

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER ROBERT KELLER,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Apr 13 2018 02:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 73871

RESPONDENT'S APPENDIX
Volume 1

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Counsel for Appellant

Counsel for Respondent

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 13th day of April, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

KENNETH G. FRIZZELL, III, ESQ.
Counsel for Appellant

CHARLES W. THOMAN
Deputy District Attorney

BY /s/ j. garcia
Employee,
Clark County District Attorney's Office

CWT/Melanie Marland/jg

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 18, 2016

C-16-312717-1 State of Nevada
 vs
 Christopher Keller

February 18, 2016 10:00 AM Initial Arraignment

HEARD BY: Weed, Randall F. **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Kristen Brown
 Anntoinette Naumec-Miller
 Kory Schlitz / ks

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT: Keller, Christopher Robert Defendant
 Sanft, Michael W. Attorney for Deft.

JOURNAL ENTRIES

- Deputized Law Clerk Chelsea Kallas present for the State of Nevada.

DEFT. KELLER ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial.

CUSTODY

3/16/16 8:30 A.M. PRE-TRIAL CONFERENCE (DEPT 19)

4/13/16 8:30 A.M. CALENDAR CALL (DEPT 19)

4/18/16 10:00 A.M. JURY TRIAL (DEPT 19)

PRINT DATE: 02/24/2016

Page 1 of 1

Minutes Date: February 18, 2016

RA 0001

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 16, 2016

C-16-312717-1 State of Nevada
 vs
 Christopher Keller

March 16, 2016 8:30 AM Pre Trial Conference

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

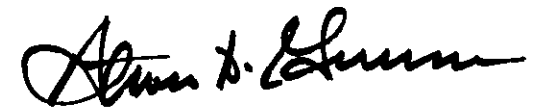
PARTIES

PRESENT:	Keller, Christopher Robert	Defendant
	Sanft, Michael W.	Attorney for Defendant
	Thomson, Megan	Deputy District Attorney

JOURNAL ENTRIES

- Mr. Sanft advised he will be filing a motion to suppress; although he anticipates ready for trial as there are no outstanding discovery issues with two days for trial. Ms. Thomson advised State is still waiting on the forensic and lab reports; however, those will be provided as soon as they are received. COURT ORDERED, trial date STANDS.

CUSTODY



CLERK OF THE COURT

1 **NOTC**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 ELIZABETH ANDERLIK
6 Deputy District Attorney
7 Nevada Bar #13444
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO: C-16-312717-1

12 CHRISTOPHER ROBERT KELLER,
13 #1804258

DEPT NO: XIX

14 Defendant.

15 **NOTICE OF INTENT TO SEEK PUNISHMENT AS**
16 **A HABITUAL CRIMINAL**

17 TO: CHRISTOPHER ROBERT KELLER, Defendant; and

18 TO: MICHAEL SANFT, ESQ., Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that pursuant to NRS
20 207.010, the STATE OF NEVADA will seek punishment of Defendant CHRISTOPHER
21 ROBERT KELLER, as a habitual criminal in the event of a felony conviction in the above-
22 entitled action.

23 That in the event of a felony conviction in the above-entitled action, the STATE OF
24 NEVADA will ask the court to sentence Defendant CHRISTOPHER ROBERT KELLER as
25 a habitual criminal based upon the following felony convictions, to-wit:

26 1. That on or about 2003, the Defendant was convicted in the State of
27 Nevada, for the crime of Possession of a Credit Card Without Cardholder Consent (felony) in
28 Case No. C189805B.


2. That on or about 2003, the Defendant was convicted in the State of Nevada, for the crime of Burglary (felony) in Case No. C192923.

3. That on or about 2009, the Defendant was convicted in the State of Nevada, for the crime of Possession of a Firearm by Ex-Felon (felony) in Case No. C252394.

4. That on or about 2013, the Defendant was convicted in the State of Nevada, for the crime of Attempt Possession of a Firearm by Ex-Felon (felony) in Case No. C279904.

5. That on or about 2013, the Defendant was convicted in the State of Nevada, for the crime of Conspiracy To Violate Uniform Controlled Substances Act (felony) in Case No. C287724.

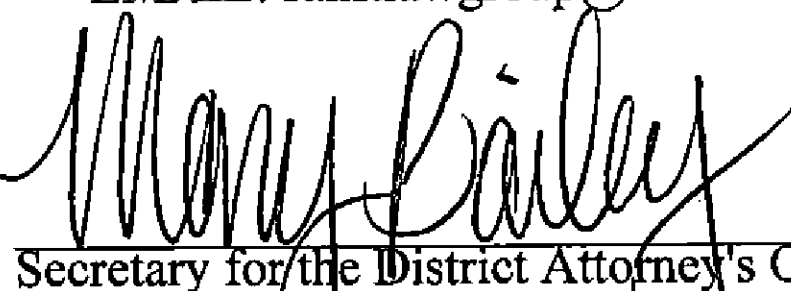
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY 
ELIZABETH ANDERLIK
Deputy District Attorney
Nevada Bar #13444

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of NOTICE OF INTENT TO SEEK PUNISHMENT AS A HABITUAL CRIMINAL, was made this 24th day of March, 2016, by Electronic Filing to:

MICHAEL SANFT, ESQ.
EMAIL: sanftlawgroup@mac.com


Secretary for the District Attorney's Office

16F01430X/mlb/L-2

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 13, 2016

C-16-312717-1 State of Nevada
vs
Christopher Keller

April 13, 2016 8:30 AM Calendar Call

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett/te
Kory Schlitz

RECORDER: Christine Erickson

PARTIES

PRESENT:	Anderlik, Elizabeth J.	Deputy District Attorney
	Keller, Christopher Robert	Defendant
	Sanft, Michael W.	Attorney for Defendant

JOURNAL ENTRIES

- Mr. Sanft advised he has announced ready for trial in department 12 next week and is unavailable for trial in this case. Further, Mr. Sanft advised the State will be providing additional discovery in this case and he will be filing a motion to suppress based on the new information. Mr. Laurent advised the discovery will be provided today. Court noted Defendant invoked his speedy trial right. Upon Court's inquiry, Defendant advised he wants to go to trial and does not want to waive his speedy trial right; although understands the scheduling conflict. Colloquy regarding trial scheduling. COURT ORDERED, trial date VACATED and RESET. Ms. Anderlik advised an offer was extended for one count of low level trafficking and one count of possession of a firearm by a prohibited person with Defendant stipulating to small habitual treatment and a stipulated sentence of 12 1/2 years. Further, Ms. Anderlik advised the offer will remain open until the calendar call date. Mr. Sanft advised he will discuss the offer with Defendant; although he believes the suppression motion needs to be filed first. Ms. Anderlik informed the Court that should the State have to respond to the suppression motion, the current offer will be revoked. Court so noted.

CUSTODY

PRINT DATE: 04/20/2016

Page 1 of 2

Minutes Date: April 13, 2016

RA 0005

C-16-312717-1

4/27/2016 8:30 AM CALENDAR CALL

5/02/2016 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 20, 2016

C-16-312717-1 State of Nevada
 vs
 Christopher Keller

April 20, 2016 8:30 AM Calendar Call

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett
 Kory Schlitz / ks

RECORDER: Christine Erickson

PARTIES

PRESENT:	Keller, Christopher Robert	Defendant
	Laurent, Christopher J	Attorney for State
	Sanft, Michael W.	Attorney for Deft.
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Colloquy regarding trial readiness. Mr. Sanft advised the court he is working on the motion to suppress; although Defendant wants to go forward with trial and represent himself if necessary. State announced ready with 10 -12 witnesses, none are out of state and anticipate 3 -4 days for trial. COURT ORDERED, trial date VACATED and matter REFERRED to Overflow for the week of 4/25/2016.

CUSTODY

4/29/16 8:30 A.M. OVERFLOW

Elizabeth Anderlik // Michael Sanft

10 -12 witnesses // 0 out of state // 3 -4 days

PRINT DATE: 04/26/2016

Page 1 of 1

Minutes Date: April 20, 2016

RA 0007

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 04, 2016

C-16-312717-1 State of Nevada
 vs
 Christopher Keller

May 04, 2016 8:30 AM Confirmation of Counsel

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett/te
Kory Schlitz

RECORDER: Christine Erickson

PARTIES

PRESENT: Anderlik, Elizabeth J. Deputy District Attorney
 Frizzell, Kenneth G. Attorney for Defendant
 Keller, Christopher Robert Defendant

JOURNAL ENTRIES

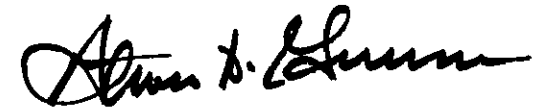
- Mr. Frizzell confirmed as counsel and advised he has spoken with Defendant regarding trial setting; although Defendant requested trial date be set within 60 days. COURT ORDERED, matter SET for trial. Colloquy regarding bail setting. Court directed Mr. Frizzell to file the appropriate motion.

CUSTODY

5/18/2016 8:30 AM PRE TRIAL CONFERENCE

6/22/2016 8:30 AM CALENDAR CALL

6/27/2016 10:00 AM JURY TRIAL



CLERK OF THE COURT

MOT

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

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ATTORNEYS FOR DEFENDANT CHRISTOPHER R. KELLER

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA

Plaintiff,

vs.

Christopher R. Keller,

Defendant.

) CASE NO. C-16-312717-1

) DEPARTMENT NO. XIX

) **DEFENDANT'S MOTION TO SUPPRESS**

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

Dated this 10 day of June, 2016.



KENNETH G. FRIZZELL, III, ESQ.

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

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

21 **484A.730. When peace officer has option to take person**
22 **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
27 without unnecessary delay before the proper magistrate.
28 The person must be taken before the magistrate in any of
the following cases:

1. 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;

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

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

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

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

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

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

29 CHRISTOPHER'S ARREST VIOLATED NRS 171.1771

30 In Nevada it is illegal to drive under the influence of cannabis, the first offense is a
31 misdemeanor, as is the second. NRS 484C.110. At the time Officer Lopez smelled the cannabis, he
32 had seen Christopher driving and supposedly violating three traffic laws—staying too long in a turn
33 lane, speeding, and having one non-operational taillight. At this juncture, the only action allowed
34 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 Officer Lopez's report is silent as to any field sobriety tests or questions about the supposed
4 smell of marijuana. Rather than question whether Christopher was driving impaired, Officer Lopez
5 immediately seized him by handcuffing him, supposedly afraid that Christopher would flee on foot.
6 There is no basis for Officer Lopez's fear that Christopher would run away, only that he "tensed up"
7 and his talking "became more nervous." Nervousness alone cannot be a basis for seizure. The
8 Supreme Court of the United States has continually reasoned that all people—even those with nothing
9 to hide—are liable to become nervous when stopped or questioned by a peace officer. Nervousness
10 can be part of the calculus of reasonable suspicion, but standing alone carries little weight. *United*
11 *States v. Arizu*, 534 U.S. 266, 122 S.Ct. 744; *United States v. Richardson*, 385 F.3d 625 630-31 (6th
12 Cir. 2004). At this juncture, Christopher is seized and in handcuffs. The only basis for this seizure is
13 minor traffic offenses and the smell of marijuana.
14
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*.

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.

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

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

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

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

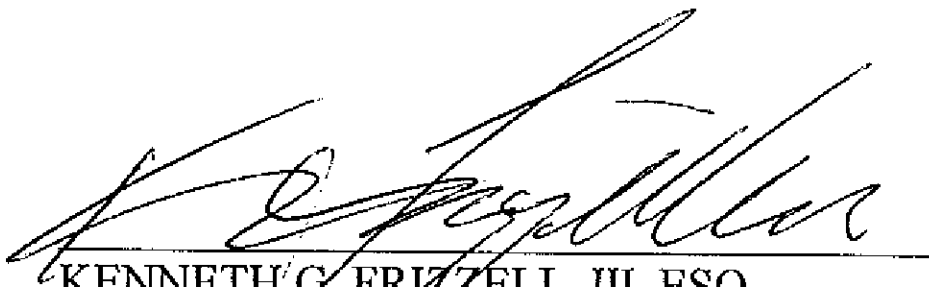
1 loss or destruction of evidence. Officer Lopez waited three hours before obtaining a warrant and
2 multiple officers participated in Christopher's detention; as such, any exigency is fictional.

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 

23 KENNETH G. FRIZZELL, III, ESQ.

24 Nevada Bar No. 6303

25 Law Offices of Kenneth G. Frizzell, III

26 619 S. Sixth Street

27 Las Vegas, NV 89101

28 Phone: 702.366.1230

Facsimile: 702.384.9961

ATTORNEYS FOR DEFENDANT CHRISTOPHER R. KELLER

EXHIBIT 1

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

DECLARATION OF ARREST

"Click here to add/edit Event# and ID# on all pages"

Event #: 160128-0259

I.D. #: 1804258

"PRINT"

True Name: KELLER, CHRISTOPHER Date of Arrest: 01-28-16 Time of Arrest: 0244

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

Other Charges

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with the Las Vegas Metropolitan Police Department, Clark County, Nevada, being so employed for a period of 9 years.

