

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

3 MATTHEW WASHINGTON,

No. 65998

4 Appellant,

5 v.

6 THE STATE OF NEVADA,

7 Respondent.
8 _____

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9 **APPELLANT'S APPENDIX VOLUME IV PAGES 688-887**

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ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR 16 2014

BY: 
MICHELE TUCKER, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

MATTHEW WASHINGTON,
Defendant.

CASE NO: C-13-294695-1

DEPT NO: I

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

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

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

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

An Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in a Second Amended Information that on or about the 5th day of November, 2013, the Defendant committed the offenses of CONSPIRACY TO COMMIT MURDER (Category B Felony NRS - 199.480, 200.010, 200.030); MURDER WITH USE OF A DEADLY WEAPON (Category A Felony NRS - 200.010, 200.030); ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony NRS - 193.330, 200.010, 200.030); BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony NRS - 200.481); DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (Category B Felony NRS - 202.285), in the following manner, to-wit: That the Defendant, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided and against the peace and dignity of the State of Nevada,

COUNT 1 - CONSPIRACY TO COMMIT MURDER

Defendant MATTHEW WASHINGTON and MARTELL MOTEN along with an unnamed coconspirator, did then and there meet with each other and between themselves and each of them with the other, willfully, unlawfully and feloniously conspire and agree to commit a crime, to-wit: Murder with use of a deadly weapon, and in furtherance of said conspiracy, Defendant MATTHEW WASHINGTON and MARTELL MOTEN did commit the acts as set forth in Counts 2 - 17, said acts being incorporated by this reference as though fully set forth herein.

COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON

Defendant MATTHEW WASHINGTON and MARTELL MOTEN along with an unnamed coconspirator, did then and there willfully, feloniously, without authority of law, and with premeditation and deliberation, and with malice aforethought, kill NATHAN RAWLS, a human being, by shooting at and into the body of the said NATHAN RAWLS, with a deadly weapon, to-wit: a firearm; the said actions of the Defendant MATTHEW

1 WASHINGTON and MARTELL MOTEN and an unnamed coconspirator, resulting in the
2 death of the said NATHAN RAWLS, Defendant MATTHEW WASHINGTON and
3 MARTELL MOTEN being responsible under the following principles of criminal liability,
4 to-wit: (1) by directly committing said act, and/or (2) by Defendant MATTHEW
5 WASHINGTON and MARTELL MOTEN and/or unnamed coconspirator, aiding or abetting
6 each other, with the specific intent that a killing occur, by providing counsel and
7 encouragement and by assisting each other in this crime by accompanying each other to the
8 crime scene where one or more of their member acted as lookouts, as one or more of their
9 member discharged one or more firearms multiple times striking at and into the body of
10 NATHAN RAWLS resulting in the death of the said NATHAN RAWLS, Defendant
11 MATTHEW WASHINGTON and MARTELL MOTEN and/or an unnamed coconspirator
12 left the crime together immediately after the shooting, Defendant MATTHEW
13 WASHINGTON and MARTELL MOTEN and the unnamed coconspirator acting in concert
14 throughout, Defendant MATTHEW WASHINGTON and MARTELL MOTEN and the
15 unnamed coconspirator counseling and encouraging each other throughout by words or
16 deeds, and/or (3) Defendant MATTHEW WASHINGTON and MARTELL MOTEN and an
17 unnamed coconspirator, conspiring with each with the specific intent to commit murder
18 whereby each is vicariously liable for the acts of the other in furtherance of the conspiracy in
19 its commission

20 COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

21 Defendant MATTHEW WASHINGTON and MARTELL MOTEN along with an
22 unnamed coconspirator, did then and there, without authority of law, and malice
23 aforethought, willfully and feloniously attempt to kill ASHLEY SCOTT, a human being, by
24 shooting at and into the body of the said ASHLEY SCOTT, with a deadly weapon, to-wit: a
25 firearm, Defendant MATTHEW WASHINGTON and MARTELL MOTEN being
26 responsible under one or more of the following principles of criminal liability, to-wit: (1) by
27 directly committing said act, and/or (2) by Defendant MATTHEW WASHINGTON and
28 MARTELL MOTEN and/or unnamed coconspirator, aiding or abetting each other, with the

1 specific intent that a killing occur, by providing counsel and encouragement and by assisting
2 each other in this crime by accompanying each other to the crime scene where one or more
3 of their member acted as lookouts, as one or more of their member discharged one or more
4 firearms multiple times striking at and into the body of ASHLEY SCOTT, Defendant
5 MATTHEW WASHINGTON and MARTELL MOTEN and/or an unnamed coconspirator
6 left the crime together immediately after the shooting, Defendant MATTHEW
7 WASHINGTON and MARTELL MOTEN and the unnamed coconspirator acting in concert
8 throughout, Defendant MATTHEW WASHINGTON and MARTELL MOTEN and the
9 unnamed coconspirator counseling and encouraging each other throughout by words or
10 deeds, and/or (3) Defendant MATTHEW WASHINGTON and MARTELL MOTEN and an
11 unnamed coconspirator, conspiring with each other with the specific intent to commit this
12 murder whereby each is vicariously liable for the acts of the other in furtherance of the
13 conspiracy in its commission.

14 COUNT 4 - BATTERY WITH USE OF A DEADLY WEAPON

15 Defendant MATTHEW WASHINGTON and MARTELL MOTEN along with an
16 unnamed coconspirator did then and there wilfully, unlawfully, and feloniously use force or
17 violence upon the person of another, to-wit: ASHLEY SCOTT, with use of a deadly
18 weapon, to-wit: a firearm, by shooting at and into the body of the said ASHLEY SCOTT,
19 Defendant MATTHEW WASHINGTON and MARTELL MOTEN, being responsible under
20 one or more of the following principles of criminal liability, to-wit: (1) by directly
21 committing said act, and/or (2) by Defendant MATTHEW WASHINGTON and MARTELL
22 MOTEN and/or unnamed coconspirator, aiding or abetting each other, by providing counsel
23 and encouragement and by assisting each other in this crime by accompanying each other to
24 the crime scene where one or more of their member acted as lookouts, as one or more of
25 their member discharged one or more firearms multiple times striking at and into the body of
26 ASHLEY SCOTT, Defendant MATTHEW WASHINGTON and MARTELL MOTEN
27 and/or an unnamed coconspirator left the crime together immediately after the shooting,
28 Defendant MATTHEW WASHINGTON and MARTELL MOTEN and the unnamed

1 coconspirator acting in concert throughout, Defendant MATTHEW WASHINGTON and
2 MARTELL MOTEN and the unnamed coconspirator counseling and encouraging each other
3 throughout by words or deeds, and/or (3) Defendant MATTHEW WASHINGTON and
4 MARTELL MOTEN and an unnamed coconspirator, conspiring with each other to commit
5 this crime whereby each is vicariously liable for the acts of the other in furtherance of the
6 conspiracy in its commission.

7 COUNT 5 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

8 Defendant MATTHEW WASHINGTON and MARTELL MOTEN along with an
9 unnamed coconspirator, did then and there, without authority of law, and malice
10 aforethought, willfully and feloniously attempt to kill LAROY THOMAS, a human being,
11 by shooting at and into the body of the said LAROY THOMAS, with a deadly weapon, to-
12 wit: a firearm, Defendant MATTHEW WASHINGTON and MARTELL MOTEN being
13 responsible under one or more of the following principles of criminal liability, to-wit: (1) by
14 directly committing said act, and/or (2) by Defendant MATTHEW WASHINGTON and
15 MARTELL MOTEN and/or unnamed coconspirator, aiding or abetting each other, with the
16 specific intent that a killing occur, by providing counsel and encouragement and by assisting
17 each other in this crime by accompanying each other to the crime scene where one or more
18 of their member acted as lookouts, as one or more of their member discharged one or more
19 firearms multiple times striking at and into the body of LAROY THOMAS, Defendant
20 MATTHEW WASHINGTON and MARTELL MOTEN and/or an unnamed coconspirator
21 left the crime together immediately after the shooting, Defendant MATTHEW
22 WASHINGTON and MARTELL MOTEN and the unnamed coconspirator acting in concert
23 throughout, Defendant MATTHEW WASHINGTON and MARTELL MOTEN and the
24 unnamed coconspirator counseling and encouraging each other throughout by words or
25 deeds, and/or (3) Defendant MATTHEW WASHINGTON and MARTELL MOTEN and an
26 unnamed coconspirator, conspiring with each other with the specific intent to commit this
27 murder whereby each is vicariously liable for the acts of the other in furtherance of the
28 conspiracy in its commission.

1 COUNT 6 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

2 Defendant MATTHEW WASHINGTON and MARTELL MOTEN along with an
3 unnamed coconspirator, did then and there, without authority of law, and malice
4 aforethought, willfully and feloniously attempt to kill MARQUE HILL, a human being, by
5 shooting at the body of the said MARQUE HILL, with a deadly weapon, to-wit: a firearm,
6 Defendant MATTHEW WASHINGTON and MARTELL MOTEN being responsible under
7 one or more of the following principles of criminal liability, to-wit: (1) by directly
8 committing said act, and/or (2) by Defendant MATTHEW WASHINGTON and MARTELL
9 MOTEN and/or unnamed coconspirator, aiding or abetting each other, with the specific
10 intent that a killing occur, by providing counsel and encouragement and by assisting each
11 other in this crime by accompanying each other to the crime scene where one or more of
12 their member acted as lookouts, as one or more of their member discharged one or more
13 firearms multiple times at the body of MARQUE HILL, Defendant MATTHEW
14 WASHINGTON and MARTELL MOTEN and/or an unnamed coconspirator left the crime
15 together immediately after the shooting, Defendant MATTHEW WASHINGTON and
16 MARTELL MOTEN and the unnamed coconspirator acting in concert throughout,
17 Defendant MATTHEW WASHINGTON and MARTELL MOTEN and the unnamed
18 coconspirator counseling and encouraging each other throughout by words or deeds, and/or
19 (3) Defendant MATTHEW WASHINGTON and MARTELL MOTEN and an unnamed
20 coconspirator, conspiring with each other with the specific intent to commit murder whereby
21 each is vicariously liable for the acts of the other in furtherance of the conspiracy in its
22 commission.

23 COUNT 7 - BATTERY WITH USE OF A DEADLY WEAPON

24 Defendant MATTHEW WASHINGTON and MARTELL MOTEN along with an
25 unnamed coconspirator, did then and there wilfully, unlawfully, and feloniously use force or
26 violence upon the person of another, to-wit: LAROY THOMAS, with use of a deadly
27 weapon, to-wit: firearm, by shooting at and into the body of LAROY THOMAS, Defendant
28 MATTHEW WASHINGTON and MARTELL MOTEN being responsible under one or

1 more of the following principles of criminal liability, to-wit: (1) by directly committing said
2 act, and/or (2) by Defendant MATTHEW WASHINGTON and MARTELL MOTEN and/or
3 unnamed coconspirator, aiding or abetting each other, with the specific intent that a killing
4 occur, by providing counsel and encouragement and by assisting each other in this crime by
5 accompanying each other to the crime scene where one or more of their member acted as
6 lookouts, as one or more of their member discharged one or more firearms multiple times at
7 the body of LAROY THOMAS, Defendant MATTHEW WASHINGTON and MARTELL
8 MOTEN and/or an unnamed coconspirator left the crime together immediately after the
9 shooting, Defendant MATTHEW WASHINGTON and MARTELL MOTEN and the
10 unnamed coconspirator acting in concert throughout, Defendant MATTHEW
11 WASHINGTON and MARTELL MOTEN and the unnamed coconspirator counseling and
12 encouraging each other throughout by words or deeds, and/or (3) Defendant MATTHEW
13 WASHINGTON and MARTELL MOTEN and an unnamed coconspirator, conspiring with
14 each other with the specific intent to commit murder whereby each is vicariously liable for
15 the acts of the other in furtherance of the conspiracy in its commission.

16 COUNT 8 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,
17 AIRCRAFT, OR WATERCRAFT

18 Defendant MATTHEW WASHINGTON and MARTELL MOTEN along with an
19 unnamed coconspirator did then and there wilfully, unlawfully, maliciously, and feloniously
20 discharge a firearm at or into a structure, said structure, not having been abandoned, located
21 at 2655 Sherwood Street, Apartment No. 18, Las Vegas, Clark County, Nevada, Defendant
22 MATTHEW WASHINGTON and MARTELL MOTEN being responsible under one or
23 more of the following principles of criminal liability, to-wit: (1) by directly committing said
24 act, and/or (2) by Defendant MATTHEW WASHINGTON and MARTELL MOTEN and/or
25 unnamed coconspirator, aiding or abetting each other in the commission of this crime with
26 the intent to commit this crime by accompanying each other to the crime scene where one or
27 more of their member acted as lookouts, as one or more of their member discharged one or
28 more firearms multiple times at or into a structure, Defendant MATTHEW WASHINGTON

1 and MARTELL MOTEN and/or an unnamed coconspirator left the crime together
2 immediately after the shooting, Defendant MATTHEW WASHINGTON and MARTELL
3 MOTEN and the unnamed coconspirator acting in concert throughout, and/or (3) pursuant to
4 a conspiracy to commit this crime.

5 COUNT 9 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,
6 AIRCRAFT, OR WATERCRAFT

7 Defendant MATTHEW WASHINGTON and MARTELL MOTEN along with an
8 unnamed coconspirator did then and there wilfully, unlawfully, maliciously, and feloniously
9 discharge a firearm at or into a structure, said structure, not having been abandoned, located
10 at 2655 Sherwood Street, Apartment No. 18, Las Vegas, Clark County, Nevada, Defendant
11 MATTHEW WASHINGTON and MARTELL MOTEN being responsible under one or
12 more of the following principles of criminal liability, to-wit: (1) by directly committing said
13 act, and/or (2) by Defendant MATTHEW WASHINGTON and MARTELL MOTEN and/or
14 unnamed coconspirator, aiding or abetting each other in the commission of this crime with
15 the intent to commit this crime by accompanying each other to the crime scene where one or
16 more of their member acted as lookouts, as one or more of their member discharged one or
17 more firearms multiple times at or into a structure, Defendant MATTHEW WASHINGTON
18 and MARTELL MOTEN and/or an unnamed coconspirator left the crime together
19 immediately after the shooting, Defendant MATTHEW WASHINGTON and MARTELL
20 MOTEN and the unnamed coconspirator acting in concert throughout, and/or (3) pursuant to
21 a conspiracy to commit this crime.

22 COUNT 10 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,
23 AIRCRAFT, OR WATERCRAFT

24 Defendant MATTHEW WASHINGTON and MARTELL MOTEN along with an
25 unnamed coconspirator did then and there wilfully, unlawfully, maliciously, and feloniously
26 discharge a firearm at or into a structure, said structure, not having been abandoned, located
27 at 2655 Sherwood Street, Apartment No. 18, Las Vegas, Clark County, Nevada, Defendant
28 MATTHEW WASHINGTON and MARTELL MOTEN being responsible under one or

1 more of the following principles of criminal liability, to-wit: (1) by directly committing said
2 act, and/or (2) by Defendant MATTHEW WASHINGTON and MARTELL MOTEN and/or
3 unnamed coconspirator, aiding or abetting each other in the commission of this crime with
4 the intent to commit this crime by accompanying each other to the crime scene where one or
5 more of their member acted as lookouts, as one or more of their member discharged one or
6 more firearms multiple times at or into a structure, Defendant MATTHEW WASHINGTON
7 and MARTELL MOTEN and/or an unnamed coconspirator left the crime together
8 immediately after the shooting, Defendant MATTHEW WASHINGTON and MARTELL
9 MOTEN and the unnamed coconspirator acting in concert throughout, and/or (3) pursuant to
10 a conspiracy to commit this crime.

11
12 COUNT 11 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,
AIRCRAFT, OR WATERCRAFT

13 Defendant MATTHEW WASHINGTON and MARTELL MOTEN along with an
14 unnamed coconspirator did then and there wilfully, unlawfully, maliciously, and feloniously
15 discharge a firearm at or into a structure, said structure, not having been abandoned, located
16 at 2655 Sherwood Street, Apartment No. 18, Las Vegas, Clark County, Nevada, Defendant
17 MATTHEW WASHINGTON and MARTELL MOTEN being responsible under one or
18 more of the following principles of criminal liability, to-wit: (1) by directly committing said
19 act, and/or (2) by Defendant MATTHEW WASHINGTON and MARTELL MOTEN and/or
20 unnamed coconspirator, aiding or abetting each other in the commission of this crime with
21 the intent to commit this crime by accompanying each other to the crime scene where one or
22 more of their member acted as lookouts, as one or more of their member discharged one or
23 more firearms multiple times at or into a structure, Defendant MATTHEW WASHINGTON
24 and MARTELL MOTEN and/or an unnamed coconspirator left the crime together
25 immediately after the shooting, Defendant MATTHEW WASHINGTON and MARTELL
26 MOTEN and the unnamed coconspirator acting in concert throughout, and/or (3) pursuant to
27 a conspiracy to commit this crime.
28

1 COUNT 12 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,
2 AIRCRAFT, OR WATERCRAFT

3 Defendant MATTHEW WASHINGTON and MARTELL MOTEN along with an
4 unnamed coconspirator did then and there wilfully, unlawfully, maliciously, and feloniously
5 discharge a firearm at or into a structure, said structure, not having been abandoned, located
6 at 2655 Sherwood Street, Apartment No. 18, Las Vegas, Clark County, Nevada, Defendant
7 MATTHEW WASHINGTON and MARTELL MOTEN being responsible under one or
8 more of the following principles of criminal liability, to-wit: (1) by directly committing said
9 act, and/or (2) by Defendant MATTHEW WASHINGTON and MARTELL MOTEN and/or
10 unnamed coconspirator, aiding or abetting each other in the commission of this crime with
11 the intent to commit this crime by accompanying each other to the crime scene where one or
12 more of their member acted as lookouts, as one or more of their member discharged one or
13 more firearms multiple times at or into a structure, Defendant MATTHEW WASHINGTON
14 and MARTELL MOTEN and/or an unnamed coconspirator left the crime together
15 immediately after the shooting, Defendant MATTHEW WASHINGTON and MARTELL
16 MOTEN and the unnamed coconspirator acting in concert throughout, and/or (3) pursuant to
17 a conspiracy to commit this crime.

18 COUNT 13 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,
19 AIRCRAFT, OR WATERCRAFT

20 Defendant MATTHEW WASHINGTON and MARTELL MOTEN along with an
21 unnamed coconspirator did then and there wilfully, unlawfully, maliciously, and feloniously
22 discharge a firearm at or into a structure, said structure, not having been abandoned, located
23 at 2655 Sherwood Street, Apartment No. 18, Las Vegas, Clark County, Nevada, Defendant
24 MATTHEW WASHINGTON and MARTELL MOTEN being responsible under one or
25 more of the following principles of criminal liability, to-wit: (1) by directly committing said
26 act, and/or (2) by Defendant MATTHEW WASHINGTON and MARTELL MOTEN and/or
27 unnamed coconspirator, aiding or abetting each other in the commission of this crime with
28 the intent to commit this crime by accompanying each other to the crime scene where one or

1 more of their member acted as lookouts, as one or more of their member discharged one or
2 more firearms multiple times at or into a structure, Defendant MATTHEW WASHINGTON
3 and MARTELL MOTEN and/or an unnamed coconspirator left the crime together
4 immediately after the shooting, Defendant MATTHEW WASHINGTON and MARTELL
5 MOTEN and the unnamed coconspirator acting in concert throughout, and/or (3) pursuant to
6 a conspiracy to commit this crime.

7 COUNT 14 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,
8 AIRCRAFT, OR WATERCRAFT

9 Defendant MATTHEW WASHINGTON and MARTELL MOTEN along with an
10 unnamed coconspirator did then and there wilfully, unlawfully, maliciously, and feloniously
11 discharge a firearm at or into a structure, said structure, not having been abandoned, located
12 at 2655 Sherwood Street, Apartment No. 18, Las Vegas, Clark County, Nevada, Defendant
13 MATTHEW WASHINGTON and MARTELL MOTEN being responsible under one or
14 more of the following principles of criminal liability, to-wit: (1) by directly committing said
15 act, and/or (2) by Defendant MATTHEW WASHINGTON and MARTELL MOTEN and/or
16 unnamed coconspirator, aiding or abetting each other in the commission of this crime with
17 the intent to commit this crime by accompanying each other to the crime scene where one or
18 more of their member acted as lookouts, as one or more of their member discharged one or
19 more firearms multiple times at or into a structure, Defendant MATTHEW WASHINGTON
20 and MARTELL MOTEN and/or an unnamed coconspirator left the crime together
21 immediately after the shooting, Defendant MATTHEW WASHINGTON and MARTELL
22 MOTEN and the unnamed coconspirator acting in concert throughout, and/or (3) pursuant to
23 a conspiracy to commit this crime.

24 COUNT 15 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,
25 AIRCRAFT, OR WATERCRAFT

26 Defendant MATTHEW WASHINGTON and MARTELL MOTEN along with an
27 unnamed coconspirator did then and there wilfully, unlawfully, maliciously, and feloniously
28 discharge a firearm at or into a structure, said structure, not having been abandoned, located

1 at 2655 Sherwood Street, Apartment No. 18, Las Vegas, Clark County, Nevada, Defendant
2 MATTHEW WASHINGTON and MARTELL MOTEN being responsible under one or
3 more of the following principles of criminal liability, to-wit: (1) by directly committing said
4 act, and/or (2) by Defendant MATTHEW WASHINGTON and MARTELL MOTEN and/or
5 unnamed coconspirator, aiding or abetting each other in the commission of this crime with
6 the intent to commit this crime by accompanying each other to the crime scene where one or
7 more of their member acted as lookouts, as one or more of their member discharged one or
8 more firearms multiple times at or into a structure, Defendant MATTHEW WASHINGTON
9 and MARTELL MOTEN and/or an unnamed coconspirator left the crime together
10 immediately after the shooting, Defendant MATTHEW WASHINGTON and MARTELL
11 MOTEN and the unnamed coconspirator acting in concert throughout, and/or (3) pursuant to
12 a conspiracy to commit this crime.

