

Any evidence of a statement made by one alleged conspirator other than at this trial shall not be considered by you as against another alleged conspirator unless you shall first determine from other independent evidence that at the time the statement was made a conspiracy to commit a crime existed and unless you shall further determine that the statement was made during the course and in furtherance of the conspiracy.

Whenever there is slight evidence that a conspiracy existed, and that the defendant was one of the members of the conspiracy, then the statements and the acts by any member of the conspiracy may be considered by the jury as evidence in the case as to the defendant. This is true even though the statements and acts may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy.

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

6 If you believe that a witness has lied about any material fact in the case, you may  
7 disregard the entire testimony of that witness or any portion of his testimony which is not  
8 proved by other evidence.  
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2 A witness who has special knowledge, skill, experience, training or education in a  
3 particular science, profession or occupation is an expert witness. An expert witness may  
4 give his opinion as to any matter in which he is skilled.

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

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

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your  
9 decision should be the product of sincere judgment and sound discretion in accordance with  
10 these rules of law.  
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When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

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

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

1  
2 If, during your deliberation, you should desire to be further informed on any point of  
3 law or hear again portions of the testimony, you must reduce your request to writing signed  
4 by the foreperson. The officer will then return you to court where the information sought  
5 will be given you in the presence of, and after notice to, the district attorney and the  
6 Defendant and his/her counsel.

7 <sup>Rebuttal</sup> Playbacks of testimony are time-consuming and are not encouraged unless you deem  
8 it a necessity. Should you require a playback, you must carefully describe the testimony to  
9 be played back so that the court recorder can arrange his/her notes. Remember, the court is  
10 not at liberty to supplement the evidence.  
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Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN:

April 17, 2008

DISTRICT JUDGE

1 VER

FILED IN OPEN COURT  
APR 18 2008 2:53pm

DISTRICT COURT  
CLARK COUNTY, NEVADA  
CHARLES J. SHORT  
CLERK OF THE COURT

2  
3  
4 THE STATE OF NEVADA,  
5  
6 Plaintiff,

qv THERESA LEE

DEPUTY

7 -vs-

CASE NO: C232494

DEPT NO: XXIV

8 NARCUS S. WESLEY,  
9 Defendant.

10 VERDICT

11 We, the jury in the above entitled case, find the Defendant NARCUS S. WESLEY, as  
12 follows:

13 COUNT 1 - CONSPIRACY TO COMMIT BURGLARY

14 *(please check the appropriate box, select only one)*

15 ☒ Guilty of Conspiracy To Commit Burglary

16 ☐ Not Guilty

17  
18  
19 COUNT 2 - CONSPIRACY TO COMMIT ROBBERY

20 *(please check the appropriate box, select only one)*

21 ☒ Guilty of Conspiracy To Commit Robbery

22 ☐ Not Guilty  
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**COUNT 3 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON**

(690 Great Dane Court)

*(please check the appropriate box, select only one)*

☒ Guilty of Burglary While In Possession Of A Deadly Weapon

☐ Guilty of Burglary

☐ Not Guilty

**COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON (Justin Richardson)**

*(please check the appropriate box, select only one)*

☒ Guilty of Robbery With Use of a Deadly Weapon

☐ Guilty of Robbery

☐ Not Guilty

**COUNT 5 - ASSAULT WITH USE OF A DEADLY WEAPON (Aitor Eskandon)**

*(please check the appropriate box, select only one)*

☒ Guilty of Assault With Use of a Deadly Weapon

☐ Guilty of Assault

☐ Not Guilty

**COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON (Justin Foucault)**

*(please check the appropriate box, select only one)*

☒ Guilty of Robbery With Use of a Deadly Weapon

☐ Guilty of Robbery

☐ Not Guilty

1  
2 **COUNT 7 – ROBBERY WITH USE OF A DEADLY WEAPON (Ryan Tognotti)**

3 *(please check the appropriate box, select only one)*

- 4 ☒ Guilty of Robbery With Use of a Deadly Weapon  
5 ☐ Guilty of Robbery  
6 ☐ Not Guilty

7  
8 **COUNT 8 – ASSAULT WITH USE OF A DEADLY WEAPON (Clinton Tognotti)**

9 *(please check the appropriate box, select only one)*

- 10 ☒ Guilty of Assault With Use of a Deadly Weapon  
11 ☐ Guilty of Assault  
12 ☐ Not Guilty

13 **COUNT 9 – ROBBERY WITH USE OF A DEADLY WEAPON (Danielle Browning)**

14 *(please check the appropriate box, select only one)*

- 15 ☒ Guilty of Robbery With Use of a Deadly Weapon  
16 ☐ Guilty of Robbery  
17 ☐ Not Guilty

18  
19 **COUNT 10 – FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (Ryan Tognotti)**

20 *(please check the appropriate box, select only one)*

- 21 ☐ Guilty of First Degree Kidnapping With Use Of A Deadly Weapon  
22 ☐ Guilty of First Degree Kidnapping  
23 ☒ Guilty of Second Degree Kidnapping With Use Of A Deadly Weapon  
24 ☐ Guilty of Second Degree Kidnapping  
25 ☐ Not Guilty

1 **COUNT 11** – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

2 (Honda Civic)

3 *(please check the appropriate box, select only one)*

4 ☒ Guilty of Burglary While In Possession Of A Deadly Weapon

5 ☐ Guilty of Burglary

6 ☐ Not Guilty

7  
8 **COUNT 12** – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

(Danielle Browning - fellatio)

9 *(please check the appropriate box, select only one)*

10 ☒ Guilty of Sexual Assault With Use of a Deadly Weapon

11 ☐ Guilty of Sexual Assault

12 ☐ Not Guilty

13  
14 **COUNT 13** – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

(Danielle Browning - cunnilingus)

15 *(please check the appropriate box, select only one)*

16 ☒ Guilty of Sexual Assault With Use of a Deadly Weapon

17 ☐ Guilty of Sexual Assault

18 ☐ Not Guilty

19  
20 **COUNT 14** – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

(Justin Richardson - fellatio)

21 *(please check the appropriate box, select only one)*

22 ☒ Guilty of Sexual Assault With Use of a Deadly Weapon

23 ☐ Guilty of Sexual Assault

24 ☐ Not Guilty

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**COUNT 15 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON**  
(Justin Richardson - cunnilingus)

*(please check the appropriate box, select only one)*

☒ Guilty of Sexual Assault With Use of a Deadly Weapon

☐ Guilty of Sexual Assault

☐ Not Guilty

**COUNT 16 - COERCION WITH USE OF A DEADLY WEAPON**  
(Ryan Tognotti)

*(please check the appropriate box, select only one)*

☒ Guilty of Coercion With Use of a Deadly Weapon

☐ Guilty of Coercion

☐ Not Guilty

**COUNT 17 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON**  
(Danielle Browning - digital penetration)

*(please check the appropriate box, select only one)*

☒ Guilty of Sexual Assault With Use of a Deadly Weapon

☐ Guilty of Sexual Assault

☐ Guilty of Open or Gross Lewdness With Use of a Deadly Weapon

☐ Guilty of Open or Gross Lewdness

☐ Not Guilty

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1  
2 **COUNT 18** - OPEN OR GROSS LEWDNESS WITH USE OF A DEADLY WEAPON  
(Danielle Browning)

3 *(please check the appropriate box, select only one)*

- 4 ☒ Guilty of Open Or Gross Lewdness With Use Of A Deadly Weapon  
5 ☐ Guilty of Open Or Gross Lewdness  
6 ☐ Not Guilty

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8 DATED this 18<sup>th</sup> day of April, 2008

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*Clara*  
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.  
NARCUS WESLEY,  
Defendant.

Case No. 07-C-232494-C  
Dept. 24

TRANSCRIPT OF PROCEEDINGS

Opening Statement of Mr. Landis

COURTHOUSE

April 11, 2008

Las Vegas, Nevada

Reported by:

Lee M. Bahr, CP, CCR 173

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APR 21 2008  
CLERK OF THE COURT

1 APPEARANCES:

2  
3 For the State:

LISA LUZAICH, ESQ.  
Chief Deputy D. A.  
Las Vegas, NV.

4 and

5 STACY KOLLINS, ESQ.  
Chief Deputy D. A.  
6 Las Vegas, NV.

7  
8  
9 Defendant present out of custody.

10 For the Defendant:

CASEY LANDIS ESQ.  
Deputy P. D.  
Las Vegas, NV.

11 and

12 JEFFREY BANKS, ESQ.  
Deputy P. D.  
13 Las Vegas, NV.

14  
15  
16  
17  
18 No other appearances.

19  
20 \*\*\*\*\*

## TRANSCRIPT OF PROCEEDINGS

MR. LANDIS: Thank you, Judge.

Ladies and gentlemen, meet Narcus Wesley.

Despite the picture the State wants to paint today, it is an honor and a privilege for me to represent him, and I promise I speak for Mr. Banks when I say that, too.

That seat over there, the seat Narcus is sitting in, that was originally reserved for Delarian Wilson.

Delarian Wilson chose not to take that seat, and that is what this case is about.

It's about choices.

It is about those who have the power to make choices, and it is about those who were forced to do things they didn't want to do, and really that's what life is about, isn't it?

It is about choices.

Everyday we all make choices. We decide what to wear, what to eat, where to go, what to do, and in the grander scheme of things we choose who we spend our life with, what path our life is going to take.

But that power is not limitless, and the law recognizes that.

There are certain choices that have consequences.

1 There are certain choices that have legal consequences.

2 Our law punishes certain choices, some with  
3 monetary fines. Some choices are punished with jail or  
4 prison time, and some choices are even punished with  
5 death.

6 We all know that.

7 Behind that theory, behind our theory of  
8 punishment is the idea that you must live with the  
9 consequences of your choices, that you can be punished  
10 for making certain choices, however, what also goes hand  
11 and hand with that theory is that we are only punished  
12 for those choices that are voluntary, those choices that  
13 we can control.

14 To punish somebody for something that's not  
15 in his power isn't right, and we recognize that, and  
16 we don't do it. We don't punish people for things they  
17 can't control.

18 And that is this case, ladies and gentlemen.  
19 Narcus Wesley had no control over what happened that  
20 night.

21 The State wants to speak today about day's  
22 events. This isn't a case about day's events. This  
23 is a case about Narcus Wesley, and it will also become  
24 a case about Delarian Wilson. Let's talk about what  
25 Narcus Wesley did, what he had control over, and what

1 he had the power to control.

2 It is not fair to do anything else though  
3 Delarian chose not to be here.

4 The bottom line is Narcus Wesley was forced  
5 into a scenario, and he did the best he could with the  
6 tools he had, and that's the bottom line.

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

9 As the State said, and they are correct,  
10 Danielle Browning was raped. Many of those kids were  
11 robbed. One of those kids was kidnapped.

12 They were terrorized for upwards of two hours.  
13 They had guns waved in their faces.

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

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

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

25 But this isn't about feeling sympathy.

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

6           People say, people often say that criminal law  
7           attorneys, or especially criminal defense attorneys get  
8           numb. Well, I promise you not here and not in this case.

9           Narcus Wesley is not responsible for what happened  
10          that night.

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

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

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

23          Narcus Wesley was nervous, apprehensive, hesitant,  
24          kind of standing off in the background.

25          I ask you to ask yourselves during this trial,

1 why didn't the State mention that during opening statement?

2 Do you think they would take that same approach  
3 if Delarian Wilson was sitting on trial?

4 Do not do what they want you to do, which is to  
5 lump these two men together because they are not the same.

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

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

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

13 Delarian, who he used to play football with,  
14 gave him a phone call and said, hey, I'm in town, if you  
15 want to catch up, maybe go out.

16 Narcus asked his father for permission and then  
17 set out to meet Delarian. They met up. They talked what  
18 they wanted to do, and like a lot of young men do, they  
19 decided to go and try and buy some marijuana.

20 Delarian said, I know a guy, and Narcus said,  
21 all right.

22 So they go to this house that we have heard  
23 about, the house is on Great Dane, and when they walked  
24 up to that door it was Narcus's sole intent to go there  
25 and buy marijuana. That was the choice he made.



1 He had no idea that Delarian Wilson intended  
2 to go into that house and rob those kids. That's the  
3 choice Delarian Wilson made.

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

7 He did not choose that scenario. He had no  
8 control over that scenario.

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

13 You will hear from each one of these kids.  
14 Narcus wasn't ordering these kids to the ground.

15 Narcus wasn't asking for wallets.

16 Narcus wasn't asking for pin numbers.

17 Narcus didn't ask to go to the ATM.

18 He just kind of stood there. He didn't know  
19 what was going on. He was in shock.

20 That was Delarian Wilson's choice. That was  
21 Delarian Wilson's choice and Delarian Wilson's choice  
22 alone.

23 Narcus Wesley didn't have a say.

24 He did the best he could in that scenario, and  
25 the evidence will show you that. Narcus Wesley didn't

1 want to rob these people. Narcus Wesley did not rob  
2 these people.

3 What the evidence will show you in this case,  
4 and I am confident that it will, is that Narcus Wesley did  
5 not want these crimes to occur.

6 That was not his choice.

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

10 Thank you.

11 THE COURT: Thank you, counsel.

12 \*\*\*\*\*

13 (End of proceedings.)

14 \*\*\*\*\*

## CERTIFICATE

STATE OF NEVADA )

) ss.

CLARK COUNTY )

I, LEE M. BAHR, CP, CCR 173, do hereby certify that I reported the foregoing proceedings; that the same is true and correct as reflected by my original machine shorthand notes taken at said time and place before the Hon. James M. Bixler, District Judge, presiding.

Dated at Las Vegas, Nevada, this  
8th day of April, 2008.



LEE M. BAHR, CP, CCR 173

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CLERK OF THE COURT

1 ORDR

2 DAVID ROGER  
3 Clark County District Attorney  
4 Nevada Bar #002781  
5 STACY KOLLINS  
6 Chief Deputy District Attorney  
7 Nevada Bar #005391  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 NARCUS SAMONE WESLEY,  
12 #1757866

13 Defendant.

CASE NO: C232494

DEPT NO: XXIV

Expedited  
ORDER FOR TRANSCRIPT

14 Upon the ex-parte application of the State of Nevada, represented by DAVID  
15 ROGER, District Attorney, by and through, STACY KOLLINS, Chief Deputy District  
16 Attorney, and good cause appearing therefore,

17 IT IS HEREBY ORDERED that a transcript of the Franks hearing heard on the 9th  
18 day of April, 2008, be prepared by LEE BAHR, Court Reporter for the above-entitled Court.

19 DATED this 11<sup>th</sup> day of April, 2008.

20  
21 DISTRICT JUDGE

22 DAVID ROGER  
23 District Attorney  
24 Nevada Bar #002781

25 BY

26 STACY KOLLINS  
27 Chief Deputy District Attorney  
28 Nevada Bar #005391

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APR 24 2008

CLERK OF THE COURT

Narcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101  
Defendant, Pro Se

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*Clara [Signature]*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

NARCUS SAMONE WESLEY.,

Defendants.

CASE NO. C232494B

DEPT. NO. XXIV

MOTION FOR NEW TRIAL

COMES NOW the defendant, above-named and appearing pro se, and respectfully  
moves this Honorable Court for an order granting him a new trial. NRS.176.515.

-1-

That this motion is made and based upon the annexed memorandum of authorities  
and all pleadings and papers on file herein.

Dated this 24 day of APRIL, 2008.

Respectfully submitted,

*N. Wesley*  
Narcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101

MEMORANDUM OF AUTHORITIES

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CLERK OF THE COURT

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After a jury trial, defendant was convicted of several felony counts including sexual assault with the use of a deadly weapon and kidnapping with the use of a deadly weapon.

NRS.176.515 provides:

. The court may grant a new trial to a defendant if required as a matter of law or on the ground of newly discovered evidence.

2. If trial was by the court without a jury the court may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment.
3. Except as otherwise provided in NRS 176.0918, a motion for a new trial based on the ground of newly discovered evidence may be made only within 2 years after the verdict or finding of guilt.
4. A motion for a new trial based on any other grounds must be made within 7 days after the verdict or finding of guilt or within such further time as the court may fix during the 7-day period under the conditions stated therein.

Issues Presented

The State destroyed the evidence supporting defendant's Miranda claim

When Henderson Police initially apprehended and detained defendant in the home defendant shared with his father, both defendant and his father demanded counsel. The entire incident was videotaped by police. Yet when the taperecording was played in court, that section was conspicuously absent. United States v. Agurs, 427 U.S. 97 (1976) requires a prosecutor to turn over to the defense evidence that was "clearly supportive of a claim of innocence" even without a defense request. In Brady v. Maryland, 373 U.S. 83 (1963), the court held that "the suppression by the prosecution of evidence favorable to the accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id.*, at 87. Indeed, Agurs specifically held that the prosecution had a duty to disclose some evidence of this description even though no requests were made for it. Agurs, *supra*, 427 U.S. at 111.

Defendant contends that the tape was blank because police erased the portions of it which would have shown that he invoked his right to counsel long before the interrogation. Had that evidence been preserved, instead of destroyed, the damning admissions made by defendant to police during interrogation would have been inadmissible at trial.

Defendant's Sixth Amendment confrontation rights were violated when  
The codefendant's taped statements were admitted during trial.

During defendant's trial the state offered and the court admitted the tape  
recorded statements of codefendant Delarian Wilson. Wilson had refused to testify  
during defendant's trial. Crawford v. Washington, 124 S.Ct. 1354 (2004).

The Sixth Amendment's Confrontation Clause provides that, "[i]n all criminal  
prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses  
against him." We have held that this bedrock procedural guarantee applies to both federal  
and state prosecutions. *Pointer v. Texas*, 380 U.S. 400, 406 (1965). Testimonial  
statements of witnesses absent from trial have been admitted only where the declarant is  
unavailable, and only where the defendant has had a prior opportunity to cross-examine.

Here, the incriminating tape recorded statements of a non-testifying codefendant  
were admitted into evidence during defendant's trial. This is a patent violation of  
defendant confrontation clause rights under the Sixth Amendment to the United States  
Constitution.



Defendant was denied his Fifth Amendment  
Right to testify on his own behalf

After the state rested its case against defendant, defendant implored counsel to allow him to take the witness stand in his own defense. Counsel, however, refused.

The right to testify on one's own behalf at a criminal trial has sources in several provisions of the Constitution. It is one of the rights that "are essential to due process of law in a fair adversary process." *Faretta v. California*, 422 U.S. 806, 819, n. 15 (1975). The necessary ingredients of the Fourteenth Amendment's guarantee that no one shall be deprived of liberty without due process of law include a right to be heard and to offer testimony: See also *Ferguson v. Georgia*, 365 U.S. at 602 (Clark, J., concurring) (Fourteenth Amendment secures "right of a criminal defendant to choose between silence and testifying in his own behalf"). 9 [483 U.S. 44, 52]

The right to testify is also found in the Compulsory Process Clause of the Sixth Amendment, which grants a defendant the right to call "witnesses in his favor," a right that is guaranteed in the criminal courts of the States by the Fourteenth Amendment. *Washington v. Texas*, 388 U.S. 14, 17-19 (1967). Logically included in the accused's right to call witnesses whose testimony is "material and favorable to his defense," *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982), is a right to testify himself, should he decide it is in his favor to do so. In fact, the most important witness for the defense in many criminal cases is the defendant himself. There is no justification today for a rule that denies an accused the opportunity to offer his own testimony. Like the truthfulness of other witnesses, the defendant's veracity, which was the concern behind the original common-law rule, can be tested adequately by cross-examination. See

generally Westen, The Compulsory Process Clause, 73 Mich. L. Rev. 71, 119-120 (1974).

Because defendant was denied his right to testify at trial, his trial was rendered fundamentally unfair.

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Defendant was denied his Sixth Amendment  
right to effective assistance of counsel

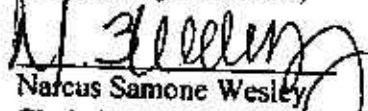
Counsel's actions, in allowing the non-testifying codefendant's tape recorded statements to be admitted at trial, refusing to allow defendant to testify at trial, and in not seeking to have defendant's incriminating admissions suppressed, rendered his representation constitutionally ineffective. Strickland v. Washington, 466 U.S. 688 (1974).

Because there were grave constitutional errors in defendant trial, the court should order a new trial under NRS 176.515.

WHEREFORE, defendant prays for an order granting him a new trial, NRS 176.515,  
and for such other and further relief as law and justice require.

Dated this 24 day of APRIL, 2008.

Respectfully submitted,

  
Narcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101

PROOF OF SERVICE

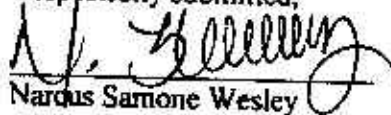
000730

The undersigned hereby certifies that a full and true copy of defendant's  
substitution of counsel has been mailed, postage fully prepaid, to the following:

David Roger  
Clark County District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89101

Dated this 24 day of APRIL, 2007.

Respectfully submitted,



Marcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101

000731

Narcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101  
Defendant, Pro Se

15  
FILED

APR 28 2 28 PM '08

*Cliff*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

CASE NO. C232494B

Plaintiff,

DEPT. NO. XXIV

v.

MOTION FOR WITHDRAWAL  
OF COUNSEL

NARCUS SAMONE WESLEY.,

Defendants.

COMES NOW the defendant, above-named and appearing pro se, and  
respectfully moves this Honorable Court for an order withdrawing/dismissing counsel.

-1-

That this motion is made and based upon the annexed memorandum of authorities  
and all pleadings and papers on file herein.

Dated this 28 day of APRIL, 2008.

Respectfully submitted,

*N. Samone Wesley*  
Narcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101

RECEIVED  
APR 28 2008  
CLERK OF THE COURT

000732

One of the claims in his motion for new trial in ineffective assistance of counsel. This claim is controlled by Ferreira v. California, 422 U.S. 806 (1975); Ryan v. District Court, 123 (Nev. Adv. No. 42 (October, 2007)).

Counsel's actions, in allowing the non-testifying codefendant's tape recorded statements to be admitted at trial, refusing to allow defendant to testify at trial, and in not seeking to have defendant's incriminating admissions suppressed, rendered his representation constitutionally ineffective. Strickland v. Washington, 466 U.S. 688 (1974).

WHEREFORE, defendant prays for an order withdrawing/dismissing counsel, and for such other and further relief as law and justice require.

Dated this 28 day of APRIL, 2008.

Respectfully submitted,

N. Samone Wesley  
Narcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101

PROOF OF SERVICE

The undersigned hereby certifies that a full and true copy of defendant's substitution of counsel has been mailed, postage fully prepaid, to the following:

David Roger  
Clark County District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89101

Dated this 28 day of APRIL, 2007.

Respectfully submitted,

N. Samone Wesley  
Narcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101

*Narcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101  
Defendant, Pro Se*

15  
FILED

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*Chaf...*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

CASE NO. C232494B

Plaintiff,

DEPT. NO. XXIV

v.

**MOTION FOR EXTENSION  
OF TIME**

NARCUS SAMONE WESLEY,

Defendants.

COMES NOW the defendant, above-named and appearing pro se, and respectfully moves this Honorable Court for an order extending the time within which defendant must apply for a new trial, NRS. 176.515, to and including May 18, 2008.

-1-

That this motion is made and based upon the annexed memorandum of authorities and all pleadings and papers on file herein.

Dated this 24 day of APRIL, 2008.

Respectfully submitted,

*N. Samone Wesley*

Narcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101

**MEMORANDUM OF AUTHORITIES**

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APR 28 2008  
CLERK OF THE COURT

000735



Defendant, after a jury trial, was convicted of several felony counts including sexual assault with the use of a deadly weapon and kidnapping with the use of a deadly weapon. Defendant contemplates filing for a new trial on grounds that the state tampered with evidence, violated his Fifth Amendment Right to remain silent during interrogation, and that counsel refused to allow defendant to take the witness stand in his own defense. To prepare such a motion, defendant, proceeding in proper person, will require additional time, beyond the seven day period provided by NRS.176.515.

NRS.176.515 provides:

1. The court may grant a new trial to a defendant if required as a matter of law or on the ground of newly discovered evidence.
2. If trial was by the court without a jury the court may vacate the judgment if entered, take additional testimony and direct the entry of a new judgment.
3. Except as otherwise provided in NRS 176.0918, a motion for a new trial based on the ground of newly discovered evidence may be made only within 2 years after the verdict or finding of guilt.
4. A motion for a new trial based on any other grounds must be made within 7 days after the verdict or finding of guilt or within such further time as the court may fix during the 7-day period.

The statutes specifically provides that, within the seven day period, the court may fix the time within which defendant may file such a motion beyond the seven day period.

Moreover, the Local Rules of Criminal Practice provide for extending time as well:

000736

Rule 3.50. Extending time.


(a) When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion, with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, but it may not extend the time for taking any action under Rule 3.40, except to the extent and under the conditions stated therein.

(b) Ex parte motions to extend time may not be granted except upon an affidavit or certificate of counsel demonstrating circumstances claimed to constitute good cause and justify enlargement of time.

WHEREFORE, defendant prays for an order enlarging the time within which he may file for a new trial, NRS 176.515, and for such other and further relief as law and justice require.

Dated this 24 day of APRIL, 2008.

Respectfully submitted,

  
Marcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101

PROOF OF SERVICE

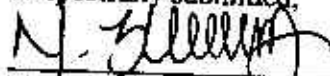
000737

The undersigned hereby certifies that a full and true copy of defendant's substitution of counsel has been mailed, postage fully prepaid, to the following:

David Roger  
Clark County District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89101

Dated this 24 day of APRIL, 2007.

Respectfully submitted,



Narcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101

Narcus Samone Wesley  
 Clark County Detention Center  
 330 South Casino Center  
 Las Vegas, Nevada 89101  
 Defendant, Pro Se

FILED

2008 APR 28 P 2:40

*CR. [Signature]*  
 CLERK OF THE COURT

DISTRICT COURT  
 CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

CASE NO. C232494B

Plaintiff,

DEPT. NO. XXIV

v.

