

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

2  
3                   Electronically Filed  
4                   Jan 11 2018 08:08 a.m.  
5                   Elizabeth A. Brown  
6                   Clerk of Supreme Court

7                   CHRISTOPHER ROBERT )  
8                   KELLER )

9                   Appellant, )  
10                  Vs. )

Supreme Court Case No. 73871  
District Court Case No. C-16-312717-1

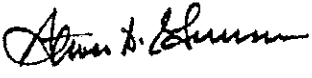
11                  THE STATE OF NEVADA )

12                  Defendant. )  
13                  \_\_\_\_\_ )

14                                   **APPELLANT'S APPENDIX**

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CLERK OF THE COURT

1 INFM  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
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10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

7 I.A. 2/18/16  
10:00 AM  
8 SANFT

9 THE STATE OF NEVADA,  
10 Plaintiff,

CASE NO: C-16-312717-1

11 -vs-

DEPT NO: XIX

12 CHRISTOPHER ROBERT KELLER,  
13 #1804258

14 Defendant.

INFORMATION

15 STATE OF NEVADA }  
16 COUNTY OF CLARK } ss.

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State  
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That CHRISTOPHER ROBERT KELLER, the Defendant(s) above named, having  
20 committed the crimes of **TRAFFICKING IN CONTROLLED SUBSTANCE (Category A**  
21 **Felony - NRS 453.3385.3 - NOC 51160); POSSESSION OF CONTROLLED**  
22 **SUBSTANCE, MARIJUANA (Category E Felony - NRS 453.336 - NOC 51127);**  
23 **POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO SELL (Category**  
24 **D Felony - NRS 453.337 - NOC 51141); and OWNERSHIP OR POSSESSION OF**  
25 **FIREARM BY PROHIBITED PERSON (Category B Felony - NRS 202.360 - NOC**  
26 **51460),** on or about the 28th day of January, 2016, within the County of Clark, State of Nevada,  
27 contrary to the form, force and effect of statutes in such cases made and provided, and against  
28 the peace and dignity of the State of Nevada,

1 COUNT 1 - TRAFFICKING IN CONTROLLED SUBSTANCE

2 did willfully, unlawfully, feloniously, and knowingly or intentionally possess, either  
3 actually or constructively, 28 grams or more, to-wit: approximately 351.4 grams of  
4 Methamphetamine, or any mixture of substance consisting of approximately 351.4 grams  
5 containing the controlled substance Methamphetamine.

6 COUNT 2 - TRAFFICKING IN CONTROLLED SUBSTANCE

7 did willfully, unlawfully, feloniously, and knowingly or intentionally possess, either  
8 actually or constructively, 28 grams or more, to-wit: approximately 36.4 grams of Heroin, or  
9 any mixture of substance consisting of approximately 36.4 grams containing the controlled  
10 substance Heroin.

11 COUNT 3 - POSSESSION OF CONTROLLED SUBSTANCE, MARIJUANA

12 did willfully, unlawfully, feloniously, and knowingly or intentionally possess a  
13 controlled substance, to-wit: Marijuana, over one (1) ounce.

14 COUNT 4 - POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO SELL

15 did willfully, unlawfully, and feloniously possess, for the purpose of sale, a controlled  
16 substance, to-wit: Methamphetamine.

17 COUNT 5 - POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO SELL

18 did willfully, unlawfully, and feloniously possess, for the purpose of sale, a controlled  
19 substance, to-wit: Heroin.

20 COUNT 6 - POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO SELL

21 did willfully, unlawfully, and feloniously possess, for the purpose of sale, a controlled  
22 substance, to-wit: Cocaine.

23 COUNT 7 - POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO SELL

24 did willfully, unlawfully, and feloniously possess, for the purpose of sale, a controlled  
25 substance, to-wit: Marijuana.

26 COUNT 8 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

27 did willfully, unlawfully, and feloniously own, or have in his possession and/or under  
28 his custody or control, a firearm, to-wit: a Beretta handgun, the defendant being a convicted

1 felon, having in 2013, been convicted of Conspiracy to Violate Uniform Controlled Substances  
2 Act, in Case No. C287724, in the Eighth Judicial District Court, Clark County, a felony under  
3 the laws of the State of Nevada; and/or having in 2013, been convicted of Attempt Possession  
4 of Firearm by Ex-Felon, in Case No. C279904, in the Eighth Judicial District Court, Clark  
5 County, a felony under the laws of the State of Nevada; and/or having in 2009, been convicted  
6 of Possession of Firearm by Ex-Felon, in Case No. C252394, in the Eighth Judicial District  
7 Court, Clark County, a felony under the laws of the State of Nevada; and/or having in 2004,  
8 been convicted of Burglary, in Case No. C192923, in the Eighth Judicial District Court, Clark  
9 County, a felony under the laws of the State of Nevada; and/or having in 2003, been convicted  
10 of Possession of Credit Card Without Cardholder's Consent, in Case No. C189805B, in the  
11 Eighth Judicial District Court, Clark County, a felony under the laws of the State of Nevada.

12 COUNT 9 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

13 did willfully, unlawfully, and feloniously own, or have in his possession and/or under  
14 his custody or control, a firearm, to-wit: a 9 mm handgun, the defendant being a convicted  
15 felon, having in 2013, been convicted of Conspiracy to Violate Uniform Controlled Substances  
16 Act, in Case No. C287724, in the Eighth Judicial District Court, Clark County, a felony under  
17 the laws of the State of Nevada; and/or having in 2013, been convicted of Attempt Possession  
18 of Firearm by Ex-Felon, in Case No. C279904, in the Eighth Judicial District Court, Clark  
19 County, a felony under the laws of the State of Nevada; and/or having in 2009, been convicted  
20 of Possession of Firearm by Ex-Felon, in Case No. C252394, in the Eighth Judicial District  
21 Court, Clark County, a felony under the laws of the State of Nevada; and/or having in 2004,  
22 been convicted of Burglary, in Case No. C192923, in the Eighth Judicial District Court, Clark  
23 County, a felony under the laws of the State of Nevada; and/or having in 2003, been convicted  
24 of Possession of Credit Card Without Cardholder's Consent, in Case No. C189805B, in the  
25 Eighth Judicial District Court, Clark County, a felony under the laws of the State of Nevada.

26 ///

27 ///


28 ///

Names of witnesses known to the District Attorney's Office at the time of filing this  
Information are as follows:

<u>NAME</u>	<u>ADDRESS</u>
BARLOW, DAWN	CCDA INVESTIGATOR
BELMONT, M.	LVMPD P#8240
COLLINGWOOD, E.	LVMPD P#9494
CUSTODIAN OF RECORDS	LVMPD, Communications, 400 S. Martin Luther
Or Designee	King Blvd, LV, NV
CUSTODIAN OF RECORDS	LVMPD, Records, 400 S. Martin Luther King
Or Designee	Blvd, LV, NV
CUSTODIAN OF RECORDS	Clark County Detention Center, 330 S. Casino
Or Designee	Center Blvd., LV, NV
EMBRY, C.	LVMPD P#6223
HENRY, J.	LVMPD P#14753
HOUGH, S.	LVMPD P#7814
LOPEZ, D.	LVMPD P#9806
TAPIA, D.	LVMPD P#10044
THI, S.	LVMPD P#14373
VANCE, J.	LVMPD P#9004

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

BY

  
SARAH KILLER  
Deputy District Attorney  
Nevada Bar #12795

16F01430X/mlb/L-2  
LVMPD EV#1601280259  
(TK5)

*Steven D. Grierson*

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

THE STATE OF NEVADA,

Plaintiff,

vs.

CHRISTOPHER ROBERT KELLER,

Defendant.

CASE NO. C-16-312717-1

DEPT. NO. XIX

TRANSCRIPT OF  
PROCEEDINGS

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE

ROUGH DRAFT TRANSCRIPT OF  
JURY TRIAL - DAY 1

PARTIAL TRANSCRIPT  
(EXCLUDES JURY VOIR DIRE)

MONDAY, MARCH 6, 2017

APPEARANCES:

FOR THE STATE:

MATTHEW T. BUNNETT, ESQ.  
MICHAEL DICKERSON, ESQ.  
*Deputy District Attorneys*

FOR THE DEFENDANT:

KENNETH G. FRIZZELL, III., ESQ.  
AMY FELICIANO, ESQ.

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER  
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1        LAS VEGAS, NEVADA, MONDAY, MARCH 6, 2017, 1:00 P.M.

2                    (Outside the presence of the jury)

3            THE COURT: All right. We're on the record in the  
4 case of State of Nevada versus Christopher Keller. This is  
5 C312717. This is the time set for jury trial. I'd like the  
6 record to reflect the presence of the defendant, his counsel,  
7 Mr. Frizzell, as well as counsel for the State. Are we ready  
8 to go forward on this?

9            MR. DICKERSON: State's ready, Your Honor.

10          THE COURT: Okay. I've just been handed a copy of  
11 Defendant Keller's substitution attorney, Amy Feliciano,  
12 appearance for record. Okay, Ms. Feliciano, you're  
13 substituting in on this matter now?

14          MS. FELICIANO: I would ask the Court to allow me to  
15 substitute in. And I have not -- I just received today from  
16 Mr. Frizzell the file, Mr. Keller's case file. I'm not  
17 prepared to go to trial. I did notify the parties and  
18 chambers last week by e-mail that Mr. Keller's mother had  
19 retained me, but I would not be ready to go to trial.

20            And just to kind of -- I let the parties know one of  
21 the issues here and why this is coming on the eve of, you  
22 know, of trial.

23          THE COURT: Okay.

24          MS. FELICIANO: Mr. Keller's mother has been -- got  
25 in touch with me in February, beginning of February, about

ROUGH DRAFT TRANSCRIPT

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1 retention. However, right after that I -- my husband and I  
2 had, unfortunately, involuntary commit our 16-year-old son to  
3 Spring Mountain Behavioral Center for mental illness.

4 At the same time, I started having seizures. I had  
5 two grand mal seizures in February and was hospitalized in  
6 Valley Hospital for over a week. I'm up to ten seizures now.  
7 It came out of nowhere. After the grand mals and when I left  
8 Valley, I suffered extreme aphasia, which I stutter, et  
9 cetera. Long story short, by the time I was able to work  
10 again and get back to normal, I contacted Mr. Keller's mother  
11 again, as I was catching up with my contacts, my telephone  
12 calls, et cetera, and his mother had graciously been waiting  
13 for me to contact her.

14 And this was on about the -- sorry, Judge.

15 THE COURT: No, that's okay. Just relax. We're  
16 fine.

17 MS. FELICIANO: This is part of it. 26th of  
18 February --

19 THE COURT: Okay.

20 MS. FELICIANO: -- and was retained at that time and  
21 prepared the documents to enter into with Mr. Keller and his  
22 mother. And that, Your Honor, is -- and Mr. Keller's mother  
23 when we had -- when we spoke, informed me that she and her  
24 husband had always been going to let him on his own, not hire  
25 counsel for him, but at this time, they wish to.

ROUGH DRAFT TRANSCRIPT

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1           And so she used -- and we listened to jail calls,  
2 her savings account to retain me and so that's -- it's my  
3 fault that I was not retained at the beginning of February  
4 when Mr. Keller's mother first contacted me. Just to let you  
5 know, Your Honor, kind of where my position is at and why  
6 everything was so last minute and, you know, let the parties  
7 know as best I could, you know, once the payment clears and  
8 things are firm. So thank you, Judge.

9           THE COURT: Ms. Feliciano, the concern I have here,  
10 and it would play part in every case, is that when we have  
11 certain dates that we put out there, everyone knows about  
12 them, and I know that you probably researched this to find out  
13 when a trial date was scheduled. You know that in the  
14 beginning prior to actually having an evidentiary hearing your  
15 client was invoking -- well, Mr. Keller was invoking his right  
16 to a speedy trial.

17           It's been -- I've dealt with a number of changes  
18 here. Full Frizzell has come in. He's not the first attorney  
19 to handle this matter. And so the concern that I have is that  
20 you would even do this, even probably as late as -- I mean as  
21 early as February knowing when we have a trial date coming up.

22           And I appreciate you're trying to step in here to  
23 assist Mr. -- I mean, Mr. Keller, but I set trial dates  
24 because I'm trying to move these cases. I have an  
25 availability to do this case now, and I think when you accept

ROUGH DRAFT TRANSCRIPT

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1 a case like this or if I even allow you to substitute in at  
2 this time, you do it at your own peril, and your client -- and  
3 that's something that you need to discuss with your client.

4 Mr. Frizzell's been involved in this matter. We've  
5 had an evidentiary hearing on this matter. I think this is a  
6 simple case. It's not going to take a lot of litigation here,  
7 as we've dealt with that already. This probably could be  
8 tried in a few days. But the concern I have is that, you  
9 know, I don't like the fact that you've put the Court in a  
10 position you now. Is that you're here, you're saying, you  
11 know, please let me substitute in, Judge, however, I need to  
12 continue this because I'm not ready.

13 I've told individuals at calendar calls if you  
14 substitute in, you're going to be going because it's just not  
15 fair to the parties. It's not even fair to the Court here.  
16 And it's certainly not fair to your client.

17 So you know, I'm in a position now to deny your  
18 motion to substitute in. Mr. Frizzell has the case. He's  
19 prepared to go forward on this. He announced ready before on  
20 this matter. Or if you insist on substituting in, we're going  
21 to go to trial here.

22 MS. FELICIANO: If I can just make the record and  
23 the calendar call in this case was quite early. And when I  
24 looked at the matter and the calendar call was quite early and  
25 saw that it was in overflow, there was no guarantee that it

ROUGH DRAFT TRANSCRIPT

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1 would be starting trial on Monday.

2 THE COURT: No, I know, but you have to understand  
3 that if I send it to overflow, it's sent with the expectation  
4 that we're going to be starting on the date that the trial  
5 date is set. So --

6 MS. FELICIANO: It's also -- I'm sorry, Your Honor.

7 THE COURT: No, it's -- go ahead.

8 MS. FELICIANO: My understanding is that the State  
9 provided new evidence this morning. There are jail calls.  
10 There are some other documents.

11 THE COURT: This morning?

12 MR. DICKERSON: Well, as far as that, Your Honor,  
13 those jail calls are only in relation to this purpose right  
14 here. This motion to continue.

15 THE COURT: It's not something you'd be presenting  
16 at trial?

17 MR. DICKERSON: Nothing we'd be presenting in trial.  
18 Just for Your Honor's edification as to the background of this  
19 continuance here and you'll hear a call, if we admit it in  
20 evidence from Mr. Keller and his mother speaking about Ms.  
21 Feliciano for the first time on the 27th of February. His  
22 mother telling him that I've hired you an attorney, here's her  
23 name, here's her phone number, and it gives you an idea of  
24 exactly why we're doing this.

25 Mr. Keller's saying, great, that's great, she can

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1 then come in and I'll get rid of Ken, and then she can file a  
2 bunch of motions and the DA will give me a better deal. I got  
3 to get a better deal. This is only for the purposes of delay,  
4 Your Honor. Only to continue this case. This case is now --

5 THE COURT: You're certainly not suggesting Ms.  
6 Feliciano is involved that, are you?

7 MR. DICKERSON: No. I think that Ms. Feliciano is  
8 simply the pawn in that play. And what we have here, Your  
9 Honor, is the sixth trial setting. The same thing kind of  
10 happened relatively at the second trial setting in May 2016,  
11 when after calendar call, Mr. Sanft withdrew and Mr. Frizzell  
12 was appointed.

13 Now we've come four settings since then, and we're  
14 just putting it on the record today that the first we hear  
15 about any of this in the background is on that February 27th  
16 call between Mr. Keller and his mother. It wasn't until the  
17 next day on the 28th that Ms. Feliciano then sent the e-mail  
18 out to the Court and to some DAs in my office that ultimately  
19 forwarded it to me saying that she was planning on  
20 substituting in, which as Your Honor knows with well after the  
21 calendar call in this case.

22 So pursuant to Eighth Judicial District Court Rule  
23 7.40, no substitution can occur if it would cause a delay in  
24 the trial. And pursuant to Rimer v. State, 351 P.3d 697,  
25 which I have a copy for, Your Honor, it was a case that came

ROUGH DRAFT TRANSCRIPT

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1 out of Judge Herndon's court, and it was actually a child  
2 death case and a child abuse case where on the eve of trial,  
3 just like this, Mr. Rimer in this case wanted to substitute in  
4 counsel. Judge Herndon denied that and the Supreme Court came  
5 down and said there's nothing wrong with that.

6 It's not an arbitrary and unreasoning denial of that  
7 substitution and that continuance and there's absolutely  
8 nothing wrong with denying it and there's no constitutional  
9 concern there. So for those reasons, Your Honor, we oppose  
10 the substitution if it would cause delay, but if it wouldn't  
11 cause delay, then, of course, we'd have no problem with it.

12 THE COURT: I understand.

13 MR. DICKERSON: That's it.

14 THE COURT: I understand.

15 MR. DICKERSON: We'd submit it.

16 THE COURT: That's what I was getting at is he was  
17 wanting to know what Ms. Feliciano wanted to do. If you want  
18 to substitute in, I'll grant that, but we're going to go to  
19 trial on this.

20 MS. FELICIANO: And Judge, for the record, in taking  
21 the case, I would have -- it would have been my case the  
22 beginning of February. I would have substituted in then, been  
23 able to appear at the calendar call and let the Court know  
24 whether I was ready or file what I needed to do, investigate,  
25 but for the extenuating circumstances of my very serious

ROUGH DRAFT TRANSCRIPT

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1 health condition, with which I have a follow-up with the  
2 neurologist on April 3rd to see if I have damage in my  
3 temporal lobe and my son's involuntarily, you know, being  
4 committed, I would have been, you know, long on this case and  
5 ready to go.