13 COUNT 16 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,
14 AIRCRAFT, OR WATERCRAFT

15 Defendant MATTHEW WASHINGTON and MARTELL MOTEN along with an
16 unnamed coconspirator did then and there wilfully, unlawfully, maliciously, and feloniously
17 discharge a firearm at or into a structure, said structure, not having been abandoned, located
18 at 2655 Sherwood Street, Apartment No. 18, Las Vegas, Clark County, Nevada, Defendant
19 MATTHEW WASHINGTON and MARTELL MOTEN being responsible under one or
20 more of the following principles of criminal liability, to-wit: (1) by directly committing said
21 act, and/or (2) by Defendant MATTHEW WASHINGTON and MARTELL MOTEN and/or
22 unnamed coconspirator, aiding or abetting each other in the commission of this crime with
23 the intent to commit this crime by accompanying each other to the crime scene where one or
24 more of their member acted as lookouts, as one or more of their member discharged one or
25 more firearms multiple times at or into a structure, Defendant MATTHEW WASHINGTON
26 and MARTELL MOTEN and/or an unnamed coconspirator left the crime together
27 immediately after the shooting, Defendant MATTHEW WASHINGTON and MARTELL
28 MOTEN and the unnamed coconspirator acting in concert throughout, and/or (3) pursuant to

1 a conspiracy to commit this crime.

2 COUNT 17 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,
3 AIRCRAFT, OR WATERCRAFT

4 Defendant MATTHEW WASHINGTON and MARTELL MOTEN along with an
5 unnamed coconspirator did then and there willfully, unlawfully, maliciously, and feloniously
6 discharge a firearm at or into a structure, said structure, not having been abandoned, located
7 at 2655 Sherwood Street, Apartment No. 18, Las Vegas, Clark County, Nevada, Defendant
8 MATTHEW WASHINGTON and MARTELL MOTEN being responsible under one or
9 more of the following principles of criminal liability, to-wit: (1) by directly committing said
10 act, and/or (2) by Defendant MATTHEW WASHINGTON and MARTELL MOTEN and/or
11 unnamed coconspirator, aiding or abetting each other in the commission of this crime with
12 the intent to commit this crime by accompanying each other to the crime scene where one or
13 more of their member acted as lookouts, as one or more of their member discharged one or
14 more firearms multiple times at or into a structure, Defendant MATTHEW WASHINGTON
15 and MARTELL MOTEN and/or an unnamed coconspirator left the crime together
16 immediately after the shooting, Defendant MATTHEW WASHINGTON and MARTELL
17 MOTEN and the unnamed coconspirator acting in concert throughout, and/or (3) pursuant to
18 a conspiracy to commit this crime.

19 It is the duty of the jury to apply the rules of law contained in these instructions to the
20 facts of the case and determine whether or not the Defendant is guilty of one or more of the
21 offenses.

22 Each charge and the evidence pertaining to it should be considered separately. The
23 fact that you may find a defendant guilty or not guilty as to one of the offenses charged
24 should not control your verdict as to any other offense charged.
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To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

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2 The Defendant is presumed innocent until the contrary is proved. This presumption
3 places upon the State the burden of proving beyond a reasonable doubt every material
4 element of the crime charged and that the Defendant is the person who committed the
5 offense.

6 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a
7 doubt as would govern or control a person in the more weighty affairs of life. If the minds of
8 the jurors, after the entire comparison and consideration of all the evidence, are in such a
9 condition that they can say they feel an abiding conviction of the truth of the charge, there is
10 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
11 speculation.

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a
13 verdict of not guilty.
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2 You are here to determine if the Defendant is guilty or not guilty based on the
3 evidence in the case. You are not called upon to return a verdict as to the guilt or innocence
4 of any other person. So, if the evidence in the case convinces you beyond a reasonable
5 doubt of the guilt of the Defendant, you should so find, even though you may believe one or
6 more persons are also guilty.
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2 The evidence which you are to consider in this case consists of the testimony of the
3 witnesses, the exhibits, and any facts admitted or agreed to by counsel.

4 There are two types of evidence; direct and circumstantial. Direct evidence is the
5 testimony of a person who claims to have personal knowledge of the commission of the
6 crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof
7 of a chain of facts and circumstances which tend to show whether the Defendant is guilty or
8 not guilty. The law makes no distinction between the weight to be given either direct or
9 circumstantial evidence. Therefore, all of the evidence in the case, including the
10 circumstantial evidence, should be considered by you in arriving at your verdict.

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

14 You must not speculate to be true any insinuations suggested by a question asked a
15 witness. A question is not evidence and may be considered only as it supplies meaning to
16 the answer.

17 You must disregard any evidence to which an objection was sustained by the court
18 and any evidence ordered stricken by the court.

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

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2 The credibility or believability of a witness should be determined by his manner upon
3 the stand, his relationship to the parties, his fears, motives, interests or feelings, his
4 opportunity to have observed the matter to which he testified, the reasonableness of his
5 statements and the strength or weakness of his recollections.

6 If you believe that a witness has lied about any material fact in the case, you may
7 disregard the entire testimony of that witness or any portion of his testimony which is not
8 proved by other evidence.
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It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

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2 The fact that a witness had been convicted of a felony, if such be a fact, may be
3 considered by you only for the purpose of determining the credibility of that witness. The
4 fact of such a conviction does not necessarily destroy or impair the witness' credibility. It is
5 one of the circumstances that you may take into consideration in weighing the testimony of
6 such a witness.
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2 A witness who has special knowledge, skill, experience, training or education in a
3 particular science, profession or occupation is an expert witness. An expert witness may
4 give his opinion as to any matter in which he is skilled.

5 You should consider such expert opinion and weigh the reasons, if any, given for it.
6 You are not bound, however, by such an opinion. Give it the weight to which you deem it
7 entitled, whether that be great or slight, and you may reject it, if, in your judgment, the
8 reasons given for it are unsound.

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2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind that such inferences should
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Only if your verdict is First Degree Murder, will you, at a later hearing, decide the issue of penalty or punishment.

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2 A conspiracy is an agreement between two or more persons for an unlawful purpose.
3 To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission
4 of, the specific crime agreed to. The crime is the agreement to do something unlawful; it
5 does not matter whether it was successful or not.

6 A person who knowingly does any act to further the object of a conspiracy, or
7 otherwise participates therein, is criminally liable as a conspirator. However, mere
8 knowledge or approval of, or acquiescence in, the object and purpose of a conspiracy
9 without an agreement to cooperate in achieving such object or purpose does not make one a
10 party to conspiracy. Conspiracy is seldom susceptible of direct proof and is usually
11 established by inference from the conduct of the parties. In particular, a conspiracy may be
12 supported by a coordinated series of acts, in furtherance of the underlying offense, sufficient
13 to infer the existence of an agreement.

14 A conspiracy to commit a crime does not end upon the completion of the crime. The
15 conspiracy continues until the co-conspirators have successfully gotten away and concealed
16 the crime.
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2 It is not necessary in proving a conspiracy to show a meeting of the alleged
3 conspirators or the making of an express or formal agreement. The formation and existence
4 of a conspiracy may be inferred from all circumstances tending to show the common intent
5 and may be proved in the same way as any other fact may be proved, either by direct
6 testimony of the fact or by circumstantial evidence, or by both direct and circumstantial
7 evidence.
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Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy.

The act of one conspirator pursuant to or in furtherance of the common design of the conspiracy is the act of all conspirators. Every conspirator is legally responsible for a specific intent crime of a co-conspirator so long as the specific intent crime was intended by the defendant. A conspirator is also legally responsible for a general intent crime that follows as one of the probable and natural consequence of the object of the conspiracy even if it was not intended as part of the original plan and even if he was not present at the time of the commission of such act.

Evidence that a person was in the company or associated with one or more other persons alleged or proven to have been members of a conspiracy is not, in itself, sufficient to prove that such person was a member of the alleged conspiracy. However, you are instructed that presence, companionship, and conduct before, during and after the offense are circumstances from which one's participation in the criminal intent may be inferred.

1
2 Where two or more persons are accused of committing a crime together, their guilt
3 may be established without proof that each personally did every act constituting the offense
4 charged.

5 All persons concerned in the commission of a crime who either directly and actively
6 commit the act constituting the offense or who knowingly and with criminal intent aid and
7 abet in its commission or, whether present or not, who advise and encourage its commission,
8 with the intent that the crime be committed, are regarded by the law as principals in the
9 crime thus committed and are equally guilty thereof.

10 A person aids and abets the commission of a crime if he knowingly and with criminal
11 intent aids, promotes, encourages or instigates by act or advice, or by act and advice, the
12 commission of such crime with the intention that the crime be committed.

13 The State is not required to prove precisely which defendant actually committed the
14 crime and which defendant aided and abetted.
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INSTRUCTION NO. 19

Mere presence at the scene of a crime or knowledge that a crime is being committed is not sufficient to establish that a defendant is guilty of an offense, unless you find beyond reasonable doubt that the defendant was a participant and not merely a knowing spectator.

However, the presence of a person at the scene of a crime and companionship with another person engaged in the commission of the crime and a course of conduct before and after the offense are circumstances which may be considered in determining whether such person aided and abetted the commission of that crime.

1
2 First Degree Murder and Attempt Murder are specific intent crimes. Defendant can
3 not be liable under conspiracy and/or aiding and abetting theory for First Degree Murder and
4 Attempt Murder for acts committed by a co-conspirator, unless Defendant also had requisite
5 specific intent.

6 Battery and Discharging Firearm at or into Structure, Vehicle, Aircraft or Watercraft
7 are general intent crimes. Murder in the Second Degree may be a general intent crime. As
8 such, Defendant may be liable under conspiracy theory for Battery and Discharging Firearm
9 at or into Structure, Vehicle, Aircraft or Watercraft for acts committed by a co-conspirator if
10 the killing is one of the probable and natural consequences of the object of the conspiracy.

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Specific intent is the intent to accomplish the precise act which the law prohibits. General intent is the intent to do that which the law prohibits. It is not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated if a crime is a general intent crime.

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2 A person who conspires to commit the crime of murder with another is guilty of
3 Conspiracy to Commit Murder. Murder is the unlawful killing of a human being with malice
4 aforethought.
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In this case the defendant is accused in a Second Amended Information alleging an open charge of murder. This charge may include First Degree Murder and Second Degree Murder.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense.

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Murder is the unlawful killing of a human being with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

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2 Malice aforethought means the intentional doing of a wrongful act without legal cause
3 or excuse or what the law considers adequate provocation. The condition of mind described
4 as malice aforethought may arise from anger, hatred, revenge, or from particular ill will,
5 spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful
6 motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with
7 reckless disregard of consequences and social duty. Malice aforethought does not imply
8 deliberation or the lapse of any considerable time between the malicious intention to injure
9 another and the actual execution of the intent but denotes an unlawful purpose and design as
10 opposed to accident and mischance.
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Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

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2 First Degree Murder is murder which is perpetrated by means of any kind of willful,
3 deliberate, and premeditated killing. All three elements -- willfulness, deliberation, and
4 premeditation -- must be proven beyond a reasonable doubt before an accused can be
5 convicted of first-degree murder.

6 Willfulness is the intent to kill. There need be no appreciable space of time between
7 formation of the intent to kill and the act of killing.

8 Deliberation is the process of determining upon a course of action to kill as a result of
9 thought, including weighing the reasons for and against the action and considering the
10 consequences of the actions.

11 A deliberate determination may be arrived at in a short period of time. But in all
12 cases the determination must not be formed in passion, or if formed in passion, it must be
13 carried out after there has been time for the passion to subside and deliberation to occur. A
14 mere unconsidered and rash impulse is not deliberate, even though it includes the intent to
15 kill.

16 Premeditation is a design, a determination to kill, distinctly formed in the mind by the
17 time of the killing.

18 Premeditation need not be for a day, an hour, or even a minute. It may be as
19 instantaneous as successive thoughts of the mind. For if the jury believes from the evidence
20 that the act constituting the killing has been preceded by and has been the result of
21 premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.
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2 The law does not undertake to measure in units of time the length of the period during
3 which the thought must be pondered before it can ripen into an intent to kill which is truly
4 deliberate and premeditated. The time will vary with different individuals and under varying
5 circumstances.

6 The true test is not the duration of time, but rather the extent of the reflection. A cold,
7 calculated judgment and decision may be arrived at in a short period of time, but a mere
8 unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation
9 and premeditation as will fix an unlawful killing as First Degree Murder.

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The intention to kill may be ascertained or deduced from the facts and circumstances of the killing, such as the use of a weapon calculated to produce death, the manner of its use, and the attendant circumstances characterizing the act.

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2 A defendant's state of mind does not require the presentation of direct evidence as it
3 existed during the commission of a crime. The jury may infer the existence of a particular
4 state of mind of a party from the circumstances disclosed by the evidence.
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2 You are instructed that the doctrine of transferred intent provides that when a person
3 attempts to murder a certain person, but by mistake or inadvertence kills or injures a
4 different person, the crime committed is the same as though the intended victim had been
5 killed.

6 However, during an attack upon a group, a defendant's intent to kill need not be
7 directed at any one individual. It is enough if the intent to kill is directed at the group.
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INSTRUCTION NO. 32

Although your verdict must be unanimous as to the charge, you do not have to be unanimous as to the theory of criminal liability. Therefore, even if you cannot agree on whether the facts establish liability as a direct actor, aider and abettor, or conspirator, you may return a verdict of guilty to the charged crime so long as all of you agree that the evidence establishes Defendant's guilt of the charged crime beyond a reasonable doubt.

INSTRUCTION NO. 33

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All murder which is not Murder of the First Degree is Murder of the Second Degree.
Murder of the Second Degree is murder with malice aforethought, but without the added
mixture of premeditation and deliberation.

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2 You are instructed that if you find that the State has established that the defendant has
3 committed First Degree Murder you shall select First Degree Murder as your verdict. The
4 crime of First Degree Murder includes the crime of Second Degree Murder. You may find
5 the defendant guilty of Second Degree Murder if:

6 1. You have not found, beyond a reasonable doubt, that the defendant is guilty of First
7 Degree Murder, and

8 2. All twelve of you are convinced beyond a reasonable doubt that the defendant is
9 guilty of the crime of Second Degree Murder.

10 If you are convinced beyond a reasonable doubt that the crime of Murder has been
11 committed by the defendant, but you have a reasonable doubt whether such murder was of
12 the first or of the second degree, you must give the defendant the benefit of that doubt and
13 return a verdict of Second Degree Murder.

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2 Attempt murder is the performance of an act or acts which tend, but fail, to kill a
3 human being, when such acts are done with express malice, namely, with the deliberate
4 intention unlawfully to kill.

5 Express malice is that deliberate intention unlawfully to take away the life of a human
6 being, which is manifested by external circumstances capable of proof.

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Battery means any willful and unlawful use of force or violence upon the person of another.

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2 You are instructed that if you find the defendant guilty of First Degree Murder,
3 Second Degree Murder, Attempt Murder or Battery, you must also determine whether or not
4 a deadly weapon was used in the commission of this crime.

5 If you find beyond a reasonable doubt that a deadly weapon was used in the
6 commission of such an offense, then you shall return the appropriate guilty verdict reflecting
7 "With Use of a Deadly Weapon".

8 If, however, you find that a deadly weapon was not used in the commission of such an
9 offense, but you find that it was committed, then you shall return the appropriate guilty
10 verdict reflecting that a deadly weapon was not used.

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A "deadly weapon" is any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; or any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

You are instructed that a firearm is a deadly weapon.

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The State is not required to have recovered the deadly weapon used in an alleged crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon was used in the commission of the crime.

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2 If more than one person commits a crime, and one of them uses a deadly weapon in
3 the commission of that crime, each may be convicted of using the deadly weapon even
4 though he did not personally himself use the weapon.

5 An unarmed offender "uses" a deadly weapon when the unarmed offender is liable for
6 the offense, another person liable for the offense is armed with and uses a deadly weapon in
7 the commission of the offense, and the unarmed offender had knowledge of the use of the
8 deadly weapon.

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Any person who willfully and maliciously discharges a firearm at or into an occupied structure is guilty of Discharging Firearm at or into Structure, Vehicle, Aircraft, or Watercraft. An occupied structure is one which has not been abandoned.

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When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

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

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

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2 Now you will listen to the arguments of counsel who will endeavor to aid you to
3 reach a proper verdict by refreshing in your minds the evidence and by showing the
4 application thereof to the law; but, whatever counsel may say, you will bear in mind that it is
5 your duty to be governed in your deliberation by the evidence as you understand it and
6 remember it to be and by the law as given to you in these instructions, with the sole, fixed
7 and steadfast purpose of doing equal and exact justice between the Defendant and the State
8 of Nevada.

GIVEN:


DISTRICT JUDGE
4-15-14

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR 16 2014 3:10 pm

BY: Michele Tucker
MICHELE TUCKER, DEPUTY

VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-VS-

MATTHEW WASHINGTON,
Defendant.

CASE NO: C-13-294695-1

DEPT NO: I

VERDICT

We, the jury in the above entitled case, find the Defendant MATTHEW WASHINGTON, as follows:

COUNT 1 – CONSPIRACY TO COMMIT MURDER

(please check the appropriate box, select only one)

☒ Guilty of Conspiracy to Commit Murder

☐ Not Guilty

COUNT 2 – MURDER WITH USE OF A DEADLY WEAPON
(Victim Nathan Rawls)

(please check the appropriate box, select only one)

☒ Guilty of First Degree Murder with Use of a Deadly Weapon

☐ Guilty of First Degree Murder

☐ Guilty of Second Degree Murder with Use of a Deadly Weapon

☐ Guilty of Second Degree Murder

☐ Not Guilty

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COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
(Victim Ashley Scott)

- ☒ Guilty of Attempt Murder with Use of a Deadly Weapon
- ☐ Guilty of Attempt Murder
- ☐ Not Guilty

COUNT 4 - BATTERY WITH USE OF A DEADLY WEAPON
(Victim Ashley Scott)

- ☒ Guilty of Battery with Use of a Deadly Weapon
- ☐ Guilty of Battery
- ☐ Not Guilty

COUNT 5 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
(Victim Laroy Thomas)

- ☒ Guilty of Attempt Murder with Use of a Deadly Weapon
- ☐ Guilty of Attempt Murder
- ☐ Not Guilty

COUNT 6 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON
(Victim Marque Hill)

- ☒ Guilty of Attempt Murder with Use of a Deadly Weapon
- ☐ Guilty of Attempt Murder
- ☐ Not Guilty

COUNT 7 - BATTERY WITH USE OF A DEADLY WEAPON
(Victim Laroy Thomas)

- ☒ Guilty of Battery with Use of a Deadly Weapon
- ☐ Guilty of Battery
- ☐ Not Guilty

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**COUNT 8 – DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,
AIRCRAFT, OR WATERCRAFT**

(please check the appropriate box, select only one)

☒ Guilty of Discharging Firearm at or into Structure, Vehicle, Aircraft or
Watercraft

☐ Not Guilty

**COUNT 9 – DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,
AIRCRAFT, OR WATERCRAFT**

(please check the appropriate box, select only one)

☒ Guilty of Discharging Firearm at or into Structure, Vehicle, Aircraft or
Watercraft

☐ Not Guilty

**COUNT 10 – DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,
AIRCRAFT, OR WATERCRAFT**

(please check the appropriate box, select only one)

☒ Guilty of Discharging Firearm at or into Structure, Vehicle, Aircraft or
Watercraft

☐ Not Guilty

**COUNT 11 – DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,
AIRCRAFT, OR WATERCRAFT**

(please check the appropriate box, select only one)

☒ Guilty of Discharging Firearm at or into Structure, Vehicle, Aircraft or
Watercraft

☐ Not Guilty

**COUNT 12 – DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,
AIRCRAFT, OR WATERCRAFT**

(please check the appropriate box, select only one)

☒ Guilty of Discharging Firearm at or into Structure, Vehicle, Aircraft or
Watercraft

☐ Not Guilty

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**COUNT 17 – DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,
AIRCRAFT, OR WATERCRAFT**

(please check the appropriate box, select only one)

- ☒ Guilty of Discharging Firearm at or into Structure, Vehicle, Aircraft or
Watercraft
- ☐ Not Guilty

DATED this 16 day of April, 2014

B. Rk / Brian Roark
FOREPERSON

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR 16 2014

BY: 
MICHELE TUCKER, DEPUTY

INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
DANIELLE K. PIEPER
Chief Deputy District Attorney
Nevada Bar #008610
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

I.A. 12/23/13
9:30 A.M.
OTTO/MANN

THE STATE OF NEVADA,
Plaintiff,

-vs-

MATTHEW WASHINGTON, #2685499
Defendant.

Case No: C-13-294695-1
Dept No: VI

SECOND AMENDED
INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss.

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That MATTHEW WASHINGTON, the Defendant above named, having committed the crimes of **POSSESSION OF FIREARM BY EX-FELON (Category B Felony NRS - 202.360)**, on or about the 5th day of November, 2013, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did then and there wilfully, unlawfully, and feloniously own or have in his possession, or under his control, a weapon, to-wit: a firearm, the said Defendant being an ex-felon, having in 2010, been convicted of Grand Larceny, in Case No. C263408, in the Eighth Judicial District Court Clark County, a felony under the laws of the State of Nevada and/or having in 2011, been convicted of

H:\CASES\WASHINGTON & MOTEN & LJ PART 3\EXFELON POSSESSION OF

1 Attempt To Carry Concealed Firearm Or Other Deadly Weapon, in Case No. C269722-1, in
2 the Eighth Judicial District Court Clark County, a felony under the laws of the State of
3 Nevada and/or having in 2011, been convicted of Burglary, in Case No. C274118-1 in the
4 Eighth Judicial District Court Clark County, a felony under the laws of the State of Nevada.

