony,  
12          NRS 207.190, 193.165.

13          And open or gross lewdness with use of a deadly  
14          weapon, gross misdemeanor, NRS 201.210 and 193.165.

15          On or about the 18th day of February, 2007,  
16          within the County of Clark, State of Nevada, contrary to  
17          the form, force and effect of the statutes in such cases  
18          made and provided, and against the peace and dignity of  
19          the State of Nevada:

20          Count I, conspiracy to commit a burglary.

21          Defendant and Delarian Kameron Wilson did then  
22          and there meet with each other, and between themselves,  
23          and each of them with the other willfully and unlawfully  
24          conspire and agree to commit a crime, to-wit, burglary,  
25          and in furtherance of the said conspiracy, Defendant and

1 Delarian Kameron Wilson did commit the acts as set forth  
2 in Counts III and XI, said acts being incorporated by this  
3 reference as though fully set forth herein.

4 Count II, conspiracy to commit robbery.

5 Defendant and Delarian Kameron Wilson did then  
6 and there meet with each other, and between themselves,  
7 and each of them with the other, willfully, unlawfully  
8 and feloniously conspire and agree to commit a crime,  
9 to-wit, robbery, and in furtherance of the said conspiracy,  
10 Defendant and Delarian Kameron Wilson did commit the acts  
11 as set forth in Counts IV, VI, VII and IX, said acts  
12 being incorporated by this record as though fully set  
13 forth therein.

14 Count III, burglary while in possession of a  
15 deadly weapon.

16 Defendant and Delarian Kameron Wilson did then  
17 and there willfully, unlawfully and feloniously enter  
18 while in possession of a deadly weapon, to-wit, a handgun,  
19 with intent to commit larceny, and/or felony, to-wit,  
20 robbery, the house at 690 Great Dane Court, Henderson,  
21 Clark County, Nevada, the Defendant being criminally  
22 liable under one or more of the following principles of  
23 criminal liability, to-wit:

- 24 1. By directly committing this crime and/or
- 25 2. By Defendant and Delarian Kameron Wilson



1 aiding or abetting one another in the commission of the  
2 said crime by assisting one another and by providing  
3 counsel and encouragement, each carrying out specific  
4 acts with the intent that the crime be committed, and/or

5 3. Pursuant to a conspiracy to commit this  
6 crime.

7 Count IX, robbery with use of a deadly weapon.

8 Defendant and Delarian Kameron Wilson did then  
9 and there willfully, unlawfully and feloniously take  
10 personal property, to-wit, condoms from the person of  
11 Justin Richardson, or in his presence, by means of force,  
12 or violence, or fear of injury to, and without the consent  
13 and against the will of the said Justin Richardson, said  
14 Defendant and Delarian Kameron Wilson, using a deadly  
15 weapon, to-wit, a handgun during the commission of said  
16 crime, the Defendants being criminally liable under one  
17 or more of the following principles of criminal liability,  
18 to-wit:

19 1. By directly committing this crime, and/or

20 2. By Defendant and Delarian Kameron Wilson  
21 aiding or abetting one another in the commission of this  
22 crime, by assisting one another, and by providing counsel  
23 and encouragement, each carrying out specific acts with  
24 the intent that this crime be committed, and/or

25 3. Pursuant to a conspiracy to commit this crime.

Count V, assault with use of a deadly weapon.

Defendant and Delarian Kameron Wilson did willfully, unlawfully and feloniously place another person in reasonable apprehension of immediate bodily harm, to-wit, Aitor Eskandon, by pointing a handgun at and forcing the said Aitor Eskandon to lay on the ground while personal property was taken from others in his presence, said Defendant and Delarian Kameron Wilson using a deadly weapon, to-wit, a handgun, during the commission of the said crime, the Defendant being criminally liable under one or more of the following principles of criminal liability, to-wit:

1. By directly committing this crime, and/or

2. By Defendant and Delarian Kameron Wilson aiding or abetting one another in the commission of this crime by assisting one other and by providing counsel and encouragement, each carrying out specific acts with the intent this crime be committed, and/or

3. Pursuant to a conspiracy to commit this crime.

Count VI, robbery with use of a deadly weapon.

Defendant and Delarian Kameron Wilson did then and there willfully, unlawfully and feloniously take personal property, to-wit, money from the person of Justin Foucault, or in his presence, by means of force or violence, or fear and injury to, and without the consent and against the will

1 of the said Justin Foucault, said Defendant and Delarian  
2 Kameron Wilson using a deadly weapon, to-wit, a handgun  
3 during the commission of said crime, the Defendant being  
4 criminally liable under one or more of the following principles  
5 of criminal liability, to-wit

6 1. By directly committing this crime, and/or

7 2. By the Defendant and Delarian Kameron Wilson  
8 aiding or abetting one another in the commission of this  
9 crime, by assisting one another, and by providing counsel  
10 and encouragement each carrying out specific acts with this  
11 crime be committed, and/or

12 3. Pursuant to conspiracy to commit this crime.

13 Count VII, Robbery with use of a deadly weapon.

14 Defendant and Delarian Kameron Wilson did then  
15 and there willfully, unlawfully and feloniously take personal  
16 property, to-wit, money from the person of Ryan Tognotti,  
17 or in his presence, by means of force, or violence, or fear  
18 of injury to, and without the consent and against the will  
19 of the said Ryan Tognotti, said Defendant and Delarian  
20 Kameron Wilson using a deadly weapon, to-wit, a handgun  
21 during the commission of said crime, the Defendant being  
22 criminally liable under one or more of the following principles  
23 of criminal liability, to-wit

24 1. By directly committing this crime, and/or

25 2. By Defendant Delarian Kameron Wilson aiding

1 or abetting one another in the commission of this crime  
2 by assisting one another, and by providing counsel and  
3 encouragement, each carrying out specific acts with the  
4 intent that this crime be committed, and/or

5 3. Pursuant to conspiracy to commit this crime.

6 Count VIII, assault with use of a deadly weapon.

7 Defendant and Delarian Kameron Wilson did willfully,  
8 unlawfully and feloniously place another person in reasonable  
9 apprehension of immediate bodily harm, to-wit, Clinton  
10 Tognotti, by pointing a handgun at and forcing the said  
11 Clinton Tognotti to lay on the ground while personal property  
12 was taken from others in his presence.

13 Said Defendant and Delarian Kameron Wilson using  
14 a deadly weapon, to-wit, a handgun during the commission  
15 of said crime, the Defendant being criminally liable under  
16 one or more of the following principles of criminal liability,  
17 to-wit:

18 1. By directly committing this crime, and

19 2. By Defendant and Delarian Kameron Wilson  
20 aiding or abetting one another in the commission of the  
21 crime by assisting one another, and by providing counsel  
22 and encouragement, each carrying out specific acts with  
23 the intent that this crime be committed, and/or.