That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense(s) of POSS FIREARM BY PROHIBITED PERSON, TRAFF METH, PCS WITS, PCS HEROIN, PCS MJ MORE THAN 1OZ, at the location of 265 N LAMB, LV NV 89110, and that the offense(s) occurred at approximately 0225 hours on the 28th day of Jan, 2016, in the:

☒ County of Clark☐ City of Las Vegas

DETAILS FOR PROBABLE CAUSE:

On 01-28-16, at 0225, I Officer Lopez, P#9806, while operating as marked patrol 1G24, observed a silver 2002 Dodge Stratus with NV plate 098ASW travelling northbound at 132 N Lamb in the center turn lane. The Dodge stratus had made an abrupt left turn from Sunrise Ave and had continued the entire time in the center turn lane while never entering the #1 northbound travel lane. The Dodge stratus was travelling at high rate of speed. I made a U-turn to conduct a records check on the vehicle and noticed the passenger tail lamp was broken. The driver continued to accelerate and made an abrupt left turn into the "Crossroads III" apartment complex. It was apparent the driver, who would later identify himself with a NV DL as Keller, Christopher 09-08-84, was trying to avoid me. Keller had traveled well over 300ft while he was in the center turn lane. 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. I began giving verbal instructions to Keller who was still at the driver's side door.

Keller had the strong odor of cannabis on his person and coming from inside the vehicle. Keller was very nervous and was upset about being stopped. Keller was wearing loose jeans and a baggy shirt that could easily conceal weapons so I informed Keller I was going to conduct a pat down for weapons. As I began my pat down, Keller tensed up and his talking became more nervous. I feared Keller was a flight risk so I placed Keller in handcuffs.

I asked Keller if he had a driver's license and he said "yes". I asked Keller if his license was in his wallet and if I could

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are misdemeanor).

Declarant must sign all page(s) with an original signature.

D. LOPEZ P#9806

Print Declarant's Name



Declarant's Signature



P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: 160128-0259

ID#: 1804258

remove the item from his pocket. Keller stated "Yes" I could remove his wallet and driver's license from his front right pants pocket. I removed a large wad of cash along with Keller's Wallet. I noticed there was more cash folded in Keller's wallet. From my training and experience involving narcotics investigations and my professional dealings with narcotics detectives I have learned it is common practice for narcotics dealers to carry their currency in multiple locations on their person for several reasons. Most commonly narcotic dealers separate their "working" money they use to make change while selling narcotics from their "personal" money or proceeds they have accumulated through selling their narcotics. Secondly narcotics dealers often fear being victimized by their customers and "robbed" of their money. The "working" money typically consists of smaller denomination bills (\$1's, \$5's, \$10's and \$20's) such as the large roll of cash I located in Keller's pocket. The total cash amount located on Keller's person was \$2187.00.

I could see in plain view green leafy residue on the driver's side floor board of the Dodge Stratus. The green leafy residue substance was consistent with my training and experience to be marijuana. With the odor of cannabis on Keller's person and in the vehicle, and the fact that I could see residue on the floor board I had probable cause that there was a controlled substance inside the vehicle. I began searching the vehicle and located a medium size plastic sealable bag containing more sealable plastic bags inside it. Between the driver's seat and center console I located a large clear sealable plastic bag. I requested a K9 narcotics dog through dispatch.

K9 Officer Newton, P#5278, along with K9 narcotics dog "Stewie" who was certified as a narcotics dog April of 2013. Stewie hit on the glove box and closer inspection revealed there was a hidden compartment on the side of the glove box that is only accessible when the glove box is open.

I conducted a records check on Keller which revealed Keller has 5 felony convictions one of which was violating controlled substance act.

Based on the large amount of cash, the large amount of sealable plastic bags, Keller's prior conviction for narcotics and the fact that the narcotics dog hit on a secret compartment inside the vehicle I believe the substance hidden inside the compartment is a schedule 1-4 controlled substance.

I applied for a search warrant at 0656 on 01-28-16, I spoke to Judge Toblasson who approved the warrant. I executed the warrant with ID tech THI, P#14373, Officers Henry, P#14753 and Officer Vance, P#9002. I located a side entrance to the secret compartment that revealed a black bag. Inside the black bag was a very expensive looking watch. It is common for stolen jewelry to be used to purchase narcotics. There were also three gold colored sealable bags, and a smaller black bag. The first gold bag had a large amount of white crystal like substance bagged into five separate bundles with

Declarant must sign all page(s)
with an original signature.

D. LOPEZ P#9806

Print Declarant's Name

Declarant's Signature

P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: 160128-0259

ID#: 1804258

clear plastic wrap. The white crystal like substance was consistent with my training and experience to be meth. These five bundles would later be weighed at NEAC for a total gross weight of 343 grams and with the help of Officer Hough, P#7814 who witnessed as I ODV tested the substance which was positive for meth.

The second gold bag had 8 blue pills with "VGR 100" on one side and "Pfizer" on the other. I contacted poison control and spoke to Tim under case number 5576876. Tim was able to identify the blue pills with "VGR 100" as sildenafil 100mg which requires a prescription. There were twenty one circular white pills with "30" on one side and an "R" and "P" on the other side. Tim identified these pills as oxycodone 30mg schedule 2. There were four bags of a brown like substance which was consistent with my training and experience to be heroin. Officer Hough, along with Officer E Collingwood P# 9494 ODV tested the brown substance which was positive for heroin and weighed 36.4 grams gross. There was another clear plastic wrap containing more white crystal like substance that was consistent with the other meth in appearance. This second bag weighed 8.4 grams gross. The total meth weight was 351.4 grams gross. There were three small multicolored pills in a single clear plastic bag that I was unable to identify at this time. There were four smaller oval pills that were the same size and also could not be positively identified. There was a white powdery substance in a small clear plastic bag that was consistent with my training and experience to be cocaine. I ODV tested the powdery substance which was positive for cocaine and weighed .8 grams gross. The last item in the second gold bag was a blue powdery substance which weighed 1.1 grams gross and I was unable to positively identify at this time.

The last smaller gold sealable bag was empty but had a horrid smell coming from inside it.

The smaller black bag had a small semi auto handgun in it. ID tech THI had evidence gloves on and was the only person to touch or manipulate the firearm. THI removed a total of seven .22 short rounds from the firearm including one from the chamber. The handgun was a Beretta .22 with serial number C35418.

I conducted a piggyback warrant on the car and Keller's apartment at 0935 which was approved by Judge Sciencio. The warrant was executed and numerous items were recovered from the apartment.

During the warrant, Det Embry located a Ruger P89 semi auto handgun with 4" USA 9mm w/ mag & bullets was recovered from the bedroom closet. Det Embry located 3 boxes of 22 short ammunition in the shed storage. I located 5 glass smoking pipes, 4 scales, and 1 box of 9mm ammunition containing 15 rounds. Det Belmont P#8240 located a glass jar in the freezer with a green leafy substance that was consistent with our training and experience to be marijuana. Det Belmont ODV tested the green leafy substance which was positive for marijuana and weighed 188.4 grams gross. Det Embry located a pay stub in the bedroom indicating Keller resides at the residence. Det Embry conducted a buccal swab kit according to the warrant. I located two bags in the bedroom containing a white crystal substance that was consistent with meth. I located a third clear plastic bag containing a brown substance that was consistent in appearance with heroin.

Declarant must sign all page(s)
with an original signature.

D. LOPEZ P#9806

Print Declarant's Name

Declarant's Signature

P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

Event #: 160128-0259

ID#: 1804258

Det Tapla, P#10044, Belmont and Hough ODV tested the two clear plastic wraps containing the white crystal like substance which was positive for meth. The first one weighed 4.4 grams net and the second weighed 3.1 grams net. Officer Hough and Collingwood ODV tested the last clear plastic bag containing the brown substance which was positive for heroin and weighed 1.1 grams net.

I conducted a records check on Keller who was convicted 06-09-14 for violating the controlled substance act. Keller was also convicted for possessing a firearm by ex-felon and was convicted 06-09-14, own possess firearm ex-fel 06-09-14, burglary 06-17-08 and possession of credit card without owners consent on 04-24-03.

Based on all these facts and circumstances, I charged Keller with 2 counts of possession of firearm by prohibited person, one count of trafficking a controlled substance meth, PCS marijuana greater than 1 ounce, PCS heroin, and PCS Ecstasy.

At 1422, Officer Collingwood was watching Keller via video while he was in the holding cell. Keller began grabbing an item from inside his pants around his groin area. Keller removed part of a magazine and ripped a piece of paper. Keller proceeded to make a line and snort an unknown item. Officer Collingwood was able to stop him before he snorted a second clear plastic wrap containing more white crystal like substance. This new purported meth was impounded as item 16.

Keller was transported to CCDC where he was booked accordingly.

Declarant must sign all page(s)
with an original signature.

D. LOPEZ P#9806

Print Declarant's Name.

Declarant's Signature

P#

EXHIBIT 2

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
ARREST REPORT

☐ City ☒ County ☒ Adult ☐ Juvenile Sector/Beat G2

ID/EVENT# 1804258	ARRESTEE'S NAME (Last) (First) (Middle) KELLER CHRISTOPHER			S.S.# 595364136
ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code) 265 N LAMB APT F, LV NV 89110				
CHARGES PROH PERS POSS FIREARM(2X), TRAFF METH, PCS MJ >1OZ, PCS HEROIN, PCS ECSTACY.				
OCCURRED	DATE 01-28-16	DAY OF WEEK THUR	TIME 0244	LOCATION OF ARREST (Number, Street, City, State, Zip Code) 265 N LAMB, LV NV 89110
RACE W	SEX M	D.O.B. 09-08-84	HT. 5'8	WT. 170
			HAIR BRO	EYES BRO
PLACE OF BIRTH EGLIN AFB, FL				
ARRESTING OFFICER #1: D. LOPEZ		P#: 9806		ARRESTING OFFICER #2: P#:
CONNECTING REPORTS (Type or Event Number) 160128-0259				

APPROVED BY (PRINTED NAME): _____

CIRCUMSTANCES OF ARREST:

OFFICERS:

D. LOPEZ 9806
J. HENRY 14753
J. VANCE 9002
C. EMBRY 6223
S. HOUGH 7814
E. COLLINGWOOD 9494
M. BELMONT 8240

ID TECH:

S. THI 14373

VEHICLE:

2002 DODGE STRATUS, NV PLATE 098ASW, VIN 4B3AQ42HX2E162394

PROPERTY CAR:

- 1) ODV+METH 351.4GG W/CHECKLIST
- 2) ODV+HEROIN 36.4 GG W/ CHECKLIST
- 3) ODV+COCAINE .8 GG W/ CHECKLIST
- 4) SMALL BLUE PILLS 25.3 GG
- 5) BLUE DUST 1.1GG
- 6) OXYCODONE 30 MG
- 7) SILDENAFIL 100MG
- 8) MULTI COL PILLS
- 9) SMALL OVAL PILLS
- 10) SEMI AUTO HANDGUN USA BERETTA 22

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/EVENT #: 160128-0259

- 11) MAG
- 12) 22 SHORT AMMUNITION
- 13) US CURRENCY \$2187.00
- 14) NICE MENS WRIST WATCH
- 15) NV REG, KELLER, CHRISTOPHER
- 16) CRYSTAL SUBSTANCE .3GG
- 17) BAGGIES W/ BLACK POUCH

PROPERTY RESIDENCE:

- 1) SEMI AUTO HANDGUN 4" usa 9MM W/ MAG \$ BULLETS
- 2) BOX(S) .22 SHORT BULLET
- 3) GLASS SMOKING PIPES
- 4) GLASS JAR W/ ODV MARIJUANA 188.4GR NET/TS
- 5) SCALES
- 6) BOX .9MM AMMO
- 7) PAYSTUB CHRISTOPHER KELLER
- 8) BUCCAL SWAB/ CHRISTOPHER KELLER
- 9) BAG ODV+METH 4.4 GR NET/TS
- 10) BAG ODV+METH 3.1 GR NET/TS
- 11) BAG ODV+HEROIN/TS 1.1GR NET.

On 01-28-16, at 0225, I Officer Lopez, P#9806, while operating as marked patrol 1G24, observed a silver 2002 Dodge Stratus with NV plate 098ASW traveling northbound at 132 N Lamb in the center turn lane. The Dodge stratus had made an abrupt left turn from Sunrise Ave and had continued the entire time in the center turn lane while never entering the #1 northbound travel lane. The Dodge stratus was traveling at high rate of speed. I made a U-turn to conduct a records check on the vehicle and noticed the passenger tail lamp was broken. The driver continued to accelerate and made an abrupt left turn into the "Crossroads III" apartment complex. It was apparent the driver, who would later identify himself with a NV DL as Keller, Christopher 09-08-84, was trying to avoid me. Keller had traveled well over 300ft while he was in the center turn lane. 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. I began giving verbal instructions to Keller who was still at the driver's side door.

Keller had the strong odor of cannabis on his person and coming from inside the vehicle. Keller was very nervous and was upset about being stopped. Keller was wearing loose jeans and a baggy shirt that could easily conceal weapons so I informed Keller I was going to conduct a pat down for weapons. As I began my pat down, Keller tensed up and his talking became more nervous. I feared Keller was a flight risk so I placed Keller in handcuffs.