5 STEVEN B. WOLFSON
6 Clark County District Attorney
Nevada Bar #001565

7
8 BY


9 DANIELLE K. PIEPER
10 Chief Deputy District Attorney
11 Nevada Bar #008610

12 Names of witnesses known to the District Attorney's Office at the time of filing this
13 Information are as follows:

14 NAME

ADDRESS

15 CUSTODIAN OF RECORDS - CLARK COUNTY DETENTION CENTER

16 CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

17 CUSTODIAN OF RECORDS - LVMPD RECORDS

18 DESOTO, DARRIN - 2635 SHERWOOD ST., #18, LVN 89109

19 DESOTO, DARRIN - 2635 SHERWOOD ST., #18, LVN 89109

20 FINK, JAMES - LVMPD P#4780

21 HILL, MARQUE - 2655 SHERWOOD ST., #18, LVN 89109

22 HONAKER, JAMIE - DISTRICT ATTORNEY INVESTIGATOR

23 MCCARTHY, JASON - LVMPD P#4715

24 PAIQUETTE, C. - LVMPD P#13937

25 RAETZ, DEAN - LVMPD P#4234

26 REVELS, JEROME - DISTRICT ATTORNEY INVESTIGATOR

27 ROGERS, R. - LVMPD P#2858

28 SCOTT, ASHLEY - 2645 SHERWOOD ST., #11, LVN 89109

1 SHELL, ELIZABETH - 1918 PINEDALE AVE., MEMPHIS, TN 38127
2 SIMMS, DR. LARY - CLARK COUNTY CORONER'S OFFICE
3 THOMAS, LAROY - 2655 SHERWOOD ST., #18, LVN 89109
4 WATTS, JOE - DISTRICT ATTORNEY INVESTIGATOR
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DA#13F18022A/B/mmw/GANG
LVMPD EV#1311050479
(TK5)

H:\CASES\WASHINGTON & MOTEN & LJ PART 3\EXFELON POSSESSION OF

ORIGINAL

JURL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DISTRICT COURT

APR 09 2014

CLARK COUNTY, NEVADA

BY: *[Signature]*
MICHELE TUCKER, DEPUTY

THE STATE OF NEVADA
Plaintiff(s),

CASE NO. C294695

-vs-

MATTHEW WASHINGTON
Defendant(s),

DEPT. NO. 1

C-13-294695-1
JURL
Jury List
3681681



JURY

- | | |
|------------------------|--------------------------|
| 1. Mr. Shawnta Ennis | 7. Ms. Edith Lucas |
| 2. Ms. Amy Lahav | 8. Mr. Brian Roark |
| 3. Mr. Keven Farley | 9. Ms. Rushina Morrison |
| 4. Mr. James Johns | 10. Ms. Angie Lucero |
| 5. Ms. Patricia Dowell | 11. Ms. Madeleine Yono |
| 6. Ms. Maryann Harakal | 12. Mr. Jeffrey Eslinger |

ALTERNATES

1. Mr. James Andrews
2. Ms. Octavia Lynch
3. Ms. Serena Perez

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ORIGINAL

1 INST

FILED IN OPEN COURT

STEVEN D. GRIERSON
CLERK OF THE COURT

APR 16 2014

BY: 
MICHELE TUCKER, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -VS-

10 MATTHEW WASHINGTON,

11 Defendant.

CASE NO: C-13-294695-1

DEPT NO: I

12
13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

14 MEMBERS OF THE JURY:

15 It is now my duty as judge to instruct you in the law that applies to this case. It is
16 your duty as jurors to follow these instructions and to apply the rules of law to the facts as
17 you find them from the evidence.

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

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

7 The order in which the instructions are given has no significance as to their relative
8 importance.
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2 An Information is but a formal method of accusing a person of a crime and is not of
3 itself any evidence of his guilt.

4 In this case, it is charged in an Amended Information that on or about the 5th day of
5 November, 2013, the Defendant committed the offense of POSSESSION OF FIREARM BY
6 EX-FELON (Category B Felony - NRS 202.360), in the following manner to wit:

7 did then and there wilfully, unlawfully, and feloniously own or have in his possession,
8 or under his control, a weapon, to-wit: a firearm, the said Defendant being an ex-felon,
9 having in 2010, been convicted of Grand Larceny, in Case No. C263408, in the Eighth
10 Judicial District Court Clark County, a felony under the laws of the State of Nevada and/or
11 having in 2011, been convicted of Attempt To Carry Concealed Firearm Or Other Deadly
12 Weapon, in Case No. C269722-1, in the Eighth Judicial District Court Clark County, a
13 felony under the laws of the State of Nevada and/or having in 2011, been convicted of
14 Burglary, in Case No. C274118-1 in the Eighth Judicial District Court Clark County, a
15 felony under the laws of the State of Nevada.

16 It is the duty of the jury to apply the rules of law contained in these instructions to the
17 facts of the case and determine whether or not the Defendant is guilty of the offense charged.
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2 To constitute the crime charged, there must exist a union or joint operation of an act
3 forbidden by law and an intent to do the act.

4 The intent with which an act is done is shown by the facts and circumstances
5 surrounding the case.

6 Do not confuse intent with motive. Motive is what prompts a person to act. Intent
7 refers only to the state of mind with which the act is done.

8 Motive is not an element of the crime charged and the State is not required to prove a
9 motive on the part of the Defendant in order to convict. However, you may consider
10 evidence of motive or lack of motive as a circumstance in the case.

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2 The Defendant is presumed innocent until the contrary is proved. This presumption
3 places upon the State the burden of proving beyond a reasonable doubt every material
4 element of the crime charged and that the Defendant is the person who committed the
5 offense.

6 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a
7 doubt as would govern or control a person in the more weighty affairs of life. If the minds of
8 the jurors, after the entire comparison and consideration of all the evidence, are in such a
9 condition that they can say they feel an abiding conviction of the truth of the charge, there is
10 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
11 speculation.

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a
13 verdict of not guilty.
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INSTRUCTION NO. 6

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2 You are here to determine the guilt or innocence of the Defendant from the evidence
3 in the case. You are not called upon to return a verdict as to the guilt or innocence of any
4 other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the
5 guilt of the Defendant, you should so find, even though you may believe one or more persons
6 are also guilty.

1 The evidence which you are to consider in this case consists of the testimony of the
2 witnesses, the exhibits, and any facts admitted or agreed to by counsel.
3

4 There are two types of evidence; direct and circumstantial. Direct evidence is the
5 testimony of a person who claims to have personal knowledge of the commission of the
6 crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof
7 of a chain of facts and circumstances which tend to show whether the Defendant is guilty or
8 not guilty. The law makes no distinction between the weight to be given either direct or
9 circumstantial evidence. Therefore, all of the evidence in the case, including the
10 circumstantial evidence, should be considered by you in arriving at your verdict.

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

14 You must not speculate to be true any insinuations suggested by a question asked a
15 witness. A question is not evidence and may be considered only as it supplies meaning to
16 the answer.

17 You must disregard any evidence to which an objection was sustained by the court
18 and any evidence ordered stricken by the court.

19 Anything you may have seen or heard outside the courtroom is not evidence and must
20 also be disregarded.
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1 The credibility or believability of a witness should be determined by his manner upon
2 the stand, his relationship to the parties, his fears, motives, interests or feelings, his
3 opportunity to have observed the matter to which he testified, the reasonableness of his
4 statements and the strength or weakness of his recollections.
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6 If you believe that a witness has lied about any material fact in the case, you may
7 disregard the entire testimony of that witness or any portion of his testimony which is not
8 proved by other evidence.
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2 A witness who has special knowledge, skill, experience, training or education in a
3 particular science, profession or occupation is an expert witness. An expert witness may
4 give his opinion as to any matter in which he is skilled.

5 You should consider such expert opinion and weigh the reasons, if any, given for it.
6 You are not bound, however, by such an opinion. Give it the weight to which you deem it
7 entitled, whether that be great or slight, and you may reject it, if, in your judgment, the
8 reasons given for it are unsound.

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1 A person who has been convicted of a felony in this or any other state, or in any
2 political subdivision thereof, or of a felony in violation of the laws of the United States of
3 America, unless he has received a pardon and the pardon does not restrict his right to bear
4 arms, shall not own or have in his possession or under his custody or control any firearm.
5 Neither the concealment of the firearm nor the carrying of the weapon are necessary
6 elements of the offense.
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8 "Firearm" includes any firearm that is loaded or unloaded and operable or inoperable.
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1 Proof of actual physical possession of a firearm is not required.

2 A person is in possession of firearm when it is under his dominion and control and to
3 his knowledge either is carried on his person or is in his presence and custody, or, if not on
4 his person or in his presence the possession is immediate, accessible, and exclusive to him.

5 Two or more persons may have joint possession of a firearm if jointly and knowingly
6 they have such dominion, control, and exclusive possession.
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INSTRUCTION NO. 12

A defendant's knowledge that the item he possessed was a firearm may be shown by direct evidence or by circumstantial evidence and reasonably drawn inference.

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The law recognizes two kinds of possession: actual possession and constructive possession. A person who knowingly has direct physical control over a thing, at a given time, is then in actual possession of it.

A person who, although not in actual possession, knowingly has both the power and the intention, at a given time, to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

The law recognizes also that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If two or more persons share actual or constructive possession of a thing, possession is joint.

You may find that the element of possession, as that term is used in these instructions, is present if you find beyond a reasonable doubt that a defendant had actual or constructive possession, either alone or jointly with others.

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2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind that such inferences should
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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2 It is a constitutional right of a defendant in a criminal trial that he may not be
3 compelled to testify. Thus, the decision as to whether he should testify is left to the
4 defendant on the advice and counsel of his attorney. You must not draw any inference of
5 guilt from the fact that he does not testify, nor should this fact be discussed by you or enter
6 into your deliberations in any way.
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In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of the guilt or innocence of the Defendant.

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2 When you retire to consider your verdict, you must select one of your member to act
3 as foreperson who will preside over your deliberation and will be your spokesperson here in
4 court.

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

8 Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it
9 signed and dated by your foreperson and then return with it to this room.
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Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN: 

DISTRICT JUDGE

4-16-14

ORIGINAL

VER

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR 16 2014 4:16pm

DISTRICT COURT
CLARK COUNTY, NEVADA

BY Michele Tucker
MICHELE TUCKER, DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-VS-

MATTHEW WASHINGTON,

Defendant.

CASE NO: C-13-294695-1

DEPT NO: I

VERDICT

We, the jury in the above entitled case, find the Defendant MATTHEW WASHINGTON, as follows:

COUNT 1 -- POSSESSION OF FIREARM BY EX-FELON

(please check the appropriate box, select only one)



Guilty of Possession of Firearm by Ex-Felon



Not Guilty

DATED this 16 day of April, 2014

Brian Roark / B Rk
FOREPERSON

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR 17 2014

BY Michele Tucker
MICHELE TUCKER, DEPUTY

1 INST

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 MATTHEW WASHINGTON,

11 Defendant.

CASE NO: C-13-294695-1
DEPT NO: I

12 INSTRUCTIONS TO THE JURY
13 (INSTRUCTION NO. 1)

14 MEMBERS OF THE JURY:

15
16 It is now my duty as judge to instruct you in the law that applies to this penalty
17 hearing. It is your duty as jurors to follow these instructions and to apply the rules of law to
18 the facts as you find them from the evidence.

19 You must not be concerned with the wisdom of any rule of law stated in these
20 instructions. Regardless of any opinion you may have as to what the law ought to be, it
21 would be a violation of your oath to base a verdict upon any other view of the law than that
22 given in the instructions of the Court.
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2 If, in these instructions, any rule, direction or idea is repeated or stated in different
3 ways, no emphasis thereon is intended by me and none may be inferred by you. For that
4 reason, you are not to single out any certain sentence or any individual point or instruction
5 and ignore the others, but you are to consider all the instructions as a whole and regard each
6 in the light of all the others.
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2 The trial jury shall fix the punishment for every person convicted of murder of the
3 first degree.

4 The jury shall fix the punishment at:

5 1. Life imprisonment without the possibility of parole, which means
6 exactly what it says, that the defendant shall not be eligible for parole;

7 2. Life imprisonment with the possibility of parole, with eligibility for
8 parole beginning when a minimum of twenty (20) years has been served; or

9 3. A definite term of fifty (50) years, with eligibility for parole beginning
10 when a minimum of twenty (20) years has been served.
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2 A prison term of fifty (50) years with eligibility for parole beginning when a
3 minimum of twenty (20) years has been served does not mean that the defendant would be
4 paroled after twenty (20) years but only that he would be eligible for parole after that period
5 of time.

6 Life imprisonment with the possibility of parole is a sentence to Life imprisonment
7 which provides that the defendant would be eligible for parole after a period of twenty (20)
8 years. This does not mean that he would be paroled after twenty (20) years but only that he
9 would be eligible for parole after that period of time.

10 Life imprisonment without the possibility of parole means exactly what it says, that
11 the defendant shall not be eligible for parole.
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In the penalty hearing, evidence may be presented concerning aggravating and mitigating circumstances relative to the offense, and any other evidence that bears on the Defendant's character.

Hearsay is admissible in a penalty hearing.

1 A reasonable doubt is one based on reason. It is not mere possible doubt, but is such a
2 doubt as would govern or control a person in the more weighty affairs of life. If the minds of
3 the jurors, after the entire comparison and consideration of all the evidence, are in such a
4 condition that they can say they feel an abiding conviction of the truth of the charge, there is
5 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or
6 speculation
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The jury is instructed that in determining the appropriate penalty to be imposed in this case that it may consider all evidence introduced and instructions given at both the penalty hearing phase of these proceedings and at the trial of this matter.

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2 In your deliberation you may not discuss or consider the subject of guilt or innocence
3 of a Defendant, as that issue has already been decided. Your duty is confined to a
4 determination of the punishment to be imposed.
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2 The credibility or believability of a witness should be determined by his manner upon
3 the stand, his relationship to the parties, his fears, motives, interests or feelings, his
4 opportunity to have observed the matter to which he testified, the reasonableness of his
5 statements and the strength or weakness of his recollections.

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

1
2 Although you are to consider only the evidence in the case in reaching a verdict, you
3 must bring to the consideration of the evidence your everyday common sense and judgment
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel
6 are justified in the light of common experience, keeping in mind that such inferences should
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your
9 decision should be the product of sincere judgment and sound discretion in accordance with
10 these rules of law.
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INSTRUCTION NO. 11

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

Your verdict must be unanimous. When you have agreed upon your verdicts, they should be signed and dated by your foreperson.

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:

Kenneth C. Cory
DISTRICT JUDGE

4-17-14

ORIGINAL

1 VER

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR 17 2014 1:58pm

DISTRICT COURT
CLARK COUNTY, NEVADA BY Michele Tucker
MICHELE TUCKER, DEPUTY

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 MATTHEW WASHINGTON

11 Defendant.

CASE NO: C-13-294695-1

DEPT NO: I

12 VERDICT

13 We, the Jury in the above entitled case, having found the Defendant, MATTHEW
14 WASHINGTON, Guilty of Count 2 - MURDER OF THE FIRST DEGREE and impose a
15 sentence of,

16 _____ A definite term of fifty (50) years imprisonment, with eligibility for
17 parole beginning when a minimum of twenty (20) years has served,

18 or

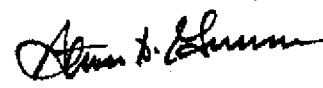
19 X Life in the Nevada Department of Corrections with eligibility for
20 parole beginning when a minimum of twenty (20) years has served,

21 or

22 _____ Life in the Nevada Department of Corrections without the possibility
23 of parole.

24
25 DATED this 17 day of April, 2014

26 Brian Roark B. Roark
27 FOREPERSON
28


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA
VS
MATTHEW WASHINGTON

CASE NO: C-13-294695-1

DEPARTMENT 1

NOTICE OF DEPARTMENT REASSIGNMENT

NOTICE IS HEREBY GIVEN that the above-entitled action has been reassigned to Judge Kenneth Cory.

☒ This reassignment is due to: Per Minute Order Dated 4-28-14

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE RESET BY THE NEW DEPARTMENT

Any motions or hearings presently scheduled in the FORMER department will be heard by the NEW department as set forth below:

Sentencing will be heard on June 18, 2014, at 9:00 AM.

PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Salevao Asifoa
S.L. Asifoa, Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that: on this the 28th day of April, 2014

☒ I placed a copy of the foregoing NOTICE OF DEPARTMENT REASSIGNMENT in the appropriate attorney folder located in the Clerk of the Court's Office:

Steven B Wolfson
David J. Otto

/s/ Salevao Asifoa
S.L. Asifoa, Deputy Clerk of the Court

MC
PP
DA

Ann T. Schuman
CLERK OF THE COURT

1 Matthew Washington
2 330 So. Casino Cent. Blvd.
3 Las Vegas, NV 89101
4 In Proper Person

DISTRICT COURT
CLARK COUNTY, NEVADA

5
6
7
8 STATE OF NEVADA,) Case No. C-13-294695-1
9 Plaintiff,) Dep't. No. I
10 vs.) Time of Hearing: ~~6-18-14~~ 9AM
11 MATTHEW WASHINGTON, #2685499,) Date of Hearing: 6-18-14
12 Defendant)

13 MEMORANDUM OF INEFFECTIVE COUNSEL AND NOTICE
14 OF A COMPLETE BREAKDOWN IN COMMUNICATION
15 BETWEEN ATTORNEY AND CLIENT

16 COMES NOW, MATTHEW WASHINGTON, in proper
17 person, without his privately retained attorney, David Otter,
18 and gives NOTICE that counsel is no longer acting in his client's
19 best interest, and refuses to return his client's letters and
20 phone calls. Mr. Washington has repeatedly requested a complete
21 copy of his discovery, which he's never seen, a copy of
22 what's been filed in this case by all parties, any orders that
23 have been issued, the court minutes, and a copy of the
24 jury instructions that were used during trial. All of
25 these requests have been ignored. Mr. Washington is

(1 of 2)

RECEIVED
MAY 19 2014
CLERK OF THE COURT

1 asking that the Court reach out to Mr. Otto and ORDER him
2 to supply the above items, as well as anything else of value
3 that is contained in his file to Mr. Washington within 10 days;
4 so that he can review his case and determine if his family
5 is going to be able to sponsor Mr. Washington, who is indigent.
6 DATED this 13th day of May, 2014.

7
8 Submitted by:

9
10 M. H. Washington

11 Matthew Washington

12 330 So. Casino Blvd.

13 Las Vegas, NV 89101
14
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(Page 2 of 2)

Matthew Washington, 2685499
330 So. Casino Ent. Blvd,
Las Vegas, NV. 89101

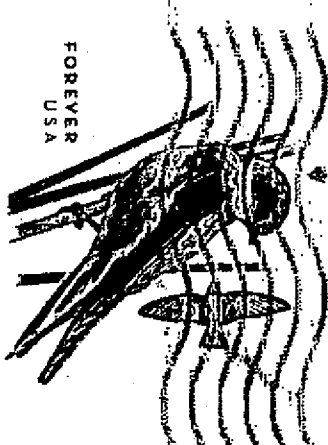
LEGAL
MAIL

Steven Grierson
Clerk of the Court
200 Lewis Ave., 3rd fl.,
Las Vegas, NV. 89155

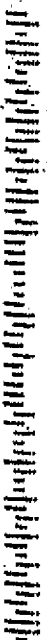
LAS VEGAS NV 890
19 MAY 2014 PM 5 L

FOREVER
USA

Bank Swallow



8915533333



Steven D. Lamm
CLERK OF THE COURT

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

MATTHEW WASHINGTON
#2685499

Defendant.

CASE NO. C294695-1

DEPT. NO. 1

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1
- CONSPIRACY TO COMMIT MURDER (Category B Felony) in violation of NRS
199.480, 200.010, 200.030, COUNT 2 - MURDER WITH THE USE OF A DEADLY
WEAPON (Category A Felony) in violation of NRS 200.010, 200.330, COUNTS 3, 5, 6
- ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony) in
violation of NRS 193.330, 200.010, 200.030, COUNTS 4, 7 - BATTERY WITH USE OF
A DEADLY WEAPON (Category B Felony) in violation of NRS 200.481, COUNT 8, 9,
10, 11, 12, 13, 14, 15, 16, 17 - DISCHARGING FIREARM AT OR INTO STRUCTURE,

<input type="checkbox"/> Nolle Prosequi (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial	<input type="checkbox"/> Jury Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal	<input type="checkbox"/> Acquittal
<input type="checkbox"/> Guilty Plea with Sent. (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction	<input checked="" type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition		

1 VEHICLE, AIRCRAFT OR WATERCRAFT (Category B Felony) in violation of NRS
2 202.285, and COUNT 1 – POSSESSION OF FIREARM BY EX-FELON (Category B
3 Felony) in violation of NRS 202.360; and the matter having been tried before a jury and
4 the Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY TO
5 COMMIT MURDER (Category B Felony) in violation of NRS 199.480, 200.010,
6 200.030, COUNT 2 – MURDER WITH THE USE OF A DEADLY WEAPON (Category
7 A Felony) in violation of NRS 200.010, 200.330, COUNTS 3, 5, 6 – ATTEMPT
8 MURDER WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of
9 NRS 193.330, 200.010, 200.030, COUNTS 4, 7 – BATTERY WITH USE OF A DEADLY
10 WEAPON (Category B Felony) in violation of NRS 200.481, COUNT 8, 9, 10, 11, 12,
11 13, 14, 15, 16, 17 – DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE,
12 AIRCRAFT OR WATERCRAFT (Category B Felony) in violation of NRS 202.285, and
13 ADDITIONAL CHARGE – POSSESSION OF FIREARM BY EX-FELON (Category B
14 Felony) in violation of NRS 202.360; thereafter, on the 18th day of June, 2014, the
15 Defendant was present in court for sentencing with his counsel DAVID J. OTTO, ESQ.,
16 and good cause appearing,

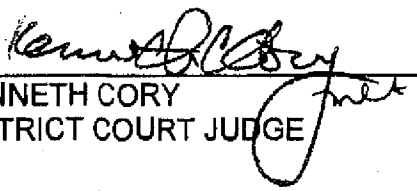
17
18 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
19 addition to the \$25.00 Administrative Assessment Fee, \$12,015.71 Restitution to be
20 paid jointly and severally with Co-Defendant plus \$3.00 DNA Collection Fee, the
21 Defendant is sentenced to the Nevada Department of Corrections (NDC) as follows: as
22 to COUNT 1 – to a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a
23 MINIMUM parole eligibility of FORTY (48) MONTHS; as to COUNT 2 – LIFE with a
24 MINIMUM parole eligibility of TWO HUNDRED FORTY (240) MONTHS plus a
25 CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM
26
27
28

1 parole eligibility of SIXTY (60) MONTHS for the Use of a Deadly Weapon,
2 CONCURRENT with COUNT 1; as to COUNT 3 – to a MAXIMUM of TWO HUNDRED
3 FORTY (240) MONTHS with a MINIMUM parole eligibility of NINETY-SIX (96)
4 MONTHS plus a CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS
5 with a MINIMUM parole eligibility of SIXTY (60) MONTHS for the Use of a Deadly
6 Weapon, CONSECUTIVE with COUNT 2; as to COUNT 4 - to a MAXIMUM of ONE
7 HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY (48)
8 MONTHS, CONCURRENT with COUNT 3; as to COUNT 5 – to a MAXIMUM of TWO
9 HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of NINETY-SIX
10 (96) MONTHS plus a CONSECUTIVE term of TWO HUNDRED FORTY (240)
11 MONTHS with a MINIMUM parole eligibility of SIXTY (60) MONTHS for the Use of a
12 Deadly Weapon, CONSECUTIVE with COUNT 4; as to COUNT 6 - to a MAXIMUM of
13 TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of NINETY-
14 SIX (96) MONTHS plus a CONSECUTIVE term of TWO HUNDRED FORTY (240)
15 MONTHS with a MINIMUM parole eligibility of SIXTY (60) MONTHS for the Use of a
16 Deadly Weapon, CONSECUTIVE with COUNT 5; as to COUNT 7 – to a MAXIMUM of
17 ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of
18 FORTY-EIGHT (48) MONTHS, CONCURRENT with COUNT 6; as to COUNT 8 – to a
19 MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of
20 TWENTY-EIGHT (28) MONTHS, CONCURRENT with COUNT 7; as to COUNT 9 – to a
21 MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of
22 TWENTY-EIGHT (28) MONTHS, CONCURRENT with COUNT 8; as to COUNT 10 – to
23 a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of
24 TWENTY-EIGHT (28) MONTHS, CONCURRENT with COUNT 9; as to COUNT 11 – to

1 a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of
2 TWENTY-EIGHT (28) MONTHS, CONCURRENT with COUNT 10; as to COUNT 12 --
3 to a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of
4 TWENTY-EIGHT (28) MONTHS, CONCURRENT with COUNT 11; as to COUNT 13 --
5 to a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of
6 TWENTY-EIGHT (28) MONTHS, CONCURRENT with COUNT 12; as to COUNT 14 --
7 to a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of
8 TWENTY-EIGHT (28) MONTHS, CONCURRENT with COUNT 13; as to COUNT 15 --
9 to a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of
10 TWENTY-EIGHT (28) MONTHS, CONCURRENT with COUNT 14; as to COUNT 16 --
11 to a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of
12 TWENTY-EIGHT (28) MONTHS, CONCURRENT with COUNT 15; as to COUNT 17 --
13 to a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of
14 TWENTY-EIGHT (28) MONTHS, CONCURRENT with COUNT 16; and as to
15 ADDITIONAL CHARGE -- to a MAXIMUM of SEVENTY-TWO (72) MONTHS with a
16 MINIMUM parole eligibility of TWENTY-EIGHT (28) MONTHS, CONCURRENT with
17 COUNT 17; with TWO HUNDRED TWENTY-FIVE (225) DAYS credit for time served.

