

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

DVONTAE RICHARD,)
)
Appellant,)
)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)
_____)

Case No. 70542

APPENDIX TO APPELLANT'S OPENING BRIEF VOLUME IV

**Appeal from Judgment of Conviction
Eighth Judicial District Court**

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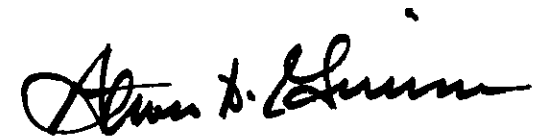
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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C308258-1
)	DEPT NO. XXVIII
vs.)	
)	
DVONTAE RICHARD,)	TRANSCRIPT OF
)	PROCEEDINGS
Defendant.)	

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE

JURY TRIAL - DAY 4

THURSDAY, FEBRUARY 25, 2016

APPEARANCES:

For the State:	JOHN L. GIORDANI, III, ESQ. Deputy District Attorney CHAD N. LEXIS, ESQ. Deputy District Attorney
For the Defendant:	BRENT D. PERCIVAL, ESQ.

RECORDED BY JUDY CHAPPELL, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

UNCERTIFIED ROUGH DRAFT

I N D E X

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1 **LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 25, 2016, 10:58 A.M.**

2 *** * * * ***

3 (Outside the presence of the jury.)

4 THE CLERK: Case C308258, State of Nevada versus
5 Dvontae Richard.

6 THE COURT: Okay. We're on the record. We're
7 outside the presence. I hope I have the final version.

8 MR. GIORDANI: You do, Your Honor. Mr. Percival and
9 I just went through and already numbered everything. We've
10 reviewed them and the verdict form. So that is the final
11 version that can be copied for the parties and the jury.

12 MR. LEXIS: And if you could, Judge, I'd like a copy
13 as well during my closing.

14 THE COURT: Certainly. Let's wait until the
15 defendant comes in.

16 (Off-record colloquy.)

17 THE COURT: All right. Let the record reflect the
18 defendant is now present. First of all, Mr. Richard, have
19 you had a chance to review the jury instructions with your
20 attorney?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. And you also, just so it's clear,
23 had a chance to meet and talk with your attorney yesterday
24 afternoon.

25 THE DEFENDANT: Yes, sir.

 UNCERTIFIED ROUGH DRAFT

1 THE COURT: Okay. Now let's do the verdict form
2 first. Has the State reviewed and approved of the verdict
3 form?

4 MR. GIORDANI: Yes, Your Honor.

5 THE COURT: Has the defense had a chance to review
6 and do you approve of the verdict form?

7 MR. PERCIVAL: I have had -- yes, Your Honor. This
8 is the one with the changes made.

9 THE COURT: Are you unsure of that?

10 MR. PERCIVAL: Actually, this one --

11 MR. GIORDANI: Yeah, you don't have it yet. He has
12 it.

13 MR. PERCIVAL: Oh, that's right, the one that's
14 being copied.

15 THE COURT: Make sure -- I want this absolutely that
16 you've had the chance to review this. I don't want a mistake
17 that it goes back there and oh, it was the wrong one. So take
18 your time, review it. Are you going to go over it with him?
19 Then get rid of all the other ones so you don't mix it up.
20 That happens all the time.

21 MR. PERCIVAL: It looks fine to me, Judge.

22 THE COURT: Okay. Very well. Give it to the clerk.
23 We will make -- oh, I only give one verdict form to the jury.
24 The reason being, I'm sure you've either heard or maybe
25 unfortunately, even seen, they will -- if they can make a

1 mistake and write on a different one, they do. We actually
2 had, even though we only give them one, they wrote something
3 and then crossed it out and had to change it. So we will give
4 them one verdict form and I tell them that. You can -- you'll
5 have the verdict form. You can put it up on the screen, you
6 can do whatever you want, but that way they only have one. If
7 they mess it up then we take the entire thing back and we give
8 them a clean copy, assuming they tell us that.

9 What else? Are we done with that? You'll all have
10 copies. We can make -- what do you want, four copies?

11 MR. GIORDANI: I think that's fair.

12 THE COURT: Okay. Jury instructions. Is the State
13 familiar with jury instructions 1 through 42?

14 MR. GIORDANI: Yes, Your Honor.

15 THE COURT: Does the State object to any of these
16 jury instructions?

17 MR. GIORDANI: No, Your Honor.

18 THE COURT: Does the State wish to offer any
19 additional jury instructions?

20 MR. GIORDANI: No, Your Honor.

21 THE COURT: Is the defense familiar with jury
22 instructions 1 through 42?

23 MR. PERCIVAL: I am, Your Honor.

24 THE COURT: Is the defense agreeable to jury
25 instructions 1 through 42?

1 MR. PERCIVAL: I have no objections to jury
2 instructions 1 through 42.

3 THE COURT: I should have said it better. Does the
4 defense object to any of the jury instructions 1 through 42?

5 MR. PERCIVAL: None. No objections.

6 THE COURT: Does the defense wish to offer any
7 additional instructions?

8 MR. PERCIVAL: No, Your Honor.

9 THE COURT: Okay. I think that's pretty much it in
10 regards to the jury instructions. We will what, 16 or 17
11 copies. The jury instructions I do give to each of them to
12 follow along. That's it on that. That will take some time.

13 While we're doing that, does the -- is the defendant
14 going to testify?

15 MR. PERCIVAL: It is my understanding that Mr.
16 Richard is not going to testify.

17 THE COURT: Mr. Richard, is that correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. I don't see the need to re-read
20 your rights regarding that. We went over that. Do you have
21 any questions regarding your rights to either testify or not
22 testify?

23 THE DEFENDANT: No, sir.

24 THE COURT: Okay. Thank you. Anything else before
25 -- I mean, it's going to take 20 minutes for them to copy all

1 this. Anything else before we --

2 MR. LEXIS: Judge, can I turn this on and put it
3 right next to the corner where I'm going to be talking? I've
4 already been told that I yell at the jury and I have a mic on
5 me. I'm going to come across as a monster.

6 MR. GIORDANI: You might anyway.

7 THE COURT: So what is it you want to do now? You
8 don't want to use the mobile --

9 MR. LEXIS: I'll put this thing right on the corner
10 of where that TV screen is and move these other things there.

11 THE COURT: As long as Judy can hear you.

12 MR. LEXIS: I'll speak up, I promise.

13 THE COURT: If she doesn't, then she will interrupt
14 you, which I'm sure you don't want.

15 MR. LEXIS: No problem.

16 MR. GIORDANI: Nothing else from the State, Your
17 Honor.

18 THE COURT: Anything from the defense?

19 MR. PERCIVAL: Nothing from the defense, Your Honor.

20 THE COURT: Okay. So here's how I hope it will go
21 basically. All we're going to do -- before lunch I will be
22 reading them, I'm sure that's going to take 30 minutes to read
23 them all the instructions. I will then admonish them and then
24 we'll go to lunch. I'm not going to put them -- have them
25 wait -- I hate to keep telling war stories but we actually

1 did. They said oh, I only have 20 minutes of closing. Well,
2 an hour later when they actually did go back, one of the
3 jurors after going through selecting alternates, et cetera,
4 had some sort of maybe diabetic whatever and had to be taken
5 away in an ambulance.

6 So history, we will not make them sit through until
7 what may be two o'clock. We'll let them go at noon. I'll
8 admonish them. They'll come back and you'll go right into
9 closings.

10 MR. GIORDANI: Judge, if I may just make a
11 suggestion. Can you guys order the food now? Because usually
12 they wait until the jury goes back, order it, it takes 45
13 minutes to get up here at the lunch hour, then they're sitting
14 back there for two hours, two and a half hours sometimes.

15 THE COURT: I --

16 MR. PERCIVAL: So you're going to read jury
17 instructions and then have them break for lunch; is that what
18 I understood?

19 THE COURT: Yeah. I was just thinking of just
20 letting them go after I admonish them. You're suggesting that
21 they be sequestered, so to speak?

22 MR. GIORDANI: Well, not necessarily. It's just
23 usually when they're -- when we get to this point you order it
24 for them. But if you're just going to let them go, great.
25 That resolves the problem right there.

1 THE COURT: I am thinking, assuming, let's say we
2 come back -- I don't know now, one o'clock or 1:30, depending
3 on how this, all this goes, you guys -- how long do you have,
4 estimating? Half hour for your --

5 MR. LEXIS: Yeah.

6 THE COURT: And how long? I'm just asking for an
7 estimate.

8 MR. PERCIVAL: I know. You know how verbose I am.
9 Probably 30 to 45 minutes.

10 THE COURT: Okay. So an hour, hour and a half,
11 whatever. So they might get the case at 3:30, who knows. We
12 certainly would be prepared to feed them dinner and that begs
13 the question how late do you want them, if they choose to
14 deliberate late or later. I'm of the mind that pretty much
15 eight o'clock is it. Not because I care but we don't want to
16 have -- I don't know how old you guys are. I think it was now
17 five or more years ago where they went all night or something.

18 MR. GIORDANI: Oh, yeah.

19 MR. PERCIVAL: That was Judge Vega that had
20 something to do with that.

21 THE COURT: We won't go there, but let's just say
22 I'm not going to, I don't see any reason for it. I think
23 eight o'clock is plenty late enough. We told them that
24 Friday --

25 MR. PERCIVAL: Judge, if I may.

1 THE COURT: Yes.

2 MR. PERCIVAL: My junior high aged son has a
3 basketball game starting at 7:15 that he would love to have
4 dad at. So if I would -- I would suggest that if they haven't
5 made a decision by 6:30 we would let them go and reconvene
6 tomorrow. Because after all, it is only Thursday.

7 MR. GIORDANI: I'm fine with that.

8 THE COURT: Okay. That's certainly reasonable. I'm
9 not -- and if somebody, if any of them say hey, we've got to
10 be done at five, then they're done at five. You know, if they
11 have to come back tomorrow, they have to come back tomorrow.
12 If they all say they want to go -- do you want me to tell them
13 ahead of time that -- well, that's -- I don't like, you know,
14 saying okay, you can deliberate, the latest you can is 6:30.
15 I think if they are deliberating at 6:30 I will just tell them
16 you're done for the day and you have to come back. Is that
17 okay with everybody?

18 MR. GIORDANI: That's fine with me.

19 MR. PERCIVAL: I think that's great because if you
20 tell them they have to be done by 6:30 then they --

21 THE COURT: Right. I don't want to limit them.

22 MR. PERCIVAL: Right. You rush their decision.

23 THE COURT: And for all I know, who knows. I'm
24 stalling, they're copying.

25 MR. GIORDANI: The only other thing, Judge, since we

1 have time to talk about it. If I could make a suggestion?

2 THE COURT: Sure.

3 MR. GIORDANI: If we finish reading the instructions
4 and Your Honor asks them do you guys just want a 15-minute
5 break and go into closing or do you want a full lunch and let
6 them make that decision, maybe we can speed the process along.

7 THE COURT: You know, I'm just assuming it's going
8 to be noon already at least by that time. Like I said, you
9 didn't have to see the guy taken away in the ambulance because
10 he had some sort of -- you know, he was middle aged and
11 although I don't know for sure because obviously HIPAA and
12 nobody called him up oh, what was the reason. I think it was
13 because he didn't eat.

14 MR. GIORDANI: Okay. We don't want that.

15 THE COURT: We don't want that. And so we were
16 lucky. It only happened literally about 15 minutes after. So
17 we had the alternate able to come back. You know, it could
18 have been much worse if the alternates aren't answering their
19 phones and blah, blah, blah. We could have been another day
20 or two.

21 MR. GIORDANI: Sure.

22 THE COURT: And I believe it was a criminal case.
23 And I got to tell you, I don't know how I remembered, but I
24 told them to start at the very beginning, which is important,
25 they have to redo that. You have to tell them you must start

1 deliberating from the beginning again and I remembered for
2 some odd reason. I'm the first one to tell you I have a
3 terrible memory anyway. That's not going to happen because
4 I'm letting them go.

5 MR. GIORDANI: Fine.

6 MR. PERCIVAL: They've got to have their blood sugar
7 up.

8 THE COURT: You know, the young ones or whatever,
9 oh, yeah, that's fine and then -- I don't know. We have some
10 seniors, don't we?

11 MR. GIORDANI: We've got a couple.

12 MR. PERCIVAL: A couple, yeah.

13 THE COURT: Okay. Take a break.

14 (Court recessed at 11:16 a.m. until 11:32 a.m.)

15 (Outside the presence of the jury.)

16 THE COURT: -- several things. I forgot and you
17 guys didn't -- we have a second trial.

18 MR. GIORDANI: Correct. I've sent that stuff, the
19 amended information and the instruction packet already to
20 Sandra, so that should be ready to go.

21 THE COURT: But still, what I'm saying is a half
22 hour, minimum, after they come back the first time.

23 MR. GIORDANI: Right.

24 THE COURT: So the other thing is you had said 6:30?
25 So I guess that's okay. So at 6:30 they're gone. And

1 according to whatever, there's something -- we can't even feed
2 them until supposedly 7:30.

3 MR. PERCIVAL: Okay. Well, Judge, I can --

4 THE COURT: I mean, that's not in stone. If you
5 tell me, you know, to give them dinner at five o'clock, I will
6 do that. But there's something from the county that
7 recommends it, so they would not get dinner. On the other
8 hand, I'm not sure -- I don't know. Any suggestions if they
9 get till five o'clock?

10 MR. PERCIVAL: The last part, any suggestions --

11 THE COURT: They may want, by the way, they may want
12 to go before five. If they have to go get their kids or
13 something else. So I'm just going to --

14 MR. PERCIVAL: Why don't we ask them?

15 MR. GIORDANI: Yeah, that's fine.

16 MR. PERCIVAL: I will tell you, Judge, that if you
17 want to keep them until eight or nine, I want to go to that --

18 THE COURT: Or, here's another or. After you guys
19 or done I could just let them go and make them come back
20 tomorrow morning.

21 MR. GIORDANI: I'd rather we push through tonight
22 and give them the option to stay. If they want to, great; if
23 not, then fine. But I think if we give them the option,
24 usually they will say yeah, we'd like to at least try to get
25 it done today.

1 THE COURT: Okay.

2 MR. PERCIVAL: Well, if that's the case, you know,
3 if they're not --

4 THE COURT: How long is your basketball game?

5 MR. PERCIVAL: It's an eighth-grade basketball game.
6 It's maybe an hour and it starts at 7:15, goes till 8:15.
7 It's four 10-minute quarters and --

8 MR. GIORDANI: Let's just give them the option to
9 stay until 6:30 and if they want to, great; if not --

10 MR. PERCIVAL: Or the other thing is if you want to
11 -- I can go out to the basketball game and if you --

12 THE COURT: All right. I will just tell them that
13 we have to -- that we are done at 6:30 or earlier or I could
14 tell them that we're done at five unless -- but the latest you
15 can go is 6:30. That's sort of giving them -- you know, I
16 don't want to --

17 MR. GIORDANI: I honestly think if you tell them we
18 can stay until 6:30, but it's your choice when you leave, that
19 covers it.

20 THE COURT: Okay. Any problem with that?

21 MR. PERCIVAL: Well, I don't think they even --

22 THE COURT: Then you run into the problem --

23 MR. PERCIVAL: -- I don't think -- here's what --

24 THE COURT: -- they will go until 6:30 and tell you
25 oh, we have a verdict.

1 MR. PERCIVAL: Right. That's exactly what I'm
2 concerned with. So I think what we ask -- we ask the jury is
3 there anyone that needs to be out of here by five o'clock or
4 before. If somebody says they do, that's what they need to
5 do. We let them go at five. If they want to stay -- and then
6 say -- and honestly, Judge, I mean, if I'm --

7 THE COURT: That still doesn't take into account the
8 30 minutes or so after they reach their first verdict.

9 MR. GIORDANI: That we can't even inform them of,
10 though, until after the verdict.

11 THE COURT: Right.

12 MR. GIORDANI: So when they come back with the
13 verdict, whatever it is, then we would have to say we need you
14 to come back tomorrow morning, if it's tonight.

15 MR. PERCIVAL: I think that's probably what's going
16 to have to happen.

17 MR. GIORDANI: We just can't say anything about that
18 second phase until the verdict is returned.

19 THE COURT: Right. I hate to say, Mr. Percival,
20 that -- I mean, I want to accommodate you and your son and all
21 that, but the only way --

22 MR. PERCIVAL: Well, here's what I was going to say,
23 Judge. From here it takes me 20 minutes to get to the
24 basketball game. I can be here until 6:50 or 6:55 and still
25 make the start of the game. If they don't mind, if they reach

1 a -- if you want to keep them past seven o'clock and they
2 don't mind waiting 20 minutes for me to get back from the
3 basketball game and a verdict comes in, I will leave the game
4 and come back.

5 MR. LEXIS: They've got to come back anyway. If
6 it's 6:30 and they reach a verdict, they've got to come back
7 the next day anyway for the other one, so it doesn't really
8 matter.

9 THE COURT: Right. They still have to go out and
10 deliberate. It's at least 30 minutes, there's no way around
11 that. And they could deliberate for an hour, I don't know.
12 All right. I'll ask them if anyone needs to leave by five.
13 If somebody does, that simplifies it, they will leave at five.
14 We will be done at five. If they say no, then I'll let them
15 go till 6:30. At 6:30 I will just call them back in.

16 MR. GIORDANI: Perfect.

17 THE COURT: If they come in at 6:30 and say, which
18 I've seen before, if I bring them in and they say oh, now we
19 have a verdict, then you're going to have to stay. I don't
20 see any way around it.

21 MR. PERCIVAL: Stay and put on the second half of
22 the -- are we going to then, if they bring in a verdict and
23 read the verdict, are we then going to put on the second phase
24 of the trial?

25 MR. GIORDANI: Yeah. All it is is I stand up, I say

1 I have a certified judgment of conviction from case blah,
2 blah, blah, State rests. That's it.

3 THE COURT: I think the jury would, especially after
4 that, would rather finish it up.

5 MR. PERCIVAL: Well, that's fine.

6 THE COURT: We'll just wait and see, but that's how
7 it goes. So, all right. Anything else?

8 MR. GIORDANI: No, Your Honor.

9 THE COURT: Bring them in. I will ask you on the
10 record does the defense rest?

11 MR. PERCIVAL: Yes.

12 THE COURT: If you wish to present any evidence,
13 then you'll say no, defense rests.

14 (Jury reconvened at 11:42 a.m.)

15 THE COURT: Please be seated. Good morning, ladies
16 and gentlemen. Call the roll.

17 (Roll called by clerk.)

18 THE COURT: The schedule is I'm going to -- well,
19 first, does the defendant wish to call any witnesses?

20 MR. PERCIVAL: No, Your Honor, the defense, we've
21 consulted with Mr. Richard, and we are not going to call any
22 witnesses. The defense rests.

23 THE COURT: Thank you. Okay. So I am going to in a
24 second read the jury instructions, a copy of which you have.
25 Please don't look at them yet, just so you're paying attention

1 to me. Once I read these, I will admonish you once again and
2 you'll go to lunch because it will be about 12:15. I'll have
3 you come back in an hour and we will go into closing arguments
4 and then later deliberations.

5 Ladies and gentlemen of the jury, I'm now going to
6 read to you the jury instructions. Each of you has a copy.
7 You may, if you choose to, follow along as I'm reading them or
8 just listen to me. You will have copies, those copies to
9 bring back with you when you deliberate. Additionally, I want
10 you to see the verdict form. The parties may actually show
11 you another copy. However, this is the original. We only
12 allow one verdict form to go back because if you make a
13 mistake we don't want several. It has created problems,
14 fortunately not with us. If you make a mistake on it, no
15 problem. Write a note, give it to the Marshal, we will give
16 you a clean verdict form.

17 (Jury instructions read - not transcribed.)

18 THE COURT: Okay. It's now 12:30. I will once
19 again read you the admonishment and it is equally important
20 that you once again still do not discuss this case with your
21 fellow jurors. You're only allowed to do that once you go
22 back to deliberate. It's headed to 12:35, so 1:35 we will ask
23 you to return.

24 During this recess you are once again admonished to
25 not talk or converse amongst yourselves or with anyone else on

1 any subject connected with this trial, or read, watch or
2 listen to any report of or commentary on the trial or any
3 person connected with the this trial by any medium of
4 information including, without limitation, newspapers,
5 television, radio or Internet. Do not form or express any
6 opinion on any subject connected with this trial until the
7 case is finally submitted to you.

8 We will be in recess.

9 MR. PERCIVAL: Until what time, Judge?

10 THE COURT: 1:35.

11 (Jury recessed at 12:34 p.m.)

12 THE COURT: Okay. We're still on the record. We're
13 outside the presence. That certainly took me longer than I
14 expected. I don't know if there's more, but boy, there was a
15 lot to read, plus I had morning calendar where I was talking
16 and losing my voice.

17 1:35. I'm still somewhat reticent, gentlemen, in
18 asking them if they can stay past five because then I will
19 still, you know, I don't want to really, you know, discuss a
20 deadline. I almost would rather at five o'clock -- I don't
21 know. All right. Think about it.

