

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

NARCUS WESLEY
Appellant

No. 57473

Electronically Filed
Mar 08 2011 08:47 a.m.
Tracie K. Lindeman

vs.

THE STATE OF NEVADA
Respondent

DOCKETING STATEMENT CRIMINAL APPEALS

(Including appeals from pretrial and post-conviction rulings and other requests for post-conviction relief)

GENERAL INFORMATION

L. Judicial District Eighth County Clark
Judge HONORABLE JAMES BIXLER District Ct Case No. C232494

2. If the defendant was given a sentence,
(a) what is the sentence?

[illegible]

(b) has the sentence been stayed pending appeal?
No.

(c) was defendant admitted to bail pending appeal?
No.

3. Was counsel in the district court appointed ☒ or retained ☐?

4. Attorney filing this docketing statement:

Attorney Christopher R. Oram Esq. Telephone (702) 528-1471
Firm: Christopher R. Oram LTD.
Address: _____

Client(s) Narcus Wesley

6. Is appellate counsel appointed ☒ or retained ☐?

If this is a joint statement by multiple appellants, add the names and addresses of other counsel on an additional sheet accompanied by a certification that they concur in the filing of this statement.

6. Attorney(s) representing respondent(s):

Attorney David Roger Telephone (702) 671-2500
Firm: District Attorney
Address: 200 Lewis Avenue
Las Vegas, Nevada 89101

Client(s) State of Nevada

Attorney Catherine Cortez-Masto Telephone _____
Firm: Attorney General
Address: 100 North Carson Street
Carson City, Nevada 89701-4717

Client(s) State of Nevada

(List additional counsel on separate sheet if necessary)

7. Nature of disposition below:

- | | |
|--|---|
| ☐ Judgment after bench trial | ☐ Grant of pretrial habeas |
| ☐ Judgment after jury verdict | ☐ Grant of motion to suppress evidence |
| ☐ Judgment upon guilty plea | ☒ Post-conviction habeas (NRS ch. 34) |
| ☐ Grant of pretrial motion to dismiss | ☐ grant ☒ denial |
| ☐ Parole/Probation revocation | ☐ Other disposition (specify) |
| ☐ Motion for new trial | |
| ☐ grant ☐ denial | |
| ☐ Motion to withdraw guilty plea | |
| ☐ grant ☐ denial | |

8. Does this appeal raise issues concerning any of the following:

☐ death sentence
☒ life sentence

☐ juvenile offender
☐ pretrial proceedings

9. Expedited appeals: The court may decide to expedite the appellate process in this matter. Are you in favor of proceeding in such manner?

Yes ☐ No ☒

10. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal (e.g., separate appeals by co-defendants, appeal after post-conviction proceedings):

Wesley Narcus v. State of Nevada, 52104, 52127

11. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts that are related to this appeal (e.g., habeas corpus proceedings in state or federal court, bifurcated proceedings against co-defendants):

State of Nevada v. Narcus Wesley, C232494

12. Nature of action. Briefly describe the nature of the action and the result below:
On December 7, 2010, the district court denied Mr. Wesley's petition for writ of habeas corpus orally. The findings of fact, conclusions of law and order was filed on January 4, 2011.

13. **Issues on appeal.** State concisely the principal issue(s) in this appeal:
Mr. Wesley reserves the right to raise issues as they become known.

14. **Constitutional issues.** If the State is not a party and if this appeal challenges the constitutionality of a statute or municipal ordinance, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A ☒ Yes ☐ No ☐
If not, explain

15. **Issues of first-impression or of public interest.** Does this appeal present a substantial legal issue of first-impression in this jurisdiction or one affecting an important public interest?

First-impression: Yes ☐ No ☒
Public interest: Yes ☐ No ☒

16. Length of trial. If this action proceeded to trial or evidentiary hearing in the district court, how many days did the trial or evidentiary hearing last?

7 days

17. Oral argument. Would you object to submission of this appeal for disposition without oral argument?

Yes ☒ No ☐

TIMELINESS OF NOTICE OF APPEAL

18. Date district court announced decision, sentence or order appealed from 12/07/2010

19. Date of entry of written judgment or order appeal from January 4, 2011

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

20. If this appeal is from an order granting or denying a petition for a writ of habeas corpus, indicate the date written notice of entry of judgment or order was served by the district court

(a) Was service by delivery ☐ or by mail ☒.

21. If the time for filing the notice of appeal was tolled by a post judgment motion,

(a) Specify the type of motion, and the date of filing of the motion:

Arrest judgment _____	Date filed _____
New trial _____	Date filed _____
(newly discovered evidence)	
New trial _____	Date filed _____
(other grounds)	

(b) Date of entry of written order resolving motion _____

22. Date notice of appeal filed 12/28/2010

23. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(b), NRS 84.560, NRS 84.575, NRS 177.015(2), or other

SUBSTANTIVE APPEALABILITY

24. Specify statute, rule or other authority that grants this court jurisdiction to review from:

NRS 177.015(1)(b)	NRS 84.560
NRS 177.015(1)(c)	NRS 84.575(1)
NRS 177.015(2)	NRS 84.575(2)
NRS 177.015(3)	Other (specify) <u>NRAP 4(b)</u>
NRS 177.055	

VERIFICATION

I certify that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief.

Narcus Wesley

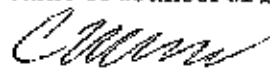
Name of appellant

Christopher R. Oram Esq.

Name of counsel of record

March 8, 2011

Date



Signature of counsel of record

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on March 7, 2011. Electronic Service of the foregoing document shall be made in accordance with the Master Service

List as follows:

CATHERINE CORTEZ-MASTO
Nevada Attorney General

STEVE OWENS
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Jossie Folkstad

An Employee of Christopher R. Oram, Esq.

1 TRAN

ORIGINAL

MAY 18 9 52 AM '11

2
3 IN THE EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

070232494-2
TRAN
Reporters Transcript
1418533



6 STATE OF NEVADA,)

7 Plaintiff,)

8 vs.)

9 NARCUS WESLEY,)

10 Defendant.)

Supreme Ct. No. 57473
Case No. C232494
Dept. No. 24

11
12 MOTION

13 Before the Honorable James M. Bixler
14 Tuesday, December 7, 2010, 8:30 a.m.

15 Reporter's Transcript of Proceedings

16
17 APPEARANCES:

18 For the State: Lisa Luzaich, Esq.
Deputy District Attorney
19 Las Vegas, Nevada

20 For the Defendant: Arnold Weinstock, Esq.
Attorney at Law
21 Las Vegas, Nevada

22 REPORTED BY: BILL NELSON, RMR, CCR No. 191
23
24
25

CLERK OF THE COURT

1 Las Vegas, Nevada, Tuesday, December 7, 2010

2
3 * * * * *

4
5 THE COURT: Wesley, Marcus Wesley.

6 Here is what I need to know:

7 Didn't I already deny the Defendant's request for
8 appointment of counsel?

9 MS. LUZAICH: Yes.

10 THE COURT: Because Mr. Weinstock was suggesting
11 that we go through Mr. Christensen's office and have he
12 and Mr. Winder appointed to pursue this writ.

13 MS. LUZAICH: Of course he would because they run
14 out of money, the family.

15 MR. WEINSTOCK: Your Honor, a couple things.

16 You know, we did do the appeal, Mr. Winder did
17 the sentencing. We did the appeal to the Supreme Court,
18 and we met with Mr. Wesley on a couple occasions.

19 THE COURT: You read through his petition?

20 MR. WEINSTOCK: I think that he is entitled to
21 counsel to litigate his post conviction relief motion.

22 MS. LUZAICH: He did just fine by himself.

23 THE COURT: Well, he did a fairly thorough
24 petition, but the construction of his petition involves
25 his allegation of ineffective assistance of counsel for

1 a whole variety of reasons.

2 I think that for us to go back and appoint you
3 guys again in the face of his petition, which alleges
4 substantially, I mean he's got a couple other issues in
5 there, the jury issue, a few other things, but the vast
6 majority I think he has six different grounds he had set
7 for in his petition in his writ.

8 The majority of them are allegations of
9 ineffective assistance of counsel for a whole variety of
10 reasons. The investigation, didn't inform him of
11 consent regards to the Defense of coercion by the
12 Co-Defendant, he sets out a whole slew of arguments as
13 to why it was ineffective assistance of counsel, but it
14 was all trial counsel alleging.

15 THE COURT: No, actually there is a couple things
16 he says on appeal were not -- or there was two or three
17 issues that weren't addressed on appeal because they
18 weren't brought up, and he throws that in too. So he's
19 covered pretty much all of his bases.

20 If I'm going to appoint counsel, I'd have to
21 appoint somebody else anyway. But I have already
22 addressed that, and to be perfectly honest with you, I
23 don't know who his counsel is up at Ely, but whoever it
24 is did a fairly decent job of putting his petition
25 together.

1 Anyway, these kids, these are college kids, these
2 are the football players from UNLV, they know their way,
3 they can read and write and write well.

4 And in any event, I think I've read this
5 petition, I read your response, I'm ready to rule.

6 MS. LUZAICH: That's what I ask the Court do.

7 THE COURT: Denied.

8 MS. LUZAICH: Thank you.

9 THE COURT: They did an excellent job, but still
10 this is something, and I did this, my last little note
11 says, this is going to require the Court to prepare an
12 order because he's set out six different grounds for his
13 writ, and I think this deserves to have an order that
14 addresses and rules on each of these grounds.

15 Otherwise, we're going to be doing it again
16 anyway.

17 MS. LUZAICH: Because it's post-conviction, we
18 would prepare findings of fact, conclusions of law and
19 order. If the Court wants to do it, of course go right
20 ahead, but we do that on post-conviction writs anyway
21 and bond it to the Court for the Court's approval.

22 THE COURT: Did those guys down in the basement
23 write this?

24 MS. LUZAICH: Yeah.

25 THE COURT: There he is.

1 He did an excellent job.

2 You guys go ahead and prepare the order.

3 MS. LUZAICH: Okay.

4 THE COURT: What is he doing, a couple of lifes
5 with consecutive?

6 MS. LUZAICH: Well, 10 to life, consecutive 10 to
7 life.

8 THE COURT: Okay.

9 (Proceedings concluded.)
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C E R T I F I C A T E

STATE OF NEVADA)

) ss.

CLARK COUNTY)

I, Bill Nelson, RMR, CCR 191, 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 Court Judge, presiding.

Dated at Las Vegas, Nevada this 18th day of April, 2011.



Bill Nelson, RMR, CCR 191,
Certified Court Reporter
Las Vegas, Nevada

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA vs Wesley, Narcus S

05/09/07 09:00 AM 00 INITIAL ARRAIGNMENT

HEARD BY: Kevin V Williams, Hearing Master; Dept. AA

OFFICERS: Lore Vanderbusse/lv, Court Clerk
Lorraine Williams, Relief Clerk
Kiara Schmidt, Reporter/RecorderPARTIES: STATE OF NEVADA
009492 Albritton, Alicia A.
0001 D1 Wilson, Delarian K
004982 Ericsson, Thomas A.
0002 D Wesley, Narcus S
003095 Kocka, FrancisY
Y
Y
Y
Y
Y

See MINUTES for Defendant 0001: Wilson, Delarian K

05/22/07 08:30 AM 00 DEFT'S O.R. RELEASE/BAIL REDUCTION /5

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Bill Nelson, Reporter/RecorderPARTIES: STATE OF NEVADA
005056 Luzaich, Elissa
0002 D Wesley, Narcus S
003095 Kocka, FrancisY
Y
Y
Y

Ms. Luzaich stated she never received a copy of the motion, however, she can respond orally or the Court can continue so she can file a written response. Mr. Kocka stated he can see there is not Receipt of Copy attached to the motion. The Court commented on the lack of information provided in the District Court file as opposed to the information they have on scope, NCIC and deft's background information when a file is before the court. Argument by Ms. Luzaich in opposition to the motion arguing the facts of the case. Argument by Mr. Kocka in support of his motion for bail reduction. Deft is a lifetime resident, has a baby, family support. Further, the Preliminary Hearing transcript has not been filed yet. Statements by both counsel re a possible severance. COURT ORDERED, motion for bail reduction is DENIED. The Court is not going to lower the bail. Under the circumstances, the Court feels deft's bail is reasonable in light of the charges. Further comment by the Court re the nature and severity of the charges. In light of the Courts ruling, Mr. Kocka stated he is not going to be able to prepare this case if deft is in custody and not working. COURT ORDERED, oral motion to WITHDRAW as counsel is GRANTED, Public Defender APPOINTED, Mr. Westbrook present, and acknowledged the appointment, and stated he will investigate to determine if

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA

vs Wesley, Narcus S

CONTINUED FROM PAGE: 001

there is any conflict with the Public Defender's office representing deft.
COURT ORDERED, matter CONTINUED for confirmation of counsel.

CUSTODY

5/24/07 8:30 A.M. CONFIRMATION OF COUNSEL (KOHN)

05/24/07 08:30 AM 00 CONFIRMATION OF COUNSEL (KOHN)

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Bill Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA
005056 Luzaich, Elissa
0002 D Wesley, Narcus S
PUBDEF Public Defender
009424 Landis, Casey

Y
Y
Y
Y
Y

Frank Kocka present to turn over his file to the Public Defender. Mr. Landis stated no conflict with representing deft, never represented the co-deft either, and the victims have never been arrested to his knowledge. COURT ORDERED, Public Defender CONFIRMED AS COUNSEL. Mr. Luzaich stated she spoke to Oronoz' office who represents co-deft. He is out of the jurisdiction for most of July, so the 7/2/07 date will not work. Ms. Luzaich thought the Court had calendared both defts for today to discuss the trial date. She also does not expect the Public Defender to be ready by 7/2/07. Deft Wesley requested his discovery. Court advised deft his attorney will make sure he gets what he needs. Deft stated he put in a discovery request six weeks ago. Ms. Luzaich stated she received the Preliminary Hearing transcript yesterday. COURT ORDERED, matter CONTINUED to discuss the trial date as to both defts.

CUSTODY (BOTH)

5/31/07 8:30 A.M. STATUS CHECK: TRIAL DATE

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA

vs Wesley, Narcus S

CONTINUED FROM PAGE: 002

05/31/07 08:30 AM 00 STATUS CHECK: TRIAL DATE

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Jackie Nelson, Reporter/RecorderPARTIES: STATE OF NEVADA
005391 Kollins, Stacy L.0001 D1 Wilson, Delarian K
006769 Oronoz, James A0002 D Wesley, Narcus S
PUBDEF Public Defender
005924 Cox, G. DarrenY
Y
Y
Y
Y
Y

See MINUTES for Defendant 0001: Wilson, Delarian K

11/01/07 08:30 AM 00 CALENDAR CALL

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Bill Nelson, Reporter/Recorder

PARTIES: NO PARTIES PRESENT

See MINUTES for Defendant 0001: Wilson, Delarian K

CRIMINAL COURT MINUTES

07-C-232494-C

STATE OF NEVADA

vs Wesley, Narcus S

CONTINUED FROM PAGE: 003

01/24/08 08:30 AM 00 CALENDAR CALL

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee/tl, Court Clerk
Rebecca Foster, Relief Clerk
Bill Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA
005056 Luzaich, Elissa

0001 D1 Wilson, Delarian K
006769 Oronoz, James A

0002 D Wesley, Narcus S
PUBDEF Public Defender
009424 Landis, Casey

Y
Y
Y
Y
Y
Y

See MINUTES for Defendant 0001: Wilson, Delarian K

03/18/08 08:30 AM 00 ALL PENDING MOTIONS (3/18/08)

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Bill Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA
009158 Rachiele, Andrea M.

0001 D1 Wilson, Delarian K

0002 D Wesley, Narcus S
PUBDEF Public Defender
009278 Westbrook, P D.

Y
Y
Y
Y
Y
Y

See MINUTES for Defendant 0001: Wilson, Delarian K

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA

vs Wesley, Narcus S

CONTINUED FROM PAGE: 004

03/25/08 08:30 AM 00 ALL PENDING MOTIONS (3/25/08)

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Lee Bahr, Reporter/Recorder

PARTIES: STATE OF NEVADA
005391 Kollins, Stacy L.
0001 D1 Wilson, Delarian K
0002 D Wesley, Narcus S
PUBDEF Public Defender
009424 Landis, Casey

Y
Y
Y
Y
Y
Y

See MINUTES for Defendant 0001: Wilson, Delarian K

03/27/08 08:30 AM 00 ALL PENDING MOTIONS (3/27/08)

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Lee Bahr, Reporter/Recorder

PARTIES: STATE OF NEVADA
005056 Luzaich, Elisea
005391 Kollins, Stacy L.
0001 D1 Wilson, Delarian K
006769 Oronoz, James A
0002 D Wesley, Narcus S
PUBDEF Public Defender
009424 Landis, Casey

Y
Y
Y
Y
Y
Y
Y
Y

See MINUTES for Defendant 0001: Wilson, Delarian K

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA

vs Wesley, Narcus S

CONTINUED FROM PAGE: 005

03/28/08 09:00 AM 00 ALL PENDING MOTIONS 3/28/08

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Nora Pena, Relief Clerk
Lee Bahr, Reporter/RecorderPARTIES: STATE OF NEVADA
005391 Kollins, Stacy L.0001 D1 Wilson, Delarian K
006769 Oronoz, James A
010707 Pandullo, Michael R.0002 D Wesley, Narcus S
PUBDEF Public Defender
009424 Landis, CaseyY
Y
Y
Y
N
Y
Y

See MINUTES for Defendant 0001: Wilson, Delarian K

03/31/08 01:30 PM 00 FRANKS HEARING
(DO NOT POST)

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Bill Nelson, Reporter/RecorderPARTIES: STATE OF NEVADA
005056 Luzaich, Elissa
005391 Kollins, Stacy L.0002 D Wesley, Narcus S
PUBDEF Public Defender
009424 Landis, Casey
005863 Banks, Jeffrey M.Y
Y
Y
Y
Y
Y
Y

Deft not present. Mr. Landis stated he appreciates the State accommodating counsel, but he would prefer the Franks Hearing held with the Officer present on Wednesday before the trial commences. Ms. Luzaich stated she has 36 witnesses, and has witnesses scheduled for Thursday and Friday this week. Court informed counsel the Court is not available Friday, 4/4/08 at 12:00 P.M. scheduled to return to work on Wednesday, 4/9/08. Mr. Banks has a conflict this Wednesday at 10:30 A.M. He has a dentist appointment to have stitches removed. The Court wanted to pick a jury tomorrow. Ms. Luzaich stated she was prepared to start this trial on Wednesday and witnesses lined up for Thursday and Friday. State has 30 witnesses. Further, technically, her Detective is not due back until one week from tomorrow which is 4/8/08. Ms. Luzaich has a trial on Monday, 4/7/08 before Judge Bell. Ms. Luzaich

CONTINUED ON PAGE: 007

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA

vs Wesley, Marcus S

CONTINUED FROM PAGE: 006

stated since she was not expecting the continuance, does not want to be held responsible if she cannot have a witness present. Court concurred. COURT ORDERED, the Court will hold the Franks Hearing on Wednesday, 4/9/08 at 10:30 A.M. and trial to commence at 1:00 P.M.

BAIL

4/9/08 10:30 A.M. FRANKS HEARING (DO NOT POST)... TRIAL BY JURY (1:00 P.M.)

CONTINUED TO: 04/09/08 10:30 AM 01

04/10/08 10:00 AM 01 TRIAL BY JURY

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Bill Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA
005056 Luzaich, Elissa
005391 Kollins, Stacy L.

0002 D Wesley, Marcus S
PUBDRP Public Defender
009424 Landis, Casey
005863 Banks, Jeffrey M.

Y
Y
Y

Y
Y
Y
Y

Deft present on Bond. Jury panel present. Clerk called role of Jury Panel. Jury selection continued. Second Amended Information FILED IN OPEN COURT. OUTSIDE PRESENCE OF JURY PANEL, Mr. Banks stated the State provided them with a disk with 400 crime scene photos, and stated it would be irresponsible on defense counsel not to review the photos prior to opening statements. Court advised counsel the Court will recess for the day once the jury is selected. Counsel STIPULATED to the presence of the Jury Panel. Jury selection CONTINUED. At the hour of 5:48 P.M. Jury and two Alternates selected and sworn. Instruction by Court to Jury. Jury EXCUSED until 10:00 A.M. on 4/11/08. OUTSIDE PRESENCE OF JURY, Mr. Banks made a Batson Challenge as to a juror excused by the State, and argued in support of his motion. Argument by Ms. Luzaich in opposition thereto. COURT ORDERED, Court feels the State gave a race neutral reason for the challenge and the motion is DENIED. ADJOURNED 6:05 P.M.

BOND

CONTINUED TO: 04/11/08 09:00 AM 02

CRIMINAL COURT MINUTES

07-C-232494-C

STATE OF NEVADA

vs Wesley, Narcus S

CONTINUED FROM PAGE: 007

04/14/08 10:00 AM 03 TRIAL BY JURY

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Roshonda Mayfield, Relief Clerk
Bill Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA
005056 Luzaich, Elissa
0002 D Wesley, Narcus S
005863 Banks, Jeffrey M.
009424 Landis, Casey

Y
Y
Y
Y
Y

JURY PRESENT: Witnesses and testified (See worksheets).

COURT RECESSED FOR LUNCH.

OUTSIDE PRESENCE OF JURY: Court advised, juror #1 has taken ill and will be EXCUSED. Therefore, the jury will consist of panel members 2-13 with #14 being the alternate.

JURY PRESENT: COURT RECONVENED; Testimony and exhibits presented (See worksheets).

OUTSIDE PRESENCE OF JURY: Ms. Luzaich argued she believes the State will rest tomorrow and will provide instructions to defense counsel.

JURY PRESENT: COURT ORDERED, matter ADJOURNED and will reconvene tomorrow at 10:00 A.M. COURT FURTHER ORDERED, jury ADMONISHED not to discuss this matter any further once released from today's proceedings.

4/15/08 10:00 A.M. NATURAL PROGRESSION

CONTINUED TO: 04/15/08 10:00 AM 04

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA

vs Wesley, Narcus S

CONTINUED FROM PAGE: 008

04/15/08 10:00 AM 04 TRIAL BY JURY

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Nora Pena, Relief Clerk
Bill Nelson, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
005391	Kollins, Stacy L.	Y
005056	Luzach, Elissa	Y
0002 D	Wesley, Narcus S	Y
PUBDEF	Public Defender	Y
009424	Landis, Casey	Y
005863	Banks, Jeffrey M.	Y

JURY PRESENT: Testimony presented. (See worksheet.) Conference at the bench.

OUTSIDE THE PRESENCE OF THE JURY: Court noted the objection is the witness may be aware of other illegal activity that the Deft. has engaged in. Argument by Ms. Luzach that the Deft. can't use his claim for defense if he has done other illegal activity. Ms. Kollins believed it's still irrelevant. Mr. Landis believed it's relevant towards the case. Argument by Mr. Banks. COURT ORDERED, Testimony of witness comes in.

JURY PRESENT: Testimony and exhibits presented. (See worksheets.) Conference at the bench. Court admonished the jury.

OUTSIDE THE PRESENCE OF THE JURY: Court advised Wilson's conviction can come in as evidence as to what he pled guilty to. Ms. Luzach stated he pled to Count I & II - Robbery with use of a deadly weapon and Count III - Sexual Assault but the Defense's theory is that Wilson accepted responsibility and she believed the Defense would need to tell the jury the entire truth that Wesley had the gun and committed sexual assault. Mr. Landis asked to redact the information. Court advised if they choose to bring it in it's the full picture of the plea that has to be present to be fair.

JURY PRESENT: Testimony and exhibits presented. (See worksheets.)

OUTSIDE THE PRESENCE OF THE JURY: Court advised Defense exhibits A, B, and C are not evidence of this trial and does not go back to the jury. Argument by Mr. Banks regarding the issue of the rifle found at the home and he is concerned about effectively defending his client now that the testimony is in evidence. He stated his client didn't have possession of the gun at anytime and there is no instruction that will undo what has been done; therefore, he requested a mistrial. COURT ORDERED, Deft's request for mistrial is DENIED due to 1) the weapon he had was not a rifle and 2) Court can explain to the jury it was the Deft's Dad's house and Deft. had no ownership to that rifle. Court advised he will give an instruction or will explain to the jury or will let Defense draft an instruction. Mr. Banks

CONTINUED ON PAGE: 010
MINUTES DATE: 04/15/08

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA

vs Wesley, Narcus S

CONTINUED FROM PAGE: 009

moved to withdraw based on the rifle, he believed there is a conflict in the evidence and asked to appoint someone else. COURT ORDERED, motion to withdraw DENIED. Court advised there is no conflict and will proceed and he will tell the jury that Deft. had no control of the rifle.

JURY PRESENT: Testimony presented. (See worksheet.) Exhibit #43 CD played for the jury. Conference at the bench. Court gave a curative instruction of the rifle. COURT ORDERED, matter CONTINUED tomorrow at 10:00 a.m. and jury admonished.

OUTSIDE THE PRESENCE OF THE JURY: Court admonished the Deft. on his right to testify.

CONTINUED TO: 04/16/08 09:30 AM 05

04/18/08 10:00 AM 07 TRIAL BY JURY

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Bill Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA
005056 Luzaich, Elissa
005391 Kollins, Stacy L.

0002 D Wesley, Narcus S
PUBDEF Public Defender
009424 Landis, Casey
005863 Banks, Jeffrey M.

Y
Y
Y

Y
Y
Y
Y

Deft present on Bond. Counsel STIPULATED as to the presence of the Jury. At the hour of 2:53 P.M. the Jury returned with a VERDICT as follows:

- CT 1 - GUILTY of Conspiracy To Commit Burglary.
- CT 2 - GUILTY of Conspiracy to Commit Robbery.
- CT 3 - GUILTY of Burglary While in Possession of a Deadly Weapon.
- CT 4 - GUILTY of Robbery With Use of a Deadly Weapon (Justin Richardson).
- CT 5 - GUILTY of Assault With Use of a Deadly Weapon (Aitor Eskandon).
- CT 6 - GUILTY of Robbery With Use of a Deadly Weapon (Justin Foucault).
- CT 7 - GUILTY of Robbery With Use of a Deadly Weapon (Ryan Tognotti).
- CT 8 - GUILTY of Assault With Use of a Deadly Weapon (Clinton Tognotti).
- CT 9 - GUILTY of Robbery With Use of a Deadly Weapon (Danielle Browning).
- CT 10 - GUILTY of Second Degree Kidnapping With Use of a Deadly Weapon (Ryan Tognotti).
- CT 11 - GUILTY of Burglary While in Possession of a Deadly Weapon (Honda Civic).

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA

vs Wesley, Marcus S

CONTINUED FROM PAGE: 010

- CT 12 - GUILTY of Sexual Assault With Use of a Deadly Weapon (Danielle Browning - fellatio).
 CT 13 - GUILTY of Sexual Assault With Use of a Deadly Weapon (Danielle Browning - cunnilingus).
 CT 14 - GUILTY of Sexual Assault With Use of a Deadly Weapon (Justin Richardson - fellatio).
 CT 15 - GUILTY of Sexual Assault With Use of a Deadly Weapon (Justin Richardson - cunnilingus).
 CT 16 - GUILTY of Coercion With Use of a Deadly Weapon (Ryan Tognotti).
 CT 17 - GUILTY of Sexual Assault With Use of a Deadly Weapon (Danielle Browning - digital penetration).
 CT 18 - GUILTY of Open or Gross Lewdness with Use of a Deadly Weapon (Danielle Browning).

Upon Court's inquiry, Mr. Landis requested the Jury polled, SO ORDERED. Court thanked and excused the Jury. State moved to REMAND deft into CUSTODY WITHOUT BAIL, SO ORDERED, BOND EXONERATED. COURT ORDERED, matter referred to the Division of Parole and Probation (P & P) and set for sentencing.

CUSTODY

6/5/08 8:30 A.M. SENTENCING (JURY VERDICT)

05/08/08 08:30 AM 00 DEPT WESLEY'S MTN FOR NEW TRIAL/32

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
 Bill Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA
 005056 Luzaich, Elisea
 0002 D Wesley, Marcus S
 PUBDEF Public Defender
 009424 Landis, Casey
 005863 Banks, Jeffrey M.

Y
 Y
 Y
 Y
 Y
 Y

Deft present in custody. At the request of Ms. Luzaich, Court advised Deft he cannot file proper person motions, except a motion to withdraw counsel when he has counsel. Court advised deft it is his prerogative to retain private counsel, and ORDERED, deft's motion to dismiss counsel is GRANTED. Mr. Banks stated he will be cooperative with whoever deft hires and turn over all of their information. COURT ORDERED, all proceedings are suspended at this time pending deft's retention of private counsel. COURT ORDERED, matter CONTINUED two weeks for confirmation of counsel. The Court received a request from P & P as to Deft Wilson that the PSI will not be ready by 5/13/08. COURT ORDERED, the Court will reset Deft Wesley's sentencing date for the same date as Deft Wesley. The Court received a letter from the

CONTINUED ON PAGE: 012

MINUTES DATE: 05/08/08

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA

vs Wesley, Marcus S

CONTINUED FROM PAGE: 011

mother of deft's child which needs to be copied and given to his new attorney.

CUSTODY (WESLEY)

5/22/08 8:30 A.M. CONFIRMATION OF COUNSEL (PRIVATE)...RESET SENTENCING DATE (WILSON)

CONTINUED TO: 05/22/08 08:30 AM 01

05/22/08 08:30 AM 00 ALL PENDING MOTIONS (5/22/08)

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Bill Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA
005056 Luzaich, Elissa

0001 D1 Wilson, Delarian K
010707 Pandullo, Michael R.

0002 D Wesley, Marcus S
001569 Winder, Dan M.
PUBDEF Public Defender
005863 Banks, Jeffrey M.

Y
Y
Y
Y
Y
Y
Y

See MINUTES for Defendant 0001: Wilson, Delarian K

06/19/08 08:30 AM 00 ALL PENDING MOTIONS (6/19/08)

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Bill Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA
004232 Carroll, Thomas M.

0002 D Wesley, Marcus S

Y
Y
Y

DEFT'S PRO PER MOTION FOR BAIL PENDING SENTENCING/APPEAL (WESLEY)...DEFT'S MOTION FOR NEW TRIAL

Deft present in custody. Court informed deft his attorney, Dan Winder, had an appearance today in Reno, NV and ORDERED, matter CONTINUED.

CONTINUED ON PAGE: 013

MINUTES DATE: 06/19/08

CRIMINAL COURT MINUTES

07-C-232494-C

STATE OF NEVADA

vs Wesley, Narcus S

CONTINUED FROM PAGE: 012

CUSTODY

6/26/08 8:30 A.M. SAME

06/26/08 08:30 AM 00 ALL PENDING MOTIONS (6/26/08)

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Lee Bahr, Reporter/RecorderPARTIES: STATE OF NEVADA
005056 Luzaich, Elissa0002 D Wesley, Narcus S
001569 Winder, Dan M.

Y

Y

Y

Y

DEFT WESLEY'S PRO PER MOTION FOR BAIL PENDING SENTENCING/APPEAL... DEFT
WESLEY'S MOTION FOR NEW TRIAL

Deft present in custody. COURT ORDERED, trailed for Mr. Winder. Court noted this was passed from last week at Mr. Winder's request as he had a preliminary hearing in Reno, NV. Mr. Wesley's father stated he saw Mr. Winder downstairs, and has had difficulty communicating with him.

LATER, Court recalled matter, Mr. Winder present. Ms. Luzaich moved the Court to deny the motions as procedurally barred and argued in support of her position. Court advised deft he is not to file proper person motions when he is represented by counsel. They are fugitive documents. Deft stated his attorney will not return phone calls. He filed a motion to dismiss his attorney before he filed any proper person motions. Court reviewed the prior minute orders in this case. Argument by Mr. Winder in support of his motions. Argument by Ms. Luzaich in opposition to the motions. COURT ORDERED, motions DENIED. Mr. Winder stated he would like to file a sentencing memorandum on behalf of Narcus Wesley. Ms. Luzaich objected to a continuance of the sentencing date, and will waive timing defects with regard to receiving the memorandum. COURT ORDERED, he may file his sentencing memorandum, but sentencing will proceed on 7/3/08. Mr. Winder will file it and fax to Ms. Luzaich. COURT ORDERED, sentencing date STANDS.

CUSTODY

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA

vs. Wesley, Narcus S

CONTINUED FROM PAGE: 013

07/03/08 08:30 AM 00 SENTENCING

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Bill Nelson, Reporter/Recorder

PARTIES:

	STATE OF NEVADA	Y
005056	Luzaich, Elissa	Y
0001 D1	Wilson, Delarian K	Y
006769	Oronoz, James A	Y
0002 D	Wesley, Narcus S	Y
001569	Winder, Dan M.	Y

See MINUTES for Defendant 0001: Wilson, Delarian K

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA vs Wilson, Delarian K

05/09/07 09:00 AM 00 INITIAL ARRAIGNMENT

HEARD BY: Kevin V Williams, Hearing Master; Dept. AA

OFFICERS: Lore Vanderbusse/lv, Court Clerk
Lorraine Williams, Relief Clerk
Kiara Schmidt, Reporter/RecorderPARTIES: STATE OF NEVADA
009492 Albritton, Alicia A.
0001 D1 Wilson, Delarian K
004982 Ericsson, Thomas A.
0002 D Wesley, Narcus S
003095 Kocka, FrancisY
Y
Y
Y
Y
Y

AS TO DEFT. WILSON: Mr. Ericsson requested this matter be continued to allow additional time for Deft. to retain Mr. Oronoz. COURT ORDERED, matter CONTINUED.

AS TO DEFT. WESLEY: Mr. Kocka advised matter not negotiated. DEFT. WESLEY ARRAIGNED, PLED NOT GUILTY and INVOKED THE 60-DAY RULE. COURT ORDERED, matter set for trial.

CUSTODY(BOTH)

05/16/07 9:00 AM ARRAIGNMENT CONTINUED(WILSON)

06/28/07 8:30 AM CALENDAR CALL (DEPT XXIV)(WESLEY)

07/02/07 10:00 AM JURY TRIAL (DEPT XXIV)(WESLEY)

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA

vs Wilson, Delarian K

CONTINUED FROM PAGE: 001

05/16/07 09:00 AM 00 ARRAIGNMENT CONTINUED

HEARD BY: Kevin V Williams, Hearing Master; Dept. AA

OFFICERS: Lore Vanderbusse/lv, Court Clerk
Lorraine Williams, Relief Clerk
Kiara Schmidt, Reporter/RecorderPARTIES: STATE OF NEVADA
006526 Turner, Robert B.0001 D1 Wilson, Delarian K
006769 Oronoz, James AY
Y
Y
Y

Mr. Oronoz advised this matter had not been negotiated. DEFT. WILSON
ARRAIGNED, PLED NOT GUILTY and WAIVED THE 60-DAY RULE. State INVOKED THE
60-DAY RULE. COURT ORDERED, matter set for trial with invoke date to be
heard with Co-Deft.