24 3. Pursuant to a conspiracy to commit this crime.

25 Count IX, robbery with use of a deadly weapon.

1 Defendant and Delarian Kameron Wilson did then  
2 and there willfully, unlawfully, and feloniously take  
3 personal property, to-wit, cell phone from the person  
4 of Danielle Browning, or in her presence, by means of force,  
5 or violence, or fear of injury to, and without the consent  
6 and against the will of the said Danielle Browning, said  
7 Defendant and Delarian Kameron Wilson using a deadly weapon,  
8 to-wit, a handgun, during the commission of said crime,  
9 the Defendant being criminally liable under one or more  
10 of the following principles of criminal liability, to-wit:

11 1. By directly committing this crime and/or

12 2. By Defendant and Delarian Kameron Wilson aiding  
13 or abetting one another in the commission of said crime  
14 by assisting one another, and by providing counsel and  
15 encouragement, each carrying out specific acts with the  
16 intent that this crime be committed, and/or

17 3. Pursuant to conspiracy to commit this crime.

18 Count X, firms degree kidnapping with use of a  
19 deadly weapon.

20 Defendant and Delarian Kameron Wilson did willfully,  
21 unlawfully, and feloniously and without authority of law  
22 seize, confine, inveigle, entice, decoy, abduct, conceal,  
23 kidnap, or carry away Ryan Tognotti, a human being, with  
24 the intent to hold or detain the said Ryan Tognotti against  
25 his will, and without his consent for the purpose of committing

1 robbery, said Defendant and Delarian Kameron Wilson using  
2 a deadly weapon, to-wit, a handgun, during the commission  
3 of said crime, the Defendant being criminally liable under  
4 one or more of the following principles of criminal liability,  
5 to-wit:

- 6 1. By directly committing the crime; and/or
- 7 2. By Defendant and Delarian Kameron Wilson  
8 aiding or abetting one another in the commission of this  
9 crime by assisting one another, and by proving counsel and  
10 encouragement, each carrying out specific acts, with the  
11 intent this crime be committed, and/or
- 12 3. Pursuant to a conspiracy to commit this  
13 crime.

14 Count XI, burglarwy while in possession of a  
15 deadly weapon.

16 Defendant and Delarian Kameron Wilson did then  
17 and there willfully, unlawfully, and feloniously enter  
18 while in possession of a deadly weapon, to-wit, handgun,  
19 with intent to commit larceny, and/or, felony, to-wit,  
20 robbery, the Honda Civic belonging to Ryan Tognotti, the  
21 Defendant being criminally liable under one or more of  
22 the following principles of criminal liability, to-wit:

- 23 1. By directly committing the crime, and/or
- 24 2. By Defendant and Delarian Kameron Wilson  
25 aiding or abetting one another in the commission of this

1 crime by assisting one another and by providing counsel  
2 and encouragement, each carrying out specific acts with  
3 the intent that this crime be committed, and/or

4 3. Pursuant to a conspiracy to commit this  
5 crime.

6 Count 12, sexual assault with use of a deadly  
7 weapon.

8 Defendant and Delarian Kameron Wilson, did then  
9 and willfully, unlawfully, and feloniously sexually assault  
10 with the use of a deadly weapon, to-wit, a handgun, and  
11 subject Danielle Browning, a female person, to sexual  
12 penetration, to-wit, by forcing Danielle Browning to  
13 perform fellatio on Justin Richardson while threatening  
14 to kill her, or others, if she did not perform said sexual  
15 act, against her will, the Defendant being criminally liable  
16 under one or more of the following principles of criminal  
17 liability, to-wit:

18 1. By directly committing this crime, and/or.

19 2. By Defendant and Delarian Kameron Wilson aiding  
20 or abetting one another in the commission of this crime by  
21 assisting one another, by providing counsel and encouragement,  
22 each carrying out specific acts with the intent that this  
23 crime be committed, and/or

24 3. Pursuant to a conspiracy to commit this crime.

25 Count XIII, sexual assault with use of a deadly

1     weapon.

2             Defendant and Delarian Kameron Wilson, did then  
3     and there willfully, unlawfully and feloniously sexually  
4     assault, with use of a deadly weapon, to-wit, a handgun,  
5     and subject Danielle Browning, a female person, to sexual  
6     penetration, to-wit, by forcing Danilelle Browning to  
7     subjected to cunnilingus performed by Justin Richardson,  
8     while threatening to kill her, or others, if she didn't  
9     engage in said acts, excuse me, threaten to kill her, or  
10    others, if she didn't engage in said sexual acts, against  
11    her will, the Defendant being criminally liable under one  
12    or more of the following principles of criminal liability,  
13    to-wit:

- 14             1. By directly committing this crime and/or  
15             2. By Defendant Delarian Kameron Wilson, aiding  
16     or abetting one another in the commission of this crime by  
17     assisting one another, and by providing counseling and  
18     encouragement, each carrying out specific acts with the  
19     intent that this crime be committed, and/or

20             3. Pursuant to conspiracy to commit this crime.

21             Count XIV, sexual assault with use of a deadly  
22     weapon.

23             Defendant and Delarian Kameron Wilson gun did then  
24     and there willfully, unlawfully, and feloniously sexually  
25     assault, with use of a deadly weapon, to-wit, a handgun,



1 and subject Justin Richardson, a male person, to sexual  
2 penetration, to-wit, by forcing Justin Richardson to receive  
3 fellatio from Danielle Browning, or threatening to kill  
4 him, and/or others, if he did not engage in said sexual conduct  
5 against his will, the Defendant being criminally liable under  
6 one or more of the following principles of criminal liability,  
7 to-wit:

8 1. By directly committing this crime, and/or

9 2. By Defendant and Delarian Kameron Wilson aiding  
10 or or abetting one another in the commission of this crime  
11 by assisting one another, and by providing counsel and  
12 encouragement, each carrying out specific acts, with the  
13 intent that this crime be committed, and/or

14 3. Pursuant to a conspiracy to commit this crime.

15 Count XV, sexual assault with use of a deadly  
16 weapon.

17 Defendant and Delarian Kameron Wilson, did then  
18 and there willfully, unlawfully and feloniously sexually  
19 assault with the use of a deadly weapon, to-wit, a handgun,  
20 and subject Justin Richardson, a male person, to sexual  
21 penetration, to-wit by forcing Justin Richardson to perform  
22 cunnilingus on Danielle Browning while threatening to kill  
23 him, and/or others, if he did not engage in said sexual  
24 conduct against his will, the Defendant being criminally  
25 liable under one or more of the following principles of

1 criminal liability, to-wit:

2 1. By directly committing the crime, and/or

3 2. By the Defendant and Delarian Kameron Wilson  
4 aiding or abetting one another in the commission of this  
5 crime, or assisting one another, and by providing counseling  
6 and encouragement, each carrying out specific acts, with the  
7 intent that this crime be committed, and/or

8 3. Three, pursuant to a conspiracy to commit  
9 this crime.