NOTICE OF MOTION

NARCUS SAMONE WESLEY,

DATE OF HEARING

Defendants.

TIME OF HEARING

NOTICE IS HEREBY GIVEN that defendant Hill bring on his motion for  
 withdrawal//dismissal for hearing on 5/8/08 8:30 AM or as soon thereafter

As he may be heard.

Dated this 28 day of APRIL, 2008.



RECEIVED

APR 28 2008

CLERK OF THE COURT

Respectfully submitted,

*N. Samone Wesley*  
 Narcus Samone Wesley  
 Clark County Detention Center  
 330 South Casino Center  
 Las Vegas, Nevada 89101

000739

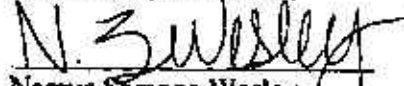
PROOF OF SERVICE

The undersigned hereby certifies that a full and true copy of defendant's substitution of counsel has been mailed, postage fully prepaid, to the following:

David Roger  
Clark County District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89101

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Respectfully submitted,



Narcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101

600740

Narcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101  
Defendant, Pro Se

7  
FILED

MAY 1 4 42 PM '08

*Chief Clerk*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
Vs

CASE NO. C232494B  
DEPT. XXIV

NOTICE OF MOTION

NARCUS SAMONE WESLEY,  
Defendants.

DATE OF HEARING: \_\_\_\_\_

TIME OF HEARING: \_\_\_\_\_

NOTICE IS HEREBY GIVEN that plaintiff will bring on for hearing his motion for bail pending sentencing/appeal, before the court on the 12 day of MAY, 2008, or as soon thereafter as he may be heard.

Dated this 1 day of MAY, 2008.

Respectfully Submitted,

*N. Samone Wesley*  
Narcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101

33

MC1

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MAY - 2 2008  
CLERK OF THE COURT

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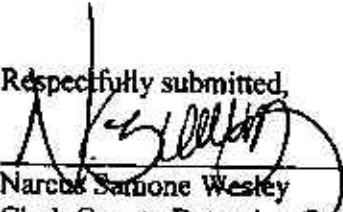
PROOF OF SERVICE

The undersigned hereby certifies that a full and true copy of defendant's motion for bail pending sentencing/appeal has been mailed, postage fully prepaid, to the following:

David Roger  
Clark County District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89101

Dated this 1 day of MAY, 2008.

Respectfully submitted,

  
Narciso Samone Wesley  
Clark County Detention Center  
330 South Casino Center

000742

Narcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101  
Defendant, Pro Se

FILED

MAY 1 4 41 PM '08

*[Signature]*  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

CASE NO. C232494B

Plaintiff,

DEPT. NO. XXIV

v.

MOTION FOR BAIL PENDING  
SENTENCING/APPEAL

NARCUS SAMONE WESLEY,

Defendants.

5-22-08

COMES NOW the defendant, above-named and appearing pro se, and respectfully moves this Honorable Court for an order admitting him to bail pending sentencing/appeal.

-1-

That this motion is made and based upon the annexed memorandum of authorities and all pleadings and papers on file herein.

Dated this 30 day of APRIL, 2008.

Respectfully submitted,

*[Signature]*  
Narcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101

MEMORANDUM OF AUTHORITIES

RECEIVED  
MAY - 2 2008  
CLERK OF THE COURT

000743



A jury found defendant guilty of several felony counts including sexual assault with the use of a deadly weapon and kidnapping with the use of a deadly weapon. Up until the verdict, defendant was out on bail. When the jury returned its guilty verdict on all counts, defendant's bail was revoked and he was taken into custody, where he has remained since that time.

The court, in initially granting bail under Nevada Revised Statutes, had to consider several factors, NRS 178.4853.

NRS 178.4853 Factors considered before release without bail. In deciding whether there is good cause to release a person without bail, the court as a minimum shall consider the following factors concerning the person:

1. The length of his residence in the community;
2. The status and history of his employment;
3. His relationships with his spouse and children, parents or other members of his family and with his close friends;
4. His reputation, character and mental condition;
5. His prior criminal record, including, without limitation, any record of his appearing or failing to appear after release on bail or without bail;
6. The identity of responsible members of the community who would vouch for the reliability of the person;
7. The nature of the offense with which he is charged, the apparent probability of conviction and the likely sentence, insofar as these factors relate to the risk of his not appearing;
8. The nature and seriousness of the danger to the alleged victim, any other person or

the community that would be posed by the person's release;

9. The likelihood of more criminal activity by him after he is released; and
10. Any other factors concerning his ties to the community or bearing on the risk that he may willfully fail to appear.

In admitting defendant to bail pretrial, this Court necessarily found that defendant was not a flight risk, a threat to the community, nor a threat to any other person. *Id.*

However, bail pending sentencing or appeal is governed by NRS 178.488:

1. Bail may be allowed pending appeal or certiorari unless it appears that the appeal is frivolous or taken for delay.
2. Pending appeal to a district court, bail may be allowed by the trial justice, by the district court, or by any judge thereof, to run until final termination of the proceedings in all courts.
3. Pending appeal or certiorari to the Supreme Court, bail may be allowed by the district court or by any judge thereof or by the Supreme Court or by a justice thereof.
4. Any court or any judge or justice authorized to grant bail may at any time revoke the order admitting the defendant to bail.
5. The court or judge by whom bail may be ordered shall require such notice of the application therefor as he may deem reasonable to be given to the district attorney of the county in which the verdict or judgment was originally rendered.

In Bergna v. State, 120 Nev.Adv.Rep. 92 (2004), after the defendant had been convicted after a jury he brought a motion for bail pending appeal with the Nevada

Supreme Court. The State opposed the motion, arguing that, pursuant to NRS 178.484(4), Nevada courts do not have jurisdiction to grant bail as a matter of law when there is proof and the presumption is great that a defendant has committed murder in the first degree. Additionally, it argued a defendant does not have a constitutionally protected right to bail pending an appeal. The Supreme Court rejected the State's interpretation of NRS 178.484(4) that the legislature did not intend courts to have jurisdiction over the release of a defendant pending appeal of a first-degree murder conviction. The *Bergna* Court looked first to the plain meaning of the language to interpret legislative intent and determined that chapter 178 of the Nevada Revised Statutes clearer referred to the court's discretion in these matters. In addition, NRS 78.4785(1) contemplates an application for bail pending appeal could be granted, and NRS 178.4871 and 178.4873 contemplate bail pending an appeal where a defendant is writ of habeas corpus. All of these sections demonstrate the legislation's intent to allow the court discretion in determining a post-conviction release on bail pending appeal. Cf. *In re Austin*, 86 Nev. 798, 801, 477 P.2d 873, 875 (1970).

The defendant and the defendant's family posted a substantial sum to secure his pretrial release. Defendant never missed a court appearance and, therefore, cannot be considered a flight risk. Moreover, defendant is a lifetime resident of Las Vegas and has substantial family ties. If released on bail pending sentencing/appeal he will maintain his current residence and will continue working construction with his father.

WHEREFORE, defendant prays for an order admitting him to bail pending sentencing/appeal, and for such other and further relief as law and justice require.

000746

Dated this 30 day of APRIL, 2008.

Respectfully submitted,



Narcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101

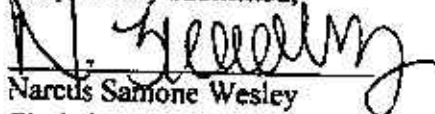
PROOF OF SERVICE

The undersigned hereby certifies that a full and true copy of defendant's motion for bail pending sentencing/appeal has been mailed, postage fully prepaid, to the following:

David Roger  
Clark County District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89101

Dated this 30 day of APRIL, 2007.

Respectfully submitted,



Narcus Samone Wesley  
Clark County Detention Center  
330 South Casino Center  
Las Vegas, Nevada 89101

000747

ORIGINAL

FILED

JUN 3 1 43 PM '08

*Chaf*  
CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

HON. JOHN MC GROARTY, SENIOR DISTRICT JUDGE, PRESIDING

THE STATE OF NEVADA,  
Plaintiff,

v.

DELARIAN K. WILSON, aka  
DELARIAN KAMERON WILSON,  
Defendant.

Case No. 232494  
Dept. 24

TRANSCRIPT OF PROCEEDINGS

Judgment and Sentencing

COURTHOUSE

May 13, 2008

Las Vegas, Nevada

Reported by:

Lee M. Bahr, CP, CCR 173

CLERK OF THE COURT

JUN - 3 2008

RECEIVED

1 APPEARANCES:  
2

3 For the State:

LISA LUZAICH, ESQ.  
Deputy D. A.  
200 Lewis Ave.  
Las Vegas, NV. 89155  
4  
5  
6

7 Defendant present in court in custody.

8 For the Defendant:

JAMES ORONoz, ESQ.  
Attorney at Law  
Las Vegas, NV. 89101  
9  
10  
11  
12  
13  
14  
15  
1617 No other appearances.  
1819 \*\*\*\*\*  
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23  
24  
25

1 INST

FILED IN OPEN COURT  
APR 18 2008

20 2:53 pm

CHARLES J. SHORT  
CLERK OF THE COURT

BY Theresa Lee  
DEPUTY

THERESA LEE

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA, )

9 Plaintiff, )

10 -vs- )

11 NARCUS SAMONE WESLEY )

12 Defendants. )

CASE NO: C232494

DEPT NO: XXIV

13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

14 MEMBERS OF THE JURY:

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

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

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INSTRUCTION NO. 2

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

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

000651



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

In this case, it is charged in an Second Amended Information that on or about the 18th day of February, 2007, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 - CONSPIRACY TO COMMIT BURGLARY

Defendant and DELARIAN KAMERON WILSON did then and there meet with each other and between themselves, and each of them with the other, wilfully and unlawfully conspire and agree to commit a crime, to-wit: Burglary, and in furtherance of said conspiracy, Defendant and DELARIAN KAMERON WILSON did commit the acts as set forth in Counts 3 & 11, said acts being incorporated by this reference as though fully set forth herein.

COUNT 2 - CONSPIRACY TO COMMIT ROBBERY

Defendant and DELARIAN KAMERON WILSON did then and there meet with each other and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: Robbery, and in furtherance of said conspiracy, Defendant and DELARIAN KAMERON WILSON did commit the acts as set forth in Counts 4, 6, 7, & 9, said acts being incorporated by this reference as though fully set forth herein.

COUNT 3 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

Defendant and DELARIAN KAMERON WILSON did then and there wilfully, unlawfully, and feloniously enter, while in possession of a deadly weapon, to-wit: a hand gun, with intent to commit larceny and/or a felony, to-wit: Robbery, the house at 690 Great Dane Court, Henderson, Clark County, Nevada, the Defendant being criminally liable under one or more of the following principles of criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and DELARIAN KAMERON WILSON

1 aiding or abetting one another in the commission of this crime by assisting one another and  
2 by providing counsel and encouragement each carrying out specific acts with the intent that  
3 this crime be committed; and/or (3) pursuant to a conspiracy to commit this crime.

4 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

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

16 COUNT 5 - ASSAULT WITH USE OF A DEADLY WEAPON

17 Defendant and DELARIAN KAMERON WILSON did wilfully, unlawfully, and  
18 feloniously place another person in reasonable apprehension of immediate bodily harm, to-  
19 wit: AITOR ESKANDON, by pointing a hand gun at and forcing the said AITOR  
20 ESKANDON to lay on the ground while personal property was taken from others in his  
21 presence, said Defendant and DELARIAN KAMERON WILSON using a deadly weapon,  
22 to-wit: a hand gun, during the commission of said crime, the Defendant being criminally  
23 liable under one or more of the following principles of criminal liability, to-wit: (1) by  
24 directly committing this crime; and/or (2) by Defendant and DELARIAN KAMERON  
25 WILSON aiding or abetting one another in the commission of this crime by assisting one  
26 another and by providing counsel and encouragement each carrying out specific acts with the  
27 intent that this crime be committed; and/or (3) pursuant to a conspiracy to commit this crime.

28 //

1 COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON

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

13 COUNT 7 - ROBBERY WITH USE OF A DEADLY WEAPON

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

25 COUNT 8 - ASSAULT WITH USE OF A DEADLY WEAPON

26 Defendant and DELARIAN KAMERON WILSON did wilfully, unlawfully, and  
27 feloniously place another person in reasonable apprehension of immediate bodily harm, to-  
28 wit: CLINTON TOGNOTTI, by pointing a hand gun at and forcing the said CLINTON

1 TOGNOTTI to lay on the ground while personal property was taken from others in his  
2 presence, said Defendant and DELARIAN KAMERON WILSON using a deadly weapon,  
3 to-wit: a hand gun, during the commission of said crime, the Defendant being criminally  
4 liable under one or more of the following principles of criminal liability, to-wit: (1) by  
5 directly committing this crime; and/or (2) by Defendant and DELARIAN KAMERON  
6 WILSON aiding or abetting one another in the commission of this crime by assisting one  
7 another and by providing counsel and encouragement each carrying out specific acts with the  
8 intent that this crime be committed; and/or (3) pursuant to a conspiracy to commit this crime.

9 COUNT 9 - ROBBERY WITH USE OF A DEADLY WEAPON

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

21 COUNT 10 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

22 Defendant and DELARIAN KAMERON WILSON did wilfully, unlawfully,  
23 feloniously, and without authority of law, seize, confine, inveigle, entice, decoy, abduct,  
24 conceal, kidnap, or carry away RYAN TOGNOTTI, a human being, with the intent to hold  
25 or detain the said RYAN TOGNOTTI against his will, and without his consent, for the  
26 purpose of committing Robbery, said Defendant and DELARIAN KAMERON WILSON  
27 using a deadly weapon, to-wit: a hand gun, during the commission of said crime, the  
28 Defendant being criminally liable under one or more of the following principles of criminal



1 liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and  
2 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this  
3 crime by assisting one another and by providing counsel and encouragement each carrying  
4 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a  
5 conspiracy to commit this crime.

6 COUNT 11 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

7 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,  
8 unlawfully, and feloniously enter, while in possession of a deadly weapon, to-wit: hand gun,  
9 with intent to commit larceny and/or a felony, to-wit: Robbery, the Honda Civic belonging  
10 to RYAN TOGNOTTI, the Defendant being criminally liable under one or more of the  
11 following principles of criminal liability, to-wit: (1) by directly committing this crime;  
12 and/or (2) by Defendant and DELARIAN KAMERON WILSON aiding or abetting one  
13 another in the commission of this crime by assisting one another and by providing counsel  
14 and encouragement each carrying out specific acts with the intent that this crime be  
15 committed; and/or (3) pursuant to a conspiracy to commit this crime.

16 COUNT 12 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

17 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,  
18 unlawfully, and feloniously sexually assault with use of a deadly weapon, to-wit: a hand gun,  
19 and subject DANIELLE BROWNING, a female person, to sexual penetration, to-wit: by  
20 forcing DANIELLE BROWNING to perform fellatio on JUSTIN RICHARDSON while  
21 threatening to kill her or others if she didn't perform said sexual act, against her will, the  
22 Defendant being criminally liable under one or more of the following principles of criminal  
23 liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and  
24 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this  
25 crime by assisting one another and by providing counsel and encouragement each carrying  
26 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a  
27 conspiracy to commit this crime.

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1 COUNT 13 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

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

13 COUNT 14 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

14 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,  
15 unlawfully, and feloniously sexually assault with use of a deadly weapon, to-wit: a hand gun,  
16 and subject JUSTIN RICHARDSON, a male person, to sexual penetration, to-wit: by  
17 forcing JUSTIN RICHARDSON to receive fellatio from DANIELLE BROWNING while  
18 threatening to kill him and/or others if he did not engage in said sexual conduct, against his  
19 will, the Defendant being criminally liable under one or more of the following principles of  
20 criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and  
21 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this  
22 crime by assisting one another and by providing counsel and encouragement each carrying  
23 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a  
24 conspiracy to commit this crime.

25 COUNT 15 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

26 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,  
27 unlawfully, and feloniously sexually assault with use of a deadly weapon, to-wit: a hand gun,  
28 and subject JUSTIN RICHARDSON, a male person, to sexual penetration, to-wit: by

1 forcing JUSTIN RICHARDSON to perform cunnilingus on DANIELLE BROWNING while  
2 threatening to kill him and/or others if he did not engage in said sexual conduct, against his  
3 will, the Defendant being criminally liable under one or more of the following principles of  
4 criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and  
5 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this  
6 crime by assisting one another and by providing counsel and encouragement each carrying  
7 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a  
8 conspiracy to commit this crime.

9 COUNT 16 - COERCION WITH USE OF A DEADLY WEAPON

10 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,  
11 unlawfully, and feloniously use physical force, or the immediate threat of such force, against  
12 RYAN TOGNOTTI, with intent to compel him to do, or abstain from doing, an act which he  
13 had a right to do, or abstain from doing, by using a deadly weapon, to-wit: a hand gun, and  
14 forcing RYAN TOGNOTTI to masturbate his penis, said acts being sexually motivated, the  
15 Defendant being criminally liable under one or more of the following principles of criminal  
16 liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and  
17 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this  
18 crime by assisting one another and by providing counsel and encouragement each carrying  
19 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a  
20 conspiracy to commit this crime.

21 COUNT 17 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

22 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,  
23 unlawfully, and feloniously sexually assault with use of a deadly weapon, to-wit: a hand gun,  
24 and subject DANIELLE BROWNING, a female person, to sexual penetration, to-wit:  
25 digital penetration, Defendant NARCUS WESLEY penetrating DANIELLE BROWNING's  
26 vagina, however slight with his hand and/or one or more fingers, against her will, the  
27 Defendant being criminally liable under one or more of the following principles of criminal  
28 liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and

1 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this  
2 crime by assisting one another and by providing counsel and encouragement each carrying  
3 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a  
4 conspiracy to commit this crime.

5 COUNT 18 - OPEN OR GROSS LEWDNESS WITH USE OF A DEADLY WEAPON

6 Defendant and DELARIAN KAMERON WILSON did then and there wilfully and  
7 unlawfully commit an act of open or gross lewdness by touching and/or rubbing the chest  
8 and/or buttocks of DANIELLE BROWNING, with use of a deadly weapon, to-wit: a hand  
9 gun, the Defendant being criminally liable under one or more of the following principles of  
10 criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and  
11 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this  
12 crime by assisting one another and by providing counsel and encouragement each carrying  
13 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a  
14 conspiracy to commit this crime.

15 It is the duty of the jury to apply the rules of law contained in these instructions to the  
16 facts of the case and determine whether or not Defendant is guilty of one or more of the  
17 offenses charged.  
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2 A conspiracy is an agreement between two or more persons for an unlawful purpose.  
3 To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission  
4 of, the specific crime agreed to. The crime is the agreement to do something unlawful; it  
5 does not matter whether it was successful or not.

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

14 A conspiracy to commit a crime does not end upon the completion of the crime. The  
15 conspiracy continues until the co-conspirators have successfully gotten away and concealed  
16 the crime.  
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2 It is not necessary in proving a conspiracy to show a meeting of the alleged  
3 conspirators or the making of an express or formal agreement. The formation and existence  
4 of a conspiracy may be inferred from all circumstances tending to show the common intent  
5 and may be proved in the same way as any other fact may be proved, either by direct  
6 testimony of the fact or by circumstantial evidence, or by both direct and circumstantial  
7 evidence.  
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2       Once a person joins a conspiracy, that person remains a member until he withdraws  
3 from it. A person can withdraw from a conspiracy by taking some positive action which  
4 disavowed or defeated the purpose of the conspiracy. It is not enough if the evidence shows  
5 that the defendant merely ceased his own activities in furtherance of the conspiracy.

6       The State has the burden of proving beyond a reasonable doubt the defendant did not  
7 withdraw from the conspiracy.  
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Each member of a criminal conspiracy is liable for each act and bound by each declaration of every other member of the conspiracy if the act or the declaration is in furtherance of the object of the conspiracy.

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

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

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

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

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

The State is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

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2 Mere presence at the scene of the crime and knowledge that a crime is being  
3 committed are not sufficient to establish that the defendant aided and abetted the crime,  
4 unless you find beyond a reasonable doubt that the defendant is a participant and not merely  
5 a knowing spectator. However, the presence of one at the commission of a crime of another  
6 is evidence which can be considered in determining whether or not he is guilty of aiding or  
7 abetting, as well as the defendant's presence, companionship, and conduct before, during and  
8 after the participation in the criminal act.  
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INSTRUCTION NO. 11

Every person who, by day or night, enters any house, room, tenement, shop, store, other building, or vehicle with the intent to commit a larceny and/or robbery therein is guilty of Burglary.

000667



INSTRUCTION NO. 12

Larceny is defined as the stealing, taking and carrying away of the personal goods or property of another with the intent to permanently deprive the owner thereof.

000668

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2       Consent to enter is not a defense to the crime of burglary so long as it is shown that  
3 entry was made with the specific intent to commit a larceny and/or robbery therein. Force  
4 or a "breaking" as such is not a necessary element of the crime.

5       The intention with which entry was made is a question of fact which may be inferred  
6 from the defendant's conduct and all other circumstances disclosed by the evidence.  
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2 Every person who commits the crime of burglary, who has in his possession or gains  
3 possession of any firearm or deadly weapon at any time during the commission of the crime,  
4 at any time before leaving the structure, or upon leaving the structure, is guilty of burglary  
5 while in possession of a weapon.

6 If more than one person commits a crime, and one of them possesses a deadly weapon  
7 in the commission of that crime, each may be convicted of while in possession of the deadly  
8 weapon if the unarmed offender had knowledge of the possession of the deadly weapon.  
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INSTRUCTION NO. 15

Every person who, in the commission of a burglary, commits any other crime, may be prosecuted for each crime separately.

000671

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. A taking is by means of force or fear if force or fear is used to:

- (a) Obtain or retain possession of the property;
- (b) Prevent or overcome resistance to the taking; or
- (c) Facilitate escape.

The degree of force used is immaterial if it is used to compel acquiescence to the taking of or escaping with the property. A taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear. Robbery is a general intent crime.

INSTRUCTION NO. 17

The value of property or money taken is not an element of the crime of Robbery, and it is only necessary that the State prove the taking of some property or money.

000673

1  
2 Robbery is not confined to a fixed locus, but may spread over considerable and  
3 varying periods of time. All matters immediately antecedent to and having direct causal  
4 connection with the robbery are deemed so closely connected with it as to form in reality a  
5 part of the occurrence. Thus, although acts of violence and intimidation preceded the actual  
6 taking of the property and may have been primarily intended for another purpose. It is  
7 enough to support the charge of robbery when a person takes the property by taking  
8 advantage of the terrifying situation he created.  
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2        Personal property is "in the presence" of a person, in respect to robbery, when it is  
3 within the person's reach, inspection, observation or control, and the person could (if not  
4 prevented by intimidation or threat of violence) retain possession of the property.  
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INSTRUCTION NO. 20

A person who intentionally places another person in reasonable apprehension of immediate bodily harm is guilty of Assault.

000676

INSTRUCTION NO. 21

Every person who willfully seizes, confines, inveigles, entices, decoys, abducts, conceals, kidnaps or carries away any person by any means whatsoever with the intent to hold or detain, or who holds or detains, the person for the purpose of committing robbery upon or from the person is guilty of Kidnapping in the First Degree, a specific intent crime.

000677

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2 You are instructed that if you find that the State has established that the defendant has  
3 committed first degree kidnapping you shall select first degree kidnapping as your verdict.  
4 The crime of first degree kidnapping includes the crime of second degree kidnapping. You  
5 may find the defendant guilty of second degree kidnapping if:

6 1. You have not found, beyond a reasonable doubt, that the defendant is guilty of  
7 kidnapping of the first degree, and

8 2. All twelve of you are convinced beyond a reasonable doubt the defendant is guilty  
9 of the crime of second degree kidnapping.

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

INSTRUCTION NO.

23

Every person who willfully and without authority of law seizes, inveigles, takes, carries away or kidnaps another person with the intent to keep the person secretly imprisoned within the state, or for the purpose of conveying the person out of the state without authority of law, or in any manner held to service or detained against his will, is guilty of kidnapping in the second degree.

000679

A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or on another, against the victim's will or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault.

"Sexual penetration" includes cunnilingus, fellatio, digital penetration, or any intrusion, however slight, of any part of a person's body. Evidence of ejaculation is not necessary.

Cunnilingus is a touching, however slight, of the female sexual organ by the mouth or tongue of another person.

Fellatio is a touching, however slight, of the penis by the mouth or tongue of another person.

Digital penetration is the placing, however slight, of one or more fingers into the genital opening of another person.

Where multiple sexual acts occur as part of a single criminal encounter a defendant may be found guilty for each separate or different act of sexual assault and/or lewdness.

Where a defendant commits a specific type of act constituting sexual assault and/or lewdness he may be found guilty of more than one count of that specific type of act of sexual assault if:

1. there is an interruption between the acts which are of the same specific type,
2. where the acts of the same specific type are interrupted by a different specific type of sexual assault or
3. For each separate object manipulated or inserted into the genital or anal opening of another.

Only one sexual assault occurs when a defendant's actions were of one specific type of sexual assault and those acts were continuous and did not stop between the acts of that specific type.

Physical force is not necessary in the commission of sexual assault. The crucial question is not whether a person was physically forced to engage in a sexual assault but whether the act was committed without his/her consent or under conditions in which the defendant knew or should have known, the person was incapable of giving his/her consent or understanding the nature of the act. There is no consent where a person is induced to submit to the sexual act through fear of death or serious bodily injury.

INSTRUCTION NO. 27

A person is not required to do more than her age, strength, surrounding facts and attending circumstances make it reasonable for him/her to do to manifest opposition to a sexual assault.