6           You know, I -- I'm asking the Court to substitute in  
7 via Mr. Keller. I appreciate the State is citing, you know,  
8 the rules on it. At the same time, he does have the right to  
9 counsel of his choosing. I certainly am not doing this for  
10 the purposes of delay and was going to ask the Court just for  
11 a short resetting of this case to give me an opportunity with  
12 my investigator to go through the file, to, you know, do what  
13 I feel is necessary and then try the case.

14           And in letting -- in accepting the case on Sunday,  
15 you know, his mother had been contacting me and, you know, I  
16 -- I forgot what I was going to say, Judge. It happens. But  
17 that's why the late substitution, and I --

18           THE COURT: Ms. Feliciano, for --

19           MR. FRIZZELL: Your Honor, if I could make a couple  
20 of points.

21           THE COURT: I will. I'll allow you.

22           MR. FRIZZELL: Okay, sorry, go ahead.

23           THE COURT: I was just going to make a point. For  
24 any reason, for whatever reason and I'm really sorry what's  
25 happened to you, but for any reason a substitution at this

ROUGH DRAFT TRANSCRIPT

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1 point in time does cause -- has a natural effect of causing  
2 delay on it if I grant it and you can't go to trial now.

3 And so for those reasons, for those reasons by  
4 themselves, let alone the nature of how long this has been  
5 going on, the number of substitutions that we've had is the  
6 reason why I'm denying that. Unless you want to -- unless  
7 you're prepared to go forward, I don't see any benefit to your  
8 client or to this case at all to allow you to substitute in.  
9 And so I mean, if you want to go forward, I'll grant you the  
10 -- I'll grant the motion. If not, I'm going to deny the  
11 motion. I'm not granting you a continuance. We're going to  
12 go forward with this today.

13 Either way, you can sit there with Mr. Frizzell or  
14 whatever you want to do, but Mr. Frizzell is the attorney of  
15 record on this.

16 MS. FELICIANO: I cannot effectively represent  
17 Mr. Keller or go to trial in this. If the Court is going to  
18 deny my motion to substitute, then I'm in a position where I  
19 would then need to refund the fees the that I have been  
20 paid --

21 THE COURT: Okay.

22 MS. FELICIANO: -- for representation and then  
23 Mr. Frizzell.

24 THE COURT: Okay.

25 MR. FRIZZELL: Your Honor, I have a couple points

ROUGH DRAFT TRANSCRIPT

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1 that I wanted to bring up to the Court on this because I was  
2 notified by your chambers that this was taking place -- that  
3 Ms. Feliciano had contacted chambers about coming in.

4 Being the attorney of record and that's why I had my  
5 investigator, Mark Maston (phonetic), come here today, we went  
6 over to see Mr. Keller on Tuesday, and -- last Tuesday. What  
7 was that, the -- it was the 28th.

8 THE COURT: March 1st.

9 (Pause in the proceedings)

10 MR. FRIZZELL: On the 1st. And we had -- the  
11 meeting was less than five minutes because Mr. Keller  
12 informed me that he had -- he had other counsel, and he  
13 didn't want to go over anything to prepare with me. He  
14 didn't want to talk to me. And then coming out today and  
15 listening to these jail calls, there's quite some vitriolic  
16 terminology used to towards me and my ineffectiveness, and  
17 that I didn't -- that there was 15 more -- there were 15 more  
18 motions that need to be filed and whatnot that my concern, if  
19 you make this go today, is that I am now being opened up,  
20 based on these calls with his mother, that we all listened to  
21 back in the conference room, that I'm opening up -- I'm being  
22 opened then for an ineffective assistance claim.

23 And regardless of whether or not it would actually  
24 go anywhere, I would have to be dealing with that. So even  
25 though Your Honor, I have been on this thing for quite some

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1 THE COURT: Yeah, go ahead and mark it now.

2 THE CLERK: Sure.

3 THE COURT: Have it marked. Okay. All right.  
4 We'll see you back at 20 to 3:00.

5 MR. DICKERSON: All right. Thanks, Judge.

6 (Court recessed at 1:42 p.m. until 2:56 p.m.)

7 (Outside the presence of the jury.).

8 THE COURT: Okay. We're back on the record in the  
9 State of Nevada versus Christopher Keller in Case No. C-  
10 312717. The defendant is present with Mr. Frizzell. State  
11 is also represented by Mr. Dickerson and Matthew Bunnett.  
12 We're outside the presence of the jury. Is there anything  
13 that needs to be put on the record before we start opening  
14 statements?

15 MR. FRIZZELL: I mean, State -- Your Honor, Ken  
16 Frizzell. The State has as part of their opening and as part  
17 of their case in chief, there were -- there was a search  
18 warrant that was issued for the residence owned by  
19 Mr. Keller, and upon that search warrant being executed,  
20 there was quite a volume of contraband that was located. And  
21 candidly, my question and my concern is what the probable  
22 cause was for that search warrant when, basically, everything  
23 happened as a result of this car stop.

24 THE COURT: Mr. Frizzell, do you have a copy --

25 MR. FRIZZELL: Of this traffic stop.

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1 THE COURT: -- of the search warrant? Do you have  
2 it?

3 MR. FRIZZELL: I believe that I do, Your Honor;  
4 however, I think State can probably get to it faster than me.

5 THE COURT: Okay. Does not the search warrant  
6 contain the information provided to the reviewing judge for  
7 purposes of establishing probable --

8 MR. FRIZZELL: Well, it --

9 THE COURT: -- cause for that search?

10 MR. FRIZZELL: And the short answer to that is yes,  
11 it does, Your Honor. However, it does not say what -- in  
12 other words, what caused based on a traffic stop where as  
13 you'll recall when we were in front of you on our motion to  
14 suppress evidentiary hearing, that basically, my client was  
15 handcuffed and ultimately in a vehicle, in a police vehicle,  
16 for approximately, three hours, and there were items found in  
17 the car, in his car. The items that we've opened up prior to  
18 going on the record here as part of the evidence.

19 And it's my concern that, basically, we're at point  
20 A with what was found in the car, and what exactly what is  
21 the probable cause to think that there was anything in the  
22 house when everything was found in the car? And the problem  
23 is, is I don't see a nexus between those two; i.e.,  
24 Mr. Keller, and this is not in the record, this is purely  
25 hypothetical, but Mr. Keller saying something to the effect

ROUGH DRAFT TRANSCRIPT

000017

1 that well, it's a good thing you didn't look in my house or  
2 something like -- I mean, if he would have said something  
3 like that, Your Honor, then --

4 THE COURT: Do you have --

5 MR. FRIZZELL: -- there would have been probably  
6 cause to get in that house, but there was no probable cause  
7 to get in that house.

8 THE COURT: Hold on, Mr. Frizzell. Do you have a  
9 copy of the search warrant that was issued by Judge Tobiasson  
10 in this matter as well?

11 MR. DICKERSON: I do, Your Honor.

12 THE COURT: Okay. Okay, Mr. Frizzell, what's your  
13 argument? There's two search warrants. One search warrant  
14 was done initially signed by Judge Tobiasson for the vehicle.  
15 A second search warrant, based on what was found in that  
16 vehicle, led to the search of the residence, and that was  
17 signed by Judge Sciscento.

18 MR. FRIZZELL: Well, and candidly, Your Honor, my  
19 concern with that, again, I'm just going to restate it to  
20 you, that there was nothing that was found in that vehicle  
21 that would have led them or there's nothing -- there's  
22 nothing enumerated or stated in any affidavit, in any  
23 declaration or in any search warrant that says other than the  
24 general term probable cause exists.

25 But my problem is, is how do we get from the car to

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1 the house when it does not say what it was in the house or  
2 excuse me, in the car or any statement maybe, possibly made  
3 by Mr. Keller after he was Mirandized, which that didn't  
4 happen --

5 THE COURT: Okay.

6 MR. FRIZZELL: -- that leads the officers to say,  
7 oh, wow, we found this here so there must be something in the  
8 house because we found this.

9 THE COURT: Okay.

10 MR. FRIZZELL: There's --

11 THE COURT: Mr. Frizzell, I understand your  
12 argument.

13 MR. FRIZZELL: Okay, all right.

14 THE COURT: Notwithstanding the timing of when  
15 you've made this basically oral motion, I'm going to hear  
16 from the State on that.

17 MR. DICKERSON: Yes, Your Honor.

18 THE COURT: What, if anything, was provided to  
19 Judge Sciscento for additional information or probable cause  
20 in order to allow the officers to search his apartment?

21 MR. DICKERSON: The additional information or  
22 probable cause was that they identified the apartment as  
23 being belonging to Mr. Keller that he had pulled up in front  
24 of this apartment and was in the officer's affidavit  
25 attempting to enter that apartment, and that was then

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1 preceding and after this point they find the large quantities  
2 of drugs indicative of drug dealing inside his vehicle that  
3 is also his vehicle.

4           So his vehicle, his apartment, same location, and  
5 it is based on the probable cause that a drug dealer is  
6 likely to have his supply inside his home. And so when they  
7 established there was that large quantity of drugs there in  
8 his vehicle, it established that he is a drug dealer. Those  
9 are without a doubt not drugs of personal use.

10           With that, Judge Sciscento found probable cause and  
11 that creates a presumption of validity. The officers relied  
12 on that and relied on that in good faith. So regardless of  
13 anything, the good faith exception that applies going back  
14 even to the probable cause in this case.

15           THE COURT: Okay. So the bottom line is, is that  
16 he gets stopped. Based on the stop, a search warrant was  
17 issued. They were able to search his vehicle. They found a  
18 large number of narcotics, multiple types of narcotics and  
19 the stop was, if not adjacent to, but in front of the  
20 apartment, and they were -- the apartment complex, they were  
21 able to identify him as living in one of those apartments,  
22 and based on the training and experience of the officer, they  
23 felt that as drug dealers, based on what they found in the  
24 vehicle, that he would have firearms, narcotics, money from  
25 drug proceeds in his residence.

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1 And so based on that, Judge Sciscento issued a  
2 search warrant for that, notwithstanding, finding whether or  
3 not there is sufficient probable cause on this, the -- your  
4 argument is that the officers acts in good faith, and based  
5 on the Leon decision, that acting in good faith then the  
6 drugs are not suppressible.

7 MR. DICKERSON: That's correct.

8 THE COURT: Or what's found in the house; is that  
9 correct?

10 MR. DICKERSON: That's correct, Your Honor.

11 THE COURT: All right. Mr. Frizzell, anything  
12 further?

13 MR. FRIZZELL: Just that for the record, I want to  
14 -- assuming that you're going to go ahead and allow it to  
15 come in, I just want my objection lodged.

16 THE COURT: Okay. All right.

17 MR. FRIZZELL: For the record.

18 THE COURT: All right. Okay, your motion to  
19 suppress any proceeds of -- or any information involving the  
20 narcotics or drug dealings or illegal firearms found in the  
21 residence I'm going to deny your motion at this time. You've  
22 made your objection.

23 I do believe that even notwithstanding a finding  
24 that it lacks probable cause, there was a good faith  
25 exception to this because a previous judge had made a

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*Steven D. Grierson*

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,

Plaintiff,

vs.

CHRISTOPHER ROBERT KELLER,

Defendant.

CASE NO. C-16-312717-1

DEPT. NO. XIX

TRANSCRIPT OF  
PROCEEDINGS

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE

**ROUGH DRAFT TRANSCRIPT OF  
JURY TRIAL - DAY 3**

WEDNESDAY, MARCH 8, 2017

APPEARANCES:

FOR THE STATE:

MATTHEW T. BUNNETT, ESQ.  
MICHAEL DICKERSON, ESQ.  
*Deputy District Attorneys*

FOR THE DEFENDANT:

KENNETH G. FRIZZELL, III., ESQ.

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER  
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1 jury?

2 We do, Your Honor.

3 THE COURT: Mr. Frizzell?

4 MR. FRIZZELL: Yes, Your Honor. I'm sorry.

5 THE COURT: Okay. When we took our break last  
6 night, the State's still in their case in chief. Call your  
7 next witness, Mr. Dickerson.

8 MR. DICKERSON: State's next witness is going to be  
9 Daniel Lopez.

10 THE MARSHAL: Watch your step. Face the clerk.  
11 Raise your right hand.

12 OFFICER DANIEL LOPEZ, STATE'S WITNESS, SWORN

13 THE CLERK: Thank you. Please be seated. Please  
14 state your full name, spelling your first and last name for  
15 the record.

16 THE WITNESS: Daniel Lopez. D-a-n-i-e-l, L-o-p-e-z.

17 THE COURT: Your witness, Mr. Dickerson.

18 MR. DICKERSON: Thank you very much, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. DICKERSON:

21 Q Sir, drawing your attention to January 28th, 2016,  
22 approximately 2:25 A.M., what were you doing?

23 A Working for Las Vegas Metropolitan Police  
24 Department.

25 Q In what capacity?

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1 A As a Police Officer II.

2 Q Okay. And so what were your duties as a police  
3 officer 2 with the Las Vegas Metropolitan Police Department on  
4 that day?

5 A Responding to calls for service, initiating self --  
6 self activity, doing traffic stops, person stops, that type of  
7 stuff.

8 Q What was your specific assignment?

9 A I was One George 24.

10 Q Okay, and what does that mean?

11 A It's basically my call sign, which means I'm  
12 assigned to George 2 Sector and George 4 Sector.

13 Q So, explain this for the folks in the jury who don't  
14 really understand how a sector works and how this call sign  
15 relates to that at all.

16 A So, each part in the Valley, it's -- the Valley is  
17 divided up into different area commands, and within each area  
18 command, they break it down to even smaller sections, or they  
19 call it sector -- sector beats. And depending on which area  
20 command you're assigned to depends on what your call sign's  
21 going to be, so G, as in George, is assigned to the Northeast  
22 Area Command.

23 Q What is the general area of the Northeast Area  
24 Command?

25 A It is pretty much everything -- there is a little

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1 bit of gaps where it's North Las Vegas and stuff like that,  
2 but for the most part, it is everything to the east of the  
3 I-15, and everything north of Sahara.

4 Q Okay. So the George area is one area inside the  
5 Northeast Area Command's overall area?

6 A Correct.

7 Q And then, as a patrol officer, do they also break  
8 down the George area?

9 A Yes.

10 Q And how does that work?

11 A So, they -- so Northeast has George and Frank.  
12 George area is broken down to everything south of Washington  
13 all the way up to Sahara, and everything north of Washington  
14 is Frank area.

15 Q So, when you talk about your call sign that day, how  
16 does that relate to you, and where you're patrolling, and what  
17 you're doing?

18 A In general, unless you're responding to calls for  
19 service outside of your area, that's the area that you're --  
20 you're supposed to typically be in.

21 Q And on January 28th, 2016, what area was that for  
22 you?

23 A I was assigned to George area; to George 24.

24 Q Okay. And any area specifically within the George  
25 area, or just all the George area?

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1 A Typically, we're allowed to go anywhere within the  
2 George area.

3 Q Okay. And when you say your general duties are  
4 patrol duties, does this mean that you're driving one of those  
5 typical black and white Las Vegas Metropolitan Police  
6 Department vehicles?

7 A Correct.

8 Q And you're wearing a uniform?

9 A Yes.

10 Q The standard tan Metro uniform?

11 A Yes.

12 Q Now, is the area of 265 Lamb Boulevard located  
13 within the George area of Northeast Area Command?

14 A Yes.

15 Q And so would that have been an area that you're  
16 patrolling on the night of January 28th, 2016 -- or the early  
17 morning, I should say?

18 A Yes.

19 Q Now, I'm going to show you --

20 MR. DICKERSON: If I may, Your Honor?

21 THE COURT: Um-hum.

22 MR. DICKERSON: Thank you.

23 BY MR. DICKERSON:

24 Q -- what's been marked as State's Proposed 3 through  
25 4. Please take a look through those. Tell me if you

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1 recognize what's depicted in those proposed exhibits.

2 A It's the southwest corner of Lamb and Stewart.

3 Q So you recognize all three of those images depicted  
4 in State's Proposed 3 through 5?

5 A Yes.

6 Q Okay, and what do you recognize them to be?

7 A Mostly it's the Crossroads 3 (phonetic), the  
8 apartment complex.

9 Q An overview of that area?

10 A Yes.

11 Q Okay.

12 MR. DICKERSON: State moves for the admission of  
13 State's Proposed 3 through 5, Your Honor.

14 THE COURT: Any objection?

15 MR. FRIZZELL: Those are just the map -- those are  
16 just the map pictures, right?

17 MR. DICKERSON: Yeah.

18 MR. FRIZZELL: No, Your Honor.

19 THE COURT: They'd be admitted.

20 (State's Exhibits 3, 4, and 5 are admitted)

21 MR. DICKERSON: Thank you.

22 BY MR. DICKERSON:

23 Q So, that evening, about 2:25 A.M., where were you in  
24 your patrol duties?

25 A At 2:25 A.M.?

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1 Q Approximately 2:25.

2 A I was in the George area.

3 Q Okay. And at some point in time, did you make your  
4 way towards the general area of Stewart and North Lamb?

5 A Yes.

6 Q And as you approached that area, what were you  
7 doing?

8 A I was driving my black and white patrol car, a Ford  
9 Explorer, and I was traveling southbound on Lamb, and I had  
10 just passed Stewart.

