IN THE SUPREME COURT OF THE STATE OF NEVADA

TONY HOBSON	)	SUPREME COURT NO. 71419
	)	
Appellant,	)	
	)	
vs.	)	**APPEAL**
	)	
STATE OF NEVADA,	)	
	)	
Respondent.	)	DISTRICT COURT NO. C-303022
	)	
	)	

APPELLANT'S OPENING BRIEF

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RULES AND STATUTES

I[1]

JURISDICTIONAL STATEMENT

A. BASIS FOR APPELLATE JURISDICTION

NRAP 4(b); NRS 177.015(3)

B. FILING DATES ESTABLISHING TIMELINESS OF APPEAL

09-20-16: Judgment of Conviction filed[2]

09-27-16: Notice of Appeal filed[3]

C. ASSERTION OF FINAL ORDER OR JUDGMENT

This appeal is from the judgment of conviction filed on September 20, 2016, the amended judgment of conviction filed on January 9, 2017,[4] and all other appealable orders and findings in this case.

II

ROUTING STATEMENT

This case is a direct appeal from a judgment of conviction based on a jury verdict that involves convictions for offenses that are Category A and B felonies. As such, this case is not within those categories presumptively assigned to the Court of Appeals under NRAP 17(b).

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1 Hereafter HA shall refer to Hobson Appendix.
2 HA/20/4750.
3 HA/20/4768.
4 HA/20/4792

III

STATEMENT OF ISSUES

ISSUE NO. 1: Whether HOBSON's 5th and 14th amendment rights to a fair trial and his statutory rights pursuant to NRS 172.241 were violated where neither he nor his attorney were given adequate notice of the state's intention to seek a grand jury indictment on Counts 33-36

ISSUE NO. 2: Whether HOBSON's 6th and 14th amendment rights to a venire selected from a fair cross section of the community was violated where only two jurors out of the entire venire of 65 jurors were African-American and testimony by the jury commissioner cast doubt on whether the jury selection process in Clark County is designed to select jurors from a fair cross section of the community.

ISSUE NO. 3: Whether HOBSON's 5th, 6th, and 14th amendment rights to present witnesses to establish his defense were violated where a co-defendant refused to talk to the defense pre-trial because he was afraid the state would withdraw a plea deal which was contingent on him cooperating with the district attorney's office, and which specifically precluded him from talking to HOBSON.

ISSUE NO. 4: Whether HOBSON's 5th and 14th amendment rights to due process and a fair trial were violated amounting to prejudicial error and requiring reversal of his kidnaping-related convictions where the convictions were not supported by the evidence because the movement of the victims was incidental to the robberies.

ISSUE NO. 5: Whether HOBSON's 5th and 14th amendment rights to due process and a fair trial were violated amounting to prejudicial error and requiring reversal of the robbery convictions which were not supported by the evidence because the victims had no possessory interest in the items taken or attempted to be taken.

ISSUE NO. 6: Whether HOBSON's 5th and 14th amendment rights to due process and a fair trial were violated amounting to prejudicial error and requiring reversal of the robbery-related convictions in Counts 81 and 82 which were not supported by the evidence because there was no evidence of an agreement to rob the Taco Bell, and no performance by Hobson of any act toward the commission of the crime.

IV

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This is a case involving 82 counts charged against two defendants (Hobson and Starr) arising out of a series of robberies labeled by the police as the Windbreaker Series[5] which occurred at 14 different fast-food locations between October 28, 2014 and November 25, 2014,[6] and involving 37 purported victims.

B. COURSE OF PROCEEDINGS

Please see the Appendix table of contents which is sorted chronologically.

C. DISPOSITION BY THE COURT BELOW

Given the number of counts and the confusion in keeping track of which count corresponds to which location, victim, charge, verdict, and sentence, counsel prepared a chart which sets forth these basic facts which are not in dispute. That chart is attached as an addendum to this Opening Brief and is offered for the convenience of the court and opposing counsel. It more clearly illustrates the disposition by the court below as to each count, and HOBSON therefore refers the Court to that addendum rather than trying to set forth the disposition in the body of this brief as to all of those 82 counts. HOBSON would add here what is not

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5 HA/14/3212.

6 See Addendum (Hobson Event Chart) attached to this Opening Brief.

included on the chart and that is that all counts relating to a particular incident were run concurrent as to that incident. Each of the 14 incidents was run consecutive to each other.[7] The total sentence given to HOBSON was 37-152 years.

V

STATEMENT OF RELEVANT FACTS

There were a series of robberies of mostly fast-food restaurants that began occurring in October, 2014 in the Las Vegas Valley. These were identified by Metro out of other robberies and burglaries occurring in the valley as the Windbreaker Series based on a common modus operandi.[8] The commonalities were determined from reviewing scene videos of the robberies and witness statements. Some of the commonalities included the height of the perpetrators with one significantly taller than the other,[9] identifying the manager and asking for money out of the safe,[10] using a blue bag to put the money in,[11] and wearing surgical masks.[12] One (the shorter one alleged to be HOBSON) wore grey Reebok shoes,[13] Snap-On gloves that were red with white lettering,[14] and a black and gray

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7 HA/20/4734.
8 HA/14/3212.
9 HA/15/3431.
10 HA/15/3431.
11 HA/15/3384.
12 HA/15/3431.
13 HA/16/3711.
14 HA/16/3729.

windbreaker with a plaid lining.[15] The taller one (alleged to be STARR) always wore black boots.[16] There was also a silver Dodge Charger that was observed on a couple of the scene videos.[17]

On November 25, 2014, a metro officer went out patrolling the area where the robberies had been occurring, hoping to see the silver Charger. He did spot one, and followed it to a parking lot near a Taco Bell.[18] He sat and watched for half an hour, during which time he alerted other patrol officers to stand by. After about a half hour an African American man exited the right rear passenger seat wearing a surgical mask on his face and a black windbreaker.[19] He went to the trunk of the car which had been opened by the driver of the car.[20] At that point, the officer called in the other metro officers who were on standby, and arrests were made.[21] The man who got out of the car was Brandon Starr.[22] The man in the right front passenger seat who had not yet exited the vehicle was Tony Hobson.[23] The man who was driving the car was Donte Johns, Hobson's brother.[24]

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15 HA/14/3215.
16 HA/15/3431.
17 HA/14/3215, 14/3282, 14/3302, 14/3332.
18 HA/14/3219-3220.
19 HA/14/3224.
20 HA/16/3706.
21 HA/14/3307.
22 HA/16/3706.
23 HA/14/3231.
24 HA/16/3695.

HOBSON was wearing grey Reeboks at the time of the arrest[25] which matched back to shoe prints taken from the Pizza Hut robbery (Count 11).[26] Starr was wearing boots the night of the arrest[27] which were possible matches to shoe prints taken at both the Pizza Hut location (Count 11) and the El Pollo Loco location (Count 52).[28] Other items indicated in the Windbreaker Series were recovered the night of the arrest, including, (1) blue bag,[29] (2) black and gray windbreaker,[30] (3) black windbreaker,[31] (4) medical masks,[32] (5) red Snap-On brand glove with white lettering,[33] (6) a hand gun,[34] and an (7) ax with an orange handle,[35]

Donte Johns entered into a plea deal with the state after the second superseding indictment was filed.[36] All the convictions in the plea deal are probationable,[37] and Johns was released from jail immediately to house arrest

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25 HA/15/3402; 16/3712.
26 HA/14/3186; 15/3475, 15/3481.
27 HA/15/3393, 15/3397; 16/3713;
28 HA/15/3470, 15/3477, 15/3483.
29 HA/15/3401, 15/3405-3406, 15/3417, 15/3418.
30 HA/14/3215.
31 HA/14/3224.
32 HA/14/3224, 14/3234; 15/3557.
33 HA/15/3557, 15/3562.
34 HA/14/3234, 14/3317.
35 HA/14/3232, 14/3317.
36 HA/16/3844.
37 HA/16/3851.

without posting bail.[38] Part of the agreement was that Johns would cooperate with the district attorney[39] and also that he would testify at trial.[40] Failure to abide by the agreement would result in the plea being withdrawn.[41]

VI

SUMMARY OF ARGUMENT

The main distinction between the Windbreaker Series of robberies and other similar crimes being committed in the valley during the time in question, was that the Windbreaker Series were robberies which occurred at closing when it was known that employees would be present as opposed to burglaries which were taking place later at night when no employees were present. The very nature of this modus operandi was that in the Windbreaker Series, the perpetrators wanted to enter when the manager who could open the safe would be present. As such, they would round up all the employees, identify the manager and separate that person from the other employees who would be held by the second perpetrator within feet of where the safe was located.[42] Therefore, it is the argument of the defense, that the only victims of the robberies were the managers who had a possessory interest in the contents of the safe, and some limited victims who had personal items stolen

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38 HA/17/3877.
39 HA/16/3852.
40 HA/16/3847-3848.
41 HA/16/3849.
42 HA/15/3382, 3428, 3430, 3435-3439.

such as cell phones. It is also the contention of the defense that the very modus operandi of the Windbreaker Series in rounding up all employees to identify the manager, negates all of the kidnaping-related convictions since all movement and restraint of the victims was incident to the robberies.