22 MR. PERCIVAL: Maybe at five just ask them if they
23 want to keep going or if they want to come back tomorrow
24 morning.

25 THE COURT: Then we've wasted more time because

1 every time we bring them in we've got to call you back. All
2 right. Take lunch and we'll decide.

3 (Court recessed at 12:36 p.m. until 1:37 p.m.)

4 (Outside the presence of the jury.)

5 THE COURT: We're on the record outside the
6 presence. Two things. One is, I mean, reading all that, the
7 Counts and whatever, do we have to read all the Counts again?

8 MR. GIORDANI: Oh, you're talking about the
9 second --

10 THE COURT: The second trial, the instructions. I
11 mean, this is 20 minutes.

12 MR. GIORDANI: I don't think so, Judge. I think the
13 one thing you could do is say all of the rules of law that
14 were applied in the or read to you previously still apply. If
15 it would require a reading of those instructions again, I can
16 do so. If not, I don't need to. The one that you would have
17 to read is, I think you got to it. There's one in there, I
18 think it's number eight or so that says -- it's eight. That
19 one has to be read and then just the tenth charge and the
20 amended information on the second one.

21 THE CLERK: The second amended, it should be yes? I
22 also need a second amended. Also, do we have another verdict
23 form? Have all these been agreed to?

24 MR. GIORDANI: All that is back with Sandra.

25 THE CLERK: Okay. So we still need to go over them

1 and agree.

2 MR. GIORDANI: We've done that, it should take two
3 minutes. It's all in the back. We just wanted to keep it
4 separate just in case papers get shuffled.

5 THE CLERK: Yes, good idea. What was your other
6 issue?

7 THE COURT: Do I have to go -- let's make sure Mr.
8 Percival is paying attention. Mr. Percival, do you need to
9 talk to your client?

10 MR. PERCIVAL: I just covered with him I think what
11 I was going to discuss.

12 THE COURT: All right. Two things. One is I think
13 because this is, as much as I would, you know, don't want to,
14 this is a new trial on a new charge or an additional charge,
15 which means he again has the right to testify in his defense,
16 which means I have to go over that again with him after we're
17 done with this part of the case.

18 Second of all or in addition, have you reviewed the
19 jury instructions that the State is proposing and is there an
20 issue regarding re-reading all of the instructions?

21 MR. PERCIVAL: Judge, in my --

22 THE COURT: At least the instructions that apply to
23 reasonable doubt, et cetera.

24 MR. PERCIVAL: Well, in my opinion I don't think
25 they have to be all re-read.

1 MR. GIORDANI: As long as the Court confers with the
2 jury and says all instructions from the prior reading still
3 apply. In addition to that set of instructions we have this
4 one instruction. If you require further or if you require me
5 to re-read those instructions, I can. Does anyone need that?
6 And they'll all, I guarantee they'll all shake their heads
7 violently no.

8 MR. PERCIVAL: Judge, can we approach the bench?

9 THE COURT: Okay.

10 (Bench conference transcribed as follows.)

11 MR. PERCIVAL: [inaudible]

12 THE COURT: Okay. So, but for the --

13 MR. PERCIVAL: [inaudible]

14 THE COURT: Right. But for appeal purposes I still
15 need to at least, until then go over -- unless he's pleading
16 guilty now, I need to go over and have you on the record agree
17 to the jury instructions. I mean, I guess we could do all
18 that afterwards.

19 MR. PERCIVAL: [inaudible]

20 THE COURT: All right. Then that 20 minutes is
21 going to be more than 20 minutes.

22 MR. PERCIVAL: [inaudible]

23 THE COURT: Oh, right. No, that's not even a
24 question. The question is are we going to put on the record
25 that you're agreeable to these. You have looked at these and

1 the jury verdict form?

2 MR. PERCIVAL: You want me to right now?

3 THE COURT: Yeah. Why not? We can get it out of
4 the way.

5 MR. GIORDANI: [inaudible]

6 MR. PERCIVAL: [inaudible]

7 THE COURT: All right. If he's pleading guilty then
8 we'll just hold off on that until afterwards. Okay. Anything
9 else outside the presence?

10 MR. PERCIVAL: No, Your Honor.

11 (End of bench conference.)

12 THE COURT: Bring them in.

13 (Jury reconvened at 1:44 p.m.)

14 THE COURT: Please be seated. Parties acknowledge
15 the presence of the jury?

16 MR. GIORDANI: Yes, Your Honor.

17 MR. PERCIVAL: So acknowledged, Your Honor.

18 THE COURT: State, are you ready for closing?

19 MR. LEXIS: Yes, Your Honor.

20 THE COURT: Please proceed.

21 STATE'S CLOSING ARGUMENT

22 By MR. LEXIS: What does it take? What does it take
23 for a man to go up somebody and try to rob him at an ATM at
24 three in the morning? What is the state of mind of a man who
25 is willing to point a firearm at somebody else? What is the

1 state of mind of somebody who is willing to try and rip off
2 someone's chain in broad daylight? This is far beyond
3 reckless conduct, far beyond zero disregard for the safety of
4 others. This man can care less who he robs and how he goes
5 about doing it.

6 Before we apply the law of the facts, there's a jury
7 instruction on this. You heard the Judge read it. Don't get
8 tunnel vision when you're applying the law to the facts. It
9 tells you, "Although you are to consider only the evidence in
10 the case in reaching a verdict, you must bring to the
11 consideration of the evidence your everyday common sense and
12 judgment as reasonable men and women." Long story short, use
13 your common sense.

14 Now let's talk about what this case is not about.
15 This is not a case about identification and who did it. It's
16 not. This man right here is one of two suspects that was
17 involved in the May 20th, 2015 incident at the Bank of
18 America. This man is one of two suspects that was involved at
19 the Terrible Herbst gas station on May 24, 2015. And we also
20 know that he is the man on that day who went up to Kirsten and
21 tried to yank off his chain.

22 You've heard from the lay witnesses. What did they
23 tell you? First from Luis Ruiz, two black males, one of them
24 had a hoodie on, mask on the face. He had his Glock 26
25 stolen. Kirsten, he initially told police one of two black

1 males wearing a red hoodie, identified the defendant right
2 when he was in the hospital as that man who went up to him and
3 tried to snatch his gold chain.

4 You heard from Eric Black, one of the two black
5 males were wearing red hoodie. The person in the red hoodie
6 was the person that tried to take his cousin's chain. He told
7 you that. He also told you the person that he shot was a man
8 with the red hoodie.

9 Randy Combs told you one of the two black males was
10 wearing a red hoodie. Horacio told you one of the two black
11 males was wearing a red hoodie. This man was within feet of
12 these people and he told you the man responsible for pulling
13 the chain was the man who was wearing the red hoodie.

14 You then heard from Metro officers, CAN -- excuse
15 me, CSA analysts and detectives. What did they tell you?
16 Well, they obtained video at the Terrible Herbst that saw the
17 defendant stumbling through the bushes which just so happened
18 to be the bushes where the Glock 26 was found. They went back
19 to the May 20th event. That was Luis's firearm. What else
20 did they do? They followed the blood trail which led to what?
21 Right to the defendant and what was next to him? Sure enough,
22 the red hoodie. And upon finding the defendant he had a
23 gunshot wound to his right calf.

24 You've also heard from Metro forensic people. What
25 did they tell you? Undoubtedly, without question, the spots

1 that were taken from the blood trail, that was his blood
2 trail. That man. The red hoodie, who did it belong to? That
3 man.

4 Defense counsel wants to come up and question these
5 people well, you know, what about the Glock? There's no DNA
6 on the Glock. It's not surprising to anybody. The man just
7 had it for less than four days. Defense counsel wants to come
8 up here and question her about well, what if he squeezed hard,
9 he squeezed the thing. Well, the State's not alleging that he
10 shot. He did not shoot that gun. There's still 10 bullets in
11 there. He never shot it. He never had time to put his DNA
12 all over it. Because it's Luis's gun, he got it less than
13 four days ago.

14 If that wasn't enough, we heard from the detectives
15 what the defendant himself told them. He tried to minimize
16 all kinds of stuff. However, what did he tell Detective
17 Miller? Well, he said he was one of two suspects at the Bank
18 of America ATM incident. And then he proceeded to tell
19 Detective Miller stuff that only one of the two suspects could
20 have known, details. What kind of details? Driving down
21 [indiscernible] and saw the victim outside the ATM. They
22 parked across the street. The victim was in his car, held him
23 at gunpoint, removed the victim from the car, described the
24 victim as a Hispanic male in his twenties.

25 He told the Detective Miller I think the guy was

1 wearing -- driving a SUV, an Expedition or a Tahoe. We know
2 that's true. The man was in a Tahoe. He describes it as a
3 light color. Well, that's correct too. He was driving a
4 white Tahoe. He tells the detective the Glock 26 was taken
5 and he admits to wearing none other than the red and gray
6 hoodie.

7 How about to Detective Spiotto? Same thing. Tries
8 to minimize certain aspects of it. What does Detective
9 Spiotto get out of him? [indiscernible] gas station with the
10 named suspect was the one who approached Kirsten. He tells
11 him that. He was wearing a red and gray hoodie. Drops the
12 9mm in the bushes. He knew exactly how many rounds were in
13 there, 10 rounds, which the crime scene analyst told you,
14 there was 10 rounds in there. And refers to it as my gun.
15 Says that's my gun. No, it's not. You know that's Luis's
16 gun.

17 Why else does the State want to point that out?
18 Well, he also refers to that chain initially with Detective
19 Weirauch as my chain. I thought that was my chain. No, it
20 wasn't. Out of all the places to go, out of all the people in
21 this town, he just so happens to be walking down the street
22 and finds the most flamboyant, expensive, gaudy chain around
23 and it's his chain. Ridiculous. But then he comes around
24 with Detective Weirauch and says oh, yeah, you know, that's
25 not my chain. He also says that's not the guy who took my

1 chain. No kidding.

2 Let's talk about the witnesses and relevance. The
3 District Attorney's Office does not get to pick and choose who
4 gets victimized, who our victims are. You might not like
5 Kirsten, he might not be someone you're going to invite over
6 to your next barbecue. You might not like Luis. You might
7 think that, you know, he's not the sharpest tool in the shed
8 given the fact that he's at the ATM at three in the morning.
9 Does any of that matter? No.

10 How about Eric? You might think this is the last
11 guy who should have a CCW. The man is trigger happy and he is
12 a bad shot, to say the least. Does that matter? No. It's
13 not relevant.

14 You heard about a lot of evidence that took place
15 after Kirsten's chain got ripped off or attempted to get
16 ripped off. Some of it's relevant, some of it's not. What's
17 some of the relevant aspects of it? Well, it goes to show
18 that Metro took this very seriously. It goes to show that
19 afterwards they came across the video which happened to then
20 link the defendant going across that where the gun was found
21 and then led to the blood trail. And then the blood trail led
22 to the defendant himself and the red hoodie. Okay. That's
23 relevant, yes.

24 What's not relevant? It doesn't matter whether Eric
25 shot that gun afterwards four times, 50 times or when someone

1 would get an RPG. It doesn't matter. The crimes that the
2 State has alleged against the defendant for that Terrible
3 Herbst gas station incident were already done, complete once
4 he went up to Kirsten and yanked the chain off of him.
5 Doesn't matter if someone's standing here or someone's
6 standing there, the unidentified suspect is shooting his.40
7 there, this way, that way. Does not matter. The crimes that
8 that man committed were already complete.

9 Let's first start with the May 20, 2015 incident at
10 Bank of America. Jury instructions tell you there's two types
11 of evidence, direct and circumstantial. The law makes no
12 distinction between the weight to be given either to direct or
13 circumstantial evidence. Therefore, all the evidence in this
14 case, including circumstantial evidence, should be considered
15 by you in arriving at your verdict.

16 What kind of direct evidence do you have of the May
17 20 incident? Well, you saw the video. Let's talk about the
18 video for a second. Three seconds, four seconds long, looked
19 like a clip from some crime movie or whatever you want to call
20 it. Just by that clip alone you knew something bad was about
21 to happen. Three o'clock in the morning, two men converging
22 on this car in a very aggressive, stealthy type way and
23 someone has no idea that they're there as he's getting back in
24 his car from the ATM.

25 What other direct evidence do you have? Well, Luis

1 tells us two black males, both with guns, one with a bandanna,
2 one with a surgical mask, they tell him give it all. They
3 then take his wallet, open his car door, force him out, tell
4 him to go stand in the back by the back driver's side area.
5 And then proceeded, the other guy proceeds to go in and take
6 the iPhone and Glock while he's being held at gunpoint.

7 What kind of circumstantial evidence do you have?

8 Well, the time, three o'clock in the morning, the place of the
9 altercation, a bank. Obviously, someone's there and has some
10 money on them or is about to get money. The combined
11 approach, the element of surprise on how they approached this
12 man, the choice of the victim. He's alone, no one else
13 around. Choice of the weapon. Both of them had firearms on
14 them, the fact that they took off right after they committed
15 the crime. And you could also consider the fact that this man
16 did a similar type occurrence four days later.

17 As far as flight goes, you actually have a jury
18 instruction on flight that says, "The flight of a person
19 immediately after the commission of a crime or after he's
20 accused of a crime is not sufficient in itself to establish
21 his guilt, but is a fact which if proved, may be considered by
22 you in light of all the other proved facts in deciding the
23 question of his guilt or innocence."

24 Again, just another example of what you can take
25 with you to determine the guilt, whether it's direct or

1 circumstantial evidence.

2 Let's talk about conspiracy. Before I talk about
3 conspiracy, let me give you an example. Say you've got the
4 medallion up there, thousand dollars or so. I've always
5 thought that would look good in living room. So after court
6 today, let's say me and John are left behind and I tell John
7 you know what, I'm going to take that medallion, why don't you
8 go out in this hallway right here and just give me a couple
9 knocks on the wall if someone's coming. And he says okay,
10 fine.

11 So he goes out there and I go up, take the
12 medallion, take off. It was my idea, I'm the one that did it,
13 it's in my house. But guess what? I'm guilty of grand
14 larceny and so is he. It doesn't matter. When you're
15 deliberating, it does not matter. You do not need to waste
16 time thinking oh, was this man the one who initially
17 approached him or did he approach from the left, from the
18 right? Was he the one holding Luis at gunpoint while the
19 other man went in the car or was it the other man holding Luis
20 at gunpoint while he went in the car? It does not matter.

21 Conspiracy is an agreement or mutual understanding
22 between two or more persons to commit a crime. To be guilty
23 of conspiracy, a defendant must intend to commit or aid in the
24 commission of the specific crime agreed to. It is not
25 necessary in proving a conspiracy to show a meeting of the

1 alleged conspirators or the making of an express or formal
2 agreement. The formation and existence may be inferred from
3 all circumstances tending to show the common intent and may be
4 proved by both direct and circumstantial evidence.

5 Another way. These are just all ways to describe
6 pretty much the same thing. Conspiracy. All persons
7 concerned in the commission of a crime who either directly or
8 actively commit the act, constituting the offense or who
9 knowingly and with criminal intent aid and abet in the
10 commission or whether present or not, who advise and encourage
11 its commission with the intent that the crime be committed,
12 are regarded by the law as principals in the crime thus
13 committed and are equally guilty thereof.

14 The quick one first. Whether you directly commit
15 the crime, aid and abet in committing the crime or conspire to
16 commit the crime, you are all equally responsible for that
17 crime. Conspiracy. The State is not required to prove
18 precisely which defendant actually commits the crime and which
19 defendant aided and abetted. Does not matter. You should not
20 be deliberating which one did which. Does not matter.

21 Theories of liability. Now, again, is a repeat of
22 the last few slides. But what I want to get through is,
23 ladies and gentlemen, in our charging document, which is in
24 your packet, we have alleged certain crimes that the defendant
25 has committed. One of them, flat out, for the May 20th event

1 is conspiracy to commit robbery. And one of them, flat out,
2 for the May 24th event is conspiracy to commit robbery. We're
3 alleging that he formed an agreement or an understanding with
4 his co-conspirator to commit robbery.

5 Now, there's other charges that we have alleged.
6 You have heard the Judge read them to you. Underneath each
7 one of those charges in our charging document we have alleged
8 the defendant can be found liable for each one of those three
9 different ways. Every one of them. This language is at the
10 bottom of each one of those charges.

11 He can be found liable if you find him directly
12 committing the crime, by aiding and abetting the commission of
13 the crime, with the intent the crime be committed by entering
14 into a course of conduct whereby the defendant did act as a
15 lookout, carry away property and/or contribute to a show of
16 force by providing counsel and/or encouragement to one another
17 by actions and words and acting in consort throughout. The
18 third way, pursuant to a conspiracy to commit the crime.

19 Notice the ors, the and/or, and/or, and/or, even
20 among aiding and abetting, number two. We don't need all
21 three, don't need all two. One of the three and he's guilty.

22 Robbery. What's robbery? Robbery is the unlawful
23 taking of the personal property from the person of another or
24 his presence against his will by means of force or violence or
25 fear of injury. The evidence has shown, has made it easy for

1 you. This man, him and his co-conspirator, used force,
2 violence, fear of injury. It couldn't have been any more
3 aggressive.

4 Robbery. If you find the defendant guilty of
5 robbery, you must also determine whether or not a deadly
6 weapon was used in the commission of the crime. Well, what's
7 a deadly weapon? You are instructed a firearm, whether loaded
8 or unloaded, operable or inoperable, is a deadly weapon. A
9 firearm includes any device [indiscernible] through a barrel
10 by force or any explosion.

11 Look, folks, the evidence shows this man and his
12 co-conspirator were using firearms. Bottom line. They
13 weren't using squirt guns. Defense counsel on one of his
14 cross-examinations [indiscernible] to Luis, it could have been
15 a BB gun. Well, even if it was a BB gun, it still would have
16 been a weapon as you see in subsection three. But that's
17 contrary to your common sense and contrary to what the
18 evidence shows. These men are using real guns.

19 Robbery with use of a deadly weapon. In order to
20 use a deadly weapon, there need not be conduct which actually
21 produces harm but only conduct which produces a fear of harm
22 or force by means or display of the deadly weapon in aiding
23 the commission of the crime. The defendant and his
24 co-conspirator did not shoot Luis. However, they sure did
25 display and they sure did use it by means of force.

1 Robbery with use of a deadly weapon. The State is
2 not required to have recovered the deadly weapon used in the
3 alleged crime or to produce the deadly weapon in court at
4 trial, but must establish that a deadly weapon was used in the
5 commission of the crime. Long story short, they took the gun,
6 both of them did. They had Luis's gun. We do not need to
7 produce that.

8 Kidnapping. Every person who willfully seizes,
9 confines, inveigles, entices, decoys, abducts, conceals,
10 kidnaps or carries away any person by any means whatsoever
11 with the intent to hold or detain or who holds or detains the
12 person for the purpose of committing robbery upon or from the
13 person is guilty of kidnapping in first degree.

14 First of all, this is not your typical movie
15 definition of kidnapping, where someone has to come and throw
16 someone in a trunk and drive them downtown. Kidnapping is
17 much broader than that. The State has even highlighted the
18 key words in which the defendant did use. Did he seize this
19 man? You'd better believe it. He wasn't going anywhere.
20 When they forced him out of that car and made him stand on the
21 side, he was seized. Was he confined? Absolutely. He wasn't
22 going anywhere with a gun pointed to him while the other man
23 with the gun is in his vehicle.

24 Abducts? Did he voluntarily get out of that vehicle
25 or was he forced to, told to, with the intent to detain?

1 Better believe it. That absolutely was their intent. For the
2 purpose of committing a robbery. Absolutely.

3 The crime of kidnapping in the first degree is
4 charged in this case is a specific intent crime. A specific
5 intent crime, as the term implies, means more than the general
6 intent to commit the act. To establish specific intent the
7 State must prove that the defendant knowingly did and act what
8 the law forbids, purposely intending to violate the law. An
9 act is normally done if done voluntarily and intentionally and
10 not because of mistake or accident or other innocent reasons.

11 Look, specific intent. Well, there's general intent
12 crimes too. If I take this clicker and I get upset and I
13 chuck it and it hits John in the head, I didn't specifically
14 intend to hit John. But it was my willful conduct which
15 resulted in an unlawful touching. Specific intent crimes you
16 need to actually specifically intend that specific crime to be
17 committed which tells you must be knowingly. And here,
18 knowingly done if voluntarily and intentionally. Two men
19 approach, point a gun and say take it all. And then order him
20 by opening up his car and forcing him to the side. That's
21 about as knowingly as it gets.

22 Kidnapping and robbery. When associated with a
23 charge of robbery, kidnapping does not occur if the movement
24 is incidental to the robbery and does not increase the risk of
25 harm over and above that necessarily present in the commission

1 of such offense.

