

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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**No. 72545**

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**KENYA SPLOND**  
Appellant,

vs.

**STATE OF NEVADA**  
Respondent.

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Appeal from a Judgment of Conviction  
Eighth Judicial District Court, Clark County  
The Honorable Elizabeth Gonzalez, District Court

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**APPENDIX VOL 4**

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1       however, by such an opinion. Give it the weight to which  
2       you deem it entitled, whether that be great or slight, and  
3       you may reject it, if in your judgment, the reasons given  
4       for it are unsound.

5               Instruction number 27: Although you are to  
6       consider only the evidence in the case in reaching a  
7       verdict, you must bring to the consideration of the  
8       evidence your every day common sense and judgment as  
9       reasonable men and women. Thus, you are not limited  
10      solely to what you see and hear as the witnesses testify.

11             You may draw reasonable inferences from the  
12      evidence which you feel are justified in the light of  
13      common experience. Keeping in mind that such inferences  
14      should not be based on speculation or guess.

15             A verdict may never be influenced by sympathy,  
16      prejudice or public opinion. Your decision should be the  
17      product of sincere judgment and sound discretion in  
18      accordance with the law.

19             Instruction number eight [sic]: When you retire  
20      to consider your verdict, you must select one of your  
21      number to act as foreperson, who will preside over your  
22      deliberation and will be your spokesperson here in court.

23             During your deliberation, you will have all the  
24      exhibits which were admitted into evidence, these written

1 instructions and forms of verdict which have been prepared  
2 for your convenience. Your verdict must be unanimous.

3 As soon as you've agreed upon a verdict, have it  
4 signed and dated by your foreperson and you return with it  
5 to this room.

6 Instruction number 29: If it becomes necessary  
7 during your deliberations to communicate with me, you may  
8 send a note through the marshal signed by the foreperson  
9 you have selected or by one or more members of the jury.

10 No member of the jury should ever attempt to  
11 communicate with me except by signed writing. And I will  
12 communicate with any member of the jury on anything  
13 concerning the case only in writing or here in open court.

14 If you send out a question, I will consult with  
15 the parties before answering, which may take some time.  
16 You may continue your deliberation while waiting for the  
17 answer to my question. Remember, that you are not to tell  
18 anyone, including me, how the jury stands, numerically or  
19 otherwise, until after you've reached a verdict or have  
20 been discharged.

21 Do not disclose any vote count in any note to the  
22 Court.

23 Instruction number 30: Now you will listen to  
24 the arguments of Counsel who will endeavor to aid you to



1 reach a proper verdict by refreshing in your minds the  
2 evidence and by showing the application thereof the law.

3 Whatever Counsel may say, you will bear in mind  
4 it is your duty to be governed in your deliberation by the  
5 evidence as you understand it and remember it to be and by  
6 the laws given to you in these instructions with the sole  
7 fixed sense the best purpose of doing equal and exact  
8 justice between each Defendant in the State of Nevada.

9 Would you like to make your closing argument?

10 MR. LEXIS: Yes, Your Honor.

11 What is the state of mind of a man who is willing  
12 to point a firearm at store clerks over a couple hundred  
13 dollars? Over a pack of gum? Or over a couple pack of  
14 cigarettes? Make no doubt about it, that is the type of  
15 man you're dealing with in this case.

16 I'd ask you to pay particular attention to this  
17 jury instruction, which reads as follows: "Although you  
18 are to consider only the evidence in this case in reaching  
19 a verdict, you must bring to the consideration of the  
20 evidence your every day common sense and judgment as  
21 reasonable men and women." Folks, use your common sense.

22 Let's talk about what this case is not about.  
23 This is not about identification or who did it. He did.  
24 You first heard from Sam. He told you about a month after

1 getting robbed, he made a 100 percent identification on  
2 that six-pack lineup, off what he looked like at the time  
3 Sam got robbed.

4 That is what the Defendant looked like. Nothing  
5 like what he does now. His hair is different. Now he's  
6 got glasses on. Now he's got a full goatee. He's dressed  
7 differently.

8 Folks, it is not surprising that Sam was unable  
9 to recognize the Defendant in court. If anything, it  
10 enhances his credibility. This man is not gonna make an  
11 identification unless he's sure. And he tells you he's  
12 100 percent sure.

13 Graciela, Metro PCS, also robbed at gunpoint,  
14 tells you about a month later, after she gets robbed,  
15 stared at this man's face while he's robbing her, makes a  
16 100 percent identification.

17 You heard from Brittany. She came in here and  
18 told you, moments later, after she got robbed, she made a  
19 100 percent identification.

20 Officer Rowberry came in here and told you he  
21 pretty much caught the Defendant red-handed. With the  
22 gun, with what Brittany told you he took -- the two packs  
23 of Newports, the gum -- the beanie, the sweater and the  
24 red shirt he was wearing underneath that had the fuzzies

1 on the back from the sweatshirt he was wearing.

2 This is not about a case of who did it. He did  
3 it.

4 Now, you also heard from a lot of witnesses. And  
5 it's up to you to decide what's relevant and what's not  
6 relevant. Folks, you've heard a lot of evidence that's  
7 not relevant. For example, latent print. Not relevant.

8 Folks, the District Attorney's office is not in  
9 the business of providing you bits and pieces of Metro's  
10 investigation. We put on the analyst; we put on the  
11 expert. Why? Because, initially, it was part of Metro's  
12 investigation. They had no idea who this man was.

13 And as they told you, it's far from a sure bet,  
14 looking at print evidence. But they tried it. It didn't  
15 work, for a variety of reasons and factors that come into  
16 play, let alone this being a commercial establishment  
17 where he was in and out.

18 Let's talk about February 2nd, 2014, the  
19 Star Mart. Brittany Slathar. During this event, we  
20 charged the Defendant with the conspiracy to commit  
21 robbery, burglary while in possession of a firearm, and  
22 robbery with use of a deadly weapon.

23 First, let's look at one of the jury  
24 instructions. There are two types of evidence, direct and

1       circumstantial. The law makes no distinction between the  
2       weight to be given to either direct or circumstantial  
3       evidence. Therefore, all the evidence in the case,  
4       including the circumstantial evidence should be considered  
5       by you in arriving at your verdict.

6               So what kind of direct evidence do you have?  
7       Well, she tells you, he acts like he's going to buy  
8       something. He pulls out a gun. He demands money. He  
9       threatens her and she makes a 100 percent identification.  
10      And caught red-handed with the co-conspirator,  
11      Kelly Chapman. Again, with the gun, the gum, the  
12      cigarettes, and everything else.

13             What else do we got? Well, if being the getaway  
14      driver isn't enough for Kelly Chapman to be involved in  
15      this case as a co-conspirator, she's got the fruits of the  
16      crime on the seat she is driving the car with. There you  
17      see, the gum, the cigarettes, not to mention, who drives  
18      around like that?

19             Well, Kelly Chapman does, when she's the getaway  
20      driver for the Defendant. When she's either trying to  
21      conceal herself or the man in the back of the car, who's  
22      hiding under some type of blanket, trying to change.

23             What other type of circumstantial evidence you  
24      have? Well, the approach. Very calculated. He knows

1 exactly what he's going to do. You see the video. He's  
2 going in to rob them. In and out.

3 Choice of the victim. He waits for them to be  
4 the only employee in the area. And no customers in the  
5 area. Choice of a weapon, a firearm. And folks, do not  
6 look at all this stuff in a box. You can consider the  
7 fact that he did the same thing a week prior and two weeks  
8 prior to that. All on the northwest part of the valley,  
9 all involving the same MO and, you see the video, same  
10 characteristics, same MO, same mannerisms, and you name  
11 it.

12 So what is a robbery? Robbery is the unlawful  
13 taking of personal property from the person of another or  
14 in his presence, against his will, by means of force or  
15 violence or fear of injury to immediate or future to his  
16 person or property.

17 Folks, I bullet "or" because we don't need all of  
18 them. Okay? But, the Defendant, she got 100 percent,  
19 because he did do all of them. From this person,  
20 absolutely. In the presence, absolutely. By means of  
21 force? Well, when you're pointing a firearm at  
22 somebody -- how about violence or fear of injury? You  
23 better believe it.

24 What else? If you find the Defendant guilty of a

1 robbery, you must also determine whether or not a deadly  
2 weapon was used in the commission of a crime.

3 Well, what's a deadly weapon? A deadly weapon  
4 means any instrument which, if used in ordinary to  
5 [inaudible] by it's design and construction will or likely  
6 cause substantial bodily harm or death. You are  
7 instructed that a firearm is a deadly weapon.

8 All three of these folks told you it was a  
9 firearm that was pointed right at them.

10 In order to use a deadly weapon there may not be  
11 conduct which actually produces harm but only conduct  
12 which produces a fear of harm or force by means or display  
13 of the deadly weapon in aiding the commission of a crime.

14 Again, even though it's "or" here and you only  
15 need to find one of them, the State would submit to you  
16 that surely it's in fear of harm, surely by force by  
17 means, and surely displayed the deadly weapon. All three  
18 of them told you, pointed the firearm right at them. They  
19 were in fear.

20 The State is not required to have recovered the  
21 deadly weapon used in the alleged crimes or to produce the  
22 deadly weapon in court at trial to establish that a deadly  
23 weapon was used in the commission of a crime.

24 It's obvious, folks. Holding otherwise or

1 [inaudible] otherwise would mean that defendants would be  
2 encouraged to discard the weapon, hide the weapon. And  
3 then they say, "Hey, State never produced it. I can't be  
4 charged with a deadly weapon aspect of it."

5 No. This instruction's telling you the State's  
6 not required to have recovered the deadly weapon and  
7 produce it in court.

8 Burglary. Every person who by day or night  
9 enters any building with the specific intent to commit  
10 robbery therein is guilty of burglary.

11 Folks, you see the video. You hear the testimony  
12 from the victims. This man knew exactly what he was gonna  
13 do from the moment he entered that store. Clear as day.  
14 Robbing people.

15 [Inaudible] possession of a firearm. Every  
16 person who commits the crime of burglary who has his  
17 possession or gains possession of any firearm or deadly  
18 weapon at any time during the commission of a crime is  
19 guilty of burglary while in possession of a deadly weapon.

20 Again, you heard from the victims. You see the  
21 video. A man enters the stores with the firearm on him.

22 Conspiracy. Any person who conspires to commit a  
23 robbery is guilty of conspiracy to commit robbery.

24 Conspiracy is an agreement or mutual understanding between

1 two or more persons to commit a crime. To be guilty of  
2 conspiracy, a Defendant must intend to commit or aid in  
3 the commission of the specific crime agreed to.

4 Let me give you an example, folks. I always  
5 thought that thousand dollar medallion hanging above the  
6 judge would look good in my living room. So after court  
7 today, if I told Binu to go out in the hallway here and  
8 give me a couple knocks on the door or knocks on the wall  
9 if anybody comes in. Just as a lookout. And he says,  
10 "Okay."

11 So I go up, I take that medallion. I bring it to  
12 my house and hang it up. And that's the end of it. Well,  
13 I'm guilty of conspiracy to commit grand larceny, Binu's  
14 guilty of conspiracy to commit grand larceny, and we're  
15 both guilty of grand larceny as well. Why? That's the  
16 law.

17 Even though he received no benefit. Even though  
18 he wasn't paid anything. Even though I was the one that  
19 did it, we're both guilty.

20 Conspiracy. The formation and existence of a  
21 conspiracy may be inferred from all circumstances tending  
22 to show the common intent and may be proved in the same  
23 way as any other fact may be proved, either by direct  
24 testimony or the fact by circumstantial evidence or by



1 both direct and circumstantial evidence. Which, here, is  
2 overwhelm.

3 He's caught in the back seat with his getaway  
4 driver, having the fruits of the crime in the seat, with  
5 it reclined, as he's in the back seat hiding, already  
6 changed clothes, huffing and puffing with the gun in the  
7 car.

8 A conspiracy to commit a crime does not end upon  
9 the completion of a crime. The conspiracy continues until  
10 the co-conspirators have successfully gotten away and  
11 concealed the crime.

12 Obviously they did not, because they were caught  
13 by Officer Rowberry red-handed.

14 So for the February 2nd, 2014, event at  
15 Star Mart, the State asks you find the Defendant guilty of  
16 conspiracy to commit robbery, burglary while in possession  
17 of a firearm, and robbery with use of a deadly weapon.

18 For the January 28, 2014, event at Metro PCS,  
19 involving Graciela Angles, the State has charged the  
20 Defendant with burglary while in possession of a firearm  
21 and robbery with use of a deadly weapon.

22 What is some of the direct evidence you have?  
23 Well, it should sound familiar to you. He acts like he's  
24 going to buy something, pulls out a gun, demands money,

1 threatens Graciela, and she later makes -- a month  
2 later -- a 100 percent identification.

3 What other circumstantial evidence you have?

4 Well, his approach. Same thing. Very calculated. He  
5 knows exactly what he's going in to do. Choice of the  
6 victim. Only employee in the store; only customer in the  
7 store is that man. Choice of the weapon. A firearm. And  
8 once again, he did the same thing a week before and a week  
9 after, all in the same area of town, all involving the  
10 same MO and all on video involving a man with very similar  
11 characteristic, features, mannerisms, walks, et cetera.

12 For the January 28, 2014, event, Metro PCS store,  
13 the State asks you to find the Defendant guilty of  
14 burglary while in possession of a firearm and robbery with  
15 use of a deadly weapon.

16 For the January 26, 2014, event at the Cricket  
17 store involving Samuel. The State is charging the  
18 Defendant with burglary while in possession of a firearm  
19 and robbery with use of a deadly weapon.

20 Not shockingly, we have the same thing. Acts  
21 like he's going to go buy something, pulls out a gun,  
22 demands the money, threatens Samuel. And then Samuel,  
23 about a month later, makes a 100 percent identification.

24 But it gets better. He's also -- we've also

1       heard from Alisa Williams. What does she tell us? Well,  
2       she sees a man matching the Defendant's physical  
3       characteristics running. Has a scar on his face with pic  
4       number 2 with facts to date, jumps into the back seat of a  
5       silver car with tinted windows, and the getaway driver is  
6       a young African American female.

7               Big shocker, two weeks later, this man is caught  
8       red-handed, after a robbery, huffing and puffing. Why?  
9       Because he was running to get into that getaway car and he  
10      was caught.

11             You heard from several witnesses said he had a  
12      scar on the face. You know what the number 2 spot means.  
13      The number 2 spots is that man right there. Jumps into  
14      the back seat of a silver car with tinted windows.

15             Big surprise, two weeks later, he's caught in the  
16      back seat of a car with tinted windows. And big surprise,  
17      two weeks later, the driver of that vehicle is a young  
18      African American female.

19             What other circumstantial evidence you have? The  
20      approach. Very calculated. Knows what he's doing.  
21      Choice of the victim. Only employee in the store. Only  
22      customer in the store, that man. Choice of the weapon, a  
23      firearm.

24             What about the events that occurred

1 January 28th, 2014, big surprise, same MO, northwest part  
2 of town, backed up by video.

3 For the January 22nd event, he ask you to find  
4 the Defendant guilty of burglary while in possession of a  
5 firearm and robbery with use of a deadly weapon.

6 How about the firearm? Jeffrey Haberman. Folks,  
7 we're not alleging that he stole the firearm. We're not  
8 charging him with stealing the firearm. We're charging  
9 him with possession of stolen property. And what evidence  
10 do you have that he's guilty of possession of stolen  
11 property?

12 Well, first, let's take a look at the law. Any  
13 person who possesses a stolen firearm and either knows the  
14 firearm is stolen or -- or possesses the firearm under  
15 such circumstances as should have caused a reasonable  
16 person to know the firearm is stolen is guilty of  
17 possession of stolen property.

18 Jeffrey Haberman told you, he owns that firearm.  
19 It was stolen from him. Never seen the Defendant before.  
20 Never gave anyone permission to take his gun. Yet, that  
21 man has his gun. Now, I underlined, how do we know he  
22 either knows or possesses a firearm under such  
23 circumstances he should cause a reasonable person to know  
24 the firearm is stolen?

1           Again, under such circumstances as should have  
2       caused a reasonable person to know a firearm is stolen.  
3       Well, not only does he have the stolen firearm on him, he  
4       obviously never registered the firearm. He obviously  
5       didn't buy it from a store that checks registration or  
6       ownership of the firearm. And most importantly, how is he  
7       using this weapon? And when he's caught, how's he acting?

8           He's using it to commit armed robberies. And  
9       when caught red-handed, he tries -- he still tries to  
10      conceal it.

11           For the Jeffrey Haberman firearm incident, we ask  
12      you to find the Defendant guilty of possession of stolen  
13      property. Thank you.

14           THE COURT: Thank you.

15           Would you like to make your argument?

16           MR. CLAUS: Yes, Your Honor.

17           Your Honor, what time do you break for  
18      [inaudible]?

19           THE COURT: I was just gonna go through.

20           MR. CLAUS: Ain't it grand to be living in the  
21      21st Century?

22           Anybody told you at the beginning of this case,  
23      I'm an advocate. State's an advocate. What we tell you  
24      is not the law. You've got a jury instruction about that.

1       Instruction number 30. And now you will listen to the  
2       arguments. Arguments aren't facts. Not evidence. The  
3       arguments of counsel, who will endeavor to aid you.

4               And the State's made you its -- there might be  
5       some scientific evidence, physical evidence, some  
6       fingerprints. But don't pay any attention to that. And  
7       the State did indeed bring it to you. They gave you that  
8       evidence. They brought in those witnesses. Do you think  
9       it might have been, using your common sense, because if  
10      they hadn't, I would?

11             And the State's witnesses. Those are people,  
12      aren't they, employed by the state, who worked on this  
13      case, have an interest in seeing it come to a conclusion.

14             Now, the State says these people gave you  
15      evidence, dispassionate evidence. The detective, the very  
16      last person that you heard from. You think it was a  
17      mistake that State called him last? No. He's the State's  
18      closer. He's the person who's supposed to wrap up all the  
19      State's arguments, all of its evidence, all the problems  
20      with its evidence in a nice bubble.

21             And do you notice he wasn't entirely cooperative  
22      with me. Who here doesn't know what a double-blind survey  
23      is? A double-blind test? Who doesn't know what the  
24      purpose of one of those is? Detective was only vaguely

1 familiar with it. Oh, I'm sorry. I'm sorry.

2 THE COURT: Okay. We can't have volunteers right now.

3 MR. CLAUS: Yes. Yes.

4 THE COURT: Let's keep it going.

5 MR. CLAUS: I apologize.

6 But I said the only time we were allowed to  
7 interact was during the openings and when we were doing  
8 voir dire. That was absolutely correct. Unfortunately,  
9 now, this is one of those times when you got to listen to  
10 me talk.

11 In any event, there are such things as  
12 double-blind surveys. There are such things as  
13 double-blind six-packs. Why? Why? Well, because when  
14 someone gives them a six-pack and says, "Do you recognize  
15 any of the people here?" Experience has taught us -- and  
16 even the detective admitted this, albeit somewhat  
17 grudgingly -- that experience has taught that there can be  
18 influence in those choices.

19 And so what Metro has done, over the decades, is  
20 tried to make it so that less and less of that can enter  
21 into the individual six-pack determinations.

22 What's not subject to human error? These videos;  
23 right? Two years ago, two years from now, they're gonna  
24 be the same. These videos are the same. There's only

1 two. That's real evidence for the 21st Century. And I  
2 talked with you about that. I said, you know, we do live  
3 in 2016. Are some of you gonna want some physical  
4 evidence? Would you expect to see some of that?

5 And indeed you do. The State says to you, don't  
6 pay it any attention. There's lots of reasons why we  
7 might not have a match. We're in the business of  
8 generating false matches. We have the fingerprint lab.  
9 We have the CSA technicians. They came out to the site  
10 and they fingerprinted the doors. They fingerprinted the  
11 various other items in the Metro PCS phone and then the  
12 doors. But they didn't get anything off that.

13 And then they sent those off to a fingerprint  
14 lab. And the fingerprint examiner looks at them and goes,  
15 "Hmm, that's not a match for Mr. Splond." And the State  
16 says, "Husha, don't worry about that. You've got  
17 eyewitness testimony. And this eyewitness testimony is  
18 better than any fingerprint evidence. You should ignore  
19 the fingerprint evidence because there's lots of reasons  
20 why you wouldn't get fingerprint evidence.

21 "Yes, we got fingerprints. Yes, we had them  
22 tested but, no, we just did that on a lark. We did that  
23 for the fun of it."

24 Ladies and gentlemen, the State doesn't test



1 fingerprints for the fun of it. They don't get  
2 fingerprint evidence because they think that they're going  
3 to get negative results. They don't take all that time  
4 dusting everywhere on the door -- well, not everywhere on  
5 the door, but specific areas on the door because they're  
6 not told that's where he put his hand.

7           Indeed, if you watch the video very carefully,  
8 around time stamp 2:36, what do you see? You see him  
9 appearing to touch the phone. Yet, pay -- you have to pay  
10 good attention to the video. And it doesn't -- he doesn't  
11 pick it up, play around with it and fiddle with it. But  
12 you also don't need to spend five minutes handling a  
13 phone, put your fingerprints on it. You touch it. You  
14 touch it.

15           And then you take that photograph and you  
16 gather -- well, put it together with the other evidence  
17 that was given to you, and that is, "Hey, look on this  
18 Galaxy phone where we took these latent prints from."  
19 Where are the prints that we're interested in? Right?  
20 One, two, five. Those were good fingerprints. Those were  
21 fingerprints that we could do an examination and  
22 comparison to Mr. Splond.

23           And where is the person here touching that phone?  
24 Top? Bottom? Side? You're gonna have to sit there and

1 take -- go through the video. And you're gonna have it  
2 back in the deliberation room.

3 Ladies and gentlemen, this case really is about  
4 the identification in the Cricket Wireless and the  
5 Metro PCS. Because, you know, before there was any  
6 suspect developed after the fact, those cases, the police  
7 needed to look at and work on and see if there were any  
8 fingerprints. And so you have that evidence.

9 You received no evidence about fingerprints from  
10 the Star Mart. You heard from the fingerprint examiner,  
11 there's lots of reasons why someone won't leave a  
12 fingerprint. "I myself don't leave fingerprints." What  
13 did you not hear? Mr. Splond doesn't leave fingerprints.

14 "I can't tell you how often that happens in the  
15 general population. I can't tell you how that would  
16 occur. It just kind of, sort of happens." And she  
17 didn't -- she wanted to hedge her bets; right?

18 When I asked her about the phone, and I said to  
19 her, "Your position, your testimony in front of the jury  
20 is that not only is it possible, but it's probable that  
21 when you recover five different latent prints from a phone  
22 and the last person to have touched that phone, handled  
23 that phone is a suspect that you're looking for, your  
24 testimony is that it's probable that their fingerprints

1       wouldn't be there?"

2               Did she ever answer that question? Did she ever  
3       use the word "probable"? More likely than not? Or what  
4       did she tell you, ladies and gentlemen? She told you,  
5       well, it's possible. It's possible. It's possible when I  
6       walk out that door I'm gonna get struck by lightning, just  
7       not very probable, is it, ladies and gentlemen? Not very  
8       probable at all.

9               She didn't want to tell you that. Why? She  
10       works for Metro. Right? She's the one who did the  
11       examination, works in Metro's lab, and that's okay.  
12       People have that sort of bias. That's why we like  
13       scientific evidence; right? Cold. Dispassionate.  
14       Doesn't change from year to year or day to day.

15              But the State says, he was identified by  
16       everyone, including Ms. Williams in the number 2 spot.  
17       Remember that with Ms. Williams? The number 2 spot? "As  
18       I sit here and look at the number 2 spot today, years  
19       after the event, I believe that's him. I didn't say that  
20       two years ago. I didn't tell that to detective when I --  
21       when I was writing it down. I didn't write it down. But  
22       as I sit here today, my memory is better than it was two  
23       years ago."

24              Ladies and gentlemen, do you really believe that?

1       No. No. Ms. Williams, fine gal. Not trying to lie to  
2       you overtly. But case in point of where what -- what  
3       happened? Invariably, what happened between two years ago  
4       and today? Probably along the neighborhood of yesterday  
5       or the day before. Somebody went through her -- went  
6       through her testimony with her and just, however it  
7       happens, "You sure you don't recognize any of those  
8       people? Not the number 2 spot either? Okay. Thank you  
9       very much."

10               And then she gets up on the stand and she says,  
11       "Hey, two years later, I recognize the 2 spot." That is  
12       exactly why there are double-blind six-pack lineups  
13       nowadays. So that when you give them -- whether you're  
14       deliberately doing it or unintentionally doing it -- I  
15       mean, listen, we're -- we're people. We're imperfect.

16               When we want a result, we have a tendency of  
17       making it happen. There's an old story about a famous  
18       horse that could count, multiply and all that. And they  
19       ran him through the tests and, shockingly, everybody said,  
20       "My -- my heavens, it seems that this horse is counting."

21               And then they said, you know what? Let's do this  
22       in a really scientific manner. Let's do a double-blind.  
23       Let's take the horse in one room and the trainer in  
24       another room. And let's have somebody else go in with the

1 horse and do what the trainer says you're supposed to do  
2 to get the horse to count. Right?

3 They couldn't. The horse didn't count anymore.  
4 The trainer who had been watched by these people was  
5 inadvertently giving tells to the horse to count. He  
6 didn't even know he was doing it. But he did it anyway.  
7 Not to be evil or malicious. But because it happens with  
8 people.

9 And that is one of the best things that can be  
10 said about our system. Is it perfect? No. No. But is  
11 it constantly trying to be made better, ladies and  
12 gentlemen? Yes, it is.

13 We know there are problems with eyewitness  
14 testimony. I could spend more time going through them  
15 with you, but you get the general idea. You've been  
16 through this trial with me.

17 What do we like instead? We like scientific  
18 evidence. I mean, you've got the scientific evidence. No  
19 disagreements. No equivocation. They got fingerprints  
20 from the Metro PCS and from the Cricket Wireless stores.  
21 They got it because people who were there, because the  
22 video said that they should do it.

23 And they got fingerprints that they could  
24 compare. They didn't come back to the store clerk. And

1       they didn't come back from Mr. Swan.

2               Ladies and gentlemen, I ask you for not guilty on  
3       the counts. And I ask you to vote your conscience. Thank  
4       you.

5       THE COURT: Thank you.

6               State, last argument.

7       MR. PALAL: Yes, Your Honor.

8               Court's indulgence.

9               Ladies and gentlemen, I'll try and [inaudible]  
10       too much of your time. You've been very patient. We all  
11       appreciate that.

12              I remember in voir dire, Mr. Claus got up here  
13       and told you jury selection's like speed dating. We're  
14       trying to see if you're compatible. State's position is  
15       that's precisely wrong.

16              In the jury instruction -- the last jury  
17       instruction the judge gives you, she says, "Your job is to  
18       do equal and exact justice between the parties." And  
19       without sympathy to anybody, whether it be our victims or  
20       to Mr. Splond. And what equal and exact justice requires  
21       in this case is guilty verdicts for all the crimes  
22       charged.

23              You know, there are some things that you see in  
24       the video the first time you look at it and there are some

1 things you see after multiple reviews. Now, I'm gonna  
2 point your attention to, if this works, the -- let's see.  
3 Is it working? Here we go -- the video here.

4 One thing you'll see in review of this video is  
5 the Defendant's not wearing the black hood shirt -- he's  
6 wearing the black hood shirt, but oh, he's wearing the red  
7 shirt underneath the black hood -- black sweatshirt. You  
8 can see it right there. You can see the little red tail.  
9 [Inaudible] something you see upon first view of the video  
10 but upon viewing it over and over. You see the  
11 Defendant's wearing a red shirt when he's robbing the  
12 Star Mart.

13 What is the Defendant caught in? Red shirt,  
14 red-handed, with all the items from the robbery, including  
15 the gun. Ladies and gentlemen, when the -- it's not even  
16 a matter of reasonable doubt, but can't be any doubt as to  
17 whether or not the Defendant is guilty of the crime  
18 associated with this -- with the Star Mart robbery.

19 The next case -- the next issue we have is  
20 Mr. Claus says that the -- when reviewing the video, you  
21 can see that the Defendant touches the phone. And he  
22 shows you a still of the video and says, "Can't really  
23 tell, but it looks like, here, he's touching the phone."

24 Folks -- and then asks you to go in the back and

1 look and see whether or not he touches the phone. I'm an  
2 efficient kind of guy. Why don't we all do it together?  
3 Actually look at the video and see from when he enters to  
4 when he leaves, does he ever touch the phone.

5 That was not what I anticipated happening.

6 THE COURT: It's okay. You get a do-over.

7 MR. CLAUS: Efficiency's a wonderful thing.

8 MR. PALAL: Court's indulgence, Your Honor.

9 THE COURT: It's all right, Counsel.

10 MR. PALAL: Okay. Here we go. It's video from the  
11 Star Mart.

12 Now, the interesting thing about videos, stills,  
13 and perspective is -- in having done this in many cases --  
14 sometimes you don't get that actual view. But the good  
15 thing about motion, you can tell if somebody's touching  
16 something. It becomes evidently clear.

17 And you'll forgive me -- I hope you forgive me.  
18 It's gonna be a five-minute video. But I think it's  
19 important when some -- when a party says about something  
20 occurred that we actually take a look and see whether or  
21 not that action occurred.

22 [Video played]

23 MR. PALAL: So when we get the Defendant coming in,  
24 having not touched the phone yet. We get him right from



1 his entry. Now, he -- he's near the phone. And I  
2 actually asked the forensic investigator or -- whether or  
3 not being near the phone or having your hand near the  
4 phone -- I think, here, I said having your hand near the  
5 Elmo, whether or not that would actually cause a latent  
6 print to occur.

7 And she said, no. She actually looked at me like  
8 that was not a very smart question to ask.

9 Again, still haven't -- haven't touched that  
10 phone.

11 Okay. Now he's getting near the phone. He's  
12 looking at it. He's looking in the phone area. He's  
13 looking at the display next to the phone at issue.

14 I don't know. The phone is static; right? It's  
15 attached to the display. Now, look. Looks at it. He  
16 raises his hand. Does he touch it? That's the picture  
17 where you're supposed to believe he touches the phone with  
18 three hands -- three fingers; right? We have three  
19 fingers touching that phone.

20 We have a diagram that a big deal is made of. We  
21 have a bunch of sticky tape. That guy never touches the  
22 phone. The Defendant never touches the phone. This whole  
23 thing about fingerprints -- I'm sorry -- was a waste of  
24 your time. But it's something that we have to put on to

1       negate negative evidence.

2               Wait, let's be honest. It was a complete waste  
3 of your time. When a guy doesn't touch the phone, he  
4 didn't leave a print on the phone. That's science.  
5 That's indisputable.

6               Now, the last event -- and I'll leave this one  
7 running, just in case you think I'm trying to hide a  
8 different section where he hides the phone -- where he  
9 touches the phone.

10              The last event I want to talk to you about. It's  
11 not the one where [inaudible] the register. It's not the  
12 one where he's identified 100 percent in a six-pack two  
13 years ago and 100 percent in court. The last store I want  
14 to talk to you about is Mr. Echeverria.

15              Because I'll be honest, folks. I was a little  
16 surprised when he didn't identify the Defendant in court.  
17 But you know what? I mean, contrary to what appears to be  
18 the accusation by Defense Counsel that we tell witnesses  
19 what to say, when somebody gets on the stand and we ask  
20 them, "Can you recognize the Defendant in court?" We have  
21 no idea what the answer's gonna be.

22              And you know that because we got an answer that  
23 if we thought -- if we knew that was gonna be the answer,  
24 we ain't asking that question. I'm not asking -- "No, I

1       don't know it's that guy." No. So we aren't pre-coaching  
2       them. We don't have a picture -- a current picture to  
3       give to them.

4               We aren't having secret meetings with  
5       Alisa Williams -- who told you, by the way, she didn't  
6       even remember filling out a six-pack, when she was on the  
7       stand. She was like, "Oh, I don't remember doing that."

8               I actually had to give it to her right here and  
9       say, "Hey, now do you remember?"

10              "Kind of."

11              And then walking away I said, "And you didn't  
12       recognize anybody?"

13              She says, "Ah, kind of number 2. Kind of number  
14       2."

15              Now there's the prize. It's the joy of trial.  
16       But what you can infer from that is, one, when  
17       Alisa Williams says it's number -- it might be number 2,  
18       it's not because I told her to say that. It's not because  
19       Mr. Lexis told her to say that.

20              And when Sam Echeverria gets on the stand here  
21       and tells you that he can't see the person who robbed him  
22       two years later, with a Defendant that looks substantially  
23       different, as my colleague said, that just buttresses his  
24       credibility. He's not identifying somebody he doesn't

1 know to be the person who committed the crime.

2 And two years ago he said it was Mr. Splond, 100  
3 percent. 100 percent. And, ladies and gentlemen, as my  
4 colleague said, this isn't an ID case. It's not about  
5 phones that weren't touched. It's not about doors that  
6 are -- where you have ingress and egress. It's not about  
7 detectives who are not performing double-blind studies --  
8 which, by the way, was only attested to by Mr. Claus. Not  
9 the -- not the detective; right?

10 Things that we say isn't evidence. Mr. Claus's  
11 testimony as to the preferability of a double-blind --  
12 double-blind six-pack, which may or may not be used in any  
13 department in the country all -- is not evidence. It's  
14 just all opinion of Mr. Claus. None of that is evidence.

15 What is evidence is first robbery, this guy  
16 comes -- the Defendant comes in, identified 100 percent.  
17 Gets into a silver car, driven off by African American  
18 female. Second incident, same thing with the same type of  
19 gun, small gun, he's identified, two years ago, and then  
20 here. Third incident is identified by Brittany. He has  
21 the proceeds of the robbery. And he's in a silver car  
22 with an African American female driving. Both Alisa and  
23 the officer told you they both have dark tinted windows on  
24 those vehicles.

1           Ladies and gentlemen, just as Sam Echeverria  
2       said, just -- two years ago, just as Graciela Angles said,  
3       two years ago and yesterday, just as Brittany Slathar said  
4       two years ago and two days ago, the Defendant is guilty.  
5       And there can be no question about it. Thank you.

6           THE COURT: Thank you, Counsel.

7           At this time, if the clerk would now swear the  
8       officers to take charge of the jurors and the alternate  
9       jurors.

10          [Officers sworn]

11          THE COURT: Ladies and gentlemen, in a minute, I'm  
12       gonna have you go with the marshal. And then I need you  
13       to do two things first: Decide on who your foreman is and  
14       then decide if you want to stay to deliberate after  
15       5:00 o'clock.

16          If you do, I'll let you do so, but not for very  
17       long. And then to pick the time you want to come back  
18       tomorrow, if you decide that you're gonna stay for a  
19       little bit or go home.

20          If I could have [Juror No. 1] and  
21       [Juror No. 8] stay. We drew numbers of who the alternates  
22       would be. And your numbers were selected. So if you'll  
23       stay with us for a few minutes.

24          Counsel, can you approach, please.

1 [Outside the presence of the jury]

2 [Bench conference]

3 THE COURT: Counsel have agreed that you can go home  
4 now, if you'd like. You're not discharged as jurors,  
5 though. What we need is your contact information where we  
6 can contact you and call you so that you can come back in  
7 case one of the other jurors is unable to continue in  
8 their job. They would then have to start their  
9 deliberations anew if one of you had to come back and be  
10 seated as a juror.

11 You're welcome to stay. But I'm making the offer  
12 to you that you can go home if you'd like, with a cell  
13 phone number.

14 JUROR NO. 1: We don't know if they're gonna be  
15 staying, if they're gonna be --

16 THE COURT: We don't know anything yet.

17 JUROR NO. 1: If we hang around for half an hour  
18 [inaudible] --

19 THE COURT: Okay. Then --

20 JUROR NO. 1: -- I prefer to do that.

21 THE COURT: All right. Then what I'll do is if you  
22 want to hang on for half an hour, I'll have Laura take you  
23 to the other room. We have two jury deliberation rooms.  
24 And then she'll get your contact information from you,

1       just in case.

2               And if they decide that they're ready to go home  
3       right now, then we'll let you go home, too, and then you  
4       won't have to come back tomorrow and we'll call you if we  
5       need to have that.   Sound like a plan?   All right.

6               [Discussion off the record]

7               THE COURT:   Mr. Claus, have you been able to inspect  
8       the laptop that the State intends to provide to the jury  
9       for them to review things?

10              MR. CLAUS:   Yes, Your Honor.

11              THE COURT:   Does it appear to you to be a clean  
12       laptop?

13              MR. CLAUS:   No, Your Honor.

14              THE COURT:   All right.   Then you're not giving it to  
15       the jury.   That was easy.

16              MR. CLAUS:   He's got somebody else's closing argument  
17       on it.   I think they're in the -- in the stages of  
18       cleaning it up right now, Your Honor.

19              THE COURT:   Yes, this is the actual verdict form.

20              THE DEFENDANT:  Can I use the restroom?

21              THE COURT:   Sure.

22               [Recess at 4:38 p.m.; proceedings resumed at  
23       4:48 p.m.]

24               [NO VIDEO FOR 4:48 P.M. TO 4:50 P.M.]

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PROCEEDING CONCLUDED AT 4:50 P.M.

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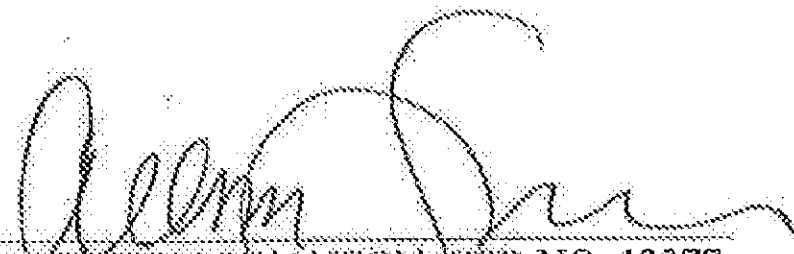


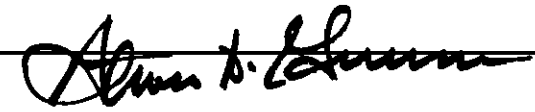
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

  
ALLISON SWANSON, CSR NO. 13377  
CERTIFIED SHORTHAND REPORTER  
FOR THE STATE OF CALIFORNIA



CLERK OF THE COURT

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-14-296374-1
	)	
vs.	)	
	)	DEPT. NO. XI
KENYA SPLOND, aka Kenny Splond,	)	
#1138461 KELLIE ERIN CHAPMAN,	)	
#1681308,	)	
	)	
Defendants.	)	
_____	)	

BEFORE THE HONORABLE ELIZABETH GONZALEZ,  
DISTRICT COURT JUDGE  
THURSDAY, MARCH 24, 2016  
RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 4

APPEARANCES:

For the Plaintiffs:	BINU PALAL
	CHAD LEXIS
	Deputy District Attorneys

For the Defendants:	AUGUSTUS CLAUS
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TRANSCRIBED BY: ALLISON SWANSON, CSR No. 13377

1 LAS VEGAS, NEVADA, THURSDAY, MARCH 24, 2016 11:07 A.M.

2 \*\*\*\*\*

3 [Outside the presence of the jury]

4 THE COURT: Morning.

5 MR. CLAUS: Morning, Your Honor.

6 THE COURT: I am told that we have a verdict.

7 As soon as you guys are ready, let me know.  
8 You're gonna wear a tie Mr. Splond, or not? You okay?  
9 All right.

10 And just so you know, the statute that says I  
11 have to instruct after close of argument is 175.161.

12 MR. PALAL: I am -- I was curious about that.

13 THE COURT: I --

14 MR. PALAL: So I'm gonna write that down, too.

15 THE COURT: That's why I asked the question the way I  
16 do and give you the answer by nodding my head.

17 MR. PALAL: It's 175.161?

18 THE COURT: Uh-huh.

19 [Discussion off the record]

20 [In the presence of the jury]

21 THE BAILIFF: Jury is present.

22 THE COURT: Counsel, you can be seated.

23 Good morning, ladies and gentlemen of the jury.

24 Counsel stipulate the presence of the jury?

1 MR. PALAL: Yes, Your Honor.

2 MR. CLAUS: Yes, Your Honor.

3 THE COURT: The record will reflect the presence of  
4 the Defendant, his attorney, and the Deputy District  
5 Attorneys. Parties have stipulated the presence of the  
6 jury.

7 Has the jury selected a foreperson?

8 JUROR NO. 5: Yes.

9 THE COURT: [Juror No. 5], are you the foreperson?

10 JUROR NO. 5: Yes.

11 THE COURT: Has the jury reached a verdict?

12 JUROR NO. 5: Yes.

13 THE COURT: Could you hand the verdict forms to the  
14 marshal, please.

15 Thank you.

16 The clerk will read the jury's verdict out loud,  
17 please.

18 THE CLERK: Yes, Your Honor.

19 District court. Clark County, Nevada, State of  
20 Nevada, Plaintiff, versus Kenny Splond, Defendant. Case  
21 number C-14-296374-1. Department Number 11. Verdict, we  
22 the jury in the above entitled case find the Defendant,  
23 Kenny Splond, as follows: As to count one, conspiracy to  
24 commit robbery, guilty of conspiracy to commit robbery.

1           Count two, burglary while in possession of a  
2   firearm, Star Mart on 5001 Rainbow, guilty of burglary  
3   while in possession of a firearm.

4           Count three, robbery with use of a deadly weapon.  
5   Victim, Brittany Slathar, guilty of robbery with use of a  
6   deadly weapon.

7           Count four, possession of stolen property.  
8   Guilty of possession of stolen property.

9           Count five, burglary while in possession of a  
10   firearm, Cricket on North Rancho. Guilty of burglary  
11   while in possession of a firearm.

12          Count six, robbery with use of a deadly weapon.  
13   Victim, Samuel Echeverria. Guilty of robbery with use of  
14   a deadly weapon.

15          Count seven, burglary while in possession of a  
16   firearm, Metro PCS on Smoke Ranch. Guilty of burglary  
17   while in possession of a firearm.

18          Count eight, robbery with use of a deadly weapon.  
19   Victim, Graciela Angles. Guilty of robbery with use of a  
20   deadly weapon.

21          Dated this 24th day of March 2016 by  
22   [Juror No. 5], foreperson.

23          Ladies and gentlemen of the jury, is this your  
24   verdict as read? So say you one, so say you all.

1 JURY: Yes.

2 THE CLERK: Thank you.

3 THE COURT: Do either of the parties wish to have the  
4 jury polled?

5 MR. PALAL: Not by the State, Your Honor.

6 MR. CLAUS: No, Your Honor.

7 THE COURT: Ladies and gentlemen, the clerk will now  
8 record the verdict in the minutes the Court.

9 You are now discharged as jurors. What that  
10 means is you can talk to anybody that you'd like to about  
11 the case. Sometimes it's helpful for the attorneys to  
12 find out things they did that were effective during the  
13 presentation of the evidence and things that were not  
14 effective. It's the only way they learn on how to be  
15 better lawyers. It's one of the reasons it's call "the  
16 practice of law." Because they continue to practice even  
17 as they get more mature.

18 I appreciate the service that you've provided. I  
19 know that coming to the courthouse to serve as a juror is  
20 not convenient. But it is a very important part of our  
21 American justice system. And without people like you to  
22 serve as jurors, this system wouldn't work.

23 I've asked my assistant Dan to call down to the  
24 third floor so they can begin the processing of your

1 checks. So hopefully they'll have those ready for you in  
2 a few minutes. But, in the meantime, I'm gonna let  
3 Counsel talk to you for a few minutes, as they get those  
4 vouchers and checks prepared.

5 [Discussion off the record]

6 THE COURT: I'm gonna go shake the hands of the jury  
7 as we get them down to the third floor. You guys remain  
8 for a few minutes for me, please.

9 MR. LEXIS: Thank you very much.

10 MR. PALAL: Thank you very much for your service.  
11 Appreciate it.

12 MR. CLAUS: Thank you very much.

13 THE COURT: Counsel, I know that bail was previously  
14 set as \$140,000. Do I need to do anything about that?

15 MR. PALAL: Your Honor, the State's gonna move to  
16 remand the Defendant without bail at this time.

17 MR. CLAUS: He hasn't been able to would make bail as  
18 it sits, Your Honor. [Inaudible] functionally no bail  
19 and 140,000 bail I think is the same thing.

20 THE COURT: But at this time the Defendant is remanded  
21 without bail.

22 I need to have a presentence investigation report  
23 done, sir. Since you're in custody, it doesn't take as  
24 long as if you're out of custody. I'm gonna set a

1 sentencing date.

2 THE CLERK: Yes, Your Honor. [Inaudible].

3 THE COURT: Uh-huh.

4 THE CLERK: May 25th at 9:00 a.m.

5 THE COURT: All right. And Counsel, if you'd like to  
6 submit a sentencing memorandum from either side, please  
7 feel free to could so. They should come and talk to you  
8 either by phone or in person at the jail to do the  
9 interview, sir. Okay? We'll see you in May.

10 Anything else, Counsel?

11 MR. PALAL: No, Your Honor.

12 THE COURT: Thank you, again --

13 MR. PALAL: Thank you very much.

14 THE COURT: -- for a smooth trial.

15 MR. PALAL: Thanks to your staff for accommodating us.

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

17 PROCEEDING CONCLUDED AT 11:19 A.M.

18 \*\*\*\*\*  
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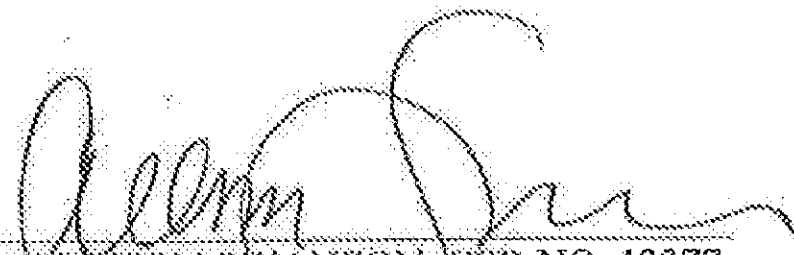


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ALLISON SWANSON, CSR NO. 13377  
CERTIFIED SHORTHAND REPORTER  
FOR THE STATE OF CALIFORNIA

DISTRICT COURT  
CLARK COUNTY, NEVADA

Defendant.

# Transcript of Proceedings

AA000794

1 LAS VEGAS, NEVADA, WEDNESDAY, JULY 20, 2016, 9:44 A.M.

2 (Court was called to order)

3 THE COURT: So can I go to Kenya Splond, Mr. Claus.

4 That would be page 8.

5 MR. CLAUS: Good morning, Your Honor.

6 THE COURT: Good morning, Mr. Splond. How are you  
7 today?

8 THE DEFENDANT: I'm well. How are you?

9 THE COURT: I'm well, thank you.

10 This is the time set for entry of judgment and  
11 imposition of sentence. By a virtue of the verdict of the jury  
12 of guilty on Count 1, conspiracy to commit robbery, guilty; on  
13 Count 2, of burglary while in possession of a firearm, guilty;  
14 on Count 3, of robbery with use of a deadly weapon, guilty; on  
15 Count 4, possession of stolen property, guilty; on Count 5,  
16 burglary while in possession of a firearm, guilty; on Count 6,  
17 robbery with use of a deadly weapon, guilty; on Count 7, of  
18 burglary while in possession of a firearm, guilty; and Count 8,  
19 guilty of robbery with use of a deadly weapon, I adjudge you  
20 guilty of those offenses.

21 MR. CLAUS: Your Honor, I was actually going to ask  
22 for an extension of the sentencing date.

23 THE COURT: Oh, okay.

24 MR. CLAUS: As you may or may not be aware, CCDC was  
25 on lock down over the entirety of the weekend indeed.

1 THE COURT: I didn't know that.

2 MR. CLAUS: When I was on the phone with Mr. Splond  
3 last night we were talking about the sentencing and he promptly  
4 went on lock down and that was the end of that.

5 THE COURT: I'm sorry, sir.

6 MR. CLAUS: They didn't even allow attorney visits  
7 over the weekend, Your Honor.

8 THE COURT: So when do you want me to continue it to?

9 MR. CLAUS: Your Honor, I think just two weeks, but  
10 there's also another matter. Mr. Splond indicated that he sent  
11 a letter to the --

12 THE COURT: He did. I read it.

13 MR. CLAUS: I did not get a copy of that letter.

14 THE COURT: Do you want a copy?

15 MR. CLAUS: I would sincerely appreciate it.

16 THE COURT: It's very well written, and it gives a  
17 very long history of his life and some of the issues he's faced  
18 because of the similarity of his name with a cousin. So I'll  
19 have a copy made for both of you.

20 MR. CLAUS: Thank you very much, Your Honor.

21 THE COURT: All right. But I did read it. So -- two  
22 copies.

23 MR. CLAUS: I know you're always very well prepared,  
24 Your Honor.

25 THE COURT: There are some days that are better than

1 others, but I did get a chance to read through his letter.

2 So how long do you need?

3 MR. CLAUS: I was going to ask for two weeks, Your  
4 Honor.

5 THE COURT: Is that okay with you, Mr. Splond?

6 MR. CLAUS: Assuming that they don't have a continuing  
7 of the same issues of the jail, but yes, Your Honor. My  
8 understanding is, by the way, they put in a new computer system.  
9 They're complaining bitterly about -- I'm seeing a shaking head,  
10 yes. They're complaining rather bitterly about it right now.  
11 So --

12 THE COURT: That's okay. I was -- miserable. I was  
13 complaining about data entry this morning when I was trying to  
14 find something, but it wasn't your data entry, it was ours. So  
15 yeah, computers will kill us all.

16 If we could go back to paper and pencils, we would all  
17 be better off.

18 THE COURT CLERK: August 3rd at 9:00 a.m..

19 MR. CLAUS: Thank you, Your Honor. Oh --

20 THE COURT: Would you like the 5th?

21 MR. CLAUS: Could we go one week beyond that?

22 THE COURT: The 10th?

23 MR. CLAUS: I suspect I will be in trial that week.

24 THE COURT: The 10th?

25 MR. CLAUS: Please, Your Honor.

1 THE COURT CLERK: August 10th.

2 MR. CLAUS: Thank you, Your Honor.

3 THE COURT: All right.

4 MR. CLAUS: And I appreciate your indulgence.

5 THE COURT: No problem. Sorry you had to wait.

6 See you later.

7 MR. LEXIS: Thank you.

8 (Pause in the proceedings)

9 THE COURT: Mr. Claus, when you're going through the

10 PSI with Mr. Splond, can you identify any of them that he thinks

11 are Kenny his cousin, instead of him?

12 MR. CLAUS: Absolutely, Your Honor.

13 THE COURT: Because there is a mention in the PSI that

14 there are some issues of cross-over. They --

15 MS. DeMONTE: Because I thought it might be the same

16 person when I was prepping the calendar last night.

17 THE COURT: So there seems to be -- I'm just concerned

18 that we make sure that the criminal history is accurate before

19 he goes up for classification purposes.

20 MR. CLAUS: Absolutely, Your Honor.

21 THE COURT: Okay.

22 MR. CLAUS: I believe your clerk is -- or no, I'm

23 trying to get someone -- may I approach?

24 THE COURT: Oh, would you like your letters?

25 MR. CLAUS: I would appreciate it.

1 THE COURT: Where's my copy? Okay.  
2 Can you give it to, I guess, Ms. DeMonte since she's  
3 the only left?  
4 MS. DeMONTE: Yeah, I'll give them to Chad.  
5 MR. CLAUS: Thank you very much.  
6 MS. DeMONTE: No problem.  
7 THE COURT: Don't lose it. I read it already.  
8 MR. CLAUS: Thank you very much, Your Honor.  
9 THE COURT: Anything else?  
10 MR. CLAUS: That's it.  
11 THE COURT: Okay. Have a nice day.  
12 MR. CLAUS: You too. Have a wonderful morning.

13 THE PROCEEDINGS CONCLUDED AT 9:48 A.M.  
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20 ATTEST: I do hereby certify that I have truly and correctly  
21 transcribed the audio/video proceedings in the above-entitled  
case to the best of my ability.

22   
23 JILL HAWKINS  
24 Court Recorder  
25

DISTRICT COURT  
CLARK COUNTY, NEVADA

# Transcript of Proceedings

AA000800



1 LAS VEGAS, NEVADA, WEDNESDAY, AUGUST 10, 2016, 10:24 A.M.

2 (Court was called to order)

3 MR. PALAL: Your Honor, I believe the parties are  
4 ready on Mr. Splond on --

5 THE COURT: Kenya Splond.

6 Good morning, Mr. Splond. How are you today?

7 THE DEFENDANT: I'm all right. How about yourself?

8 THE COURT: I am well. Thank you. Okay.

9 MR. CLAUS: Your Honor, I am going to be requesting  
10 another continuance here, a 30-day continuance. I've talked to  
11 the State, they don't have any opposition to it, I believe. We  
12 have the confusion of Mr. Splond in his PSI with his --

13 THE COURT: Cousin, Kenny.

14 MR. CLAUS: -- cousin. So --

15 THE COURT: Kenya versus Kenny, easy to confuse.

16 MR. CLAUS: And I think that might be why Your Honor  
17 on the supplemental they went from recommending so many  
18 concurrents to switching around to some consecutive  
19 recommendations, as you may or may not have noticed, Your Honor.

20 THE COURT: Yeah.

21 MR. CLAUS: But I think that's due to their confusion  
22 with his more storied relations. So with that being said, Your  
23 Honor, a 30-day continuance request.

24 MR. PALAL: I have no objection to the continuance.  
25 As far as the basis for the change in recommendation, I don't

1 know that that's true.

2 THE COURT: I don't either.

3 MR. PALAL: But no objection to the continuance to  
4 make sure we get the PSI correct.

5 THE COURT: Mr. Splond, are you okay with continuing  
6 your sentencing while they try and investigate the issues?

7 THE DEFENDANT: Yes.

8 THE COURT: Not that the investigation will be  
9 successful or not, but they're going to -- because you  
10 apparently have been doing this for a long time on your own.

11 THE DEFENDANT: Yes.

12 THE COURT: Okay.

13 MR. CLAUS: He is -- he is --

14 THE COURT: I read the stuff you give me, Mr. Claus.

15 MR. CLAUS: Every once in a while I hope you don't.

16 THE COURT: He came to the civil bench bar meeting  
17 yesterday. I have no idea what he's doing there. I see him  
18 sitting in the back of the back row and we're all just looking  
19 at him like what's he doing in the civil bench bar meeting.

20 MR. CLAUS: Well, I do civil cases every once in a  
21 while, and I got drawn --

22 THE COURT: He got free food.

23 MR. PALAL: Well, there you go. You've got to let me  
24 know the next time there's a civil bar bench meeting.

25 (Pause in the proceedings)

1 THE COURT: Okay. Can I just skip ahead to going back  
2 to my calendar?

3 MR. PALAL: Yes.

4 THE COURT: Mr. Splond, so we'll see you in about a  
5 month.

6 THE COURT CLERK: September 7 at 9:00 a.m..

7 MR. PALAL: Thank you, Your Honor.

8 MR. KUTINAC: September 2nd?

9 THE COURT: 7th.

10 THE COURT CLERK: 7th.

11 MR. KUTINAC: Thank you.

12 MR. CLAUS: Thank you very much, Your Honor.

13 THE PROCEEDINGS CONCLUDED AT 10:26 A.M.

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20 ATTEST: I do hereby certify that I have truly and correctly  
21 transcribed the audio/video proceedings in the above-entitled  
22 case to the best of my ability.

23   
24 JILL HAWKINS  
25 Court Recorder

DISTRICT COURT  
CLARK COUNTY, NEVADA

Defendant.

# Transcript of Proceedings

AA000804

1 LAS VEGAS, NEVADA, WEDNESDAY, SEPTEMBER 7, 2016, 10:16 A.M.

2 (Court was called to order)

3 THE COURT: What page is Mr. Splond on? Does anybody  
4 remember?

5 MR. CLAUS: 29, I believe.

6 THE COURT: 29. All right. So what are we doing  
7 today?

8 MR. CLAUS: Unfortunately I need to throw myself on  
9 the mercy of the Court. I had a new staff member, Your Honor,  
10 while I wrote a note for myself and the file was supposed to  
11 come back to me to subpoena the records from P and P, it got  
12 filed and didn't get done.

13 So, Your Honor, with the grace of the Court, I'll ask  
14 for 30 days to get this done. I don't believe the State has an  
15 opposition.

16 THE COURT: Mr. Splond, is that okay with you?

17 THE DEFENDANT: [No audible response].

18 THE COURT: All right.

19 MR. CLAUS: Thank you very much.

20 THE COURT: You didn't have to throw yourself on the  
21 mercy of the Court.

22 MR. CLAUS: No, no. I hate it being entirely my  
23 fault.

24 MR. PALAL: I like it when he does that.

25 THE COURT: This is an important thing to be

1 researched and it needs to be handled, and Mr. Splond -- it's  
2 important to him. I read his letter, I understand the issues,  
3 so do you, and we're either going to work it out or we're not.

4 MR. CLAUS: I just dislike being so flagrantly  
5 forgetful.

6 THE COURT: And you do it so few. It's intermittent  
7 when this happens. So, you know, if you say, Judge, I screwed  
8 up, give me some time, it's not the regular occurring events.

9 MR. CLAUS: Thank you, Your Honor.

10 THE COURT: 'Bye.

11 THE COURT CLERK: October 5, 9:00 a.m.

12 MR. CLAUS: Can we perhaps go a week out beyond that?

13 THE COURT: We can.

14 THE COURT CLERK: October 12th?

15 MR. CLAUS: Please. Thank you very much.

16 THE PROCEEDINGS CONCLUDED AT 10:18 A.M.

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20 ATTEST: I do hereby certify that I have truly and correctly  
21 transcribed the audio/video proceedings in the above-entitled  
22 case to the best of my ability.

23   
24 JILL HAWKINS  
25 Court Recorder

DISTRICT COURT  
CLARK COUNTY, NEVADA

Defendant.

# Transcript of Proceedings

AA000807

1 LAS VEGAS, NEVADA, WEDNESDAY, OCTOBER 12, 2016, 10:40 A.M.

2 (Court was called to order)

3 THE COURT: Mr. Splond, page 18.

4 Good morning, Mr. Splond. How are you?

5 THE DEFENDANT: I'm all right. How are you?

6 (Pause in the proceedings)

7 THE COURT: How are you doing, Mr. Splond?

8 THE DEFENDANT: I'm okay. How are you?

9 THE COURT: I'm well. Thank you.

10 How are we doing on our investigation of those issues  
11 related to his cousin?

12 MR. CLAUS: We've issued the subpoenas, Your Honor,  
13 and we've even reached out to Parole and Probation, but we  
14 haven't received anything back. So I'm going to have to file --

15 THE COURT: So do you want me to continue it again?

16 MR. CLAUS: Please, Your Honor. I've talked with Mr.  
17 Splond about this, I've also talked to the State. I don't  
18 believe they have an objection. But did let them know I will  
19 have to file a motion to compel at this point. First time I  
20 haven't had any sort of response from Parole and Probation,  
21 which is unusual.

22 THE COURT: Okay.

23 MR. CLAUS: Well, at least unusual for me, Your Honor.  
24 Usually they at least send me something.

25 THE COURT: You have better luck than others I know.



1 So how long do you want me to continue it?

2 MR. CLAUS: I'd ask for 30 days, Your Honor, with the  
3 [inaudible] that I will be --

4 THE COURT: Four weeks. Want to go four weeks?

5 MR. CLAUS: That I will be putting something on  
6 calendar.

7 THE COURT: Put it when I'm back, when I'm back in  
8 November. So that would probably be November 16th.

9 THE COURT CLERK: Yes. November 16, 9:00 a.m.

10 THE COURT: Is that okay?

11 MR. CLAUS: That's fine, Your Honor.

12 THE COURT: Okay. Anything else?

13 MR. CLAUS: That's it. Thank you very much, Your  
14 Honor.

15 THE COURT: All right. Have a nice day.

16 MR. SCHWARTZ: Thank you, Your Honor.

17 MR. CLAUS: Your Honor, Thank you for your indulgence.

18 THE PROCEEDINGS CONCLUDED AT 10:42 A.M.

19  
20 ATTEST: I do hereby certify that I have truly and correctly  
21 transcribed the audio/video proceedings in the above-entitled  
case to the best of my ability.

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24 JILL HAWKINS  
Court Recorder

DISTRICT COURT  
CLARK COUNTY, NEVADA

Defendant.

# Transcript of Proceedings

AA000810

1 LAS VEGAS, NEVADA, WEDNESDAY, NOVEMBER 23, 2016, 10:06 A.M.

2 (Court was called to order)

3 THE COURT: Now if I could go to Mr. Splond.

4 Did you guys ever figure out between Mr. Splond and  
5 his cousin?

6 MR. CLAUS: No, and in fact, I received an interesting  
7 response -- nonresponse from P and P. So I'm going to have to  
8 file a motion to compel the documents, Your Honor. When I asked  
9 him for the scoring sheets --

10 THE COURT: Mr. Splond, I am sorry it is taking so  
11 long to get you sentenced. I am going to put this on my list of  
12 three -- you will now be three cases that I'm not going to  
13 transfer after I do the Chief Judge, because I've got to finish  
14 this since I tried it.

15 MR. CLAUS: Yes, Your Honor.

16 THE COURT: So we'll -- I won't have access to a  
17 regular courtroom, sir, so it may be hard for us to schedule  
18 when I do see you again, but it sounds like there's some work  
19 that your counsel still needs to do to clarify those issues  
20 about you or your cousin; okay?

21 How long?

22 MR. CLAUS: Well, Your Honor, I'll file the motion  
23 probably this weekend.

24 THE COURT: How long do you want me to set it for?

25 MR. CLAUS: Well, that's going to be up to P and P to

1 be perfectly frank, Your Honor.

2 THE COURT: Well, you're going to serve them with a  
3 subpoena; right?

4 MR. CLAUS: Yes, Your Honor.

5 THE COURT: And they're going to say no, and then  
6 you're going to --

7 MR. CLAUS: No, I've already served them with a  
8 subpoena. What they've given me is sort of nonresponsive, Your  
9 Honor.

10 THE COURT: Are you going to do an order to show cause  
11 then?

12 MR. CLAUS: Yes, Your Honor.

13 THE COURT: Oh, okay. Make sure you serve the AG.

14 MR. CLAUS: Yes, Your Honor.

15 MR. PALAL: And, yeah, just to clarify, the District  
16 Attorney's Office is not P and P's counsel, AG, DPS attorneys.

17 THE COURT: I just said that. I handled that. I said  
18 make sure you have served the AG.

19 MR. PALAL: I appreciate it.

20 MS. HARRIS: [Inaudible].

21 MR. PALAL: All right. Thank you, Your Honor. I just  
22 want to make sure.

23 THE COURT: Ms. Harris and I had this discussion the  
24 other day. She goes, Judge, they won't accept it if I deliver  
25 it here. I said I don't care.

1 MS. HARRIS: Well, I emailed it up to Carson.

2 MR. CLAUS: I've -- I've -- I'm sorry, Your Honor,

3 having walked this lonely road only twice before, I know that

4 when it gets to this point, we now some times have to effectuate

5 personal service up in Carson.

6 THE COURT: Yeah, unfortunately, yeah.

7 MR. CLAUS: So, I'm sorry, Your Honor, I really didn't

8 want it to get to this point.

9 THE COURT: No. But the issues that Mr. Splond raised

10 are very important issues and they need to be addressed.

11 MR. CLAUS: Yes, Your Honor.

12 THE COURT: And I don't know any other way to do that

13 fact finding other than to dig down into the weeds.

14 MR. CLAUS: Yes, Your Honor.

15 THE COURT: Anything else?

16 MR. PALAL: And, Your Honor, State --

17 THE COURT: Have any ideas?

18 MR. PALAL: -- has no objection. State would like

19 this clarified as well, because since we want a clean record for

20 the sentencing, the State's going to ask for substantial time.

21 So it's important that we clarify these issues.

22 THE COURT: I understand. But it's important for Mr.

23 Splond --

24 MR. PALAL: Yeah, no, so -- yes.

25 THE COURT: -- it's important to you, it's important

1 to me, it's important to all of us.

2 MR. PALAL: Absolutely. So as much time as we need, I  
3 just -- State -- I just don't want to rush Mr. Claus, because I  
4 want to give as much time as he needs to clarify these issues.

5 MR. CLAUS: Your Honor, I think the clarification will  
6 come relatively quickly once the orders and the motion to hold  
7 in contempt or show cause start being issued.

8 THE COURT: We'll see. So you're going to send in an  
9 application for an order to show cause, and I'm going to assign  
10 it, we're going to set a hearing --

11 MR. CLAUS: Yes, Your Honor.

12 THE COURT: -- and then we'll figure it out. But, Mr.  
13 Splond, it may be a little -- it won't be this courtroom, I  
14 don't know where we'll be. We'll figure it out and we'll let  
15 the jail know so they can bring you to the right place.

16 THE DEFENDANT: I will be separated from my cousin?

17 THE COURT: No. I'm going to become Chief Judge in a  
18 couple of weeks, so I won't be having my regular calendar. I'm  
19 only going to have a couple of criminal cases that I have in  
20 process a lot of stuff that I haven't finished. You're one of  
21 those, at this point, three cases that I'm going to keep  
22 responsibility over.

23 THE DEFENDANT: Okay.

24 THE COURT: Because you and I have a long history, and  
25 we had a trial, and we got this other stuff, even though you

1 started with Judge Smith.

2           How'd that happen? Don't get me started.

3           Anything else?

4           MR. CLAUS: I'm just --

5           THE COURT: All right. So I'm not -- I'm going to

6 continue the sentencing for 30 days. Are you in town the day

7 before Christmas?

8           MR. CLAUS: I don't go anywhere, Your Honor, yes.

9           THE COURT: December --

10          THE COURT CLERK: 22nd.

11          THE COURT: 22nd. Is that the Wednesday?

12          THE COURT CLERK: 21st --

13          THE COURT: 21st.

14          THE COURT CLERK: -- is the Wednesday.

15          December 21st, 9:00 a.m.

16          THE COURT: And I'm going to have to figure out where

17 that's going to be. So we'll let you know once we get it.

18          MR. CLAUS: Well, Your Honor, if I may be so bold.

19 How I suspect this is going to shake out is I'm going to file

20 the motion for an order to show cause, and then other things are

21 going to get added to your calendar --

22          THE COURT: They might.

23          MR. CLAUS: -- based upon that. And probably before

24 we get to that 21st date, we'll know whether we're going to be

25 vacating that date or moving it forward or doing something with

1 it.

2 THE COURT: Don't know.

3 MR. CLAUS: Prognostication, Your Honor.

4 MR. PALAL: Thank you, Your Honor. Appreciate it.

5 THE COURT: Anything else?

6 MR. PALAL: No.

7 THE COURT: Mr. Splond, I again apologize that this is  
8 taking so long. We're trying very hard to get the information.

9 Anything else, Mr. Claus, Mr. Palal?

10 MR. CLAUS: That is it, Your Honor. Thank you.

11 THE COURT: Have a wonderful holiday.

12 MR. CLAUS: You too, Your Honor. Thank you.

13 THE PROCEEDINGS CONCLUDED AT 10:10 A.M.

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20 ATTEST: I do hereby certify that I have truly and correctly  
21 transcribed the audio/video proceedings in the above-entitled  
22 case to the best of my ability.

23   
24 JILL HAWKINS  
25 Court Recorder



DISTRICT COURT  
CLARK COUNTY, NEVADA

Defendant.

# Transcript of Proceedings

AA000817

1 LAS VEGAS, NEVADA, WEDNESDAY, DECEMBER 21, 2016, 9:17 A.M.

2 (Court was called to order)

3 THE COURT: Mr. Claus, how are you? Page 11.

4 MR. CLAUS: Fair to Midland, Your Honor. How are you  
5 doing?

6 THE COURT: Well, thank you.

7 Good morning, Mr. Splond. How are you doing?

8 THE DEFENDANT: All right. How about yourself?

9 THE COURT: I'm well, thank you.

10 How are we doing with the Department of Parole and  
11 Probation?

12 MR. CLAUS: The motion to compel hearing is set for  
13 January 4th, Your Honor. We'll need one more extension here,  
14 and we'll fight it out.

15 THE COURT: All right. I'm going to set the  
16 sentencing for the week after that, which is January 11th. So  
17 if at the hearing on January 4th it turns out you get a lot more  
18 information and you're going to need more time then the 11th let  
19 us know.

20 MR. CLAUS: Thank you, Your Honor.

21 THE COURT CLERK: January 11, 9:00 a.m.

22 MR. CLAUS: Thank you, Your Honor.

23 THE COURT: I need that on a Monday.

24 THE COURT CLERK: January 9, 9:00 a.m.

25 THE COURT: And we will be -- this case is one of the

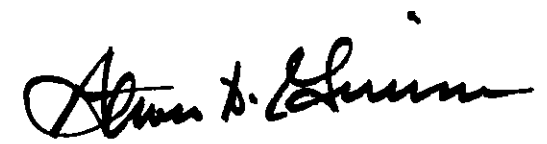
1 few that I'm going to keep because of the unusual stuff with it.

2 MR. CLAUS: Yes, Your Honor, understood. Thank you  
3 very much.

4 THE PROCEEDINGS CONCLUDED AT 9:19 A.M.  
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20 ATTEST: I do hereby certify that I have truly and correctly  
21 transcribed the audio/video proceedings in the above-entitled  
case to the best of my ability.

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JILL HAWKINS  
24 Court Recorder  
25

  
CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C296374-1
	)	DEPT. NO. 1
vs.	)	
	)	
KENYA SPLOND,	)	
	)	
Defendant.	)	

BEFORE THE HONORABLE KENNETH C. CORY, DISTRICT JUDGE  
MONDAY, JANUARY 9, 2017 AT 10:02 A.M.

**RECORDER'S TRANSCRIPT RE:  
DEFENDANT'S MOTION TO COMPEL PRODUCTION OF SUBPOENAED  
MATERIALS  
SENTENCING**

APPEARANCES:

FOR THE STATE:	BINU G. PALAL Deputy District Attorney
FOR THE DEFENDANT:	T. AUGUSTAS CLAUS, ESQ.
ALSO PRESENT:	DAVID R. KEENE, II Senior Deputy Attorney General

Recorded by: LISA A. LIZOTTE, COURT RECORDER

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(MONDAY, JANUARY 9, 2017 AT 10:02 A.M.)

THE CLERK: Page 6, and I have a note from the JEA that this matter is going to be referred back to Gonzalez – transferred back to Gonzalez.

THE COURT: Okay. Good.

THE CLERK: She wants a Monday date.

THE COURT: A Monday date.

MR. PALAL: Okay. Monday date, any Monday is fine with DA's office.

THE COURT: Okay.

MR. KEENE: Well, Your Honor, I was just – I hadn't received notice it had been reassigned to here, so I was in her courtroom this morning at 9:00 o'clock and she said that she had put it back in to be reassigned to somebody else, and her Bailiff –

THE COURT: This morning?

MR. KEENE: Yes, Your Honor, and her –

THE CLERK: And that was just brought to me.

MR. KEENE: Okay.

THE COURT: Well, do you want to do this, we can give you a Monday date and if for some reason it's not in her court on that date we can – we can say then in that case be here so you don't have to keep –

THE CLERK: I'll send it – I'll set it off her calendar.

THE COURT: You'll set it. All right. She's setting it on Judge Gonzalez' calendar. All right?

MR. KEENE: Okay.

1 THE COURT: Gee, I was looking forward to hearing from you all.  
2 All right, so –  
3 THE CLERK: Is there a Monday that you guys want?  
4 MR. PALAL: Any Monday is fine.  
5 MR. KEENE: Any Monday is fine.  
6 THE COURT: You?  
7 THE CLERK: January 23<sup>rd</sup>.  
8 MR. KEENE: Thank you.  
9 THE COURT: Thank you.  
10 THE COURT RECORDER: Counsel, your name?  
11 MR. KEENE: David Keene, K-e-e-n-e. I'm with the Attorney  
12 General's office.  
13 THE COURT: A Judge's – what do I want to say, the thing you  
14 would hope for for Christmas, a defense attorney with no voice.  
15 MR. CLAUS: I'll speak up into the microphone.  
16 THE COURT: I just had the same thing. Before I – when I came in  
17 a week or so ago to hold court I had to use a lapel mic. You have to be sure and  
18 turn it off though when you're done.  
19 (Whereupon, the proceedings concluded.)  
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.

 —  
LISA A. LIZOTTE  
Court Recorder

DISTRICT COURT  
CLARK COUNTY, NEVADA

Defendant.

# Transcript of Proceedings

MONDAY, JANUARY 23, 2017

AA000824



1  
2 LAS VEGAS, NEVADA, MONDAY, JANUARY 23, 2017, 9:58 A.M.

3 (Court was called to order)

4 THE COURT: Mr. Splond, I am also besides handling  
5 your criminal case, I am in charge now of minor guardianship.  
6 And I have a document in Case Number G16046031-M that is alleged  
7 to be your signature. Since it's not notarized and you're in  
8 the jail, I'm going to send the marshal over and ask if you  
9 signed this document.

10 THE DEFENDANT: Yes.

11 THE COURT: Okay. Thank you, sir. That helps me on  
12 the guardianship case, which is on calendar for next week.

13 Now, Mr. Claus, we're here on the motion for  
14 production of subpoenaed materials related to P&P.

15 MR. CLAUS: Well, Your Honor, to be perfectly frank, I  
16 think I've -- there's nothing to be produced reading their  
17 motion. I'd still ask for an order. I think I predicted the  
18 State's nature of their opposition in my motion itself, but I  
19 don't think that these materials are confidential.

20 I'd submit to the Court.

21 THE COURT: Regardless of whether they're  
22 confidential, the State has said we don't have any.

23 MR. CLAUS: Exactly.

24 MR. KEENE: That's correct, Your Honor. I called up  
25 to records myself, as I've stated in my affidavit, asked them to

1 provide me with everything in the file, and they said you have  
2 it.

3 THE COURT: Okay.

4 MR. KEENE: We've produced everything.

5 THE COURT: I can't order them to produce  
6 documentation that does not exist.

7 MR. CLAUS: Understood, Your Honor.

8 THE COURT: Okay. So given the response that's been  
9 provided by the Attorney General's Office, I'm going to not  
10 require any additional protection of information from P&P  
11 pursuant to that subpoena.

12 MR. CLAUS: If I could, Your Honor, though while the  
13 State can't produce anything, you can't order them to produce it  
14 just for the sake of the record should this ever become an issue  
15 on the appeal or post-conviction relief settings that, you know,  
16 the State comes up with something out of the P&P file.

17 THE COURT: If information had in fact existed, I  
18 would order them. So I am ordering it, but conditioned on the  
19 information I've been provided there is no information to be  
20 turned over. How's that?

21 MR. CLAUS: Very well, Your Honor.

22 THE COURT: It accomplishes the same purpose with a  
23 little bit different language.

24 MR. KEENE: I believe so, Your Honor.

25 THE COURT: All right. So, that means you're done.

1 Sorry you had to come back again.

2 MR. KEENE: It's no problem, Your Honor.

3 THE COURT: Now I get to the part. Are we ready to  
4 proceed with sentencing or schedule sentencing?

5 MR. CLAUS: Your Honor, I was going to ask to schedule  
6 sentencing in two weeks. Given that there's no new materials, I  
7 think the sentencing memo can be done relatively quickly here.  
8 And then it's just a matter of whether or not the State would  
9 like an opportunity to respond. But I imagine I can have it  
10 filed by this Friday.

11 MR. PALAL: That State's ready at Court's convenience.  
12 The State will just make its arguments orally.

13 THE COURT: Okay. I only have a courtroom with a  
14 sally port Monday's from 8:00 to 10:15, which means I lose it in  
15 15 minutes. So do you want to come back on -- we're moving the  
16 6th on Wynn/Okada.

17 THE COURT CLERK: The motion to compel?

18 THE COURT: We're moving that stuff on the 6th; right,  
19 because they're in Carson City?

20 So can you come back on February 6th, because my  
21 Wynn/Okada folks are not coming that day, and their half hour  
22 turns into an hour almost every time they show up, which is  
23 every Monday at 8:00 o'clock.

24 MR. CLAUS: That looks fine, Your Honor.

25 THE COURT: Does that work?

1 MR. PALAL: That's fine [inaudible].

2 THE COURT: Okay. So we'll proceed with sentencing

3 then, Mr. Splond, on February 6th, 2017 at 9:00 o'clock?

4 MR. CLAUS: Yes.

5 THE COURT: Does that work?

6 MR. CLAUS: I've got a trial set that day with --

7 THE COURT: Do you want to come at 8:30?

8 Can you bring him at 8:30? Because I know you guys

9 have transport issues, and since I'm not on the real schedule, I

10 don't want to screw it up worse.

11 THE CORRECTIONAL OFFICER: Yes, we can do that.

12 THE COURT: Which is better, 8:30?

13 THE CORRECTIONAL OFFICER: 8:30.

14 THE COURT: Okay.

15 MR. CLAUS: 8:30 is excellent, Your Honor.

16 THE COURT: Okay. Can we do 8:30?

17 MR. CLAUS: Yes.

18 THE COURT: Is that okay, Mr. Palal?

19 MR. PALAL: Yes, Your Honor.

20 THE COURT: All right.

21 MR. CLAUS: Thank you, Your Honor.

22 THE COURT: So, Mr. Splond, I'll see you then. Thank

23 you again for your help on that guardianship. I just wanted to

24 make sure that was your signature before I relied on that

25 document.

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MR. PALAL: Thank you, Your Honor. Thanks, everybody.

THE COURT: Have a nice day.

THE PROCEEDINGS CONCLUDED AT 10:01 A.M.

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

  
\_\_\_\_\_  
JILL HAWKINS  
Court Recorder

DISTRICT COURT  
CLARK COUNTY, NEVADA

# Transcript of Proceedings

AA000830

1 LAS VEGAS, NEVADA, MONDAY, FEBRUARY 6, 2017, 9:12 A.M.

2 (Court was called to order)

3 THE COURT: If I could go to Splond. Good morning,  
4 Mr. Splond. How are you?

5 THE DEFENDANT: Good morning. I'm all right. How  
6 about yourself?

7 THE COURT: I'm well.

8 This is the time set for entry of judgment and  
9 imposition of sentence. Is there any legal cause or reason why  
10 judgment should not be entered at this time?

11 MR. CLAUS: No, Your Honor.

12 THE COURT: By virtue of the verdict of the jury  
13 entered on March 24th, 2016, I adjudge you guilty of Count 1,  
14 conspiracy to commit robbery; Count 2, burglary while in  
15 possession of a firearm; Count 3, robbery with use of a deadly  
16 weapon, victim Brittany Slathar; Count 4, possession of stolen  
17 property; Count 5, burglary while in possession of a firearm,  
18 Cricket on North Rancho; Count 6, robbery with use of a deadly  
19 weapon, victim Samuel Echeverria; Count 7, burglary while in  
20 possession of a firearm, Metro PCS on Smoke Ranch; and Count 8,  
21 robbery with use of a deadly weapon, victim Graciela Angeles.

22 Has everyone had the opportunity to review the  
23 supplemental pre-sentence investigation report that was prepared  
24 on June 30th, 2016?

25 MR. PALAL: Yes, Your Honor.

1 MR. CLAUS: Yes, Your Honor.

2 THE COURT: Okay. I know that there was some motion  
3 practice and subpoenas that were issued by Mr. Claus to the  
4 Department of Public Safety to try and resolve the issue that  
5 has been raised about Mr. Splond being confused with his cousin.  
6 And because the Attorney General indicated to us there were no  
7 additional records that were available, it looks like there is  
8 no additional supplementation that can be done at this time.  
9 Does that seem like everybody's understanding?

10 MR. CLAUS: Yes, Your Honor.

11 MR. PALAL: Yes, Your Honor.

12 THE COURT: Okay. Mr. Splond, I also received a  
13 letter from you that I got in May of last year and a letter from  
14 Ms. Rashid that I got in, I think, it was October, all right.

15 Counsel, anything else before we proceed?

16 MR. CLAUS: No, Your Honor.

17 THE COURT: Any legal reason we shouldn't proceed?  
18 State's position.

19 MR. PALAL: Yes, Your Honor. This Court sat through  
20 this trial, but it was some time ago as this Court is aware way  
21 back in March of last year. I just want to highlight a few  
22 things and I'll be brief, Your Honor.

23 When the Defendant went on this robbery spree, this  
24 robbery series, he was awaiting sentencing in another case. So  
25 I think that kind of tells you -- gives -- sets a stage for



1 that. And I think we might hear that the Defendant was, you  
2 know, drug addled during these 11 days where these three  
3 robberies are committed, but I would suggest to you that the  
4 evidence shows something completely different.

5           What you heard at trial was from Samuel Echevarria and  
6 you heard from him that the Defendant goes into the store, waits  
7 until it gets empty, then points a gun at the cashier and says,  
8 empty the register before I blow your brains out. Importantly,  
9 it's methodical, he waits until the store is empty then he  
10 proceeds to commit the robbery.

11           Six days later on January 28th, 2014, he enters the  
12 Metro PCS where Garciela Jimenez is working, he -- again, he  
13 waits until the store is empty. And even then he says, he waits  
14 until -- he asks the clerk, Ms. Jimenez, to go into the back to  
15 bring out a phone so he could look at it, and then he initiates  
16 the robbery so he can take not only what's in the register, but  
17 also take that phone as well.

18           Then five days after that on February 2nd, 2014, he --  
19 he goes as though he's going to purchase something. He takes  
20 something from the Starmart, as though he's going to purchase  
21 something, to make sure that Brittany Slathar goes to the  
22 register, and after that point he pulls out the gun and says,  
23 you're going to die you dumb white bitch, give me all your money  
24 or your life is over.

25           Your Honor, all these actions over the 11 days, the

1 method in which these robberies occurred indicates that there's  
2 some thought behind it. It's not a -- it's not a drug addled,  
3 mindless, going from place to place, but rather it is well  
4 thought out series of robberies.

5 And, Your Honor, you mentioned that the Defendant gave  
6 -- submitted a letter to the Court, and I think that letter is  
7 telling. What the Defendant says in his letter is, quote, "I've  
8 been through enough". Your Honor, the State submits the  
9 community has been through enough. That Mr. Splond is the  
10 author of these robberies, he's the author of his fate, that's  
11 why he sits here now. The Defendant also says, I guess I'm  
12 saying I'm sorry. Hardly a resounding apology.

13 And finally, and I think most important to -- to the  
14 State, I think what the Court should really consider is he says,  
15 I had no choice in none of this. Frankly, the State finds that  
16 offensive; I had no choice in none of this. You know who had no  
17 choice in this, Samuel Echevarria, Garciela Jimenez, Brittany  
18 Slathar, people who went to low-paying jobs to support their  
19 families and as a result met with a gun somebody trying to take  
20 a shortcut. He had no choice in this, Your Honor? He's the  
21 only person that had a choice in this.

22 As a result, Your Honor, the State's going to be  
23 asking for 15 years on the bottom, 45 years on the top. We're  
24 going to ask that on the first robbery you -- 3 to 10 for the  
25 robbery with a consecutive 2 to 5 years for 5 to 15, and we're

1 going to ask you to do that for each one of these robberies and  
2 run each robbery consecutive with each other. There are three  
3 different events. They're worthy of their own sentences.

4 With regards to the subsequent crimes, the burglaries  
5 that go along with each one of the robberies, the State would  
6 ask that you follow P and P's recommendation of 35 to 156 on  
7 each one of those and run those concurrent. But, Your Honor,  
8 the State believes that each robbery deserves its own  
9 independent sentence because each victims had their own  
10 independent experience five and six days apart. Your Honor, and  
11 just so the Court is aware, the State has a calculation of 935  
12 days credit.

13 With that the State will submit.

14 THE COURT: 935?

15 MR. PALAL: Yes.

16 THE COURT: Mr. Splond, is there anything you'd like  
17 to tell me before I hear from your counsel?

18 THE DEFENDANT: I would like to apologize to the Court  
19 and to the victims. I just --

20 THE MARSHAL: Hold on a second.

21 THE DEFENDANT: During my trial, Mr. Echevarria,  
22 whatever his name is --

23 THE MARSHAL: Hold it up to you.

24 THE DEFENDANT: -- he told you guys that I didn't rob  
25 him. He said it on the stand -- on the witness stand. So I

1 don't understand this. I don't -- I was -- I am a drug addict.  
2 I have been on drugs for the last 15 years, and I was on pills  
3 and all kinds of other things. So I am saying that I'm not --  
4 that is -- I wasn't -- I was on PCP the night of that robbery  
5 that Brittany Slathar -- I was on PCP and other -- and Xanax and  
6 all kinds of other drugs. So I don't -- I don't -- and I don't  
7 even understand how you can sit here and say that he wasn't on  
8 drugs and it's methodical. No, I was high. That's all, Ms.  
9 Gonzalez.

10 THE COURT: Thank you, sir.

11 Mr. Claus.

12 MR. CLAUS: Your Honor, I'm -- I know that Mr. Splond  
13 has some frustrations with the results of the trial based upon  
14 the testimony, but you've heard that testimony and we're here  
15 dealing with the result.

16 Now, Your Honor, this has taken a long time to get to  
17 this point, an exceptionally long time, and inordinately long  
18 time, and --

19 THE COURT: Longest I've ever had on a sentencing.

20 MR. CLAUS: And in no small part because of what Mr.  
21 Splond makes clear in his letter.

22 Your Honor, 1992, almost 20 years ago, Mr. Splond has  
23 a good-paying job, youngest man working at the Nevada Test Site  
24 at that time, 18 years old. As in his own words, keeps his nose  
25 clean, goes back and forth from work and home. And then his

1 mother, who he loves dearly, invites him to spend time with some  
2 family, cousin, brother. And those individuals have an  
3 altercation with police officers that alter the trajectory of  
4 Mr. Splond's life, completely, irrevocably.

5           He ends up picking up new charges because of that.  
6 Simple misdemeanors, Your Honor, but misdemeanors that flag him  
7 as someone who should be looked at more carefully in the  
8 screening processes, but that's not the worst of what happens.  
9 Because of that incident, he starts being confused with his  
10 family members.

11           Indeed, Your Honor, but were it not for the fact that  
12 this other Splond, Kenny Splond, were in custody in front of  
13 Judge Smith, it would have been hard to convince Judge Smith  
14 that these were different individuals. I believe Mr. Splond  
15 when he says when Judge Smith looked at this, and he looked at  
16 the wrong record, he said to him, you should be in prison. That  
17 is the reaction of everyone that made this conflation mistake.

18           And, Your Honor, P and P itself with all its vast  
19 resources and essentially unlimited access to NCIC and Scope,  
20 when we go through all of this process and we get the second  
21 PSI, on page 3 under gang affiliation, after it has essentially  
22 been shown to them that this is a mistake, the best that we can  
23 get P and P to say about his gang affiliation is that Mr. Splond  
24 denied any gang involvement; however, according to information  
25 obtained from Las Vegas Metropolitan Police Department, the

1 Defendant, Mr. Splond, is a member of the Rollin 60's Crips.

2 A booking photograph of Mr. Splond at the time of  
3 classification as a gang member is the Defendant's brother. But  
4 we don't even get P and P to say, we're dealing with the wrong  
5 person. What we get them to say is, well, Metro says he's a  
6 gang member, but the booking photo appears to be the brother.  
7 But we're going to leave this in anyway knowing that it's going  
8 to be reviewed by all parties at future parole hearings. That  
9 is the best we get from Parole and Probation.

10 And, Your Honor, that is emblematic of the situation  
11 here. Mr. Splond came to the Court before we went to trial  
12 willing to take responsibility for these actions. Part of what  
13 caused the problem here though is frankly he was so drug addled.  
14 And as he says to the Court he woke up two weeks after being in  
15 custody, realized where he was, realized what he'd done, but  
16 some of these things, Your Honor, he didn't even remember doing.

17 To his credit though, Your Honor, despite that  
18 description and despite what the State says, Your Honor, this is  
19 a non-probationable crime that we are looking at being forced to  
20 send Mr. Splond to prison because of the use of the weapon and  
21 the robberies. Absent that, it would be an interesting argument  
22 in front of you today. But, Your Honor, we are confined to  
23 place Mr. Splond into custody because of that robbery with use  
24 of a deadly weapon.

25 The Co-Defendant, Your Honor, got probation, 28 to 72

1 sentence. Then violated probation and ended up being sent to  
2 prison for additional criminal charges.

3 Again, while some people, Your Honor, in this system  
4 get chance after chance, like Kelly Chapman, the co-Defendant  
5 here, the driver in all of these circumstances. Starting her  
6 criminal history in 2005 with a taking of a vehicle without the  
7 owner's consent; 2010, same charge; 2010, abuse and neglect and  
8 endangerment of a child; 2010, attempt theft; 2014, this charge;  
9 2015, fraudulent use of a debit card; multiple chances at gross  
10 misdemeanor treatment before ultimately being given probation on  
11 a felony, and then being given probation on this felony, Your  
12 Honor, despite her involvement in all of these circumstances.

13 And, Your Honor, when it comes to scale of punishment,  
14 each judge is different. But the State offered negotiations  
15 which frankly even I was not in favor of at that point for that  
16 client. For a client who kidnapped and beat local elderly  
17 residents for 15 to 45 sentence, what the State is asking you to  
18 impose here on Mr. Splond because it can, but not because it's  
19 right.

20 Mr. Splond did not hurt any of these individuals. And  
21 while he might have altered their perceptions of reality for  
22 some time to come, and might have frightened them greatly by  
23 placing this firearm in their face and demanding money from  
24 them. At the end of the day, Your Honor, this third robbery  
25 that he was caught at, what did he get? He comes in and starts

1 yelling at the cashier, give me money, after he asks for two  
2 packs of smokes -- of cigarettes. The cashier says to him, I  
3 can't open up the drawer without a transaction. You have to buy  
4 something with a transaction. Were this situation not so  
5 serious, that response would be laughable. It would be  
6 something that you'd have -- be written in a cartoon, something  
7 that Hollywood would write in a script for an exceptionally  
8 foolish criminal, and that's what this was.

9           Mr. Splond was so drug addled at this point that when  
10 the cashier says this to him, his reaction is not to beat the  
11 cashier senseless, is not to shoot the cashier, it is to take  
12 the cigarettes that are in front of him, two packs, and a pack  
13 of gum and leave the store. That was a mark of Mr. Splond's  
14 dangerousness; that when he is refused what he is demanding, he  
15 does not resort to physical violence, he simply leaves the  
16 store.

17           Your Honor, when looking at writing a sentencing memo  
18 here, and I know I requested 14 days for that, I met with Mr.  
19 Splond yesterday, and to be perfectly frank, I didn't think that  
20 I could sum up his life better than this letter to the Court  
21 did. I didn't think that I'd be doing anything but  
22 regurgitating that.

23           And in truth, Your Honor, I didn't think that you were  
24 the sort of judge that would look at the latest PSI report and  
25 say, well, everything's recommended consecutively versus the



1 first PSI report that recommends concurrency treatment between a  
2 number of these charges, and say, well, because PSI -- because P  
3 and P recommended consecutive treatment, I'm going to go with  
4 that. Even though we know now P and P cannot provide any  
5 justification whatsoever as to how one number got to the other.

6 Your Honor, you have been in this trial, you saw this  
7 evidence, you saw the witnesses, you saw the effect that this  
8 had upon these witnesses, and can make that judgment. You have  
9 heard from Mr. Splond himself. He is not an articulate man when  
10 he speaks, but he is expressive when he writes his letters.

11 Your Honor, I would ask for a 3 to 8 year accumulative  
12 sentence. I know that's a lot to ask, but to be perfectly  
13 frank, it's less than the Co-Defendant received. And while she  
14 might have some lesser level of culpability in terms of not  
15 actually committing the crimes, she was involved in all of them,  
16 and the State gave you that measure with their negotiations for  
17 her.

18 And I'll submit thereon.

19 THE COURT: Thank you.

20 Mr. Splond, is there anything else you'd like me to  
21 hear?

22 THE DEFENDANT: No, ma'am. No.

23 THE COURT: For the record, counsel, Mr. Splond also  
24 has a guardianship proceeding where he's a parent involved in  
25 front of me, so I had him tell me the other day that the consent

1 he had signed was actually his consent, since it wasn't  
2 notarized, so.

3 Anything else, counsel?

4 MR. PALAL: No, Your Honor.

5 MR. CLAUS: No, Your Honor.

6 THE COURT: In accordance with the laws of the State  
7 of Nevada, the Court now sentences you on Count 1 to a period of  
8 12 to 60 months in the Nevada Department of Corrections.

9 On Count 2, the Court sentences you to a period of 28  
10 to 156 months in the Nevada Department of Corrections, that  
11 sentence to run concurrent with Count 1.

12 On Count 3, the Court sentences you to 28 to 156  
13 months, plus an enhancement of 28 to 156 months consecutive to  
14 that sentence, but concurrent with Count 2 along with  
15 restitution in the amount of \$686.71 to that victim.

16 On Count 4, the Court sentences you to 24 to 60  
17 concurrent with Counts 1 through 3.

18 On Count 5, the Court sentences you to 28 to 156  
19 consecutive to Counts 1, 2, 3 and 4.

20 On Count 6, the Court sentences you to 28 to 156, plus  
21 an enhancement of 28 to 156 for the use of the deadly weapon  
22 consecutive to Counts -- or I'm sorry, concurrent to Count 5.

23 And Count 7, the Court sentences you to a period of 28  
24 to 156, that is consecutive to the other counts.

25 And on Count 8, the Court sentences you to 28 to 156

1 with a consecutive sentence of 28 to 156, that sentence to run  
2 concurrent with Count 7.

3           So, Counsel, what I tried to do was to group the  
4 charges together so I have three concurrent sentences that are  
5 for each of the separate robberies.

6           In addition, I have credit for time served I believe  
7 of 935 days, Mr. Claus?

8           MR. CLAUS: Yes, Your Honor. I'll agree to that.

9           THE COURT: A \$25 administrative assessment, a \$250  
10 defense assessment, a \$3 DNA collection fee. That should take  
11 me to an aggregate sentence of 168 to 936 if my math is correct  
12 with the deadly weapon enhancements.

13           MR. PALAL: I'm not going to be able to do the math on  
14 the fly, Your Honor, so.

15           THE COURT: I did it last night because I have trouble  
16 with math. That's why I'm a judge now.

17           The DNA fee is waived because it was taken in your  
18 other case.

19           Did I get everything?

20           MR. PALAL: Yes, Your Honor.

21           MR. CLAUS: Yes, Your Honor.

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THE COURT: All right. Good luck, sir.

MR. PALAL: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 9:31 A.M.

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

  
\_\_\_\_\_  
JILL HAWKINS  
Court Recorder

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

---

**No. 72545**

---

**KENYA SPLOND**  
Appellant,

vs.

**STATE OF NEVADA**  
Respondent.

---

Appeal from a Judgment of Conviction  
Eighth Judicial District Court, Clark County  
The Honorable Elizabeth Gonzalez, District Court

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**APPENDIX VOL 3**

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1 THE WITNESS: Alisa J. Williams.

2 THE COURT: And could you spell your name, please.

3 THE WITNESS: A-l-i-s-a.

4 THE COURT: Williams, the typical spelling?

5 THE WITNESS: Yes, Williams.

6 THE COURT: All right. Ma'am, there are M&Ms in that  
7 dispenser next to you. There is water in the pitcher next  
8 to you. If you should need some coffee, let the marshal  
9 know.

10 You may proceed.

11 MR. PALAL: Thank you, Your Honor.

12 DIRECT EXAMINATION OF ALISA WILLIAMS

13 BY MR. PALAL:

14 Q Ms. Williams, do you remember being, or talking to  
15 the police about January 22nd, 2014?

16 A Not quite.

17 Q Yeah. Well, do you remember seeing somebody leave --  
18 saying -- saying that you saw somebody leave a Cricket store  
19 January 22nd, 2014?

20 A Yes. Yes.

21 Q And what were you doing that day?

22 A I was getting out of work.

23 Q Where did you work?

24 A At Wild Hair.

1 Q And is that in the same complex as the Cricket store?

2 A Next door.

3 Q Right next door. All right. And did anything strike  
4 you as unusual about the person leaving the Cricket store?

5 A No, he just ran and jumped into the back of a  
6 car.

7 Q Okay. And could you -- was the person white? Asian?  
8 Black?

9 A Black American.

10 Q Okay. And was he skinny or was he --

11 A Pretty skinny.

12 Q Okay. And then, did you happen -- can you describe  
13 the vehicle that the person went in to.

14 A It was a silver car. I don't know what kind of  
15 model it was, no. It was silver.

16 Q Was it a truck or a sedan?

17 A It was a silver car.

18 Q Okay.

19 A Yeah.

20 Q It's a regular car, then?

21 A Yeah.

22 Q Not a truck.

23 A No.

24 Q Not a SUV.



1 A No.

2 Q Okay. Do you recall if the windows were tinted at  
3 all?

4 A I don't remember, no.

5 Q Did -- do you recall -- can you describe the person  
6 who was driving the car.

7 A She's a light-skinned black female, young, and  
8 she had white shades on.

9 Q Okay. And so the -- the African American male who  
10 left -- who kind of -- who you said ran out of the Cricket  
11 store, did he go into the front seat or the back seat?

12 A Jumped in the back seat.

13 Q At some point later -- at some point later, did a  
14 detective come speak to you about this incident?

15 A Yes.

16 Q And did he provide you a photo array of people to see  
17 if you could recognize that person?

18 A No.

19 Q You don't remember him doing that?

20 A I don't remember doing that, no.

21 MR. PALAL: All right. Court's indulgence.

22 Your Honor, for the record, I showed Defense  
23 Counsel State's Proposed Exhibit Number 41.

24 May I approach the witness?

1 THE COURT: You may.

2 BY MR. PALAL:

3 Q Now I'm gonna show you what's been previously marked  
4 as State's Proposed Exhibit Number 41. I'm gonna ask you to  
5 take a look at it. Is that your name on the top?

6 A Yes, it is.

7 Q Do you see your signature?

8 A Yes, I do.

9 Q Is that your writing?

10 A Yes, it is.

11 Q All right. Now, I'm gonna ask you to take a look at  
12 the second page. Do you see your initial?

13 A Yes.

14 Q Okay.

15 MR. PALAL: Your Honor, at this time the State's gonna  
16 move State's Exhibit 41 into evidence.

17 THE COURT: Any objection?

18 MR. CLAUS: Not at this point, Your Honor.

19 THE COURT: 41 be admitted.

20 [STATE'S EXHIBIT 41 ADMITTED]

21 BY MR. PALAL:

22 Q Now, in fairness ma'am -- [inaudible]. In fairness,  
23 ma'am, so do you now recall having -- being given a photo  
24 array by detectives some time later?

1 A Not really, no.

2 Q But you do recognize your handwriting?

3 A Yeah. Yeah. Everything else, I remember, yeah.

4 Q Everything else you recognize.

5 A Yeah.

6 Q And in fairness, when looking at the photo array, you  
7 were not able to identify the person, were you?

8 A I just saw his scar on his face. That's all I  
9 saw and had a hat on his head.

10 Q So you saw scars on his face, hat --

11 A On the -- on the jaw, cheek.

12 Q On the jaw.

13 A Yeah.

14 Q What kind of scars are you talking about?

15 A It was just a scar like a burn or something. I  
16 don't know. Like a knife cut or something. A burn. I  
17 don't know.

18 Q Could they be consistent with acne scars?

19 A No. No.

20 Q Okay. And you weren't able to pick the person out of  
21 the six-pack.

22 A Um --

23 Q I'm sorry. Out of the photo array.

24 A Um, that second one looks like it may be. I'm

1 not sure. He had a scar on his face.

2 Q So the second one looks like it might be, but you  
3 aren't sure and you weren't sure back then.

4 A I just remember a scar on the face and a hat. He  
5 had a hat over his head.

6 Q Okay.

7 A All right.

8 MR. PALAL: Okay. State will pass the witness.

9 THE COURT: Any examination?

10 CROSS-EXAMINATION OF ALISA WILLIAMS

11 BY MR. CLAUS:

12 Q As part of your -- as part of looking at the photo  
13 array, you told the detective you couldn't identify anyone; is  
14 that correct?

15 A No, just remember the scar and the hat. That's  
16 all I remember. That's what he had on. That's it.

17 Q But as part of the photo array and the photo array  
18 that you'd been given, you told the officer, "I looked and the  
19 photos and didn't recognize any of the people"; correct?

20 A Uh-huh.

21 Q And you didn't indicate that one looked closer than  
22 the others; correct?

23 A One looks closer on there, yeah.

24 Q But you didn't indicate that to the officer; correct?

1           A     No.

2           Q     Okay.  And is this first time you're telling this to  
3     someone today?

4           A     Yeah.

5           Q     And have you met with the District Attorneys prior to  
6     testifying today?

7           A     No.

8           Q     How did you come to testify today, then?

9           A     They called me yesterday -- well, last week.

10          Q     Okay.  And you were given a subpoena?

11          A     No, he just called me, actually.  I -- I had one  
12     previous, couple years earlier, but nothing ever happened  
13     of it.

14          Q     Okay.  And when you talked with this person on the  
15     phone, did you talk about what you'd done on the photo array?

16          A     No.

17          Q     Okay.  So your testimony that number two kind of  
18     looks like the scar guy is --

19          A     Wait.  If you bring up, I can show you which one  
20     it is.  I don't know --

21          Q     I have an idea which one it is.  What I'm just trying  
22     to clarify is, this is the first time you've said that to  
23     anybody.

24          A     Yeah.

1           Q     Okay. Today in court. You didn't say it back then.  
2     You didn't write it down. Is your memory better today than it  
3     was three years ago?

4           A     Better today? No, not really.

5           Q     Okay.

6           A     It's been a long time.

7           Q     Tends to be worse; yes?

8           A     Yeah.

9           Q     Okay. And as part of this photo array, you were also  
10    shown a photo arrays of women; correct?

11          A     Yeah.

12          Q     And you weren't able to identify anyone as that -- as  
13    part of that photo array; correct?

14          A     No.

15          Q     Okay. Now, this vehicle that you said was -- the  
16    folks were getting into, there was nothing else that stood out  
17    about it to you; correct?

18          A     No, just silver, newer model car. I don't know  
19    what kind of car it was either, no.

20          Q     Okay.

21          MR. CLAUS: Court's indulgence for just a moment,  
22    please.

23          THE COURT: Sure.

24          BY MR. CLAUS:

1           Q     And at the time of this incident, you also gave a  
2     written voluntary statement to the police.

3           A     Yes.

4           Q     Do you remember doing that?

5           A     Yes.

6           Q     Okay. Have you had a chance to review that --

7           A     No.

8           Q     -- before you testified today?

9           A     No. No.

10          Q     Do you remember on that voluntary statement that you  
11     didn't describe any damage to the vehicle.

12          A     No.

13          Q     Nothing else stood out -- stood out about the vehicle  
14     to you?

15          A     No.

16          Q     Okay.

17          A     It just parked in the opposite way the -- the  
18     people go out of the parking lot. You know, not -- not  
19     backed into -- it was backed into the parking lot,  
20     actually.

21          Q     Okay.

22          A     Parking spot. That was it.

23               MR. CLAUS: Thank you. Pass the witness, Your Honor.

24               THE COURT: Any redirect?

1 MR. PALAL: Briefly, Your Honor.

2 REDIRECT EXAMINATION OF ALISA WILLIAMS

3 BY MR. PALAL:

4 Q Mr. Claus referred to your voluntary statement that  
5 you wrote immediately after the event.

6 A Yes.

7 Q And you haven't seen it since the 2/2014?

8 A Nope.

9 Q Do you recall if you told the police that the silver  
10 car had tinted windows?

11 A No, I don't remember at all.

12 Q Would it refresh your recollection if I showed you  
13 the statement you wrote in 2014?

14 A Okay.

15 MR. PALAL: Your Honor, may I approach the witness?

16 THE COURT: You may.

17 Anybody want it marked for record purposes?

18 MR. PALAL: Not for the State, Your Honor.

19 MR. CLAUS: Just as part of the Court's record,  
20 Your Honor, perhaps.

21 THE COURT: We'll mark it as Court's one at the break.

22 [COURT'S EXHIBIT 1 MARKED.]

23 BY MR. PALAL:

24 Q Do you recognize your handwriting here?



1 A Yes.

2 Q Is that your name on the top?

3 A Yes.

4 Q Can you just read quietly to yourself.

5 A 'Kay.

6 Q And now, having -- and is this, in fact, a copy of  
7 the written statement you wrote in 2014?

8 A Yes.

9 Q And does it refresh your recollection as to whether  
10 or not you told the police officer that the silver car had  
11 tinted windows?

12 A No, I don't remember that now, really.

13 Q Do you -- having seen this, do you -- did you see  
14 that you wrote --

15 A Yeah.

16 Q -- "the car had tinted windows."

17 A Yeah.

18 Q So at that time, in 2014, you believe that the car --

19 A Yeah.

20 Q -- had tinted windows.

21 A Yeah.

22 MR. PALAL: All right. State will pass the witness,  
23 Your Honor.

24 THE COURT: Anything else, Mr. Claus?

1 MR. CLAUS: No, Your Honor.

2 THE COURT: Any questions from the jury?

3 Thank you, ma'am. We appreciate your time.

4 Thank you with your -- for your patience with us.

5 THE WITNESS: Okay.

6 THE COURT: Have a nice day.

7 THE WITNESS: Thank you.

8 THE COURT: Next witness.

9 MR. PALAL: State calls --

10 THE COURT: And we will need a copy of the statement  
11 to mark as Court's 1, at the break. So don't let it  
12 leave.

13 MR. LEXIS: State calls Brittany Slathar.

14 BRITTANY SLATHAR,  
15 [having been called as a witness and being first duly  
16 sworn testified as follows:]

17 THE CLERK: Thank you. Please be seated and please  
18 state and spell your name for the record.

19 THE WITNESS: Brittany Slathar, B-R-I-T-T-A-N-Y,  
20 S-L-A-T-H-A-R.

21 THE COURT: And, ma'am, there is a dispenser with M&Ms  
22 in it, if you should need some. There's water in the  
23 pitcher. I saw you brought some of your own. If you  
24 should need some coffee, let the marshal know.

1 THE WITNESS: Okay. Thank you.

2 THE COURT: You may proceed, Counsel.

3 MR. LEXIS: Thank you, Your Honor.

4 DIRECT EXAMINATION OF BRITTANY SLATHAR

5 BY MR. LEXIS:

6 Q Ma'am, on February 2nd, 2014, were you working at  
7 Star Mart?

8 A Yes.

9 Q Was that around 2:45 in the morning?

10 A Yes.

11 Q Is that here in Las Vegas, Clark County?

12 A Yes, it is.

13 Q And is that at 5001 North Rainbow?

14 A Yes.

15 Q What were you doing there?

16 A I was a cashier, graveyard.

17 Q Did anything out of the ordinary happen around 2:45  
18 in the morning?

19 A Yes, a gentleman came in and robbed me at  
20 gunpoint.

21 Q Okay. Let's take it step by step, ma'am. When did  
22 you first notice this person and where were you?

23 A Oh, I was sitting at the tables on the -- in --  
24 like, on the side, doing crossword puzzles. It's really,

1       like, dead on graveyard. And when someone walks in a  
2       "ding" -- like a bell dings. And I saw him go to the gum.  
3       And when he walked to the counter, I got up and walked to  
4       the counter.

5           Q       Do you know what kind of gum he got?

6           A       Wrigley spearmint gum.

7           Q       And was there anyone else at the store?

8           A       No.

9           Q       And then once he approached the register, is that  
10       when you approached the register?

11          A       Yes.

12          Q       What happened next?

13          A       I asked if he needed anything else. He said two  
14       packs of Newport 100s. So the cigarettes were behind me.  
15       I turned around. I grabbed the cigarettes. And as I was  
16       ringing them up, he pulled the gun out and told me to give  
17       him all the -- tell me give him all the money.

18                I told him once I was in a transaction, I could  
19       not open my register. And I was just -- kept telling him  
20       I couldn't open it. He said, keep -- kept saying, "Give  
21       me the money. Give me the money. I'm gonna kill you.  
22       You're gonna die." And I kept -- calling me names,  
23       telling me, "Give me the money dumb white bitch." Told me  
24       I was stupid. And just kept telling me, continuously,

1 "Give me the money. Give me the money."

2 Q And you did not open the register.

3 A No, I did not.

4 Q Okay. And why didn't you open the register?

5 A I didn't know that -- I was under the assumption  
6 I had to pay that money back. So I wasn't gonna give him  
7 the money. So I didn't give it to him. And it was very  
8 stupid.

9 Q When you saw this gun, ma'am, were you in fear?

10 A Yes. I actually stepped back because I was very  
11 shocked and, you know, I was not expecting that.

12 Q Does it affect you to this day?

13 A Yes.

14 Q And was he getting frustrated when you kept telling  
15 him this?

16 A Very.

17 Q And what was he doing?

18 A He just -- he was holding the gun on the counter,  
19 pointing at me. And just was standing there and he would,  
20 like, hide the gun and then put it back. And he just kept  
21 telling me, "Give me the money. Give me the money."

22 Q Did he eventually leave?

23 A Yes, he told me that he'd be back. I was lucky.  
24 And I -- he'd be back.

1 Q And did he grab anything?

2 A Yes, the cigarettes. Well, the gum was on the  
3 counter. And I had put the cigarettes to the right of my  
4 register to not -- try not to give them to him and he  
5 eventually reached over the counter and grabbed them and  
6 then he left.

7 Q What did you do?

8 A I turned around and I called Metro. And once I  
9 got off the phone with Metro, I went around and locked the  
10 front doors because he said he'd be back. So I had locked  
11 the front door so he couldn't get back in. And so nobody  
12 else could come in as well.

13 Q Did Metro immediately respond?

14 A Yeah, I had saw a car drive by with the lights on  
15 and then another bunch of cop pulled in shortly after.

16 Q Soon thereafter, did they take you to a certain  
17 scene?

18 A Yes, they did.

19 Q And did they give you what's called a Show Up Witness  
20 Instruction Sheet?

21 A Yes, they did.

22 MR. LEXIS: Let the record reflect that I'm showing  
23 Defense Counsel State's Proposed Exhibit 19.

24 Your Honor, may I approach?

1 THE COURT: You may.

2 BY MR. LEXIS:

3 Q Ma'am, I'm showing you what has been marked as  
4 State's Proposed Exhibit 19.

5 A Uh-huh.

6 Q Do you recognize that, ma'am?

7 A Yeah, this is the form the police officer gave me  
8 before I went to that location where the suspect was.

9 Q Is there instructions at the top?

10 A Yes.

11 Q Did either the officer or you read those  
12 instructions?

13 A Yes, they told me to read them before.

14 Q And did you do that?

15 A Yes.

16 Q And then did you make an identification?

17 A Yes, I did.

18 Q And what specifically did you put down?

19 A You want me to read this?

20 Q Yes.

21 A "The male in front of the police car was the man  
22 who robbed me at the -- robbed me at gunpoint. He was  
23 wearing blue jeans, red T-shirt, and black tennis shoes.  
24 When he came in the store he was wearing blue jeans, a

1 black hooded sweatshirt and a beanie light," slash, "dark  
2 brown spots." It was a camouflage beanie.

3 Q And your identification was 100 percent?

4 A Yes. He was right in front of my face and I  
5 can't -- you can't -- he didn't cover his face, so I saw  
6 his face.

7 MR. LEXIS: Your Honor, the State moves to admit  
8 State's Proposed Exhibit 19.

9 THE COURT: Any objection?

10 MR. CLAUS: No, Your Honor.

11 THE COURT: Be admitted.

12 [STATE'S EXHIBIT 19 ADMITTED]

13 MR. LEXIS: Let the record reflect I'm showing Defense  
14 Counsel State's Proposed 25.

15 May I approach Your Honor?

16 THE COURT: You may.

17 BY MR. LEXIS:

18 Q Ma'am, I'm showing you what has been marked as  
19 State's Proposed Exhibit 25.

20 A Okay.

21 Q What is that?

22 A This is the property that he stole from the  
23 store.

24 Q Do you recognize that?



1           A     Yes.

2           Q     And what is it?

3           A     It is Wrigley spearmint gum and two packs of  
4     Newport 100s. One open; one not.

5           Q     And were those returned to the store?

6           A     Yes, they were.

7           MR. LEXIS: Your Honor I move to admit  
8     State's Proposed Exhibit 25.

9           THE COURT: Any objection?

10          MR. CLAUS: No, Your Honor.

11          THE COURT: 25 be admitted.

12                   [STATE'S EXHIBIT 25 ADMITTED]

13          MR. LEXIS: Let the record reflect I'm showing Defense  
14     Counsel State proposed 38.

15                   May I approach, Your Honor?

16          THE COURT: You may.

17     BY MR. LEXIS:

18           Q     Ma'am, I'm showing you what has been marked as  
19     State's Proposed Exhibit 38. Do you recognize that photo  
20     photograph?

21           A     Yes, I do.

22           Q     Who was in that photograph?

23           A     I am behind the register and he is in front of  
24     me.

1 Q And at what point in the occurrence is this?

2 A In the middle of the robbery, when he has the gun  
3 in his hand and he's just telling me, "Give me the money,"  
4 at some -- at some point.

5 MR. LEXIS: Your Honor, State moves to admit  
6 State's Proposed 38.

7 THE COURT: Any objection?

8 MR. CLAUS: No, Your Honor.

9 MR. PALAL: Permission to publish, Your Honor?

10 THE COURT: 38 be admitted.

11 [STATE'S EXHIBIT 38 ADMITTED]

12 THE COURT: You may.

13 MR. LEXIS: Thank you.

14 BY MR. LEXIS:

15 Q Is this you on the right, ma'am?

16 A Yes.

17 Q That's him on the left?

18 A Yes.

19 Q And is the firearm in his hand?

20 A Yes, you can slightly see it, not very well. But  
21 you can kind of see there's something in his hand.

22 Q And describe for me that firearm.

23 A It was a black revolver. I knew it was a  
24 revolver, not a -- like a handgun. It had no clip. But

1       it was a black revolver. It was very small.

2           Q     Ma'am, prior to this date, did you also recognize  
3       this man?

4           A     Yes.

5           Q     And how is that?

6           A     He -- he had been in my store before, as a  
7       customer.

8           Q     So as soon as he walked in the store, did you  
9       recognize him automatically --

10          A     Yes.

11          Q     -- from someone you previously dealt with?

12          A     Yeah. I have a very good memory. I knew it  
13       was -- he was a previous customer.

14          Q     Prior to this date, did you meet with the  
15       District Attorney's office?

16          A     Yes, I have.

17          Q     At one point, did you go over the video?

18          A     Uh --

19          Q     Were you shown video of this --

20          A     Oh, yes.

21          Q     -- of this occurrence?

22          A     Yes.

23           MR. LEXIS: Your Honor, let the record reflect State's  
24       showing proposed Exhibit 40 to Defense Counsel.

1                   May I approach Your Honor?

2           THE COURT:   You may.

3   BY MR. LEXIS:

4           Q     Ma'am, I'm showing you what has been marked as  
5   State's Proposed Exhibit 40.  Do you recognize that CD?

6           A     Yes, it's the video of the robbery.

7           Q     Okay.  After we showed you that video, did one of the  
8   District Attorneys pop it out and have you sign that exact CD?

9           A     Yes.

10          Q     Is that your signature on that CD?

11          A     Yes, it is.

12          MR. LEXIS:  Your Honor, State moves to admit  
13   State's Proposed Exhibit 40.

14          THE COURT:  Any objection?

15          MR. CLAUS:  Your Honor, can we lay a better foundation  
16   for this, please?

17          THE COURT:  What part of the foundation do you have a  
18   problem with?

19          MR. CLAUS:  Just if she viewed the entire video --

20          THE COURT:  Okay.

21          MR. CLAUS:  -- and [inaudible] --

22          THE COURT:  You could --

23   BY MR. LEXIS:

24          Q     Did we play this video in the entirety to you on --

1       what's contained on this CD?

2           A     Yes.

3           Q     And did you particularly observe every aspect --

4           A     Yes.

5           Q     -- of this?

6           A     Yes.

7       MR. LEXIS: Your Honor, I move to admit.

8       MR. CLAUS: No objection.

9       THE COURT: Be admitted.

10               [STATE'S EXHIBIT 40 ADMITTED]

11       THE COURT: You may publish.

12       MR. LEXIS: Thank you, Your Honor.

13       BY MR. LEXIS:

14           Q     Now, sir -- excuse me -- ma'am, do you see that  
15       person who robbed you in court today?

16           A     Yes, I do.

17           Q     Could you please point to him and identify for me the  
18       color shirt he's wearing.

19           A     He's right there in a white shirt.

20       MR. LEXIS: Your Honor, let the record reflect the  
21       witness has identified the Defendant.

22       THE COURT: Record will so reflect.

23               [Video played]

24       /

1 BY MR. LEXIS:

2 Q Ma'am, what are we looking at?

3 A You're looking at the store. I'm over -- I'm on  
4 the right doing crossword puzzles. And this is the aisle  
5 with the chips and the candy on it. It's not the entire  
6 store, but most of it. You see the ding -- like the -- I  
7 look up because I heard the ding from the door

8 Q And what's going on right now?

9 A He's grabbing a pack of gum. It's a gum aisle,  
10 candy aisle.

11 Q And is that the Wrigley gum that you identified  
12 earlier?

13 A Yes, it is.

14 Q What's going on now?

15 A He walks up to the counter. So I see him, so I  
16 walk up to the counter as well.

17 Q You recognize that person, ma'am?

18 A Yes, that is me.

19 Q What are you doing?

20 A I am grabbing the pack of gum to ring it up. And  
21 that's when he says he wants the two packs of Newports.  
22 So I turn around because they were behind me. And I grab  
23 the Newports and I start ringing them up.