Additionally, as to the attempt and conspiracy charges in Counts 81 and 82, the defense contends that those are not supported by the evidence given that Hobson had not exited the vehicle and Donte Johns testified that he didn't know why Starr had asked him to pop the trunk.[43] Therefore, there was insufficient evidence of performance of some act toward commission of a crime to support the conviction for attempt, and no evidence of an agreement to commit a crime at the time that Starr exited the vehicle to support the conviction for conspiracy.

It also appears that HOBSON's Constitutional and statutory rights were violated because (1) his attorneys were not given adequate notice of the grand jury hearing as to Counts 33-36, (2) the jury venire did not represent a fair cross section of the community, and (3) the state interfered with HOBSON's ability to conduct pre-trial interrogation of the key witness against him – Donte Johns.

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43 HA/16/3706.

VII

ARGUMENT

A. NO NOTICE OF GRAND JURY INDICTMENT (COUNTS 33-36)

(Standard of Review: de novo)[44]

The grand jury heard testimony on all counts except 33-36 (Burger King) concluding on February 19, 2015.[45] At the end of the hearing, the state advised that, "...we were unable to get one additional witness in so we're not going to have you deliberate on this case right now. We'll come back in a few weeks when we can get an additional period of time."[46] However, the very same day, the grand jury foreperson endorsed a true bill, also signed by the deputy district attorney, which included Counts 33-36.[47] Two months later on April 17, 2015, the state revealed in a footnote to the state's return to a habeas writ that the grand jury had not yet deliberated on those counts. It further stated in that footnote that it intended to present Counts 33-36 to the grand jury at some time in the future.[48]

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44 The construction or interpretation of a statute is reviewed de novo. *United States v. Leon H.*, 365 F.3d 750, 752 (9th Cir. 2004).

45 HA/2/456.

46 HA/3/642.

47 HA/4/743.

48 HA/4/849.

The grand jury was reconvened on April 23, 2015, as to Counts 33-36,[49] and a witness was sworn and testified.[50] The defense was not provided notice of that second grand jury hearing.[51] The defense brought a habeas petition and requested that the court dismiss those counts for failure to provide notice of that grand jury hearing.[52]

The court denied that motion stating that notice given for the other counts under the first superseding indictment was continuing or "ongoing notice throughout the proceedings." The Court stated that it felt "that the argument kind of falls because the other information is contained in this original notice."[53] Presumably, the original notice is the charges on Counts 33-36 which were erroneously included in the first superseding indictment.

In *Marcum,* this Court held that a defendant has a right to testify in front of a grand jury before he is indicted, and he therefore has a right to notice of the grand jury hearing where an indictment will be sought, a reasonable time before the hearing is to take place. This Court found that a one-day notice was unreasonable.[54] In response to *Marcum*, the Legislature amended NRS 172.241 to include a five-day notice provision of the State's intent to seek an indictment,

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49 HA/4/896.
50 HA/4/903.
51 HA/5/1118.
52 HA/5/1065.
53 HA/5/1120.
54 *Sheriff, Humboldt County v. Marcum*, 105 Nev. 824, 826-827 (1989).

requiring the defense to submit a written request for the date, time, and place.[55] To be exact, NRS 172.241 now provides that notice is adequate if (1) the notice gives the defendant not less than five **judicial** days to submit a request to testify, and (2) **advises the person** that the person may testify before the grand jury only if the person submits a written request to the district attorney and includes an address where the district attorney may send notice of the date, time and place of the scheduled proceeding of the grand jury.

Five Day Notice Not Provided

In this case, the state claimed that it gave notice of its intent to convene the grand jury on Counts 33-36 in the footnote which appeared in the state's return on April 17, 2015.[56] However, April 17, 2015 fell on a Friday, and the grand jury hearing was scheduled for April 23, 2015. The 17th was only four **judicial** days before that hearing, which did not give the defense five days to let the district attorney know that it wanted to testify.

Required Advice Not Provided

The so-called notice was included in a footnote to the state's return. It did not advise HOBSON that he could testify before the grand jury only if he submitted a written request to the district attorney. It did not indicate that in that

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55 *McNamara v. State,* 377 P.3d 106, 115-116 (Nev.Aug. 12, 2016). *See* Hearing on S.B. 82 Before the Assembly Judiciary Comm., 66th Leg. (Nev., May 30, 1991); *see also* 1997 Nev. Stat., ch. 99, § 1, at 188.

56 HA/5/1116.

request, HOBSON had to include the address where the district attorney could send notice of the date, time, and place of the grand jury proceeding. The footnote merely stated:

> The State would note that Counts 33 through 36 were inadvertently placed in the Superseding Indictment. The Grand Jury has not yet deliberated on these specific counts. A final grand jury presentment is forthcoming in which these counts will be deliberated upon and, pending a finding of probable cause by the Grand Jury, properly appended to the Second Superseding Indictment.[57]

For the foregoing reasons, HOBSON did not receive adequate notice of the state's intent to hold proceedings before the grand jury on April 23, 2015 on Counts 33-36, and the court erred in refusing to grant HOBSON's habeas petition to dismiss those counts on that ground. That constituted a violation of HOBSON's Constitutional rights to due process of law as well as his statutory rights codified by the State of Nevada in NRS 172.241, and this Court should remand with instructions that those counts be dismissed.

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[57] HA/4/849.

B. JURY VENIRE NOT REPRESENTATIVE

(Standard of Review: de novo)[58]

Both Starr and HOBSON are African Americans. Yet, only two jurors out of the entire venire of 65 jurors were African-American.[59] Accordingly, the defense brought a motion to strike the venire.[60]

The trial court characterized the issue as a *Batson* issue[61] and denied the motion to strike the venire pursuant to *McCarty*[62] because the defense did not make out a prima facie case of discrimination.[63] However, *McCarty* dealt with a *Batson* issue involving improper peremptory challenges, so the Court's reliance on that case was misplaced. The defense pointed out that this was a challenge to the venire which was controlled by the *Williams* case.[64] The record does not indicate that the Court even considered that case.

Disparity was 70

In *Williams,* the court went through a mathematical comparison of percentage of jury which was African American to percentage of African

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58 *United States v. Bushyhead,* 270 F.3d 905, 909 (9th Cir. 2001); *United States v. Bishop,* 959 F.2d 820, 827 (9th Cir. 1992).

59 HA/7/1608.

60 HA/7/1609.

61 HA/7/1623.

62 *Jason Duval McCarty v. State of Nevada,* 371 P.3d 1002 (2016).

63 HA/7/1623-1624.

64 *Williams v. State,* 121 Nev. 934, 942 (Nev. 2005).

Americans in the community and held that a comparative disparity over 50 indicates that the representation of African Americans is likely not fair and reasonable.[65] The exact calculations and wording of this formulation is as follows:

> The 2000 census indicates that the percentage of African Americans in Clark County, Nevada, is 9.1. U.S. .... Having one African American in a forty-person venire results in only 2.5 African Americans. Whether a certain percentage is a fair representation of a group is measured by the absolute and comparative disparity between the actual percentage in the venire and the percentage of the group in the community. The absolute disparity is 6.6. This is not a large percentage. But if 6.6 is compared with the actual percentage of African Americans in Clark County, 9.1, the comparative disparity is 72.5. Comparative disparities over 50 indicate that the representation of African Americans is likely not fair and reasonable. *See Evans*, 112 Nev. at 1187, 926 P.2d at 275.[66]

The defense in the case at bar presented evidence that statistics for Clark County demographics for 2015 show that 10 percent of the population of Clark County are African Americans.[67]

Using the formulation set forth in *Williams,* the comparative disparity in this case was 70.[68] Therefore, pursuant to the rule of *Williams*, the representation of African Americans in the venire in this case was not fair and reasonable. Accordingly, it was error for the court to refuse to strike the venire and empanel a new one.

