IN THE SUPREME COURT OF THE STATE OF NEVADA

TONY HOBSON,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 71419

RESPONDENT'S ANSWERING BRIEF

Appeal From Judgment of Conviction
Eighth Judicial District Court, Clark County

SANDRA L. STEWART, ESQ.
Nevada Bar #006834
140 Rancho Maria Street
Las Vegas, Nevada 89148
(702) 363-4656

Counsel for Appellant

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

ADAM PAUL LAXALT
Nevada Attorney General
Nevada Bar #012426
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Respondent

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ROUTING STATEMENT

This appeal is not presumptively assigned to the Court of Appeals pursuant to NRAP 17(2)(A) because it is an appeal of Category A or B felony convictions.

STATEMENT OF THE ISSUES

I. Whether Hobson received adequate notice of the grand jury indictment on counts 33-36.

II. Whether the jury venire adequately represented the community.

III. Whether the State did not interfere with witnesses.

IV. Whether the State presented sufficient evidence to sustain Hobson's kidnapping convictions.

V. Whether the State presented sufficient evidence to sustain Hobson's robbery convictions.

VI. Whether the State presented sufficient evidence to sustain Hobson's Conspiracy to Commit Robbery and Attempt Robbery with Use of a Deadly Weapon convictions.

STATEMENT OF THE CASE

On December 12, 2014, Appellant Tony Hobson was indicted on twelve charges, arising from the November 24, 2014, robbery of a Popeye's Chicken. Count 1 – Conspiracy to Commit Robbery; Count 2 – burglary while in possession of a firearm; Count 3 – First Degree Kidnapping; Count 4 – Robbery with Use of a Deadly Weapon; Count 5 – First Degree Kidnapping; Count 6 – Robbery with Use of a Deadly Weapon; Count 7 – First Degree Kidnapping; Count 8 – Robbery with Use of a Deadly Weapon; Count 9 – First Degree Kidnapping; Count 10 – Robbery with Use of a Deadly Weapon; Count 11 – First Degree Kidnapping; Count 12 – Robbery with Use of a Deadly Weapon. 1 AA 81-85.

On December 22, 2014, Hobson was arraigned on all 12 counts to which he pleaded not guilty. 1 AA 140.

On February 20, 2015, a Superseding Indictment was filed containing 82 counts. 3 AA 695. The Grand Jury met twice, once on January 22, 2015 and for a second time on February 19, 2015 to hear testimony and deliberate on this Superseding Indictment. 1 AA 202, 2 AA 456. Those charges included 13 counts of Burglary while in Possession of a Deadly Weapon, 14 counts of Conspiracy to Commit Robbery, 40 counts of Robbery with Use of a Deadly Weapon, 3 Counts of

Attempt Robbery with Use of a Deadly Weapon, 3 counts of Conspiracy to Commit Kidnapping, 8 counts of first Degree Kidnapping with Use of a Deadly Weapon, and 1 count of Attempt First Degree Kidnapping with Use of a Deadly Weapon. 2 AA 378-428.

On February 25, 2015, Hobson was arraigned on the Superseding Indictment. 4 AA 759-761. At this arraignment, Defendant pleaded not guilty again to the 12 counts carried over from the initial Indictment to the Superseding Indictment, as well as the additional 70 counts included in the Superseding Indictment. 4 AA 762. The Grand Jury Transcripts clearly indicated that counts 33-36 had not yet been deliberated upon, but they were inadvertently included in the indictment and therefore the arraignment. 3 AA 643.

On March 18, 2015 Hobson filed a pre-trial Petition for Writ of Habeas Corpus alleging that marginal or slight evidence of the crimes did not exist, and therefore he was erroneously indicted on all charges. 4 AA 791.

In its April 17, 2015 reply to Hobson's pre-trial Petition, the State noted that Hobson had not yet been indicted on counts 33, 34, 35, and 36. 4 AA 849. Accordingly, the State presented to the grand jury for a fourth time on April 23, 2015. 4 AA 896. At that time the Grand Jury returned a true bill on the Second Superseding Indictment, which included counts 33, 34, 35, and 36, as well as all of

the previous counts, which had been re-numbered to appear in chronological order. 4 AA 912.

On May 13, 2015, Hobson was arraigned on counts 33, 34, 35, and 36 to which he pleaded not guilty. 5 AA 1056.

Hobson's pre-trial Petition for Writ of Habeas Corpus was heard and denied on May 18, 2015. 5 AA5 AA 1131. Findings of Fact, Conclusions of Law, and Order were filed on April 13, 2016. 7 AA 1470.

A 13-day jury trial commenced on May 2, 2016. 7 AA 1603. On May 23, 2016 the jury returned a verdict finding Hobson guilty on 72 counts. 20 AA 4627-4657.

Defendant was sentenced on September 8, 2016 and a Judgment of Conviction was entered on September 20, 2016 in which Defendant adjudicated guilty on COUNTS 1, 8, 11, 16, 22, 33, 37, 44, 48, 52, 60, and 68 BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony); COUNTS 2, 9, 12, 17, 23, 34, 38, 45, 49, 54, 61, 69 and 81 CONSPIRACY TO COMMIT ROBBERY (Category B Felony); COUNTS 3, 4, 5, 6, 7, 10, 13, 14, 15, 18, 19, 20, 21, 24, 25, 39, 40, 41, 42, 43, 46, 47, 50, 51, 56, 57, 58, 59, 64, 66, 72, 74, 76, 78 and 80 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony); COUNTS 35, 36, and 82 ATTEMPT ROBBERY WITH USE OF A DEADLY (Category B Felony); COUNT 55 FALSE IMPRISONMENT WITH USE OF A DEADLY WEAPON (Category B Felony); COUNTS 63 and 65 SECOND

DEGREE KIDNAPPING WITH USE OF A DEADLY WEAPON (Category B Felony); COUNTS 71, 73, 75, 77 and 79 FALSE IMPRISONMENT (Gross Misdemeanor). 20 AA 4713-4802.

Defendant was sentenced as follows: As to COUNT 1 - 12-84 months; as to COUNT 2 – 12-36 months; as to COUNT 3 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; as to COUNT 4 -24-84 months; plus a CONSECUTIVE 12-60 months for use of a deadly weapon; as to COUNT 5 – 24-84 months; plus a CONSECUTIVE 12-60 months for use of a deadly weapon; as to COUNT 6 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; as to COUNT 7 – 24-84 months; plus a CONSECUTIVE term 12-60 months for use of a deadly weapon; COUNTS 1- 7 CONCURRENT with EACH OTHER; COUNT 8 – 12-84 months; as to COUNT 9 – 12-36 months; as to COUNT 10 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; COUNTS 8-10 CONCURRENT with EACH OTHER and CONSECUTIVE to COUNT 7; as to COUNT 11 – 12-84 months; as to COUNT 12 – 12-36 months; as to COUNT 13 – 24-84 months; plus a CONSECUTIVE term of a 12-60 months for use of a deadly weapon; as to COUNT 14 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; as to COUNT 15 – 24-84 months; plus a CONSECUTIVE term of 12 to 60 months for use of a deadly weapon; COUNTS 11-15 CONCURRENT with EACH OTHER and

CONSECUTIVE to COUNT 10; as to COUNT 16 – 12-84 months; as to COUNT 17 – 12-36 months; as to COUNT 18 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; as to COUNT 19 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; as to COUNT 20 – 24-84 months; plus a CONSECUTIVE term 12-60 months for use of a deadly weapon; as to COUNT 21 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; COUNTS 16-21 CONCURRENT with EACH OTHER and CONSECUTIVE to COUNT 15; as to COUNT 22 – 12-84 months; as to COUNT 23 – 12-36 months; as to COUNT 24 – 24-84 months; plus a CONSECUTIVE term 12-60 months for use of a deadly weapon; as to COUNT 25 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; COUNTS 22-25 CONCURRENT with EACH OTHER and CONSECUTIVE to COUNT 21; as to COUNT 33 – 12-84 months; as to COUNT 34 – 12-36 months; as to COUNT 35 – 24-84 months; plus a CONSECUTIVE term of a MINIMUM 12-60 months for use of a deadly weapon; as to COUNT 36 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; COUNTS 33-36 CONCURRENT with EACH OTHER and CONSECUTIVE to COUNT 25; as to COUNT 37 – 12-84 months; as to COUNT 38 – 12-36 months; as to COUNT 39 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; as to COUNT 40 – 24-84 months; plus