10 Count XVI, coercion with use of a deadly weapon.

11 Defendant and Delarian Kameron Wilson did then  
12 and there willfully, unlawfully, and feloniously use physical  
13 force, or the immediate threat of such force, against Ryan  
14 Tognotti, with intent to compel him to do or abstain an act  
15 which he had a right to do, or abstain from doing, by using  
16 a deadly weapon, to-wit, a handgun, and forcing Ryan Tognotti,  
17 to masturbate his penis, said acts being sexually motivated,  
18 the Defendant being criminally liable, under one or more of  
19 the following principles of criminal liability, to-wit:

20 1. By directly committing this crime, and/or

21 2. The Defendant and Delarian Kameron Wilson  
22 aiding or abetting one another in the commission of this  
23 crime by assisting one another, and by providing counsel  
24 and encouragement, each carrying out specific acts, with  
25 the intent that this crime be committed, and/or

1           3. Pursuant to a conspiracy to commit this crime.

2           Count XVII, sexual assault with use of a deadly  
3 weapon.

4           Defendant and Delarian Kameron Wilson did then  
5 and there willfully, unlawfully and feloniously sexually  
6 assault with use of a deadly weapon, to-wit, a handgun, and  
7 subject Danielle Browning,, a female person, to sexual  
8 penetration, to-wit, digital penetration, Defendant Marcus  
9 Wesley penetrated Danielle Browning's vagina, however slight,  
10 with his hand, or one; or more of his fingers against her  
11 will, the Defendant being criminally liable under one or  
12 more of the following principles of criminal liability,  
13 to-wit:

14           1. By directly committing the crime, and.

15           2. By the Defendant and Delarian Kameron Wilson  
16 aiding or abetting one another in the commission of this  
17 crime by assisting one another, and by providing counsel  
18 and encouragement, each carrying out specific acts, with  
19 the intent that this crime be committed, and/or.

20           3. Pursant to a conspiracy to commit this  
21 crime.

22           Count XVIII, open or gross lewdness with the use  
23 of a deadly weapon.

24           Defendant and Delarian Kameron Wilson did then  
25 and willfully and unlawfully commit an act of open or gross

1     lewdness by touching, and/or rubbing the chest, and/or the  
2     buttocks of Danielle Browning, with use of a deadly weapon,  
3     to-wit, a handgun, to you, the Defendant being criminally  
4     liable under one or more of the following principles of  
5     criminal liability, to-wit:

6             1. By directly committing this crime, and/or

7             2. By the Defendant and Delarian Kameron Wilson  
8     aiding and abetting one another in the commission of this  
9     crime by assisting one another, and by providing counsel  
10    and encouragement, each carrying out specific acts with the  
11    intent that this crime be committed, and/or

12            3. Pursuant to a conspiracy to commit this crime.

13            Davis Roger, District Attorney, by Lisa Luzaich,  
14    Chief Deputy District Attorney, to which the Defendant  
15    entered pleas of not guilty.

16            THE COURT: This case is based upon the information  
17    that we have had the Clerk just read to you.

18            You should distinctly understand that this  
19    information, this charging document is simply a charging  
20    document, and is not in any sense evidence of the allegations  
21    that are contained within it.

22            The Defendant has pled not guilty to this  
23    information.

24            The State, therefore, has the burden of proving  
25    each of the essential elements of the charges beyond a

1 reasonable doubt.

2 As the Defendant sits there now, he is not guilty.

3 The purpose of this trial is to determine whether  
4 or not the State will meet that burden of proof.

5 It is your primary responsibility as jurors to  
6 find and determine the facts.

7 Under our system of criminal procedure, you are  
8 the sole Judge of the facts. You are to determine the facts  
9 from the testimony you hear, and the other evidence, including  
10 exhibits introduced to the Court.

11 It is up to you to determine the inferences which  
12 you feel may be properly drawn from the evidence.

13 At times I may sustain objections or direct you  
14 to disregard certain testimony or other exhibits.

15 You must not consider any evidence to which an  
16 objection has been sustained, or which I have instructed  
17 you to disregard.

18 Anything you may have seen or heard outside the  
19 courtroom is not evidence and must also be disregarded.

20 You must not be influenced in any degree by any  
21 personal feelings of sympathy for or prejudice against the  
22 State of the Defendant.

23 Both sides are entitled to the same fair and  
24 impartial consideration.

25 In considering the weight and value of the

1 testimony of any witness, you may take into consideration  
2 the appearance, the attitude, the behavior of the witness,  
3 the interest of the witness in the outcome of the case, if  
4 any, the relation of the witness to the Defendant or the  
5 State, the inclination to speak truthfully, or not, and  
6 the probability or improbability of the witness's statements,  
7 and all of the facts and circumstances in evidence.

8           Thus you may give the testimony of any witness  
9 just such weight and value as you believe that testimony  
10 of that witness is entitled to receive.

11           There are two kinds of evidence, direct and  
12 circumstantial.

13           Direct evidence is testimony by a witness evidence  
14 about what that witness personally saw or heard.

15           Circumstantial evidence is testimony or exhibits  
16 which are proof of a particular fact, which, if proven, you  
17 may infer the existence of a second fact.

18           If you were to wake up in the morning -- this is  
19 a classic example of what direct evidenced is, and what  
20 circumstantial evidence is -- if you wake up in the morning,  
21 and you go outside, and you see that the sidewalk is wet,  
22 the street is wet, and there is water running down the  
23 gutter, you could infer from what you are seeing that it  
24 had rained during the night.

25           That is circumstantial evidence of what you

1       inferred that it had rained during the night.

2               On the other hand, if you woke up, and went outside  
3 during the night and saw it raining, that's direct evidence.  
4 You actually saw it.

5               You may consider both direct and circumstantial  
6 evidence in deciding this case.

7               The law permits you to give equal weight to both,  
8 but it is for you to decide how much weight to give any  
9 evidence.

10              You will be given the opportunity to ask questions,  
11 and I am going to explain to you about this asking questions  
12 from the jury, and before, as I do this, I am going to go  
13 back and kind of review what everybody here does during the  
14 course of the trial, what everybody's job is.

15              These folks over here are the prosecutors. They  
16 are going to put on their case, ask their witnesses questions,  
17 and cross-examine any other witnesses that the Defense may  
18 put on.