11 Q Okay. I'm going to show you what's been admitted as  
12 State's Exhibit 3.

13 MR. DICKERSON: If I may publish for the jury, Your  
14 Honor?

15 THE COURT: Yes.

16 MR. DICKERSON: State's Exhibit 3 here on the Elmo.

17 THE COURT: It's coming on.

18 MR. DICKERSON: Thank you very much.

19 THE COURT: There it is. Do you have that, ladies  
20 and gentlemen?

21 UNKNOWN SPEAKER: Yeah.

22 THE COURT: Okay. Can you see that, Officer, in  
23 front of you?

24 THE WITNESS: Yes.

25 MR. DICKERSON: All right.

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1 BY MR. DICKERSON:

2 Q Do you -- you obviously recognize this area, as you  
3 previously testified. Is this the area that you were speaking  
4 of, driving southbound on Lamb?

5 A Yes.

6 Q If you could indicate generally where you were at  
7 this time that I'm speaking about right now, approximately  
8 2:20, 2:25 A.M.

9 A 2:25, I'm not entirely sure exactly where I was.

10 Q Okay. Where were you when you -- what time was it  
11 approximately when you came into this area?

12 A I would say it was closer to 2:40, 2:45.

13 Q Okay. And so what happens as you come southbound on  
14 Lamb Boulevard?

15 A As I was traveling south on Lamb, I saw a vehicle  
16 pull off of Sunrise Avenue, and it made a left turn, and it  
17 was -- it made the left turn at a high rate of speed, which  
18 caught my attention. And I couldn't tell if the vehicle had  
19 stopped for the stop sign at Sunrise or not, but the vehicle  
20 had -- it was a silver Dodge Stratus, and it made a left turn,  
21 and when it made the left turn, it went straight into the  
22 center turn lane. It didn't actually get into the northbound  
23 lanes that are right here on Lamb.

24 Q Okay. So if you could -- this screen to your left,  
25 it's a touch screen. So if you touch it, it will make a mark

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1 on this screen here.

2 A Okay.

3 Q If you could indicate for the jury where you saw  
4 this vehicle turning from.

5 A It was turning right here off of Sunrise Avenue.

6 Q Okay. And again, this was a silver Dodge Stratus?

7 A Yes.

8 Q At this point in time, when this car turns off of  
9 Sunrise Avenue, where are you in your patrol car?

10 A I am about right there.

11 Q Okay. So, you're heading southbound?

12 A Yes.

13 Q And when we're looking at this map here, where is  
14 this south portion?

15 A Do you want me to point on the map, or --

16 Q If you could just say up, down, right --

17 A Down is the south part of this map.

18 Q Okay, so down. So, Sunrise Avenue would be south of  
19 where you were?

20 A Correct.

21 Q And you're traveling south, so you're traveling  
22 towards Sunrise Avenue?

23 A Correct.

24 Q Now, this vehicle, this silver Dodge Stratus that  
25 turns from Sunrise Avenue onto Lamb, which direction does that

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1 vehicle go?

2 A He's making a left turn to go northbound.

3 Q Okay. So, at that point in time, the vehicle would  
4 at some point in time have to cross paths with you?

5 A Correct.

6 Q So, as this vehicle comes onto Lamb Boulevard, in  
7 what manner did the vehicle turn onto Lamb Boulevard?

8 A It was -- it was really quick, and it was at a high  
9 rate of speed.

10 Q So, if you could describe for us what Lamb Boulevard  
11 looks like in this area. You indicated that there's a center  
12 turn lane. What other lanes are there?

13 A There are three northbound travel lanes, there are  
14 three southbound travel lanes, and then there's the center  
15 turn area where vehicles from either southbound or northbound  
16 pull in while they yield for traffic to make their left turns  
17 across traffic.

18 Q Okay. And so, when this silver Dodge Stratus turns,  
19 it turns into that center turn lane?

20 A Correct.

21 Q That would mean there's three travel lanes to the  
22 right of it?

23 A Correct.

24 Q And three travel lanes to the left?

25 A Yes.

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1 Q And you were coming towards this vehicle in one of  
2 those travel lanes to the left?

3 A Yes.

4 Q Okay. So what happens from this point in time?

5 A I decided I was going to conduct a records check on  
6 the vehicle, on the plate, and so I made a U-turn to get  
7 behind the vehicle.

8 Q So now you're going to travel northbound as well?

9 A Correct.

10 Q Had the vehicle passed you at this point in time?

11 A Yes.

12 Q When you make that U-turn, what happens?

13 A I noticed that the passenger taillight was broken  
14 and that the driver was not slowing down.

15 Q Okay. Is the vehicle still in the center turn lane?

16 A Correct.

17 Q Are you able to see a license plate at that time?

18 A Yes.

19 Q Was that Nevada 098ASW?

20 A Yes.

21 Q And so what happens from this point in time after  
22 you recognize the issue with the taillight?

23 A I speed up to try and catch up to the vehicle so I  
24 could initiate a traffic stop. The vehicle continued  
25 northbound, and then it made a left turn into the Crossroads 3

ROUGH DRAFT TRANSCRIPT

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1 (phonetic).

2 Q Okay. How did the vehicle make that left turn into  
3 the Crossroads 3?

4 A From the center turn lane, he made the left turn.  
5 It was quick. It was -- it was obvious to me that he was  
6 trying to put some distance between me and him.

7 Q Was there any other traffic on the road?

8 A Yes.

9 Q And coming which direction?

10 A There was other vehicles coming southbound.

11 Q What happened with that traffic as this Dodge  
12 Stratus made a left turn?

13 A So the other vehicles that were coming southbound,  
14 they obviously could tell because of the manner -- the way  
15 they were driving -- the drivers that were driving southbound,  
16 they all slowed down because they saw this car and they knew  
17 he was going to cut in front of them, and sure enough, he cut  
18 in front of them. And southbound traffic, they actually  
19 basically came to a slow crawl, allowing me to actually go  
20 into the Crossroads 3 as well.

21 Q Did you have your lights and sirens on at this time?

22 A No.

23 Q Lights?

24 A No.

25 Q Okay. So the traffic stopped nonetheless?

ROUGH DRAFT TRANSCRIPT

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1 A Correct.

2 Q Okay. So what do you do at this point in time?

3 A I'm catching up to the vehicle inside the Crossroads  
4 3 apartment complex. The vehicle's hitting the speed bumps  
5 pretty quick, and I'm still trying to close the distance  
6 between our two vehicles.

7 Q So what is the procedure that you take now as a  
8 police officer about to make contact with this vehicle?

9 A Well, because of the way he was driving -- and most  
10 typical drivers that see a police officer, they tend to behave  
11 themselves, slow down, drive in a manner that's more prudent.  
12 And since this driver was actually trying to put distance  
13 between us, I knew from my training and experience being a law  
14 enforcement officer and getting into lots and lots of foot  
15 pursuits and foot chases that the driver was going to bail  
16 from the vehicle, and so I initiated the traffic stop on him  
17 as he was pulling into a parking spot.

18 Q And what do you do when you initiate a traffic stop?

19 A I turn on lights and sirens.

20 Q Okay. Do you have to notify anybody about this?

21 A I had already called out radio traffic because I  
22 knew that the vehicle was obviously trying to get away from  
23 me. I'd already called for another unit, and I'd already  
24 called out the traffic stop as well before I turned on the  
25 lights and siren -- just the lights.

ROUGH DRAFT TRANSCRIPT

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1 Q Where were you about when you called out that radio  
2 traffic?

3 A I believe it was about the time I was pulling into  
4 the Crossroads 3.

5 Q Okay. And just so we can tell here, where is the  
6 Crossroads 3 located on this particular map that we're looking  
7 at?

8 A The entrance to the Crossroads 3 is right here.

9 Q All right. So you indicated that entrance right  
10 there, kind of between those white buildings?

11 A Yeah.

12 Q All right. And that's the area that you indicated  
13 that this silver Dodge Stratus had turned left into?

14 A Yes.

15 Q Okay. I'm going to show you what's been marked as  
16 State's Exhibit 4 and admitted as such. Is this the area of  
17 the Crossroads 3 apartment?

18 A Yes.

19 Q Just a close-up of that? Is that a yes?

20 A Yes.

21 Q Okay. If you could just indicate where the entrance  
22 of the Crossroads is right on this map as well.

23 A The entrance is right there.

24 Q So you say right about there is where you get on  
25 your radio and you say what?

ROUGH DRAFT TRANSCRIPT

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1           A     I call out the traffic stop, stating that I was  
2 going to -- basically, I was notifying dispatch that I was  
3 initiating a traffic stop on the vehicle.

4           Q     When you notify dispatch, does that also notify  
5 other people that are on the same radio?

6           A     Yes.

7           Q     Who else would be on this radio?

8           A     The entire George squad, and the entire Frank squad.

9           Q     So all of the patrol officers from the Northeast  
10 Area Command?

11          A     Yes.

12          Q     Okay. Do the dispatchers take notes on what's going  
13 on?

14          A     Yes.

15          Q     Do they take notes to specifically what is called  
16 out by you and what time that's happening?

17          A     Yes. Dispatch actually creates an event, and they  
18 put on the event that I initiated a traffic stop, and what I  
19 initiated the traffic stop on, and they timestamp it.

20          Q     Okay. Do you recall the exact timestamp of that?

21          A     I do not.

22          Q     Is there a CAD Report that you could look at that  
23 would help refresh your recollection?

24          A     Yes.

25          Q     And what is CAD?

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1           A     CAD is basically a printout of the chronological  
2 order of everything that happened as it's being relayed to  
3 dispatch and dispatch is updating the event.

4           Q     If I may, showing you a CAD Report, just take a look  
5 at that and tell me if that refreshes your recollection as to  
6 when you conducted this traffic stop.

7           A     Yes.

8           Q     When was it that you conducted the traffic stop,  
9 sir?

10          A     It says at 2:25.

11          Q     Okay. So, approximately 2:25 A.M., you are calling  
12 out on the radio you're coming into the Crossroads 3  
13 Apartments, about to do a traffic stop?

14          A     Yes.

15          Q     On this silver Dodge Stratus, Nevada license plate  
16 098 Adam, Sam, William?

17          A     Yes.

18          Q     Okay. So, when you get into the Crossroads, how was  
19 this silver Dodge Stratus traveling through the apartment?

20          A     Into the Crossroads, it was hitting the speed bumps  
21 fast. He was going really fast.

22          Q     Okay, and where does this vehicle end up?

23          A     He actually ends up -- do you want me to point on  
24 the map?

25          Q     Please do.

ROUGH DRAFT TRANSCRIPT

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1           A     He actually parks in a parking spot right about  
2 there.

3           Q     All right, and that's at Building 265?

4           A     Yes.

5           Q     And you indicated that it's right there, somewhere  
6 in front of where it says "F" on the map?

7           A     Yes.

8           Q     I'm going to show you what's been marked as -- and  
9 admitted as State's Exhibit 5. Do you recognize this to be  
10 the same area, just a close-up of it?

11          A     Yes.

12          Q     If you could, for the ladies and gentlemen of the  
13 jury, just tell them where that vehicle was parked as you  
14 conducted that traffic stop. And is that under an awning?

15          A     Yes.

16          Q     So where are you in your vehicle at that point in  
17 time when the vehicle pulls in?

18          A     As he pulls in, I'm pulling in right behind him. Do  
19 you want me to indicate where my vehicle was?

20          Q     Please do. Okay. At this point in time, do you  
21 have your lights on?

22          A     Yes.

23          Q     Okay. And now that you're behind the vehicle with  
24 your lights on, the vehicle's in this parking spot, what  
25 happens?

ROUGH DRAFT TRANSCRIPT

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1 A He had already jumped out of his car, and I had  
2 jumped out of my car.

3 Q When you say "he," who are you referring to?

4 A I am referring to the defendant.

5 Q Okay. You pointed over here to my right?

6 A Yes.

7 Q If you could, please identify a piece of clothing  
8 and point to the individual that you're identifying.

9 A He's wearing a light blue collared shirt, sitting  
10 right there.

11 Q Okay.

12 MR. DICKERSON: If the record could reflect that the  
13 witness is identifying the defendant, Your Honor?

14 THE COURT: Yes, it will.

15 MR. DICKERSON: Thank you.

16 BY MR. DICKERSON:

17 Q So you see the defendant jump out of that silver  
18 Dodge Stratus?

19 A Yes.

20 Q And where does the defendant go?

21 A He opens the door and he starts running towards the  
22 back of his car.

23 Q Okay. So the back of his car would have been where?

24 A Towards his bumper.

25 Q Okay. And are you near the back?

ROUGH DRAFT TRANSCRIPT

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1 A Yeah, I'm there at the back of his car as well.

2 Q Is the door of that silver Dodge Stratus still open?

3 A Yes.

4 Q So, what does that cause to happen, this door being  
5 open?

6 A The door is open on the car. I can smell the odor  
7 of cannabis on him, and I can smell it also coming out of the  
8 vehicle.

9 Q Okay. Was there any route forward for the defendant  
10 to take?

11 A No, because the way he opened his door, he kind of  
12 prevented himself from being able to run towards the front of  
13 his vehicle, because he would have had to have got out of the  
14 car, shut the door, and then proceed to go forward towards the  
15 front of his car.

16 Q Okay. So, how quickly after the defendant gets that  
17 silver Dodge Stratus parked right there in that parking spot  
18 is it that he's exiting the vehicle?

19 A It was -- it was basically instantaneously.

20 Q Okay, so he didn't wait around to get things  
21 together in there?

22 A No.

23 Q Okay. You said instantaneously?

24 A I mean, he basically -- he -- the car stopped, he  
25 got out of his car, I was ready to end up in a foot chase so I

ROUGH DRAFT TRANSCRIPT

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1 was already out of my car as well.

2 Q So what did you do?

3 A I made contact with him on his side of the car, and  
4 I walked him over towards the front of my patrol car.

5 Q And your patrol car is right there behind it?

6 A Correct.

7 Q This vehicle, was it -- it was parked in a specific  
8 parking spot; is that right?

9 A Yes.

10 Q Do you recall the number of that parking spot?

11 A I believe it was 58.

12 Q Okay. Now, parking spot 58, you're right behind it.  
13 Where is it that you take the defendant?

14 A Right to the front of my patrol vehicle, which is --

15 Q And you said, at this time, you're already smelling  
16 marijuana?

17 A I can smell marijuana.

18 Q Coming from where?

19 A Coming from him and coming from inside the vehicle.

20 Q Okay. So what do you do?

21 A I conducted a pat-down for weapons on him. He was  
22 upset that he had gotten stopped, and he was really nervous,  
23 so I went ahead and placed him in handcuffs, because that and  
24 the way he was driving and trying to get away from me, I  
25 suspected that he was a flight risk and that he was going to

ROUGH DRAFT TRANSCRIPT

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1 run.

2 Q Okay. And so you conduct a pat-down?

3 A Correct.

4 Q Do you find any weapons?

5 A I did not find any weapons.

6 Q What do you do next?

7 A I asked him if he had his ID.

8 Q Like a driver's license?

9 A Yes.

10 Q And what does he say?

11 A He says he does.

12 Q And so what happens next?

13 A I ask him if his ID is on his person; he says yes.

14 I asked him where it was; he said it was in his front pocket.

15 I asked him if I could remove it; he said yes.

16 Q Okay, so did you proceed to remove his ID?

17 A I did.

18 Q And what happens when you do that?

19 A As I removed the wallet, I end up grabbing a wad of

20 cash that was right next to the wallet on the outside of it.

21 Q What was this wad of cash?

22 A It was mostly \$20 bills, some other denominations as

23 well.

24 Q And it was right there with his wallet?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

000012

1 Q Where exactly was his wallet?

2 A His wallet was in his front right pants pocket.

3 Q Okay, and the money was right there with it?

4 A Yes.

5 Q But not in the wallet?

6 A There was some that ended up being in the wallet,  
7 and some that was outside of the wallet.

8 Q Was there any particular way that this money was  
9 organized?

10 A Yes. He had five 20s folded facing one direction,  
11 then he had another five 20s folded facing the opposite  
12 direction. They were -- they were all folded the same, but  
13 the creases of the fold were on different sides, opposite  
14 sides, and so then it just kept on switching.

15 Q Okay. Was this a lot of money or just a little bit  
16 of money?

17 A It was -- it was a good amount of money.

18 Q Do you recall offhand how much money?

19 A I don't remember the exact dollar amount. I do  
20 remember it was over \$2,000.

21 Q And do you recall offhand the exact denominations of  
22 that money?

23 A I don't.

24 Q Okay. At some point in time later in the night, did  
25 you end up impounding all of that money?

ROUGH DRAFT TRANSCRIPT

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1 A I did.

2 Q Did you, as part of that impound, use a money  
3 accounting report sheet?

4 A Yes.

5 Q Would looking at that money accounting report help  
6 you refresh your recollection as to, number one, how much  
7 money it was; and number two, what the denominations were?

8 A Yes.

9 Q Okay. Just take a look at this. Do you recognize  
10 this form?

11 A Yes.

12 Q Did you fill out this form?

13 A This is an enlarged version of the form that I  
14 filled out, yes.

15 Q Okay. It fairly and accurately represents that  
16 form?

17 A Yes.

18 Q When you filled out this form, was the information  
19 that you put on this form fresh in your memory, or was it  
20 happening right at that time?