000683



INSTRUCTION NO. 28

Submission is not the equivalent of consent. While consent inevitably involves submission, submission does not inevitably involve consent. Lack of protest by a victim is simply one among the totality of circumstances to be considered by the jury.

000684

INSTRUCTION NO. 29

There is no requirement that the testimony of a victim of sexual assault be corroborated, and her testimony standing alone, if believed beyond a reasonable doubt, is sufficient to sustain a verdict of guilty.

000685

Open and Gross Lewdness is defined as any indecent, obscene or vulgar act of a sexual nature that:

1. is intentionally committed in a public place, even if the act is not observed; or
2. is committed in a private place, but in an open manner, as opposed to a secret manner, and with the intent to be offensive to the observer.

INSTRUCTION NO.

31

Any person who uses violence upon another person or threatens violence or injury to another person with the specific intent to compel another to do or abstain from doing an act which such other person has a right to do or abstain from doing is guilty of Coercion.

000687

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2 A defendant acts under duress if at the time of the offense charged:

- 3 1. the threats and menaces are such that they would cause a reasonable person  
4 to fear that his life would be in immediate danger if he did not engage in the  
5 conduct charged, and  
6 2. the person then actually believed that his life was so endangered.  
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2 The defendant does not act voluntarily if the defendant acts under duress at the time  
3 of the offense charged. If the State fails to prove the absence of duress beyond a reasonable  
4 doubt, then you must find the defendant not guilty.  
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INSTRUCTION NO. 34

Although your verdict must be unanimous as to the charge, you do not have to agree on the theory of guilt. Therefore, even if you cannot agree on whether the facts establish liability as directly committing the crime, as an aider and abettor, or a co-conspirator, so long as all of you agree that the evidence establishes the defendant's guilt of the charge, your verdict shall be guilty of the charge.

000690

INSTRUCTION NO. 35

You are instructed that if you find a defendant guilty of Robbery, Assault, First or Second Degree Kidnapping, Sexual Assault, Coercion or Open Or Gross Lewdness you must also determine whether or not a deadly weapon was used in the commission of this crime.

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

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

000691



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

You are instructed that a firearm is a deadly weapon and proof of its deadly capabilities is not required.

INSTRUCTION NO. 37

If more than one person commits a crime, and one of them uses a deadly weapon in the commission of that crime, each may be convicted of using the deadly weapon if the unarmed offender had knowledge of the use of the deadly weapon.

In order to "use" a deadly weapon, there need not be conduct which actually produces harm but only conduct which produces a fear of harm or force by means or display of the deadly weapon in aiding the commission of the crime.

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2 To constitute the crime charged, there must exist a union or joint operation of an act  
3 forbidden by law and an intent to do the act.

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

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

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

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

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

12 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a  
13 verdict of not guilty.  
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2 It is a constitutional right of a defendant in a criminal trial that he may not be  
3 compelled to testify. Thus, the decision as to whether he should testify is left to the  
4 defendant on the advice and counsel of his attorney. You must not draw any inference of  
5 guilt from the fact that he does not testify, nor should this fact be discussed by you or enter  
6 into your deliberations in any way.  
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INSTRUCTION NO. 41

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2       You are here to determine whether the Defendant is guilty or not guilty from the  
3 evidence in the case. You are not called upon to return a verdict as to the guilt or innocence  
4 of any other person. So, if the evidence in the case convinces you beyond a reasonable  
5 doubt of the guilt of the Defendant, you should so find, even though you may believe one or  
6 more persons are also guilty.  
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000697

INSTRUCTION NO. 42

In you deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the defendant is guilty or not guilty.

000698

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

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

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

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

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

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



1 MR. BANKS: Thank you. That's all I have, Judge.

2 MS. LUZAICH: I just have two.

3 THE COURT: All right.

4 REDIRECT EXAMINATION

5 BY MS. LUZAICH:

6 Q. Detective, did you ever intentionally leave  
7 any information out of your search warrant affidavit?

8 A. No, ma'am.

9 Q. Did you ever intentionally misstate any  
10 information in your search warrant affidavit?

11 A. No.

12 MS. LUZAICH: Thank you, nothing further.

13 MR. LANDIS: No further Recross-Examination.

14 THE COURT: Okay, thank you, Officer. I appreciate  
15 your testimony.

16 THE WITNESS: Thank you, Your Honor.

17 (Witness excused.)

18 THE COURT: Let's take a break until 12:30.

19 And we will come back, and you are going to call  
20 some people, and we are going to wrap this up.

21 We have got 80 people in the jury pool that's going  
22 to get here at one o'clock.

23 And I want to stay on schedule. But I don't have  
24 room for 80 people.

25 THE BAILIFF: We are not going to be able to use

1 that. So they are going to have to use it.

2 MS. LUZAICH: There are no other courtrooms.

3 THE COURT: Apparently they are doing something  
4 next door. They've got enough seats.

5 MS. LUZAICH: Can we switch with them?

6 THE COURT: I don't know. What's going on with  
7 them?

8 MS. LUZAICH: Is 20 in trial, Wall.

9 THE COURT: What?

10 MS. LUZAICH: Is 20 in trial, Judge Wall's court?

11 THE COURT: We haven't checked.

12 MS. LUZAICH: I mean, check with him, because  
13 that's what Togliatti uses is his courtroom when she has  
14 a big panel.

15 THE COURT: Okay. Anyway let's take a break for  
16 30 minutes.

17 Can everybody eat in 30 minutes?

18 Okay. Let's take a quick break for 30 minutes.  
19 We will be back. We will be in recess until 12:30, and  
20 then do you feel we can get through your witnesses, Mr.  
21 Landis, between 12:30 and one?

22 MR. LANDIS: Short. They should be short. My  
23 directs have been short.

24 THE COURT: Fine, very good. All right. We  
25 are in recess.

1 MR. BANKS: Thank you.

2 \*\*\*\*\*

3 (Whereupon, a recess was had until 12:35 p.m.  
4 April 9, 2008. Thereafter, after recess, all parties  
5 present, the following proceedings were had in open  
6 court:)

7 \*\*\*\*\*

8 THE BAILIFF: Everybody remain seated. We are  
9 back in session.

10 THE COURT: Back on the record in the matter of  
11 the State of Nevada v. Narcus Wesley.

12 Mr. Landis, your first witness?

13 MR. LANDIS: We are calling Donna Lamonte.

14 THE COURT: Okay.

15 THE CLERK: Come forward, please take the witness  
16 stand, remain standing, raise your right hand,  
17 Whereupon,

18 DONNA LAMONTE,  
19 called as a witness herein by the Defendant Wesley,  
20 having been first duly sworn, was examined and testified  
21 as follows:

22 THE CLERK: Thank you very much. You may be  
23 seated.

24 Please state your name and spell your first and  
25 last name for the record.

1 THE WITNESS: Donna J. Lamonte, D-o-n-n-a, last  
2 name is L-a-m-o-n-t-e.

3 THE CLERK: Thank you.

4 THE COURT: Go ahead.

5 DIRECT EXAMINATION

6 BY MR. LANDIS:

7 Q. How are you currently employed, Ms. Lamonte?

8 A. I am employed with Nevada Power Company.

9 Q. What do you do there?

10 A. I am a team investigator.

11 Q. What does that job entail?

12 A. Conducting internal investigations,  
13 conducting external investigations, subpoena process is  
14 done in my office. Some prosecution for the company is  
15 put together and submitted.

16 Q. Do you personally sometimes assist or directly  
17 assist in complying with subpoenas?

18 A. Sometimes I do, but it's not my main function  
19 though.

20 Q. Were you employed in that capacity in February  
21 of last year?

22 A. Yes, I was.

23 Q. And I assume that quite a few subpoenas come  
24 across your office desk in the course of a given week or  
25 month, right?

000603

1 A. There was 1,896 last month.

2 Q. You don't remember every one?

3 A. No.

4 Q. The case we are talking about occurred in  
5 February, of 2007.

6 You don't remember the specific details of complying  
7 with this subpoena in this case, do you?

8 A. No.

9 Q. But you, when you do file subpoenas, tend to  
10 follow a procedure or a protocol, correct?

11 A. Yes.

12 Q. And can John Q. Public call you from off the  
13 street and get information about about power records?

14 A. No.

15 Q. Now, does somebody need a subpoena before  
16 you guys hand over information regarding power records?

17 A. You need a subpoena in order to obtain  
18 information, yes.

19 Q. Okay. Are you able to run power records a  
20 variety of different ways?

21 Let me be more clear. Can you draw power records  
22 by name?

23 A. Yes.

24 Q. Can you run them by Social Security number?

25 A. Yes, I can.

000604

1 Q. And can you run them by address?

2 A. Yes, I can.

3 Q. If a police officer calls you and asks you  
4 for information, is it normal procedure for them to send  
5 you a subpoena?

6 A. Yes.

7 Q. And that would occur before obviously you  
8 give them that information?

9 A. Yes, a subpoena is required.

10 MR. LANDIS: Can I approach, Judge?

11 THE COURT: Yes.

12 MR. LANDIS: Can I approach the witness?

13 THE COURT: Yes.

14 BY MR. LANDIS:

15 Q. I am going to show you State's Exhibit  
16 1. In your normal course of business, do you ever receive  
17 that subpoena that has the name and the Social Security  
18 number, which of those items would you use to run a record?

19 A. We would run the Social Security number  
20 first.

21 MR. LANDIS: Okay, the Court's indulgence.

22 THE COURT: Certainly.

23 BY MR. LANDIS:

24 Q. About two weeks ago, did you personally  
25 receive a subpoena from my office?

000605

1 A. Yes, I did.

2 Q. And did you comply with that subpoena?

3 A. Yes, I did.

4 Let me clarify, it wasn't myself. It was the  
5 other gentleman who worked in my office who actually bring  
6 the subpoena.

7 MR. LANDIS: Okay.

8 MS. LUZAICH: Can we get a copy of that?

9 MR. LANDIS: Judge, the State wants me to go  
10 copy this for them.

11 THE COURT: Two copies.

12 MR. LANDIS: Can I approach the witness?

13 THE COURT: Yes.

14 (Whereupon, documents were marked by the Clerk  
15 as Defeandant's Exhibits B and C, respectively.)

16 BY MR. LANDIS:

17 Q. I'm showing you what has been marked as  
18 State's Proposed -- or Defense Proposed B and C.

19 Is B the subpoena that was sent to your office  
20 a week or so ago?

21 A. Yes, it appears so.

22 Q. And is C the information that you provided  
23 to comply with that subpoena?

24 A. Yes.

25 Q. What information did I provide you referencing

000696

1 an individual on my subpoena?

2 Did I provide you with a name?

3 MS. LUZAICH: I object. She didn't get a copy of  
4 your subpoena.

5 THE COURT: Do you want to submit a copy of that?

6 MS. LUZAICH: Yeah, make a copy of that.

7 THE CLERK: Just the subpoena.

8 MR. LANDIS: Two pages, Judge.

9 THE COURT: There you go. Thank you.

10 BY MR. LANDIS:

11 Q. I provided you with a name on that subpoena,  
12 correct?

13 A. Yes.

14 Q. And what is that name?

15 A. Narcus Wesley.

16 Q. And without saying the full Social Security  
17 number, did I provide with you a Social Security number on  
18 that subpoena?

19 A. Yes, you did.

20 Q. Could you tell us the last four digits?

21 A. 8230.

22 Q. Okay. And running that subpoena, turning  
23 to the State's -- or Defense Proposed C, was there any  
24 power records referencing Narcus Wesley?

25 A. Yes, there was.



1 Q. Before I ask you the next question, what  
2 dates did I ask you to run referencing Narcus Wesley?

3 A. You gave me the parameters of January 1,  
4 2006 through December 31, 2007.

5 Q. And did Narcus Wesley have power at any  
6 address in Clark County during that time?

7 A. Yes, he did.

8 Q. How many addresses?

9 A. One.

10 Q. What was that address?

11 A. The address was 1915 Simmons Street, building  
12 25, unit 2175.

13 Q. Were you able to determine the dates that he  
14 had power at that address?

15 A. Yes, and they were provided.

16 Q. And what were those dates?

17 A. He moved in on January 1 -- or excuse me,  
18 January 3, 2007, and he moved out on September the 12th,  
19 2007.

20 MR. LANDIS: Okay. I move for the admission of  
21 Defense B and C.

22 THE COURT: Any objection?

23 MS. LUZAICH: No.

24 THE COURT: Defense Exhibits B and C are admitted.

25 MR. LANDIS: May I approach the witness?

1 THE COURT: Yes.

2 MR. LANDIS: I have nothing further.

3 CROSS-EXAMINATION

4 BY MS. LUZAICH:

5 Q. Is it possible for a police officer to call  
6 you and say, I have an emergency, I need to know if this  
7 person has power. I will get you a subpoena as soon as we  
8 hang up?

9 A. In an emergency situation, an officer can  
10 call, but they are instructed and do know ahead of time  
11 that the subpoena needs to be obtained in order to achieve  
12 the information they are requiring.

13 Q. Right.

14 So is it possible that Detective Weske called  
15 you, and said I have an emergency situation, sexual assault  
16 with a weapon, robbery with a weapon, I am looking for  
17 power under the name of Narcus Wesley, and I will send  
18 you a subpoena as soon as we hang up. Is it possible that  
19 you would have sent him information?

20 A. It is possible.

21 Q. Okay. And is it possible that you would  
22 have sent him, or told him over the phone Narcus Wesley  
23 has at X address, and this is his Social Security number  
24 so that he could include the correct Social Security number  
25 on the subpoena that he sent to you?

1 A. Is it possible?

2 Q. Yes.

3 A. Normally, they would call up the office and  
4 express what the emergency is.

5 Q. Right. I just told you it was possible --

6 A. (Interposing) Right, and he expresses what  
7 the emergency is, and a subpoena was on its way, yes, we  
8 would be able to communicate information.

9 Q. Right. So is it possible that you answered  
10 his request saying, yes, Marcus Wesley has power at such  
11 and such address, and this is his Social Security number,  
12 so that the detective could include the Social Security  
13 number in the subpoena that he sent to you?

14 A. I suppose it could be possible.

15 Q. Okay.

16 Now, have you seen any documents that indicate  
17 that you did send Detective -- or that Detective Weske did  
18 have a conversation with you?

19 A. Can you say that again?

20 Q. Can I have the other exhibit?

21 THE COURT: They are all up there. There is the  
22 one that had the handwritten notations on that fax, right,  
23 or whatever it was?

24 BY MS. LUZAICH:

25 Q. Okay.

1 I am showing you State's Exhibits 1, 2, 3, 4, and  
2 it's random order, don't worry about the numbers. Does any  
3 of that look familiar?

4 A. Well, this is what I saw a minute ago.

5 Q. No. You haven't seen that yet in this  
6 courtroom.

7 MR. LANDIS: I did show her State's --

8 MS. LUZAICH: Oh, you showed her ours? Oh, I'm  
9 sorry. Okay, I'm sorry, I'm sorry.

10 THE WITNESS: But I didn't see the attachments  
11 here.

12 BY MS. LUZAICH:

13 Q. Right.

14 Could this be your -- I am pointing you to State's  
15 Exhibit 2.

16 Could that be your handwriting?

17 A. That is my handwriting.

18 Q. Okay. So do you believe that you sent this  
19 to Detective Weske?

20 A. Yes.

21 Q. Pursuant to that subpoena, Number 1?

22 A. Involving that subpoena, yes.

23 Q. Okay.

24 Q. And on the subpoena, it asks for Narcus Wesley,  
25 correct?

000611

1 A. Correct.

2 Q. And it gives the essential Social Security  
3 number?

4 A. Correct.

5 Q. And so in response you did not send him  
6 Marcus Wesley information but you just discussed on Direct  
7 Examination.

8 Instead you sent him this (indicating)?

9 A. I sent him the information that involved  
10 the Social Security number that was provided on that  
11 subpoena.

12 Q. Okay.

13 Is there a reason that you would not have sent  
14 him this information that corresponded to the name?

15 A. We first run the Social Security number,  
16 and if there is a hit on it, that is the information that  
17 we provide.

18 If we notice that there is some differentiating  
19 information between what the subpoena is and what the  
20 information we are running is, sometimes people use their  
21 middle name as their first name.

22 We will note that on the subpoena so the officer  
23 or the office, whoever is subpoenaing the information, is  
24 aware that there is some discrepancies in the information.

25 Q. Okay.

1 But what you did was you sent him the information  
2 pertaining to the Social Security number?

3 A. Correct.

4 Q. And said the name is different, as opposed  
5 to sending the information pertaining to the name?

6 A. Right, because I ran the Social Security  
7 number, and there was a hit and a match on that.

8 Q. Okay.

9 And this says, and I am talking again about  
10 Exhibit 2, where your handwritten individual's name is  
11 different, it says: "Move in 11/1/06."

12 A. Correct.

13 Q. But does that say that anywhere on here?

14 A. No, that is information that's printed  
15 out. It is always handwritten in. There isn't a screen  
16 that says and in-out date. That is always handwritten  
17 on the subpoena.

18 And if there is an in date, and it's stamped,  
19 "active", obviously there is not an out date because  
20 it's still a current surveyu.

21 MS. LUZAICH: Okay. The Court's indulgence  
22 one second.

23 Q. Is it possible that Detective Weske also  
24 told you, I'm looking for or asked you to look under an  
25 address, Valley Lane, Valley Avenue, Valley something,

000613

1 or other?

2 A. It is possible, but I don't remember.

3 Q. And you said that the power was off on  
4 Valley Lane under that name but turned on immediately  
5 thereafter on Gay Lane, and that was the information  
6 you sent to him?

7 A. Possible, but I don't remember.

8 Q. Because you have 1,900 subpoenas every  
9 month over the last year?

10 A. Well, 1,900 just last month.

11 Q. Right, just for the last month over the  
12 last year?

13 A. Yeah.

14 THE COURT: Can I -- can I ask her a question?

15 MS. LUZAICH: Can you? Of course. It is your  
16 court.

17 BY THE COURT:

18 Q. So is this a likely or a possible scenario  
19 that you are on the phone with the detective, who is  
20 requesting some information and telling you that a subpoena  
21 will follow. He gives you a name, a social, do you have  
22 power in that name, and maybe you even have an address,  
23 and you could immediately look up the name, the address  
24 the social, however you are going to do it, but you could  
25 do it all three ways couldn't you?

1 THE WITNESS: Yes I could.

2 THE COURT: So you have a name, you have the  
3 social, you have an address. Whatever would be the  
4 easiest way, your computer will tell you immediately  
5 while you are on the telephone at that address and that  
6 name, and that Social Security, there is no power at that  
7 address in that name with that Social Security.

8 But you would also be able to tell immediately  
9 that there is power in that name, maybe with a different  
10 Social Security and a different address, that coincided  
11 with the out date, and the in date at the new address.

12 Can you tell all that information immediately  
13 while you are on the telephone?

14 THE WITNESS: I can see an out date when somebody  
15 moves, yes, I can, instantly when I pull up the record.

16 THE COURT: Okay.

17 THE WITNESS: With some research.

18 THE COURT: Right. And you are obviously putting  
19 in different information into the computer, but it gives  
20 you immediate feedback, and it tells you all this?

21 THE WITNESS: Yes, it does.

22 THE COURT: So even in a short conversation with  
23 the police officer on the telephone, would it be possible,  
24 unlikely, likely, that if you look under here, you say, well,  
25 detective, the address and the name that you've given me



1 are no longer active, but there is an active address and a  
2 different address with that name, maybe with a different  
3 Social Security number, or whatever?

4 THE WITNESS: That isn't something that I would  
5 be able to instantly see with a different Social Security  
6 number. When I'm pulling up a record, it's just a unique  
7 record about that Social Security number. I would be able  
8 to see if that Social Security moved to a different address.

9 I would not be able to see someone else's Social  
10 Security number onto that person's record, like any of  
11 these record lack a Social Security number.

12 THE COURT: Okay. So the base then to track this  
13 information is primarily the Social Security number?

14 THE WITNESS: Yes, it is.

15 THE COURT: Okay. And so, but you could while  
16 you are on the telephone say, well, that power that you  
17 have given me was shut off on that particular date, but  
18 I am seeing that the power on that same date was turned  
19 on at a different address with the same name?

20 THE WITNESS: Like a customer moved?

21 THE COURT: Right.

22 THE WITNESS: Correct, that's correct.

23 THE COURT: And you would be able at that -- and  
24 would that be -- if somebody said that that is what they  
25 were told on the phone, is there any reason to believe to

1 say that that's true or not true, I mean, is that entirely  
2 possible or is it highly unlikely?

3 THE WITNESS: If a customer moved?

4 THE COURT: Yes, if you are talking to a police  
5 officer, and the police officer said that's what I said on  
6 the phone, is that -- is that likely?

7 THE WITNESS: It could be likely, and the subpoena  
8 was coming over, and it was an emergency situation, it could  
9 have come, that's fine.

10 THE COURT: Actually, what we are more concerned  
11 with here is the actual conversation that you had.

12 Is that information so readily available to you  
13 that that if the police officer said, that's what I was  
14 told that that it's probably accurate?

15 THE WITNESS: Probably accurate.

16 THE COURT: Okay.

17 BY MS. LUZAICH: (Continuing)

18 Q. Just in simple terms:

19 If a police officer calls you and says, I am  
20 looking for John Smith's power. I believe it is at Adams  
21 Drive, and you look up John Smith, and you say, yes,  
22 Officer, John Smith has power, but it was turned off on  
23 Adams Drive on January 1 and turned on on Washington  
24 Drive on January 2, I mean, is that something that you  
25 could determine quickly?

1 A. Yes.

2 Q. And, Officer, John Smith's Social Security  
3 number is 123456789, or whatever, so that you can put that  
4 on the subpoena when you send it to me as soon as you hang  
5 up the telephone?

6 A. Normally under normal circumstances, the  
7 officer gives me a Social Security number.

8 Q. But if they don't have it?

9 A. If they don't have it, a common name would  
10 be too hard to --

11 Q. (Interposing) Well, no, I am just using  
12 John Smith, but if you see it there, you are looking at  
13 the screen, and it says John Smith has power on Washington  
14 Drive, his Social Security number would be on the screen  
15 also, correct?

16 A. If they gave me one, yes.

17 Q. If they gave you one?

18 A. Correct.

19 Q. So, during your conversation with the  
20 detective, so that he would get you the correct information  
21 on the subpoena, is it possible that you would have told  
22 him, yes, John Smith has power at Washington and his Social  
23 Security is 132456, so that he can give you the correct  
24 information to make it easier to comply with the subpoena  
25 because it is easier for you to comply with the subpoena

1 if you have the Social Security number, correct?

2 A. Correct.

3 MS. LUZAICH: Okay, thank you.

4 THE COURT: Anything else?

5 MR. LANDIS: Yeah, briefly, Judge.

6 THE COURT: Go ahead.

7 REDIRECT EXAMINATION

8 BY MR. LANDIS:

9 Q. As an investigator for Nevada Power, you  
10 have been trained in the importance of details?

11 A. Yes.

12 Q. Is it important that you pay attention to  
13 like numbers in the Social Security number?

14 A. Yes.

15 Q. Or names?

16 A. Yes.

17 Q. If an officer called you and said I want  
18 to know if John Smith has power at 444 Red Street, and  
19 you pull up that record, and it turns out that there was  
20 power at 444 Red Street, however, it wasn't John Smith,  
21 it was James Smith that had power.

22 Based on your training and experience, would  
23 you notice that difference when you are talking to the  
24 officer?

25 A. Yes, I would.

1 Q. And would you inform the officer of that?

2 A. Yes.

3 Q. Is it normal practice or we are talking  
4 about possibilities, I want to talk about what you do.

5 Do you give Social Security numbers to police  
6 officers when they ask for them without a subpoena actually  
7 hitting your desk?

8 A. If it's an emergency situation, and the  
9 subpoena is on the way, information can be communicated,  
10 in an emergency, an extreme emergency situation.

11 Subpoenas need to be provided in order to obtain  
12 the information.

13 MR. LANDIS: The Court's indulgence. Nothing  
14 further, Judge.

15 THE COURT: Thank you very much for your testimony.  
16 I appreciate it.

17 THE WITNESS: Thank you.

18 (Witness excused.)

19 THE COURT: Do you want to call somebody else?

20 MR. LANDIS: I call Narvies Wesley.

21 MS. LUZAICH: Who?

22 MR. LANDIS: Narvies Wesley.

23 THE CLERK: Come forward, please, sir, take the  
24 witness stand, remain standing and raise your right hand.  
25 Whereupon,

1 NARVIEZ WESLEY,  
2 called as a witness herein by the Defendant, having been  
3 first duly sworn, was examined and testified as follows:

4 THE CLERK: Thank you very much. You may have  
5 a seat.

6 State your name, spell your first name and last  
7 name for the record.

8 THE WITNESS: My name is Narvyez Wesley. The  
9 first name is N-a-r-v-i-e-z, and the last name, Wesley,  
10 W-e-s-l-e-y.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MR. LANDIS:

14 Q. Mr. Wesley, where did you reside in February,  
15 of 2007?

16 A. 4232 Gay Lane, Las Vegas, Nevada.

17 Q. Do you know this guy?

18 A. Yes, I do.

19 Q. Who is this?

20 A. My son.

21 MR. LANDIS: Let the record reflect Mr. Wesley  
22 has I D'd the Defendant.

23 THE COURT: The record will so show.

24 BY MR. LANDIS:

25 Q. Were you home in February, of 2007 when

1 Henderson SWAT entered your home?

2 A. Yes, I was.

3 Q. Who was at at that time?

4 A. My wife, myself, and my son.

5 Q. Narcus?

6 A. Yes.

7 Q. During the course of their search of your  
8 premises, did you have any conversations with members  
9 of either SWAT or the Henderson Police Department?

