

1 KAMERON WILSON: Right.  
2 DETECTIVE WESKE: and that's why we're here. It took us a while to get  
3 us a search warrant. Before I can ask you any questions because you got  
4 handcuffs on- -  
5 KAMERON WILSON: Yes, sir.  
6 DETECTIVE WESKE: And you are not free to go obviously - -  
7 KAMERON WILSON: Yes - -  
8 DETECTIVE WESKE: (incomprehensible) got handcuffs on. So before I  
9 get started, I'm going to explain to you. You have the right to remain silent.  
10 DETECTIVE WESKE: Do you understand that?  
11 KAMERON WILSON: Yes, sir.  
12 DETECTIVE WESKE: Anything you say can and will be used against you  
13 in a court of law. You understand that?  
14 KAMERON WILSON: Yes, sir.  
15 DETECTIVE WESKE: You have the right an attorney present before any  
16 questioning. Do you understand that?  
17 KAMERON WILSON: Yes, sir.  
18 DETECTIVE WESKE: Cannot afford one, one will be appointed to  
19 represent you at no cost to you. Do you understand that?  
20 KAMERON WILSON: Yes, sir.  
21 DETECTIVE WESKE: Any time you can stop answering questions. You  
22 understand?  
23 KAMERON WILSON: Yes, sir.  
24

25 (WILSON'S Voluntary Statement, pp. 1-4).

26 Thereafter, Detective Weske asked WILSON to explain what the purpose was of  
27 going to the victims' house. WILSON denied going there. (Voluntary Statement, pp. 4-5, p.  
28

6).

The record in this case reveals that the defendant was not given improper or incomplete Miranda warnings. The record further reveals that the Defendant absolutely understood his rights, in that immediately after each right was given to Defendant, Detective Weske explicitly asked if Defendant understood the right, to which Defendant responded "Yes, sir." each and every time.

Clearly, Defense counsel's argument that Defendant's waiver of his Fifth Amendment rights was not done in a knowing and intelligent manner is flawed and must fail on its face, as the defendant's waiver is implicit in the transcripts of his voluntary statement. Moreover, the defendant's argument is not supported by the law.

**III. Defendant's Statement Was Freely and Voluntarily Given and Must Not Be Suppressed**

"A confession is admissible only if it is made freely and voluntarily, without compulsion or inducement." Passama v. State, 103 Nev. 212, 213, 735 P.2d 321, 322 (1987) (citing Franklin v. State, 96 Nev. 417, 610 P.2d 732 (1980)). A confession is voluntary if it is the product of a "rational intellect and a free will." Blackburn v. Alabama, 361 U.S. 199, 208, 80 S.Ct. 274, 280 (1960). "To determine the voluntariness of a confession, the court must consider the effect of the totality of the circumstances on the will of the defendant. (citation omitted). The question in each case is whether the defendant's will was overborne when he confessed." Passama, 103 Nev. at 214, 735 P.2d at 323. In Passama, the Nevada Supreme Court, citing Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041 (1973), delineated the following factors to be considered when evaluating the voluntariness of a confession:

the youth of the accused; his lack of education or his low intelligence; the lack of any advice of constitutional rights; the length of detention; the repeated and prolonged nature of questioning; and the use of physical punishment such as the deprivation of food or sleep.

Id. at 323.

1 In this case, the Defendant's argument simply provides little to no facts which support  
2 his argument that his confession was involuntarily given. Defendant states that his will was  
3 overborne by the police conduct through psychological pressure, notions of leniency or  
4 promises of harsher punishment. (Defendant's Motion, p. 11; 14-21). The State disagrees.

5 The Nevada Supreme Court has ruled that a defendant's statement is not deemed  
6 involuntary when made as a result of police misrepresentations. In Sheriff v. Bessey, 112  
7 Nev. 322, 914 P.2d 618 (1996), the Supreme Court reversed a pre-trial petition for a writ of  
8 habeas corpus where the District Court found that the Detective had improperly fabricated  
9 evidence and ruled that the defendant's inculpatory statements should have been suppressed  
10 and dismissed the information. The District Court objected to the fact that during  
11 questioning, the defendant denied engaging in any sexual acts with the victim. The police  
12 officer asked the defendant if he could explain why scientific testing determined that the  
13 defendant's semen was present on the couch of the apartment where the sexual acts allegedly  
14 occurred. "The actual analysis was negative, but the officer presented Bessey with a false  
15 crime lab report, which the officer had prepared. Bessey then made a number of inculpatory  
16 statements." Id.

17 The Bessey court recognized that under Passama it is a totality of the circumstances  
18 test to determine whether a confession was voluntary. Police deception was a relevant factor  
19 in determining whether the confession was voluntary; "however, an officer's lie about the  
20 strength of the evidence against the defendant, in itself, is insufficient to make the confession  
21 involuntary." Id. (citing Holland v. McGinnis, 963 F.2d 1044, 1051 (7th Cir. 1992), *cert.*  
22 *denied*, 113 S.Ct. 1053 (1993)). Further, "cases throughout the country support the general  
23 rule that confessions obtained through the use of subterfuge are not vitiated so long as the  
24 methods used are not of a type reasonably likely to procure an untrue statement." Id.

25 The Bessey court noted that lying to a suspect about a co-defendant's statement is  
26 insufficient to render a suspect's subsequent statement involuntary. Id. (citing Frazier v.  
27 Kupp, 394 U.S. 731 (1969)). Moreover, lying to a suspect regarding the suspect's  
28

1 connection to the crime is "the least likely to render a confession involuntary". Id. (citing  
2 Holland, supra.)

3 Such misrepresentations, of course, may cause a suspect to confess, but causation  
4 alone does not constitute coercion; if it did, all confessions following interrogations would  
5 be involuntary because "it can almost be said that the interrogation caused the confession."  
6 Citing Miller v. Fenton, 796 F.2d 598, 605 (3rd Cir.), *cert. denied*, 107 S.Ct. 585 (1986).  
7 Thus, the issue is not causation, but the degree of improper coercion, and in this instance the  
8 degree was slight. Id.

9 The Bessey court determined that the Detective's lie and the false lab report are only  
10 part of the consideration of the totality of the circumstances. The court found:

11 Bessey went to the police station voluntarily and the length of the  
12 interview was relatively short. The only factor that was out of  
13 the ordinary was the production of the falsified lab report. Based  
14 on the law in this area and the facts of this case, there is no  
reason to believe that Bessey's inculpatory statements were not  
voluntary. Id.

15 Citing State v. Kelekolio, 74 Haw. 479, 849 P.2d 58, 71-74 (1993), the Bessey court  
16 noted the following:

17 [t]he Hawaii Supreme Court considered the relevant case law and  
18 scholarly authority and formulated a rule by which to measure  
19 the legitimacy of the use of deception by the police in eliciting  
20 confessions or inculpatory statements from suspects and  
arrestees. The Kelekolio court adopted the following rule:

21 [E]mployment by the police of deliberate falsehoods intrinsic to  
22 the facts of the alleged offense in question will be treated as one  
23 of the totality of circumstances surrounding the confession or  
24 statement to be considered in assessing its voluntariness; on the  
25 other hand, deliberate falsehoods extrinsic to the facts of the  
26 alleged offense, which are of a type reasonably likely to procure  
27 an untrue statement or to influence the accused to make a  
28 confession regardless of guilt, will be regarded as coercive per  
se, thus obviating the need for a "totality of circumstances"  
analysis of voluntariness. 849 P.2d at 73.



1 Examples of intrinsic falsehoods would include  
2 misrepresentations regarding the existence of incriminating  
3 evidence such as placement of the defendant's vehicle at the  
4 crime scene, physical evidence linked to the victim in the  
5 defendant's car, presence of defendant's fingerprints at the crime  
6 scene or in the getaway car, positive identification by reliable  
7 eyewitnesses, and identification of the defendant's semen in the  
8 victim or at the crime scene. *See id.*

9 Examples of extrinsic falsehoods of a type reasonably likely to  
10 procure an untrue statement or to influence an accused to make a  
11 confession regardless of guilt would include the following:  
12 assurances of divine salvation upon confession, promises of  
13 mental health treatment in exchange for confession, assurances  
14 of more favorable treatment rather than incarceration in  
15 exchange for confession, misrepresenting the consequences of a  
16 particular conviction, representation that welfare benefits would  
17 be withdrawn or children taken away unless there is a confession  
18 or suggestion of harm or benefit to someone. *See Lynum v.*  
19 *Illinois*, 372 U.S. 528, 83 S.Ct. 917, 9 L.Ed.2d 922 (1963);  
20 *Kelekolio*, 849 P.2d at 73-74.

21 *Bessey*, 112 Nev. 322 at 326.

22 Finally, the *Bessey* court recognized that many of the investigatory techniques  
23 designed to elicit incriminating statements often involve some degree of deception.

24 Several techniques which involve deception include under-cover  
25 police officers, sting operations, and interrogation techniques  
26 such as offering false sympathy, ***blaming the victim***, ***minimizing***  
27 ***the seriousness of the charge***, using a good cop/bad cop routine,  
28 ***or suggesting that there is sufficient evidence when there is not***.  
As long as the techniques do not tend to produce inherently  
unreliable statements or revolt our sense of justice, they should  
not be declared violative of the United States or Nevada  
Constitutions. *Id.* (Emphasis added).

1 In this case, Detective Weske was very up front with Defendant about the evidence  
2 that had been collected against him, including ATM photographs, eyewitness identification  
3 and the probability of print evidence at the crime scene, not to mention the fact that they had  
4 found "Grant" who identified Defendant as someone whom he had a history with and who  
5 had previously lived at the house where the victims resided when the crimes occurred in this  
6 case. As stated in the statement of facts above, WILSON told the victims in this case he was  
7 at the house looking for "Grant" who allegedly owed him some money.

1 Despite being confronted with all of that, Defendant initially denied being involved  
2 (Voluntary Statement pp. 4-6). Thereafter, Defendant does in fact state that he is scared to  
3 be honest with the Detective, but then lies and says that three people were involved in the  
4 commission of the instant crimes, Defendant, a guy named Christopher and Christopher's  
5 cousin. (Voluntary Statement, p. 36). Defendant continues to stick to his three person story  
6 for the next 30 pages, at which point Detective Weske asks where the stolen money is  
7 because it needed to be given back to the victims. Detective Weske asks if the money is all  
8 at the blackjack table and then tells Defendant that arrangements could be made for gamblers  
9 anonymous if that was necessary to fix that problem. (PHT, pp. 66-67). Defendant denied  
10 having a gambling problem and admitted to having money of his own, in his pocket. The  
11 conversation did not cause Defendant to confess, as he had already admitted his involvement  
12 in the matter when the conversation occurred.

13 During the interview, Detective Hartshorn made it perfectly clear that Defendant  
14 could not undue what he did, but did not have to take the rap for the others. (Voluntary  
15 Statement, p. 76). Thereafter, Defendant denied being involved in any sexual abuse of the  
16 female victim in this case. (Voluntary Statement, p. 77).

17 Detective Hartshorn also told Defendant that they could tell the DA that Defendant  
18 was cooperative the entire time, he had nothing to do with the sexual assault, he tried to stop  
19 it, he gave us the name that we would have found out anyways and will find out probably  
20 find out in a couple of days. Detective Hartshorn told Defendant that a little honesty goes a  
21 long way; however, Detective Hartshorn also told Defendant that he could make no  
22 promises. (Voluntary Statement, p. 78-79).

23 Clearly, Defendant's confession was the product of his own free will and his own  
24 rational choice and was therefore voluntarily given and should not be suppressed.

25 //

26 //

27 //

28

1 **CONCLUSION**

2 Based on the above, the State respectfully requests this Honorable Court deny  
3 Defendants Motion to Suppress Statement.

4 DATED this 24th day of March, 2008.

5 Respectfully submitted,

6 DAVID ROGER  
7 Clark County District Attorney  
8 Nevada Bar #002781

9 BY /s//LISA LUZAICH  
10 LISA LUZAICH  
11 Chief Deputy District Attorney  
12 Nevada Bar #005056

13 **CERTIFICATE OF FACSIMILE**

14 I further hereby certify service of the above and foregoing Opposition to Defendant  
15 WILSON'S Motion to Suppress Statement, was made this 24th day of March, 2008, via  
16 facsimile transmission to:

17 CASEY A. LANDIS, DPD  
18 Fax # 366-0521  
19 Counsel for Defendant WESLEY

20 and

21 JAMES A. ORONoz, ESQ.  
22 Fax # 474-1320  
23 Counsel for Defendant WILSON

24 BY \_\_\_\_\_  
25 Secretary for the District Attorney's Office

26  
27 sms/SVU  
28

  
CLERK OF THE COURT

**OPPS**

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Nevada Bar #002781  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

DELARIAN K. WILSON, aka Delarian  
Kameron Wilson, #1966773  
NARCUS S. WESLEY, aka  
Narcus Samone Wesley #1757866

Defendant.

CASE NO: C232494

DEPT NO: XXIV

**STATE'S OPPOSITION TO DEFENDANT WESLEY'S MOTION TO SUPPRESS  
FRUITS OF ILLEGAL SEARCH**

DATE OF HEARING: 03/25/08  
TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through LISA LUZAICH, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant WESLEY'S Motion to Suppress Fruits of Illegal Search.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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**000457**

1 **STATEMENT OF THE CASE**

2 On April 20, 2007, Defendants, DELARIAN K. WILSON, aka Delarian Kameron  
3 Wilson and NARCUS S. WESLEY, aka, Narcus Samone Wesley, were charged by way of  
4 Information with the crimes of CONSPIRACY TO COMMIT BURGLARY (Gross  
5 Misdemeanor - NRS 199.480, 205.060); CONSPIRACY TO COMMIT ROBBERY (Felony  
6 - NRS 199.480, 200.380); BURGLARY WHILE IN POSSESSION OF A DEADLY  
7 WEAPON (Felony - NRS 205.060); ROBBERY WITH USE OF A DEADLY WEAPON  
8 (Felony - NRS 200.380, 193.165); ASSAULT WITH USE OF A DEADLY WEAPON  
9 (Felony - NRS 200.471, 193.165); FIRST DEGREE KIDNAPPING WITH USE OF A  
10 DEADLY WEAPON (Felony - NRS 200.310, 200.320, 193.165); SEXUAL ASSAULT  
11 WITH USE OF A DEADLY WEAPON (Felony - NRS 200.364, 200.366, 193.165);  
12 COERCION WITH USE OF A DEADLY WEAPON (Felony - NRS 207.190, 193.165) and  
13 OPEN OR GROSS LEWDNESS WITH USE OF A DEADLY WEAPON (Gross  
14 Misdemeanor - NRS 201.210, 193.165).

15 The crimes occurred on or about the 18th day of February, 2007, within the County of  
16 Clark, State of Nevada. The victims in this case are Aitor Eskandon (DOB: 06-26-86), Clint  
17 Tognotti (DOB: 04-08-88), Ryan Tognotti (DOB: 10-20-85), Justin Foucault (DOB: 11-19-  
18 85), Danielle Browning (02-16-89) and Justin Richardson (09-07-86).

19 Trial of this matter is scheduled to commence on March 31, 2008. On March 11,  
20 2008, Defendant WESLEY filed a Motion to Suppress Fruits of Illegal Search. The State's  
21 Opposition follows.

22 **POINTS AND AUTHORITIES**

23 **STATEMENT OF FACTS**

24 Police reports indicate that on February 19, 2007, Henderson police officers were  
25 dispatched to 2101 W. Warm Springs #4322, reference a Robbery. While en-route  
26 Henderson dispatch advised that two black males had entered the victims' residence at 690  
27 Great Dane Court, pointed handguns at them, and forced one of the victims to drive to two  
28



1 different ATM's to get \$900.00.

2 Upon arriving at the apartment, Officer Slattery made contact with all of the victims.  
3 All of the victims were visibly shaking and Danielle Browning had tears in her eyes. Ryan  
4 Tognitti advised that he would be the person to relay what happened.

5 Ryan stated that he had been sitting in the living room of his house with Justin, Clint  
6 and Aitor. They had just turned on a movie when they heard a knock at the door, followed  
7 by the doorbell. Ryan stated that many friends come to his house at all hours of the day.  
8 Ryan further advised that he normally leaves the door unlocked and will tell people to "come  
9 in" when they knock. On this occasion Ryan said "come in" but nobody entered. Ryan went  
10 to the door, opened it and was met by two black males who stated that they wanted to talk to  
11 Grant. Ryan advised that there was no Grant at the house, and that there was no Grant that  
12 lived at the residence. The two black males then reached in front of their waste bands and  
13 pulled out hand guns and advised all of the subjects to get on the ground and keep their faces  
14 to the ground or they would be shot. The black males kept telling the victims that they  
15 needed to speak to Grant because he owed them money. All of the victims were advised to  
16 empty their pockets, which consisted of cell phones and wallets.

17 When asked if anyone else was in the residence, they all advised that Justin  
18 Richardson and his girlfriend were in their room which was located down the hall. The  
19 shorter black male went down the hall and got Justin and Danielle, brought them to the front  
20 room and made them get down on the living room floor with the others.

21 The black males demanded money. When it was learned that the victims only had  
22 twenty (20) dollars, the suspects indicated that wasn't good enough and asked for ATM  
23 cards. Only Ryan and Justin had ATM cards which were handed over. Ryan was told to get  
24 up and get his keys. After Ryan got his keys, the shorter black male told all of the victims on  
25 the ground that he was going to the ATM. The black male further stated, "If you guys fuck  
26 up, I am going to have my boy shoot you and then I am going to shoot your friend."  
27  
28

1 Ryan was escorted to his vehicle by the shorter black male and they drove to the  
2 Nevada State bank located at Siena Heights/Eastern. The cards would not work so he drove  
3 to the Wells Fargo at Eastern and St. Rose, where he withdrew five hundred (\$500.00)  
4 dollars out of Justin Foucault's account and four hundred (\$400.00) dollars out of his own  
5 account. Ryan drove back to the 690 Great Dane Court address. Ryan advised that the black  
6 male kept the gun to Ryan's hip at all times. Ryan further advised that neither black male  
7 was wearing gloves.

8 When they got back to the residence, Ryan was ordered back down onto the floor face  
9 first, at which time the black males started messing with Justin Richardson and Danielle  
10 Browning, in that that the black males made the two perform oral sex on each other. After  
11 approximately thirty minutes the black males stated they were going to leave and that  
12 everyone should wait two minutes to get up off the floor and retrieve their cell phones.  
13 Afterwards, they all packed their bags and went to Clint Tognotti's residence.

14 Clint Tognotti, Justin Foucault and Aitor Eskandon gave statements consistent with  
15 Ryan Tognotti's.

16 Justin Richardson also gave a statement and indicated that he and Danielle Browning  
17 had been asleep in his bedroom when he heard a few knocks on the door. A black male  
18 entered the room and pointed a gun at him and Danielle, and advised them to get up and put  
19 there hands on their head. They were advised to move out into the living room where the rest  
20 of his friends were face down on the floor. The black males kept asking where Grant was  
21 and stating that Grant owed them \$10,000 dollars reference drugs. Justin advised that he  
22 learned that there was a Grant who used to live at the residence because they sometimes  
23 received mail that was addressed to a "Grant." Justin advised that Ryan went to the ATM to  
24 get the two black males some money. While Ryan was away from the residence, the black  
25 male that stayed behind kept telling all of the people on the floor that they were 90% done.

26 When Ryan arrived back at the residence, Justin was told to roll over and Danielle  
27 was told to start sucking Justin's dick. The black males told Danielle that if she did not do it  
28

1 they were going to kill them all. Justin advised that he was so scared he could not get a hard  
2 on. While Justin was on his back a pillow was put over his face. The black males told Justin  
3 that if he did not get hard then they were going to kill him and make one of his friends have  
4 sex with Danielle. The black further advised that if none of them could get aroused then they  
5 would have sex with Danielle. The black male's forced Danielle into the 69 position with  
6 Justin, and told Justin to give Danielle oral sex. Justin was then forced back onto his face  
7 and one of the black males got close to Danielle.

8 Justin heard one of the black males ask, "Is that good as your boyfriends?" Justin  
9 advised that they made Danielle walk over to the staircase and he does not know what  
10 happened after that. The black male that seemed to be in charge went over to Justin and  
11 asked him for condoms. Justin walked to his bedroom with the black male following with  
12 his gun drawn. When Justin got to his bedroom the black male instructed him to stop, keep  
13 his hands above his head and not say anything. The black male put the gun against Justin's  
14 head and said "I'm going to fucking kill you." The black male then stated, "Nah, your ok,  
15 now get those condoms." Justin got two condoms and was escorted back to the living room  
16 floor, face first. Justin stated that the black male told him that he had just gotten out of jail  
17 and hitched a ride from New Mexico to find Grant. The black males advised all of the  
18 subjects again to wait two full minutes to look outside. All of the victims left the house and  
19 went to Clint's to call the police because the suspects told them if they called the police the  
20 suspects would come back and kill them all.

21 Danielle Browning stated that she had been sleeping with her boyfriend Justin  
22 Richardson in the back room of the residence. She advised that a black male walked into the  
23 room and pointed a gun at them and made them move to the living room floor, at which time  
24 Ryan was forced to go to the ATM to retrieve \$900.00. Danielle stated that while Ryan was  
25 gone the other black male stayed behind to make sure that they didn't move. Danielle  
26 advised that somehow the black males got all of their cell phones.

1 When Ryan arrived back at the residence, the bigger black male forced Danielle to  
2 give Justin oral sex. The black males put a pillow over Justin's head with a gun to it. The  
3 black males ordered Danielle to get completely naked and while she complied the other  
4 victims on the floor were instructed to keep their faces down or they would be killed. The  
5 black males told Danielle and Justin to have sex in front of everyone, but they were unable to  
6 because Ryan could not get hard. After Justin could not be aroused the black males told the  
7 other males to start getting hard because they were going to have sex with Danielle.  
8 Danielle was moved to the staircase where the thinner black male told her that he was hard  
9 and that he wanted to have sex with her. Danielle stated that she told him numerous times  
10 that she did not want to have sex with him and he stated, "I have a gun so I'm in charge."  
11 Danielle stated that the bigger black male made Justin go to his room and retrieve condom.  
12 The thinner male put a gun to her side and began touching her chest and kept asking her to  
13 give him a blow job, or have sex with him. Danielle kept telling him that she did not want to  
14 have sex with him. The black male told Danielle to spread her legs and put her legs directly  
15 up in the air. Danielle was shaking so badly she could not keep her legs up in the air.

16 The black male told Danielle if she didn't stop shaking he was going to shoot her.  
17 Danielle could not stop shaking so the black male grabbed her ankles and held her legs in the  
18 air. The black male began touching her all over and put one finger inside her vagina.  
19 Danielle was instructed to get her clothes on and lay down face first next to Justin  
20 Richardson.

21 Danielle said the black males told them that if they called the police they would have  
22 someone come back and kill all of them. The black males told all of the subjects not to  
23 move for a full two minutes before going outside to get their cell phones. Danielle advised  
24 that her cell phone was not there and was valued at approximately two hundred (\$200.00)  
25 dollars.

26 During Justin Foucault's statement to police he described suspect #1 as a black male  
27 adult, mid 20's, approximately 5'9", 180-200 lbs, stock build, wearing a black baseball cap,  
28

1 black shirt, black jeans and black tennis shoes. The suspect appeared to use a "Glock" 9mm  
2 semi-automatic handgun during the incident.

3 Suspect #2 was a black male adult, approximately 6', 160-170 lbs, skinny, wearing a  
4 black baseball cap, black T-shirt, and black pants. Suspect #2 used an unknown type of  
5 handgun. During the incident Jason heard suspect #1 call suspect #2 Marcus.

6 Detectives located the owner information for the residence at 690 Great Dane and  
7 contacted Victor Michalak in an attempt to learn if a Grant lived at the residence prior to the  
8 current victims. Mr. Michalak stated that he had rented the residence to a Brandon who  
9 worked at Country Insurance in Henderson. Brandon had three roommates and he knew one  
10 of them to be a Grant. Employment records showed that Brandon's last name was Preston  
11 and a telephone number was provided. Brandon was contacted by telephone and stated he  
12 was located at Desert Buick on West Sahara. Brandon agreed to meet with Detective  
13 Weske. Brandon told Detective Weske that Grant Hieb lived with him at 690 Great Dane  
14 and currently lives with him at 225 S. Stephanie Street #1023. Brandon stated that he did  
15 not know if Grant sold marijuana, or knew anyone that would want to rob Grant. Brandon  
16 did state that Grant had a couple black friends from Colorado. Brandon stated that Grant  
17 drove a green Toyota Camry.

18 HPD Detectives Hartshorn and Weske went to Brandon and Grant's residence in an  
19 attempt to contact Grant. Upon arrival they observed Grant's Toyota Camry. Detectives  
20 knocked on the door for several minutes and threw small rocks at the windows but nobody  
21 answered the door. Detectives contacted Brandon who said that Grant should have answered  
22 the door. Brandon attempted to call Grant and then called back and told Detectives that  
23 Grant did not answer. Detective Weske explained that due to the fact two armed black males  
24 had gone to 690 Great Dane and were looking for Grant, he was concerned for Grant's  
25 safety. Brandon stated that he was also concerned and could not get home for a couple  
26 hours. Brandon gave the detectives permission to check inside the residence to make sure  
27 Grant was okay. Detective Weske went to the manager's office who responded to Grant and  
28



1 Brandon's apartment with the key.

2       Upon opening Grant and Brandon's front door Detective Weske loudly announced  
3 "Henderson Police" several times. In addition a strong odor of burnt marijuana emanated  
4 from inside the apartment. Detective Weske called for Grant who answered "yes." Detective  
5 Weske asked if he was okay and Grant stated "yeah." Grant came out of the room and  
6 indicated that he had been sleeping and did not hear them banging on the door or yelling  
7 "Henderson Police". It was explained what had happened at his old residence and Grant  
8 agreed to go to the Henderson Police Department and assist in the investigation.

9       During the drive to the police department Grant told Detective Weske that  
10 approximately a year prior, he was robbed at his house by a friend named Delarian Wilson.  
11 Grant staid he knew Wilson from the gym he worked out at. In addition, Grant would sell  
12 Wilson small amounts of marijuana occasionally. Grant described how he had pulled into  
13 his garage and Wilson had snuck into his house wearing a ski mask. Grant was immediately  
14 able to recognize Wilson when he pulled out a gun and went directly to Grant's room.  
15 Wilson took approximately \$10,000 in cash and a small amount of marijuana. Grant asked  
16 Wilson why he was doing this as Wilson left the residence with the mask off; however,  
17 Wilson would not look at Grant. Grant did not contact the police because he did not want to  
18 create a scene and knew he would be in trouble for selling marijuana. Grant stated that  
19 Wilson moved to Colorado where he had joined the Adam's State College Football Team.  
20 Wilson did not know that Grant had moved and Wilson is the only person that Grant knew  
21 that would do something like the facts of the instant crime. Grant stated that he had not  
22 personally spoke to Wilson, but a friend called him and left him a message that Wilson was  
23 back in town.

24       Grant was shown a photograph of Wilson and identified it. A photo line-up was  
25 created using Wilson's 2005 booking photo and was shown to the victims in this case. The  
26 majority of the victims stated that Wilson was similar to the first suspect in that he was stout  
27 and wearing a black shirt with the letter "A" on it, a black baseball hat, dark jeans and dark  
28

1 colored athletic shoes.

2 A records check of the Circus Circus Hotel Casino revealed that Defendant WILSON  
3 was registered with four other subjects to room number 8744. A search warrant was  
4 prepared for the hotel room and Defendant WILSON was detained by two other detectives  
5 while playing cards at a black jack table.

6 Detectives Hartsorn and Weske responded to the security office of the Circus Circus  
7 where Defendant WILSON was advised of his Miranda Warnings, which he said he  
8 understood. WILSON admitted going to 690 Great Dane with the intention of robbing Grant  
9 of his money and marijuana. WILSON said he was with his friend whom he knows only as  
10 Narcus. WILSON stated that that they drove to Grant's residence in Narcus's white 300M  
11 Chrysler. WILSON said they knocked on the door and Narcus pointed a gun at the  
12 occupants and put them on the floor. WILSON admitted that he rode in the passenger seat of  
13 Ryan's vehicle while Ryan collected the money from the ATM. WILSON stated that Narcus  
14 stayed at the residence with the remaining victims. WILSON stated that when he got back,  
15 Narcus got crazy and tried to make Justin Richardson have sex with Danielle Browning and  
16 when they could not, Narcus started touching Danielle Browning.

17 WILSON told Narcus to stop and they left. WILSON said he went to what he  
18 thought was Grant's residence with the intention to rob Grant. WILSON stated that he has a  
19 gambling problem. Wilson said even after he realized Grant did not live at the Great Dane  
20 address, all he could think about was the fact that he arrived in Las Vegas on Friday and had  
21 lost \$1,200.00 and needed more money.

22 On January 20, 2007, a records check of the UNLV football roster showed a player  
23 named Narcus WESLEY. Police contacted Nevada Power and spoke to Investigator Donna  
24 Lamont. Using WESLEY'S date of birth and Social Security Number, HPD prepared an  
25 administrative subpoena for records reference Narcus WESLEY. While on the telephone  
26 with Investigator Lamont, Detective Weske asked Ms. Lamont if the power at 2372 Valley  
27 Drive in Las Vegas was in Narcus WESLEY'S name due to the fact DMV listed that  
28

1 location as his address as of October 3, 2006. WESLEY also listed 2372 Valley Drive as his  
2 address for UNLV. Ms. Lamont stated that WESLEY no longer had power at 2372 Valley  
3 drive and that it had been turned off on November 1, 2006, and turned on at 4232 Gaye  
4 Lane. Ms. Lamont stated that she would send the information via fax.

5 **Detective Hartshorn and Weske immediately went to 4232 Gaye Lane and**  
6 **observed the white 2005 Chrysler 300M registered to WESLEY parked in the driveway**  
7 **of 4232 Gaye Lane.** Detective Weske showed a photograph of WESLEY to WILSON, and  
8 WILSON confirmed that WESLEY was with him during the commission of the crimes in  
9 this case. **WILSON was asked if he knew where WESLEY lived and WESLEY stated**  
10 **that WILSON lived with his parents somewhere on the west side of town.**

11 On February 20, 2007, a Search Warrant was obtained for 4232 Gaye Lane. Upon  
12 S.W.A.T. serving the search warrant, Detective Weske interviewed Narcus WESLEY, after  
13 he was advised of his Miranda Warning, which he said he understood. Detective Hartshorn  
14 witnessed the interview.

15 WESLEY stated that WILSON had asked him to go with him to get some marijuana.  
16 WILSON asked WESLEY if he knew where WILSON could get some money and when  
17 WESLEY said he did not, WILSON asked WESLEY to meet him at a gas station in  
18 Henderson. After meeting WILSON, they drove to an unknown neighborhood in  
19 WILSON'S rental vehicle<sup>1</sup>. Once they were at the residence WILSON told WESLEY to  
20 knock on the door and then get out of the way, which he did. WESLEY said he did not have  
21 a gun but simulated having one by having his hand under his shirt. WESLEY said when  
22 WILSON realized it was not Grant's house he apologized but decided he needed money  
23

24 <sup>1</sup> The vehicle driven by WILSON was later identified as having been rented by a Tricia Vincenty who was in Las Vegas  
25 for the NBA All Star game. Tricia met WILSON over the weekend through her cousin and did not know him  
26 personally. Tricia let Wilson use the car while in Las Vegas but was not aware WILSON had the car for two days and  
27 thought it had been parked at the hotel. Tricia stated that she had no personal items in the car except the rental  
28 agreement and gave permission for the car to be searched. The vehicle was searched and the following items were  
located: 1-Black wallet containing miscellaneous credit cards in the name of Delarian Wilson; 1-Colorado DL in the  
name of Delarian Wilson; 3) 1-Kodak digital camera; 1-package of 1" x 1" zip lock baggies; 1-plastic baggie  
containing 15 grams of marijuana, and 2-Global cash receipts in the name of Delarian Wilson. The items were  
impounded into HPD Evidence and the vehicle was released to Tricia Vincenty via HPD 42.

1 anyways.

2 WILSON asked people for the money and then took one of the male victims to the  
3 bank to withdraw money. WESLEY state that when WILSON came back he stated that they  
4 were 90% done. WILSON told Danielle Browning to have sex with Justin Richardson and  
5 instructed them to perform oral sex with each other. WESLEY stated that Danielle's butt  
6 looked good so he asked her if he could touch it while she was kissing on Justin and she said  
7 "yes" so WESLEY touched her bare butt. WESLEY stated that when Justin could not  
8 perform WILSON asked if anyone could get hard and WESLEY did not want to seem like a  
9 punk and said he could. WESLEY stated that he did rub the top of Danielle's vagina after  
10 asking her if it was okay. WESLEY stated that Danielle did not seem like she enjoyed it.  
11 WESLEY stated that Danielle's vagina was shaved.

12 WESLEY stated that the only person who could identify him was the person who  
13 answered the door because the other victims had their faces in the carpet. WESLEY stated  
14 that Danielle had her eyes closed when he touched her vagina. WESLEY stated that he  
15 received \$260.00 from WILSON and spent the money because he was short on money right  
16 now.

17 During the search of WESLEY'S room he pointed out the shoes and the pants he was  
18 wearing. He told police the hat and doo-rag he was wearing was in the car, which was later  
19 located. Police also located a SKS rifle in the garage of the residence and \$95.00 cash.  
20 WESLEY stated that he took a condom from the victims' house but later threw it out. The  
21 jeans, shoes, \$95.00 cash, white head rag, jock shop receipt, SKS rifle, and a State Farm bill  
22 showing NARCUS WESLEY'S residence at 4232 Gaye Lane was seized.

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1 The United States Supreme Court has stated:

2 The warrant traditionally has represented an independent  
3 assurance that a search and arrest will not proceed without  
4 probable cause to believe that a crime has been committed and  
5 that the person or place named in the warrant is involved in the  
6 crime. Thus, an issuing magistrate must meet two tests. He must  
7 be neutral and detached, and he must be capable of determining  
8 whether probable cause exists for the requested arrest or search.  
9 This Court long has insisted that inferences of probable cause be  
10 drawn by 'a neutral and detached magistrate instead of being  
11 judged by the officer engaged in the often competitive enterprise  
12 of ferreting out crime.' Shadwick v. City of Tampa, 407 U.S.  
13 345, 350, 92 S.Ct. 2119, 2122, 32 L.Ed.2d 783 (1972), *quoting*  
14 Johnson v. United States, 333 U.S. 10, 14, 68 S.Ct. 367, 369, 92  
15 L.Ed. 436 (1948). United States v. Ross, 456 U.S. 798, 827, 102  
16 S.Ct. 2157, 2174 (1982).

17 When a neutral magistrate makes a probable cause determination, the magistrate  
18 "may draw reasonable inferences from the material he receives, and his ultimate probable  
19 cause decision should be paid great deference by reviewing courts." United States v. May,  
20 819 F.2d 531, 535 (5th Cir.1987). Additionally, a magistrate is entitled to rely on the  
21 experience of the officers presenting the search warrant. The Ninth Circuit Court of Appeals  
22 states:

23 It is also clearly established that 'in weighing the evidence  
24 supporting a request for a search warrant, a magistrate may rely  
25 on the conclusions of experienced law enforcement officers  
26 regarding where evidence of a crime is likely to be found.'  
27 United States v. Ayers, 924 F.2d 1468, 1479 (9th Cir. 1991)  
28 (citation omitted).

29 The Ninth Circuit has long recognized that knowledge that evidence is at a particular  
30 location is not essential to establish the probable cause to search the location. In United  
31 States v. Fannin, 817 F.2d 1379 (9th Cir. 1987) that court held:

32 A magistrate is entitled to draw reasonable inferences about  
33 where evidence is likely to be kept, based on the nature of the  
34 evidence and the type offense. The magistrate need not  
35 determine that the evidence sought is in fact on the premises to  
36 be searched ... or that the evidence is more likely than not to be

1 found where the search takes place ... the magistrate need only  
2 conclude that it would be reasonable to seek the evidence in the  
place indicated in the affidavit.

3 In U.S. v. Rettig, 589 F.2d 418 (9th Cir.1979), the Ninth Circuit Court held:

4 Where factual inaccuracy of the affidavit is alleged, a warrant is  
5 invalidated only if it is established that the affiant was guilty of  
6 deliberate falsehood or reckless disregard for the truth, and if  
7 with the affidavit's false material set to one side, the information  
8 remaining in the affidavit is inadequate to support probable  
cause. *Id.* at 422. (Citing Franks v. Delaware, 438 U.S. 154, 98 S.  
Ct 2674 (1978))

9 The Court in Rettig, *supra*, went on to state: "to determine whether or not a search is  
10 confined to its lawful scope, it is proper to consider both the purpose disclosed in the  
11 application for a warrant's issuance and the manner of its execution." *Id.* at 423.

12 In determining whether there is probable cause to issue a warrant, a magistrate looks  
13 to the "totality of the circumstances" set forth in the affidavit. Illinois v. Gates, *supra*. The  
14 "totality of the circumstances" in the instant case clearly support the magistrate's finding of  
15 probable cause to search Defendant's residence.

16 In the case at bar, the probable cause portion of the Application and Affidavit in  
17 Support for Search Warrant suggests that after speaking to Co-Defendant WILSON, police  
18 learned that a suspect named "Narcus" was with WILSON when the crimes occurred.  
19 WILSON did not have a last name for police but mentioned that "Narcus" was an ex-football  
20 teammate, lived on the West side with his parents, and drove a white Chrysler sedan, which  
21 they used to drive to the crime scene in this case.

22 Thereafter, a records check of the UNLV football roster showed a player named  
23 Narcus Wesley. A further records check showed WESLEY'S date of birth as 10-03-82 and  
24 his social security number ending in 8230.

25 Based upon that information HPD prepared an administrative subpoena for Nevada  
26 Power records reference Narcus WESLEY. While on the telephone with Investigator  
27 Lamont from Nevada Power, Detective Weske asked Ms. Lamont if the power at 2372

1 Valley Drive in Las Vegas was in Narcus WESLEY'S name due to the fact DMV listed that  
2 location as his address as of October 3, 2006. WESLEY also listed 2372 Valley Drive as his  
3 address for UNLV. Ms. Lamont stated that WESLEY no longer had power at 2372 Valley  
4 drive and that it had been turned off on November 1, 2006, and turned on at 4232 Gaye  
5 Lane, under his name. Ms. Lamont stated that she would send the information via fax.

6 In the subsequent fax that was sent to Detective Weske from Nevada Power, a  
7 notation made at the bottom of the records indicates that the Individuals first name is  
8 different from the Detective's request. Furthermore, the social security on the Administrative  
9 request is that of Narviez Wesley, Narcus' father, which ends in 3280.

10 What is clear about the Nevada Power records is that WESLEY'S DMV and UNLV  
11 records list [Narcus] WESLEY's address as 2372 Valley Drive, as of October 3, 2006; that  
12 the power was shut off at that location and established at the 4232 Gaye Lane address on all  
13 on the same day, on November 1, 2006. Donna Lamont from Nevada Power established  
14 these facts with Detective Weske telephonically. It seems probable that at the time the  
15 information was being requested Detective Wesley gave Ms. Lamont the name of Narcus  
16 Wesley and the prior address, at which time Ms. Lamont came back with the verbal  
17 information noting a different social security number on the account. The police report itself  
18 seems to suggest the same.

19 While it is true that the records sent by Nevada Power show Narviez Wesley as the  
20 customer, the Detective certainly was requesting information on Narcus Wesley. The  
21 circumstances appear to indicate that there was simply a miscommunication between  
22 Detective Weske and Donna Lamont with regard to first name on the account, which are  
23 similar, while the last name, address and connection dates were correct both verbally and in  
24 the faxed copy of the records.

25 Upon obtaining the information from Nevada Power, **Detective Hartshorn and**  
26 **Weske immediately went to 4232 Gaye Lane and observed the white 2005 Chrysler**  
27 **300M registered to WESLEY parked in the driveway of 4232 Gaye Lane.** Detective  
28

1 Weske also showed a photograph of WESLEY to WILSON, and WILSON confirmed that  
2 WESLEY was with him during the commission of the crimes in this case. WILSON was  
3 asked if he knew where WESLEY lived and WESLEY stated that **WILSON lived with his**  
4 **parents** somewhere on the west side of town.

5 In this case the manner in which the officers conducted the search was entirely  
6 consistent with seeking evidence relating to the offenses being investigated. There is no  
7 evidence of overreaching or falsity.

8 **II. EVEN IF THE SEARCH WARRANT WAS NOT VALID ON ITS FACE, THE**  
9 **GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE PROHIBITS**  
10 **THE EXCLUSION OF THE EVIDENCE WHERE THE OFFICERS ACTED**  
11 **IN OBJECTIVE GOOD FAITH RELIANCE ON THE SEARCH WARRANT.**

12 In 1984, 23 years after the United States Supreme Court announced its decision in  
13 Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684 (1961), it handed down its decisions in United  
14 States v. Leon, 468 U.S. 897, 104 S.Ct. 3405 (1984) and Massachusetts v. Sheppard, 468  
15 U.S. 981, 104 S.Ct. 3434 (1984). These decisions stand for the proposition that even if a  
16 search warrant is defective, so long as the affiant acted in good faith and the magistrate  
17 reviewing and signing the warrant was neutral and detached, then despite an error of  
18 constitutional dimensions, evidence will not be excluded. The most beneficial and lasting  
19 effect of these decisions on the law enforcement community is that they have absolutely  
20 encouraged the use of search warrants which furthers the ultimate aim of the Fourth  
21 Amendment by placing a judge between the police and the citizen being searched. The basic  
22 rule from Leon and Sheppard, *supra*, is that even if the search warrant is lacking in probable  
23 cause, the good faith exception will save the evidence from suppression if the officers acted  
24 in objective good faith reliance and within the scope of the warrant. A defect in the warrant  
no longer mandates exclusion of evidence on Fourth Amendment grounds.

25 It is important to note that in both Leon and Sheppard, *supra*, there was insufficient  
26 probable cause to support the search and seizure of the evidence sought to be suppressed.  
27 Nevertheless, in both instances, the United States Supreme Court specifically held that the  
28

1 exclusionary rule would not be applied.

2 The Nevada Supreme Court and the United States Supreme Court recognize that the  
3 "issue of exclusion is separate from the question of whether the Fourth Amendment has been  
4 violated, and that exclusion is only appropriate where the remedial objectives of the  
5 exclusionary rule are served." Powell v. State, 113 Nev. 41, 930 P.2d 1123, 1125 (1997),  
6 Arizona v. Evans, 514 U.S. 1, 115 S.Ct. 1185, 1192 93, 131 L.Ed.2d 34 (1995).

7 Our Nevada Supreme Court has concluded:

8 United States v. Leon held that evidence obtained by officers  
9 acting in reasonable reliance on a search warrant issued by a  
10 neutral judge or magistrate that is ultimately found to be invalid  
11 for want of probable cause is admissible in the prosecution's case  
12 in chief. The court concluded that where law enforcement  
13 officers act in objective good faith reliance within the scope of a  
14 warrant obtained from a judge or magistrate, exclusion of  
evidence does not serve the purpose of deterring law  
enforcement officers when the warrant is subsequently found  
legally devoid of probable cause.

15 Point v. State, 102 Nev. 143, 149, 717 P.2d 38, 42 (1986).

16 The exclusionary rule cannot be invoked in this case without a Leon objective good  
17 faith reliance analysis. Point v. State, 102 Nev. 143, 149, 717 P.2d 38, 42 (1986), Powell v.  
18 State, 113 Nev. 41, 930 P.2d 1123, 1125 (1997), United States v. Leon, 468 U.S. 897, 104  
19 S.Ct. 3405 (1984).

20 The court must uphold the search warrant if the officers acted in objective good faith  
21 reliance. If for some reason, it is decided that the Search Warrant was not valid, it should be  
22 saved anyway due to the fact that officers executed the warrant acting in a good faith  
23 reliance that the warrant was in fact valid.

24 In U.S. v. Leon, 468 US 897 (1984), the United States Supreme Court held that, "[a]  
25 police officer's reliance on the magistrate's probable-cause determination and on the  
26 technical sufficiency of the warrant he issues must be objectively reasonable." Id. at 898.  
27 Leon goes on to hold that suppression is appropriate only if (1) the magistrate was misled  
28



1 by information the affiant knew to be false or would have known to be false except for his  
2 reckless disregard for the truth, (2) the issuing magistrate wholly abandoned his detached  
3 and neutral role, or (3) the executing officer could not have possibly manifested a good faith  
4 reliance on a "warrant based on an affidavit so lacking in indicia of probable cause as to  
5 render official belief in its existence entirely unreasonable." 468 U.S. at 899.

6 **III. THE DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING**  
7 **TO ATTACK THE VERACITY OF THE SEARCH WARRANT APPLICANT.**

8 In Leon, the United States Supreme Court recognized that a search warrant can still  
9 be attacked as in Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674 (1978). In Franks, the  
10 Court held that:

11 (a) To mandate an evidentiary hearing, the challenger's attack  
12 must be more than conclusory and must be supported by more  
13 than a mere desire to cross-examine. The allegation of deliberate  
14 falsehood or of reckless disregard must point out specifically  
15 with supporting reasons the portion of the warrant affidavit that  
16 is claimed to be false. It also must be accompanied by an offer of  
proof, including affidavits or sworn or otherwise reliable  
statements of witnesses, or a satisfactory explanation of their  
absence.

17 (b) If these requirements as to allegations and offer of proof are  
18 met, and, if when material that is the subject of the alleged falsity  
19 or reckless disregard is set to one side, there remains sufficient  
20 content in the warrant affidavit to support a finding of probable  
cause, no hearing is required, but if the remaining content is  
insufficient, the defendant is entitled under the Fourth and  
Fourteenth Amendments to a hearing.

21 (c) If, after a hearing, a defendant establishes by a preponderance  
22 of the evidence that the false statement was included in the  
23 affidavit by the affiant knowingly and intentionally, or with  
24 reckless disregard for the truth, and the false statement was  
25 necessary to defining of probable cause, then the search warrant  
26 must be voided and the fruits of the search excluded from the  
27 trial to the same extent as if probable cause was lacking on the  
28 face of the affidavit.

1 Franks v. Delaware, 98 S.Ct. at 2676.

2 The prerequisites for the Defendant to successfully obtain the suppression of evidence  
3 based upon a claim of a falsehood within the warrant application are very clear. The first of  
4 those prerequisites is that the attack be more than conclusory and must be accompanied by  
5 an offer of proof including affidavits. That requirement was recognized by the Nevada  
6 Supreme Court in the case of Garrettson v. State, 114 Nev. 1064, 967 P.2d 428 (1998),  
7 wherein the Court upheld the denial of a request for a Franks hearing due to an insufficient  
8 showing having been made to justify conducting the hearing. Here, Defendant has not made  
9 a sufficient offer of proof justifying an evidentiary hearing. No proffer has been made, nor  
10 have any affidavits been presented. Rather, Defendant has presented mere conclusions that  
11 the warrant application contains falsehoods. Therefore, this Court must deny Defendant's  
12 request for a Franks hearing.

13 In this case, WESLEY asserts that Detective Weske falsely represented that  
14 WESLEY had power in his name at 4232 Gaye Avenue. Furthermore, WESLEY's motion  
15 suggests that because the subpoena return from Nevada Power clearly stated that "Narcus"  
16 Wesley did not have power in his name but "Narviez" Wesley did, Detective Weske  
17 intentionally omitted the information from the search warrant application.

18 It is the State's position that Detective Weske did not intentionally misrepresent any  
19 facts concerning the investigation and was honest in stating his belief that "Narcus" Wesley  
20 had utilities in his name at 4232 Gaye Lane. This fact is made abundantly clear by the police  
21 report entry which states the following:

22 On 1-21-07, a recorded phone conversation between Narcus and  
23 Narviez was listened to. Narcus admitted to his mother and  
24 father what he and Wilson had done. (It should be noted that  
25 there is a phone conversation between Wilson and his mother  
26 where he also admits to everything he has done). Narviez told  
27 Narcus not to worry because the Nevada Power records were  
28 wrong and the records show Narviez as the customer. I then  
looked for the return fax, which I found. I observed it to state at  
the bottom "\*\*Please Note: Individuals first name is different

1 from your request."

2 The faxed copy of the record shows Narviez Wesley as the  
3 customer, however, the records show power was discontinued  
4 from Narcus's old address of 2372 Valley Drive on 11/01/06 and  
5 reconnected on the 11/01/06 at the 4232 Gaye Lane, both having  
6 Narviez as the customer. Due to the fact the first name of  
7 Narviez and Narcus were similar and the last names were the  
8 same I believe the first names were miss communicated verbally,  
9 however the address's and the connection dates were correct both  
10 verbally and in the faxed copy of the records. It should also be  
11 noted that on the probable cause of the search warrant there is a  
12 typo on the date of the crime. The warrant reads on 2/18/07 at  
13 0125 hours, Officers responded to the location of the victims. It  
14 should read on 2/19/07 at 0125 hours, Officers responded.

15 Clearly, Detective Weske did not knowingly and intentionally engage in making a  
16 false statement regarding Narcus WESLEY having utilities in his name at the Gaye address.  
17 Furthermore, even if WESLEY could somehow prove the information regarding the utilities  
18 included in the affidavit was a false statement given by the affiant knowingly and  
19 intentionally, or with reckless disregard for the truth, WESLEY could not meet the second  
20 prong of the Franks analysis which requires that the false statement was necessary to  
21 defining of probable cause.

22 For the sake of argument this Court can apply the second part of the Franks analysis  
23 and disregard all reference to utilities in Narcus Wesley's name at the 4232 Gaye Lane  
24 address. If that information is disregarded, sufficient probable cause remains within the  
25 application since the warrant application still sets-forth all of the information concerning the  
26 officers observations of WESLEY'S vehicle being parked in front of the Gayle residence on  
27 the day the warrant application was drafted, along with the information he received from  
28 WILSON which indicated that an ex-football buddy named "Narcus" participated in the  
commission of the crimes with him, drove him to the crimes in the vehicle that was parked in  
front of the Gayle residence and specifically identified a photograph of Narcus WESLEY as  
the individual who engaged in committing the crimes with him, which was all obtained on

1 the day the warrant application was drafted.