18 As the \$150.00 DNA Analysis Fee and Genetic Testing have been previously imposed,
19 the Fee and Testing in the current case are WAIVED.
20
21
22
23

24 DATED this 26 day of June, 2014
25
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28


KENNETH CORY
DISTRICT COURT JUDGE

Allen B. Johnson
CLERK OF THE COURT

1 Matthew Washington
2 330 Casino Cnt. Blvd.
3 Las Vegas, NV. 89101
4 In Proper Person

5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 STATE OF NEVADA,)

8 Plaintiff,)

Case No.: C-13-294695-1

9 vs.)

Dept. No.: T

10 MATTHEW WASHINGTON,)

11 #2685499, Defendant.)

12 NOTICE OF APPEAL

13
14 COMES NOW, MATTHEW WASHINGTON, in proper person, without
15 counsel, and hereby gives NOTICE of appeal from the final conviction
16 of the following charges entered into the record on the 18 day
17 of June, 2014:

- 18 • Conspiracy to Commit Murder, (Count 1);
- 19 • Murder with the Use of a Deadly Weapon, (Count 2);
- 20 • Attempt Murder with the Use of a Deadly Weapon, (Count 3);
- 21 • Battery with the Use of a Deadly Weapon, (Count 4);
- 22 • Attempt Murder with the Use of a Deadly Weapon, (Count 5);
- 23 • Battery with the Use of a Deadly Weapon, (Count 6);
- 24 • Attempt Murder with the Use of a Deadly Weapon, (Count 7);
- 25 • Battery with the Use of a Deadly Weapon, (Count 8);
- 26 • Discharging a Firearm into a Structure, Vehicle, Aircraft, or Watercraft,
- 27 (Count 9);
- 28 • Discharging a Firearm into a Structure, Vehicle, Aircraft, or Watercraft,
- 29

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JUN 30 2014
CLERK OF COURT

(Count 10);

• Discharging a Firearm into a Structure, Vehicle, Aircraft, or Watercraft,

(Count 11);

• Discharging a Firearm into a Structure, Vehicle, Aircraft, or Watercraft,

(Count 12);

• Discharging a Firearm into a Structure, Vehicle, Aircraft, or Watercraft,

(Count 13);

• Discharging a Firearm into a Structure, Vehicle, Aircraft, or Watercraft,

(Count 14);

• Discharging a Firearm into a Structure, Vehicle, Aircraft, or Watercraft,

(Count 15);

• Discharging a Firearm into a Structure, Vehicle, Aircraft, or Watercraft,

(Count 16);

• Possession of a Firearm by Ex-felon.

• Discharging a Firearm into a Structure, Vehicle, Aircraft, or Watercraft, (Count 17);

DATED this 20 day of June, 2014.

By: M. H. Washington

Matthew Washington

330 So. Casino Cent. Blvd.

Las Vegas, NV. 89101

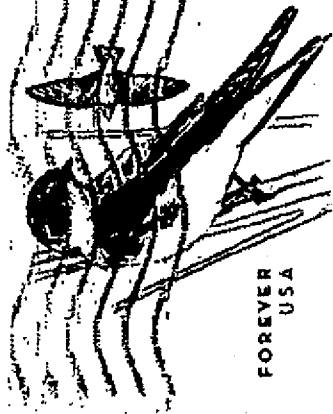
(Page 2 of 2)

Matthew Washington, #2685499
330 Sycasino Court Blvd.
Las Vegas, NV. 89101

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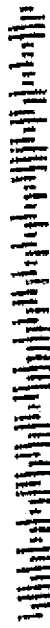
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27 JUN 2014 PM 3 L

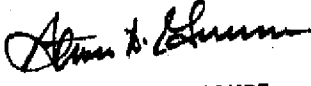


Bank Swallow

Steven Grierson
Clerk of the Court
200 Lewis Ave., 3rd Fl.
Las Vegas, NV. 89155



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CLERK OF THE COURT

1 NOAS
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR No. 0556
4 309 South Third Street, Suite 226
5 Las Vegas, Nevada 89155
6 (702) 455-4685
7 Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 v.

10 MATTHEW WASHINGTON,

11 Defendant.

C-13-294695-1

CASE NO. ~~C-13-294695-2~~

DEPT. NO. I

NOTICE OF APPEAL

13 TO: THE STATE OF NEVADA

14 STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY,
15 NEVADA and DEPARTMENT NO. I OF THE EIGHTH JUDICIAL
16 DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE
17 COUNTY OF CLARK.

18 NOTICE is hereby given that Defendant, Matthew
19 Washington, presently incarcerated in the Nevada State Prison,
20 appeals to the Supreme Court of the State of Nevada from the
21 judgment entered against said Defendant on the 27th day of June,
22 2014, whereby he was convicted of Ct. 1 - Conspiracy to Commit
23 Murder; Ct. 2 - Murder With Use of a Deadly Weapon; Cts. 3, 5, 6 -
24 Attempt Murder With Use of a Deadly Weapon, Cts. 4, 7 - Battery
25 With Use of a Deadly Weapon; Cts, 8, 9, 10, 11, 12, 13, 14, 15,
26 16, 17 - Discharging Firearm At Or Into Structure, Vehicle,
27 Aircraft or Watercraft Additional Charge - Possession of Firearm
28 By Ex-Felon and sentenced to \$25 Admin. fee; \$12,015.71
restitution to be paid jointly and severally with Co-Defendant;
\$3.00 DNA collection fee; Ct. 1 - 48-120 months in prison; Ct. 2 -

1 240 months to Life in prison plus a consecutive term of 60-240
2 months for Use of a Deadly Weapon, Concurrent with Ct. 1; Ct. 3 -
3 96-240 months plus a consecutive term of 60-240 months for Use of
4 a Deadly Weapon, consecutive with Ct. 2; Ct. 4 - 48-120 months in
5 prison, concurrent with Ct. 3; Ct. 5 - 96-240 months in prison
6 plus a consecutive term of 60-240 months for the Use of a Deadly
7 Weapon, consecutive with Ct. 4; Ct. 6 - 60-240 months in prison
8 plus a consecutive term of 60-240 months for the Use of a Deadly
9 Weapon, consecutive to Ct. 5; Ct. 7 - 48-120 months concurrent
10 with Ct. 6; Ct. 8 - 28-72 months concurrent with Ct. 7; Ct. 9 -
11 28-72 months, concurrent with Ct. 8; Ct. 10 - 28-72 months
12 concurrent with Ct. 9; Ct. 11 - 28-72 months concurrent with Ct.
13 10; Ct. 12 - 28-72 months, concurrent with Ct. 11; Ct. 13 - 28-72
14 months, concurrent with Ct. 12; Ct. 14 - 28-72 months, concurrent
15 with Ct. 13; Ct. 15 - 28-72 months, concurrent with Ct. 14 - Ct.
16 16 - 28-72 months, concurrent with Ct. 15; Ct. 17 - 28-72 months,
17 concurrent with Ct. 16; as to additional charge 28-72 months,
18 concurrent with Ct. 17; 255 days CTS; \$150 DNA analysis fee and
19 genetic testing waived in the current case.

20 DATED this 17th day of July, 2014.

21 PHILIP J. KOHN
22 CLARK COUNTY PUBLIC DEFENDER

23 By: /s/ Sharon G. Dickinson
24 SHARON G. DICKINSON, #3710
25 Deputy Public Defender
26 309 S. Third Street, Ste. 226
27 Las Vegas, Nevada 89155
28 (702) 455-4685

DECLARATION OF MAILING

Carrie Connolly, an employee with the Clark County Public Defender's Office, hereby declares that she is, and was when the herein described mailing took place, a citizen of the United States, over 21 years of age, and not a party to, nor interested in, the within action; that on the 17th day of July, 2014, declarant deposited in the United States mail at Las Vegas, Nevada, a copy of the Notice of Appeal in the case of the State of Nevada v. Matthew Washington, Case No. C-13-294695-2, enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to Matthew Washington, c/o High Desert State Prison, P.O. Box 650, Indian Springs, NV 89018. That there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 17th day of July, 2014.

/s/ Carrie M. Connolly
An employee of the Clark County
Public Defender's Office

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing
was made this 17th day of July, 2014, by Electronic Filing to:

District Attorneys Office
E-Mail Address:

PDMotions@clarkcountyda.com

Jennifer.Garcia@clarkcountyda.com

Eileen.Davis@clarkcountyda.com

/s/ Carrie M. Connolly
Secretary for the
Public Defender's Office

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 23, 2013

C-13-294695-1 State of Nevada
 vs
 Matthew Washington

December 23, 2013 9:30 AM Initial Arraignment

HEARD BY: De La Garza, Melisa

COURTROOM: RJC Lower Level
Arraignment

COURT CLERK: Melissa Murphy

RECORDER: Kiara Schmidt

PARTIES

PRESENT: Benedict, Susan M.
 Otto, David J.
 Washington, Matthew

Deputy District Attorney
Attorney for Defendant
Defendant

JOURNAL ENTRIES

- DEFT. WASHINGTON ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE.
COURT ORDERED, matter set for trial. COURT FURTHER ORDERED, pursuant to Statute, Counsel
has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been
filed as of today, Counsel has 21 days from the filing of the Transcript.

CUSTODY

12/30/13 9:00 A.M. STATUS CHECK: TRIAL READINESS (DEPT 11)

01/29/14 9:00 A.M. CALENDAR CALL (DEPT 11)

02/03/14 1:00 P.M. JURY TRIAL (DEPT 11)

PRINT DATE: 12/24/2013

Page 1 of 1

Minutes Date:

December 23, 2013

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****December 30, 2013**

C-13-294695-1 State of Nevada
 vs
 Matthew Washington

December 30, 2013 9:00 AM Status Check: Trial Readiness

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea; Dania Batiste/db

RECORDER: Sandra Pruchnic

PARTIES

PRESENT:	Otto, David J.	Attorney for Defendant
	Pieper, Danielle K.	Deputy District Attorney
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- APPEARANCES CONTINUED: J. Mann, Esq., counsel for Co-Defendant Washington.

Ms. Pieper advised that on January 8, 2014, the State will take this case before the Death Penalty Committee, and requested a continuance until after that matter has been heard. Mr. Mann requested that Defendant remain at the Clark County Detention Center (CCDC), so he may have further discussions, as he will be unable to adequately speak with his client and prepare for trial.

Conference at the Bench.

Court DIRECTED Mr. Mann to prepare a written Order indicating Defendant shall remain at CCDC pending the next hearing. Mr. Mann stated he will send the Order to Chambers. COURT SO NOTED.

Upon the Court's inquiry, Mr. Mann advised he will file a Severance Motion. Mr. Otto concurred with Mr. Mann's representations. COURT SO NOTED, and ORDERED, counsel to file the Motion on or before January 13, 2014; matter SET for a Status Check. COURT FURTHER ORDERED, the trial date will not be rescheduled.

PRINT DATE: 01/03/2014

Page 1 of 2

Minutes Date: December 30, 2013

CUSTODY

1/13/2014 9:00 am Status Check: Death Penalty Committee

1/29/2014 9:00 am Calendar Call

2/3/2014 1:00 pm Jury Trial

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 13, 2014**

C-13-294695-1

State of Nevada

vs

Matthew Washington

January 13, 2014**9:00 AM****All Pending Motions****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Dulce Romea / dr ; Katrina Hernandez**RECORDER:** Jill Hawkins**PARTIES****PRESENT:**

Otto, David J.

Pieper, Danielle K.

State of Nevada

Washington, Matthew

Attorney for Defendant

Deputy District Attorney

Plaintiff

Defendant

JOURNAL ENTRIES**- MOTION TO SEVER DEFTS...STATUS CHECK: DEATH PENALTY COMMITTEE**

Also present: Co-Deft Martell Moten, represented by Joel Mann, Esq.

As to the Motion to Sever Defts, Ms. Pieper advised she never received a copy. Mr. Otto stated it was faxed to the D.A.'s office but not directly to the Gang Unit. Ms. Pieper advised Mr. Mann has filed a Motion to Sever which is on calendar for January 22nd. COURT ORDERED, both Defts' Motions to Sever will be heard on January 22, 2014.

Mr. Mann advised his client previously invoked, but because of evidentiary issues Deft Moten has decided to waive his speedy trial rights. Mr. Otto stated his client, Deft Washington, continues to invoke. Ms. Pieper advised at this time the State is not seeking the death penalty for both Defts; additional forensic investigation remains; she has also not called the lab and believes DNA results will not be done by February 3rd even if all her DNA people were noticed. Upon Court's inquiry, Deft Moten confirmed he is willing to WAIVE his speedy trial rights. Court, addressing Deft Washington, stated trial is currently set on February 3rd but that there is some work to be done and Deft has had the chance to discuss available options. Deft Washington stated he wished to proceed. Ms. Pieper noted it is her understanding the decision to go forward is something Deft Washington

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Minutes Date: January 13, 2014

has and could be against his attorney's advice; if Deft is convicted of first degree murder, one of the things State will present is that Deft was aware of outstanding discovery and yet it was his decision to go forward; additionally, ineffective assistance of counsel will be an issue. Court so noted. Upon Mr. Mann's inquiry, Court stated counsel does not need to file a motion. Mr. Otto noted for the record it was his client's decision to keep the current trial date.

Ms. Pieper further advised she has extended an offer of second degree murder with use of a deadly weapon which has two potential sentences: first, a 10 to 25, or second, 10 to life. She has agreed to remove the life tail, thus it will only be 10 to 25 with the consecutive deadly weapon enhancement which is 1 to 20 years; it is her understanding that not only is Deft Washington going forward with the current trial date, he is also rejecting the State's offer. Deft Washington concurred. Mr. Mann advised he and his client will discuss the latter's options, and requested Deft remain one more week at CCDC. There being no objection by the State, COURT SO ORDERED. Counsel to prepare the order. Ms. Pieper and Mr. Mann advised they will do a stipulation and order to continue the trial date for Deft Moten.

CUSTODY

1-22-14	9:00 AM	NOTICE OF MOTION AND MOTION TO SEVER DEFENDANTS
1-29-14	9:00 AM	CALENDAR CALL
2-3-14	1:00 PM	JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 22, 2014

C-13-294695-1

State of Nevada

vs

Matthew Washington

January 22, 2014

9:00 AM

Deft's Motion to Sever

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea; Shelly Landwehr/sl

RECORDER: Jill Hawkins

REPORTER:

PARTIES

Otto, David J.

Attorney

PRESENT:

Pieper, Danielle K.

Attorney

Schifalacqua, Barbara

Attorney

State of Nevada

Plaintiff

Washington, Matthew

Defendant

JOURNAL ENTRIES

- Following conference at the bench, Mr. Otto stated defendant will not waive outside of the 60 days. Colloquy. COURT ORDERED, trial date STANDS. Mr. Otto moved for an investigator to be appointed; GRANTED. Court DIRECTED counsel to send order to chambers to include the name of the investigator. FURTHER ORDERED, defendants motion MOOT, given the scheduling issue and waiver.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor COURT MINUTES January 29, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

January 29, 2014 9:00 AM Calendar Call

HEARD BY: Gonzalez, Elizabeth COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

PARTIES

PRESENT:	Otto, David J. Pieper, Danielle K. Schifalacqua, Barbara State of Nevada Washington, Matthew	Attorney for Defendant Deputy District Attorney Deputy District Attorney Plaintiff Defendant
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JOURNAL ENTRIES

- Ms. Schifalacqua advised she handed Mr. Otto additional forensic discovery this morning. Upon Court's inquiry, Ms. Pieper advised trial is anticipated to last a week and a half including the penalty phase if Deft is convicted of first degree murder. Mr. Otto advised, because the State provided him with discovery only this morning indicating toolmark evidence related to ballistics, shell casings, and guns involved in this case, it may assist the record to allow him to have time to review that issue; with that said, he has conferred with the Deft, and the latter does not wish to waive his speedy trial rights; additionally, he did not have an expert retained for this matter because there was no indication by the State they would have this evidence before trial.

Ms. Schifalacqua stated if Mr. Otto wishes to retain an expert his remedy is a continuance; however, it has always been the State's position that they have properly noticed all of their experts; Mr. Otto is well aware the DNA, latent prints are being worked on, and she finally received the firearms analysis this morning. COURT ORDERED, Deft's request to hire an expert is GRANTED. Counsel to prepare the order which should include the expert's name. Expert expenses GRANTED in the amount of \$3,500.00. If the expert testifies amount will be increased. COURT ORDERED, trial VACATED from February 3rd and RESET on February 11, 2014. Discussion regarding estimated length of trial taking into account the toolmark expert. Ms. Pieper advised State will have 30 to 40 witnesses. Ms.

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Minutes Date: January 29, 2014

Schifalacqua noted trial can be reset on the 11th with the caveat that the State may make representations at that point that some of their witnesses cannot appear. CONFERENCE AT THE BENCH held at Mr. Otto's request. COURT ORDERED, Calendar Call CONTINUED to February 5, 2014.

CUSTODY

2-5-14 9:00 AM CALENDAR CALL

2-11-14 9:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor COURT MINUTES February 05, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

February 05, 2014 9:00 AM Calendar Call

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

PARTIES

PRESENT:

Otto, David J.
Pieper, Danielle K.
Schifalacqua, Barbara
State of Nevada
Washington, Matthew

Attorney for Defendant
Deputy District Attorney
Deputy District Attorney
Plaintiff
Defendant

JOURNAL ENTRIES

- Court disclosed conference call held yesterday with defense counsel regarding trial scheduling.

Mr. Otto advised Deft no longer requests motions to suppress be filed; however, he has yet to retain a toolmark expert, needs all the underlying data, and requests a 60-day continuance although Deft continues to assert his right to a speedy trial. Upon Court's inquiry, Deft confirmed he has discussed with counsel the work that needs to be done and understands the Court may grant a brief continuance even though he asserts his speedy trial rights. Ms. Pieper advised State is ready to proceed and will have 30 to 40 witnesses; however, they will not oppose defense counsel's oral motion for a continuance. Per Mr. Otto's request, Court DIRECTED State to provide the data sooner rather than later; discovery issues, if any, can be addressed via conference call. Because of important factual information that appears to be related to Deft's ballistics report, the COURT finds good cause to GRANT continuance of trial. Trial RESET on April 7, 2014.

CUSTODY

3-3-14 9:00 AM

STATUS CHECK: TRIAL READINESS

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Minutes Date: February 05, 2014

C-13-294695-1

4-2-14 9:00 AM CALENDAR CALL

4-7-14 1:00 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 03, 2014

C-13-294695-1 State of Nevada
 vs
 Matthew Washington

March 03, 2014 9:00 AM Status Check: Trial Readiness

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Andrea Natali

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:	Ohlinger, Roberta J.	Attorney for Deft.
	Otto, David J.	Attorney for Deft.
	Pieper, Danielle K.	Attorney for State
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- Due to technical difficulties with the JAVS audio/video recording system, COURT ORDERED, matter CONTINUED.

CUSTODY

3/5/14 9:00 AM - STATUS CHECK: TRIAL READINESS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 05, 2014**

C-13-294695-1

State of Nevada

vs

Matthew Washington

March 05, 2014**9:00 AM****Status Check****HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Carole D'Aloia**RECORDER:** Jill Hawkins**REPORTER:****PARTIES****PRESENT:**

Ohlinger, Roberta J.

Attorney

Otto, David J.

Attorney

Pieper, Danielle K.

Attorney

Schifalacqua, Barbara

Attorney

State of Nevada

Plaintiff

Washington, Matthew

Defendant

JOURNAL ENTRIES

- Mr. Otto advised that Robert Ohlinger-Johnson, Esq., is present and has associated-in on this case. Upon Court's inquiry, counsel advised trial should take approximately one and a half (1 1/2) weeks. Court advised that if any additional motions need to be filed prior to trial, counsel should file them sooner than later. COURT ORDERED, calendar call and jury trial dates STAND.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor COURT MINUTES March 24, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

March 24, 2014 9:00 AM Defendant's Motion in Limine

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

PARTIES

PRESENT:	Ohlinger, Roberta J.	Attorney for Defendant
	Otto, David J.	Attorney for Defendant
	Pieper, Danielle K.	Deputy District Attorney
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- Mr. Otto advised State opposed last Friday, March 21st, and apparently they were served by fax. Per Mr. Otto's request and there being no objection, COURT ORDERED, matter CONTINUED.