a CONSECUTIVE term of 12-60 months for use of a deadly weapon; as to COUNT 41 -24-84 months; plus a CONSECUTIVE term of 12-60 month for use of a deadly weapon; as to COUNT 42 – 24-84 months; plus a CONSECUTIVE term of a 12-60 months for use of a deadly weapon; as to COUNT 43 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; COUNTS 37-43 CONCURRENT with EACH OTHER and CONSECUTIVE to COUNT 36; as to COUNT 44 – 12-84 months; as to COUNT 45 – 12-36 months; as to COUNT 46 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; as to COUNT 47 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; COUNTS 44-47 CONCURRENT with EACH OTHER and CONSECUTIVE to COUNT 43; as to COUNT 48 – 12-84 months; as to COUNT 49 – 12-36 months; as to COUNT 50 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; as to COUNT 51 - 24-84 months; plus a CONSECUTIVE term of 12-60 month for use of a deadly weapon; COUNTS 48-51 CONCURRENT with EACH OTHER and CONSECUTIVE to COUNT 47; as to COUNT 52 – 12-84 months; as to COUNT 54 -12-36 months; as to COUNT 55 - 12-36 months; as to COUNT 56 – 24-84 months; plus a CONSECUTIVE term 12-60 months for use of a deadly weapon; as to COUNT 57 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; as to COUNT 58 – 24-84 months; plus a CONSECUTIVE

term of 12-60 months for use of a deadly weapon; as to COUNT 59 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; COUNTS 52-59 CONCURRENT with EACH OTHER and CONSECUTIVE to COUNT 51; as to COUNT 60 – 12-84 months; as to COUNT 61 – 12-36 months; as to COUNT 63 – 24-84 months; plus a CONSECUTIVE term of a 12-60 month for use of a deadly weapon; as to COUNT 64 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; as to COUNT 65 – 24-84 months; plus a CONSECUTIVE term of a MINIMUM of 12-60 months for use of a deadly weapon; as to COUNT 66 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; COUNTS 60-66 CONCURRENT with EACH OTHER and CONSECUTIVE to COUNT 59; as to COUNT 68 - 12-84 months; as to COUNT 69 – 12-36 months; as to COUNT 71 - 364 days in the Clark County Detention Center; as to COUNT 72 - to 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; as to COUNT 73 – 24-84 months; plus a CONSECUTIVE term of a 12-60 months for use of a deadly weapon; as to COUNT 74 – 24-84 months; plus a CONSECUTIVE term of 12-60 month for use of a deadly weapon; as to COUNT 75 - 364 days in the Clark County Detention Center; as to COUNT 76 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; as to COUNT 77 – 364 days in the Clark County Detention Center; as to COUNT 78 – 24-84 months; plus a CONSECUTIVE term of 12-60

months for use of a deadly weapon; as to COUNT 79 – 364 day in the Clark County Detention Center; as to COUNT 80 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; COUNTS 68-80 CONCURRENT with EACH OTHER and CONSECUTIVE to COUNT 66; as to COUNT 81 - 12-36 months; as to COUNT 82 – 24-84 months; plus a CONSECUTIVE term of 12-60 months for use of a deadly weapon; COUNTS 81 and 82 CONCURRENT with EACH OTHER and CONSECUTIVE to COUNT 80; with SIX HUNDRED FIFTY-FOUR (654) DAYS credit for time served. The aggregate total sentence is 444 to 1,824 months in the Nevada Department of Corrections. 20 AA 4750-4760.[1]

Hobson filed a Notice of Appeal on October 5, 2016. Hobson filed the instant Opening Brief (AOB) on April 26, 2017. The State herein responds.

STATEMENT OF THE FACTS

Overview

Hobson and his co-conspirator, Brandon Starr, committed 13 robberies over the course of approximately two months.[2] A third person, Hobson's brother Donte

[1] A clerical error was later noted, and an Amended Judgment of Conviction was filed January 9, 2017 reflecting that he was sentenced as to Count 36- sixty (60) months with a minimum parole eligibility of twelve (12) months, plus a consecutive sentence of sixty (60) months with a minimum parole eligibility of twelve (12) months. The error did not affect his aggregate sentence.

[2] The State proceeded under a theory of conspiracy liability. 11 AA 4351. Because the assailants are each liable for the actions of the other, they are not distinguished

Johns was also involved in some of the incidents. After several robberies, Metro started investigating the so-called "windbreaker series." 14 AA 3215. Metro identified a silver or gray Dodge Charger as a suspect vehicle in the series. 14 AA 3215. The three men were apprehended on November 25, 2014, in a silver Dodge Charger in a Taco Bell parking lot, before they were able to rob the Taco Bell. 14 AA 3216, 3220. For the sake of brevity, only the facts of the events which led to the challenged convictions are included below, along with relevant facts from the trial proceedings.

Offenses

Event 1

On October 28, 2014, Hobson and Star robbed an El Pollo Loco while five employees were finishing their shifts. 11 AA 2519, 11 AA 2520-2522. Wearing gloves on their hands and with bandanas covering their faces, one assailant broke a window in the front of the restaurant while the other waited at the back door to prevent any employees from leaving. 11 AA 2533-2534, 11 AA 2528-2529. One employee, Diana Mena, ran towards the manager's office screaming in Spanish that they were being robbed. 11 AA 2530. Hobson and Starr demanded that the employees in the lobby get on the ground while they ordered Jamie Schoebel, who

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or identified by name throughout the analysis. Sharma v. State, 118 Nev. 648, 56 P.3d 868 (2002), 19 AA 4577.

was in the manager's office, to open the safe. 11 AA 2531. One of the assailants pointed the gun at employee Jose Caballero's head and said he would kill Jose if Jamie did not open the safe. 11 AA 2536. When Jamie opened the safe, one of the robbers reached into the safe to take cash and walked out with it in hand. 11 AA 2536.

Event 5

On November 4, 2014, Hobson and Starr robbed a Little Caesar's between 11 and 11:30 PM. 14 AA 3359. Idania Sacba was in an office towards the back of the restaurant completing paperwork, while Jesus Dorame was entering and leaving the store periodically to make deliveries. 14 AA 3360. Sacba heard unfamiliar voices in the front of the restaurant and as she stood up to leave, one of the assailants was already standing next to her with a gun. 14 AA 3363. The robber was wearing a black jacket and a mask over his face when he took Sacba's cell phone and forced her to the front of the store where he demanded that she open the safe. 14 AA 3362, 14 AA 3364. Surveillance footage showed that Dorame was in the restaurant while the robbers were there. 14 AA 3368, 3371. Sacba was not able to open the safe and eventually the assailant gave up. 14. AA 3364. The two assailants sent Sacba back to the office. 14 AA 3366. After the assailants left, Sacba called 911. 14 AA 3368.

Event 8

November 17, 2014, Hobson and Starr robbed a Wendy's where four employees and one employee, Jesus Lopez's, wife, Noemy Marroquin, were present. 12 AA 2821.[3] They entered the Wendy's dressed in black, wearing gloves, with their faces covered. 12 AA 2831. Marroquin was sitting in the front lobby of the restaurant when an assailant lifted her up by her sweater and forced her into the back. 12 AA 2824. The assailants forced Marroquin and the four employees to get on the floor in the back of the restaurant, a few feet outside the manager's office. 12 AA 2826. Manager Juan Mendoza was in the manager's office when the assailants forced Marroquin to the back. 13 AA 2911. One of the assailants held a gun to Marroquin's head while the other pointed a gun at Mendoza and ordered him to open the safe. 13 AA 2913. One of the assailants pistol-whipped Mendoza causing an injury to his forehead, right before Mendoza opened the safe. 13 AA 2915-2916. Initially the assailants ordered Mendoza to load the money from the safe into a blue bag, but then pushed Mendoza out of the way saying he was "too slow." 13 AA 2914-2915, 2917. After the robbers left, Mendoza was taken to the hospital where he received six sutures for the wound on his head. 13 AA 2921, 13 AA 2923-2924.

Event 9

[3] At the time of the crime, Lopez and Marroquin were dating. At the time of trial they were married. 12 AA 2820.

November 21, 2014, Hobson and Starr robbed a Wendy's restaurant where four employees were present at closing around 1:00 AM. 13 AA 2968-2969. Jessica Hubbard, the manager, was in the office of the restaurant doing paperwork when she heard glass shatter. 13 AA 2973-2974. She left the office to see what had caused the noise and the two assailants came around the corner, one with a gun pointed at Hubbard. 13 AA 2974. Both were dressed in black or dark clothing, wearing gloves, with surgical masks covering their faces. 13 AA 2974. The assailant with the gun forced Hubbard back into the office, while the other assailant brought the other three employees outside the office. 13 AA 2976. The robber with the gun demanded that Hubbard open the safe in the office, which she did. 13 AA 2977. She then put the money from the safe in a cardboard box, per the assailant's orders. 13 AA 2977. The robbers demanded more money and employee Jorge Morales told them that it was not possible to open the other safes in the restaurant. 13 AA 2984-2985. After the assailants left, the employees sought to call 911 and found the restaurant phones in a pot of chili in the kitchen, and Hubbard's cell phone missing. 13 AA 2980. As Hubbard was searching for another phone, she noticed a police car driving through the parking lot, so she flagged it down and reported the crime. 13 AA 2982.