19              These folks over here are going to cross-examine  
20 the State's witnesses and put on any evidence witness that  
21 they deem necessary.

22              I am going to listen to any objections and rule  
23 on them, and instruct you on the law.

24              You are the jury. It is your job to determine  
25 the facts of this case.

1           It's not your job to be the prosecutor or the  
2           Defense attorney and ask questions. But the law permits  
3           you to ask a question, and there is a specific procedure  
4           that you go through if you are going to ask a question,  
5           although it is not encouraged that you ask questions.

6           You can ask questions, you take your notebook,  
7           clean sheet, nothing else on it. You write your question,  
8           you put your name, and your juror number on the question.  
9           The question has to be a question for the witness.

10          You will raise your hand, and Joe will come and  
11          pick up the question. He will bring it to me, I will call  
12          counsel to the bench. I will show them the question. We  
13          will go through it. I will listen to what they have to say.  
14          I will make a ruling as to whether or not that is a proper  
15          question to be asked of the witness.

16          If it is, I will ask the question, okay?

17          You can't ask questions of me, or counsel, or  
18          anybody else, and if you are going to ask a question of  
19          the witness, you need to do it while the witness is still  
20          sitting there.

21          So, as each witness concludes their testimony,  
22          I will try to make a quick review to see if there is  
23          anybody that has their hand up because once that witness  
24          leaves the witness stand, it's too late, and you won't be  
25          asking that witness any questions, any more questions.



1     okay?

2             All right. The first thing that is going to  
3     happen when I get done with these instructions, we are  
4     going to have opening arguments.

5             Opening statements of counsel and the closing  
6     arguments of counsel are intended to help you understand  
7     the evidence and applying the law.

8             But you have to keep in mind, opening statements  
9     and closing arguments of counsel are not evidence.

10            Until this case has been submitted to you, you  
11     must not discuss it with anyone, even with each other.  
12     After it is submitted to you, you must discuss it only  
13     in the jury room with your fellow jurors.

14            It is important that you keep an open mind and  
15     not decide any issues pertaining to this case until the  
16     entire case has been submitted to you under the instructions  
17     that I give you on the law.

18            If you cannot hear a witness, please raise your  
19     hand and indicate if that's the case.

20            If you need to use the restroom, raise your hand,  
21     let Joe know, and he will tell me, and we will take a break.

22            We will try to take breaks about every hour to  
23     hour -- no more than an hour and a half. It doesn't matter  
24     how long it has been. If you need a break for some reason,  
25     if you raise your hand, let Joe know, and we will take one,

1 all right?

2 During the course of the trial, I may be seen  
3 to be making notes. If by some chance you see me making a  
4 note, that's not to make any kind of an inference, you are  
5 not to draw any kind of an inference from the fact.

6 I am simply preparing to address legal arguments  
7 from counsel, and for that reason, I may be taking particular  
8 notes of some kind of the -- of some of the testimony.

9 You are not going to have a transcript of this  
10 case. You will have an opportunity to take notes, and you  
11 will have an opportunity to ask for readbacks. But again,  
12 that's not encouraged.

13 So we want you to pay close attention.

14 You each have a notebook pad to take notes on,  
15 and we encourage you to take notes, but I need to make  
16 sure you understand that I don't want you taking notes  
17 to the exclusion of listening to somebody's testimony.

18 So if you are going to take notes, take notes  
19 when they are not talking, or inbetween the witnesses,  
20 you want to note down something, but pay particular  
21 attention to the witnesses when they are on the witness  
22 stand. Don't let something distract tract you from  
23 doing that.

24 Let's see. \*

25 This trial will proceed in the following manner.

1           The District Attorney, either Ms. Luzaich or Ms.  
2           Kollins, will make an opening statement, which is an outline  
3           so help you understand what the State expects to prove during  
4           the course of the trial.

5           Counsel for the Defense, either Mr. Landis or Mr.  
6           Banks will then also if they want to, but don't have to, make  
7           an opening statement.

8           Also, it serves as an introduction of what they  
9           anticipate the evidence to be.

10          The State will then will present its evidence, and  
11          Defense counsel will cross-examine the witnesses.

12          Following the State's case, the Defense may present  
13          evidence, and the Deputy District Attorneys will then  
14          cross-examine those witnesses.

15          However, as I said earlier, the Defense is not  
16          obligated to put any witness on the witness stand.

17          After all of the evidence has been presented, I  
18          will instruct you on what the law is as it pertains to this  
19          case.

20          After the instructions of the law have been read  
21          to you, and each side is going to have an opportunity to  
22          present their closing argument.

23          Again, as I said, the closing arguments just like  
24          in the opening statements, it is not evidence.

25          The arguments are designed primarily to summarize

1 what counsel feels the evidence has shown.

2 Since the State has the burden of proof when it  
3 comes to closing arguments, they get to make the first closing  
4 argument, the Defense makes their closing argument, and then  
5 the State gets a chance to make their final rebuttal closing  
6 argument.

7 After all of the arguments have been completed,  
8 you will at that time retire, and you will take one set of  
9 the instructions on the law, and the verdict forms, and you  
10 will retire to the jury room to consider your verdict.

11 Let me remind you, until the case has actually  
12 been submitted to you, just as I have described, do not  
13 talk to each other about the case, or about anybody who  
14 has anything to do with this case.

15 Do not talk to anyone else about this case, or  
16 anybody -- or anyone who has anything to do with this case  
17 until the trial is ended, and you have been discharged.

18 Anyone else means anyone else, members of your  
19 family, or friends, anybody that you see in the Courthouse  
20 especially.

21 As I told you yesterday, you can tell them you  
22 are in a criminal trial, but you can't tell them anything  
23 else. I'm in a criminal trial. The Judge has instructed  
24 me not to discuss this, and so you will have to wait, and  
25 I will tell you about it when the case is over.

1 Do not let anybody else talk to you about the  
2 case. If somebody talks to you and is insistent, then  
3 you notify Joe, and we will handle it, okay?

4 Don't read anything about this case. Don't read  
5 anything in the newspapers. Don't read anything on the  
6 internet. Don't look anything up. Don't listen to anything  
7 on the radio.

8 Just, if something should come up where this case  
9 is mentioned, you just don't look at it.

10 And don't visit, as I told you before, anyplace,  
11 the scene of any of the events that are testified to.

12 Do not do any kind of investigation or research.

13 Do not get on the internet, as I told you yesterday,  
14 and start looking stuff up to see if you can find something,  
15 some old news article, or something bolstering the evidence.

16 You have to reach a verdict based upon the evidence  
17 that you hear in this case in this courtroom during the  
18 course of this trial, and the instructions that I give you,  
19 and that's all.