CUSTODY

4-2-14	9:00 AM	DEFENDANT'S MOTION IN LIMINE...CALENDAR CALL
4-7-14	1:00 PM	JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor COURT MINUTES April 02, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

April 02, 2014 9:00 AM All Pending Motions

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea / dr ; Andrea Natali

RECORDER: Jill Hawkins

PARTIES

PRESENT:

Ohlinger, Roberta J.
Otto, David J.
Pieper, Danielle K.
Schifalacqua, Barbara
State of Nevada
Washington, Matthew

Attorney for Defendant
Attorney for Defendant
Deputy District Attorney
Deputy District Attorney
Plaintiff
Defendant

JOURNAL ENTRIES

- CALENDAR CALL...DEFENDANT'S MOTION IN LIMINE

Mr. Otto requested matter be set for Petrocelli hearing on prior bad acts and an outside-the-presence hearing for Bruton issues before any statements of the co-conspirator are placed before the jury. Ms. Schifalacqua advised the evidence they provided is for the penalty phase, not case-in-chief, and parties might be able to resolve this issue. Upon inquiry of the Court, Mr. Otto concurred he would be okay with the State not putting on any prior bad acts other than at a potential sentencing hearing. Ms. Pieper argued State would say the Co-Def't's statement is not subject to Bruton. Ms. Schifalacqua advised they would not play his statement but call him in, which they would not do as he himself is pending murder charges; however, there are a few statements made during the course of the conspiracy which are the only ones subject to presentation to the jury without the co-Def't taking the stand. Ms. Pieper confirmed they plan to use Deft Washington's statements; the State will submit there may be one or two statements made by co-Def't Moten which the State will allege was made during the furtherance of a conspiracy. Court advised counsel of its trial schedule and noted any pre-trial issues in the instant case need to be addressed before case is reassigned to a different trial judge. **COURT ORDERED**, matter set for Evidentiary Hearing on Friday, April 4, related to a portion of co-

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Minutes Date: April 02, 2014

Deft Moten's statements. Case will be placed through the Presiding Criminal Judge for reassignment as it is not eligible for Overflow. State advised they will coordinate their out-of-state witnesses.

Matter RECALLED. Ms. Pieper advised they have explained to Mr. Otto the statement from the preliminary hearing they intend to use, and it is their understanding Mr. Otto has decided he will not object. Mr. Otto advised this statement is to a certain degree indicative of his client's lack of guilt, i.e. when co-Deft Moten tells his client to run from the police in the car and have a shoot-out, Deft Washington tells him no; he has no objection to the State putting this on. Upon Court's inquiry, Ms. Pieper concurred this is the only statement of co-Deft Moten they anticipate using. Court DIRECTED parties to do a written stipulation. COURT ORDERED, Evidentiary Hearing VACATED. Matter SET for Telephonic Conference on Friday, April 4. Deft does not need to be transported.

CUSTODY

4-4-14 10:00 AM TELEPHONIC CONFERENCE RE: TRIAL JUDGE

4-7-14 1:00 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 04, 2014

C-13-294695-1 State of Nevada
 vs
 Matthew Washington

April 04, 2014 10:00 AM Telephonic Conference Re: Trial Judge

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

PARTIES

PRESENT:

Otto, David J.
Pieper, Danielle K.
Schifalacqua, Barbara
State of Nevada

Attorney for Defendant
Deputy District Attorney
Deputy District Attorney
Plaintiff

JOURNAL ENTRIES

- Deft's presence WAIVED. Ms. Pieper and Ms. Schifalacqua participated telephonically.

Court ADVISED due to its trial schedule this matter will be tried in Department I (Judge Kenneth Cory). Parties DIRECTED to meet with Judge Cory today. Colloquy regarding statement State intends to use at trial. Mr. Otto advised it cannot be found in the preliminary hearing transcript. Ms. Pieper advised it is actually in Deft Washington's statement. Mr. Otto noted non-issue at this point as long as everyone has the same understanding.

CUSTODY

4-7-14 1:30 PM JURY TRIAL (DEPT I)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 07, 2014

C-13-294695-1 State of Nevada
 vs
 Matthew Washington

April 07, 2014 1:30 PM Jury Trial

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

PARTIES PRESENT:	Ohlinger, Roberta J.	Attorney for Defendant
	Otto, David J.	Attorney for Defendant
	Pieper, Danielle K.	Attorney for the State
	Schifalacqua, Barbara	Attorney for the State
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- JURY TRIAL BEGINS

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Defendant present in custody. AMENDED INFORMATION FILED IN OPEN COURT. Ms. Pieper advised on January 29, 2014 an offer was made to the defendant which was rejected. Colloquy regarding jury panel.

INSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Voir Dire Oath given. Jury selection commenced. Having not selected and sworn a Jury this date, Court ADMONISHED the prospective jurors and ORDERED them to return the following day at the time given to resume jury selection.

Matter in RECESS.

CUSTODY

CONTINUED TO: 4/8/14 1:00 PM

PRINT DATE: 04/08/2014

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Minutes Date: April 07, 2014

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

April 08, 2014

C-13-294695-1

State of Nevada

vs

Matthew Washington

April 08, 2014

1:00 PM

Jury Trial

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

PARTIES PRESENT: Ohlinger, Roberta J.
Otto, David J.
Pieper, Danielle K.
Schifalacqua, Barbara
State of Nevada
Washington, Matthew

Attorney for Defendant
Attorney for Defendant
Attorney for the State
Attorney for the State
Plaintiff
Defendant

JOURNAL ENTRIES

- JURY TRIAL CONTINUES

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Ms. Pieper advised her and Ms. Schifalacqua were discussing the trial the following evening and notice Juror #912 was near them. Juror #912 was brought in and questioned whether she had overheard any of the conversation. Juror #912 advised she had not. Juror #268 and Juror #850 showed proof of planned vacations and were excused.

INSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Jury selection resumed. Having not selected and sworn a Jury this date, Court ADMONISHED the prospective jurors and ORDERED them to return the following day at the time given to resume jury selection.

Matter in RECESS.

CUSTODY

CONTINUED TO: 4/9/14 1:00 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor COURT MINUTES April 09, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

April 09, 2014 1:00 PM Jury Trial

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

PARTIES PRESENT:	Ohlinger, Roberta J.	Attorney for the Defendant
	Otto, David J.	Attorney for the Defendant
	Pieper, Danielle K.	Attorney for the State
	Schifalacqua, Barbara	Attorney for the State
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- JURY TRIAL CONTINUES

INSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Jury and three (3) Alternates SELECTED and SWORN.

INSIDE THE PRESENCE OF THE JURY: Introductory remarks by the Court. The Clerk read the Amended Information to the Jury and stated the defendant's plea thereto. Opening statements by Ms. Pieper. Opening statements by Mr. Otto. Exclusionary Rule INVOKED. Testimony and exhibits commence. (See attached worksheets.)

OUTSIDE THE PRESENCE OF THE JURY: Ms. Pieper stated concerns of admonishing the defendant's family to not speak to any of the jurors. Court brought the defendant's family in and ADMONISHED them they could not speak to any of the jurors.

INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits continued. (See attached worksheets.) Following the day's testimony, Court ADMONISHED the Jury and ORDERED them to return the following day at the time given.

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Minutes Date: April 09, 2014

OUTSIDE THE PRESENCE OF THE JURY: Marshal Breed advised the Court and counsel juror #1 had approached her to inform her after seeing the family in the Courtroom, he believes the defendant is a distant cousin. Ms. Schifalacqua inquired if any of the defendant's family members were present at the time juror #1 approached her. Marshal Breed advised no. Marshal Breed further advised juror #1 stated he was going to make some phone calls to see if he is related. Marshal Breed stated she informed him he could not make the phone calls and the Court would deal with this matter first thing in the morning. Court advised juror #1 would be excused when the jurors return in the morning.

Matter in RECESS

CUSTODY

CONTINUED TO: 4/10/14 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor **COURT MINUTES** **April 10, 2014**

C-13-294695-1 State of Nevada
vs
Matthew Washington

April 10, 2014 **9:00 AM** **Jury Trial**

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

PARTIES PRESENT:	Ohlinger, Roberta J.	Attorney for the Defendant
	Otto, David J.	Attorney for the Defendant
	Pieper, Danielle K.	Attorney for the State
	Schifalacqua, Barbara	Attorney for the State
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- JURY TRIAL CONTINUES.

OUTSIDE THE PRESENCE OF THE JURY: Juror #1 questioned regarding statements made to Marshal Breed the following evening as possibly being related to the defendant. COURT ORDERD, Juror #1 EXCUSED.

INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits resume. (See attached worksheets.)

OUTSIDE THE PRESENCE OF THE JURY: Mr. Otto inquired of what questions he would be allowed to ask of the witness who is a convicted felon. Ms. Pieper advised the only questions that can be asked is what, where, and when; cannot ask as to the underlining facts. Colloquy regarding scheduling.

INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits resume. (See attached worksheets.) Following the day's testimony, Court ADMONISHED the Jury and ORDERED, them to return the following day at the time given.

Matter in RECESS.

CUSTODY

CONTINUED TO: 4/11/14 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor COURT MINUTES April 11, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

April 11, 2014 9:00 AM Jury Trial

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

PARTIES PRESENT: Ohlinger, Roberta J. Attorney for Defendant
Otto, David J. Attorney for Defendant
Pieper, Danielle K. Attorney for the State
Schifalacqua, Barbara Attorney for the State
State of Nevada Plaintiff
Washington, Matthew Defendant

JOURNAL ENTRIES

- JURY TRIAL CONTINUES

OUTSIDE THE PRESENCE OF THE JURY: Ms. Pieper advised a Second Amended Information had been submitted for filing. Ms. Pieper further advised the Second Amended Information had grammar corrections and correction of charges. **SECOND AMENDED INFORMATION FILED IN OPEN COURT.** Mr. Otto stated he had done some research as to doing an appeal if necessary and he cannot withdraw as counsel if the defendant receives a life sentence, but can if a non-life sentence is imposed. Colloquy as to having a penalty phase.

INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits resume (See attached worksheets.)

OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding witness schedules. Ms. Schifalacqua advised to the stipulation of exhibits 76, 77, 92, 133, 134, 138 & 139.

INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits resume (See attached worksheets.)

OUTSIDE THE PRESENCE OF THE JURY: Court noted it had been advised by Marshal Crank juror

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Minutes Date: April 11, 2014

#12 recognized witness David Johnson. Ms. Schifalacqua advised witness David Johnson advised the same. Juror #12 brought in and questioned regarding knowing witness David Johnson; only knowing him through a friend and they do not socialize. Court inquired of Juror #12 if he would be bias or more in favor of the State. Juror #12 advised it would not. Counsel advised they have no issue keeping Juror #12.

INSIDE THE PRESENCE OF THE JURY: Following the day's testimony, Court ADMONISHED the Jury and ORDERED them to return on the date and time given.

OUTSIDE THE PRESENC OF THE JURY: Court ADMONISHED the defendant regarding his right not to testify.

Matter in RECESS.

CUSTODY

CONTINUED TO: 4/14/14 1:00 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 14, 2014**

C-13-294695-1

State of Nevada

vs

Matthew Washington

April 14, 2014**1:00 PM****Jury Trial****HEARD BY:** Cory, Kenneth**COURTROOM:** RJC Courtroom 16A**COURT CLERK:** Michele Tucker**RECORDER:** Beverly Sigurnik

PARTIES PRESENT:	Ohlinger, Roberta J.	Attorney for Defendant
	Otto, David J.	Attorney for Defendant
	Pieper, Danielle K.	Attorney for the State
	Schifalacqua, Barbara	Attorney for the State
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- JURY TRIAL CONTINUES

OUTSIDE THE PRESENCE OF THE JURY: Mr. Otto moved for a mistrial on the bases of a conversation between officers as to what time their shift ended. Ms. Pieper argued there would have to be prejudice; we were not on the record at the time and the jurors were leaving for a break. Ms. Schifalacqua argued the jury would have to know why the corrections officer was present and who he was; this was a discussion off the record as to what time their shifts ended between themselves. Statements by Mr. Otto. **COURT ORDERED, Motion as to Mistrial DENIED.**

INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits continued. (See attached worksheet.) At the hour of 2:52 p.m. the State **RESTED.**

OUTSIDE THE PRESENCE OF THE JURY: Court noted the defendant's mother reported as she was leaving Friday night, on the ramp outside the Court house, two of the jurors were present as a comment was made in regards to a wasp and her saying "excuse me, I need to use the handrail". Court **ADMONISHED** the family as to speaking with the jurors. Juror #5 brought in outside the presence of the jury panel and questioned as to the conversation. Juror #7 brought in outside the

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Minutes Date: April 14, 2014

presence of the jury panel and questioned as to the conversation. Juror #7 expressed being scared and not comfortable making any decisions. Ms. Schifalaqua expressed her concerns with family speaking with the jury and now being scared. Defendant's family brought back in outside the presence of the jury panel and ADMONISHED as to having to excuse a jury member. Court EXCUSED juror #7.

INSIDE THE PRESENCE OF THE JURY: Jury ADMONISHED as to speaking with anyone.

OUTSIDE THE PRESENCE OF THE JURY: Mr. Otto moved for an Adversary Verdict of Not Guilty under NRS 175.381(1). COURT ORDERED, Motion DENIED. Ms. Schifalaqua argued no matter what the verdict is the charge of Possession of Firearm by Ex-Felon will be brought before any penalty phase of the trial. At the hour of 4:09 p.m. the Defense RESTED.

INSIDE THE PRESENCE OF THE JURY: Following the day's testimony, Court ADMONISHED the Jury and ORDERED them to return the next day at the time given.

Matter in RECESS.

CUSTODY

CONTINUED TO: 4/15/14 1:30 PM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 15, 2014

C-13-294695-1 State of Nevada
 vs
 Matthew Washington

April 15, 2014 1:00 PM Jury Trial

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

PARTIES PRESENT:	Ohlinger, Roberta J.	Attorney for the Defendant
	Otto, David J.	Attorney for the Defendant
	Pieper, Danielle K.	Attorney for the State
	Schifalacqua, Barbara	Attorney for the State
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- JURY TRIAL CONTINUES

OUTSIDE THE PRESENCE OF THE JURY: Jury Instructions settled.

INSIDE THE PRESENCE OF THE JURY: Court instructed the Jury on the law. Closing arguments by counsel. Marshal SWORN to take charge of the Jury and Alternates. At the hour of 4:41 p.m., the Jury retired to deliberate. The Jury informed the Marshal they had selected a Foreperson and wish to commence deliberations in the morning and the COURT SO ORDERED.

Matter in RECESS.

CUSTODY

CONTINUED TO: 4/16/14 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor COURT MINUTES April 16, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

April 16, 2014 9:00 AM Jury Trial

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

PARTIES PRESENT: Ohlinger, Roberta J. Attorney for the Defendant
Otto, David J. Attorney for the Defendant
Pieper, Danielle K. Attorney for the State
Schifalacqua, Barbara Attorney for the State
State of Nevada Plaintiff
Washington, Matthew Defendant

JOURNAL ENTRIES

- JURY TRIAL CONTINUES

At the hour of 9:00 a.m., deliberations commence.

OUTSIDE THE PRESENCE OF THE JURY: Jury questions put on the record and admitted as Court's exhibits. Colloquy regarding second phase of trial. **CONFERENCE AT THE BENCH.**

INSIDE THE PRESENCE OF THE JURY: At the hour of 3:10 pm., the Jury returned with the following Verdicts:

COUNT 1 - CONSPIRACY TO COMMIT MURDER (F), GUILTY;
COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON (F), GUILTY OF FIRST DEGREE MURDER WITH USE OF DEADLY WEAPON;
COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), GUILTY OF ATTEMPT MURDER WITH USE OF DEADLY WEAPON;
COUNT 4 - BATTER WITH USE OF A DEADLY WEAPON (F), GUILTY OF BATTERY WITH USE OF A DEADLY WEAPON;

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Page 1 of 2

Minutes Date:

April 16, 2014

COUNT 5 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), GUILTY OF ATTEMPT MURDER WITH USE OF A DEADLY WEAPON;

COUNT 6 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), GUILTY OF ATTEMPT MURDER WITH USE OF A DEADLY WEAPON;

COUNT 7 - BATTERY WITH USE OF A DEADLY WEAPON (F), GUILTY OF BATTERY WITH USE OF A DEADLY WEAPON;

COUNT 8 - COUNT 17 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), GUILTY (COUNTS 8- 17).

Jury polled at the request of defense counsel.

BIFURCATED PORTION OF TRIAL BEGINS

INSIDE THE PRESENCE OF THE JURY: Second Amended Information FILED IN OPEN COURT regarding Possession of Firearm by Ex-Felon (F). Clerk read Second Amended Information to the Jury. Ms. Schifalacqua advised as to the nature of the charge. Exclusionary Rule WAIVED. Opening statements by Ms. Schifalacqua. Mr. Otto declined to present an opening statement. At the hour of 3:25 p.m. State RESTED. CONFERENCE AT THE BENCH.

OUTSIDE THE PRESENCE OF THE JURY: Jury Instructions settled.

INSIDE THE PRESENCE OF THE JURY: At the hour of 3:43 p.m. Defense RESTED. Court instructed the Jury on the law. Closing statements by counsel. At the hour of 4:02 p.m., the Jury retired to deliberate. At the hour of 4:16 p.m., the Jury returned with the following Verdict:

COUNT 1 - POSSESSION OF FIREARM BY EX-FELON (F), GUILTY

Jury polled at the request of defense counsel.

Court ADMONISHED the Jury and ORDERED them to return the following day at the time given to begin the Penalty Hearing.

OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding instructions and schedule for the penalty phase.

Matter in RECESS

CUSTODY

CONTINUED TO: 4/17/14 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor COURT MINUTES April 17, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

April 17, 2014 9:00 AM Jury Trial

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Patti Slattery

PARTIES PRESENT:	Ohlinger, Roberta J.	Attorney for Defendant
	Otto, David J.	Attorney for Defendant
	Pieper, Danielle K.	Attorney for the State
	Schifalacqua, Barbara	Attorney for the State
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- JURY TRIAL CONTINUES

PENALTY PHASE

OUTSIDE THE PRESENCE OF THE JURY: Ms. Pieper advised Mr. Otto had not filed any notices of witness; the State will not object to him filing late notices or the family testifying. Exclusionary Rule WAIVED.

INSIDE THE PRESENCE OF THE JURY: Opening Statements by counsel. Testimony and exhibits commence. (See attached Worksheets.). At the hour of 10:32 a.m. States RESTED.

OUTSIDE THE PRESENCE OF THE JURY: Court ADMONISHED the Defendant regarding making a sworn or unsworn statement.

INSIDE THE PRESENCE OF THE JURY: Matthew Washington made an unsworn statement of allocution. Testimony and exhibits continued. (See attached Worksheets.) At the hour of 11:28 p.m. Defense RESTED. CONFERENCE AT THE BENCH. Court instructed Jury. Closing arguments by

PRINT DATE: 04/21/2014

Page 1 of 2

Minutes Date: April 17, 2014

counsel. At the hour of 11:52 p.m., the Jury retired to begin deliberations.

OUTSIDE THE PRESENCE OF THE JURY: Sentencing date given as to the remaining charges. Ms. Pieper requested the Defendant be remanded without bail. COURT SO ORDERED.

INSIDE THE PRESENCE OF THE JURY: At the hour of 1:58 p.m. Jury returned with VERDICT having previously found the Defendant GUILTY of COUNT 2 - MURDER OF THE FIRST DEGREE (F).

The Jury sentenced DEFENDANT to LIFE IN THE NEVADA DEPARTMENT OF CORRECTIONS WITH ELIGIBILITY FOR PAROLE BEGINNING WHEN A MINIMUM OF TWENTY (20) YEARS HAS SERVED.

COURT thanked and excused the jury. COURT ORDERED, matter referred to P&P and SET for Sentencing, Defendant to be held in the Clark County Detention Center WITHOUT BAIL.

CUTODY

6/18/14 9:00 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor COURT MINUTES April 28, 2014**

C-13-294695-1 State of Nevada
vs
Matthew Washington

April 28, 2014 Chambers Minute Order

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

JOURNAL ENTRIES

The instant case was originally assigned to District Court Department 11 and is currently set for trial to commence April 7, 2014. Due to being engaged in another lengthy trial during the same time period, Department 11 is unable to preside over the instant trial on its scheduled date. The matter is not eligible for overflow due to its expected length.

EDCR 1.30 (15) gives the Chief Judge of the Eighth Judicial District Court the authority to reassign cases between departments as convenience or necessity requires. EDCR 1.30 (11) also states that the Chief Judge must appoint a Judge to preside over the Criminal Division of the Court. EDCR 1.31 gives the Criminal Presiding Judge the authority to reassign pending criminal cases from one department to another. As with EDCR 1.30(15), the Presiding Criminal Judge's decision on reassigning pending criminal cases should be done as convenience and necessity require.

District Court Department 1 is available to take the instant trial and maintain its current trial date setting. Therefore, based on the totality of circumstances present, this Court, as Criminal Presiding Judge, ORDERS, pursuant to EDCR 1.31, the reassignment of the instant case to Department 1 for trial. The attorneys are directed to contact Judge Cory's chambers for further instructions.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor COURT MINUTES June 18, 2014

C-13-294695-1 State of Nevada
vs
Matthew Washington

June 18, 2014 9:00 AM Sentencing

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 16A

COURT CLERK: Michele Tucker

RECORDER: Beverly Sigurnik

PARTIES PRESENT:	Otto, David J.	Attorney for the Defendant
	Pieper, Danielle K.	Attorney for the State
	Schifalacqua, Barbara	Attorney for the State
	State of Nevada	Plaintiff
	Washington, Matthew	Defendant

JOURNAL ENTRIES

- Defendant Washington PRESENT in custody.

DEFT WASHINGTON ADJUDGED GUILTY of COUNT 1 - CONSPIRACY TO COMMIT MURDER (F), COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON (F), COUNT 3 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), COUNT 4 - BATTERY WITH USE OF DEADLY WEAPON (F), COUNT 5 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), COUNT 6 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (F), COUNT 7 - BATTERY WITH USE OF DEADLY WEAPON (F), COUNT 8 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 9 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 10 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 11 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 12 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 13 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 14 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 15 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), COUNT 16 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT

PRINT DATE: 06/19/2014

Page 1 of 3

Minutes Date: June 18, 2014

(F), COUNT 17 - DISCHARGING FIREARM AT OR INTO STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (F), and COUNT 18 - POSSESSION OF FIREARM BY EX-FELON (F).

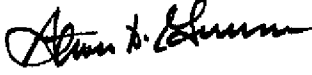
Arguments by Ms. Schifalacqua. Arguments by Mr. Otto. Statements by the Court.

COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$3.00 DNA Collection fee, \$12,015.71 Restitution jointly and severally with co-defendant, and a \$150.00 DNA Analysis fee including testing to determine genetic markers - WAIVED, as to COUNT 1 Deft. SENTENCED to a MINIMUM of FORTY EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED (120) MONTHS; COUNT 2 a MINIMUM of TWO HUNDRED FORTY (240) and a MAXIMUM of LIFE, plus a CONSECUTIVE MINIMUM of SIXTY (60) MONTHS and a MAXIMUM TWO HUNDRED FORTY (240) MONTHS for Use of a Deadly Weapon to run CONCURRENT with COUNT 1; COUNT 3 a MINIMUM of NINETY SIX (96) and a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS, plus a CONSECUTIVE MINIMUM of SIXTY (60) MONTHS and a MAXIMUM TWO HUNDRED FORTY (240) MONTHS for Use of a Deadly Weapon to run CONSECUTIVE with COUNT 2; COUNT 4 a MINIMUM of FORTY EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED (120) MONTHS to run CONCURRENT with COUNT 3; COUNT 5 a MINIMUM of NINETY SIX (96) and a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS, plus a CONSECUTIVE MINIMUM of SIXTY (60) MONTHS and a MAXIMUM TWO HUNDRED FORTY (240) MONTHS for Use of a Deadly Weapon to run CONSECUTIVE with COUNT 4; COUNT 6 a MINIMUM of NINETY SIX (96) and a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS, plus a CONSECUTIVE MINIMUM of SIXTY (60) MONTHS and a MAXIMUM TWO HUNDRED FORTY (240) MONTHS for Use of a Deadly Weapon to run CONSECUTIVE with COUNT 5; COUNT 7 a MINIMUM of FORTY EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED (120) MONTHS to run CONCURRENT with COUNT 6; COUNT 8 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 7; COUNT 9 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 8; COUNT 10 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 9; COUNT 11 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 10; COUNT 12 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 11; COUNT 13 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 12; COUNT 14 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 13; COUNT 15 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 14; COUNT 16 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 15; COUNT 17 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 16; COUNT 18 a MINIMUM of TWENTY EIGHT (28) MONTHS and a MAXIMUM of SEVENTY TWO (72) MONTHS to run CONCURRENT with COUNT 17 in the Nevada Department of Correction (NDC) with 225 DAYS credit for time served.

Mr. Otto advised the Public Defender's (PD) Office would be confirming as appellant counsel; further advised he had provided them with a digital copy of the file. Ms. Bakhtary advised the PD's office would be filing a Notice of Appeal.

BOND, if any, EXONERATED.

NDC


CLERK OF THE COURT

1 TRAN

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DISTRICT COURT
CLARK COUNTY, NEVADA

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7

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THE STATE OF NEVADA,

) CASE NO. C-13-294695-1
) CASE NO. C-13-294695-2

9

Plaintiff,

10

vs.

DEPT. I

11

MATTHEW WASHINGTON,

(ARRAIGNMENT HELD IN DEPT. LLA)

12

MARTELL MOTEN,

13

Defendants.

14

BEFORE THE HONORABLE MELISA DE LA GARZA, HEARING MASTER
MONDAY, DECEMBER 23, 2013

15

16

**RECORDER'S TRANSCRIPT OF HEARING RE:
INITIAL ARRAIGNMENT**

17

18

19

APPEARANCES:

20

For the State:

SUSAN BENEDICT, ESQ.,
Chief Deputy District Attorney

21

22

For the Defendants:

M. KENT KOZAL, ESQ.,
DAVID J. OTTO, ESQ.,
Attorneys at Law

23

24

25

RECORDED BY: KIARA SCHMIDT, COURT RECORDER

1 MONDAY, DECEMBER 23, 2013

2 * * * * *

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

4
5 THE COURT: Okay, pages nine and ten, State of Nevada versus Martell
6 Moten, C294695-2, and Matthew Washington, C294695-1. And they are both
7 present in custody. Counsels, if you would state your appearances.

8 MR. KOZAL: Kent Kozal, 5039, appearing for Joel Mann on behalf of Martell
9 Moten.

10 MR. OTTO: David Otto on behalf of Matthew Washington.

11 THE COURT: Thank you. And who do I have here to my right with the
12 T-shirt? Who is that? Yes, you, sir.

13 THE DEFENDANT: Martell Moten.

14 THE COURT: You're Mr. Moten. Okay, thank you. All right. And where are
15 we?

16 MR. KOZAL: This is going to be a not-guilty plea, and he will be invoking
17 the 60-day rule.

18 THE COURT: And as to Washington?

19 MR. OTTO: Not guilty and invoking the 60-day rule.

20 THE COURT: All right. Mr. Moten, did you receive a copy of the Information
21 stating the charges against you?

22 THE DEFENDANT [Moten]: Yes, I did.

23 THE COURT: You read through it and understood it?

24 THE DEFENDANT [Moten]: Yes.

25 THE COURT: You want to waive a formal reading of the charges?

1 THE DEFENDANT [Moten]: What you mean?

2 THE COURT: Do you want it read out loud? Is it -- or is it okay that you've
3 read through it before?

4 THE DEFENDANT [Moten]: Yeah, I read through it before.

5 THE COURT: All right, sir. How do you plead?

6 THE DEFENDANT [Moten]: Not guilty.

7 THE COURT: You do have a right to a trial within 60 days. It's my
8 understanding you want to invoke that right. You want a speedy trial.

9 THE DEFENDANT [Moten]: Yes.

10 THE COURT: Speedy trial. And then as to Matthew Washington. Sir, did
11 you receive a copy of the Information stating the charges against you?

12 THE DEFENDANT [Washington]: Yes, ma'am.

13 THE COURT: You read through it?

14 THE DEFENDANT [Washington]: Yes, ma'am.

15 THE COURT: You understood it?

16 THE DEFENDANT [Washington]: Yes, ma'am.

17 THE COURT: You want to waive a formal reading of the charges?

18 THE DEFENDANT [Washington]: Yes, ma'am.

19 THE COURT: How do you plead?

20 THE DEFENDANT [Washington]: Not guilty.

21 THE COURT: You do have a right to a trial within 60 days. Again, it's my
22 understanding you want to invoke that right. Is that correct?

23 THE DEFENDANT [Washington]: Yes, ma'am.

24 THE COURT: All right. Speedy trial as to both.

25 THE CLERK: Status check December 16th at 9:00 a.m. Calendar call

1 January 15th at 9:00 a.m.

2 THE COURT: All right. December 16 is passed so that's probably not going
3 to work.

4 MS. BENEDICT: I didn't even notice.

5 THE COURT: Just saying.

6 THE CLERK: December 30th at 9:00 a.m. for status check. Calendar call
7 December -- January 29th at 9:00 a.m., and Jury trial February 3rd at 1:00 p.m.,
8 Department 11.

9 THE COURT: Are you guys going to be ready for that? Do we have anything
10 else within the 60 days?

11 MR. OTTO: Yeah, that's --


12 THE CLERK: That's the last date they gave.

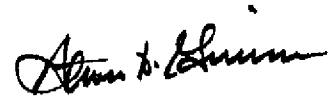
13 THE COURT: That's it. Okay. I guess that's it. All right. Sorry about that.
14 All right. Within -- I meant, pursuant to statute you have 21 days from today for the
15 filing of any writs. If the transcript has not been filed as of today, you have 21 days
16 from the filing. All right. Thank you, gentlemen.

17 (Whereupon, the proceedings concluded.)

18 * * * * *

19 ATTEST: I do hereby certify that I have truly and correctly transcribed the
20 audio/video proceedings in the above-entitled case to the best of my ability.

21 
22 _____
23 Kiara Schmidt, Court Recorder/Transcriber
24
25


CLERK OF THE COURT

1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 STATE OF NEVADA,

7 Plaintiff,

CASE NO. C294695-1
C294695-2

8 vs.

DEPT. XI

9
10 MATTHEW WASHINGTON AND
MARTELL MOTEN,

11 Defendants.

12
13 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE
14 MONDAY, DECEMBER 30, 2013

15 **RECORDER'S TRANSCRIPT OF**
16 **STATUS CHECK - TRIAL READINESS (BOTH)**

17
18 **APPEARANCES:**

19 For the State:

DANIELLE PIEPER, ESQ.
Chief Deputy District Attorney

20
21 For Defendant Washington:

DAVID J. OTTO, ESQ.

22 For Defendant Moten:

JOEL M. MANN, ESQ.

23
24
25 RECORDED BY: SANDRA PRUCHNIC, COURT RECORDER

Monday, December 30, 2013 -- 9:50 a.m.

THE COURT: So Washington and Moten. Good morning, gentlemen.
How are you today?

UNIDENTIFIED DEFENDANT: I'm all right. How you doing?

THE COURT: I'm well. This is a status check I have to make sure that
we're on course to be ready for trial on your February 3rd date.

MR. MANN: Good morning, Your Honor. Joel Mann appearing on behalf
of Martell Moten.

MR. OTTO: And David Otto on behalf of Matthew Washington. Good
morning, Your Honor.

THE COURT: Not Mr. Francis today, huh?

MR. OTTO: No, not Joe Francis today.

MS. PIEPER: Good morning, Judge. Danielle Pieper on behalf of the
State. I did let both attorneys know that on January 8th, the State will be taking
this case to the Death Penalty Committee, and so I think what we may be asking
for, after speaking to counsel about that, is a status check date maybe on the 9th,
which I think is -- she's giving me Wednesday.

THE COURT: How about January 13th? That's a Monday.

MR. MANN: That works, Your Honor.

THE COURT: Okay.

THE CLERK: January 13th at 9:00 a.m.

MR. MANN: Your Honor, there's one last issue. My client is -- was on
parole when he was arrested and now has been sent up to High Desert. I'd ask for
this next week or until our next court date that he remain in the Clark County

1 Detention Center so I can have further discussions with him and be able to
2 properly discuss this case with him.

3 THE COURT: The detention center hates that when I order that.

4 MR. MANN: I understand that, Your Honor, but I do believe it is a
5 necessity.

6 THE COURT: So you will be unable to adequately prepare and meet with
7 your client unless he is down here?

8 MR. MANN: That is correct, Your Honor.

9 THE COURT: All right.

10 (Counsel confer)

11 MS. PIEPER: Can we approach briefly?

12 THE COURT: You can.

13 (Bench conference - not transcribed)

14 THE COURT: Then the issues with preparation for Defense counsel, I'm
15 going to order that Mr. Moten be retained at the Clark County Detention Center
16 pending our next hearing on January 13th, and then we'll address it further at that
17 time.

18 MR. MANN: And, Your Honor, do I need to do anything like an order,
19 anything to -- on your behalf or --

20 THE COURT: It would be better.

21 MR. MANN: Okay. I'd be happy to do that. I'll have that over to your
22 chambers.

23 THE COURT: I'm here.

24 MR. MANN: Perfect.

25 THE COURT: Anything else?

1 MR. MANN: No, Your Honor. Thank you.

2 THE COURT: All right. Have you guys got any other issues you think
3 we're going to need to address assuming you go on the February 3rd date?

4 MR. MANN: I anticipate filing a severance motion on *Bruton* issues.

5 MR. OTTO: And I will be filing a *Bruton* -- a severance motion on *Bruton*.

6 THE COURT: And can you file those --

7 MR. OTTO: I can have mine --

8 THE COURT: -- by the 13th if we're not going to be moving the trial?
9 Because I'm going to need to get them decided before your trial on February 3rd, if
10 we're going on that day.

11 MR. MANN: Yes, Your Honor.

12 THE COURT: All right.

13 MS. PIEPER: Thank you.

14 MR. OTTO: Thank you.

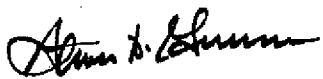
15 MR. MANN: Thank you.

16 [Proceeding concluded at 9:56 a.m.]

17
18 ATTEST: I do hereby certify that I have truly and correctly transcribed the
19 audio-visual recording of the proceeding in the above entitled case to the
20 best of my ability.

21 

22
23 Renee Vincent, Court Recorder/Transcriber


CLERK OF THE COURT

1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 STATE OF NEVADA,

7 Plaintiff,

8 vs.

CASE NO. C294695-1
C294695-2

DEPT. XI

9
10 MATTHEW WASHINGTON AND
11 MARTELL MOTEN,

12 Defendants.

13 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE
14 MONDAY, JANUARY 13, 2014

15 **RECORDER'S TRANSCRIPT OF**
16 **MOTION TO SEVER DEFENDANTS**
17 **STATUS CHECK: TRIAL SETTING AND**
18 **DEATH PENALTY COMMITTEE**

19 APPEARANCES:

20 For the State:

DANIELLE PIEPER, ESQ.
Chief Deputy District Attorney

21
22 For Defendant Washington:

DAVID J. OTTO, ESQ.

23 For Defendant Moten:

JOEL MANN, ESQ.

24
25 RECORDED BY: JILL HAWKINS, COURT RECORDER

1 Monday, January 13, 2014 -- 11:36 a.m.

2
3 THE COURT: All right. The motion that I have on calendar -- this is
4 Washington and Moten, Case Number 294695, page 9. Because of the issues we
5 were having with Odyssey this morning -- not Odyssey, JAVS this morning,
6 counsel graciously agreed to come back at 11:30 so we could straighten this out,
7 also to get Mr. Moten, who had inadvertently been left off the calendar to come up.
8 You gentlemen can sit down, if you'd like.

9 So we're here on a status check on the trial setting and a motion to
10 sever the Defendants.

11 MS. PIEPER: Judge, in regard to the motion to sever the Defendants, I just
12 found out from, actually, Mr. Mann that there was the motion. I never received a
13 copy of the motion, so --

14 MR. OTTO: It was faxed and mailed to the DA's. It was not faxed directly -

15 -
16 MS. PIEPER: I got it, Judge.

17 MR. OTTO: I gave her a copy this morning.

18 MS. PIEPER: It's all --

19 MR. OTTO: It was not faxed directly to the gang unit --

20 THE COURT: So do you want to continue it to till when?

21 MS. PIEPER: Till when -- my understanding is Mr. Mann has filed a motion
22 to sever on --

23 MR. MANN: I think it's scheduled for January 23rd, Your Honor.

24 THE COURT: Do you want them both on January 23rd?

25 MS. PIEPER: Yes. Please, Your Honor.

1 THE COURT: Okay.

2 MR. MANN: Is that the correct date?

3 THE COURT: That's -- I can't do it on a Thursday. That's a --

4 MR. MANN: Oh, okay. It must be --

5 MS. PIEPER: The 22nd.

6 THE COURT: On the 22nd? The Wednesday? Not so much.

7 MR. MANN: Yes, it's on the 22nd.

8 MR. OTTO: The 22nd at 8:00 or 10:00 or --

9 THE COURT: 9:00.

10 MR. OTTO: 9:00. Anywhere in between?

11 MR. MANN: Sometime.

12 THE COURT: When you show up.

13 MR. OTTO: Oh. I'll be on time.

14 THE COURT: You've always been on time, Mr. Otto. It's never been you
15 I've had any issues with. 294695, Sub 2, was on on the 22nd, so let's put Sub 1 on
16 the 22nd as well. Make sure we get a calendar page for both of them.

17 THE CLERK: Yes, Your Honor.

18 THE COURT: Okay.

19 MR. MANN: My client has also previously invoked his right to a speedy
20 trial. Because of some evidentiary issues and waiting for the forensic stuff, we
21 have -- he has decided that he wants to waive his right to a speedy trial, and so we
22 cannot announce ready for the, I believe, February 2nd trial date -- February 3rd
23 trial date. I'm a day off everything today.

24 MR. OTTO: My client, on the other hand, has decided to continue to invoke
25 the right to a speedy trial.

1 THE COURT: So let me ask a couple questions.

2 MR. OTTO: All right.

3 THE COURT: Has the State -- is the death seeking the death penalty?

4 MS. PIEPER: I was just going to -- Judge, we went to the -- we went to the
5 committee. At this time the State of Nevada will not be seeking the death penalty
6 against both of these two Defendants.

7 THE COURT: All right. And is there additional forensic investigation that
8 remains ongoing?

9 MS. PIEPER: Yes.

10 THE COURT: All right. And when do you anticipate the results of that
11 forensic investigation to be completed?

12 MS. PIEPER: I have no date in mind. I haven't yet called the lab. One of
13 the things we have is DNA, which I know will not be done by February 3rd.

14 THE COURT: Okay.

15 MS. PIEPER: Even though I have -- even though I have notice, all my DNA
16 people, the finger -- all those people. Just as a precautionary measure, I know that
17 the DNA will not be done by the 3rd.

18 THE COURT: So, Mr. Moten, you understand that your attorney today has
19 informed me today that you are willing to waive your right to a speedy trial so the
20 remainder of the investigation can be accomplished. Is that what you want to do?

21 DEFENDANT MOTEN: (No audible response).

22 THE COURT: If you don't understand what I'm saying, I --

23 DEFENDANT MOTEN: So you guys are saying that the original speedy
24 trial date, we're not going to proceed on that day; it's going to be continued?

25 THE COURT: Well, no, I'm asking you. February 3rd is the date for your

1 current trial.

2 DEFENDANT MOTEN: Right. Yeah, I don't want to -- I don't want to go to
3 trial then.

4 THE COURT: Okay. And there's some additional work that has to be
5 done. So in order for me to reset you, the next available group of cases I have is
6 on March 17th, which will be after when you had invoked your right to a speedy
7 trial.

8 DEFENDANT MOTEN: Okay.

9 THE COURT: So are you willing to waive your right to a speedy trial?

10 DEFENDANT MOTEN: Yes.

11 THE COURT: Okay. Now, Mr. Washington, you have a trial date set for
12 February 3rd, and there's still some work to be done. You can, if you want,
13 proceed to trial at that time. Because I'm here. I got courtrooms. I got people who
14 are ready to go to trial, and I know the State has whatever they're going to be able
15 to do to go to trial. The problem is you may not have all the information. Some of
16 it may be exculpatory, which would help you, and some of it may be inculpatory,
17 which may hurt you. But it's your decision as to whether you waive the right or not.

18 Have you had a chance to discuss with your attorney the options
19 available to you?

20 DEFENDANT WASHINGTON: Yes, ma'am.

21 THE COURT: Okay. And do you want to proceed with your trial on
22 February 3rd or do you want to waive your right to a speedy trial and go on a
23 different day?

24 DEFENDANT WASHINGTON: I want a speedy trial.

25 THE COURT: Okay.

1 MS. PIEPER: Judge, I want to make the further record that it's my
2 understanding that the decision to go forward with the trial date, the speedy trial
3 date is something that the Defendant has decided, and it could be potentially
4 against his current attorney's advice. That's not something I want to get into, but I
5 would like to make the record that it is the Defendant that is the one that wants to
6 go forward on that date.

7 And the only reason I say that is because, obviously, if we go to trial
8 on that date, whether they're together or they're separated and the Defendant does
9 get convicted of a first degree murder conviction, one of the issues that the State
10 will bring up is obviously the fact that the Defendant was aware that those -- those
11 items were outstanding; that he made the decision to go forward, and so, therefore,
12 he should not be able to bring those issues up.

13 Additionally, after you go through the direct appeal process,
14 obviously, on post-conviction, one of the issues that will come up is ineffective
15 assistance of counsel. One of the things another attorney will argue is that Mr.
16 Otto was ineffective when he did not do investigation, maybe on his own or not, but
17 he went to trial on a murder case when the Defendant is looking at spending the
18 rest of his life in prison in 30 days.

19 And so that Mr. Otto will be obviously canvassed on, and he will
20 have to testify, and his communications at that time with the Defendant will no
21 longer be privileged, but, obviously, that is going to be a big issue that he -- or the
22 decision that was made to go to trial in --

23 THE COURT: Well, that's why I communicate with the Defendant. Sir,
24 you've had a chance to talk to Mr. Otto about what your options are, haven't you?

25 DEFENDANT WASHINGTON: Yes, ma'am.

1 THE COURT: And you're the one making this decision?

2 DEFENDANT WASHINGTON: Yes, ma'am.

3 THE COURT: Do you feel like he had a chance to fully inform you of your
4 options?

5 DEFENDANT WASHINGTON: Yes, ma'am.

6 THE COURT: All right. I have a question, does the March 17th date, does
7 that not fall within the 60 days? When was the arraignment? Oh, no, it's 90 days.
8 Okay. Never mind. I was trying to help. All right. Anything else? So I have a
9 motion to sever next Wednesday. Currently, I have one Defendant who's going to
10 be ready to go on February 3rd, and the other Defendant who's probably going to
11 ask me to continue his trial to a later date, and so we'll discuss that at the time we
12 have the motion to sever.

13 MR. MANN: Your Honor, would you require me to file a written motion to
14 continue on that or can we do it orally?

15 THE COURT: I assume the reason you're going to ask for a continuance is
16 because you need to do some investigation, and you want to see the results of the
17 State's forensic examination?

18 MR. MANN: That's exactly correct, Your Honor.

19 THE COURT: Then you don't need to file a written motion. I think we all
20 know that's an issue. Mr. Otto.

21 MR. OTTO: I just want to make a record, and if my client disagrees with
22 me, I have discussed the evidentiary issues in the case, the State investigation, the
23 sentencing possibilities with him, and he is making this decision on his own.

24 MS. PIEPER: And, Judge, I have also extended an offer of a second
25 degree murder with use of a deadly weapon. In regard to the second degree

1 murder, there are two potential sentences, 10 to 25 or 10 to life. I agree to take the
2 life tail off, so it's just a 10 to 25 with, obviously, the consecutive deadly weapon
3 enhancements, which can be up to one year, up to 20 -- 1 to 20 years consecutive.

4 At this time it's my understanding that Mister -- and I have had an
5 extension -- extensive discussions yet with Mr. Mann, but it's my understanding
6 that not only does Matthew Washington want to go forward with the trial date, but
7 he also is at this time rejecting that offer.

8 THE COURT: Sir, have you had a chance to discuss the offer that the
9 State has made with your attorney?

10 DEFENDANT WASHINGTON: Yes, ma'am.

11 THE COURT: And you feel, after discussing it with your attorney, that it's in
12 your best interest to reject it?

13 DEFENDANT WASHINGTON: Yes, ma'am.

14 THE COURT: All right. I'm just making sure. All right. Mr. Mann, at some
15 point in time, you're going to discuss the offer with your client, and you and your
16 client are going to make a decision as to what is in his best interest?

17 MR. MANN: Yes, Your Honor.

18 THE COURT: All right.

19 MR. MANN: Your Honor, one last issue. My client, obviously, was at the
20 Nevada State Prison. We had done an order to have him transported down. I
21 thank you for that. He was transported down. I've had numerous opportunities to
22 speak with him, but because of this being ongoing investigation, he's asking that
23 he can remain down here for an additional week, if Your Honor is inclined to do
24 that, so I can continue to talk to him about various issues.

25 THE COURT: Well, we're going to continue his trial, right?

1 MR. MANN: That -- yes, absolutely.

2 THE COURT: Would you rather him closer to your trial?

3 MS. PIEPER: Well, that's all if you sever the case.

4 MR. OTTO: Are we severing them or are we doing them together?

5 THE COURT: I don't know yet.

6 MR. OTTO: Well, based on the -- on the invocation and the wait.

7 THE COURT: I'm asking questions right now.

8 MR. OTTO: Oh, okay.

9 THE COURT: I'm going to make that decision next Wednesday. Do you
10 want your client to remain through next Wednesday?