2 **IV. THE EVIDENCE WAS NOT DERIVED FROM UNLAWFUL SEIZURE**  
3 **AND MUST NOT BE SUPPRESSED AS TAINTED FRUIT OF A FOURTH**  
4 **AMENDMENT VIOLATION**

5 WESLEY argues that under the doctrine of Wong Sun v. United States, 371 U.S. 471,  
6 83 S.Ct. 407 (1963), his confession should not be admitted against him because it is the  
7 "fruits of the poisonous tree." This argument lacks merit because the original evidence was  
8 lawfully obtained, therefore, the confession which stems from this evidence may lawfully be  
9 admitted. Additionally, WESLEY was advised his rights pursuant to Miranda v. Arizona,  
10 and the defendant indicated that he understood these rights before admitting his part in the  
11 crimes charged. As such the evidence and statements must not be suppressed.

12 **CONCLUSION**

13 Based on the above, the State respectfully requests this Honorable Court deny  
14 Defendants Motion to Suppress Fruits of Illegal Search.

15 DATED this 24th day of March, 2008.

16 Respectfully submitted,

17 DAVID ROGER  
18 Clark County District Attorney  
19 Nevada Bar #002781

20 BY /s//LISA LUZAICH  
21 LISA LUZAICH  
22 Chief Deputy District Attorney  
23 Nevada Bar #005056  
24  
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CERTIFICATE OF FACSIMILE

I further hereby certify service of the above and foregoing Opposition to Defendant WESLEY'S Motion to Suppress Fruits of Illegal Search, was made this 24th day of March, 2008, via facsimile transmission to:

CASEY A. LANDIS, DPD  
Fax # 366-9370  
Counsel for Defendant WESLEY

and

JAMES A. ORONoz, ESQ.  
Fax # 474-1320  
Counsel for Defendant WILSON

BY Shellic Warner  
Secretary for the District Attorney's Office

sms/SVU



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

ORIGINAL

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FILED

2008 MAR 25 P 2:56

DISTRICT COURT  
CLARK COUNTY, NEVADA

CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

v.

NARCUS SAMONE WESLEY,  
Defendant.

CASE NO. C232494B

DEPT. NO. XXIV

DATE: March 27, 2008  
TIME: 8:30 a.m.

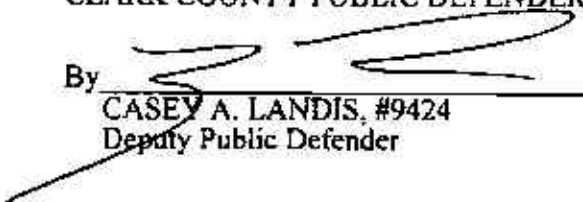
MOTION TO CONTINUE TRIAL

COMES NOW, the Defendant, NARCUS SAMONE WESLEY, by and through  
CASEY A. LANDIS, Deputy Public Defender and hereby request a continuance of the trial  
currently scheduled to commence on March 31, 2008.

This Motion is made and based upon all the papers and pleadings on file herein, the  
attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

DATED this 25<sup>th</sup> day of March, 2008.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By   
CASEY A. LANDIS, #9424  
Deputy Public Defender

CMC

RECEIVED

MAR 26 2008

CLERK OF THE COURT

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DECLARATION

CASEY A. LANDIS makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and the Defendant has represented the following facts and circumstances of this case.

2. That Wesley is charged with a number of counts that carry possible life sentences. Trial is currently set to begin on March 31, 2008. Wesley is currently out of custody. Conversely, Codefendant Wilson remains in custody.

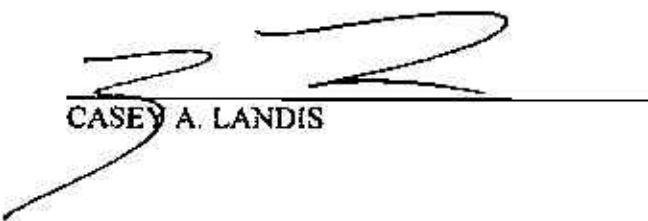
3. That Wesley filed a motion to sever codefendants on March 6, 2008. Based on a number of unforeseen circumstances, it was not until March 25, 2008, that Wesley learned that the cases would in fact be severed. This reality drastically alters the dynamics of Wesley's trial. Counsel's approach to both examining the State's witnesses and the possible witnesses the defense may call must be reexamined based on the severance.

4. That Wesley filed a motion to suppress the fruits of an illegal search on March 11, 2008. Again based on unforeseen events, that motion is yet to be decided by this Court. As articulated in that motion, an evidentiary hearing must be held before that motion is decided by this Court. This Court's ruling on that motion will also have a significant impact on Wesley's trial strategy. Counsel submits that a ruling on the eve of trial will not allow adequate time to react.

5. That based on the gravity of these charges, the fact that codefendant Wilson is in custody, and would therefore take priority, and the lingering legal issues still pending, Wesley brings this Motion requesting a brief continuance of his trial.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 25<sup>th</sup> day of March, 2008.

  
CASEY A. LANDIS

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**NOTICE OF MOTION**

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 25th day of March, 2008, at 8:30 a.m..

DATED this 25<sup>th</sup> day of March, 2008.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By 

CASEY A. LANDIS, #9424  
Deputy Public Defender

**RECEIPT OF COPY**

RECEIPT OF COPY of the above and foregoing Motion to Continue Trial is hereby acknowledged this 25 day of March, 2008.

CLARK COUNTY DISTRICT ATTORNEY

By 

000481

ORIGINAL

1 GMEM  
2 DAVID ROGER  
3 DISTRICT ATTORNEY  
4 Nevada Bar #002781  
5 LISA LUZAICH  
6 Chief Deputy District Attorney  
7 Nevada Bar #005056  
8 200 Lewis Avenue  
9 Las Vegas, NV 89155-2212  
10 (702)671-2500  
11 Attorney for Plaintiff

FILED IN OPEN COURT

MAR 28 2008 20

CHARLES J. SHORT  
CLERK OF THE COURT

BY

*Nora Pena*  
NORA PENADEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DELARIAN KAMERON WILSON,  
#1966773

Defendant.

CASE NO: C232494  
DEPT NO: XXIV

GUILTY PLEA AGREEMENT

I hereby agree to plead guilty to: ROBBERY WITH USE OF A DEADLY WEAPON  
(Felony - NRS 200.380, 193.165) and SEXUAL ASSAULT (Felony - NRS 200.364,  
200.366), as more fully alleged in the charging document attached hereto as Exhibit "1".

My decision to plead guilty is based upon the plea agreement in this case which is as  
follows:

The State has agreed to retain the right to argue at sentencing.

CONSEQUENCES OF THE PLEA

I understand that by pleading guilty I admit the facts which support all the elements of  
the offense(s) to which I now plead as set forth in Exhibit "1".

As to Counts 1 & 2 - I understand that as a consequence of my plea of guilty the  
Court must sentence me to imprisonment in the Nevada Department of Corrections for a  
minimum term of not less than two (2) years and a maximum term of not more than fifteen  
(15) years, plus an equal and consecutive minimum term of not less than two (2) years and a

000482

1 maximum term of not more than fifteen (15) years for the use of a deadly weapon. The  
2 minimum term of imprisonment may not exceed forty percent (40%) of the maximum term  
3 of imprisonment.

4 As to Count 3 - I understand that as a consequence of my plea of guilty the Court  
5 must sentencing to life in the Nevada Department of Prison with the possibility of parole  
6 with parole eligibility beginning at ten (10) years or definite term of twenty-five (25) years  
7 with parole eligibility beginning at ten (10) years.

8 I understand that the law requires me to pay an Administrative Assessment Fee.

9 I understand that, if appropriate, I will be ordered to make restitution to the victim of  
10 the offense(s) to which I am pleading guilty and to the victim of any related offense which is  
11 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to  
12 reimburse the State of Nevada for any expenses related to my extradition, if any.

13 I understand that I am not eligible for probation for the offenses to which I am  
14 pleading guilty.

15 Further, that before I am eligible for parole a panel consisting of the administrator of  
16 the mental health and developmental services of the department of human resources or his  
17 designee; the director of the department of corrections or his designee; and a psychologist  
18 license to practice in this state or a psychiatrist license to practice medicine in this state  
19 certifies that I was under observation while confined in an institution of the department of  
20 corrections that I do not represent a high risk to reoffend based upon a currently accepted  
21 standard of assessment.

22 I further understand that the Court will include as part of my sentence, in addition to  
23 any other penalties provided by law, lifetime supervision commencing after any period of  
24 probation or any term of imprisonment and period of release upon parole; said special  
25 sentence of lifetime supervision must begin upon release from incarceration.

26 I further understand that the Court will include as part of my sentence, in addition to  
27 any other penalties provided by law, pursuant to NRS 179D.450, I must register as a sex  
28 offender within 48 hours of release from custody.



1 I also understand that I must submit to blood and/or saliva tests under the Direction of  
2 the Division of Parole and Probation to determine genetic markers and/or secretor status.

3 I understand that if more than one sentence of imprisonment is imposed and I am  
4 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order  
5 the sentences served concurrently or consecutively.

6 I also understand that information regarding charges not filed, dismissed charges, or  
7 charges to be dismissed pursuant to this agreement may be considered by the judge at  
8 sentencing.

9 I have not been promised or guaranteed any particular sentence by anyone. I know  
10 that my sentence is to be determined by the Court within the limits prescribed by statute.

11 I understand that if my attorney or the State of Nevada or both recommend any  
12 specific punishment to the Court, the Court is not obligated to accept the recommendation.

13 I understand that if the State of Nevada has agreed to recommend or stipulate a  
14 particular sentence or has agreed not to present argument regarding the sentence, or agreed  
15 not to oppose a particular sentence, such agreement is contingent upon my appearance in  
16 court on the initial sentencing date (and any subsequent dates if the sentencing is continued).  
17 I understand that if I fail to appear for the scheduled sentencing date or I commit a new  
18 criminal offense prior to sentencing the State of Nevada would regain the full right to argue  
19 for any lawful sentence.

20 I understand if the offense(s) to which I am pleading guilty to was committed while I  
21 was incarcerated on another charge or while I was on probation or parole that I am not  
22 eligible for credit for time served toward the instant offense(s).

23 I understand that as a consequence of my plea of guilty, if I am not a citizen of the  
24 United States, I may, in addition to other consequences provided for by federal law, be  
25 removed, deported, excluded from entry into the United States or denied naturalization.

26 I understand that the Division of Parole and Probation will prepare a report for the  
27 sentencing judge prior to sentencing. This report will include matters relevant to the issue of  
28 sentencing, including my criminal history. This report may contain hearsay information

1 regarding my background and criminal history. My attorney and I will each have the  
2 opportunity to comment on the information contained in the report at the time of sentencing.  
3 Unless the District Attorney has specifically agreed otherwise, then the District Attorney  
4 may also comment on this report.

#### 5 WAIVER OF RIGHTS

6 By entering my plea of guilty, I understand that I am waiving and forever giving up  
7 the following rights and privileges:

8 1. The constitutional privilege against self-incrimination, including the right to refuse  
9 to testify at trial, in which event the prosecution would not be allowed to comment to the  
10 jury about my refusal to testify.

11 2. The constitutional right to a speedy and public trial by an impartial jury, free of  
12 excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the  
13 assistance of an attorney, either appointed or retained. At trial the State would bear the  
14 burden of proving beyond a reasonable doubt each element of the offense charged.

15 3. The constitutional right to confront and cross-examine any witnesses who would  
16 testify against me.

17 4. The constitutional right to subpoena witnesses to testify on my behalf.

18 5. The constitutional right to testify in my own defense.

19 6. The right to appeal the conviction, with the assistance of an attorney, either  
20 appointed or retained, unless the appeal is based upon reasonable constitutional jurisdictional  
21 or other grounds that challenge the legality of the proceedings and except as otherwise  
22 provided in subsection 3 of NRS 174.035.

#### 23 VOLUNTARINESS OF PLEA

24 I have discussed the elements of all of the original charge(s) against me with my  
25 attorney and I understand the nature of the charge(s) against me.

26 I understand that the State would have to prove each element of the charge(s) against  
27 me at trial.

28 //

1 I have discussed with my attorney any possible defenses, defense strategies and  
2 circumstances which might be in my favor.

3 All of the foregoing elements, consequences, rights, and waiver of rights have been  
4 thoroughly explained to me by my attorney.

5 I believe that pleading guilty and accepting this plea bargain is in my best interest,  
6 and that a trial would be contrary to my best interest.

7 I am signing this agreement voluntarily, after consultation with my attorney, and I am  
8 not acting under duress or coercion or by virtue of any promises of leniency, except for those  
9 set forth in this agreement.

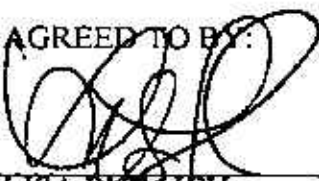
10 I am not now under the influence of any intoxicating liquor, a controlled substance or  
11 other drug which would in any manner impair my ability to comprehend or understand this  
12 agreement or the proceedings surrounding my entry of this plea.

13 My attorney has answered all my questions regarding this guilty plea agreement and  
14 its consequences to my satisfaction and I am satisfied with the services provided by my  
15 attorney.

16 DATED this 24 day of March, 2008.

17   
18 DELARIAN KAMERON WILSON  
19 Defendant

20 AGREED TO BY:

21   
22 LISA LOZAICH  
23 Chief Deputy District Attorney  
24 Nevada Bar #005056

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1 INFO  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 LISA LUZAICH  
6 Chief Deputy District Attorney  
7 Nevada Bar #005056  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 DELARIAN KAMERON WILSON,  
14 #1966773,

15 Defendant.

Case No: C232494  
Dept No: XXIV

AMENDED  
INFORMATION

16 STATE OF NEVADA }  
17 COUNTY OF CLARK } ss.

18 DAVID ROGER, District Attorney within and for the County of Clark, State of  
19 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

20 That DELARIAN KAMERON WILSON, the Defendant above named, having  
21 committed the crimes of ROBBERY WITH USE OF A DEADLY WEAPON (Felony -  
22 NRS 200.380, 193.165) and SEXUAL ASSAULT (Felony - NRS 200.364, 200.366), on or  
23 about the 18th day of February, 2007, within the County of Clark, State of Nevada, contrary  
24 to the form, force and effect of statutes in such cases made and provided, and against the  
25 peace and dignity of the State of Nevada,

26 //

27 //

28 //



1 COUNT 1 - ROBBERY WITH USE OF A DEADLY WEAPON

2 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:  
3 condoms, from the person of JUSTIN RICHARDSON, or in his presence, by means of force  
4 or violence or fear of injury to, and without the consent and against the will of the said  
5 JUSTIN RICHARDSON and/or money, from the person of JUSTIN FOUCAULT, or in his  
6 presence, by means of force or violence or fear of injury to, and without the consent and  
7 against the will of the said JUSTIN FOUCAULT, said Defendant using a deadly weapon, to-  
8 wit: a hand gun, during the commission of said crime, the Defendant being criminally liable  
9 under one or more of the following principles of criminal liability, to-wit: (1) by directly  
10 committing this crime; and/or (2) by Defendant aiding or abetting NARCUS SAMONE  
11 WESLEY in the commission of this crime by assisting one another and by providing counsel  
12 and encouragement each carrying out specific acts with the intent that this crime be  
13 committed; and/or (3) pursuant to a conspiracy to commit this crime.

14 COUNT 2 - ROBBERY WITH USE OF A DEADLY WEAPON

15 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:  
16 cell phone, from the person of DANIELLE BROWNING, or in her presence, by means of  
17 force or violence or fear of injury to, and without the consent and against the will of the said  
18 DANIELLE BROWNING and/or money, from the person of RYAN TOGNOTTI, or in his  
19 presence, by means of force or violence or fear of injury to, and without the consent and  
20 against the will of the said RYAN TOGNOTTI, said Defendant using a deadly weapon, to-  
21 wit: a hand gun, during the commission of said crime, the Defendant being criminally liable  
22 under one or more of the following principles of criminal liability, to-wit: (1) by directly  
23 committing this crime; and/or (2) by Defendant aiding or abetting NARCUS SAMONE  
24 WESLEY in the commission of this crime by assisting one another and by providing counsel  
25 and encouragement each carrying out specific acts with the intent that this crime be  
26 committed; and/or (3) pursuant to a conspiracy to commit this crime.

27 //


28 //

1 COUNT 3 - SEXUAL ASSAULT

2 did then and there wilfully, unlawfully, and feloniously sexually assault and subject  
3 DANIELLE BROWNING, a female person, to sexual penetration, to-wit: by forcing  
4 DANIELLE BROWNING to perform fellatio on JUSTIN RICHARDSON and/or by forcing  
5 DANIELLE BROWNING to be subjected to cunnilingus performed by JUSTIN  
6 RICHARDSON and/or by forcing JUSTIN RICHARDSON to receive fellatio from  
7 DANIELLE BROWNING and/or by forcing JUSTIN RICHARDSON to perform  
8 cunnilingus on DANIELLE BROWNING while threatening to kill them or others if they  
9 didn't perform said sexual act, against their will, the Defendant being criminally liable under  
10 one or more of the following principles of criminal liability, to-wit: (1) by directly  
11 committing this crime; and/or (2) by Defendant aiding or abetting NARCUS SAMONE  
12 WESLEY in the commission of this crime by assisting one another and by providing counsel  
13 and encouragement each carrying out specific acts with the intent that this crime be  
14 committed; and/or (3) pursuant to a conspiracy to commit this crime.

15 DAVID ROGER  
16 DISTRICT ATTORNEY  
17 Nevada Bar #002781

18 BY

19   
20 LISA LUZAICH  
21 Chief Deputy District Attorney  
22 Nevada Bar #005056  
23  
24  
25  
26

27 DA#07FH0317A/B/mmw/SVU  
28 HPD EV#0703748  
(TKI)

1 INFO  
2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 LISA LUZAICH  
6 Chief Deputy District Attorney  
7 Nevada Bar #005056  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

ORIGINAL

FILED IN OPEN COURT

MAR 29 2008 20

CHARLES J. SHORT  
CLERK OF THE COURT

BY Nora Pena  
NORA PENA DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,  
11 Plaintiff,

12 -vs-

13 DELARIAN KAMERON WILSON,  
14 #1966773,  
15 Defendant.

Case No: C232494  
Dept No: XXIV

AMENDED  
INFORMATION

16 STATE OF NEVADA }  
17 COUNTY OF CLARK } ss.

18 DAVID ROGER, District Attorney within and for the County of Clark, State of  
19 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

20 That DELARIAN KAMERON WILSON, the Defendant above named, having  
21 committed the crimes of ROBBERY WITH USE OF A DEADLY WEAPON (Felony -  
22 NRS 200.380, 193.165) and SEXUAL ASSAULT (Felony - NRS 200.364, 200.366), on or  
23 about the 18th day of February, 2007, within the County of Clark, State of Nevada, contrary  
24 to the form, force and effect of statutes in such cases made and provided, and against the  
25 peace and dignity of the State of Nevada,

26 //

27 //

28 //

1 COUNT 1 - ROBBERY WITH USE OF A DEADLY WEAPON

2 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:  
3 condoms, from the person of JUSTIN RICHARDSON, or in his presence, by means of force  
4 or violence or fear of injury to, and without the consent and against the will of the said  
5 JUSTIN RICHARDSON and/or money, from the person of JUSTIN FOUCAULT, or in his  
6 presence, by means of force or violence or fear of injury to, and without the consent and  
7 against the will of the said JUSTIN FOUCAULT, said Defendant using a deadly weapon, to-  
8 wit: a hand gun, during the commission of said crime, the Defendant being criminally liable  
9 under one or more of the following principles of criminal liability, to-wit: (1) by directly  
10 committing this crime; and/or (2) by Defendant aiding or abetting NARCUS SAMONE  
11 WESLEY in the commission of this crime by assisting one another and by providing counsel  
12 and encouragement each carrying out specific acts with the intent that this crime be  
13 committed; and/or (3) pursuant to a conspiracy to commit this crime.

14 COUNT 2 - ROBBERY WITH USE OF A DEADLY WEAPON

15 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:  
16 cell phone, from the person of DANIELLE BROWNING, or in her presence, by means of  
17 force or violence or fear of injury to, and without the consent and against the will of the said  
18 DANIELLE BROWNING and/or money, from the person of RYAN TOGNOTTI, or in his  
19 presence, by means of force or violence or fear of injury to, and without the consent and  
20 against the will of the said RYAN TOGNOTTI, said Defendant using a deadly weapon, to-  
21 wit: a hand gun, during the commission of said crime, the Defendant being criminally liable  
22 under one or more of the following principles of criminal liability, to-wit: (1) by directly  
23 committing this crime; and/or (2) by Defendant aiding or abetting NARCUS SAMONE  
24 WESLEY in the commission of this crime by assisting one another and by providing counsel  
25 and encouragement each carrying out specific acts with the intent that this crime be  
26 committed; and/or (3) pursuant to a conspiracy to commit this crime.

27 //

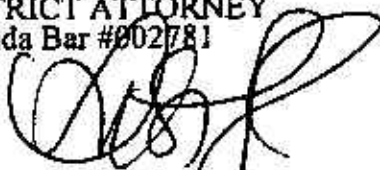
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9.2  
7  
1 COUNT 3 - SEXUAL ASSAULT

2 did then and there wilfully, unlawfully, and feloniously sexually assault and subject  
3 DANIELLE BROWNING, a female person, to sexual penetration, to-wit: by forcing  
4 DANIELLE BROWNING to perform fellatio on JUSTIN RICHARDSON and/or by forcing  
5 DANIELLE BROWNING to be subjected to cunnilingus performed by JUSTIN  
6 RICHARDSON and/or by forcing JUSTIN RICHARDSON to receive fellatio from  
7 DANIELLE BROWNING and/or by forcing JUSTIN RICHARDSON to perform  
8 cunnilingus on DANIELLE BROWNING while threatening to kill them or others if they  
9 didn't perform said sexual act, against their will, the Defendant being criminally liable under  
10 one or more of the following principles of criminal liability, to-wit: (1) by directly  
11 committing this crime; and/or (2) by Defendant aiding or abetting NARCUS SAMONE  
12 WESLEY in the commission of this crime by assisting one another and by providing counsel  
13 and encouragement each carrying out specific acts with the intent that this crime be  
14 committed; and/or (3) pursuant to a conspiracy to commit this crime.

15 DAVID ROGER  
16 DISTRICT ATTORNEY  
17 Nevada Bar #002781

18 BY

  
19 LISA LUZAICH  
20 Chief Deputy District Attorney  
21 Nevada Bar #005056  
22  
23  
24  
25  
26

27 DA#07FH0317A/B/mmw/SVU  
28 HPD EV#0703748  
(TK1)



  
CLERK OF THE COURT

1 **NOTC**  
2 **DAVID ROGER**  
3 **Clark County District Attorney**  
4 **Nevada Bar #002781**  
5 **LISA LUZAICH**  
6 **Chief Deputy District Attorney**  
7 **Nevada Bar #005056**  
8 **200 Lewis Avenue**  
9 **Las Vegas, Nevada 89155-2212**  
10 **(702) 671-2500**  
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **-vs-**

12 **NARCUS SAMONE WESLEY,**  
13 **#1757866**

14 **Defendant.**

**CASE NO: C232494**

**DEPT NO: XXIV**

15 **SUPPLEMENTAL NOTICE OF WITNESSES AND/OR EXPERT WITNESSES**  
16 **[NRS 174.234]**

17 **TO: NARCUS SAMONE WESLEY, Defendant; and**

18 **TO: CASEY LANDIS, Deputy Public Defender, Counsel of Record;**

19 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF**  
20 **NEVADA intends to call the following witnesses in its case in chief:**

21 **These witnesses are in addition to those witnesses endorsed on the Information and**  
22 **any other witness for which a separate Notice has been filed.**

23 **YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the STATE OF**  
24 **NEVADA intends to call expert witnesses in its case in chief as follows:**

25 **The substance of each expert witness testimony and copy of all reports made by or at**  
26 **the direction of the expert witness has been provided in discovery.**

27 **A copy of each expert witness curriculum vitae, if available, is attached hereto.**

28 **\*Indicates an additional witness**

NAME

ADDRESS

\*AYERS, JENNIFER – HPD P#1369: Will testify as an expert crime scene analyst.

\*BARNES, DAVID – HPD P#792

BROWNING, DANIELLE – HC 60 BOX 53007, ROAD MTN., NV 89045

CASTRO, JUNE – HPD P#825

\*CUSTODIAN OF RECORDS – ALL TELL WIRELESS

\*CUSTODIAN OF RECORDS – CIRCUS CIRCUS HOTEL & CASINO

\*CUSTODIAN OF RECORDS – NEVADA POWER CO.

DUNAWAY, BRIAN – HPD P#659

\*EBBERT, LINDA – Will testify as an expert Sexual Assault Nurse Examiner regarding the treatment of the victim in this case.

ESKANDON, AITOR – 2101 W. WARM SPRGS RD., #4322, HND, NV 89014

FOUCAULT, JUSTIN – 690 GREAT DANE CT., HND, NV 89052

HARTSHORN, BRYAN – HPD P#1146

HENN, ITZHAK – HPD P#1202

\*HIEB, GRANT – 225 S. STEPHANIE ST., #1023, HEND, NV 89012

JOHNSTON, MICHAEL – HPD P#634

\*MICHALAK, VICTOR – 1420 VIEWPOINT DR., OXNARD, CA 93035

NISWONGER, ANTHONY – HPD P#1003

\*O'NEAL, WALTER – WELLS FARGO SEC DEPT.

PENA, RODRIGO – HPD P#857

\*PIRO, GERALD – CIRCUS CIRCUS SECURITY

\*PRESTON, BRANDON – 399 SEINE WAY, HEND, NV 89014

RICHARDSON, JUSTIN – 690 GREAT DANE CT., HND, NV 89052

\*RIDINGS, CRAIG – HPD P#358

\*SELF, JOY – HPD P#1370: Will testify as an expert crime scene analyst.

\*SILVA, VERONICA or Designee – WELLS FARGO SEC DEPT.

SLATTERY, KYLE – HPD P#1306

1 \*SWARTWOOD, AMBER - HPD

2 \*TILLMON, HAVEN - HPD P#1255

3 \*TIMOTHY, KENT - HPD P#1223: Will testify as a fingerprint expert.

4 TOGNOTTI, RYAN - 690 GREAT DANE CT., HND, NV 89052

5 TOGNOTTI, CLINTON - 2101 W. WARM SPRGS RD., #4322, HND, NV 89014

6 \*VINCENTY, TRICIA - 480 S. KINGSTON CR., AURORA, CO 80012

7 \*WESKE, CURTIS - HPD P#974

8 \*WILSON, DELARIAN - ADDRESS UNKNOWN

9 DAVID ROGER  
10 DISTRICT ATTORNEY  
Nevada Bar #002781

11 BY /s//LISA LUZAICH  
12 LISA LUZAICH  
13 Chief Deputy District Attorney  
14 Nevada Bar #005056

15 CERTIFICATE OF FACSIMILE TRANSMISSION

16 I hereby certify that service of State's Notice, was made this 28th day of March, 2008,  
17 by facsimile transmission to:

18 CASEY LANDIS, Deputy Public Defender  
19 366-0521

20 BY Shellie Warner  
21 Employee of the District Attorney's Office

22  
23  
24  
25  
26  
27  
28 mmw/SVU

*Curriculum Vitae*

**LINDA L. EBBERT R.N. S.A.N.E.**

3655 S. Decatur Blvd., #14-149

Las Vegas, Nevada 89103

**EXPERIENCE**

Sexual Assault Nurse Examiner  
1995-present  
Rose Heart Inc.  
3655 S. Decatur Blvd. #14-149  
Las Vegas, NV 89103

Years Employed

Co-owner and President of Rose Heart, Inc. Responsible for administration and daily business tasks. Function actively as a sexual assault nurse examiner. Over 550 sexual assault examinations completed in the past four years. Appear in court as expert witness and present testimony regarding forensic evidence collected an interpretation of results of examinations.

Registered Nurse  
Years Employed 1990-present  
University Medical Center  
Emergency Dept.  
1800 W. Charleston Blvd.  
Las Vegas, NV 89102

Work full time as R.N. caring for patients in the Fast Track area of the E.R.

Northeastern Ohio General Hospital  
1993-1988

Years Employed

Ob/Gyn as Labor and Delivery Nurse  
Supervision As Shift Supervisor and as Coordinator E.R.

Lake Hospital System  
Emergency Room Staff Nurse  
Coordinator Emergency Room...Lake Medical Center Madison

Madison Clinic Ambulance Service  
5 years  
Experience in Transporting Critical Patients

**EDUCATION**

Meadville Area Senior High School  
1957-1960  
Meadville, PA 16335  
High School Diploma

Meadville City Hospital School of Nursing  
1960-1963

1 Graduate Diploma School of Nursing  
2 Registered Nurse Program – 3 Year Program

3 Ursaline College

1987-1989

4 Pepper Pike, Ohio

Majoring in Humanities for B.A. in Health Care Administration

5 **CREDENTIALS / CERTIFICATION**

6 R.N. Registered Nurse

7 A.C.L.S. Advanced Life Care Support, Successful Completion of all Course  
8 Requirements

9 T.N.C.C. Trauma Nurse Course, Successful Completion of all Course  
10 Requirements

11 S.A.N.E. Sexual Assault Nurse Examiner, Successful Completion of all Course  
12 Requirements



ORIGINAL

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*CL. M. Bahr*  
CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF CLARK  
THE HON. JAMES M. BIXLER, DISTRICT COURT JUDGE, PRESIDING

THE STATE OF NEVADA,  
Plaintiff,

v.

DELARIAN K. WILSON, aka  
DELARIAN KAMERON WILSON,  
NARCUS S. WESLEY, ESQ., aka  
NARCUS SAMONE WESLEY,  
Defendant.

Case No. C232494  
Dept. 24

TRANSCRIPT OF PROCEEDINGS

Change of Plea as to Defendant Wilson

COURTHOUSE

March 28, 2007

Las Vegas, Nevada

Reported by:

Lee M. Bahr, CP, CCR 173

RECEIVED

APR 1 2008

Lee M. Bahr, CCR 173

CLERK OF THE COURT

702-243-3386

000499

1 Later, after asking Wilson the location of the stolen money, and then speculating that  
2 Wilson spent the money gambling, Detective Hartshorn made the following promise to Wilson:  
3 "[W]e can arrange for gambling anonymous and all that kind of stuff if that's what needs to  
4 happen to fix this problem."<sup>18</sup>

5 Later, Wilson asks, "You're about to charge me with all those counts?" Weske replies,  
6 "Well, you know, I—you're not—you're not being totally honest with me. You're not telling  
7 me everybody that was involved." Moments later Weske continues as follows:

8 I if you would have been honest with me about the involvement  
9 over there, you know, some of the charges might have changed,  
10 but you're not being honest with me. so you're the only one I can  
11 hold accountable. Now, if you want to tell me the truth, you  
12 know, I could possibly work on it, but you don't want to sit here  
13 and tell me the truth, so why should I help you? You know what I  
14 mean? ...

15 You want to lie to me and you want to play these games about  
16 who's involved, you do the same. You know what I mean? You  
17 can take it out in court. You can just tie up all that, or you can tell  
18 me. Tell me the truth right now before we walk out of this room.  
19 Save yourself some heartache.<sup>19</sup>

20 Later, after asking Wilson the location of the stolen money, and then speculating that  
21 Wilson spent the money gambling, Detective Hartshorn made the following promise to Wilson:  
22 "[W]e can arrange for gambling anonymous and all that kind of stuff if that's what needs to  
23 happen to fix this probl

24 Later, Weske stated to Wilson, "This is your last chance." Shortly thereafter, Weske  
once again repeats his claim that police are only interested in the person responsible for the  
sexual assault, and that if Wilson gives up that individual, Wilson will be helping himself.

<sup>18</sup> Id. at p. 67, l. 3-5.

<sup>19</sup> Id. at p. 70-71.

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1 Later, both detectives once again state that the sexual assault is the most significant  
2 offense, and imply that Wilson can avoid liability for that offense by giving up his accomplice.<sup>20</sup>

3 Shortly thereafter, Weske encouraged Wilson to "lessen [his] culpability."<sup>21</sup>

4 Later, Detective Hartshorn explicitly promises Wilson that, if Wilson cooperates and  
5 gives up his accomplice, he will tell the DA that Wilson had nothing to do with the sexual  
6 assault.<sup>22</sup> Weske then supplements the promise with a threat, that if Wilson says nothing,  
7 Weske will tell the DA, and presumably, Wilson will receive harsher treatment.<sup>23</sup> Shortly  
8 thereafter, Weske implies that if Wilson cooperates, he may not have to stay in custody in Las  
9 Vegas for even a week.<sup>24</sup>

10 After the above-referenced threats and promises, Wilson made the bulk of the  
11 inculpatory statements.

## 12 II. ARGUMENT

13 DEFENDANT DELARIAN WILSON'S STATEMENTS TO POLICE MUST BE SUPPRESSED, BECAUSE  
14 THOSE STATEMENTS WERE NOT MADE FREELY, VOLUNTARILY, AND WITHOUT COMPUSSION  
15 OR INDUCEMENT, AND BECAUSE THE DEFENDANT DID NOT KNOWINGLY AND INTELLIGENTLY  
16 WAIVE HIS FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION.

17 A criminal defendant's statement to police is admissible as evidence only if it is made  
18 freely, voluntarily, and without compulsion or inducement. *Franklin v. State*, 96 Nev. 417, 421,  
19 610 P.2d 732, 734 (1980). When the State intends to use the statements of an accused against  
20 him at trial, the court must hold a hearing outside the jury's presence to determine whether a  
21 purported confession was made freely, voluntarily, and without compulsion or inducement.  
22 *Jackson v. Denno*, 378 U.S. 368 (1964). At the hearing, the State must show by preponderance  
23 of the evidence that the defendant's statements were given freely, voluntarily, and without

24 <sup>20</sup> *Id.* at p. 74.

<sup>21</sup> *Id.* at p. 76, l. 2.

<sup>22</sup> *Id.* at p. 78, l. 23-25; p. 79, l. 1-4.

<sup>23</sup> *Id.* at p. 79-80.

<sup>24</sup> *Id.* at p. 81.

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1 compulsion or inducement. *Brimmings v. State*, 93 Nev. 434 (1977). If, after a *Jackson v.*  
2 *Denno* hearing, the Court finds that the statement was not voluntarily given, the statement  
3 cannot be used for any purpose. See, e.g. *Mincey v. Arizona*, 437 U.S. 385 (1978).

4 Moreover, to protect the defendant's right against self-incrimination, the State bears the  
5 burden of showing by a preponderance of the evidence that the defendant knowingly and  
6 intelligently waived his Fifth Amendment rights against self-incrimination after receiving  
7 Miranda warnings. *Harte v. State*, 116 Nev. 1054, 1062 (2000); *Falcon v. State*, 110 Nev. 530  
8 (1994). Only if the totality of the circumstances reveals both an un-coerced choice and the  
9 requisite level of comprehension may a court properly conclude that the Defendant waived his  
10 Miranda rights. *United States v. Male Juvenile*, 121 F.3d 34, 39-40 (2nd Cir. 1997). The  
11 Miranda waiver's validity must be determined in each case through an examination of the  
12 particular facts and circumstances surrounding the case, including the background, experience  
and conduct of the accused. *Edwards v. Arizona*, 451 U.S. 477 (1981).

13 Here, Wilson's statements to police were not made freely, voluntarily, and without  
14 compulsion or inducement, and moreover, the Defendant did not knowingly and intelligently  
waive his Fifth Amendment rights.

15 **A. The Defendant's voluntary statement was not given freely, voluntarily,**  
16 **and without compulsion or inducement.**

17 A criminal defendant's statement to police is admissible as evidence only if it is made  
18 freely, voluntarily, and without compulsion or inducement. *Franklin v. State*, 96 Nev. 417, 421,  
19 610 P.2d 732, 734 (1980). A criminal conviction based in whole or in part upon an involuntary  
20 confession is a denial of due process, even if there is ample evidence aside from the confession  
21 to support the conviction. *Jackson v. Denno*, 378 U.S. 368 (1964).

22 When a prosecutor intends to use the statements of an accused against him in court,  
23 there must be a hearing outside the presence of the jury to determine whether a purported  
24 confession was made freely, voluntarily, and without compulsion or inducement. *Jackson v.*  
*Denno*, 378 U.S. 368 (1964). At this hearing, the Court shall analyze what the suspect told the

1 police, and the circumstances under which the statements were made. The Court must then  
2 decide whether, after reviewing the totality of the circumstances, the statements were  
3 voluntarily made. *Id.*

4 The burden of requesting a *Jackson v. Denno* hearing rests initially with the defendant.  
5 *Wilkins v. State*, 96 Nev. 267 (1980). However, once the hearing has been requested, the  
6 burden shifts to the prosecution to demonstrate by a preponderance of the evidence that the  
7 voluntary statement was given freely, voluntarily, and without compulsion or inducement.  
8 *Brimmings v. State*, 93 Nev. 434 (1977). If, after a *Jackson v. Denno* hearing, the Court finds  
9 that the statement was not voluntarily given, the statement cannot be used for any purpose. See,  
e.g. *Mincey v. Arizona*, 437 U.S. 385 (1978).

10 Here, Wilson did not give his voluntary statement freely, voluntarily, and without  
11 compulsion or inducement. First, Wilson was in custody when he was interviewed, and clearly  
12 believed that he had no choice but to talk to the detectives. Second, both detectives made  
13 repeated and grand promises of leniency for Wilson's cooperation. Wilson was told that police  
14 weren't interested in the robbery; they were interested in the sexual assault, which, according to  
15 both detectives, Wilson was not involved in and prevented his accomplice from completing.  
16 Third, both detectives used aggressive language and compelled Wilson's inculpatory statements  
17 by threatening that Wilson would "take the whole rap" if he did not cooperate. That is, Wilson  
18 was made to believe that his punishment would be harsher if he did not cooperate with the  
19 detectives. Moreover, Wilson was made to believe that this was his one and only time to  
20 choose cooperation, and that if Wilson did not choose to cooperate before detectives left the  
21 interview, he would be charged with everything and receive no leniency. Indeed, Wilson was  
told that the DA would hear of his lack of remorse and lack of cooperation if Wilson did not tell  
the detectives what they wanted to hear.

22 Moreover, Wilson did not understand his *Miranda* rights when he purportedly waived  
23 them.



1        **B. The Defendant did not knowingly and intelligently waive his Fifth**  
2        **Amendment rights.**

3        A person's right against self-incrimination is protected by the Fifth Amendment to the  
4        United States Constitution and Article 1, Section 8 of the Nevada Constitution. *Holyfield v.*  
5        *Townsell*, 101 Nev. 793 (1985). The accused must be adequately and effectively informed of  
6        his rights and the exercise of those rights must be fully honored. *Miranda v. Arizona*, 384 U.S.  
7        436, 467, 478-79 (1966). When an individual is taken into custody, deprived of his freedom,  
8        and subjected to questioning, the privilege against self-incrimination is jeopardized. *Id.* Thus,  
9        the authorities must warn the individual prior to any questioning that he has the right to remain  
10       silent, that anything he says can be used against him in a court of law, that he has the right to the  
11       presence of an attorney. *Id.* After such warnings have been given, and such opportunity  
12       afforded him, the individual may knowingly and intelligently waive these rights. *Id.* But unless  
13       and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence  
14       obtained as a result of interrogation can be used against him. *Miranda v. Arizona*, 384 U.S. 436,  
15       478-79 (1966).

16       The State bears the burden of showing by a preponderance of the evidence that the  
17       defendant knowingly and intelligently waived his Fifth Amendment rights after receiving  
18       Miranda warnings. *Harte v. State*, 116 Nev. 1054, 1062 (2000); *Falcon v. State*, 110 Nev. 530  
19       (1994). To prove a valid waiver, the government must show (1) that the relinquishment of the  
20       defendant's rights was voluntary and (2) that the defendant had a full awareness of the right  
21       being waived and of the consequences of waiving that right. *United States v. Male Juvenile*,  
22       121 F.3d 34, 39-40 (2nd Cir. 1997). Only if the totality of the circumstances reveals both an un-  
23       coerced choice and the requisite level of comprehension may a court properly conclude that the  
24       Miranda rights have been waived. *Id.*

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1 Moreover, the validity of the Miranda waiver must be determined in each case through  
2 an examination of the particular facts and circumstances surrounding the case, including the  
3 background, experience and conduct of the accused. *Edwards v. Arizona*, 451 U.S. 477 (1981);  
4 *Rowbottom v. State*, 105 Nev. 472 (1989) (overruled on other grounds by *Jezdik v. State*, 110  
5 P.3d 1058); *Harte v. State*, 116 Nev. 1054, 1062 (2000). In *Harte*, the Nevada Supreme Court  
6 considered several factors. In particular, the court considered the Defendant's education,  
7 intelligence, and ability to communicate. *Id.* The court also considered the content of the  
8 Defendant's conversation with police. *Id.*

9 Here, Wilson did not knowingly and intelligently waive his Fifth Amendment rights.  
10 After stating that he was tired and not willing to "bullshit," Detective Weske rifles through the  
11 Miranda warnings, but does not explain them. Weske proceeds with substantive questioning,  
12 having never received any indication that Wilson understood his rights or what rights he was  
13 giving up. Weske never cured his inadequate explanation of *Miranda*.

14 Weske's and Hartshorn's aggressive interrogation techniques further compound the  
15 problems with Wilson's supposed Fifth Amendment waiver. Specifically, numerous threats  
16 and promises prevented Wilson from intelligently waving his Fifth Amendment rights. Both  
17 detectives promised Wilson leniency for his cooperation numerous times. Additionally, both  
18 detectives told Wilson that he would be punished more harshly, and take the whole rap, if he did  
19 not cooperate. Moreover, detective Weske repeatedly told Wilson that he had little time to  
20 make up his mind about cooperation. According to Weske, once Weske left the room without  
21 receiving Wilson's cooperation, it would be too late for Wilson to receive any benefit from  
22 cooperation. This false time constraint was mentioned several times.

23 Considering the inadequate explanations of Miranda and the aggressive interrogation  
24 style used by multiple interrogators, it is clear that Wilson did not knowingly and voluntarily

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1 waive his Fifth Amendment rights. As such, the statements Wilson made to police should be  
2 suppressed.

3 **III. CONCLUSION**

4 For the foregoing reasons, Defendant Delarian Wilson respectfully requests that this  
5 Honorable Court grant Defendant's Motion to Suppress Statement.

6  
7 DATED this 17 day of March, 2008.

8  
9 DRASKOVICH & ORONoz, P.C.

10  
11 By: 

James A. Oronoz  
815 S. Casino Center Blvd.  
Las Vegas, Nevada 89101  
(702) 474-4222  
Attorneys for Defendant

12  
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RECEIPT OF COPY

RECEIPT of DEFENDANT'S MOTION TO SUPPRESS STATEMENT is hereby  
acknowledged this \_\_\_\_ day of \_\_\_\_\_, 2008.

Deputy District Attorney  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89101

000407

# **EXHIBIT 1**

**000408**





**INTERVIEW OF DELARIAN KAMERON WILSON**

DR #07-03748

February 19, 2007

Prepared for the  
**HENDERSON POLICE DEPARTMENT**  
**INVESTIGATIONS BUREAU**  
BY: Mona Shield Payne

**000409**

1 STATE OF NEVADA) DATE: 02/19/07  
 2 ) SS: HENDERSON  
 3 COUNTY OF CLARK) TIME: 7:46 p.m.  
 4  
 5  
 6 This taped interview of DELARIAN KAMERON WILSON did  
 7 hereby take place at the Circus Circus Hotel and Casino, 2880 South  
 8 Las Vegas Boulevard, Las Vegas, Nevada, reference DR #07-03748.  
 9  
 10 Person present during this interview is DELARIAN KAMERON  
 11 WILSON. Persons conducting the interview and tape recording are  
 12 DETECTIVE CURTIS WESKE and DETECTIVE BRIAN HARTSHORN of  
 13 the Henderson Police Department. Transcription of taped statement  
 14 by Mona Shield Payne of I WRITE transcription, inc.  
 15  
 16  
 17 DETECTIVE WESKE: I'm Detective Weske. This is  
 18 Detective Hartshorn. They said you've been real cooperative. We'll  
 19 talk a little bit here.  
 20 KAMERON WILSON: Yes, sir.  
 21 DETECTIVE WESKE: (Inaudible) information. Got your  
 22 UNLV picture and I got your picture when you were arrested in Metro  
 23 a couple years ago.  
 24 KAMERON WILSON: Yeah.  
 25 DETECTIVE WESKE: Listen, bro', I've been up since

1 KAMERON WILSON: Yes, sir.  
 2 DETECTIVE WESKE: And they're going to swap the  
 3 stairs, they've been sitting across your room, been doing surveillance,  
 4 and that's how I picked you up --  
 5 KAMERON WILSON: Right.  
 6 DETECTIVE WESKE: -- and that's why we're here. It  
 7 took us a while to get us a search warrant. Before I can ask you any  
 8 questions, because you got handcuffs on --  
 9 KAMERON WILSON: Yes, sir.  
 10 DETECTIVE WESKE: -- okay, you're not free to go  
 11 obviously --  
 12 KAMERON WILSON: Yes --  
 13 DETECTIVE WESKE: -- (incomprehensible) got handcuffs  
 14 on. So before I get started, I'm going to explain to you. You have  
 15 the right to remain silent.  
 16 DETECTIVE WESKE: Do you understand that?  
 17 KAMERON WILSON: Yes, sir.  
 18 DETECTIVE WESKE: Anything you say can and will be  
 19 used against you in a court of law. You understand that?  
 20 KAMERON WILSON: Yes, sir.  
 21 DETECTIVE WESKE: You have the right to have an  
 22 attorney present before any questioning. Do you understand that?  
 23 KAMERON WILSON: Yes, sir.  
 24 DETECTIVE WESKE: Cannot afford one, one will be  
 25 appointed to represent you at no cost to you. Do you understand

Page 2

Page 4

1 3 o'clock this morning. The call came in before that. We've done  
 2 a lot of -- a lot of investigation. We had criminalistics out. We had  
 3 cameras on the ATMs, and we did a photo lineup with you. Okay?  
 4 I'm not going to bullshit you. I'm not going to sit here and play  
 5 games with you and say, okay, Kameron, do you know this person,  
 6 do you know this person.  
 7 KAMERON WILSON: Right.  
 8 DETECTIVE WESKE: All right? Because you're the  
 9 person that they described as the one that stopped the major event,  
 10 okay, last night. You stopped whoever's with you from getting too  
 11 carried away on what happened. Here's what I believe happened. I  
 12 believe you went over there and you wanted to confront someone  
 13 that you felt owed you some money, and shit got out of hand with  
 14 this other person. Now, I'm giving you a chance. I'm coming to you  
 15 first --  
 16 KAMERON WILSON: Right.  
 17 DETECTIVE WESKE: -- to give your side of the story.  
 18 Okay?  
 19 KAMERON WILSON: Right.  
 20 DETECTIVE WESKE: I -- if you want to bullshit me or  
 21 whatever 'cause, like I said, we've already talked -- we've got six  
 22 people there. You guys were there for a long time, you know.  
 23 They're probably going (incomprehensible) your name, probably going  
 24 (incomprehensible) your picture. That's a done deal. That's why  
 25 we're here.

1 that?  
 2 KAMERON WILSON: Yes, sir.  
 3 DETECTIVE WESKE: Any time you can stop answering  
 4 questions. You understand?  
 5 KAMERON WILSON: Yes, sir.  
 6 DETECTIVE WESKE: (Incomprehensible.)  
 7 DETECTIVE HARTSHORN: No.  
 8 DETECTIVE WESKE: Okay.  
 9 BY DETECTIVE WESKE:  
 10 Q. Like I said, I'm tired, bro'. Kameron, I'm going to -- what  
 11 happened I think -- and this is from doing this for 13 years. What I  
 12 think happened is you got in a little over your head yesterday, last  
 13 night. It started last night, and it went on for a couple hours. And  
 14 then you actually saved some girl's life last night, and that's what I  
 15 truly believe. So you -- that's why when I said why I wanted to talk  
 16 to you, I said I want to talk to Kameron. Everybody else calls you  
 17 Kameron, right?  
 18 A. Right.  
 19 Q. Grant calls you Kameron?  
 20 A. Right.  
 21 Q. Okay. Or do you want to be called Delarian?  
 22 A. (Incomprehensible.)  
 23 Q. I need you to explain to me -- explain to me what was the  
 24 purpose of going over there last night.  
 25 A. Actually, sir, I -- I (incomprehensible) over there. I wasn't

Page 5

1 even over there.  
2 Q. Okay. You didn't wear gloves.  
3 A. Huh?  
4 Q. You didn't wear gloves.  
5 A. Who?  
6 Q. You didn't mask up.  
7 A. Nah, I didn't mask up.  
8 Q. Right. You didn't wear gloves, and your partner didn't  
9 either. Okay? You were there for two hours. Did you think that they  
10 would not recognize you in a photo lineup? The problem is is you live  
11 out of state. So you didn't think they'd know who it was.  
12 A. No.  
13 Q. The problem is is that once we figured out and you  
14 messed up by asking where Grant was, he owes you some money.  
15 well, of course, we're going to figure out who Grant is because he  
16 lived there before.  
17 A. Right.  
18 Q. Okay? And then we just circumvent the  
19 (incomprehensible) then. Okay?  
20 A. Right.  
21 Q. So that's what I'm saying. I believe Grant owed you some  
22 money. I know what Grant does. I know what Grant does. We  
23 found a bunch of dope in his place today. Okay? I know what he  
24 does. Know what kind of money he has. Okay? And I know those  
25 guys aren't honest all the time, and I imagine -- you know, I don't care

Page 6

1 about the marijuana deals, you know, to be honest with you. What  
2 I care about is the fact that your partner, whoever he is, did what he  
3 did to that girl. She's 18 years old, and she's going to be scarred for  
4 the rest of her life. You know, you got -- everybody -- her boyfriend's  
5 going to be scarred. He -- he feels, you know -- you get to feel like  
6 a man. Put yourself in that situation, and I think you did put yourself  
7 in that situation --  
8 A. Right.  
9 Q. -- and that's why you told him to quit it.  
10 A. Right.  
11 Q. Right? I mean you put yourself in that situation saying,  
12 okay, man, if I was laying on the ground and some dude was doing  
13 my girl, man, mother fucker have to probably kill me 'cause that's  
14 how I'd feel.  
15 A. I feel.  
16 Q. I couldn't wake up the next morning. You know what,  
17 shoot me, kill me. At least I know I died trying, and that's what  
18 would happen, and then you'd be in trouble for a lot more. The only  
19 thing you got going for you is you saved her and you stopped him  
20 from doing it. You said that's enough. Okay? Now, you can tell me --  
21 -- I need to know, first of all, your partner's name and why it got out  
22 of hand? Is he fucking crazy?  
23 A. That's what I'm saying. Like I -- I never  
24 (incomprehensible) at the house (incomprehensible).  
25 Q. Okay. So you just -- you just want call it like that, bro'?