I asked Keller if he had a driver's license and he said "yes". I asked Keller if his license was in his wallet and if I could remove the item from his pocket. Keller stated "Yes" I could remove his wallet and driver's license from his front right pants pocket. I removed a large wad of cash along with Keller's Wallet. I noticed there was more cash folded in Keller's wallet. From my training and experience involving narcotics investigations and my professional dealings with narcotics detectives I have learned it is common practice for narcotics dealers to carry their currency in multiple locations on their person for several reasons. Most commonly narcotic dealers separate their "working" money they use to make change while selling narcotics from their "personal" money or

JUN 13 2016

DISTRICT COURT
CLARK COUNTY, NEVADA

BY: TIA EVERETT
TIA EVERETT, DEPUTY

C-16-312717-1

STATE OF NEVADA

) Case No.: 16F01430X

Plaintiff,

) Dept. No.: XIX

vs.

) Docket No.: _____

CHRISTOPHER R. KELLER
#1804258

Defendant

MOTION TO DISMISS COUNSEL
AND
APPOINT ALTERNATE COUNSEL

COMES NOW, the DEFENDANT CHRISTOPHER R. KELLER, AND MOVES THIS HONORABLE COURT TO DISMISS COUNSEL, KENNETH G. FRIZZELL, III, AND APPOINT OTHER COUNSEL TO REPRESENT DEFENDANT.

THIS MOTION IS BASED UPON ALL PAPERS, PLEADINGS AND DOCUMENTS ON FILE. FACTUAL STATEMENTS ARE SET FORTH IN THE POINTS AND AUTHORITIES CONTAINED THEREIN.

DATED THIS 13th DAY OF JUNE, 2016.

C-16-312717-1
MDC
Motion to Dismiss Counsel
4564987



RA 0029

POINTS AND AUTHORITIES

IT IS RESPECTFULLY REQUESTED OF THIS COURT TO GRANT THIS MOTION TO DISMISS COUNSEL AND APPOINT OTHER COUNSEL FOR THE REASONS LISTED BELOW:

I. PROCEDURAL BACKGROUND AND FACTUAL SUMMARY

SINCE KENNETH FRIZZELL WAS APPOINTED AS COUNSEL DEFENDANT CHRISTOPHER R. KELLER HAS BEEN PREJUDICED AND SUFFERED MANIFEST INJUSTICE BASED ON COUNSEL'S FAILURE TO:

1. USE A DIFFERENT INVESTIGATOR OTHER THEN THE ONE USED BY MY LAST ATTORNEY WHERE PRIVILEGED INFORMATION WAS EXPOSED TO ANOTHER OF HIS CLIENTS.

2. PROVIDE FULL DISCOVERY AND FILE APPROPRIATE MOTIONS IN A TIMELY MANNER.

3. REFUSED TO KEEP ORIGINAL TRIAL DATE AGAINST THE WISHES OF DEFENDANT.

II. ARGUMENT

DEFENDANT, CHRISTOPHER R. KELLER, ASSERTS HE IS BEING DENIED HIS RIGHT TO EFFECTIVE REPRESENTATION DUE TO WHOLLY

1 INADEQUATE ACTIONS OF HIS COURT-APPOINTED
2 COUNSEL. FURTHER, COUNSEL'S ACTIONS CONSTITUTE
3 A VIOLATION OF THE DEFENDANT'S DUE PROCESS RIGHTS.

4 DEFENDANT HAS AN UNQUALIFIED RIGHT
5 TO LEGAL ASSISTANCE THAT EXPRESSES LOYALTY
6 AND EFFECTIVENESS (CUYLER V. SULLIVAN), 100 S. CT
7 1708 (1980); AND (FRAZIER V. UNITED STATES), 18 F. 3d 778
8 (9th Cir. 1994). Thus, THE ADVERSARIAL PROCESS PROTECTED
9 BY THE SIXTH AMENDMENT REQUIRES THAT THE
10 ACCUSED HAVE ADVOCATE COUNSEL. (ANDERS V. CALIFORNIA,
11 87 S. CT. 1396 (1967). "IF THE COMPLETE COLLAPSE OF THE
12 ATTORNEY-CLIENT RELATIONSHIP IS EVIDENT...") JONG V.
13 STATE, 120 NEV. 963 (2004).

14 WHEREFORE, THE UNDERSIGNED PRAYS THAT THE COURT GRANTS
15 THIS MOTION TO DISMISS COUNSEL AND APPOINT OTHER COUNSEL FOR DEFENDANT

16 DATED THIS 13th day of JUNE, 2016.

17 I, CHRISTOPHER R. KELLER, do

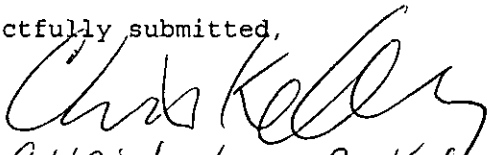
18 solemnly swear, under the penalty of perjury, that

19 the above MOTION TO DISMISS COUNSEL is accurate,

20 correct, and true to the best of my knowledge.

21 NRS 171.102 and NRS 208.165.

22 Respectfully submitted,

23 
24 CHRISTOPHER R. KELLER
25 Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 20, 2016

C-16-312717-1 State of Nevada
 vs
 Christopher Keller

**June 20, 2016 8:30 AM All Pending Motions
(6/20/2016)**

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

PARTIES

PRESENT: Baharav, Colleen Deputy District Attorney
 Frizzell, Kenneth G. Attorney for Defendant
 Keller, Christopher Robert Defendant

JOURNAL ENTRIES

- DEFENDANT'S MOTION TO SUPPRESS:

Court stated based on the motion he is inclined to hold a hearing regarding the suppression. Mr. Frizzell advised he just received a copy of the State's opposition and would like an opportunity to file a written reply. Colloquy regarding scheduling. Ms. Baharav advised for the record the offer in this case was officially revoked on 7/13/2016. COURT ORDERED, trial date VACATED and RESET; motion CONTINUED and SET for Hearing.

DEFENDANT'S MOTION TO REDUCE BAIL:

COURT ORDERED, motion DENIED; bail STANDS.

DEFENDANT'S PRO PER MOTION TO DISMISS COUNSEL AND APPOINT ALTERNATE COUNSEL:

COURT ORDERED, matter CONTINUED.

PRINT DATE: 06/29/2016

Page 1 of 2

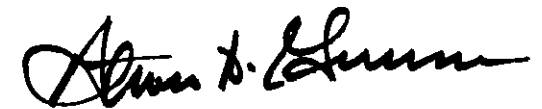
Minutes Date: June 20, 2016

RA 0032

CUSTODY

7/20/2016 8:30 AM CALENDAR CALL

7/21/2016 8:30 AM DEFENDANT'S MOTION TO SUPPRESS ... DENNO HEARING ...
DEFENDANT'S PRO PER MOTION TO DISMISS COUNSEL AND APPOINT ALTERNATE
COUNSEL



CLERK OF THE COURT

1 **NOTC**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL DICKERSON
6 Deputy District Attorney
7 Nevada Bar #13476
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 CHRISTOPHER ROBERT KELLER,
13 #1804258
14 Defendant.

CASE NO: C-16-312717-1

DEPT NO: XIX

15 **NOTICE OF INTENT TO SEEK PUNISHMENT AS**
16 **A HABITUAL CRIMINAL**

17 TO: CHRISTOPHER ROBERT KELLER, Defendant; and

18 TO: KENNETH FRIZZELL III, ESQ., Counsel of Record:

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that pursuant to NRS
20 207.010, the STATE OF NEVADA will seek punishment of Defendant CHRISTOPHER
21 ROBERT KELLER, as a habitual criminal in the event of a felony conviction in the above-
22 entitled action.

23 That in the event of a felony conviction in the above-entitled action, the STATE OF
24 NEVADA will ask the court to sentence Defendant CHRISTOPHER ROBERT KELLER as
25 a habitual criminal based upon the following felony convictions, to-wit:

26 1. That on or about 2003, the Defendant was convicted in the State of
27 Nevada, for the crime of Possession of Credit Card without Cardholder's Consent (felony) in
28 C189805B.

1 2. That on or about 2003, the Defendant was convicted in the State of
2 Nevada, for the crime of Burglary (felony) in C192923.


3 3. That on or about 2009, the Defendant was convicted in the State of
4 Nevada, for the crime of Possession of Firearm by Ex-Felon (felony) in C252394.

5 4. That on or about 2013, the Defendant was convicted in the State of
6 Nevada, for the crime of Attempt Possession of Firearm by Ex-Felon (felony) in C279904.

7 5. That on or about 2013, the Defendant was convicted in the State of
8 Nevada, for the crime of Conspiracy to Violate Uniform Controlled Substance Act (felony) in
9 C287724.

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


13 BY


14 MICHAEL DICKERSON
15 Deputy District Attorney
16 Nevada Bar #13476

17 **CERTIFICATE OF ELECTRONIC FILING**

18 I hereby certify that service of NOTICE OF INTENT TO SEEK PUNISHMENT AS
19 A HABITUAL CRIMINAL, was made this 18th day of July, 2016, by Electronic Filing to:

20 KENNETH FRIZZELL III, ESQ.
21 EMAIL: frizzelllaw@yahoo.com

22 
23 Secretary for the District Attorney's Office
24
25
26
27
28

16F01430X/mlb/L-2

used by Mr. Frizzell is the same investigator Mr. Sanft used and he has filed a bar complaint against the investigator. Further, Defendant advised he does not believe Mr. Frizzell is representing him the way he wants. Further discussion regarding Defendant's issues with counsel and investigator. COURT FURTHER ORDERED, Motion DENIED.

CALENDAR CALL:

State announced ready with 3 - 4 days for trial. Mr. Frizzell requested trial be continued as he has been preparing for the motion to suppress and has not been able to prepare for trial. Colloquy regarding scheduling. COURT ORDERED, request to continue GRANTED; trial date VACATED and RESET.

8/17/2016 8:30 AM PRE TRIAL CONFERENCE

9/14/2016 8:30 AM CALENDAR CALL

9/19/2016 10:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 14, 2016

C-16-312717-1 State of Nevada
 vs
 Christopher Keller

September 14, 2016 8:30 AM Calendar Call

HEARD BY: Kephart, William D.

COURTROOM: RJC Courtroom 03E

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

PARTIES

PRESENT:	Frizzell, Kenneth G.	Attorney for Defendant
	Keller, Christopher Robert	Defendant
	Scow, Richard H.	Deputy District Attorney

JOURNAL ENTRIES

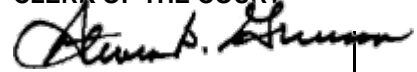
- Mr. Frizzell advised based on the representations made by the arresting officer regarding body cam footage during the hearing held in this case, he has spoken with Mr. Dickerson who has been unable to locate any information which will necessitate the filing of a motion. Further, Mr. Frizzell advised Defendant has agreed to continue the trial date and waive his speedy trial right. Further discussion regarding the body cam footage. Upon Court's inquiry, Defendant waived his rights to a speedy trial. COURT ORDERED, trial date VACATED and RESET.

CUSTODY

2/01/2017 8:30 AM PRE TRIAL CONFERENCE

3/01/2017 8:30 AM CALENDAR CALL

3/06/2017 10:00 AM JURY TRIAL



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 1**

**PARTIAL TRANSCRIPT
(EXCLUDES JURY VOIR DIRE)**

MONDAY, MARCH 6, 2017

APPEARANCES:

FOR THE STATE:	MATTHEW T. BUNNETT, ESQ. MICHAEL DICKERSON, ESQ. <i>Deputy District Attorneys</i>
FOR THE DEFENDANT:	KENNETH G. FRIZZELL, III., ESQ. AMY FELICIANO, ESQ.

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

RA 0039

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

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.

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

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

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

ROUGH DRAFT TRANSCRIPT

RA 0044

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

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

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

RA 0047

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

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

1 time and the fact that Mr. Keller refuse today talk with me
2 or my investigator coupled with what I heard today on these
3 calls, there was even a threat made, almost a collusion, if
4 you will, between Mr. Keller and his mother that there's
5 going to be a bar complaint coming from this.

6 And so for me to go today knowing what I've heard,
7 Your Honor, as much as I appreciate your policies and how you
8 run your court --

9 THE COURT: It's really not policies.

10 MR. FRIZZELL: Well, I'm asking -- I'm asking for a
11 brief continuance because I'm going to get -- I know what's
12 going to be coming if we go and the inevitable --

13 THE COURT: Well, Mr. Frizzell --

14 MR. FRIZZELL: -- happens and I lose.

15 THE COURT: Mr. Frizzell, if we succumb to that
16 type of behavior on behalf of your clients, then we'd be
17 getting controlled by him. This whole case has been going
18 that way. He's been playing this whole card game that way
19 where he's trying to control this court. He's been trying to
20 order certain things, get the court to order certain things.
21 You've filed motions in this matter.

22 MR. FRIZZELL: I have.

23 THE COURT: He's challenged other attorneys. He's
24 not going to be happy until he gets his way all the time.
25 But the problem is he's in a position right now that he

1 doesn't necessarily get his way. All he gets is due process.
2 And right now due process is afoot. And if he wants to make
3 arguments and complaints on you, I -- you know, I appreciate
4 your concerns, Mr. Frizzell. I've seen you practice for your
5 whole year -- your whole career as an attorney I've watched
6 you practice. I don't -- I'm not going to weigh in on
7 anything with that, but I'm not -- I'm confident in your
8 abilities. That's why you're an attorney that's appointed in
9 my courtroom so --

10 MR. FRIZZELL: I understand, and I appreciate that,
11 Your Honor.

12 THE COURT: So we're --

13 MR. FRIZZELL: I just want to make those points --

14 THE COURT: Okay.

15 MR. FRIZZELL: -- to Your Honor.

16 THE COURT: You have, and, you know, there's always
17 claims of this ineffective assistance making, always have
18 those claims. And until I see them or hear him, I can't make
19 any rulings on them. But at this point, we have a time set
20 for trial and that's what we're here for.