24 Q Same Newports as you identified earlier?

1           A     Yes, Newport 100s. And he pulls the gun, so I  
2     step back.

3           MR. LEXIS: Will you pause it right there.

4     BY MR. LEXIS:

5           Q     So at that point, when you see that gun, are you in  
6     fear, ma'am?

7           A     Immediately.

8           Q     And is that why you step back?

9           A     Yes.

10          Q     And what are you doing -- what's the next thing  
11     you're doing?

12          A     I just -- I rang cigarettes and that's when he  
13     starts saying, "Give me the money." And that's when I  
14     start pleading with him that I can't open my drawer.

15          Q     You're lying to him --

16          A     Yes.

17          Q     -- and acting like you can't --

18          A     Yeah. And I put the cigarettes to the right to  
19     try to not get him to take them. And he grabs the gum.

20          Q     Is that you --

21          A     And the gun's right there on the counter.

22          Q     And you prevented him from taking it and he grabbed  
23     them from you?

24          A     Yep.

1           Q     Now, you're still playing at acting like you can't  
2     open the register?

3           A     Yes.

4           Q     Is that a "yes," ma'am?

5           A     Yes. And I turn -- I even turn my computer to  
6     show him.

7           Q     What's he saying to you at this point?

8           A     "Open the register. I know you can open it.  
9     Just open it. Give me the money." And then that's when  
10    he gets frustrated and leaves, tells me he'll be back.

11          Q     He threatened your life several times?

12          A     Yes.

13          Q     What are you doing at this point now?

14          A     I turn around to call Metro.

15          Q     What are we watching here, ma'am?

16          A     Another video of him at the register. Me ringing  
17    him up. Just a different angle. And I'm grabbing the  
18    cigarettes, once again. And he, in just a second, pulls  
19    out the gun. And there it is. And he's shaking his head,  
20    "Give me the money."

21          Q     Pointing that gun right at you?

22          A     Yep. It's under his hand. He's wearing gloves.  
23    But it is pointed at me, yes.

24          Q     Is he continuing talking to you this entire time?



1           A     Yes.

2           Q     What's he doing here?

3           A     Grabbed the cigarettes from the other side of my  
4     register.  You can see he's getting frustrated, shaking  
5     his head.  You see he puts the gun back in his sweatshirt.  
6     And then he points it at me again through the sweatshirt.

7           Q     Were you able to give the police a general  
8     description of where he left?

9           A     Kind of.  I -- there's a -- you can see a camera  
10    up here.  I can see different angles.  And I could see  
11    which way he ran through the glass.  But I don't know  
12    exactly where he went, but I could tell you what direction  
13    he went.

14          Q     And did you relay that to 9-1-1?

15          A     Yes, I did.

16          Q     And you didn't go out to run after this guy?

17          A     No.

18          Q     So you basically just stayed there, waited for police  
19    to arrive?

20          A     Yes, I did.

21          Q     And gave them a general description of where he was  
22    headed.

23          A     Yes.

24          Q     And it was pretty much minutes later, after you did

1 the show up?

2 A Yeah. I mean, they came in. They talked to me  
3 and asked me what had happened. And then they told me  
4 that they may or may not have a suspect somewhere close  
5 by.

6 MR. LEXIS: May I approach, Your Honor?

7 THE COURT: You may.

8 MR. LEXIS: State's Proposed Exhibit 19.

9 THE CLERK: 19's already admitted.

10 MR. LEXIS: Yeah.

11 BY MR. LEXIS:

12 Q Now showing you [inaudible] State's Exhibit 19.  
13 Could you tell me those instructions that were read.

14 A You want me to read it?

15 Q Yes.

16 A Okay. "In a moment I'm going to show you a  
17 person who is being detained. This person may or may not  
18 be a person who committed the crime now being  
19 investigated. The fact that this person is detained  
20 should not cause you to -- to believe or guess that he or  
21 she is guilty. You do not have to identify anyone. It is  
22 just as important to free innocent persons from suspicion  
23 as it is to identify those who are guilty.

24 "Please keep in mind that clothing can be easily

1 changed. Please do not talk to anyone, other than the  
2 police officers, while viewing this person. You must make  
3 up your own mind and not be influenced by other witnesses,  
4 if any.

5 "When you have viewed the person, please tell me  
6 whether or not you can make identification. If you can,  
7 tell me in your own words how sure you are of the  
8 identification. Please do not indicate in any way to other  
9 witnesses that you have or have not made identification.  
10 Thank you."

11 Q You read those instructions before you made the  
12 identification; correct?

13 A Yes, before they even drove me over there.

14 Q And you were of the understanding that you didn't  
15 have to pick anybody.

16 A Yes.

17 Q But yet, you identified this man as 100 percent?

18 A Yes, I knew right -- right when -- I knew  
19 instantly.

20 Q And to this day, are you certain 100 percent?

21 A Yes.

22 MR. LEXIS: Nothing further, Your Honor.

23 THE COURT: Cross-examination?

24 /

1 CROSS-EXAMINATION OF BRITTANY SLATHAR

2 BY MR. CLAUS:

3 Q Ms. Slathar, there was a significant period of time  
4 between when you originally given the admonition and when you  
5 ultimately wrote what your feelings were about the  
6 identification; correct?

7 A Yes.

8 Q About 25 -- 24 minutes.

9 A Yes.

10 Q Okay. And during that time period, were you at the  
11 scene or were you -- well, I'm sorry. Were you at the scene  
12 where the person was located or were you at the Star Mart?

13 A Star Mart.

14 Q Okay. What was -- what was being waited for?

15 A They were waiting -- I was -- they were talking  
16 to me about -- asked me what had happened and they were  
17 waiting for something at the scene. They were waiting for  
18 something they were doing there. I don't -- I'm not sure.

19 Q Okay.

20 A I didn't ask questions. I was just -- they were  
21 the cops. They were in charge.

22 Q When you first showed up to the scene, did you tell  
23 anyone that you didn't believe that was the one who has robbed  
24 you based upon the difference in his clothes?

1           A     No.  I -- he had changed his clothes, but I saw  
2     his face.

3           Q     Okay.  So the police officers never told you that he  
4     had changed his clothes --

5           A     No --

6           Q     -- you told them --

7           A     -- I said that.

8           Q     -- the officers.

9           MR. CLAUS:  Court's indulgence.

10                  Pass this witness, Your Honor.

11           THE COURT:  Any redirect?

12           MR. LEXIS:  Yes, Your Honor.

13           THE COURT:  Questions from the jury?

14           MR. LEXIS:  Judge, I have some more questions.

15           THE COURT:  I know.

16           MR. LEXIS:  Oh, sorry.

17           THE COURT:  I'm doing two things at once while you're  
18     walking.

19           MR. LEXIS:  Sorry.

20           THE COURT:  It's okay.

21           MR. LEXIS:  The record reflect I'm showing Defense  
22     Counsel State's Proposed Exhibit 33.

23                  May I approach Your Honor?

24

1 THE COURT: You may.

2 REDIRECT EXAMINATION OF BRITTANY SLATHAR

3 BY MR. LEXIS:

4 Q Ma'am, I'm showing you what has been marked as  
5 State's Proposed Exhibit 33.

6 A Uh-huh.

7 Q Do you recognize that photograph?

8 A Yes.

9 Q What is it?

10 A It is the man who robbed me on February 2nd.

11 Q True and accurate representation of what he looked  
12 like?

13 A Yes.

14 Q Is that what he was wearing when you did your show  
15 up?

16 A No -- yes, when he -- when he did the show up,  
17 yes, not when he robbed me.

18 Q Okay. What was he wearing when he robbed you?

19 A He was wearing a black sweatshirt, blue jeans,  
20 and a camouflage beanie.

21 MR. LEXIS: Your Honor, State moves to admit  
22 State's Proposed 33.

23 THE COURT: Any objection?

24 MR. CLAUS: No, Your Honor.

1 THE COURT: 33 will be admitted.

2 [STATE'S EXHIBIT 33 ADMITTED]

3 MR. LEXIS: Permission to publish, Your Honor.

4 THE COURT: You may.

5 BY MR. LEXIS:

6 Q So when you stated earlier he had on different  
7 clothing to the officer, is this what you meant?

8 A Yes.

9 Q That he had a red shirt on at the time --

10 A Yes.

11 Q -- that you did your show up?

12 A Yes.

13 Q And his hair, obviously, it was very  
14 close-to-the-head cut.

15 A Yes.

16 Q Very different from what he has on today?

17 A Yes.

18 Q Wasn't wearing glasses then either?

19 A No.

20 Q In addition, his goatee is very more pronounced now?

21 A Yes.

22 MR. LEXIS: Nothing further, Your Honor.

23 THE COURT: Anything further, Mr. Claus?

24 MR. CLAUS: Yes, Your Honor.

1                   RECROSS-EXAMINATION OF BRITTANY SLATHAR

2           BY MR. CLAUS:

3           Q       When you -- when you said the individual who robbed  
4           you, he was wearing gloves; correct?

5           A       Yes.

6           Q       Okay. Were they big thick leather gloves? Do you  
7           remember specifically what --

8           A       They just looked like -- they don't look leather.  
9           They just look like black, I guess, cloth gloves. I mean,  
10          I wasn't really concentrating on the gloves. I was  
11          concentrating on the gun.

12          Q       Good enough. Thank you.

13          MR. CLAUS: Pass the witness, Your Honor.

14          THE COURT: Counsel, can you approach? I have a  
15          question from the jury.

16                   [Bench conference]

17          THE COURT: Ma'am, I have a question from the jurors.

18          THE WITNESS: Okay.

19          THE COURT: Did you tell 9-1-1 or responding officers  
20          the direction you saw him go from your position within the  
21          store?

22          THE WITNESS: Yes, I did.

23          THE COURT: Does anybody want to follow up?

24



1           FURTHER REDIRECT EXAMINATION OF BRITTANY SLATHAR

2       BY MR. LEXIS:

3           Q     Do you remember which direction, ma'am?

4           A     To the left of my store. It was on Rainbow. I  
5     don't really know, like, north, south, east, west, but I  
6     could tell you he went left up Rainbow. Because if you go  
7     right, there's a casino right there. So you can't really  
8     go right. So he went left, out my doors.

9           Q     Out your doors and to the left?

10          A     Uh-huh.

11          MR. LEXIS: Nothing further, Your Honor.

12          THE COURT: Anything further?

13          MR. CLAUS: No, Your Honor.

14          THE COURT: Thank you, ma'am. We appreciate your  
15     time. Thank you for your patience. You may have a nice  
16     afternoon.

17          THE WITNESS: You, too. Thank you.

18          THE COURT: Next witness.

19          MR. PALAL: Your Honor, may we approach?

20          THE COURT: You can.

21                 [Bench conference]

22          THE COURT: Ladies and gentlemen, we're gonna take a  
23     break for personal convenience.

24                 During this recess, you are admonished not to

1 talk or converse among yourselves or with anyone else on  
2 any subject connected with this trial or read, watch, or  
3 listen to any report of commentary on the trial or any  
4 person connected to this trial by any means of  
5 information, including without limitation: Social media,  
6 text, newspaper, television, Internet, radio or form or  
7 express any opinion on any subject connected with the  
8 trial until the case is finally submitted to you.

9 We give you about ten minutes. If anybody needs  
10 coffee, please let the marshal know and he will be happy  
11 to get you some.

12 Hear that part, Kevin?

13 THE BAILIFF: Yes, I do, Judge.

14 THE COURT: Okay.

15 THE BAILIFF: Folks, can you [inaudible] your chairs  
16 [inaudible] Your Honor?

17 THE COURT: Yes, please.

18 [Outside the presence of the jury]

19 THE COURT: I ascribe to the Stu Bell Rule of trial.  
20 So you run out of witnesses and I use those words.

21 So do you rest?

22 MR. PALAL: Fair enough, Your Honor.

23 THE COURT: With a smile on my face. But I'm always  
24 happy to give you a break for personal convenience.

1 MR. PALAL: Thank you. Appreciate it.

2 MR. CLAUS: Thank you, Your Honor.

3 THE COURT: How are we doing on time? We're moving at  
4 a faster clip than you'd thought, huh?

5 MR. PALAL: Much faster. We have one witness here.  
6 We're just trying to -- he's gonna be -- he's gonna be  
7 short. So we're trying just [inaudible] the rest.

8 THE COURT: Move them up. Got another two and a half  
9 hours.

10 [Recess at 2:38 p.m.; proceedings resumed at  
11 2:48 a.m.]

12 [Outside the presence of the jury]

13 THE BAILIFF: Want me to get them, Judge?

14 THE COURT: Uh-huh. I'd really like to finish the  
15 trial tomorrow.

16 THE CLERK: Mr. Palal?

17 MR. PALAL: Yes.

18 THE CLERK: Do you guys have 19?

19 THE COURT: In addition to 19, we need the statement  
20 that was used to refresh the recollection of Miss -- was  
21 it Williams?

22 MR. PALAL: Yes.

23 THE COURT: Which we'll mark as Court's 1.

24 [Discussion off the record]

1 [In the presence of the jury]

2 THE BAILIFF: Jurors are present.

3 THE COURT: Counsel, state the presence of the jury.

4 MR. PALAL: Yes, Your Honor.

5 MR. CLAUS: Yes, Your Honor.

6 THE COURT: Your next witness.

7 MR. LEXIS: State calls Jeffrey Haberman.

8 JEFFREY HABERMAN,

9 [having been called as a witness and being first duly  
10 sworn testified as follows:]

11 THE CLERK: Thank you. Please be seated.

12 Please state and spell your name for the record.

13 THE WITNESS: Jeffrey Bruce Haberman, J-E-F-F-R-E-Y,  
14 B-R-U-C-E, H-A-B, as in "bravo," E-R-M-A-N.

15 THE COURT: Sir, you will notice there is a dispenser  
16 of M&Ms there, if you should need them. There's water in  
17 the pitcher next to you. And if you'd like some coffee,  
18 the marshal can assist you.

19 THE WITNESS: Thank you.

20 THE COURT: You may proceed.

21 MR. LEXIS: Thank you, Your Honor.

22 DIRECT EXAMINATION OF JEFFREY HABERMAN

23 BY MR. LEXIS:

24 Q Sir, do you own a 38-caliber Colt revolver?

1           A     I did.  It was stolen.

2           Q     When was it stolen?

3           A     October 2013.

4           Q     And how was it stolen?

5           A     Somebody broke into my home, stole the entire gun  
6     safe.

7           MR. LEXIS:  Let the record reflect that I'm showing  
8     opposing Counsel State's Exhibit -- Proposed Exhibit 29  
9     and 30.

10                  May I approach, Your Honor?

11           THE COURT:  You may.

12     BY MR. LEXIS:

13           Q     Sir, I'm showing you what has been marked as  
14     State's Proposed Exhibit 29.

15           A     Yes.

16           Q     Do you recognize that firearm?

17           A     Yes, I do.

18           Q     Does it appear to be your -- true and accurate  
19     representation of your firearm?

20           A     Yes, it does.  Colt Detective Special.

21           Q     Showing you what has been marked as State's Proposed  
22     Exhibit 30.  Do you recognize that?

23           A     Yes.

24           Q     True and accurate representation --

1 A Yes.

2 Q -- of what your firearm looks like?

3 A Yes, sir.

4 MR. LEXIS: Your Honor, I move to admit  
5 State's Proposed 29 and 30.

6 THE COURT: Any objection to 29 and 30?

7 MR. CLAUS: No, Your Honor.

8 THE COURT: 29 and 30 be admitted.

9 [STATE'S EXHIBITS 29 AND 30 ADMITTED]

10 BY MR. LEXIS:

11 Q When did you buy this firearm, sir, or how did you  
12 come in --

13 A Um, I inherited it from my father, basically.

14 Q Okay.

15 A He bought it in Los Angeles.

16 Q And what did you do when you got it?

17 A Uh, registered in my name.

18 MR. LEXIS: Let the record reflect I'm showing  
19 opposing Counsel State's Proposed 42.

20 May I approach?

21 THE COURT: You may.

22 BY MR. LEXIS:

23 Q Sir, I'm showing you a certified copy from the  
24 Metropolitan Police Department for a gun registration. Do you

1 recognize that document?

2 A Looks familiar. Yes, I do.

3 Q Does that include your name?

4 A Yes, it does.

5 Q What else does it include?

6 A My mother's name, her address, my address, the  
7 serial number of the gun, manufacturer, and model.

8 Q Is all that information true and correct?

9 A Yes, it is, sir.

10 Q The serial number?

11 A Um, yes, sir.

12 MR. LEXIS: Your Honor, I move to admit

13 State's Proposed 42.

14 THE COURT: Any objection to 42?

15 MR. CLAUS: Well, Your Honor, I think he only talked  
16 about the first page; correct? Not the second?

17 MR. LEXIS: Talked about the second page. The first  
18 page is a certified document from the Metropolitan Police  
19 Department saying that it is true and accurate and it is  
20 from Custodian of Record of Metro.

21 MR. CLAUS: No, Your Honor.

22 THE COURT: Be admitted.

23 THE CLERK: Mr. Lexis, can you staple that?

24 MR. LEXIS: Yes.

1 [STATE'S EXHIBIT 42 ADMITTED]

2 MR. LEXIS: May I publish, Your Honor?

3 THE COURT: You may.

4 BY MR. LEXIS:

5 Q Here I'm showing you the second page of State's 42.  
6 That's your name? That's your serial number you're referring  
7 to, sir?

8 A Yes, sir.

9 Q Sir, I'm showing you State's 29. Is that the firearm  
10 the gun registration was referring to?

11 A Yes, sir, it is.

12 Q Tell me exactly how it was stolen.

13 A I came home one day, the back door had been  
14 pry -- my patio door had been pried open. Somebody  
15 entered the house, stole the entire gun safe, ripped the  
16 front -- I had a double dead bolt on the front door. That  
17 was ripped out of the door and then went right out.  
18 There's still drag marks on the concrete from the safe.

19 Q You know a person named Kenny Splond?

20 A No, sir.

21 Q The man sitting at Counsel table, with the white  
22 shirt and the striped tie.

23 A No, sir.

24 Q Have you ever seen that man before?



1           A     I don't believe so.

2           Q     Did you ever give that man permission to go in your  
3     house?

4           A     No, sir.

5           Q     Did you ever give that man permission to borrow your  
6     firearm?

7           A     No, sir.

8           Q     Did you ever give permission to any of his friends,  
9     relatives, et cetera, to ever have your gun?

10          A     No, sir.

11          Q     Did you ever give permission for anyone to have this  
12     gun at issue?

13          A     No, sir.

14          Q     Did you ever fire this weapon, sir?

15          A     No, sir.

16          MR. LEXIS: Let the record reflect I'm showing  
17     opposing Counsel State's Proposed 28.

18                 May I approach, Your Honor?

19          THE COURT: You may.

20     BY MR. LEXIS:

21          Q     Sir, I'm showing you what has been marked as  
22     State's Proposed 28. What is that a picture of?

23          A     My colt with four rounds in it.

24          Q     True and accurate representation of your firearm?

1           A     Yes.

2           MR. LEXIS:   Your Honor, I move to admit

3   State's Proposed 28.

4           THE COURT:   Any objection?

5           MR. CLAUS:   Yes, Your Honor.   Foundation.   I mean --

6           THE COURT:   Overruled.

7                       [STATE'S EXHIBIT 28 ADMITTED]

8           MR. LEXIS:   May I publish, Your Honor?

9           THE COURT:   You may.

10          BY MR. LEXIS:

11           Q     Is that your firearm, sir?

12           A     Yes, sir.

13           Q     With rounds in the chamber?

14           A     Yes, sir.

15           Q     Did you keep rounds in the chamber?

16           A     No, sir.

17           Q     This gun was empty when it was stolen?

18           A     Yes, sir.

19           MR. LEXIS:   Nothing further, Your Honor.

20           THE COURT:   Cross-examination?

21                       CROSS-EXAMINATION OF JEFFREY HABERMAN

22          BY MR. CLAUS:

23           Q     Mr. Haberman, were you there when this photograph was

24   taken?

1           A     No, sir.

2           Q     Do you know when this photograph was taken?

3           A     No, sir.

4           Q     Do you know anything about the surrounding  
5 circumstances of this photograph?

6           A     No, sir.

7           Q     Do you know anything about the ammunition that  
8 purports to be in that gun?

9           A     No, sir.

10          Q     Do you know whether that's live or empty ammunition,  
11 could be fired? I'm not asking you to speculate. I'm asking,  
12 if you know, sir.

13          A     Three rounds, look like they're live. One round  
14 looks like it's been fired.

15          Q     I'm not asking you to speculate, sir --

16          A     No, sir --

17          Q     -- I'm asking do you know.

18          A     -- I'm looking at -- I'm looking at the photo of  
19 the primer.

20          Q     Yes, Your Honor -- yes, sir. I -- I guessed that.  
21 What I'm asking you is not to speculate. I'm asking --

22          A     I'm --

23          Q     -- do you know anything about those cartridges --

24          A     No, sir, I don't.

1           Q     Okay.  So you're guessing, based upon what you think  
2     the character --

3           A     Well, the primer --

4           MR. LEXIS:  Judge, I'm gonna object to --

5           THE COURT:  Mr. Claus, you have to let him finish.

6           MR. CLAUS:  Yes.

7           THE COURT:  Okay.

8     BY MR. CLAUS:

9           Q     So you are guessing based upon that --

10          A     No, sir -- well, actually, sir, when you fire a  
11     center-fire cartridge, the primer will show an  
12     indentation.

13          Q     Under most circumstances; correct?

14          A     Under all circumstances, sir.

15          Q     Okay.

16          A     I used to sign off on an FFL in Los Angeles.

17          Q     But you don't know if there are bullets on the other  
18     ends of those cartridges; correct?

19          A     No, sir, I don't.

20          Q     You don't know anything about those cartridges;  
21     correct?

22          A     No.

23          Q     So you don't know whether they're live, whether  
24     there's gun powder in them, you don't know anything about that

1 photograph; correct?

2 A No, sir.

3 Q Okay.

4 MR. CLAUS: Repeat my objection to the admission of  
5 this photograph.

6 THE COURT: I already ruled, Counsel. You may  
7 proceed.

8 MR. CLAUS: Yes, Your Honor.

9 Your Honor, at this point, all I'd ask for is an  
10 admonition to the jury --

11 THE COURT: Counsel, if you would please proceed.

12 MR. CLAUS: Pass witness.

13 THE COURT: Cross-examination -- or redirect?

14 MR. LEXIS: Yes, Your Honor.

15 REDIRECT EXAMINATION OF JEFFREY HABERMAN

16 BY MR. LEXIS:

17 Q What is FFL, sir?

18 A Federal Firearm License.

19 Q And how do you obtain that?

20 A I worked for somebody who had one. I worked in a  
21 gun store in Los Angeles.

22 Q Okay.

23 MR. LEXIS: Nothing further.

24 THE COURT: Anything else, Mr. Claus?

1 MR. CLAUS: No, Your Honor.

2 THE COURT: All right.

3 Thank you, sir. We appreciate your time. Have a  
4 very nice afternoon.

5 THE WITNESS: Thank you.

6 THE COURT: Next witness.

7 MR. CLAUS: Your Honor, may I approach, please?

8 THE COURT: Yep.

9 [Bench conference]

10 THE COURT: Ladies and gentlemen, Counsel and I have a  
11 brief legal issue to resolve and then we will get back to  
12 you.

13 During this recess, you are admonished not to  
14 talk or converse among yourselves or with anyone else on  
15 any subject connected with this trial or read, watch, or  
16 listen to any report of or commentary on the trial or any  
17 person connected to this trial by any means of  
18 information, including without limitation: Social media,  
19 text, newspaper, television, Internet, radio or form or  
20 express any opinion on any subject connected with the  
21 trial until the case is finally submitted to you.

22 Hopefully it will only take us about five  
23 minutes. But if it takes you longer, you need a restroom  
24 break or something, please take advantage of the time.

1                   [Outside the presence of the jury]

2           THE COURT: The last time that I had one of those  
3 instructions, Mr. Claus, was in the Koony case. I'm gonna  
4 look to see if I have it. But otherwise, I will need all  
5 of you to talk to me about the -- because I use it as a  
6 limiting instruction, usually. And I understand sometimes  
7 it's different. 'Cause, frequently, the bad acts are  
8 admitted only for limited circumstances. So I'm looking  
9 for it right now.

10          MR. PALAL: Your Honor --

11          THE COURT: Mind your witnesses, guys.

12          MR. PALAL: Yeah, we're --

13          THE COURT: I'm not waiting for half hour, 45 minutes  
14 for somebody to drive for the lab from the other side of  
15 town.

16                 Okay. Here is the one I used last. And it's  
17 been a couple years. And it was under some different  
18 circumstances: "Evidence the Defendant committed offenses  
19 other than that for which he is on trial, if believed, was  
20 not received and may not be considered by you to prove  
21 that she is a person of bad character or prove she has a  
22 disposition to commit crimes.

23                 "Such information was foreseen and may be  
24 considered by you only for the limited purpose of proving

1 the Defendant's opportunity, attempt, mode, plan,  
2 knowledge, identity or the absence of mistake or accident.  
3 You must weigh this evidence in the same manner as you do  
4 all other evidence in the case."

5 MR. CLAUS: Well, that doesn't quite work, Your Honor.  
6 I -- I can --

7 THE COURT: Okay.

8 MR. CLAUS: -- get a different cut at it. But  
9 essentially, Your Honor, all I'd be asking for is that  
10 evidence of another crime, which the Defendant has not  
11 committed, has been induced here at trial. That cannot  
12 weigh into your deliberations --

13 THE COURT: Write -- write yours down and then I will  
14 type. How's that?

15 MR. CLAUS: Yes, Your Honor.

16 And, Your Honor, I can't remember, but did the  
17 State include the standard instruction, whether or not the  
18 Defendant includes -- intends to testify?

19 THE COURT: It did.

20 MR. CLAUS: Okay.

21 THE COURT: Yeah, I also have a voluntariness  
22 instruction in here.

23 How do you spell the last witness's name?

24 MR. PALAL: That was --



1 MR. CLAUS: Haberman.

2 THE COURT: H-A-B-E-R-M-A-N?

3 MR. CLAUS: Yes, Your Honor.

4 How about this, Your Honor --

5 THE COURT: To them?

6 MR. CLAUS: Oh, I have not. Here you go.

7 [Discussion off the record]

8 MR. PALAL: It's fine. I have no objection to that.

9 THE COURT: Okay. Here's what I started with, which  
10 is a little different, because I'm trying to make it  
11 specific.

12 MR. CLAUS: Yes, Your Honor.

13 THE COURT: And I like that language you have. But I  
14 added, "Evidence that someone committed a burglary to whom  
15 Mr. Haberman was not received and may not be considered by  
16 you to prove the Defendant had any involvement in that  
17 burglary. Such information was received and will be  
18 considered by you only for the limited purpose of proving  
19 the weapon was stolen. You must weigh this evidence in  
20 the same manner as you do all other evidence in the case."

21 But I also want to add the line about "you may  
22 not consider this for the guilt."

23 MR. CLAUS: Okay. Thank you.

24 THE COURT: So I'm trying to tailor it to the incident

1       for my limitation.

2           MR. CLAUS:  Sorry.  I tried to keep it a little more  
3       general.

4           THE COURT:  I know.  But when it's a limiting  
5       instruction, I try to make it as specific as possible.

6           MR. CLAUS:  Yes, Your Honor.

7           THE COURT:  Wow, your handwriting's bad.

8           MR. PALAL:  Should have been a doctor.

9           THE COURT:  Uh -- you want me to say "guilt or  
10       innocence" or just "guilt"?

11          MR. CLAUS:  "Guilt," Your Honor.

12          THE COURT:  So here's my amalgamated instruction:  
13       "Evidence was introduced by the State of other crimes that  
14       the Defendant is not charged with.  Evidence that someone  
15       committed a burglary at the home of Mr. Haberman was not  
16       received and may not be considered by you to prove the  
17       Defendant had any involvement in that burglary.

18                "Such information was received and may be  
19       considered by you only for the limited purpose of proving  
20       the weapon was stolen.  That information cannot be used by  
21       you in determining the guilt of the Defendant in this  
22       case.  You must weigh this evidence in the same manner as  
23       you do all over evidence in this case."

24                What do you think?

1 MR. CLAUS: [Inaudible], Your Honor. I like it.

2 THE COURT: Is that okay?

3 MR. PALAL: Works for the State, Your Honor.

4 THE COURT: Okay. So I will read that to the jurors  
5 as they come back in, once they sit down.

6 How we doing on witnesses?

7 Mr. Claus, here you go. Thank you for your  
8 efforts. Good job.

9 MR. PALAL: We've called, literally, every witness --  
10 even witnesses we weren't planning on calling -- just so  
11 they could fill the time. And they are all within  
12 30 minutes, but nobody [inaudible]. We even called  
13 Brittany Slathar to have her -- have her -- recall her for  
14 the sake of the jury's entertainment. And -- and she's --

15 THE COURT: I probably -- I probably wouldn't let you  
16 recall her for the sake of the jury's entertainment. So  
17 what's your plan?

18 MR. LEXIS: Your Honor, the expert's on the way. It's  
19 my fault. I was in charge of getting all the witnesses,  
20 and given the previous -- I thought we were gonna have  
21 more, lengthier direct and cross of these people.

22 THE COURT: Okay.

23 MR. PALAL: If -- if it's the Court's pleasure, we can  
24 do one of two things: We can beg of the Court to wait the

1 expert to get here. She said [inaudible] should be here  
2 in about 15 to 20 minutes or we could recess early today  
3 and, thus, given the pace we're going, we could get  
4 through -- State's confident it would rest for either late  
5 Wednesday --

6 THE COURT: I don't want to leave the jury sitting out  
7 there in the hallway for half hour, 40 minutes while  
8 people get here, park, come up the elevators. You know,  
9 that's just wrong.

10 MR. PALAL: Okay.

11 THE COURT: So, Mr. Claus?

12 MR. CLAUS: We're ready to proceed, Your Honor.

13 THE COURT: Okay. So I'm going to -- how many more  
14 witnesses you got?

15 MR. PALAL: In total?

16 THE COURT: Uh-huh.

17 MR. PALAL: Court's indulgence. About -- about this  
18 amount of time or less than the -- the previous witnesses.

19 THE COURT: So I'm gonna grant your request to recess  
20 early today with the understanding you're gonna finish  
21 your evidence and close tomorrow.

22 MR. PALAL: We'll finish our evidence tomorrow.

23 THE COURT: Mr. Claus, do you have any additional  
24 instructions, other than this one we just talked about

1       that you want to offer?

2           MR. CLAUS:  At this point, Your Honor, I also had made  
3       an objection to the foundation that was being laid for  
4       just the handgun, the picture of the cartridges.  I do  
5       expound upon that, Your Honor.

6           Again, this witness -- and the State knew this.  
7       This witness knew nothing about that photograph, knew  
8       nothing about the circumstances of it, couldn't verify  
9       anything about the cartridges there.  Simply, the witness  
10      was allowed to make some inferential leaps and testify as  
11      to those matters.

12          THE COURT:  We didn't do that on the State's  
13      questioning.  He -- his only comments on the State's  
14      questioning was, "Do you recognize what's in this  
15      picture?"

16           "Yes, that's my handgun with ammunition in it."

17          MR. CLAUS:  Understood, Your Honor.

18          THE COURT:  Under the circumstances, I think he can  
19      testify to that.  That's why I overruled your objection.

20           Now, I understand your comments about the state  
21      of the ammunition.  And, certainly, that was different  
22      than what I usual have happen.  Because I don't usual have  
23      people with Federal Firearms Licenses here testifying  
24      about their own personal weapons, but things happen.

1 MR. CLAUS: Yes, Your Honor.

2 THE COURT: So all right. So I'm gonna read this  
3 instruction to the jury. I'm gonna let them go and have  
4 them back here at 10:30 tomorrow, as long as you all tell  
5 me you'll be done tomorrow.

6 MR. PALAL: State will be done tomorrow.

7 THE COURT: Okay. There is, in this package, a  
8 voluntariness instruction. Mr. Claus, I currently have  
9 not heard anybody testify about the statement. I don't  
10 know if anybody's gonna testify about the statement. But  
11 I'm gonna encourage you to think about it.

12 MR. CLAUS: Yes, Your Honor.

13 THE COURT: I lost my own marshal.

14 MR. CLAUS: Your Honor, we're starting tomorrow at --  
15 at 10:30.

16 THE COURT: 10:30 is the hope.

17 MR. CLAUS: I've got a 10:00 o'clock murder  
18 arraignment. I'll try to get that taken care of very  
19 quickly, Your Honor, in lower level.

20 THE COURT: What department?

21 MR. CLAUS: It's in lower level.

22 THE COURT: You ready?

23 MR. CLAUS: But I've asked for some leeway from the  
24 Court, if necessary.

1           THE COURT: Well, my problem is different. I've  
2 got -- my criminal calendar's tomorrow and the CO and I  
3 are hoping that I'm gonna be able to do 10:30. He's  
4 thinking 11:00, but I'm thinking 10:30. So we're gonna  
5 see what works out. We're gonna do our best 'cause I  
6 can't do two things at once with a bunch of inmates.

7           MR. CLAUS: Yes, Your Honor.

8           THE COURT: And sometimes I have to wait for the swap.

9           MR. CLAUS: One other question, Your Honor. I've  
10 been getting the State's witnesses as they've come today.  
11 If we're gonna give them continuance to gather their  
12 witnesses together, I'd like to have a list of all those  
13 witnesses that they intend on calling tomorrow.

14          THE COURT: Guys, can you tell him all the witnesses  
15 you're gonna call tomorrow before we leave, just so he  
16 knows?

17          MR. PALAL: Sure. Right now -- right now or --

18          THE COURT: No, before we leave. I'm gonna read this  
19 instruction to the State -- or read this instruction to  
20 the jurors before I let them go home.

21                 [Discussion off the record]

22                 [In the presence of the jury]

23          THE BAILIFF: Jurors are present.

24          THE COURT: Counsel, stipulate to the presence of the

1 jury.

2 MR. PALAL: Yes, Your Honor.

3 MR. CLAUS: Yes, Your Honor.

4 THE COURT: You may be seated.

5 Ladies and gentlemen, I have an instruction to  
6 read for you: Evidence was introduced by the State of  
7 other crimes that the Defendant is not charged with.  
8 Evidence that someone committed a burglary at the home of  
9 Mr. Haberman was not received and may not be considered by  
10 you to prove that Defendant had any involvement in that  
11 burglary.

12 Such information was received and may be  
13 considered by you only for the limited purpose of proving  
14 the weapon was stolen. That information cannot be used by  
15 you in determining the guilt of the Defendant in this  
16 case. You must weigh this evidence in the same manner as  
17 you do all other evidence in this case.

18 Counsel, do we still have a scheduling problem?

19 MR. PALAL: Yes, Your Honor.

20 THE COURT: Okay. Ladies and gentlemen, we have a  
21 slight scheduling problem. But the good news is we also  
22 will be done a day early. It means that, based upon the  
23 pace at which we were proceeding today, we will done on  
24 Thursday rather than Friday.



1           But I'm gonna also let you go rather than have  
2   you sit here and wait while the witness travels and  
3   doesn't get here for half an hour, 40 minutes. So if I  
4   could see you tomorrow morning at 10:30, outside courtroom  
5   14A.

6           During this recess, you are admonished not to  
7   talk or converse among yourselves or with anyone else on  
8   any subject connected with this trial or read, watch, or  
9   listen to any report of commentary on the trial or any  
10   person connected with this trial by any means of  
11   information, including without limitation: Social media,  
12   text, newspaper, television, Internet, radio or form or  
13   express any opinion on any subject connected with the  
14   trial until the case is finally submitted to you.

15           So we'll see you tomorrow morning at 10:30.

16           Counsel, if you would remain, please.

17           [Outside the presence of the jury]

18           THE COURT: Okay. Kevin, thank you.

19           So, Counsel -- you can sit down. I'm gonna print  
20   for you the version of the instructions that I've been  
21   able to create. Except I think I just exited without  
22   saving. And so I'll have these for you. If you could  
23   look at them quickly, tell me if you see anything obvious.

24           Where do you want your limiting instruction in

1       your stack?

2               MR. CLAUS: Court's pleasure.

3               THE COURT: I'm gonna put it after the conspiracy and  
4 before the stolen weapon.

5               Kevin?

6               THE BAILIFF: Yes, Your Honor.

7               THE COURT: Can you go grab me -- oh, it will only  
8 print to that printer. Never mind. I'll take care of it.  
9 I'll have the juror instructions for you in just a second.

10              [Recess at 3:23 p.m.; proceedings resumed at  
11 3:28 p.m.]

12              [Outside the presence of the jury]

13              THE COURT: This is yours. So I got to fix the  
14 caption. I got to fix the page formatting. See if you  
15 think there's anything else obvious missing. If you want  
16 to wait and tell me in the morning, that's okay.

17              MR. CLAUS: I'd like to wait to tell you in the  
18 morning, Your Honor.

19              THE COURT: The problem is that if you tell me in the  
20 morning, you got to tell me quick.

21              MR. CLAUS: Well, what I'll try and do, Your Honor,  
22 with your -- with your permission is I'll try to e-mail it  
23 tonight.

24              THE COURT: You know my assistant's e-mail?

1 MR. CLAUS: It's lawclerk11 --

2 THE COURT: That'll work.

3 MR. CLAUS: Or lawclerkdepartment11 or something like  
4 that. It's the standard.

5 THE CLERK: DEPT11LC.

6 MR. CLAUS: There you go. It's -- it's --

7 THE COURT: Yeah. That's the law clerk e-mail. Yeah,  
8 that one.

9 MR. CLAUS: All the law clerks have that same e-mail  
10 [inaudible].

11 THE COURT: They do.

12 Well, I'm gonna fix the caption right now before  
13 I forget.

14 MR. CLAUS: I'll come and get you all the changes  
15 before we start court at 10:30 tomorrow morning.

16 THE COURT: Anything else?

17 MR. CLAUS: No, thank you.

18 THE COURT: Don't let anybody else know that I gave  
19 you a break 'cause I'm not supposed to be nice about this  
20 being here on time.

21 MR. CLAUS: I see, Your Honor.

22 MR. PALAL: I will keep it a secret, Your Honor.

23 MR. CLAUS: Having been on the receiving end of this  
24 Stu Bell treatment, I was expecting --

1           THE COURT: You want the ID number in the caption? I  
2 know some people don't like it in there.

3           MR. CLAUS: I prefer not to have it in there,  
4 Your Honor.

5           THE COURT: I'm gonna take it out. I understand why  
6 you don't want it in there and it's okay with me to take  
7 it out.

8           Okay. You guys can leave. I'm just gonna work  
9 on this for a minute, since I'm at this computer. See if  
10 I can get these. I'll see you guys at 10:30 in the  
11 morning or soon thereafter as I can get done with my  
12 regular calendar, get the Defendant here, and be ready to  
13 go.

14                       PROCEEDING CONCLUDED AT 3:30 A.M.

15                               \*\*\*\*\*

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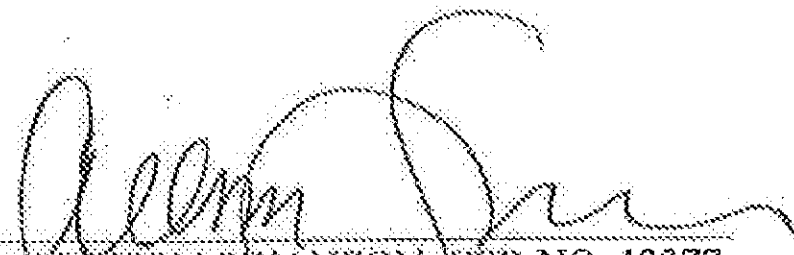
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CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

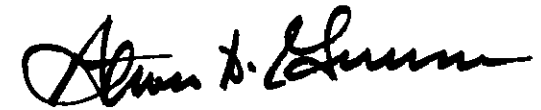
AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

  
ALLISON SWANSON, CSR NO. 13377  
CERTIFIED SHORTHAND REPORTER  
FOR THE STATE OF CALIFORNIA

TRAN

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CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-14-296374-1
	)	
vs.	)	
	)	DEPT. NO. XI
KENYA SPLOND, aka Kenny Splond,	)	
#1138461 KELLIE ERIN CHAPMAN,	)	
#1681308,	)	
	)	
Defendants.	)	

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BEFORE THE HONORABLE ELIZABETH GONZALEZ,

DISTRICT COURT JUDGE

Wednesday, March 23, 2016

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 3

APPEARANCES:

For the Plaintiffs:	BINU PALAL
	CHAD LEXIS

	Deputy District Attorneys
For the Defendants:	AUGUSTUS CLAUS

TRANSCRIBED BY: ALLISON SWANSON, CSR No. 13377

1 LAS VEGAS, NEVADA, WEDNESDAY, MARCH 23, 2016 10:46 A.M.

2 \*\*\*\*\*

3 [Outside the presence of the jury]

4 THE COURT: -- Court's Exhibit 4, yesterday.

5 MR. CLAUS: Yes, Your Honor, I did. I spoke with the  
6 State. There was some question about a voluntariness  
7 instruction. I didn't see one included.

8 THE COURT: There is one. It is -- well, let's see  
9 where it is. Maybe I'm wrong. Maybe it wasn't there.  
10 Apparently you guys were right and I'm wrong.

11 MR. CLAUS: I would never repeat that outside of this  
12 courtroom, Your Honor.

13 THE COURT: Well, you know, it's on the record.

14 MR. CLAUS: In any event, that being said, I've spoken  
15 with the State. They don't intend on introducing any of  
16 Mr. Swan's statements. So I don't think we need a  
17 voluntariness instruction at this point.

18 THE COURT: Okay.

19 MR. PALAL: Your Honor, the other -- the other  
20 question, we noticed that -- that you moved one  
21 instruction -- I mean, it's perfunctory --

22 THE COURT: Moved it?

23 MR. PALAL: Removed it, which was "that any person who  
24 conspires to commit robbery is guilty of conspiracy to

1       commit robbery."

2           THE COURT: I didn't remove it on purpose.

3           MR. CLAUS: Well, I didn't -- I thought it was in  
4       there.

5           MR. PALAL: Yeah, we didn't see it in there.

6           THE COURT: Hold on. Let's see. Unfortunately, I  
7       forgot to number the pages, so you'll have to tell me what  
8       instruction it's behind, if you find it first.

9           MR. CLAUS: Here it is. It's after the -- the "use of  
10       deadly weapon" instruction.

11          MR. PALAL: Okay.

12          MR. CLAUS: "Person who conspires to commit robbery is  
13       guilty of conspiracy to commit robbery."

14          MR. PALAL: Oh, perfect. All right. Thank you. It  
15       actually was in there. That's our mistake.

16          THE COURT: You okay?

17          MR. PALAL: Yes. And then, beyond that, the State had  
18       no --

19          THE COURT: Is there anything else that you guys  
20       wanted added? Changed? Language issues? Anything like  
21       that before I give you a set that we're gonna use to  
22       [inaudible] jury instructions when we get to that point?

23          MR. CLAUS: No, Your Honor.

24          MR. PALAL: Court's indulgence.



1           THE COURT: This is what I call a "working set." I  
2       guess nobody else does it this way.

3           MR. PALAL: No, Your Honor.

4           THE COURT: Okay. And I will print the working set  
5       and then we'll settle them when we get a chance.

6           [Discussion off the record]

7           [Recess at 10:49 a.m.; proceedings resumed at  
8       10:50 a.m.]

9           [Outside the presence of the jury]

10          [Discussion off the record]

11          THE COURT: Are we then gonna be ready to go?

12          MR. PALAL: Yes, Your Honor.

13          THE COURT: All the jurors are here and ready?

14          THE BAILIFF: Yes, Judge.

15          THE COURT: Give us a minute.

16          THE BAILIFF: Yes, Judge.

17          [Discussion off the record]

18          [In the presence of the jury]

19          THE BAILIFF: Jurors are present.

20          THE COURT: Good morning ladies and gentlemen.

21                Counsel, you can be seated.

22                Ms. Clerk, if you'd please take the roll of the  
23       jury.

24          THE CLERK: Yes, Your Honor.

1 [Jury roll call]

2 THE COURT: Counsel, stipulate the presence of the  
3 jury.

4 MR. PALAL: Yes, Your Honor.

5 MR. CLAUS: Yes, Your Honor.

6 THE COURT: Next witness.

7 MR. PALAL: Your Honor, the State calls  
8 Joshua Rowberry to the stand.

9 JOSHUA ROWBERRY,  
10 [having been called as a witness and being first duly  
11 sworn testified as follows:]

12 THE CLERK: Thank you. Please be seated and please  
13 state and spell your name for the record.

14 THE WITNESS: Joshua Rowberry, J-O-S-H-U-A,  
15 R-O-W-B-E-R-R-Y.

16 THE COURT: Sir, you will notice that there are M&Ms  
17 in the dispenser next to you, a pitcher of water up there.  
18 And if you should need some coffee, let the marshal know.  
19 You may proceed.

20 MR. PALAL: Thank you, Your Honor.

21 DIRECT EXAMINATION OF JOSHUA ROWBERRY  
22 BY MR. PALAL:

23 Q Mr. Rowberry, how are you employed?

24 A Las Vegas Metropolitan Police Department.

1 Q And in what capacity are you employed with Metro?

2 A Police officer.

3 Q All right. And do you have a specific assignment?

4 A Patrol, northwest.

5 Q Do you have a specific shift?

6 A Graveyard.

7 Q And were you working graveyard this week?

8 A This week?

9 Q Yeah. This week?

10 A Yes.

11 Q Were you working graveyard on February 2nd, 2014?

12 A Yes.

13 Q On February 2nd, 2014, did you get a call regarding a  
14 robbery?

15 A Yes.

16 Q Where was that call?

17 A 5001 North Rainbow.

18 Q All right.

19 MR. PALAL: Your Honor, may I approach the witness?

20 THE COURT: You may.

21 MR. PALAL: For the record, I've shown Defense Counsel  
22 State's Proposed Exhibit Number 45.

23 BY MR. PALAL:

24 Q Officer Rowberry, can you take a look at what's

1 depicted as State's Proposed Exhibit Number 45. Do you  
2 recognize -- do you recognize what's on this -- what's  
3 depicted in this exhibit?

4 A Yes.

5 Q What is depicted in this exhibit?

6 A It's an aerial map of the address of the  
7 community store.

8 Q And are you familiar with this particular area?

9 A Yes.

10 Q Is this the area that you are on patrol on  
11 frequently?

12 A Yes.

13 Q And does this fairly and accurately depict the  
14 area -- the area around 5001 North Rainbow Boulevard?

15 A Yes.

16 MR. PALAL: Your Honor, at this time, the State's  
17 going to move into evidence State's Proposed Exhibit 45.

18 THE COURT: Any objection?

19 MR. CLAUS: No, Your Honor.

20 THE COURT: Be admitted.

21 [STATE'S EXHIBIT 45 ADMITTED]

22 MR. PALAL: Permission to publish?

23 THE COURT: You may.

24 /

1 BY MR. PALAL:

2 Q Okay. Now, you said you were called out to  
3 5001 North Rainbow; is that correct?

4 A Yes.

5 Q And what's located at 5001 North Rainbow?

6 A It's a gas station.

7 Q Is that --

8 THE COURT: Hold on a second. Kevin, the witness  
9 needs the mouse.

10 THE BAILIFF: Ah, yes.

11 THE COURT: Sir, we have new technology in this  
12 courtroom. You don't draw on the monitor with your finger  
13 anywhere. You're supposed to try and use this mouse.  
14 And, unfortunately, somebody took my controller where I  
15 can erase the marks.

16 THE CLERK: Click it first.

17 THE COURT: Okay.

18 BY MR. PALAL:

19 Q All right. So we'll try to work this out. Why don't  
20 we practice by circling 5001 North Rainbow.

21 THE COURT: I see a little mark.

22 THE WITNESS: There it goes.

23 MR. PALAL: And for the record, the witness has  
24 circled a round marking [inaudible] 5001 North Rainbow.

1 BY MR. PALAL:

2 Q All right, sir. Now, did you have any information,  
3 at that time, as to which direction the suspect was headed?

4 A North.

5 Q All right. And can you draw on the map the direction  
6 that -- the information that you had that the Defendant was at  
7 the -- the Defendant was headed.

8 All right. So that's an arrow facing to the top of  
9 the screen on Rainbow.

10 A Correct.

11 Q Now, did you actually stop at 5001 North Rainbow?

12 A No.

13 Q Why not?

14 A The information that I was given, the suspect was  
15 already -- left the store and was traveling northbound  
16 Rainbow. When a arrived in the area, he was no longer at  
17 the store, so I had proceeded to drive north on Rainbow to  
18 begin looking for anybody in the area.

19 Q And do you recall approximately what time the armed  
20 robbery was called in?

21 A At 2:57 a.m.

22 Q And what -- you recall what time that you got into  
23 this area?

24 A It was probably 3:00 a.m.

1 Q So shortly thereafter.

2 A Uh-huh.

3 Q Is that a "yes"?

4 A Yes.

5 Q All right. So when you're driving up North Rainbow,  
6 are your -- are you driving in a patrol vehicle?

7 A Yes.

8 Q Are your lights and sirens on?

9 A No.

10 Q Do you see -- in that area, are you looking for  
11 pedestrians?

12 A Yes.

13 Q Do you see any pedestrians?

14 A No.

15 Q Are you looking for other vehicles?

16 A Yes.

17 Q Do you see other vehicles?

18 A I see one vehicle. It's north of -- ahead of me,  
19 north -- I'm traveling north. It's a few -- a little ways  
20 up ahead of me.

21 Q All right. And can you mark on the map the  
22 approximate area that you saw the vehicle.

23 Now, when the report came in, were you told the --  
24 that the person who committed the robbery was leaving on foot

1 or by car?

2 A On foot.

3 MR. CLAUS: Your Honor, I'm going to object to hearsay  
4 at this point.

5 THE COURT: Overruled.

6 BY MR. PALAL:

7 Q I'm sorry. What was your answer?

8 A On foot.

9 Q Okay. On foot. Now, prior to the events that  
10 occurred on February 2nd, 2014, how long had you been a patrol  
11 officer?

12 A At that time, five to six years.

13 Q Have you -- did you -- had you had an opportunity to  
14 respond to robberies, previous to this?

15 A Yes.

16 Q In your training and experience, five years out there  
17 responding to robberies, has -- have you ever had an  
18 experience where a getaway driver was parked away from where  
19 the actual robbery occurs?

20 A Yes.

21 Q Is that something that happens frequently?

22 A Yes.

23 Q So did -- what was the significance to you of seeing  
24 the car north on Rainbow?



1           A     It's the only vehicle in the area. It's in close  
2           proximity to where the robbery occurred. And it's heading  
3           northbound, away from where the robbery occurred.

4           MR. PALAL: Your Honor, may I approach the witness?

5           THE COURT: You may.

6           BY MR. PALAL:

7           Q     I've shown opposing counsel and now I'm gonna show  
8           the witness State's Proposed Exhibit 21. Sir, can you take a  
9           look at this photo and tell us what it depicts? Do you  
10          recognize what it depicts?

11          A     Yes.

12          Q     What does it depict?

13          A     It's the vehicle that I saw traveling northbound  
14          that pulled off of Rancho Santa Fe.

15          Q     Does it fairly and accurately depict the video as --  
16          the automobile, as you saw it, on February 2nd, 2014?

17          A     Yes.

18          MR. PALAL: Your Honor, at this time the State's gonna  
19          move for State's Proposed Exhibit Number 21 to be entered  
20          into evidence.

21          THE COURT: Any objection?

22          MR. CLAUS: No, Your Honor.

23          THE COURT: 21 be admitted.

24                 [STATE'S EXHIBIT 21 ADMITTED]

1 MR. PALAL: Your Honor, may I publish?

2 THE COURT: You may.

3 Can I take the marks off of the map?

4 MR. PALAL: Yes, please.

5 THE COURT: Okay. Where do I point this special  
6 clicker, Jill?

7 THE CLERK: Just hit "trash."

8 THE COURT: I'm hitting "trash," but where do I point  
9 it towards?

10 MR. PALAL: Oh, we got it.

11 THE CLERK: Sorry.

12 THE COURT: It's okay.

13 BY MR. PALAL:

14 Q I'm showing you what's now been admitted as  
15 State's Proposed -- State's Exhibit 21. This is the vehicle  
16 we were talking about?

17 A Yes.

18 Q And now, this vehicle, obviously, has some damage to  
19 the back; is that correct?

20 A Correct.

21 Q Now, in stopping the vehicle, did that -- why did you  
22 stop the vehicle?

23 A One, the vehicle leaving the area of the robbery;  
24 two, it drew my attention because of the -- the damage to

1 the rear of the vehicle. I didn't know if any -- if it  
2 was just involved in an accident, if anything was falling  
3 off this vehicle.

4 Q So you -- so you had stopped the vehicle for two  
5 reasons, essentially.

6 A Yes.

7 Q Now, did you -- did you stop the vehicle immediately  
8 upon seeing it or did you follow it for a while?

9 A I followed it a short distance, trying to see its  
10 reaction to me being behind it. Maybe if it was gonna  
11 take off, if it was gonna pull over, do something else.

12 Q And now showing you, again, what's been admitted as  
13 State's Exhibit 45. Can you tell -- can you show us on the  
14 map the route that the vehicle took.

15 MR. PALAL: We don't have the cursor anymore,  
16 Your Honor.

17 THE COURT: Click the mouse.

18 MR. PALAL: Thank you, Your Honor.

19 BY MR. PALAL:

20 Q So upon you following it, is it fair to say -- well,  
21 strike that.

22 For the record, you've marked going up Rainbow and  
23 then taking a side street that leads to the corner of  
24 Flora Spray and Fruit Flower Avenue; is that correct?

1           A     Correct.

2           Q     So upon you following the vehicle, the vehicle then  
3     decide -- then pulls into a residential neighborhood?

4           A     Yes.

5           Q     At that time, do you -- at some point during that  
6     time, do you decide to turn on your lights and sirens?

7           A     Yes.

8           Q     And do you turn on --

9           A     Yes.

10          Q     And do you -- does the car in front of you stop?

11          A     Yes.

12          Q     All right. What do you do then?

13          A     I exit my vehicle and approach this vehicle on  
14     the driver's side. When I get to the driver's side rear  
15     passenger door, the window was up, windows are tinted  
16     dark.

17          Q     Could you see into the back window?

18          A     No.

19          Q     All right. So it was of note to you that the back  
20     windows were darkly tinted.

21          A     Yes.

22          Q     Did you proceed to the -- proceed to the driver --  
23     front driver's side of the vehicle?

24          A     No, I stayed at that spot right behind the rear

1 door.

2 Q Why?

3 A For officer safety issues. I can't see in the  
4 back seat. I don't know if anybody's back there.

5 Q And does the fact that you were just told an armed  
6 robbery come into -- an armed robbery occurred come into play?

7 A Yes.

8 Q Does the person in the front seat roll down the  
9 window or is the window up?

10 A The window was down. I don't remember if she  
11 rolled it down while I was there or as I was walking up.

12 Q All right.

13 MR. PALAL: Your Honor, may I approach the witness?

14 THE COURT: You may.

15 MR. PALAL: I've shown opposing counsel and I'm now  
16 going to show the witness what's been marked as  
17 State's Proposed Exhibit Number 4 -- 44.

18 BY MR. PALAL:

19 Q Sir, can you take a look at that. Do you recognize  
20 what is -- or whom is depicted in State's Exhibit 44?

21 A Yes.

22 Q Does it fairly and accurately show the person -- show  
23 a person that you recognize?

24 A Yes.

1           MR. PALAL: Your Honor, at this time, State's gonna  
2           move State's Proposed Exhibit 44 into evidence.

3           THE COURT: Any objection?

4           MR. CLAUS: No, Your Honor.

5           THE COURT: 44 be admitted.

6                     [STATE'S EXHIBIT 44 ADMITTED]

7           MR. PALAL: Permission to publish?

8           THE COURT: You may.

9                     See if I can throw these in the trash. So I got  
10           to point them at the Elmo? Okay.

11          BY MR. PALAL:

12                 Q     Who's the person in State's Proposed --  
13                 State's Exhibit Number 44?

14                 A     It's the driver, Kelly Chapman.

15                 Q     And you're talking about the driver of the vehicle  
16                 that we were talking about that --

17                 A     Yes.

18                 Q     Did you give Ms. Chapman any instructions?

19                 A     To roll the back window down.

20                 Q     Did she comply?

21                 A     Yes.

22                 Q     Did you notice anything in the back of the vehicle  
23                 after she had rolled down the rear window?

24                 A     Yes.

1 Q What did you notice?

2 A There was a black male adult laying in the back  
3 seat, covered up by a blanket, and breathing very heavily.

4 Q Could you see his hands?

5 A No.

6 Q Was that significant to you?

7 A Yes.

8 Q Why was that significant?

9 A I can't see his hands. I don't know if he's  
10 armed with anything. So --

11 Q Do you give him any instructions?

12 A I gave him several instructions to "let me see  
13 your hands." And he failed to comply to those commands of  
14 me asking him to show his hands.

15 Q By "failing to comply," do you mean he never showed  
16 you his hands?

17 A Correct.

18 Q Do you see the person in the courtroom today that you  
19 gave the instructions on February 2nd, 2014?

20 A Yes.

21 Q Can you please point that person out and describe an  
22 article of clothing they're wearing?

23 A He's sitting right here. Male with glasses, gray  
24 shirt and tie.

1           MR. PALAL: Your Honor, may the record reflect that  
2 the witness has identified the Defendant?

3           THE COURT: The record will so reflect.

4 BY MR. PALAL:

5           Q     Well, so now with -- so now there's no compliance in  
6 the back seat, what do you do?

7           A     I -- I initiated code red on my channel.

8           Q     What does a code red mean?

9           A     [Inaudible] let's the area command or the other  
10 officers working in my area or my channel know that I have  
11 something going on, that I need the radio for myself. No  
12 one else can get on there and talk, except for me. And it  
13 also alerts them that I may need some help. So they start  
14 heading towards me.

15          Q     And by "they," you mean other officers?

16          A     Right.

17          Q     Do you do anything at this point?

18          A     I pull out my firearm and keep both subjects,  
19 driver and the passenger, in the -- in the vehicle. I  
20 step back and just keep initiating verbal commands to, you  
21 know, "Don't move," and wait for other officers to arrive.

22          Q     Do other officers ultimately arrive?

23          A     Yes.

24          Q     At that point, do you give any instructions to the



1 occupants of the vehicle?

2 A Yes.

3 Q What instructions do you give?

4 A We have the driver step out of the vehicle and  
5 walk back towards the officers, where she was taken into  
6 custody. And then we initiate verbal commands to the  
7 passenger of the vehicle to step out of the vehicle.

8 Q And did they comply?

9 A Yes.

10 MR. PALAL: Your Honor, may I approach the witness?

11 THE COURT: You may.

12 BY MR. PALAL:

13 Q I'm gonna show you what's been previously marked as  
14 State's Proposed Exhibit 20. Do you recognize what's depicted  
15 in the exhibit?

16 A Yes.

17 Q Does it fairly and accurately depict the area?

18 A Yes.

19 MR. PALAL: Your Honor, State's gonna move  
20 State's Exhibit 20 into evidence.

21 THE COURT: Any objection?

22 MR. CLAUS: No, Your Honor.

23 THE COURT: 20 be admitted.

24 [STATE'S EXHIBIT 20 ADMITTED]

1 MR. PALAL: Permission to publish?

2 THE COURT: You may.

3 BY MR. PALAL:

4 Q And just -- what is State's Exhibit 20 -- Exhibit 20  
5 depict?

6 A It's the cross streets of where the vehicle  
7 finally came to rest.

8 Q So once the Defendant and Ms. Chapman exit the  
9 vehicle, do you have -- are the doors open or closed?

10 A Open.

11 Q Do you have an ability to see what's inside the  
12 vehicle?

13 A Yes.

14 Q And while Mr. Claus is looking at that, on the radio,  
15 were you informed of the contents that was taken from the  
16 store on the robbery?

17 A Yes.

18 Q You recall what the contents were reported?

19 A Two packs of Newport cigarettes and a spearmint  
20 Wrigley's gum.

21 MR. PALAL: Your Honor, may I approach the witness?

22 THE COURT: You may.

23 BY MR. PALAL:

24 Q I'm gonna show -- I've shown Defense Counsel, and I'm

1       gonna show you what's been previously marked as  
2       State's Proposed exhibits 31 -- well, let me do it the other  
3       way -- 22, 23, 24, 26 and 31.

4           THE COURT: 22 through 26 and 31?

5           MR. PALAL: Yes.

6           THE COURT: Okay.

7       BY MR. PALAL:

8           Q       Officer, can you look through these exhibits. Do you  
9       recognize what these photos depict?

10          A       That's the inside of the vehicle after both  
11       subjects were taken into custody.

12          Q       Does it fairly and accurately depict the vehicle on  
13       February 2nd, 2014?

14          A       Yes.

15          MR. PALAL: Your Honor, at this time, the State's  
16       gonna move the proposed -- move 22, 23, 24, 26 and 31 into  
17       evidence.

18          THE COURT: 22 through 24, 26 and 31. Any objection?

19          MR. CLAUS: No, Your Honor.

20          THE COURT: They'll be admitted.

21                 [STATE'S EXHIBITS 22-24, 26, AND 31 ADMITTED]

22          MR. PALAL: Permission to publish?

23          THE COURT: You may.

24       /

1 BY MR. PALAL:

2 Q Showing you State's Exhibit 22, can you tell us what  
3 this is.

4 A It's the driver's side rear door, looking into  
5 the vehicle.

6 Q Now, it appears as though the front seat is angled  
7 very far down. Is -- is that accurate?

8 A Yes.

9 Q Did you move the front seat down at all?

10 A No.

11 Q Is that how -- when you stopped Ms. Chapman, is that  
12 the condition that the seat was in?

13 A Yes.

14 Q Did that strike you as unusual?

15 A Yes.

16 Q Why?

17 A That she may have been laying down, waiting,  
18 where she didn't want to be seen in the vehicle.

19 Q I'm gonna show you, now, State's Exhibit 23. Can you  
20 tell us what we're looking at?

21 A It's the driver's seat of the vehicle. You  
22 can -- it's two packs of Newports and Wrigley's spearmint  
23 gum.

24 Q And what was the significance of that?

1           A     The details of the call that was given by the  
2     victim in this is that these were the items taken.

3           MR. PALAL:   And then I'm gonna publish  
4     State's Exhibit 24.

5     BY MR. PALAL:

6           Q     Can you tell us what State's Exhibit 24 depicts?

7           A     Same thing, driver's seat.   Just the closer view  
8     of the front seat and the evidence.

9           Q     I'm gonna show you State's Exhibit 26.   Can you tell  
10    us what that depicts?

11          A     It's the passenger's side rear door.   And  
12    there's -- this is the floor of the back seat with a black  
13    sweater.

14          Q     And what was the significance of the black sweater?

15          A     Description given of the male running northbound  
16    on foot was wearing a black sweater.

17          Q     I'm gonna show you what's been -- State's Exhibit 31.  
18    Do you recognize what's in State's Exhibit 31?

19          A     Yes.

20          Q     Can you tell us what it is?

21          A     Passenger's side back seat, floor, and a  
22    camouflage beanie.

23          Q     Do you take the black sweatshirt out of the car?

24          A     Yes.

1 Q Why?

2 A To look for anything else, see if there's  
3 anything inside the sweater.

4 Q Do you photograph the black sweatshirt out of the  
5 vehicle?

6 A I didn't personally photograph it, no.

7 Q Okay. Did you see the black sweatshirt out of the  
8 vehicle?

9 A Yes.

10 Q Okay. Did you notice anything inside the black  
11 sweatshirt when you pulled it out?

12 A Yes.

13 Q What was inside -- what did you notice inside the  
14 black sweatshirt?

15 A The handgun.

16 Q And by "the handgun," what do you mean?

17 A It was a revolver that was also stated in the  
18 details, when I was arriving, that the suspect was -- had  
19 a -- had a handgun.

20 Q Did you take out the -- the, I guess, the camouflage  
21 beanie out of the vehicle?

22 A Yes.

23 Q And did you take out the two Newports and the  
24 spearmint -- the spearmint gum out of the vehicle?

1           A     Yes.

2           MR. PALAL:  Permission to approach the witness,  
3     Your Honor?

4           THE COURT:  You may.

5     BY MR. PALAL:

6           Q     I've shown opposing counsel and I'm now gonna show  
7     you State's Proposed exhibit -- oh, I'm sorry.  
8     State's Proposed exhibits 27 and 32.  Can you take a look at  
9     these exhibits and say -- see if you recognize them.

10          A     Yes.

11          Q     What do they depict?

12          A     The black sweater that was laid out on the hood  
13     of the car and a camouflage beanie.

14          Q     And do they fairly and accurately depict the items  
15     after you had pulled them out of the vehicle?

16          A     Yes.

17          MR. PALAL:  Your Honor at this time, State's going to  
18     move to admit 27 and 32.

19          THE COURT:  Any objection?

20          MR. CLAUS:  No, Your Honor.

21          THE COURT:  27 and 32 be admitted.

22                     [STATE'S EXHIBITS 27 AND 32 ADMITTED]

23     BY MR. PALAL:

24          Q     Okay.  I'm going to show you State's Exhibit 27.  Is

1       this the sweatshirt you had pulled out of the vehicle?

2           A     Yes.

3           Q     Now, I -- I have to -- I notice that it looks lighter  
4       here than it did in the back of the car; is that fair?

5           A     Yes.

6           Q     Do you recall what kind of lighting you used when  
7       this photo was taken?

8           A     Flashlights.

9           Q     Was it dark outside?

10          A     Extremely dark.

11          Q     What time -- what time was this about?

12          A     3:00 -- after 3:00 a.m. 3:04, 3:03.

13          Q     All right. And I'm gonna show you  
14       State's Exhibit 32. Is this the camouflage hat that was  
15       previously depicted inside the vehicle?

16          A     Yes.

17          Q     Now, you had mentioned that you pulled out a firearm  
18       from the vehicle. I'm gonna show you what's been admitted as  
19       State's Exhibit 29. Do you recognize what's depicted in  
20       State's Exhibit 29?

21          A     Yes.

22          Q     What is it?

23          A     It's a revolver.

24          Q     And it's the -- was it the revolver you found in the



1       sweatshirt?

2           A     Yes.

3           Q     Now, where exactly in the sweatshirt did you find the  
4       revolver?

5           A     It was in the pocket. In the front -- front  
6       pockets of the hooded sweatshirt.

7           Q     I'm gonna show you State's Exhibit 28. Do you  
8       recognize what's depicted in State's Exhibit 28?

9           A     Yes.

10          Q     What is it?

11          A     It's the same revolver showing that, out of six  
12       possible rounds, there's four rounds in the -- in the  
13       revolver.

14          Q     I'm gonna show you State's Exhibit 30. Can you tell  
15       us what that is?

16          A     It's the revolver, showing the manufacturer's  
17       name on the barrel.

18          Q     I'm gonna show you State's Exhibit 25. Can you tell  
19       us what that is?

20          A     The two packs of Newports and spearmint Wrigley  
21       gum.

22          Q     And is that the Newports and spearmint gum that was  
23       in the front seat of the car?

24          A     Yes.

1           Q     Now, at -- during this time, is the Defendant  
2     detained or is he free to roam about?

3           A     He's detained.

4           MR. PALAL: Your Honor, may I approach the witness?

5           THE COURT: You may.

6     BY MR. PALAL:

7           Q     So I'm gonna show you -- sir, I'm gonna show you  
8     what's been previously marked as State's Proposed Exhibits 34  
9     and 35. Can you take a look at them.

10          A     Yes.

11          Q     Do you recognize what's depicted in  
12     State's Exhibits -- Proposed Exhibits 34 and 35?

13          A     Yes.

14          Q     What do they depict?

15          A     The suspect that was in the back seat of the  
16     vehicle.

17          Q     And --

18          MR. PALAL: All right. Your Honor, at this time, the  
19     State's gonna move State's Proposed exhibits 34 and 35  
20     into evidence.

21          THE COURT: Any objection?

22          MR. CLAUS: No, Your Honor.

23          THE COURT: 34 and 35 be admitted.

24                 [STATE'S EXHIBITS 34 AND 35 ADMITTED]

1 MR. PALAL: Permission to publish?

2 THE COURT: You may.

3 BY MR. PALAL:

4 Q Showing you State's Exhibit 35. Can you tell us what  
5 this is?

6 A The suspect that was taken into custody.

7 Q Is that suspect the same person in here, court today?

8 A Yes.

9 Q Show you what's been previously admitted as  
10 State's Exhibit 33. Can you tell us what that is?

11 A The same subject.

12 Q And the same person that's in the courtroom today?

13 A Yes.

14 Q I'm gonna show you State's Exhibit 34. Can you tell  
15 us what this is?

16 A It's the back of the same subject.

17 Q Now, it looks, from the back -- from the photo, at  
18 least -- there are some black dots on this shirt. Did you  
19 notice that on February 2nd, 2014?

20 A Yes.

21 Q And what was the significance to you about the black  
22 dots on the back of the shirt?

23 A They were small fibers of cotton where would  
24 sometimes, you know, when you take off a hooded sweatshirt

1       you might get those lint particles or whatever that's  
2       still left on your shirt.

3           Q       So to your observation, is it fair to say that, to  
4       your observation, these are lint particles from the black  
5       sweatshirt?

6           A       Yes.

7           MR. PALAL: Court's indulgence.

8                   Your Honor, the State would pass the witness.

9           THE COURT: Cross-examination?

10                   CROSS-EXAMINATION OF JOSHUA ROWBERRY

11       BY MR. CLAUS:

12           Q       These lint particles, Officer Rowberry, did you  
13       [inaudible] any of those?

14           A       Did I maintain any of them?

15           Q       Yes --

16           A       No.

17           Q       -- did you gather any of them? Did you maintain any  
18       of them?

19           A       No.

20           Q       Did you document them here?

21           A       I believe I documented them in my report.

22           Q       Okay. Did you take these photographs?

23           A       I didn't personally take the photographs, no.

24           MR. CLAUS: Court's indulgence.

1 THE COURT: Sure.

2 BY MR. CLAUS:

3 Q The -- and I want to be clear. The Wrigley spearmint  
4 gum, the Newports, they were found inside the driver's seat?

5 A Yes.

6 Q In the condition that the photographs show. They  
7 weren't inside of a purse, they weren't anywhere else, other  
8 than in that seat.

9 A Correct.

10 Q So they were being sat upon, essentially.

11 A Well, I don't believe they were being sat on.  
12 But when the driver exited the vehicle, if they were on  
13 the side of her, then when she got out, they fell over.

14 MR. CLAUS: Court's indulgence.

15 Pass the witness, Your Honor.

16 THE COURT: Any redirect?

17 MR. PALAL: No, Your Honor.

18 THE COURT: Any questions from the jurors? Nobody's  
19 writing?

20 Okay. Thank you, sir. We appreciate your time.  
21 Have a nice afternoon.

22 Next witness.

23 MR. LEXIS: State calls Officer Landers.

24 JEREMY LANDERS,

1 [having been called as a witness and being first duly  
2 sworn testified as follows:]

3 THE CLERK: Please be seated.

4 THE WITNESS: Thank you.

5 THE CLERK: Please state and spell your name for the  
6 record.

7 THE WITNESS: It's Officer Jeremy Landers,  
8 J-E-R-E-M-Y, L-A-N-D-E-R-S.

9 THE COURT: Sir, you will notice there are M&Ms in the  
10 dispenser there, if you should need some during the  
11 examination. And there is water in the pitcher. If you  
12 need some coffee, let the marshal know.

13 THE WITNESS: Perfect.

14 THE COURT: Please proceed.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: Uh-huh.

17 DIRECT EXAMINATION OF JEREMY LANDERS

18 BY MR. LEXIS:

19 Q Where do you work, sir?

20 A I'm a police officer with Las Vegas Metropolitan  
21 Police Department.

22 Q How long have you worked there?

23 A September will be 13 years.

24 Q Were you working on February 2nd, 2014?

1           A     I was, sir.

2           Q     Were you dispatched to the area of  
3     5001 North Rainbow, Clark County, Las Vegas, Nevada?

4           A     Yes, I was.

5           Q     What was the nature of the dispatch?

6           A     It was a robbery with a deadly weapon at a  
7     convenience store.

8           Q     Is it the Star Mart?

9           A     It is.

10          Q     What happened upon arrival?

11          A     I made contact with the victim, began to get her  
12     statement. As I was getting her statement, I was apprised  
13     that Officer Rowberry had conducted a traffic stop on what  
14     he deemed was a suspicious vehicle in the area, not too  
15     far away, that was possibly related.

16          Q     Do you remember what time you arrived?

17          A     I don't. It's -- it's indicated in the CAD  
18     record. I'd be -- it's been some time. So I'd have to  
19     refresh my memory.

20          Q     Would it refresh my memory if I showed you your CAD?

21          A     It would, sir.

22          MR. LEXIS: May I approach, Your Honor?

23          THE COURT: You may.

24                 Anybody like the CAD record marked for precision

1 of the record only?

2 MR. CLAUS: Please, Your Honor, for the Court's  
3 record, please.

4 MR. LEXIS: Would you like it marked now, Your Honor?

5 THE COURT: As Court's Exhibit.

6 THE CLERK: It will be Court's 5.

7 THE COURT: Okay.

8 [COURT'S EXHIBIT 5 MARKED.]

9 THE COURT: And then make sure you give it back to her  
10 when you're finished.

11 MR. LEXIS: Yes, Your Honor.

12 THE COURT: Thank you.

13 MR. LEXIS: May I approach?

14 THE COURT: You may.

15 BY MR. LEXIS:

16 Q Officer, please read that to yourself. Don't say  
17 anything. Let me know when you're done.

18 A Okay.

19 Q Did that refresh your memory, officer?

20 A It does.

21 Q What time did you arrive?

22 A 03:11 hours, as indicated by the CAD record. I  
23 was operating as marked patrol unit one "X-ray."

24 Q And soon thereafter, were you advised that a suspect



1 had been taken into custody?

2 A I was.

3 Q Is that when you took the victim to the location?

4 A Yes.

5 Q Was she cooperative?

6 A Our victim? Yes.

7 Q Yes.

8 A Yes, she was.

9 Q Her name Brittany Slathar?

10 A Yes.

11 MR. LEXIS: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. LEXIS:

14 Q Sir, I'm showing you what has been marked as  
15 State's Exhibit 10. What is that?

16 A This is a -- this is commonly known as a show up  
17 form or Show Up Witness Instructions.

18 Q Did you follow that procedure?

19 A I did.

20 Q What did you do?

21 A Okay. A show up -- you may have seen it in the  
22 movies, on TV, that type of thing. It's generally  
23 conducted within a short time following a crime, where a  
24 suspect is -- potential suspect has been located and

1       stopped, where we would transport our victim or witness to  
2       that location to -- to make an identification whether or  
3       not that is or is not the suspect that committed the  
4       crime.

5           Q       Are there instructions on that sheet --

6           THE COURT:   Hold on a second, Counsel.  I think the  
7       exhibit you're referring to is Exhibit 19.  Can you just  
8       confirm that's what it says.

9           THE WITNESS:  That is correct.

10          THE COURT:  Thank you.

11          THE WITNESS:  I had my glasses on --

12          MR. LEXIS:  Sorry, Your Honor.

13          THE WITNESS:  -- I can actually read that.

14          THE COURT:  It's Dulce.  She wants to make sure you're  
15       doing it right, Counsel.

16       BY MR. LEXIS:

17           Q       And, sir, is there an admonishment on there?

18           A       There is.

19           Q       And was the victim advised of that admonishment?

20           A       Yes.

21           Q       And can you please read that admonishment to the  
22       jury.

23           A       Yes.  We would have filled out this top half and  
24       I would have admonished the victim, prior to actually

1 going over to the location where the suspect was stopped.  
2 I would have read this verbatim. In fact, I did. And it  
3 goes as -- as, and I, quote, "In a moment I'm going to  
4 show you a person who is being detained. This person may  
5 or may not be the person who committed the crime now being  
6 investigated. The fact that this person is detained  
7 should not cause you to believe or guess that he," slash,  
8 "she is guilty. You do not have to identify anyone. It  
9 is just as important to free innocent persons from  
10 suspicion as it is to identify those who are guilty.

11 "Please keep in mind that clothing can easily be  
12 changed. Please do not talk to anyone, other than the  
13 police officers, while viewing this person. You must make  
14 up your own mind and are not to be influenced by other  
15 witnesses, if any.

16 "When you have viewed the person, please tell me  
17 whether or not you can make an identification. If you  
18 can, tell me in your own words how sure you are of your  
19 identification. Please do not indicate in any way to  
20 other witnesses that you have or have not made an  
21 identification. Thank you."

22 Q And she was advised of that prior to your arrival of  
23 where the suspect was at?

24 A Correct, sir.

1           Q     And tell me her demeanor and her reaction once she  
2     saw this individual?

3           A     She made a very rapid identification. And as  
4     soon as she saw him, that -- that was the guy.

5           Q     And did she also fill out that bottom part?

6           A     She did.

7           Q     And that's after she made the identification?

8           A     Correct, sir.

9           Q     And what did she state on that?

10          A     Her statement is, "The male in front of the  
11     police car was the man who robbed me at gun point. He was  
12     wearing blue jeans a red T-shirt and black tennis shoes.  
13     When he came into the store, he was wearing blue jeans, a  
14     black hooded sweatshirt and a beanie, light," slash, "dark  
15     brown spots." I assume that was the beanie.

16          MR. LEXIS: No further questions, Your Honor.

17          THE COURT: Cross-examination?

18                   CROSS-EXAMINATION OF JEREMY LANDERS

19     BY MR. CLAUS:

20          Q     You said that, initially, Ms. Slathar made a very  
21     rapid identification. If there was -- was there any  
22     equivocation about the identity of individual?

23          A     By "equivocation" you mean she -- did she wobble  
24     at all?

1 Q Yes, because of the change of clothes.

2 A No.

3 Q And no officer would have told her that he could have  
4 changed his clothes from the time that the robbery occurred?

5 A Actually, it says in the admonishment that the  
6 clothes may have been changed.

7 Q Okay. Did you say that at the scene as well?

8 A No, I read her the admonishment, I drove her to  
9 the scene, and let her make the decision from there.

10 MR. CLAUS: Pass the witness, Your Honor.

11 THE COURT: Any further examination, Counsel?

12 MR. LEXIS: No, Your Honor.

13 THE COURT: Any questions from the jurors?

14 Thank you, sir. We appreciate your time. Have a  
15 nice afternoon.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Next witness.

18 Can you give the exhibit -- Court's Exhibit to  
19 Dulce? Thank you.

20 Who's our next witness?

21 MR. PALAL: Graciela Angles.

22 THE COURT: Thank you.

23 GRACIELA ANGLES,

24 [having been called as a witness and being first duly

1 sworn testified as follows:]

2 THE CLERK: Thank you. Please be seated and please  
3 state and spell your name for the record.

4 THE WITNESS: Graciela Angles, G-R-A-C-I-E-L-A. Last  
5 name, Angles, A-N-G-L-E-S.

6 THE COURT: And, ma'am, there are some M&Ms in the  
7 dispenser next to you, if you should need those. And then  
8 if you would like, there's some water in the pitcher. And  
9 if you would like some coffee, the marshal can help you  
10 with that, too.

11 All right. You may proceed, Counsel.

12 DIRECT EXAMINATION OF GRACIELA ANGLES

13 BY MR. LEXIS:

14 Q Good morning, ma'am.

15 A Morning.

16 Q On January 28, 2014, were you working at the  
17 Metro PCS?

18 A Yes, I was.

19 Q Is that at 6663 Smoke Ranch?

20 A Yes.

21 Q Is that here in Las Vegas, Clark County, Nevada?

22 A Yes.

23 Q Around 2:00 o'clock, did anything out of the ordinary  
24 happen?

1           A     Yes, it did.

2           Q     What happened?

3           A     Uh, an African American guy came in and did a  
4 robbery on the store, took money and took a phone.

5           Q     Let's take it piece by piece, ma'am.

6           A     Okay.

7           Q     When you first saw him come in, did you notice  
8 anything out of the ordinary?

9           A     No.

10          Q     What is the first thing you saw this man do?

11          A     Went to look at the phones and ask me about the  
12 plans.

13          Q     Asked you about the plans?

14          A     Yes.

15          MR. LEXIS: Your Honor, may the record reflect I'm  
16 showing opposing counsel State's Proposed 32, 14, 13, 12,  
17 and 11.

18                May I approach, Your Honor?

19          THE COURT: 11 through 14 and 32.

20          MR. LEXIS: Correct, Your Honor.

21          THE COURT: All right. You sure it's 32?

22          THE CLERK: 32 [inaudible].

23          MR. LEXIS: Looks like a three --

24          THE CLERK: [Inaudible]

1 MR. LEXIS: Is that a seven? 32?

2 THE CLERK: 37, yeah.

3 MR. LEXIS: 37.

4 THE COURT: That's Dulce's fault. Not yours, Counsel.

5 MR. LEXIS: Your Honor, it's fine.

6 BY MR. LEXIS:

7 Q Ma'am, please take a look through those photos. Are  
8 those true and accurate representations of what the store  
9 looked like on that day?

10 A Yes.

11 MR. LEXIS: Your Honor, I move to admit these  
12 exhibits.

13 THE COURT: 11 through 14 and 37. Any objection?

14 MR. CLAUS: No, Your Honor.

15 THE COURT: Be admitted.

16 [STATE'S EXHIBITS 11-14 AND 37 ADMITTED]

17 BY MR. LEXIS:

18 Q Ma'am, I'm showing you State's Exhibit 11. What is  
19 that a picture of?

20 A Of the front of the store.

21 Q True and accurate representation?

22 A Yes.

23 Q And is there some tape around there? Does that look  
24 like a police vehicle to you?



1 A Yes, it is.

2 Q [Inaudible] did this occur off the police got there?

3 A Yes.

4 Q And did they try to tape around the scene?

5 A Yes, they did.

6 Q Did they let anybody in and out?

7 A No.

8 Q I'm showing you State's Exhibit 12. What are we  
9 looking at there?

10 A The inside of the store.

11 Q And where were you when the robbery took place?

12 A I was behind the counter.

13 Q Showing you State's Exhibit 13. What is this a  
14 picture of?

15 A It's behind the counter.

16 Q That's where you were?

17 A Yes.

18 Q Showing you State's Exhibit 14. What is this a  
19 picture of?

20 A That's a phone, a display. The Omega.

21 Q And what's the significance of this phone?

22 A [Inaudible]

23 Q Was he trying to buy this phone? Was he looking at  
24 this phone --

1           A     Yes, he was.

2           Q     -- what's the significance of this?

3           A     It's a -- yeah, he was looking at that phone.

4           Q     I'm showing you State's Exhibit 37. What is that a  
5 picture of?

6           A     While the robbery was taking place.

7           Q     That's exactly where you were behind the counter?

8           A     Yes.

9           Q     Where the register is?

10          A     Yes.

11          Q     And in that picture is, does he appear to be holding  
12 a firearm?

13          A     Yes, it is.

14          Q     So ma'am, explain to us, after you see him come in,  
15 he inquires about a phone, you say?

16          A     Yes.

17          Q     What happens next?

18          A     I explain to him about the plans. He asked me  
19 about a Galaxy S4, how much would be the total. I pull up  
20 the phone from the back. I scan it. I give him the  
21 total. And then he asks me about a different phone, which  
22 it was the Omega. And I take the Galaxy S4 back, bring  
23 the Omega out and scan it and give him the total and ask  
24 him if he was gonna pay cash or debit.

1           Q     So you have several facial interactions with this  
2     person.

3           A     Yes, I did.

4           Q     Okay. After that happened, what happened next?

5           A     He actually pulled out the gun, asked me to step  
6     back and give him the money.

7           Q     Were you in fear?

8           A     I gave him the money.

9           Q     Were you in fear? Were you afraid?

10          A     Yes.

11          Q     And so you complied with his demands?

12          A     Yes.

13          Q     And did you grab all the cash out of the draw?

14          A     Yes.

15          Q     And while you were doing this, was the gun pointed at  
16     you?

17          A     Yes, it was.

18          Q     Appear to be a small gun?

19          A     Yes, it was a small --

20          Q     What did he do?

21          A     He just asked me to give him the money. He took  
22     the -- the Omega that was next to me and he took out.

23          Q     Soon thereafter, ma'am, did a police officer arrive  
24     with Metro about a month later and show you some pictures?

1 A Yes, sir.

2 Q Is that a "yes"?

3 A Yes.

4 MR. LEXIS: Your Honor, let the record reflect I'm  
5 showing opposing counsel State's Proposed Exhibit 16.

6 THE COURT: 16?

7 MR. LEXIS: Yes, Your Honor.

8 THE COURT: Thank you.

9 MR. LEXIS: May I approach, Your Honor?

10 THE COURT: You may.

11 BY MR. LEXIS:

12 Q Ma'am, I'm showing you State's Proposed 16. What is  
13 the first page of that?

14 A It's a -- array about the state -- about the  
15 picture that it was showed to me and there was writing  
16 where the police officer read to me.

17 Q Okay. Is there instructions on that first sheet?

18 A Yes, there is.

19 Q Before you were given the pictures, were you advised  
20 of the instructions?

21 A Yes, I was.

22 Q And was that by the police officer or was that by you  
23 reading that?

24 A No, that was by the police officer.

1           Q     After that admonishment was read to you, were you  
2 then shown the photographs?

3           A     Yes, I was.

4           Q     Can you please turn it to page 2. Are those the  
5 photographs you were shown?

6           A     Yes.

7           Q     And what did you do?

8           A     I circle number 2 and write my name under.

9           Q     Did you then indicate on page 1 how sure you were?

10          A     Yes, I did.

11          Q     Can you please turn to page 1 and tell us what you  
12 put.

13          A     "I identified the number 2. I'm 100 percent sure  
14 that he robbed me at Smoke Ranch. Nothing is change.  
15 It's still -- it's still the same. Only the difference is  
16 that he's not wearing a hat."

17          MR. LEXIS: Your Honor, State moves to admit  
18 State's Proposed Exhibit 16.

19          THE COURT: Any objection to 16?

20          MR. CLAUS: No, Your Honor.

21          THE COURT: 16 be admitted.

22                 [STATE'S EXHIBIT 16 ADMITTED]

23          MR. LEXIS: Permission to publish, Your Honor?

24

1 THE COURT: You may.

2 BY MR. LEXIS:

3 Q Ma'am, is this the instruction sheet?

4 A Yes, it is.

5 Q Is these the instructions that were read to you?

6 A Yes.

7 Q And you read those -- or somebody read those to you  
8 before seeing the photographs?

9 A They read them to me.

10 Q Before seeing the photographs?

11 A Yes.

12 Q Were you then shown the photographs?

13 A Yes, I was.

14 Q And is that the circle you put?

15 A Yes.

16 Q And is that your writing underneath number 2?

17 A Yes.

18 Q And to this day, do you still indicate, 100 percent,  
19 number 2?

20 A Yes.

21 Q Was his features similar in this picture as they were  
22 when he robbed you?

23 A Yes, they were.

24 Q Was the hair short?

1 A Yes.

2 Q Was the facial hair short?

3 A Yes.

4 Q Was he wearing glasses or not wearing glasses?

5 A He was not wearing glasses.

6 Q Was he wearing ordinary casual clothes or was he  
7 wearing like I'm wearing?

8 A He was wearing casual clothes.

9 Q You see that person in court today?

10 A Yes, I do.

11 Q Can you please point to him and identify for me the  
12 color shirt he's wearing.

13 A I'm sorry. What was that?

14 Q Can you please point to that person and identify for  
15 me the color shirt he is wearing.

16 A Gray.

17 MR. LEXIS: Your Honor, let the record reflect the  
18 witness has identified the Defendant.

19 THE COURT: The record will so reflect.

20 BY MR. LEXIS:

21 Q Ma'am, did you also go over a video that was taken  
22 during this incident at the District Attorney's office?

23 A Yes.

24 Q After that video was shown to you, was the video then

1 popped out, the CD, and did you sign it immediately?

2 A Yes.

3 MR. LEXIS: Let the record reflect I'm showing  
4 opposing counsel State Proposed 43.

5 May I approach, Your Honor?

6 THE COURT: You may.

7 BY MR. LEXIS:

8 Q Ma'am, I'm showing you State's Proposed Exhibit 43.  
9 Do you recognize that CD?

10 A Yes, I do.

11 Q Do you recognize the signature on that CD?

12 A Yes, I do.

13 Q Is that your signature?

14 A Yes, it is.

15 MR. LEXIS: Your Honor, I move to admit  
16 State's Proposed 43.

17 MR. CLAUS: Your Honor, can we have further foundation  
18 laid, please.

19 THE COURT: Counsel, can you establish she watched the  
20 whole thing.

21 MR. LEXIS: Yes, Your Honor.

22 BY MR. LEXIS:

23 Q Did you watch all the video that is on this CD?

24 A Yes, I did.



1           Q     And does it truly and accurately depict what happened  
2     on that day?

3           A     Yes.

4           Q     And what you saw on that day?

5           A     Yes.

6           MR. LEXIS: Your Honor, I move to admit  
7     State's Proposed --

8           THE COURT: Any additional objection?

9           MR. CLAUS: No, Your Honor.

10          THE COURT: Be admitted.

11                 [STATE'S EXHIBIT 43 ADMITTED]

12          THE COURT: And which number was that?

13          MR. CLAUS: 43, Your Honor.

14          THE COURT: Ma'am, it's gonna show up on this monitor  
15     here.

16          THE WITNESS: [Inaudible]

17     BY MR. LEXIS:

18          Q     Ma'am, can you tell us what we are looking at.

19          A     I was looking at the computer. I was watching a  
20     movie.

21          Q     Is this the suspect coming in right now?

22          A     Yes, it is.

23          Q     And what is going on right now?

24          A     He's asking me about the phones. I'm explaining

1 to him the plans on the phones and what kind of promotions  
2 we have going on.

3 Q What's going on right now?

4 A It's -- it's -- we're still talking about the  
5 phones.

6 Q Still chitchat over the phones?

7 A About the phones, what's the difference between  
8 them.

9 Q Where are you going?

10 A He's asking me about the total of the Galaxy S4.  
11 So I went to get it so I can bring him up and give him the  
12 total.

13 Q You have the phone now?

14 A Yes, I do.

15 Q What are you talking about now?

16 A I'm scanning the phone to bring -- to bring the  
17 total up.

18 Q Is he still acting like he's trying to buy the phone?

19 A Yes.

20 Q Do you remember what this conversation is about? Or  
21 the same thing?

22 A It's still about the same thing. About what kind  
23 of plan he wants.

24 Q What is he looking at over there?

1 A He's --

2 Q Do you have phones in those cases?

3 A We have phones. We have different type of phones  
4 on that circle.

5 Q And next to him, is there a display?

6 A Yes, there is. It's the Galaxy Mega.

7 Q That's the Galaxy Mega?

8 A That's the Galaxy Mega.

9 Q Are you the only employee in the store at the time?

10 A Yes, I was.

11 Q Is he the only customer in the store at this time?

12 A Yes, he was.

13 Q During the robbery, were you the only employee?

14 A Yes.

15 Q And was he the only customer?

16 A Yes.

17 Q What's going on now, ma'am?

18 A He asked me what's different between the  
19 Galaxy S4. So he -- the Galaxy S4 and the Mega. So I  
20 went to take the Galaxy S4 back and bring him the Mega  
21 out.

22 Q The Mega's a bigger, better phone?

23 A It's a -- it's a bigger phone, bigger screen.

24 Q During this exchange, are you looking at him several

1 times in the face?

2 A Yes.

3 Q What's going on now, ma'am?

4 A I'm putting the phone together to show it to him,  
5 so he could hold it and play with it. Display the phone  
6 to him.

7 Q So you're taking it out to make it operational, out  
8 of the box?

9 A Yes.

10 Q And he's waiting for you to do that?

11 A He -- yes.

12 Q What are you doing now, ma'am?

13 A I'm scanning the case to get him the total with  
14 the phone, the case, and the plan.

15 Q At this point, you've made the phone operational?

16 A Yes.

17 Q What's going on right now, ma'am?

18 A I turn on the phone. I ask him if he was gonna  
19 pay cash or debit. And he pulled out the gun.

20 MR. LEXIS: Can you pause it right there?

21 BY MR. LEXIS:

22 Q So is he pointing the firearm at you?

23 A Yes.

24 Q Was he pointing the firearm at you the entire time he

1 was demanding the money?

2 A Yes.

3 Q And you were in fear?

4 A Yes.

5 Q And you said you complied with his demands?

6 A I did comply with them.

7 Q What's going on right now?

8 A I'm giving him the money from the register.

9 Q You step back. Why you stepping back?

10 A He asked me to step back.

11 Q Did he immediately, then, leave the store?

12 A Yes, he did.

13 Q What are you doing right now?

14 A I'm calling 9-1-1.

15 Q Did you immediately call 9-1-1?

16 A Yes, I did.

17 Q And the phone you made operational, he took that as  
18 well?

19 A Yes, he did.

20 MR. LEXIS: No further questions, Your Honor.

21 THE COURT: Cross-examination?

22 MR. CLAUS: Court's indulgence for just a moment,  
23 please.

24 THE COURT: Okay. Counsel, what was the exhibit

1       number of the video?

2           MR. PALAL: 43, Your Honor.

3           THE COURT: 43. Thank you.

4           MR. CLAUS: Your Honor, I'll pass this witness.

5           THE COURT: And may I have the jury questions, please.

6                   Counsel, can you approach?

7           MR. CLAUS: Oh, actually, Your Honor, I'm sorry. I  
8       did have one question of this witness, if I may.

9           THE COURT: Ask.

10                   CROSS-EXAMINATION OF GRACIELA ANGLES

11       BY MR. CLAUS:

12           Q       The firearm that was produced, do you remember if it  
13       was an automatic firearm?

14           A       I honestly don't know.

15           Q       Okay.

16           A       I don't know about firearms.

17           Q       You don't know the difference between automatic or  
18       revolver.

19           A       No.

20           MR. CLAUS: Okay. Thank you, Your Honor.

21           THE COURT: Counsel, can you approach? I have  
22       questions from the jury.

23           MR. LEXIS: Judge, may I follow up on that, too?

24           THE COURT: After we ask the questions from the jury.

1 [Bench conference]

2 THE COURT: I have a couple questions from the jurors.

3 THE WITNESS: Uh-huh.

4 THE COURT: Did you have to leave the floor at the  
5 store to get the phones or were they on the floor?

6 THE WITNESS: They are on the -- they are on the  
7 store, they're on the floor.

8 THE COURT: And did you see him put away the gun to  
9 grab the phone with his right hand before exiting the  
10 store?

11 THE WITNESS: No.

12 THE COURT: Okay. Thank you.

13 Counsel, would you like to follow up?

14 MR. LEXIS: Court's indulgence.

15 Nothing from the State, nothing further.

16 THE COURT: Anything else, Mr. Claus?

17 MR. CLAUS: Just a moment, Your Honor. Pass the  
18 witness, Your Honor.

19 THE COURT: Okay. Thank you. We appreciate your  
20 time. Have a very nice afternoon.

21 Ladies and gentlemen, at this time we're gonna  
22 take our lunch recess until 1:15.

23 During this recess, you are admonished not to  
24 talk or converse among yourselves or with anyone else on

1 any subject connected with this trial or read, watch, or  
2 listen to any report of commentary on the trial or any  
3 person connected to this trial by any means of  
4 information, including without limitation: Social media,  
5 text, newspaper, television, Internet, radio or form or  
6 express any opinion on any subject connected with the  
7 trial until the case is finally submitted to you.

8 We'll see you at 1:15. If you could gather  
9 outside 14A.

10 [Outside the presence of the jury]

11 THE COURT: Counsel, if you could come up here, one of  
12 you. I don't care which one. You're the hander-outer.  
13 There's two for each side.

14 So this is now -- we're past your working set.  
15 If it's okay, I'll go ahead and take one more shot at it,  
16 see if there's anything else that's missed. I've made the  
17 corrections we talked about yesterday. I will then, if  
18 you tell me after lunch that these look good, I will then  
19 number them and give you a new set that has the  
20 handwritten numbers on it.

21 MR. PALAL: All right. Thank you, Your Honor.

22 THE COURT: Okay? And I'm just trying to make sure  
23 we've done our parts.

24 Anything else before I see you guys at 1:00-ish?



1 MR. PALAL: Nothing from the State.

2 THE COURT: You guys at 1:00-ish.

3 MR. PALAL: Okay.

4 MR. CLAUS: No, Your Honor.

5 THE COURT: Okay.

6 MR. PALAL: Thank you.

7 THE COURT: Uh-huh.

8 [Recess at 11:58 a.m.; proceedings resumed at  
9 1:09 p.m.]

10 [Outside the presence of the jury]

11 [Discussion off the record]

12 THE COURT: So as soon as I have juries all here, I'm  
13 ready to go. Do you need the list of them?

14 THE BAILIFF: Uh, you have a list of them?

15 THE COURT: I got a list.

16 THE BAILIFF: I'll take a list. [Inaudible]

17 THE COURT: Here you go. They should be in front of  
18 14A.

19 THE BAILIFF: I'll go see what I can [inaudible].

20 THE COURT: There should be 14 of them.

21 THE BAILIFF: 14 of them?

22 THE COURT: In front of 14A.

23 THE BAILIFF: Yes, ma'am.

24 THE COURT: Thank you.

1                   Good afternoon, gentlemen. How are you?

2           MR. LEXIS: Not too bad. And you?

3           THE COURT: I'm great. So while we're doing that,  
4   Mr. Splond, you understand that under the Constitution of  
5   the United States and under the constitution of the  
6   State of Nevada, you cannot be compelled to testify in  
7   this case; correct?

8           THE DEFENDANT: Yes.

9           THE COURT: You may, at your own request, give up this  
10   right and take the witness stand and testify. If you do,  
11   you'll be subject to cross-examination by the  
12   District Attorney. And anything you may say, be it on  
13   direct or cross-examination, will be subject to fair  
14   comment when the District Attorney speaks to the jury in  
15   final argument. Do you understand that?

16          THE DEFENDANT: Yes.

17          THE COURT: If you choose not to testify, the Court  
18   will not permit the District Attorney to make any comments  
19   to the jury because you've not testified. You understand  
20   that?

21          THE DEFENDANT: Yes.

22          THE COURT: If you elect not to testify, the Court  
23   will instruct the jury that only if your attorney  
24   specifically request, generally, the law does not compel a

1 Defendant in a criminal case to take the stand and testify  
2 and no presumption may be raised, no inference of any kind  
3 may be drawn that from the failure for the Defendant to  
4 testify. Do you have any questions about these rights?

5 THE DEFENDANT: No.

6 THE COURT: Okay. You're further advised that if you  
7 have a felony conviction, more than ten years has not  
8 elapsed from the date you've been convicted or discharged  
9 from prison, parole, or probation, whichever's later, the  
10 Defense has not stopped to preclude that coming before the  
11 jury, you elect to take the stand and testify, deputy's  
12 attorney [inaudible] may [inaudible] ask you the  
13 following: Have you been convicted of a felony? What was  
14 the felony? When did it happen? However, they can't ask  
15 you any questions about the details. You understand those  
16 rights?

17 THE DEFENDANT: Yes.

18 THE COURT: The jury instruction I did mention about  
19 the not testifying is in the packet currently. During  
20 lunch break, we did notice one error in the packet of  
21 information. The two captions between the instructions  
22 and the verdict form did not match. We've corrected that.  
23 So it would be "Kenny" on both the instructions and the  
24 verdict because that matches the amended indictment.

1 THE BAILIFF: Judge, [inaudible].

2 THE COURT: Great. Thank you.

3 [Discussion off the record]

4 [In the presence of the jury]

5 THE BAILIFF: Jurors are present.

6 THE COURT: Thank you, Kevin.

7 THE BAILIFF: You're welcome, Judge.

8 THE COURT: Counsel, stipulate the presence of the  
9 jury.

10 MR. PALAL: Yes, Your Honor.

11 MR. CLAUS: Yes, Your Honor.

12 THE COURT: You may be seated.

13 Good afternoon, ladies and gentlemen.

14 You're next witness.

15 MR. PALAL: State calls Crime Scene Analyst Spoor.

16 MONTE SPOOR,

17 [having been called as a witness and being first duly  
18 sworn testified as follows:]

19 THE CLERK: Thank you. Please be seated.

20 Please state and spell your name for the record.

21 THE WITNESS: It's Monte Spoor. First name,

22 M-O-N-T-E. Last name Spoor, S-P-O-O-R.

23 THE COURT: Thank you, sir. Sir, you will notice  
24 there's a dispenser with M&Ms near you. There is a

1 pitcher of water. If you'd like some coffee --

2 THE WITNESS: Thank you.

3 THE COURT: -- the marshal can help you with that,  
4 too.

5 You may proceed.

6 DIRECT EXAMINATION OF MONTE SPOOR

7 BY MR. PALAL:

8 Q Sir, how are you employed?

9 A Employed with the Las Vegas Metropolitan Police  
10 Department as a Senior Crime Scene Analyst and a  
11 Quality Assistant.

12 Q Okay. And what does a crime scene analyst do?

13 A A crime scene analyst investigates crime scenes.

14 Q All right. And how long have you worked for  
15 Las Vegas Metropolitan Police Department?

16 A Little over 26 years.

17 Q And is -- have you been working as a crime scene  
18 analyst for all of those 26 years?

19 A Yes, sir, I have.

20 Q What kind of training, education, experience do you  
21 have as a crime scene analyst?

22 A A lot. Twelve-page SOQ, which you've problem  
23 seen. Twenty-six years of training, on-the-job training  
24 for that college. Before that, high school. Lots.

1           Q     What kind of degree -- what degree did you get in  
2 college?

3           A     I don't have a degree.

4           Q     Okay.

5           A     Yeah.

6           Q     What did you study in college?

7           A     I studied biology and criminal justice.

8           Q     Okay. And what kind of -- do you take any kind of  
9 continuing education?

10          A     All the time. Yes, sir.

11          Q     What types of continuing education?

12          A     If you allow me, I can pull out my SOQ and --

13          Q     Just --

14          A     -- read out -- everything from crime scene  
15 investigations on basic, intermediate, and advanced  
16 levels; bloodstain on basic and intermediate levels;  
17 photography on basic, intermediate, and advanced levels;  
18 anything that pertains to my job in general.

19          Q     Per se, you've had a lot of hours of training.

20          A     Well over 1800.

21          Q     Hours of training?

22          A     Hours of training, yeah.

23          Q     All right. Were you operating in your capacity as a  
24 Senior Crime Scene Analyst on January 22nd, 2014?

1           A     Yes, I was.

2           Q     And where were you called out to?

3           A     I was called out a robbery.

4           Q     And do you -- what physical location were you called  
5 out to?

6           A     It would have been 4343 North Rancho Drive.

7           Q     And it seems to me that you are referring to  
8 something in front of you --

9           A     Yes.

10          Q     -- what are you referring to?

11          A     This is my report. Help me remember, since it  
12 was number of years back.

13          Q     Now, on January 22nd -- I'm sorry. What was the  
14 address that you're --

15          A     4343 North Rancho Boulevard, Number 104.

16          Q     And is that here in Clark County, Nevada?

17          A     Yes, sir, it is.

18          Q     When you get to a scene of a possible robbery, what  
19 do you do?

20          A     Basically, I make contact with the officers that  
21 have previously arrived before me or the detectives that  
22 have previously arrived before me. Gather information  
23 about the scene, what had happened, how did it happen.  
24 From there, I make my notes. And from there I conduct my

1       photography. And from there I do my processing.

2           Q     And when you say "processing" what do you mean?

3           A     Generally, processing for latent fingerprints,  
4       the recovery there of any evidence that is left behind.

5           Q     And in this case, is that the procedure you took?

6           A     Yes, sir, it was.

7       MR. PALAL: Your Honor, may I approach the witness?

8       THE COURT: You may.

9       BY MR. PALAL:

10          Q     Sir, I'm gonna show you previously admitted Exhibits  
11       1, 2, 3, 4, and 5. Can you take a look at those?

12          A     Yes, sir.

13          Q     Do you recognize what's State's Exhibits 1 through 5  
14       are?

15          A     Yes, sir, I do.

16          Q     What are they?

17          A     They're photographs of the location that I  
18       previously identified. They're the documentation portion  
19       of my crime scene investigation.

20          Q     All right. I'm also now going to show you  
21       State's Proposed Exhibits 6 through 8. Can you please take a  
22       look at them. Do you recognize what's depicted in  
23       State's Exhibits 6 through 8?

24          A     Yes, sir, I do.



1 Q What do they depict?

2 A They depict two latent fingerprint lifts  
3 embodying the tape that is left on the interior sides of  
4 the north facing doors to the business.

5 Q And do they fairly and accurately depict the door, as  
6 you viewed it on January 22nd, 2014, after you had processed  
7 it?

8 A Yes, sir.

9 MR. PALAL: All right. Your Honor, State's gonna move  
10 State's Exhibits 7 through 9 into evidence.

11 THE COURT: Any objection?

12 MR. PALAL: And I apologize. That's 6 through 8.

13 THE COURT: 6 through 8? Any objection?

14 MR. CLAUS: No, Your Honor.

15 THE COURT: 6 through 8 will be admitted.

16 [STATE'S EXHIBITS 6-8 ADMITTED]

17 MR. PALAL: Permission to publish the exhibits?

18 THE COURT: You may.

19 BY MR. PALAL:

20 Q I'm showing you State's Exhibit 1. What is this?

21 A That's the north facing portion of the business  
22 that I responded to, suite number 104.

23 Q And is there a business next to it?

24 A Yes, sir, there are two business that adjoin it.

1           Q     Can you tell us what the businesses that adjoin it  
2     are.

3           A     Adjoining to the west would be a  
4     Luscious Boutique and adjoining to the east or right would  
5     be fresh -- or Baja Fresh, I think is what it was.

6           Q     Thank you. I want to show you know what's been  
7     admitted as State's Exhibit 2. Can you tell us what this is.

8           A     Yes, sir. You're looking at the exterior north  
9     facing entry doors to suite number 104.

10          Q     Now, there appears to be some yellow tape in front of  
11     the door.

12          A     Yes, sir.

13          Q     Can you tell us what that is?

14          A     Yes, sir. More than likely, the first responding  
15     officers, once they arrived and then got the story,  
16     cordoned off the area so that no one would enter an area  
17     that may contain potential evidence.

18          Q     I'm gonna show you State's Exhibit 3. Can you tell  
19     us what this is.

20          A     Yes, sir. Basically, you're looking from north  
21     to south into the interior of the business. And at the  
22     very south end of the business is a north facing customer  
23     service counter.

24          Q     And why did you take a -- why did you document that

1 area?

2 A The suspect had removed money from the cash  
3 register draw, which is located on the clerk side or on  
4 the south side of that customer service counter.

5 Q I'm now showing you what's been admitted as  
6 State's Exhibit 4. Can you tell us what we're looking at.

7 A Yes, sir. You're looking at the south side of  
8 that customer service counter. And in particular, you're  
9 looking at this area right here.

10 Q All right.

11 A Yeah, it's not drawing today.

12 THE COURT: Sir, you got to use the mouse, now.

13 THE WITNESS: Oh, gotta use the mouse now.

14 THE COURT: We have new technology.

15 THE WITNESS: Okay.

16 THE COURT: So click the mouse --

17 MR. PALAL: Yeah, click it once.

18 THE COURT: -- till you get a cursor.

19 THE WITNESS: There we go.

20 THE COURT: And now draw.

21 THE WITNESS: Okay. So you're -- you're looking at  
22 this area right here. In particular, this, which is the  
23 cash register drawer.

24 MR. PALAL: And for the record, you've drawn a circle

1       around, I guess, the center of the photo.

2               THE WITNESS: Kind of a "B."

3       BY MR. PALAL:

4               Q       I'm now gonna show you what's been admitted as  
5       State's Exhibit --

6               THE COURT: May I remove the marks?

7               MR. PALAL: Yes, please. Thank you, Your Honor.

8       BY MR. PALAL:

9               Q       I'm now gonna show you what's been admitted as  
10       State's Exhibit 5. Can you tell us what we're looking at.

11              A       Yeah. Yes, sir. Now you're at the south end of  
12       the business and you're looking back north to the north  
13       entry doors.

14              Q       And so is this -- what is this a perspective from?

15              A       This is a perspective from back where that  
16       counter was located, looking back towards the north front  
17       of the business. When you saw that last picture, the  
18       first picture that we looked at, showed the north front.  
19       This is the interior side of the business, looking back to  
20       that direction.

21              Q       Now, in the process -- in processing this scene, did  
22       you -- it obviously appears you took photos to document it.

23              A       Yes, sir.

24              Q       Did you attempt to recover latent fingerprints?

1           A     I did.

2           Q     Where did you attempt to recover latent  
3 fingerprints --

4           A     Latent fingerprints --

5           Q     -- fingerprints from.  Sorry.

6           A     Sorry.

7           Q     I was just trying to get latent paint fingerprints  
8 from.

9           A     The cash register drawer itself and the interior  
10 of the two north facing doors.

11          Q     Were you able to get any latent fingerprints from the  
12 cash register area?

13          A     No, sir, I was not.

14          Q     Does that mean nobody touched the cash register area?

15          A     No, sir, that doesn't.

16          Q     Were you able to develop latent fingerprints from the  
17 door?

18          A     Yes, sir, I was.

19          Q     Can you tell us what latent -- can you tell us what  
20 latent fingerprints are.

21          A     Latent fingerprints -- the word "latent" means  
22 "hidden, not visible to the naked eye."  So when a person  
23 touches a surface, depending on the condition of the  
24 surface and what is being secreted on the palm or surfaces

1 of the hands, it can leave an impression of the ridge  
2 detail that's on the palm or surfaces of our hands.

3 We have this ridge detail because if we didn't,  
4 we went to pick something up, it'd slide right out of our  
5 hands. It helps us grip and hold.

6 So, basically, what the latent is, is it's  
7 hidden. It's not visible to the naked eye. So in order  
8 to render that visible, or to search for these hidden  
9 prints, I use a powder and a glassine [phonetic] fiber  
10 brush. And I apply this powder to these surfaces. And it  
11 helps adhere to the substrate that's left behind from the  
12 palm or surfaces of our hands onto the surfaces in which  
13 we're processing. And that helps me see them.

14 Then once that I'm able to see them, I can  
15 recover them with a latent tape, like you saw in the  
16 photos previously shown. And that helps me pull them from  
17 the surface. And to put them on to a contrasting  
18 background. Because we use black powder, our contrasting  
19 background is white. That enables us to see what we've  
20 lifted. So we've taken something hidden and we've made it  
21 visible.

22 Q What are the factors in determining if a latent print  
23 has been left? Or what are the factors that cause a latent  
24 print to be left?

1           A     Factors that cause a latent print to be left is  
2     somebody touched a surface with the palm or surfaces of  
3     their hands or the plant or surfaces of their feet. That  
4     leaves the distinguishable marks that we are looking for  
5     to make identifications.

6           If somebody were to lean up against something  
7     with their arm, we would see that too, but it would be  
8     more of a hair/pore structure. It doesn't give us a whole  
9     lot of identification.

10          Q     Are there factors regarding individuals and whether  
11     or not they would leave a mark?

12          A     Oh, sure. You can touch something and because  
13     your fingerprints are individualized to you and you  
14     only -- even identical twins do not share the same  
15     fingerprints. Share the same DNA, but they do not share  
16     the same fingerprints. Because you touch something, you  
17     could possibly leave that detail behind. And then again,  
18     you may not.

19          Q     And what are the factors in determining whether or  
20     not -- what are the factors that go into whether a latent  
21     print is left or not?

22          A     There are many factors. The type of surface. Is  
23     the surface smooth? Is it textured? Is it clean? Is it  
24     dirty? Is the person secreting out of the pore structures

1 of the palm or surfaces of their hands?

2 We secret 99 percent water or moisture,  
3 perspiration. The other two -- the other one percent, it  
4 could be fatty acids, lipids, amino acids, salts.  
5 Everything our body produces, we push out of our pores.

6 If you look at the little ridges on your fingers,  
7 you'll see if you're -- you're good enough and you have  
8 nice little readers like me, you can actually see little  
9 round pores on the top of those ridges. That's pores.  
10 And those push out that stuff.

11 We could also pick up other stuff. Say we're  
12 working on our car. We get a little oil on our hands and  
13 we touch something. We can leave that impression behind.  
14 There's many factors that determine whether something is  
15 left and something isn't. You just don't know until you  
16 process. The process helps you render that visible. And  
17 you may not render anything visible.

18 Q So it's possible for somebody to touch something and  
19 not render anything.

20 A That is correct.

21 Q And now, you talked about types of surfaces. And one  
22 thing you mentioned was clean or dirty surfaces.

23 A Yes.

24 Q What -- can you tell us what that -- what are you



1       talking about specifically?

2           A       Well, my experience -- say we have a window. Say  
3       the window goes to the house or in the back yard. And you  
4       look at that window and that window has a lot of alkali on  
5       it because the sprinkler hits it. That would be  
6       considered a dirty window. That might not necessarily be  
7       able to allow the substrate from the hand to transfer.

8           Another instance would be, say you have a dusty  
9       window. We touch that dusty window, but what happens is  
10      the dirt transfers to our hands and the substrate from our  
11      hands don't transfer to the surface. A clean surface, a  
12      nice, smooth, clean surface, we can transfer our  
13      substrate.

14           But what if we're not secreting? What if we're  
15      in the sweating? What if we don't have the substrate on  
16      our hands? We might not leave anything at all. It's  
17      really difficult to say somebody will or will not leave  
18      something. It's also difficult to say a surface is good  
19      or bad until you actual process that surface and see what  
20      it's rendering.

21           Q       And are some people more inclined than others to  
22      leave fingerprints?

23           A       Sure, if somebody's sweating. They're nervous or  
24      sweating, they might be more inclined. But then again, if

1       they're sweating too much, we might not get a ridge  
2       pattern. We might get a blob. If somebody is a good  
3       secreter, like I like to say, but they're touching a  
4       surface that's been touched by ten people previously, we  
5       might not get anything because we have a build up of  
6       substrate, where we can't isolate the substrate that we're  
7       leaving behind.

8               There is, literally, a million and one factors on  
9       why you can and can't leave prints. And each situation is  
10      unique within itself.

11             Q       Now, let's focus back on the event on  
12      January 22nd, 2014. You said you were able to develop some  
13      latent prints. I'm gonna show you what's been admitted as  
14      State's Exhibit 6. Can you tell us what we're looking at.

15             A       Basically, you're looking at the inside of the  
16      double north facing doors that allow access to that  
17      business. So you have the -- let me do a little thing  
18      here.

19               So this would be -- let's just do this. This  
20      would be the west side door. And this would be the east  
21      side door. Put a big "E" there. So located on the west  
22      side door -- and you can actually see all the fingerprint  
23      powder that was applied. You can see all this black  
24      that's all over these doors.

1           So basically, on the west side door I was able to  
2   develop latent detail right there. And on the east side  
3   door, I was able to develop latent detail right there.  
4   It's denoted by the two pieces of latent fingerprint tape  
5   that are located on the actual detail that I was able to  
6   render visible using my powder process that I explained  
7   earlier.

8           If you look at a closer photo, you're gonna see a  
9   "1" and a "2." I'll denote each one of those fingerprints  
10   as "latent fingerprint lift 1," "latent fingerprint lift  
11   2."

12          Q    All right. Now, you'd mentioned that there's dirt  
13   that -- or not dirt but I guess -- what is the --

14          A    Our black powder.

15          Q    Back powder --

16          A    Black processing powder.

17          Q    Black processing powder on the door. Now, it appears  
18   there are portions where your tape's not at but that the black  
19   powder is stuck to the door.