Event 11

On November 23, 2014, Starr and Hobson robbed an El Pollo Loco in Las Vegas. 11 AA 2626. Four employees, Yanais Silva, Luis Lopez, Sergio Bautista,

and Laura Lopez were at the restaurant closing around 10:30 PM. 11 AA 2626-2628. Around 11:00 PM as Silva was leaving out the back door, she heard someone throw a rock through one of the front windows, breaking it. 11 AA 2630. She proceeded to attempt to exit the building through the back door, but after struggling to open the door she finally opened the door to find a man standing in the threshold wearing a black hoodie and surgical mask, pointing a gun at her head. 11 AA 2632-2633. He forced her back into the center of the restaurant where he and his co-conspirator, who was also wearing a surgical mask, detained all four employees. 11 AA 2634. The man holding the gun demanded to know who the manager was, and when Laura Lopez identified herself, he ordered her to stand up. 11 AA 2636. One of the assailants ripped the landline phone from the wall. 11 AA 2642. The two assailants walked Laura Lopez into the manager's office and forced her to open the safe inside and give them the money. 11 AA 2637. After they had the cash, they told the four employees to stay on the ground, and not to look at them, as they exited the building. 11 AA 2641.

Event 12

On November 23, 2014, after completing the El Pollo Loco Robbery, Starr and Hobson also robbed a Taco Bell shortly after it closed at 11:00 PM. 13 AA 3122-3123. Either Starr or Hobson broke a window in the front of the store and entered with a gun, wearing a mask. 13 AA 3126. The three employees inside ran to the back

door, and one, Jammie Ward, opened it. 13 AA 3127-3128. The other defendant was standing in the back doorway holding a gun, also wearing a mask. 13 AA 3127. Ward managed to slip under the assailant's arm and escape, though the assailant tried to grab her collar. 14 AA 3155. The man with the gun pushed or pulled the other two employees, Vanessa Gonazalez-Aparicio and Holly Hadeed, through the threshold of the door and back into the restaurant. 13 AA 3128, 14 AA 3155, 3163. One assailant smashed the landline located in the manager's office. 12 AA 3130. He also pointed a gun at Gonzalez-Aparicio's head and ordered her to open the safe in the manager's office, but she was unable. 13 AA 3130. The other assailant was standing lookout as the assailant in the manager's office took Gonzalez-Aparicio's personal phone from her hand and the two robbers left the restaurant. 13 AA 3131. The robbers walked past a cash register drawer, containing cash, which was sitting atop the counter in plain view. 14 AA 3134-3135, 2 AA 451. The employees then activated a silent alarm and called the police from the second employee's personal phone. 13 AA 3132.

Event 13

November 24, 2014, Starr and Hobson robbed a Popeye's Chicken on Jones and Vegas Drive. 13 AA 3090. The store closed around 11:00 PM. 13 AA 3090. There were five employees present at the time of closing. 13 AA 3090-3091. Hobson or Starr broke one of the front windows with a hatchet and entered the restaurant,

wearing dark clothing, a hood, and something covering his face. 13 AA 3096, 3097. The employees ran to the back door which they tried to open, but could not. 13 AA 3099. Either Hobson or Starr entered through the back door, also in black clothing with his face covered, carrying a gun. 13 AA 3099-3100. One of the assailants asked who the manager of the Popeye's was. 13 AA 3101. Alma Gomez identified herself as the manager. 13 AA 3101. One of the defendants gave Gomez a cloth bag and ordered her to retrieve all the money from the office. 13 AA 3101. Gomez opened the safe in the office and proceeded to place the money in the bag while one of the assailants kept a gun pointed at her. 13 AA 3104-3105. The robbers grabbed Gomez's phone which was sitting on top of a desk, and left out the back door demanding the employees stay face down on the floor. 13 AA 3106. They complied and after Hobson and Starr left, one of the employees called 911. 13 AA 3109.

Event 14

Detective Weirauch testified that he was a robbery detective in 2014 and a silver or gray Dodge charger had been identified as a suspect vehicle in a recent robbery series. 14 AA 3220. He left Metro headquarters around 10:30 PM on November 25, 2014 and spotted a silver Dodge Charger on Nellis Boulevard. 14 AA 3216, 3220. When the vehicle pulled into a Taco Bell parking lot and parked, Detective Weirauch followed, parking approximately one row away in the same lot. 14 AA 3221. He alerted other detectives to his location and the possible suspect

vehicle, using a text message and the police radio system. 14 AA 3225-3226. Then, Detective Weirauch saw someone exit the car from the rear passenger seat wearing a black windbreaker and surgical mask. 14 AA 3224. At that point, Detective Weirauch called for patrol units to respond to the suspect vehicle. 14 AA 3227. Patrol officers conducted a felony stop[4], along with Detective Weirauch. 14 AA 3227-3228. When Detective Weirauch approached the vehicle he could see a small axe with an orange handle, medical masks, and a gun in the trunk of the car. 14 AA 3232-3234.

Trial

Before jury selection began on May 2, 2016, Hobson and his co-defendant moved to strike the jury venire for a lack of racial diversity. 7 AA 1610. The Court went into recess at which time it placed a call to the jury commissioner. 7 AA 1610-1611. The jury commissioner came to the court room where she testified to Clark County's jury pool aggregation process, explaining that lists are compiled from the Nevada Department of Motor Vehicles and Nevada Energy databases. 7 AA 1611. The Court denied the motion to strike the venire. 7 AA 1624.

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[4] In a "felony stop" all of the occupants are removed from a car which officers have probable cause to believe contains criminal evidence. Hughes v. State, 116 Nev. 975, 12 P.3d 948 (2000)

SUMMARY OF THE ARGUMENT

Hobson challenges the notice he received of his indictment, the jury list compilation methods of Clark County, the State's plea agreement with a co-defendant, and the sufficiency of the evidence in several of his numerous convictions.

In order to indict Hobson on all 82 of the Counts on which he was indicted the State presented to the Grand Jury on four different occasions, bringing in numerous witnesses and instructing the Grand Jury to limit its deliberation to the Counts presented each time. 4 AA 839. Throughout this process, Hobson was aware of the Grand Jury meetings and the charges contained in the indictment. 5 AA 1113-1120, 1135-1136. While he claims that he was not timely informed of the Grand Jury's fourth meeting, at which it returned a true bill on the indictment of counts 33-36, he had received notice of the charges in his initial Marcum notice. AA 1113-1120, 1135-1136. He also had access to the earlier Grand Jury transcripts, which clearly indicated that the Grand Jury would re-convene to deliberate on these counts, giving him ample time to inform the District Attorney if he wished to testify. 1 AA 202.

Hobson also challenges the Clark County Jury Commissioner's method for compiling jury lists. In this case, the District Court brought the commissioner into court to testify. 4 AA 839. The court determined that the system for creating jury

venires was adequate and so ruled. 7 AA 1610. The same or substantially similar testimony has been given in other cases in which the District Court has also found the selection system to be adequate. See e.g. Battle v. State, No. 68744, 2016 Nev. Unpub. LEXIS 607 (Aug. 10, 2016). Hobson fails to show that this ruling was an abuse of the court's discretion, and therefore it should not be disturbed on appeal.

Next, Hobson argues that the State interfered with witnesses by entering into a Guilty Plea Agreement with another co-conspirator. The State did nothing to dissuade the co-conspirator from speaking with Hobson's counsel prior to trial and, therefore, he cannot make out a cognizable claim.

Hobson also challenges the sufficiency of the evidence of the kidnapping convictions, pursuant to Mendoza v. State, 122 Nev. 267, 130 P.3d 176 (2006). However, Hobson systematically engaged in kidnappings along with the robberies by preventing employees from exiting the restaurants he was robbing, thereby increasing their risk of harm and prolonging the time before they could seek help.

Hobson challenges the sufficiency of the evidence of numerous robbery convictions because he avers only the store managers had sufficient possessory interest in the property taken to be victims of a robbery under Phillips v. State, 99 Nev. 693, 669 P.2d 706 (1983). However, in Klein v. State, 105 Nev. 880, 784 P.2d 970 (1989) this Court found that employees shared possessory interest in company property and therefore the convictions for the other employees should be upheld.

Finally, Hobson challenges the sufficiency of the evidence in the conspiracy and attempt robbery convictions arising from the final event in the series. Here, Metro arrested Hobson before he and co-conspirators could perpetuate a robbery on a Taco Bell and the jury made a reasonable determination of fact to find he had committed conspiracy and attempt robbery. 16 AA 3777, 13 AA 3090, 13 AA 3224, 16 AA 3840.

ARGUMENT

I.

HOBSON RECEIVED ADEQUATE NOTICE OF THE GRAND JURY INDICTMENT ON COUNTS 33-36.

Hobson claims he did not receive sufficient notice of the fourth convention of the grand jury because the April 17, 2015 Return to Petition for Writ of Habeas Corpus, in which the State indicated its intention to indict the remaining charges in a footnote, was served only four judicial days before the Grand Jury re-convened on April 23rd. AOB at 9, 4 AA 839. However, the footnote in the Return was not Hobson's first or only notice of the Grand Jury hearing. It was included in the original Marcum notice and in the transcripts from the previous Grand Jury hearings. 5 AA 1135-1136. The original Marcum notice included LVMPD event number 141117-0096, which corresponds to the Burger King robbery on November 11, 2014 from which the charges arise. 5 AA 1135-1136, 5 AA 1047.

Further, Hobson had access to the transcripts from the Grand Jury Proceedings on the Superseding Indictment, which clearly indicated that additional Grand Jury time would be necessary to deliberate on the remaining counts. 1 AA 202, 2 AA 456.