11 MR. MANN: Yes, please.

12 THE COURT: I'm happy to issue that order given the upcoming motion that
13 is on calendar. My concern, though, is that if we leave him here too long, it will
14 adversely affect him -- you're at High Desert?

15 MR. MANN: Correct.

16 DEFENDANT MOTEN: Yes, ma'am.

17 THE COURT: At High Desert.

18 MR. MANN: Yeah --

19 THE COURT: And they don't like the order that I draft or that I send, so,
20 you know, but we'll do it.

21 MR. MANN: Okay.

22 THE COURT: I guess maybe you should send me an order, and this time
23 instead of me having you file it, we'll just take care of it.

24 MR. MANN: Okay.

25 THE COURT: Because we need the -- it'll work better that way.

1 MR. MANN: Okay. Sounds good, Your Honor.

2 THE COURT: Because last time there was a lot of extra work --

3 MR. MANN: Yes.

4 THE COURT: -- for you.

5 MR. MANN: And, Your Honor, I'll get that to you later this afternoon.

6 THE COURT: I'm in trial, so I'm here. Anything else?

7 MS. PIEPER: No, not from the State, Your Honor.

8 MR. OTTO: Thank Your Honor.

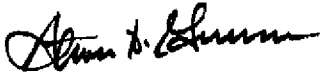
9 THE COURT: All right. Thank you. Pleasure to see you all. Thank you
10 again for coming at this special setting when we had technical problems this
11 morning.

12 [Proceeding concluded at 11:47 a.m.]

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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio-visual recording of the proceeding in the above entitled case to the
22 best of my ability.

23 

24 Renee Vincent, Court Recorder/Transcriber


CLERK OF THE COURT

1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 MATTHEW WASHINGTON AND
9 MARTELL MOTEN,

10 Defendants.
11

CASE NO. C294695-1
C294695-2

DEPT. XI

12 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE
13 WEDNESDAY, JANUARY 22, 2014

14 **RECORDER'S TRANSCRIPT OF**
15 **MOTIONS TO SEVER**
16

17 **APPEARANCES:**

18 For the State:

DANIELLE PIEPER, ESQ.
Chief Deputy District Attorney
BARBARA SCHIFALACQUA, ESQ.
Chief Deputy District Attorney

19
20
21 For Defendant Washington:

DAVID J. OTTO, ESQ.

22 For Defendant Moten:

JOEL M. MANN, ESQ.

23
24
25 RECORDED BY: JILL HAWKINS, COURT RECORDER

1 Wednesday, January 22, 2014 -- 9:50 a.m.

2
3 THE COURT: Let's do Washington. I saw Mr. Otto earlier. Did we lose
4 him?

5 UNIDENTIFIED SPEAKER: Yes, Your Honor.

6 THE COURT: We would trail that one.

7 [Matter trailed at 10:19 a.m.]

8 [Matter recalled at 10:36 a.m.]

9 THE COURT: What page are you guys on, Ms. Pieper?

10 MS. PIEPER: Good morning, Judge.

11 THE COURT: And you brought Ms. Schiff -- I took the spelling down.

12 Schifalacqua.

13 MS. SCHIFALACQUA: You took it down? Schifalacqua, Your Honor.

14 Thank you. Morning.

15 THE COURT: Page 16. Good morning, Mr. Washington, Mr. Moten. How
16 are you gentlemen today?

17 UNIDENTIFIED DEFENDANT: I'm all right. How are you doing?

18 THE COURT: I'm well. Thank you. All right. Here's my first
19 question --

20 MS. PIEPER: Judge, can we approach? I'm sorry this is so early.

21 THE COURT: Absolutely.

22 MR. OTTO: Do you want us to make our appearances and --

23 THE COURT: Sure.

24 MR. OTTO: David Otto on behalf of Matthew Washington.

25

1 MR. MANN: Good morning, Your Honor. Joel Mann on behalf of Martell
2 Moten.

3 THE COURT: Come on up.

4 (Bench Conference - not transcribed)

5 THE COURT: Mr. Washington, I think you remember the last time we were
6 here we had a discussion about some additional work your counsel needs to do and
7 things you and he have talked about about your speedy trial rights.

8 DEFENDANT WASHINGTON: Yes, ma'am.

9 THE COURT: I have a March 17th setting, which is just outside the 60 days,
10 which is really close, 60 days, which would give your counsel a chance to actually
11 be ready for your trial without waiving your speedy trial rights. Do you want to go to
12 March 17th?

13 DEFENDANT WASHINGTON: No, ma'am.

14 THE COURT: Okay. So your counsel said he has additional work to do, but
15 you do not want to move your trial. So anything else, Counsel?

16 MR. OTTO: Is that your answer, Mr. Washington?

17 DEFENDANT WASHINGTON: Yes, sir. Yes, ma'am.

18 THE COURT: We made our record last time we were here, so I don't think
19 we need to make it again. I did ask him.

20 Mr. Mann, your client has waived his speedy rule, and so would you
21 like me to move your trial?

22 MR. MANN: Yes, Your Honor. That was my understanding. Mr. Moten,
23 correct?

24 DEFENDANT MOTEN: Yes.

25 MR. MANN: Yes.

1 THE COURT: Okay. So when would you like to move your trial, Mr. Mann?

2 MR. MANN: Your Honor, we're waiting on significant discovery issues, so
3 I'm not sure when those are coming out. I don't think we'll have them by March
4 17th.

5 THE COURT: No, I didn't think so either from what you guys told me.

6 MR. MANN: Yeah.

7 THE COURT: I do have things in the middle of April, and I have things late
8 May or early June.

9 MR. MANN: I am in a jury trial end of May, beginning of June, so that won't
10 work, but --

11 THE COURT: How about end of June?

12 MR. MANN: Actually, I apologize, I think that -- let me just --

13 MS. PIEPER: Oh, wait.

14 MR. MANN: -- verify that trial date.

15 MS. PIEPER: I think sometime in June, I think Robert Jackson is in here
16 with Mr. Pitaro.

17 THE COURT: That's right, and we're not moving that again.

18 MS. PIEPER: Right. That's -- that's why thought --

19 THE COURT: I don't remember what day it is. I just know I'm not moving it
20 again.

21 MS. PIEPER: Can I --

22 THE COURT: Yes, please turn on your calendar and look.

23 (Pause)

24 MS. PIEPER: Robert Jackson is set to go on June 11th.

25 THE COURT: Well, June 11th is a Wednesday --

1 MS. PIEPER: Oh, sorry.

2 THE COURT: -- so that would be set for the 16th. The 11th will be the
3 calendar call.

4 MR. MANN: Your Honor --

5 THE COURT: Is that more than a week?

6 MS. PIEPER: Yes. Well, yeah. And then I think the Co-Defendant might be
7 set on the 23rd. So it's like back to back.

8 THE COURT: Okay. Mr. Mann is going to talk to Mr. Moten about options.

9 MS. PIEPER: Judge, he sent -- we are here on the motion to sever.

10 THE COURT: I know that. You notice how I'm avoiding that issue.

11 (Counsel confer)

12 THE COURT: Mr. Otto, if you need to have an investigator appointed during
13 the thing, please send me over an order and I'll get that done for you today.

14 MR. OTTO: I'd make the motion here and have an investigator appointed.

15 THE COURT: You've stated it orally, and I've said yes --

16 MR. OTTO: Yes, I'm making a motion for an investigator, Your Honor.

17 THE COURT: And it's granted.

18 MR. OTTO: And I will send you an order.

19 THE COURT: You're sending me an order.

20 MR. OTTO: Today.

21 THE COURT: Yes.

22 MR. MANN: Your Honor, Ms. Pieper and I spoke about October. Is that an
23 available month for Your Honor?

24 THE COURT: I have October 13, 20 and 27. Do you like any of those
25 days?

1 MR. MANN: Uh --

2 THE COURT: The problem with the 27th is that's only a four-day week
3 because of the Nevada Day holiday observed.

4 MR. MANN: Okay.

5 MS. PIEPER: I would say the 13th or the 20th.

6 MR. MANN: The 13th is Columbus Day.

7 MS. PIEPER: Oh, sorry.

8 THE COURT: But that's not observed in State Court --

9 MR. MANN: We don't have -- that's not a --

10 THE COURT: -- because we observe Nevada Day.

11 MR. MANN: That's perfect. The 13th is fine.

12 THE COURT: So October 13th. Mr. Otto, my law clerk reminds me you
13 have to include the name of your investigator in the order.

14 MR. OTTO: All right. I will.

15 THE CLERK: Status check on trial readiness, September 8th at 9:00 a.m.;
16 calendar call, October 8th at 9:00 a.m.; jury trial, October 13th at
17 1:00 p.m.

18 MS. SCHIFALACQUA: And, Judge, just for the record, are you -- I mean,
19 this really is a de facto severance then. I guess our other motion -- I mean --

20 MS. PIEPER: We're going to -- yeah, obviously, we're --

21 THE COURT: The motion to sever is moot given the scheduling issue with
22 the invocation and waiver.

23 MS. PIEPER: Okay.

24 THE COURT: If for some reason Mr. Washington's case does not go when
25 it's supposed to, I have not ordered them severed. But at this point given the

1 invocation of the speedy trial rights by Mr. Washington, I am allowing him to have
2 his trial go within that time.

3 MS. PIEPER: Okay. But the Court also has discretion on whether it can
4 continue a trial --

5 THE COURT: I know.

6 MS. PIEPER: -- based on whether counsel is ready for trial.

7 THE COURT: I made my record on that last week, Ms. Pieper.

8 MS. PIEPER: Okay. Judge, just for the record, the State is going to hand
9 over Mr. Moten's transcript to Mr. Otto. Earlier I had given it to Mr. Mann.

10 MR. MANN: I have received it, Your Honor.

11 THE COURT: Anything else?

12 MS. PIEPER: No.

13 THE COURT: All right. I'll see you guys on the 29th for calendar call.

14 MS. PIEPER: Okay.

15 THE COURT: Well, not you guys. I'll see Mr. Otto --

16 MR. OTTO: Otto and Mister --

17 THE COURT: -- not Mr. Mann.

18 MR. MANN: Thank you, Your Honor.

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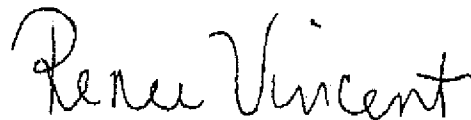
1 THE COURT: Remember, write the investigator's name in the order,
2 Mr. Otto.

3 MR. MANN: I will, Your Honor. Thank you.

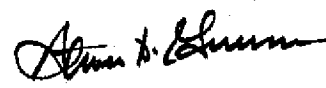
4 THE COURT: Thank you.

5 (Proceedings concluded at 10:45 a.m.)
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20 Renee Vincent, Court Recorder/Transcriber
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CLERK OF THE COURT

1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

CASE NO. C294695-1

DEPT. XI

8 MATTHEW WASHINGTON,

9 Defendant.
10
11

12 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE
13 WEDNESDAY, JANUARY 29, 2014

14 **RECORDER'S TRANSCRIPT OF**
15 **CALENDAR CALL**

16
17 **APPEARANCES:**

18 For the State:

DANIELLE PIEPER, ESQ.
Chief Deputy District Attorney
BARBARA SCHIFALACQUA, ESQ.
Chief Deputy District Attorney

19
20
21 For the Defendant:

DAVID J. OTTO, ESQ.

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25 RECORDED BY: JILL HAWKINS, COURT RECORDER

1 Wednesday, January 29, 2014 -- 10:01 a.m.

2
3 THE COURT: Page 11. Morning, sir. How are you today?

4 THE DEFENDANT: Fine.

5 MR. OTTO: David Otto on behalf of Mr. Washington, Your Honor.

6 MS. PIEPER: Danielle Pieper and Barbara Schifalacqua on behalf of the
7 State.

8 MS. SCHIFALACQUA: Morning, Your Honor.

9 THE COURT: Morning. How long is it going to take to try?

10 MS. SCHIFALACQUA: I definitely think --

11 MS. PIEPER: Probably a week and a half. That includes the penalty
12 phase if he gets convicted of a first degree murder.

13 MS. SCHIFALACQUA: Yeah, we'll definitely go into a second week,
14 Judge, if we have a penalty hearing in front of our jurors because, frankly, it's kind
15 of a three-part --

16 THE COURT: Can we start on February 11th? My civil case that was
17 supposed to go there isn't there, and that would keep us within our 60-day issue --

18 MS. SCHIFALACQUA: Uh-huh.

19 THE COURT: -- I have to do and give us enough time.

20 (State Counsel confer)

21 MR. OTTO: Also, Your Honor, while the State is looking at its calendar, I
22 only this morning received some more discovery from the State indicating -- I
23 haven't had a chance to read it yet, indicating that they have tool mark evidence,
24 ballistics, on shell casings and guns involved in the case.

25 I have not had an expert retained for that matter because I did not have

1 any indication they would have that evidence before trial. I do now have an
2 indication they have that evidence, and for the record, it may assist the record to
3 allow me time and a *Wittus* motion for an expert on the tool mark issue. That might
4 take some time. I have discussed with my client, he does not want to waive the
5 60-day rule.

6 MS. SCHIFALACQUA: And, Judge, if I could make a record just briefly.

7 THE COURT: Sure.

8 MS. SCHIFALACQUA: I have -- I mean, obviously, if he wants to retain an
9 expert, his remedy would be a continuance, but we filed all of our experts, the
10 firearms, tool marks, as well as DNA, as well as latent prints. Mr. Otto is well
11 aware that actually our DNA and our latent prints are being worked on as we
12 speak. And, in fact, the firearms analysis I got this
13 morning -- it's why I came a little bit late to court, Judge -- I was waiting for the
14 results.

15 So they're still working and they continue to work, Judge. It's
16 always been our position we've properly noticed our experts, which what the
17 statutes say, as soon as the reports are available, we will provide the same to the
18 Defense, and we --

19 THE COURT: Well, as soon as they're available does have a little bit of
20 caveat --

21 MS. SCHIFALACQUA: Sure. No, and I -- I understand, Judge, but we
22 were set in 30 days, so it's not as if we're, you know --

23 THE COURT: No, I understand. Your request to hire an expert is granted.
24 Can you please put the name of your forensic expert in the order that you send
25 over, and will \$3500 be enough for the expert expenses?

1 MR. OTTO: They're all looking at me, Judge.

2 THE COURT: I know they are.

3 MR. OTTO: Without recommending someone, I think that that's actually
4 more than enough.

5 THE COURT: Okay.

6 MR. OTTO: Unless they have to testify.

7 THE COURT: All right. If they have to testify, of course, I will increase the
8 amount. So get that order over, and then I'll be good to go.

9 MR. OTTO: All right, Your Honor.

10 THE COURT: Does February 11th work? The reason I'm picking that is I
11 was told the case is six days.

12 MR. OTTO: Well, yeah. My expert -- I don't know who it is, but after
13 discussion, I don't believe the tool mark expert will be finished in -- now it's roughly
14 11 days.

15 THE COURT: First you have to ask them. Then they have to tell you --

16 MR. OTTO: Yes.

17 THE COURT: -- yes or no.

18 MR. OTTO: Yes.

19 THE COURT: And then you have to ask me another question --

20 MR. OTTO: I understand, Your Honor.

21 THE COURT: -- after you talk to your client. This process thing.

22 MR. OTTO: It's terrible, isn't it?

23 THE COURT: February 11th.

24 MS. SCHIFALACQUA: Court's indulgence.

25 (State Counsel confer)

1 MS. SCHIFALACQUA: All right. The only issue the State has is we're
2 obviously --

3 MS. PIEPER: We have 30 to 40 witnesses.

4 THE COURT: Uh-huh.

5 MS. PIEPER: So I'll probably have to contact all of them to see if --

6 MS. SCHIFALACQUA: If we can move them.

7 MS. PIEPER: If we can move them.

8 THE COURT: Yes, you probably do.

9 MS. SCHIFALACQUA: Judge, so -- I mean, if we're going to set it, that's
10 fine, just with the caveat that we might make representations at that point that
11 we're -- that they can't come during that week or something. You know, obviously -
12 -

13 THE COURT: If you have something like that, you need to tell me.

14 MS. SCHIFALACQUA: Sure. Well, we don't know. I mean --

15 THE COURT: I know.

16 MS. SCHIFALACQUA: We're ready today. You know, obviously, the
17 Defense is, you know, relying on his client continuing to say that he's ready to go
18 forward; but he's clearly, I guess, making a record that you're not ready to go
19 forward? I just want this, Judge --

20 THE COURT: We made that record a couple times already when you
21 weren't here.

22 MS. SCHIFALACQUA: Okay.

23 THE COURT: Okay.

24 MR. OTTO: And there's one more record the State indicated they might
25 like me to make if we could approach to discuss it briefly.

1 THE COURT: Sure.

2 (Bench conference - not transcribed)

3 THE COURT: I'm going to continue your calendar call to next Wednesday.

4 THE CLERK: February 5 at 9:00 a.m.

5 THE COURT: Mr. Otto, get that order over here, so I can get it signed.

6 MR. OTTO: I will, Your Honor. Thank you.

7 THE COURT: Okay. And our plan is to start February 11th at 9:00 a.m.

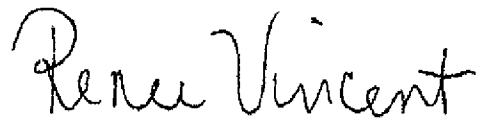
8 That way I can be done with Mr. Reed's case.

9 MS. SCHIFALACQUA: Thank Your Honor.

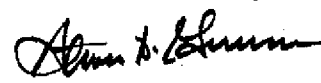
10 THE COURT: All right.

11 (Proceedings concluded at 10:07 a.m.)

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21
22 Renee Vincent, Court Recorder/Transcriber


CLERK OF THE COURT

1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

CASE NO. C294695-1

DEPT. XI

8
9 MATTHEW WASHINGTON,

10 Defendant.

11
12 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE
13 WEDNESDAY, FEBRUARY 5, 2014

14 **RECORDER'S TRANSCRIPT OF**
15 **CALENDAR CALL**

16
17 **APPEARANCES:**

18 For the State:

DANIELLE PIEPER, ESQ.
Chief Deputy District Attorney
BARBARA SCHIFALACQUA, ESQ.
Chief Deputy District Attorney

20
21 For the Defendant:

DAVID J. OTTO, ESQ.

22
23
24
25 RECORDED BY: JILL HAWKINS, COURT RECORDER

1 Wednesday, February 5, 2014 -- 9:34 a.m.

2
3 THE COURT: Have we seen Mr. Otto yet this morning?

4 MS. PIEPER: We have not yet.

5 (Matter trailed at 9:18 a.m.)

6 (Matter recalled at 9:34 a.m.)

7 THE COURT: That's on page 13. Morning, sir. How are you today?

8 THE DEFENDANT: Good. How are you?

9 THE COURT: I'm well. Thank you. Morning, Mr. Otto.

10 MR. OTTO: Good morning, Your Honor. David Otto on behalf of Mr.
11 Washington.

12 THE COURT: Mr. Washington, yesterday I had a conference call with
13 counsel, and your attorney had had some scheduling issues because of the trial I
14 was in this week resolved, so I was talking to them about moving the trial up to
15 start on Monday. We didn't put you on that phone call, so I wanted to let you know
16 what we did. All right. Now --

17 MR. OTTO: As we discussed on the phone call, Your Honor, Mr.
18 Washington had requested of me that some motions to suppress evidence be filed
19 on his behalf. I have just discussed it with him, and he no longer wants those
20 motions to suppress as they may move up the trial date, but that -- that may be
21 moot in the sense that just last week, I got what I would call a bare bones report
22 without the underlying data in ballistics evidence from the State.

23 I have spoken to and have yet to retain a ballistics or a tool mark
24 expert for firearms identification, and he needs all the underlying data. And it's
25 pretty obvious to -- in order to analyze what the -- the work the State has done.

1 It seems obvious to me that he can't have that done by this
2 weekend, and I would say it would take him at least 60 days to analyze -- I have to,
3 one, get it from the State, which has to get it from Metro, and I would then have to
4 present it to my expert, and he would have to analyze it. I would say that's going to
5 take at least 60 days. Mr. Washington is still asserting his right to a speedy trial,
6 however. So it's not unheard of in the cases for this to happen, this type of thing.

7 THE COURT: I understand. Sir, do you understand the work your counsel
8 is describing that the expert I authorized him to hire last week needs to do?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Have you had a chance to discuss with your counsel
11 whether you believe that is important to your defense in this case?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Okay. You understand that that work that the expert's going
14 to have to do may take some time, and while you may maintain your right to a
15 speedy trial, I may have to make a determination that in order for the expert to do
16 the work, that I will grant a brief continuance of the matter while you still maintain
17 your right to a speedy trial? Do you understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Okay.

20 MR. OTTO: So I would ask that the case be continued in order that the
21 expert do his work.

22 THE COURT: State's position.

23 MS. PIEPER: The State anticipates ready, 30 to 40 witnesses. If he's
24 doing an oral motion to continue, which I'm assuming he's doing today --

25 THE COURT: Well, yeah.

1 MS. PIEPER: -- we're not going to oppose the motion to continue --

2 THE COURT: Right. I appointed the expert last week.

3 MS. PIEPER: No, I get it.

4 THE COURT: It's really hard for the expert to -- he handed him the report, I
5 appointed the expert to do a report -- you know.

6 MS. PIEPER: Oh, no, we get that. We totally get that, Your Honor.

7 MR. OTTO: And I would ask the Court to order our request that the State
8 provide all the underlying data to the ballistics expert.

9 MS. PIEPER: Well, normally what we do is we provide that to you, and
10 then you provide that to the ballistics --

11 THE COURT: Yeah.

12 MR. OTTO: That's what I'm talking about, providing it to me, yeah.

13 THE COURT: Yeah. He's going to get the expert (sic) filed --

14 MS. PIEPER: Right.

15 THE COURT: -- for Defendant's counsel, so the Defendant's counsel can
16 give it to the Defendant's expert, so the Defendant's expert can review it, and if a
17 test needs to be done, they can do it.