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65 *Williams, supra,* at 940.

66 *Williams, supra,* at 940.

67 HA/7/1609.

68 2/65=3%; 10-3=7 (absolute disparity); 7/10=70 (comparative disparity).

Jury Selection Lists Are Not Adequate

This Court stated in *Williams*, that "[w]ithout an awareness of the makeup of the lists used to select the jury pool or the actual jury pool itself, a jury commissioner cannot adequately determine whether the jury pool or the jury lists reflect a fair cross section of the community. If the jury list does not produce jury pools that reflect a fair cross section of the community, then the jury commissioner should use more lists than mandated by statute. *E.g.*, NRS 6.010. In 2002, the **Nevada Jury Improvement Commission recommended that at least three source lists be used to constitute jury pools**. Jury Improvement Commission, *Report of the Supreme Court of Nevada* 10 (2002), available at http://www.nvsupremecourt.us/DOCS/reports/rpt_0210_jury.PDF. We do not hold at this time that being unaware of the composition of the jury pool is unconstitutional. We do, however, observe that without knowledge of the composition of the jury pool and jury lists, an assertion that they provide juries comprising a fair cross section of the community is mere speculation." (emphasis added)

In this case, the jury commissioner for Clark County testified that they pull jurors from a master list compiled from only two sources -- Nevada DMV and Nevada Energy records.[69] She testified that EDCR 6.10 designates DMV as the

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69 HA/7/1612.

primary source, with Nevada Energy as the second source. Those records are compiled into a single record. She did not know the percentage that is derived from DMV as opposed to Nevada Energy.[70] Therefore, the jury commissioner in Clark County is blindly following the dictates of EDCR 6.10 even though it is producing juries that do not comprise a fair cross section of the community. She has not followed the mandate of *Williams* that if a fair cross section is not being obtained, three sources should be used for compiling the jury pool.

Simply using the DMV records and Nevada Energy records has the effect of producing jurors who are mostly well above the poverty level since they will likely own cars and maintain residences with electricity bills in their names. Yet, it is well-documented that a very high percentage of young male African Americans are existing at or substantially below the poverty level. That demographic is all but excluded from the jury pool that would be obtained from the lists currently being used by the Clark County jury commissioner. Accordingly, it is virtually impossible for a young black male in Clark County to go to trial with a jury represented 10% by a jury of his peers. In this case, the venire only contained 3%. And, as with any demographic, it is folly to assume that all of those would ever make the actual jury. Some would have prejudices that could not be overcome, some would have personal issues precluding them from serving on the jury, and

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70 HA/7/1617.

the list goes on and on. It is, therefore, imperative, especially when dealing with young black male defendants who are today making up such a large percentage of those incarcerated in our prisons, that better methods are used to insure that their juries include a fair cross section of the community. The two lists currently used by the jury commissioner are not adequate to provide that fair cross section, as demonstrated in this case, and also in the *Williams* case. A more appropriate list to include would be one which is not based on wealth, and the defense suggests that the postal address records for Clark County would be a better source which would include people of limited means who cannot afford cars, who may still be living in their parents' basements, or who may be cohabiting with roommates who are responsible for utilities and rent.

For the foregoing reasons, HOBSON contends that it was reversible error for the trial court to refuse to strike the venire, that he was thereby deprived of his 6th Amendment right to a jury selected from a fair cross section of the community, and that as a result all convictions must be reversed and the matter remanded for a new trial with instructions that he is entitled to a venire comprised of at least 10% African Americans.

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C. STATE PRE-TRIAL INTERFERENCE WITH WITNESS

(Standard of Review: clear error)[71]

HOBSON contends that the state interfered with his Sixth Amendment right to present witnesses to establish his defense and also interfered with his Fifth Amendment right to be free from improper governmental interference with his defense. This occurred by the nature of the plea agreement made by the state with HOBSON's co-conspirator, Donte Johns (HOBSON's brother), who drove the silver Charger in connection with several of the events. This plea agreement and fear of it being withdrawn because of the terms of the agreement caused Johns' attorney (Cottner) to recommend that Johns not talk to defense counsel pre-trial.

The Sixth Amendment guarantees a criminal defendant the right to present witnesses to "establish his defense without fear of retaliation against the witness by the government." *United States v. Dupre*, 117 F.3d 810, 823 (5th Cir. 1997); *see also Washington v. Texas*, 388 U.S. 14 (1967). In addition, the Fifth Amendment protects the defendant from improper governmental interference with his defense.[72]

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71 Trial court's denial of a motion for new trial based on prosecutorial misconduct is reviewed for an abuse of discretion. *United States v. Murillo*, 288 F.3d 1126, 1140 (9th Cir. 2002).

72 *United States v. Bieganowski*, 313 F.3d 264, 291 (5th Cir. Tex. 2002); *United States v. Causey*, 2006 U.S. Dist. LEXIS 1847, 3-4 (S.D. Tex. Jan. 9, 2006).

"To make a showing that the government has infringed on [these] right[s], ...[d]efendants bear the burden of proving, by a preponderance of the evidence, that the government substantially interfered with their access to witnesses by improper conduct that deprived defendants of access to witnesses or prevented the witnesses from testifying. *United States v. Scroggins*, 379 F.3d 233, 239 (5th Cir. 2004); *United States v. Hatch*, 926 F.2d 387, 395 (5th Cir. 1991). If the government's actions do not affect the witness's decision, there is no violation of due process. *United States v. Viera*, 839 F.2d 1113, 1115 (5th Cir. 1988). Likewise, "no right of a defendant is violated when a potential witness freely chooses not to talk [to defense counsel]."[73] "In order to demonstrate substantial government interference, 'the defendant must show a causal connection between the governmental action and the witness' decision not to testify.' *See Knotts v. Quarterman*, 253 F. App'x 376, 381 (5th Cir. 2007) (unpublished) (citing *Bieganowski*, 313 F.3d at 291-92; *United States v. Thompson*, 130 F.3d 676, 687 (5th Cir. 1997))."[74]

In this case, HOBSON contends that the state placed Donte Johns in fear of retaliation by withdrawal of his plea agreement if he talked to HOBSON or his

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[73] *In re United States*, 878 F.2d 153, 157 (5th Cir. 1989); *Causey, supra,* at 3-4.

[74] *United States v. Anderson*, 755 F.3d 782, 792 (5th Cir. Tex. 2014).

attorneys. In fact, the plea agreement specifically precluded Johns from talking to HOBSON or STARR.[75]

Following the filing of the second superseding indictment, Johns entered into a plea deal. [76] All of the convictions in the plea deal were probationable.[77] He also got to be released from jail immediately to house arrest without posting bail.[78] Part of the agreement was that Johns testify at trial.[79] **He was also required to cooperate with the district attorney's office.[80] Failure to abide by the agreement would result in the plea being withdrawn.**[81]

After entering the plea deal, Johns met with the state attorneys three times prior to trial to discuss the facts of the case.[82] He gave them a proffer which was a meeting for about three hours.[83] He met with them additional times to go over his testimony and to go through all the event videos.[84] None of those meetings with the district attorney were recorded or otherwise memorialized. The defense was

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75 HA/16/3848.
76 HA/16/3844.
77 HA/16/3851.
78 HA/17/3877.
79 HA/16/3847-3848.
80 HA/16/3852.
81 HA/16/3849.
82 HA/16/3853, 17/3872,
83 HA/17/3898.
84 HA/17/3899.

not invited to attend.[85] Johns' attorney (Cottner) was present during each of those meetings.[86]

During this period of time that Johns was meeting with the district attorney, defense counsel reached out to Johns' attorney and asked to meet with Johns.[87] Johns learned of these requests and told his attorney that he was willing to meet with them.[88] His attorney admitted that Johns was willing to talk to defense attorneys but that he (Cottner) advised him not to.[89] Cottner testified that he told Johns that **since he wants to please the state and since he had aligned himself with the state**, that he didn't think it was in Johns' best interest to meet with the defense attorneys. Johns followed his attorney's advice and refused to meet with defense counsel.[90] Cottner further testified that he would instruct Johns not to answer any questions about his conversations with his client about testifying or the strategy behind that because all such conversations were protected by the attorney-client privilege.[91] Clearly, Cottner was concerned that if his client was allowed to meet with the defense attorneys, that could be construed by the state as failure to **please the state with whom Johns was aligned** by virtue of the plea agreement,

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85 HA/17/3899-3900.
86 HA/17/3897.
87 HA/16/3831, 17/3903.
88 HA/17/3873, 16/3831, 17/3903.
89 HA/17/3909.
90 HA/16/3832, 17/3909, 17/3945-3946.
91 HA/17/3915.

and that any such meetings could open the door for the state to withdraw the plea deal.