2 Incidental. What about incidental conduct? This is
3 when defense counsel had Luis up on the stand, he's telling
4 him well, there's lighting, there was lighting outside, right?
5 And there was cars that were coming by right there. That
6 didn't change the equation. What's he getting at? He's
7 getting at kidnapping and robbery. First of all, was the
8 movement incidental? Did they have to move this man outside
9 of his vehicle to the side of his vehicle to complete their
10 robbery? No. Incidental movement is put your hand on the
11 steering wheel, keep your head forward, give me what's in your
12 glove box, give me your roll out of your back pocket, open up
13 that middle console.

14 Forcing a man to get out of his vehicle to the side
15 is not incidental. They did not need to do that to complete
16 their robbery. Moreover, increase the risk of harm, does not
17 increase the risk of harm. It absolutely increased his risk
18 of harm. There's no question. What is the first thing police
19 officers do across this country when they pull somebody over
20 and they think he might pose a risk? Get him out of the car.
21 It lessens their risk, it makes that person much more
22 vulnerable.

23 How many people across this country when they drive
24 down the street, their car breaks down, they're on the bad
25 side of town, or they get involved in some road rage incident

1 where some maniac wants to fight, whatever, and they don't
2 want to put themselves in a bad position. Do they stay in
3 their car or do they substantially increase their risk of harm
4 by getting out? Luis was sitting in his car, he had the
5 protection of the shell of his car, built-in barrier, he had
6 his gun next to him, had his keys in the ignition.

7 Instead, what do they do? The defendant and his
8 co-conspirator knew what they were doing. Less risk to them,
9 more risk to Luis. Have him get out of the car where he has
10 nothing. Is now at the total mercy of these men. Number one,
11 it's not incidental. Number two, it absolutely increased his
12 risk of harm.

13 Burglary. Every person who by day or night enters
14 any vehicle with the intent to commit larceny, therein is
15 guilty of burglary. It doesn't get much more clear-cut than
16 take it all, guns, forcing him out while another man goes
17 inside and takes the iPhone and his gun. That was absolutely
18 their intent. The intention with which entry was made is a
19 question of fact which may be inferred from the defendant's
20 conduct and all other circumstances disclosed by the evidence.

21 Burglary. When two or more persons participate in
22 the commission of a burglary and one or more of them enters
23 the vehicle, it is not necessary to prove the other individual
24 actually entered because one who aids and abets another in the
25 commission of a burglary is equally guilty as a principal.

1 We threw this in there just as a reminder. I know
2 we went over the three theories before, whether you directly
3 commit, aiding and abetting or conspiracy, you're liable.
4 Burglary while in possession of a firearm. Every person who
5 commits the crime of burglary who has in his possession or
6 gains possession of any firearm or deadly weapon at the time
7 during the commission of the crime, at any time before leaving
8 the structure or upon leaving the structure, is guilty of
9 burglary while in possession of a weapon.

10 Not only did these two men have a weapon when they
11 first appeared, they then went in with -- one of them went in
12 with a weapon and gain another weapon on the way out.
13 Burglary. Every person who in the commission of a burglary
14 commits any other crime may be prosecuted for each crime
15 separately. Well, what other crimes did he commit while doing
16 so?

17 Larceny is defined as the stealing, taking and
18 carrying away of the personal goods or property of another
19 with the intent to permanently deprive the owner thereof. You
20 heard why he went in there. After Luis already gave his
21 wallet and the contents therein, one of them went in there and
22 took his iPhone and his Glock. Grand larceny. What makes the
23 larceny a grand larceny? Six hundred and fifty dollars.
24 That's basically it, which is obviously a Glock plus the
25 iPhone plus the contents and the wallet. I believe he said he

1 had a Louis Vuitton wallet. It's clearly more combined \$650.

2 Grand larceny of a firearm. Every person who shall
3 steal, take and carry away a firearm with the specific intent
4 to deprive the owner permanently of the firearm is guilty of
5 grand larceny of a firearm. Overwhelming evidence. They
6 took, either him or his co-conspirator, took Luis's firearm.

7 For the May 20th, 2015 event at the Bank of America
8 the State asks you to find the defendant guilty of conspiracy
9 to commit robbery, burglary while in possession of a firearm,
10 grand larceny of a firearm, grand larceny, robbery with use of
11 a deadly weapon and first degree kidnapping with use of a
12 deadly weapon.

13 Now, the May 24, 2015 event at the Terrible Herbst.
14 We'll start off the same way, direct and circumstantial
15 evidence. What do we have? Ladies and gentlemen, you need to
16 look at both. And the law makes no distinction between the
17 weight to be given either to the direct or circumstantial
18 evidence.

19 Kirsten Travon Kinard told us that he suddenly felt
20 his chain being yanked. Eric Blake said he saw suspicious
21 activity between the defendant and the unidentified suspect
22 and he saw his cousin's chain being forcefully pulled.

23 Randy Combs sees Kirsten spin around at the corner
24 of his eye. Why? Well, the evidence shows it's because he's
25 getting his chain being tugged off of him.

1 And Horacio Hernandez-Lopez. You heard this man.
2 He gave the demonstration. He was within feet of these
3 people. He has no dog in this fight. And he gave you a
4 demonstration on how he came up to me, made sure I was
5 standing the right way and how he's coming from the opposite
6 side of Kirsten and demonstrates as the defendant walked up,
7 unannounced, did not say anything and then all of a sudden
8 forcefully grabbed Kirsten's chain and violently tugged it to
9 try to rip it off of him. He himself told you that he was in
10 shock as he thought oh, my gosh, this guy's getting robbed.

11 What other circumstantial evidence do you have?
12 Well, keep in mind this man just did what he did four days ago
13 at the Bank of America. What else? You heard from Elizabeth
14 Greer tell you what. She saw these two men conferring with
15 one another before they approached. The combined approach,
16 they arrived together. The element of surprise. Kirsten had
17 no advance notice that he was about to get his chain ripped
18 off.

19 What other circumstantial evidence? Again, just so
20 happens that the man appears to be trying to rip off the most
21 expensive item, the most [indiscernible] item that he could
22 possibly see, the gold chain. What other circumstantial
23 evidence? Well, we know they both had weapons. His
24 co-conspirator had a .40 on him. He had Luis's Glock on him.

25 What do we mean by quick draw? Well, you're out

1 with a buddy and all of a sudden your buddy, unbeknown to you,
2 decides to start causing trouble. He's shocked, what the heck
3 are you doing, man, and it's going to take him a minute, at
4 least more than a few seconds to pull out his gun. You heard
5 how quick the man with the .40 was to draw his gun. Eric told
6 you. He was keeping an eye on this man when he went up to
7 Kirsten. And once he saw him rip Kirsten's, try to rip his
8 chain off, he immediately grabbed his gun and pulled it out.
9 And while he's grabbing his gun to immediately pull it out,
10 the guy with the .40 is doing the same thing. Why? They knew
11 exactly what they were trying to do.

12 And, of course, we have the flight again. Other
13 circumstantial evidence you can use for the guilt. Yeah, I'm
14 not going to go over conspiracy all over again. Again,
15 there's an agreement between or mutual understanding between
16 two or more persons to commit the crime. Use the direct and
17 circumstantial evidence as you see fit.

18 The State has alleged that this man and his
19 co-conspirator formed an agreement or understanding that on
20 this particular day he was going to go up and try to rip that
21 chain off Kirsten's neck.

22 We have a little more to the conspiracy than the the
23 May 20th event. Why? Because he was unsuccessful. The crime
24 is the agreement to do something unlawful. It does not matter
25 whether it was successful or not. He can't get up here and

1 say oh, [indiscernible] yeah. Defense counsel's going to come
2 up here, as you heard from the testimony, and state that his
3 chain wasn't ripped off. That's not in the facts.

4 Attempt robbery. We already went over robbery
5 before, it's at the top. Robbery is the unlawful taking of a
6 person's property from the person of another or in his
7 presence against his will by means of force or violence or
8 fear of injury to immediate or future to his person or
9 property. We obviously know he tried to rob, but he was
10 unsuccessful. So we have to go to the second one which makes
11 it an attempt robbery. An attempt to commit a crime consists
12 of two elements, a specific intent to commit a crime and a
13 direct but ineffectual act done towards its commission.

14 The evidence has shown he tried to commit it but he
15 was unsuccessful in doing so. Therefore, that's why the State
16 has charged an attempt robbery and not a robbery. In
17 addition, the State has used its discretion not to charge an
18 attempt robbery with use of a deadly weapon.

19 Battery. Battery means any willful or unlawful use
20 of force or violence upon the person of another. Evidence is
21 overwhelming in that and it's easy. Once he went up and laid
22 his hands on Kirsten, that was a battery. That is willful and
23 unlawful force, unlawful contact of another. It's a battery.
24 And when you do such a thing, when you commit a battery with
25 the specific intent to commit the robbery, the crime is

1 battery with the intent to commit a crime.

2 For the May 24, 2015 events at the Terrible Herbst,
3 the State asks you to find the defendant guilty of conspiracy
4 to commit robbery, attempt robbery and battery with intent to
5 commit a crime. Thank you.

6 THE COURT: Defense.

7 DEFENDANT'S CLOSING ARGUMENT

8 MR. PERCIVAL: Ladies and gentlemen of the jury,
9 before I get started I'd like to take a couple seconds to say
10 thank you for your patience and your attention during the
11 trial this week. I notice that you've all been very attentive
12 to what the witnesses had to say and probably, unfortunately,
13 to what we lawyers have to say too. So thank you. It's
14 almost certain in my mind that there's some place that each
15 and every one of you would probably rather be than sitting in
16 a courtroom four days in a row. But this is the country that
17 I'm aware of where we have the ability to be judged by our
18 peers at a trial by a jury instead of by some appointed
19 magistrate or some royal appointee who has a person's guilt or
20 innocence in his own hands and is a minion of the government.
21 That's not the case here.

22 Without people like you who are willing to sacrifice
23 your time and your attention and do your civic duty, this
24 whole system of justice doesn't work. I dare say, it's
25 probably the best one in the world. That being said, thank

1 you very much for your time and your attention.

2 There's one thing that Mr. Lexis said that I
3 completely agree with. This isn't a whodunit. This trial has
4 never been about a whodunit. We're not reading some Agatha
5 Christie novel trying to figure out who was involved. Why?
6 Because my client, Mr. Richard, told the police everything in
7 the hospital at UMC on the 24th and the 25th and then again on
8 June 3rd when he spoke with Detective Miller. He doesn't take
9 the stand today to testify to you because he doesn't have
10 anything different to say. He's always maintained that he
11 told the detectives the truth and there's no point -- and the
12 detectives have regurgitated everything that he said to them
13 to you, so there's no reason for him to take the stand.

14 And there is a jury instruction that says he doesn't
15 have to take the stand. He doesn't have to prove a doggone
16 thing. And it can't be held against him if he doesn't take
17 the stand. That's not to be considered in his guilt or
18 innocence. And Mr. Richard and I have conferred and from the
19 beginning there have been things that he has been willing to
20 concede.

21 There's a misconception in the general public, I
22 don't know if any of you or if all of you or if only some of
23 you hold it, but there's a misconception in the general public
24 that the role of the defense attorney is to try and get a
25 complete acquittal for his client in every case. And that's

1 not really the role of the defense attorney. The role of the
2 defense attorney is to do -- to give his best efforts to
3 ensure that his client, if convicted, is only convicted of the
4 crimes of which he is guilty under both the state of the law
5 and the state of the facts as they are presented at trial.
6 That is the role of the defense attorney.

7 Sure, you strive to get an acquittal for everything
8 you can, but there are times when that is not possible. So
9 your job is to make sure that your client is not unfairly
10 convicted of anything. That's my role and that's what I'm
11 here to try and do.

12 The first thing I'd like you to remember when you're
13 considering this case is jury instruction number five. You've
14 all got a set of jury instructions. And I'm going to be
15 making reference to and quoting from a number of them. My
16 arguments are not evidence, but these are the law. They are
17 the law as it was presented to you by the Judge. And at the
18 beginning -- remember during voir dire I asked, you know,
19 you're going to be asked to follow the law as it is presented
20 to you by the jury instructions at the end of the case. Is
21 there anyone that has a problem with that? Is there anyone
22 that can't do that? And I didn't see one of you raise your
23 hand and say no, I can't do it. And I don't think I would --
24 if I asked the same question right now I don't think I'd get
25 that response right now.

1 But jury instruction number five says, "The
2 defendant is presumed innocent until the contrary is proved.
3 This presumption places upon the State the burden of proving
4 beyond a reasonable doubt every element," not just a few
5 elements, "every element of the crimes charged and that the
6 defendant is the person who committed the crime."

7 What now? My client and I have conferred. When
8 you've got nine charges and two separate incidents, it's
9 always kind of difficult to decide where to start and where to
10 go to. What I'm going to -- the only thing I could think of
11 in preparing for this case is to handle this chronologically.
12 We'll deal with the incident of May 20th at the ATM first and
13 we will deal with the incident of May 24th at Terrible Herbst
14 in a minute.

15 My client is willing to concede and in fact told the
16 police officers who told you he was riding around with some
17 people at 2:30, 3:00 in the morning and the guy he was riding
18 with saw this guy at the ATM, apparently getting money, or
19 that's what we -- I think that would be logical to assume
20 that's what he's doing at an ATM at 2:30 in the morning. He's
21 either getting money or depositing money, one of the two, and
22 he says let's do this.

23 My client, for whatever reason, agreed. And his
24 role was to go, as the defendant explained, he said his role
25 was to go and watch his buddy's back. His buddy was going to

1 get money and he was going to watch his back. Okay. Is there
2 a conspiracy to commit robbery there? Yes. He's conceding
3 that. I'm authorized to concede that. He's not going to try
4 and lie to you. Like I just got out to take a stroll around
5 the block and my buddy decides to go rob this guy. No, he
6 knew that he was going to rob the guy. There's no question
7 about that.

8 Did a robbery occur? Yes, a robbery occurred.
9 According to Mr. Ruiz, his wallet was taken. Two men
10 approached with guns, his wallet was taken, his iPhone was
11 taken and \$30 was taken that was inside his wallet. And
12 during the course of the robbery he says both of them were
13 waving guns. My client said that, told the police that he did
14 not have a gun, he was there watching to make sure that his
15 buddy didn't have problems pulling this off.

16 That kind of makes sense because if he had had a gun
17 on the evening of May 20th, why did he have the stolen gun on
18 his person on May 24th? He's going to concede that to you.
19 If he already had a gun, why would he be carrying around a
20 stolen handgun? Everybody's smarter than that. But Mr. Ruiz
21 testified that these two individuals approached and one of
22 them opened the door and said get out or first said give it
23 all and then opened the door and said get out. And he got out
24 and he moved oh, four or five feet to the, roughly the back of
25 the back door, between the back door and the back tire where

1 he was standing. He said this other guy had a gun.

2 But the guy that he picked out on a six-pack photo
3 lineup, if you recall that, we were all shown the photo
4 lineup, the guy that got into the car that he circled and
5 wrote his name under and said this is the guy that got into
6 the car and started searching the car was not my client. He
7 said he considered my client, he looked at my client, all
8 this, but no, he thinks this is the guy that did it and he was
9 the one that got into his car and started searching his car
10 and apparently took his gun and his [indiscernible].

11 Now, one of the charges that my client's facing
12 today is burglary while in possession of a firearm. Burglary
13 is defined by jury instruction number 17. "Burglary is the
14 entry," in this case into a vehicle. But if you were to read
15 the whole statute it would be entry into a vehicle, structure
16 or enclosure with the intent to commit a crime therein.
17 Burglary is complete when the entry is made. The crime of
18 burglary has occurred when a person enters into a building,
19 car or structure with the intent to commit a theft inside.

20 Did that gentleman do that? Yes. But did my client
21 help him to enter into that car? No. He did aid or abet him.
22 What he did was he stood by and he watched. And he stood by
23 close enough that this guy wasn't going to get in trouble --
24 get him in trouble. But did he help him to commit the act of
25 burglary? No. He did not aid him and abet him in breaking in

1 -- in opening that car and getting into that car and
2 committing a theft therein. He's not guilty of burglary.

3 Furthermore, the State has failed to prove beyond a
4 reasonable doubt the second leg of that, and that is while in
5 possession of a firearm. Remember, it is the State's burden,
6 no one else's burden, it's the State's burden to prove beyond
7 a reasonable doubt every element of the crime charged.

8 Firearm is discussed in jury instruction number 16.
9 Jury instruction number 16 defines a firearm as including a
10 device designed to be used as a weapon from which a projectile
11 may be expelled through a barrel by the force of an explosion
12 or other form of combustion. What we all think of as a gun.
13 Or, how about this one? This is a firearm. Any device that
14 is used to mark the clothing of a person with paint or any
15 other substance. So if you're out playing paintball wars with
16 your friends, you're in possession of a firearm under this
17 definition.

18 Third, any device from which a metallic projective,
19 including any ball bearing or pellet, may be expelled by a
20 means of spring, gas, air or other force. Was that proven in
21 this case? No. What the State proved is that Luis Ruiz
22 thought that these guys had guns. What they proved was that
23 they looked like guns. What they did not prove is that they
24 were designed to be a weapon and could propel a projectile
25 down the barrel by force of explosion or combustion.

1 They did not prove that they were designed to mark
2 somebody else's clothing with pain. And they did not prove
3 that they were capable of expelling a metallic projectile down
4 the barrel by the use of gas, spring, air or other force. And
5 that has to be proved. That's their obligation to prove that
6 beyond a reasonable doubt to you. And that wasn't done.

7 My client is not guilty of the crime of burglary
8 while in possession of a firearm, even under a co-conspirator
9 theory. Mr. Lexis laid a lot of groundwork about how each
10 conspiracy -- each co-conspirator is responsible for the
11 actions of all other co-conspirators in the commission of a
12 crime. Well, under some circumstances, certain circumstances,
13 that is true. However, it is not true of specific intent
14 crimes.

15 Now, there are two -- as the prosecution point out,
16 there are two types of crimes. There are general intent
17 crimes, which is -- are crimes that are just basically the
18 intent to do something that the law forbids. They just
19 generally do something that the law forbids. A specific
20 intent crime requires that you perform an act with a goal, a
21 specific goal and that you intend to do the act to reach the
22 goal.

23 Jury instruction number 12 talks about specific
24 intent crime. And it says in the third paragraph, "A
25 conspirator may be convicted of a specific intent crime, such

1 as burglary, only if he had the specific intent that that
2 particular crime," not the particular crime, that particular
3 crime, "only if the co-conspirator had the intent that the
4 crime of burglary be committed may he be found guilty of
5 burglary." And it says, "A conspirator may be convicted of a
6 specific intent crime only if he had the specific intent that
7 that particular crime be committed. Burglary and kidnapping
8 in the first degree are specific intent crimes."

9 So you would have to find that there was an
10 agreement between two persons to specifically commit the crime
11 of burglary, entry into a structure for the purpose of
12 committing theft. That's not what he told the detectives. He
13 said, this guy said I'm going to go get some money, I need you
14 to help me out, come watch my back, make sure nothing happens
15 to me. He thinks there's going to be a robbery. Has no --
16 there was no discussion about I'm going to get him out of the
17 car and break him out of the car and move him down the car
18 five feet and we're going to commit -- they're going to
19 burglarize his car and kidnap him. That makes common sense.
20 That's the kind of agreement that they make, not I know, you
21 open the car door. They have to prove this.

22 You've got to open the car door and get into the car
23 for the purpose of committing the crime. And the State has
24 not proven that -- even all the other flaws in that theory put
25 aside, the State has not proven that there was a conspiracy to

1 commit this specific intent crime between Mr. Richard and his
2 unidentified co-defendant or who would be a co-defendant had
3 he been apprehended.

4 Let's talk for a minute about first degree
5 kidnapping. Kidnapping is the seizure or movement or -- I'll
6 just do what the prosecution did and go through jury
7 instruction 28. It says that, "A person who willfully seizes,
8 confines, inveigles, entices, decoys, abducts, conceals,
9 kidnaps or carries away any person by any means whatsoever
10 with the intent to hold or detain or who holds or detains the
11 person for the purpose of committing robbery upon or from the
12 person is guilty of kidnapping in the first degree."

13 "It is the fact, not the distance of the forcible
14 movement that constitutes kidnapping. However, a charge of
15 kidnapping and an associated offense will lie only where the
16 movement of the victim is over and above that required to
17 completely associated crime charged. On associated with the
18 crime of robbery, kidnapping does not occur if the movement is
19 incidental to the robbery and does not increase the risk of
20 harm over and above the necessarily present -- that necessary
21 present in the commission of the crime."

22 The crime of kidnapping in the first degree is a
23 specific intent crime, as we discussed earlier. You cannot
24 find him guilty of kidnapping in the first degree because he
25 entered into a conspiracy to commit a robbery. He has to

1 specifically intend that a kidnapping occur pursuant to the
2 conspiracy before you can find him guilty of kidnapping in the
3 first degree n a conspiracy theory.