20 Okay. Counsel, are you ready?

21 You are up.

22 MS. LUZAICH: You know what? We would invoke the  
23 exclusionary rule.

24 THE COURT: Any witnesses or potential witnesses  
25 in this case should remain in the hallway and are admonished

1 not to discuss with anybody besides counsel their testimony.

2 Is there anybody else here?

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

5 THE COURT: Just real quickly, just what we were  
6 discussing.

7 There are persons who at one point or another  
8 during the course of coming up to this trial were considered  
9 a possible witness.

10 They have been not -- they are no longer considered  
11 possible witnesses, and just as counsel and everybody agrees  
12 and understands it, anybody who actually is in the courtroom,  
13 after the witnesses have been excluded, will not be allowed  
14 to become a witness.

15 So that's how that works. All right. Go right  
16 ahead.

17 OPENING STATEMENT BY MS. LUZAICH

18  
19 MS. LUZAICH: On Sunday, February 18, of 2007,  
20 Ryan Tognotti, his brother, Clint, their friend, Justin  
21 Foucault and Aitor Eskandon, whose name I probably butchered,  
22 and I will apologize to him later were hanging out at Ryan  
23 and Justin's home in Henderson at 690 Great Dane Court.

24 Coincidentally, that was Allstar Weekend, NBA  
25 Allstar, the Allstar game was that night, somewhere around

1 10 o'clock at night, they had put a movie on, they were  
2 hanging out just casually, and they were expecting some  
3 friends over.

4 While they were hanging out casually and expecting  
5 friends to come, they hear a knock on the door. Thinking  
6 it's their friends, Ryan yells, come in.

7 Well, nobody comes in.

8 So Ryan gets up, goes to the door, the door is  
9 pushed open, and two young African American guys come in.

10 Well, the guys who live and are hanging out there  
11 are kind of surprised because that they have never seen  
12 these guys before, and they were wondering what they want,  
13 whereupon, the two guys who came in, pull guns out of their  
14 waists, tell everyone to get on the floor, and keep asking  
15 about Grant. Where is Grant? Grant owes me money. Where  
16 is Grant?

17 And the guys have no idea. We don't know. Grant  
18 doesn't live here. We live here.

19 Well, the two young guys with guns, they are still  
20 saying, where is Grant, what's going on? We want Grant.  
21 Grant owes us money.

22 So the four poor kids, who are staying and living  
23 there, laying on the ground, still have no idea what's going  
24 on. You don't know who Grant is. Well, if Grant is not here,  
25 we will take your money instead.

1           They also ask, well, you know, other than you four,  
2           is anybody else here? Anybody else living here?

3           Unfortunately, for these two, Justin Richardson,  
4           who is also a roommate there, and his girlfriend, Danielle,  
5           are down the hall in Justin's room sleeping.

6           So one of the guys with guns, and you are going  
7           to hear these guys described to as the shorter but heavier  
8           guy, and the taller but thinner guy. Sometimes you will  
9           hear them say guy number one, guy number two.

10          Guy number one would be the shorter, heavier guy.  
11          Guy number two would be the taller, thinner guy.

12          So the shorter, heavier guy goes down the hall  
13          to Justin's bedroom, bang, bang, bang, wake up, wake up.  
14          Justin, who has to go to work early the next morning, and  
15          his girlfriend, Danielle were sleeping, he wakes them stand  
16          with their hands up, guns in their face, and brings them  
17          down the hall with their friends and sets them on the  
18          ground.

19          So they say, well, money, cough up the money,  
20          cough up the money, as they have their two guns there,  
21          and these poor six kids between them don't have \$25.

22          So they are kind of panicing. The two guys with  
23          guns are extremely unhappy because they want more money so  
24          they are like, well, if you don't have any more money, who  
25          has got ATM cards?



1 Well, of these six kids only two of them have  
2 ATM, Justin Foucault and Ryan Tognotti. So the bigger  
3 or so the heavier, shorter one says, well, then you are  
4 going to get to take me to the ARM. We are going to get  
5 some money. We came here for money, we are going to get  
6 some money.

7 Well, Ryan's bedroom is upstairs, and he says,  
8 you know, the keys are upstairs, so the bigger, heavier  
9 one goes upstairs with him to get Ryan's keys, and he  
10 tells them as he and Ryan are about to walk out the  
11 door, don't do anything stupid. If you fuck up, my friend  
12 here is going to shoot you all, and I am going to shoot  
13 your friend.

14 So the four, five now of them lay there quietly  
15 while Ryan and the shorter, heavier guy with the gun leave.

16 Ryan gets in his car with the guys and drives.  
17 Now, by now, it's close to midnightish, maybe even after  
18 midnight. It's dark. It's late at night. It's Sunday  
19 night, Monday morning, you know, not much is open.

20 So they drive to a bank, Bank of Nevada, something  
21 like that that's fairly close to Ryan's house.

22 As he's driving, he is in the driver's seat,  
23 the guy, the shorter, heavier guy with the gun is in the  
24 passenger seat with the gun to Ryan's head the whole time.

25 Unfortunately, when he gets to the ATM machine,

1 it doesn't work. So Ryan is panicking a little. The other  
2 guy is not very happy. So Ryan drives to the Wells Fargo  
3 Bank. He went up to the Wells Fargo Bank, he takes his  
4 card, and Justin takes his friend's ATM card and he pulls  
5 \$500 out of one account and \$400 out of the other account,  
6 and drives home.

7 You will hear that while they were gone, the  
8 other five were on the floor with their eyes shut, hands  
9 down, hands above their head, and what not, just hoping  
10 that Ryan gets back okay.

11 The other one, the taller, thinner one is still  
12 there, still with his gun, still not letting them move, or  
13 do anything, but he is asking them, well, how far is it?  
14 What's taking so long? How far is it? What's going on?

15 Well, Ryan, fortunately, gets back safely and  
16 is told to lay down again with his friends. He has given  
17 up the \$900, and the shorter, heavier one says something  
18 to the effect of, well, you know, you are 90 percent done  
19 now. There is only 10 percent to make up for.

20 And they are still asking questions about Grant.  
21 Where's Grant, where's Grant? What's that doing? Where's  
22 Grant's money. But nobody knows who Grant is.

23 So, having been told that that they were 90  
24 percent done, the shorter, heavier one says something  
25 to the effect of, well, I think it's time that you two,

1 boyfriend and girlfriend, have sex with each other.

2 Well, the two of them tried. Danielle, the  
3 girlfriend, Justin Richardson, the boyfriend.

4 Unfortunately, the guns waving in your face  
5 or up at your head, it's not really that easy.

6 At one point, one of them put the gun to  
7 Justin's head, and he says, well, you know, if you don't  
8 get hard, I am going to have to shoot you. They put a  
9 pillow over his face, everything. Nothing works. He's  
10 nervous. He just can't get hard. They can't touch that.