20          A    Yes, sir.

21          Q    What does that indicate?

22          A    It indicates, basically, I'm very thorough. I  
23   processed everything I could possible process if somebody  
24   were to make haste and go out those doors. But that

1 doesn't mean that I'm gonna get that latent detail. For a  
2 variety of reasons that I explained earlier. Might not be  
3 secreters, might have had gloves on, might never have been  
4 there. There's a variety of factors. Might not hit the  
5 door in that area.

6           You know, unless somebody tells me specifically,  
7 "Hey, they hit the door in this area," I do everything.  
8 Because I don't want to eliminate one little area. I want  
9 to do it all and see what I come up with.

10           Q     And the black powder, it sticks to moisture, is  
11 that -- is that correct or --

12           A     It will adhere to the substrate left behind.  
13 Substrate can be anything that I described earlier. Could  
14 be moisture, could be acids, could be lipids. Could be  
15 salts. It could be sebaceous oils which we pick up when  
16 we rub our heads. If we rub our hair, you'll feel the oil  
17 gets on your fingers. It could be a lot of different  
18 things. Could be the -- the car grease that you had on  
19 your hand from working on your car.

20           Q     And so the black powder on the door, there's --  
21 that's -- it's sticking to the door because of substrates on  
22 the door.

23           A     It can do that or it could also stick to the  
24 minor imperfections in the glass, too. You know, if you

1 look at glass up close, sometimes glass looks like it has  
2 scratches or striations. It will fill in those holes.

3 But what we are looking for is that actual detail  
4 that we see on the palm or surfaces of our hands. If I  
5 don't see that detail, it's not useful for me.

6 Q And so where the black powder's on the door, where  
7 you don't have the tape, there is something there, but it's  
8 not detailed enough for you to develop a latent print.

9 A Right. It could be substrate on top of substrate  
10 on top of substrate that has no detail. You're not seeing  
11 those ridges. You're not seeing those furrows. You're  
12 not seeing that pattern detail. So it is useless,  
13 basically.

14 Q And fair to say that this is the ingress and egress  
15 of the business, the enter -- how you enter and how you exit  
16 from the business.

17 A This is the customer.

18 Q Okay. Customer --

19 A Yes.

20 Q -- and --

21 A Because --

22 Q The way the customer enters and exits.

23 A Yes.

24 Q And so in a business, you would expect to have a

1 number of people coming in and coming out using the door.

2 A If they're successful.

3 Q At opening the door.

4 A Yes.

5 Q And -- or if the business is successful.

6 A If the business is successful, yes.

7 Q All right. And that can affect -- it sounds like  
8 that affects your ability to develop prints.

9 A That very well could be. If the -- if the  
10 business doesn't clean the doors on a regular basis and  
11 people are going in and out, touching the handles,  
12 touching the bars, touching the vertical metal, touching  
13 the glass, and nobody's cleaning that, you just get build  
14 ups of substrate on top of substrate on top of substrate.  
15 So, basically, what you have is a bunch of blah. You  
16 don't have anything that's identifiable.

17 Q I'm going to show you State's Exhibit 7. You'd  
18 mentioned you number your --

19 MR. PALAL: Your Honor, can you clear it?

20 THE COURT: I'm trying to. I've got -- I'm learning,  
21 too.

22 BY MR. PALAL:

23 Q All right. So you'd mentioned earlier that tape --  
24 you number your tape. Is this an example -- it's -- I'm

1       sorry. Let me clear up the record -- State's Exhibit 7 depict  
2       an example of you numbering your tape?

3           A       Yes, sir, it does.

4           Q       And the tape there indicates what?

5           A       I numbered this as latent print -- or "latent  
6       lift 1," basically.

7           Q       And that's an actual latent print you were able to  
8       lift from the door.

9           A       Yeah. You couldn't -- I don't know if you guys  
10       have as great a view as I do, but -- let me see here. I  
11       can -- I'm very computer savvy. I love computers, but  
12       this is frustrating. There we go. I got it.

13                   So you can kind of see one latent here. It's  
14       rounded. And you can kind of see another latent here.  
15       It's rounded. So if you look -- the first one, if you  
16       look above the rounded section, you'll see one. And the  
17       second one, if you look below it you'll see a rounded  
18       area. Those are the latents. You don't see them very  
19       well until they're pulled off that surface and put on a  
20       contrasting background.

21           Q       All right. I'm now gonna show you State's Exhibit 2.  
22       I mean -- I'm sorry. State's Exhibit 8.

23           A       That is my "latent print lift number 2." I had  
24       two. One from the west door, one from the east door.

1 Both on the interior side.

2 This is a great example of applying powder and  
3 not getting anything but blah. If you can look on the  
4 vertical metal beams where it says "push," you can see  
5 it's just -- it's convoluted.

6 Q And also, it appears that the bottom right of the  
7 photo, there seems to be a lot of -- a lot of powder there as  
8 well?

9 A Yes.

10 Q And would that be more, I guess as you put it, blah?

11 A It could be that or can could be a wear in the  
12 glass where the powder's adhering as well. So --

13 Q All right. What do you do with the latents when  
14 you're done with -- when you've -- after you've put the tape  
15 on the door?

16 A The latents are recovered. They're put on a  
17 contrasting background, which in this case would be a  
18 latent print card. And on that latent print card, there's  
19 some information that needs to be filled out: The event  
20 number of the case; the person that's recovering the  
21 latent, which would be myself; the event number; and the  
22 location from which -- obviously, the location of where  
23 we're at; the victim's name; and the location of which or  
24 where that latent was recovered from.



1           Q     And can you tell us what the event number was for  
2     this case?

3           A     It was 1401222866.

4           Q     And does each event -- does each Metro event assigned  
5     its own number?

6           A     Yes, each -- each call that Metro receives or  
7     responds to is assigned an event number for that day. So  
8     this was event number 2866 of that day.

9           MR. PALAL: Court's indulgence.

10          THE COURT: Sure.

11          MR. PALAL: State will pass the witness, Your Honor.

12          THE COURT: Cross-examination?

13                   CROSS-EXAMINATION OF MONTE SPOOR

14          BY MR. CLAUS:

15          Q     Officer Spoor --

16          A     Yes, sir.

17          Q     -- you've had direct interaction with the employee,  
18     then, or were you interacting with other Metro officers to get  
19     your direction on where to take the latent print?

20          A     Interacting with Detective Pasos [phonetic].

21          Q     And he told you where to get these prints from.

22          A     Yes, sir.

23          Q     And so based upon those interactions that you had  
24     with the detective, you believe that the prints that you were

1       able to develop at both the 1 and 2 tape locations were  
2       relevant to the investigation.

3           A       They would be relevant in that the information I  
4       was given is the suspect came to enter -- entered and left  
5       out those doors. Yes, sir.

6           Q       And you preserved those for analysis?

7           A       Yes, sir, I did.

8           MR. CLAUS: Okay. Thank you. No further questions.

9           MR. PALAL: Nothing --

10          THE COURT: Anything else from the State?

11          MR. PALAL: No, Your Honor.

12          THE COURT: No questions from the jury?

13                 Thank you very much, sir. We appreciate your  
14       time. Have a nice afternoon.

15          THE WITNESS: Thank you.

16          THE COURT: Next witness.

17          MR. LEXIS: State calls Analyst Fletcher.

18          THE COURT: Ladies and gentlemen, we are just trying  
19       this new technology for the first time. So we apologize  
20       for our hiccups as we try to make it work. We used to  
21       have touch screens like Howard Cosell used 20 years ago.  
22       But those were, apparently, no longer the state of the art  
23       or even working very well.

24                         SHAWN FLETCHER,

1 [having been called as a witness and being first duly  
2 sworn testified as follows:]

3 THE CLERK: Thank you. Please be seated.

4 Please state and spell your name for the record.

5 THE WITNESS: It's Shawn Fletcher. It's S-H-A-W-N and  
6 F-L-E-T-C-H-E-R.

7 THE COURT: You will see there are some M&Ms in the  
8 dispenser. There's water in the pitcher. If you would  
9 like some coffee, the marshal can help you with that.

10 THE WITNESS: Thank you.

11 MR. LEXIS: May I proceed, Your Honor?

12 THE COURT: You may.

13 DIRECT EXAMINATION OF SHAWN FLETCHER

14 BY MR. LEXIS:

15 Q Where do you work, ma'am?

16 A I work for Las Vegas Metropolitan Police  
17 Department as a Senior Crime Scene Analyst.

18 Q How long have you worked there?

19 A Nineteen and a half years.

20 Q What do you do?

21 A I'm a Senior Crime Scene Analyst. The crime  
22 scene analyst respond to the crime scenes, usually at  
23 patrol officers' or detectives' request. We process the  
24 crime scenes, which means we do all the photography, all

1 the evidence collection, and all the latent print  
2 processing that needs to be done on the scene.

3 Q What kind of training and experience have you  
4 received over the years?

5 A I have a bachelor's degree in cardiac rehab and  
6 nutrition and I have an associate's degree in criminal  
7 justice. We go through a crime scene analyst academy when  
8 we get hired. And then we have an extensive field  
9 training program.

10 We often get sent to classes and retraining in  
11 photography; any type of crime scene processing; latent  
12 print processing, which is the fingerprint processing;  
13 death investigations; fire investigations; trauma  
14 investigations. And then a lot of it's on-the-job  
15 training. We do a lot of in-house training. And then  
16 every day, basically, crime scene after crime scene.

17 Q And what is a latent print?

18 A A latent print is basically a fingerprint that's  
19 left behind on a surface. You secrete different things --  
20 amino acids, fatty acids -- you touch your face, anything  
21 that will get stuck to your finger that you can transfer  
22 onto a surface is going to leave a latent print.

23 And "latent print" just means it's a hidden  
24 print. "Latent" means "hidden." So we need to usually do

1 something to that print to make it visible so that we can  
2 recover it.

3 Q Okay. What type of factors go into determining  
4 whether or not you could recover a suitable print?

5 A Well, a lot of people have dry hands. So if your  
6 hands are really dry, you probably not gonna have any of  
7 that moisture. Most of the fingerprint is just water. So  
8 it evaporates very quickly.

9 If you're touching your forehead a lot or your  
10 arms, you may get some oils on there. And, you know, you  
11 can leave behind oils. So any type of powder that we  
12 would use is gonna react with some of those moisture  
13 things.

14 But there's a lot of things that can affect that.  
15 If you have dry hands, you're probably not gonna leave a  
16 print. If you have a rough surface, it's probably not  
17 gonna maintain a print either. People wear gloves, if  
18 you've got something over your hands, you're not gonna  
19 leave a print. If you're sweating too much, you might not  
20 leave a print because you're gonna have a lot of  
21 distortion and we're just gonna kind of see the water  
22 marks from the print.

23 Anything like that can kind of not help anybody  
24 leave prints. And sometimes people don't -- they just

1       don't touch anything in the right way. If you don't grab  
2       something and you're swiping or just pushing it you can  
3       smudge prints. And then a lot of times if something's  
4       handled quite often, you're gonna get prints on top of  
5       prints on top of prints. And they can't do a whole lot  
6       with that because it's hard to separate the prints.

7           Q     So it's more difficult in, say, a commercial  
8       establishment to find a print, given the amount of people that  
9       go in and out?

10          A     Yes, it's usually more difficult.

11          Q     And let's say, for example, you're in a room of 12  
12       people, is it possible for all 12 people to leave a suitable  
13       print?

14          A     It's possible for all 12 people to leave a print.  
15       It's possible that none of them would leave a print.

16          Q     So it's also possible that none of them leave a  
17       print.

18          A     Correct.

19          Q     Ma'am, were you dispatched on January 28th, 2014, to  
20       the Metro PCS store at 6663 Smoke Ranch?

21          A     Yes.

22          Q     Is that here in Las Vegas, Nevada, Clark County?

23          A     It is.

24          Q     I'm showing you what is marked as State's Exhibit 11.

1       What is that a picture of, ma'am?

2           A       That's the front of the store. The west -- this  
3       is gonna be the west -- can you draw on this one?

4           THE COURT: You can. You have to use the mouse.

5           THE WITNESS: Oh, okay.

6           THE COURT: It's new technology. So you're not the  
7       only one having trouble today.

8           THE WITNESS: Well, the only door you see, that's the  
9       west door.

10                   Oh, I see. How's that? Okay. This is the west  
11       door. Right here. Oops. Okay. That's touchy.

12       BY MR. LEXIS:

13           Q       Okay. For the record, you put a circle over --

14           A       Yes.

15           Q       -- what you're saying is the west door?

16           A       Correct.

17           Q       Okay. Is that a Metro police car outside?

18           A       Yes.

19           Q       And is that tape to preserve the area?

20           A       That's correct. That's the crime scene tape.

21           Q       Ma'am, I'm showing you what is marked as  
22       State's Exhibit 12. What is that a picture of?

23           A       This is the inside of the store and the service  
24       counter and lobby area.

1 Q Is that also tape on there to preserve the area?

2 A Yes.

3 Q Did you examine these areas?

4 A Yes.

5 Q What areas did you examine?

6 A Normally, I look at everything. I'll usually get  
7 some guidance from either the detective or the officer and  
8 then also sometimes from the employees, as to the areas  
9 that the suspect was in or touched or handled or anything  
10 like that.

11 Q Any particular area you lifted a print off of?

12 A This -- lost it again. The demo phone at the end  
13 of the --

14 Q I think you need to click it again, ma'am, for the --

15 A Oh, there we go. This demo phone right here, I  
16 got prints on.

17 Q For the record, you're putting a circle over the demo  
18 phone?

19 A Yes. It's attached to the countertop there.

20 Q Okay. Ma'am, I'm showing you State's Exhibit 14.  
21 What is that ma'am?

22 A That's just a close-up of the same phone.

23 Q At the exact location that you circled previously?

24 A Yes, except the south end of the service counter



1       there.

2           Q       And I'm showing you State's Exhibit 13. What is this  
3       a picture of, ma'am?

4           A       This is from behind the counter. So this area  
5       over here -- I'm not very good at this. The area at the  
6       far left, that's going to be where that phone is. And  
7       this is just the -- you can see the cash drawer in the  
8       middle there. That is the drawer that was disturbed.

9           Q       So fair to say, where I'm pointing over here --

10          A       Yes.

11          Q       -- is where the demo phone was?

12          A       Yes, it's right up on that top counter.

13          Q       Showing you what is --

14          A       Sorry.

15          Q       -- excuse me.

16          A       How are you doing that? Okay. I'm probably  
17       doing the wrong way. Okay.

18          Q       Go ahead, ma'am. Now you can circle it for us.

19          A       That phone is going to be right down here, but on  
20       the customer side of the counter.

21          Q       All right. For the record, you're making a circle  
22       where that demo phone was.

23          A       Yes.

24          MR. LEXIS: Let the record reflect I'm showing

1       opposing counsel State Proposed 15.

2               May I approach, Your Honor?

3       THE COURT:   You may.

4       BY MR. LEXIS:

5       Q       Ma'am, I'm showing you what has been marked as  
6       State's Proposed Exhibit 15.   What is it?

7       A       This is the cell phone.   This is the demo cell  
8       phone.

9       Q       True and accurate representation of what it looked  
10      like on that day?

11      A       Yes.

12      Q       And is that your stuff on there?

13      A       It is.

14      MR. LEXIS:   Your Honor, I move to admit --

15      THE COURT:   Any objection?

16      MR. CLAUS:   No, Your Honor.

17      THE COURT:   Be admitted.

18               [STATE'S EXHIBIT 15 ADMITTED]

19      MR. LEXIS:   And this one published, Your Honor?

20      THE COURT:   You may.

21      BY MR. LEXIS:

22      Q       And describe for us what that is.

23      A       This is the phone.   This is my fingerprint tape,  
24      all these different pieces that you see here, with the

1       corresponding numbers. The way the process works is it's  
2       a powder that I was using in this particular case. And  
3       it's applied with a brush to the phone with the hopes that  
4       the powder is gonna adhere to the moisture that's left  
5       behind in the fingerprint.

6               Once we see that something -- that powder has  
7       adhered to that area, we use just a piece of tape. It's  
8       basically Scotch Tape. But it's a forensic fingerprint  
9       tape. And we will place that over the individual prints.

10              So in this particular case, I saw five specific  
11       areas that had fingerprints. And so they got numbered  
12       accordingly, just to keep it consistent with tracking and  
13       the photography, so they could identify them later. And  
14       once that tape gets adhered down, I take this picture,  
15       showing the locations of them. And then I will remove  
16       those individual pieces of tape and they get placed on a  
17       white fingerprint card.

18              And the contrast, you'll be able to see my black  
19       fingerprint powder in the shape of the ridge detail of the  
20       fingerprint on the card. And that's how the fingerprints  
21       get lifted. That's how we call that we recovered them or  
22       we lifted them.

23              Q       This is the demo phone?

24              A       Yes.

1 Q Safe to say many people have touched this phone?

2 A I would assume so, yes.

3 Q And how many prints were you able to lift off this  
4 phone?

5 A I got five different lifts. So there may be a  
6 couple prints on each lift. But there were five lifts.

7 Q So only five lifts?

8 A Yes.

9 Q And when someone picks up the phone, does it also  
10 take into consideration a problem that might occur when --  
11 whether or not you're gonna find a print as far as how you  
12 hold a phone?

13 A Yes, how you hold it. With these phones, you  
14 know, they're smart phones, so you're sliding and moving  
15 around on the screen. So that can obscure a lot of the  
16 prints or smear the prints. They're actual quite fragile,  
17 most of the time. So if I, you know, were to grab this  
18 phone right now and do something with it, I may be swiping  
19 and moving around and just smudging my own prints.

20 In this particular case, you know, I -- I -- most  
21 of the front of the phone had prints on it. So there are  
22 prints there that were recovered. But they're -- you  
23 know, they may or may not be smudged or they may or may  
24 not be identifiable. And they may also be several prints

1 on top of prints. And sometimes that's difficult.

2 Q And is that on top of the sweat factor or how dry  
3 your hands are?

4 A Yes, all of that will come into play with that  
5 too.

6 Q Including how dirty the phone is?

7 A Yes.

8 Q Including how the person touched the phone?

9 A Correct.

10 Q Including the surface factor?

11 A Yes.

12 Q Just because you get a suitable print, is that always  
13 a good enough print for the expert to analyze?

14 A No.

15 Q And why do you say that?

16 A Well, the -- we will get, sometimes, just real  
17 tiny small portions of a print. And it may be nice and  
18 clear but it may not be enough to actually identify it to  
19 any specific person. If we get a nice, full, complete  
20 print, a lot of times that can be run through what we call  
21 our AFI system, which is our Automated Fingerprint System.

22 And we can sometimes get a hit on a person that's  
23 already in the system. But that takes a really good,  
24 pretty much a full print. So sometimes there's just not

1 enough there to actually identify it to a specific person.  
2 There's just not enough detail.

3 Q Did you try to recover any other prints, ma'am?

4 A I believe I printed the door.

5 Q And did that lead to anything?

6 A No, it did not.

7 Q Does that surprise you?

8 A No.

9 Q Why do you say that?

10 A Well, in the businesses, quite frequently,  
11 especially busy businesses like cell phone places, you  
12 know, they're not cleaning the doors every five minutes.  
13 The clerks are busy. So unless somebody's going out and  
14 cleaning these doors, a lot of times we have a really hard  
15 time getting prints on the doors because they're touched  
16 so often.

17 It also depends on the type of handle that's on  
18 the doors. The handles that are on the outside that, you  
19 know, when you pull open, you know, they're out in the  
20 weather all day. They're getting beat up by the sun. So  
21 those surfaces are usually not very good because they're  
22 worn and rough. That metal on door handles gets worn and  
23 it gets pitted. So a lot of the door handles -- the push  
24 handles, the pull handles -- a lot of those aren't very

1 good.

2 People don't often push open the glass, but they  
3 do. And where they do, that kind of gets -- happens in  
4 the same spot every time, so you -- prints over prints  
5 over prints. So the doors are just -- you know, they're  
6 used all day long, in and out, and they're never cleaned.

7 MR. LEXIS: Thank you, ma'am. No further questions.

8 THE COURT: Cross-examination?

9 CROSS-EXAMINATION OF SHAWN FLETCHER

10 BY MR. CLAUS:

11 Q Ms. Fletcher, do you remember any of the specifics of  
12 the doors in this particular location?

13 A Specifics --

14 Q How the door handles were pitted? Were they worn?  
15 Were they --

16 A I don't recall.

17 Q -- you know [inaudible] any print?

18 A I don't recall specifically in this case, no.

19 Q And indeed, generally speaking, when prints are  
20 gathered from individuals that are being processed by Metro  
21 for one reason or another, glass is a preferred medium to have  
22 them place their palms or fingers upon to gain the best  
23 possible print; correct?

24 A Yes. Glass can be very good, especially if it's

1 clean.

2 Q In fact, it is the preferred medium. It is what  
3 Metro uses to gather prints; correct?

4 A They may. I don't go down there and do that part  
5 of the job. So not quite sure how they're recovering the  
6 prints nowadays. But --

7 Q And you don't have any independent knowledge of the  
8 crime scene investigation. You basically show up and then  
9 print what you're told to print.

10 A Yeah, usually it's -- it's kind of a  
11 collaborative effort. The detectives or the officers will  
12 tell us what they found out. They're usually there quite  
13 a bit before we get there. They'll do their investigation  
14 and they'll pass on whatever information they gleaned. A  
15 lot of times I'm able to talk to the victims or to the  
16 clerk and I may get a little bit more. And then sometimes  
17 we have video.

18 And I don't believe I saw video in this  
19 particular case. So I would have gained my information  
20 either from the clerks or the detectives and the patrol  
21 officer.

22 Q Do you remember, specifically, how you gained your  
23 information in this case?

24 A I don't remember exactly, with this. I had, you



1 know, generally, again, it's the patrol officer who I'm  
2 usually dealing with.

3 Q So if there was video in this case, is it possible  
4 you might have gathered your information from that --

5 A It's possible, yes.

6 Q And based upon wherever you were getting this  
7 information from, you decided that you needed to -- or it  
8 was -- it was decided -- who makes the final decision of what  
9 you attempt to get latent prints from and what you don't?

10 A Oh, I do.

11 Q Okay.

12 A Yeah.

13 Q So you decided to get latent prints from the demo  
14 phone and from the doors; correct?

15 A Correct. I did not recover any from the door.  
16 But I do believe I processed the door.

17 Q Okay.

18 MR. CLAUS: No further questions, Your Honor.

19 THE COURT: Anything else?

20 MR. LEXIS: No, Your Honor.

21 THE COURT: From the jury?

22 Thank you, ma'am. We appreciate your time. Have  
23 a good afternoon.

24 Next witness.

1           MR. PALAL: Your Honor, State calls  
2 Heather Gouldthorpe to the stand.

3                       HEATHER GOULDTHORPE,  
4 [having been called as a witness and being first duly  
5 sworn testified as follows:]

6           THE CLERK: Please be seated.

7                       Please state and spell your name for the record.

8           THE WITNESS: My name's Heather Gouldthorpe. Heather,  
9 H-E-A-T-H-E-R, and Gouldthorpe, G-O-U-L-D-T-H-O-R-P-E.

10          THE COURT: And, ma'am, you will notice there are some  
11 M&Ms in the dispenser next to you. There's water in the  
12 pitcher. If you should need some coffee, let the marshal  
13 know.

14          THE WITNESS: Thank you.

15          THE COURT: You may proceed.

16                       DIRECT EXAMINATION OF HEATHER GOULDTHORPE

17 BY MR. PALAL:

18          Q       Ms. Gouldthorpe, how are you employed?

19          A       I'm a forensic scientist in the Latent Print Unit  
20 at the Las Vegas Metropolitan Police Department Forensic  
21 Lab.

22          Q       And do you -- do you have any education to have that  
23 job?

24          A       I have my bachelor's degree in sociology and my

1 master's degree in forensic science.

2 Q All right. Do you have any training for your job?

3 A Yes. I started out at the laboratory as a  
4 Forensic Lab Technologist, where I learned the basics of  
5 fingerprint comparisons. I learn how to analyze latent  
6 prints, enter them into our AFI system, which is our  
7 Automated Fingerprint Identification System. Search that  
8 system. And then also to recover latent prints from items  
9 of evidence.

10 I then went on to promote to Forensic Scientist  
11 Trainee, where I spent a year studying how to do more  
12 complex comparisons, how to issue conclusions with the  
13 comparisons that I did, and how to render reports.

14 Q All right. And how long have you been working in  
15 this capacity?

16 A I've been at the laboratory as a technologist  
17 for -- or since I was a technologist for, like, nine  
18 years. Sorry.

19 Q Now, we've already heard testimony as to what a  
20 latent print is. Can you briefly tell us what a latent print  
21 is.

22 A Yes. You'll notice the skin on the hands of  
23 your -- the palms of your hands and the soles of your  
24 feet. It's a different type of skin than the rest of your

1 skin. This is called friction ridge skin. Residue coats  
2 these ridges. And if you happen to touch a surface, you  
3 have the potential to leave behind a replication of those  
4 ridges. And that often has to be either chemically or  
5 powder processed to be visualized.

6 Q Now, to be clear, you're not the person that goes out  
7 and processes the prints.

8 A No.

9 Q Ma'am, in your experience -- looking around this  
10 courtroom, there's about 25 people in this courtroom. Would  
11 you be surprised if everybody in this courtroom left a latent  
12 print in this courtroom?

13 A Would I about surprised if they did?

14 Q If they did.

15 A If they did, yes.

16 Q Would you be surprised if nobody left a latent print  
17 in this courtroom?

18 A No, I wouldn't be surprised at that either.

19 Q What makes you come to those conclusions?

20 A Not every time you touch a surface are you gonna  
21 leave behind a latent print. There's several factors to  
22 this. Part of it is the condition of your skin. Are your  
23 hands dry? Are they oily? What type of -- how much  
24 residue is on that skin?

1           And then there's surface factors. What type  
2           and -- surface are you touching? Is it textured? Is it  
3           too small to recover something off of? And then how you  
4           touch it. Do you just lightly touch it like you would  
5           hold every day object or do you put your hand and move it  
6           around so it's distorted?

7           And then there's also environmental factors. So  
8           if you leave something out in the desert or in the heat of  
9           the summer, obviously, the heat will dry up any water  
10          residue that would be there. And latent prints and sweat  
11          and all that is primarily made of water. So --

12          Q     Now, in -- while performing your job duties, were you  
13          assigned a packet of latent prints related to a robbery series  
14          from requester named Jeffrey Smith?

15          A     Yes, I was.

16          Q     Now, what do you do when you get assigned prints to  
17          examine?

18          A     The first thing we do is we pull the evidence  
19          from our secured location. We move it into our custody to  
20          maintain the chain of custody that we have. Then we  
21          inventory each packet to make sure that what is said that  
22          is in that packet is truly indeed in there. Then we  
23          screen the latent prints to determine whether or not they  
24          are suitable for us to make a comparison with.

1 Q And did you go through that process for this case?

2 A I did.

3 Q Or for that particular packet?

4 A Correct.

5 Q And what were your conclusions or what did you do  
6 when you got the packet? What -- were you able to draw any  
7 conclusions from opening the packet of latent fingerprints?

8 A Which --

9 Q I'm sorry. It's for --

10 A -- which event is this --

11 Q I'm sorry. For lab case number 14-01721.

12 A May I refer to my report?

13 Q Yes.

14 THE COURT: If that will assist you in refreshing your  
15 recollection, please feel free to do so.

16 THE WITNESS: Thank you. And that was 14-1 -- 01721?

17 BY MR. PALAL:

18 Q 01721, yes.

19 A Okay. In that packet, there were two lift cards.  
20 I've entered the prints that were in those, that were  
21 suitable, I entered those into our AFI system, which is  
22 our Automated Fingerprint Identification System. I then  
23 got a positive hit in our system.

24 And what that is, is it's a searching tool. So

1       there's a database of fingerprints that we search against.  
2       And I entered the print. I manually encode it. So I tell  
3       the system what to look for. I then get a candidate list  
4       back and then I have to go one by one on each candidate  
5       list and look at the candidate list.

6               And in this particular case, I did get a  
7       potential hit. What I do is then I take the ID number  
8       that's assigned to that latent print or to that candidate  
9       list. I take that ID number and then I go and pull the  
10      prints.

11             And then I get a hard copy of the latent print or  
12      the fingerprint exemplars and then I do a manual side by  
13      side comparison. So I'm looking at ridge -- at the ridge  
14      detail in the latent prints and then I'm comparing that,  
15      side by side, against the ridge detail in the exemplar  
16      print. And in this case, I did get identification.

17             Q       And for whom did you get an identification for?

18             A       Samuel Echeverria.

19             Q       All right. Now, that was the first lift card. Was  
20      there a second lift card as well?

21             A       There was, yes.

22             Q       And did you try to -- did you analyze that  
23      fingerprint? I'm sorry.

24             A       I did. It did not belong to -- I excluded

1 Samuel Echeverria and I entered that into the AFI system  
2 and I did not get a -- any -- I got a negative hit. So it  
3 means I did not hit to any candidates on that list.

4 Q I am now going to turn your attention to lab case  
5 number 14-07126. Did you go through a similar process in  
6 analyzing fingerprints recovered for that lab case?

7 A I did.

8 Q And what were the results?

9 A Initially, there was no prints in there that were  
10 able to be put through our AFI system. So then I had  
11 received a request to compare Kenny Splond against the  
12 prints that were in that case.

13 Q Did -- I'm sorry. Did any of the prints match  
14 Mr. Splond?

15 A I excluded Kenny Splond from three of the five  
16 prints that were in there. Two of the five prints were  
17 not suitable for comparison purposes.

18 Q And what is "not suitable for a comparison" mean?

19 A We have to have enough information in the latent  
20 prints. So we need to have enough -- the quantity, the  
21 quality, and the specificity of information has to be  
22 there. A lot of times they'll recover bits and pieces of  
23 ridge detail. And it's just not enough information for us  
24 to confidently carry on to our comparison process.



1           Q     So even if somebody actually does leave a latent  
2     print, that may not be good enough to compare.

3           A     That's correct.

4           Q     And people may touch items and not leave a latent  
5     print.

6           A     Correct.

7           MR. PALAL:   Court's indulgence.

8                     State will pass the witness.

9           THE COURT:   Cross-examination?

10          MR. CLAUS:   Yes, Your Honor.

11                     Court's indulgence.

12                     CROSS-EXAMINATION OF HEATHER GOULDTHORPE

13          BY MR. CLAUS:

14           Q     Ms. Gouldthorpe, in fact, in -- let's -- let's talk  
15     first about lab case number 14-01721.  You said that there was  
16     a candidate list that was generated there.

17           A     That's correct.

18           Q     Okay.  And do you keep track of which candidates are  
19     generated by AFIS?

20           A     No, we do not.

21           Q     Do you remember who those candidates were?

22           A     No, I do not.

23           Q     Do you remember about how many people are in the  
24     candidate list that was generated by AFIS?

1           A     The candidate list that we request is about 15  
2 candidates.

3           Q     Is that a duplicatable candidate list, then. So if  
4 you wandered down to your lab and did the same search, would  
5 AFIS then generate that same candidate list?

6           A     Not to my knowledge. Given the fact that new --  
7 new people enter the system every day. If somebody  
8 searches it in a different way than I search it -- because  
9 I am manually encoding it -- another analyst might  
10 manually encode it slightly different than me to get a  
11 different set of candidate -- candidates on that list.

12          Q     I'm sorry. Maybe my question was imprecise. If you  
13 went down to your lab today and did the same search that you  
14 did on -- let's see here -- on or about February 5th of 2014,  
15 would it generate the same list of people or would it be a  
16 bigger list of people, potentially?

17          A     It would be the same number of candidates. The  
18 number of candidates is -- is something that we determined  
19 as a laboratory that we would search. Given that we have  
20 a new system, it's got new algorithms, so the list would  
21 be different.

22               Also, there's other people that enter the system  
23 since 2014, when I did this case, that could potentially  
24 be on that candidate list.

1           Q     Does anyone every leave that system, to your  
2 knowledge?

3           A     Not -- well, if they have their records sealed.  
4 Then their records would be pulled out of there.

5           Q     So that would be the only way?

6           A     Correct.

7           Q     My understanding of those was AFIS was a federal  
8 database; is that incorrect?

9           A     There are different levels. They have the local  
10 level, which is controlled by the Las Vegas Metropolitan  
11 Police Department. Then we have the state level, which  
12 is, basically, the State of Nevada and it's -- it's  
13 located within the Western Identification Network, which  
14 is the State of Nevada, the State of Idaho, Alaska,  
15 Oregon, Washington, and Utah. And then we have the  
16 California State database that we can search. And then we  
17 do have the federal level that we can search through  
18 IAFIS.

19                     In this particular case, at the time, we weren't  
20 searching IAFIS. So it was not a federal search at this  
21 point.

22           Q     So this was just a local search.

23           A     This was just a local search.

24           Q     Okay. How do you make a determination which of the

1 candidates you're going to compare manually?

2 A Well, like I said, on screen, I determine whether  
3 or not I get a positive hit or a negative hit. What I do  
4 on screen is do an on-screen comparison. I see if I have  
5 enough information on there that I think is a -- I can  
6 call it a positive. Then I will pull that record to  
7 manually compare.

8 If I look and I don't see enough information to  
9 say it was a positive hit, it would then be a negative  
10 hit. And in this case, that I was -- the case I was  
11 talking about, I did get a negative hit in the cases.

12 Q So the very first time you ran the search, the -- you  
13 didn't get any positive results?

14 A The first -- no, on one of the lift -- one of the  
15 latent prints, when I ran it into the system, I got  
16 negative results on that. And it was --

17 Q Okay.

18 A -- excluded from both Samuel Echeverria and  
19 Kenny Splond.

20 Q Okay. There were -- there were two lift cards that  
21 you ran reports for; correct?

22 A Correct. On this case, yes.

23 Q Okay. And both of those lift cards would have  
24 generated separate candidate lists; correct?

1           A     Correct.

2           Q     And you didn't keep a listing of those candidates  
3     that were generated.

4           A     No, we didn't.

5           Q     And you don't remember who those candidates were that  
6     were generated.

7           A     No, I didn't.

8           Q     Okay. And to the extent that they were generated,  
9     I'm talking about Q1 on the very first lift card --

10          A     One?

11          Q     -- okay?

12          A     Right.

13          Q     And, to your knowledge, there is no way of  
14     regenerating those exact results today.

15          A     No.

16          Q     And as you sit here, you don't remember how many  
17     positive results you got back for Q1.

18          A     I identified it to Samuel Echeverria. That was  
19     the positive result that I got. That was the one I ran,  
20     got a positive hit. And then I compared -- on lift card  
21     Q1, there was actually three suitable latent prints on  
22     that card.

23                 I -- once I got that positive association, I then  
24     compared it, identified it to one of the fingers of

1 Samuel Echeverria. Sorry if I'm really blowing his name.  
2 And then I also identified the other two latent prints in  
3 that case to Samuel Echeverria.

4 Q With the belief that they'd been formed at the same  
5 time; is that correct?

6 A Correct.

7 Q And then the third print, it was suitable for entry  
8 into your AFIS database?

9 A The --

10 Q I'm sorry. The second print. Pardon me.

11 A The -- the second -- Q2?

12 Q I'm getting myself confused.

13 A Yes, it was. I excluded Samuel Echeverria, also  
14 excluded Kenny Splond. And then I did search it through  
15 our AFI system with negative results.

16 Q And not trying to confuse you, but do you remember  
17 that you actually ran the report two different times and  
18 generated two different -- well, two different reports of  
19 examinations?

20 A Yes, I did.

21 Q Okay. And so the first time that you ran it through  
22 the AFI system, obviously you felt it had enough points to be  
23 entered into the AFI system for a search?

24 A Correct.

1           Q     What's a minimum criteria for an entry into the AFIS  
2     database?

3           A     It's the -- the minimum criteria? We have  
4     guidelines that are set by our laboratory. It's something  
5     that we came up with as a laboratory standard for us only.  
6     And our criteria was, at that time, 12 minutiae points and  
7     distal determination of up and then we have to determine  
8     whether or not it has either a focal point, which is  
9     either a core, which is like the middle part of the print,  
10    or a delta area, which is basically a triangle area in the  
11    print.

12          Q     What is a minutiae point for the purposes of this  
13    discussion?

14          A     So our ridges, they're not straight up and down,  
15    they're not horizontal. They do -- they have a flow to  
16    them. And when you trace that ridge out, it either does  
17    something. It either stops, which would be a ridge  
18    ending, or it merges into another ridge or divides into  
19    two ridges. And those would be bifurcations. Or it's a  
20    small ridge, so it has a short ridge. Those would be  
21    minutiae points that we plot.

22          Q     And so this second print had enough of those minutiae  
23    points and enough -- I'm sorry. What was the secondary  
24    characteristic that made it eligible for entry into the AFIS

1 database?

2 A It has to -- we have to have distal orientation  
3 known and a focal point. So either a core or delta or  
4 something that we can have a focal point there.

5 Q So the first time that you wrote a report of your  
6 examination, you just ran the print through your AFIS database  
7 and you return a negative results.

8 A Correct.

9 Q Okay. But the second time you were specifically  
10 requested to do an examination for Mr. Splond.

11 A Correct.

12 Q Okay. And that was approximately two months later,  
13 month and a half later; is that correct?

14 A I believe so. Something like that.

15 Q Would it help to refresh your recollection to show  
16 you a copy of your report or do you have it in front of you?

17 A I have the -- the second -- secondary report. I  
18 don't have the first report.

19 Q May I approach and see what you've got up there --

20 THE COURT: You may.

21 MR. CLAUS: -- as well, please? Thank you.

22 Thank you, Your Honor.

23 BY MR. CLAUS:

24 Q And so you were specifically requested to do a



1 comparison with Mr. Splond. Was this an automated comparison  
2 or was this a manual comparison you did yourself?

3 A It's a manual comparison that I did.

4 Q Okay. And you had Mr. Splond's fingerprints.

5 A Yes.

6 Q Okay. And you came to the conclusion that Mr. Splond  
7 could be excluded from that fingerprint labeled "Q2."

8 A Correct.

9 Q So, to your knowledge, of all the fingerprints that  
10 were taken from your lab -- from -- from -- I suppose we could  
11 say this would be -- do you know where these were taken from,  
12 these -- these lifts?

13 A I have what was reported on the lift card. Every  
14 time we get a lift card in, it has a description of where  
15 it came from. And on there it says it was taken from the  
16 interior west side of the north facing glass entrance  
17 door.

18 Q Does it say whether these were taken from a  
19 Cricket Wireless for from a Metro PCS?

20 A It does on the outside of the packet, which is  
21 contained in my notes, but I don't --

22 Q And --

23 A -- reflect that. If I look at my notes --

24 Q Would you like to look at your notes to refresh your

1 recollection?

2 A Could I -- yeah.

3 Q Would it help you to do so?

4 A Thank you.

5 MR. CLAUS: Your Honor, with the State's permission,  
6 we'll just enter into a stipulation that these lift cards  
7 [inaudible] Cricket Wireless.

8 THE COURT: Right. You accept that stipulation?

9 MR. PALAL: Yes, Your Honor.

10 THE COURT: Okay. Both cards came from the Cricket.

11 BY MR. CLAUS:

12 Q Now, moving on, you also wrote in a -- a report of  
13 examination for latent prints, lab case number 14-01726. Can  
14 we just call it 726 for sake of brevity?

15 A Yes.

16 Q Okay. And in that report, you had -- did you write  
17 two reports there as well?

18 A I did. The first report that I wrote, it was a  
19 report that said that the latent prints in this packet  
20 were not suitable for an AFIS search. And if a manual  
21 comparison was needed at some point in time, to submit a  
22 request for that. And that happened. I was asked to  
23 request -- to compare against Kenny Splond.

24 Q Okay. And ultimately, you decided that three of

1       those five prints were suitable for comparison purposes.

2           A       That's correct.

3           Q       Now, as part of that comparison, you go through and  
4       you create notes, bench notes for yourself; correct?

5           A       That's correct, yes.

6           Q       And in these bench notes, you document where these  
7       lifts came from; is that correct?

8           A       Right. What our -- what we do with the notes is,  
9       basically, we make a copy of the outside of the lift card.  
10       So on the lift card, it documents where they came from,  
11       which is written by the crime scene analyst who recovers  
12       the latent prints.

13                   And then it also has my documentation on there  
14       saying what I numbered it. Because I number them Q1, Q2,  
15       Q3, Q4, and Q5, along with my initials. And then if I  
16       determine a latent print is suitable, I will make mark it  
17       with a designator. In this case it's a fingerprint. So  
18       it's an arch over the finger with the letter "A."

19           Q       Okay. And showing you State's Exhibit Number 15,  
20       this is -- have you seen this photograph before?

21           A       I have not.

22           Q       Okay. Directing your attention -- let's -- let's  
23       zoom in here a little bit. Generally speaking, even though  
24       you don't know the specifics of this photograph, what are we

1 generally looking at here?

2 A From my knowledge, this is what the crime scene  
3 analysts take a picture of. So their 1, 2, 3, would be in  
4 relation to what their lift cards would be. So when they  
5 take off tape lift number 1, they put it on a card and  
6 then that card is their "1." And then same with 2, 3, and  
7 4 or how many ever is on that photograph. I see 1, 2, and  
8 3 right there.

9 Q Well, and we can -- we can move it up, if that makes  
10 it a little easier.

11 A Yeah. So all five of those, to my knowledge,  
12 would correspond to the lift cards that were turned into  
13 the -- on this case.

14 Q All right. This seems to be [inaudible]. It's a  
15 wonderful thing, technology.

16 Okay. Can you see all the numbers there?

17 A I do.

18 Q Actually, there we go. I think we can see all the  
19 numbers there; right?

20 A Correct.

21 Q Okay. So the idea is, is that when the crime scene  
22 analyst takes these latent fingerprints and put them on these  
23 tape, they're going to box them up, send them off to you. And  
24 then you're going to analyze them. And you're going to try to

1 use the same numbering scheme that they did; correct?

2 A Correct.

3 Q Okay. So wherever we see "1" on a piece of tape for  
4 your purposes of your report, that's where you're going to be  
5 talking about "Q1"; correct?

6 A Correct.

7 Q Okay. And where you see "2" on the tape, it's going  
8 to correspond to "Q2," and so on and so forth until we get  
9 down to 5 on the -- on the number 5 on the tape on the screen.  
10 And then in your report that's going to be "Q5"; correct?

11 A Yes.

12 Q All right. So in your report, you found that there  
13 were no suitable latent prints for your comparison purposes in  
14 2 and 3; correct?

15 A Correct.

16 Q So can you take a -- you have that little mouse in  
17 front of you.

18 A Uh-huh.

19 Q Can you kind of --

20 THE COURT: Ma'am, you're gonna have to click it to  
21 try and get the indicator to come off, come up for you.  
22 There you go.

23 MR. CLAUS: Brave new world.

24 BY MR. CLAUS:

1           Q     Okay. So can you show us where the Q2 and Q3 tapes  
2 would be, then.

3           A     This would be Q2. Sorry about that. And Q3.

4           Q     You are very detail oriented. With that being said,  
5 let's -- and, in fact, you have a diagram of that in your  
6 notes. You tried to mirror that as well; correct?

7           A     We try to correspond what their number 1 is to  
8 our Q1, yes.

9           Q     Okay. And in your notes, you actually say where that  
10 lift came from; correct?

11          A     Right. We have a copy of the lift card attached  
12 to our notes.

13          Q     Okay. And what I'm -- what I'm -- I suppose what I'm  
14 trying to get at is even though you've got the numbers around  
15 the side, the latent print comes from somewhere on the phone;  
16 correct?

17          A     Correct.

18          Q     And it doesn't necessarily correspond to exactly  
19 where that tape is.

20          A     Um --

21          Q     Well, no, that's -- that's badly phrased. That  
22 tape -- the tapes appear to be overlapping; right? So you  
23 actually, when you're doing your notes, would identify, based  
24 upon where that tape is and how it was photographed, where you

1 think the latent prints were on the phone itself; correct?

2 A What we get is a -- it's basically an index card  
3 looking -- it looks like an index card with the piece of  
4 tape on it. And whatever images are contained, or latent  
5 prints are contained in that tape area is what we look at.

6 Q That's good enough. And so what you did is, based  
7 upon that, you -- you -- you tried to create a -- apology -- I  
8 map, essentially, of where these latent prints were on the  
9 phone itself; is that correct?

10 A Well, we don't necessarily do that. We just look  
11 at what's on that lift card. And we see what's in that  
12 tape area that they turned in. And then we determine  
13 whether or not there's information that -- on that latent  
14 to carry on to our comparison process.

15 Q Then maybe I'm not understanding. Maybe I can get a  
16 little more specific for you.

17 MR. CLAUS: Splond 42, please.

18 Your Honor, may I approach the witness?

19 THE COURT: You may. Can I remove the marks off the  
20 photo on the monitor?

21 MR. CLAUS: Uh --

22 THE COURT: No? Okay.

23 MR. CLAUS: Let's leave them where they are, please,  
24 just right now, Your Honor.

1 /

2 BY MR. CLAUS:

3 Q Showing you a document. Does -- does this document  
4 look to be your work product?

5 A Yes. And the diagram that you're showing me is  
6 on the back of that lift card. So it's something that the  
7 crime scene analyst annotated on the back of their lift  
8 cards.

9 Q Okay. So this is not something that you did, but it  
10 goes into your report to tell you where the fingerprints are  
11 coming from.

12 A Correct. It's -- it's what the crime scene  
13 analyst -- it's part of their designations. And we  
14 contain it within our notes as part of our note taking  
15 process to show what they collected in their notes.

16 Q Okay.

17 A Or what they turned into us.

18 Q And so to the extent that you wrote your report,  
19 then, the fingerprints -- the actual location of the latent  
20 prints would correspond with the numbers in this page?

21 A Yeah.

22 Q Okay. And did that comport with your own findings,  
23 when you were going through the tape?

24 A What --



1           Q     As you were going through the tape to identify the  
2     latent prints, did -- did the numbers that you've put here in  
3     your report correspond with where the prints were located on  
4     the phone, essentially?

5           A     We don't really look at that. What we look at is  
6     whether or not there's latent print evidence on that tape.  
7     We don't necessarily -- we just document what's on the  
8     cards, their diagrams, for purposes of note taking. But  
9     it doesn't have any bearing on whether or not a latent  
10    print is suitable or not suitable for comparison.

11          Q     Okay. Then maybe come at this another way. Does  
12    this document -- is this document, then, an accurate  
13    reflection of the information that you received about the  
14    location of the latent prints on the page?

15          A     Yes. Yes, it was.

16          Q     Okay.

17          MR. CLAUS: Your Honor, I'm going to mark this as  
18    Defense A.

19          THE COURT: Okay.

20          MR. CLAUS: Move for its admission.

21          MR. PALAL: No objection.

22          THE COURT: Objection? Be admitted.

23                 [DEFENDANT'S EXHIBIT A MARKED AND ADMITTED]

24          MR. CLAUS: Permission to publish to the jury.

1 THE COURT: You may. I've erased the marks.

2 MR. CLAUS: I was wandering around [inaudible].

3 THE COURT: It's okay.

4 BY MR. CLAUS:

5 Q So now that we can look at the photograph together,  
6 this -- this purports to be a sort of diagram of the Galaxy  
7 phone, where the prints were taken off of; correct?

8 A Correct.

9 Q Okay. And we can see that the numbers now -- one,  
10 two, three, four, five -- are now distributed around the  
11 diagram of the phone itself; correct?

12 A Correct.

13 Q And so is it your understanding that these numbers --  
14 one, two, three, four, five -- are meant to correspond with  
15 approximately where the latent prints were found on the  
16 device?

17 A That's correct.

18 Q Okay. Long way. You know what? I'm gonna leave  
19 that up there for us to talk. I'm gonna leave that up there  
20 for us to talk. Or perhaps with can do this: If I put this  
21 exhibit in front of you, can you take this exhibit and, to the  
22 best of your ability, try and transpose these numbers on to  
23 what we're looking at on [inaudible].

24 A Um --

1 Q I know, the [inaudible] --

2 THE COURT: You want her to write the numbers on the  
3 screen?

4 MR. CLAUS: Yes, Your Honor.

5 THE COURT: Okay.

6 THE WITNESS: Oh, sorry.

7 THE COURT: Hold on. Let me erase.

8 BY MR. CLAUS:

9 Q Thank you. Now, in your report -- so this -- this  
10 would also correspond to the Q1 through Q5 in your --  
11 referenced in your report; correct?

12 A Correct.

13 Q All right. And in your report, you had indicated  
14 that Q1 was a suitable latent print and you compared that  
15 against the known prints of Mr. Splond and you excluded him as  
16 a match; correct?

17 A I did, yes.

18 Q Okay. Now, Q2 and Q3 -- 2 and 3 -- you said were the  
19 unsuitable prints; correct?

20 A Correct.

21 Q Okay. But number 4, you identified as being a  
22 suitable print. And you also excluded Mr. Splond from number  
23 4; is that correct?

24 A Correct.

1           Q     All right. And Q5, you did a manual examination  
2     there as well and excluded Mr. Splond from that print.

3           A     Correct.

4           Q     And that was a suitable print as well.

5           A     It was.

6           Q     Okay. Now, lots of reasons why you might not leave a  
7     fingerprint. But obviously, on this device, there were a  
8     series of fingerprints that were taken off of this device.

9           A     Correct.

10          Q     And in your experience, if you're the last person to  
11     speak -- to touch such a device and there's no one else that  
12     touches it after you, is it reasonable to expect that you  
13     might leave a print behind?

14          A     Not necessarily. Like I said before, every time  
15     you touch something, you're not necessarily gonna leave  
16     behind a latent print.

17          Q     But if you do develop prints from that phone, so that  
18     there's not so much gunk on the phone that all the prints are  
19     obscured and you are the last person to touch this phone,  
20     would it be reasonable to expect that you would be one of the  
21     prints found?

22          A     Like I said, not necessarily. If you think of it  
23     as like a door to your favorite restaurant. Anyone that  
24     touches that door from the time that restaurant door was

1       cleaned to the time that somebody comes and processes it,  
2       anyone that enters that door to your favorite restaurant  
3       can potentially leave behind a latent print.

4           Q     Is this a door to a restaurant?

5           A     No, but it's --

6           Q     Do you know how many people touched this device?

7           A     I do not.

8           Q     Okay. And you did, in fact, get fingerprints off of  
9       it; correct?

10          A     Yes.

11          Q     And you were able to make an examination from those  
12       fingerprints.

13          A     Correct.

14          Q     And so what you're telling the jury is that it's very  
15       reasonable that the last person to have touched a phone that  
16       has five different latent prints that have been pulled off of  
17       it, it's very reasonable, very probable that that person  
18       wouldn't have left a fingerprint.

19          A     Can you say that again?

20          Q     That it's very probable and very reasonable that  
21       person would not have left a fingerprint.

22          A     It's possible. It's not necessarily always --  
23       any time you touch a surface, you're not necessarily  
24       always gonna leave behind a latent print.

1           Q     Indeed, anything is possible. But is it probable?

2           A     It's possible, but, like I said, any time you  
3 touch a surface, not all the time will you leave behind a  
4 latent print.

5           Q     All right. Let's -- let's deal with some of the  
6 technicals of it: You're familiar with how the fingerprints  
7 are gathered by Metro.

8           A     Correct.

9           Q     And they use glass to do that; correct?

10          A     How --

11          Q     They use a glass device to gather the prints;  
12 correct?

13          A     The platens that are finger -- that are -- yes.

14          Q     Okay. In fact, glass is the preferred method for  
15 gathering fingerprints; correct?

16          A     It's -- it's a -- definitely a suitable surface,  
17 yes.

18          Q     Not -- not -- perhaps not the perfect surface. Is  
19 there a perfect surface?

20          A     No.

21          Q     Okay. Does -- does glass rank up there as being one  
22 of the best surfaces to get fingerprints from?

23          A     When you're talking about -- like, electronically  
24 taking your fingerprints, they do use glass plate --

1 platens to take those because glass is easibly (sic)  
2 cleanable. So when you do roll a surface, you can easily  
3 clean it for the next person so you don't get overlap on  
4 that. So --

5 Q And now-a-days they're not even having people put,  
6 you know, the black -- the black ink on their fingers when  
7 they take their fingerprints -- correct -- they're just  
8 rolling them across the -- across the glass.

9 A Yeah.

10 Q Okay.

11 A For the most part.

12 Q Okay. Were you asked to compare these fingerprints  
13 to any anyone else?

14 A Outside of -- I was only requested to compare  
15 them to Kenny Splond.

16 Q And again, both at the -- the Cricket and the Metro  
17 PCS, your results were negative.

18 A Correct.

19 Q Thank you.

20 THE COURT: May I remove the marks?

21 MR. PALAL: Yes, Your Honor. May I --

22 THE COURT: Redirect.

23 MR. PALAL: Thank you.

24 REDIRECT EXAMINATION OF HEATHER GOULDTHORPE

1 BY MR. PALAL:

2 Q All right. Ms. Gouldthorpe, Mr. Claus mentioned that  
3 when Metro takes prints of people, they use glass. It seemed  
4 to me that you wanted to say something about why the process  
5 of using glass. Do they clean the surface of glass after  
6 taking fingerprints?

7 A Yes. Every time at the Fingerprint Bureau, when  
8 they do take somebody's prints, what they do is they take  
9 the prints and then afterwards, they'd use a glass cleaner  
10 and then they clean it. So then the next person that  
11 comes behind them, they won't get overlap of latent -- of  
12 prints in the system.

13 Q Now, it probably wouldn't be a good way to collect  
14 prints to just not clean it and just lay a print over print.

15 A No.

16 Q Now, are you aware of whether they put any kind of  
17 liquid or water on prints prior to taking the prints?

18 A Occasionally, I know -- because I'm one of those  
19 people, I have really dry hands. So they put, like, a  
20 lotion on the hands to moisten them up before taking  
21 prints.

22 Q And why -- why is that?

23 A Like I said, I'm one of those people, I have dry  
24 skin. I leave behind really bad latent prints. I know



1       this because as part of our -- when we process evidence,  
2       we have to make QC prints. And in order for me to get a  
3       print that I can say will react positively, I have to  
4       really load my fingers up.

5               So what that means is I have to either touch the  
6       back of my hair line or rub my forehead, which is the  
7       oiliest part on my skin, to be able to produce a print  
8       that would -- that I could process that I can recover a  
9       latent from.

10       Q       So even using Metro's equipment on a clean glass  
11       surface, surface that -- that's cleaned after every use, when  
12       you put your hand on there, you don't develop good latent  
13       prints.

14       A       Correct.

15       Q       One last thing, do you have to actually touch the  
16       item for you to leave a print or does hovering above it leave  
17       a print?

18       A       Well, you have to touch -- in order for the  
19       latent be developed, you have to actually touch the print.  
20       Because it's a -- you're actually leaving behind a  
21       replication of your skin. So in order to leave behind  
22       that replication, you have to actually touch the surface.

23       Q       So to leave a latent print, just, generally, even  
24       beyond that, you have to touch the item.

1           A     Yep.

2           Q     So like -- because I've been looking at this Elmo a  
3     lot.  If I haven't touched it, I'm not gonna leave a print.

4           A     Correct.

5           MR. PALAL:  No further.

6           THE COURT:  Redirect -- or recross?

7           MR. CLAUS:  Please, Your Honor.

8                   RECROSS-EXAMINATION OF HEATHER GOULDTHORPE

9     BY MR. CLAUS:

10          Q     So you fingerprinted yourself and checked -- tried to  
11     check your own fingerprints and had difficulty with that.

12          A     I do.

13          Q     Okay.  And is it in getting any fingerprints, getting  
14     suitable fingerprints, or getting perfect fingerprints?

15          A     Getting any -- getting any latent to develop.  If  
16     I just touch a surface, I know that I have -- I won't  
17     leave any prints that I can develop to positively call a  
18     latent print.  So that's why I have to, myself, load my  
19     fingers with oily sebaceous sweat, in order to develop a  
20     latent print.

21          Q     Now, this is an individual characteristic; correct?

22          A     It is, yes.

23          Q     Are you aware of any statistics of what pocket -- of  
24     what percentage of the population has this same difficulty?

1 A No.

2 Q And you perspire through your hands; correct?

3 A Correct.

4 Q All right. And you put oils out through your hands;  
5 correct? And that is a universal characteristic.

6 A It is.

7 Q Okay. And when you're under stress, you'll perspire  
8 more; correct?

9 A Correct.

10 Q And in order to leave a fingerprint, you don't have  
11 to have held an item for five minutes, ten minutes, you can  
12 just touch it and that will leave a fingerprint; correct?

13 A Correct.

14 MR. CLAUS: Pass the witness, Your Honor.

15 MR. PALAL: Nothing from the State.

16 THE COURT: Anything further?

17 MR. PALAL: No, Your Honor. I apologize.

18 THE COURT: Any questions from the jury?

19 Thank you, ma'am. We appreciate your time. Have  
20 a very nice afternoon.

21 Next witness.

22 MR. LEXIS: State calls Detective Kavon.

23 THE COURT: How long do you think he's gonna be?

24 MR. PALAL: Twenty-five minutes.

1           THE COURT: Ladies and gentlemen, we're gonna take an  
2 afternoon recess before we start with a longer witness.

3           During this recess, you're admonished not to talk  
4 or converse among yourselves, with anyone else on any  
5 subject connected with this trial or read, watch or listen  
6 to any person connected with this trial by any medium of  
7 information including, without limitation: Social media,  
8 text, newspaper, television, Internet, radio or form or  
9 express any opinion on any subject connected with the  
10 trial until the case is finally submitted to you.

11           See you in about ten minutes outside courtroom  
12 14A.

13           [Outside the presence of the jury]

14           THE COURT: By my count, as we all know, is not  
15 necessarily accurate, this will be your seventh witness of  
16 the day. And yesterday you told me you had seven more  
17 witnesses.

18           MR. PALAL: That's correct.

19           THE COURT: And I can draw a conclusion from that.

20           MR. PALAL: Yes, you are.

21           THE COURT: Okay. So I have numbered the instructions  
22 for you. Who's my hander-outer?

23           MR. PALAL: I got it, Your Honor.

24           THE COURT: Two per side. Now they have numbers on

1       them.

2           MR. PALAL:   Thank you.

3           THE COURT:   So these will be the set we settle from.

4           MR. CLAUS:   Thank you.

5           THE COURT:   You guys can have five minutes or so for  
6       break.

7           MR. PALAL:   Is the jury --

8           MR. CLAUS:   Front or back?

9           MR. PALAL:   Yeah, where's the -- is the jury in front  
10       or back?

11          THE COURT:   Jury should be out by 14A.

12          MR. PALAL:   Okay.

13          THE COURT:   They're in the front.   You guys are going  
14       in the back.

15                       [Recess at 2:46 p.m.; proceedings resumed at  
16       2:46 p.m.]

17                       [Outside the presence of the jury]

18                       [Discussion off the record]

19          THE COURT:   Do you have the machine that we're gonna  
20       give the jury to watch the videos?

21          MR. PALAL:   Yes.

22          THE COURT:   Your clean computer?

23          MR. PALAL:   Yes.

24          THE COURT:   So Mr. Claus, this is how I do it:   Once

1 we finish everything and I send the jury back, we then  
2 have a clean laptop, typically provided by the DA's  
3 office. I have you check that laptop with them to make  
4 sure that it appears to you to be a clean laptop, before I  
5 send it back. And then we rely upon that laptop to be the  
6 one the jury uses.

7 MR. CLAUS: Okay.

8 THE COURT: So if that's okay with you, that'll be the  
9 process I follow.

10 MR. CLAUS: A-okay with me.

11 THE COURT: Great. It's so nice to talk to lawyers  
12 who actually are agreeable as to one close to the other  
13 ones that are talking to my people in the back hallway.

14 MR. CLAUS: And I only try to disagree on the really  
15 important things, Your Honor.

16 THE COURT: Lovely. That's good.

17 MR. CLAUS: Something's going on here.

18 THE COURT: There's apparently some suspicious  
19 activity outside the building. So I will arrange for the  
20 jurors to be accompanied to the garage, if they stay late.  
21 Not sure what the suspicious activity is. But don't want  
22 to run [inaudible].

23 MR. PALAL: Actually, that brings up with a good  
24 point, Your Honor. How long do you have the -- do you

1       send the jurors home or do they -- give them time to  
2       deliberate?

3           THE COURT: My general rule is -- and as it's a  
4       general rule, that means sometimes I depart from it -- is  
5       I send jurors home by 6:30, whether they like it or not.  
6       But I let them pick the time they come back.

7           MR. CLAUS: So we're gonna be sticking around till  
8       6:30.

9           THE COURT: Well, probably not, but it's possible.

10                  [Discussion off the record]

11          MR. PALAL: Your Honor, my submit of 25 minutes  
12       included cross, so --

13          THE COURT: I -- I've already said you guys are  
14       getting done today. I've got the instructions ready to  
15       go. They're numbered; you got them. I'm ready to go at  
16       the next break to settle jury instructions and be gone.

17          MR. PALAL: Okay. Perfect.

18          THE COURT: Unless you want to settle --

19          MR. PALAL: Thank you.

20          THE COURT: -- now. Have you looked at them?

21          MR. CLAUS: Yes, Your Honor.

22          THE COURT: Okay. Has the State had the opportunity  
23       to review the Court's proposed jury instructions numbered  
24       1 through 30?

1 MR. PALAL: Yes, Your Honor.

2 THE COURT: Does the State object to the giving of  
3 those instructions?

4 MR. PALAL: No, Your Honor.

5 THE COURT: Does the State have any additional  
6 instructions to propose?

7 MR. PALAL: No, Your Honor.

8 THE COURT: Has the Defense had the opportunity to  
9 look at the Court's proposed instructions numbered 1  
10 through 30?

11 MR. CLAUS: Yes, Your Honor.

12 THE COURT: Do you object to the giving of any of  
13 those instructions?

14 MR. CLAUS: No, Your Honor.

15 THE COURT: Do you have any additional instructions to  
16 propose at this time?

17 MR. CLAUS: No, Your Honor.

18 THE COURT: Have both of you had the opportunity to  
19 look at the proposed form of verdict that the clerk has  
20 placed on a blue backer, in which --

21 MR. CLAUS: Yes.

22 THE COURT: -- has the same name as the instructions?  
23 Does anyone object to the verdict form?

24 MR. CLAUS: No, Your Honor.



1 MR. PALAL: No, Your Honor.

2 THE COURT: Okay. You both want me to instruct the  
3 jury before closing arguments.

4 MR. PALAL: Yes, Your Honor.

5 MR. CLAUS: Yes, Your Honor.

6 THE COURT: Okay. So Kevin, I'm going to give these  
7 to Dan to make the copies while we're hearing the last  
8 witness.

9 THE BAILIFF: Okay.

10 THE COURT: I'll do it. You line them up.

11 [Discussion off the record]

12 THE COURT: Is it okay with you guys if we give the  
13 jurors a verdict form too?

14 MR. PALAL: [Inaudible]

15 THE COURT: Sometimes we give them a verdict form and  
16 sometimes we don't. Do you want them to have a verdict  
17 form or not?

18 MR. CLAUS: A copy.

19 MR. PALAL: Oh, yes, please.

20 MR. CLAUS: Yeah.

21 THE COURT: Here. Here, Dan.

22 MR. PALAL: Do some people actually request that jury  
23 instructions be read after closings?

24 THE COURT: The statute requires it.

1 MR. PALAL: I didn't know that.

2 THE COURT: This is why I ask it and nod my head so  
3 you know the right answer.

4 MR. PALAL: Oh, okay. The statute mandates it after.  
5 And we just --

6 THE COURT: Believe so.

7 MR. PALAL: -- we stipulate it to go before.

8 THE COURT: Because we've all learned it, after isn't  
9 the best time for you to explain the jury instructions.

10 MR. CLAUS: That would explain why some judges do it  
11 after.

12 THE COURT: Those of us who were actually trial  
13 lawyers know why it's important the judge do it first.

14 [In the presence of the jury]

15 THE BAILIFF: Jurors are present.

16 THE COURT: Counsel, stipulate the presence of the  
17 jury.

18 MR. CLAUS: Yes, Your Honor.

19 MR. LEXIS: Yes, Your Honor.

20 THE COURT: You may be seated.

21 Your next witness.

22 MR. LEXIS: Detective Kavon.

23 MR. CLAUS: Detective who?

24 MR. LEXIS: Kavon.

1 SCOTT KAVON,

2 [having been called as a witness and being first duly  
3 sworn testified as follows:]

4 THE CLERK: Thank you. Please be seated.

5 Please state and spell your name for the record.

6 THE WITNESS: My name is Scott Kavon, S-C-O-T-T,  
7 K-A-V, as in "Victor," O-N.

8 THE COURT: Sir, you will notice there is a dispenser  
9 with M&Ms next to you. There's a pitcher with water in  
10 it. And if you should need some coffee, let the marshal  
11 know. He'd be happy to help you out.

12 THE WITNESS: Thank you.

13 THE COURT: You may proceed.

14 DIRECT EXAMINATION OF SCOTT KAVON

15 BY MR. LEXIS:

16 Q Where do you work, sir?

17 A I currently am retired.

18 Q Where did you work?

19 A I used to work with the Las Vegas Metropolitan  
20 Police Department.

21 Q For how many years?

22 A I did a little less than 25 years with the police  
23 department.

24 Q And when did you retire?

1           A     I retired a little less than eight months ago.  
2     Approximately 236 days ago.

3           Q     Sir, in 2014, what division were you assigned to?

4           A     I was assigned to the robbery/homicide section,  
5     concentrating in the Robbery Division. And I had been  
6     assigned there for approximately ten years.

7           Q     In early 2014, were you assigned to investigate a  
8     string of robberies that occurred at the Cricket store at  
9     4343 North Rancho, the Metro PCS store at 6663 Smoke Ranch,  
10    and the Star Mart at 5001 North Rainbow?

11          A     Yes, I was.

12          Q     And how were you assigned that?

13          A     In the -- in the Las Vegas Metropolitan Police  
14    Department, in the robbery section, specific, the city or  
15    Clark County, actually, is broken down into sections.  
16    Geographical areas, substations, for patrol cover those  
17    sections. And then the detectives are also assigned  
18    sections of the city to work.

19                I was assigned a northwest part of the valley, at  
20    that time, being the northwest substation encompasses that  
21    area of town that you describe.

22          Q     Did each of those three robberies occur in the  
23    northwest part of this valley?

24          A     Yes, they did.

1 Q Here in Clark County, Las Vegas?

2 A Yes, they did.

3 Q And what did you do when you were assigned this  
4 investigation?

5 A Initially, the calls are generated and uniformed  
6 officers respond. They take crime reports. They take  
7 voluntary statements. They do a preliminary  
8 investigation. From there, the case is assigned to a  
9 detective. And in this instance, these cases were  
10 assigned to me.

11 I received these cases in a computer database,  
12 which we call a queue, in the queue, along with other cases  
13 from the northwest. And I begin to sort through them and  
14 investigate them. I look at them for commonalities and  
15 things like that.

16 Q Were you able to obtain videos from these locations?

17 A I was. I reviewed the video for both the Cricket  
18 store and the Metro PCS.

19 Q Did there come a time where you eventually were able  
20 to develop a suspect?

21 A Yes, there did. Ultimately, I looked at these  
22 three cases, in chronological order, as I received them, I  
23 looked at them. And I noted that the -- the case was --  
24 the case -- the suspect in these cases was very similar.

1           He had a similar method of operation or the way  
2       he would conduct his crimes. He had a similar physical  
3       description and physical build. It was distinctive  
4       because the witnesses and victims in these crimes  
5       described him as having some sort of scarring on his  
6       cheeks, either pock mark or acne scarring or something  
7       like that.

8           The suspect utilized a revolver in -- in two of  
9       out of these three cases. And he also utilized a silver  
10      car as a getaway car, silver four-door car. And in -- in  
11      two -- two of the cases, witnesses saw a female driving  
12      the getaway car away. So --

13           MR. CLAUS: Objection. [Inaudible]

14           THE COURT: Overruled.

15           BY MR. LEXIS:

16           Q     Go ahead.

17           A     So ultimately, when I looked at all these cases  
18      together, I noted that on the -- the Star Mart convenience  
19      store that was robbed, uniformed officers had made two  
20      arrests in that case, arresting a Kenneth Splond or  
21      Kenny Splond.

22           Q     And you're aware that a firearm was used on all three  
23      robberies?

24           A     Yes, it was described as a revolver in at least

1 two of the robberies.

2 Q And so, after that third event, on February 2nd at  
3 the Star Mart, Metro actually had a suspect in custody.

4 A That's correct.

5 Q Showing you what is State's Exhibit 33. You  
6 recognize that photograph, sir?

7 A Yes, I do.

8 Q And who is that?

9 A That's a photograph of Kenny or Kenneth Splond.

10 Q You see that person in court today?

11 A Yes, I do.

12 Q Would you please point to him, identify for me the  
13 colored shirt he is wearing.

14 A He's sitting there at the Defendant's table.  
15 He's wearing a gray shirt with a gray tie.

16 MR. LEXIS: Your Honor, let the record reflect the  
17 detective has identified the Defendant.

18 THE COURT: Record will so reflect.

19 BY MR. LEXIS:

20 Q I'm also showing you states Exhibit 35. You  
21 recognize that photograph, sir?

22 A Yes, I do.

23 Q Is it the same person?

24 A That is also Kenny Splond, yes.

1           Q     Can you describe for me his appearance, his facial  
2 features.

3           A     He's an African American or a black male. He  
4 has -- he has short, dark, close-cropped hair in that  
5 picture. He has a light mustache and maybe a little bit  
6 of a light beard that's going on. He appears to have some  
7 sort of scarring on his cheeks and maybe his neck area  
8 there.

9           Q     What is he wearing?

10          A     He's wearing an orange-ish colored shirt from --  
11 I mean, I can only see, obviously, from the -- from the  
12 shoulders up. But with a -- possibly a darker shirt  
13 underneath.

14          Q     Is he wearing glasses?

15          A     He is not wearing glasses, no.

16          Q     You see the Defendant in court today?

17          A     I do. I do.

18          Q     Can you please describe me any characteristics, if  
19 any, that are different from this photograph.

20          A     To me, his appearance is substantially different,  
21 sitting here in court today, as it is from back in  
22 January, February of 2014. His hair is much longer now  
23 and done up in some type of braid. He's wearing glasses  
24 right now. And it appears that he's grown out his facial



1 hair, his goatee, and it's got a little gray in it, just  
2 like mine.

3 Q And what is he wearing?

4 A He's wearing a gray button down dress shirt with  
5 a gray pattern tie or silver pattern tie.

6 Q Now that you had a suspect in custody, and after you  
7 paired up those videos, what did you do next?

8 A What I always do in a case like this is I -- the  
9 suspect's in custody. I review a photograph of the  
10 suspect and then compare that to the video, to make sure  
11 that it -- it's consistent.

12 If not -- if you're not able to make a complete  
13 identification from the video and the photograph, which in  
14 almost every case you're not, you at least want to make  
15 sure it's consistent with characteristics and build and  
16 appearance and that sort of thing.

17 After I did that, I determined that it was time  
18 to create a photo lineup or photo array, as we call it.

19 Q And how many of these photo arrays have you  
20 conducted, rough estimate?

21 A In the little less than 25 years as a detective  
22 and an officer in Metro, I've conducted hundreds and  
23 hundreds of these photo arrays.

24 Q And can you explain for us how you go about getting

1 the photographs.

2 A Sure. Metro Police Department has a database, a  
3 database of photos that are in this database. Hundreds  
4 and hundreds and thousands of photographs are in this  
5 database. These photographs are separated into categories  
6 by race, by gender, that sort of thing, by age.

7 It's data inputted in when the photograph was  
8 taken. You know, they put in the age of the person, their  
9 name and their ID number and, you know, how tall they are  
10 and how much they weigh and that's all in the database.

11 When we create a photo array or sometimes it's  
12 referred to as a six-pack, you go into this database and  
13 you input the information for the known person that you  
14 want included in there. In this case, I input the  
15 information for Kenny Splond. Then that pulls  
16 Kenny Splond's picture out of the database.

17 And then you also put in criteria of what you  
18 want to match with that. You -- you put in, obviously,  
19 you wouldn't want to put in female with a male suspect.  
20 So you eliminate all the females. You eliminate Caucasian  
21 or -- or white -- white people. You eliminate all sorts  
22 of various things. You make sure the ages are close and  
23 the height and weights are close.

24 And when that computer program or that database

1 randomly generates about 200 to 300 more photographs that  
2 it thinks is similar to, in this case, Kenny Splond. From  
3 there, then the detective will take -- and in this case, I  
4 took and I pulled out photographs that, you know, the  
5 hairs were -- the hair color, it was similar, and things  
6 like that that the computer just can't do.

7 And I chose five other photographs to go along  
8 with Kenny Splond's photograph and told the computer to  
9 compile that. The computer randomly puts those pictures  
10 into -- on one sheet of paper, so to speak, in one, two,  
11 three, four, five, six pictures. And it generates that  
12 document for you.

13 Q Did you do that on this case?

14 A Yes, I did.

15 Q And did you compile a photo lineup or six-pack for  
16 both the victims in the first two robberies?

17 A Yes, I did.

18 MR. LEXIS: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MR. LEXIS:

21 Q Sir, I'm showing you what is marked as  
22 State's Exhibit 9. What is that, sir?

23 A State's Exhibit 9 is the photo lineup witness  
24 instructions, which is a document provided by Metro to

1 show and explain to a witness or a victim what to do  
2 before viewing the photographs.

3 The second part of State's Exhibit 9 is the  
4 actual photo lineup or six-pack that I compiled that I  
5 explained before.

6 Q Okay. And that first part, the instruction part, did  
7 you do that on both of these cases?

8 A Yes, I did.

9 Q And what does that instruction entail?

10 A The top part of the witness instruction is  
11 information about the person you're going to show the  
12 photo lineup to. The witness or the victim's name and  
13 that sort of information. It also includes the case  
14 number for this specific case, where you're showing the  
15 photo lineup, and date and time the lineup was shown and  
16 who it was shown by.

17 Below that is a paragraph of information that you  
18 read to the witness, prior to them looking at the photo,  
19 so they understand what they're going to be doing.

20 Q And did you do that in both these cases?

21 A Yes, I did.

22 Q Can you please read it to the jury.

23 A Yes. The paragraph states, "In a moment, I'm  
24 going to show you a group of photographs. This group of

1        photographs may or may not contain a picture of the person  
2        who committed the crime now being investigated. The fact  
3        that the photos are being shown to you should not cause  
4        you to believe or guess that a guilty person has been  
5        caught.

6                "You do not have to identify anyone. It is just  
7        as important to free innocent persons from suspicion as it  
8        is to identify those that are guilty. Please keep in mind  
9        that hair styles, beards, mustaches, are easily changed.  
10       Also, photographs do not always depict the true complexion  
11       of a person. It may be lighter or darker than shown in  
12       the photo.

13               "You should pay no attention to any markings or  
14       numbers that may appear on the photos. Also pay no  
15       attention to whether the photos are in color or black and  
16       white or any other differences in the type or the style of  
17       the photographs.

18               "You should only study the person shown in each  
19       photograph. Please do not talk to anyone, other than  
20       police officers while viewing the photos. You must make  
21       up your own mind and not be influenced by any other  
22       witnesses, if any.

23               "When you've completed viewing the photos, please  
24       tell me whether or not you can make an identification. If

1       you can, tell me in your own words how sure you are of  
2       your identification. Please do not indicate to any other  
3       witnesses that you have or have not made an  
4       identification. Thank you."

5           Q       Let's talk about the part where you're instructing  
6       them, after they've seen this person, to describe how sure  
7       they are. 100 percent. Is that rare or is that common?

8           A       Actually, 100 percent is somewhat rare for a  
9       witness to say, "I'm 100 percent sure."

10          Q       And did both victims indicate they were 100 percent  
11       sure?

12          A       Yes, both -- both the witnesses or victims in  
13       this case indicated that they were 100 percent sure of  
14       their identification.

15          Q       What was the victim on the sheet that you have in  
16       front of you?

17          A       This is victim Samuel Echeverria.

18          Q       And what did they indicate?

19          A       Mr. Echeverria indicated that he was 100 percent  
20       sure that the person depicted in photo position number 2  
21       was the person who robbed him or "robbed me," as he said.

22               MR. LEXIS: May I approach, Your Honor?

23               THE COURT: You may.

24               BY MR. LEXIS:

1           Q     Sir, again, I'm showing you State's Exhibit 9. The  
2 second page, did the victim make that circle?

3           A     Yes, the victim made that circle.

4           Q     And did they write underneath that?

5           A     And they signed their name underneath that in the  
6 position number 2, yes.

7           Q     And who is in position number 2?

8           A     That is a picture of Kenny Splond.

9           Q     Is that the person you identified as the Defendant in  
10 court?

11          A     Yes, it is.

12          MR. LEXIS: May I approach, Your Honor?

13          THE COURT: You may.

14          BY MR. LEXIS:

15          Q     Sir, I'm showing you what has been marked as  
16 State's Exhibit 16. What is that?

17          A     State's Exhibit 16 is the Photo Lineup Witness  
18 Instruction Sheet that is required document by -- by the  
19 police department. And the second part of Exhibit 16 is  
20 the photographic lineup that I described before.

21          Q     And who is the victim in that case?

22          A     The victim in this case is Graciela Angles.

23          Q     Did you read the admonishment to her?

24          A     I did. Your admonishment is identical and I read

1       that to her.

2           Q     And what did she put on there, as far as  
3       identification?

4           A     She also identified the Defendant -- or the  
5       person positioned in number 2 as 100 percent sure that  
6       that is the person that robbed her.

7           MR. LEXIS:   May I approach, Your Honor?

8           THE COURT:   You may.

9       BY MR. LEXIS:

10          Q     Sir, I'm showing you State's Exhibit 16, page 2.   Who  
11       made that circle?

12          A     That circle was made by the victim in this case,  
13       Ms. Angles.

14          Q     And did she also write underneath it?

15          A     She did.   It appears she signed her name  
16       underneath it, yes.

17          Q     And who was in position number 2?

18          A     That is Defendant Kenny Splond.

19          Q     Same person you identified earlier today as the  
20       Defendant?

21          A     Yes.

22          Q     Sir, were you also aware that a firearm was recovered  
23       during the Star Mart incident?

24          A     Yes, I am aware of that.



1           Q     And was that firearm registered to somebody other  
2     than the Defendant?

3           A     Yes, it was.

4           Q     Back in 2014, when these robberies occurred, were you  
5     required to register your firearm?

6           A     Yes, you were.

7           Q     In fact, if you went into a store and bought a  
8     firearm, would they have to check who the owner was and -- to  
9     have you register the firearm?

10          A     Yes, they would.

11          Q     And obviously, the Defendant couldn't have done that  
12     because it wasn't his firearm, registered in his name.

13          A     That -- that is correct, yes.

14          MR. LEXIS:   Nothing further, Your Honor.

15          THE COURT:   Cross-examination?

16                   CROSS-EXAMINATION OF SCOTT KAVON

17     BY MR. CLAUS:

18          Q     Detective Kavon or is it Kavon?

19          A     Kavon.

20          Q     Kavon.  You've been working as a Metro officer for  
21     25 years; correct?

22          A     Well --

23          Q     Just about.

24          A     Just about.  Little less.

1           Q     And in that, you've done many, many hundreds of  
2     six-pack lineups.

3           A     Yes, sir.

4           Q     And the process by which the six-pack lineups or  
5     photo arrays -- let's -- can we call them six-packs for the  
6     sake of just simplicity?

7           A     Sure.

8           Q     And the process by which those six-packs were done or  
9     are done has changed significantly over the last three  
10    decades; correct?

11          A     Yes.

12          Q     Okay. Initially -- let's start out with some of  
13    those changes. From the beginning of your practice until  
14    know, what are some of the changes that you would say are most  
15    significant in the photo array procedures?

16          A     Will, initially, thinking back to the early 90s,  
17    when I first started, when you did a six-pack or a photo  
18    lineup, there was no database. There was no electronic  
19    generated pictures. You physically had to go to the photo  
20    lab, Las Vegas Metropolitan Police Department Photo Lab  
21    and you had to request photographs.

22                 And they would actual give you photographs  
23    similar to a Polaroid, but not quite. It was a -- it was  
24    a printed photograph. It had a face and a side profile.

1 And then you would take those photographs and you'd cut  
2 the edges off of them and you would slip them in a manilla  
3 folder that had the little cutouts for them. You would  
4 tape evidence seals around them and staple them so the  
5 pictures didn't get all cock-eyed and slanted and stuff.

6 And ultimately, then, after you got it all taped  
7 up and sealed up and it was a big folder full of six  
8 pictures, you would then take it out and -- I'm sure the  
9 forms have changed since then, a little bit. But I don't  
10 recall exact changes for those forms.

11 Q I was talking more substance than form and how you  
12 put them together and tape them together and cut them, put  
13 them together. I was more talking along the instructions.  
14 How you give the instructions to the person with the six-pack  
15 lineup. Double-blind setups that are now being used by some  
16 police departments. Does Metro use a double-blind setup?

17 A Not to my knowledge, no.

18 Q What is a double-blind setup? For the -- for the --  
19 for the sake of the jury, what's a double-blind setup?

20 A As -- as it refers to --

21 Q Six-pack arrays.

22 A Six-pack arrays. I don't know. We don't utilize  
23 a double -- or at the time, didn't use a double-blind set  
24 up.

1           Q     And so you don't know what a double-blind --  
2     double-blind array is?

3           A     I'd never used it and I've never done it.  So,  
4     no, I don't really know what that is.

5           Q     But you do know what it is.  You have heard about it.

6           A     I have heard of double-blind studies and such  
7     like that, in where -- I'm somewhat familiar with the  
8     concept of what double-blind means, yes.

9           Q     Okay.  So if you -- and the purposes of a six-pack  
10    array -- and you know some departments are using this, what  
11    does it mean?

12          A     Number one, I don't know any departments that are  
13    using this.

14          MR. LEXIS:  Judge, I'm gonna object to speculation.

15          THE COURT:  There's an objection.  Your objection is?

16          MR. LEXIS:  Speculation.

17          THE COURT:  Sustained.  Can you rephrase your  
18    question.

19    BY MR. CLAUS:

20          Q     Let's go back to how the six-pack as changed, then.  
21    Now you provide written instruction; correct?

22          A     Yes.

23          Q     Wasn't always so, was it?

24          A     It's been that way for a long time.  I'm not sure

1       when that started. I don't think it was always so, no.

2           Q       And the instructions have changed; correct?

3           A       Probably. But I can't answer that with  
4       100 percent accuracy. I don't remember. It's been a long  
5       time since we've used that form and those instructions.

6           Q       And now the arrays are created by computer; correct?

7           A       Yes.

8           Q       And a lot of these changes have been made to further  
9       the efficacy of the six-pack lineup; right?

10          A       I'm not sure. I -- I guess that's one of the  
11       reasons why. I thought more so for the simplicity of  
12       being able to put them together without having to drive  
13       around to locate pictures, hard copy pictures and stuff  
14       like that.

15          Q       Okay. So the written instructions are included in  
16       there just so you don't have to drive around.

17          A       Not the written instructions, the actual photo  
18       lineup six-pack.

19          Q       Okay. So let's -- let's talk about the written  
20       instructions.

21          A       Okay.

22          Q       The written instructions are consistent. Everybody  
23       gives the same written instruction; right?

24          A       Yes.

1           Q     Okay. And why is the written instruction given to  
2     you, the detective? Why are you not allowed to do that off  
3     the cuff?

4           A     Well, because I think they want consistency in  
5     what your witnesses are being told and how they're looking  
6     at the photo lineup and what -- what they should bear in  
7     mind when they do look at the photo lineups.

8           Q     Okay. And the concern is that you might be -- well,  
9     they want a photo lineup that's the best evidence; right?

10          A     I would assume so, yes.

11          Q     And they don't want any influence on someone's  
12     statement in that six-pack lineup; correct?

13          A     I would -- I would certainly think not, no.

14          Q     Okay. And so to try and, as I said, improve the  
15     efficacy of the six-pack lineups and make sure that they're  
16     not being influenced by the person giving them, they've put  
17     some procedures in place that everybody has to follow now;  
18     correct?

19          A     There are procedures in place that everybody has  
20     to follow; that's correct, yes.

21          Q     Okay. And the six-packs have now been created by the  
22     computer so that a person isn't necessarily creating that  
23     six-pack array; correct?

24          A     Not correct in the way you've stated it. There's

1 human -- in this case, I -- I selected the photographs.  
2 The computer gave me choices. The computer randomly  
3 placed them in an order. And yet, the -- you can't take  
4 the human element out of it. The human being selects  
5 the -- which photographs go into that photo array.

6 Q But as much as possible, when the photo array is  
7 given to the individual, you want to make sure that no due --  
8 no undue influence is placed on any particular photograph;  
9 correct?

10 A That is correct.

11 Q There's not a position that is always used for the  
12 suspect?

13 A Correct.

14 Q Okay. Is that randomly generated or is -- does the  
15 detective generating the array pick that stuff?

16 A The -- pick the position of the photographs?

17 Q Yes.

18 A That is randomly generated by the computer.

19 Q And when you're giving this, you have written  
20 instructions that you have to give the person that's accepting  
21 the -- or agreeing to do the six-pack lineup; correct?

22 A Yes.

23 Q Okay. Anything you're allowed to add to that?  
24 Extemporaneous speaking, spontaneous things that you're

1       allowed to tell the person or is this pretty much the script,  
2       what's written here on the front page?

3           A       That is pretty much the script right there.

4           Q       Okay. Now, did you record any of these lineups that  
5       you conducted either with -- well, frankly, let's -- let's  
6       start with a broad question: Do you conduct any -- did you  
7       record any of the lineups that you conducted?

8           A       Record, as in documentation with the photo lineup  
9       witness sheet and the actual photo lineup?

10          Q       No, I'm talking about as in audio record, video  
11       record.

12          A       Oh, no.

13          Q       No. Okay. And these were all done over a year ago;  
14       is that correct?

15          A       Yes.

16          Q       And at the time, you had a suspect. You had someone  
17       that you believe had been involved in all three robberies.

18          A       Yes.

19          Q       In point of fact, before you had -- I'm sorry. After  
20       you conducted these six-pack lineups, you -- you contacted the  
21       Metro fingerprint examiners and asked them to look at the  
22       fingerprints recovered from all of the scenes.

23          A       Yes.

24          Q       Okay. And your request was just look at all of the



1       suitable prints and compare them against Mr. Splond.

2           A       Yes.

3           Q       And all the results were negative; correct?

4           A       I don't know that.

5           Q       Okay. So you've forgotten that.

6           A       I don't know if I ever knew that.

7           Q       So you never -- you never found out the results.

8           A       I submitted a request for fingerprint comparison.

9       I don't remember what the results were, no.

10          Q       Do you remember where you were located when you gave  
11 the photo lineup to Mr. Samuel Echeverria?

12          A       I don't remember if I was at his place of  
13 business or at his residence. So, no, I don't remember.

14          Q       Do you remember where you were located when you gave  
15 the six-pack lineup to Graciela Angles?

16          A       No, I don't. I do know it's documented on the  
17 witness list or -- I'm sorry -- the photo lineup array.

18          Q       And you document that because you know that at some  
19 point you might be called upon to testify to these matters.  
20 And if you don't document, you're gonna have a hard time  
21 remembering; right?

22          A       Especially on a two-year-old case, yes, sir.

23          Q       Okay. And so to the extent that it's not documented,  
24 you don't remember it as you sit here.

1           A     That's correct.

2           Q     And you don't remember -- well, do you remember any  
3     of the specifics of those lineups? Let's start with  
4     Mr. Echeverria. Do you remember any of the specifics of the  
5     lineup with Mr. Echeverria? Do you remember whether it was  
6     night? Whether it was day?

7           A     Um, well, I do remember that I worked -- I work  
8     day shift during that. So it would have been during the  
9     day, yes.

10          Q     Okay. But you don't remember if it was during the  
11     day. You're just assuming it was during the day because that  
12     was when your shift is.

13          A     No, I'm pretty sure it was during the day, yes.

14          Q     Okay. Same thing with Ms. Graciela Angles, that was  
15     during the day, too?

16          A     Yes.

17          Q     Do you remember anything about their choices, other  
18     than what they wrote down?

19          A     I remember that both of them almost immediately  
20     indicated that Mr. Kenny Splond was the suspect who had --  
21     who had committed the robbery. Sometimes witnesses will  
22     take a long time. Sometimes witnesses will take a very  
23     short time to make an identification. And I remember, in  
24     this case, it had took a very short time for them to do

1       it.

2           Q     In fact, I think you testified for the State that  
3       it's rare that people say 100 percent?

4           A     It is rare, yes.

5           Q     And when you say "rare," if you had to turn that into  
6       a percentage, what would you turn that into? One percent of  
7       the time? Ten percent of the time? Ninety percent of the  
8       time?

9           A     I don't have any statistics or documents to -- to  
10      back this up, but in my experience over the years, as an  
11      estimate, I would say it's -- I would say it's less  
12      than -- hmm, I want to say in the neighborhood of 10 to  
13      15 percent of the time, a victim or a witness will make  
14      100 percent identification. And the other, you know,  
15      85 percent of the time, it's -- it's a varying degree  
16      of -- from 0 to 100 percent.

17          Q     Okay. So that includes all the six-packs that you've  
18      done. The ones that have been completely negative, including  
19      the ones that have been 100 percent.

20          A     Well, no. That does not include the 0 to  
21      100 percent. That is -- that includes, for me, when I was  
22      giving that percentage, that includes the percentage of  
23      people who identified someone in a six-pack.

24          Q     Okay.

1           A     Many time -- or often times, a victim or a  
2     witness cannot identify somebody.

3           Q     Now, let's go back to this concept of a double-blind  
4     six-pack. Whether or not you know other departments that are  
5     using them, whether or not you know if Metro's using them, the  
6     concept of a double-blind is to insulate the person giving the  
7     six-pack from inadvertently --

8           MR. LEXIS: Judge, I'm going to object. It's  
9     speculation and Counsel's testifying.

10          THE COURT: Overruled. I don't have a question yet.  
11     Let's wait until the question finishes first.

12     BY MR. CLAUS:

13          Q     The purpose of this double-blind setup is to stop  
14     this person who's giving the six-pack to the person who's  
15     receiving the six-pack from inadvertently signaling them, one  
16     way or another, as to any preference or identification that  
17     might have already been made; correct?

18          A     I don't know that -- that's the case.

19          MR. LEXIS: Objection, Your Honor.

20     BY MR. CLAUS:

21          Q     Okay. Let's back off --

22          THE COURT: Okay. So wait. I have an objection on  
23     speculation.

24                 The objection is sustained. Sir, I don't want

1       you to guess or speculate. But to the extent that you  
2       have an understanding, the jury's entitled hear what that  
3       understanding is.

4           THE WITNESS: Yes, ma'am.

5           THE COURT: But you're not supposed to guess or  
6       speculate.

7           THE WITNESS: Yes, ma'am.

8       BY MR. CLAUS:

9           Q       Then let's go broader. You've testified that you  
10       know generally what a double-blind survey is; correct?

11          A       Correct.

12          Q       All right. And so the purpose of a double-blind  
13       survey is to stop the person who's giving the survey from  
14       advertently or inadvertently -- one of the major purposes of a  
15       double-blind survey is to keep the person who's giving the  
16       survey from inadvertently signaling the person who's taking  
17       the survey to what sort of answer they want them to give;  
18       correct?

19          A       That seems fair, yes.

20          Q       It's to create, as much as possible, an even result;  
21       correct?

22          A       Okay.

23          Q       And some police departments are using this method in  
24       their six-packs today; correct?

1           A     I don't know that.

2           Q     This method was not used in this six-pack; correct?

3           A     Correct.

4           Q     When you gave the six-pack to Mr. Echeverria, you  
5     knew who was in the number 2 slot and you knew who the suspect  
6     was that you were interested in information about; correct?

7           A     Correct.

8           Q     When you gave the survey to Ms. Angles, you knew who  
9     was in the number 2 spot and you knew who the suspect was that  
10    you were interested in getting information about; correct?

11          A     The six-pack, you mean?

12          Q     Yes.

13          A     Yes, that's correct.

14          Q     I'm sorry if I misspoke.

15          MR. CLAUS: I'll pass the witness, Your Honor.

16          THE COURT: Redirect?

17                   REDIRECT EXAMINATION OF SCOTT KAVON

18          BY MR. LEXIS:

19           Q     Officer, you stated that often during these six-pack  
20    photo lineups, the victims sometimes don't pick anybody.

21           A     That's correct, yes.

22           Q     And that was when you personally were conducting  
23    those six-pack lineups?

24           A     Yes, many times.

1 MR. LEXIS: Nothing further, Your Honor.

2 THE COURT: Anything else, Mr. Claus?

3 MR. CLAUS: No, Your Honor.

4 THE COURT: Any questions from the jury?

5 Thank you. Sir, we appreciate your time. Have a  
6 very nice afternoon. Congratulations on your retirement.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Your next witness.

9 MR. PALAL: Your Honor, at this time, the State rests.

10 THE COURT: Before you rest, can you please come up to  
11 the clerk and make sure that all of the exhibits you think  
12 are in evidence are actually in evidence.

13 MR. PALAL: Prior to and this witness testifying, the  
14 State has reviewed the exhibits. All the evidence that we  
15 think is in appears to be in.

16 THE COURT: Thank you.

17 MR. PALAL: Thank you.

18 THE COURT: Is there any additional evidence the  
19 Defense would like to present at this time?

20 MR. CLAUS: No, Your Honor.

21 THE COURT: Counsel, is there any reason not to  
22 proceed to jury instructions?

23 MR. CLAUS: No, Your Honor.

24 MR. PALAL: No, Your Honor.

1           THE COURT:   Okay.   Kevin, do you have jury  
2   instructions for the jury?

3           THE BAILIFF:   Yes, Judge.

4           THE COURT:   Ladies and gentlemen, the marshal's now  
5   handing out to you some jury instructions.   I'm about to  
6   instruct you upon the laws that apply in this case.   I  
7   would like to instruct you orally, without reading to you;  
8   however, these instructions are of such importance that it  
9   is necessary for me to read to you the carefully prepared  
10   written instructions.

11           As you will see, as you get your copies, the  
12   instructions are long and some are quite complicated.   If  
13   they are not especially clear when I read them to you,  
14   please keep in mind that when you go to the jury room, you  
15   have your own set.   And as Counsel, in their final  
16   arguments, address the application of the facts to the  
17   law, you may make notes on the instructions to assist you  
18   in your deliberations.

19           Instructions to the jury:   Instruction number  
20   one.   Members of the jury, it is now my duty as judge to  
21   instruct you in the law that applies to this case.   It is  
22   your duty as jurors to follow these instructions and to  
23   apply the rules of law to the facts as you find them from  
24   the evidence.



1           You must not be concerned with the list of any  
2       rule of law stated in these instructions, regardless of  
3       any opinion you may have as to what the law ought to be.  
4       It would be a violation of your oath to base a verdict  
5       upon any other view of the law than that given in the  
6       instructions of the Court.

7           Instruction number two: If in these instructions  
8       any rule, direction or idea is repeated or stated in  
9       different ways, no emphasis thereon is intended by me and  
10      none may be inferred by you. For that reason, you are not  
11      to single out any certain sentence or any individual point  
12      or instruction and ignore the others, but you are to  
13      consider all the instructions as a whole and regard each  
14      in the light of all the others. The order in which the  
15      instructions are given has no significance as to the  
16      relative importance.

17          Instruction number three: And indictment is but  
18      a formal method of accusing a person of a crime and is not  
19      of itself any evidence of his guilt. In this case, it is  
20      charged in an amended indictment that the Defendant,  
21      Kenny Splond, AKA Kenya Splond committed the crimes of  
22      conspiracy to commit robbery, burglary while in possession  
23      of a firearm, robbery with use of a firearm, and  
24      possession of stolen property.

1           It is the duty of the jury to apply the rules of  
2   law contained in these instructions to the facts of the  
3   case and determine whether or not the Defendant is guilty  
4   of one or more of the offenses charged.

5           Count one, conspiracy to commit robbery.  
6   Defendant Kenny Splond, AKA Kenya Splond and  
7   co-conspirator Kelly Aaron Chapman did on or about  
8   February 2nd, 2014, did meet with each other and, between  
9   themselves and each of them with the other, willfully,  
10   unlawfully, and feloniously conspire with each other to  
11   commit a robbery by the Defendant committing the acts as  
12   set forth in count 2 and 3.

13           Said acts will be incorporated by this reference  
14   as those fully set forth herein.

15           Count two, burglary while in possession of a  
16   firearm. Defendants Kenny Splond, AKA Kenya Splond, and  
17   co-conspirator Kelly Aaron Chapman did then and there  
18   willfully, unlawfully, and feloniously enter with intent  
19   to commit robbery that certain building occupied by  
20   Star Mart, located at 5001 North Rainbow, Las Vegas,  
21   Clark County, Nevada.

22           Said Defendant did possess and/or gain possession  
23   of a firearm during the possession of the -- commission of  
24   the crime and/or before leaving the structure to wit, one,

1 by directly committing the crime and/or, two, by aiding  
2 and abetting in the commission of this crime with the  
3 intent that this crime be committed by providing counsel  
4 and/or encouragement and by entering into a course of  
5 conduct whereby Defendant Kenny Splond, AKA Kenya Splond,  
6 entered Star Mart, located at 5001 North Rainbow  
7 Boulevard, Las Vegas, Clark County, Nevada, with a firearm  
8 and demanded money and/or cigarettes and/or gum from  
9 Brittany Slathar and took cigarettes and/or gum while  
10 co-conspirator Kelly Chapman provided Defendant,  
11 Kenny Splond, AKA Kenya Splond, transportation to the  
12 Star Mart prior to the robbery and/or acted as a getaway  
13 driver and/or lookout and both Defendants fled the scene  
14 together and/or, three, pursuant to a conspiracy to commit  
15 this crime.

16 Count three, robbery with use of a deadly weapon.  
17 Defendants Kenny Splond, AKA Kenya Splond, and  
18 co-conspirator Kelly Aaron Chapman did then and there  
19 willfully, unlawfully, and feloniously take personal  
20 property, to wit cigarettes and gum on the person of  
21 Brittany Slathar or in her presence by means of force or  
22 violence or fear of injury to and without the consent and  
23 against the will of Brittany Slathar with the use of a  
24 deadly weapon, to wit a handgun, to wit by, one, directly

1 committing this crime and/or, two, by aiding and abetting  
2 in the commission of this crime with the intent that this  
3 crime be committed by providing counsel and/or  
4 encouragement and by entering into a course of conduct  
5 whereby Defendant Kenya Splond entered a Star Mart,  
6 located at 5001 North Rainbow Boulevard, Las Vegas,  
7 Clark County, Nevada, with a firearm and demanded money  
8 and/or cigarettes and/or gum from Brittany Slathar and  
9 took cigarettes and/or gum while co-conspirator Kelly  
10 Chapman provided Defendant Kenny Splond, AKA Kenya Splond,  
11 transportation to the Star Mart prior to the robbery  
12 and/or acted as the getaway driver and/or lookout and both  
13 Defendants fled the scene together and/or, three, pursuant  
14 to a conspiracy to commit this crime.

15 Count four, possession of stolen property.  
16 Defendant Kenny Splond, AKA Kenya Splond, did willfully,  
17 unlawfully, and feloniously, for his own gain posses  
18 property wrongfully taken from Jeffrey Bruce Haberman, to  
19 wit colt 38 revolver, serial number 941609, which  
20 Defendant knew or had reason to believe had been stolen.

21 Count five, burglary while in possession of a  
22 firearm. Defendant Kenny Splond, AKA Kenya Splond, did on  
23 or about January 22, 2014, then and there willfully,  
24 unlawfully, and feloniously enter with intent to commit

1 robbery that certain building occupied by  
2 Samuel Echeverria, located at 4343 North Rancho Drive,  
3 Apartment Number 104, Las Vegas, Clark County, Nevada.  
4 Said Defendant did possess and/or gain possession of a  
5 firearm during the commission of the crime and/or before  
6 leaving the structure.

7 Count six, robbery with use of a deadly weapon.  
8 Defendant Kenny Splond, AKA Kenya Splond, did on or about  
9 January 22, 2014, willfully, unlawfully, and feloniously  
10 take personal property, to wit lawful money in the  
11 United States from the person of Samuel Echeverria or in  
12 his presence by means of force or violence or fear of  
13 injury to without the consentient and against the will of  
14 Samuel Echeverria with the use of a deadly weapon, to wit  
15 a handgun.

16 Count seven, burglary while in possession of a  
17 firearm. Defendant Kenny Splond, AKA Kenya Splond, did on  
18 or about January 28, 2014, then and there willfully,  
19 unlawfully, and feloniously enter with intent to commit  
20 robbery that certain building occupied by Graciela Angles,  
21 located at 6663 Smoke Ranch Road, Las Vegas, Clark County,  
22 Nevada. Said Defendant did possess and/or gain possession  
23 of a firearm during the commission of the crime and/or  
24 before leaving the structure.

1           Now to eight, robbery with use of a deadly  
2       weapon. Defendant Kenny Splond, AKA Kenya Splond, did on  
3       or about January 28, 2014, willfully, unlawfully, and  
4       feloniously take personal property, to wit lawful money of  
5       the United States, from the person of Graciela Angles or  
6       in her presence by means of force or violence or fear of  
7       injury to and without the consent and against the will of  
8       Graciela Angles with the use of a deadly weapon, to wit a  
9       handgun.

10           It is the duty of the jury to apply the rules of  
11       law contained in these instructions, the facts of the  
12       case, and determine whether or not the State has met its  
13       burden beyond a reasonable doubt as to whether any  
14       Defendant is guilty of any of the offenses charged.

15           Each charge and the evidence pertaining to it  
16       should be considered separately. The fact that you may  
17       find the Defendant guilty or not guilty as to one of the  
18       offenses charged should not control your verdict as to any  
19       other offense charged.

20           Instruction number four: To constitute the crime  
21       charged, there must exist a union or joint operation of an  
22       act forbidden by law and an intent to do the act. The  
23       intent with which an act is done as shown by the facts and  
24       circumstances surrounding the case. Do not confuse intent

1 with motive. Motive is what prompts a person to act.  
2 Intent refers only to the state of the mind with which the  
3 act is done.

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

9 Instruction number five: In your deliberations  
10 as to whether the State has met its burden beyond a  
11 reasonable doubt, the subject of penalty or punishment is  
12 not to be discussed or considered by you and should in no  
13 way influence your verdict.

14 Instruction number six: You are here to  
15 determine whether the State of Nevada has met its burden  
16 of proof as to the Defendant from the evidence in the  
17 case. You are not called upon to return a verdict as to  
18 any other person other than the named Defendant in this  
19 matter. So if the evidence in the case convinces you  
20 beyond a reasonable doubt of the guilt of the Defendant,  
21 you should so find, even though you may believe one or  
22 more persons are also guilty.

23 Instruction number seven: The evidence which you  
24 are to consider in this case consists of the testimony of

1 the witnesses, the exhibits, and any facts admitted or  
2 agreed to by counsel. There are two types of evidence,  
3 direct and circumstantial.

4 Direct evidence is the testimony of a person who  
5 claims to have personal knowledge of the commission of the  
6 crime which has been charged, such as an eye witness.

7 Circumstantial evidence is the proof of a chain of facts  
8 and circumstances which tend to show whether the Defendant  
9 is guilty or not guilty.

10 The law makes no distinction between the weight  
11 to be given either direct or circumstantial evidence.  
12 Therefore, all of the evidence in the case, including the  
13 circumstantial evidence, should be considered by you in  
14 arriving at your verdict.

15 It is up to you to determine the weight to be  
16 given any evidence. Statements, arguments, and opinions  
17 of counsel are not evidence in the case. However, if the  
18 attorneys stipulate to the existence of a fact, you must  
19 accept the stipulation as evidence and regard that fact as  
20 proved.

21 You must not speculate to be true any insinuation  
22 suggested by a question asked a witness. A question is  
23 not evidence and may be considered only as it supplies  
24 meaning to the answer.



1           You must disregard any evidence to which an  
2       objection was sustained by the Court and any evidence  
3       ordered stricken by the Court. Anything you may have seen  
4       or heard outside the courtroom is not evidence and must  
5       also be disregarded.

6           Instruction number eight: The credibility or  
7       believability of a witness should be determined by his  
8       manner upon the stand, his relationship to the parties,  
9       his fears, motives, interests, or feelings, his  
10      opportunity to have observed the manner to which he  
11      testified, the reasonableness of his statements and the  
12      strength or weakness of his recollections.

13          If you believe that a witness has lied about any  
14      material fact in the case, you may disregard the entire  
15      testimony of that witness or any portion of his testimony  
16      which is not proved by other evidence.

17          Instruction number nine: The Defendant is  
18      presumed innocent unless the contrary is proved. This  
19      presumption places upon the State the burden of proving  
20      beyond a reasonable doubt every element of the crime  
21      charged and that the Defendant is the person who committed  
22      the offense or offenses.

23          A reasonable doubt is one based on reason. It is  
24      not mere possible doubt, but is such a doubt as would

1        govern or control of person in the more weighty affairs of  
2        life. If the minds of the jurors, after the entire  
3        comparison and consideration of all the evidence, are in  
4        such a condition that they can say they feel an abiding  
5        conviction of the truth of the charge, there is not a  
6        reasonable doubt.

7                Doubt to be reasonable must be actual, not mere  
8        possibility or speculation. If you have a reasonable  
9        doubt as to the guilt of the Defendant, the Defendant is  
10        entitled to a verdict of not guilty.

11               Instruction number ten: It is a constitutional  
12        right of the Defendant at a criminal trial that he may not  
13        be compelled to testify. Thus, the decision as to whether  
14        he should testify is left to the Defendant on the advice  
15        and Counsel of his attorney.

16               You must not draw any inference of guilt from the  
17        fact that he does not testify or should this fact be  
18        discussed by you or enter into your deliberations in any  
19        way.

20               Instruction number 11: Every person who by day  
21        or night enters any building with the specific intent to  
22        commit robbery therein is guilty of burglary.

23               Robbery is defined in the instructions that  
24        follow: It is not necessary that the State prove the

1 Defendant actually committed a crime inside the building  
2 after he entered in order for you to find him guilty of  
3 burglary. The essence of the crime of burglary is the  
4 unlawful entry, with criminal intent, to commit one or  
5 more of the enumerated crimes.

6 Consent to enter is not a defense to the crime of  
7 burglary, so long as it is shown that the entry was made  
8 with the specific intent to commit one or more of the  
9 enumerated crimes therein. Force or a breaking in is not  
10 an element of the crime.

11 Instruction number 12: Every person who in the  
12 commission of a burglary commits any other crime may be  
13 prosecuted for each crime separately.

14 Instruction number 13: Every person who commits  
15 the crime of burglary, who has in his possession or gains  
16 possession of any firearm or deadly weapon at any time  
17 during the commission of the crime, at any time before  
18 leaving the structure or upon leaving the structure, is  
19 guilty of burglary while in possession of a deadly weapon.

20 Instruction number 14: You are instructed that  
21 if you find a defendant guilty of burglary, you must also  
22 determine whether or not a deadly weapon was used in the  
23 commission of this crime.

24 Instruction number 15: Deadly weapon means any

1 instrument, which if used in the ordinary manner  
2 contemplated by its design and construction, will or is  
3 likely to cause substantial bodily harm or death. Any  
4 weapon, device, instrument, material or substance, which  
5 under the circumstances in which it was used attempted to  
6 be used, or threatened to be used is readily capable of  
7 causing substantial bodily harm or death.

8 You are instructed that a firearm is a deadly  
9 weapon.

10 Instruction number 16: In order to use a deadly  
11 weapon, there need not be conduct which actually produces  
12 harm, but only conduct which produces a fear of harm or  
13 force by means of a display of the deadly weapon in aiding  
14 the commission of the crime.

15 The State is not required to have recovered the  
16 deadly weapon used in an alleged crime or to produce the  
17 deadly weapon in court or trial to establish that a deadly  
18 weapon was used in the commission of the crime.

19 Instruction number 17: Any person who conspires  
20 to commit robbery is guilty of conspiracy to commit  
21 robbery.

22 Instruction number 18: Robbery is the unlawful  
23 taking of personal property from the person of another or  
24 in his presence, against his will, by means of force or

1 violence or fear of injury, immediate or future, to his  
2 person or property or the person or property of a member  
3 of his family or of anyone in his company at the time of  
4 the robbery.

5 Such force or fear must be used to, one, obtain  
6 or retain possession of the property, two, to prevent or  
7 over come resistance to the taking of the property, or,  
8 three, to facilitate escape with the property.

9 In any case, the degree of force is immaterial if  
10 used to compel acquiescence to the taking of or escaping  
11 with the property. Such taking constitutes robbery  
12 whenever it appears that although the taking was fully  
13 completed without the knowledge of the person from whom  
14 taking, such knowledge was prevented by the use of force  
15 or fear.

16 The value of property or money taken is not an  
17 element of the crime of robbery. And it is only necessary  
18 that the State prove the taking of some property or money.

19 Personal property is in the presence of a person  
20 in respect to robbery when it is within the person's  
21 reach, inspection, observation or control and the person  
22 could, if not prevented by intimidation or threat of  
23 violence, retain possession of the property.

24 Instruction number 19: You are instructed that

1 if you find the Defendant guilty of robbery, you must also  
2 determine whether or not a deadly weapon was used in the  
3 commission of this crime.

4 Instruction number 20: Conspiracy is an  
5 agreement of mutual understanding between two or more  
6 persons to commit a crime. To be guilty of conspiracy, a  
7 Defendant must intend to commit or to aid in the  
8 commission of the specific crime agreed to. The crime was  
9 the agreement to do something unlawful. It does not  
10 matter whether it was successful or not.

11 It is not necessary in proving a conspiracy to  
12 show a meeting of the alleged conspirators or the making  
13 of an express or formal agreement. The formation and  
14 existence of a conspiracy may be inferred from all  
15 circumstances tending to show the common intent and may be  
16 proved in the same way as any other fact may be proved,  
17 either by direct testimony of the fact or by  
18 circumstantial evidence or by both direct and  
19 circumstantial evidence.

20 A conspiracy to commit a crime does not end upon  
21 the completion of the crime. The conspiracy continues  
22 until the co-conspirators have successfully gotten away  
23 and concealed the crime. However, in order to find the  
24 Defendant criminally liable for acts of other conspirator,

1       pursuant to a conspiracy, the crimes of burglary while in  
2       possession of a deadly weapon, you must find the Defendant  
3       possessed specific intent to commit that specific crime.

4               Instruction number 21: Absent an agreement to  
5       cooperate in achieving the purpose of a conspiracy, mere  
6       knowledge of and acquiescence in or approval of that  
7       purpose does not make one a party to a conspiracy.

8               Instruction number 22: Evidence was introduced  
9       by the State of other crimes that the Defendant is not  
10      charged with. Evidence that someone committed a burglary  
11      at the home of Mr. Haberman was not received and may not  
12      be considered by you to prove that the Defendant had any  
13      involvement in that burglary.

14              Such information was received and may be  
15      considered by you only for the limited purpose of proving  
16      the weapon was stolen. That information cannot be used by  
17      you in determining the guilt of the Defendant in this  
18      case. You must weigh this evidence in the same manner as  
19      you do all other evidence in the case.

20              Instruction number 23: Any person who possesses  
21      a stolen firearm and either knows the firearm is stolen or  
22      possesses the firearm under such circumstances as should  
23      have caused a reasonable person to know the firearm was  
24      stolen, is guilty of possession of stolen property.

1           Instruction number 24: Your verdict must be  
2 unanimous as to its charge. You do not have to be  
3 unanimous on the principle of criminal liability. It is  
4 sufficient that each of you find beyond a reasonable doubt  
5 the Defendant committed the charged crime.

6           Instruction number 25: The flight of a person  
7 after the commission of a crime is not sufficient in  
8 itself to establish guilt. However, if flight is proved,  
9 it is circumstantial evidence in determining guilt or  
10 innocence.

11           Before considering flight, however, you must be  
12 convinced that the Defendant was the person who fled the  
13 scene of the crime. The essence of flight embodies the  
14 idea of deliberately going away with consciousness of  
15 guilt and for the purpose of avoiding apprehension or  
16 prosecution. The weight to which such circumstance is  
17 entitled is a matter for the jury to determine.

18           Instruction number 26: A witness who has special  
19 knowledge, skill, experience, training, or education in a  
20 particular science, profession, or occupation is an expert  
21 witness. An expert witness may give his or her opinion as  
22 to any manner in which he or she is skilled.

23           You should consider such expert opinion and weigh  
24 the reasons, if any, given for it. You are not bound,



**IN THE SUPREME COURT OF THE STATE OF NEVADA**

---

**No. 72545**

---

**KENYA SPLOND**  
Appellant,

vs.

**STATE OF NEVADA**  
Respondent.

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Appeal from a Judgment of Conviction  
Eighth Judicial District Court, Clark County  
The Honorable Elizabeth Gonzalez, District Court

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**APPENDIX VOL 2**

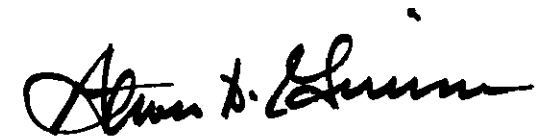
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Transcript of Resetting Trial.....	AA-000371-AA-000379
Transcript of Status Check.....	AA-000380-AA-000387
Transcript of Jury Trial Day 1.....	AA-000388-AA-000456
Transcript of Jury Trial Day 2.....	AA-000457-AA-000500



CLERK OF THE COURT

1 RTRAN

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

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vs.

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12

KENYA SPLOND,  
AKA KENNY SPLOND

13

14

Defendant.

15

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
MONDAY, JULY 14, 2014

16

17

**TRANSCRIPT OF PROCEEDINGS**  
**STATUS CHECK: POSSIBLE NEGOTIATIONS**

18

19

APPEARANCES:

20

For the State:

21

WILLIAM DIXON, ESQ.  
Deputy District Attorney

22

For the Defendant:

23

NOT PRESENT

24

25

RECORDED BY: JILL JACOBY, COURT RECORDER

1 MONDAY, JULY 14, 2014 AT 9:02 A.M.

2  
3 THE COURT: C296374, Kenny Splond.

4 When is the codefendant's trial set?

5 MR. DIXON: I can give you the codefendant's name, if you could please look  
6 it up, Your Honor.

7 I just got a text from the deputy in charge of this case, and she's in  
8 court this morning, the codefendant is Kellie Chapman, K-E-L-L-I-E.

9 THE COURT: I have the chief clerk here, she'll tell me.

10 THE CLERK: Jury trial is -- or calendar call is August 13<sup>th</sup>, and the jury trial is  
11 August 18<sup>th</sup>.

12 THE COURT: All right. We'll have a status check on Wednesday to make  
13 sure those dates are good with Mr. late Frank Kocka.

14 THE CLERK: That will be July 16<sup>th</sup> 8:00 a.m.

15 MR. DIXON: Thank you, Your Honor.

16 [Proceeding concluded at 9:02 a.m.]

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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

23 

24 Gina Villani  
25 Court Recorder

DISTRICT COURT  
CLARK COUNTY, NEVADA

DEPT. VIII

**TRANSCRIPT OF PROCEEDINGS**  
**STATUS CHECK: TRIAL DATE**

NOT PRESENT

AA000253

1 WEDNESDAY, JULY 16, 2014 AT 9:50 A.M.

2  
3 THE COURT: Did we ever get ahold of Kocka?

4 THE MARSHAL: I made three calls, got the message machine all three  
5 times. And I got ahold of him Monday to be here. He came in the court.

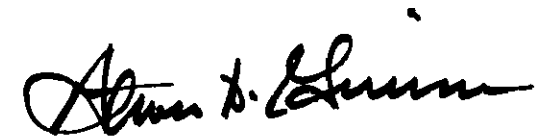
6 THE COURT: Trial date stands on Mr. Splond.

7 [Proceeding concluded at 9:50 a.m.]  
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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

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24 Gina Villani  
25 Court Recorder



CLERK OF THE COURT

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11  
12 KENYA SPLOND,  
13 AKA KENNY SPLOND  
KELLIE ERIN CHAPMAN,

14 Defendants.

CASE NO. C296374

DEPT. VIII

15 BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
16 WEDNESDAY, AUGUST 13, 2014

17 **TRANSCRIPT OF PROCEEDINGS**  
18 **CALENDAR CALL**

19 APPEARANCES:

20 For the State:

TIERRA JONES, ESQ.  
Deputy District Attorney

21  
22 For the Defendant Kenya Splond:

FRANK KOCKA, ESQ.

23 For the Defendant Kellie Erin Chapman:

ROY NELSON, ESQ.

24  
25 RECORDED BY: JILL JACOBY, COURT RECORDER



1 WEDNESDAY, AUGUST 13, 2014 AT 8:33 A.M.

2  
3 THE COURT: C296374, Kenya Splond.