CUSTODY

06/28/07 8:30 AM CALENDAR CALL (DEPT XXIV) (BOTH)

07/02/07 10:00 AM JURY TRIAL (DEPT XXIV) (BOTH)

05/31/07 08:30 AM 00 STATUS CHECK: TRIAL DATE

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Jackie Nelson, Reporter/RecorderPARTIES: STATE OF NEVADA
005391 Kollins, Stacy L.0001 D1 Wilson, Delarian K
006769 Oronoz, James A0002 D Wesley, Marcus S
PUBDEF Public Defender
005924 Cox, G. DarrenY
Y
Y
Y
Y
Y
Y

Ms. Kollins stated this matter is on for status check. Deft Wilson waived
his right to speedy trial, Deft Wesley invoked. Mr. Cox stated he received
the discovery and did not see a conflict with the PD's office representing
deft. Mr. Oronoz stated this case involves numerous life sentences, with
that and his calendar, he will not be able to prepare for trial before the
fall, and spoke to his client re same. Mr. Oronoz stated, he will also be
seeking a severance. Ms. Kollins stated there is no objection by the State

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CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA

vs Wilson, Delarian K

CONTINUED FROM PAGE: 002

to continuing the trial date. Mr. Cox stated, he spoke to Mr. Westbrook, he will not be ready to go either. Mr. Oronoz stated he has a Federal trial in August and a murder trial in September this year. COURT ORDERED, trial date VACATED AND RESET, the Court will stack this #2 behind the murder trial. If the murder trial goes forward, the Court will make sure this case goes to trial during that stack. Upon examination by the Court, Defts WILSON AND WESLEY WAIVED their right to speedy trial.

CUSTODY (BOTH)

11/01/07 08:30 AM 00 CALENDAR CALL

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Bill Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA
005056 Luzaich, Elissa
0001 D1 Wilson, Delarian K
006769 Oronoz, James A
0002 D Wesley, Narcus S
PUBDEF Public Defender
009424 Landis, Casey

Y
Y
Y
Y
Y
Y
Y

Deft Wilson present in custody. Deft Wesley present on bond. Court advised counsel this is the second case in line for trial. Mr. Oronoz stated he will be in trial next week before Judge Mahan. Further, there is additional discovery to review. He notified the State regarding his position and would ask for a short continuance. Ms. Luzaich concurred and stated after a conversation with Henderson Police, they brought in an additional 700 pages of discovery. There is a lot of evidence they did not have. Ms. Luzaich answered ready for trial for the State. COURT ORDERED, trial date VACATED AND RESET.

CUSTODY (WILSON)

BAIL (WESLEY)

1/24/08 8:30 A.M. CALENDAR CALL (BOTH)

1/28/08 10:00 A.M. TRIAL BY JURY (BOTH)

CRIMINAL COURT MINUTES

07-C-232494-C

STATE OF NEVADA

vs Wilson, Delarian K

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01/24/08 08:30 AM 00 CALENDAR CALL

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee/tl, Court Clerk
Rebecca Foster, Relief Clerk
Bill Nelson, Reporter/Recorder

PARTIES:

	STATE OF NEVADA	Y
005056	Luzaich, Elissa	Y
0001 D1	Wilson, Delarian K	Y
006769	Oronoz, James A	Y
0002 D	Wesley, Marcus S	Y
PUBDEF	Public Defender	Y
009424	Landis, Casey	Y

Deft Wilson present in custody. Deft Wesley present on Bond. Court advised counsel this case is #2 to proceed to trial next week. This case has had one prior continuance. Mr. Oronoz advised the Court he is starting a murder trial before Judge Bell which is scheduled to go next week and will last all week. He requested the Court continue this trial until March, 2008. The case will either negotiate or counsel will be ready for trial. Ms. Luzaich concurred, and had no objection. She will be in the Bookman trial in this court for the next two weeks. Ms. Luzaich stated this case is too lengthy to go to overflow. COURT ORDERED, trial date VACATED AND RESET.

CUSTODY (WILSON)

BAIL (WESLEY)

3/27/08 8:30 A.M. CALENDAR CALL

3/31/08 10:00 A.M. TRIAL BY JURY

CONTINUED ON PAGE: 005
MINUTES DATE: 01/24/08

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA vs Wilson, Delarian K
CONTINUED FROM PAGE: 004

03/18/08 08:30 AM 00 ALL PENDING MOTIONS (3/18/08)

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Bill Nelson, Reporter/Recorder

PARTIES: STATE OF NEVADA
009158 Rachiele, Andrea M.
0001 D1 Wilson, Delarian K
0002 D Wesley, Narcus S
PUBDEF Public Defender
009278 Westbrook, P D.

Y
Y
Y
Y
Y
Y

DEFT'S MOTION TO SEVER DEFTS...DEFT'S JOINDER TO MOTION IN CO-DEFT NARCUS
WESLEY'S MOTION TO SEVER (WILSON)

Deft Wilson present in custody. Deft. Wesley present in custody. Mr. Westbrook stated Ms. Kollins appeared this morning on behalf of Ms. Luzaich who had to leave town on a family emergency and requested matter continued to 3/25/08, SO ORDERED. Court advised the State, the Court did not receive State's response. Ms. Rachiele stated she will send Ms. Kollins an e-mail and make sure this is done.

CUSTODY (WILSON)

BAIL (WESLEY)

3/25/08 8:30 A.M. SAME

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA

vs Wilson, Delarian K

CONTINUED FROM PAGE: 005

03/25/08 08:30 AM 00 ALL PENDING MOTIONS (3/25/08)

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Lee Bahr, Reporter/Recorder

PARTIES: STATE OF NEVADA
005391 Kollins, Stacy L.
0001 D1 Wilson, Delarian K
0002 D Wesley, Narcus S
PUBDEF Public Defender
009424 Landis, Casey

Y
Y
Y
Y
Y
Y

DEFT'S JOINDER TO MOTION IN CO-DEFT NARCUS WESLEY'S MOTION TO SEVER DEFTS
(WILSON)...DEFT'S MOTION TO SEVER DEFTS (WESLEY)...DEFT'S MOTION TO SUPPRESS
(WESLEY)

Deft Wilson present in custody without counsel. Deft Wesley present on bail
with Mr. Landis. Ms. Kollins requested permission to approach the Bench, SO
ORDERED. Thereafter, COURT ORDERED, motions CONTINUED to calendar call. Ms.
Kollins stated she will check with Mr. Oronoz re next weeks trial
schedule. The Court is not making a ruling today, however, the Court is
going to sever the defts for trial, and Deft Wilson in custody will be tried
first.

CUSTODY (WILSON) BAIL (WESLEY)

3/27/08 8:30 A.M. SAME

CONTINUED ON PAGE: 007
MINUTES DATE: 03/25/08

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA

vs Wilson, Delarian K

CONTINUED FROM PAGE: 006

03/27/08 08:30 AM 00 ALL PENDING MOTIONS (3/27/08)

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Lee Bahr, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
	005056 Luzaich, Blissa	Y
	005391 Kollins, Stacy L.	Y
	0001 D1 Wilson, Delarian K	Y
	006769 Oronoz, James A	Y
	0002 D Wesley, Narcus S	Y
	PUBDEF Public Defender	Y
	009424 Landis, Casey	Y

DEFT'S JOINDER TO MOTION TO SEVER DEFTS (WILSON)...DEFT'S MOTION TO CONTINUE (WESLEY)...DEFT'S MOTION TO SUPPRESS STATEMENTS (WILSON)...DEFT'S MOTION TO SUPPRESS (WESLEY)...DEFT'S MOTION TO SEVER DEFTS (WESLEY)...CALENDAR CALL (BOTH)

COURT ORDERED, both motions to sever are GRANTED. The Court will address the motion to continue the trial. Mr. Oronoz requested an opportunity to speak with his client, SO ORDERED, matter TRAILED. LATER, Court recalled matter, all present as above. CONFERENCE AT THE BENCH. State announced ready for trial on Wilson. Mr. Oronoz answered ready for trial on Deft Wilson, but debating over an offer made. His client would like to speak to his mother. Court stated the motion to suppress stems from the search warrant. Ms. Luzaich concurred, there should be testimony. Colloquy between Court and counsel re the search warrant and the communication with Nevada Power Company and the power being on at one residence or the other, and the power being in either deft's name or his father's name. COURT ORDERED, the Court will CONTINUE the Calendar Call, status check re deft Wilson changing his plea, deft Wilson's motion to suppress to tomorrow morning at 9:00 A.M. FURTHER ORDERED, the Court will hold a Franks Hearing on Monday, 3/31/08 at 1:30 A.M. IT IS FURTHER ORDERED, Deft Wilson will proceed to trial first as he is in custody on Tuesday, 4/1/08, and if deft Wilson accepts the offer, Deft Wesley will start his trial on Wednesday, 4/2/08.

CUSTODY (WILSON)

BAIL (WESLEY)

3/28/08 8:30 A.M. STATUS CHECK: CHANGE OF PLEA (WILSON)...DEFT WILSON'S MOTION TO SUPPRESS...DEFT WESLEY'S MOTION TO CONTINUE TRIAL

3/31/08 1:30 P.M. FRANK'S HEARING

CONTINUED ON PAGE: 008

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vs Wilson, Delarian K

CONTINUED FROM PAGE: 007

4/1/08 10:00 A.M. TRIAL BY JURY (WILSON)

4/2/08 10:00 A.M. TRIAL BY JURY (WESLEY)

03/28/08 09:00 AM 00 ALL PENDING MOTIONS 3/28/08

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Nora Pena, Relief Clerk
Lee Bahr, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
005391	Kollins, Stacy L.	Y
0001 D1	Wilson, Delarian K	Y
006769	Oronoz, James A	Y
010707	Pandullo, Michael R.	Y
0002 D	Wesley, Marcus S	N
PUBDEF	Public Defender	Y
009424	Landis, Casey	Y

DEFT'S MOTION TO CONTINUE TRIAL (WESLEY)...STATUS CHECK: CHANGE OF PLEA
(WILSON)...DEFT'S MOTION TO SUPPRESS STATEMENT (WILSON)

DEFT WILSON: NEGOTIATIONS are as contained in the Guilty Plea Agreement and Amended Information FILED IN OPEN COURT. DEFT. WILSON ARRAIGNED AND PLED GUILTY TO AMENDED INFORMATION - COUNT I-II, ROBBERY WITH USE OF A DEADLY WEAPON (F) and COUNT III, SEXUAL ASSAULT (F). COURT ACCEPTED plea and ORDERED, matter referred to the Division of Parole and Probation (P & P) and set for sentencing; Trial date VACATED and Deft's motion to suppress statement is MOOT.

DEFT WESLEY: COURT ORDERED, Deft's Wesley's presence waived. Ms. Kollins advised the Deft. left the jurisdiction, they have an offer of proof as to what he would testify to and they will be able to do a telephonic recording for the Franks hearing on Monday. Colloquy between Court and counsel regarding the search warrant served on the Deft's home. Mr. Landis advised he has the right to cross and address it over the telephone. Ms. Kollins advised she can provide a copy of an affidavit to be marked as Court's exhibit. COURT ORDERED, Affidavit marked as Court's Exhibit #1. Court noted the Franks Hearing is set for Monday at 1:30 p.m. as to Wesley and the Jury Trial is set for 10:00 a.m. on Wednesday. COURT ORDERED, Deft's motion to continue trial PREVIOUSLY GRANTED and set for Wednesday.

CUSTODY - WILSON

BAIL - WESLEY

CRIMINAL COURT MINUTES

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vs Wilson, Delarian K

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5/13/08 8:30 AM SENTENCING - WILSON

05/13/08 08:30 AM 00 SENTENCING

HEARD BY: JOHN MCGROARTY, Senior Judge; Dept. VJ45

OFFICERS: Theresa Lee, Court Clerk
Lee Bahr, Reporter/RecorderPARTIES: STATE OF NEVADA
005056 Luzaich, Elissa
0001 D1 Wilson, Delarian K
006769 Oronoz, James AY
Y
Y
Y

Deft Wilson present in custody. Mr. Oronoz stated P & P has asked for additional time to prepare the report. Ms. Luzaich stated she would like both defts sentenced on one day so the speakers do not have to return twice. COURT ORDERED, matter CONTINUED one week to reset the sentencing date as to both defts.

CUSTODY

5/22/08 8:30 A.M. RESET SENTENCING DATE

05/22/08 08:30 AM 00 ALL PENDING MOTIONS (5/22/08)

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Bill Nelson, Reporter/RecorderPARTIES: STATE OF NEVADA
005056 Luzaich, Elissa
0001 D1 Wilson, Delarian K
010707 Pandullo, Michael R.
0002 D Wesley, Marcus S
001569 Winder, Dan M.
PUBDEF Public Defender
005863 Banks, Jeffrey M.Y
Y
Y
Y
Y
Y
Y
Y

DEFT WESLEY'S PRO PER MOTION FOR BAIL PENDING APPEAL...RESET SENTENCING DATE (BOTH)...CONFIRMATION OF COUNSEL (WESLEY)...DEFT WESLEY'S MOTION FOR NEW TRIAL

CRIMINAL COURT MINUTES

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Both defts present in custody. Ms. Luzaich stated Mr. Pandullo appeared for Mr. Oronoz earlier. Mr. Winder CONFIRMED AS COUNSEL for Deft. Wesley and stated he would like to review their file, post trial, and would like to file supplemental points and authorities in 30 days for Deft Wesley's motion for new trial. Ms. Luzaich stated when defts are represented by counsel, there are no proper person motions therefore nothing is pending. Court noted the motions were filed, but have no legal effect. Ms. Luzaich also objected as the time to file a motion for new trial has statutorily passed and all that needs to be set is a sentencing date. Mr. Winder stated when the deft filed his motion it should toll the time. Further arguments by counsel. Ms. Luzaich requested the defts sentenced on the same date because of the speakers, and requested sentencing date set in 30 days. Mr. Winder suggested 60 days for sentencing. COURT ORDERED, the Court will keep the defts together, sentencing date set in 30 days. Objection by Deft Wilson to postponing his sentence. FURTHER ORDERED, supplement to Deft Wesley's motion to be filed, motion sent for argument. Mr. Winder stated the PD will have the file ready for him this afternoon. COURT ORDERED, Public Defender is WITHDRAWN. Mr. Banks stated Mr. Winder should handle this matter through the appeal process, and the PD should not be reappointed at any stage of these proceedings due to the allegations Deft made in his motion against counsel.

CUSTODY (BOTH)

6/19/08 8:30 A.M. DEFT WESLEY'S MOTION FOR NEW TRIAL

7/3/08 8:30 A.M. SENTENCING (BOTH)

07/03/08 08:30 AM 00 SENTENCING

HEARD BY: James Bixler, Judge; Dept. 24

OFFICERS: Theresa Lee, Court Clerk
Bill Nelson, Reporter/Recorder

PARTIES:	STATE OF NEVADA	Y
005056	Luzaich, Elissa	Y
0001 D1	Wilson, Delarian K	Y
006769	Oronoz, James A	Y
0002 D	Wesley, Narcus S	Y
001569	Winder, Dan M.	Y

SENTENCING (DELARIAN WILSON)

Deft Wilson present in custody. Court noted Deft Wilson pled to three counts. Court noted Deft Wilson has one misdemeanor conviction in his background which is the extent of his record. Because of the Deft Wesley's

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA

vs Wilson, Delarian K

CONTINUED FROM PAGE: 010

trial, the Court is familiar with everything that went on in this case. Deft Wilson had the lead in this whole thing. Arguments by counsel. Ms. Luzaich stated the victims have elected not to speak today but are present in the courtroom. Statement by deft Wilson. By virtue of his plea of guilty, DEFT. WILSON is ADJUDGED GUILTY of CTS 1 & 2 - ROBBERY WITH USE OF A DEADLY WEAPON (F), AND CT 3 - SEXUAL ASSAULT (F) as outlined in the Amended Information FILED IN OPEN COURT on 3/28/08. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, and a \$150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED on CT 1 - ROBBERY to a MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE-HUNDRED AND EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC) PLUS a CONSECUTIVE ENHANCEMENT of a MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE-HUNDRED AND EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC) for the USE OF A DEADLY WEAPON; CT 2 - ROBBERY to a MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE-HUNDRED AND EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC) PLUS a CONSECUTIVE ENHANCEMENT of a MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE-HUNDRED AND EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC) for the USE OF A DEADLY WEAPON; and CT 3 - SEXUAL ASSAULT, a sentence of LIFE in the Nevada Department of Corrections with a MINIMUM parole eligibility after TEN (10) YEARS has been served; CTS 1, 2 & 3 to run CONSECUTIVE one with the other; with 500 DAYS credit for time served; RESTITUTION \$3,196 jointly and severally with co-deft; deft subject to LIFETIME SUPERVISION upon release from prison, probation or parole; and to register as a sex offender within 48 HOURS of release from prison.

SENTENCING (NARCUS WESLEY)

By virtue of the Jury's Verdict, Deft WESLEY is ADJUDGED GUILTY of CTS 1 & 18 - Conspiracy To Commit Burglary; CT 2 - Conspiracy to Commit Robbery; CTS 3 & 11 - Burglary While in Possession of a Deadly Weapon; CTS 4, 6, 7 & 9 - Robbery With Use of a Deadly Weapon; CTS 5 & 8 - Assault With Use of a Deadly Weapon; CT 10 - Second Degree Kidnapping With Use of a Deadly Weapon; CTS 12, 13, 14, 15 & 17 - Sexual Assault With Use of a Deadly Weapon; CT 16 - Coercion With Use of a Deadly Weapon; CT 18 - Open or Gross Lewdness with Use of a Deadly Weapon. Arguments by counsel. Statement by deft. Ms. Luzaich stated the victims have elected not to speak today but are present in the courtroom. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, and a \$150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED on CT 1 - TWELVE (12) MONTHS in Clark County Detention Center; on CT 18 - TWELVE (12) MONTHS in Clark County Detention Center; CT 2 - a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS in the Nevada Department of Corrections (NDC); CT 3 - a MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE-HUNDRED AND EIGHTY (180) MONTHS in the Nevada Department of Corrections; CT 11 - a MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE-HUNDRED AND EIGHTY (180) MONTHS in the Nevada Department of Corrections; CT 4 - ROBBERY, a MINIMUM of SIXTY (60) MONTHS and a MAXIMUM of ONE HUNDRED AND EIGHTY (180) MONTHS, PLUS an EQUAL AND CONSECUTIVE MINIMUM of SIXTY (60) MONTHS and a MAXIMUM of ONE HUNDRED AND EIGHTY (180) MONTHS; CT 6 - ROBBERY,

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CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA

vs Wilson, Delarian K

CONTINUED FROM PAGE: 011

a MINIMUM of SIXTY (60) MONTHS and a MAXIMUM of ONE HUNDRED AND EIGHTY (180) MONTHS, PLUS an EQUAL AND CONSECUTIVE MINIMUM of SIXTY (60) MONTHS and a MAXIMUM of ONE HUNDRED AND EIGHTY (180) MONTHS; CT 7 - ROBBERY, a MINIMUM of SIXTY (60) MONTHS and a MAXIMUM of ONE HUNDRED AND EIGHTY (180) MONTHS, PLUS an EQUAL AND CONSECUTIVE MINIMUM of SIXTY (60) MONTHS and a MAXIMUM of ONE HUNDRED AND EIGHTY (180) MONTHS; CT 9 - ROBBERY, a MINIMUM of SIXTY (60) MONTHS and a MAXIMUM of ONE HUNDRED AND EIGHTY (180) MONTHS, PLUS an EQUAL AND CONSECUTIVE MINIMUM of SIXTY (60) MONTHS and a MAXIMUM of ONE HUNDRED AND EIGHTY (180) MONTHS; CT 5 - a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS in the Nevada Department of Corrections; CT 8 - a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS in the Nevada Department of Corrections; CT 10 - SECOND DEGREE KIDNAPPING, a MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED AND EIGHTY (180) MONTHS in the Nevada Department of Corrections, PLUS an EQUAL AND CONSECUTIVE MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED AND EIGHTY (180) MONTHS for the USE OF A DEADLY WEAPON; CT 12 - LIFE in the Nevada Department of Corrections with a MINIMUM parole eligibility after TEN (10) YEARS has been served, PLUS a CONSECUTIVE MINIMUM of EIGHT (8) YEARS to a MAXIMUM of TWENTY (20) YEARS for the USE OF A DEADLY WEAPON; CT 13 - LIFE in the Nevada Department of Corrections with a MINIMUM parole eligibility after TEN (10) YEARS has been served, PLUS a CONSECUTIVE MINIMUM of EIGHT (8) YEARS to a MAXIMUM of TWENTY (20) YEARS for the USE OF A DEADLY WEAPON; CT 14 - LIFE in the Nevada Department of Corrections with a MINIMUM parole eligibility after TEN (10) YEARS has been served, PLUS a CONSECUTIVE MINIMUM of EIGHT (8) YEARS to a MAXIMUM of TWENTY (20) YEARS for the USE OF A DEADLY WEAPON; CT 15 - LIFE in the Nevada Department of Corrections with a MINIMUM parole eligibility after TEN (10) YEARS has been served, PLUS a CONSECUTIVE MINIMUM of EIGHT (8) YEARS to a MAXIMUM of TWENTY (20) YEARS for the USE OF A DEADLY WEAPON; CT 17 - LIFE in the Nevada Department of Corrections with a MINIMUM parole eligibility after TEN (10) YEARS has been served, PLUS a CONSECUTIVE MINIMUM of EIGHT (8) YEARS to a MAXIMUM of TWENTY (20) YEARS for the USE OF A DEADLY WEAPON; CT 16 - COERCION - a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS in the Nevada Department of Corrections PLUS a CONSECUTIVE ENHANCEMENT of a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS; ALL COUNTS to run CONCURRENT one with the other; with 185 DAYS credit for time served; RESTITUTION \$3,196 jointly and severally with co-deft; deft subject to LIFETIME SUPERVISION upon release from prison, probation or parole; and to register as a sex offender within 48 HOURS of release from prison. Mr. Winder moved for bail pending appeal as to Narcus Wesley. Objection by Ms. Luzaich. COURT ORDERED, there will not be any bail in this case, Mr. Winder will have to petition the Supreme Court. Mr. Winder requested the Court appoint him to do the appeal, the family does not have the funds to retain him. Objection by Ms. Luzaich and stated the Public Defender does not have a conflict to do the appeal. Jeffrey Banks, DPD, Deft's trial counsel present and stated deft has challenged his trial counsel's representation of him at trial, therefore, they cannot take the appeal. Court stated for the record, the Court felt both Mr. Landis and Mr. Westbrook did an excellent job defending the case. Mr. Winder to put his motion in writing.

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MINUTES DATE: 07/03/08

CRIMINAL COURT MINUTES

07-C-232494-C STATE OF NEVADA

vs Wilson, Delarian K

CONTINUED FROM PAGE: 012

Mr. Oronoz has one issue to address with regard to Deft. Wilson. He would like the record to reflect their position, that the sentence given to Deft Wilson was entirely too severe and excessive. Court directed Mr. Winder to file the Notice of Appeal, then file his motion for appointment. Mr. Oronoz had the same request, Court directed him to file his motion for appointment in writing.

BONDS, if any, EXONERATED.

NDC (BOTH)

Logout My Account Search Menu New District Civil/Criminal Search Refine Search Back

Location : District Court Civil/Criminal Help

REGISTER OF ACTIONS

CASE NO. 07C232494-2

The State of Nevada vs Narcus S Wesley

Case Type: **Felony/Gross Misdemeanor**
 Date Filed: **04/19/2007**
 Location: **Department 24**
 Conversion Case Number: **C232494**
 Defendant's Scope ID #: **1757886**
 Lower Court Case Number: **07FH00317**
 Supreme Court No.: **57473**

RELATED CASE INFORMATION

Related Cases

07C232494-1 (Multi-Defendant Case)

PARTY INFORMATION

Defendant Wesley, Narcus S

Lead Attorneys
Christopher R Oram

Retained

7023845563(W)

Plaintiff State of Nevada

David J. Roger
702-671-2700(W)

CHARGE INFORMATION

Charges: Wesley, Narcus S

	Statute	Level	Date
1. CONSPIRACY TO COMMIT A CRIME	199.480	Gross Misdemeanor	01/01/1900
1. BURGLARY.	205.060	Gross Misdemeanor	01/01/1900
2. CONSPIRACY TO COMMIT A CRIME	199.480	Felony	01/01/1900
2. ROBBERY	200.380	Felony	01/01/1900
3. BURGLARY.	205.060	Felony	01/01/1900
4. ROBBERY	200.380	Felony	01/01/1900
4. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
5. ASSAULT.	200.471	Felony	01/01/1900
5. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
6. ROBBERY	200.380	Felony	01/01/1900
6. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
7. ROBBERY	200.380	Felony	01/01/1900
7. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
8. ASSAULT.	200.471	Felony	01/01/1900
8. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
9. ROBBERY	200.380	Felony	01/01/1900
9. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
10. KIDNAPPING IN SECOND DEGREE	200.330	Felony	01/01/1900
10. KIDNAP WITH USE OF A DEADLY WEAPON	200.310	Felony	01/01/1900
10. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
11. BURGLARY.	205.060	Felony	01/01/1900
12. SEXUAL ASSAULT	200.366	Felony	01/01/1900
12. SEXUAL ASSAULT	200.364	Felony	01/01/1900
12. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
13. SEXUAL ASSAULT	200.368	Felony	01/01/1900

13. SEXUAL ASSAULT	200.364	Felony	01/01/1900
13. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
14. SEXUAL ASSAULT	200.366	Felony	01/01/1900
14. SEXUAL ASSAULT	200.364	Felony	01/01/1900
14. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
15. SEXUAL ASSAULT	200.366	Felony	01/01/1900
15. SEXUAL ASSAULT	200.364	Felony	01/01/1900
15. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
16. COERCION UNLAWFUL FOR ANY PERSON TO FORCE ANOTHER TO DO OR ABSTAIN FROM	207.190	Felony	01/01/1900
16. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
17. SEXUAL ASSAULT	200.366	Felony	01/01/1900
17. SEXUAL ASSAULT	200.364	Felony	01/01/1900
17. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
18. OPEN OR GROSS LEWDNESS	201.210	Gross Misdemeanor	01/01/1900
18. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Gross Misdemeanor	01/01/1900

EVENTS & ORDERS OF THE COURT

DISPOSITIONS	
01/01/1900	Plea (Judicial Officer: User, Conversion) 1. CONSPIRACY TO COMMIT A CRIME Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 1. BURGLARY. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 2. CONSPIRACY TO COMMIT A CRIME Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 2. ROBBERY Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 3. BURGLARY. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 4. ROBBERY Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 4. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 5. ASSAULT. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 5. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 6. ROBBERY Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 6. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 7. ROBBERY

	Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 7. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 8. ASSAULT. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 8. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 9. ROBBERY Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 9. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 10. KIDNAPPING IN SECOND DEGREE Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 10. KIDNAP WITH USE OF A DEADLY WEAPON Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 10. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 11. BURGLARY. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 12. SEXUAL ASSAULT Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 12. SEXUAL ASSAULT Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 12. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 13. SEXUAL ASSAULT Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 13. SEXUAL ASSAULT Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 13. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 14. SEXUAL ASSAULT Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 14. SEXUAL ASSAULT Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 14. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 15. SEXUAL ASSAULT Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 15. SEXUAL ASSAULT Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion)

	15. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 16. COERCION. UNLAWFUL FOR ANY PERSON TO FORCE ANOTHER TO DO OR ABSTAIN FROM Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 16. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 17. SEXUAL ASSAULT Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 17. SEXUAL ASSAULT Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 17. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 18. OPEN OR GROSS LEWDNESS Not Guilty
01/01/1900	Plea (Judicial Officer: User, Conversion) 18. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Not Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 1. CONSPIRACY TO COMMIT A CRIME Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 1. BURGLARY. Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 2. CONSPIRACY TO COMMIT A CRIME Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 2. ROBBERY Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 3. BURGLARY. Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 4. ROBBERY Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 4. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 5. ASSAULT. Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 5. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 6. ROBBERY Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 6. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 7. ROBBERY Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 7. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Guilty

07/03/2008	Disposition (Judicial Officer: User, Conversion) 8. ASSAULT. Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 8. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 9. ROBBERY Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 9. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 10. KIDNAPPING IN SECOND DEGREE Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 10. KIDNAP WITH USE OF A DEADLY WEAPON Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 10. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 11. BURGLARY. Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 12. SEXUAL ASSAULT Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 12. SEXUAL ASSUALT Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 12. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 13. SEXUAL ASSAULT Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 13. SEXUAL ASSUALT Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 13. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 14. SEXUAL ASSAULT Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 14. SEXUAL ASSUALT Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 14. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 15. SEXUAL ASSAULT Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 15. SEXUAL ASSUALT Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion) 15. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Guilty
07/03/2008	Disposition (Judicial Officer: User, Conversion)

16. COERCION. UNLAWFUL FOR ANY PERSON TO FORCE ANOTHER TO DO OR ABSTAIN FROM
Guilty

07/03/2008 Disposition (Judicial Officer: User, Conversion)
16. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.
Guilty

07/03/2008 Disposition (Judicial Officer: User, Conversion)
17. SEXUAL ASSAULT
Guilty

07/03/2008 Disposition (Judicial Officer: User, Conversion)
17. SEXUAL ASSAULT
Guilty

07/03/2008 Disposition (Judicial Officer: User, Conversion)
17. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.
Guilty

07/03/2008 Disposition (Judicial Officer: User, Conversion)
18. OPEN OR GROSS LEWDNESS
Guilty

07/03/2008 Disposition (Judicial Officer: User, Conversion)
18. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.
Guilty

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
1. CONSPIRACY TO COMMIT A CRIME
Converted Disposition:
Sentence# 0001:
Minimum 12 Months to Maximum 12 Months
Placement: CCDC
Converted Disposition:
Sentence# 0002: LIFETIME SUPERVISION
Converted Disposition:
Sentence# 0003: RESTITUTION
Amount: \$3196.00
Converted Disposition:
Sentence# 0004: DNA FEE/GENETIC MARKERS ANALYSIS
Amount: \$150.00
Converted Disposition:
Sentence# 0005: ADMINISTRATION FEE
Amount: \$25.00

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
2. CONSPIRACY TO COMMIT A CRIME
Converted Disposition:
Sentence# 0001:
Minimum 20 Months to Maximum 72 Months
Placement: NSP
Cons/Conc: Concurrent
w/Charge Item: 0001
and Sentence#: 0001

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
3. BURGLARY
Converted Disposition:
Sentence# 0001:
Minimum 72 Months to Maximum 180 Months
Placement: NSP
Cons/Conc: Concurrent
w/Charge Item: 0003
and Sentence#: 0001

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
4. ROBBERY
Converted Disposition:
Sentence# 0001:
Minimum 18 Months to Maximum 60 Months
Placement: NSP
Cons/Conc: Concurrent
w/Charge Item: 0005
and Sentence#: 0001
Converted Disposition:
Sentence# 0002:
Minimum 18 Months to Maximum 60 Months
Placement: NSP
Cons/Conc: Consecutive
w/Charge Item: 0006

and Sentence#: 0001

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
5. ASSAULT.
Converted Disposition:
Sentence# 0001:
Minimum 24 Months to Maximum 72 Months
Placement: NSP
Cons/Conc: Concurrent
w/Charge Item: 0006
and Sentence#: 0001

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
6. ROBBERY
Converted Disposition:
Sentence# 0001:
Minimum 18 Months to Maximum 60 Months
Placement: NSP
Cons/Conc: Concurrent
w/Charge Item: 0008
and Sentence#: 0001
Converted Disposition:
Sentence# 0002:
Minimum 18 Months to Maximum 60 Months
Placement: NSP
Cons/Conc: Consecutive
w/Charge Item: 0010
and Sentence#: 0001

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
7. ROBBERY
Converted Disposition:
Sentence# 0001:
Minimum 18 Months to Maximum 60 Months
Placement: NSP
Cons/Conc: Concurrent
w/Charge Item: 0010
and Sentence#: 0001
Converted Disposition:
Sentence# 0002:
Minimum 18 Months to Maximum 60 Months
Placement: NSP
Cons/Conc: Consecutive
w/Charge Item: 0012
and Sentence#: 0001

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
8. ASSAULT.
Converted Disposition:
Sentence# 0001:
Minimum 24 Months to Maximum 72 Months
Placement: NSP
Cons/Conc: Concurrent
w/Charge Item: 0012
and Sentence#: 0001

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
9. ROBBERY
Converted Disposition:
Sentence# 0001:
Minimum 18 Months to Maximum 60 Months
Placement: NSP
Cons/Conc: Concurrent
w/Charge Item: 0014
and Sentence#: 0001
Converted Disposition:
Sentence# 0002:
Minimum 18 Months to Maximum 60 Months
Placement: NSP
Cons/Conc: Consecutive
w/Charge Item: 0016
and Sentence#: 0001

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
10. KIDNAPPING IN SECOND DEGREE
Converted Disposition:
Sentence# 0001:
Minimum 72 Months to Maximum 180 Months
Placement: NSP

Cons/Conc: Concurrent
w/Charge Item: 0016
and Sentence#: 0001
Converted Disposition:
Sentence# 0002:
Minimum 72 Months to Maximum 180 Months
Placement: NSP
Cons/Conc: Consecutive
w/Charge Item: 0018
and Sentence#: 0001

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
11. BURGLARY

Converted Disposition:
Sentence# 0001:
Minimum 72 Months to Maximum 180 Months
Placement: NSP
Cons/Conc: Concurrent
w/Charge Item: 0018
and Sentence#: 0001

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
12. SEXUAL ASSAULT

Converted Disposition:
Sentence# 0001: LIFE WITH POSSIBILITY OF PAROLE
Cons/Conc: Concurrent
w/Charge Item: 0021
and Sentence#: 0001
Converted Disposition:
Sentence# 0002:
Minimum 8 Years to Maximum 20 Years
Placement: NSP
Cons/Conc: Consecutive
w/Charge Item: 0022
and Sentence#: 0001
Converted Disposition:
Sentence# 0003: DEFENDANT RE-SENTENCED
Converted Disposition:
Sentence# 0004:
Minimum 8 Years to Maximum 20 Years
Placement: NSP
Converted Disposition:
Sentence# 0005: LIFE WITH POSSIBILITY OF PAROLE

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
13. SEXUAL ASSAULT

Converted Disposition:
Sentence# 0001: LIFE WITH POSSIBILITY OF PAROLE
Cons/Conc: Concurrent
w/Charge Item: 0022
and Sentence#: 0001
Converted Disposition:
Sentence# 0002:
Minimum 8 Years to Maximum 20 Years
Placement: NSP
Cons/Conc: Consecutive
w/Charge Item: 0025
and Sentence#: 0001
Converted Disposition:
Sentence# 0003: SENTENCE MODIFIED TO

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
14. SEXUAL ASSAULT

Converted Disposition:
Sentence# 0001: LIFE WITH POSSIBILITY OF PAROLE
Cons/Conc: Concurrent
w/Charge Item: 0025
and Sentence#: 0001
Converted Disposition:
Sentence# 0002:
Minimum 8 Months to Maximum 20 Months
Placement: NSP
Cons/Conc: Consecutive
w/Charge Item: 0028
and Sentence#: 0001