Page 7

1 A. No. I'm just saying I wasn't with no partner, stuff like  
2 that.  
3 Q. Okay. You were there last night. That's -- that's not an  
4 issue. I don't -- I don't have to go any further. Okay?  
5 A. Yeah.  
6 Q. You were there last night.  
7 A. Yeah.  
8 Q. You went there and asked for Grant. Okay?  
9 A. No, not me.  
10 Q. You were there.  
11 A. Yeah.  
12 Q. Okay. I'm telling you you were there. That -- that's not  
13 an issue.  
14 A. Right.  
15 Q. It's not a matter of who. It's a matter of why. You need  
16 to explain to me. If you just want to go to court --  
17 A. Some -- some -- someone else told me -- someone else  
18 told me that they -- I -- I was --  
19 Q. They picked you out of the photo lineup, all six of 'em.  
20 A. I wasn't them.  
21 Q. Okay.  
22 A. I wasn't --  
23 Q. Who'd you go with?  
24 A. Some guy named Chris -- Christopher or something like  
25 that.

Page 8

1 Q. Christopher who?  
2 A. I don't even know the name, sir.  
3 Q. Why'd you go over there with him?  
4 A. He -- he bought -- he buys from Grant.  
5 Q. You've bought from Grant before.  
6 A. Yeah, when I used to live out here. I --  
7 Q. Right. And then you guys had a falling out.  
8 A. Yeah, long time ago.  
9 Q. And then -- and then you moved. So why did you agree  
10 to go over there with Christopher?  
11 A. Christopher was buying from Grant already. He still -- still  
12 buys from Grant.  
13 Q. Okay. So you go in there.  
14 A. I don't really know Christopher. I ran into him in casino.  
15 Q. Where? Here?  
16 A. No. At the Stratosphere.  
17 Q. So --  
18 A. He went in -- he played at some JC when I knew him  
19 through a -- through a friend, like a -- I never really, know what I'm  
20 saying --  
21 Q. What car did you take over there?  
22 A. Who, me?  
23 Q. You and him, Christopher. Who drove?  
24 A. I rode with Christopher. I didn't even know I was going.  
25 He said he was going to get something from Grant. When I went in

1 there. I went with Christopher and I went in there and he was talking  
2 about Grant. He was like -- he -- first he asked me like do you want  
3 to go with me. know what I'm saying, over to Grant's house. I'm like  
4 whatever, you know what I'm -- I -- I haven't talked to Grant in a  
5 while, but I know who Grant is. So right when I get over here, you  
6 know what I'm saying -- right when I get over here, he's like -- he was  
7 like -- he knocks on the door, whatever, and then I'm just going in  
8 thinking it's Grant, and then, you know what I'm saying, that's when  
9 it was all going down like that.

10 Q. Okay. Well, tell me how it went down.

11 A. Well, at first, he just comes in there and I don't know if  
12 the gun was real or not. I never seen it. He starts talking -- he starts  
13 telling people to do thing and things like that, and all I did -- when --  
14 when he was talking, whatever, I just told him, I said, "Dog, got a lot  
15 of things going on. I'm playing college football, about to graduate."  
16 I was like, "I don't know why you brought me into this situation." I  
17 was like, "Come on, come on, let's just get out of here, man."  
18 And -- and then that's what he -- and he -- he ended up just running.  
19 He just left me there, and I ended up walking away on my own. I  
20 haven't seen -- I haven't even seen Christopher. I'm -- that's why --

21 Q. Well, hold on.

22 A. -- (Inaudible) myself.

23 Q. When he said that he told 'em what to do, did he tell 'em  
24 to get down on the ground?

25 A. Yeah. He was saying that, but I was kind of -- I wasn't

1 A. Sir. I'm being --

2 Q. 'Cause if you're not going to be totally honest with --

3 A. I'm being honest with you, sir.

4 Q. Okay. But you're -- you're not.

5 A. (Inaudible) that's it.

6 Q. You're -- okay.

7 A. I don't --

8 Q. It didn't just end -- it just didn't end right there, bro'. It  
9 went on for two hours, and you're the one that stopped him from  
10 fucking sexually assaulting that girl. You're the one that said, hey,  
11 dog, that's enough, let's go. You're the one that stopped it. Do you  
12 understand? That's a good thing.

13 A. Yeah, but --

14 Q. That's the only good thing that came out of this. Okay?

15 A. Sir --

16 Q. You're telling me you didn't stop it, you were going to let  
17 him do it?

18 A. Sir, how -- I didn't say anything in there. I didn't stop  
19 anything. You know what I'm saying? Most the time -- once  
20 Christopher started doing that, Chris -- Christopher, I didn't even  
21 know what was going on. Christopher wasn't even cooperating with  
22 me.

23 Q. Okay. What did you tell him when he told her to take her  
24 clothes off?

25 A. I -- I -- I told him, I said, I was like, "I'm about to leave."

1 moving either.

2 Q. No, no, I understand that. You go in there. He's got a  
3 gun. He --

4 A. Yeah, I --

5 Q. -- tells everybody to get down on the ground.

6 A. I didn't even know he had a gun. That's what --

7 Q. Okay.

8 A. -- threw everything off.

9 Q. Okay. But that -- that's where -- okay. We're not being  
10 honest after that point because that's not how -- I guess --

11 A. No, that's what --

12 Q. Listen to me. Listen to me. Okay? I've got six people  
13 there. Okay?

14 A. Six people.

15 Q. Six people there, okay, and they're all frightened to death  
16 because they didn't know anything what Grant was doing before. So  
17 now you go over there. He tells you that, and you're like, fuck, now  
18 you've got me in this situation. I know he's your friend, but tell --

19 A. No. I -- he's an acquaintance.

20 Q. Okay. He's an acquaintance. So you get there, and he  
21 does this shit. Who stayed behind while someone went to the ATM?

22 A. Who? I don't know.

23 Q. Come -- all right, bro'. It was just you two in the house.

24 Okay? So I've already known -- I've already got the answers. Okay?

25 I'm -- I'm trying to see if you're going to be totally honest with me.

1 When I told him I was about to leave, he was like, "No, you're not."  
2 And I was like -- and I was like, "Where's Grant?" I didn't even know  
3 Grant moved.

4 Q. Okay.

5 A. You know what I mean?

6 Q. I know -- I know that.

7 A. (Inaudible.)

8 Q. So when he told her to take her clothes off, you said I'm  
9 about to leave and he said, no, you're not?

10 A. Yeah.

11 Q. Did he point the gun at you?

12 A. No.

13 Q. Okay. So why didn't you leave?

14 A. Because I was -- I just -- you know what I'm saying. I was  
15 like, "I'm about to leave, man." And then he was like -- he was like,  
16 "Nah, nah." And then (Incomprehensible). I just went into a shock,  
17 and then right when that happened, I just -- I left. I started running.

18 Q. You didn't -- okay. At that point after -- after you came  
19 back from the ATM --

20 A. Yeah.

21 Q. -- after they came back from the ATM --

22 A. Yeah, they did.

23 Q. Okay. And they brought the money back, okay, did he  
24 split it with ya?

25 A. No.

Page 13

1 Q. Okay.

2 A. I got only -- I got \$207. I got --

3 Q. Did you play blackjack today?

4 A. Who me?

5 Q. Yeah.

6 A. A little bit.

7 Q. How much did you play?

8 A. Probably about -- about two or three --

9 Q. Two or three hundred?

10 A. -- three hundred, yes.

11 Q. Okay. So he goes with 'em to the ATM.

12 A. Uh-huh.

13 Q. Okay. And at that point, you sit there with 'em and they

14 said you were cordial, you talked to 'em, you weren't mean or

15 anything, you kind of just looked around. Is that because you were

16 in shock?

17 A. I didn't know what was going on.

18 Q. Okay.

19 A. So --

20 Q. Did you have a gun?

21 A. No, sir.

22 Q. You never show 'em a gun?

23 A. No, sir.

24 Q. Okay. So --

25 A. I didn't have no guns whatsoever.

Page 14

1 Q. Okay. So Christopher comes back with the dude and the

2 money, and then what does Christopher say?

3 A. He told me nothing about -- I didn't even know where

4 Christopher went. He told me -- he told me that -- when he left --

5 Q. Well, you were standing there when he said --

6 A. -- (inaudible).

7 Q. -- who's got ATM cards?

8 A. I know, and like he said, "You stay here. Don't leave."

9 So I stayed there --

10 Q. Uh-huh.

11 A. -- and I -- I just sit there quiet the whole time.

12 Q. Okay. So you kept quiet the whole time, and then they

13 come back with ATM cards and the money?

14 A. Yes, sir.

15 Q. Okay. And --

16 A. But I don't -- I didn't see no money.

17 Q. Okay. You didn't see no money.

18 A. I didn't see no cards or anything like that.

19 Q. Did Christopher leave the gun with you?

20 A. No, sir.

21 Q. Okay. So at that point, what are you thinking when

22 Christopher left?

23 A. Christopher left.

24 Q. What are you thinking?

25 A. Get out of there.

Page 15

1 Q. So why didn't you?

2 A. I did.

3 Q. No, you didn't get out of there.

4 A. Oh, you mean when he left to the ATM?

5 Q. When he left to the ATM.

6 A. 'Cause I didn't know what to do..

7 Q. Didn't know what to do?

8 A. 'Cause Christopher's crazy, and Christopher -- I don't

9 really know him that well, but, you know, I heard a lot of things. Like

10 I heard, you know what I'm saying, so at -- and I didn't -- you know

11 what I'm saying, he knows I go to college and out of state. So like

12 I don't really know too much about him 'cause, like I said, I met him

13 through a friend -- through a friend one night way back in the day, like

14 two or three years ago, and I just happened to run into him, and I had

15 asked him earlier that day, "Do you know where I could get some

16 smoke?" 'Cause I was out here on vacation, I was looking for some

17 bomb. And he was like -- like, "No."

18 He's like, you know what I'm saying, "Grant's still got -- Grant

19 is still on." I was like, "Grant?" You know what I'm saying, "Grant,

20 Grant (incomprehensible)?" And then he's like, "Yeah." Then that's

21 when we went over there, and when we got over there, you know

22 what I'm saying, like he knocked on the door. So, you know what

23 I'm saying, I was just thinking -- I usually -- that's how Grant was.

24 Grant's like, come in. When we came in, I thought we was going to

25 get a little smoke, \$50, so I can smoke weed, and that's when he

Page 16

1 started pulling out.

2 I knew just like, oh, my God, you know what I'm saying,

3 what's going on here? And then I (incomprehensible) shock, you

4 know what I mean. And then all -- the only thing I do remember is we

5 came back 'cause I -- I never see no ATMs or anything like that

6 because actually at one point he had told me one of the persons, I

7 don't know their names, had to go to the bathroom or something.

8 And he -- he told me to stay there and watch 'em. And he was in

9 there -- he told me to stand right by the bathroom and watch the guy

10 use the bathroom. So that's all I did was stand -- stand there and

11 watch him, you know what I'm saying, the bathroom.

12 Then he came back and he was -- he didn't say nothing about

13 no ATM or anything like that. And then the dude got done using the

14 bathroom, and I heard him, you know what I'm saying, talking to the

15 girl, but he was kind of whispering and I couldn't really hear, you

16 know what I'm saying, exactly what he was saying --

17 Q. Okay.

18 A. -- and what -- what he -- I -- I know he had a gun and, you

19 know what I'm saying, things like that and -- and I -- and I just was,

20 you know, kind of concerned. I just was like -- you know, I was

21 like -- I just told him straight-up whispering (incomprehensible). I was

22 like -- I said, "Man, (incomprehensible) supposed to be into this." And

23 then that's when he told me -- he's like, "Well, you -- you, you know

24 what I'm saying, you bitching (incomprehensible)."

25 "(Incomprehensible) nothing to do with this, dog. (Incomprehensible)



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Page 19

1 I'm here on vacation. And then the next thing you know, you know  
2 what I'm saying, he -- he took off. He just on feet, and --  
3 Q. You guys didn't get back in the car and go?  
4 A. No.  
5 Q. Why not?  
6 A. He left.  
7 Q. Okay. So you -- you leave. Let -- let's go back to when  
8 he came back from the ATM.  
9 A. Okay.  
10 Q. I need you to describe what happened. I need you to  
11 describe to me --  
12 A. One of the guys had to use the bathroom, so.  
13 Q. Right, right. You --  
14 A. So --  
15 Q. -- went to bathroom, but now when he comes back there,  
16 he tells 'em something to the effect, okay, we're 90 percent done  
17 here, 10 percent --  
18 A. I -- I don't know (incomprehensible) said 'cause -- 'cause  
19 I'm around the corner, sir. The bathroom --  
20 Q. No, no, no. But -- but here's what happens on the floor  
21 in front of both of you. He tells one girl that you're going -- how long  
22 you been dating and you're going to do him and he couldn't get it up.  
23 Okay?  
24 A. Yeah, I didn't hear all that stuff.  
25 Q. So you're telling me you weren't there when he told her

1 us you -- he starts staying where's the condoms? Okay. And then  
2 you walk back in there. You guys get the condoms, but you don't  
3 use 'em. You don't -- you don't do that. He starts putting his finger  
4 in her, and that's when you tell him to stop, let's go. You said that's  
5 enough.  
6 A. That's -- I said -- I said -- I said, "I don't know what you're  
7 doing." I said, "You -- you need to get out of here." And when I told  
8 him that, that's when he -- he just took off  
9 Q. Okay. So what I'm saying is you were standing there  
10 when he -- when he had her clothes off, and he said fine.  
11 A. No, I didn't say (incomprehensible).  
12 Q. I want -- I want --  
13 A. I --  
14 Q. I want to know what he said exactly as far as --  
15 A. I don't know.  
16 Q. -- the fact that nobody could get it up. When you saw  
17 him put his finger in there --  
18 A. No, I didn't. That's -- that's -- that's where -- that's the  
19 part I don't get what you're saying. I didn't see that.  
20 Q. Okay. When did you tell him we got to get out of there,  
21 we got out --  
22 A. I (incomprehensible). I said he -- I said, "Dog" --  
23 Q. Where was he standing when you said that?  
24 A. He was standing like -- if I'm right here, he was standing  
25 about right where that pole is.

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Page 20

1 to take off her clothes and told him to take off his clothes? You  
2 weren't there? That guy used the bathroom for ten minutes, and  
3 you're telling me you weren't there?  
4 A. That guy -- that guy used the bathroom ten minutes.  
5 Q. Well, I -- I know that's a lie. Okay? You were being  
6 honest up until then.  
7 A. No, I --  
8 Q. But -- but I'm telling you --  
9 A. I'm telling you right now that I was with the guy that was  
10 using the bathroom --  
11 Q. Okay.  
12 A. -- not with him, but like, you know what I'm saying,  
13 like --  
14 Q. But he came --  
15 A. -- the house was dark, sir. I don't really know, you know  
16 what I'm saying --  
17 Q. Hold on a second. I understand that. But he comes out  
18 and he sees what happened. Okay? Then he gets put on the ground.  
19 Everybody gets put on the ground, and then she gets put on the stair,  
20 and -- and --  
21 A. And I'm still standing over there.  
22 Q. No. 'Cause the guy's back on the ground. We talked to  
23 him. Okay?  
24 A. Yes.  
25 Q. He's back on the ground. You come over, and she tells

1 Q. Where the girl is?  
2 A. Everyone else was on the floor.  
3 Q. She had no clothes on?  
4 A. Yeah, I believe so. I don't -- it was dark, sir. It was dark.  
5 I -- I think she -- I think she had maybe her top on or something, but  
6 I don't think she was like completely totally naked.  
7 Q. Okay. So you're -- you're saying you didn't see him put  
8 his finger in her and you didn't say stop it?  
9 A. I didn't see her put -- I -- I didn't tell her to stop nothing.  
10 I said --  
11 Q. No, him. You didn't --  
12 A. Oh, him.  
13 Q. -- tell him to stop it when you saw what he was doing?  
14 A. I didn't see him stick his finger, though. The -- the whole  
15 situation, I told him just to stop everything.  
16 Q. Well, what's the whole situation? Tell me the whole  
17 situation.  
18 A. The whole -- the whole situation was being there that  
19 popped up, all that.  
20 Q. How come they're saying you both had guns?  
21 A. I have no idea, but you checked everything. You could  
22 check my rental car, you know what I'm saying. I got --  
23 Q. So was that car rented? It's in your name?  
24 A. No. Actually, I -- I -- I ordered it online from out of state  
25 in my name, but when I got here because I didn't have two proof --



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Page 23

1 I didn't have a credit card and my driver's license on me and  
 2 identification, and my driver's license is suspended until May, you  
 3 know what I'm saying. I can't -- I can't drive.  
 4 Q. Who rented it then?  
 5 A. Oh, my friend, Tanisha's cousin  
 6 Q. A girl or guy?  
 7 A. Girl.  
 8 Q. Okay. And then what's this guy's name?  
 9 A. Q. That's my roommate I come out here with.  
 10 Q. Okay, and Q wasn't up there with you?  
 11 A. No.  
 12 Q. 'Cause I'm going to have 'em come down here and look  
 13 at 'em one-on-one, and if you're lying to me --  
 14 A. You're going to go get Q?  
 15 Q. They're going to look at Q.  
 16 A. Oh, go ahead.  
 17 Q. You're telling me it's not Q?  
 18 A. I swear to God.  
 19 Q. Dude, was Christopher staying in the room with you?  
 20 A. No.  
 21 Q. There's one more guy that's supposed to be in the room.  
 22 A. Nah.  
 23 Q. Who's that?  
 24 A. Nah, I only got one room.  
 25 Q. So it's only you and him?

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1 A. Me and Q.  
 2 Q. There's no one else?  
 3 A. No.  
 4 Q. So where are the clothes that you were wearing?  
 5 A. My clothes?  
 6 Q. The clothes you were wearing last night when you went  
 7 to Grant's?  
 8 A. The room.  
 9 Q. They're in your room? The hat and everything?  
 10 BY DETECTIVE HARTSHORN:  
 11 Q. His clothes going to be up there, too?  
 12 A. Who?  
 13 BY DETECTIVE WESKE:  
 14 Q. Christopher's.  
 15 BY DETECTIVE HARTSHORN:  
 16 Q. Christopher's.  
 17 A. Nope.  
 18 Q. We're not going to find his hat and his all that?  
 19 A. Uh-huh.  
 20 BY DETECTIVE WESKE:  
 21 Q. You're telling me -- you're telling me Christopher --  
 22 A. I -- I (incomprehensible) hat. I had a black shirt and a  
 23 black hat.  
 24 Q. With an A on it?  
 25 A. Uh-huh.

1 Q. And that's up in the room?  
 2 A. Uh-huh.  
 3 Q. And there's no guns in the car?  
 4 A. No, sir.  
 5 Q. There's no gun in that room?  
 6 A. No, sir, (incomprehensible).  
 7 Q. No ammunition?  
 8 A. No.  
 9 Q. Was there any ammunition?  
 10 A. No.  
 11 Q. Okay. And you're telling me you went there with him to  
 12 get some smoke, he did this in front of you and then he didn't even  
 13 give you no money?  
 14 A. Nothing. He left me, sir.  
 15 Q. Well, let's -- let's find out --  
 16 A. -- after he (inaudible).  
 17 Q. -- how truthful you are because Grant was truthful with  
 18 me today. Okay? 'Cause he's -- he's -- he's done. What I found in  
 19 his place -- because once you -- you got him involved today. He felt  
 20 he got robbed twice because you got him involved, and guess what,  
 21 all his money and all his dope's gone because I went over there  
 22 checking on him, "Hey, these guys went over to rob you, Grant,  
 23 'cause they said, hey, is Grant here?" So I finally figure out who he  
 24 is.  
 25 A. Uh-huh.

Page 24

1 Q. And guess what? He told me why you guys had a falling  
 2 out. Okay? So tell me what happened that time.  
 3 A. I don't know nothing about that.  
 4 Q. (Inaudible).  
 5 A. (Inaudible).  
 6 Q. Okay. Grant --  
 7 A. (Inaudible).  
 8 Q. Let me -- let me -- let start here. Okay? He comes home.  
 9 You come in the house with a mask on at first. Grant recognizes ya.  
 10 He recognizes the dog (incomprehensible). What's going on? Are you  
 11 in some kind of trouble? Okay. And I don't -- he said you didn't look  
 12 the same. You looked like something was messed up with you, like  
 13 you may have been on something or, you know, you had some  
 14 serious issues. And so he didn't think you were serious at first.  
 15 Didn't say you were going to kill him. You just had -- you just point  
 16 it at him, but he didn't even know if it was a real gun, and he didn't  
 17 know. Was it a real gun?  
 18 A. I didn't point nothing at Grant, man.  
 19 Q. Okay? You didn't point nothing at him?  
 20 A. Nah, me and Grant never had --  
 21 Q. Okay. So then when he comes -- when you come outside,  
 22 you go outside, and then that's when the mask is off and he  
 23 confronts you and asks you what's up, why'd you do that. We  
 24 looked at cell phone records --  
 25 A. Right.

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1 Q. -- okay, 'cause that's the only way I could confirm just his  
2 word against yours, you know.  
3 A. Right.  
4 Q. But I got witnesses there. I got all the -- I got Grant there  
5 and the other -- the other guy that was there, you know. Tell me  
6 what happened there. Did -- did -- did Grant owe you something  
7 or --  
8 A. Grant doesn't owe me nothing.  
9 Q. Okay. So what happened? Why'd you -- why'd you take  
10 his weed?  
11 A. Grant -- Grant don't owe me nothing. I never  
12 (incomprehensible).  
13 Q. So you're degrading going up there, taking his weed, this --  
14 and this thousand dollars?  
15 A. Who, Grant?  
16 Q. Yeah.  
17 A. I didn't take no weed from Grant.  
18 Q. Okay. What about the thousand dollars?  
19 A. Didn't take thousand dollars from Grant either.  
20 Q. So he's lying?  
21 A. I haven't even talked to Grant.  
22 Q. So he's lying about a year and a half ago when you went  
23 over there?  
24 A. Yeah.  
25 Q. He's straight-out lying?

1 much in your system, and being All-Star weekend and all that stuff,  
2 I know how it's been down here. It's party all day all night.  
3 A. Yeah.  
4 Q. There's nothing wrong with that. Okay? You made a  
5 mistake then. You made a mistake this time. We're not trying to say  
6 you're a bad person.  
7 A. No.  
8 Q. What we're --  
9 A. (Inaudible.)  
10 Q. -- trying to figure out is -- is why -- why did you let it get  
11 so far. You know what I'm saying?  
12 A. I didn't do anything, sir.  
13 Q. But you were in the house.  
14 A. I know, but that wasn't on my own -- I was going --  
15 someone said they were going to buy a sack from Grant. Christopher  
16 said -- I asked Christopher when I ran into him at the Stratosphere. I  
17 said, "Man," I said, "do you know where I can get a 50 sack?"  
18 (Incomprehensible) he's like, "All I know is that Grant  
19 (incomprehensible)."  
20 Q. You lived here before, right?  
21 A. Yes, sir.  
22 Q. How long ago has it been?  
23 A. About three years ago, three-and-a-half years ago.  
24 Q. You went to UNLV?  
25 A. Yeah.

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1 A. He's straight-out lying. I never took no weed or no  
2 thousand dollars from Grant.  
3 Q. Why do you think we came up with your name?  
4 A. Through Grant. That's how I knew Grant. Everyone know  
5 Grant serves to the whole --  
6 Q. I know he serves. You know what, he ain't done --  
7 A. (Inaudible.)  
8 Q. -- but what I'm saying is, you know, you were there on  
9 this one. What's wrong with telling me about the last one?  
10 A. 'Cause -- 'cause I wasn't in -- I wasn't (incomprehensible)  
11 Grant like that. I didn't take no weed from Grant. That's what I'm  
12 saying.  
13 BY DETECTIVE HARTSHORN:  
14 Q. Listen, man, we -- we're not saying you're a bad person.  
15 You've shown that today. You've shown that you have some kind of  
16 heart, obviously, 'cause you did what you did. Okay?  
17 A. (Inaudible.)  
18 Q. We know that you have a gambling problem. We know  
19 that you have a -- you, obviously, were having some kind of issue that  
20 day with Grant a year and a half ago 'cause you were all tore up.  
21 Okay? I understand that. People get tore up. You don't think we  
22 were -- were kids once?  
23 A. I understand.  
24 Q. We understand, too. We went to college. Okay?  
25 Sometimes you do stuff that's stupid because you got a little too

1 Q. Played ball?  
2 A. Yeah.  
3 Q. That's how you knew Grant?  
4 A. I knew Grant from 24-Hour Fitness.  
5 Q. Oh, that's right. He said that, too. How did you know  
6 Christopher when you were up here?  
7 A. Christopher, he used to go get -- I believe he went to  
8 UNLV. I don't really know that. I met him from a friend.  
9 Q. He didn't play ball with you?  
10 A. No.  
11 Q. Okay. So when Christopher -- how does Christopher  
12 know Grant then?  
13 A. Christopher knows Grant through me when I used to get  
14 sacks from Grant back in the day.  
15 Q. Okay. So Grant -- Grant's more of a high-level type of  
16 dude?  
17 A. Yeah, Grant -- Grant, you know what I'm saying --  
18 Q. 'Cause I know 'cause we took a ton of money out of his  
19 fricken house today, dude.  
20 A. Yeah.  
21 Q. Found dope, too, weed.  
22 A. Yeah.  
23 Q. So, you know, that -- it is what it is, but I mean did  
24 you -- when was the last time you talked to Grant?  
25 A. Not in a while.

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1 Q. Okay. So --  
 2 A. It's been a year or so.  
 3 Q. So you've been -- where do you live now?  
 4 A. I live in Colorado.  
 5 Q. Okay. So you're just down from Colorado to visit, NBA  
 6 All-Star weekend --  
 7 A. Yeah.  
 8 Q. -- all that kind of stuff? Okay. Now, was Christopher --  
 9 is Christopher still living here?  
 10 A. I don't know. I -- I would assume, sir. He was from  
 11 Vegas when I met -- when I -- when I -- when I used to live here, he  
 12 had lived in Vegas. I never been to his house, but I know -- I know  
 13 I used to see him a lot.  
 14 Q. But he knew how to get to the -- to Grant's old place,  
 15 right?  
 16 A. Sure.  
 17 Q. He knew how to drive there?  
 18 A. Yeah.  
 19 Q. Were you driving or was he driving?  
 20 A. Nah, he was driving.  
 21 Q. Okay. What car was it?  
 22 A. Like a Chrysler.  
 23 Q. Chrysler what?  
 24 A. 300.  
 25 Q. What color was it?

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1 A. Like green.  
 2 Q. Okay. It was just --  
 3 A. Looked like a -- like dark -- it might be black, but it was  
 4 real dark.  
 5 Q. Is it just you two that were in the car? There's no one  
 6 else, right?  
 7 A. Yeah.  
 8 Q. Okay. So there's just the two. All right.  
 9 A. Just us two.  
 10 BY DETECTIVE WESKE:  
 11 Q. Where'd you end up scoring weed?  
 12 A. Scored it at one of my homegirl's --  
 13 Q. Okay.  
 14 A. -- (inaudible).  
 15 Q. Okay.  
 16 DETECTIVE WESKE: Are you still talking to 'em?  
 17 DETECTIVE HARTSHORN: Nah.  
 18 BY DETECTIVE WESKE:  
 19 Q. Listen.  
 20 A. Yes, sir.  
 21 Q. This cell phone that you guys got from there, is that going  
 22 to be in your room or is that going to be in the car?  
 23 A. Neither.  
 24 Q. Neither?  
 25 A. You check both. (Incomprehensible), sir.

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1 (Incomprehensible).  
 2 Q. Who's got the cell phone?  
 3 A. I don't have no cell phone, sir. That's my cell phone right  
 4 there.  
 5 Q. I understand that, but her cell phone was taken, and I  
 6 mean we're going to be able to, you know, look at this cell phone, see  
 7 if it pings. This is your cell phone?  
 8 A. Yes, sir.  
 9 Q. Did you use it while you were up there at all?  
 10 A. Where?  
 11 Q. Up at Grant's place --  
 12 A. No, sir.  
 13 Q. -- (inaudible)? Is this turning on?  
 14 A. It's a little -- could be a little dead (inaudible).  
 15 Q. Well, I'm going to see if you called her cell phone from this  
 16 number. Is her number going to be on here?  
 17 A. What the number?  
 18 Q. Well, you know what her number is if you tried to call  
 19 Christopher on it with a cell phone, right? But if I find the number on  
 20 here, I'm -- I'm going to have to start thinking you're -- you're starting  
 21 to not tell me everything. Is her number going to be on here as far as  
 22 (inaudible)?  
 23 A. I don't know what you're talking about.  
 24 Q. The girl that was up there, her -- one of the cell phones --  
 25 A. Where from?

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1 Q. -- was taken from that -- from -- from the place you guys  
 2 went and robbed.  
 3 A. Oh, okay.  
 4 Q. Okay? Did you call that number --  
 5 A. No.  
 6 Q. -- trying to get a hold of Christopher?  
 7 A. No. Christopher? No, I didn't try to get a hold -- I don't  
 8 even know Christopher's number. I told ya I ran into him at the  
 9 Stratosphere. I don't have -- there's only like five 702 numbers that  
 10 I got in that phone. I only talk to certain people from Vegas anymore.  
 11 Vegas (Incomprehensible). I don't really like it, man, you know.  
 12 BY DETECTIVE HARTSHORN:  
 13 Q. Uh-huh.  
 14 A. I stay away and things like that.  
 15 Q. Did you see him taking that phone? Did you see him  
 16 grab --  
 17 A. No.  
 18 Q. -- 'cause you stuck -- you had all the phones, right?  
 19 A. Who? I didn't have any --  
 20 Q. He had all the phones?  
 21 BY DETECTIVE WESKE:  
 22 Q. Well, you had all the phones and then you guys went  
 23 outside. What'd he do with the phones?  
 24 A. Remember, I told you he left before me. He opened the  
 25 door and --

1 Q. Well, they said you left --  
 2 A. -- was already gone.  
 3 Q. -- at the same time?  
 4 A. Nah. I'm not lying to you right there, sir. I just looked at  
 5 him, told him, I said, "Dug," I said, "man," I said, "Man. I don't" -- I  
 6 whispered just like this. I said, "Man, I don't know what (inaudible)."  
 7 I was like, I was like, "I'm about to get out of here." And then like he  
 8 was talking a few, you know what I'm saying, a few words and shit.  
 9 and he -- he just opened the door and just took off. And all I did, you  
 10 know what I'm saying, when I walked out the house, I just told all the  
 11 people, I said, "Man," I was like, "I hope you know I got hurt, man,  
 12 and I, you know what I'm saying, I -- I did not ask for any of this,"  
 13 and I ran.  
 14 BY DETECTIVE HARTSHORN:  
 15 Q. Well, you proved that.  
 16 DETECTIVE WESKE: Do you have the phone number?  
 17 Do you know what it was?  
 18 DETECTIVE HARTSHORN: I don't have it. This is Rod's  
 19 notebook, it's a 775 number.  
 20 DETECTIVE WESKE: Is it?  
 21 DETECTIVE HARTSHORN: Yeah, pretty sure. I can call  
 22 Rod and get him if you want.  
 23 BY DETECTIVE HARTSHORN:  
 24 Q. Oh, let me ask you this. When the guy that -- that he  
 25 took to go get the ATM card to go get the money out of the banks

1 and stuff --  
 2 A. Uh-huh.  
 3 Q. -- of the debit cards, did you see that car that they left  
 4 in --  
 5 A. No, sir.  
 6 Q. -- see what kind of car?  
 7 A. No, sir.  
 8 Q. Okay. Is there any reason why your -- why your  
 9 fingerprints would be inside of that car?  
 10 A. What car?  
 11 Q. Of the car that was used to go pick up money from the --  
 12 A. No, sir.  
 13 Q. Okay. So your prints will not be in there?  
 14 A. (Inaudible.)  
 15 Q. You're a hundred-percent sure?  
 16 A. Yeah.  
 17 Q. Did you like accident -- did you touch it on the way out or  
 18 anything like that?  
 19 A. No, sir.  
 20 Q. Okay. So at no point were you inside that car?  
 21 A. No, sir.  
 22 Q. So no fiber transfer, no fingerprints, no nothing like that?  
 23 A. I --  
 24 Q. You're positive, right?  
 25 A. I was (incomprehensible), sir.

1 Q. So you never got in that -- that car to go to the bank?  
 2 That was not you?  
 3 A. Nah.  
 4 Q. Okay. Any reason your face is going to show up on the  
 5 surveillance of the ATMs?  
 6 A. Shouldn't.  
 7 Q. Shouldn't? Why? Did you use those ATMs earlier?  
 8 A. Nah. I don't -- I don't have no ATM over there.  
 9 Q. Man, it -- it's yes or no, man, 'cause you don't even go up  
 10 there. Am I right?  
 11 A. Nah, exactly.  
 12 Q. So it shouldn't be up there because? Why shouldn't it?  
 13 A. 'Cause I didn't -- I don't do anything. I -- I didn't go. I  
 14 didn't -- I shouldn't be in there 'cause I was at the house.  
 15 Q. Okay. You shouldn't be on those tapes? Okay. You're  
 16 positive on that?  
 17 A. What?  
 18 Q. That you're not on those tapes at the bank? You know  
 19 that tapes are high-speed, right? You know we've already looked at  
 20 'em, right?  
 21 A. Yeah.  
 22 Q. Okay?  
 23 BY DETECTIVE WESKE:  
 24 Q. Did you go to the ATM with him is what he's asking?  
 25 A. Yes.

1 Q. Okay. So why don't you start being honest with what  
 2 really happened?  
 3 A. Well, I'm scared, sir.  
 4 Q. I understand you're scared. Okay? But -- but the farther  
 5 you dig yourself in a hole, the worse it's going to look for ya. Okay?  
 6 It's not a matter of who. We're here with who.  
 7 A. Right.  
 8 Q. It's a matter of why and what exactly happened and what  
 9 you did. Okay? So let's -- let's start from the beginning again.  
 10 A. All right. Well, (incomprehensible) just to be truthful  
 11 honest, there was a total of like three people there.  
 12 Q. Okay. Who --  
 13 A. It was Christopher and I guess Christopher's cousin, and,  
 14 you know what I'm saying, basically, what -- what I did, you know  
 15 what I'm saying, was I was -- the reason why I was on the ATM is  
 16 because I was in the passenger's seat and, you know what I'm  
 17 saying, Christopher was the one that he -- he's the one in the back  
 18 seat. Like he had a gun, you know.  
 19 Q. Right.  
 20 A. And --  
 21 Q. (Inaudible.)  
 22 A. -- I was -- I was just chilling, you know, like basically going  
 23 along with everything that they were saying or whatever, and then  
 24 after that, I fucking -- you know, all that was going on, and the reason  
 25 why there was someone at the house I believe 'cause that's what his



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1 cousin was stayed there at that house. His cousin stayed there  
2 probably with the other people. So then when I came back -- when  
3 I came back from -- me and -- me -- me and Christopher, I came back  
4 and he was like -- he was asking, you know, he was just -- he  
5 basically just kept talking to the people, and that's when I started --  
6 I had to go watch the dude shit.

7 Q. Uh-huh.

8 A. You know what I mean? And then that's when I did that.  
9 and then basically, you know what I'm saying, when I was watching  
10 them, you know what I'm saying, Christopher and his cousin,  
11 basically, they ran and they left me there. And that's when I ran  
12 about five, ten minutes after that.

13 Q. So three of you were in the house?

14 A. Yeah, there was a three.

15 Q. Three of you were in the house and one stayed in the car?  
16 One stayed in the car?

17 A. What do you mean?

18 Q. Did one stay in the car while two of you went in the  
19 house, or did all three of you go in the house?

20 A. One stayed in the house.

21 Q. When you first pulled up and knocked on the door --

22 A. Oh.

23 Q. -- who stayed in the car?

24 A. No. There was three. We were all three there.

25 Q. All three of you went in there?

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1 A. Yes, sir.

2 Q. Okay.

3 A. But we were all -- like they -- the way they did it, it was  
4 like a normal knock, sir. It was just, you know.

5 Q. Oh, I know.

6 BY DETECTIVE HARTSHORN:

7 Q. We know they let you in.

8 A. Oh. Huh?

9 Q. They let you right in.

10 A. Yeah, yeah.

11 Q. 'Cause that's -- that's what they do. They're cool like  
12 that.

13 A. Yeah.

14 BY DETECTIVE WESKE:

15 Q. It's a frat house, basically.

16 A. Yeah, yeah.

17 Q. You know, they let you in, and then from there who pulls  
18 out the guns?

19 A. It was only one gun.

20 Q. And that -- who had that?

21 A. Christopher.

22 Q. Okay. So you went to the ATM with Christopher, and the  
23 other dude stayed?

24 A. Yeah.

25 Q. Okay. So then when you got back from the ATM, what

1 happened then? You went with --

2 A. I --

3 Q. You --

4 A. -- never.

5 Q. -- went with the one to go stat while they -- they harassed  
6 the --

7 A. Well, when we came back, I -- like he told me, he was  
8 like -- the dude's like -- like, "I really got to use the bathroom." And  
9 at this time, I'm kind of shaking, too, and he's like -- he's like -- he  
10 was like, "Go with him, you know what I'm saying, watch him, you  
11 know what I'm saying, use the bathroom." So I like walked over  
12 there. I was kind of like, you know what I'm saying, past the  
13 bathroom, I was kind of like to the left of right there, and there was  
14 Christopher and his cousin, and they had the other four, you know  
15 what I'm saying, kind of hostage.

16 And I -- the whole time I'm just sitting there, you know what  
17 I'm saying, kind of panicking. 'Cause to be honest with y'all, I was  
18 even a little scared of Christopher, too, 'cause, you know what I'm  
19 saying. He -- like he's like twenty -- like 27, 28 years old, you know  
20 what I'm saying, like I mean he's like -- I heard he's like been in jail  
21 and shit like, you know what I'm saying. I don't even know too much  
22 about him. All I know is that I need some bomb and I had smoked  
23 weed with him a couple of times, gambled with him before, like you  
24 know what I'm saying, as acquaintances. It was All-Star weekend.  
25 I had a couple drinks, you know. I was feeling good. So, you know.

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1 that's why we say he could get stuff from Grant, and I hadn't talked  
2 to Grant. I didn't know -- I didn't -- hadn't talked to Grant. I don't  
3 have Grant's number. So I couldn't call. My honey got --

4 BY DETECTIVE HARTSHORN:

5 Q. Have you ever been arrested?

6 A. Have I ever been arrested? Yes, sir.

7 Q. Have you done any time?

8 A. Time, no.

9 Q. What's the longest you've been in? Have you been in  
10 recently?

11 A. No.

12 Q. How -- how long has it been?

13 A. It's been a while. I -- I've never done like (smudgie).

14 Q. Did Christopher just get out?

15 A. I don't know. See, that's what I'm saying. I don't know  
16 Christopher very well.

17 BY DETECTIVE WESKE:

18 Q. Listen to me.

19 A. I'm being -- I'm being totally honest with you.

20 Q. Okay. You're not being totally honest because --

21 A. I'm --

22 Q. -- okay, about one thing. You're saying, well, the reason  
23 why, you know, we went to Grant's is because, you know, I got it  
24 there before. That part's bullshit. You already had a problem with  
25 Grant. You had a falling-out with him. You already took his shit one

1 time, and you're not going to go back up there just to say, hey,  
2 Grant, can I buy you some weed from you when he's already had a  
3 problem with you.

4 A. But that's what I'm saying. I don't know what you're  
5 talking about. I never robbed Grant. That's why --

6 Q. Why would he make that up?

7 A. 'Cause he's fucking -- I don't know what the fuck he is  
8 talking about. He's the fucking -- he's fucking doing a gig. Like you  
9 say, I haven't talked to Grant. I haven't took no money or no weed  
10 from Grant.

11 Q. So why'd you lie about staying at the house when you  
12 didn't stay at the house?

13 A. 'Cause I just didn't -- I just don't want to get involved in  
14 it like, you know, like the whole time, you know what I'm saying.  
15 When I left last night, I was just hoping that I -- 'cause I -- I didn't do  
16 anything. Like I basically, you know what I'm saying, the situation.  
17 I don't know if it was going to go worse or not, but all I did, you  
18 know what I'm saying, I basically let them know that like [ -- ] was  
19 literally, you know what I'm saying, (incomprehensible) so, you know  
20 what I mean, and I think that's what scared Christopher and them  
21 'cause when they didn't really trust me. So, you know what I'm  
22 saying, like a little bit after that, he, you know what I'm saying, he  
23 just bombed out.

24 BY DETECTIVE HARTSHORN:

25 Q. Did you drive the car back here then?

1 A. Where? The car?

2 Q. The -- did you bring it back here?

3 A. No, sir. I got a ride.

4 Q. So how did the car end up back here?

5 A. What car?

6 Q. The Chrysler.

7 A. Oh, the -- we don't have a Chrysler.

8 Q. You just said you drove over in that Chrysler, and you  
9 were driving.

10 A. No, no, they -- I was riding with them. It was  
11 Christopher's Chrysler, a green Chrysler. Christopher's cousin. I  
12 don't even remember his name. I kept calling him like DC or D -- DK  
13 or D -- D something. That was their Chrysler. I don't have no  
14 Chrysler, bro'. I'm being -- I'm being dead serious with y'all.

15 BY DETECTIVE WESKE:

16 Q. Okay. Well, then tell me the truth about what happened  
17 when they told her to take the clothes off and that. Tell me --

18 A. Sir, that's all I know. They were -- I was -- I had to  
19 watch -- all I know if I didn't watch the guy take a shit, the fool  
20 Christopher could blast me. Christopher's the only one that had a  
21 gun.

22 Q. So when you came out and you saw -- which was it, was  
23 it Christopher or was the cousin over there?

24 A. That's funny, now that -- now that you're saying that.

25 That's probably why he told me to get in the front seat 'cause I didn't

1 even know ATMs had cameras and shit, man. So I'm, you know

2 what I'm saying, I'm sitting there talking, you know what I'm saying.

3 whatever, you know what I'm saying. They probably -- that's

4 probably I like been kind of set up in this thing, probably be fucking

5 part of, you know what I'm saying -- I didn't even know there was

6 cameras and shit on the ATM. He probably wanted to see my face

7 and shit.

8 BY DETECTIVE HARTSHORN:

9 Q. Listen. We know no one else was in that car, dude. It

10 was just you and the ATM. You were the only one that went to the  
11 ATM.

12 A. No.

13 Q. It was only you. We can see crystal clear, man. It

14 was -- you were the only one in that car. We already know that. It

15 doesn't make it any different. Okay? You went. That -- look. Focus

16 on this. Okay? Taking somebody's money, who gives a shit. There's

17 more money everywhere, right?

18 A. Right.

19 Q. Who cares. Okay? Sexually assaulting a female, that's

20 a completely different animal. Okay? We don't really care about the

21 ATM. That's not a big deal in our book. We care about the sexual

22 assault, the fact that you stopped it, which is huge for you in all this

23 mess. Okay? It's huge. But that is one thing and a little standing is

24 another.

25 A. Right.

1 Q. It's totally different. Okay?

2 A. (Inaudible.)

3 Q. The fact that you went, that shows that you didn't want

4 to be involved in that. It shows that you didn't want -- want to be

5 there. Okay? If I got to do something in this mess, then I'd go with

6 this cat and get the -- the money out of the ATM, I don't care, but I

7 don't want to be here with all these people, you know, especially with

8 the girl. So we know that you're a good kid, a good guy, but it's

9 just -- you were in a messed-up situation, but we know you went to

10 the ATM. We know you came back. We know you stopped that

11 sexual assault. Okay?

12 A. I didn't stop it, sir. I really did. I'm being -- I'm being

13 truthfully honest. I didn't stop the sexual assault. I didn't.

14 Q. That's too bad because that would be good for you.

15 BY DETECTIVE WESKE:

16 Q. But that's fine. You stop it, but you see we already know

17 what's going on here, but we let you lie. You keep lying to us.

18 A. No, I'm --

19 Q. You know, you tell us --

20 A. -- I'm not lying. I'm just nervous, man.

21 Q. Okay. But you're telling us Christopher's in the back seat

22 when he's not. Okay? Do you want to tell me the truth, or do we

23 just go on out? It's up to you. Do you want to go to prison now, or

24 do we want to go through this whole thing and tell us the truth one

25 last time? 'Cause I'm tired of playing with you. And I've been up



1 since 1 o'clock in the morning, bro'. It's now going on almost 24  
2 hours.  
3 You understand right upstairs now they're searching your room  
4 with a search warrant. We got it signed by the judge. So they're  
5 going through that. They're getting your clothes. They're looking to  
6 see if the phone's in there. They're looking for guns. I don't know  
7 what's going to be in there. They're going to take the car. They're  
8 going to bring it over to the station. We'll get another search warrant  
9 for that or apply for a search warrant, see what the judge says on  
10 that. Okay? Now, I'm going to ask you one last time to start from  
11 the beginning and give me the truth, and if you go anymore lies, bro',  
12 I'm done. I'm done. I'll let you take the whole rap.  
13 A. Take the whole rap?  
14 Q. Yeah.  
15 A. (inaudible.)  
16 Q. Okay. You went out there. Okay? Now, who all went up  
17 there?  
18 A. I just told ya: Christopher, his cousin and me.  
19 Q. Okay. When you got to the house, who stayed in the car?  
20 A. No one stayed in the car. All three was in the house, sir.  
21 Q. Okay.  
22 A. That's -- that's what I'm trying to say.  
23 Q. All right. And then who went to the ATM?  
24 A. I did.  
25 Q. Okay. And who stayed behind?

1 A. Christopher and his cousin, whatever it is, DC.  
2 BY DETECTIVE HARTSHORN:  
3 Q. Can you tell me why no one ever saw a third person  
4 there? None of them. None of them ever heard a third person. They  
5 heard your voice, and they heard I guess Christopher's voice.  
6 A. Right.  
7 Q. That's the only voices they heard.  
8 A. Right.  
9 Q. Is the guy a mute? I mean does he not talk? They never  
10 saw him. They never saw his feet. They're all laying like this. You  
11 can see out this way. You can see your feet. They saw your shoes,  
12 described your shoes, described Christopher's shoes. They never saw  
13 this other cousin.  
14 A. That's why I'm trying --  
15 Q. The cousin stay in the car?  
16 A. Cousin --  
17 Q. 'Cause we're thinking the cousin stayed in the car.  
18 A. No. The cousin was in the house.  
19 Q. Okay. So then Christian stayed in the car.  
20 A. No one --  
21 Q. 'Cause you left --  
22 A. -- (inaudible) Christopher and his cousin --  
23 Q. -- that car was not parked out by -- by the house, right?  
24 A. Right.  
25 Q. That car was parked --

1 A. Me -- me --  
2 Q. -- around the corner.  
3 A. -- and that other guy -- all -- all I was told to do was going  
4 on to the ATM. I go with the guy to the ATM. I come back, and  
5 that's what's all going on.  
6 BY DETECTIVE WESKE:  
7 Q. What's all going on?  
8 A. I mean the -- the -- you know what saying, that everyone  
9 that was on the ground and stuff. Christopher and this cousin that  
10 both lived here -- see, his cousin -- the reason why they probably  
11 never see his cousin because his cousin was never really, you know  
12 what I'm saying, like in -- in the -- in the light. He never really got into  
13 it. Like he kind of was like the observer. Like basically, I -- I was the  
14 one, you know what I'm saying -- like I didn't have no gun or nothing  
15 like that. I -- I went with old boy, you know what I'm saying. Old  
16 boy come back. He had -- Christopher has a gun and Christopher's  
17 cousin, he -- he was kind of like the observer. He like -- he was in the  
18 house, sir. But see, I don't -- I don't know Christopher and them like  
19 that.  
20 Q. Well, they're only saying two people went.  
21 A. No. There was three, sir. I don't -- I don't know --  
22 Q. What does DC look like?  
23 A. DC is like dark-skinned. He had like -- what was he  
24 wearing yesterday? He probably had like dark colors on, like it was  
25 probably like dark blue, you know what I'm saying, dark kind of. He's

1 darker than me.  
2 Q. What'd Christopher look like?  
3 A. Christopher is like caramel color.  
4 Q. Okay. Is he tall, thin, what?  
5 A. Athletic shape kind of.  
6 BY DETECTIVE HARTSHORN:  
7 Q. Is he taller or shorter than you?  
8 A. Taller.  
9 Q. Skinnier than you? Thinner I should say?  
10 A. Yeah.  
11 BY DETECTIVE WESKE:  
12 Q. What about DC?  
13 A. DC's like -- he's tall, probably about six -- about six --  
14 6'1", six foot.  
15 Q. Darker?  
16 A. Darker, yeah. He's darker than me.  
17 Q. So you don't -- you don't know these guys?  
18 A. I don't know 'em like -- nah, I don't have any of their info  
19 and things like that.  
20 Q. What about in your phone?  
21 A. Go ahead. Go ahead and call stuff.  
22 Q. Do you have his phone number in there?  
23 A. No, sir, not Christopher.  
24 Q. How about DC?  
25 A. Nah. I don't even know -- that was my first time meeting

1 DC.  
 2 Q. How'd you hook up with 'em?  
 3 A. I was at the Stratosphere. I had seen 'em at the  
 4 Stratosphere. I (inaudible).  
 5 Q. Does Christopher live here?  
 6 A. He -- he -- I don't know. He's from Vegas. I don't know  
 7 if he still lives here or not. Like I said --  
 8 Q. Christopher knows Grant?  
 9 A. Yeah. He probably -- a lot of people know Grant. Like  
 10 Grant supplied the whole like UNLV football team.  
 11 BY DETECTIVE HARTSHORN:  
 12 Q. Yeah, we know that. We know that well. (Inaudible) one  
 13 second.  
 14 BY DETECTIVE WESKE:  
 15 Q. Is this boy -- is your boy going to know anything about  
 16 this?  
 17 A. No, sir.  
 18 Q. Did you talk to him about it at all?  
 19 A. No.  
 20 Q. 'Cause if you lie to me --  
 21 A. Nah.  
 22 Q. -- and he tells me, yeah, he told me about it, but I wasn't  
 23 there, and you say he doesn't know anything about it, that's just  
 24 another lie. It's going to play me off.  
 25 A. Nah.