10 A. Yes, I did.

11 Q. What were those conversations?

12 A. When they came into our home --

13 MS. LUZAICH: Objection, foundation, I mean, who  
14 are we talking about?

15 THE COURT: We are talking about the witness  
16 and the --

17 MS. LUZAICH: Any officer in his home?

18 THE COURT: Well, I don't know. Did you ever  
19 get anybody's name of any of the SWAT as they came in?

20 THE WITNESS: No, sir.

21 THE COURT: Was there one particular person  
22 that appeared to be in charge?

23 THE WITNESS: Not at the moment.

24 We were asleep, and when they came in, they had  
25 guns in our face and lights shing, and they told me and

1 my wife to put our hands up, and sit there, and we just  
2 sat there with our hands in the air, and then we asked  
3 them what's going on, and nobody said anything.

4 THE COURT: You don't know who you were talking  
5 to?

6 THE WITNESS: No, because they had on their  
7 helmets and everything so we didn't even see any faces on  
8 them.

9 THE COURT: Go ahead.

10 BY MR. LANDIS:

11 Q. Could you tell the difference between  
12 the initial SWAT officers that entered your house and  
13 other members of that Police Department?

14 A. Yes.

15 Q. How could you tell that difference?

16 A. The SWAT officers were all dressed with  
17 helmets, guns and the lights on, with the lights shining,  
18 and the other officers, the first officer that we really  
19 saw after they made us go in the living room, he had on  
20 just some regular clothes, like a pair of slacks and a  
21 shirt. He wasn't dressed up, or anything.

22 And then it was dark in the room so then another  
23 officer came in, and they talked.

24 Then a few minutes later, a lady officer come  
25 in with another man, like four or five different officers,



1 but they didn't have on any uniforms. They had on regular  
2 street clothes.

3 Q. Have you seen one of those officers who was  
4 wearing civilian clothes that day in the hallway of this  
5 Courthouse today?

6 A. Yes, I have.

7 Q. I want to first talk about the SWAT people  
8 who came into your house.

9 Did you have any direct conversations with them?

10 A. The only thing, no, well, we asked them what  
11 was going on, you know, what was happening because we didn't  
12 know.

13 And they said, just to be still, and then they sit  
14 there for a minute, and they went in Marcus's bedroom, got  
15 him and brought him out.

16 Then they brought us back up in the living room  
17 and set us down on the couch.

18 Then the SWAT team went outside with Marcus at  
19 first, and the Officer Weske, I remember him because he  
20 told us who he was, stood there in the living room with  
21 us in front of us, and wouldn't let us move. So we were  
22 just sitting there on the couch for like almost an hour,  
23 15, 20 minutes.

24 Q. Did you have any conversations with any  
25 of those officers regarding the existence of a search

1 warrant?

2 A. Yes, we did.

3 My wife asked them first, where was the search  
4 warrant?

5 And this Officer Weske told my wife that the  
6 search warrant was outside. He would go out and get it  
7 and bring it back.

8 So 10, 15 minutes went by while the other officer  
9 entered the bedroom, searching all the back part of my  
10 house, and my wife asked him again for the search warrant.  
11 He said, don't worry about it. We have got it. We are  
12 going to go get it.

13 Then, I guess, about 30, 45 minutes later because  
14 we sat there a long time. My wife asked him, where is the  
15 search warrant? And he said something, and he then just  
16 kind of turned it off.

17 So I think it was about that time, I asked him,  
18 could I call my family attorney because we use one attorney  
19 for the whole family for certain, you know, little stuff.

20 MS. LUZAICH: Judge, can he answer the question?  
21 I am going to object as non responsive. Can he answer the  
22 question, did you review the search warrant?

23 THE WITNESS: Okay. I --

24 THE COURT: Go ahead and answer the question.

25 BY MR. LANDIS:

1 Q. About that attorney issue, who was present,  
2 what members of your family were present at that point in  
3 time?

4 MS. LUZAICH: Objection, relevance, as to --

5 THE COURT: Overruled. Let's get through this.  
6 Let's get through this hearing. C'mon. Go ahead.

7 THE WITNESS: All three of us, my wife, my wife --  
8 I was sitting here, my wife was in the middle, and Narcus  
9 was alongside when I asked about the attorney. So all  
10 three of us were there in the room.

11 BY MR. LANDIS:

12 Q. And what did you ask him?

13 A. I asked him could I call my family attorney  
14 because we wanted an attorney present because they wouldn't  
15 tell us nothing.

16 So I know that the law says you have the right  
17 to an attorney to be there or at least advised by an  
18 attorney. They told me that we didn't need an attorney  
19 there because he wasn't under arrest.

20 Q. Who told you that?

21 A. Officer Weske.

22 MR. LANDIS: Nothing further.

23 THE COURT: Go ahead.

24 MS. LUZAICH: The Court's indulgence.

25 THE COURT: Okay.

## CROSS-EXAMINATION

BY MS. KOLLINS:

Q. Mr. Wesley, you have been at least twice convicted of felonies in this jurisdiction, is that correct?

A. Yes, but that doesn't have anything pertaining to this case.

Q. Well, that's not for you to decide. That's for the Court to decide.

A. Yes, I have been convicted of a felony, yes. Yes, I have. Assault with a deadly weapon and attempted murder, yes.

Q. Your son was escorted outside by Detective Weske?

A. No.

Q. By SWAT?

A. Yes.

Q. And then talked to by Detective Weske outside?

A. No. Detective Weske was in the house when they brought our son back into the house because they said it was cold outside so they brought him back into the house and set him down.

Q. Okay. And eventually your whole family was taken out of zip ties, correct?

A. No, we were never -- we were never tied

1 up, no. We were just held that date, I guess you know  
2 they had guns right there so we couldn't move.

3 MS. KOLLINS: No more questions.

4 THE COURT: Is that it?

5 MR. LANDIS: Nothing further, Judge.

6 THE COURT: Okay. Thank you very much for your  
7 testimony, Mr. Wesley, I appreciate it.

8 (Witness excused.)

9 THE COURT: Is that going to be it?

10 MR. LANDIS: The Court's indulgence.

11 I call Angela Wesley, and while we are getting  
12 her, Judge, for the record, I do intend to call my client  
13 as to issues pertaining to this search warrant.

14 I do think the case law is clear, but I want to  
15 make sure we are all on the same page.

16 He can testify as to issues pertaining to his  
17 rights of counsel, and the search warrant.

18 The State, of course, has the right to cross  
19 him as to that, but subsequent issues dealing with the  
20 case cannot be inquired into, and further, it does not  
21 impact anything that would happen at the jury trial later  
22 today.

23 THE COURT: That's my understanding, just to  
24 make it quite clear.

25 MR. LANDIS: I just wanted to make sure before

1 we had him take the stand.

2 THE COURT: All right.

3 THE CLERK: Would you come step forward, please  
4 ma'am, take the witness stand.

5 Remain standing, and raise your right hand,  
6 please.

7 Whereupon,

8 ANGELA WESLEY,  
9 called as a witness herein by the Defendant, having been  
10 first duly sworn, was examined and testified as follows:

11 THE CLERK: Thank you very much, you may be  
12 seated.

13 Please state your name and spell your first and  
14 your last name for the record.

15 THE WITNESS: Angela, A-n-g-e-l-a, the last name,  
16 Wesley, W-e-s-l-e-y.

17 THE CLERK: Thank you.

18 DIRECT EXAMINATION

19 BY MR. LANDIS:

20 Q. Ma'am, where did you live in February, of  
21 2007?

22 A. At 4232 Gay Lane.

23 Q. Did you live there with your husband?

24 A. Yes.

25 Q. And what's his name?

1 A. Narviez Wesley.

2 Q. Were you home in February, of 2007, when  
3 the Henderson Police Department SWAT served a search warrant  
4 at that residence?

5 A. Yes.

6 Q. As part of that execution, did there come  
7 a time when the three of you, and by the three of you,  
8 I mean Narviez, yourself and Narcus were in the living  
9 room?

10 A. Yes.

11 Q. Did you hear any communication between Narviez  
12 and members of the Henderson Police Department concerning  
13 a right to -- his intent to call his attorney?

14 A. To call our family attorney, yes.

15 Q. What was said?

16 A. They told us that we didn't need one at that  
17 time because Narcus was not under arrest.

18 Q. Slow down. What did Narviez say?

19 A. Narviez said could he call his family lawyer?

20 Q. And did one of the Henderson Police Department  
21 officials respond to that request?

22 A. Yes, he did.

23 Q. And what did they say?

24 A. That he didn't need a family attorney because  
25 Narviez wasn't under arrest -- or Narcus wasn't under arrest.

1 MR. LANDIS: Nothing further, Judge.

2 THE COURT: Cross?

3 MS. LUZAICH: Nothing.

4 THE COURT: All right, thank you.

5 Thank you for your testimony. I appreciate it.

6 (Witness excused.)

7 MR. LANDIS: We will call lastly, Judge, Narcus  
8 Wesley.

9 THE COURT: Okay.

10 THE CLERK: Come forward, please, take the witness  
11 stand, remain standing, and raise your right hand.

12 Whereupon,

13 NARCUS WESLEY,

14 called as a witness herein by the Defendant, having been  
15 first duly sworn, was examined and testified as follows:

16 THE CLERK: Thank you very much. You may be  
17 seated.

18 State your name and spell your first and last  
19 name for the record.

20 THE WITNESS: Narcus, N-a-r-c-u-s, Wesley,  
21 W-e-s-l-e-y.

22 THE CLERK: Thank you.

23 DIRECT EXAMINATION

24 BY MR. LANDIS:

25 Q. Were you at that Gay Lane address we have



1 heard about a few times today in February, of 2007 when  
2 a search warrant was executed?

3 A. Yes.

4 Q. Did there come a time when your father,  
5 your stepmother, and yourself were in the living room  
6 of that residence?

7 A. Yes.

8 Q. Could you hear everything that was being  
9 said amongst your family members and members of the  
10 Henderson Police Department?

11 A. Yes, because we were in the living room.

12 Q. Did you hear your father at any point  
13 talk to the Henderson Police Department regarding an  
14 attorney being present?

15 A. Yes.

16 Q. What did he say?

17 A. My dad asked him, he said, well, and he  
18 said, what's going on, and he said, we are going to call  
19 our family attorney, and the cop say, nobody is under  
20 arrest, so you guys don't need that.

21 Q. And you heard that at that time?

22 A. Yes.

23 MR. LANDIS: The Court's indulgence.

24 THE COURT: Sure.

25 MR. LANDIS: Nothing further, Judge.

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## CROSS-EXAMINATION

BY MS. LUZAICH:

Q. Well, in fact, you were not under arrest at that point, is that correct?

MR. LANDIS: Objection, legal conclusion.

BY MS. LUZAICH:

Q. Well, did anyone tell him --

THE COURT: Go ahead, overruled. Go ahead.

BY MS. LUZAICH:

Q. Okay. Is that correct? Did anybody tell you you were under arrest yet?

A. Uh-uh.

Q. Would that be a "no"?

A. No.

Q. Okay. And, in fact, you were at that house that day, correct?

A. Correct.

Q. Were you sleeping when SWAT got there?

A. I really can't recall because --

Q. Where were you when SWAT got there?

A. I was in my bedroom.

Q. So you have a bedroom there?

A. Uh-huh.

Q. And you were in that -- is that a yes?

A. Yes, yes.

1 Q. You always have to say yes or no, because  
2 our really nice court reporter here has a yes button, a  
3 no button but no uh-uh button?

4 A. Yes, ma'am.

5 Q. Is that fair? So you were at the house  
6 at least for a significant period of time that day,  
7 right?

8 A. Yes.

9 Q. And you drive that white Chrysler 300?

10 A. Yes, I bought it.

11 Q. And that was in the driveway that day?

12 A. Yes.

13 Q. And evening?

14 A. Yes.

15 Q. And you did, in fact, speak with police  
16 officers, just you and Detective Weske and Detective  
17 Hartshorn, correct?

18 A. No, not exactly.

19 Q. So you never talked to them?

20 A. Yes, I talked to them, but it wouldn't  
21 just go to that.

22 Q. Okay. Were you tape recorded?

23 A. I would assume. I didn't know I was being  
24 tape recorded.

25 Q. Did they remove -- did you have ties on

1 your wrists when you talked to them?

2 A. Yes.

3 Q. And did they try and get the ties off?

4 A. Well, yes, but it certainly took a while.

5 Q. And it was hard, right?

6 A. Uh-huh.

7 Q. Okay. Did they -- is that a "yes"?

8 A. Yes.

9 Q. But they did try --

10 A. Yes.

11 Q. They did try to help you out because it  
12 was uncomfortable?

13 A. I guess.

14 Q. And they -- well, was it uncomfortable?

15 A. Yes, it was uncomfortable. I still have  
16 the marks on my hands.

17 Q. And they tried to --

18 MR. LANDIS: (Interposing) Well, that is  
19 speculation, Judge. He doesn't know what they were trying  
20 to do.

21 MS. LUZAICH: Well, he knows that they were trying  
22 to take them off.

23 THE COURT: Overruled, c'mon. Did they finally  
24 get those slip-ons --

25 MS. LUZAICH: Zip ties.

1 THE COURT: -- those ties, zip ties, did they get  
2 those finally off?

3 THE WITNESS: Yes, but they put cuffs on after.

4 THE COURT: All right.

5 BY MS. LUZAICH:

6 Q. Okay. And they read you your rights, correct?

7 A. I don't recall that.

8 Q. So if there is a tape recording of your  
9 rights being read to you, and you say you understand them,  
10 that was justly magically produced?

11 A. Well, if it's on the paper, I guess so, but  
12 at the time when they came in, I was half asleep and telling  
13 me a whole bunch of things, and I was just saying uh-huh,  
14 uh-huh, okay.

15 Q. But you remember your dad asking for a  
16 lawyer?

17 A. Yes, because we were standing there.

18 MS. LUZAICH: Okay, nothing further.

19 THE COURT: Anything else?

20 MR. LANDIS: No, Judge.

21 THE COURT: Okay. I appreciate very much your  
22 testimony. Go ahead and sit by counsel.

23 THE DEFENDANT: Okay.

24 (Witness excused.)

25 THE COURT: Does that conclude our evidentiary

1 portion of our hearings.

2 MR. LANDIS: Yes, the Defense has no further  
3 witnesses.

4 THE COURT: All right. Let's wrap up your  
5 arguments here.

6 Any supplements to your written motion and  
7 opposition, this should be the time to wrap it up.

8 MR. LANDIS: Judge, contrary to what the State  
9 says two times in their opposition, the information provided  
10 by Detective Weske in his search warrant affidavit concerning  
11 the Nevada Power records which we heard about today, they  
12 did not concern statements made by codefendant concerning  
13 where this guy lived or that he lived with his parents.

14 They also concern the fact that he had a 300-M  
15 Chrysler that was registered to him.

16 So, in effect, it was those two facts and those  
17 two facts alone that the detective purported to tie Mr.  
18 Wesley to that residence.

19 The detective couldn't give good answers as to  
20 where he got that Social Security number from.

21 He couldn't give good answers as to why he didn't  
22 point out that information in the search warrant.

23 I think Donna Lamonte made it pretty clear  
24 that if he would have requested that name or even if  
25 he requested that name and that address if there was a

1 discrepancy, she would have communicated that to him  
2 over the phone.

3 Further, as to how he got that Social Security  
4 number, which clearly was not Narcus's, he knew it wasn't  
5 Narcus's because he put Narcus's correct Social Security  
6 number throughout the same portion of the case he testified  
7 in putting on the search warrant itself.

8 I think it's pretty clear that he knew at the  
9 time he drafted that search warrant that Narcus Wesley could  
10 not have power at that address, that it was in fact Narviez  
11 Wesley, and he knew that sending that subpoena to that house  
12 with that Social Security number would get him information  
13 that he put in the search warrant.

14 That is, if not a knowingly false statement,  
15 it shows a reckless disregard, Judge. Those facts are  
16 important.

17 Further, as to the Chrysler as to where it was  
18 registered to, he said he got information concerning the  
19 fact that it was registered to Narcus, but if he would  
20 have gotten that information, he would have also found  
21 out that it was registered to Narcus at a different  
22 address.

23 He did not include that information in the  
24 search warrant.

25 Those two statements, which are the only basis

1 for probable cause in that search warrant have some issues  
2 regarding their veracity.

3 As I say, Judge, we don't have to show that they  
4 were knowingly false. A reckless disregard for the truth  
5 is also as doubt.

6 What this Court needs to do is take out those  
7 statements made by Detective Weske concerning probable  
8 cause that you believe meet those standards, and they  
9 know will, there is no deference due to the magistrate  
10 in this situation, determine whether or not what is in  
11 there, which was not false, which was not submitted without  
12 reckless disregard for the truth, whether those statements  
13 afford a probable cause, Judge, and they just don't. They  
14 just don't.

15 Even if, even if you believe that he did not  
16 have the information regarding the car that he chose not  
17 to put in the search warrant, the fact that an individual  
18 has a car parked in front of the house is not enough to  
19 support probable cause to search that house.

20 If we are talking about an arrest warrant, that's  
21 one thing.

22 But Lord knows any time the cops sees a car  
23 parked in front of the house, that does not give him  
24 probable cause to search that house for evidence of a  
25 crime.



1           That alone is not basis for probable cause,  
2 Judge. This was a bad search warrant.

3           You heard what they said. They were in a hurry.  
4 He cut corners, and he did not do a complete job.

5           Second, as to his confession, there is issues  
6 regarding right to counsel.

7           On behalf of his family with my client sitting  
8 there, his father asserted, at least asked if they could  
9 call their family attorney.

10          The answer was:

11          You don't need an attorney, he is not under  
12 the arrest.

13          That's not the law, and that's not the standard.  
14 If an individual wants to have an attorney present for  
15 questioning, or for that matter during the execution of  
16 a search warrant, they have that right.

17          With my client sitting there and hearing that,  
18 the reasonable inferences, the inferences he drew was  
19 that he could not have an attorney there at that time.  
20 Then questioning begins.

21          As to the Miranda warning, they were in quick  
22 succession if you look at the transcript, and the only  
23 questions:

24                "Do you understand that?"

25                "Uh-huh, Uh-huh."

1 "Do you understand that?"

2 Detective Weske never went to the second step of  
3 asking:

4 Do you want to waive those rights and talk to us?

5 That's an important step in Miranda, and it's an  
6 important thing for a potential Defendant to hear before  
7 the further questions.

8 Based on that, we ask that you suppress the entire  
9 search, including the statement based on the search warrant  
10 alone.

11 If the Court is not inclined to do it, we would  
12 ask this that you suppress his statement for violation of  
13 Miranda.

14 MR. BANKS: And, Judge, I wanted just to add to  
15 that that there was no indication by Detective Weske that  
16 Narcus had a right to counsel during questioning, and I am  
17 relying on the case of Pope, P-o-p-e, v. Zenon, Z-e-n-o-n.  
18 That's at 69 F.3d 1018, page 1023.

19 That's a Ninth Circuit 1995 case, which indicates  
20 that before interrogation, police must make it clear to the  
21 suspect that he has a right to talk with an attorney before  
22 questioning and to have that attorney present during the  
23 interrogation.

24 With that, we will submit it to the Court.

25 THE COURT: Your turn.

1 MS. LUZAICH: First of all, there is no evidence  
2 whatsoever to suggest that Detective Weske either intentionally  
3 misled the reviewing Judge, or that he was reckless in his  
4 disregard for the truth.

5 The way he described it, and the way that is very  
6 much more likely that it occurred, these guys had been up  
7 for two and a half days basically by the time he called Donna  
8 Lamonte, and he calls her and says that he has -- he is  
9 looking for power under the name of Narcus Wesley at Valley  
10 Lane, Valley Drive, whatever, and she looks it up, and she  
11 says, well, there is a Narcus Wesley, but it's not -- it  
12 was turned off at Valley, it's at Gay Lane.

13 Wilson had told him that Narcus drives the  
14 Chrysler 300, that's in the search warrant.

15 He goes to that address, and he immediately as  
16 soon as he hangs up the phone with her, he goes to that  
17 address to corroborate, and sure enough, the white Chrysler  
18 is in the driveway, and he goes, and he writes the search  
19 warrant and gets it done.

20 It's not until the next day after he hears from  
21 Narcus's dad about the power thing that he goes back, and  
22 he sees the subpoena, and it says:

23 "Please note. The individual's first name is  
24 different from your request."

25 And the note on here was indicating that she

1 did not notice when she was on the phone with him that  
2 the name was different.

3 He knew that the person who committed the offense  
4 with Wilson was Narcus. Narcus's photograph was pointed  
5 out by Wilson. The vehicle is the same, I mean, under the  
6 case law, if there is an intentional misrepresentation, or  
7 reckless disregard, you re-review it, taking that out, and  
8 I think that even without that information, there is still  
9 enough.

10 But there is no evidence that it was an intentional  
11 misrepresentation or that it was reckless.

12 I think there is certainly sufficient probable  
13 cause for the search warrant, and he did everything in  
14 good faith.

15 When you think about it, they had two guys that  
16 commit this -- I mean, forcible guns into the house, kids  
17 on the ground, takes one to the ATM with a gun, with the  
18 other one staying with the others at gunpoint.

19 Then they gratuitously for no reason whatsoever  
20 cause the SA, the sexual assault to occur, and then this  
21 one actually sexually assaults the girl with the gun.

22 So that is something that they are dire trying  
23 to find the individuals that committed the offenses.

24 These guys were working around the clock for  
25 two and a half days, and it is kind of a miracle that

1 they were able to find the guys.

2 So I think that their intent is absolutely in  
3 good form.

4 So I think that as far as the search warrant,  
5 they're fine.

6 But as far as the Miranda, and invoking, first  
7 of all, daddy can't invoke on behalf of Narcus, absolutely,  
8 positively, the case law says that.

9 Even if he were a juvenile, daddy can't invoke  
10 on his behalf, but he's an adult so daddy can't invoke on  
11 behalf of him.

12 Furthermore, it was very clear. He read from  
13 the transcript. They read him his Miranda rights, and he  
14 understood them, and he chose to speak with them.

15 And then finally, you know, the case law says  
16 there is no teleonomic phrases that have to be put forth.

17 He just has to understand that he has got the  
18 right to an attorney, and he has got the right to an  
19 attorney now. He doesn't have to wait until he gets to  
20 court.

21 And the fact that they said that you have the  
22 right before questioning, dah, it means during questioning  
23 as well.

24 What the Court is concerned about is when they  
25 don't say when the right attaches that people, even though

1 they watch TV, think that they don't have the right until  
2 they get to court.

3 It was very clear that they told him that he  
4 has got the right to an attorney right then and there.

5 So there is no reason for the Court to suppress  
6 anything.

7 MR. LANDIS: Very briefly, Judge, two points.

8 Donna Lamonte made it very clear that she called  
9 with the address and the name and if the name was different,  
10 she would have let them know that.

11 She did not mix her words when she said that,  
12 Judge.

13 And, secondly, to say that Detective Weske didn't  
14 lie, has no reason to lie, we all know very well that if he  
15 loses this motion because of bad police work, he is going  
16 to get in trouble for it.

17 To say that he doesn't have something to gain by  
18 getting out there and trying to fix what he did that day  
19 is a joke.

20 We all know in a case this serious, this guy has  
21 to to make sure the search warrant sticks or he is going  
22 to hear about it back at the station.

23 There is case law after case law where individual  
24 judges who had set against the exclusionary rule talk about  
25 how it support perjury. It puts officers in a spot where

1 they have to lie to keep evidence in court. This is that  
2 case.

3 And, lastly, Judge, they say it is a miracle,  
4 they say it's a miracle that these people were found.

5 I don't think it's a miracle that these people  
6 were found when constitutional rights are violated.

7 THE COURT: All right. Here is my take, and  
8 I don't think it is very surprising.

9 First of all, I don't think that any of the --  
10 there is no question that there was some misinformation on  
11 that application, as I see it, and everybody understands  
12 it.

13 All right. The question is whether it was done  
14 intentionally or recklessly.

15 My conclusion is no, I don't think so at all  
16 under these circumstances. I think {it's is quite clear,  
17 the father's name, the son's name. I don't think there  
18 was by any stretch, by any stretch that it was done  
19 intentionally.

20 I think it was all business. If it had been  
21 noticed, I think that even just a minor explanation would  
22 have sufficed, and even if it was, which I don't believe  
23 for an instant that it was, I think that the rest of the  
24 information still reaches the level of probable cause,  
25 and I think that it's the test that the Court applies

1 is a substantial basis for concluding probable cause  
2 exculpatory was a small part of accuracy and clarity is  
3 going to be.

4 Just as importantly, let me address the Miranda  
5 warnings.

6 I am not aware that the complicity, the status  
7 of the law is such that you have to inform the defendant  
8 not only of their right to an attorney before questioning,  
9 but that you have to go on to a further explanation that  
10 includes specifically the right to have an attorney present  
11 during questioning.

12 He did say that he could stop at any time that  
13 he directed him to stop.

14 The Defendant acknowledged that each one of those  
15 questions was clear.

16 There is nothing wrong with that argument, and the  
17 motion to suppress is denied.

18 \*\*\*\*\*

19 (End of excerpt of proceedings.)

20 \*\*\*\*\*

21

22

23

24

25

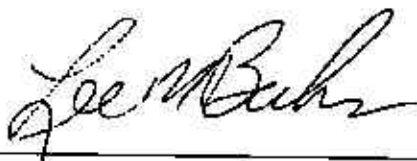


## CERTIFICATE

STATE OF NEVADA       )  
                              ) ss.  
CLARK COUNTY           )

I, LEE M. BAHR, CP, CCR 173, do hereby certify  
that I reported the foregoing proceedings; that the same  
is true and correct as reflected by my original machine  
shorthand notes taken at said time and place before the  
Hon. James M. Bixler, District Judge, presiding.

Dated at Las Vegas, Nevada, this  
10th day of April, 2008.



