

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 JAMES MANNING,

4 Appellant,

5 v.

6 THE STATE OF NEVADA,

7 Respondent.

) No. 65856
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10 **APPELLANT'S APPENDIX VOLUME III PAGES 458-679**

11 PHILIP J. KOHN
12 Clark County Public Defender
13 309 South Third Street
14 Las Vegas, Nevada 89155-2610

15 Attorney for Appellant

STEVE WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

ADAM LAXALT
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

Counsel for Respondent

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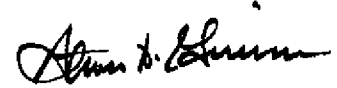
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TRAN
CASE NO. C-290624
DEPT. NO. 3



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

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| THE STATE OF NEVADA, |) | |
| |) | |
| Plaintiff, |) | REPORTER'S TRANSCRIPT |
| |) | OF |
| vs. |) | JURY TRIAL |
| |) | |
| JAMES MANNING, |) | |
| |) | |
| Defendant. |) | |

BEFORE THE HONORABLE DOUGLAS
DISTRICT COURT JUDGE

DATED: TUESDAY, JANUARY 14, 2014

REPORTED BY: Sharon Howard, C.C.R. #745

1 APPEARANCES:

2 For the State:

HAGAR TRIPPIEDI, ESQ.

3
4
5
6 For the Defendant:

MARISSA PENSABENE, ESQ.

7 BELINDA HARRIS, ESQ.
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1 LAS VEGAS, NEVADA; TUESDAY, JANUARY 14, 2014

2 P R O C E E D I N G S

3 * * * * *

4
5 THE COURT: Outside the presence.

6 Anything outside the presence.

7 MS. PENSABENE: We did, your Honor. We wanted
8 to briefly put on the record what was discussed at the
9 bench conferences yesterday.

10 The first thing we discussed was we objected to the
11 DA investigator present in court, we wanted to make sure
12 that that was on the record.

13 Ms. Trippeidi did mention to us that she would not be
14 called as a witness. The DA investigator was noticed.

15 THE COURT: You are correct. We had bench
16 conference. She was in the courtroom during -- after jury
17 selection. We were going to start opening statements.
18 Ms. Trippiedi represented she was not calling her as a
19 witness. So I said if anybody that was subpoenaed that
20 gets released from their subpoena or the side that
21 subpoenaed them determines they're not going to utilize
22 them as a witness they are free to stay in the
23 courtroom.

24 MS. TRIPPIEDI: Correct.

25 MS. PENSABENE: Correct.

1 The second thing we want to put on the record was we
2 did have a bench conference discussing an offer of proof
3 for one of the witnesses, Callie Borley. An offer of
4 proof was provided by the State. Our position was this
5 particular witness did not see anything, did not observe
6 anything. The offer of proof was provide by the State.

7 THE COURT: I think you are correct that we did
8 have a bench conference. Original what Ms. Harris was
9 saying was that there wasn't any statement from this
10 witness so you were asking for an offer of proof, which
11 was entirely appropriate, to try figure out is she a
12 percipient witness or is she relaying things on hearsay.
13 Because she was also the person who called 911.
14 Apparently from the phone call, I'm assuming, you all had
15 concern that maybe she was just relaying what people told
16 her.

17 MS. PENSABENE: That's absolutely correct.

18 THE COURT: And the State indicated, no, she
19 witnessed certain things. So I said, well, go ahead and
20 put her on the stand. It's obvious, if you feel they're
21 going into something that's hearsay, raise an objection
22 and we'll deal with it if need be.

23 MS. PENSABENE: That's all we have.

24 THE COURT: Okay.

25 State have anything.

1 MS. TRIPPIEDI: No, your Honor.

2 THE COURT: You have two or one.

3 MS. TRIPPIEDI: I'm not sure yet. Kind of going
4 to see how the first one goes and decide if I call the
5 next one.

6 THE COURT: Back on the record in C-290624.
7 Mr. Manning is present with his attorneys. State's
8 attorneys are present. Our jurors are present.

9 We'll continue with the State's case in chief. State
10 may call their next witness.

11 MS. TRIPPIEDI: State calls Chad Embry.

12 THE CLERK: You do solemnly swear the testimony
13 you are about to give in this action shall be the truth,
14 the whole truth, and nothing but the truth so help you
15 God.

16 THE WITNESS: I do.

17 THE CLERK: Be seated. State and spell your
18 name for the record.

19 THE WITNESS: Chad Embry, E-M-B-R-Y.

20 THE COURT: Ms. Trippiedi.

21 DIRECT EXAMINATION

22 BY MS. TRIPPIEDI:

23 Q. How are you employed?

24 A. Las Vegas Metropolitan Police Department.

25 Q. What do you do for the police department?

1 A. Robbery detective.

2 Q. How long have you been a robbery detective?

3 A. 5 years.

4 Q. What are the duties of a robbery detective?

5 A. We do follow up investigations to business
6 robberies, street robberies that patrol officers respond
7 to and take reports on.

8 Q. Did you receive training when you became a
9 robbery detective?

10 A. Yes. You're required to go through certain
11 classes every year to stay qualified to do be a police
12 officer, period. And lots of on-the-job training as
13 well.

14 Q. Do you under go those classes yearly?

15 A. Yes.

16 Q. I want to call your attention to an incident
17 that occurred March 29, 2013. Were you assigned to
18 investigate a robbery that occurred?

19 A. Yes.

20 Q. What were the details of that robbery?

21 A. The details of the robbery were that a black
22 male adult pushed a white male adult on the bus, pushed
23 him down and ran from the bus taking some property.

24 Q. You yourself didn't go to the bus that day?

25 A. No, I did not.

1 Q. Who did?

2 A. Patrol officer from that area.

3 Q. You then get the case from the patrol officer.
4 Is that how it works?

5 A. Correct. They'll take the incident report that
6 gets logged into the system. Those cases, the reports are
7 divided to different detectives based on area commands.

8 Q. So when you got this case what did you do as
9 part of your investigation?

10 A. When I received the case -- the case is also
11 updated into a local station briefing log. Which
12 basically is the details of what occurred during the crime
13 and the suspect description.

14 If there is video or still pictures from the video,
15 a lot of times those will get up-loaded into the briefing.
16 So when officers come in before their shift, they are
17 allowed to scan through the different incidents that
18 occurred during the shift. If there is video available,
19 pictures available they are able to look at those photos
20 to help identify a suspect.

21 So when this case was assigned to me there was
22 still photographs assigned in briefing related to that
23 case of the potential robbery suspect.

24 Q. So there were still photographs from the bus
25 on March 29?

1 A. Correct.

2 Q. With a suspect?

3 A. Yes.

4 Q. Did you ever attempt to obtain video?

5 A. I did. Generally what happens is we contact
6 the bus company who in turn recovers the video for us,
7 releases the video over to us. Sometimes that's able to
8 be done at the time of the incident and it's given to the
9 patrol officers who in turn take that video and impound it
10 at the station and it goes to our evidence vault.

11 Later when the case gets to detectives, they can go
12 to the evidence vault and pull the video in order to do --
13 to look at the video and obtain still pictures from the
14 video if need be.

15 So seeing the pictures on the briefing line I
16 assumed that the video was turned over to the patrol
17 officers and the video was impounded. After I called down
18 to the evidence vault when I started conducting my
19 investigation I found out the video was never picked up by
20 patrol.

21 So I called the bus company and tried to obtain a
22 copy of the video.

23 Q. Were you able to obtain a copy?

24 A. I wasn't. The bus company surveillance had --
25 went out of business. Someone bought out the company. So

1 the company that I talked to was no longer in business.
2 They were based out of Chicago. And they had no video on
3 achieve and was not able to recover any of the video.

4 Q. But you attempted to obtain some sort of
5 video?

6 A. Yes.

7 Q. After those attempts you weren't able to?

8 A. Correct.

9 Q. But you did learn for certain that those
10 stills were from the video?

11 A. Yes.

12 Q. Now, based on the stills that you had what did
13 you do with those?

14 A. I took those stills, there wasn't a lot of
15 leads on this case. Basically the stills are the only
16 leads we had. What I did was I took the pictures, which
17 were good quality, and we do what -- we conduct what is
18 called a media release. Where we take those pictures and
19 basically give a very general description of what happened
20 that day that this person is a person of interest if
21 anyone has information call Crime Stoppers anonymously.
22 Or they can contact the police department directly, if
23 they want to be involved.

24 Q. You put one of the pictures from the March 29
25 incident on the bus into a media release and what if

1 anything happen as a result of that?

2 MS. PENSABENE: Approach.

3 THE COURT: Yes.

4 (Discussion held at the bench.

5 THE COURT: Just for the record, the objection
6 is overruled.

7 Ms. Trippiedi you can continue.

8 BY MS. TRIPPIEDI:

9 Q. So eventually a Crime Stopper tip came in,
10 correct?

11 A. Yes.

12 Q. You learned that the person in the photo was a
13 person by the name of James Manning, correct?

14 A. Correct.

15 Q. And now I'm going to ask you questions about
16 the photo lineup that was done in the case. Isn't it true
17 that Metro has a data bank of photographs compiled from
18 drive licenses, work cards, et cetera?

19 A. Yes.

20 Q. You pulled a photo of James Manning from that
21 data base, correct?

22 A. Yes.

23 Q. James is sitting here today, third person away
24 from me to the right?

25 A. Yes.

1 MS. TRIPPIEDI: For the record he's identified
2 the Defendant.

3 THE COURT: The gentleman in the blue shirt.

4 THE WITNESS: Yes, sir.

5 THE COURT: Thank you. Record will so
6 reflect.

7 BY MS. TRIPPIEDI:

8 Q. The photo you pulled of James Manning you also
9 pulled 5 other random photos, correct?

10 A. Yes.

11 Q. Then based on all of those photo. you
12 conducted a photo lineup that you showed to the victim,
13 Thor Berg, in this case?

14 A. Yes.

15 MS. PENSABENE: Objection. Can we approach.

16 THE COURT: Yes.

17 (Discussion held at the bench.)

18 THE COURT: Objection is overruled.

19 Continue.

20 BY MS. TRIPPIEDI:

21 Q. So that photo lineup was done on April 25,
22 2013, correct?

23 A. Yes.

24 Q. You told Thor Berg when you met with him that
25 he doesn't have to pick anybody from the 6 photos you

1 showed him?

2 A. Yes.

3 Q. Did he pick somebody?

4 A. Did.

5 Q. Who did he pick?

6 A. He identified Manning as the suspect who
7 robbed him.

8 Q. Okay. Did that pretty much end your
9 investigation in this case?

10 A. Yes.

11 MS. TRIPPIEDI: Pass the witness at this time.

12 THE COURT: Ms. Pensabene.

13 CROSS-EXAMINATION

14 BY MS. PENSABENE:

15 Q. Good afternoon. You were the lead detective
16 on the case?

17 A. Yes.

18 Q. You've been a robbery detective for 5 years?

19 A. Yes.

20 Q. I want to go back through some of the
21 information that Ms. Trippiedi got from you and flesh it
22 out a little.

23 You went to the academy in Nevada?

24 A. Yes.

25 Q. They teach the importance of thorough

1 investigations?

2 A. Yes.

3 Q. As a detective is it your job to figure out
4 what happened?

5 A. Correct.

6 Q. Do justice for the victims?

7 A. Yes.

8 Q. And part of your job is to gather all the
9 evidence in this case?

10 A. Yes.

11 Q. As a detective you want your evidence to be
12 reliable as possible?

13 A. Correct.

14 Q. Building a case, correct?

15 A. Yes.

16 Q. But unfortunately you kind of have to deal
17 with the evidence presented before you?

18 A. Absolutely.

19 Q. There are some factor outside your control?

20 A. Yes.

21 Q. So when a line-up occurs more than 30 days
22 after the incident that's not ideal?

23 A. No.

24 Q. In an ideal world you would like to have the
25 lineup closer in time?

- 1 A. As close as possible.
- 2 Q. Strike while the iron is hot, so to speak?
- 3 A. Yes.
- 4 Q. This is because memories fade?
- 5 A. Yes.
- 6 Q. Especially with elderly people?
- 7 A. Yes.
- 8 Q. You want to make this process as reliable as
- 9 possible?
- 10 A. Correct.
- 11 Q. In an ideal world you want to make sure that
- 12 the line-up is free of any suggestibility?
- 13 A. Yes.
- 14 Q. Any kind of outside influences?
- 15 A. Yes.
- 16 Q. And any kind of variables you are unable to
- 17 control?
- 18 A. Yes.
- 19 Q. Because you want to be fair?
- 20 A. Correct.
- 21 Q. Fair to both sides?
- 22 A. Absolutely.
- 23 Q. In this case you did testify that there was a
- 24 media release?
- 25 A. Correct.

1 Q. With a photo?

2 A. Yes.

3 Q. Of James Manning?

4 A. I didn't know if it was James Manning, but

5 there was a photo of the subject on the bus.

6 Q. It was broadcast on television?

7 A. Yes.

8 Q. Was it broadcast in any other media outlets?

9 A. I believe it is broadcast on TV and over

10 security departments of the strip.

11 Q. What about internet?

12 A. Yeah.

13 Q. So television, security -- what security?

14 A. I'm not sure. We can't testify to exactly

15 with outlets it is -- news media outlets.

16 Q. Okay. In an ideal world you would like to

17 have a lineup where there was no picture broadcast on

18 television prior?

19 A. Yes.

20 Q. When you are investigating this incident you

21 want to do as much as possible?

22 A. Correct.

23 Q. I understand you're a robbery detective so you

24 probably see a whole range of different types of

25 robberies?

1 A. Yes.

2 Q. Anything from a snatch and grab purse --

3 A. Correct.

4 Q. -- to a Seven/11 ski mask, stick-em up?

5 A. Yes.

6 Q. Okay.

7 No matter what the actual incident is you want to
8 gather as much as you can?

9 A. Yes.

10 Q. All this information that you gather can
11 develop other leads?

12 A. It can, yes.

13 Q. If a crime is caught, say on camera, you can
14 take that evidence to the bank?

15 A. Good evidence.

16 Q. We agree.

17 A. Yes.

18 Q. In this case the video was unavailable?

19 A. Correct.

20 Q. And you testified that all you had were still
21 photos?

22 A. Yes..

23 Q. Of a suspect?

24 A. Yes.

25 Q. But you don't determine that that person was a

1 suspect?

2 A. No.

3 Q. So someone else determines that that person is
4 a suspect?

5 A. Correct.

6 Q. Because there was no video available you were
7 unable to verify if you believed that person was a
8 suspect?

9 A. Based on the description of the suspect from
10 the report.

11 Q. Okay. So no video surveillance in this case,
12 and that's not ideal. There are other things you can do,
13 other evidence that you can gather, right?

14 A. Sometimes.

15 Q. Interviewing witnesses is one of those
16 things?

17 A. Yes.

18 Q. Or following up with witnesses?

19 A. Yes.

20 Q. Just getting voluntarily statements?

21 A. Correct.

22 Q. You don't have a statement for the bus driver
23 in this case?

24 A. I do not.

25 Q. You weren't able to follow up with the bus

1 driver in this case?

2 A. I was not, no.

3 Q. You don't have a statement from Ms. Callie
4 Borley in this case?

5 A. No, I don't.

6 Q. You weren't able to follow up with her?

7 A. I was not.

8 Q. You don't have any statements from any other
9 passengers on the bus?

10 A. I don't, no.

11 Q. So moving on past the statements and video.
12 Also in an ideal world you would like to have some kind of
13 investigation into the property that was taken?

14 A. Yes.

15 Q. In this case there is a number of things
16 missing 10- to \$12.00, right?

17 A. Yes.

18 Q. CAT bus card?

19 A. Yes.

20 Q. Missing casino player cards?

21 A. Yes.

22 Q. I didn't see in your report, but I want to
23 double check. You didn't check into the player cards?

24 A. The victim's player cards.

25 Q. You didn't check to see if they were used

1 after March 29?

2 A. No.

3 Q. You didn't see if the CAT bus card was used
4 again?

5 A. No.

6 Q. From your investigation you learn that Mr.
7 Berg had been at the casino prior to this incident?

8 A. Based on the incident report that's what was
9 stated.

10 Q. It stated Sunset Station?

11 A. Yes.

12 Q. You didn't go to Sunset Station?

13 A. I did not.

14 Q. No follow up?

15 A. Not at Sunset Station.

16 Q. You weren't able to see if there was someone
17 following Mr. Berg out of Sunset Station?

18 A. No.

19 MS. PENSABENE: No questions. Thank you.

20 THE COURT: Ms. Trippiedi.

21 REDIRECT EXAMINATION

22 BY MS. TRIPPIEDI:

23 Q. Sir, why didn't do you follow up on the
24 player's card?

25 A. It's not something we do on a simple street

1 robbery. Unfortunately we just have too few detectives at
2 this point to do every possible lead that could be done.

3 We are assigned 2- to 3,000 robberies cases a year,
4 so we have to unfortunately pick how much we get to do on
5 each case. So a lot of times our time is devoted to
6 cases, business robberies where shots are fired, people
7 are injured. So a lot of times we don't get to spend as
8 much time as we would like.

9 Q. You said about 2- to 3,000 robberies a year.
10 Is that how much your division investigates?

11 A. Yes.

12 Q. How many did you personally work on?

13 A. Off the top of my head I would say a couple
14 hundred.

15 Q. Out of those couple hundred how many a year
16 would you say are actually solved?

17 A. Very low percent. Especially street
18 robberies. There's not a ton of evidence to go on. These
19 are the toughest is solve.

20 Q. Would you say it's very rare to catch
21 someone?

22 A. Yes, it is.

23 MS. TRIPPIEDI: Pass the witness.

24 THE COURT: Ms. Pensabene.

25 MS. PENSABENE: Thank you, your Honor.

1 RECROSS-EXAMINATION

2 BY MS. PENSABENE:

3 Q. Based on the testimony provided would you say
4 that this cause is low priority?5 A. I wouldn't say low priority. I would say when
6 we have a case that occurs at a business, there is more
7 witnesses, eye-witnesses, more video surveillance to view.
8 This case unfortunately we didn't have video. There's
9 more evidence to weed through and follow up.10 Q. I want to follow up with the video
11 surveillance. You stated on direct --12 MS. TRIPPIEDI: This exceeds -- she's going to
13 ask questions about the video, it's exceeds the scope.

14 MS. PENSABENE: You just discussed --

15 THE COURT: It it expands for purpose of cross,
16 I'll allow you to back on redirect.

17 MS. PENSABENE: Thank you, your Honor.

18 BY MS. PENSABENE:

19 Q. In this case video was not provided by the
20 patrol officer?

21 A. Yes.

22 Q. So when you realized it was not provided, you
23 went back to bus company?

24 A. Yes.

25 Q. Do you recall what the time period was at that

1 point when you realized that?

2 A. I don't.

3 Q. But you did know that this case was gearing up
4 for trial?

5 A. At that point, I didn't.

6 MS. PENSABENE: That's all.

7 THE COURT: Ms. Trippiedi.

8 MS. TRIPPIEDI: No further questions.

9 THE COURT: Anything from our jurors. No.
10 Detective, thank you for your time. You are excused.

11 State can call their next witness..

12 MS. TRIPPIEDI: At this point the State is going
13 to rest.

14 THE COURT: Tell you what. We need to take a
15 recess at the conclusion of the State's case.

16 JURY ADMONITION

17 During the recess, ladies and gentlemen, you are
18 admonished not to converse among yourselves or with anyone
19 else, including, without limitation, the lawyers, parties
20 and witnesses, on any subject connected with this trial,
21 or any other case referred to during it, or read, watch,
22 or listen to any report of or commentary on the trial, or
23 any person connected with this trial, or any such other
24 case by any medium of information including, without
25 limitation, newspapers, television, internet or radio.

1 You are further admonished not to form or express any
2 opinion on any subject connected with this trial until the
3 case is finally submitted to you.

4 Outside the presence.

5 To begin with there were two issues raised by way of
6 objection at the bench before we took our recess.

7 The first was an objection that was being made to
8 Detective Embry's reference that Metro received from Crime
9 Stoppers the name James Manning.

10 You are objecting to that information being elicited
11 because the call didn't come directly to him.

12 MS. PENSABENE: My objection was double
13 hearsay.

14 THE COURT: The State's position was, look.
15 We're not offering it for the truth of the matter asserted
16 the person was James Manning, just that that's a name that
17 was given to Metro.

18 MS. TRIPPIEDI: Correct.

19 THE COURT: I did say, I didn't think it was
20 appropriate for a police officer -- to elicit from the
21 detective this is a name you received though our Crime
22 Stoppers. I went out and investigated that person.

23 That's not -- I understand the argument can be made,
24 well, the person was representing it to be James Manning,
25 so it's offered as the truth of the matter from the person

1 who said that's him. But for purposes of the officer's
2 testimony it's just in order to explain why he goes to
3 investigate James Manning, you offer the crime tip
4 information that was received by the department which is
5 someone calls up and says I think it was James Manning.
6 So I didn't think that was inappropriate

7 The second issue that was objected to was allowing
8 the detective to elicit that there was an identification
9 made during the photo lineup that was shown to Mr. Berg.

10 Certainly when Mr. Berg testified, you could have
11 shown him the photo lineup and said do you remember
12 viewing the photo line up. Did you identify anybody. He
13 picks it out as well.

14 But generally speaking Metro is going to be asked
15 about that too because they're the ones that are going to
16 keep the photo lineup, keep the form showing that a
17 witness has or hasn't identified anybody, or signed off on
18 having identified somebody. As well as testifying about
19 who the person is that the victim or witness has
20 identified. Because the victim or witness generally
21 speaking isn't going to know who the perpetrator is, if
22 it's a stranger to them.

23 So even though you all were objecting saying they
24 should have shown Mr. Berg, I agree that they -- I would
25 have shown it to the victim as well. But I don't think

1 that precludes the detective testifying as well. Assuming
2 it's the detective that did it. Which it was. Mr. Berg
3 who made the identification, he had identified the guy I
4 put in there as James Manning.

5 MS. PENSABENE: Just to expand, your Honor. I
6 think the basis of our objection was not only hearsay but
7 that this particular detective could not authenticate
8 Mr. Berg's signature. That's all we needed to add.

9 MS. TRIPPIEDI: My response to that is he was
10 sitting next to him. He was present when he signed it.
11 So there is no authentication necessary.

12 MS. HARRIS: It would be, because this is a
13 statement, your Honor. Just like if anybody gives a
14 statement if it where for impeachment purposes I couldn't
15 impeach that officer with is this your signature. Did you
16 write this. Because he would say, no, that's not my
17 signature. I'm not that person.

18 THE COURT: If the gentleman sat there and
19 witnessed the witness sign the form and took custody of
20 those things, you are still proposing that he couldn't
21 come in and say this is the form I gave the guy. I
22 watched him fill it out and sign it.

23 MR. HARRIS: No because I couldn't impeach him
24 with that.

25 If I said, well, he put in here this isn't what I

1 said -- if he would have testified and said he identified
2 Mr. Manning. Then I in trying to impeach him say, well,
3 here he says he didn't say that. Is he mistaken. He
4 says, well, that's not my statement. I didn't sign it. I
5 didn't write it. And I couldn't impeach him.