21 A It was fresh in my memory.

22 Q Okay. Had you just counted down the money?

23 A Yes.

24 Q And was that what you were memorializing here?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

000044

1 Q So how much money was it that was in the defendant's  
2 pocket?

3 MR. FRIZZELL: I'm going to object, Your Honor,  
4 because if we're just refreshing recollection --

5 MR. DICKERSON: It's --

6 MR. FRIZZELL: -- he can't keep that with him. He  
7 can look at it, and then --

8 MR. DICKERSON: It's actually a --

9 THE COURT: Okay.

10 MR. DICKERSON: -- past recollection recorded.

11 THE COURT: Well --

12 MR. FRIZZELL: Yeah, but still, he can't read from  
13 it.

14 MR. DICKERSON: Well, he could if it's past --

15 THE COURT: Can -- can I get in on this?

16 MR. FRIZZELL: Absolutely.

17 THE COURT: Okay. So what are you offering -- how  
18 are you offering this? Are you asking --

19 MR. DICKERSON: I'm offering --

20 THE COURT: -- to refresh his memory? Are you --

21 MR. DICKERSON: I'm offering this as a past  
22 recollection recorded, Your Honor.

23 THE COURT: Are you offering the actual report?

24 MR. DICKERSON: I'm not; just for him to read from --  
25 -- to -- for his recollection that he recorded at that time.

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1 THE COURT: After reviewing it, Officer, does it  
2 refresh your memory how much money you actually retrieved from  
3 him?

4 THE WITNESS: Yes.

5 THE COURT: Okay. Tell us what it was.

6 THE WITNESS: It's \$2,187.

7 MR. FRIZZELL: Objection, he just looked at it  
8 again.

9 THE COURT: Well, it's either way. It's either way.  
10 It's got -- it's got -- he's refreshing his memory. He said  
11 it refreshed his memory, and then he told me how much. If he  
12 didn't refresh his memory -- does it refresh your memory or  
13 not?

14 THE WITNESS: Yes.

15 THE COURT: Can you tell me without looking at the  
16 report?

17 THE WITNESS: \$2,187.

18 THE COURT: Okay, so it refreshed his memory. If  
19 not, then it --

20 MR. FRIZZELL: Okay.

21 THE COURT: -- is past recollection recorded. So  
22 either way, we're going to hear it. So I'm just trying to  
23 make the record clear.

24 MR. FRIZZELL: All right, I just want to make sure,  
25 because the questions the State was asking was not what you

ROUGH DRAFT TRANSCRIPT

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1 ask for --

2 THE COURT: But I asked, okay?

3 MR. FRIZZELL: Got it.

4 THE COURT: All right. Go ahead, Mr. Dickerson.

5 MR. DICKERSON: Thank you, Your Honor.

6 MR. FRIZZELL: Just for the record, I do object, but

7 you can overrule it.

8 THE COURT: Go ahead.

9 MR. DICKERSON: Okay. Thank you, Your Honor.

10 BY MR. DICKERSON:

11 Q Sir, do you recall the exact denominations?

12 A I don't.

13 Q And so would looking at this report of -- that you

14 wrote; is that right?

15 A Yes.

16 Q And the information on this report was clear on your

17 mind when you wrote it?

18 A Yes.

19 Q And this was more recent in time than today; is that

20 correct?

21 A Yes.

22 Q When was it that you created this report?

23 A January 28th of 2016.

24 Q Okay. So, how many \$1 bills were in that wad of

25 money?

ROUGH DRAFT TRANSCRIPT

000047

1 A I'd have to look at it, because --

2 Q Feel free.

3 A Two \$1 bills.

4 Q How many \$5 bills?

5 A There's one \$5 bill.

6 MR. FRIZZELL: Your Honor, this is a continuing  
7 objection, because he's -- he's --

8 THE COURT: I understand, but I also understand he  
9 is doing it by past recollection recorded. There is a  
10 difference, so.

11 MR. FRIZZELL: I just want to make my record, Your  
12 Honor.

13 THE COURT: Okay. All right, thank you.

14 MR. FRIZZELL: I'm objecting that he's --

15 THE COURT: Okay.

16 MR. FRIZZELL: -- continuing to just read it.

17 THE COURT: Overruled. Go ahead.

18 BY MR. DICKERSON:

19 Q How many \$10 bills?

20 A \$10 bills? There were two \$10 bills.

21 Q How many \$20 bills?

22 A 68 \$20 bills.

23 Q Okay. How many \$50 bills?

24 A Two \$50 bills.

25 Q And how many \$100 bills?

ROUGH DRAFT TRANSCRIPT

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- 1 A Seven.
- 2 Q All right. And that was a total of \$2,187?
- 3 A Correct.
- 4 Q In cash?
- 5 A Yes.
- 6 Q Located in the defendant's front right pants pocket?
- 7 A Yes.
- 8 Q So, at that point in time, you've pulled his wallet  
9 out; you see all this money. What do you do?
- 10 A I set the wallet and I set the money on the hood of  
11 my car.
- 12 Q And has the backup unit that you -- that you'd  
13 previously called for arrived?
- 14 A Yes.
- 15 Q So now the defendant's in the front of your car; is  
16 that right?
- 17 A Yes.
- 18 Q What happens?
- 19 A Officer Henry was walking up; he was my backup  
20 officer. He was walking up on the passenger side of the car,  
21 I was still up there at the front of the car with him, and  
22 while we're out there, there's about five gunshots that go off  
23 in the apartment complex.
- 24 Q Five gunshots?
- 25 A Five gunshots.

ROUGH DRAFT TRANSCRIPT

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1 Q How close are you to the gunshots?

2 A They are -- they literally sound like they're on the  
3 other side of one of the buildings in the apartment complex.

4 Q I'm going to show you here what we've looked at  
5 previously and what's been marked and admitted as State's  
6 Exhibit 4. Do you recognize this, sir?

7 A Yes.

8 Q So you indicated where you were generally; is that  
9 right?

10 A Yes.

11 Q If you could do that again.

12 A My car is right about -- a little bit up from that.  
13 Every time I touch the screen, it goes a little lower, but.

14 Q And so you're there in front of your car with the  
15 defendant?

16 A Yes.

17 Q You have a backup officer that has just arrived?

18 A Yes.

19 Q Is that Officer Henry?

20 A Yes.

21 Q And so it's just you and Officer Henry?

22 A Yes.

23 Q Where do you hear these gunshots coming from?

24 A The gunshots are -- they -- they're coming from the  
25 north, and they sound extremely close. They sound like

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1 they're literally on the other side of this building right  
2 here.

3 Q Okay. If you could make a circle so it's a little  
4 bit more clear.

5 A They basically sound like they're coming from this  
6 area right here.

7 Q Okay, so very close by?

8 A Yes.

9 Q As a police officer in this situation, what do you  
10 do?

11 A Well, since I'd already taken control of my suspect,  
12 I took him and I put him in the back of my patrol car for his  
13 safety. Officer Henry went north to go investigate the  
14 gunshots that just occurred. I called out the radio traffic  
15 over the radio. The air unit and basically a lot of black and  
16 white police cars all showed up in the area.

17 Q So cops flood the area?

18 A Yes.

19 Q Looking for remnants of a shooting?

20 A Yes.

21 Q What are you looking for in that situation?

22 A Whenever there's a shooting, we're looking for  
23 victims, we're looking for suspects, we're looking for  
24 gunshots in -- you know, in buildings or anything like that,  
25 casings.

ROUGH DRAFT TRANSCRIPT

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- 1 Q And so how long is this search going on?
- 2 A It's going on for -- it goes on for a while.
- 3 Q Where are you at that time?
- 4 A I'm still with my -- my suspect.
- 5 Q The defendant?
- 6 A The defendant.
- 7 Q He's in the back of your patrol car?
- 8 A Yes.
- 9 Q And what do you do?
- 10 A I initially -- I put him in the back of my patrol
- 11 car. I took cover on the side of my patrol car because of the
- 12 gunshots, and I was still calling out all the radio traffic,
- 13 coordinating with the air unit as to where to go, and where we
- 14 heard them, and that type of stuff.
- 15 Q And what was the end result of all these units and
- 16 the air unit coming down and looking for these gunshots?
- 17 A No victims were located, no suspects were located,
- 18 no gunshots, no shell casings --
- 19 Q So what happened?
- 20 A -- no impacts. We continued on with my traffic
- 21 stop.
- 22 Q So you're on your traffic stop. Do you have
- 23 occasion to look inside the vehicle?
- 24 A Yes.
- 25 Q And when does that occur?

ROUGH DRAFT TRANSCRIPT

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*Steven D. Grierson*

TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

THE STATE OF NEVADA,	.	CASE NO. C-16-312717-1
	.	
Plaintiff,	.	DEPT. NO. XIX
	.	
vs.	.	TRANSCRIPT OF
	.	PROCEEDINGS
CHRISTOPHER ROBERT KELLER,	.	
	.	
Defendant.	.	
. . . . .		

BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE

**ROUGH DRAFT TRANSCRIPT OF  
JURY TRIAL - DAY 4**

THURSDAY, MARCH 9, 2017

APPEARANCES:

FOR THE STATE:

MATTHEW T. BUNNETT, ESQ.  
MICHAEL DICKERSON, ESQ.  
*Deputy District Attorneys*

FOR THE DEFENDANT:

KENNETH G. FRIZZELL, III., ESQ.

RECORDED BY: CHRISTINE ERICKSON, COURT RECORDER  
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

1 LAS VEGAS, NEVADA, THURSDAY, MARCH 9, 2017, 9:14 A.M.

2 (Outside the presence of the jury)

3 THE MARSHAL: Please be seated.

4 THE COURT: Is there anything that needs to be put  
5 on the record or we just want to bring the jury?

6 MR. DICKERSON: We can go ahead. Ken, do you want  
7 to put anything on the record at this point in time?

8 MR. FRIZZELL: Well, Your Honor, we were listening  
9 to --

10 THE CLERK: Wait. Sorry. He need to call the case.

11 MR. FRIZZELL: Oh, I'm sorry.

12 THE COURT: You ready, Christine?

13 THE COURT RECORDER: Yes, sir.

14 THE COURT: Okay. We're back on the record in the  
15 State of Nevada versus Christopher Keller in C-312717. I'd  
16 like the record to reflect the presence of the defendant and  
17 his counsel, as well as State and their counsel. We're  
18 outside the presence of the jury. Does anyone need to make a  
19 record at this point? Mr. Frizzell?

20 MR. FRIZZELL: Yes, Your Honor, only because there  
21 was some discussion yesterday on the record about potential  
22 witnesses that my client wanted me to attempt to call. And I  
23 obtained a number for one of them, and the other one, as I  
24 believe that I may have told you, was my investigator, who was  
25 also the investigator on the case prior to my being appointed

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1 to this.

2 And neither the witness that I was given the  
3 information on last night nor Mr. Maston (phonetic) were able  
4 to tell me the information that we were attempting to elicit  
5 regarding occupants of the house prior to the -- prior to  
6 Mr. Keller's arrest.

7 Secondly, as you may know, we were back listening to  
8 some redactions out of a -- out of some jail calls from the  
9 night of the arrest or right around the night of the arrest,  
10 and while I have agreed and I think we've stipulated to the  
11 authenticity of the jail call itself, I do have at least an  
12 objection to certain parts of that conversation as being a  
13 hearsay objection that I don't know if there's a -- I don't  
14 know what the State's opposition to my objection would be,  
15 but --

16 THE COURT: Okay.

17 MR. FRIZZELL: -- I believe it's a hearsay  
18 objection.

19 MR. DICKERSON: Your Honor, there's a certain  
20 portion of the redacted call that we just listened to that  
21 Mr. Frizzell's going to be logging his hearsay objection to,  
22 which is statements coming from the individual that  
23 Mr. Keller's talking to, statements that include that  
24 individual telling Mr. Keller that she popped off the rounds  
25 out when she ran away from the scene as he was getting

ROUGH DRAFT TRANSCRIPT

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1 arrested.

2 And it was a conversation between the both of them  
3 that is about this entire event. So it's the State's position  
4 here that any of her statements are admissible for the purpose  
5 of showing his knowledge and his consciousness of guilt under  
6 the hearsay exception for the residual hearsay given that  
7 their truthfulness and reliability isn't really challenged  
8 here. Given that it's corroborated by the events in this case  
9 and Mr. Keller's conversation and response himself.

10 So for those reasons, any of her statements really  
11 are admissible and they do go to show -- they are relevant for  
12 the fact that they show Mr. Keller's knowledge and his  
13 consciousness of guilt.

14 THE COURT: Mr. Frizzell, why would they need be  
15 considered adopted admissions?

16 MR. FRIZZELL: Because they were not elicited by my  
17 client. It was -- they were offered by the person on the  
18 other -- by the person on the other end who Mr. Keller -- you  
19 know, who the jail call is between Mr. Keller and this person  
20 and --

21 THE COURT: I know, but was there not a discussion  
22 over that? What type of response did Mr. Keller have when  
23 that was represented to him?

24 MR. FRIZZELL: He said I -- I think the actual word  
25 is, I heard the thing, meaning I heard some shots. I heard --

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1 that's the context of the conversation. But it wasn't like he  
2 said anything to the effect of, quote, "thank you for popping  
3 off shows shots," or anything like that. It was offered to  
4 him. He did not know that that's what -- that that what was  
5 happening. This person, this woman offered that information  
6 and Mr. Keller just simply said yeah, I heard some -- I heard  
7 the thing, which referring to the shots.

8 THE COURT: Okay.

9 MR. DICKERSON: And Your Honor, there is some basis  
10 for an adopted admission here, given that you'll hear in the  
11 call, if we can play it for you as an offer of proof, that  
12 Mr. Keller acknowledges seeing this individual run from the  
13 scene, and then they have the conversation right after he says  
14 acknowledges seeing her run, he says, yeah, I heard the little  
15 thing, and then she says, yeah, I popped off those rounds, and  
16 then he says, yeah, the cops are saying it was a distraction,  
17 and then she says, yeah, it was.

18 And in his response, it's not like why would you do  
19 that, you got me in more trouble. It's basically, without  
20 saying, thank you, like, yeah, I understand why you did that.

21 THE COURT: Okay. He acknowledges that he heard  
22 them. He acknowledges what the police officers were concerned  
23 about. Okay. All right. So I understand your objection.  
24 You've lodged your objection.

25 MR. FRIZZELL: Okay.

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1 THE COURT: I'm going to overrule the objection. I  
2 do believe it would be admissible. So all right, other than  
3 that, are we ready to go?

4 MR. DICKERSON: I believe so, Your Honor.

5 MR. FRIZZELL: Yes, Your Honor.

6 THE COURT: All right. Okay. Call the jury in.  
7 Who's going to be your next witness?

8 MR. BUNNETT: Steven Hough.

9 THE DEFENDANT: Your Honor, I had a witness that was  
10 here -- that's here right now that was here on the first day  
11 that was just jury selection --

12 THE COURT: Uh-huh.

13 THE DEFENDANT: -- and we didn't know that -- I  
14 wasn't aware -- we didn't know that she couldn't like come to  
15 the thing, if she was going to be a witness or something.

16 THE COURT: So have them stop real quick. Don't let  
17 them come in. Ed, hold them out a minute, okay? Just hold it  
18 right there. Right there, just hold them out right there.

19 All right, no one has asked the Court to invoke the  
20 exclusionary rule.

21 MR. DICKERSON: That's true, Your Honor. And in  
22 large part that's due to the fact that we were never put on  
23 notice by defense that they would have any witnesses in this  
24 case. So there was no reason that we believed we needed to  
25 invoke the exclusionary rule on our part because we didn't

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1 believe the defense had any witnesses besides maybe the  
2 defendant himself.

3 THE COURT: Okay. So how -- I guess, it's the young  
4 lady that's seated right there?

5 MR. FRIZZELL: Yes, Your Honor.

6 THE COURT: All right. How long -- was she  
7 throughout the whole day of first day.

8 MR. DICKERSON: I believe she was here for two days,  
9 Your Honor.

10 THE COURT: Was she here for the opening statements?  
11 Here for any testimony?

12 MR. FRIZZELL: She was here for the -- no, she was  
13 here for the first day of jury selection.

14 THE COURT: Okay.

15 MR. FRIZZELL: She was not here yesterday.

16 THE COURT: All right.

17 MR. FRIZZELL: My client's mother was here.

18 Obviously, she's not going to be a witness.

19 THE COURT: Okay. All right. Who is the witness?

20 MR. FRIZZELL: Mary Silva.

21 THE COURT: All right.

22 MR. FRIZZELL: Mary Silva.

23 THE COURT: Okay. Notwithstanding the fact that the  
24 State was not put on notice of these witnesses, I'm going to  
25 allow you to call her if you choose to. But you need to make

ROUGH DRAFT TRANSCRIPT

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1 easily accessible.

2           You heard the testimony from Officer Henry saying  
3 that he had some difficulty getting in there, and the small  
4 bags are found inside the (inaudible) of the car. I think if  
5 you look at each of those, you're going to find that  
6 defendant is -- (inaudible) as well. And you'll find that  
7 the defendant is guilty of count 6, and we've proven that  
8 beyond a reasonable doubt today.

9           Now, count 7's the final count, and it's possession  
10 with intent, marijuana. We've talked about the four elements  
11 ad nauseam. Go back to count 3 for the first three. But the  
12 intent to sell, look at the same factors. Look at the money,  
13 the scales in the house, the quantity, the fact that that jar  
14 was filled with marijuana, and think about Detective  
15 Belmont's testimony. Detective Belmont testified that that  
16 was not personal use.

17           So we've proven each of those four elements beyond  
18 a reasonable doubt, and the State has proven count 7,  
19 possession with intent to sell marijuana, and the defendant  
20 is guilty of that.