The defense contended that its inability to pre-trial Donte Johns potentially deprived it of discovering exculpatory evidence which would be helpful to the defense. In addition, during Donte Johns' testimony at trial he recounted facts previously unknown by the defense, to wit: that (1) Starr wore a particular jacket every day – the one that was depicted in the arrest photo, (2) that either Hobson or Starr told him that Popeye's had the most money, (3) that Starr and Hobson got a Ruger later on, (4) that Starr was bleeding from a cut he sustained when breaking through one of the windows.[92] The defense was completely unaware of these facts prior to trial and had no ability to prepare cross-examination related to these statements.[93] Moreover, pre-trial knowledge of this testimony may have affected plea bargain decisions for HOBSON. When these statements came out during testimony at trial, the defense moved for a mistrial which was denied.[94] The reason for the denial was that there was no *Brady* violation because the state had abided by its obligations under NRS 174.235.[95] The trial court's reasoning was faulty because *Brady* violations and NRS 174.235 relate to discovery of tangible objects

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92 HA/16/3829-3830.
93 HA/16/3830.
94 HA/16/3836-3837.
95 HA/16/3833.

such as written or recorded statements or confessions, reports of physical or mental examinations, and books, papers, and documents. This was not a *Brady* violation. It was an infringement by the state with the defense ability to prepare its case, by intimidating a key witness with fear of withdrawal of a plea agreement.

Instead of denying the motion for mistrial, the trial court should have done as the court did in *Causey*. It should have taken a short half-day break in the trial to give the defense an opportunity to interview Donte Johns, and entered an order that Johns' decision to speak with defense counsel could not be viewed by the state as a lack of cooperation with the state and that the state would be precluded from using such cooperation with defense counsel as a basis for withdrawing the plea deal.[96] Absent such accommodation, the court committed clear error in refusing the defense request for a mistrial, and this case should be remanded for a new trial with instructions that Donte Johns be permitted to meet with defense counsel without fear that the state would withdraw Johns' plea agreement.

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96 *Causey, supra,* at 6-8.

D. NO EVIDENCE OF KIDNAPING-RELATED CHARGES

(Standard of Review: de novo)

Claims of convictions which are supported by insufficient evidence are reviewed de novo.[97] "The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged".[98]

HOBSON was convicted of kidnaping or false imprisonment in connection with three events, to wit: (1) 11-23-14 El Pollo Loco Event (Count 55), (2) 11-23-14 Taco Bell Event (Counts 63 and 65) and (3) 11-24-14 Popeyes Event (Counts 71, 73, 75, 77, and 79).[99] HOBSON contends that in each instance, the movement of the victims was incident to the robbery and therefore the evidence does not support the convictions.[100]

The landmark case on this issue in Nevada is *Mendoza.*[101] In that case, this Court held that a defendant in a robbery case will be subjected to dual liability for robbery and either 1st or 2nd degree kidnaping only where (1) the movement or

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97 *United States v. Shipsey,* 363 F.3d 962, 971 n.8 (9th Cir. 2004); *United States v. Bieganowski,* 313 F.3d 264, 291 (5th Cir. 2002).

98 *Apprendi v. New Jersey*, 530 U.S. 466, 477 (U.S. 2000).

99 See Addendum to this Opening Brief (Hobson Event Chart).

100 HOBSON would note that he appeals both from the Judgment Of Conviction, Amended Judgment Of Conviction, and Findings Of Fact And Conclusions Of Law filed on April 13, 2016 (HA/7/1470) where the court found that the restraint of these victims exceeded that necessary to complete the robberies where they were forced back into the restaurant. (HA/7/1478.)

101 *Mendoza v. State,* 122 Nev. 267 (Nev. 2006).

restraint substantially increases the risk of harm to the victim over and above that necessarily present to effect the robbery, or (2) the movement or restraint of the victim substantially exceeds that required to complete the robbery.[102] This analysis was held by this Court to be applicable to cases of false imprisonment as well.[103]

The common thread in the three events where the jury found HOBSON guilty of kidnaping or false imprisonment was that an employee had run to the back door trying to escape the perpetrator who had entered through the front of the store. In each case, they were met by a second man with a gun when they opened the back door, and were stopped at gunpoint from exiting the store. In the **El Pollo Loco Event (Count 55)**, the testimony from the victim was that there was a guy at the back door when she was trying to leave who turned her around and pushed her back into the store.[104] He then moved all the employees to the work station that was closer to the office and the cash registers.[105] They asked who the manager was.[106] They told the manager to open the safe.[107] In the **Taco Bell Event (Counts 63 and 65)**, it was the same scenario except that Vanessa was one step outside the store when she was pulled back in.[108] Holly was also one step outside

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102 *Mendoza, supra,* at 274-275.
103 *Garcia v. State*, 121 Nev. 327, 330, 334-335 (2005).
104 HA/11/2634.
105 HA/11/2634.
106 HA/11/2642.
107 HA/11/2637, 13/3060.
108 HA/13/3128.

the back door when she was pulled back in.[109] Both Holly and Vanessa were directed to the office area where the safe was located.[110] Vanessa was the assistant manager,[111] and she was directed to open the safe.[112] In the **Popeyes Event (Counts 71, 73, 75, 77, and 79)** everyone tried to escape out the back door, but when they got it open there was a man there with a gun who directed them back to the area where the vault was located.[113] All but the manager were told to get on the floor.[114] They were outside the office.[115] He told the manager to go in the office and get the money from the vault and put it in the bag.[116]

HOBSON would point out that the testimony of the various police officers and detectives in this case regarding the modus operandi which in their minds tied all these events together included a crucial fact that set them apart from other thefts taking place in the valley at the time. That was, that the goal of the perpetrators in this Windbreaker Series of robberies was to rob the safe. In order to do that, they purposely entered the stores close to closing when the employees were still present,[117] and the first thing they did was to round all the employees up, find out

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109 HA/13/3128.
110 HA/13/3129.
111 HA/13/3122.
112 HA/13/3129.
113 HA/14/3173-3175
114 HA/14/3174-3175.
115 HA/13/3105.
116 HA/13/3101.
117 HA/14/3214, 14/3302.

who the manager was, and direct that person to open the safe.[118] Unlike other thefts occurring in the valley which were actually burglaries with no associated robbery, these events were robberies where the assailants were specifically looking to rob the safe which required the manager's cooperation.[119] In order to effect the robberies in this case, an essential component was that they identify the manager who was the only one who had the ability to open the safe. Since they didn't know who the manager was when they first entered a store, an essential component of the Windbreaker Series was that the assailants keep all the employees inside the store so that they could identify the manager. The state can't have it both ways. It can't use this common thread to establish modus operandi, but then on the other hand claim that very element of entering when employees were there, keeping them all together in order to identify the manager, and directing the manager to unlock the safe, was not incidental to the robbery. The state claimed that those actions were the very gravamen of the modus operandi which tied all these events together! Accordingly, keeping employees from escaping was absolutely incidental to effecting these robberies and did not increase the risk of harm to employees who had taken one step outside the store any more than it did to employees who were standing one step away inside the store.

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118 HA/15/3382, 15/3430, 15/3435-3439,

119 HA/15/3428, 15/3435-3439.

For the foregoing reasons, HOBSON contends that all of the kidnaping-related counts should be dismissed or remanded for a new trial. **Those counts are 55, 63, 65, 71, 73, 75, 77, and 79.**

E. NO EVIDENCE OF ROBBERY CHARGES

(Standard of Review: de novo)

Claims of convictions which are supported by insufficient evidence are reviewed de novo.[120] "The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged".[121]

HOBSON contends that many of the robbery convictions are not supported by the evidence because the victims had no possessory interest in any of the property taken.

1) THE LAW

This Court recently held in an unpublished decision that,"[i]n addition to proving the presence element of robbery, the State must prove the possession element. *See Phillips v. State*, 99 Nev. 693, 696 (1983) (concluding that defendant could not be guilty of robbery where the State failed to prove the victim, a

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120 *United States v. Shipsey,* 363 F.3d 962, 971 n.8 (9th Cir. 2004).