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
15. SEXUAL ASSAULT
Converted Disposition:

Sentence# 0001: LIFE WITH POSSIBILITY OF PAROLE
 Cons/Conc: Concurrent
 w/Charge Item: 0028
 and Sentence#: 0001
 Converted Disposition:
 Sentence# 0002:
 Minimum 8 Years to Maximum 20 Years
 Placement: NSP
 Cons/Conc: Consecutive
 w/Charge Item: 0031
 and Sentence#: 0001
 Converted Disposition:
 Sentence# 0003: SENTENCE MODIFIED TO
 Converted Disposition:
 Sentence# 0004:
 Minimum 8 Years to Maximum 20 Years
 Placement: NSP
 Converted Disposition:
 Sentence# 0005: LIFE WITH POSSIBILITY OF PAROLE
 Cons/Conc: Consecutive
 w/Charge Item: 0003
 and Sentence#: 0001

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
 16. COERCION, UNLAWFUL FOR ANY PERSON TO FORCE ANOTHER TO DO OR ABSTAIN FROM

Converted Disposition:
 Sentence# 0001:
 Minimum 24 Months to Maximum 72 Months
 Placement: NSP
 Cons/Conc: Concurrent
 w/Charge Item: 0031
 and Sentence#: 0001
 Converted Disposition:
 Sentence# 0002:
 Minimum 24 Months to Maximum 72 Months
 Placement: NSP
 Cons/Conc: Consecutive
 w/Charge Item: 0034
 and Sentence#: 0001

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
 17. SEXUAL ASSAULT

Converted Disposition:
 Sentence# 0001: LIFE WITH POSSIBILITY OF PAROLE
 Cons/Conc: Concurrent
 w/Charge Item: 0034
 and Sentence#: 0001
 Converted Disposition:
 Sentence# 0002:
 Minimum 8 Years to Maximum 20 Years
 Placement: NSP
 Cons/Conc: Consecutive
 w/Charge Item: 0036
 and Sentence#: 0001
 Converted Disposition:
 Sentence# 0003: SENTENCE MODIFIED TO
 Converted Disposition:
 Sentence# 0004:
 Minimum 8 Years to Maximum 20 Years
 Placement: NSP
 Converted Disposition:
 Sentence# 0005: LIFE WITH POSSIBILITY OF PAROLE
 Cons/Conc: Consecutive
 w/Charge Item: 0003
 and Sentence#: 0001

07/03/2008 Adult Adjudication (Judicial Officer: User, Conversion)
 18. OPEN OR GROSS LEWDNESS

Converted Disposition:
 Sentence# 0001:
 Minimum 12 Months to Maximum 12 Months
 Placement: CCDC
 Cons/Conc: Concurrent
 w/Charge Item: 0036
 and Sentence#: 0001

OTHER EVENTS AND HEARINGS

04/19/2007 Information
INFORMATION Fee \$0.00
07C232494-20001.tif pages

04/20/2007 Hearing
INITIAL ARRAIGNMENT
07C232494-20002.tif pages

04/20/2007 Information
INFORMATION
07C232494-20003.tif pages

04/25/2007 Criminal Bindover
CRIMINAL BINDER
07C232494-20004.tif pages

05/09/2007 Hearing
ARRAIGNMENT CONTINUED
07C232494-20006.tif pages

05/09/2007 Initial Arraignment (9:00 AM) ()
INITIAL ARRAIGNMENT Court Clerk: Lore Vanderbusse/Relief Clerk: Lorraine Williams Reporter/Recorder: Kiara Schmidt Heard
By: Kevin Williams
Parties Present

05/16/2007 Result: Matter Heard
Arraignment Continued (9:00 AM) ()
ARRAIGNMENT CONTINUED Court Clerk: Lore Vanderbusse/Relief Clerk: Lorraine Williams Reporter/Recorder: Kiara Schmidt
Heard By: Kevin Williams
Parties Present

05/17/2007 Result: Matter Heard
Motion
DEFT'S O.R. RELEASE/BAIL REDUCTION /5
07C232494-20009.tif pages

05/22/2007 Hearing
CONFIRMATION OF COUNSEL (KOHIN)
07C232494-20010.tif pages

05/22/2007 Motion for Own Recognizance Release/Settling Reasonable Bail (8:30 AM) ()
DEFT'S O.R. RELEASE/BAIL REDUCTION /5 Court Clerk: Theresa Lee Reporter/Recorder: Bill Nelson Heard By: James Bixler
Parties Present

05/23/2007 Result: Denied
Reporters Transcript
REPORTER'S TRANSCRIPT PRELIMINARY HEARING
07C232494-20011.tif pages

05/23/2007 Reporters Transcript
REPORTER'S TRANSCRIPT PRELIMINARY HEARING
07C232494-20012.tif pages

05/24/2007 Motion for Confirmation of Counsel (8:30 AM) ()
CONFIRMATION OF COUNSEL (KOHIN) Court Clerk: Theresa Lee Reporter/Recorder: Bill Nelson Heard By: James Bixler
Parties Present

05/25/2007 Result: Matter Heard
Hearing
STATUS CHECK: TRIAL DATE
07C232494-20013.tif pages

05/31/2007 Status Check (8:30 AM) ()
STATUS CHECK: TRIAL DATE Court Clerk: Theresa Lee Reporter/Recorder: Jackie Nelson Heard By: James Bixler
Parties Present

06/08/2007 Result: Matter Heard
Bond
BOND - #AS250K-1339 - \$93,000.00
07C232494-20014.tif pages

06/08/2007 Bond
BOND - #AS100K-2709 - \$100,000.00
07C232494-20015.tif pages

06/08/2007 Bond
BOND - #AS250K-1338 - \$215,000.00
07C232494-20016.tif pages

06/28/2007 CANCELED Calendar Call (8:30 AM) ()
Vacated
Result: Vacate

07/02/2007 CANCELED Jury Trial (10:00 AM) ()
Vacated
Result: Vacate

08/16/2007 Request
EX PARTE MOTION TO APPOINT INVESTIGATOR AND FOR FEES IN EXCESS OF STATUTORY LIMIT LIMIT-RELATED
PARTYID: 07C232494_0001
07C232494-20019.tif pages

08/29/2007 Ex Parte Order
EX PARTE ORDER - RELATED PARTYID: 07C232494_0001
07C232494-20020.tif pages

11/01/2007 Calendar Call (8:30 AM) ()
CALENDAR CALL Court Clerk: Theresa Lee Reporter/Recorder: Bill Nelson Heard By: James Bixler
Parties Present

11/05/2007 Result: Matter Heard
CANCELED Jury Trial (10:00 AM) ()
 Vacated

01/24/2008 Result: Vacate
Calendar Call (8:30 AM) ()
CALENDAR CALL Court Clerk: Theresa Lee/Relief Clerk: Rebecca Foster Reporter/Recorder: Bill Nelson Heard By: James Bixler
Parties Present

01/28/2008 Result: Matter Heard
CANCELED Jury Trial (10:00 AM) ()
 Vacated

03/06/2008 Result: Vacate
Motion
DEFT'S MTN TO SEVER DEFTS/14
 07C232494-20025.tif pages

03/11/2008 **Motion**
DEFT'S MTN TO SUPPRESS /15
 07C232494-20028.tif pages

03/11/2008 **Motion**
DEFT'S JOINDER TO MTN TO SEVER DEFTS /16
 07C232494-20027.tif pages

03/17/2008 **Motion**
DEFT'S MTN TO SUPPRESS STATEMENT/17
 07C232494-20028.tif pages

03/18/2008 **Motion to Sever (8:30 AM) ()**
DEFT'S MTN TO SEVER DEFTS/14 Heard By: James Bixler

03/18/2008 Result: Matter Continued
Joinder (8:30 AM) ()
DEFT'S JOINDER TO MTN TO SEVER DEFTS /16 Heard By: James Bixler

03/18/2008 Result: Matter Continued
All Pending Motions (8:30 AM) ()
ALL PENDING MOTIONS (3/18/08) Court Clerk: Theresa Lee Reporter/Recorder: Bill Nelson Heard By: James Bixler
Parties Present

03/22/2008 Result: Matter Heard
Motion
ALL PENDING MOTIONS (3/18/08)
 07C232494-20029.tif pages

03/24/2008 **Opposition**
STATES OPPOSITION TO DEFENDANT WILSONS MOTION TO SUPPRESS STATEMENT
 07C232494-20030.tif pages

03/24/2008 **Opposition**
STATES OPPOSITION TO DEFENDANT WESLEYS MOTION TO SUPPRESS FRUITS OF ILLEGAL SEARCH SEARCH
 07C232494-20031.tif pages

03/25/2008 **Motion**
DEFT'S MTN TO CONTINUE /1
 07C232494-20032.tif pages

03/25/2008 **Motion to Sever (8:30 AM) ()**
DEFT'S MTN TO SEVER DEFTS/14 Heard By: James Bixler

03/25/2008 Result: Matter Continued
Motion to Suppress (8:30 AM) ()
DEFT'S MTN TO SUPPRESS /15

03/25/2008 Result: Matter Continued
Joinder (8:30 AM) ()
DEFT'S JOINDER TO MTN TO SEVER DEFTS /16 Heard By: James Bixler

03/25/2008 Result: Matter Continued
All Pending Motions (8:30 AM) ()
ALL PENDING MOTIONS (3/25/08) Court Clerk: Theresa Lee Reporter/Recorder: Lee Bahr Heard By: James Bixler
Parties Present

03/26/2008 Result: Matter Heard
Motion
ALL PENDING MOTIONS (3/25/08)
 07C232494-20033.tif pages

03/27/2008 **Hearing**
STATUS CHECK: CHANGE OF PLEA
 07C232494-20034.tif pages

03/27/2008 **Hearing**
FRANKS HEARING (DO NOT POST)
 07C232494-20035.tif pages

03/27/2008 **Motion**
ALL PENDING MOTIONS (3/27/08)
 07C232494-20038.tif pages

03/27/2008 **Calendar Call (8:30 AM) ()**
CALENDAR CALL

03/27/2008 **Motion to Sever (8:30 AM) ()**
DEFT'S MTN TO SEVER DEFTS/14 Heard By: James Bixler

03/27/2008 Result: Matter Continued
Motion to Suppress (1:30 PM) ()
DEFT'S MTN TO SUPPRESS /15
 Result: Matter Continued

03/27/2008 Joinder (8:30 AM) ()
DEFT'S JOINDER TO MTN TO SEVER DEFTS /16 Heard By: James Bixler
Result: Matter Continued

03/27/2008 Motion to Suppress (8:30 AM) ()
DEFT'S MTN TO SUPPRESS STATEMENT/17 Heard By: James Bixler
Result: Matter Continued

03/27/2008 Motion to Continue (8:30 AM) ()
DEFT'S MTN TO CONTINUE /1 Heard By: James Bixler
Result: Granted

03/27/2008 All Pending Motions (8:30 AM) ()
ALL PENDING MOTIONS (3/27/08) Court Clerk: Theresa Lee Reporter/Recorder: Lee Bahr Heard By: James Bixler
Parties Present

03/28/2008 Result: Matter Heard
Motion
ALL PENDING MOTIONS 3/28/08
07C232494-20039.tif pages

03/28/2008 Memorandum
GUILTY PLEA MEMORANDUM/AGREEMENT
07C232494-20040.tif pages

03/28/2008 Information
AMENDED INFORMATION
07C232494-20042.tif pages

03/28/2008 Notice of Witnesses and/or Expert Witnesses
NOTICE OF WITNESSES AND/OR EXPERT WITNESSES
07C232494-20045.tif pages

03/28/2008 Motion to Suppress (9:00 AM) ()
DEFT'S MTN TO SUPPRESS STATEMENT/17 Heard By: James Bixler
Result: Moot

03/28/2008 Status Check (9:00 AM) ()
STATUS CHECK: CHANGE OF PLEA

03/28/2008 All Pending Motions (9:00 AM) ()
ALL PENDING MOTIONS 3/28/08 Relief Clerk: Nore Pena Reporter/Recorder: Lee Bahr Heard By: James Bixler
Parties Present

03/31/2008 Result: Matter Heard
CANCELED Jury Trial (10:00 AM) ()
Vacated

03/31/2008 Result: Vacate
Motion to Suppress (1:30 PM) ()
DEFT'S MTN TO SUPPRESS /15

03/31/2008 Hearing (1:30 PM) ()
FRANKS HEARING (DO NOT POST) Court Clerk: Theresa Lee Reporter/Recorder: Bill Nelson Heard By: Bixler, James
Parties Present

04/01/2008 Result: Matter Continued
Reporters Transcript
REPORTER'S TRANSCRIPT CHANGE OF PLEA AS TO DEFENDANT WILSON
07C232494-20046.tif pages

04/01/2008 CANCELED Jury Trial (10:00 AM) ()
Vacated

04/01/2008 Result: Vacate
CANCELED Jury Trial (10:00 AM) ()
Vacated

04/02/2008 Result: Vacate
CANCELED Jury Trial (10:00 AM) ()
Vacated

04/04/2008 Result: Vacate
Conversion Case Event Type
SENTENCING
07C232494-20047.tif pages

04/07/2008 Notice of Witnesses and/or Expert Witnesses
NOTICE OF WITNESSES AND/OR EXPERT WITNESSES - RELATED PARTYID: 07C232494...0002
07C232494-20048.tif pages

04/09/2008 Hearing (10:30 AM) ()
FRANKS HEARING (DO NOT POST) Heard By: James Bixler
Result: Denied

04/09/2008 Jury Trial (1:00 PM) ()
TRIAL BY JURY Heard By: James Bixler
Result: Matter Continued

04/10/2008 Information
SECOND AMENDED INFORMATION
07C232494-20049.tif pages

04/10/2008 Jury List
DISTRICT COURT JURY LIST
07C232494-20051.tif pages

04/10/2008 Jury Trial (9:00 AM) ()
TRIAL BY JURY Court Clerk: Theresa Lee Reporter/Recorder: Bill Nelson Heard By: Bixler, James
Parties Present

04/11/2008 Result: Matter Continued
Reporters Transcript

REPORTER'S TRANSCRIPT OF PROCEEDINGS
07C232494-20050.tif pages

04/11/2008 Jury Trial (10:00 AM) ()
TRIAL BY JURY Heard By: James Bixler
Result: Matter Continued

04/14/2008 Amended Jury List
AMENDED CRIMINAL JURY LIST
07C232494-20054.tif pages

04/14/2008 Jury Trial (10:00 AM) ()
TRIAL BY JURY Relief Clerk: Rashonda Mayfield Reporter/Recorder: Bill Nelson Heard By: Bixler, James
Parties Present
Result: Matter Continued

04/15/2008 Jury Trial (9:30 AM) ()
TRIAL BY JURY Relief Clerk: Nora Pena Reporter/Recorder: Bill Nelson Heard By: Bixler, James
Parties Present
Result: Matter Continued

04/16/2008 Jury Trial (10:00 AM) ()
TRIAL BY JURY Heard By: James Bixler
Result: Matter Continued

04/17/2008 Jury Trial (10:00 AM) ()
TRIAL BY JURY Heard By: James Bixler
Result: Matter Continued

04/18/2008 Conversion Case Event Type
SENTENCING
07C232494-20052.tif pages

04/18/2008 Instructions to the Jury
INSTRUCTIONS TO THE JURY
07C232494-20053.tif pages

04/18/2008 Judgment
VERDICT
07C232494-20055.tif pages

04/18/2008 Jury Trial (10:00 AM) ()
TRIAL BY JURY Court Clerk: Theresa Lee Reporter/Recorder: Bill Nelson Heard By: James Bixler
Parties Present
Result: Matter Heard

04/21/2008 Reporters Transcript
REPORTER'S TRANSCRIPT OPENING STATEMENT OF MR LANDIS
07C232494-20056.tif pages

04/24/2008 Order
ORDER FOR EXPEDITION OF TRANSCRIPT
07C232494-20059.tif pages

04/28/2008 Motion
DEFT WESLEY'S MTN FOR NEW TRIAL/32
07C232494-20060.tif pages

04/28/2008 Request
MOTION FOR WITHDRAWAL OF COUNSEL - RELATED PARTYID: 07C232494_0002
07C232494-20061.tif pages

04/28/2008 Request
MOTION FOR EXTENSION OF TIME - RELATED PARTYID: 07C232494_0002
07C232494-20062.tif pages

04/28/2008 Notice
NOTICE OF MOTION - RELATED PARTYID: 07C232494_0001
07C232494-20063.tif pages

05/01/2008 Motion
DEFT'S PRO PER MTN FOR BAIL PENDING/33 (VKNO MTN EXISTS)
07C232494-20064.tif pages

05/01/2008 Request
MOTION FOR BAIL PENDING SENTENCING APPEAL
07C232494-20065.tif pages

05/01/2008 Motion
DEFT WESLEY'S PRO PER MTN FOR BAIL PEND SENTENCING/APPEAL
07C232494-20069.tif pages

05/08/2008 Motion (8:30 AM) ()
DEFT WESLEY'S MTN FOR NEW TRIAL/32 Court Clerk: Theresa Lee Reporter/Recorder: Bill Nelson Heard By: Bixler, James
Parties Present
Result: Matter Continued

05/10/2008 Hearing
CONFIRMATION OF COUNSEL (PRIVATE COUNSEL)
07C232494-20066.tif pages

05/10/2008 Motion
RESET SENTENCING DATE
07C232494-20067.tif pages

05/13/2008 Sentencing (8:30 AM) ()
SENTENCING Court Clerk: Theresa Lee Reporter/Recorder: Lee Behr Heard By: JOHN MCGROARTY
Parties Present
Result: Resct

05/17/2008 Motion

05/22/2008 **RESET SENTENCING DATE**
07C232494-20068.tif pages

05/22/2008 **Motion**
ALL PENDING MOTIONS (5/22/08)
07C232494-20070.tif pages

05/22/2008 **Conversion Case Event Type**
SENTENCING
07C232494-20071.tif pages

05/22/2008 **Motion (8:30 AM) ()**
DEFT WESLEY'S MTN FOR NEW TRIAL/32 Heard By: James Bixler
Result: Matter Continued

05/22/2008 **CANCELED Motion (8:30 AM) ()**
Vacated
Result: Vacate

05/22/2008 **Motion for Confirmation of Counsel (8:30 AM) ()**
CONFIRMATION OF COUNSEL (PRIVATE COUNSEL) Heard By: James Bixler
Result: Granted

05/22/2008 **Hearing (8:30 AM) ()**
RESET SENTENCING DATE Heard By: James Bixler
Result: Matter Heard

05/22/2008 **Hearing (8:30 AM) ()**
RESET SENTENCING DATE Heard By: James Bixler
Result: Matter Heard

05/22/2008 **Motion (8:30 AM) ()**
DEFT WESLEY'S PRO PER MTN FOR BAIL PEND SENTENCING/APPEAL Heard By: James Bixler
Result: Matter Continued

05/22/2008 **All Pending Motions (8:30 AM) ()**
ALL PENDING MOTIONS (5/22/08) Court Clerk: Theresa Lee Reporter/Recorder: Bill Nelson Heard By: James Bixler
Parties Present
Result: Matter Heard

06/03/2008 **Reporters Transcript**
REPORTER'S TRANSCRIPT OF PROCEEDINGS JUDGMENT AND SENTENCING
07C232494-20072.tif pages

06/05/2008 **Points and Authorities**
SUPPLEMENTAL POINTS AND AUTHORITIES TO MOTION FOR NEW TRIAL - RELATED PARTYID: 07C232494_0002
07C232494-20073.tif pages

06/05/2008 **CANCELED Sentencing (8:30 AM) ()**
Vacated
Result: Vacate

06/10/2008 **Receipt of Copy**
RECEIPT OF COPY - RELATED PARTYID: 07C232494_0002
07C232494-20074.tif pages

06/18/2008 **Opposition**
STATES OPPOSITION TO DEFTS MTN FOR NEW TRIAL
07C232494-20075.tif pages

06/19/2008 **Motion**
ALL PENDING MOTIONS (6/19/08)
07C232494-20076.tif pages

06/19/2008 **Motion (8:30 AM) ()**
DEFT WESLEY'S MTN FOR NEW TRIAL/32 Heard By: James Bixler
Result: Matter Continued

06/19/2008 **Motion (8:30 AM) ()**
DEFT WESLEY'S PRO PER MTN FOR BAIL PEND SENTENCING/APPEAL Heard By: James Bixler
Result: Matter Continued

06/19/2008 **All Pending Motions (8:30 AM) ()**
ALL PENDING MOTIONS (6/19/08) Court Clerk: Theresa Lee Reporter/Recorder: Bill Nelson Heard By: James Bixler
Parties Present
Result: Matter Heard

06/26/2008 **Motion**
ALL PENDING MOTIONS (6/26/08)
07C232494-20080.tif pages

06/26/2008 **Motion (8:30 AM) ()**
DEFT WESLEY'S MTN FOR NEW TRIAL/32 Heard By: James Bixler
Result: Denied

06/26/2008 **Motion (8:30 AM) ()**
DEFT WESLEY'S PRO PER MTN FOR BAIL PEND SENTENCING/APPEAL Heard By: James Bixler
Result: Denied

06/26/2008 **All Pending Motions (8:30 AM) ()**
ALL PENDING MOTIONS (6/26/08) Court Clerk: Theresa Lee Reporter/Recorder: Leo Behr Heard By: James Bixler
Parties Present
Result: Matter Heard

07/03/2008 **Reporters Transcript**
REPORTER'S TRANSCRIPT DEFENDANTS PRO PER MOTION FOR BAIL PENDING SENTENCING/APPEAL DEFENDANTS
MOTION FOR NEW TRIAL SENTENCING/APPEAL DEFENDANTS MOTION FOR NEW TRIAL
07C232494-20077.tif pages

07/03/2008 **Memorandum**
SENTENCING MEMORANDUM - RELATED PARTYID: 07C232494_0002
07C232494-20078.tif pages

07/03/2008 **Sentencing (8:30 AM) ()**
SENTENCING Court Clerk: Theresa Lee Reporter/Recorder: Bill Nelson Heard By: James Bixler
Parties Present

07/16/2008 **Judgment**
JUDGMENT OF CONVICTION/ADMIN ASSESSMENT
07C232494-20083.tif pages

07/16/2008 **Judgment**
JUDGMENT OF CONVICTION/GENETIC TESTING
07C232494-20084.tif pages

07/16/2008 **Judgment**
JUDGMENT OF CONVICTION/RESTITUTION
07C232494-20085.tif pages

07/18/2008 **Judgment**
JUDGMENT OF CONVICTION/ADMIN ASSESSMENT
07C232494-20086.tif pages

07/18/2008 **Judgment**
JUDGMENT OF CONVICTION/GENETIC TESTING
07C232494-20087.tif pages

07/18/2008 **Judgment**
JUDGMENT OF CONVICTION/RESTITUTION
07C232494-20088.tif pages

07/18/2008 **Notice of Appeal**
NOTICE OF APPEAL (SC 52104) - RELATED PARTYID: 07C232494_0001
07C232494-20089.tif pages

07/21/2008 **Statement**
CASE APPEAL STATEMENT
07C232494-20090.tif pages

07/22/2008 **Notice of Appeal**
NOTICE OF APPEAL (SC 52104) - RELATED PARTYID: 07C232494_0001
07C232494-20091.tif pages

07/24/2008 **Statement**
CASE APPEAL STATEMENT
07C232494-20092.tif pages

07/24/2008 **Notice of Appeal**
NOTICE OF APPEAL (SC 52127)
07C232494-20093.tif pages

07/24/2008 **Statement**
CASE APPEAL STATEMENT
07C232494-20094.tif pages

07/24/2008 **Statement**
CASE APPEAL STATEMENT - RELATED PARTYID: 07C232494_0001
07C232494-20095.tif pages

07/24/2008 **Notice of Appeal**
NOTICE OF APPEAL (SC 52104) - RELATED PARTYID: 07C232494_0001
07C232494-20096.tif pages

07/25/2008 **Notice of Appeal**
NOTICE OF APPEAL (SC 52127)
07C232494-20097.tif pages

08/05/2008 **Notice of Appeal**
NOTICE OF APPEAL (SC 52104) - RELATED PARTYID: 07C232494_0001
07C232494-20098.tif pages

08/06/2008 **Statement**
CASE APPEAL STATEMENT
07C232494-20099.tif pages

08/14/2008 **Statement**
CASE APPEAL STATEMENT - RELATED PARTYID: 07C232494_0002
07C232494-20100.tif pages

09/03/2008 **Reporters Transcript**
REPORTER'S TRANSCRIPT OF PROCEEDINGS
07C232494-20101.tif pages

09/05/2008 **Motion**
STATE'S MTN TO CORRECT ILLEGAL SENTENCE #2
07C232494-20103.tif pages

09/10/2008 **Request**
REQUEST FOR ROUGH DRAFT TRANSCRIPT - RELATED PARTYID: 07C232494_0001
07C232494-20104.tif pages

09/13/2008 **Order**
ORDER FOR PRODUCTION OF INMATE
07C232494-20105.tif pages

09/16/2008 **Ex Parte**
EX PARTE APPLICATION TO APPOINT ATTORNEY OF RECORD TO REPRESENT DEFT NARCUS S WESLEY DURING APPEAL PROCESS WESLEY DURING APPEAL PROCESS - RELATED PARTYID: 07C232494_0002
07C232494-20106.tif pages

09/16/2008 **Motion**
EX-PARTE MTN FOR COURT APPOINTMENT
07C232494-20107.tif pages

09/18/2008 **Motion (8:30 AM) ()**
STATE'S MTN TO CORRECT ILLEGAL SENTENCE #2 Court Clerk: Theresa Lee Reporter/Recorder: Bill Nelson Heard By: Bixler,

James
Parties Present
 Result: Matter Continued
 09/17/2008 **Request**
 REQUEST FOR ROUGH DRAFT TRANSCRIPT - RELATED PARTYID: 07C232494_0001
 07C232494-20108.tif pages
 09/23/2008 **Motion**
 ALL PENDING MOTIONS (9/23/08)
 07C232494-20110.tif pages
 09/23/2008 **Motion (8:30 AM) ()**
 STATE'S MTN TO CORRECT ILLEGAL SENTENCE #2 Heard By: James Bixler
 Result: Matter Continued
 09/23/2008 **Motion for Appointment (8:30 AM) ()**
 EX-PARTE MTN FOR COURT APPOINTMENT Heard By: James Bixler
 Result: Granted
 09/23/2008 **All Pending Motions (8:30 AM) ()**
 ALL PENDING MOTIONS (9/23/08) Court Clerk: Theresa Lee Reporter/Recorder: Bill Nelson Heard By: James Bixler
Parties Present
 Result: Matter Heard
 10/07/2008 **Request**
 REQUEST FOR TRANSCRIPT OF PROCEEDINGS - RELATED PARTYID: 07C232494_0002
 07C232494-20112.tif pages
 10/08/2008 **Judgment**
 AMENDED JUDGMENT OF CONVICTION
 07C232494-20111.tif pages
 11/12/2008 **Reporters Transcript**
 REPORTER'S TRANSCRIPT OF PROCEEDINGS - JURY TRIAL
 07C232494-20113.tif pages
 11/12/2008 **Reporters Transcript**
 REPORTER'S TRANSCRIPT OF PROCEEDINGS - JURY TRIAL
 07C232494-20114.tif pages
 11/12/2008 **Reporters Transcript**
 REPORTER'S TRANSCRIPT OF PROCEEDINGS - JURY TRIAL
 07C232494-20115.tif pages
 11/12/2008 **Reporters Transcript**
 REPORTER'S TRANSCRIPT OF PROCEEDINGS - REGARDING SENTENCING
 07C232494-20116.tif pages
 11/12/2008 **Reporters Transcript**
 REPORTER'S TRANSCRIPT OF PROCEEDINGS - JURY TRIAL
 07C232494-20117.tif pages
 11/12/2008 **Reporters Transcript**
 REPORTER'S TRANSCRIPT OF PROCEEDINGS - SENTENCING
 07C232494-20118.tif pages
 11/12/2008 **Reporters Transcript**
 REPORTER'S TRANSCRIPT OF PROCEEDINGS - JURY TRIAL
 07C232494-20119.tif pages
 11/12/2008 **Reporters Transcript**
 REPORTER'S TRANSCRIPT OF PROCEEDINGS - SENTENCING
 07C232494-20120.tif pages
 12/05/2008 **Reporters Transcript**
 REPORTER'S TRANSCRIPT OF PROCEEDINGS - JURY TRIAL
 07C232494-20121.tif pages
 12/05/2008 **Reporters Transcript**
 REPORTER'S TRANSCRIPT OF PROCEEDINGS - JURY TRIAL
 07C232494-20122.tif pages
 12/05/2008 **Reporters Transcript**
 REPORTER'S TRANSCRIPT OF PROCEEDINGS - JURY TRIAL
 07C232494-20123.tif pages
 12/05/2008 **Certificate**
 CERTIFICATE OF DELIVERY TO THE SUPREME COURT COURTHOUSE
 07C232494-20126.tif pages
 12/09/2008 **Certificate**
 CERTIFICATE OF DELIVERY TO THE SUPREME COURT COURTHOUSE
 07C232494-20124.tif pages
 12/09/2008 **Reporters Transcript**
 REPORTER'S TRANSCRIPT OF PROCEEDINGS - CHANGE OF PLEA AS TO DEFENDANT WILSON
 07C232494-20125.tif pages
 08/07/2009 **Judgment**
 CLERK'S CERTIFICATE JUDGMENT AFFIRMED
 07C232494-20128.tif pages
 04/12/2010 **Judgment**
 CLERK'S CERTIFICATE/JUDGMENT AFFIRMED
 07C232494-20132.tif pages
 06/28/2010 **Conversion Case Event Type**
 ATTORNEY TIME AND COSTS - RELATED PARTYID: 07C232494_0002
 07C232494-20133.tif pages
 09/09/2010 **Petition for Writ of Habeas Corpus**
 09/09/2010 **Motion for Leave to Proceed In Forma Pauperis**
 09/09/2010 **Affidavit In Support**

09/09/2010 *Affidavit in Support of Motion to Proceed In Forma Pauperis*
 Motion for Appointment of Attorney
 Motion for The Appointment of Counsel Request for Evidentiary Hearing
 10/08/2010 Order for Petition for Writ of Habeas Corpus
 12/07/2010 Petition for Writ of Habeas Corpus (8:30 AM) (Judicial Officer Bixler, James)
 Parties Present
 Minutes
 Result: Denied
 12/28/2010 Notice of Appeal (criminal)
 01/04/2011 Case Appeal Statement
 01/04/2011 Findings of Fact, Conclusions of Law and Order
 02/16/2011 Notice of Entry of Decision and Order
 02/28/2011 Order for Production of Inmate
 03/01/2011 Status Check (8:30 AM) (Judicial Officer Bixler, James)
 03/01/2011, 03/29/2011
 Supreme Court Remand
 Parties Present
 Minutes
 Result: Continued
 05/18/2011 Reporters Transcript
 Reporters Transcript of Proceedings Motion - Heard 12/07/2010

 FINANCIAL INFORMATION

	Defendant Wesley, Marcus S	
	Total Financial Assessment	175.00
	Total Payments and Credits	0.00
	Balance Due as of 09/06/2011	175.00
07/31/2008	Transaction Assessment	175.00

CASE NO. 07C232494-2

2017年12月27日

Supreme Court No.: 57473

07C232494-1 (Multi-Defendant Case)

David J. Roger
702-671-2700(W)

12. SEXUAL ASSAULT

200 354

Felony

01/01/1900

12. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
13. SEXUAL ASSAULT	200.366	Felony	01/01/1900
13. SEXUAL ASSAULT	200.364	Felony	01/01/1900
13. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
14. SEXUAL ASSAULT	200.366	Felony	01/01/1900
14. SEXUAL ASSAULT	200.364	Felony	01/01/1900
14. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
15. SEXUAL ASSAULT	200.366	Felony	01/01/1900
15. SEXUAL ASSAULT	200.364	Felony	01/01/1900
15. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
16. COERCION. UNLAWFUL FOR ANY PERSON TO FORCE ANOTHER TO DO OR ABSTAIN FROM	207.190	Felony	01/01/1900
16. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
17. SEXUAL ASSAULT	200.366	Felony	01/01/1900
17. SEXUAL ASSAULT	200.364	Felony	01/01/1900
17. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
18. OPEN OR GROSS LEWDNESS	201.210	Gross Misdemeanor	01/01/1900
18. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Gross Misdemeanor	01/01/1900

EVENTS & ORDERS OF THE COURT

12/07/2010 | **Petition for Writ of Habeas Corpus (8:30 AM)** (Judicial Officer Bixler, James)

Minutes

12/07/2010 8:30 AM

- Delt not present. Mr. Weinstein advised Mr. Winder is in Ely; therefore, he is requesting this court to appoint counsel and supplement Petition. Mr. Fattig stated this is Ms. Luziach's case. MATTER TRAILED. Ms. Luziach present. MATTER RECALLED. Following arguments of counsel. COURT ORDERED. MOTION DENIED. Court Noted, this is going to require the Court to prepare an Order to address each of his grounds. Ms. Luziach advised she will prepare a post conviction. State to prepare the Order. NDC

Parties Present

[Return to Register of Actions](#)

REGISTER OF ACTIONS

CASE No. 07C232494-2

The State of Nevada vs Narcus S Wesley

Case Type: Felony/Gross
Misdemeanor
Date Filed: 04/19/2007
Location: Department 24
Conversion Case Number: C232494
Defendant's Scope ID #: 1757866
Lower Court Case Number: 07FH00317
Supreme Court No.: 57473**RELATED CASE INFORMATION****Related Cases**

07C232494-1 (Multi-Defendant Case)

PARTY INFORMATION

Defendant Wesley, Narcus S

Lead Attorneys
Christopher R Oram

Retained

7023845563(W)

Plaintiff State of Nevada

David J. Roger
702-671-2700(W)**CHARGE INFORMATION**

Charges: Wesley, Narcus S	Statute	Level	Date
1. CONSPIRACY TO COMMIT A CRIME	199.480	Gross Misdemeanor	01/01/1900
1. BURGLARY	205.060	Gross Misdemeanor	01/01/1900
2. CONSPIRACY TO COMMIT A CRIME	199.480	Felony	01/01/1900
2. ROBBERY	200.380	Felony	01/01/1900
3. BURGLARY	205.060	Felony	01/01/1900
4. ROBBERY	200.380	Felony	01/01/1900
4. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
5. ASSAULT	200.471	Felony	01/01/1900
5. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
6. ROBBERY	200.380	Felony	01/01/1900
6. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
7. ROBBERY	200.380	Felony	01/01/1900
7. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
8. ASSAULT	200.471	Felony	01/01/1900
8. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
9. ROBBERY	200.380	Felony	01/01/1900
9. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
10. KIDNAPPING IN SECOND DEGREE	200.330	Felony	01/01/1900
10. KIDNAP WITH USE OF A DEADLY WEAPON	200.310	Felony	01/01/1900
10. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
11. BURGLARY	205.060	Felony	01/01/1900
12. SEXUAL ASSAULT	200.366	Felony	01/01/1900
12. SEXUAL ASSUALT	200.364	Felony	01/01/1900

12. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
13. SEXUAL ASSAULT	200.366	Felony	01/01/1900
13. SEXUAL ASSAULT	200.364	Felony	01/01/1900
13. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
14. SEXUAL ASSAULT	200.366	Felony	01/01/1900
14. SEXUAL ASSAULT	200.364	Felony	01/01/1900
14. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
15. SEXUAL ASSAULT	200.366	Felony	01/01/1900
15. SEXUAL ASSAULT	200.364	Felony	01/01/1900
15. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
16. COERCION. UNLAWFUL FOR ANY PERSON TO FORCE ANOTHER TO DO OR ABSTAIN FROM	207.190	Felony	01/01/1900
16. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
17. SEXUAL ASSAULT	200.366	Felony	01/01/1900
17. SEXUAL ASSAULT	200.364	Felony	01/01/1900
17. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
18. OPEN OR GROSS LEWDNESS	201.210	Gross Misdemeanor	01/01/1900
18. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Gross Misdemeanor	01/01/1900

EVENTS & ORDERS OF THE COURT

03/01/2011 Status Check (8:30 AM) (Judicial Officer Bixler, James)
03/01/2011, 03/29/2011
Supreme Court Remand

Minutes

03/01/2011 8:30 AM

- STATUS CHECK: SUPREME COURT REMAND Deft. not present, in custody in the Nevada Dept. of Corrections. Mr. Oram advised he can accept appointment and requested matter be continued for Deft. to be present. State doesn't believe Deft. has to be present, Mr. Oram can review transcript and see what he needs to file, then he can visit Deft. in prison. Further, State would note Deft. was not represented by counsel when appeal was filed. Mr. Oram requested matter be CONTINUED 30 days to see he has received the file before setting a briefing schedule. Court directed Mr. Oram to check with Mr. Winder for the file first. Mr. Oram stated he would make appearance at Supreme Court on this case. NDC CONTINUED TO: 3/29/11 8:30 AM

03/29/2011 8:30 AM

- Deft. not present, in custody in the Nevada Department of Corrections. Mr. Oram advised he had made an appearance in the Supreme Court and everything is on track. COURT ORDERED, matter taken OFF CALENDAR. NDC

Parties Present

Return to Register of Actions

1 years to LIFE for the use of a deadly weapon; and as to Count XVI – TWENTY-FOUR (24)
2 to SEVENTY-TWO (72) months plus an equal and consecutive term of TWENTY-FOUR
3 (24) to SEVENTY-TWO (72) months for the use of a deadly weapon; all counts to run
4 concurrently. 1 AA 127-32. Basically, Appellant was sentenced to twenty years to life since
5 the remainder of his counts ran concurrently.