4 We have Mr. Ruiz telling you, telling the Court,
5 telling the prosecution, telling me that the guy that he
6 identified opened his door, told him to get out and he got in.
7 This guy stood around, had him at gunpoint or what he thought
8 was gunpoint. But there's no evidence whatsoever that the --
9 and then the guy that got in the car stole, while inside the
10 car, his iPhone and his gun, his Glock 19 -- no, Glock 26.
11 But there's no -- they got him out of the car so he could
12 search the car to commit the theft. The purpose of the
13 movement was to complete the theft. And they didn't move him
14 from here across the street, they didn't move him to some
15 concealed area where they could bust a cap in him and nobody
16 would see and increase his danger in that respect. They got
17 him out of the car, a white car, they put him right up against
18 his own car and he stood there as traffic is buzzing back and
19 forth.

20 And you looked at the video and you saw the security
21 video from Bank of America. There's traffic going by there.
22 If anything, they decreased the risk of harm because A -- and
23 by the way, this is also why a police officer gets you out of
24 your car when he pulls you over. By getting you out of your
25 car he precludes you from grabbing some kind of weapon so that

1 he has to shoot you. He reduces the risk of harm to you when
2 he pulls you over. And he also reduces the risk of harm to
3 himself, so it's kind of a mutually beneficial movement to get
4 you out of the car where you can't reach a concealed weapon
5 and where he can see what's going on.

6 Now, what do you think is more dangerous? Someone
7 sitting inside a car with dark tinted windows, with the window
8 rolled down on the side where he's got this supposed gun and
9 all they have to do is reach in and shoot him or when they get
10 him outside where he's completely open and obvious to the
11 public? He's probably safer in the well-lighted parking lot
12 where the public can see and people are much less likely to
13 shoot him under that circumstance. They didn't increase the
14 risk of harm by moving him, not substantially.

15 Was a firearm stolen? Yes. My client will concede
16 that. A firearm was taken. He ultimately wound up with the
17 firearm, but a firearm was taken. Grand larceny of a firearm?
18 We can concede that.

19 Now, with respect to the incident of May 24th. You
20 saw video of a man in the red hoodie, which my client concedes
21 was him, told the police that. The man in the red hoodie
22 walking up the sidewalk, all the way around to the front door
23 of the Terrible Herbst. He and the guy with the towel over
24 his head entering the front door of the Terrible Herbst. My
25 client turns toward that guy and then turns -- they're not

1 inside two or three seconds, turns and walks out the door and
2 he goes back to the man who he thought was wearing his chain.
3 And he told the police officers. You heard, I believe it was
4 Detective Spiotto testified that when he -- when they got to
5 the gas station, the convenience store gas station he said
6 that's my chain and he turned around and went back.

7 Now, there's no -- Ms. Greer says they say isn't
8 that Old Boy? I don't know where that came from. My client
9 says he doesn't know this guy and has never seen him before in
10 his life, but he thought he was wearing his chain and he went
11 back to get it. There was no discussion. Weed Man, I'm going
12 to change my nickname. Weed Man follows him down there and
13 stands around and watches and when my client goes up and grabs
14 the chain, which he told the detective he did. He said I went
15 up and I grabbed and said let me see that, that's my chain. A
16 struggle ensues, a fight ensues.

17 Did it handle it the wrong way? Yeah, probably. If
18 he thought that that was his chain, he probably should have
19 said where'd you get that? Where'd you get that chain?
20 Because that looks an awful lot like one that was stolen from
21 me. Did he handle it improperly? Absolutely. And he even
22 told the police officer that. He said you know, it was really
23 more the way of my approach than anything else. I shouldn't
24 have done that. And in retrospect, I don't think it was my
25 chain. He told the police officer that and the police officer

1 told us that. Right?

2 So is he really trying to steal the chain or is he
3 trying to identify this chain as his own when a fight breaks
4 out? That's what he's told the police officers all along.

5 And this flight instruction? Flight being evidence
6 of knowledge or consciousness of guilt. Let me tell you
7 something. If somebody breaks out a 9mm and starts squeezing
8 off 16 rounds in my direction, am I going to be in flight?
9 You better believe it and it's going to have nothing to do
10 with whether I think I'm guilty of something or not, it's
11 going to have everything to do with whether I think I'm going
12 to wind up full of bullet holes. And that is exactly what he
13 does. When the bullets start flying he turns and runs. And I
14 defy anyone to tell me that when the bullets start flying like
15 that you're not going to do the same thing if you're unarmed.
16 Or even if you're armed if you don't want to shoot somebody.

17 He was honest about about -- he's honest to the
18 police officers about he had the gun. He's honest to the
19 police officers about I got hit, I tripped, I fell in the
20 bushes and I hid my gun because I didn't want to be caught
21 with a gun, and then I limped off down into the apartment
22 complex. Has the State proven beyond a reasonable doubt that
23 this was in fact an attempted robbery and not just him
24 confronting somebody over what he thought was his own
25 property? No, they have not.

1 Battery with intent to commit a crime. You know,
2 the law in the State of Nevada is kind of weird. I've always
3 thought so. But it's law. If you forcibly take property from
4 another person, you actually take it, commit a robbery, it is
5 a robbery. Even if the property that you take is your own.
6 If they have possession of your property and you take it back
7 through self-help, that is a robbery. Okay? But battery with
8 intent to commit a crime, you have to commit a crime. You
9 have to intend a crime when doing it.

10 Most people who think they are taking their own
11 property back do not think they're committing a crime. They
12 don't intend to commit a crime. They don't intend to commit a
13 robbery. Is there a battery by virtue of him yanking on his
14 chain? Yes, probably. Is there a battery with intent to
15 commit a crime? No. The State has failed to prove that
16 charge beyond a reasonable doubt.

17 I'm sorry that you had to sit here for four days and
18 listen to all the hot air that we've thrown around the
19 courtroom to get to this conclusion. Sometimes we're able to
20 resolve cases without having to have a group of jurors in,
21 sometimes we're not. As I told you before, my role is to do
22 my best to make sure that my client, if convicted and when
23 convicted, is convicted of only those charges which both the
24 law and the facts support. I've told you what he concedes and
25 it's my -- I would submit to you that the State has failed to

1 carry the burden of proof beyond a reasonable doubt on the
2 charges of burglary while in possession of a firearm, robbery
3 with use of a deadly weapon, first degree kidnapping and
4 attempt robbery and battery with intent to commit a crime.

5 Have they proven and has my client conceded to
6 conspiracy to commit robbery and the robbery in the first
7 event? Yes. Has my client conceded a battery, that by
8 grabbing that chain and yanking on it, saying let me see that?
9 His language probably wasn't quite that gentle. But yes. But
10 the State simply has failed to carry the day with respect to
11 the remaining charges.

12 Thank you very much for your attention. Sorry I
13 took up so much of your time. Hope next time we meet it's
14 under different circumstances.

15 THE COURT: Thank you. Does the State have
16 rebuttal?

17 MR. GIORDANI: Yes, Your Honor.

18 THE COURT: Proceed.

19 MR. GIORDANI: Thank you.

20 STATE'S REBUTTAL CLOSING ARGUMENT

21 MR. GIORDANI: Admit what you can't deny and deny
22 what you can't admit. That's what Mr. Percival just did,
23 that's what Mr. Richard did when he spoke to the police on
24 three separate occasions.

25 Now I'm not going to waste too much of your time

1 bogging down, getting into all the details of the offenses,
2 but I'm going to tell you this. Mr. Percival's a good
3 attorney, I respect him, he's done a hell of a job for his
4 client. But unfortunately for him, he represents a client
5 that's guilty as sin for every single crime that we charged.
6 I'll tell you this. We did not overcharge in this case, as
7 Mr. Percival would have you believe. He's trying to attack
8 the little elements of a few offenses to try to get you to
9 trim off some of the offenses. We didn't overcharge in this
10 case.

11 Had we charged the defendant with all 22 rounds that
12 were fired at that May 24th incident, that may have been
13 overcharging. That's not using prosecutorial discretion as
14 we're supposed to. We're supposed to do justice. We're not
15 supposed to get convictions, we're supposed to do justice.

16 Now, I don't think, I honest don't believe, I don't
17 think anyone in this room would argue that Mr. Richard went
18 to the car wash that day with the intent that a gunfight was
19 going to ensue. Right? I mean, who can presume that the guy
20 you robbed is going to be a pimp or whatever the heck he is
21 and have his bodyguard next to him with a loaded firearm and
22 then a shootout? I mean, I don't think he intended that.

23 However, had I charged him with that I would have
24 been legally fine because of that conspirator liability that
25 Mr. Lexis explained to you initially. Now, Mr. Richard there

1 is guilty of every single crime that occurs that is a natural
2 and probable consequence of his initial intent. That just
3 means that when you are going out to a public place to rob a
4 person of their property, you're in trouble if gunfight ensues
5 and people get killed. That's on you. That's why robbery's
6 illegal. That's why we don't let people rob other people in
7 daylight because things like this happen. That's the reason
8 we presented all that evidence to you, to show what happens
9 when crimes, such as the ones the defendant committed, are
10 committed.

11 I didn't have to show you the ballistics or the tool
12 mark expert, that doesn't matter. Number one, she couldn't
13 tell you whose bullet went into the people, which I assume you
14 had questions about. But it wouldn't matter anyway. The gun
15 charges aren't charged in this case. The gunfire isn't
16 charged in this case.

17 I want to address a few points that Mr. Percival
18 made during his argument and I want to start by kind of
19 setting this groundwork. To believe or to go along with what
20 Mr. Percival just argued and to drop a couple charges here and
21 there, you would have to presume that when the defendant spoke
22 to the detectives he was telling the truth about every single
23 aspect of everything. I want to tell you why that isn't the
24 case and why it's obvious that isn't the case.

25 You heard testimony, the statements, you didn't

1 actually see them, but I'm going to remind you about a couple
2 of things he said to show you that he admitted what he had to
3 admit, but denied what he couldn't admit. Number one, he
4 would have you believe that he was driving down the street on
5 the May 20th incident and the guy he was with, it was his
6 idea, it was an opportunistic crime where they saw someone in
7 a parking lot, they chose to pull over and rob the guy. I
8 admit that, I can't deny that because you've got surveillance
9 video. But he minimized and he said the other guy planned it.
10 The other guy had the gun. He robbed the guy. He went into
11 the car, et cetera. So he minimized. He admitted what he had
12 to admit. He denied what he couldn't admit or so he thought.

13 Think about this. Now he's found four days later
14 with a firearm. Right? And his story to the detective was
15 there's no phone taken, there's no wallet taken, there's no
16 money taken. There's a firearm taken, I admit that because
17 you caught me with it. Admit what you have to admit, deny
18 what you can't admit.

19 Now, if you're to accept Mr. Richard's story as
20 true, then you would have to logically accept that his buddy
21 planned that robbery on May 20th, his buddy ran the show, his
22 buddy had the firearm when it happened, his buddy obtained the
23 firearm, but then somehow Mr. Richard, the guy who was just
24 there to be a bodyguard, is the one that ends up with the only
25 thing stolen in that robbery. So they did all that so he

1 could help out his buddy who was just there as a bodyguard.
2 Absolutely does not make sense.

3 Along that same line, when Mr. Percival mentioned
4 about the firearm charge and saying that we didn't prove the
5 firearm charge, which we absolutely did. He stated portions
6 of the law that benefit his side of the case, but he skipped a
7 couple portions that clearly state that we've proven beyond a
8 reasonable doubt that that was the case. And factually, if
9 you'll recall the statements from the detective, Mr. Richard
10 said on two separate occasions when we first walked up he
11 caught the gun. Pointing the finger at the buddy, minimizing
12 his conduct, making sure the other -- the cops know the other
13 guy did everything. He caught the gun.

14 Well, in making that statement he admitted to use of
15 a deadly weapon during the commission of that robbery. You
16 heard in the other instructions, it doesn't matter if he
17 actually had a gun or if the other guy had a gun. So when
18 that guy walked up and caught the gun, he himself accidentally
19 admitted that he's guilty of robbery with use of a deadly
20 weapon and kidnapping with use of a deadly weapon. There's no
21 getting around that. Those were his words. They're not our
22 words, they're his.

23 So whether or not he had a firearm doesn't matter.
24 I would submit to you, though, that he did. And how do you
25 know that? Mr. Ruiz. He told you clear as day both had

1 firearms. He said that multiple times. One guy had a firearm
2 that went into the car, one guy had a firearm that held me at
3 gunpoint by the side of my vehicle. When they ordered me out
4 of the car, that was at gunpoint. That right there is a
5 kidnapping with use of a deadly weapon. Ordering him out away
6 from his keys, away from his protection, as Mr. Lexis told
7 you.

8 But Mr. Percival kind of attacked that and I want to
9 bring up a point that he must have missed. Don't forget that
10 when the robbery was complete, when the items were already
11 stolen, they ordered him at gunpoint back into the car. So if
12 you want to accept Mr. Percival's argument that he was safer
13 on the street because it's well-lit and there's cars driving
14 by, fine, accept that. Because when they put him back in the
15 car at gunpoint, that's a kidnapping too. That's not
16 incidental movement. The robbery's done. It's not
17 incidental, it's a new kidnapping. That's the charge.

18 A couple more points to address about Mr.
19 Percival's argument with regard to the burglary. He said, and
20 I tried to quote, did he help him to commit the act of
21 burglary, no. He said that he just stood there watched by so
22 his buddy didn't get in trouble or so things didn't go wrong,
23 whatever it was. That's absolutely not the case. He aided
24 and abetted in the commission of the burglary because he held
25 the owner of the vehicle that was just burgled at gunpoint

1 while his buddy went through the car. And that's assuming
2 it's the friend, the unknown co-conspirator who the defendant
3 never named, by the way, that's assuming that he's the one
4 that went in the vehicle. But this is where your common sense
5 comes in.

6 And I want to remind you about what Mr. Ruiz said
7 when he talked about that photo lineup. Mr. Ruiz said to you
8 that he looked at number one and number three for about 10
9 minutes, I think was his testimony, around 10 minutes. He
10 focused on those two and he ultimately picked number one
11 instead of number three. Remember that? But he also clearly
12 said that's the guy that went into the car. Now Mr. Percival
13 would have you believe that he identified someone else's going
14 into the car, not his client number three. That doesn't make
15 any logical sense.

16 Number one was picked from random, completely
17 random. There's thousands if not millions of photos that they
18 could have chosen from, and Mr. Percival would have you
19 believe that number one is the guy that went in the car. No,
20 no, no. Number one looks eerily similar to number three
21 because number three is the guy that went into the car.
22 Number one looks similar, so that's why he said that's the guy
23 that went into the car. He just got the two wrong. He was 80
24 percent right or he was 80 percent certain that the person he
25 identified was the person that went into the car.

1 Logically, if he's between one and three, then he's
2 identifying the defendant as the one that went into the car
3 and did all the stealing. Which would make sense again coming
4 around to May 24th when he's the guy with the stolen firearm,
5 the proceeds of the robbery which he would have you believe is
6 the only thing stolen.

7 There are a couple of jury instructions that I want
8 to draw your attention to. One of them is jury instruction
9 number 13. The second paragraph says, "A co-conspirator
10 and/or aider and abettor is guilty not only of the offense he
11 intended to facilitate or encourage, but also of any
12 reasonable foreseeable offense committed by the co-conspirator
13 and/or the person he aids and abets."

14 I think the waters were a little muddied earlier, so
15 I want to clarify this. When he conspired to commit the
16 robbery on the 20th, he's on the hook for the natural and
17 probable consequences of that action. Now, Mr. Percival, his
18 quote was -- I apologize here. "There was no discussion about
19 I'm going to get him out of the car and move him a couple feet
20 and enter the car." That was his argument as to why his
21 client's not on the hook for the burglary and the kidnapping.

22 Well, that's why that law is in place. That's why
23 that law was enacted by our legislature. Because when you
24 plan to commit a robbery, agree to do so, conspire to do so,
25 and then follow through with it, if your buddy with the gun

1 tells the guy to get out of the car and increases his risk of
2 harm and then enters the car to commit the robbery --

3 MR. PERCIVAL: Objection, this is a misstatement of
4 the law.

5 MR. GIORDANI: I can read it directly from the
6 instruction.

7 THE COURT: Approach.

8 (Bench conference transcribed as follows.)

9 THE COURT: What are you saying?

10 MR. PERCIVAL: The law says that you can't be found
11 [indiscernible] co-conspirator theory [indiscernible] specific
12 intent crime unless they have proven that a conspiracy was to
13 commit that crime, kidnapping [indiscernible].

14 MR. GIORDANI: [inaudible]

15 MR. PERCIVAL: [inaudible]

16 MR. GIORDANI: [inaudible]

17 THE COURT: First of all, you can't object until he
18 completes it because he hasn't not -- he hasn't said something
19 wrong until --

20 MR. PERCIVAL: He actually completed it once and was
21 starting to go through it again.

22 THE COURT: I don't think so. You understand what
23 his objection is regarding the, it's regarding the burglary,
24 correct?

25 MR. PERCIVAL: The burglary and the kidnapping.

1 THE COURT: That are specific intent crimes. Right,
2 right. Okay. I don't think he -- I'm overruling the
3 objection. If he does it again or if it does it, then
4 certainly I'll strike it.

5 (End of bench conference.)

6 THE COURT: Objection overruled.

7 MR. GIORDANI: Thank you, Your Honor.

8 As I was saying, either way, if he is the person
9 going into the car or the person standing outside of the car
10 holding Mr. Ruiz at gunpoint, he had the specific intent that
11 the crime be committed of kidnapping and the crime be
12 committed of burglary. Because he's either number one, doing
13 it himself so you know he has the intent, or number two,
14 standing there holding the guy at gunpoint while it's done.
15 So either way, no matter how you look at it, he's guilty of
16 first degree kidnapping with use, burglary while in
17 possession, robbery with use of a deadly weapon and
18 conspiracy.

19 And I'll just note. I think Mr. Lexis hit this, but
20 in case he didn't, you'll see in the charging document that
21 Counts One and I believe Count Seven or Eight are conspiracy
22 to commit robbery. The conspiracy in and of itself is the
23 agreement to commit a crime. The agreement in and of itself
24 is a crime and that's charged as a conspiracy. So when they
25 conspired and agreed, so on the May 20th event when they

1 agreed yeah, let's go rob this guy, they park in the dark
2 parking lot across the street and put on masks and one of them
3 or both of them get firearms, conspiracy's done. They've
4 taken over acts in furtherance, they're about to do the crime,
5 they've conspired and agreed. That's Count One and I believe
6 Seven or Eight.

7 MR. LEXIS: Seven.

8 MR. GIORDANI: Seven. There's also conspiracy
9 liability that pursuant to that conspiracy, each and every one
10 of the other Counts with Mr. Richard is guilty pursuant to
11 conspiracy liability.

12 MR. PERCIVAL: I'd have to object again. That's a
13 misstatement of the law with respect to the specific intent
14 crimes and that's discussed ad nauseam in Bolden versus State.

15 MR. GIORDANI: And I'm quoting directly from the
16 jury instructions that we both signed.

17 THE COURT: I'm overruling the objection.

18 MR. GIORDANI: Thank you, Your Honor. In any event,
19 keep those in mind. Conspiracy in and of itself is a crime.
20 Then there's conspiracy liability that's defined over and over
21 in your instructions. Please just read those.

22 The other instruction I would like to point you to
23 instruction number 18. This is with regard to the burglary
24 again. And I don't mean to be repetitive, but it says
25 specifically, "When two or more persons participate in the

1 commission of a burglary and one or more of them enters the
2 vehicle, it is not necessary to prove the other individual
3 actually entered because one who aids and abets another in the
4 commission of a burglary is equally guilty as a principal."

5 The final point about the burglary and I'll move on
6 is whether or not -- well, our position and the evidence shows
7 that both men had firearms during that incident. But even if
8 you think only one did, whether or not they had that gun, the
9 one person who didn't have the gun entered the vehicle, they
10 stole a firearm. And the law says burglary while in
11 possession of a firearm is if you enter with a gun or if you
12 obtain one during the commission of a burglary or on the way
13 out. So don't be confused with that.

14 I want to talk about jury instruction number 23. If
15 you wouldn't mind looking at that. The attempt robbery
16 charge. There is a line in instruction number 23 that I don't
17 want you to miss when you're back in the jury deliberation
18 room. The second paragraph says, "Robbery requires the intent
19 to take property by fear or force. A good faith belief that
20 the property at issue is once owned, does not nullify the
21 intent to take property from another by force."

22 Mr. Percival challenged the attempt robbery on May
23 24th of Mr. Kinard and he said to an extent that it's because
24 his client thought it was his own chain. We can dispute that
25 all day. Doesn't matter what he thought because the law says

1 whether he thought it was his own or not, doesn't matter, it's
2 a robbery. You don't go run up to somebody and try to take
3 your own property back because things like this shooting
4 happen.

5 I want you to remember the testimony of Horacio
6 Lopez. He's the guy that, as Mr. Lexis pointed out, has no
7 dog in this fight. He's a car wash worker, he's there and he
8 did a demonstration, I want to say twice, of how Mr. Richard
9 approached Mr. Kinard. Now you could accept Mr. Richard's
10 statements to the police as true, blindly, and that he was
11 walking up to just look at it. Or you could accept the
12 statements of a person who has nothing to gain by telling 14
13 members of his community, his peers that he saw Mr. Richard
14 walk up as if he's walking by and then snatch from the side.
15 That's an attempt robbery. Now, because the chain weighs two
16 kilos and didn't break, it wasn't a complete robbery. But in
17 any event, it's an attempt and that's all they charged.