121 *Apprendi v. New Jersey*, 530 U.S. 466, 477 (U.S. 2000).

customer present during a jewelry store robbery, had a possessory interest in any of the items stolen from the jewelry store). To satisfy its burden of proving the element of possession, the State may show that the defendant took property from the property owner or from someone with a special interest in the property. *State v. Ah Loi*, 5 Nev. 99, 101-02 (1869). The State may also present evidence that the victim had a possessory interest in the property. *See Klein v. State*, 105 Nev. 880, 885 (1989) (providing that a defendant can be guilty of two counts of robbery where two victims share joint possession and control of the stolen property); *see also People v. Ramos*, 30 Cal. 3d 553 (Cal. 1982) (concluding conviction of two counts of robbery was proper where the State proved both employees had joint possession of the property). The sheer presence of the victim or the victim's familial relationship with the owner of personal property, without proof of a possessory interest, does not satisfy the possession element of robbery. *See Phillips*, *supra,* at 696. We therefore conclude a rational trier of fact could not have found the possession element beyond a reasonable doubt because the State failed to introduce any evidence that Anthony, Thavin, or Trinity had a possessory interest in the items stolen. *See Milton v. State*, 111 Nev. 1487, 1491 (1995). On the other hand, a rational trier of fact could have found the element of possession with respect to the robbery count related to David because David testified that he owned ....

the stolen iPad. *See Ah Loi*, 5 Nev. at 101-02 (Robbery may be committed by the taking of property from . . . the general owner.)."[122]

In *Allen*,[123] two armed men threatened employees of a credit union and took money from two tellers. The Indiana Supreme Court held that approaching each teller may constitute several assaults, but that upon taking the property, only one robbery had occurred when all of that taken property is titled in one entity.

In *Nicks*,[124] the defendant was convicted of three counts of armed robbery of a market. He had taken money from the manager and two checkers at separate check-out counters. The Illinois Appellate Court, holding there was only one robbery, reasoned that there was only one course of conduct and only one entity's property taken: "All three acts occurred almost simultaneously, and in each instance it was store money either from a safe or cash register which was taken. "

Similarly, in *Potter*,[125] the defendant entered a convenience store, drew a revolver and said, "'freeze, I want all the money." There were two employees who each gave the defendant money out of two cash registers. The North Carolina Supreme Court in holding there could be only one conviction stated: "When the

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122 *Hubbard v. State*, 2016 Nev.App.Unpub. LEXIS 51, 10-11 (Nev. Ct. App. Apr. 1, 2016).

123 *Allen v. State,* 428 N.E.2d 1237 (Ind. 1981).

124 *People v. Nicks,* 23 Ill. App. 3d 435 (1974).

125 *State v. Potter,* 285 N.C. 238 (1974).

lives of all employees in a store are threatened and endangered by the use or threatened use of a firearm incident to the theft of their employer's money or property, a single robbery with firearms is committed."

Finally, in *Faatea*,[126] the Supreme Court of Hawaii held that there was only one robbery when the defendant and a companion entered a Ramada Inn accounting office, pointed a gun and said "'Everyone down on the floor. This is a holdup,'" and left with $25,000 of the hotel's money. Because there were five employees in the office, the robbers were charged in a five-count indictment. In dismissing the indictment, the court stated:

> Inasmuch as there was but one act of theft here, from one owner, we are constrained to hold that the defendant could be convicted and sentenced for but one robbery offense. The theft was of Ramada Inn property, and each of the five employees named were simply custodians of the property for the benefit of their employer. The threatened use of force was directed against all five for the purpose of effectuating the unlawful taking of their employer's property. It was this threat which converted the taking from theft to robbery. Thus, there was only one aggravated theft (robbery) for which a sentence could be imposed.

Similar results have been reached in a number of cases decided under the federal Bank Robbery Act, where money has been taken from several bank tellers. In *Canty*,[127] the defendants were convicted of four counts of armed robbery, one

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126 *State v. Faatea,* 65 Hawaii 156 (1982).

127 *United States v. Canty,* 152 U.S. App. D.C. 103 (D.C. Cir. 1972).

count for each of the bank tellers robbed. The court, in setting aside these convictions, stated:

> We cannot agree with the Government's position that the robbery of each teller constitutes a separate 'taking' within the meaning of the statute . . . . There is no doubt here that only one transaction took place and that only one bank was robbed . . . . Even assuming that the intent of the statute in this regard is not perfectly clear, the Supreme Court has held that, unless a statutory intent to permit multiple punishments is stated 'clearly and without ambiguity, doubt will be resolved against turning a single transaction into multiple offenses.

The position taken in *Canty* has been reaffirmed in subsequent cases.[128]

2) THE FACTS

Turning now to the facts of this case and evaluating whether a victim had a possessory interest in the items stolen, HOBSON analyzes each separate incident.[129]

10-28-14 El Pollo Loco

HOBSON was found guilty of robbery with use as to five employees of El Pollo Loco, to wit: Jamie Schoebel, Diana Mena, Jose Borja, Jennifer Hernandez, and David Caballero. Jamie was in her office and the employees were in the back, and all of a sudden they all came running up to the office with the robbers behind

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128 *See, United States v. Diggs,* 173 U.S. App. D.C. 95 (D.C. Cir. 1974); *United States v. Cooper,* 164 U.S. App. D.C. 191 (D.C. Cir. 1974); *United States v. Marzano,* 537 F.2d 257 (7th Cir. 1976).

129 See Addendum to this Opening Brief (HOBSON Event Chart).

them.[130] They were all taken up front and told to get on the floor.[131] They gathered the employees outside the office.[132] Jamie was in the office with the robbers.[133] They told Jamie to open the safe.[134] $800-$1,000 was taken from the safe.[135]

There was no evidence that anything was taken other than the money that was taken from the safe that Jamie, alone, as the manager of the store had the ability to open. She was the only one who had possession of that money because she was the only one with the ability to open the safe.

Accordingly, there was only evidence to support conviction for one robbery at the El Pollo Loco, and **Counts 4-7 should be reversed** because they were against employees who had no possessory right to the money stolen.

11-4-14 (Little Caesars)

As to this event, Idania Sacba and Jesus Dorame were the only ones working that night.[136] Jesus was the driver.[137] There was no testimony that Jesus was even present in the store at the time of the robbery. There was a video showing Jesus come into the store from a delivery, but there was no evidence that he was coming

130 HA/11/2529-2530.
131 HA/11/2531.
132 HA/11/2593.
133 HA/11/2595.
134 HA/11/2531.
135 HA/11/2538.
136 HA/14/3360.
137 HA/14/3353.

in when the robbers were still there.[138] Jesus did not testify. Idiana did not have access to the safe.[139] The only thing taken was a cell phone from Idiana.[140] So, there was no evidence that Jesus was even present during the robbery, and there was certainly no evidence (even if Jesus was present) that he had a possessory interest in Idiana's cell phone.

Accordingly, there was only evidence to support conviction for one robbery at Little Caesars of a cell phone from Idiana, and **Count 25 should be reversed.**

11-17-14 (Wendy's)

As to this event, there were five people in the store at the time of the robbery, to wit: Noemy Morroquin, Janie Fannon, Jesus Lopez, Anthony Maddaford, and Juan Mendoza. Noemy was not even an employee. She was sitting in the customer area waiting for Jesus to get off work.[141] Juan was the closing manager.[142] The robbers pushed Juan into the manager's office where the safe was and had him empty the safe into a blue bag.[143] The other employees were in the back about 15 feet from the manager's office.[144] The robbers took between

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138 HA/14/3371.
139 HA/14/3364.
140 HA/14/3366.
141 HA/12/2821-2825.
142 HA/13/2909.
143 HA/13/2915.
144 HA/12/2824-2825.

$200-$800 from the safe.[145] Juan was the only one who had possession of that money because he was the closing manager and the only one with the ability to open the safe.

Accordingly, there was only evidence to support one robbery at this Wendy's and **Counts 39-42 should be reversed**.

11-21-14 (Wendy's)

Jessica Hubbard was working with Jorge Morales, Daniel and Adrianna.[146] HOBSON was only charged with robbery of Jessica and Jorge. Jessica was the manager and was told to go to the office to get the money from the safe.[147] The other employees were held just outside the office door.[148] They got a little less than $200 from the safe.[149] After the robbers got the money from the safe, they left.[150] Jessica assumed that they also took her cell phone.[151] Jessica was the only one with a possessory interest in the money taken from the safe because she was the manager and the only one with the ability to open that safe. Certainly, she was the only one with a possessory interest in her cell phone.