11 So then, they make Danielle perform fellatio  
12 on him to try to get him hard. So she has got his penis  
13 in her mouth, and she is trying, but nothing is happening,  
14 surprise, surprise, with guns blaring, and being told that  
15 they are going to kill their friend.

16 So then they make Justin perform oral sex on  
17 Danielle.

18 Unfortunately, that still doesn't make Justin  
19 hard. Imagine having to do this in front of your friends  
20 with guns waving at your head.

21 And the guys are getting kind of miffed at this  
22 time, well, you know, if you can't do it, one of your other  
23 friends can, and the shorter, heavier one picks on Ryan,  
24 and tells him to try and get himself hard.

25 Well, you know, nothing is happening, stage fright

1 maybe, guns blaring, friends around. So he gives him a  
2 bottle of lotion, the shorter, heavier one gives him a  
3 bottle of lotion. He says, here, try this.

4 Well, the lotion didn't help either. So the  
5 taller thinner one says, well, they can't, I can. I'm hard.  
6 I'll do it. So they take Danielle, who they have already  
7 told to take her clothes off, they take her away from the  
8 circle of friends in the middle of the floor, and bring  
9 her over to the stairs.

10 While over there, the taller, thinner one starts  
11 touching her on the chest, on the butt. Tells her she has  
12 got a nice ass. Can he touch it?

13 He then brings her from the stairs to the chair,  
14 tells her to raise her legs, starts rubbing on her vagina.  
15 He is asking her about, do you want to give me head? Do  
16 you want sex, and she really does not want to.

17 He starts rubbing on her vagina, and ultimately  
18 puts his finger in her vagina.

19 Now, fortunately, by now, the first one, the  
20 shorter, heavier one is kind of getting antsy. C'mon,  
21 let's go, let's go, stop, stop, they've done enough, let's  
22 go.

23 So they throw the female's clothes back to her,  
24 let her get dressed, put her back with her friends, and  
25 they these kids, we are leaving. Do not call the police.

1 If you call the police, we will come back and kill you.  
2 They collect all their cell phones. All six have cell  
3 phones.

4 They take them outside. They say, wait two  
5 minutes. Don't move. Wait two minutes.

6 So they walk out the door.

7 Well, the kids actually sit there and wait, not  
8 knowing what else to do when one of them burst back in.  
9 Oh, you moved, you moved, I know you moved. Ha, ha, joke,  
10 joke.

11 Well, ultimately, the two do leave, and they tell  
12 the kids that we are going to leave your cell phones outside  
13 in the rocks. Wait two minutes. Don't move. Don't call  
14 the police or we'll kill you, but wait two minutes, and don't  
15 move.

16 Well, these kids being scared to death kind of  
17 count out the two minutes before they move, and once they  
18 decided that they can move, they know they got to get out  
19 of there, they just don't want to be there anymore.

20 So they go outside, they collect their cell  
21 phones. Unfortunately, there are not all of the cell phones  
22 there. Danniele's phone is missing. Danielle's phone is  
23 gone.

24 So they get together, and they drive over to  
25 an apartment on Warm Springs that belongs to springs to

1 Clint and Aitor, two of the guys that were there, Ryan's  
2 brother, and from there they call 911.

3 Well, of course, 911 sends a patrol officer and  
4 a patrol officer comes, talks to the kids, finds out what  
5 had happened, realizes this is something more than patrol  
6 can handle, and calls out detectives.

7 So pretty much most of the Henderson Police  
8 Department ends up at some point at Warm Springs trying  
9 to figure this all out.

10 So you are going to hear from a bunch of different  
11 detectives. You are going to hear from the detectives who  
12 first come out. There are six kids there, six kids need to  
13 be interviewed to find out what's going on.

14 You are going to hear from the detectives who  
15 interviewed the kids, got as much information as they possibly  
16 could, I mean, these kids had no idea who the guys were.  
17 They had no leads, they had no nothing except they remembered  
18 that the shorter, heavier one called out a name that they  
19 thought was Marcus. That was all they knew.

20 Well, while the detectives are out there, they  
21 realize that when Ryan took the shorter, heavier guy to the  
22 ATM, when you go to the ATM, there's a camera there.

23 So they call the banks. Unfortunately, it's like  
24 three in the morning by now, three in the morning, Monday  
25 morning, I believe it was President's Day.

1           No bank is open at three o'clock in the morning,  
2           so Detective Weske leaves messages at both of the banks  
3           saying, you know, I have this crime where there is one guy  
4           in the passenger seat, one guy in the driver's seat, and  
5           the guy in the passenger's seat has the gun, and the guy  
6           in the driver's seat. The guy in the passenger seat is  
7           an African American guy. They are both young, and it is  
8           about this time, but can you freeze the whole night just  
9           in case and see if you can get me any skills. He leaves  
10          messages.

11           Unfortunately, like I said, because the bank is  
12          closed, there's nothing more they can do there.

13           So the detectives are all getting information  
14          from the kids trying to figure out how are we going to put  
15          this together?

16           Well, they also sent crime scene over to -- crime  
17          scene analysts over to the Great Dane home to see what  
18          evidence they can collect.

19           An they get fingerprints, you know, is there any,  
20          you know, DNA, anything whatsoever. So they go out, and  
21          they process the house.

22           They also realized that these two guys were so  
23          fixated on Grant, like they were sure that Grant lived  
24          there, were surprised that Grant didn't live there. So  
25          one of them gets onto a little website to Clerk County

1 Assessor's office to figure out who own the house, and  
2 they figure out that a guy named Victor Michalak, I'm sure  
3 I'm saying his name wrong, too, owns the house.

4 So they contact him, and they are asking him,  
5 you know, we are investigating a crime that occurred at  
6 the 690 Great Dane address, and it seems to involve, or  
7 at least be related to somebody named Grant. Do you know  
8 anybody named Grant, did somebody named Grant ever live  
9 at that home?

10 Well, a Grant was not the renter there, but they  
11 discovered that an individual named Brandon Preston was  
12 the renter there, but he had a friend and a roommate named  
13 Grant.

14 So, great, you know, we are going in the right  
15 direction. So they try and find Grant and Preston, who  
16 works, I can't remember. They find out where he works,  
17 and they contact him, and they say we are investigating  
18 the series of offenses that occurred at the Great Dane  
19 address. We know you used to live there, but the people  
20 that committed this offense were looking for Grant.

21 Do you know someone named Grant?

22 Coincidentally, he did, and still lives with  
23 Grant.

24 So the detectives get the information about  
25 where Grant is living now, and what the phone number is,



1 and they call the house, they call -- or they go to the  
2 house. There is no answer. Knock, knock, knock on the  
3 door, Henderson police, knock, knock, knock. No answer  
4 still.