6 THE COURT: I'm not sure what you're saying.
7 Impeach him how.

8 MR. HARRIS: There is a statement that goes with
9 the lineup. He's saying that Mr. Berg identified James
10 Manning. At this point we have to take his word that that
11 is what happened, because other than that --

12 THE COURT: You don't have to. You can question
13 him about what happened to the extent you have some reason
14 to question him about that.

15 MR. HARRIS: But at this point, Judge, with the
16 statement I can't question him on that statement. Only
17 Mr. Berg would be able to be questioned on that
18 statement.

19 THE COURT: You could question the detective.
20 Are you saying you wanted to ask him how sure was M. Berg,
21 or what did Mr. Berg say about the identification.

22 Is that what you are saying.

23 MR. HARRIS: I could have asked those, yes.

24 THE COURT: Absolutely. Are you saying you
25 couldn't have.

1 MR. HARRIS: If he says I don't recall, what
2 method do you have to refresh his recollection.

3 THE COURT: You show him the form. You were
4 sitting there with Mr. Berg. Didn't he write I'm only 52
5 percent sure, or whatever it may be.

6 MR. HARRIS: That's not his form. If Mr. Berg
7 having his own signature, the office doesn't have to adapt
8 that statement.

9 THE COURT: I'm way confused by what you're
10 saying.

11 If a police officer sits down with a witness and says
12 here's a photo lineup, and the witness looks at the photo
13 line up and picks somebody out and the police officer says
14 write on the form whatever you want to write about how
15 sure you are and sign it. He watches him do that.

16 Then you can go to town with the police officer
17 during trial about that photo lineup form. You can ask
18 whatever you want about it. isn't it true Mr. Berg wasn't
19 sure. Isn't it true that you saw him pick out 3 different
20 people. Isn't it true that he wrote on here he's only 50
21 percent sure. I don't remember. Well, let me show you the
22 form. What did he write on there. He's only 50 percent
23 sure.

24 MR. HARRIS: But he doesn't have to adapt the
25 form.

1 THE COURT: Adapt it.

2 MR. HARRIS: If I'm saying let me refresh your
3 recollection with this inform, it's not his form so how
4 could be adapt the statement that it is.

5 THE COURT: You mean adopt the statement.

6 MR. HARRIS: Yes.

7 THE COURT: He doesn't have to adopt the
8 statement. You can refresh someone's recollection with a
9 cocktail napkin. It doesn't matter. That's the form the
10 witness filled out. It's the form that he gives to the
11 witness.

12 MR. HARRIS: That's my point.

13 THE COURT: What.

14 MR. HARRIS: He wouldn't have to adopt the
15 statement at all, because it's the witness' statement.

16 THE COURT: Whether he adopts somebody else's
17 statement is irrelevant. You are talking about trying to
18 get into evidence that the witness made this statement.

19 'm saying you could asked the officer about that if
20 you chose to. I can't remember -- my recollection is that
21 this form he said he was 97 percent sure. But if somebody
22 wanted to bring that out, you could have done that.

23 MR. HARRIS: Okay.

24 THE COURT: You all were -- just because Mr.
25 Berg didn't testify about that earlier doesn't mean the

1 officer can't get up there and testify that Mr. Berg made
2 an identification and picked out a certain individual.

3 Thereafter, if you all wanted to bring out the
4 statements that Mr. Berg made or wrote on that form you
5 can do that with the detective. Generally speaking he's
6 the one that's got that form. That's the person that's
7 always asked about that. As opposed to the witness or the
8 victim, unless the witness or victim were shown the form
9 before court to refresh memory as well.

10 But in future reference, you can ask the detective
11 about that.

12 MS. TRIPPIEDI: For the record, I did have the
13 victim ID the Defendant and point to him.

14 THE COURT: Like I said, if you have a photo
15 lineup, maybe that's for future reference for you. I
16 don't see any reason why you don't show the photo lineup
17 to the victim during the trial to say is this a photo
18 lineup you saw. But it doesn't preclude the police
19 officer that presented it and presented the form from
20 testifying about it as well.

21 Okay. Anything further.

22 MS. PENSABENE: No.

23 THE COURT: Mr. Manning, you can remain seated.
24 Couple of things I want to inform you of.

25 Under the constitution of the United States and under

1 the constitution of the State of Nevada, you understand
2 you cannot be compelled to testify. You cannot be --
3 nobody can force you to be a witness.

4 You understand that.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You may, however, at own request
7 give up those constitutional rights and take the stand and
8 testify.

9 You understand that.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If you do, so you'll be subjected to
12 cross-examination by the prosecutors and anything you say,
13 whether it is on questioning from your attorneys or
14 cross-examination from the prosecutors, anything you say
15 will be the subject of fair comment when the attorneys
16 make their closing arguments.

17 You understand that.

18 That means everybody can talk about whatever you
19 testify to.

20 THE DEFENDANT: Yes.

21 THE COURT: If you choose not to testify, I will
22 not permit the prosecutors to make any comments to the
23 jury about the fact that you have not testified.

24 You understand that.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: If you choose not to testify, I will
2 give an instruction, if you and your attorney want me too,
3 a written instruction, that says it is a constitutional
4 right of a defendant in a criminal trial that he may not
5 be compelled to testify. Thus, the decision as to whether
6 he should testify is left to the Defendant on the advice
7 and counsel of his attorneys.

8 You must not drawing any inference of guilt from the
9 fact that he does not testify. Nor should this fact be
10 discussed by you or enter into your deliberations in any
11 way.

12 You understand that as well.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Furthermore, you are advised if you
15 have a felony conviction and more than 10 years has not
16 elapsed from the date you have been convicted or
17 discharged from prison or probation, whichever is later,
18 and the defense has not sought to preclude that from
19 coming before the jury, if you are to testify, the
20 prosecutors would be permitted to ask you if you have been
21 convicted of a felony, what was the felony, and when did
22 it happen.

23 They would not be allowed to go into any details
24 surrounding the felony conviction.

25 You understand that.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you have any questions of myself
3 based upon the admonition I gave you.

4 THE DEFENDANT: No, sir.

5 THE COURT: As we stand here now are you going
6 to have witnesses to call.

7 MS. PENSABENE: We will not.

8 THE COURT: So you want to argue tomorrow.

9 MS. PENSABENE: I'd prefer that.

10 THE COURT: I told you you could argue
11 Wednesday. We'll get the jury back in just for a minute.
12 First I need to figure out how long I think calendar is
13 going to be.

14 MS. PENSABENE: Can we have a moment. I'd like
15 to speak with Mr. Manning just the make he doesn't want to
16 testify.

17 (Brief recess taken.)

18 THE COURT: Anything outside the presence.

19 MS. TRIPPIEDI: No.

20 MS. PENSABENE: No.

21 THE COURT: Back on the record in C-290624.

22 Mr. Manning is present with his attorneys. State's
23 attorneys are present. Jurors are back.

24 Ladies and gentlemen, thank you for your patience. I
25 appreciate it.

1 MR. HARRIS: Defense can have Mr. Manning come
2 to the witness stand.

3 THE COURT: Mr. Manning if you could come to the
4 witness stand, sir.

5 THE CLERK: Swear swear.

6 THE WITNESS: I do.

7 THE CLERK: Be seated. State spell name for the
8 record.

9 THE WITNESS: James Manning, M-A-N-N-I-N-G.

10 DIRECT EXAMINATION

11 BY MR. HARRIS:

12 Q. Is your name James Manning?

13 A. Yes.

14 Q. What is your date of birth?

15 A. 10/18/87.

16 Q. Where are you from, Mr. Manning?

17 A. Las Vegas, Nevada.

18 Q. Born and raised?

19 A. Yes.

20 Q. Are you the same James Manning that's
21 convicted of attempt possession of a controlled substance
22 here in Las Vegas, Nevada

23 A. Yes.

24 Q. Did you plead guilty in that case?

25 A. Yes.

1 Q. You took full responsibility for that case?

2 A. Yes.

3 Q. Now I'm going to call you James because that
4 is what I've always called you. Is that okay?

5 A. Yes.

6 Q. James, are you nervous right now?

7 A. Yes.

8 Q. I'm sure this is difficult for you to do,
9 correct?

10 A. Yes.

11 Q. I wanted to take you back. Do you remember
12 March 23, 2013?

13 A. I can't recall.

14 Q. March, 23, 2013 -- sorry March 29, 2013, my
15 mistake?

16 A. I do.

17 Q. Why do you remember that day?

18 A. Because that was the day I was excused of this
19 crime.

20 Q. Okay. On that day were you on the bus?

21 A. Yes, I was.

22 Q. Do you remember where you got on the bus at?

23 A. Henderson.

24 Q. Do you remember where in Henderson?

25 A. I can't recall the street.

1 Q. What is the bus stop right in front of that
2 you remember?

3 A. Long John Silvers in that area A&W.

4 Q. Where were you going on the bus?

5 A. I was going to a friend's house.

6 Q. Do you remember your friend's name?

7 A. Yes.

8 Q. What is the friend's name?

9 A. Jeremy Watson.

10 Q. How do you know him?

11 A. I went to high school with him.

12 Q. What high school is that?

13 A. Desert Pine.

14 Q. When you first got off the bus -- when you got
15 on the bus where where were you seated?

16 A. Towards the back of the bus.

17 Q. You'd seen Mr. Berg here yesterday; is that
18 correct?

19 A. Yes.

20 Q. Did you see him on the bus on that day?

21 A. Yes.

22 Q. Where was he at on the bus?

23 A. He was toward the front of the bus.

24 Q. When did you notice him on the bus?

25 A. When it got crowded I had to go toward the

1 front of the bus because I ended up giving up my seat. I
2 was in the back of the bus and I got toward the front
3 there was no where to stand, that's when I saw him
4 standing.

5 Q. Why did you go towards the front of the bus?

6 A. I had to make room. It was crowded.

7 Q. So you noticed him when you both are at the
8 front of the bus?

9 A. Yes.

10 Q. What exit were you getting off at?

11 A. The front door.

12 Q. What exit on the bus?

13 A. Boulder and Nellis.

14 Q. You got off you said at the front door?

15 A. Well, I didn't get -- make it off through that
16 door, but that's the door I intend getting off.

17 Q. When you're starting to get off the bus do you
18 have any contact with Mr. Berg?

19 A. Yes. I mean it was pretty crowded, sure.
20 Because we were like right next to each other. It was
21 crowded. I may have, you know -- I mean, yeah. Yes.

22 Q. Did you take anything from Mr. Berg?

23 A. No.

24 Q. Did you stick your hand in Mr. Berg's
25 pocket?

1 A. No.

2 MS. PENSABENE: No further questions.

3 THE COURT: Ms. Trippiedi.

4 CROSS-EXAMINATION

5 BY MS. TRIPPIEDI:

6 Q. Mr. Manning, do you remember giving a
7 statement to a detective?

8 MS. PENSABENE: May we approach.

9 THE COURT: Sure.

10 (Discussion held at the bench.)

11 THE COURT: We are in recess.

12 JURY ADMONITION

13 During the recess, ladies and gentlemen, you are
14 admonished not to converse among yourselves or with anyone
15 else, including, without limitation, the lawyers, parties
16 and witnesses, on any subject connected with this trial,
17 or any other case referred to during it, or read, watch,
18 or listen to any report of or commentary on the trial, or
19 any person connected with this trial, or any such other
20 case by any medium of information including, without
21 limitation, newspapers, television, internet or radio.

22 You are further admonished not to form or express any
23 opinion on any subject connected with this trial until the
24 case is finally submitted to you.

25 (Brief recess taken.)

1 THE COURT: Back on the record.

2 Outside the presence of the jury.

3 Prior to taking our recess, during the beginning of
4 cross-examination, Ms. Trippeidi asked the defendant about
5 a statement he gave to the robbery detective, Detective
6 Kovon, on May 18, 2013.

7 Ms. Trippiedi -- there was an objection. We had a
8 brief discussions at the bench, what was the subject of
9 the statement and relevant to these. I said we'd take a
10 recess and get all of this on the record.

11 MS. TRIPPIEDI: Your Honor, it's our position
12 that while certainly he does talk about a prior bad act in
13 an earlier incident that occurred two days before this
14 incident, he also admits partaking in other robberies and
15 he was with an individual named Nicolas that made him do a
16 lot of things. Some of the things I'll point you to is he
17 says on page 11, on the top, after he showed me what he'd
18 do to the first person, it was all a sick game, he reeled
19 me in and act like he was a -- I'm thinking why is this
20 dude talking to me.

21 11 On the bottom, he says if he pushed up on somebody
22 or take that from him, or if you don't take it you already
23 know what time it is.

24 I'm going to try to establish that there were
25 repeated times where this individual forced him to do

1 things to people specifically, and he instilled fear into
2 the Defendant.

3 He also says on page 8 -- he says, he forced me to do
4 shit.

5 He also says he was with this Nicholas Thompson.

6 He says says, that he just met him but at page 8 he
7 says, you know, how many times did you meet up with people
8 that -- or that did he beat up people that you have seen.
9 That's what the detective asked.

10 He say, more than I can count on both fingers. That's
11 an inconsistent statement.

12 I have 3 pages of notes on this.

13 THE COURT: Just a couple of clarifications I
14 was trying to get out of it.

15 I understand that Detective Kovon apparently was
16 conducting the interview under an event number for a crime
17 that is alleged to have occurred a couple of days prior to
18 this one.

19 MS. TRIPPIEDI: Yes.

20 At first this was all one case.

21 THE COURT: He does reference in his preamble,
22 if you will, that Detective Embry is investigating and
23 Detective Embry got pictures, video from the CAT bus and
24 he did a media release. Is that the media release we have
25 here, or is that a different media release.

1 MS. TRIPPIEDI: They did two different -- he was
2 probably referencing both. But they did do to different
3 media releases.

4 THE COURT: From two different robberies.

5 MS. TRIPPIEDI: Was there just the one.

6 MS. PENSABENE: If there was two, it's news to
7 me. I honestly had in my discovery the release -- the one
8 we have now.

9 THE COURT: Our case is Detective Embry as the
10 lead detective.

11 MS. TRIPPIEDI: Detective Kovon was just helping
12 Detective Embry. He doesn't have his own separate case.

13 THE COURT: Who is the March 27th case.

14 MS. TRIPPIEDI: Also Detective Embry.

15 THE COURT: All right.

16 One of the reasons I asked is later on in the
17 statement he's showing photos from the bus to the
18 Defendant. So is that March 27th photos or March 29
19 photos.

20 MS. PENSABENE: We don't have the photo. We
21 don't know which photo that is. Also I think that the
22 statement goes on to will you sign this, will you sign
23 this. There is no signature. We don't know what photo
24 that is.

25 THE COURT: That's why I was trying to figure

1 out. Are they photo from this case or still photos from
2 the March 27th event, or what are they.

3 MS. TRIPPIEDI: I'm not really entirely sure
4 which they were.

5 MR. HARRIS: We have been asking for those
6 photos for some time. We don't know which photos they
7 are. Nonetheless, even if they are the photos from March
8 29, 2013, we stipulated and have conceded in front of the
9 jury that Mr. Manning is on the bus on that day.

10 MS. PENSABENE: I want to add that in the
11 statement -- later on in the statement Mr. Manning is
12 saying that's the guy, that's the guy. I believe they are
13 the pictures from the 27th.

14 The 27th shows Mr. Manning and another man on the
15 bus. I believe that is from the 27th.

16 THE COURT: In the statement he's referencing in
17 some of the photos saying is that me by myself. I don't
18 know if there is more than one photo that he's being shown
19 or what.

20 I mean I'll tell you all that in my mind reading
21 through this I'm parsing it out in portions. I agree
22 there's portions in there where he seems to be describing
23 someone in general that this guy is making me do a lot of
24 things. I can't remember how many times he made me do it.
25 Then he's talking specifically about a couple of events.

1 One involved a lady. One involving a Mexican dude on the
2 street. Another one he's referencing a dude on the bus.
3 But there is no specificity as to who that dude is.

4 MS. PENSABENE: If I can interject.

5 THE COURT: Hold on.

6 Also he's talking about these photos where he's
7 identifying himself as being on the bus. So there is 3
8 areas of this statement that have some potential
9 relevance.

10 MS. PENSABENE: The Dude on the bus discussion,
11 he talks about not getting a phone. So everything is a --
12 in this statement is a snatch and grab, so to speak.
13 Whereas the incident we have is a pickpocket. I think
14 that all of the incidents he's talking about, talks about
15 giving the phones to the Russian Mafia, this all has to do
16 with phones. It's different from what we are doing here
17 today. That's why it's irrelevant and prior bad acts.

18 THE COURT: I think on that issue you lose
19 greatly. We're talking about -- if you're believing the
20 testimony of Mr. Berg the guy that comes up snatches
21 whatever is in his pocket quickly on a bus. I don't think
22 that's entirely dissimilar from the other things he's
23 describing.

24 I tell you up front you should have filed a motion
25 before trial on this. You know the statement is out

1 there. He's making these admissions about involvement in
2 all of these other things. The potential of him
3 testifying and you want keep this out. It should have
4 been done in limine in my mind.

5 Their obligation to file a motion for bad acts is
6 they want to put something on in their case and chief.
7 They have no idea where your client is going to testify,
8 therefore, what potentially are they going to be getting
9 into on cross-examination.

10 In my mind, one thing that would be admissible in
11 here, is this generalized statement about, look, this dude
12 was making me do stuff. I have no idea how many times he
13 made me do it. I think he referenced to these occurring
14 in March.

15 MR. HARRIS: In the statement when he says in
16 general, they don't put a time frame on it. The only time
17 frame we have is the March 27th, incident. Then he says a
18 bunch of other incidents. There is no time frame given to
19 that.

20 THE COURT: He says March, your client says
21 March.

22 MR. HARRIS: The time frame in the statement is
23 March 27, when he is talking about --

24 THE COURT: Even with regard to the quote
25 unquote Mexican dude he reference that one happened around

1 March.

2 The lady on the bus they're talking about happened on
3 March 27th.

4 Our case is March 29th. It's clearly the same time
5 period.

6 MR. HARRIS: But it's not the same date.

7 THE COURT: You know what. Your client doesn't
8 have to say on March 29th I was on the CAT bus and robbed
9 this other guy in order for some of his statements to be
10 admissible, if he chooses to take the stand and testify.
11 Because he wasn't very clear with specificity doesn't mean
12 they who can't call him as a witness aren't allowed to
13 potentially cross-examine him about things relevant from
14 the statement he's given.

15 MR. HARRIS: How is this relevant if we don't
16 have the time frame and has nothing to do with the March
17 29th incident.

18 THE COURT: That's for the jury to decide. If
19 he's being accused in this case, in my mind, of doing
20 something that's pretty similar to the things being
21 alleged -- or he's talking about having done in these
22 other instances, which is accosting people on buses, on
23 the street, trying to snatch and grab property from them.
24 And there's some guy making him do all this.

25 He's saying I have no idea how many times I did this.

1 And he himself is making statements about them occur in
2 the same time period as this and at lease on one or two
3 occasions within the statement on CAT buses, just like
4 this case.

5 Whether that statement applies to this particular
6 instance or not is something that a fact finder decides.
7 But I would think that it is very much relevant. The
8 question is is the probative versus prejudicial nature of
9 it.

10 MR. HARRIS: Judge, I would also say is it's a
11 prior bad act. The State didn't file a bad act's
12 motion.

13 THE COURT: That's her case in chief. Not on
14 her case. You called your client to the stand, they are
15 not bound to file a motion to admit evidence in their case
16 in chief of bad acts for what your client can testify to
17 if he makes the decision knowing the pitfalls of that.

18 MR. HARRIS: Only if we open up the door.

19 THE COURT: Cross-examination of your client,
20 who they cannot call as a witness. If there's relevance
21 evidence, even if you chose to not go into it, they're
22 entitled to go into it.

23 They can't call him as a witness.

24 MR. HARRIS: But they can't go into all his
25 prior bad acts if we don't open the door.

1 THE COURT: If it's relevant they can.

2 MR. HARRIS: I respectfully disagree with the
3 court on that.

4 THE COURT: So your position is you, as the only
5 person who can call the Defendant as a witness, if you
6 decide that I'm going to call him and he has all of these
7 things that are relevant to the case, but I'm not going to
8 ask about any of them and they can't ask even though they
9 can't call him as a witness.

10 MR. HARRIS: That's my position.

11 THE COURT: I disagree.

12 MR. HARRIS: If we open the door, they can walk
13 through it.

14 THE COURT: I disagree with your position. If
15 you call your client as a witness -- they can't call him
16 -- and you put him on the stand to testify and there are
17 issues that are relevant to this case in deciding his
18 guilt or not guilt and they can't put it fourth and can't
19 call him as a witness, they can cross-examination him.

20 MR. HARRIS: But they could have put it fourth
21 if they filed a prior bad acts motion.

22 THE COURT: Ms. Harris, if they don't want to
23 put it on in their case in chief because they believe, you
24 know what, for whatever reason we're not going to pursue
25 putting on bad acts in our case in chief, which is a

1 different standard. Then you choose to put your client on
2 the stand, you run the risk in all these things.

3 They couldn't put it in their case in chief he had a
4 conviction. You put him on the stand and brought out he
5 had the conviction. If you wouldn't have asked that
6 question, they would have been allowed to ask that
7 question.

8 These are things you run the risk of when your client
9 takes the stand to testify. If there is information out
10 there that may be prejudicial to him but it's nonetheless
11 relevant to the case, they may be entitled to ask him
12 about it. Those are things that attorneys and defendants
13 have to decide upon when they run that risk to try to
14 figure out am I going to testify or not testify.

15 MS. PENSABENE: Your Honor, I understand the
16 court's position on the relevancy issue. If we could move
17 to the prejudicial versus probative value.

18 THE COURT: Okay.

19 MS. PENSABENE: I do believe if these -- any of
20 these instances in this statement come forward it will be
21 highly prejudicial beyond the point of being probative at
22 all. What we are here today is -- the jury is here to
23 determine what occurred on the 29th. Hearing numerous
24 instances of snatch and grabs, the Russian Mafia, and Baby
25 Insane, as he's referred to in the statement it's highly

1 prejudicial, beyond the point of having any probative
2 value. I think it's error if we allowed that.

3 THE COURT: Ms. Trippiedi.

4 MS. TRIPPIEDI: Our response is that it goes to
5 the case. There is no indication that we're going to talk
6 about the Russian Mafia. That was one line in the whole
7 statement. I think it is very important and probative to
8 the charges in this case for the jury to know that right
9 around the same time period and in the same area -- he
10 does says buses on Boulder Highway -- up and down Boulder
11 Highway -- he was running around with an individual that
12 repeatedly forced him to commit robberies. That's very
13 probative.

14 At one point he even says, yeah -- yeah I didn't even
15 get the phone though. In regards to one robbery. So who
16 knows if he is talking about this robbery or not. This
17 the all probative because it goes to -- it's very relevant
18 to this case. The charges in this case. I don't
19 understand how him committing several robberies on buses
20 with another individual, sometimes without -- at one point
21 he says that the individual was waiting for him across the
22 street, you know. That's very probative to this case.