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145 HA/13/2920.
146 HA/13/2963.
147 HA/13/2976.
148 HA/13/2976-2977.
149 HA/13/2977.
150 HA/13/2979.
151 HA/13/2980.

Accordingly, there was only evidence to support one robbery count at this Wendy's and **Count 47** should be reversed.

11-23-14 (El Pollo Loco)

There were four people working at this El Pollo Loco the night of the robbery, to wit: Yanais Silva-Rios, Lauren Lopez, Sergio Bautista, and Luis Lopez. The robbers moved all the employees to the work station that was closest to the office and asked who the manager was.[152] Laura was the manager.[153] They took Laura into the office and told her to open the safe.[154] The robbers also took Laura's phone.[155]

Laura was the only one with a possessory interest in the money taken from the safe because she was the manager and the only one with the ability to open that safe. Certainly, she was the only one with a possessory interest in her cell phone.

Accordingly, there was only evidence to support one robbery count at this El Pollo Loco and **Counts 56, 58, and 59** should be reversed.

11-23-14 (Taco Bell)

There were three people working at this Taco Bell at the time of the robbery, to wit: Vanessa Gonzalez-Aparicio, Holly Hadeed, and Jamie Ward. Vanessa was

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152 HA/11/2634-2636.
153 HA/13/3052.
154 HA/11/2637, 2640.
155 HA/11/2640.

the assistant manager.[156] Jamie escaped and there was no conviction as to Jamie.[157] Vanessa was unable to open the safe, so the only thing that was taken in that robbery was Vanessa's phone which was taken right out of her hands.[158] Nothing was taken from Holly, and Vanessa was the only one with a possessory interest in her phone.

Accordingly, there was only evidence to support one robbery count at this Taco Bell and **Count 66** should be reversed.

11-24-14 (Popeyes)

There were five people at this Popeyes when it was robbed, to wit: Alma Gomez, Angelica Abrego, Gabriela Oyoque, Rafael Velasquez-Borragan, and Jose Espinoza. When the robbers found out Alma was the manager, they told her to go in the office and put all the money in the blue bag.[159] All the employees followed to the vault and then all but the manager (Alma) were told to get on the floor.[160] Nothing was taken from the other employees. Alma was the only one with a possessory interest in the money taken from the vault because she was the manager and the only one with the ability to open it.

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156 HA/13/3122.
157 HA/13/3127.
158 HA/13/3130, 3130, 3131; HA/14/3142-3143.
159 HA/13/3101.
160 HA/14/3174-3175.

Accordingly, there was only evidence to support one robbery count at this Popeyes and **Counts 74, 76, 78, and 80** should be reversed.

3) CONCLUSION

For the foregoing reasons, the following counts should be reversed because they were against people who had no possessory interest in the items stolen:

4-7, 25, 39-42, 47, 56, 58, 59, 66, 74, 76, 78, and 80.

As to Count 25, it should be reversed for the additional reason that there was no evidence that person was even present in the store at the time that the robbery occurred.

F. NO EVIDENCE OF CONSPIRACY OR ATTEMPT (COUNTS 81-82)

(Standard of Review: de novo[161])

Claims of convictions which are supported by insufficient evidence are reviewed de novo.[162] "The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged".[163]

Counts 81 and 82 are for conspiracy and attempt to commit robbery of a Taco Bell on November 25, 2014. In order to prove a conspiracy, the state must

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161 *United States v. Erskine,* 355 F.3d 1161, 1166 (9th Cir. 2004).

162 *United States v. Shipsey,* 363 F.3d 962, 971 n.8 (9th Cir. 2004).

163 *Apprendi v. New Jersey*, 530 U.S. 466, 477 (U.S. 2000).

prove that two or more people agreed to take property by force or fear.[164] In order to prove an attempt, the state must prove that there was performance of some act towards commission of the crime.[165] The act must go beyond mere devising or arranging the means and measures necessary for the commission of the offense. There must be direct movement toward the commission of the crime.[166]

In connection with Counts 81 and 82, the testimony of Donte Johns who was driving the car at the time the arrest was made, conclusively established that there was no agreement to rob the Taco Bell, and no movement toward commission of the crime by HOBSON.

Johns testified that on the night of the arrest, they went to get something to eat. They first went to Burger King, but since it was crowded, they went to Taco Bell.[167] They parked near the Taco Bell and were just sitting in the car listening to music for about 20-30 minutes.[168] During that 20-30 minute period they had a discussion about possibly robbing Taco Bell.[169] At some point, Brandon Starr who had been sitting in the back seat got out of the car and asked Donte Johns (driver)

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164 *Garcia v. State,* 121 Nev. 327, 343 (2005).

165 *Mathis v. State,* 82 Nev. 402, 419 (1966); *Crawford v. State,* 107 Nev. 345, 351 (1991).

166 *State. v. Charley Lung,* 21 Nev. 209 (1891); *State v. Dawson,* 45 Nev. 255, 257 (1921).

167 HA/16/3702.

168 HA/16/3704.

169 HA/16/3704.

to pop the trunk.[170] At that point, Johns did not know why Brandon was getting out of the car.[171] HOBSON was still sitting in the right front passenger seat of the car.[172] As soon as Starr went to the trunk of the car, the police pulled in and arrested everyone.[173]

That testimony absolutely established that there was no agreement among the three men to rob anything, and there was certainly no action by HOBSON toward commission of any crime. He was merely sitting in the right front passenger seat listening to music. No one in the car knew why Starr got out and wanted the trunk opened.

For the foregoing reasons, Counts 81 and 82 for conspiracy and attempted robbery of the Taco Bell should be reversed.

VIII

CONCLUSION

HOBSON's convictions should be reversed because he (1) was denied a jury selected from a fair cross section of the community, and (2) the prosecution interfered with HOBSON's ability to prepare his case by intimidating a key witness. **Counts 33-36** should be dismissed because the court erred in refusing to

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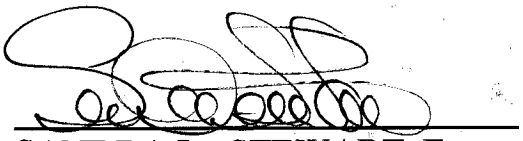
170 HA/16/3706.
171 HA/16/3706.
172 HA/14/3231.
173 HA/16/3707.

grant HOBSON's habeas petition to dismiss those counts on the ground that he had not received adequate notice of the state's intent to hold proceedings before the grand jury as to those counts. All kidnaping-related counts **(55, 63, 65, 71, 73, 75, 77 and 79)** should be reversed because the movement of the victims was incident to the robberies. **Counts 4-7, 25, 39-42, 47, 56, 58, 59, 66, 74, 76, 78 and 80** should be reversed because the alleged victims of those robbery counts had no possessory interest in the items stolen and as to **Count 25**, there was no proof that "victim" was even present when the robbery took place. **Counts 81 and 82** for conspiracy and attempt should be reversed because there was no evidence of an agreement and no overt act by HOBSON toward commission of the alleged crime.

Respectfully submitted,

Dated this 24th day of April, 2017.



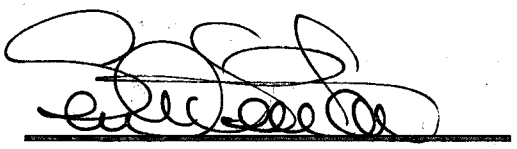
SANDRA L. STEWART, Esq.
Attorney for Appellant

IX

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this opening brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript of appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure. I further certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word 14.4.3 For Mac with Times New Roman 14-point. I further certify that this opening brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because it contains only 9,629 words.

DATED: April 24, 2017



SANDRA L. STEWART, Esq.
Appellate Counsel for
TONY HOBSON

X

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the:

APPELLANT'S APPENDIX

by mailing a copy on March 24, 2017 via first class mail, postage thereon fully prepaid, to the following:

TONY HOBSON
INMATE NO. 1165963
ELY STATE PRISON
POST OFFICE BOX 1989
ELY, NV 89301

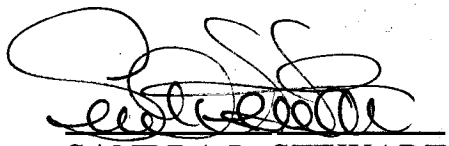
and by mailing a copy on April 24, 2017 via first class mail, postage thereon fully prepaid, to the following:

STEVEN B. WOLFSON, ESQ. (w/CD of Appendix)
CLARK COUNTY DISTRICT ATTORNEY
200 LEWIS AVENUE
LAS VEGAS, NV 89155-2212

I further certify that I served a copy of the:

APPELLANT'S OPENING BRIEF

by mailing a copy on April 24, 2017 via first class mail, postage thereon fully prepaid, to Messrs. Hobson and Wolfson at the addresses listed above.