1 Q. What'd you tell him about it?  
 2 A. Huh?  
 3 Q. What'd you tell him about it?  
 4 A. I just told him that basically, you know, I was going -- I  
 5 was (incomprehensible) situation. I was like, "I -- I'm  
 6 (incomprehensible) get into it." I was like, "Man, I ran up with a  
 7 couple bomeys, Christopher and there, you know what I'm saying.  
 8 (Inaudible) for a while." But I didn't really -- I didn't really -- I didn't  
 9 really -- I didn't tell him about DC or --  
 10 Q. That's him, huh?  
 11 A. No. You can call it.  
 12 Q. Who's DC?  
 13 A. DC is my -- a professional boxer I know.  
 14 Q. (Inaudible).  
 15 DETECTIVE WESKE: You can't (inaudible).  
 16 DETECTIVE HARTSHORN: What? (Inaudible).  
 17 DETECTIVE WESKE: Aw, man.  
 18 BY DETECTIVE HARTSHORN:  
 19 Q. Is that your phone?  
 20 A. Yeah.  
 21 BY DETECTIVE WESKE:  
 22 Q. (Incomprehensible) not said your name. All right? Now,  
 23 evidently, he's having a hard time believing that we talked, okay, and  
 24 that you mentioned something to him. You confided in him is what  
 25 you told me. Yes or no?

1 A. What?  
 2 Q. Did you say you confided in him, you told him what  
 3 happened last night?  
 4 A. No. I (inaudible).  
 5 Q. I got it on tape recorder. You want to tell me that you  
 6 didn't?  
 7 A. I said -- I didn't say I -- I talked to him. All I said my other  
 8 roommate.  
 9 Q. Okay. (Inaudible) lying. I got it on tape. I'll play it for ya.  
 10 It's right underneath that table.  
 11 A. You asked me if I talked to my roommate, and I  
 12 (inaudible) --  
 13 Q. I said him --  
 14 A. -- my roommate.  
 15 Q. -- in there and you said yeah, I explained a little bit to him.  
 16 Who's your other roommate you explained it to?  
 17 A. Uh. (Incomprehensible).  
 18 Q. Uh what? Who?  
 19 A. I don't even know him that well.  
 20 Q. But you confided into him about what happened last  
 21 night?  
 22 A. No, I --  
 23 Q. See, that (inaudible).  
 24 A. -- (incomprehensible).  
 25 Q. All right. Let's go down.

1 A. Hey --  
 2 Q. We'll stay a little longer.  
 3 BY DETECTIVE HARTSHORN:  
 4 Q. Do you know what he's trying to do?  
 5 A. What?  
 6 Q. He's trying to get him out of here. You understand that,  
 7 right?  
 8 A. What do you mean?  
 9 Q. If he didn't do nothing -- if he didn't do nothing, he needs  
 10 to corroborate your story with him. He just wants to get him out of  
 11 here, (Incomprehensible) lay in it. If you -- you told him that, you  
 12 might as well just tell him because all he's trying to do is help him  
 13 out, get him out of here. While he's cowering for you right now --  
 14 A. Yeah.  
 15 Q. -- saying he don't know shit and you didn't -- you didn't  
 16 tell him shit --  
 17 A. Yeah.  
 18 Q. -- you just make it worse on him, making him stick around.  
 19 You understand that, right?  
 20 A. Yeah.  
 21 Q. He's not trying to get him into any trouble. He's trying to  
 22 make sure he wasn't involved.  
 23 A. Right.  
 24 Q. You understand that?  
 25 A. Right.

1 Q. Okay. So -- so you're not helping him out by saying you  
2 didn't tell him if you already told the detective that you did tell him.  
3 A. I didn't. But he didn't ask me. I (incomprehensible) tell  
4 him.  
5 Q. Okay. But here's the deal, right, I mean and he knows  
6 this, and he knows a lot of the answers. He knows what happened.  
7 He knows (incomprehensible) you didn't tell no one else.  
8 A. Huh?  
9 Q. He knows you didn't tell anyone else. He knows that  
10 you -- that that's the only guy you confided in. Okay? He's just  
11 trying to -- he's trying to corroborate your story, okay,  
12 (incomprehensible) do that with Q, he's out of here, he's gone,  
13 doesn't have to deal with this bullshit right now, you know. But now,  
14 makes him look like he's not telling the truth, makes it look like you're  
15 not telling the truth and --  
16 A. (Incomprehensible.)  
17 Q. No, I -- I -- I understand. I understand, but keep this in  
18 mind. Keep this in mind. And this ain't my case, I don't -- I don't  
19 even know any details about it, but the situation you guys are in,  
20 that's -- that is be honest and cooperative (inaudible) --  
21 A. Right.  
22 Q. -- cool. Keep it that way. It's going to go -- it's going to  
23 go better on you. You know what I mean? If you said something,  
24 you said it. I mean if you said you told him what happened or if you  
25 told him a little bit of what happened, then -- then -- then tell him that

1 BY DETECTIVE WESKE:

2 Q. I'm getting pissed off, and the reason is it because I just  
3 asked you specifically there, you know, if he was involved, and you  
4 said no, he wasn't, it was Christopher and DC. Okay? And then you  
5 said --  
6 A. (Inaudible.)  
7 Q. -- I confided in him. And now because he -- he's  
8 hesitating to tell me what's going on, now you get scared and  
9 nervous, and he says he's been with you the whole time. So I'm  
10 starting to believe he's the other person involved.  
11 A. No.  
12 Q. So like I said, the other people are coming out to look, and  
13 if he says -- and if they point him out and say he's involved, that's  
14 just another lie, another nail in your coffin. Okay? And now you say  
15 there's a third person that's been staying up in the room with you, but  
16 they're going through the stuff, and they don't see two sets of --  
17 there's more than two sets. You know what I mean?  
18 A. Yeah. It's just me -- it's just me and him. He -- we  
19 had -- we had another homey that stayed with me. He's already  
20 gone.  
21 Q. Who's that?  
22 A. He -- his name is Roger.  
23 Q. How come he's giving me a different name?  
24 A. What'd he say?  
25 Q. He's give -- he's telling me --

1 'cause now he -- now he's thinking you -- now looks like you're a liar.  
2 Now just completely looks like you're a liar. You know what I mean?  
3 So just adds up.  
4 A. (Incomprehensible.)  
5 Q. (Incomprehensible) put it this way. If you told him any  
6 information about what you did does not make him an accomplice just  
7 because you told him.  
8 A. Well --  
9 Q. I mean you're not getting him in trouble.  
10 A. Right.  
11 Q. We're not trying to get him in trouble, trying to make sure  
12 he wasn't involved.  
13 A. Right.  
14 Q. Okay? So that's what I'm trying to say.  
15 A. I'm just saying (incomprehensible).  
16 Q. You know who you told.  
17 A. Huh?  
18 Q. You know who you told. You know what you said to that  
19 detective 'cause you're not dumb. You're smart, (incomprehensible)  
20 guys are smart.  
21 A. Okay.  
22 Q. So just I mean come on. You're not kids. You know --  
23 A. But see, he asked me -- you asking me questions the same  
24 way (incomprehensible) times (incomprehensible) asking now and I  
25 answered and he thinks I'm lying to him. That's (incomprehensible).

1 A. We didn't -- we didn't have --  
2 Q. -- (Inaudible). He's telling me --  
3 A. We didn't have --  
4 Q. How'd you guys get here?  
5 A. Graham.  
6 Q. Okay. Well, that's one good thing you guys got your  
7 story on. And then who else was here with you guys?  
8 A. Some of the -- I don't remember, Roger something.  
9 something like -- it was -- it was his -- it was his peoples, it was  
10 his -- they only stayed with us like one night, though, his cousins.  
11 They were here --  
12 Q. Yes or no --  
13 A. -- for All-Star weekend.  
14 Q. -- was he with you?  
15 A. No.  
16 BY DETECTIVE HARTSHORN:  
17 Q. Is there any reason his prints are going to show up at that  
18 house?  
19 A. No.  
20 Q. Any reason they're going to be in the car?  
21 A. No.  
22 Q. Any reason? 'Cause touched -- everybody touched all  
23 kinds of shit. That's all you did was touch everything in the house.  
24 A. Yeah.  
25 Q. We got prints going galore. Is there any reason his prints

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1 I are going to be in that house?  
 2 A. No.  
 3 Q. Does he know the other guy, Christian?  
 4 A. No.  
 5 Q. Did he know you went?  
 6 A. No. I was with him gambling most the time until he  
 7 took -- they -- he went to sleep, and then that's when -- 'cause he  
 8 doesn't gamble. He doesn't like to gamble. So when he was  
 9 sleeping, I was going --  
 10 BY DETECTIVE WESKE:  
 11 Q. So why'd you just -- why'd you just lie to me? Why'd you  
 12 say, oh, I didn't tell him? Why did you (inaudible)?  
 13 A. (Inaudible) 'cause sometimes you ask me questions and I  
 14 don't know (incomprehensible).  
 15 Q. No, but you told me. I mean why'd you sit here and lie in  
 16 front of me because you're scared, because you don't want to seem  
 17 like a (incomprehensible) telling him?  
 18 A. No.  
 19 Q. I mean that's one way just to confirm your story is you're  
 20 telling the truth is that, yeah, I told, I told him, man. So that's one  
 21 way. The only thing I can see the reason why you'd lie is because  
 22 he's involved. I've been doing this job a long time. Okay?  
 23 A. He's not involved, sir.  
 24 Q. But then why would you lie about, you know, you told  
 25 him, but why would you sit there and when I'm trying to tell him

1 Q. Big (inaudible)?  
 2 A. I know. Confide (incomprehensible), you know what I'm  
 3 saying, like --  
 4 BY DETECTIVE HARTSHORN:  
 5 Q. Confide. You tell someone in confidence.  
 6 BY DETECTIVE WESKE:  
 7 Q. I said -- he just said confide.  
 8 A. Oh.  
 9 Q. But my exact question was, hey, did you tell him what  
 10 happened, and you said yeah. I mean I -- you know, you hesitate a  
 11 little bit and you go, yeah, well, I told him a little bit, I just told him --  
 12 and you went into the story of what you told him. You said, well,  
 13 yeah, I told him, you know, that some stuff went down that, you  
 14 know --  
 15 A. (Incomprehensible) he asked me I been tonight, and I was  
 16 like, "Man, I just been hanging out with Christopher," and that was  
 17 about it.  
 18 Q. No. You told -- you said -- your exact words and I won't  
 19 make it up because this is going to be transcribed --  
 20 A. Right.  
 21 Q. -- that you told Christopher --  
 22 A. (Incomprehensible.)  
 23 Q. -- you told -- you told him that some shit went down with  
 24 Christopher.  
 25 A. You said did I talk to Christopher tonight, and I -- you said

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1 something and I'm trying to -- I'm trying to show him that I'm being  
 2 honest to him and that I don't lie --  
 3 A. Right.  
 4 Q. -- that, hey, I'm being honest. No, he told me, he said  
 5 that he told you what happened, so it's okay. Now I want to see if  
 6 you're telling the truth. I want him to tell me what you told him, but  
 7 now when I bring him over here, you basically call me a liar, and I  
 8 don't dig that, bro'.  
 9 A. I was -- see, the thing is that I -- I just didn't know the  
 10 way you were asking me. Like I thought you were just saying did I --  
 11 you know, did I talk about the conversation (incomprehensible).  
 12 BY DETECTIVE HARTSHORN:  
 13 Q. Did you confide in him or not?  
 14 A. No.  
 15 Q. You didn't tell him a thing?  
 16 A. No.  
 17 BY DETECTIVE WESKE:  
 18 Q. But earlier, you said you did.  
 19 A. But I thought you were asking me a different question. I  
 20 didn't understand like.  
 21 BY DETECTIVE HARTSHORN:  
 22 Q. We're not trying to trick you.  
 23 A. You're saying big words (inaudible).  
 24 Q. We're just trying to get the truth.  
 25 BY DETECTIVE WESKE:

1 did I talk to my roommate tonight, and I said yeah.  
 2 Q. So you're saying it was you, Christopher and DC?  
 3 A. Me, Christopher and DC.  
 4 Q. But you don't know how to get a hold of Christopher, and  
 5 you don't know how to get a hold of DC?  
 6 A. I -- that was my first time meeting DC, and I don't -- I  
 7 don't talk to Christopher that much.  
 8 BY DETECTIVE HARTSHORN:  
 9 Q. Do you know who all he hangs out -- listen, you -- right  
 10 now, you're the only one here.  
 11 A. I know.  
 12 Q. So I don't know why you're trying to protect these other  
 13 people because you're going to take the heat for everything, whereas  
 14 they're --  
 15 A. (Inaudible.)  
 16 Q. -- going to walk away with the -- what -- however all this  
 17 cash and all this stuff. They're going to walk away, and you're going  
 18 to take the rap for the whole thing. Why you protecting?  
 19 A. I'm -- I'm -- I'm willing to take the whole rap, sir, because  
 20 for the simple fact that, you know what I'm saying, like the Lord is  
 21 good to me and like in that situation I -- he knows that I was in the  
 22 wrong situation at the wrong (incomprehensible). If that's how it has  
 23 to go down, then it just has to go down like that.  
 24 BY DETECTIVE WESKE:  
 25 Q. So you know right now you're going to take the rap for



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1 kidnapping --

2 A. Kidnapping?

3 Q. You took the guy to the ATM. You think he wanted to go  
4 on his own free will?

5 A. Kidnapping?

6 Q. You --

7 BY DETECTIVE HARTSHORN:

8 Q. It's called kidnapping when you take someone.

9 BY DETECTIVE WESKE:

10 Q. Do you think that kid wanted to go there on his own free  
11 will and get \$900?

12 A. I didn't take \$900 from that guy, man.

13 Q. You got two withdrawals: a \$500 and a \$400 one.

14 A. Yeah.

15 Q. Okay? You brought the money back to Christopher what  
16 you're saying. You're saying you didn't take the money, right?

17 A. Yeah.

18 Q. So what'd you do with the money?

19 A. I never had money.

20 Q. When he took the money out of the ATM, what'd you do  
21 with the money?

22 A. He had it. When he -- he gave it to Christopher.

23 Q. So he walked in the door and gave it to Christopher.

24 Why'd you go with him to take the money out of the ATM? Why'd  
25 you go with him?

1 because he wouldn't say anything. He's not going to -- he's not

2 going to switch you off. He didn't switch you off last time, you know.

3 So what I'm saying is what -- what point when it started spinning out  
4 of control, when you realize this suspect Grant's house that you come  
5 to rob, why don't you just get the hell out? Why didn't you walk out  
6 of the car when you were in the car with him to go get that money?

7 Do you have that big a gambling problem that you needed money?

8 Tell me. You got to give me something. You got to give me a reason  
9 why -- why you needed money.

10 A. I don't -- I don't -- I don't have a reason.

11 Q. Okay. Why did you need the money?

12 A. I told y'all I -- I went with Christopher, man, Christopher.

13 Q. But you had an opportunity to get away. You're trying to  
14 tell me Christopher's this evil person, he's crazy, but you had an  
15 opportunity to get away. You don't even live here. You can go out  
16 of state.

17 A. But he knows -- he can get to me, man.

18 Q. Obviously, if he's just an acquaintance.

19 A. He knows that I go to school at Adam's State.

20 Q. And you don't know anything about him?

21 A. I -- all I know is that he's from Las Vegas, he's cool, he  
22 smoke weed, he smoked a lot of weed (inaudible).

23 Q. He obviously isn't cool.

24 A. Well, I know now.

25 Q. You're saying -- you're -- okay. Well, we'll find out

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1 A. Because Christopher told me to go.

2 Q. Okay. So he was forced to go. You went with him to  
3 make sure he got the money out, and you didn't go to police.

4 A. Right.

5 Q. Okay. That's kidnapping. He had no choice to go there.

6 So that's kidnapping. Okay? Kidnapping first degree. Then a sexual  
7 assault. You were in that house when they put their finger in, and  
8 she's saying that you said stop. You're saying I didn't see it, I didn't  
9 say stop. Okay. Well, that'll come out in trial. All right? You guys  
10 can decide that in trial and we'll see who they believe, her or you.

11 who's been lying to us about, okay, I wasn't in the car, well, no.

12 Christopher was in the car, okay, I was 'cause now I know, you  
13 know, there's video now, you know, you have my prints. 'Cause you  
14 guys didn't wear gloves. You went to a guy's house that you robbed  
15 before that's going to know ya, and look -- I mean you didn't think  
16 this through. You know what I mean?

17 A. Right.

18 Q. You went down there and you thought this will be an easy  
19 target 'cause he's a drug dealer and he ain't going to report it, he  
20 didn't report it before. Low and behold, you get inside and you're like  
21 holy shit, we're at the wrong place, here, we shouldn't even do this  
22 now because this isn't Grant. But then all of a sudden, for whatever  
23 reason, it spins out of control and you guys go through with it. I  
24 don't know why.

25 You know what? I understand if it was Grant why you'd do it

1 because I mean we'll find out from Grant if he knows a Christopher  
2 or if you're bullshitting us, and we got his picture. So we'll put it in  
3 a photo lineup, and if he was there, he'll eventually go down. Plus  
4 we're going to have fingerprints from all you guys 'cause you guys  
5 didn't wear gloves. You know what I mean? That's coming. That's  
6 -- that really don't give a shit. Somewhere you guys are in the system  
7 and -- and we'll get everybody eventually whether you want to help  
8 us out or not, but what I'm saying is when you realize it wasn't  
9 Grant's house you went there to rob, you're realizing ooh, why didn't  
10 you just back out at that time? Why didn't you just say, oh, fuck,  
11 okay, well, let's wait 'til we find him.12 A. At the time, I just thought we were going to get a sack  
13 from Grant, bro'.

14 Q. Even though you robbed him one other time?

15 A. I didn't rob Grant. That's what I'm trying to tell you.  
16 Grant's full of shit, man.17 Q. I know. But you lied to me a couple times. First you tell  
18 me Christopher's in the back seat.19 A. (Incomprehensible) I'm confused -- you just confusing me  
20 right now, you know what I'm saying I don't (incomprehensible)  
21 sound crazy because you understand you're confusing me.

22 BY DETECTIVE HARTSHORN:

23 Q. The whole thing is crazy, man.

24 A. (Inaudible.)

25 Q. That's the point. This thing is so crazy, it doesn't even

1 I make sense. You know what I'm saying?

2 A Yeah.

3 Q From beginning to end, this thing is ridiculous.

4 A Ridiculous.

5 Q You know? You understand what I'm saying?

6 A That's how I feel.

7 Q So there is no --

8 A I'm sitting here. My whole -- my whole -- my whole -- I'm

9 scheduled to graduate in May. It's not going to happen. Fuck it.

10 All -- all this shit that's supposed to go on in my life good ain't going

11 to happen now. I can't go on a vacation out of state. Fucking now

12 I got to go, you know what I'm saying, fight a kidnapping, sexual

13 assault, some -- some shit that, you know what I'm saying, I don't

14 really -- you're -- I'm -- I'm telling -- looking you in the eye. I don't

15 know Christopher like that. I don't.

16 BY DETECTIVE WESKE:

17 Q Okay. But you should know him because you went with

18 him and you continue --

19 A I know (incomprehensible).

20 Q This whole --

21 A It's All-Star weekend. I need some weed, sir.

22 Q All right. But this whole ordeal lasted what, three hours?

23 A I don't know.

24 Q Two to three hours? It lasted a long time. You know

25 what I mean? You guys went to two ATMs. Both of 'em -- when

1 you went to the first ATM, what happened then?

2 A (Incomprehensible) something like a card

3 (incomprehensible) up.

4 Q Okay. So then you went to the next ATM and the card

5 worked there?

6 A I guess.

7 Q Both cards?

8 A Yeah.

9 Q You were right there. You know what --

10 A I mean it worked. I wasn't -- I wasn't talking to him that

11 too much.

12 Q So is the camera showing him handing you money?

13 A Who?

14 Q The guy you took to the ATM.

15 A Nah.

16 Q You want to try that again?

17 A What?

18 Q Did he hand you money?

19 A No.

20 BY DETECTIVE HARTSHORN:

21 Q Where is the money now, man? If we can get --

22 A I don't have any money.

23 Q -- the money back from 'em, then that's just one thing

24 that you don't have to worry about down the road. You need to get

25 the money back to 'em. Is it all at the blackjack table? Is that where

1 it's at?

2 A No.

3 Q Because we can arrange for gambling anonymous and all

4 that kind of stuff if that's what needs to happen to fix this problem.

5 But obviously --

6 A (Inaudible.)

7 Q -- you needed money --

8 A (Inaudible) --

9 Q -- enough.

10 A -- my pocket right here

11 BY DETECTIVE WESKE:

12 Q You got two hundred some dollars.

13 A Yeah.

14 Q Okay? And you've already spent two or three hundred

15 dollars. So that would probably be half of nine hundred.

16 A I -- I already had money, though, sir, I came out here with

17 I -- you know what I'm saying? I had my own (incomprehensible)

18 already had (incomprehensible). I got money on my own. Exactly

19 Those are all my receipts from pulling out money, sir.

20 Q You have a wallet?

21 A No, sir.

22 Q Where's your credit cards?

23 A They're with my auntie, sir.

24 Q Huh?

25 A They're with (incomprehensible), my homegirl Tanisha and

1 them.

2 Q Stand up. Let me see if you got anything else in your

3 pockets. I thought they searched you.

4 A They did.

5 Q You have no wallet at all?

6 A No, sir.

7 Q Anything in your shoes?

8 A No, sir.

9 Q Where you keep your ID?

10 A My ID is (incomprehensible).

11 Q Is where?

12 A I said it's with my cousin.

13 Q Who's your cousin?

14 A The girl, Tanisha.

15 Q Where's she at?

16 A She probably at home.

17 Q Why would you give her your wallet, your ID and shit?

18 A So I don't (incomprehensible) gamble make sure that's

19 (incomprehensible) everything.

20 Q So you do have a gambling problem.

21 A No. I'm just -- you know, I put it away so that I don't get

22 any -- the more you bring with you, the more you're going to gamble.

23 If you don't gamble, you know what I'm saying, you don't have the

24 money, you can't gamble.

25 Q All right. Well, the car's being towed to our station.



1 A. What car?  
 2 Q. Your rental car.  
 3 A. Hub?  
 4 Q. They're frisking (he search warrant up (inaudible). That  
 5 car's being towed to the station. Think we're going to try and take  
 6 a photo of your friend and get all his information. He lives in Colorado  
 7 with you, at the same house? Has he ever been arrested before?  
 8 A. I don't think so.  
 9 Q. Does he go to school there?  
 10 A. Yeah.  
 11 Q. Football?  
 12 A. Yeah.  
 13 Q. (Inaudible.)  
 14 A. Huh?  
 15 Q. So I can get a photo (inaudible). I -- I -- I feel he was  
 16 there.  
 17 A. He wasn't there, sir.  
 18 Q. I have that feeling, and I have that gut feeling he was  
 19 there. You guys came down here together, friends, you hung out,  
 20 and then you guys went (incomprehensible) twice a day. You already  
 21 told me what happened. You guys (incomprehensible). So I -- I think  
 22 he was there, but we'll find out with forensic and we'll find out with  
 23 a photo lineup of him, and he'll eventually get caught. They'll --  
 24 they'll extradite him, and then maybe one day instead of right now  
 25 facing up to it and getting this thing over with, what'll happen is we'll

1 come down to his school and we'll pull him right out  
 2 (incomprehensible). You know what I mean?  
 3 A. Uh-huh.  
 4 Q. That's going be worse than just taking care of it right here  
 5 and say, okay, well, he's out of town and he's taking care of  
 6 something. Because we go down there with a warrant, I guarantee,  
 7 especially for something like this, the feds will get involved, and  
 8 they'll take him and they'll transport him back. So you know what I  
 9 mean? It's eventually going to come, so.  
 10 A. And me? You're about to charge me with all those  
 11 counts?  
 12 Q. Well, you know, I -- you're not -- you're not being totally  
 13 honest with me. You're not telling me everybody that was involved.  
 14 You're not -- you're not -- you're making this other shit up, you know,  
 15 and --  
 16 A. (Inaudible.)  
 17 Q. -- because -- because I'm going to prove that you're lying  
 18 to me about who's involved. I'm going to prove that to you, and you  
 19 know, if you would have been honest with me about the involvement  
 20 over there, you know, some of the charges might have changed, but  
 21 you're not being honest with me. So you're the only one I can hold  
 22 accountable. Now, if you want to tell me the truth, you know, I could  
 23 possibly work on it, but you don't want to sit here and tell me the  
 24 truth, so why should I help you? You know what I mean? Like for  
 25 instance, what's this? Three hundred, four hundred, \$500. You're

1 still \$400 short. You know what I mean?  
 2 A. I got receipts there that shows that -- that I pull out the  
 3 ATM.  
 4 Q. Get on the -- on the 18th, on the 18th --  
 5 A. Yeah.  
 6 Q. -- you did two of 'em. Okay? This happened the 19th.  
 7 A. I got more than those other -- just all my receipts.  
 8 Q. And -- and that's something that --  
 9 A. I have a credit --  
 10 Q. -- you could -- that's something you could fight about in  
 11 court. You see what I'm saying? You want to lie to me and you  
 12 want to play these games about who's involved, you do the same.  
 13 You know what I mean? You can take it out in court. You can just  
 14 tie up all that, or you can tell me. Tell me the truth right now before  
 15 we walk out of this room. Save yourself some heartache.  
 16 A. Sir, I'm being truthful with you.  
 17 Q. You're not being truthful with about who's involved. You  
 18 and I both know.  
 19 A. He wasn't involved, sir.  
 20 Q. Well, you and I both know you're not being honest with  
 21 who's involved and what the names are.  
 22 A. (Incomprehensible.)  
 23 Q. This is your last chance.  
 24 A. (Incomprehensible) like to go (incomprehensible).  
 25 Q. Doesn't have to be.

1 A. You're not telling me. You know, you're -- you know, I  
 2 mean (incomprehensible). Like what do you mean? Like I don't know  
 3 what else you want.  
 4 Q. I want the person that did what he did to her. That's  
 5 what I want. That's the person I'm pissed off at. I got a daughter.  
 6 Think about it. You got a sister? How'd you like it if you were put on  
 7 the floor, told to stay there and someone made her take her clothes  
 8 off and did that in front of you? Think about it. Just think about how  
 9 angry you would be. Just think about it. Would you want to know  
 10 who did it? Would you want some closure? Yeah. So does she. She  
 11 wants some closure.  
 12 She's never going to have that closure. She's always going to  
 13 look over her shoulder now. Even though you guys don't know who  
 14 she is or where she is at now 'cause they're already, fucking --  
 15 they're already gone. They're gone, moved somewhere else safe, you  
 16 know, 'cause you were looking for the wrong person all over this. But  
 17 you don't -- you don't want to help yourself out of it. You don't want  
 18 to give me that person, and that's the person I really want, and I'm  
 19 sure that's the person society wants. You know what I mean?  
 20 There's a time where you got to say, you know what, I got to  
 21 make a cut. You want to protect him. You protect him. Take it all  
 22 'cause it's just going to make you look like an asshole in protecting  
 23 this other guy. It's going to be looked -- the judge and everybody else  
 24 is going to look at you like, hey -- I can't say what they're going to be  
 25 looking for. I mean if I was a judge or I was a jury, go, hey, you

1 I know what -- go --  
2 A. I mean what -- what -- I mean I'm just telling y'all I've  
3 been telling the truth. I mean can you just tell me how much years or  
4 whatever I'll probably be facing so I could just call my mother? It's  
5 going to break her heart and all that and --  
6 Q. So you don't want to tell us the truth of who's involved  
7 or no?  
8 A. So even -- you haven't really talked to me about -- I've  
9 been telling you everything you want --  
10 Q. You told us you were involved, but --  
11 A. -- (inaudible).  
12 Q. -- we -- we -- we already had you. We already had you.  
13 Okay? That's -- that's a damn deal. Why do you think I pulled you  
14 out first? I already had you. You didn't have to tell me anything.  
15 You could have said, aw, I don't know what you're talking about.  
16 Okay. Fine. We go. You know? What I'm trying to do is show that  
17 you're cooperative and you're telling me who all's involved, but you  
18 don't want to. You want to bullshit me about this other shit, you  
19 know. Tell me who's all involved. And if that means telling on your  
20 friend because he did some fucking crazy shit that you didn't agree  
21 with, you know what, he did what was worse while you're just  
22 standing around. Okay? And then -- then that's what you got to do,  
23 but you got to be honest with me. Okay? You can't sit here and --  
24 and screw around with me. I'm tired, man. It's late. It's five after  
25 8:00. Okay? We've been here since 5:00 in the morning. You

1 I know, I've been working on this -- it's a serious case.  
2 A. Serious.  
3 Q. Yeah, serious shit. I mean otherwise, you wouldn't have  
4 everybody down here. So one last time --  
5 A. I'm just --  
6 Q. -- who?  
7 A. I'm just -- I'm just saying like what the (incomprehensible)  
8 sexual assault?  
9 Q. Well, sexual assault's the worst of it.  
10 BY DETECTIVE HARTSHORN:  
11 Q. By far. By far. You think you can't recover if some guys  
12 takes you to the ATM and gets money out? Who gives a shit. I'm  
13 (incomprehensible) later. You think a girl's going to recover from  
14 having that happen to her? No.  
15 BY DETECTIVE WESKE:  
16 Q. I mean society looks at worse.  
17 BY DETECTIVE HARTSHORN:  
18 Q. It's a completely different -- completely different thing,  
19 man. Completely different.  
20 BY DETECTIVE WESKE:  
21 Q. Register as a sex offender your whole life if you get out.  
22 BY DETECTIVE HARTSHORN:  
23 Q. You need to tell us who (incomprehensible). You got to  
24 tell us. It's -- it's huge for you. It's huge for -- for everybody  
25 involved. Okay?

1 A. (Incomprehensible) school, man. I'm about to graduate  
2 BY DETECTIVE WESKE:  
3 Q. I know. I looked at your 2007 draft -- scout draft book  
4 on --  
5 BY DETECTIVE HARTSHORN:  
6 Q. What I've heard from them is not going to do you any  
7 good. It's not. Okay? We understand you're not the bad person to  
8 this deal. You got caught up in a messed-up sir.  
9 A. No, I'm not, sir.  
10 Q. We -- we need to know who the other guy is.  
11 A. I'm a good person.  
12 Q. We know that. We obviously know that. It's been shown  
13 through your actions. You got in a messed-up situation, but you  
14 stopped some stuff that shouldn't have happened. We got to know  
15 who the other guy is. You got to tell us.  
16 A. All right, man. The thing about it is, man, I -- I -- I have --  
17 had a friend, man, that snatched on his friend. He was murdered the  
18 next week.  
19 Q. You don't have to testify on him. You -- that's not an  
20 issue.  
21 A. I just want to give you a name and get out of it, man.  
22 Q. All right. What's the name?  
23 BY DETECTIVE WESKE:  
24 Q. Okay. Listen. First of all, listen to me. Okay? I know  
25 you say you want to get out of it. You're involved in it --

1 A. I know.  
2 Q. -- but you lessen your culpability, you know, by -- by, you  
3 know --  
4 A. But I mean, sir, I just want to -- like --  
5 Q. Well, you can't -- I'm going to be honest with you. You  
6 can't undo what you did. Okay?  
7 A. I know.  
8 Q. I came in here trying to give you an out. I came in here  
9 trying to tell ya, you know, this is what they told us --  
10 A. Right.  
11 Q. -- that you said, hey, stop that shit, let's go. All right?  
12 You're saying no, and I did not say that at all. So I don't know who  
13 they're getting it confused with, but they're saying it was you. They  
14 identified you as the one that said stop what you're doing, let's go.  
15 Okay? I came to you with that, you know, saying, hey, you had some  
16 (incomprehensible), you know. 'Cause if that was a small thing --  
17 A. (Incomprehensible), sir.  
18 Q. Sexual wasn't your gig. Maybe getting some weed and  
19 some money, okay, I can go along with that because the fucker gets  
20 his money illegal anyways. You know, maybe I can go along with  
21 that, but I ain't going to go along with you sexually harassing some  
22 girl.  
23 A. I didn't sexually harass her.  
24 Q. I didn't say you did. I said that's what's going through  
25 your mind. That's what I thought was going through your mind that

1 I'm not going to go along with this, I'm going to go along with the  
2 dope, the money, but you ain't -- you ain't messing with no girl, I got  
3 sisters and shit like that. You know, that's what I'm thinking is going  
4 through your mind, but I -- I don't know, I don't know what's going  
5 through your mind now. Like I said, can't make you any promises  
6 but, you know, you -- you need to -- you know, the testifying, that's  
7 something you can talk to the district attorney about later, you know,  
8 say, hey, if I do this, then -- then --

9 A. Well, I mean I -- I'm not even -- I don't even want to get  
10 into all that, Man. I just --

11 Q. Okay. Well, then you don't -- I mean that's what you tell  
12 'em. Say I don't want to get into all that. You got to tell me.

13 A. I -- I just want -- I just want to go, man, just take -- take  
14 whatever you charge me for, man, just -- just do me, man, take my  
15 own punishment. I didn't do any -- I never told anyone to get naked.  
16 I didn't tell any -- I didn't do any of that.

17 Q. But you're covering for 'em. Okay? You're covering for  
18 'em. So I --

19 A. But you never told me like what -- like, you know what I'm  
20 saying, like -- like -- like my father, man, my father just did 15 years  
21 in prison.

22 Q. Oh, I know.

23 A. It's a difference in --

24 Q. So tell us -- tell us --

25 A. I just -- I just want --

1 Q. Tell us who the other --

2 A. I just want to play football, man.

3 Q. All right. Tell us who the person is.

4 A. (Inaudible.)

5 Q. Tell us who the other person is. You don't have to testify.

6 You tell me who the other person is. I'll get a --

7 BY DETECTIVE HARTSHORN:

8 Q. We got enough -- we got enough evidence anyways. It's  
9 just a matter of processing. We're going to know who the guy is  
10 whether --

11 BY DETECTIVE WESKE:

12 Q. It's going to take --

13 BY DETECTIVE HARTSHORN:

14 Q. -- you tell us or not.

15 BY DETECTIVE WESKE:

16 Q. It's going to take -- it's going to take a long time. I mean  
17 if you tell us who it is, that way we can work on it a little bit faster,  
18 you know what I mean, and you help us out.

19 A. What about me, though? Like --

20 BY DETECTIVE HARTSHORN:

21 Q. The only thing we can give ya --

22 A. Like what would --

23 Q. -- it what we're telling ya is that when we go to the D.A.  
24 and the D.A. says, okay, this is everything that's going to happen,  
25 we're going to say he was cooperative the entire time, he had nothing

1 to do with the sexual assault, he tried to stop it, he gave us the name  
2 that we would have found out anyways and will find out probably the  
3 next couple days, and that's that. Okay? That's -- that goes a long  
4 ways. Showing some honesty goes a long way.

5 I can't promise you what you're going to get from the D.A., but  
6 I can promise you it's going to be much better to be honest about that  
7 part of it than not. Okay? 'Cause when you start lying about it and  
8 start covering for it, it seems like you've got some kind of  
9 (incomprehensible) in it somehow.

10 BY DETECTIVE WESKE:

11 Q. Right now this is out of our hands as far as making any  
12 promises. It's going to have to go to the district attorney. But we  
13 do -- we'll talk to him. We'll sit there and say -- and say -- and it's  
14 like I'm telling ya now --

15 A. Well, (incomprehensible).

16 Q. -- (incomprehensible) make any promises but we'll talk  
17 to --

18 A. -- (incomprehensible) what's the chance of me graduating  
19 on time, man?

20 Q. That's something I have to talk to him about. It depends  
21 on -- right now, you know, I -- this is what I'm going to tell him. If  
22 this is how we end this conversation where, you know, hey, I'm just  
23 going to take the rap myself, I'm going to tell him, you know what,  
24 he wasn't no help at all, he wanted us to do it the hard way, he  
25 wants us to spend money on forensics, he wants us to do other shit,

1 he doesn't have any remorse about that girl getting -- getting down  
2 what she got done to her in front of those people, he has no remorse  
3 at all, all he cared about is himself. So you know what, D.A., do  
4 what you want with him.

5 Or you know what, we went in there, he said he was sorry,  
6 he's trying to go to school, he's a running back, he did -- you know,  
7 we got voices there that says, you know, he said stop it even though  
8 he's saying he said he didn't see it happen, they're saying stop it, he  
9 didn't want no part of that, you know, the robbery, yeah, he was --  
10 he was part of and taking the guy to the ATM and --

11 A. (Incomprehensible.)

12 Q. -- (Inaudible) admit to. But I'm -- I'm done. I'm -- I'm  
13 tired, bro'. We're either going to -- right now.

14 A. I (incomprehensible). I'm supposed to head back to school  
15 tomorrow.

16 Q. I know you are. I know you are. Well, if you're looking  
17 for me to promise you, hey, you're going to school tomorrow, I can't.

18 A. Well, I just --

19 Q. I can't. I'm not going to be to ya. That's one thing I pride  
20 myself on is I don't lie. I don't. I can't. I -- first of all --

21 A. I'm (incomprehensible).

22 Q. -- I got to get a hold of the district attorney, and it takes  
23 a lot more than that, you know, and talk to him and tell him how I feel  
24 because I don't even -- the case won't even be assigned probably for  
25 a week. You know what I mean?

1 A. So I got to stay out in Vegas for a week?

2 Q. Not necessarily. You can bail out, but I'm going to -- I'll

3 call screening and say who's going to have it? They go by your last

4 name and I can talk to somebody, you know, as far as, you know, as

5 far as what you've told us, but you haven't -- you haven't told me

6 anything except for you want to take the whole rap. 'cause this --

7 DETECTIVE HARTSHORN: (Inaudible.)

8 BY DETECTIVE WESKE:

9 Q. They had two Trojans taken from there. So I mean we'll

10 ask 'em if that's the one. If that's one of 'em, you know -- he honest

11 right now, did you get it from the house?

12 A. Not that one. I -- I didn't -- I didn't take any condoms.

13 Q. You just said "not that one." Where's the one you took?

14 A. Nah, but the old boy took condoms.

15 Q. Who did?

16 A. His name is Narcus, man.

17 Q. Who?

18 A. Narcus.

19 Q. Who's Narcus?

20 A. Narcus.

21 BY DETECTIVE HARTSHORN:

22 Q. What's the last name, bro'?

23 BY DETECTIVE WESKE:

24 Q. Him? What's his name?

25 A. Quinn Harris.

1 Q. Who's Narcus?

2 A. Narcus is this one cat I used to fuck with a long time ago.

3 and he bought some sacks off Grant a couple times, but --

4 BY DETECTIVE HARTSHORN:

5 Q. We already know who Narcus is, bro'. He was on your

6 football team. He played (Incomprehensible). Right?

7 BY DETECTIVE WESKE:

8 Q. Narcus or Marcus?

9 BY DETECTIVE HARTSHORN:

10 Q. Marcus with a N, yeah. You know, we looked at the

11 whole roster. We know who Narcus is. We got his whole last name.

12 We're just waiting for you to be honest, trying to give you a chance.

13 A. I just told you, bro'.

14 Q. And I'm -- and that went a long ways. We had this

15 whole -- what position he play again, running back? I can't remember

16 because he was about three quarter way down the list.

17 A. DB or something.

18 Q. DB, okay.

19 BY DETECTIVE WESKE:

20 Q. Does he live here?

21 A. I believe in Vegas, yeah.

22 Q. How'd you hook up with him?

23 A. I leaned up with him.

24 Q. Called him?

25 A. Huh?

1 Q. Called him?

2 A. Nah, I seen him.

3 Q. Is he in your call?

4 A. Yeah.

5 Q. So you called him. Where's he live?

6 A. Somewhere on the west side. I don't really know.

7 (Incomprehensible.)

8 Q. So it was just you and Narcus?

9 A. Yeah.

10 Q. So why would you go in there and try to make us believe

11 there's three people? Okay. So who was the one that made her take

12 her clothes off?

13 A. Narcus.

14 Q. What'd he do? I want the whole thing. I don't want

15 this -- I want the whole thing, not just made her take her clothes off.

16 I want what he made her and the guys do, too.

17 A. I really was going -- like I said, I was watching the

18 bathroom 'cause like that but, you know, I believe that he was -- he

19 was trying to get 'em hard or whatever, trying to do this girl, you

20 know what I'm saying. Then he told her -- after that he told her about

21 how -- third time about how, you know, he was asking the -- the

22 boyfriend how would he like if he did his girl and all that. He kept --

23 the dude kept saying, "Please, don't," you know, like, "don't do my

24 girl," you know, shit like that.

25 And -- and like after that like -- like really Narcus had the gun

1 and all that, you know, so like he was really doing that for a while,

2 and then -- then he fucking -- he changed, and I just had enough of it.

3 I was just like, "Man, let's get out of here." And he did -- like he did

4 run, you know what I'm saying. We get here and like

5 (Incomprehensible) find my own way home, but --

6 BY DETECTIVE HARTSHORN:

7 Q. You had the car, though, right?

8 A. No.

9 Q. (Incomprehensible.)

10 A. Yeah. He left in his car.

11 Q. Oh, it's his car that took off?

12 A. Yeah.

13 BY DETECTIVE WESKE:

14 Q. What kind of car was it?

15 A. Like a Chrysler.

16 Q. Was --

17 BY DETECTIVE HARTSHORN:

18 Q. Same thing? Same thing as this -- this other car?

19 A. Isn't that car, the rental car (Incomprehensible).

20 Q. That was the car, the rental?

21 A. No. It was like a white one.

22 Q. Oh, he drove a white Chrysler?

23 A. Yeah, a white (Incomprehensible).

24 BY DETECTIVE WESKE:

25 Q. Where'd you get the car (Incomprehensible)?



1 A. Like around the corner.  
2 Q. So you park around the corner. You went out there and  
3 knocked on the door, asked for Grant. Who came up with the story  
4 about Grant owing money?  
5 A. Oh, shit. That was -- that was me.  
6 Q. So you came up with the money, saying, okay, well, he  
7 owes us money so.  
8 A. I was like, you know what I'm saying, like  
9 (incomprehensible). "Where's Grant?" you know. And Narcus was  
10 basically, you know, telling 'em whatever, and I was like -- and then  
11 it -- it was the wrong situation, like you said, you know. And then I  
12 just got into a little moment, and then basically what happened after  
13 that was -- that's when I had to go to the A -- go to the ATM. Then  
14 I went to the ATM. Then after that, came back, and then that's when  
15 all that crazy shit going on, and that's when I told, I was like, "Man,  
16 (incomprehensible) don't do that," I said.  
17 Q. Who went in the room to get the condoms? Who went  
18 with the boy to go get the condoms?  
19 A. Me.  
20 Q. And what'd you do with the condoms?  
21 A. Gave 'em to Narcus.  
22 Q. And so why didn't he use them?  
23 A. Basically, just -- you know, I -- I don't remember 'cause I  
24 already told him like after he had touched, you know what I'm saying,  
25 like (incomprehensible) like no, and I'm -- honestly, when I went back

1 to the -- in the room with the -- with the dude, I said, "Man," I said --  
2 I was like -- I told them girls, I said, "I promise you," I was like -- I  
3 was like -- I was like, "You don't got nothing to worry" -- I was like --  
4 -- I was like -- I was like, "Like this didn't even happen." I was like,  
5 "No one's going to have sex with your girl. No -- I just -- I just want  
6 to get out of here." And I told him that in his room, you know  
7 And so then I came back out, you know what I mean. I had  
8 gave the condom like. He really -- he really didn't want to, you know  
9 what I'm saying, do it, but then you could tell like -- like he really did,  
10 and like I told him, I was like, "No." Like he never opened one or  
11 anything like that, and I was just like, "No." Was like, "Don't" -- I  
12 was like, "Don't do it," you know what I'm saying, and that was it.  
13 Q. And you guys didn't meet together?  
14 A. No.  
15 Q. What'd you do with the cell phones?  
16 A. Put 'em in the bush.  
17 Q. Okay. What'd you do with the one you took?  
18 A. I didn't even take one.  
19 Q. One's -- one was taken. Okay? You put 'em in the bush.  
20 A. Must be -- must be on the ground or somewhere, I swear.  
21 I got -- the cell phones that I had, unless -- unless Narcus took the cell  
22 phones, you know what I'm saying. Like all the cell phones I had like  
23 I took -- I took --  
24 Q. Well, we're going to be able to pull that cell phone record  
25 and see if numbers were called on that, okay, and I --

1 A. Okay.  
2 Q. -- guarantee -- or we're going to be able to see where that  
3 cell phone was last or just because all cell phones have GPS's in 'em.  
4 Like if you lost that, we could go and say, okay, this is where that cell  
5 phone is. So if it's down in this area, if it pings in this area or, you  
6 know, the towers or whatever, you know, if we -- if we discover it in  
7 this area, then I know -- you know what I mean? You've been honest  
8 with everything else.  
9 A. Right. I'm --  
10 Q. You just --  
11 A. I'm telling you right now I --  
12 Q. Okay.  
13 A. -- don't know. I'm being -- I'm not lying to you no more.  
14 Like -- like --  
15 Q. Well, then --  
16 A. -- lying's not going to be good anymore.  
17 Q. Right, right. And so let's -- let's be honest about the other  
18 thing.  
19 A. (Inaudible.)  
20 Q. Okay? Let's -- let's be honest. You went up there  
21 because you knew Grant had dope and he had money, and then you  
22 realized -- I mean because otherwise you wouldn't had the story  
23 planned right. Well, Grant owes me money. You know, he did me  
24 wrong. So now you guys can give me a thousand dollars and we'll  
25 call it good. Who's the one that said, "Okay, we're 90 percent done,

1 there's 10 percent left?"  
2 A. Narcus.  
3 Q. Okay.  
4 A. Narcus -- Narcus had the gun and all that, you know.  
5 Like --  
6 Q. Okay. AD right.  
7 A. -- it wasn't even a real gun.  
8 Q. So --  
9 BY DETECTIVE HARTSHORN:  
10 Q. Where's Narcus?  
11 A. I don't know where Narcus is.  
12 BY DETECTIVE WESKE:  
13 Q. So Narcus -- you went in there with no real gun?  
14 A. Yeah. Wasn't no real gun. Grant -- Grant -- Grant is  
15 my -- Grant's like -- Grant's never really, you know what I mean, like  
16 he -- he hustles but he does (incomprehensible). You know, he just  
17 tries to make that kind of money.  
18 Q. He's not going to fight ya?  
19 A. Yeah, like, you know what I'm saying, he's not -- but even  
20 that, you know what I mean, like --  
21 Q. Well, I know you figure it's an easy lick because he's a  
22 drug dealer, you know. He's not going to report it. You know how  
23 many times I can get, you know, like they say, oh -- where it makes  
24 a mistake is like shots are fired or the wrong people are there. That's  
25 where we get involved because other than that, the drug dealers don't

1 call us, you know, and then when they do get called, we get the  
2 dope, and they're, you know, they're in trouble, too. So I mean I  
3 understand why you're going up there, but I mean it's -- okay? You  
4 went up there to rob him.

5 A. Well, basically, when I ran into Marcus, he just talking  
6 about did, you know what I'm saying, did he know of any, you know  
7 what I mean, any licks.

8 Q. Yeah.

9 A. And -- and we -- and, you know, that's when I was like,  
10 you know, I was like -- you know, I was like, well, you know what I'm  
11 saying. Grant supposedly, you know what I'm saying,  
12 (incomprehensible), you know. And then that's how -- and then  
13 that's how, you know what I'm saying, I showed him where, you  
14 know what I'm saying, where -- where the house was, like where,  
15 you know what I'm saying, where I thought riding. 'Cause me and  
16 Grant used to be real cool.

17 Q. Right. No, I know, and then -- then what happened with  
18 the deal where you -- you did a lick on Grant the year before? I mean  
19 he doesn't say he wants to press charges.

20 BY DETECTIVE HARTSHORN:

21 Q. He said you were just spun out of your mind, man.

22 BY DETECTIVE WESKE:

23 Q. Tell me (inaudible).

24 A. (Inaudible) well, Grant -- well, Grant, man, you know, you  
25 know, back in the day, you know, I used to try to sell a little bit, and

1 I used to (incomprehensible) Grant. When I -- you know, I gave it all  
2 up to keep playing football like, you know, I was doing good things in  
3 my life, and, you know, Grant, man, he was supposed to look out for  
4 me, you know what I'm saying, and things like that. Then they  
5 just -- Grant just became -- making so much money, you know what  
6 I'm saying, and things like that. Then he just (incomprehensible), you  
7 know, just kind of felt like, you know what I'm saying, like -- like he  
8 basically was like me getting at y'all three, you know what I'm saying,  
9 like (incomprehensible). You know, like I -- I hooked him up. Like I  
10 hooked him up with the guy I was getting it from, you know, and  
11 things like that and then.

12 BY DETECTIVE HARTSHORN:

13 Q. So he took all your business. He took --

14 A. Right.

15 Q. -- the business and wasn't giving you anything on the  
16 back end.

17 A. Right.

18 Q. So you handed it to him, and he was screwing you out  
19 back.

20 A. Right.

21 Q. Right?

22 BY DETECTIVE WESKE:

23 Q. So tell me how that one went down. Were you with  
24 anybody?

25 A. Oh, yeah, like he told you, (incomprehensible), you know

1 what I'm saying. That one just, you know, like --

2 Q. You pulled in the garage and --

3 A. Yeah, but he wasn't even really, you know what I'm  
4 saying, like he already knew -- he was like -- he was like, "Oh, I can't  
5 (incomprehensible)." Like, you know, just all bad and then, you know,  
6 ended up, you know what I'm saying. It wasn't like a thousand  
7 dollars. I was only like six -- like four or five hundred like, you know  
8 what I'm saying, be honest with you, and then it was some weed, but  
9 I -- you know, I couldn't bring weed on the plane, anything like that.  
10 so I just gave all the weed to Brandon and shit.

11 Q. Brandon?

12 A. I don't know his last name. That was a long time ago.  
13 bro'.

14 Q. All right. It's like pulling teeth, bro'.

15 A. Huh?

16 Q. It's like pulling teeth. You know what I mean? Like you  
17 said, if you're a -- you're a God-fearing man, like you said, you know,  
18 God knows I messed up and he'll be with me, you got to make it  
19 right, you got to make it right for these people. You know, that's  
20 what God would want, right? You know?