5 By now, it's more, you know, reasonable time  
6 of day, maybe eight, nine o'clock, not four in the morning,  
7 but they are also concerned, these guys with guns had been  
8 looking for Grant, and they were really hot to see Grant,  
9 so they call Brandon back, you know, hey, you know, are you  
10 kind of worried about your friend, and you say that he is  
11 there, and he has described the car, and the car is there,  
12 but he is not answering, you know, can we go in?

13 So, you know, Brandon, of course, gets concerned.  
14 So they get a key from the manager, they go in, they open  
15 the door, they open the door, Henderson police, Henderson  
16 police. Are you here, Grant?

17 Well, Grant, you know, waking up, comes downstairs,  
18 yeah, yeah, I'm here.. Well, you know, it turns out that  
19 Grant at some point in his life sold a little bit of pot,  
20 and that apparently is why they were looking for Grant.

21 So the police talk to Grant, and describe what  
22 happened, and talked about two young African American guys,  
23 do you know anybody like that?

24 Coincidentally, Grant says, I have this friend,  
25 Kameron Wilson, Delarian Kameron Wilson. I used to work

1 out with him. He played football at UNLV, has since  
2 transferred up to Colorado to Adams State, but you know  
3 what, I kind of think I remember hearing that he was back  
4 recently.

5 So, now they have a name, Delarian Kameron Wilson,  
6 something to work with.

7 Grant not only gives them, you know, information  
8 in a statement, but he comes down to the Henderson Police  
9 Department to give a videotape statement.

10 Unfortunately, for Grant, while they are at his  
11 house, they find some of his pot, and about 7,000 of his  
12 dollars, which they seize, and continue on with their  
13 investigation.

14 So, now they have a name. They run him, and looking  
15 for a driver's license, or what not, anyway to contact him,  
16 and they do find the photograph of him.

17 They show the photograph to Grant, and Grant says,  
18 yeah, that's Kameron. I know him that's Kameron.

19 So with that information, and they go, sorry, by  
20 the way, know that Danielle's phone is still not in her  
21 possession. They assume it is in the possession of these  
22 two individuals.

23 They try to kind of run a trace like thing on  
24 Danielle's phone, and they discover that the phone has been  
25 used somewhere on the Strip, somewhere in the vicinity of

1 Circus Circus.

2 The detectives go to Circus Circus, and sure  
3 enough Delarian Kameron Wilson is registered for the weekend  
4 at Circus Circus.

5 A lot of good luck so far, and more detectives  
6 go into the Circus Circus, and you know what they find  
7 Delarian Kameron Wilson playing blackjack at Circus Circus.

8 Because they know he's there, the police write  
9 a search warrant for his room, get it signed by a Judge.

10 They have him arrested. They have him brought  
11 to security, and with the search warrant, they go to the  
12 room registered to Delarian Kameron Wilson at Circus Circus.

13 Now, because they know that these two guys had  
14 guns, they have SWAT serve the search warrant just because  
15 all they found was Wilson, they still haven't found the  
16 other one. They serve the search warrant on his room, and  
17 they. They find a bunch of his stuff, and a Greyhound  
18 ticket, and things of that nature, so -- from Colorado to  
19 here in his name.

20 They talk to Wilson in the security office, and  
21 they are able to discover the name Narcus. Narcus and  
22 UNLV football.

23 Well, again, more steps in the right direction  
24 at least. So detectives go to UNLV to the athletic  
25 department to see the football roster, and sure enough

1     Narcus Wesley, sitting right over there plays Football  
2     at UNIV.

3             And you remember that the kids thought they heard  
4     Wilson, who was the shorter, heavier one, say something like  
5     Marcus. Marcus, Narcus, very close.

6             And they get information that he was driving --  
7     he, Narcus Wesley, drives a white Chrysler 300.

8             They call Nevada Power in order to find out does  
9     Narcus Wesley have power anywhere here in town? That is  
10    how police often find out where you are when they are  
11    looking for you. They see where is your power, or your  
12    phone number, or whatever.

13            And they are told by Donna Lamonte over at Nevada  
14    Power that Narcus Wesley has power -- I'm sorry, first of  
15    all, I'm sorry, they got a Valley Drive address from UNIV,  
16    and they say that Narcus Wesley has power on Valley Drive.

17            Well, Donna Lamonte says, no, he doesn't have  
18    power on Valley Drive, that was turned off, but it was  
19    turned on on Gay Lane, and so with that information, they  
20    quick send a subpoena so she will send the official records  
21    to them, and Detectives Weske, and Hartshorn and Quick  
22    cruise right over to the Gay Lane address to see is he  
23    there? Is the car there? You know, are we going to find  
24    him?

25            Well, when they get to the Gay Lane address,

1 and by now it's Tuesday, they have been working just about  
2 nonstop, all these guys since Sunday night, Monday morning.  
3 They get to the Gay Lane address, and sure enough, the  
4 white Chrysler 300 is in the driveway.

5 And they sit for awhile to see if anybody going  
6 to come or go, you know, what's going on there?

7 Well, nobody is moving. The car is staying  
8 there. So they call. They know that they are going to  
9 write a search warrant, hopefully get it signed by the  
10 Judge so that they can go to the house and see does Narcus  
11 live there? Is he there right then, and like I said, is  
12 there any evidence from the crime there?

13 And again, knowing that there were guns used  
14 during this crime, they called SWAT to serve the search  
15 warrant, and they call SWAT and say, hey, we are writing  
16 the search warrant, but why don't you guys come out here,  
17 recon., you know, hopefully, we can get the search warrant,  
18 and then we can all go serve it.

19 So they go, they write the search warrant, Weske  
20 and Hartshortn, they do get it signed by a Judge. They  
21 come back. SWAT serves the warrant, and sure enough Narcus  
22 Wesley is there in the house.

23 They go in, bring Narcus Wesley outside, have a  
24 conversation with him in the vehicle and discover, yes, it  
25 was him. He was there.

1           Now, he tells them, the police, that he did not  
2     have a gun, that he just simulated a gun, but he does admit  
3     that he was there.

4           He tells them that he did touch Danielle, but  
5     that Danielle said it was okay, that he told her that she  
6     had a nice butt, could he touch it? And she said, yes.

7           He says that he also rubbed the top of her vagina,  
8     asking -- after asking her if it was okay.

9           Interestingly, he never says that Wilson touched  
10    her, although, of course, blame everything on Wilson.

11          That is essentially the evidence that you are going  
12    to hear.

13          Now you will hear, I admit, that the kids can  
14    probably not actually identify by face either Delarian Kameron  
15    Wilson or Marcus Wesley.