18 I want to thank you, as Mr. Percival did, for your
19 time and attention. I appreciate that everyone was taking
20 notes and there were several questions asked. At this point,
21 I will submit to you that we have proved every single element
22 of every single offense charged in that amended information
23 that you'll have back there. Come back with a verdict of
24 guilty on all those Counts and I'm going to guess that it's
25 going to be the fastest verdict in the history of this

1 courthouse. Thank you very much.

2 THE COURT: Thank you. Joe is the Marshal, Sandy is
3 my JEA. They'll be sworn in. Sandy, once this is done, Sandy
4 will take the alternates. I want to thank everybody whose,
5 the jurors who have participated. The alternates are not
6 released. I had a trial several months ago where
7 unfortunately, we needed an alternate right away. So it does
8 happen. You're not released. You will go with Sandy, she'll
9 take your phone numbers, et cetera, and we will, as long as
10 you have a cell phone number, we'll allow you to go home but
11 you're still under oath, you still cannot talk to anybody
12 about the case until the matter is resolved. So go ahead and
13 swear them in.

14 (Marshal sworn)

15 THE COURT: Kathy, read the names of the alternates.

16 THE CLERK: Juror number 13, Michael Shaw. Juror
17 number 14, Lakendrick Nix.

18 THE COURT: The alternates will -- Sandy, you going
19 to meet them over there? -- will go with you. Joe will take
20 the rest of you back to the deliberation room. In a minute or
21 so we will have all the exhibits taken back for you to review.
22 You can take your notebooks, of course. The alternates, give
23 your notebooks to Sandy and she will keep them safe. Go
24 ahead.

25 (Jury recessed at 3:17 p.m.)

1 THE COURT: Okay. If you'll leave your cell phone
2 numbers.

3 MR. GIORDANI: Judge, we do need to make a quick
4 record.

5 THE COURT: Okay.

6 MR. GIORDANI: Mr. Percival conceded a few crimes
7 and points during his argument. I saw him conferring with his
8 client. I assume he ran it by and they agreed, but the
9 record's sake we always like to have that on the record that
10 they conferred about that before he did that.

11 MR. PERCIVAL: That's correct, is it not?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. Mr. Percival has confirmed that.
14 As far as -- let's assume they come back somehow before six --
15 well, is the defendant going to concede the --

16 MR. PERCIVAL: Ex-felon in possession of a firearm.

17 THE COURT: Yes, thank you. Felon in possession of
18 a firearm?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Do I need to go over all the
21 instructions regarding plea just to make sure?

22 MR. GIORDANI: You have to canvass him but there's
23 no plea agreement.

24 THE COURT: No, but I'll canvass him. Okay.

25 MR. PERCIVAL: Do you want to do that right now?

1 THE COURT: You can have a seat if you want.

2 MR. GIORDANI: Depends on what happens.

3 THE COURT: Well, this is just a felon in
4 possession. I don't see how, even if he was not guilty on all
5 the charges, if he is pleading guilty to felon in possession
6 it's separate. Mr. Percival, is he willing to go ahead and
7 plead guilty to felon in possession or do you want to wait
8 until --

9 MR. PERCIVAL: I don't think it matters, Judge. If
10 we do it now or if we do it after the jury returns.

11 THE COURT: Okay. Although we don't have a -- wait,
12 I think the amended is here. Is the amended information
13 somewhere?

14 MR. GIORDANI: Yes, but we can't -- I don't think we
15 can file it until after the jury returns a verdict.

16 THE COURT: Okay. So we can't do any of this.
17 Okay. We're in recess.

18 (Court recessed at 3:22 p.m. until 5:48 p.m.)

19 (Outside the presence of the jury.)

20 THE CLERK: -- Case Number C308258, State of Nevada
21 versus Dvontae Richard.

22 THE COURT: Let the record reflect we're doing a
23 conference call. We're outside the presence. It's 5:48. Mr.
24 Percival is here in person and the State -- who's on the
25 telephone?

1 MR. GIORDANI: John Giordani.

2 THE COURT: Okay. So we did have -- we had a call I
3 guess from a relative wondering, you know, when they were
4 going to be done or whatever. So in any event, it's now 11 to
5 six. I'm going to bring them back in without anybody here,
6 read the admonition and have them come back tomorrow.

7 MR. GIORDANI: Okay. A call from a relative of a
8 juror asking where they were?

9 THE COURT: Yeah.

10 MR. GIORDANI: Okay.

11 THE COURT: I think said they were sitting outside
12 waiting. I mean outside, outside. I think, just so it's
13 clear, as long as no one's here and that means I will not
14 allow Mr. Percival or the defendant, then I can just read them
15 the admonition and send them home.

16 MR. GIORDANI: I'm fine with that.

17 THE COURT: If one side's here, then the other side
18 has to be here, correct?

19 MR. PERCIVAL: I'm being evicted.

20 THE COURT: Yes, you are. So you can go home. You
21 can go to your game a few minutes early. But I don't know
22 who's waiting outside, but I don't see any good to -- I assume
23 they're -- well, I know they're still -- they're at least
24 still in there so I can't imagine that they'll -- we could get
25 this all done in 30 minutes which Mr. Percival has to leave.

1 So that's what I'm going to do. Okay?

2 MR. GIORDANI: Okay. What time will you be bringing
3 them back tomorrow?

4 THE COURT: Nine a.m.

5 MR. GIORDANI: Okay.

6 THE COURT: So we will call you as soon as we hear
7 something.

8 MR. GIORDANI: All right.

9 THE COURT: What I didn't want to do is say oh, you
10 have another 10 minutes. I'm just going to bring them in, end
11 of story. So there's no issue they're being rushed, it's just
12 okay, we're done for the day. Okay. That's it. Have a good
13 evening.

14 MR. GIORDANI: All right. You too.

15 THE COURT: You get to get some dinner.

16 MR. GIORDANI: Yeah.

17 THE COURT: Bye. Thank you.

18 MR. PERCIVAL: Thank you.

19 THE COURT: You can actually go to your game and
20 enjoy.

21 (Pause in proceedings.)

22 (Jury reconvened at 5:53 p.m.)

23 THE COURT: Be seated, wherever you want. We're on
24 the record. So the good news is you get Krispy Kremes. The
25 bad news is you have to come back tomorrow. We'll see you

1 tomorrow at nine a.m. I'm going to read you the admonition.
2 I am sure you are more tempted since we are now -- you're in
3 the deliberation process, you cannot talk to your fellow
4 jurors except when you're back there. So if you're out here
5 tomorrow before everybody gets here, whatever, you still
6 cannot talk until all of your fellow jurors are present to
7 deliberate.

8 During this recess you're once again admonished do
9 not talk or converse amongst yourselves or with anyone else on
10 any subject connected with this trial, or read, watch or
11 listen to any report of or commentary on the trial or any
12 person connected with this trial by any medium of information
13 including, without limitation, newspapers, television, radio
14 or Internet. Do not form or express any opinion on any
15 subject connected with the trial until the case -- until
16 you're back deliberating. The case has already been submitted
17 to you.

18 Okay. So leave all your stuff, any notes, anything
19 like that, you can leave it right there. We will lock the
20 courtroom. I ask that you be back here tomorrow at nine a.m.
21 to deliberate. Okay. Have a good evening.

22 (Court recessed for the evening at 5:56 p.m.)
23
24
25

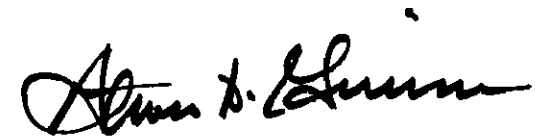
ACKNOWLEDGMENT:

Pursuant to Rule 3C(d) of Nevada Rules of Appellate Procedure, this is a rough draft transcript expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON
TRANSCRIBER

UNCERTIFIED ROUGH DRAFT



CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO. C308258-1
)	DEPT NO. XXVIII
VS.)	
)	
DVONTAE RICHARD,)	TRANSCRIPT OF
)	PROCEEDINGS
Defendant.)	

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE

JURY TRIAL - DAY 5

FRIDAY, FEBRUARY 26, 2016

APPEARANCES:

For the State:	JOHN L. GIORDANI, III, ESQ. Deputy District Attorney CHAD N. LEXIS, ESQ. Deputy District Attorney
For the Defendant:	BRENT D. PERCIVAL, ESQ.

RECORDED BY JUDY CHAPPELL, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

UNCERTIFIED ROUGH DRAFT

1 **LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 26, 2016, 11:04 A.M.**

2 *** * * * ***

3 (Outside the presence of the jury.)

4 THE COURT: Please be seated. Good morning. Go
5 ahead and call it.

6 THE CLERK: Case Number C308258, the State of Nevada
7 versus Dvontae Richard.

8 THE COURT: Good morning. Let the record reflect
9 the defendant is present. We're outside the presence. I was
10 told that the jury has a verdict but now we need to talk
11 about, unless you want to bring them in and have the verdict,
12 the other Count that we don't have an amended --

13 MR. GIORDANI: I have that here, Your Honor.

14 MR. PERCIVAL: He has that and I will go over the
15 guilty plea agreement with my client.

16 THE COURT: Is there a written guilty plea?

17 MR. PERCIVAL: There is a written guilty plea --
18 isn't there?

19 MR. GIORDANI: No, there is no written guilty plea.

20 MR. PERCIVAL: Oh, I thought --

21 MR. GIORDANI: I thought he was just going to plead.
22 We can't even file this, though, until the verdict comes back
23 so we might as well just get them out of here or get the
24 verdict read. I can't file this amended for Mr. Percival to
25 review with Mr. Richard until after the verdict.

 UNCERTIFIED ROUGH DRAFT

1 THE COURT: I'm sure it's not going to happen;
2 however, if we dismiss the jury and he says oh, wait, I'm not
3 going to sign it.

4 MR. GIORDANI: Yeah, that's true.

5 THE COURT: So, okay. We will just send them back
6 for a few minutes and see what transpires. I certainly
7 wouldn't blame him if he did. I mean, he -- why would he do
8 that? Okay. Because it would be too late. Once the jury's
9 gone, that would be too late. Okay. Let's bring them back
10 in.

11 (Jury reconvened at 11:06 a.m.)

12 THE COURT: Please be seated. You didn't exactly
13 sit in the same places, but do the parties acknowledge the
14 presence of the jury?

15 MR. PERCIVAL: Yes, Your Honor.

16 MR. GIORDANI: Yes, Your Honor.

17 THE COURT: Ladies and gentlemen of the jury, have
18 you chosen a foreperson and if so, who is that foreperson?

19 JUROR NO. 8: I am.

20 THE COURT: Foreperson, please -- well, first of
21 all, have all 12 members of the jury reached a unanimous
22 verdict as to the charges presented to you?

23 JUROR NO. 8: Yes, Your Honor.

24 THE COURT: Please hand the Marshal the verdict
25 form.

1 THE CLERK: District Court, Clark County, Nevada,
2 Case Number C30828, Department 28. The State of Nevada,
3 plaintiff versus Dvontae Richard, defendant.

4 Verdict. We the jury in the above-entitled case,
5 find the defendant Dvontae Richard as follows:

6 Count One, conspiracy to commit robbery. Guilty of
7 conspiracy to commit robbery.

8 We the jury in the entitled case find the defendant
9 Dvontae Richard as follows:

10 Count Two, burglary while in possession of a
11 firearm. Guilty of burglary while in possession of a firearm.

12 Count Three, grand larceny of firearm. Guilty of
13 grand larceny of a firearm.

14 Count Four, grand larceny. Guilty of grand larceny.

15 Count Five, robbery with use of a deadly weapon.
16 Guilty of robbery with use of a deadly weapon.

17 Count Six, first degree kidnapping with use of a
18 deadly weapon. Not guilty.

19 Count Seven, conspiracy to commit robbery. Guilty
20 of conspiracy to commit robbery.

21 Count Eight, attempt robbery. Guilty of attempt
22 robbery.

23 Count Nine, battery with intent to commit a crime.
24 Guilty of battery with intent to commit a crime.

25 Dated this 26th day of February, 2016. Shawn Kish,

1 Foreperson.

2 Ladies and gentlemen of the jury, are these your
3 verdicts as read?

4 JURY PANEL: Yes.

5 THE CLERK: So say you one so say you all?

6 JURY PANEL: Yes.

7 THE COURT: Does either party wish to have the jury
8 individually polled?

9 MR. GIORDANI: No, Your Honor.

10 MR. PERCIVAL: No, Your Honor.

11 THE COURT: The verdict of the jury shall now be
12 recorded in the minutes of the Court.

13 Ladies and gentlemen, we're not done; however, we
14 should -- it should not be that long before we are done. I'm
15 going to ask the Marshal to take you back to the deliberation
16 room. Hopefully, it will not be very long, but the parties
17 and I have something that we need to discuss outside your
18 presence. Go ahead.

19 (Jury recessed at 11:12 a.m.)

20 THE COURT: Okay. Just so it's clear in case I
21 forget, Mr. Richard is remanded to custody. The bail is
22 revoked, rescinded. This matter is referred to the Department
23 of Parole and Probation for presentence report and set over
24 for entry of judgment and imposition of sentence. Will you
25 give us a date?

1 THE CLERK: It's 50 days out. We can do -- do you
2 want it early in the morning, 8:30? March 31st at 8:30?

3 MR. PERCIVAL: That will be fine.

4 THE COURT: What's that?

5 MR. PERCIVAL: I -- what day of the week is that?

6 THE CLERK: That's a Thursday.

7 MR. PERCIVAL: That's good. I couldn't remember if
8 I had a jury trial starting that day or if that was a calendar
9 call day and I believe it's a calendar call day for me.

10 THE COURT: If that's not good we can --

11 MR. PERCIVAL: No, that will be fine. And if it
12 turns out that there's something that is unavoidable for me to
13 miss, I will contact Mr. Giordani and we'll come up with a day
14 and then we'll -- with days that are appropriate and then
15 we'll contact the Court to reschedule.

16 THE CLERK: We'll do yours at 8:30.

17 MR. GIORDANI: Thank you. And, Your Honor, at this
18 time I do have a second amended information to file with the
19 Court which adds the additional Count of possession, ownership
20 or possession of a firearm by a prohibited person that was
21 bifurcated off of the prior information. May I approach?

22 THE COURT: Yes.

23 THE CLERK: Is this the same one you gave me
24 yesterday?

25 MR. GIORDANI: No, that one had a mistake.

1 THE CLERK: Counsel, did you need copies?

2 MR. PERCIVAL: I will certainly need a copy because
3 I need to go over it with my client.

4 THE COURT: Right. Why don't you go ahead --

5 MR. PERCIVAL: This shouldn't take more than five
6 minutes.

7 THE COURT: You want to do it in there or do you
8 want us to --

9 MR. GIORDANI: I'll step out.

10 THE COURT: Okay. You can step out. That's fine.
11 We'll take a short recess.

12 (Court recessed at 11:15 a.m. until 11:26 a.m.)

13 (Outside the presence of the jury.)

14 THE COURT: Okay. We're back on the record. We're
15 outside the presence. There's a second amended information
16 that was just filed that adds the Count of felon in possession
17 of a firearm or Count Ten, ownership or possession of firearm
18 by prohibited person. Have you had a chance -- has the
19 defendant had a chance to review that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: This is the State of Nevada versus
22 Dvontae Richard. Let the record reflect, just so it's clear,
23 defendant is present in custody. We're subsequent to the jury
24 verdict on the other Counts. It's my understanding that the
25 defendant is going to plead guilty to Count Ten of the second

1 amended information; is that correct?

2 MR. PERCIVAL: That is correct, Your Honor.

3 THE COURT: I think, just to be clear, I'm going to
4 go through the guilty plea canvass.

5 MR. GIORDANI: All the portions except for you
6 signed this on page and we have a guilty -- yeah.

7 THE COURT: Yeah. Defendant, will you stand up so
8 we can hear you? Please state your true, full name.

9 THE DEFENDANT: Dvontae Dshawn Richard.

10 THE COURT: And how old are you?

11 THE DEFENDANT: Twenty-three.

12 THE COURT: How far did you go in school?

13 THE DEFENDANT: Twelfth grade.

14 THE COURT: Do you read, write and understand the
15 English language?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand you're being charged
18 with ownership or possession of firearm prohibited -- by a
19 prohibited person?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And how do you plead to that charge?

22 THE DEFENDANT: Guilty.

23 THE COURT: Is anybody forcing you to plead guilty?

24 THE DEFENDANT: No.

25 THE COURT: Are you pleading guilty of your own free

1 will?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that as a consequence
4 of your plea that the Court can sentence you one to six years
5 in prison?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand you'll be required to
8 pay an administrative fee and that will go along with the
9 other convictions?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Is this probational?

12 MR. GIORDANI: It is probational.

13 MR. PERCIVAL: Yes. That particular crime is
14 probational.

15 THE COURT: And we're only doing it regarding this.
16 Do you understand this is a probational offense?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand sentencing is strictly
19 up to the Court, so nobody can promise you probation, leniency
20 or special treatment?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you also understand nobody can
23 promise you a particular sentence? So even if the -- you and
24 the State have stipulated, sentencing is completely up to me.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand by pleading guilty
2 you're giving up the constitutional rights, the right to
3 remain silent, the right to trial -- what other on this
4 particular? Do I have to go through all of them?

5 MR. PERCIVAL: The right to against
6 self-incrimination.

7 THE COURT: Yeah.

8 MR. GIORDANI: The most important one is the right
9 to appeal except for on the four constitutional grounds.

10 THE COURT: Okay. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Did you have a chance to discuss this
13 case and your rights with your attorney?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you have any questions regarding
16 those rights or this negotiation?

17 THE DEFENDANT: No, sir.

18 THE COURT: Are you pleading -- I'm sorry, no?

19 THE DEFENDANT: I don't have any questions.

20 THE COURT: Oh, you don't have any questions.

21 Sorry. Are you pleading -- I'm going faster than -- are you
22 pleading guilty because in truth and fact that on or about May
23 20th and May 24th you willfully, unlawfully and feloniously
24 had in your possession or under your custody or control a
25 firearm to wit a Glock .26 9mm bearing serial number XCX346

1 and that the defendant being convicted of a felony happening
2 in 2012 and convicted of attempted burglary in Case Number
3 C279444 in the Eighth Judicial District, Clark County, a
4 felony under the laws of Nevada?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: The Court accepts that your plea is
7 freely and voluntarily given. We'll have this included in the
8 PSI report regarding the jury or the convictions on the other
9 Counts. The Court return date is the same return date?

10 THE CLERK: Yes, March 31st, 8:30.

11 MR. GIORDANI: Thank you. And, Judge, if I could
12 just make a request. Typically, we bring the jury in and tell
13 them they can talk to the attorneys if they want, but I'm
14 preparing for a murder trial that starts Monday and I'd like
15 to just leave. Can you just not give them that option to talk
16 to us or talk to me? Mr. Percival can talk to them.

17 MR. PERCIVAL: I want to talk to them.

18 THE COURT: Yeah, absolutely. As long as -- did I
19 cover everything? Obviously, I don't do a lot of canvassing.

20 MR. GIORDANI: I believe you did, Your Honor.

21 THE COURT: Usually the guilty script is -- okay.
22 So we're done. I will bring the jury back in, excuse them,
23 let them talk to you. Because I'm only thanking them, I think
24 we're done and he is going to be taken away.

25 MR. PERCIVAL: Okay. There's no further action

1 required on their part except to hear us say thank you.

2 THE COURT: Absolutely. It will be on the record
3 that I'm excusing them and they're free to talk to anybody if
4 they choose. But other than that, the case is over.

5 MR. GIORDANI: Thank you.

6 MR. PERCIVAL: Thank you, sir.

7 THE COURT: Okay.

8 MR. PERCIVAL: Can you tell them that sometimes the
9 attorneys like to speak with the jury?

10 THE COURT: Absolutely, I'll do that.

11 MR. PERCIVAL: May I briefly speak with the family
12 over here before we bring the jury in? It's not going to be
13 more than a minute or two.

14 THE COURT: That's fine. Tell them two minutes and
15 bring them in.

16 (Pause in proceedings.)

17 THE COURT: Okay. Tell him to bring them in.

18 (Off-record colloquy.)

19 THE COURT: It was a pleasure. I know that every
20 judge says that criminal cases are more civil than the civil
21 cases. If you have ever sat in, they do everything but call
22 each other names, but they certainly -- they're not civil.

23 (Jury reconvened at 11:36 a.m.)

24 THE COURT: Please be seated. Counsel, approach
25 real quick.

1 (Bench conference transcribed as follows.)

2 THE COURT: I certainly -- should I tell them why we
3 kept them?

4 MR. PERCIVAL: Sure.

5 THE COURT: Okay. Thank you.

6 (End of bench conference.)