23 Many robberies are occurring in the same time period,
24 same area.

25 MS. PENSABENE: Our position is if the jury

1 hears any of that evidence they are going to look at any
2 other evidence. They'll hear that and want to convict
3 immediately without a fair shake. There is no analysis
4 further. He did it before. He must have done it again.

5 THE COURT: That's always a concern about prior
6 bad acts. But that doesn't mean that anybody, the United
7 State's Supreme Court on down to State Supreme Court has
8 never said prior bad acts are inadmissible, period. They
9 recognize that pitfalls to the admission of prior bad acts
10 at time of trial.

11 We have to remember we are not dealing in a
12 traditional prior bad act sense. We're talking about your
13 client's statement. This isn't a question where I need to
14 make a decision about did or did not something occur
15 having prove it by clear and convincing evidence and
16 filing a motion to introduce prior bad acts in the case in
17 chief. This is a statement your client gave to robbery
18 detectives investigating a robbery, in which he admits to
19 multiple acts and says he can't remember how many acts,
20 and he admits to these acts occurring at the same time
21 within days of this act. And admits to acts occurring on
22 CAT buses. And admits to acts on CAT buses in the area of
23 this event. And there is nothing in his statement that
24 excludes him from having committed this robbery.

25 There is just a lot of generalized statement about

1 this is a bad guy. He was going to kill me or beat me up
2 if I didn't do what he wanted me to do. He'd have me
3 going up to people and snatching their phones. This lady
4 on the bus, and this dude on the bus, Mexican dude on the
5 street. I don't know how many times I did this. I saw
6 this guy beat people up and I was really, really scared of
7 him.

8 I mean, I do not believe that the prejudicial nature
9 -- I agree it's prejudicial. Anything that inculcates
10 your client is prejudicial. Whether it's identification
11 or a fingerprint or whatever. I don't believe it's a
12 situation in which the prejudicial nature of what's being
13 offered -- we're going to limit what comes in. It's
14 something that could be characterized as outweighing the
15 probative value. It's very probative.

16 My recollections is this case started to the jury as
17 an identification issue. Now your client got on the stand
18 and admitted he was the guy on the bus next to the victim,
19 but he didn't take anything. So I think this becomes more
20 relevant in light of what is the characterization that he
21 is now put forth to the jury. I was there. It's not an
22 identification issue. I was on the bus. I was right next
23 to the victim. I was standing next to him. I'm sure I
24 had contact with him, but nope, I did take anything.

25 MS. PENSABENE: Identification was going to be

1 different then what your Honor stated. It was going --
2 I'll leave it at that Ms. Harris has more to add.

3 MR. HARRIS: The identification is not what your
4 Honor stated. It's misidentification but not in that
5 sense.

6 However, I would ask your Honor to look at 48 --

7 THE COURT: What sense would it have been then.
8 You were asking for the Crawford instruction if they
9 failed to prove they identified the Defendant as the guy
10 that committed the crime.

11 MR. HARRIS: Right, Judge. Because we said that
12 he was going -- he was misidentified. We told them they
13 would see how and why, because there are several other
14 factors of why people may have thought he might have done
15 this. But there are several other factors proving that he
16 did not do that.

17 THE COURT: That's not misidentification. It's
18 just he didn't commit a crime.

19 MR. HARRIS: He was identified as committing the
20 crime, was the position we're taking. He got a crime
21 tipper (sic) stop, the ID,, Mr. Berg ID'd him 30 days
22 later. That's the way we chose to try our case n that
23 sense.

24 I point to 48.045, part two, evidence of a crimes,
25 wrongs, or acts to prove character of the person in order

1 to show that he acted in conformity within -- therewith.

2 It may however be admissible for the purposes to
3 prove a motive, opportunity, intent, preparation, plan,
4 knowledge, identity, or mistake or accident. That is
5 exactly from the statute. So while the State is saying
6 it's relevant, it is not -- you can't use it to show that
7 it's relevant to say this is how he acted in conformity
8 therewith. They have to say the reason why it is
9 relevant.

10 Furthermore, it still would have to be proven by
11 clear and convincing evidence.

12 THE COURT: I agree. I'm saying that's not an
13 issue here. It's his statement. We're not talking about
14 somebody alleges he did something and we need to bring
15 them in and have them testify about what it is they're
16 alleging occurred so I can decide whether I think whether
17 it occurred is proven by clear and convincing evidence.
18 This is your guy's admission.

19 MR. HARRIS: I understand. But I still think it
20 has to be proven by clear and convincing evidence.

21 THE COURT: How else do you prove it.

22 MR. HARRIS: Bring their witness in here if they
23 have one. There is a witness from --

24 THE COURT: There is the guy. He's on the stand
25 testifying now. That's who you ask. It's his statement.

1 MR. HARRIS: We're not here for the 3/27
2 incident.

3 THE COURT: We can go round and round on this,
4 Ms. Harris. It's just failure to communicate with us. In
5 any event, I think that obviously under the statement of
6 your client they can prove by clear and convincing
7 evidence that he made the statement that your client made
8 indicating his involvement in a series of events that I
9 laid out earlier were both similar in nature, location, in
10 time, in manner, in many ways extraordinarily similar to
11 what it is that's alleged to have occurred with Mr.
12 Berg.

13 So I think the statements within here are admissible.
14 Not to parcel out every single thing that was occurring,
15 but to the extent you want to ask him about it and
16 potentially ask the rebuttal detective about it. Did he
17 make admissions to be involved in events with this guy he
18 says was forcing him to do certain things. And that some
19 of which occurred on CAT buses and that type of thing.

20 But not go into the specificity of every one of them
21 or what it was that occurred in each of those.

22 MS. TRIPPIEDI: I'm not going to.

23 THE COURT: It's very clear in my mind that the
24 evidence in terms of relevance would be relevant to
25 whatever was motivating Mr. Manning. Since he has

1 admitted he was on the bus. It's not an issue of
2 identity. It's certainly not relevant to issues of his
3 intent. It's not some kind of incident as he's
4 characterizing in the contact he had with the victim. It
5 would be relevant in proving whether there is a common
6 scheme or plan. His own admission said it was a common
7 scheme or plan. he's saying he was forced to do this.
8 He's admitting the was engaging in a series of these
9 actions.

10 So it's admissible. It's admissible because your
11 client got on the stand and opened himself up to this.

12 MR. HARRIS: I would like to mark and move the
13 statement as the court exhibit.

14 THE COURT: We can.

15 MR. HARRIS: The whole statement.

16 THE COURT: Get a clean copy of it and we'll do
17 that.

18 THE COURT: Did you have anything.

19 MS. TRIPPIEDI: I was going to say that I'll try
20 not to mention the specific acts with the lady and the
21 cell phone.

22 THE COURT: Look, in reading through it, on
23 pages 11 and 12 when he makes reference to -- he can't be
24 specific to how many times this has occurred that he's
25 made do something with somebody. Mr. Manning

1 characterizes himself as a pawn of Mr. Thompson, to go
2 take property, take sedatives is what he references.
3 Pages 11 is where he talks about being a pawn.

4 Page 19 there's reference to these things occurring.
5 Obviously there is references throughout to March 27th
6 event with the lady on the bus. He's identifying himself
7 in pictures on the bus in regard to one of these events.
8 He makes reference at page 23 to another event involving a
9 dude on the bus. Like I said, all of those things, I
10 think when taken in context and their totality make this
11 admissible.

12 But what I would like you to do, both with Mr.
13 Manning and the detective is be more specific into the
14 questions asked so we're not going through reams of what
15 was said in the statement.

16 (Brief recess taken.)

17 THE COURT: On the record. Outside the presence
18 of the jury. Mr. Manning is here with his attorneys.
19 Before we start back up, I'm inclined to read to them an
20 instruction about how to utilize what you are going to
21 question him about, either directly or when he's
22 testifying, and/or doing it again if the detective
23 testifies much like he would do with bad acts. it just
24 tells the jury there is going to be testimony about
25 allegations that the Defendant engaged in some other

1 wrongs or bad conduct. It's not being admitted to prove
2 that he is a bad person, et cetera.

3 Such evidence if received may be considered by you
4 for the limited purpose of -- as I characterized it
5 earlier -- proving the Defendant's motive and/or intent
6 regarding the events in this case, and/or to prove
7 incidents in this case are part of a common scheme or plan
8 and would prove that events in this case were not a result
9 of mistake or accident.

10 If you don't want me to do it, I won't do it. But I
11 think sua sponte I need to bring it up if you haven't
12 asked.

13 MS. PENSABENE: We'd like you to give that.

14 THE COURT: I'll do that before any witness
15 that's asked about it. So I'll do it before you start
16 back up with cross-examination of the Defendant. Then
17 I'll do it again if we have a detective that testifies in
18 rebuttal as well as I'll prepare written instructions to
19 put into our jury instruction when we get those settled.

20 Anything else before we start.

21 MS. PENSABENE: No.

22 THE COURT: Back on the record in 290624.
23 Mr. Manning is on the stand. His attorneys are present.
24 State's attorney are present. Our jurors are present.
25 We'll continue with the testimony of Mr. Manning.

1 I'll remind you you are still under oath.

2 Ladies and gentlemen, before Ms. Trippiedi starts up
3 with cross-examination, ladies and gentlemen, I want to
4 read to you a legal instruction -- you'll get written jury
5 instructions as well.

6 But the part of evidence you're going to hear during
7 Ms. Trippiedi's questioning of the Defendant pertains to
8 allegations that he may have engaged in wrongs or bad
9 conduct, other than that for which he's on trial.
10 Evidence the Defendant committed offenses are engaged in
11 bad conduct, other than that for which he is on trial, if
12 believed is not received and may not be considered by you
13 to prove that he is a person of bad character, or to prove
14 that he has a disposition to commit crimes.

15 Rather such evidence is received and may be
16 considered by you only for the limited purposes of proving
17 the Defendant's motive and/or intent regarding the events
18 in this case, and/or to prove that the events in this case
19 were part of a common scheme or plan, and/or to prove that
20 the events in this case were not a result of a mistake or
21 accident.

22 You must weigh this evidence in the same manner as
23 you do you all the other evidence in the case.

24 Counsel.

25 BY MS. TRIPPIEDI:

1 Q. Sir, do you remember giving a statement to a
2 Detective Kovon?

3 A. Yes.

4 Q. May 18, 2013?

5 A. Yes.

6 Q. That statement was at 2:22, correct?

7 THE COURT: A.m. or p.m.

8 BY MS. TRIPPIEDI:

9 Q. Do remember what time of day?

10 A. I can't remember the time. I didn't have a
11 watch or anything.

12 Q. But do you remember speaking with him on May
13 18?

14 A. Yes.

15 Q. Do you remember telling him about an
16 individual named Nicholas D. Thompson?

17 A. I remember, yes.

18 Q. Is Nicholas Thompson a bad guy?

19 A. I mean -- I can't really say that would be
20 truthful, if I was to -- I couldn't say it and be
21 truthful.

22 Q. Is he someone that is -- someone that you are
23 fearful of?

24 A. No, not at all.

25 Q. Remember in your statement to Detective Kovon

1 saying that Nicholas Thompson is a terrifying man?

2 A. Yes, I remember I said a lot of things to the
3 detective that maybe --

4 Q. Just yes or no. Remember saying he's
5 terrifying man?

6 A. I don't remember saying that. I'm pretty such
7 I said a lot of things.

8 Q. Remember saying that Nicholas Thompson goes
9 around and intimidates people? Yes or no?

10 A. I can't remember word for word everything I
11 told the detective. I just remember we talked for a
12 while.

13 Q. Do you remember saying I started seeing some
14 of the shit he was capable of. Remember saying that to
15 Detective Kovon?

16 A. Truthfully I don't remember. I remember the
17 interview, but, I mean, I was pretty -- it's just
18 something I'm not going to remember word for word. It
19 wasn't that important.

20 Q. Do you remember saying the dude scared me and
21 was forcing me to come with him. Remember saying that?

22 A. I may have conjectured a lot of things that
23 day.

24 Q. Would it surprise you to learn you said that
25 to him?

1 A. No, it wouldn't at all.

2 Q. Did you ever see Nicholas Thompson doing
3 anything that you would characterized as bad?

4 A. No.

5 MR. HARRIS: Objection.

6 THE COURT: As to.

7 MR. HARRIS: Seeing anything that he would ever
8 see him doing characterized as bad.

9 THE COURT: But association, which part of
10 that.

11 MR. HARRIS: That part ever seeing him doing
12 anything bad.

13 BY MS. TRIPPIEDI:

14 Q. Did you ever see him do anything illegal?

15 A. No.

16 Q. Did you ever see him beat anybody up?

17 A. No.

18 Q. Do you remember being asked by Detective Kovon
19 how many times did Nicholas Thompson beat up people that
20 you'd seen. Do you remember answering more than I can
21 count on both fingers?

22 A. I don't remember.

23 Q. Would it surprise you to learn you said
24 that?

25 A. It wouldn't at all.

1 Q. Do you ever remember -- let me ask you. Did he
2 ever, Nicholas Thompson, did he ever cause you to do
3 anything illegal?

4 A. No.

5 Q. Do you remember telling Detective Kovon that
6 he put you in situations that you didn't want to be in?

7 A. I remember saying something like that.

8 Q. Do you remember telling Detective Kovon that
9 Nicholas, this individual, did things to people, and it
10 was a sick game and he'd real you in. Remember saying
11 that?

12 A. Like I stated previously, I remember
13 conjecturing a lot of things to the detective.

14 Q. But would it surprise you that that is what
15 you said to the detective?

16 A. Not at all. I didn't calculate anything I was
17 going to tell him. I figured since --

18 Q. I'm not asking you why you said what you said
19 what you said. I'm just asking you if you said it?

20 Remember saying to the detective I was his little
21 pawn?

22 A. No, I don't remember.

23 Q. Would it surprise you to learn that you did
24 say that on page 11 of your statement?

25 A. Wouldn't at all.

1 Q. Do you remember telling the detective that
2 this individual, Nicholas, would ride around on a bus
3 around the area of Boulder Highway?

4 That wouldn't surprise you to learn you said
5 that?

6 A. Wouldn't at all.

7 Q. Do you remember saying that he made your
8 cousin Joshua Hicks do things the same way he had to you.
9 Remember saying that. Remember saying that you saw your
10 cousin Joshua Hicks on a bus with him?

11 A. No.

12 Q. Would it surprise you to learn you did say
13 that?

14 A. No.

15 Q. Wouldn't surprise you?

16 A. No.

17 Q. Do you remember saying sometimes he'd tell you
18 to do something -- this is Nicholas -- tell you to do
19 something and he'd be waiting across the street. So that
20 the chances of you getting away from him were unlikely
21 because he was going to chase you down. You remember him
22 saying that?

23 A. No, I don't.

24 Q. Would it surprise you to learn that you did
25 say that on page 33 of your statement?

1 A. No, it wouldn't.

2 MS. TRIPPIEDI: Court's indulgence briefly.

3 THE COURT: Okay.

4 BY MS. TRIPPIEDI:

5 Q. Did you ever watch Nicholas actually beat
6 someone up then take something from them?

7 A. No.

8 Q. Do you remember on page 17 and 18 of your
9 statement you say to the detective that you saw Nicholas
10 beat a short Mexican dude and snatch up -- snatch him up.
11 Do you remember that?

12 A. No.

13 Q. Would it surprise you to learn you said that
14 to Detective Kovon?

15 A. That would.

16 MS. TRIPPIEDI: Approach the witness.

17 THE COURT: Yes.

18 BY MS. TRIPPIEDI:

19 Q. I'm going to show you a copy of your voluntary
20 statement.

21 A. Voluntary. '

22 Q. Your statement you gave.

23 A. I wouldn't say voluntary.

24 Q. Read it over and let me know if you remember
25 saying that.

1 A. I remember a time -- I don't recall it, but I
2 mean, I'm not going to doubt it.

3 Q. So your testimony is that you were actually on
4 the bus March 29th, right?

5 A. Yes.

6 Q. Were you by yourself or were you with anyone
7 else?

8 A. Yes, no I was alone.

9 Q. Where were you going?

10 A. Going to a friend's house.

11 Q. Where were you coming from?

12 A. Henderson.

13 Q. Henderson?

14 A. Yes.

15 Q. Where?

16 A. Pretty -- I don't know WalMart in that area a
17 little further from the Long John Silver and A&W. I'm not
18 familiar with -- my mom stays in Henderson. I was coming
19 from her house. I was helping her move. I was going to a
20 friend's house.

21 Q. Where were you working at the time?

22 A. At the time I wasn't full-time employed, but
23 was getting like side jobs here and there with United
24 Temps.

25 Q. Where were you living at the time?

1 A. Where was I living.

2 Q. Yes.

3 A. At the time I can't remember the exact
4 address. I was staying with a friend. I can't remember
5 the address. I can't recall offhand -- Owen and Martin
6 Luther King.

7 Q. You do recall seeing the victim who you saw
8 testify at trial, Thor Berg. You saw him on the bus that
9 day?

10 A. March -- yes.

11 Q. What made you first notice him?

12 A. I'd gotten up cause the bus was crowded and he
13 was standing up holding onto the rail, like, and that's
14 like when we was right next to each other. The bus was
15 crowded. Hard to miss right there.

16 Q. Did you actually see him fall?

17 A. Yes.

18 Q. What is your story about what happened?

19 A. I -- well, I -- it was pretty crowded, you
20 know. I was just trying to get off the bus, you know,
21 like he was kind of in the way, you know. I just kind of
22 walked past him, I didn't mean to like -- I guess he fell
23 kind of dramatic to me, but he had fallen. I caught him
24 because I did kind of go past him rough, but I didn't
25 realize he was so fragile. Because his grip was firm when

1 I went past him he like fell and started hollering.

2 Q. He falls?

3 A. Yes.

4 Q. Did you call 911 for him?

5 A. No.

6 Q. Did you call for help?

7 A. No.

8 Q. Did you help him get up at all?

9 A. No.

10 Q. What did do you?

11 A. I walked off the bus.

12 MS. TRIPPIEDI: No further questions.

13 THE COURT: Ms. Harris.

14 MR. HARRIS: No questions for Mr. Manning.

15 THE COURT: Questions from our jurors. No.

16 Mr. Manning, go ahead step down, sir. Thank you.

17 You have any further witnesses.

18 MS. PENSABENE: The defense rests.

19 THE COURT: State, any rebuttal.

20 MS. TRIPPIEDI: No, your Honor.

21 THE COURT: Okay, ladies and gentlemen, we're

22 going to take our evening recess. Tomorrow we'll do

23 1:00. See you all tomorrow.

24 JURY ADMONITION

25 During the recess, ladies and gentlemen, you are

1 admonished not to converse among yourselves or with anyone
2 else, including, without limitation, the lawyers, parties
3 and witnesses, on any subject connected with this trial,
4 or any other case referred to during it, or read, watch,
5 or listen to any report of or commentary on the trial, or
6 any person connected with this trial, or any such other
7 case by any medium of information including, without
8 limitation, newspapers, television, internet or radio.

9 You are further admonished not to form or express any
10 opinion on any subject connected with this trial until the
11 case is finally submitted to you.

12 Anything outside the presence.

13 MS. PENSABENE: No.

14 MS. HARRIS: No.

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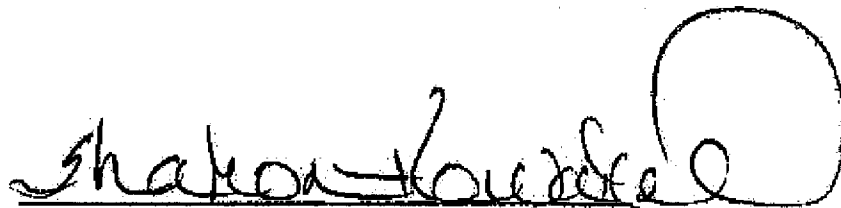
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CERTIFICATE
OF
CERTIFIED COURT REPORTER

* * * * *

I, the undersigned certified court reporter in and for the
State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the
time and place therein set forth; that the testimony and
all objections made at the time of the proceedings were
recorded stenographically by me and were thereafter
transcribed under my direction; that the foregoing is a
true record of the testimony and of all objections made at
the time of the proceedings.

A handwritten signature in cursive script, reading "Sharon Howard", is written over a horizontal line. The signature is fluid and includes a large, circular flourish at the end.

Sharon Howard
C.C.R. #745

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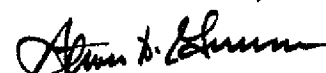
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TRAN
CASE NO. C-290624
DEPT. NO. 3



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

THE STATE OF NEVADA,

Plaintiff,

vs.

JAMES MANNING,

Defendant.

REPORTER'S TRANSCRIPT
OF
JURY TRIAL

BEFORE THE HONORABLE DOUGLAS
DISTRICT COURT JUDGE

DATED: WEDNESDAY, JANUARY 15, 2014

REPORTED BY: Sharon Howard, C.C.R. #745

1 APPEARANCES:

2 For the State: HAGAR TRIPPIEDI, ESQ.

3

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6 For the Defendant: MARISSA PENSABENE, ESQ.

7 BELINDA HARRIS, ESQ.

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* * * * *

1 LAS VEGAS, NEVADA; WEDNESDAY, JANUARY 15, 2014

2 P R O C E E D I N G S

3 * * * * *

4
5 THE COURT: Good afternoon.

6 On the record, outside the presence. Mr. Manning is
7 here with his attorneys. We got everything settled. I
8 know there are some that the defense wants marked as court
9 exhibits. There's one that got e-mailed over today that
10 defense was proposing so let's take that up first.

11 MS. PENSABENE: Your Honor, prior to the actual
12 trial we were of the understanding that the video was
13 malfunctioning and that's the reason why it was not able
14 to be copied. Based on the testimony of Detective Embry
15 as I recall it was not copied at the time, so by the time
16 it came to his file it was too late because the bus
17 company had changed. So in my opinion that's a failure to
18 gather the evidence. For that reason we're asking for the
19 Daniel instruction.

20 THE COURT: What is it that supports -- what
21 position would you take on that, gross negligence,
22 negligence materiality.

23 MS. PENSABENE: It is gross negligence based on
24 the fact that Officer Steinbach who responded to the scene
25 knew there was video there and didn't -- from the

1 testimony, it's my understanding he only took pictures. He
2 didn't take video. He didn't copy the videos. He
3 neglected to do that. By the time it got to Detective
4 Embry's desk it was too late. We don't know when he
5 actually got the file or if he looked at it immediately or
6 not. It may have been sitting on his desk for awhile.

7 MS. TRIPPIEDI: I don't think it amounts to
8 negligence or gross negligence or bad faith. You know, I
9 think it's certainly reasonable or a reasonable jury could
10 find -- that's the standard that the Daniels' case
11 requires -- that a reasonable jury find that it was
12 negligent. I don't think they could find that because it
13 was -- we learned there were repeated attempts to locate
14 the video.