21 I'm not going to let individuals dictate how the
22 Court proceeds on this. I've been more than gracious, I
23 think, to your client in this case. I've listened to him.
24 I've watched him. I still have his eye -- I mean, his -- my
25 vision of him where he sat in the back row on one particular

1 day that we had some exchange. But all I want to do -- he
2 wants a trial, I'm giving him a trial. It's been continued a
3 number of -- what did you -- six --

4 MR. DICKERSON: This is the sixth setting, Your
5 Honor.

6 THE COURT: So, Mr. Keller, time is up. We're
7 going to go to trial now and what happens happens. If you're
8 fortunate, you'll be found not guilty. If you're
9 unfortunate, you won't be, and then you'll have to deal with
10 any litigation beyond this.

11 And if this comes into play, then you have a
12 record. You've made your record, and we'll deal with that.
13 But at this point in time, Ms. Feliciano, I'm going to ask
14 you once again, are you substituting in? If you are, we are
15 going to trial today. If you can't because you need to
16 continue it, then I'm not going to allow you to substitute
17 in.

18 MS. FELICIANO: No, I can't be effective --

19 THE COURT: Okay.

20 MS. FELICIANO: -- were I to go to trial today.

21 THE COURT: Okay.

22 MS. FELICIANO: Just one thing for the record, Your
23 Honor, you had mentioned taking this case and being ready for
24 trial. You know, I -- as I said, I would have been, but for
25 the extenuating circumstances, but as well as, I mean, this

1 is how I make my living, Your Honor, is, you know, accepting
2 cases and, you know, being retained to represent clients. I
3 mean, this is a significant --

4 THE COURT: Well, sometimes I -- I've made this
5 comment a number of times. I think sometimes the attorneys,
6 and you should -- you -- I imagine you are aware of this, but
7 it's something you probably need to keep under an
8 understanding of at the time frame of where the case is as to
9 when you set your fees.

10 I would imagine that if somebody's going to come
11 hire me and my trial starts in a week, the fees are going to
12 be a lot higher knowing that you have to get prepared for it
13 than, you know, coming in and just asking to continue it. I
14 don't know, but that's not me. I'm not -- that's just what I
15 would think but --

16 MS. FELICIANO: And --

17 THE COURT: -- here we have a trial date scheduled.
18 You know, I appreciate your candor and I'm so sorry about
19 what happened, and you'll get -- I'm sure you'll get through
20 it. You're healthy and you're strong. But at this point in
21 time, I need to make a decision on this case.

22 So if -- once again, so you're telling me you
23 cannot go forward today?

24 MS. FELICIANO: I cannot, Your Honor.

25 THE COURT: Okay.

1 MS. FELICIANO: And --

2 THE COURT: All right.

3 MS. FELICIANO: -- I just want today point out one
4 more thing on behalf of there Keller, if I may. There was --
5 he did file a bar complaint against Mr. Frizzell, I believe,
6 on --

7 MR. FRIZZELL: I haven't even received it yet.

8 MS. FELICIANO: It was last year --

9 MR. FRIZZELL: Oh.

10 MS. FELICIANO: And I'm sorry, it was against both
11 -- a grievance against both Mr. Frizzell and Mr. Sanft on
12 June 16, 2016, and the bar counsel, State Bar, reviewed the
13 court records and it informed Mr. Keller that his grievance
14 involved issues best addressed in appropriate court settings
15 and in the judicial forum.

16 So I just wanted to make that record as well to
17 dovetail on Mr. Frizzell's argument that there is a conflict
18 and a breakdown in communication.

19 THE COURT: But we also know that simply filing a
20 bar complaint even Bar's decision doesn't bar the attorney
21 from representing him in the case. So I mean, and that's not
22 grounds to remove an attorney as well. So all right, so Ms.
23 Feliciano, thank you so much for your representation. Go
24 ahead and get the jury in. We're ready to start on the trial
25 in this matter.

ROUGH DRAFT TRANSCRIPT

RA 0054

1 MR. DICKERSON: And Your Honor, would you like us
2 to move a copy as a court exhibit of those calls that we
3 listened to with defense counsel?

4 THE COURT: You can -- I'd like them marked as a
5 court exhibit.

6 MR. DICKERSON: Yes.

7 THE COURT: Yeah.

8 (Pause in the proceedings)

9 MR. FRIZZELL: Your Honor, while we're doing that,
10 could I just take a brief recess to talk with Mr. Keller?
11 There was a new offer proposed while we were awaiting you.

12 THE COURT: You can have a brief recess.

13 MR. FRIZZELL: Okay.

14 THE COURT: I'll go ahead and exit.

15 MR. FRIZZELL: Yeah.

16 THE COURT: I'm going to ask the State to exit, but
17 they're going to go get the jury right now.

18 MR. FRIZZELL: That's fine, Your Honor.

19 THE COURT: It's right across the hall. Once they
20 get them lined up, come get me.

21 THE MARSHAL: Thorough lined up already.

22 THE COURT: Oh, they're already out there?

23 THE MARSHAL: Yes.

24 THE COURT: All right. I'm going to give you --
25 I'll give you five minutes.

ROUGH DRAFT TRANSCRIPT

RA 0055

1 MR. FRIZZELL: Okay, fair enough.

2 THE COURT: All right? Okay.

3 (Court recessed at 1:22 p.m. until 1:39 p.m.)

4 (Pause in the proceedings)

5 (Outside the presence of the jury)

6 MR. FRIZZELL: Mr. Keller wanted to ask the

7 Court --

8 THE COURT RECORDER: When we're on the record.

9 THE COURT: Okay, hold on.

10 MR. FRIZZELL: Yes.

11 THE COURT RECORDER: We're not on yet.

12 THE COURT: When we get on then I can let him ask
13 it.

14 THE COURT RECORDER: Okay, we're on.

15 MR. FRIZZELL: Ask the Court something.

16 THE COURT: All right, go ahead. We're back on the
17 record. State of Nevada versus Christopher Keller, C-312717.
18 Mr. Keller?

19 THE DEFENDANT: I wanted to -- I've been trying to
20 file this motion since the last time in court, but in here,
21 if you wanted to just read it and then decide if you wanted
22 to file, it was one of the reasons because my attorney
23 could never get another investigator and that was my point is
24 the same investigator's with Sanft, and my problem was never
25 with Sanft or with Frizzell to begin with. It was with the

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RA 0056

1 investigator. And then he -- so I've been trying to get
2 another lawyer and just now I haven't had no money. Just now
3 I've been able to file my taxes, you know, but, I mean, I'm
4 in here.

5 I have no control over when they could get money to
6 hire me a lawyer on the street. But I had in this motion
7 that I've been trying to, you know, been trying to put in
8 here that I -- what my problem is. Why I've never been able
9 to discuss my case with him really because he has sent his
10 investigator and then, you know, I've just been trying to get
11 another investigator since the beginning of this case and
12 since the beginning of all this.

13 THE COURT: Okay. Well, the reason why you can't
14 file it on your own is you file it through your attorney.
15 Otherwise, it's a fugitive document. And, you know, we've
16 been dealing with this case -- this case has been here for a
17 number of -- Mr. Keller, you don't just come in the day of
18 trial and here's the problem, you're familiar with the
19 proceedings. You've been doing this a long time. You've
20 been in more courts than I can probably think of.

21 And so then for the last minute like this for you
22 to do this, you know, I understand you think you may have
23 concern, but I don't believe so. I believe you're doing this
24 for purposes of delaying this, and that's all you've been
25 doing.

1 THE DEFENDANT: But I have here the visiting log
2 from my attorney and then --

3 THE COURT: But what's that got to do with you not
4 talking to him?

5 THE DEFENDANT: Oh, because I haven't been able to
6 talk to -- he's never came.

7 THE COURT: But you won't talk to the --

8 THE DEFENDANT: He's only sent the --

9 THE COURT: -- the investigator because you don't
10 -- you have an issue with the investigator so you won't talk
11 to him, right?

12 THE DEFENDANT: That's somewhat, that's the --
13 yeah.

14 THE COURT: Okay. All right.

15 THE DEFENDANT: But my attorney hasn't never came
16 to see me or anything.

17 THE COURT: Because they work through their
18 investigators. All right. You ready?

19 MR. DICKERSON: One thing, Your Honor. With the
20 charges in this case, we're going to just move for the filing
21 of the second amended information bifurcating the charge of
22 prohibited person. We will at that time be file ago third
23 amended information when we approach those charges of the
24 prohibited person in possession of a firearm.

25 That's solely for the purposes of not introducing

ROUGH DRAFT TRANSCRIPT

RA 0058

1 the defendant's prior felonies, unless he should testify in
2 this first part of the trial. So for that we'd ask for this
3 second amended information be filed for that limited purpose
4 only.

5 THE COURT: Okay. So you're bifurcating the
6 charges in this matter?

7 MR. DICKERSON: That's correct.

8 THE COURT: Okay. All right, do you have any
9 objection to that, Mr. Frizzell?

10 MR. FRIZZELL: No, Your Honor.

11 THE COURT: Okay. All right, so just read counts 1
12 through 7, and then 8 and 9 will be --

13 MR. DICKERSON: I actually have a second amended
14 information right there.

15 MR. FRIZZELL: I'm just a little confused because
16 you did say third at one point here.

17 MR. DICKERSON: Third amended information will be
18 filed after this first part of the trial. That will include
19 all the charges that are currently on the amended
20 information, which is going to be the --

21 THE COURT: Well, why do you need to file a third?
22 Because you go on this and then you go on the other one, if
23 need be and you just bring the jury in and you give them that
24 and then they add it. So I see what you mean, you wanted to
25 add it to it?

1 MR. DICKERSON: Right. I think -- I -- there was
2 some talk with some folks in my office about what's easier
3 for the clerk's office, whether I file the second amended
4 with the bifurcated charges so the prohibited person not
5 being on that second amended, and then after the verdict
6 comes down on the first part of the trial, we file the third
7 amended which has all the charges again on it.

8 THE COURT: That's fine. However you want to do
9 it. Okay. So we got the second amended. All right. Okay.
10 So get the jury in, Ed.

11 (Transcribed proceedings concluded at 1:43 P.M.;
12 balance of proceedings, jury voir dire, not transcribed
13 herein.)

14 * * * * *

15 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of
16 Appellate Procedure, I acknowledge that this is a rough draft
17 transcript, expeditiously prepared, not proofread, corrected,
18 or certified to be an accurate transcript.

19

20

Julie Lord

21

22

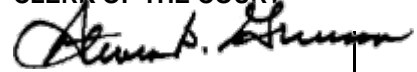
23

JULIE LORD, INDEPENDENT TRANSCRIBER

24

ROUGH DRAFT TRANSCRIPT

RA 0060



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 2**

**PARTIAL TRANSCRIPT
(EXCLUDES JURY VOIR DIRE)**

TUESDAY, MARCH 7, 2017

APPEARANCES:

FOR THE STATE:	MATTHEW T. BUNNETT, ESQ. MICHAEL DICKERSON, ESQ. <i>Deputy District Attorneys</i>
FOR THE DEFENDANT:	KENNETH G. FRIZZELL, III., ESQ.

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

RA 0061

1 LAS VEGAS, NEVADA, TUESDAY, MARCH 7, 2017, 10:50 A.M.

2 (Proceedings from 10:50 A.M. to 1:22 P.M. not transcribed)

3 * * * * *

4 (CLERK SWEARS JURY PANEL)

5 THE COURT: All right, ladies and gentlemen, we'll
6 wait until you get all those together. What I'm going to do
7 at this point in time is I'm going to charge you. Meaning I'm
8 going to read some instructions that I read to the jury before
9 we get started. I'd like to be able to just speak them to
10 you, as I am now, but there's a lot of instructions. Some of
11 them are quite complicated and some of them are quite long.
12 So bear with me. Let me know when you're all ready and you're
13 all situated. Okay.

14 Then I'm going to take -- I'm going to give you all
15 a break after this because the parties want to get time to get
16 everything together to get started, okay? All right. You all
17 ready? Okay.

18 For the record, ladies and gentlemen, you're now my
19 sworn jurors in this matter. Before we commence opening
20 statements, I want to give you some introductory remarks.
21 What I will now say is intended to serve as a general
22 introduction to the trial of this case. It is not a
23 substitute for the detailed instructions on the law, which I
24 will give you at the close of this case before you retire to
25 render your verdict.

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RA 0062

1 This is a criminal case commenced by the State of
2 Nevada, which I may sometimes refer to as State against
3 Mr. Keller. The case is based on an information, and I'm
4 going to have the clerk now read the information to you and
5 state the pleadings of the defendant.