6 Where there are multiple victims, the defendant can be charged and convicted of
7 separate offenses relating to each individual victim. Woods v. State, 114 Nev. 468, 958 P.2d
8 91 (1998). Furthermore, separate and distinct acts of sexual assault committed as part of a
9 single criminal encounter may be charged as separate counts, and convictions entered
10 thereon. Peck v. State, 116 Nev. 840, 7 P.3d 470 (2000) (overruled on other grounds).

11 Since Appellant's sentence fell within the statutory range it was not excessive. A
12 sentencing judge is accorded wide discretion in imposing a sentence and his determination
13 will not be disturbed on appeal absent an abuse of discretion. Martinez v. State, 114 Nev.
14 735, 737-38, 961 P.2d 143, 145 (1998). "This discretion enables the judge to consider a
15 wide, largely unlimited variety of information to insure that the punishment fits not only the
16 crime, but also the individual defendant. Id. at 738, at 145. Indeed, the Eighth Amendment
17 requires that defendants be sentenced individually, taking into consideration both the
18 individual and the crime itself. Id. at 737, at 145. This Court will not interfere with the
19 sentence imposed "s[o] long as the record does not demonstrate prejudice resulting from
20 consideration of information or accusations founded on facts supported by only impalpable
21 or highly suspect evidence. Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159 (1976); see also
22 Alfred v. State, 120 Nev. 410, 421, 92 P.3d 1246, 1253 (2004).

23 Appellant contends that his sentence was excessive because he was sentenced to five
24 (5) separate life sentences with consecutive ten (10) to life sentence for use of a deadly
25 weapon. OB, p. 14. Appellant contends that each of those sentences was related to one
26 alleged act of Appellant digitally penetrating Danielle Browning. Id. However, Defendant
27 has mischaracterized the circumstances surrounding Counts 12-15 and 17. Count 12
28 involved the sexual assault of Danielle and Justin R. and forcing Danielle to perform fellatio

1 on Justin R. 1 AA 21. Count 13 involved forcing Danielle to receive cunnilingus from
2 Justin. 1 AA 22. Count 14 involved forcing Justin to receive fellatio from Danielle. 1 AA
3 22. Count 15 involved forcing Justin to perform cunnilingus on Danielle. 1 AA 22. Finally,
4 Count 17 involved the digital penetration of Danielle's vagina by Appellant's finger. 1 AA
5 23.

6 Appellant's sentences for the sexual assaults comport with statutory mandates. NRS
7 200.366 provides in pertinent part:

8 1. A person who subjects another person to sexual penetration,
9 or who forces another person to make a sexual penetration on
10 himself or another, or on a beast, against the will of the victim . .
11 . is guilty of sexual assault.

12 2. Except as otherwise provided in subsections 3 and 4, a
13 person who commits a sexual assault is guilty of a category A
14 felony and shall be punished: . . .

15 (b) If no substantial bodily harm to the victim results, by
16 imprisonment in the state prison for *life with the possibility of*
17 *parole, with eligibility for parole beginning when a minimum*
18 *of 10 years has been served.* . .

19 NRS 200.366 (emphasis added).

20 Furthermore, NRS 193.165 (1995) provides that use of a deadly weapon during the
21 commission of a crime compels an additional term of imprisonment for a minimum term of
22 imprisonment prescribed by statute for the crime. Finally, NRS 176.035(1) provides that
23 where a defendant is convicted of two or more offenses, the judge has discretion to run the
24 sentences either concurrently or consecutively.

25 Appellant received a sentence of life with a minimum parole eligibility of ten (10)
26 years for the Sexual Assault counts, plus an equal and consecutive term of life with a
27 minimum parole eligibility of ten (10) years for the use of a deadly weapon; all eighteen
28 counts for which Appellant was convicted were to run concurrent to one another. Clearly,
Appellant's sentence was within the statutory mandates.

Appellant's sentences involved two separate victims. Since the Appellant can be
properly charged and convicted of separate offenses relating to each individual victim, each
charge and sentence was proper. Woods, 114 Nev. 468, 958 P.2d 91. Finally, as each of
those four sexual assaults involved the giving and receiving of a sexual act by each of those

1 victims, they involved separate and distinct acts of sexual assault sufficient to be charged as
2 separate counts, and convictions entered thereon. Peck, 116 Nev. 840, 7 P.3d 470.
3 Appellant also digitally penetrated Danielle's vagina. Since that had nothing to do with the
4 fellatio she was forced to give or the cunnilingus she was forced to receive, that is clearly not
5 cumulative as Appellant claims. Appellant's sentence was not cumulative or excessive as it
6 comports with the statutory guidelines imposed by law, involves two separate victims, and
7 four separate acts involving forcing those victims to perform sexual acts on each other as
8 well as one act of Appellant sexually assaulting Danielle. Appellant's claim is without merit
9 and must be denied.

10 VII.

11 JUROR ABERNATHY WAS PROPERLY EXCLUDED

12 Appellant claims in the conclusion to his opening brief that he was denied a jury of
13 his peers because "the district attorney arbitrarily excused one of the two African-Americans
14 eligible for the jury. OB, p. 15. Although Appellant did not address this point
15 substantively in his brief as an enumerated claim, it is clear upon a review of the record that
16 this claim is belied by the record and should be denied.

17 Defense counsel raised the issue of whether or not Juror Abernathy was dismissed
18 because of her race in a hearing regarding his Batson challenge on April 10, 2008. Juror
19 Abernathy gave the following testimony in voir dire:

20 The Court: Have you ever had any kind of experience with law
21 enforcement that would have some effect upon your sitting as a juror in
22 this kind of case? . . . Nothing that would make you give the testimony
of a police officer any greater or lesser weight than non police officer
would have?

23 Juror Abernathy: If you had asked me a year ago, I would have said
yes, but I was young and stupid, and I wouldn't choose them over
anyone else. . .

24 The Court: Have you, or anybody close to you, ever been the victim of
or accused of any kind of a - any other kind of criminal offense?

25 Juror Abernathy: I was actually arrested in 2006, in Henderson, but it
wasn't anything particularly formal arrest connected with that. . .

26 The Court: What was the charge?

27 Juror Abernathy: It was assault and battery, but it got amended to a
gross misdemeanor because it was with a roommate, from a
28 relationship. . .

1 **The Court:** You and a roommate got into a beef . . . and you were the
only one who got arrested?

2 **Juror Abernathy:** Yes, I was, and I was also the one who called the
police. . .

3 **The Court:** . . . Did that cause you a problem?

4 **Juror Abernathy:** No, it's always been good after, it was a year ago. *I*
used to have the whole outlook about police not really doing their job,
5 but I think I can now admit that I was drunk, and I did give up
something, and I did what I had to do.

6 3 AA 706-9 (emphasis added). The State later struck Juror Abernathy during an off-
7 the-record discussion with defense counsel and the trial judge. 4 AA 733.

8 Defense counsel lodged a Batson challenge at the conclusion of the voir dire process.

9 The district court heard the following arguments:

10 **The Court:** . . . All right. Counsel, you wish to make a Batson
11 challenge to the State's striking, challenging juror number five by the
name of Stephanie Abernathy.

12 **Mr. Banks:** Yes, Judge, Stephanie Abernathy, badge number 284.

13 Defense's position is that Ms. Abernathy was part of a protected
class that being that she was African American, coincidentally, the same
protected class as my client.

14 Based on the answers that she gave in response to the Court's
15 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
16 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.

17 And not only that, I believe she indicated that she was a freelance
18 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.

19 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.

20 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
21 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
22 to put forth a race neutral reason for this - for the challenge.

23 **Ms. Luzaleh:** Well, first of all, I wasn't convinced that she was actually
African American when she sat down.

24 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.

25 She talked about an arrest for domestic violence. That alone is
enough. She talked about how she doesn't, or at least at one point didn't
like the Henderson Police Department.

26 That alone is also enough.

27 The fact that she has said that she has gotten over that. So what, you
know, I call bullshit on that.

28 But those are just a series of race neutral reasons, and that's why we
kicked her.

1 **The Court:** I think that the State has identified a sufficient race neutral
2 reason, and that I think that they have and responded appropriately to
3 the Batson challenge, and identified they have designated a race neutral
4 reason.

5 4 AA 748-50. The district court determined upon arguments from both parties that
6 the State had a valid race neutral explanation for striking Juror Abernathy.

7 Discriminatory use of preemptory challenges by both the prosecution and criminal
8 defendants based on gender, ethnic origin, or race is unconstitutional and prohibited under
9 the Equal Protection Clause. Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712 (1986);
10 United States v. Martinez-Salazar, 528 U.S. 304, 120 S.Ct. 774 (2000). In determining
11 whether a juror was impermissibly excluded, the Court must undertake a three-part analysis.
12 Purkett v. Elem, 514 U.S. 765, 766-67, 115 S.Ct. 1769, 1770-71 (1995); see also Doyle v.
13 State, 112 Nev. 879, 921 P.2d 901, 907-908 (1996). First, an opponent of a preemptory
14 challenge must make out a prima facie case of racial discrimination. Id. A prima facie case
15 of racial discrimination can be shown by reviewing the "pattern of strikes exercised or the
16 questions and statements made by counsel during the voir dire examination. Batson, 476
17 U.S. at 96-7, 106 S.Ct. at 1723. Second, once a prima facie case is made, the proponent of
18 the strike has the burden of production and must come forward with a race-neutral
19 explanation. Purkett, 514 U.S. at 767, 115 S.Ct. at 1770. The explanation does not have to
20 be persuasive, or even plausible. Id. at 768, 115 S.Ct. at 1771. Unless a discriminatory
21 intent is inherent in the State's explanation, the reason offered will be deemed race neutral.
22 Id. Finally, if a race-neutral explanation is tendered, the trial court must then decide whether
23 the opponent of the strike has proved purposeful racial discrimination. Id. The issue comes
24 down to whether the trial court finds the prosecutor's race-neutral explanations to be credible
25 as measured by the prosecutor's demeanor, the reasonableness or improbability of the
26 proffered explanation, and whether the rationale has some basis in accepted trial strategy.
27 Miller-El v. Cockrell, 123 S.Ct. 1029 (2003). In reviewing the denial of a Batson challenge,
28 the reviewing court should give great deference to the determining court as they are in a
 better position to assess whether racial discrimination was occurring. Hernandez v. New

1 York, 500 U.S. 352, 367, 111 S.Ct. 1859, 1870 (1990); Doyle, 112 Nev. at 889-890, 921
2 P.2d at 908.

3 The Defense utterly failed to meet its obligations under the first step to make out a
4 prima facie case of racial discrimination and the record is devoid of any such purpose from
5 the challenge of a single African-American juror. Unfortunately, this prerequisite is often
6 overlooked as in the present case and the State was never under any obligation to offer a race
7 neutral reason. Nonetheless, the State did give several race neutral reasons including that
8 Juror Abernathy had been previously arrested for domestic violence, convicted of a gross
9 misdemeanor, and that at least at one point she did not think that HPD did their jobs and she
10 would have given their testimony less weight. The State was free to distrust the juror's
11 insistence that she had put that prejudice and bias behind her, and the district court
12 determined that the reasons were race-neutral and that no purposeful racial discrimination
13 was shown. Such findings are entitled to deference by this Court on appeal.

14 CONCLUSION

15 WHEREFORE, the State respectfully requests that Appellant's claims are without
16 merit and this Court should affirm the Judgment of Conviction.

17 Dated this 28th day of October, 2009.

18 Respectfully submitted,

19 DAVID ROGER
20 Clark County District Attorney
Nevada Bar # 002781

21 BY /s/ Steven S. Owens
22 STEVEN S. OWENS
23 Chief Deputy District Attorney
24 Nevada Bar #004352
25 Office of the Clark County District Attorney
26 Regional Justice Center
27 200 Lewis Avenue
28 Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

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I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 28th day of October, 2009.

Respectfully submitted

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ Steven S. Owens

STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on October 28, 2009. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ MASTO
Nevada Attorney General

DAN M. WINDER
Counsel for Appellant

STEVEN S. OWENS
Chief Deputy District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

ARNOLD WEINSTOCK, ESQ.
Law Offices of Dan M. Winder, P.C.
3507 W. Charleston Blvd.
Las Vegas, Nevada 89102

BY /s/ elleen davis
Employee, District Attorney's Office

SSO/Colleen Brown/cd

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

NARCUS S. WESLEY
Appellant,
v.
THE STATE OF NEVADA,
Respondent.

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Nevada Supreme Court Case No.: 52127
District Court Case No.: C232494
District Court Dept. No.: XXIV

FILED
DEC 09 2009

APPELLANT'S REPLY BRIEF

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

TRAVIS K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

DAN M. WINDER, ESQ.
Nevada Bar #1569
Arnold Weinstock, Esq.
Nevada Bar No: 000810
3507 W. Charleston Blvd.
Las Vegas, Nevada 89102
(702) 474-0523

DAVID ROGER
CLARK COUNTY, NEVADA
DISTRICT ATTORNEY
Nevada Bar #2781
200 Lewis Ave., 3rd Floor
Las Vegas, Nevada 89155
(702) 671-2500

CATHERINE CORTEZ-MASTO
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 486-3420

Counsel for Appellant

Counsel for Respondent

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IN THE SUPREME COURT OF THE STATE OF NEVADA

NARCUS S. WESLEY

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Nevada Supreme Court Case No.: 52127

District Court Case No.: C232494

District Court Dept. No.: XXIV

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(Appeal from Judgment of Conviction and
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Nevada Bar #1569
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Las Vegas, Nevada 89102
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DAVID ROGER
CLARK COUNTY, NEVADA
DISTRICT ATTORNEY
Nevada Bar #2781
200 Lewis Ave., 3rd Floor
Las Vegas, Nevada 89155
(702) 671-2500

CATHERINE CORTEZ-MASTO
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 486-3420

Counsel for Respondent

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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

7 **I**

8 **INTRODUCTION**

9 Appellant, NARCUS WESLEY, (hereinafter referred to as "WESLEY"), hereby repeats and
10 re-incorporates by reference by reference all issues raised in his Opening Brief herein. Failure to
11 address any points alleged by the State in its Answering Brief is in no way an acceptance of those
12 arguments or a concession of viability of the State's arguments. Rather, by this Reply Brief,
13 Appellant is attempting to reiterate and re-enforce those errors of clear constitutional magnitude
14 which in themselves mandate reversal of WESLEY's conviction. No issues previously raised by
15 Appellant are withdrawn or waived.

16 **II**

17 **NARCUS WESLEY WAS DEPRIVED OF HIS RIGHT TO CONFRONT DELARIAN**
18 **WILSON ON THE INCRIMINATING STATEMENTS PRESENTED TO THE JURY**

19 It is widely recognized that the right of confrontation is a basic trial right which cannot be
20 waived for an accused by his counsel. Don v. Nix, 886 F. 2d 203, 207 (8th Cir 1989); see also
21 Johnson v. State, 117 Nev. 153, 17 P. 3d 1008 (Nev. 2001). Despite the State's assertions,
22 NARCUS WESLEY's right of confrontation was unilaterally waived by his counsel throughout his
23 trial. This "trial strategy" was never discussed with WESLEY, and he never consented to that tactic.

24 Not only was Delarian Wilson's guilty plea and his statement to the police admitted without
25 objection by WESLEY's trial counsel, but numerous statements attributed to Wilson were introduced
26 to the jury without objection by WESLEY's counsel. Those statements clearly showed Wilson's
27 guilt to the jury, and as Wilson was a named co-defendant, WESLEY's guilt was likewise shown
28 to the jury. WESLEY could not, and did not, have the opportunity to cross-examine, question, or

1 present evidence as to the lack of veracity of those statements by Wilson.

2 The Arizona Supreme Court has recognized that "evidence of co-defendant's guilt is no more
3 relevant when offered by accused on issues of guilt or innocence than when it is offered by the State
4 on same issue and is properly excluded." State v. Corrales, 641 P. 2d 1315, 131 Ariz. 411 (1982)
5 (*emphasis added*). "Fairness during trial is not one sided and applies to both the Defendant and the
6 State." Sampson v. State, 121 Nev. 820, 121 P. 3d 1255 (2005), at 121 Nev. 828. It is the duty of
7 the Judge, in this case Judge Bixler to assure that the Defendant is given a fair trial, and this was not
8 done in the instant case.

9 Although the State's Answering Brief repeatedly tried to rely on the fact that most of
10 Wilson's statements were offered by defense counsel, that point is irrelevant to the instant case. As
11 the Nevada Supreme Court has previously held, where the Defendant's fundamental right of
12 confrontation is implicated, defense counsel may not waive it over the Defendant's objection.
13 DeRosa v. Dist. Ct., 115 Nev. 225, 985 P. 2d. 157 (1999), (*emphasis added*).

14 The State tries to infer that NARCUS WESLEY consented to the tactics of his legal counsel
15 since "Appellant was present during this conversation between the parties and the court and did not
16 manifest any disagreement." (Answering Brief, page 10, lines 2-3). Just how was the Appellant
17 supposed to "manifest" his disagreement? Appellant was never questioned by the court whether he
18 "manifested any disagreement." Moreover, the Defendant never made any statements to the court
19 that indicated he was in anyway in agreement with, or willing to accept, these misguided trial tactics
20 of his legal counsel.

21 III

22 NARCUS WESLEY WAS NEVER CANVASSED BY THE COURT TO 23 DETERMINE HIS AGREEMENT, OR LACK THEREOF, OF TRIAL COUNSEL'S IMPROPER TRIAL "STRATEGY"

24 In Hernandez v. State, 194 P. 3d 1235 (Nev. 2008), the Nevada Supreme Court addressed
25 the proper procedure when a defense strategy at trial includes a confession of guilt. As the Court
26 therein stated, "At a minimum, the District Court should canvass the Defendant outside the presence
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1 of the State and the jury to determine whether the Defendant understands the strategy behind
2 conceding guilt or degree of guilt to the subject charges. Additionally, the District Court must
3 inform the Defendant that conceding guilt relieves the State of its burden to prove an offense and that
4 the Defendant has the right to challenge the State's evidence." *Id.* at 1243 (*emphasis added*).

5 There is no dispute that Mr. WESLEY was never canvassed by the court as to whether he
6 understood and consented to the "strategy" of his trial counsel. In fact, Mr. WESLEY was never
7 questioned by the court as to any trial "strategy" of his counsel. Certainly, Mr. WESLEY was never
8 advised by the court of the State's burden to prove the offenses or of his right to challenge the State's
9 evidence. The requirements enunciated by the Court in Hernandez, supra, were totally ignored by
10 the trial court.

11 By presenting the guilty plea of his co-defendant, Delarian Wilson, to the jury, in which
12 WESLEY's involvement in the crimes for which he was on trial for was conceded, WESLEY's guilt
13 was admitted to the jury. It is recognized that a defendant's right to a fair trial embraces his right not
14 to be convicted, in whole or in part, upon the guilty plea of his co-conspirators. Hall v. State, 109
15 P.3d 499, 205 Wy. 35 (2005). That is exactly what happened to WESLEY in the instant case.

16 It is interesting that the only argument to this issue raised by the State in its Answering Brief
17 was that "this issue was not preserved by Appellant for Appeal and therefore should be summarily
18 dismissed." (Answering Brief, page 10, lines 20-21; see also, page 12, lines 1-2). Such an argument
19 is a red herring and does not fully explain the status of Nevada law. Not only was WESLEY not
20 asked whether he objected to his counsel's trial "strategy", (see above), but it was unrealistic to
21 expect his trial counsel to object to their own ill fated trial strategy. A timely objection to
22 WESLEY's own trial counsel's strategy was impossible and was not legally necessary in the instant
23 case.

24 As this Court has stated in Jones v. State, 110 Nev. 730, 877 P. 2d 1052 (1994), a post
25 conviction evidentiary hearing on a claim of ineffective assistance of counsel was not necessary
26 where counsel's actions were a matter of record, not disputed, and were per se improper. Moreover,

1 the Court may address plain error on issues of constitutional dimension sua sponte. Emmons v.
2 State, 107 Nev. 53, 61, 807 P. 2d 718, 723 (1991), see also, Sullivan v. State, 115 Nev. 383, 990 P.
3 2d 1258 (1999).

4 Trial counsel's errors in the instant case were wide spread and were clearly prejudicial to
5 WESLEY's interest. Trial counsel's errors included, but were not limited to, admitting to the jury
6 in opening statement that the crimes for which WESLEY was on trial for did occur and were
7 egregious, admitting that WESLEY was present for these crimes, failing to object to incriminating
8 evidence against WESLEY which was not legally admissible, and including WESLEY in the
9 activities of Delorean Wilson, who had plead guilty to charges which WESLEY was on trial for.
10 Due to the actions, or lack of action, by his trial counsel, NARCUS WESLEY had no chance before
11 the jury. As this Court has previously held, "the cumulative affects of multiple errors may violate
12 a defendant's right to a fair trial even though the errors are harmless individually." Evans v. State,
13 117 Nev 609, 28 P. 3d 498 (2001).

14 IV

15 THE PRESENTMENT OF DELARIAN WILSON'S GUILTY PLEA AGREEMENT TO 16 THE JURY WAS PER SE IMPROPER

17 In Johnson v. State, 117 Nev. 153, 17 P. 3d 1008 (2001), the Nevada Supreme Court found
18 that a defense counsel's presentment of an insanity defense against the Defendant's express
19 objections was per se improper. In reversing the jury's conviction of second degree murder with use
20 of a deadly weapon, the Court stated that the error was not subject to harmless error analysis because
21 it is a structural defect affecting the framework within which the trial proceeds, rather than simply
22 an error in the tactical process itself. *Id.* at 160. Likewise, in Jones v. State, *supra*, this Court
23 reversed a murder conviction where defense counsel conceded their client's guilt to second degree
24 murder in an attempt to avoid a first degree murder conviction. The Court found this action to be
25 per se improper.

26 Moreover, in Walker v. State, 113 Nev. 853, 944 P. 2d 762 (1997), the defendant, through
27 counsel, sought to admit statements of a co-defendant wherein the co-defendant admitted to stabbing
28

1 the victim in the case. In denying the admission of the co-defendant's change of plea statement, the
2 trial court ruled the statement to be inadmissible hearsay. On Appeal, the Nevada Supreme Court
3 affirmed the actions of the trial court stating "the District Court properly decided that the change of
4 plea and penalty hearing statements were inadmissible." *Id.* at 856.

5 In its Answering Brief, the State never disputed the fact that "a guilty plea or conviction of
6 a co-defendant may not be used as substantive evidence of another defendant's guilt." See People
7 v. Brunner, 797 P. 2d 788 (Colo. App. 1990). Rather, the State argues that "since Appellant
8 proffered this evidence, he should now be estopped from challenging it on Appeal just because its
9 admission did not have the intended affect on the jury." (Answering Brief, page 12, lines 3-5).

10 In reality, WESLEY is not challenging the admission of Delarian Wilson's statements
11 because they did not have the intended effect on the jury. WESLEY is challenging the admissions
12 because they never should have been allowed to be presented to the jury. The statements were
13 inadmissible hearsay, prejudicial to the interests of WESLEY, and were per se improper. WESLEY
14 never consented to presenting of Wilson's statements to the jury, and Judge Bixler never should have
15 allowed their admission before the jury.

16 V

17 THE IN COURT "IDENTIFICATION" OF WESLEY TO THE JURY WAS 18 MANIFESTLY IMPROPER

19 NARCUS WESLEY was never identified conclusively by any witness. Rather, he was
20 universally referred to as a "taller-skinnier African-American." WESLEY was the only African-
21 American subjected to an in court identification by the witnesses, and it was only his body type
22 which was identified before the jury.

23 In Bias v. State, 105 Nev. 869, 784 P. 2d 963 (1989), the Nevada Supreme Court addressed
24 the issue of in court identification. As the Court therein explained, the test of reliability involves a
25 two fold inquiry, (1) whether the procedure is unnecessarily suggestive, and (2) if so, whether under
26 all the circumstances the identification is reliable despite an unnecessarily suggestive identification
27 procedure.

1 In the instant case, the identification of WESLEY in court was unnecessarily suggestive.
2 WESLEY was the only African-American subject to identification. No one was present for
3 comparison to WESLEY. He was not identified as being "taller" than anyone, or "skinnier" than
4 anyone. He was never seen by any of the witnesses. Although they all testified that the "taller-
5 skinner African-American" had spoken, no identification of his voice was ever attempted. There was
6 no identification of WESLEY by any witness prior to the in court "identification". As such, under
7 all of these circumstances, the identification of WESLEY by the witnesses in court was not reliable
8 and could not be used as the basis for a conviction of WESLEY.

9 VI

10 THE SENTENCE IMPOSED UPON WESLEY WAS UNREASONABLE 11 UNDER ALL CIRCUMSTANCES

12 In reality, WESLEY was punished for his election to seek a jury trial to establish his
13 innocence. It is undisputed by all witnesses, the trial judge, and even the prosecuting attorneys that
14 the "taller-skinier African-American" was a much smaller player in these crimes than was Delarian
15 Wilson. Wilson took a plea bargain offered by the State and entered a plea to three counts of an
16 eighteen count information. WESLEY, expecting a fair trial without his attorneys undermining his
17 innocence, exercised his constitutional right to go to trial and due to his trial counsel's unagreed to
18 errors, WESLEY was convicted to all eighteen counts. As a result of the jury verdicts, WESLEY,
19 who had no prior criminal record, is slated to spend the rest of his life in prison. Delarian Wilson,
20 the admitted major player in these crimes will spend less time in prison than will WESLEY.

21 In response, the State claims the WESLEY's sentence was proper because it fell within the
22 prescribed statutory range. (Answering Brief, page 24, lines 9-10). While it is true that the sentence
23 imposed were within the statutory range, under all circumstances involved, the sentences were
24 cumulative and excessive. See Braunstein v. State, 118 Nev. 68, 40 P. 3d 413 (2002); Crowley v.
25 State, 120 Nev. 38, 83 P. 3d 282 (2004).

26 ///

27 ///

VII

THE DENIAL OF WESLEY'S MOTION TO SUPPRESS WAS IN ERROR SINCE HE WAS DENIED ACCESS TO LEGAL COUNSEL BEFORE QUESTIONING

It is undisputed that the search warrant which led to the arrest and questioning of NARCUS WESLEY was based upon incorrect information. The arresting officer either knew, or should have known of that fact before detaining and questioning Mr. WESLEY. (See A.A. page 169-170). Nonetheless, Mr. WESLEY was detained and questioned by the police despite the fact that his father, Narciez Wesley requested to call the family attorney before anyone talked to the police. (AA., page 226-232). Mr. WESLEY heard that request by his father and heard it refused by the police. Mr. WESLEY was then read his Miranda Rights and questioned by the police. However, Mr. WESLEY was never asked if he waived his Miranda Rights. (AA, page 199). In the hallmark case of Miranda v. Arizona, 384, U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 694 (1966), the United States Supreme Court made it clear that as soon as an accused indicates by any means his election to remain silent or invoke his right to counsel, the police must respect his choice (*emphasis added*). For reasons unknown, Narciez Wesley's request for an attorney before anybody was questioned by the police was refused.

In its Answering Brief, the State blindly makes the statement that "Appellant's father cannot invoke his Miranda Rights vicariously and therefore this claim is without merit and must be denied." (Answering Brief page 18, lines 22-23). The State offers no citation to support this claim. In fact, this writer can find no support in the State of Nevada to show that a child's father's request to have an attorney present before anyone in his house is questioned by the police can be ignored.

Obviously, once NARCUS WESLEY heard his father's request for an attorney before anyone was questioned was ignored, NARCUS WESLEY must have felt that any request by *him* to have an attorney present would be likewise ignored. Certainly, the spirit and intent of Miranda was ignored in this case, and any statements made by NARCUS WESLEY should have been suppressed by the court.

///

VIII

CONCLUSION

Reversal of WESLEY's April 18, 2008, conviction is mandated under Nevada and Federal Constitutional Law. WESLEY was convicted as a direct result of the improper actions by his trial counsel and the judge. The jury was improperly advised of the guilty plea statements and incriminating admissions of WESLEY's co-defendant, Delarian Wilson.

WESLEY was not advised of the improper trial "strategies" of his trial counsel, and WESLEY was never afforded the opportunity to voice his disagreement with those "strategies". As the United States Supreme Court stated in the epic case of Paretti v. California, 422 U.S. 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975), "the right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails." *Id.* at 422 U.S. 819-20, 95 S. Ct. 2525. Moreover, this Honorable Court has previously declared that "courts should indulge every reasonable presumption against waiver, and they should not presume acquiescence in the loss of fundamental rights. . . . Presuming waiver from a silent record is impermissible." Raquepaw v. State, 108 Nev. 1020, 1022, 843 P. 2d 364 (1992).

Therefore, either individually or cumulatively, the gross errors which occurred in NARCUS WESLEY's trial mandate the reversal of his conviction and the remand of his case for a new trial.

DATED this 4th day of December, 2009.

LAW OFFICE OF DAN M. WINDER, P.C.

By: 

Dan M. Winder, Esq.

Nevada Bar No: 001569

Arnold Weinstock, Esq.

Nevada Bar No: 000810

3507 W. Charleston Blvd.

Las Vegas, Nevada 89102

Telephone: (702) 474-0523

Facsimile: (702) 474-0631

Email: winderdayatty@aol.com

Attorney for Appellant

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DATED this 24th day of December, 2009.

By: Don M. Winder, Esq.

Page 9 of 10

CERTIFICATE OF MAILING

I hereby certify that service of the Appellant's Reply Brief was made this 4 day of December, 2009, by depositing a copy in the U.S. Mail, postage prepaid, addressed to:

Nevada Attorney General
100 N. Carson Street
Carson City, Nevada 89701

District Attorney
200 Lewis Ave., 3rd Floor
Las Vegas, Nevada 89155

By: Becki Pate
An employee of LAW OFFICE OF DAN M. WINDER, P.C.

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IN THE SUPREME COURT OF THE STATE OF NEVADA

NARCUS S. WESLEY A/K/A NARCUS
SAMONE WESLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52127

FILED

MAR 11 2010

THOMAS K. LINDENMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of conspiracy to commit burglary, conspiracy to commit robbery, two counts of burglary while in possession of a deadly weapon, four counts of robbery with the use of a deadly weapon, two counts of assault with a deadly weapon, second-degree kidnapping, five counts of sexual assault with the use of a deadly weapon, coercion with the use of a deadly weapon, and open or gross lewdness with the use of a deadly weapon. Eighth Judicial District Court, Clark County; James M. Bixler, Judge. Appellant Narcus Wesley raises several claims of error.

First, Wesley claims that the district court erred by admitting his coconspirator Delarian Wilson's hearsay statements and guilty plea. Wesley's claims are without merit. Wilson's statements during the perpetration of the crime were non-hearsay pursuant to NRS 51.035(3)(c). And Wilson's confession and guilty plea were admitted by the defense over the State's objections. See Ford v. State, 122 Nev. 796, 805, 138 P.3d 500, 506 (2006) (confrontation rights may be waived through counsel); Carter v. State, 121 Nev. 759, 769, 121 P.3d 592, 599 (2005) ("A party who

participates in an alleged error is estopped from raising any objection on appeal.”).

Second, Wesley claims that the district court erred by denying a motion to suppress his statements based on (1) a deficient search warrant and (2) the violation of his rights under Miranda v. Arizona, 384 U.S. 436 (1966). Wesley’s claims are without merit. Although the record reveals that some information in the affidavit supporting the search warrant was inaccurate, the district court did not err in finding that (1) the errors in the affidavit were not made intentionally or with a reckless disregard for the truth and (2) absent the misinformation the affidavit still provided probable cause for a warrant to issue. See Franks v. Delaware, 438 U.S. 154, 171-72 (1978). And Wesley was properly informed of his Miranda rights before he consented to questioning. His father’s request for an opportunity to contact the family attorney did not constitute an invocation of Wesley’s right to counsel. See, e.g., Terry v. LeFevre, 862 F.2d 409, 412 (2d. Cir. 1988) (providing that mother cannot invoke right to counsel on behalf of son); Dewey v. State, 123 Nev. 483, 485, 169 P.3d 1149, 1150 (2007) (concluding that request for counsel must be “clear, unequivocal, and unambiguous”).