At the end of the Grand Jury hearing on January 22, 2015, Chief Deputy District Attorney Liz Mercer told the Grand jury "we were unable to get one additional witness in so we're not going to have you deliberate on [the November 14, 2014 Burger King] case right now. We'll come back in a few weeks when we can get an additional period of time." 2 AA 375. And the transcript concludes with "(Proceedings adjourned, to reconvene at a later, undetermined time.)" 2 AA 375. These transcripts were available by March 4, 2015, giving Hobson plenty of time to review them before the Grand Jury convened on April 23rd. 1 AA 202.

At the beginning of the February 19, 2015 convention of the Grand Jury Chief Deputy District Attorney Liz Mercer stated "as to Counts 33, 34 and 35, and 36, we're going to ask you to withhold deliberations on those counts, don't deliberate on them today because we have been unable to obtain that witness's presence." 2 AA 461. Hobson had access to these transcripts at least as early as they were electronically filed on March 4, 2015, far in advance of the April 23rd convention of the Grand Jury. 2 AA 465. The purpose of Marcum Notice is to alert the accused to the indictment and provide the accused the opportunity to testify before the Grand Jury. Sheriff, Humboldt Cty. v. Marcum, 105 Nev. 824, 783 P.2d 1389 (1989).

Hobson had ample time to inform the District Attorney if he wished to testify at the Grand Jury hearing on the remaining counts, fulfilling the State's notice requirement. As such, he is not entitled to relief on this claim.

II.
THE JURY VENIRE ADEQUATELY REPRESENTED THE COMMUNITY.

Before jury selection began on May 2, 2016, Hobson and his co-defendant moved to strike the jury venire for a lack of racial diversity. 7 AA 1610. At trial, the Court found that Jason Duval McCarty v. State of Nevada, 371 P.3d 1002 (2016) requires the moving party to make out a prima facie case of discrimination, which Hobson failed to do. 7 AA 1623-1624. Specifically, prima facie discrimination requires that the discrimination be systematic, in other words, racially motivated. 7 AA 1624. On appeal, Hobson argues that McCarty was misapplied and the Court, instead, should have followed the ruling of Williams v. State, 121 Nev. 934 (2005). OAB at 13. He also, inexplicably, objected to the Court's characterization of his challenge as a Batson issue. AOB at 13, 7 AA 1626. Williams relies on Batson to analyze the permissibility of striking a jury venire, stating "we now determine that *Batson* does apply to challenges resulting in the dismissal of the venire." Williams v. State, 121 Nev. 934, 944, 125 P.3d 627, 634 (2005) Yet, Hobson eschews the application of Batson in his own case.

The Court properly applied Batson to determine "[the defendant] need[s] to make a prima facie case of discrimination…and I haven't seen that you've done that." 7 AA 1624.

Hobson uses Williams for two different propositions. First, he cites to Williams' formula for calculating disparity between community and jury makeup. AOB at 13-14. Second, he relies on Williams to argue that the jury venire should have been compiled from three sources. AOB at 15-17. The latter argument was made at trial and, therefore, properly preserved. 7 AA 1626. The former is presented for the first time on appeal. Id.

The Court did not err in not calculating a "disparity factor."

On appeal, Hobson applies a mathematical equation borrowed from the Idaho Court of Appeals that indicates the "comparative disparity" of the jury venire was 70 percent, and argues that this number is too large because it is greater than 50 percent. AOB at 13-14. This number, essentially, says that the difference between the proportion of African American venire members and the proportion of the Clark County population that is African American, is equal to 70% of the size of the Clark County population that is African American.[5] Evans v. Nev., 112 Nev. 1172, 1187,

[5] The percentage is arrived at by taking the percentage of the venire that was African American (3%) and subtracting that number from the percentage of the Clark County population that is African American (10%), to arrive at the raw number 7. That number is then divided by the percentage of the population of Clark County that is African American, to arrive at 7/10 or 70%.

926 P.2d 265, 275 (1996) (citing State v. Lopez, 107 Idaho 726, 692 P.2d 370, 377 (Idaho Ct. App. 1984)). However, the disparity calculation does not have a strict 50 percent cut-off. Evans v. Nev., 112 Nev. 1172, 926 P.2d 265 (1996). To the contrary, the Idaho Court of Appeals suggested that "a comparative disparity well below 50% is unlikely to be sufficient [to show underrepresentation]" Evans v. Nev., 112 Nev. 1172, 1187, 926 P.2d 265, 275 (1996). This Court, and any other District Court in Nevada, is not required to utilize this particular calculation in order to determine how closely the jury venire represents the makeup of the community population.

In Williams the court applied the three prong test set forth in Duren v. Missouri

> "(1) that the group alleged to be excluded is a '*distinctive' group* in the community; (2) that the *representation of this group in venires* from which juries are selected *is not fair and reasonable* in relation to the number of such persons in the community; and (3) that this underrepresentation is *due to systematic exclusion* of the group *in the jury-selection process.*

Williams v. State, 121 Nev. 934, 940, 125 P.3d 627, 631 (2005)

The court applied the Lopez disparity factor to determine that the venire met the second prong. The Court's use in Williams of the test presented in Lopez merely represents the employment of an analytical tool, not the establishment of a binding rule. Importantly, the court also concluded that the Williams did *not* meet the third prong. Williams v. State, 121 Nev. 934, 940, 125 P.3d 627, 631 (2005). Therefore

the court ruled "Williams has not suffered a violation of his Sixth Amendment rights because the first venire did not violate his right to a venire composed of a fair cross section of the community." Williams v. State, 121 Nev. 934, 942, 125 P.3d 627, 632-33 (2005). Hobson, likewise, fails this test and therefore cannot make out a cognizable claim. Whether the jury venire representation was "fair and reasonable" is of no import where an appellant cannot make out a case of systematic discrimination. Hobson fails even to attempt, let alone show, that the jury venire was created through systematic discrimination.

The Jury Selection Lists Are Adequate

Hobson reiterates his trial argument on appeal that Clark County's jury selection lists are inadequate. Essentially, he argues that because the current method of compiling jury lists is "producing juries that do not comprise a fair cross section of the community," the Jury Commissioner is in violation of Williams. Jury Commissioner Mariah Witt was brought in to testify to the method of compiling the lists and the District Court did not abuse its discretion by finding that Hobson failed to meet his burden to sustain the objection. 7 AA 1611-1622. Again, because Hobson does not meet all three prongs of the Duren test, he fails to establish a violation of Williams. See supra.

Moreover, Clark County's jury selection system has been upheld on appeal by the Nevada Supreme Court before. See e.g. Battle v. State, No. 68744, 2016 Nev.

Unpub. LEXIS 607 (Aug. 10, 2016). Nothing in the County's method for pulling potential jurors from the lists compiled by the Department of Motor Vehicles and Nevada Energy encourages, or allows, the jury commissioner to systematically exclude potential jurors on the basis of race. Therefore, Hobson's argument is without merit.

III.
THE STATE DID NOT INTERFERE WITH WITNESSES

Hobson argues that the State violated his Fifth and Sixth Amendment rights, in essence, by entering into a plea agreement with Hobson's brother and co-conspirator Donte Johns. AOB at 18-20. Johns declined a request from Hobson's attorney to meet pre-trial, which was Johns' right to refuse. For reasons unknown, all of Hobson's legal authority on this issue come from the U.S. 5th Circuit Court of Appeals. The use of plea bargaining to secure testimony, however, has deep historical roots in the United States. See Agreements for Cooperation in Criminal Cases., 45 Vand. L. Rev. 1. See also, e.g. United States v. Booker, 543 U.S. 220, 125 S. Ct. 738 (2005), Santobello v. New York, 404 U.S. 257, 92 S. Ct. 495 (1971), Hoffa v. United States, 385 U.S. 293, 87 S. Ct. 408 (1966), Bram v. United States, 168 U.S. 532, 18 S. Ct. 183 (1897), Whiskey Cases, 99 U.S. 594 (1878).

This court has held "bargaining for specific trial testimony, i.e., testimony that is essentially consistent with the information represented to be factually true during negotiations with the State, and withholding the benefits of the bargain until

after the witness has testified, is not inconsistent with the search for truth or due process." Sheriff, Humboldt Cty. v. Acuna, 107 Nev. 664, 669, 819 P.2d 197, 198 (1991) And, has further opined that this conclusion is "the rule generally prevailing in both state and federal courts." Id at 669.

Hobson's argument that Johns declined the meeting because of the actions of the State is completely unfounded. It was well-established at trial that Johns' attorney, Kyle Cottner, advised Johns not to meet with counsel for the defense prior to trial. See e.g. 17 AA 3907-3910. Cottner was candid in expressing that he gave his client this advice because he had already entered into a plea agreement in which he agreed to testify for the State. At no point did Cottner, the State, or Johns suggest that the State ever directly or indirectly prevented Johns from speaking with the defense attorneys. Hobson conflates Johns' attorney's advice with action on the part of the State. Here, the State did not instruct nor did it encourage Johns not to speak with the Defense, it merely entered into a plea negotiation with Johns. That Johns' attorney determined it was not in his best interest to speak with the Defense and so instructed him, does nothing to show that the State engaged in any misconduct. As Hobson is unable to make any showing of misconduct or other State action influencing Johns' decision not to speak with Hobson's counsel prior to trial, the Court's decision should be affirmed.