15 We learned that the company went out of business just
16 shortly after. We -- you know, and the case even says
17 that -- it states that police officers generally have no
18 duty to collect all potential evidence from a crime scene.
19 They do have a duty to collect evidence, you know, and he
20 did collect what was there. He got the names of the
21 important witness. He took her name. Took the victim's
22 name. He documented the scene. He did a report, you
23 know. The video obviously wasn't available right there
24 and then. And it's reasonable for the detective that
25 obtained the case to think that there was video because he

1 saw still photographs.

2 As you know there was also another robbery in this
3 case originally. It was two robberies originally charged.
4 And there was video for that event. So it's not
5 unreasonable to assume that the detective saw videos in
6 evidence. He saw stills for him to think that, yes, they
7 are in the evidence vault. Later when I asked him to
8 obtain the video that's when we learned that there was no
9 video. After that -- this is what he told me. I don't
10 remember what came out on the stand. After that, you
11 know, I asked him to try to obtain the video. I told him
12 go back and try to get the company to get the video. He
13 tried numerous times. I said go to the new company --
14 they changed ownership -- and try again. It was
15 unsuccessful.

16 I don't think that amounts to negligence or gross
17 negligence required.

18 THE COURT: Materiality, the first aspect of it,
19 whether you're dealing with preservation or gathering of
20 evidence was materiality. You have to take a look at --
21 particularly in regard to failure to gather evidence,
22 materiality is is this something one could reasonably
23 conclude would have changed the outcome of the trial. I
24 know we're not at that point, but that's the standard on
25 Supreme Court review.

1 In terms of what this video would have shown, where
2 the cameras were on the bus --

3 MS. TRIPPIEDI: The Daniels' case, just to put
4 it out there. It was about failure to draw blood from a
5 defendant that later said he was under the influence of
6 narcotics and that's why he committed the case. It's
7 completely different.

8 In the Daniels' case the evidence was material to the
9 outcome of the case, but in this case, there are other
10 factors of evidence that point to his guilt. For instance
11 the victim testimony, eye-witness testimony, I don't think
12 it's so material as the Daniels' case where that blood
13 evidence was necessary. It needed to be done on the spot.
14 It's certainly distinguished.

15 MS. PENSABENE: If I can respond, your Honor.

16 First thing I want to say is I want to go back. The
17 State did mention that there were -- this was originally
18 one case with 4 counts. Before it was one case with 4
19 counts it was two separate events, two separate Metro
20 event numbers. To the end the detective picked up the
21 file and assumed that everything was there, it was two
22 event numbers.

23 It's my understanding it's the State who decides to
24 bring the case in 4 separate counts. I don't think he
25 would have picked up event number 327, event number 329

1 and said there's video in one of these there must be video
2 in the other.

3 As far as materiality, this would have effected the
4 case. If we had the video, so much more light would have
5 been shed on the case.

6 We know that the bus has 8 cameras that are all over
7 the bus. They have several in the center, a front camera
8 and back cameras. I believe had there been video in this
9 case it would have been very material.

10 MS. TRIPPIEDI: Just in response to that
11 briefly. Casinos have cameras all over and we get cases
12 that happen in the casino and we'll have the video
13 surveillance and often it's hard to distinguish what
14 happened based on that video surveillance. It's not always
15 very clear. There are other people in the stills. It
16 makes it very hard to determine what happened in a case
17 based on video surveillance.

18 MS. PENSABENE: We're not talking about a
19 casino. We're talking about a bus. Video stills have
20 good quality. I think we would have been able to see
21 something.

22 THE COURT: My problem with materiality is we
23 don't know what all the cameras would catch, much less --
24 and by that I mean what locations are they focused on so
25 you're going to get to see something. That's first.

1 Second and apart from the description by people about
2 how crowded the bus was whether you're going to see
3 somebody put their hand in somebody's pocket or not and
4 see that.

5 So it's questionable to me whether it meets the
6 materiality requirement that the Supreme Court wants from
7 Daniel's. Regardless of the factual scenario in Daniels,
8 the import of Daniels is it created such for a failure to
9 gather evidence as opposed to preserving evidence once the
10 State has it. It enunciated the standard from New Mexico
11 so that's what we use. I think it's an appropriate case
12 to look at.

13 But like I said the first thing they talk about is is
14 it material. That means would it reasonably have changed
15 the outcome. I don't think we can answer that question.
16 That's kind of a problem. But even if we could answer
17 that question, they'd say it was material. I don't think
18 anything I heard rises to the level of bad faith or gross
19 negligence. It's arguably negligence. If we apply the
20 standard that we use in civil cases to define negligence
21 about what reasonable people do, I think certainly the
22 defense could make argument that the detective was
23 negligent in not going back and trying to obtain video
24 earlier or figure out where the camera angles were so that
25 they should or shouldn't have gone to get the video. So

1 you can make that argument.

2 From what the standard would be for gross negligence,
3 I'm not prepared to say that it meets the standard of
4 gross negligence. I think it's only if you get to gross
5 negligence, do you begin dealing with instructing the jury
6 on presumptions of unavailability or who benefited or not
7 benefited in terms of showing.

8 Bad faith lead to dismissal, suppression, gross
9 negligence is presumption of unavailability.

10 Negligence, I don't think involves any sanction.
11 It's something to argue. You can sit up there and argue
12 it's going to be a struggle for you to reach the standard
13 of beyond a reasonable doubt because you don't have this
14 video. That's the fault of the police. They did a bad
15 job. You can make that argument. But I don't think it's
16 appropriate for any kind of presumption, rebuttal or
17 otherwise.

18 MS. PENSABENE: In light of your ruling your
19 Honor, can we have that marked as an exhibit.

20 THE COURT: The instruction.

21 MS. PENSABENE: Yes.

22 THE COURT: Yes.

23 MS. PENSABENE: Thank you.

24 THE COURT: You have a copy of it.

25 Judge Bell told me she got rid of that rule, the 5

1 arrests for mental health court a year ago she said.
2 Well, problem solved. But she wasn't sure where it came
3 from either.

4 In regard to instructions that we previously went
5 through and settled upon, let's put them on the record.

6 Instruction, No. 1, it is now my duty as judge.

7 2, if in these instructions.

8 3, an information is.

9 4, robbery is.

10 5, the value of property.

11 6, an individual identified.

12 7, battery means.

13 8, to constitute the crime charged.

14 9, the defendant is presumed.

15 10, the State has the burden of proving.

16 11, the evidence which you are to consider.

17 12, during the course of the trial.

18 13, credibility or believability.

19 14, the value of eye-witness identification.

20 15, it is a constitutional right.

21 16, although you are to consider.

22 17, if you find that the State failed.

23 18, in your deliberation.

24 19, when you retire.

25 20, if during your deliberation.

1 21, now you will listen to arguments of counsel.

2 So you know I also took off -- I compressed the
3 verdict into one-page instead of two, because I think you
4 only need that we the jury in the above-entitled case
5 language once. I also took off everywhere that it had the
6 a.k.a. I don't send that to the jury, it's just James
7 Manning. I took it off the front page of the
8 instructions, as well as off the verdict form.

9 The State has a copy of the 21 instructions.

10 MS. TRIPPIEDI: Yes.

11 THE COURT: Any objection to any of the 21.

12 MS. TRIPPIEDI: No, your Honor.

13 THE COURT: Any objection to the verdict form.

14 MS. TRIPPIEDI: No, your Honor.

15 THE COURT: You have any you're requesting to be
16 given that the court is not going to give you want marked
17 as court exhibits.

18 MS. TRIPPIEDI: No, your Honor.

19 THE COURT: Defense have a copy of the 21.

20 MS. PENSABENE: We do, your Honor.

21 THE COURT: Any objection to any of the 21.

22 MS. PENSABENE: We don't.

23 THE COURT: Any objection to the verdict form.

24 MS. PENSABENE: No, your Honor.

25 THE COURT: You have any other then the Daniels

1 one we discussed that you want to have marked as court
2 exhibits.

3 MS. PENSABENE: Yes. There were some yesterday
4 we discussed.

5 The first is the reasonable doubt standard, we'd like
6 to have that marked. We believe that this is a correct
7 statement of the law in *Randolf v State*. I believe your
8 Honor yesterday stated that you thought it was dicta. We
9 do believe it's the correct holding.

10 THE COURT: I don't know that it was dicta. I
11 think what I said was it was a correct statement of the
12 language. Used finish case I don't think in that case
13 they were at that time proposing to change the instruction
14 on reasonable doubt. I wouldn't be surprised if they do
15 in the future. But I don't want to be the guy changing
16 reasonable doubt now in terms of the instruction without
17 direction from the Supreme Court. We'll have that marked
18 as an exhibit.

19 MS. PENSABENE: Thank you.

20 There is another one. I believe if there are two
21 interpretations in the case you have to go with the
22 interpretation more --

23 THE COURT: The one based on *Bails*, *Hooper*.

24 MS. PENSABENE: Correct. We'd like to have that
25 marked as an exhibit as well. That's language that comes

1 from the correct statement of the law.

2 THE COURT: Okay.

3 When we were discussing that I indicated that I think
4 that proposed instruction came out of those cases that
5 were in the early to mid 70s. What the Supreme Court said,
6 I believe the Supreme Court affirmed the non-use of the
7 instruction. It stated that the appropriate instruction on
8 reasonable doubt is given in those instructions aren't
9 necessary. So I will however it marked.

10 You have a clean copy.

11 MS. PENSABENE: I can find one for you, your
12 Honor.

13 THE COURT: So we'll have that marked as a court
14 exhibit as well.

15 MS. PENSABENE: the last one your Honor, the
16 last issue is that we had asked for a lesser included in
17 this case. We are of the belief, based on the testimony
18 of Mr. Berg and Ms. Borley's testimony it shows that the
19 battery in this case is the force required in the robbery.
20 We'd like that also included.

21 THE COURT: The previous discussion we had on
22 that was if I recall correctly I said that it may be that
23 you can argue if he gets convicted of both crimes that the
24 battery was subsumed into the force necessary to commit
25 the robbery. I don't think that makes the battery a

1 lesser included offence. It just make the defense apply
2 the alternative.

3 So they can only adjudicate him on one or the other.
4 So I'm very open to having that discussion if they
5 convict. I think the State is entitled to put both
6 charges forward. If the jury returns a verdict as to
7 both, we'll speak about sentencing and adjudication. It
8 may be he gets adjudicated on one.

9 Okay.

10 MS. PENSABENE: One more issue I forget. We did
11 request yesterday that the verdict form be changed to not,
12 number 4, guilty based on presumption of innocence.

13 THE COURT: You did make that request. I'll
14 leave it as it is.

15 You have anything else.

16 MS. PENSABENE: That's all.

17 THE COURT: Anything from the State.

18 MS. TRIPPIEDI: No, your Honor.

19 MS. HARRIS: I have two issues. I did provide,
20 for the record, the exhibit of Mr. Manning's statement
21 that we had argument on yesterday for a court exhibit. I
22 would like to also ask the court to mark the photo
23 identification, the line-up information that the detective
24 was allowed to testify to that I believe is hearsay, as
25 also a court exhibit.

1 THE COURT: Okay. I thought those were admitted
2 as exhibits.

3 THE CLERK: They weren't.

4 MS. HARRIS: That's why I want to make it court
5 exhibits.

6 THE COURT: So the line-up, which is proposed to
7 be the line-up that has the circle around Mr. Manning with
8 the initials as 2-C. And the line-up witness instruction
9 form is 2-A. All of those will be marked as court
10 exhibits.

11 MS. HARRIS: Thank you, Judge. Just the line-up
12 stuff and the statement.

13 MS. TRIPPIEDI: It was not admitted. The media
14 release was not. Just the stills.

15 THE COURT: Okay.

16 MS. PENSABENE: I'll e-mail you a clean copy. I
17 don't have one of the exhibits you want.

18 THE COURT: Fine.

19 On the record in 290624, State of Nevada vs.
20 James Manning. Mr. Manning is present with his attorneys.
21 State's attorneys are present. Jurors are present.

22 You'll recall when we started this process Monday I
23 said there would come a time I was going to give you the
24 law that is is my obligation to decide that applies to the
25 case. That's the time we've reached. So I need to, by

1 law, read the instructions to you. As I said that's why I
2 give you a packet. I give you a packet to read along.
3 It's easier to start understanding them and thinking about
4 them if you can read them while I'm reading them to you.
5 That's first thing.

6 The second thing is you get to take your packet wi
7 you when you go back to deliberate. Feel free while I'm
8 reading to you to make notes on any particular
9 instructions you want to.

10 What I would suggest is that you maybe write your
11 name or initials on the front page so your packet doesn't
12 get mixed up anybody else's.

13 I'll try to read through them as quick as can to get
14 onto arguments.

15 Instructions to the jury, Instruction No. 1, members
16 of the jury, it is now my duty as judge to instruct you in
17 the law that applies to this case.

18 It is your duty as jurors to follow these
19 instructions and to apply the rules of law to the facts as
20 you find them from the evidence.

21 You must not be concerned with the wisdom of any rule
22 of law stated in these instructions. Regardless of any
23 opinion you may have as to what the law ought to be, it
24 would be a violation of your oath to base a verdict upon
25 any other view of the law than that given in the

1 instructions of the court.

2 Number 2, if in these instructions, any rule,
3 direction, or idea is repeated or stated in different
4 ways, no emphasis thereon is intended by me and none may
5 be inferred by you. For that reason you are not to single
6 out any certain sentence or individual point or
7 instruction and ignore the others. But you are to
8 consider all the instructions as a whole, and regard each
9 in the light of all the others.

10 The order in which the instructions are given has no
11 significance as to relative importance.

12 3, an information is but a formal method of accusing
13 a person of a crime and is not of itself any evidence of
14 his guilt.

15 In this case it is charged in an information that on
16 or about March 29, 2013, the Defendant committed the
17 offenses of robbery, victim 60 years of age or older,
18 Category B felony, NRS 193.167, 200.380.

19 Battery with intent to commit a crime, Category B
20 felony, NRS 200.400, in the following manner, to wit:

21 Count (1), robbery, victim 60 years of age or older.
22 Did then and there willfully, unlawfully, and feloniously
23 take personal property, to wit, money from the person of
24 Thor Berg, being 60 years of age or older, or in his
25 presence by means of force or violence or fear of injury

1 to and without the consent and against the will of the
2 said Thor Berg.

3 2, battery with intent to commit a crime. Did then
4 and there willfully, unlawfully, and feloniously use force
5 or violence upon the person of another, to wit, Thor Berg,
6 with the intent to commit robbery, by pushing the said
7 Thor Berg to the ground.

8 It is the duty of the jury to apply the rules of law
9 contained in these instructions to the facts of the case
10 and determine whether or not the Defendant is guilty of
11 one or more of the offenses charged.

12 Each charge and the evidence pertaining to it should
13 be considered separately. The fact that you may find a
14 defendant guilty or not guilty as to one of the offenses
15 charged, should not control your verdict as to any other
16 offence charged.

17 Number 4, robbery is the unlawful taking of personal
18 property from the person of another or in any his presence
19 against his will by means of force or violence or fear of
20 injury immediate or future to his person or property or
21 the personal property of a member of his family or of
22 anyone in his company at the time of the robbery.

23 Such force or fear must be used to obtain or retain
24 possession of the property to prevent or overcome
25 resistance to the taking, or to facilitate escape. In

1 either of which cases the degree of force is immaterial if
2 used to compel acquiescence to the taking of our escaping
3 with the property.

4 5, the value of property or money taken is not an
5 element of the crime of robbery. And it is only necessary
6 that the State prove forcible taking of some property or
7 money.

8 6, any individual identified as a victim who is 60
9 years of age older on the date of the alleged crime
10 satisfies the element of being a victim 60 years of age or
11 older.

12 7, battery means any willful and unlawful use of
13 force violence upon the person of another. Any person who
14 commits a battery upon another with the specific intent to
15 commit a robbery is guilty of the offence of battery with
16 intent to commit a crime.

17 8, to constitute the crime charged there must exist a
18 union or joint operation of an act forbidden by law and an
19 intent to do the act.

20 The intent with which an act is done is shown by the
21 facts and circumstances surrounding the case. Do not
22 confuse intent with motive. Motive is what prompts a
23 person to act. Intent refers only to the state of mind
24 with which the act is done. Motive is not an element of
25 the crime charged, and the State is not required to prove

1 a motive on the part of a Defendant in order to convict.

2 However, you may consider evidence of motive or lack
3 of motive as a circumstance in the case.

4 9, the Defendant is presumed innocent until the
5 contrary is proved. This presumption places upon the
6 State the burden of proving beyond a reasonable doubt
7 every material element of the crime charged, and that the
8 Defendant is the person who committed the offence.

9 A reasonable doubt is one based on reason. It is not
10 mere possible doubt, but is such a doubt as would govern
11 or control a person in the more weighty affairs of life.

12 If the minds of the jurors, after the entire
13 comparison and consideration of all the evidence are in
14 such a condition that they can say they feel an abiding
15 conviction of the truth of the charge, there is not a
16 reasonable doubt.

17 Doubt to be reasonable must be actual, not mere
18 possibility or speculation.

19 If you have a reasonable doubt as to the guilt of the
20 Defendant, he is entitled to a verdict of not guilty.

21 10, the State has the burden of proving beyond a
22 reasonable doubt every material element of the crime
23 charged. The Defendant does not have to proof his
24 innocence. Accordingly, the Defendant does not have to
25 call witnesses to testify on his behalf.

1 11, the evidence which you are to consider in the
2 case consists of the testimony of the witnesses, the
3 exhibits, and any facts admitted or agreed to by counsel.
4 There are two types of evidence, direct and
5 circumstantial.

6 Direct evidence is the testimony of a person who
7 claims to have personal knowledge of the commission of the
8 crime which has been charged, such as an eye-witness.

9 Circumstantial evidence is the proof of a chain of
10 facts and circumstances which tend to show whether the
11 Defendant is guilty or not guilty.

12 The law makes no distinction between the weight to be
13 given either direct or circumstantial evidence.
14 Therefore, all of the evidence in the case, including the
15 circumstantial evidence, should be considered by you in
16 arriving at your verdict.

17 Statements, arguments, and opinions of counsel are
18 not evidence in the case. However, if the attorneys
19 stipulate to the existence of a fact, you must accept the
20 stipulation as evidence and regard that fact as proved.

21 You must not speculate to be true any insinuation
22 suggested by a question asked a witness. A question is
23 not evidence and may be considered only as it supplies
24 meaning to the answer. You must disregard any evidence to
25 which an objection was sustained by the court, and any

1 evidence ordered stricken by the court.

2 Anything you may have seen or heard outside the
3 courtroom is not evidence and must also be disregarded.

4 12, during the course of the trial you have heard
5 evidence pertaining to allegations that the Defendant
6 engaged in wrongs or bad conduct other than those for
7 which he is on trial, and evidence that the Defendant
8 committed offenses or engaged in bad conduct other than
9 that for which he is on trial if believed was not received
10 and may not be considered by you to prove that he is a
11 person of bad character or to prove that he has a
12 disposition to commit crimes.

13 Such evidence was received and may be considered by
14 you only for the limited purposes of prove the Defendant's
15 motive and/or intent regarding the events in this case,
16 and/or proof that the events in this case were part of a
17 common scheme or plan, and/or to prove the events in this
18 case were not as a result of mistake or accident.

19 You must weigh this evidence in the same manner as
20 you do all other evidence in the case.

21 13, the credibility or believability of a witness
22 should be determined by his manner upon the stand, his
23 relationship to the parties, his fears, motives,
24 interests, or feelings, his opportunity to have observed
25 the matter to which he testified, and the reasonableness

1 of his statements and the strength or weakness of his
2 recollections.

3 If you believe that a witness has lied about any
4 material fact in the case, you may disregard the entire
5 testimony of that witness or any portion of his testimony
6 which is not proved by other evidence.

7 The weight of the evidence is not necessarily
8 determined by the number of witnesses testifying. You
9 should consider all of the facts and circumstances in
10 evidence.

11 14, when evaluating an eye-witness' identification
12 you can consider the believability of the eye-witness, as
13 well as other factors such as the opportunity of the
14 witness to observe the criminal at the time of the act.
15 The witness' degree of attention. The accuracy of the
16 witness' description of the criminal. And the length of
17 time between the crime and the identification.

18 15, it is a constitutional right of a defendant in a
19 criminal trial that he may not be compelled to testify.
20 Thus the decision as to whether he should testify is left
21 to the defendant on the advice of counsel of his
22 attorney.

23 You must not draw any inference of guilt from the
24 fact that he does not testify. Nor should this fact be
25 discussed by you or enter into your deliberations in any

1 way.

2 16, although you are to consider only the evidence
3 in the case in reaching a verdict, you must bring to the
4 consideration of the evidence your every day common sense
5 and judgment as reasonable men and woman. Thus you are
6 not limited solely to what you see and hear as the
7 witnesses testify.

8 You may draw reasonable inferences from the evidence
9 which you feel are justified in the light of common
10 experience. Keeping in mind that such inferences should
11 not be based on speculation or guess.

12 A verdict may never be influenced by sympathy,
13 prejudice, or public opinion. Your decision should be the
14 product of sincere judgment and sound discretion in
15 accordance with these rules of law.

16 17, if you find that the state failed to prove beyond
17 a reasonable doubt any material element of the crime
18 charged you must find the Defendant not guilty of that
19 crime.

20 18, in your deliberation you may not discuss or
21 consider the fact the Defendant is being held in custody,
22 as that is a matter which is completely relevant and not
23 related to your determination of whether the Defendant is
24 guilty or not guilty.

25 19, when you retire to consider your verdict you must

1 select one of your members to act as foreperson who will
2 reside over your deliberation and will be your
3 spokesperson here in court.

4 During your deliberation you will have all the
5 exhibits which are admitted into evidence, these written
6 instructions, and forms of verdict which have been
7 prepared for your convenience.

8 Your verdict must be unanimous. As soon as you have
9 agreed upon a verdict, have it signed and dated by your
10 foreperson and then return with it to this room.

11 20, if during your deliberation you should desire to
12 be further informed on any point of law or hear again
13 portions of testimony, you must reduces your request to
14 writing signed by the foreperson. The officer will then
15 return you to court where the information sought will be
16 given to in the presence of and after notice to the
17 district attorney and the Defendant and his counsel.

18 Read backs or testimony are time consuming and are
19 not encouraged unless you deem it a necessity. Should you
20 require a read back you must carefully describe the
21 testimony to be read back so that the court reporter can
22 arrange her notes. Remember, the court is not at liberty
23 to supplement the evidence.

24 21, now you will listen to the arguments of counsel
25 who will endeavor to aid you to reach a proper verdict by

1 refreshing in your minds the evidence and by showing the
2 application thereof to the law.

3 But whatever counsel may say, you will bear in mind
4 that it is duty to be governed in your deliberation by the
5 evidence as understand it and remember it to be and by law
6 as given to you in these instructions, with the sole,
7 fixed, and steadfast purpose of doing equal and exact
8 justice between the Defendant and the State of Nevada.

9 You all should have a copy of the verdict form on the
10 back of your packet. It's self-explanatory and the
11 attorneys may discuss that further with you during
12 arguments.