LEE M. BAHR, CP, CCR 173

JURL

FILED IN OPEN COURT

APR 14 2008 20

CHARLES J. SHORT  
CLERK OF THE COURT

BY

*Roshonda Mayfield*  
ROSHONDA MAYFIELD DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff(s),

CASE NO. C232494

-vs-

DEPT. NO. XXIV

NARCUS S. WESLEY

Defendant(s).

**AMENDED JURY**

- |                        |                       |
|------------------------|-----------------------|
| 1. BRENDA MEDEIROS     | 9. BETTY FISHER       |
| 2. JOANN CZERWINSKI    | 10. BONNIE BRUNSON    |
| 3. ROBBIE HOLLEY       | 11. BARBARA WAGNER    |
| 4. DONNA BELLA         | 12. CHRISTINE FORESTA |
| 5. JUANETA GIBSON      | 13. MELINDA WRIGHT    |
| 6. MICHAEL BAIRD       |                       |
| 7. KELLY RUSSO-WINN    |                       |
| 8. EVE CROSSMAN-KEENAN |                       |

**ALTERNATES**

1. SECRET FROM ABOVE

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1 conversation.

2 Q. Okay. And about what time of the day is  
3 it by now?

4 A. Probably closer to noon, or so.

5 Q. Okay.

6 A. Or two o'clock.

7 Q. And did you talk to Grant about what you  
8 knew?

9 A. Yes.

10 Q. Were you trying to -- well, what were you  
11 trying to find out from Grant?

12 A. Trying to find out if he knew who would  
13 be asking for him, you know, who would be coming in there  
14 trying to use the bank. I go, you know, does he owe money?  
15 Is anybody after you?

16 Q. Did you give any description of the individual  
17 who could be after him?

18 A. Yes, I said there were two black males that  
19 came looking for you, and, you know, they called you by  
20 name, and they wanted some money. They said you owed some  
21 money.

22 Q. Did he give you a name?

23 A. Yes, he did.

24 Q. What name did he give you?

25 A. He said Delarian Wilson.

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1 Q. Okay. And is that the only name that he  
2 gave you?

3 A. Yes.

4 Q. Okay. So he didn't know who potentially the  
5 second person could be?

6 A. No, he didn't.

7 Q. And when he gave you the names, well, did  
8 he give you the name of Delarian Wilson or was there also  
9 another?

10 A. Cameron.

11 Q. Okay. And did he give you other information  
12 about Delarian and Cameron Wilson?

13 A. He said that he -- he used to work at -- not  
14 used to work, he used to play football at UNLV, he said that  
15 he worked out with him at the gym, but he had heard that he  
16 had transferred down to Colorado and out-of-state.

17 Q. And, I'm sorry, you keep saying "he" and  
18 "him", he who heard that he had transferred --

19 A. (Interposing) Grant heard this stuff.

20 Q. Grant heard that Wilson played and transferred?

21 A. Yes.

22 Q. Okay.

23 A. Well, he was friends with --

24 Q. Wilson?

25 A. Wilson, and he said that he worked out with

000551

1 him at the gym, you know, but a while ago he knew that he  
2 had been transferred to Adam State.

3 Grant said that Wilson moved to Adam State, and  
4 was playing football there and then he said that, you know,  
5 it is kind of funny you say that, but one of my friends  
6 called me -- Grant said one of his friends called him and  
7 said that Wilson is back in town, and that he asked about  
8 Grant.

9 Q. Recently?

10 A. Yes.

11 Q. Okay.

12 A. Maybe a day or two.

13 Q. Okay. And with that information, what did  
14 you do?

15 A. I asked him if he could come down to the  
16 station and talk to Detective Niswonger because his name  
17 is in this case, and see if he had more questions since  
18 they were interviewing the victims, if he would come down  
19 and give a taped statement and, you know, identify photos  
20 if we could find one.

21 Q. And did he agree to come down with you?

22 A. Yes, he did.

23 Q. And did you learn during the course of this  
24 that there was stuff -- Grant told you that?

25 A. Yes.

000552

1 Q. Was it marijuana?

2 A. Yes.

3 Q. And did you actually find some of that stuff  
4 at Grant's house?

5 A. Yes, I did.

6 Q. And some money?

7 A. Yes.

8 Q. And did you seize all that?

9 A. Yes, I did.

10 Q. Okay. Now, at the station, did he actually  
11 give a taped interview?

12 A. Yes, he did.

13 Q. And that was audio and videotape?

14 A. Yes, it was.

15 Q. Did you get any more information from him  
16 regarding the individuals who might have committed the  
17 crime that you were investigating?

18 A. Just I believe he identified a 2005 booking  
19 photo for Delarian, and we didn't get any other suspect  
20 information.

21 Q. Okay. While he was at the station, is it  
22 your understanding that one of the detectives found a  
23 booking photo of Delarian Wilson?

24 A. Yes.

25 Q. And were you present when grant -- and what's

1 Grant's name, just for the record, his last name?

2 A. Heib.

3 Q. Is that H-i-e-b?

4 A. I think it's H-e-i-b.

5 Q. Oh, that's either way.

6 Okay.

7 And were you present when Grant Heib was shown  
8 the photo and said whether or not that was the person?

9 A. I believe I was. I'm pretty sure I was.

10 Q. Okay. Was it your understanding that he  
11 did identify --

12 A. Yes.

13 Q. -- that person as Delarian Wilson?

14 A. Yes.

15 Q. Okay. And once you had that information,  
16 then what did you do?

17 A. At that point, we had other detectives  
18 working on different things so we were now trying to scour,  
19 you know, basically Las Vegas, looking for Delarian Wilson,  
20 and I understand that a narcotics team was working on that  
21 end of it.

22 Q. Okay.

23 Were there -- earlier I had asked you if  
24 Detective Niswonger was assigning people to do certain  
25 things.

1 All of these people that were participating  
2 in the investigation, were you communicating with each  
3 other?

4 A. Communicating with each other and, basically,  
5 the sergeant was basically our liaison, Sergeant Dunaway.  
6 So if we didn't talk to these people directly we talked to  
7 the sergeant once we completed a task and so it was Tony  
8 Niswonger now, I'm sorry, Detective Niswonger to Sergeant  
9 Dunaway, what have you heard, and so he was kind of the  
10 liaison.

11 Q. Okay. And you were sharing information with  
12 others that way?

13 A. Yes.

14 Q. Through maybe Detective Dunaway?

15 A. Yes.

16 Q. And did Detective Dunaway give you information  
17 regarding the location of Delarian Wilson?

18 A. Yes.

19 Q. And do you know about what time of day? Are  
20 we still in the same day, that Monday?

21 A. Yes, yes, we are, we are in the afternoon.  
22 I think that we were at three or four o'clock in the  
23 afternoon at this point.

24 Q. Okay.

25 And did you get information -- was there a time

000555



1 that Delarian Wilson was actually located?

2 A. Yes.

3 Q. And where was he located?

4 A. Circus Circus.

5 Q. Now, did you participate in actually locating  
6 Mr. Wilson?

7 A. No.

8 Q. Did you go to Circus Circus once you discovered  
9 covered that Wilson was located?

10 A. Later in the evening, yes.

11 Q. Did you do anything inbetween the time that  
12 you or that you recall inbetween the time that you had the  
13 conversation with Grant Heib and the time that you went to  
14 Circus Circus?

15 A. Yes.

16 Q. What did you do at that time?

17 A. They were trying to locate him, and once  
18 they said they located him, and they found out that he  
19 had a room there registered to him then I was assisting  
20 Detective Pena, and I believe Detective Hartshorn was  
21 there in gathering information to apply for a search  
22 warrant for that room at Circus Circus.

23 Q. Okay.

24 But you are not the one who actually authored  
25 the search warrant, correct?

1 A. Not that one.

2 Q. So was that Detective Pena?

3 A. I believe so.

4 Q. Okay.

5 Do you know about what time of day it was that  
6 you got to Circus Circus?

7 A. I am going to have to say five or six. I  
8 know it was getting dark.

9 Q. Okay.

10 And did you participate in serving the search  
11 warrant, in and -- I'm sorry -- was the search warrant  
12 for the room that Delarian Wilson was registered to?

13 A. Yes, it was.

14 Q. Okay.

15 And at this point you still have no idea who  
16 the other suspect is, is that correct?

17 A. Correct.

18 Q. You don't have the name, nothing?

19 A. No.

20 Q. Okay.

21 And, I'm sorry, I asked the question, I wasn't  
22 listening to the answer, did you participate in serving  
23 the search warrant on Delarian Wilson's room?

24 A. No, I did not.

25 Q. Do you know while his room was being searched

000557

1 where he was?

2 A. Yes. At that point he was being detained  
3 at security downstairs, with security.

4 Q. Okay.

5 Was it it your understanding that one of the other  
6 detectives physically found him and took him into custody  
7 and brought him to security?

8 A. Yes, they took him into custody at a blackjack  
9 table.

10 Q. Okay. And when you went to security, was he  
11 there by himself or with others?

12 A. He was there with others.

13 Q. Police officers?

14 A. Police officers, and I think two others, a  
15 female and a male.

16 Q. Like friend type people?

17 A. Yes.

18 Q. As opposed to service type people?

19 A. Yes.

20 Q. Okay. And what did you do when you got  
21 there?

22 A. I talked to Detective Allison. He said he  
23 was playing blackjack.

24 You know, we just kind of talked about, okay,  
25 the other detectives that were across the room from him,

000558

1 we will wait for him to come back. We are going to serve  
2 a search warrant with Detective Pena. That was approved  
3 and then myself and Detective Hartshorn were assigned to  
4 interview Delarian.

5 Q. And did you do that?

6 A. Yes, we did.

7 Q. And where did you do that?

8 A. In a like security room. It had tables in  
9 there. I don't know if it was a break room or a security  
10 room, but it was right next to it.

11 Q. But it was in the Circus Circus?

12 A. Right.

13 Q. Okay. And did you read him his rights per  
14 Miranda?

15 A. Yes, I did.

16 Q. And did he admit or deny that he had been  
17 at the residence at 690 Great Dane?

18 A. He admitted.

19 Q. Did you talk to him about whether or not  
20 he was there alone or with another individual?

21 A. He said that he was with somebody.

22 Q. Did he give you the name of the person he  
23 was with?

24 A. Yes.

25 Q. What was the name he gave you?

1 A. Narcus.

2 Q. Did he give you any other information  
3 about Narcus?

4 A. He said that he played football for UNLV.  
5 He lived on the west side with his parents, and he drove  
6 a white Chrysler 300.

7 Q. Okay. When you had that information, what  
8 did you then do?

9 A. At that point, it was late at night, we  
10 wrapped up our interview.

11 We went through the details of everything, and  
12 wrapped up our interview, got with Sergeant Pena and took  
13 what he was going to take out of the room.

14 We had Delarian transported to the jail, took  
15 everything back to the station, and I completed my arrest  
16 report, and my witness stuff, and we were probably there  
17 until midnight, one o'clock in the morning.

18 Q. So you actually did arrest Delarian Wilson?

19 A. We arrested him, got all through the  
20 paperwork that we needed to have done that night so he  
21 was taken to jail, there was a certain amount that we had  
22 done. I believe we got done early in the morning, we were  
23 told to get a couple of hours sleep, and come back, you  
24 know, mid morning, and so that's what we did. We come back  
25 mid morning.

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1 Q. Now, I'm sorry, when you say you came back  
2 mid morning, would that by then be Tuesday?

3 A. The 20th, so this happened, I believe that's  
4 Tuesday, the 20th.

5 Q. Sunday night to Monday is the offense, and  
6 then Monday night you are working and come back Tuesday?

7 A. Right.

8 Q. Okay.

9 So when you came back Tuesday, you and Detective  
10 Hartshorn again?

11 A. Yes.

12 Q. And what did you do Tuesday when you came  
13 back?

14 A. Tuesday, I mean, the early detectives was  
15 already, Detective Niswonger, because he works the early  
16 shift, so they were already there, and then we briefed  
17 him on what we had, and what the second suspect we  
18 believed his name was, and so Detective Bakalas, who  
19 I work with, used to work at UNLV as a strength trainer  
20 for sports.

21 So he said he had somebody over there that he  
22 could talk to.

23 So he went over there, and he went down there  
24 and talked to, I believe, the director of athletics.

25 Q. Okay. And can you spell his name for

1 the court reporter?

2 A. B-a-k-a-l-a-s.

3 Q. Okay. And when he went down and talked  
4 to the athletic director at UNLV, or whoever it is that  
5 he talked to at UNLV, did he then give you information?

6 A. Yes, a little while later he called and  
7 said they he had a football roster in his hane, and he  
8 had the name Narcus Wesley.

9 Q. Did he also give you information about  
10 where Narcus Wesley indicated at least to the football  
11 department where he was living at the time?

12 A. Yes.

13 Q. And where was that?

14 A. I believe it was 2372 Valley Drive in  
15 Las Vegas.

16 Q. Okay.

17 And did he give you any other information at  
18 that time, Detective Bakalas?

19 A. Not at that time.

20 Q. Okay. So what did you do once you had  
21 that information?

22 A. Once I had that information, I called  
23 Nevada Power and spoke to a Donna Lamonte, and I asked  
24 Donna, I would like to check a residence for power, and  
25 she said, okay.

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1 I said it is 2372 Valley Drive, and I said the  
2 name that we are looking for is Narcus Wesley, and she  
3 said, okay.

4 A couple seconds later, a minute or two later  
5 she said, well, you know that power has been turned off  
6 there, hang on a second. Let me check another thing.

7 Okay. Well, that power is turned off, and now  
8 it's re-turned on at I think it's 4232, I would have to  
9 look at my notes. 4232 Gay Lane, if it was the same name.

10 I said, thanks a lot, we are sending you a  
11 subpoena, you know, I explained the case to her, you  
12 know, before, before we talked. I told her the seriousness  
13 of it, and so I faxed off a subpoena, and Detective Hartshorn  
14 immediately left and went to Gay Lane.

15 Q. And why did you go to Gay Lane?

16 A. Because that's where the power was turned  
17 on with that same name, and we wanted to go over and confirm  
18 if he lived there.

19 Q. Okay.

20 Was it your intention to get a search warrant for  
21 that location?

22 A. Yes.

23 Q. And if by confirming that he lived there,  
24 what were you looking for?

25 A. His vehicle, him out in the front yard, or

000563



1 anything, you know.

2 Q. About what time of day is it that you  
3 physically went there?

4 A. It was in the afternoon.

5 Q. So it was still light out?

6 A. Right, right.

7 Q. Okay. And when you went to Gay Lane, what  
8 did you see?

9 A. I saw his white Chrysler 300-N that I ran  
10 the registration on, and it came back to Narcus Wesley and  
11 a female that I can't recall.

12 Q. And a female's name?

13 A. Yes.

14 Q. Did you get any other information at that  
15 point?

16 A. I believe that the registration came back  
17 to the Valley address, but we sat there for a little while,  
18 watched the car. It didn't move, and at that time, I  
19 immediately called Sergeant Hart, H-a-r-t, who is the SWAT  
20 Sergeant, and I said, I think we have located the second  
21 suspect.

22 I have a vehicle here. I have got the house,  
23 and I am going to fill out an affidavit for a search  
24 warrant. If you guys wanted to start to recon so when  
25 we get it done, you guys can decide what you want to

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1 do.

2 Q. Okay.

3 And did you then go and fill out an affidavit  
4 for a search warrant?

5 A. Yes.

6 Q. And where did you go to do that?

7 A. I went to the Henderson Police Department.

8 Q. Okay. And did you actually prepare a search  
9 warrant?

10 A. Yes, I did.

11 Q. Did you take it to get it signed by a  
12 Judge?

13 A. Yes, I did.

14 Q. And when you got it signed by a Judge,  
15 what did you do?

16 A. I notified Sergeant Hart that it was signed,  
17 we are good to go.

18 I believe we went back and made copies, and we  
19 have to leave one with the residence, and then after we  
20 did that, we went down and met -- I can't remember the  
21 name of the place, but it was a bar. We met behind a bar  
22 close to the residence with SWAT.

23 Q. What was the purpose of that?

24 A. To brief it, you know, they do the recon,  
25 and do all the briefing.

000565

1 Q. Okay. Had you asked them to be on the  
2 lookout for anybody who comes and goes from the residence?

3 A. Yes.

4 Q. And did they indicate to you whether or  
5 not anybody came or went from the residence while you  
6 were gone?

7 A. They didn't indicate that they had anybody  
8 leaving or not. But once we got to the scene with the  
9 police, then we immediately, Detective Hartshorn and I  
10 immediately went and sat, sat at the residence and put  
11 eyes on there, took up the surveillance and the vehicle  
12 was still parked there, and so we just sat there.

13 Q. Okay.

14 A. And we saw SWAT serve the warrant.

15 Q. And did you have SWAT serve the warrant?

16 A. Because of the nature of the crime, because  
17 there was a gun involved, that we had information that  
18 there was a gun involved, sexual assault, robbery.

19 Q. Did you watch SWAT serve the warrant?

20 A. Yes.

21 Q. And when they served the warrant, did  
22 they knock, announce and enter?

23 A. Yeah, we watched it from afar, I mean, we  
24 stayed away.

25 Q. Right, but you could see --

000566

1 A. Yes.

2 Q. -- that it was happening?

3 A. Yes.

4 Q. Okay. And then what did you do?

5 A. Waited for them to clear the residence,  
6 and once they say it is okay, you know, then we go in.

7 And, basically, at that time, I was getting my  
8 stuff ready. I was out of the vehicle. I just pulled the  
9 vehicle up closer to the house, and I was at our car getting  
10 our stuff ready, and Narcus came out. They brought Narcus  
11 out, and that's where I began to do our interview, and  
12 everybody else went in and searched.

13 Q. Okay, you are pointing somebody out.

14 Was there an individual in the residence that  
15 physically walked outside that you see here in court  
16 today?

17 A. Yes.

18 Q. Can you describe where he is sitting and  
19 what he is wearing?

20 A. He is wearing a pants and suit jacket, a  
21 brown gray tie, sitting at the Defendant's table in the  
22 middle.

23 MS. LUZAICH: Your Honor, may the record reflect  
24 identification of the Defendant?

25 THE COURT: The record will so show.

1 MS. LUZAICH: Thank you.

2 Q. Was it your understanding that there were  
3 also other individuals in the house?

4 A. Yes.

5 Q. And did you ultimately speak with them as  
6 well?

7 A. Yes, I did.

8 Q. Okay. You spoke with the Defendant?

9 A. Yes.

10 Q. Did you give him his rights per Miranda?

11 A. Yes, I did.

12 Q. Did you do it by memory or from a card?

13 A. I believe I was handed a card.

14 Q. Okay. And did he express to you that he  
15 understood his rights?

16 A. Yes, he did.

17 Q. And then did he talk to you?

18 A. Yes, he did.

19 Q. Okay. Now, did some -- after you spoke  
20 with the Defendant, did something happen?

21 Did you find something out, relating to his  
22 father?

23 A. Okay. With his father, you know, once we  
24 went back in there --

25 Q. Okay. Maybe I should rephrase that. I

1 don't know if it was after.

2 A. Right.

3 Q. Did something happen with his father?

4 A. Yes.

5 Q. What?

6 A. Well, his father demanded -- his father  
7 and mother, I believe it's his mother, demanded a copy  
8 of the search warrant, and I said it's out in the car, I  
9 will get it in just a second, went out to the car and got  
10 it, gave it back to them, and while he was reading it,  
11 you know, I asked if there is any guns in the house, he  
12 said his nephew used to have them, and all of a sudden,  
13 he said:

14 "This is wrong. The power is in my name. It's  
15 not in Nascus's name."

16 And I got his name, and his name is Narbis.

17 Q. Could you spell that?

18 A. Well, it's spelled two different ways, I  
19 mean, on record, in scope, it's N-a-r-b-i-s, or b-i-z,  
20 and I believe in Nevada Power it was N-a-r-b-i-z.

21 Q. Okay.

22 So the Defendant's daddy indicated to you that  
23 there was some incorrect information in the search warrant?

24 A. Yes.

25 Q. Once you found that out, did you do anything?

1 A. Not right at that moment.

2 We finished what we had there, got his stuff,  
3 and then transported him to the jail, booked him into the  
4 jail, and then the next morning when I came back in, I  
5 looked in my mailbox. We have a box there, and there was  
6 a copy of the subpoena. So I looked at that, and that's  
7 where it said:

8 An asterisk: "Please note..." I have to look  
9 at my notes, something to the effect:

10 "Please note. Individual's first name is  
11 different from your request."

12 Q. Okay.

13 Now, when you say there was a copy of the subpoena  
14 in your box, would that be the subpoena that you had sent  
15 to Nevada Power?

16 A. It was her reply. Her reply, I'm sorry.

17 Q. But pertaining to the subpoena?

18 A. To my subpoena.

19 Q. Okay. That you sent to Nevada Power?

20 A. Yes.

21 MS. LUZAICH: May I approach the Clerk?

22 THE COURT: Sure.

23 (Whereupon, four exhibits were marked for  
24 identification by the Clerk as State's Exhibits 1, 2,  
25 3 and 4, respectively.)

1 MS. LUZAICH: For the record, the Clerk is  
2 marking four pieces of paper State's Proposed Exhibits  
3 1, 2, 3, 4.

4 They have been shown and are reshowed to defense  
5 counsel, and I don't know that they are in the correct  
6 order, so 1, 2, 3, 4 are kind of just random number.

7 Q. Detective, I am showing you what has been  
8 marked as State's Proposed Exhibits 1, 2, 3, 4, and can  
9 you tell me, do you recognize these?

10 A. Yes, I do.

11 Q. What are they, understanding that 1, 2, 3,  
12 4 may be out of order?

13 A. A subpoena I sent, and her reply, Ms.  
14 Lamonte, I believe Ms. Lamonte sent them from Nevada Power.

15 MS. LUZAICH: Move into evidence.

16 MR. LANDIS: No objection.

17 THE COURT: Admitted.

18 THE CLERK: Which one?

19 MS. LUZAICH: All four.

20 THE CLERK: All four?

21 BY MS. LUZAICH:

22 Q. And for the record, on State's Proposed  
23 Exhibit 2, is that where the asterisk with the note that  
24 you just described is?

25 A. Yes.



1 Q. And can you read it into the record for  
2 me?

3 A. "Please note. Individual's first name is  
4 different from your request."

5 Q. And on it -- okay. So from the time  
6 that you spoke with her on the phone, you immediately  
7 left, went, did your surveillance, for want of a better  
8 word, you looked to see what was there, and you were  
9 just doing things until you served the search warrant?

10 A. Yes.

11 MS. LUZAICH: Okay, thank you. I will pass the  
12 witness.

13 THE COURT: Cross.

14 MR. LANDIS: The Court's indulgence..

15 THE COURT: Sure.

16 CROSS-EXAMINATION

17 BY MR. LANDIS:

18 Q. Good morning.

19 A. Good morning.

20 Q. We can agree that throughout this process  
21 from when you got involved until your investigation  
22 concluded, that time was of the essence, yes?

23 A. Yes.

24 Q. And you proceeded in that fashion, with  
25 pretty much everything you did, correct?

1 A. Yes.

2 Q. And that included the drafting and issuance  
3 of the search warrant for Gay Lane?

4 A. Yes, I was gathering information from other  
5 detectives as well.

6 Q. To put it another way, you didn't want  
7 to wait three days to get that search warrant, is that  
8 correct?

9 A. Right.

10 Q. And before we get into that search warrant,  
11 I want to talk a little bit about the order of events  
12 involving the interrogation of Mr. Wilson, and the trip  
13 to UNLV, or at least you receiving the information from  
14 UNLV, the football roster, okay?

15 A. Yes.

16 Q. I think you testified on direct, and correct  
17 me if I am wrong, that the first of those two events was  
18 the interrogation of Wilson?

19 A. Yes.

20 Q. And then thereafter, sometime thereafter,  
21 a short matter later, you got the roster, correct?

22 A. Yes.

23 Q. Page 82 of the interrogation of Wilson,  
24 lines five and six.

25 Do you recall Detective Hartshorn saying during

1 that interrogation:

2 "We already know who Narcus is, bro. He was  
3 on your football team. He played...  
4 (incomprehensible) right?"

5 A. We were going in and out of the room there  
6 so he may have said it, I may have been there. I'm not  
7 sure.

8 Q. All right. He did say it or he may have  
9 said it?

10 A. No, if it's in there, he said it.

11 Q. Okay.

12 A. But you would have to ask him.

13 Q. Would you agree that it is indicative that  
14 he knew Narcus was on the UNLV football roster during that  
15 interrogation?

16 A. He could have been lying, you know, because  
17 at that time Grant said that he played football, and so we  
18 were guessing that he was a football player with him, I  
19 mean, I don't know.

20 Q. Well, as to your search warrant, I only  
21 want to talk about what's in the search warrant. I don't  
22 want to talk about what you do that was not in the search  
23 warrant, okay?

24 A. Yes.

25 Q. You said that somewhere during the interrogation

1 of Wilson he told you guys that Narcus lived somewhere on the  
2 west side of town with his parents?

3 A. Yes.

4 Q. And that's during the interrogation that  
5 occurred at Circus Circus, correct?

6 A. No, there was a time when I went and showed  
7 him his picture at the jail, and that's when he told me.

8 Q. A little different than what you testified  
9 on direct, correct?

10 A. As far as what?

11 Q. Receiving that information, and let me  
12 clarify:

13 During the interrogation at Circus Circus, that  
14 was recorded, correct?

15 A. Yes.

16 Q. At that time, he didn't tell you where  
17 Narcus lived, did he?

18 A. I'm not sure if he told us on that or not.  
19 I have to look at the transcript.

20 Q. Would that refresh your recollection?

21 A. If I read the whole transcript, yes.

22 Q. May I approach, Judge?

23 THE COURT: Yes.

24 BY MR. LANDIS:

25 Q. When is it where you talked about Narcus?

1 A. Yeah, right here he says:  
2 "Somewhere on the west side but I really don't  
3 know."

4 Q. But definitely not on the west side of  
5 town with his parents, correct?

6 A. No, I believe that the parents were probably  
7 at the jail.

8 Q. Very well. Well, we can agree nowhere in  
9 that statement, that recorded statement that occurred at  
10 Circus Circus did he say Narcus lives on the west side of  
11 town with his parents, is that right?