SANDRA L. STEWART

ADDENDUM

HOBSON EVENT CHART

DATE	COUNT	ADDRESS (BUSINESS)	VICTIM	T	CHARGE	VERDICT	SENTENCE	APPENDIX PAGE
10-28-2014	01	4011 E CHARLESTON (EPL)			BURGLARY W/USE	GUILTY	12-84	4627-4657, 4720, 4792-4802
10-28-2014	02	4011 E CHARLESTON (EPL)			CONSPIRACY-ROBBERY	GUILTY	12-36	4627-4657, 4720, 4792-4802
10-28-2014	03	4011 E CHARLESTON (EPL)	SCHOEBEL, JAMIE	*	ROBBERY W/USE	GUILTY	24-84 +12-60	2517, 4627-4657, 4720, 4792-4802
10-28-2014	04	4011 E CHARLESTON (EPL)	MENA, DIANA	*	ROBBERY W/USE	GUILTY	24-84 +12-60	2586, 4627-4657, 4720, 4792-4802
10-28-2014	05	4011 E CHARLESTON (EPL)	BORJA, JOSE	*	ROBBERY W/USE	GUILTY	24-84 +12-60	2563, 4627-4657, 4720, 4792-4802
10-28-2014	06	4011 E CHARLESTON (EPL)	HERNANDEZ, JENNIFER		ROBBERY W/USE	GUILTY	24-84 +12-60	4627-4657, 4720, 4792-4802
10-28-2014	07	4011 E CHARLESTON (EPL)	CABALLERO, DAVID		ROBBERY W/USE	GUILTY	24-84 +12-60	4627-4657, 4720, 4792-4802
10-29-2014	08	4581 E. CHARLESTON (7-11)			BURGLARY W/USE	GUILTY	12-84	4627-4657, 4665, 4720, 4792-4802
10-29-2014	09	4581 E. CHARLESTON (7-11)			CONSPIRACY-ROBBERY	GUILTY	12-36	4627-4657, 4665, 4720, 4792-4802
10-29-2014	10	4581 E. CHARLESTON (7-11)	BUTLER, DARNELL	*	ROBBERY W/USE	GUILTY	24-84 +12-60	2602, 4627-4657, 4665, 4720, 4792-4802
11-01-2014	11	6130 W. LAKE MEAD (PH)			BURGLARY W/USE	GUILTY	12-84	4627-4657, 4720, 4792-4802
11-01-2014	12	6130 W. LAKE MEAD (PH)			CONSPIRACY-ROBBERY	GUILTY	12-36	4627-4657, 4720, 4792-4802
11-01-2014	13	6130 W. LAKE MEAD (PH)	POOLE, SHANNON	*	ROBBERY W/USE	GUILTY	24-84 +12-60	2649, 4627-4657, 4720, 4792-4802
11-01-2014	14	6130 W. LAKE MEAD (PH)	HEFFNER, DANIEL		ROBBERY W/USE	GUILTY	24-84 +12-60	4627-4657, 4720, 4792-4802
11-01-2014	15	6130 W. LAKE MEAD (PH)	THIMAKSI, GEORGE		ROBBERY W/USE	GUILTY	24-84 +12-60	4627-4657, 4720, 4792-4802

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11-03-2014	16	5015 E. SAHARA (PH)			BURGLARY W/USE	GUILTY	12-84	4627-4657, 4720, 4792-4802
11-03-2014	17	5015 E. SAHARA (PH)			CONSPIRACY-ROBBERY	GUILTY	12-36	4627-4657, 4720, 4792-4802
11-03-2014	18	5015 E. SAHARA (PH)	FARAONE, TREVOR	*	ROBBERY W/USE	GUILTY	24-84 +12-60	2676, 4627-4657, 4720, 4792 4802
11-03-2014	19	5015 E. SAHARA (PH)	CARMICHAEL, ASHLEY		ROBBERY W/USE	GUILTY	24-84 +12-60	4627-4657, 4720, 4792-4802
11-03-2014	20	5015 E. SAHARA (PH)	BAGWELL, THOMAS		ROBBERY W/USE	GUILTY	24-84 +12-60	4627-4657, 4720, 4792-4802
11-03-2014	21	5015 E. SAHARA (PH)	BROWN, GUY	*	ROBBERY W/USE	GUILTY	24-84 +12-60	2839, 4627-4657, 4720, 4792 4802
11-04-2014	22	4258 E. CHARLESTON (LC)			BURGLARY W/USE	GUILTY	12-84	4627-4657, 4720, 4792-4802
11-04-2014	23	4258 E. CHARLESTON (LC)			CONSPIRACY-ROBBERY	GUILTY	12-36	4627-4657, 4720, 4792-4802
11-04-2014	24	4258 E. CHARLESTON (LC)	SACBA, IDANIA	*	ROBBERY W/USE	GUILTY	24-84 +12-60	3356, 4627-4657, 4720, 4792 4802
11-04-2014	25	4258 E. CHARLESTON (LC)	DORAME, JESUS		ROBBERY W/USE	GUILTY	24-84 +12-60	4627-4657, 4720, 4792-4802
11-15-2014	26	4505 E. BONANZA (POPEYES)			BURGLARY W/USE	NOT GUILTY		4627-4657, 4668, 4717, 4792 4802
11-15-2014	27	4505 E. BONANZA (POPEYES)			CONSPIRACY-ROBBERY	NOT GUILTY		4627-4657, 4668, 4717, 4792 4802
11-15-2014	28	4505 E. BONANZA (POPEYES)	RUIZ, JERONIMO	*	ROBBERY W/USE	NOT GUILTY		2856, 4627-4657, 4668, 4717, 4792-4802
11-15-2014	29	4505 E. BONANZA (POPEYES)	TAINGO, JUAN		ROBBERY W/USE	NOT GUILTY		4627-4657, 4668, 4717, 4792 4802
11-15-2014	30	4505 E. BONANZA (POPEYES)	ORNELAS, ANGELICA		ROBBERY W/USE	NOT GUILTY		4627-4657, 4668, 4717, 4792 4802
11-15-2014	31	4505 E. BONANZA (POPEYES)	VASQUEZ, JOHANA		ROBBERY W/USE	NOT GUILTY		4627-4657, 4668, 4717, 4792 4802
11-15-2014	32	4505 E. BONANZA (POPEYES)	ROSALES, KARINA	*	ROBBERY W/USE	NOT GUILTY		2893, 4627-4657, 4668, 4717, 4792-4802