6 (CLERK READS SECOND AMENDED INFORMATION TO THE JURY)

7 THE COURT: Ladies and gentlemen, this case is based
8 on this information that we was just read to you by my clerk.
9 You should distinctly understand that an information is simply
10 a charge and it is not in any sense evidence of the allegation
11 that is it contains. The defendant has pled not guilty to
12 this information and State therefore then has the burden of
13 proving each of the essential elements of the charges beyond a
14 reasonable doubt.

15 As the defendant sits here now he is not guilty.
16 The purpose of this trial is to determine whether the State
17 will meet that burden. It is your primary responsibility as
18 jurors to find as determine the facts. Under our system of
19 criminal procedure, you are the judge and sole judge of the
20 facts. You are to determine the facts from the testimony you
21 hear and other evidence including exhibits introduced here in
22 court. It is up to you to determine the inferences in which
23 you feel may be drawn -- properly drawn from the evidence.

24 The trial begins with opening statements. The
25 district attorney will make an opening statement, if they

1 desire to, which is an outline to help you understand what the
2 State expects that they will prove. Next the defendant's
3 attorneys may, if they so desire, make an opening statement,
4 but he does not have to.

5 Opening statements serve as an introduction to the
6 evidence which the party making the statement intends to
7 prove, but it is not evidence. Next the State will commence
8 with its case in chief. This is the State's opportunity to
9 present its evidence. This consists of the calling of
10 witnesses and the production of physical items of evidence,
11 such as documents and/or photographs and the like.

12 Counsel for the defendant may cross-examine the
13 State's witnesses. Following State's case in chief, the
14 defendant may present evidence and the district attorneys may
15 cross-examine the defense witnesses. However, as I've said,
16 the defendant is not obligated to present any evidence. There
17 are two kinds of evidence; direct and circumstantial. Direct
18 evidence is testimony by a witness about what that witness
19 personally saw or heard or did. Circumstantial evidence is
20 testimony or exhibits which are proof of a particular fact
21 from which, if proven, you may infer the existence of a second
22 fact.

23 You may consider both direct and circumstantial
24 evidence in deciding this case. The law permits you to give
25 equal weight to both but it is for you to decide how much

1 weight to give any evidence. Anything you may have heard or
2 seen outside the courtroom is not evidence and you must
3 disregard that.

4 Regarding the presentation of evidence, it is the
5 duty of an attorney to object to evidence which he or she
6 feels may not be properly brought before the jury. At times I
7 may sustain objections or direct the jury to disregard certain
8 testimony or exhibits. You must not consider any evidence
9 which an objection has been sustained or which I have
10 instructed you to disregard.

11 In considering the weight and value of the testimony
12 of any witness, you may take into consideration the
13 appearance, attitude and behavior of that witness, the
14 interest of the witness in the outcome of the case, if any,
15 the relation of the witness to the defendant or the State, the
16 inclination of the witness to speak truthfully or not and the
17 probability or improbability of the witnesses' statements and
18 all the facts and circumstances in evidence. Thus, you may
19 give the testimony of any witness you to determine such weight
20 and value ayes you believe the testimony of that witness is
21 entitled to receive.

22 If the defendant presents evidence, the State will
23 have the opportunity to present rebuttal evidence, and the
24 defendant may have the opportunity to present surrebuttal
25 evidence.

1 After all the evidence has been presented, I will
2 then instruct you on the law. After the instructions on the
3 law have been read to you, each side will the opportunity to
4 present closing arguments. What is said in closing argument
5 is not evidence, just like opening statements are not
6 evidence. The arguments are designed to summarize and
7 interpret the evidence while discussing with you how to apply
8 the law to the particular facts in this case.

9 Since the State has the burden of proving the
10 defendant guilty beyond a reasonable doubt, State has the
11 right to open and close the arguments. This means that State
12 will make a closing argument, followed by closing arguments by
13 the defense and then the State will make rebuttal argument.

14 After the arguments have been completed, you will
15 retire to deliberate on your verdict. I may during this trial
16 take notes of witness testimony. You are not to make any
17 inference from that action. I am required to prepare for
18 legal arguments of counsel during this trial, and for that
19 reason, I may take notes.

20 The jury will not have a transcript to consult at
21 the close of the case; however, you will be furnished note
22 pads. You all have note pads? Okay. And pencils to allow
23 you to take notes yourself. Mr. Lamago (sic), okay. I didn't
24 put you to sleep, did I? Okay.

25 If any juror discovers during the trial or after the

1 jury has retired to deliberate that he or she has personal
2 knowledge of any of the fact in controversy in this case, you
3 shall disclose that situation to myself in the absence of the
4 other jurors. This means that if you learn during the course
5 of this trial that you were acquainted with the facts of this
6 case or the witnesses that you have heard or been previously
7 told about, and then you must declare that to me, and you do
8 so through my marshal.

9 Additionally, if the aforementioned situation does
10 arise, you're admonished that you may not relate to any of
11 your fellow jurors any of facts relating to this case or
12 within your own personal knowledge.

13 Likewise, if you discover that any other juror has
14 personal knowledge of any fact in controversy in this case,
15 you shall also disclose that situation to myself in absence of
16 the or jurors. Once again, you communicate that through my
17 marshal and if the aforementioned situation does arise, you're
18 admonished that you may not relate to any fellow jurors any of
19 the facts relating to this case that are within your own
20 knowledge or that which you have just learned from other
21 jurors.

22 You will also recall that during the course of this
23 trial the attorneys -- I this indicate this had previously,
24 but both sides of the parties, the witnesses and court
25 personnel, other than the marshal, are not permitted to

1 converse with members of the jury.

2 As I previously stated, these individuals are not
3 being antisocial. Rather, they are bound by ethics and the
4 law may not -- and by law and not talk to you. To do so might
5 contaminate your verdict. If anyone approaches you to try to
6 talk to you, I want you to immediately notify my marshal, if
7 they try to talk to you about this case.

8 If you see anyone in this courtroom that tries to
9 talk to you during this case, other than my marshal, I want
10 you to notify my marshal. Okay? Moreover, you're admonished
11 that you are not to visit the scene of any of the acts or
12 occurrences made mention of during the trial unless
13 specifically directed to do so by me. Please don't
14 investigate this case or anyone who has anything to do with
15 this case on your own. Do not undertake any legal or factual
16 research on your own.

17 That's why I talk about don't get on the Internet,
18 don't pull up anything on your own, don't do any legal
19 research on your own. Finally, you must not be influenced in
20 any degree by any personal feelings of sympathy for or
21 prejudice against the State or the defendant. Both sides are
22 entitled to the same fair and impartial considerations.

23 That's what you had indicated earlier during voir
24 dire that you could be fair and impartial. You will be given
25 the opportunity to ask written questions of any of the

1 witnesses called to testify in this case. You are not
2 encouraged to ask a large number of questions because that is
3 the primary responsibility of these attorneys. Only a limited
4 number of questions may be posed by jurors, and you will not
5 be allowed to become the third attorney or to advocate a
6 certain position with your questions.

7 I have the discretion to preclude individuals from
8 asking any excessive number of questions. Questions may be
9 asked after both lawyers have finished questioning the
10 witnesses and only at that time. For example shall the State
11 calls a witness, conducts direct examination, the defense then
12 has the opportunity to cross-examine, the defense may -- I
13 mean, the State may go on direct and maybe recross, redirect,
14 recross. Sometimes it goes back and forth a number of times.
15 Until and only when they conclude their questioning you'll
16 have an opportunity to then ask questions.

17 Sometimes their going back and forth may answer your
18 questions. So if you want to ask questions at the beginning,
19 you might waste your time, okay? And if you wish to do so, if
20 you want to ask a question, then what you do is on your
21 notebook write your question on a full sheet of paper. Put
22 your name and your juror number on there, Juror No. 1 would be
23 Mr. Foster, Juror No. 2, based on where you're seated. Put
24 your badge number -- I mean, your seat number and your name on
25 there.

ROUGH DRAFT TRANSCRIPT

RA 0069

1 Just fold it in half, raise it up, my marshal will
2 come over and get it. I'll look at the jury to see if there's
3 any other questions. Any questions that you pose must be
4 factual in nature and designed to clarify information that
5 you've already was presented. All questions must be directed
6 to the witness and not to the lawyers or to me or the judge.

7 So if you're asking the question, you ask it as if
8 you're asking the witness. You don't say Judge, will you ask
9 him, okay? Understand? After you've indicated that you have
10 a question, my marshal, as I said, will get it, will bring it
11 up here and the parties will approach and we will discuss that
12 question.

13 Only questions permissible under the rules of
14 evidence will be asked and the jurors should not draw any
15 inferences or conclusions if the questions have been submitted
16 were not asked. We have a lot of times jurors ask hearsay
17 questions, and so since it's not proper, the same objections
18 that the parties would be make being, as if one of the other
19 parties were making the question, would be how we deal with
20 questions from the jury. As if you're one of litigants, but
21 you still have to follow the rules of evidence.

22 If I determine that your question may be properly
23 asked, I will ask it of the witness. The attorneys will have
24 the opportunity to follow up if necessary. The question will
25 be asked exactly like you write it. So please understand that

1 when you give it to me, I need to be -- it needs to be
2 legible, I need to be able to read it. If I determine that
3 it's not legible, it won't be asked. If I determine it's not
4 proper, it won't be asked. If I determine that it has been
5 asked already, I won't ask it. Okay?

6 Until the case is submitted to you, you must not
7 discuss this with anyone, even with your fellow jurors.
8 Meaning, you can't -- when you go to lunch, you can't go out
9 and just start talking about the case. You cannot do that.

10 After it is submitted to you, you must discuss it
11 only with your fellow jurors in the jury room. Okay? You
12 understand? It's important that you keep an open mind and not
13 decide any issue in this case until the entire case has been
14 submitted to you under the instructions from me.

15 When -- okay. If you cannot hear a witness, please
16 raise your hand as an indication. Also, if you need to use
17 the restroom or if you feel ill, please raise your hand as an
18 indication. I'll try to take a break about every 90 minutes,
19 once get the trial going, and give you an opportunity to
20 stretch your legs. And I have no objections, as I indicated,
21 you can bring in drinks, as long as you have some type of lid.
22 I don't even mind if you bring in snacks. Some individuals
23 need to because of diabetes issues or health issues they need
24 to. And I don't mind that, as long as it's not disruptive.

25 And I always use the example my clerk and my staff's

1 getting tired of it, but if you're sitting in there and you're
2 eating Doritos and it crunching and it's making noise and it's
3 disruptive, I'm going to stop you, okay? That's just the
4 simplest way I can tell you. So please understand also this
5 is not your home, and that we have to clean up after you, and
6 I would appreciate that you're conscientious of that.

7 Again, let me remind you until the case is submitted
8 to you, do not talk to each other about it or about anyone who
9 has anything to do with this until the case has ended and
10 you've been allow today decide your verdict or I've released
11 you from your duties.

12 Do not talk to anyone else about this case or anyone
13 that has anything to do with it until the trial has ended and
14 you have been discharged as jurors. Anyone else includes
15 members of your family and your friends. Oftentimes, spouses
16 want to drill you and drill you and drill you and find out
17 what are you doing, where are you really at, how come you're
18 not telling me about it? And when you tell them I can't talk
19 to you about it, automatically, their antennas go up and they
20 think that you're being dishonest with them.

21 So what I tell you to do, if you have a spouse like
22 that, that won't take no for an answer, contact me or my
23 marshal and we'll get it straightened out. We're real good at
24 that. Or tell them to come down. Tell them to come down and
25 sit and watch what you're doing. Obviously, they can't -- you

ROUGH DRAFT TRANSCRIPT

RA 0072

1 can't discuss with them, but they're more than welcome to be
2 here.

3 I will tell you, though, that when the trial starts,
4 you need to let them know that they need to stay in the
5 courtroom. I won't let them come and go as it goes. I got a
6 button here that I can actually lock the door, and I've done
7 that before. When people get up, I think it's extremely rude
8 when we have witnesses up here and we have people running in
9 and out of my courtroom, and I won't let that happen.

10 Do not let anyone talk to you about the case or
11 about anyone who has anything to do with it. If someone
12 should try to do so, immediately contact my marshal. And do
13 not read any news stories or articles or listen to any radio
14 or television reports about the case about anyone who has
15 anything to do with it.

16 You're on your honor system now. So if it's somehow
17 this hits the news and it's on TV tonight and you see it, and
18 go, I kind of recognize that, walk away from it. I'd ask you
19 to do so. If you see it in a newspaper, get away from it. If
20 you're running something on Google and this name comes up, get
21 away from it. That's -- you're on your honor system, that's
22 all I can tell you.

23 But I will tell you that in today's technology,
24 parties have an ability to find out certain things that jurors
25 are doing, and it's caused problems. And I have you back here

ROUGH DRAFT TRANSCRIPT

RA 0073

1 on your own, and now rather than a witness being up here,
2 you're sitting up here, and I don't think any of you want to
3 do that and it's really easy to avoid that. Just follow my
4 instructions.

5 Do not -- once again, do not visit the scene. I
6 don't think we'll have an issue with that at all during this
7 trial. Or undertake any investigation or research on your
8 own. That's -- I can't stress that enough. Do not. Okay?

9 While this trial is going, I'm going to ask also
10 that you have your phones off. And if you have anyone that
11 comes in, like your family member, tell them that they're
12 going to have to have their phones off, okay? Do you have any
13 questions before we go any further? All right.