Third, Wesley claims that there is insufficient evidence to support his convictions. However, in addition to the consistent testimony of six victims regarding the crime and their identification of Wesley as matching the description of one of the two perpetrators, Wesley admitted his willing involvement. The evidence was more than sufficient for a rational juror to find beyond a reasonable doubt that Wesley was guilty of all of the charged crimes. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Fourth, Wesley claims that his sentences are cumulative and excessive because he was sentenced to ten life terms with the possibility of

parole related to one alleged act of digital penetration. Wesley misstates the facts. He was found guilty of one count of sexual assault with the use of a deadly weapon for the digital penetration of one victim. The remaining four counts of sexual assault with the use of a deadly weapon resulted from forcing two victims to perform several sexual acts on one another at gun point. And Wesley's sentences for each individual act—and the pertinent weapon enhancements—are within the statutory guidelines. See NRS 200.366; 1995 Nev. Stat., ch. 455, § 1, at 1431; State v. Dist. Ct. (Pullin), 124 Nev. ___, ___, 188 P.3d 1079, 1080-81 (2008).

Finally, Wesley claims that trial counsel was ineffective for admitting guilt during opening statements. We decline to address this claim because “[o]n direct appeal, this court does not address claims of ineffective assistance of counsel.” Ouanbengboune v. State, 125 Nev. ___, ___, 220 P.3d 1122, 1125 n.1 (2009).

Having considered Wesley's claims and concluded that no relief is warranted,¹ we

ORDER the judgment of conviction AFFIRMED.

Hardesty, J.
Hardesty

Douglas, J.
Douglas

Pickering, J.
Pickering

¹Wesley makes a passing claim in the conclusion of his opening brief that the district court erred by permitting the peremptory challenge of an African-American potential juror in violation of Batson v. Kentucky, 476 U.S. 79 (1986). Our review of the record reveals no error in this regard.

cc: Hon. James M. Bixler, District Judge
The Law Office of Dan M. Winder, P.C.
Clark County District Attorney
Eighth District Court Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

NARCUS S. WESLEY A/K/A NARCUS SAMONE
WESLEY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 52127

District Court Case No. C232494

REMITTITUR

TO: Steven D. Grierson, Clark District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: April 8, 2010

Tracie Lindeman, Clerk of Court

By: A. Ingersoll
Deputy Clerk

cc (without enclosures):
Hon. James M. Bixler, District Judge
Clark County District Attorney
The Law Office of Dan M. Winder, P.C.

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on APR 12 2010

Deputy Matthew S. [Signature]
District Court Clerk

RECEIVED

APR 12 2010

CLERK OF THE COURT

RECEIVED

APR 15 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

10-01-999

Case No. 0232494

Dept. No. XX1 ✓

ORIGINAL

FILED

SEP 09 2010

Shirley
CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

NAZOM S. WESLEY
Petitioner,

v.

E. K. McDANIEL, WARDEN, EW.
Respondent.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you're not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

RECEIVED

SEP 09 2010

CLERK OF THE COURT

07CE32404-2
157110
Petition for Writ of Habeas Corpus
925533



ORIGINAL

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: ELY STATE PRISON

2. Name and location of court which entered the judgment of conviction under attack:
EIGHTH JUDICIAL DISTRICT COURT CLARK COUNTY NEVADA.

3. Date of judgment of conviction: APRIL 18, 2008

4. Case number: C 232 494

5. (a) Length of sentence: 2 - CONSEC. 10 - LIFE W/P PAROLE

(b) If sentence is death, state any date upon which execution is scheduled: N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No X
If "yes", list crime, case number and sentence being served at this time: N/A

7. Nature of offense involved in conviction being challenged:

8. What was your plea? (check one):
(a) Not guilty ☒ (b) Guilty ☐ (c) Nolo contendere ☐

9. If you entered a plea of guilty to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty was negotiated, give details:

N/A

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)
(a) Jury X (b) Judge without a jury _____

11. Did you testify at the trial? Yes ☐ No ☒

12. Did you appeal from the judgment of conviction? Yes ☒ No ☐

13. If you did appeal, answer the following:

(a) Name of Court: NEVADA SUPREME COURT

(b) Case number of citation: 52-12-1
Result: CONVICTION AFFIRMED

(c) Result: conviction affirmed

(d) Date of result: MARCH 11, 2010

(Attach copy of order or decision, if available.)

14. If you did not appeal, explain briefly why you did not: N/A

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes _____ No X

16. If your answer to No. 15 was "yes", give the following information:

(a)(1) Name of court: X N/A

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No _____

(5) Result: _____

(6) Date of result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to such result: _____

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes _____ No _____

(5) Result: _____

(6) Date of result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to such a result: _____

(c) As to any third or subsequent additional applications or motions, give the same information as above, list them on a separate sheet and attach.

(d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion? Yes _____ No _____

Citation or date of decision: _____

(2) Second petition, application or motion? Yes _____ No _____

Citation or date of decision: _____

(3) Third or subsequent petitions, applications or motions? Yes _____ No _____

Citation or date of decision: _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N/A

17. Has any ground being raised in this petition been previously presented to this or any other court by way of petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify:

(a) Which of the grounds is the same: N/A

(b) The proceedings in which these grounds were raised: N/A

(c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N/A

18. If any of the grounds listed in No.'s 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.)

19. Are you filing this petition more than one year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) THIS PETITION HAS BEEN FILED WITHIN ONE (1) YEAR OF THE DIRECT APPEAL BEING DECIDED.

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes No X
If yes, state what court and case number: N/A

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: (TRIAL): JEFFERY BANKS, ESQ. - CARY LANDIS, ESQ. DEPUTIES PUBLIC DEFENDERS LAS VEGAS, NEVADA.
(APPEAL): DAN M. WINDER, ESQ. - ARNOLD WEINSTEIN, ESQ.

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes No X
If yes, specify where and when it is to be served, if you know:

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground One: TRIAL COUNSEL WAS INEFFECTIVE VIOLATING PETITIONERS SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

Supporting FACTS (Tell your story briefly without citing cases or law.):
SEE PAGE 5(A) FOR ALL SUPPORTING FACTS

(b) Ground Two: PETITIONERS FAILURE TO HAVE A JURY OF HIS PEERS AND A FAIR AND IMPARTIAL JURY VIOLATED PETITIONERS DUE PROCESS AND SIXTH AND FOURTEENTH AMENDMENT RIGHTS.

Supporting FACTS (Tell your story briefly without citing cases or law.):
SEE PAGE 5 (G) FOR ALL SUPPORTING FACTS

(c) Ground Three: PETITIONER WAS DENIED HIS DUE PROCESS RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION BECAUSE THERE WAS INSUFFICIENT EVIDENCE PRESENTED AT TRIAL TO SUPPORT A FINDING OF GUILT OF THE CRIMES.

Supporting FACTS (Tell your story briefly without citing cases or law.):
SEE PAGE 5 (I) FOR ALL SUPPORTING FACTS

(d) Ground Four: THE RESULT OF THE SUGGESTIVE AND TAINTED IN-COURT IDENTIFICATION VIOLATED THE PETITIONERS DUE PROCESS OF LAW AND HIS FIFTH AND FOURTEENTH AMENDMENTS.

Supporting FACTS (Tell your story briefly without citing cases or law.):
SEE PAGE 5 (J) FOR ALL SUPPORTING FACTS

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at Ely State Prison, on the 16 day of the month of AUGUST of the year 2010

N. W. [Signature]
Signature of petitioner

Ely State Prison
Post Office Box 1989
Ely, Nevada 89301-1989

Signature of Attorney (if any)

Attorney for petitioner

Address

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof, that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

N. W. [Signature]
Petitioner

Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I, NARCUS S. WESLEY, hereby certify pursuant to N.R.C.P. 5(b), that on this 16 day of the month of AUGUST, of the year 2010, I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

Respondent prison or jail official

Address

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

District Attorney of County of Conviction

Address

N. Wesley
Signature of Petitioner

(a) Ground Five: THE DETECTIVES OBTAINED THEIR SEARCH WARRANT IN VIOLATION OF N.R.S 199.120, N.R.S 199.145, N.R.S 199.135, N.R.S 199.130, N.R.S 199.200, N.R.S 199.210, VIOLATING PETITIONERS DUE PROCESS OF LAW AND FOURTH AMENDMENT.

Supporting FACTS (Tell your story briefly without citing cases or law.):

SEE PAGE 5 (J) FOR ALL SUPPORTING FACTS

(b) Ground Six: PETITIONERS FIFTH AND FOURTEENTH AMENDMENTS AS WELL AS HIS DUE PROCESS, WAS VIOLATED, BECAUSE THE CUMULATIVE EFFECTS OF THE TRIAL COURT ABUSED ITS DISCRETION.

Supporting FACTS (Tell your story briefly without citing cases or law.):

SEE PAGE 5 (M) FOR ALL SUPPORTING FACTS

(c) Ground Seven:

Supporting FACTS (Tell your story briefly without citing cases or law.):

(d) Ground Eight:

Supporting FACTS (Tell your story briefly without citing cases or law.):

GROUND ONE: SUPPORTING FACTS:

TRIAL COUNSEL WAS INEFFECTIVE FOR:

1. FAILING TO USE POLICE REPORT OF EARLIER CONTRADICTORY STATEMENTS BY THE ALLEGED SEXUAL ASSAULT VICTIM. THE POLICE REPORT WOULD HAVE RAISED SERIOUS DOUBT, ABOUT WHAT OCCURED THE NIGHT OF THE ALLEGED CRIME. IN THE POLICE REPORT THE VICTIM STATED THAT SHE "DID NOT SEE ANYTHING NOR DID SHE SEE THE PETITIONER," THE VICTIM ALSO STATED THAT SHE "DID NOT KNOW WHO TOUCHED HER OR WHO DID WHAT, BECAUSE HER EYES WERE CLOSED DURING THE ENTIRE TIME THE ALLEGED CRIMES WERE BEING COMMITTED; AND THAT SHE KEPT ~~HER~~ FACING THE FLOOR AND NEVER LOOKED UP.

UPON TRIAL THE VICTIM STATED THAT SHE SAW THE PETITIONER WITH A GUN IN HIS HAND, ALSO THAT THE PETITIONER PLACED A GUN IN HER SIDE AND SEXUALLY ASSAULTED HER; AS SHE PLEADED TO THE PETITIONER TO STOP.

THIS IS A SERIOUS ERROR AND THE FAILURE OF THE TRIAL COUNSEL TO USE THIS STATEMENT, DEPRIVED THE PETITIONER EFFECTIVE ASSISTANCE OF COUNSEL; AND A FAIR TRIAL AS GUARANTEED BY THE SIXTH AMENDMENT.

IF THE JURY WOULD HAVE HEARD THIS CONTRADICTORY STATEMENT IT WOULD HAVE BEEN IMPOSSIBLE FOR THE JURY TO FIND THE PETITIONER GUILTY BEYOND A REASONABLE DOUBT.

TRIAL COUNSEL'S FAILURE TO INTRODUCE POLICE REPORT OF THE STATED MOST IMPORTANT WITNESS WAS DEFICIENT PERFORMANCE WHICH WAS PREJUDICIAL TO THE PETITIONER.

(a) Ground Nine: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

(b) Ground Ten: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

(c) Ground Eleven: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

(d) Ground Twelve: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

(Title of Document)

filed in District Court Case No. _____

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-OR-

B. For the administration of a public program or
for an application for a federal or state grant.

N. W. (Signature)

8-16-10

(Date)

IN A SEXUAL ASSAULT PROSECUTION, SO AS TO CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL. THE EVIDENCE OF THE VICTIMS INABILITY TO RECALL RELIABLY THE INCIDENTS SURROUNDING HER SEXUAL ASSAULT WAS SUBSTANTIAL, AND ANY REASONABLE FINDER OF FACTS WOULD NECESSARILY HAVE BEEN INFLUENCED BY THE EVIDENCE OF VICTIMS LACK OF CREDIBILITY BASED UPON HER DEFECTIVE MEMORY, WHICH TRIAL COUNSEL FAILED TO PRESENT.

THE EXTENT OF THE VICTIMS RECOLLECTION OF THE INCIDENT IN THE POLICE REPORT AND HER TESTIMONY AT TRIAL WOULD SUPPORT CONCLUSION THAT THE INTRODUCING OF IMPEACHMENT EVIDENCE WOULD HAVE AFFECTED THE OUTCOME OF THE TRIAL.

2. TRIAL COUNSEL FAIL SHORT FOR WILLINGNESS TO ACCEPT THE GOVERNMENT'S VERSION OF FACTS ABOUT THE SEXUAL ASSAULT, WHEN THE PETITIONER SAID HE NEVER PENETRATED THE VICTIM THAT HE ONLY TOUCHED THE TOP OF THE VICTIM. COUNSEL FAILED TO SHOW THAT PETITIONER SAID HE TOUCHED HER THE VICTIM ON THE FLOOR, NOT THE CHAIR WERE THE VICTIM SAID SHE WAS SEXUALLY ASSAULTED BY THE PETITIONER. ALSO VICTIM NUMBER FOUR STATED THAT HE HEARD SOMEONE ASK THE VICTIM IF HE COULD TOUCH HER ON THE FLOOR NEXT TO HIM. THIS INFORMATION WOULD HAVE SHOWN THAT THE PETITIONER DID NOT TOUCH HER ON THE CHAIR AND SHOWS THAT HIS STORY HOLDS UP ABOUT WHAT HAPPENED THAT NIGHT.

TRIAL COUNSEL FAILURE TO INTRODUCE THIS EVIDENCE OR BELIEVE THE VERSION OF FACTS, THAT THE PETITIONER SAID OCCURRED RENDERED THE TRIAL COUNSEL INEFFECTIVE.

3. TRIAL COUNSEL FAILURE TO INTERVIEW WITNESSES AND CONDUCT A PRETRIAL INVESTIGATION PRIOR TO TRIAL, ALSO FAILURE TO INTERVIEW SEXUAL ASSAULT VICTIM

TO ASSESS HER VERSION OF FACTS. ALONG WITH TRIAL COUNSEL FAILING TO RETAIN AN INVESTIGATOR TO INTERVIEW WITNESSES, CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL WHICH TRIAL COUNSEL PERFORMANCE FELL BELOW THE CONSTITUTIONALLY REQUIRED LEVEL OF REPRESENTATION.

4. TRIAL COUNSEL CREATED A CONFLICT OF INTEREST BETWEEN PETITIONER AND COUNSEL BY TELLING THE PETITIONER BEFORE THE TRIAL BEGAN, THAT HE IS GOING TO LOSE THE TRIAL IF HE DOES NOT TAKE THE DEAL OFFERED BY THE STATE. ALSO THAT HE IS GOING TO DIE IN PRISON FOR NOT TAKING THE DEAL OFFERED BY THE STATE, AND AFTER THE MOTION TO SUPPRESS HEARING TRIAL COUNSEL TOLD THE PETITIONER IN HIS OFFICE THAT THE PETITIONER WILL DIE IN PRISON AND HE BELIEVES THAT TO BE TRUE.

THESE STATEMENTS MADE BY COUNSEL CLEARLY PREJUDICED THE PETITIONER AND DENIED HIM THE RIGHT TO A CONFLICT FREE COUNSEL GUARANTEED BY THE SIXTH AMENDMENT.

5. TRIAL COUNSEL FAILURE TO REQUEST THAT THE ALLEGED VICTIM BE GIVEN A PHYSICAL EXAMINATION OR UNDERGO A PSYCHOLOGICAL EXAMINATION TO DETERMINE WHETHER SHE WAS BEING TRUTHFUL WITH THE TRIAL COUNSEL HAVING IN THEIR POSSESSION A CONTRADICTORY ^{STATEMENT} FROM THE ALLEGED VICTIM HER STATEMENT TO THE POLICE WAS OF THE MOST IMPORTANCE TO GET THE TRUTH. THE FACT THAT THE TRIAL COUNSEL FAILED TO HAVE THE ABOVE DONE RENDERED THE TRIAL COUNSEL INEFFECTIVE.

6. TRIAL COUNSEL FAILURE TO PRESENT WITNESSES IN SUPPORT OF PETITIONER'S CHARACTER EVEN THOUGH PETITIONER PROVIDED HIM WITH A LIST OF POSSIBLE WITNESSES. TRIAL COUNSEL ALSO FAILED TO PREPARE FOR PRESENTATION OF DEFENSE WITNESSES. EVEN MORE TRIAL COUNSEL HAD SOME WITNESSES, AND SAID THAT THEIR TESTIMONY WOULD NOT BE NEEDED BECAUSE IT WOULD NOT HELP THE PETITIONER.

7. TRIAL COUNSEL WAS INEFFECTIVE FOR ADMITTING INTO EVIDENCE STATEMENTS BY THE PETITIONER'S CO-DEFENDANT TO THE POLICE AND THE GUILTY PLEA OF THE CO-DEFENDANT INTO EVIDENCE. TRIAL COUNSEL DECIDED TO ENTER THE STATEMENTS AND GUILTY PLEA WITHOUT THE APPROVAL OF THE PETITIONER, ALSO THE TRIAL COUNSEL IGNORED ANY AND EVERY METHOD OR STRATEGY THE PETITIONER THOUGHT WOULD BE HELPFUL TO HIS DEFENSE. EVEN MORE THE TRIAL COUNSEL FAILED TO ENSURE THAT THE TRIAL COURT CANVASS THE PETITIONER AS TO IF HE UNDERSTOOD AND AGREED TO THE INTRODUCTION OF HIS CO-DEFENDANTS STATEMENT AND GUILTY PLEA.

8. TRIAL COUNSEL WAS INEFFECTIVE BY FAILING TO ~~PRESENT~~ ^{OBJECT} TO THE ACTS OF PROSECUTORIAL MISCONDUCT, THE INTRODUCTION OF IRRELEVANT AND PREJUDICIAL TESTIMONY OF GRANT HEIR.

9. TRIAL COUNSEL FAILED TO WITHDRAW FROM REPRESENTING THE PETITIONER BASED UPON THE PUBLIC DEFENDERS OFFICE REPRESENTATION OF THE PETITIONER'S FATHER PERTAINING TO THE SAME CASE.

PETITIONER'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WAS VIOLATED BECAUSE HE WAS REPRESENTED BY AN ATTORNEY WHO LABORED UNDER AN ACTUAL CONFLICT OF INTEREST,

ALSO THE PETITIONER WAS DENIED HIS RIGHT TO CONFLICT FREE COUNSEL WHEN THE COURT MADE THE PUBLIC DEFENDERS REPRESENT THE PETITIONER AFTER THE CONFLICT OF INTEREST BETWEEN THE PETITIONER AND THE PUBLIC DEFENDERS OFFICE BECAME APPARENT.

THE PUBLIC DEFENDERS OFFICE LABORED UNDER AN ACTUAL CONFLICT OF INTEREST INVOLVING THEIR DUTY OF LOYALTY, THEREFORE THE PETITIONER WAS NOT AFFORDED THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL OR CONFLICT FREE COUNSEL.

10. TRIAL COUNSEL WAS INEFFECTIVE FOR CONCEALING THE PETITIONER'S GUILT IN HIS OPENING STATEMENTS AND IN THEIR CLOSING ARGUMENT, WITHOUT OBTAINING THE PETITIONER'S CONSENT WHEN THE PETITIONER PLED NOT GUILTY TO ALL CHARGES.

TRIAL COUNSEL STATED "AS THE STATE SAYS AND THEY ARE CORRECT, DANIELLE BROWNING WAS RAPED. MANY OF THOSE KIDS WERE ROBBED, ONE OF THOSE KIDS WAS KIDNAPED. THEY WERE TERRORIZED FOR UPWARDS FOR TWO HOURS. THEY HAD GUNS WAIVED IN THEIR FACES. I'M NOT DISPUTING THAT, I'M NOT DISPUTING THAT." THIS WAS SAID TO THE JURY IN THE TRIAL COUNSEL OPENING STATEMENT. (SEE A.A. PG. 802, LINES 11-14).

TRIAL COUNSEL THEN STATED IN THEIR CLOSING ARGUMENT "HE DID TOUCH HER. WHY? BECAUSE IF SOMEONE DID NOT DO SOMETHING SEXUAL TO DANIELLE BROWNING AT THAT MOMENT SOMEBODY WAS GOING TO DIE, AND YOU KNOW WHAT, THEN WE WOULD ALL BE HERE ON A MURDER CASE. YEA, I CAN GET-- LET ME DO IT, LET ME TOUCH HER, I CAN GET HARD. WERE GOING TO HEAR MORE OF THAT I IMAGINE. WHAT THE PETITIONER DID WAS VILE. IT WAS DISGUSTING. IT WAS HORRIFIC. AND DANIELLE DIDN'T DESERVE THAT. SHE DIDN'T DESERVE THAT. IT WAS BAD AND DON'T THINK THAT EVERYBODY IN THIS ROOM DOESN'T FEEL THAT WAY." (SEE A.A. PG. 1197, LINES 5-20).

TRIAL COUNSEL TOLD THE JURY TO FIND THE PETITIONER GUILTY OF ALL COUNTS. THESE ADMISSIONS WERE NEVER DISCUSSED WITH THE PETITIONER, NOR WERE THEY APPROVED BY THE PETITIONER. IN FACT THESE ISSUES WERE NEVER DISCUSSED WITH THE PETITIONER AND HE HAD NO OPTION BUT TO ACCEPT HIS COUNSEL TACTICS. IN REALITY THE PETITIONER HAD NO CHANCE BEFORE THE JURY ONCE THOSE ACTIONS WERE ADMITTED TO THE JURY. THE PETITIONER'S COUNSEL HAD ADMITTED GUILT FOR HIM.

11. TRIAL COUNSEL WAS INEFFECTIVE ^{FOR} FORCING THE IMPOSITION OF THE DURESS DEFENSE, THE PETITIONER EXPRESSED HIS DISAGREEMENT WITH THE DURESS DEFENSE BUT COUNSEL COMPLETELY IGNORED HIS DISAGREEMENT. AND FORCED THE PETITIONER TO ACCEPT THE DEFENSE STRATEGY, FOR REASONS THAT IT WOULD BE IN THE BEST INTEREST FOR THE PETITIONER TO ACCEPT IT. AS WELL AS IGNORING ANY AND EVERY STRATEGY, THAT THE PETITIONER THOUGHT WOULD HELP THE DEFENSE.

12. TRIAL COUNSEL WAS INEFFECTIVE FOR TRYING TO FORCE THE PETITIONER INTO TAKING A DEAL OR PLEAD GUILTY TO THE CHARGES, BY THE COUNSEL ATTEMPTING TO FORCE THE PETITIONER INTO TAKING A DEAL OR PLEADING GUILTY CREATED A CONFLICT OF INTEREST AND RENDERED COUNSEL INEFFECTIVE.

13. TRIAL COUNSEL FAILED TO CHALLENGE THE SUFFICIENCY OF THE EVIDENCE TO SUPPORT A CONVICTION FOR SEXUAL ASSAULT, THE STATE HAD NO EVIDENCE TO PROVE THE PETITIONER SEXUALLY ASSAULTED OR CONSPIRED TO SEXUALLY ASSAULT THE ALLEGED VICTIMS.

14. TRIAL COUNSEL FAILED TO INVESTIGATE A MOTIVE FOR FALSE ACCUSATIONS AND FAILED TO INVESTIGATE AS TO THE CREDIBILITY OF THE WITNESSES FOR THE STATE AND THEIR BACKGROUNDS.

ALL ALLEGATIONS OF INEFFECTIVE ASSISTANCE CONTAINED IN THE GROUNDS ABOVE CANNOT REASONABLY BE PRESUMED TO BE THE RESULT OF ANY TACTICAL OR STRATEGIC CHOICE WITHIN THE RANGE OF REASONABLE ATTORNEY COMPETENCE. RATHER, THE DEFECTS WERE THE RESULTS OF COUNSEL, LACK OF PREPARATION, KNOWLEDGE AND SKILL. CUMULATIVE AND SINGULARLY, COUNSEL'S FAILINGS RESULTED IN PREJUDICE TO PETITIONER. SPECIFICALLY, THE ERRORS ALLEGED DEPRIVED PETITIONER OF A FAIR TRIAL COMPLETE WITH A CONSTITUTIONALLY RELIABLE OUTCOME.

GROUND TWO: SUPPORTING FACTS:

ON APRIL 9, 2008 THE JUDGE BEGAN SELECTING THE JURY. HE ASKED THE JURY POOL "ARE THERE ANY PERSONS IN THIS JURY POOL WHO KNOWS ANY OF THE ATTORNEYS, ANY ATTORNEYS FOR THE STATE? ANY OF THE WITNESSES THAT WERE NAMED BY THE STATE OR THE DEFENSE.

JUROR NUMBER #275 BARBARA WAGNER ACKNOWLEDGED, THAT SHE KNEW BRIAN MURRAY A WITNESS FOR THE DEFENSE, BUT FAILED TO ACKNOWLEDGE THAT SHE KNEW LINDA EBBERT A WITNESS FOR THE STATE. THE STATE MADE IT CLEAR TO THE JURY POOL THAT ITS THE JURYS DUTY TO INFORM THEM OF ANYONE THEY MIGHT BE AWARE OF, OR HAVE ANY RELATIONSHIP WITH OUTSIDE OF THE CASE. WHY SHE CHOSE TO NOT INFORM THE COURT OF THIS INFORMATION IS UNKNOWN.

ALSO ON APRIL 11, 2008 AT THE BEGINNING OF TRIAL, THE JUDGE ONCE AGAIN MADE IT CLEAR TO THE JURY "THAT IF YOU LEARN DURING THE COURSE OF

THIS TRIAL THAT YOU WERE ACQUAINTED WITH THE FACTS OF THIS CASE OR THE WITNESSES, AND YOU HAVE NOT PREVIOUSLY TOLD ME OF THIS RELATIONSHIP, YOU MUST THEN DECLARE TO ME THAT FACT. YOU MUST COMMUNICATE TO ME THROUGH THE BAILIFF."

ONCE AGAIN SHE HAD THE OPPORTUNITY TO ACKNOWLEDGE THE FACT THAT SHE KNEW A WITNESS FOR THE STATE, BUT ONCE AGAIN SHE FAILED TO INFORM THE COURT ABOUT THIS INFORMATION. SO BY OMITTING HER TRUE KNOWLEDGE OF THE STATE WITNESS, AND BEING A MEMBER OF THE JURY, WHETHER SHE KNEW OR ACTED BIASLY OR CONSCIOUSLY, IT DENIED THE PETITIONER OF HIS RIGHT TO A FAIR TRIAL AND A IMPARTIAL JURY, IT ALSO VIOLATED THE PETITIONERS SIXTH AND FOURTEENTH AMENDMENTS AND DUE PROCESS GUARANTEES.

2. ON APRIL 9, 2008 THE JURY WAS SELECTED FOR THE PETITIONER, THERE WERE TEN FEMALES AND TWO MALES; WHILE ONLY ONE ~~MALE~~ AFRICAN AMERICAN MALE. ALL THE JURORS WERE OVER THE AGE OF 35, THE PETITIONER WAS ONLY 25 YEARS OF AGE. THE AGE GAP BETWEEN THE PETITIONER AND THE JURY, WAS NOT CLOSE TO BEING A JURY OF THE PETITIONERS PEERS. FURTHER MORE THE DEFENDANT IS A AFRICAN AMERICAN MALE WHILE THERE WAS ONLY ONE AFRICAN AMERICAN SEATED ON THE JURY. WITHOUT HAVING THE OPPORTUNITY TO HAVE ONE JUROR CLOSE TO THE PETITIONERS AGE, AND ONLY HAVE ONE PERSON WITH THE PETITIONERS RACE; DENIED THE PETITIONER HIS RIGHT TO HAVE A JURY OF HIS PEERS.

GROUND THREE: SUPPORTING FACTS:

1. THERE WAS INSUFFICIENT EVIDENCE TO PROVE THAT THE PETITIONER SEXUALLY ASSAULTED THE VICTIM OR CONSPIRED TO SEXUALLY ASSAULT THE VICTIMS AND THERE WAS NO EVIDENCE THAT THE PETITIONER CONSPIRED TO ANY CRIMES. THE ONLY EVIDENCE OF A CONSPIRACY IS THE TESTIMONY OF THE VICTIMS, WHERE THE VICTIMS SAID THEY HEARD THE PETITIONER COMMENT ON THE SEXUAL ASSAULTS.

2. THERE WAS INSUFFICIENT EVIDENCE TO PROVE THAT THE PETITIONER POSSED A WEAPON, OR HAD THE ABILITY TO CONTROL THE WEAPON. ALSO THERE IS INSUFFICIENT EVIDENCE TO ENHANCE THE PETITIONERS SENTENCE FOR COMMITTING THE CRIMES WHILE USING A DEADLY WEAPON.

3. BASED UPON LEGALLY ADMISSIBLE EVIDENCE, VERY LITTLE EVIDENCE WAS PRESENTED TO THE JURY UPON WHICH A CONVICTION OF THE PETITIONER COULD BE BASED. EACH OF THE VICTIMS TESTIFIED THAT SINCE THEY WERE LYING DOWN WITH THEIR FACES ON THE GROUND THEY WERE UNABLE TO VIEW ANY ACTIVITIES. THE VICTIMS COULD ONLY TESTIFY AS TO WHAT THEY HEARD, NOT SAW, AND CERTAINLY NO ONE COULD LEGALLY IDENTIFY THE VOICE OF THE PETITIONER. IN FACT, SINCE NO VICTIM OBSERVED THE PETITIONERS FACE, NO ONE COULD IDENTIFY THE PETITIONER BEYOND A REASONABLE DOUBT.

WHEN LOOKED AT IN ITS ENTIRETY, THE EVIDENCE AGAINST THE PETITIONER WAS CLEARLY INSUFFICIENT AND CANNOT SUPPORT HIS CONVICTIONS.

GROUND FOUR: SUPPORTING FACTS:

1. THE IDENTIFICATION PROCEDURE WAS SO IMPERMISSIBLY SUGGESTIVE AS TO GIVE RISE TO A VERY SUBSTANTIAL LIKELIHOOD OF IRREPARABLE MISIDENTIFICATION. THE WITNESSES STATED THAT THEIR HEADS WERE DOWN THE ENTIRE TIME THE ALLEGED CRIMES WERE BEING COMMITTED. THE VICTIMS COULD NOT IDENTIFY THE PETITIONER IN A PHOTO-LINE UP, AND THE ONLY DESCRIPTION^{THEY} KNEW WAS A TALLER, SKINNIER AFRICAN AMERICAN MALE. IN REALITY ANY TALLER SKINNIER AFRICAN AMERICAN MALE COULD HAVE SAT BEHIND THE DEFENSE TABLE, AND BEEN FOUND GUILTY OF ALL THE CHARGES AGAINST THE PETITIONER.

GROUND FIVE: SUPPORTING FACTS:

1. IN THE DETECTIVES SEARCH WARRANT THEY SAID "A RECORDS CHECK OF THE PETITIONER SHOWED HIS DATE OF BIRTH ALONG WITH HIS SOCIAL SECURITY NUMBER." BUT THEY SENT THE PETITIONER'S NAME WITH HIS FATHER'S SOCIAL SECURITY NUMBER, ON A SWORN AND SIGNED ADMINISTRATIVE REQUEST. IT CLEARLY STATES "A TRUE AND ACCURATE COPY OF YOUR CUSTOMER RECORDS" IF THE DETECTIVES WOULD HAVE SENT THE PETITIONER'S NAME WITH HIS SOCIAL SECURITY NUMBER NOT HIS FATHER'S, A COMPLETELY DIFFERENT ADDRESS WOULD HAVE APPEARED.

THE DETECTIVES KNEW THAT THE PETITIONER DID NOT HAVE POWER AT THE RESIDENCE BUT IN ORDER FOR THEM GAIN ENTRANCE OF THE RESIDENCE, THEY DRAFTED A SEARCH WARRANT STATING "A SUBPOENA OF NEVADA POWER'S RECORDS SHOWED THE PETITIONER TO HAVE AN ACCOUNT AT THE RESIDENCE OF 4232 GAYE AVENUE, LAS VEGAS, NEVADA 89108".

THE FACT THAT HE KNEW THE SEARCH WARRANT CONTAINED SOME FALSE INFORMATION, AND HE SIGNED IT AS TO BE TRUE AND CORRECT. THEN HE TOOK IT TO THE JUDGE TO SIGN KNOWING THAT IT HAD SOME INFORMATION IN IT THAT HE KNEW WAS NOT TRUE, MADE IT CLEAR THAT HE THOUGHT IF HE DID NOT PUT THAT FALSE INFORMATION IN THE SEARCH WARRANT, HE WOULD NOT HAVE ENOUGH PROBABLE CAUSE TO TAKE TO THE JUDGE AND GET HIS APPROVAL.

THE METHODS AND MANNER OF THESE DETECTIVES, GAINED THE SEARCH AND SEIZURE WARRANT THROUGH USING DELIBERATE PERJURY, FRAUD TO GET THIS JUDGES SIGNED AUTHORIZATION, RENDERS THE STATEMENT FROM THE PETITIONER TO BE INADMISSIBLE, AND NOT ONLY BUT THE ITEMS "CLOTHING COMPLETELY USELESS, INCONCLUSIVE OR WEAK, IN REGARDS TO THE PETITIONER. THE DETECTIVES WENT AFOUL BEYOND THE CALL OF DUTY TO OBTAIN THE PETITIONER AND THIS STATEMENT, THE DETECTIVE CONSPIRED AND DID MISLEAD, DECEIVE THE JUDGE BY FALSELY SWEARING ON A AFFIDAVIT.

N.R.S. 199.120

- A PERSON, HAVING TAKEN A LAWFUL OATH OR MAKE AFFIRMATION IN A JUDICIAL PROCEEDING OR ANY OTHER MATTER WHERE, BY LAW, AN OATH OR AFFIRMATION IS REQUIRED AND NO OTHER PENALTY IS PRESCRIBED, WHO:
 1. WILLFULLY MAKES AN UNQUALIFIED STATEMENT OF THAT WHICH HE DOES NOT KNOW TO BE TRUE;
 2. SWEARS OR AFFIRMS WILLFULLY AND FALSELY IN A MATTER MATERIAL TO THE ISSUE OR POINT IN QUESTION;
 3. SUBORNS ANY OTHER PERSON TO MAKE SUCH A UNQUALIFIED STATEMENT OR TO SWEAR OR AFFIRM IN SUCH A MANNER;
 4. EXECUTES AN AFFIDAVIT PURSUANT TO N.R.S 15.010 WHICH CONTAINS A FALSE STATEMENT OF SUBORNS ANY OTHER PERSON TO DO SO; OR

5. EXECUTES AN AFFIDAVIT OR OTHER INSTRUMENT WHICH CONTAINS A FALSE STATEMENT BEFORE A PERSON AUTHORIZED TO ADMINISTER OATHS OR SUBORNS ANY OTHER PERSON TO DO SO,

• IS GUILTY OF PERJURY OR SUBORNATION OF PERJURY, AS THE CASE MAY BE WHICH IS A CATEGORY D FELONY AND SHALL BE PUNISHED AS PROVIDED IN N.R.S. 193.130.