7 THE COURT: Ladies and gentlemen, first of all, you
8 are now -- well, I want to thank you for your service.
9 Obviously, it's important to all the parties and you
10 definitely fulfilled your duty, you paid attention, you
11 certainly took your time in deliberations. So all of the
12 parties I'm sure want to thank you for participating in the
13 process.

14 In one minute you're going to be free to talk to
15 anybody you want about this case. Certainly, the attorneys
16 generally want to discuss how they did, any pointers. It's a
17 learning process. Unfortunately, the D.A. has told me that he
18 must leave, so he will not be able to answer your questions.
19 He has another trial right on the heels. But the defense
20 counsel has indicated if you would like to, he certainly would
21 like to talk to you and ask you some questions about the
22 process. If you would like to, you certainly may do so. If
23 you do not, don't worry. He's not going to bother you.
24 Nobody is going to bother you. You're free to tell him you
25 don't want to and just go down to the third floor, Jury

1 Services, report in to get your checks.

2 Aside from that, although it's unusual, we sent you
3 back because there was an additional Count that we could not
4 disclose to you and that is a felon in possession of a
5 firearm. But the defendant entered a plea on that while you
6 were out. So otherwise, you would have to deliberate on that
7 additional Count. It is unusual, but that's the way it goes.

8 Other than that, as I said, I want to thank you very
9 much. You're excused. You can talk to anybody. I will take
10 a minute and shake all your hands, but because every case can
11 be appealed, there's not a lot certainly I can or will be able
12 to talk to you about. But the defense counsel I'm sure can
13 answer questions. With that, you're free to go.

14 MR. GIORDANI: Judge, I just got a text that my
15 meeting was able to move so I'm going to come back if they'd
16 like to talk to me as well.

17 THE COURT: Okay. If you'd like to do it in here?

18 MR. PERCIVAL: Would you like to speak in here? We
19 have gone back to the jury deliberation room before. I don't
20 know if the Court would --

21 THE COURT: It's fine here because we're going to be
22 cleaning out that -- okay. We're off the record.

23 (Court adjourned at 11:40 a.m.)

24

25

ACKNOWLEDGMENT:

Pursuant to Rule 3C(d) of Nevada Rules of Appellate Procedure, this is a rough draft transcript expeditiously prepared, not proofread, corrected or certified to be an accurate transcript.

A handwritten signature in cursive script, reading "Kimberly Lawson", is written over a horizontal line.

KIMBERLY LAWSON
TRANSCRIBER

UNCERTIFIED ROUGH DRAFT

1 VER

2 ORIGINAL

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

4 FEB 26 2016

5 BY, Kathy Klein 11:12 AM
KATHY KLEIN, DEPUTY

6 DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

CASE NO: C-15-308258-1

10 DVONTAE RICHARD

DEPT NO: XXVIII

11 Defendant.

12 VERDICT

13 We, the jury in the above entitled case, find the Defendant DVONTAE RICHARD, as
14 follows:

15 COUNT 1 – CONSPIRACY TO COMMIT ROBBERY

16 *(Please check the appropriate box, select only one)*

- 17 ☒ Guilty of Conspiracy to Commit Robbery
18 ☐ Not Guilty
19

20 We, the jury in the above entitled case, find the Defendant DVONTAE RICHARD, as
21 follows:

22 COUNT 2 – BURGLARY WHILE IN POSSESSION OF A FIREARM

23 *(Please check the appropriate box, select only one)*

- 24 ☒ Guilty of Burglary while in Possession of a Firearm
25 ☐ Guilty of Burglary
26 ☐ Not Guilty
27

28 C-15-308258-1
VER
Verdict
4527239



00654

4

1 We, the jury in the above entitled case, find the Defendant DVONTAE RICHARD, as
2 follows:

3 **COUNT 3 - GRAND LARCENY OF FIREARM**

4 *(Please check the appropriate box, select only one)*

- 5 ☒ Guilty of Grand Larceny of Firearm
6 ☐ Not Guilty
7

8 We, the jury in the above entitled case, find the Defendant DVONTAE RICHARD, as
9 follows:

10 **COUNT 4 - GRAND LARCENY**

11 *(Please check the appropriate box, select only one)*

- 12 ☒ Guilty of Grand Larceny
13 ☐ Guilty of Larceny
14 ☐ Not Guilty
15

16 We, the jury in the above entitled case, find the Defendant DVONTAE RICHARD, as
17 follows:

18 **COUNT 5 - ROBBERY WITH USE OF A DEADLY WEAPON**

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

- 20 ☒ Guilty of Robbery with use of a Deadly Weapon
21 ☐ Guilty of Robbery
22 ☐ Not Guilty
23
24
25
26
27
28

1 We, the jury in the above entitled case, find the Defendant DVONTAE RICHARD, as
2 follows:

3 **COUNT 6** – FIRST DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON

4 *(Please check the appropriate box, select only one)*

- 5 ☐ Guilty of First Degree Kidnapping with use of a Deadly Weapon
6 ☐ Guilty of First Degree Kidnapping
7 ☒ Not Guilty
8

9 We, the jury in the above entitled case, find the Defendant DVONTAE RICHARD, as
10 follows:

11 **COUNT 7** - CONSPIRACY TO COMMIT ROBBERY

12 *(Please check the appropriate box, select only one)*

- 13 ☒ Guilty of Conspiracy to Commit Robbery
14 ☐ Not Guilty
15

16 We, the jury in the above entitled case, find the Defendant DVONTAE RICHARD, as
17 follows:

18 **COUNT 8** - ATTEMPT ROBBERY

19 *(Please check the appropriate box, select only one)*

- 20 ☒ Guilty of Attempt Robbery
21 ☐ Not Guilty
22
23
24
25
26
27
28

1 We, the jury in the above entitled case, find the Defendant DVONTAE RICHARD, as
2 follows:

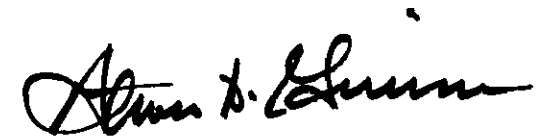
3 **COUNT 9 - BATTERY WITH INTENT TO COMMIT A CRIME**

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

- 5 ☒ Guilty of Battery with Intent to Commit a Crime
6 ☐ Guilty of Battery
7 ☐ Not Guilty

8
9 DATED this 26 day of February, 2016

10
11 
12 FOREPERSON



CLERK OF THE COURT

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DVONTAE RICHARD,

Defendant.

CASE NO. C308258

DEPT. XXVIII

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE

WEDNESDAY, MAY 25, 2016

**TRANSCRIPT OF PROCEEDINGS
SENTENCING**

APPEARANCES:

For the State:

JOHN L. GIORDANI III, ESQ.
Deputy District Attorney

CHAD N. LEXIS, ESQ.
Deputy District Attorney

For the Defendant:

BRENT D. PERCIVAL, ESQ.

RECORDED BY: JUDY CHAPPELL, COURT RECORDER

1 WEDNESDAY, MAY 25, 2016 AT 9:31 A.M.

2
3 THE COURT: Good morning. Please be seated.

4 MR. GIORDANI: Good morning.

5 THE COURT: Go ahead.

6 THE CLERK: Case Number C308258, the State of Nevada versus
7 Dvontae Richard.

8 THE COURT: Counsel, state your appearance for the record.

9 MR. LEXIS: Chad Lexis for the State.

10 MR. GIORDANI: John Giordani on behalf of the State.

11 MR. PERCIVAL: Brent Percival, Bar Number 3656, appearing for the
12 Defendant, Dvontae Richard, who is present, in person, in custody.

13 THE COURT: This is the time set for sentencing. Is there any legal reason
14 why we should not go forward with the judgment and sentencing now?

15 MR. PERCIVAL: None that I'm aware of, Your Honor.

16 MR. GIORDANI: No, Your Honor.

17 THE COURT: Was there – somebody mentioned there was yet another
18 problem with the PSI.

19 MR. PERCIVAL: No. What happened, Judge, was that when I was provided
20 with a – the most, what was supposed to be the most recent copy, they sent me an
21 earlier copy. It was faxed to me on the 17th of May, just a week ago yesterday and I
22 didn't realize that it wasn't a – that they didn't have the revisions from the first
23 supplemental in it until this morning. But then I got the second supplemental from
24 Mr. Giordani this morning and it is – their – the problems that existed in the first two
25 have now been fixed.

1 THE COURT: Okay. And that's the May 9th report?

2 MR. PERCIVAL: Yes.

3 THE COURT: And for the record the problem was that initially it had said that

4 the Defendant, I think, was shooting which was –

5 MR. PERCIVAL: Correct.

6 THE COURT: -- incorrect. And that the second issue was, I don't remember,

7 what was the second issue?

8 MR. PERCIVAL: Second issue was, Judge, that the –

9 THE COURT: Oh, it left out the –

10 MR. PERCIVAL: -- the description, the description of the Robbery with Use of

11 a Deadly Weapon did not have the –

12 THE COURT: Enhancement.

13 MR. PERCIVAL: -- mandatory enhancement language.

14 THE COURT: Thank you. And that's now included and everybody agrees

15 that the PSI is correct.

16 MR. GIORDANI: Yes, at this point, the second supplemental PSI is all

17 correct.

18 MR. PERCIVAL: Yes, I believe that to be the case, Your Honor.

19 THE COURT: Okay. So. By virtue of the jury's verdict, I hereby adjudge you

20 guilty of Count 1, Conspiracy to Commit Robbery; Count 2, Burglary while in

21 Possession of a Firearm; Count 3, Grand Larceny of a Firearm; Count 4, Grand

22 Larceny; Count 5, Robbery with the Use of a Deadly Weapon; Count 7, Conspiracy

23 to Commit Robbery; Count 8, Attempt Robbery; Count 9, Battery with Intent to

24 Commit a Crime; and Count 10, Ownership or Possession of a Firearm by a

25 Prohibited Person. Count 10 was pursuant to a plea.

1 MR. GIORDANI: That is correct, Your Honor.

2 THE COURT: Does State wish to argue?

3 MR. GIORDANI: Yes, Your Honor, briefly. I won't belabor the facts. You
4 heard the entirety of the jury trial and testimony from the witnesses. I'll just remind
5 the Court that this was two distinct instances. One was the robbery at the ATM
6 machine and the other was attempted robbery which resulted in a shootout at the
7 car wash.

8 Because these are two distinct instances, I am asking for consecutive
9 sentences for the two instances. On Count 5, Robbery with Use of a Deadly
10 Weapon, I'm asking for 6- to 15-year term. And Count 8, the Attempt Robbery, I'm
11 asking for 4- to 10-year term, consecutive to Count 5, for a total of 10 to 25 years in
12 Nevada Department of Corrections, with the remaining counts running concurrent. I
13 do that for several reasons. One, based upon his limited record, but the serious
14 nature of the offense and obviously what happened at the second incident could
15 have resulted in many more injuries, fatalities to people like you and I driving down
16 the street or who happen to be at the car wash that day.

17 So I believe a 10 to 25-year term is appropriate for Mr. Richard and I
18 will submit it to the Court's discretion on that.

19 THE COURT: Thank you.

20 Mr. Richard, your attorney has the right to argue on your behalf.
21 However, before he or she does so, is there anything you wish to tell me in
22 mitigation of sentence? This is now the time to do so.

23 THE DEFENDANT: First of all, I apologize to every, you know, everybody
24 that was hurt and who this affected. I apologize to my family for letting them down.
25 And I'm ready to do what I got to do to make it back to my family.

1 THE COURT: Thank you.

2 Mr. Percival.

3 MR. PERCIVAL: Your Honor, I would ask the Court to sentence Mr. Richard
4 to a total sentence of 6 to 15 years. I recognize that these were two separate
5 instances. However, I'd also like the Court to know, you know, I know I've only
6 known Dvontae for about, for slightly less than a year now, but it feels like a lot
7 longer than that. And over the years – over the course of the year, I've come to
8 know him to be a very bright, articulate young man who has, I believe, has a lot of
9 potential to contribute to society when he gets back on track.

10 Court will recall that these two instances happened right at a time when
11 he and his fiancée had separated, with his two children remaining with her. He was
12 at a very, very low point in his life. He was – he took to associating with some
13 unsavory people and as a result he allowed himself to be led into crimes that I
14 believe would be uncharacteristic of him under any other circumstances. He's only
15 23 years old. We know medically that at that age, a young man's brain isn't even
16 fully developed. You know, they do impulsive things. They do things not only
17 impulsively but they seem to, and I can even recall being that age myself, not think
18 of the possible consequences of their actions before they act it.

19 But in this particular case, Mr. Richard didn't injure anybody. Even
20 though he acquired in the first incident possession of a firearm, he never attempted
21 to shoot anyone. In fact, when gunfire erupted from the person whose chain he tried
22 to take from that person's bodyguard or companion, instead of attempting to use the
23 firearm that he did have, he turned and ran to try to get away from the situation. At
24 least he showed the good judgment to not fire back.

25 He has been nothing but cooperative and truthful with police officers

1 from the time that he was first arrested. At his interview at the hospital, he
2 confessed his involvement in one of the crimes and – well confessed his
3 involvement in the car wash crime. And then later when interviewed by a second
4 detective, he was completely truthful, completely forthcoming. He admitted his
5 involvement, he admitted what he had done. He was as frank and straightforward
6 as he could be about that stuff. From the very beginning of my association with him,
7 he has expressed remorse and said that if he had to do it over, he would never do
8 anything like this again. He's expressed a great deal of longing and a sense of
9 missing his two – he has two young children, ages 4 and 2 –

10 Correct?

11 Five – 4 and 5 now. One of them just started school. And I think it
12 would be a shame if those two young ladies were adults before they ever got to see
13 their daddy again.

14 I know that – I know and he knows that the acts that he participated in
15 were wrong. And he's always said, you know, I wish I – I really wish I hadn't done it.
16 But he can't do anything about it now. I would suggest that the appropriate
17 sentence would be on Count 1, a sentence of 12 to 30 months. On Count 2, a
18 sentence of 24 to 60 months, concurrent with Count 1. On Count 3, a sentence of
19 24 to 60, concurrent with Count 1. On Count 4, a sentence of 12 to 30, I guess I
20 should say concurrent to Count 3, 2 and 1. On Count 5, a sentence of 24 to 60
21 months with an enhancement of 12 to 30 months, which is the Court is well aware,
22 must be run consecutive to the 24 to 60 months underlying. On Count 7, a 12- to
23 30- month sentence, concurrent to Counts 1 through 5. On Count 8, 24 to 60,
24 concurrent to Counts 1 through 5 and 7. On Count 9, a sentence of 24 to 60
25 concurrent to Counts 1 through 8. And on Count 10, a sentence of 12 to 30 months.

1 I can tell you, Judge, that Mr. Richard has a very loving and supportive
2 family. They have been communicative with me throughout this and have been
3 helpful. I know that he's got a large number of family members here today in his
4 support. I'm certain that this is the type of incident that won't happen again. And I
5 would just ask the Court to minimize the pain and suffering that his family and his
6 children are going to go through in his absence by sentencing him to the minimum
7 sentences. And we know that, you know, this is a mandatory prison thing, that
8 probation isn't available. He's been well aware of that for some time. But I would
9 ask that the Court show some mercy.

10 THE COURT: Thank you. In accordance with the laws of the State of
11 Nevada, I assess the administrative fee of \$25, the DNA analysis of 150, and the
12 DNA administrative assessment of \$3.

13 I sentence you on Count 1, Conspiracy to Commit Robbery, a minimum
14 term of 12 months, maximum of 72.

15 Count 2, Burglary while in Possession of a Firearm, minimum term 36
16 months, maximum 180.

17 Count 3, Grand Larceny of a Firearm, minimum term of 24 months,
18 maximum term 120.

19 Oh, Count 2 consecutive to Count 1. Count 3 consecutive to Count 2.
20 Hopefully, sorry, that's clear.

21 Count 4, Grand Larceny, minimum term of 24 months, maximum of 60.
22 Concurrent with Count 3.

23 Count 5, Robbery with the Use of a Deadly Weapon, a minimum term
24 72 months, maximum term 180 months, enhancement 48 months to 180 months.
25 Consecutive to Counts 1, 2, and 3.

1 Count 7, Conspiracy to Commit Robbery, minimum term of 28 months,
2 maximum term of 72 months. Concurrent with Count 5.

3 Count 8, Attempted Robbery, a minimum of 48 months, a maximum of
4 120. Concurrent with Count 7.

5 Count 9, Battery with Intent to Commit a Crime, minimum term 48
6 months, maximum term 120 months. Consecutive to Counts 1, 2, 3, and 5.

7 Count 10, Ownership or Possession of a Firearm by a Prohibited
8 Person, minimum 28, maximum 72. Concurrent with Count 9.

9 MR. GIORDANI: And, Your Honor, I forgot to mention the restitution is 1,130
10 to victim VC2234125 and \$201.24 to VC2234128.

11 THE CLERK: That was two hundred and –

12 MR. GIORDANI: \$201.24. And Mr. Richard has 367 days credit for time
13 served.

14 THE COURT: Okay. He'll be given credit for the time served and the
15 restitution for the victims pursuant to – you said VC2234128 is 201.24?

16 MR. GIORDANI: Correct.

17 THE COURT: And the other victim which is –

18 MR. GIORDANI: VC2234125, that's –

19 THE COURT: Is 1331.24.

20 MR. GIORDANI: No, is 1130.00.

21 THE COURT: Oh, all right. That was the total. I see.

22 MR. GIORDANI: Yes, correct.

23 THE COURT: All right restitution in that amount. Okay.

24 MR. GIORDANI: Thank you, Your Honor.

25 THE COURT: Oh, one for the record, we received some letters in mitigation.

1 I'll have them, hopefully they were given to the prosecutor, I'll have them marked as
2 Court's exhibit.

3 MR. GIORDANI: Thank you, Your Honor.

4 THE COURT: And we're done.

5 MR. GIORDANI: All right.

6
7 [Proceeding concluded at 9:48 a.m.]

8
9 [Proceeding recalled at 11:20 a.m.]

10
11 THE COURT: Remain seated.

12 Go ahead, call it.

13 THE CLERK: Case Number C308258, the State of Nevada versus
14 Dvontae Richard.

15 THE COURT: Let the record reflect the Defendant is present with counsel,
16 Mr. Percival. And the DA, Mr. Giordani is present. Two things, one of which I tried
17 to – I remembered as you guys were running out of the courtroom, but. Under
18 NRS 176.035, I need to state the cumulative, the minimum maximum, on the record.
19 I don't think you can just put it in the JOC. In any event, that's why because -- we
20 called you back. I reviewed also, because I wanted to make sure it was correct, the
21 additions and I, although I didn't play the tape, I want to make sure Count 9, Battery
22 with Intent to Commit a Crime, 48 months to 120, I'm going to have that
23 concurrent – concurrent to Counts 1, 2, 3 and 5.

24 MR. GIORDANI: Okay.

25 THE COURT: And that – because I had added it up and make sure – let me, I

1 want to ask everybody if they got the same that it's minimum of 16, a maximum of
2 61.

3 MR. GIORDANI: Correct. That's what I have, at least.

4 MR. PERCIVAL: I somehow misadded it and had 14. I don't – but I'm sure it
5 was –

6 THE COURT: Okay, well let's, so we can make sure. I'll even – I'll even go
7 over it. On Count 1, it's 1 year. And I'm not doing it by months. Count 2 is 3 years.
8 Count 3 is 2 years. Count 5 is 6 years. The enhancement, mandatory
9 enhancement is 4 years. And that's it. So I have 1 and 3 is 4. And 2 is 6.

10 MR. PERCIVAL: 6 is 12 and 4 is 16.

11 THE COURT: 6 is 12 and 4 is 16.

12 MR. PERCIVAL: So were Count 7 and 8 – 7, 8, and 10 run concurrently with
13 1, 2, 3, and 5.

14 THE COURT: Counts 7, 8, –

15 MR. PERCIVAL: And 10.

16 THE COURT: -- 9 –

17 MR. PERCIVAL: 9.

18 THE COURT: -- and 10.

19 MR. PERCIVAL: All run concurrent.

20 MR. GIORDANI: I think to simplify, the phrasing should be, that's – those four
21 counts, 7, 8, 9 and 10 are running concurrent to all other counts.

22 THE COURT: Correct.

23 THE CLERK: To all of the counts?

24 MR. GIORDANI: All other counts.

25 THE CLERK: All other counts.

1 THE COURT: All other counts.

2 THE CLERK: Okay.

3 THE COURT: And so under NRS 176, the minimum 16, the maximum of 61

4 years.

5 MR. GIORDANI: Correct.

6 THE COURT: And I apologize for having to – you know, it right away I knew

7 but everybody had to run off to different departments so this is our fourth try.

8 Is there any questions?

9 MR. GIORDANI: None from the State, Your Honor.

10 THE COURT: Mr. Percival? Or Mr. Richard? Is it clear?

11 MR. PERCIVAL: I – just to be certain.

12 THE COURT: That's fine.

13 MR. PERCIVAL: On the bottom end of Count 1, we have 1 year. Bottom end

14 of Count 2, we have 3 years. Bottom end of Count 3, we have 2 years. Count 4

15 was run concurrently.