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11-17-2014	33	2599 S. NELLIS (BK)			BURGLARY W/USE	GUILTY	12-84	4627-4657, 4721, 4792-4802
11-17-2014	34	2599 S. NELLIS (BK)			CONSPIRACY-ROBBERY	GUILTY	12-36	4627-4657, 4721, 4792-4802
11-17-2014	35	2599 S. NELLIS (BK)	COMBS, CORNELL		ATTEMPT-ROBBERY	GUILTY	12-60+12-60	4627-4657, 4721, 4792-4802
11-17-2014	36	2599 S. NELLIS (BK)	DE MASON, SONIA	*	ATTEMPT-ROBBERY	GUILTY	12-60+12-60	2987, 4627-4657, 4721, 4792-4802
11-17-2014	37	990 N. NELLIS (WENDY'S)			BURGLARY W/USE	GUILTY	12-84	4627-4657, 4721, 4792-4802
11-17-2014	38	990 N. NELLIS (WENDY'S)			CONSPIRACY-ROBBERY	GUILTY	12-36	4627-4657, 4721, 4792-4802
11-17-2014	39	990 N. NELLIS (WENDY'S)	MORROQUIN, NOEMY	*	ROBBERY W/USE	GUILTY	24-84 +12-60	2820, 4627-4657, 4721, 4792-4802
11-17-2014	40	990 N. NELLIS (WENDY'S)	FANNON, JANIE		ROBBERY W/USE	GUILTY	24-84 +12-60	4627-4657, 4721, 4792-4802
11-17-2014	41	990 N. NELLIS (WENDY'S)	LOPEZ, JESUS		ROBBERY W/USE	GUILTY	24-84 +12-60	4627-4657, 4721, 4792-4802
11-17-2014	42	990 N. NELLIS (WENDY'S)	MADDAFORD, ANTHONY		ROBBERY W/USE	GUILTY	24-84 +12-60	4627-4657, 4721, 4792-4802
11-17-2014	43	990 N. NELLIS (WENDY'S)	MENDOZA, JUAN	*	ROBBERY W/USE	GUILTY	24-84 +12-60	2907, 4627-4657, 4721, 4792-4802
11-21-2014	44	7150 W. LAKE MEAD (WENDY'S)			BURGLARY W/USE	GUILTY	12-84	4627-4657, 4721, 4792-4802
11-21-2014	45	7150 W. LAKE MEAD (WENDY'S)			CONSPIRACY-ROBBERY	GUILTY	12-36	4627-4657, 4721, 4792-4802
11-21-2014	46	7150 W. LAKE MEAD (WENDY'S)	HUBBARD, JESSICA	*	ROBBERY W/USE	GUILTY	24-84 +12-60	2966, 4627-4657, 4721, 4792-4802
11-21-2014	47	7150 W. LAKE MEAD (WENDY'S)	MORALES, JORGE		ROBBERY W/USE	GUILTY	24-84 +12-60	4627-4657, 4721, 4792-4802
11-22-2014	48	60 NO. STEPHANIE (POPEYES)			BURGLARY W/USE	GUILTY	12-84	4627-4657, 4721, 4792-4802
11-22-2014	49	60 NO. STEPHANIE (POPEYES)			CONSPIRACY-ROBBERY	GUILTY	12-36	4627-4657, 4721, 4792-4802
11-22-2014	50	60 NO. STEPHANIE (POPEYES)	URIBE, ALEJANDRE	*	ROBBERY W/USE	GUILTY	24-84 +12-60	3000, 4627-4657, 4721, 4792-4802
11-22-2014	51	60 NO. STEPHANIE (POPEYES)	COX, SKYLER	*	ROBBERY W/USE	GUILTY	24-84 +12-60	3027, 4627-4657, 4721, 4792-4802

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11-23-2014	52	7380 W. CHEYENNE (EPL)			BURGLARY W/USE	GUILTY	12-84	4627-4657, 4721, 4792-4802
11-23-2014	53	7380 W. CHEYENNE (EPL)			CONSPIRACY-KIDNAPING 1	NOT GUILTY		4627-4657, 4673, 4721, 4792 4802
11-23-2014	54	7380 W. CHEYENNE (EPL)			CONSPIRACY-ROBBERY	GUILTY	12-36	4627-4657, 4721, 4792-4802
11-23-2014	55	7380 W. CHEYENNE (EPL)	SILVA-RIOS, YANAIS	*	FALSE IMPRISON W/USE	GUILTY	12-36	2625, 4627-4657, 4673, 4721, 4792-4802
11-23-2014	56	7380 W. CHEYENNE (EPL)	SILVA-RIOS, YANAIS	*	ROBBERY W/USE	GUILTY	24-84 +12-60	2625, 4627-4657, 4721, 4792 4802
11-23-2014	57	7380 W. CHEYENNE (EPL)	LOPEZ, LAUREN (LAURA)	*	ROBBERY W/USE	GUILTY	24-84 +12-60	3051, 4627-4657, 4721, 4792 4802
11-23-2014	58	7380 W. CHEYENNE (EPL)	BAUTISTA, SERGIO		ROBBERY W/USE	GUILTY	24-84 +12-60	4627-4657, 4721, 4792-4802
11-23-2014	59	7380 W. CHEYENNE (EPL)	LOPEZ, LUIS		ROBBERY W/USE	GUILTY	24-84 +12-60	4627-4657, 4721, 4792-4802
11-23-2014	60	9480 W. LAKE MEAD (TB)			BURGLARY W/USE	GUILTY	12-84	4627-4657, 4722, 4792-4802
11-23-2014	61	9480 W. LAKE MEAD (TB)			CONSPIRACY-ROBBERY	GUILTY	12-36	4627-4657, 4722, 4792-4802
11-23-2014	62	9480 W. LAKE MEAD (TB)			CONSPIRACY-KIDNAPING	NOT GUILTY		4627-4657, 4674, 4681, 4722, 4792-4802
11-23-2014	63	9480 W. LAKE MEAD (TB)	GONZALEZ-APARICIO, VANESSA	*	KIDNAPING 2 W/USE	GUILTY	24-84 +12-60	3122, 4627-4657, 4722, 4792 4802
11-23-2014	64	9480 W. LAKE MEAD (TB)	GONZALEZ-APARICIO, VANESSA	*	ROBBERY W/USE	GUILTY	24-84 +12-60	3122, 4627-4657, 4722, 4792 4802
11-23-2014	65	9480 W. LAKE MEAD (TB)	HADEED, HOLLY	*	KIDNAPING 2 W/USE	GUILTY	24-84 +12-60	3149, 4627-4657, 4722, 4792 4802
11-23-2014	66	9480 W. LAKE MEAD (TB)	HADEED, HOLLY	*	ROBBERY W/USE	GUILTY	24-84 +12-60	3149, 4627-4657, 4722, 4792 4802
11-23-2014	67	9480 W. LAKE MEAD (TB)	WARD, JAMIE		ATTEMPT-KIDNAP 1 W/USE	NOT GUILTY		4627-4657, 4675, 4682, 4722, 4792-4802

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11-24-2014	68	6121 VEGAS (POPEYES)			BURGLARY W/USE	GUILTY	12-84	4627-4657, 4722, 4792-4802
11-24-2014	69	6121 VEGAS (POPEYES)			CONSPIRACY-ROBBERY	GUILTY	12-36	4627-4657, 4722, 4792-4802
11-24-2014	70	6121 VEGAS (POPEYES)			CONSPIRACY-KIDNAP 1	NOT GUILTY		4627-4657, 4676, 4792-4802
11-24-2014	71	6121 VEGAS (POPEYES)	GOMEZ, ALMA	*	FALSE IMPRISONMENT	GUILTY	364-DAYS	3088, 4627-4657, 4722, 4792 4802
11-24-2014	72	6121 VEGAS (POPEYES)	GOMEZ, ALMA	*	ROBBERY W/USE	GUILTY	24-84 +12-60	3088, 4627-4657, 4722, 4792 4802
11-24-2014	73	6121 VEGAS (POPEYES)	ABREGO, ANGELICA		FALSE IMPRISONMENT	GUILTY	364 DAYS	4627-4657, 4676, 4682, 4722, 4792-4802
11-24-2014	74	6121 VEGAS (POPEYES)	ABREGO, ANGELICA		ROBBERY W/USE	GUILTY	24-84 +12-60	4627-4657, 4722, 4792-4802
11-24-2014	75	6121 VEGAS (POPEYES)	OYOQUE, GABRIELA		FALSE IMPRISONMENT	GUILTY	364 DAYS	4627-4657, 4677, 4682, 4722, 4792-4802
11-24-2014	76	6121 VEGAS (POPEYES)	OYOQUE, GABRIELA		ROBBERY W/USE	GUILTY	24-84 +12-60	4627-4657, 4722, 4792-4802
11-24-2014	77	6121 VEGAS (POPEYES)	VELASQUEZ-BORRAGAN, RAFAEL	*	FALSE IMPRISONMENT	GUILTY	364 DAYS	4657, 4677, 4682, 4722, 4792 4802
11-24-2014	78	6121 VEGAS (POPEYES)	VELASQUEZ-BORRAGAN, RAFAEL	*	ROBBERY W/USE	GUILTY	24-84 +12-60	3167, 4627-4657, 4722, 4792 4802
11-24-2014	79	6121 VEGAS (POPEYES)	ESPINOZA, JOSE		FALSE IMPRISONMENT	GUILTY	364 DAYS	4627-4657, 4678, 4682, 4722, 4792-4802
11-24-2014	80	6121 VEGAS (POPEYES)	ESPINOZA, JOSE		ROBBERY W/USE	GUILTY	24-84 +12-60	4627-4657, 4722, 4792-4802
11-25-2014	81	3264 S. NELLIS (TB)			CONSPIRACY-ROBBERY	GUILTY	12-36	4627-4657, 4722, 4792-4802
11-25-2014	82	3264 S. NELLIS (TB)			ATTEMPT-ROBBERY W/USE	GUILTY	12-60 +12-60	4627-4657, 4722, 4792-4802

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