13 Thank you for your time with me.

14 Ms. Trippiedi.

15 CLOSING STATEMENT

16 BY MS. TRIPPIEDI:

17 Ladies and gentlemen, in every criminal case the
18 State is required to prove two things. That a crime was
19 committed. And that the Defendant is the one that
20 committed the crime.

21 So I'm going to talk first about that first prong and
22 work way to the second requirement that we have to prove.

23 So the crime charged in this case is robbery of a
24 victim over the age of 60, and battery with intent to
25 commit a crime.

1 Page 4, Instruction 4, defines what a robbery is.
2 It's a taking of personal property from someone by use of
3 force. So it's different than a larceny. I carry a large
4 purse and sometimes I don't zip it all the way. If I were
5 to come home and see that my wallet was missing, that
6 would not be a robbery. It was not a forceful taking.

7 In this case the evidence shows us that a robbery in
8 fact occurred. We have testimony from the victim Thor
9 Berg, that you heard from. And Thor told you that he felt
10 a hand go into his pocket then he felt himself pushed
11 down.

12 He also testified that his belongings, he had money
13 in his pocket, his belongings were taken from him. So
14 that's the definition of a robbery.

15 We also have testimony from an eye-witness that saw
16 the whole thing. She said that she saw the Defendant take
17 Thor's belongings and knock him down. Now, I know it may
18 not seem like much because it's not scientific evidence,
19 but those two key pieces of evidence, the victim's
20 testimony and the eye-witness' testimony are huge
21 determinative that this actually occurred.

22 In most of our cases that robbery detective told you
23 that -- told us that there is 2- to 3,000 robbery cases a
24 year. Not many are solved. So must of our cases do go
25 unsolved. Police reports get filed.

1 But in this case, this case was actually solved.
2 We're here today in court. We have actual testimony from
3 the victim and from an eye-witness. That's huge evidence.
4 I don't want you to underestimate that evidence.

5 Now, battery with intent to commit a robbery also
6 occurred. We know that the victim was pushed down. And
7 it's true that Callie, the eye-witness, testified that he
8 got knocked like somewhere here. The victim said it was
9 somewhere down there. That small detail is not important.
10 All we have to show is that he was knocked down. It could
11 be perceived differently depending on where someone is
12 standing on the bus. But the victim testified he felt
13 himself get knocked to the ground. The eye-witness
14 testified I saw him knock him out.

15 This eye-witness in this case, she is not just
16 another person riding the bus. She is a loss prevention
17 officer. Her job everyday is to go to work and take notice
18 of people. She is very perceptive of people.

19 She is the one that saw this and came in and relayed
20 details. So that's very significant. That's something
21 you really need to keep in mind.

22 Now, what other evidence do we have that this crime
23 was committed. The Defendant took the stand, and he
24 testified about the statement that he gave to the
25 detective in this case. You heard me first ask him about

1 a Nicholas. What does he have to do with this case. Let
2 me tell you why Nicholas is important. The Defendant told
3 the robbery detective that Nicholas is a person that he
4 hangs out with Nicholas. He's a person that has -- he's
5 seen more times than he can count on both fingers him
6 knock people down. Nicholas played the game where he
7 would take things from people on buses in the area of
8 Charleston. Right where this happened to occur. Then the
9 Defendant said two things that are important about this
10 Nicholas. He said I was his little pawn, and he said this
11 is all his little --

12 MS. PENSABENE: That not in evidence.

13 THE COURT: I'll sustain the objection.

14 MS. TRIPPIEDI: Your Honor, if I may. The
15 Defendant actually, he didn't say this, but when I asked
16 is this what you told the detective. Would it surprise
17 you to learn you told this to the detectives. He said no
18 it wouldn't.

19 THE COURT: The objection was I was his pawn.

20 MS. PENSABENE: Correct.

21 THE COURT: I'll sustain that objection.

22 MS. TRIPPIEDI: Okay.

23 He also said this was all a game to him. And he
24 reeled me in.

25 MS. PENSABENE: Objection, facts not in

1 evidence.

2 THE COURT: Approach the bench.

3 (Discussion held at the bench.)

4 THE COURT: The last objection is overruled. I'll
5 allow that statement to stand.

6 Continue.

7 BY MS. TRIPPIEDI:

8 You heard that he did tell the detective that
9 Nicholas had a little game, and he reeled the Defendant
10 in. So you know you can connect the dots and see why that
11 is relevant in this case and why it's significant. This
12 wasn't just a man who was on his way to work on the bus
13 and happened to come across all of this.

14 Speaking of him being on his way to work, he
15 testified that he didn't have a job at the time. He had a
16 part time job. He didn't have a place to live at the
17 time. So I mean there's a motive. You can consider motive
18 for whether you think this crime occurred. That would be a
19 motive for him.

20 And another thing that -- the other thing that we do
21 have to prove in this case is that the Defendant is the
22 one that committed this crime. I think that the evidence
23 for that is overwhelming. They started out their case very
24 first thing that you heard from the defense attorneys was,
25 ladies and gentlemen, this is a case of misidentification.

1 Clearly it's not a case of misidentification, because he
2 admitted that he was there on the bus that day.

3 I think that is significant too. Why would he even
4 remember March 29, 2013 at his time on the bus if nothing
5 had happened. I don't remember drives to work. I don't
6 remember who I cut off or who cut me off on the way to
7 work a year ago. He remembered March 29, 2013. What did
8 he remember about it. There were a lot of people on the
9 bus. I saw this old man. He was right next to me. And
10 he was on the ground. That's what he remembers from this
11 incident.

12 I asked him, so this man was on the ground next to
13 you on the ground and he said yes. And he said that the
14 old man hollered. Now if he really remembers it this way
15 -- and I don't expect him to pick up the phone and call
16 911. But I do expect him to reach out a hand. What did
17 he tell you he did. He got off the bus.

18 I mean Instruction No. 16, in the packet you received
19 is what -- it's a long instruction so you don't have to
20 read it now, but it's what we lawyers refer to as the
21 common sense instruction. What that instruction tells us
22 is when you come in for jury duty and when you go through
23 the metal detectors down stairs you are not to leave your
24 common sense outside of this building. You bring it into
25 the building with you bring it into the courtroom with you

1 and you use it as you're evaluating the evidence in this
2 case and as you are making your determination.

3 And common sense tells us that it doesn't make sense
4 for him to remember a day like March 29, 2013 and remember
5 someone falling and getting off the bus. Use your common
6 sense when you are making your determination.

7 Another important thing to show that he is the one
8 that committed the crime, other than, well -- I mean the
9 most important thing is that victim testimony. I know I
10 keep saying it, but I want to stress how important it
11 is.

12 Say for instance a person comes home, and they find
13 the house ransacked, burglarized. Then they look out
14 their window and they see a man leaving their house with a
15 pillowcase full of their belongs. If that victim, that
16 homeowners comes into court and says that's the man that
17 burglarized my house. That's strong evidence.

18 Now, if the neighbor across the street saw the man
19 leaving the house with a pillowcase full of stuff and
20 comes into court and testifies too, that's huge evidence.
21 It's overwhelming. So I don't want to say that that's not
22 important. But what I'm telling you know this for is
23 that's not all we have. We have other stuff too to show
24 that he did commit this act.

25 Instruction No. 11, is the circumstantial evidence

1 instruction. What that tells us to do is look at all of
2 the circumstances in the case when you are making your
3 determination. So imagine every single instance, every
4 single piece of evidence being a link in long chain that
5 establishes his guilt.

6 What do we have here. We have once again, that
7 victim's testimony. We have the eye-witness testimony,
8 the loss prevention officer. We have this still photo
9 showing that the Defendant was there. We have not only
10 the still photos, but the detective got the name the Crime
11 Stoppers tip James Manning. You know we are not here
12 because they got a tip that said James Manning. We are
13 here today for all of those other reasons.

14 Detective took the picture of James Manning, a
15 different picture, put it into a photo line-up. Shows it
16 to the victim. And the victim again says, yes, this is
17 the person that robbed me.

18 And we have the fact that James Manning admitted that
19 he has a friend that reeled him into this game and reeled
20 him into this game of taking things from people, pushing
21 people down on buses.

22 So all of those links are part of a chain that
23 establish that that man is guilty. At the end of this
24 case, we're going to ask you that when you go into the
25 jury room to deliberate we're going to ask that you find

1 him guilty as charged. Hold him responsible for what he
2 did.

3 Thank you.

4 THE COURT: Ms. Pensabene.

5 MS. PENSABENE: Thank you.

6 CLOSING STATEMENT

7 BY MS. PENSABENE:

8 Good afternoon.

9 The devil is in the details. You heard me talk to
10 you about the importance of details in jury selection.
11 You heard Ms. Harris in opening ask that you pay attention
12 to details in this case. Details in this case lead to one
13 thing, reasonable doubt. An overwhelming amount of
14 reasonable doubt.

15 Let's start with the two key witness, the two key
16 eye-witnesses in this case. They have two different
17 stories. Two conflicting accounts of what happened. Two
18 versions of event. Two witnesses that can't agree.
19 That's reasonable doubt.

20 Ms. Callie came and testified that she saw a wallet,
21 a wallet come out of Mr. Berg's pants. Mr. Berg testified
22 he didn't have a wallet. He didn't have a money clip. His
23 items were loose in his pants. You heard Mr. Berg say, he
24 was pushed, the back of his leg. You heard Ms. Callie say
25 that's not what happened. Mr. Manning ran up balled up

1 his fist. Swung at Mr. Berg and knocked Mr. Berg to the
2 ground.

3 You heard Mr. Berg say he didn't see anyone coming.
4 Ms. Callie stated that James ran off. You also have Ms.
5 Callie is a loss prevention officer who is supposed to pay
6 attention to details, can't recall a lot of details of the
7 case. Another day, another time. doesn't know how long
8 she worked that day. There was a juror question, doesn't
9 remember what color pants Mr. Berg was wearing. The Devil
10 is in the details.

11 There is a lot of confusion in the case, between the
12 two eye-witness accounts. Another reason to doubt it is
13 the absolute lack of investigation in the case. Police
14 didn't do much. Not in the onset when they arrived at the
15 bus. There wasn't much follow up done.

16 Officer Steinbach arrived arrived to the bus, and he
17 told you that it's his discretion to gather evidence, his
18 discretion to take statements. So he didn't take any
19 statements from the 40 some odd people on the bus. Didn't
20 get names from anyone, no contact information, phone
21 numbers.

22 Officer Steinbach, why not talk to the bus driver.
23 Talk to the bus driver. The bus driver, he or she, we
24 don't know because he didn't get that name. The bus
25 driver is driving the bus. He's there because it's his or

1 her bus. They are going to be there until police
2 arrive.

3 Bus driver, did you notice anything strange that day.
4 Did you notice anything in your rear view mirror. Do you
5 have regulars on the bus. Was there anyone unusual on the
6 bus. Did you notice anything like that. He didn't get
7 anything of like.

8 How about the guy or girl that might have been
9 sitting next to Mr. Berg. Did you see what happened. Did
10 you see what was going on. Did you see the man that
11 pushed. Did you see the man get punched in the face. Did
12 you see any of that We don't have that.

13 How about Ms. Callie the eye-witness. Did he speak
14 to Ms. Callie to get contact information. No. In jury
15 selection we heard from you guys a lot of different
16 things. If you are investigating a case what do you want
17 to see. You want to see interviews. You want to see
18 statements, video. You want to see video.

19 Well, in this case you know that there is a video on
20 that bus. But you also know that the officers failed to
21 collect that video. They didn't impound it. Now, if
22 there is video wouldn't you like to see it. Say a friend
23 of mine goes to see a movie. It's a great movie. Tell me
24 all about it. The special effects are awesome. It was
25 great. The act That movie deserves an Oscar. You have

1 to see. Are you happy with that account. Are you
2 satisfied with just that. You want to see the movie
3 yourself.

4 Now, we also heard Officer Steinbach say that a lot
5 of follow-up stuff we asked about, follow-up
6 investigation. That's not his jurisdiction, his realm.
7 That's for the robbery detective. So let's move on.
8 Detective Embry, what did he do in this case. Well, he
9 didn't interview anyone because Officer Steinbach had no
10 contact information for him. Steinbach didn't take any
11 names, voluntarily statements, contact information so
12 Embry could follow up. But surely Detective Embry could
13 have contacted the bus driver. I mean, he knows what bus
14 this allegation is alleged to have happened on. He knows
15 the bus company. He can call up the bus company and say
16 who's the driver. Can I get their name and number. I'd
17 like to speak with them. He didn't do that.

18 How about other follow-up. We heard that there is a
19 CAT bus card missing and some various casino player's
20 cards. How about picking up the phone and calling CAT and
21 saying has this card been used since March 29, 2013.

22 We know there's video on the bus, if you get it in
23 time. If the card had been used they could have pulled
24 the video. How about the player's cards. Detective Embry
25 doesn't know which player's cards were allegedly stolen.

1 He doesn't know. But if he did he'd ask those questions.
2 He could have called up casinos, picked up the phone.
3 Hey, this player's card for Thor Berg, has it been used,
4 used at your casino. Because if I had we know living in
5 Las Vegas that every single square inch of every casino is
6 covered in cameras.

7 Speaking of video, Mr. Berg said he was at Sunset
8 Station prior to getting on the bus. Did Detective Embry
9 follow up on that. Look into that and verify that. Maybe
10 someone is following Mr. Berg. Did he look into any of
11 that. No, he didn't.

12 Now, you heard the State talk a little in jury
13 selection and also in closing about CSI. They don't want
14 you to except advanced technological forensic evidence.
15 We're not talking about CSI. We are talking about plain
16 old police work, foot work, interviews, phone calls,
17 getting names and numbers.

18 Now you also heard Detective Embry say he has got
19 thousands of robberies per year. That's unfortunate. No
20 one wants crime in the community. That's terrible. So he
21 decides how many resources to allot where. Clearly this
22 wasn't a priority. You want to know who this is a
23 priority for. This is a propriety for James Manning.
24 This is his life. This is his liberty.

25 Maybe you are not convinced, maybe you think this is

1 \$10.00. So what. This is a street robbery, as Detective
2 Embry discussed, as he referred to it.

3 What we're asking here is not that hard. We are
4 asking for a phone call, an interview. We're asking to
5 verify.

6 So what we are left with now is a mess. We're left
7 with confusion. We're left was a lot of reasonable doubt.
8 Another reason for you to doubt the State's case is
9 because what James himself told you. He took the stand.
10 He told you, I was on that bus. I pushed into the old
11 man. I ran and passed him because I was trying to get off
12 the bus. That was rude. That was really rude. He should
13 have said, excuse me, sir. Or gone out another exit.

14 That's the reason he was misidentified. Maybe I used
15 the word misidentified too loosely, too loosely in
16 opening. He was misidentified as a robber.

17 What he should have been identified as was a pest, a
18 nuisance. He was a nuisance on that bus. He was walking
19 around, scoping around, bugging people. He was a nuisance.
20 That's what he was identified as, as a nuisance.

21 Let's talk about the Crime Stoppers media release.
22 There's a media release with his picture on it. We told
23 you he was on the bus. He told you he was on the bus.
24 His picture on the bus is on the media release. It's not
25 that unlikely that someone called and said that's James

1 Manning. If my face is on a media release, I expect
2 Ms. Harris to call Crime Stoppers. That's Ms. Pensabene.

3 What else did James say on the stand. He not only
4 spoke to you, but we found out he spoke to the police. He
5 Spoke with an educated detective. You heard when the
6 State was cross-examining Mr. Manning that there was talk
7 about Nicholas. Nicholas is a bad guy. Nicholas beats
8 people up. Nicholas was on the bus. So what. What is
9 that. That's muddying the water.

10 That's equivalent of the State saying who is on
11 first, what is on second. I don't care who is on third.
12 Who is Nicholas Thompson. Who is he to you. Did the
13 State or detectives talk to Nicholas Thompson. No.

14 That's a red herring. I also want to talk about what
15 you didn't hear. What you heard from Mr. Manning was
16 important, but maybe more importantly is what you did not
17 here. You didn't hear that he told detectives I robbed
18 Thor Berg. Because he didn't rob Thor Berg.

19 I want to move on now. I want to talk about the jury
20 instructions -- or one of the instructions.

21 Instruction 16, which I believe Ms. Trippiedi point
22 out to you. It talks about sympathy. Now, Mr. Berg is
23 sympathetic. Absolutely. He was wheeled in here, just
24 released from the hospital on something unrelated to these
25 allegations. He's frail, thin, feeble. When he speaks you

1 can hear that he has a problem with his speech.

2 His voice sound raspy. He's a sympathetic gu.
3 Knocked down on the bus. Feeling bad for him, feeling
4 sympathy for him is what makes you human. Everyone in
5 this room is sympathetic for him. But jury Instruction 16
6 is clear, sympathy as no place in that jury deliberation
7 room.

8 You can not allow sympathy to effect your decision.
9 Sympathy for Mr. Berg, Mr. Manning. it has no place. What
10 are you allowed to consider. What are we left with. What
11 are we left with in the case.

12 We're left with two eye-witnesses with conflicting
13 stories. A lot of confusion. Nicholas Thompson. We're
14 left with a whole lot of lack of police investigation.
15 That's all reasonable doubt.

16 Now is that the standard. Is that enough. Is that
17 enough to convict one of our citizens. Is that enough to
18 take away his liberty. I submit to you, it's not.
19 Absolutely not.

20 What do we expect out of our police, ladies and
21 gentlemen. The buck stops with you. You heard that judge
22 talk about reasonable doubt. There is a jury instructions
23 that talks about it. I don't recall what number it is. it
24 talks about having an abiding conviction. Do you have an
25 abiding conviction. Are you going to abide with what you

1 decide today. Are you going to abide with it in a year on
2 your death bed.

3 There is too much reasonable doubt. The details
4 aren't here. Hold the State to their burden. The State
5 must prove to you this case beyond a reasonable doubt.
6 Hold them to their burden. Tell them that there is not
7 enough evidence. They have not proven this case beyond a
8 reasonable doubt. Because they failed to do that,
9 Mr. Manning is not guilty. We're going to ask that you
10 return the only fair verdict in this case. Find James
11 Manning not guilty.

12 Thank you.

13 THE COURT: Thank you.

14 State.

15 CLOSING STATEMENT

16 BY MS. TRIPPIEDI:

17 So defense keeps saying that cops didn't do
18 enough in this case. You know when there is a car
19 accident on the side of the road and you know a drunk
20 driver's fault. Police arrive at the scene and they make
21 every car in the area pull over so they can get statement.
22 Sometimes people and stop want to talk. In that case they
23 take a statement. But they're not going to go around
24 force people to make statements. The officer said that's
25 not what they do.

1 In this case Callie Mae gave a statement. I
2 mean she decided to give her name. So we were able to
3 contact her. She came in and testified. She didn't have
4 to do that.

5 What does she have to gain from coming in here and
6 taking an oath and lying. What does she have to gain from
7 that. So the officers, they don't force people to do
8 anything.

9 Another thing is the officers said they took the
10 victim, Thor, to that Pizza Hut where they brought some
11 suspects in front of him. They asked if this was the man
12 that robbed him. He said, no. These aren't the guys. He
13 didn't pick someone because he had to. He didn't see
14 someone. Later he did. Sitting there in front of you
15 today he did, you know. He has nothing to gain. What did
16 he lose from this 10, \$12.00. Which brings me to another
17 point.

18 He didn't have any other credit cards. It would be
19 reasonable if he had a debt cards for the police officers
20 to call a bank and see where that debit card is being
21 used.

22 Why would they think that Mr. Managing is going to
23 use Thor's player's card. Is he going to give Thor Berg
24 extra points at the casino. Why would he want to use his
25 player's card. A player's card is for points. It's not --

1 there is -- he wouldn't gain anything from using the
2 player's card.

3 They keep telling you that this man was just being a
4 nuisance on the bus. It was all a misunderstanding. Mr.
5 Berg felt a hand in his pocket. He looked and there he
6 was knocking him down.

7 This isn't a case of nuisance on a bus. He actually
8 had a purpose. Callie Mae said I looked at him. I knew
9 he was up to something, you know. She said I saw the old
10 man's money sticking out of his pocket. I knew something
11 was going to happen. That's what she said. So this isn't
12 just a case of someone being a nuisance on the business.

13 You heard the evidence. You can make your
14 determination, based on the evidence.

15 I'll submit it.

16 THE COURT: We'll swear the officers to take
17 charge of the jury.

18 THE CLERK: You do solemnly swear you will keep
19 this jury together in some private and convenient place,
20 that you will not let anyone speak to them nor speak to
21 them yourself unless it be by order of the court, except
22 to ask if they have agreed upon a verdict and you will
23 return them to court when they have so agreed so help you
24 God.

25 THE OFFICER: I do.

1 THE COURT: We'll get you back to the
2 deliberation room to get started on deliberation. Go
3 ahead and take all of your belongings back with you.

4 Mr. Nokes, you are my alternate. So you are going to
5 go with Molly. She'll fill you in. You are still under
6 the admonition not to talk about the case. We'll notify you
7 when the jury has reached their verdict.

8 Anything outside.

9 MS. PENSABENE: I'd like to put on record what
10 was discussed at the bench and the objections raised to the
11 statement, was he -- he is a pawn.

12 THE COURT: Which is the first.

13 MS. PENSABENE: Yes. My objection was that that
14 was facts not in evidence. It was sustained.

15 I don't -- you know what. I don't have an objection
16 for the second one.

17 THE COURT: Since I called you up here to the
18 bench, what I'll say is when the second objection was
19 raised, I called you up to the bench because even though
20 knew in my head I thought what she was saying had come out
21 in trial. I was going to overrule the objection.

22 I wanted to -- I think I characterize it as
23 prophylactically see what other things she might be
24 discussing about the statement. Because there were a
25 number of things that we discussed when I was making my

1 rulings as to why I was making it, but I don't think it
2 had been brought out in the testimony.

3 So we talked about issues related to the timing,
4 March, issues related to being on the bus and issues
5 related to it being in the vicinity.

6 Okay. Anything else.

7 MS. PENSABENE: That's all, your Honor.

8 THE COURT: Okay.

9 We'll be in recess. Leave contact information with
10 Carol so she can get hold of you.

11 (Brief recess taken.)

12 THE COURT: On the record in C-290624, State of
13 Nevada vs. James Manning. Mr. Manning is present.
14 State's attorneys are present.

15 Mr. Kermani, are you our foreperson.

16 IMPANELED JUROR: I am.

17 THE COURT: How did you like that by the way.

18 IMPANELED JUROR: It was interesting.

19 THE COURT: Did you get elected because you
20 raised your hand to be foreperson.

21 IMPANELED JUROR: I didn't raise my hand.

22 THE COURT: Jury reached a verdict.

23 IMPANELED JUROR: We have.

24 THE COURT: Hand the verdict form to my marshal,
25 please.

1 I'll have the clerk read the verdict into the minutes
2 of the court.

3 THE CLERK: District Court, Clark County, Nevada
4 State of Nevada plaintiff versus James D. Manning,
5 defendant, case C-290624-1, Department 3, verdict:

6 We the jury in the above-entitled case find the
7 Defendant, James Manning as follows;

8 Count (1), robbery, victim 60 years of age or older,
9 not guilty.

10 Count (2), battery with intent to commit a crime.
11 Guilty of battery with intent to commit a crime.

12 Dated this 15th day of January 2014, Leon Kermani,
13 foreperson.

14 Ladies and gentlemen of the jury, is that your
15 verdict as read so say you one, so say you all.

16 IMPANELED JURORS: (Choir of yeses.)

17 THE COURT: Thank you. Anyone wish to have the
18 jury polled.

19 MS. PENSABENE: No, your Honor.

20 MS. TRIPPIEDI: No, your Honor.

21 THE COURT: That concludes your service with the
22 great thanks of the court. You are no longer under that
23 admonition.