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IV.
THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUSTAIN HOBSON'S KIDNAPPING CONVICTIONS.

When reviewing a sufficiency of the evidence claim, the relevant inquiry is *not* whether the court is convinced of the defendant's guilt beyond a reasonable doubt. Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980). Rather, when the jury has already found the defendant guilty, the limited inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Milton v. State, 111 Nev. 1487, 1491, 908 P.2d 684, 686-87 (1995).

Thus, the evidence is only insufficient when "the prosecution has not produced a minimum threshold of evidence upon which a conviction may be based, even if such evidence were believed by the jury." Evans v. State, 112 Nev. 1172, 1193, 926 P.2d 265, 279 (1996) (emphasis removed).

Convictions for contemporaneous robberies and kidnappings present special sufficiency questions, governed by the law as set forth in Mendoza v. State, 122 Nev. 267, 130 P.3d 176 (2006).

> [T]o sustain convictions for both robbery and kidnapping arising from the same course of conduct, any movement or restraint must stand alone with independent significance from the act of robbery itself, create a risk of danger to the victim substantially exceeding that necessarily present in the crime of robbery, or involve movement, seizure or restraint substantially in excess of that necessary to its completion.

Id at 275.

And, the jury was so instructed:

> In order for you to find the defendant guilty of both first-degree kidnapping (or second-degree kidnapping) and an associated offense of robbery, you must also find beyond a reasonable doubt either:
>
> (1) That any movement of the victim was not incidental to the robbery;
>
> (2) That any incidental movement of the victim substantially increased the risk of harm to the victim over and above that necessarily present in the robbery;
>
> (3) That any incidental movement of the victim substantially exceeded that required to complete the robbery;
>
> (4) That the victim was physically restrained and such restraint substantially increased the risk of harm to the victim; or
>
> (5) The movement or restraint had an independent purpose or significance.

Mendoza v. State, 122 Nev. 267, 275-76, 130 P.3d 176, 181 (2006), Jury Instruction 26, 20 AA 4597.

In part, Hobson argues that because the State relied on the Hobson and Starr's practice of identifying the store manager to open the safe as part of their modus operandi, the attempt to keep all employees in the building was also part of the modus operandi, and therefore incidental to the robbery. AOB at 27. That preventing employees from leaving the building was part of the assailants' modus operandi has no bearing on whether it was incidental to the robbery. Committing two crimes during the same incident can be a modus operandi, for example a prolific thief who

commits forgery in the course of his thefts, or a prolific burglar who commits vandalism in the course of his burglaries. Hobson and Starr made a habit of committing kidnapping in addition to robberies.

Hobson implies that because he did not know at the time of the commission of the crime which victims were able to open the safes, it was necessary to detain everyone present in each restaurant. However, forcing a person to open a safe is not inherently necessary to complete a robbery, and was especially unnecessary in the cases where Starr and Hobson successfully obtained (or could have obtained) property from places other than the safes.

Moreover, to the extent the assailants knew only one employee would be able to open the safes, they knowingly kidnapped the rest of the employees in order to find the employee who could open the safe. In other words, Hobson cannot simply claim that it was "necessary" to detain all of the employees present in order to find the manager, in order to open the safe, in order to take the money. When Hobson and Starr chose to execute their robbery by detaining everyone present, they chose to commit kidnapping in the course of their robbery. They knew they would necessarily be detaining some people whose presence was not necessary to complete the robbery, and therefore kidnapping or falsely imprisoning them. The Nevada Supreme Court in Mendoza provided the test for determining what constitutes a kidnapping contemporaneous with a robbery, and that the movement increased the

risk to the victim and/or was unnecessary to complete the robbery is met in each of Hobson's convictions.

Event 11

Hobson claims insufficient evidence was presented to sustain his conviction for False Imprisonment With Use of a Deadly Weapon (Count 55) in which he detained Yanais Silva during the robbery of an El Pollo Loco robbery on November 23, 2014. AOB at 25, 11 AA 2626. In this instance, Hobson and Starr entered the restaurant while four employees were still present and one, Yanais Silva, attempted to leave through the back door. 11 AA 2626, 2632-2633. One of the assailants forced Silva back into the building at gun point. 11 AA 2632-2633. Hobson argues that "keeping employees from escaping was absolutely incidental to effecting these robberies." AOB at 27.

To the contrary, forcing Silva back into the building was unnecessary to commit the robbery. Silva did not have access to the cash in the safe and the assailants did not take anything from Silva's person. Detaining Silva simply prolonged the time until the employees could contact authorities and receive aid, thereby increasing the risk of harm to all of the victims. Silva's risk of harm was especially heightened because beyond the usual risk of harm inherent to lying on the floor and waiting while the assailants completed the robbery, she was subjected to a physical confrontation at the back door and held at gunpoint.

Event 12

Next, Hobson argues that insufficient evidence was presented for the two Counts of Second Degree Kidnapping (63, 65) for employees working at a Taco Bell on November 23, 2014 when Starr and Hobson robbed it shortly after 11:00 PM. 13 AA 3122-3123. In this incident, three employees were still at Taco Bell when one assailant entered through the front. 13 AA 3122-3123. All three employees ran to the back door where the other assailant was standing with a gun. 14 AA 3155, 3163. One employee, Jammie Ward, managed to slip under the assailant's arm and flee the restaurant.[6] 14 AA 3155. The other two employees were forced back into the restaurant, where Hobson and Starr demanded they open the safe. 13 AA 3130. Hobson and Starr ignored a drawer of cash left on top of the counter during the robbery. 14 AA 3134-3135, 2 AA 451. When the employees were unable to open the safe Hobson and Starr left. 14 AA 3134-3135.

Moving the victims back into the restaurant was not necessary to complete the robbery, as Hobson and Starr could have simply taken the cash drawer that was sitting on the counter. 13 AA 3134-3135. Moreover, the people they forced back into the restaurant were unable to open the safe, and therefore their presence was not necessary to complete the robbery. 13 AA 3130. While Hobson implies that he did

[6] Hobson was convicted on Count 67 of Attempt First Degree Kidnapping with use of a Deadly Weapon for the attempted kidnapping of Jammie Ward, which he does not challenge in his appeal. 20 AA 4793.

not know at the time that he forced the employees back into the store that they would be unable to open the safe, bringing them back into the building to ascertain this fact was an act of independent significance. Put another way, Hobson and Starr could have asked *before* they forced the employees back into the restaurant if they could open the safe and let them go when they learned that they could not. Instead, Hobson and Starr chose to hold both employees at gun point, increasing their risk of harm. As the employees tried to flee the building and they were physically prevented, and could have been injured just in this physical confrontation. In addition, by being forced back into the restaurant the employees were prevented from seeking help. These two employees were needlessly included in the robbery and therefore Hobson's kidnapping convictions are all substantiated.

Event 13

Hobson argues that insufficient evidence existed for the five counts of False Imprisonment (71, 73, 75, 77, 79) of which he was convicted in connection with the robbery of a Popeye's Chicken on November 24, 2014. 13 AA 3090.

In this instance, five employees were present at the time of close. 13 AA 3090. As they tried to leave through the back door, one of the assailants forced all five back into the middle of the restaurant at gunpoint. 13 AA 3099-3100. This increased their risk of harm and was not necessary to complete the robberies. By forcing the employees to stay in the building, Hobson and Starr extended the time before anyone

could contact authorities and receive help, which increased their risk. Moreover, moving the four employees further into the restaurant who could not open the safe was entirely unnecessary to complete the robbery and rendered the movement not "incident" to the robbery. Accordingly, all five of the kidnapping charges in this event were supported by adequate evidence.

V.
THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUSTAIN HOBSON'S ROBBERY CONVICTIONS.

Hobson challenges several of his robbery convictions on the basis of insufficient evidence. When reviewing a sufficiency of the evidence claim, the relevant inquiry is *not* whether the court is convinced of the defendant's guilt beyond a reasonable doubt. Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980). Rather, when the jury has already found the defendant guilty, the limited inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Milton v. State, 111 Nev. 1487, 1491, 908 P.2d 684, 686-87 (1995).

Thus, the evidence is only insufficient when "the prosecution has not produced a minimum threshold of evidence upon which a conviction may be based, even if such evidence were believed by the jury." Evans v. State, 112 Nev. 1172, 1193, 926 P.2d 265, 279 (1996) (emphasis removed).

Specifically, Hobson cites to Phillips for the proposition that the State must prove that a victim had a possessory interest in the stolen property in order to sustain a robbery conviction. AOB at 28-29, Phillips v. State, 99 Nev. 693, 669 P.2d 706 (1983). Hobson also provides a litany of non-binding authority to indicate that other courts in other jurisdictions have rejected the notion that multiple employees could have coextensive possessory interests in company property. AOB at 30-32. The Nevada Supreme Court, however, has already found that employees may share possessory interests in company property. See Klein v. State, 105 Nev. 880, 784 P.2d 970 (1989) infra.