4 MR. KOCKA: Good morning, Your Honor.

5 THE COURT: Hey.

6 MR. KOCKA: Good to see you.

7 THE COURT: Good to see you.

8 What are you doing?

9 MR. KOCKA: What am I doing, Judge?

10 THE COURT: You're not ready for trial?

11 MR. KOCKA: No, Judge. I spoke to Ms. Lexis yesterday -- I believe also the  
12 codefendant's been picked up, and Mr. Nelson is on that case as well. He's in trial  
13 right now. I've got the Banditos (phonetic) trial coming up in Department 2 that we  
14 are gearing up for.

15 And at this point, I spoke to Ms. Lexis, there is an offer outstanding  
16 that -- although their offer is not really all that great. We're going to be asking for a  
17 continuance in this case. If you want to set it for status check negotiation and reset  
18 the trial.

19 THE COURT: When do you want it back on?

20 MR. KOCKA: 30 days.

21 THE COURT: 30 days, okay.

22 THE CLERK: September 8<sup>th</sup> at 8:00 a.m.

23 MR. KOCKA: Thank you, Judge.

24 THE COURT: Thanks.

25 THE CLERK: And then we'll set trial at that time.

1 MS. JONES: And you said the trial is vacated?

2 MR. KOCKA: Trial is vacated?

3 THE COURT: Trial dates vacated.

4 MR. KOCKA: Thank you, Judge.

5 [Matter trailed at 8:34 a.m.]

6 [Matter recalled at 9:13 a.m.]

7 THE COURT: How about C296374, Kellie Chapman.

8 MR. NELSON: She's present in custody, in the back, Your Honor.

9 THE COURT: Are you ready to go to trial?

10 MR. NELSON: I'm not, Judge. I got set in Judge Herndon already for next

11 week on an invoked. I need to file a motion to request for bail.

12 It's my understanding the codefendant got set over for 30 days; is that

13 correct?

14 MS. JONES: That's correct, 9-8.

15 THE COURT: Why are we split apart?

16 MS. JONES: You heard it because Mr. Kocka was here, Judge.

17 THE COURT: Oh.

18 MR. NELSON: If we can have the same date?

19 THE COURT: That's fine.

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1 MR. NELSON: I think I can have it negotiated and done by then.

2 THE COURT: All right.

3 THE CLERK: September 8<sup>th</sup> at 8:00 a.m.

4 THE COURT: Thanks.

5 MR. NELSON: Thank you.

6 [Proceeding concluded at 9:14 a.m.]

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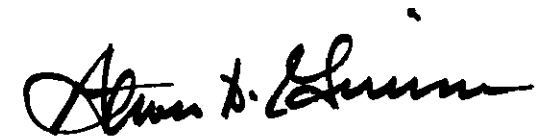
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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

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24 \_\_\_\_\_  
Gina Villani  
Court Recorder

25



CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

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vs.

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12

KENYA SPLOND,  
AKA KENNY SPLOND

13

KELLIE ERIN CHAPMAN,

14

Defendants.

15

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

16

MONDAY, SEPTEMBER 8, 2014

17

**TRANSCRIPT OF PROCEEDINGS**  
**STATUS CHECK: NEGOTIATIONS**

18

19

APPEARANCES:

20

For the State:

MARC DIGIACOMO, ESQ.  
Chief Deputy District Attorney

21

22

For the Defendant Kenya Splond:

FRANK KOCKA, ESQ.

23

For the Defendant Kellie Erin Chapman:

Roy Nelson, ESQ.

24

25

RECORDED BY: JILL JACOBY, COURT RECORDER

1 MONDAY, SEPTEMBER 8, 2014 AT 8:26 A.M.

2  
3 THE COURT: C296374, Kellie Chapman.

4 Don't we need Kocka here on Splond?

5 MR. DIGIACOMO: I don't know if it's Kocka or Hendron. But we need --

6 THE COURT: I show Kocka on the calendar.

7 [Colloquy between Court and Clerk]

8 MR. DIGIACOMO: I know that Mr. Hendron took over many of Kocka's track  
9 cases. So if it's a track appointment, Mr. Hendron may be showing up on it.

10 THE COURT: Kocka isn't a track attorney here though.

11 MR. DIGIACOMO: Okay.

12 THE COURT: So we have a new track attorney, or he's a track attorney in  
13 the other --

14 MR. DIGIACOMO: I don't remember which department. He's in one of the  
15 two departments. It may be the other department, Judge.

16 THE COURT: All right.

17 [Colloquy between Court and Clerk]

18 THE COURT: Do you have Kocka's cell number?

19 THE MARSHAL: Yes.

20 THE COURT: Call him. Tell him I'd call him, but I'm busy.

21 [Matter trailed at 8:28 a.m.]

22 [Matter recalled at 8:44 a.m.]

23 THE COURT: C296374, Kenya Splond.

24 MR. KOCKA: Good morning, Judge. This is on status check negotiations.  
25 My understanding is is that Ms. Lexis just returned, and Ms. Trippiedi just brought

1 Mr. Splond up through the grand jury on another case. I think the indictment just  
2 came down about two weeks ago. As of this date, I have not received an offer from  
3 either one of them, this was on status check. So if you want to kick it a week, I'll see  
4 if Ms. Lexis is done with her vacation, and then Ms. Trippiedi can get together and  
5 maybe we can get something done.

6 THE COURT: All right. Pass it another week.

7 MR. KOCKA: Thank you, Judge.

8 THE COURT: Thanks.

9 THE CLERK: September 15<sup>th</sup> at 8:00 a.m.

10 [Colloquy between Court and Clerk]

11 MR. DIGIACOMO: Judge, is this the same representations for the  
12 codefendant Ms. Chapman as well? I know Mr. Nelson has --

13 THE COURT: We'll find out. We'll find out. He's -- let's finish -- he's working  
14 the Dickens case, the Dickens out of the case.

15 [Matter trailed at 8:45 a.m.]

16 [Matter recalled at 8:55 a.m.]

17 THE COURT: C296374, Kellie Chapman. It's set for September 15<sup>th</sup> at  
18 8 o'clock. It's a status check.

19 Was she charged in that same indictment?

20 ///

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MR. NELSON: I don't believe so.


THE COURT: The new one, okay.

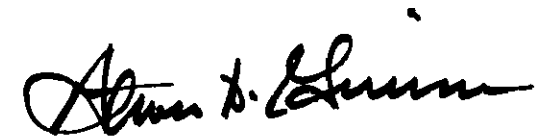
MR. NELSON: Thank you, Your Honor.

THE COURT: We can set a trial then. Thanks.

[Proceeding concluded at 8:55 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual recording in the above-entitled case to the best of my ability.

  
\_\_\_\_\_  
Gina Villani  
Court Recorder



CLERK OF THE COURT

1 RTRAN  
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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11  
12 KENYA SPLOND,  
13 AKA KENNY SPLOND  
KELLIE ERIN CHAPMAN,

14 Defendants.

CASE NO. C296374

DEPT. VIII

15 BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
16 MONDAY, SEPTEMBER 15, 2014

17 **TRANSCRIPT OF PROCEEDINGS**  
18 **STATUS CHECK: NEGOTIATIONS**

19 APPEARANCES:

20 For the State:

AGNES LEXIS, ESQ.  
Deputy District Attorney

21  
22 For the Defendant Kenya Splond:

FRANK KOCKA, ESQ.

23 For the Defendant Kellie Erin Chapman:

ROY NELSON, ESQ.

24  
25 RECORDED BY: JILL JACOBY, COURT RECORDER



1 MONDAY, SEPTEMBER 15, 2014 AT 8:28 A.M.

2  
3 THE COURT: C296374, Kellie Chapman.

4 Have you got ahold of Kocka yet?

5 THE MARSHAL: I put two calls in. I got his answer machine.

6 THE COURT: All right.

7 MR. NELSON: Judge, his client was indicted on new charges. My client was  
8 not. We think we -- Ms. Lexis and I have talked this morning. Her dad's been  
9 present at every single court appearance as well. We think we're close to an offer.

10 THE COURT: Okay.

11 MR. NELSON: And so I'd ask for two weeks as a status check, if that's okay  
12 with the State?

13 MS. LEXIS: Yes, it is, Your Honor.

14 And just for the record, I had previously conveyed an offer to Mr. Kocka  
15 regarding the codefendant Mr. Splond --

16 THE COURT: Splond's not on. So let's not talk about that without an  
17 attorney present.

18 MS. LEXIS: All right.

19 THE COURT: Let's just talk about Chapman.

20 MS. LEXIS: Okay.

21 THE COURT: Two weeks okay?

22 MS. LEXIS: Two weeks is okay.

23 THE COURT: All right. Two weeks.

24 THE CLERK: September 29<sup>th</sup> at 8:00 a.m.

25 THE COURT: And then we'll get Kocka here.

1 MS. LEXIS: Okay.

2 [Matter trailed at 8:29 a.m.]

3 [Matter recalled at 8:49 a.m.]

4 THE COURT: C296374, Kenya Splond.

5 MR. KOCKA: Good morning, Judge.

6 THE COURT: Hey.

7 MR. KOCKA: Oh, it's you.

8 THE COURT: This is time for probably a negotiation, but he got picked up on

9 a new case, an indicted.

10 MR. KOCKA: Oh, yeah, he didn't get picked. It's ever since he's been here,

11 Judge.

12 THE COURT: Oh, he's been here, okay.

13 MR. KOCKA: They're just dragging their heels indicting him.

14 THE COURT: They got him indicted.

15 MR. KOCKA: Yeah, I know.

16 MS. LEXIS: I did convey an offer, Your Honor, previously which involved both

17 cases while the second case was still in Justice Court. I can reconvey that offer. All

18 though I know Mr. Kocka did not like it very much, so.

19 MR. KOCKA: Ms. Trippiedi has the other case, Judge. Maybe I'll talk to her

20 and see if I can get a better deal.

21 THE COURT: If you want me to pass it a week or two? What do you want to

22 do?


23 MR. KOCKA: Why don't we go two, Judge? I know we've got a calendar call

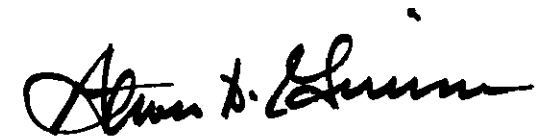
24 date set, and I'm trying to see if Ms. Lexis here might somehow soften up.

25 THE COURT: I don't show a calendar call day.

1 MR. KOCKA: You don't?  
2 THE COURT: Not typed on here.  
3 MR. KOCKA: I show -- Oh, you know it's in Department 12 we have the  
4 calendar call, Judge.  
5 THE COURT: All right.  
6 MR. KOCKA: That's the new case for the indictment.  
7 THE COURT: Two weeks?  
8 MR. KOCKA: Two weeks sounds good.  
9 THE COURT: All right.  
10 THE CLERK: October 1<sup>st</sup> at 8:00 a.m.  
11 MR. KOCKA: 10-1-14. I'm going to get the offer, Judge.  
12 [Proceeding concluded at 8:50 a.m.]

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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

23   
24 Gina Villani  
25 Court Recorder



CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

KENYA SPLOND,  
AKA KENNY SPLOND

Defendant.

CASE NO. C296374

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
WEDNESDAY, OCTOBER 1, 2014

**TRANSCRIPT OF PROCEEDINGS**  
**STATUS CHECK: NEGOTIATIONS**

APPEARANCES:

For the State:

TIERRA JONES, ESQ.  
Deputy District Attorney

For the Defendant:

FRANK KOCKA, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

1 WEDNESDAY, OCTOBER 1, 2014 AT 8:41 A.M.

2  
3 THE COURT: C296374, Kenya Splond.

4 MR. KOCKA: We just need to set the trial date, Judge

5 THE COURT: All right. It's not negotiated?

6 MR. KOCKA: No, Judge. And he has a trial date currently set in District  
7 Court, Department 12, for May 12<sup>th</sup>, so -- or excuse me March 12<sup>th</sup>. So this is not  
8 negotiated. You just need to set a trial date here.

9 THE COURT: All right.

10 THE CLERK: Calendar call would be May 20<sup>th</sup> at 8:00 a.m. Trial is May 26<sup>th</sup>  
11 at 9:30.

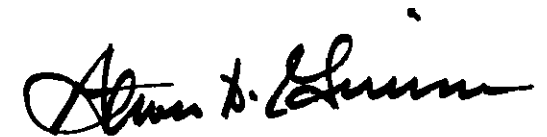
12 THE COURT: Thanks.

13 MR. KOCKA: Thank you.

14 [Proceeding concluded at 8:42 a.m.]

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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

23   
24 Gina Villani  
25 Court Recorder



CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

KENYA SPLOND,  
AKA KENNY SPLOND

Defendant.

CASE NO. C296374  
C300105

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
WEDNESDAY, MARCH 18, 2015

**TRANSCRIPT OF PROCEEDINGS**  
**STATE'S MOTION TO CONSOLIDATE**

APPEARANCES:

For the State:

HAGAR TRIPPIEDI, ESQ.  
Deputy District Attorney

For the Defendant:

FRANK KOCKA, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

1 WEDNESDAY, MARCH 18, 2015 AT 8:44 A.M.

2  
3 THE COURT: C296374, Kenya Splond.

4 MR. KOCKA: Good morning, Your Honor.

5 THE COURT: I was waiting to call you and you --

6 MR. KOCKA: I've already been called, your most efficient staff. I mean, Tom  
7 is just incredible, Judge. It was 8:01 and a half --

8 THE COURT: Don't.

9 MR. KOCKA: -- when he called me.

10 THE COURT: We've been together longer than most people have been  
11 married.

12 MR. KOCKA: That's what he was just telling me.

13 THE COURT: Years.

14 MR. KOCKA: Yeah, I know. Are you paying him combat pay yet or --

15 THE COURT: I get hazardous pay for that.

16 MR. KOCKA: Really.

17 THE COURT: He's the best.

18 MR. KOCKA: He is the best, Judge.

19 THE COURT: Best in the courthouse.

20 MR. KOCKA: You know what, Judge?

21 THE COURT: All right.

22 MR. KOCKA: Judge, you should thank him.

23 THE COURT: Thank you, Thomas.

24 MR. KOCKA: There you go.

25 THE COURT: He had a great trip this week.

1 MR. KOCKA: Did he? Where did he go?

2 THE COURT: Right over -- right there, he tripped on that cord.

3 MR. KOCKA: If I had a drumstick, I'd give you a roll, Judge.

4 THE COURT: Yeah, bada boom.

5 What about Splond?

6 MR. KOCKA: No opposition. Well, you should be -- I should be standing over

7 here, huh? Yeah, you know, I just had this uneasy feeling when I was standing. I

8 didn't know why and now I do. I was standing at the wrong table.

9 Judge, I have no opposition on the motion.

10 THE COURT: Consolidate. That means they're bringing it to me.

11 MR. KOCKA: So we can sit here and put everything in front of you because I

12 feel more comfortable in front of you, Judge.

13 THE COURT: Ha, ha, ha. All right. Bring Mr. Splond's case C300105 -- did

14 you talk to the other judge?

15 MR. KOCKA: Yeah.

16 THE COURT: And it's okay with them --

17 MR. KOCKA: Yeah.

18 THE COURT: -- them to get out of work?

19 MR. KOCKA: They love giving their work to you, Judge.

20 THE COURT: They all do.

21 MR. KOCKA: They do.

22 THE COURT: They do.

23 MR. KOCKA: Yeah.

24 THE COURT: Okay. We need a status check --

25 MR. KOCKA: Because you're the second hardest working judge in this



1 building.

2 THE COURT: We need a status check?

3 MR. KOCKA: Yeah.

4 THE COURT: When?

5 MR. KOCKA: 30 days.

6 THE COURT: 30 days.

7 MR. KOCKA: Ms. Botelho's on it, maybe we should go 45 days.

8 MS. TRIPPIEDI: And I'll have the amended info filed with the charges from  
9 the other case on that date.

10 THE COURT: Okay.

11 MR. KOCKA: Judge, maybe we should go 45. Ms. Botelho's working the  
12 case; it always takes her a little bit longer.

13 THE COURT: Okay. I can turn around, you can whack him, and I wouldn't  
14 see it, then it wouldn't be in my presence.

15 MS. TRIPPIEDI: Your Honor, actually I will --

16 MS. HEAP: I'll do it.

17 THE COURT: And then you can prosecute him.

18 MS. TRIPPIEDI: -- I'll be filing -- I'm going to be filing the amended info with  
19 the new charges probably this week.

20 THE COURT: Okay.

21 MS. TRIPPIEDI: So we can just keep the calendar call day as is.

22 THE COURT: Do you have all the discovery in the other case?

23 MR. KOCKA: I've got everything, Judge.

24 THE COURT: Okay. So, we're just -- Okay, cool.

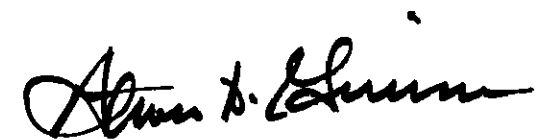
25 MR. KOCKA: We're either going to resolve this or I'll be filing motions, Judge.

1 THE COURT: Okay.  
2 MS. TRIPPIEDI: We can take it off calendar.  
3 THE COURT: The trial is currently set for May 26<sup>th</sup>. We don't need to change  
4 that?  
5 MS. TRIPPIEDI: We don't need to change that. We can just take it off  
6 calendar.  
7 MR. KOCKA: We're good.  
8 THE COURT: Okay.  
9 MR. KOCKA: All right.  
10 THE COURT: Thanks.  
11 MS. TRIPPIEDI: Thank you.  
12 THE CLERK: And your name, please?  
13 MS. TRIPPIEDI: My name is Hagar Trippiedi, Bar No. 10114.  
14 COURT: And the other one is C300105 is Kenny Splond, not Kenya.

15 [Proceeding concluded at 8:46 a.m.]  
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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

23   
24 Gina Villani  
25 Court Recorder



CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

KENYA SPLOND,  
AKA KENNY SPLOND

Defendant.

CASE NO. C296374

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
WEDNESDAY, APRIL 8, 2015

**TRANSCRIPT OF PROCEEDINGS**  
**STATE'S REQUEST: TO FILE AN AMENDED INDICTMENT**

APPEARANCES:

For the State:

TALEEN PANDUKHT, ESQ.  
CHIEF Deputy District Attorney

For the Defendant:

NOT PRESENT

RECORDED BY: JILL JACOBY, COURT RECORDER

1 WEDNESDAY, APRIL 8, 2015 AT 10:05 A.M.

2  
3 THE COURT: C296374, Kenya Splond.

4 File the amended indictment so you don't lose it.

5 MS. PANDUKHT: I can still file it, yes.

6 THE COURT: Yeah.

7 And we'll continue this Monday to get Mr. Kocka back here.

8 MS. PANDUKHT: So both of those cases are back on Monday?

9 THE COURT: Yes.

10 MS. PANDUKHT: Conveniently I will be too.

11 THE CORRECTIONS OFFICER: What date is that, please?

12 THE CLERK: April 13<sup>th</sup>.

13 THE CORRECTIONS OFFICER: Thank you.

14 THE COURT: Thanks.

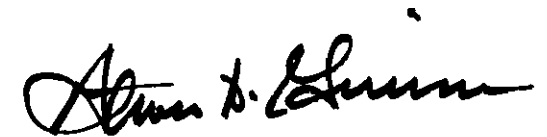
15 MS. PANDUKHT: Thank you.

16 [Proceeding concluded at 10:09 a.m.]

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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

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24 Gina Villani  
25 Court Recorder



CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

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vs.

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12

KENNY SPLOND,  
AKA KENYA SPLOND

13

14

Defendant.

15

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
WEDNESDAY, APRIL 15, 2015

16

17

**TRANSCRIPT OF PROCEEDINGS**  
**STATUS CHECK: STATUS OF CASE**

18

19

APPEARANCES:

20

For the State:

21

WILLIAM FLINN, ESQ.  
Chief Deputy District Attorney

22

23

For the Defendant:

24

FRANK KOCKA, ESQ.

25

RECORDED BY: JILL JACOBY, COURT RECORDER

1 WEDNESDAY, APRIL 15, 2015 AT 8:30 A.M.

2  
3 THE COURT: C296374, Kenny Splond, and 300105.

4 MR. KOCKA: Good morning, Judge.

5 THE COURT: Hey.

6 MR. KOCKA: Nice haircut.

7 THE COURT: You too.

8 MR. KOCKA: Thanks.

9 THE COURT: Both of them.

10 MR. KOCKA: Yeah, got a little extra polish on it this morning.

11 THE COURT: All right. This is status check on the case to see that you're  
12 prepared for trial. Are you ready for trial?

13 MR. KOCKA: Judge, I have been trying to get the DA handling this case,  
14 Ms. Botelho to get us an offer. I spoke to Ms. Trippiedi last time, Hagar, she was  
15 supposed to get with Ms. -- I guess she's Ms. Lexis now, and I can't get either DA to  
16 give me an offer on the case whatsoever.

17 THE COURT: Well, they may not offer anything, but you have to go over and  
18 look at their file. Have you had an opportunity --

19 MR. KOCKA: I've got the file. We're good on it. I'm trying to get some kind  
20 of --

21 THE COURT: You're ready for trial?

22 MR. KOCKA: Judge, I -- this is not a case that I'm going to be prepared to try.  
23 I'm trying to get an offer on it. What I've informed the district attorney on numerous  
24 occasions is I have not been retained to do the trial on this case, but I am more than  
25 happy to stay on this case and get it negotiated if they give me an offer. I've told

1 both of them, Ms. Trippiedi and Ms. Lexis, that if you don't give me an offer, and I've  
2 told them this about --

3 THE COURT: Right.

4 MR. KOCKA: -- it the last time we were here. I am going to have to withdraw.

5 THE COURT: They will bring an offer on Monday. I expect them here on  
6 Monday. Okay. Make sure they know that.

7 MR. FLINN: I will. Ms. Lexis is in a trial.

8 THE COURT: Them or Steve -- them or Steve Wolfson. And I'll call Wolfson.  
9 I do have his cell.

10 MR. FLINN: That's fine, Your Honor.

11 THE COURT: I would explain to him it's important that they be here Monday.  
12 Thank you.

13 THE CLERK: April 20<sup>th</sup>.

14 MR. KOCKA: Thank you, Judge.

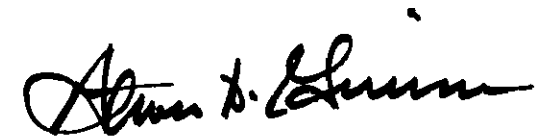
15 THE COURT: Thanks.

16 [Proceeding concluded at 8:32 a.m.]  
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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

23 

24 Gina Villani  
25 Court Recorder



CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

KENNY SPLOND,  
AKA KENYA SPLOND

Defendant.

CASE NO. C296374  
C300105  
DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
MONDAY, APRIL 20, 2015

**TRANSCRIPT OF PROCEEDINGS**  
**STATUS CHECK: STATUS OF CASE**

APPEARANCES:

For the State:

HAGAR TRIPPIEDI, ESQ.  
Deputy District Attorney

For the Defendant:

FRANK KOCKA, ESQ.

NADIA HOJJAT, ESQ.  
Deputy Public Defender

RECORDED BY: JILL JACOBY, COURT RECORDER



1 MONDAY, APRIL 20, 2015 AT 8:56 A.M.

2  
3 THE COURT: C296374, C300105, Kenny Splond.

4 MR. KOCKA: Good morning, Judge.

5 THE COURT: Hey.

6 Is this case resolved?

7 MR. KOCKA: It is not, Your Honor. I did receive an offer on the case; the  
8 offer is not acceptable to my client. So at this point, Your Honor, I don't know if you  
9 want me to do it formally in writing or you'll accept it orally, but I'm going to have to  
10 get him over to the PD's office because he wants to go to trial.

11 THE COURT: All right. Mr. Kocka's allowed to withdraw. We'll set it down --  
12 public defender is appointed, give them the file. It will be on for Wednesday for a  
13 status check on conflict.

14 MR. KOCKA: Thank you, Judge.

15 MS. HOJJAT: And, Your Honor, this was my case down in Justice Court. I  
16 remember at the time there was no conflict, but I've seem to recall that they were  
17 actually going to file on the uncharged codefendant.

18 MR. KOCKA: They did.

19 MS. HOJJAT: If they filed on the uncharged codefendant, I believe, my office  
20 had represented her. Because I remember I already ran this conflict check. So that  
21 should be a conflict. I'll go back and double check it, but that's my recollection with  
22 this case.

23 THE COURT: See you Wednesday.

24 THE CLERK: April 22<sup>nd</sup>.

25 MS. HOJJAT: Thank you.

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THE CLERK: State, your name, please.


MS. TRIPPIEDI: Hagar Trippiedi, Bar No. 10114.

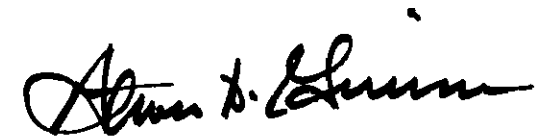
MR. KOCKA: Thank you, Judge.

THE COURT: Yep.

[Proceeding concluded at 8:58 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual recording in the above-entitled case to the best of my ability.

  
\_\_\_\_\_  
Gina Villani  
Court Recorder



CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

KENNY SPLOND,  
AKA KENYA SPLOND

Defendant.

CASE NO. C296374  
C300105

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
WEDNESDAY, APRIL 22, 2015

**TRANSCRIPT OF PROCEEDINGS**  
**CONFIRMATION OF COUNSEL**

APPEARANCES:

For the State:

JOHN GIORDANI, ESQ.  
Deputy District Attorney

For the Defendant:

FIKISHA MILLER, ESQ.  
Deputy Public Defender

T. AUGUSTAS CLAUS, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

1  
2 WEDNESDAY, APRIL 22, 2015 AT 9:03 A.M.

3  
4 THE COURT: C296374, Kenny Splond, and C300105.

5 Mr. Splond, I got a text that the PD can't handle it.

6 Step over that way so I can talk to Mr. Claus who's going to represent  
7 Mr. Splond.

8 MS. MILLER: Your Honor, we do have the discovery to turn over to  
9 Mr. Claus.

10 THE COURT: All right. I'm going to have to ask that you represent him.  
11 Kocka came in to try to negotiate, it wasn't negotiated, PD looked there's a conflict,  
12 so.

13 Trial's currently set May 26<sup>th</sup>. I don't think you can be ready by May  
14 26<sup>th</sup>.

15 MR. CLAUS: No, but -- no, we can just reset it now, Your Honor.

16 THE COURT: All right. Let's reset the trial date to the next stack.

17 THE CLERK: August 24<sup>th</sup> at 9:30. Calendar call is August 19<sup>th</sup> 8:00 a.m.

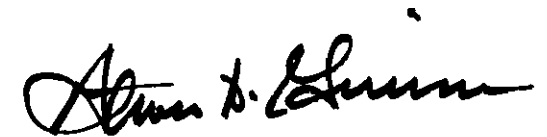
18 THE COURT: And a 30 day status check on making sure that you're  
19 prepared for trial and you have all that you need for trial.

20 THE CLERK: July 29<sup>th</sup> at 8:00 a.m.

21 [Proceeding concluded at 9:04 a.m.]

22 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
23 recording in the above-entitled case to the best of my ability.

24   
Gina Villani  
25 Court Recorder



CLERK OF THE COURT

1 RTRAN  
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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11  
12 KENNY SPLOND,  
13 AKA KENYA SPLOND

14 Defendant.

CASE NO. C296374  
C300105

DEPT. VIII

15 BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
16 WEDNESDAY, JULY 29, 2015

17 **TRANSCRIPT OF PROCEEDINGS**  
18 **STATUS CHECK: TRIAL READINESS**

19 APPEARANCES:

20 For the State:

TIERRA JONES, ESQ.  
Deputy District Attorney

22 For the Defendant:

T. AUGUSTAS CLAUS, ESQ.

23  
24  
25 RECORDED BY: PATTI SLATTERY, COURT RECORDER

1 WEDNESDAY, JULY 29, 2015 AT 10:02 A.M.

2  
3 THE COURT: C296374 and C300105, Kenny Splond. Your attorney is in  
4 another department, we'll put this back on for -- this is on status check to see if he's  
5 trial ready for the August 24<sup>th</sup> trial anyway. So put it on August 12<sup>th</sup>.

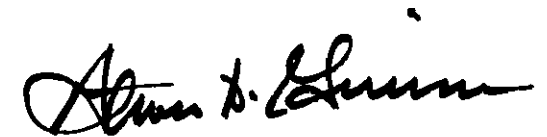
6 THE CLERK: August 12<sup>th</sup> at 8:00 a.m.

7 THE COURT: Thank you. And then call Claus's office and tell him that we  
8 continued it to the 12<sup>th</sup>.

9 [Proceeding concluded at 10:02 a.m.]

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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

23   
24 Gina Villani  
25 Court Recorder



CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

KENNY SPLOND,  
AKA KENYA SPLOND

Defendant.

CASE NO. C296374  
C300105

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
WEDNESDAY, AUGUST 12, 2015

**TRANSCRIPT OF PROCEEDINGS**  
**STATUS CHECK: TRIAL READINESS**

APPEARANCES:

For the State:

MEGAN THOMSON, ESQ.  
Chief Deputy District Attorney

For the Defendant:

T. AUGUSTAS CLAUS, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

1 WEDNESDAY, AUGUST 12, 2015 AT 8:28 A.M.

2  
3 THE COURT: C296374 -- stay here -- Kenny Splond. This is status check on  
4 trial readiness.

5 MR. CLAUS: Yes, Your Honor, I apologize. Your Honor, I have some --

6 THE COURT: And his other case C300105.

7 MR. CLAUS: Your Honor, I'm not sure why we're having this now; in part,  
8 because I've got another case set for a 60-day invocation.

9 THE COURT: Well, do you have -- have you got the discovery?

10 MR. CLAUS: No, Your Honor, I have not.

11 THE COURT: Why have you not gotten the discovery?

12 MR. CLAUS: I've gotten some of the discovery. I'm sorry, let me be  
13 particular. I haven't conducted a file review with the State to confirm that I have --

14 THE COURT: Okay. You should have done that by today, that's what this is  
15 on for, is a status check to see that you've done that.

16 MR. CLAUS: I was misinformed, Your Honor.

17 THE COURT: All right. All right. Trial dates for August 24<sup>th</sup>. So at calendar  
18 call, I guess, we'll have this trial readiness. You better be ready because now you  
19 can't tell me that -- you tell me you haven't got the discovery.

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MR. CLAUS: I will --


THE COURT: You better have been over there.

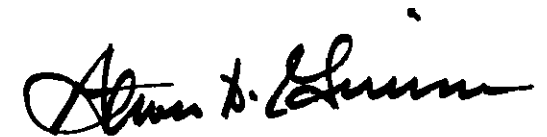
MR. CLAUS: Double some efforts, Your honor.

THE COURT: All right.

[Proceeding concluded at 8:29 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual recording in the above-entitled case to the best of my ability.

  
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Gina Villani  
Court Recorder



CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

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vs.

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KENNY SPLOND,  
AKA KENYA SPLOND

13

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Defendant.

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BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
WEDNESDAY, AUGUST 19, 2015

16

**TRANSCRIPT OF PROCEEDINGS**  
**CALENDAR CALL**

17

18

19

APPEARANCES:

20

For the State:

21

AGNES LEXIS, ESQ.  
Deputy District Attorney

22

For the Defendant:

23

T. AUGUSTAS CLAUS, ESQ.

24

25

RECORDED BY: JILL JACOBY, COURT RECORDER

1 WEDNESDAY, AUGUST 19, 2015 AT 9:22 A.M.

2  
3 THE COURT: Are you ready on Splond?

4 THE STATE: Yes, Your Honor.

5 THE COURT: Is this the one you're announcing ready for trial on?

6 MR. CLAUS: No, Your Honor. I'll be announcing ready on Anthony  
7 Humphrey, Your Honor.

8 Mr. Splond hasn't invoked is my understanding or at least he waived  
9 prior to my appointment on the case.

10 THE COURT: He's waived on both but.

11 [Matter trailed at 9:22 a.m.]

12 [Matter recalled at 9:25 a.m.]

13 THE COURT: C296374 and C300105, Kenny Splond.

14 MS. LEXIS: You're Honor, it should only be one case now because it was  
15 consolidated. So I have C296374 as the only case.

16 THE COURT: I have eight counts there and four counts in the other case.

17 So what do you have?

18 MS. LEXIS: All eight counts should be now under C296374.

19 THE COURT: That's the eight counts.

20 So dismiss the other one?

21 MS. LEXIS: Right now, yes.

22 THE COURT: Okay. So you're in trail, we'll have to continue this.

23 MR. CLAUS: I've explained that to Mr. Splond the last time we were here.

24 THE COURT: All right.

25 THE CLERK: Trial is February 1<sup>st</sup> at 9:30. Calendar call is January 26<sup>th</sup>.

1 MS. LEXIS: Your Honor, do we have anything sooner than next year since  
2 he's in custody and it's an old case?  
3 THE CLERK: January 4<sup>th</sup>?  
4 MS. LEXIS: We're eligible for overflow.  
5 THE COURT: January 4<sup>th</sup>.  
6 MS. LEXIS: Even if we're overflow eligible?  
7 THE COURT: The next stack. Let's put it to the end of October. We'll send it  
8 to overflow.  
9 THE CLERK: October 19<sup>th</sup> jury trial and calendar call is October 14<sup>th</sup>.  
10 MS. LEXIS: October 14<sup>th</sup> and October 19<sup>th</sup>.  
11 MR. CLAUS: And, Your Honor, just for the record I'm not sure we're overflow  
12 eligible this is three different robberies, so. Perhaps we can get it done in a week;  
13 perhaps not.  
14 THE COURT: In here you can get it done in a week.  
15 MS. LEXIS: Absolutely.  
16 MR. CLAUS: Your Honor, we've had trial before but -- let me remind you of  
17 that.  
18 THE COURT: Well, you've just got to quit yabbering and just try your case.  
19 MR. CLAUS: Well, I would except I do like getting –  
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THE COURT: Yabber, you like to yabber.

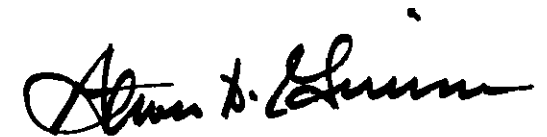
MR. CLAUS: -- not guilties and misdemeanors, Your Honor. So with that  
being said --

[Proceeding concluded at 9:27 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
recording in the above-entitled case to the best of my ability.



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Gina Villani  
Court Recorder



CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

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vs.

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12

KENNY SPLOND,  
AKA KENYA SPLOND

13

KELLIE ERIN CHAPMAN

14

Defendants.

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BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE

16

MONDAY, OCTOBER 5, 2015

17

**TRANSCRIPT OF PROCEEDINGS**  
**DEFENDANT'S MOTION TO PLACE ON CALENDAR FOR THE PURPOSE OF**  
**CONTINUING TRIAL DATE**  
**REVOCATION OF PROBATION**

18

19

20

APPEARANCES:

21

For the State:

TIERRA JONES, ESQ.  
Deputy District Attorney

22

23

For the Defendant Kenny Splond:

T. AUGUSTAS CLAUS, ESQ.

24

For the Defendant Kellie Erin Chapman:

ROY NELSON, ESQ.

25

RECORDED BY: JILL JACOBY, COURT RECORDER

1 MONDAY, OCTOBER 5, 2015 AT 8:53 A.M.

2  
3 THE COURT: C296374, Kellie Chapman.

4 MR. NELSON: She's present in custody. This is the time set for probation  
5 revocation. The officer is present. Pursuant to negotiations in a separate case  
6 she's stipulating to the probation revocation in this case without modification. She  
7 has 221 days credit for time served. I believe it's a 28 to 72 month sentence.

8 THE COURT: Okay. Go through it again, I'm sorry.

9 MS. JONES: 28 to 72, yes.

10 MR. NELSON: 28 to 72, no modification, and 221 days credit for time served.

11 THE COURT: Is that your understanding --

12 DEFENDANT CHAPMAN: Yes, it is.

13 THE COURT: -- of what's going on?

14 I put you -- and you reviewed your presentence report with your  
15 attorney, this one and the other attorney?

16 DEFENDANT CHAPMAN: Yes.

17 THE COURT: And you're satisfied that this is in your best interest?

18 DEFENDANT CHAPMAN: Yes.

19 THE COURT: Do you have any questions of your attorney before I sentence  
20 you?

21 DEFENDANT CHAPMAN: No.

22 THE COURT: Are you satisfied with Mr. Nelson?

23 DEFENDANT CHAPMAN: Yes, I am.

24 THE COURT: And his services?

25 DEFENDANT CHAPMAN: Absolutely.

1 THE COURT: I put you on probation on January 14<sup>th</sup>, 2015, sentenced you to  
2 28 to 72 months, and you haven't reported, you sort of absconded; is that right?

3 DEFENDANT CHAPMAN: Yes.

4 THE COURT: All right. And then there's a new case, and you pled to that, or  
5 about to plead to it?

6 DEFENDANT CHAPMAN: Yes.

7 THE COURT: All right. And part of that deal is you're going to be --

8 DEFENDANT CHAPMAN: Revoked.

9 THE COURT: -- revoked in this one?

10 DEFENDANT CHAPMAN: Yes.

11 THE COURT: And do you have any questions of the Court before I sentence  
12 you?

13 DEFENDANT CHAPMAN: No.

14 THE COURT: Okay. I will revoke your probation; you're sentenced to 28 to  
15 72 months in Nevada Department of Corrections.

16 With what type of credit?

17 MR. NELSON: 221 days.

18 MS. JONES: That's correct, Your Honor.

19 THE COURT: 221 days.

20 [Matter trailed at 8:55 a.m.]

21 [Matter recalled at 9:19 a.m.]

22 THE COURT: C296374, State of Nevada versus Kenny Splond.

23 MR. CLAUS: Good morning, Your Honor. Augustas Claus appearing on  
24 behalf of Mr. Splond, who is present in custody.

25 Your Honor, this is a request to reset Mr. Splond's trial date, it currently



1 overlaps with a murder trial that Judge Villani is very motivated to have go forward.

2 THE COURT: All right. Next criminal stack?

3 MR. CLAUS: When is the next criminal stack?

4 THE COURT: When is the next criminal stack after October?

5 THE CLERK: November 9<sup>th</sup>.

6 THE COURT: November.

7 MR. CLAUS: I don't think that's sufficient time, Your Honor.

8 THE COURT: December do we have --

9 THE CLERK: January 4<sup>th</sup>.

10 THE COURT: January 4<sup>th</sup>, 2016, 8 o'clock.

11 MR. CLAUS: Thank you, Your Honor.

12 MS. JONES: For trial?

13 THE COURT: No, for calendar call. The trial date then will be that Monday.

14 Okay. We actually -- Okay. I have a fill in clerk, so just be patient.

15 [Colloquy between Court and Clerk]

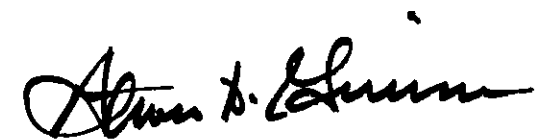
16 THE CLERK: So calendar call is December 30<sup>th</sup> at 8:00 a.m. Jury trial is  
17 January 11<sup>th</sup> at 9:30.

18 [Proceeding concluded at 9:21 a.m.]

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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

23 

24 Gina Villani  
25 Court Recorder



CLERK OF THE COURT

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

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vs.

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KENNY SPLOND,  
AKA KENYA SPLOND

13

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Defendant.

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BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
WEDNESDAY, DECEMBER 30, 2015

16

**TRANSCRIPT OF PROCEEDINGS**  
**CALENDAR CALL**

17

18

19

APPEARANCES:

20

For the State:

21

AGNES LEXIS, ESQ.  
Deputy District Attorney

22

For the Defendant:

23

AUGUSTAS CLAUS, ESQ.

24

25

RECORDED BY: JILL JACOBY, COURT RECORDER

1 WEDNESDAY, DECEMBER 30, 2015 AT 9:07 A.M.

2  
3 THE COURT: C296374, Kenny Splond.

4 MS. LEXIS: State's ready, 10 to 12 witnesses. It's been continued multiple  
5 times. He's been through three attorneys. Mr. Claus is his third.

6 MR. CLAUS: And I think, Your Honor, it's presumptive to have the calendar  
7 call this week if Baldovinos does not deal. And we have something we're talking  
8 about right now, Your Honor, but until it's put in writing, Your Honor, I may very well  
9 be in trial for that second week for Mr. Splond. So if we can continue the calendar  
10 call until next week.

11 THE COURT: Monday. Calendar call Monday.

12 THE CLERK: January 4<sup>th</sup> at 8:00 a.m.

13 [Matter trailed at 9:07 a.m.]

14 [Matter recalled at 11:04 a.m.]

15 THE COURT: C296374 Kenny Splond. We'll put it on for Monday, but we are  
16 going to go to trial on the 11<sup>th</sup>.

17 MS. JONES: Thank you, Judge.

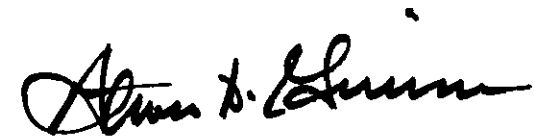
18 MR. CLAUS: I'll take it for Monday. Thank you, Your Honor.

19 [Proceeding concluded at 11:05 a.m.]

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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

23 

24 Gina Villani  
25 Court Recorder



CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

KENNY SPLOND,  
AKA KENYA SPLOND

Defendant.

CASE NO. C296374  
C300105

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
MONDAY, JANUARY 4, 2016

**TRANSCRIPT OF PROCEEDINGS**  
**CALENDAR CALL**

APPEARANCES:

For the State:

JOHN GIORDANI, ESQ.  
TIERRA JONES, ESQ.  
Deputy District Attorneys

For the Defendant Kenny Splond:

ROCHELLE NGUYEN, ESQ.

For the Defendant Kellie Erin Chapman:

ROY NELSON, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

1 MONDAY, JANUARY 4, 2016 AT 9:16 A.M.

2  
3 THE COURT: C296374, Kenny Splond. Again, Mr. Splond, you're attorney is  
4 not feeling well. We'll pass it a week.

5 THE CLERK: January 11<sup>th</sup>, 8:00 a.m.

6 THE COURT: He's not going to be able to do the trial starting tomorrow, so.  
7 We'll take care of that.

8 MS. JONES: That's next week's trial, Judge.

9 THE COURT: No, he -- wasn't he the one doing tomorrow's trial?

10 MS. JONES: No, that's Roy.

11 MS. NGUYEN: No, that's Roy.

12 THE COURT: Oh, okay.

13 MS. NGUYEN: I think Roy is here, so.

14 THE COURT: Trial is still on; starting in the morning.

15 MS. NGUYEN: Is that all, Your Honor?

16 THE COURT: Yeah, I think so.

17 MS. NGUYEN: I think so too. Thank you.

18 [Matter trailed at 9:17 a.m.]

19 [Matter recalled at 9:33 a.m.]

20 MS. JONES: And, Your Honor, can you recall the Splond matter on 14A?

21 THE COURT: Yeah. Mr. Nelson will stand in for Mr. --

22 MS. JONES: I just have one question.

23 THE COURT: C296374, Kenny Splond.

24 MS. JONES: And, Your Honor, this case is set for jury trial next week --

25 THE COURT: Roy --

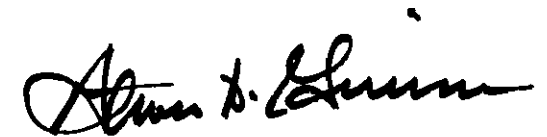
1 MS. JONES: -- are you vacating the trial date?  
2 THE COURT: I'm going to have to vacate the trial. I told you Mr. Claus has  
3 been injured.  
4 MS. JONES: Right. We just wanted to know if we could call off our  
5 witnesses.  
6 THE COURT: Yes, call off your witnesses.  
7 MS. JONES: Okay. And you'll have a status check Monday morning?  
8 THE COURT: His office said he was unable to be at court at all for the week  
9 and can't go to trial next week.  
10 MS. JONES: Okay. So vacating the trial date, status check next Monday?  
11 THE COURT: Vacating the trial date.  
12 MS. JONES: Thank you.

13 [Proceeding concluded at 9:33 a.m.]  
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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

23 

24 Gina Villani  
25 Court Recorder



CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

KENNY SPLOND,  
AKA KENYA SPLOND

Defendant.

CASE NO. C296374  
C300105

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
MONDAY, JANUARY 11, 2016

**TRANSCRIPT OF PROCEEDINGS**  
**STATUS CHECK: RESET TRIAL DATE**

APPEARANCES:

For the State:

HILARY HEAP, ESQ.  
Deputy District Attorney

For the Defendant:

AUGUSTAS CLAUS, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

1 MONDAY, JANUARY 11, 2016 AT 8:43 A.M.

2  
3 THE COURT: C296374 and C300105, Kenny Splond.

4 MR. CLAUS: Good morning, Your Honor, Augustas Claus appearing on  
5 behalf of Mr. Splond who is present in custody.

6 MS. HEAP: Your Honor, on this case Ms. Lexis is asking for the trial date as  
7 soon as possible.

8 THE COURT: When's the next criminal stack?

9 THE CLERK: January 25<sup>th</sup>.

10 THE COURT: January 25<sup>th</sup>.

11 MS. HEAP: That's in like two weeks.

12 MR. CLAUS: That's a little bit soon, Your Honor.

13 THE COURT: Well, you should have been ready before we continued it so  
14 that you could rehabilitate. Now that -- and you should have been prepared for this  
15 trial.

16 MR. CLAUS: That's absolutely true, Your Honor.

17 THE COURT: So we vacated that -- this trial date so we'll be on that stack for  
18 the 25<sup>th</sup>.

19 Is that the calendar call date or the trial date?

20 THE CLERK: That's trial date.

21 You do have one murder case.

22 THE COURT: That's all right.

23 THE CLERK: Okay. So calendar call is January 13<sup>th</sup> at 8:00 a.m. Jury trial  
24 January 25<sup>th</sup> at 9:30.

25 MS. HEAP: Can I ask just -- is that the beginning of the stack?



1 [Colloquy between Court and Clerk]

2 MS. HEAP: Is it the beginning --

3 MR. CLAUSE: We can do that because frankly, Your Honor, I've got an

4 invoked client set February 1<sup>st</sup> and a murder trial set February 8<sup>th</sup>. So if you're going

5 to try and get it to trial that quickly, it's going to have to be --

6 THE COURT: Well, no I'm trying to --

7 MS. HEAP: My concern is just subpoenaing the witnesses.

8 THE COURT: All right.

9 MS. HEAP: Can I -- Can we trail this for one moment while I ask Ms. Lexis?

10 THE COURT: No.

11 Give us the next stack. That's not -- just give me the next stack after

12 January.

13 THE CLERK: Okay. We're going to go March 2<sup>nd</sup> for calendar call at

14 8:00 a.m. March 14<sup>th</sup> Jury trial 9:30.

15 MS. HEAP: Thank you.

16 MR. CLAUS: I've got no problem with that, Your Honor. However, I do have

17 a SA case set for that week as well, just so the Court's aware.

18 THE CLERK: How long will this trial take?

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1 MR. CLAUS: Multiple burglaries, set over, I think, four or five different  
2 incidents. This would probably take better part of a week. Just given the multiplicity  
3 of locations and --

4 THE COURT: One week.

5 THE CLERK: Okay.

6 [Proceeding concluded at 8:45 a.m.]  
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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

23 

24 Gina Villani  
25 Court Recorder



1 WEDNESDAY, MARCH 2, 2016 AT 8:24 A.M.

2  
3 THE COURT: C296374, C300105 Kenny Splond.

4 MR. CLAUS: Good morning, Your Honor, Augustas Claus appearing on  
5 behalf of Mr. Splond.

6 THE COURT: Are you ready for trial?

7 MR. CLAUS: I believe we're ready to go, Your Honor.

8 THE COURT: How long will it take to try this case?

9 MS. LEXIS: It's 13 to 15 witnesses. It's the oldest case in your stack. If you  
10 keep us, we'll be done in four days, five days.

11 THE COURT: I can't. I have a victim that is in custody on a material witness  
12 on Page 5. Michael Harper's gonna go. That's number one because I have the  
13 victim in custody.

14 MS. LEXIS: Okay.

15 THE COURT: So this will go to overflow.

16 No out of state witnesses?

17 MS. LEXIS: No out of state witnesses -- or maybe one. It's our detective  
18 who's retired.

19 THE COURT: Okay. Do you have any witnesses that --

20 MR. CLAUS: Potential of perhaps two or three, Your Honor.

21 THE COURT: All right. Overflow for Friday.

22 THE CLERK: March 4<sup>th</sup> at 8:30.

23 MS. LEXIS: This is for the 14<sup>th</sup>; right, Your Honor?

24 THE COURT: This is for the 14<sup>th</sup>.

25 MS. LEXIS: So overflow --

1 MR. CLAUS: This will be -- it will be overflow for next week, Your Honor.

2 THE COURT: Yes.

3 THE CLERK: March 11<sup>th</sup> 8:30, Department 18.

4 THE COURT: Thanks.

5 MR. CLAUS: Thank you.

6 [Proceeding concluded at 8:25 a.m.]

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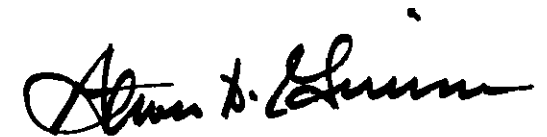
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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

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24 \_\_\_\_\_  
Gina Villani  
Court Recorder

25



CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

KENNY SPLOND  
AKA KENYA SPLOND,

Defendant.

CASE NO. C-14-296374-1

DEPT. XVIII

BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

FRIDAY, MARCH 11, 2016

**RECORDER'S TRANSCRIPT RE:  
OVERFLOW**

APPEARANCES:

For the State:

BINU G. PALAL, ESQ.  
AGNES LEXIS, ESQ.  
Deputy District Attorneys

For the Defendant:

T. AUGUSTAS CLAUS, ESQ.

RECORDED BY: MICHELLE RAMSEY, COURT RECORDER

1 FRIDAY MARCH 11, 2016

2 [Proceeding commenced at 8:31 a.m.]

3  
4 THE COURT: Let's begin on page one then. C296374 consolidated 300105  
5 issued proceeding under the lower per EDCR. The record should reflect the  
6 presence of representatives of the State, Ms. Lexis, Mr. Palal. Mr. Palal's on behalf  
7 of Mr. Splond, who's present. Per court staff and originated in Department 8, Four  
8 to five days to try, 13 to 15 witnesses. Does that remain an accurate reflection of  
trial time, gentlemen?

9 MR. PALAL: Yes, Your Honor.

10 THE COURT: And lady?

11 MR. CLAUS: Yes, Your Honor.

12 THE COURT: All right. I'm sending you to Judge Gonzales, DC 11. She's  
13 working out of 14C. She's requested a Tuesday, Tuesday, 9:30 start. All right.

14 MR. PALAL: And, Your Honor, is she ok then if it may flow over to the next  
week then?

15 THE COURT: She's got next week.

16 MR. PALAL: Okay.

17 THE COURT: You said four days and she's going to give you full days, so.

18 MR. PALAL: Okay. Oh, full days? Okay that should be fine.

19 THE COURT: I would think. Go check with her JEA, Dan Kutinac, is the JEA.  
20 I'd go up there now and make sure you're good to go.

21 MR. PALAL: All right. Thank you, Your Honor.

22 THE COURT: Mr. Splond, any questions?

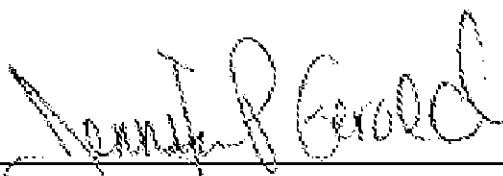
23 THE DEFENDANT: No.

24 THE COURT: All right. Very good.

25 [Proceeding concluded at 8:33 a.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

  
\_\_\_\_\_  
Jennifer P. Gerold  
Court Recorder/Transcriber



DISTRICT COURT  
CLARK COUNTY, NEVADA

Defendant.

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# Transcript of Proceedings

AA000312

1 LAS VEGAS, NEVADA, FRIDAY, MARCH 11, 2016, 9:26 A.M.

2 (Court was called to order)

3 THE COURT: So what do you guys want to know? Good  
4 morning.

5 MR. PALAL: Good morning, Judge.

6 MR. CLAUS: Good morning, Your Honor.

7 MR. PALAL: Binu Palal for the State. We just want to  
8 know what the schedule is like for your week next week so we  
9 could coordinate our witnesses and what not.

10 THE COURT: My biggest issue is who is my calendar  
11 deputy on Wednesday. You don't know who that is. That throws  
12 me sometimes off.

13 MR. PALAL: Okay.

14 THE COURT: But my plan is to start at 9:30 on Tuesday  
15 and Thursday.

16 MR. PALAL: Mm-hmm.

17 THE COURT: And to start as close to 10:15 as possible  
18 on Wednesday.

19 MR. PALAL: Mm-hmm.

20 THE COURT: And on Friday we should be able to start  
21 at 9:00.

22 MR. PALAL: All right. Great, thank you very much,  
23 Your Honor.

24 THE COURT: Does that get you guys done this week, or  
25 that week?

1 MR. PALAL: I think it should.

2 THE COURT: Because Dan says you think you're four to  
3 five days.

4 MR. PALAL: Right. Right. But I think --

5 MR. CLAUS: Yeah.

6 MR. PALAL: I don't know. Gus, what do you think?

7 MR. CLAUS: Well, I was going to ask if we could have  
8 the beginnig of your Monday just to be sure, Your Honor. But my  
9 understanding was is that we're not going to have the ability of  
10 flowing into the week after.

11 THE COURT: Probably not.

12 MR. CLAUS: So --

13 THE COURT: I have --

14 MR. CLAUS: [Unintelligible] jury selection on Monday?

15 THE COURT: I can't, because I have a preliminary  
16 injunction hearing, and I've got a settlement conference.

17 MR. CLAUS: Okay.

18 THE COURT: Love to, can't.

19 MR. PALAL: All right. Your Honor, I think we should  
20 -- we should -- we should be able to get this done by the --  
21 give this to a jury by the end of business on Friday.

22 THE COURT: Okay. Because I have -- you know, if you  
23 want to try and start at 9:00 o'clock on Tuesday, I only have a  
24 few things on my calendar and I start my civil at 8:30. The  
25 problem is I've got -- is Wednesday is really the problem,

1 because I have 30 something things on.

2 MR. PALAL: All right. I'll talk to the calendar

3 deputy and tell that person to go fast.

4 THE COURT: It never helps.

5 MR. PALAL: Your Honor, if you're willing to at least

6 try to get us a start at 9:00 on Tuesday, I'm sure both parties

7 will be there at 9:00 o'clock on Tuesday, and if we're able to

8 go we can go.

9 THE COURT: Is that okay? Gus?

10 MR. CLAUS: Yeah. That sounds fine, Your Honor.

11 THE COURT: Okay.

12 MR. CLAUS: Thanks.

13 THE COURT: Well, Dan, tell jury we'd like a jury at

14 9:00 and we'll have Kevin --

15 MR. KUTINAC: Should I go 9:00, because they're going

16 to have to mark exhibits? Should I go 9:30?

17 THE COURT: When are you guys going to mark your

18 exhibits and things?

19 MR. PALAL: We can do that Tuesday morning. I mean,

20 we can get there early Tuesday morning.

21 THE COURT: Dulce said she'd love to see you Tuesday

22 morning.

23 MR. PALAL: Okay. That's fine, Your Honor.

24 THE COURT: Anything else?

25 MR. PALAL: Nothing.

1           THE COURT: So I need any jury instructions you  
2 actually think you're going use, email them to Dan in Word  
3 format, and then Gus, as things go through the trial if you want  
4 to add to that let me know. I'll try and have a working set  
5 done for you Wednesday at lunch time.

6           MR. PALAL: Oh, great. Thank you.

7           MR. CLAUS: Thank you, Your Honor.

8           MR. PALAL: Thank you, Your Honor.

9           THE COURT: Okay? But if you guys give me any that  
10 you think you want just send them over and Dan will work it out.  
11 Do you know how to get ahold of Dan?

12          MR. PALAL: You know what can I get Dan's email?

13          MR. KUTINAC: I have your cards. I'll send you each  
14 an email together so that you'll have my email address.

15          MR. PALAL: Thank you.

16          MR. CLAUS: Thank you.

17          THE COURT: Anything else?

18          MR. PALAL: Nothing from the State.

19          MR. CLAUS: I think that's it, Your Honor.

20          THE COURT: All right. We'll see you on Tuesday  
21 morning. Sorry I couldn't start on Monday, but I've got a  
22 preliminary injunction hearing and a settlement conference both.

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MR. PALAL: No problem, Your Honor.  
MR. CLAUS: That's all right, Your Honor.  
THE COURT: Okay. 'Bye.  
MR. CLAUS: Thank you.  
MR. PALAL: 'Bye.

THE PROCEEDINGS CONCLUDED AT 9:30 A.M.

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

  
\_\_\_\_\_  
JILL HAWKINS  
Court Recorder

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
vs.  
KENYA SPLOND,  
Defendant.

CASE NO. C-14-296374-1  
DEPT. XI

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**TUESDAY, MARCH 15, 2016**

**TRANSCRIPT OF PROCEEDINGS RE:**

**JURY TRIAL - DAY 1**

APPEARANCES :

For the State:

BINU G. PALAL  
CHAD N. LEXIS  
Deputy District Attorneys

For the Defendant: T. AUGUSTUS CLAUS, ESQ.

RECORDED BY: JILL HAWKINS, COURT RECORDER

1                   **LAS VEGAS, NEVADA; TUESDAY, MARCH 15, 2016**

2                   [Proceeding commenced at 8:56 a.m.]

3                   [Outside the presence of the prospective jury panel]

4           THE COURT:     Good morning, sir.   How are you today?

5           THE DEFENDANT:   I'm all right.   How about yourself?

6           THE COURT:     I am well.   I was just explaining to counsel, I  
7 have an unusual way that, if you agree, I will select the alternate  
8 jurors.   I have found that sometimes the alternates who are at the  
9 end of the list, you know, the last two people --

10          THE DEFENDANT:   Right.

11          THE COURT:     -- who are the alternates, they don't always pay  
12 attention during the trial.   So when I first became a Judge, we  
13 went to a different system where we use this, if you agree, by  
14 drawing out of a coffee can two numbers for seats that would be  
15 jurors.   The problem is if we use that method, you will not know  
16 who those alternates are until your counsel has executed all of the  
17 peremptory challenges because those seats will float as to the  
18 person remaining after the execution of the peremptory challenge.

19                 So I'm going to give you a minute to talk to your  
20 attorney about whether you want to use the old-fashioned method of  
21 having the last four people be the group we use to pick the two  
22 alternates or whether we have them float and then counsel will use  
23 that additional peremptory challenge across the entire group.   So  
24 it's four for the standard jurors and one for the alternates.   And  
25



1 if you use the method with the poker chips, you get five across the  
2 whole group; otherwise, you have four across the group of twenty  
3 and one across the group of four. Okay? So I'll let you guys  
4 figure that out.

5 MR. CLAUS: But we don't know that number ahead of time. We  
6 draw that alternate number.

7 THE COURT: He draws it. I have two -- I have all the poker  
8 chips here. If you want to do that, he can pull the two chips and  
9 he'll tell us what numbers they are by drawing the two chips.

10 MR. CLAUS: Okay.

11 THE COURT: But he gets to pick, not anybody else.

12 [Pause in the proceedings]

13 THE COURT: Mr. Claus, have you had a chance to review the  
14 State's proposed exhibits 1 through 35?

15 MR. CLAUS: I have not, Your Honor.

16 THE COURT: Okay. Then I won't ask you the next question.  
17 One of the things that annoys me to no end is speaking objection,  
18 so let's try and avoid them. State your legal basis.

19 MR. CLAUS: Are we on the record?

20 THE COURT: We're on.

21 MR. CLAUS: I agree with that wholeheartedly, Your Honor.

22 THE COURT: So just give me your legal basis. Any more  
23 argument I'll have you come up to the bench while I'll excuse the  
24 jurors. I try and make a record of everything we talk about at the  
25

1 bench conferences, but don't rely on me for your record of what  
2 should be made. If you have other things, we'll make them at the  
3 next break, but I'll try to keep my list of things I think are  
4 important. Please remember you're in charge of what you think is  
5 important because my perspective is slightly different than yours.  
6 Anybody need any dailies that you know of at this point?

7 MR. CLAUS: No, Your Honor.

8 MR. PALAL: No, Your Honor.

9 THE COURT: If you're going to use a PowerPoint as part of  
10 any of your arguments or presentations with witnesses, the Clerk  
11 will need a copy. She prefers it on a portable electronic storage  
12 device or printed. She will mark it as a Court's Exhibit. Jurors  
13 are allowed to ask questions. Please be aware that I'm going to  
14 call you up to the bench to review the questions whenever the  
15 jurors submit them. Hopefully the Marshal's gathering them pretty  
16 quickly so as you guys have a break between direct and cross or  
17 redirect, I'll have you guys come up, review them, make a  
18 determination if you have any objections. Anybody have any  
19 questions since you're not my regular guys about how I do things?

21 MR. PALAL: None that I can think of, Your Honor.

22 MR. CLAUS: I imagine you'll throw your gavel at me if I do  
23 anything wrong.

24 THE COURT: I won't yell at you. I'll ask you to approach.  
25 I let both sides make a brief factual statement to the voir dire

1 before we start so when we ask them if they know any of the  
2 witnesses or know anything about the case, they have a frame of  
3 reference to answer those questions. So if you'd like to make a  
4 statement, you can, you don't have to. If you don't want to, I  
5 won't ask you in front of the jurors. You think you want to talk  
6 them?

7 MR. CLAUS: For voir dire, Your Honor?

8 THE COURT: Just a little bit about who your witnesses might  
9 be and why you think whatever it was the State was wrong -- said  
10 was wrong.

11 MR. CLAUS: Oh. No, I wouldn't want to do any argument at  
12 that point.

13 THE COURT: Okay. So then I'll ask you -- it's not really an  
14 argument, it's just a factual statement. So I'll ask you then just  
15 introduce your client.

16 MR. CLAUS: Okay.

17 THE COURT: Okay. And yourself. And you have the list of  
18 witnesses so you can read it to them?

19 MR. PALAL: Yes, Your Honor.

20 THE COURT: Okay. Any questions for me?

21 MR. CLAUS: No, Your Honor.

22 MR. PALAL: No, Your Honor.

23 THE COURT: Really?

24 MR. PALAL: I'm sure we'll find something along the way.  
25

1 [Recess taken from 9:02 a.m. to 9:06 a.m.]

2 MR. CLAUS: Your Honor, just for the sake of the record, I  
3 don't believe there was ever an offer extended --

4 THE COURT: Oh, well then let me canvass. Did the State ever  
5 make an offer?

6 MR. CLAUS: To me as Counsel, Your Honor, I want to clarify  
7 that.

8 THE COURT: I'm just asking.

9 MR. CLAUS: There were two prior counsels here.

10 MR. PALAL: Are we on the record?

11 THE COURT: Absolutely.

12 MR. PALAL: Okay. Yes to previous counsel, Mr. Kocka, an  
13 offer was made. It was to plead guilty to two robberies with use  
14 of a deadly weapon, full right to argue including for consecutive  
15 time. I think that was, though, some time ago and to be perfectly  
16 frank with the Court, Mr. Lexis and I are relatively new on this  
17 case so we don't have that time line --

18 THE COURT: Well, let me ask Mr. Splond, did you get that  
19 offer, sir, earlier?

20 THE DEFENDANT: No.

21 THE COURT: No?

22 THE DEFENDANT: No.

23 THE COURT: Then I'll let you take to Mr. Claus about it.  
24 Remember, the decision is always yours, not anybody else's.  
25

1 MR. PALAL: And, Your Honor, to be clear, I believe that offer  
2 was revoked while Mr. Kocka was counsel, I think, well over a year  
3 ago.

4 THE COURT: Okay.

5 MR. PALAL: And is no longer outstanding.

6 THE COURT: So there's no current offer?

7 MR. PALAL: There's no current offer.

8 THE COURT: And when do you think that offer was made  
9 Mr. Kocka since Mr. Splond never recalls receiving it? Now, I  
10 should make a record.

11 MR. PALAL: I believe it was made in 2014, but I will have to  
12 -- I will have to confer with the original -- the deputy who made  
13 the original offer.

14 THE COURT: Okay. And when, if ever, was that offer formally  
15 withdrawn?  
16

17 MR. PALAL: I also believe in the beginning of 2015, Your  
18 Honor.

19 THE COURT: And why do you think that?

20 MR. PALAL: My communications with the original deputy which  
21 is Ms. Lexis. But I will confer --

22 THE COURT: Who?

23 MR. PALAL: Agnes Lexis. She's a deputy in our office. So  
24 she's the person who originally had this case. She's actually  
25 double set is the reason why Mr. Lexis and I --

1 THE COURT: You're here.

2 MR. PALAL: -- are handling this case.

3 THE COURT: Any relation between Mr. Lexis and Ms. Lexis?

4 MR. LEXIS: Yes, Your Honor.

5 THE COURT: Okay. I don't know her. Is she -- who's track  
6 are you guys, usually?

7 MR. PALAL: We are usually in the Walsh -- Judge Walsh, Judge  
8 Togliatti, Judge Delaney and Judge Johnson.

9 THE COURT: Okay. So, sir, if you never got that offer from  
10 your other attorney, I apologize. They are telling me now it is  
11 withdrawn. So at this point they are not making an offer of any  
12 sort it sounds like to you. So I guess we'll just go ahead and  
13 proceed and then deal with whatever issues there may be later if  
14 there are any.

15

16 MR. CLAUS: Yeah. And I don't think there's any disagreement,  
17 Your Honor, that no offer was ever conveyed to me or conveyed to  
18 Mr. Splond.

19 MR. PALAL: That's correct.

20 MR. LEXIS: And Your Honor, according to the minutes in  
21 C296374, Department 11, on September 15th, 2014, --

22 THE COURT: Okay. I'm going, hold on, I'm not as fast as  
23 you.

24 MR. LEXIS: Okay.

25 THE COURT: And this was in front of Judge Smith that day.

1 Ms. Lexis stated she previously conveyed an offer which involved  
2 both cases; however, counsel did not like the offer. The request  
3 of Mr. Kocka, Court ordered matter continued. So there may have  
4 been some discussion about that offer because it looks like it was  
5 continued to October 1st for the same issue to be discussed. And  
6 that was again in front of Judge Smith. Mr. Kocka advised matter  
7 not resolved.

8 MR. LEXIS: That's correct, Your Honor. And according to  
9 Ms. Lexis that's when the offer was revoked and there is no offer  
10 at this time.

11 THE COURT: Okay. So now you get to decide which tie you  
12 like better.

13 After the cases were consolidated, was another offer made or  
14 was it only prior to the consolidation?

15 MR. PALAL: It was prior to the consolidation, Your Honor.

16 THE COURT: But the representation, at least from the  
17 minutes, looks like it was to both cases at the time the offer was  
18 made, prior to the consolidation.

19 MR. PALAL: That's correct.

20 THE COURT: All right. Nice gray tie.

21 MR. CLAUS: It is a nice gray tie, Your Honor, thank you for  
22 allowing us to use it.

23 THE COURT: It's not me; it's my assistant, Dan.

24 MR. CLAUS: Well thank you, Dan.

1 THE COURT: If you want to leave those items here, we  
2 frequently have people leave them and put them right there on the  
3 back of that bench. You're welcome to leave it rather than haul it  
4 back and forth. It's not a very big bag, so you won't, you know,  
5 worry about it.

6 MR. CLAUS: I appreciate it, Your Honor.

7 THE COURT: All right. So is there anything else from a  
8 housekeeping standpoint that we can do while we wait for the jurors  
9 to come upstairs?

10 MR. PALAL: I don't believe so. I believe your Court received  
11 our proposed jury instructions.

12 THE COURT: Dan says yes.

13 MR. PALAL: I don't know that there's any other outstanding  
14 issues. Mr. Claus?

15 MR. CLAUS: No. I think that's it, Your Honor.

16 THE COURT: Did you get a chance to look at the exhibits yet,  
17 Mr. Claus?

18 MR. CLAUS: No, Your Honor. May I?

19 THE COURT: Trying to use your time wisely.

20 MR. CLAUS: Thank you.

21 MR. PALAL: Are we going to choose the alternates?

22 THE COURT: Oh, let's let him finish this. So there's 1  
23 through 35. Look like all photos are DVDs.

24 MR. PALAL: Yes, Your Honor. In addition, there's some photo  
25



1 lineups as well.

2 MR. CLAUS: I previously spoken with the State, they were  
3 going to bring in the custodian of records for these, I believe.

4 MR. PALAL: Actually, we're not intending on bringing in the  
5 custodian of records. We're having the victims authenticate  
6 whatever video they can.

7 MR. CLAUS: That has some apparent limitations then.

8 THE COURT: They only have to testify that they're  
9 substantially similar to whatever it was they observed. Pretty  
10 well a standard, but yeah.

11 MR. CLAUS: I had some interesting discussions with Judge  
12 Hafen about this a couple weeks ago. In that if they don't bring  
13 in the COR and the case doesn't come in in its entirety, they  
14 sensed that the victims or the witnesses did not observe something  
15 on the tape then.

16 THE COURT: DVDs are harder than photos.

17 MR. PALAL: And, Your Honor, if we're discussing this, I have  
18 edited the videos to exclude those views that the victim could not  
19 attest to. So primarily what you'll be seeing in videos is videos  
20 in which the victim is either in and can identify themselves or has  
21 a view from where they were standing as to what was happening.

22 THE COURT: Okay. So here's what I'm going to ask you,  
23 because I'm paranoid, did you provide the edited DVDs to Mr. Claus  
24 for his review before coming today?  
25

1 MR. PALAL: I did not.

2 THE COURT: Darn.

3 MR. PALAL: I can -- I can prepare them. Send the edited --  
4 they're nothing -- there's nothing new and I haven't not spliced  
5 anything together.

6 THE COURT: Well no, but it's the edited issue. I need him  
7 to review whatever it is that you're proposing. I understand that  
8 it came from a greater population --

9 MR. PALAL: Yes.

10 THE COURT: -- and you've now edited that population --

11 MR. PALAL: Right.

12 THE COURT: -- but he's still entitled to see that edited  
13 version before I make him stipulate or object.

14 MR. PALAL: Okay. Yes, Your Honor, I'll provide that to  
15 defense counsel.

16 THE COURT: Okay.

17 [Pause in the proceedings 9:13:55 - 9:14:08 by the Court]

18 THE COURT: Okay, so you've had a chance to look photographs  
19 now. Counsel's going to get you a copy of the edited DVDs for you  
20 to look at --

21 MR. CLAUS: Court's indulgence, Your Honor.

22 THE COURT: -- whether he's either emailing them or sending  
23 them, I don't know.

24 MR. CLAUS: Thank you, Your Honor.

1 [Pause in the proceedings]

2 THE COURT: So you got a chance to look at proposed 1 through  
3 35 with the exception of the DVDs which are, I guess, being  
4 downloaded to a thumb drive as we speak.

5 MR. CLAUS: Yes, Your Honor.

6 THE COURT: Okay. Were there any that you want to state an  
7 objection to now or are we going to do them on a case-by-case basis  
8 as witness testifies?

9 MR. CLAUS: Probably on a case-by-case basis, Your Honor, but  
10 I'm looking right now at the discovery that was turned over by the  
11 State. Some of them are newish to me.

12 THE COURT: They look different to you?

13 MR. CLAUS: They do.

14 THE COURT: Okay.

15 MR. CLAUS: Let me just double check them. That might be my  
16 memory playing tricks on me.

17 [Pause in the proceedings]

18 THE COURT: Do they appear to be different? Are there  
19 differences?

20 MR. PALAL: I prefer to -- I'd prefer to deal with it now as  
21 opposed to tomorrow.

22 MR. CLAUS: Well, dealing with it now, Your Honor, is I try  
23 and keep a fairly organized folder of discovery from the State and  
24 in looking at the photos that the State's chosen to introduce or  
25

1 marked as exhibits a number of them caught my eye, primarily from  
2 the Cricket store locations, from the different event numbers.

3 THE COURT: Which would be 1 through 8?

4 MR. PALAL: Yes, Your Honor.

5 MR. CLAUS: Yes, Your Honor.

6 MR. CLAUS: It's Cricket and Metro Wireless, and I think these  
7 would have been associated with event numbers 140122-2866.

8 THE COURT: And the Metro Wireless are 1 through 15?

9 MR. CLAUS: One through 15 which would be event number --

10 THE COURT: And I'm sorry not 1 through 15, 11 through 15.

11 MR. CLAUS: -- which would be event number 140128-2214. The  
12 difficulty is, Your Honor, those, from all intents and purposes  
13 that I can find, have not been produced to me. Conversely, that  
14 puts me in a bit of a strange position because at those two  
15 locations, there were prints lifted from the glass and from the  
16 counter and from those latent print examinations which are shown in  
17 the photographs that I think Mr. Palal has --

18 THE COURT: Number 7 and 8? Proposed 7 and 8.

19 MR. CLAUS: -- that would constitute exculpatory evidence. So  
20 even though I haven't received it, Your Honor, my druthers would be  
21 give me a chance to take a closer look at that --

22 THE COURT: I'm not rushing you.

23 MR. CLAUS: -- and then I'll finish making my record tomorrow  
24 or when this becomes pertinent. And it's my understanding that  
25

1 Mr. Palal would like to do that right now. I'm a little bit  
2 hamstrung in this moment.

3 THE COURT: So wait -- let me -- did you get number 10 and 17  
4 previously in the unedited version which are the DVDs for those two  
5 locations?

6 MR. CLAUS: Let me check and make sure [indiscernible] up  
7 here.

8 THE COURT: Ten and 17 are DVDs, so they'd be the video.

9 MR. CLAUS: No I did not -- oh I'm sorry, 10 and 17 --

10 THE COURT: Are the proposed videos.

11 MR. CLAUS: -- the video and the Metro PCS for the -- yes,  
12 Your Honor, I did receive that [indiscernible] --

13 THE COURT: Okay. So we're just talking about the stills  
14 that are 1 through 8 and 11 through 15 that there's a potential  
15 issue with?

16 MR. CLAUS: Yes, Your Honor.

17 MR. PALAL: Right.

18 MR. CLAUS: These aren't stills that are taken from the video;  
19 these are stills that were captured by Metro --

20 THE COURT: Okay.

21 MR. CLAUS: -- for their investigation. As I said, Your  
22 Honor, that places me in a little bit of a pickle because the --

23 THE COURT: I'm not making you do anything yet.

24 MR. CLAUS: Yes, Your Honor.

1 THE COURT: Just making sure we have -- we understand there's  
2 an issue.

3 MR. PALAL: Right.

4 THE COURT: Okay. So did you and Mr. Splond decide how we're  
5 doing the alternates?

6 MR. CLAUS: I believe Mr. Splond would like to take a chance  
7 at drawing out his alternate, Your Honor.

8 THE COURT: Okay. Dan, will you walk over there with the --  
9 I'm going to do two alternates because I've had lots of people not  
10 showing up the second day. So, sir, pick out two, there are 1  
11 through 14 in there.

12 MR. KUTINAC: First one, number 10. Second, number 12.

13 THE COURT: So the tenth person remaining after the execution  
14 of the ten peremptory challenges will be your first alternate, and  
15 the twelfth person remaining on the list after the execution of the  
16 ten peremptory challenges will be your second alternate, sir. So  
17 you won't know who those people are until all the peremptory  
18 challenges are executed, but because you've chosen this method,  
19 your counsel gets to use a total of five peremptory challenges over  
20 that group of 24 and he can use them against anybody he wants to.  
21 Any other questions, counsel?

22 MR. LEXIS: And, Your Honor, just for the record, the previous  
23 counsel stated she gave them all to Frank Kocka, all to defense  
24 counsel present today. It's noted in the reports that there was  
25

1 pictures taken and we're giving them all to him again right now.

2 THE COURT: And if you guys Bates number like I've been  
3 telling Chris Lalli for years, this wouldn't be an issue.

4 MR. CLAUS: Fortunately, Your Honor, I do Bates number when I  
5 receive them.

6 THE COURT: I understand. The DA's office is the one who has  
7 to approve when they gave it and giving it is tough when you have  
8 Bates number.

9 MR. PALAL: Sure, Your Honor. The only -- the only -- and I  
10 understand this may present an issue, the only thing the State  
11 would ask is that we address this before we swear in the jury, so  
12 if we need a continuance as opposed to a mistrial going forward. I  
13 think if -- Mr. Claus is now aware of the issue. He's aware that  
14 -- I understand that he may need time to decide how he wants to  
15 proceed, but the State's position is if he -- the proper -- State's  
16 position is the remedy would be a continuance rather than striking  
17 the photos. And so that -- State would just ask that we decide  
18 that issue before we swear in the jury.

19 THE COURT: The actual jury as opposed to the voir dire?

20 MR. PALAL: Yeah, before jeopardy attaches.

21 MR. CLAUS: May I --

22 THE COURT: It's a fair request.

23 MR. CLAUS: It is, Your Honor. And I don't disagree. It is a  
24 fair request. Because it is exculpatory evidence, Your Honor, may  
25

1 I have a moment to speak with my client?

2 THE COURT: Well, I'm not going to make you decide right now.

3 I'll ask you at lunch.

4 MR. CLAUS: Okay.

5 THE COURT: That way you have time to talk to your client

6 about it and think about it.

7 MR. CLAUS: Okay.

8 THE COURT: I'm not forcing you to decide right now. We're

9 going to just start doing voir dire now. I'm not going to swear

10 the jury until after we've made this decision. So Kevin, have you

11 got them lined up?

12 THE MARSHAL: Yes, I have everyone.

13 THE COURT: Even 21?

14 THE MARSHAL: Yes, Judge. She is here.

15 THE COURT: All right. We had misplaced 21 for a while, she

16 has reappeared. So bring them in. The first 24 people on your

17 list will go to the box. The others will sit in the audience

18 avoiding the broken chair.

19 THE MARSHAL: Yes, Judge.

20 THE COURT: So we're going to use real badge numbers --

21 THE MARSHAL: Jurors are present.

22 THE COURT: -- which is the four digit number.

23 [In the presence of the prospective jury panel]

24 THE COURT: You can be seated, counsel. Good morning, ladies

25



1 and gentlemen. This is the time set for trial of case number  
2 C296374, State of Nevada versus Kenny Splond. The record will  
3 reflect the presence of the Defendant, his counsel and counsel for  
4 the State and all officers of the Court. Are the parties ready to  
5 proceed?

6 MR. PALAL: Yes, Your Honor.

7 MR. CLAUS: Yes, Your Honor.

8 THE COURT: Ladies and gentlemen, you are in Department 11 of  
9 the 8th Judicial District Court. My name is Elizabeth Gonzalez and  
10 I'm the presiding Judge in this Department. Good morning. Can  
11 everybody hear me? I noticed we have one person using my  
12 headphones; does anybody else have any problems hearing me? Okay.

13  
14 Let me take this opportunity to introduce the Court staff  
15 with whom you may be coming into contact during this process. Jill  
16 Hawkins is the Court Recorder. She takes everything down on a  
17 digital audio video recording system. For that reason, it's very  
18 important that if you need to respond to a question you give me the  
19 last four digits of the badge number that you have so that she can  
20 properly identify whoever it is that's speaking if she ever has to  
21 make a transcription of these proceedings.

22 Dulce Romea's the Court Clerk. She swears witnesses,  
23 keeps track of the exhibits and keeps the official record of the  
24 Court.

25 You've already met Kevin Eckhardt who's our Marshal. You

1 will have the most contact with him.

2           Standing by the rear door is my assistant, Dan Kutinac,  
3 you may also come into contact with him if you need letters for  
4 your employer or anything if you're actually chosen as a juror.

5           On behalf of the State, if you would please introduce  
6 yourself, your co-counsel, your witnesses, and make a brief factual  
7 statement about the case.

8           MR. PALAL: Thank you, Your Honor. Good morning, ladies and  
9 gentlemen. My name is Binu Palal, with me is Chad Lexis, we are  
10 deputies with the Clark County District Attorney's Office.

11           Ladies and gentlemen, in this case the State has charged  
12 the Defendant, Kenny Splond, with burglary while in possession of a  
13 firearm, and robbery with use of a firearm, and possession of  
14 stolen property.

15           Ladies and gentlemen, the allegations are that the  
16 Defendant -- that the Defendant entered into Star Mart located at  
17 5001 Rainbow on February 2nd, 2014. That he entered into -- that  
18 he entered into Metro PCS located at 6663 Smoke Ranch committing a  
19 robbery there. And that he entered into 4343 North Rancho Drive, a  
20 Cricket store, and committing a robbery in there. The State also  
21 alleges that the Defendant possessed stolen property, specifically  
22 here, a firearm owned by Jeffrey Bruce Haberman.

23           The State intends to call some of the following  
24 witnesses, but please listen to see if you know any of these  
25

1 witnesses. Samuel Echeverria, Graciela Angeles-Menez, Detective  
2 Kavon, Officer Ayala, Custodian of Records of CCDC Las Vegas  
3 Metropolitan Police Department Communications and Records Division,  
4 Kristy Holzer, Joshua Rowberry, Brittney Slather, Alisa Williams.

5           Additionally, the State may be calling Officer Brumaghin,  
6 Officer Carter, Kelly Chapman, Officer Coleman, Custodian of  
7 Records of the Nevada Department of Motor Vehicles, Custodian of  
8 Records of the Star Mart, Officer Fairweather, Officer Forson,  
9 Officer Francis, Officer Garcia, Officer Haas, Jeffrey Haberman,  
10 Officer Hoffman, Officer Kirwin, Detective Landers, Araceli, last  
11 name unknown, Officer McCray, Officer Ralyea.

12           Lastly, the State may also call the following witnesses:  
13 Crime Scene Analyst, Shawn Fletcher, Latent Print Examiner, Heather  
14 Gouldthorpe, and Crime Scene Analyst, Monte Spoor. Thank you.

15           THE COURT: Thank you. On behalf of Mr. Splond, please  
16 introduce yourself, your client, and any additional witnesses you  
17 might be calling.

18           MR. CLAUS: Good morning, ladies and gentlemen of the jury.  
19 My name is Augustas Claus, I represent Kenny Splond. In addition  
20 to the witnesses that you have heard from the State, it's possible  
21 that you may hear from Mr. Splond. You may also hear from Toby  
22 [indiscernible]. Thank you.

23           THE COURT: Thank you. Ms. Clerk, if you would please call  
24 the roll of panel of prospective jurors. Ladies and gentlemen,  
25

1 when your name is called, please answer present or here.

2 [Clerk calls roll of prospective jury panel]

3 THE COURT: Are there any members of my prospective jurors  
4 whose names were not called? If you would please stand and be  
5 sworn.

6 [Clerk swears prospective jury panel]

7 PROSPECTIVE JURY: I do [in unison].

8 THE CLERK: Please be seated.

9 THE COURT: Ladies and gentlemen, we are about to commence  
10 the jury selection process. During this process you will be asked  
11 questions bearing upon your ability to sit as fair and impartial  
12 jurors in this particular case. You'll be asked questions both by  
13 myself and by counsel. Please understand that some of the questions  
14 may seem somewhat personal. They are not intended to embarrass  
15 you, but they are necessary for the parties to make a determination  
16 as to whether you can set as a fair and impartial juror in this  
17 particular case.  
18

19 If, for some reason, you believe that the answer needs to  
20 be given in private, please let me know and we will try and  
21 accommodate your request, but it is important that we obtain  
22 truthful and honest answers so the Court and counsel can make an  
23 intelligent determination as to your capabilities to serve as a  
24 fair and impartial juror.

25 It is important you know the significance of full

1 complete and honest answers to all the questions we are about to  
2 ask you. Please do not try to hide or withhold anything which  
3 might indicate bias or prejudice by you. Should you fail to answer  
4 truthfully or if you hide or withhold anything touching upon your  
5 qualifications that fact may tend to contaminate your verdict. I'm  
6 going to conduct a brief general examination of all of you and then  
7 I'm going to focus some more detailed questions to those folks  
8 sitting in the box area.

9           At some point during the process of selection of jury,  
10 the attorneys will have the right to ask that a particular person  
11 be excused. This process is called a challenge. Please do not be  
12 offended if you are excused by one of the challenge processes. It  
13 doesn't mean that you're not qualified to sit as a juror; it just  
14 means that there's something in your background that the attorneys  
15 believe may give question as to whether you can be fair and  
16 impartial in this particular case.

17           If you wish to respond to a question, please remember I  
18 need the last four digits of your badge number and then the marshal  
19 will have a microphone so that you can be picked up on the audio  
20 video recording system. So please wait until the microphone gets  
21 to you before you give your badge number.

22           First, has anyone in my group of prospective jurors been  
23 convicted of a felony? Seeing no hands I have a universally  
24 negative response.  
25

1           Is there anyone in my group of jurors who's not a United  
2 States citizen? Seeing no hands I have a universally negative  
3 response.

4           Is there anyone who has such a sympathy, prejudice or  
5 bias relating to age, religion, race, gender, sexual orientation or  
6 national origin that they feel would affect their ability to be  
7 open-minded, fair and impartial jurors? Seeing no hands I have a  
8 universally negative -- ma'am?

9           PROSPECTIVE JUROR #0149: Badge number 149. I am not  
10 qualified because I'm not good speak English or, you know, good  
11 understanding.

12           THE COURT: Okay. Thank you for giving me your badge number.  
13 And you must have understood at least part of my response so my  
14 instructions -- so we'll get to you and may ask you some more  
15 questions in a little bit, ma'am.

16           Are any of you acquainted with the Defendant or his  
17 attorney? Seeing no hands I have a universally negative response.

18           Are any of you acquainted with either of the Deputy  
19 District Attorneys? Seeing no hands I have a universally negative  
20 response.

21           Are any of you acquainted with any of the witnesses'  
22 names who were read?

23           PROSPECTIVE JUROR #0115: Badge number 0115, I'm a police  
24 officer with the Las Vegas Metropolitan Police Department and know  
25

1 some of the witnesses that are potentially called.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR #0115: I've also worked with Deputy DA Chad  
4 Lexis on cases before.

5 THE COURT: Okay. Thank you. Anybody else recognize any of  
6 the witnesses' names who were read? Okay. This case is expected  
7 to last four days, would serving that period of time serve as an  
8 undue burden for any of you?

9 PROSPECTIVE JUROR #0088: Badge number 0088, working at SLS  
10 Hotel and Casino full-time.

11 THE COURT: Where do you work, ma'am?

12 PROSPECTIVE JUROR #0088: SLS Hotel and Casino.

13 THE COURT: And what do you do there?

14 PROSPECTIVE JUROR #0088: Food and beverage service.

15 THE COURT: And do they pay for you to serve on jury duty?

16 PROSPECTIVE JUROR #0088: No.

17 THE COURT: Okay. Have you checked with your HR Department  
18 to confirm that?

19 PROSPECTIVE JUROR #0088: No.

20 THE COURT: Okay. Why do you think they don't pay for you to  
21 be on jury duty?

22 PROSPECTIVE JUROR #0088: Because I don't know I just assumed,  
23 I guess.

24 THE COURT: Okay. At our next break, will you call them to  
25

1 check?

2 PROSPECTIVE JUROR #0088: Yes.

3 THE COURT: Because most of the hotels have a period of time  
4 that they pay for jury duty for a period.

5 PROSPECTIVE JUROR #0088: Okay.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR #0088: Yeah.

8 PROSPECTIVE JUROR #0091: Badge 0091, just some Spring Break  
9 plans that I was going to be out of town starting on Sunday.

10 THE COURT: So if we finish by Friday, you're okay?

11 PROSPECTIVE JUROR #0091: Yes.

12 THE COURT: All right.

13 PROSPECTIVE JUROR #0092: Badge number -- badge number 0092,  
14 I'm a foreman for construction company. I'm finishing up the  
15 Federal Justice Tower down on Clark and 6th. I'm installing all  
16 the security ceilings in there and it's quite important to get that  
17 thing wrapped up.

18 THE COURT: Okay. Thank you, sir.

19 PROSPECTIVE JUROR #0150: Badge number 0150, I'm a student at  
20 UNLV and I have classes that are imperative that I attend.

21 THE COURT: And are you having midterms soon?

22 PROSPECTIVE JUROR #0150: Yes, ma'am.

23 THE COURT: When are those?

24 PROSPECTIVE JUROR #0150: I have one tomorrow.



1 THE COURT: Okay. And what's your class schedule?

2 PROSPECTIVE JUROR #0150: I have classes all day today and

3 all day tomorrow and Thursday.

4 THE COURT: Okay. So what is -- when you say all day, what

5 are your class hours?

6 PROSPECTIVE JUROR #0150: I have one class at 10 o'clock. I

7 have one class at 2:30 and another class at 5:30.

8 THE COURT: Okay. So you have a 10, a 2:30 and a 5?

9 PROSPECTIVE JUROR #0150: Yes.

10 THE COURT: What's your major?

11 PROSPECTIVE JUROR #0150: Asian studies.

12 THE COURT: Okay. Thank you. Anybody else who believes it

13 will be a hardship to serve for the rest of the week?

14 PROSPECTIVE JUROR #0163: Badge number 0163, I also work in

15 the casino industry. I work at the Encore Beach Club and I'm not

16 sure if they'll pay the weekends. Like you said, I'll probably

17 have to make sure, but just letting you know.

18 THE COURT: Okay. So on our next break if you'll call over

19 there and talk to the HR folks and see what the policy is for the

20 Beach Club for jury service.

21 PROSPECTIVE JUROR #0163: Okay.

22 THE COURT: Okay?

23 PROSPECTIVE JUROR #0163: Thank you.

24 THE COURT: Anybody else in the box area before Kevin goes to

25

1 the audience? Okay.

2 PROSPECTIVE JUROR #0249: Badge number 0249, I'm the primary  
3 caretaker for an autistic child.

4 THE COURT: Okay. All right. Anybody else in that back row?

5 PROSPECTIVE JUROR #0246: Badge number 0246, I work for  
6 Republic Services and I don't get paid for being here.

7 MR. CLAUS: What was that badge number again, please, Your  
8 Honor?

9 THE MARSHAL: What's your badge number again?

10 PROSPECTIVE JUROR #0246: Oh, 0246.

11 MR. CLAUS: Thank you.

12 THE COURT: Yes, ma'am.

13 PROSPECTIVE JUROR #0255: Excuse me, I'm sorry, my English is  
14 not very good and it is very difficult to understand exactly. My  
15 number is 255.  
16

17 THE COURT: Okay.

18 PROSPECTIVE JUROR #0255: That's all. That's all.

19 THE COURT: All right, ma'am.

20 PROSPECTIVE JUROR #0255: It is very difficult for me.

21 THE COURT: It's okay, ma'am. What kind of work do you do?

22 PROSPECTIVE JUROR #0255: Sorry. No, I am retired.

23 THE COURT: Okay. And before you retired, what kind of work  
24 did you do?

25 PROSPECTIVE JUROR #0255: Nothing. I was with my husband.

1 THE COURT: Okay. And how long have you been a United States  
2 citizen?

3 PROSPECTIVE JUROR #0255: From two, zero, zero, nine.

4 THE COURT: Okay. And how long have you lived in the U.S.?

5 PROSPECTIVE JUROR #0255: Sorry?

6 THE COURT: How long have you lived in the U.S.?

7 PROSPECTIVE JUROR #0255: From two, zero, zero, two.

8 THE COURT: All right. Thank you, ma'am.

9 PROSPECTIVE JUROR #0255: Thank you.

10 THE COURT: Anybody else who believes it would be a hardship  
11 to serve?

12 PROSPECTIVE JUROR #0267: Badge 0267, I'm a CPA and partner  
13 with the firm of Bradshaw, Smith, and Company and today's a  
14 corporate deadline and there's other numerous appointments and  
15 engagements at this time.

16 THE COURT: Thanks.

17 PROSPECTIVE JUROR #0271: Badge is 0271, I'm a nursing mother  
18 of a seven-week old and so I need at least a 20-minute break every  
19 two hours to pump.

20 THE COURT: Okay. Thank you, ma'am.

21 PROSPECTIVE JUROR #0277: 0277, I am the sitter for two small  
22 children of working mothers.

23 THE COURT: And are those your children or grandchildren,  
24 ma'am? Or are they --  
25

1 PROSPECTIVE JUROR #0277: One is my grandchild and another is  
2 not.

3 THE COURT: Okay. Thank you.

4 PROSPECTIVE JUROR #0283: 0283, I work for Enterprise  
5 Rent-A-Car and I am a commissioned employee and I just opened a  
6 branch so it's imperative that I'm there.

7 THE COURT: Anybody else?

8 PROSPECTIVE JUROR #0302: Badge 302, I'm an on-call casino  
9 poker dealer and we're embarking on a poker tournament this week  
10 which gives me the opportunity to work full-time. Normally, I can  
11 only work a couple days a week.

12 THE COURT: Thank you, sir.

13 PROSPECTIVE JUROR #0263: Badge number 2 -- 0263, I am an  
14 aesthetician, local, currently self-employed. I already have  
15 previous appointments booked for all of the week slash on stand-by  
16 which isn't -- but, I also have at least one interview coming up  
17 this week. One of those I do need to call back today. It would be  
18 great. I'm looking for something other than my self-employment.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR #0263: Very intensely right now, and that's  
21 pretty much it.

22 THE COURT: So when you said you have interviews, those are  
23 job interviews?

24 PROSPECTIVE JUROR #0263: Yes, job interviews.

1 THE COURT: Okay. Thank you. Anybody else? Anybody else  
2 have a hardship or reason you couldn't serve for the rest of the  
3 week? I have one up here.

4 PROSPECTIVE JUROR #0169: Badge number 169, work at the Santa  
5 Fe Race and Sports Book. It's March Madness beginning this week,  
6 we have a small crew, and boss just said all hands on deck.

7 THE COURT: Your badge number's what?

8 PROSPECTIVE JUROR #0169: 169.

9 THE COURT: Okay. Thank you, sir. Ladies and gentlemen,  
10 are there any of you who believe that for any reason you couldn't  
11 be fair and impartial in this case based upon the limited  
12 information you currently know? Okay.

13 PROSPECTIVE JUROR #0086: Badge number 0086, I was a victim of  
14 armed robbery 23 years ago.

15 THE COURT: And that experience colors your judgment on  
16 anybody who's alleged to have those crimes?

17 PROSPECTIVE JUROR #0086: Possibly.

18 THE COURT: Okay. Anybody else who believe there's a concern?

19 PROSPECTIVE JUROR #0115: Badge number 115, again being a  
20 police officer with the Las Vegas Metropolitan Police Department,  
21 the alleged -- or the addresses where the alleged crimes were  
22 committed are right on the border of my area command and it's  
23 possible that I may have other knowledge of those crimes or alleged  
24 crimes due to information shared in the department and their  
25

1 geographical location to where I work.

2 THE COURT: Thank you, sir. Anybody else?

3 PROSPECTIVE JUROR #0107: Badge 107, I was also a victim of  
4 armed robbery.

5 THE COURT: And when was that, sir?

6 PROSPECTIVE JUROR #0107: Probably like 20 years ago.

7 THE COURT: And does that experience color your judgment on  
8 anyone who's alleged with those kind of crimes?

9 PROSPECTIVE JUROR #0107: I think so.

10 THE COURT: Okay. Anybody else?

11 PROSPECTIVE JUROR #0145: Badge 0145, I was in law enforcement  
12 for ten years and I don't feel that I could be impartial.

13 THE COURT: Okay. Where were you in law enforcement?

14 PROSPECTIVE JUROR #0145: In North Miami Police Department.

15 THE COURT: Anybody else?

16 PROSPECTIVE JUROR #0169: Badge 169, I was also a victim of  
17 armed robbery New Year's Day 2003.

18 THE COURT: And do you think that experience, sir, would color  
19 your judgment on somebody who has those crimes alleged against  
20 them?  
21

22 PROSPECTIVE JUROR #0169: I do.

23 THE COURT: Thank you. Anybody else who believes for any  
24 other reason you might not be able to be fair and impartial?

25 PROSPECTIVE JUROR #0282: Mine's not about the fair and

1 impartial, mine's about being able to serve. As you saw, I tried  
2 to get up and go to the bathroom --

3 THE MARSHAL: Badge number?

4 PROSPECTIVE JUROR #0282: Badge number 0282 and I've been  
5 having issues with my bladder. Doctors don't really know what it  
6 is, so I need to go like frequently.

7 THE COURT: What's your number, sir?

8 PROSPECTIVE JUROR #0282: 0282. If the bathroom breaks  
9 weren't an issue, it wouldn't be a problem, though.

10 THE COURT: Okay. So if you want to get up and go now, that's  
11 okay.

12 PROSPECTIVE JUROR #0282: Okay. Thank you.

13 THE COURT: But is it an unpredictable or a period of time  
14 that you need frequent breaks?

15 PROSPECTIVE JUROR #0282: It really depends. I'm a  
16 schoolteacher and sometimes I just have to get up and go.

17 THE COURT: Okay. All right. Thank you, sir. And then just  
18 come back to your seat when you get back, sir.

19 PROSPECTIVE JUROR #0282: Okay. Thank you, Your Honor.

20 THE COURT: In any criminal trial the jury sitting as a group  
21 acts as a fact -- oh, we have another one?

22 PROSPECTIVE JUROR #0306: Juror 306, I've been in banking  
23 18 years and I've been involved in --

24 THE COURT: Hold on a second, ma'am. Okay, yes.

1 PROSPECTIVE JUROR #0306: I've been in banking 18 years and  
2 I've been involved in a lot of robberies.

3 THE COURT: And does that cause you to have concern about  
4 whether you can be fair and impartial?

5 PROSPECTIVE JUROR #0306: Possibly.

6 THE COURT: Okay.

7 MR. CLAUS: And that was badge number 0306?

8 THE COURT: 306.

9 MR. CLAUS: Thank you.

10 THE COURT: Anybody else?

11 PROSPECTIVE JUROR #0261: Badge number 0261, I grew up in a  
12 family, my father's a retired police officer back in Michigan just  
13 outside of Detroit. I'm not sure I can be fair in this trial.

14 THE COURT: Okay. Anybody else who has a concern about being  
15 fair and impartial?  
16

17 PROSPECTIVE JUROR #0222: Yeah, badge number 222, it has  
18 nothing to do with fair and impartial, I apologize, but as far as  
19 being able to serve, I just need to know that I could get a phone  
20 call from my son or my wife, my son's extremely ill. He's had  
21 three open-heart surgeries and he has seizures. And so I don't  
22 have a problem serving, I just need to know that if there was a  
23 problem that someone could let me know, so.

24 THE COURT: So if we had those calls go to my assistant and  
25 then they could come in and tell you if there was an emergency --



1 PROSPECTIVE JUROR #0222: Yeah.

2 THE COURT: -- would that work?

3 PROSPECTIVE JUROR #0222: Yeah, we have no family in Nevada  
4 and so I have other little kids at home that my wife would have to  
5 need help with, but that's the only problem.

6 THE COURT: All right. Thank you, sir. I appreciate your  
7 willingness to serve.

8 THE MARSHAL: Anyone else?

9 THE COURT: Anybody else who has a concern about being fair  
10 and impartial based on the limited information you currently have?

11 In any trial the jury sitting as a group are acting as  
12 fact finders. That means that the jurors listen to the evidence.  
13 They listen to the witnesses. They look at the documents that are  
14 admitted, and then as a group, they make a decision about what  
15 happened. Does anybody have a problem acting as a fact finder?  
16 Serving in that role? Seeing no hands I have a universally  
17 negative response.

18 My primary job as the Judge is to give you all the  
19 instructions on the law that apply to the case. Does anybody think  
20 that they will have problems following the law as I give it to you?  
21 Seeing no hands I have a universally negative response.

22 Under our system, certain principles of law apply in  
23 every criminal trial they are that the indictment filed in the case  
24 is a mere accusation and is not evidence of guilt, the State must  
25

1 prove that the defendant is guilty beyond a reasonable doubt, and  
2 the defendant is presumed innocent. Does anyone have a concern  
3 with those particular principles or not believe in them? I have a  
4 universally negative response.

5 So I'm going to go back real quick to Mr. Cooke.

6 PROSPECTIVE JUROR #0282: Yes.

7 THE COURT: Mr. Cooke, two questions while you were out of the  
8 room. First, the jurors acting as a group, listen to the  
9 witnesses, look at the exhibits and then as a group, make a  
10 decision about what happened acting as fact finders; do you have a  
11 problem fulfilling that role if you're chosen?

12 PROSPECTIVE JUROR #0282: No, Your Honor.

13 THE COURT: And my primary job as the Judge is to give you  
14 instructions on the law. Do you have any reason to believe you  
15 wouldn't be able to follow the instructions on the law as I give  
16 them to you?

17 PROSPECTIVE JUROR #0282: No, Your Honor.

18 THE COURT: And then you heard my question about the basic  
19 principles of criminal justice as you came in the room, you don't  
20 have a problem with those? All right. Thank you, sir.

21 PROSPECTIVE JUROR #0282: Thank you.

22 THE COURT: And if you need to go to the restroom, just raise  
23 your hand, go, and I'll try to catch you up as you come back in.

24 PROSPECTIVE JUROR #0282: Thank you.

1 THE COURT: Okay. Can all of you wait in forming your opinion  
2 until all of the evidence has presented -- been presented to you  
3 and under the instructions that I give you? Everybody willing to  
4 wait until the end of the case to make a decision? All right. I  
5 have a universally positive response.

6 Does anybody know anything about this case other than  
7 potentially Officer Dalrymple, other than what's been said here in  
8 the courtroom? Seeing no hands I have a universally negative  
9 response.

10 Ladies and gentlemen, you're now going to take a short  
11 five-minute recess while I talk to the lawyers about a couple of  
12 issues and then I'm going to have you come back into the room.  
13 Please remember the order in which you're seated in. Those of you  
14 who have reassignments to call your HR department, if you could try  
15 and do that now, that would be really helpful. And then if you get  
16 information, signal me when you come back in that you need to give  
17 me that answer. Okay?

18 THE MARSHAL: Stay on this floor, please.

19 [Outside the presence of the prospective jury panel]

20 THE COURT: Thank you, sir.

21 MR. CLAUS: We have one other issue, Your Honor.

22 THE COURT: Got to wait for all the doors to close. All  
23 right, now.

24 MR. CLAUS: One of the jurors wandered out with the headset

1 still on which means --

2 THE COURT: The gentleman here?

3 MR. CLAUS: No, there was a gentleman in the back row, Your  
4 Honor.

5 THE COURT: Needed a headset?

6 MR. CLAUS: He had a headset which means that he's still  
7 listening.

8 THE COURT: Oh. Kevin, could you go get my headphones from  
9 the gentleman who has them in the hallway?

10 MR. CLAUS: If you can hear us, come back in.

11 THE COURT: Good catch, Mr. Claus. Okay. I try and treat all  
12 the people who gave me hardships the same. So if we excuse people  
13 who have financial hardships because they're aestheticians or they  
14 don't get tips, I try and excuse the whole group that's like that.  
15 So I'm going to go through those who I think we have hardship  
16 issues and then we can talk about the group that has other  
17 potential issues.

18 THE CLERK: Judge, you have to wait until he comes back with  
19 the headset.

20 THE COURT: I haven't said anything yet.

21 THE DEFENDANT: Judge, the restroom?

22 THE COURT: Oh, yeah. You can, sir. I'm going to go to 150  
23 as soon as Kevin walks in the room with headphones. Kevin, do you  
24 have my headphones?  
25

1 THE MARSHAL: Yes, Judge.

2 THE COURT: All right. So number 150, Jordan Myrda is a UNLV  
3 student who is in the midst of midterms. I would typically excuse  
4 that person.

5 MR. PALAL: The State has no objection.

6 MR. CLAUS: No objection, Your Honor.

7 THE COURT: Okay. Dan, is there some special form I have to  
8 use now?

9 MR. KUTINAC: No, Your Honor. No. Just so you know, though,  
10 when you do excuse them, they are free to go they do not need to go  
11 back down to the third floor.

12 THE COURT: Okay

13 MR. CLAUS: Really?

14 MR. KUTINAC: Yeah, they get a whole new system now.

15 THE COURT: Okay. And then I have juror number 222 who has a  
16 child issue who says that he's willing to serve, but may have to  
17 leave at a moment's notice.

18 MR. CLAUS: Yeah, the open-heart surgery, yes, Your Honor.

19 MR. PALAL: The State has no objection.

20 THE COURT: So if it's okay with you guys, I'm going to excuse  
21 him?  
22

23 MR. CLAUS: And that's 222, Your Honor, for the record?

24 THE COURT: 222. And then I have 249 who has an autistic  
25 child that she is the caregiver for.

1 MR. PALAL: I have no problem -- she's pretty far down the  
2 jury list anyway, Your Honor.

3 THE COURT: Yeah, she is. I have 267. I usually try and  
4 excuse the CPAs during tax season and encourage them to reschedule  
5 ahead of time.

6 MR. PALAL: State --

7 MR. LEXIS: Yeah. No objection.

8 MR. CLAUS: Yeah, no objection. Which was the CPA again,  
9 please, Your Honor?

10 MR. PALAL: 267.

11 THE COURT: His number is 267.

12 MR. CLAUS: Thank you.

13 THE COURT: 271 is our lady who is currently pumping in the  
14 deliberation room, Kevin?

15 THE MARSHAL: Yes, Judge.

16 THE COURT: She seems willing to serve, but it may create  
17 issues with the breaks. I just mention that for your thought --

18 MR. PALAL: Yes, the State has no objection to excusing her.

19 MR. CLAUS: Neither here, Your Honor.

20 THE COURT: So 271.

21 MR. CLAUS: 271?

22 THE COURT: 277 babysits her grandchild while someone works.  
23 That's someone I would typically excuse.

24 MR. PALAL: No objection by the State.

1 THE COURT: Mr. Claus?

2 MR. CLAUS: That was 277, Your Honor?

3 THE COURT: 277.

4 MR. CLAUS: No objection.

5 THE COURT: 282 has to take frequent unannounced restroom  
6 breaks.

7 MR. CLAUS: I think that's a good person to excuse, Your  
8 Honor.

9 MR. PALAL: The State would agree.

10 THE COURT: Okay. I mean, I told him he could during jury  
11 selection, but it would create a huge problem during trial.

12 MR. CLAUS: Then again, it might cover for me needing to take  
13 a restroom break so often, so.

14 THE COURT: It would -- it's up to you guys.

15 MR. PALAL: Yes, the State has no objection.

16 THE COURT: Okay. And then I have a lot of people -- I have  
17 one Metro, current Metro officer who I would prefer not to have him  
18 talk too much about stuff in front of the jury.

19 MR. PALAL: The State has no objection to excusing that juror,  
20 115.

21 MR. CLAUS: 115. Yes let's --

22 THE COURT: I'm trying to find his number; he's like in the  
23 first 20.

24 MR. PALAL: 115, Your Honor.

25

1 MR. CLAUS: Before he inadvertently --

2 MR. KUTINAC: What number, Judge?

3 MR. PALAL: 115.

4 MR. LEXIS: 115, Your Honor.

5 MR. CLAUS: Before he blurts that he has knowledge of this  
6 crime.

7 THE COURT: That's why I said, besides Officer Dalrymple.  
8 He's 115, any objection to excusing him?

9 MR. CLAUS: No, Your Honor.

10 MR. PALAL: None, Your Honor.

11 THE COURT: And then I had a bunch of people who were victims  
12 of armed robberies and expressed concern. If you want to excuse  
13 them now, I will. Otherwise, I will let you guys ask and you can  
14 make cause challenges as we go.

15 MR. PALAL: The State would ask for an opportunity to ask some  
16 questions and proceed.

17 THE COURT: Okay.

18 MR. CLAUS: And, Your Honor, I'm just trying to make record,  
19 when I've -- having a juror that says that on the front-end usually  
20 means that they're going to take an opportunity to say something  
21 nasty on the record. I'd prefer to get rid of them right now and  
22 there's only two of them. That I'm aware of. That would need to  
23 be let go of.

24 THE COURT: There were four.

25



1 MR. PALAL: Yeah, four.

2 MR. CLAUS: I've got 107 --

3 THE COURT: I've got four.

4 MR. CLAUS: -- and then --

5 MR. PALAL: 306.

6 MR. CLAUS: -- 169 and that gets us out of the 20 people that

7 are in the jury. I'm not sure who --

8 MR. LEXIS: No, you're missing 86.

9 THE COURT: 86, the second person

10 MR. CLAUS: Oh, I'm sorry, yes, I am missing 86, apologies,

11 Your Honor.

12 THE COURT: And then you have the banker, also, who is sitting

13 in seat, near the end.

14 MR. PALAL: 306, Your Honor.

15 THE COURT: 306.

16 MR. CLAUS: 306 was at the end?

17 THE COURT: Yeah, she was the banker.

18 MR. PALAL: Yeah.

19 THE COURT: Okay. So you want to ask them questions?

20 MR. PALAL: Yeah --

21 THE COURT: You understand that if something really bad

22 happens and then I have to start all over and then we won't finish

23 this week?

24 MR. PALAL: State understands that, but we think -- we would

25

1 like the opportunity to at least question them.

2 THE COURT: Okay. Understanding that if they contaminate the  
3 whole panel, I have a problem. And I have had people who go to  
4 that extent just to get out of jury duty.

5 MR. CLAUS: As have I, Your Honor.

6 THE COURT: Because they just don't want to be here.

7 MR. PALAL: I think we can phrase the questions in such a way.

8 THE COURT: All right. Is there anyone else other than those  
9 categories and specific individuals we've talk about that you have  
10 concern? I have two people who claim they don't speak any English.  
11 One is in the box. She was, however, able to give me her badge  
12 number so she clearly understood what we were doing so far this  
13 morning. The Russian lady in the back row.

14 MR. PALAL: State will submit.

15 THE COURT: Mr. Claus?

16 MR. CLAUS: Your Honor, I'd be more concerned about Ms. Bong  
17 Lee simply because she did speak with an exceptionally heavy  
18 accent. I was able to understand the Russian speaker and even  
19 though she might not have had as good of a grasp of the language as  
20 she'd have liked, she was comprehensible. Ms. Lee, on the other  
21 hand, I think she might have trouble interacting with the other  
22 jurors. I'd ask if you're inclined to excuse her for cause at this  
23 point.  
24

25 THE COURT: Any objections?

1 MR. PALAL: No objection. State takes no position.

2 THE COURT: So I'll excuse 149. So here's the -- any others

3 that you guys want me to consider excusing at this early stage

4 based on the limited information we currently have?

5 MR. PALAL: Nothing from the State, Your Honor.

6 MR. CLAUS: No, Your Honor.

7 THE COURT: 150, 222, 249, 267, 271, 277, 282, 115 and 149.

8 MR. PALAL: If I could do them in order, Your Honor, make sure

9 I've got them right? 115, 149 --

10 THE COURT: 115, 149, 150, 222, 249, 267, 271, 277, 282.

11 MR. PALAL: Exactly, thank you, Your Honor.

12 THE COURT: Everybody got the same list?

13 MR. CLAUS: Yes, Your Honor.

14 THE COURT: Now, I'm going to cross-reference on my list. I

15 am going to take a longer break than I was going to because of the

16 young lady who's pumping. But she is one of the jurors we're

17 excusing, so I may just have Kevin excuse her depending upon when

18 you guys are ready. Does anybody want the opportunity to take a

19 restroom break themselves while we're at this stage?

20 MR. CLAUS: I'll take a short break, Your Honor.

21 THE COURT: Okay.

22 [Recess taken from 10:08 a.m. to 10:14 a.m.]

23 [Outside the presence of the prospective jury panel]

24 MR. CLAUS: -- continuance, would you keep this?

25

1 THE COURT: I am required to keep it. I get in trouble if I  
2 try to send it back to the originating department. I did it once  
3 when the Judge had not decided a pending motion in limine and I  
4 sent it back and I got in trouble, but Herndon backed me up. So  
5 otherwise I get stuck with it.

6 MR. CLAUS: Okay.

7 THE COURT: I mean stuck, you remain in my department.

8 MR. CLAUS: Okay. Then based upon that, Your Honor, and  
9 speaking with Mr. Splond, he would like some additional time to go  
10 through this new evidence with me. Your Honor, I can't imagine it  
11 taking much more than a week, but based upon the photographs -- and  
12 these are questions I didn't have answers for. I think a week  
13 continuance would be more than sufficient.

14 MR. PALAL: All right. Your Honor, I'd just like to make a  
15 brief record.

16 THE COURT: I'm listening.

17 MR. PALAL: If that's okay. In speaking with Ms. Lexis, she  
18 said she had a file review with Mr. Claus. Now, I don't have any  
19 problem with Mr. Claus' representation that he doesn't have the  
20 photos; it must have been some kind of oversight. I'm not  
21 questioning Mr. Claus' integrity or anything like that, just to be  
22 clear. I've worked with him for a long time. He's always been  
23 upfront with me; however, Ms. Lexis said she went over the file  
24 that the photos were in the file at the time. Clearly something  
25

1 miscommunication happened.

2           With regards to a one week continuance, Your Honor, the  
3 issue with that for the State is the lead detective is -- one, the  
4 lead detective in the case is flying in from Wisconsin, he's  
5 currently retired. So there's that. I don't know -- I just can't  
6 represent to the Court when he'd be available. Two, as the Court  
7 knows we had spent some time lining up a number of witnesses. I  
8 don't know that I can turn that around. We'll make representation  
9 as to whether I can turn that around in one week. So if we're  
10 continuing the case, I mean, the State would -- Court's indulgence  
11 --

12           MR. CLAUS: If the State needs a longer continuance to secure  
13 the witnesses, Your Honor, I told Mr. Splond that that might be an  
14 eventuality to this request, so I can't very well object to that  
15 based upon the nature of my request.  
16

17           THE COURT: No, I understand.

18           MR. PALAL: Can -- when does the Court have its criminal  
19 calendars? Can we reset this for tomorrow?

20           THE COURT: I have criminal calendars Mondays and Wednesdays.  
21 Is tomorrow Wednesday?

22           MR. PALAL: Yes, tomorrow is Wednesday.

23           THE COURT: Tomorrow's Wednesday.

24           MR. PALAL: Can we put it on for tomorrow so we can try and  
25 contact our witnesses and see their availability for next week?

1 THE COURT: Is that okay with you? Status check tomorrow?

2 MR. CLAUS: That's just fine with me, Your Honor.

3 MR. PALAL: Thank you, Judge.

4 THE COURT: All right. Based upon the issue related to

5 proposed State's Exhibits 1 through 8 and 11 through 15, the

6 request for continuance is granted. I am going to dismiss this

7 group of jurors in its entirety and let them go and have you come

8 back tomorrow for a status check on resetting trial.

9 MR. LEXIS: Your Honor --

10 THE COURT: Hold on.

11 MR. LEXIS: I'm sorry.

12 THE COURT: My stack goes through the week of April 11th and

13 then I have the next stack starts in May -- or the end of May

14 beginning of June.

15 MR. LEXIS: And that was my question, Your Honor. If we

16 reschedule we could do it either next week or the following week?

17 MR. CLAUS: In the position I'm putting the State in, Your

18 Honor, I must --

19 THE COURT: I will then negotiate with you dates.

20 MR. LEXIS: All right. Thank you, Your Honor.

21 THE COURT: The problem is for me and this is the problem for

22 I think most of the Judges, we already have a bunch of stuff set so

23 it doesn't really matter. There's already a lot of crap going on

24 and so we try really hard to make things happen when they should,

25

1 but sometimes stuff happens.

2 MR. PALAL: Sure.

3 THE COURT: So like with you guys, I'm now going to -- when  
4 the jurors come back in, excuse them all and I'm going to call the  
5 preliminary junction hearing and I didn't finish yesterday and ask  
6 if they want to use any of the days this week.

7 MR. PALAL: All right.

8 THE COURT: Because I had told them they weren't going to get  
9 to go for a couple of weeks because you guys were going to be busy.