21           Now, I want to direct your attention to an  
22 instruction, the common sense instruction. It says, you're  
23 supposed to consider only the evidence in this case, but you  
24 have to bring to consideration your everyday common sense,  
25 your judgment as reasonable men and women. Mr. Frizzell said

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1 it perfectly at the beginning of this trial, you don't check  
2 your brain at the door. You don't check your common sense at  
3 the door.

4           Members of the jury, the evidence you heard today,  
5 I want you to apply your common sense. Is that amount of  
6 drugs found in a secret compartment, using your common sense,  
7 does defendant really not know about those? Are those scales  
8 for sales? Is that something that the defendant would know  
9 about, those drugs lying on the scale next to his bed? Those  
10 balloons, those are consistent with the sell of heroin.  
11 Those baggies, those are consistent with the sell of  
12 narcotics. That marijuana, that's not personal use. Those  
13 sheets, names next to numbers, coupled with defendant's  
14 statements about people owing him money. Use your common  
15 sense. And in doing so, you'll find that counts 1, 2, 3, 4,  
16 5, 6 and 7 have all been proven beyond a reasonable doubt by  
17 both of us today, and I'd ask you to find the defendant  
18 guilty as charged. Thank you.

19           THE COURT: Thank you, Mr. Bunnett. Mr. Frizzell.

20                   DEFENDANT'S CLOSING ARGUMENT

21           MR. FRIZZELL: Yes, Your Honor, thank you. Ladies  
22 and gentlemen, I know this has been a long four days, and I  
23 appreciate very much, as I know the State and everyone else  
24 in here, appreciates your attentiveness and your patience  
25 with the process. Oh, and I'm going to need the --

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1 THE CLERK: That's what I was trying to find out.

2 MR. FRIZZELL: Now, as you'll recall, I told you  
3 yesterday morning at the very beginning that we had two --  
4 basically two areas that I really wanted you to pay attention  
5 to. And basically, I was correct, and I'm going to go  
6 through them and show you what I told you and what I was able  
7 to show through both State's witnesses on our end and my one  
8 witness, Officer Henry.

9 I told you first off that defendant didn't know  
10 that drugs were in the car. And I told you that there wasn't  
11 going to be one witness that was going to be able to tell you  
12 that my client knew any of that was in the car or in the  
13 house, that he knew what the nature of what was in the car or  
14 in the house, that he was in either actual or constructive  
15 possession because there's one instruction that I need you to  
16 pay attention to when you go back there. It's instruction  
17 number 16, and it's in here. The State --

18 Basically, it's talking about something called mere  
19 presence. And as you can see, and when you get back in the  
20 back, and take a look at it a little more, mere presence at  
21 the scene of a crime or even knowledge that a crime is being  
22 committed isn't enough to establish the defendant's guilt.  
23 You have to be able to find that he was a participant and not  
24 merely a knowing spectator.

25 Now, going back through some of the testimony

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1 bored so he pulled out that little thing that he had that  
2 that guy wanted him to try. Listen to the calls. That's  
3 what he says. And he puts it on the table and he crushes it  
4 up and he rolls up a piece of magazine and he snorts it.  
5 That's brazen right there at the police station.

6           Couldn't have known they were watching, but they  
7 were. They come in, what do they find? Methamphetamine  
8 taped to the defendant's scrotum. Just another step in the  
9 defendant's knowing participation in his life of drug dealing  
10 because why would you put it in your pocket, somebody might  
11 search there.

12           We learned a lot from the calls the defendant made  
13 from the people he spoke to. We learned that gunshots were,  
14 in fact, a distraction. It was fake. Something that's  
15 suspected all along by officers on scene. It turns out, too,  
16 yeah, that's the case. And the defendant, when he's learning  
17 that, on the phone is not surprised. He's not saying why  
18 would you do that? You caused more attention to none of  
19 that. What's the response? It's a laugh. It's a joke.  
20 It's like I expected that. Who would expect it? Why would  
21 you expect that?

22           There's only really one reason why you would expect  
23 that. If you know that you have people out there, they know  
24 you have stuff on you, they see you in a situation with the  
25 police, and you got to go. That's the only reason you could

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@ 11:24 AM  
FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

MAR 10 2017

BY Tia Everett  
TIA EVERETT, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CHRISTOPHER ROBERT KELLER,  
#1804258

Defendant.

CASE NO: C-16-312717-1

DEPT NO: XIX

VERDICT

We, the jury in the above entitled case, find the Defendant CHRISTOPHER ROBERT KELLER, as follows:

COUNT 1 - TRAFFICKING IN CONTROLLED SUBSTANCE

(Please check the appropriate box, select only one)

- ☒ Guilty of Trafficking In Controlled Substance  
☐ Not Guilty

COUNT 2 - TRAFFICKING IN CONTROLLED SUBSTANCE

(Please check the appropriate box, select only one)

- ☒ Guilty of Trafficking In Controlled Substance  
☐ Not Guilty

COUNT 3 - POSSESSION OF CONTROLLED SUBSTANCE - MARIJUANA GREATER THAN ONE OUNCE

(Please check the appropriate box, select only one)

- ☒ Guilty of Possession of Controlled Substance - Marijuana Greater than One Ounce  
☐ Not Guilty

C-16-312717-1  
VER  
Verdict  
4830710



1 **COUNT 4 - POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO SELL -**  
2 **METHAMPHETAMINE**

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

- 4 ☒ Guilty of Possession of Controlled Substance with Intent to Sell  
5 ☐ Not Guilty

6 **COUNT 5 - POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO SELL -**  
7 **HEROIN**

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

- 9 ☒ Guilty of Possession of Controlled Substance with Intent to Sell  
10 ☐ Not Guilty

11 **COUNT 6 - POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO SELL -**  
12 **COCAINE**

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


- 14 ☒ Guilty of Possession of Controlled Substance with Intent to Sell  
15 ☐ Not Guilty

16 **COUNT 7 - POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO SELL -**  
17 **MARIJUANA**

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

- 19 ☒ Guilty of Possession of Controlled Substance with Intent to Sell  
20 ☐ Not Guilty

21  
22 DATED this 10 day of March, 2017

23  
24 

25 FOREPERSON

2:11:04 AM  
FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

MAR 10 2017  
BY TIA EVERETT  
TIA EVERETT, DEPUTY

DISTRICT COURT  
CLARK COUNTY, NEVADA

1 VER

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6 THE STATE OF NEVADA,

7 Plaintiff,

8 -vs-

9 CHRISTOPHER ROBERT KELLER,  
10 #1804258

11 Defendant.

CASE NO: C-16-312717-1

DEPT NO: XIX

12 VERDICT

13 We, the jury in the above entitled case, find the Defendant CHRISTOPHER ROBERT  
14 KELLER, as follows:

15 COUNT 8 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

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

17 ☒ Guilty of OWNERSHIP OR POSSESSION OF FIREARM BY  
18 PROHIBITED PERSON

19 ☐ Not Guilty

20 COUNT 9 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON

21 (Please check the appropriate box, select only one)

22 ☒ Guilty of OWNERSHIP OR POSSESSION OF FIREARM BY  
23 PROHIBITED PERSON

24 ☐ Not Guilty

25 DATED this 10 day of March, 2017

26  
27 AL JH  
FOREPERSON

28 C-16-312717-1  
VER  
Verdict  
4630711



000066

*Steven D. Grierson*

JOC

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CHRISTOPHER ROBERT KELLER  
#1804258

Defendant.

CASE NO. C-16-312717-1

DEPT. NO. XIX

JUDGMENT OF CONVICTION  
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1  
- TRAFFICKING IN CONTROLLED SUBSTANCE (Category A Felony) in violation of  
NRS 453.3385.3; COUNT 2 - TRAFFICKING IN CONTROLLED SUBSTANCE  
(Category A Felony) in violation of NRS 453.3385.3; COUNT 3 - POSSESSION OF  
CONTROLLED SUBSTANCE, MARIJUANA (Category E Felony) in violation of NRS  
453.336; COUNT 4 - POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT  
TO SELL (Category D Felony) in violation of NRS 535.337; COUNT 5 - POSSESSION  
OF CONTROLLED SUBSTANCE WITH INTENT TO SELL (Category D Felony) in

//

- |   |  |
|---|--|
| <input type="checkbox"/> Nolle Prosequi (before trial)                    | <input type="checkbox"/> Bench (Non-Jury) Trial                |
| <input type="checkbox"/> Dismissed (after diversion)                      | <input type="checkbox"/> Dismissed (during trial)              |
| <input type="checkbox"/> Dismissed (before trial)                         | <input type="checkbox"/> Acquittal                             |
| <input checked="" type="checkbox"/> Guilty Plea with Sent. (before trial) | <input type="checkbox"/> Guilty Plea with Sent. (during trial) |
| <input type="checkbox"/> Transferred (before/during trial)                | <input type="checkbox"/> Conviction                            |
| <input type="checkbox"/> Other Manner of Disposition                      |  |

1 violation of NRS 535.337, of COUNT 6 – POSSESSION OF CONTROLLED  
2 SUBSTANCE WITH INTENT TO SELL (Category D Felony) In violation of NRS  
3 535.337; COUNT 7 – POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT  
4 TO SELL (Category D Felony) In violation of NRS 535.337; COUNT 8 – OWNERSHIP  
5 OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony) in  
6 violation of NRS 202.360; COUNT 9 – OWNERSHIP OR POSSESSION OF FIREARM  
7 BY PROHIBITED PERSON (Category B Felony) in violation of NRS 202.360, and the  
8 matter having been tried before a jury and the Defendant having been found guilty of  
9 the crimes of COUNT 1 – TRAFFICKING IN CONTROLLED SUBSTANCE (Category  
10 A Felony) in violation of NRS 453.3385.3; COUNT 2 – TRAFFICKING IN  
11 CONTROLLED SUBSTANCE (Category A Felony) in violation of NRS 453.3385.3;  
12 COUNT 3 – POSSESSION OF CONTROLLED SUBSTANCE, MARIJUANA GREATER  
13 THAN ONE OUNCE (Category E Felony) in violation of NRS 453.336; COUNT 4 –  
14 POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO SELL (Category D  
15 Felony) In violation of NRS 535.337; COUNT 5 – POSSESSION OF CONTROLLED  
16 SUBSTANCE WITH INTENT TO SELL (Category D Felony) in violation of NRS  
17 535.337, of COUNT 6 – POSSESSION OF CONTROLLED SUBSTANCE WITH  
18 INTENT TO SELL (Category D Felony) in violation of NRS 535.337; COUNT 7 –  
19 POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO SELL  
20 (Category D Felony) in violation of NRS 535.337; COUNT 8 – OWNERSHIP OR  
21 POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony) in  
22 violation of NRS 202.360; COUNT 9 – OWNERSHIP OR POSSESSION OF  
23 FIREARM BY PROHIBITED PERSON (Category B Felony) in violation of NRS 202.360;

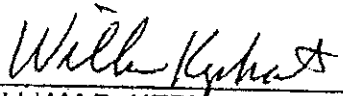

1 thereafter, on the 7<sup>th</sup> day of August, 2017, the Defendant was present in court for  
2 sentencing with counsel KENNETH FRIZZELL, and good cause appearing,  
3

4 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses as set forth in  
5 the jury's verdict, in addition to the \$25.00 Administrative Assessment Fee and  
6 \$10,000.00 fine plus \$3.00 DNA Collection Fee, the Defendant is SENTENCED to the  
7 Nevada Department of Corrections (NDC) as follows: **COUNT 1** - LIFE with a  
8 MINIMUM Parole Eligibility after TEN (10) YEARS; **COUNT 2** - LIFE with a MINIMUM  
9 Parole Eligibility after TEN (10) YEARS, CONCURRENT with COUNT 1; **COUNT 3** - a  
10 MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of  
11 TWELVE (12) MONTHS, CONCURRENT with COUNT 2; **COUNT 4** - a MAXIMUM of  
12 FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12)  
13 MONTHS, CONCURRENT with COUNT 3; **COUNT 5** - a MAXIMUM of FORTY-EIGHT  
14 (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS,  
15 CONCURRENT with COUNT 4; **COUNT 6** - a MAXIMUM of FORTY-EIGHT (48)  
16 MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS,  
17 CONCURRENT with COUNT 5; **COUNT 7** - a MAXIMUM of FORTY-EIGHT (48)  
18 MONTHS with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS,  
19 CONCURRENT with COUNT 6; **COUNT 8** -LIFE with a MINIMUM Parole Eligibility  
20 after TEN (10) YEARS under the LARGE HABITUAL Criminal Statute, CONSECUTIVE  
21 to COUNTS 1, 2, 3, 4, 5, 6 and 7; and **COUNT 9** -LIFE with a MINIMUM Parole  
22 Eligibility after TEN (10) YEARS under the LARGE HABITUAL Criminal Statute,  
23 CONCURRENT with COUNT 8; with FIVE HUNDRED FIFTY-NINE (559) DAYS credit  
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1 for time served. . As the \$150.00 DNA Analysis Fee and Genetic Testing have been  
2 previously imposed, the Fee and Testing in the current case are WAIVED.  
3

4 The AGGREGATE TOTAL sentence is LIFE with a MINIMUM PAROLE ELIGIBILITY  
5 OF TWENTY (20) YEARS  
6

7 DATED this 10<sup>th</sup> day of August, 2017.  
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11 WILLIAM D. KEPHART  
12 DISTRICT COURT JUDGE   
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*Steven D. Grierson*

1 AJOC

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA  
5

6 THE STATE OF NEVADA,

7 Plaintiff,

CASE NO. C-16-312717-1

8 -VS-

DEPT. NO. XIX

9  
10 CHRISTOPHER ROBERT KELLER  
11 #1804258

12 Defendant.  
13

14 AMENDED JUDGMENT OF CONVICTION  
15 (JURY TRIAL)  
16

17 The Defendant previously entered a plea of not guilty to the crimes of COUNT 1  
18 - TRAFFICKING IN CONTROLLED SUBSTANCE (Category A Felony) in violation of  
19 NRS 453.3385.3; COUNT 2 - TRAFFICKING IN CONTROLLED SUBSTANCE  
20 (Category A Felony) in violation of NRS 453.3385.3; COUNT 3 - POSSESSION OF  
21 CONTROLLED SUBSTANCE, MARIJUANA (Category E Felony) in violation of NRS  
22 453.336; COUNT 4 - POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT  
23 TO SELL (Category D Felony) in violation of NRS 435.337; COUNT 5 - POSSESSION  
24 OF CONTROLLED SUBSTANCE WITH INTENT TO SELL (Category D Felony) in  
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1 violation of NRS 435.337, of COUNT 6 – POSSESSION OF CONTROLLED  
2 SUBSTANCE WITH INTENT TO SELL (Category D Felony) in violation of NRS  
3 435.337; COUNT 7 – POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT  
4 TO SELL (Category D Felony) in violation of NRS 435.337; COUNT 8 – OWNERSHIP  
5 OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony) in  
6 violation of NRS 202.360; COUNT 9 – OWNERSHIP OR POSSESSION OF FIREARM  
7 BY PROHIBITED PERSON (Category B Felony) in violation of NRS 202.360, and the  
8 matter having been tried before a jury and the Defendant having been found guilty of  
9 the crimes of COUNT 1 – TRAFFICKING IN CONTROLLED SUBSTANCE (Category  
10 A Felony) in violation of NRS 453.3385.3; COUNT 2 – TRAFFICKING IN  
11 CONTROLLED SUBSTANCE (Category A Felony) in violation of NRS 453.3385.3;  
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14 POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO SELL (Category D  
15 Felony) in violation of NRS 435.337; COUNT 5 – POSSESSION OF CONTROLLED  
16 SUBSTANCE WITH INTENT TO SELL (Category D Felony) in violation of NRS  
17 435.337, of COUNT 6 – POSSESSION OF CONTROLLED SUBSTANCE WITH  
18 INTENT TO SELL (Category D Felony) in violation of NRS 435.337; COUNT 7 –  
19 POSSESSION OF CONTROLLED SUBSTANCE WITH INTENT TO SELL  
20 (Category D Felony) in violation of NRS 435.337; COUNT 8 – OWNERSHIP OR  
21 POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony) in  
22 violation of NRS 202.360; COUNT 9 – OWNERSHIP OR POSSESSION OF  
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1 thereafter, on the 7<sup>th</sup> day of August, 2017, the Defendant was present in court for  
2 sentencing with counsel KENNETH FRIZZELL, and good cause appearing,  
3

4 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses as set forth in  
5 the jury's verdict, in addition to the \$25.00 Administrative Assessment Fee and  
6 \$10,000.00 fine plus \$3.00 DNA Collection Fee, the Defendant is SENTENCED to the  
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9 Parole Eligibility after TEN (10) YEARS, CONCURRENT with COUNT 1; **COUNT 3** - a  
10 MAXIMUM of FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of  
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12 FORTY-EIGHT (48) MONTHS with a MINIMUM Parole Eligibility of TWELVE (12)  
13 MONTHS, CONCURRENT with COUNT 3; **COUNT 5** - a MAXIMUM of FORTY-EIGHT  
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15 CONCURRENT with COUNT 4; **COUNT 6** - a MAXIMUM of FORTY-EIGHT (48)  
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1 for time served. . As the \$150.00 DNA Analysis Fee and Genetic Testing have been  
2 previously imposed, the Fee and Testing in the current case are WAIVED.  
3

4 The AGGREGATE TOTAL sentence is LIFE with a MINIMUM PAROLE ELIGIBILITY  
5 OF TWENTY (20) YEARS  
6

7 THEREAFTER, a clerical error having been discovered, the Amended Judgment  
8 of Conviction reflects the following correction: NRS 435.337 – POSSESSION OF  
9 CONTROLLED SUBSTANCE WITH INTENT TO SELL for COUNTS 4, 5, 6, and 7.  
10

11  
12 DATED this 11<sup>th</sup> day of December, 2017.  
13  
14

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16 \_\_\_\_\_  
17 WILLIAM D. KEPHART  
18 DISTRICT COURT JUDGE  
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*Steven D. Grierson*

1 **NOTE**

2 LAW OFFICE OF KENNETH G. FRIZZELL, III  
3 Kenneth G. Frizzell, III, Esq.  
4 Nevada Bar No.:006303  
5 619 South 6<sup>th</sup> Street  
6 Las Vegas, Nevada 89101  
7 (702) 366-1230  
8 Attorney for Defendant

6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 CHRISTOPHER R. KELLER,  
12 #1754046

13 Defendant.

Case No.: C-16-312717-1  
Dept. No.: XIX

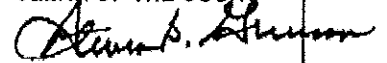
Date:  
Time:

14 **NOTICE OF APPEAL**

15 COMES NOW the Defendant, CHRISTOPHER KELLER, by and through his attorney,  
16 KENNETH G. FRIZZELL, III, ESQ. and hereby appeals to the Supreme Court of Nevada from the  
17 final Judgment of Conviction entered in this action on August 10, 2017.