In Phillips the defendant entered a jewelry store and forced the owner and two employees into a back room where he tied their hands and gagged one employee. Phillips 99 Nev. at 694, 669 P.2d at 706. A customer then entered the store and the defendant bound and gagged the customer as well. Id. The defendant took the cash box, daily receipts, and over seventy pieces of jewelry before leaving the store. Id. On appeal, the defendant successfully argued that the customer did not have a possessory interest in the property taken. Id at 695.

In Phillips the Nevada Supreme Court clarified that the State must show that a victim of robbery was both in the possession of the property of which they were robbed, and were present when it was taken. Id. The court utilized the definition of "presence" set forth in Robertson that "[a] thing is in the presence of a person, in

respect to robbery, which is so within his reach, inspection, observation or control, that he could, if not overcome by violence or prevented by fear, *retain his possession* of it." Phillips, 99 Nev. at 695, 669 P.2d at 707 (citing Robertson v. Sheriff, 93 Nev. 300, 302, 565 P.2d 647, 648 (1997)(emphasis in original)).

To inform its decision on what constitutes "possession," the Court cited a California Supreme Court decision in which two employees were present at a Taco Bell and robbery convictions pertaining to both employees were upheld. People v. Ramos, 30 Cal. 3d 553, 180 Cal. Rptr. 266, 639 P.2d 908 (1982) (reversed on other grounds). While the Court ultimately determined that the customer in Phillips did not have a possessory interest in the property taken, Hobson's case is more analogous to Ramos than Phillips because in Ramos the victims were both employees.

In People v. Ramos the defendant and a co-offender entered a Taco Bell where the defendant was employed as a janitor. Id. The assailants forced two employees into the walk in refrigerator, where the assailants ordered the employees to remain facing away from the assailants as they entered and exited the refrigerator several times, leaving the employees inside. Id at 563. The assailants took money from the restaurant. Id. Eventually, the assailants returned and fatally shot one of the employees in the head. Id at 564. The appellant was convicted of murder, attempt murder, and two counts of robbery. He appealed one of the robbery convictions,

arguing that because there was only one act of taking of property, he could only properly be convicted of one count of robbery. Id at 587. The court opined:

> When two or more persons are in joint possession of a single item of personal property, the person attempting to unlawfully take such property must deal with all such individuals. All must be placed in fear or forced to unwillingly give up possession. To the extent that any threat may provoke resistance, and thus increase the possibility of actual physical injury, a threat accompanied by a taking of property from two victims' possession is even more likely to provoke resistance.
>
> We view the central element of the crime of robbery as the force or fear applied to the individual victim in order to deprive him of his property. Accordingly, if force or fear is applied to two victims in joint possession of property, two convictions of robbery are proper.

People v. Ramos, 30 Cal. 3d 553, 589, 639 P.2d 908, 928-29 (1982).

Hobson depends upon decisions from various other jurisdictions to attempt to persuade this Court to hold that only the managers on duty during the various robberies, and not the other employees present, had possessory interests in the money Hobson and Starr took from the restaurants they robbed. AOB 28-32. But, since its 1982 decision in Phillips, the Nevada Supreme Court decided Klein in which it held that two employees could both have a possessory interest in company property. Phillips v. State, 99 Nev. 693, 669 P.2d 706 (1983), Klein v. State, 105 Nev. 880, 784 P.2d 970 (1989).

In Klein, the manager of a Payless Shoe Store was outside cleaning the windows when the defendant approached the manger holding a knife and ordered her back into the store. Klein 105 Nev. at 881, 784 P.2d at 971. Another employee was inside counting the daily receipts and as this employee reached for the phone, the defendant ordered her to put the phone down. Id. He then demanded a bag which contained $198 dollars, which he received. Id. The defendant forced the manager and the other employee into a bathroom, in which they locked themselves inside. They attempted to summon help, but the portable alarm they attempted to use from the bathroom did not function. Before the victims were able to call for help, the defendant returned and sexually assaulted one of the women. Klein v. State, 105 Nev. 880, 784 P.2d 970 (1989). He returned them to the bathroom and called the police, himself. Id. On appeal, the defendant argued that the employee who was inside when the incident began did not have a sufficient possessory interest in the store's cash to be robbed of it, citing the Phillips decision. The Nevada Supreme Court, citing to Ramos, found her interest as an employee and a direct target of the defendant's threats to be sufficient to sustain the robbery conviction.

Phillips and Klein are both the Nevada progeny of the California Ramos decision, and Klein is more on point than Phillips in the instant case. Just as the two Klein employees shared a possessory interest in their common employer's property,

the two to five employees present during each of these robberies also shared possessory interests in the property taken.

Hobson and Starr used the threat of force against all employees present in order to effectuate the robberies. While the money may have been locked in a safe at the time the robbers entered, the lack of physical access does not diminish every employees' possessory interest in the cash.

The difference between a mere customer and an employee is that an employee has a general stewardship obligation over the company's property. One would expect that, but for being held at gunpoint or similar circumstances, any employee would prevent the loss of company property. Such an expectation is not incumbent on customers. In Cavaretta, "to have an employee/employer relationship with the true owner [met] the possessory interest element of the crime of robbery." Cavarretta v. Scillia, No. 2:09-cv-02228-PMP-VCF, 2013 U.S. Dist. LEXIS 14754, at *10 (D. Nev. Feb. 3, 2013).

In that case, the U.S. District Court for the District of Nevada determined that a rational trier of fact could find two security guards attempting to stop someone from leaving a department store with stolen merchandise in hand to have sufficient possessory interest in the merchandise to be robbed of it. Id. Of course, none of the employees in Hobson's case actually resisted his attempts with any physical force because, unlike Cavaretta, Hobson was armed with a gun. Rather, the employees

were met with a threat of force—evinced by Hobson brandishing a gun and ordering the employees to lie on the floor—that allowed Hobson and Starr to escape with the stolen property. Inasmuch as a security guard is in "possession" of a client's merchandise, an employee is in "possession" of cash secured in a safe. The jury made a reasonable conclusion as to the robbery elements in every count which Hobson contests.

Event 1

Hobson was convicted of five counts of Robbery with a Deadly Weapon (3, 4, 5, 6, 7) in connection with the October 28, 2014 robbery of an El Pollo Loco. 4 AA 918-920. Hobson does not contest the conviction for the robbery of the manager Schoebel (Count 3). He does, however, challenge his conviction in the robbery of Jose Caballero, and the three other employees present. AOB at 33. All four employees had sufficient possessory interest in the cash taken from the safe pursuant to Ramos and Klein. The conviction for robbing Caballero (Count7) was supported by additional evidence that a gun was held to his head as an assailant threatened to kill Caballero if his coworker did not open the safe. 11 AA 2536. Certainly, with a gun to Caballero's head, Hobson applied the threat of force to Caballero in order to effectuate the taking of the money he ultimately acquired. In the words of the Ramos court, Hobson did not just "deal with" Schoebel, but

Caballero and every other person present in the restaurant. Ramos, 30 Cal. 3d at 589, 639 P.2d at 928-29.

Hobson fails to meet his burden of proving that no rational trier of fact could have found that sufficient evidence was presented to sustain the conviction. Milton, 111 Nev. at 1491, 908 P.2d at 687 ("the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt") (internal citations omitted). The jury made a reasonable conclusion that all of the employees shared a possessory interest in the money stolen from the restaurants. See Phillips 99 Nev. at 695, 669 P.2d at 707 (citing to People v. Ramos, 30 Cal. 3d 553, 589, 639 P.2d 908, 929 (1982) for the analysis of possession), People v. Ramos, 30 Cal. 3d at 589, 639 P.2d at 929 ("if force or fear is applied to two victims in joint possession of property, two convictions of robbery are proper."); see also Klein 105 Nev. 880 at 885 ("both [employees] were in joint possession and control of all of the store's money"); see also Cavarretta v. Scillia, No. 2:09-cv-02228-PMP-VCF, 2013 U.S. Dist. LEXIS 14754, at *10 (D. Nev. Feb. 3, 2013) ("it was sufficient [for] the persons from whom the property was taken … to have an employee/employer relationship with the true owner in order to meet the possessory interest element of the crime of robbery").

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Event 5

Hobson was convicted of two counts of robbery (24, 25) of a Little Caesar's manager, Idiana Sacba, as well as a delivery person, Jesus Dorame on November 4, 2014. 4 AA 928-929, 14 AA 3359-3360. Hobson and Starr entered the Little Caesar's near closing time and when they were unable to obtain money from the safe, took Sacba's cell phone before leaving.

In this instance, Hobson disputes both Dorame's presence and his possessory interest in the property stolen. AOB at 34. See Phillips 99 Nev. at 695, 669 P.2d at 707 (establishing "the element of possession must still be satisfied" in addition to presence.) Hobson argues that "there was no evidence that [Jesus] was coming in [to the store] when the robbers were still there." AOB at 34. This claim is clearly belied by the record.