21 DETECTIVE WESKE: (Incomprehensible) talk to the sarge  
22 about -- that's (incomprehensible).

23 DETECTIVE HARTSHORN: (Incomprehensible) guy?

24 DETECTIVE WESKE: Yeah.

25 KAMERON WILSON: (Incomprehensible) me?

1 DETECTIVE WESKE: Have you got -- you got a good FI  
2 on him?

3 DETECTIVE HARTSHORN: They know of him. So of  
4 course, so.

5 DETECTIVE WESKE: You got a good FI on him?

6 DETECTIVE HARTSHORN: Nah. (Incomprehensible).

7 No. This guy's --

8 DETECTIVE WESKE: (Incomprehensible.)

9 KAMERON WILSON: Oh, so you don't know?

10 DETECTIVE HARTSHORN: Yeah, yeah. We didn't know  
11 if it was the other guy (incomprehensible), if he was the other guy  
12 (incomprehensible).

13 DETECTIVE WESKE: (Incomprehensible.)

14 BY DETECTIVE HARTSHORN:

15 Q. It's good man. You did it right. It's how it should be.

16 This isn't your fault. You didn't -- you didn't touch that girl any time,  
17 did ya? Not even -- not touching at all, right? Just him? Just

18 Marcus? Okay. What they're going to do here in a couple minutes is

19 they're going to do this thing called a Buccal swab, and it's just to  
20 pull DNA just to make sure you didn't, which we know you didn't, but  
21 it's like a toothbrush and just go in your mouth and pull the DNA out.

22 That way can match it up to the DNA that they found on her, and  
23 since you didn't touch her, it's a -- it's a nonissue. Cool? Don't let  
24 it freak ya out or anything. It's no big deal. You know where --

25 where'd you last see Marcus? Did he drop you off here?



1 A. Nah. (incomprehensible) got a ride.  
 2 Q. Oh, that's right. He ditched ya, and you had to -- you had  
 3 to get on foot. Who picked you up?  
 4 A. My homegirl.  
 5 Q. Okay.  
 6 A. The only thing, man, about that rental, that's in my  
 7 homegirl's name. She rented it, and she -- she -- she -- her plane's  
 8 supposed to leave at like 6:00 tomorrow, bro'.  
 9 Q. Well, she -- she can leave. We'll get it back to the rental  
 10 company?  
 11 A. Huh?  
 12 Q. She can leave it. We'll get it back to the rental company,  
 13 but we thought it was that car to begin with. You sure it was white?  
 14 There's nothing in that car?  
 15 A. What --  
 16 Q. The rental?  
 17 A. No.  
 18 Q. No cash, nothing?  
 19 A. Uh-uh.  
 20 Q. What'd you do with all the cash then? Did you split it?  
 21 A. I gave -- yeah.  
 22 Q. How much did you keep? How much did you give him?  
 23 A. I gave Marcus like -- I took like two hundred.  
 24 BY DETECTIVE WESKE:  
 25 Q. Hey, can -- can Q -- is that his name -- can he go up and

1 get his stuff out of the room since it's in your name?  
 2 A. Yeah. Can he get -- can -- can you tell him to take my --  
 3 Q. Take the stuff we didn't take?  
 4 A. Yeah, take my stuff with him.  
 5 SERGEANT MCKENNA: You give approval for that?  
 6 KAMERON WILSON: Yeah.  
 7 SERGEANT MCKENNA: Okay. That's good.  
 8 (incomprehensible).  
 9 DETECTIVE HARTSHORN: I already told him about the  
 10 Buccal swab. He knows the whole bit, so.  
 11 SERGEANT MCKENNA: Yeah, 'cause -- okay.  
 12 DETECTIVE HARTSHORN: Okay.  
 13 (Off-the-record colloquy between detectives.)  
 14 OFFICER: I need to get your (incomprehensible), so I can  
 15 give it to (incomprehensible). Is that okay? What's your -- what's  
 16 your mom's number?  
 17 KAMERON WILSON: 303 --  
 18 OFFICER: 303.  
 19 KAMERON WILSON: -- 337 --  
 20 OFFICER: Uh-huh, 337.  
 21 KAMERON WILSON: -- 0771 --  
 22 OFFICER: Okay. What's her name?  
 23 KAMERON WILSON: 720 --  
 24 OFFICER: Uh-huh.  
 25 KAMERON WILSON: -- 536 --

1 OFFICER: 720 or 702?  
 2 KAMERON WILSON: 720 --  
 3 OFFICER: Uh-huh.  
 4 KAMERON WILSON: -- 536-8463.  
 5 OFFICER: What's your mom's name?  
 6 KAMERON WILSON: Lisa (phonetic). My dad's name is  
 7 Daryl.  
 8 OFFICER: Daryl?  
 9 KAMERON WILSON: Yes. Hey, can I -- can I talk to my  
 10 friend just for a second?  
 11 OFFICER: No. We cannot let you do that. I'm going to  
 12 give him these numbers.  
 13 KAMERON WILSON: Oh.  
 14 OFFICER: Okay?  
 15 KAMERON WILSON: Can you tell him --  
 16 OFFICER: What do you want to tell him?  
 17 KAMERON WILSON: Can you just tell him that -- that  
 18 I'm not going back to Colorado in the morning?  
 19 OFFICER: (Inaudible)?  
 20 KAMERON WILSON: Yeah. You know, tell him to take  
 21 all, you know what I'm saying, that's mine, to take it  
 22 (incomprehensible) Colorado?  
 23 OFFICER: Okay.  
 24 (Off-the-record colloquy between detectives.)  
 25 UNKNOWN MALE: Can I take off your hat here? I got

1 to take a picture of ya real quick. All right? This is -- this is for a  
 2 criminal trespass from all MGM Mirage Properties. Okay? So  
 3 (incomprehensible). In other words, you can't come back to any  
 4 MGM Mirage properties.  
 5 KAMERON WILSON: Oh, I (incomprehensible) back to  
 6 Vegas.  
 7 UNKNOWN MALE: Well, you can go to any other -- you  
 8 can go to Harrah's. You can go to Caesars, but you can't come to  
 9 the Bellagio --  
 10 KAMERON WILSON: (Inaudible.)  
 11 UNKNOWN MALE: -- whatever. Okay?  
 12 KAMERON WILSON: Yes, sir.  
 13 UNKNOWN MALE: All right.  
 14 DETECTIVE PENA: Hey, partner, I'm Detective Pena.  
 15 P-E-N-A, from the Henderson Police Department. My badge number's  
 16 857. Today's date is going to be February the 19th of 2007. It's  
 17 approximately 2130 hours, according to my watch. I'm going to ask  
 18 you if you'll tell me your first name and your last name and spell it for  
 19 me.  
 20 KAMERON WILSON: Delarian Sean Kameron,  
 21 DETECTIVE PENA: Okay. Can you spell it for me,  
 22 please.  
 23 KAMERON WILSON: D-E-L-A-R-I-A-N, C-E -- or S-E-A-N.  
 24 K-A-M-E-R-O-N, W-I-L-S-O-N.  
 25 DETECTIVE PENA: Okay. I'm sorry, how do you say

1 your last name, again?  
2 KAMERON WILSON: Wilson.  
3 DETECTIVE PENA: Mr. Wilson. Okay. What I have here  
4 is called a Buccal swab.  
5 KAMERON WILSON: Yeah.  
6 DETECTIVE PENA: What it means, I can get a sample of  
7 your DNA. I want you to understand that because you are under  
8 arrest, okay, that you have a right to refuse it if you so choose.  
9 KAMERON WILSON: Right.  
10 DETECTIVE PENA: Okay? You understand that basically  
11 you have a right to consult with an attorney if you so choose.  
12 Otherwise, if you're volunteering and if there's no reason that you  
13 have any concern for your DNA, that I'm asking if you volunteer to  
14 give a sample of your DNA?  
15 KAMERON WILSON: Of -- of my blood?  
16 DETECTIVE PENA: No, no. It's like a Q-tip  
17 (incomprehensible), it's --  
18 KAMERON WILSON: Oh. Well, why would I --  
19 DETECTIVE PENA: You know what? Who's -- who's --  
20 OFFICER: Yeah, you don't need --  
21 DETECTIVE PENA: Oh, you know what? I've got a  
22 search warrant. I don't even have to ask you. So basically, we can  
23 go ahead and do this right now.  
24 KAMERON WILSON: Oh, I don't have a problem doing  
25 it. I just was --

1 I certify that the foregoing is a true and accurate  
2 transcript of the electronic audio recording from the interview  
3 in the above-captioned matter.  
4  
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7 Mona Shield Payne, Transcriptionist Date  
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1 DETECTIVE PENA: [ -- it's -- you know what, it's been  
2 a long day, and I didn't realize that what I wrote paper on pertains to  
3 you. So I'm letting you know you don't have a choice anyway, so.  
4 KAMERON WILSON: What do you mean pertains to you?  
5 DETECTIVE PENA: Meaning there's a search warrant  
6 that I wrote that states that through this investigation I've determined  
7 that you might be responsible for committing a crime that involves  
8 sexual charges. Due to that, I submitted a warrant to a judge. The  
9 judge went ahead and said yeah --  
10 DETECTIVE WESKE: Is this still going on or no?  
11 DETECTIVE PENA: -- (incomprehensible) you have  
12 enough probable cause --  
13 DETECTIVE WESKE: Going to go off tape at what  
14 time --  
15 DETECTIVE PENA: -- go ahead and get a search  
16 warrant --  
17 DETECTIVE HARTSHORN: I don't know what time it is.  
18 DETECTIVE PENA: -- a search warrant is included for  
19 your body, so but it's keep of neither here nor there right now 'cause  
20 I --  
21 DETECTIVE HARTSHORN: It's about 2133.  
22  
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CLERK OF THE COURT

**OPPS**  
**DAVID ROGER**  
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Nevada Bar #002781  
**LISA LUZAICH**  
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Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
DELARIAN K. WILSON, aka Delarian )  
Kameron Wilson, #1966773 )  
NARCUS S. WESLEY, aka )  
Narcus Samone Wesley #1757866 )  
Defendant, )

CASE NO: C232494  
DEPT NO: XXIV

**STATE'S OPPOSITION TO DEFENDANT WILSON'S MOTION  
TO SUPPRESS STATEMENT**

DATE OF HEARING: 03/27/08  
TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through LISA LUZAICH, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant WILSON'S Motion to Suppress Statement.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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## STATEMENT OF THE CASE

On April 20, 2007, Defendants, DELARIAN K. WILSON, aka Delarian Kameron Wilson and NARCUS S. WESLEY, aka, Narcus Samone Wesley, were charged by way of Information with the crimes of CONSPIRACY TO COMMIT BURGLARY (Gross Misdemeanor - NRS 199.480, 205.060); CONSPIRACY TO COMMIT ROBBERY (Felony - NRS 199.480, 200.380); BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Felony - NRS 205.060); ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS 200.380, 193.165); ASSAULT WITH USE OF A DEADLY WEAPON (Felony - NRS 200.471, 193.165); FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (Felony - NRS 200.310, 200.320, 193.165); SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON (Felony - NRS 200.364, 200.366, 193.165); COERCION WITH USE OF A DEADLY WEAPON (Felony - NRS 207.190, 193.165) and OPEN OR GROSS LEWDNESS WITH USE OF A DEADLY WEAPON (Gross Misdemeanor - NRS 201.210, 193.165).

The crimes occurred on or about the 18th day of February, 2007, within the County of Clark, State of Nevada. The victims in this case are Aitor Eskandon (DOB: 06-26-86), Clint Tognotti (DOB: 04-08-88), Ryan Tognotti (DOB: 10-20-85), Justin Foucault (DOB: 11-19-85), Danielle Browning (02-16-89) and Justin Richardson (09-07-86).

Trial of this matter is scheduled to commence on March 31, 2008. On March 17, 2008, Defendant WILSON filed a Motion to Suppress Statement. The State's Opposition follows.

## POINTS AND AUTHORITIES

### STATEMENT OF FACTS

Police reports indicate that on February 19, 2007, Henderson police officers were dispatched to 2101 W. Warm Springs #4322, reference a Robbery. While en-route Henderson dispatch advised that two black males had entered the victims' residence at 690 Great Dane Court, pointed handguns at them, and forced one of the victims to drive to two

1 different ATM's to get \$900.00.

2 Upon arriving at the apartment, Officer Slattery made contact with all of the victims.  
3 All of the victims were visibly shaking and Danielle Browning had tears in her eyes. Ryan  
4 Tognitti advised that he would be the person to relay what happened.

5 Ryan stated that he had been sitting in the living room of his house with Justin, Clint  
6 and Aitor. They had just turned on a movie when they heard a knock at the door, followed  
7 by the doorbell. Ryan stated that many friends come to his house at all hours of the day.  
8 Ryan further advised that he normally leaves the door unlocked and will tell people to "come  
9 in" when they knock. On this occasion Ryan said "come in" but nobody entered. Ryan went  
10 to the door, opened it and was met by two black males who stated that they wanted to talk to  
11 Grant. Ryan advised that there was no Grant at the house, and that there was no Grant that  
12 lived at the residence. The two black males then reached in front of their waste bands and  
13 pulled out hand guns and advised all of the subjects to get on the ground and keep their faces  
14 to the ground or they would be shot. The black males kept telling the victims that they  
15 needed to speak to Grant because he owed them money. All of the victims were advised to  
16 empty their pockets, which consisted of cell phones and wallets.

17 When asked if anyone else was in the residence, they all advised that Justin  
18 Richardson and his girlfriend were in their room which was located down the hall. The  
19 shorter black male went down the hall and got Justin and Danielle, brought them to the front  
20 room and made them get down on the living room floor with the others.

21 The black males demanded money. When it was learned that the victims only had  
22 twenty (20) dollars, the suspects indicated that wasn't good enough and asked for ATM  
23 cards. Only Ryan and Justin had ATM cards which were handed over. Ryan was told to get  
24 up and get his keys. After Ryan got his keys, the shorter black male told all of the victims on  
25 the ground that he was going to the ATM. The black male further stated, "If you guys fuck  
26 up, I am going to have my boy shoot you and then I am going to shoot your friend."

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1 Ryan was escorted to his vehicle by the shorter black male and they drove to the  
2 Nevada State bank located at Siena Heights/Eastern. The cards would not work so he drove  
3 to the Wells Fargo at Eastern and St. Rose, where he withdrew five hundred (\$500.00)  
4 dollars out of Justin Foucault's account and four hundred (\$400.00) dollars out of his own  
5 account. Ryan drove back to the 690 Great Dane Court address. Ryan advised that the black  
6 male kept the gun to Ryan's hip at all times. Ryan further advised that neither black male  
7 was wearing gloves.

8 When they got back to the residence, Ryan was ordered back down onto the floor face  
9 first, at which time the black males started messing with Justin Richardson and Danielle  
10 Browning, in that that the black males made the two perform oral sex on each other. After  
11 approximately thirty minutes the black males stated they were going to leave and that  
12 everyone should wait two minutes to get up off the floor and retrieve their cell phones.  
13 Afterwards, they all packed their bags and went to Clint Tognotti's residence.

14 Clint Tognotti, Justin Foucault and Aitor Eskandon gave statements consistent with  
15 Ryan Tognotti's.

16 Justin Richardson also gave a statement and indicated that he and Danielle Browning  
17 had been asleep in his bedroom when he heard a few knocks on the door. A black male  
18 entered the room and pointed a gun at him and Danielle, and advised them to get up and put  
19 there hands on their head. They were advised to move out into the living room where the rest  
20 of his friends were face down on the floor. The black males kept asking where Grant was  
21 and stating that Grant owed them \$10,000 dollars reference drugs. Justin advised that he  
22 learned that there was a Grant who used to live at the residence because they sometimes  
23 received mail that was addressed to a "Grant." Justin advised that Ryan went to the ATM to  
24 get the two black males some money. While Ryan was away from the residence, the black  
25 male that stayed behind kept telling all of the people on the floor that they were 90% done.

26 When Ryan arrived back at the residence, Justin was told to roll over and Danielle  
27 was told to start sucking Justin's dick. The black males told Danielle that if she did not do it  
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1 they were going to kill them all. Justin advised that he was so scared he could not get a hard  
2 on. While Justin was on his back a pillow was put over his face. The black males told Justin  
3 that if he did not get hard then they were going to kill him and make one of his friends have  
4 sex with Danielle. The black further advised that if none of them could get aroused then they  
5 would have sex with Danielle. The black male's forced Danielle into the 69 position with  
6 Justin, and told Justin to give Danielle oral sex. Justin was then forced back onto his face  
7 and one of the black males got close to Danielle.

8 Justin heard one of the black males ask, "Is that good as your boyfriends?" Justin  
9 advised that they made Danielle walk over to the staircase and he does not know what  
10 happened after that. The black male that seemed to be in charge went over to Justin and  
11 asked him for condoms. Justin walked to his bedroom with the black male following with  
12 his gun drawn. When Justin got to his bedroom the black male instructed him to stop, keep  
13 his hands above his head and not say anything. The black male put the gun against Justin's  
14 head and said "I'm going to fucking kill you." The black male then stated, "Nah, your ok,  
15 now get those condoms." Justin got two condoms and was escorted back to the living room  
16 floor, face first. Justin stated that the black male told him that he had just gotten out of jail  
17 and hitched a ride from New Mexico to find Grant. The black males advised all of the  
18 subjects again to wait two full minutes to look outside. All of the victims left the house and  
19 went to Clint's to call the police because the suspects told them if they called the police the  
20 suspects would come back and kill them all.

21 Danielle Browning stated that she had been sleeping with her boyfriend Justin  
22 Richardson in the back room of the residence. She advised that a black male walked into the  
23 room and pointed a gun at them and made them move to the living room floor, at which time  
24 Ryan was forced to go to the ATM to retrieve \$900.00. Danielle stated that while Ryan was  
25 gone the other black male stayed behind to make sure that they didn't move. Danielle  
26 advised that somehow the black males got all of their cell phones.

27 //

1 When Ryan arrived back at the residence, the bigger black male forced Danielle to  
2 give Justin oral sex. The black males put a pillow over Justin's head with a gun to it. The  
3 black males ordered Danielle to get completely naked and while she complied the other  
4 victims on the floor were instructed to keep their faces down or they would be killed. The  
5 black males told Danielle and Justin to have sex in front of everyone, but they were unable to  
6 because Ryan could not get hard. After Justin could not be aroused the black males told the  
7 other males to start getting hard because they were going to have sex with Danielle.  
8 Danielle was moved to the staircase where the thinner black male told her that he was hard  
9 and that he wanted to have sex with her. Danielle stated that she told him numerous times  
10 that she did not want to have sex with him and he stated, "I have a gun so I'm in charge."  
11 Danielle stated that the bigger black male made Justin go to his room and retrieve condom.  
12 The thinner male put a gun to her side and began touching her chest and kept asking her to  
13 give him a blow job, or have sex with him. Danielle kept telling him that she did not want to  
14 have sex with him. The black male told Danielle to spread her legs and put her legs directly  
15 up in the air. Danielle was shaking so badly she could not keep her legs up in the air.

16 The black male told Danielle if she didn't stop shaking he was going to shoot her.  
17 Danielle could not stop shaking so the black male grabbed her ankles and held her legs in the  
18 air. The black male began touching her all over and put one finger inside her vagina.  
19 Danielle was instructed to get her clothes on and lay down face first next to Justin  
20 Richardson.

21 Danielle said the black males told them that if they called the police they would have  
22 someone come back and kill all of them. The black males told all of the subjects not to  
23 move for a full two minutes before going outside to get their cell phones. Danielle advised  
24 that her cell phone was not there and was valued at approximately two hundred (\$200.00)  
25 dollars.

26 During Justin Foucault's statement to police he described suspect #1 as a black male  
27 adult, mid 20's, approximately 5'9", 180-200 lbs, stock build, wearing a black baseball cap,  
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1 black shirt, black jeans and black tennis shoes. The suspect appeared to use a "Glock" 9mm  
2 semi-automatic handgun during the incident.

3 Suspect #2 was a black male adult, approximately 6', 160-170 lbs, skinny, wearing a  
4 black baseball cap, black T-shirt, and black pants. Suspect #2 used an unknown type of  
5 handgun. During the incident Jason heard suspect #1 call suspect #2 Marcus.

6 Detectives located the owner information for the residence at 690 Great Dane and  
7 contacted Victor Michalak in an attempt to learn if a Grant lived at the residence prior to the  
8 current victims. Mr. Michalak stated that he had rented the residence to a Brandon who  
9 worked at Country Insurance in Henderson. Brandon had three roommates and he knew one  
10 of them to be a Grant. Employment records showed that Brandon's last name was Preston  
11 and a telephone number was provided. Brandon was contacted by telephone and stated he  
12 was located at Desert Buick on West Sahara. Brandon agreed to meet with Detective  
13 Weske. Brandon told Detective Weske that Grant Hieb lived with him at 690 Great Dane  
14 and currently lives with him at 225 S. Stephanie Street #1023. Brandon stated that he did  
15 not know if Grant sold marijuana, or knew anyone that would want to rob Grant. Brandon  
16 did state that Grant had a couple black friends from Colorado. Brandon stated that Grant  
17 drove a green Toyota Camry.

18 HPD Detectives Hartshorn and Weske went to Brandon and Grant's residence in an  
19 attempt to contact Grant. Upon arrival they observed Grant's Toyota Camry. Detectives  
20 knocked on the door for several minutes and threw small rocks at the windows but nobody  
21 answered the door. Detectives contacted Brandon who said that Grant should have answered  
22 the door. Brandon attempted to call Grant and then called back and told Detectives that  
23 Grant did not answer. Detective Weske explained that due to the fact two armed black males  
24 had gone to 690 Great Dane and were looking for Grant, he was concerned for Grant's  
25 safety. Brandon stated that he was also concerned and could not get home for a couple  
26 hours. Brandon gave the detectives permission to check inside the residence to make sure  
27 Grant was okay. Detective Weske went to the manager's office who responded to Grant and  
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1 Brandon's apartment with the key.

2 Upon opening Grant and Brandon's front door Detective Weske loudly announced  
3 "Henderson Police" several times. In addition a strong odor of burnt marijuana emanated  
4 from inside the apartment. Detective Weske called for Grant who answered "yes." Detective  
5 Weske asked if he was okay and Grant stated "yeah." Grant came out of the room and  
6 indicated that he had been sleeping and did not hear them banging on the door or yelling  
7 "Henderson Police". It was explained what had happened at his old residence and Grant  
8 agreed to go to the Henderson Police Department and assist in the investigation.

9 During the drive to the police department Grant told Detective Weske that  
10 approximately a year prior, he was robbed at his house by a friend named Delarian Wilson.  
11 Grant stated he knew Wilson from the gym he worked out at. In addition, Grant would sell  
12 Wilson small amounts of marijuana occasionally. Grant described how he had pulled into  
13 his garage and Wilson had snuck into his house wearing a ski mask. Grant was immediately  
14 able to recognize Wilson when he pulled out a gun and went directly to Grant's room.  
15 Wilson took approximately \$10,000 in cash and a small amount of marijuana. Grant asked  
16 Wilson why he was doing this as Wilson left the residence with the mask off; however,  
17 Wilson would not look at Grant. Grant did not contact the police because he did not want to  
18 create a scene and knew he would be in trouble for selling marijuana. Grant stated that  
19 Wilson moved to Colorado where he had joined the Adam's State College Football Team.  
20 Wilson did not know that Grant had moved and Wilson is the only person that Grant knew  
21 that would do something like the facts of the instant crime. Grant stated that he had not  
22 personally spoke to Wilson, but a friend called him and left him a message that Wilson was  
23 back in town.

24 Grant was shown a photograph of WILSON and identified it. A photo line-up was  
25 created using Wilson's 2005 booking photo and was shown to the victims in this case. The  
26 majority of the victims stated that Wilson was similar to the first suspect in that he was stout  
27 and wearing a black shirt with the letter "A" on it, a black baseball hat, dark jeans and dark  
28



1 colored athletic shoes.

2 A records check of the Circus Circus Hotel Casino revealed that Defendant WILSON  
3 was registered with four other subjects to room number 8744. A search warrant was  
4 prepared for the hotel room and Defendant WILSON was detained by two other detectives  
5 while playing cards at a black jack table.

6 Detectives Hartsorn and Weske responded to the security office of the Circus Circus  
7 where Defendant WILSON was advised of his Miranda Warnings, which he said he  
8 understood. WILSON admitted going to 690 Great Dane with the intention of robbing Grant  
9 of his money and marijuana. WILSON said he was with his friend whom he knows only as  
10 Narcus. WILSON stated that that they drove to Grant's residence in Narcus's white 300M  
11 Chrysler. WILSON said they knocked on the door and Narcus pointed a gun at the  
12 occupants and put them on the floor. WILSON admitted that he rode in the passenger seat of  
13 Ryan's vehicle while Ryan collected the money from the ATM. WILSON stated that Narcus  
14 stayed at the residence with the remaining victims. WILSON stated that when he got back,  
15 Narcus got crazy and tried to make Justin Richardson have sex with Danielle Browning and  
16 when they could not, Narcus started touching Danielle Browning.

17 WILSON told Narcus to stop and they left. WILSON said he went to what he  
18 thought was Grant's residence with the intention to rob Grant. WILSON stated that he has a  
19 gambling problem. Wilson said even after he realized Grand did not live at the Great Dane  
20 address, all he could think about was the fact that he arrived in Las Vegas on Friday and had  
21 lost \$1,200.00 and needed more money.

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## LEGAL ARGUMENT

### I. Defendant Was Properly Advised of His Miranda Warnings

There is some split of authority as to whether Miranda v. Arizona requires a specific statement that the defendant has a right to an attorney during questioning and whether a defendant has to be told the words "during questioning" in relation to being told he has a right to an attorney. In United States v. Noti, 731 F.2d 610, 614 (9th Cir. 1984), the 9th Circuit held that Miranda Warnings that did not inform the defendant that he had a right to counsel during questioning violated the defendant's constitutional rights. The Court noted that this was not a well established principle and was a "close call." Id. at 614.

Noti is not distinguishable here for two reasons. First, the facts are distinguishable from the one at bar: and second, such a holding is contrary to common sense, the underlying intent of Miranda, and the holding of several other cases. For starters, in Noti, the police had simply told the defendant that he had a right to consult with counsel before questioning, leaving it ambiguous as to whether or not the defendant was entitled to counsel during the questioning itself. Id. That sort of misconception is not present in the case before the bar because the Detectives told the defendant that he had a right to have an attorney. This implies that he has a right to have an attorney at any and all times. Certainly specific words do not need to be used before the Detectives meet their duties under Miranda. California v. Prysock, 101 S. Ct. 2806 (1981); United States v. Tillman, 963 F.2d 137 (6th Cir. 1992).

This conclusion is supported by several cases, including other Ninth Circuit cases that were not specifically overruled by Noti. These cases hold that Miranda is satisfied by the inference that can be drawn from the combination of statements that the individual has a right to remain silent and the right to counsel. United States v. Lamia, 429 F.2d 373, 377 (2d Cir.), *cert. denied*, 400 U.S. 907, 91 S. Ct. 150, 27 L. Ed. 2d 146 (1970); State v. Adams, 484 F.2d 357, 361 (7th Cir. 1973).

It should be noted that in Sweeney v. United States, 408 F.2d 121 (9th cir. 1969), the Ninth Circuit held that Miranda warnings in which the defendant was told "he was entitled to

1 an attorney; that if he could not afford an attorney one would be appointed for him" satisfied  
2 the requirements of Miranda. The Ninth Circuit in Sweeney followed the rationale of every  
3 other court which held these types of warnings sufficient, stating that the warning that he  
4 was entitled to an attorney, coupled with the admonition he had a right to remain silent,  
5 clearly implied the defendant had a right to an attorney before and during questioning. Id. at  
6 124. Noti did not specifically overrule Sweeney. Cf. United States v. Pheaster, 544 F.2d  
7 353, 365 (9th Cir. 1976)(court refused to put form over substance and held the Miranda  
8 warnings were sufficient even though defendant was not told of his right to an attorney at  
9 questioning, because the defendant specifically interrupted the officer and told him he knew  
10 about his right to an attorney).

11 Furthermore, the Ninth Circuit's citation of Prysock and the United States Supreme  
12 Court dictate that no talismanic incantation of rights is necessary to meet the demands of  
13 Miranda, is inconsistent with its holding in Noti. The United States Supreme Court has been  
14 very clear that Miranda Warnings are not required to be given from a pre-printed card and  
15 are not a "talismanic incantation". California v. Prysock, 101 S. Ct. 2806 (1981); United  
16 States v. Tillman, 963 F.2d 137 (6th Cir. 1992). It is not fatal to Miranda warnings if an  
17 irrelevant word is omitted so long as the Miranda warnings are not misleading. Prysock, 101  
18 S. Ct. at 2809. Cf. Moran v. Burbine, 106 S. Ct. 1135 (1986)(defendant does not have to be  
19 told that his attorney has been called or that the attorney is willing to be present during  
20 interrogation).

21 Similarly, the Detectives telling the defendant that he is entitled to counsel is  
22 sufficient under Miranda. There is no requirement under Miranda that officers use the magic  
23 words "you are entitled to counsel right now" or "you are entitled to counsel during  
24 interrogation."

25 This conclusion is supported by United States v. Lamia, 429 F.2d 373 (2nd Cir.  
26 1970). In this case, FBI agents were investigating a robbery and placed the defendant under  
27 arrest and gave him his Miranda warnings. Specifically, the FBI agent stated, "you have a  
28

1 right to an attorney, if you are not able to afford an attorney, an attorney will be appointed by  
2 the court." The Lamia Court held that the Supreme Court did not prescribe an exact  
3 format to be used in advising a suspect of his constitution right to remain silent but rather left  
4 to the court the duty of guarding against any invasion of the right and any resolution of such  
5 a question should give precedence to substance over form. Citing Tucker v. United States,  
6 375 F.2d 363 (8th cir. 1967). The court held:

7 Lamia had been told without qualification that he had the right to  
8 an attorney and that one would be appointed if he could not  
9 afford one. Viewing this statement in context, Lamia having just  
10 been informed that he did not have to make any statement to the  
11 agents outside the bar, Lamia was effectively warned that he  
need not make any statement until he had the advice of an  
attorney. Id.

12 This theme is reiterated in United States v. Adams, 484 F.2d 357, 361 (7th Cir. 1973).  
13 In this case, the defendant was given his rights in a summary form and they were not read  
14 from a pre-printed card. The officers told the defendant of his right to an attorney but did  
15 not include the words regarding the presence of an attorney before questioning. The Court  
16 upheld these warnings as satisfactory under Lamia. See also United States v. Cusumano,  
17 429 F.2d 378, 379 (2nd Cir. 1970)(even though defendant was not specifically told that he  
18 had a right to counsel to be present at questioning, such an inference can be drawn from the  
19 fact he was told he had a right to an attorney and he had a right to remain silent, such  
20 warnings are sufficient under Miranda); Tasby v. United States, 451 F.2d 394, 398 (8th Cir.  
21 1971)(statement made to defendant that an attorney would be appointed "at the proper time"  
22 did not negate the effectiveness of the Miranda warnings when defendant was told he had a  
23 right to remain silent and have an attorney); People v. Valdivia, 226 Cal. Rptr. 144  
24 (1986)(Miranda warning was not defective because defendant was told he was entitled to an  
25 attorney before questioning but not specifically told that he was entitled to an attorney during  
26 questioning because a reasonable interpretation of the language was that defendant had an  
27 unfettered right to an attorney).  
28

1 Most importantly, the United States Supreme Court has confronted on this issue in a  
2 similar situation. In Duckworth v. Eagan, 492 U.S. 195, 109 S. Ct. 2875 (1989), the  
3 defendant signed a waiver form stating that he had a right to an attorney and if he cannot  
4 afford one, one will be appointed "if and when you go to court." The United States Supreme  
5 Court upheld this version of Miranda as an adequate warning, stating:

6 Miranda warnings need not be given in the exact form described  
7 in Miranda but simply must reasonably convey to the suspect his  
8 rights...the initial warnings given to respondent, . . . touched on all  
of the bases required by Miranda.

9 Id. at 195.

10 **II. Defendant Voluntarily, Knowingly and Intelligently Waived his Miranda**  
11 **Warnings**

12 The prosecutor has the burden to prove that the waiver of a suspect's 5th Amendment  
13 Miranda rights was voluntary, knowingly and intelligently made. This burden is on the  
14 prosecution by preponderance of the evidence. Falcon v. State, 110 Nev. 530, 874 P.2d 772  
15 (1994). This is generally accomplished by demonstrating to the court that the officer advised  
16 the defendant of his Miranda rights and at the conclusion of the advisement asked the  
17 suspect if he understood his rights. An affirmative response by the suspect normally satisfies  
18 the knowingly and intelligent portion of the waiver.

19 The voluntariness prong is normally judged under a totality of the circumstances  
20 existing at the time that the rights were read to the defendant. A waiver of rights need not be  
21 expressed, i.e., the suspect need not say "I waive my Miranda rights" nor need the officer ask  
22 the suspect "do you waive your Miranda rights". It is sufficient if the officer obtains an  
23 affirmative response to the question whether the suspect understands the rights that were just  
24 read to him. See generally Tomarchio v. State, 99 Nev. 572, 665 P.2d 804 (1983); North  
25 Carolina v. Butler, 441 U.S. 369, 99 S.Ct. 1755 (1979) (defendant refused to sign the waiver  
26 but agreed to talk to the officers. This was an adequate waiver according to the United  
27 States Supreme Court). See also Tague v. Louisiana, 444 U.S. 469, 100 S.Ct. 652 (1980).



1 See also, Connecticut v. Barrett, 479 U.S. 523, 107 S.Ct. 828 (1987), wherein defendant  
2 agrees to make oral, but declines written statement.

3 In Mendoza v. State, 122 Nev. 267, 130 P.2d 176 (2006), our Nevada Supreme Court  
4 addressed the very issue raised by the Defendant in this case. In rejecting Mendoza's  
5 argument that he did not explicitly state his intent to waive the right to counsel the Court  
6 held:

7 A valid waiver of rights under Miranda must be voluntary,  
8 knowing, and intelligent. See Miranda, 384 U.S. at 444, 86 S.Ct.  
9 1602; see also Floyd, 118 Nev. at 171, 42 P.3d at 259-60. "A  
10 waiver is voluntary if, under the totality of the circumstances, the  
11 confession was the product of a free and deliberate choice rather  
12 than coercion or improper inducement." U.S. v. Doe, 155 F.3d  
13 1070, 1074 (9th Cir.1998) (citing United States v. Pinion, 800  
14 F.2d 976, 980 (9th Cir.1986)) A written or oral statement of  
15 waiver of the right to remain silent is not invariably necessary.  
16 See North Carolina v. Butler, 441 U.S. 369, 373, 99 S.Ct. 1755,  
17 60 L.Ed.2d 286 (1979). Rather, a waiver may be inferred from  
18 the actions and words of the person interrogated. Id.

19 A detective read Mendoza his rights in Spanish, and Mendoza  
20 never expressed difficulty understanding the nature of his rights  
21 or the content of the subsequent questioning. Further, Mendoza  
22 never expressed a desire not to speak. A review of the totality of  
23 the circumstances reveals that Mendoza voluntarily, knowingly,  
24 and intelligently waived his Miranda rights. Given the wealth of  
25 evidence pointing to Mendoza's guilt, even if a Miranda violation  
26 occurred, any error in admitting Mendoza's un-Mirandized  
27 statement is harmless beyond a reasonable doubt. See Arizona v.  
28 Fulminante, 499 U.S. 279, 295-96, 111 S.Ct. 1246, 113 L.Ed.2d  
302 (1991).

Id., 122 Nev. 267, 130 P.2d 176, 181-182.

24 In this case, On February 19, 2007, at 7:46 p.m., Henderson Police Detectives Curtis  
25 Weske and Brian Hartshorn conducted voluntary statement with WILSON, at the Circus  
26 Circus Hotel and Casino, 2880 South Las Vegas Blvd., Las Vegas, Nevada. Upon meeting  
27 with WILSON, the following conversation between himself and Detective Weske occurred:

1 DETECTIVE WESKE: I'm Detective Weske. This is Detective Hartshorn.  
2 They said you've been real cooperative. We'll talk a little bit here.

3 KAMERON WILSON: Yes, sir.

4 DETECTIVE WESKE: (Inaudible) information. Got your UNLV picture  
5 and I got your picture where you were arrested in Metro a couple years ago.

6 KAMERON WILSON: Yeah.

7 DETECTIVE WESKE: Listen bro, I've been up since 3 o'clock this  
8 morning. The call came in before that. We've done a lot of - - a lot of  
9 investigation. We had criminalistics come out. We had cameras on the ATM's,  
10 and we did a photo line up with you. Okay? I'm not going to bullshit you. I'm  
11 not going to sit her and play games with you and say, okay, Kameron, do you  
12 know this person, do you know this person.

13 KAMERON WILSON: Right.

14 DETECTIVE WESKE: All right? Because you're the person that they  
15 described as the one that stopped the major event, okay, last night. You  
16 stopped whoever's with you from getting too carried away on what happened.  
17 Here's what I believe happened I believe you went over there and you wanted  
18 to confront someone you felt owed you some money, and shit got out of hand  
19 with this other person. Now, I'm giving you a chance, I'm coming to you first  
20 - -

21 KAMERON WILSON: Right.

22 DETECTIVE WESKE: To give your side of the story. Okay?

23 KAMERON WILSON: Right.

24 DETECTIVE WESKE: I - - if you want to bullshit me or whatever 'cause,  
25 like I said, we've already talked—we've got six people there. You guys were  
26 there for a long time, you know. They're probably going (incomprehensible)  
27 your name, probably going (incomprehensible) your picture. That's a done  
28 deal. That's why we're here.

KAMERON WILSON: Yes sir.

DETECTIVE WESKE: And they're going to swab the stairs, they've been  
sitting across from your room, been doing surveillance and that's how I picked  
you up - -

ORIGINAL

1 ORDR  
2 JAMES A. ORONOZ, ESQ.  
3 Nevada Bar No. 6769  
4 815 S. Casino Center  
5 Las Vegas, Nevada 89101-6718  
6 702.474.4222  
7 Attorney for Defendant

*Chaf*  
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

FILED

THE STATE OF NEVADA,

Plaintiff,

v.

DELARIAN WILSON,

Defendant.

CASE NO: C232494  
DEPT NO: XXIV

EX-PARTE ORDER

Based upon the Ex-Parte Application for an investigator brought by James A. Oronoz, Esq., attorney for Defendant, and good cause appearing therefore;

THE COURT HEREBY FINDS that the Defendant is indigent and that Defendant's request for payment of investigator fees, travel and related expenses is reasonable and necessary to his defense.

IT IS HEREBY ORDERED that Charlene Gonzales of Robert D. Lawson Investigations be appointed for the above styled case, and be authorized payment in the sum of \$5,000.00 in excess of the statutory limit pursuant to NRS 7.135(1).

IT IS FURTHER ORDERED that Charlene Gonzales of Robert D. Lawson Investigations be authorized to enter the Clark County Detention Center to conduct contact visit interviews with Defendant, day or night, at the convenience of the Detention Center.

DATED this 24th day of August, 2007.

Respectfully Submitted By:

*J. A. Oronoz*  
JAMES A. ORONOZ, ESQ.

*James A. Oronoz*  
DISTRICT COURT JUDGE

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PHILIP J. KOHN, PUBLIC DEFENDER  
NEVADA BAR NO. 0556  
309 South Third Street, Suite 226  
Las Vegas, Nevada 89155  
(702) 455-4685  
Attorney for Defendant

FILED

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MAR 20 2008

DISTRICT COURT OF THE COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

NARCUS SAMONE WESLEY,

Defendant.

CASE NO. C232494B

DEPT. NO. XXIV

DATE: March 18, 2008

TIME: 8:30 a.m.


**MOTION TO SEVER DEFENDANTS**

COMES NOW, the Defendant, NARCUS SAMONE WESLEY, by and through CASEY A. LANDIS, Deputy Public Defender and hereby requests that his trial be severed from the trial of Delarian Wilson.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, the Memorandum of Points and Authorities in support thereof and oral argument at the time set for hearing this Motion.

DATED this 6<sup>th</sup> day of March, 2008.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By   
CASEY A. LANDIS, #9424  
Deputy Public Defender

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DECLARATION

CASEY A. LANDIS makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and the Defendant has represented the following facts and circumstances of this case.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 6<sup>th</sup> day of March, 2008.

  
CASEY A. LANDIS



1 POINTS AND AUTHORITIES

2 I. FACTS

3 On February 18, 2007, two black males forcibly entered a residence and proceeded to  
4 commit a number of crimes upon the 6 individuals located therein. The victims reported that one  
5 of the two individuals, alleged to be Delarian Wilson, was clearly in charge of the events that  
6 transpired. According to the victims, Wilson issued all of the commands and made most, if not all,  
7 of the decisions. Conversely, the second perpetrator, alleged to be Narcus Wesley, was described  
8 as quit and visibly nervous throughout the ordeal.

9 After the perpetrators left the residence, the Henderson Police Department was called and  
10 began an investigation. Shortly thereafter, the Henderson Police Department identified Delarian  
11 Wilson as a possible suspect and located him at the Circus-Circus Hotel-Casino. Upon contacting  
12 Wilson, the Henderson Police Department interrogated him regarding his whereabouts on February  
13 18, 2007. Wilson fully confessed to committing the various crimes on those 6 victims. Wilson  
14 also informed the police that the individual who was with him was a former football teammate  
15 named Narcus Wesley.

16 The Henderson Police Department then contacted Narcus Wesley at his parent's residence.  
17 Wesley was also interrogated and confessed to being present with Wilson on February 18. Wesley  
18 told the police that he thought they were going to that house in order to buy some marijuana from a  
19 man named Grant. Once at the residence, Wilson disclosed his intent to rob Grant of \$1,000.  
20 After Wilson realized that Grant no longer resided at the residence, Wilson decided to nevertheless  
21 rob the people therein.

22 Both Wesley and Wilson were arrested and charged with numerous count of Robbery with  
23 use of a Deadly Weapon, Sexual Assault with Use of a Deadly Weapon and related charges.  
24 Currently, Wilson and Wesley are charged as codefendants through a single indictment. Trial is  
25 currently scheduled to commence before this Court on March 31, 2007. This motion to sever the  
26 trials of Wesley and Wilson follows.

27 ///

28 ///

1           **II.     ARGUMENT**

2           NRS 174.165 provides, in relevant part:

3                                "If it appears that a defendant or the State of Nevada is prejudiced by  
4                                a joinder of offense or of defendants...the court may ☐ grant a  
5                                severance of defendants or provide whatever other relief justice  
6                                requires."

7           Here, a joint trial will prejudice both Wilson and Wesley for two primary reasons. First,  
8           both Wilson and Wesley made statements to the Henderson Police Department implicating the  
9           other in the commission of these crimes. Second, Wesley's defense of duress requires that the jury  
10          hears of Wilson's criminal history and prior conduct. These realities require that Wilson and  
11          Wesley be granted separate trials free from the inescapable prejudice that will stem from a joint  
12          trial.

13                            A.     The Confessions of Wilson and Wesley Require Severance

14          In Bruton v. United States, 391 U.S. 123 (1968) the Supreme Court recognized that an  
15          accused's right to cross-examination, as embodied in the Sixth Amendment, is violated by  
16          introduction of a statement by a co-defendant implicating the accused when that co-defendant  
17          elects not to testify. Cf. Lord v. State, 107 Nev. 28, 43-44 (1991). Moreover, the Supreme Court  
18          recognized the inadequacy of jury instruction to cure any prejudice from the introduction of such  
19          statements. 391 U.S. at 129 ("The naive assumption that prejudicial effects can be overcome by  
20          instructions to the jury ... all practicing lawyers know to be unmitigated fiction.") (citing  
21          Krulewitch v. United States, 336 U.S. 440, 453 (Jackson, J., concurring)).

22          Following the holding of Crawford v. Washington, 541 U.S. 36 (2005), allowing the  
23          incriminating statement of non-testifying codefendant Wilson to be admitted against Wesley also  
24          violates the Confrontation Clause of the Sixth Amendment. Wilson's confession to the Henderson  
25          Police Department was a "testimonial statement" as defined by Crawford and its progeny. As  
26          such, that statement can only be admitted against Wesley if he has the opportunity to fully and  
27          effectively cross examine Wilson. By electing not to testify, Wilson will be circumventing  
28          Wesley's ability to do so, thereby, rendering the confession inadmissible under Crawford.

///

1 B. Severance is Required Since Wesley's Defense Requires the Introduction of  
2 Wilson's Criminal History

3 Under the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution a criminal  
4 defendant has a fundamental constitutional right to present a defense. See, e.g., Rock v. Arkansas,  
5 483 U.S. 44 (1987); Washington v. Texas, 388 U.S. 14 (1967). "The right of an accused in a  
6 criminal trial to due process is, in essence, the right to a fair opportunity to defend against the  
7 State's accusations. The rights to confront and cross-examine witnesses and to call witnesses in  
8 one's own behalf have long been recognized as essential to due process." Chambers v.  
9 Mississippi, 410 U.S. 284, 294 (1973).

10 In this case, Wesley intends to defend against these charges by presenting the defense of  
11 duress. Under NRS 194.010 (7) an individual's criminal conduct is excused if that person acted  
12 with a reasonable belief that he was in danger of death or great bodily harm. See Browning v.  
13 State, 120 Nev. 347, 361 (2004). As stated by the U.S. Supreme Court, duress "excuse[s] criminal  
14 conduct where the actor was under an unlawful threat of imminent death or serious bodily injury,  
15 which threat caused the actor to engage in conduct violating the literal terms of the criminal law."  
16 United States v. Bailey, 444 U.S. 394, 410 (1980).

17 By raising the defense of duress, which a criminal defendant has a fundamental  
18 constitutional right to present, Wesley must show that his belief that death or bodily harm could  
19 follow, was reasonable. To make that showing Wesley is required to disclose his knowledge  
20 regarding Wilson's past criminal conduct. The jury will learn of Wilson's past robberies and  
21 previous crimes of violence.<sup>1</sup> By its very nature, this evidence will prejudice the jury against  
22 Wilson and make a fair trial impossible.

23 Absent severance, this Court will be forced to either deprive Wesley of his constitutional  
24 right to present a defense by not allowing evidence of Wilson's criminal history or to deprive  
25 Wesley of a fair trial free from prejudice. Severance is the only way to protect the constitutional  
26 rights of both Wilson and Wesley.

27 ///

28 ///

<sup>1</sup> Upon request, Wesley will provide this Court with a detailed narrative regarding Wilson's criminal history.

1           **III. CONCLUSION**

2           Narcus Wesley is currently charged with a number of counts that carry mandatory life  
3 sentences. Wesley is cognizant of the importance of judicial economy and the expense of  
4 unnecessary trials. However, this is not a case where a single trial can grant Wesley and Wilson  
5 the constitutional protections they are entitled to. Due to the confessions of Wesley and Wilson  
6 which implicate one another, severance is required. Further, even in the absence of those  
7 confessions, Wesley has a right to present a defense of duress in this case. In so doing, Wilson  
8 criminal history will be admitted into evidence. Resultantly, severance is required to protect  
9 against unfair prejudice.

10           Wherefore, for all the foregoing reasons, and for any other reasons this Court may deem  
11 just and proper, Narcus Wesley respectfully requests that this motion be granted and that his trial  
12 be severed from that of Delarian Wilson's.

13  
14           DATED this 6<sup>th</sup> day of March, 2008.

15                           PHILIP J. KOHN  
16                           CLARK COUNTY PUBLIC DEFENDER

17                           By   
18                           CASEY A. LANDIS, #9424  
19                           Deputy Public Defender  
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**NOTICE OF MOTION**

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 18th day of March, 2008, at 8:30 a.m..

DATED this 6<sup>th</sup> day of March, 2008.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By   
CASEY A. LANDIS, #9424  
Deputy Public Defender

**RECEIPT OF COPY**

RECEIPT OF COPY of the above and foregoing Motion to Sever Defendants is hereby acknowledged this 6 day of March, 2008.

CLARK COUNTY DISTRICT ATTORNEY

By 



PHILIP J. KOHN, PUBLIC DEFENDER  
NEVADA BAR NO. 0556  
309 South Third Street, Suite 226  
Las Vegas, Nevada 89155  
(702) 455-4685  
Attorney for Defendant

FILED

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DISTRICT COURT OF THE COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

NARCUS SAMONE WESLEY,

Defendant.

CASE NO. C232494B

DEPT. NO. XXIV

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CLARK COUNTY PUBLIC DEFENDER

By Casey A. Landis  
CASEY A. LANDIS, #9424  
Deputy Public Defender

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I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

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///

1                   B.     Severance is Required Since Wesley's Defense Requires the Introduction of  
2                         Wilson's Criminal History

3             Under the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution a criminal  
4     defendant has a fundamental constitutional right to present a defense. See, e.g., Rock v. Arkansas,  
5     483 U.S. 44 (1987); Washington v. Texas, 388 U.S. 14 (1967). "The right of an accused in a  
6     criminal trial to due process is, in essence, the right to a fair opportunity to defend against the  
7     State's accusations. The rights to confront and cross-examine witnesses and to call witnesses in  
8     one's own behalf have long been recognized as essential to due process." Chambers v.  
9     Mississippi, 410 U.S. 284, 294 (1973).

10            In this case, Wesley intends to defend against these charges by presenting the defense of  
11     duress. Under NRS 194.010 (7) an individual's criminal conduct is excused if that person acted  
12     with a reasonable belief that he was in danger of death or great bodily harm. See Browning v.  
13     State, 120 Nev. 347, 361 (2004). As stated by the U.S. Supreme Court, duress "excuse[s] criminal  
14     conduct where the actor was under an unlawful threat of imminent death or serious bodily injury,  
15     which threat caused the actor to engage in conduct violating the literal terms of the criminal law."  
16     United States v. Bailey, 444 U.S. 394, 410 (1980).

17            By raising the defense of duress, which a criminal defendant has a fundamental  
18     constitutional right to present, Wesley must show that his belief that death or bodily harm could  
19     follow, was reasonable. To make that showing Wesley is required to disclose his knowledge  
20     regarding Wilson's past criminal conduct. The jury will learn of Wilson's past robberies and  
21     previous crimes of violence.<sup>1</sup> By its very nature, this evidence will prejudice the jury against  
22     Wilson and make a fair trial impossible.

23            Absent severance, this Court will be forced to either deprive Wesley of his constitutional  
24     right to present a defense by not allowing evidence of Wilson's criminal history or to deprive  
25     Wesley of a fair trial free from prejudice. Severance is the only way to protect the constitutional  
26     rights of both Wilson and Wesley.