12 A. Just right here, right now.

13 Q. Okay.

14 A. We have Vegas, somewhere on the west side.

15 MS. LUZAICH: What page?

16 THE WITNESS: Page 83, page 82 and page 83. I  
17 believe that's it. Yes, sir.

18 BY MR. LANDIS:

19 Q. Reading that refreshes your recollection?

20 A. It refreshes that, you know, like I said,  
21 we were both in there, you know, he said, west side of  
22 Vegas on this.

23 Q. Okay. But nowhere in there does he say  
24 west side of town with his parents?

25 A. Not that I saw, no, sir.

1 Q. And you would agree this is accurate?

2 A. Yes, yes.

3 Q. Now, you mentioned a possible second time  
4 that you spoke to Mr. Wilson, correct?

5 A. Yes.

6 Q. You didn't talk about that on direct.  
7 Could you give me a little background of what occurred,  
8 why that occurred, and where it occurred?

9 A. It occurred at the Henderson jail, and I  
10 took a picture of Narcus's DMV photo over there and  
11 identified him.

12 Q. When did that occur in the order of events?

13 A. That occurred before the search warrant,  
14 and just before he went to the station or went to the  
15 jail.

16 Q. Was that before or after you conducted  
17 your first surveillance of the Gay Lane address and saw  
18 the white Chrysler?

19 A. That was after that.

20 Q. All right. And it's your testimony here  
21 that during that second interrogation or second interview  
22 with Wilson at the jail he told you that?

23 A. Yes.

24 Q. Was that interview transcribed? Was it  
25 recorded?

1 A. No, it wasn't. He was still up in booking.

2 Q. Did that second interrogation of Wilson  
3 occur before or after you drafted your search warrant?

4 A. That occurred before.

5 Q. Before?

6 A. Yes.

7 Q. In that search warrant, you go through a  
8 lot of the events that you testified to today, correct?

9 A. Yes.

10 Q. Do you inform the reviewing magistrate that  
11 Wilson said Wesley lived on the west side of town?

12 A. I would have to look at the search warrant.  
13 Yes, it is in the search warrant.

14 Q. What page?

15 A. It doesn't have a number. Next to the end.

16 MR. LANDIS: May I approach?

17 THE COURT: Yes.

18 BY MR. LANDIS:

19 Q. Does reviewing that refresh your recollection?

20 A. It says that I showed a photograph of Narcus  
21 Wesley to Wilson.

22 Q. I am going to keep that there. I understand  
23 that's in there, but is the information about the location  
24 of where he lives and that he may live with his parents, is  
25 that in there?

1 A. No.

2 Q. So, obviously, the reviewing magistrate did  
3 not have that information at the time that he obviously  
4 reviewed the request?

5 A. No, sir.

6 Q. When you went to the Gay Lane address for  
7 the first time and observed that Chrysler, did you thereafter  
8 contact the DMV and check the registration?

9 A. Not DMV, our -- and I can't recall, this is  
10 a while ago, we either called dispatch at that point or we  
11 had laptops in our car, too.

12 Q. And that's where you gained the information?

13 A. Yes.

14 Q. And the information you gained was that that  
15 car was registered to Narcus?

16 A. Yes.

17 Q. And one other person?

18 A. Yes.

19 Q. And that it was registered to a Valley View  
20 address?

21 A. Yes, Valley, not Valley View.

22 Q. I'm sorry. Let me be more precise, Valley  
23 Drive?

24 A. Valley Drive, yes.

25 Q. Okay. Did you learn at that time, communicating



1 with whoever it is that you did communicate the dates of  
2 registration?

3 A. No.

4 Q. Did you learn that the car was currently  
5 registered?

6 A. Yes, I believe it was currently registered?

7 Well, if you will look right there, and I have no  
8 recollection of it being expired, that registration.

9 Q. Did you learn the date that that registration  
10 began, that most current registration?

11 A. No.

12 Q. And you had that information at the time you  
13 drafted your search warrant request?

14 Yes?

15 A. I didn't have it with me. We obtained it.  
16 It was accessible to me, yes.

17 Q. You knew that though at the time you drafted  
18 your search warrant?

19 A. Yes, I knew that that vehicle was registered  
20 to him..

21 Q. And you knew it was to that Valley Drive  
22 address?

23 A. Yes, I believe so.

24 Q. And your search warrant request, you informed  
25 the magistrate --

1 A. Yes.

2 Q. Let me be more clear.

3 You informed the magistrate that the car is  
4 registered to Narcus, correct?

5 A. Yes.

6 Q. You informed the magistrate that the car was  
7 registered to Narcus at that Valley Drive address?

8 A. No, sir.

9 Q. There is police procedure on how you request  
10 information from administrative agencies, correct?

11 A. Sometimes, yes.

12 Q. And you know I couldn't call Nevada Power  
13 and get any information I wanted, correct?

14 A. I don't know. Some people can get it if  
15 they have contacts, and so forth, and once again, others  
16 can't get it.

17 Q. I understand. But we can agree that it  
18 is under the subpoena power that you get that information?

19 A. Sometimes. If there is emergencies, there  
20 are setup ways, where, hey, they get it to us within 72  
21 hours.

22 Q. Okay. You know people at Nevada Power is  
23 what you are saying?

24 A. This is the second time I ever talked with  
25 Donna.

1 Q. Okay. At the time that you called Donna  
2 at Nevada Power, had you drafted your Nevada Power subpoena  
3 yet?

4 A. No.

5 Q. How long after you communicated with Donna  
6 did you draft that subpoena?

7 A. Right after I phoned.

8 Q. As soon as you hung up the phone?

9 A. You just go on the computer, you have got  
10 a shell, and you turn it on, and print it, and that's it.

11 Q. And in relation to that, when did you send  
12 or fax a subpoena to Ms. Lamonte?

13 A. I believe I went and faxed it over to her  
14 before we left.

15 Q. All right. On that subpoena, you did send  
16 to Donna Lamonte, you list Narcus Wesley's name?

17 A. Yes.

18 Q. And you list a Social Security number?

19 A. I believe I had his Social Security and  
20 birth date on there, I believe.

21 MR. LANDIS: If I might approach, Judge?

22 THE COURT: Yes.

23 BY MR. LANDIS:

24 Q. Would reviewing your subpoena refresh your  
25 recollection?

1 A. Yes.

2 MR. LANDIS: May I approach?

3 THE COURT: Sure.

4 MR. LANDIS: Could we approach very briefly,  
5 Judge?

6 Sorry.

7 (Discussion off the record at the bench between  
8 the Court and counsel.)

9 THE COURT: All right. We are going to take a  
10 break at noon for at least 20 or 30 minutes, but right  
11 now, we are going to take a five minute break so we all  
12 can run to the restroom real quick. So we are going to  
13 be in recess for five minutes.

14 \*\*\*\*\*

15 (Whereupon, a brief recess was had.

16 After recess, all parties present, the following  
17 proceedings were had in open court:)

18 \*\*\*\*\*

19 THE COURT: All right. We are back on the record  
20 on the State of Nevada v. Marcus Wesley.

21 Go ahead.

22 MR. LANDIS: Thank you, Judge.

23 Whereupon,

24 DETECTIVE CURTIS WESKY,  
25 resumed the witness stand, having been previously duly

1 sworn, was examined and testified further as follows:

2 CROSS-EXAMINATION

3 BY MR. LANDIS: (Continuing)

4 Q. You got that subpoena, that you sent to  
5 Ms. Lamonte, correct?

6 A. No, the one I received I got. I don't  
7 have the -- you gave me this one.

8 Q. Okay, the Court's indulgence. Well, can  
9 we agree --

10 A. I'm sorry, yeah, you are right. This is  
11 the one, yes.

12 Q. It might be her fax return, but it is  
13 more or less the exact same thing as that, sir, right?

14 A. Right, yes, yes.

15 Q. And on that you have a name, you put  
16 Narcus Wesley, correct?

17 A. Yes.

18 Q. You put a Social Security number, correct?

19 A. Yes.

20 Q. Could you to protect identity just give us  
21 the last four digits of that Social Security number that  
22 you left on that subpoena?

23 A. 3280.

24 Q. Do you list an address on that subpoena?

25 A. No, I don't.

1 Q. There is a number of vowels in Mr. Wesley's  
2 name, which is his D R number?

3 A. Yes.

4 Q. What is that?

5 A. That's our report number.

6 MR. LANDIS: Okay. May I approach, Judge?

7 THE COURT: Yes.

8 BY MR. LANDIS:

9 Q. Where in the world did you get that Social  
10 Security number from?

11 A. I believe it was given to me by Detective  
12 Bakalas.

13 Q. Detective Batkins?

14 A. Bakalas.

15 Q. Okay.

16 A. I believe from the UNLV records, I'm not --  
17 I'm not positive but --

18 Q. In your search warrant application, you  
19 also list a Social Security number, correct?

20 A. Yes, I believe so.

21 MR. LANDIS: May I approach, Judge?

22 THE COURT: Yes, of course.

23 BY MR. LANDIS:

24 Q. I assume you don't remember that Social  
25 Security number offhand?

1 A. No.

2 MR. LANDIS: May I approach the witness, Judge?

3 THE COURT: Yes.

4 (Whereupon, Defendant's Exhibit A marked for  
5 identification by the Clerk.)

6 BY MR. LANDIS:

7 Q. Showing you what has been marked as Defendant's  
8 Proposed A?

9 A. Yes, sir.

10 Q. Does reviewing that refresh your recollection  
11 as to what Social Security number you listed in the search  
12 warrant?

13 A. Yes, it's a different one.

14 Q. Could you tell us the last four digits that  
15 you listed in your search warrant?

16 A. 8230.

17 MR. LANDIS: May I approach?

18 THE COURT: Yes.

19 BY MR. LANDIS:

20 Q. Where did you get that Social Security number  
21 from?

22 A. I said I thought I got it from Detective  
23 Bakalas, and there was a lot of papers and stuff, and I  
24 may have picked up the wrong one.

25 Q. Okay.

1 Now, I want to talk a little bit about your  
2 communications with Ms. Lamonte?

3 A. Okay.

4 Q. You testified on direct that the first thing  
5 you asked her for was an address?

6 A. Yes.

7 Q. Did you give her an address and a name, an  
8 address with a Social Security number or just an address?

9 A. I just gave her the address, and I said the  
10 name I am looking for is Narcus Wesley.

11 Q. And you gave her those two tidbits of  
12 information before she responded to any of your requests  
13 at all?

14 A. Yes.

15 Q. And that address you gave her was the Gay  
16 Lane address?

17 A. No, I gave her the Valley address.

18 Q. I'm sorry, the Valley Drive address?

19 A. Yes.

20 Q. What was her response to the best of your  
21 recollection to that?

22 A. The best of my recollection was, okay,  
23 there is no power at that address. Let me check something.

24 And then took a second, and the power was turned  
25 on in the same at this Gay address, 4232 Gay Avenue.



1 Q. Between the time that she said the power  
2 was turned off up until the time she gave you the Gay Lane  
3 address, did you give her any further information?

4 A. I don't believe so.

5 Q. While on the phone, was there any further  
6 communications by you or by Ms. Lamonte?

7 A. I believe about the subpoena, I said I am  
8 sending her a subpoena.

9 Q. Okay. How long after you hung up the phone  
10 with Ms. Lamonte did you start drafting your search warrant  
11 on that occasion? Identification?

12 A. Hours probably, I think, you know, we went  
13 out there. We had to -- we went out there, checked the  
14 address, found the vehicle, made a call to SWAT, sat there  
15 for a little bit, and then, as I said, I showed that  
16 photograph to Wilson, and then I went and started my  
17 affidavit based on, I think, you know, based on because  
18 everybody had a section of what they did.

19 So I am going by some of what was going on the  
20 other line so it was probably a few hours.

21 Q. Would it be fair to say that you sent SWAT  
22 to begin recon in anticipation of the search warrant being  
23 written?

24 A. Yes, I always call ahead of time and say I  
25 am applying for a search warrant.

1 Q. Okay.

2 When -- as a detective in Henderson, who do you  
3 tend to send your search warrants applications to, what  
4 Judge?

5 A. We have Judge George (phonetically) and Judge  
6 Berg (phonetically), and ideally, if they are not available,  
7 there is a Judge in Boulder City.

8 Q. Is it fair to say that the majority of them  
9 go to Burke or George, don't they?

10 A. Yes.

11 Q. This one went to George, correct?

12 A. I believe so.

13 Q. You were confident that the search warrant  
14 was being granted, and you sent SWAT out because George  
15 always grants your search warrant requests, doesn't he?

16 A. I have never had any declined. So, you  
17 know, that's not to say he won't.

18 Q. We are not talking about won't. He never  
19 has?

20 A. No.

21 MS. LUZAICH: Well, objection to the form of the  
22 question. I think Detective Weske hasn't had one declined,  
23 but he certainly can't testify whether anyone else has.

24 THE COURT: I think that is probably correct.  
25 At some time, you don't know whether he has declined anybody

1 else's applications, do you? You just never had one that's  
2 been declined?

3 THE WITNESS: Listen, I will tell you something  
4 about Judge George. He reads every piece of information on  
5 that form. You are there for a while.

6 MR. LANDIS: And I would object to that on  
7 foundation, Judge.

8 THE COURT: Overruled.

9 BY MR. LANDIS:

10 Q. When you arrived at the address to execute  
11 the search warrant, how long was SWAT in the house before  
12 you entered?

13 MS. LUZAICH: Well, that assumes facts not in  
14 evidence. He didn't enter.

15 THE COURT: Rephrase that. You may have misled  
16 what you are asking.

17 MR. LANDIS: Right.

18 Q. Is it your testimony that SWAT brought  
19 Narcus out of the house?

20 A. Yes.

21 Q. And that's before you ever entered the  
22 house?

23 A. Yes.

24 Q. But there came a time that you entered  
25 the house?

1 A. Yes.

2 Q. When was that?

3 A. After our interview. I brought him back  
4 in there. We sat him on a chair, and someone sat and  
5 watched, and I gave dad the search warrant, and then I  
6 went back in the back bedroom.

7 Q. Who cuffed Narcus?

8 A. Well, I believe SWAT because he had zip  
9 cuffs on. We were trying to actually get those off but  
10 I don't carry cutters.

11 Q. Did you have any communications with SWAT  
12 about what occurred before you took custody of Narcus --?

13 A. Oh, they knew the case, yes.

14 Q. That's not what I am asking.

15 Did you have any conversations between -- with  
16 SWAT about what occurred in the house before you took  
17 possession of Narcus?

18 A. No.

19 Q. So you have no idea what may have been said  
20 between SWAT and Narcus?

21 A. No.

22 Q. Or what may have been said between SWAT  
23 and members of Narcus's family?

24 A. No.

25 Q. Where did this interview take place?

1 A. Outside in the car. I believe it was concluded  
2 in the car.

3 Q. A police issue car?

4 A. Yes.

5 MR. LANDIS: The Court's indulgence.

6 THE COURT: Sure.

7 MR. LANDIS: With the Court's permission, I will  
8 hand the torch to Mr. Banks for a few questions.

9 THE COURT: Go ahead.

10 MR. BANKS: Thank you.

11 CROSS-EXAMINATION

12 BY MR. BANKS:

13 Q. Thank you. Detective Weske?

14 A. Oh yes.

15 Q. How do you do, I'm Jeff Banks?

16 A. I'm fine, thank you.

17 Q. I believe, and I want to be fair, and I  
18 think it's actually your words in the interview with Mr.  
19 Wesley, did you explain to him that he was not free to  
20 leave, is that -- is that fair?

21 A. Yes, I believe so.

22 Q. Okay. And I want to take you back to your  
23 direct with Ms. Luzaich. I wrote it down. I don't want  
24 to misquote you, but she had asked you about some rights  
25 that were maybe relayed to Mr. Wesley?

1 A. Yes.

2 Q. And I think you said:

3 "I believe I was handed a card..."

4 When it came down to where when you were recalling  
5 the Miranda rights, is that fair?

6 A. I do it both ways, I mean, I don't carry a  
7 card with me.

8 Q. Okay.

9 A. I don't have a card with me. Sometimes it  
10 is handed to me, a card.

11 Q. Okay. And when somebody is not free to leave,  
12 it is very important at that point that those rights are  
13 communicated to that person, is that fair?

14 A. Before you do an interrogation, yes, sir.

15 Q. Okay.

16 And when somebody is not free to leave, it is  
17 of utmost importance that those rights are communicated  
18 to that person, is that fair?

19 A. It depends on the situation.

20 Q. Okay. And I am talking about the situation  
21 where someone is not free to leave, in a situation where  
22 somebody is not free to leave, it is of utmost importance  
23 that those rights are communicated to that person, is that  
24 fair?

25 A. Like I said, if you are on a traffic stop,

1 you are not free to leave. I don't think you need to read  
2 Miranda so it depends on the situation.

3 If I am going to interrogate about a crime, yes.  
4 They are not free to leave, and they are in custody, yes,  
5 I do read them.

6 Q. Okay. He was not free to leave?

7 A. Right.

8 Q. And he was in custody, that's fair?

9 A. Yes.

10 Q. It was like a zip tie?

11 A. Yeah, I believe they have those plastic  
12 ties, yes, sir.

13 Q. Okay. So at that point, it was of utmost  
14 importance that he be given those rights, is that fair?

15 A. Not at that point. At the point where  
16 I start my interrogation is where he needs to be read  
17 Miranda from my training and experience.

18 If you just come out of a house handcuffed, I  
19 am not going to read him his Miranda rights right then  
20 and there.

21 MS. LUZAICH: Well, Your Honor I am going to  
22 object to that whole line right there because whether or  
23 not Miranda is required is a legal issue. It's not an  
24 opinion by the detective, I mean, what the detectives  
25 believes doesn't matter.

1 The bottom line is:

2 Did he or did he not do the right thing legally,  
3 and that's something the Court is going to decide, not  
4 the detective,

5 BY MR. BANKS:

6 Q. You gave him his Miranda rights one time in  
7 this whole interaction?

8 A. I believe so.

9 Q. Okay. And it was when he came out of the  
10 house, and he was in ties, and he was told he was not free  
11 to leave, is that fair?

12 A. Yes, I would have to look at the transcript  
13 of exactly when I read them to him..

14 MR. BANKS: Okay. May I approach?

15 THE COURT: Sure.

16 THE WITNESS: Okay.

17 BY MR. BANKS:

18 Q. Training and experience told you that that  
19 was the right time to communicate those rights to Mr.  
20 Wesley, is that a fair characterization?

21 A. After I made sure he was okay, yes.

22 Q. All right. And you said you believed  
23 you were handed a card, and you don't carry a card with  
24 you?

25 A. No.



1 Q. Okay. So it is not like you have one as  
2 you sit here today on you?

3 A. That's correct.

4 Q. On your person?

5 A. Correct.

6 Q. The card exists, and it is very specific  
7 with those rights -- let me back up.

8 That card is very specific with the rights that  
9 are read to the accused, is that fair?

10 A. Yes.

11 Q. Okay. And it's very thorough?

12 A. Yes.

13 Q. Okay. And the card exists so when somebody  
14 doesn't have it all memorized, the card exists so when  
15 somebody doesn't have it all memorized, you say the right  
16 things to the accused, right?

17 A. Yes, sir.

18 Q. And we can agree that's of paramount importance  
19 when you read those rights to somebody, tell them what their  
20 rights are before they start talking, you want to be satisfied  
21 that they know what you are talking about, is that fair?

22 A. Yes, that they understand their rights, yes.

23 Q. And that they understand those rights, is  
24 that fair?

25 A. Yes.

1 Q. Okay. And you want to be comfortable, at  
2 least in your mind, that they are knowingly and intelligently  
3 giving up those rights and talking to you, is that fair?

4 A. Yes.

5 Q. I have been told, you know, that I want --  
6 I want to make sure that he understands his rights, yes.

7 Q. Okay.

8 A. He has a right to know them.

9 Q. Okay. And we can agree on that card, you  
10 have seen the card?

11 A. Yes.

12 Q. You are familiar with the card?

13 A. Yes.

14 Q. We can agree on the card that there is  
15 part of the card that there is a question, do you understand  
16 these rights, and you waive them and give them up.

17 Is that -- is that fair based on what you have  
18 seen on the card?

19 MS. LUZAICH: Objection, that is not the card.

20 THE COURT: Well, we haven't seen the card for  
21 that matter, and I'm not quite sure exactly what your  
22 point is, but we got to get there quicker.

23 BY MR. BANKS:

24 Q. If you know.

25 A. Well, there is various cards.

1 Q. No, I don't. I am talking about the Henderson  
2 one.

3 A. The Henderson one.

4 Q. And if you don't know, you don't know?

5 A. I don't know what the bottom says.

6 Q. Okay. Where -- can you tell me where in  
7 the transcript you clarified it with Mr. Wesley whether  
8 he understood the rights that you read to him?

9 A. After each one I asked Mr. Wesley.

10 MS. LUZAICH: I ask him to just have him read  
11 the rights as he read them that day into the record.

12 THE WITNESS: The first thing that I say is the  
13 first thing is you have the right to remain silent. The  
14 first thing, you have the right to remain silent, do you  
15 understand that?

16 Yes, sir.

17 Anything you say can and will be used against  
18 you in a court of law. Do you understand that?

19 Uh-huh.

20 You have the right to have an attorney present  
21 when I am questioning you if you wish. If you cannot afford  
22 an attorney, one will be appointed to represent you before  
23 you answer any questions. Do you understand that?

24 Yeah.

25 MR. BANKS: Okay.

1 THE WITNESS: And any time you can stop answering  
2 these questions.

3 BY MR. BANKS:

4 Q. Okay.

5 And can you show me where in that transcript that  
6 you -- that Mr. Wesley made it clear that he was waiving  
7 and giving up those rights?

8 A. No, it doesn't.

9 I won't ask him about waiving his rights. I asked  
10 him if he understood those rights.

11 Q. Okay. And just so your testimony is clear,  
12 you never did ask him if he waives them and gives them up,  
13 is that fair?

14 A. I just asked him if he -- right, I just asked  
15 him if he understood those rights.

16 Q. Okay. And one more quick question:

17 Did you ever explain to him -- I know you  
18 explained to him he has a right to an attorney before  
19 questioning.

20 Did you ever explain to him that he has the right  
21 to an attorney during questioning?

22 A. No, I said one will be appointed to represent  
23 you at no cost to you before any questions. Do you understand  
24 that?