16          You will hear that they were shown some photo  
17    lineups, and that I don't believe anybody actually picked  
18    them out, but you will hear that he did admit that it was  
19    him was there.

20          And that's what you are going to hear over the  
21    next few days.

22          At the end of the trial, we are going to stand up  
23    here again, in closing argument and ask you to find Marcus  
24    Wesley guilty of all the charges.

25          Thank you.

1 THE COURT: Thank you. Counsel?

2 MR. LANDIS: Thank you, Judge.

3 OPENING STATEMENT BY MR. LANDIS

4  
5 MR. LANDIS: Ladies and gentlemen, meet Narcus  
6 Wesley.

7 Despite the picture the State wants to paint  
8 today, it's an honor and a privilege for me to represent  
9 him, and I promise you I speak for Mr. Banks when I say  
10 that, too.

11 That seat over there, the seat Narcus is sitting  
12 in, that was originally reserved for Delarian Wilson.  
13 Delarian Wilson chose not to take that seat, and that is  
14 what this case is about.

15 It's about choices. It's about those who have  
16 the power to make choices, and it's about those who were  
17 forced to do things they didn't want to do, and really,  
18 that's what life is about, isn't it?

19 It is about choices. Everyday we all make  
20 choices.

21 We decide what to wear, what to eat, where to  
22 go, what to do, and in the grander scheme of things, we  
23 choose who to spend our life with, what path our life is  
24 going to take.

25 But that power is not limitless, and the law

1 recognizes that. There are certain choices that have  
2 consequences. There are certain choices that have legal  
3 consequences.

4 Our law punishes certain choices, some with  
5 monetary fines. Some choices are punished with jail or  
6 prison time, and some choices are even punished with  
7 death. We all know that.

8 Behind that theory, behind our theory of  
9 punishment is the idea that you must live with the  
10 consequences of your choices, that you can be punished  
11 for making certain choices.

12 However, what also goes hand and hand with that  
13 theory, is that we are only punished for those choices  
14 that are voluntary, those choices that we can control.

15 To punish somebody for something that's not  
16 in their power isn't right, and we recognize that, and  
17 we don't do it. We don't punish people for things they  
18 can't control.

19 And that is this case, ladies and gentlemen.

20 Narcus Wesley had no control over what happened  
21 that night.

22 The State wants to speak today about day's events.  
23 This isn't a case about day's events. This is a case about  
24 Narcus Wesley, and it will also become a case about Delarian  
25 Wilson. Let's not group them together. Let's talk about



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IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \* \*

NARCUS WESLEY,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

S.C. CASE NO. 57473

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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 III  
~~~~~

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APPELLANT'S APPENDIX

<u>VOLUME</u>	<u>PLEADING</u>	<u>PAGE NO</u>
1	AMENDED CRIMINAL COMPLAINT (FILED 04/17/07)	008-015
1	AMENDED JUDGEMENT OF CONVICTION (FILED 10/08/08)	127-132
7	APPELLANT'S OPENING BRIEF (FILED 08/05/09)	1204-1226
7	APPELLANT'S REPLY BRIEF (FILED 12/09/09)	1264-1277
7	COURT MINUTES (FILED)	1328-1375
7	CONT. RESPONDENT'S ANSWERING BRIEF (FILED 10/28/09)	1256-1263
2	CONT. TRANSCRIPT OF PROCEEDING DEFENDANT WESLEY'S MOTION TO SUPPRESS APRIL 9,2008 (FILED 04/11/08)	241-248
3	CONT. TRANSCRIPT OF PROCEEDINGS JURY TRIAL APRIL 9,10,11, 2008 (FILED 12/05/08)	485-715
4	CONT. TRANSCRIPT OF PROCEEDINGS JURY TRIAL APRIL 9,10,11, 2008 (FILED 12/05/08)	716-894
5	CONT. TRANSCRIPT OF PROCEEDINGS JURY TRIAL APRIL 9,10,11, 2008 (FILED 12/05/08)	895-1040
6	CONT. TRANSCRIPT OF PROCEEDINGS JURY TRIAL APRIL 9,10,11, 2008 (FILED 12/05/08)	1041-1172

1	1	CRIMINAL COMPLAINT (FILED 02/23/07)	001-007
2	7	DOCKETING STATEMENT CRIMINAL APPEALS (FILED 03/08/11)	1316-1321
3			
4	1	INFORMATION (FILED 04/20/07)	016-024
5			
6	1	JUDGEMENT OF CONVICTION (FILED 07/02/08)	122-126
7	7	MOTION (FILED 05/18/11)	1322-1327
8			
9	7	MOTION FOR THE APPOINTMENT OF COUNSEL (FILED 09/09/10)	1307-1310
10			
11	1	MOTION TO CONTINUE TRIAL (FILED 03/25/08)	113-115
12	1	MOTION TO SUPPRESS FRUITS OF ILLEGAL SEARCH (FILED 03/11/08)	030-057
13			
14	7	NOTICE OF APPEAL (FILED 12/08/10)	1312-1313
15			
16	7	NOTICE OF APPEARANCE OF COUNSEL (FILED 03/01/11)	1314-1315
17	7	ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS (FILED 10/08/10)	1311-1311
18			
19	7	ORDER OF AFFIRMANCE (FILED 03/11/10)	1278-1281
20			
21	7	PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) (FILED 09/09/10)	1283-1306
22			
23	7	REMITTITUR (FILED 04/15/10)	1282-1282
24	7	RESPONDENT'S ANSWERING BRIEF (FILED 10/28/09)	1227-1255
25			
26	1	SECOND AMENDED INFORMATION (FILED 04/08/08)	103-112
27	1	STATE'S OPPOSITION TO DEFENDANT WESLEY'S MOTION TO SUPPRESS FRUITS OF ILLEGAL SEARCH (FILED 03/24/08)	058-079
28			

1	1	TRANSCRIPT OF PROCEEDINGS CHANGE OF PLEA AS TO DEFENDANT WILSON MARCH 28, 2008 (FILED 12/09/08)	080-102
2			
3	1	TRANSCRIPT OF PROCEEDINGS DEFENDANT WESLEY'S MOTION TO SUPPRESS APRIL 9, 2008 (FILED 04/11/08)	133-240
4			
5			
6	2	TRANSCRIPT OF PROCEEDINGS JURY TRIAL APRIL 9, 10, 11, 2008 (FILED 12/05/08)	249-484
7			
8	6	TRANSCRIPT OF PROCEEDINGS JURY TRIAL APRIL 17, 2008 (FILED 11/12/08)	1173-1203
9			
10	1	VERDICT (FILED 04/18/08)	116-121
11			
12			
13			
14			
15			
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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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