14 Ladies and gentlemen, at this point in time, it's 20
15 to 2:00. Have you all eaten? You've been kind of hanging out
16 here? Okay. I'm going to give you an opportunity. Be back
17 here -- I'll give you an hour. Be back here 20 to 3:00.
18 We're only going to go until 4:30 today. We got -- there's
19 other arrangements that we have (indiscernible), but okay?
20 Everybody -- any questions?

21 All right.

22 UNIDENTIFIED JUROR: Our notebooks, do we keep them
23 with us or --

24 THE COURT: You can leave them on your chair.

25 UNIDENTIFIED JUROR: Okay.

ROUGH DRAFT TRANSCRIPT

RA 0074

1 THE COURT: Okay? If you'd like to, if you have any
2 belongings, whatever, you want to leave it, you can. I prefer
3 you take it. That way we just don't have any issues, but if
4 you'd like -- you don't want to carry a pillow or a sweater or
5 anything like that, you can leave them on your chair. Okay?
6 All right. So we'll be at ease while the jury exits the room,
7 okay? Twenty to 2:00.

8 I know we start late sometimes, but be here, we're
9 going to get started right at 20 to -- 20 to 3:00 I'm sorry,
10 20 to 3:00.

11 (Outside the presence of the jury.)

12 THE COURT: Okay. We're outside the presence of
13 the jury. Be ready 20 to 3:00. Probably one or two
14 witnesses.

15 MR. DICKERSON: That's what I'm thinking. We had a
16 couple lined up. We'll go ahead and call off about four of
17 them.

18 THE COURT: Okay.

19 MR. DICKERSON: Plan on putting two on. One should
20 be a CSA, very short, and the next one will be --

21 THE COURT: Okay.

22 MR. DICKERSON: -- through the rest of the day.

23 THE COURT: Okay.

24 MR. DICKERSON: We also have physical evidence here
25 right now. Can we bring that in?

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.

ROUGH DRAFT TRANSCRIPT

RA 0076

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

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

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

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.

ROUGH DRAFT TRANSCRIPT

RA 0080

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

ROUGH DRAFT TRANSCRIPT

RA 0081

1 determination that it was sufficient based on what was
2 represented to him. So for that reason, I've denied your
3 motion.

4 MR. FRIZZELL: Okay.

5 THE COURT: Okay? All right.

6 MR. FRIZZELL: Thank you.

7 THE COURT: Okay.

8 MR. DICKERSON: And with that, State would be ready
9 to proceed to openings.

10 THE COURT: All right. Go ahead and get the jury
11 in, Ed.

12 THE MARSHAL: All rise for the jury.

13 (In the presence of the jury)

14 THE COURT: Okay. We're back on the record in Case
15 No. C-312717, State of Nevada versus Christopher Keller. Go
16 ahead and have a seat, everybody.

17 I'd like the record to reflect the presence of the
18 defendant and his counsel, Mr. Frizzell, the State and their
19 counsel, Mr. Dickerson and Mr. Bunnett and all members of the
20 jury. Will the parties stipulate to the presence of the
21 jury?

22 MR. FRIZZELL: Yes, Your Honor.

23 MR. DICKERSON: Yes, Your Honor.

24 THE COURT: Okay. Before we took a break, we were
25 just beginning to start this trial. At this time, the State,

ROUGH DRAFT TRANSCRIPT

RA 0082

1 if they wish, can do an opening statement. Mr. Bunnett.

2 MR. BUNNETT: Thank you, Your Honor.

3 THE COURT: Can ya'll see that okay? Do you need
4 my marshal to move it and adjust it? Sometimes the light
5 kind of affects it? All right. Everyone's fine. Go ahead,
6 Mr. Bunnett.

7 STATE'S OPENING STATEMENT

8 MR. BUNNETT: Methamphetamine, cocaine, heroin and
9 marijuana. These drugs were found in the defendant's house
10 and the defendant's car. And that, ladies and gentlemen of
11 the jury, is why we're all here today.

12 The story begins last year on January 28th of 2016
13 in the early morning hours, approximately, 2:51 in the
14 morning. Daniel Lopez, who was then a officer for the
15 Metropolitan Police Department was on patrol in the area of
16 Stewart and Lamb here in Clark County, Nevada. While on
17 patrol, Lopez noticed that a 2002 silver Dodge Stratus was
18 turning from Sunrise Avenue onto Lamb Boulevard and did so
19 abruptly.

20 As the car turned and after the car turned, the car
21 stayed in the center turn lane, the lane that drivers are
22 supposed to utilize to complete a turn and then enter the
23 travel lanes. The car did not enter travel lanes. Stayed in
24 that center lane and was driving at a high rate of speed.

25 Officer Lopez turns his car around, and upon doing

ROUGH DRAFT TRANSCRIPT

RA 0083

1 so, gets behind the Dodge Stratus, and when he gets behind
2 the Dodge Stratus, he notices that the taillight that's on
3 the passenger side is not in accordance with the traffic laws
4 of Nevada. Based on this, he continues following the
5 vehicle. The vehicle turns into the Crossroads 3 Apartment
6 complex (phonetic). That's at the corner of Stewart and
7 Lamb. It's the several white buildings up at the top.

8 So it turns into the apartment complex, keeps
9 going, and the car stops at parking spot 58. Now, as you can
10 see, there are two white doors in front of the spot. And one
11 of these says apartment D. Eventually, Lopez determines that
12 this apartment is not apartment D. It is, in fact, unit F,
13 and he does that basically by searching around the nearby
14 apartments or condo units and determines that there's two Ds
15 and this D doesn't make sense based on what he's seeing.

16 But before he does that, he initiates his lights
17 and sirens, and upon doing so, he sees the defendant,
18 Christopher Keller, get out of his car and head towards that
19 -- one of those units. He initiates the traffic stop, speaks
20 to Mr. Keller, and eventually obtains a driver's license
21 which establishes to him that Mr. Keller does, in fact, live
22 at the apartment collection 265 North Lamb, and that he lives
23 specifically in unit F.

24 While also searching his wallet, he notices that
25 Mr. Keller has \$2,187 in his wallet, mainly in the form of

ROUGH DRAFT TRANSCRIPT

RA 0084

1 \$20 bills. Also, when Mr. -- or when Lopez approaches
2 Mr. Keller, he notices that the defendant has the distinct
3 smell that cannabis has.

4 So after this happens, Officer Jacob Henry, who
5 also worked for Metro, comes to the scene. He comes to
6 assist Lopez in the traffic stop, and soon after he arrives,
7 he hears a gunshot. That gunshot draws Henry from that area
8 to another area. There's nothing over there. Doesn't see
9 anybody who's injured, doesn't see any shell casings, but he
10 goes over there for a little bit, eventually comes back and
11 the traffic stop continues.

12 Lopez looks in the car and Lopez finds green leafy
13 substance on the floor, which he believed to be marijuana.
14 So based on this, based on the other things that he had
15 noticed, he made the decision to obtain the help of a canine
16 officer and a canine dog named Stewie (phonetic).

17 So the officer shows up with Stewie, and Stewie
18 goes around the car, and he indicates at the glove box, he
19 indicates the presence of narcotics at the glove box. Based
20 on this, Lopez tries to go into the glove box and notices
21 that when he does so, there's a secret compartment on the
22 side. He puts his hand in there and he feels what he
23 believes to be a gun.

24 So based on that, he backs out and immediately goes
25 to get a search warrant. The search warrant's obtained, and

ROUGH DRAFT TRANSCRIPT

RA 0085

1 he, Officer Henry, and crime scene analyst Stephanie Thi,
2 search the vehicle. And inside that secret compartment in
3 the glove compartment there is a mesh bag. Inside that mesh
4 bag are two gold bags. And one those bags has a Beretta .22
5 caliber firearm in there.

6 In addition, inside those bags Lopez finds several
7 other smaller bags that draws attention. He finds several
8 packages of an off white crystal substance. Based on his
9 training and experience, he believed that this was
10 methamphetamine. Forensic scientist Jason Althnether later
11 tested this substance and determined that this substance was,
12 indeed, methamphetamine. And he weighed the substance, he
13 determined that the net weight of the substance was 344.29
14 grams.

15 Lopez also finds plastic wrappers with a brown
16 substance, and he believes this to be heroin. Jason
17 Althnether again tests this substance. He determines that
18 the substance is, indeed, heroin, and that the weight -- net
19 weight of that substance is 33.92 grams. Lopez also finds a
20 plastic bag containing an off white powdery substance. Based
21 on his training and experience, he believes this to be
22 cocaine.

23 Jason Althnether tests this substance, and once
24 again, determines that the substance is cocaine and that
25 essentially, Officer Lopez was correct in his assessment.

ROUGH DRAFT TRANSCRIPT

RA 0086

1 Now, Lopez also finds in that compartment a blue powdery
2 substance, and he doesn't really know what to make of it, but
3 eventually that substance is weighed -- or tested and weighed
4 by Jason Althnether. Jason Althnether determines that it is
5 a combination of the drugs methamphetamine, amphetamine and
6 cocaine.

7 So based on what's found in the car -- and before I
8 move on, this was a total sum of everything that was found in
9 that compartment. So based on what this shows, what he found
10 in the car, Lopez decides to get a search warrant for the
11 defendant's house. That's 265 North Lamb, unit F.

12 And he searches the house with the help of, amongst
13 others, Officer Steven Hough, Officer Chad Embry -- Detective
14 Chad Embry and Detective Michael Belmont. So this condo unit
15 is a one-bedroom unit. It's got an adjoining master
16 bathroom, and it's got a living area and a kitchen.

17 So Lopez's search is mainly relegated to the
18 bedroom. In the bedroom Lopez finds smoking pipes, he finds
19 four scales, including some that are sitting on the floor, he
20 finds a box of 9 millimeter ammunition on the ground in the
21 bedroom, he finds two bag in the bedroom that contain an off
22 white crystalline substance.

23 Based on his training and experience, he thought
24 this was methamphetamine. So those are the pipes. That's
25 just a overall summary of the bedroom. Those are the scales.

ROUGH DRAFT TRANSCRIPT

RA 0087

1 That's the ammunition. And he finds an off white crystalline
2 substance he believes to be methamphetamine.

3 Jason Althnether tests this, he finds out he's
4 correct, it's indeed, methamphetamine. One bag weighs 3.818
5 grams, while the other bag weighs 2.357 grams. Additionally,
6 Lopez in the bedroom finds a brown substance that he once
7 again, believes to be heroin. Jason Althnether tested that
8 substance, finds out it's heroin and it weighs .895 grams.

9 Detective Chad Embry assists in the search and he
10 searches both the bedroom and a storage closet that is
11 outside of the apartment but directly in front. In the
12 storage closet he finds 22 short ammunition. Remember,
13 members of the jury, that the firearm that was found in the
14 car was a .22 caliber firearm.

15 Embry in the bedroom closet finds a Ruger handgun,
16 9 millimeters. Remember that Officer Lopez found 9
17 millimeter ammunition on the floor of the bedroom. He also
18 finds a pay stub. It has the defendant's name on it in that
19 bedroom.

20 Now, Detective Belmont searched the kitchen. And
21 in the kitchen Officer Belmont found a glass jar containing a
22 green leafy substance that he thought was marijuana.
23 Forensic scientist Jason Althnether tested the substance, and
24 determines that it is, indeed, marijuana.

25 Now, in addition to what I've discussed previously,

ROUGH DRAFT TRANSCRIPT

RA 0088

1 also found in the house are balloons, clean pipes, syringes
2 and elastic bands. So members of the jury, as you listen tot
3 evidence, I'd like you to listen carefully to evidence that
4 connects the defendant to the car and the (inaudible).

5 That evidence in terms of the car includes the fact
6 that he was driving it, includes the fact that DMV
7 registration records list him as the registered owner of that
8 Dodge Stratus. In addition, connecting the house -- listen
9 carefully as you hear that the pay stub with the defendant's
10 name was found in the house. You'll see assessor records
11 that lists him as the owner of the house. And you'll also
12 look at the DMV records, and they will also show you that
13 this address, 265 North Lamb, unit F, is listed as his
14 physical address.

15 So based on all of this and all the evidence I've
16 discussed, at the conclusion of this trial, I'm going to
17 return to you and I'm going to ask you to return a verdict of
18 guilty as to seven counts. Those counts are trafficking in a
19 controlled substance, methamphetamine; trafficking in a
20 controlled substance, heroin; possession of controlled
21 substance, marijuana over an ounce; possession of controlled
22 substance with intent to sell methamphetamine, possession of
23 controlled substance with intent to sell heroin; possession
24 with intent to sell cocaine; and possession with intent to
25 sale marijuana. Thank you.

ROUGH DRAFT TRANSCRIPT

RA 0089

1 THE COURT: Thank you, Mr. Bunnett. Mr. Frizzell,
2 did you have any --

3 MR. FRIZZELL: Yes, Your Honor.

4 THE CLERK: Do you need the Elmo counter or
5 anything?

6 MR. FRIZZELL: I'm sorry?

7 THE CLERK: Do you need the Elmo or anything?

8 DEFENDANT'S OPENING STATEMENT

9 MR. FRIZZELL: No. Now, ladies and gentlemen, I
10 know we've been here a couple of days already, and now it
11 gets to the parts that's a little bit more interesting for
12 you, as the judge was saying. Got through that jury
13 selection stuff.