10 MR. CLAUS: Apologies, Your Honor.

11 THE COURT: It's not your problem. They're civil lawyers;  
12 they get paid by the hour.

13 MR. PALAL: So, Your Honor, we'll be here tomorrow with an  
14 idea of our availability.

15 THE COURT: 9 o'clock.

16 MR. PALAL: Thank you, Your Honor.

17 THE COURT: Okay. But don't leave.

18 MR. CLAUS: I was apologizing for subjecting you to civil  
19 attorneys for that long, Your Honor.

20 THE COURT: Their half day hearing wasn't a half day hearing.

21 MR. CLAUS: Shocking.

22 MR. KUTINAC: Hold on --

23 THE COURT: You want me to hold the exhibits that have been  
24 offered or return them to the State?  
25

1 MR. PALAL: Can you hold them with the exhibit list? Thank  
2 you.

3 THE CLERK: Sure.

4 MR. PALAL: Thank you.

5 THE COURT: Since they're not admitted, do we keep them in a  
6 special thing here or send them to the vault?

7 THE CLERK: I think now they want us to --

8 MR. CLAUS: Are we off the record?

9 THE COURT: Not yet.

10 [Pause in the proceedings]

11 MR. LEXIS: Your Honor, would you have a Monday start next  
12 week if it was next week?

13 THE COURT: What -- hold on, I got to get back to March. Next  
14 week would be the 21st?

15 MR. PALAL: Yes.

16 THE COURT: Quite possibly. I do not have a conflict. It  
17 would be a Monday afternoon start, probably. No, it would be a  
18 Monday morning start. I don't have a settlement conference. I  
19 have five cases currently set. I can't tell --

20 MR. PALAL: Oh, yeah, cause we may be sent to overflow --  
21 would we be -- are we -- our --

22 THE COURT: Well, we try and keep the longest of the cases and  
23 send the shorter ones to overflow. There is one case -- did you  
24 put that case back on that you vacated in error? Aniqua Anderson?  
25



1 THE CLERK: Yes.

2 THE COURT: There was one case with a grumpy young lady who  
3 wants to fire the Public Defenders' Office and hire her own lawyer  
4 and I told her if she could afford to hire her own lawyer, she  
5 probably couldn't qualify for the Public Defenders' Office and she  
6 got mad at me. So I don't think those -- I think those are all  
7 shorter, though. I think yours would be the longest case. The  
8 oldest case on there -- you're a what? Are you a 2014 case?  
9 You're the oldest of my cases now on this list.

10 THE MARSHAL: Ready, Your Honor?

11 THE COURT: I am. Do you have the young lady?

12 THE MARSHAL: Yes, Judge.

13 THE COURT: Okay. I think you would be likely to bump those  
14 if you tell me you want to go next week.

15 THE MARSHAL: Jurors are present

16 [In the presence of the prospective jury panel]

17 THE COURT: You can be seated, counsel. Ladies and gentlemen,  
18 I want to thank all of you for your jury service. You are now all  
19 excused. Thank you so much for coming because without people like  
20 you who come and are willing to sit as jurors, our system wouldn't  
21 work. So thank you very much to all of you for coming. I believe  
22 you are now all supposed to go home or go back to work. You have  
23 no further things to do with us. Thank you so much. Have a great  
24 day.  
25

1 [Jury excused]

2 THE COURT: All right. So see you guys at 9 in the morning.

3 MR. PALAL: Sorry for wasting your morning, Your Honor.

4 THE COURT: Dulce will retain the exhibits. If you want to go  
5 next week, it looks like a sure shot, you'll go here.

6 MR. PALAL: Okay.

7 MR. CLAUS: Your Honor, one thing that I might be doing just  
8 so you're aware, and I don't know if the State wants to oppose this  
9 orally right now. The transcripts from the previous hearings in  
10 which they said that the offers were or were not conveyed, I've got  
11 certain things in writing that came through to my office. I don't  
12 know exactly how that record was built beforehand. Obviously, it  
13 was before my time.  
14

15 THE COURT: Yeah.

16 MR. CLAUS: As this came up and based upon the answer that was  
17 given by Mr. Splond, I feel that I should probably dig into that a  
18 little bit more. So with your permission, Your Honor, I will  
19 submit some ex parte orders to the Court for signature for the  
20 preparation of those transcripts, assuming the State does not  
21 object from those previous hearings.

22 THE COURT: Does Doug Smith have a court recorder or a court  
23 reporter? Do you guys know?

24 UNIDENTIFIED SPEAKER: It's a court reporter.

25 MR. PALAL: I think it's a reporter, Your Honor.

1 THE COURT: Yeah, then send over the orders and I'll sign  
2 them.

3 MR. CLAUS: Thank you very much, Your Honor.

4 THE COURT: There's no objection; right?

5 MR. PALAL: No, Your Honor.

6 THE COURT: We need to clarify that issue. Okay. Anything  
7 else?

8 MR. CLAUS: That's it.

9 MR. PALAL: Nothing from State.

10 THE COURT: Don't forgot to give my assistant back his tie.  
11 And I'll see you guys in the morning?

12 MR. PALAL: Yes.

13 THE COURT: And I'll see if I can get my preliminary  
14 injunction hearing back on.

15 MR. CLAUS: What time, Your Honor, in the morning?


16 MR. PALAL: Eight --

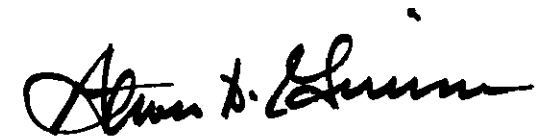
17 THE COURT: 9 o'clock.

18 MR. CLAUS: 9 o' clock. Thank you.

19 [Proceeding concluded at 10:27 a.m.]

20  
21 ATTEST: I do hereby certify that I have truly and correctly  
22 transcribed the audio/video proceedings in the above-entitled case  
23 to the best of my ability.

24  
25   
Jennifer P. Gerold  
Court Recorder/Transcriber



CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

KENYA SPLOND,

Defendant.

CASE NO. C296374

DEPT. XI

**Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

**HEARING ON DEFENDANT'S MOTION TO PRODUCE AND PRESERVE EVIDENCE  
AND STATUS CHECK RESETTING TRIAL**

WEDNESDAY, MARCH 16, 2016

APPEARANCES:

FOR THE STATE:

CHAD N. LEXIS  
Deputy District Attorney

FOR THE DEFENDANT:

T. AUGUSTUS CLAUS, ESQ.

RECORDED BY: JILL HAWKINS, COURT RECORDER

1 LAS VEGAS, NEVADA, WEDNESDAY, MARCH 16, 2016, 9:45 A.M.

2 (Court was called to order)

3 THE COURT: 29, Splond.

4 How are you doing?

5 MR. CLAUS: Fair to Midland, Your Honor.

6 MR. LEXIS: Good morning, Your Honor. Chad Lexis for  
7 the State.

8 THE COURT: Good morning, Mr. Splond. I haven't seen  
9 you since what, yesterday, day before.

10 THE DEFENDANT: Yesterday.

11 THE COURT: Okay. You guys ready to go?

12 MR. CLAUS: I believe the State wants to go, Your  
13 Honor. I'd -- and I'll hold to what I said yesterday.

14 THE COURT: 10:00 o'clock, Monday.

15 MR. LEXIS: Correct, Your Honor.

16 MR. CLAUS: Monday or Tuesday, Your Honor? Which  
17 start would you prefer?

18 THE COURT: I'd prefer Monday. That way we're sure we  
19 get done.

20 MR. CLAUS: If we can do a Monday start, Your Honor,  
21 my request would only be that we start a little later in the  
22 day.

23 THE COURT: 1:00 o'clock.

24 MR. CLAUS: Well, not necessarily 1:00 o'clock, but  
25 maybe a 10:00 o'clock start.

1 THE COURT: That's what I said 10:00.

2 MR. CLAUS: The 9:00 o'clocks are very difficult for

3 me.

4 THE COURT: 10:00 o'clock. Monday, 10:00. 10:30?

5 MR. LEXIS: 10:00 o'clock's good for me, Judge.

6 THE COURT: 10:30?

7 MR. CLAUS: 10:30 would be better, please.

8 THE COURT: 10:30.

9 THE COURT CLERK: March 21, 10:30 for trial.

10 MR. LEXIS: And, Your Honor, for the record, I handed

11 over the CD as you requested yesterday of the video.

12 THE COURT: The edited versions of the video.

13 MR. LEXIS: Correct, Your Honor. It looks like Mr.

14 Claus also filed a discovery motion. I told him he's more than

15 welcome to come over at any time to look at our files, yet

16 again. We have turned over at this point everything.

17 THE COURT: Well, here's one of the problems in this

18 department. I ordered the information produced and that doesn't

19 necessarily mean you get to just open up your file.

20 MR. LEXIS: Correct.

21 THE COURT: They are two different things.

22 MR. LEXIS: But we've -- I also asked Mr. Claus if

23 there was anything specifically that he is addressing that we

24 have not turned over.

25 THE COURT: Hold on. Let me see if I can find a

1 motion. I didn't know there was a motion.

2 MR. CLAUS: It was filed late last night, Your Honor.  
3 I was reviewing the discovery and going through, and I  
4 figured --

5 THE COURT: Hold on.

6 MR. CLAUS: -- I should file a discovery motion at  
7 this point.

8 THE COURT: Since trial's on Monday, I figure I would  
9 look at it now, if you guys would give me a second.

10 MR. LEXIS: Yes, Your Honor.

11 (Pause in the proceedings)

12 THE COURT: Did the State want to object to any of the  
13 specific requests that are enumerated beginning on page 8? No,  
14 I'm sorry, it's 7.

15 MR. LEXIS: Other than, Judge, I can assure the Court  
16 we have complied with Brady and Giglio. I've asked Mr. Claus if  
17 anyone of these specifically he has not obtained or needs and he  
18 tells me in the negative.

19 THE COURT: Okay. The motion is granted with the  
20 exception of "E". The material will not be provided to the  
21 defense, but will be shown to the defense to the extent it is  
22 available by the State, and "I" except for notes that reflect  
23 conversations with the District Attorneys as those are work  
24 product. I'm not going to require the production of any of the  
25 items under "O" at this time; however, they will have to be

1 produced prior to the commencement of trial and the defendant  
2 will have the opportunity to object to their use. And on "W",  
3 if it relates to misconduct of an officer, I will do an in  
4 camera review and then make a determination as to whether the  
5 information will be released. And all the other respects the  
6 motion's granted.

7 MR. LEXIS: E, O --

8 THE COURT: E, I, O and W.

9 MR. CLAUS: I'll have to change W to U, Your Honor.

10 THE COURT: Is that what it is?

11 MR. CLAUS: No, Your Honor. I'm just saying I'm just  
12 going to have to reorder that.

13 THE COURT: Let me make sure. Hold on. I don't think  
14 you went all. No, U's okay.

15 MR. CLAUS: I know. E, I, O, U, and [unintelligible].

16 THE COURT: He's making fun of me.

17 MR. CLAUS: I'm not, I'm not. No, no, no, no.

18 THE COURT: Oh, I didn't get it.

19 MR. CLAUS: I'm sorry.

20 THE COURT: Now I understand. E, I, O, U. Okay.  
21 Good. I got it. Thank you. All right. I'm a little slow this  
22 morning.

23 MR. LEXIS: So, Your Honor, do you want us to file a  
24 response or did you already address this [unintelligible]?

25 THE COURT: No. I asked you to respond orally since



1 we're starting trial on Monday.

2 MR. LEXIS: I understand.

3 THE COURT: It was like why are we going to wait. So  
4 it looks like all of the information is specifically included.  
5 He's got a lot of references to specific event numbers and  
6 information. Get those to him as soon as you can so that we  
7 don't have a delay related to the next trial date.

8 MR. CLAUS: Now --

9 MR. LEXIS: And --

10 MR. CLAUS: -- Your Honor, the --

11 MR. LEXIS: Sorry.

12 MR. CLAUS: -- there are some things that have come up  
13 based upon the evidence that I'm going to dig deeper into. I'm  
14 going to try and do that by Monday, Your Honor. I've told the  
15 State, the State doesn't appear to have that evidence either.  
16 If they don't have it, Your Honor, and I've done the file review  
17 with them, I'm going to plan on filing a motion in limine. I  
18 understand that it's a late date, but I don't want to have  
19 anything else show up in trial or during testimony that's in the  
20 State's putative custody or from their experts that hasn't been  
21 produced by the time we get going.

22 MR. LEXIS: Well, Judge, can we vent that out now as  
23 far as what is it he's misses. What does he want? What is he  
24 missing?

25 MR. CLAUS: I haven't seen the bench notes for the

1 fingerprint examiner. I spoke with the DA about this outside of  
2 court. I don't believe they do either.

3 MR. LEXIS: That's correct.

4 MR. CLAUS: To be perfectly frank, I'm satisfied with  
5 that as the fingerprint examiner's reports simply say that my  
6 client's finger prints are excluded from possible matches. What  
7 I don't want to have is have the fingerprint examiner show up  
8 with their bench notes at trial and then start testifying as to  
9 why that happens, Your Honor, to be perfectly frank. And then  
10 I'm faced with this conundrum in front of the jury of an expert  
11 showing up with notes that should have been produced, dare I say  
12 months ago.

13 THE COURT: You were here when I talked about the  
14 appendix to the expert report on the other case and why it's  
15 important that when the expert relies on things it's important  
16 we have that information.

17 MR. LEXIS: I will call --

18 THE COURT: It's the same kind of thing.

19 MR. LEXIS: I will call them up today, Your Honor.

20 THE COURT: Okay.

21 MR. LEXIS: Is there anything else?

22 THE COURT: But if there is a problem related to the  
23 evidence production that I've just ordered or to your review  
24 after you meet with the DAs, I'd rather hear about it Friday  
25 afternoon when I can tell the jury not to come in and maybe do

1 other things productively then have a problem.

2 MR. LEXIS: Could we have a status check on Friday,  
3 Your Honor?

4 THE COURT: We can have a status check on Friday.

5 THE COURT CLERK: March 18th at --

6 THE COURT: Can we do 9:00 o'clock?

7 MR. CLAUS: I was already planning on being available  
8 at 9:00 o'clock on Friday, Your Honor.

9 THE COURT: Where you?

10 MR. CLAUS: I'll be there.

11 THE COURT: You okay with 9:00 o'clock?

12 MR. LEXIS: Yes, Your Honor.

13 MR. CLAUS: I've got Competency Court at 9:00 o'clock,  
14 Your Honor. So if you just put a --

15 THE COURT: Could we do 9:30?

16 MR. CLAUS: 9:30 would be just fine.

17 THE COURT: 9:30 okay?

18 MR. LEXIS: Yes, Your Honor.

19 And my -- I ask if there is anything else that he's  
20 aware of at this time.

21 THE COURT: There's all these lists of event numbers  
22 that are in this motion, and I'm assuming that the reason  
23 they're listed is because they're important. That's my only  
24 guess. So if what you're asking him is is there anything else  
25 that's not in the motion, please --

1 MR. LEXIS: That he does not have, Your Honor.

2 MR. CLAUS: Those are -- that was just a thing that I  
3 could call up off the top of my head, Your Honor, as something  
4 that I thought might happen at trial, as it has happened at  
5 trial. I'll dredge back into my list of horrors and try and  
6 think of something else for this afternoon.

7 THE COURT: Well, I'd really like the detectives not  
8 to show up with notes that nobody's ever seen to testify during  
9 trial, because that'll send me through the ceiling.

10 MR. LEXIS: Yes, Your Honor.

11 THE COURT: Okay. Anything else?

12 MR. CLAUS: I think that's it, Your Honor.

13 THE COURT: All right. Then I guess I'll see you  
14 Friday at 9:00 -- 30.

15 MR. CLAUS: Thank you very much.

16 THE COURT: 9:30.

17 THE COURT CLERK: March 18.

18 MR. CLAUS: 9:30. Thank you.

19 THE PROCEEDINGS CONCLUDED AT 9:55 A.M.

20 ATTEST: I do hereby certify that I have truly and correctly  
21 transcribed the audio/video proceedings in the above-entitled  
22 case to the best of my ability.

22

23

24

25

  
JILL HAWKINS  
Court Recorder

DISTRICT COURT  
CLARK COUNTY, NEVADA

Defendant.

# Transcript of Proceedings

AA000380

1 LAS VEGAS, NEVADA, FRIDAY, MARCH 18, 2016, 9:26 A.M.

2 (Court was called to order)

3 THE COURT: Good morning.

4 MS. LEXIS: Good morning.

5 THE COURT: Good morning, Mr. Splond. How are you  
6 today?

7 THE DEFENDANT: All right. How are you?

8 THE COURT: So how are we doing?

9 MS. LEXIS: Your Honor, since the last court date, Mr.  
10 Lexis obtained the CSA notes and also the notes and files from  
11 the fingerprint expert. Those were disclosed to Mr. Claus.

12 THE COURT: Hold on a second. I apparently have to  
13 wait for my staff to come back in the room.

14 MS. LEXIS: Okay.

15 THE COURT RECORDER: Can I have your appearance,  
16 please?

17 MS. LEXIS: Oh, yes. Agnes Lexis for the State,  
18 L-E-X-I-S, Bar Number 11064.

19 MR. LEXIS: Chad Lexis, 10391.

20 THE COURT: And they are related.

21 MR. CLAUS: Augustus Claus for Mr. Splond who's  
22 present in custody, Bar Number 10004.

23 THE COURT RECORDER: I'm sorry. I didn't hear you.

24 MR. CLAUS: Augustus Claus for Mr. Splond who's  
25 currently in custody, Bar Number 10004.

1 THE COURT: Okay. Keep going.

2 MS. LEXIS: Your Honor, Mr. Claus and Mr. Lexis and I  
3 met last night to do a very intensive file review. I was told  
4 of the Court's advice regarding Bate stamping discovery. So  
5 what I did is I went through --

6 THE COURT: This is not the first time I've said it.  
7 I've had this discussion with Mr. Lalli for years.

8 MS. LEXIS: Yes. But I note at the last court date  
9 you indicated that I should have done that. So I took the  
10 Court's advice, I went through all --

11 THE COURT: I didn't say you. I said all of the DA's  
12 office should.

13 MS. LEXIS: I did it in this particular case. I went  
14 through all of the discovery that I've ever given Mr. Claus from  
15 the inception of this case, and also prior counsel. I Bate  
16 stamped it and I made it available to Mr. Claus, I burnt it onto  
17 a thumb drive. I also burned it onto a CD, and I would like to  
18 lodge that as an exhibit with the Court.

19 In addition, Mr. Claus signed a receipt of copy of  
20 discovery containing an outline of the items that I couldn't  
21 Bate stamp, for instance, video or some audio files. He signed  
22 it and dated it yesterday, I've also initialed and dated it.  
23 May I approach your clerk to file it as an exhibit?

24 THE COURT: Sure. Here's my question though. Did it  
25 include the items that were the subject of the discovery motion

1 on Wednesday?

2 MS. LEXIS: Yes, it did, Your Honor.

3 THE COURT: Okay.

4 MS. LEXIS: I gave that to him separately, but also  
5 included it in all of the Bate stamped discovery.

6 THE COURT: Thank you.

7 Mr. Claus, good morning.

8 MR. CLAUS: Good morning, Your Honor.

9 THE COURT: Did you get a thumb drive?

10 MR. CLAUS: I did get a thumb drive, Your Honor.

11 THE COURT: Were you able to read the data that was on  
12 the thumb drive?

13 MR. CLAUS: Yes, Your Honor.

14 THE COURT: Good.

15 MR. CLAUS: I've been reading the data that's been on  
16 the thumb drive.

17 THE COURT: Those are two good steps.

18 MR. CLAUS: About 1100 pages, Your Honor. The  
19 District Attorney's representation is that a lot of that is  
20 duplicate. So I have no reason to disbelieve that. I have been  
21 going through it since I received it in the evening. I did  
22 however, Your Honor, in the course of my review come across some  
23 documents. Frankly, Your Honor, I think I might have had these  
24 before, but it prompted me to file a motion to suppress this  
25 morning. His traffic stop, a copy of that was sent to the Court



1 and to the District Attorney, but frankly, it wasn't filed until  
2 very early this morning.

3 THE COURT: We don't have it yet.

4 MR. CLAUS: May I approach, please?

5 THE COURT: Sure.

6 MR. CLAUS: My position would be, Your Honor, that we  
7 can handle this motion to suppress, assuming the State doesn't  
8 have any objection, prior to impaneling the jury. They say they  
9 have their witnesses. There was one officer who did this and  
10 wrote a report.

11 THE COURT: Okay.

12 MS. LEXIS: My initial position, Your Honor, is that  
13 this motion is extremely untimely according to --

14 THE COURT: It really is late.

15 MS. LEXIS: -- EDCR 3. --

16 THE COURT: Because we started trial last Tuesday.

17 MS. LEXIS: Yes, Your Honor. And I also upon  
18 reviewing Odyssey will note for the Court that Mr. Claus was  
19 appointed on this case April 22nd of 2015. Since then the trial  
20 has been continued under his watch three times. He has  
21 announced ready all of those times. I understand it was  
22 continued based on the 20 or 25 photos that he claimed he was  
23 missing. He has had an opportunity to look at that now. I'll  
24 just note for the Court that I read his motion to suppress based  
25 on the illegal stop. The basis for the stop and the -- all of

1 the reports, the video, also the photographs concerning this  
2 particular event, which -- this robbery which led to the stop,  
3 Mr. Claus has had since April of 2015. So that defense was  
4 certainly available to Mr. Claus to raise, which adds to just  
5 the untimeliness of this particular motion.

6 THE COURT: So assume it's untimely, I'm still going  
7 to hear it because otherwise we have to try the case again.

8 MS. LEXIS: I understand, Your Honor.

9 THE COURT: So what are you doing at 10:00 o'clock on  
10 Monday morning?

11 MS. LEXIS: Motion to suppress hearing.

12 MR. CLAUS: Actually, there's another complication,  
13 Your Honor, but this is one you can resolve one way or the  
14 other.

15 I have an open murder preliminary hearing that's  
16 scheduled Monday morning, which is -- I had thought going to be  
17 continued. After speaking with the client yesterday, he'd like  
18 to go forward. I've talked with the District Attorney, the  
19 coroner is not available, but if we can stipulate to the cause  
20 of death just for the purposes of preliminary hearing we can go  
21 forward. So I was going to be asking for a later start on  
22 Monday, Your Honor.

23 THE COURT: Okay. Can we -- how late?

24 MR. CLAUS: I was going to ask for 1:00 o'clock.

25 THE COURT: Can you have your officer here for the

1 evidentiary hearing at 1:00 o'clock?

2 MS. LEXIS: I will call Officer Rowberry and have him  
3 here. If there's a problem may I call -- contact chambers?

4 THE COURT: Please let my law clerk know.

5 MS. LEXIS: Okay.

6 THE COURT: How long do you think for the evidentiary  
7 hearing on the suppression, an hour?

8 MR. CLAUS: Your Honor, I -- yes, very little.

9 MS. LEXIS: And, Your Honor, may the State respond  
10 orally being that --

11 THE COURT: Absolutely.

12 MS. LEXIS: Thank you.

13 THE COURT: And so I'll plan to pick up the jury --  
14 have Kevin pick up the jury at 2:00.

15 MR. CLAUS: Very well.

16 THE COURT: And we can start jury selection again with  
17 a new panel.

18 MS. LEXIS: Yes, Your Honor.

19 MR. CLAUS: Thank you, Your Honor.

20 THE COURT: Anything else?

21 MR. LEXIS: And, Your Honor, just so you know, Mr.  
22 Palal is not going to be here on Friday. We anticipate --

23 THE COURT: Today's Friday.

24 MS. LEXIS: Next week Friday and Monday.

25 THE COURT: Oh, okay.

1 MR. LEXIS: We anticipate on being done on Thursday,  
2 but I just wanted to make you aware of that. If I have to  
3 handle it myself on Friday [unintelligible].

4 THE COURT: I'm not worried about it. I know it's  
5 going to be fine.

6 MS. LEXIS: Okay.

7 THE COURT: Anything else? I already have the jury  
8 instructions; you gave them to me last time. See you at 1:00  
9 o'clock on Monday.

10 MR. CLAUS: Thank you, Your Honor.

11 THE COURT: Okay. Have a nice weekend.

12 MS. LEXIS: Thank you, you too.

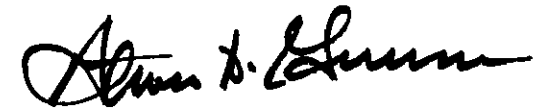
13 THE PROCEEDINGS CONCLUDED AT 9:32 A.M.

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case to the best of my ability.

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23   
24 JILL HAWKINS  
Court Recorder

TRAN

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DISTRICT COURT  
CLARK COUNTY, NEVADA

CLERK OF THE COURT

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-14-296374-1
	)	
vs.	)	
	)	DEPT. NO. XI
KENYA SPLOND, aka Kenny Splond,	)	
#1138461 KELLIE ERIN CHAPMAN,	)	
#1681308,	)	
	)	
Defendants.	)	
	)	

BEFORE THE HONORABLE ELIZABETH GONZALEZ,

DISTRICT COURT JUDGE

MONDAY, MARCH 21, 2016

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 1

APPEARANCES:

For the Plaintiffs:	BINU PALAL
	CHAD LEXIS
	Deputy District Attorneys

For the Defendants:	AUGUSTUS CLAUS
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TRANSCRIBED BY: ALLISON SWANSON, CSR No. 13377

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3 STATE'S WITNESSES: DAY PAGE

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18 Redirect Examination by MR. LEXIS 2 96

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## LIST OF EXHIBITS

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## STATE'S EXHIBITS

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2 LAS VEGAS, NEVADA, MONDAY, MARCH 21, 2016 1:03 P.M.

3

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4

THE BAILIFF: -- is now in session. The honorable  
5 Elizabeth Gonzalez presiding.

6

THE COURT: Good afternoon.

7

THE BAILIFF: Please be seated.

8

MR. PALAL: Good afternoon, Your Honor.

9

THE COURT: Are we ready to proceed with the  
10 evidentiary hearing?

11

MR. CLAUS: Yes, Your Honor.

12

MR. PALAL: Yes, Your Honor.

13

THE COURT: First witness.

14

MR. PALAL: State calls Officer Rowberry to the stand.

15

Your Honor, may I use the podium?

16

THE COURT: Sure.

17

MR. PALAL: Thank you.

18

THE COURT: Just remember, if you wander, Joe will  
19 scold you. She'll try not to do it in front of the jury,  
20 but --

21

MR. PALAL: Yeah.

22

THE COURT: -- it moves and it has flaps and there's  
23 all sorts of stuff. And it has, like, wings that are on  
24 the side, if you need to use them for shelves to stack

1       crap. I'm sorry. To stack important legal items.

2                       JOSHUA ROBERRY,

3       [having been called as a witness and being first duly  
4       sworn testified as follows:]

5           THE CLERK: Thank you. Please be seated, and please  
6       state and spell your name for the record.

7           THE WITNESS: Joshua Rowberry. J-o-s-h-u-a,  
8       R-o-w-b-e-r-r-y.

9           THE COURT: Now, sir, you'll notice there's water in  
10       the pitcher there and there are M&Ms in the dispenser. If  
11       you should need something else, let the marshal know,  
12       he'll try to help you.

13          THE WITNESS: Thank you.

14          THE COURT: You may proceed.

15          MR. PALAL: Thank you, Your Honor.

16                       DIRECT EXAMINATION OF JOSHUA ROWBERRY

17       BY MR. PALAL:

18           Q       Sir, how are you employed?

19           A       With Las Vegas Metropolitan Police Department.

20           Q       And in what capacity?

21           A       Police officer.

22           Q       And are you assigned to a particular type of duty?

23           A       Graveyard patrol.

24           Q       Were you operating in that capacity on

1 February 2nd, 2014?

2 A Yes, I was.

3 Q Now, prior to February 2nd, 2014, how long were you a  
4 patrol officer for?

5 A Five, six years.

6 Q Now, in the early morning hours of approximately  
7 3:00 a.m., did you receive a call?

8 A Yes, I did.

9 Q What was the nature of the call?

10 A It was a robbery at the gas station.

11 Q Okay. And were you -- over on the call, were you  
12 informed whether or not a gun was used?

13 A Yes, I was.

14 Q Was a gun used?

15 A Yes.

16 Q Okay. What did you do upon receiving that call?

17 A I went en route to the area of Rancho and  
18 Rainbow, where the store was located.

19 Q And is the store located at 5001 Rainbow Boulevard?

20 A Yes.

21 Q Sorry. North Rainbow Boulevard, to be more specific.  
22 Is that a "yes"?

23 A Yes.

24 Q All right. Did you ultimately arrive at

1 5001 North Rainbow Boulevard?

2 A In the vicinity, yes.

3 Q Okay. Did you stop at the -- at the area at  
4 5001 North Rainbow Boulevard?

5 A I didn't stop at the store, no.

6 Q Why -- why not?

7 A The information that was given to us over the  
8 radio in the MDT, the computer, was that the male was last  
9 seen running northbound from the store.

10 Q And do you know running northbound on a particular  
11 street?

12 A Rainbow.

13 Q All right. So what did you do?

14 A I started looking in the area for anything that  
15 stuck out, subject running, anything -- basically, looking  
16 for the suspect that was last seen running.

17 Q At approximately how -- when you're on Rainbow,  
18 approximately how much later than the call is this? How much  
19 time had elapsed?

20 A Two, three minutes.

21 Q Did you see anything that got your attention?

22 A A vehicle that pulled out off of a side street,  
23 was Rancho Santa Fe.

24 Q And I'm gonna show you what's been previously marked

1 as State's Proposed Exhibit Number 1.

2 MR. PALAL: Your Honor, may I approach the witness?

3 THE COURT: You may.

4 BY MR. PALAL:

5 Q Sir, do you recognize what's State's Proposed Exhibit  
6 Number 1 is?

7 A Yes, it's an aerial map of the address,  
8 5001 North Rainbow and the surrounding area.

9 Q And does it fairly and accurately depict this area?

10 A Yes.

11 Q And are you familiar with this area?

12 A Yes.

13 Q Is this your area of patrol?

14 A Yes.

15 MR. PALAL: Your Honor, at this time, the State moves  
16 State's Proposed Exhibit Number 1 into evidence.

17 THE COURT: Any objection per purposes of this  
18 hearing?

19 MR. CLAUS: No, Your Honor.

20 THE COURT: Be admitted.

21 [STATE'S EXHIBIT 1 ADMITTED]

22 BY MR. PALAL:

23 Q Okay. And so you -- where is the area -- and you can  
24 mark with my pen. Where's the area that you saw the vehicle

1 leaving?

2 MR. CLAUS: May I approach, please, Your Honor?

3 THE COURT: You may.

4 MR. CLAUS: Just while he's doing this.

5 THE COURT: You want to see where he marks; right?

6 MR. CLAUS: Yes, Your Honor.

7 THE COURT: Someday we'll have technology so it all  
8 works better.

9 BY MR. PALAL:

10 Q All right. And so you're marking -- you drew a  
11 circle at Rainbow Santa Fe Drive and Rainbow Boulevard.

12 A Correct.

13 THE COURT: Rancho Santa Fe --

14 THE WITNESS: Rancho Santa Fe.

15 BY MR. PALAL:

16 Q Sorry. Rancho Santa and Rainbow Boulevard.

17 Now, what direction was the vehicle proceeding?

18 A North.

19 Q And did you notice anything odd about the vehicle?

20 A Yes.

21 Q What did you notice about the vehicle?

22 A The -- the rear of the vehicle was smashed or  
23 damaged like it was involved in an accident.

24 MR. PALAL: Your Honor, I'm -- may I approach the



1 witness with State's Proposed Exhibit Number 2?

2 THE COURT: You may.

3 BY MR. PALAL:

4 Q Showing you what's been marked in this case before as  
5 Exhibit Number 2, do you recognize what's depicted in State's  
6 Proposed Exhibit Number 2?

7 A The vehicle that I observed pulling out from  
8 Rancho Santa Fe.

9 Q Does it -- does it fairly and accurately depict the  
10 vehicle, as you noticed it, on February 2nd, 2014?

11 A Yes.

12 MR. PALAL: Your Honor, the State moves at this time,  
13 State's Exhibit 2 into evidence.

14 THE COURT: Any objection for purpose of this hearing?

15 MR. CLAUS: No, Your Honor.

16 THE COURT: Be admitted.

17 [STATE'S EXHIBIT 2 ADMITTED]

18 BY MR. PALAL:

19 Q And from the photo, it shows that the back of the  
20 vehicle appears to be damaged; is that fair?

21 A Yes.

22 Q Now, what was the significance of the damage to the  
23 back of the vehicle?

24 A Um, there's parts of the vehicle that are hanging

1 down, unknown if, you know, they can fall off or --

2 Q Is that kind of damage to the back of the vehicle  
3 something that what cause you to initiate a traffic stop?

4 A Yes.

5 Q Okay. And have you, in your course as a patrol  
6 officer, initiated traffic stops based on damage similar to  
7 the damage at the back of the vehicle?

8 A Yes.

9 Q Can you -- are you permitted to cite somebody for  
10 damage to the back of the vehicle?

11 A If it's an unsafe vehicle that, you know, things  
12 can fall off and, you know, injure other motorists that  
13 may be following behind, yes.

14 Q And does the damage to the vehicle indicate to you  
15 something may have happened prior to the -- to you seeing the  
16 vehicle?

17 A Yes. I mean, somebody rear-ended it or something  
18 happened.

19 Q Okay. And so at this point do you believe you have  
20 probable cause to stop the vehicle for a traffic infraction?

21 A Yes.

22 Q All right. Now, moving on, there's also the robbery  
23 that had just occurred. How far away are we from the place  
24 where the robbery was reported?

1           A     When I first observed the vehicle?

2           Q     Yes.

3           A     Less than half a mile.

4           Q     And were there any other vehicles on the road?

5           A     No.

6           Q     Were there any other people on the road?

7           A     No.

8           Q     In your training and experience as an officer who's  
9     been working, I think, six years at this -- five or six years,  
10    at this point, have you ever answered calls to robberies?

11          A     Yes.

12          Q     Have you ever answered calls for robberies where  
13    somebody has left the robbery by foot?

14          A     Yes.

15          Q     And in your training and experience, have people left  
16    by foot only to enter in a car parked someplace else?

17          A     Yes.

18          Q     Has that happened to -- has that happened in your  
19    training and experience more than once?

20          A     Yes.

21          Q     At this time, does anything else draw your attention  
22    to the vehicle?

23          A     Those two things, that's it.

24          Q     And at some point, do you -- do you start to follow

1 the vehicle?

2 A As soon as it pulls out onto Rainbow, I begin  
3 following it.

4 Q Do you immediately pull it -- pull the vehicle over?

5 A No, I -- I start watching for -- see what its  
6 movements are, you know, if it takes off speeding, if it  
7 starts driving erratically, things like that.

8 Q Okay. And did the vehicle do anything?

9 A Um, slow speeds. It's driving -- speed limit on  
10 that street is 45. So I mean, it's not traveling at speed  
11 limit speeds but, other than that, it's driving in the  
12 lane.

13 Q At some point, do you decide to stop the vehicle?

14 A Yes.

15 Q Why do you decide to stop the vehicle?

16 A Um, it's close proximity to the robbery, the fact  
17 that the vehicle is damaged, things could be falling off.  
18 So for the traffic infraction and the fact that the  
19 robbery just occurred. And within the amount of time  
20 lapse from the last time the male was last seen leaving  
21 the store to me finding the store's maybe four minutes.

22 Q Now, what happens when you stop the vehicle?

23 A I stopped the vehicle, walk up to driver's side,  
24 right behind the rear window, rear passenger window. I

1 had verbal communication with the driver. I asked the  
2 driver to roll down the back window.

3 Q And let me pause you right there. Do you -- what's  
4 the physical characteristics of the driver?

5 A The female.

6 Q Now, when you were following the vehicle, could  
7 you -- could you see who the driver was?

8 A No.

9 Q All right. So you made some command to the female  
10 operator of the vehicle?

11 A Correct.

12 Q And what were the commands?

13 A If you could roll down the back window. The  
14 windows are heavily tinted, so I couldn't see in there.  
15 It's one of officer safety issues. For me to proceed  
16 forward to make contact with the driver, you know, face to  
17 face or in person, I don't -- I want to make sure that  
18 that back seat is clear. Or if somebody is back there, I  
19 know who's back there.

20 Q And did she comply with your command?

21 A Yes.

22 Q And did you notice anything in the back seat of the  
23 vehicle?

24 A It was a black male adult laying on the seat,

1 covered up.

2 Q And by "covered up" what do you mean?

3 A Like, under a -- under a blanket.

4 Q Did you issue any commands to the black male adult in  
5 the back of the vehicle?

6 A Yes, I did.

7 Q What were those commands?

8 A Let me see your hands.

9 Q And why -- why did you make that command?

10 A The information that was provided, initially in  
11 the robbery, when I was en route, was that the suspect was  
12 last seen with a handgun. So for officer safety purposes,  
13 I can't see his hands. I don't know if this person has a  
14 weapon or not.

15 Q All right. So was -- when you issued that command to  
16 the black male adult in the back of the vehicle, did that  
17 person comply?

18 A No.

19 Q And though probably not relevant for this process,  
20 this proceeding, do you see that person in the courtroom  
21 today?

22 A Yes, I do.

23 Q Can you please identify him.

24 A He's sitting at the table here with the white

1 shirt, glasses.

2 MR. PALAL: Your Honor, may the record --

3 THE COURT: Record will so reflect.

4 MR. PALAL: Thank you.

5 BY MR. PALAL:

6 Q Did you, um -- when the Defendant was not complying  
7 with your orders, what did you do?

8 A I initiated a code red on my channel.

9 Q What does a code red mean?

10 A Basically, any of the other officers working  
11 cannot use the radio. It's mainly for me because I have  
12 something apparent that I'm dealing with that I need other  
13 officers to respond to my location.

14 Q Did the other officers respond?

15 A Yes.

16 Q What -- what happened after the other officers  
17 respond?

18 A The other officers respond. We take the  
19 female -- we have her exit the vehicle, take her into  
20 custody. The male exits the vehicle and we take him into  
21 custody.

22 Q So at that point, the fact that the male in the back  
23 of the vehicle is being compliant?

24 A Right.

1           Q     Did you happen to -- after the male and female were  
2     taken into custody, were the doors -- did they leave the doors  
3     open when they exited the vehicle?

4           A     Yes.

5           Q     Were you able to observe anything relevant to you in  
6     plain view?

7           A     Yes.

8           Q     What were you able to observe?

9           A     In the -- in the driver seat, there was two packs  
10    of Newport cigarettes, an eight-pack of Wrigley spearmint  
11    gum.

12          Q     What was the significance of the -- of these items?

13          A     In the details of the robbery, which is on our  
14    computer and broadcast over the air, was that the subject  
15    took two packs of Newports and Wrigley's spearmint gum.

16          MR. PALAL: Your Honor, permission to approach the  
17    witness.

18          THE COURT: You may.

19    BY MR. PALAL:

20          Q     Showing you what's been marked as State's Proposed  
21    Exhibit Number 3, do you recognize what's depicted on State's  
22    Exhibit Number 3?

23          A     Yes.

24          Q     Does it fairly -- what is State's Exhibit Number 3?



1           A     It's the driver's seat of the vehicle with the  
2     Newport cigarettes and the gum.

3           Q     And does it fairly and accurately depict the vehicle,  
4     as you observed it, after the female had exited the vehicle?

5           A     Yes.

6           MR. PALAL: Your Honor, at this time the State's gonna  
7     move exhibit -- State's Proposed Exhibit 3 into evidence.

8           THE COURT: Any objection?

9           MR. CLAUS: No, Your Honor.

10          THE COURT: Purpose of this hearing, be admitted.

11                 [STATE'S EXHIBIT 3 ADMITTED]

12          BY MR. PALAL:

13          Q     At that point, do you conduct a search of the  
14     vehicle?

15          A     No.

16          Q     What happens between you conducting a search of the  
17     vehicle -- between this point and when you conducted a search  
18     of the vehicle?

19          A     Um, the female and the male were taken to  
20     separate cars, when they were initially taken into  
21     custody. Officers read each subject a Miranda, and they  
22     were questioned. When they're being questioned, their  
23     stories were inaccurate, as far as -- you know, they were  
24     different.

1 Q In --

2 A And --

3 Q In consistent [inaudible] --

4 A Inconsistent with each other. And

5 Officer Landers responded to the store. He arrived at my  
6 scene with the car stop with the victim of the robbery and  
7 conducted a show up, which I got information from him that  
8 the show up was 100 percent.

9 Q And by the way, you say "the show up is 100 percent,"  
10 does that mean that the -- that the victim identified somebody  
11 as being part of the robbery that had occurred at  
12 5001 North Rainbow?

13 A Yes.

14 Q And who did she identify as being the person? Was it  
15 the female or the male?

16 A Male.

17 Q All right. And same male we have sitting here today?

18 A Yes.

19 MR. PALAL: Court's indulgence.

20 THE COURT: Sure.

21 MR. PALAL: Take your time, Your Honor. Take your  
22 time.

23 BY MR. PALAL:

24 Q All right. Now, after getting the -- being informed

1       that the alleged victim in this case identified the Defendant  
2       as 100 percent, at that point, do you conduct a search of the  
3       vehicle?

4           A       Um, no. I -- I had contacted Robbery, which I  
5       remember which detective I spoke to. I gave him the  
6       details. Fact that there was a robbery, these items were  
7       taken, the -- the gum, the cigarettes -- the car stop that  
8       I had initiated, that we had subjects in custody and a  
9       show up was conducted for 100 percent.

10           He instructed that everything was good to go and  
11       I had probable cause to search the vehicle.

12           Q       Do you, yourself, believe you had probable cause to  
13       search the vehicle at that point?

14           A       Yes.

15           Q       And upon searching the vehicle, did you find other  
16       items that were relevant to your investigation?

17           A       Yes.

18           Q       What else did you find?

19           A       A black hooded sweatshirt, a camouflage beanie,  
20       and a revolver.

21           Q       And how did you know that -- what were the  
22       significance of the black -- what was the significance of the  
23       black hooded sweatshirt?

24           A       It was one of the descriptions given by the

1 victim. When the male left, that's what he was wearing.

2 Q And the --

3 MR. CLAUS: I'm gonna object to hearsay, here. I've  
4 allowed a lot of it in.

5 THE COURT: Overruled.

6 BY MR. PALAL:

7 Q And with regards to the camouflage hat, what was the  
8 significance of that?

9 A The suspect was last seen wearing the camouflage  
10 hat.

11 Q And with regards to the revolver, what was the  
12 significance of that?

13 A That's what he was armed with.

14 MR. PALAL: State will pass the witness, Your Honor.

15 THE COURT: Cross-examination.

16 CROSS-EXAMINATION OF JOSHUA ROWBERRY

17 BY MR. CLAUS:

18 Q Officer, let's go -- let's go back a little bit and  
19 let's be a little more specific about when and how things  
20 happened. You received the call that a robbery had occurred  
21 at the Star Mart at 2:57 a.m.; is that correct?

22 A Yes.

23 Q And you initiated the traffic stop at 3:03.

24 A Correct.

1           Q     Okay. Now, your information that you'd received from  
2     that call out was that a black male had robbed Star Mart;  
3     correct?

4           A     Correct.

5           Q     And that that black male had went on foot towards  
6     the, I think there's a -- some sort of pub directly to the  
7     north of the Star Mart?

8           A     What? Excuse me?

9           Q     There's some sort of pub or bar directly to the north  
10    of Star Mart.

11          A     No.

12          Q     You don't know that?

13          A     No, there's not.

14          Q     No, there's not. Okay. What is there between that  
15    subdivision and the Star Mart?

16          A     There's a, what now is a -- a church. Before  
17    that, it as the Century 21 Movie Theater and there was  
18    some residence -- or some commercial businesses. That's  
19    it.

20          Q     Okay.

21          A     There -- correct, there is a bar, but it's not on  
22    Rainbow. It's west in the parking lot.

23          Q     Okay. So based upon that description, and it took  
24    you -- what -- seven minutes, then, to initiate the traffic

1 stop?

2 A Correct.

3 Q And when you initiated the traffic stop, was the car  
4 half a mile away from the Star Mart?

5 A Could be.

6 Q And it was coming out of a residential subdivision;  
7 is that correct?

8 A Yes.

9 Q Okay. And it pulled out on to Rainbow from  
10 Sante Fe Drive; right?

11 A Rancho Santa Fe.

12 Q Rancho Santa Fe, thank you.

13 Now, do you issue a citation to the driver or,  
14 frankly, anyone in the vehicle for the damage to the vehicle?

15 A I did not.

16 Q When you were following the vehicle, did you notice  
17 any materials falling off the vehicle?

18 A No, I did not.

19 Q And you already testified that when the vehicle  
20 pulled out from the side street, it wasn't driving  
21 erratically, it wasn't exceeding the speed limit, it wasn't  
22 going outside of the lines; correct?

23 A Correct.

24 Q Approximately how far away from Rancho Santa Fe Drive

1 and Rainbow did you activate your lights and siren to initiate  
2 the traffic stop?

3 A The next -- I think it's the second left to turn  
4 into the next subdivision.

5 Q Help refresh your recollection by looking at the  
6 photos?

7 A Yes.

8 MR. CLAUS: For the record, I'm gonna be talking about  
9 State's Exhibit -- or Proposed Exhibit Number 2 for this  
10 hearing.

11 BY MR. CLAUS:

12 Q So you already did a circle at one location. Can  
13 you --

14 THE COURT: So use a different color, if he's gonna  
15 circle again, please.

16 MR. CLAUS: I was gonna ask him to do an "X."

17 MR. PALAL: Your Honor, if I may approach the witness,  
18 I got a different color pen.

19 THE COURT: Okay.

20 MR. CLAUS: You can do a different color pen.

21 THE COURT: I have an orange and a purple.

22 MR. CLAUS: Can we make an "X" --

23 THE COURT: We can make an "X."

24 BY MR. CLAUS:

1           Q     -- where he -- where you initiated the traffic stop  
2     and where the car ultimately came to a rest.  Okay.

3           A     And you want where it came to a rest?

4           Q     Yeah.

5           A     As in another "X" or --

6           THE COURT:  How about a triangle for this one.

7     BY MR. CLAUS:

8           Q     How about a triangle?  How's that?

9                 Okay.  And the driver of the car was a female;  
10    correct?

11          A     Yes.

12          Q     And you had seen the car turn on to Rainbow?

13          A     Correct.

14          Q     Was it facing you at that point?  Could you see who  
15    the driver was?

16          A     I did not see the driver.

17          Q     Okay.  But could you have seen the driver, if you  
18    were looking?

19          A     No.  When it pulled out, I was far enough back --  
20    um, I -- I wouldn't have been able to see the driver, no.

21          Q     At what point did you know that you'd pulled over a  
22    female?

23          A     When I got to the driver's side to make contact  
24    with the driver.



1           Q     Okay. And yet you still continued speaking with her?  
2     Your first command was to order her to roll down -- roll down  
3     her back window?

4           A     Correct.

5           Q     Okay. And she complied with that.

6           A     Yes.

7           Q     You didn't ask for license or registration.

8           A     No.

9           Q     And it's because you believe this car was involved in  
10    the robbery.

11          A     Yes.

12          Q     Okay. And other than the traffic damage, didn't have  
13    anything to do with the robbery; correct?

14          A     The damage? No.

15          Q     Okay. There was nothing called to indicate there was  
16    a car involved, there was a female involved, that there was  
17    any damage to a vehicle that had been inflicted as part of  
18    this robbery; correct?

19          A     No.

20          Q     Okay. So the only articulable fact that you used to  
21    believe that this car was associated with the robbery was the  
22    fact that it was in the area of the robbery when you arrived?

23          A     That and I had -- the fact that the vehicle was  
24    damaged. Whether or not it was related to the robbery, it

1 still had damage to the vehicle. Because I didn't know if  
2 it was involved in a four -- an accident or not.

3 Q Okay. Had you received any information from any  
4 source that there had been an accident in the immediate  
5 vicinity or in the immediate time period before initiating  
6 that stop?

7 A No.

8 Q Okay. And you'd been watching the vehicle and  
9 nothing had fallen out of the vehicle during the time you had  
10 been following behind it.

11 A No.

12 Q Okay. And you didn't issue a traffic citation to the  
13 vehicle --

14 A I did not.

15 Q -- for violating any law.

16 MR. PALAL: Objection. Asked and answered.

17 THE COURT: Overruled. You can answer.

18 THE WITNESS: I did not.

19 BY MR. CLAUS:

20 Q What law would it have been violating? Could you  
21 have ticketed?

22 A Yes.

23 Q And what code?

24 A For the code, I'm not 100 percent. The charge

1 would have been, like, an unsafe motor vehicle traveling  
2 on a highway.

3 Q And how was the motor vehicle unsafe?

4 A Right now, without me investigating -- I didn't  
5 investigate that particular thing, due to the fact that  
6 the information that I had after that was the male in the  
7 back seat that was identified as the subject that robbed  
8 the gas station.

9 The traffic infraction, I had no worries about  
10 that anymore. That was not the seriousness of the crime  
11 at the time.

12 Q Okay. And indeed, in your police report -- and  
13 you're -- you're trained to write police reports; right?

14 A Yes.

15 Q And how long have you been writing police reports?

16 A Now, almost eight years.

17 Q And when you're trained to write these police  
18 reports, they tell you to write all of the important facts in  
19 these police reports; correct?

20 A Correct.

21 Q Not to leave anything else; correct?

22 A Right.

23 Q Okay. And so you didn't put anything in your police  
24 report about there being an actual infraction for unsafeness;

1 correct?

2 A No.

3 Q No, that's not correct or --

4 A No. I did not put that there was a stop for that  
5 infraction, no.

6 Q Okay.

7 A Other than in my report, I believe I wrote that  
8 the vehicle was damaged.

9 Q Yes. And as you stand here today, or -- excuse me --  
10 sit here today, you cannot identify the code section that you  
11 believe the vehicle was violating.

12 A No. When it comes to traffic codes or things  
13 like that, we have a book that we would refer to, like a  
14 citation book, that fits the actual charge in all the  
15 county, city codes.

16 Q Okay. And who publishes that book?

17 A LVMPD.

18 Q And is that a book that you had in your car that day?

19 A Yes.

20 Q Okay. And what's the name of that book?

21 A Traffic Citation Guide.

22 Q Traffic Citation --

23 A Guide.

24 Q Citation Guide. And so if you're going to look for a

1 citation in that guide to issue, what would be the criteria  
2 that you would use?

3 A As far as?

4 Q Well, you said that this -- this was a citable  
5 offense. So when you're looking in this guide for how would  
6 you issue the citation, what would be the facts that you would  
7 use? How is this -- how is this guide organized?

8 A It's done by traffic offenses, driver's license,  
9 registration, equipment violations, then there's parking  
10 enforcement. It goes through all the list. Once you go  
11 to that tab, you flip it over and then you would find the  
12 infraction and you would have to enter city, county code  
13 and the code -- or the booking code.

14 Q Okay. And so what facts would you use to identify  
15 the infraction that was being violated here, or the code that  
16 was being violated here?

17 A Like I said, I didn't investigate that part of  
18 it. That was why I stopped the vehicle. But I didn't  
19 investigate it. So I didn't look at the vehicle to see  
20 how well things were bolted, if it was taped on there, if  
21 it was [inaudible] I didn't -- I didn't investigate that  
22 part of the vehicle.

23 So I no longer went to look at the  
24 Traffic Citation Guide. I didn't look any of that stuff

1 up. The part that I dealt with was the robbery, the  
2 suspect was in custody, and I did the -- the booking for  
3 that. That's all I did.

4 Q Okay. To your knowledge, did anyone else deal with  
5 the traffic citation side?

6 A That, I don't remember.

7 Q Okay. Did you write the temporary custody record for  
8 Ms. Chapman?

9 A For Ms. Chapman?

10 Q Yes.

11 A That, I don't recall.

12 Q It help to refresh your recollection, show you copy  
13 of the TCR or Ms. Chapman.

14 A Yes.

15 MR. CLAUS: Permission to approach, Your Honor.

16 THE COURT: You may. And you're gonna show him an  
17 electronic version?

18 MR. CLAUS: Yes, Your Honor, with --

19 THE COURT: Okay.

20 MR. CLAUS: -- with the Court's permission.

21 THE COURT: That's fine.

22 MR. CLAUS: What was filed with the motion.

23 THE COURT: At some point in time, we will need a  
24 citation to that, but I think we have it attached to

1 three.

2 MR. CLAUS: Your Honor, I believe that the citation  
3 would be under the State's Bates stamping regime --

4 THE COURT: 367?

5 MR. CLAUS: -- Splond 367, yeah.

6 THE COURT: Yeah. Just wanted to make sure.

7 THE WITNESS: Yes, that is me.

8 BY MR. CLAUS:

9 Q Okay. And does this refresh your recollection as to  
10 what charges Ms. Chapman was booked under?

11 A Yes.

12 Q Okay. And was she booked for a traffic citation?

13 A No.

14 Q So, to your knowledge, did you or anyone else issue  
15 her a traffic citation?

16 A No.

17 Q Okay. And, indeed, you were the one that issued this  
18 TCR or -- or wrote out this TCR for --

19 A Yes.

20 Q -- Ms. Chapman.

21 So it would have fallen to you to do any other  
22 booking paperwork; correct?

23 A A lot of times when the call is what the -- you  
24 know, like a robbery or something that is fairly large --

1       it's not a ticket, it's not something, you know, you just  
2       do fairly quick -- this involves four or five officers.  
3       So while I'm doing something, or the other officer's doing  
4       something, I might fill out the TCR. I might fill out the  
5       request, the witness list.

6               We get help -- we help each other out.  
7       Obviously, my name is on there as the arresting and  
8       transporting, so --

9           Q     And it's your signature on this; correct?

10          A     Yes.

11          Q     Okay. So you would be the person to know if she had  
12       been given a citation or if she was arrested for anything  
13       else.

14          A     Yes.

15          Q     Okay. And, to your knowledge, was she?

16          A     No.

17          Q     Okay. And as you sit here today, you cannot identify  
18       the specific facts that you used to look for the citation in  
19       your traffic citation code book.

20               MR. PALAL: Objection, Your Honor. Mischaracterizes  
21       the witness's --

22               THE COURT: Sustained.

23               MR. PALAL: -- testimony.

24               MR. CLAUS: Then I'll ask you --



1 THE COURT: Do you want to ask it a different way?

2 MR. CLAUS: -- again.

3 BY MR. CLAUS:

4 Q Then I'll ask you again, officer. What facts would  
5 you use to look for the traffic infraction in this case?

6 A The facts?

7 Q Yes.

8 A As far as, you know, how well is the bumper on  
9 there, can it fall off? Is there any other part of the  
10 vehicle that can fall off? That's what I would be looking  
11 for.

12 Q Now, can you testify to any of those things today?

13 A No.

14 Q Did you look for any of those things at the time that  
15 you initiated the traffic stop?

16 A No.

17 Q Okay. So in point of fact, all the facts that you've  
18 just given to me, you have no facts that you would use to look  
19 up in the code book what that infraction might have been; is  
20 that correct?

21 MR. PALAL: Objection, Your Honor. Again,  
22 mischaracterizes the witness's testimony.

23 THE COURT: Overruled. Sir, he's asking you if you  
24 remember the facts you would have used to look up in your

1 book, as you sit here today; right?

2 MR. CLAUS: Correct, Your Honor.

3 THE COURT: Okay.

4 THE WITNESS: So the facts of why I stopped it?

5 BY MR. CLAUS:

6 Q No, the facts that you would have used to issue a  
7 citation.

8 A It's what I -- if parts of the vehicle are  
9 falling off, if there -- maybe there was one bolt holding  
10 it on and it can fall off --

11 Q Yes, officer.

12 A -- that's what I would be looking for.

13 Q But -- but you didn't check any of those things --

14 A No.

15 Q -- correct?

16 So you cannot testify today that any of those things  
17 were happening; correct?

18 A Correct.

19 Q You cannot testify that a bolt was falling off;  
20 correct?

21 A Correct.

22 Q You cannot testify that the bumper was falling off;  
23 correct?

24 A Correct.

1 Q Because you didn't check any of those facts.

2 A No, I did not.

3 Q So if somebody asked you to write a citation today  
4 for what occurred when you pulled over Ms. Chapman, you would  
5 not be able to do so; correct?

6 A Today, no.

7 Q Okay.

8 MR. CLAUS: Pass the witness, Your Honor.

9 THE COURT: Redirect?

10 MR. PALAL: No, Your Honor.

11 THE COURT: Thank you. Sir, you can step down. We  
12 appreciate your time. Have a nice afternoon.

13 Next witness.

14 MR. PALAL: That concludes the State's presentation.

15 THE COURT: Any additional witnesses that you'd like  
16 to call on behalf of the Defense?

17 MR. CLAUS: No, Your Honor.

18 THE COURT: All right. Would you like to argue? It  
19 was your motion, Mr. Claus, so you get to start.

20 MR. CLAUS: Yes, Your Honor.

21 Your Honor, to be frank, this is fairly straight  
22 forward. An officer can't just stop a group of people  
23 because they happen to be in a high crime area. Can't  
24 stop a group of people because they happen to be in the

1 same area that a crime occurred. There's black letter  
2 case law on that.

3 The issue is here that the State, I think, is  
4 going to try to say is, well, he started with a traffic  
5 stop because he thought the vehicle was unsafe. And what  
6 you have, Your Honor, is a completely pretextual traffic  
7 stop. He knew what he was looking for. He was looking  
8 for somebody who was leaving the scene of the robbery.  
9 And he looked and he used any pretext for making that  
10 stop.

11 When he followed this vehicle, even though he was  
12 following it for whether or not it was a safe vehicle on  
13 the roadway ostensibly, he observed nothing to give him  
14 any cause for concern that this was an unsafe vehicle.  
15 There were not parts falling on this vehicle. There was  
16 nothing that appeared unsafe from this vehicle, other than  
17 the fact that it had been in a car wreck. And there was  
18 no reason for him to be looking for a vehicle that had  
19 been in a wreck.

20 Moreover, Your Honor, when he initiates the  
21 traffic stop, he's done with the pretextual traffic stop.  
22 What he's really looking for is, is this car associated  
23 with the robbery? And so he proceeds in that fashion. He  
24 doesn't ask the person to identify themselves. He doesn't

1 ask for ID. He immediately begins ordering the driver of  
2 the car to essentially render the car searchable for him  
3 because that is his true purpose.

4 And, Your Honor, that is the essence of a  
5 pretextual stop. That as soon as a police officer has  
6 what he -- what he wanted, he starts looking for what he's  
7 really after. And that is the people associated with the  
8 robbery.

9 And he's identified two facts: One, the car was  
10 in the area of the robbery, which cannot support probable  
11 cause in and of itself, and that the vehicle was damaged,  
12 which, Your Honor, I've shown to be completely pretextual.

13 Based upon that, I would ask for the evidence  
14 that was gathered from that pretextual stop to be  
15 suppressed.

16 THE COURT: Thank you.

17 MR. PALAL: Your Honor, with all due respect to my  
18 colleague, he has the law precisely wrong.

19 First of all, if we're talking about the traffic  
20 stop, Nevada, in 2014, adopted the notion that  
21 pretextual -- that we no longer -- I'm sorry. Let me take  
22 this back.

23 The United States Supreme Court said in  
24 Ohio v. Robinette at 519 US 33 in 1996 is that, doesn't

1 matter if it's -- if a stop is pretextual or not, as long  
2 as there's a valid basis to stop the vehicle, if the  
3 officer has probable cause that a traffic infraction has  
4 occurred.

5 Now, if you look at State's Exhibit 2, for the  
6 purposes of this hearing, the back of the vehicle clearly  
7 shows that there's probable cause that the vehicle may be  
8 unsafe on the road.

9 In the true motivation of the officer, according  
10 to the Supreme -- United States Supreme Court, is not  
11 relevant, as long as there is a basis in law that there's  
12 probable cause that a -- that there's a traffic  
13 infraction.

14 And that we have here. The photo speaks for  
15 itself. There's probable cause for a traffic infraction.  
16 So that's one way in which the stop can be justified.

17 Now, let's not conflate that with the other way,  
18 which the traffic -- or the stop could be justified, which  
19 is the reasonable suspicion or an investigatory stop.  
20 Your Honor, that probable cause is not needed for an  
21 investigatory stop, rather a reasonable suspicion is  
22 what's required.

23 And what the United States Supreme Court has said  
24 on this issue is that even innocent actions, when viewed

1 by police officers who have knowledge of the motives or  
2 patterns of certain types of criminal activity, can give  
3 rise to reasonable suspicion. And that's in US v. Cortez  
4 449 US 441.

5 The case that the Defense actually cites to,  
6 Illinois v. Wardlow, also says that a stop, as long as  
7 as -- you can stop as long as there is reasonable  
8 suspicion. And even innocent activity may be the basis  
9 for a -- for a reasonable suspicion stop.

10 And what the officer articulated was, in his  
11 training and experience, robbers sometimes go to cars  
12 awaiting some distance away. They go to that vehicle and  
13 then that vehicle is what ultimately provides them  
14 transportation.

15 And what he testified to was that at 2:57 the  
16 call came in and 3:03 he conducted the traffic stop,  
17 Your Honor. Within six minutes, heading in the general  
18 direction that the -- that the Defendant -- that the  
19 suspected robber was running. The only car on the road,  
20 the only person on the road is enough for a reasonable  
21 suspicion. It's enough to make that stop.

22 So State's position is under two distinct  
23 theories, a stop was proper. First, the probable cause  
24 that a traffic infraction had occurred, which is

1 demonstrated by not just the officer's testimony but by  
2 State's proposed -- State's Exhibit Number 2 and the  
3 reasonable suspicion that the car may be in -- may be  
4 involved -- or the persons in the car may be involved in  
5 the robbery.

6 And given the low threshold required for a  
7 reasonable suspicion, which is something -- essentially  
8 what the Supreme Court has said, something more than a  
9 hunch. And that's what he had here. More than a hunch.  
10 He saw the car traveling in the same direction, the only  
11 car on the road. And given his training and experience,  
12 this is a means of getting away from a robbery, that he  
13 had more than a hunch.

14 So under either one of those two theories, the  
15 evidence should not be suppressed. The stop was proper.

16 THE COURT: Thank you.

17 Mr. Claus, anything else?

18 MR. CLAUS: No, Your Honor. In terms of the  
19 pretextual stop -- this might be a different situation if  
20 the officer had said, "There's damage to that car. I'm  
21 stopping it immediately."

22 But if you look at the exhibit, Your Honor, the  
23 police officer followed this car for half a mile, looking  
24 for something else. And it was only when the officer



1       says, "Okay. Nothing else is happening here," that he  
2       decided to force the issue.

3               That is clearly pretextual. And in terms of  
4       reasonable suspicion, Your Honor, reasonable suspicion,  
5       the activity is what? What was the activity that was  
6       being engaged in here that provided even reasonable,  
7       articulable suspicion? It was being in the area of the  
8       robbery. That's it. And, Your Honor, that's not enough.  
9       There has to be something more.

10              The police officer might have had a hunch. And  
11       that's exactly what he testified to. But it was nothing  
12       more than that.

13              And so, Your Honor, I'd submit thereon.

14              THE COURT: Thank you. The motion is denied. Here,  
15       there was a valid basis for the traffic stop, which led to  
16       the discovery of the additional evidence. Even if no  
17       citation was issued, the photographic evidence shows the  
18       valid basis.

19              Anything else?

20              MR. CLAUS: No, Your Honor.

21              MR. PALAL: Nothing for the State.

22              THE COURT: All right. Kevin, go get my jury.

23              THE BAILIFF: Yes, Your Honor.

24              THE COURT: Now, Mr. Splond, remember how we talked

1 about the selection of the alternate jurors the other day?

2 Do you remember that discussion?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you still want to use that process?

5 THE DEFENDANT: Uh, no.

6 THE COURT: Okay. So we're gonna let the alternate  
7 jurors be the last two, which would be 13 and 14.

8 THE DEFENDANT: Yeah. Yes [inaudible].

9 THE COURT: Sir, it's your decision.

10 THE DEFENDANT: [Inaudible]

11 THE COURT: No. No. I'm not trying to pressure you.

12 THE DEFENDANT: I know. I would -- I would pick the  
13 two.

14 THE COURT: You want to pick the two names out of the  
15 proffer -- okay. Let me get Dan.

16 Dan, can you come take the coffee can to  
17 Mr. Splond? He's gonna pull out a poker chip somewhere  
18 between 1 and 14. You're gonna tell me number one and  
19 then you're gonna tell me number two.

20 MR. KUTINAC: Sorry, Your Honor [inaudible].

21 THE COURT: Well, I sent Kevin to get the jury. So I  
22 had to holler at you. Don't worry. You're good. He'll  
23 say he has not been able to find all the chips.

24 MR. CLAUS: Thankfully, Your Honor, I know that I

1       didn't touch them. So I am --

2           THE COURT: When we did --

3           MR. CLAUS: -- exculpated.

4           THE COURT: -- City Center we had 20 or 25 alternates,  
5       so it was a little more frustrating.

6           MR. PALAL: Wow.

7           THE COURT: We had enough alternates to make a year.

8           MR. PALAL: Wow.

9           MR. KUTINAC: What are we missing?

10          THE CLERK: Six.

11          MR. PALAL: We got a great TV out of it; right?

12          THE COURT: I got two.

13          MR. PALAL: Oh, wow, I didn't even notice that one.

14          THE COURT: We got two great TVs. And boy, are they  
15       hooked in that ceiling.

16                You got them all?

17          MR. KUTINAC: [Inaudible]

18          THE COURT: All right. Mr. Splond, tell us who our  
19       first alternate's gonna be.

20          THE DEFENDANT: Eight, Your Honor.

21          THE COURT: And our second alternate.

22          THE DEFENDANT: Number one, Your Honor.

23          THE COURT: So the person remaining in the eight spot,  
24       after the execution of all the preemptory challenges, will

1 be the first alternate. And the person remaining in the  
2 first spot, after the execution of all the preemptory  
3 challenges, will be the second alternate. Those will be  
4 blind and the jurors wouldn't be disclosed that  
5 information until right after closing arguments.

6 All right. Anything else while we pull the  
7 jurors upstairs?

8 MR. CLAUS: My client would like to speak with me,  
9 Your Honor. Can I --

10 THE COURT: Sure. Absolutely.

11 MR. CLAUS: -- take him to the side room?

12 THE COURT: Absolutely.

13 MR. CLAUS: Thank you.

14 THE COURT: And let us know when you're ready.

15 MR. CLAUS: Thank you, Your Honor.

16 THE COURT: Because I'm not gonna rush you because you  
17 know how long it takes me to get a jury upstairs.

18 MR. CLAUS: Yes, Your Honor.

19 [Recess at 1:44 p.m. proceedings resumed at  
20 2:00 p.m.]

21 [Outside the presence of the prospective jury]

22 THE COURT: Can you start at 9:30 tomorrow?  
23 Tomorrow's Tuesday.

24 MR. CLAUS: Let me check.

1 THE COURT: I ask these questions for a reason.

2 MR. PALAL: Yes, Your Honor.

3 THE COURT: Thank you.

4 THE BAILIFF: You're welcome.

5 MR. CLAUS: Tomorrow, it looks like I can do a 9:30  
6 start, Your Honor.

7 THE COURT: Awesome. And we're gonna shoot for 10:30  
8 on Wednesday.

9 You ready to bring them in?

10 THE BAILIFF: Not just yet, Judge.

11 THE COURT: Okay. Kevin, signal me before you bring  
12 them in; okay?

13 THE BAILIFF: Yes, I will.

14 THE COURT: Thank you.

15 MR. CLAUS: And then you said on Wednesday we're gonna  
16 start at 10:30?

17 THE COURT: Yeah, I think so. I got 20 things on my  
18 calendar at 9:00.

19 MR. CLAUS: And then Thursday, 10:30 start as well,  
20 Your Honor?

21 THE COURT: No, Thursday will be 9:00, 9:30. I only  
22 have seven things on.

23 [Discussion off the record]

24 MR. CLAUS: Friday, when would you expect to start,

1 Your Honor, if we go on Friday?

2 THE COURT: I have an evidentiary hearing at 8:30 on a  
3 post conviction that should last about five minutes, maybe  
4 ten. So I'm thinking 9:30. 9:00 or 9:30.

5 MR. CLAUS: Excellent. Okay. And it's 9:30 tomorrow?  
6 May I go in the --

7 THE COURT: Yeah. 9:30 Tuesday, Thursday, Friday.  
8 10:30 Wednesday.

9 MR. CLAUS: Thank you.

10 [Discussion off the record]

11 [In the presence of the prospective jury]

12 THE BAILIFF: Jurors are present.

13 THE COURT: You can sit down in these two chairs.

14 Counsel, you can be seated.

15 Good afternoon, ladies and gentlemen. This is  
16 the time set for the trial of case number C296374,  
17 State of Nevada versus Kenny Splond, the Defendant.

18 The record will reflect the presence of the  
19 Defendant, his Counsel, and Counsel for the State, as well  
20 as all the officers of the Court.

21 Are the parties ready to proceed?

22 MR. PALAL: Yes, Your Honor.

23 MR. CLAUS: Yes, Your Honor.

24 THE COURT: Ladies and gentlemen, you are in

1 Department 11 of the 8th Judicial District Court. My name  
2 is Elizabeth Gonzalez and I'm the presiding judge in this  
3 department.

4 Let me take this opportunity to introduce the  
5 Court staff with whom you may be coming into contact  
6 during jury selection. Jill Hopkins is the  
7 Court Recorder. She takes down everything that occurs in  
8 the courtroom on a digital audio/video recording system.  
9 For that reason, it's very important that if you have to  
10 respond to a question, you give me the last four digits of  
11 the badge number. That way she will be able to accurately  
12 identify whoever has responded as part of a transcript, if  
13 she ever has to type one.

14 Dulce Romea, she's the Court Clerk who swears  
15 witnesses, marks exhibits, and keeps track of the  
16 evidence.

17 Kevin Ekhart is the marshal who you have already  
18 met and is the person you will have the most contact  
19 during the trial.

20 On behalf of the State, if you would please  
21 introduce yourself and make a brief statement of the  
22 nature of the case and state the names of the witnesses  
23 you may call and introduce your court counsel.

24 MR. PALAL: Yes, thank you, Your Honor.

1           Good afternoon, ladies and gentlemen, my name is  
2   Binu Palal. I'm here with Chad Lexis. We are both  
3   Deputy District Attorneys for the Clark County  
4   District Attorney's Office.

5           You've been called here for a criminal case. In  
6   this case, the State has charged the Defendant with a  
7   series of robberies and burglaries. Specifically, the  
8   Defendant is charged with a burglary with use of a firearm  
9   and robbery with use of a firearm for his -- with the --  
10   on January 22nd, 2014, with -- for entering into a Cricket  
11   located at 4343 North Rancho Drive.

12           The next crime he's committed -- he's charged  
13   with is also a burglary and -- burglary with one  
14   possession of a firearm and robbery with use of a firearm  
15   for a robbery and burglary that occurred on  
16   January 28th, 2014, at a Metro PCS located at  
17   6663 Smoke Ranch.

18           He's also charged with a burglary with a firearm  
19   and robbery with a firearm for the events that occurred on  
20   February 2nd, 2014, at a Star Mart located at  
21   5001 North Rainbow.

22           Additionally, he's charged with conspiracy  
23   robbery with a co-conspirator, name of Kelly Chapman, also  
24   charged with possession of stolen property, to wit a



1 firearm in this case.

2 Ladies and gentlemen, I'm gonna read you a list  
3 of names of people we may call. We are almost assuredly  
4 not calling all these folks. But we just list everybody  
5 who could possibly be a witness in this case.  
6 Officer Ayala, Ariselli Bautista, Officer Brumagin,  
7 Officer Bruno; Officer Carter, Officer Casper;  
8 Officer Coleman; Detective Cologne, custodian of records  
9 for the Clark County Detention Center, Las Vegas  
10 Metropolitan Police Department dispatch and records, the  
11 custodian of records for the Nevada Department of Motor  
12 Vehicles, the custodian of records for Star Mart,  
13 Officer Dun, Samuel Echeverria, Officer Fairweather,  
14 Crime Scene Analyst Fletcher, Officer Forson,  
15 Officer Francis, Officer Garcia, Forensic Analyst  
16 Heather Gouldthorpe, Officer Haus, Jeffery Haberman,  
17 Officer Hoffman, Christy Holser, Graciela Jimenez,  
18 Detective Scott Kavon, Officer Kerwin, Officer Couelausky,  
19 Officer Landers, Officer Marquez, Officer McCray,  
20 Officer Paysos, Officer Raylea, Officer Rowberry,  
21 Brittany Slathar, Crime Scene Analyst 4, and  
22 Alisa Williams.

23 Thank you.

24 THE COURT: Thank you.

1           Mr. Claus, need you to introduce yourself, your  
2       client, and any additional witnesses you intend to call.

3           MR. CLAUS: Good afternoon, ladies and gentlemen of  
4       the jury. My name is Augustus Claus. I represent Splond.  
5       Additional witnesses that may be called by the Defense  
6       include Mr. Splond but also [inaudible].

7           Thank you very much.

8           THE COURT: Thank you.

9           Ladies and gentlemen, and this is Tom Stewart.  
10       He is an extern, which is a law student who's working with  
11       our Department. So you may see him in and out of the  
12       courtroom.

13           Ms. Clerk, please call the roll of the panel of  
14       perspective jurors. Ladies and gentlemen, when your name  
15       is called, if you would please answer "present" or "here."

16           [Jury roll call]

17           THE COURT: Is there anyone here as a member of my  
18       perspective jury who's name was not called?

19           Seeing no hands, having [inaudible] a response.  
20       Could you all please stand up and raise your right hands  
21       to be sworn.

22           [The prospective jury was duly sworn]

23           THE COURT: Ma'am, would you like some water?

24           Is anyone not able to hear me?

1           Okay. Ladies and gentlemen, we are about to  
2       commence the jury selection process. During this process,  
3       questions will be asked of you, both by myself and by  
4       Counsel.

5           I will tell you that some of the questions will  
6       be somewhat personal. They are not intended to embarrass  
7       you. They are asked so that Counsel and the Court can  
8       make a determination as to whether you can sit as a fair  
9       and impartial juror in this particular case.

10          If for any reason you believe that the answer to  
11       a question needs to be given in private, please let us  
12       know and we will try and accommodate your request.

13          It is important you know the significance of  
14       full, complete, and honest answers to all the questions we  
15       are about to ask you. Please do not try to hide or  
16       withhold anything which might indicate bias or prejudice  
17       of any sort by any of you. Should you fail to answer  
18       truthfully or if you hide or with hold anything bearing  
19       upon your ability to serve or your qualifications, that  
20       fact may tend to contaminate your verdict.

21          I'm going to conduct a general examination of all  
22       of you. And then I'm gonna focus more precise questions  
23       on those sitting in the box area. At some point during  
24       the process of selecting a jury, Counsel will have the

1 right to ask that a particular individual be excused.  
2 Please do not be offended if you're excused by one of  
3 these processes. They're called challenges. It doesn't  
4 mean you're not qualified to sit as a jury or juror, it  
5 just means that in this particular case, there's something  
6 in your background that gives Counsel concern as to  
7 whether you could sit fairly and impartially in this  
8 particular case.

9 Please remember that those procedures are part of  
10 our system of government. And they are some of the  
11 protections that are given to everyone that is involved in  
12 our system.

13 If you wish to respond to a question, please  
14 remember, I need the last four digits of your badge number  
15 before you respond. And because we're using a recording  
16 system, please wait for the microphone to get you -- get  
17 to you. Kevin has it and he will try and be quick.

18 [Jury voir dire recorded but not herein  
19 transcribed]

20 THE COURT: Ladies and gentlemen, we're gonna let you  
21 guys be excused for a few minutes.

22 During this recess, you are admonished not to  
23 talk or converse among yourselves or with anyone else on  
24 any subject connected with this trial or read, watch, or

1 listen to any report of commentary on the trial or any  
2 person connected to this trial by any means of  
3 information, including without limitation: Social media,  
4 text, newspaper, television, Internet, radio or form or  
5 express any opinion on any subject connected with the  
6 trial until the case is finally submitted to you.

7 We'll see you about ten minutes outside.

8 Courtroom 14A at the other end of the hallway, there's  
9 some blue buckets there. I'm not sure if it's a hazard or  
10 not. If there's a hazard don't go down there all the way.

11 THE BAILIFF: Remember which seats you're in, please.

12 JUROR: Same seats, different courtroom?

13 THE BAILIFF: No, same seats --

14 THE COURT: No, you'll come back to these chairs.

15 JUROR: Oh, I thought you said we're gonna get sent to  
16 14A.

17 THE BAILIFF: No.

18 THE COURT: I'm just trying to send you the other end  
19 of the hallway, so you don't run into any people who may  
20 be coming in and out of the courtroom.

21 JUROR: Got it.

22 [Outside the presence of the prospective jury]

23 [Jury voir dire resumed]

24 THE COURT: All right, guys. While we're doing that,

1 if we could now go to my list of --

2 MR. WAITE: Your Honor?

3 THE COURT: Yeah.

4 MR. WAITE: Can I be excused. I've got a couple  
5 motions [inaudible] today.

6 THE COURT: Bye. Yes, you may leave.

7 MR. WAITE: Thank you. I appreciate it.

8 THE COURT: But some people like to watch the process.  
9 Well, you know.

10 MR. WAITE: Thank you.

11 THE COURT: Okay.

12 MR. PALAL: Can we -- we can probably move back to our  
13 desks.

14 THE COURT: Now that we don't have any jurors, I can  
15 do this. Nobody's got headphones this time. So I don't  
16 have to worry about that.

17 [Jury voir dire resumed]

18 THE COURT: Okay. Does anybody want to, outside the  
19 presence, ask any of the folks who had felony convictions  
20 anything about those to establish whether you think they,  
21 in fact, do have the ability to serve or not. I know  
22 sometimes that is a touchy issue.

23 MR. PALAL: Your Honor, I think during the course of  
24 voir dire we usually ask, "Have you been accused of a

1 crime," and go --

2 THE COURT: I do ask that.

3 MR. PALAL: -- and go a little bit in -- I mean, just  
4 the nature of it.

5 THE COURT: Right.

6 MR. PALAL: I don't think the State requires anything  
7 more than that.

8 THE COURT: Okay.

9 MR. PALAL: If we -- and if we do, Your Honor, do we  
10 have permission to further inquire if necessary?

11 THE COURT: Absolutely.

12 MR. PALAL: All right. Thank you, Your Honor.

13 THE COURT: The concern is some people are  
14 uncomfortable talking about that information in public.  
15 And so I was gonna let you, if you thought there was any  
16 reason that you needed it, to take the opportunity to ask  
17 outside the presence of the other jurors, but --

18 MR. PALAL: No, we're fine, Your Honor. Thank you  
19 for the opportunity.

20 MR. CLAUS: [Inaudible] knows that their civil rights  
21 have been restored is refreshing, Your Honor, so I have no  
22 questions.

23 THE COURT: Okay. Kevin, as soon as you have them  
24 back, I will excuse those in addition to Mr. Waite, who

1 I've not excused. And I will fill the seats vacated by  
2 excused jurors from the audience. And hopefully we  
3 [inaudible] but I don't know how long it's gonna take that  
4 young lady to get to and from the bathroom because I don't  
5 even know if the bathrooms on the floor are working today.

6 [Pause in the proceedings]

7 THE COURT: Mr. Claus, look at your list, make sure  
8 I'm right: 46, 156, 345, 368, 371, 372, 383, 384, 447,  
9 and 472.

10 MR. CLAUS: I agree, Your Honor.

11 THE COURT: Okay.

12 THE COURT: I had somehow written the other juror ID  
13 number for two of them. So I had to go back and correct  
14 my list. Because I have two sets of ID numbers and  
15 sometimes I write the other one.

16 MR. CLAUS: Your formatting on your random list is  
17 slightly different than the other departments and that  
18 takes a little bit of getting used to, but not much.

19 THE COURT: Is it different?

20 MR. CLAUS: Just a little different.

21 THE COURT: This is the new system that applies to  
22 everybody.

23 MR. CLAUS: Really?

24 MR. PALAL: Oh, okay. That might be it.



1 THE COURT: This is the new -- it's been -- this is  
2 its third week.

3 MR. PALAL: Oh, okay.

4 MR. CLAUS: I thought --

5 THE COURT: And you've had me for two.

6 MR. CLAUS: Okay.

7 THE COURT: Are we ready, Kevin?

8 THE BAILIFF: Yes, Judge.

9 [Discussion off the record]

10 [In the presence of the prospective jury]

11 THE COURT: Ladies and gentlemen, you can sit down.

12 Counsel, you may be seated.

13 Ladies and gentlemen, I'm going to excuse the  
14 following individuals at this time.

15 [Jury voir dire resumed]

16 THE COURT: Yes, we're gonna take a short break. All  
17 you got to do is wave at me.

18 Ladies and gentlemen, during this recess, you are  
19 admonished not to talk or converse among yourselves or  
20 with anyone else on any subject connected with this trial  
21 or read, watch, or listen to any report of commentary on  
22 the trial or any person connected to this trial by any  
23 means of information, including without limitation:  
24 Social media, text, newspaper, television, Internet, radio

1 or form or express any opinion on any subject connected  
2 with the trial until the case is finally submitted to you.

3 While all those individuals are all going to the  
4 restroom, if I could have [Juror 0412] and [Juror 0422]  
5 please remain with us. But the rest of you can all go to  
6 the restroom or stay out in the hallway, out there in  
7 front of 14A.

8 [Outside the presence of the jury]

9 [Jury voir dire resumed]

10 THE COURT: Does Counsel need a restroom break before  
11 the marshal brings everybody back in?

12 MR. PALAL: Yes, please.

13 THE COURT: Okay.

14 MR. PALAL: Thank you, Your Honor.

15 THE COURT: You know, I'm trying to watch out for you  
16 guys.

17 [Recess at 3:22 p.m.; proceedings resumed at  
18 3:27 p.m.]

19 [Outside the presence of the jury]

20 [Discussion off the record]

21 THE COURT: Well, once I finish these -- the number  
22 six that we're gonna put in there -- the person we're  
23 gonna put in chair six, then I'm gonna ask the general  
24 question about criminal contacts. And then just let them

1 raise their hands and then you guys follow up on them as  
2 you will.

3 MR. PALAL: Okay.

4 THE COURT: I'm not gonna go into any details at all  
5 with them. Just have them identify themselves for you  
6 guys.

7 MR. PALAL: All right.

8 THE COURT: So write fast.

9 MR. PALAL: All right.

10 MR. CLAUS: Your Honor, do you have a stated goal of  
11 getting through jury selection by the end of the day --

12 THE COURT: I have no --

13 MR. CLAUS: -- today?

14 THE COURT: -- stated goals, other than to do my job.  
15 And to do my job well.

16 MR. CLAUS: I just -- some judges like to -- like to  
17 get through certain items in a given day.

18 THE COURT: No, I --

19 MR. CLAUS: And so they'll length then out the day --

20 THE COURT: No, my day end at 5:00 o'clock.

21 MR. CLAUS: Okay.

22 THE COURT: I don't pay overtime to staff. I'm a  
23 responsible elected official.

24 MR. CLAUS: Yes, Your Honor.

1 THE COURT: I know there's a difference of opinion in  
2 the building, but that's my opinion.

3 MR. CLAUS: I -- I --

4 THE COURT: I see budgets and I know what it means.

5 MR. CLAUS: I've learned to go with the flow,  
6 Your Honor. I think that's --

7 THE COURT: That's good.

8 MR. CLAUS: I go where I'm ordered, how's that?

9 THE COURT: You know? I've been known to go over, but  
10 only when something unusual occurs. We try not to; right?

11 THE CLERK: Right.

12 THE BAILIFF: Ready?

13 [In the presence of the jury]

14 THE BAILIFF: Jurors are present.

15 THE COURT: You can sit down when you get to your  
16 chairs if you feel like it. You can stand up if you want  
17 to. Oh, you got to scoot down one more. Leave that sixth  
18 chair open. Yeah. There you go. Thank you.

19 [Jury voir dire resumed]

20 THE COURT: Okay. Ladies and gentlemen, at this time  
21 we're gonna take our evening recess. We're gonna start  
22 tomorrow morning at 9:30. So if you could meet outside  
23 courtroom 14A in the morning.

24 During this recess, you're admonished not to talk

1 or converse among yourselves, with anyone else, any  
2 subject connected with this trial or read, watch or  
3 listening any report or commentary on the trial or any  
4 person connected with this trial by any mean of  
5 information including, without limitation: Social media,  
6 text, newspaper, television, Internet, radio or form or  
7 express any opinion on any subject connected with the  
8 matter until the case is it finally submitted to you.

9 Ladies and gentlemen, I'm gonna read you one  
10 thing that I probably wouldn't read you until tomorrow.  
11 But because you're gonna be gone overnight, I'm gonna read  
12 it to you. Hold on a second. Let me find it in my notes.

13 During the course of this trial, the attorneys  
14 for both sides of the parties, witnesses, and court  
15 personnel, other than the marshal, are not permitted to  
16 converse with members of the jury. These individuals are  
17 not being antisocial, they are bound by ethics and the law  
18 not to talk to you. To do so might contaminate your  
19 verdict.

20 You're admonished, additionally, you're not to  
21 visit the scene of any of the acts or occurrences made  
22 mention of during the trial unless specifically directed  
23 to do so by the Court. Please don't investigate this case  
24 or anyone that has anything to do with this case on your

1 own. Do not undertake any legal or factual research on  
2 your own. And that includes research on the Internet.

3 So we'll see you in the morning at 9:30. Have a  
4 nice evening.

5 [Outside the presence of the jury]

6 THE COURT: Kevin?

7 THE BAILIFF: Yes, Your Honor.

8 THE COURT: For Ms. Amico, can you give her directions  
9 to the handicap parking facility for the jurors so that  
10 she can park there tomorrow?

11 Okay. Anything outside the presence?

12 MR. PALAL: Your Honor, I just want to -- in order to  
13 line up our witnesses. Do you have a time you suggest  
14 that we line those witnesses up?

15 THE COURT: My guess is that we will finish the jury  
16 selection by about 10:30 tomorrow, maybe 11:00.

17 MR. PALAL: Okay.

18 THE COURT: And then you guys will make openings. And  
19 then I have to break for lunch and go twist arms of pro  
20 bono lawyers. And then we'll start back up at 1:30,  
21 probably --

22 MR. PALAL: Okay.

23 THE COURT: -- with witnesses, will be my guess, then.

24 MR. PALAL: That's what I'll tell our witnesses, then.

1 THE COURT: That sound like a plan for you guys?

2 MR. PALAL: Yes, that's fine, Your Honor.

3 THE COURT: All right. I'm holding you here for a few  
4 minutes because typically at this stage, when I break jury  
5 instructions overnight, I have three or four people who  
6 have to talk to us tonight.

7 So we're all gonna stay here to wait for Kevin to  
8 come back and say, "Judge, there's these people who have  
9 to talk to you." And if he doesn't say that, that's okay  
10 and we'll all go home. But if he does say that, then  
11 we'll visit with those people individually and see what  
12 their problem is.

13 So just, you know, be patient for a few minutes.

14 [Discussion off the record]

15 MR. CLAUS: And, Your Honor, I haven't practiced in  
16 front of you before, but in talking with the State,  
17 they're gonna be bringing in the fingerprint examiner. I  
18 try not to double subpoena witnesses, if at all possible.  
19 I didn't know, some judges want you to because if the  
20 State --

21 THE COURT: No, I don't want you to. I want you to do  
22 it all at once so I only have one witness in.

23 Kevin, are we ready to go home?

24 THE BAILIFF: Yes, Judge.

1 THE COURT: No -- no people had to talk to us tonight?

2 THE BAILIFF: No.

3 THE COURT: Not a single one. That's lovely to hear.

4 All right. So we'll see you guys in the morning  
5 at 9:30.

6 MR. PALAL: Thank you, Your Honor.

7 PROCEEDING CONCLUDED AT 5:00 P.M.

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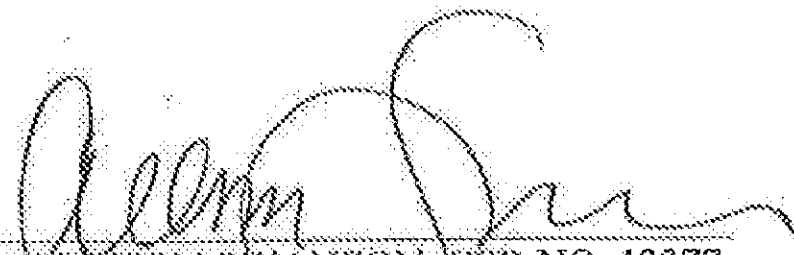


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I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

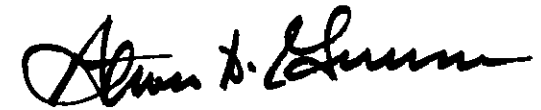
AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

  
ALLISON SWANSON, CSR NO. 13377  
CERTIFIED SHORTHAND REPORTER  
FOR THE STATE OF CALIFORNIA

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CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-14-296374-1
	)	
vs.	)	
	)	DEPT. NO. XI
KENYA SPLOND, aka Kenny Splond,	)	
#1138461 KELLIE ERIN CHAPMAN,	)	
#1681308,	)	
	)	
Defendants.	)	

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BEFORE THE HONORABLE ELIZABETH GONZALEZ,

DISTRICT COURT JUDGE

Tuesday, March 22, 2016

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 2

APPEARANCES:

For the Plaintiffs:	BINU PALAL
	CHAD LEXIS
	Deputy District Attorneys

For the Defendants:	AUGUSTUS CLAUS
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TRANSCRIBED BY: ALLISON SWANSON, CSR No. 13377

1 LAS VEGAS, NEVADA, TUESDAY, MARCH 22, 2016 9:30 A.M.

2 \*\*\*\*\*

3 [Outside the presence of the prospective jury]

4 MR. CLAUS: I'm just gonna use the restroom, if you  
5 don't mind, Your Honor.

6 THE COURT: That's fine.

7 MR. CLAUS: Yeah?

8 THE COURT: You got to get a tie on your client, too.

9 MR. CLAUS: Yeah.

10 THE DEFENDANT: Thank you.

11 THE COURT: Do either of you have anything outside the  
12 presence?

13 MR. PALAL: Nothing from the State, Your Honor.

14 MR. CLAUS: No, nothing from the Defense.

15 THE COURT: Okay. The plan is we're gonna finish jury  
16 selection, exercise the challenges, take a break, set up  
17 the Elmo, do our openings, break for lunch.

18 I got to be in Summerlin at noon for an arm  
19 twisting. And I'll be back here at 1:15, 1:30. We'll  
20 plan for the jury at 1:30.

21 MR. CLAUS: Five peremptories a piece, yes,  
22 Your Honor?

23 THE COURT: Yes.

24 MR. CLAUS: Thank you.

1 THE COURT: Across the whole group because you agreed  
2 to the alternate process that was the unusual one.

3 MR. CLAUS: Yes, Your Honor.

4 THE COURT: Okay. Bye.

5 [Discussion off the record]

6 [Recess at 9:31 a.m.; proceedings resumed at  
7 9:34 a.m.]

8 THE BAILIFF: Still waiting on four jurors.

9 THE COURT: Okay. So I'm not late. I did good. I  
10 was ready on time.

11 [Recess at 9:34 a.m.; proceedings resumed at  
12 9:54 a.m.]

13 [Outside the presence of the jury]

14 THE COURT: Mr. Claus, you're gonna use about half  
15 hour?

16 MR. CLAUS: I thought more towards an hour,  
17 Your Honor, but --

18 THE COURT: Come on Jordan, fix us up. And what juror  
19 are we missing?

20 THE BAILIFF: [Inaudible] 46.

21 THE COURT: Okay. So we're missing a paralegal from  
22 the law firm, [Juror 0516]

23 THE BAILIFF: She showed up.

24 THE COURT: All right. Bring them in.

1 THE BAILIFF: Yes, Judge.

2 [Discussion off the record]

3 [In the presence of the prospective jury]

4 THE COURT: Morning, ladies and gentlemen.

5 Counsel, you can be seated.

6 Mr. Claus, you may continue your examination.

7 MR. CLAUS: Thank you, Your Honor.

8 [Jury voir dire resumed]

9 THE COURT: Thank you.

10 Ladies and gentlemen, at this time Counsel begin  
11 executing the peremptory challenges. I'm gonna go ahead  
12 and read some introductory comments to you while they're  
13 doing that. Counsel, if you have any questions during the  
14 process executing your peremptory challenges, remember, I  
15 would rather hear about them rather than you have a  
16 mistake while making an assumption incorrectly.

17 Ladies and gentlemen, first, I want to thank all  
18 of you for coming. And that includes those in the  
19 audience who did not get up to be questioned. Without  
20 those of you who are willing to serve as jurors, our  
21 system wouldn't work.

22 As you've heard from some of the attorneys, this  
23 is one of the most important systems in the whole -- in  
24 the whole world. We have a system where everyone is

1       presumed innocent and is judged by their peers.

2               You sitting here are those peers. And I  
3       appreciate your willingness to come down here during  
4       spring break. On behalf of all of the judges here at the  
5       8th Judicial District Court, thank you for your  
6       attendance. Even if you're not selected as a juror, we  
7       really appreciate you.

8               If you want to visit among yourselves, you can.  
9       Sometimes this process takes a little longer than others.  
10      If you want to stand up at your chair, you can.

11              Counsel, are there any issues with respect to the  
12      execution of peremptory challenges?

13              MR. PALAL: None by the State, Your Honor.

14              MR. CLAUS: No, Your Honor.

15              THE COURT: Okay. Ladies and gentlemen, the following  
16      individuals will remain and form my jury. The rest of you  
17      may be excused as soon as I finish reading the names. And  
18      I truly appreciate your attendance and your participation  
19      as jurors.

20              The following individuals please remain: Badge  
21      number 386, [Juror No. 1]; badge number 394,  
22      [Juror No. 2]; badge number 251, [Juror No. 3]; badge  
23      number 269, [Juror No. 4]; badge number 425,  
24      [Juror No. 5]; badge number 291, [Juror No. 6]; badge

1       number 294, [Juror No. 7]; badge number 412,  
2       [Juror No. 8], badge number 353, [Juror No. 9], badge  
3       number 367, [Juror No. 10]; badge number 427,  
4       [Juror No. 11]; badge number 401, [Juror No. 12]; badge  
5       number 378, [Juror No. 13]; and badge number 381,  
6       [Juror No. 14].

7               So if those individuals would remain, the rest of  
8       you are excused. Thank you, again, for your  
9       participation.

10              [Juror No. 1], you have the first important  
11       decision to make. You're gonna have to look at this  
12       monitor on the wall. Do you want to sit in that chair or  
13       move over one? You're okay seeing it? It's not gonna be  
14       too far? Okay.

15              Ladies and gentlemen, if you'd all stand and  
16       we're gonna swear you in now.

17              [The jury was duly sworn]

18              THE COURT: And those of you on the top row, if you  
19       could all squish in so you're in row. So if you'd move  
20       over one chair. Now, [Juror No. 8], you have to make the  
21       decision as to whether you can see that monitor up there  
22       from the chair you're in or if you want to move over a  
23       chair.

24              JUROR NO. 8: I'm okay.

1           THE COURT: Okay. So if you guys can squish in. And  
2 then, ladies, if you would go in and in order form -- get  
3 in those black more comfortable chairs. And  
4 [Juror No. 14], you're gonna be on the end.

5           Thank you. Ladies and gentlemen, you are now  
6 sworn members of this jury. Before we commence with  
7 opening statements, I need to make some introductory  
8 comments.

9           You're admonished that no juror may declare to a  
10 fellow jury any fact relating to this case of his or her  
11 own knowledge. And if any juror discovers during the  
12 trial or after the jury has retired that he or she or any  
13 other juror has personal knowledge of any fact in  
14 controversy in this case, you shall disclose that to me in  
15 the absence of the other jurors. The way you do that is  
16 you tell the marshal.

17           So what that means is if somebody walks into the  
18 courtroom and you recognize them -- either because you've  
19 seen them at church, you run into them at the gym but you  
20 don't know their name and you didn't know their name in  
21 the list of witnesses was read -- you need to bring that  
22 to our attention. The way that you do that is by telling  
23 the marshal. And then if an inquiry needs to be made, I  
24 go ahead and make that at that time; okay?



1           During the course of this trial, the attorneys  
2   for both sides, the parties, the witnesses, and court  
3   personnel, other than the marshal, are not permitted to  
4   converse with members of the jury. These individuals are  
5   not being antisocial. They are bound by ethics and the  
6   law not to talk to you. To do so might contaminate your  
7   verdict.

8           You're admonished, additionally, that you are not  
9   to visit the scene of any of the acts or occurrences made  
10   mention of during this trial unless specifically directed  
11   to do so by the Court. Please don't investigate this case  
12   or anyone who has anything to do with this case on your  
13   own. Do not undertake any legal or factual research on  
14   your own. And that includes research on the Internet.

15           What I will now say is intended to serve as an  
16   introduction to the trial of this case. It is not a  
17   substitute for the detailed instructions on the law, which  
18   I will give you at the close of the case and before you  
19   retire to consider your verdict.

20           This is a criminal case commenced by the State of  
21   Nevada, which I may sometimes refer to as the State,  
22   against Kenny Splond, the Defendant. The case is based on  
23   an indictment. The clerk will now read the indictment to  
24   the ladies and gentlemen of the jury and state the plea

1 the Defendant to that indictment.

2 [Indictment read]

3 THE COURT: Ladies and gentlemen, this case is based  
4 on the indictment which has been read to you by the clerk.  
5 You should distinctly understand the indictment is simply  
6 a charge and it is not in any sense evidence of the  
7 allegations it contains.

8 The Defendant has pled not guilty to the  
9 indictment. The State therefore has the burden of proving  
10 each of the essential elements of the charges beyond a  
11 reasonable doubt. As the Defendant sits here now, he is  
12 not guilty.

13 The purpose of this trial is to determine whether  
14 the State will meet that burden. It is your primary  
15 responsibility as jurors to find and determine the facts.  
16 Under our system of justice, you are the sole judge of the  
17 facts. You are to determine the facts from the testimony  
18 you hear and the other evidence, including exhibits,  
19 introduced in court. It is up to you to determine if the  
20 inferences which you feel may be properly drawn from the  
21 evidence.

22 At times I may sustain objections or direct that  
23 you disregard certain testimony or exhibits. You must not  
24 consider any evidence to which an objection has been

1       sustained or which I have instructed you to disregard.

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

4               You must not be influenced in any degree by any  
5       personal feeling of sympathy for or prejudice against the  
6       State or the Defendant. Both sides are entitled to the  
7       same fair and impartial consideration.

8               In considering the weight and value of the  
9       testimony of any witness, you may take into consideration  
10      the appearance, attitude, and behavior of the witness; the  
11      interest of the witness in the outcome of the case, if  
12      any; the relation of the witness to the Defendant or the  
13      State; the inclination of the witness to speak truthfully  
14      or not; and the probability or improbability of the  
15      witness's statements and all of the facts and  
16      circumstances in evidence. Thus, you may give any piece  
17      of evidence just such weight as you believe it deserves.

18              There are two kinds of evidence: Direct and  
19      circumstantial. Direct evidence is testimony by a witness  
20      about what that witness personally saw or heard or did.  
21      Circumstantial evidence is testimony or exhibits which are  
22      proof of a particular fact from which, if proven, you may  
23      infer the existence of a second fact.

24              You may consider both direct and circumstantial

1 evidence in deciding the case. The law permits you to  
2 give equal weight to both. But it is for you to decide  
3 how much weight to give to any particular piece of  
4 evidence.

5 Opening statements and closing arguments of the  
6 attorneys are intended to help you in understanding the  
7 evidence and applying the law. But they are not evidence.

8 Until this case is submitted to you, you must not  
9 discuss it with anyone, even with your fellow jurors.  
10 After it is submitted to you, you must discuss it only in  
11 the jury room with your fellow jurors. It is important  
12 that you keep an open mind and not decide any issue in the  
13 case until the entire case has been submitted to you under  
14 instructions from me.

15 If you cannot hear a witness, please raise your  
16 hand as an indication. If you need to use the restroom or  
17 if you feel ill, please raise your hand as an indication.  
18 I usually try and take a break every 90 minutes or so. If  
19 you'd like to bring a snack or a drink into the courtroom,  
20 that's okay as well. And we do have a refrigerator, if  
21 you want to bring your lunch during the week, as we  
22 progress.

23 I may, during the trial, take notes of the  
24 witnesses' testimony and you will see me working on my

1 computer. You are not to make any inference from that  
2 action. I'm required to prepare for legal arguments of  
3 Counsel during the trial. And for that reason, I may take  
4 notes and will work on my computer.

5 You will not have a transcript to consult at  
6 close of the case. However, you will be furnished with  
7 notepads and writing utensils and will be allowed to take  
8 notes. Kevin will pass those out in just a minute.

9 The trial will proceed in the following manner:  
10 The Deputy District Attorney will make an opening  
11 statement, which is an outline to help you understand what  
12 the State expects to prove. Next, the Defendant may, but  
13 does not have to make an opening statement. Opening  
14 statements are not evidence but serve as an introduction  
15 to the evidence which the party making the statement  
16 intends to prove.

17 The State will then present its evidence and  
18 Counsel for the Defendant may cross-examine the witnesses.  
19 Following the State's case, the Defendant may present  
20 evidence and the deputy to the District Attorney may  
21 cross-examine those witnesses. However, as I've said, the  
22 Defendant is not obligated to present any evidence.

23 You will be given the opportunity to ask written  
24 questions of any of the witnesses called to testify in

1       this case. You are not encouraged to ask large numbers of  
2       questions, because that is the primary responsibility of  
3       the parties. Questions may be asked only in the following  
4       manner: After both sides have had the opportunity to ask  
5       questions of a witness and before I let the witness leave  
6       the room.

7               If you would like to ask the questions, if you  
8       would please write your question on the yellow pads that  
9       are sitting on the bar in front of you. One question per  
10      sheet of paper. The marshal will then bring the questions  
11      to me. I will make a determination with Counsel as to  
12      whether the question is legally appropriate. If the  
13      question is legally appropriate, I will then go ahead and  
14      ask it on your behalf.

15             You are not to -- you are not to place undue  
16      weight upon any question that is submitted by the jury.  
17      Nor are you to draw any inferences if I do not permit a  
18      question by the jury.

19             After all of the evidence has been presented, I  
20      will then instruct you on the law. After the instructions  
21      on the law have been read to you, each side has the  
22      opportunity to present oral argument.

23             What is said in closing argument is not evidence.  
24      The arguments are designed to summarize and interpret the

1 evidence. Since the State has the burden of proving the  
2 Defendant guilty beyond a reasonable doubt, the State has  
3 the right to open and close the arguments.

4 After the arguments have been completed, you will  
5 retire to deliberate on your verdict. Let me remind you  
6 that until this case is submitted, do not talk to each  
7 other about it or about anyone who has anything to do with  
8 it until the end of the case, when you go to the jury room  
9 to decide on your verdict.

10 Do not talk with anyone else about this case or  
11 about anyone who has anything to do with it until the  
12 trial has ended and you've been discharged as jurors.  
13 "Anyone else" includes members of your family and your  
14 friends. You may tell them you're a juror in a criminal  
15 case, but don't tell them anything else about it until  
16 after I've discharged you.

17 Do not let anyone talk to you about the case or  
18 about anyone who has anything to do with it. If someone  
19 should try to talk to you, please report it to me  
20 immediately by contacting the marshal.

21 Do not read any news stories or articles or  
22 listen to any radio or television reports about the case  
23 or about anyone who has anything to do with it. And do  
24 not visit the scene of any of the incidents mentioned

1 during the trial or undertake any investigation or  
2 research on your own. Please do not do any posting or  
3 communications on any social networking sites or do any  
4 independent research, including Internet research.

5 How long do you anticipate your opening to be?

6 MR. PALAL: About 15 minutes, Your Honor.

7 THE COURT: Okay. So would you like to proceed now?  
8 It's 11:30 or do you want me -- I'm gonna have to break it  
9 by 1:45. So I would have to split the openings if we  
10 break now.

11 MR. PALAL: Court's pleasure.

12 THE COURT: Okay. Ladies and gentlemen, we're gonna  
13 go ahead and break. I have a meeting I have to be at in  
14 Summerlin at noon. So I'm gonna go there and I'll be back  
15 here by 1:15.

16 During this recess, you are admonished not to  
17 talk or converse among yourselves or with anyone else on  
18 any subject connected with this trial or read, watch, or  
19 listen any report of or commentary on the trial or any  
20 person connected with this trial by any means of  
21 information including, without limitation: Social media,  
22 text, newspaper, television, the Internet, radio or form  
23 or express the opinion on any subject connected with the  
24 trial until the case is finally submitted to you.



1           If you need a letter for your employer to tell  
2   them where you're gonna be for the rest of the week, as  
3   you go out the door, let the marshal know. He will then  
4   have a letter prepared for you. If you have a fax number  
5   you want it to go to, or if you have an e-mail address you  
6   want it to go to, my assistant can get those sent off for  
7   you.

8           In addition, the marshal should have additional  
9   parking information for you to move to the garage that is  
10   closer to the courthouse. If you would like to move your  
11   car during the lunch hour, you may; okay? We'll see you  
12   at 1:15.

13           You have a new door you go in and out of now.

14           [Outside the presence of the jury]

15           THE COURT: Thank you. Counsel, is there anything  
16   outside the presence?

17           MR. CLAUS: No, Your Honor.

18           MR. PALAL: Nothing from the State.

19           THE COURT: I just wanted to confirm that I did ask  
20   before I excused the additional jurors that there were no  
21   issues about the use of peremptory challenges. I don't  
22   know if I said it loud enough to hit the record or not.  
23   Sometimes I forget to say it loud enough. Did we say it  
24   loud enough Jill?

1 THE CLERK: [Inaudible]

2 THE COURT: Yeah. Just that it was on there.

3 Sometimes I do it at the bench with you guys and it  
4 doesn't make the record.

5 Anything else outside the presence?

6 MR. PALAL: Nothing from the State.

7 THE COURT: How long do you anticipate your opening  
8 is?

9 MR. CLAUS: Usually I reserve, Your Honor.

10 THE COURT: Okay.

11 MR. CLAUS: But I haven't seen the State's, so --

12 THE COURT: All right. So you're gonna play that by  
13 ear. I just didn't want to put you in the position of  
14 splitting them. And then so we'll have our first witness  
15 probably about 2:00-ish --

16 MR. PALAL: Yes.

17 THE COURT: -- 1:45.

18 MR. PALAL: Yep.

19 THE COURT: Okay. We're a little behind schedule, but  
20 not much.

21 MR. PALAL: All right.

22 THE COURT: Okay?

23 MR. PALAL: Thank you, Your Honor.

24 THE COURT: See you after lunch.

1                   [Recess at 11:31 a.m.; proceedings resumed at  
2                   1:25 p.m.]

3                   [Outside the presence of the jury]

4                   MR. CLAUS: I apologize for our tardiness. I thought  
5                   it was 1:15 -- 1:30.

6                   THE COURT: Okay. Bring them in, Kevin.

7                   THE BAILIFF: Yes, Your Honor.

8                   THE COURT: [Inaudible]

9                   THE BAILIFF: [Inaudible]

10                  THE COURT: Bring in the jury, please.

11                  [Discussion off the record]

12                  [In the presence of the jury]

13                  THE BAILIFF: Jurors are present.

14                  THE COURT: Good afternoon, ladies and gentlemen.

15                  Counsel, stipulate presence of the jury?

16                  MR. PALAL: Yes, Your Honor.

17                  MR. CLAUS: Yes, Your Honor.

18                  THE COURT: You can be seated.

19                  Ladies and gentlemen, if you have it write any  
20                  jury questions, I need you to write your seat number on  
21                  the sheet of paper that you submit. [Juror No. 1], you're  
22                  number one. [Juror No. 7], you're number seven. So you  
23                  can number yourselves in between. [Juror No. 8], you're  
24                  number eight. And [Juror No. 14], you're number 14; okay?

1           You're opening statement.

2           MR. PALAL: Yes, Your Honor.

3           Good afternoon ladies and gentlemen. As was  
4 mentioned earlier, when reading our introduction, in this  
5 case the State has charged the Defendant with a series of  
6 burglaries and robberies occurring in late January and  
7 early February of 2014.

8           Specifically, the Defendant is charged with three  
9 events. Event number one, January 22nd, 2014, at a  
10 Cricket Wireless. Event number two, January 28th, 2014,  
11 at a Metro PCS. And event three, February 2nd, 2014, at a  
12 Star Mart.

13           And, ladies and gentlemen, what the evidence will  
14 show in this case is that the Defendant entered all three  
15 of these establishments with a gun and robbed the three  
16 individual cashiers who were -- who were working that day  
17 in each respective establishment.

18           First, I'm gonna talk to you about event number  
19 one, but I want to take a step back and let you know that,  
20 you know, one of the things with trial is that we don't  
21 get the witnesses, necessarily, in the order we would  
22 like. So while these are the chronological events of the  
23 case, you may be hearing from witnesses in a  
24 nonchronological order.

1           The first event occurs on January 22nd, 2014, at  
2     the Cricket Wireless store. What you're gonna do is  
3     you're gonna hear from Samuel Echeverria. And he will  
4     testify that he saw the Defendant enter the store and he  
5     waited -- the Defendant waited while Mr. Echeverria  
6     attended to another customer.

7           And what you see at the bottom of the screen is a  
8     video still of the -- of the robbery as it occurred.

9           The -- Mr. Echeverria will also say that the  
10    Defendant asked for a specific battery. That  
11    Mr. Echeverria went to go get the battery. And when he  
12    comes back, the Defendant then pulls out a gun and tells  
13    him to take the money out of the register.

14          And, you know, you'll also hear that there some  
15    fingerprints taken from the door outside of the -- outside  
16    the Cricket Wireless store. And you'll hear from a crime  
17    scene analyst. And they'll tell but how they try and get  
18    fingerprints. And that those were the only fingerprints  
19    taken were from the door. And that one set of  
20    fingerprints belonged to the clerk and the other set of  
21    fingerprints belonged to somebody unrelated to this case.  
22    They don't belong to of the Defendant.

23          You're gonna hear about the second event. And  
24    you'll hear from Graciela Angles. And she'll justify that

1 she saw the Defendant enter the store, asking to buy a  
2 cell phone. She'll say the Defendant asking for a  
3 specific phone -- I believe it's the Galaxy Mega. That  
4 she went to get the phone to ring the Defendant up and  
5 that the Defendant pulled a gun out and told her to take  
6 all the money out of the register and give it to him.

7 And here, again, you'll also hear -- what you're  
8 looking at is the crime -- video still of the events at  
9 the Metro PCS.

10 You'll also hear that, yes, there were some  
11 fingerprints taken from the store. The only fingerprints  
12 taken from the store were from a display case. And they  
13 didn't belong to either the clerk or the Defendant.

14 You're -- the third event, you'll hear from  
15 Brittany Slathar. She was the person who was acting as  
16 the cashier at the Star Mart. And she'll testify she saw  
17 the Defendant enter the store. He grabbed some candy and  
18 he went to the register where he asked for two Newport  
19 cigarettes. Two packs of Newport cigarettes.

20 She'll say that while she's ringing up the  
21 transaction, the Defendant pulls out of a gun out of his  
22 sweatshirt, threatens her and tells her to give him the  
23 money. She'll testify the Defendant's wearing a black  
24 sweatshirt, gloves and a spotted brown beanie.

1           And that's -- you'll hear that's important  
2   information. Because minutes after this occurs, you're --  
3   and that's a still of the video of the actual robbery.  
4   Minutes after this occurs, Officer Rowberry is driving,  
5   responding to the scene, and he sees a gray sedan about a  
6   half-mile away from the Star Mart.

7           And what he's gonna tell you is he saw the damage  
8   to the back of the vehicle, it's the only car in  
9   proximity. There was nobody on the street. And he  
10   decides to pull the car over. And when he pulls the car  
11   over, he'll tell you that he had -- it was a black female  
12   driving.

13           And he'll tell you that he asked the black female  
14   to roll down the rear window. And the reason why, he'll  
15   say, is because he was told that somebody just had a  
16   firearm in the area. He couldn't see into the back of the  
17   car. So for officer safety, he wanted to make sure if  
18   there's anybody in the back of the car, he could see them.

19           And he'll tell you the person in the back of the  
20   car was the Defendant. And as a result of -- after some  
21   talking, asking the Defendant to show his hands and the  
22   Defendant refusing to comply, both the female in the front  
23   and the Defendant are -- are asked to exit the vehicle.

24           And when the female front exits the vehicle, what

1       you'll hear is, on the front seat are two Newport  
2       cigarettes and a pack of gum. The same items taken from  
3       the Star Mart.

4                You'll hear the back seat, where the Defendant  
5       was, is a black hoodie sweatshirt. The same clothing worn  
6       by the person who robbed the Star Mart. You'll hear that  
7       in the back seat is a grayish camouflage hoodie. The same  
8       type -- I'm sorry. Beanie. The same type of beanie worn  
9       by the person who robbed the Star Mart.

10              And you will hear in the back seat, where the  
11       Defendant was found, found a small revolver. The same  
12       type of gun Brittany Slathar's gonna tell you was used  
13       when she was robbed.

14              As a result of this event on February 2nd, you'll  
15       hear from Detective Kavon. Now, he's now retired, but he  
16       was working then. And he'll tell you that, now, they have  
17       developed a subject with a similar MO as the first two  
18       robberies, he decides to go back to the cashiers who were  
19       robbed in event one and event two. And he presents to  
20       them what's -- what they often refer to as a six-pack.  
21       It's a photo array of six people.

22              And he asks Sam Echeverria -- he reads the  
23       instructions. And he asks them, you know, "Can you  
24       identify somebody?"



1           And Mr. Echeverria, way back in 2014 says, "Yes,  
2       that's the person. That's the person. That's the  
3       Defendant."

4           And then, at a separate event, Detective Kavon  
5       also goes back and backtracks with the cashier at the  
6       Metro PCS. And she's given a photo array, six different  
7       people. And she circles the Defendant.

8           And what you'll hear from both of them, and what  
9       you'll see from the six-pack instructions, is that they're  
10      asked to write the percentage of how sure they are that  
11      this is the person that committed the robberies. And  
12      you'll hear from these two people, independently, they say  
13      that person that they circled that they -- the name that  
14      they signed, they are 100 percent sure that that is the  
15      person that robbed them with a firearm.

16           Ladies and gentlemen, at the end of this case,  
17      the State expects that it will have proved its case beyond  
18      a reasonable doubt. And we'll ask you to find the  
19      Defendant guilty of all charges. Thank you.

20           THE COURT: Thank you. Would you like to make your  
21      opening or wave?

22           MR. CLAUS: I'll be reserving, please, Your Honor.

23           THE COURT: Okay. First witness.

24           Would you like to invoke the exclusionary rule?

1 MR. CLAUS: Please, Your Honor.

2 THE COURT: If there's anyone in the courtroom who  
3 anticipates being called as a witness, please wait in the  
4 hallway.

5 Mr. Marshal, if anybody should come into the  
6 courtroom, please inquire whether a witness. If they are,  
7 please ask them to wait in the hallway.

8 THE BAILIFF: Yes, Your Honor.

9 MR. LEXIS: State calls Samuel Echeverria.

10 SAMUEL ECHEVERRIA,  
11 [having been called as a witness and being first duly  
12 sworn testified as follows:]

13 THE CLERK: Thank you. Please be seated.

14 Please state and spell your name for the record.

15 THE WITNESS: My name is Samuel Echeverria.

16 THE COURT: And if you could spell that, please.

17 THE WITNESS: Oh, sorry. S-A-M-U-E-L. Last name's  
18 E-C-H-E-V-E, double "R," I-A.

19 THE COURT: How you doing today, sir?

20 THE WITNESS: Doing good, ma'am.

21 THE COURT: You will notice there are M&Ms in that  
22 dispenser. If would you like some while you're a witness,  
23 you may have some. There's also a pitcher of water there.  
24 If you should need some coffee, let the marshal know.

1 THE WITNESS: Thank you.

2 THE COURT: You may proceed.

3 DIRECT EXAMINATION OF SAMUEL ECHEVERRIA

4 BY MR. LEXIS:

5 Q Good afternoon, sir.

6 A Good afternoon.

7 Q On January 22nd, 2014, where were you working?

8 A I was working at Cricket Wireless on  
9 4343 North Rancho Drive.

10 Q Were you working around 4:35 p.m.?

11 A Yes, I was.

12 Q And is that address, 4343 North Rancho Drive, is that  
13 in Clark County, Las Vegas, Nevada?

14 A Yes, it is.

15 Q Did anything unusual happen around that time?

16 A Yes, it did. A black male came in with a black  
17 hoodie, a black baseball cap, black shirt, black shoes,  
18 regular blue jeans. First made himself to be a customer,  
19 came in and robbed me at gunpoint.

20 Q Let's take it piece by piece, sir. When did you  
21 first notice him coming in?

22 A Um, I would say about 20 minutes before it  
23 happened.

24 Q Were you having a conversation with this man?

1           A     No, I was not.

2           Q     But you clearly saw him.

3           A     Clearly saw him.

4           Q     What was -- was he waiting for another customer?

5           A     Yeah, he was waiting around for me to finish up  
6 with the customers I was with.

7           Q     And this happened over a period of 20 minutes, you  
8 say?

9           A     He was in the store waiting. And it didn't take  
10 long for him to rob me.

11          Q     So tell me, did he wait for this other person to  
12 leave or was that person still in the store?

13          A     That person left.

14          Q     Immediately after that person leaving, what did he  
15 do?

16          A     He came up to the register and asked me for a  
17 specific battery for his girlfriend. I told him I was  
18 gonna go check if I had it. I walked up to the front to  
19 see if I had it. I walked back behind the desk to grab  
20 the keys so I could unlock the holsters.