24 I will tell you, I'm expecting that attorneys might
25 want to chat with you afterwards. That would be a help to

1. them in planning future cases.

2 Thank you for your time again.

3 Anything outside the presence.

4 MS. PENSABENE: No.

5 THE COURT: We'll set it for sentencing in 60
6 days.

7 THE CLERK: March 20th at 9:00.

8 MS. PENSABENE: Thank you.

9 THE COURT: I'll ask the State to refer the file
10 to P&P for preparation of pre-sentence investigative
11 report.

12 MS. TRIPPIEDI: Okay.

13 THE COURT: Thanks.

14

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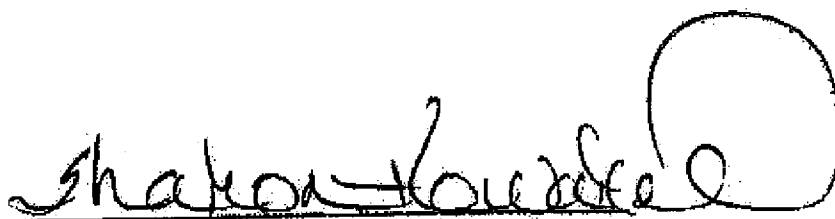
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CERTIFICATE
OF
CERTIFIED COURT REPORTER

* * * * *

I, the undersigned certified court reporter in and for the
State of Nevada, do hereby certify:

That the foregoing proceedings were taken before me at the
time and place therein set forth; that the testimony and
all objections made at the time of the proceedings were
recorded stenographically by me and were thereafter
transcribed under my direction; that the foregoing is a
true record of the testimony and of all objections made at
the time of the proceedings.

A handwritten signature in cursive script, reading "Sharon Howard", is written over a horizontal line. The signature is fluid and includes a large loop at the end.

Sharon Howard
C.C.R. #745

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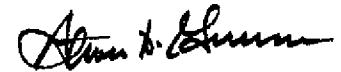
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TRAN
CASE NO. C-290624
DEPT. NO. 3



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

| | | |
|----------------------|---|-----------------------|
| THE STATE OF NEVADA, |) | |
| |) | |
| Plaintiff, |) | REPORTER'S TRANSCRIPT |
| |) | OF |
| |) | MOTION FOR NEW TRIAL |
| |) | |
| JAMES MANNING, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

BEFORE THE HONORABLE DOUGLAS
DISTRICT COURT JUDGE

DATED: TUESDAY, FEBRUARY 4, 2014

REPORTED BY: Sharon Howard, C.C.R. #745

1 APPEARANCES:

2 For the State: (UNIDENTIFIED)

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6 For the Defendant: MARISSA PENSABENE, ESQ.

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1 LAS VEGAS, NEVADA; TUESDAY, FEBRUARY 4, 2014

2 P R O C E E D I N G S

3 * * * * *

4
5 THE COURT: Page 11, C-290624, State v
6 Manning.

7 This is on for a defense motion for judgment of
8 acquittal or new trial.

9 Ms. Pensabene.

10 MS. PENSABENE: Your Honor, I'll submit on our
11 motion.

12 THE COURT: State.

13 MS. TRIPPEIDI: We'll submit on our opposition
14 too, your Honor.

15 THE COURT: Look, I'll admit that I found the
16 verdict a little odd, but 23 years I've been doing this I
17 often find verdicts odd. I don't think you can speculate
18 as to why the jury decided to just convict him of battery
19 with intent to commit robbery and not convict him of
20 robbery as well. They didn't find the property.
21 Sometimes in people's minds if you don't find the
22 property, or maybe they are thinking I'm not willing to
23 convict him of the charge.

24 Maybe they compromised. Who knows. Maybe they
25 decided to throw him a bone. Maybe they thought that even

1 though he intended to rob him, maybe the property fell out
2 in the bus and never got the property, so it wasn't a
3 robbery.

4 There is in my mind too many variables that a jury
5 could have considered which would have given rise to the
6 verdict such that I don't think it would be appropriate to
7 grant a new trial or speculate that there was something
8 improper in the way it was done to rendered the verdict we
9 received to be improper in any fashion.

10 For those reasons I'll deny the motion.

11 MS. PENSABENE: Thank you.

12 MS. TRIPPEIDI: Thank you.

13 THE COURT: We'll leave it on for March 20th for
14 sentencing. Thank you guys.

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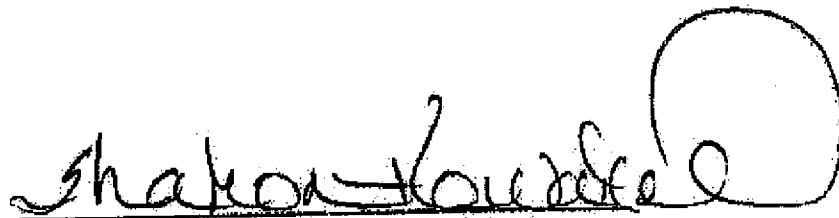
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CERTIFICATE
OF
CERTIFIED COURT REPORTER

* * * * *

I, the undersigned certified court reporter in and for the
State of Nevada, do hereby certify:

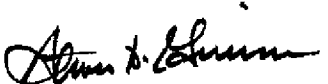
That the foregoing proceedings were taken before me at the
time and place therein set forth; that the testimony and
all objections made at the time of the proceedings were
recorded stenographically by me and were thereafter
transcribed under my direction; that the foregoing is a
true record of the testimony and of all objections made at
the time of the proceedings.

A handwritten signature in cursive script, reading "Sharon Howard", is written over a horizontal line. The signature is fluid and includes a large, circular flourish at the end.

Sharon Howard
C.C.R. #745

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TRAN
CASE NO. C-290624
DEPT. NO. 3


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

| | | |
|----------------------|---|-----------------------|
| THE STATE OF NEVADA, |) | |
| |) | |
| Plaintiff, |) | REPORTER'S TRANSCRIPT |
| |) | OF |
| |) | RESET SENTENCING |
| |) | |
| JAMES MANNING, |) | |
| |) | |
| Defendant. |) | |
| |) | |

BEFORE THE HONORABLE DOUGLAS
DISTRICT COURT JUDGE

DATED: THURSDAY, MARCH 20, 2014

REPORTED BY: Sharon Howard, C.C.R. #745

1 APPEARANCES:

2 For the State: (UNIDENTIFIED)

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6 For the Defendant: MARISSA PENSABENE, ESQ.

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1 LAS VEGAS, NEVADA; THURSDAY, MARCH 20, 2014

2 P R O C E E D I N G S

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5 THE COURT: Page 11, State of Nevada vs. James
6 Manning, C-290624. He's present in custody.

7 This is on for sentencing. Ms. Pensabene had
8 contacted the court previous to indicate she wanted a
9 continuance to look at some things related to the gang
10 affiliation or membership information that is in the
11 PSI.

12 Did you get the --

13 MS. PENSABENE: I got the FI cards.

14 I want to make a record. I feel I need to ask for a
15 Sonya hearing today. The reason being we are -- what is
16 on the FI card, the first card doesn't have any kind of
17 self-admitting statement as to being in a gang.

18 The second card has no explanation for how the stop
19 came about. All it's stating was it was a consensual
20 stop. I feel we need to move forward and have the hearing
21 to clear things up. My client, however, does not want to
22 have such a hearing. He wants to move forward with
23 sentencing today. But at the same time he also wants to
24 have that portion of the PSI stricken.

25 So I feel like we need to move forward and have the

1 hearing so we can do that. I wanted to put on the record,
2 it's not his wishes to do so.

3 THE COURT: Well, I'll be honest with you Mr.
4 Manning. Based on what I got from the FI card, I'm not
5 striking anything out of the gang information on the
6 PSI.

7 So we can do it in about 30 days or so. Then we'll
8 try and set a hearing on that issue and get whichever
9 officer it is that filled out that card to come in.

10 Your attorney is trying to do the best she can on
11 your behalf and put you in the best light going up to
12 prison, in terms of what information they'll have up
13 there. I understand her concern that's why I'm willing to
14 continue it. But tell you what, approach the bench real
15 quick.

16 (Discussion held at the bench.)

17 THE COURT: Okay. We're going to go head and
18 continue the sentencing so that Ms. Pensabene will have an
19 opportunity to discuss with Mr. Manning the FI card
20 information we got so far. I got it this morning and
21 provided it to her this morning.

22 We may look to try to get other information out of
23 other law enforcement agencies as well.

24 THE CLERK: April 24th, 9:00.

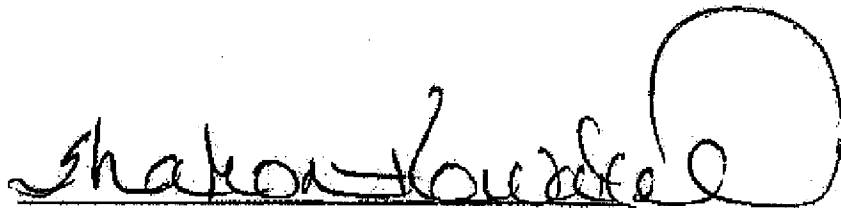
25 MS. PENSABENE: Thank you.

CERTIFICATE
OF
CERTIFIED COURT REPORTER

* * * * *

I, the undersigned certified court reporter in and for the
State of Nevada, do hereby certify:

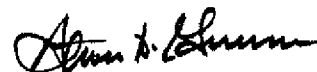
That the foregoing proceedings were taken before me at the
time and place therein set forth; that the testimony and
all objections made at the time of the proceedings were
recorded stenographically by me and were thereafter
transcribed under my direction; that the foregoing is a
true record of the testimony and of all objections made at
the time of the proceedings.

A handwritten signature in cursive script, reading "Sharon Howard", is written over a horizontal line. The signature is fluid and includes a large, circular flourish at the end.

Sharon Howard
C.C.R. #745

1 TRAN

2
3 IN THE EIGHTH JUDICIAL DISTRICT COURT
4 CLARK COUNTY, NEVADA Electronically Filed 08/09/2014 11:49:12 AM

5
6 

CLERK OF THE COURT

7 THE STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

10 JAMES DAEVON MANNING,)

11 Defendant.)

Case No.

C290624

Dept. No. 3

12 SENTENCING

13
14 Before the Honorable Douglas W. Herndon
15 Tuesday, May 13, 2014, 9:00 a.m.

16 Reporter's Transcript of Proceedings

17
18 APPEARANCES:

19 For the State: Hagar Trippiedi, Esq.
20 Deputy District Attorney

21 For the Defendant: Marissa Pensabene, Esq.
22 Deputy Public Defender

23
24
25 REPORTED BY: ROBERT A. CANGEMI, CCR No. 888

1 Las Vegas, Nevada, Tuesday, May 13,
2 2014

3 * * * * *

4 MS. PENSABENE: Judge, if you can call James
5 Manning on page 13.

6 THE COURT: James Manning, 290624.

7 He is present in custody. This is on for
8 sentencing.

9 Is there any legal cause or reason why
10 sentencing should not go forward?

11 MS. PENSABENE: No.

12 But it was my understanding that this was
13 also on for a Somay hearing.

14 THE COURT: I remember that you mentioned,
15 and I thought that was before we got the FI cards
16 that you were going to want one.

17 MS. PENSABENE: That's fine.

18 I don't think the officer has been
19 subpoenaed anyway.

20 THE COURT: Is it still your desire to have
21 that hearing prior to the sentencing?

22 MS. PENSABENE: I don't think so. I think
23 Mr. Manning wants to get sentenced.

24 THE COURT: I will adjudicate you guilt of
25 the felony battery with intent to commit a crime.

1 State.

2 MS. TRIPPIEDI: Your Honor, this is 26-year-
3 old man who already has a significant criminal
4 history, despite his age.

5 His criminal history dates back to 2006 when
6 he was 18, and includes crimes such as theft,
7 battery and drug-related crimes.

8 His first felony conviction was in 2008,
9 attempt possession of a controlled substance.

10 He was given probation in that case, and
11 violated probation a notable 6 times, Your Honor.

12 Every time he violated probation, he kept
13 getting reinstated.

14 Finally, he was revoked in 2009. After that
15 incident, he continued to commit crimes.

16 In this case it involved, as you know from
17 sitting through the trial, a robbery of an
18 individual at a bus stop.

19 There was actually a second victim that we
20 didn't have for trial that she did report the crime;
21 it was a lady that he robbed her cell phone from
22 her, and then the victim in our case that testified,
23 we heard his testimony, he was an older man.

24 He has health problems. He testified that
25 the Defendant pushed him down, reached into his

1 pocket, and took a stack of his bills.

2 This was just an old man that was going to
3 gamble at Sunset Station. He had like his Players
4 Card in his pocket, cash on him, and the Defendant
5 pushed him down, caused injury to his back.

6 And then during interviews with officers,
7 the Defendant admitted that this is what he does.
8 He rides up to buses in the Boulder Highway area.

9 He rides up and down looking for people to
10 rob. It is consistent what he told the officer
11 during the PSI interview.

12 He doesn't have a job. He doesn't have a
13 source of income, so it makes sense that this is
14 what he essentially does for a living.

15 Your Honor, he continues to commit crimes
16 despite his prior convictions, and his prior chances
17 at probation.

18 He hasn't accepted any responsibility for
19 his actions in this case, which is evident from the
20 fact that he took this case to trial.

21 Your Honor, it looks like the Parole and
22 Probation office is recommending the minimum for
23 this offense.

24 They are recommending 24 to 72. We don't
25 feel that his actions warrant the minimums. He is

1 not an individual that should not receive the
2 minimums, because this wasn't his first offense, and
3 because he was convicted at trial.

4 We are asking for you to sentence him to 38
5 to 96 months, which is essentially 3 to 8.

6 We think that's more appropriate, and we
7 will submit it with that.

8 Thank you.

9 THE COURT: Mr. Manning, just so you know, I
10 don't hold it against you or anybody else for going
11 to trial, regardless of whether in your mind you
12 think you are guilty or innocent, you have a right
13 to have the State present evidence at trial.

14 What do you want to say before your attorney
15 speaks?

16 THE DEFENDANT: I didn't get violated on
17 probation 6 times. If is every time you get locked
18 up, I had warrants for traffic tickets, and each
19 time it is like automatically as a violation.

20 I didn't come in contact with the law. It
21 is not that I was out breaking the law.

22 Technically I only got reinstated once, I
23 think. Every other time you get like just
24 miscellaneous petty stuff.

25 I didn't get reinstated 6 times. I don't

1 think anybody could get reinstated 6 times. I had a
2 traffic ticket for jaywalking or something like
3 that.

4 It had gone to warrant, and that violates
5 me, even though I was doing what I had to do
6 somewhat.

7 I was on probation, and you know, with that,
8 I ask that I be given a chance to -- I have been
9 incarcerated almost a year, a 5 day shot, a 6 day
10 shot.

11 I had lot time to think about the way I was
12 living. I just had a lot of time to work on
13 myself.

14 I don't think that I should have to go to
15 prison at 26. It was dumb stuff I was doing, even
16 though I don't agree with -- I was doing all that,
17 you know.

18 I wasn't living right, but I had time to
19 change, get my mind right. I have been
20 incarcerated, and I don't see why I shouldn't get a
21 chance to get out and try to do the right thing.

22 That's all I got to say.

23 THE COURT: Okay.

24 Ms. Pensabene.

25 MS. PENSABENE: Your Honor, I am going to

1 ask the Court to place Mr. Manning on probation with
2 some type of substance abuse counseling.

3 I think that the State embellishes
4 Mr. Manning's record and what happened in this case.

5 Mr. Manning has one prior felony for attempt
6 possession of a controlled substance, and he does
7 have some misdemeanors, 4 misdemeanors.

8 He is not a hardened criminal with a long
9 intensive record. He was placed on probation. He
10 was revoked off of probation.

11 He was revoked due to drugs. I think that
12 drugs has been something that's been a problem in
13 his life, and I think if we address the substance
14 abuse issues in this case, and in his life, that he
15 could very well be a perfect candidate for
16 probation.

17 Additionally, we respect the jury's decision
18 here. I won't go into detail about the robbery in
19 this case.

20 The jury acquitted him of the robbery, and
21 found him guilty of the battery with the intent to
22 commit robbery.

23 They acquitted him of the robbery. We need
24 to respect the jury's decision there.

25 With regard to the battery, Mr. Burg's was

1 pushed or shoved to the ground. That's what the
2 victim stated.

3 He stated he was pushed. This is not a
4 severe beating. There was no deadly weapon.

5 There was no knife.

6 There was no bat.

7 There was no gun.

8 With respect to battery cases, this case is
9 on the on low end. This not something completely
10 serious.

11 I am not trying to undermine what happened
12 here, but I want to put it in context that this
13 offense was not the crime of the century.

14 Because of that, I think 3 to 8 is far too
15 reaching in this case.

16 Mr. Manning has lived in Clark County his
17 entire life. His family is here. They would like
18 to support him on probation.

19 His mother lives in town. His father was
20 present at the trial. He has stated that he will be
21 working inside CCDC on bettering himself.

22 And that's something when we were discussing
23 sentencing, he told me that he was reading anything
24 that he could get his hands on.

25 He has a couple of leads on jobs. He knows

1 someone who at the work KFC on Spring Mountain and
2 Jones.

3 If that doesn't work out, he knows that the
4 Recycling Service of Nevada hires ex-felons.

5 He is actually taking initiative to look
6 into what kind of jobs he can get on the outside.

7 He is a young man. I don't think 3 to 8 is
8 something that is appropriate.

9 I don't think that what Parole and Probation
10 recommended is appropriate. He sat in custody for a
11 year.

12 I think probation is the best thing that we
13 can do for Mr. Manning. We can't just send someone
14 to prison and lock the door and throw away the key.

15 This is something that we should invest in
16 as far as substance abuse.

17 And based on that, I would submit it.

18 THE COURT: Mr. Manning, I will tell you
19 that I am not going to put you on probation.

20 I will give you the minimum sentence,
21 though, and I think you are sincere in what you are
22 telling me.

23 I don't think you are shining me on not to
24 send you to prison. I think you are sincere about
25 what you are saying, and when you get out, you have

1 to maintain that level of sincerity about trying to
2 figure out how to do things a little bit better.

3 From my perspective of sentencing you, I am
4 looking at what it was that was alleged to have
5 occurred in this case, what the evidence was that I
6 heard at trial.

7 I don't think this was a singular incident,
8 and then I don't think your record is anywhere near
9 what I see a lot of time, but it has been consistent
10 with getting in trouble.

11 Whether it is a substance abuse problem, or
12 whatever else it is, so there is some argument about
13 what likelihood is it that Mr. Manning is going to
14 complete probation.

15 It is mostly about what it was that occurred
16 here.

17 In Any event, there is \$25.00 AA fee.

18 A \$150.00 DNA fee.

19 \$750 in indigent attorney's fees.

20 \$1,614.62 in restitution.

21 Who is it payable to?

22 MS. TRIPPIEDI: It would be to Victims of
23 Crime.

24 THE COURT: Okay.

25 I am not going to impose the fine.

1 There is 24 to 60 month sentence at the
2 Nevada Department of Prisons, with 362 days credit
3 for time served.

4
5 (Proceedings concluded.)
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C E R T I F I C A T E

STATE OF NEVADA)

) ss.

CLARK COUNTY)

I, Robert A. Cangemi, CCR 888, do hereby
certify that I reported the foregoing proceedings,
and that the same is true and accurate 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 9th day of
August, 2014.