27     ///

28     ///

<sup>1</sup> Upon request, Wesley will provide this Court with a detailed narrative regarding Wilson's criminal history.



1           **III. CONCLUSION**

2           Narcus Wesley is currently charged with a number of counts that carry mandatory life  
3 sentences. Wesley is cognizant of the importance of judicial economy and the expense of  
4 unnecessary trials. However, this is not a case where a single trial can grant Wesley and Wilson  
5 the constitutional protections they are entitled to. Due to the confessions of Wesley and Wilson  
6 which implicate one another, severance is required. Further, even in the absence of those  
7 confessions, Wesley has a right to present a defense of duress in this case. In so doing, Wilson  
8 criminal history will be admitted into evidence. Resultantly, severance is required to protect  
9 against unfair prejudice.

10           Wherefore, for all the foregoing reasons, and for any other reasons this Court may deem  
11 just and proper, Narcus Wesley respectfully requests that this motion be granted and that his trial  
12 be severed from that of Delarian Wilson's.

13  
14           DATED this 6<sup>th</sup> day of March, 2008.

15                           PHILIP J. KOHN  
16                           CLARK COUNTY PUBLIC DEFENDER

17                           By   
18                           CASEY A. LANDIS, #9424  
19                           Deputy Public Defender

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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 18th day of March, 2008, at 8:30 a.m..

DATED this 6<sup>th</sup> day of March, 2008.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By   
CASEY A. LANDIS, #9424  
Deputy Public Defender

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Motion to Sever Defendants is hereby acknowledged this 6 day of March, 2008.

CLARK COUNTY DISTRICT ATTORNEY

By 

PHILIP J. KOHN, PUBLIC DEFENDER  
NEVADA BAR NO. 0556  
309 South Third Street, Suite 226  
Las Vegas, Nevada 89155  
(702) 455-4685  
Attorney for Defendant

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FILED

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DISTRICT COURT

CLERK OF THE COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

NARCUS SAMONE WESLEY,

Defendant.

CASE NO. C232494B

DEPT. NO. XXIV

DATE: March 25, 2008

TIME: 8:30 a.m.

**MOTION TO SUPPRESS FRUITS OF ILLEGAL SEARCH**

COMES NOW, the Defendant, NARCUS SAMONE WESLEY, by and through CASEY A. LANDIS, Deputy Public Defender and hereby Moves this Court for an Order suppressing the property seized from 4232 Gaye Avenue on February 20, 2007. This motion further seeks to suppress all statements made by Wesley during that search.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Declaration of Counsel, the Memorandum of Points and Authorities in support thereof, and oral argument at the time set for hearing this Motion.

DATED this 11<sup>th</sup> day of March, 2008.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By   
CASEY A. LANDIS, #9424  
Deputy Public Defender

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CLERK OF THE COURT

000365

DECLARATION

CASEY A. LANDIS makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I am the Deputy Public Defender assigned to represent the Defendant in the instant matter, and the Defendant has represented the following facts and circumstances of this case.

I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045).

EXECUTED this 11<sup>th</sup> day of March, 2008.

  
CASEY A. LANDIS

NRS

NRS

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Points and Authorities

I. FACTS

On February 18, 2007, two black males forcibly entered a residence and proceeded to commit a number of crimes upon the 6 individuals located therein. The victims reported that one of the two individuals, alleged to be Delarian Wilson, was clearly in charge of the events that transpired. According to the victims, Wilson issued all of the commands and made most, if not all, of the decisions. Conversely, the second perpetrator, alleged to be Narcus Wesley, was described as quit and visibly nervous throughout the ordeal.

After the perpetrators left the residence, the Henderson Police Department were called and began an investigation. Shortly thereafter, the Henderson Police Department identified Delarian Wilson as a possible suspect and located him at the Circus-Circus Hotel-Casino. Upon contacting Wilson, the Henderson Police Department interrogated him regarding his whereabouts on February 18, 2007. Wilson fully confessed to committing the various crimes on those 6 victims. Wilson also informed the police that the individual who was with him was a former football teammate he only knew as "Narcus." Thereafter, Wilson was arrested and charged.

With Wilson in custody, the Henderson Police Department set out to determine the identity of the individual Wilson identified as "Narcus." From a U.N.L.V football roster, the Henderson Police Department learned that an individual named Narcus Wesley was a member of that team. An administrative subpoena was then sent to Nevada Power. See Exhibit 1 (Administrative Subpoena to Nevada Power) The subpoena requests power records for "Narcus Wesley." Following Narcus' name on the subpoena, a social security number, alleged to be his, is listed. In reality, the social security number written on the subpoena does not belong to Narcus Wesley.

The administrative subpoena was returned by Nevada Power on February 20, 2007. Nevada Power was unable to locate a current customer by the name of Narcus Wesley. However, the incorrect social security number provided did result in a match. That social security number matched with a customer named "Narviz Wesley" with an address of 4232 Gaye Avenue. See Exhibit 2 (Nevada Power Subpoena Return)



1 When Nevada Power gave this power record to the Henderson Police Department, they  
2 made it clear that the return did not match the request. On the power record returned to the police,  
3 an employee of Nevada Power hand wrote the following:

4 *\*Please Note: Individuals first name is different from your request*

5 See Exhibit 2. With that address in hand, the Henderson Police Department drove by 4232 Gaye  
6 Lane and observed a white Chrysler 300M in the drive way. When Wilson was interrogated, he  
7 said that Narcus drove a car matching that description.

8 A search warrant request and affidavit was then submitted to the Honorable S. George. See  
9 Exhibit 3 (Search Warrant Application and Affidavit). The search warrant application sought to  
10 search the residence as well as all vehicles present. The search warrant application disclosed the  
11 crimes that were reported, the statements made by the victims, and the interrogation and arrest of  
12 Wilson. In an attempt to show probable cause to search 4323 Gaye Lane, the police wrote the  
13 following:

14 A records check of the UNLV football roster showed a player  
15 named Narcus Wesley. A further records check showed Narcus's  
16 date of birth was 10/03/1982 and a SSN of XXX-XX-XXXX. A  
17 subpoena of Nevada Power's records showed Narcus to have an  
18 account at the residence of 4232 Gaye Avenue, Las Vegas, Nevada  
19 89108. I observed the above vehicles including the white 2005  
20 Chrysler registered to Narcus in the driveway of 4232 Gaye Avenue.

21 See id.

22 Nowhere in the search warrant application did the Henderson Police Department disclose  
23 the name discrepancies made clear to them by Nevada Power. Further, the Henderson Police  
24 Department found it unnecessary to inform the judge that the social security number sent to  
25 Nevada Power did not belong to Narcus.

26 Based on these factual inaccuracies, the search warrant was approved in full. See Exhibit 4  
27 (Search Warrant). The search warrant was executed on February 20, 2007. Narcus and his father,  
28 Narviej Wesley, were present at the residence. During the search, Narcus was handcuffed and

1 interrogated. He admitted to his participation in the crime. The Henderson Police Department  
2 seized the clothing Narcus claimed to be wearing during the crimes, \$95.00, a SRS rifle, and a  
3 State Farm bill showing 4232 Gaye Lane to be Narcus's address.

4 Narcus was arrested and charged with numerous counts of Robbery with use of a Deadly  
5 Weapon, Sexual Assault with Use of a Deadly Weapon and related charges. Currently, Wilson  
6 and Wesley are charged as codefendants through a single indictment and trial is currently  
7 scheduled to commence before this Court on March 31, 2007. This motion to suppress the fruits  
8 of an illegal search follows.

9 **II. ARGUMENT**

10  
11 **A. THE HENDERSON POLICE DEPARTMENT MISREPRESENTED**  
12 **MATERIAL FACTS IN THE AFFIDAVIT IN SUPPORT OF A SEARCH**  
13 **WARRANT IN AN EFFORT TO MISLEAD THE ISSUING COURT**  
14 **REGARDING THE EXISTENCE OF PROBABLE CAUSE**

15 In Franks v. Delaware, 438 U.S. 154, 98 S. Ct. 2674 (1978), the United States Supreme  
16 Court recognized the constitutional right to challenge the truthfulness of statements contained in a  
17 search warrant affidavit. The Court must hold an evidentiary hearing under Franks upon a  
18 substantial preliminary showing that (1) a false statement was included in the affidavit; (2) the  
19 false statement was made knowingly and intentionally, or with reckless disregard for the truth; and  
20 (3) the allegedly false statement was necessary to the finding of probable cause. Id. at 2676; see  
21 also Garettson v. State, 114 Nev. 1064 (1998). At this stage, clear proof of deliberate or reckless  
22 misstatements is not required, but rather is reserved for the evidentiary hearing. See United States  
23 v. Stanert, 762 F.2d 775, 781 (9th Cir. 1985); United States v. Chesher, 678 F.2d 1353, 1362 (9th  
24 Cir. 1982). Thus, Wesley may, upon the substantial showing outlined above, request an evidentiary  
25 hearing to develop the factual basis for the suppression of the evidence. At the evidentiary hearing,  
26 if the defendants ultimately establish the required elements by a preponderance of the evidence,  
27 the Court must void the search and suppress the fruits thereof. See Franks, 438 U.S. at 156.

28 When the Henderson Police Department applied for the search warrant in this case, they  
informed the Court that Narcus Wesley had power in this name at 4232 Gaye Avenue. That

1 statement was false. At the time that statement was made, the Henderson Police Department knew  
2 it was false. The subpoena return from Nevada Power was clear that Narcus Wesley did not have  
3 power in his name at 4232 Gaye Avenue. The Henderson Police Department intentionally omitted  
4 that information from the search warrant application. That misrepresentation by the Henderson  
5 Police Department forms the sole basis for probable cause for the issuance of the warrant.  
6 Resultantly, this Court must grant Wesley's request for a Franks hearing.

7  
8 **B. THE STANDARD FOR EVALUATING EVIDENCE FOLLOWING A  
FRANKS HEARING IS *DE NOVO***

9 The reviewing court must review de novo the original decision to issue the warrant. See  
10 United States v. Elliott, 893 F.2d 220, 222 (9th Cir. 1990). De novo review is appropriate because  
11 the probable cause and necessity questions "turn[] on the consequences of a fraud on the issuing  
12 magistrate. . . ." Id.<sup>1</sup>

13 A reviewing court must set the affiant's false statements to one side and then determine  
14 whether the affidavit's remaining content is sufficient to establish probable cause. See Franks, 438  
15 U.S. at 156. If the affidavit is not sufficient, the warrant must be voided and the evidence  
16 suppressed. See id. Once this Court has conducted the Franks hearing and removed the offending  
17 misstatements, the affidavit will fail to establish the required probable cause and all evidence  
18 found as an indirect and direct result of the unlawful search must be suppressed.

19 **C. THE GOOD FAITH EXCEPTION DOES NOT APPLY**

20 In United States v. Leon, 468 U.S. 897, 920 (1984), the Court held that evidence seized  
21 pursuant to an invalid search warrant would nevertheless be admissible "when an officer acting  
22 with objective good faith has obtained a search warrant from a judge or magistrate and acted  
23 within its scope." However, the "good-faith exception" does not apply if its application would  
24 allow the purpose of the exclusionary rule to be circumvented (i.e., deterrence of police  
25 misconduct.) Hence, Leon says:

26  
27 <sup>1</sup> A misstatement or omission by a government official other than the affiant may also be a basis for suppression under  
28 Franks. United States v. DeLeon, 979 F.2d 761, 764 (9th Cir. 1992); United States v. Roberts, 747 F.2d 537, 546 n.10  
(9th Cir. 1984). Because the magistrate must independently evaluate the affidavit, "the police cannot insulate one  
officer's deliberate misstatements merely by relaying it through an officer-affiant personally ignorant of its falsity."  
DeLeon, 979 F.2d at 764 (citing 838 F.2d at 714) (citations omitted).

1           Suppression therefore remains an appropriate remedy if the  
2           magistrate or judge in issuing a warrant was misled by information in  
3           an affidavit that the affiant knew was false or would have known was  
4           false except for his reckless disregard for the truth. *Id.* at 923.

5           Due to the fact that any probable cause that supports this warrant was based on statements  
6           known to be false, the State can not use the good faith exception to circumvent the legal effects of  
7           the Henderson Police Department's dishonesty.

8           **D. THE TANGIBLE AND TESTIMONIAL EVIDENCE THAT WAS DERIVED  
9           FROM THE UNLAWFUL SEIZURE MUST BE SUPPRESSED AS TAINTED  
10          FRUIT OF A FOURTH AMENDMENT VIOLATION.**

11          To enforce the protections of the Fourth Amendment, the Supreme Court has held that  
12          evidence seized as a result of a Fourth Amendment violation may not constitute proof against the  
13          victim. See generally *Wong Sun v. United States*, 371 U.S. 471, 484 (1963). The exclusionary  
14          rule "prohibits the introduction of tangible materials seized during an unlawful search and of  
15          testimony concerning knowledge acquired during an unlawful search." *Murray v. United States*,  
16          487 U.S. 533, 536 (1988). "The exclusionary rule also prohibits the introduction of derivative  
17          evidence both tangible and testimonial, that is the product of the primary evidence, or that is  
18          otherwise acquired as an indirect result of the unlawful search." *Id.* By refusing to admit evidence  
19          that is obtained through illegal police conduct, "the courts hope to instill in those particular  
20          investigating officers, or in their future counterparts, a greater degree of care toward the rights of  
21          an accused." *Michigan v. Tucker*, 417 U.S. 433, 447 (1974).

22          All of the tangible evidence that was found during the search of 4323 Gaye Avenue must  
23          be suppressed because it represents tainted fruit of illegal police conduct. See generally *Wong*  
24          *Sun*, 371 U.S. at 484. Specifically, the items that were found as a result of the invalid search  
25          warrant must be suppressed because it was obtained based on a material misrepresentation of fact.  
26          Allowing this evidence to be used against Wesley would frustrate the purposes of the Fourth  
27          Amendment and would encourage future unjustified seizures by these particular officers and their  
28          future counterparts. See, e.g., *Michigan*, 417 U.S. at 447. The exclusionary rule prohibits the  
                government from using any statements or confessions that are made by Wesley during the  
                unconstitutional search. *New York v. Harris*, 495 U.S. 14, 19 (1990).

1  
2 **III. CONCLUSION**

3 For the foregoing reasons, Wesley respectfully requests that this Court suppress all tangible  
4 and intangible evidence seized as a direct result of the illegal search of 4323 Gaye Avenue, garage  
5 and automobile and any fruits of that search. Wesley expects that the government will contest his  
6 factual assertions and, if so, he requests an evidentiary hearing to resolve disputed factual matters.  
7

8  
9 DATED this 11<sup>th</sup> day of March, 2008.

10 PHILIP J. KOHN  
11 CLARK COUNTY PUBLIC DEFENDER

12 By   
13 CASEY A. LANDIS, #9424  
14 Deputy Public Defender  
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**NOTICE OF MOTION**

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 25th day of March, 2008, at 8:30 a.m..

DATED this 11<sup>th</sup> day of March, 2008.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

By   
CASEY A. LANDIS, #9424  
Deputy Public Defender

**RECEIPT OF COPY**

RECEIPT OF COPY of the above and foregoing Motion to Suppress Fruits of Illegal Search is hereby acknowledged this 11 day of March, 2008.

CLARK COUNTY DISTRICT ATTORNEY

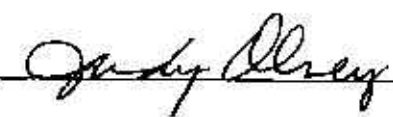
By 

EXHIBIT 1

000374

# HENDERSON POLICE



# DEPARTMENT

## ADMINISTRATIVE REQUEST

Richard Perkins Chief

### THE HENDERSON POLICE DEPARTMENT SENDS GREETINGS TO:

Nevada Power Attn: Donna Lamont

**YOU ARE HEREBY REQUESTED** that all and singular business excuses being set aside, you produce:

**RE: DR# 07-03748**

1. A true and accurate copy of your customer records, including the name(s), address(es), telephone number(s), listed as the customer(s) for the following:

Narcus Wesley/ 566-58-3280

The records are requested to be delivered, on or before the 20<sup>th</sup> day of February 2007, to the Henderson Police Department in person or via fax # (702) 267-4751 to the attention of Detective Curtis Weske.

XX CHECK HERE IF EMERGENCY REQUEST AND IS NEEDED AS SOON AS POSSIBLE.

This request is made to further a criminal/civil investigation being conducted by the Henderson Police Department. If you have any questions about this subpoena, contact Detective Curtis Weske at (702) 267-4783. You are requested not to disclose the existence of this Administrative Request. Any such disclosure could obstruct and impede the investigation being conducted and thereby interfere with the enforcement of the law.

Dated this 20th day of February, 2007

Capt R. Wamsley

By:

*Capt R. Wamsley*  
Bureau Commander  
Henderson Police Department

EXHIBIT 2

000376

1123280

WESLEY

HARVEY

15-DEC-1987

600-50-3288

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Move in 11/1/06

\* Please Note: Individuals first name is different from your request.

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CELL	CELL			702	810-7194		A	N	
HM	ROM	MA	MAIL	702	877-8413		A	N	

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LAS VEGAS

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USA

UNITED STATES OF AMERICA

CLV

CITY OF LAS VEGAS

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OTHER - CITY OF LAS VEGAS

50358

DEFAULT CUSTOMER

01-JAN-1980

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HOUSE

A121

ACTIVE

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EXHIBIT 3

000380

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APPLICATION AND AFFIDAVIT  
for  
SEARCH WARRANT

STATE OF NEVADA )  
COUNTY OF CLARK)

SS:

Curtis Weske, being first duly sworn, deposes and states that he is the Affiant herein and that he is a Detective with the Henderson Police Department, presently assigned to the Criminal Investigations Major Crimes Unit. That he has been with the Henderson Police Department since August 30, 1999. There is probable cause to believe that certain property hereinafter described, will be found at the following described locations, to wit:

PREMISES TO BE SEARCHED

- The Person of Marcus Wesley, Date of Birth 10/03/1982, social security number 530-04-8230. Further described as a Black Male Adult weighing approximately 195 lbs., standing approximately 6 feet.
- The residence located at 4232 Gaye Lane Las Vegas, Nevada 89109. Further described as a tan single story residence with a brown shingled roof and dark brown shutters. The residence has an attached two vehicle garage with a white garage door. The numbers "4232" are located to the left of the front door and are black in color.

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- A Chrysler 300M and is further described as white in color with Nevada plates of "232TZD" and Vehicle Identification Number of 2C3JA43R35H604054.
- A blue over Gray colored 1988 Chevrolet truck bearing Nevada License 707 PWC with a Vehicle Identification Number of 2GCFK29K1J1178072. The vehicle is registered to a Narcus Wesley. Both vehicles are parked in the driveway of the residence.
- Any and all vehicles associated with said residence.

PROPERTY TO BE SEIZED

- Forensic examination of the person of Narcus Wesley, to include a sample of blood or bodily fluid for DNA purposes, including trace evidence items, such as but not limited to body fluids, hair samples, or other human properties indicative or consistent with a sexual encounter.
- A black cellular flip phone with camera, assigned phone number (775-346-0225), with service provided by ALLTEL.

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- U.S. Currency including but not limited to denominations of increments common to ATM withdraws.
- Condoms described as the brand name of Trojan in light blue packaging.
- Any and all firearms including but not limited to firearms commonly referred to handguns similar to that described by the victims, possibly being a Glock 9mm and associated ammunition for said firearm.
- ATM receipts dated for February 18<sup>th</sup> or 19<sup>th</sup> of 2007.
- Suspect clothing as described by the victims but not limited to a white baseball hat, white doo-rag, black shirt, dark jeans and gray/black athletic shoes.
- Limited items of personal property to show the identity of persons in control of the premises to be searched.

The property herein before described constitutes evidence, which tends to demonstrate that the criminal offense of KIDNAPPING, a Felony violation of N.R.S. 200.310-1 has been committed, SEXUAL ASSAULT, a Felony violation of N.R.S. 200.366 and ROBBERY, a Felony violation of N.R.S. 200.380 has been committed. In support of your Affiant's assertion to constitute the existence of probable cause, the following facts are offered:

#### PROBABLE CAUSE

That on 2-18-07 at approximately 0125 hours, officers responded to 2101 West Warm Springs apartment number 4322. Upon arrival officers contacted Justin Richardson, Aitor Eskandon, Justin Foucault, Ryan Tognotti, Clint Tognotti and Danielle Browning and were advised of the following:

That all of the above listed subjects were at the residence of 690 Great Dane where Aitor Eskandon, Justin Foucault, Ryan Tognotti and Clint Tognotti were watching a movie in the living room of the residence while Justin Richardson and Danielle Browning were sleeping in Richardson's bedroom. At approximately 2200 hours, on 02/18/2007 someone knocked on the front

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door of the residence.

Ryan answered the door and due to the large amount of people who frequent the residence, Ryan invited them in. The two suspects were described as a black male adult, approximately 20 to 25 years of age, approximately 5'8" to 5' 10" tall with a stout build. The first subject was wearing a black shirt with the letter "A" on it, a black baseball hat, dark jeans and dark colored athletic shoes. The second subject was a black male adult approximately 20-25 years of age, approximately 6 feet tall with a thin build. The second subject was wearing a white baseball hat, white doo-rag, black shirt, dark jeans and gray/black athletic shoes.

Both subjects entered the residence and the first subject asked Ryan where Grant was. Ryan advised the subject that he did not know a Grant. The subjects then became agitated and again asked Ryan where Grant was. Ryan again advised that he did not know a Grant at which point both subjects lifted up the front of their shirts exposing and subsequently pulling firearms from their waist bands. Both subject's firearms were described as black semi-automatic handguns possibly being Glock 9mm. They then pointed the handguns at the subjects in the front room and yelled at them to get on the ground in a circle, face down with their arms over their heads stacking their hands on top of each other in the middle of the circle. The suspects then asked if anyone else was in the residence and they responded that Danielle Browning and Justin Richardson were in the upstairs bedroom asleep. The first suspect then went upstairs and escorted them to the living room where they were also told to lay face down on the ground with their hands in the center of the circle.

That the first subject then asked the group for all their money. The group only had about \$20 in their possession which was taken by the suspects. The first suspect then asked who had money in their bank accounts and both Ryan Tognotti and Justin Foucault advised that they both had money in their accounts. Ryan was then told get the debit cards and told to drive him to the bank to withdraw money from the accounts. Ryan was then escorted to his vehicle (blue Honda Civic) by the first suspects and drove him to two Banks and withdrew a total of \$900. They then returned to the residence and the suspect told Ryan to get back on the ground face down.

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Suspect one told the victims that they were 90% done but that there remained 10% more to finish. The suspects asked Justin Richardson and Danielle Browning how long they had been going out and if they were in love. The suspects subsequently ordered Danielle to perform oral sex on Justin. The suspects told the victims that they expected Justin to have sexual relations (penis to vagina) while they watched. Justin Richardson was unable to sustain an erection out of the stress of the situation and the suspects became irritated. They told both subjects to undress completely and then told Justin Richardson that if he didn't perform, they would begin killing everyone. The suspects forced Justin Richardson and Danielle Browning to engage in mutual oral sex in an attempt arouse Justin Richardson. When Richardson was still unable to perform, they then turned to the other males and asked who would be able to perform. The suspects then demanded that Ryan Tognotti manually try and stimulate himself in order to sustain an erection. Ryan Tognotti was told to lower his clothing exposing his penis and attempt to stimulate himself to erection. Tognotti tried to do as told without success due to the stress.

Danielle Brown was then approached by suspect number two and was digitally penetrated in her vagina. At some point, suspect number one asked who had condoms and after subsequent questioning, Justin Richardson advised that he had condoms in his room. Richardson was escorted to his room and two Trojan lubricated condoms were obtained. The packaging for the condoms was light blue in color. The condoms were taken but never accounted for and remain missing.

The suspects then told the victims that they were going to leave and no one better call the police or they know people that will come back and kill them. The suspects fled taking all of the victim's cell phones, discarding all of them outside of the residence with the exception of one belonging to Danielle Browning. The phone belonging to Browning was described as a black camera flip phone with the carrier being Alltel and the phone number being (775-346-0225). The suspects fled in an unknown direction in an unknown manner.

While Detectives were interviewing the victims Detectives obtained the owner's information of the 690 Great Dane residence in attempt to learn if a Grant had lived at the residence prior to the current victims. The owner of the residence Victor Michalak said that he had rented the residence to a Brandon who worked at Country Insurance in Henderson. Victor stated Brandon had three roommates and he knew one of them to be a Grant.

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Employment records showed Brandon's last name as Preston and a phone number was provided. Brandon was contacted and he stated that a Grant Hieb lived with him at 690 Great Dane and he stated Grant currently lives with him at 225 S. Stephanie #1023. Detectives contacted Grant who agreed to come to the Henderson Police Department and assist Detectives with the investigation.

Grant stated approximately a year ago he was robbed at the house by a friend named Delarian Wilson. (05/31/83) Grant said he knew Wilson from the gym he worked at in addition he would sell Wilson small amounts of Marijuana occasionally. Grant said when he pulled into his garage Wilson snuck into the house wearing a mask however he was immediately recognized by Brandon as Wilson pulled out a gun and went upstairs to Grant's room. Grant said Wilson took approximately 1000.00 cash and a small amount of Marijuana. Grant said he asked Wilson why he was doing this as Wilson left his residence with the mask off. Grant said Wilson would not look at him. Grant said he did not want to create a scene because he knew he would be in trouble for selling Marijuana. Grant said he did not call the Police. Grant said Wilson moved to Colorado and joined the Adam's State College Football team. Grant said Wilson does not know Grant moved. Grant said that is the only person he knows that would do something like this. Grant said he has not talked to Wilson; however a friend called him and left him a message stating Wilson was back in town.

Detectives located a Las Vegas Metropolitan Police booking photo of Wilson, which Grant identified as being the Wilson that he knew.

A photo line-up was created with Wilson's 2005 booking photo and showed to the victims. The majority of the victims stated Wilson was similar the first suspect that was stout and wearing a black shirt with the letter "A" on it, a black baseball hat, dark jeans and dark colored athletic shoes. After viewing the photo line-up Eskandon stated he was approximately 60% sure that Wilson was one of the suspects that committed the above crimes on him and the other victims.

At approximately 1500 hours, a records check of a Las Vegas Hotel named Circus Circus located at 2880 S. Las Vegas Blvd showed Wilson was registered with four other subjects to room number 8744. While preparing a search warrant for Wilson's hotel room Sgt. Dunaway stated they had detained Wilson at a Blackjack table.

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Detective Hartshorn and I responded to the security office of Circus Circus and conducted a recorded interview of Wilson after he was read his Miranda Warning, which he said he understood.

Wilson admitted to going to 690 Great Dane with ex football teammate he knew only as Narcus in Narcus's white Chrysler sedan, with the intention of robbing Grant of his money and Marijuana. Wilson said they knocked on the door and after being let in, Narcus pointed a gun at the occupants and put them on the floor. Wilson said he collected two ATM cards and had Ryan drive to two banks as Wilson rode in the passenger seat of Ryan's vehicle. Wilson said Narcus stayed at the house with the remaining victims. Wilson said when he got back Narcus got crazy and tried to make Richardson and Browning have sex. When Richardson could not perform Narcus started to digitally penetrate Browning. Wilson said he told Narcus to stop and then they left. Wilson said he intended to rob Grant because Wilson has a gambling problem. Wilson said even after he realized Grant did not live at Great Dane all he could think about was the fact that he arrived in Las Vegas on Friday and had lost 1200.00 and he needed more money.

Due to the fact that the that Wilson admitted he and Narcus conspired to commit a Robbery, the fact they used a deadly weapon while taking the property of another, the fact Ryan was forced to drive to the ATM with Wilson, the fact Browning was forced to perform oral sex on Richardson, and the fact Richardson was forced to perform oral sex on Browning with the use of a deadly weapon, Wilson was charged with Kidnapping, Sexual Assault, and Robbery with a Deadly Weapon. He was transported to the Henderson Jail where he was booked accordingly.

A records check of the UNLV football roster showed a player named Narcus Wesley. A further records check showed Narcus's date of birth was 10/03/1982 and a SSN of 530-04-8230. A subpoena of Nevada Power's records showed Narcus to have an account at the residence of 4232 Gaye Avenue, Las Vegas, Nevada 89108. I observed the above vehicles including the white 2005 Chrysler registered to Narcus parked in the driveway of 4232 Gaye Avenue. I showed a photograph of Narcus Wesley to Wilson, which he confirmed to be the Narcus that was with him during the Robbery, Kidnapping, and Sexual Assault.

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Due to the fact that the that a Robbery, Kidnapping, and Sexual Assault occurred at 690 Great Dane, the fact that the majority of the victims identified Wilson as matching one of the suspects that committed the crimes against them, the fact that Wilson was located and confessed to committing these crimes and he admitted to committing them with a male he identified as Narcus Wesley, the fact Wilson identified Narcus's white Chrysler 300 M as the vehicle used in committing these crimes, the fact the 1998 Chevrolet two tone truck is parked within the curtilage of the residence, the fact that the suspects took money and a cellular phone from the victims, the fact the suspects used firearms, which based on my training and experience I know that suspects commonly keep their firearms, and clothing they wore during the crimes, and the fact Narcus has utilities in his name for 4232 Gaye Lane Las Vegas, Nevada 89108, and the fact Narcus's vehicle was observed park in the driveway of 4232 Gaye Lane, I believe there is probable cause to believe that items listed above will be located in said residence or vehicles.

I further request that the search of this premise be authorized at any hour of the day or night. The reason for this request is that the crimes were violent and involved the use of a firearm. That the location of the suspect is known at this time. Furthermore the fact that the suspect's co conspirator has been arrested and there is high probability for destruction of evidence if not served immediately.

That the aforementioned events occurred in the City of Henderson, County of Clark, State of Nevada.



Curtis Weske #974, AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 20th DAY OF February, 2007.

  
JUDGE

000388



EXHIBIT 4

000389

SEARCH WARRANT

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STATE OF NEVADA )  
COUNTY OF CLARK)

The State of Nevada, to any Peace Officer in the County of Clark. Proof by Affidavit having been made before me by Det. Rodrigo Pena, said Affidavit attached hereto and incorporated herein by reference, that there is probable cause to believe that certain property, namely:

- Forensic examination of the person of Narcus Wesley, to include a sample of blood or bodily fluid for DNA purposes, including trace evidence items, such as but not limited to body fluids, hair samples, or other human properties indicative or consistent with a sexual encounter.
- A black cellular flip phone with camera, assigned phone number (775-346-0225), with service provided by ALLTEL.
- U.S. Currency including but not limited to denominations of increments common to ATM withdrawals.
- Condoms described as the brand name of Trojan in light blue packaging.
- Any and all firearms including but not limited to firearms commonly referred to handguns similar to that described by the victims, possibly being a Glock 9mm and associated ammunition for said firearm.
- ATM receipts dated for February 18<sup>th</sup> or 19<sup>th</sup> of 2007.
- Suspect clothing as described by the victims but not limited to a white baseball hat, white doo-rag, black shirt, dark jeans and gray/black athletic shoes.

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- Limited items of personal property to show the identity of persons in control of the premises to be searched.
- Any and all vehicles associated with said residence.

is presently located at:

- The Person of Marcus Wesley. Date of Birth 10/03/1982, social security number 530-04-8230. Further described as a Black Male Adult weighing approximately 195 lbs., standing approximately 6 feet.
- The residence located at 4232 Gaye Lane Las Vegas, Nevada 89109. Further described as a tan single story residence with a brown shingled roof and dark brown shutters. The residence has an attached two vehicle garage with a white garage door. The numbers "4232" are located to the left of the front door and are black in color.



- A Chrysler 300M and is further described as white in color with Nevada plates of "232T2D" and Vehicle Identification Number of 2C3JA43R35H604054.

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- A blue over Gray colored 1988 Chevrolet truck bearing Nevada License 707 PWC with a Vehicle Identification Number of 2GCFK29K1J1178072. The vehicle is registered to a Narvies Wesley. Both vehicle are parked in the driveway of the residence.
- Any and all vehicles associated with said residence.

### SEARCH WARRANT

That as I am satisfied that there is probable cause to believe that the said property is located as set forth above and that based upon the Affidavit attached hereto there are sufficient grounds for the issuance of the Search Warrant.

You are hereby commanded to search forthwith said premises for said property, serving this warrant at any hour of the day or night, and if the property There to seize it, prepare a written inventory of the property seized and make a return for me within ten days.

DATED THIS 20th DAY OF February, 2007.

JUDGE

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*Cliff*  
CLERK OF THE COURT

1 JOIN

2 JAMES A. ORONOV, ESQ.

3 Nevada Bar No. 6769

4 815 South Casino Center Blvd.

5 Las Vegas, Nevada 89101

6 Telephone: (702) 474-4222

7 Facsimile: (702) 474-1320

8 Attorney for Defendant Wilson

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

12 DELARIAN WILSON,

13 Defendant.

CASE NO.: C232494

DEPT. NO.: XXIV

Hearing Date: 03/18/08

Hearing Time: 08:30am

DEFENDANT'S JOINDER IN CO-DEFENDANT NARCUS WESLEY'S MOTION TO  
SEVER DEFENDANTS

16 COMES NOW, the Defendant, DELARIAN WILSON, by and through his attorney,  
17 JAMES A. ORONOV, ESQ., and respectfully joins, without additional points or authority, the  
18 MOTION TO SEVER DEFENDANTS, brought by Co-Defendant NARCUS WESLEY and his  
19 counsel, CASEY A. LANDIS, ESQ., to be heard before this court.

20 DATED this 10<sup>th</sup> day of March, 2008.

21 *J. O.*  
22 JAMES A. ORONOV, ESQ.  
23 Nevada Bar No. 6769  
24 815 South Casino Center Blvd.  
25 Las Vegas, Nevada 89101  
26 Telephone: (702) 474-4222  
27 Facsimile: (702) 474-1320

16

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MAR 11 2008  
CLERK OF THE COURT



1 **ROC**

2 **JAMES A. ORONoz, ESQ.**

3 Nevada Bar No. 6769

4 815 South Casino Center Blvd.

5 Las Vegas, Nevada 89101

6 Telephone: (702) 474-4222

7 Facsimile: (702) 474-1320

8 *Attorney for Defendant Wilson*

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 **THE STATE OF NEVADA,**

12 **Plaintiff,**

13 **v.**

14 **DELARIAN WILSON,**

15 **Defendant.**

CASE NO.: C232494

DEPT. NO.: XXIV

16 **RECEIPT OF COPY**

17 RECEIPT of DEFENDANT'S JOINER IN CO-DEFENDANT NARCUS WESLEY'S  
18 MOTION TO SEVER DEFENDANTS to the Court hereby acknowledged this \_\_\_\_ day of

19 March, 2008.

20 \_\_\_\_\_  
21 Deputy District Attorney  
22 Regional Justice Center  
23 200 Lewis Avenue  
24 Las Vegas, NV 89101

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CLERK OF THE COURT

1 MOT

JAMES A. ORONoz

2 Nevada Bar No. 6769

DRASKOVICH & ORONoz, P.C.

3 815 S. Casino Center Blvd.

Las Vegas, Nevada 89101

4 Telephone: (702) 474-4222

Attorney for Defendant

5  
6 DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 DELARIAN K. WILSON,

12 Defendant;

CASE NO.: C232494

DEPT. NO.: XXIV

Date:

Time:

DEFENDANT'S MOTION TO  
SUPPRESS STATEMENT

13 COMES NOW the Defendant, Delarian K. Wilson, by and through his attorney of  
14 record, James A. Oronoz, Esq., of the Law Offices of Draskovich and Oronoz, P.C., and  
15 respectfully requests that this Court order the suppression of all statements made by the  
16 Defendant to agents of the Las Vegas Metropolitan Police Department, or, in the alternative,  
17 pursuant to *Jackson v. Denno*, 378 U.S. 368 (1964), order an evidentiary hearing to determine  
18 the whether the Defendant's statements were made freely, voluntarily, and without compulsion  
19 or inducement.  
20  
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CLERK OF THE COURT

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1 This motion is made and based upon the attached Points and Authorities, any and all  
2 pleadings on file herein, and any oral argument deemed necessary by this Court.

3  
4 DATED this 17 day of March, 2008.

5 DRASKOVICH & ORONoz, P.C.

6  
7 By:  FOR

8 James A. Oronoz  
9 815 S. Casino Center Blvd.  
10 Las Vegas, Nevada 89101  
11 (702) 474-4222  
12 Attorneys for Defendant

13 **NOTICE OF MOTION**

14 TO: David Roger, District Attorney Clark County, Nevada;

15 DEFENDANT'S MOTION TO SUPPRESS STATEMENT will be heard on the 27 day of

16 March, 2007, at 830 (a.m.) p.m. in Department XXIV.

17 DATED this ^ day of March, 2008.

18 DRASKOVICH & ORONoz, P.C.

19  
20 By:  FOR

21 James A. Oronoz  
22 815 S. Casino Center Blvd.  
23 Las Vegas, Nevada 89101  
24 (702) 474-4222  
Attorneys for Defendant

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION AND FACTUAL BACKGROUND**

The Defendant, Delarian K. Wilson, is charged by way of Amended Criminal Complaint, with the following crimes: Count 1, Conspiracy to Commit Burglary; Count 2, Conspiracy to Commit Robbery; Counts 3 and 11, Burglary while in Possession of a Deadly Weapon; Counts 4, 5, 6, 7 and 9, Robbery with use of a Deadly Weapon; Count 8, Assault with use of a Deadly Weapon; Count 10, First Degree Kidnapping with use of a Deadly Weapon; Count 12, 13, 14, 15, and 17, Sexual Assault with a Deadly Weapon; Count 16, Coercion with use of a Deadly Weapon; and Count 18, Open or Gross Lewdness with use of a Deadly Weapon.

Delarian Wilson was interviewed by police on February 19, 2007. Detectives Weske and Hartshorn conducted the interview. Detective Weske began the interview by saying to Wilson, "They said you've been real cooperative. We'll talk a little bit here."<sup>1</sup> Detective Weske proceeded in an aggressive manner, stating the following:

Listen bro', I've been up since 3 o'clock this morning. The call came in before that. We've done a lot—a lot of investigation. We had criminalistics out. We had cameras on the ATMs, and we did a photo lineup with you. Okay? I'm not going to bullshit you. I'm not going to sit here and play games with you and say, okay Kameron, do you know this person, do you know this person.<sup>2</sup>

Weske then described to Wilson how he believed that another person, presumably Wilson's Co-Defendant, was involved in the crimes of which Wilson was accused, and that this other person was more culpable. In particular, Weske stated, "I believe... shit got out of hand

<sup>1</sup> Transcript of Interview with Delarian Kameron Wilson, page 1, lines 18-19.

<sup>2</sup> *Id.* at page 1, line 25 through page 2, lines 1-6.

000397

1 with this other person. Now I'm giving you a chance. I'm coming to you first... to give your  
2 side of the story."<sup>3</sup>

3 Detective Weske continued the interview, without giving a *Miranda* warning, stating to  
4 Wilson that he and other law enforcement officers already have six eyewitness identifications as  
5 well as a mountain of additional evidence.<sup>4</sup>

6 Weske then gave Wilson a *Miranda* warning.<sup>5</sup>

7 Weske then continues the interview, again in an aggressive manner, stating that he knew  
8 Wilson was one of the two perpetrators. Wilson Denied being at the crime scene.<sup>6</sup> Wilson  
9 repeated his denial of culpability several times.<sup>7</sup>

10 Later in the interview, Detective Weske asked Wilson, "So why don't you start being  
11 honest with what really happened?"<sup>8</sup> Wilson responded by stating that he was scared.<sup>9</sup> Weske  
12 stated, in reponse, "I know you're scared. Okay? But—but the farther you dig yourself in a  
13 hole, the worse it's going to look for ya."<sup>10</sup>

14 Later, Weske stated that he, and presumably the rest of the investigating law  
15 enforcement officers, were not concerned with the robbery, but the sexual assault, which,  
16 according to Weske, Wilson stopped. Weske stated the following:

17 Focus on this. Okay? Taking somebody's money, who gives a  
18 shit. There's more money everywhere, right? ... Who cares.  
19 Okay? Sexually assaulting a female, that's a completely different  
20 animal. Okay? We don't really care about the ATM. That's not  
21 a big deal in our book. We care about the sexual assault, the fact  
22 that you stopped it, which is huge for you in all this mess. Okay?  
23 It's huge. But that one thing and a little stealing is another.<sup>11</sup>

24 <sup>3</sup> *Id.* at p. 2, l. 13-17.

<sup>4</sup> *Id.* at p. 2, l. 20-25; p. 3, l. 1-4.

<sup>5</sup> *Id.* at p. 3.

<sup>6</sup> *Id.* at p. 4-5.

<sup>7</sup> *Id.* at p. 6, l. 23-24; p. 7, l. 9; p. 7, l. 17-18.

<sup>8</sup> *Id.* at p. 36, l. 1-3.

<sup>9</sup> *Id.* at p. 36, l. 3.

<sup>10</sup> *Id.* at p. 36, l. 4-6.

<sup>11</sup> *Id.* at p. 43.

1 Weske was not satisfied with Wilson's response to this interrogation tactic, and again  
2 told Wilson that he was lying. In particular, Weske stated, "...you see we already know what's  
3 going on here, but we let you lie. You keep lying to us." Moments later, Weske stated the  
4 following:

5 Do you want to tell me the truth, or do we just go on out? It's up  
6 to you. Do you want to go to prison now, or do we want to go  
7 through this whole thing and tell us the truth one last time?  
8 'Cause I'm tired of playing with you....

9 Now, I'm going to ask you one last time to start from the  
10 beginning and give me the truth, and if you go anymore lies, bro',  
11 I'm done. I'm done. I'll let you take the whole rap.<sup>12</sup>

12 Wilson responded, "Take the whole rap?"<sup>13</sup>

13 Later, Weske stated, "I'm getting pissed off," and said to Wilson, regarding a perceived  
14 lie, "that's just another lie, another nail in your coffin."<sup>14</sup>

15 Some time later, upon being confronted with another perceived lie, Wilson stated, "But  
16 I thought you were asking me a different question. I didn't understand like." Shortly thereafter,  
17 Wilson stated, "You're saying big words."<sup>15</sup>

18 Shortly thereafter, Detective Hartshorn stated to Wilson, regarding possible  
19 accomplices, "I don't know why you're trying to protect these other people because you're  
20 going to take the heat for everything... you're going to take the rap for the whole thing"<sup>16</sup>

21 Later, upon repeated questioning about supposed lies or inconsistencies in his story,  
22 Wilson stated, "I'm confused—you just confusing me right now, you know what I'm saying. I  
23 don't (incomprehensible) sound crazy because you understand you're confusing me."<sup>17</sup>

24 <sup>12</sup> *Id.* at p. 45.

<sup>13</sup> *Id.* at p. 45, l. 13.

<sup>14</sup> *Id.* at p. 55, l. 2, 14.

<sup>15</sup> *Id.* at p. 58, l. 19-20, 23.

<sup>16</sup> *Id.* at p. 60, l. 12-13, l. 17-18.

<sup>17</sup> *Id.* at p. 64, l. 19-21.



20

1           A     They asked where Grant was and we told them we  
2     don't know who Grant is. They said that Grant lives here,  
3     where is he, and we told them we don't know. They said,  
4     "That's his TV, he lives here," and we kept saying we don't  
5     know. They said, "He owes us \$10,000 and we gotta get at  
6     least a thousand out of you or we'll kill you."

7           Q     Who said that?

8           A     The short, stocky one.

9           Q     While the short, stocky one was talking about  
10    that what was the thinner one doing?

11          A     Just circling around us telling us -- they both  
12    told us to stay down. Occasionally throughout this.

13          Q     As they walked into the home were there lights  
14    on?

15          A     No. Just the TV glow.

16          Q     And was it a fairly large TV?

17          A     Yeah.

18          Q     So it was a good glow?

19          A     Yeah.

20          Q     Did the TV remain on for awhile?

21          A     It remained on the whole way through the movie.

22          Q     Through an entire movie?

23          A     Yeah.

24          Q     When they talked about the thousand dollars and  
25    wanting money did you cough up some money?

000300

1           A       They asked for our wallets and we gave them our  
2 wallets. They collected all of our cell phones. We put our  
3 wallets on the floor and they said, "Give us all your  
4 money," and from the wallets together we could only come up  
5 with ten, twenty dollars. They said, "That's not good  
6 enough and we need at least a thousand."

7           Q       Of that ten or twenty was any of it yours?

8           A       Yeah, I had four dollars.

9           Q       When they were not satisfied with that amount  
10 of money did they ask for something else?

11          A       They just repeated they were going to kill us  
12 if they didn't get any money, and at that point Ryan said,  
13 "We don't have any money here," but he has money in his ATM  
14 and he has his debit card with him, and they said, "Does  
15 anybody else? That's not good enough." And I also said,  
16 "Yeah, I have money in my ATM."

17          Q       And when you say "money in my ATM," do you mean  
18 money in the bank that you can retrieve through an ATM?

19          A       Yeah.

20          Q       And did you give somebody your ATM card?

21          A       I pulled out my ATM card, I don't remember who  
22 I gave it to.

23          Q       Did you give it to somebody who was not one of  
24 your friends?

25          A       Yeah.

000301

1 Q And when you gave up your ATM card did they --  
2 and I mean they, not your friends -- also ask for something  
3 else so that they could get money out of your ATM?

4 A They asked -- they asked me how much I had in  
5 it, I better not be lying or they'd kill me and then they  
6 asked for the PIN. They said if I don't give them the right  
7 PIN, I won't ever see my friend again.

8 Q When you say "they said and they asked," was it  
9 one person doing the talking at that point?

10 A Yeah.

11 Q Who was that?

12 A Short, stocky one.

13 Q Did you actually give your PIN number as well  
14 as your ATM card?

15 A Yes.

16 Q Did you do that because you were scared because  
17 there was a gun?

18 A Yeah.

19 Q You said your friend. Was it Ryan?

20 A Yes, it was Ryan.

21 Q Did Ryan leave with one of them?

22 A Yes.

23 Q Who did he leave with?

24 A Short, stocky one.

25 Q When Ryan and the short, stocky one were gone,

000302

1 did the thinner one remain?

2 A Yeah.

3 Q What did he do while he remained?

4 A The short, stocky one said, "Make sure they  
5 don't move," and he said, "If they move, kill them," and  
6 told us all to stay down, be cool, nothing will happen. And  
7 I don't believe he said anything the rest of the time.  
8 Except throughout he asked, "Where is the nearest store?  
9 Why is it taking so long? Where is the nearest store?" We  
10 told him and he said okay.

11 Q Who is the one who said if you don't move  
12 everything will be okay?

13 A The tall, skinny one that was in with us while  
14 Ryan was gone.

15 Q Did Ryan and the stockier one return?

16 A Yeah.

17 Q And did you hear the guys talking about doing  
18 something between Justin Richardson and Danielle?

19 A Yeah. They came back in the house, the short,  
20 stocky one again said, "You're 90 percent done. If you do  
21 this last one thing then you guys will be all right, we're  
22 not going to kill anyone." And they told Danielle to take  
23 off her clothes.

24 Q And then what?

25 A And then told Danielle to perform oral sex on

000303

1 Justin, told Justin to roll over, put a pillow -- I didn't  
2 see them put the pillow over his face but said, "I'll hold  
3 you down here and don't move, don't try anything."

4 Q You heard all that?

5 A Yeah.

6 Q Did you also hear them saying something along  
7 those lines to Ryan?

8 A Yeah. Later they circled all of asking us if  
9 we could get hard and if we couldn't have sex with Danielle  
10 then one of them is going to have to.

11 Q Who said that?

12 A The short, stocky one. And asked each of us if  
13 we could get hard. I said no. Clint said no. Aitor said  
14 no and he told Ryan to roll over, pull his pants down and  
15 start masturbating.

16 Q When that was all done, did you hear Danielle  
17 being moved to another part of the house?

18 A Well, at that point I -- Justin said he had to  
19 use the restroom so he got up and went to the restroom. I  
20 don't know where Danielle was in location to me but I heard  
21 the tall, skinnier one tell Danielle, "Do you like how that  
22 feels?" I don't know what he was doing, I didn't see that.

23 Q You heard the tall, skinnier one saying to  
24 Danielle, "Do you like how that feels"?

25 A Yeah.

000304

1 Q Was she no longer where she was?

2 A She was right to the left of me and she got up  
3 and I don't know where they were, though.

4 Q But somewhere else, she got up and moved?

5 A Yeah.

6 Q At their demand?

7 A Yeah.

8 Q When that was all over did there come a time  
9 that they actually left the home?

10 A Yes.

11 Q And how did that occur?

12 A They told us to count to two minutes, don't  
13 take our heads up, don't get up or anything. Throughout  
14 this the tall, skinny one said he was hard and, "Are you  
15 sure you want to go?" The stockier, shorter one said, "No,  
16 they've been cool, they've been cool, I am going to let them  
17 go. Count to two minutes and don't move, my friend's  
18 outside."

19 At that point the tall, skinny one exited,  
20 said, "My friend is outside looking in the window. Don't  
21 move or we'll come back and shoot you. You don't know if  
22 I'll be outside, you don't know if we'll leave. We'll leave  
23 the cell phones outside and after two minutes pick them up."

24 Q So the taller, skinnier one wanted to continue  
25 the sex acts but the shorter one said no?

000305



2 1 A He repeatedly said, "I'm hard, I am hard."

2 Q And then at some point they collected your cell  
3 phones?

4 A They collected our cell phones at the beginning  
5 and then they said, "We are going to leave your cell phones  
6 outside."

7 Q So ultimately after they left did you get your  
8 cell phone back?

9 A Yeah.

10 Q How much money from your bank account through  
11 the ATM was taken?

12 A Five hundred and then two dollars surcharge.  
13 Five hundred and two.

14 MS. LUZAICH: Thank you. I'd pass the witness.

15 THE COURT: Mr. Oronoz.

16 MR. ORONoz: I have no questions, Your Honor.

17 THE COURT: Mr. Kocka.

18

19 CROSS-EXAMINATION

20 BY MR. KOCKA:

21 Q Where were you when you saw them pull the  
22 pistols?

23 A Sitting in the very end of the couch closest to  
24 the door.

25 Q So you were sitting in the couch. Where were

000306

2

1 they when they first pulled the pistols?