21                And when I was ringing him up for the battery, I  
22 was looking down as I was scanning it in. I looked up,  
23 and he pulled out a black gun and said, "Give me all the  
24 money before I blow your brains out."

1           Q     While you're going to get the battery, are you  
2     conversing with this individual?

3           A     Uh, a little small chitchat there. But don't  
4     really remember what we talked about.

5           Q     Are you continuing to see him in the face?

6           A     Yes.

7           Q     And how soon after did he pull out the gun, when you  
8     went back behind the counter?

9           A     He waited for me to scan in the battery in the  
10    system.

11          Q     When you saw that firearm, were you scared?

12          A     Yes, I was.

13          Q     Describe that firearm for me.

14          A     It looked like a black revolver. Like a  
15    six-shooter. I really don't know much about guns. But  
16    I've seen them enough.

17          Q     Did you comply with his demands?

18          A     Yes, I did.

19          Q     Sir, did you call the police?

20          A     Yes, I did.

21          Q     Did they come?

22          A     Yes, they did.

23          Q     Did they mark off the area?

24          A     Yes, they did.

1           Q     Did they eventually show up some other time? Did a  
2     detective approach you about a month later with a photo  
3     lineup?

4           A     Yes, a detective did.

5           MR. LEXIS: Your Honor, let the record reflect I'm  
6     showing Defense Counsel State's Proposed Exhibit 9.

7           THE COURT: Proposed 9?

8           MR. LEXIS: Yes, Your Honor.

9           THE COURT: Thank you.

10          MR. LEXIS: May I approach, Your Honor?

11          THE COURT: You may.

12     BY MR. LEXIS:

13          Q     Sir, I'm showing you what has been marked as  
14     State's Proposed Exhibit 9. Do you recognize that?

15          A     Yes, I do.

16          Q     Is that your handwriting at the bottom?

17          A     Yes, it is.

18          Q     Is there set of instructions at the top?

19          A     Yes, there is.

20          Q     And did either the police officer read that to you or  
21     did you read it to yourself?

22          A     Both.

23          Q     He read it to you and then you read it yourself?

24          A     Yes, I did.

1 Q Did you follow those instructions?

2 A Yes, I did.

3 Q Did you then look at the six-pack photo lineup?

4 A Yes, I did.

5 Q Would you please flip the page. Is there a circle on  
6 that page?

7 A Yes, there is.

8 Q Did you make that circle?

9 A Yes, I did.

10 Q And did you write below that photo?

11 A Yes, my signature's there.

12 Q Did you also write on the first page?

13 A Yes, sir, I did.

14 Q And what did you write on the first page?

15 A I wrote that I was, basically, 100 percent  
16 accurate that this was the man that came in that night and  
17 robbed me.

18 Q What is your exact wording, sir?

19 A I take -- "I took a look at the pictures. The  
20 number 2 fit the description on the photo. I'm  
21 100 percent sure that that was the man that came in that  
22 night and robbed me at gunpoint."

23 MR. LEXIS: Your Honor, State moves to admit  
24 State's Proposed Exhibit 9.

1 THE COURT: Any objection to 9?

2 MR. CLAUS: No, Your Honor.

3 THE COURT: 9 be admitted.

4 [STATE'S EXHIBIT 9 ADMITTED]

5 MR. PALAL: Let the record reflect that I'm showing  
6 Defense Counsel State's Proposed 1 through 5.

7 THE COURT: 1 through 5?

8 MR. LEXIS: Yes, Your Honor.

9 THE COURT: Thank you.

10 MR. LEXIS: May I approach, Your Honor?

11 THE COURT: You may.

12 BY MR. LEXIS:

13 Q Sir, I'm showing you what has been marked as  
14 State's Proposed 1 through 5. Can you please flip through  
15 those photographs.

16 Sir, are those all true and accurate representations  
17 of what the store looked like on that day?

18 A Yes, they are.

19 MR. LEXIS: Your Honor, I move to admit State's 1  
20 through 5.

21 THE COURT: Any objection?

22 MR. CLAUS: No, Your Honor.

23 THE COURT: 1 through 5 will be admitted.

24 [STATE'S EXHIBITS 1-5 ADMITTED]



1 BY MR. LEXIS:

2 Q Sir, prior to coming to court today, did you meet  
3 with the District Attorneys involved in this case?

4 A Yes, I did.

5 Q And did -- during that meeting, did you go over  
6 video?

7 A Yes, I did.

8 Q And was it a true and accurate rendition of what  
9 happened on that day?

10 A Yes, it was.

11 MR. LEXIS: The record reflect that I'm showing  
12 Defense Counsel State's Proposed 39.

13 [Discussion off the record]

14 MR. LEXIS: Your Honor, may I approach?

15 THE COURT: Sure.

16 BY MR. LEXIS:

17 Q Sir, after you reviewed that video, did you sign the  
18 CD?

19 A Yes, I did sign the CD.

20 Q Is that your signature?

21 A Yes, it is.

22 MR. LEXIS: Judge, I move to admit State's Proposed 39  
23 and ask to play it.

24 THE COURT: Any objection?

1           MR. CLAUS: Based on the representations of the State,  
2           Your Honor, no.

3           THE COURT: Be admitted.

4                     [STATE'S EXHIBIT 39 ADMITTED]

5           THE COURT: And you may publish.

6           MR. LEXIS: Thank you.

7           THE COURT: And, sir, it should come up on the screen  
8           next to you here, if all the technology works.

9           MR. LEXIS: Mr. [Inaudible] could you start  
10          [inaudible].

11          UNIDENTIFIED: Yeah, sorry. Give it a second to warm  
12          up.

13                     [Video played]

14          BY MR. LEXIS:

15           Q     Sir, can you describe for us who was behind that  
16          counter.

17           A     That is me, Sam Echeverria.

18           Q     Okay. Can you describe for me who was standing up in  
19          that frame as well, to the right, in front of you?

20           A     That is the -- the robber.

21           Q     What's going on right here, sir?

22           A     I was finishing wrapping up the refund I just  
23          did. He asked me for the battery. As I was doing it, at  
24          the same time, I walked to the front, to check if I had

1 the specific battery he demanded.

2 Q And you said earlier you're maintaining some  
3 chitchat. Is that going on right now?

4 A No, not until he walks -- right there.

5 Q Now it is?

6 A Yeah.

7 Q At this point, everyone left the store?

8 A Yes.

9 Q It's just you and him?

10 A Only us two.

11 Q Is that you, sir?

12 A Yes, it is.

13 Q Is that the same man?

14 A Yes, it is.

15 Q Why are you leaving again, sir?

16 A I walked to the back to grab the keys so I could  
17 walk back to the front to unlock the holster to take out  
18 the battery.

19 Q What's going on now?

20 A Uh, I sat the battery down. So I'm ringing it  
21 up. As I was scanning it in, I'm not really paying  
22 attention. Then he walked up right there and he said,  
23 "Give me all the money before I blow your brains out."

24

1 MR. LEXIS: Can you pause it right there, please.

2 BY MR. LEXIS:

3 Q Sir, I saw you step back.

4 A Yeah.

5 Q With your arm did -- did you put your arms out?

6 A Yes, I did.

7 Q And why did you do that?

8 A Because I hesitated. I was afraid. In fear of  
9 my life.

10 Q Did you see something at that point?

11 A Yeah, that's when I saw the gun.

12 Q What's going on now, sir?

13 A I popped open the register and gave him all the  
14 money.

15 Q Is that him putting the gun back in his pocket and  
16 leaving with the cash?

17 A Yes.

18 Q What are you doing now?

19 A Close the register. Waited for him to walk out  
20 the front door so I could start calling the cops.

21 Q You immediately called the cops?

22 A Yes, I did.

23 Q Sir, do you see that person who robbed you in court  
24 today?

1           A     No, I do not.

2           Q     This happened two years ago, sir?

3           A     Yes, sir.

4           Q     And did you make your photo lineup identification  
5     about a month later?

6           A     Yes, I did.

7           Q     Sir, we're seeing another angle on the camera.  You  
8     recognize that?

9           A     Yes, I do.

10          Q     Who's that?

11          A     That is me behind the register.

12          Q     Okay.  And who is in front of you?

13          A     The same man that robbed me.

14          Q     What's going on, sir?

15          A     That's when he demanded the money, he'll blow my  
16     brains out.  I stepped back, opened the register, handed  
17     him the money.

18               MR. LEXIS:  Let the record reflect I'm showing Defense  
19     Counsel State Proposed 36.

20                     Your Honor, may I approach?

21               THE COURT:  You may.

22     BY MR. LEXIS:

23           Q     Sir, I'm showing you what's been marked as  
24     State's Proposed 36.  What is that?

1           A     That is him approaching with a gun in his hand.

2           Q     Is that a true and accurate representation of what  
3 occurred on that day?

4           A     Absolutely.

5           MR. LEXIS: Your Honor, State moves to admit  
6 State's Proposed 36.

7           THE COURT: Any objection?

8           MR. CLAUS: No, Your Honor.

9           THE COURT: Be admitted.

10                   [STATE'S EXHIBIT 36 ADMITTED]

11 BY MR. LEXIS:

12          Q     Sir, I'm showing you State's Exhibit 9. Do you  
13 recognize this, sir?

14          A     Yes, I do.

15          Q     And is the person in the number 2 spot right there --

16          A     Yes, it is.

17          Q     -- is that who you circled?

18          A     Yes, I did.

19          Q     Is that your signature underneath it?

20          A     That's my signature.

21          Q     Is that the person you stated on the first page --

22          A     That is the person I stated --

23          Q     -- that you're 100 percent --

24          A     Yes, I did.

1           Q     And to this day, you still maintain that you are  
2     100 percent that guy in the number 2 spot is the person --

3           A     Absolutely.

4           Q     And you made this identification about less than a  
5     month or a few days after -- a month and a few days after you  
6     were robbed?

7           A     Yes, I did.

8           MR. LEXIS:   Nothing further, Your Honor.

9           THE COURT:   Any cross-examination?

10          MR. CLAUS:   Yes, Your Honor.

11                   CROSS-EXAMINATION OF SAMUEL ECHEVERRIA

12          BY MR. CLAUS:

13           Q     Mr. Echeverria, you also wrote a voluntary statement  
14     for the police. You hand wrote one. Do you remember doing  
15     that?

16           A     Yes, I did.

17           Q     Okay. And do you remember that at the end of that  
18     voluntary statement you indicated that the individual who  
19     robbed you turned and walked out the door using his hand to  
20     open it?

21           A     Yes, I did.

22           Q     And, in fact, you remember the specific part of the  
23     door that he'd used to open -- the specific part of the door  
24     that he touched to open it; correct?

1           A     Uh, not really, no more. I just do remember  
2     him --

3           Q     Not anymore, but at the time you remembered.

4           A     Uh-huh.

5           Q     Okay. And at the time of the robbery, when you gave  
6     the -- or I'm sorry -- directly after the robbery, when you  
7     gave your voluntary statement, you told the police where that  
8     area was; correct?

9           A     Yes.

10          Q     And at the time, you identified it. The police went  
11     and they took fingerprints from that area of the door;  
12     correct?

13          A     Yes, they did.

14          Q     And, to your knowledge, at that time, they didn't --  
15     they didn't get the wrong area of the door. That was the  
16     right area of the door. That was where you told them the  
17     perpetrator's hands had been; correct?

18          A     Correct.

19          Q     Okay. Now, the person who robbed you, was he wearing  
20     any gloves?

21          A     No.

22          Q     Okay. So that's why you -- and the police, did they  
23     ask you if he'd pressed on anything with his hands or did you  
24     supply that to them yourself?



1           A     I supplied that to them myself.

2           Q     Okay. So you did that expecting that based upon how  
3 much they pressed on that glass that there should be  
4 fingerprints there.

5           A     Absolutely.

6           Q     Now, after the individual robbed you left the store,  
7 did anyone else come into the store?

8           A     No.

9           Q     In fact, you locked the doors.

10          A     Yes, I did.

11          Q     Okay. And during the space of time in which the  
12 person was robbing you or you were interacting with that  
13 person, there was no else in the store; correct?

14          A     No one else.

15          Q     It was just you and the person who robbed you.

16          A     Correct.

17          Q     So from the time we look at this video that's been  
18 shown to you, to the time that you, literally, hand the person  
19 the cash, there's nobody else in the store, nobody else tries  
20 to come in; correct?

21          A     Right.

22          Q     After the person leaves, nobody else tries to come  
23 in.

24          A     Right.

1           Q     Okay. And the hand print you identified was on the  
2     inside of the door; correct?

3           A     Correct.

4           Q     Now, prior to doing the six-pack lineup in February,  
5     had the police asked you to conduct any sort of identification  
6     prior to that point?

7           A     No, that was the first time.

8           Q     Had you given a description of the -- of the  
9     individual who robbed you?

10          A     When that lineup was handed to me, yes, I did  
11     give my description.

12          Q     Okay. Prior to you giving your description -- prior  
13     to you doing that lineup, had you given the police a  
14     description?

15          A     Yes, I did.

16          Q     Okay. And that description was -- do you remember  
17     what that description was?

18          A     I told them it was a male. He was a black male,  
19     black baseball cap, black hoodie, light blue jeans, black  
20     boots, had a lot of acne in his face.

21          Q     Okay. Now, you had a chance to review the video  
22     before you testified today; is that correct?

23          A     Yes, I did.

24          Q     Okay. And you had -- did you have a chance to look

1 at your handwritten voluntary statement?

2 A Yes, I did.

3 Q Were there any other statements that you gave to the  
4 police in written or -- that were written or recorded?

5 A Not that I recall.

6 MR. CLAUS: Court's indulgence for just a moment.

7 THE COURT: Sure.

8 MR. CLAUS: Pass the witness, Your Honor.

9 THE COURT: Any redirect?

10 REDIRECT EXAMINATION OF SAMUEL ECHEVERRIA

11 BY MR. LEXIS:

12 Q Sir, were you working graveyard?

13 A Yes, I was working a graveyard.

14 Q This was about 4:45, 4:35 p.m.?

15 A It was.

16 Q Was it a busy day?

17 A It was a busy day.

18 Q There was a lot of people in and out?

19 A Yes.

20 MR. LEXIS: No further questions, Your Honor.

21 THE COURT: Anything further?

22 RECROSS-EXAMINATION OF SAMUEL ECHEVERRIA

23 BY MR. CLAUS:

24 Q So was it light out when this crime occurred?

1           A     Oh, um, I honestly don't remember at the --

2           Q     Okay.

3           A     I honestly --

4           Q     The store was well -- I'm sorry. Go ahead. I didn't  
5 mean to interrupt you. Were you saying?

6           A     I honestly don't remember, to be honest.

7           Q     Okay. But the store was well lit; correct?

8           A     Yes, it was.

9           Q     Okay. Any -- any problems with seeing in the store?

10          A     No.

11          Q     Do you have corrective -- do you need any corrective  
12 lenses? Any contact lenses?

13          A     Yes, I do, but I see pretty good.

14          Q     Okay. Were they in that day?

15          A     No.

16          Q     They were not in that day. Were they in for seeing  
17 far away or for seeing close up?

18          A     For seeing close up.

19          Q     Okay. So -- and you got a good look at this person  
20 both far away and close up?

21          A     Yes, I did.

22          Q     Okay.

23          MR. CLAUS: Pass the witness.

24          THE COURT: Any further direct examination? Any

1 questions from the jurors?

2 MR. LEXIS: Judge, I do have a couple --

3 THE COURT: Oh, okay. Sorry.

4 FURTHER REDIRECT EXAMINATION OF SAMUEL ECHEVERRIA

5 BY MR. LEXIS:

6 Q Just showing you State's 59. Did his hair look like  
7 that?

8 A It really did, but he did have a baseball cap on.

9 Q Okay. It was short?

10 A Yes.

11 MR. LEXIS: Nothing further.

12 THE COURT: Anything else?

13 MR. CLAUS: We'll pass the witness, Your Honor.

14 THE COURT: Thank you, sir. We appreciate your time.  
15 Have a very nice afternoon. Thank you for our -- your  
16 patience with us.

17 THE WITNESS: Thank you, ma'am.

18 THE COURT: Next witness.

19 MR. LEXIS: State calls Alisa Williams.

20 ALISA WILLIAMS,

21 [having been called as a witness and being first duly  
22 sworn testified as follows:]

23 THE CLERK: Thank you. Please be seated.

24 Please state and spell your name for the record.

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

---

**No. 72545**

---

**KENYA SPLOND**  
Appellant,

vs.

**STATE OF NEVADA**  
Respondent.

---

Appeal from a Judgment of Conviction  
Eighth Judicial District Court, Clark County  
The Honorable Elizabeth Gonzalez, District Court

---

**APPENDIX VOL 1**

---

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## REGISTER OF ACTIONS

[CASE No. C-14-296374-1](#)

State of Nevada vs Kenya Splond

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

Case Type: **Felony/Gross Misdemeanor**

Date Filed: **03/05/2014**

Location: **Department 11**

Cross-Reference Case Number: **C296374**

Defendant's Scope ID #: **1138461**

Grand Jury Case Number: **13AGJ118**

ITAG Case ID: **1578659**

Supreme Court No.: **72545**

### RELATED CASE INFORMATION

#### Related Cases

C-14-296374-2 (Multi-Defendant Case)

C-14-300105-1 (Consolidated)

### PARTY INFORMATION

**Defendant**     **Splond, Kenya** *Also Known As* **Splond, Kenny**  
Other Agency Numbers  
1138461 Scope ID Subject Identifier

**Lead Attorneys**  
**T. Augustus Claus**  
*Retained*  
702-463-4900(W)

**Plaintiff**     **State of Nevada**

**Steven B Wolfson**  
702-671-2700(W)

### CHARGE INFORMATION

Charges: Splond, Kenya	Statute	Level	Date
1. CONSPIRACY TO COMMIT ROBBERY	200.380	Felony	02/02/2014
2. BURGLARY WHILE IN POSSESSION OF A FIREARM	205.060.4	Felony	02/02/2014
3. ROBBERY WITH USE OF A DEADLY WEAPON	200.380	Felony	02/02/2014
4. POSSESSION OF STOLEN PROPERTY	205.275.2c	Felony	02/02/2014
5. BURGLARY WHILE IN POSSESSION OF A FIREARM	205.060.4	Felony	01/22/2014
6. ROBBERY WITH USE OF A DEADLY WEAPON	200.380	Felony	01/22/2014
7. BURGLARY WHILE IN POSSESSION OF A FIREARM	205.060.4	Felony	01/28/2014
8. ROBBERY WITH USE OF A DEADLY WEAPON	200.380	Felony	01/28/2014

### EVENTS & ORDERS OF THE COURT

#### DISPOSITIONS

03/12/2014 (Judicial Officer: Gonzalez, Elizabeth)  
1. CONSPIRACY TO COMMIT ROBBERY  
Not Guilty  
2. BURGLARY WHILE IN POSSESSION OF A FIREARM  
Not Guilty  
3. ROBBERY WITH USE OF A DEADLY WEAPON  
Not Guilty  
4. POSSESSION OF STOLEN PROPERTY  
Not Guilty  
5. BURGLARY WHILE IN POSSESSION OF A FIREARM  
Not Guilty

**AA000001**

	6. ROBBERY WITH USE OF A DEADLY WEAPON Not Guilty
	7. BURGLARY WHILE IN POSSESSION OF A FIREARM Not Guilty
	8. ROBBERY WITH USE OF A DEADLY WEAPON Not Guilty
02/06/2017	(Judicial Officer: Gonzalez, Elizabeth) 1. CONSPIRACY TO COMMIT ROBBERY Guilty
	2. BURGLARY WHILE IN POSSESSION OF A FIREARM Guilty
	3. ROBBERY WITH USE OF A DEADLY WEAPON Guilty
	4. POSSESSION OF STOLEN PROPERTY Guilty
	5. BURGLARY WHILE IN POSSESSION OF A FIREARM Guilty
	6. ROBBERY WITH USE OF A DEADLY WEAPON Guilty
	7. BURGLARY WHILE IN POSSESSION OF A FIREARM Guilty
	8. ROBBERY WITH USE OF A DEADLY WEAPON Guilty
02/06/2017	(Judicial Officer: Gonzalez, Elizabeth) 1. CONSPIRACY TO COMMIT ROBBERY Sentenced to Nevada Dept. of Corrections Term: Minimum:12 Months, Maximum:60 Months
02/06/2017	(Judicial Officer: Gonzalez, Elizabeth) 2. BURGLARY WHILE IN POSSESSION OF A FIREARM Sentenced to Nevada Dept. of Corrections Term: Minimum:28 Months, Maximum:156 Months Concurrent: Charge 1
02/06/2017	(Judicial Officer: Gonzalez, Elizabeth) 3. ROBBERY WITH USE OF A DEADLY WEAPON Sentenced to Nevada Dept. of Corrections Term: Minimum:28 Months, Maximum:156 Months Consecutive Enhancement:for use of a deadly weapon, Minimum:28 Months, Maximum:156 Months Concurrent: Charge 2 Other Fees
02/06/2017	(Judicial Officer: Gonzalez, Elizabeth) 4. POSSESSION OF STOLEN PROPERTY Sentenced to Nevada Dept. of Corrections Term: Minimum:24 Months, Maximum:60 Months Concurrent: Charge 1 through 3
02/06/2017	(Judicial Officer: Gonzalez, Elizabeth) 5. BURGLARY WHILE IN POSSESSION OF A FIREARM Sentenced to Nevada Dept. of Corrections Term: Minimum:28 Months, Maximum:156 Months Concurrent: Charge 1 through 4
02/06/2017	(Judicial Officer: Gonzalez, Elizabeth) 6. ROBBERY WITH USE OF A DEADLY WEAPON Sentenced to Nevada Dept. of Corrections Term: Minimum:28 Months, Maximum:156 Months Consecutive Enhancement:for use of a deadly weapon, Minimum:28 Months, Maximum:156 Months Concurrent: Charge 5
02/06/2017	(Judicial Officer: Gonzalez, Elizabeth) 7. BURGLARY WHILE IN POSSESSION OF A FIREARM Sentenced to Nevada Dept. of Corrections Term: Minimum:28 Months, Maximum:156 Months Consecutive: Charge - to the other COUNTS
02/06/2017	(Judicial Officer: Gonzalez, Elizabeth) 8. ROBBERY WITH USE OF A DEADLY WEAPON Sentenced to Nevada Dept. of Corrections Term: Minimum:28 Months, Maximum:156 Months Consecutive Enhancement:for use of a deadly weapon, Minimum:28 Months, Maximum:156 Months

AA000002

Concurrent: Charge 7  
 Credit for Time Served: 935 Days  
 Fee Totals:  
     Administrative  
     Assessment Fee \$25                      \$25.00  
     Genetic Marker  
     Analysis AA Fee \$3                      \$3.00  
     Indigent Defense Civil  
     Assessment Fee - ASK                      \$250.00  
 Fee Totals \$                      \$278.00  
 Comment (DNA fee and testing WAIVED, previously submitted)

**OTHER EVENTS AND HEARINGS**

03/05/2014 [Grand Jury Indictment](#) (11:45 AM) (Judicial Officer Bell, Linda Marie)  
     [Parties Present](#)  
     [Minutes](#)  
 Result: Matter Heard  
 03/05/2014 **CANCELED Grand Jury Indictment** (11:45 AM) (Judicial Officer Bell, Linda Marie)  
     *Vacated - On In Error*  
 03/05/2014 [Indictment](#)  
     *Indictment*  
 03/05/2014 [Warrant](#)  
     *Indictment Warrant*  
 03/07/2014 [Indictment Warrant Return](#)  
 03/10/2014 [Transcript of Proceedings](#)  
     *Reporter's Transcript of Proceedings, Grand Jury Hearing, March 4, 2014*  
 03/12/2014 **Initial Arraignment** (8:00 AM) (Judicial Officer Smith, Douglas E.)  
 Result: Plea Entered  
 03/12/2014 **Indictment Warrant Return** (8:00 AM) (Judicial Officer Smith, Douglas E.)  
 Result: Matter Heard  
 03/12/2014 [All Pending Motions](#) (8:00 AM) (Judicial Officer Smith, Douglas E.)  
     [Parties Present](#)  
     [Minutes](#)  
 Result: Matter Heard  
 03/19/2014 [Notice of Witnesses and/or Expert Witnesses](#)  
     *Notice of Witnesses*  
 04/02/2014 [Calendar Call](#) (8:00 AM) (Judicial Officer Smith, Douglas E.)  
     [Parties Present](#)  
     [Minutes](#)  
 Result: Set Status Check  
 04/07/2014 **CANCELED Jury Trial** (9:30 AM) (Judicial Officer Smith, Douglas E.)  
     *Vacated - per Judge*  
 04/30/2014 [Status Check](#) (8:00 AM) (Judicial Officer Smith, Douglas E.)  
     *Status Check: Negotiations/Reset Trial*  
     [Parties Present](#)  
     [Minutes](#)  
 Result: Trial Date Set  
 06/16/2014 [Status Check](#) (8:00 AM) (Judicial Officer Smith, Douglas E.)  
     **06/16/2014, 07/14/2014**  
     **STATUS CHECK: POSSIBLE NEGOTIATIONS**  
     [Parties Present](#)  
     [Minutes](#)  
 Result: Matter Continued  
 07/16/2014 [Status Check](#) (8:00 AM) (Judicial Officer Smith, Douglas E.)  
     *Status Check: Trial Date*  
     [Parties Present](#)  
     [Minutes](#)  
 Result: Matter Heard  
 08/07/2014 [Notice of Witnesses and/or Expert Witnesses](#)  
     *Supplemental Notice of Witnesses*  
 08/13/2014 [Calendar Call](#) (8:00 AM) (Judicial Officer Smith, Douglas E.)  
     [Parties Present](#)  
     [Minutes](#)  
     *01/28/2015 Reset by Court to 08/13/2014*

**AA000003**

08/18/2014 Result: Matter Heard  
**CANCELED Jury Trial** (9:30 AM) (Judicial Officer Smith, Douglas E.)  
*Vacated*  
*02/02/2015 Reset by Court to 08/18/2014*

09/08/2014 **Status Check: Negotiations/Trial Setting** (8:00 AM) (Judicial Officer Smith, Douglas E.)  
**09/08/2014, 09/15/2014, 10/01/2014**  
*STATUS CHECK: NEGOTIATIONS*  
[Parties Present](#)  
[Minutes](#)

03/03/2015 Result: Matter Continued  
**Notice of Motion**  
*Notice of Motion and Motion to Consolidate*

03/18/2015 **Motion to Consolidate** (8:00 AM) (Judicial Officer Smith, Douglas E.)  
*State's Motion to Consolidate*  
[Parties Present](#)  
[Minutes](#)

04/08/2015 Result: Motion Granted  
**Request** (8:00 AM) (Judicial Officer Smith, Douglas E.)  
*DA's Request: States Request to File an Amended Indictment*  
[Parties Present](#)  
[Minutes](#)

04/08/2015 Result: Matter Heard  
**Amended Indictment**  
*Amended Indictment*

04/15/2015 **Status Check** (8:00 AM) (Judicial Officer Smith, Douglas E.)  
**04/15/2015, 04/20/2015**  
*STATUS CHECK: STATUS OF CASE*  
[Parties Present](#)  
[Minutes](#)

04/22/2015 Result: Matter Continued  
**Confirmation of Counsel** (8:00 AM) (Judicial Officer Smith, Douglas E.)  
*CONFIRMATION OF COUNSEL (KOHN)*  
[Parties Present](#)  
[Minutes](#)

05/20/2015 Result: Matter Heard  
**CANCELED Calendar Call** (8:00 AM) (Judicial Officer Barker, David)  
*Vacated*

05/26/2015 **CANCELED Jury Trial** (9:30 AM) (Judicial Officer Smith, Douglas E.)  
*Vacated*

07/29/2015 **Status Check** (8:00 AM) (Judicial Officer Smith, Douglas E.)  
**07/29/2015, 08/12/2015**  
*STATUS CHECK: TRIAL READINESS*  
[Parties Present](#)  
[Minutes](#)

08/03/2015 Result: Matter Continued  
**Notice**  
*Notice of Expert Witnesses and Witnesses*

08/12/2015 **Notice of Witnesses and/or Expert Witnesses**  
*Second Supplemental Notice of Witnesses*

08/19/2015 **Calendar Call** (8:00 AM) (Judicial Officer Smith, Douglas E.)  
[Parties Present](#)  
[Minutes](#)

08/24/2015 Result: Matter Heard  
**CANCELED Jury Trial** (9:00 AM) (Judicial Officer Smith, Douglas E.)  
*Vacated*

08/25/2015 **Notice of Witnesses and/or Expert Witnesses**  
*Notice of Expert Witnesses (NRS 174.234 (2))*

09/24/2015 **Notice**  
*Notice to Place on Calendar*

10/05/2015 **Motion to Continue Trial** (8:00 AM) (Judicial Officer Smith, Douglas E.)  
*Defendant's Motion to Place on Calendar for the Purpose of Continuing Trial Date*  
[Parties Present](#)  
[Minutes](#)

Result: Motion Granted

AA000004

10/14/2015 **CANCELED Calendar Call** (8:00 AM) (Judicial Officer Smith, Douglas E.)  
*Vacated - per Judge*

10/19/2015 **CANCELED Jury Trial** (9:30 AM) (Judicial Officer Smith, Douglas E.)  
*Vacated - per Judge*

12/30/2015 **Calendar Call** (8:00 AM) (Judicial Officer Smith, Douglas E.)  
**12/30/2015, 01/04/2016**  
[Parties Present](#)  
[Minutes](#)  
Result: Matter Continued

01/11/2016 **CANCELED Jury Trial** (9:30 AM) (Judicial Officer Smith, Douglas E.)  
*Vacated - per Judge*

01/11/2016 **Status Check: Reset Trial Date** (8:00 AM) (Judicial Officer Smith, Douglas E.)  
[Parties Present](#)  
[Minutes](#)  
Result: Trial Date Set

03/02/2016 **Calendar Call** (8:00 AM) (Judicial Officer Smith, Douglas E.)  
[Parties Present](#)  
[Minutes](#)  
Result: Matter Heard

03/11/2016 **Overflow** (8:30 AM) (Judicial Officer Barker, David)  
**OVERFLOW (8): A.LEXIS/T.CLAUS / 13-15 WITS / 4-5 DAYS**  
[Parties Present](#)  
[Minutes](#)  
Result: Trial Date Set

03/11/2016 **Telephonic Conference** (9:30 AM) (Judicial Officer Gonzalez, Elizabeth)  
*Telephonic Conference at Request of Counsel*  
[Parties Present](#)  
[Minutes](#)  
Result: Trial Date Set

03/14/2016 **CANCELED Jury Trial** (9:30 AM) (Judicial Officer Smith, Douglas E.)  
*Vacated - per Judge*

03/15/2016 **Jury Trial** (9:00 AM) (Judicial Officer Gonzalez, Elizabeth)  
[Parties Present](#)  
[Minutes](#)  
Result: Set Status Check

03/15/2016 **Motion**  
*Motion to Produce and Preserve Evidence*

03/16/2016 **Status Check** (9:00 AM) (Judicial Officer Gonzalez, Elizabeth)  
*Status Check: Resetting Trial*  
Result: Trial Date Set

03/16/2016 **Motion** (9:00 AM) (Judicial Officer Gonzalez, Elizabeth)  
*Defendant's Motion to Produce and Preserve Evidence*  
*03/28/2016 Reset by Court to 03/16/2016*  
Result: Granted in Part

03/16/2016 **All Pending Motions** (9:00 AM) (Judicial Officer Gonzalez, Elizabeth)  
[Parties Present](#)  
[Minutes](#)  
Result: Matter Heard

03/18/2016 **Status Check** (9:30 AM) (Judicial Officer Gonzalez, Elizabeth)  
*Status Check: Discovery*  
[Parties Present](#)  
[Minutes](#)  
Result: Matter Heard

03/18/2016 **Motion**  
*Motion to Suppress Evidence Obtained as Result of Illegal Stop*

03/21/2016 **Jury Trial** (2:00 PM) (Judicial Officer Gonzalez, Elizabeth)  
**03/21/2016, 03/22/2016, 03/23/2016, 03/24/2016**  
[Parties Present](#)  
[Minutes](#)  
*03/21/2016 Reset by Court to 03/21/2016*  
Result: Trial Continues

AA000005

03/21/2016 [Motion](#) (1:00 PM) (Judicial Officer Gonzalez, Elizabeth)  
*Defendant's Motion to Suppress Evidence Obtained as Result of Illegal Stop*  
[Parties Present](#)  
[Minutes](#)  
 03/28/2016 *Reset by Court to 03/21/2016*  
 Result: Denied

03/22/2016 [Jury List](#)  
 03/23/2016 [Amended Jury List](#)  
 03/24/2016 [Instructions to the Jury](#)  
 03/24/2016 [Verdict](#)  
 05/11/2016 [PSI](#)  
 07/05/2016 [PSI - Supplemental PSI](#)  
 07/20/2016 [Sentencing](#) (9:00 AM) (Judicial Officer Gonzalez, Elizabeth)  
**07/20/2016, 08/10/2016, 09/07/2016, 10/12/2016, 11/23/2016, 12/21/2016, 01/09/2017, 01/23/2017, 02/06/2017**  
[Parties Present](#)  
[Minutes](#)  
 05/25/2016 *Reset by Court to 06/08/2016*  
 06/08/2016 *Reset by Court to 07/20/2016*  
 11/16/2016 *Reset by Court to 11/23/2016*  
 01/09/2017 *Reset by Court to 01/09/2017*  
 01/09/2017 *Reset by Court to 01/09/2017*  
 Result: Matter Continued

12/20/2016 [Motion](#)  
*Motion to Compel Production of Subpoenaed Materials*

01/02/2017 **Case Reassigned to Department 1**  
*Case reassigned from Judge Elizabeth Gonzalez Dept 11*

01/05/2017 [Opposition to Motion](#)  
*Opposition to Motion to Compel Production of Subpoenaed Materials*

01/09/2017 **Motion to Compel** (9:00 AM) (Judicial Officer Cory, Kenneth)  
**01/09/2017, 01/23/2017**  
*Defendant's Motion to Compel Production of Subpoenaed Materials*  
 01/04/2017 *Reset by Court to 01/09/2017*  
 01/09/2017 *Reset by Court to 01/09/2017*  
 Result: Continued

01/09/2017 **All Pending Motions** (9:00 AM) (Judicial Officer Cory, Kenneth)  
**DEFENDANT'S MOTION TO COMPEL PRODUCTION OF SUBPOENAED MATERIALS...SENTENCING**  
[Parties Present](#)  
[Minutes](#)  
 Result: Matter Heard

01/23/2017 **All Pending Motions** (9:00 AM) (Judicial Officer Gonzalez, Elizabeth)  
[Parties Present](#)  
[Minutes](#)  
 Result: Matter Heard

02/13/2017 [Judgment of Conviction](#)  
**JUDGMENT OF CONVICTION (JURY TRIAL)**

03/02/2017 [Notice of Appeal \(criminal\)](#)  
*Notice of Appeal*

03/02/2017 [Request](#)  
*Request for Rough Draft Transcripts*

03/02/2017 [Case Appeal Statement](#)  
*Case Appeal Statement*

03/02/2017 [Request](#)  
*Request for Rough Draft Transcript*

03/10/2017 [Recorders Transcript of Hearing](#)  
*Transcript of Proceedings Status Check: Indictment Return in C296374, Initial Arraignment, Indictment Warrant Return. Heard on March 1*

03/10/2017 [Recorders Transcript of Hearing](#)  
*Transcript of Proceedings Calendar Call. Heard on April 2, 2014*

03/10/2017 [Recorders Transcript of Hearing](#)  
*Transcript of Proceedings Status Check: Negotiations/Reset Trial. Heard on April 30, 2014*

03/10/2017 [Recorders Transcript of Hearing](#)  
*Transcript of Proceedings Status Check: Possible Negotiations. Heard on June 16, 2014*

03/10/2017 [Recorders Transcript of Hearing](#)  
*Transcript of Proceedings Status Check: Possible Negotiations. Heard on July 14, 2014*

03/10/2017 [Recorders Transcript of Hearing](#)  
*Transcript of Proceedings Status Check: Trial Date. Heard on July 16, 2014*

AA000006

03/10/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Transcript of Proceedings Calendar Call. Heard on August 13, 2014</i>
03/10/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Transcript of Proceedings Status Check: Negotiations. Heard on September 8, 2014</i>
03/10/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Transcript of Proceedings Status Check: Negotiations. Heard on September 15, 2014</i>
03/10/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Transcript of Proceedings Status Check: Negotiations. Heard on October 1, 2014</i>
03/10/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Transcript of Proceedings State's Motion to Consolidate. Heard on March 18, 2015</i>
03/10/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Transcript of Proceedings State's Request: To File an Amended Indictment. Heard on April 8, 2015</i>
03/10/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Transcript of Proceedings Status Check: Status of Case. Heard on April 15, 2015</i>
03/10/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Transcript of Proceedings Status Check: Status of Case. Heard on April 20, 2015</i>
03/10/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Transcript of Proceedings Confirmation of Counsel. Heard on April 22, 2015</i>
03/10/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Transcript of Proceedings Status Check: Trial Readiness. Heard on July 29, 2015</i>
03/10/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Transcript of Proceedings Status Check: Trial Readiness. Heard on August 12, 2015</i>
03/10/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Transcript of Proceedings Calendar Call. Heard on August 19, 2015</i>
03/10/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Transcript of Proceeding Defendant's Motion to Place on Calendar for the Purpose of Continuing Trial date Revocation of Probation. Hear October 5, 2015</i>
03/10/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Transcript of Proceedings Calendar Call. Heard on December 30, 2015</i>
03/10/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Transcript of Proceedings Status Check: Reset Trial Date. Heard on January 11, 2016</i>
03/10/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Transcript of Proceedings Calendar Call. Heard on March 2, 2016</i>
03/10/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Transcript of Proceedings Calendar Call. Heard on January 4, 2016</i>
03/13/2017	<a href="#">Recorders Transcript of Hearing</a> <i>Recorder's Transcript Re: Overflow - 3/11/2016</i>
03/20/2017	<a href="#">Transcript of Proceedings</a> <i>Recorder's Transcript Re: Defendant's Motion to Compel Production of Subpoenaed Materials January 9, 2017 Sentencing 01-09-17</i>
03/22/2017	<a href="#">Reporters Transcript</a> <i>Transcript of Proceedings: Telephone Conference 3/11/16</i>
03/22/2017	<a href="#">Reporters Transcript</a> <i>Transcript of Proceedings: Jury Trial - Day 1 3/15/16</i>
03/22/2017	<a href="#">Reporters Transcript</a> <i>Transcript of Proceedings: Hearing on Defendant's Motion to Produce and Preserve Evidence and Status Check Resetting Trial 3/16/16</i>
03/22/2017	<a href="#">Reporters Transcript</a> <i>Transcript of Proceedings: Status Check 3/18/16</i>
03/22/2017	<a href="#">Reporters Transcript</a> <i>Transcript of Proceedings: Sentencing 7/20/16</i>
03/22/2017	<a href="#">Reporters Transcript</a> <i>Transcript of Proceedings: Sentencing (continued) 8/10/16</i>
03/22/2017	<a href="#">Reporters Transcript</a> <i>Transcript of Proceedings: Sentencing (continued) 9/7/16</i>
03/22/2017	<a href="#">Reporters Transcript</a> <i>Transcript of Proceedings: Sentencing (continued) 10/12/16</i>
03/22/2017	<a href="#">Reporters Transcript</a> <i>Transcript of Proceedings: Sentencing (continued) 11/23/16</i>
03/22/2017	<a href="#">Reporters Transcript</a> <i>Transcript of Proceedings: Sentencing (continued) 12/21/16</i>
03/22/2017	<a href="#">Reporters Transcript</a> <i>Transcript of Proceedings: Defendant's Motion to Compel Production of Subpoenaed Materials 1/23/17</i>
03/22/2017	<a href="#">Reporters Transcript</a> <i>Transcript of Proceedings: Sentencing (continued) 2/6/17</i>
04/19/2017	<a href="#">Reporters Transcript</a> <i>Transcript of Proceedings: Jury Trial - Day 1</i>
04/19/2017	<a href="#">Reporters Transcript</a> <i>Transcript of Proceedings: Jury Trial - Day 2</i>
04/19/2017	<a href="#">Reporters Transcript</a> <i>Transcript of Proceedings: Jury Trial - Day 3</i>
04/19/2017	<a href="#">Reporters Transcript</a> <i>Transcript of Proceedings: Jury Trial - Day 4</i>

AA000007

08/09/2017	<a href="#">Minute Order</a> (9:30 AM) (Judicial Officer Gonzalez, Elizabeth) <i>Minute Order Setting Hearing</i> <a href="#">Minutes</a> Result: Minute Order - No Hearing Held
09/01/2017	<b>CANCELED Hearing</b> (8:30 AM) (Judicial Officer Gonzalez, Elizabeth) <i>Vacated</i> <i>Hearing re: P &amp; P's request</i>

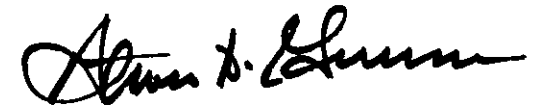
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**FINANCIAL INFORMATION**

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	<b>Defendant</b> Splond, Kenya	
	Total Financial Assessment	278.00
	Total Payments and Credits	0.00
	<b>Balance Due as of 09/28/2017</b>	<b>278.00</b>
03/14/2017	Transaction Assessment	278.00





CLERK OF THE COURT

1 **IND**  
2 **STEVEN B. WOLFSON**  
3 **Clark County District Attorney**  
4 **Nevada Bar #001565**  
5 **AGNES LEXIS**  
6 **Deputy District Attorney**  
7 **Nevada Bar #011064**  
8 **200 Lewis Avenue**  
9 **Las Vegas, Nevada 89155-2212**  
10 **(702) 671-2500**  
11 **Attorney for Plaintiff**

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

**KENYA SPLOND, aka,**  
**Kenny Splond, #1138461**  
**KELLIE ERIN CHAPMAN,**  
**#1681308**

Defendant.

CASE NO: C-14-296374-1

DEPT NO: VIII

INDICTMENT

STATE OF NEVADA }  
COUNTY OF CLARK } ss.

The Defendant above named, KENYA SPLOND, aka, Kenny Splond and KELLIE ERIN CHAPMAN, accused by the Clark County Grand Jury of the crime(s) of CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380,199.480 - 50147); BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS 205.060 - 50426); ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - 50138) and POSSESSION OF STOLEN PROPERTY (Category B Felony - NRS 205.275(2)(c) - 56060), committed at and within the County of Clark, State of Nevada, on or about the 2nd day of February, 2014, as follows:

///

///

///

1 COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

2 Defendants KENYA SPLOND, aka, Kenny Splond and KELLIE ERIN CHAPMAN  
3 did, then and there meet with each other and between themselves, and each of them with the  
4 other, wilfully, unlawfully, and feloniously conspire and agree to commit robbery, and in  
5 furtherance of said conspiracy, defendants did commit the acts as set forth in Count 2 and 3,  
6 said acts being incorporated by reference as though fully set forth herein.

7 COUNT 2 - BURGLARY WHILE IN POSSESSION OF A FIREARM

8 Defendants KENYA SPLOND, aka, Kenny Splond and KELLIE ERIN CHAPMAN  
9 did then and there wilfully, unlawfully, and feloniously enter, with intent to commit robbery,  
10 that certain building occupied by STAR MART, located at 5001 North Rainbow, Las Vegas,  
11 Clark County, Nevada, said Defendant did possess and/or gain possession of a firearm during  
12 the commission of the crime and/or before leaving the structure, to wit: (1) by directly  
13 committing this crime and /or (2) by aiding and abetting in the commission of this crime, with  
14 the intent that this crime be committed, by providing counsel and/or encouragement and by  
15 entering into a course of conduct whereby Defendant KENYA SPLOND entered Star Mart,  
16 located at 5001 N. Rainbow Boulevard, Las Vegas, Clark County, Nevada with a firearm and  
17 demanded money and/or cigarettes and/or gum from BRITTANY SLATHAR and took  
18 cigarettes and/or gum while Defendant KELLIE CHAPMAN provided Defendant KENYA  
19 SPLOND transportation to the Star Mart prior to the robbery and/or acted as a getaway driver  
20 and/or look-out and both Defendants fled the scene together and/or (3) pursuant to a  
21 conspiracy to commit this crime.

22 COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

23 Defendants KENYA SPLOND, aka, Kenny Splond and KELLIE ERIN CHAPMAN  
24 did then and there wilfully, unlawfully, and feloniously take personal property, to-wit:  
25 cigarettes and gum, from the person of BRITTANY SLATHAR, or in her presence, by means  
26 of force or violence, or fear of injury to, and without the consent and against the will of  
27 BRITTANY SLATHAR, with use of a deadly weapon, to-wit: a handgun, to wit: (1) by  
28 directly committing this crime and /or (2) by aiding and abetting in the commission of this

1 crime, with the intent that this crime be committed, by providing counsel and/or  
2 encouragement and by entering into a course of conduct whereby Defendant KENYA  
3 SPLOND entered Star Mart, located at 5001 N. Rainbow Boulevard, Las Vegas, Clark County,  
4 Nevada with a firearm and demanded money and/or cigarettes and/or gum from BRITTANY  
5 SLATHAR and took cigarettes and/or gum while Defendant KELLIE CHAPMAN provided  
6 Defendant KENYA SPLOND transportation to the Star Mart prior to the robbery and/or acted  
7 as a getaway driver and/or look-out and both Defendants fled the scene together and/or (3)  
8 pursuant to a conspiracy to commit this crime.

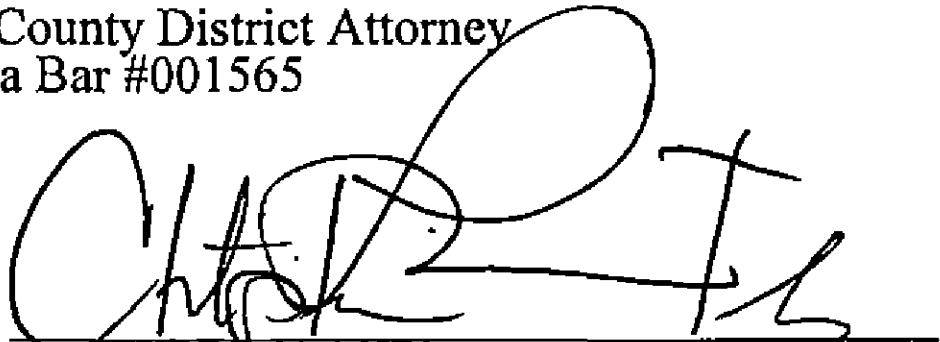
9 COUNT 4 - POSSESSION OF STOLEN PROPERTY

10 Defendant KENYA SPLOND, aka, Kenny Splon did wilfully, unlawfully, and  
11 feloniously for his own gain, possess property wrongfully taken from JEFFREY BRUCE  
12 HABERMAN, to-wit: Colt 38 revolver serial# 941609, which Defendant knew, or had reason  
13 to believe, had been stolen.

14 DATED this 5<sup>th</sup> day of March, 2014.

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

17  
18 BY

  
19 AGNES LEXIS  
20 Deputy District Attorney  
Nevada Bar #011064

21 ENDORSEMENT: A True Bill

22   
23 Edward Malec  
24 Foreperson, Clark County Grand Jury

Names of witnesses testifying before the Grand Jury:

ROWBERRY, JOSHUA, LVMPD# 13894

SLATHAR, BRITTANY, STARMART, 5001 N RAINBOW BLVD, LVN

HABERMAN, JEFFREY, c/o CCDA, 200 Lewis Avenue, LV, NV 89101

Additional witnesses known to the District Attorney at time of filing the Indictment:

BRUMAGIN, ANTHONY, LVMPD# 13756

CUSTODIAN OF RECORDS, CCDC

CUSTODIAN OF RECORDS, LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS, LVMPD RECORDS

CUSTODIAN OF RECORDS, STARMART, 5001 N RAINBOW BLVD, LVN

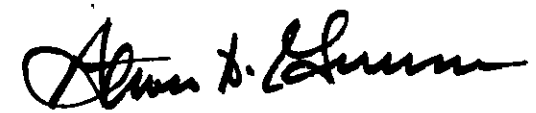
LANDERS, JEREMY, LVMPD# 8073

RALYEA, CHARLES, LVMPD# 13357

13AGJ118A-B/14F01777A-B/ed-GJ

LVMPD EV# 1402020525

(TK11)

DISTRICT COURT  
CLARK COUNTY, NEVADA

CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

-VS-

KENYA SPLOND, aka,  
Kenny Splond, #1138461

Defendant.

CASE NO: C-14-296374-1

DEPT NO: VIII

WARRANT FOR ARRESTINDICTMENT WARRANT

THE STATE OF NEVADA,

To: Any Sheriff, Constable, Marshall, Policeman, or Peace Officer in This State:

An Indictment having been found on the 5th day of March, 2014, in the above entitled Court, charging Defendant KENYA SPLOND, aka, Kenny Splond, above named, with the crime(s) of: (1) CT - CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - 50147); (1) CT - BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS 205.060 - 50426); (1) CT - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - 50138) and (1) CT- POSSESSION OF STOLEN PROPERTY (Category B Felony - NRS 205.275(2)(c) - 56060).

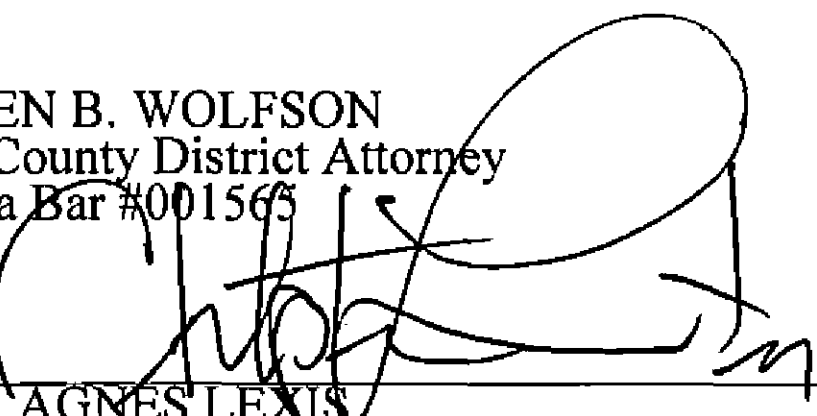

**YOU ARE, THEREFORE, COMMANDED** forthwith to arrest and bring said Defendant before the Court to answer the Indictment. If the Court is not in session, you are to deliver Defendant into the custody of the Sheriff of Clark County, or if requested by Defendant, take Defendant before any Magistrate in the County where arrested that bail may be given to answer to the Indictment. Defendant shall be admitted to bail in the sum of \$ 140,000.

I HEREBY AUTHORIZE THE SERVICE OF THE WITHIN WARRANT BY TELETYPE, PURSUANT TO NRS 171.148. The Warrant may be served at any hour day or night

GIVEN under my hand this \_\_\_\_ day of March, 2014.

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001563

BY

  
AGNES LEXIS  
Deputy District Attorney  
Nevada Bar #011064  
DISTRICT JUDGE  
LINDA MARIE BELL  
BAIL \$ 140,000DA# 13AGJ118A-B/ 14F01777A-B/ed  
LVMPD EV#1402020525  
11/14/1972; BMA; 530-68-1773;  
(TK11)

RET  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
AGNES LEXIS  
Deputy District Attorney  
Nevada Bar #011064  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

KENYA SPLOND, aka,  
Kenny Splond, #1138461

Defendant.

CASE NO: C-14-296374-1  
DEPT NO: VIII

INDICTMENT WARRANT RETURN

An Indictment having heretofore been found on the 5th day of March, 2014, in the above entitled Court, charging Defendant KENYA SPLOND, aka, Kenny Splond, above named, with the crime(s) of: (1) CT - CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - 50147); (1) CT - BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS 205.060 - 50426); (1) CT - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - 50138) and (1) CT- POSSESSION OF STOLEN PROPERTY (Category B Felony - NRS 205.275(2)(c) - 56060), and upon finding the said Indictment, the court issued a warrant for the arrest of said Defendant.

I hereby certify that I received a certified copy of the Indictment Warrant and served the same by arresting the within Defendant on the \_\_\_\_ day of \_\_\_\_\_ 2014.

DOUGLAS C. GILLESPIE,  
Clark County, Nevada

BY

\_\_\_\_\_  
Deputy

RET  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
AGNES LEXIS  
Deputy District Attorney  
Nevada Bar #011064  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

FILED

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*Adam L. Johnson*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-VS-

KENYA SPLOND, aka,  
Kenny Splond, #1138461

Defendant.

CASE NO: C-14-296374-1  
DEPT NO: VIII

INDICTMENT WARRANT RETURN

An Indictment having heretofore been found on the 5th day of March, 2014, in the above entitled Court, charging Defendant KENYA SPLOND, aka, Kenny Splond, above named, with the crime(s) of: (1) CT - CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - 50147); (1) CT - BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS 205.060 - 50426); (1) CT - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - 50138) and (1) CT- POSSESSION OF STOLEN PROPERTY (Category B Felony - NRS 205.275(2)(c) - 56060), and upon finding the said Indictment, the court issued a warrant for the arrest of said Defendant.

I hereby certify that I received a certified copy of the Indictment Warrant and served the same by arresting the within Defendant on the 5 day of March 2014.

DOUGLAS C. GILLESPIE,  
Clark County, Nevada

BY

Deputy

*Adam L. Johnson*

RECEIVED  
MAR 07 2014  
CLERK OF THE COURT

C-14-296374-1  
IWR  
Indictment Warrant Return  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

  
CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

-vs-

KENYA SPLOND, aka,  
Kenny Splond, #1138461

Defendant.

CASE NO: C-14-296374-1

DEPT NO: VIII

WARRANT FOR ARREST

INDICTMENT WARRANT

THE STATE OF NEVADA,

To: Any Sheriff, Constable, Marshall, Policeman, or Peace Officer in This State:

An Indictment having been found on the 5th day of March, 2014, in the above entitled Court, charging Defendant KENYA SPLOND, aka, Kenny Splond, above named, with the crime(s) of: (1) CT - CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - 50147); (1) CT - BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS 205.060 - 50426); (1) CT - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - 50138) and (1) CT - POSSESSION OF STOLEN PROPERTY (Category B Felony - NRS 205.275(2)(c) - 56060).

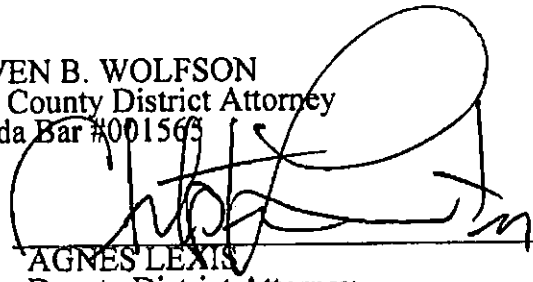
**YOU ARE, THEREFORE, COMMANDED** forthwith to arrest and bring said Defendant before the Court to answer the Indictment. If the Court is not in session, you are to deliver Defendant into the custody of the Sheriff of Clark County, or if requested by Defendant, take Defendant before any Magistrate in the County where arrested that bail may be given to answer to the Indictment. Defendant shall be admitted to bail in the sum of \$ 140,000.


I HEREBY AUTHORIZE THE SERVICE OF THE WITHIN WARRANT BY TELETYPE, PURSUANT TO NRS 171.148. The Warrant may be served at any hour day or night

GIVEN under my hand this \_\_\_\_\_ day of March, 2014.

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001563

BY

  
AGNES LEXAS  
Deputy District Attorney  
Nevada Bar #011064

  
DISTRICT JUDGE  
LINDA MARIE BELL  
BAIL \$ 140,000

DA# 13AGJ118A-B/ 14F01777A-B/ed  
LVMPD EV#1402020525  
11/14/1972; BMA; 530-68-1773;  
(TK11)

CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE

  
CLERK OF THE COURT

MAR - 5 2014

AA000016



\*PAGE 1 OF 1

\*ID/CS# 1138461

☐ JUVENILE ☐ NEW ID

CO. SGT APPROVAL

☒ REBOOK ☐ ABSENTIA ☐ FORM 6 ☐ NDOC ☐ EXT TO LAS VEGAS ☐ LVC ☐ HND ☐ NLV ☐ COURTESY HOLD ☐ DETAINER

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**TEMPORARY CUSTODY RECORD**  
(\* DENOTES REQUIRED FIELD)

DISTRICT 4  
\*ARREST DATE: 3/5/2014 \*ARREST TIME: 1222

\*EVENT #:

\*CO-DEF:

*INTAKE NAME (AKA, ALIAS, ETC.)				LAST SPLOND		FIRST KENNY		MIDDLE		TRUE NAME LAST SPLOND				FIRST KENNY		MIDDLE							
*HOME ADDRESS (STREET # AND STREET NAME) UNKNOWN								BLDG./APT.#		*CITY				*STATE		*ZIP		*PLACE OF BIRTH LV, NV					
*DATE OF BIRTH 11/14/1972		*RACE B		*ETHNIC		*SEX M		*HEIGHT 5'10		*WEIGHT 180		*HAIR BLK		*EYES BRO		*SOCIAL SECURITY # 530-68-1773		*CITIZENSHIP USA		*ALIEN REGISTRATION #		<input type="checkbox"/> US VETERAN <input type="checkbox"/> ACTIVE MILITARY	
*LOCATION OF CRIME (STREET ADDRESS, CITY, STATE, ZIP) <input type="checkbox"/> CC <input type="checkbox"/> LV WARRANT										*LOCATION OF ARREST (STREET ADDRESS, CITY, STATE, ZIP) CCDC												<input type="checkbox"/> CITIZEN'S ARREST <input type="checkbox"/> SPEAKS ENGLISH	
*ARR ** TYPE		*COURT LV JC DC OTR		*WARRANT # / CASE #		*# COUNTS		*NOC CODE		* M GM F		*CHARGE LITERAL				*ORD / NRS		*BAIL		*EVENT# / NIC#			
GJI		<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>		C29637		1		50147		<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>		CONSP ROBBERY				200.380							
GJI		<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>		C29637		1		50426		<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>		BURGLARY WHILE POSS OF GUN/DW				205.060							
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GJI		<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>		C29637		1		56057		<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/>		BUY/POSS/RCV STOLEN PROP, \$650 - 3500				200.380							
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*OTHER JURISDICTION:				**ARREST TYPES: PC - PROBABLE CAUSE BS - BONDSMAN SURRENDER BW - BENCH WARRANT AW - ARREST WARRANT RM - REMAND GJI - GRAND JURY INDICTMENT																			

TIME STAMP  
AT BOOKING

ARRESTING OFFICER SIGNATURE

\*PRINTED NAME

\*P#

\*AGENCY

\*SECTOR/BEAT  
OF ARREST

\*TRANSPORTING OFFICER SIGNATURE

\*PRINTED NAME

\*P#

\*AGENCY

\*EMERGENCY CONTACT

\*RELATIONSHIP

\*PHONE NUMBER

\*EMAIL ADDRESS

CUSTODY RELEASED TO

NAME

POSITION

AGENCY

FIRST APP DATE:

TIME:

COURT: ☐ JUSTICE  
☐ MUNICIPAL ☐ JUVENILE

☐ STD BAIL ☐ O.R. REL

☐ PC ☐ I.A.D.

JUDGE:

TIME STAMP  
AT RELEASING

P#

REL REV P#

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☐ COURTS COPY

☐ DSD RECORDS COPY

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

Allen D. Levine

**CLERK OF THE COURT**

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID

DISTRICT COURT

THE STATE OF NEVADA,

Plaintiff,

VS.

KENYA SPLOND, aka Kenny Splond,  
KELLIE ERIN CHAPMAN,

Defendants.

GJ No. 13AGJ118AB  
DC No. C296374

Taken at Las Vegas, Nevada

Tuesday, March 4, 2014

3:13 p.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Reported by: Danette L. Antonacci, C.C.R. No. 222

1 GRAND JURORS PRESENT ON MARCH 4, 2014

2

3 EDWARD GOLEC, Foreperson

4 JULIE SCHWERDTFEGER, Deputy Foreperson

5 SHARON BERGER, Secretary

6 ANNA ALVAREZ, Assistant Secretary

7 SUSAN BEAUCHAMP

8 GERALD BRYAN

9 NIKKI FOSTER

10 MICHAEL GARCIA

11 JOSHUA HAGER

12 GOPAL JAIRATH

13 SHIRLEY JOHNSON

14 CHARLES KNIGHTEN

15 JOSEPH O'CONNELL

16 PATRICK ORTMAN

17 GARY ROGERS

18 CRAIG WISE

19 RONALD WORLEY

20

21 Also present at the request of the Grand Jury:

22

23 Agnes Lexis,  
24 Deputy District Attorney

24

25

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JOSHUA ROWBERRY	33
JEFFREY HABERMAN	46

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1 LAS VEGAS, NEVADA, MARCH 4, 2014

2 \* \* \* \* \*

3  
4 DANETTE L. ANTONACCI,

5 having been first duly sworn to faithfully  
6 and accurately transcribe the following  
7 proceedings to the best of her ability.  
8

9 MS. LEXIS: Good afternoon. My name is  
10 Agnes Lexis. I am a deputy district attorney. Today I  
11 will be presenting Grand Jury Case Number 13AGJ118AB  
12 which is the State of Nevada versus Kenya or Kenny  
13 Splond and also Kellie Erin Chapman.

14 The charges for your consideration today  
15 are conspiracy to commit robbery, burglary while in  
16 possession of a firearm, robbery with use of a deadly  
17 weapon and possession of stolen property, firearm. I'm  
18 just going to briefly for the record read some of the  
19 elements of the charges and we'll start with testimony.

20 Conspiracy is an agreement or mutual  
21 understanding between two or more persons to commit a  
22 crime. To be guilty of a conspiracy, a defendant must  
23 intends to commit, or to aid in the commission of, the  
24 specific crime agreed to. The crime is the agreement to  
25 do something unlawful; it does not matter whether it is

1 successful or not.

2 Evidence that a person was in the company  
3 of or associated with one or more other persons alleged  
4 or proved to have been member of a conspiracy is not in  
5 itself sufficient to prove that such person was a member  
6 of the alleged conspiracy. However, presence,  
7 companionship and conduct before, during and after the  
8 offense are circumstances from which one's participation  
9 in the conspiracy may be inferred.

10 Burglary is entering, in this particular  
11 case 5001 North Rainbow, Las Vegas, Clark County,  
12 Nevada, with the intent to commit larceny and/or robbery  
13 therein.

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

18 Every person who commits the crime of  
19 burglary who has in his or her possession or gains  
20 possession of a deadly weapon any time during the  
21 commission of the crime, at any time before leaving the  
22 structure, or upon leaving the structure, is guilty of  
23 burglary while in possession of a deadly weapon.

24 Deadly weapon means any instrument which,  
25 if used in the ordinary manner contemplated by its



1 design and construction, will or is likely to cause  
2 substantial bodily harm or death; or any weapon, device,  
3 instrument, material or substance which, under the  
4 circumstances in which it is used, attempted to be used  
5 or threatened to be used, is readily capable of causing  
6 substantial bodily harm or death.

7           Robbery is the unlawful taking of personal  
8 property from the person of another, or in his or her  
9 presence, against his or her will, by means of force or  
10 violence or fear of injury, immediate or future, to his  
11 person or property. Such force or fear must be used to  
12 obtain or retain possession of the property, to prevent  
13 or overcome resistance to the taking of the property, or  
14 to facilitate escape with the property. The degree of  
15 force is immaterial if used to compel acquiescence with  
16 the taking or escaping with the property.

17           The value of the property or money taken is  
18 not an element of the crime of robbery. It is only  
19 necessary that the State prove the taking of some money  
20 or property.

21           And lastly. A person commits possession of  
22 stolen property if the person, for his or her own gain  
23 or to prevent the owner from again possessing the  
24 owner's property, buys, receives, possesses or withholds  
25 property, knowing that it is stolen property or under

1 circumstances as should have caused a reasonable person  
2 to know that it is stolen property.

3 Do any of you have any questions regarding  
4 the charges or the elements? You've heard those before,  
5 haven't you?

6 A JUROR: Uh-huh.

7 MS. LEXIS: So the State's first witness is  
8 Brittany Slathar.

9 THE FOREPERSON: Please raise your right  
10 hand.

11 You do solemnly swear the testimony you are  
12 about to give upon the investigation now pending before  
13 this Grand Jury shall be the truth, the whole truth, and  
14 nothing but the truth, so help you God?

15 THE WITNESS: I do.

16 THE FOREPERSON: Please be seated.

17 You are advised that you are here today to  
18 give testimony in the investigation pertaining to the  
19 offenses of conspiracy to commit robbery, burglary while  
20 in possession of a firearm, robbery with use of a deadly  
21 weapon, and possession of stolen property, involving  
22 Kenya Splond and Kellie Erin Chapman.

23 Do you understand this advisement?

24 THE WITNESS: Yes.

25 THE FOREPERSON: Please state your first

1 and last name and spell both for the record.

2 THE WITNESS: Brittany, B-R-I-T-T-A-N-Y  
3 Slathar, S-L-A-T-H-A-R.

4 THE FOREPERSON: Thank you.

5 MS. LEXIS: Thank you.

6 BRITTANY SLATHAR,  
7 having been first duly sworn by the Foreperson of the  
8 Grand Jury to testify to the truth, the whole truth,  
9 and nothing but the truth, testified as follows:

10

11 EXAMINATION

12

13 BY MS. LEXIS:

14 Q. Is it okay if I call you Brittany?

15 A. Yes.

16 Q. Brittany, I want to turn your attention to  
17 February 2, 2014. Were you working at that time?

18 A. Yes, I was.

19 Q. Where were you working, Brittany?

20 A. At Star Mart. It's a convenience store.

21 Q. Is that located at 5001 North Rainbow, Las  
22 Vegas, Clark County, Nevada?

23 A. Yes.

24 Q. And what did you do at that convenience  
25 store?

1 A. I'm a cashier.

2 Q. What shift did you work?

3 A. Graveyard.

4 Q. As a graveyard cashier did you typically  
5 work alone or with other clerks?

6 A. I'm always alone.

7 Q. And what is the graveyard shift considered,  
8 what times?

9 A. 10:00 p.m. to 6:00 a.m.

10 Q. On February 2nd, 2014, did something happen  
11 to you while you were working at the convenience store  
12 that's causing you to have to testify before the Grand  
13 Jury today?

14 A. Yes.

15 Q. Okay. Brittany, can you please tell us  
16 what happened?

17 A. I was sitting at the table just doing like  
18 little puzzle books to keep myself busy and a gentleman  
19 walked in and I saw him walk right to the candy aisle  
20 and he walked straight to the counter, I approached, he  
21 asked for two packs of Newport 100's. I turned around,  
22 I grabbed the cigarettes, as I'm ringing them up he  
23 pulls a gun out of his sweatshirt and tells me to give  
24 him the money. I put the cigarettes to the side to try  
25 to avoid giving them to him and he just kept telling me

1 open my drawer. And I told him once I start a  
2 transaction that's not possible. And he just kept, he  
3 kept pointing the gun at me telling me to open my  
4 drawer, open my drawer or my life's over, I'm going to  
5 die, kept calling me names.

6 Q. So let me stop you right there. Did this  
7 person enter the convenience store by himself, alone or  
8 with other people?

9 A. Alone.

10 Q. And was it a male or a female?

11 A. A male.

12 Q. And what race?

13 A. Black. African American.

14 Q. And you said this person immediately went  
15 to the candy aisle?

16 A. Yes.

17 Q. And after that the person went up to the  
18 counter?

19 A. Yes.

20 Q. And once at the counter the person asked  
21 for a specific type of cigarettes?

22 A. Yes.

23 Q. What kind of cigarettes?

24 A. Newport Menthol 100's.

25 Q. Did you retrieve those cigarettes?

1           A.     Yes, I did.

2           Q.     And where did you place them?

3           A.     I rang them up and I sat them on the  
4 counter and once he pulled the gun I quickly grabbed  
5 them and put them like on the right side of my register  
6 where it kind of like you have to completely walk around  
7 and reach over to get to them.

8           Q.     And you talked about this individual  
9 pulling a gun. Were you able to see the color of the  
10 gun?

11          A.     Yes, I was.

12          Q.     What color?

13          A.     It was black.

14          Q.     Do you know anything about guns? Do you  
15 know what type of gun it was?

16          A.     Yes.

17          Q.     For the record you were nodding your head.  
18 What type of gun was it?

19          A.     It was a revolver. I didn't know exactly  
20 what kind of revolver but I knew it didn't have a clip.  
21 I knew it was a revolver.

22          Q.     So you saw enough of the gun to ascertain  
23 that it was a revolver and black?

24          A.     Yes.

25          Q.     And where was this particular individual

1 holding the gun when you said he pointed it at you?

2 A. About waist length, about on the counter  
3 like at his waist.

4 Q. Do you recall whether or not this  
5 individual was wearing gloves?

6 A. Yes, he was.

7 Q. And you indicated that this male asked you  
8 for money?

9 A. Yes.

10 Q. And was that from your register?

11 A. Yes.

12 Q. And you indicated -- did you turn over  
13 money?

14 A. No, I did not.

15 Q. Why not?

16 A. I just, I told him I couldn't open my  
17 drawer. I would have gave him the money, I was just  
18 trying not to. I actually ended up turning my computer  
19 screen cause once I start a transaction there's no  
20 buttons to open by drawer. I told him I couldn't open  
21 it and he ended up getting so frustrated he left and  
22 told me he'd be back.

23 Q. You indicated he was calling you names.  
24 What kind of names was this particular person calling  
25 you?

1           A.     He was calling me a dumb white bitch, he  
2 was telling me I'm stupid, like ignorant, like young,  
3 like calling me anything he could possibly think of.

4           Q.     And did he have an occasion to threaten  
5 your life or make threats towards you?

6           A.     Oh yes, he threatened me numerous times.

7           Q.     What exactly did he say?

8           A.     He told me if I didn't give him the money  
9 he was going to shoot me in the head. Like before he  
10 left he told me he'd be back, my life was over, like  
11 that's the worse decision of my life. He just kept  
12 telling me I was going to die.

13          Q.     And this might sound like a stupid question  
14 but. Were you in fear when you saw the gun and when  
15 this individual was threatening you?

16          A.     Yes, and I still am every day at work.

17          Q.     Brittany, was this individual who went in  
18 and robbed you, was he able to make out with any items  
19 from the store?

20          A.     Yes.

21          Q.     And what were those items?

22          A.     He got a pack of Wrigley Spearmint gum and  
23 two packs of the Newport Menthol 100's.

24          Q.     And immediately upon this person leaving or  
25 going towards the exit of the store, there's one front



1 exit; is that right?

2 A. Yes.

3 Q. Did you see this person make any kind of  
4 gesture immediately upon coming out of the front door?

5 A. Yes, cause there's windows around like and  
6 I could see out and right when he walked around the  
7 corner I saw him go like this with his hand.

8 Q. Okay. What did you do next? Did you call  
9 the police?

10 A. Well, I walked around to the front door to  
11 lock it because he said he'd be back and then I walked  
12 back behind the counter and I called Metro.

13 Q. Brief indulgence.

14 After you called Metro were you escorted by  
15 a detective to a residential area near the store?

16 A. Yes, I was.

17 Q. And what were you brought there to do?

18 A. They had told me they had an individual and  
19 it may or may not be the guy that had robbed me and so  
20 they drove me over there and it was him.

21 Q. Brittany, does the store have a  
22 surveillance system?

23 A. Yes, it does.

24 Q. And I'm sorry, let me go back. It may or  
25 may not be him. Were you presented with an individual?

1           A.     Yes. I stayed in the police car and they  
2 pulled, they had an individual, they brought him around  
3 and they put him, you know, in front of the car, not  
4 close but so he couldn't see me, and it was him.

5           Q.     Okay. And how sure were you that the  
6 person presented to you was the individual who had just  
7 robbed you?

8           A.     A hundred percent. He didn't cover his  
9 face.

10          Q.     Was the individual who robbed you wearing  
11 the same type of clothing that he had been wearing when  
12 he entered your store?

13          A.     No.

14          Q.     What had changed? Do you recall?

15          A.     When he entered my store he was wearing  
16 blue jeans, a black sweatshirt and a brown camouflage  
17 beanie, and when I went to go identify him he was  
18 wearing blue jeans and a red T-shirt.

19          Q.     Does the store have a surveillance system?

20          A.     Yes, it does.

21          Q.     And are you familiar with the surveillance  
22 system?

23          A.     Yes.

24          Q.     In fact right from where your cash register  
25 is, is there a TV that shows you what's being recorded

1 in the surveillance system?

2 A. Yeah. It flips to different ones  
3 periodically.

4 Q. So different views?

5 A. Yes.

6 Q. In this particular, after this particular  
7 robbery, did the police request surveillance video from  
8 your store?

9 A. Yes, they did.

10 Q. And do you have a store manager there?

11 A. Yes, I do.

12 Q. What's her name?

13 A. Araceli Barista.

14 Q. Were you present when Araceli burned a copy  
15 or reviewed surveillance video, located the event of  
16 your robbery and then burned a copy for police?

17 A. Yes, I was.

18 Q. So you're familiar with what was captured  
19 on the store surveillance video?

20 A. Yes.

21 Q. Brittany, we are going to use the overhead.  
22 Okay?

23 A. Okay.

24 Q. I'm going to show you Grand Jury Exhibit  
25 Number 5. Can you tell the grand jurors what this view

1 is right here?

2 A. That's the front door to the store.

3 Q. And what's this over here?

4 A. That's one of the aisles. The tables are  
5 on the right and the candy aisle is on the left.

6 Q. I want to draw your attention -- maybe I  
7 can zoom in.

8 You said you were doing cross word puzzles  
9 off to the side. Is that in fact you?

10 A. Yes.

11 Q. What's this area right here?

12 A. My cash register. The one I was using that  
13 night.

14 Q. And what's this up here?

15 A. The parking lot.

16 Q. And towards the bottom left, what's this  
17 one right here?

18 A. That's like a view of the whole store. I  
19 can see almost the whole store when I was standing right  
20 there.

21 Q. And how about towards the bottom right?

22 A. That is on the, like when you walk out the  
23 doors, the right hand side and there's a bar right  
24 there, so there's a parking lot between it.

25 Q. And is this how, if you are to look at the

1 surveillance video at your store, is this what all the  
2 different views look like at any given point in time?

3 A. Yeah. There's more but she took out the  
4 ones that you couldn't see him or had nothing to do with  
5 it.

6 Q. And you watched that?

7 A. Yes.

8 Q. And on the surveillance video are there  
9 time stamps as well?

10 A. Oh yes.

11 Q. For instance on your cash register view,  
12 Grand Jury Exhibit Number 5, is it February 2nd, 2014 at  
13 2:51:55 a.m.?

14 A. Yes.

15 Q. I'm going to show you Grand Jury Exhibit  
16 Number 4.

17 Actually no, let's do -- or actually this  
18 is what I wanted to show you.

19 Is this the person entering from a  
20 different, from a certain part of the store or a parking  
21 lot?

22 A. Yes.

23 Q. The person who robbed you?

24 A. Yes, it is.

25 Q. I'm going to show you Grand Jury Exhibit

1 Number 4. Does this show the various different views  
2 that were given to police showing the person who robbed  
3 you leaving the store?

4 A. Yes.

5 Q. And the time stamp being 2:54:01 a.m. Does  
6 that seem to be fair and accurate?

7 A. Yes.

8 Q. I'll show you this particular view.  
9 Shortly after the individual left the store, turning  
10 your attention to about 2:54:21 a.m., is the store phone  
11 located to the bottom left of the bottom left picture?

12 A. Yes.

13 Q. Were you calling the police at that time?

14 A. Yes, I was.

15 Q. And I'm going to turn your attention to the  
16 bottom right hand corner. Around the same time or at  
17 exactly the same time that you were calling the police,  
18 I want to turn everybody's attention to this light  
19 colored car that's exiting the area of, you said towards  
20 the bar parking lot?

21 A. That faces the bar parking lot. It is the  
22 bar parking lot. Like we kind of share a parking lot.

23 Q. So at about 2:54:21 there's a car leaving  
24 that particular area where the defendant is, or, excuse  
25 me, where the robber is seen to be leaving?

1           A.     Yes.

2           Q.     I'm not going to go through all the photos  
3 but. Grand Jury Exhibit Number 19, do you recognize  
4 what's shown in this photo?

5           A.     Yes, I do.

6           Q.     What do you recognize there?

7           A.     That is the gentleman who robbed me. He's  
8 walking into my convenience store.

9           Q.     I'm going to show you -- that was Grand  
10 Jury Exhibit Number 19.

11                   I'm going to show you Grand Jury Exhibit  
12 Number 17. What's shown in this particular photo?

13           A.     That's him in the middle of it basically  
14 telling me, holding the gun at me telling me to give him  
15 the money. And you can see the pack of gum on the  
16 counter.

17           Q.     Where is that? Is that right here?

18           A.     Yeah. The cigarettes are on the other side  
19 of my register.

20           Q.     I'm going to show you a photo.

21                   I don't believe I have one of the  
22 cigarettes.

23           A.     If you have a picture of me standing at the  
24 register you can probably see them, they're right there.

25           Q.     I'm going to turn your attention to Grand

1 Jury Exhibit Number 16. You said the person who robbed  
2 you had a weapon. Can you see any part of the weapon  
3 here in this particular Grand Jury exhibit?

4 A. Yes.

5 Q. And could you please stand up and point to  
6 where it is?

7 A. Up there or on here?

8 Q. Right here.

9 A. Right there. You can see the tip of it.

10 Q. Okay. So for the record is that right on  
11 top of the counter?

12 A. Yes.

13 Q. Where a person would pay and you can see  
14 the tip of the weapon?

15 A. Yes.

16 Q. I'm going to show you Grand Jury Exhibit  
17 Number 15. Can you also see the tip right there, the  
18 top almost middle corner?

19 A. Yes. And he kept covering it with his hand  
20 so that's probably why you can only see the tip of it  
21 because he kept it covered with his other hand.

22 Q. You indicated to the grand jurors earlier  
23 that upon leaving your store or exiting the door you saw  
24 the person make a gesture with the right hand kind of  
25 calling someone over?



1           A.     After he walked out the door because  
2 there's windows.

3           Q.     I'm going to show you Grand Jury Exhibit  
4 Number 14. Is this the direction that the person was  
5 leaving?

6           A.     Yes.

7           Q.     And is the person making a gesture with his  
8 right hand there?

9           A.     Yes, he is.

10          Q.     Showing you Grand Jury Exhibit Number 13.  
11 It's time stamped 2:54:01. Is this the person who  
12 robbed you leaving in the same area that he is seen  
13 arriving in?

14          A.     Yes.

15          Q.     And about 20 seconds later, in Grand Jury  
16 Exhibit Number 12, is there a vehicle towards the top  
17 left hand corner?

18          A.     Yes.

19          Q.     And is it a light colored vehicle?

20          A.     Yes.

21          Q.     Different view, Grand Jury Exhibit  
22 Number 11. Turning your attention to the top left  
23 again, is it a light colored vehicle?

24          A.     Yes, it is.

25          Q.     Brittany, I'm going to show you what's been

1 marked as Grand Jury Exhibit Number 27. Do you  
2 recognize this person?

3 A. Yes, I do.

4 Q. Who do you recognize this person to be?

5 A. The man who robbed me on February 2nd.

6 Q. Show you Grand Jury Exhibit Number 27 for  
7 the record. Was this the individual that was also  
8 presented to you in that residential area shortly after  
9 the robbery?

10 A. Yes, it was.

11 Q. And this is the person you identified  
12 100 percent as the person who robbed you?

13 A. Yes.

14 Q. Brittany, I'm going to show you Grand Jury  
15 Exhibit Number 26. Do you recognize this individual?

16 A. When I went to go identify the male, she, I  
17 didn't see her but she was presented to me, asked me if  
18 she was there, but I didn't see her.

19 Q. Okay.

20 A. Just when I went to go identify him.

21 Q. Okay. So to be clear, one person came in  
22 and robbed you at gunpoint?

23 A. Yes.

24 Q. I'm going to show you Grand Jury Exhibit  
25 Number 25. Do you recognize any of the items shown in

1 this particular photo?

2 A. Yes.

3 Q. And what do you recognize?

4 A. The packet of Wrigley Spearmint gum, the  
5 two packs of Newport Menthol 100's.

6 Q. And that's located in it looks like a car  
7 seat; is that correct?

8 A. Yes.

9 Q. Do they appear to be the same type of  
10 cigarettes, the same number, and also the same type of  
11 gum that had been taken from your store?

12 A. Yes.

13 Q. Brittany, when the person first walked in,  
14 I just want to get the timing kind of correct, the  
15 person who robbed you wasn't in the store for very long;  
16 is that fair to say?

17 A. Not long at all. Maybe two, three minutes,  
18 very short.

19 Q. Okay. Did the person at any -- well, once  
20 the person picked out the gum, how quickly after the  
21 person picked out the gum did they go, did the person go  
22 to the register?

23 A. Instantly. Didn't even look anywhere else,  
24 went straight to the gum and straight to the counter.

25 Q. And then asked for the cigarettes and then

1 brandished the weapon?

2 A. Yes.

3 MS. LEXIS: I have no further questions for  
4 this particular witness. Do any of the Grand Jury  
5 members have any questions?

6 THE FOREPERSON: Charles.

7 BY A JUROR:

8 Q. Miss Slathar, in your testimony you said  
9 that he went right to the gum and then straight to the  
10 counter. But is this after -- but you also mentioned  
11 that he was in the store two or three minutes. So I'm  
12 trying to narrow it down. Was he in the store just  
13 milling around before he went to the gum or did he walk  
14 into the door and go to the gum and then go to the  
15 counter?

16 A. He walked in the store, went straight to  
17 the gum and straight to the counter. He didn't go  
18 anywhere else.

19 Q. So it wasn't like three minutes, you were  
20 saying three minutes, but it was a few seconds, right?

21 A. Once he was at the counter he was at the  
22 counter for a minute or two just trying to get me to  
23 open my drawer and, you know, yelling at me.

24 Q. Sure. Thank you.

25 A. No problem.

1 BY MS. LEXIS:

2 Q. Just to clarify because it's important as  
3 to one of the counts. Grand Jury Exhibit Number 20,  
4 this is the person that you identified as robbing you.

5 A. Uh-huh.

6 Q. Or the person who robbed you. Walking  
7 towards the entrance of the store; is that correct?

8 A. Yes.

9 Q. And it's time stamped 2:51:55; is that  
10 right?

11 A. Yes.

12 Q. And Grand Jury Exhibit Number 19, this is  
13 the person entering the store; is that correct?

14 A. Yes.

15 Q. And it is time stamped 2:52:18; is that  
16 correct?

17 A. Yes.

18 Q. And Grand Jury Exhibit Number 18, this is  
19 the person looking through what you described as the  
20 candy aisle; is that correct?

21 A. Yes. And the register's right there.

22 Q. Okay. And you are right there?

23 A. Yes, I am.

24 Q. And the registers are towards the bottom  
25 right hand corner?

1           A.     Yes.

2           Q.     And this is time stamped 2:52:32; is that  
3 correct?

4           A.     Yes.

5           Q.     And then immediately after that, the  
6 counter, Grand Jury Exhibit 17, the individual, this is  
7 not the first time that he went up to the counter but  
8 the time stamp 2:52:59, the person is demanding items  
9 with the weapon out; is that correct?

10          A.     Yes.

11          Q.     So as you were just questioned by the grand  
12 juror, the person walked in, went to the candy section,  
13 grabbed something, went to pay, asked, demanded money  
14 and brandished the weapon?

15          A.     Yes.

16          Q.     He was at the counter a few minutes?

17          A.     Yeah.

18                 MS. LEXIS: Any other questions?

19                 THE FOREPERSON: Craig.

20 BY A JUROR:

21          Q.     Later, was it in the morning after you got  
22 off your shift that the police took you to view the  
23 individual that robbed you?

24          A.     No, instantly.

25          Q.     Instantly?

1           A.     When I called Metro I saw, I was looking  
2 out my window waiting for them, I saw a Metro cop drive  
3 by, another one pulled in a minute or two later and once  
4 he got there, it was five minutes he was talking to me  
5 explaining to me like what to do, and then he drove me  
6 right down there.

7           Q.     Wow.   Okay.

8           THE FOREPERSON:   Anna.

9 BY A JUROR:

10          Q.     You seem really confident about the  
11 situation.   Were you robbed before?

12          A.     Never.

13          Q.     Did you receive training on situations like  
14 this?

15          A.     No.   My first time working at a convenience  
16 store.   I was a waitress before that so I've never been  
17 robbed before.

18          Q.     You're very, what do you call it, brave I  
19 think.

20          A.     Thank you.

21          MS. LEXIS:   Are there any other questions?

22          THE FOREPERSON:   Gary.

23 BY A JUROR:

24          Q.     Similar to Anna's.   I was just wondering,  
25 Brittany, if Star Mart or anyone gave you training on

1 procedures to follow, what to do if someone attempts to  
2 rob you.

3 A. Not at all.

4 Q. Not at all?

5 A. No. I wish.

6 BY MS. LEXIS:

7 Q. In fact after you spoke to the police and  
8 the deputy DA assigned to this case, we told you next  
9 time to give up the money; correct?

10 A. Well see I didn't know at the time they  
11 were insured and they get it all back. I didn't know  
12 all that.

13 MS. LEXIS: Any other questions?

14 THE FOREPERSON: Miss Slathar, by law,  
15 these proceedings are secret and you are prohibited from  
16 disclosing to anyone anything that has transpired before  
17 us, including evidence and statements presented to the  
18 Grand Jury, any event occurring or statement made in the  
19 presence of the Grand Jury, and information obtained by  
20 the Grand Jury.

21 Failure to comply with this admonition is a  
22 gross misdemeanor punishable by a year in the Clark  
23 County Detention Center and a \$2,000 fine. In addition,  
24 you may be held in contempt of court punishable by an  
25 additional \$500 fine and 25 days in the Clark County



1 Detention Center.

2 Do you understand this admonition?

3 THE WITNESS: Yes.

4 THE FOREPERSON: Thank you. You are  
5 excused.

6 THE WITNESS: Thank you.

7 MS. LEXIS: Brittany, will you send Officer  
8 Rowberry in next.

9 THE WITNESS: Uh-huh, just --

10 MS. LEXIS: You know what, I'll come out.

11 THE FOREPERSON: Please raise your right  
12 hand.

13 You do solemnly swear the testimony you are  
14 about to give upon the investigation now pending before  
15 this Grand Jury shall be the truth, the whole truth, and  
16 nothing but the truth, so help you God?

17 THE WITNESS: Yes, I do.

18 THE FOREPERSON: Please be seated.

19 You are advised that you are here today to  
20 give testimony in the investigation pertaining to the  
21 offenses of conspiracy to commit robbery, burglary while  
22 in possession of a firearm, robbery with use of a deadly  
23 weapon, and possession of stolen property, involving  
24 Kenya Splond and Kellie Erin Chapman.

25 Do you understand this advisement?

1 THE WITNESS: Yes, I do.

2 THE FOREPERSON: Please state your first  
3 and last name and spell both for the record.

4 THE WITNESS: Joshua Rowberry. J-O-S-H-U-A  
5 last name is R-O-W-B-E-R-R-Y.

6 THE FOREPERSON: Thank you.

7 MS. LEXIS: May I proceed, Mr. Foreperson?

8 THE FOREPERSON: Yes.

9 JOSHUA ROWBERRY,  
10 having been first duly sworn by the Foreperson of the  
11 Grand Jury to testify to the truth, the whole truth,  
12 and nothing but the truth, testified as follows:

13  
14 EXAMINATION

15  
16 BY MS. LEXIS:

17 Q. Officer, how are you employed?

18 A. With LVMPD.

19 Q. How long have you been employed with LVMPD?

20 A. About five years now.

21 Q. And what do you do there?

22 A. Patrol.

23 Q. What shift do you work?

24 A. Graveyard.

25 Q. Turning your attention to February 2nd,

1 2014, were you working as a police officer on the  
2 graveyard shift?

3 A. Yes, I was.

4 Q. Did you at some point become dispatched to  
5 a robbery located at 5001 North Rainbow, Las Vegas,  
6 Clark County, Nevada?

7 A. Yes, I was.

8 Q. Please tell the ladies and gentlemen of the  
9 jury how you became involved in that investigation.

10 A. As I got close to the area of the  
11 convenience store, I proceeded to go north, northbound  
12 on Rainbow because the last update we had was that when  
13 the suspect left the convenience store he was last seen  
14 running northbound on foot. As I was driving north on  
15 Rainbow, I was coming up to Rancho Sante Fe Drive and --

16 Q. I'm going to stop you right there.

17 I'm going to put Grand Jury Exhibit  
18 Number 2 up so maybe -- is the convenience store that  
19 we're talking about right here, 5001 North Rainbow  
20 Boulevard, which is to the right of the photo?

21 A. Yes, it is.

22 Q. And you can actually use the exhibit if you  
23 want to explain where you went.

24 A. The convenience store here. This would be  
25 going north. And Rancho Sante Fe drive is right about

1 here. As I was driving I observed this, a silver, which  
2 ended up being a Grand Am Pontiac, pull out and  
3 proceeded northbound in front of me. And due to the  
4 fact the robbery and the recent area, it was the only  
5 car seen in the area, I made a vehicle stop on the car.

6 Q. Where did you conduct the vehicle stop, do  
7 you recall?

8 A. It was on Fruits Flower and -- I can't  
9 remember the --

10 Q. Flora Spray?

11 A. Yes.

12 Q. Can you show the ladies and gentlemen of  
13 the jury where that particular intersection is?

14 A. Which is right here.

15 Q. Okay. Approximately how far away is that  
16 from the convenience store?

17 A. Probably almost a mile.

18 Q. Okay. And you stated that you conducted a  
19 vehicle stop on a silver Pontiac Grand Am?

20 A. Correct.

21 Q. Do you recall what the license plate number  
22 was on that Grand Am?

23 A. It was a Nevada plate, 384 Victor Frank  
24 Union.

25 Q. Could it be Nevada plate 438 Victor --

1           A.     Or 438, sorry.

2           Q.     438 Victor Frank and then U; is that  
3 correct?

4           A.     Yes.

5           Q.     How many people did you encounter in the  
6 vehicle when you conducted that stop?

7           A.     When I made the stop there was a female  
8 driving. The windows were all rolled up, it's dark out.  
9 I asked her to roll down all the windows so I could see  
10 anybody in the back seat. I didn't initially see  
11 anybody. Further looking in the vehicle I saw a male,  
12 black male subject who was laying down in the back seat  
13 and he was breathing very, very heavily as if he was  
14 just running.

15          Q.     And let me stop you right there. Was that  
16 particular individual hiding behind or was he located  
17 underneath a blanket?

18          A.     Yes. He was either, a blanket or clothes.  
19 You could see his upper torso barely. And I couldn't  
20 see his hands, all I could make out was half a torso and  
21 a head. I initiated a code red to get other officers to  
22 respond to the area. Doing so three additional officers  
23 arrived and we pulled each subject out without any  
24 incident and at that time they were read Miranda.

25          Q.     But you yourself did not read Miranda?

1           A.     Only to Chapman.

2           Q.     And we're not going to talk too much about  
3 their statements.

4                   But subsequent to speaking with the two  
5 individuals located in the car, and let me just show you  
6 a photo. I'll approach you with Grand Jury Exhibit  
7 Number 27 and Grand Jury Exhibit Number 26. Do you  
8 recognize the individuals in these photos?

9           A.     Yes. Kellie Chapman.

10          Q.     So Grand Jury Exhibit Number 26 is Kellie  
11 Chapman?

12          A.     And the other one is Kenya Splond.

13          Q.     Grand Jury Exhibit Number 27, Kenya Splond?  
14 Yes?

15                   So these are the two people you found in  
16 the car?

17          A.     Yes.

18          Q.     After speaking to both suspects, conducting  
19 an initial investigation, was the car searched?

20          A.     The vehicle was searched by Anthony or  
21 officer Brumaghin. It's B-R-U-M-H-A-G -- sorry, let me  
22 say that again. It's B-R-U-M-A-G-H-I-N.

23          Q.     Were you present when the vehicle was  
24 searched?

25          A.     Yes, I was.

1           Q.     What items of evidentiary value were  
2 located inside the silver Pontiac Grand Am?

3           A.     On the front seat where Miss Chapman was  
4 sitting was two packs of Newport cigarettes and Wrigley  
5 Spearmint gum. When we got to the back seat on the  
6 passenger side down on the floorboard there was a .38  
7 revolver which was recovered inside the sweatshirt.

8           Q.     And I'm sorry, where was the sweatshirt  
9 with the revolver located?

10          A.     Passenger side rear floorboard.

11          Q.     And I'm going to approach.

12                 Grand Jury Exhibit 25. So the two packs of  
13 cigarettes and also the gum?

14          A.     Correct.

15          Q.     And that's on the driver, front driver's  
16 side; is that correct?

17          A.     Yes.

18          Q.     You just told the Grand Jury about finding  
19 a revolver and clothing.

20          A.     Correct.

21          Q.     Grand Jury Exhibit Number 24, do you  
22 recognize that?

23          A.     Yes.

24          Q.     What was that?

25          A.     It's the sweatshirt and the handle of the

1 revolver.

2 Q. Grand Jury Exhibit Number 23. That's a  
3 photo showing the manufacturer or the brand of the  
4 revolver?

5 A. Yes. That's the muzzle.

6 Q. It's a Colt; is that correct?

7 A. Yes.

8 Q. And Grand Jury Exhibit Number 22. Do you  
9 see that?

10 A. Yes, it's a revolver.

11 Q. Same one, right?

12 A. Correct.

13 Q. Grand Jury Exhibit Number 21, what does  
14 that show?

15 A. Same revolver which was loaded with four  
16 rounds of .38.

17 Q. Do you recall the serial number on the  
18 revolver that was located?

19 A. Offhand I do not.

20 Q. Do you have some reports with you that have  
21 been turned upside down?

22 A. I do.

23 Q. Would looking at your report refresh your  
24 recollection? I believe it's page 2 of your arrest  
25 report.



1           A.     Yes, it was 941609.

2           Q.     Thank you. And it was a Colt .38; is that  
3 correct?

4           A.     Correct.

5           Q.     The silver Pontiac Grand Am, were you able  
6 to ascertain, run a records check and figure out who it  
7 belonged to?

8           A.     Officers on scene ran the plate or dispatch  
9 advised us that the plate did not return back to that  
10 vehicle. It actually returned back to a Hyundai. We  
11 further, we ran the VIN number on the vehicle which  
12 returned back to Miss Chapman.

13          Q.     Okay.

14          A.     Which was expired.

15          Q.     Okay. So the VIN number of the vehicle  
16 returned to Kellie Chapman?

17          A.     Correct.

18          Q.     But the license plate number, 438 Victor  
19 Frank Unit, came back to a different type of vehicle; is  
20 that correct?

21          A.     Correct, which was also no current  
22 registration was found.

23          Q.     I'm going to approach you with Grand Jury  
24 Exhibit Number 8 and 7.

25                 Grand Jury Exhibit Number 8 is actually

1 admissible because it's a certified DMV copy. I'm just  
2 asking this witness some questions. You indicated that  
3 you stopped a vehicle with license plate 438 Victor  
4 Frank Unit?

5 A. Correct.

6 Q. Is that correct?

7 And you indicated that it did not return to  
8 the Pontiac Grand Am?

9 A. Correct.

10 Q. Is this in fact the DMV records showing  
11 that there is no registration information available for  
12 that particular plate number?

13 A. Correct.

14 Q. And that's the plate number that was  
15 located on the vehicle when you stopped it?

16 A. Yes, it was.

17 Q. And you indicated that the Pontiac Grand  
18 Am, the VIN number that you were given, did return to  
19 Kellie Chapman; is that correct?

20 A. Yes.

21 Q. Okay. And DMV record showing that  
22 Miss Chapman does in fact have a 2006 Pontiac Grand Am  
23 registered to her; is that correct?

24 A. Yes.

25 Q. And the registration, or the plate number,

1     excuse me, is not the plate number that was on the  
2     vehicle when you stopped it?

3             A.     No, it wasn't.

4             Q.     What does that indicate to you, Officer?

5             A.     The vehicle was cold plated.

6             Q.     What does that mean?

7             A.     Usually you find it more common on stolen  
8     vehicles or people steal another license plate and put  
9     it on their vehicle, that way it doesn't show up for say  
10    like a stolen vehicle, if I run the plate it's not going  
11    to show up as stolen because it's giving me the  
12    information of another vehicle.

13            Q.     But in this particular case of course there  
14    is no allegation of possession of stolen vehicle?

15            A.     No.

16            Q.     But that's what struck you as suspicious  
17    anyway?

18            A.     Yes.

19            Q.     And subsequent to your investigation were  
20    both Miss Kellie Chapman and also Kenya Splond arrested  
21    for the robbery and associated charges that occurred on  
22    February 2nd, 2013?

23            A.     Yes, they were.

24                   MS. LEXIS: I have no more questions for  
25    this particular witness. Do any of the Grand Jury

1 members have any questions?

2 THE FOREPERSON: Charles.

3 BY A JUROR:

4 Q. Officer, I just have a clarification. I  
5 want you to clarify something. You mentioned that when  
6 you first started that you had received a radio or a  
7 report rather that the suspect was on foot. My question  
8 is previous to your stop in the Grand Am did you receive  
9 subsequent information that said that an automobile was  
10 also may have been involved in this robbery.

11 A. No.

12 Q. Okay. So why did you stop the Grand Am  
13 then?

14 A. It's in the area of a robbery. It's not  
15 uncommon for people to run to get out of the area and  
16 get into a vehicle.

17 Q. Okay.

18 A. Which obviously cause we're looking for  
19 somebody on foot, not in a car.

20 Q. Sure. Okay. Thank you.

21 BY MS. LEXIS:

22 Q. And as you previously testified, the actual  
23 stop was very near the area of the robbery; is that fair  
24 to say?

25 A. Yes.

1 Q. Okay. Certainly within running distance?

2 A. Correct.

3 THE FOREPERSON: Any other questions?

4 Officer, by law, these proceedings are  
5 secret and you are prohibited from disclosing to anyone  
6 anything that has transpired before us, including  
7 evidence and statements presented to the Grand Jury, any  
8 event occurring or statement made in the presence of the  
9 Grand Jury, and information obtained by the Grand Jury.

10 Failure to comply with this admonition is a  
11 gross misdemeanor punishable by a year in the Clark  
12 County Detention Center and a \$2,000 fine. In addition,  
13 you may be held in contempt of court punishable by an  
14 additional \$500 fine and 25 days in the Clark County  
15 Detention Center.

16 Do you understand this admonition?

17 THE WITNESS: Yes, I do.

18 THE FOREPERSON: Thank you. You are  
19 excused.

20 Agnes, could we take a five minute break?

21 MS. LEXIS: Sure.

22 THE FOREPERSON: We're going to take a five  
23 minute break.

24 A JUROR: Five to seven.

25 (Recess.)

1 MS. LEXIS: We're back on Grand Jury Case  
2 Number 13AGJ118AB, Kenya Splond and Kellie Chapman. The  
3 State's next witness is Jeffrey Haberman.

4 THE FOREPERSON: Please raise your right  
5 hand.

6 You do solemnly swear the testimony you are  
7 about to give upon the investigation now pending before  
8 this Grand Jury shall be the truth, the whole truth, and  
9 nothing but the truth, so help you God?

10 THE WITNESS: Yes, sir.

11 THE FOREPERSON: You are advised that you  
12 are here today to give testimony in the investigation  
13 pertaining to the offenses of conspiracy to commit  
14 robbery, burglary while in possession of a firearm,  
15 robbery with use of a deadly weapon, and possession of  
16 stolen property, involving Kenya Splond and Kellie Erin  
17 Chapman.

18 Do you understand this advisement?

19 THE WITNESS: Yes, sir.

20 THE FOREPERSON: Please state your first  
21 and last name and spell both for the record.

22 THE WITNESS: Jeffrey, J-E-F-F-R-E-Y,  
23 Haberman, H-A-B-E-R-M-A-N.

24 THE FOREPERSON: Thank you.

25 MS. LEXIS: Thank you Mr. Foreperson.

1                                   JEFFREY HABERMAN,  
2   having been first duly sworn by the Foreperson of the  
3   Grand Jury to testify to the truth, the whole truth,  
4   and nothing but the truth, testified as follows:

5  
6                                   EXAMINATION

7  
8   BY MS. LEXIS:

9           Q.     Hello Mr. Haberman.  Mr. Haberman, back on,  
10   or actually let's just go with the year 2013.  Did you  
11   own a .38 caliber Colt revolver?

12          A.     Yes, ma'am.

13          Q.     And was the serial number of that  
14   particular weapon 941609?

15                 And for the record you're pulling something  
16   out of your wallet.  Is it the blue card?

17          A.     The blue card, the registration card.

18          Q.     All right.  And was that the registration  
19   card for --

20          A.     Yes, ma'am.

21          Q.     -- the Colt?

22          A.     Yes, ma'am.

23          Q.     And that is the correct serial number,  
24   941609?

25          A.     Yes, ma'am.

1 Q. How long have you owned that gun, sir?

2 A. I inherited it from my father who bought it  
3 in Los Angeles I think in the 1980s.

4 Q. And did there come an occasion where that  
5 firearm was stolen from you?

6 A. Yes, ma'am.

7 Q. Okay. And when was it stolen?

8 A. October 2013, the last Wednesday in the  
9 month I believe.

10 Q. Okay. Can I approach you, sir, with Grand  
11 Jury Exhibit Number 26 and 27.

12 Do you recognize the person shown in Grand  
13 Jury Exhibit Number 26?

14 A. No, ma'am.

15 Q. Okay. And how about Grand Jury Exhibit  
16 Number 27?

17 A. No, ma'am.

18 Q. Did you at any time give your .38 revolver  
19 to either of these individuals?

20 A. No, ma'am.

21 Q. Specifically did they have your permission  
22 to have your weapon on February 2nd, 2014?

23 A. No, ma'am.

24 Q. And that gun is registered to you as shown  
25 by the blue card; is that right, sir?



1           A.     Yes, ma'am.

2           Q.     Did you file a police report, sir, when  
3 this gun was stolen?

4           A.     Yes, ma'am.

5           MS. LEXIS: I have no further questions.  
6 Do any of the jury members have any questions?

7           THE FOREPERSON: Mr. Haberman, by law,  
8 these proceedings are secret and you are prohibited from  
9 disclosing to anyone anything that has transpired before  
10 us, including evidence and statements presented to the  
11 Grand Jury, any event occurring or statement made in the  
12 presence of the Grand Jury, and information obtained by  
13 the Grand Jury.

14           Failure to comply with this admonition is a  
15 gross misdemeanor punishable by a year in the Clark  
16 County Detention Center and a \$2,000 fine. In addition,  
17 you may be held in contempt of court punishable by an  
18 additional \$500 fine and 25 days in the Clark County  
19 Detention Center.

20           Do you understand this admonition?

21           THE WITNESS: Yes, sir.

22           THE FOREPERSON: Thank you. You are  
23 excused.

24           THE WITNESS: Thank you.

25           MS. LEXIS: Prior to submitting for your

1 consideration the charges I would just like to explain a  
2 little bit about some of the exhibits.

3 I have Grand Jury Exhibit Number 7 which is  
4 a copy of the certified DMV records and the front is the  
5 certified custodian of record sheet and also the second  
6 page shows the vehicle registration data for a 2006  
7 Pontiac Grand Am registered to Kellie Erin Chapman.

8 Grand Jury Exhibit Number 8 is another  
9 certified, a copy of a certified DMV record. The first  
10 page shows that the custodian of records conducted a  
11 search of license plate number 438 Victor Frank Unit and  
12 indicated that the above referenced plate number is not  
13 valid in the State of Nevada. The second page is also a  
14 certified printout indicating that same information.

15 And Grand Jury Exhibit Number 6 is a, first  
16 page is a letter from the custodian of records from  
17 Metro's gun registration department indicating that they  
18 did a search for the registrant of a Colt .38 revolver,  
19 serial number 941609 and the second is the actual gun  
20 registration, copy of the certified, indicating that the  
21 Colt revolver, serial number 941609, was in fact  
22 registered to Jeffrey Haberman who you just heard from.

23 I am admitting these as business records,  
24 certified business records under the hearsay exception,  
25 but they've also been testified to.

1           A JUROR: I think there is one correction  
2 you want to make under Count 4, page 3, line 11. It's  
3 just a gender difference. But Kenya Splond is a male.  
4 So rather than feloniously for her own gain, should it  
5 say for his own gain?

6           MS. LEXIS: Yes. Thank you so much for  
7 catching that. We can make that correction.

8           Okay. I would now submit for your  
9 deliberation.

10           (At this time, all persons, other than  
11 members of the Grand Jury, exit the room at 4:09 p.m.  
12 and return at 4:13 p.m.)

13           THE FOREPERSON: Madame District Attorney,  
14 by a vote of 12 or more grand jurors a true bill has  
15 been returned against defendant defendants Kenya Splond  
16 and Kellie Erin Chapman charging the crimes of  
17 conspiracy to commit robbery, burglary while in  
18 possession of a firearm, robbery with use of a deadly  
19 weapon, and possession of stolen property, in Grand Jury  
20 Case Number 13AGJ118AB. We instruct you to prepare an  
21 Indictment in conformance with the proposed Indictment  
22 previously submitted to us.

23           MS. LEXIS: Thank you.

24           (Proceedings concluded.)  
25

**REPORTER'S CERTIFICATE**

**STATE OF NEVADA**       )  
                                  :   Ss  
**COUNTY OF CLARK**       )

I, Danette L. Antonacci, C.C.R. 222, do  
hereby certify that I took down in Shorthand (Stenotype)  
all of the proceedings had in the before-entitled matter  
at the time and place indicated and thereafter said  
shorthand notes were transcribed at and under my  
direction and supervision and that the foregoing  
transcript constitutes a full, true, and accurate record  
of the proceedings had.

Dated at Las Vegas, Nevada,  
March 4, 2014

/s/ Danette L. Antonacci

---

Danette L. Antonacci, C.C.R. 222

## 1 AFFIRMATION

2 Pursuant to NRS 239B.030

3  
4 The undersigned does hereby affirm that the  
5 preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER  
6 13AGJ118AB:  
78 X Does not contain the social security number of any  
9 person,

10 -OR-

11 \_\_\_\_ Contains the social security number of a person as  
12 required by:13 A. A specific state or federal law, to-  
14 wit: NRS 656.250.

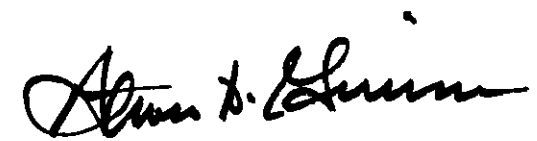
15 -OR-

16 B. For the administration of a public program  
17 or for an application for a federal or  
18 state grant.

19 /s/ Danette L. Antonacci

20 Signature

21 3-4-14  
22 Date23 Danette L. Antonacci  
24 Print Name25 Official Court Reporter  
Title



CLERK OF THE COURT

NWEW  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
AGNES LEXIS  
Deputy District Attorney  
Nevada Bar #11064  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KENYA SPLOND, aka,  
Kenny Splond, #1138461

Defendant.

CASE NO: C-14-296374-1

DEPT NO: VIII

NOTICE OF WITNESSES  
[NRS 174.234(1)(a)]

TO: KENYA SPLOND, aka, Kenny Splond, Defendant; and

TO: FRANK P. KOCKA, ESQ., Counsel of Record:

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

NAME

ADDRESS

BRUMAGHIN, A.

LVMPD P#13756

CARTER, J.

LVMPD P#14302

CHAPMAN, KELLIE ERIN

1152 Kabuki Ave, Henderson, NV 89074

CUSTODIAN OF RECORDS

CCDC

CUSTODIAN OF RECORDS

LVMPD - DISPATCH

CUSTODIAN OF RECORDS

LVMPD - RECORDS

CUSTODIAN OF RECORDS

NEVADA DMV

1 CUSTODIAN OR RECORDS

STAR MART, 5001 N. Rainbow, LVN 89130

2 FORSON, C.

LVMPD P#14082

3 GARCIA, B.

LVMPD P#13822

4 HAAS, F.

LVMPD P#7420

5 HABERMAN, JEFFREY

1881 W. Alexander Rd, #1146, NLVN 89032

6 HOFFMAN, N.

LVMPD P#13516

7 KIRWIN, B.

LVMPD P#13890

8 LANDERS, J.

LVMPD P#8073

9 LNU, ARACELI

STAR MART, 5001 N. Rainbow, LVN 89130

10 RALYEA, C.

LVMPD P#13357

11 ROWBERRY, J.

LVMPD P#13894

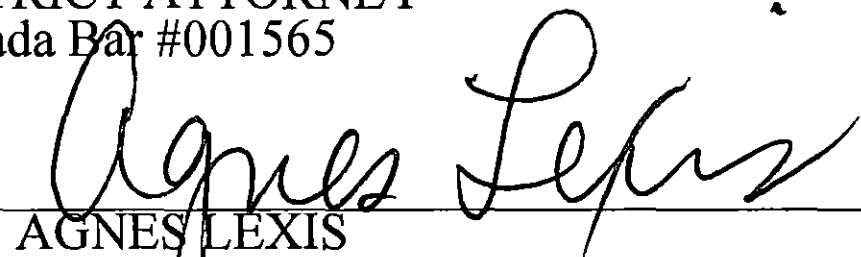
12 SLATHAR, BRITTANY

C/O District Attorney's Office

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

15 STEVEN B. WOLFSON  
16 DISTRICT ATTORNEY  
Nevada Bar #001565

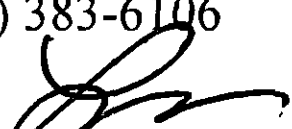
17 BY

  
18 AGNES LEXIS  
19 Deputy District Attorney  
Nevada Bar #11064

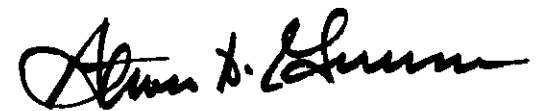
20  
21 CERTIFICATE OF FACSIMILE TRANSMISSION

22  
23 I hereby certify that service of Notice of Witnesses, was made this 19<sup>th</sup> day of  
24 March, 2003, by facsimile transmission to:

25 FRANK P. KOCKA, ESQ.  
26 (702) 383-6106

  
27 Employee of the District Attorney's Office

28 14F01777A/llm/L1



CLERK OF THE COURT

NWEW  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
AGNES LEXIS  
Chief Deputy District Attorney  
Nevada Bar #11064  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KENYA SPLOND, aka,  
Kenny Splond, #1138461

Defendant.

CASE NO: C-14-296374-1

DEPT NO: VIII

**SUPPLEMENTAL NOTICE OF WITNESSES**

[NRS 174.234(1)(a)]

TO: KENYA SPLOND, aka, Kenny Splond, Defendant; and

TO: FRANK P. KOCKA, ESQ., Counsel of Record:

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

- Indicates Additional Witnesses

NAME

ADDRESS

BRUMAGHIN, A.

LVMPD P#13756

CARTER, J.

LVMPD P#14302

CHAPMAN, KELLIE ERIN

1152 Kabuki Ave, Henderson, NV 89074

\*COLEMAN, R.

LVMPD P# 13843

CUSTODIAN OF RECORDS

CCDC

CUSTODIAN OF RECORDS

LVMPD - DISPATCH



1	CUSTODIAN OF RECORDS	LVMPD – RECORDS
2	CUSTODIAN OF RECORDS	NEVADA DMV
3	CUSTODIAN OR RECORDS	STAR MART, 5001 N. Rainbow, LVN 89130
4	*FAIRWEATHER, M.	LVMPD P# 8390
5	FORSON, C.	LVMPD P#14082
6	*FRANCIS, D.	LVMPD p# 8434
7	GARCIA, B.	LVMPD P#13822
8	HAAS, F.	LVMPD P#7420
9	HABERMAN, JEFFREY	1881 W. Alexander Rd, #1146, NLVN 89032
10	HOFFMAN, N.	LVMPD P#13516
11	KIRWIN, B.	LVMPD P#13890
12	LANDERS, J.	LVMPD P#8073
13	LNU, ARACELI	STAR MART, 5001 N. Rainbow, LVN 89130
14	*MCCRAY, D.	LVMPD P# 8126
15	RALYEA, C.	LVMPD P#13357
16	ROWBERRY, J.	LVMPD P#13894
17	SLATHAR, BRITTANY	C/O District Attorney's Office

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

20                                   STEVEN B. WOLFSON  
21                                   DISTRICT ATTORNEY  
22                                   Nevada Bar #001565

23                                   BY /s/ Agnes Lexis  
24                                   AGNES LEXIS  
25                                   Chief Deputy District Attorney  
26                                   Nevada Bar #11064

25   ///  
26   ///  
27   ///  
28   ///

## CERTIFICATE OF FACSIMILE TRANSMISSION

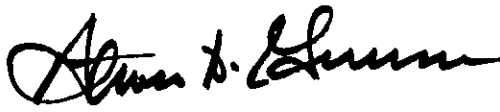
I hereby certify that service of Supplemental Notice of Witnesses, was made this 7th day of August, 2014, by facsimile transmission to:

FRANK P. KOCKA, ESQ.  
(702) 383-6106

/s/ Stephanie Johnson  
Employee of the District Attorney's Office

1 **NOTM**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 Hagar Trippiedi  
6 Deputy District Attorney  
7 Nevada Bar #0010114  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2211  
10 (702) 671-2500  
11 Attorney for Plaintiff

Electronically Filed  
03/03/2015 12:11:20 PM

  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 KENNY SPLOND #1138461,

14 Defendant.

Case No. C-14-296374

DEPT No. VIII

15  
16 **NOTICE OF MOTION AND MOTION TO CONSOLIDATE**

17 DATE OF HEARING: March 18, 2015

18 TIME OF HEARING: 8:00 A.M.

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, District Attorney,  
20 through Hagar Trippiedi, Deputy District Attorney, and files this Notice of Motion and Motion  
21 to Consolidate.

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

25 **NOTICE OF HEARING**

26 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned  
27 will bring the foregoing motion on for setting before the above entitled Court, in Department


28 ///

1 8 thereof, on the 18th day of March, 2015, at the hour of 8:00 o'clock , or as soon thereafter as  
2 counsel may be heard.

3 DATED this \_\_\_\_\_ day of March, 2015.

4  
5 STEVEN B. WOLFSON  
6 Clark County District Attorney  
7 Nevada Bar #001565

8  
9 BY

  
10 HAGAR TRIPPIEDI  
11 Deputy District Attorney  
12 Nevada Bar #0010114

### 12 **PROCEDURAL HISTORY**

13 Kenny Splond (hereinafter "defendant") was charged and indicted in case C-14-300105  
14 with one (1) count of Burglary While in Possession of a Firearm, one (1) count of Robbery  
15 with Use of a Deadly Weapon, one (1) count of Burglary While in Possession of a Firearm,  
16 and one (1) count of Robbery with Use of a Deadly Weapon. Trial is set to commence May  
17 26, 2015.

18 The Defendant was charged and indicted in a related case, C-14-296374-1 with one (1)  
19 count Conspiracy to Commit Robbery, one (1) count Burglary While In Possession of a  
20 Firearm, one (1) count Robbery With us of a Deadly Weapon, and one (1) count Possession  
21 of Stolen Property. Trial in that case is set to commence on March 17, 2015.

### 22 **STATEMENT OF FACTS**

#### 23 1. Case C-14-300105

24 On January 22, 2014, Sam Echeverria was working at the Cricket Wireless store located  
25 at 4343 N. Rancho Drive when he was robbed at gunpoint. (Preliminary Hearing Transcript,  
26 hereinafter "PHT" 7). The Defendant came in and posed as a customer, asking for a cellphone  
27 battery. (PHT 8). As Mr. Echeverria went to the register to ring him up, Defendant pointed a  
28 black firearm at him and said "give me all the money in the register before I blow your brains

1 out.” (PHT 8-9). Mr. Echeverria gave the defendant \$386.71. (PHT 10).

2 On January 28, 2014, Graciela Angeles was working at the Metro PCS store located at  
3 6663 Smoke Ranch Road. (PHT 14). The Defendant came in posing as a customer, asking to  
4 buy a cell phone. (PHT 15). When Ms. Angeles asked him if he wanted to pay cash or debit,  
5 the Defendant pulled out a gun and told her to give him all the money from the register. (PHT  
6 15). Ms. Jimenez gave the Defendant \$300.00. (PHT 16).