N.R.S. "OATH" AND "SWEAR" DEFINED 199.125

1. THE TERM "OATH" SHALL INCLUDE AN AFFIRMATION AND EVERY OTHER MODE AUTHORIZED BY LAW OR ATTESTING THE TRUTH OF THAT WHICH IS STATED
2. A PERSON WHO SHALL STATE ANY MATTER UNDER OATH SHALL BE DEEMED "TO SWEAR" THERETO.

N.R.S. 199.130 - FALSE AFFIDAVIT OR COMPLAINT TO EFFECT ARREST OR SEARCH.

1. A PERSON WHO MAKE, EXECUTES OR SIGNS OR CAUSES TO BE MADE, EXECUTED OR SIGNED, ANY FALSE OR FICTITIOUS AFFIDAVIT COMPLAINT, DEPOSITION, OR OTHER INSTRUMENT IN WRITING BEFORE ANY OFFICER OR PERSON AUTHORIZED TO ADMINISTER OATHS FOR THE PURPOSE OR WITH THE INTENT OF SECURING A WARRANT FOR THE ARREST OF ANY OTHER PERSON, OR FOR THE PURPOSE OF SECURING A WARRANT FOR THE SEARCHING OF THE PREMISES, GOOD CHATTELS OR EFFECT OR OF SEIZING THE GOODS, CHATTELS OR EFFECTS, OR OF SEIZING ANYTHING IN THE POSSESSION OF ANY OTHER PERSON IS GUILTY OF PERJURY WHICH IS A CATEGORY D FELONY

2. A PERSON WHO COMMITS ANY OF THE ACTS OR OFFENSES DEFINED OR SET OUT IN SUBSECTION 1 SHALL BE PUNISHED AS PROVIDED IN N.R.S. 193.130

N.R.S. 199.145 STATEMENT MADE IN DECLARATION UNDER PENALTY OF PERJURY

A PERSON WHO: IN A DECLARATION MADE UNDER PENALTY OF PERJURY:

1. MAKES A WILLFUL AND FALSE STATEMENT IN A MATTER TO THE ISSUES OR POINT IN QUESTION; OR

2. WILLFULLY MAKES AN UNQUALIFIED STATEMENT OF THAT WHICH HE DOES NOT KNOW TO BE TRUE;

OR WHO SUBORNS ANOTHER TO MAKE IS SUCH DECLARATION A STATEMENT OF THE KIND DESCRIBED IN SUBSECTION 1 OR 2 IS GUILTY OF PERJURY OR SUBSECTION OF PERJURY AS THE CASE MAY BE, WHICH IS A CATEGORY D FELONY AND SHALL BE PUNISHED AS PROVIDED IN N.R.S. 193.130

N.R.S. 199.200 STATEMENT OF WHAT ONE DOES NOT KNOW TO BE TRUE:

EVERY UNQUALIFIED STATEMENT OF THAT WHICH ONE DOES NOT KNOW TO BE TRUE IS EQUIVALENT TO A STATEMENT OF THAT WHICH HE KNOWS TO BE FALSE.

N.R.S. 199.210 OFFERING FALSE EVIDENCE.

A PERSON WHO UPON ANY TRIAL, HEARING, INQUIRY INVESTIGATION OR OTHER PROCEEDING AUTHORIZED BY LAW, OFFERS OR PROCURES TO BE OFFERED IN EVIDENCE AS GENUINE, ANY BOOK, PAPER DOCUMENT, RECORD OR OTHER INSTRUMENT IN WRITING, KNOWING THE SAME TO HAVE BEEN FORGED OR FRAUDULENTLY ALTERED, IS GUILTY OF A CATEGORY D FELONY AND SHALL BE PUNISHED AS PROVIDED IN N.R.S. 193.130.

GROUND SIX: SUPPORTING FACTS:

1. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY ALLOWING HEARSAY STATEMENT AND GUILTY PLEA THE PETITIONERS CO-DEFENDANT INTO EVIDENCE.

2. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY REFUSING TO GRANT THE PETITIONERS MOTION FOR A NEW TRIAL.

3. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY ADMITTING ADDITIONAL HIGHLY PREJUDICIAL PHOTOGRAPHS OF THE CRIME SCENE ON THE SAME DAY AS TRIAL.
4. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY RULING THAT THE STATEMENT MADE BY THE PETITIONER WAS ADMISSIBLE AGAINST HIM.
5. TRIAL COURT FAILED TO CONDUCT AN ADEQUATE INQUIRY INTO DEFENSE COUNSEL'S POTENTIAL CONFLICT OF INTEREST.
6. TRIAL COURT FAILED TO CANVASS THE PETITIONER OUTSIDE THE PRESENCE OF THE STATE AND JURY TO DETERMINE WHETHER PETITIONER CONSENTED TO THE CONCESSION OF GUILT OR UNDERSTOOD THE INTRODUCTION OF SUCH EVIDENCE.
7. TRIAL COURT ABUSED ITS DISCRETION IN DENYING TRIAL COUNSEL'S REQUEST FOR A SUBSTITUTE COUNSEL, AND CREATED A CONFLICT OF INTEREST BY FORCING TRIAL COUNSEL TO PROVE THEIR OWN INEFFECTIVENESS, THEREBY DEPRIVING THE PETITIONER OF HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, TRIAL COUNSEL STATED THAT THEY COULD NOT ADEQUATELY REPRESENT THE PETITIONER. THE TRIAL COURT FORCED THE TRIAL COUNSEL TO REPRESENT THE PETITIONER.

Case No. C-232494

Dept. No. XXIV

070232494-2
MAPA
Motion for Appointment of Attorney
925554



FILED

SEP 09 2010

CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK

NARCUS S. WESLEY
Petitioner,

MOTION FOR THE APPOINTMENT
OF COUNSEL

-vs-

E.K. McDANIEL, WARDEN, ELY
Respondents.

REQUEST FOR EVIDENTIARY HEARING

COMES NOW, the Petitioner, NARCUS S. WESLEY, proceeding pro se, within the
above entitled cause of action and respectfully requests this Court to consider the appointment of counsel
for Petitioner for the prosecution of this action.

This motion is made and based upon the matters set forth here, N.R.S. 34.750(1)(2), affidavit of
Petitioner, the attached Memorandum of Points and Authorities, as well as all other pleadings and
documents on file within this case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

This action commenced by Petitioner NARCUS S. WESLEY, in state custody,
pursuant to Chapter 34, et seq., petition for Writ of Habeas Corpus (Post-Conviction).

II. STATEMENT OF THE FACTS

To support the Petitioner's need for the appointment of counsel in this action, he states the
following:

1. The merits of claims for relief in this action are of Constitutional dimension, and
Petitioner is likely to succeed in this case.

2. Petitioner is incarcerated at the Ely State Prison in Ely, Nevada. Petitioner is unable to undertake the ability, as an attorney would or could, to investigate crucial facts involved within the Petition for Writ of Habeas Corpus.
3. The issues presented in the Petition involves a complexity that Petitioner is unable to argue effectively.
4. Petitioner does not have the current legal knowledge and abilities, as an attorney would have, to properly present the case to this Court coupled with the fact that appointed counsel would be of service to the Court, Petitioner, and the Respondents as well, by sharpening the issues in this case, shaping the examination of potential witnesses and ultimately shortening the time of the prosecution of this case.
5. Petitioner has made an effort to obtain counsel, but does not have the funds necessary or available to pay for the costs of counsel, see Declaration of Petitioner.
6. Petitioner would need to have an attorney appointed to assist in the determination of whether he should agree to sign consent for a psychological examination.
7. The prison severely limits the hours that Petitioner may have access to the Law Library, and as well, the facility has very limited legal research materials and sources.
8. While the Petitioner does have the assistance of a prison law clerk, he is not an attorney and not allowed to plead before the Courts and like Petitioner, the legal assistants have limited knowledge and expertise.
9. The Petitioner and his assisting law clerks, by reason of their imprisonment, have a severely limited ability to investigate, or take depositions, expand the record or otherwise litigate this action.
10. The ends of justice will be served in this case by the appointment of professional and competent counsel to represent Petitioner.

II. ARGUMENT

Motions for the appointment of counsel are made pursuant to N.R.S. 34,750, and are addressed to the sound discretion of the Court. Under Chapter 34,750 the Court may request an attorney to represent any

such person unable to employ counsel. On a Motion for Appointment of Counsel pursuant to N.R.S. 34.750, the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination of witnesses, and ultimately shortening trial and assisting in the just determination.

In order for the appointment of counsel to be granted, the Court must consider several factors to be met in order for the appointment of counsel to be granted; (1) The merits of the claim for relief; (2) The ability to investigate crucial factors; (3) whether evidence consists of conflicting testimony effectively treated only by counsel; (4) The ability to present the case; and (5) The complexity of the legal issues raised in the petition.

III. CONCLUSION

Based upon the facts and law presented herein, Petitioner would respectfully request this Court to weigh the factors involved within this case, and appoint counsel for Petitioner to assist this Court in the just determination of this action

Dated this 14 day of AUGUST, 2008 2010

Ely State Prison
P.O. Box 1989
Ely, Nevada 89301

N. W. [Signature]
Petitioner.

VERIFICATION

I declare, affirm and swear under the penalty of perjury that all of the above facts, statements and assertions are true and correct of my own knowledge. As to any such matters stated upon information or belief, I swear that I believe them all to be true and correct.

Dated this 14 day of AUGUST, 2008 2010

N. W. [Signature]
Petitioner, pro per.

CERTIFICATE OF SERVICE BY MAIL

I, NARCIS S. WESLEY, hereby certify pursuant to N.R.C.P.
2010
5(b), that on this 16 day of AUGUST, of the year 2010, I mailed a true and
correct copy of the foregoing Motion for Leave to Proceed in Forma Pauperis; Affidavit in Support of
Motion for Leave to Proceed in Forma Pauperis; Motion for the Appointment of Counsel; and Request for
Evidentiary Hearing, addressed to:

<u>DAVID ROGER / DISTRICT ATTORNEY</u>	<u>CATHERINE CORTEZ-MASTO</u>	
Name	ATTORNEY GENERAL Name	Name
<u>200 LEWIS AVE, 3rd FLOOR</u>	<u>100 NORTH CARSON STREET</u>	
<u>LAS VEGAS, NV 89155</u>	<u>CARSON CITY, NV 89701</u>	
<u>NEVADA BAR # 2781</u>	<u>4717</u>	
Address	Address	Address

N. W. Wesley
Petitioner

1 PPOW

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

FILED
OCT - 8 2010
CLERK OF COURT

5 MARCUS S. WESLEY,

6 Petitioner,

7 vs.

8 E.K. MCDANIEL, WARDEN ELY,

9 Respondent,

Case No: C232494

Dept No: 24

ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

10
11 Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on
12 September 9, 2010. The Court has reviewed the petition and has determined that a response would assist
13 the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and
14 good cause appearing therefore,

15 IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order,
16 answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS
17 34.360 to 34.830, inclusive.

18 IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

19
20 Calendar on the 7th day of December, 2010, at the hour of

21
22 8:30 AM o'clock for further proceedings.

23
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27 District Court Judge
28

070832404-2
CPWH
Order for Petition for Writ of Habeas Corpus
003074



NARCUS S. WESLEY #1022289
ELY STATE PRISON
P.O. BOX 1989
ELY, NEVADA 89301

FILED

DEC 28 2010

CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA IN AND FOR THE
COUNTY OF CLARK

NARCUS S. WESLEY,

PETITIONER,

vs.

THE STATE OF NEVADA,

RESPONDENT,

CASE No. C232494

DEPT No. XXIV

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT THE PETITIONER
NARCUS S. WESLEY, IN AND THROUGH PROPER PERSON
HEREBY APPEALS TO THE SUPREME COURT OF NEVADA
FROM THE ORDER DENYING AND OR DISMISSING
THE PETITION FOR POST-CONVICTION RELIEF

RULED ON THE 7TH DAY OF DECEMBER, 2010
DATED THIS 17TH DAY OF DECEMBER, 2010

RESPECTFULLY SUBMITTED BY

Narcus Wesley

NARCUS S. WESLEY #1022289

070282404-2
110000
Hollow of Appeal (criminal)
1100442



RECEIVED

DEC 28 2010

CLERK OF THE COURT

NARCUS WESLEY # 1022289
ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89201

DISTRICT COURT CLERKS OFFICE
200 LEWIS AVENUE - 3RD FLOOR
LAS VEGAS, NV 89101



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11/11/11 11:11 AM 11/11/11 11:11 AM 11/11/11 11:11 AM

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL 702.384-5563 | FAX 702.974-0523

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IN THE SUPREME COURT OF THE STATE OF NEVADA

NARCUS WESLEY
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

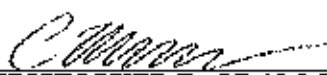
S.C. CASE NO. 57473
Electronically Filed
Mar 01 2011 02:53 p.m.
Tracie K. Lindeman

NOTICE OF APPEARANCE OF COUNSEL

CHRISTOPHER R. ORAM, ESQ., does hereby enter his appearance as counsel of record for the Appellant before this Court in the place and stead of Mr. Wesley in Proper Person and informs this Honorable Court that he shall proceed to comply with this Court's pending orders.

DATED this 1st day of March, 2011.

Respectfully submitted by,


CHRISTOPHER R. ORAM, ESQ.
Nevada Bar No. 004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
(702) 384-5563

Attorney for Appellant
NARCUS WESLEY

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5565 | FAX 702.974-0623

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on March 1, 2011. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ-MASTO
Nevada Attorney General

STEVE OWENS
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Jessie Folkestad
An Employee of Christopher R. Oram, Esq.

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

THOMAS W. LINDEN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

7
8 **APPELLANT'S OPENING BRIEF**

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

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18
19 **DAN M. WINDER, ESQ.**
20 Nevada Bar #1569
21 Arnold Weinstock, Esq.
22 Nevada Bar No: 000810
23 3507 W. Charleston Blvd.
24 Las Vegas, Nevada 89102
25 (702) 474-0523

26
27 Counsel for Appellant

28 **DAVID ROGER**
 CLARK COUNTY, NEVADA
 DISTRICT ATTORNEY
 Nevada Bar #2781
 200 Lewis Ave., 3rd Floor
 Las Vegas, Nevada 89155
 (702) 671-2500

CATHERINE CORTEZ-MASTO
 Attorney General
 100 North Carson Street
 Carson City, Nevada 89701-4717
 (702) 486-3420

 Counsel for Respondent

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

7
8 **APPELLANT'S OPENING BRIEF**

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

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24 Las Vegas, Nevada 89102
25 (702) 474-0523

26
27 Counsel for Appellant

20 **DAVID ROGER**
21 **CLARK COUNTY, NEVADA**
22 **DISTRICT ATTORNEY**
23 Nevada Bar #2781
24 200 Lewis Ave., 3rd Floor
25 Las Vegas, Nevada 89155
26 (702) 671-2500

27 **CATHERINE CORTEZ-MASTO**
28 Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 486-3420

Counsel for Respondent

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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

7 **STATEMENT OF THE ISSUES**

8 A. Did the Trial Court's Admission of the Statements of Delarian Wilson violate Narcus
9 Wesley's Right to a fair trial?

10 B. Was the admission of Delarian Wilson's guilty plea during Narcus Wesley's trial
11 reversible error?

12 C. Did Narcus Wesley's counsel commit fatal error which mandates this Court to sua
13 sponte reverse Wesley's conviction?

14 D. Was the trial court's failure to grant Narcus Wesley's Motion to Suppress clear error?

15 E. Was sufficient evidence presented to the jury to support the conviction of Narcus
16 Wesley beyond a reasonable doubt?

17 F. Was the sentence imposed upon Narcus Wesley cumulative and excessive?

INTRODUCTION

Appellant, Narcus Wesley was convicted of eighteen (18) counts, ranging from five (5) counts of sexual assault with use of a deadly weapon to two (2) counts of conspiracy. His conviction was obtained in a trial that was in violation of the fundamental fairness guaranteed by the United States and Nevada Constitutions because he was convicted primarily based upon the statements and actions of his co-defendant, Delarian Wilson, who was not tried with Wesley due to his prior plea to three (3) counts. Wesley was deprived of his right to adequate assistance of trial counsel due to his counsels unauthorized activities in admitting Wesley's guilt to the jury. Numerous other clear constitutional errors occurred during Wesley's trial. Based upon all those errors Wesley's Judgment of Conviction must be reversed and Wesley must be granted a new trial. In addition, there was insufficient evidence to sustain the convictions and Wesley's Judgment of Conviction must be vacated.

STATEMENT OF THE CASE

On or about February 23, 2007, a criminal complaint was filed in Justice Court, Henderson Township charging Delarian K. Wilson (hereinafter referred to as "Wilson") and Appellant herein, NARCUS S. WESLEY (hereinafter referred to as "WESLEY") in a 16 count complaint over an incident which allegedly occurred on or about February 18, 2007. (See Appellant's Appendix (hereinafter referred to as "A.A.")pg 1-7). On or about April 17, 2007, that complaint was amended by adding two additional counts. (See A.A. 8-15).

After a Preliminary Hearing in Henderson Justice Court, both defendants were bound over to District Court, and on or about April 20, 2007 an Information was filed in Department 24 before the Honorable Judge James Bixler charging each defendant with 18 counts. (See A.A. 16-24). Both defendants were arraigned and entered not guilty pleas to all counts. On March 6, 2008, a Motion to Sever Defendants was filed by Appellant WESLEY and granted by the Court. (See A.A. 25-29).

Prior to Trial, on March 1, 2008, WESLEY filed a Motion to Suppress Fruits of an Illegal Search. (A.A. 30-57). This Motion was opposed by the State (A.A. 58-79). Thereafter, defendant

1 Wilson changed his plea and entered a guilty plea to two counts of Robbery with Use of a Deadly
2 Weapon and one count of Sexual Assault. (A.A. pg 90-102). Upon Wilson's plea, on April 10, 2008
3 the State filed a Second Amended Information charging WESLEY with committing all 18 counts
4 alleged. (A.A. 103-112).

5 Since Wilson entered his plea, leaving WESLEY as the only defendant, and since the court
6 had not ruled on WESLEY's Motion to Suppress Fruits of an Illegal Search, on March 25, 2008,
7 WESLEY filed a Motion to Continue Trial. (A.A. pg 113-115). Nonetheless, on April 9, 2008
8 WESLEY's trial began with a Franks hearing. The Trial concluded on April 18, 2008 and at 2:53
9 p.m. on that date, a jury returned with a verdict finding WESLEY guilty on all 18 counts. (A.A. pg.
10 116-121).

11 On July 3, 2008, WESLEY was sentenced by Judge Bixler as follows: Count One Conspiracy
12 to Commit Burglary, Twelve months in the Clark County Detention Center (CCDC); Count Two
13 Conspiracy to Commit Robbery, Seventy-Two - One Hundred Eighty months in the Nevada
14 Department of Corrections (NDC); Counts Three and Eleven, Burglary While in Possession of a
15 Deadly Weapon, Seventy-Two to One Hundred Eighty months in NDC; Counts Four, Six, Seven,
16 and Nine, Robbery With Use of a Deadly Weapon, Sixty to One Hundred Eighty months in NDC
17 with a consecutive Sixty to One Hundred Eighty months for Use of a Deadly Weapon; Counts Five
18 and Eight, Assault With a Deadly Weapon, Twenty-Four to Seventy-Two months in NDC; Count
19 Ten, First Degree Kidnaping, Seventy-Two to One Hundred Eight months at NDC with a
20 consecutive term of Seventy-Two to One Hundred Eight months; Counts Twelve, Thirteen,
21 Fourteen, Fifteen and Seventeen, Sexual Assault With Use of a Deadly Weapon, Ten to Life at the
22 NDC with a consecutive Eight - Twenty years for Use of a Deadly Weapon; Count Sixteen Coercion
23 With Use of a Deadly Weapon, Twenty-Four - Seventy-Two months at the NDC with a consecutive
24 Twenty-Four to Seventy-Two months for the Use of a Deadly Weapon and Count Eighteen, Open
25 and Gross Lewdness With Use of a Deadly Weapon, Twelve months at the CCDC. All sentences
26 were ordered to run concurrent and WESLEY received credit for One Hundred Eighty-Five days
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1 served. (A.A. pg. 122-126).

2 Unhappy with that sentence, the State appealed Judge Bixler's sentence alleging that the
3 sentences in Counts Twelve, Thirteen, Fourteen, Fifteen and Seventeen were improper. On
4 September 23, 2008, pursuant to the States Motion to Correct an Illegal Sentence, the Court amended
5 its sentences on Counts Twelve, Thirteen, Fourteen, Fifteen and Seventeen giving WESLEY five
6 additional sentences of Ten to Life in lieu of the Court's original sentences of Eight to Twenty years
7 for Use of a Deadly Weapon. (A.A. pg. 127-132). The instant Appeal followed.

8 **STATEMENT OF FACTS**

9 On April 9, 2009, WESLEY's Trial began with a Franks hearing outside the presence of the
10 jury in support of WESLEY's Motion to Suppress the Fruits of an Illegal Search. (A.A. pg. 133-248).
11 The State called Detective Curtis Weske of the Henderson Police Department. Detective Weske was
12 investigating a crime which had occurred on February 18, 2007. Ultimately as part of his
13 investigation, Detective Weske developed the name of Delarian Wilson as one of the possible
14 suspects in a crime. (A.A. pg. 150). Mr. Wilson was subsequently found at Circus Circus arrested,
15 and questioned by the Henderson Police Officers. (A.A. pg. 157). Mr. Wilson allegedly admitted
16 that he was at the crime scene and gave the name NARCUS as the person who was with him. (A.A.
17 pg. 160). The next day, it was determined that Wilson was referring to NARCUS WESLEY, who
18 allegedly lived at 2372 Valley Drive in Las Vegas. (A.A. pg. 162). Detective Weske called Nevada
19 Power and was told that power at Valley Drive had been turned off and re-turned on at 4232 Gay
20 Lane. Detective Weske went to Gay Lane and filled out an Affidavit for a Search Warrant. (A.A.
21 pg. 165). SWAT entered the residence and brought NARCUS WESLEY out. (A.A. pg. 166).
22 WESLEY's father was also there, asked for a copy of the Search Warrant, and noticed that the
23 Warrant was wrong since the power was in his name, Narbíz, not NARCUS'. (A.A. pg. 169).
24 Despite that fact, NARCUS was arrested and booked. It was not until the next day that Detective
25 Weske noticed that the Subpoena had an asterisk and stated "Please note. Individuals first name is
26 different from your request." (A.A. pg. 170, see also A.A. pg. 1203).

1 On cross examination, Detective Weske admitted that his Affidavit for Search Warrant listed
2 the wrong Social Security Number for WESLEY. (A.A. pg. 186). Detective Weske also admitted
3 that he called SWAT before receiving a Search Warrant. (A.A. pg. 189). Finally, in reading Mr.
4 WESLEY his Miranda Rights, Detective Weske admitted that he never asked WESLEY if he waived
5 his Miranda Rights. (A.A. pg. 199).

6 Mr. Narviez Wesley, NARCUS' father, testified that after SWAT entered his house and
7 NARCUS was taken from his bedroom, Narviez Wesley asked to call his family attorney before
8 anyone talked to the police. (A.A. pg. 226). In response, Narviez testified that Detective Weske told
9 him they did not need an attorney there. (A.A. pg. 226). NARCUS' stepmother, Angela Wesley also
10 testified that she recalled her husband Narviez asking to call their family attorney while NARCUS
11 was sitting beside them, before NARCUS was interrogated. (A.A. pg. 230). Finally, NARCUS
12 WESLEY testified at the hearing that he was present when his father asked to call the family attorney
13 before NARCUS was questioned and the request was refused by Detective Weske. (A.A. pg. 232).
14 Nonetheless, WESLEY's Motion to Suppress was denied by the Court. (A.A. pg. 247).

15 Thereupon, the Trial started with Jury Selection. (A.A. pg. 364-743). Upon seating of the
16 jury, WESLEY's counsel made a Batson challenge regarding the State's striking of proposed juror
17 Stephanie Abernathy, an African-American female. (A.A. pg. 748). Although the State gave several
18 feeble explanations for Ms. Abernathy's excusal, (A.A. pg. 749-750), the judge summarily denied
19 the Batson Challenge and ordered the Trial to proceed. (A.A. pg. 750).

20 The trial proceeded to opening argument. In his initial address to the jury panel, WESLEY's
21 counsel made the following statement: "As the State said, and they are correct, Danielle Browning
22 was raped. Many of those kids were robbed. One of those kids was kidnaped. They were terrorized
23 for an upwards of two hours. They had guns waived in their faces." (A.A. pg. 802, lines 11-14,
24 *emphasis added*).

25 The State called numerous witnesses to testify including the following: DANIELLE
26 BROWNING, one of the alleged victims, testified that in February, 2007 she was living in a house
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1 on Great Dane in Henderson, Nevada with her boyfriend Justin and several of his friends. (A.A. pg.
2 816). There was a knock on the bedroom door and the person was told to come in. (A.A. pg. 818).
3 A short, stocky African-American with a gun came in and told Danielle and her boyfriend to go to
4 the living room and lie down on the floor. (A.A. pg. 820). In the living room there was a taller,
5 skinnier African-American. (A.A. pg. 823). Without objection from WESLEY's counsel, Danielle
6 constantly referred to the two African-Americans as "they" not specifically separating the actions
7 from one or the other. (A.A. pg. 818-827).

8 Danielle testified that the stockier guy took Ryan to an ATM. (A.A. pg. 828). The skinnier
9 guy was told to stay and "make sure that they didn't leave or call the cops." (A.A. pg. 830). While
10 Ryan and the shorter stockier guy were gone, the taller thinner guy "just stood above us, kinda
11 pacing." (A.A. pg. 830). After about twenty minutes, Ryan and the shorter, stockier guy returned
12 and the shorter, heavier guy said they were ninety percent done and the other ten percent was up to
13 Danielle. (A.A. pg. 831). The shorter stockier guy said he wanted Danielle to perform oral sex on
14 her boyfriend. The shorter, stockier guy "took over." (A.A. pg. 832). Her boyfriend could not get
15 hard and the shorter stockier guy "was getting mad." (A.A. pg. 834). Upon questioning by the State,
16 Danielle proceeded to identify WESLEY as the taller, skinnier guy by body type only. (A.A. pg.
17 850).

18 On cross examination, Danielle testified that the taller guy did nothing and the stockier guy
19 was in charge of the situation, including asking for PIN numbers. (A.A. pg. 852-854). It was the
20 shorter guy that made statements about Danielle and her boyfriend having sex, (A.A. pg. 856), and
21 it got even scarier when the stockier guy said "if someone does not perform, or get it on, someone
22 is going to be killed." (A.A. pg. 860). Finally, Danielle admitted that she didn't know if the skinnier
23 guy had a gun. (A.A. pg. 867).

24 The State called numerous other witnesses, including all of the victims. All victims testified
25 in similar fashion, with all agreeing that the shorter, stockier guy was in charge throughout the
26 proceedings with the taller skinnier guy remaining quiet throughout most of this incident. (A.A. pg.

1 893, pg. 980, pg. 1000, pg. 1014, pg. 1023). During the time the short stockier gentleman was gone,
2 the taller skinnier guy did nothing but appear nervous. (A.A. pg. 920, pg. 984). All victims testified
3 it was the shorter, stockier guy that was getting angrier and making threats to them. (A.A. pg. 906,
4 pg. 948). None of the victims ever testified to seeing the taller, skinnier guy's face, and they could
5 all only identify him based on his body build. (A.A. pg. 926, pg. 987, pg. 1014, pg. 1020-21). In
6 fact, they all testified that they kept their faces down, and as Ryan Tognotti testified, "Throughout
7 the whole process, he never really got a good look at WESLEY's face at all." (A.A. pg. 99).

8 The sexual assault nurse who examined Danielle Browning after the incident, LINDA
9 EBBERT, testified that she did not find any trauma upon Danielle. (A.A. pg. 1008). Thereafter, a
10 variety of Henderson Police Officers and Detectives were called. Each police witness talked
11 primarily about their involvement with Delarian Wilson and not NARCUS WESLEY, including
12 KENT TIMOTHY, a latent print examiner who testified to four (4) recovered prints which matched
13 to Delarian Wilson, and none which matched to NARCUS WESLEY. (A.A. pg. 1063).

14 Detective CURTIS WESKE of the Henderson Police Department testified and identified a
15 photograph of Delarian Wilson taken on February 19, 2007 at the Clark County Jail. (A.A. pg.
16 1073). Again, there was no objection made by WESLEY's counsel. Detective Weske also testified
17 about his conversation with Donna Lamont of Nevada Power, who told him about an address at 4232
18 Gay Avenue for NARCUS WESLEY. (A.A. pg. 1074). Again, there was no objection from
19 WESLEY's counsel. Detective Weske also testified as to preparing an Affidavit and obtaining a
20 Search Warrant for the residence on Gay Avenue. (A.A. pg. 1076).

21 Defense counsel thereupon objected and asked for a hearing outside the jury's presence due
22 to a clear evidentiary violation. There was testimony about a rifle being found during the search of
23 the Gay Avenue address. Defense counsel objected because a clear conflict of interest arose since
24 the rifle belonged to NARCUS' father, Narviel Wesley, who was an ex-felon and had been
25 represented by the Public Defender's Office. (A.A. pg. 1079). The idea that a rifle which was
26 admittedly not used in the crime was seized and that NARCUS resided with an ex-felon who had
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1 been represented by the Public Defender was clearly prejudicial to NARCUS WESLEY's interest.
2 A Request for Mistrial was timely made by NARCUS' counsel. (A.A. pg. 1079). The court denied
3 the Mistrial stating "There's not going to be a Mistrial. You are not going to get off of this case."
4 (A.A. pg. 1081). Detective Weske continued testifying and on cross-examination admitted that
5 during his interview with Delarian Wilson, Mr. Wilson told him of a person named "Christopher"
6 who had committed the crime with him, and that Christopher had a gun. In fact, Wilson said that
7 "he stayed at the house while Christopher went to the ATM." (A.A. pg. 1094).

8 Thereupon, defense counsel requested the admission of Wilson's Guilty Plea and Plea
9 Agreement before the jury. (A.A. pg. 1096-1101). Defense counsel also wanted to play a CD of
10 Wilson's statements to the police, but the court ordered the first seventy-five pages of that statement
11 redacted. (A.A. pg. 1101). Again, WESLEY was never asked by the court whether he knew of,
12 consented to, or approved of his attorney's tactics. Finally, defense counsel had Detective Weske
13 reiterate all the crimes to which WESLEY admitted to in his interview with Detective Weske. (A.A.
14 pg. 1106).

15 POINTS AND AUTHORITIES

16 I.

17 THE STATEMENTS OF DELARIAN WILSON CANNOT BE USED AS A BASIS UPON 18 WHICH TO CONVICT NARCUS WESLEY

19 Throughout the Trial, a majority of the evidence presented to the jury involved alleged
20 statements made by Delarian Wilson. Wilson was not present at Trial, and his hearsay statements
21 were presented through various witnesses. However, at the heart of the Confrontation Clause of the
22 United States Constitution is a preference for live testimony and cross-examination. See United
23 States Constitution, Amendment Six; DeRosa v. First Judicial District Court, 115 Nev. 225, 985 P.
24 2d 157 (1999).

25 Although at one point, Wilson was WESLEY's co-defendant, Wilson chose to enter a guilty
26 plea to Three (3) counts prior to Trial and would not testify at WESLEY's Trial. If Wilson had not
27 plead out, his statements would not be admissible at Trial against his co-defendant, WESLEY. See

1 Bruton v. United States, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968).

2 The Nevada Supreme Court has previously held that the right of confrontation prevents the
3 use at a joint trial of a non-testifying defendant's admission if it incriminates another defendant.
4 Rodriguez v. State, 117 Nev. 800, 32 P. 3d 773 (2001). If Wilson's statements could not be used
5 at a joint trial, they certainly could not be used at WESLEY's trial without WESLEY having the
6 opportunity to confront and cross-examine Wilson over those statements. As this Court has stated,
7 "Under Bruton, a defendant's rights are violated when the State introduces a non-testifying co-
8 defendant's confession or statements incriminating a defendant." Franco v. State, 109 Nev. 1229,
9 866 P.2d 247 (1993); Duckworth v. State, 114 Nev. 951, 966 P.2d 165 (1998).

10 In the instant case, a vast majority of the evidence incriminating WESLEY were statements
11 attributed to Wilson. Every victim testified that Wilson was in charge throughout the incident, and
12 that WESLEY rarely said anything. Although several witnesses identified WESLEY at trial, those
13 identifications were suspect at best, since each witness testified that their face was down and that the
14 never viewed WESLEY's face. Absent the statements and confessions of Wilson, WESLEY could
15 never have been convicted beyond a reasonable doubt. Therefore, on that basis alone, a reversal is
16 warranted.

17 II.

18 THE ADMISSION OF DELARIAN WILSON'S GUILTY PLEA DURING NARCUS 19 WESLEY'S TRIAL WAS REVERSIBLE ERROR

20 Trumping the admission of Delarian Wilson's statements and admissions, the Court
21 inexplicably allowed the jury to hear a re-enactment of Delarian Wilson's guilty plea including his
22 factual basis therefore. Such testimony is clearly inadmissible and mandates a reversal of
23 WESLEY's conviction and a Remand for New Trial.

24 Numerous states have recognized the impropriety of such a practice. The Colorado Appeals
25 Court has held that "A guilty plea or conviction of a co-defendant may not be used as substantive
26 evidence of another defendant's guilt." People v. Brunner, 797 P.2d 788 (Colo. App. 1990). The
27 Oregon Court has held that a co-defendant's conviction resulting from the same transaction generally

1 may not be introduced as substantive evidence of a defendant's guilt. State v. Clark, 779 P 2d 215,
2 98 Or. Ap. 478 (1989). The state of Wyoming has held that the right to a fair trial embraces the right
3 not to be convicted in whole or in part, upon the guilty plea of coconspirators. Capshaw v. State, 11
4 P. 3d 905, Wyo. (2000); see also Hall v. State, 109 P 3d 499, 2005 Wy. 35 (2005).

5 The Nevada Supreme Court has previously followed this line of analysis. In Walden v. State,
6 113 Nev 853, 944 P. 2d 762 (1997), the Court stated that a co-defendant's change of plea statement
7 and penalty hearing statement in which a co-defendant admitted to stabbing the victim were not
8 admissible during the guilt phase of the defendant's murder trial. The Court reversed a murder
9 conviction in that instance.