18 Dated this 24 day of August, 2017.

19  
20 *Kenneth G. Frizzell, III*  
21 KENNETH G. FRIZZELL, III, ESQ.  
22 Nevada Bar No.:006303  
23 619 South 6<sup>th</sup> Street  
24 Las Vegas, Nevada 89101  
25 (702) 366-1230  
26 Attorney for Defendant, KELLER  
27  
28



1 ASTA  
2 LAW OFFICES OF KENNETH G. FRIZZELL, III  
3 Kenneth G. Frizzell, III, Esq.  
4 Nevada Bar #006303  
5 619 South 6<sup>th</sup> Street  
6 Las Vegas, Nevada 89101  
7 (702) 366-1230  
8 Attorney for Appellant, CHRISTOPHER KELLER

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 STATE OF NEVADA,

10 Plaintiff,

-vs-

11 CHRISTOPHER KELLER,  
12 #1754046,

13 Defendant.

Case No.: C-16-312717-1  
Dept. No.: XIX

CASE APPEAL STATEMENT

- 14
- 15 1. Name of the Appellant filing this Case Appeal Statement:
- 16 Christopher Keller
- 17 2. Identify the Judge issuing the decision, judgment, or order appealed from:
- 18 Hon. William "Bill" Kephart.
- 19 3. Identify each appellant and respondent and the name and address of counsel for
- 20 each appellant and respondent:
- 21
- 22 Appellant: Christopher Keller  
Respondent: State of Nevada
- 23 Kenneth G. Frizzell III, Esq. Michael Dickerson, Esq. (D.A.)  
24 619 S. 6<sup>th</sup> Street 200 South 3<sup>rd</sup> Street  
Las Vegas, Nevada 89101 Las Vegas, NV 89101  
25 (702) 366-1230 (702) 671-2768  
Attorney for Appellant, Christopher Keller Dep. Dist. Atty., Respondent
- 26 4. Indicate whether any attorney identified above in response to question 3 is not
- 27 licensed to practice law in Nevada and, if so, whether the district court granted that
- 28 attorney permission to appear under SCR 42(attach a copy of any district court order

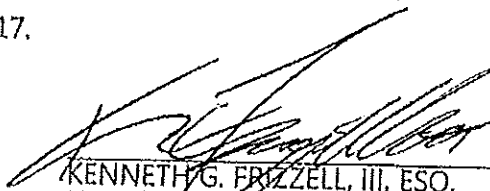
- 1 granting such permission):  
2  
3 N/A  
4 5. Indicate whether appellant was represented by appointed or retained counsel in the  
5 District Court:  
6 Appellant was represented by appointed counsel in the District Court.  
7 6. Indicate whether appellant is represented by appointed or retained counsel on  
8 appeal:  
9 Appellant is represented by appointed counsel on appeal.  
10 7. Indicate whether Appellant was granted leave to proceed in Forma Pauperis, and the  
11 date of entry of the District Court Order granting such leave:  
12  
13 N/A  
14 8. Indicate the date the proceedings commenced in the District Court:  
15 February 16, 2016.  
16 9. Provide a brief description of the nature of the action and the result in district court,  
17 including the type of judgment or order being appealed and the relief granted by  
18 the district:  
19 High-Level Drug Trafficking, Jury verdict, sentenced under Nevada's large habitual  
20 criminal statute.  
21 10. Indicate whether this case has previously been the subject of an appeal to, or  
22 original writ proceeding in, the Supreme Court and, if so, the caption and Supreme  
23 Court docket number of the prior proceeding:  
24 N/A.  
25 11. Indicate whether this appeal involves child custody or visitation:  
26 No  
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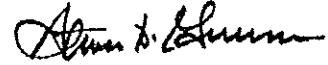
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12. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

N/A

DATED this 25 day of August, 2017.

  
KENNETH G. FRIZZELL, III, ESQ.  
Nevada Bar No.: 006303  
619 South 6<sup>th</sup> Street  
Las Vegas, Nevada 89101  
(702) 366-1230  
Attorney for Appellant, CHRISTOPHER  
KELLER

  
CLERK OF THE COURT

1 MOT

2 KENNETH G. FRIZZELL, III, ESQ.

3 Nevada Bar No. 6303

4 Law Offices of Kenneth G. Frizzell, III

5 619 S. Sixth Street

6 Las Vegas, NV 89101

7 Phone: 702.366.1230

8 Facsimile: 702.384.9961

9 ATTORNEYS FOR DEFENDANT CHRISTOPHER R. KELLER

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA

13 Plaintiff,

14 vs.

15 Christopher R. Keller,

16 Defendant.


17 CASE NO. C-16-312717-1

18 DEPARTMENT NO. XIX

19 DEFENDANT'S MOTION TO SUPPRESS

20 COMES NOW the Defendant, Christopher R. Keller, through his Counsel, Kenneth G.  
21 Frizzell, III, and files this Motion to Suppress evidence gathered in violation of his Fourth and  
22 Fourteenth Amendment rights against unreasonable searches and seizures. This Motion is based on all  
23 the papers and pleadings on file herein as well as oral arguments, if any, before this Court.

24 Dated this 10 day of June, 2016.

25   
KENNETH G. FRIZZELL, III, ESQ.

26 Nevada Bar No. 6303

27 Law Offices of Kenneth G. Frizzell, III

28 619 S. Sixth Street

Las Vegas, NV 89101

Phone: 702.366.1230

Facsimile: 702.384.9961


ATTORNEYS FOR DEFENDANT CHRISTOPHER R. KELLER

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NOTICE OF MOTION

TO: ALL COUNSEL OF RECORD:

YOU AND EACH OF YOU will please take Notice that the undersigned will bring the foregoing MOTION TO SUPPRESS on the 20 day of June, 2016, at the hour of 8:30 ~~AM~~ <sup>PM</sup> in Department 19, or as soon thereafter as counsel may be heard.

  
KENNETH G. FRIZZELL, III, ESQ.

Nevada Bar No. 6303

Law Offices of Kenneth G. Frizzell, III

619 S. Sixth Street

Las Vegas, NV 89101

Phone: 702.366.1230

Facsimile: 702.384.9961

ATTORNEYS FOR DEFENDANT CHRISTOPHER R. KELLER

DEFENDANT CHRISTOPHER R. KELLER'S MOTION TO SUPPRESS

This is a Motion to Suppress contraband allegedly recovered following a traffic stop on or about January 28, 2016. This Motion is brought pursuant to Rule 3.20 of the Eight Judicial Rules of Practice. This matter is set for jury trial on June 27, 2016.

The instant case began when Officer D. Lopez, LVMPD No. 9806 is alleged to have witnessed Christopher Keller commit three minor traffic violations, specifically traveling more than 300 feet in the center lane and traveling at a high rate of speed with one non-operational taillight. Lopez believed that Christopher's "abrupt" turning into an apartment complex was indicative of Christopher's "trying to avoid him." No citation is made to any traffic violation that entails trying to avoid an officer (likely because none such exists). According to the Declaration of Arrest, Christopher turned into parking space #58 and exited the vehicle. Lopez conducted a traffic stop and "jumped out" of his own vehicle. A copy of this Declaration of Arrest is attached hereto as Exhibit 1.

1 Lopez claimed to smell a strong odor of cannabis about Christopher and conducted a pat-down  
2 search for weapons. Lopez believed that Christopher would flee, so he placed him in handcuffs. This  
3 seizure occurred at 0225 AM, or 2:25 in the morning.  
4

5 Besides the trivial traffic offenses mentioned above, Lopez had no grounds to stop  
6 Christopher. In, Nevada, persons stopped for traffic infractions or other misdemeanors must not be  
7 subject to a full custodial arrest unless the arresting officer articulates a reason why he or she believes  
8 this particular individual will not appear for said traffic violation or other misdemeanors. *State v.*  
9 *Bayard*, 119 Nev. 241 (2003). As noted in *Bayard*, the State of Nevada stated it provided protections  
10 over and above that of the Fourth Amendment of the Constitution of the United States, which are  
11 minimal per the United States Supreme Court in *Atwater v. Lago Vista*, 532 U.S. 318 (2001). In  
12 *Atwater*, an officer pulled over a self described "soccer mom" with no criminal record for not wearing  
13 her seatbelt and subjected her to a full custodial arrest. A sharply divided Supreme Court (5-4) held  
14 that this custodial arrest did not violate the Fourth Amendment. The Court distinctly recognized,  
15 however, the states' power to legislatively restrict such arrests and give citizens greater protections.  
16

17 Nevada gives its citizens additional protections in NRS 484A.730. This statute states that a  
18 peace officer has the option to take a person before a magistrate, i.e. effectuate a custodial arrest,  
19 when this person refuses to submit to a safety test of his or her vehicle, refuse to submit his/her  
20 vehicle to a weight test, or is driving under the influence. The statute reads:  
21

22 **484A.730. When peace officer has option to take person  
before magistrate.**

23 Whenever any person is halted by a peace officer for any  
24 violation of this chapter and is not required to be taken  
25 before a magistrate, the person may, in the discretion of the  
26 peace officer, either be given a traffic citation, or be taken  
without unnecessary delay before the proper magistrate.  
The person must be taken before the magistrate in any of  
the following cases:

27 1. When the person does not furnish satisfactory evidence  
28 of identity or when the peace officer has reasonable and  
probable grounds to believe the person will disregard a  
written promise to appear in court;

1  
2 2. When the person is charged with a violation of NRS  
3 484D.580 relating to the refusal of a driver of a vehicle to  
4 submit the vehicle to an inspection and test;

5 3. When the person is charged with a violation of NRS  
6 484D.675 relating to the failure or refusal of a driver of a  
7 vehicle to submit the vehicle and load to a weighing or to  
8 remove excess weight therefrom; or

9 4. When the person is charged with a violation of NRS  
10 484C.110 or 484C.120, unless the person is incapacitated  
11 and is being treated for injuries at the time the peace officer  
12 would otherwise be taking the person before the magistrate.

13 As this Court is aware, NRS 484 is designated as "traffic laws." It follows that if the Nevada  
14 Legislature spelled out three instances wherein an individual may be arrested for traffic infractions,  
15 these are inclusive and complete. If none of these situations is present, an individual may not be  
16 arrested based simply on traffic infractions. Instead, an individual is to be cited, unless said individual  
17 cannot provide satisfactory evidence of a residence or gives other indicia that he or she will not  
18 appear.

19 Officer Lopez noted in the Declaration that Christopher had prior convictions for controlled  
20 substance violations, possessing a firearm, burglary and credit card charges; but not a single failure to  
21 appear, warrant, or other indicia that he would not honor a traffic ticket. The Declaration of Arrest  
22 indicates that Officer Lopez retrieved Christopher's wallet which correctly identified him and his  
23 address. As such, there is no justification for a full custodial arrest based on the traffic offenses.

24 The Supreme Court of Nevada has recently interpreted NRS 484A.730 in *Bayard, supra*. In  
25 *Bayard*, the defendant was stopped for a minor traffic violation. The officer ordered the defendant out  
26 of the car and the defendant told the officer he had a gun. The defendant produced a gun from his  
27 waistband and a valid concealed-carry permit. The officer elected to arrest the defendant and upon  
28 arrival to the jail, numerous bundles of cocaine were located in the defendant's underwear. These  
drugs were suppressed because of the officer's violation of NRS 484.795. The opinion states:

We hold that an arrest made in violation of NRS 484.795  
violates a suspect's right to be free from unlawful searches  
and seizures under Article 1, Section 18, even though the

1 arrest does not offend the Fourth Amendment. An officer  
2 violates NRS 484.795 if the officer abuses his or her  
3 discretion in making a full custodial arrest instead of  
4 issuing a traffic citation. We adopt the test set forth by the  
5 Montana Supreme Court in *State v. Bauer* for determining  
6 the proper exercise of police discretion to arrest under NRS  
7 484.795. To make a valid arrest based on state  
8 constitutional grounds, "an officer's exercise of discretion  
9 must be reasonable." Reasonableness requires probable  
10 cause that a traffic offense has been committed and  
11 circumstances that require immediate arrest. Absent  
12 special circumstances requiring immediate arrest,  
13 individuals should not be made to endure the humiliation of  
14 arrest and detention when a citation will satisfy the state's  
15 interest. Such special circumstances are contained in the  
16 mandatory section of NRS 484.795 or exist when an officer  
17 has probable cause to believe other criminal misconduct is  
18 afoot. This rule will help minimize arbitrary arrests based  
19 on race, religion, or other improper factors and will benefit  
20 law enforcement by limiting the high costs associated with  
21 arrests for minor traffic offenses.

22 In the instant case, the only justification for Officer's Lopez near immediate seizure of  
23 Christopher is an "abrupt turn" into an apartment complex and a "strong odor of cannabis on his  
24 person and coming inside the vehicle." The latter justification is suspect at best because Lopez's  
25 report indicates that that Christopher "jumped out" of the driver's side door. At that time, Lopez  
26 activated his lights and "jumped out" of his own patrol vehicle. At the time Lopez began issuing  
27 commands to Christopher, the latter was standing beside his car, Lopez was standing by the police  
28 car. For the smell of cannabis to emanate between these two vehicles on a chilly January morning is  
rather suspect, more so in light of the fact that Christopher's door was closed.

#### CHRISTOPHER'S ARREST VIOLATED NRS 171.1771

24 In Nevada it is illegal to drive under the influence of cannabis, the first offense is a  
25 misdemeanor, as is the second. NRS 484C.110. At the time Officer Lopez smelled the cannabis, he  
26 had seen Christopher driving and supposedly violating three traffic laws—staying too long in a turn  
27 lane, speeding, and having one non-operational taillight. At this juncture, the only action allowed  
28 under the law is to issue Christopher a citation for these misdemeanor citations. Under Nevada Law,

1 Christopher could only be taken into custody if there were indicia of previous failures to appear or  
2 other indicators that he would not honor the written promise to appear.

3  
4 Officer Lopez's report is silent as to any field sobriety tests or questions about the supposed  
5 smell of marijuana. Rather than question whether Christopher was driving impaired, Officer Lopez  
6 immediately seized him by handcuffing him, supposedly afraid that Christopher would flee on foot.  
7 There is no basis for Officer Lopez's fear that Christopher would run away, only that he "tensed up"  
8 and his talking "became more nervous." Nervousness alone cannot be a basis for seizure. The  
9 Supreme Court of the United States has continually reasoned that all people—even those with nothing  
10 to hide—are liable to become nervous when stopped or questioned by a peace officer. Nervousness  
11 can be part of the calculus of reasonable suspicion, but standing alone carries little weight. *United*  
12 *States v. Arizu*, 534 U.S. 266, 122 S.Ct. 744; *United States v. Richardson*, 385 F.3d 625 630-31 (6th  
13 Cir. 2004). At this juncture, Christopher is seized and in handcuffs. The only basis for this seizure is  
14 minor traffic offenses and the smell of marijuana.  
15

16 As is plain from the above, Officer Lopez's stop became unlawful after he elected not to issue  
17 the necessary citations or conduct field sobriety tests. A traffic stop that is legitimate when initiated  
18 becomes illegitimate when the officer detains the car and driver beyond the time required to process  
19 the traffic offense, unless the extended detention is consensual, de minimis, or justified by a  
20 reasonable articulable suspicion of criminal activity. *State v. Beckman*, 305 P.3d 912, (Nev.2013).

21  
22 In *Beckman*, a Nevada State Trooper stopped the defendant for speeding. He checked his  
23 license and registration which was all valid and then decided to warn him about the speed. Based on  
24 the defendant's nervousness and some fingerprints near a door panel, the Trooper suspected the  
25 defendant of transporting drugs. The Trooper asked the defendant to remain at the scene just long  
26 enough for a dog sniff, which was positive. The additional wait was between 7-8 minutes. Despite  
27 this brief detention, all the drugs recovered were suppressed.  
28

1 The instant case is similar to *Beckman* in that Christopher was seized based on an officer's  
2 assumption or hunch. Officer Lopez mentions in the Declaration that he observed very trivial traffic  
3 infractions and that Christopher "was trying to avoid me." The only basis for the assumption that  
4 Christopher was trying to avoid Officer Lopez was an abrupt (but legal) turn into an apartment  
5 complex. There are countless reasons why a vehicle would make an abrupt turn into an apartment  
6 complex; one of the tens of thousands may include avoiding an officer, which is not illegal. As such,  
7 Christopher's stop, even assuming it was legitimate, quickly morphed into an illegal stop when the  
8 time passed wherein Officer Lopez could write Christopher a ticket and/or do field sobriety tests.  
9 Because none of the legal actions were performed after Christopher's traffic stop; all evidence  
10 recovered from this vehicle stop must be suppressed. *Beckman, supra*.