7 2. Case C-14-296374

8 On February 2, 2014, Brittany Slathar was working at the Star Mart Convenience  
9 Store located at 5001 N. Rainbow Boulevard. (PHT 10). The Defendant walked in, posed as a  
10 customer, and asked for two packs of Newport cigarettes. (PHT 11). As Ms. Slather began to  
11 ring him up, the Defendant pulled a gun out of his sweatshirt and told her to give him the  
12 money. (PHT 11). Ms. Slather attempted to open the register but it would not open without a  
13 sale. (PHT 12, 14). While she was trying to open the register, the Defendant was telling her to  
14 open the drawer or her life is over and that if she didn’t give him the money he was going to  
15 shoot her in the head. (PHT 12, 15). The Defendant got away with a pack of gum and two  
16 packs of Newport cigarettes. (PHT 15).

17 **POINTS AND AUTHORITIES**

18 **I. The Defendants’ Indictments Should be Consolidated Because the Charges in**  
19 **Each Indictment are Factually Connected and Evidence a Common Scheme or Plan.**

20 NRS 174.155 provides:

21 The court may order two or more indictments or informations to be tried together if  
22 the offenses, and the defendants if there is more than one, could have been joined in a  
23 single indictment or information. The procedure shall be the same as if the  
prosecution were under such single indictment or information.

24 NRS 173.115 provides:

25 Two or more offenses may be charged in the same indictment or information and a  
26 separate count for each offense if the offenses, whether felonies or misdemeanors or

27 both, are:

- 28 1. Based on the same act or transaction; or

1                   2. Based on two or more acts or transactions connected together or  
2                   constituting parts of a common scheme or plan.

3                   In considering whether to allow consolidation, the courts have looked that the  
4                   conflicting policies of judicial economy and efficiency of judicial administration, controlling  
5                   court calendars in avoidance of multiple trials, and any resulting prejudice to a defendant  
6                   which may arise from consolidation. See United States v. Fancher, 195 F. Supp. 634 (D.  
7                   Conn.), affirmed, 319 F.2d 604 (4th Cir. 1963). Moreover, as the Nevada Supreme Court has  
8                   repeatedly held, the decision to allow the joinder of offenses lies within the sound discretion  
9                   of the trial court and such a decision will not be reversed absent an abuse of discretion. Robins  
10                  v. State, 106 Nev. 611, 798 P.2d 558 (1990); Mitchell v. State, 105 Nev. 735, 782 P.2d 1340  
11                  (1989); Lovell v. State, 92 Nev. 128, 132, 546 P.2d 1301, 1303 (1976). The United States  
12                  Supreme Court has noted that joint trials are preferred because “they promote efficiency and  
13                  ‘serve the interests of justice by avoiding the scandal and inequity of inconsistent verdicts.’”  
14                  United States v. Zafiro, 113 S.Ct. 933 (1993). Further, the United States Supreme Court held  
15                  that the joinder of criminal offenses is not an issue that raises constitutional concern. Spencer  
16                  v. Texas, 385 U.S. 554, 87 S.Ct. 648 (1967).

17                  In Graves v. State, 912 P.2d 234 (Nev. 1996) the Nevada Supreme Court upheld the  
18                  joinder of two counts of burglary wherein the defendant entered one casino and stole coins  
19                  from a patron and, thereafter, entered a different casino and stole money from a cashier. Again,  
20                  the court justified the joinder because the two charged offenses “were part of a common  
21                  scheme or plan and factually connected.”

22                  In Tillema v. State, 112 Nev. 266, 914 P.2d 605 (1996), the Nevada Supreme Court  
23                  held that when separate crimes are connected together by a continued course of conduct,  
24                  joinder is appropriate. Additionally, the Court found that, “if... evidence of one charge would  
25                  be cross-admissible in evidence at a separate trial on another charge, then both charges may  
26                  be tried together and need not be severed.” Id. at 268..

27                  Tillema involved the joinder of two vehicular burglaries and one store burglary. 112  
28                  Nev. At 268. The Court held that the two vehicular burglaries evidenced a common scheme

1 or plan because both offenses involved vehicles in casino parking garages and occurred only  
2 seventeen days apart. Id. The Court concluded that evidence from both cases would be cross-  
3 admissible to prove Tillema's felonious intent in entering the vehicle. Id.

4 In the instant case, the charges against Defendant Kenny Splond should be consolidated  
5 into one Indictment because they are factually connected and involve a common scheme or  
6 plan. The events in case C-14-300105 involve two robberies of employees at a store while the  
7 Defendant posed as a customer and asked for money from the register. The two incidents in  
8 that case took place on January 22, 2014 and January 28, 2014, only six (6) days apart. The  
9 incident in the instant case also involves the robbery of a store employee where the Defendant  
10 posed as a customer. That incident occurred on February 2, 2014, just 5 days after the other  
11 two incidents.

12 The three incidents here evidence a common scheme or plan because each of the  
13 offenses involve store robberies and occurred only 11 days apart. The evidence from each  
14 trial would be cross-admissible to demonstrate the Defendant's felonious intent when entering  
15 the stores and pointing the gun at the store employees. A consolidated trial would promote  
16 judicial efficiency and ensure that valuable courtroom time is not wasted; as the facts  
17 contained in C-14-3001015 are inherent to this case.

## 18 I. CONCLUSION

19 For the foregoing reasons, the State respectfully requests that the Court consolidate  
20 the two indictments into a single case, best reflected as the earlier filed case C-14-296374-1.  
21

22 DATED this 3rd day of March, 2015.

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

26 BY

27 Hagar Trippiedi  
28 Deputy District Attorney  
Nevada Bar #0010114

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that service of NOTICE OF MOTION AND MOTION TO CONSOLIDATE, was made this 3rd day of March, 2015, by Electronic Filing to:

FRANK KOCKA, ESQ.  
EMAIL: fkocka@yahoo.com

  
Secretary for the District Attorney's Office

14F03420X/mlb/L-2



ORIGINAL

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

APR 08 2015

BY:   
LOUISA GARCIA, DEPUTY

1 AIND  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 HAGAR TRIPPIEDI  
6 Deputy District Attorney  
7 Nevada Bar #10114  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

C-14-296374-1  
AIND  
Amended Indictment  
4447829



THE STATE OF NEVADA,

Plaintiff,

CASE NO: C-14-296374-1

-vs-

DEPT NO: VIII

KENNY SPLOND, aka,  
Kenya Splond, #1138461

Defendant.

AMENDED  
INDICTMENT

STATE OF NEVADA }  
COUNTY OF CLARK } ss.

The Defendant above named, KENNY SPLOND, aka, Kenya Splond, accused by the Clark County Grand Jury of the crime(s) of CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - 50147); BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS 205.060 - 50426); ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - 50138) and POSSESSION OF STOLEN PROPERTY (Category B Felony - NRS 205.275(2)(c) - 56060), committed at and within the County of Clark, State of Nevada, on or about the 2nd day of February, 2014, as follows:

COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

Defendant KENNY SPLOND, aka, Kenya Splond and Co-Conspirator KELLIE ERIN CHAPMAN did, then and there meet with each other and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire and agree to commit

AA000081

robbery, and in furtherance of said conspiracy, defendants did commit the acts as set forth in Count 2 and 3, said acts being incorporated by reference as though fully set forth herein.

COUNT 2 - BURGLARY WHILE IN POSSESSION OF A FIREARM

Defendants KENNY SPLOND, aka, Kenya Splond and Co-Conspirator KELLIE ERIN CHAPMAN did then and there wilfully, unlawfully, and feloniously enter, with intent to commit robbery, that certain building occupied by STAR MART, located at 5001 North Rainbow, Las Vegas, Clark County, Nevada, said Defendant did possess and/or gain possession of a firearm during the commission of the crime and/or before leaving the structure, to wit: (1) by directly committing this crime and /or (2) by aiding and abetting in the commission of this crime, with the intent that this crime be committed, by providing counsel and/or encouragement and by entering into a course of conduct whereby Defendant KENNY SPLOND, aka, Kenya Splond entered Star Mart, located at 5001 N. Rainbow Boulevard, Las Vegas, Clark County, Nevada with a firearm and demanded money and/or cigarettes and/or gum from BRITTANY SLATHAR and took cigarettes and/or gum while Co-Conspirator KELLIE CHAPMAN provided Defendant KENNY SPLOND, aka, Kenya Splond transportation to the Star Mart prior to the robbery and/or acted as a getaway driver and/or look-out and both Defendants fled the scene together and/or (3) pursuant to a conspiracy to commit this crime.

COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

Defendants KENNY SPLOND, aka, Kenya Splond and Co-Conspirator KELLIE ERIN CHAPMAN did then and there wilfully, unlawfully, and feloniously take personal property, to-wit: cigarettes and gum, from the person of BRITTANY SLATHAR, or in her presence, by means of force or violence, or fear of injury to, and without the consent and against the will of BRITTANY SLATHAR, with use of a deadly weapon, to-wit: a handgun, to wit: (1) by directly committing this crime and /or (2) by aiding and abetting in the commission of this crime, with the intent that this crime be committed, by providing counsel and/or encouragement and by entering into a course of conduct whereby Defendant KENYA SPLOND entered Star Mart, located at 5001 N. Rainbow Boulevard, Las Vegas, Clark County,

1 Nevada with a firearm and demanded money and/or cigarettes and/or gum from BRITTANY  
2 SLATHAR and took cigarettes and/or gum while Co-Conspirator KELLIE CHAPMAN  
3 provided Defendant KENNY SPLOND, aka, Kenya Splond transportation to the Star Mart  
4 prior to the robbery and/or acted as a getaway driver and/or look-out and both Defendants fled  
5 the scene together and/or (3) pursuant to a conspiracy to commit this crime.

6 COUNT 4 - POSSESSION OF STOLEN PROPERTY

7 Defendant KENNY SPLOND, aka, Kenya Splond did, wilfully, unlawfully, and  
8 feloniously for his own gain, possess property wrongfully taken from JEFFREY BRUCE  
9 HABERMAN, to-wit: Colt 38 revolver serial# 941609, which Defendant knew, or had reason  
10 to believe, had been stolen.

11 COUNT 5 - BURGLARY WHILE IN POSSESSION OF A FIREARM

12 Defendant KENNY SPLOND, aka, Kenya Splond did, on or about January 22, 2014,  
13 then and there wilfully, unlawfully, and feloniously enter, with intent to commit robbery,  
14 that certain building occupied by SAMUEL ECHEVERRIA, located at 4343 North Rancho  
15 Drive, Apartment No. 104, Las Vegas, Clark County, Nevada, said Defendant did possess  
16 and/or gain possession of a firearm during the commission of the crime and/or before leaving  
17 the structure.

18 COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON

19 Defendant KENNY SPLOND, aka, Kenya Splond did, on or about January 22, 2014,  
20 wilfully, unlawfully, and feloniously take personal property, to-wit: lawful money of the  
21 United States, from the person of SAMUEL ECHEVERRIA, or in his presence, by means of  
22 force or violence, or fear of injury to, and without the consent and against the will of  
23 SAMUEL ECHEVERRIA, with use of a deadly weapon, to-wit: a handgun.

24 COUNT 7 - BURGLARY WHILE IN POSSESSION OF A FIREARM

25 Defendant KENNY SPLOND, aka, Kenya Splond did, on or about January 28, 2014,  
26 then and there wilfully, unlawfully, and feloniously enter, with intent to commit robbery,  
27 that certain building occupied by GRACIELA ANGELES, located at 6663 Smoke Ranch  
28

1 Road, Las Vegas, Clark County, Nevada, said Defendant did possess and/or gain possession  
2 of a firearm during the commission of the crime and/or before leaving the structure.

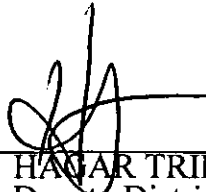
3 COUNT 8 - ROBBERY WITH USE OF A DEADLY WEAPON

4 Defendant KENNY SPLOND, aka, Kenya Splond did, on or about January 28, 2014  
5 wilfully, unlawfully, and feloniously take personal property, to-wit: lawful money of the  
6 United States, from the person of GRACIELA ANGELES, or in her presence, by means of  
7 force or violence, or fear of injury to, and without the consent and against the will of  
8 GRACIELA ANGELES, with use of a deadly weapon, to-wit: a handgun.

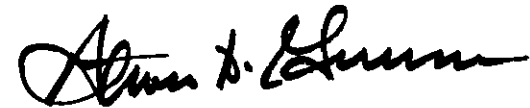
9  
10 DATED this 26<sup>th</sup> day of March, 2015.

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

14  
15 BY

  
16 HAGAR TRIPPIEDI  
17 Deputy District Attorney  
18 Nevada Bar #10114  
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26 13AGJ118A-B/14F01777A-B/mlb/L-2  
27 LVMPD EV# 1402020525  
28 (TK11)



CLERK OF THE COURT

NOT

T. AUGUSTUS CLAUS, ESQ.  
LEGAL RESOURCE GROUP, LLC.

Nevada Bar No. 10004  
205 N. Stephanie St., Suite D221  
Henderson, NV 89074  
Telephone: (702) 463-4900  
Fax: (702) 463-4800

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

KENYA SPLOND,  
#1138461

Defendant.

Case No.: C-14-296374-1

Dept. No.: 8

**NOTICE OF EXPERT WITNESSES**

**AND WITNESSES**

TO: STEVEN WOLFSON, Chief Deputy District Attorney

KENYA SPLOND also gives notice of his intention to use any and all witnesses listed by the STATE OF NEVADA in their expert witness notices and witness notices, their charging information(s) and witness notices.

Notice is hereby given, pursuant to NRS 174.234, containing the names and last known addresses of witnesses the Defendant intends to call during the Case in Chief of the Defendant at trial (excluding any victim address made confidential):

Expert Witness

Address

LARRY SMITH

6895 E. Lake Mead Blvd., Suite A6-131  
Las Vegas, NV 89156

Larry Smith is an expert in the creation, deletion and analysis of electronically stored information on computers and cell phones, including cellular technology. Smith's expertise extends to the science and technology to retrieve video, audio and other embedded data evidence from analog and digital devices, the processes and procedures to retrieve such recorded evidence, the examinations done on the evidence in this case, the results of such testing and reports prepared in this regard. Smith is prepared to offer testimony relating to the forensic analysis of electronic devices, including best practices and procedures, error correction and creation, forensic tools and equipment available to Las Vegas Metropolitan Police, interpretation and

extrapolation from electronic data, including cell tower, cell phone records and data, plotting cell phone/tower data on relevant maps based on historical records of cellular phone records, as well as the creation, functioning, data collection and information received and collected by cellular provider cell sites and conclusions which can be drawn therefrom. Smith is also expected to provide testimony on social media records, including cellular and internet based records and other electronically stored information relevant to the instant case.

NORAH RUDIN, PhD.

650 Castro St., Suite 120-404  
Mountain View, CA 94041

Dr. Rudin will be expected to offer testimony related to DNA evidence extractions, comparisons, analysis, mathematical models, and the identification of bodily fluids, including the theory and best practices and procedures related to DNA laboratories and science. Dr. Rudin will testify to all aspects that are part of the conclusion of any DNA related reports supplied by the State of Nevada, including bench notes, reports and testing in this case. Testimony will include all aspects of the science associated with DNA and the statistical analysis therein.

ROBERT IRWIN

P.O. Box 20610  
Las Vegas, NV 89112

Robert Irwin is expected to offer testimony relating to the forensic analysis of firearm and toolmark comparisons, including best practices and procedures, error correction and creation, forensic tools and equipment available to Las Vegas Metropolitan Police, interpretation of firearm and toolmark data, including shell casings, caliber of firearms, bullets and other firearm and/or toolmark information, including bullet trajectory relevant to the instant case.

MICHAEL SWEEDO

P.O. Box 129  
Sonoita, AZ 85637

Michael Sweedo is expected to offer testimony relating to the forensic analysis of latent fingerprint comparison, including best practices and procedures, error correction and creation, science and techniques available, interpretation of latent fingerprint comparison relevant to the instant case.

The substance of each expert's testimony and a copy of all report made by or at the direction of the expert witness have been provided in discovery. The Curriculum Vitae for identified expert witness is attached to this Notice.

Notice is also hereby given of these additional witnesses:

CUSTODIAN OF RECORDS,  
OR DESIGNEE

CCDC  
330 S. Casino Center Blvd., Las Vegas NV

CUSTODIAN OF RECORDS,  
OR DESIGNEE

LVMPD COMMUNICATIONS  
400 MLK Blvd., Las Vegas NV

CUSTODIAN OF RECORDS,

LVMPD RECORDS

1 OR DESIGNEE 400 MLK Blvd., Las Vegas NV  
2 CUSTODIAN OF RECORDS, LVMPD DISPATCH  
OR DESIGNEE 1301 E. Lake Mead Blvd, N. Las Vegas  
3  
4 CUSTODIAN OF RECORDS, NEVADA DMV  
OR DESIGNEE  
5 CUSTODIAN OF RECORDS, STAR MART  
6 OR DESIGNEE 5001 N. Rainbow, Las Vegas NV 89130  
7  
8

9 DATED this 3<sup>rd</sup> day of August, 2015.

10 LEGAL RESOURCE GROUP, LLC.

11 /s/ T. Augustus Claus

12 T. AUGUSTUS CLAUS, ESQ.  
13 LEGAL RESOURCE GROUP, LLC.  
14 Nevada Bar No. 10004  
205 N. Stephanie St., Suite D221  
Henderson, NV 89074  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of **LEGAL RESOURCE GROUP, LLC.**, and that on the 3<sup>rd</sup> day of August, 2015, I caused the foregoing **Notice of Expert Witness List** to be served as follows:

☐ by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid; and/or

☐ pursuant to EDCR 7.26, by sending it via facsimile; and/or

☐ by hand delivery via runner

☒ via electronic service

to the attorneys listed below:

DISTRICT ATTORNEY'S OFFICE  
Clark County District Attorney  
200 South Lewis Avenue  
Las Vegas, Nevada 89155  
[pdmotions@clarkcountyda.com](mailto:pdmotions@clarkcountyda.com)

/s/ Tobi Caperon  
An Employee of the Legal Resource Group, LLC.



**Larry Smith**  
Private Investigator #1751A

Nevada Digital Forensics  
6895 E. Lake Mead Blvd. Ste. A6-131  
Las Vegas, Nevada 89156

<http://www.NvDigitalForensics.com>

Contact info:  
[larry@nvdigitalforensics.com](mailto:larry@nvdigitalforensics.com)  
[nvdigitalforensics@gmail.com](mailto:nvdigitalforensics@gmail.com)

702-600-2138

Larry Smith is the owner and operator of Nevada Digital Forensics based out of Las Vegas, Nevada. Larry was a 24 year veteran of the Las Vegas Police Department retiring in 2012. He has worked in various details of the LVMPD including Patrol, Gang Unit, Community Policing, Domestic Violence detail, Physical Abuse Detail, and the Sexual Abuse Detail. In early 1999 he started the Cyber Crimes Detail of the Las Vegas Metro Police department and assisted in the creation of the Internet Crimes Against Children Detail (ICAC) as well as the FBI / LVMPD Innocent Image task force.

In January 2003 the LVMPD Cyber Crimes Detail, and myself, joined forces with the United States Secret Service's Electronic Crimes Task Force. I assisted in the creation of the Electronic Crimes Detail as a Forensic Data Recovery Specialist.

A Data Recovery Specialist uses special tools, techniques, and software programs to make forensically sound copies of suspect hard drives and related media and analyze those copies for evidence of a crime or that no proof that a crime had occurred.

Larry has received the following training:

He was promoted to Detective and assigned to the Physical Abuse Detail from 11-1996 to 6-1997. The Physical Abuse Detail investigates physically abused children and the elderly.

He then was reassigned to the Sexual Abuse Detail in June 1997 until August of 2000.

While assigned to the Sexual Abuse Detail he assisted in the creation of the Internet Crimes Against Children Detail. The main mission if the ICAC detail was the apprehension of sex offenders when their target was children and their tool was the Internet and/or a computer. This included all child pornography cases.

His last assignment was in the USSS Electronic Crimes Task Force and the LVMPD Computer Forensics Unit that consisted of investigating any crime where a computer, PDA, or cell phone was used to facilitate that crime. These crimes include Homeland Defense issues, Homicides, Internet Stalking, Robberies, Network Intrusions, Kidnappings, Email and Online Fraud, Child Pornography, Luring Children using Computers, etc.

Larry has also had training in cell phone tracking and CDR (Call Detail Records) as a part of his cell phone forensics courses as well the as Harris Corp. cell phone tracking course listed below.

In addition to the data recovery classes listed below, Larry Smith has had training in all aspects of criminal investigative work such as fraud, robbery, crimes against persons, and property crimes.

Larry is also licensed Private Investigator (#1751A).

#### **COMPUTER/INTERNET/CELLPHONE TRAINING:**

09/95-11/96	Choice Computers as an apprentice technician	200+hrs
11-03-97	Computer Seizure Workshop	40 hrs
01-14-99	FBI Innocent Images (Internet Child Porn)	12 hrs
08-09-99	Protecting Children Online	36 hrs
12-13-99	Innocent Images Training	40 hrs
01-25-00	Encase Training	24 hrs
04-17-00	Data Recovery and Analysis	36 hrs
05-01-00	International Assoc. of Comp. Invest. Specialists	80 hrs

12-05-00	Internet Crimes Against Children conference	24 hrs
01-09-00	Computer forensics exams using Encase	32 hrs.
09-06-00	9 <sup>th</sup> Annual Western States Sexual Assault Seminar	24 hrs.
09-05-01	10 <sup>th</sup> Annual Western States Sexual Assault Seminar	24 hrs.
02-26-01	AccessData Forensic Exams and Password Retrieval	32 hrs
09-14-01	Encase Users Conference	8 hrs
10-22-01	NTI Computer Forensics Training	36 hrs
12-09-01	2001 ICAC Training Conference	20 hrs
03-19-02	Encase Advanced training	32 hrs
04-12-02	National White Collar Crime Data Recovery	36 hrs
09-23-02	NIPC Networks/System Security for Agents	80 hrs
10-15-02	Investigating Cyber Attacks	32 hrs
10-28-02	Beginning Unix for Investigators	40 hrs
10-28-02	Advanced Unix for Investigators	40 hrs
11-01-02	Basic Solaris 8 system administration	32 hrs
11-22-02	Advanced Solaris Administration	32 hrs
12-13-02	Unix for Investigators Part 3	40 hrs
02-18-03	Encase 4 Intermediate	32 hrs
03-03-03	Basic Linux/Basic SMART Training	40 hrs
04-28-03	LPI Linux 101	40 hrs
05-12-03	LPI Linux 102	40 hrs
05-26-03	Red Hat Linux Essentials 1-4	32 hrs
06-09-03	Red Hat RH133 Linux System Administration	32 hrs
06-17-03	Red Hat RH253 Linux Networking-Security	32 hrs
06-23-03	ADRA Advanced Data Recovery	32 hrs
08-18-03	Linux Professional Institute Boot Camp	77 hrs
09-25-03	Hard Drive Analysis, FAT, NT, Linux	21 hrs
09-23-03	FAT/Linux/NTFS File System Review	21 hrs
11-14-03	A+ Certification Operating Systems	40 hrs
01-12-04	SMART for Linux Intermediate/Advanced	32 hrs
04-19-04	Macintosh Forensics Course	40 hrs
05-03-04	Ethical Hacking Course	40 hrs
07-13-04	Encase Internet and Email Examinations	32 hrs
08-31-04	Apple Macintosh Server Essentials	32 hrs
03-09-04	Mac OS Server Essentials 10.3	32 hrs
01-26-05	Hidden Data Communications	8 hrs
02-08-05	Encase Network Intrusion Examinations	32 hrs
06-06-05	TCP/IP and Network Intrusions	32 hrs
09-19-05	Cell Phone Forensics, MFI	32 hrs
11-12-05	Advanced BitPim Cell Phone Forensics	10 hrs
11-28-05	Stingray/Kingfish training, Harris Corp	32 hrs
12-16-05	Network Hacking (Synerity Systems)	35 hrs
1-10-06	DOD Cyber Crimes Conference	32 hrs
02-02-06	Mac OSX Server Training v10.4	32 hrs
05-25-06	Wireless Communications	40 hrs
6-27-06	Encase V5 Advanced Forensics	32 hrs

8-31-06	Network Forensics-DefCon edition	32 hrs
01-23-07	E-fence live incident response course (Helix)	24 hrs
03-02-07	Encase Computer Forensics II	32 hrs
04-15-07	Handheld Forensics	32 hrs
08-02-07	Advanced Hacking Techniques - Synerity	32 hrs
10-11-07	Access Data Windows Forensic	21 hrs
10-12-07	Access Data Vista Forensics	07 hrs
11-07	Paraben Advanced Cell Phone Seizure	32 hrs
11-16-07	ICAC Investigation of Cellular Telephones (SEARCH)	32 hrs
04-11-08	Wireless LAN (Synerity)	32 hrs
04-24-08	DC Live Audio Forensics	32 hrs
08-07-08	Workstation Examination (DefCon Edition(Synerity))	32 hrs
03-26-09	Windows Forensic Registry (Access Data)	21 hrs
05-15-09	Advanced Cellular Forensic (US Secret Service)	40 hrs
12-13-09	Internet Forensics (Access Data)	21hrs
03-05-10	Mobile Phone Examiner Analysis (Access Data)	7hrs
03-12-10	Bitpim & Cellular Phone Artifacts (access Data)	7hrs
06-04-10	AccessData Oxygen Forensics Suite II	7hrs
06-17-10	AccessData Bootcamp	21hrs
06-06-10	Techno Security Conference	32hrs
07-27-10	Defcon Preconference Training (Network threats)	15hrs
08-20-10	Accessdata Mobile Forensics Workshop 202	35 hrs
12-08-10	Live Data Acquisition and Analysis Course	16hrs
12-09-10	Windows 7 Forensic Course	8 hrs
01-20-11	Cellular Forensics, Data Recovery, Mobile Spyware	24 hrs
01-24-11	Call Detail Records & GPS Devices	7 hrs
04-08-11	Phone Repair and Chip Off Analysis	40 hrs
05-12-11	SANS Adv. Computer Analysis and Incident Response	36hrs
06-01-11	iOS Forensic Analysis and Lantern Training	16hrs
06-08-12	Techno Security Conference	32 hrs.
09-23-11	SANS Mobile Device Forensics	30hrs
10-13-11	Cellebrite UFED Physical Certification	8hrs
10-13-11	Cellebrite UFED Certification	16hrs
04/19/12	2012 National Law Enforcement Training on Child Exploitation	22hrs
6/6/2012	Techno Security and Digital Investigations Conference	32 hrs.
03/08/12	Mobile Device Repair and JTAG course	32hrs

For a Total of 2822 hrs.

#### College of Southern Nevada

Summer 1999	CIT106b PC Maintenance and Configuration	3cr
Fall 1999	CIT107b A+ Software	3cr
Spring 2000	Unix Operating System	3cr
Fall 2000	CIT149b Networking Essentials	3cr
Summer 2001	CIT185b Windows 2000 Pro/Server	3cr

Fall 2001	ET249b Cisco Networking Academy	4cr
Spring 2004	Advanced Computer Forensics	3cr
Fall 2006	CIJ198b Encase Forensics	3cr

#### Instruction

Fall 2004-2006	Adjunct Professor at CSN teaching Computer forensics and Advanced Computer Forensics
Fall 2004	Adjunct Professor at CSN teaching Investigating Digital Crimes
11/07- 3/08	Part Time Instructor for Paraben Corp.
4/2013 to Present	ICAC and cellphone forensics Instructor at High Tech Crime Institute (HTCI)

#### CERTIFICATIONS:

11/08	Certified Advanced Cell Phone Seizure (Paraben Software)
09/99- 2012	Member of the High Tech Crime Consortium
05/12/00	Certified Electronic Evidence Collection Specialist (IACIS)
07/31/01	Microsoft Certified Professional ID# 2392098
03/08/02	CompTIA Network+ Certification ID # 10275221
04/02/07	ENCE Certification
06-22-10	ACE Certified (AccessData Certified Examiner)
10/13/2011	Cellebrite Certifications



## PROFESSIONAL QUALIFICATIONS

### ◆ PROFESSIONAL CERTIFICATIONS

Certified by International Association for Identification as:  
CERTIFIED LATENT PRINT EXAMINER since 1988  
SENIOR CRIME SCENE ANALYST since 1990

### ◆ PROFESSIONAL TRAINING

SCIENTIFIC ANALYSIS, FACTS BEHIND AVE-V & DAUBERT, MAY 2005  
RIDGEOLOGY, DAUBERT & TESTIMONY, NOV. 2003  
ADVANCED RIDGEOLOGY, IAI, May, 1997  
TRAINING SYMPOSIUM, IABPA & ACSR, 1996, IABPA 2000, 2001, 2004  
TRAINING SYMPOSIUM, AZ Identification Council, 1993, 1996, 1997, 1998, 1999, 2000, 2003, 2005  
FORENSIC FIREARMS, AZ Homicide Investigators Assn., 1996  
INTL. ASSN. FOR IDENTIFICATION EDUCATIONAL SEMINAR, 1995  
FOOTWEAR & TIRE TRACK CONFERENCE, AZ Identification Council, 1994  
BLOODSTAIN PATTERN ANALYSIS WORKSHOP, Metro Dade PD, 1993  
ADVANCED BLOODSTAIN PATTERN INTERPRETATION, AZ Homicide Investigators Assn., 1993  
TRAINING CONFERENCE, AZ Identification Council, 1992, 1993, 1994  
DEMYSTIFYING PALM PRINTS, Seminar, 1991  
COLLECTION AND PRESERVATION OF PHYSICAL EVIDENCE SCHOOL, FBI Academy, Quantico, VA, 1989  
IDENTIKIT (Composite) Seminar, 1988  
ADVANCED LATENT FINGERPRINT COURSE, 1987  
FBI ADVANCED LATENT FINGERPRINT SCHOOL, 1982  
FBI FINGERPRINT CLASSIFICATION SCHOOL, 1982  
CIVIL AND CRIMINAL IDENTIFICATION AND INVESTIGATION COURSE, American Institute of Applied Science, 1982

### ◆ SPEAKER

Arizona Attorneys for Criminal Justice Annual Conference  
Arizona Association for Licensed Private Investigators  
Arizona Society for Industrial Security  
Tennessee Association of Criminal Defense Lawyers  
US Army Trial Defense Service, Hanau, Germany

### ◆ PROFESSIONAL ASSOCIATIONS

Member of International Association for Identification  
Member of Arizona Identification Council  
Executive Committee - Past Member  
Latent Print Certification Committee - Past Member & Past Chairman  
Member of International Association of Bloodstain Pattern Analysts  
Past member of Professional Photographers of America, Inc.

## ◆ EDUCATION

B.S. Business Administration, University of Arizona, 1972  
MEd Educational Media, University of Arizona, 1979

## ◆ EXPERIENCE

Twenty four years experience testifying in federal, military, state and city courts. Experience supplemented by teaching and educational media background.

Eleven years experience with Tucson Police Department as an Identification Technician and Senior Identification Technician. Job duties included processing crime scenes for latent prints, evidence collection, latent print comparisons, John & Jane Doe identification, evidence processing, crime scene photography, crime scene analysis, photo darkroom work and section management.

Independent fingerprint consultant since May, 1992. During this time I have worked cases for defense and prosecuting attorneys, private investigators, government agencies and private individuals - both nationally and internationally. My work as an independent consultant has included testifying in federal and state courts, primarily for the defense, but also for the prosecution.

**Mike Sweedo**

**P.O. Box 129**

**Sonoita, AZ 85637**

**(520) 455-5697**

**Cell Phone: (520) 403-5383**

[fingers@dakotacom.net](mailto:fingers@dakotacom.net)

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**Robert M. Irwin**  
**P.O. Box 20610**  
**Las Vegas, NV 89112**  
**Born February 2, 1944 Los Angeles, CA**

**Phone (702) 433-1081**  
**FAX (702) 433-4706**  
**Pager (702) 698-7301**  
**E-mail bob@rirwin.com**

## **EMPLOYMENT BACKGROUND**

- 1962-63** Attended Oregon Technical Institute, Klamath Falls, Oregon.  
Gunsmithing curriculum, one and one half years.
- 1962-63** Gunsmith at Joe's Sporting Goods, Klamath Falls, Oregon.
- 1963-70** Managed Motion Picture theaters in Los Angeles area for Continental,  
Lowes and Pacific Theatres, moved to Flack Theaters as city manager.
- 1971-76** Moved to Las Vegas, employed by The Mint Hotel as a keno writer  
and moved to the Union Plaza Casino as a keno shift supervisor.
- 1971-72** Part time gunsmith by Accuracy Gun Shop, Las Vegas, NV.
- 1972-77** Design work on various firearm projects, first U. S. patent issued  
in 1976. Various firearms subsequently built by ATC using this patent
- 1978-82** Founded and operated ATC (Armament Technology Corporation), firearm  
design and prototype manufacturing. Several firearm designs developed for  
Arminex Corp and Mossberg Firearms as well as in house research.
- 1982-88** Founded and operated "The Survival Store" in Las Vegas, a firearm retail  
store and gunsmithing operation. Added an indoor pistol range during expansion  
in late 1983 and began teaching firearms classes on a regular basis.  
Sold interest to partners in 1988.
- 1986-** Employed part time as Bailiff for Justice Court and as a Deputy for the  
Boulder Township Constable's Office.
- 1988-** Founded and operated "The Gun Store" in Las Vegas encompassing retail  
firearms, gunsmithing, indoor pistol ranges and firearms training.
- 1992** Continuing firearms design work, second U. S. Patent issued.  
Prototype firearms built for Global Technologies, Ltd. (Australia).
- 1992-** Firearms instructor at various law enforcement academies for LEAA,  
CCSN, On Scene, Inc. and the C.C. School District Police Dept.
- 2001-** Semi-retired from The Gun Store to pursue private firearms consulting  
work, but still employed there as Instructor for Security Officer and  
Concealed Weapon Permit, firearms and use of force classes.



**.Robert M. Irwin, Biography**  
**Firearms and Training Background**

**CERTIFICATIONS:**

**National Rifle Association**

<i>Training Counselor (Instructor Trainer)</i>	<i>Rifle Instructor</i>
<i>Police Firearms Instructor</i>	<i>Personal Protection Instructor</i>
<i>Security Firearms Instructor</i>	<i>Home Firearms Safety Instructor</i>
<i>Pistol Instructor</i>	<i>Shotgun Instructor</i>

**Nevada Attorney Generals Office, Private Investigator's Licensing Board**

*Security Firearms Instructor*

**Nevada Peace Officer's Standards and Training**

*Category II Peace Officer*  
*Police Pistol Instructor*  
*Police Shotgun Instructor*  
*Law Enforcement Firearms Instructor Trainer*

**Utah Department of Public Safety**

*Concealed Firearms Instructor*

**ADDITIONAL BACKGROUND**

One and a half years gunsmithing curriculum, Oregon Technical Institute

Two U.S. Patents issued for firearm operation systems

Several firearms, safety and use of force articles published in various  
firearms and law enforcement magazines

More than 75 columns on firearms, force and law enforcement issues published by

The Vegas Times & The Las Vegas Gazette, community newspapers

Gun stunts, safety and technical assistance provided for numerous motion  
pictures, television productions, commercials and stage shows

Firearms Instructor, Law Enforcement Assistance Association Category II

NV P.O.S.T Law Enforcement academies, 1992 and 1994

Chief Firearms Instructor, ten Category I & four Category II law enforcement  
academies at Community College of Southern Nevada, 1995-2002

Chief Firearms Instructor five On Scene, Inc. Category II Academies 1998-2000

Chief Firearms Instructor CC Family & Youth Services Cat II Academy 1999

Hostage Negotiation Instructor, Community College Academy Program, 1996

Firearms Instructor, Clark County School District Police academy 1997

Firearms Instructor Southern Nevada Law Enforcement Academy 2002

Chief Instructor, NV POST L. E. Firearms Instructor Training class 2002

Instructed and certified in firearms more than 9500 armed Security Officers for  
the Nevada State Attorney General's Security Firearms Training Program

Trained over 5000 concealed firearm permit holders for Nevada, Florida & Utah

Trained and certified 98 Firearms Instructors for The National Rifle Association

Testified as a expert witness in Municipal, County, State, and Federal Courts

## **MEMBERSHIPS**

**International Association of Law Enforcement Firearms Instructors**  
**American Society of Law Enforcement Trainers**  
**Nevada Law Enforcement Assistance Association (Director)**  
**Southern Nevada Law Enforcement Trainers Association**  
**Police Marksman Association**  
**Law Enforcement Alliance of America**

## **FIREARMS & USE OF FORCE TRAINING**

**2/84 Basic Firearms Instructor Course, 24 Hours, National Rifle Association**  
**3/89 Illegal Firearms Identification Course, 8 hours, BATF**  
**1/90 Category II Peace Officer Academy, 200 hours, Nevada POST/NLVFD**  
**3/91 PR-24 Baton Certification, 12 hours, Boulder City PD**  
**5/91 Firearms Instructor/Rangemaster Police Pistol, 40 hours, Nevada POST**  
**5/91 Firearms Instructor/Rangemaster Police Shotgun, 24 hours, Nevada POST**  
**6/91 Firearms Training Counselor Course, 40 hours, National Rifle Association**  
**8/91 Security Firearms Instructor, 40 hours, National Rifle Association**  
**2/92 Police Firearms Instructor, appointment, National Rifle Association**  
**4/92 Court Security Seminar, 24 hours, Public Agency Training Council**  
**11/92 Instructor Development, 40 hours, Las Vegas City Detention/NV POST**  
**1/94 Firearms Training Counselor Seminar, 40 hours, National Rifle Association**  
**10/94 Range Development Conference, 24 hours, National Rifle Association**  
**11/94 Expandable Baton Certification, 8 hours, Boulder Constable's Office**  
**11/94 OC Spray Certification, 8 hours, Boulder Constable's Office**  
**8/95 Glock Armorer's School, 8 hours, Glock Firearms, Inc.**  
**11/95 Police Civil Liability, 24 hours, Thomas/Means Law Enforcement Seminar**  
**6/96 Police Firearms Instructor, 80 hours, Nevada Law Enforcement Academy**  
**12/96 Street Survival Seminar, 24 hours, Calibre Press/LVMPD**  
**12/96 Use of Force, 8 hours, Clark County School District Police Dept.**  
**6/97 Law Enforcement Training Camp, 40 hours, Sigarms, Smith & Wesson, et al.**  
**11/97 IALEFI Regional Firearms Training Conference, 16 hours, Phoenix PD**  
**12/97 Kel-Tec Armorers School, 8 hours, Kel-Tec / Boulder City PD**  
**12/97 Glock Armorers Recertification, 8 hours, Glock / LVMPD**  
**3/98 OC Spray Instructor's Certification, CCDA's Office / 1 Mark Inc.**  
**6/98 Street Survival Seminar, 24 hours, Calibre Press / LVMPD**  
**6/00 Glock Advanced Armorers School, 16 hours, Glock / LVMPD**  
**9/00 Police Civil Liability Workshop, 16.2 hours, AELE**  
**7/02 Police Liability in Nevada, 6 hours, Lorman Education Services**

### **Peace Officer Commissions (current)**

**Lieutenant, Boulder Township Constable's Office**  
**Bailiff, Clark County Justice Court**

### **Peace Officer Commissions (previous)**

**Officer, Nevada Youth Parole Bureau**  
**Bailiff, Boulder City Municipal Court**

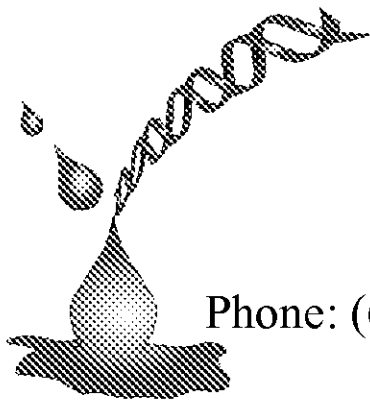
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**Born February 2, 1944 Los Angeles, CA**

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## **EMPLOYMENT BACKGROUND**

- 1962-63** Attended Oregon Technical Institute, Klamath Falls, Oregon.  
Gunsmithing curriculum, one and one half years.
- 1962-63** Gunsmith at Joe's Sporting Goods, Klamath Falls, Oregon.
- 1963-70** Managed Motion Picture theaters in Los Angeles area for Continental, Lowes and Pacific Theatres, moved to Flack Theaters as city manager.
- 1971-76** Moved to Las Vegas, employed by The Mint Hotel as a keno writer and moved to the Union Plaza Casino as a keno shift supervisor.
- 1971-72** Part time gunsmith by Accuracy Gun Shop, Las Vegas, NV,
- 1972-77** Design work on various firearm projects, first U. S. patent issued in 1976. Various firearms subsequently built by ATC using this patent
- 1978-82** Founded and operated ATC (Armament Technology Corporation), firearm design and prototype manufacturing. Several firearm designs developed for Arminex Corp and Mossberg Firearms as well as in house research.
- 1982-88** Founded and operated "The Survival Store" in Las Vegas, a firearm retail store and gunsmithing operation. Added an indoor pistol range during expansion in late 1983 and began teaching firearms classes on a regular basis. Sold interest to partners in 1988.
- 1986-** Employed part time as Bailiff for Justice Court and as a Deputy for the Boulder Township Constable's Office.
- 1988-** Founded and operated "The Gun Store" in Las Vegas encompassing retail firearms, gunsmithing, indoor pistol ranges and firearms training.
- 1992** Continuing firearms design work, second U. S. Patent issued. Prototype firearms built for Global Technologies, Ltd. (Australia).
- 1992-** Firearms instructor at various law enforcement academies for LEAA, CCSN, On Scene, Inc. and the C.C. School District Police Dept.
- 2001-** Semi-retired from The Gun Store to pursue private firearms consulting work, but still employed there as instructor for Security Officer and Concealed Weapon Permit, firearms and use of force classes.





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**CURRICULUM VITAE**

6/17/2015

**EDUCATION**

1981-1987. Ph.D., Molecular biology/Genetics, Department of Biology, Brandeis University, Waltham, Massachusetts.

1975-1979. B.A., Zoology, Pomona College, Claremont, California.

**PROFESSIONAL ACTIVITIES**

1991-present. Forensic DNA Consultant.

1999-2002. Acting DNA Technical Leader (consultant), San Diego Sheriff's Office DNA Laboratory.

1999. Acting DNA Technical Leader (consultant), San Francisco Police Department Criminalistics Laboratory.

1997-1999. Acting DNA Technical Leader (consultant), Idaho State Department of Law Enforcement DNA Laboratory.

1997-2004. Developer, instructor of online courses with Knowledge Solutions; *Introduction to Forensic DNA, Fundamentals of Forensic Science, Arson and Explosives, Toolmarks and Firearms*.

1995-2001. Instructor, University of California at Berkeley Extension; *Survey of Forensic Sciences, Fundamentals of Forensic DNA, Careers in Forensic Science, Advanced Topics in Forensic Science*.

1991-1993. DNA Technical Leader, California State Department of Justice DNA Laboratory.

1987-1990. Post-doctoral fellow, Lawrence Berkeley Laboratory, Berkeley, California.

**PROFESSIONAL ORGANIZATIONS**

California Association of Criminalists (CAC)

American Academy of Forensic Science (AAFS), Fellow

American Board of Criminalistics (D-ABC), Diplomate

**SOFTWARE**

Principal in SCIEG, a non-profit company, housing *Lab Retriever*, a free, open-source software tool, for calculating Likelihood ratios with a probability of drop-out, and training and education in probabilistic genotyping.

**AWARDS, HONORS**

2014-2015. National Institute of Justice Grant 2013-DN-BX-K029 2013-DN-BX-K029.

Advancing probabilistic approaches to interpreting low-template DNA profiles and mixtures: Developing theory, implementing practice. (Co-PIs Kirk Lohmueller and Keith Inman)

2013-. The Constitution Project; Committee on DNA Collection; Co-chair  
 2009. Service Award, California Association of Criminalists  
 2007. Reviewer, United Nations Office of Drug and Crime Manual  
 2007-2011. Commonwealth of Virginia Scientific Advisory Committee  
 1983-1985. National Institute of Health genetics training grant  
 1981-1985. Goldwyn Fellowship

## BOOKS AND CHAPTERS

Inman, K. and Rudin N. *Sequential Unmasking: Minimizing Observer Effects in Forensic Science.*, Encyclopedia of Forensic Sciences 2<sup>nd</sup> Ed. Eds. Siegel, J.A., Saukko, P.J., Waltham:Academic Press, 2013.

Rudin N. and Inman, K. *An Introduction to Forensic DNA Analysis*, CRC Press Inc., Boca Raton, FL. 1997, 2001.

Inman, K. and Rudin, N. *Principles and Practice of Criminalistics: The Profession of Forensic Science*, CRC Press Inc., Boca Raton, FL, 2000.

Rudin N. and Inman, K. Editors, *Protocols in Forensic Science* series, CRC Press, incl. *Scientific Protocols for Forensic Examination of Clothing*, Jane Taupin and Chesterene Cwiklik; *Scientific Protocols for Fire Investigation*, John Lentini; *Ethics in Forensic Science: Professional Standards for the Practice of Criminalistics*, Peter Barnett.

Rudin, N. *Dictionary of Modern Biology*. Barron's Educational, Hauppauge, NY. 1997.

Inman, K., and Rudin, N. Scientific Basis of DNA Typing and Overview of Forensic DNA Typing in *Forensic Evidence*, California District Attorneys Association 1999.

Rudin, N. and Inman, K. DNA Based Identification in: *Biometrics: Personal Identification in Networked Society*, Kluwer Academic Publishers, 1999.

Inman, K. and Rudin N., *DNA Demystified, Solving Crimes in the 90's; An Introduction to Forensic DNA Typing*, Self-published, 1994.

## ACADEMIC PUBLICATIONS

Inman, K., et al. Lab Retriever: a software tool for calculating likelihood ratios incorporating a probability of drop-out for forensic DNA profiles. Submitted.

Lohmueller, K.E., Rudin, N., Inman, K. Analysis of allelic drop-out using the Identifiler® and PowerPlex® 16 forensic STR typing systems. 2014. *Forensic Science International: Genetics*. **12**, 1-11.

Lohmueller, K.E., Rudin, N., Calculating the Weight of Evidence in Low-Template Forensic DNA Casework. *J. Forensic Sci*, **58** (S1) 2013. P.S243-S249

Inman, K. and Rudin, N. The Origin of Evidence. *Forensic Science International*. 2002. **126** p. 11-16.

Brettell, T.A., Rudin, N., Saferstein, R. 2003. Forensic Science. *Anal. Chem.* **75**, p. 2877-2890.

Brettell, T.A., Inman, K., Rudin, N., Saferstein, R. 2001. Forensic Science. *Anal. Chem.* **73**, p. 2735-2744.

Brettell, T.A., Inman, K., Rudin, N., Saferstein, R. 1999. Forensic Science. *Anal. Chem.* **71** p. 235R-255R.

Rudin, N. And Inman, K. 1997. Exonerated by Science. *Jurimetrics J.* **37**, p. 319-323.

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- Myers, S.P., and N. Rudin. 1993. Evaluation of Centricon 100 Filtration Units on the *HaeIII* Digestion Efficiency of DNA Extracted from Bloodstains. *TIE-LINE*. Vol. 17, No. 1 p. 55.
- Dora, E.G., Rudin, N. Martell, J.R., Esposito, M.S., Ramirez, R.M. 1999. RPD3 (REC3) mutations affect mitotic recombination in *Saccharomyces cerevisiae*. *Current Genetics* **35**: 68-76.
- Fishman-Lobell, J., Rudin, N. and J. E. Haber. 1992. Two alternative pathways of double-strand break repair that are kinetically separable and independently modulated. *Mol. Cell Biol.* **12**:3 1292-1303.
- Rudin, N, E. Sugarman and J. E. Haber. 1989. Genetic and physical analysis of double-strand break repair and recombination in *Saccharomyces cerevisiae*. *Genetics* **122**: 519-534.
- Rudin, N., and J.E. Haber. 1988. Efficient repair of *HO*-induced chromosomal breaks in *Saccharomyces cerevisiae* by recombination between flanking homologous sequences. *Mol. Cell Biol.* **8**:9 3918-3928.
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#### ABSTRACTS AND PRESENTATIONS

- Marsden, C., Rudin, N., Inman, K., Lohmueller, K., 2015. Defining the limits of forensic DNA profile interpretation: An assessment of the information content inherent in complex mixtures., NIST International Symposium on Forensic Science Error Management, Washington D.C.
- Rudin, N., Conviction and exoneration in Cook Co., The story of a questionable Y-STR interpretation, CAC meeting Rohnert Part, 2014.
- Marsden, C., Rudin, N., Inman, K., Lohmueller, K., 2015. Defining the limits of forensic DNA profile interpretation: An assessment of the information content inherent in complex mixtures., CAC, Ventura, CA.
- Rudin, N., 2015. Forensic DNA Statistics: DON'T PANIC!. NACDL, Las Vegas, NV.
- Rudin, N., 2015. Another questionable Y-STR profile interpretation: the story continues .... CAC, Ventura, CA.
- Marsden, C., Rudin, N., Inman, K., Lohmueller, K., 2015. Defining the limits of forensic DNA profile interpretation: An assessment of the information content inherent in complex mixtures., AAFS, Orlando, FL.
- Rudin, N., Conviction and exoneration in Cook Co., The story of a questionable Y-STR interpretation, CAC meeting Rohnert Part, 2014.
- Rudin, N., Burley, L. Turns out, you CAN do PCR in a barn: Exceeding the limits of science – a case report, CAC meeting Rohnert Part, 2014.
- Marsden, C., Rudin, N., Inman, K., Lohmueller, K. Defining the limits of forensic DNA profile interpretation: An assessment of the information content inherent in complex mixtures. CAC meeting Rohnert Part, 2014.
- Inman, K., Rudin N., Lohmueller K., 2014. *Lab Retriever*, Probabilistic Software Workshop, Promega International Symposium for Human Identity, Phoenix, AZ.

- Inman, K., Rudin N., , Lohmueller K., 2014, Probabilistic Genotyping and *Lab Retriever*, CAC study group, Richmond CA, Aug 26.
- Inman, K., Rudin N., , Lohmueller K., 2014, Probabilistic Genotyping and *Lab Retriever*, CAC meeting, Pasadena CA, Aug 26.
- Inman, K., Rudin N., Lohmueller K., 2013. Calculating Likelihood Ratios Incorporating a Probability of Drop-out using the free program *Lab Retriever*. ½ day Workshop, Promega International Symposium for Human Identity, Atlanta, GA.
- Lohmueller K., Rudin N., Inman, K., 2013. Analysis Of Allelic Drop-Out Using The Identifiler ® And PowerPlex ® Forensic STR Typing Systems II. Evaluation Of Estimated Drop-Out Probabilities, Presentation, AAFS, Washington D.C.
- Inman, K., Lohmueller K., Rudin N., 2013. Analysis of allelic drop-out using the Identifiler ® and PowerPlex ® 16 forensic STR typing systems I. Estimation of drop-out probabilities, Presentation, AAFS, Washington D.C.
- Inman, K., Rudin N., Lohmueller K., 2013. Calculating Likelihood Ratios Incorporating a Probability of Drop-out: Introducing *Lab Retriever*, a free and user-friendly software program. Workshop, AAFS, Washington D.C.
- Rudin, N., Inman, K., Circumstantial Evidence that Supports an Inference for the Defense: Getting the most out of your DNA profile, 2013. NACDL conference, Washington D.C.
- Inman, K., Rudin N., Lohmueller K., 2012. Calculating Likelihood Ratios Incorporating a Probability of Drop-out: A New Web-based Tool, CAC meeting, Bakersfield, CA.
- Lohmueller K., Rudin N., Inman, K., 2011. Approaches to Measure the Strength of DNA Evidence Exhibiting Possible Stochastic Effects. CAC meeting, Sacramento, CA.
- Inman, K., Rudin N., Lohmueller K. 2011. A review of detection thresholds and their application to low-template DNA samples. CAC meeting, Sacramento, CA.
- Lohmueller K., Rudin N., Inman, K. 2011. Performance of statistical approaches to measure the strength of DNA evidence exhibiting possible stochastic effects. ICFIS meeting, Seattle, WA.
- Lohmueller, K., Rudin, N., 2011. The application of likelihood ratios using allelic drop-out to case samples, ICFIS, Seattle, WA.
- Lohmueller K., Rudin N., Inman, K. 2011. Performance of Statistical Approaches to Measure the Strength of DNA Evidence Exhibiting Possible Stochastic Effects, AAFS meeting, Chicago, IL.
- Lohmueller K., Rudin N., Inman, K. Analysis of allelic drop-out using the Identifiler STR multiplex. Promega Human Identity Symposium, San Antonio, TX.
- Rudin, N. and Inman, K., Workshop: Introduction to perception, observer effects, bias, and expectation in forensic science, AAFS, Seattle, WA.
- Rudin, N., 2010, Defining the science in forensic science, part of a symposium “Just science, how scientists can reform the criminal justice system”
- Lohmueller K., Rudin N., Inman, K. 2010, Tools for estimating the weight of evidence for difficult profiles. CAC meeting, Oakland, CA.
- Rudin, N., and Inman, K., 2008. The Role of Forensic Science in the Innocence Movement, CAC meeting, Sacramento, CA.
- Rudin, N., 2008. The Consequence of Keg Stands. CAC meeting, Sacramento, CA.

- Rudin, N., 2005. Y-STRs Come of Age: A disputed interpretation. CAC meeting, Oakland, CA.
- Rudin, N., 2003. It Takes a Criminalist to see the Forest for the Trees. CAC meeting, San Diego, CA.
- Rudin, N. 2002. Houston, We Have a Problem. CAC meeting, Huntington Beach, CA.
- Rudin, N. 2002. The Database Hit that Missed the Mark. CAC meeting, San Francisco, CA.
- Rudin, N. 2002. Biological Evidence as Transfer Evidence. CAC meeting, San Francisco, CA.
- Rudin, N. and Inman, K. 1999. The Origin of Evidence. CAC meeting, Oakland, CA.
- Rudin, N. 1999. Case Review. CAC meeting, Oakland, CA.
- Rudin, N. 1998. DNA Case Review. CAC meeting, Monterey, CA.
- Rudin, N. and Inman K. 1993. Development of Mini-satellite Variant Repeat (MVR) Analysis for Forensic Samples. Promega Human Identity Symposium, Scottsdale, AZ.
- Barcellos, L., and Rudin, N. 1993. The Case of the Laundered Results. CAC meeting, Berkeley, CA.
- Rudin, N., and Inman, K. 1993. Development of Mini-satellite Variant Repeat for Forensic Analysis. CAC meeting, Berkeley, CA.
- Rudin, N., 1993. Evaluation of Methods involving PCR Amplification of Additional DNA Sequence and Length Polymorphisms for Forensic Typing. AAFS meeting, Boston, MA
- Rudin, N.R., Konzak, K., Gima, L., Brewer, L., Buoncristiani, M., Horne, M., Inman, K., Ma, M., Pierson, M., Sims, G., Bashinski, J. 1992. A Systematic Study of the Effect of Various Environmental Abuses on RFLP and PCR Analysis of Forensic Samples. Promega Human Identity Symposium, Scottsdale, AZ.
- Rudin, N.R., Konzak, K., Gima, L., Brewer, L., Buoncristiani, M., Horne, M., Inman, K., Ma, M., Pierson, M., Sims, G., Bashinski, J. 1992. A Systematic Study of the Effect of Various Environmental Abuses on RFLP and PCR Analysis of Forensic Samples. AAFS meeting, New Orleans, LA
- Rudin, N.R., Konzak, K., Gima, L., Brewer, L., Buoncristiani, M., Horne, M., Inman, K., Ma, M., Pierson, M., Sims, G., Bashinski, J. 1991. A Systematic Study of the Effect of Various Environmental Abuses on RFLP and PCR Analysis of Forensic Samples. CAC meeting, Ontario, CA.
- Rudin, N., H.W. Moise, J.T. Brown and M.S. Esposito. 1990. The *REC3* gene of *S. cerevisiae*: molecular cloning, disruption and DNA sequencing. Yeast: (Spec Iss.)
- Moise, H.W., Rudin, N. J.T. Brown and M.S. Esposito. 1990. The *REC1* DNA strand-transfer protein of *Saccharomyces cerevisiae* is required for recombination, X-ray damage repair, mating-type switching and meiosis. In abstracts of papers presented at the 1990 meeting on yeast genetics and molecular biology, The Hague, The Netherlands.
- Fishman-Lobell, J., N. Rudin and J. Haber. 1990. Increasing the distance between direct repeats slows the kinetics of double-strand break induced recombination. In abstracts of papers presented at the 1990 meeting on yeast genetics and molecular biology, The Hague, The Netherlands.
- Rudin, N., H. Moise, J.T., Brown and M.S. Esposito. 1989. The *REC1*, *REC3* AND *REC4* genes of *Saccharomyces cerevisiae*; *in vivo* and *in vitro* phenotypes of conditional



- hyporecombination mutants. Abstracts of FASEB conference on genetic recombination and genome rearrangements, July 9-14, 1989, p.48.
- Brown, J. T., N. Rudin and M.S. Esposito. 1989. The *REC1*, *REC3* AND *REC4* genes of *Saccharomyces cerevisiae*. AAAS annual meeting, San Francisco, CA. Abs. 428.
- Esposito, M.S., N. Rudin and G.T. Thomson. 1989. Novel YAC vectors and *Saccharomyces cerevisiae* recipients for study of human DNA recombination and ordering of YAC human genomic libraries. Abstracts of papers presented at the 1989 Cold Spring Harbor meeting on genome mapping and sequencing, April 26-30, 1989, p.74.
- Esposito, M.S., J.T. Brown, and N. Rudin. 1988. The *REC1* gene of *Saccharomyces cerevisiae* is required for spontaneous mitotic gene conversion, intragenic recombination, intergenic recombination, genomic stability, and sporulation *In vivo* and *in vitro* properties of the temperature sensitive mutation *REC1-1*. *Yeast* 4: s308 (Spec. Iss.).
- Rudin, N, E. Sugarman and J.E. Haber. 1988. *HO*-endonuclease-induced recombination in yeast. *Yeast* 4: s309 (Spec. Iss.).
- Esposito, M.S., J.T. Brown, and N. Rudin. 1988. The *REC1* gene of *S. cerevisiae* is required for spontaneous mitotic gene conversion, intra- and intergenic recombination, genomic stability, repair of X-ray damage and sporulation. In abstracts of papers presented at the 1988 meeting on Intermediates in Genetic Recombination. Cold Spring Harbor Laboratory, Cold Spring Harbor, New York. p.194.
- Rudin, N, E. Sugarman and J.E. Haber. 1988. *HO*-endonuclease-induced recombination in yeast. In abstracts of papers presented at the 1988 meeting on Intermediates in Genetic Recombination. Cold Spring Harbor Laboratory, Cold Spring Harbor, New York. p.193.
- Rudin, N., E. Sugarman, and J.E. Haber. *HO*-induced recombination events in a *LACZ* duplication system. In Abstracts of papers presented at the 1987 meeting on yeast genetics and molecular biology, San Francisco California. p. 398.
- Rudin, N., S. Stewart, and J.E. Haber. Cis-acting sequences in mating-type switching. In abstracts of papers presented at the 1987 meeting on Yeast genetics and molecular biology, San Francisco, California. p. 176.
- Rudin, N., S. Stewart and J. E. Haber. 1986. Homologous and non-homologous sequences involved in mating type switching. *Yeast* 2: s330 (suppl).
- Rudin, N. and J. E. Haber. 1985. Effect of Interchromosomal Mating-type Switching in *S. cerevisiae*. *Genetics* 110: s60 (suppl).
- Rudin, N., B. Connolly, M. Kluznik and J. E. Haber. 1985. Effects of interchromosomal mating type switching in *S. cerevisiae*. In abstracts of papers presented at the 1985 meeting on Molecular Biology of Yeast. Cold Spring Harbor Laboratory, Cold Spring Harbor, New York. p. 122.

#### OPINION AND EDITORIAL ARTICLES

- Rudin, N., and Inman K., Causes of wrongful conviction (Don't believe everything you think), *CACNews*, 1<sup>st</sup> Quarter, 2014
- Rudin, N., and Inman K., What science could (and should) do for justice, *CACNews*, 4th Quarter, 2013
- Rudin, N., and Inman K., Can we talk?, *CACNews*, 3<sup>rd</sup> Quarter, 2013
- Rudin, N., and Inman K., We're probably thinking ... About probabilistic approaches to weighting evidence, *CACNews*, 2<sup>nd</sup> Quarter, 2013

- Rudin, N., and Inman K., Journey to the Red Planet: Curiosity meets Forensic Science *CACNews*, 1<sup>st</sup> Quarter, 2013
- Rudin, N., and Inman K., The Proceedings of Dinner: Bridging the Generations *CACNews*, 4<sup>th</sup> Quarter, 2012
- Rudin, N., and Inman K., Lake Errbegon "... where the evidence is unambiguous, the analyses robust, and all the criminalists are above average. " *CACNews*, 3<sup>rd</sup> Quarter, 2012
- Rudin, N., and Inman K., A Decade of the Proceedings of Lunch – Thinking Allowed, and thinking aloud *CACNews*, 2<sup>nd</sup> Quarter, 2012
- Rudin, N., and Inman K., The discomfort of thought – a discussion with John Butler *CACNews*, 1<sup>st</sup> Quarter, 2012
- Rudin, N., and Inman K., To err is human and inevitable, *CACNews*, 4<sup>th</sup> Quarter, 2011
- Rudin, N., and Inman K., Why politics is worse for science than the law, *CACNews*, 2<sup>nd</sup> Quarter, 2011
- Rudin, N., and Inman K., That's not what we meant: Sequential Unmasking revisited, *CACNews*, 1<sup>st</sup> Quarter, 2011
- Rudin, N., and Inman K., How low can you go? The experience fallacy: Quothe the raven "In my experience," never more! *CACNews*, 4<sup>th</sup> Quarter, 2010
- Rudin, N., and Inman K., How low can you go? Should you just say no? *CACNews*, 3<sup>rd</sup> Quarter, 2010
- Rudin, N., and Inman K., 'tis the Season: The NAS "one year later" Commemorative edition, 2<sup>nd</sup> Quarter, 2010
- Rudin, N., and Inman K., Dining with a Founder: A conversation with Jay Siegel, *CACNews*, 1<sup>st</sup> Quarter, 2010
- Thompson., *et al.*, Commentary on: Thornton JI., Letter to the editor – a rejection of "working blind" as a cure for contextual bias. *J Forensic Sci*, 55(6), 2011
- Krane, D., *et al.*, Commentary on: Budowle B., *et al.* A perspective on errors, bias, and interpretation in the forensic sciences and direction for continuing advancement. *J Forensic Sci*, 55(1), 2010.
- Krane, D., *et al.*, Time for DNA Disclosure, *Science*, 326, 2009.
- Rudin, N., and Inman K., Dining with a Founder, A conversation with Jay Siegel, *CACNews*, 1<sup>st</sup> Quarter, 2010.
- Rudin, N., and Inman K., How much should the analyst know and when should she know it, *CACNews*, 4<sup>th</sup> Quarter, 2009.
- Rudin, N., and Inman K., Challenging the canon, *CACNews*, 3<sup>rd</sup> Quarter, 2009
- Rudin, N., and Inman K., Stakes, steaks and stakeholders, *CACNews*, 2<sup>nd</sup> Quarter, 2009
- Krane, D., *et al.*, Authors' response to Ostrum B., Commentary on: sequential unmasking: a means of minimizing observer effects in forensic DNA interpretation. *J Forensic Sci* 54(6), 2009.
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- Rudin, N., and Inman K., The forensic disadvantage suffered by forensic scientists, *CACNews*, 3rd Quarter, 2008.
- Rudin N., and Inman K., Genetic Witness: Through the Lens of a Social Scientist, *CACNews*, 2nd Quarter, 2008.
- Rudin N., and Inman K., Keith and Norah's Top 10: Areas in which forensic science could improve, *CACNews*, 1st Quarter, 2008.
- Rudin N., and Inman K., The Flodbit Problem: What are we Doing?, *CACNews*, 4th Quarter, 2007.
- Rudin N., and Inman K., The Urban Myths and Conventional Wisdom of Transfer: DNA as Trace Evidence, *CACNews*, 3<sup>rd</sup> Quarter, 2007.
- Rudin N., and Inman K., Know the Code, *CACNews*, 2<sup>nd</sup> Quarter, 2007.
- Rudin N., and Inman K., A frosty debate: The chilling effect of a cold hit in a DNA database, *CACNews*, 1<sup>st</sup> Quarter, 2007.
- Rudin N., and Inman K., Seeing DeForest AND the Trees, *CACNews*, 4<sup>th</sup> Quarter 2006.
- Rudin N., and Inman K., The Pen is Mightier than the Pipette, *CACNews*, 2<sup>nd</sup> Quarter, 2006.
- Rudin N., and Inman, K., The Shifty Paradigm, Part II: Errors and Lies and Fraud, Oh My! *CACNews* 1st Quarter 2006.
- Rudin N., and Inman, K., The Shifty Paradigm, Part I: Who Gets to Define the Practice of Forensic Science? *CACNews* 4th Quarter 2005.
- Rudin N., and Inman, K., A Hitchhiker's Guide to Accreditation, *CACNews* 3rd Quarter 2005.
- Rudin N., and Inman, K., Fingerprints in Print, The Sequel: The continuing saga of a latent print misidentification in the Madrid bombing case, *CACNews* 2nd Quarter 2005.
- Rudin N., and Inman, K., Fingerprints in Print: The apparent misidentification of a latent print in the Madrid bombing case, *CACNews* 4th Quarter 2004.
- Rudin N., and Inman, K., Myth or Aphorism: Sayings by which we live (The Dogma of forensic science), *CACNews* 3rd Quarter 2004.
- Rudin N., and Inman, K., The Culture of Bias - Part 1I, *CACNews* 2nd Quarter 2004.
- Rudin N., and Inman, K., The Culture of Bias - Part 1, *CACNews* 1st Quarter 2004.
- Rudin N. and Inman, K. Which Came First, the Blood or the Print? The Rest of the Story. *CACNews* 4th Quarter 2003.
- Rudin N. and Inman, K. Which Came First, the Blood or the Print? The Role of Experimentation in Forensic Casework *CACNews* 3rd Quarter, 2003.
- Rudin N. and Inman, K. Experts on experts. What is the role of the scientist in assisting an attorney with an opposing expert? *CACNews* 2nd Quarter, 2003.

Rudin N. and Inman, K. Articulating Hypotheses – the null hypothesis and beyond. *CACNews* 1st Quarter, 2003.

Rudin N. and Inman, K. Biological Evidence as Trace Evidence: The Forensic Science of DNA Typing, *CACNews*, 4th Quarter, 2002.

Rudin N. and Inman, K. The Transfer of Evidence and Back Again. *CACNews*, 3rd Quarter, 2002.

Rudin N. and Inman, K. How Far Should an Analyst Go? *CACNews*, 2nd Quarter, 2002.

Rudin N. and Inman, K. Specialist vs. Generalist. *CACNews*, 1st Quarter, 2002.

Rudin N. and Inman, K. Divisible Matter. *CACNews*, 4th Quarter, 2001.

Inman, K. and Rudin N. How much should the analyst know? *CAC News*, Fall, 1997

Rudin, N., DNA Untwisted, *San Francisco Daily Journal*, April, 1995.

### **TRAINING PROVIDED**

1-day training on forensic statistics, likelihood ratios incorporating a probability of drop-out, Lab Retriever statistical software, San Francisco forensic DNA laboratory, Nov. 6, 2014

1-day training on forensic statistics, likelihood ratios incorporating a probability of drop-out, Lab Retriever statistical software, SWAFS, Sept. 25, 2014

3-day training on forensic statistics, likelihood ratios incorporating a probability of drop-out, Lab Retriever statistical software, Jefferson Co. Regional Crime laboratory, Sept. 9-11, 2014

3-day training on forensic statistics, likelihood ratios incorporating a probability of drop-out, Lab Retriever statistical software, Oregon State Police forensic DNA laboratory, July 22-24, 2014

2-day training on Advanced Topics in Forensic DNA Profiling, Cook County Public Defender Office, June 26-27, 2014

1-day training on forensic statistics, likelihood ratios incorporating a probability of drop-out, Lab Retriever statistical software, MAFS, June 9, 2014

1.5-day training on forensic statistics, likelihood ratios incorporating a probability of drop-out, Lab Retriever statistical software, NEAFS, May 21-22, 2014

½ day training on forensic statistics, likelihood ratios incorporating a probability of drop-out, Lab Retriever statistical software, MAAFS, May 20, 2014

3-day training on forensic statistics, likelihood ratios incorporating a probability of drop-out, Lab Retriever statistical software, Denver PD forensic DNA laboratory, July 15-17, 2013.

### **SELECTED INVITED SPEAKING ENGAGEMENTS**

2014. Invited Speaker, Forensic DNA 101; Know the Code, Virginia Indigent Defender Conference, Sept. 16-17, 2014, Newport News, VA.

2010. Invited Speaker, The Science and Fiction of Forensic Science, *Pomona College Alumni Association*, Palo Alto, CA.

2009. Invited Speaker, What's an Allele Between Friends and other Y-STR topics, *DePaul University Law School Conference on Science and the Law*, Chicago, IL.

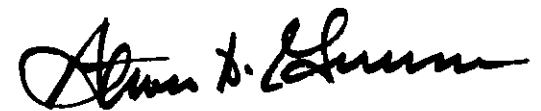
2008. Invited Speaker, Sequential Unmasking, *DePaul University Law School Conference on Science and the Law*, Chicago, IL.

2007. Invited Speaker, Debunking CSI, *University of Santa Clara Law School*, Santa Clara, CA, 2007

2007. Invited Speaker, DNA Transfer, *DNA boot camp, organized by the Minnesota Public Defender Office*, Brainerd, MN.
2007. Invited Speaker, Forensic DNA: The Science and Fiction of Forensic Science, *American Chemical Society*, Berkeley, CA.
2007. Invited Speaker, Literature Review of Transfer, *DePaul University Law School Conference on Science and the Law*, Chicago, IL.
2006. Invited Speaker. Mitochondrial DNA in GA v. Vaughn: a Case Example. *The Science of DNA Profiling*, Dayton, OH.
2006. Invited Speaker, The Science of Individualization, or is it?, *European Academy of Forensic Sciences*, Helsinki, Finland.
2006. Invited Speaker, The Threshold Effect, *DePaul University Law School Conference on Science and the Law*, Chicago, IL.
2005. Invited Speaker, How to work with a DNA expert, *California Public Defender's Association*, Monterey, CA.
2005. Faculty, DNA Cross Examination College, national trial skills conference organized by the *Public Defender Service of the District of Columbia*, Washington, D.C.
2004. Invited Speaker, European Circuit Conference, USAF, Garmish, Germany.
2002. Invited Speaker, Death Penalty Defense Seminar, *California Association for Criminal Justice/California Public Defender's Association*, Monterey, CA.
2001. Invited Speaker, Forensic DNA and the Law conference, *The Cyril H. Wecht Institute for Forensic Science and Law*, Duquesne University, Pittsburgh, PA.
2001. Invited Lecturer, *Institut de police scientifique et de criminologie*, University of Lausanne, Switzerland.
1998. Invited Speaker, Introduction to Forensic DNA Analysis; Technical issues in forensic DNA casework. *VIII Simposio Internacional de Criminalistica*, Cartagena, Colombia.

#### **SELECTED CONTINUING EDUCATION AND TRAINING**

- Promega PowerPlex Y23 seminar, Walnut Creek, CA, 2012.
- Future Trends in Forensic DNA Technology, AB HID University, Berkeley, CA, 2009.
- Hair Microscopy for the DNA Analyst Workshop, Skip Palenik, San Jose, CA, 2009.
- Population Statistics and Forensic DNA Analysis, George Carmody, San Diego, CA, 2001.
- Statistics and Population Genetics for Forensic DNA Analysis, NCSU, NC, 1999.
- STR Analysis and Typing, California Criminalistics Institute, Sacramento, CA, 1999.
- Automated Sequencer Training course, Applied Biosystems, Foster City, CA, 1992.
- Advanced Aspects of Forensic DNA Analysis School, FBI Academy, Quantico, VA, 1992.
- PCR-DQ $\alpha$  Training Class, Cetus Corporation, Berkeley, CA, 1991.



CLERK OF THE COURT

NWEW  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
AGNES LEXIS  
Chief Deputy District Attorney  
Nevada Bar #11064  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

KENYA SPLOND, aka,  
Kenny Splond, #1138461

Defendant.

CASE NO: C-14-296374-1

DEPT NO: VIII

**SECOND SUPPLEMENTAL NOTICE OF WITNESSES**  
[NRS 174.234(1)(a)]

TO: KENYA SPLOND, aka, Kenny Splond, Defendant; and

TO: FRANK P. KOCKA, ESQ., Counsel of Record:

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

\*Indicates Additional Witnesses

NAME

ADDRESS

\*AYALA, J.

LVMPD #7906

\*BAUTISTA, ARACELI

STAR MART, 5001 N. Rainbow, LVN 89130

BRUMAGHIN, A.

LVMPD P#13756

\*BRUNO, B.

LVMPD P#7912

CARTER, J.

LVMPD P#14302

\*CASPER, P.

LVMPD P#6549

1	COLEMAN, R.	LVMPD P#13843
2	*COLON, M.	LVMPD P#7585
3	CUSTODIAN OF RECORDS	CCDC
4	CUSTODIAN OF RECORDS	LVMPD - DISPATCH
5	CUSTODIAN OF RECORDS	LVMPD – RECORDS
6	CUSTODIAN OF RECORDS	NEVADA DMV
7	CUSTODIAN OR RECORDS	STAR MART, 5001 N. Rainbow, LVN 89130
8	*DUNN, C.	LVMPD #8253
9	*ECHEVERRIA, SAMUEL	3651 N. Rancho Rd., #251, LV NV 89130
10	FAIRWEATHER, M.	LVMPD P# 8390
11	*FLETCHER, S.	LVMPD P# 5221
12	FORSON, C.	LVMPD P#14082
13	FRANCIS, D.	LVMPD P# 8434
14	GARCIA, B.	LVMPD P#13822
15	*GOULDTHORPE, H.	LVMPD P# 8646
16	HAAS, F.	LVMPD P#7420
17	HABERMAN, JEFFREY	1881 W. Alexander Rd, #1146, NLVN 89032
18	HOFFMAN, N.	LVMPD P#13516
19	*HOLZER, KIRSTY	6237 Blushing Willow St., NLV NV 89081
20	*JIMENEZ, GRACIELA	1864 Bledsoe, LV NV 89130
21	*KAVON, SCOTT	LVMPD P#4131
22	KIRWIN, B.	LVMPD P#13890
23	*KOWALSKI, B.	LVMPD P#8550
24	LANDERS, J.	LVMPD P#8073
25	*MARQUEZ, A.	LVMPD P#6250
26	MCCRAY, D.	LVMPD P# 8126
27	*PAZOS, E.	LVMPD P#6817
28	RALYEA, C.	LVMPD P#13357

1 ROWBERRY, J.

LVMPD P#13894

2 SLATHAR, BRITTANY

C/O District Attorney's Office

3 \*SPOOR, M.

LVMPD P# 3856

4 \*WILLIAMS, ALISA

3837 Alpine Track Av., NLV NV 89130

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

7 STEVEN B. WOLFSON  
8 DISTRICT ATTORNEY  
Nevada Bar #001565

9  
10 BY /s/ Agnes Lexis  
AGNES LEXIS  
11 Chief Deputy District Attorney  
Nevada Bar #11064

12  
13  
14  
15  
16 CERTIFICATE OF FACSIMILE TRANSMISSION

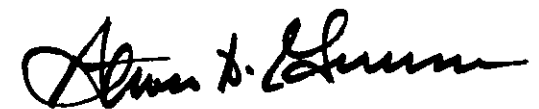
17 I hereby certify that service of Second Supplemental Notice of Witnesses, was made  
18 this 12th day of August, 2014, by facsimile transmission to:

19 FRANK P. KOCKA, ESQ.  
20 (702) 383-6106

21 /s/ Stephanie Johnson  
Employee of the District Attorney's Office

22  
23  
24  
25  
26  
27  
28 14F01777A/saj/L-1





CLERK OF THE COURT

NWEW  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
AGNES M. LEXIS  
Chief Deputy District Attorney  
Nevada Bar #011064  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

KENYA SPLOND, aka  
Kenny Splond,  
#1138461

Defendant.

CASE NO: C-14-296374-1

DEPT NO: VIII

NOTICE OF EXPERT WITNESSES  
[NRS 174.234(2)]

TO: KENYA SPLOND, aka Kenny Splond, Defendant; and

TO: FRANK P. KOCKA, ESQ., Counsel of Record:

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

**SHAWN FLETCHER, P#5221, or Designee** – A Crime Scene Analyst with the Las  
Vegas Metropolitan Police Department. He is an expert in the area of crime scene  
investigation and the identification, documentation, collection and preservation of evidence  
and will give opinions related thereto.

**HEATHER GOULDTHORPE, P#8646, or Designee** – A Latent Print Examiner with  
the Las Vegas Metropolitan Police Department. She is an expert in the area of fingerprints  
and fingerprint examination and comparison and will give scientific opinions related thereto.  
She will testify regarding the print comparisons she performed in this case.

1           **MONTE SPOOR, P#3856, or Designee** - A Crime Scene Analyst with the Las Vegas  
2 Metropolitan Police Department. He is an expert in the area of crime scene investigation and  
3 the identification, documentation, collection and preservation of evidence and will give  
4 opinions related thereto.


5           These witnesses are in addition to those witnesses endorsed on the Information or  
6 Indictment and any other witnesses for which a separate Notice of Witnesses and/or Expert  
7 Witnesses has been filed

8           The substance of each expert witness' testimony and a copy of all reports made by or  
9 at the direction of the expert witness has been provided in discovery.

10          A copy of each expert witness' curriculum vitae, if available, is attached hereto.

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

14                               BY

15                                 
16                               AGNES M. LEXIS  
17                               Chief Deputy District Attorney  
18                               Nevada Bar #011064

19                               CERTIFICATE OF FACSIMILE TRANSMISSION

20           I hereby certify that service of State's Notice of Expert Witnesses, was made this 25<sup>th</sup>  
21 day of August, 2015, by facsimile transmission to:

22                               FRANK P. KOCKA, ESQ.  
23                               FAX #702-383-6106

24                               BY:

25                                 
26                               J. Robertson  
27                               Secretary for the District Attorney's Office

28           14F01777A/jr/L-1

Curriculum Vitae

Las Vegas Criminalistics Bureau  
Statement of Qualifications

Name: Shawn Fletcher

P# 5221

Date: 8-28-03

CURRENT CLASSIFICATION		
	Classification	Minimum Qualifications
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.

FORMAL EDUCATION		
Institution	Major	Degree/Date
Central Michigan University	Health & Fitness	Degree 1990
CCSN	Criminal Justice/Law Enforcement	Degree 1995

TESTIMONY		
Yes	No	

EMPLOYMENT HISTORY		
Employer	Title	Date
LVMPD	Sr. Crime Scene Analyst	7-29-96

FLETCHER, SHAWN  
SENIOR CSA

P# 5221  
SS#: 381-94-9092

CRIMINALISTICS BUREAU - FIELD  
DOH: 07-29-96

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
1990	Health Fitness & Health Promotion in Hospital & Corporate Settings Minor in Nutrition	Central Michigan University	Degree
1995	Criminal Justice/ Law Enforcement	CCSN	Degree
01-24-96	Crime Scene Processing for Resident Officers	LVMPD	7
02-28-96	NCIC - Phase III - Full Access	LVMPD	7
07-29 to 08-16-96	Crime Scene Analyst Academy	LVMPD	105
08-16-96	CAPSTUN for Civilians	LVMPD	1.5
09-96	FATS Training	LVMPD	?
09-18, 19 & 09-25-96	Civilian Firearm/Use of Force	LVMPD	21
09-20-96	NCIC - Phase II - Limited Access	LVMPD	4
08-17 to 11-01-96	Field Training	LVMPD	440
09-18 to 09-25-96	Civilian Firearm/Use of Force	LVMPD	21
09-27-96	DI Weaponless Defense/Handcuff	LVMPD	3
09-27-96	Combat Shooting Simulator/FATS	LVMPD	1
09-30-96	Duty Weapon Qualification	LVMPD	2
10-24-96	Driver Training - Level 2	LVMPD	8
11-07-96	Ultraviolet (UV) Light Orientation and Safety Presentation	LVMPD	1
12-13-96	International Association For Identification - Member	# 15197	
01-21-97	Forensic Science	American Institute of Applied Science (AIAS)	260
01-28 to 01-30-97	Top Gun Training	LVMPD	21
02-27-97	Moot Court - Video	LVMPD	2
03-26-97	Introduction to Computers	LVMPD	4
03-30-97	Duty Weapon Qualification	LVMPD	2
01-28 to 01-30-97	Top Gun Training	LVMPD	21
??	Crime Scene Processing for Resident Officers		7
02-28-??	NCIC Phase III	LVMPD	8
06-13-97	NCIC - Phase I - Video	LVMPD	20 Min

06-18-97	Critical Procedures Test	LVMPD	
07-02-97	Duty Weapon Qualification	LVMPD	2
09-08 to 09-12-97	Crime Scene Technology Workshop 2	Northwestern University, Traffic Institute	40
09-30-97	Duty Weapon Qualification	LVMPD	2
10-06 to 10-10-97	Investigative Photography I	Northwestern University, Traffic Institute	40
12-31-97	Duty Weapon Qualification	LVMPD	2
02-23-98	Domestic Violence	LVMPD	1
03-28-98	Critical Procedures Test	LVMPD	2
03-31-98	Duty Weapon Qualification	LVMPD	2
05-19-98	Investigative Profiling of Sexually Deviant Crimes	LVMPD	7
06-23-98	Duty Weapon Qualification	LVMPD	2
08-24 to 08-28-98	Bloodstain Evidence Workshop I	Northwestern University, Traffic Institute	40
09-28-98	Optional Weapon	LVMPD	
11-17-98	Combat Shooting Simulator/FATS	LVMPD	1
12-15-98	Verbal Judo	LVMPD	7
12-22-98	Duty Weapon Qualification	LVMPD	2
03-30-99	Duty Weapon Qualification	LVMPD	2
04-13-99	Critical Procedures Test	LVMPD	2
04-28 to 04-30-99	First Annual Educational Conference Opening Ceremonies (2) Banquet (3)	NSDIAI	
"	Blood Enhancement	NSDIAI	4
"	DNA Evidence	NSDIAI	2
"	Latent Prints on Skin	NSDIAI	2
"	Footwear/Tire Tracks	NSDIAI	2
"	Unabomber	NSDIAI	2
"	JFK-MLK Evidence	NSDIAI	2
"	Laboratory Photography	NSDIAI	2
"	Polly Klass	NSDIAI	2
06-15-99	Duty Weapon Qualification	LVMPD	2
06-30-99	Optional Weapon	LVMPD	
08-23 to	Bloodstain Evidence Workshop 2	Northwestern University,	40

08-27-99		Traffic Institute	
09-21-99	Duty Weapon Qualification	LVMPD	2
09-27-99	Combat Shooting Simulator/FATS	LVMPD	1
01-20-00	Latent Fingerprint Development Workshop	U.S. Secret Service	8
03-08-00	Critical Procedures Testing	LVMPD	
03-22, 23 & 03-24-00	Forensic Death and Homicide Investigation	Public Agency Training Council - National Criminal Justice	24
04-07-00	Winning Courtroom Confrontations Seminar	LVMPD	4
06-13-00	Crime Scene Analyst Certification (qualified)- Completed all requirements and tests	IAI	
06-20-00	Handgun Qualification 3 - Recertification	LVMPD	1
07-18-00	Handgun Qualification 3 - Recertification	LVMPD	1
07-23 to 07-29-00	85 <sup>TH</sup> International Educational Conference (SEE BELOW) Charleston Civic Center, Charleston, West Virginia	IAI	Total - 13 hrs. (See below)
"	W-BL104 - Blood Presumptive Tests to Enhancement Techniques	IAI	3
"	W-BL205 - Swipes, Wipes and other Transfer Impressions	IAI	2
"	W-CS401 - The Recovery of Skeletal Remains	IAI	4
"	W-FT302 - The Collection and Preservation of Footwear Evidence	IAI	4
10-31-00	Firearms Training Simulator	LVMPD	1
01-26-01	Ridgeology Comparison Techniques - Advanced	Forensic Identification Training Seminars, LLC	40
02-12 to 02-14-01	Clandestine Laboratory Safety Certification Course Occasional Site Worker - Patrol Response to Clandestine Drug Labs (02-14-01 - 4 hours)	LVMPD	24
03-19-01	In-the-Blink-of-an -Eye - Video	LVMPD	15 Min.
03-23-01	Handgun Qualification 1	LVMPD	1
04-05-01	Driver Training Class II	LVMPD	8
04-11 to 04-13-01	NSDIAI - 3 <sup>rd</sup> Annual Educational Conference Gizmos & Gadgets	NSDIAI	2
"	Officer Involved Shootings	NSDIAI	3
"	Ted Binion Homicide	NSDIAI	2
09-07-01	Firearms Qualification 2 - Recertification	LVMPD	2
10-01-01	RC - Use of Force - Video Training Tape #1	LVMPD	15 Min.
10-29-01	Bloodstain Pattern Analysis - Angle of Impact Proficiency Exercise - Certificate #22	LVMPD Criminalistics Bureau	3

12-20-01	Firearms Training Simulator - Recertification	LVMPD	1
12-21-01	Handgun Qualification 4 - Recertification	LVMPD	1
02-19-02	Handgun Qualification 1 - Recertification	LVMPD	1
03-30-02	Documentation of Footwear & Tire Impressions	LVMPD	1
03-30-02	Forensic Anthropology	LVMPD	1.5
04-02-02	Objective Approach to the Crime Scene	LVMPD	1
04-01-02	Clandestine Laboratory Safety - Fingerprint Processing	LVMPD	1
04-25-02	Chemical Enhancements of Bloodstains, Preliminary Steps	LVMPD - Criminalistics Bureau	1
08-04 to 08-10-02	87 <sup>th</sup> International Educational Conference - See below	IAI	
"	W-50 - Advanced Documentation for Bloodstain Evidence	"	3
"	W-69 - Painting with Light	"	3
"	Triple Murders in the City of Los Angeles: The Trial in Indonesia	"	1
"	Death Cases: Truth or Consequences	"	1
"	Suicide or Is It?	"	1
01-04-03	IAI - Crime Scene Certification Board - Declared "Senior Crime Scene Analyst"	IAI	
02-03 to 02-05-03	Shooting Incident Reconstruction - Forensic Identification Training Seminars	LVMPD	24

## Statement of Qualifications

Name: Heather Gouldthorpe

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
FORENSIC LABORATORY  
STATEMENT OF QUALIFICATIONS**

Date: 03/09/11

Name: Heather Gouldthorpe P#: 8646 Classification: Forensic Scientist Trainee

Current Discipline of Assignment: Latent Prints

EXPERIENCE IN THE FOLLOWING DISCIPLINE(S)			
Controlled Substances		Blood Alcohol	
Toolmarks		Breath Alcohol	
Trace Evidence		Arson Analysis	
Toxicology		Firearms	
Latent Prints	X	Crime Scene Investigations	
Serology		Clandestine Laboratory Response Team	
Document Examination		DNA Analysis	
Quality Assurance		Technical Support / AFIS	

EDUCATION			
<i>Institution</i>	<i>Dates Attended</i>	<i>Major</i>	<i>Degree Completed</i>
National University	08/2000-01/2001	Forensic Science	MFS
Bowling Green State University	08/1991-05/1995	Sociology	BA
College of Southern Nevada	08/1998-02/2006	N/A	N/A
Grossmont College	08/2002-12/2002	N/A	N/A
University of Nevada - Las Vegas	08/1996-12/1998	N/A	N/A
University of Akron	06/1993-08/1993	N/A	N/A

ADDITIONAL TRAINING / SEMINARS			
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Statement of Qualifications

Name: Heather Gouldthorpe

<i>Course / Seminar</i>	<i>Location</i>	<i>Dates</i>
Basic Statistics/SWAFS	Dallas, TX	09/24/2010
Law and Testimony/SWAFS	Dallas, TX	09/20/2010
Forensic Fingerprint Analysis Basics	Forensic Training Network online course	08/26/2010
History of an Optimized Development 1,2 Indanedione-Zinc Reagent	Las Vegas, NV	10/07/2009
Automated Fingerprint Identification System	West Virginia University Extended Learning online course	04/02/2009
Analysis of Distortion in Latent Prints	Las Vegas, NV	02/09-02/10/2009
GSW-L Latent User Methods and Operations	Las Vegas, NV	09/17- 09/18/2008
Application of Statistics to Ridgeology and ACE-V Methodology	Las Vegas, NV	03/31 - 04/04/2008
Forensic Ridgeology	Las Vegas, NV	02/18 - 02/22/2008
Forensic Photography	Las Vegas, NV	02/14/2008
Forensic Digital Imaging	Las Vegas, NV	01/07 - 01/09/2008
Introduction to Firearms Safety	Las Vegas, NV	10/24/2007
Drivers Training	Las Vegas, NV	07/02/2007
87 <sup>th</sup> Annual IAI International Educational Conference	Las Vegas, NV	08/04 - 08/10/2002
Nevada State Division for the IAI 3 <sup>rd</sup> Annual Educational Conference	Las Vegas, NV	04/11 - 04/13/2001
Fingerprinting -State of Nevada P.O.S.T. Basic Certification	Las Vegas, NV	04/16/1997
<b>COURTROOM EXPERIENCE</b>		
<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>
District Court	Latent Prints	1

## Statement of Qualifications

Name: Heather Gouldthorpe

COURTROOM EXPERIENCE		
<i>Court</i>	<i>Discipline</i>	<i>Number of Times</i>

EMPLOYMENT HISTORY		
<i>Employer</i>	<i>Job Title</i>	<i>Date</i>
Las Vegas Metropolitan Police Department	Forensic Scientist Trainee	03/05/11-Present
Las Vegas Metropolitan Police Department	Forensic Laboratory Technician	06/02/07 - 03/05/11
Las Vegas Metropolitan Police Department	Law Enforcement Support Technician	02/28/07-06/02/07

PROFESSIONAL AFFILIATIONS	
<i>Organization</i>	<i>Date(s)</i>
International Association for Identification (IAI)	2007-present
Southwestern Association of Forensic Scientists (SWAFS)	2010-present

PUBLICATIONS / PRESENTATIONS:

Statement of Qualifications

Name: Heather Gouldthorpe

<b>PUBLICATIONS / PRESENTATIONS:</b>
<b>OTHER QUALIFICATIONS:</b>
IAI Certified Latent Print Examiner - November 30, 2010.

**Las Vegas Criminalistics Bureau  
Statement of Qualifications**

Name: Monte Spoor

P# 3856

Date: 10-01-03

<b>CURRENT CLASSIFICATION</b>		
	<i>Classification</i>	<i>Minimum Qualifications</i>
	Crime Scene Analyst I	AA Degree with major course work in Criminal Justice, Forensic Science, Physical Science or related field, including specialized training in Crime Scene Investigation.
	Crime Scene Analyst II	18 months - 2 years continuous service with LVMPD as a Crime Scene Analyst I.
X	Senior Crime Scene Analyst	Two (2) years as a Crime Scene Analyst II to qualify for the promotional test for Senior Crime Scene Analyst.
	Crime Scene Analyst Supervisor	Four (4) years continuous service with LVMPD and completion of probation as a Senior Crime Scene Analyst. Must have the equivalent of a Bachelor's Degree from an accredited college or university with major course work in Criminal Justice, Forensic Science, Physical Science or related field.

<b>FORMAL EDUCATION</b>		
<i>Institution</i>	<i>Major</i>	<i>Degree/Date</i>
U of Wyoming	General Studies	30 Cr. Hours
UNLV	Criminal Justice	92 Cr. Hours

<b>TESTIMONY</b>		
<i>Yes</i>	<i>No</i>	

<b>EMPLOYMENT HISTORY</b>		
<i>Employer</i>	<i>Title</i>	<i>Date</i>
LVMPD	Sr. Crime Scene Analyst	12-4-89

SPOOR, MONTE

P# 3856  
CRIMINALISTICS BUREAU -

FIELD

SENIOR CSA

SS#: 530-04-8532

DOH: 12-04-89

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
12-90	Forensic Science	American Institute of Applied Science	160
12-22-90	LVMPD Drug Testing Film	LVMPD	25 Min.
09-08-90	Firearms Training	LVMPD	8
09-28-90	Stress Management	LVMPD	4
07-11-90	New Employee	LVMPD	24
01-02-91	Driver's Training - Level 02	LVMPD	8
01-15-91	Gangs in Clark County	LVMPD	4.5
02-28-91	NCIC Level III - Video	LVMPD	
07-03-91	Gun Shot Wounds - Video	LVMPD	1
09-30-91	Duty Weapon Qualification	LVMPD	1
12-21-91	Duty Weapon Qualification	LVMPD	1
01-16-92	Firearms, Toolmarks, and Documents	LVMPD	8
02-18-92	Footwear Evidence/Recovering Firearms	LVMPD	7
03-31-92	Duty Weapon Qualification	LVMPD	1
05-05-92	NCIC Phase I - Miscellaneous Updates	LVMPD	10 Min.
06-30-92	Duty Weapon Qualification	LVMPD	1
06-30-92	Additional Duty Weapons Qualification	LVMPD	
07-92	In-Service Training Video - New Pursuit Policy	LVMPD	1
09-08-92	Asian Gangs	LVMPD	3
09-09-92	Bloodborne Pathogens - Video	LVMPD	25 Min.
09-30-92	Duty Weapon Qualification	LVMPD	1
12-31-92	Duty Weapon Qualification		
02-26-93	Polilight Laser Photography & Chemical Techniques	LVMPD	8
03-10-93	NCIC Phase I - Videotape	LVMPD	20 Min.

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DATE	CLASS TITLE	AGENCY	CREDIT HOURS
03-26-93	Off-Duty Weapon Qualification	LVMPD	
03-26-93	Back-up Weapon Qualification	LVMPD	
03-31-93	NCIC Phase I - Video	LVMPD	20 Min.
03-31-93	Duty Weapon Qualification	LVMPD	1
06-30-93	Duty Weapon Qualification	LVMPD	1
09-30-93	Duty Weapon Qualification	LVMPD	1
12-31-93	Duty Weapon Qualification	LVMPD	1
03-03-94	Driver's Training	LVMPD	8
03-10-94	Det. Tactics (PR24) - Recertification		4
03-11-94	Back-up Weapon Qualification	LVMPD	
03-15-94	Asian Gangs	LVMPD	3
03-31-94	Duty Weapon Qualification	LVMPD	1
08-01-94	Abuse/Neglect of Elderly	LVMPD	2.5
09-30-94	Optional Weapon	LVMPD	
09-30-94	Duty Weapon Qualification	LVMPD	1
09-94	Bloodborne Pathogens - Video	LVMPD	
10-17-94	Air Smuggling	LVMPD	7
12-02-94	Gangs in Clark County	LVMPD	7
03-31-95	Duty Weapon Qualification	LVMPD	1
06-30-95	Duty Weapon Qualification	LVMPD	1
09-30-95	Duty Weapon Qualification	LVMPD	1
03-26-96	(A) Back-up Weapon Qualification & (B) Off-Duty Weapon Qualification	LVMPD	
03-31-96	Duty Weapon Qualification	LVMPD	1
06-30-96	Duty Weapon Qualification	LVMPD	2
07-09-96	Critical Procedures Test	LVMPD	
07-22-96	Gunshot & Stab Wounds: A Medical Examiner's View	Barbara Clark Mims Associates	8
09-23 to		Northwestern University,	

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DATE	CLASS TITLE	AGENCY	CREDIT HOURS
09-27-96	Crime Scene Technology II	Traffic Institute	40
09-30-96	Duty Weapon Qualification	LVMPD	2
02-04, 05, & 02-06-97	Top Gun Training	LVMPD	21
02-27-97	Moot Court - Video	LVMPD	2
03-10, 11, & 03-12-97	Practical Homicide Investigation	Public Agency Training Council - Public Safety Continuing Education	24
03-13-97	Ultraviolet (UV) Light Orientation and Safety Presentation	LVMPD	1
03-30-97	Duty Weapon Qualification	LVMPD	2
04-16-97	Conflict Resolution and Confrontation Skills	ETC W/CareerTrack Seminar	7
04-23, 24, & 04-30-97	Civilian Use of Force & Firearm Training	LVMPD	21
06-13-97	NCIC Phase I - Video	LVMPD	20 Min.
07-02-97	Duty Weapon Qualification	LVMPD	2
07-21-97	Critical Procedures Test	LVMPD	
08-27, 28, & 08-29-97	Train the Trainers - F.T.E.P	LVMPD	21
09-15 to 09-19-97	Bloodstain Evidence Workshop I	Northwestern University, Traffic Institute	40
09-30-97	Duty Weapon Qualification	LVMPD	2
10-06 to 10-10-97	Investigative Photography 1	Northwestern University, Traffic Institute	40
11-26-97	International Assoc. For Identification (IAI), Member # 15832	IAI	
12-04-97	Stress Management	LVMPD	4
12-31-97	Duty Weapon Qualification	LVMPD	2
02-04-98	Certificate of Appreciation - United Way of		

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DATE	CLASS TITLE	AGENCY	CREDIT HOURS
	Southern Nevada		
02-14-98	Trauma Shooting - Video	LVMPD	30 Min.
02-19-98	Combat Shooting Simulator (FATS)	LVMPD	1
02-23-98	Domestic Violence - Video	LVMPD	1
03-04-98	Clandestine Lab Dangers - Video	LVMPD	30 Min.
03-05-98	Secondary Devices - Video	LVMPD	30 Min.
03-31-98	Duty Weapon Qualification	LVMPD	2
04-08-98	Critical Procedures Test	LVMPD	
04-30-98	Class II - Driver Training	LVMPD	8
06-16-98	Duty Weapon Qualification	LVMPD	2
10-30-98	Nevada State Division of the International Association for Identification (NSDIAI) - Active Charter Member, Certificate #00069	NSDIAI	
12-04-98	Duty Weapon Qualification	LVMPD	2
12-07 to 12-11-98	Advanced Practical Homicide Investigation	Public Agency Training Council, National Crime Justice, Public Safety Continuing Education	40
01-15-99	Training - Motor Home Driving	LVMPD	4
03-22-99	Award Presentation and PR Photography	LVMPD	2
03-30-99	Duty Weapon Qualification	LVMPD	2
04-22-99	Latent Fingerprint Workshop of Cyanoacrylate Techniques	Detecto Print	6
04-28 to 04-30-99	First Annual Educational Conference - Unabomber	NSDIAI	2
"	Bombing Scenes	NSDIAI	2
"	Polly Klass	NSDIAI	2
"	Footwear/Tire Tracks	NSDIAI	2
"	DNA Evidence	NSDIAI	2
"	Child Abuse	NSDIAI	2



DATE	CLASS TITLE	AGENCY	CREDIT HOURS
"	J. Edgar Hoover	NSDIAI	2
"	Disaster Preparedness	NSDIAI	2
08-23 to 08-27-99	Bloodstain Evidence Workshop 2	Northwestern University, Traffic Institute	40
09-27-99	Duty Weapon Qualification	LVMPD	2
09-27 to 10-01-99	1 <sup>st</sup> Annual Advanced Crime Scene Reconstruction Invitational Workshop - "Police- Involved Incidents" - hosted by LVMPD	Institute of Applied Forensic Technology	40
10-28-99	Combat Shooting Simulator - FATS	LVMPD	1
01-19-00	Latent Fingerprint Development Workshop	U.S. Secret Service	8
03-06 to 03-07-00	Hate Crimes and Extremist Groups	Public Agency Training Council, National Crime Justice	16
04-10 to 04-12-00	LVMPD Clandestine Laboratory/Safety Certification Course	LVMPD	24
12-11-00	How to Write User Manuals: A Technical- Writing Workshop	Padgett-Thompson	6 (0.6 CEUs)
01-17-01	Courtroom Testimony for Police Officers	State of Nevada Commission on Peace Officers' Standards and Training	4
02-27-01	The Grammar and Usage Seminar	Fred Pryor Seminars	6
04-11 to 04-17-01	Instructor Development	LVMPD	40
07-22 to 07-28-01	International Association for Identification - 86 <sup>th</sup> International Educational Conference (see below)	IAI	(see below)
"	Investigating Occult Crime	"	8
"	Killer on the Railcar	"	1.5
"	Unique Applications for Alternate Lights and Lasers	"	1
"	Specialized Photography: Techniques to Reveal Hidden Evidence	"	30 Min.
"	John Gacy, Serial Murderer	"	30 Min.

DATE	CLASS TITLE	AGENCY	CREDIT HOURS
"	Photographic Identification of Clothing from Wear and Tear and Manufactured characteristics - The Band-Aid Bandit Case	"	1
01-15-02	Bloodstain Pattern Analysis - Certificate # 037 - completed proficiency exercises - Given by Criminalistics Bureau	LVMPD Criminalistics Bureau	3
04-03-02	Documentation of Footwear & Tire Impressions	LVMPD	1
04-04-02	Criminal Law	LVMPD	2
08-04 to 08-10-02	87 <sup>th</sup> International Educational Conference - See below	IAI	
"	The Luck Factor	"	.5
"	Animation in Your Crime Scene - Utilization of 3-D	"	1
"	Courtroom or Classroom? Demonstrative Evidence	"	2
"	Fingerprint Evidence in the Danielle Van Damme Trial	"	1
"	Blood Reagents: Is it Really Blood?	"	1
"	Physical Evidence - Definitions and Uses	"	1
"	Latest Development in Vacuum Metal Deposition	"	1
01-20 to 01-24-03	Ridgeology Science Workshop - Forensic Identification Training Seminars	LVMPD	40
02-03 to 02-05-03	Shooting Incident Reconstruction - Forensic Identification Training Seminars	LVMPD	24

<b>Las Vegas Metropolitan Police Department</b> <b>Forensic Laboratory</b>  <b>(Supplemental) Report of Examination</b>  <b>Latent Prints</b>		<b>Distribution Date:</b> April 16, 2014 <b>Agency:</b> LVMPD <b>Primary Case #:</b> 140128-2214 <b>Incident:</b> Robbery <b>Requester:</b> Scott J Kavon <b>Location:</b> Robbery/Homicide Bureau <b>Lab Case #:</b> 14-01726
<b>Subject(s):</b>	Kenny SPLOND (Suspect)	

The following evidence was examined and results are reported below.

#### Latent Print Examination

Lab Item #	Impound Pkg #	Card #	Description	Results and Conclusions
Item 1	005221 - 1	Q1	One lift card from "Samsung Galaxy Mega demonstration phone on counter at south end".	One suitable print(s) marked A: A - The latent print was excluded from the following: SPLOND, Kenny
		Q2	One lift card from "Samsung Galaxy Mega demonstration phone on counter at south end".	No suitable latent prints.
		Q3	One lift card from "Samsung Galaxy Mega demonstration phone on counter at south end".	No suitable latent prints.
		Q4	One lift card from "Samsung Galaxy Mega demonstration phone on counter at south end".	One suitable print(s) marked A: A - The latent print was excluded from the following: SPLOND, Kenny
		Q5	One lift card from "Samsung Galaxy Mega demonstration phone on counter at south end".	One suitable print(s) marked A: A - The latent print was excluded from the following: SPLOND, Kenny

#### Exemplar Prints

Name	ID	Description
SPLOND, Kenny	1138461	LVMPD Archive fingerprints dated 2/2/2014

The evidence is returned to secure storage.

Technical Reviewer: Forensic Scientist Kathryn Aoyama P#8025

*Heather Gouldthorpe 8646*

Heather Gouldthorpe, #8646  
Forensic Scientist II

04/11/2014

- END OF REPORT -

<b>Las Vegas Metropolitan Police Department</b> <b>Forensic Laboratory</b> <b>Report of Examination</b> <b>Latent Prints</b>		<b>Distribution Date:</b> February 12, 2014 <b>Agency:</b> LVMPD <b>Primary Case #:</b> 140128-2214 <b>Incident:</b> Robbery <b>Requester:</b> Scott J Kavon <b>Location:</b> Robbery/Homicide Bureau <b>Lab Case #:</b> 14-01726
<b>Subject(s):</b>	None Listed	

The following evidence was examined and results are reported below.

The latent prints in package 005221 - 1 booked 01/29/2014 were screened for AFIS with the following results:

The latent print(s) were analyzed and do not qualify for AFIS entry.

This report is limited to comparisons made as a result of AFIS screening. Additional latent prints were collected from the crime scene and are available for comparison. If additional comparisons are needed to the person(s) listed above or other individuals please submit a Forensic Laboratory Examination Request (LVMPD63) to the Forensic Lab (e-mail request to: ForensicLab@lvmpd.com). Be sure to include the names and ID#'s of all individuals to be compared to the latent prints in this case.

Note: Registered latent prints will be deleted from the AFIS database when the case reaches the statute of limitations.

The evidence is returned to secure storage.

*Heather Gouldthorpe 8646*

Heather Gouldthorpe, #8646  
Forensic Scientist I

02/10/2014

- END OF REPORT -

<b>Las Vegas Metropolitan Police Department</b> <b>Forensic Laboratory</b> <b>Report of Examination</b> <b>Latent Prints</b>		<b>Distribution Date:</b> February 6, 2014 <b>Agency:</b> LVMPD <b>Primary Case #:</b> 140122-2866 <b>Incident:</b> Robbery <b>Requester:</b> Jeffrey M Smith <b>Location:</b> CSI <b>Lab Case #:</b> 14-01721
<b>Subject(s):</b>	Samuel ECHEVERRIA (AFIS)	

The following evidence was examined and results are reported below.

#### Latent Print Examination

Lab Item #	Impound Pkg #	Card #	Description	Results and Conclusions
Item 1	003856 - 1	Q1	One lift card "From the interior west side of the north facing glass entrance door."	Two suitable print(s) marked A and B: A - Searched through AFIS with positive results; identified to the left middle finger of ECHEVERRIA, Samuel.  B - Identified to the left index finger of ECHEVERRIA, Samuel.
		Q2	One lift card "From the interior east side of the north facing glass entrance door."	One suitable print(s) marked A: A - The latent print was excluded from the following: ECHEVERRIA, Samuel  Searched through AFIS with negative results and registered in the database.

#### Exemplar Prints

Name	ID	Description
ECHEVERRIA, Samuel	2806724	LVMPD Archive fingerprints dated 3/28/2011

The evidence is returned to secure storage.

Technical Reviewer: Forensic Scientist Heidi Eldridge P#14665

*Heather Gouldthorpe 8646*

Heather Gouldthorpe, #8646  
Forensic Scientist I

02/05/2014

- END OF REPORT -

<b>Las Vegas Metropolitan Police Department</b> <b>Forensic Laboratory</b>  <b>(Supplemental) Report of Examination</b>  <b>Latent Prints</b>		<b>Distribution Date:</b> April 16, 2014 <b>Agency:</b> LVMPD <b>Primary Case #:</b> 140122-2866 <b>Incident:</b> Robbery <b>Requester:</b> Scott Kavon <b>Location:</b> Robbery/Homicide Bureau <b>Lab Case #:</b> 14-01721
<b>Subject(s):</b>	Kenny SPLOND (Suspect) Samuel ECHEVERRIA (Victim)	

The following evidence was examined and results are reported below.

#### Latent Print Examination

Lab Item #	Impound Pkg #	Card #	Description	Results and Conclusions
Item 1	003856 - 1	Q1	One lift card "from the interior west side of the north facing glass entrance door."	Three suitable print(s) marked A, B and C: A - Identified to the left middle finger of ECHEVERRIA, Samuel.*  B - Identified to the left index finger of ECHEVERRIA, Samuel.*  C - Identified to the left ring finger of ECHEVERRIA, Samuel.
		Q2	One lift card "from the interior east side of the north facing glass entrance door."	One suitable print(s) marked A: A - The latent print was excluded from the following: ECHEVERRIA, Samuel SPLOND, Kenny  Searched through AFIS with negative results.

#### Exemplar Prints

Name	ID	Description
ECHEVERRIA, Samuel	2806724	LVMPD Archive fingerprints dated 3/28/2011
SPLOND, Kenny	1138461	LVMPD Archive fingerprints dated 2/2/2014

\*This report included identifications that were previously reported by FS H. Gouldthorpe, P#8646, on 02/05/14.

The evidence is returned to secure storage.

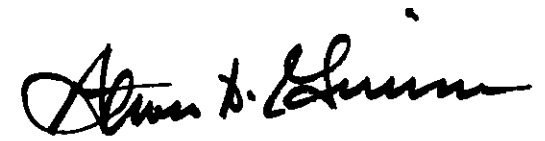
Technical Reviewer: Forensic Scientist Kathryn Aoyama P#8025

*Heather Gouldthorpe 8646*

Heather Gouldthorpe, #8646  
Forensic Scientist II

04/11/2014

- END OF REPORT -

  
CLERK OF THE COURT

1 **NOT**  
2 T. AUGUSTUS CLAUS, ESQ.  
3 LEGAL RESOURCE GROUP, LLC.  
4 Nevada Bar No. 10004  
5 205 N. Stephanie St., Suite D221  
6 Henderson, NV 89074  
7 Telephone: (702) 463-4900  
8 Fax: (702) 463-4800

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

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 vs.

12 KENYA SPLOND,  
13 #1138461

14 Defendant.

Case No.: C-14-296374-1

Dept. No.: 8

**NOTICE TO PLACE ON CALENDAR**

15 Upon the application of T. Augustus Claus, Defendant's KENYA SPLOND Attorney,  
16 it is hereby requested that the above entitled matter be placed on the 8:00 a.m. calendar on  
17 the 5 day of October, 2015, at 8:00 o'clock A.M. for the purpose of Continuing Trial Date.

18  
19 DATED this 24<sup>th</sup> day of September, 2015.

20 LEGAL RESOURCE GROUP, LLC.

21  
22 /s/ T. Augustus Claus  
23 T. AUGUSTUS CLAUS, ESQ.  
24 LEGAL RESOURCE GROUP, LLC.  
25 Nevada Bar No. 10004  
26 205 N. Stephanie St., Suite D221  
27 Henderson, NV 89074  
28

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of **LEGAL RESOURCE GROUP, LLC.**, and that on the 24<sup>th</sup> day of September, 2015, I caused the Notice to Place of Calendar to be served as follows:

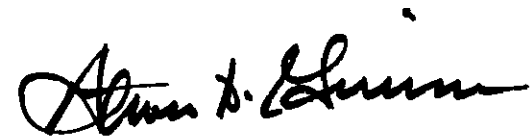
- ☐ by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid; and/or
- ☐ pursuant to EDCR 7.26, by sending it via facsimile; and/or
- ☐ by hand delivery via runner
- ☒ via electronic service

to the attorneys listed below:

DISTRICT ATTORNEY'S OFFICE  
Clark County District Attorney  
200 South Lewis Avenue  
Las Vegas, Nevada 89155  
pdmotions@clarkcountyda.com

/s/ Tobi Caperon  
An Employee of the Legal Resource Group, LLC.





CLERK OF THE COURT

**MOT**

T. AUGUSTUS CLAUS, ESQ.  
LEGAL RESOURCE GROUP, LLC.  
Nevada Bar No. 10004  
205 N. Stephanie St., Suite D221  
Henderson, NV 89074  
(702) 463-4900 Phone  
(702) 463-4800 Fax  
Attorney for Defendant

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

KENYA SPLOND,  
#1138461

Defendants.

Case No.: C-14-296374-1

Dept. No.: 11

**MOTION TO PRODUCE AND PRESERVE EVIDENCE**

COMES NOW the Defendant KENYA SPLOND, by and through his attorney, T. AUGUSTUS CLAUS, Esq., of the law firm LEGAL RESOURCE GROUP, LLC., and hereby moves this Honorable Court to Order the State to Produce And Preserve Evidence. This Motion is based upon the pleadings and papers on file herein, the following Points and Authorities, the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, and any additional arguments which may be had at the hearing hereon.

DATED this 15<sup>th</sup> day of March, 2016.

LEGAL RESOURCE GROUP, LLC

/s/ T. Augustus Claus

T. AUGUSTUS CLAUS, ESQ.  
LEGAL RESOURCE GROUP, LLC  
Attorney for Defendant

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DATED this 15<sup>th</sup> day of March, 2016.

/s/ T. Augustus Claus  
T. AUGUSTUS CLAUS, ESQ.  
Nevada Bar No. 10004  
205 N. Stephanie St., Suite D221  
Henderson, NV 89074  
(702)463-4900 Phone  
(702)463-4800 Fax  
Attorney for Defendant

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF FACTS**

4 Kenya Splond (hereinafter “SPLOND” or “Defendant”) is currently awaiting for Jury  
5 Trial to be rescheduled and is charged with multiple counts of Burglary While In Possession of A  
6 Firearm, Robbery With Use of A Deadly Weapon, and one count of possession of stolen  
7 property and conspiracy to commit robbery. These charges from alleged crimes committed  
8 across three different locations on three different dates.

9 On January 22<sup>nd</sup>, 2014, the Cricket Wireless store located at 4343 N. Rancho Drive was  
10 burgled by a customer asking for a cellphone battery. The perpetrator pointed a black firearm at  
11 Sam Echeverria and demanded money, which they received in the amount of \$386.71.

12 On January 28<sup>th</sup>, 2014, the Metro PCS store located at 6663 Smoke Ranch Road was  
13 burgled by a customer asking to buy a cell phone. The perpetrator used to gun to demand money  
14 from Graciela Angeles, which they received in the amount of \$300.00.

15 On February 2<sup>nd</sup>, 2014, the Star Mart Convenience Store located at 5001 N. Rainbow  
16 Boulevard was burgled by a customer buying two packs of Newport 100s cigarettes and a pack  
17 of Wrigley’s chewing gum. The perpetrator pointed a gun at Brittany Slathar and demanded  
18 money, which Ms. Slathar cleverly denied him by saying that she couldn’t open the cash drawer  
19 without making a sale. While not pleased, the perpetrator ultimately escaped with two packs of  
20 cigarettes and chewing gum.

21 SPLOND was arrested as part of a vehicle stop approximately 1000 yards away.

22 This Motion follows:  
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**II.**

**LEGAL ARGUMENT**

The State's obligations to produce evidence prior to trial can be broadly be categorized as both statutory and constitutional in nature.

**1. Statutory Requirements**

NRS 174.235 provides in part that:

“1. Except as otherwise provided in NRS 174.233 to 174.295, inclusive, at the request of a defendant, the prosecuting attorney shall permit the defendant to inspect and to copy or photograph any:

(a) Written or recorded statements or confessions made by the defendant, or any written or recorded statements made by a witness the prosecuting attorney intends to call during the case in chief of the State, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney;

(b) Results or reports of physical or mental examinations, scientific tests or scientific experiments made in connection with the particular case, or copies thereof, within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney; and

(c) Books, papers, documents, tangible objects, or copies thereof, which the prosecuting attorney intends to introduce during the case in chief of the State and which are within the possession, custody or control of the State, the existence of which is known, or by the exercise of due diligence may become known, to the prosecuting attorney.”

NRS 174.235 (2016).

In short, NRS 174.235 provides for the statutory production by the State of all “...papers, documents, tangible objects, or copies thereof, which the prosecuting attorney intends to introduce during the case in chief of the State...” NRS 174.235(1)(c). While the State ceaselessly seeks to limit their duties of production under all theories of discovery, a narrow

1 reading NRS 174.235 pertaining to only case-in-chief evidence leads to absurd results.<sup>1</sup>

2 Accordingly, at a minimum, the State's statutory duties should be read to include all witness  
3 accounts and scientific testing that have been generated in association with this case.

## 4       **2.       Constitutional Requirements**

5       Failure of the State to provide exculpatory evidence in its actual or constructive  
6 possession prior to trial can result in violations of a defendant's due process rights in the Fifth  
7 and Fourteenth Amendments of the United States Constitution. These rules apply regardless of a  
8 limiting statutory framework and create a class of materials generally referred to as "Brady  
9 Materials". See generally Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.12d 215  
10 (1963); Kyles v. Whitley, 514 U.S.W. 419, 115 S.Ct. 1555, 131 L.Ed.2d 290 (1995); Strickler v.  
11 Greene, 527 U.S. 263, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999). When the defense makes a  
12 specific request for Brady material and the State does not provide such material, the Nevada  
13 Supreme Court has held that there are grounds for reversal of a conviction "if there exists a  
14 reasonable possibility that the claimed evidence would have affected the judgment of the trier of  
15 fact." Roberts v. State, 110 Nev. 1121, 881 P.2d 1, 5 (1994). See, also, Jimenez v. State, 112  
16 Nev. 610, 619, 918 P.2d 687, 692 (1996), and State v. Bennett, 119 Nev. 589, 81 P.3d 1, 8  
17 (2003).