14 I want to thank you first off, because without a
15 jury in our system of government, in our system, our justice
16 system, without you, this system breaks down. We are one of
17 the few countries in the world that have an innocent until
18 proven guilty standard. And for your service, I appreciate
19 it because we live in the greatest country in the world.

20 Now, the State -- if everything were the way the
21 State said, if everything that they said was just gospel
22 truth, there would be no reason for me, there would be no
23 reason for you, we'd just proceed right to sentencing and
24 we'd just hang Mr. Keller and that would be it. Okay?

25 MR. DICKERSON: And Your Honor --

ROUGH DRAFT TRANSCRIPT

RA 0090

1 MR. FRIZZELL: However --

2 THE COURT: Hold on, hold on.

3 MR. DICKERSON: I'm going to -- may I approach?

4 THE COURT: Yes.

5 (Off-record bench conference.)

6 THE COURT: Go ahead, Mr. Frizzell.

7 MR. FRIZZELL: It's what the State doesn't tell you
8 that's what I want you to pay attention to. And we've got a
9 couple of issues here that ya'll are going to have to grapple
10 with back in the jury room. I don't know if you remember
11 today when Mr. Dickerson was talking about forensic evidence
12 and the lack of forensic evidence and how everybody agreed
13 that you don't necessarily need forensic evidence to convict
14 someone if the evidence shows otherwise.

15 Well, all of these things were tested. Okay. We
16 have some things sitting out over there on the top of that
17 cabinet and some things that just haven't been opened up yet
18 just because of time and whatnot. But you will hear from the
19 State's DNA analyst, their DNA witness, that essentially,
20 everything that you are going to be able to see, you're going
21 to be able to look at up close on the screen and whatnot,
22 especially those things that were found, as State's said,
23 they were found in that little compartment inside of the
24 vehicle.

25 My client's DNA was not found on any of those

ROUGH DRAFT TRANSCRIPT

RA 0091

1 things. And why that's important is because that is not
2 something that -- well, you saw the hole, you saw that in the
3 car there -- that is not something where you could take salad
4 tongs or something like that and put it in there. It would
5 be something where you'd have to physically put it in there
6 and jam it in there.

7 My client didn't know what was in that car. He
8 didn't touch any of those items. So when we say you need
9 forensic evidence to convict someone or you don't need
10 forensic evidence to convict someone, you certainly, as I
11 said earlier, you're not checking your brain at the door
12 either. Okay. You can use your common sense to see if this
13 is something where somebody's going to have to stick this in
14 here and going to have to handle it and push it down in a
15 hole, that at no time are you -- when there is no DNA
16 evidence found, there is that inference that we were talking
17 about. And that's something you need -- that you're going to
18 need weigh back in the jury room when we ultimately get
19 there.

20 If none of my client's DNA, his fingerprints,
21 saliva, anything was found on these items, did he even put
22 them there? Did he even know they were there? I'm going to
23 pause it to you that the State's not going to be able to
24 survive any witnesses that are going to be able to say yeah,
25 defendant knew it was there.

1 Now, we also have, as State's showed you, some
2 items that were located inside of his residence. During the
3 traffic stop, sometime between the traffic stop and between
4 the actual end of the arrest, when Mr. Keller was ultimately
5 arrested on this, and you'll hear this from one of the
6 officers as well, he was approached -- one of the officers
7 was approached by someone. And that someone had asked, hey,
8 can I get into the residence because I was staying there and
9 I got some of my stuff in there, can I go get my stuff out?

10 Well, the police, like they should, say, no this is
11 a crime scene, you're not going in, you're not getting
12 anything out. But so then there's a question, was it even
13 Mr. Keller -- was any of it even Mr. Keller's?

14 Ladies and gentlemen, that's -- like I say, we've
15 got some gray area here. This isn't just a black and white,
16 the State throws the -- throws this evidence in front of you,
17 gives their opening and it's gospel truth. There are some
18 gray areas here.

19 And as we go through the evidence over these next
20 couple of days, the rest of today and hopefully just
21 tomorrow, I think that you're going to see that State isn't
22 going to be able to meet that high burden, meet that burden
23 that they have, that beyond a reasonable doubt burden that
24 Mr. Keller was in possession of these items that were found
25 in the car or that he had knowledge of these items that were

1 found in the house. And that's for you to weigh.

2 And we trust that when you go back there in the
3 jury box -- jury room, excuse me -- and you deliberate that
4 you keep these things in mind when you come out and you find
5 my client not guilty on all charges. Thank you.

6 THE COURT: Thank you, Mr. Frizzell. Mr.
7 Dickerson --

8 MR. DICKERSON: Yes.

9 THE COURT: -- call your first witness.

10 MR. DICKERSON: State's first witness is going to
11 be Stephanie Thi.

12 (Pause in the proceedings)

13 STEPHANIE THI, STATE'S WITNESS, SWORN

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

17 THE WITNESS: My name is Stephanie Thi,
18 S-t-e-p-h-a-n-i-e, T-h-i.

19 THE COURT: Your witness.

20 MR. DICKERSON: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. DICKERSON:

23 Q How are you employed, ma'am?

24 A I'm a crime scene analyst with the Las Vegas
25 Metropolitan Police Department.

ROUGH DRAFT TRANSCRIPT

RA 0094

1 Q And what is a crime scene analyst?

2 A A crime scene analyst conducts crime scene
3 investigations for the department.

4 Q Okay. And so it's kind of like the show CSI?

5 A Loosely.

6 Q Loosely. Very loosely, right?

7 A Yes.

8 Q So what are your specific duties?

9 A Our main duties involve documentation of a crime
10 scene through reports and photographs and evidence collection
11 and preservation.

12 Q Okay. What sort of training and experience do you
13 have to have to do this job?

14 A I have a bachelor of science in biology. I also
15 have a master of science in biomedical forensic sciences. I
16 completed the CSA academy with the police department, as well
17 as a field training program.

18 Q So this -- your background, education and your
19 training through the department, does that teach you how to
20 collect evidence?

21 A Yes, it does.

22 Q And so what are important aspects for collecting a
23 document and evidence?

24 A It's important to understand how to properly
25 preserve and package evidence, how do you document it through

ROUGH DRAFT TRANSCRIPT

RA 0095

1 photographs, the types of information that would be relevant
2 for documentation purposes, issues with contamination and
3 cross-contamination, and how to properly package the evidence
4 for preservation.

5 Q You said photographs. Is that a big part of your
6 job?

7 A Yes, it is.

8 Q Did you take photographs in this case that we're
9 here for today?

10 A Yes.

11 Q Do you generally take photographs on most scenes
12 that you go to?

13 A Yes, I do.

14 Q And why is that?

15 A We take photographs for documentations so that they
16 can be used in a courtroom setting to depict the scene as it
17 was observed during the incident.

18 Q So specifically the events that bring us here, let
19 me draw your attention to those, the early morning hours of
20 January 28, 2016. Do you recall that day and time?

21 A Yes.

22 Q What was it that led you to become involved in this
23 case?

24 A A request was made for a CSA to respond for
25 documentation of the service of a search warrant.

ROUGH DRAFT TRANSCRIPT

RA 0096

1 Q And was that specifically at 265 Lamb Boulevard?

2 A Yes, it was.

3 Q And when you were called for the search warrant that
4 you were specifically called for, was that for a search
5 warrant on a vehicle?

6 A Yes.

7 Q Specifically, a 2002 silver Dodge Stratus?

8 A Yes.

9 Q Parked in -- parked in spot number 58?

10 A Yes.

11 Q So when you arrived, what was the state of vehicle?

12 A The vehicle was parked in the parking space number
13 58. The hood was open, the trunk was open, as was the
14 passenger side door.

15 Q Okay. And so what, if anything, did you do upon
16 first arriving on scene?

17 A When I first arrived on scene, I always make contact
18 with officers that are present on scene to gather information
19 as it relates to the event and why I am there. I then take
20 notes to document my observations and then I take
21 photographs.

22 Q So you first got some information about this
23 vehicle?

24 A Yes.

25 Q The background behind the search warrant, generally?

ROUGH DRAFT TRANSCRIPT

RA 0097

1 A For search warrant purposes, the information would
2 have been what items were being searched for under the search
3 warrant.

4 Q Okay. And so do you just go and begin the search
5 warrant or do you take steps to document the scene first?

6 A The scene is always documented as I find it and then
7 overall photos are taken of the entirety of the scene, which
8 would include the exterior of the vehicle as well as the
9 interior of the vehicle and then a search would commence in
10 layers so that further documentation can be done if items
11 were located.

12 Q So then if I understand you correctly, before you
13 event start the search, you take all around photos of the
14 vehicle?

15 A Yes.

16 Q Just as you found it when you arrived?

17 A Yes.

18 Q Okay.

19 MR. DICKERSON: At this point in time, Your Honor,
20 pursuant to stipulation, the State is going to move for the
21 admission of State's Proposed 6 through 37 and State's
22 Proposed 39.

23 THE COURT: You have no objection to those being
24 admitted.

25 MR. FRIZZELL: No, Your Honor, we previously

1 agreed.

2 THE COURT: Okay, 6 through 37 and 39 will be
3 admitted.

4 (State's Exhibits 6 through 37 and 39 admitted)

5 MR. DICKERSON: Thank you, Your Honor.

6 BY MR. DICKERSON:

7 Q Now, Ms. Thi, I'm going to show you some photos,
8 everything that I just spoke to the judge about, and you just
9 tell me if you recognize these photos as a whole. Take a
10 minute and go ahead and look through those.

11 A I recognize these as my photos.

12 Q Okay. And these are the photos that you took on
13 scene there at 265 Lamb Boulevard?

14 A Yes.

15 Q So when we speak of initially looking at these go
16 ahead and look at State's 6.

17 MR. DICKERSON: Madam clerk or would this be 1?

18 THE CLERK: That would be the number on the back of
19 it.

20 MR. DICKERSON: Thank you very much.

21 BY MR. DICKERSON:

22 Q State's 6. Would this be one of the images that you
23 took when you first arrived on scene?

24 A Yes, it is.

25 Q And what does this show?

1 A That is the rear of the vehicle in the parking space
2 -- a covered parking space marked 58.

3 Q Okay. And from there you continue to take all
4 around photos?

5 A Yes, that's correct.

6 Q Including this, State's 8?

7 A Yes.

8 Q And what is this a photo of?

9 A That is a photo of the license plate on the vehicle.

10 Q And State's 9, is this a photo that you took as an
11 overall?

12 A Yes, it is.

13 Q Looking at State's 9, it appears that there are keys
14 in the trunk; is that right?

15 A Yes.

16 Q Were those keys in there when you first arrived on
17 scene?

18 A Yes, they were.

19 Q Okay. And State's 10, another overall of the
20 vehicle?

21 A Yes.

22 Q Just from the passenger side?

23 A Yes, that's correct.

24 Q And State's 13, is that a close-up of that same
25 area?

ROUGH DRAFT TRANSCRIPT

RA 0100

1 A Yes.

2 Q And State's 16, what is this a photo of?

3 A That's a photo of the interior as I'm standing at
4 the open passenger side door.

5 Q Now, was there a certain area of the vehicle that
6 the search warrant that was about to proceed was focusing on?

7 A Yes.

8 Q And what area was that?

9 A I was directed by the officers on scene that the
10 area of concern was the glove compartment area.

11 Q Okay. And do you see that area here in this photo
12 of this State's Exhibit 16?

13 A Yes.

14 Q If you could please just point to that on the screen
15 that there's there on your left. And what was the state of
16 that area in particular when you arrived?

17 A The glove compartment had been removed and is
18 sitting on the floor board, and the glove compartment area is
19 now exposed.

20 Q So the focus of the search warrant that was about to
21 proceed you said was in this area?

22 A Yes.

23 Q And was there any particular thing about that area
24 that caused it to be the focus?

25 A I was directed to a -- an area within the glove

ROUGH DRAFT TRANSCRIPT

RA 0101

1 compartment that appeared to have access to a space behind
2 the plastic paneling.

3 Q Okay. First, showing you State's Exhibit 18. Is
4 this that same general area just a frontal view of it?

5 A Yes.

6 Q And now showing you State's 19, do you recognize
7 what's depicted here in this image?

8 A Yes.

9 Q And what is that?

10 A This is a view of the glove compartment from around
11 the area of the center console.

12 Q And State's 20, just a closer of that?

13 A Yes.

14 Q So were you, as part of this search warrant, able to
15 recover the items through that hole there?

16 A No, I was not.

17 Q What was done?

18 A A separate piece of paneling was removed to gain
19 access to that area.

20 Q And where was that paneling?

21 A The paneling was on the passenger side, the portion
22 of the vehicle that is in contact with the door when it
23 closes.

24 Q Okay. I'm going to show you here State's Exhibit
25 17. Do you recognize that area that you just spoke of in

1 this image?

2 A Yes.

3 Q If you could please point to that on the screen to
4 your left.

5 A It's not --

6 Q It's not working? Try it again. And so what is it
7 about this area that allows you to ultimately make entry into
8 that location?

9 A That piece of paneling was removable.

10 Q And were you there when this piece of paneling was
11 removed?

12 A Yes, I was.

13 Q How did it come up?

14 A It just -- it snapped off or popped off.

15 Q Okay. Did it have to be pried off or anything like
16 that?

17 A I don't know how much force was involved because I
18 was not the one who physically removed that piece of
19 paneling.