2 A They came into the left of me.

3 Q So they were to the left of you on the couch  
4 when they pulled the pistols?

5 A Yes. The door is right here, I am sitting on  
6 the couch right here and they came right here.

7 Q They were inside the residence when they pulled  
8 the pistols?

9 A Yes.

10 Q Had you guys been drinking that night?

11 A Yeah. I had a couple sips out of one beer.

12 Q How many beers had been consumed that night  
13 amongst you?

14 A Zero.

15 Q Was it a malt liquor?

16 A Yeah.

17 Q How about drugs?

18 A Not that I am aware of, no.

19 Q Are you aware of any marijuana in the house?

20 A Not that I'm aware of.

21 Q Which of the two individuals made the statement  
22 if you don't have sex with her then one of us would have to?

23 A The shorter, stockier one.

24 Q And the individual sitting directly to my left,  
25 this is Mr. Wesley my client. Is that the individual that

000307

2 1 made that comment?

2 A No.

3 Q Did you also hear a comment being made by one  
4 of the individuals that if one of you guys can't have sex  
5 with her that he is going to kill somebody?

6 A Yeah.

7 Q Who made that comment?

8 A Not your client.

9 Q Mr. Wilson?

10 A Yeah.

11 Q You said that you heard my client make a  
12 statement that, "I'm hard"?

13 A Uh-huh.

14 Q Was that before or after the statement that  
15 unless one of you guys can have sex with Danielle that  
16 somebody was going to be killed?

17 A After.

18 MR. KOCKA: I have nothing further.

19 Thank you, Judge.  
20

21 REDIRECT EXAMINATION

22 BY MS. LUZAICH:

23 Q I am sorry, I forgot to ask do you see the  
24 individuals that were in the house that night here in court  
25 today?

000308

2 1 A Yes.

2 Q Can you describe where they're sitting and  
3 something they're wearing?

4 A Right in front of me in the blue shirts.

5 MS. LUZAICH: May the record reflect  
6 identification of the defendants?

7 THE COURT: Yes.

8 BY MS. LUZAICH:

9 Q The shorter, stockier one, is that the one on  
10 your right or left?

11 A On my right.

12 Q And then the taller, thinner one, is that the  
13 one on your left?

14 A Yes.

15 MS. LUZAICH: Thank you.

16 THE COURT: Thank you for your testimony.  
17 You're excused and you're free to leave.

18 Let's take a ten minutes recess break.

19 (Recess.)

20 MS. LUZAICH: The State is calling Aitor.

21

22 AITOR ESKANDOR,

23 called as a witness by the State, having been first duly  
24 sworn to tell the truth, the whole truth, and nothing but  
25 the truth, testified as follows:

000309

2           1           THE CLERK: Please state your full name and  
2           2           spell it for the record.

3           3           THE WITNESS: Aitor Eskandor, A-i-t-o-r,  
4           4           E-s-k-a-n-d-o-r.

5  
6                               DIRECT EXAMINATION

7           BY MS. LUZAICH:

8           Q       Aitor, I am going to take you back to  
9           February 18th of 2007. Were you at a home on 690 Great Dane  
10          Court in Henderson, Clark County, Nevada with your friends  
11          Ryan, Clint, Justin Foucault and then Justin and Danielle  
12          somewhere around ten o'clock at night?

13          A       Yes, ma'am.

14          Q       And were you guys getting ready to watch a  
15          movie when there was a knock at the door?

16          A       Yes.

17          Q       Did you see who ultimately came in after that  
18          knock at the door?

19          A       I cannot recall. I don't remember. There were  
20          two gentlemen came in.

21          Q       And can you describe the ethnicity of the two  
22          gentlemen that came in?

23          A       Black.

24          Q       Could you describe a difference between the two  
25          of them?

000310

3

1 A One was bigger built, the other one was  
2 smaller.

3 Q When you say "bigger built," do you mean  
4 stockier?

5 A Stockier, yes, ma'am.

6 Q When you say "the other one was smaller," does  
7 that mean skinnier?

8 A Yes, ma'am.

9 Q Did you see something in one or both of their  
10 possession?

11 A Yes, ma'am.

12 Q What did you see?

13 A A Glock nine millimeter -- I can say for sure  
14 one of them had a Glock nine millimeter.

15 Q Which one had the Glock nine millimeter?

16 A The bigger built.

17 Q Are you familiar with guns, is that why you  
18 know it was a Glock nine millimeter?

19 A Yes.

20 Q The other one, skinnier one, did you see  
21 anything in his possession?

22 A No, ma'am. I seen a silhouette, black  
23 silhouette.

24 Q What did you see a silhouette of?

25 A Black silhouette, like the silhouette of a gun.

000311



3

1

Q Something that looked like a gun?

2

A Yes, ma'am.

3

Q But you're not sure that was a gun?

4

A No.

5

Q Were you scared when you saw that?

6

A Yes, ma'am.

7

Q Did they give orders and directions?

8

A Yes, ma'am.

9

Q What directions did they give?

10

A To get on the ground face down.

11

Q Did one or both of them give that direction?

12

A Just one.

13

Q Which one?

14

A Bigger one. Bigger built one.

15

Q And did you get on the ground?

16

A Yes.

17

Q Did you do that because you were scared?

18

A Yes, ma'am.

19

Q Because he had a gun?

20

A Yes.

21

Q Were you scared the whole time they were there?

22

A Yes, ma'am.

23

MS. LUZAICH: Thank you. I'd pass the witness.

24

THE COURT: Mr. Kocka.

25

MR. KOCKA: Thank you, Judge.

000312

3

1

CROSS-EXAMINATION

2

BY MR. KOCKA:

3

4

5

Q I am just going to call you Aitor because there is no way I am going to get the last name right, it's almost as bad as mine.

6

7

8

You're described two individuals as shorter and taller. The individual to my left is my client Mr. Wesley. Is that the taller or the shorter, stockier?

9

10

11

12

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14

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24

25

A The shorter.

Q This gentleman?

A Yes, sir.

Q So you're saying Mr. Wesley is the shorter of the individuals?

A Yes, sir.

Q Is that the individual that gave you orders?

A No, sir.

Q So Mr. Wesley did not give the orders?

A No.

Q You said that you saw a Glock nine millimeter in the hands of the stockier guy, right?

A Yes, sir.

Q Is that Mr. Wesley or the individual to his left Mr. Wilson?

A Mr. Wilson.

Q And you said that you saw something in the

000313

3 1 hands of Mr. Wesley you're not quite sure what it was,  
2 though?

3 A Yes, sir.

4 Q You saw a silhouette, correct?

5 A Yes, sir.

6 Q You're not sure if it was a gun?

7 A No, sir.

8 MR. KOCKA: I have nothing further.

9 Thank you. Judge.

10 THE COURT: Mr. Oronoz.

11 MR. ORONOS: Nothing.

12 THE COURT: Redirect?

13  
14 REDIRECT EXAMINATION

15 BY MS. LUZAICH:

16 Q Well, the two individuals that were in the  
17 house that night, do you see them here in court today or  
18 somebody that fits their build and description?

19 A Yes, ma'am.

20 Q Can you describe where the people that fit  
21 their build and description are sitting?

22 A Right there.

23 MS. LUZAICH: Record reflect identification of  
24 the defendants?

25 THE COURT: It shall.

000314

3 1 MS. LUZAICH: Nothing further.

2 THE COURT: Thank you for your testimony, sir.  
3 You're excused and you're free to leave.

4 MS. LUZAICH: State calls Detective Hartshorn,  
5 that's my last witness.

6  
7 BRYAN HARTSHORN,

8 called as a witness by the State, having been first duly  
9 sworn to tell the truth, the whole truth, and nothing but  
10 the truth, testified as follows:

11  
12 THE CLERK: Please state your full name and  
13 spell it for the record.

14 THE WITNESS: Bryan Hartshorn, B-r-y-a-n,  
15 H-a-r-t-s-h-o-r-n.

16  
17 DIRECT EXAMINATION

18 BY MS. LUZAICH:

19 Q Are you a police officer with the Henderson  
20 Police Department?

21 A Yes.

22 Q How long have you been with Henderson police?

23 A Four and a half years.

24 Q Where are you currently assigned?

25 A Detective bureau, major crimes unit.

000315

3           1           Q       Were you employed in that capacity on  
2           February 18th of 2007?

3           A       Yes.

4           Q       And starting then and over the course of the  
5           next period of time did you participate in the investigation  
6           into a robbery that occurred at 690 Great Dane Court  
7           involving a bunch of young adults?

8           A       Yes.

9           Q       Did you and Detective Weske also participate in  
10          this investigation?

11          A       We were both.

12          Q       And did your investigation lead you to two  
13          ultimate suspects?

14          A       Yes.

15          Q       What are the names of the two ultimate  
16          suspects?

17          A       The first is Delarian Kameron Wilson and the  
18          second is Narcus Wesley.

19          Q       Did you have contact with each of them  
20          personally?

21          A       I did.

22          Q       Do you see them here in court today?

23          A       Yes.

24          Q       Can you describe where they're sitting and  
25          something they are wearing.

000316

3           1           A       Mr. Wilson is sitting on the right next to his  
2           lawyer, I am assuming, with the blue shirt. He's got the  
3           blue jumper and orange shoes.

4           Q       That would be your right?

5           A       My right.

6           MS. LUZAICH: Record reflect identification of  
7           the defendant Wilson?

8           THE COURT: Yes.

9           THE WITNESS: On the left of him is Mr. Wesley,  
10          Narcus Wesley.

11         BY MS. LUZAICH:

12         Q       That would be your left?

13         A       My left also.

14         MS. LUZAICH: Record reflect identification of  
15         the defendant Wesley?

16         THE COURT: It shall.

17         BY MS. LUZAICH:

18         Q       Did you and Detective Weske speak with  
19         defendant Wilson?

20         A       We did.

21         Q       Where did you guys speak with him?

22         A       That was at the Circus Circus Hotel and Casino.

23         Q       Did Detective Weske read defendant Wilson his  
24         rights per Miranda?

25         A       Yes.

000317



4 1 Q Did he do it from a card or memory?

2 A Memory.

3 Q Were you present when he did that?

4 A I was.

5 Q And after reading him Miranda did the defendant  
6 Wilson speak with you guys?

7 A Yes.

8 Q Did he tell you whether or not he participated  
9 in a robbery that occurred at 690 Great Dane Court on  
10 February 18th?

11 A Yes.

12 Q Did he tell you that he did I guess would be  
13 the question?

14 A Yes.

15 Q Did you also speak with defendant Wesley with  
16 Detective Weske?

17 A Yes, we did.

18 Q And did Detective Weske read defendant Wesley  
19 his Miranda rights?

20 A He did.

21 Q Were you present when he did that?

22 A I was.

23 Q And did defendant Wesley also admit to being  
24 present and participating in a robbery at 690 Great Dane  
25 Court?

000318

4           1           A       Yes, he did.  
          2           Q       On February 18th?  
          3           A       Yes.  
          4           MS. LUZAICH: Thank you. I'd pass the witness.  
          5           THE COURT: Mr. Kocka.  
          6           MR. KOCKA: Court's indulgence.  
          7           Judge, I have no questions.  
          8

9                               CROSS-EXAMINATION

10          BY MR. ORONoz:

11               Q       Detective Hartshorn, you indicated that this --  
12          well, maybe you didn't indicate but I just read it, but was  
13          in fact this interview recorded?

14               A       It was.

15               Q       And did you take notes in conjunction with this  
16          interview?

17               A       No.

18               Q       Did you see the other detective taking notes in  
19          conjunction with the interview?

20               A       No.

21               MR. ORONoz: Thank you. I have no other  
22          questions.

23               THE COURT: Redirect?

24               MS. LUZAICH: No.

25               THE COURT: Thank you for your testimony.

000319

4           1       You're excused and you're free to leave.

2                   MS. LUZAICH: Judge, I have no more witnesses.  
3       Before I rest I would like to clean up my amended complaint.  
4       Does the court have a copy of the amended complaint I filed  
5       this morning?

6                   THE COURT: Yes.

7                   MS. LUZAICH: For the record I have spoken with  
8       both Mr. Kocka and Mr. Oronoz about this. On Count 1, the  
9       conspiracy to commit burglary, on line 27 it says the  
10      defendants committed the acts as set forth in Count 10. It  
11      should actually read in Counts 3 and 11. And for the record  
12      I had previously added Count 3 burglary while in possession  
13      of a deadly weapon for entering the house. Originally it  
14      was only charged as one burglary for entering the car. Now  
15      there's two burglaries, one for entering the house and one  
16      for entering the car.

17                   And then I would move to amend Count 5. It is  
18      currently charged as robbery with deadly weapon for victim  
19      Aitor Eskandor. I would ask that that be amended to reflect  
20      an assault with a deadly weapon, the language would be the  
21      same as Count 8. I had previously when I filed the amended  
22      made Count 8 an assault with a deadly weapon when originally  
23      it was a robbery and I would submit that Counts 5 and 8  
24      should be assault with a deadly weapon because they're not  
25      robbery because property wasn't actually taken from Clint or

000320

4 1 Aitor. And I think with that I would rest.

2 THE COURT: Mr. Kocka.

3 MR. KOCKA: With regard to the amendments Miss  
4 Luzaich did approach me prior to the proceedings today and  
5 she did advise me of this and I have no objection to the  
6 amendment at this time.

7 THE COURT: Thank you.

8 MR. ORONOZ: I would join that, Your Honor.

9 THE COURT: Thank you. It'll be amended.

10 So the State rests?

11 MS. LUZAICH: Yes.

12 THE COURT: Mr. Kocka.

13 MR. KOCKA: With regard to Mr. Wesley I've  
14 discussed his right at this point to testify and following  
15 my advice he is going to decline to testify at this time.  
16 We are not going to be calling any witnesses.

17 MR. ORONOZ: Judge, with regard to Mr. Wilson,  
18 it's the same situation, I've discussed with him his right  
19 to testify, he's agreed not to testify. We are not going to  
20 be calling any witnesses. We would rest.

21 THE COURT: All right. Argument.

22 MS. LUZAICH: Waive opening, reserve rebuttal.

23 THE COURT: Mr. Kocka.

24 MR. KOCKA: Thank you, Judge. Your Honor, most  
25 of what I am going to address now I think is probably going

000321

4 1 to address bail. I understand the purpose of the  
2 preliminary hearing, the standard the State must prove at  
3 this point. What I am going to do is I am going to submit  
4 with regard to the evidence that's been provided before the  
5 court for the purposes of preliminary hearing only. I  
6 would, however, reserve argument for a bail hearing at the  
7 end.

8 MR. ORONOZ: Judge, that's the same, I would  
9 submit the counts to the court's discretion; however, I  
5 10 would like to be heard as to bail.

11 THE COURT: All right. Miss Luzaich, anything  
12 you'd like to add?

13 MS. LUZAICH: Only that I would like to be  
14 heard in response to bail as well.

15 THE COURT: Mr. Wilson and Mr. Wesley, would  
16 you please stand. At this stage of the proceedings the  
17 State has met their burden so I intend to bind you over for  
18 jury trial at this time. After which I'll entertain a  
19 motion for bail.

20 It appearing to me from the complaint on file  
21 herein and the testimony that's been adduced at this  
22 preliminary hearing that crimes have been committed, to wit:  
23 Conspiracy to commit burglary, conspiracy to commit robbery,  
24 burglary while in possession of a deadly weapon, robbery  
25 with use of a deadly weapon, assault with use of a deadly

000322

5           1        weapon, first degree kidnapping with use of a deadly weapon,  
2           2        sexual assault with use of a deadly weapon, coercion with  
3           3        use of a deadly weapon, open and gross lewdness with use of  
4           4        a deadly weapon as described in the amended criminal  
5           5        complaint, and there is sufficient cause to believe the  
6           6        defendants named herein, Delarian Wilson and Narcus Wesley,  
7           7        committed said crimes. I hereby order said defendants be  
8           8        held to answer to said charges in the Eighth Judicial  
9           9        District Court, State of Nevada, County of Clark.

10                    You are to appear for your initial arraignment  
11           11        on --

12                    THE CLERK: May 9th, 9:00 a.m., lower level,  
13           13        this case is tracked to Department 24.

14                    Mr. Kocka.

15                    MR. KOCKA: Understandably for purposes of the  
16           16        preliminary hearing the standard is as it is far below  
17           17        reasonable doubt however. With regard to bail status I  
18           18        think throughout the course of these proceedings we've heard  
19           19        a number of things that I think the court must take a  
20           20        cautionary approach to. We have heard a number of  
21           21        witnesses -- and I'm making this argument and I have to be  
22           22        careful here because I think I need to address specifically  
23           23        with regard to Mr. Wesley alone at this point. We have  
24           24        heard -- and I am going to preface this and take a step  
25           25        back. We originally brought a bail reduction motion before

000323



5           1       Your Honor at which point we brought a number of things to  
2           2       light, attached a number of letters of support from the  
3           3       community, attached a number of incidents of lack of his  
4           4       prior criminal history. At that point you denied it but I  
5           5       think you said you would entertain the motion again at the  
6           6       close of the preliminary hearing once the facts are sorted  
7           7       out. Because at that point Mr. Carroll stood here and said  
8           8       at this point they're both pointing fingers at each other.

9                     What we've had here over the course of this  
10          10       afternoon and the other morning is the witnesses who are in  
11          11       fact sorting out the facts of this case, repeatedly we have  
12          12       had, and it wasn't just me asking, I mean from the opening  
13          13       of the gate we had the witnesses and they all come in and  
14          14       say "they, they, they." Upon clarification from the State  
15          15       themselves they have been divided into Mr. Wilson and Mr.  
16          16       Wesley. Every time the specifics were brought out as to who  
17          17       was it that seemed to be the leader, who was it that seemed  
18          18       to be the main guy, who was it that seemed to be in charge,  
19          19       without wavering every single witness said it was Mr.  
20          20       Wilson, not Mr. Wesley. Mr. Wesley was characterized as  
21          21       being in the background, not giving orders, not direction,  
22          22       more of a nervous follower than a leader.

23                    There's the point in time where Mr. Wilson  
24          24       actually leaves with the individual and Mr. Wesley is left  
25          25       with the rest of the individuals to watch over them and it

000324

5           1       is at Mr. Wilson's direction that Mr. Wesley does this, the  
2           2       direction was if any of them move, shoot them. Specifically  
3           3       every single witness that got up there said, "Did you hear  
4           4       Mr. Wesley give any commands? Did you hear Mr. Wesley say,  
5           5       'Don't move or I'll shoot you?' No. What was he doing?  
6           6       Well, I think he was walking around." He didn't even have  
7           7       any interaction with any of these individuals. They all  
8           8       say, "I think he's walking around in the background, I think  
9           9       he's sitting on the stairs." He didn't interact. He didn't  
10          10      even touch them, put a gun on them.

11                   Interestingly, "Was it a gun, Danielle? I  
12          12      don't know." On a number of occasions, "Did you see a gun?  
13          13      I think it was a gun." When I think it was Miss Luzaich  
14          14      asked, "Was it a gun in your side?" and it was clarified, "I  
15          15      don't know if it was a gun. It was something in my side."  
16          16      Danielle never puts a gun in Mr. Wesley's hands.

17                   "Justin, are you positive? No. Are you sure  
18          18      it was a gun? No."

19                   The next individual who comes up, "Was it a  
20          20      gun? Well, I think it was a gun." But this is an  
21          21      individual who also said he didn't get a good enough look at  
22          22      the guy's face to even say who he is. "I can't even  
23          23      identify him in court today. He's a thin black man. How  
24          24      many thin black men do you know? A lot. Can you from the  
25          25      stand say that this thin black man is the one with the gun?

000325

6

1 No."

2 Next person is 75 percent sure he had a gun.  
3 "Are you sure it was a gun? No." Witness after witness  
4 says he's not even sure that Mr. Wesley has a gun. They  
5 characterize him as being the follower. They characterize  
6 Mr. Wilson as being the leader, the one giving the orders,  
7 the one who is putting the guns in people's faces, pillows  
8 over people's faces, the one who is instructing the two to  
9 perform in the sexual act, the one who is instructing the  
10 other one to drop his pants, the one who makes the comment,  
11 "If someone here doesn't do the sexual act I am going to  
12 start killing people." I was very specific in asking what  
13 was Mr. Wesley doing. "I don't know. I don't remember.  
14 Nothing. Did you hear him make any demands? No."

15 Judge, I know that they were bound over and I  
16 know that the standard for the bindover is such that there  
17 is reason to bind them over. What I am going to ask,  
18 however, is that you diverge from the standard of the  
19 bindover and separate the facts of the two individuals as to  
20 levels of culpability, levels of responsibility for this act  
21 and I am going to ask Your Honor to reduce Mr. Wesley's  
22 bail. I am not going to ask for an O.R., I would not even  
23 stand here and insult the court with that. What I am asking  
24 for is a bail reduction.

25 His family has been here in support from the

000326

6 1 first day when the day that we first brought the bail  
2 reduction. They have gone through the community and  
3 attached letter upon letter of support for Mr. Wesley. They  
4 have attended each preliminary hearing, they are here again  
5 today.

6 The two standards that we need to take a look  
7 at in granting a bail reduction is, is he a flight risk.  
8 Your Honor, the entire right side of this courtroom are  
9 family members that will guarantee he is not a flight risk.  
10 Is he a danger to the community? That was the point I think  
11 we were stuck on last time and we needed to take a look to  
12 see what the witnesses were going to sort out and see if  
13 he's a danger to the community.

14 And that's where I'm asking you to draw that  
15 division between Mr. Wilson and Mr. Wesley and not to lump  
16 the two of them together into the overall facts of what  
17 we've heard today, to give credence to what the witnesses  
18 have testified as to Mr. Wesley's role in this. We're not  
19 even sure that he had a gun and what is he characterized as?  
20 The follower. Not the leader. Not by any stretch. I think  
21 this is going to bear out at the time of trial even more to  
22 the fact that Mr. Wesley was in the wrong place at the wrong  
23 time and got caught up in something way beyond his control.

24 What does his record show? His record shows  
25 he's an individual who hasn't been in trouble before. Is

000327

6           1       this characteristic of him? No. Is this characteristic of  
2           2       an individual who has letters of support saying he's an  
3           3       inspiration to children in the community. He works. He's  
4           4       played at UNLV football. He works with kids football in the  
5           5       community. That's what's within his character.

6                       I believe that when this case goes to trial  
7           7       it's going to get flushed out even further that this is so  
8           8       divergent in the character from who is Mr. Wesley that he'll  
9           9       have a different result than it's having today and what I am  
10          10       asking is that you grant him the ability to prepare for this  
11          11       case out of custody. He has the significant family support,  
12          12       and as for the danger of the community, again I cannot  
13          13       stress enough please take a look at what the testimony was  
14          14       as to the relative participation of both parties in this  
15          15       crime and afford Mr. Wesley a bail reduction that he can  
16          16       make. Thank you.

17                    THE COURT: Mr. Oronoz.

18                    MR. ORONOZ: Judge, very briefly, and I am not  
19          19       going to litigate all of the issues that I would probably  
20          20       raise in front of a jury, but first of all in the absence of  
21          21       this confession, which is going to be litigated and we are  
22          22       going to make every attempt that we can to deal with that,  
23          23       but in the absence of the detectives saying that my client  
24          24       made admissions, what does the State really have? Well,  
25          25       they have some problems and I know this court as a

000328

7           1       prosecutor and I know the court realizes that some cases are  
2           2       tougher to prove than others and I would submit, Judge, that  
3           3       there are extenuating factors in this case that might  
4           4       persuade the court to consider imposing a lower amount of  
5           5       bail than the court previously imposed. I know when the  
6           6       court probably looks at some of these charges initially the  
7           7       court will think high, high bail.

8                     The fact of the matter is, Judge, we're dealing  
9           9       with at least in my client a young man who was two weeks  
10          10       away from graduating from Adam State, was a football player,  
11          11       was going to, and it's not even clear now, but at one point  
12          12       he was going to participate in the draft that's coming up  
13          13       here I think next week.

14                    He has significant family support, his mother  
15          15       isn't here today, she didn't fly out from Denver because I  
16          16       told her, "Look, just save the funds, we need to perhaps be  
17          17       ready for trial." Otherwise she would be here. But he does  
18          18       have support, he has family that cares about him and love  
19          19       him and I do believe by the time that all the facts are  
20          20       flushed out in this case a very different picture is going  
21          21       to be present than what we have here today before the court.

22                    I would ask that the court consider the unique  
23          23       situation of my client insofar as his background. Minimal  
24          24       to nonexistent criminal history and he's been an achiever.  
25          25       I would ask for the court to consider that when the court

000329



7           1       sets the bail.

2                       I respectfully dispute with counsel the fact  
3       that my client was the alleged mastermind in this and he  
4       imposed duress upon the other party. I don't think that's  
5       relevant. I think the fact of the matter is even here and  
6       now they're still entitled to a presumption of innocence  
7       even at this stage. I would ask for the court to consider  
8       those factors when setting bail and with that I'd submit it.

9                       THE COURT: Miss Luzaich.

10                      MS. LUZAICH: I would ask the court to set bail  
11       at 500,000 cash only for each one of them. You know, they  
12       may not have much if any prior criminal history, but boy  
13       they entered the system with a bang. They are charged each  
14       with six counts that are life sentences. In fact, double  
15       life sentences because of the deadly weapons that they used.

16                      These kids all came in here and told you how  
17       terrified they were when these two guys came in guns blazing  
18       pointing guns at these kids telling them, "We know Grant is  
19       here. We want money. Oh, Grant's not here? Well, then we  
20       want your money." They were there for two hours and not  
21       only do they take one kid down the street and get money out  
22       of an ATM, but once that's all done then the gratuitous sex  
23       acts start. I mean that is just outrageous.

24                      These kids are going to trial, these kids are  
25       going to prison. Because almost everything they're charged

000330

7           1       with are non-probationable. These guys admitted that they  
2           2       did these things. Now, whether or not there's a difference  
3           3       in levels of culpability are really not an issue here.

4                       Wilson has ties elsewhere. I mean his family  
5           5       is elsewhere, he's got basically no ties here.

6                       Wesley, although he's got lots of family that  
7           7       supports him and that's great for him and I'm sorry for his  
8           8       family, but you know I'm looking through these letters of  
9           9       support that were provided for him: "I believe the  
10          10       situation currently surrounding Narcus will prove to be  
11          11       false." Well, you've heard the testimony and you've heard  
12          12       that he's admitted it. "There is no way the Narcus that I  
13          13       know would do something like that." Well, he did. Does  
14          14       that change this person's opinion? "This is a man of great  
15          15       values and morals." This is the one who when defendant  
16          16       Wilson said, "Oh, you know what? They've done enough of  
17          17       this gratuitous sex stuff," he wanted to keep going. He's  
18          18       the one that stuck his finger in that poor little girl's  
19          19       vagina. "I have great difficulty believing that Narcus  
20          20       could have been involved in the criminal activities that  
21          21       were reported to me." I think even the defendant's father  
22          22       writes a statement that says, "I truly cannot believe he  
23          23       would do such acts as accused or have any involvement in  
24          24       such a crime or any crime." By the way, he told his parents  
25          25       on the phone that he did these things. It's been recorded.

000331

7 1 So 500,000 cash bail because they both have  
2 ties elsewhere is an absolutely appropriate bail considering  
8 3 they're going to prison. And I would submit it.

4 THE COURT: Well, the representations have been  
5 made so obviously it's a sad case all the way around. We  
6 have Mr. Wesley who has his friends and family that are here  
7 and I see you have a lot of support, Mr. Wesley, and of  
8 course you're showing that today.

9 And, Mr. Wilson, you're from the Denver area  
10 and representations have been made for the same, but you  
11 know, I have to tell you, in the years I've been here on the  
12 bench this one ranks up there with one of the most serious  
13 cases I have had. Just because of the testimony that's been  
14 adduced, the actions that were taken and I believe what we  
15 have here now I have to ask myself is there a reason to  
16 reduce bail? There is really not a reason to reduce bail.  
17 Miss Luzaich asked that it be increased. But I think that  
18 what we have now is sufficient so I am not going to raise  
19 it. But I am also not going to reduce it. From I have seen  
20 here at the preliminary hearing doesn't persuade me that  
21 this should be reduced.

22 So your attorneys will make the appropriate  
23 motion in District Court in a couple of weeks and the  
24 District Court judge may disagree with me, but until then  
25 bail will remain as is. Thank you.

000332

(The proceedings concluded.)

\* \* \* \* \*

ATTEST: Full, true and accurate transcript of  
proceedings.

  
LISA BRENSKE, CCR No. 186

000333

# BAIL BOND FILED

1757866  
NO Imm  
060707  
2310  
*[Signature]*

In the EIGHTH JUDICIAL DISTRICT Court, County of Clark, State of Nevada.

STATE OF NEVADA

Bail Bond No. AS250K-1339

vs.

*[Signature]*  
CLERK OF THE COURT

Defendant NARCUS S. WESLEY Case No. E232494B

Know all me by these presents:

That we, **VIP Bail Bonds** as principal and **ALLEGHENY CASUALTY COMPANY**, as the Surety, heretofore authorized to transact Bail Bonds in the State of Nevada, are held and bound, to the above court, for payment in the sum of \*\*93,000.00\*\* Dollars, whereof, we bind ourselves, our heirs, executors, administrators, and successors, and assigns, jointly and severally, and firmly, by these presents. The condition of this obligation is such that the said defendant shall appear from day to day and term to term of said court to answer the charge(s) of:

BURG WHILE IN POSS DW, SEXUAL ASSAULT (5cts)

COERCION W/DW

and not depart the same without leave, then this obligation to be void, else to remain in full force and effect.

This bond shall be in full force and effect until any of the following events:

- 1) Exoneration by court order.
- 2) Termination of this case by dismissal or conviction.

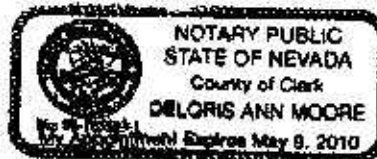
Signed and sealed this: 7 day of JUNE, 2007

*[Signature]*  
Attorney in fact

Subscribed and Sworn: before me, a Notary Public for the State of Nevada,

This 7 day of JUNE, 2007.

*[Signature]*  
Notary



Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2007

By \_\_\_\_\_

VIP BAIL BONDS  
P.O. BOX 81142  
LAS VEGAS, NV 89180  
(702) 735-2245

RECEIVED

JUN 08 2007

CLERK OF THE COURT

ALLEGHENY CASUALTY CO.  
P.O. BOX 9818  
CALABASAS, CA. 91372

000334

VERIFY FIRST - THIS DOCUMENT IS PRINTED IN RED & BLACK INKS.

Only the original Power of Attorney will bind this Surety.

**POWER OF ATTORNEY**  
**ALLEGHENY CASUALTY COMPANY**

P.O. Box 9810, CALABASAS, CA 91372-9810 (800) 935-2245

**POWER** AS250K-1339  
**NUMBER**

**THIS POWER VOID IF NOT USED BY: December 31, 2007**

**POWER AMOUNT \$ 250,000**

KNOW ALL MEN BY THESE PRESENTS, that ALLEGHENY CASUALTY COMPANY, a corporation duly organized and existing under the laws of the State of Pennsylvania, has constituted and appointed, and does hereby constitute and appoint, its true and lawful Attorney-in-Fact, with full power and authority to sign the company's name and affix its corporate seal to, and deliver on its behalf as surety, any and all obligations as herein provided, and the execution of such obligations in pursuance of these presents shall be as binding upon the company as fully and to all intents and purposes as if done by the regularly elected officers of said company at its home office in their own proper person, and the said company hereby ratifies and confirms all and whatsoever its said Attorney-in-Fact may lawfully do and perform in the premises by virtue of these presents.

**THIS POWER OF ATTORNEY IS VOID IF ALTERED OR ERASED, THE OBLIGATION OF THE COMPANY SHALL NOT EXCEED THE SUM OF**

**TWO HUNDRED FIFTY THOUSAND \*\*\*\*\***

**AND MAY BE EXECUTED FOR RECOGNIZANCE ON CRIMINAL BAIL BONDS ONLY.**

Authority of such Attorney-in-Fact is limited to the execution of appearance bonds and cannot be construed to guarantee defendant's future lawful conduct, adherence to travel limitation, fines, restitution, payments or penalties, or any other condition imposed by a court not specifically related to court appearances. A separate Power of Attorney must be attached to each bond executed. Powers of Attorney must not be returned to Attorney-in-Fact, but should remain a permanent part of the court records.

Bond Amt \$ **\*\*93,000.00\*\*** Date Executed **6/7/07**

Defendant **NARCUS S. WESLEY** DOB \_\_\_\_\_

Case # **C 232494B** Appearance Date \_\_\_\_\_

**BURG WHILE IN POSS DW, SEXUAL ASSAULT (5cts)**

Offense **Coercion w/DW**

Court County **CLARK COUNTY DISTRICT**

Court City **LAS VEGAS** Court State **NV** Div./Dept. \_\_\_\_\_

If rewrite, give orig. power # \_\_\_\_\_ ☐ Increase ☐ Decrease

Executing Agent **NAKIA WOODSON** Signature (if applicable, add your COURT assigned Agent # \_\_\_\_\_)



Form# ACC 0100 (9/06)

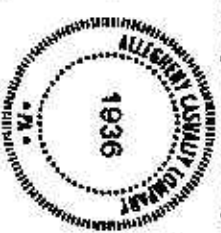
**ORIGINAL**

**NOTICE: Stacking of Powers is strictly prohibited. No more than one power from this Surety may be used to post any one bail amount.**

IN WITNESS WHEREOF, said ALLEGHENY CASUALTY COMPANY, by virtue of authority conferred by its Board of Directors, has caused these presents to be sealed with its corporate seal, signed by its President and attested by its Secretary, this 2nd day of January, 1998.

*Thomas R. Roney*  
Thomas Roney, President

*Nakia Woodson*  
Nakia Woodson, Secretary



**NOT VALID FOR IMMIGRATION**



00209041



Only the original Power of Attorney  
will bind the Surety.

**CERTIFICATE OF DISCHARGE**  
ALLEGHENY CASUALTY COMPANY  
P.O. BOX 9810, CALABASAS, CA 91372-9810 (800) 935-2245

POWER  
NUMBER AS250K-1339 C

POWER VOID DATE: December 31, 2007

POWER AMOUNT \$ 250,000

ORIGINAL POWER OF ATTORNEY DID NOT EXCEED THE SUM OF  
TWO HUNDRED FIFTY THOUSAND

Bond Amt \$ 250,000.00 Date Executed 6/7/07

Defendant MARCUS S. WISLEY DOB

Case # C 232494B Appearance Date

Offense BURG WIELD IN POSS DV, SEXUAL ASSAULT (5cts)  
Offense

Court County CLARK COUNTY DISTRICT

Court City LAS VEGAS Court State NV Div/Dept

If rewrite, give orig. power # ☐ Increase ☐ Decrease

Executing Agent NAKIA WOODSON

Signature# applicable, add your COURT assigned Agent #

Form# ACC.0100 (9/06)

DISCHARGE COPY

COURT USE ONLY

Discharge Date:

Clerk Signature:

X AGENT INITIALS



00209041

VIP BAIL BONDS  
P.O. BOX 81142  
LAS VEGAS, NV 89180

000337

# BAIL BOND FILED

1757866  
NO Imm  
060707  
2310  
33364

In the EIGHTH JUDICIAL DISTRICT Court, County of Clark, State of Nevada.

STATE OF NEVADA

Bail Bond No. AS100K-2709

vs.

*[Signature]*  
CLERK OF THE COURT

Defendant NARCUS S. WESLEY

Case No. C 232494B

Know all me by these presents:

That we, **VIP Bail Bonds** as principal and **ALLEGHENY CASUALTY COMPANY**, as the Surety, heretofore authorized to transact Bail Bonds in the State of Nevada, are held and bound, to the above court, for payment in the sum of \*\*100,000.00\*\* Dollars, whereof, we bind ourselves, our heirs, executors, administrators, and successors, and assigns, jointly and severally, and firmly, by these presents. The condition of this obligation is such that the said defendant shall appear from day to day and term to term of said court to answer the charge(s) of:

KIDNAP 1ST W/DW

and not depart the same without leave, then this obligation to be void, else to remain in full force and effect.

This bond shall be in full force and effect until any of the following events:

- 1) Exoneration by court order.
- 2) Termination of this case by dismissal or conviction.

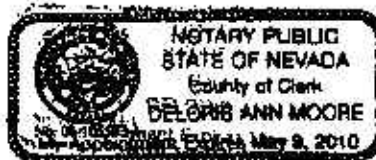
Signed and sealed this: 7 day of JUNE, 2007

*[Signature]*  
Attorney in fact

Subscribed and Sworn: before me, a Notary Public for the State of Nevada,

This 7 day of JUNE, 2007.

*[Signature]*  
Notary



Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2007

By \_\_\_\_\_

VIP BAIL BONDS  
P.O. BOX 81142  
LAS VEGAS, NV 89180  
(702) 735-2245

RECEIVED

JUN 08 2007

CLERK OF THE COURT

ALLEGHENY CASUALTY CO.  
P.O. BOX 9810  
CALABASAS, CA. 91372

000338

VERIFY FIRST - THIS DOCUMENT IS PRINTED IN RED & BLACK INKS.

Only the original Power of Attorney  
will bind this Surety.

**POWER OF ATTORNEY**  
**ALLEGHENY CASUALTY COMPANY**  
P.O. BOX 9810, CALABASAS, CA 91372-9810 (800) 935-2245

**POWER**  
**NUMBER AS100K-2709**

**THIS POWER VOID IF NOT USED BY: December 31, 2007**

**POWER AMOUNT \$ 100,000**

KNOW ALL MEN BY THESE PRESENTS, that ALLEGHENY CASUALTY COMPANY, a corporation duly organized and existing under the laws of the State of Pennsylvania, has constituted and appointed, and does hereby constitute and appoint, its true and lawful Attorney-in-Fact, with full power and authority to sign the company's name and affix its corporate seal to, and deliver on its behalf as surety, any and all obligations as herein provided, and the execution of such obligations in pursuance of these presents shall be as binding upon the company as fully and to all intents and purposes as if done by the regularly elected officers of said company at its home office in their own proper person, and the said company hereby ratifies and confirms all and whatsoever its said Attorney-in-Fact may lawfully do and perform in the premises by virtue of these presents.

**THIS POWER OF ATTORNEY IS VOID IF ALTERED OR ERASED, THE OBLIGATION OF THE COMPANY SHALL NOT EXCEED THE SUM OF**

**ONE HUNDRED THOUSAND \*\*\*\*\***

**AND MAY BE EXECUTED FOR RECOGNIZANCE ON CRIMINAL BAIL BONDS ONLY.**

Authority of such Attorney-in-Fact is limited to the execution of appearance bonds and cannot be construed to guarantee defendant's future lawful conduct, adherence to travel limitation, fines, restitution, payments or penalties, or any other condition imposed by a court not specifically related to court appearances. A separate Power of Attorney must be attached to each bond executed. Powers of Attorney must not be returned to Attorney-in-Fact, but should remain a permanent part of the court records.

Bond Amt \$ \*\* 100,000.00 \*\* Date Executed 6/7/07

Defendant NARCUS S. WESLEY DOB

Case # C 232494B Appearance Date 11/1/07

Offense KIDNAP 1ST W/DV

Court County CLARK COUNTY DISTRICT

Court City LAS VEGAS Court State NV Div/Dept.

If rewrite, give orig. power #  ☐ Increase ☐ Decrease

Executing Agent NAKIA WOODSON

Signature if applicable, add your COURT assigned Agent #

Form# ACC.0100 (9/06)

**ORIGINAL**

**NOTICE: Stacking of Powers is strictly prohibited. No more than one power from this Surety may be used to post any one bail amount.**

**IN WITNESS WHEREOF,** said ALLEGHENY CASUALTY COMPANY, by virtue of authority conferred by the Board of Directors, has caused these presents to be sealed with its corporate seal, signed by its President and attested by its Secretary, this 2nd day of January, 1998.

*Thomas Ridenour, President*

*Nakia Woodson, Secretary*



**NOT VALID FOR  
IMMIGRATION**



00201844

Only the original Power of Attorney  
will bind this Surety.

**CERTIFICATE OF DISCHARGE**  
**ALLEGHENY CASUALTY COMPANY**  
P.O. BOX 9810, CALABASAS, CA 91372-9810 (800) 935-2245

POWER  
NUMBER AS100K-2709

POWER VOID DATE: December 31, 2007

POWER AMOUNT \$ 100,000

ORIGINAL POWER OF ATTORNEY DID NOT EXCEED THE SUM OF  
ONE HUNDRED THOUSAND

Bond Amt \$ 100,000.00 Date Executed 6/7/07

Defendant NARCUS S. WESLEY DOB 6/7/07

Case # C 232494F Appearance Date 11/1/07

Offense KIDNAP 1st V/BY

Court County CLARK COUNTY DISTRICT

Court City LAS VEGAS Court State NV Div/Dept

If rewrite, give orig. power # ☐ Increase ☐ Decrease

Executing Agent NAKIA WOODSON

Signature/initial applicable, add your COURT assigned Agent #

Form# ACC.0100 (9/06) DISCHARGE COPY

COURT USE ONLY  
Discharge Date: \_\_\_\_\_  
Clerk Signature: \_\_\_\_\_



00201844

VIP BAIL BONDS  
P.O. BOX 81142  
LAS VEGAS, NV 89180

000341



**BAIL BOND**

**FILED**

1757866  
NO IMM  
060707  
2310  
G3344

In the EIGHTH JUDICIAL DISTRICT Court, County of Clark, State of Nevada

STATE OF NEVADA

Bail Bond No. AS250K-1338

vs.

*Cliff SPS*  
CLERK OF THE COURT

Defendant NARCUS S. WESLEY

Case No. C 232494B

Know all me by these presents:

That we, **VIP Bail Bonds** as principal and **ALLEGHENY CASUALTY COMPANY**, as the Surety, heretofore authorized to transact Bail Bonds in the State of Nevada, are held and bound, to the above court, for payment in the sum of \*\*215,000.00\*\* Dollars, whereof, we bind ourselves, our heirs, executors, administrators, and successors, and assigns, jointly and severally, and firmly, by these presents. The condition of this obligation is such that the said defendant shall appear from day to day and term to term of said court to answer the charge(s) of:

CONSP BURG, CONSP ROBB, ROBB W/DW (6cts)

and not depart the same without leave, then this obligation to be void, else to remain in full force and effect.

This bond shall be in full force and effect until any of the following events:

- 1) Exoneration by court order. 2) Termination of this case by dismissal or conviction.

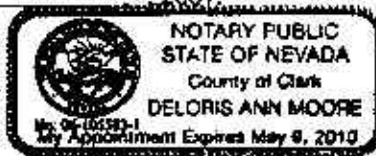
Signed and sealed this: 7 day of JUNE, 2007

*[Signature]*  
Attorney in fact

Subscribed and Sworn: before me, a Notary Public for the State of Nevada,

This 7 day of JUNE, 2007.

*Deloris Ann Moore*  
Notary



Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2007

By \_\_\_\_\_

VIP BAIL BONDS  
P.O. BOX 81142  
LAS VEGAS, NV 89180  
(702) 735-2245

ALLEGHENY CASUALTY CO.  
P.O. BOX 9810  
CALABASAS, CA. 91372

**RECEIVED**

JUN 08 2007

CLERK OF THE COURT

000342

Only the original Power of Attorney  
will bind this Surety.

VERIFY FIRST - THIS DOCUMENT IS PRINTED IN RED & BLACK INKS.

**POWER OF ATTORNEY**  
ALLEGHENY CASUALTY COMPANY  
P.O. BOX 9810, CALABASAS, CA 91372-9810 (800) 935-2245

POWER  
NUMBER AS250K-1338

THIS POWER VOID IF NOT USED BY: December 31, 2007

POWER AMOUNT \$ 250,000

KNOW ALL MEN BY THESE PRESENTS, that ALLEGHENY CASUALTY COMPANY, a corporation duly organized and existing under the laws of the State of Pennsylvania, has constituted and appointed, and does hereby constitute and appoint, its true and lawful Attorney-in-Fact, with full power and authority to sign the company's name and affix its corporate seal to, and deliver on its behalf as surety, any and all obligations as herein provided, and the execution of such obligations in pursuance of these presents shall be as binding upon the company as fully and to all intents and purposes as if done by the regularly elected officers of said company at its home office in their own proper person, and the said company hereby ratifies and confirms all and whatsoever its said Attorney-in-Fact may lawfully do and perform in the premises by virtue of these presents.

THIS POWER OF ATTORNEY IS VOID IF ALTERED OR ERASED. THE OBLIGATION OF THE COMPANY SHALL NOT EXCEED THE SUM OF  
**TWO HUNDRED FIFTY THOUSAND**

AND MAY BE EXECUTED FOR RECOGNIZANCE ON CRIMINAL BAIL BONDS ONLY.

Authority of such Attorney-in-Fact is limited to the execution of appearance bonds and cannot be construed to guarantee defendant's future lawful conduct, adherence to travel limitations, fines, restitution, payments or penalties, or any other condition imposed by a court not specifically related to court appearances. A separate Power of Attorney must be attached to each bond executed. Powers of Attorney must not be returned to Attorney-in-Fact, but should remain a permanent part of the court records.

Bond Amt \$ \*\*215,000.00\*\* Date Executed 6/7/07

Defendant NARCUS S. WESLEY DOB

Case # C232494B Appearance Date

Offense CONSP BURG, CONSP ROBB, ROBB W/DW (6cts)

Court County CLARK COUNTY DISTRICT

Court City LAS VEGAS Court State NV Div/Dept.

If rewrite, give orig. power # ☐ Increase ☐ Decrease

Executing Agent NAKIA WOODSON

Signatures applicable, add your COURT assigned Agent #

Form# ACC.0100 (9/06)

ORIGINAL

NOTICE: Stacking of Powers is strictly prohibited. No more than one power from this Surety may be used to post any one bail amount.  
IN WITNESS WHEREOF, said ALLEGHENY CASUALTY COMPANY, by virtue of authority conferred by its Board of Directors, has caused these presents to be sealed with its corporate seal, signed by its President and attested by its Secretary, this 2nd day of January, 1998.

*Thomas A. Hines*  
Thomas A. Hines, President

*Mark P. Hines*  
Mark P. Hines, Secretary



NOT VALID FOR  
IMMIGRATION



Only the original Power of Attorney  
will bind this Surety.

**CERTIFICATE OF DISCHARGE**

**ALLECHENY CASUALTY COMPANY**

P.O. BOX 9810, CALABASAS, CA 91372-9810 (800) 935-2245

POWER  
NUMBER **AS250R-1338C**

**POWER VOID DATE: December 31, 2007**

**POWER AMOUNT \$ 250,000**

ORIGINAL POWER OF ATTORNEY DID NOT EXCEED THE SUM OF  
**TWO HUNDRED FIFTY THOUSAND**

Bond Amt \$ **250,000.00** Date Executed **6/7/07**

Defendant **NARCUS S. WESTLY** DOB \_\_\_\_\_

Case # **C232494R** Appearance Date \_\_\_\_\_

Offense **CONSP BURQ, CONSP ROFD, ROBR W/DR (6cts)**

Court County **CLARK COUNTY DISTRICT**

Court City **LAS VEGAS** Court State **NV** Div/Dept \_\_\_\_\_

If rewrite, give orig. power # \_\_\_\_\_ ☐ Increase ☐ Decrease

Executing Agent **NAKIA WOODSON**

Signature/If applicable, add your COURT assigned Agent #

Form# ACC 0100 (9/06)

**DISCHARGE COPY**

**COURT USE ONLY**

Discharge Date: \_\_\_\_\_

Clerk Signature: \_\_\_\_\_

**X** AGENT INITIALS



00209040

VIP BAIL BONDS  
P.O. BOX 81142  
LAS VEGAS, NV 89180

060345

ORIGINAL

JAMES A. ORONOZ, ESQ.  
Nevada Bar No. 6769  
815 South Casino Center Blvd.  
Las Vegas, Nevada 89101-6718  
702.474.4222  
Attorney for Defendant

CLERK OF THE COURT

AUG 16 11 57 AM '07

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DELARIAN WILSON,

Defendant.

CASE NO: C232494  
DEPT NO: XXIV

**EX PARTE MOTION TO APPOINT INVESTIGATOR AND  
FOR FEES IN EXCESS OF STATUTORY LIMIT**

Defendant, DELARIAN WILSON, by and through his counsel, JAMES A. ORONOZ, moves this Honorable Court for an Order Appointing Charlene Gonzales of Robert D. Lawson, Investigations as private investigator to investigate and prepare the above captioned matter for the court appointed attorney for trial, and for an order authorizing payment to said investigator in excess of the statutory limit pursuant to NRS 7.135.

This motion is made and based upon the papers and pleadings on file herein, the Points and Authorities which follow, and the affidavit of counsel attached hereto.

DATED this 15<sup>th</sup> day of August, 2007.

DRASKOVICH & ORONOZ, P.C.

RECEIVED

AUG 16 2007

CLERK OF THE COURT

JAMES A. ORONOZ, ESQ.  
Nevada Bar No. 6769  
815 South Casino Center Blvd.  
Las Vegas, Nevada 89101-6718  
Attorney for Defendant

000346

1 **POINTS AND AUTHORITIES**

2 Nevada Revised Statute 7.135, provides as follows:

3 Reimbursement for expenses; employment of investigative,  
4 expert or other services.

5 The attorney appointed by a magistrate or district court to  
6 represent a defendant is entitled, in addition to the fee  
7 provided by NRS 7.125 for his services, to be reimbursed for  
8 expenses reasonably incurred by him in representing the  
9 defendant and may apply, subject to the prior approval of the  
10 magistrate or the district court in an ex parte application, such  
11 investigative expert or other services as may be necessary for  
12 an adequate defense. Compensation to any person furnishing  
13 such investigative, expert or other services as must not exceed  
14 \$300.00 exclusive of reimbursement for expenses reasonable  
15 incurred, unless payment in excess of that limit is:

16 Certified by the trial judge of the court, or by the magistrate if  
17 the services were rendered in connection with a case disposed  
18 of entirely before him, as necessary to provide fair  
19 compensation for services of an unusual character or  
20 duration....