18       The Nevada Supreme Court has clarified the components of a Brady violation, including  
19 that:

20               "Due process does not require simply the disclosure of  
21               'exculpatory' evidence. Evidence also must be disclosed if it  
22               provides grounds for the defense to attack the reliability,  
                  thoroughness, and good faith of the police investigation, to  
                  impeach the credibility of the state's witnesses, or to bolster the

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23       <sup>1</sup> For instance, NRS 171.1965 governs the production of evidence prior to a preliminary hearing and  
requires the State to provide any "written or recorded statements" and "scientific tests" of any witnesses, not limited  
to the simply what the state intends to introduce in its case in chief.

1 defense case against prosecutorial attacks. Furthermore,  
2 '[d]iscovery in a criminal case is not limited to investigative leads  
3 or reports that are admissible in evidence.' Evidence 'need not  
4 have been independently admissible to have been material.'"  
5 Mazzan v. Warden, Ely State Prison, 116 Nev. 48, 67, 993 P.2d 25, 37 (2000) (citations  
6 omitted). Accordingly, Brady Materials include not only directly exculpatory materials, but also  
7 those materials that allow a defendant to attack the substance of the State's case or theory.

8 Finally, the State is charged with the constructive possession of their agents and the  
9 Nevada Supreme Court has firmly stated:

10 "Moreover, even if the detectives withheld their reports without the  
11 prosecutor's knowledge, 'the state attorney is charged with  
12 constructive knowledge and possession of evidence withheld by  
13 other state agents, such as law enforcement officers.'"

14 Jimenez v. State, 112 Nev. 610, 620, 918 P.2d 687, 693 (1996), citing to Gorham v. State,  
15 597 So.2d 782, 784 (Fla.1992); cf. United States v. Butler, 567 F.2d 885, 891 (9th Cir.1978). In  
16 Kyles v. Whitley, supra, the United States Supreme Court made it clear that the prosecutor has  
17 an affirmative obligation to obtain Brady material and provide it to the defense, even if the  
18 prosecutor is initially unaware of its existence. In so finding, the Supreme Court noted that  
19 "[t]he prosecution's affirmative duty to disclose evidence favorable to a defendant can trace its  
20 origins to early 20th century strictures against misrepresentation and is of course most  
21 prominently associated with this Court's decision in Brady v. Maryland . . ." Id. 514 U.S. at 432.  
22 The Kyles Court also made it clear that this obligation exists even where the defense does not  
23 make a request for such evidence. Id.

### 21 3. Defendant's Specific Requests

22 Defendant, by and through counsel, hereby requests this Honorable Court to Order the  
23 State of Nevada to preserve and produce the following items. In the case of any items the Court

1 does not order produced, the Defendant requests that the State be ordered to preserve said items,  
2 should they be necessary for any trial or appeal of this matter.

- 3 a. The last known address and contact information for those interviewed or questioned  
4 regarding these events, including those who may have provided leads to law  
5 enforcement.
- 6 b. Written or recorded statements, memoranda, and summaries of oral statements of the  
7 persons associated with the events charged in this case, whether or not the State  
8 intends to call such persons as witnesses in this matter.
- 9 c. Any and all written or recorded notes of any law enforcement agent(s), containing  
10 essentially verbatim information provided by any of the person(s) associated with the  
11 events charged in this case.
- 12 d. Original audio and/or video tape recordings of all interviews conducted by or on  
13 behalf of the law enforcement agents, relative to the charges against SPLOND in  
14 Case No. C-14-296374-1& C-14-300105-1.
- 15 e. The criminal histories within the knowledge of the State of Nevada for the persons  
16 interviewed or questioned regarding these events, including his or her name and last  
17 known address; and any potential witnesses relating to the charges against SPLOND  
18 in Case No. C-14-296374-1& C-14-300105-1.<sup>2</sup>
- 19 f. Information concerning any actual, implied, and/or prospective promises made to,  
20 deals offered to and/or benefits, payments and/or inducements to any prospective  
21 witnesses or co-defendants in this case, whether formal or not, or completed or not.

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22 <sup>2</sup> To the extent that the State contends that these criminal histories cannot be provided to the defense absent  
23 a court order, Defendant requests that this court issue such an order, as they has no independent access to this  
information, except for the SCOPE printouts for the witnesses endorsed on the Criminal Complaint in this case. The  
scope of this request is such that, to the extent that the State, either in the initial investigation by Metro or in  
preparation for proceeding with charges, has availed itself of criminal history information via SCOPE or NCIC, such  
knowledge should be shared with the Defendant.

1 This would include, but is not limited to, specifically, any rewards, reimbursements,  
2 vouchers, cash payments and/or assistance in the broadest sense received by any  
3 prospective witnesses or co-defendants.

4 g. Statements, formal or not, and recorded or not, alleged to have been made by the  
5 Defendant, related in any way to Event Number 140122-2866, 140128-2214, 140202-  
6 0538, 140202-0526, 140202-2619, Case No. C-14-296374-1& C-14-300105-1  
7 (District Court) or intended to be used by the State in this case from any other case.  
8 This request includes any notes of law enforcement.

9 h. Pictures or photographs, whether digital or in another form, taken of any object or  
10 item inventoried or impounded into evidence as a result of the search warrant issued  
11 in this matter, or evidence which is related and intending to be used by the State in  
12 any way, to the following to Event Number 140122-2866, 140128-2214, 140202-  
13 0538, 140202-0526, 140202-2619, Case No. C-14-296374-1& C-14-300105-1  
14 (District Court), including but not limited to:

- 15 1. Evidence Impound Reports
- 16 2. Crime Scene Investigation Reports

17 i. Documents and/or notes of law enforcement agent(s) or investigator(s), reflecting the  
18 investigation where the Defendant was arrested.

19 j. Reports of the incidents complained of in or related to 140122-2866, 140128- 2214,  
20 140202-0538, 140202-0526, 140202-2619, Case No. C-14-296374-1& C-14-300105-  
21 1 (District Court), including any surveillance video and/or audio tapes prepared or  
22 generated by:

- 23 1. The witnesses



1                   2. The Officers

2                   3. Any other law enforcement agent(s) who was involved, in any way,  
3                   with the incidents which are the basis for the underlying charges in the  
4                   case as referenced hereinabove.

5           k. Field Notes or Case Monitoring forms (or time lines) prepared in relation to 140122-  
6           2866, 140128-2214, 140202-0538, 140202-0526, 140202-2619, Case No. C-14-  
7           296374-1& C-14-300105-1 (District Court).<sup>3</sup>

8           l. All written reports, notes, memoranda, maps, drawings or diagrams written, drawn  
9           or otherwise prepared in connection with, or pertaining, in any way, to the  
10           investigation of the crimes charged against the Defendant in Case No. C-14-296374-1  
11           & C-14-300105-1, by the following:

12                   1. The witnesses

13                   2. The Officers

14                   3. Any other law enforcement agent(s) who was involved, in any way,  
15                   with the incidents which are the basis for the underlying charges in the  
16                   case as referenced hereinabove.

17           m. Any of the following enumerated items that are relevant to 140122-2866, 140128-  
18           2214, 140202-0538, 140202-0526, 140202-2619, Case No. C-14-296374-1& C-14-  
19           300105-1 (District Court) whether the State intends to offer them into evidence at  
20           trial or not, that are not covered under another specific request or provided

21  
22  
23                   <sup>3</sup> These items go directly to the nature and thoroughness of the police investigation. As noted in Mazzan,  
supra, evidence “must be disclosed if it provides grounds for the defense to attack the reliability, thoroughness, and  
good faith of the police investigation.” Therefore, these field notes are necessary to providing the accused with the  
information necessary to such a defense.

1 previously, including but not limited to:<sup>4</sup>

2 1. Photographs;

3 2. Videotapes;

4 3. Audiotapes

5 n. Call logs, field notes and/or memos, calls for services, officer log records, and radio  
6 traffic records, both audio and written, referencing the following 140122-2866,  
7 140128-2214, 140202-0538, 140202-0526, 140202-2619, Case No. C- 14-296374-1&  
8 C-14-300105-1 (District Court).

9 o. Tangible or demonstrative objects, books, papers or documents which the State will  
10 rely on for trial, or which were seized at the time of the arrest of the accused, or the  
11 execution of any search warrants relating to the charges against the Defendant, not  
12 already provided to the defense.

13 p. A copy of any search warrant issued and/or served in relation to the charges against  
14 the Defendant in Case No. C-14-296374-1& C-14-300105-1.

15 q. All reports, laboratory or otherwise, or statements of experts made in connection  
16 with the charges against SPLOND in Case No. C-14-296374-1& C-14-300105-1,  
17 including, but not limited to, the Las Vegas Metropolitan Police Department  
18 Computer Forensic Lab Report related to, Event Number 140122-2866, 140128-2214,  
19 140202-0538, 140202-0526, 140202-2619 and any subsequent addendums, changes,  
20 or supplemental, whether intended to be used at trial or not, including results of any  
21 scientific tests, experiments or comparisons by any officer, detective, crime scene  
22 analyst, laboratory technician, evidence technician, agent of the State, or private

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23 <sup>4</sup> Should any of the items in this request have been lost or destroyed, those items should be specifically listed, and an explanation for their loss or destruction should be furnished.

1 individuals consulted by the State.

- 2 r. The accused herein specifically requests information as to whether any digital  
3 imaging or enhancement techniques were used in connection with the analysis of any  
4 evidence related to this cause, whether the results of such techniques or analyses are  
5 intended to be used by the State at trial or not.
- 6 s. Any criminal history information or acts concerning the Defendant which the State  
7 intends to use at the trial of this matter, including use for impeachment if he should  
8 testify, and/or for proof of knowledge, intent, common scheme or plan, or other  
9 purposes, pursuant to NRS 48.045.
- 10 t. All 911 calls, CAD and LRMS records related to any of the following Event Number  
11 140122-2866, 140128-2214, 140202-0538, 140202-0526, 140202-2619, Case No. C-  
12 14-296374-1& C-14-300105-1 (District Court).
- 13 u. All records and/or recordings relating to transmissions of radio traffic for the Event  
14 Number 140122-2866, 140128-2214, 140202-0538, 140202-0526, 140202-2619,  
15 Case No. C-14-296374-1& C-14-300105-1 (District Court).
- 16 v. Any information obtained during the investigation of this matter which could in any  
17 way be considered favorable to the defense, whether discounted by the State or not.  
18 Such information includes, but is not limited to, information furnished by those  
19 interviewed during the investigation, the results of any searches performed, any leads  
20 which were furnished to law enforcement, whether such leads were followed-up or  
21 not, and any forensic evidence.
- 22 w. Any information on any criminal history or any material or information which relates  
23 to specific instances of misconduct of any witness in the case from which it could be

1 inferred that the person is untruthful and which may be or may lead to admissible  
2 evidence. This includes, but is not limited to, any juvenile record, misdemeanors, out-  
3 of-state arrests and convictions, outstanding arrest warrants or bench warrants, and  
4 cases which were dismissed or not pursued by the prosecuting agency or any other  
5 information that would go to the issue of credibility and bias, whether or not the  
6 information is admissible as evidence.

7 **III.**

8 **CONCLUSION**

9 For the foregoing reasons, Defendant asks this Honorable Court grant the above Motion, and  
10 issue any Orders as may be necessary to preserve evidence in this case.

11 DATED this 15<sup>th</sup> day of March, 2016.

12  
13 LEGAL RESOURCE GROUP, LLC

14 /s/ T. Augustus Claus  
15 T. AUGUSTUS CLAUS, ESQ.  
16 Nevada Bar #010004  
17 LEGAL RESOURCE GROUP, LLC  
18  
19  
20  
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23

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of **LEGAL RESOURCE**  
3 **GROUP, LLC.**, and that on the 15<sup>th</sup> day of March, 2016, I caused the MOTION TO  
4 PRODUCE AND PRESERVE EVIDENCE to be served as follows:

5 ☐ by placing a true and correct copy of the same to be deposited for mailing in the  
6 U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first  
class postage was fully prepaid; and/or

7 ☐ pursuant to EDCR 7.26, by sending it via facsimile; and/or

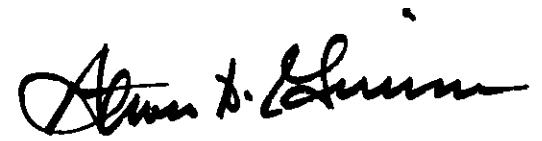
8 ☐ by hand delivery via runner

9 ☒ via electronic service

10 to the attorneys listed below:  
11

12 DISTRICT ATTORNEY'S OFFICE  
13 Clark County District Attorney  
200 South Lewis Avenue  
Las Vegas, Nevada 89155  
14 pdmotions@clarkcountyda.com

15 /s/ Tobi Caperon  
16 An Employee of the Legal Resource Group, LLC.  
17  
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23

  
CLERK OF THE COURT

**MOT**

T. AUGUSTUS CLAUS, ESQ.  
LEGAL RESOURCE GROUP, LLC.  
Nevada Bar No. 10004  
205 N. Stephanie St., Suite D221  
Henderson, NV 89074  
(702) 463-4900 Phone  
(702) 463-4800 Fax  
*Attorney for Defendant*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

KENYA SPLOND,  
#1138461

Defendants.

Case No.: C-14-296374-1

Dept. No.: 11

**MOTION TO SUPPRESS EVIDENCE OBTAINED AS RESULT OF ILLEGAL STOP**

COMES NOW the Defendant KENYA SPLOND, by and through their attorney, T. AUGUSTUS CLAUS, Esq., of the law firm LEGAL RESOURCE GROUP, LLC., and hereby files this MOTION TO SUPPRESS EVIDENCE OBTAINED AS RESULT OF ILLEGAL STOP. This Motion is based upon the pleadings and papers on file herein, the following Points and Authorities, the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution, and any additional arguments which may be had at the hearing hereon.

DATED this 18<sup>th</sup> day of March, 2016.

LEGAL RESOURCE GROUP, LLC

/s/ T. Augustus Claus

T. AUGUSTUS CLAUS, ESQ.  
LEGAL RESOURCE GROUP, LLC  
*Attorney for Defendant*

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DATED this 18<sup>th</sup> day of March, 2016.

/s/ T. Augustus Claus  
T. AUGUSTUS CLAUS, ESQ.  
Nevada Bar No. 10004  
205 N. Stephanie St., Suite D221  
Henderson, NV 89074  
(702)463-4900 Phone  
(702)463-4800 Fax  
*Attorney for Defendant*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF FACTS**

4 Kenya Splond (hereinafter “SPLOND” or “Defendant”) is currently awaiting for Jury  
5 Trial to be rescheduled and is charged with multiple counts of Burglary While In Possession of A  
6 Firearm, Robbery With Use of A Deadly Weapon, and one count of possession of stolen  
7 property and conspiracy to commit robbery. These charges from alleged crimes committed  
8 across three different locations on three different dates.

9 On January 22<sup>nd</sup>, 2014, the Cricket Wireless store located at 4343 N. Rancho Drive was  
10 burgled by a customer asking for a cellphone battery. The perpetrator pointed a black firearm at  
11 Sam Echeverria and demanded money, which they received in the amount of \$386.71.

12 On January 28<sup>th</sup>, 2014, the Metro PCS store located at 6663 Smoke Ranch Road was  
13 burgled by a customer asking to buy a cell phone. The perpetrator used to gun to demand money  
14 from Graciela Angeles, which they received in the amount of \$300.00.

15 On February 2<sup>nd</sup>, 2014, the Star Mart Convenience Store located at 5001 N. Rainbow  
16 Boulevard was burgled by a customer buying two packs of Newport 100s cigarettes and a pack  
17 of Wrigley’s chewing gum. The perpetrator pointed a gun at Brittany Slathar and demanded  
18 money, which Ms. Slathar cleverly denied him by saying that she couldn’t open the cash drawer  
19 without making a sale. While not pleased, the perpetrator ultimately escaped with two packs of  
20 cigarettes and chewing gum.

21 Initially police were notified of the incident via an alarm company and the register silent  
22 alarm. Slathar called 911 and indicated that the male who robbed her had left on Rainbow Blvd.  
23 towards “the bar next door” on foot. There were no indications of accomplices or vehicle



involvement. *See* Exhibit A. Based on this information, Officers observed a silver 4 door sedan leaving the area and conducted a traffic stop “for extreme damage to the rear of the vehicle and for leaving the area of the Robbery.” *See* Exhibit B. No citation appears to have been issued for the vehicle extreme damage. *See* Exhibit C.

Upon initiation of the traffic stop, officers observed someone under a sheet in the back of the car and ultimately took SPLOND into custody. *See Exhibit B.* During the arrest of SPLOND, the cigarettes and gum associated with the Star Mart robbery were located, as well as a firearm. It does not appear that the police sought or ever received a search warrant.

This Motion follows:

## II.

## LEGAL ARGUMENT

Even investigatory stops by police must be based on something related to what they are seeking. In the case at bar, there is no indication of any facts, other than being in the vicinity of the robbery that give police any basis for an investigatory stop.

The Fourth Amendment to the United States Constitution provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,” and that “no Warrants shall issue, but upon probable cause.” Article I, Section 18 of the Nevada Constitution similarly provides, “[t]he right of the people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause....” Under these cognate provisions of our federal and state constitutions, warrantless searches “are per se unreasonable ... subject only to a few specifically established and well-delineated exceptions.” Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967); Hughes v. State, 116 Nev. 975,

1 979, 12 P.3d 948, 951 (2000). One such exception is the “automobile exception.” However, even  
2 an automobile stop requires probable cause. *See generally State v. Lloyd*, 129 Nev. Adv. Op. 79,  
3 312 P.3d 467 (2013).

4 While probable cause could be found if the suspect was “...reasonably within the area of  
5 the robbed office and met a reasonable description of the robber”, the driver of the vehicle was  
6 female and there were no indications of an accomplice or a vehicle. *Johnson v. State*, 86 Nev.  
7 52, 54, 464 P.2d 465, 466 (1970), *see also Franklin v. State*, 96 Nev. 417 (1980). Conversely,  
8 not even reasonable suspicion is found for situations like this, where a person standing in a “high  
9 drug area” is conversing with others and doesn’t wish to speak with police. An individual's  
10 presence in an area of expected criminal activity, standing alone, is not enough to support a  
11 reasonable, particularized suspicion that the person is committing a crime. *Brown v. Texas*, 443  
12 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979); *see also Illinois v. Wardlow*, 528 U.S. 119, 124,  
13 120 S. Ct. 673, 676, 145 L. Ed. 2d 570 (2000).

14 As a general matter, if the state obtains evidence in violation of a suspect’s constitutional  
15 rights, the evidence must be excluded from trial. *See Mapp v. Ohio*, 367 U.S. 643 (1961); *State*  
16 *v. Carter*, 322 N.C. 709, 370 S.E.2d 553 (1988). While not automatic, the exclusionary rule  
17 operates as a judicially created remedy designed to safeguard against future violations of Fourth  
18 Amendment rights through the rule's general deterrent effect. *See U.S. v. Leon*, 468 U.S. 897;  
19 *U.S. v. Calandra*, 414 U.S. 338; *Arizona v. Evans*, 514 U.S. 1 (1995). Here the conduct  
20 complained of was by the arresting officer himself and the application of the exclusionary rule is  
21 strongest under any analysis. Accordingly, the Defendant moves to suppress the evidence  
22 obtained as a result of his wrongful seizure or in the alternative, for a hearing to establish those  
23 additional facts to support exclusion.

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## CONCLUSION

For the foregoing reasons, Defendant asks this Honorable Court grant the above Motion, and issue any Orders as may be necessary to preserve evidence in this case.

DATED this 18<sup>th</sup> day of March, 2016.

LEGAL RESOURCE GROUP, LLC

/s/ T. Augustus Claus  
T. AUGUSTUS CLAUS, ESQ.  
Nevada Bar #010004  
LEGAL RESOURCE GROUP, LLC

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of **LEGAL RESOURCE**  
3 **GROUP, LLC.**, and that on the 18<sup>th</sup> day of March, 2016, I caused the MOTION TO  
4 SUPPRESS EVIDENCE OBTAINED AS RESULT OF ILLEGAL STOP to be served as  
5 follows:

6 ☐ by placing a true and correct copy of the same to be deposited for mailing in the  
7 U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first  
class postage was fully prepaid; and/or

8 ☐ pursuant to EDCR 7.26, by sending it via facsimile; and/or

9 ☐ by hand delivery via runner

10 ☒ via electronic service

11 to the attorneys listed below:  
12

13 DISTRICT ATTORNEY'S OFFICE  
14 Clark County District Attorney  
200 South Lewis Avenue  
Las Vegas, Nevada 89155  
15 pdmotions@clarkcountyda.com

16 /s/ Tobi Caperon  
17 An Employee of the Legal Resource Group, LLC.  
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LVMPD - COMMUNICATION CENTER  
EVENT SEARCH

I HEREBY CERTIFY that this is a full, true  
and correct copy of the original on file with  
the Las Vegas Metropolitan Police Department,  
except for the information that is privileged  
and confidential by law

RESEARCH ASSISTANT Communications Bureau

EVT : LLV140202000525  
LOC : STAR MART  
ADDR: 5001 N RAINBOW BLVD  
CADD: 5001 N RAINBOW BLV  
MAP : 0171879  
P/U : 1X  
DATE: 2014/02/02  
911: YES

TYPE: 407  
BLDG:  
XST : RAMP  
CNAM: EMP/BRITTNEY SLATHER  
S/B : X4  
OFF1: 8073  
INIT: 02:57:07  
CLSE: 09:47:53

PRI : 0  
APT :  
CITY : LV  
CPHONE: 7026457577  
SRA : B218  
OFF2 :  
AREA : NW  
DISP : C

02:57:28	EU	INITIATED BY FRM- TO-LV14568	35	LV14568
02:57:28	CM	Original Location : STAR MART	35	LV14568
02:57:28	CM	T/L SECONDS 413 TO BIZ	35	LV14568
02:57:28	CM	Primary Event: MAIN Opened: 14/02/02 02:57	35	LV14568
02:57:41	CM	C35/ SUSP LS NB RAIN ON FOOT 0257HRS	35	LV14568
02:57:47	USAS 1X6	5001 N RAINBOW BLVD 407	16	LV14392
02:57:48	EU 1X6	PU FRM- TO-LV/1X6	16	LV14392
02:58:10	USER 1X6	5001 N RAINBOW BLVD 407	00	LV13357
02:58:21	CM	C35/ BMA/30-35 YO, 6'0, THIN BLD, GRY/BRN SPOTTED BEANIE, BLK SWTSHT,	35	LV14568
02:58:21	CM	UNK COL PNTS 0258HRS	35	LV14568
02:58:30	USAS 1V5	5001 N RAINBOW BLVD 407	16	LV14392
02:58:30	USAS 1V12	5001 N RAINBOW BLVD 407	16	LV14392
02:58:30	USAS 757	5001 N RAINBOW BLVD 407	16	LV14392
02:58:35	USER 1V12	5001 N RAINBOW BLVD 407	00	LV14082
02:58:38	USER 1V5	5001 N RAINBOW BLVD 407	00	LV14302
02:58:45	CM	C35/ NEG 408/446, 413 WAS BLK REVOLVER HANDGUN 0258HRS	35	LV14568
02:59:11	CM	SEE #0526 407A FRM BIZ	16	LV14392
02:59:20	USER 1V5	5001 N RAINBOW BLVD 407	00	LV14302
02:59:36	CM	C35/ TOLD SUSP SHE COULDN'T OPEN REGISTER // TOOK 2 PACKS OF	35	LV14568
02:59:36	CM	NEWPORT 100 CIGARETTES AND 1 PACK GUM // NEG INJS- REF MED 0259HRS	35	LV14568
02:59:42	EU 1X6	CN FRM-STAR MART TO-EMP/BRITTNEY SLATHER	35	LV14568
02:59:44	CM	9/ANSEC, DAY ROBBERY AI 0259	09	LV4866
03:00:18	CM	C35/ HAS SEEN SUSP IN BIZ BEFORE 0300HRS	35	LV14568
03:00:35	USAS 1X5	5001 N RAINBOW BLVD 407	16	LV14392
03:00:47	CM	C35/ PR REF TO STAY LL // WILL CALL MGR TO BE ENR TO SEE IF SHE CAN PULL	35	LV14568
03:00:47	CM	VIDEO 0300HRS	35	LV14568
03:03:12	UR 1X5	Reassign: 407 LLV140202000538	16	LV14392
03:04:59	UR 757	Reassign: 407 LLV140202000538	16	LV14392
03:05:16	UR 1V5	Reassign: 407 LLV140202000538	16	LV14392
03:08:32	USAS 1X	5001 N RAINBOW BLVD 407	16	LV14392
03:08:32	USAS 1X7	5001 N RAINBOW BLVD 407	16	LV14392
03:08:36	UR 1X7	Reassign: 407 LLV140202000538	16	LV14392
03:09:10	UR 1V12	Reassign: 407 LLV140202000514	16	LV14392
03:09:18	USAR 1X	5001 N RAINBOW BLVD 407	00	LV8073
03:11:19	EU 1X	PU FRM-LV/1X6 TO-LV/1X	16	LV14392
03:11:27	CM	1X6: MIRANDA READ TO SPLOND, KENYA DOB AT 0308 HOURS	00	LV13357
03:11:46	USAS 1V12	5001 N RAINBOW BLVD 407	16	LV14392
03:12:57	UR 1X6	Reassign: 407 LLV140202000538	16	LV14392
03:18:19	CM	1X ENR FOR SHOW UP 0318HRS	16	LV14392
03:19:49	CM	1X SHOW UP IS POSITIVE 0319HRS	16	LV14392
03:20:12	CM	1X NEG ON FEM 0320HRS	16	LV14392
03:20:38	USAR 1V12	5001 N RAINBOW BLVD 407	00	LV14082

## DECLARATION OF ARREST

"Click here to add/edit Event# and ID# on all pages"

Event #: 140202-0525

I.D. #: 1138461

"PRINT"

True Name: Splond, Kenny Date of Arrest: 2-2-14 Time of Arrest: 0330

## OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

Prohibited person in possession of a firearm

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with the Las Vegas Metropolitan Police Department, Clark County, Nevada, being so employed for a period of 4 years 7 months.

That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense(s) of AWDW, Robbery w/deadly weapon, Conspiracy to commit Robbery, Possession of Stolen Firearm at the location of 5001 N. Rainbow BLVD, and that the offense(s) occurred at approximately 0257 hours on the 2nd day of February, 2014, in the:

☐ County of Clark☒ City of Las Vegas

## DETAILS FOR PROBABLE CAUSE:

On 2-2-14 I Officer J. Rowberry P#13894 assigned myself to a Robbery at 5001 N. Rainbow Las Vegas, NV 89130. The details of the call stated that a black male entered the store, approached the counter with a pack of Wrigley's Spearmint Gum and asked for two packs of New Port 100 cigarettes. While at the counter the black male adult produced a black revolver and pointed it at the clerk with the revolver in his right and at waist level pointing it at the clerk demanding the money in the register. The clerk stated that she could not open the register without making a sale and then the black male stated "you're lucky to be alive and I'll be back". The black male became enraged and placed the revolver back into his hoodie pocket and kept it leveled at Slather. The male repeatedly barked at Slather, "You are going to die, you dumb white bitch! The male then stated, " Give me all the money or your life is over!" The black male was last seen running out of the store north bound down Rainbow wearing a black hooded sweatshirt and a multi colored beanie.

I arrived in the area and observed a silver 4 door sedan pull out on to Rainbow from Rancho Santa Fe Dr. leaving the area. The vehicle was now traveling northbound Rainbow and turned into a housing development off of Sea Poppy Ln. I conducted a vehicle stop on the vehicle bearing NV-438VFU at the intersection of Fruit Flower/ Flora Spray for extreme damage to the rear of the vehicle and for leaving area of the Robbery. I approached the vehicle and observed a black female driver, while at the back of the vehicle I asked the driver to roll the back window down and that's when I

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are misdemeanor).

Declarant must sign all page(s)  
with an original signature.

J. Rowberry

Print Declarant's Name

Declarant's Signature

P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**CONTINUATION REPORT**

Event #: 140202-0525

ID#: 1138461

observed a black male laying down in the back seat hiding under a blanket and breathing very heavily. I drew out my firearm, asked the dispatcher for a code red due to the male in the back seat not listening to verbal commands. Responding units arrived and both subjects were taken into custody. The male was identified as Splond,, Kenny DOB 11-14-72 and the female as Chapman, Kellie DOB 12-17-81. Officer C. Ralyea P# 13357 read Miranda to Splond at 0308 hours on the 2nd of February 2014. Officer Ralyea conducted a records check on Splond which reviled Splond to have warrants out of the County. I made contact with Chapman and read Miranda at 0300 hours on the 2nd of February 2014. When I asked Chapman if she understood her rights she replied "yes". I asked Chapman what they were doing in the area and she stated that she was taking her boyfriend to Centennial Hospital. When I asked Chapman where she was coming from she stated "I just picked up my boyfriend up on Sahara and I'm taking him to the hospital". Officer Ralyea asked Splond what they were doing in the area and he stated "we were at the Santa Fe Hotel because I needed to use the restroom". Officer J. Landers P# 8073 responded to the scene and made contact with the clerk Slathar, Brittany. Officer Landers then responded to the vehicle stop with Slathar to conduct a show up which was a 100% positive match on the male (Splond) and 0% negative on the female (Chapman). The vehicle was photographed by Officer A. Brumaghin before I conducted a vehicle search on the vehicle after Splond was positively identified as the suspect and at the time of the vehicle stop, the vehicle was occupied and mobile. In plain view I observed two packs of Newport Cigarettes and a pack of Wrigley's spearmint gum on the driver's seat. In the back seat where Splond was I located a black hooded sweatshirt on the floor and inside the sweatshirt was a black revolver which was recovered. The revolver was Colt 38 serial # 941609 which returned stolen ORI/NV0020201, OCA/131030019064, MIC/G713067641. The two packs of Newport cigarette's and the Wrigley's gum were released back to the store with one pack of cigarettes opened but nothing missing. I asked Splond about the revolver that was found in the black sweater and he stated that "the sweater is mine, I wore it all day" I asked again about the revolver and Splond replied "I don't know, just take me to jail". While talking to Splond I observed black fuzz on his red shirt caused from wearing his black hooded sweatshirt.

The vehicle was Pontiac Grand Am and the license plate bearing NV-438VFU was returning to Hyundai with no current registration. The Grand Am with Vin #2G2WP552561167274 returned showing the R/O as Chapman, Kellie. Officer A. Brumaghin P# 13756 asked Chapman why the plate was on the vehicle and she stated "I don't know anything about that". The vehicle was towed by Ewing Bros. for safe keeping. Splond, Kenny was arrested for AWDW, Robbery w/

Declarant must sign all page(s)  
with an original signature.

**J. Rowberry**

Print Declarant's Name

Declarant's Signature

P#

Codef B

Page <u>1</u> of <u>1</u>		LAS VEGAS METROPOLITAN POLICE DEPARTMENT TEMPORARY CUSTODY RECORD		I.D. #: <u>1681308</u> Event #: <u>140202-0525</u>	
DATE OF ARREST: <u>2/2/14</u> TIME OF ARREST: <u>0330</u>		I.D. ESTAB. BY: <u>SCOPE</u>			
INTAKE NAME (AKA, ALIAS, ETC.)		Last	First	Middle	TRUE NAME
<u>CHAPMAN KELLIE ERIN</u>					<u>Chapman Kellie Erin</u>
ADDRESS		BLOG/APT. #		CITY	STATE
<u>3200 MCLEOD</u>		<u>176</u>		<u>LV</u>	<u>NV</u>
DATE OF BIRTH	RACE	SEX	HEIGHT	WEIGHT	HAIR
<u>12/17/81</u>	<u>B</u>	<u>F</u>	<u>5'5</u>	<u>120</u>	<u>BLK</u>
SOCIAL SECURITY #		EYES		PLACE OF BIRTH	
<u>-</u>		<u>BRN</u>		<u>LV NV</u>	
LOCATION OF CRIME (# - Street - City - State - Zip)		Citizen Arrest		LOCATION OF ARREST	
<u>5001 N RAINBOW LV NV 89030</u>		<u>Y. (N)</u>		<u>FRUIT FLOWER/FLORASPRAY</u>	
BKG. CODE	CHARGE	ORD / NRS #	M	GM	F
<u>50147</u>	<u>CONSPIRACY TO COMMIT ROBBERY</u>	<u>100.380 \$20,000</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ARREST TYPE: <u>BS - PROBABLE CAUSE</u> <u>BS - BONDSMAN SURRENDER</u> <u>BW - BENCH WARRANT</u> <u>WA - WARRANT</u> <u>RM - REMAND</u> <u>GJI - GRAND JURY IND.</u>		OTHER COURT:		APPROVAL CONTROL # FOR ADDITIONAL CHARGES:	
Arresting Officer's Signature		(Print Name)	P #	Agency	
<u>[Signature]</u>		<u>15 ROWBERAY/13894/LUMP</u>	<u>1</u>	<u>SA</u>	
Transporting Officer's Signature		(Print Name)	P #	Agency	
<u>[Signature]</u>					
Time Stamp at BOOKING		OFFICER MUST SIGN SECOND PAGE WITH ORIGINAL SIGNATURE.			
<u>02-02-14 09:36 DSD RECORDS</u>		<input checked="" type="checkbox"/> FOR PROBABLE CAUSE/NCIC HIT ARREST SEE PAGE TWO FOR DETAILS. <input type="checkbox"/> BENCH WARRANT SERVED ON _____ <input type="checkbox"/> WARRANT SERVED ON _____ <input type="checkbox"/> GRAND JURY INDICTMENT SERVED ON _____ TYPE OF I.D. FOR VERIFICATION _____			
P #:		PHOTO <div style="border: 1px solid black; width: 100px; height: 100px; margin: 0 auto;"></div>			

1418941 R70



1 INST

2 ORIGINAL

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

MAR 24 2016  
11:13 AM

BY   
DULCE MARIE ROMEA, DEPUTY

3  
4  
5  
6 DISTRICT COURT  
CLARK COUNTY, NEVADA

7  
8 THE STATE OF NEVADA, )

9 Plaintiff, )

CASE NO: C-14-296374-1

10 -VS- )

DEPT NO: XI

11 KENNY SPLOND, )

12 Defendant. )  
13  
14

15 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

16 MEMBERS OF THE JURY:

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

20 You must not be concerned with the wisdom of any rule of law stated in these  
21 instructions. Regardless of any opinion you may have as to what the law ought to be, it  
22 would be a violation of your oath to base a verdict upon any other view of the law than that  
23 given in the instructions of the Court.  
24  
25

26 C-14-296374-1  
INST  
Instructions to the Jury  
4534079



AA000161

32

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

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

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

In this case, it is charged in an Amended Indictment that the Defendant, KENNY SPLOND aka Kenya Splond, committed the crimes of CONSPIRACY TO COMMIT ROBBERY, BURGLARY WHILE IN POSSESSION OF A FIREARM, ROBBERY WITH USE OF A FIREARM, and POSSESSION OF STOLEN PROPERTY. It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the Defendant is guilty of one or more of the offenses charged.

COUNT 1 - CONSPIRACY TO COMMIT ROBBERY

Defendant KENNY SPLOND, aka, Kenya Splond and Co-Conspirator KELLIE ERIN CHAPMAN did on or about February 2, 2014 did meet with each other and between themselves, and each of them with the other, wilfully, unlawfully, and feloniously conspire with each other to commit a robbery, by the Defendant committing the acts as set forth in Count 2 and 3, said acts being incorporated by this reference as though fully set forth herein.

COUNT 2 - BURGLARY WHILE IN POSSESSION OF A FIREARM

Defendants KENNY SPLOND, aka, Kenya Splond and Co-Conspirator KELLIE ERIN CHAPMAN did then and there wilfully, unlawfully, and feloniously enter, with intent to commit robbery, that certain building occupied by STAR MART, located at 5001 North Rainbow, Las Vegas, Clark County, Nevada, said Defendant did possess and/or gain possession of a firearm during the commission of the crime and/or before leaving the structure, to wit: (1) by directly committing this crime and /or (2) by aiding and abetting in the commission of this crime, with the intent that this crime be committed, by providing counsel and/or encouragement and by entering into a course of conduct whereby Defendant KENNY SPLOND, aka, Kenya Splond entered Star Mart, located at 5001 N. Rainbow Boulevard, Las Vegas, Clark County, Nevada with a firearm and demanded money and/or cigarettes and/or gum from BRITTANY SLATHAR and took cigarettes and/or gum while Co-Conspirator KELLIE CHAPMAN provided Defendant KENNY SPLOND, aka, Kenya

1 Splond transportation to the Star Mart prior to the robbery and/or acted as a getaway driver  
2 and/or look-out and both Defendants fled the scene together and/or (3) pursuant to a  
3 conspiracy to commit this crime.

4 COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

5 Defendants KENNY SPLOND, aka, Kenya Splond and Co-Conspirator KELLIE  
6 ERIN CHAPMAN did then and there wilfully, unlawfully, and feloniously take personal  
7 property, to-wit: cigarettes and gum, from the person of BRITTANY SLATHAR, or in her  
8 presence, by means of force or violence, or fear of injury to, and without the consent and  
9 against the will of BRITTANY SLATHAR, with use of a deadly weapon, to-wit: a handgun,  
10 to wit: (1) by directly committing this crime and /or (2) by aiding and abetting in the  
11 commission of this crime, with the intent that this crime be committed, by providing counsel  
12 and/or encouragement and by entering into a course of conduct whereby Defendant KENYA  
13 SPLOND entered Star Mart, located at 5001 N. Rainbow Boulevard, Las Vegas, Clark  
14 County, Nevada with a firearm and demanded money and/or cigarettes and/or gum from  
15 BRITTANY SLATHAR and took cigarettes and/or gum while Co-Conspirator KELLIE  
16 CHAPMAN provided Defendant KENNY SPLOND, aka, Kenya Splond transportation to  
17 the Star Mart prior to the robbery and/or acted as a getaway driver and/or look-out and both  
18 Defendants fled the scene together and/or (3) pursuant to a conspiracy to commit this crime.

19 COUNT 4 - POSSESSION OF STOLEN PROPERTY

20 Defendant KENNY SPLOND, aka, Kenya Splond did, wilfully, unlawfully, and  
21 feloniously for his own gain, possess property wrongfully taken from JEFFREY BRUCE  
22 HABERMAN, to-wit: Colt 38 revolver serial# 941609, which Defendant knew, or had  
23 reason to believe, had been stolen.

24 COUNT 5 - BURGLARY WHILE IN POSSESSION OF A FIREARM

25 Defendant KENNY SPLOND, aka, Kenya Splond did, on or about January 22, 2014,  
26 then and there wilfully, unlawfully, and feloniously enter, with intent to commit robbery,  
27 that certain building occupied by SAMUEL ECHEVERRIA, located at 4343 North Rancho  
28 Drive, Apartment No. 104, Las Vegas, Clark County, Nevada, said Defendant did possess

1 and/or gain possession of a firearm during the commission of the crime and/or before leaving  
2 the structure.

3 COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON

4 Defendant KENNY SPLOND, aka, Kenya Splond did, on or about January 22, 2014,  
5 wilfully, unlawfully, and feloniously take personal property, to-wit: lawful money of the  
6 United States, from the person of SAMUEL ECHEVERRIA, or in his presence, by means of  
7 force or violence, or fear of injury to, and without the consent and against the will of  
8 SAMUEL ECHEVERRIA, with use of a deadly weapon, to-wit: a handgun.

9 COUNT 7 - BURGLARY WHILE IN POSSESSION OF A FIREARM

10 Defendant KENNY SPLOND, aka, Kenya Splond did, on or about January 28, 2014,  
11 then and there wilfully, unlawfully, and feloniously enter, with intent to commit robbery,  
12 that certain building occupied by GRACIELA ANGELES, located at 6663 Smoke Ranch  
13 Road, Las Vegas, Clark County, Nevada, said Defendant did possess and/or gain possession  
14 of a firearm during the commission of the crime and/or before leaving the structure.

15 COUNT 8 - ROBBERY WITH USE OF A DEADLY WEAPON

16 Defendant KENNY SPLOND, aka, Kenya Splond did, on or about January 28, 2014  
17 wilfully, unlawfully, and feloniously take personal property, to-wit: lawful money of the  
18 United States, from the person of GRACIELA ANGELES, or in her presence, by means of  
19 force or violence, or fear of injury to, and without the consent and against the will of  
20 GRACIELA ANGELES, with use of a deadly weapon, to-wit: a handgun.

21 It is the duty of the jury to apply the rules of law contained in these instructions to the  
22 facts of the case and determine whether or not the State has met its burden beyond a  
23 reasonable doubt as to whether any Defendant is guilty of any of the offense(s) charged.  
24 Each charge and the evidence pertaining to it should be considered separately. The fact that  
25 you may find a defendant guilty or not guilty as to one of the offenses charged should not  
26 control your verdict as to any other offense charged.

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

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

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

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

INSTRUCTION NO. 5

In your deliberations as to whether the State has met its burden beyond a reasonable doubt, the subject of penalty or punishment is not to be discussed or considered by you and should in no way influence your verdict.

INSTRUCTION NO. 6

You are here to determine whether the State of Nevada has met its burden of proof as to the Defendant from the evidence in the case. You are not called upon to return a verdict as to any other person other than the named Defendant in this matter. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty.



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

There are two types of evidence: direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict. It is up to you to determine the weight to be given any evidence. Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

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

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

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

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

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

The Defendant is presumed innocent unless the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is the person who committed the offense or offenses.

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

If you have a reasonable doubt as to the guilt of the Defendant, the Defendant is entitled to a verdict of not guilty.

1  
2 It is a constitutional right of a defendant in a criminal trial that he may not be  
3 compelled to testify. Thus, the decision as to whether he should testify is left to the  
4 defendant on the advice and counsel of his attorney. You must not draw any inference of  
5 guilt from the fact that he does not testify, nor should this fact be discussed by you or enter  
6 into your deliberations in any way.  
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Every person who, by day or night, enters any building with the specific intent to commit robbery therein, is guilty of Burglary. Robbery is defined in the instructions that follow.

It is not necessary that the State prove the defendant actually committed a crime inside the building after he entered in order for you to find him guilty of burglary. The essence of the crime of burglary is the unlawful entry with criminal intent to commit one or more of the enumerated crimes.

Consent to enter is not a defense to the crime of burglary so long as it is shown that entry was made with the specific intent to commit one or more of the enumerated crimes therein. Force or a "breaking in" is not an element of the crime.

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

Every person who commits the crime of burglary who has in his possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure, or upon leaving the structure, is guilty of burglary while in possession of a deadly weapon.

INSTRUCTION NO. 14

You are instructed that if you find a Defendant guilty of Burglary, you must also determine whether or not a deadly weapon was used in the commission of this crime.

AA000176



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

You are instructed that a firearm is a deadly weapon.

INSTRUCTION NO. 16

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

The State is not required to have recovered the deadly weapon used in an alleged crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon was used in the commission of the crime.

INSTRUCTION NO. 17

Any person who conspires to commit Robbery is guilty of Conspiracy to Commit Robbery.

AA000179

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

1. Obtain or retain possession of the property,
2. To prevent or overcome resistance to the taking of the property, or
3. To facilitate escape with the property.

In any case the degree of force is immaterial if used to compel acquiescence to the taking of or escaping with the property. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

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

Personal property is "in the presence" of a person, in respect to robbery, when it is within the person's reach, inspection, observation or control, and the person could, if not prevented by intimidation or threat of violence, retain possession of the property.

INSTRUCTION NO. 19

You are instructed that if you find a Defendant guilty of Robbery, you must also determine whether or not a deadly weapon was used in the commission of this crime.

AA000181

Conspiracy is an agreement or mutual understanding between two or more persons to commit a crime. To be guilty of conspiracy, a defendant must intend to commit, or to aid in the commission of the specific crime agreed to. The crime is the agreement to do something unlawful; it does not matter whether it was successful or not. It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or the making of an express or formal agreement. The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other fact may be proved, either by direct testimony of the fact or by circumstantial evidence, or by both direct and circumstantial evidence.

A conspiracy to commit a crime does not end upon the completion of the crime. The conspiracy continues until the co-conspirators have successfully gotten away and concealed the crime. However, in order to find the defendant criminally liable for acts of another conspirator, pursuant to a conspiracy to the crimes of Burglary While in Possession of a Deadly Weapon you must find that the defendant possessed the specific intent to commit that specific crime.

Absent an agreement to cooperate in achieving the purpose of a conspiracy, mere knowledge of and acquiescence in or approval of that purpose does not make one a party to conspiracy.

1  
2 Evidence was introduced by the State of other crimes that the Defendant is not  
3 charged with. Evidence that someone committed a burglary at the home of Mr. Haberman,  
4 was not received and may not be considered by you to prove that Defendant had any  
5 involvement in that burglary. Such information was received and may be considered by you  
6 only for the limited purpose of proving the weapon was stolen. That information cannot be  
7 used by you in determining the guilt of the Defendant in this case. You must weigh this  
8 evidence in the same manner as you do all other evidence in the case.  
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Any person who possesses a stolen firearm and either knows the firearm is stolen or possesses the firearm under such circumstances as should have caused a reasonable person to know the firearm is stolen, is guilty of Possession of Stolen Property.

INSTRUCTION NO. 24

Your verdict must be unanimous as to each charge. You do not have to be unanimous on the principle of criminal liability. It is sufficient that each of you find beyond a reasonable doubt that the defendant committed the charged crime.

1  
2 The flight of a person after the commission of a crime is not sufficient in itself to  
3 establish guilt; however, if flight is proved, it is circumstantial evidence in determining guilt  
4 or innocence. Before considering flight, however, you must be convinced that the defendant  
5 was the person who fled the scene of the crime.

6 The essence of flight embodies the idea of deliberately going away with  
7 consciousness of guilt and for the purpose of avoiding apprehension or prosecution. The  
8 weight to which such circumstance is entitled is a matter for the jury to determine.  
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A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his or her opinion as to any matter in which he or she is skilled.

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

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

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

When you retire to consider your verdict, you must select one of your number to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

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

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

1  
2 If it becomes necessary during your deliberations to communicate with me, you may  
3 send a note through the marshal, signed by the foreperson you have selected or by one or  
4 more members of the jury. No member of the jury should ever attempt to communicate with  
5 me except by a signed writing, and I will communicate with any member of the jury on  
6 anything concerning the case only in writing, or here in open court.

7 If you send out a question, I will consult with the parties before answering, which  
8 may take some time. You may continue your deliberation while waiting for the answer to  
9 my question. Remember that you are not to tell anyone, including me, how the jury stands,  
10 numerically or otherwise, until after you have reached a verdict or have been discharged. Do  
11 not disclose any vote count in any note to the Court.

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between each Defendant and the State of Nevada.

GIVEN: 

DISTRICT JUDGE



MAR 24 2016  
11:13 AM

BY,   
DULCE MARIE ROMEA, DEPUTY

ORIGINAL

VER

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KENNY SPLOND,

Defendant.

CASE NO: C-14-296374-1

DEPT NO: XI

VERDICT

We, the jury in the above entitled case, find the KENNY SPLOND, as follows:

**COUNT 1** – CONSPIRACY TO COMMIT ROBBERY, *(please check the appropriate box, select only one)*

- ☒ Guilty of Conspiracy to Commit Robbery  
☐ Not Guilty

**COUNT 2** – BURGLARY WHILE IN POSSESSION OF A FIREARM, (Star Mart on 5001 Rainbow) *(please check the appropriate box, select only one)*

- ☒ Guilty of Burglary While in Possession of a Firearm  
☐ Guilty of Burglary  
☐ Not Guilty

///

///

///

C-14-296374-1  
VER  
Verdict  
4534080



AA000193

3

**COUNT 3** – ROBBERY WITH USE OF A DEADLY WEAPON, (Victim Brittany Slathar) *(please check the appropriate box, select only one)*

☒ Guilty of Robbery with Use of a Deadly Weapon

☐ Guilty of Robbery

☐ Not Guilty

**COUNT 4** – POSSESSION OF STOLEN PROPERTY

☒ Guilty of Possession of Stolen Property

☐ Not Guilty

**COUNT 5** – BURGLARY WHILE IN POSSESSION OF A FIREARM, (Cricket on North Rancho) *(please check the appropriate box, select only one)*

☒ Guilty of Burglary While in Possession of a Firearm

☐ Guilty of Burglary

☐ Not Guilty

**COUNT 6** – ROBBERY WITH USE OF A DEADLY WEAPON, (Victim Samuel Echeverria) *(please check the appropriate box, select only one)*

☒ Guilty of Robbery with Use of a Deadly Weapon

☐ Guilty of Robbery

☐ Not Guilty

**COUNT 7** – BURGLARY WHILE IN POSSESSION OF A FIREARM, (Metro PCS on Smoke Ranch) *(please check the appropriate box, select only one)*

☒ Guilty of Burglary While in Possession of a Firearm

☐ Guilty of Burglary

☐ Not Guilty

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**COUNT 8** – ROBBERY WITH USE OF A DEADLY WEAPON, (Victim Graciela Angeles) *(please check the appropriate box, select only one)*

☒ Guilty of Robbery with Use of a Deadly Weapon

☐ Guilty of Robbery☐ Not Guilty

DATED this 24 day of March, 2016.

Patricia A. Amico  
FOREPERSON

  
CLERK OF THE COURT

**MOT**

T. AUGUSTUS CLAUS, ESQ.  
LEGAL RESOURCE GROUP, LLC.  
Nevada Bar No. 10004  
205 N. Stephanie St., Suite D221  
Henderson, NV 89074  
(702) 463-4900 Phone  
(702) 463-4800 Fax  
Attorney for Defendant

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

Case No.: C-14-296374-1

KENYA SPLOND,  
#1138461

Dept. No.: 11

Defendants,

**MOTION TO COMPEL PRODUCTION OF SUBPOENAED MATERIALS**

COMES NOW the Defendant KENYA SPLOND, by and through his attorney, T. AUGUSTUS CLAUS, Esq., of the law firm Legal Resource Group LLC., and hereby moves this Honorable Court for an Order Compelling the Production of Subpoenaed Materials from the Department of Parole and Probation. To the extent any evidence is not ordered to be produced, Splond requests an order that it be preserved.

DATED this 20<sup>th</sup> day of December, 2016.

LEGAL RESOURCE GROUP, LLC

/s/ T. Augustus Claus

T. AUGUSTUS CLAUS, ESQ.  
LEGAL RESOURCE GROUP, LLC  
Attorney for Defendant

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DATED this 20<sup>th</sup> day of December, 2016.

/s/ T. Augustus Claus  
T. AUGUSTUS CLAUS, ESQ.  
Nevada Bar No. 10004  
205 N. Stephanie St., Suite D221  
Henderson, NV 89074  
(702)463-4900 Phone  
(702)463-4800 Fax  
Attorney for Defendant

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **STATEMENT OF FACTS**

4 Kenya Splond is currently awaiting sentencing in this case. As part of the sentencing  
5 process a Presentence Investigation Report (hereinafter “PSI”) was prepared for Mr. Splond on  
6 May 9<sup>th</sup>, 2016 (PSI #1) by the Division of Parole and Probation (hereinafter “P&P”). A  
7 subsequent PSI was created on June 30<sup>th</sup>, 2016 (PSI #2). The differences in PSI #1 and PSI #2  
8 include:

- 9
- PSI #1 recommended Count 2 be served concurrent with Count 1. PSI #2 recommended consecutive time.
  - 10 • PSI #1 recommended Count 7 be served concurrent with Count 6. PSI #2 recommended consecutive time.
  - 11 • PSI #1 recommended Count 8 be served concurrent with Count 7. PSI #2 recommended consecutive time.
  - 12 • PSI #1 has a longer (and apparently inaccurate) criminal history, that is corrected in PSI #2.
- 13

14 There are no additional charges that were filed, or have been filed, against Mr. Splond  
15 from the writing of PSI #1 to PSI #2. There are no new facts that came to light, no new  
16 information available. However, Mr. Splond did object to the contents of PSI #1, both in terms  
17 of prior criminal history and gang affiliation.<sup>1</sup> In essence then, the question that Mr. Splond  
18 desires to have answered is “Why the increased recommended penalty?” To that end, Mr. Splond  
19 sent a subpoena to P&P requesting:

20 \_\_\_\_\_  
21 <sup>1</sup> It appears that PSI #2 acknowledges that Mr. Splond’s gang affiliation is incorrect, but it is still included:

22 “Mr. Splond denied any gang involvement; however, according to  
information obtained from the Las Vegas Metropolitan Police  
Department, the defendant is a member of the “Rollin 60s Crips”.

23 **A booking photograph of Mr. Splond at time of classification  
as a gang member is the defendant brother.”**

PSI pg. 3 (emphasis added).

1 “1. Parole and Probation PSI Score Sheet for Defendant  
2 Kenya Splond in this matter.

3 2. Documentation, including communications, relating to  
4 the changes made in Defendant Kenya Splond's PSI from the May  
5 9th, 2016 version to the June 30th 2016 version specifically relating  
6 to:

- 7 a. Gang Activity/ Affiliation (including documents  
8 evidencing Splond's purported Crips membership)
- 9 b. X. RECOMMENDATIONS (including documents  
10 evidencing the change to consecutive treatment for counts  
11 2, 7 and 8).”

12 See Exhibit A, SDT to P&P. P&P responded to the request for documents by sending only the  
13 PSI scoring sheet, which appears to have been created on October 27<sup>th</sup>, 2016 (neither the date of  
14 PSI #1 or #2), with no additional information supporting the changes from PSI #1 to PSI #2. See  
15 Exhibit B, P&P Response. Splond seeks an order to compel the production of the documents  
16 relevant to the request above which P&P has heretofore failed to produce.

## 17 II.

### 18 LEGAL ARGUMENT

19 Just as a defendant’s characteristics may be relevant in mitigation of a sentence, “... so  
20 too are characteristics of the victim relevant to the factfinder’s sentencing decision.” Sherman v.  
21 State, 114 Nev. 998, 1013 (Nev. 1998). There are circumscriptions on the sentencer’s areas of  
22 inquiry and certain areas, such as victim impact statements submitted by the State, must be  
23 handled with care to avoid violating a defendant’s constitutional rights. United States v.  
Borrero-Isaza, 887 F.2d 1349, 1352 (9<sup>th</sup> Cir. 1989), citing United States v. Tucker, 404 U.S. 443,  
446-47 (1972); see also, Buschauer v. State, 106 Nev. 890 (Nev. 1990). However, a sentencing  
judge may consider a “... wide, largely unlimited variety of information to insure that the  
punishment fits not only the crime, but also the individual defendant.” Martinez v. State, 114

1 Nev. 735, 738 (Nev. 1998). As such, it is the Defendant's right and the Court's obligation to  
2 hear evidence in mitigation of the Defendant's sentence, as proposed herein.

3 On the other hand, the Court is not permitted to consider impalpable and highly suspect  
4 evidence. Goodson v. State, 98 Nev. 493, 495-96, 654 P.2d 1006, 1007(1982). Material  
5 information is "unreliable" if it "lacks 'some minimal indicium of reliability beyond mere  
6 allegation.'" United States v. Ibarra, 737 F.2d 825, 827 (9<sup>th</sup> Cir. 1984) quoting United States v.  
7 Baylin, 696 F.2d 1030, 1040 (3<sup>rd</sup> Cir. 1982). Moreover, while a district court has wide latitude in  
8 considering evidence, "...the district court must refrain from punishing a defendant for prior  
9 uncharged crimes." Denson v. State, 112 Nev. 489, 494 (Nev. 1996); citing Sheriff v. Morfin,  
10 107 Nev. 557, 561, 816 P.2d 453, 455 (1991); see also Riker v. State, 111 Nev. 1316, 1326-27,  
11 905 P.2d 706, 712-13 (1995).

12 Under the Stockmeier opinion, even though there is no defined process for resolving  
13 objections to a PSI, a defendant must object to his PSI at the time of sentencing. Id. at 213-214.  
14 Stockmeier requires that the defendant not only object to disputed factual statements that affect  
15 his sentence, but he must also object to "...any significant inaccuracy [which] could follow a  
16 defendant into the prison system and be used to determine his classification, placement in certain  
17 programs, and eligibility for parole..." Stockmeier v. State, Bd. of Parole Com'rs, 255 P.3d 209,  
18 214 (Nev. 2011). Stockmeier concludes that "...thus, the defendant must promptly seek to  
19 correct any alleged inaccuracies to prevent the Department of Corrections from relying on a PSI  
20 that could not later be changed." Stockmeier v. State, Bd. of Parole Com'rs, 255 P.3d 209, 214  
21 (Nev. 2011); See NRS 176.159(1); see also United States Dept. of Justice v. Julian, 486 U.S. 1,  
22 5-6, 108 S.Ct. 1606, 100 L.Ed.2d 1 (1988). However, the Stockmeier opinion also makes it  
23 clear that the Division of Parole and Probation has statutory duties in regards to the defendant's



1 PSI, demarked by the citation “See generally NRS 176.133–.159; NRS 213.1071–.1078; NRS  
2 213.1092–.10988.” Stockmeier v. State, Bd. of Parole Com'rs, 255 P.3d 209, 213 (Nev. 2011).

3 Contained within the Nevada Supreme Court’s citations in Stockmeier is the requirement that:

4 “The Chief Parole and Probation Officer shall adopt by regulation  
5 standards to assist him or her in formulating a recommendation  
6 regarding the granting of probation or the revocation of parole or  
7 probation to a convicted person who is otherwise eligible for or on  
8 probation or parole. **The standards must be based upon  
objective criteria for determining the person's probability of  
success on parole or probation.**”

9 Nev. Rev. Stat. Ann. § 213.10988 (2011) (emphasis added). This statutory duty is  
10 reflected in NAC 213.590 and in the Probation Success Probability form adopted by the Division  
11 of Parole and probation. See Nev. Admin. Code §213.590 (2011). The numerical scoring from  
12 the Probation Success Probability form is then used on the Sentence Recommendation Selection  
13 Scale (“SRSS”) form, resulting in a term of incarceration or recommendation of probation. See  
14 Nev. Admin. Code § 213.600. While the form itself provides for scoring deviation, that  
15 deviation must be explained from results reached by using the **objective** standards provided for  
16 under NAC 213.590.

17 A sentence based upon mistaken or highly suspect information would deny Splond due  
18 process under the Fourteenth Amendment. Denying a defendant’s counsel access to the  
19 Divisions scoring documents and supporting documentation violates a defendant’s Sixth  
20 Amendment right to effective assistance of counsel at sentencing. Splond asserts that if the  
21 Division of Parole and Probation does not disclose the documents supporting its changed  
22 recommendation, counsel for Splond will never know how P&P reached their new  
23 recommendation and will not be able to effectively comment on that recommendation at  
sentencing. Splond argues that he has a statutory right to inspect P&P’s scoring documents so

1 that his attorney can comment on P&P's recommendation at sentencing and to ensure that P&P  
2 is complying with its statutory obligations. Moreover, as will likely be asserted by the State, the  
3 plain language of NRS 176.156 and NRS 213.1075 do not preclude the disclosure of the  
4 presentence investigation documents and given the limited nature of the documents sought and  
5 the extraordinary circumstances presented here, the Court should compel production of the  
6 sought after documents.

7 **III.**

8 **CONCLUSION**

9 For the foregoing reasons, Defendant asks this Honorable Court grant the above Motion, and  
10 issue an order compelling the production of the sought after documents from the Division of  
11 Parole and Probation.

12 DATED this 20<sup>th</sup> day of December, 2016.

13  
14 LEGAL RESOURCE GROUP, LLC

15 /s/ T. Augustus Claus  
16 T. AUGUSTUS CLAUS, ESQ.  
Nevada Bar #010004  
LEGAL RESOURCE GROUP, LLC

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of **LEGAL RESOURCE**  
3 **GROUP, LLC.**, and that on the 20<sup>th</sup> day of December, 2016, I caused the MOTION TO  
4 COMPEL PRODUCTION OF SUBPEONAED MATERIALS to be served as follows:

5 ☒ by placing a true and correct copy of the same to be deposited for mailing in the  
6 U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first  
class postage was fully prepaid (FOR AG ONLY); and/or

7 ☐ pursuant to EDCR 7.26, by sending it via facsimile; and/or

8 ☐ by hand delivery via runner

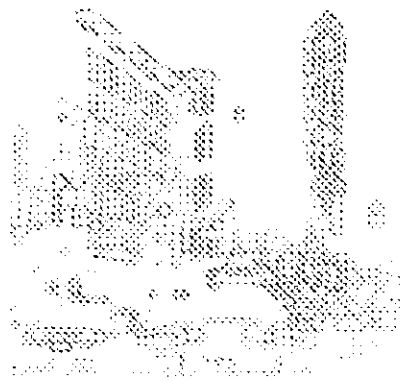
9 ☒ via electronic service

10 to the attorneys listed below:  
11

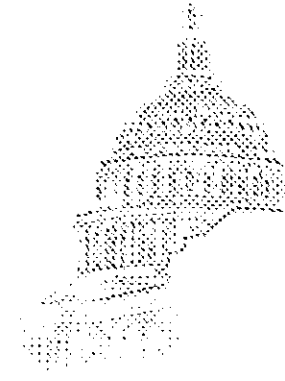
12 DISTRICT ATTORNEY'S OFFICE  
Clark County District Attorney  
13 200 South Lewis Avenue  
Las Vegas, Nevada 89155  
14 [pdmotions@clarkcountyda.com](mailto:pdmotions@clarkcountyda.com)

15 ATTORNEY GENERAL'S OFFICE  
ADAM PAUL LAXALT  
16 555 Wright Way  
Carson City, Nevada 89711  
17 [AGinfo@ag.nv.gov](mailto:AGinfo@ag.nv.gov)

18 /s/ Tobi Caperon  
19 An Employee of the Legal Resource Group, LLC.  
20  
21  
22  
23



LEGAL RESOURCE GROUP, LLC



October 24<sup>th</sup>, 2016

SENT VIA US MAIL AND FACSIMILE

Nevada Department of Public Safety- Parole & Probation  
Attn: Lt. Silva  
215 E. Bonanza  
Las Vegas, NV 89101  
Fax: 702-486-3040

Re: State of Nevada v. Kenya Splond  
Case C-14-296374-1  
PSI/BIN [REDACTED]

Lieutenant Silva,

Please be advised that this office represents Mr. Kenya Splond in the above-entitled case. It is our understanding that your office has completed two PSIs for this client, referenced by the BIN number above. Our office hereby requests our client's individual Sentence Recommendation Score Sheet and Probation Success Probability Score Sheet for purposes of sentencing. Additionally, we request the documentation relating to the changes made in Defendant Kenya Splond's PSI from the May 9<sup>th</sup>, 2016 version to the June 30<sup>th</sup>, 2016 version specifically relating to:

- A. Gang Activity/Affiliation (including documents evidencing Splond's purported Crips membership)
- B. X. RECOMMENDATIONS (including documents evidencing the change to consecutive treatment for counts 2,7 and 8)

It is my understanding, pursuant to statements made by the Honorable Judge Hardesty of the Nevada Supreme Court, that Parole and Probation has been cited on record in front of the Nevada Legislature and members of the Nevada Supreme Court (Advisory Committee Meeting, May 1, 2014, in Carson City) representing that these documents will be provided to defense counsel upon request.

It is imperative that our office receive these documents as soon as possible so that we can efficiently prepare for sentencing and protect our client's rights. Please see that they are sent via the most efficient means available, to the undersigned at the address, email, and/or fax number provided above.

205 N. Stephanie St., Suite D221  
Henderson, NV 89074

Phone 702-463-4900 Fax 702-463-4800

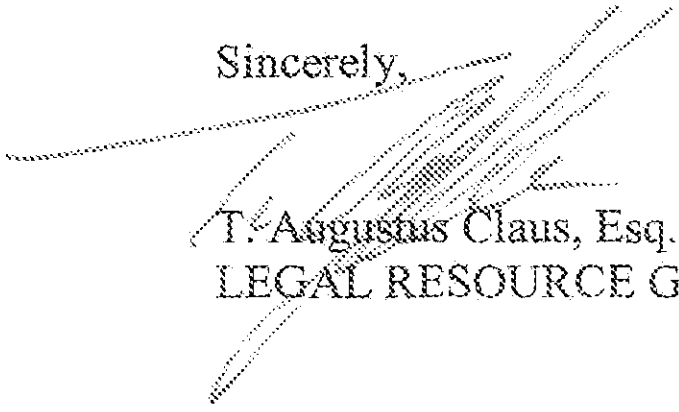
229 S. Las Vegas Blvd, Suite 205  
Las Vegas, NV 89101

AA000204

Finally, please be aware that these documents have already been subpoenaed on September 12<sup>th</sup>, 2016, receipt of which was confirmed by your staff identified as "Lisa #4821". I have included a copy of the subpoena served on Parole and Probation. Our next step will be to file a motion to compel the production of these documents.

Thank you, in advance, for your cooperation with this request.

Sincerely,



T. Augustus Claus, Esq.  
LEGAL RESOURCE GROUP, LLC

Attachment: SDT for P&P Records

SUBP

1 T. AUGUSTUS CLAUS, ESQ.

Nevada Bar No. 10004

2 LEGAL RESOURCE GROUP, LLC

229 S. Las Vegas Blvd, Suite 205

3 Las Vegas, NV 89101

(702)463-4900 Phone

4 (702)463-4800 Fax

Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

9 STATE OF NEVADA,

10 Plaintiff,

11 vs.

12 SPLOND, KENYA

13 ID# 1138461

Defendant.

Case No.: C-14-296374-1

Dept. No.: 11

SUBPOENA - CRIMINAL

☐ REGULAR ☒ DUCES TECUM

14 THE STATE OF NEVADA SENDS GREETINGS TO:

15 PERSON MOST KNOWLEDGEABLE AND/OR

16 CUSTODIAN OF RECORDS

17 PAROLE AND PROBATION

215 E. Bonanza Rd.

Las Vegas, NV 89101

18 YOU ARE HEREBY COMMANDED that all and singular, business and personal excuses  
19 set aside, you appear and attend on the 19<sup>th</sup> day of September, 2016, at the hour of 9:00 a.m., at  
20 District Court Department 11 in the Regional Justice Center located at 200 Lewis Avenue, Las  
21 Vegas, NV 89101. Your attendance is required to authenticate and to produce and permit  
22 inspection and copying of surveillance tapes, designated books, documents or tangible things in  
23 your possession, custody or control, or to permit inspection of premises. You are required to  
24 bring with you at the time of your appearance any items set forth below in EXHIBIT A.

25 INSTEAD OF PERSONAL APPEARANCE, YOU MAY PRODUCE THE ITEMS  
26 REQUESTED AT LEAST TWO (2) BUSINESS DAYS BEFORE THE DATE SET  
27 FORTH IN THE SUBPOENA WITH A COMPLETELY EXECUTED AND NOTARIZED  
28

1 AFFIDAVIT OF CUSTODIAN OF RECORDS, attached hereto as Exhibit B. As part of  
2 this accommodation, please produce the items sought, together with the aforementioned  
3 custodian of records affidavit to:

4 Legal Resource Group, LLC.  
5 229 S. Las Vegas Blvd., Suite 205  
6 Las Vegas, NV 89101

7 Please call the Legal Resource Group, LLC to confirm receipt of your materials and that your  
8 compliance was sufficient to negate appearing before the District Court at 702-463-4900.

9 If you fail to attend, and/or to produce the documents requested, you may be deemed  
10 guilty of contempt of Court, pursuant to NRS 174.385, and liable to pay all losses and damages  
11 caused by your failure to appear. Please see the attached Exhibit A for information regarding the  
12 duties of the person subject to this Subpoena.

13 CLERK OF COURT

14 By: \_\_\_\_\_

15 Deputy Clerk

16 SEP 12 2016

17 Date

18 Submitted by:

19 LEGAL RESOURCE GROUP, LLC.

20 By: \_\_\_\_\_

21 T. AUGUSTUS CLAUS, ESQ.

22 Nevada Bar No. 10004

23 229 S. Las Vegas Blvd, Suite 206

24 Las Vegas, NV 89101

25 Attorney for Defendant

EXHIBIT A

**LIST OF ITEMS TO BE PRODUCED**

1. Parole and Probation PSI Score Sheet for Defendant Kenya Splond in this matter.
2. Documentation, including communications, relating to the changes made in Defendant Kenya Splond's PSI from the May 9<sup>th</sup>, 2016 version to the June 30<sup>th</sup>, 2016 version specifically relating to:
  - a. Gang Activity/Affiliation (including documents evidencing Splond's purported Crips membership)
  - b. X. RECOMMENDATIONS (including documents evidencing the change to consecutive treatment for counts 2, 7 and 8)



EXHIBIT B

CERTIFICATE OF CUSTODIAN OF RECORDS

State of Nevada }  
County of..... } ss.

NOW COMES ....., who after first being duly sworn deposes and says:

1. That the deponent is the ..... (position or title) ..... of ..... (name of employer) ..... and in his or her capacity as ..... (position or title) ..... is a custodian of the records of ..... (name of employer) .....

2. That ..... (name of employer) ..... is licensed to do business as a ..... in the State of .....

3. That on the ..... day of the month of ..... of the year ....., the deponent was served with a subpoena in connection with the above-entitled cause, calling for the production of records pertaining to .....

4. That the deponent has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

5. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the deponent or ..... (name of employer) .....

Subscribed and sworn to before me,  
a Notary Public,  
on this ..... day of the month of ..... of the year .....

Notary Public ..... County, Nevada  
My appointment expires:.....

AFFIDAVIT OF SERVICE

STATE OF NEVADA )  
COUNTY OF CLARK ) ss.

\_\_\_\_\_, being duly sworn says: That at all times herein affiant was over 18 years of age, not a party to nor interested in the proceeding in which this affidavit is made. That affiant received the Subpoena on the \_\_\_\_ day of \_\_\_\_\_, 2016, and served the same on the \_\_\_\_\_ day of \_\_\_\_\_, 2016 by delivering a copy to the witness at: \_\_\_\_\_

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Signature of person making service

SUBSCRIBED AND SWORN to before me  
this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
NOTARY PUBLIC in and for said County and State



## Division of Parole &amp; Probation

1445 Old Hot Springs Rd, Suite 104

Carson City, NV 89706

Telephone: [REDACTED]

\*New\* Fax: [REDACTED]

From: Melinda Ridgely AAI

Custodian of Records

Command: Headquarters ~ General Services~  
Records

## FAX COVER SHEET

TO: T. Augustus Claus Esq

DATE: 10/27/2016

FAX#: [REDACTED]

PAGES: 7 including this cover sheet

SUBJECT: Kenya Splond

ATTENTION:

☐ Urgent☒ As Requested☐ For Review☐ As We Discussed☐ Please Comment/Recommend☐ For Your Information☐ Please Handle/Reply☐ Other

COMMENTS:

## \*\*\*\*CONFIDENTIAL\*\*\*\*

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE AND ANY AND ALL ACCOMPANYING DOCUMENTS ARE THE PROPERTY OF THE STATE OF NEVADA, DEPARTMENT OF PUBLIC SAFETY, DIVISION OF PAROLE AND PROBATION, AND ARE PRIVILEGED AND CONFIDENTIAL. THE INFORMATION CONTAINED HEREIN IS INTENDED ONLY FOR THE USE OF THE DESIGNATED RECIPIENT NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION, OR THE TAKING OF ANY ACTION IN RELIANCE ON THIS INFORMATION IS STRICTLY PROHIBITED.

IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ADDRESS SHOWN ABOVE VIA THE U. S. POSTAL SERVICE. THANK YOU.

---

Committed to Nevada's Public Safety

AA000211

Brian Sandoval  
*Governor*



James M. Wright  
*Director*

Natalie A. Wood  
*Chief*

## DIVISION OF PAROLE AND PROBATION

OFFICE OF THE CHIEF  
1445 Old Hot Springs Road, Suite 104  
Carson City, NV 89706

October 27, 2016

Dear T. Augustus Claus,

In response to the Subpoena Duces Tecum issued in Case C296374, please find attached PSI scoring documents for Defendant Kenya Splond. In light of recent district court rulings related to disclosure of similar documents, the Division of Parole and Probation provides the attached documents at this time. However, the Division maintains the position that these documents are confidential pursuant to NRS 176.156 and NRS 213.1075. This current production of documents does not constitute an abandonment of this position. In the future, should similar production of scoring documents result in unreasonable burden to the Division, the Division maintains its ability to pursue appropriate legal recourse to subpoenas for such documents.

For:   
Stephanie O'Rourke, Major

Brian Sandoval  
Governor

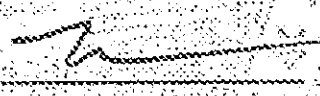


DIVISION OF PAROLE AND PROBATION  
October 27, 2016  
CERTIFICATE OF CUSTODIAN OF RECORDS

State of Nevada

Carson City

1. The Division of Parole and Probation (hereinafter "Division") and as such is a custodian of the records of the Division.
2. That the Division is a state agency of the Department of Public Safety of the State of Nevada.
3. That the Division received a Subpoena calling for the production of records pertaining to Kenya Splond
4. That the deponent has researched the Division's records has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete except for the redacted portions or other information deemed highly sensitive by the Division.
5. The document to which this certificate is attached is a full, true and correct copy of the documents called for in Subpoena on file and of records in my office

By: Melinda Ridgely 

Date: 10/27/2016



Natalie Wood  
Chief

## DIVISION OF PAROLE AND PROBATION

October 27, 2016

### PROBATION SUCCESS PROBABILITY (PSP) SCORE

Offender:	SPLOND, KENYA	Offense Score Total:	19
PSI #:	██████████	Social Score Total:	25
BIN #:	██████████	Raw Score Total:	16
Case #:	C296374	Total PSP Score:	44

#### Prior Criminal History:

Felony Convictions:	0 = One	Jail Sentences:	0 = 3 or more
Misdemeanor Convictions:	0 = 4 or more	Juvenile Commitments:	2 = None/or over 24
Pending, unrelated cases:	0 = Felony	Years free of Conv:	0 = Less than 3
Subsequent Crim Hist:	1 = Arrest/Pending	Prior Formal Suprv:	1 = One
Prior Incarcerations:	3 = None	Criminal Pattern:	-2 = History of Violence

#### Present Offense:

Circumstances of Arrest:	2 = Non-prob.	Sophistication/Premeditation:	0 = High
Type of Offense:	0 = Person	Plea Bargain Benefits:	2 = N/A
Psych or Medical Impact:	3 = N/A	Financial Impact:	2 = Minimal or no loss
Weapon:	-2 = Brandished	CoOffender:	0 = Leader/Coerced Others or NONE
Controlled Substances:	3 = N/A	Motive:	1 = Under Influence/Alch or Drugs

Raw Score x 1.2 = Offense Score Total: 19

#### Social History:

Age:	3 = 40 or more	Family Situation:	2 = Moderately Supportive
Employment/Program:	2 = Sporadic	Education:	2 = High School/GED/Vo-T
Financial:	2 = Could be developed	Military:	1 = Hon Discharge/No Mil
Employability:	0 = Unemployable		

#### Pre Sentence Adjustment:

Commitment/Ties:	2 = Local/In State	Resource Availability:	2 = Available
Program Participation:	1 = Planned/Current	Substance Drug:	0 = Regular Use
Honesty/Cooperation:	2 = Candid	Substance Alcohol:	3 = Non-Problematic
Attitude/Supervision:	2 = Positive	Attitude/Offense:	1 = Indifferent

Social Score Total: 25

Offense Score + Social Score = PSP TOTAL SCORE: 44

## REFERENCE &amp; GUIDE TO MAX SENTENCE AND MINIMUM PAROLE ELIGIBILITY

SENTENCE IN YEARS	SENTENCE RANGE	LOW (39-49 MOS)	MODERATE (28-38 MOS)	MEDIUM (17-27 MOS)	MED-HIGH (6-16 MOS)	HIGH (-5-5 MOS)
1-4	MAXIMUM (SUGGESTED MAX) MINIMUM	30 - 48 (30) 12 MOS	30 - 48 (32) 12 MOS	30 - 48 (34) 12 MOS	30 - 48 (36) 12 MOS	30 - 48 (48) 12 MOS
1-5	MAXIMUM (SUGGESTED MAX) MINIMUM	30 - 60 (30) 12 MOS	30 - 60 (32) 12 MOS	30 - 60 (36) 12 MOS	30 - 60 (48) 12 MOS	33 - 60 (60) 12 MOS
1-6	MAXIMUM (SUGGESTED MAX) MINIMUM	30 - 72 (30) 12 MOS	30 - 72 (36) 12 MOS	30 - 72 (48) 12 MOS	33 - 72 (60) 13 MOS	40 - 72 (72) 16 MOS
1-10	MAXIMUM (SUGGESTED MAX) MINIMUM	30 - 120 (30) 12 MOS	30 - 120 (48) 12 MOS	30 - 120 (72) 12 MOS	55 - 120 (96) 22 MOS	65 - 120 (120) 26 MOS
2-10	MAXIMUM (SUGGESTED MAX) MINIMUM	60 - 120 (60) 24 MOS	60 - 120 (62) 24 MOS	60 - 120 (72) 24 MOS	60 - 120 (96) 24 MOS	65 - 120 (120) 26 MOS
2-15	MAXIMUM (SUGGESTED MAX) MINIMUM	60 - 180 (60) 24 MOS	60 - 180 (84) 24 MOS	65 - 180 (120) 26 MOS	88 - 180 (156) 35 MOS	100 - 180 (180) 40 MOS
3-15	MAXIMUM (SUGGESTED MAX) MINIMUM	90 - 180 (90) 36 MOS	90 - 180 (92) 36 MOS	90 - 180 (120) 36 MOS	90 - 180 (156) 36 MOS	100 - 180 (180) 40 MOS
5-15	MAXIMUM (SUGGESTED MAX) MINIMUM	150 - 180 (150) 60 MOS	150 - 180 (155) 60 MOS	150 - 180 (160) 60 MOS	150 - 180 (170) 60 MOS	150 - 180 (180) 60 MOS
1-20	MAXIMUM (SUGGESTED MAX) MINIMUM	30 - 240 (48) 12 MOS	55 - 240 (96) 22 MOS	80 - 240 (144) 32 MOS	108 - 240 (192) 43 MOS	133 - 240 (240) 53 MOS
2-20	MAXIMUM (SUGGESTED MAX) MINIMUM	60 - 240 (60) 24 MOS	60 - 240 (96) 24 MOS	80 - 240 (144) 32 MOS	108 - 240 (192) 43 MOS	133 - 240 (240) 53 MOS
5-20	MAXIMUM (SUGGESTED MAX) MINIMUM	150 - 240 (150) 60 MOS	150 - 240 (170) 60 MOS	150 - 240 (190) 60 MOS	150 - 240 (215) 60 MOS	150 - 240 (240) 60 MOS



OFFENSE SCORE

Prior Criminal History

Felony Convictions	Jail Sentences	Adjudicator Convictions	Juvenile Commitments	Pending unresolved cases	Years free of Conviction	Subsequent Criminal History	Prior Incarcerations	Prior Formal Supervision	Criminal Pattern
-1 2 or More	0 3 or More	0 4 or More	0 Two	0 Felony	0 Less than 3	0 Convictions	0 2 or more	0 More than 1	-2 History of Violence
0 One	1 2 or Less	1-3	1 One	1 Misdemeanor	2 3-5	1 Arrest/Pending	1 One	1 One	0 Same Type or Increased Severity
1 None	2 None	2 None	2 None/over 24	2 None	4 Over 5	2 None	3 None	2 None	1 Recurrent/Increased Severity
									2 Non/No Record

Present Offense

Circumstances of Arrest	Type of Offense	Psych or Medical Impact	Financial Impact	Controlled Substances	Sophistication/Prominence	Uses Bargain Benefits	Weapons	Co Offender	Motive
-3 Violent	-2 Multiple person (3 or More)	0 Death	0 Extensive	-2 Sales/Smuggling/Manufacturing	0 High	0 High	0 Used	0 Leader/Controlled Offender or None	1 Under Influence/Alcohol or Drugs
0 Resistant	-1 Multiple person (2)	0 Disability	0 Moderate	0 Possession for Sale/Minor Sales	1 Moderate	1 Somewhat	-2 Brandished	1 Equal Responsibility	0 Deliberate
2 Non-verb	0 Person	1 Reg Medical Treatment/ Psych	2 Minor or no loss	2 Simple Possession	2 None	2 N/A	0 Implied/ Concealed	2 Follower	2 Situational
3 Voluntary	1 Sales	2 Minor/ No Treatment	N/A	3 N/A			3 N/A	3 Unintentional	
	2 Property	3 N/A							
	3 Victims/Inj (Excluding Sales)								



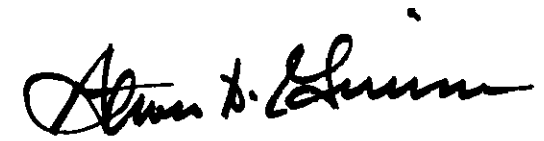
## SOCIAL SCORE

## Social History

	Age		Family Situation		Education		Employment/ Program		Military		Employability		Financi
0	Certified Adult	0	Disruptive	0	Unknown	0	Almost Non-existent	0	Other	0	Unemployable	0	Unknown
1	Under 25	1	Non-Supportive/ Non- Habitant	1	Incomplete	2	Spontane	1	Hon Discharge/ No Military Service	1	Could be developed	1	Inadequate
2	25-39	2	Moderately Supportive	2	High School/ GED/ Vo- Tech Cert	4	Continuous/ Housewife			2	Readily/ Not Needed	2	Could be Developed
3	40 or More	3	Constructive Support	3	College or Tech Program Completed							4	Adequate

## PreSentence Adjustment

	Commitment/ Ties		Resource Availability		Substance Alcohol		Substance Drug		Program Participation		Honesty/ Cooperation		Attitude/ Supervision		Attitude Offense
0	None	0	Unavailable	0	Excessive	-2	Serious Abuser/ Addict	-1	Refused	0	Deceptive	0	Negative	0	Denies
1	Home State	2	Available	2	Problematic	0	Regular Use	0	Failure	1	Reluctant	1	Indifferent	1	Indifferent
2	Local/ In State	3	Pre-Determined/Not needed	3	Non-Problematic	1	Occasional	1	Planned/Current	2	Comid	2	Positive	2	Contrite
						3	No Use	2	Completed						

  
CLERK OF THE COURT

1 **OPPS**  
2 ADAM PAUL LAXALT  
3 Attorney General  
4 David R. Keene, II (Bar. No. 11826)  
5 Senior Deputy Attorney General  
6 State of Nevada  
7 Office of the Attorney General  
8 555 East Washington Avenue, Suite 3900  
9 Las Vegas, Nevada 89101  
10 (702) 486-3584 (phone)  
11 (702) 486-3773 (fax)  
12 dkeene@ag.nv.gov  
13  
14 Attorneys for The State of Nevada  
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16

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 THE STATE OF NEVADA,  
13 Plaintiff,

Case No. C-14-296374-1  
Dept. No. 11

14 vs.

15 KENYA SPLOND, #1138461,  
16 Defendant.

17 **OPPOSITION TO MOTION TO COMPEL**  
18 **PRODUCTION OF SUBPOENAED MATERIALS**

19 Date of Hearing: January 9, 2017  
20 Time of Hearing: 9:00 a.m.

21 COMES NOW the State of Nevada, Department of Public Safety, Division of Parole and  
22 Probation ("P&P"), by and through counsel, Adam Paul Laxalt, Attorney General for the State of  
23 Nevada, and David R. Keene, II, Senior Deputy Attorney General, and hereby submits its Opposition to  
24 Motion to Compel Production of Subpoenaed Materials.

25 This Opposition is made and based on the following memorandum of points and authorities, the  
26 pleadings and papers on file and any additional evidence the Court deems appropriate.

27 ///

28 ///

///

AFFIDAVIT OF DAVID R. KEENE, II

STATE OF NEVADA       )  
                                      : ss  
COUNTY OF CLARK       )

David R. Keene, II, being first duly sworn, deposes and says:

1. The Affiant is duly licensed to practice law in the State of Nevada and, in that capacity, is an attorney in the Office of the Attorney General for the State of Nevada.

2. The Affiant represents the State of Nevada, Department of Public Safety, Division of Parole and Probation, in this matter.

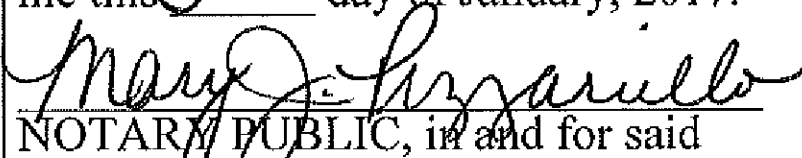
3. On January 5, 2017, the Affiant spoke to Melinda Ridgely, a custodian of records for the State of Nevada, Department of Public Safety, Division of Parole and Probation.

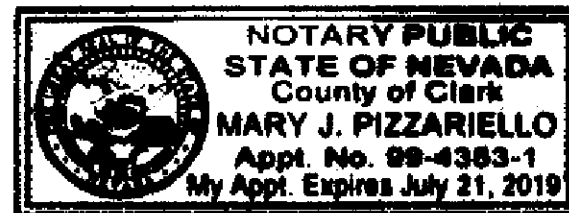
4. Ms. Ridgely told Affiant that the State of Nevada, Department of Public Safety, Division of Parole and Probation had provided the entire contents of Defendant Keyna Splond's parole and probation file to his attorney, pursuant to a subpoena dated September 12, 2016, and that no additional documentation exists.

Further Affiant sayeth naught.

  
DAVID R. KEENE, II

SUBSCRIBED and SWORN to before  
me this 5<sup>th</sup> day of January, 2017.

  
NOTARY PUBLIC, in and for said  
County and State (seal)



## POINTS AND AUTHORITIES

Defendant Kenya Splond ("Defendant") has subpoenaed certain materials from P&P. See Motion to Compel, Exhibit A. P&P responded with the documents presented in Exhibit B of the Motion to Compel. Subsequently, Defendant filed his Motion to Compel, seeking information provided to P&P officers and employees.

### **A. Arguments**

#### **1. Disclosure of the subpoenaed material is precluded by law.**

NRS 213.1075 provides that all information obtained by any P&P officer or employee is privileged:

Except as otherwise provided by specific statute, all information obtained in the discharge of official duty by a parole and probation officer or employee of the board is privileged and may not be disclosed directly or indirectly to anyone other than the board, the judge, district attorney or others entitled to receive such information, unless otherwise ordered by the board or judge or unless necessary to perform the duties of the division.

Such documents demanded by the Subpoena in this case – documentation, including communications – constitutes information obtained in the discharge of duties and, therefore, falls squarely within the protections of NRS 213.1075. Pursuant to NRS 213.1075, this file is privileged and should not be disclosed.

#### **2. The information Defendant seeks does not exist.**

Undersigned counsel avers that, after speaking with a P&P official, no additional information is contained in Defendant's P&P file. Thus, to the extent this Court rules that Defendant is entitled to the information, it should be aware that no such information exists.

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1           **B.       Conclusion**

2           For the reasons herein provided, the Motion to Compel Production of Subpoenaed Materials  
3 should be denied.

4           DATED this 5th day of January, 2017.

5                                   ADAM PAUL LAXALT  
6                                   Attorney General

7                                   By: /s/ David R. Keene, II  
8                                   David R. Keene, II (Bar. No. 11826)  
9                                   Senior Deputy Attorney General  
10                                  Attorneys for The State of Nevada  
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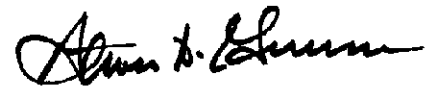
**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on January 5, 2017, I filed the foregoing **Opposition to Motion to Compel Production of Subpoenaed Materials** via this Court's electronic filing system. Parties that are registered with this Court's EFS will be served electronically. The following parties are not registered and, therefore, a copy of this document has been placed in the U.S. mail, first-class postage prepaid, addressed as follows:

T. Augustus Claus, Esq.  
Legal Resource Group, LLC  
205 North Stephanie Street, Suite D221  
Henderson, NV 89074

Attorneys for Defendant

/s/ Mary Pizzariello  
An employee of the Office of  
the Nevada Attorney General



CLERK OF THE COURT

JOC

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KENNY SPLOND aka  
Kenya Splond  
#1138461

Defendant.

CASE NO. C296374-1

DEPT. NO. XI

JUDGMENT OF CONVICTION  
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480, COUNTS 2, 5 and 7 – BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony) in violation of NRS 205.060, COUNT 3, 6 and 8 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; and COUNTS 4 – POSSESSION OF STOLEN PROPERTY (Category B Felony) in violation of NRS 205.275(2)(c); and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS

1 200.380, 199.480, COUNTS 2, 5 and 7 – BURGLARY WHILE IN POSSESSION OF A  
2 FIREARM (Category B Felony) in violation of NRS 205.060, COUNT 3, 6 and 8 –  
3 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of  
4 NRS 200.380, 193.165; and COUNTS 4 – POSSESSION OF STOLEN PROPERTY  
5 (Category B Felony) in violation of NRS 205.275(2)(c); thereafter, on the 6<sup>th</sup> day of  
6 February, 2017, the Defendant was present in court for sentencing with counsel  
7 AUGUSTUS CLAUS, ESQ., and good cause appearing,  
8

9 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in  
10 addition to the \$25.00 Administrative Assessment Fee, \$686.71 Restitution payable to  
11 Victim in Count 3 (Brittany Slathar), \$250.00 Indigent Defense Civil Assessment Fee  
12 plus \$3.00 DNA Collection Fee, the Defendant is SENTENCED to the Nevada  
13 Department of Corrections (NDC) as follows: **COUNT 1** - a MAXIMUM of SIXTY (60)  
14 MONTHS with a MINIMUM parole eligibility of TWELVE (12) MONTHS; **COUNT 2** - a  
15 MAXIMUM of ONE HUNDRED FIFTY-SIX (156) MONTHS with a MINIMUM parole  
16 eligibility of TWENTY-EIGHT (28) MONTHS, CONCURRENT with COUNT 1; **COUNT 3**  
17 - a MAXIMUM of ONE HUNDRED FIFTY-SIX (156) MONTHS with a MINIMUM parole  
18 eligibility of TWENTY-EIGHT (28) MONTHS plus a CONSECUTIVE term ONE  
19 HUNDRED FIFTY-SIX (156) MONTHS with a MINIMUM parole eligibility of TWENTY-  
20 EIGHT (28) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT  
21 2; **COUNT 4** - a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility  
22 of TWENTY-FOUR (24) MONTHS, CONCURRENT with COUNTS 1, 2 & 3; **COUNT 5** -  
23 a MAXIMUM of ONE HUNDRED FIFTY-SIX (156) MONTHS with a MINIMUM parole  
24 eligibility of TWENTY-EIGHT (28) MONTHS, CONSECUTIVE to COUNTS 1, 2, 3 & 4;  
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1 **COUNT 6** - a MAXIMUM of ONE HUNDRED FIFTY-SIX (156) MONTHS with a  
2 MINIMUM parole eligibility of TWENTY-EIGHT (28) MONTHS plus a CONSECUTIVE  
3 term of ONE HUNDRED FIFTY-SIX (156) MONTHS with a MINIMUM parole eligibility of  
4 TWENTY-EIGHT (28) MONTHS for the Use of a Deadly Weapon, CONCURRENT with  
5 COUNT 5; **COUNT 7** - a MAXIMUM of ONE HUNDRED FIFTY-SIX (156) MONTHS  
6 with a MINIMUM parole eligibility of TWENTY-EIGHT (28) MONTHS, CONSECUTIVE  
7 to OTHER COUNTS; **COUNT 8** - a MAXIMUM of ONE HUNDRED FIFTY-SIX (156)  
8 MONTHS with a MINIMUM parole eligibility of TWENTY-EIGHT (28) MONTHS plus a  
9 CONSECUTIVE term of ONE HUNDRED FIFTY-SIX (156) MONTHS with a MINIMUM  
10 parole eligibility of TWENTY-EIGHT (28) MONTHS for the Use of a Deadly Weapon,  
11 CONCURRENT with COUNT 7; with NINE HUNDRED THIRTY-FIVE (935) DAYS  
12 credit for time served. As the \$150.00 DNA Analysis Fee and Genetic Testing have  
13 been previously imposed, the Fee and Testing in the current case are WAIVED. The  
14 AGGREGATE TOTAL sentence is NINE HUNDRED THIRTY-SIX (936) MONTHS  
15 MAXIMUM with a MINIMUM PAROLE ELIGIBILITY OF ONE HUNDRED SIXTY-EIGHT  
16 (168) MONTHS.

17 DATED this 10<sup>th</sup> day of February, 2017

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ELIZABETH GONZALEZ  
DISTRICT COURT JUDGE  


  
CLERK OF THE COURT

NOTC

T. AUGUSTUS CLAUS, ESQ.  
LEGAL RESOURCE GROUP, LLC.  
Nevada Bar No. 10004  
205 N. Stephanie St., Suite D221  
Henderson, Nevada 89074  
(702)463-4900 Phone  
(702)463-4800 Fax  
Attorney for Defendant  
KENYA SPLOND

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

KENYA SPLOND

Defendant.

CASE NO. C-14-296374-1

DEPT. NO. 11

**NOTICE OF APPEAL**

Notice is hereby given that KENYA SPLOND, Defendant above named, by and through his attorney of record, T. AUGUSTUS CLAUS, ESQ., from the LEGAL RESOURCE GROUP, LLC., hereby appeals to the Supreme Court of Nevada, from Clark County District Court, his conviction. The Defendant previously appeared before the Court with counsel and entered a plea of not guilty to the crimes of COUNT 1 -CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480, COUNTS 2, 5 and 7- BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony) in violation of NRS 205.060, COUNT 3, 6 and 8- ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; and COUNTS 4- POSSESSION OF STOLEN PROPERTY (Category B Felony) in violation of NRS 205.275(2)(c); and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 -CONSPIRACY TO

1 COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480, COUNTS 2, 5  
2 and 7- BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony) in violation  
3 of NRS 205.060, COUNT 3, 6 and 8- ROBBERY WITH USE OF A DEADLY WEAPON  
4 (Category B Felony) in violation of NRS 200.380, 193.165; and COUNTS 4- POSSESSION OF  
5 STOLEN PROPERTY (Category B Felony) in violation of NRS 205.275(2)(c); thereafter, on the  
6 6<sup>th</sup> day of February, 2017, the Defendant was present in court for sentencing with counsel  
7 AUGUSTUS CLAUS, ESQ., and good cause appearing,  
8

9 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to  
10 the \$25.00 Administrative Assessment Fee, \$686.71 Restitution payable to Victim in Count 3  
11 (Brittany Slathar), \$250.00 Indigent Defense Civil Assessment Fee plus \$3.00 DNA Collection Fee,  
12 the Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows:

13 **COUNT 1** - a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of  
14 TWELVE (12) MONTHS; **COUNT 2**- a MAXIMUM of ONE HUNDRED FIFTY-SIX (156)  
15 MONTHS with a MINIMUM parole eligibility of TWENTY-EIGHT (28) MONTHS,  
16 CONCURRENT with COUNT 1; **COUNT 3**-a MAXIMUM of ONE HUNDRED FIFTY-SIX  
17 (156) MONTHS with a MINIMUM parole eligibility of TWENTY-EIGHT (28) MONTHS plus a  
18 CONSECUTIVE term ONE HUNDRED FIFTY-SIX (156) MONTHS with a MINIMUM parole  
19 eligibility of TWENTY- EIGHT (28) MONTHS for the Use of a Deadly Weapon, CONCURRENT  
20 with COUNT 2; **COUNT 4**- a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole  
21 eligibility of TWENTY-FOUR (24) MONTHS, CONCURRENT with COUNTS 1, 2 & 3; **COUNT**  
22 **5**- a MAXIMUM of ONE HUNDRED FIFTY-SIX (156) MONTHS with a MINIMUM parole  
23 eligibility of TWENTY-EIGHT (28) MONTHS, CONSECUTIVE to COUNTS 1, 2, 3 & 4;

24 **COUNT 6**- a MAXIMUM of ONE HUNDRED FIFTY-SIX (156) MONTHS with a  
25 MINIMUM parole eligibility of TWENTY-EIGHT (28) MONTHS plus a CONSECUTIVE term of  
26 ONE HUNDRED FIFTY-SIX (156) MONTHS with a MINIMUM parole eligibility of TWENTY-  
27 EIGHT (28) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 5;  
28

1 **COUNT 7-** a MAXIMUM of ONE HUNDRED FIFTY-SIX (156) MONTHS with a MINIMUM  
2 parole eligibility of TWENTY-EIGHT (28) MONTHS, CONSECUTIVE to OTHER COUNTS;  
3 **COUNT 8-** a MAXIMUM of ONE HUNDRED FIFTY-SIX (156) MONTHS with a MINIMUM  
4 parole eligibility of TWENTY-EIGHT (28) MONTHS plus a CONSECUTIVE term of ONE  
5 HUNDRED FIFTY-SIX (156) MONTHS with a MINIMUM parole eligibility of TWENTY-  
6 EIGHT (28) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 7; with  
7 NINE HUNDRED THIRTY-FIVE (935) DAYS credit for time served. As the \$150.00 DNA  
8 Analysis Fee and Genetic Testing have been previously imposed, the Fee and Testing in the current  
9 case are WAIVED. The AGGREGATE TOTAL sentence is NINE HUNDRED THIRTY-SIX (936)  
10 MONTHS MAXIMUM with a MINIMUM PAROLE ELIGIBILITY OF ONE HUNDRED SIXTY-  
11 EIGHT (168) MONTHS.

12 DATED this 2<sup>nd</sup> day of March, 2017.

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LEGAL RESOURCE GROUP, LLC.

/s/ T. Augustus Claus  
T. AUGUSTUS CLAUS, ESQ.  
Nevada Bar No. 10004  
205 N. Stephanie St., Suite D221  
Henderson, Nevada 89074

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of **LEGAL RESOURCE GROUP, LLC.**, and that on the 2<sup>nd</sup> day of March, 2017, I caused the Notice of Appeal to be served as follows:

☐ by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid; and/or

☐ pursuant to EDCR 7.26, by sending it via facsimile; and/or

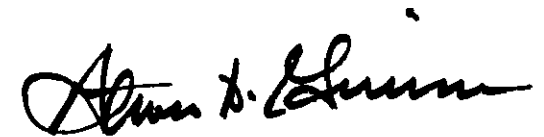
☐ by hand delivery via runner

☒ via electronic service

to the attorneys listed below:

DISTRICT ATTORNEY'S OFFICE  
Clark County District Attorney  
200 South Lewis Avenue  
Las Vegas, Nevada 89155  
[pdmotions@clarkcountyda.com](mailto:pdmotions@clarkcountyda.com)

/s/ Tobi Caperon  
An Employee of the Legal Resource Group, LLC.



CLERK OF THE COURT

**REQ**  
T. AUGUSTUS CLAUS, ESQ.  
LEGAL RESOURCE GROUP, LLC.  
Nevada Bar No. 10004  
205 N. Stephanie St., Suite D221  
Henderson, Nevada 89074  
(702)463-4900 Phone  
(702)463-4800 Fax  
Counsel for Defendant  
KENYA SPLOND

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

vs.

KENYA SPLOND

Defendant.

CASE NO. C-14-296374-1  
DEPT. NO. 11

**REQUEST FOR ROUGH DRAFT**  
**TRANSCRIPT**

**TO: JILL HAWKINS**

KENYA SPLOND, Defendant, thru his attorney T. Augustus Claus from the Legal Resource Group, LLC., requests preparation of a Transcripts of the proceedings before the District Court on:

-3/5/14 – Grand Jury Indictment

-3/12/14 – All Pending Motions

- 4/2/14 – Calendar Call

- 4/30/14 – Status Check

- 6/16/14 – Status Check

- 7/14/14 – Status Check

- 7/16/14 – Status Check

- 8/13/14 – Calendar Call

- 9/8/14 – Status Check

1 - 9/15/14 – Status Check  
2 - 10/1/14 – Status Check  
3 - 3/18/15 – Motion to Consolidate  
4 - 4/8/15 – Request  
5 - 4/15/15 – Status Check  
6 - 4/20/15 – Status Check  
7 - 4/22/15 – Confirmation of Counsel  
8 - 7/29/15 – Status Check  
9 - 8/12/15 – Status Check  
10 - 8/19/15 – Calendar Call  
11 - 10/5/15 – Motion to Continue Trial  
12 - 12/30/15 – Calendar Call  
13 - 1/4/16 – Calendar Call  
14 - 1/11/16 – Status Check  
15 - 3/2/16 – Calendar Call  
16 - 3/11/16 – Overflow  
17 - 3/11/16 – Telephonic Conference  
18 - 3/15/16 – Jury Trial  
19 - 3/16/16 – All Pending Motions  
20 - 3/18/16 – Status Check  
21 - 3/21/16 - Motion  
22 - 3/21/16 – Jury Trial  
23 - 3/22/16 – Jury Trial  
24 - 3/23/16 – Jury Trial  
25 - 3/24/16 – Jury Trial  
26 -7/20/16 – Sentencing  
27 -8/10/16 – Sentencing  
28 -9/7/16 – Sentencing





1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of **LEGAL RESOURCE**  
3 **GROUP, LLC.**, and that on the 2<sup>nd</sup> day of March, 2017, I caused the Request for Rough Draft  
4 Transcripts to be served as follows:

- 5 ☐ by placing a true and correct copy of the same to be deposited for mailing in the U.S.  
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7 postage was fully prepaid; and/or  
8 ☐ pursuant to EDCR 7.26, by sending it via facsimile; and/or  
9 ☐ by hand delivery via runner  
10 ☒ via electronic service

11 to the attorneys listed below:

12 DISTRICT ATTORNEY'S OFFICE  
13 Clark County District Attorney  
200 South Lewis Avenue  
14 Las Vegas, Nevada 89155  
15 [pdmotions@clarkcountyda.com](mailto:pdmotions@clarkcountyda.com)

16 Jill Hawkins  
Court Reporter  
17 [hawkinsj@clarkcountycourts.us](mailto:hawkinsj@clarkcountycourts.us)

18  
19 /s/ Tobi Caperon  
20 An Employee of the Legal Resource Group, LLC.

  
CLERK OF THE COURT

ASTA  
T. AUGUSTUS CLAUS, ESQ.  
LEGAL RESOURCE GROUP, LLC.  
Nevada Bar No. 10004  
205 N. Stephanie St., Suite D221  
Henderson, Nevada 89074  
(702)463-4900 Phone  
(702)463-4800 Fax  
Attorney for Defendant  
KENYA SPLOND

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

vs.

KENYA SPLOND

Defendant.

CASE NO. C-14-296374-1

DEPT. NO. 11

**CASE APPEAL STATEMENT**

1. Name of appellant filing this case appeal statement:

KENYA SPLOND

2. Identity of the judge issuing the decision, judgment, or order appealed from:

Judge ELIZABETH GONZALEZ

3. Identity of all parties to the proceedings in the District Court:

Plaintiff – State of Nevada

Defendant – KENYA SPLOND

4. Identity of all parties involved in this appeal:

KENYA SPLOND, Appellant;

State of Nevada (Clark County District Attorney's Office), Respondent

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5. The name, law firm, address, and telephone number of all counsel on appeal and  
indentify the party or parties whom they represent:

T. Augustus Claus, Esq., Legal Resource Group, LLC., 205 N. Stephanie St., Suite  
D221, Henderson, NV 89074. Phone # 702-463-4900 – Counsel for Appellant

Steven Wolfson, Clark County District Attorney’s Office, 200 Lewis Ave., Las  
Vegas, NV 89155. Phone # 702-671-2500 – Counsel for State

6. Indicate whether appellant is represented by appointed or retained counsel in the District  
Court:

Appointed

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appointed

8. Indicate whether appellant was granted leave to proceed in forma pauperies, and the date  
of the entry of the District Court order granting such leave:

No

9. Indicate the date the proceedings commenced in the District Court:

February 6<sup>th</sup>, 2017.

DATED this 2<sup>nd</sup> day of March, 2017.

Respectfully submitted,

by: /s/ T. Augustus Claus  
T. AUGUSTUS CLAUS, ESQ.  
LEGAL RESOURCE GROUP, LLC.  
Nevada Bar No. 10004  
205 N. Stephanie St., Suite D221  
Henderson, Nevada 89074

**CERTIFICATE OF SERVICE**

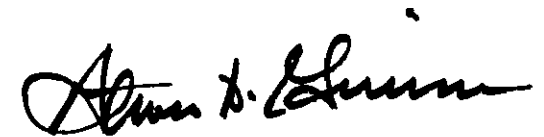
Pursuant to NRCP 5(b), I hereby certify that I am an employee of **LEGAL RESOURCE GROUP, LLC.**, and that on the 2<sup>nd</sup> day of March, 2017, I caused the Case Appeal Statement to be served as follows:

- ☐ by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid; and/or
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to the attorneys listed below:

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Clark County District Attorney  
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Las Vegas, Nevada 89155  
pdmotions@clarkcountyda.com

/s/ Tobi Caperon  
An Employee of the Legal Resource Group, LLC.



CLERK OF THE COURT

**REQ**  
T. AUGUSTUS CLAUS, ESQ.  
LEGAL RESOURCE GROUP, LLC.  
Nevada Bar No. 10004  
205 N. Stephanie St., Suite D221  
Henderson, Nevada 89074  
(702)463-4900 Phone  
(702)463-4800 Fax  
Counsel for Defendant  
KENYA SPLOND

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

vs.

KENYA SPLOND

Defendant.

CASE NO. C-14-296374-1  
DEPT. NO. 11

**REQUEST FOR ROUGH DRAFT**  
**TRANSCRIPT**

**TO: JILL HAWKINS, CHERYL CARPENTER, LISA LIZOTTE, RENEE VINCENT,  
CYNTHIA GEORGILAS, JILL JACOBY**

KENYA SPLOND, Defendant, thru his attorney T. Augustus Claus from the Legal Resource Group, LLC., requests preparation of a Transcripts of the proceedings before the District Court on:

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-3/12/14 – All Pending Motions

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26 - 3/24/16 – Jury Trial  
27 - 7/20/16 – Sentencing  
28 - 8/10/16 – Sentencing



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14  
15 Jill Hawkins  
Court Reporter  
16 [hawkinsj@clarkcountycourts.us](mailto:hawkinsj@clarkcountycourts.us)

17 Jill Jacoby  
Court Reporter  
18 [jacobyj@clarkcountycourts.us](mailto:jacobyj@clarkcountycourts.us)

19 Lisa Lizotte  
Court Reporter  
20 [lizottel@clarkcountycourts.us](mailto:lizottel@clarkcountycourts.us)

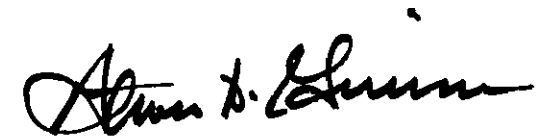
21  
22 Renee Vincent  
Court Reporter  
23 [vincentr@clarkcountycourts.us](mailto:vincentr@clarkcountycourts.us)

24 Cynthia Georgilas  
Court Reporter  
25 [georgilasc@clarkcountycourts.us](mailto:georgilasc@clarkcountycourts.us)

26 Cheryl Carpenter  
Court Reporter  
27 [carpenterc@clarkcountycourts.us](mailto:carpenterc@clarkcountycourts.us)

28 /s/ Tobi Caperon  
An Employee of the Legal Resource Group, LLC.





CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

KENYA SPLOND,  
AKA KENNY SPLOND

Defendant.

CASE NO. C296111  
C296374  
DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
WEDNESDAY, MARCH 12, 2014

**TRANSCRIPT OF PROCEEDINGS**  
**STATUS CHECK: INDICTMENT RETURN IN C296374**  
**INITIAL ARRAIGNMENT**  
**INDICTMENT WARRANT RETURN**

APPEARANCES:

For the State:

AGNES LEXIS, ESQ.  
Deputy District Attorney

For the Defendant:

FRANK KOCKA, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

1 WEDNESDAY, MARCH 12, 2014 AT 8:40 A.M.

2  
3 THE COURT: C296111, Kenya Splond, and C296374.

4 MR. KOCKA: Good morning, Your Honor.

5 THE COURT: Defendant is present in custody. These are indictment  
6 returns?

7 MR. KOCKA: Yes, sir. I would confirm as his attorney at this time, Your  
8 Honor. He's got a copy of the information, he's read it this morning, we waive the  
9 reading.

10 THE COURT: Are you appointed or retained?

11 MR. KOCKA: Retained.

12 THE COURT: Okay. Does he invoke or waive his right to a speedy trial?

13 MR. KOCKA: Your Honor, we've already -- one of the cases needs to be  
14 dismissed because it came up through lower level already. They took it subsequent  
15 to the grand jury. We have a trial in front of you already set on that case for April 7<sup>th</sup>.  
16 So, I think, what we need to do is a little housekeeping this morning. Get a plea on  
17 the new information, dismiss the underlying case, which has been incorporated into  
18 the information here, and then we have to reset a new trial date. He is invoking.

19 MS. LEXIS: That's correct, Your Honor. Good morning.

20 C296111 needs to be dismissed by way of superseding indictment,  
21 which is C296374. And we would need a new trial date, he invoked.

22 THE COURT: And that's conspiracy to commit robbery, burglary in  
23 possession of a firearm, robbery with the use, and possession of stolen property?

24 MS. LEXIS: That's correct, Your Honor.

25 THE COURT: Is that your understanding as well?

1 MR. KOCKA: Yes, sir. And we would need to vacate the trial date already  
2 set in that as well.

3 THE COURT: We'll vacate that trial date, dismiss C296111.

4 Invoke or waive?

5 MR. KOCKA: Invoke.

6 THE COURT: Invoke the right to a speedy trial.

7 THE CLERK: April 7<sup>th</sup> at 8:00 a.m. Calendar call is April 2<sup>nd</sup>.

8 THE COURT: Any motions you can file in writing, please.

9 MR. KOCKA: Thank you.

10 I don't believe at this point that we've actually taken a plea from my  
11 client.

12 THE COURT: Well, you entered a plea on his behalf.

13 MR. KOCKA: I did, but he is present --

14 THE COURT: How do you plead to the four felony charges?

15 THE DEFENDANT: Not guilty.

16 THE COURT: All right.

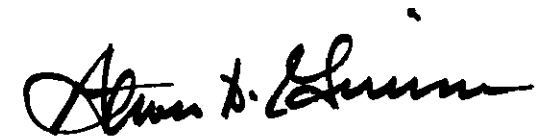
17 MR. KOCKA: Thank you, Your Honor. I appreciate it.

18 [Proceeding concluded at 8:41 a.m.]

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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

23 

24 Gina Villani  
25 Court Recorder



CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

KENYA SPLOND,  
AKA KENNY SPLOND

Defendant.

CASE NO. C296374

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
WEDNESDAY, APRIL 2, 2014

**TRANSCRIPT OF PROCEEDINGS  
CALENDAR CALL**

APPEARANCES:

For the State:

VICTORIA VILLEGAS, ESQ.  
Chief Deputy District Attorney

For the Defendant:

FRANK KOCKA, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

1 WEDNESDAY, APRIL 2, 2014 AT 8:54 A.M.

2  
3 THE COURT: C296374, Kenya Splond.

4 MR. KOCKA: Judge, I'm actually starting trial with Judge Barker in about an  
5 hour, it's supposed to go two weeks, so I'm not going to be able to do this one.

6 THE COURT: All right.

7 MR. KOCKA: I'm trying to get together with the DA, get an offer on the table.  
8 I think we're probably going to get this one resolved. So if you want to set it for a  
9 status check in about 30 days?

10 THE COURT: 30 day status check.

11 MR. KOCKA: Thanks, Judge.

12 THE COURT: And if we can't, we'll reset the trial then.

13 MR. KOCKA: Yep, we'll reset it at that time.

14 THE CLERK: April 30<sup>th</sup> at 8:00 a.m.

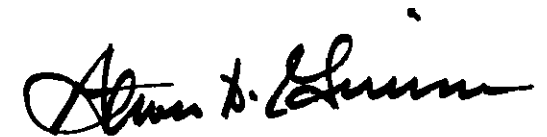
15 THE COURT: Thanks.

16 MR. KOCKA: Thank you, Judge. I appreciate it.

17 [Proceeding concluded at 8:55 a.m.]  
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21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

23   
24 \_\_\_\_\_  
Gina Villani  
Court Recorder  
25



CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

KENYA SPLOND,  
AKA KENNY SPLOND

Defendant.

CASE NO. C296374

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
WEDNESDAY, APRIL 30, 2014

**TRANSCRIPT OF PROCEEDINGS**  
**STATUS CHECK: NEGOTIATIONS/RESET TRIAL**

APPEARANCES:

For the State:

TIERRA JONES, ESQ.  
Deputy District Attorney

For the Defendant:

FRANK KOCKA, ESQ.

RECORDED BY: JILL JACOBY, COURT RECORDER

1 WEDNESDAY, APRIL 30, 2014 AT 8:31 A.M.

2  
3 THE COURT: C296374, Kenya Splond.

4 MR. KOCKA: Judge, the district attorney that's been assigned to this case is  
5 not here, but I believe she's left the file, and it's her request that we just set a new  
6 trial date in the case.

7 MS. JONES: That is correct, Your Honor.

8 THE COURT: All right. New trial date set for -- did he waive?

9 MR. KOCKA: I believe he did, Judge.

10 I'd also like to set a status check in addition to the trial.

11 THE COURT: Because our ordinary course is in 2015.

12 MR. KOCKA: Judge, why don't we do this --

13 THE COURT: We'll have a status check in 45 days.

14 MR. KOCKA: Perfect. Because there's an offer that's floating around out  
15 there, we just need to finalize it.

16 THE COURT: Set the trial in 2015, criminal trial.

17 You waived your right to a speedy trial, yes?

18 MR. KOCKA: He did, Judge.

19 THE COURT: Is that right?

20 THE DEFENDANT: Yes.

21 THE COURT: All right.

22 THE CLERK: Calendar call is January 28<sup>th</sup>, 2015, at 8:00 a.m. Trial is  
23 February 2<sup>nd</sup> at 9:30. The status check date would be June 6<sup>th</sup> --

24 THE COURT: Possible negotiations.

25 THE CLERK: -- at 8:00 a.m. Oh, I'm sorry, June 16<sup>th</sup>.

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MS. JONES: June 16<sup>th</sup>?


THE CLERK: Correct.

MR. KOCKA: Thank you, Judge. I appreciate it.

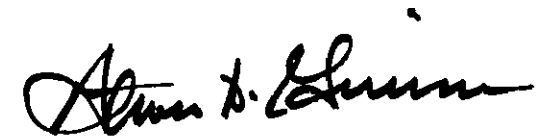
THE COURT: All right.

[Proceeding concluded at 8:32 a.m.]

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual recording in the above-entitled case to the best of my ability.

  
\_\_\_\_\_  
Gina Villani  
Court Recorder





CLERK OF THE COURT

1 RTRAN

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DISTRICT COURT  
CLARK COUNTY, NEVADA

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STATE OF NEVADA,

9

Plaintiff,

10

vs.

11

12

KENYA SPLOND,  
AKA KENNY SPLOND

13

14

Defendant.

15

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE  
MONDAY, JUNE 16, 2014

16

17

**TRANSCRIPT OF PROCEEDINGS**  
**STATUS CHECK: POSSIBLE NEGOTIATIONS**

18

19

APPEARANCES:

20

For the State:

21

AGNES LEXIS, ESQ.  
Deputy District Attorney

22

For the Defendant:

23

FRANK KOCKA, ESQ.

24

25

RECORDED BY: JILL JACOBY, COURT RECORDER

1 MONDAY JUNE 16, 2014 AT 9:12 A.M.

2  
3 THE COURT: C296374, Kenya Splond.

4 MR. KOCKA: Good morning, Judge.

5 THE COURT: Hey.

6 MR. KOCKA: He is present in custody.

7 Your Honor, we have been going back and forth with Ms. Lexis of the  
8 DA's office trying to get an offer, a global offer on the table. He has a prelim down  
9 at Department 3, and a sentencing currently set in Department 2. I know we set this  
10 a couple of times for status checks. Ms. Lexis has assured me she's going to make  
11 an offer. She's cautioned it by saying I may not like the offer, but she's going to be  
12 getting me an offer for sure.

13 THE COURT: All right. 30 days to get this cleaned up.

14 MR. KOCKA: Thank you, Judge.

15 THE CLERK: July 14<sup>th</sup> 8:00 a.m.

16 THE COURT: Thanks, Frank.

17 MR. KOCKA: Good seeing you, Judge.

18 THE COURT: Good seeing you.

19 [Proceeding concluded at 9:13 a.m.]

20  
21 ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual  
22 recording in the above-entitled case to the best of my ability.

23 

24 Gina Villani  
25 Court Recorder