11  
12 Suppression is a question of facts and law. *Johnson v. State*, 118 Nev. 787, 794, 59 P.3d 450,  
13 455 (2002), *overruled on other grounds by Nunnery v. State*, 127 Nev. \_\_\_, \_\_\_, 263 P.3d 235, 250-51  
14 (2011). It is hornbook doctrine that evidence gathered from an illegal or illegitimate search is  
15 suppressed; as is the "fruit" of the illegal search or the poisonous tree. *Torres v. State*, 341 P.3d 652  
16 (Nev. 2015). In *Torres*, an Elko deputy saw the defendant, a smaller man, staggering near a bridge.  
17 This deputy believed that the defendant was intoxicated and underage. After the defendant produced  
18 identification that he was older than 21 and therefore allowed to drink alcohol and be out past curfew,  
19 the detention had to cease. Because this Elko deputy had a hunch that the identification card was fake,  
20 he detained the defendant long enough to learn he had warrants out of California. After learning the  
21 arrest was extraditable, the defendant was arrested and a gun was found on his person.

22  
23 The Supreme Court of Nevada held that all evidence gathered after the reasons for the initial  
24 stop (age and alcohol) were resolved had to be suppressed. The same should be true of the present  
25 case. Christopher was believed to be driving bad and possibly smoking marijuana. When Christopher  
26 was stopped, Officer Lopez should have resolved the concern by issuing a citation and performing  
27  
28

1 field sobriety tests; not elevating a minor traffic stop into a full custodial arrest within minutes based  
2 on the hunch.

3 Christopher anticipates that the State will argue that cash money found on his person created  
4 the necessary probable cause to increase the scope of the search. As will be explained below, the  
5 minimal amount of cash is insufficient to give rise to the assumption that Christopher was involved in  
6 illegal activity.  
7

8 When Christopher was stopped, he had a total of \$2,187.00 on his person. During the later  
9 search of Christopher's residence, pay stubs were recovered from Christopher's residence. These pay  
10 stubs prove that Christopher works as a butcher. Furthermore, currency alone is insufficient to justify  
11 a more invasive search unless the monies can be tied directly to narcotics. Probable cause to connect  
12 the currency to a violation of the narcotics laws exists when the government has reasonable grounds  
13 to believe that the property in question was related to an illegal drug transaction. This standard  
14 requires more than mere suspicion but less than prima facie proof. *United States v. \$93,685.61 in U.S.*  
15 *Currency*, 730 F.2d 571, 572 (9th Cir.1984), cert. denied, 469 U.S. 831 (1984). Probable cause may  
16 be established by "the aggregate of the facts." *\$93,685.61 in U.S. Currency*, 730 F.2d at 572. In this  
17 case, the amount of money is small. A mere \$2,187 is insufficient to establish probable cause that  
18 Christopher engaged in narcotics trafficking. Indeed, the United States Treasury does not require cash  
19 transactions to be reported unless said transaction consists of ten thousand dollars or more—almost  
20 five times the amount of money Christopher was alleged to have carried. See IRS .GOV/form 8300.  
21

22 As is shown from the case law and recitation of facts, the stop for misdemeanor traffic  
23 infractions cannot lead to a custodial arrest under these facts. Nevada likewise has a prohibition  
24 against making arrests for misdemeanors. Nevada enacted NRS 171.1771 which restricts custodial  
25 arrests to situations where the person "does not furnish satisfactory evidence of identity or when the  
26 peace officer has reasonable and probable grounds to believe the person . . . will disregard a written  
27 promise to appear." The statute is set forth in full below:  
28

1 NRS 171.1771 Issuance of citation when person detained  
2 by peace officer. Whenever any person is detained by a  
3 peace officer for any violation of a county, city or town  
4 ordinance or a state law which is punishable as a  
5 misdemeanor and the person is not required to be taken  
6 before a magistrate, the person shall, in the discretion of the  
7 peace officer, either be given a misdemeanor citation, or be  
8 taken without unnecessary delay before the proper  
9 magistrate. Any such person shall be taken before the  
10 magistrate when the person does not furnish satisfactory  
11 evidence of identity or when the peace officer has  
12 reasonable and probable grounds to believe the person  
13 will disregard a written promise to appear in court.  
14 (Emphasis added).

15 The statute clearly spells out when a misdemeanant can be arrested, and it follows that when a  
16 misdemeanant does not meet the criteria set forth in NRS 171.1771, he or she cannot be subject to a  
17 custodial arrest. The facts of this case, briefly restated, are that Christopher pulled into "Crossroads  
18 III" apartment complex. Pulling into this apartment was deemed evasive by Officer Lopez. After the  
19 vehicle stop quickly morphed into a full custodial arrest, Officer Lopez sought a search warrant for  
20 Christopher's car located at 265 North Lamb, space #58 and 265 North Lamb, Apartment F, with the  
21 letter D taped on the door.

22 By the time Christopher was seized and handcuffed, he was only guilty of smelling like  
23 marijuana and three minor traffic infractions as well as being nervous. None of these factors are  
24 sufficient to justify a custodial arrest. The cash, a mere \$2,187.00 is insufficient to elevate the  
25 aforementioned misdemeanors into a custodial arrest.

26 **THE THREE HOUR DELAY BETWEEN CHRISTOPHER'S APPREHENSION AND**  
27 **OBTAINING A WARRANT MAKES THE VEHICLE STOP INVALID**

28 Officer Lopez and the State agree that Officer Lopez conducted a "traffic stop" on Christopher.  
The Declaration of Arrest reads: "Keller pulled his Dodge Stratus into space #58 and jumped out of the  
driver's side door. I conducted a traffic stop by activating my lights and jumped out of my own patrol  
vehicle." See Exhibit 1 (emphasis added).

1 In Nevada, a traffic stop or other investigative detention that lasts longer than sixty (60)  
2 minutes is presumed invalid and is unlawful. NRS 171.123. According to the recent landmark search  
3 and seizure case of *Rodriguez v. United States*, 135 S. Ct. 1609 (2015), a routine traffic stop is more  
4 like a brief stop under *Terry v. Ohio* 392 U. S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889, than an arrest,  
5 see, e.g., *Arizona v. Johnson*, 555 U. S. 323, 330, 129 S. Ct. 781, 172 L. Ed. 2d 694. The goal of a  
6 traffic stop is to address the violation that warranted the stop, *Illinois v. Caballes*, 543 U. S. 405, 407,  
7 125 S. Ct. 834, 160 L. Ed. 2d 842 and attend to related safety concerns. Authority for the seizure ends  
8 when tasks tied to the traffic infraction are--or reasonably should have been--completed.

9  
10 Christopher's traffic stop occurred at 2:25 AM. As stated above, Christopher's traffic stop  
11 quickly and unlawfully turned into a full custodial interrogation within minutes. Christopher argues  
12 this was erroneous and that the authority for this admitted traffic stop ended after a reasonable time to  
13 write a ticket or conduct a field sobriety test (based on the smell of marijuana). However, should this  
14 Court rule that Christopher was lawfully seized at or about 2:25 through 2:40, the fact that no search  
15 warrant was issued until three hours later is problematic. While there is reference to Christopher  
16 sleeping in the back of Officer Lopez's police car; there is no justification as to why three hours  
17 elapsed between the seizure and the issuance of the warrant. It is unlikely that Officer Lopez  
18 continued to perform police duties with Christopher asleep in the back of his car; it is likewise unlikely  
19 that Officer Lopez stood idly by in excess of 1/3 of his ten hour shift before deciding to obtain a  
20 warrant.  
21

22  
23 Searches conducted without a warrant are presumed invalid. *California v. Acevedo*, 111 S.Ct.  
24 1982 (1991), *Phillips v. State*, 106 Nev. 763 (1990). Any evidence gathered following a violation of  
25 the Fourth Amendment is tainted with the violation and must be suppressed under the "fruit of the  
26 poisonous tree." *Wong Sun v. United States*, 371 U.S. 407 (1963). In this case, Officer Lopez alleges  
27 he made a full arrest, found baggies and a secret compartment, waited three hours and then obtained a  
28

1 warrant. Pursuant to *Wong Sun* and its many concurring opinions, any contraband seized before the  
2 issuance of the warrant is to be suppressed.

3  
4 Officer Lopez conducted the traffic stop at 2:25 AM. Immediately thereafter, Lopez claimed  
5 "probable cause" for a warrantless search of the car. At this time, Christopher is already seized in the  
6 legal sense (he is in handcuffs) and the warrant exception was based on the plain view of marijuana  
7 residue on the floorboard of Christopher's car. It should be stated what is obvious and that is at 2:25  
8 AM on a January morning it is very dark and therefore the claim of visible and obvious marijuana is  
9 suspect. There is no mention of Officer Lopez using his flashlight, nor is there any mention of  
10 overhead lighting. Marijuana *residue* by definition is difficult to see, and most telling, there is no  
11 mention of any marijuana, burnt roaches, residue, pipes, or paraphernalia being recovered from the car.  
12 See Exhibit 2, Arrest Report.

13  
14 Officer Lopez relies on the car search exception and admittedly started searching before  
15 obtaining a warrant. The car search exception is invalid under the facts of Christopher's seizure. The  
16 car search exception in Nevada was set forth in *Camacho v. State*, 119 Nev. 395, 75 P.3d 370 (2003).  
17 In *Camacho*, police waited in a parking lot for the defendant who was there to sell drugs. The police  
18 had planned to arrest Camacho and seize his car. The arrest was made, and after Camacho was  
19 secured in a patrol car, a detective searched his car and recovered methamphetamine. The search was  
20 held invalid inasmuch as there was no exigency, the defendant was unable to lose or destroy the  
21 evidence, the car could be easily secured against third parties, and a warrant was available  
22 telephonically. Camacho's drugs were not suppressed based on inevitable discovery, which is not  
23 applicable here. In *Camacho*, the police intended to seize (and eventually forfeit) the defendant's  
24 vehicle and it would have been inventoried. Here, Christopher was unlawfully seized for misdemeanor  
25 traffic violations and his car was lawfully parked at his residence. There was no exigency to justify a  
26 warrantless search of the car much less seizure of the same. Exigency connotes an immediate threat to  
27  
28

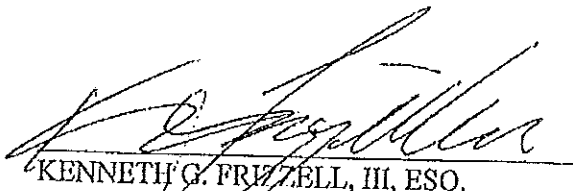
1 loss or destruction of evidence. Officer Lopez waited three hours before obtaining a warrant and  
2 multiple officers participated in Christopher's detention; as such, any exigency is fictional.

3  
4 **CONCLUSION**

5 Nevada law prohibits a custodial arrest for a misdemeanor or traffic violation. Officer Lopez  
6 stopped Christopher for making an "abrupt turn" that Lopez interpreted as evasive, but not unlawful.  
7 Christopher attempted to exit his vehicle but was detained and handcuffed—seized—because he  
8 smelled like marijuana (a possible misdemeanor) and appeared nervous and had committed three  
9 misdemeanor traffic offenses. Officer Lopez had no right to escalate the traffic stop into a full  
10 custodial arrest. If Christopher did smell of marijuana (which he denies), the proper course of action  
11 would have been to perform a field sobriety test to see if he was driving impaired. This was not done.  
12 Instead, Officer Lopez claimed to see marijuana residue on the floor of a parked vehicle in the dark of  
13 a January morning. This marijuana was never recovered.  
14

15 Christopher was arrested in violation of NRS 484A.730 and NRS 171.1771 as well as  
16 controlling precedent from the Supreme Court of Nevada and the Supreme Court of the United States.  
17 Based on the statutes and authority cited herein, Christopher R. Keller requests all evidence seized  
18 from his vehicle on January 28, 2016 be suppressed.

19 Dated June 10, 2016.

20  
21  
22   
KENNETH G. FRIZZELL, III, ESQ.

23 Nevada Bar No. 6303

24 Law Offices of Kenneth G. Frizzell, III

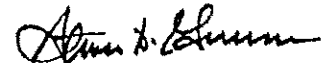
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DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

11 -vs-

12 CHRISTOPHER ROBERT KELLER,  
13 #1804258

14 Defendant.

CASE NO: C-16-312717-1

DEPT NO: XIX

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

16 DATE OF HEARING: JUNE 20, 2016  
17 TIME OF HEARING: 8:30 AM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
19 District Attorney, through ELIZABETH J. ANDERLIK, Deputy District Attorney, and hereby  
20 submits the attached Points and Authorities in Opposition to Defendant's Motion to Suppress.

21 This Opposition is made and based upon all the papers and pleadings on file herein, the  
22 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
23 deemed necessary by this Honorable Court.

24 //

25 //

26 //

27 //

28 //

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1 POINTS AND AUTHORITIES

2 I. Statement of Facts

3 On January 28, 2016, Officer Lopez conducted a vehicle stop on a 2002 Dodge later  
4 learned to be driven by Christopher Keller ("Defendant"). Preliminary Hearing Tr. Feb. 16,  
5 2016 (hereinafter "PH"), at 5-6. Officer Lopez conducted the vehicle stop because the vehicle  
6 had travelled over 300 feet in a double-yellow left-hand turn lane, made a U-turn, made an  
7 abrupt turn into a residential area, was travelling at a high rate of speed, and had a broken tail  
8 light. PH at 6-7. Once the vehicle entered the residential area, it parked, and Defendant  
9 quickly left the vehicle. PH at 8. Officer Lopez observed Defendant quickly jump out of the  
10 vehicle, and was "trying to get somewhere else really quick, was trying to get away from  
11 [Officer Lopez] really quick." PH at 8. Officer Lopez was able to smell the odor of marijuana  
12 coming from Defendant's person as well as from the inside of the vehicle. PH at 8.

13 Defendant consented to allow Officer Lopez to remove his wallet from his pocket to  
14 see Defendant's identification. PH at 10. Upon removing the wallet, Officer Lopez noted that  
15 Defendant was carrying what appeared to be a large amount of cash. PH at 10. The amount  
16 of cash was determined to be \$2,187.00. PH at 11. Based upon the manner in which the cash  
17 was situated, and the amount of cash that Defendant carried, Officer Lopez determined that  
18 the cash was, in his training and experience, consistent with the sale of narcotics. PH at 11-  
19 12. Officer Lopez based this conclusion, in part, on the denominations of the cash, the way  
20 the cash was specifically folded, the fact that 20-dollar-bills were folded in increments of \$100,  
21 the direction the bills were facing, and the fact that the larger separate "wad of cash" was made  
22 up of mostly smaller denominations, such as \$5 and \$10 bills. PH at 11-12.

23 During the Terry stop and pat-down, "there were five shots fired within the apartment  
24 complex," so Officer Lopez placed Defendant in handcuffs and into the patrol vehicle not only  
25 for Defendant's safety, but also so that Officer Lopez would be able to safely address any  
26 issues stemming from the shots fired. PH at 12. Additionally, Officer Lopez believed that  
27 Defendant would be a flight risk based upon his attempts to avoid the officer, his nervousness,

28 //

1 the fact that he was so upset about being stopped, and Defendant's behavior while Officer  
2 Lopez conducted the pat down for weapons. Def. Exhibit 1 at 1.

3       Afterward, Officer Lopez located noticed a green leafy residue on the floorboard of the  
4 driver's side vehicle in plain view. PH at 12. Based upon the vehicle, the odor of marijuana  
5 emanating from Defendant and the vehicle, and the green leafy residue in plain view, Officer  
6 Lopez conducted a probable cause search. PH at 12-13. During the probable cause search,  
7 Officer Lopez located a clear sealable plastic bag containing multiple smaller clear plastic  
8 bags as well as another large sealable plastic bag. PH at 13. At that point, Officer Lopez  
9 called for a K-9 team. PH at 13. The dog alerted to the glove box, wherein Officer Lopez  
10 located a concealed compartment. PH at 13-14. At that time Officer Lopez obtained a search  
11 warrant. PH at 14. Pursuant to the search warrant, Officer Lopez located several items of  
12 evidence. PH at 15; Def. Exhibit 1 at 2-3.

13       **II. Officer Lopez did not arrest Defendant for misdemeanor offenses.**

14       In his Motion, Defendant alleges that he was unlawfully arrested for misdemeanor  
15 offenses, and therefore all evidence must be suppressed. However, Defendant's proposition  
16 is based upon a faulty premise: Defendant was not arrested for misdemeanor traffic offenses.  
17 As Officer Lopez explained at the preliminary hearing as well as in his report, Defendant was  
18 placed in handcuffs for a variety of reasons, none of which included his arrest for traffic  
19 violations. PH at 12; Def. Exhibit 1 at 1. Defendant was placed in handcuffs not only because  
20 Officer Lopez believed he was a flight risk based on Defendant's behavior and the officer's  
21 training and experience, but also because five shots were fired nearby and Officer Lopez  
22 needed to secure the area. Id. Handcuffing Defendant was not part of an arrest for traffic  
23 violations, but his being handcuffed and placed in the patrol vehicle was an attempt to protect  
24 the safety of officers as well as Defendant given the situation. Specifically, Officer Lopez  
25 testified that he placed Defendant in handcuffs because, "There were 5 shots fired within the  
26 apartment complex, and I placed him in handcuffs, and placed him in the back of my patrol  
27 vehicle for his safet[y], as well as to free me up, so that I could address whatever issues came  
28 about." PH at 12.