16 THE COURT: Correct.

17 MR. PERCIVAL: Count 5, the underlying robbery was a minimum of 6,

18 maximum I suppose 15. The enhancement was 4 years. And then Counts 7, 8, 9,

19 and 10 are running concurrent to all previously stated.

20 THE COURT: That's correct.

21 MR. PERCIVAL: Okay.

22 THE COURT: I apologize for having to bring you back, but I don't think, just

23 as I said, although it says you have to state it, maybe it would be adequate in the

24 JOC, but I wanted to make sure it was clear to everybody on the record. And then

25 Kathy, and I guess I had said 9 incorrectly. So I review all of these when we get the

1 JOC so I would have caught it then, but since I had to bring you back, we're here.

2 Okay.

3 MR. GIORDANI: That works, that's prudent. Thank you.

4 THE COURT: Have a good day. I apologize for the – for bringing you back
5 but we need to make it, cross our t's.


6 MR. GIORDANI: Yeah, fair enough. Thank you, Your Honor.

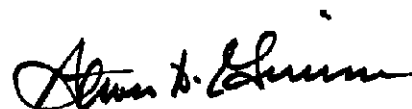
7 MR. PERCIVAL: Understood.

8 THE COURT: All right. Have a good day.

9
10 [Proceeding concluded at 11:26 a.m.]

11
12
13
14 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual
15 recording in the above-entitled case.

16 
17 _____
Judy Chappell
Court Recorder



CLERK OF THE COURT

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-VS-

DVONTAE RICHARD aka
Dvontae Dshawn Richard
#2806958

Defendant.

CASE NO. C308258-1

DEPT. NO. XXVIII

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNTS 1 and 7 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNT 2 – BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony) in violation of NRS 205.060; COUNT 3 – GRAND LARCENY OF FIREARM (Category B Felony) in violation of NRS 205.226; COUNT 4 – GRAND LARCENY (Category C Felony) in violation of NRS 205.220.1, 205.222.2; COUNT 5 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 6 – FIRST DEGREE KIDNAPPING WITH

<input type="checkbox"/> Not Plea (before trial)	<input type="checkbox"/> Bench (Non-Jury) Trial	<input type="checkbox"/> Jury Trial
<input type="checkbox"/> Dismissed (after diversion)	<input type="checkbox"/> Dismissed (during trial)	<input type="checkbox"/> Dismissed (during trial)
<input type="checkbox"/> Dismissed (before trial)	<input type="checkbox"/> Acquittal	<input type="checkbox"/> Acquittal
<input type="checkbox"/> Guilty Plea with Sent. (before trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)	<input type="checkbox"/> Guilty Plea with Sent. (during trial)
<input type="checkbox"/> Transferred (before/during trial)	<input type="checkbox"/> Conviction	<input checked="" type="checkbox"/> Conviction
<input type="checkbox"/> Other Manner of Disposition		

00670

5/26/16 28

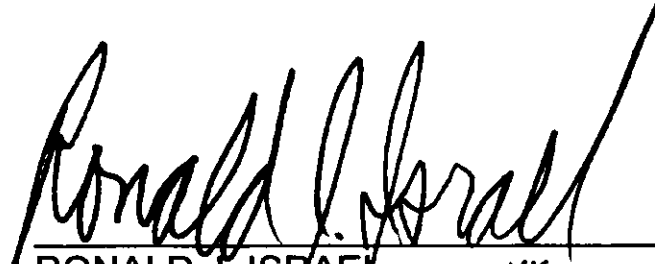
1 USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.310,
2 200.320, 193.165; COUNT 8 – ATTEMPT ROBBERY (Category B Felony) in violation
3 of NRS 200.380, 193.330; COUNT 9 – BATTERY WITH INTENT TO COMMIT A
4 CRIME (Category B Felony) in violation of NRS 200.400.2; and entered a plea of guilty
5 to the crime of COUNT 10 – OWNERSHIP OR POSSESSION OF FIREARM BY
6 PROHIBITED PERSON (Category B Felony) in violation of NRS 202.360; and the
7 matter having been tried before a jury and the Defendant having been found guilty of
8 the crimes of COUNTS 1 and 7 – CONSPIRACY TO COMMIT ROBBERY (Category B
9 Felony) in violation of NRS 200.380, 199.480; COUNT 2 – BURGLARY WHILE IN
10 POSSESSION OF A FIREARM (Category B Felony) in violation of NRS 205.060;
11 COUNT 3 – GRAND LARCENY OF FIREARM (Category B Felony) in violation of NRS
12 205.226; COUNT 4 – GRAND LARCENY (Category C Felony) in violation of NRS
13 205.220.1, 205.222.2; COUNT 5 – ROBBERY WITH USE OF A DEADLY WEAPON
14 (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 8 – ATTEMPT
15 ROBBERY (Category B Felony) in violation of NRS 200.380, 193.330; and COUNT 9 –
16 BATTERY WITH INTENT TO COMMIT A CRIME (Category B Felony) in violation of
17 NRS 200.400.2; thereafter, on the 25th day of May, 2016, the Defendant was present in
18 court for sentencing with counsel BRENT PERCIVAL, ESQ., and good cause
19 appearing,
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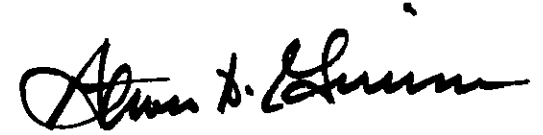
24 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) and, in
25 addition to the \$25.00 Administrative Assessment Fee, \$1,130.00 Restitution to
26 VC2234125 and \$201.24 Restitution to VC2234128 and \$150.00 DNA Analysis Fee
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1 including testing to determine genetic markers plus \$3.00 DNA Collection Fee the
2 Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:
3 **COUNT 1** – a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole
4 Eligibility of TWELVE (12) MONTHS; **COUNT 2** - a MAXIMUM of ONE HUNDRED
5 EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of THIRTY-SIX (36)
6 MONTHS, CONSECUTIVE to COUNT 1; **COUNT 3** - a MAXIMUM of ONE HUNDRED
7 TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24)
8 MONTHS, CONSECUTIVE to COUNT 2; **COUNT 4** – a MAXIMUM of SIXTY (60)
9 MONTHS with a MINIMUM Parole Eligibility of TWENTY-FOUR (24) MONTHS,
10 CONCURRENT with COUNT 3; **COUNT 5** - a MAXIMUM of ONE HUNDRED EIGHTY
11 (180) MONTHS with a MINIMUM Parole Eligibility of SEVENTY-TWO (72) MONTHS
12 plus a CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS with a
13 MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS for the Use of a Deadly
14 Weapon, CONSECUTIVE to COUNTS 1, 3 and 3; **COUNT 7** – a MAXIMUM of
15 SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT
16 (28) MONTHS, CONCURRENT with ALL OTHER COUNTS; **COUNT 8** - a MAXIMUM
17 of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole Eligibility of
18 FORTY-EIGHT (48) MONTHS, CONCURRENT with ALL OTHER COUNTS; **COUNT 9**
19 - a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM Parole
20 Eligibility of FORTY-EIGHT (48) MONTHS, CONCURRENT with ALL OTHER
21 COUNTS; and **COUNT 10** – a MAXIMUM of SEVENTY-TWO (72) MONTHS with a
22 MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS, CONCURRENT with
23 ALL OTHER COUNTS; with THREE HUNDRED SIXTY-SEVEN (367) DAYS credit for
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1 time served. The AGGREGATE TOTAL sentence is SIXTY-ONE (61) YEARS
2 MAXIMUM with a MINIMUM PAROLE ELIGIBILITY OF SIXTEEN (16) YEARS.

3 DATED this 26th day of May, 2014

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8 RONALD J. ISRAEL KK
9 DISTRICT COURT JUDGE
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CLERK OF THE COURT

NOTC
BRENT D. PERCIVAL, ESQ
Nevada Bar No. 3656
BRENT D. PERCIVAL, ESQ., P.C.
630 South Third Street
Las Vegas, Nevada 89101
(702) 868-5650

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA

Plaintiff,

vs.

DVONTAE DEALVONE RICHARD, a/k/a
Dvontae Dshawn Richard
#2806958

Defendant.

Case No. C308258-1
Dept. No. XXVIII

DEFENDANT'S NOTICE OF APPEAL

COMES NOW, Defendant, DVONTAE RICHARD, by and through his attorney of record, BRENT D. PERCIVAL, ESQ., and the law office of BRENT D. PERCIVAL, ESQ., P.C., and hereby gives notice of his taking a criminal appeal to the Nevada Supreme Court from that judgment of conviction entered the 27th day of May, 2016. The Judgment of Conviction was served upon counsel for the Defendant, via electronic filing and service on the 27th day of May, 2016.

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Law Office of Brent D. Percival, Esq.
630 South Third Street
Las Vegas, Nevada 89101
(702) 868-5650 · Fax (702) 385-3823

Law Office of Brent D. Percival, Esq.
630 South Third Street
Las Vegas, Nevada 89101
(702) 868-5650 · Fax (702) 385-3823

1
2 A copy of the Judgment of Conviction appealed from is attached to this Notice of
3 Appeal as Exhibit 1 hereto.

4 RESPECTFULLY SUBMITTED this 1st day of June, 2016.

5 BRENT D. PERCIVAL, ESQ. P.C.

6
7
8 
9 BRENT D. PERCIVAL, ESQ.
10 Nevada Bar No. 3656
11 630 South Third Street
12 Las Vegas, Nevada 89101
13 (702) 868-5650
14 Attorney for Defendant
15 DVONTAE RICHARD
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Law Office of Brent D. Percival, Esq.
630 South Third Street
Las Vegas, Nevada 89101
(702) 868-5650 · Fax (702) 385-3823

CERTIFICATE OF MAILING

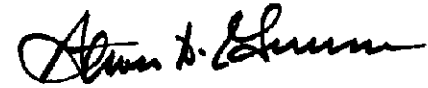
I hereby certify that on the 10 day of June, 2016, I served the foregoing **Notice of Appeal** by depositing a true and correct copy in the U.S. Mail, first-class postage affixed, addressed as follows:

Clark County District Attorney's Office
STEVEN B. WOLFSON, ESQ.
Nevada State Bar No. 001565
200 East Lewis Avenue
Las Vegas, Nevada 89101
ATT'N: APPELLATE DIVISION

And by electronic filing and service upon the Clark County District Attorney's office.


An Employee of
Brent D. Percival, Esq., P.C.

AJOC



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

DVONTAE RICHARD aka
Dvontae Dshawn Richard
#2806958

Defendant.

CASE NO. C308258-1

DEPT. NO. XXVIII

AMENDED JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNTS 1 and 7 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480; COUNT 2 – BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony) in violation of NRS 205.060; COUNT 3 – GRAND LARCENY OF FIREARM (Category B Felony) in violation of NRS 205.226; COUNT 4 – GRAND LARCENY (Category C Felony) in violation of NRS 205.220.1, 205.222.2; COUNT 5 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 6 – FIRST DEGREE KIDNAPPING WITH

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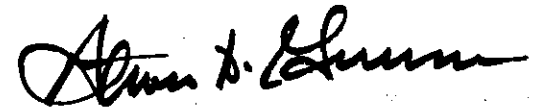
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23 MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS, CONCURRENT with
24 ALL OTHER COUNTS; with THREE HUNDRED SIXTY-SEVEN (367) DAYS credit for
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1 time served. The AGGREGATE TOTAL sentence is SIXTY-ONE (61) YEARS
2 MAXIMUM with a MINIMUM PAROLE ELIGIBILITY OF SIXTEEN (16) YEARS.

3 THEREAFTER, a clerical error having been discovered, the Amended Judgment
4 of Conviction reflects the following correction: COUNT 5 - CONSECUTIVE to COUNTS
5 1, 2 and 3 not COUNTS 1, 3 and 3.
6

7 DATED this 6 day of June, 2016

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12 RONALD J. ISRAEL
13 DISTRICT COURT JUDGE
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CLERK OF THE COURT

NOTC
BRENT D. PERCIVAL, ESQ.
Nevada Bar No. 3656
BRENT D. PERCIVAL, ESQ., P.C.
630 South Third Street
Las Vegas, Nevada 89101
(702) 868-5650

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA

Plaintiff,

vs.

DVONTAE DEALVONE RICHARD, a/k/a
Dvontae Dshawn Richard
#2806958

Defendant.

Case No. C308258-1
Dept. No. XXVIII

**DEFENDANT'S NOTICE OF APPEAL
FROM AMENDED JUDGMENT OF CONVICTION**

COMES NOW, Defendant, DVONTAE RICHARD, by and through his attorney of record, BRENT D. PERCIVAL, ESQ., and the law office of BRENT D. PERCIVAL, ESQ., P.C., and hereby gives notice of his taking a criminal appeal to the Nevada Supreme Court from that Amended Judgment of Conviction entered the 7th day of June, 2016. The Judgment of Conviction was served upon counsel for the Defendant, via electronic filing and service on the 9th day of June, 2016.

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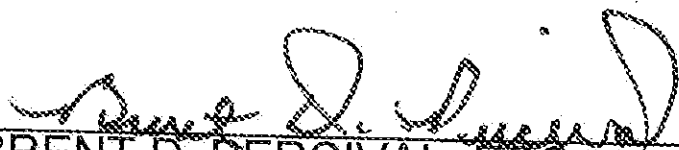
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Law Office of Brent D. Percival, Esq.
630 South Third Street
Las Vegas, Nevada 89101
(702) 868-5650 · Fax (702) 385-3823

1
2 A copy of the Judgment of Conviction appealed from is attached to this Notice of
3 Appeal as Exhibit 1 hereto.

4 RESPECTFULLY SUBMITTED this 9th day of June, 2016.

5 BRENT D. PERCIVAL, ESQ. P.C.

6
7
8 
9 BRENT D. PERCIVAL, ESQ.
10 Nevada Bar No. 3656
11 630 South Third Street
12 Las Vegas, Nevada 89101
13 (702) 868-5650
14 Attorney for Defendant
15 DVONTAE RICHARD
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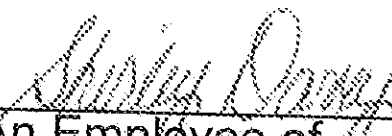
Law Office of Brent D. Percival, Esq.
630 South Third Street
Las Vegas, Nevada 89101
(702) 868-5650 · Fax (702) 385-3823

CERTIFICATE OF MAILING

I hereby certify that on the 9th day of June, 2016, I served the foregoing
Notice of Appeal from Amended Judgment of Conviction by depositing a true and
correct copy in the U.S. Mail, first-class postage affixed, addressed as follows:

Clark County District Attorney's Office
STEVEN B. WOLFSON, ESQ.
Nevada State Bar No. 001565
200 East Lewis Avenue
Las Vegas, Nevada 89101
ATT'N: APPELLATE DIVISION

And by electronic filing and service upon the Clark County District Attorney's office.


An Employee of
Brent D. Percival, Esq., P.C.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 27, 2015

C-15-308258-1 State of Nevada
 vs
 Dvontae Richard

July 27, 2015 10:00 AM Initial Arraignment

HEARD BY: De La Garza, Melisa **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Roshonda Mayfield

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT: Richard, Dvontae Defendant

JOURNAL ENTRIES

- Information FILED IN OPENC COURT.

DEFT. RICHARD ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT FURTHER ORDERED, counsel has 21 days from the filing of the preliminary transcript to file any writs. The discovery motion requested by defense is GRANTED pursuant to NRS 174.235.

CUSTODY

9/14/15 9:30 A.M. CALENDAR CALL (DEPT. 25)

9/21/15 10:30 A.M. JURY TRIAL (DEPT. 25)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 03, 2015

C-15-308258-1 State of Nevada
 vs
 Dvontae Richard

August 03, 2015 9:00 AM All Pending Motions

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

RECORDER:

REPORTER: Sharon Howard

PARTIES

PRESENT: Burns, J Patrick Attorney
 Richard, Dvontae Defendant
 State of Nevada Plaintiff

JOURNAL ENTRIES

- APPOINTMENT OF COUNSEL.....DEFENDANT'S MOTION FOR SETTING OF REASONABLE BAIL.....PUBLIC DEFENDER'S MOTION TO WITHDRAW DUE TO CONFLICT

Brent Percival, Esq., not present to accept appointment; therefore, COURT ORDERED, matter CONTINUED to the next criminal session.

CUSTODY

Continued to: 8/5/2015 9:00 am

CLERK'S NOTE: A copy of this Minute Order was faxed to Mr. Percival. /db 8.3.2015

PRINT DATE: 06/03/2016

Page 2 of 33

Minutes Date: July 27, 2015

00685

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 05, 2015

C-15-308258-1 State of Nevada
 vs
 Dvontae Richard

August 05, 2015 9:00 AM All Pending Motions

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

RECORDER:

REPORTER: Sharon Howard

PARTIES

PRESENT:	Burns, J Patrick	Attorney
	Percival, Brent D.	Attorney
	Richard, Dvontae	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- APPOINTMENT OF COUNSEL (B. PERCIVAL, ESQ.).....DEFENDANT'S MOTION FOR SETTING OF REASONABLE BAIL.....PUBLIC DEFENDER'S MOTION TO WITHDRAW DUE TO CONFLICT

Deputy Public Defender Tyler Gaston provided Mr. Percival with discovery in open court. Mr. Percival advised the Court if he sees any conflicts, he will place the matter on calendar. COURT SO NOTED, and ORDERED, Public Defender's Motion to Withdraw Due to Conflict GRANTED; Mr. Percival APPOINTED as counsel for Defendant.

COURT FURTHER ORDERED, bail motion CONTINUED one (1) week to give Mr. Percival an opportunity to determine if any supplementation is necessary, or if the motion is well-founded. FURTHER ORDERED, Mr. Percival to provide enough time for the State to respond if he chooses to file a supplement to the motion; parties to discuss calendar call and trial date at the next hearing.

C-15-308258-1

CUSTODY

8/12/2015 9:00 am Defendant's Motion for Reasonable Bail....Status Check: Trial Readiness

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 12, 2015

C-15-308258-1 State of Nevada
 vs
 Dvontae Richard

August 12, 2015 9:00 AM All Pending Motions

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

RECORDER:

REPORTER: Brenda Schroeder

PARTIES

PRESENT: Overly, Sarah Attorney
 Percival, Brent D. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S MOTION FOR SETTING OF REASONABLE BAIL.....STATUS CHECK: TRIAL READINESS

Defendant not present, hospitalized at University Medical Center (UMC).

Mr. Percival advised the Court that Defendant was shot in the leg at the scene of one the robberies; further, counsel has done a cursory review of the file and reviewed the bail motion. As to trial readiness, Mr. Percival stated it will be difficult for him to announce ready, as he recently obtained this case, and he has several other trials set that he does not anticipate resolving.

Upon the Court's inquiry, Mr. Percival requested a continuance to better familiarize himself Defendant's file and motion. COURT NOTED, Defendant invoked his right to a speedy trial; and ORDERED, matter CONTINUED one (1) week; Ms. Overly to advise assigned Deputy D.A. Patrick Burns.

C-15-308258-1

CUSTODY

Continued to: 8/19/2015 9:00 am

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 19, 2015

C-15-308258-1 State of Nevada
 vs
 Dvontae Richard

August 19, 2015 9:00 AM All Pending Motions

HEARD BY: Delaney, Kathleen E. **COURTROOM:** RJC Courtroom 15A

COURT CLERK: Dania Batiste

RECORDER:

REPORTER: Sharon Howard

PARTIES

PRESENT: Moskal, Thomas J. Attorney
 Percival, Brent D. Attorney
 State of Nevada Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S MOTION FOR SETTING OF REASONABLE BAIL.....STATUS CHECK: TRIAL READINESS

Mr. Percival advised the Court he unsuccessfully attempted to visit Defendant, who is still hospitalized at University Medical Center (UMC); however, counsel will try again this week. Mr. Percival further advised the Preliminary Hearing transcript was filed on Monday; additionally, he does not wish to argue the bail motion in Defendant's absence. No objection by the State.

COURT NOTED, no inclination to change the trial date at this time, as Defendant must be present, and this case needs more stability. COURT ORDERED, matters CONTINUED two (2) weeks.

CUSTODY

C-15-308258-1

Continued to: 9/2/2015 9:00 am

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 02, 2015

C-15-308258-1 State of Nevada
 vs
 Dvontae Richard

September 02, 2015 9:00 AM All Pending Motions

HEARD BY: Delaney, Kathleen E.

COURTROOM: RJC Courtroom 15A

COURT CLERK: Dania Batiste

RECORDER:

REPORTER: Sharon Howard

PARTIES

PRESENT:	Overly, Sarah	Attorney
	Percival, Brent D.	Attorney
	Richard, Dvontae	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFENDANT'S MOTION FOR SETTING OF REASONABLE BAIL.....STATUS CHECK: TRIAL READINESS

As to Defendant's Motion for Setting of Reasonable Bail:

Mr. Percival advised the Court that he was unable to visit Defendant last night, as his client was under a medical quarantine due to an infection from the gunshot wound; and argued that if Defendant is released from custody, he will have easier access to his client. Mr. Percival further argued that Defendant will receive medical attention if released, he is a lifetime resident of the area, he has family support and employment; and will not be a flight risk.