21 The Nevada Supreme Court held in Widdes v. 2<sup>nd</sup> Judicial District Court, 114 Nev.  
22 1224, 968 P.2d 1165 (1998), that where a client represented by private counsel is indigent  
23 and unable to afford the costs of her defense, the state is required to pay for reasonable  
24 and necessary defense services. The Court held as follows:

25 ...[W]e hold that a criminal defendant who has retained private  
26 counsel is nonetheless entitled to reasonable defense services  
27 at public expense based on the defendant's showing of  
28 indigence and need for the services. Although the use of  
public funds in this manner may appear to be a misuse of such  
funds, we feel that a contrary rule would have a greater  
negative impact on scarce public resources by creating  
disincentives for defendants to seek private representation at  
their own expense. Such representation, at least defrays the  
most costly aspect of defending a person charged with criminal  
misconduct; costs that otherwise would be borne by public  
funds. Additionally, a contrary rule disallowing the use of  
public funds would undoubtedly create disincentives to the  
defense bar from taking those cases in which defense counsel  
would possibly have to absorb the costs of defense services.  
Further, we are confident that a sufficient safeguard against  
the misuse of public funds is created by placing the burden  
squarely on the Defendant to demonstrate both indigence and  
reasonable need for the services in question. Id at 1168,  
1229. See State v. Burns, 2000 UT 56, 4 P.3d 795 (2000).



1 The Defendant in the case at bar faced with the serious charges of six (6) counts  
2 of robbery with a deadly weapon, two (2) counts of conspiracy burglary, burglary with use  
3 of a deadly weapon, first degree kidnap with a deadly weapon, coercion with a deadly  
4 weapon, and five (5) counts of sexual assault with a deadly weapon. If Defendant is  
5 convicted, he may be sentenced to life in prison. Thus, there is no question that the  
6 litigation is complex as contemplated by NRS 7.135.

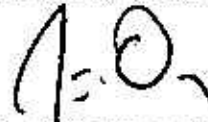
7 The Defendant is indigent. His family has expended nearly all their meager savings  
8 to retain his present counsel.

9 CONCLUSION

10 Based on the foregoing and the facts set forth in counsel's affidavit, it is respectfully  
11 requested that Charlene Gonzales of Robert D. Lawson, Investigations be appointed as  
12 private investigator in this matter, and fees in excess of the statutory limit be granted in the  
13 sum of \$5,000.00.

14 DATED this 15<sup>th</sup> day of August, 2007.

15 DRASKOVICH & ORONOZ, P.C.

16 

17 \_\_\_\_\_  
18 JAMES A. ORONOZ, ESQ.  
19 Nevada Bar No. 6769  
20 Attorney for Defendant  
21  
22  
23  
24  
25  
26  
27  
28

AFFIDAVIT OF JAMES A. ORONOZ

STATE OF NEVADA

COUNTY OF CLARK

} ss:

JAMES A. ORONOZ, under the penalty of perjury, declares that the following is true and correct:

1. I am an attorney duly licensed to practice law in the State of Nevada and am counsel of record for the Defendant in the instant action;

2. I have personal knowledge of facts contained in this affidavit and am competent to testify as to those facts;

3. That I am aware that Defendant is indigent;

4. That I submit this affidavit in support of Defendant's Ex Parte Motion to Appoint Investigator and for Fees in Excess of Statutory Limit;

5. That there are a number of factual matters that must be investigated and numerous witness which must be interviewed in order to adequately prepare this case for trial;

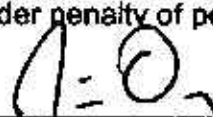
6. That there are a number of pretrial motions that require factual investigation, and Defendant is in need of the services of a private investigator pursuant to NRS 7.135;

7. That I have experience in preparing felony cases for trial and penalty hearing, and can assure this Court that an investigative fee in the amount of \$5,000.00 is a reasonable sum for investigative services under such circumstances;

8. That I believe that the appearance, testimony, and/or services of the aforementioned experts/witnesses is crucial to mounting an adequate defense on behalf of the Defendant.

9. That prior to any additional expense being incurred, affiant will petition the Court for prior approval.

Executed this 15<sup>th</sup> day of August, 2007, under penalty of perjury.

  
JAMES A. ORONOZ

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

2  
3       **DELARIAN K. WILSON,**  
4                   **Appellant,**  
5       **vs.**  
6       **THE STATE OF NEVADA**  
                  **Respondent.**

**Supreme Court No.:**

District Court Case No. 16732494-11

Electronically Filed  
Nov 12 2015 10:10 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

7                   **APPELLANT'S APPENDIX – VOLUME II – PAGES 0250-0499**

8       **MATTHEW D. CARLING**  
9       51 East 400 North, Bldg. #1  
10      Cedar City, Utah 84720  
11      (702) 419-7330 (Office)  
          *Attorney for Appellant*

**STEVEN B. WOLFSON**  
          Clark County District Attorney  
          200 Lewis Avenue, 3<sup>rd</sup> Floor  
          Las Vegas, Nevada 89155  
          *Counsel for Respondent*

**CATHERINE CORTEZ MASTO**  
          Attorney General  
          100 North Carson Street  
          Carson City, Nevada 89701-4717  
          *Counsel for Respondent*

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10

1 touching each other, is that correct, right now when you  
2 were showing me what he did?

3 A Like his hands in between his legs, yeah.

4 Q So was it very clear to you that that was in  
5 fact a handgun as opposed to something else?

6 A Yes.

7 Q When you got back into the house did either of  
8 them tell you what to do?

9 A They told me to get back down on the floor and  
10 lay back down with all the rest of them.

11 Q Who told you that?

12 A The shorter, stockier one.

13 Q Did either of them say anything once you got  
14 back down into your position?

15 A They said -- the shorter, stockier one said,  
16 "Okay. You guys have been cooperating, we're 90 percent  
17 done, we only got ten percent left."

18 Q Did he tell you what he meant by that?

19 A Not at first.

20 Q What happened after that?

21 A After that he told Justin and Danielle to  
22 basically perform sexual acts on each other.

23 Q Could you see what was going on?

24 A No, I could only hear.

25 Q And who did you hear say that?

000250

10 1 A The shorter, stockier one, the one in the car  
2 with me.

3 Q The shorter, stockier one, when told to perform  
4 sexual acts, did he use any particular acts?

5 A Basically he told Justin to pull down his pants  
6 and then basically for Danielle to give him oral sex.

7 Q Did it sound like they were trying to do that?

8 A Yeah.

9 Q And what's the next thing that either the  
10 stockier or thinner one said that caused you to realize that  
11 something was going on?

11 12 A He wanted Justin to get hard as they put it and  
13 Justin was having a hard time getting hard so like he told  
14 Justin if he couldn't get hard then he was going to have one  
15 of the other guys in the room with us do something with  
16 Danielle, if he couldn't get hard.

17 Q Who said that?

18 A The shorter, stockier one.

19 Q Then what happened?

20 A Then basically Justin couldn't get hard and  
21 after awhile Justin said that lotion might help and that he  
22 needed lotion. So the shorter, stockier one I believe -- or  
23 so Justin tells me that --

24 MR. KOCKA: Objection.

25 000251

1 BY MS. LUZAICH:

2 Q One of the two individuals did something. What  
3 did they do?

4 A They took Justin into the room and Justin  
5 grabbed a bottle of lotion and came back out.

6 Q And did you hear lotion being applied?

7 A I heard like the squirting sounds coming out.

8 Q Did one of them tell Justin to do something to  
9 Danielle?

10 A Say that again.

11 Q Did one of the guys tell Justin to do something  
12 for or to Danielle?

13 A Eat her out.

14 Q Who said that?

15 A I believe the shorter, stockier one.

16 Q Did they tell somebody else to do something  
17 after that?

18 A They told me -- well, actually they asked  
19 everybody else if we were hard and then --

20 Q Who asked everybody else if you were hard?

21 A The shorter, stockier one.

22 Q Okay.

23 A And then everybody kept saying they're not,  
24 they didn't want to do that to Justin and for some reason I  
25 got picked out and I was told to pull my pants down.

000252

1 Q Who told you that?

2 A The shorter, stockier one.

3 Q Did you do that?

4 A Yes.

5 Q And did you do that because there was a gun?

6 A Yes.

7 Q Where was the gun when you did that?

8 A Well, I was laying on my stomach and they told  
9 me to turn over, to pull my pants down and they put a pillow  
10 over my face.

11 Q They who?

12 A The shorter, stockier one put the pillow over  
13 my face. I believe. Because it was his voice next to me.  
14 And he held the pillow over my face and like squirted lotion  
15 in my hand and I proceeded to masturbate I guess.

16 Q Did you put your hand on your penis?

17 A Yes.

18 Q Try to make it hard?

19 A Yes.

20 Q And then what happened?

21 A And then after a couple minutes of that I  
22 wasn't getting hard because I was scared and they told me to  
23 pull my pants back up and turn back over.

24 Q Then what happened?

25 A Then Justin wasn't able to get hard. Justin

000253

11 1 said that he had some condoms in his room and they proceeded  
2 to go get condoms.

3 Q Who went and got condoms?

4 A Justin and the shorter, stockier one.

5 Q Went where?

6 A Went to his room next to the kitchen.

7 Q And then what?

8 A And then we were all laying out there and he  
9 was finding condoms in his room. Once he found the condoms  
10 he brought them back out and I believe Justin applied a  
11 condom --

12 MR. ORNOZ: Objection. Speculation.

13 THE COURT: Sustained.

14 MS. LUZAICH: That's fine.

15 Q Did one of them say something to or about  
16 Danielle?

17 A The shorter, stockier one kept asking the  
18 taller, skinnier one if he was hard and the taller, skinnier  
19 one said that yes, he was hard. Throughout this.

20 Q Do you know did you see the thinner one do  
21 anything?

22 A I did not.

23 Q Did you hear the thinner one do anything?

24 A I didn't see him but I heard him ask Danielle  
25 if he could touch her ass.

000254



11 1 Q Was it the thinner one or the stockier one that  
2 asked that?

3 A The thinner one asked that.

4 Q What else did you hear?

5 A I heard Danielle kept saying no and just  
6 basically —

7 Q Did you hear Danielle move across the room or  
8 move to another location?

9 A Yeah, she went to a chair that was located  
10 right in front of the door.

11 Q And do you know did one of them go over by the  
12 chair with her?

13 A Yeah, I believe I heard footsteps and I could  
14 see their shoes moving across the floor.

15 Q Did there come a time that they left?

16 A Yes.

17 Q How did that occur?

18 A After they were done with Justin and Danielle  
19 we all kind of got back down in the middle of the floor  
20 laying down and they gave us instructions that they were  
21 going to leave. They told us not to call the cops because  
22 they would have someone come shoot up the house. So they —  
23 basically the shorter, stockier one told us that he was  
24 going to give us two minutes and he could be waiting  
25 outside, he could be down the street, he could be anywhere

000255

11  
12

1 and he told us to wait for two minutes and then we could go  
2 outside, get up and get our cell phones that they took from  
3 us previously and then told us that they would be gone.

4 Q You said the cell phones they took from you  
5 previously. Did one or both of them ask you all for your  
6 cell phones?

7 A The shorter, stockier one asked us for our cell  
8 phones.

9 Q Did you give your cell phone up?

10 A Yes.

11 Q Did it appear or sound like the other people in  
12 the house gave up their cell phone?

13 A Yes.

14 Q So did they then go outside with your cell  
15 phones?

16 A Yeah.

17 Q And did you go outside after them?

18 A After the two minutes. After they told us to  
19 wait two minutes.

20 Q Did they come back?

21 A After about ten seconds the shorter, stockier  
22 one came back in and said, "I saw you move," and then he was  
23 like, "Just joking," he kind of laughed. And then he told  
24 us to be still, wait two minutes and then I heard footsteps  
25 leave the house.

00256

12 1 Q And then they never came back?

2 A No.

3 Q Did you get your cell phone back?

4 A Yes.

5 MS. LUZAICH: Thank you. I'd pass the witness.

6

7

CROSS-EXAMINATION

8

BY MR. ORNOZ:

9

Q I just have a few questions. Ryan, if I could  
10 ask you and direct your attention to a point in time that  
11 you're driving with the stockier of the two again,  
12 approximately how far did you drive with this individual  
13 from your house, can you estimate in miles or perhaps  
14 minutes?

15 A The whole trip?

16 Q Yes.

17 A The whole trip is probably two miles.

18 Q So it's maybe a mile out and a mile back?

19 A Yeah.

20 Q And you indicated that he had a gun to your  
21 head?

22 A To my hip.

23 Q Did he instruct you not to look over at him?

24 A Yes.

25 Q Did you follow that instruction?

000257

12

1 A Yes.

2 Q At any point did you look over at him?

3 A When I turned, I would turn my head a little  
4 bit and I could kind of see him out of the corner of my eye  
5 but I couldn't get a good recognition.

6 Q So it would be accurate to say that you never  
7 looked at him full on in the face?

8 A No.

9 Q You never maintained eye contact with him?

10 A Nope.

11 Q Let me ask you about your meeting with the  
12 Henderson detectives on this case. Did they show you a  
13 lineup or pictures of individuals for you to pick out and  
14 identify?

15 A Yes.

16 Q And were you able to do that?

17 A Just by body type alone.

18 Q So you were not able to identify by facial  
19 features, correct?

20 A Not very good, no.

21 Q And just so I understand the best you were able  
22 to do, which is understandable under the circumstances, was  
23 to identify a certain body type?

24 A Yes.

25 Q Did they take any notes while this was going

000258

12

1 on?

2 A Did the detectives?

3 Q Yes.

4 A Yeah.

5 Q And did you write anything in conjunction with  
6 this identification?7 A I believe I wrote on a piece of paper which one  
8 I believe it to be.9 Q Did you attach or affix a percentage in  
10 conjunction with that? For example, a lot of times they say  
11 are you 60 percent, 50 percent?

12 A I don't remember.

13 Q So you didn't write it's number two a hundred  
14 percent, you didn't do anything like that?

15 A I am not sure if I attached a percentage to it.

16 Q And did you do that the same day that you gave  
17 this interview at the police station?18 A Well, it kind of overlapped from Sunday night  
19 to Monday morning.20 Q So as you sit here today being completely  
21 candid with us and the State and the court, as you look at  
22 my client in the face you cannot with certainty say that he  
23 was the stocky individual in the incident, correct?

24 A As far as facial recognition, no.

25 Q In fact, the furthest you could probably go is

000259

12 1 to say that they have a similar body type; is that correct?

2 A The shorter, stockier one I mentioned?

3 Q Yes, sir.

4 A Yes.

5 MR. ORONOZ: Thank you very much. I have no  
6 further questions.

7 THE COURT: Mr. Kocka.

8 MR. KOCKA: Thank you, Judge.

9  
10 CROSS-EXAMINATION

11 BY MR. KOCKA:

12 Q Ryan, when you first heard the knock on the  
13 door and you went to answer the door is there a little  
14 vestibule or doorway by the front door?

15 A Yeah, there's like a little like wooden area  
16 that you walk into and then there's the carpet of the living  
17 room.

18 Q And that little wooden area, is there a light  
19 in that area?

20 A Yes, there is.

21 Q Were the lights on at that time?

22 A No. Not that light.

23 Q So the hallway light by the door was not on?

24 A No.

25 Q What time did this occur?

000260



12

1 A Around 10:30 I believe.

2

Q And when you opened the door, two individuals are standing there, correct?

3

4 A Yes.

13

5

Q Did you get a good look at either of them?

6

A As far as facial recognition, no.

7

Q And at what point did you actually first see them lift up their shirts?

8

9 A When they went to step inside the door. As they were stepping inside the door they lifted up their shirts.

10

11 Q So they were lifting up the shirts and this is the area with no lights in the hallway vestibule area?

12

13 A Yes.

14

15 Q That's when you say you saw a gun?

16

17 A Yeah.

18

19 Q Now, back in the living room were the lights off because you guys were watching TV?

20

21 A There was one set of lights on.

22

23 Q Where was that?

24

25 A That was in the main living room area. There's a high ceiling and there's two sets of lights, one set was on.

26

27 Q When you say high ceiling, would these be like recessed lighting in the ceiling?

000261

13

1 A Yeah.

2 Q So it wouldn't have been, let's say, a ground  
3 level table lamp or something?

4 A No.

5 Q About how high are these ceilings?

6 A Like 20, 25 feet.

7 Q And there were two of those lights on?

8 A Yeah.

9 Q How far away are those lights located from the  
10 vestibule at the front door?

11 A Ten feet maybe.

12 Q Now, you've referred to the shorter, stockier  
13 guy. I represent Mr. Wesley, the gentleman sitting to my  
14 left. Is this the shorter, stockier guy or the taller,  
15 skinnier one?

16 A No. That's the taller, skinnier one.

17 Q When Mr. Wesley was coming in the door was he  
18 to your right or to the left of you?

19 A He was to my left.

20 Q Now, you say he had a gun. Where was his gun?

21 A In his waistband.

22 Q Did you actually see the gun in the waistband?

23 A When he pulled his shirt up, yes.

24 Q What did you see in the waistband? What did  
25 you actually see exposed in the waistband?

000262

13

1 A The stock of the gun. And then when he pulled  
2 it out I saw the barrel.

3 Q When you first saw the stock, describe the  
4 stock for me.

5 A It was darker in color, I believe it was black,  
6 but I'm not certain it was black. I just know that it was  
7 dark in color.

8 Q Do you remember giving a statement to the  
9 police?

10 A Yes.

11 Q Do you remember describing it as being kind of  
12 grayish?

13 A Grayish, yeah. Dark gray, black.

14 Q Now, when you say you saw it being pulled out,  
15 you saw a barrel, describe the barrel for me.

16 A Looked like the barrel of a Glock handgun.

17 Q And what did he do with this when he pulled it  
18 out of his waistband?

19 A He kind of pointed it at the room where we were  
20 situated kind of like at all of us and told us to get on the  
21 floor.

22 Q Where were you in relation to Mr. Wesley at  
23 that time?

24 A As he was walking in the door, he walked to the  
25 inside of me. If the door is over here and I had the door

000263

13

1 opened, he walked to the inside of me.

2 Q He was passing you?

3 A He was probably parallel with me at that time.

4 Q He was parallel with you when he was pulling  
5 the gun out?

6 A Yeah. When he stepped in the door, he pulled  
7 out the gun and the gun was fully exposed before he was  
8 parallel with me.

9 Q And then is he actually walking past you as  
10 he's exposing the gun?

11 A No. He stayed right there like even with me  
12 and then he told us to get on the floor and so I hit the  
13 deck and got on the floor.

14 Q When you hit the deck did you turn around and  
15 start walking or did you walk backwards?

16 A I don't understand the question.

17 Q You had to get from the vestibule into the  
18 living room, correct?

19 A Yeah.

20 Q Do you remember if you turned around or did you  
21 back up to go into the living room?

22 A Well, like if the door swings open like this,  
23 here's the little hallway and the edge of the carpet of the  
24 living room is right on the edge of the wood. So I just  
25 turned to my right and dove on the floor.

000264

13 1 Q Now, at this point in time do you get a look at  
2 his face?

3 A No.

4 Q As a matter of fact you gave a statement to the  
5 police that you didn't get a look at his face at all,  
6 correct?

7 A What's that?

8 Q You gave a statement to the police that you did  
9 not get a look at his face at all; is that correct?

10 A No. Not really.

11 Q So again to follow up on Mr. Oronoz's question,  
12 the description you're giving, the identification you're  
13 giving in court is based upon body type, the tall, skinny  
14 guy?

15 A Yes.

14 16 Q So as we sit here today looking at Mr. Wesley  
17 your identification is based upon the fact that he's a tall,  
18 skinny black man?

19 A Yes.

20 Q Not by the fact of looking at his face and  
21 saying that this is the individual that was in your house  
22 that night?

23 A No facial recognition. Just by body type, yes.

24 Q Do you know many tall, skinny black men?

25 A Yeah.

000265

14 1 Q Now, you made some comments when Miss Luzaich  
2 was asking you questions about, "he made me pull my pants  
3 down." Who was that, Mr. Wilson or Mr. Wesley?

4 A The shorter, stockier one.

5 Q And I am going to ask that obviously my client  
6 is Mr. Wesley, and the shorter guy is Mr. Wilson. So Mr.  
7 Wilson is the one that gave you instructions to pull your  
8 pants down?

9 A Yeah.

10 Q And it was Mr. Wilson that removed you from the  
11 house at gunpoint?

12 A Yes.

13 Q Where was Mr. Wesley at that point in time?

14 A When we got in the car to leave?

15 Q Just before you left the house where was he?

16 A He was sitting on the stairs.

17 Q Did he give you any instructions to leave the  
18 house?

19 A No.

20 Q You also described to the police somebody that  
21 you believed to be in charge of this situation, correct?

22 A Yes.

23 Q Who would that be?

24 A Mr. Wilson.

25 Q And I believe you actually described him as

000266



14

1 being the leader; is that correct?

2 A Yes.

3 Q That was Mr. Wilson?

4 A Uh-huh.

5 Q Now, when you and Mr. Wilson came back from  
6 going to the ATM you said that when you came back into the  
7 house you saw Mr. Wesley by the stairs?

8 A Yes.

9 Q Was he sitting on the stairs?

10 A He was sitting on the stairs.

11 Q When you entered the house is there a banister  
12 to the staircase like a handrail?

13 A Yes.

14 Q When you first come in where is the banister in  
15 relation to you seeing Mr. Wesley sitting? Is it between —

16 A Like you walk in the door, the stairs and the  
17 banister are parallel to the door.

18 Q So wouldn't Mr. Wesley be behind the banister?

19 A Yes.

20 Q So the banister would be between your view of  
21 Mr. Wesley and yourself when you're coming in?

22 A Yes. I could only see his body and his feet.

23 Q So you could see his body and feet, the rest of  
24 you was obstructed by the banister?

25 A Yes.

000267

14 1 Q Because you said you saw him sitting there and  
2 between his legs you saw a gun, correct?

3 A Yes.

4 Q Would that be then the way you're describing it  
5 that Mr. Wesley would have been sitting sideways toward you?

6 A Restate that.

7 Q When you walk in the door having returned with  
8 Mr. Wilson, the way you describe the staircase, the banister  
9 would be between you and Mr. Wesley?

10 A Yes.

11 Q Would Mr. Wesley then be sitting sideways, not  
12 directly facing you but sideways when you walked in the  
13 door?

14 A Yes.

15 Q And you were able to see a gun between his legs  
16 when he's sitting there sideways?

17 A Yes, because he was sitting with his knees up  
18 and the gun like right here on his legs.

19 Q So the gun was on his legs or between his legs?

20 A Like I see the stock of the gun and the back  
21 part of his hand on top of his leg and the gun was pointing  
22 down in between his legs.

23 Q So the gun was pointing down between the legs?

24 A Yes, sir.

25 Q And this is all observed by you with the

000268

14 1 banister between you and Mr. Wesley?

2 A Yes.

3 Q Were the lights on or off?

4 A The only thing that was permitting light was  
5 the glow from the TV.

6 Q Where was the TV located in relation to the  
7 staircase?

8 A It was probably five feet to the left in the  
9 living room.

10 Q Facing the staircase or away from the  
11 staircase?

12 A It's not facing the staircase.

13 Q So the light, the glow from the TV, would not  
14 be projecting on the staircase, correct?

15 A The -- well, it's a pretty big TV that we had  
16 in the house and it emitted a lot of light.

17 Q It would not be projecting or facing the  
18 staircase?

19 A No, it's not facing the staircase.

20 Q How far away were you when you observed Mr.  
21 Wesley on the staircase from him?

22 A Only a couple feet because the staircase is  
23 right by the door.

24 Q At that point in time you also didn't get a  
25 close enough look at his face, right?

000269

14

1 A No.

2 Q But you saw —

3 A Because the banister was like covering his  
4 face.

5 Q But you were able to see a stock of the gun?

6 A Yes.

15

7 Q In his hand on his leg?

8 A Yes.

9 Q You don't have any personal knowledge by having  
10 observed anything occur between Danielle and either of these  
11 two individuals, do you?

12 A Not any like as far as visual, no.

13 Q Any knowledge you have has either been told to  
14 you or something that you overheard?

15 A Yes.

16 Q As a matter of fact do you recall giving a  
17 statement to the police or actually answering the question  
18 from the police, "Was there anything that happened" —

19 MS. LUZAICH: Page?

20 MR. KOCKA: I am sorry. 45, lines 20 through  
21 22.22 Q "Was there anything that happened between  
23 Danielle and anybody that you're aware of?" and your  
24 response was, "No"?

25 MS. LUZAICH: Well, objection. That's not the

000270

1 whole question. "Was there anything else that happened?"

2 MR. KOCKA: Let me re-read the question.

3 Q "Do you know aside from Justin having to try to  
4 do things with his girlfriend and aside from them telling  
5 you to try to get yourself hard and do something was there  
6 anything else that happened between Danielle and anybody  
7 that you're aware of?" and do you recall your answer to  
8 that?

9 A No.

10 MR. KOCKA: May I approach?

11 THE COURT: Yes.

12 THE WITNESS: When he asked that question —

13 BY MR. KOCKA:

14 Q I'm not asking you to read into it. I'm asking  
15 do you recall giving that answer?

16 A Do I recall giving that answer?

17 Q Yes.

18 A Not particularly because there's a lot of  
19 questions being thrown at us.

20 Q You gave a statement to the police on February  
21 19th, 2007, correct?

22 A Yes.

23 Q And in response to that question, "Do you  
24 recall anything else happening between anyone that you're  
25 aware of and Danielle?" and was your answer, "No"?

000271

15 1 A If that's what it says, yes.

2 Q Is that what it says?

3 A Yes.

4 Q And this is your statement?

5 A Yes.

6 MR. KOCKA: Nothing further.

7

8

REDIRECT EXAMINATION

9

BY MS. LUZAICH:

10 Q Well, if you continue on, oh, about six or so  
11 lines later did you start talking about how they kept  
12 telling Danielle to spread her legs and hold her legs up and  
13 one of them stuck his fingers in her vaginal area, he asked  
14 if he could stick his fingers there and she said she minded  
15 but he proceeded to do it anyway and then he complained she  
16 wasn't wet, do you remember telling them that?

17 A Yes.

18 MS. LUZAICH: Thank you.

19 MR. KOCKA: Just one follow-up.

20

21

RECROSS EXAMINATION

22

BY MR. KOCKA:

23 Q Again you did not observe who was saying that,  
24 did you?

25 A What's that?

000?72



1 Q You did not see or observe who was saying that?

2 A No. My face was to the floor.

3  
4 FURTHER REDIRECT EXAMINATION

5 BY MS. LUZAICH:

6 Q But you heard it personally, you didn't hear it  
7 because somebody told you that was said?

8 A Re-say that again.

9 Q You personally heard that occurring?

10 A Yeah.

11 Q While it was happening?

12 A Yeah.

13 MS. LUZAICH: Thank you.

14 THE COURT: Thank you. You're excused and  
15 you're free to leave.

16 MS. LUZAICH: Can I have one minute before we  
17 call the next witness?

18 THE COURT: Yes.

19 (Off the record.)

20 MS. LUZAICH: May I call the next witness,  
21 Judge?

22 THE COURT: Yes.

23 MS. LUZAICH: Clint Tognotti.

24  
25 000273

15 1 CLINT TOGNOTTI,

2 called as a witness by the State, having been first duly  
3 sworn to tell the truth, the whole truth, and nothing but  
4 the truth, testified as follows:

5  
6 THE CLERK: Please state your full name and  
7 spell it for the record.

8 THE WITNESS: Clint Tognotti, C-l-i-n-t,  
9 T-o-g-n-o-t-t-i.

10  
11 DIRECT EXAMINATION

12 BY MS. LUZAICH:

13 Q Clint, is the young man who just left the  
14 courtroom your brother, Ryan?

15 A Yes, he is.

16 Q And on February 18th of 2007 was he living at  
17 590 Great Dane Court, Henderson, Clark County, Nevada?

18 A Yes, he was.

19 Q Was that the night of the All Star game?

20 A Yes.

21 Q Did you go to his house and were a bunch of you  
22 getting ready to watch a movie when something happened?

23 A Yes.

24 Q What happened?

25 A The doorbell rang. My brother said to come on

000274

15 1 in, we were expecting friends. And so Justin Foucault, his  
2 other roommate, said, "Check who it is." My brother got up,  
3 went to the door, looked through the peep hole and I looked  
4 back at the TV and the next thing I looked over again and  
5 the door was cracked a little bit, my brother is kind of  
6 looking around it and then the door got pushed open and two  
7 males came in. And I didn't know who they were.

8 My brother said, "Can I help you?" something to  
9 that effect. And then one guy started looking around and  
10 then I saw the other one behind him and then the other one  
11 started walking towards the middle of the living room.

12 Q Had you ever seen those two individuals before  
13 that in your life?

14 A No, I have not.

15 Q What was the ethnicity of the two individuals?

16 A They were black.

17 Q Was there something different about the two of  
18 them?

19 A One was stockier and shorter and the other one  
20 was taller, skinnier male.

21 Q Did one of them do more talking than the other?

22 A Yes.

23 Q Which was that?

24 A The stockier one.

25 Q Did you see one or both of them with something

000275

15 1 in their possession?  
16

2 A Yes.

3 Q How is it that you saw it? What did they do  
4 that caused you to see it?

5 A The first one came into the living room, walked  
6 really fast towards the middle. Me and my friend Aitor were  
7 sitting on the middle of the couch and he looked over to us,  
8 cocked his gun and put it like right in front of my face,  
9 said, "Get on the ground," and when he cocked the gun I  
10 could hear the bullet hit the table right in between my  
11 friend and I.

12 So I got on the ground. And later that night I  
13 looked up once and I could — I wasn't — I didn't know what  
14 kind of gun it was but I could see something to the effect  
15 it looked like a gun.

16 Q Now, let's go back a second. The one that came  
17 in quickly and cocked the gun, was that the skinnier one or  
18 the stockier one?

19 A The stockier one.

20 Q When you say you saw him cock the gun, did you  
21 get a good look at it so you could tell what kind of gun it  
22 was?

23 A Yes.

24 Q What kind of gun was it?

25 A Glock nine millimeter, black.

000276

16

1 Q Are you familiar with guns?

2 A Yes.

3 Q Is that why you could tell it was a Glock nine  
4 millimeter?

5 A Yes.

6 Q The other person, was that the taller, skinnier  
7 one?

8 A Yes.

9 Q The other taller, skinnier individual, you said  
10 you saw something in his hand that looked like a gun. How  
11 sure are you that it was a gun in the second individual's  
12 hand?

13 A About 75 percent sure. I got -- the silhouette  
14 of the gun, it wasn't totally dark, but it wasn't really  
15 light. So it looked like a gun. And I've seen plenty of  
16 guns so I wasn't going to question that.

17 Q And when you say you saw a silhouette of a gun,  
18 so it wasn't as if his hand was in his pocket pretending to  
19 be a gun?

20 A No.

21 Q And you said it was the skinnier one?

22 A Yes.

23 Q You said the stockier one was doing more  
24 talking. Did you get a good look at the stockier one's face  
25 at any point?

000?77

1 A When he first came in and pointed the gun I saw  
2 his face for probably three seconds before I got on the  
3 ground.

4 Q And do you see him here in court today?

5 A Yes.

6 Q Can you describe where he's sitting?

7 A The one on the right.

8 Q The one wearing what color?

9 A Blue.

10 MS. LUZAICH: Record reflect identification of  
11 the defendant Wilson?

12 THE COURT: Yes.

13 BY MS. LUZAICH:

14 Q Did you ever get a good look at the thinner  
15 one's face?

16 A Not really.

17 Q Do you see an individual in the courtroom with  
18 a body type the same as that individual?

19 A Yes, I do.

20 Q Can you describe where he's sitting?

21 A To the left in blue.

22 MS. LUZAICH: Record reflect identification of  
23 Wesley?

24 THE COURT: It shall.

25 000278



16

1 BY MS. LUZAICH:

2 Q The TV that's in the room, I asked you about a  
3 movie. Had you guys turned on the movie yet before these  
4 individuals came in?

5 A Yes, it was about five minutes into the movie.

6 Q And was the TV on when they came in?

7 A Yes.

8 Q Were the lights on when they came in?

9 A One was, a lamp.

10 Q Did somebody shut that off or cause it to be  
11 shut off?

12 A I don't know what time during the whole thing  
13 it was shut off, but both the light and the TV were shut  
14 off. TV was shut off later when the movie ended. The movie  
15 was rolling, like the credits, and then they said, "How do  
16 you shut this thing off?"

17 Q So the movie was rolling the credits when they  
18 shut it off?

19 A Yeah. We watched the whole -- or heard the  
20 whole movie from the ground.

21 Q What movie was it?

22 A School for Scoundrals.

23 Q About how long is that movie?

24 A I watched it last weekend so it's about two  
25 hours.

000279

16

1 Q So these individuals were in your home for  
2 almost two hours?

3 A Yeah.

4 Q Or in the home?

5 A Yes.

6 Q How big is the TV?

7 A How did they use it?

8 Q How big is the TV?

9 A It's a big screen TV. About 30, 32, 35 inches.

10 Q So it's not one of the small ones?

11 A Yes.

12 Q And it emitted a bit of light?

13 A Yeah.

14 Q So the gun cocks, bullet comes out, you hit the  
15 ground and is somebody giving instructions about what to do?

16 A Yes.

17 Q And what were the instructions?

18 A To get on the ground and put our hands out and  
19 put our face down and don't look up.

20 Q Who gave you the instructions?

21 A The stockier one.

17

22 Q Did one of the individuals also ask for  
23 something from you guys?

24 A He asked where Grant was at.

25 Q But did he ask for something in — some thing

000280

17

1 from you guys?

2 A At any time during the whole thing?

3 Q As time progressed.

4 A Yes.

5 Q What did they ask?

6 A For money.

7 Q Who asked for the money?

8 A The stockier gentleman.

9 Q Did he ask for anything in particular, I mean  
10 did he say cough up your wallets or did he say we want  
11 money?

12 A He kept asking all of us how much we had and  
13 nobody had a thousand dollars that he said he wanted.

14 Q So somebody said they wanted a thousand  
15 dollars?

16 A Yes.

17 Q Which one said that?

18 A The stockier one.

19 Q And who was in the room at that time?

20 A My brother, myself, Aitor and Justin Foucault.

21 Q Were there two other individuals in the house  
22 as well?

23 A Yes.

24 Q Who else was in the house?

25 A Those two.

000281

17

1 Q Who was in the actual --

2 A Justin and his girlfriend were in the other  
3 room asleep.

4 Q And had they been in the other room sleeping  
5 for awhile before the defendants got there?

6 A For about an hour.

7 Q Did the defendants cause them to come out?

8 A Yes.

9 Q Which one if only one of them caused Justin and  
10 Danielle to come out?

11 A I wasn't sure which one went in, but I could  
12 hear a voice back there in his room saying -- kept saying  
13 his name Justin and I kept hearing Justin say, "What?"

14 Q During the course of time that these  
15 individuals were in your home did you hear one or both of  
16 them use a name?

17 A I heard one say -- I heard Narcus and I thought  
18 that was a name. I told the police officer later that I  
19 thought I heard the name Narcus.

20 Q When Justin and Danielle came out were they  
21 also ordered to lay on the ground?

22 A Yes.

23 Q And who ordered them to lay on the ground?

24 A The stockier one.

25 Q Did there come a time that one of you guys

000282

17

1 left?

2 A Yes.

3 Q Who left?

4 A My brother.

5 Q Your brother Ryan?

6 A Yeah.

7 Q Who did he leave with?

8 A The stockier one.

9 Q Why did he leave with the stockier one?

10 A The guy didn't -- he wanted a thousand dollars  
11 and no one had that much money. So he said he's got ATM  
12 cards. And my brother offered his and Justin Foucault  
13 offered the other ATM card. And then he asked for the PIN  
14 numbers and then he took my brother and told the other guy  
15 to hold us down and if we pick our head up to shoot us.

16 Q Did the stockier one and your brother leave?

17 A Yes.

18 Q While they were gone was the thinner one there  
19 with you?

20 A Yes.

21 Q What did he do while your brother and the  
22 stockier one were gone?

23 A He was silent for about 15 minutes. And then  
24 the only thing I heard him say, he asked us how far away the  
25 bank was. And that's all I heard him say.

000283

17           1           Q     And were you scared while all this was going  
2           2           on?

3           3           A     Yes, I was.

4           4           Q     Were you scared when the stockier one came and  
5           5           put a gun in your face?

6           6           A     Yes, I was.

7           7           Q     When the stockier one and your brother came  
8           8           back did you hear things going on between them and Justin  
9           9           and Danielle?

10          10          A     Yes, I did.

11          11          Q     Did they cause you to do anything?

12          12          A     No. They did not. They asked me if I get hard  
13          13          and I told them no and then they left me alone.

14          14          Q     Did you hear things going on with Ryan your  
15          15          brother?

16          16          A     Yes, I did. He was to my right.

17          17          Q     Did there come a time that they left?

18          18          A     Who?

19          19          Q     The defendants.

20          20          A     Just that one time when --

21          21          Q     Ultimately left?

22          22          A     Oh, yes. Yes.

23          23          Q     And you said that they got there shortly after  
24          24          the movie started and they left after the movie ended so  
25          25          around two hours?

000284



17

1 A Uh-huh.

2 Q When they left, how did that occur ultimately  
3 in the end?4 A They said, "Keep your heads down, we are going  
5 to -- we want you to count to two minutes, we are going to  
6 leave and count out loud for two minutes and then you can  
7 get up. And to not call the cops," or they'll have somebody  
8 come up and shoot us.9 Q Did you lose any property during this? Was any  
10 property taken from you?11 A Just my cell phone, but then he left them out  
12 in the rocks.

13 Q So you got your cell phone back?

14 A Yes.

15 Q When they were asking for money talking about  
16 the thousand dollars did you have any money or a wallet with  
17 you?18 A I did not have my wallet because I was wearing  
19 shorts and I just left it in my car.

20 MS. LUZAICH: Thank you. I'd pass the witness.

21 THE COURT: Cross, Mr. Kocka.

22 MR. KOCKA: Thank you, Judge.

23

24

25

18

000285

CROSS-EXAMINATION

BY MR. KOCKA:

Q Do you prefer to go by Clint or Clinton?

A Clint.

Q Did it appear to you that there was one in charge of the situation?

A Yes.

Q And who would that be?

A The stockier gentleman.

Q Would that be Mr. Wilson? And let me clear it up for you, the gentleman that I have got my hand on right now is Mr. Wesley, the individual directly to his left is Mr. Wilson. The person that you described to the police as being way more in charge, would that be Mr. Wilson?

A Yes.

Q Now, you indicated about the first guy that came in, was that Mr. Wilson?

A Yes.

Q And that was the individual that you saw with the gun in his hands?

A Yes.

Q And that was the individual that cocked the gun?

A Yes.

Q And put it in your face?

000286

18 1 A Yes.

2 Q Now, after he did that you testified that you  
3 put your face down on the ground, correct?

4 A Uh-huh.

5 Q Yes?

6 A Yes.

7 Q And I believe you told Miss Luzaich that you  
8 looked up briefly and saw something that looked like a gun?

9 A Yes.

10 Q In Mr. Wesley's hand?

11 A Yes.

12 Q And I believe you said that you were about 75  
13 percent sure that it was even a gun?

14 A Yes.

15 Q So as you sit here today you're not positive  
16 that Mr. Wesley even had a gun, are you?

17 A Not a hundred percent positive.

18 Q As a matter of fact do you recall giving a  
19 statement to the police on February 19th?

20 A Yes.

21 Q In that statement do you recall telling them —  
22 MS. LUZAICH: Page.

23 MR. KOCKA: Page six at lines nine through 13.

24 Q When asked if Mr. Wesley had a gun, you said  
25 yeah. Asked to describe what the gun looked like and you

000287

18           1       answered, "I didn't get a good look at the gun because just  
2           2       if I picked up my head they'd get pissed."

3           A       Yes.

4           Q       You don't know if it was a gun or not, do you?

5           A       Well, when I see a silhouette of a gun and I'm  
6       being robbed I'm going to assume it's a gun.

7           Q       You know assumptions are very dangerous things?

8           A       Yes, I do.

9           MS. LUZAICH: Objection.

10       BY MR. KOCKA:

11           Q       This is an assumption that you're making,  
12       right?

13           A       No.

14           Q       Isn't what you just said you are going to  
15       assume it's a gun?

16           A       I am going to highly think it's a gun or  
17       assumed.

18           Q       I think we're playing a game of semantics. I  
19       think your word you chose is you are going to assume --

20           MS. LUZAICH: Asked and answered.

21           THE COURT: Sustained.

22       BY MR. KOCKA:

23           Q       You're not positive it was a gun, are you?

24           A       Not a hundred percent, I already answered that  
25       question.

000288

18 1 Q It could have just as easily been something  
2 else?

3 A No, it couldn't have. Not as easily.

4 Q It could have been something else?

5 MS. LUZAICH: Speculation.

6 THE COURT: Sustained.

7 MS. LUZAICH: We get the point.

8 BY MR. KOCKA:

9 Q Now, another point you never really got a good  
10 look at Mr. Wesley's face, correct?

11 A No.

12 Q So your identification is based upon the body  
13 type?

14 A Yes. And he fits it pretty well.

15 Q Tall, thin black man?

16 A Yes.

17 Q How many tall, thin black men do you know?

18 A Probably three that I'm good friends with.

19 Q I didn't say good friends with. That you know?

20 A That I know? Numerous.

21 Q So it would be a fair assumption to say there  
22 are numerous tall, thin black men in this world?

23 A Yes.

24 Q Without looking at the facial characteristics  
25 of one can you identify one from the other by just looking

000289

18

1 at their body type?

2 A Depends on the two people.

3 Q Could you do it so positively?

4 A No, not a hundred percent.

5 Q When you say that the individuals came into the  
6 house, you said that there was one I believe small light on.  
7 Where was that light located?

8 A In the living room.

9 Q Whereabouts?

10 A It was to my right. There's a recliner —  
11 there's a couch and then a recliner diagonal to the couch  
12 and it's in between the couch and the recliner.

13 Q Anything else besides the light and from the  
14 TV?

15 A There might have been but I don't remember.

16 Q You said that the TV was turned off at some  
17 point. Was that before or after Mr. Wilson returned with  
18 Ryan from going to his little excursion?

19 A I don't recall.

20 Q Do you recall if the TV was on when they came  
21 back?

22 A No. I wasn't too worried about the TV.

23 Q You paid attention enough to know that the  
24 credits were rolling, right?

25 A Yeah.

000290



19           1           Q     Do you remember when that was happening in  
2 relation to everything going on?

3           A     It was later on and I just remember looking up  
4 and kind of thinking wow, we've been on the ground for two  
5 hours.

6           Q     Do you know if that was before or after Wilson  
7 came back with Ryan?

8           A     No, I do not.

9           MR. KOCKA: Pass the witness.

10          THE COURT: Mr. Oronoz.

11  
12                           CROSS-EXAMINATION

13 BY MR. ORONOS:

14          Q     If I can call you Clint, I don't want to  
15 butcher your last name.

16                 Let me ask you a few questions and I'd like to  
17 establish a time frame from when the two individuals came in  
18 the door or came to the door.

19          A     Okay.

20          Q     If I can direct your attention to that point.

21          A     Uh-huh.

22          Q     Did you go to the door?

23          A     No, I did not.

24          Q     Where were you at when the two individuals  
25 knocked on the door?

000291

19

1 A I was on the right side of the couch the  
2 furthest part away from the door.

3 Q So I just want to make sure I understand. Were  
4 you the furthest person in the room from the door?

5 A If you saw the living room it would be hard to  
6 tell who was the furthest away from like the door. There's  
7 two seats -- there's a seat that's kind of like right with  
8 the end of the couch so -- and I don't know if my brother  
9 was sitting in that seat when he went to answer the door. I  
10 just know that he was the one that went to the door.

11 Q Where is the couch in relation to the door?

12 A Like here is the door like right here, the  
13 couch is on the wall back here. If you just walk straight  
14 and you'll run into the couch.

15 Q So you were seated when the individuals came in  
16 the room?

17 A Uh-huh. Yes.

18 Q And how long after they came in the room did  
19 they have you put your heads down?

20 A Ten seconds.

21 Q So within a matter of ten seconds your heads  
22 were down, correct?

23 A Yes.

24 Q After that they directed you to lay down on the  
25 ground; is that correct or not?

000292

19           1           A       No, not totally. They made us get on our knees  
2           2           and then said get on the ground. Like they'd say -- because  
3           3           the table is right in front of the couch so I had to walk  
4           4           around and they said to get down on the floor. And then  
5           5           they just told us to put our heads down and keep our arms in  
6           6           the middle of the circle. So it wasn't like we had to put  
7           7           our heads down like they just wanted us to get on the ground  
8           8           and put our heads down as fast as --

9           Q       Tell me if this is correct. Basically the  
10          sequence would be put your heads down?

11          A       Uh-huh.

12          Q       Next line is get on your knees with your heads  
13          down?

14          A       Just pretty much they didn't instruct us  
15          throughout the whole movement. Just to get down and keep  
16          your head down and don't look up.

17          Q       But throughout the movement the heads were  
18          down?

19          A       I wasn't going to look up.

20          Q       And the instruction was it was pretty clear you  
21          better not look at us, correct?

22          A       Yes.

23          Q       That was something you took seriously?

24          A       Yes.

25          Q       And you in fact did not look at them, correct?

000293

19

1           A     I saw his face because I didn't know what was  
2 going on -- I saw the stockier gentleman's face for an  
3 instant because I still didn't know what was going on for  
4 sure. And when he pulled the gun out, it was just hectic,  
5 but I looked up and I saw him and then that's when he told  
6 us like within a split second after he pulled the gun out he  
7 started instructing us to the floor.

8           Q     So it's your testimony you saw the stockier  
9 suspect's face for a split second; is that correct?

10          A     Yes.

11          Q     And this occurred when he was at the door and  
12 you were at the far end of the couch?

13          A     No. He was walking fastly into the middle of  
14 the living room and he was right in front of the couch and  
15 the gun was probably a foot away from our heads.

16          Q     Let me ask you this: Were you shown photos of  
17 possible suspects in this case?

18          A     Yes, I was.

19          Q     By detectives?

20          A     Yes.

21          Q     And did you make any positive identifications?

22          A     I don't recall. I don't even know they told us  
23 that yet.

24          Q     Well, they showed you a number of photographs;  
25 is that correct?

000294

19 1 A Yes. I know which ones I picked.

2 Q And you picked one or did you pick a number of  
3 them?

4 A I picked one for sure and then the other one I  
5 told the detective that I am not positive, but that it looks  
6 like him.

7 Q So one you identified for sure and one could  
8 have been a suspect; is that correct?

9 A Yes.

10 Q And did you put anything in writing to that  
11 effect, like did they have you write down like this is  
12 number two or three or whatever?

20 13 A Yes. They told me to write I had reasonable  
14 suspicion that it was these two, not that I totally -- I  
15 think on one it was more like reinforced that I knew who he  
16 was, but the other one they made sure I wrote just like I  
17 have reasonable suspicion.

18 Q Did they tell you the words to write?

19 A They told me that I should put that.

20 Q Did they tell you what you should put on the  
21 one you really felt was the suspect?

22 A They just said -- I told them what I said and  
23 they said put that on that, write that down.

24 Q And do you recall which detective that was  
25 with?

000295

20 1 A No, I do not.

2 MR. ORONoz: I have no further questions.

3 MS. LUZAICH: Nothing.

4 THE COURT: Thank you for your testimony.

5 You're excused and you're free to leave.

6 Next witness.

7 MS. LUZAICH: Justin Foucault.

8 MR. ORONoz: I should have done this earlier,  
9 if you can instruct the witnesses not to discuss what's  
10 going on.

11 MS. LUZAICH: Oh, I told them that.

12  
13 JUSTIN FOUCAULT,

14 called as a witness by the State, having been first duly  
15 sworn to tell the truth, the whole truth, and nothing but  
16 the truth, testified as follows:

17  
18 THE CLERK: Please state your full name and  
19 spell it for the record.

20 THE WITNESS: Justin Foucault, J-u-s-t-i-n,  
21 F-o-u-c-a-u-l-t.

22  
23 DIRECT EXAMINATION

24 BY MS. LUZAICH:

25 Q Justin, I am going to take you back to

000296



20 1 February 18th of 2007. That night around ten o'clock were  
2 you at 690 Great Dane Court in Henderson, Clark County,  
3 Nevada?

4 A Yes.

5 Q And were you there with Ryan Tognotti, Clint  
6 Tognotti, Aitor Eskandor all getting ready to watch a movie  
7 on All Star night?

8 A Yes.

9 Q Were two other individuals also in the house  
10 but sleeping?

11 A Yup.

12 Q Was that Justin Richardson and Danielle  
13 Browning?

14 A Yes, it was.

15 Q As you guys were getting ready to watch a movie  
16 that night did something happen?

17 A Yes.

18 Q What happened?

19 A We heard a knock at the door.

20 Q And did individuals come into the home?

21 A We said come in because we were expecting  
22 people to come over that night and I told Ryan to get up and  
23 go to the door, make sure it wasn't our neighbor down the  
24 street. And as he began to open the door two individuals  
25 walked in.

000297

20           1           Q     Can you describe the ethnicity of these  
          2 individuals?

          3           A     Two black males.

          4           Q     Could you describe was there a difference  
          5 between the two of them?

          6           A     Yeah. One was shorter and a little stockier,  
          7 bigger built, and the other one was tall and skinny.

          8           Q     Did you see anything in the possession of  
          9 either or both of them as they were in the house?

         10           A     Yes. After awhile they both pulled out guns,  
         11 pistols.

         12           Q     When you say "they both pulled out guns," did  
         13 you see them both reach somewhere and pull guns out?

         14           A     Yes. Reached by their hips and pulled out a  
         15 dark pistol.

         16           Q     Did both of them do that?

         17           A     Yes.

         18           Q     The shorter, stockier one, could you see the  
         19 pistol in his hand?

         20           A     Yes.

         21           Q     What color was it?

         22           A     It was a dark color.

         23           Q     And are you familiar enough with guns that you  
         24 know the difference between a revolver and automatic or  
         25 semiauto?

000298

20

1 A Yeah.

2 Q And was that one a revolver or automatic or  
3 semiautomatic?

4 A It was automatic, they were not a revolver.

5 Q And then the skinnier individual, you actually  
6 saw him pull a gun out of his waistband?

7 A Yes.

8 Q And was that a revolver or automatic or  
9 semiautomatic?

10 A It was automatic or semiautomatic, not a  
11 revolver.

12 Q What color was that gun?

13 A Same, dark color.

14 Q Did one or both of them start instructing you  
15 guys to do things?

16 A Yeah. The stockier, shorter one told us to get  
17 on the floor, put our hands together in a circle on each  
18 other's hands and face down and don't look up.

19 Q Did you do that?

20 A Yes.

21 Q Did you do that because you were scared and  
22 they had a gun?

23 A Yes.

24 Q Did one or both of them ask for anything in  
25 particular?

000299