1 Defendant claims that Officer Lopez's belief that Defendant was attempting to avoid  
2 him based upon his traffic violations was unfounded. However, Officer Lopez articulated  
3 more than Defendant's erratic driving to support his conclusion that Defendant was attempting  
4 to avoid him and was a flight risk. For example, Officer Lopez believed that Defendant would  
5 be a flight risk based upon Defendant's attempts to avoid the officer by jumping quickly from  
6 the vehicle and attempting to leave the area quickly, his attempts to "get away from [Officer  
7 Lopez] really quick," his nervousness, the fact that he was so upset about being stopped, and  
8 Defendant's behavior while Officer Lopez conducted the pat down for weapons. PH at 8; Def.  
9 Exhibit 1 at 1.

10 Because Defendant was not actually arrested for minor traffic violations, Defendant's  
11 arguments based upon that premise are inapplicable, as are his citation to such legal authority  
12 as NRS 484A.730, NRS 484.795, and State v. Baynard, 119 Nev. 241 (2003). Moreover,  
13 Defendant's detention through the use of handcuffs was never articulated by Officer Lopez to  
14 be an arrest at all. Defendant was being detained for his own and officer safety. In U.S. v.  
15 Navarrete-Baron, 192 F.3d 786 (8th Cir. 1999), the Court held that police officers did not  
16 exceed scope of Terry stop when they handcuffed occupants of automobile and placed them  
17 in separate patrol cars while officers searched automobile; there were two suspects and only  
18 two officers at scene, detention did not last for unreasonably long time, and in light of  
19 dangerous nature of suspected crime of drug trafficking and good possibility that driver or  
20 passenger had weapon, their confinement with handcuffs in back of patrol cars during search  
21 was reasonably necessary to maintain status quo, protect officers, and allow them to conduct  
22 search immediately and without interference.

23 Additionally, in U.S. v. Meza-Corrales, 183 F.3d 1116 (9th Cir. 1999), drug  
24 enforcement agents' temporarily detaining defendant with the use of handcuffs, was  
25 reasonable and did not escalate into a full-blown arrest, given relatively small number of  
26 officers present at scene, fact that weapons had been found and more weapons potentially  
27 remained hidden, fleeing persons were on the loose, uncooperative persons were inside the  
28 residence, an armed lookout was outside and blew a car horn when DEA came.

1 The Court held that detentions do not rise to the level of an arrest in circumstances  
2 when the details of the detention are a reasonable response to legitimate safety concerns on  
3 the part of the investigating officers. The Court stated, "When we make such judgments,  
4 common sense and ordinary human experience rather than bright-line rules serve as our guide,  
5 and we recognize that we allow intrusive and aggressive police conduct without deeming it an  
6 arrest in those circumstances when it is a reasonable response to legitimate safety concerns on  
7 the part of the investigating officers." Id., 183 F.3d at 1123.

8 Here, Officer Lopez's detention of Defendant was reasonable given the fact that five  
9 shots were fired in the apartment complex at approximately the same time as he was  
10 conducting the stop and Terry pat-down of Defendant. It was reasonable for Officer Lopez to  
11 secure Defendant in the patrol vehicle both for Defendant's safety considering the  
12 circumstances and for officer safety while he investigated the shots fired. It's hard to imagine  
13 a more legitimate safety concern than five gunshots in the immediate vicinity. Based upon the  
14 holding and reasoning in Meza-Corrales, Defendant's detention given the circumstances did  
15 not escalate to a full arrest at that time.

16 **III. Defendant's arrest did not violate NRS 171.1771.**

17 Defendant argues additionally that he was arrested unlawfully under NRS 171.1771.  
18 Pursuant to NRS 171.1771,

19 Whenever any person is detained by a peace officer for any violation of  
20 a county, city or town ordinance or a state law which is punishable as a  
21 misdemeanor and the person is not required to be taken before a magistrate, the  
22 person shall, in the discretion of the peace officer, either be given a misdemeanor  
23 citation, or be taken without unnecessary delay before the proper magistrate.  
24 Any such person shall be taken before the magistrate when the person does not  
furnish satisfactory evidence of identity or when the peace officer has reasonable  
and probable grounds to believe the person will disregard a written promise to  
appear in court.<sup>1</sup>

25 Once again, this statute is inapplicable. For the reasons explained above, Defendant was not  
26 under arrest for minor misdemeanors. At the time that he was first placed in handcuffs, he

27 <sup>1</sup> Even if NRS 171.1771 applied here, it would still not result in the suppression of the evidence. Officer Lopez would  
28 have reasonably believed that Defendant would "disregard a written promise to appear" based upon his behavior in  
trying to avoid Officer Lopez. His attempts to hurry away from his vehicle and from law enforcement rather than face  
the officer who pulled him over indicate he would not be likely to appear on a traffic citation.

1 was not under arrest at all, but was simply being detained because he was deemed a flight risk  
2 and for officer and Defendant's safety. Therefore, Defendant's argument must fail.

3 Defendant suggests that because no field sobriety tests were conducted, Defendant was  
4 not subject to arrest because he was only subject to citation for the traffic infractions.  
5 However, Defendant assumes that Defendant had been arrested at the time the contraband was  
6 found, and moreover that he was arrested for traffic violations and apparently driving under  
7 the influence of cannabis. There is no indication in the police reports or preliminary hearing  
8 transcript that Defendant was under arrest at that time, nevertheless that it was for traffic  
9 violations or driving under the influence of cannabis. Instead, as was outlined above,  
10 Defendant was being detained because he was deemed a flight risk, and the detention was  
11 continued for officer and Defendant's safety due to five gunshots in the area. Defendant's  
12 claim that "the only basis for [his] seizure is minor traffic offenses and the smell of marijuana,"  
13 Def's Motion at 6, is contradicted by the evidence. As discussed previously, substantial  
14 evidence exists through Officer Lopez's testimony as well as the police reports that Defendant  
15 was detained for legitimate reasons and not arrested for minor offenses in violation of Nevada  
16 law.

17 Moreover, Defendant's claim that the officer's failure to issue citations for the traffic  
18 offenses or to conduct field sobriety tests is evidence of the unlawful arrest is specious. In  
19 fact, the officer's decision not to issue such citations and to not conduct field sobriety tests is  
20 actually evidence in support of the conclusion that Defendant *was not under arrest for such*  
21 *offenses*. Instead, he was being detained for legitimate and reasonable reasons as articulated  
22 above.

23 Beckman and Torres, *infra*, do not apply to the facts of this case in the manner  
24 Defendant suggests because here, the need for detention continued. Here, Officer Lopez found  
25 additional evidence during the process of attempting to identify Defendant that increased his  
26 probable cause to believe that Defendant was committing a felony offense. He had not yet  
27 completed the steps necessary to address the initial reason for the stop when he discovered  
28 //

1 additional evidence of potential crimes and when a new issue presented itself: the five  
2 gunshots.

3 In State v. Beckman, 305 P.3d 912, 915 (Nev. 2013), the Court held that "A traffic stop  
4 that is legitimate when initiated becomes illegitimate when the officer detains the car and  
5 driver beyond the time required to process the traffic offense, unless the extended detention is  
6 consensual, de minimis, or justified by a reasonable articulable suspicion of criminal activity."

7 (Emphasis added.) Additionally,

8 During the course of a lawful traffic stop, officers may complete a  
9 number of routine tasks. For example, they may ask for a driver's license and  
10 vehicle registration, run a computer check, and issue a ticket. See United States  
11 v. Vaughan, 700 F.3d 705, 710 (4th Cir. 2012). Officers may also inquire about  
12 the occupants' destination, route, and purpose. United States v. Sanchez, 417  
13 F.3d 971, 975 (8th Cir. 2005). And if necessary, law enforcement may conduct  
14 a brief, limited investigation for safety purposes. Terry v. Ohio, 392 U.S. 1, 27,  
15 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); Dixon v. State, 103 Nev. 272, 273, 737  
16 P.2d 1162, 1163-64 (1987).

17 Id. at 916. Here, Defendant's detention was reasonable pursuant to the standards set under  
18 Beckman, Vaughan, Sanchez, Terry, Dixon, and Meza-Corrales, *supra*. Officer Lopez  
19 detained Defendant briefly due to his belief that Defendant was a flight risk and may have  
20 weapons on his person. While conducting a Terry pat down for weapons, Officer Lopez was  
21 given consent to pull Defendant's wallet from his pocket to obtain his identification card. In  
22 the process of doing so, Officer Lopez also found the cash which through his training and  
23 experience he believed, combined with the odor of marijuana emanating from Defendant and  
24 his vehicle, was indicative of drug sales. Finally, five gunshots created an emergency situation  
25 wherein Officer Lopez needed to continue Defendant's detention for his own safety as well as  
26 that of Officer Lopez while he investigated the gunshots and was then able to continue his  
27 investigation into Defendant's potential criminal activity.

28 In Torres, the defendant's detention was deemed by the Nevada Supreme Court to be  
unreasonable because

Once Torres produced his ID card verifying he was not a minor and over the age  
of 21, the suspicion for the original encounter was cured and Officer Shelley no  
longer had reasonable suspicion to detain Torres. But rather than release Torres,  
Officer Shelley continued to detain him, and contacted dispatch to check for

1 warrants. The officer explained his further detention of Torres as his "standard  
2 practice" because he 'very often get[s] fake I.D.'s, altered information on I.D.'s,  
3 I.D.'s that resemble the person but is not truly that person.' However, there is no  
4 evidence to show that Torres's ID card was fake or altered in any way.

5 Torres v. State, 341 P.3d 652, 657 (Nev. 2015). Thus, Torres is unlike the instant case. While  
6 in Torres the suspect was cleared of wrongdoing *before* the officer continued the detention to  
7 check for warrants when the officer had *no other indication* that the suspect was guilty of any  
8 other wrongdoing, thus making additional detention unlawful, the same is not the case here.  
9 Here, Officer Lopez was continuing the detention necessary regarding the initial stop, i.e.  
10 retrieving Defendant's identification, when he also discovered additional evidence of potential  
11 wrongdoing, i.e. the odor of illegal substance, cash in denominations and folded in such a way  
12 as to indicate sales, and Defendant's behavior. Further, the emergent situation of shots fired  
13 added to the reasonable nature of the continued detention.

14 Finally, Defendant's claim that his possession of \$2,187.00 on his person was not  
15 sufficient indication of wrongdoing is without merit. Officer Lopez explained at the  
16 preliminary hearing as well as in his reports (see Def. Exhibits 1 and 2) that it was not only  
17 the amount of cash that Defendant carried, but the specific manner in which he carried the  
18 various denominations that indicated to him that, with the combination of the odor of  
19 marijuana emanating from Defendant and his vehicle, the cash was related to narcotics sales.  
20 It is not as though Officer Lopez noted that Defendant had \$200 in cash and assumed he must  
21 be dealing drugs. Officer Lopez articulated in his reports and at the preliminary hearing the  
22 aggregated facts necessary to establish probable cause. See U.S. v. \$93,685.61 in U.S.  
23 Currency, 730 F.2d 571, 572, cert. denied, 469 U.S. 831 (1984). Whether Defendant was  
24 employed or had pay stubs in his residence is irrelevant to the analysis firstly because such  
25 information was not available to Officer Lopez at the time that he discovered the case, but was  
26 only discovered later. Thus it could not have been part of his consideration at the time that he  
27 located the cash. Moreover, Defendant's pay stub indicates he was paid \$275.63 on November  
28 27, 2015. State's Exhibit 1. The pay stub could hardly explain the over \$2,000 in cash he had  
on his person at the time of his detention. Thus Defendant's argument must fail.

1 IV. Any delay in obtaining a search warrant was reasonable under the  
2 circumstances.

3 In Rodriguez v. United States, 135 S. Ct. 1609, 1612 (2015), the U.S. Supreme Court  
4 reiterated that once the goal of a traffic stop has been achieved or reasonably should have been,  
5 the detainment becomes unlawful. Under Nevada law, detention may not last longer than 60  
6 minutes without probable cause for arrest. NRS 171.123. Once a detention exceeds the 60-  
7 minute time limit under NRS 171.123, the detention then ripens into a de facto arrest for  
8 which probable cause is necessary. State v. McKellips, 118 Nev. 465, 49 P.3d 655, (Nev.  
9 2002).

10 In the instant case, the traffic stop occurred sometime shortly after 2:25 am. Def.  
11 Exhibit 1 at 1. Officer Lopez applied for a search warrant at 5:56 am. Def. Exhibit 1 at 2.  
12 During that time, Officer Lopez was in a position where he had to investigate five gunshots in  
13 the immediate vicinity, and he determined that there was sufficient probable cause to apply  
14 for and was granted a search warrant for the hidden compartment. Defendant's allegation that  
15 it is unlikely that Officer Lopez continued in executing his duties while Defendant was in the  
16 back of the police vehicle is directly contradicted by Officer Lopez's testimony that he placed  
17 Defendant in the back of the vehicle for his safety while the officer investigated the gunshots.  
18 Although the detention was more lengthy than would ordinarily be allowed for a traffic stop,  
19 exigent circumstances existed to justify the officer's actions. Moreover, by the time that the  
20 60 minute limit was reached, Officer Lopez had already established probable cause to believe  
21 that Defendant was engaged in illegal activity, and thus to justify his arrest, based upon the  
22 odor of marijuana, Defendant's attempt to flee, and the cash he found on Defendant's person  
23 indicating narcotics sales.

24 After smelling the odor of marijuana on Defendant's person and emanating from his  
25 vehicle, and after finding cash in Defendant's pocket that indicated through his training and  
26 experience that it was the proceeds of narcotics sale, Officer Lopez found the marijuana  
27 residue that was in plain view, and, although there is no specific mention of a flashlight, it is  
28 //

1 difficult to imagine a situation in which an officer would conduct an investigation without  
2 sufficient lighting to do so.

3 Moreover, Defendant cites to Camacho v. State, 119 Nev. 395 (2003) as the rule on car  
4 search exceptions. However, a more recent case, State v. Lloyd, 312 P.3d 467 (Nev. 2013),  
5 refines the rule. In that case, the Nevada Supreme Court held that when probable cause exists  
6 to believe that a controlled substance will be found inside a vehicle, and the vehicle was  
7 occupied and mobile at the time the officer initiated the stop, the warrantless search is valid.  
8 Id. At 474. Here, the odor of marijuana combined with Defendant's attempts to avoid the  
9 officer and the cash indicative of narcotics sales and the marijuana residue in plain view clearly  
10 meet the requirement for probable cause under Lloyd, and thus the search leading to Officer  
11 Lopez finding the plastic baggies and the hidden compartment before obtaining a search  
12 warrant are valid. Moreover, at that time, Officer Lopez immediately stopped the search and  
13 applied for a search warrant, which was granted, before any further search took place,  
14 indicating that Officer Lopez was operating on a good faith basis with probable cause  
15 sufficient to support the search under Lloyd.

### 16 CONCLUSION

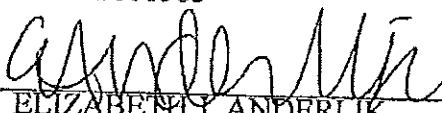
17 Defendant was not placed under custodial arrest for minor misdemeanor offenses.  
18 Instead, Defendant was detained lawfully, and at some point later was under arrest based upon  
19 probable cause for more serious offenses. The officer's search of Defendant's person as well  
20 as the vehicle comported with Nevada law, and therefore the evidence should not be  
21 suppressed. Based upon the foregoing, Defendant's motion must be denied.

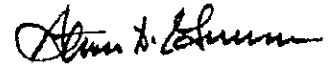
22 DATED this \_\_\_\_\_ day of June, 2016.

23 Respectfully submitted,

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

27 BY

28   
ELIZABETH S. ANDERLIK  
Deputy District Attorney  
Nevada Bar #013444



CLERK OF THE COURT

1 **ORDR**

2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 MICHAEL DICKERSON  
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8 200 Lewis Avenue  
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11 Attorney for Plaintiff

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,  
11 Plaintiff,

12 -vs-

13 CHRISTOPHER ROBERT KELLER,  
14 #1804258

15 Defendant.

CASE NO: C-16-312717-1

DEPT NO: XIX

16 **ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS**  
17 **AND DEFENDANTS PRO PER MOTION TO DISMISS COUNSEL**  
18 **AND APPOINT ALTERNATIVE COUNSEL**

19 DATE OF HEARING: July 21, 2016  
20 TIME OF HEARING: 10:00 A.M.

21 THIS MATTER having come on for hearing before the above entitled Court on the  
22 21st day of July, 2016, the Defendant being present, REPRESENTED BY KENNETH  
23 FRIZZELL, III, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District  
24 Attorney, through MICHAEL DICKERSON, Deputy District Attorney, and the Court having  
25 heard the arguments of counsel and good cause appearing therefor,

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28 ///

///

1 IT IS HEREBY ORDERED that the Defendant's, shall be, and it is DENIED.  
2 DATED this 16<sup>th</sup> day of August, 2016.

3  
4 Walt Kelly  
DISTRICT JUDGE

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

7  
8 BY M. R. Dickerson  
9 MICHAEL DICKERSON  
Deputy District Attorney  
10 Nevada Bar #13476  
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