25 And he said: Yes.

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

2  
3       **DELARIAN K. WILSON,**  
4                   **Appellant,**  
5       **vs.**  
6       **THE STATE OF NEVADA**  
7                   **Respondent.**

**Supreme Court No.:**  
**District Court Case No.:** C232494-1

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8                   **APPELLANT'S APPENDIX - VOLUME III - PAGES 0500-0749**

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Motion for Bail Pending Sentencing Appeal filed on 05/01/08	0743-0747
Supplemental Points and Authorities to Motion for New Trial filed on 06/05/08	0754-0759
Receipt of Copy filed on 06/10/08	0760
State's Opposition to Defendant's Motion for New Trial filed on 06/18/08	0761-0765

1	Sentencing Memorandum filed on 07/03/08	0787-0820
2	Judgment of Conviction (Plea of Guilty) filed on 07/16/08	0821-0822
3	Judgment of Conviction (Jury Trial) filed on 07/18/08	0823-0827
4	Notice of Appeal filed on 07/18/08	0828-0829
5	Case Appeal Statement filed on 07/21/08	0830-0831
6	Notice of Appeal filed on 07/22/08	0832-0833
7	Case Appeal Statement filed on 07/24/08	0834-0836
8	Notice of Appeal filed on 07/24/08	0837-0838
9	Case Appeal Statement filed on 07/24/08	0839-0840
10	Case Appeal Statement filed on 07/24/08	0841-0843
11	Notice of Appeal filed on 07/24/08	0844-0846
12	Notice of Appeal filed on 07/25/08	0847-0848
13	Notice of Appeal filed on 08/05/08	0849-0851
14	Case Appeal Statement filed on 08/06/08	0852-0853
15	Case Appeal Statement filed on 08/14/08	0854-0856
16	Notice of Motion and Motion to Correct Illegal Sentence filed on 09/05/08	0878-0881
17	Request for Rough Draft Transcript filed on 09/10/08	0882-0885
18	Order for Production of Inmate Narcus Samone Wesley filed on 09/13/08	0886-0887
19	Ex Parte Application to Appoint Attorney of Record to Represent Defendant Narcus S. Wesley During Appeal Process filed on 09/15/08	0888-0892
20	Request for Rough Draft Transcript filed on 09/17/08	0893-0896
21	Request for Transcript of Proceedings filed on 10/07/08	0897-0899
22	Amended Judgment of Conviction filed on 10/08/08	0900-0905
23	Certificate of Delivery to the Supreme Courthouse filed on 12/05/08	1996-1997
24	Certificate of Delivery to the Supreme Courthouse filed on 12/09/08	1998-2000
25	Clerk's Certificate Judgment Affirmed filed on 08/07/09	2021-2027
26	Clerk's Certificate Judgment Affirmed filed on 04/12/10	2028-2034
27	Attorney Time and Costs filed on 06/28/10	2035-2039
28	Motion for Order Instructing the Attorney of Record to Provide petitioner With a Complete and Copy of the Case in the Above Entitled Case Number filed on 08/05/10	2040-2052
29	Certificate of Mailing filed on 08/20/10	2053
30	Request for Transcripts/Court Proceedings filed on 10/01/10	2054-2071
31	State's Opposition to Defendant's Request for Transcripts/Court Proceedings filed on 10/13/10	2072-2075
32	Defendant's Motion to Appoint Post-Conviction Relief Counsel filed on 10/27/10	2076-2081
33	Order Denying Defendant's Request for Transcripts/Court Proceedings filed on 11/01/10	2082-2083
34	State's Opposition to Defendant's Motion to Appoint Post-Conviction Relief Counsel filed on 11/23/10	2084-2088
35	Receipt filed on 12/17/10	2089
36	Notice of Change of Hearing filed on 06/15/11	2090



1	Petition for Writ of Habeas Corpus (Post-Conviction) filed on 10/10/11	2091-2104
2	Application and Order for Transcripts filed on 10/13/11	2105
3	Application and Order for Transcripts filed on 10/13/11	2106
4	Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) and Motion to Dismiss filed on 11/01/11	2107-2115
5	Reply to State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) and Motion to Dismiss filed on 12/05/11	2121-2122
6	Findings of Fact, Conclusions of Law and Order filed on 01/06/12	2123-2130
7	Notice of Entry of Decision and Order filed on 01/18/12	2131-2139
8	Motion for Clarification and/or Reconsideration of Denial of Defendant's Petition for Writ of Habeas Corpus filed on 01/30/12	2140-2141
9	Order Staying the Findings of Fact, Conclusions of Law and Order filed on 02/21/12	2142
10	Notice of Appeal filed on 02/21/12	2143
11	Opposition to Defendant's Motion for Clarification and/or Reconsideration of Denial of Defendant's Petition for Writ of Habeas Corpus filed on 02/24/12	2149-2150
12	Order for Production of Inmate Delarian Kameron Wilson filed on 03/01/12	2163
13	Motion to Place on Calendar filed on 05/23/13	2164
14	Order for Transcripts filed on 08/06/13	2197
15	Findings of Fact and Conclusions of Law and Order filed on 11/12/13	2205
16	Notice of Entry of Findings of Fact, Conclusions of Law and Order filed on 11/19/13	2206-2215
17	Order for Transcript filed on 11/21/13	2216
18	Notice of Appeal filed on 12/10/13	2217
19	Case Appeal Statement filed on 12/10/13	2218-2220
20	Motion to Withdraw Due to Conflict filed on 08/06/14	2221-2223
21	Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)	2224-2265
22	State's Response and Motion to Dismiss Defendant's "Supplemental" Petition for Writ of Habeas Corpus (Post-Conviction) filed on 03/06/15	2266-2276
23	Stipulation to Enlarge Briefing Schedule and Order filed on 03/26/15	2277-2278
24	Reply to State's Response and Motion to Dismiss Defendant's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) filed on 04/20/15	2279-2296
25	Findings of Fact, Conclusions of Law and Order filed on 07/22/15	2297-2303
26	Notice of Entry of Findings of Fact, Conclusions of Law and Order filed on 07/24/15	2304-2311
27	Notice of Appeal filed on 08/04/15	2312-2313
28	Case Appeal Statement filed on 08/04/15	2314-2316
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## TRANSCRIPTS

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Transcript - Opening Statement of Mr. Landis filed on 04/21/08	0713-0722
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Transcript - Writ filed on 09/23/13	2165-2196
Transcript -	

1 APPEARANCES:

2  
3 For the State:

STACY KOLLINS, ESQ.

Deputy D. A.

200 Lewis Ave.

Las Vegas, NV. 89155

and

CHRISTOPHER LAURANT, ESQ.

Deputy D. A.

200 Lewis Ave.

Las Vegas, NV. 89155

8  
9 Defendant Wilson present in court in custody.

10 For Defendant Wilson:

by DRASKOVICH LAW OFFICE

JAMES A. ORONOZ, ESQ.

Attorney at Law

Las Vegas, NV. 89101

12  
13 Defendant Wesley not present in court out of custody.

14 For Defendant Wesley:

CASEY LANDIS ESQ.

Deputy Public Defender

Las Vegas, NV.

16  
17  
18  
19  
20 No other appearances.

21  
22 \*\*\*\*\*

## TRANSCRIPT OF PROCEEDINGS

THE BAILIFF: All rise.

Department 24 is now in session, the Hon. Judge James M. Bixler presiding.

Please be seated.

THE COURT: Okay. This is the matter of the State of Nevada v. Delarian Wilson.

And we are also on for Narcus Wesley, are we not, Mr. Landis?

MR. LANDIS: Technically, Judge. I don't have the Defendant present.

THE COURT: Okay.

MR. LAURANT: With regard to Mr. Wilson, the other one, I am filling in right now for Ms. Luzaich on the Wilson matter, which she has familiarity with, but I know nothing about any new trial dates or anything like that.

THE COURT: Okay, no problem.

MR. LAURANT: Thank you.

THE COURT: We are primarily dealing with Mr. Wilson. It is my understanding that Mr. Wilson is going to take the offer that was made?

MR. ORONOZ: Yes, sir.

THE COURT: All right, do we have -- okay.

1 All right. Mr. Wilson, is it your understanding  
2 that this morning you are going to withdraw your plea of  
3 not guilty and enter a plea of guilty to one count of  
4 robbery with the use of a deadly weapon and one count  
5 of sexual assault, is that it?

6 Two counts.

7 MR. ORONOZ: Two counts of robbery.

8 THE COURT: Two counts of robbery with use of  
9 a deadly weapon and one count of sexual assault, is that  
10 correct, Mr. Wilson?

11 DEFENDANT WILSON: Yes, sir.

12 THE COURT: Okay.

13 And I have in my hand a guilty plea agreement.  
14 Have you read through it?

15 DEFENDANT WILSON: Yes, sir.

16 THE COURT: Did you go through it with your  
17 attorney?

18 DEFENDANT WILSON: Yes, sir.

19 THE COURT: Fine. Did you understand everything?

20 DEFENDANT WILSON: Yes, sir.

21 THE COURT: On page five of this guilty plea  
22 agreement, is what I am showing you, there is a signature.  
23 Is that your signature?

24 DEFENDANT WILSON: Yes, sir.

25 THE COURT: And did you read through it, discuss

1 it with your attorney, and understand everything that is  
2 contained in this guilty plea agreement before you signed  
3 it?

4 DEFENDANT WILSON: Yes, sir.

5 THE COURT: Okay.

6 A couple of things that are contained in the  
7 guilty plea agreement that I need to touch upon to make  
8 sure that you understand.

9 Did you discuss with your attorney the possible  
10 sentences that the Court could impose as a result of your  
11 entering a plea of guilty to these charges?

12 DEFENDANT WILSON: Yes, sir.

13 THE COURT: What is your understanding of the  
14 possible sentence that the Court could impose in return  
15 for your -- in exchange for your plea of guilty on these  
16 charges?

17 DEFENDANT WILSON: The sentences could be run  
18 consecutive, and that I could face anywhere from 10 to  
19 25 from 10 to life.

20 THE COURT: Okay.

21 And that's your understanding, and you understand  
22 that what happens to you when it comes time for sentencing,  
23 if I understand correctly, the State retains the right to  
24 argue at sentencing, is that correct?

25 MR. ORONOZ: Yes, Your Honor.

1 THE COURT: Is Mr. Order.

2 THE COURT: What happens to you at the time of  
3 sentencing is entirely up to the Court.

4 Your attorney is going to be arguing for the --  
5 on the lesser end of the sentence, and the State will  
6 be arguing for the maximum sentence, and do you understand  
7 that?

8 DEFENDANT WILSON: Yes, sir.

9 THE COURT: And what happens to you at the time  
10 of sentencing, and nobody can promise or predict what is  
11 going to happen.

12 Do you understand that?

13 DEFENDANT WILSON: Yes, sir.

14 DEFENDANT WILSON: Did you also read through  
15 and understand that you have certain rights in regards  
16 to having a trial.

17 Those trial rights are explained to you in the  
18 guilty plea agreement.

19 DEFENDANT WILSON: Yes, sir.

20 THE COURT: Did you discuss those rights with  
21 your attorney?

22 DEFENDANT WILSON: Yes, I did.

23 THE COURT: Do you understand those rights?

24 DEFENDANT WILSON: Yes, sir.

25 THE COURT: Okay.

1 Do you understand that by accepting this guilty  
2 plea agreement, and entering these pleas of guilty today  
3 that you will by necessity have to give up your right to  
4 have a trial.

5 Do you understand that?

6 DEFENDANT WILSON: Yes, sir.

7 THE COURT: Is that what you want to do?

8 DEFENDANT WILSON: Yes, I do.

9 THE COURT: Other than that which is contained  
10 in this guilty plea agreement, has anybody promised you  
11 anything that's not contained in here in return for your  
12 plea of guilty to these charges?

13 DEFENDANT WILSON: No, sir.

14 THE COURT: Has anybody threatened or coerced  
15 you in any fashion, or in any manner, in order to get you  
16 to plead guilty to these charges?

17 DEFENDANT WILSON: No.

18 THE COURT: In the amended information, it  
19 indicates that these three charges that you are pleading  
20 guilty to occurred on or about February 18, 2007 within  
21 Clark County, State of Nevada.

22 Tell me in your own words what happened on  
23 February 18, 2007, which causes you to plead guilty  
24 today to these charges?

25 DEFENDANT WILSON: I came in Las Vegas,

1 THE COURT REPORTER: Speak up, please.

2 DEFENDANT WILSON: I'm sorry. I came into  
3 Las Vegas, and I went in there, and I robbed two people,  
4 I robbed these people at gunpoint, and aided and abided  
5 in a sexual assault that was going on.

6 THE COURT: The -- your friend, Mr. Wesley,  
7 who you were -- was who you had committed these acts  
8 with?

9 DEFENDANT WILSON: Yes, sir.

10 THE COURT: And these were acts that were  
11 committed with the use of a firearm.

12 Is that correct?

13 DEFENDANT WILSON: Yes, sir.

14 THE COURT: How many people were in the house  
15 when you guys went in there?

16 DEFENDANT WILSON: Six, I believe.

17 THE COURT: And then somebody took one of these  
18 people to the ATM machine and got -- had them get money  
19 out of an ATM machine, is that right?.

20 DEFENDANT WILSON: Yes, sir.

21 THE COURT: Who did that?

22 DEFENDANT WILSON: I did, sir.

23 THE COURT: And then in regards to the sexual  
24 assault, your partner actually committed the sexual  
25 assault, but you assisted and encouraged in the overall



1 commission of the crime.

2 Is that right?

3 DEFENDANT WILSON: Yes, sir.

4 THE COURT: You understand that still makes  
5 you viable of having committed a sexual assault?

6 DEFENDANT WILSON: Yes, sir.

7 THE COURT: And you went through that with your  
8 attorney, and you understand why?

9 DEFENDANT WILSON: Yes, sir.

10 THE COURT: Okay.

11 And are you pleading guilty to the two counts  
12 of robbery with the use of a deadly weapon and the one  
13 count of sexual assault because in truth and in fact  
14 you are actually guilty of committing those offenses?

15 DEFENDANT WILSON: Yes, sir.

16 THE COURT: And you are not pleading guilty  
17 for any other reason.

18 DEFENDANT WILSON: No, sir.

19 MR. ORONoz: And, Your Honor, I also -- could  
20 the Court canvass him about the penalties on the sexual  
21 assault?

22 And I also discussed with him the penalties  
23 associated with the robberies with use, and explained  
24 to him that they could be run either concurrently or  
25 consecutively.

1 THE COURT: Did you understand that?

2 DEFENDANT WILSON: Yes.

3 THE COURT: That the sentences that the Court  
4 could impose on each of the three counts could run  
5 consecutive to each other, one after the other.

6 Do you understand that?

7 DEFENDANT WILSON: Yes, sir.

8 THE COURT: And do you understand that these  
9 are mandatory prison sentences so that after you plead  
10 guilty that there is no possibility that you are not  
11 going to prison.

12 Do you understand that?

13 DEFENDANT WILSON: Yes, sir.

14 THE COURT: Anything else?

15 MS. KOLLINS: Your Honor, did you canvass him  
16 on the fact that there will be lifetime supervision as  
17 well as restitution in this matter?

18 THE COURT: No, I didn't.

19 On the sexual assault charge, there is a  
20 requirement that at the back end, at some point in time,  
21 you will be released from prison, but when you get out  
22 of prison, in addition to whatever conditions may be  
23 imposed if you were on parole, after a parole has expired,  
24 there still is a requirement that you stay registered for  
25 a lifetime.

1           It's called lifetime supervision.

2           And the terms of the lifetime supervision aren't  
3 even known at this point because they won't be known until  
4 you get out of prison, and then they formulate whatever  
5 conditions would be appropriate at the time.

6           But I can't tell you what those conditions are  
7 going to be for lifetime supervision because they are not  
8 known at the time, but I am putting you on notice that when  
9 you do get out of prison and when you do expire your parole,  
10 there are going to be requirements that you have to comply  
11 with for the rest of your life.

12           Have you ever had that explained to you?

13           DEFENDANT WILSON: Yes, sir.

14           THE COURT: Okay.

15           MS. KOLLINS: And, Your Honor, I guess the last  
16 thing, before he is parole eligible, he will have to undergo  
17 a psychosexual examination that determines that he is less  
18 than a high risk to reoffend sexually, and that will be  
19 reviewed by the Parole Board.

20           THE COURT: That is a statutory requirement  
21 prior to being admitted to parole.

22           Do you understand that?

23           In other words, you are going to talk to a  
24 psychiatrist, and you are going to go through a psychosexual  
25 evaluation, and the result of that evaluation must indicate

1 that you are something less than a high risk for recidivism  
2 in terms of a sexual crime.

3 DEFENDANT WILSON: Yes, sir.

4 THE COURT: Now, understanding all that, is it  
5 your desire still to enter your plea of guilty to these  
6 three charges, two counts of robbery with use of a deadly  
7 weapon, and one count of sexual assault.

8 Is that correct?

9 DEFENDANT WILSON: Yes, sir.

10 THE COURT: Okay. Anything else?

11 MS. KOLLINS: No, Your Honor. Thank you.

12 THE COURT: All right.

13 The Court is going to accept your plea of guilty  
14 to those three charges, Count I, Count II, robbery with the  
15 use of a deadly weapon, and Count III, sexual assault, as  
16 having been freely and voluntarily entered.

17 We need what, 45 days?

18 MS. KOLLINS: 45 days should do it. There is  
19 no requirement for the psychosexual on the front end,  
20 but just to be on the safe side.

21 THE COURT: Okay, all right.

22 MR. ORONCZ: Could we do it in 30?

23 THE COURT: We can try, but I will be honest  
24 with you, you know, anything --

25 MR. ORONCZ: 45 days will be fine.

1 THE COURT: We are probably going to be wasting  
2 time if we try to do it 30.

3 MR. ORONOZ: Okay.

4 THE COURT: Because we get letters from them,  
5 for anything approaching 30 days, we are getting letters  
6 from P and P asking for more time so we might as well just  
7 go ahead and pass it for 45 days.

8 THE CLERK: May 13, at 8:30.

9 MR. LANDIS: And as to Mr. Wesley, his presence  
10 is waived today?

11 THE COURT: Yes, I waived Mr. Wesley's presence,  
12 Mr. Landis. Now that Mr. Wilson's matter is over with,  
13 I guess you guys are up, right?

14 MS. KOLLINS: That's correct.

15 THE COURT: And we are set for a Franks hearing  
16 Monday afternoon at 1:30, right?

17 MS. KOLLINS: Yes, and just to let the Court  
18 know, Detective Westby (phonetically) left the jurisdiction,  
19 and Ms. Luzaich and I were unaware of that.

20 What I have for you this morning is an affidavit  
21 that is an offer of proof of what he would testify to.

22 I also have coordinated with him with Mr.  
23 Landis's and the Court's permission to telephonically  
24 conduct the Franks hearing.

25 He will be as far away as Texas and will be

1 traveling back here, believing that we were starting later  
2 in the week. He didn't understand the necessity for the  
3 Franks hearing when he left town.

4 THE COURT: Why don't we do this then?

5 I suspect that Mr. Landis is going to be wanting  
6 to look the detective in the eye when he is testifying.

7 MS. KOLLINS: Well, and here's the thing. If  
8 we could just preliminarily do it on Monday over the phone,  
9 have it recorded, then he will get him in the jurisdiction,  
10 and then Mr. Landis can conclude any of his cross-examination  
11 that he feels is necessary if he likes.

12 Here is the issue.

13 Understandably, the incorrect name or the name was  
14 not put in the affidavit, and I have an explanation and an  
15 offer of proof and an affidavit for this Court explaining  
16 why that is.

17 The detective got the information verbally that  
18 the address had been changed.

19 Not till he had drafted the search warrant, got  
20 it confirmed that the vehicle was at that address, you  
21 know, was gone from the station, not till he returned was  
22 that subpoena, that administrative subpoena complied with  
23 such that the paper document came in.

24 He never received that information verbally.  
25 He didn't get that until after the warrant was drafted.

1 approved, executed.

2 Do you see what I am saying?

3 I mean, the facts didn't come in until long  
4 after he was gone from the station and had split to Nevada  
5 Power.

6 So that's -- I mean, that is the issue.

7 So on that limited basis, if we could do it by  
8 virtue of a phone conference then --

9 THE COURT: What you are suggesting actually  
10 is that you want to bifurcate it.

11 You want to go ahead, and put him under oath  
12 on the telephone, have you guys quiz him and say that  
13 we get his testimony presumptively will coincide with  
14 what he is giving you in terms of an affidavit, and  
15 then set it over to Wednesday morning, and then Mr.  
16 Landis can then cross-examine him as to whatever matters  
17 he chose?

18 MS. KOLLINS: Right.

19 THE COURT: Okay.

20 MR. LANDIS: I do disagree with their factual  
21 basis that they've stated.

22 I believe that he attached that Nevada Power  
23 record to his search court affidavit at the time he  
24 submitted it. But there is other issues --

25 MS. KOLLINS: (Interposing) Perhaps after when

1 he filed it.

2 MR. LANDIS: Whatever it may be, I do have some  
3 questions for this guy.

4 I do think I have the right to cross-examine  
5 him under Franks.

6 THE COURT: I agree.

7 MR. LANDIS: I understand the issue.

8 I think it is best that Monday we address him  
9 over the phone, maybe that will resolve it, maybe that  
10 will give me at least a better idea of how the Court is  
11 going to rule so I can start preparing for trial.

12 THE COURT: Are you going to give him a copy  
13 of this?

14 MS. KOLLINS: I am, Your Honor. I only brought  
15 one with me.

16 THE COURT: We will make one. Joe?

17 MS. KOLLINS: Can he make one?

18 THE COURT: Yeah. Do I need a copy?

19 MS. KOLLINS: Yes, Judge, I would make one copy  
20 for the Court.

21 THE COURT: All right, get a copy of this.

22 Let's plan on 1:30 Monday. We will see what he  
23 has to say, and then I will certainly not, you know, we  
24 will get an idea of what he is going to say. We are going  
25 to read it, and we are going to hear him, and put him under



1 oath.

2 MS. KOLLINS: And that's why I have that drafted  
3 so that Mr. Landis would have -- everyone would have a  
4 concrete understanding of the chronology of what transpired,  
5 and the State is still taking the position that, you know,  
6 sans the Nevada Power, there is still sufficient probable  
7 cause --

8 THE COURT: I understand.

9 MS. KOLLINS: -- for the location of the vehicle.

10 THE COURT: I understand.

11 There is other information in the application,  
12 but let's address this first.

13 MR. LANDIS: Obviously, if they want to concede  
14 and take that out, we could just address the probable cause  
15 basis itself.

16 THE COURT: Let's let him -- let's hear from him  
17 first.

18 MS. KOLLINS: You want to not believe.

19 THE COURT: All right. Well then, just hang on,  
20 everybody gets their copies of the affidavit, and we will  
21 crank it up at 1:30 on Monday afternoon, and hear what  
22 the detective has to say.

23 MS. KOLLINS: And on behalf of the State, if we  
24 could just mark that as a Court's exhibit. There is no  
25 previous Court's exhibits in this matter, if we could mark

1 that as Court's Exhibit 1, that would be nothing that would  
2 ever go to the jury.

3 THE COURT: Okay, we will make sure. Mark this  
4 as a Court's exhibit.

5 THE CLERK: Okay.

6 THE COURT: Okay. Then we are done this morning,  
7 right?

8 MR. LANDIS: I apologize for my dress, Judge.

9 THE COURT: Oh, I think it's nice.

10 MR. LANDIS: Thank you, Judge.

11 THE CLERK: Could I have your bar number, please,  
12 counsel?

13 MR. LANDIS: 9424.

14 THE CLERK: Thank you.

15 So the motion on Wilson is moot, and the trial  
16 still will be vacated?

17 THE COURT: Right, and the motion -- the motion  
18 on Wilson for today now is moot.

19 MS. KOLLINS: And as to the suppression motion  
20 on Wesley stands, and the trial date on Wesley stands?

21 THE COURT: Yes.

22 To clarify, the hearing -- the Franks hearing for  
23 Wesley is 1:30 Monday. The trial will commence 10 o'clock  
24 Wednesday. We will probably move that back so that --

25 MR. LANDIS: We will see what happens Monday.

1 THE COURT: Right, right. All right.

2 THE CLERK: So his motion is to continue on  
3 Monday?

4 THE COURT: As of now, it is going to be denied  
5 because Wilson has pled.

6 Actually, it did get moved to Monday. It was  
7 originally scheduled for Monday. Now, it's moot.

8 The motion to continue was granted, and the  
9 trial is Wednesday.

10 THE CLERK: Oh, I got the record, and the trial  
11 is on Wednesday.

12 THE COURT: Right.

13 THE CLERK: Okay.

14 THE COURT: Yes, all right.

15 MS. KOLLINS: Judge, the only other thing that  
16 I forgot to ask you in court, what size of a panel are you  
17 bringing up, do you know?

18 THE COURT: 80.

19 MS. KOLLINS: Okay, thank you.

20 THE COURT: Is that enough?

21 MS. KOLLINS: Yes.

22 THE COURT: Okay.

23 \*\*\*\*\*

24 (End of proceedings.)

25 \*\*\*\*\*

## CERTIFICATE

STATE OF NEVADA )  
 ) ss.  
CLARK COUNTY )

I, LEE M. BAHR, CP, CCR 173, do hereby certify that I reported the foregoing proceedings; that the same is true and correct as reflected by my original machine shorthand notes taken at said time and place before the Hon. James M. Bixler, District Judge, presiding.

Dated at Las Vegas, Nevada, this  
28th day of March, 2008.



LEE M. BAHR, CP, CCR 173

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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

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

NARCUS SAMONE WESLEY,

Defendant.

CASE NO. C232494B

DEPT. NO. XXIV

DATE: April 9, 2008  
TIME: 12:00 p.m.

DEFENDANT'S NOTICE OF WITNESSES, PURSUANT TO NRS 174.234

TO: CLARK COUNTY DISTRICT ATTORNEY:

You, and each of you, will please take notice that the Defendant, NARCUS SAMONE WESLEY, intends to call the following witness in his case in chief:

Narviez Wesley

4232 Gaye Lane, LV, NV

Mel Washington

4601 West Bonanza Rd., LV, NV

Brian Murray

4601 West Bonanza Rd., LV, NV

Randy Morgan

8149 O'Bannon, LV, NV

Carlos Diaz

1000 Date Street, LV, NV

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1 William S. Arrington

325 W. Lake Mead Pkwy., Henderson, NV

2 Carolyn D. Merrick

Address Unknown

3  
4 DATED this 3<sup>rd</sup> day of April, 2008.

5 PHILIP J. KOHN

CLARK COUNTY PUBLIC DEFENDER

6  
7 By

CASEY A. LANDIS, #9424  
Deputy Public Defender

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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Notice is hereby acknowledged this

7 day of April, 2008.

CLARK COUNTY DISTRICT ATTORNEY

By



Case Name: Narcus Samone Wesley

Case No.: C232494B

Dept. No.: XXIV

000521

ORIGINAL

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

FILED IN OPEN COURT

APR 10 2008 20

CHARLES J. SHORT  
CLERK OF THE COURT

BY *Theresa Lee* DEPUTY

12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,

15 Plaintiff,

16 -vs-

17 NARCUS S. WESLEY, aka  
18 Narcus Samone Wesley #1757866,  
19 Defendant.

Case No: C232494  
Dept No: XXIV

SECOND AMENDED  
INFORMATION

20 STATE OF NEVADA }  
21 COUNTY OF CLARK } ss.

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

24 That NARCUS S. WESLEY, aka, Narcus Samone Wesley, the Defendant above  
25 named, having committed the crimes of CONSPIRACY TO COMMIT BURGLARY  
26 (Gross Misdemeanor - NRS 199.480, 205.060); CONSPIRACY TO COMMIT  
27 ROBBERY (Felony - NRS 199.480, 200.380); BURGLARY WHILE IN POSSESSION  
28 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,



1 200.320, 193.165); SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON  
2 (Felony - NRS 200.364, 200.366, 193.165); COERCION WITH USE OF A DEADLY  
3 WEAPON (Felony - NRS 207.190, 193.165) and OPEN OR GROSS LEWDNESS  
4 WITH USE OF A DEADLY WEAPON (Gross Misdemeanor - NRS 201.210, 193.165),  
5 on or about the 18th day of February, 2007, within the County of Clark, State of Nevada,  
6 contrary to the form, force and effect of statutes in such cases made and provided, and  
7 against the peace and dignity of the State of Nevada,

8 COUNT 1 - CONSPIRACY TO COMMIT BURGLARY

9 Defendant and DELARIAN KAMERON WILSON did then and there meet with each  
10 other and between themselves, and each of them with the other, wilfully and unlawfully  
11 conspire and agree to commit a crime, to-wit: Burglary, and in furtherance of said  
12 conspiracy, Defendant and DELARIAN KAMERON WILSON did commit the acts as set  
13 forth in Counts 3 & 11, said acts being incorporated by this reference as though fully set  
14 forth herein.