18 MS. PIEPER: Yes.

19 THE COURT: Right?

20 MS. PIEPER: Yes.

21 THE COURT: Okay. Mr. Washington, do you -- is there anything you want
22 to talk to your lawyer about before I do anything else today?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: Okay. Then because of the important factual information
25 that appears to be related to the investigation by the Defendant's ballistic expert, I

1 am going to find good cause for the continuance of the trial at this time. My
2 question is, since you believe it takes 60 days, Mr. Otto, for that work to be
3 accomplished, you want me to set you on --

4 MR. OTTO: I would say at least 60 days. You know, the one matter I didn't
5 discuss with the expert because he doesn't have the information in front of him and
6 he may not be able to tell me how long --

7 THE COURT: I know.

8 MR. OTTO: I'm assuming at least 60 days.

9 THE COURT: Well, I was looking at April 7th.

10 MS. PIEPER: Do you want to just --

11 THE COURT: Which is pretty close to 60 days.

12 MR. PIEPER: Would you like to set it in April, and then we do a status
13 check prior to that?

14 THE COURT: Well, that's what I'm hoping to do.

15 MR. OTTO: I think that date is --

16 THE COURT: I want to make sure that Mr. Otto is available.

17 MR. OTTO: April 7th, Your Honor?

18 THE COURT: April 7.

19 MR. OTTO: That would be fine with me, Your Honor.

20 THE COURT: All right. So since good cause has been shown for the
21 continuance, I am going to -- while I understand the Defendant has invoked his
22 right to a speedy trial, I'm going to grant the request for a continuance for the
23 additional expert investigation that needs to be done because it appears to be
24 important to the Defendant's defense of his case. And I'm going to set the case for
25 trial on April 7th. Dulce, the rest of the dates?

1 THE CLERK: Status check on trial readiness, March 3rd at 9:00 a.m.;
2 calendar call, April 2nd at 9:00 a.m.; jury trial, April 7th at 1:00 p.m.

3 MS. PIEPER: Thank Your Honor.

4 THE COURT: And, ladies, if you could sooner rather than later get the
5 expert information to Mr. Otto so that if there is a hitch in this investigation that
6 needs to be done, we can have a conference call to try and iron it out sooner rather
7 than later.

8 MS. PIEPER: Sure.

9 THE COURT: My other concern is whether -- if it's just a microscopic
10 examination of the bullet, if we need to have that -- if there's any destructive testing
11 or anything else, we're going to have to come up with a protocol for that as well.

12 MS. SCHIFALACQUA: Understood, Judge.

13 THE COURT: Okay.

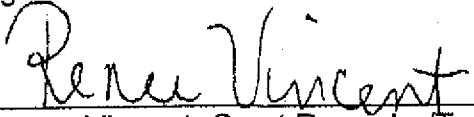
14 MR. OTTO: Thank Your Honor.

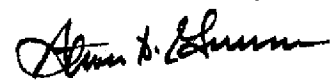
15 THE COURT: Have a nice day.

16 MS. PIEPER: Thank you.

17 (Proceedings concluded at 9:40 a.m.)

18
19
20 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
21 visual recording of the proceeding in the above entitled case to the
22 best of my ability.

23 
24 Renee Vincent, Court Recorder/Transcriber
25



CLERK OF THE COURT

1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

CASE NO. C294695-1

DEPT. XI

8 MATTHEW WASHINGTON,
9

10 Defendant.
11

12 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE
13 WEDNESDAY, MARCH 5, 2014
14

15 **RECORDER'S TRANSCRIPT OF**
16 **STATUS CHECK: TRIAL READINESS**

17 APPEARANCES:

18 For the State:

DANIELLE PIEPER, ESQ.
Chief Deputy District Attorney
BARBARA SCHIFALACQUA, ESQ.
Chief Deputy District Attorney

21 For the Defendant:

DAVID J. OTTO, ESQ.
ROBERTA OHLINGER-JOHNSON, ESQ.

24
25 RECORDED BY: JILL HAWKINS, COURT RECORDER

1 Wednesday, March 5, 2014 -- 9:37 a.m.

2
3 THE COURT: Mr. Otto --

4 MR. OTTO: Yes, ma'am.

5 THE COURT: -- are we ready on Matthew Washington?

6 MR. OTTO: I personally am ready, but I do not believe the illustrious
7 Danielle Pieper is here this morning -- or yet.

8 THE COURT: She was here.

9 MR. OTTO: She was here --

10 MS. OHLINGER-JOHNSON: She went for another hearing. She told me,
11 so I guess we'll need to trail it.

12 THE COURT: Right. So we'll trail it for a few minutes and see if she
13 comes back. Sorry.

14 MR. OTTO: All right. Thank you. Because when she was here, I was
15 missing you.

16 (Matter trailed at 9:38 a.m.)

17 (Matter recalled at 10:16 a.m.)

18 THE COURT: Ms. Pieper, if I can go to Mr. Washington's case.

19 MS. PIEPER: Thank you.

20 MR. OTTO: Good morning, again, Your Honor. David Otto on behalf of
21 Mr. Washington and --

22 MS. OHLINGER-JOHNSON: Roberta Ohlinger-Johnson, co-counsel.

23 MR. OTTO: Ms. Johnson is -- is associating in with me for this case, right,
24 and the trial.

25 THE COURT: All right. How many days are you going to take?

1 MS. PIEPER: It's probably going to take a week and a half in this
2 department, if that's what you're asking.

3 THE COURT: No, I'm asking how many days.

4 MS. PIEPER: Probably a week and a half.

5 MS. OHLINGER-JOHNSON: Yeah.

6 MR. OTTO: So it's seven days?

7 THE COURT: So you're thinking two weeks?

8 MR. OTTO: 14 days or --

9 MS. PIEPER: Well, I know that this Court is very judicious with its time, but
10 other departments --

11 THE COURT: I understand, which is why I'm giving you a different
12 estimate because I can't try this and Cooney at the same time --

13 MS. PIEPER: Right.

14 THE COURT: -- so I've got to figure out if I can find a volunteer.

15 MS. PIEPER: Yes, I think two weeks.

16 MS. SCHIFALACQUA: I think we'll go into a second week, Judge. For
17 sure.

18 THE COURT: Okay. So Judge Herndon and I will figure out what to do.
19 Tell me what, if anything, you need to do to be ready. I know that you had some
20 expert examination that was going on, and I need an update.

21 MR. OTTO: All right, Your Honor. Here's your update. We have had an
22 expert look at -- at the tool marks. I have sent an investigator to talk to witnesses.
23 We will not be naming an expert for any purpose, including the tool marks, and we
24 will perhaps, and we're determining, what witnesses we are going to name, if any.

25 THE COURT: Do you anticipate any additional motion practice with

1 respect to this case?

2 MR. OTTO: Do you?

3 MS. PIEPER: I think she's asking you.

4 MR. OTTO: I don't.

5 THE COURT: Okay. Good. All right. So it sounds like you're going to be
6 ready to go. Now I'm going to make sure that I have judges for both the Cooney
7 case and this one.

8 MR. OTTO: The only would be perhaps in limine motions.

9 THE COURT: Can you file those sooner rather than later?

10 MR. OTTO: I will if I have any, yes.

11 THE COURT: Anything else?

12 MS. PIEPER: No, Your Honor.

13 THE COURT: So somewhere seven to eight days, basically, is what you're
14 telling me, Ms. Pieper?

15 MS. PIEPER: Yes.

16 THE COURT: Okay. All right.

17 MR. OTTO: Thank you.

18 THE COURT: Thank you. Have a nice day.

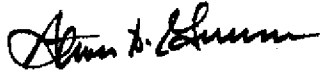
19 MS. SCHIFALACQUA: Thank you.

20 (Proceedings concluded at 10:18 a.m.)

21
22 ATTEST: I do hereby certify that I have truly and correctly transcribed the
23 audio-visual recording of the proceeding in the above entitled case to the
24 best of my ability.

25 

Renee Vincent, Court Recorder/Transcriber


CLERK OF THE COURT

1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

CASE NO. C294695-1

DEPT. XI

8 MATTHEW WASHINGTON,

9 Defendant.
10
11

12 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE
13 FRIDAY, MARCH 24, 2014
14

15 **RECORDER'S TRANSCRIPT OF**
16 **DEFENDANT'S MOTION IN LIMINE**

17 APPEARANCES:

18 For the State:

DANIELLE PIEPER, ESQ.
Chief Deputy District Attorney
BARBARA SCHIFALACQUA, ESQ.
Chief Deputy District Attorney

21 For the Defendant:

DAVID J. OTTO, ESQ.
ROBERTA OHLINGER-JOHNSON, ESQ.

23
24
25 RECORDED BY: JILL HAWKINS, COURT RECORDER

1 Friday, March 24, 2014 -- 9:24 a.m.

2
3 MR. OTTO: We have Matthew Washington, and we have a quick one.

4 THE COURT: Okay.

5 MR. OTTO: We filed a motion in limine regarding prior bad acts and the
6 Bruton question, and we have been discussing it with the State. The State just --
7 they seem to not know why I filed it. I filed it to put it on the record. The State
8 opposed it on Friday, and, apparently, we were served by fax. This is the first time
9 I've seen their opposition --

10 THE COURT: Do you want to come back Wednesday?

11 MR. OTTO: If the Court would like, we could come back on the calendar
12 call Wednesday, which is the 2nd of April.

13 THE COURT: Perfect.

14 MS. PIEPER: That's fine, Judge.

15 THE COURT: Okay. We'll see you then.

16 MR. OTTO: Thank you very much.

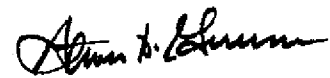
17 THE CLERK: April 2nd at 9:00 a.m.

18 (Proceedings concluded at 9:25 a.m.)
19

20 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
21 visual recording of the proceeding in the above entitled case to the
22 best of my ability.

23 
24

25 Renee Vincent, Court Recorder/Transcriber



CLERK OF THE COURT

1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

CASE NO. C294695-1

DEPT. XI

8 MATTHEW WASHINGTON,

9 Defendant.
10
11

12 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE
13 WEDNESDAY, APRIL 2, 2014
14

15 **RECORDER'S TRANSCRIPT OF**
16 **CALENDAR CALL**
17 **DEFENDANT'S MOTION IN LIMINE**

18 **APPEARANCES:**

19 For the State:

DANIELLE PIEPER, ESQ.
Chief Deputy District Attorney
BARBARA SCHIFALACQUA, ESQ.
Chief Deputy District Attorney

21 For the Defendant:

22 DAVID J. OTTO, ESQ.
ROBERTA OHLINGER-JOHNSON, ESQ.
23
24

25 RECORDED BY: JILL HAWKINS, COURT RECORDER

1 Wednesday, April 2, 2014 -- 9:41 a.m.

2
3 THE COURT: Good morning. Page 4. Good morning, sir. How are you
4 today?

5 THE DEFENDANT: All right.

6 THE COURT: Let's start with the motion in limine.

7 MR. OTTO: Good morning, Your Honor. David Otto on behalf of Mr.
8 Washington, here with co-counsel, Roberta Ohlinger.

9 I made the motion in order to alert the parties and the Court that an
10 out of the presence of the jury hearing must be held before -- a *Petrocelli* hearing
11 for the prior bad acts, and the State concedes that they know that.

12 As to the *Bruton* matters, I put the motion in for the same reason so
13 that an out-of-court hearing could be held before any statements of a co-
14 conspirator are -- are put in front of a jury. And I'm trying to save court time and
15 prevent any -- any problem with a juror getting wind of statements that shouldn't be
16 in evidence.

17 THE COURT: So when do you want to do the hearings?

18 MS. SCHIFALACQUA: Well, Judge, the only question we have and partly
19 why our -- I mean, that we acknowledge if we were going to introduce bad acts,
20 that we would need to have the hearing. Mr. Otto sought no remedy, so we
21 weren't certain what -- we provided a number of pieces of evidence that were for
22 penalty, which would not be introduced in the case -- the State's case in chief.

23 So because he requested nothing with regard to what he wanted us
24 not to introduce, we have no intention, if Mr. Otto thinks otherwise, that this
25 Defendant's particular priors are not going to be introduced in the State's case in

1 chief. Those are provided because, obviously, he's facing a potential penalty
2 phase in front of the jury. So we might be able to resolve this. There's nothing --
3 I'm not sure what he's asking us not to introduce.

4 THE COURT: He seems happy with that.

5 MR. OTTO: And -- and I'm making a record, Your Honor. It's part of my
6 job here to make sure this record is clean.

7 THE COURT: That's fine.

8 MR. OTTO: It's a murder case with lifetime potentials here. Also,
9 sentencing in front of the jury. And the State did tell me -- and I have no reason
10 not to believe them -- in the hallway that they would not be putting any PBA's on in
11 the case other than at a potential sentencing hearing.

12 THE COURT: If that's true, are you okay with that?

13 MR. OTTO: I am okay with that --

14 THE COURT: Right.

15 MR. OTTO: -- now that it's stated on the record. As to *Bruton*, they've
16 been less clear. Now, we know that there were statements made by Mr.
17 Washington. We know there were statements made by his Co-Defendant, now
18 severed, and I'm just putting this in as a prophylactic to ensure -- or try to ensure
19 that none of those *Bruton* statements come in, and if we can have -- my remedy is,
20 if the -- what I asked for in the motion was if the State wished to present any *Bruton*
21 material, they tell us now and we have a hearing. So I don't -- I don't know.

22 MS. PIEPER: I guess a lot of it sort of plays out with how the trial's going to
23 play out. I mean, that's why we're saying --

24 THE COURT: So you think you might use it, which means I have to have a
25 hearing, right?

1 MS. PIEPER: The Co-Conspirator's statement, the State's going to say, is
2 not subject to *Bruton*; therefore --

3 MS. SCHIFALACQUA: Made in furtherance of the conspiracy, Judge.
4 We're not even going to play, obviously, Mr. Moten's statement. You know, we're
5 not going to -- we'd have to call Mr. Moten, clearly. We're not going to do that.

6 MS. PIEPER: Right.

7 MS. SCHIFALACQUA: Mr. Moten's pending the murder charges. There
8 are a few statements within, and maybe we can get with Mr. Otto, that were made
9 during the course of their conspiracy. That -- those are the only statements that
10 would be subject to being able to be presented in front of the jury without having
11 Mr. Moten take the stand. And we outlined that, obviously, in our response. So,
12 again. I don't know if this is just miscommunication between us, but --

13 THE COURT: So -- but you plan to use some of Mr. Washington's
14 statements during your trial?

15 MS. PIEPER: Mr. Washington's statements? Yes.

16 MR. OTTO: Mr. Moten's statements. Moten is the Co-Conspirator.

17 THE COURT: Mr. Moten, they said they're not going to use his statement.
18 They're going to call him live.

19 MS. SCHIFALACQUA: No, no, no.

20 MS. PIEPER: No, we wouldn't be able to call him live, Judge.

21 THE COURT: Well, I know, you can't call him live because he's facing his
22 own trial --

23 MS. PIEPER: Right.

24 THE COURT: -- which means he would never testify.

25 MS. PIEPER: Correct. The State's going to submit that there may be one

1 or two statements that Mr. Moten made that we're going to allege were made
2 during the -- during the furtherance of a conspiracy. If we're -- the State has to or
3 feels that we need to introduce that during the trial, then we can do arguments in
4 front of the Court. I mean, that's --

5 MR. OTTO: What I'm trying to --

6 THE COURT: Okay. Here's the problem.

7 MR. OTTO: Thank you, Your Honor.

8 THE COURT: The problem is --

9 MS. SCHIFALACQUA: We don't know what you want --

10 MS. PIEPER: We don't know if we're going to need it --

11 THE COURT: Can I talk?

12 MS. PIEPER: Sure.

13 THE COURT: The problem is, because we're trying the Cooney case, I
14 have to finish any pretrial issues before I send you to another judge --

15 MS. PIEPER: Correct.

16 MS. SCHIFALACQUA: Right.

17 THE COURT: -- to go. So I'm trying to identify what those pretrial issues
18 are because it appears there might be a couple of things I have to do so that I can
19 do them before one of my colleagues kindly steps in to try your case.

20 MS. PIEPER: Correct.

21 THE COURT: So it sounds like we need an evidentiary hearing, even if it's
22 not very long --

23 MS. PIEPER: Yes.

24 THE COURT: -- related to Mr. Washington's statements at this point.

25 MS. PIEPER: No, Mr. Moten's --

1 MS. SCHIFALACQUA: Mr. Moten's state -- a portion of Mr. Moten's
2 statements.

3 THE COURT: So it's only Mr. Moten's statements?

4 MS. PIEPER: Yes.

5 MS. SCHIFALACQUA: Right, because his statement gets to come in in
6 total. It's obviously --

7 MS. PIEPER: A party admission.

8 MS. SCHIFALACQUA: Right. Admission by a party opponent. So we
9 can play his statement.

10 MS. PIEPER: Yes.

11 THE COURT: Okay. So Friday?

12 MS. PIEPER: Sure.

13 THE COURT: 9:30?

14 MR. OTTO: If I could just check my calendar. Friday's usually very good
15 for me.

16 THE COURT: Please.

17 (Pause)

18 MR. OTTO: I have another serious case that I'm going to have a short
19 hearing on at 9:30 downstairs --

20 THE COURT: Do you want me to do 10:00?

21 MR. OTTO: Yes, let's try for 10:00 if we could, Your Honor.

22 THE COURT: Friday at 10:00.

23 THE CLERK: April 4 at 10:00 a.m.

24 THE COURT: And then I will try and know who has volunteered to take
25 you on. Since you are longer than a week, you can't go to overflow. I have to

1 place you through the presiding judge of the Criminal Division.

2 MS. PIEPER: Okay.

3 THE COURT: Okay?

4 MS. PIEPER: So I have -- do we have a courtroom? I guess that's the
5 question of the State.

6 THE COURT: I will know on Friday to tell you where that is.

7 MS. PIEPER: Okay.

8 MS. SCHIFALACQUA: We just have --

9 THE COURT: I believe the answer is yes, you have a courtroom.

10 MS. PIEPER: Okay.

11 MS. SCHIFALACQUA: Okay. Great. We just have to coordinate our out-
12 of-state witnesses, Judge.

13 MS. PIEPER: Witnesses.

14 MS. SCHIFALACQUA: That's all.

15 THE COURT: Understand.

16 MS. SCHIFALACQUA: Thank you.

17 THE COURT: I'll see you Friday at 10:00.

18 (Proceedings concluded at 9:47 a.m.)

19

20 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
21 visual recording of the proceeding in the above entitled case to the
22 best of my ability.

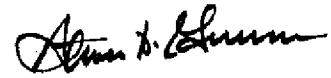
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Renee Vincent, Court Recorder/Transcriber



CLERK OF THE COURT

1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

CASE NO. C294695-1

DEPT. XI

8
9 MATTHEW WASHINGTON,

10 Defendant.

11
12 BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE
13 FRIDAY, APRIL 4 2014

14 **RECORDER'S TRANSCRIPT OF**
15 **TELEPHONIC CONFERENCE**
16 **RE: TRIAL JUDGE**

17 **APPEARANCES:**

18 For the State:
19 (telephonically)

DANIELLE PIEPER, ESQ.
Chief Deputy District Attorney
BARBARA SCHIFALACQUA, ESQ.
Chief Deputy District Attorney

21 For the Defendant:

DAVID J. OTTO, ESQ.

22
23
24
25 RECORDED BY: JILL HAWKINS, COURT RECORDER

1 Friday, April 4, 2014 -- 9:58 a.m.

2
3 THE MARSHAL: Department 11.

4 MS. PIEPER: Hi, it's Danielle Pieper and Barbara Schifalacqua.

5 THE MARSHAL: Hi. Hold on for the Judge.

6 MS. PIEPER: Thank you.

7 (Pause)

8 THE COURT: Good morning, ladies. Mr. Otto is here with me here in the
9 courtroom.

10 MS. SCHIFALACQUA: Good morning, Judge.

11 MS. PIEPER: Good morning, Judge.

12 MR. OTTO: Good morning, y'all.

13 THE COURT: I have a courtroom for you. Judge Cory would love to see
14 you this morning so that he can go over whatever things there are he needs to talk
15 to you about before you start trial on Monday.

16 MS. PIEPER: Okay. Do you know what time he wants to meet with us?

17 THE COURT: Sooner rather than later.

18 MS. PIEPER: Okay.

19 THE COURT: Mr. Otto would love if you could just go up to the 16th floor
20 to A now or call his secretary and see if they can put you on the phone while he's
21 up there.

22 MS. SCHIFALACQUA: That's perfect. We'll call over there right now,
23 Judge. Thank you.

24 THE COURT: Mr. Otto is on his way up there.

25 MS. PIEPER: Okay. Thank you.

1 MR. OTTO: Well, no, I'm not. I'm going to be here until we end this
2 hearing.

3 THE COURT: Bye.

4 MR. OTTO: Wait, wait, we have a hearing.

5 THE COURT: We don't have a hearing. You guys told me we weren't
6 doing anything.

7 MR. OTTO: No, we have a hearing on the -- on the --

8 MS. SCHIFALACQUA: No, we don't have --

9 MS. PIEPER: No, we don't have a hearing.

10 MS. SCHIFALACQUA: We do not have a hearing.

11 THE COURT: A motion in limine?

12 MR. OTTO: Okay. Let -- let --

13 MS. PIEPER: We usually do it on Wednesday.

14 THE COURT: I thought you stipulated to the single statement of Mr. Moten
15 that was going to be admitted on the record.

16 MR. OTTO: That's right, the go, go, go statement. That is true, we did
17 stipulate to the --

18 THE COURT: Was there another portion of that issue? Because I thought
19 we had resolved --

20 MR. OTTO: I just can't find it in his transcript.

21 THE COURT: Oh, they can't find it in the transcript.

22 MS. PIEPER: Because we realized -- and we were going to call him -- is
23 that it was actually -- it's actually in his client's statement.

24 MR. OTTO: That is correct. That's what I thought you must've done.
25 Okay.

1 THE COURT: So are we done now?

2 MS. SCHIFALACQUA: That's a no issue -- non-issue, but it still --

3 MS. PIEPER: But we're still --

4 MR. OTTO: It's a non-issue as long as we all understand -- it's a non-
5 issue as long as we all understand that your witnesses and you can't ask and
6 answer questions regarding Mr. Moten's statement in front of this jury.

7 THE COURT: So --

8 MS. SCHIFALACQUA: I'm aware of --

9 MS. PIEPER: Right.

10 THE COURT: Okay.

11 MS. PIEPER: Correct.

12 THE COURT: So go on up and see Judge Cory because I think we have
13 resolved the issue, that it is not in Mr. Moten's statement, which was the issue we
14 were dealing with.

15 MS. PIEPER: Correct.

16 THE COURT: Since it's not in Mr. Moten's statement and it deals with the
17 Defendant, I'm letting you guys go upstairs to see Judge Cory. He is
18 16-A. Bye.

19 MS. PIEPER: Do you want the phone -- do you know what the secretary's
20 number is?

21 ...

22 ...

23 ...

24 ...

25 ...

1 THE COURT: No, but her name's Joan.

2 MS. PIEPER: Okay. Thank you.

3 THE COURT: Okay.

4 MR. OTTO: I'm a happy man.

5 (Proceedings concluded at 10:01 a.m.)
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17 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-
18 visual recording of the proceeding in the above entitled case to the
19 best of my ability.



20 Renee Vincent, Court Recorder/Transcriber
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Respondent.

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