> Q. …I'm going to skip ahead to about 15 minutes and 27 seconds in. Is the area where the front door would be located?
> A. Yes.
> Q. Is that Jesus bringing in the delivery?
> A. yes.
> Q. I'm going to skip ahead to about 14:30. Does that appear to be the two suspects leaving?
> A. yes.

14 AA 3371. At three different points in her direct testimony Sacba stated that the surveillance footage showed Dorame in the restaurant *before* the robbers left. 14 AA 3368, 3371. The jury viewed this footage during trial. 14 AA 3368. Accordingly, the assailants must have overcome Jesus' will, in addition to Sacba's,

in order to ultimately succeed in the robbery. While the only property they succeeded in taking was Sacba's personal cell phone, the jury made a reasonable finding that assailants applied force or threatened force against Dorame in addition to Sacba. 14 AA 3368. With proper instructions from the court, jurors determined that what they saw on the video and the testimony they heard from Sacba proved that Hobson and Starr robbed not just Sacba, but also Dorame. 14 AA 3370-3372.

Event 8

On November 17, 2014, Hobson and Starr robbed a Wendy's where four employees (Janie Fannon, Jesus Lopez, Anthony Maddaford, and Juan Mendoza) and one employee's wife, Noemy Marroquin, were present. 12 AA 2821.[7] Marroquin was sitting in the front lobby of the restaurant when an assailant lifted her up by her sweater and forced her into the back. 12 AA 2824. The assailants forced Marroquin and the four employees to get on the floor in the back of the restaurant, a few feet outside the manager's office. 12 AA 2826. One of the assailants held a gun to Marroquin's head while the other pointed a gun at the manager, Juan Mendoza, and ordered him to open the safe. 13 AA 2913. The assailants took money from the safe and left the restaurant. 13 AA 2913-2915.

[7] At the time of the crime, Lopez and Marroquin were dating. At the time of trial they were married. 12 AA 2820.

Hobson challenges the convictions on Counts 39, 40, 41, and 42 which relate to Fannon, Lopez, Maddaford, and Marroquin. AOB at 34. Hobson fails to meet his burden of proving that no rational trier of fact could have found that sufficient evidence was presented to sustain the convictions. Milton, 111 Nev. at 1491, 908 P.2d at 687 ("the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt") (internal citations omitted). As to the convictions for robbery of Fannon, Lopez, and Maddaford, the jury made a reasonable conclusion that all of the employees shared possessory interest in the money stolen from the restaurants. See Phillips 99 Nev. at 695, 669 P.2d at 707 (citing to People v. Ramos, 30 Cal. 3d 553, 589, 639 P.2d 908, 929 (1982) for the analysis of possession), People v. Ramos, 30 Cal. 3d at 589, 639 P.2d at 929 ("if force or fear is applied to two victims in joint possession of property, two convictions of robbery are proper."); see also Klein 105 Nev. 880 at 885 ("both [employees] were in joint possession and control of all of the store's money"); see also Cavarretta v. Scillia, No. 2:09-cv-02228-PMP-VCF, 2013 U.S. Dist. LEXIS 14754, at *10 (D. Nev. Feb. 3, 2013) ("it was sufficient [for] the persons from whom the property was taken … to have an employee/employer relationship with the true owner in order to meet the possessory interest element of the crime of robbery").

The jury also acted reasonably in determining that Noemy Marroquin had sufficient possessory interest in the money stolen from Wendy's to be a victim of robbery. See Milton v. State, 111 Nev. 1487, 908 P.2d 684 (1995). Marroquin testified that she was dragged from the lobby area of the restaurant to the kitchen area where a gun was held to her head and the robbers demanded that an employee empty the safe of its cash. 12 AA 2824-2826. She was as involved in this robbery as any of the employees and treated in the same manner they were all treated over the course of the incident. Moreover, Marroquin retained possessory interest in the restaurant's property through her relationship as a partner to one of the employees of the restaurant. She was picking Lopez up from work, making her presence necessary for Lopez to perform his functions as an employee. 12 AA 2821.

Event 9

On November 21, 2014, Hobson and Starr robbed a Wendy's restaurant where four employees were present at closing around 1:00 AM. 13 AA 2968-2969. Hobson was convicted of two counts of Robbery with Use of a Deadly Weapon (46, 47) for the robberies of the manager, Jessica Hubbard, and another employee, Jorge Morales. 4 AA 942-943, 20 AA 4792-4802. After Hubbard loaded money from the safe into a cardboard box, the assailants demanded more money and Morales told them that it was not possible to open the other safes in the restaurant. 13 AA 2984-

2985. The assailants took Hubbard's phone and left with the money. 13 AA 2984-2986.

Hobson contests his conviction for the robbery of Jorge Morales, arguing that Morales did not have a possessory interest in the property taken, which included the restaurant's cash and Hubbard's personal cell phone. AOB at 35-36. As an employee of Wendy's, Morales had possession of the cash under the Klein holding. Klein 105 Nev. 880 at 885. Further, he was personally affronted with a threat of force when the assailants demanded more money and he explained that the other safes in the restaurant could not be opened due to timed locking devices. 13 AA 2984-2985.

Hobson fails to meet his burden of proving that no rational trier of fact could have found that sufficient evidence was presented to sustain the conviction. Milton, 111 Nev. at 1491, 908 P.2d at 687 ("the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt") (internal citations omitted). The jury made a reasonable conclusion that all of the employees shared possessory interest in the money stolen from the restaurants. See Phillips 99 Nev. at 695, 669 P.2d at 707 (citing to People v. Ramos, 30 Cal. 3d 553, 589, 639 P.2d 908, 929 (1982) for the analysis of possession), People v. Ramos, 30 Cal. 3d at 589, 639 P.2d at 929 ("if force or fear is applied to two victims in joint

possession of property, two convictions of robbery are proper."); see also Klein 105 Nev. 880 at 885 ("both [employees] were in joint possession and control of all of the store's money"); see also Cavarretta v. Scillia, No. 2:09-cv-02228-PMP-VCF, 2013 U.S. Dist. LEXIS 14754, at *10 (D. Nev. Feb. 3, 2013) ("it was sufficient [for] the persons from whom the property was taken … to have an employee/employer relationship with the true owner in order to meet the possessory interest element of the crime of robbery").

Event 11

Hobson and Starr robbed four El Pollo Loco employees at gun point, including the shift manager who opened the office safe and retrieved cash for the assailants. 11 AA 2626-2627.

Hobson now challenges three counts of Robbery With Use of a Deadly Weapon (56, 58, 59) as relate to the three employees who were not the manager (Yanais Silva, Luis Lopez, and Sergio Bautista.) AOB at 36, 4 AA 945-947. Hobson fails to meet his burden of proving that no rational trier of fact could have found that sufficient evidence was presented to sustain the conviction. Milton, 111 Nev. at 1491, 908 P.2d at 687 ("the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt") (internal citations omitted). The jury made a reasonable conclusion that all of the employees

shared possessory interest in the money stolen from the restaurants. See Phillips 99 Nev. at 695, 669 P.2d at 707 (citing to People v. Ramos, 30 Cal. 3d 553, 589, 639 P.2d 908, 929 (1982) for the analysis of possession), People v. Ramos, 30 Cal. 3d at 589, 639 P.2d at 929 ("if force or fear is applied to two victims in joint possession of property, two convictions of robbery are proper."); see also Klein 105 Nev. 880 at 885 ("both [employees] were in joint possession and control of all of the store's money"); see also Cavarretta v. Scillia, No. 2:09-cv-02228-PMP-VCF, 2013 U.S. Dist. LEXIS 14754, at *10 (D. Nev. Feb. 3, 2013) ("it was sufficient [for] the persons from whom the property was taken … to have an employee/employer relationship with the true owner in order to meet the possessory interest element of the crime of robbery").

Event 12

Three employees, Vanessa Gonzalez-Aparicio, Holly Hadeed, and Jammie Ward, were present at a Taco Bell near closing time on November 23, 2014, when Hobson and Starr robbed it. 13 AA 3122-3123. Ward managed to escape through the back door by darting underneath one of the assailant's arms. 13 AA 3155. Gonzalez-Aparicio who was the manager was forced back into the restaurant, along with Hadeed, where one assailant smashed the landline located in the manager's office. 12 AA 3130. He also pointed a gun at Gonzalez-Aparicio's head and ordered her to open the safe in the manager's office, but she was unable. 13 AA 3130. The

other assailant was standing lookout as the assailant in the manager's office took Gonzalez-Aparicio's personal phone from her hand and the two robbers left the restaurant. 13 AA 3131.