/s/ Robert A. Cangemi_____

Robert A. Cangemi, CCR 888

Certified Court Reporter

Las Vegas, Nevada

abuse

entire

| A | |
|---|---|
| <p>abuse (7:2) (7:14) (9:16) (10:11) accepted (4:18) accurate (12:11) acquitted (7:20) (7:23) actions (4:19) (4:25) actually (3:19) (9:5) additionally (7:17) address (7:13) adjudicate (2:24) admitted (4:7) after (3:14) against (5:10) age (3:4) agree (6:16) all (6:16) (6:22) alleged (10:4) almost (6:9) already (3:3) also (2:13) any (2:9) (4:18) (10:17) anybody (5:10) (6:1) anything (8:23) anyway (2:19) anywhere (10:8) appearances (1:18) appropriate (5:6) (9:8) (9:10) are (4:24) (5:4) (5:12) (9:21) (9:23) (9:24) (9:25) area (4:8) argument (10:12) ask (6:8) (7:1) asking (5:4) attempt (3:9) (7:5) attorney (1:20) (5:14) attorney's (10:19) august (12:16) automatically (5:19) away (9:14)</p> | <p>ccr (1:25) (12:9) (12:19) cell (3:21) century (8:13) certified (12:20) certify (12:10) chance (6:8) (6:21) chances (4:16) change (6:19) clark (1:4) (8:16) (12:4) come (5:20) commit (2:25) (3:15) (4:15) (7:22) complete (10:14) completely (8:9) concluded (11:5) consistent (4:10) (10:9) contact (5:20) context (8:12) continued (3:15) continues (4:15) controlled (3:9) (7:6) convicted (5:3) conviction (3:8) convictions (4:16) could (6:1) (7:15) (8:24) counseling (7:2) county (1:4) (8:16) (12:4) couple (8:25) court (1:3) (2:6) (2:14) (2:20) (2:24) (5:9) (6:23) (7:1) (9:18) (10:24) (12:14) (12:20) credit (11:2) crime (2:25) (3:20) (8:13) (10:23) crimes (3:6) (3:7) (3:15) (4:15) criminal (3:3) (3:5) (7:8) custody (2:7) (9:10)</p> |
| B | |
| <p>back (3:5) (4:5) based (9:17) bat (8:6) battery (2:25) (3:7) (7:21) (7:25) (8:8) beating (8:4) because (5:2) (5:3) (8:14) been (2:18) (6:8) (6:19) (7:12) (10:9) before (1:14) (2:15) (5:14) (12:13) best (9:12) better (10:2) bettering (8:21) bills (4:1) bit (10:2) bixler (12:13) boulder (4:8) breaking (5:21) burg's (7:25) bus (3:18) buses (4:8) but (2:12) (6:18) (8:12) (10:9)</p> | <p>D</p> <p>daevon (1:9) dated (12:15) dates (3:5) day (6:9) (12:15) days (11:2) deadly (8:4) decision (7:17) (7:24) defendant (1:10) (1:21) (3:25) (4:4) (4:7) (5:16) defender (1:21) department (11:2) dept (1:9) deputy (1:20) (1:21) desire (2:20) despite (3:4) (4:16) detail (7:18) did (3:20) didn't (3:20) (5:16) (5:20) (5:25) discussing (8:22) district (1:3) (1:20) (12:14) dna (10:18) does (4:7) (4:14) (7:6) doesn't (4:12) (9:3) doing (6:5) (6:15) (6:16) don't (2:18) (2:22) (4:24) (5:10) (5:25) (6:14) (6:16) (6:20) (9:7) (9:9) (9:23) (10:7) (10:8) door (9:14) douglas (1:14) down (3:25) (4:5) (4:9) drug-related (3:7) drugs (7:11) (7:12) due (7:11) dumb (6:15) during (4:6) (4:11)</p> |
| C | |
| <p>call (2:4) can (2:4) (9:6) (9:13) candidate (7:15) cangemi (1:25) (12:9) (12:19) can't (9:13) card (4:4) cards (2:15) case (1:8) (3:10) (3:16) (3:22) (4:19) (4:20) (7:4) (7:14) (7:19) (8:8) (8:15) (10:5) cases (8:8) cash (4:4) cause (2:9) caused (4:5) ccdc (8:21)</p> | <p>E</p> <p>each (5:16) eighth (1:3) else (5:10) (10:12) embellishes (7:3) end (8:9) entire (8:17)</p> |

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| <p>esq (1:19) (1:21)</p> <p>essentially (4:14) (5:5)</p> <p>even (6:5) (6:15)</p> <p>event (10:17)</p> <p>every (3:12) (5:17) (5:23)</p> <p>evidence (5:13) (10:5)</p> <p>evident (4:19)</p> <p>ex-felons (9:4)</p> | <p>I</p> <p>impose (10:25)</p> <p>incarcerated (6:9) (6:20)</p> <p>incident (3:15) (10:7)</p> <p>includes (3:5)</p> <p>income (4:13)</p> <p>indigent (10:19)</p> <p>individual (3:18) (5:1)</p> <p>initiative (9:5)</p> <p>injury (4:5)</p> <p>innocent (5:12)</p> <p>inside (8:21)</p> <p>intensive (7:9)</p> <p>intent (2:25) (7:21)</p> <p>interview (4:11)</p> <p>interviews (4:5)</p> <p>into (3:25) (7:18) (9:6)</p> <p>invest (9:15)</p> <p>involved (3:16)</p> <p>issues (7:14)</p> |
| <p>F</p> <p>fact (4:20)</p> <p>family (8:17)</p> <p>far (8:14) (9:16)</p> <p>father (8:19)</p> <p>fee (10:17) (10:18)</p> <p>feel (4:25)</p> <p>fees (10:19)</p> <p>felony (2:25) (3:8) (7:5)</p> <p>figure (10:2)</p> <p>finally (3:14)</p> <p>fine (2:17) (10:25)</p> <p>first (3:8) (5:2)</p> <p>for (1:19) (1:21) (2:7) (2:13) (3:20) (4:9) (4:14) (4:18) (4:22) (5:4) (5:10) (5:18) (6:2) (7:5) (7:15) (9:10) (9:13) (11:3)</p> <p>foregoing (12:10)</p> <p>forward (2:10)</p> <p>found (7:21)</p> <p>from (3:16) (3:21) (4:19) (10:3)</p> | <p>J</p> <p>james (1:9) (2:4) (2:6) (12:13)</p> <p>jaywalking (5:2)</p> <p>job (4:12)</p> <p>jobs (8:25) (9:6)</p> <p>jones (9:2)</p> <p>judge (2:4) (12:14)</p> <p>judicial (1:3)</p> <p>jury (7:20)</p> <p>jury's (7:17) (7:24)</p> <p>just (4:2) (5:9) (5:23) (6:12) (9:13)</p> |
| <p>G</p> <p>gamble (4:3)</p> <p>get (2:23) (5:16) (5:17) (5:23) (5:25) (6:1) (6:19) (6:20) (6:21) (8:24) (9:6) (9:25)</p> <p>getting (3:13) (10:10)</p> <p>give (9:20)</p> <p>given (3:10) (6:8)</p> <p>going (2:16) (4:2) (5:10) (6:25) (9:19) (10:13) (10:25)</p> <p>gone (6:4)</p> <p>got (2:15) (5:22) (6:22)</p> <p>ground (8:1)</p> <p>guilt (2:24)</p> <p>guilty (5:12) (7:21)</p> <p>gun (8:7)</p> | <p>K</p> <p>kept (3:12)</p> <p>key (9:14)</p> <p>kfc (9:1)</p> <p>kind (9:6)</p> <p>knife (8:5)</p> <p>know (3:16) (5:9) (6:7) (6:17)</p> <p>knows (8:25) (9:3)</p> |
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VOLUNTARY STATEMENT
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EVENT #: 130327-0636

SPECIFIC CRIME: ROBBERY

DATE OCCURRED: 03-27-2013

TIME OCCURRED:

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: JAMES MANNING ID#1994553

DOB:

SOCIAL SECURITY #:

RACE:

SEX:

HEIGHT:

WEIGHT:

HAIR:

EYES:

HOME ADDRESS:

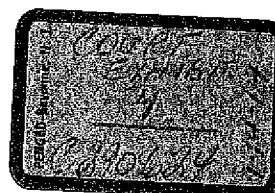
PHONE 1:

WORK ADDRESS:

PHONE 2:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE S. KAVON, P#4131, LVMPD ROBBERY Detail, on 05-18-13 at 1422 hours. Present during the interview is Detective S. Kavon, P#4131 and James Manning.

Q: Operator, this is Detective Kavon, K-A-V-O-N, P#4131, conducting a taped interview under Event #130327-0636. Uh, subject matter is going to be an interview with, uh, last name Manning, M-A-N-N-I-N-G, first name James, J-A-M-E-S, middle name Daevon, D-A-E-V-O-N, he's a junior.. LVMPD ID#1994553. We are presently located at the Clark County Detention Center. The date and time of this interview is gonna be 05-18-2000 and, or 2013 at 1422 hours. Uh, Mr. Manning, what I'm gonna do is read you your rights real quick and



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STATEMENT OF: JAMES MANNING

then we're, we'll sit here and talk. Uh, you have the right to remain silent. Anything you say can be used against you in a court of law. You have the right to the presence of an attorney. If you cannot afford an attorney, uh, one will be appointed before questioning. Mr. Manning, do you understand those rights?

A: Yes sir.

Q: Alright, I'm gonna mark yes here, uh, can I get a signature right there next to that X, uh, that, uh, it's just sayin' that I read you those rights there. Okay, uh, I got a call about I don't know a half hour, 45 minutes ago from my partner who said that the City Marshals had you stopped basically and what the City Marshal, uh, told me was that he had gone out to park he had gotten a call that you were out sleepin' or...

A: Yeah.

Q:snoozin' on, uh...

A: Yeah, yeah.

Q: ...on a slide or somethin' or playground...

A: Nah, like...

Q: ...equipment.

A: ...yeah, on, on the playground equipment, yeah.

Q: Okay, and he went up and he tapped ya' on the foot and woke you woke you up or whatever...

A: Yeah.

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STATEMENT OF: JAMES MANNING

Q: ...you weren't necessarily doing anything wrong out there...

A: Right.

Q: ...you were just, you were just layin' there sleepin' and, uh, when he ran you up and did a records check on you it showed that my partner wanted to talk to you, okay, about this robbery I guess it was, alright. Now having said that I really don't know anything about it, but my partner left me some paperwork here, okay, uh, and I'm just gonna read through it. Basically it says that, uh, back on April 27th, so not quite a month ago, okay, no wait January, February, March, uh, actually March 27th, so almost two months ago, but not quite it says, uh, at about four o'clock in the morning, uh, this girl was ridin' a bus, okay, must be like a CAT bus, you know, a city bus, uh, over on Boulder Highway in front of Arizona Charlies, okay. Uh, she said that she, uh, two, it says here two black guys got on the bus and sat down behind her. Um, the black guy sat behind her, uh, let's see she described both of the black guys here, um, and let's see as I'm readin' through it, it says that it looks like one of the guys, uh, took her cell phone. Uh, one of, one of the guys pushed her and took her cell phone basically, which was a Samsung cell phone. Um, they got video of the whole incident on the CAT bus. Uh, and my partner Detective Embry, uh, got the pictures, the video from the CAT bus and he did a media release, released it to all the media outlets. Um, somebody anonymous called up and said it was you who did it. Uh, Detective Embry put together a photo lineup, you know, with the six pictures of bl...random, uh, guys with your physical

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characteristics in there and it looks like they picked you out, that girl picked you out as the person that pushed her down and took her cell phone, okay. Uh, that's basically the case in a nutshell right there. Uh, so and I noticed that when I, when the City Marshal turned over custody you had a couple of cell phones in your property.

A: Yeah.

Q: Is one of those cell phones that girl's cell phone?

A: No sir.

Q: No? alright.

A: They're both mine.

Q: They're both yours? Um, can you tell me about the incident I mean was it a misunderstanding between you and the girl on the bus or what, what happened?

A: What happened was the dude, the other dude that I was with.

Q: Okay.

A: Um, and I got his check cashin' ID in my property.

Q: Okay.

A: Yeah. His name is, uh, Nicholas D. Thompson I think it's, it's in my property, it says, it says ch...uh, Check City or somethin' they got the check ____.

Q: I'll go, I'll go, I'll go ...

A: Yeah.

Q: ...check it out. Nicholas D. Thompson or somethin' like that?

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- A: Yeah, man, this dude he...the dude is, the dude is terrifyin', man.
- Q: Yeah.
- A: He's terrifyin', man, I'm just gonna tell you the truth. That dude is terrifyin', man.
- Q: Like what, in what way is he....
- A: Like just period like he, he's a really intimidatin' person, man, that's what he do he goes around and intimidates people.
- Q: Mm.
- A: He took my phone when I first met him, you know what I mean.
- Q: Yeah.
- A: Like he played it cool like we, we was all good like buddy, buddy and I'm thinkin', okay, until I really started seein' some of the shit that he was capable of, you know what I mean.
- Q: Yeah.
- A: Like some just randomly beatin' people up, you know, takin' their phones just...
- Q: Really?
- A: ...the dude's scary, man, and forcin' me to come with him like, you know, and, and like watch and if I say somethin' I mean...
- Q: You could get your ass kicked.
- A: Nah, probably killed.
- Q: Oh, killed, yeah?
- A: This dude is, man, trust me man this is a dude that he needs to go down, man.

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Q: Really?

A: He need to go down ...

Q: What...

A: ...not just on no weasel shit tryin' to get myself well just...

Q: Right.

A: ...I feel the only reason I was even with this dude, uh, I it's like I couldn't get away from him, man, I swear to God. I was like with him against my will the moment I would a thought to, uh, hey, I'm just gonna catch the bus and go over here.

Q: Yeah.

A: Literally this dude was holdin' like and, you know, people in public he don't give a fuck about that as long as the cops aren't around it's like the moment you try to get away I'll just, I seen him really hurt some people real bad, man.

Q: Really?

A: Yeah.

Q: What, uh, what's he go by?

A: Uh...

Q: Does he go by anything?

A: He, on his Facebook his name _____.

Q: Wait on his Facebook...

A: Or and, but his real name he call himself Baby Insane.

Q: Baby Insane?

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A: Yep, Baby Insane from somethin' Crips from Pomona Mafia Crip that's what he say he from.

Q: Pomona Mafia Crip?

A: Yeah, man, and he be on Tropicana and Las Vegas Boule...I mean I could bring him to you. He the same dude on that tape with me, it's the same dude.

Q: Really?

A: That's on that bus.

Q: Same dude?

A: Yep, I mean like right...

Q: What'd you say his Facebook name was I forgot?

A: Uh, Fo Nick Deep some shit Fo Nick Deep it's weird.

Q: Like...

A: Uh, it's in my phone though.

Q: ...like four like F-O-R, For or ...

A: Yeah, like...

Q: ...or Fo or...

A: ...no F, uh, F-O like...

Q: F-O ...

A: Yeah.

Q: ...Nick Deep?

A: Yeah, somethin', some crazy shit I don't know. I don't, but I mean like the dude to

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the point where he keep tryin' to get me to meet up with him.

Q: Really?

A: Cause he know once I get back to meet him and I make up all kinda excuses...

Q: Right.

A: ...of why I don't even know how he got that number, man, but it's like I know...

Q: Where's he stay at?

A: Uh, he be on Tropicana and Las Vegas Boulevard up that way, but past it. And trust me it's gonna be cause he be back and forth to Cali so it's gonna be kinda...

Q: Oh, okay.

A: ...and so unless you know like he's reeled out like if I meet him like I was supposed to meet him hella time and I'm just not cause then he, he forces me to do shit like he puts me in it's just it's crazy, man, I just ____.

Q: Puts you in a bad situations, huh?

A: Yeah, man, to where like I seen him beat this one dude up for no reason like he the dude didn't even see it comin', man, it's countless things I could tell you ____.

Q: How many, how many times did he beat people up have you seen him?

A: Pft, man, I, I more than both of my fingers.

Q: Really?

A: Guarantee.

Q: More than ten, huh?

A: I mean...

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Q: Where does he do it, does he hang out in one particular part of town where he always does this at or what...

A: Nah, he...

Q: ...I mean give me an example of one of the times.

A: ...he, he just...

Q: _____

A: ..._____ he's just he's like a lion homie he get on the bus ...

Q: Yeah.

A: ...and he randomly go around even in a car he'll ...I seen him beat the shit out of this dude and steal his car, man.

Q: Really?

A: Yeah.

Q: When was that?

A: Uh, probably beginning of March probably.

Q: March?

A: He beat the shit he put him to sleep, man.

Q: Really?

A: The dude wasn't movin' no more and went in his pockets and took his car, man.
And then...

Q: What, what does this guy look like white guy, black guy...

A: A...

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Q: ...Mexican?

A: ...black dude.

Q: Black dude?

A: Yeah. Beat the shit out of him I thought he killed him cause he stopped movin'.

Q: Hmm.

A: I mean ~~this~~ dude has hurt a lot of people, man, females included.

Q: What does he drive?

A: He don't drive he...

Q: No car?

A: ...if he do it's cause he stole it.

Q: Yeah.

A: He's not gonna be this ain't the kinda I mean but his like I said his name is Nicholas D. Thompson.

Q: That's his real name government...

A: Yep.

Q: ..name?

A: Nicholas D. Thompson.

Q: Do you know his phone number?

A: Uh, it's in my thing.

Q: It's in your phone, alright. Um, and so he goes around and he robs people on, on buses?

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A: Mm hmm.

Q: He like intimidates 'em...

A: Buses...

Q: ...and stuff?

A: ...wherever. Wherever and then...

Q: On the street, in a bus?

A: Yeah, and then he'll like after he showed me what he did to the first person like it was all this sick little game he'd reel me in and act like we was...cause I'm thinkin' like why is this dude talkin' to me, man.

Q: Yeah.

A: I didn't know him at first so well he played cool with me, you know, smoked a blunt or two then did somethin' real bad to somebody and really hurt him and I got scared.

Q: Yeah.

A: And that's all he wanted to know was and after that I was like his little pawn.

Q: Right, right.

A: When he'd do somethin' if he pushed up on somebody or if he be like take that from 'em and if you don't take it you already know what time it is Wood because he say he from the Wood...

Q: He says he's from...

A: ...the Wood.

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Q: ...Wood?

A: Yeah, and then he be like you already know what time it is. And I just, I don't wanna get, you know, I didn't wanna get fucked up, man.

Q: Right.

A: I really didn't, I really didn't, man, I know it sound crazy like you a grown ass man, but look at this dude physical features, man, this dude will fuckin' kill me, man.

Q: Yeah, de...

A: I watched...

Q: ...describe him to me he was he, is he a black guy?

A: Yeah.

Q: Is he light skinned or dark skinned?

A: Like a little darker than me.

Q: Okay.

A: Brown like, like brownish tan.

Q: Right.

A: He tall he got a tattoo in the middle of his forehead I got a P and crown over it.

Q: A P and crown on the middle of his forehead?

A: Yeah, right here.

Q: Like the letter P?

A: Yeah, man, the dude is crazy, man, and he's just all that he basically is using me like a little bitch.

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Q: Right. Wait hold up one second. Um, a P and a crown on his forehead?

A: Yeah.

Q: Any, any other tattoos or anything that you know of?

A: He do, but I never really paid attention to him...

Q: What on his arms...

A: ...like that.

Q: ...or what?

A: Yeah.

Q: Alright.

A: And can ya'll please tell this dude that I didn't cause, you know, ya'll...

Q: No, I know.

A: ...get him I'm done.

Q: I ain't gonna...

A: I'm telling you ...

Q: ...tell him nothin' ____.

A: ...I'm done from this dude, man.

Q: How big is he ya' think or...

A: He big, man.

Q: I mean how old is he let's say?

A: He 23 or 24.

Q: Twenty-three?

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A: He 24.

Q: Twenty-four years old?

A: Yeah, he 24.

Q: Alright. And he's big like, like taller than you?

A: And he big, dude, and he's _____ and he got hella muscles, man.

Q: Really?

A: Yeah, and he be... whenever time he hits somebody he knock 'em out.

Q: Mm hmm.

A: I don't care if they bigger than him it's a dude that you just don't wanna bump past with, man.

Q: Right.

A: Unless you got a weapon cause it ain't gonna be fair.

Q: Right. Does this dude, uh, does he carry weapons or not, or not? Like...

A: Sometimes.

Q: ...like what gun, knife what?

A: _____.

Q: Gun?

A: He don't really carry no knives.

Q: Alright.

A: But he carry a gun like that night, uh, he had a gun.

Q: Did he...

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A: Yeah.

Q: ...on the bus?

A: Yep, a deuce deuce.

Q: Hmm.

A: That's why I was like ...

Q: Now on the, the night on the bus, the, the incident that we were talkin' about here it was you and him on the bus and that girl, do you remember that girl? I mean a little bit?

A: Yeah.

Q: Who took the phone, you took the phone from her because you were intimidated by him, is that what you're sayin'?

A: And he told me, um, because it was like three other times we tried it, but I, I didn't do it I made an excuse up I was like...

Q: Okay.

A: ...ah, they got away or I didn't there was too many people. And then he was like on this last one, um, you already, he was like, "You already know what time it is if you don't get this."

Q: Right. What'd you mean by that...what'd ya', what'd ya' think that meant like you were gonna get it if you didn't, uh, do it?

A: He was gonna shoot me.

Q: So what'd you do just push her and...

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A: No, I didn't push her I snatched it.

Q: Just like snatched the phone?

A: Yeah, I didn't even touch her.

Q: Where was it in her purse or...

A: It was in her hand like this...

Q: In her hand.

A: ...and I just and it ran into the door was o...closed and I ran into the door.

Q: Alright.

A: Bomp.

Q: Bounced out?

A: Yeah, and then it opened and then, uh, I ran and then somehow this fool felt me
he...

Q: Really?

A: ...yep, and he took the phone and then left me again.

Q: That same night or later on or what?

A: That same night and I told him, "I'm never doin' that again," and he was like, "Shut
up well you're gonna do whatever I tell you to do."

Q: Mmm.

A: So like just every cause like whenever I make up my own mind I'll be like, man,
fuck this I'm leavin', I'm, I'm grown man like this fools just, you know, fuckin' it ain't,
you'll see if ya'll ever get him you'll...

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Q: Yeah.

A: ...see, man, that dude I mean cause you could probably even look at it and tell that I didn't wanna do that shit...

Q: Yeah.

A: ...right then and there, but...

Q: It didn't, it didn't seem like it from the pictures I saw and stuff the video and stuff didn't seem like you wanted to.

A: Cause he was gonna fuckin' kill me, dude, and I mean how can I tell this lady he'll, he'll kill both of us if I say, hey, lady look...

Q: Right.

A: ...I gotta get your phone, but then he really gonna _____ on the bus.

Q: Yeah.

A: But...

Q: Um, what's, uh, how many times have you felt like you had to do this with the other dude how many other times have you done it?

A: Man, that fool I don't know how many times, man, he tried to make me do this shit.

Q: Alright.

A: I remember a time when there was a Mexican dude walkin' and, um, I tried to snatch his phone and he, but he, he got, he actually got his hand loose then this fool came because I'm walkin' with the Mexican dude I then came, he then dropped me I'm walkin' with the Mexican dude and as I'm walkin', uh, fuckin' I try to

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get the phone, but he waitin' up ahead.

Q: Right.

A: And after I couldn't get the phone I just pushed off and jetted across the street.

Q: Right.

A: And I watched, um, as the little short Mexican dude got to that part of the wall I could take you back to that same area and everything he, uh, snatched 'em up cause, cause he was way bigger than him.

Q: Right.

A: And he snatched 'em up and, uh, like really fuck and he wasn't movin'.

Q: He beat him up...

A: Yeah, he stopped...

Q: ...took his phone and stuff?

A: ...movin'. And he stopped movin'.

Q: Hmm, where was that, what part of town was that in?

A: On Tropicana and somewhere almost close to Trop and Boulder just a little bit ways up.

Q: Over by Sportsmans over there or...

A: Nah, closer up.

Q: Closer up towards ...

A: Clo...

Q: ...town?

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A: Yeah, more...

Q: Yeah.

A: ...more up towards...

Q: Uh huh.

A: ...that way.

Q: Alright.

A: And...

Q: How long ago was that?

A: That was about around that time March somethin' probably.

Q: Around that same time?

A: Yep, cause ...

Q: What...

A: ...that's all he do every night is just ride around and that's every night that's what he do.

Q: Just up and down Boulder Highway, Tropicana...

A: Yep.

Q: ...in through there?

A: Yep, yep then the only parts he don't go...

Q: What's he do with all these phones?

A: I don't know he said he knew some Russian dude or some shit and...

Q: Hmm.

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A: ...and, uh, some, uh, Ethiopian people that he be take, takin' 'em to and ...

Q: This is here is a, a surveillance picture from one of the bus videos that's you obviously, right?

A: Yeah.

Q: Yeah, now is that the same cause I got some I, I got a couple of pictures here is that the, is that the what shirt you were wearin' and stuff when you ...

A: When I did that with him, yeah, I got that from him.

Q: That shirt?

A: Let me see.

Q: I, I got some more here just sign if that's you right there just sign your name right there on that picture just right down here somewhere.

A: What is this though?

Q: That's a picture...

A: What is...

Q: ...of you.

A: ...what is that?

Q: Oh, I don't know what that is.

A: I was by myself?

Q: Well I think you were either walkin' on or walkin' off or somethin' I really don't know, man, that's all I got for a picture. But I mean I'm just sayin' that I mean you, that's you you're takin' responsibility _____

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A: Right, but all, alright I just wanna know ...

Q: Yeah.

A: ...am I goin' down for this stuff by myself because I just, I provided ya'll with his name, his full name.

Q: Right.

A: And I mean I'm pretty sure it might come down that ya'll wanted me to testify against this dude in court.

Q: Right.

A: All I'm sayin', man, this shit is serious and this dude will kill me and my freedom it wouldn't matter because he's gonna find me, somehow he gonna find me and I just wanna know if, if, if I could ya'll to, to apprehend him, man, and ya'll get him.

Q: Right.