10 In the instant case, the Trial Court allowed the verbatim re-enactment of Delarian Wilson's
11 guilty plea to three (3) of the charges to which WESLEY was standing Trial. Wilson plead guilty
12 to two (2) counts of Robbery With the Use of a Deadly Weapon and one (1) Count of Sexual
13 Assault. Not only was the jury advised that the person who had been identified as WESLEY's
14 coconspirator had admitted to being guilty of robbing two of the victims in the matter which was
15 awaiting the jury's decision, but that also Wilson was admitting to aiding and abetting WESLEY in
16 the commission of a sexual assault that they were supposed to decide WESLEY's guilt or innocence
17 of. WESLEY could not confront or cross-examine that evidence. After hearing that Wilson had
18 plead guilty to three (3) of the charges they were to decide upon, what could the jury do but find
19 WESLEY guilty of those charges? Upon finding WESLEY guilty of those charges it was a fait
20 accompli that WESLEY would be guilty on all charges.

21 Although it is conceded that the issue of bringing Wilson's guilty plea before the jury was
22 initially brought up by WESLEY's trial counsel, it was Judge Bixler's decision to allow that
23 improper and inflammatory information to be presented to the jury. That decision to seek the
24 presentation of Wilson's guilty plea was never discussed with WESLEY and he never consented to
25 the presentation of that evidence to the jury. In effect, WESLEY's attorney's "threw their client
26 under the bus." Jones v. State, 110 Nev. 730, 877 P. 2d 1052 (1994).

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III.

THE ERRORS OF WESLEY'S COUNSEL MANDATES THIS COURT TO SUA SPONTE REVERSE WESLEY'S CONVICTION

The Nevada Supreme Court has recognized that the right to defend is given directly to the accused, for it is he who suffers the consequences if the defense fails. Agmon v. State, 121 Nev. 200, 111 P.3d 1092 (2005). From the beginning, WESLEY's trial counsel were "on a frolic of their own." Without discussing or clearing it with their client, WESLEY's trial counsel told the jury in their Opening Statement "As the State said and they are correct, Danielle Browning was raped. Many of those kids were robbed. One of those kids was kidnapped. They were terrorized for upwards for two hours. They had guns waived in their faces. I'm not disputing that. I'm not disputing that" (see A.A. pg. 802, lines 11-14). In reality, WESLEY's counsel told the jury to find WESLEY guilty of all counts. These admissions were never discussed with WESLEY, nor were they approved by WESLEY.

In Jones v. State, *supra*, the Nevada Supreme Court held that a "finding that counsel had conceded guilt without defendant's consent would mandate reversal irrespective of any strategic or tactical motives for concessions that might be disclosed at any evidentiary hearing." *Id.* at 737, *emphasis added*. In the instant case, the Trial Court never inquired of WESLEY if he approved of and consented to his counsel's tactics. In fact, that issue was never discussed with WESLEY and he had no option but to accept his counsel's ill-fated tactics. In reality, WESLEY had no chance before the jury once those actions were admitted to the jury. WESLEY's counsel had admitted guilt for him.

When that Court error is coupled with WESLEY's attorneys seeking and allowing Wilson's guilty plea hearing to be reenacted before the jury and his admissions played before the jury, this Court has no option but to reverse WESLEY's conviction and to remand this case for a new trial. As this Court has previously stated, "The Supreme Court may consider sua sponte plain error which affects the defendants substantial rights if the error either: (1) had a prejudicial impact on the verdict when reviewed in the context in the trial as a whole, or (2) seriously affects the integrity or public

1 reputation of the judicial proceedings." Rowland v. State, 118 Nev. 31, 39 P 3d 114 (2002). Under
2 either standard, sua sponte action by this Court is mandated.

3 IV.

4 **THE TRIAL COURT'S FAILURE TO GRANT WESLEY'S MOTION TO SUPPRESS**
5 **WAS CLEAR ERROR**

6 It is uncontested that material facts were misrepresented in the Henderson Police Department
7 Affidavit in Support of a Search Warrant. This was done in an effort to mislead the issuing court
8 regarding the existence of probable cause. In Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674
9 (1978), the United States Supreme Court recognized the Constitution right to challenge the
10 truthfulness of statements contained in the search warrant affidavit. At the evidentiary hearing
11 pursuant to Garettson v. State, 114 Nev. 106, 967 P. 2d 428, (1998), the testifying witness, Detective
12 Wesko, clearly admitted to providing false information in his Affidavit to Support the Search
13 Warrant. The search warrant was issued notwithstanding the clear and undisputed fact that
14 NARCUS WESLEY did not have power in his name at 4232 Gay Avenue. It was not even his
15 house. This was advised to Detective Wesko prior to the execution of the search warrant. Whether
16 Detective Wesko looked at and reviewed the statement prior to its execution is unclear, but the
17 information provided was clearly incorrect.

18 Just as importantly, it was undisputed that prior to questioning by the police, NARCUS
19 WESLEY's father had requested of the police officers, with NARCUS present, the opportunity to
20 contact the family attorney before any questioning. As such, the defendant's rights pursuant to
21 Miranda v. Arizona, 384 US. 436, 444 (1966), were invoked, but ignored by the Henderson Police
22 Department to be admissible, the State must show by a preponderance of the evidence that the
23 defendant's statements were given freely, voluntarily, and without compulsion or inducement. Allen
24 v. State, 91 Nev. 568 - 570, 540 P. 2d 101 (1975). NARCUS WESLEY was a neophyte in the
25 judicial system, and when he heard his father's request to have an attorney present before any
26 questioning being ignored by the Henderson Police Department, it was obvious to NARCUS that
27 invoking his Miranda Rights would be futile. WESLEY was led into believing that he had no right

1 to have an attorney present before being questioned. Therefore, based upon those clear violations,
2 any statements utilized by the Henderson Police Department that were received from NARCUS
3 WESLEY are inadmissible. See generally, Wong Sun v. United States, 371 U.S. 471, 478 (1963).
4 As such, the use of the statements by NARCUS WESLEY was improper.

5 V.

6 **THERE WAS NOT SUFFICIENT LEGAL EVIDENCE PRESENTED TO THE JURY TO**
7 **SUPPORT A CONVICTION OF NARCUS WESLEY BEYOND A REASONABLE**
8 **DOUBT**

8 It is axiomatic that the State must prove every element of a crime beyond a reasonable doubt.
9 Baton v. State, 118 Nev. 61, 381 P 3d 880 (2002). Based upon legally admissible evidence, very
10 little evidence was presented to the jury upon which a conviction of WESLEY could be based. Each
11 of the victims in this case testified that since they were lying down with their face on the ground they
12 were unable to view any activities. The victims could only testify as to what they heard, not saw,
13 and certainly no one could legally identify the voice of NARCUS WESLEY. In fact, since no victim
14 observed WESLEY's face, no one could accurately identify WESLEY beyond a reasonable doubt.

15 It has been recognized that reliability is the lynchpin in determining the admissibility of both
16 in court identification testimony as well as evidence concerning out of court identifications. People
17 v. Reid, 598 P 2d 148, 42 Colo. App. 273 (1979); see also, State v. Cottrell, 968 P 2d 1090, 32 Idaho
18 181 (1998). In Nevada, the test applicable to identification is whether, in light of the totality of the
19 circumstances, the identification was so unreasonably suggestive and conducive to irreparable
20 mistaken identification that the defendant was denied due process of law. Bolin v. State, 114 Nev.
21 503, 960 P 2d 784 (1998). Additionally, The State of Colorado has held that the People have the
22 burden of establishing by clear and convincing evidence that an in Court identification is based upon
23 the witnesses prior independent observations of the defendant. People v. Monroe, 907 P 2d 690,
24 Colo. App. (1995).

25 In the instant case, there was no out of court identification of WESLEY by the victims. The
26 in court "identifications" of WESLEY were clearly suspect. Each witness testified that their head
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1 was down and that they never saw WESLEY's face. The only description of the perpetrator was as
2 a taller, skinnier, African-American male. That description must fit thousands of people in Clark
3 County, Nevada. Since WESLEY was the defendant and the only African-American male subject
4 to identification, the identification was clearly suspect.

5 Moreover, a review of the testimony at trial showed that the majority of the victims testimony
6 referred to the activities as being done by "them" or "they" and not WESLEY. Little, if any,
7 activities were attributed to WESLEY. The only actions clearly testified to by the victims were all
8 actions of Delarian Wilson, not WESLEY. As such, when a party challenges the sufficiency of the
9 evidence on appeal in a criminal case, the standard of review is whether, reviewing the evidence in
10 a light favorable to the prosecution, a reasonable jury could have been convinced of the defendant's
11 guilt beyond a reasonable doubt. Gaxiola v. State, 121 Nev. 638, 119 P 3d 1225 (2005).

12 Using the standard set forth in Gaxiola, the conviction of WESLEY cannot stand. No viable,
13 undisputed, and legal evidence implicating WESLEY was presented before the jury. When looked
14 at in its entirety, the evidence against WESLEY was clearly insufficient and cannot support his
15 convictions. There was never any evidence of an agreement between WESLEY and Wilson to even
16 support an inference of a conspiracy between them. See Bolden v. State, 121 Nev. 908, 124 P. 3d
17 191 (2003). As this court stated in Bolden, supra, "absent an agreement to cooperate in achieving
18 the purpose of a conspiracy, mere knowledge of, acquiesce in, or approval of that purpose does not
19 make one a party to conspiracy. Id., at 910. Absent a conspiracy, there was no evidence at all
20 presented to the jury to inculcate WESLEY.

21 VI.

22 THE SENTENCE IMPOSED UPON WESLEY IS CUMULATIVE AND EXCESSIVE

23 WESLEY was sentenced to five (5) separate ten to life sentences with a consecutive ten to
24 life sentence for Use of a Deadly Weapon. Each of those sentences was related to one alleged act
25 of WESLEY digitally penetrating Danielle Browning. Not only is that sentence excessive, it is also
26 cumulative. Braunstem v. State, 118 Nev. 68, 40 P 3d 413 (2002); see also, Crowley v. State, 120
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1 Nev. 30, 83 P 3d 282 (2004). As the Nevada Supreme Court has previously held, "a Court should
2 normally presume that the legislature did not intend multiple punishments for the same offense."
3 Ebeling v. State, 120 Nev. 401, 91 P 3d 599 (2004). Moreover, the Court has held that when a
4 Defendant receives multiple convictions based on a single act, the Supreme Court will reverse
5 redundant convictions that do not comport with legislative intent. Wilson v. State, 121 Nev. 345,
6 114 P. 3d 285 (2005).

7 The same rational exists as to WESLEY's sentences of sixty to one hundred eighty months
8 with a consecutive sixty to one hundred eighty months for Use of a Deadly Weapon on four counts
9 of Robbery With Use of a Deadly Weapon. Not only was there no evidence that WESLEY
10 committed any robbery, but those sentences are excessive and cumulative. In reality, if WESLEY's
11 convictions and sentences are not reversed by this Honorable Court, this Twenty-Five (25) year old
12 gentleman with no prior criminal convictions will never get out of prison for an incident that, at best,
13 he was merely present for. Such an unjust result cannot be condoned by this Honorable Court.

14 VII.

15 CONCLUSION

16 A review of NARCUS WESLEY's trial shows that from its beginning WESLEY had no
17 chance to prevail. Prior to trial, the court wrongfully denied WESLEY's Motion to Suppress.
18 Immediately thereafter, WESLEY was denied a jury of his peers. Out of a panel of eighty (80)
19 persons, the district attorney arbitrarily excused one of the two African-Americans eligible for the
20 jury.

21 Once the trial began, WESLEY's counsel conceded WESLEY's guilt to the jury in his
22 opening statement. This improper practice was done without WESLEY's knowledge or consent.
23 Moreover, as the trial proceeded, WESLEY's counsel did nothing to prevent the jury from hearing
24 improper, and inadmissible statements from WESLEY's co-defendant and his alleged co-conspirator,
25 Delerian Wilson. This was a clear Ratson violation. No motions were made, and no objections
26 offered.

1 All statements offered at trial referred to the activities of "they" or "them," but again, no
2 objections were made. The "identifications" of WESLEY were clearly suspect. No witness ever saw
3 WESLEY's face. He was merely the "taller, skinner, African-American male" who may have been
4 in the house. The "taller, skinner, African-American male" never robbed any victim, or asked any
5 victim to perform any sex act.

6 Finally, WESLEY's counsel inexplicably asked to, and were permitted to have WESLEY's
7 co-defendant and alleged co-conspirator's guilty plea to three (3) felonies which were awaiting a jury
8 decision to be reenacted before the jury. If WESLEY's co-defendant and alleged co-conspirator had
9 already admitted his guilt, how could the jury find WESLEY not guilty of the crimes? It was a "no
10 brainer" for the jury. NARCUS WESLEY had no chance.

11 Any one of these errors fatally flawed WESLEY's trial. The cumulative effect of the clear
12 violations made WESLEY's trial a sham. WESLEY was never afforded the right to a fair trial. As
13 the Nevada Supreme Court has previously held "the cumulative affect of errors may violate a
14 defendant's constitutional right to a fair trial though errors are harmless individually." Hernandez
15 v. State, 118 Nev. 513, 53 P.3d 1100 (2002).

16 Therefore, either individually or cumulatively the gross errors which occurred in WESLEY's
17 trial mandate the reversal of his convictions and remand for a new trial.

18 DATED this 27th day of July, 2009.

19 Respectfully Submitted,
20 LAW OFFICE OF DAN M. WINDER, P.C.

21 By: 

22 Dan M. Winder, Esq.
23 Nevada Bar No: 001569
24 Arnold Weinstock, Esq.
25 Nevada Bar No: 000810
26 3507 W. Charleston Blvd.
27 Las Vegas, Nevada 89102
28 Telephone: (702) 474-0523
Facsimile: (702) 474-0631
Email: winderdayatt@att.com
Attorney for Appellant

1 **CERTIFICATE OF COMPLIANCE**

2 I hereby certify that I have read this appellate brief, and to the best of my knowledge,
3 information, and belief, it is not frivolous or interposed for any improper purpose, I further certify
4 that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP
5 28(e), which requires every assertion in the brief regarding matters in the record to be supported by
6 appropriate references to the record on appeal. In understand that I may be subject to sanctions in
7 the event that the accompanying brief is not in confirmative with the requirements of the Nevada
8 Rules of Appellate Procedure.

9 DATED this 27th day of July, 2009.

10 LAW OFFICE OF DAN M. WINDER, P.C.

11 By: 

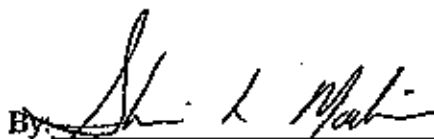
12 Dan M. Winder, Esq.
13 Nevada Bar No: 001569
14 Arnold Weinstock, Esq.
15 Nevada Bar No: 000810
16 3507 W. Charleston Blvd.
17 Las Vegas, Nevada 89102
18 Telephone: (702) 474-0523
19 Facsimile: (702) 474-0631
20 Email: winderdayaltv@aol.com
21 Attorney for Appellant
22
23
24
25
26
27
28

1 **CERTIFICATE OF MAILING**

2 I hereby certify that service of the Appellant's Opening Brief was made this 29th day of
3 July, 2009, by depositing a copy in the U.S. Mail, postage prepaid, addressed to:

4 Nevada Attorney General
5 100 N. Carson Street
6 Carson City, Nevada 89701

7 District Attorney
8 200 Lewis Ave., 3rd Floor
9 Las Vegas, Nevada 89155

10
11 By 

12 An employee of LAW OFFICE OF DAN M. WINDER, P.C.

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1 IN THE SUPREME COURT OF THE STATE OF NEVADA

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5 NARCUS S. WESLEY,

6 Appellant,

7 v.

8 THE STATE OF NEVADA,

9 Respondent.

) Case No. 52127

)
) Electronically Filed
) Oct 28 2009 04:20 p.m.
) Tracie K. Lindeman

10
11 RESPONDENT'S ANSWERING BRIEF

12 Appeal From Judgment of Conviction and Sentence
13 Eighth Judicial District Court, Clark County

14 DAN M. WINDER, ESQ.
15 Law Offices of Dan M. Winder, P.C.
16 Nevada Bar #001569
17 ARNOLD WEINSTOCK, ESQ.
18 Law Office of Dan M. Winder, P.C.
19 Nevada Bar #000810
20 3507 W. Charleston Blvd.
21 Las Vegas, Nevada 89102
22 (702) 474-0523

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

CATHERINE CORTEZ MASTO
Nevada Attorney General
Nevada Bar #003926
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

23
24
25
26
27
28 Counsel for Appellant

Counsel for Respondent

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1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
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4
5 NARCUS S. WESLEY,) Case No. 52127
6 Appellant,)
7 v.)
8 THE STATE OF NEVADA,)
9 Respondent.)

10 **RESPONDENT'S ANSWERING BRIEF**

11 **Appeal from Judgment of Conviction and Sentence in**
12 **Elghth Judicial Distriet Court, Clark County**

13 **STATEMENT OF THE ISSUE(S)**

- 14 1. WHETHER THE ADMISSION OF CO-DEFENDANT WILSON'S
15 STATEMENTS VIOLATED THE CONFRONTATION CLAUSE.
16 2. WHETHER ADMISSION OF CO-DEFENDANT WILSON'S GUILTY
17 PLEA DURING APPELLANT'S TRIAL WAS REVERSIBLE ERROR.
18 3. WHETHER APPELLANT'S TRIAL COUNSEL MADE ERRORS
19 SUFFICIENT TO WARRANT SUA SPONTE REVERSAL OF
20 APPELLANT'S CONVICTION.
21 4. WHETHER THE TRIAL COURT'S FAILURE TO GRANT
22 APPELLANT'S MOTION TO SUPPRESS WAS CLEAR ERROR.
23 5. WHETHER THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE
24 CONVICTION OF APPELLANT BEYOND A REASONABLE DOUBT.
25 6. WHETHER THE SENTENCE IMPOSED UPON APPELLANT WAS
26 CUMULATIVE AND EXCESSIVE.
27 7. WHETHER JUROR ABERNATHY WAS PROPERLY DISMISSED.

28 **STATEMENT OF THE CASE**

On April 20, 2007, the State filed an Information charging Narcus S. Wesley
(hereinafter "Appellant ") and Delarian K. Wilson (hereinafter "Wilson ") with multiple
counts of Conspiracy, Burglary, Robbery, Assault, Kidnapping, Sexual Assault, Coercion,

1 and Open or Gross Lewdness, all with use of a deadly weapon. 1 AA 16-24. Co-Defendant
2 Wilson entered into negotiations with the State and pleaded guilty to two counts of Robbery
3 with Use of a Deadly Weapon and one count of Sexual Assault.

4 Meanwhile, Appellant filed a Motion to Suppress Fruits of Illegal Search on March
5 11, 2008, claiming that the Henderson Police Department (hereinafter "HPD ") intentionally
6 misrepresented material facts in the affidavit in support of a search warrant. 1 AA 30, 34.
7 Specifically, Appellant claimed that the HPD knew that Appellant did not have power in his
8 name at the address located for him by Nevada Power and therefore, proceeding on this
9 information was an intentional misrepresentation. 1 AA 35. Furthermore, Appellant argued
10 that since the HPD did not have a valid search warrant, statements by Appellant indicating
11 his involvement in the above-related crimes should be suppressed. 1 AA 36. The State filed
12 its Opposition on March 24, 2007. 1 AA 58. At the April 9, 2008, hearing on the Motion to
13 Suppress, the district court heard the testimony of Detective Curtis Weske, Nevada Power
14 Company Employee Donna Lamonte, and Narviez, Angela, and Narcus Wesley. 1 AA 135.
15 The court recognized that there was misinformation on the application for the search
16 warrant, but concluded that it was not done intentionally or recklessly. 2 AA 246. The court
17 further noted that the misinformation on the application was not noticed by HPD in time to
18 correct it, and that even if it had been, it would not matter because the remainder of the
19 information in the application was sufficient to reach the level of probable cause. 2 AA 246.
20 The court finally noted that HPD Mirandized Appellant and informed him that he had the
21 right to have an attorney and also that Appellant could stop the questioning at any time. 2
22 AA 247. The court denied Appellant's Motion to Suppress on April 9, 2008.

23 Appellant's jury trial began on April 9, 2008, and concluded on April 18, 2008. The
24 jury convicted Appellant of all eighteen (18) counts alleged in the Second Amended
25 Information. 1 AA 116-21. On July 3, 2008, Appellant was adjudged guilty of all eighteen
26 (18) counts and sentenced as follows¹: as to Counts I and XVIII – TWELVE (12) months; as

27
28 ¹ The State filed a Motion to Correct Illegal Sentence as to Counts 12-15, and 17 as the court
had previously given Wesley EIGHT (8) to TWENTY (20) years instead of TEN (10) to

1 to Counts II, III, and XI – TWENTY-EIGHT (28) to SEVENTY-TWO (72) months; as to
2 Counts IV, VI, VII, and IX – SIXTY (60) to ONE HUNDRED EIGHTY (180) months plus
3 an equal and consecutive term of SIXTY (60) to ONE HUNDRED EIGHTY (180) months
4 for the use of a deadly weapon; as to Counts V and VIII – TWENTY-FOUR (24) to
5 SEVENTY-TWO (72) months; as to Count X – SEVENTY-TWO (72) to ONE HUNDRED
6 EIGHTY (180) months plus an equal and consecutive term of SEVENTY-TWO (72) to
7 ONE HUNDRED EIGHTY (180) months for the use of a deadly weapon; as to Counts XII –
8 XV, and XVII – TEN (10) years to LIFE plus an equal and consecutive term of TEN (10)
9 years to LIFE for the use of a deadly weapon; and as to Count XVI – TWENTY-FOUR (24)
10 to SEVENTY-TWO (72) months plus an equal and consecutive term of TWENTY-FOUR
11 (24) to SEVENTY-TWO (72) months for the use of a deadly weapon; all counts to run
12 concurrently. 1 AA 127-32. Judgment of Conviction was filed on July 18, 2008, and an
13 Amended Judgment of Conviction reflecting a correction in the sentence to Counts XII –
14 XV, and XVII was filed on October 8, 2008. 1 AA 122, 127. Appellant filed a Notice of
15 Appeal with the Supreme Court of Nevada on July 24, 2008.

16 STATEMENT OF THE FACTS

17 On February 18, 2007, Ryan Tognotti, Clint Tognotti, Aitor Eskandon, and Justin
18 Foucault (hereinafter “Justin F.), were watching a movie at 690 Great Dane, Henderson,
19 Nevada, when there was a knock at the door. 4 AA 818. Ryan answered the door and saw
20 two men, a short and stocky African-American male later identified through confession to be
21 Co-Defendant Wilson, and a tall and more slender African-American male later identified
22 through confession to be Appellant. 5 AA 977. Claiming to be looking for Grant, Wilson
23 and Appellant became agitated when Ryan informed them that he did not know a Grant nor
24 did a Grant live at the house. 5 AA 978. The men then lifted guns out of their waistbands,
25 pointed them at the four men in the living room, and barged inside. 5 AA 978.

26
27 TWENTY (20) as called for under the Statute. 1 AA 132. The court corrected the sentence
28 at a hearing on September 23, 2008. Defendant was present with counsel during said
hearing. The corrected sentence is listed above.

1 Wilson and Appellant ordered Ryan, Clint, Aitor, and Justin F. onto the floor, face
2 down, with their arms over their heads stacking their hands on top of each other in the
3 middle of the circle. 4 AA 889. They then asked if anyone else was in the apartment. 5 AA
4 979. Ryan indicated that Justin Richardson (hereinafter "Justin R. ") and Danielle Browning
5 were sleeping in Justin R.'s room down the hall. 5 AA 979. Wilson went into Justin R.'s
6 room and yelled at them to get up and walked them at gunpoint out into the living room to
7 join the others. 4 AA 818-19. Appellant said that he had a gun and told all six not to move.
8 4 AA 823, 892. Wilson demanded all of the cash, cell phones, and wallets that the six had in
9 their possession. 4 AA 828. Upon finding only \$20 between them, Wilson became upset
10 and told them that he and Appellant needed more money or they were going to shoot them
11 all. 5 AA 980. Since none of the victims had any more cash, Wilson asked who had money
12 in their bank accounts. 5 AA 981. Ryan and Justin F. said they did and were subsequently
13 ordered to hand over their ATM cards and pin numbers. 4 AA 828. Wilson took Ryan at
14 gunpoint to get his car keys. 5 AA 981. Before Wilson and Ryan left the apartment, Wilson
15 told all of the victims that, "If you guys fuck up, I am going to have my boy shoot you and
16 then I am going to shoot your friend. 1 AA 60. Wilson then forced Ryan at gunpoint to
17 drive to two separate ATMs in the area, keeping the gun pointed at Ryan's hip the entire
18 time. 5 AA 981-82, 983. In total, Ryan withdrew \$500 from Justin F.'s account and \$400
19 from his own account. 1 AA 49.

20 Meanwhile, Appellant stayed with the remaining victims. 4 AA 830. He told the
21 victims that if any of them moved, he would shoot them. 5 AA 898. At no point from
22 entering the house until Wilson left with Ryan, did Appellant utter a word of protest against
23 Wilson's actions. 4 AA 830-31. At no point after Wilson left him alone with the remaining
24 victims did Appellant try to call the police or release any of the victims. 4 AA 830-31.

25 When Ryan and Wilson returned, Wilson informed the victims that they were 90%
26 done but that there remained 10% more to finish. 5 AA 984. Wilson then ordered Justin R.
27 and Danielle to take off their clothing and have sex. 4 AA 832. Overcome by the stress of
28 the situation, Justin R. was unable to sustain an erection, enraging Wilson. 4 AA 832.

1 Wilson told the victims that if Justin R. did not perform, that he would start killing everyone.
2 4 AA 832, 906. The suspects then ordered Danielle to perform fellatio on Justin R. to help
3 him sustain an erection. 5 AA 904. When this did not work, Wilson ordered them to
4 perform mutual oral sex on each other. 5 AA 919. At this point Wilson noted that if Justin
5 R. could not "get it up" that either he or Appellant would do it. 4 AA 835. During this time,
6 Appellant was standing in the background "egging" Wilson on, telling him that if Justin R.
7 could not have sex with Danielle, he could. 5 AA 910. Since Justin R. was unable to
8 become aroused sufficient to have sex with Danielle, Wilson ordered Ryan to get "hard",
9 otherwise he or Appellant would have to. 5 AA 910. Wilson handed Ryan a bottle of lotion
10 and told him to masturbate. 4 AA 872. Both Appellant and Wilson were egging Ryan on,
11 encouraging him to get hard so he could have sex with Danielle. 4 AA 835. Ryan too was
12 unable to sustain an erection. 4 AA 835. Wilson asked if anyone could "get it up," to which
13 Appellant responded, "I'm hard, I can have sex with her." 5 AA 1015.

14 Wilson ordered Danielle to the staircase. 4 AA 836. Appellant walked over and told
15 Danielle that if Justin R. could not have sex with her, he could. 4 AA 839. Appellant moved
16 Danielle to a nearby recliner. 4 AA 839. Appellant told her that he was hard and he wanted
17 to have sex with her. 4 AA 839. He asked her "if she liked it." 4 AA 839. She said no. 4
18 AA 839. She repeatedly told Appellant that she did not want to engage in sexual relations
19 with him but he stated, "I have a gun so I'm in charge." 4 AA 841. Appellant told Danielle
20 to spread her legs and put them directly in the air. 4 AA 841. Danielle was shaking so badly
21 that she could not keep her legs in the air. 1 AA 63. Appellant told Danielle that if she did
22 not stop shaking he was going to shoot her. 5 AA 1013. Danielle still could not stop
23 shaking, so Appellant held her legs up and began touching her. 1 AA 63. Appellant then put
24 his finger inside Danielle's vagina. 1 AA 63. Wilson eventually told Appellant to stop
25 because they had to go. 4 AA 842. Appellant reluctantly stopped. 4 AA 842-43.

26 Appellant and Wilson grabbed all of the victim's cell phones and carried them
27 outside. 1 AA 50. They told the victims that they were going to leave, they had better count
28 to two minutes before moving, and that no one better call the police or they know people that

1 will come back and kill them. 1 AA 50. While the victims were counting out the two
2 minutes, Wilson reentered the house and yelled that he saw someone move. 4 AA 844. The
3 victims said that no one had moved, and Wilson told them that he was just joking and that he
4 had put the phones outside. 4 AA 844. All of the cell phones, except Danielle's cell phone,
5 were later found outside of the house. 4 AA 845. After counting to two minutes, the victims
6 got up and locked the doors. 5 AA 927-29. Shortly thereafter the victims went to Clint's
7 apartment where they called the police. 4 AA 846. After taking the statements from the
8 victims, the HPD began searching for Danielle's cell phone. 6 AA 1046. Detectives also
9 began looking into the previous residents of 690 Great Dane to see if they could find a
10 "Grant. 6 AA 1046.

11 HPD Detectives Hartshorn and Weske were able to locate Grant Hieb, a former
12 resident of 690 Great Dane, Henderson, Nevada. 5 AA 1038. Grant agreed to go to the
13 Henderson Police Station and assist in the investigation. 5 AA 1038. Grant was able to
14 identify Delarian Wilson as a friend who had previously robbed him. 5 AA 1039; 6 AA
15 1042-43. A little while later HPD received word that Danielle's cell phone had been used in
16 the vicinity of Circus Circus. 6 AA 1046. Wilson was detained while playing cars at Circus
17 Circus and admitted to going to 690 Great Dane with the intention of robbing Grant of his
18 money and marijuana. 6 AA 1047, 1066. Wilson stated that he was with his friend Narcus
19 who played football at UNLV, which was similar to the name "Marcus" which the victims
20 had remembered hearing. 6 AA 1074.

21 Detectives went to UNLV to check the football roster and found that a Narcus Wesley
22 played UNLV football and used 2372 Valley Drive in Las Vegas as his address. 6 AA 1074.
23 Detectives contacted Nevada Power to determine whether Appellant had power at that
24 address. 6 AA 1074. HPD Detectives were advised that there was no longer power in
25 Appellant's name at that address, but that the power had been turned on at 4232 Gaye Lane,
26 Las Vegas. 6 AA 1074. HPD Detectives faxed over their subpoena information to Nevada
27 Power and headed to the Gaye Lane Address. 6 AA 1074. Upon arriving at the Gaye Lane
28 address, the Detectives observed a 2005 Chrysler 300M registered to Appellant parked in the

1 driveway, the same car Wilson stated his partner was driving. 6 AA 1075. The Detectives
2 obtained a search warrant for that address as well. 6 AA 1075. SWAT entered the premises
3 and served the search warrant. 6 AA 1075.

4 Officer Wesko advised Appellant of his Miranda rights, confirmed that Appellant
5 understood those rights, and then proceeded to interview him. 1 AA 67. Appellant stated
6 that Wilson asked him to go get some marijuana. 6 AA 1086. Wilson also asked if
7 Appellant knew where Wilson could get some money, but Appellant did not. 1 AA 67.
8 Appellant then stated that once they arrived at the 690 Great Dane address Wilson told him
9 to knock on the door and get out of the way. 1 AA 67. Appellant then claimed that he only
10 simulated having a gun. 1 AA 67. When Wilson recognized that Grant did not live there,
11 Wilson decided that he needed the money anyway so they continued to rob the victims. 1
12 AA 68. Appellant stated that he went along with Wilson for the most part, but that Wilson
13 was the person in charge. 1 AA 68. He stated that he told Wilson he could perform when all
14 the other guys could not because "he did not want to seem like a punk. 6 AA 1087. He
15 admitted that he did rub the top of Danielle's vagina after asking her if it was ok, but that
16 Danielle did not seem like she enjoyed it. 6 AA 1087. Appellant never stated that he was
17 afraid or give any indication that he was afraid of Wilson. 6 AA 1087. Appellant indicated
18 that at one point, he thought the entire robbery was funny, because it was like being in the
19 movies. 6 AA 1087. Appellant indicated that he stayed at the house after Wilson left
20 because he was dressed in a t-shirt, it was cold outside, and he did not know where he was,
21 despite having six victims on the floor who could tell him the address. 6 AA 1087. Finally,
22 Appellant identified the clothes he was wearing during the robbery. 6 AA 1087. After
23 hearing the testimony of all six (6) victims, who identified Appellant by body-type, as well
24 as the officers who responded to the scene and heard Appellant's confession, the jury
25 convicted Appellant of all eighteen (18) counts. 6 AA 1114.

26 ARGUMENT

27 I.

28 THE ADMISSION OF CO-DEFENDANT WILSON'S STATEMENTS DID NOT VIOLATE THE CONFRONTATION CLAUSE

1 Appellant claims that a vast majority of the evidence incriminating Appellant was Co-
2 Defendant Wilson's statements and since Wilson was not called to testify, Appellant's
3 Confrontation Clause rights were violated. OB, pp. 8-9. Further, Appellant claims that
4 "absent the statements and confessions of Co-Defendant Wilson, [Appellant] could never
5 have been convicted beyond a reasonable doubt. *Id.* However, Appellant fails to identify
6 any specific statements of Wilson that he claims violated the Confrontation Clause leaving
7 this Court and the State to speculate about the factual basis for this claim. Notably, Wilson's
8 taped interview by HPD was offered by Appellant and played for the jury over the objections
9 of the State:

10 **Ms. Kollins:** Based on the motions filed pretrial, this Defendant was
11 deprived of his right to confront Delarian Wilson, and now they are
12 playing the very tape that implicates to some extent their client, they
understand and have made that strategic decision.

13 For purposes of counsel, I'd ask counsel to put that on the record.

14 **Mr. Landis:** Without doubt, Judge.

15 Just to be clear judge, in my motion to sever I had a number of
16 issues.

17 Bruton issues were one.

18 A second ground, as we say, with Grant testifying we intended to
19 introduce that testimony about Delarian Wilson's prior robberies, that
20 would have not been admissible if he was sitting here, and you are right,
21 we are making the reasonable decision after talking to each other, *and*
22 *talking to his client*, to admit his statement of plea and plea canvas, and
we're not flying off the cuff to make this, I assure you this.

23 **Ms. Kollins:** I guess then because this is a decision the Court has made,
24 I would ask Mr. Banks and Mr. Landis to reiterate their decision to still
25 play this based on that ruling, because I mean, they made a decision to
26 play this tape and waive *any confrontation based on the playing of the*
27 *entire tape*, and if that has affected their strategy or decision at all, they
28 need to make a record it hasn't, and they are happy with the portion that
is going to be played.

I'm just looking to preserve the record, Your Honor.

Mr. Banks: Yeah, we think the whole thing should be played, with that
part that concerns the Court be redacted.

I guess if - I don't know if it's a time issue.

The Court: It's not a time issue, just that it serves no purpose, it's
totally irrelevant to listen to fabrications by Wilson. That serves no
point.

Everybody admits they were inconsistent stories.

1 6 AA 1099, 1101 [emphasis added]. The Defense then offered Wilson's taped
2 statements to police into evidence which were subsequently played to the jury. 6 AA 1102.
3 During the playing of the tapes, Defense counsel continued to ask questions highlighting the
4 inconsistencies in Wilson's statements. 6 AA 1103. Finally, highlighting the
5 inconsistencies between Wilson's statements to police, the testimony of the victims in this
6 case, and Wilson's subsequent guilty plea, the Defense offered Wilson's guilty plea
7 agreement into evidence. 6 AA 1105. Accordingly, Appellant waived any Confrontation
8 Clause violations through his counsel when he proffered Wilson's statements to the police
9 over the objections of the State. Defense counsel also waived any Confrontation Clause
10 violations on the record after speaking to their client. 6 AA 1099.