Hobson was convicted of two Counts of Robbery With Use of a Deadly Weapon (64, 66) for the robberies of Gonzalez-Aparacio and Hadeed. 20 AA 4792-4802, 4 AA 951-952. He contends there was insufficient evidence to support his conviction for robbing Holly Hadeed. AOB at 36-37. Hobson fails to meet his burden of proving that no rational trier of fact could have found that sufficient evidence was presented to sustain the conviction. Milton, 111 Nev. at 1491, 908 P.2d at 687 ("the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt") (internal citations omitted). Hadeed testified that one of the assailants aimed a gun at her "when we were trying to open the safe." 14 AA 3158. Both women failed to open the safe, meaning Hadeed had no readier access to the money than Gonazalez-Aparacio had. Id. Moreover, the assailants must have overcome Hadeed's will, in addition to Gonzalez-Aparacio's, in order to ultimately succeed in the robbery. While the cell phone they managed to steal was Gonzalez-Aparacio's, the jury made a reasonable finding that assailants applied force or threatened force against Hadeed in addition to Gonzalez-Aparacio. 14 AA 3158. With proper instructions from the court, jurors

determined that the evidence proved that Hobson and Starr robbed both Hadeed and Gonzalez-Aparacio. 14 AA 3158-3161.

Both women were equally responsible for the money, therefore both had possessory interests in it. The jury made a reasonable conclusion that all of the employees shared possessory interest in the money stolen from the restaurants. See Phillips 99 Nev. at 695, 669 P.2d at 707 (citing to People v. Ramos, 30 Cal. 3d 553, 589, 639 P.2d 908, 929 (1982) for the analysis of possession), People v. Ramos, 30 Cal. 3d at 589, 639 P.2d at 929 ("if force or fear is applied to two victims in joint possession of property, two convictions of robbery are proper."); see also Klein 105 Nev. 880 at 885 ("both [employees] were in joint possession and control of all of the store's money"); see also Cavarretta v. Scillia, No. 2:09-cv-02228-PMP-VCF, 2013 U.S. Dist. LEXIS 14754, at *10 (D. Nev. Feb. 3, 2013) ("it was sufficient [for] the persons from whom the property was taken … to have an employee/employer relationship with the true owner in order to meet the possessory interest element of the crime of robbery").

Event 13

On November 24, 2014, Starr and Hobson robbed a Popeye's Chicken on Jones and Vegas Drive where five employees were present. 13 AA 3090-3091. Alma Gomez identified herself as the manager. 13 AA 3101.

Hobson argues that the convictions for four counts of Robbery With Use of a Deadly Weapon (74, 76, 78, 80) which pertain to the four employees other than

Gomez (Abrego, Oyoque, Velasquez-Borragan, and Espinoza) were not supported by sufficient evidence. AOB 37-38.

Hobson fails to meet his burden of proving that no rational trier of fact could have found that sufficient evidence was presented to sustain the convictions. Milton, 111 Nev. at 1491, 908 P.2d at 687 ("the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt") (internal citations omitted). The jury made a reasonable conclusion that all of the employees shared possessory interest in the money stolen from the restaurants. See Phillips 99 Nev. at 695, 669 P.2d at 707 (citing to People v. Ramos, 30 Cal. 3d 553, 589, 639 P.2d 908, 929 (1982) for the analysis of possession), People v. Ramos, 30 Cal. 3d at 589, 639 P.2d at 929 ("if force or fear is applied to two victims in joint possession of property, two convictions of robbery are proper."); see also Klein 105 Nev. 880 at 885 ("both [employees] were in joint possession and control of all of the store's money"); see also Cavarretta v. Scillia, No. 2:09-cv-02228-PMP-VCF, 2013 U.S. Dist. LEXIS 14754, at *10 (D. Nev. Feb. 3, 2013) ("it was sufficient [for] the persons from whom the property was taken … to have an employee/employer relationship with the true owner in order to meet the possessory interest element of the crime of robbery").

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VI.
THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUSTAIN HOBSON'S CONSPIRACY TO COMMIT ROBBERY AND ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON CONVICTIONS.

Hobson also contends insufficient evidence was presented to sustain convictions in Counts 81 and 82 for Conspiracy to Commit Robbery and Attempt Robbery with Use of a Deadly weapon, respectively. AOB at 39-40. These convictions pertain to the November 25, 2014 attempted robbery of a Taco Bell (Event 14), which was thwarted when police arrested the defendants. 4 AA 962. When reviewing a sufficiency of the evidence claim, the relevant inquiry is *not* whether the court is convinced of the defendant's guilt beyond a reasonable doubt. Wilkins v. State, 96 Nev. 367, 374, 609 P.2d 309, 313 (1980). Rather, when the jury has already found the defendant guilty, the limited inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Milton v. State, 111 Nev. 1487, 1491, 908 P.2d 684, 686-87 (1995).

Thus, the evidence is only insufficient when "the prosecution has not produced a minimum threshold of evidence upon which a conviction may be based, even if such evidence were believed by the jury." Evans v. State, 112 Nev. 1172, 1193, 926 P.2d 265, 279 (1996) (emphasis removed).

The jury was presented with testimony from at least two different witnesses—co-conspirator Donte Johns, and Detective Abell Weirach—relating to the

November 25, Taco Bell robbery. 16 AA 3692, 14 AA 3209. In addition, the jury heard numerous other witnesses testify over the course of ten days to Hobson and Starr's involvement in thirteen other robberies. The jury was charged with making its own determination of credibility of the witnesses. 20 AA 4617. Hobson, however, focuses narrowly on a fraction of Johns' testimony in his Opening Brief to argue that he, Johns, and Starr never formulated an agreement to rob the Taco Bell that night. In fact, Johns also testified

> Q. Okay. So the next day, November 25th, as you testified yesterday, that was the night that you were arrested; is that correct?
> A. Yes
> Q. Outside the Taco Bell?
> A. Yes.
> Q. Now, Donte, when was the decision made when you were at that Taco Bell, the night you were arrested, when was the decision made by you, Mr. Starr and Mr. Hobson to rob the Taco Bell?
> A. On our way to it.
> Q. On your way to it? Okay was that in [sic] you were at the Burger King going to Taco Bell or before you got to Burger King?
> A. No. Already Leaving Burger King.
> Q. Okay. How did that conversation come up that you decided that you were going to rob the Taco Bell?
> A. It was a "we might as well" type of thing.
> Q. Okay. Speak up, please.
> A. It was a "we might as well" type of thing.
> Q. Who had that conversation?
> A. The three of us.

16 AA 3840.

In addition, Detective Weirauch testified that the police were able to determine that the same people committed the other thirteen robberies based on the clothes they were wearing, the number of people present, the type of business they robbed, and the time of day they committed the crimes. 14 AA 3214. The jury also saw pictures of the multiple weapons in the car and heard evidence that the offenders had previously used the same types of weapons in robberies of fast food restaurants. 14 AA 3232-3234. When the jury then heard that Hobson and the co-offenders were wearing the same type of clothes, outside the same type of business, at the same time of day as during the other robberies, carrying the weapons used in previous robberies, they made a reasonable conclusion of fact that the men had entered into an agreement to commit another robbery. 14 AA 3214-3216, 3232-3234, 16 AA 3710-3711, 3726, 3840. Between the earlier Popeye's robbery on the same night, Detective Weirauch seeing Starr in a surgical mask and, perhaps most importantly, Johns testifying that he and the other two co-conspirators had agree to rob the Taco Bell, there was ample evidence to sustain the conspiracy conviction. 16 AA 3777, 13 AA 3090, 13 AA 3224, 16 AA 3840.

The jury also reasonably found sufficient evidence to sustain the conviction for Attempt Robbery with a Deadly Weapon. Hobson argues "he was merely sitting in the right front passenger seat listening to music," and committed no acts in furtherance of a crime. AOB at 40. He neglects to mention that he was wearing

black pants, a black shirt, and grey shoes, which he wore during all of the previous robberies. 16 AA 3710-3711. And, the weapons Hobson used in the previous robberies were in the car. 13 AA 3232, 16 AA 3763-3764. Each of these acts-donning his robbery attire and bringing along the weapons-were undertaken in order to commit a robbery. In addition, according to Johns' testimony, all three men took the action of transporting themselves to the Taco Bell, which they had already decided to rob. 16 AA 3840. Therefore, Hobson *did* take action towards the commission of a crime and was properly convicted of the attempt charge.

CONCLUSION

Hobson was adequately informed of the State's intention to seek an Indictment against him, the State provided sufficient evidence to sustain his convictions, and Hobson was not prejudiced by inadequate jury list compilation methods or the State entering into a Guilty Plea Agreement with a co-defendant. Therefore, the State respectfully requests that Hobsons convictions be AFFIRMED.

Dated this 24th day of August, 2017.

Respectfully submitted,

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

BY */s/ Charles W. Thoman*
CHARLES W. THOMAN
Deputy District Attorney
Nevada Bar #012649
Office of the Clark County District Attorney

CERTIFICATE OF COMPLIANCE

1. **I hereby 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 Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points of more, contains 13,525 words.
3. **Finally, I hereby certify** that I have read this appellate 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 NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or 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.

Dated this 24th day of August, 2017.

Respectfully submitted

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

BY */s/ Charles W. Thoman*
CHARLES W. THOMAN
Deputy District Attorney
Nevada Bar #012649
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 24th day of August, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

SANDRA L. STEWART, ESQ.
Counsel for Appellant

CHALRES W. THOMAN
Deputy District Attorney

/s/ J. Garcia
Employee, Clark County
District Attorney's Office

CWT/Melanie Scheible/jg