A: You know what I mean. I need some kinda I don't, you know, I'm not sayin', you know, I mean it's fucked up, man, you know, the situation is fucked up, you know, a homeless dude t...

Q: I know, man.

A: ...ran into a dude like this, man, there ain't nobody there to save me, you know what I mean, and it's like it's crazy but...

Q: Well I'm gonna say that you're the first person we talked to obviously we ain't talked to him at all.

A: Right.

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Q: And you've come clean and you've been honest, alright.

A: Right.

Q: And I'm gonna make sure that the District Attorney's Office and the judge knows that, hey, you helped us out without you we may not even be able to find this other guy I don't know. I can't...

A: _____ you're not.

Q: ...really say cause it's not my case. Remember what I said, man, this, this is Detective Embry's case.

A: I just know period if I'm I, and I, ah, as I'm, cause you gotta think what's goin' through my mind as this shit happened I'm thinkin' what if we get caught he...

Q: Right.

A: ...gonna fuckin' kick me to the curb, you know, and try to get away and then, you know, that's fucked up when you force me against my will, man.

Q: I'm tryin' to see if I got a picture of him in here if we're talkin' about...

A: He gotta be, dude, it gotta be, I got a picture of him on the ID he gotta be up...

Q: Yeah.

A: ...in there, man.

Q: Yeah.

A: He gotta be up in there.

Q: Let me see what I got here.

A: If not I would...

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Q: Like I said this ain't my case file let me look through it a little bit.

A: I was with this dude for so, so many times I was with this fool...

Q: Right.

A: ...but I didn't wanna be for days, you know, I had to tag along with him I couldn't get away. I just couldn't get away, man.

Q: Yeah. I hear ya' I understand, man.

A: But it gotta be, it gotta be numerous occasions I was with that fool...

Q: Yeah.

A: ...on the bus and all I'm sayin' is, yeah, that's the day they beat my ass.

Q: Who hit your ass?

A: The police.

Q: Oh, did they?

A: Really bad, but...

Q: There must've been another incident too where you were on the bus and, and that same day maybe what's this one?

A: Yeah, probably that same...

Q: And...

A:he did...

Q:snatched another phone. This looks like you snatchin' a phone right there is that some dude you snatched a phone from?

A: Oh, yeah, nah, I ain't even get the phone though.

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Q: Oh really?

A: I ain't even get it, yeah, yeah.

Q: What, what happened on this one?

A: That was him like he on that bus too.

Q: He's on that bus too?

A: He on that, that's the time when I first, first ever met him right there.

Q: Yeah.

A: That was the first time I ever met him.

Q: What happened on this one did he tell you to go up and...

A: Yep.

Q: ...snatch the phone?

A: He was like look, like he the dude is crazy, man, you gotta actually get him to know what I mean like...

Q: Right.

A: ...the intimidation of makin' a person do somethin' against their will, you know what I mean.

Q: Right.

A: And I know it sounds all crazy cause you gotta think I don't got no history or nothin' like this.

Q: Here this is you and, this is you and another cat walkin' on the bus that's...

A: That's him.

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Q: ...not a good picture. Is that him?

A: That's him, man.

Q: With a pic in his hair or somethin'?

A: Yeah, that's him he cut his hair now let me see that's him.

Q: Let me see if I can find a better picture.

A: That's him.

Q: That's him there?

A: That's him, man, that's him, bro, trust me that's him. That's him look.

Q: Yeah.

A: You see I'm followin' him.

Q: Yeah.

A: You think I'm gonna try to run that's him, That's him, man.

Q: That's you there, right? Alright, that's you.

A: Damn.

Q: I don't have no good pictures of the other dude.

A: That's him and...

Q: Ah, there...

A: ...man go get the I...

Q: ...you go.

A: ...look.

Q: How's that, is that him?

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A: Man, go get the ID out of my shit and you'll see right now that...

Q: Really.

A: ...that's him. That's him he claim he from the Wood.

Q: Right there, alright. So this, this is that cat that you're talkin' about he's from the Wood, huh?

A: Yep, his name Nicholas D. Thompson they call him Baby Insane, Baby Insane and he say he's from Cali Pomona Mafia Crip and I'm not the only dude he's done this with. He done made countless my cousin, Joshua Hicks, I don't know what he made my cousin do I just know that he had my cousin, you know what I mean, the same way he had me. I saw 'em both...

Q: Really?

A: ...on the bus, yeah. Luckily the bus was, the doors closed to the _____ and as it was zoomin' past just pickin' up speed I seen both of 'em and the look in my cousin eyes I already knew he got him doin' the same shit.

Q: Really?

A: Yep.

Q: Recently? I mean does he got...

A: _____, yeah, this year, yeah.

Q: This year, uh huh. When's the last time you saw this guy?

A: Man, it's back then that time.

Q: Uh, so in March.

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A: Yep.

Q: So you ain't seen him since March?

A: Yep, I've been to...well I've been stayin' away from him on purpose.

Q: Yeah, I...

A: I've been scared to even...

Q: ...I don't...

A: ...get...

Q: I don't blame ya', man.

A: I've been scared to even get on the bus cause I'm tellin' ya' the moment he see me
I'm not gonna be able to get away from him, man.

Q: Yeah.

A: I'm telling you I'm not gonna...this ain't a guy I could just say, hey, whoo, whoo,
whoo trust me that's a dude that need to be locked up, man.

Q: Alright, let's do, let me do this I'm gonna, I'm gonna out here sit, sit back out here
for a minute I'm gonna go grab your property, okay, want you to do is I want you to
show me his cell phone, alright, his cell phone number in there and his Facebook
stuff and that ID you say you got of him, is that cool?

A: Yeah.

Q: Okay, alright. So let's do that I'm just gonna leave all this stuff sit in here for now.
Come on out with me and I'll grab your property. Alright, so here's, uh, this came
out of your property...

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A: Yeah, that's him.

Q: ...this is a Check City.

A: That's him.

Q: That's him?

A: That's him, yep, Nicholas D. Thompson that's him.

Q: Alright and that's his real name?

A: Yep.

Q: Alright.

A: That's his real name.

Q: Now which cell, which one of these cell phones...

A: This one I just got that that's a Obama phone that came in this bag.

Q: Oh, this an Obama...

A: Yeah, that's bra...

Q: ...phone.

A: ...yeah, that's brand new I just got it...

Q: Okay.

A:yesterday. Yep.

Q: And that one is your phone there?

A: Yeah.

Q: Alright.

A: Actually my sister gave it to me and there's a number you could probably contact

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her in here too to verify that.

Q: Okay.

A: But it was her phone, but the night I came here that I had the bandage on my head on that picture...

Q: Yeah.

A: ...that's the night she gave me this phone.

Q: Okay.

A: In front of the police cause she was cause she was like I'm gonna need to be able...

Q: Oh.

A: ...to call her when I got out of jail and I've been havin' it ever since. I got wait.

(Knock on the door)

Q: Come on in. Uh, we're, thank you sir. That's for you I bet.

A: Okay, yeah it is. Damn. _____ bars up in here.

Q: You can still get in the phone book, right...

A: Eh, nah...

Q: ..._____?

A: ...It's on Facebook.

Q: Oh.

A: Yeah, I don't even got no physical number on him, but I, that's how I be gettin' like when he be hittin' me up on Facebook and shit.

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- Q: So that's how you guys communicate is back and forth on Facebook?
- A: Well, yeah.
- Q: You ain't got no cell phone for him, cell phone number?
- A: Um, that's what I'm about to see.
- Q: Alright.
- A: Cause there was a time he had called me, but it popped up as private cause I'm tellin' you he not stupid.
- Q: Alright.
- A: He's not dumb, he notice shit, he know if I went down for it.
- Q: Right.
- A: I would ____...
- Q: Well he don't know you got arrested...
- A: That's what...
- Q: ...right?
- A: Nah, he don't, but I'm sayin' just period, man, there's some shit that I don't wanna go down for period by myself if...
- Q: Right.
- A: Let me see.
- Q: Alright, I'm gonna stick all this stuff back.
- A: Okay.
- Q: What's the phone number to that Samsung phone you got there?

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EVENT #: 130327-0636
STATEMENT OF: JAMES MANNING

- A: Uh, 702...to this one?
- Q: No, not the Obama phone the other one.
- A: This one, uh, 702...
- Q: Uh huh.
- A: ...uh, 772...
- Q: Uh huh.
- A: ...9596.
- Q: And your sister gave that to you?
- A: Yeah.
- Q: What's your sister's name?
- A: Shatara Manning.
- Q: Alright. Is that her phone?
- A: Yeah.
- Q: Does she pay the bill on it or what?
- A: Yeah, that's _____.
- Q: Alright. So how many, how many phones have you stolen...
- A: I only...
- Q: ...in the whole time you've been with him?
- A: Two.
- Q: Two?
- A: That successfully happened, but the...

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EVENT #: 130327-0636
STATEMENT OF: JAMES MANNING

Q: Okay.

A: ...rest I always made cause I'm sittin' I'm like this dude is bltchin' me out, man, he's makin' my, he's fuckin' my name up.

Q: Right.

A: You know and either I could die or just take this horrible beating and I don't even got his name and they'll never catch him.

Q: Yeah.

A: So it was like ...

Q: How'd you get that ID of his, that Check City ID?

A: I snuck from him cause I knew if somethin' like this ever happened I knew I was gonna have to reveal the truth for if I have to go down it'll be wrong for me to just sit in, in jail and go to court and have to face this when...

Q: Right.

A: ...I didn't create this, I didn't want this, I don't even got a history of this, I don't do shit like this, man.

Q: Right.

A: But, um, yeah.

Q: What was the other time you took a phone tell me about that.

A: Um, shit I know it was more than just cause that lady that was a successful one and I don't know.

Q: I mean how many...

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EVENT #: 130327-0636

STATEMENT OF: JAMES MANNING

A: I just know it had to be more than one phone cause...

Q: Right.

A: ...cause I remember that time him gettin' impatient like that like, you know, just it'd, let me think, I gotta think cause it was hella times I made excuses up as to why I didn't...

Q: Right.

A: ...do it even though it was really just because I let the person go cause I didn't wanna do it.

Q: Yeah.

A: But it's like why you think he was right there with me cause he wanted to see if all this stuff cause he was like, "I think you're lyin' to me Wood..."

Q: Mm hmm.

A: ...I think you ain't tryin'," you know what I mean, cause he'll do somethin' and then be waiting in the area like across the street so chances of gettin' away from him he gonna chase me down and, you know what I mean, I can't this, this dude is sick, man, I'm....

Q: Yeah.

A: ...look.

Q: Alright, what do you got for me?

A: Hold on.

Q: You got a signal?

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EVENT #: 130327-0036
STATEMENT OF: JAMES MANNING

- A: Nah uh, I'm tryin' to go to it so you could just have his page and stuff.
- Q: Alright.
- A: Uh, right here, right here.
- Q: Alright, let me see.
- A: This crazy mother fucker, man, yep, right there that's him and he in the suites somewhere, he be in the Budget Suites off Trop over there I told you.
- Q: Alright.
- A: Not on the Strip exactly on Las Vegas Boulevard it's when you take that, that turn.
- Q: Right, so this is his Facebook page you just got to it's F-O D-E-E-P N-I-I-C-C.
- A: Oh, yeah, or, yeah, I thought it was FO Nick Deep some...
- Q: Right.
- A: ...I knew it was some shit I don't...
- Q: And that's him, huh?
- A: Yep, that's him, man, that's him he the reason all of this happened he thought of this, he did this randomly and the, and the fucked up thing is he don't plan this shit.
- Q: Right.
- A: We'll...he'll just randomly do it so I won't be able to back out and if I do he gonna beat the shit out of me right there.
- Q: Does he, uh, is this Facebook page do you have to friend him to get on it or not?
- A: Nah uh, just...
- Q: No, just open?

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EVENT #: 130327-0636
STATEMENT OF: JAMES MANNING

A: Yeah.

Q: Alright. What's your Facebook?

A: Uh...

Q: What are you under?

A: On there Daevon Hicks it's right there just go to...

Q: Oh, I don't know, man, I don't know how to use Facebook. You go by Daevon Hicks on here?

A: Yeah, just cause I knew if somethin' like this happened I gotta be able to make him think that I'm not even dealin' with the cops or nothin' cause the ____...

Q: Right.

A: ...that's weird, man, somethin' in my mind was tellin' me cause see he from Cali, man, I'm from Vegas born and raised in my life.

Q: Right.

A: I've never been nowhere outside of these lines over the state line in my entire life so just seein' how he gets down it let me know he ain't from out here.

Q: No.

A: And he, he's a monster, homie, he's a monster like that day on that bus with that lady...

Q: Right.

A: ...I'm, I'm like come on, man.

Q: Go ahead and turn that off so your battery don't die.

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EVENT #: 130327-0638
STATEMENT OF: JAMES MANNING

Q: Alright. Alright, that's good, um, I'm gonna tell Detective Embry about this when he comes back, alright, we'll dig into this he might come down and talk to you again if you want to, alright. He might have some follow up questions...

A: Yeah...

Q: ...for ya'.

A: ...I just wanna be able to get that dude, man...

Q: Yeah.

A: ...so at least when I go to court for this whether he admits to it or not, dude, come on man, dude, you forced me against my will, man.

Q: Right, right.

A: Straight up.

Q: I hear you, I hear you.

A: He forced me against my will now I'm sittin' in jail...

Q: You see...

A: ...with no way to explain like, you know, I don't got the phones...

Q: You...

A: ...so it lets you know ...

Q: Right.

A: ...but and I can, and I can take ya'll to the people he s...gave the phones to.

Q: Alright.

A: So ...

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EVENT #: 130327-0836
STATEMENT OF: JAMES MANNING

Q: Alright.

A: ...if somebody could just hear me out to help me and at least believe that I didn't conspire this shit in my mind I don't do nothin' like this. I don't got no history this at all, man, this, this is not me at all.

Q: Very good.

A: So ...

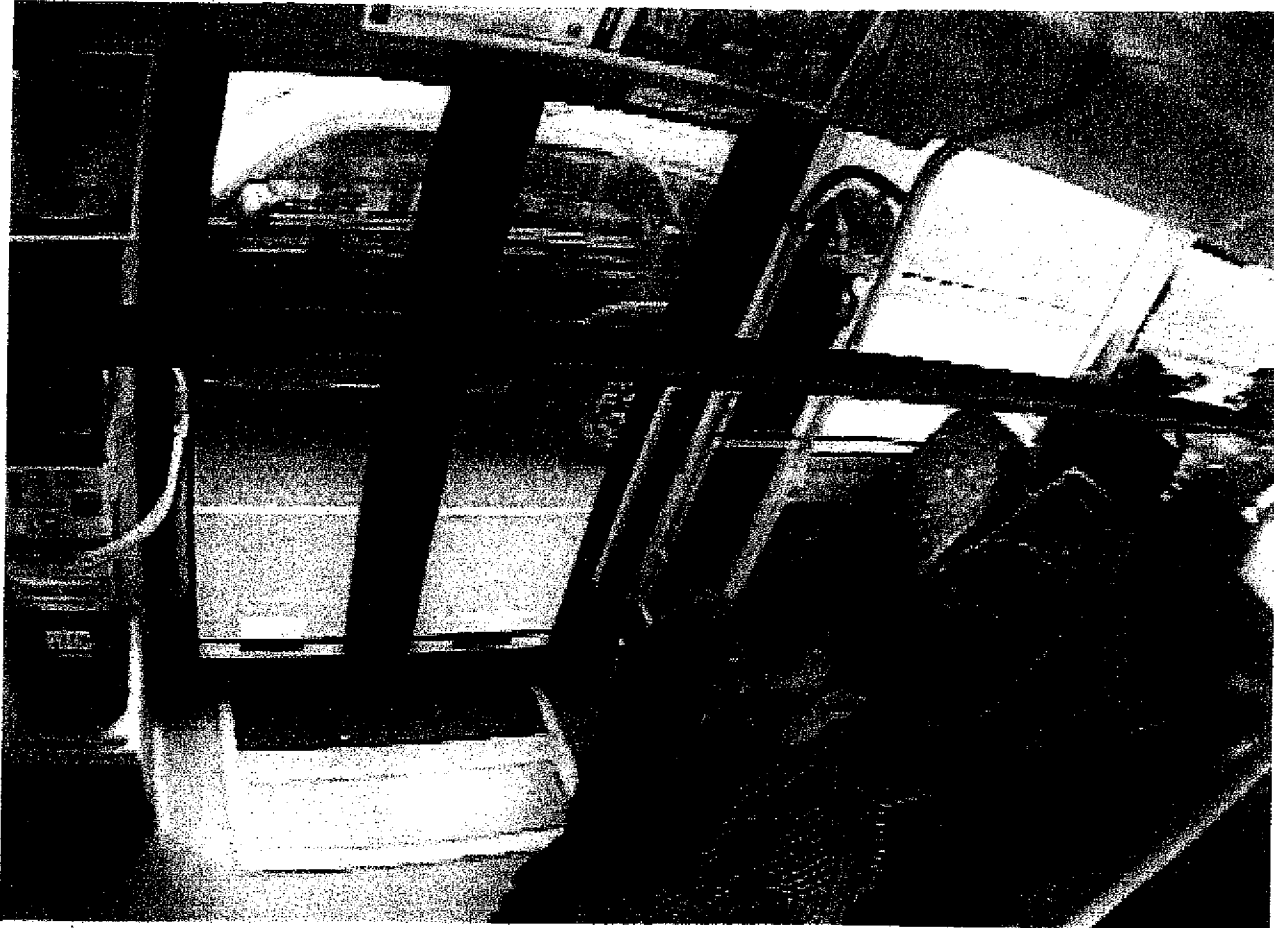
Q: Alright, that's the end of the taped statement, the same persons present, same date and time now is, uh, 1455 hours.

THIS VOLUNTARY STATEMENT WAS COMPLETED AT CCDC ON THE 18TH DAY OF MAY, 2013 AT 1455 HOURS.

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DVR Video Snapshot

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sys\DVRMS0839A087-Camera 6 Center Door-16.04.59_16.39.59.avi
Fri, Mar 29, 2013, 4:15:37 PM (Pacific Daylight Time) (36.0636° N, 115.0396° W @ 33.3 mph)
Event: No event selected



Video Capture Size: 704 x 480 pixels
Video Frame Time: 3/29/2013 4:15:37 PM (Pacific Daylight Time)
Media Input Name: Camera 6 Center Door
DVR Location: AO 48
DVR Serial #: MS0839A087-5412
DVR Station ID: 48

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DVR Video Snapshot

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Fri, Mar 29, 2013, 4:05:39 PM (Pacific Daylight Time) (36.0635° N, 115.0416° W @ 0.0 mph)
Event: No event selected

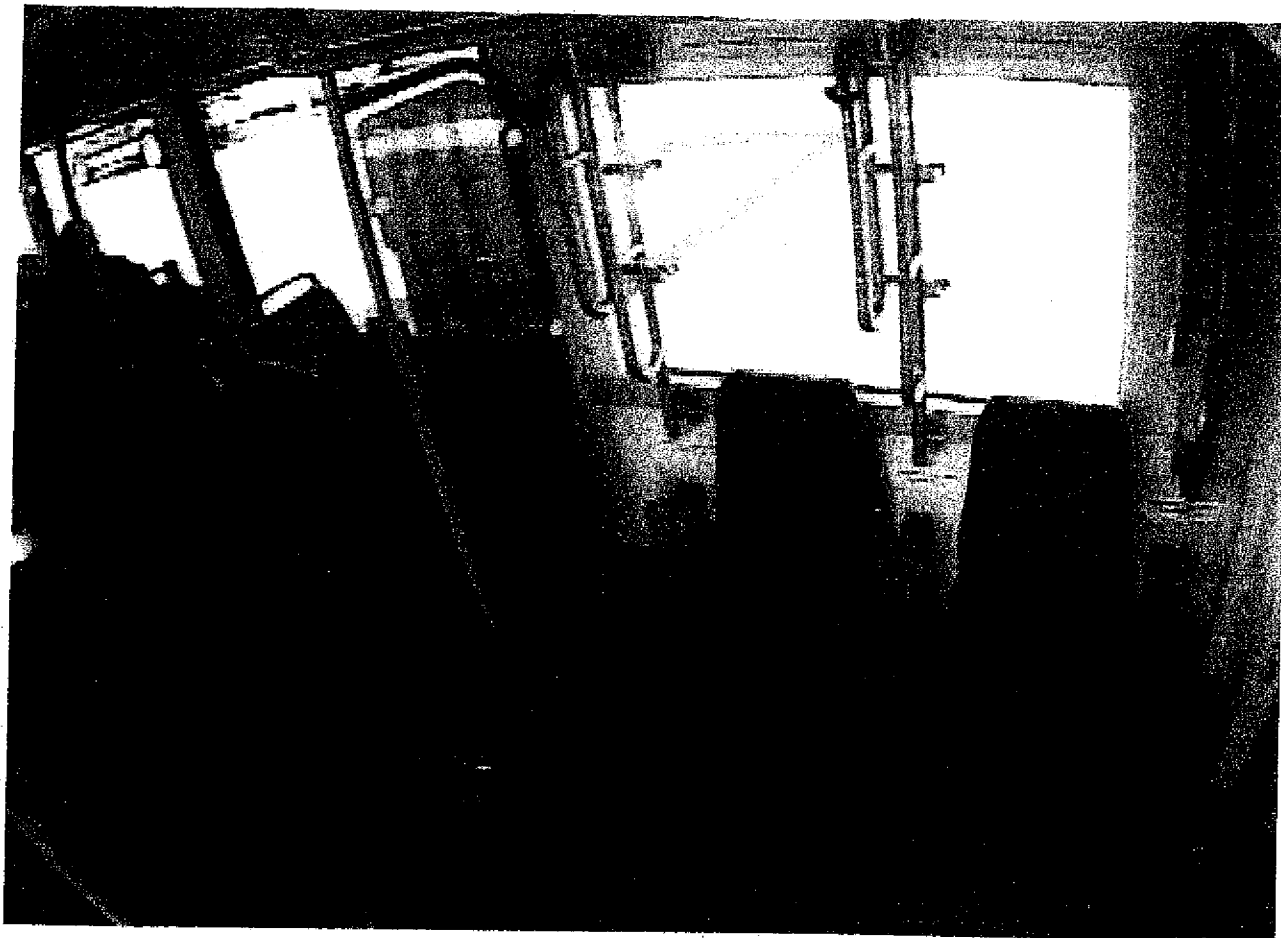


Video Capture Size: 704 x 480 pixels
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sys\DVRMS0839A087-Camera 4 Rear Center-16.04.59_16.39.59.avi
Fri, Mar 29, 2013, 4:15:35 PM (Pacific Daylight Time) (36.0636° N, 115.0400° W @ 31.8 mph)
Event: No event selected



Video Capture Size: 704 x 480 pixels
Video Frame Time: 3/29/2013 4:15:35 PM (Pacific Daylight Time)
Media Input Name: Camera 4 Rear Center
DVR Location: AO 48
DVR Serial #: MS0839A087-5412
DVR Station ID: 48

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No. 65856

VS.

Respondent.

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STEVE WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

ADAM LAXALT
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

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