11 The Confrontation Clause is meant to protect Defendants from testimonial evidence
12 *offered by the State* where the Defendant would not be given an opportunity to confront
13 witnesses against him or her. DeRose v. First Judicial Dist. Ct., 115 Nev. 225, 230-1, 985
14 P.2d 157, 160-1 (1999); see U.S. Const. Amend. VI, Pointer v. Texas, 380 U.S. 400, 403, 85
15 S.Ct. 1065 (1965) [emphasis added]. The right to confrontation may be waived by the
16 failure to object to the use of such evidence at trial, Ford v. State, 122 Nev. 796, 806, 138
17 P.3d 500, 507 (2006), or where a defense attorney continues to question a witness regarding
18 the testimony objected to. See Dias v. State, 95 Nev. 710, 715, 601 P.2d 706, 709 (1979).
19 The test for the validity of a waiver of a fundamental constitutional right is whether the
20 defendant made an intentional relinquishment or abandonment of a known right or privilege.
21 Raquepaw v. State, 108 Nev. 1020, 1022, 843 P.2d 364, 366 (1992). Counsel may not waive
22 defendant's right of confrontation over his client's objections. Id.

23 It is clear from the record that statements made by Wilson were offered at the
24 insistence of defense counsel for the purpose of painting Wilson as the perpetrator of the
25 crimes. The State asked the Defense specifically to acknowledge that the decision to offer
26 these statements was a strategic decision. 6 AA 1099. Defense counsel stated on the record
27 "without a doubt that they did not enter into decision to admit Wilson's plea and plea
28 canvas lightly. 6 AA 1099. Mr. Landis stated that this was a reasonable decision that they

1 made after talking to each other (Mr. Landis and Mr. Banks) and after talking to their client.
2 6 AA 1099. Appellant was present during this conversation between the parties and the
3 court and did not manifest any disagreement. 6 AA 1099. It is clear from the record that the
4 decision to admit Wilson's statements was the result of planning on the part of the Defense.
5 Since Appellant was present in court when the exchange took place, and his counsel stated
6 that they spoke with their client about admitting this statements, Appellant through his
7 attorneys made an intentional relinquishment or abandonment of his confrontation clause
8 claims. See Raquepaw, 108 Nev. at 1022, 843 P.2d at 366. Appellant's confrontation rights
9 were not violated when he intentionally offered the statements of his former Co-Defendant.
10 In fact, Appellant did not even reserve this issue for appeal since his counsel offered these
11 statements over objections by the State. Appellant's claim has no merit and should be
12 denied.

13 II.

14 ADMISSION OF CO-DEFENDANT WILSON'S GUILTY PLEA DURING 15 APPELLANT'S TRIAL WAS NOT REVERSIBLE ERROR

16 Appellant contends that the admission of Wilson's guilty plea is inadmissible and
17 mandates a reversal of Appellant's conviction and a remand for a new trial. OB, p. 9.
18 Furthermore, Appellant contends that, although it was trial counsel's idea to bring in
19 Wilson's guilty plea, it was Judge Bixler's decision to allow the "improper and inflammatory
20 information to be presented to the jury. Id. at p. 10. He states that this decision was never
21 discussed with him nor did he consent to the presentation of such evidence. Id. This issue
22 was not preserved by Appellant for appeal and therefore should be summarily dismissed.
23 McLellan v. State, 182 P.3d 106 (Nev. 2008). Furthermore, the evidence was proffered by
24 the Defense in an attempt to show that Co-Defendant Wilson was the person responsible for
25 the crimes committed. 6 AA 1099. Just because this strategy did not lend itself to an
26 acquittal by the jury does not now mean that Appellant should be able to challenge it; in fact
27 Appellant should be estopped from raising any objection to such evidence on appeal.

28 The district court heard the following arguments concerning Co-Defendant Wilson's
guilty plea:

1 **The Court:** . . . You want to present before this jury evidence that
2 Delarian Wilson has pled guilty to the charges he plead guilty to last
3 week?

4 **Mr. Landis:** Correct.

5 * * *

6 **The Court:** I think if I remember correctly, I specifically had to ask
7 Defendant Wilson in regards to the sexual assault charge upon what
8 basis he was entering a plea in the sexual assault, and he specifically
9 described it as an aider and abettor to Co-Defendant Wesley. . .

10 The point is, if you are going to get into this, you got to be able to
11 get into it all the way. You really are not going to be allowed to pick
12 and choose that information that you want the jury to hear and exclude
13 any of the other relevant information.

14 I think that that is something you are going to have to decide.

15 I don't – or *I do think that if you guys think strategically that is the*
16 *right thing to do, I think you should be allowed to do it.*

17 Again, you have to decide if you want to have all of that information
18 presented.

19 But I think the full picture of his plea is going to have to be
20 presented in order to make it fair.

21 **Mr. Landis:** Okay. We can live with that ruling, Judge.

22 That would include a redacted copy of the guilty plea agreement? . . .

23 **The Court:** Anything, whether it's in the guilty plea agreement, the
24 canvas, anything that pertains to anything touching upon penalty, has to
25 be redacted. . .

26 That he understands, and other than that, other than any information
27 regarding the penalty, I don't care how you do it, if it's a guilty plea
28 agreement, if it's a canvas, if it's the information, I think however we
 get it, it has to be the full picture. . .

Ms. Luzaich: Then – But I also get to go into Delarian Wilson's
 statement where he tells the police, yeah, I was there, yeah, I did this,
 but he and Narcus Wesley had the gun, and he and Narcus Wesley
 committed the sexual assault, if they are going to bring that in, I get to
 do that as well.

Mr. Landis: We are not arguing any different.

The Court: All right. We are all on the same page.

 Again, this all stems from their decision how they want to handle it.

 If they choose not to allow any of it in, that's fine, *but if they choose*
 to bring it in, then that is the rule, that's how we'll approach it.

6 AA 1057-58 (emphasis added). Thus, at the insistence of Appellant's trial counsel,
Co-Defendant Wilson's guilty plea canvas and agreement were entered into evidence for
strategic purposes. The statements were proffered in an attempt to show that Wilson was the
person responsible for the crimes committed. 6 AA 1099.

1 This issue is not properly before this court since Appellant did not preserve this issue
2 below. In fact, Appellant offered this evidence, did not object to its admission at trial, and
3 argued vehemently for its admission over the objections of the State. Since Appellant
4 proffered this evidence, he should now be estopped from challenging it on appeal just
5 because its admission did not have the intended effect on the jury. Carter v. State, 121 Nev.
6 759, 121 P.3d 592 (2005). In Carter, the Nevada Supreme Court found that a sexual assault
7 defendant was estopped from raising any objection that admission of evidence of his prior
8 drug involvement was error, where defendant himself elicited evidence of his illegal drug
9 use. Id. The Court determined that since the defendant participated in the "alleged error",
10 he should be estopped from raising any objection on appeal. Id. This ruling has applied in
11 other cases as well. See Sidote v. State, 94 Nev. 762, 587 P.2d 1317 (1978) (Defendant may
12 not consciously invite district court action perceived as favorable to him and then claim it as
13 error on appeal); Van Valkenberg v. State, 594 P.2d 707 (1979) (defense counsel agreed at
14 trial to instruction so they could not challenge it on appeal). While it is generally true that a
15 guilty plea or conviction of one person is not admissible against another charged with the
16 same offense, Hilt v. State, 91 Nev. 654, 662, 541 P.2d 645, 650-51 (1975), where such
17 evidence is introduced by defense counsel as part of the trial strategy the rule has no
18 application. See People v. Burch, 22 Ill.App.3d 950, 317 N.E.2d 136 (1974). Strategy
19 decisions by counsel are "tactical" decisions and will be "virtually unchallengeable absent
20 extraordinary circumstances. Doleman v. State, 112 Nev. 843, 846, 921 P.2d 278, 280
21 (1996).

22 Appellant's claim that the decision to seek the admission of Co-Defendant Wilson's
23 guilty plea was never discussed with him nor did he consent to the presentation of the
24 evidence to the jury is belied by the record. The State requested that the Defense submit on
25 the record that their decision to enter Co-Defendant Wilson's statements to the police and
26 guilty plea agreement was a strategic decision and that they were in fact waiving
27 Confrontation Clause violation claims. 6 AA 1099. Defense counsel stated that they were
28 making this "reasonable decision" after speaking to each other and to their client and that

1 they were not flying "off the cuff. 6 AA 1099. Appellant was present in court when this
2 conversation was taking place. Claiming now that he did not consent to this and that this
3 was never discussed with him is false and is belied by the record.

4 Finally, Appellant's reliance upon Bruton v. United States and "Walden v. State to
5 support his claims that Co-Defendant Wilson's statements were improperly admitted is
6 misplaced. While it is true that the admission of a codefendant's confession in a joint trial
7 has been found to violate a criminal defendant's right of cross-examination, Bruton v. United
8 States, 391 U.S. 123, 126, 88 S. Ct. 1620, 1622 (1968), this was not a joint trial.
9 Furthermore, Appellant's case is distinguishable from "Walden v. State, 113 Nev. 853, 944
10 P.2d 762 (1997). The case referenced is actually titled Walker v. State, 113 Nev. 853, 944
11 P.2d 762 (1997) and Appellant's case is distinguishable. First, Appellant's attorneys were
12 not seeking to enter into evidence any exculpatory statements offered by Co-Defendant for
13 Appellant. Instead, trial counsel focused on Wilson admitting to his participation in the
14 crime and later argued that since he consistently changed his story, and Appellant did not,
15 Appellant's version of his limited involvement is the correct version. 6 AA 1103. Secondly,
16 Appellant's trial counsel offered Wilson's statements with the intent of highlighting the
17 inconsistent statements, not to provide exculpatory statements, which the district court judge
18 acknowledged. 6 AA 1101. His decision to allow them into evidence was not patently
19 unreasonable given the demonstrated defense theory. Since the admission of evidence is an
20 abuse of discretion review, and Appellant does not demonstrate how the district court abused
21 its discretion, Appellant's claim should be denied.

22 III.

23 APPELLANT'S TRIAL COUNSEL DID NOT MAKE ERRORS SUFFICIENT TO 24 WARRANT SUA SPONTE REVERSAL OF APPELLANT'S CONVICTION

25 Appellant claims that Appellant's trial counsel was "on a frolic of their own" when
26 they admitted during opening statements that the victims had been victimized. OB, p. 11.
27 He claims that his trial counsel admitted his guilt without discussing it with him and that he
28 had no option to accept his counsel's "ill-fated tactics. Id. He argues that sua sponte
reversal is required because Appellant's seeking and allowing Wilson's guilty plea hearing

1 and statements to police to be played before the jury either: "(1) had a prejudicial impact on
2 the verdict when reviewed in the context in the trial as a whole, or (2) seriously affects the
3 integrity or public reputation of the judicial proceedings. Id. at p. 12.

4 Claims of ineffective assistance of counsel should be raised in post-conviction
5 proceedings in the district court in the first instance and are generally not appropriate for
6 review on direct appeal. Feazell v. State, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995).
7 Furthermore, Appellant's trial counsel at most conceded only that certain crimes occurred
8 but not that his client participated or was guilty of those crimes. Since the issue in this case
9 was not whether the crimes occurred but whether Appellant aided and abetted or conspired
10 to assist in those crimes, Appellant's claims of prejudice is without merit.

11 Appellant's trial counsel provided the following statements to the jury with regards to
12 the crimes that night during his opening statement:

13 Mr. Landis:

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

16 4 AA 802-3. It is apparent from trial counsel's statements that he was not conceding
17 Appellant's guilt but rather foisting the blame for what happened upon Wilson. An attorney
18 cannot deprive his client of the right to have the issue of guilt or innocence presented to the
19 jury as an adversarial issue upon which the state bears the burden of proof without
20 committing ineffective assistance of counsel. Jones v. State, 110 Nev. 730, 737, 877 P.2d
21 1052, 1056 (1994). A lawyer may make a tactical determination of how to run a trial, but
22 the due process clause does not permit the attorney to enter a guilty plea or admit facts that
23 amount to a guilty plea without the client's consent. Id. In Jones, defense counsel conceded
24 that he thought the evidence showed beyond a reasonable doubt that his client killed the
25 victim but that he was guilty only of second-degree murder as he was incapable of forming
26 the requisite intent and premeditation for first-degree murder. 110 Nev. 730, 736, 877 P.2d
27 1052, 1056 (1994). Notably, Jones testified that he did not kill the victim and when
28

1 canvassed on the subject following the guilt phase, indicated to the trial court that he did not
2 consent to his counsel's argument that he was not guilty of second-degree murder. Id.

3 Appellant's case is clearly distinguishable from Jones. Trial counsel never admitted
4 that Appellant was guilty of any crime, only that the crimes had occurred. 4 AA 802-3.
5 Furthermore, he placed the blame for those crimes squarely on the shoulders of Co-
6 Defendant Wilson. 4 AA 802-3. Co-Defendant Wilson's guilt was demonstrated again
7 through his guilty plea canvas and plea and through his statements to police. At no point did
8 Appellant's trial counsel commit the egregious errors of Jones's trial counsel sufficient to
9 warrant a reversal of his conviction.

10 Since defense counsel was not admitting Appellant's guilt, Appellant did not need to
11 give his permission for statements admitting that the victim's were injured. While the client
12 may make decisions regarding the ultimate objectives of representation, the trial lawyer
13 alone is entrusted with decisions regarding legal tactics such as deciding what witnesses to
14 call. Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002). Once counsel is appointed, the
15 day-to-day conduct of the defense rests with the attorney. Id. He, not the client, has the
16 immediate-and ultimate-responsibility of deciding if and when to object, which witnesses, if
17 any, to call, and what defenses to develop. Id.

18 Defense counsel admitted on the record that they were using Wilson's statements to
19 help their defense that he was responsible and not Appellant. 6 AA 1099. ("In each case
20 [Wilson] talks about somebody else forcing him to do it, somebody else having the gun, and
21 somebody else doing the robberies, the sexual contact, and he assumes our client's position. .
22 . he lies three different times.) This position was not patently unreasonable considering
23 Appellant's own admissions to the police that he digitally penetrated Danielle's vagina. 6
24 AA 1106. Based upon Appellant's confession and the consistency of the victim's story of
25 events, defense counsel did the best they could in developing a believable defense theory.

26 Furthermore, Appellant has not demonstrated any prejudice with regards to his trial
27 counsel's actions. Prejudice is very rarely presumed. See United States v. Cronin, 466 U.S.
28 648, 104, S.Ct. 2039 (1984). Appellant makes a bare allegation that trial counsel's actions

1 resulted in his guilty verdict. The burden is on Appellant to demonstrate prejudice sufficient
2 to warrant overturning his conviction. Strickland v. Washington, 466 U.S. 668, 687, 104
3 S.Ct. 2052, 2064 (1984). Appellant does not plead facts to show that his counsel admitting
4 that the crimes occurred, considering there was going to be six witnesses testifying
5 consistently about the events that occurred, prejudiced the verdict. Rowland v. State, 118
6 Nev. 31, 39 P.3d 114 (2002). Nor does Appellant demonstrate how counsel's "errors
7 seriously affected the integrity or public reputation of the judicial proceedings. Id.
8 Appellant's bare and naked allegation should be denied.

9 IV.

10 THE TRIAL COURT PROPERLY DENIED APPELLANT'S MOTION
11 TO SUPPRESS

12 Appellant claims that the search warrant for the Gay Avenue address where Appellant
13 was located was invalid because HPD did not have probable cause and provided false
14 statements in an effort to mislead the issuing court regarding the existence of probable cause,
15 OB, p. 12. Furthermore, Appellant claims that his confession to HPD was invalid because
16 his father, with him present, had invoked his Miranda v. Arizona, 384 U.S. 436, 444, 86
17 S.Ct. 1602, 1612 (1966) rights but HPD continued questioning him. Id. Appellant's
18 contentions are without merit as the court found probable cause even without the alleged
19 misinformation included in the affidavit attached to the search warrant application and
20 Appellant never invoked his right to an attorney.

21 A. Motion to Suppress - Franks Hearing

22 The district court held a Franks hearing on April 9, 2008. 1 AA 133; see Franks v.
23 Delaware, 438 U.S. 154, 98 S.Ct. 2674 (1978). During the hearing, the court heard from
24 Detective Curtis Weske, who applied for the search warrant, Nevada Power Company
25 Employee Donna Lamonte, who gave the Detectives information prior to receiving the
26 search warrant, and Narviez, Angela, and Narcus Wesley. 1 AA 135. The court also had the
27 following information contained in the affidavit attached to the search warrant: (1) Co-
28 Defendant Wilson stated that he committed this crime with a Narcus who played UNLV
Football, upon further investigation at UNLV Athletics, Narcus was found to be Narcus

1 Wesley who lived with his father at 4232 Gaye Lane Las Vegas (1 AA 56); (2) Co-
2 Defendant Wilson stated that he and Appellant drove around in Appellant's white sedan, a
3 white sedan was registered to Narcus Wesley at 4232 Gayc Lane Las Vegas (1 AA 56); (3)
4 Co-Defendant Wilson had just confessed his involvement in a crime involving the use of a
5 deadly weapon and that Appellant had been involved in the same crime (1 AA 49-52); and
6 (4) that HPD had reason to believe Appellant could be a danger to others or potentially
7 destroy evidence (1 AA 52-53).

8 After hearing the testimony of the witnesses at the hearing and reviewing the
9 information contained the affidavit, the court ruled as follows:

10 **The Court:** . . . First of all, I don't think that any of the -- there is no
11 question that there was some misinformation on that application, as I
12 see it, and everybody understands it.

13 All right. The question is whether it was done intentionally or
14 recklessly.

15 My conclusion is no, I don't think so at all under these
16 circumstances. I think . . . it's [sic] is quite clear, the father's name, the
17 son's name. I don't think there was by any stretch, by any stretch that it
18 was done intentionally.

19 I think it was all business. If it had been noticed, I think that even
20 just a minor explanation would have sufficed, and even if it was, which
21 I don't believe for an instant that it was, I think that the rest of the
22 information still reaches the level of probable cause, and I think that it's
23 the test that the Court applies is a substantial basis for concluding
24 probable cause exculpatory was a small part of accuracy and clarity is
25 going to be.

26 2 AA 246-47. The district court found no intentional or reckless misinformation in
27 confusing the names of Narviez and Narucs in their haste to apprehend a man who had just
28 committed a violent crime. 2 AA 246-47. Even though it is true that there was
misinformation in terms of the Nevada Power Company account name, the district court
determined that HPD Detectives did not knowingly and maliciously get a search warrant
based solely on that information and that probable cause existed even without the
misinformation. 2 AA 246-47. The interplay of the factual circumstances surrounding a
search or seizure and the constitutional standards for when searches and seizures are
reasonable requires the two-step review of a mixed question of law and fact: appellate court
reviews the district court's findings of historical fact for clear error, but reviews the legal

1 consequences of those factual findings de novo. Somee v. State, 187 P.3d 152 (2008). A
2 district court's factual findings will be given deference by this court on appeal so long as
3 they are supported by substantial evidence and are not clearly wrong. Riley v. State, 110
4 Nev. 638, 647, 878 P.2d 272, 278 (1994). Based upon all of these factors, the testimony of
5 Officer Weske, Donna Lamonte, and the Wesley's themselves, the district court did not abuse
6 its discretion in determining that there was probable cause sufficient to deny the motion to
7 suppress and no bad faith on the part of police.

8 Additionally, Appellant's statements were not subject to suppression as fruits of the
9 alleged invalid search warrant or arrest. A Fourth Amendment violation does not result in
10 the suppression of any subsequently obtained confession unless the arrest was not supported
11 by probable cause. New York v. Harris, 495 U.S. 14, 110 S.Ct. 1640 (1990). In Payton v.
12 New York, 445 U.S. 573, 602-03, 100 S.Ct. 1371, 1387-88 (1980) the Supreme Court held
13 that the Fourth Amendment prohibits the police from effecting a warrantless and
14 nonconsensual entry into a suspect's home in order to make a routine felony arrest. The
15 Supreme Court held in New York that the rule in Payton was designed to protect the physical
16 integrity of the home and not to grant criminal suspects protection from statements made
17 outside their premises where the police have probable cause for arresting the suspect for
18 committing a crime. Id. 495 U.S. at 18, 110 S.Ct. at 1643. Since the district court
19 determined that there was always probable cause to arrest Appellant, his statements were
20 properly admitted.

21 B. Alleged Miranda Violation

22 Appellant's father cannot invoke his Miranda rights vicariously and therefore this
23 claim is without merit and must be denied. The following testimony was adduced at the
24 April 9, 2008, hearing on the motion to suppress:

25 Ms. Luzaich: Okay. You spoke with the Defendant?

26 Detective Weske: Yes.

27 Ms. Luzaich: Did you give him his rights per Miranda?

28 Detective Weske: Yes, I did.

1 **Ms. Luzaich:** Did you do it by memory or from a card?

2 **Detective Weske:** I believe I was handed a card.

3 **Ms. Luzaich:** Okay, and did he express to you that he understood his
4 rights?

5 **Detective Weske:** Yes, he did.

6 **Ms. Luzaich:** And then did he talk to you?

7 **Detective Weske:** Yes, he did.

8 1 AA 168. Defense counsel also questioned Appellant's father about the alleged request for
9 an attorney:

10 **Mr. Landis:** About the attorney issue, who was present, what members
11 of your family were present at that point in time? . . .

12 **Narviez Wesley:** All three of us, my wife, my wife - I was sitting there,
13 my wife was in the middle, and Narcus was alongside when I asked
14 about the attorney. So all three of us were in the room.

15 **Mr. Landis:** And what did you ask him?

16 **Narviez Wesley:** I asked him could I call my family attorney because
17 we wanted an attorney present because they wouldn't tell us nothing.
18 So I know that the law says you have the right to an attorney to be there
19 or at least advised by an attorney. They told me that we didn't need an
20 attorney there because he wasn't under arrest.

21 **Mr. Landis:** Who told you that?

22 **Narviez Wesley:** Officer Weske.

23 1 AA 225-6. Finally, Appellant testified about his interaction with HPD:

24 **Mr. Landis:** Did you hear your father at any point talk to the Henderson
25 Police Department regarding an attorney being present?

26 **Appellant:** Yes.

27 **Mr. Landis:** What did he say?

28 **Appellant:** My dad asked him, he said, well, and he said, what's going
on, and he said, we are going to call our family attorney, and the cop
say, nobody is under arrest, so you guys don't need that. . .

Ms. Luzaich: Well, in fact, you were not under arrest at that point, is
that correct? . . . Did anybody tell you you were under arrest yet? . . .

Appellant: No. . .

1 1 AA 236. The district court addressed the issue of Appellants alleged invocation of his
2 Miranda rights as follows:

3 **The Court:** Just as importantly, let me address the Miranda warnings.

4 I am not aware that the complicity, the status of the law is such that
5 you have to inform the defendant not only of their right to an attorney
6 before questioning, but that you have to go on to a further explanation
7 that includes specifically the right to have an attorney present during
8 questioning.

9 He did say that he could stop at any time that he directed him to
10 stop.

11 The Defendant acknowledged that each one of those questions was
12 clear.

13 There is nothing wrong with that argument, and the motion to
14 suppress is denied.

15 2 AA 246-47.

16 Appellant voluntarily, knowingly, and intelligently waived the rights guaranteed
17 under Miranda and therefore his statements were properly admitted by the trial court. In
18 order to admit statements made during custodial interrogation, a defendant's waiver of the
19 rights guaranteed under Miranda must be voluntarily, knowingly, and intelligently made.
20 Miranda v. Arizona, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612 (1966). A court should use a
21 totality of the circumstances evaluation in order to determine whether the Miranda warnings
22 were properly given and whether the defendant's waiver of Miranda rights was valid.
23 Edwards v. Arizona, 451 U.S. 477, 486 n. 9, 101 S.Ct. 1880, 1885 n. 9 (1981). In resolving
24 the question in light of the Miranda standards, the substance and not the form of the
25 warnings should be of primary importance. Criswell v. State, 84 Nev. 459, 462, 443 P.2d
26 552, 554 (1968). The question of the admissibility of a confession is primarily a factual
27 question addressed to the district court: where that determination is supported by substantial
28 evidence, it should not be disturbed on appeal. Echavarria v. State, 108 Nev. at 743, 839
P.2d at 595 (1992).

 The district court determined that Appellant's confession to HPD was voluntarily,
knowingly, and intelligently entered into. Furthermore, Appellant never states that he
invoked his Miranda rights, only that his father requested an attorney. Miranda rights are
personal to the defendant and can only be invoked by the defendant or his attorney, not by

1 his father. Goldstein v. State, 89 Nev. 527, 516 P.2d 111 (1973) (father hiring attorney is
2 insufficient for invocation of counsel). Accordingly, once Appellant was arrested and
3 custodial interrogation was about to take place, HPD appropriately advised Appellant of his
4 Miranda rights and Appellant made a voluntary and knowing waiver.

5 **V.**

6 **THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE CONVICTION OF**
7 **APPELLANT BEYOND A REASONABLE DOUBT**

8 Appellant claims that the State failed to prove that Appellant was the person who
9 committed the crimes since none of the victims could identify his face, the victims could
10 only testify what they heard, not saw, there was no out of court identification of Appellant,
11 and the only actions clearly testified to by the victims were committed by Co-Defendant
12 Wilson. OB, p. 14. Since Appellant confessed to being involved in the crimes, to holding
13 the victims at what they thought was gun point while Wilson took Ryan to get his money, to
14 splitting the money they stolen from the victims with Wilson, and to digitally penetrating
15 Danielle's vagina, there was more than sufficient evidence presented to convict Appellant of
16 all the counts he was charged with. This is even more true considering Appellant was
17 charged under an aiding and abetting theory.

18 In addition, all of the victims identified Appellant as a man matching the physical
19 description of the second man who was in the house that night. 4 AA 849-50, 5 AA 927,
20 987, 999, 1014, 1021. Since Appellant identified himself as the second man in the house
21 that night and all of the victims testified that Appellant matched the physical description of
22 that man, the jury reasonably concluded that Appellant was the person who helped commit
23 these crimes. The jury was free to accept Appellant's representation that he was present for
24 the commission of the crimes and then to disregard those portions that minimized his own
25 behavior and believe instead the account of the six victims as to Appellant's participation.

26 Furthermore, there was sufficient evidence presented to convict Appellant of all
27 counts he was charged with both under a conspiracy theory and under an aiding and abetting
28 theory. The standard of review for sufficiency of the evidence upon appeal is whether the
jury, acting reasonably, could have been convinced of the defendant's guilt beyond a

1 reasonable doubt. Edwards v. State, 90 Nev. 255, 258-259, 524 P.2d 328, 331 (1974). In
2 reviewing a claim of insufficient evidence, the relevant inquiry is "whether, after reviewing
3 the evidence in the light most favorable to the prosecution, any rational trier of fact could
4 have found the essential elements of the crime beyond a reasonable doubt. Origel-Candido
5 v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380 (1998). "Where there is substantial
6 evidence to support a jury verdict, [the verdict] will not be disturbed on appeal. Smith v.
7 State, 112 Nev. 1269, 927 P.2d 14, 20 (1996). Moreover, "it is the jury's function, not that
8 of the court, to assess the weight of the evidence and determine the credibility of the
9 witnesses. Origel-Candido, 114 Nev. 378, 381, 956 P.2d 1378, 1380. This does not require
10 this Court to decide whether "it believes that the evidence at the trial established guilt
11 beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. at 319-20, 99 S.Ct. at 2789
12 (1979). This standard thus preserves the fact finder's role and responsibility "[to fairly]
13 resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences
14 from basic facts to ultimate facts. Id. at 319, 99 S.Ct. at 2789. A jury is free to rely on both
15 direct and circumstantial evidence in returning its verdict. Wilkins v. State, 96 Nev. 367,
16 609 P.2d 309 (1980). Also, the Nevada Supreme Court has consistently held that
17 circumstantial evidence alone may sustain a conviction. Deveroux v. State, 96 Nev. 388,
18 391, 610 P.2d 722, 724 (1980) (citing Crawford v. State, 92 Nev. 456, 552 P.2d 1378
19 (1976)).

20 A. Conspiracy

21 Appellant was charged with conspiracy as a substantive crime and as a theory of
22 liability. 6 AA 1118. Furthermore, the jury was instructed on the law relative to conspiracy.
23 6 AA 1126 -- 1130. In Thomas v. State, 114 Nev. 1127, 1143, 967 P.2d 1111, 1123 (1998)
24 the Nevada Supreme Court concluded that a jury could infer that an agreement was formed
25 between the codefendants when Thomas handed a gun to his Co-Defendant Hall and
26 instructed him to collect some money. Hall subsequently collected the money and gave it to
27 Thomas in the car. Id. at 1144. Without objection or interference Hall observed Thomas
28 bring a loaded gun into a hotel and demand money from a clerk. Id.

1 Appellant stated that he went with Wilson to the house to get some drugs from a man
2 named Grant. 1 AA 67. Wilson told Appellant to knock on the door and then get out of the
3 way. 1 AA 67. At this point Appellant indicated that he did not have a gun but he simulated
4 one under his shirt anyway. 1 AA 67. Once Wilson realized that the house they were at was
5 not Grant's, Wilson decided to go through with the robbery anyway and Appellant went
6 along with him. 1 AA 67-8. Furthermore, when Appellant was alone with the victims, he
7 informed them that if they were cool they would not get hurt. 5 AA 898. Later, Appellant
8 admitted to digitally penetrating Danielle's vagina. 1 AA 68.

9 Based upon the confession of Appellant and the corroborating testimony of all of the
10 victims, it is obvious that there is sufficient evidence to support the conviction of appellant
11 based upon a conspiracy theory. There was a coordinating series of events where Appellant
12 simulated having a gun prior to entering the house, told the victims that he would not shoot
13 them if they behaved while Wilson was away, held an object to Danielle while he was
14 molesting her such that she thought it was a gun, digitally penetrated Danielle's vagina, and
15 then split the proceeds of the nights adventures with Wilson afterwards. There is a clear
16 indication that there was an agreement between Wilson and Appellant sufficient to satisfy
17 Thomas and for a reasonable jury to conclude they conspired in the crimes.

18 B. Aiding and Abetting

19 Appellant was also charged with aiding and abetting and the jury was correctly
20 instructed on this theory of vicarious liability. 6 AA 1131-32. There was ample evidence in
21 the record that Appellant was a participant in the crimes he was convicted of. Appellant
22 himself admitted to being present, acting like he had a gun, watching over the victims while
23 Wilson kidnapped Ryan and took him to an ATM machine to get money from his and Justin
24 R.'s accounts, told Wilson that he could get hard during the sexual assaults of Justin R. and
25 Danielle, that he rubbed Danielle's vagina and digitally penetrated her, and that he split the
26 money with Wilson. 6 AA 1106-07. This evidence alone is sufficient to convict Appellant
27 of aiding and abetting in the commissions of these crimes beyond a reasonable doubt.
28

1 Furthermore, all of the victims identified Appellant as a man with a body type
2 consistent to the second person who victimized them. 4 AA 849-50; 5 AA 927; 5 AA 987;
3 5 AA 999; 5 AA 1014; and 5 AA 1021. Two of the victims even testified that they heard the
4 shorter man call the taller man a name that sounded like "Marcus. 5 AA 987; 5 AA 1018.
5 As the jury is the ultimate fact finder, and their verdict should not be disturbed absent plain
6 error. Appellant's confession and the corroborating testimony of all six victims was
7 sufficient for a jury to find Appellant guilty beyond a reasonable doubt. The jury verdict
8 must be sustained and Appellant's claim dismissed.

9 **VI.**

10 **THE SENTENCE IMPOSED BY THE DISTRICT COURT FELL WITHIN THE**
11 **PRESCRIBED STATUTORY RANGE AND WAS THEREFORE PROPER**

12 Appellant is claiming that each of his sentences relates to one alleged act of Appellant
13 digitally penetrating Danielle and therefore his five separate ten to life sentences with
14 consecutive ten to life sentences for use of a deadly weapon is excessive. OB, p. 14.
15 Appellant is mistaken however that his sentences relate to a single act upon Danielle. Since
16 his convictions were for different acts of sexual assault perpetrated upon Danielle and Justin
17 R. it is clear that these are five separate acts and therefore five separate but concurrent
18 sentences was appropriate.

19 Appellant was found guilty of all eighteen counts alleged in the Second Amended
20 Information. 6 AA 1114. On July 3, 2008, Appellant was adjudged guilty of all eighteen
21 (18) counts and sentenced as follows: as to Counts I and XVIII -- TWELVE (12) months; as
22 to Counts II, III, and XI -- TWENTY-EIGHT (28) to SEVENTY-TWO (72) months; as to
23 Counts IV, VI, VII, and IX -- SIXTY (60) to ONE HUNDRED EIGHTY (180) months plus
24 an equal and consecutive term of SIXTY (60) to ONE HUNDRED EIGHTY (180) months
25 for the use of a deadly weapon; as to Counts V and VIII -- TWENTY-FOUR (24) to
26 SEVENTY-TWO (72) months; as to Count X -- SEVENTY-TWO (72) to ONE HUNDRED
27 EIGHTY (180) months plus an equal and consecutive term of SEVENTY-TWO (72) to
28 ONE HUNDRED EIGHTY (180) months for the use of a deadly weapon; as to Counts XII --
XV, and XVII -- TEN (10) years to LIFE plus an equal and consecutive term of TEN (10)

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

NARCUS WESLEY,

S.C. CASE NO. 57473

Appellant,

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Clerk of Supreme Court

vs.

THE STATE OF NEVADA,

Respondent.

APPEAL FROM DENIAL OF PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)
EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE JAMES BIXLER, PRESIDING

~~~~~  
APPELLANT'S APPENDIX TO THE OPENING BRIEF  
VOLUME VII  
~~~~~

ATTORNEY FOR APPELLANT

CHRISTOPHER R. ORAM, ESQ.

Attorney at Law

Nevada Bar No. 004349

520 S. Fourth Street, 2nd Floor

Las Vegas, Nevada 89101

Telephone: (702) 384-5563

ATTORNEY FOR RESPONDENT

DAVID ROGER, ESQ.

District Attorney

Nevada Bar No. 0002781

200 South Third Street

Las Vegas, Nevada 89101

CATHERINE CORTEZ MASTO

Nevada Attorney General

Nevada Bar No. 0003926

100 North Carson Street

Carson City, Nevada 89701-4717

IN THE SUPREME COURT OF NEVADA

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APPELLANT'S APPENDIX

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on September ___, 2011. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

CATHERINE CORTEZ-MASTO
Nevada Attorney General

STEVE OWENS
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Jessie Vargas
An Employee of Christopher R. Oram, Esq.

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623