15 COUNT 2 - CONSPIRACY TO COMMIT ROBBERY

16 Defendant and DELARIAN KAMERON WILSON did then and there meet with each  
17 other and between themselves, and each of them with the other, wilfully, unlawfully, and  
18 feloniously conspire and agree to commit a crime, to-wit: Robbery, and in furtherance of  
19 said conspiracy, Defendant and DELARIAN KAMERON WILSON did commit the acts as  
20 set forth in Counts 4, 6, 7, & 9, said acts being incorporated by this reference as though fully  
21 set forth herein.

22 COUNT 3 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

23 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,  
24 unlawfully, and feloniously enter, while in possession of a deadly weapon, to-wit: a hand  
25 gun, with intent to commit larceny and/or a felony, to-wit: Robbery, the house at 690 Great  
26 Dane Court, Henderson, Clark County, Nevada, the Defendant being criminally liable under  
27 one or more of the following principles of criminal liability, to-wit: (1) by directly  
28 committing this crime; and/or (2) by Defendant and DELARIAN KAMERON WILSON

1 aiding or abetting one another in the commission of this crime by assisting one another and  
2 by providing counsel and encouragement each carrying out specific acts with the intent that  
3 this crime be committed; and/or (3) pursuant to a conspiracy to commit this crime.

4 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

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

16 COUNT 5 - ASSAULT WITH USE OF A DEADLY WEAPON

17 Defendant and DELARIAN KAMERON WILSON did wilfully, unlawfully, and  
18 feloniously place another person in reasonable apprehension of immediate bodily harm, to-  
19 wit: AITOR ESKANDON, by pointing a hand gun at and forcing the said AITOR  
20 ESKANDON to lay on the ground while personal property was taken from others in his  
21 presence, said Defendant and DELARIAN KAMERON WILSON using a deadly weapon,  
22 to-wit: a hand gun, during the commission of said crime, the Defendant being criminally  
23 liable under one or more of the following principles of criminal liability, to-wit: (1) by  
24 directly committing this crime; and/or (2) by Defendant and DELARIAN KAMERON  
25 WILSON aiding or abetting one another in the commission of this crime by assisting one  
26 another and by providing counsel and encouragement each carrying out specific acts with the  
27 intent that this crime be committed; and/or (3) pursuant to a conspiracy to commit this crime.

28 //

1 COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON

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

13 COUNT 7 - ROBBERY WITH USE OF A DEADLY WEAPON

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

25 COUNT 8 - ASSAULT WITH USE OF A DEADLY WEAPON

26 Defendant and DELARIAN KAMERON WILSON did wilfully, unlawfully, and  
27 feloniously place another person in reasonable apprehension of immediate bodily harm, to-  
28 wit: CLINTON TOGNOTTI, by pointing a hand gun at and forcing the said CLINTON

1 TOGNOTTI to lay on the ground while personal property was taken from others in his  
2 presence, said Defendant and DELARIAN KAMERON WILSON using a deadly weapon,  
3 to-wit: a hand gun, during the commission of said crime, the Defendant being criminally  
4 liable under one or more of the following principles of criminal liability, to-wit: (1) by  
5 directly committing this crime; and/or (2) by Defendant and DELARIAN KAMERON  
6 WILSON aiding or abetting one another in the commission of this crime by assisting one  
7 another and by providing counsel and encouragement each carrying out specific acts with the  
8 intent that this crime be committed; and/or (3) pursuant to a conspiracy to commit this crime.

9 COUNT 9 - ROBBERY WITH USE OF A DEADLY WEAPON

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

21 COUNT 10 - FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

22 Defendant and DELARIAN KAMERON WILSON did wilfully, unlawfully,  
23 feloniously, and without authority of law, seize, confine, inveigle, entice, decoy, abduct,  
24 conceal, kidnap, or carry away RYAN TOGNOTTI, a human being, with the intent to hold  
25 or detain the said RYAN TOGNOTTI against his will, and without his consent, for the  
26 purpose of committing Robbery, said Defendant and DELARIAN KAMERON WILSON  
27 using a deadly weapon, to-wit: a hand gun, during the commission of said crime, the  
28 Defendant being criminally liable under one or more of the following principles of criminal



1 liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and  
2 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this  
3 crime by assisting one another and by providing counsel and encouragement each carrying  
4 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a  
5 conspiracy to commit this crime.

6 COUNT 11 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

7 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,  
8 unlawfully, and feloniously enter, while in possession of a deadly weapon, to-wit: hand gun,  
9 with intent to commit larceny and/or a felony, to-wit: Robbery, the Honda Civic belonging  
10 to RYAN TOGNOTTI, the Defendant being criminally liable under one or more of the  
11 following principles of criminal liability, to-wit: (1) by directly committing this crime;  
12 and/or (2) by Defendant and DELARIAN KAMERON WILSON aiding or abetting one  
13 another in the commission of this crime by assisting one another and by providing counsel  
14 and encouragement each carrying out specific acts with the intent that this crime be  
15 committed; and/or (3) pursuant to a conspiracy to commit this crime.

16 COUNT 12 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

17 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,  
18 unlawfully, and feloniously sexually assault with use of a deadly weapon, to-wit: a hand gun,  
19 and subject DANIELLE BROWNING, a female person, to sexual penetration, to-wit: by  
20 forcing DANIELLE BROWNING to perform fellatio on JUSTIN RICHARDSON while  
21 threatening to kill her or others if she didn't perform said sexual act, against her will, the  
22 Defendant being criminally liable under one or more of the following principles of criminal  
23 liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and  
24 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this  
25 crime by assisting one another and by providing counsel and encouragement each carrying  
26 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a  
27 conspiracy to commit this crime.

28 //

1 COUNT 13 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

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

13 COUNT 14 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

14 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,  
15 unlawfully, and feloniously sexually assault with use of a deadly weapon, to-wit: a hand gun,  
16 and subject JUSTIN RICHARDSON, a male person, to sexual penetration, to-wit: by  
17 forcing JUSTIN RICHARDSON to receive fellatio from DANIELLE BROWNING while  
18 threatening to kill him and/or others if he did not engage in said sexual conduct, against his  
19 will, the Defendant being criminally liable under one or more of the following principles of  
20 criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and  
21 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this  
22 crime by assisting one another and by providing counsel and encouragement each carrying  
23 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a  
24 conspiracy to commit this crime.

25 COUNT 15 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

26 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,  
27 unlawfully, and feloniously sexually assault with use of a deadly weapon, to-wit: a hand gun,  
28 and subject JUSTIN RICHARDSON, a male person, to sexual penetration, to-wit: by

1 forcing JUSTIN RICHARDSON to perform cunnilingus on DANIELLE BROWNING while  
2 threatening to kill him and/or others if he did not engage in said sexual conduct, against his  
3 will, the Defendant being criminally liable under one or more of the following principles of  
4 criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and  
5 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this  
6 crime by assisting one another and by providing counsel and encouragement each carrying  
7 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a  
8 conspiracy to commit this crime.

9 COUNT 16 - COERCION WITH USE OF A DEADLY WEAPON

10 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,  
11 unlawfully, and feloniously use physical force, or the immediate threat of such force, against  
12 RYAN TOGNOTTI, with intent to compel him to do, or abstain from doing, an act which he  
13 had a right to do, or abstain from doing, by using a deadly weapon, to-wit: a hand gun, and  
14 forcing RYAN TOGNOTTI to masturbate his penis, said acts being sexually motivated, the  
15 Defendant being criminally liable under one or more of the following principles of criminal  
16 liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and  
17 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this  
18 crime by assisting one another and by providing counsel and encouragement each carrying  
19 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a  
20 conspiracy to commit this crime.

21 COUNT 17 - SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

22 Defendant and DELARIAN KAMERON WILSON did then and there wilfully,  
23 unlawfully, and feloniously sexually assault with use of a deadly weapon, to-wit: a hand gun,  
24 and subject DANIELLE BROWNING, a female person, to sexual penetration, to-wit:  
25 digital penetration, Defendant NARCUS WESLEY penetrating DANIELLE BROWNING's  
26 vagina, however slight with his hand and/or one or more fingers, against her will, the  
27 Defendant being criminally liable under one or more of the following principles of criminal  
28 liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and

1 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this  
2 crime by assisting one another and by providing counsel and encouragement each carrying  
3 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a  
4 conspiracy to commit this crime.

5 COUNT 18 – OPEN OR GROSS LEWDNESS WITH USE OF A DEADLY WEAPON

6 Defendant and DELARIAN KAMERON WILSON did then and there wilfully and  
7 unlawfully commit an act of open or gross lewdness by touching and/or rubbing the chest  
8 and/or buttocks of DANIELLE BROWNING, with use of a deadly weapon, to-wit: a hand  
9 gun, the Defendant being criminally liable under one or more of the following principles of  
10 criminal liability, to-wit: (1) by directly committing this crime; and/or (2) by Defendant and  
11 DELARIAN KAMERON WILSON aiding or abetting one another in the commission of this  
12 crime by assisting one another and by providing counsel and encouragement each carrying  
13 out specific acts with the intent that this crime be committed; and/or (3) pursuant to a  
14 conspiracy to commit this crime.

15 DAVID ROGER  
16 DISTRICT ATTORNEY  
Nevada Bar #002781

17  
18 BY

  
19 LISA LUZAICH  
Chief Deputy District Attorney  
20 Nevada Bar #005056  
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Names of witnesses known to the District Attorney's Office at the time of filing this  
Information are as follows:

NAME

ADDRESS

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

CASTRO, JUNE - HPD P#825

DUNAWAY, BRIAN - HPD P#659

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

JOHNSTON, MICHAEL - HPD P#634

NISWONGER, ANTHONY - HPD P#1003

PENA, RODRIGO - HPD P#857

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

SLATTERY, KYLE - HPD P#1306

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

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

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

1 JURL

2 ORIGINAL

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3 DISTRICT COURT

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4 CLARK COUNTY, NEVADA

5 *[Signature]*  
CLERK OF THE COURT

6  
7 STATE OF NEVADA,

8 Plaintiff(s).

CASE NO. C232494

9 -vs-

DEPT. NO. XXIV

10 NARCUS SAMONE WESLEY,

11 Defendant(s).

12  
13  
14 JURY

- 15 1. Moll Magura  
16 2. Joann Czerwinski  
17 3. Robbie Holley  
18 4. Donna Bella  
19 5. Juaneta Gibson  
20 6. Michael Baird  
21 7. Kelly Russo-Winn

8. Eve Crossman-Keenan  
9. Betty Fisher  
10. Bonnie Brunson  
11. Barbara Wagner  
12. Christine Foresta  
13. Brenda Medeiros  
14. Melinda Wright

22  
23 ALTERNATES

24 Secret from above  
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*Cliff*  
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.  
NARCUS S. WESLEY,  
Defendant.

Case No. 07-C-232494-C  
Dept. 24

TRANSCRIPT OF PROCEEDINGS

Defendant Wesley's Motion to Suppress

COURTHOUSE

April 9, 2008

Las Vegas, Nevada

Reported by:

Lee M. Bahr, CP, CCR 173

## 1 APPEARANCES:

2  
3 For the State:4 LIZA LUZAICH, ESQ.  
5 Chief Deputy D. A.  
6 200 Lewis Ave.  
7 Las Vegas, NV. 89155  
8 and  
9 STACY KOLLINS, ESQ.  
10 Chief Deputy D. A.  
11 200 Lewis Ave.  
12 Las Vegas, NV. 89155  
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20 Defendant present in court out of custody.

21 For the Defendant:

22 CASEY LANDIS ESQ.  
23 Deputy P. D.  
24 Las Vegas, NV.  
25 and  
JEFFREY BANKS, ESQ.  
Deputy P. D.  
Las Vegas, NV.20 No other appearances.  
21  
22  
23  
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\*\*\*\*\*

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TRANSCRIPT OF EXCERPT OF PROCEEDINGS

Hearing on Defendant's Motion to Suppress

THE COURT: This is the time set for the State of Nevada v. -- this is Wilson, Delarion Wilson.

MS. LUZAICH: Wesley.

MR. LANDIS: Wesley.

THE COURT: Excuse me, Narcus Wesley. Sorry.

All right. This is your motion to suppress, correct?

MR. LANDIS: Correct, Judge.

THE COURT: And I think that we have reached the point where we are going to call a detective, isn't that correct?

MR. LANDIS: Yes, Judge.

THE COURT: There is only one witness, right?

MR. LANDIS: No.

THE COURT: There is more than one witness. You are going to call a couple?

MR. LANDIS: Yes.

THE COURT: Okay.

THE COURT: The first witness then is?

MS. LUZAICH: First, Judge, I -- this all arises out of the service of the search warrant, and there is at least one individual here that was present

1 during the service of the search warrant that I think  
2 should not be in the courtroom during the testimony.  
3 That would be the Defendant's mother, who is walking  
4 out of the room right now.

5 I don't know who the individual in the orange  
6 shirt is, but I am told that one of the Defendants and  
7 his mother and father were present.

8 MR. LANDIS: Two things, Judge.

9 One, I don't intend to call her as a witness.

10 Two, his stepmother was there. His biological  
11 mother, who that was, was not there during the search  
12 warrant. I do think they have a right to be here this  
13 morning.

14 THE COURT: Yes, if they aren't -- if they are  
15 not potential witnesses, they can, absolutely.

16 If they are potential witnesses, step outside.

17 Anybody that is a potential witness in regards  
18 to this case, and in specific, specifics, search the  
19 issuance -- the search, the actual search warrant as  
20 execution on the residence at -- what was the address?

21 MS. LUZAICH: Gay Lane, 1450 Gay Lane.

22 THE COURT: All right. Anybody who is a potential  
23 witness in regards to that incident may step outside.

24 MR. LANDIS: And I can assure this Court that  
25 the witnesses I do intend to call have been asked to stay

1 outside.

2 THE COURT: That's fine, all right. So --

3 MR. BANKS: And, Judge, I am going to tell mom  
4 that it is okay for her to be in here.

5 THE COURT: Sure, yeah, absolutely.

6 MR. BANKS: Thank you.

7 THE COURT: Absolutely. All right. We are going  
8 to call the detective, right?.

9 MS. LUZAICH: That's right. The State calls  
10 Curtis Weske.

11 THE CLERK: Come forward, sir.

12 Take the witness stand. Remain standing and  
13 raise your right hand.

14 Whereupon,

15 DETECTIVE CURTIS WESKE,  
16 called as a witness herein by the State, having been  
17 first duly sworn, was examined and testified as follows:

18 THE CLERK: Thank you very much.

19 Please state your name, spell your first and  
20 last name for the record.

21 THE WITNESS: My name is Curtis Allen Weske,  
22 first name is C-u-r-t-i-s. The last name is W-e-s-k-e.

23 THE CLERK: And your middle name is A-l-a-n  
24 or A-l-l-e-n?

25 THE WITNESS: A-l-l-e-n.



1 THE CLERK: Thank you.

2 THE COURT: Go ahead.

3 DIRECT EXAMINATION

4 BY MS. LUZAICH:

5 Q. Sir, are you a police officer with the  
6 Henderson Police Department?

7 A. Yes, I am.

8 Q. How long have you been so employed?

9 A. Since August 30, of 1999.

10 Q. Of 1999?

11 A. Yes.

12 Q. And were you a peace officer before coming  
13 to the Henderson Police Department?

14 A. Yes, I was.

15 Q. And where was that?

16 A. In Juneau, Alaska.

17 Q. For how long were you a police officer  
18 there?

19 A. Almost five years.

20 Q. And while you were in Alaska, were you a  
21 patrol officer or were you a patrol officer and something  
22 else?

23 A. A patrol officer.

24 Q. Okay.

25 When you came to the Henderson Police Department,

1 did you get in as a patrol officer?

2 A. Yes, I did.

3 Q. And did you become something else as well?

4 A. Yes.

5 Q. What else did you do?

6 A. I worked on the ATF Fighting Crime Task Force  
7 for a little while I was in the property section of the  
8 bureau. I went to robbery and major crimes, and now I  
9 am in what they call the Intel/Working to Target Repeat  
10 Offenders and gathering intelligence.

11 Q. Okay. Specifically, in February, of 2007,  
12 where were you assigned?

13 A. Major crimes.

14 Q. And the weekend of February like 17, 18,  
15 19, around there, was that what you believed to be All  
16 Star Weekend with NBA and their Allstar game?

17 A. Yes.

18 Q. And did you or were you asked to participate  
19 in an investigation of several offenses that occurred late  
20 at night, Sunday night, February 19, 18, whatever the Sunday  
21 night was was on Great Game Night?

22 A. Yes, ma'am.

23 Q. How was it that you particularly got involved?

24 A. Sergeant Dunaway called and asked me to  
25 respond to an apartment complex.

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1 Q. Where was the the apartment complex that you --  
2 oh, and did you respond? Sorry.

3 A. I believe it was 2101 Warm Springs, Warm Springs  
4 is in the Green Valley area.

5 Q. Okay. That would be Henderson, Nevada, right?

6 A. Yes.

7 Q. And when you went to the Warm Springs  
8 Apartments, was that late at night, early in the morning?

9 A. Early in the morning.

10 Q. When you got there, were there other police  
11 officers already there?

12 A. Other police officers or other detectives,  
13 yes, ma'am.

14 Q. A lot of them, correct?

15 A. Yes.

16 Q. And were there also some young kids that  
17 you believed to be victims that were also there?

18 A. Yes, they were up in the apartment, I  
19 believe.

20 Q. And I swear when I say, "young kids",  
21 anybody younger than me is a young kid.

22 Did you personally contact with any of those  
23 kids at that time?

24 A. No, I didn't.

25 Q. Was there a detective that was kind of in

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1 charge of the investigation at that point?

2 A. Yes, there was.

3 Q. Who was that?

4 A. Detective Niswonger.

5 Q. And could you spell for our wonderful court  
6 reporter Niswonger?

7 A. I believe it's N-i-s-w-o-n-g-e-r.

8 Q. If not, it's close enough, right?

9 A. Yes.

10 Q. Okay. And is it your understanding that  
11 Detective Niswonger kind of assigned certain tasks to  
12 certain detectives?

13 A. Yes.

14 Q. And is it your understanding that certain  
15 detectives were assigned to interview the victims of the  
16 offenses?

17 A. Yes.

18 Q. And that other detectives were asked to  
19 go find and do things?

20 A. Yes.

21 Q. And were you one of the detectives that  
22 were asked to go find and do things?

23 A. Yes.

24 Q. Did you find and the things by yourself  
25 or with somebody else?

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1 A. With Detective Hartshorn, who was assigned  
2 to -- basically, we were riding together.

3 Q. And could you spell his name for the court  
4 reporter?

5 A. H-a-r-t-s-h-o-r-n, I believe. I believe  
6 that is right.

7 Q. Okay. And what were you and Detective  
8 Hartshorn assigned to do?

9 A. The first thing we were assigned to do is  
10 because information was passed on that they had went to  
11 two banks, were forced to take out money so they just  
12 tried to get ahold of the bank. They knew it was early  
13 in the morning, but there is numbers on the bank that  
14 we could call and try to get video surveillance lockdown.

15 Q. Okay.

16 Now, just for the record, and I'm not offering  
17 this for the truth, I'm just offering it to lay a foundation,  
18 and for purposes of what it was, what was your understanding  
19 of the offenses that had occurred?

20 A. One of the subjects had taken one of the  
21 victims around in a vehicle with a gun pointed at them and  
22 made them use their ATM carw in the drive-through lanes,  
23 and taken out money.

24 So we knew that most of these cams have cameras  
25 on there, so they were wanting to see, you know, if they

1 can get that transaction lockdown and see if we could get  
2 photos.

3 Q. Okay.

4 And you talked about one suspect. How many  
5 suspects is it your understanding that there were?

6 A. I was told that there was two.

7 Q. And was there a description of the suspects  
8 given to you, generic descriptions?

9 A. Two black males, and one was taller and one  
10 was shorter.

11 Q. Okay. And in addition to going to the ATM,  
12 what else was your understanding?

13 A. As far as the crime?

14 Okay. I was told that they went into a house,  
15 held them at gunpoint, put them down at gunpoint, took  
16 one of them to the ATM to get cash. They wanted money.

17 And then after that, they attempted to make  
18 her perform sex on each other, and then actually one of  
19 them, or both of them may have touched one of the females  
20 when they couldn't perform sex, I asked for a guy named  
21 Grant.

22 It all happened at 690 Dane, and that's, based  
23 on what we had at that point, it was kind of generic because  
24 they were still in the middle of the interviews, they were  
25 getting the sexual assault detectives to do what they were

1 trained to do the interviews on that, and so then that's  
2 when we were assigned to go the first thing we were assigned  
3 to do at the bank.

4 Q. And when you were assigned to investigate  
5 the angle of the bank, did you have any idea who the suspects  
6 were other than that they were black males?

7 A. No.

8 Q. Okay. So, when you were assigned to investigate  
9 the bank, and go, what exactly did you do?

10 A. When I went to the bank, at that point all I  
11 had to do was get the numbers, and I got a recording on one --  
12 I can't remember which one -- and then the other one I talked  
13 to somebody, and said, hey, this is about the time it occurred  
14 but we would like it from this time, I think it was about  
15 midnight until five in the morning, and this probably was  
16 the number one lane, if you could just freeze everything,  
17 you should have a black male and a white male in the front  
18 seat, and I believe at that time they gave me the victim's  
19 name that used the ATM card.

20 I can't remember what his name was, but I believe  
21 I said this could be the account number that it was.

22 Q. Okay. Was the bank -- at the time that you  
23 were specifically contacting the bank, was the bank open  
24 yet?

25 A. No, it was closed. It was just like an

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1 answering service that we used to check in on it, and then  
2 after that I had no more dealings with the bank.

3 Q. Okay. And about what time of the day was  
4 that?

5 A. Probably five o'clock in the morning, five,  
6 six o'clock in the morning. I think I got to the scene  
7 about three, something like that.

8 Q. Okay.

9 So after you called and left messages for the bank,  
10 what did you do?

11 A. After that the sergeant, Sergeant Dunaway  
12 said, hey, let's go up to 690 Great Dane. We want to get  
13 our crime scene continuum there so we need to clear the  
14 residence, we have got a protocol to make sure nobody else  
15 is in there. So that's what we did. We proceeded to 690  
16 Great Dane.

17 Q. Okay. And when you were at 690 Great Dane,  
18 did the crime scene come?

19 A. Yes, they did.

20 Q. And did they go in and do whatever it is  
21 that they do?

22 A. Yes, they did.

23 Q. Did you stay there the whole time at the  
24 crime scene or did you go do something else?

25 A. No, while they were in there, we knocked

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1 on doors to see if we could get any information which  
2 nothing really panned out, and then we looked up because  
3 we knew it was a rental, and we thought, okay, then maybe  
4 we would try to find where the renter lived before, so we  
5 had our laptop, and I think it was Hartsborn who looked  
6 up Clark County Assessor's file, looked up 690 Great Dane,  
7 and it came back to Victor Michalak, I'm not sure I'm  
8 saying it right.

9 But -- and he lived up near there in Southern  
10 Hills. So at that point we went up there and knocked on  
11 his residence door and talked with him.

12 Q. And when you talked with him -- when you  
13 talked with him, did you explain to him what had occurred  
14 and why you were there?

15 A. Yeah, we said that a pretty serious crime  
16 had occurred at that residence, and we were looking, you  
17 know, to see who rented the house before him, or if he  
18 knew a Grant.

19 At that time he said, well, the house was rented  
20 to a Brandon Preston, who worked for Country Insurance,  
21 or Countrywide, I believe, and that he had a roommate, he  
22 had some roommates, but he had a roommate that he believed  
23 his name was grant.

24 Q. Okay.

25 While you were having this conversation with

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1 Victor whatever his name is, about what time of the day  
2 is it by now?

3 A. This is in the morning. This is getting  
4 closer, I think, to eight or nine.

5 Q. Okay.

6 And with the information about Brandon Preston,  
7 what did you then do?

8 A. We called Country -- Countrywide, and they  
9 told us they did have a Brandon Preston that worked there,  
10 and they gave us a phone number to contact him with, and  
11 so I called that phone number.

12 Q. Did you contact Brandon Preston personally?

13 A. Yes, I did.

14 Q. Did you have a conversation with him about  
15 what you knew?

16 A. Yes.

17 Q. And did you get information about an  
18 individual named Grant?

19 A. Yes.

20 Q. Did he give you actual like residence  
21 information, I know grant, and he lives at such and such?

22 A. Yes, he did. He told me he was still  
23 roommates with him, however, they had moved, and so he  
24 gave me that address, and said that he should be at home  
25 right now, and so we proceeded over there.

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1 Q. You physically went over to that location?

2 A. Yes.

3 Q. And is that still in Henderson?

4 A. Yes.

5 Q. And when you went to that location, what  
6 happened?

7 A. At the point we knocked on the door, I made  
8 a phone call because he gave me Grant's phone number. We  
9 knocked on the door, we called, and we saw his car in the  
10 driveway, and there was no answer.

11 And so I can't recall I called him back, and I  
12 said, well, this was actually targeted towards him so are  
13 you concerned for him, too, and he said, yes, he was.

14 Q. And, I'm sorry, when you say, "called him  
15 back", who is "him"?

16 A. Brandon.

17 Q. Okay.

18 A. And he said, yes, he should be there, and  
19 there is no reason why he shouldn't be answering the door.

20 So at that time we got the manager's key to open  
21 the door, stood at the bottom of the door and called out,  
22 "Henderson police, Brandon, are you okay? Henderson police,  
23 Brandon, are you okay?"

24 At that time he woke up and came out, and he  
25 said, yeah, he was fine, and that is when we had our

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