Opposition by Ms. Overly, requesting Defendant's bail be increased to \$350,000.00, arguing he received his gunshot wound while committing the crime, he is a confirmed gang member, and the likelihood of a conviction in this case is high.

COURT NOTED the totality of the circumstances, there is no basis to increase or reduce the bail at this time; and ORDERED, bail STANDS.

As to the Status Check: Trial Readiness:

Upon the Court's inquiry, and after conferring with Mr. Percival, Defendant advised he waives his right to a speedy trial. COURT ACCEPTED Defendant's waiver, and ORDERED, trial VACATED and RESET in the ordinary course.

CUSTODY

2/17/2016	9:30 am	Calendar Call
2/22/2016	10:30 am	Jury Trial

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 17, 2016

C-15-308258-1 State of Nevada
 vs
 Dvontae Richard

February 17, 2016 9:30 AM Calendar Call

HEARD BY: Delaney, Kathleen E.

COURTROOM: RJC Courtroom 15A

COURT CLERK: Dania Batiste

RECORDER:

REPORTER: Sharon Howard

PARTIES

PRESENT:	Burns, J Patrick	Attorney
	Percival, Brent D.	Attorney
	Richard, Dvontae	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Defendant Dvontae Richard's Motion to Suppress Custodial Statements FILED IN OPEN COURT

Upon the Court's inquiry, Mr. Percival advised that he served the State with a copy of the Motion to Suppress. Mr. Burns agreed, and noted that he concedes to the need for a Jackson v. Denno hearing regarding the statements in question; additionally, the State will be calling 1 witness. Mr. Burns further advised that Deputy D.A. Mr. Giordani will be trying this case, and it is overflow eligible.

Mr Percival stated that he has been summoned for jury duty and must be present Thursday morning at Jury Services for further direction. COURT SO NOTED, and ORDERED, matter SET for hearing; and REFERRED to Overflow; trial

CUSTODY

PRINT DATE: 06/03/2016

Page 12 of 33

Minutes Date: July 27, 2015

00695

2/18/2016	1:30 pm	Jackson v. Denno Hearing
2/19/2016	8:30 am	Overflow (Dept. 18)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 18, 2016

C-15-308258-1 State of Nevada
vs
Dvontae Richard

February 18, 2016 1:30 PM Jackson v Denno Hearing

HEARD BY: Delaney, Kathleen E.

COURTROOM: RJC Courtroom 15A

COURT CLERK: Dania Batiste

RECORDER:

REPORTER: Sharon Howard

PARTIES

PRESENT:	Giordani, John	Attorney
	Percival, Brent D.	Attorney
	Richard, Dvontae	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Opening remarks by the State. Upon the Court's inquiry, Mr. Percival advised he wishes to reserve his remarks to the end of this hearing. COURT SO NOTED.

Theodore Weirauch, Lance Spiotto, and Defendant Dvontae Dashawn Richard sworn and testified.

Mr. Giordani cited case law and argued that at the time the statements were made, Defendant was coherent, recounted the incident in two separate interviews, and he was able to recall the facts; therefore, the standard has been met, and both statements should be admitted.

Opposition by Mr. Percival, arguing that the detective had with him at the time of the interview, a department issued recorder intended to memorialize conversations with witnesses and suspects; additionally, the detective is aware of the importance of a person's rights being given up. Mr. Percival questioned why the detective did not record the Miranda Rights; and further argued that the State has failed to meet its burden to show Defendant knowingly and voluntarily surrendered those rights when he made statements that went against his own interests. Further argument by Mr.

Giordani.

COURT ORDERED, matter briefly taken UNDER ADVISEMENT; the Court will review the recordings, transcripts, case law, and argument before issuing its Minute Order by the end of today.

CUSTODY

2/19/2016 8:30 am Overflow (Dept. 18 - Courtroom 10C)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 18, 2016

C-15-308258-1 State of Nevada
 vs
 Dvontae Richard

February 18, 2016 5:01 PM Minute Order

HEARD BY: Delaney, Kathleen E.

COURTROOM: RJC Courtroom 15A

COURT CLERK: Dania Batiste

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- This matter, having come before the Court on February 18, 2016 for a hearing on Defendant s Motion to Suppress pursuant to Jackson v. Denno, and after review and consideration of the written motion, testimony elicited and arguments of counsel at the time of the hearing, and review of a recording and transcripts of the statements in question, as well as all relevant case law, the Court FINDS, for the reasons stated below, that the State has met its burden to show by a preponderance of the evidence that (1) the statements in question made by the Defendant were voluntary, and (2) the statements were given after the Defendant was properly Mirandized. Accordingly, Defendant s Motion to Suppress is DENIED, and the State may use the statements made by Defendant may be used at trial.

In the instant case, the evidence produced at the time of the hearing supports the State s contention that the Defendant was properly Mirandized by officers before being questioned on the two occasions at issue. Defendant testified he did not recall his interview with Detective Weirauch, but the audio recording reviewed by the Court, as well as Detective Weirauch s testimony, are sufficient for the State to meet its burden to show Defendant was properly Mirandized on the first occasion in the Emergency Room. As regards the second interview with Detective Spiotto in Defendant s hospital room, both the Defendant s testimony that he recalls being given warnings like those required by Miranda, and Detective Spiotto s testimony, even absent an audio recording of the

warnings being given, are also sufficient for the State to meet its burden to show Defendant was properly Mirandized.

Further in the instant case, under the totality of the circumstances surrounding the statements in question, there is not sufficient evidence to question the voluntariness of Defendant's statements to either Detective Weirauch or Detective Spiotto. While it is uncontested that Defendant was given medication to control his pain prior to both statements being given, the testimony of the Detectives, as well as the Defendant as regards the second interview in the hospital room, gives no indication that the Defendant was uncomfortable or incoherent, or unable to understand the meaning of the statements he made or the context in which he made them. Neither interview was of prolonged duration, and the substance of each interview was substantially similar. In light of these findings, and in the absence of any evidence that the statements were otherwise obtained by any physical or psychological coercion or improper inducement such that the will of the Defendant was overcome, the State has also met its burden to show the voluntariness of Defendant's statements by a preponderance of the evidence.

CUSTODY

2/19/2016 8:30 am Overflow (Dept. 18 - Courtroom 10C)

CLERK'S NOTE: A copy of this Minute Order has been electronically mailed to Deputy D.A. John Giordani, Esq.; and faxed to Defendant's counsel, Brent Percival, Esq. /db 2.18.2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 19, 2016

C-15-308258-1 State of Nevada
vs
Dvontae Richard

February 19, 2016 8:30 AM Overflow

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 10C

COURT CLERK: Billie Jo Craig

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:	Giordani, John	Attorney
	Percival, Brent D.	Attorney
	Richard, Dvontae	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- COURT ORDERED, matter REFERRED to Dept. 28, Judge Ron Israel, for a 5-day Jury Trial.

CUSTODY

2/22/16 9:00 AM JURY TRIAL - DEPT. 28

J. GIORDANI/B.. PERCIVAL
5 DAYS
11-13 WITNESSES

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 22, 2016

C-15-308258-1 State of Nevada
vs
Dvontae Richard

February 22, 2016 9:00 AM Jury Trial

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT:	Giordani, John	Attorney
	Lexis, Chad N.	Attorney
	Percival, Brent D.	Attorney
	Richard, Dvontae	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: State submitted an Amended Information dropping the enhancement, with use of a deadly weapon in Count 8- Attempt Robbery (F) and for trial purposes, removed Count 10-, Ownership or Possession of Firearm by Prohibited Person, (F). Amended Information, FILED IN OPEN COURT. Colloquy regarding jury trial protocol. Mr. Percival noted there was an offer two weeks ago, Defendant would have plead guilty to one count with an 8 to 20 year sentence. Mr. Percival stated the offer on the record, to which Defendant rejected the offer. Mr. Percival further noted the State offered a second offer and the Defendant rejected this offer. State noted there are no longer any offers.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire. Arguments by Counsel at the bench.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: At the request of the Court, Ms. Witt, Jury Commissioner appeared, sworn and gave testimony regarding the summons of potential jurors. Mr. Percival argued the limited number of African Americans in the jury pool. Arguments by the State

regarding the case law. Court stated its findings and noted the jury selection system is random and ORDERED, Defendant's Motion, DENIED.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire continued.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: State Challenged for Cause Juror 145. Mr. Percival traversed Juror 145 outside the presence of the jury. Arguments by Counsel, Court GRANTED Challenge for cause pursuant to Jitnan.

PROSPECTIVE JURY PANEL PRESENT: Voir Dire continued. Counsel passed for cause. Jury and two secret alternates selected and sworn. The last two seats being the secret alternates.

Clerk read the Information to the jury and stated the Defendant's plea thereto. Opening statements by the state. Opening statement reserved by Mr. Percival.

EXCLUSIONARY RULE INVOKED.

Evening recess.

CUSTODY

02/23/16 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 23, 2016

C-15-308258-1 State of Nevada
vs
Dvontae Richard

February 23, 2016 10:00 AM Jury Trial

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT:	Giordani, John	Attorney
	Lexis, Chad N.	Attorney
	Percival, Brent D.	Attorney
	Richard, Dvontae	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Spanish Interpreter, Richardo Pico, present for State's witness, Horacio Herman Dez-Lopez.

OUTSIDE THE PRESENCE OF THE JURY: EXCLUSIONARY RULE INVOKED. Defendant stated he was not ready for trial, stating he did not receive all the pictures or transcript and further had no time to speak with his counsel. Mr. Percival noted he was appointed in August and had given the Deft. everything he had except the pictures were on a CD and the Deft. told him he saw the photos at the preliminary injunction. Defendant requested new counsel. Court noted this is now in the middle of trial and Deft. could proceed with this matter post trial and ORDERED, Deft's Motion for New Counsel, DENIED. Court gave Defendant time to review the transcripts provided.

JURY PRESENT: Clerk took the roll of the Jury. Testimony and exhibits presented (see worksheets.)

Evening recess.

C-15-308258-1

CUSTODY

02/24/16 9:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 24, 2016

C-15-308258-1 State of Nevada
 vs
 Dvontae Richard

February 24, 2016 9:00 AM Jury Trial

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell
Sandra Pruchnic

REPORTER:

PARTIES

PRESENT:	Giordani, John	Attorney
	Lexis, Chad N.	Attorney
	Percival, Brent D.	Attorney
	Richard, Dvontae	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding proposed jury instructions.

JURY PRESENT: Clerk took the roll of the jury. Testimony and exhibits presented (see worksheets.)

OUTSIDE THE PRESENCE OF THE JURY: Arguments regarding case U.S. America v. Larry Louscious 2:15-cr-00106-JAD-VCF. Court noted case noted was an unpublished Federal Court opinion overrule in Nevada. Mr. Percival requested the Court reconsider the Motion from last Wednesday, Motion to Suppress pursuant to Jackson V. Denno Hearing and not allow the State's witnesses, the Officers, to testify regarding the Deft's testimony in the hospital. Arguments by the State. Court noted it reviewed the decision and the minutes from the Jackson V. Denno Hearing conducted by Judge Delaney and the miranda warning was voluntary and appropriate, Judge Delaney ruled "Deft. was properly mirandized" and further noted this Court will not hold a second hearing based on Larry Louscious to overturn Judge Delaney's decision, Court DENIED, Motion to

reconsider.

JURY PRESENT: Further testimony and exhibits presented (see worksheets.)

OUTSIDE THE PRESENCE OF THE JURY: Mr. Percival stated arguments to preserve his right to challenge the miranda warning. Court noted the warning the Officer read to the Deft. regarding his rights was before questioning and not during questioning.

JURY PRESENT: Further testimony and exhibits presented (see worksheets.) State rests.

OUTSIDE THE PRESENCE OF THE JURY: Court advised Defendant of his/her right not to testify. Colloquy regarding jury instructions.

Evening recess.

CUSTODY

02/25/16 11:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 25, 2016

C-15-308258-1 State of Nevada
 vs
 Dvontae Richard

February 25, 2016 11:30 AM Jury Trial

HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT:	Giordani, John	Attorney
	Lexis, Chad N.	Attorney
	Percival, Brent D.	Attorney
	Richard, Dvontae	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding scheduling issues. Counsel finalized instructions. Mr. Percival stated the Defendant will not be testifying. Upon Court's inquiry, Defendant stated he would not testify. Instructions settled. Colloquy regarding the State's 2nd Amended Information to be filed to include the 10th count that was removed prior to trial.

JURY PRESENT: Clerk took the roll of the Jury. Court instructed the jury. Closing arguments. Marshal and Judicial Executive Assistant (JEA) sworn and given charge of the jury. Court Thanked and released the two alternate jurors.

At the hour of 3:16 P.M. the jury retired to deliberate.

OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding scheduling issues. Defendant agreed to plead guilty to the Count 10, Ownership or Possession of Firearm by Prohibited Person, within the 2nd Amended Information to be filed after the jury verdict. Amended Jury List, FILED IN OPEN

C-15-308258-1

COURT.

Evening recess.

CUSTODY

02/26/16 9:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 26, 2016

C-15-308258-1 State of Nevada
 vs
 Dvontae Richard

February 26, 2016 9:00 AM Jury Trial

HEARD BY: Israel, Ronald J. **COURTROOM:** RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

REPORTER:

PARTIES

PRESENT:	Giordani, John	Attorney
	Lexis, Chad N.	Attorney
	Percival, Brent D.	Attorney
	Richard, Dvontae	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- JURY PRESENT: 9:15 A.M. Jury returned to deliberation.

At the hour of 11:12 A.M. the jury returned with a Verdict:

COUNT 1 - CONSPIRACY TO COMMIT ROBBERY - GUILTY
COUNT 2 - BURGLARY WHILE IN POSSESSION OF A FIREARM - GUILTY
COUNT 3 - GRAND LARCENY OF FIREARM - GUILTY
COUNT 4 - GRAND LARCENY - GUILTY
COUNT 5 - ROBBERY WITH USE OF A DEADLY WEAPON - GUILTY
COUNT 6 - NOT GUILTY
COUNT 7 - CONSPIRACY TO COMMIT ROBBERY - GUILTY
COUNT 8 - ATTEMPT ROBBERY - GUILTY
COUNT 9 - BATTERY WITH INTENT TO COMMIT A CRIME

Counsel agreed not to poll the Jury. Verdict and Instructions, FILED IN OPEN COURT. Jury returned

to the deliberation room for a temporary break.

OUTSIDE THE PRESENCE OF THE JURY: COURT ORDERED, Deft. remanded into custody, WITHOUT BAIL, and matter referred to the Division of Parole and Probation (P & P) and set for sentencing.

State provided the second amended information to include count 10. Second Amended Information FILED IN OPEN COURT. No Guilty Plea Agreement provided. Court and Counsel noted this charge carries a ONE (1) to SIX (6) Year sentence in the Nevada Department of Corrections, this charge is a probational offence and no one can stipulate or promise Deft. a particular sentence and the sentencing is up to the Court. Court further canvassed Deft of his rights. DEFT. RICHARD ARRAIGNED AND PLED GUILTY TO COUNT 10, OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (F). Court ACCEPTED plea and, ORDERED, Matter referred to (P & P) to include this charge within the Pre-Sentence Investigation (PSI) Report and SET for sentencing.

JURY PRESENT: Court Thanked and excused the Jury.

Court adjourned.

CUSTODY

03/31/16 8:30 AM SENTENCING (CTS 1-5 & 7-10) DEPT. 28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 31, 2016**

C-15-308258-1

State of Nevada

vs

Dvontae Richard

March 31, 2016**8:30 AM****Sentencing**

**Sentencing (Jury
Verdict/Counts 1-5, 7-
9, Guilty Plea Count
10)**

HEARD BY: Israel, Ronald J.**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Kathy Klein**RECORDER:** Judy Chappell**REPORTER:****PARTIES****PRESENT:**

Giordani, John
Percival, Brent D.
Richard, Dvontae
State of Nevada

Attorney
Attorney
Defendant
Plaintiff

JOURNAL ENTRIES

- Deft. present and in custody. Mr. Percival not present. State noted the Pre-Investigation (PSI) Report had errors and Counsel agreed it would be appropriate to correct the PSI and requested matter be continued. COURT ORDERED, Matter CONTINUED.

Mr. Percival present and was given the continued date.

CUSTODY

05/04/16 9:00 AM SENTENCING (JURY VERDICT COUNTS 1-5 7-9//GUILTY PLEA COUNT 10)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 04, 2016**

C-15-308258-1 State of Nevada
vs
Dvontae Richard

May 04, 2016	9:00 AM	Sentencing	Sentencing (Jury Verdict/Counts 1-5, 7- 9, Guilty Plea Count 10)
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HEARD BY: Israel, Ronald J.**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Kathy Klein**RECORDER:** Judy Chappell**REPORTER:****PARTIES**

PRESENT:	Giordani, John	Attorney
	Percival, Brent D.	Attorney
	Richard, Dvontae	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Deft. present and in custody. Mr. Percival noted the Pre-Investigation (PSI) Report had another error regarding count 5, the enhancement not listed. State noted the PSI listed the enhancement in their recommendations and the Court proceed and note it on the record. Court noted in the abundance of caution, it would be appropriate to correct the PSI and ORDERED, Matter CONTINUED for the PSI correction.

CUSTODY

05/25/16 9:00 AM SENTENCING (JURY VERDICT COUNTS 1-5 7-9//GUILTY PLEA COUNT 10)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 25, 2016**

C-15-308258-1 State of Nevada
vs
Dvontae Richard

May 25, 2016	9:00 AM	Sentencing	Sentencing (Jury Verdict/Counts 1-5, 7- 9, Guilty Plea Count 10)
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HEARD BY: Israel, Ronald J.**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Kathy Klein**RECORDER:** Judy Chappell**REPORTER:****PARTIES**

PRESENT:	Giordani, John	Attorney
	Lexis, Chad N.	Attorney
	Percival, Brent D.	Attorney
	Richard, Dvontae	Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- PURSUANT TO JURY VERDICTS, DEFT. RICHARD ADJUDGED GUILTY of COUNTS 1 & 7 - CONSPIRACY TO COMMIT ROBBERY (F); COUNT 2 - BURGLARY WHILE IN POSSESSION OF A FIREARM (F); COUNT 3 - GRAND LARCENY OF FIREARM (F); COUNT 4 - GRAND LARCENY (F); COUNT 5 - ROBBERY WITH USE OF A DEADLY WEAPON (F); COUNT 8 - ATTEMPT ROBBERY (F); COUNT 9 - BATTERY WITH INTENT TO COMMIT A CRIME (F). COUNT 6- FOUND NOT GUILTY AND DEFT. PLEAD GUILTY to COUNT 10 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (F). Colloquy regarding the Second Supplemental Pre-Sentencing Report (PSI) and Court made record of changes received. Both the State and Counsel agreed the Second Supplemental PSI was correct and were ready to proceed with sentencing. Arguments by the State and Counsel. Statement by Deft. Letter provided to the Court, from Counsel, reviewed and marked as a Courts exhibit.

COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, a \$150.00 DNA Analysis fee including testing to determine genetic markers, and \$3.00 DNA Collection fee, and \$1130.00 to VC2234125 and \$201.24 to VC2234128 Restitution, Deft. SENTENCED as to;

COUNT 1 - To a MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS in the Nevada Department of Corrections (NDC),

COUNT 2 - To a MINIMUM of THIRTY-SIX (36) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC), CONSECUTIVE to Count 1;

COUNT 3 - To a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections (NDC), CONSECUTIVE to Count 2;

COUNT 4 - To a MINIMUM of TWENTY-FOUR (24) MONTHS and a MAXIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC), CONCURRENT with Count 3;

COUNT 5 - To a MINIMUM of SEVENTY-TWO (72) MONTHS and a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS in the Nevada Department of Corrections (NDC), plus a CONSECUTIVE term of a MINIMUM of FORTY-EIGHT (48) and a MAXIMUM of ONE HUNDRED EIGHTY (180), for use of a deadly weapon, CONSECUTIVE to Counts, 2, 3, 3;

COUNT 7 - To a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS in the Nevada Department of Corrections (NDC), CONCURRENT with all other counts;

COUNT 8 - To a MINIMUM of FORTY-EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections (NDC), CONCURRENT with all other counts;

COUNT 9 - To a MINIMUM of FORTY-EIGHT (48) MONTHS and a MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of Corrections (NDC), CONCURRENT with all other counts;

COUNT 10 - To a MINIMUM of TWENTY-EIGHT (28) MONTHS and a MAXIMUM of SEVENTY-TWO (72) MONTHS in the Nevada Department of Corrections (NDC), CONCURRENT with all other counts, with 367 DAYS credit for time served. The AGGREGATE TOTAL sentence is a MINIMUM of SIXTEEN (16) YEARS and MAXIMUM of FIFTEEN (15) YEARS.

BOND, if any, EXONERATED.

NDC