20 Q Did you see tools or anything being used?

21 A No.

22 Q Okay. State's Exhibit 21 here, what is depicted
23 here in this image?

24 A That is the same area with the piece of paneling
25 removed.

ROUGH DRAFT TRANSCRIPT

RA 0103

1 Q So that's what it looked like after that paneling
2 was removed?

3 A Yes.

4 Q And what was the located inside of that area there?

5 A There was a black zip bag, apparently a nylon type
6 material.

7 Q I'm going to show you here State's Exhibit 22. What
8 is depicted here in State's Exhibit 22?

9 A That is a closer view of that compartment with the
10 black bag inside of it.

11 Q Is that how you found it when that plastic piece
12 came off the side?

13 A Yes, it is.

14 Q So as the crime scene analyst on scene, what's your
15 duty from this point forward?

16 A From this point forward, I would remove the item
17 after it has been documented and I would remove the items
18 from that bag continuing with the documentation as those
19 items were being removed.

20 Q So when you're talking about your documentation, are
21 you taking notes?

22 A Notes and photographs.

23 Q Okay. And photographs? So photographs through each
24 step of the way?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

RA 0104

1 Q So what was the next step from here?

2 A The item was removed and laid out so that the pouch
3 could be photographed before it was opened.

4 Q Okay. I'm going to show you State's Exhibit 23. Do
5 you recognize that item, ma'am?

6 A Yes, I do.

7 Q And what is that?

8 A That is a black zipper nylon pouch.

9 Q And do you recognize this from specifically this
10 event?

11 MR. FRIZZELL: I'm going to object. Leading on
12 that one.

13 THE COURT: Are you asking if that's leading if
14 she --

15 MR. FRIZZELL: No, I -- I'm object --

16 THE COURT: -- remembers this --

17 MR. FRIZZELL: How do you know?

18 MR. DICKERSON: It was an open-ended question,
19 Your Honor.

20 THE COURT: Overruled. Go ahead. Can you answer
21 that?

22 THE WITNESS: Yes, I do recognize it as the bag
23 that I removed.

24 BY MR. DICKERSON:

25 Q That you removed from where?

ROUGH DRAFT TRANSCRIPT

RA 0105

1 A From the compartment behind the glove box of the
2 vehicle.

3 Q Okay. The one that we were looking at earlier in
4 this exhibit, State's Exhibit 23?

5 A Yes.

6 Q Or 22, excuse me? So when you pulled out that black
7 bag, did it appear as it did here in State's Exhibit 23?

8 A Yes.

9 Q And what was the next step from there, ma'am?

10 A The zipper compartment, the main zipper compartment
11 was opened and photographed.

12 MR. FRIZZELL: And Your Honor, just for the record,
13 I'll withdraw that objection.

14 THE COURT: Okay. All right.

15 BY MR. DICKERSON:

16 Q And does that appear here in -- you recognize this
17 State's Exhibit 24?

18 A Yes.

19 Q And what do you recognize this being, ma'am?

20 A That is my hand holding the pouch open showing the
21 contents.

22 Q And so this is you unzipping the pouch?

23 A Yes.

24 Q Okay. And from there, what did you do?

25 A The items were removed and documented as well.

ROUGH DRAFT TRANSCRIPT

RA 0106

1 Q Okay. Showing you State's Exhibit 25. Do you
2 recognize what's depicted here?

3 A That is a watch.

4 Q Would this have been a watch recovered from this
5 bag?

6 A Yes.

7 Q And State's Exhibit 26, do you recognize these
8 items?

9 A Yes, I do.

10 Q And what is this?

11 A Those are two gold colored plastic ziplock type
12 bags.

13 Q And where did you come in contact with these bags?

14 A Both of those were inside of that black pouch.

15 Q So did you remove these bags from the black pouch?

16 A I did.

17 Q And did you then subsequently take this photograph?

18 A Yes.

19 Q What was the next step removing these gold bags from
20 the black pouch?

21 A The pouches were then opened and the contents
22 photographed.

23 Q Showing you State's Exhibit 27, do you recognize
24 what's depicted here, ma'am?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

RA 0107

1 Q And what is that?

2 A That is one of the pouches opened again with my hand
3 holding it open showing the contents within.

4 Q And what, if anything, do you recall being in this
5 particular bag?

6 A There were several baggies of unknown substance.

7 Q Okay. And onto State's Exhibit 29, do you recognize
8 this, ma'am?

9 A Yes.

10 Q And what do you recognize that to be?

11 A That is the other gold bag opening again with my
12 hand showing the contents.

13 Q So from here you pulled out these bags and taken a
14 look inside, what's the next step?

15 A As with the other pouch, the items were removed and
16 documented.

17 Q All right. Showing you here State's Exhibit 28. Do
18 you recognize this image?

19 A Yes.

20 Q And what do you recognize this to be?

21 A Those are the pouches and the contents removed and
22 laid out.

23 Q So the black item on the right-hand side of the
24 screen right here where I'm pointing, what is that item?

25 A That appeared to be a nylon type of a draw string

ROUGH DRAFT TRANSCRIPT

RA 0108

1 bag.

2 Q And was that the item that we just seen in the last
3 photograph, State's Exhibit 29?

4 A Yes.

5 Q And the other items aside from that watch, what are
6 those items?

7 A Those are various plastic bags containing unknown
8 substances.

9 Q Okay. And were those recovered from the other bag?

10 A Yes.

11 Q Looking at State's Exhibit 30, is this that black
12 nylon bag that you were referring to?

13 A Yes.

14 Q And you're opening it here in this photograph? Is
15 this your hand?

16 A Yes, that's my hand.

17 Q And what, if anything, did you recover in there?

18 A A firearm was recovered.

19 Q Showing you State's Exhibit 31. Do you recognize
20 this image, ma'am?

21 A Yes.

22 Q And what do you recognize that to be?

23 A That is the black nylon bag laid open showing the
24 firearm that was inside it.

25 Q Okay. The firearm that was inside it, did you

ROUGH DRAFT TRANSCRIPT

RA 0109

1 recover that?

2 A Yes.

3 Q Showing you State's Exhibit 32, do you recognize
4 this image?

5 A Yes.

6 Q And what do you recognize that to be?

7 A That is the firearm on top of the nylon bag with a
8 scale in photo.

9 Q And what is that scale? What's the purpose of that?

10 A The scale provides reference for the size of the
11 item.

12 Q Okay. Now, when you recover a firearm like this,
13 could it be loaded?

14 A Yes.

15 Q And so what, if anything, do you do?

16 A The firearm is first documented as-is, the condition
17 of the firearm. And then the firearm is then unloaded to
18 reveal the contents, if any.

19 Q So would this have been the condition of the firearm
20 when you first recovered it?

21 A Yes.

22 Q And as you start to -- what's the word that you
23 used?

24 A Either unload or download the firearm.

25 Q Okay. As you start to unload or download the

ROUGH DRAFT TRANSCRIPT

RA 0110

1 firearm, what do you first do?

2 A The first step in unloading a firearm is to remove
3 the source of ammunition. In this case, it was the magazine.

4 Q And did you do that?

5 A Yes.

6 Q And what did you find when you took out the magazine
7 from this gun?

8 A The magazine is first removed and it's laid out to
9 be documented. The slide of the gun is then racked to
10 remove, if any, additional ammunition that might be in the
11 chamber. All of those items are photographed. And then the
12 magazine itself is downloaded, meaning that the ammunition
13 from the magazine is removed.

14 Q Do you have an estimate of how many firearms you've
15 recovered in your career as a CSA?

16 A I would estimate hundreds.

17 Q And how long have you been a CSA?

18 A Six and a half years.

19 Q Okay. And hundreds of firearms in that time. So
20 you're pretty familiar with firearms?

21 A Yes.

22 Q For members of the jury who aren't so familiar, if
23 you could please just indicate for them the two things that
24 you previously mentioned. First magazine, if you could
25 indicate for them on the screen where the magazine is located

ROUGH DRAFT TRANSCRIPT

RA 0111

1 on this firearm.

2 A This here is the bottom portion of the magazine, and
3 it feeds into the magazine well in this direction, and the
4 ammunition follows up in this direction. It feeds into the
5 firearm here, and this is where the chamber is located.

6 Q Okay. And so that area that you indicated there at
7 the bottom of the firearm would have been the bottom of the
8 magazine?

9 A Yes.

10 Q And that's the part that you first take out to
11 download the weapon?

12 A Yes.

13 Q And then you indicated that there is the slide of
14 the gun. If you could please indicate for the members of the
15 jury what is the slide that you're referring to?

16 A The slide is this entire top portion, and that's the
17 portion of the firearm that moves when the gun is fired.

18 Q Okay. How does that work?

19 A When the trigger is pulled, there is the action of
20 the slide moving that causes the round to be ejected and a
21 fresh one to be inserted into the chamber.

22 Q So when downloading the weapon, what is the purpose
23 of pulling that slide down?

24 A To remove any ammunition that might be in the
25 chamber.

ROUGH DRAFT TRANSCRIPT

RA 0112

1 Q Okay. Showing you here State's Exhibit 36, do you
2 recognize this image, ma'am?

3 A Yes.

4 Q And what do you recognize this to be?

5 A That is the firearm with the magazine removed and a
6 single round that had been removed from the chamber.

7 Q And State's Exhibit 37, what is this?

8 A That is the same image, but the magazine has been
9 unloaded with all the ammunition removed.

10 Q So in this particular case there was ammunition
11 within this gun?

12 A Yes, there was.

13 Q One in the chamber?

14 A Yes.

15 Q And so six rounds in the magazine; is that correct?

16 A Yes.

17 Q And that was found out when you downloaded the gun?

18 A Yes.

19 Q This particular picture, that's what documents it?

20 A Yes, that's correct.

21 Q I'm going to show you here what's been marked as
22 State's Proposed 81 and -- and 81-D and E. Do you recognize
23 these items?

24 A Yes, I do.

25 Q And how do you recognize them?

ROUGH DRAFT TRANSCRIPT

RA 0113

1 A By the markings that are on the firearm.

2 Q Okay. What do you recognize them to be?

3 A It is a Beretta model 950, .22 caliber
4 semi-automatic firearm.

5 Q Okay. Is this the same firearm that you recovered
6 in this case? Appear to be that firearm?

7 A Yes.

8 MR. DICKERSON: State moves for the admission of
9 State's 81-D through E. I believe there's -- that we had
10 talked about that.

11 MR. FRIZZELL: Didn't -- yeah, I thought we already
12 did.

13 MR. DICKERSON: Yeah. By stipulation, Your Honor.

14 THE COURT: Any objection?

15 MR. FRIZZELL: No, Your Honor. We previously
16 agreed --

17 THE COURT: All right.

18 MR. FRIZZELL: -- as well.

19 THE COURT: Exhibit 81-D through E will be
20 admitted.

21 (State's Exhibits 81-D through E admitted)

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

23 BY MR. DICKERSON:

24 Q And what's been marked as -- and admitted as State's
25 Exhibit 81-F, do you recognize this item, ma'am? These two

1 items, I should say.

2 A These two vials contain -- one contains six
3 cartridges and the other one contains one cartridge.

4 Q And do these appear to be the same type of
5 cartridges -- same cartridges you recovered here in this
6 case?

7 A Yes.

8 Q Is there any information contained on cartridges in
9 particular?

10 A Depending on the type of ammunition and the
11 manufacturer, there may be manufacturer's markings indicating
12 the brand and possibly a caliber.

13 Q Is that information that is pertinent to you as a
14 crime scene analyst?

15 A Yes.

16 Q Where do you find that sort of information?

17 A That sort of information is located on what we call
18 a headstamp.

19 Q Do the cartridges in this case have headstamps?

20 A Yes.

21 Q Are you able to tell what those are?

22 A It says REM.

23 Q Does that have any sort of significance to you,
24 ma'am?

25 A That typically is the marking for Remington.

ROUGH DRAFT TRANSCRIPT

RA 0115

1 Q And what is Remington?

2 A Remington is a manufacturer of firearms.

3 Q And do they produce ammunition as well?

4 A Yes.

5 Q So the headstamp in this case would indicate what to
6 you?

7 A That it is a Remington made ammunition.

8 Q Okay. Now, the suspected narcotics or substances
9 that were recovered in the other bag --

10 A Yes.

11 Q -- were those impounded by you?

12 A No.

13 Q Do you know who impounded those?

14 A All of the items would have been impounded by a
15 patrol officer.

16 Q Okay. While there on scene, did you find -- or
17 photograph something else indicative of ownership inside the
18 vehicle?

19 A The vehicle registration.

20 Q Showing you here State's Exhibit 15. Do you
21 recognize this, ma'am?

22 A Yes.

23 Q What do you recognize that to be?

24 A That is a Nevada DMV registration for the year 2016.

25 Q And was this recovered in the vehicle?

ROUGH DRAFT TRANSCRIPT

RA 0116

1 A Yes.

2 Q And is that there in the top left, does that say
3 Keller, Christopher Robert?

4 A Yes.

5 Q And did you also take a photograph of the defendant
6 in this case?

7 A I did.

8 Q When did you take that photograph?

9 A I took that photograph when I initially responded to
10 the scene.

11 Q Okay. So this was there at 265 Lamb?

12 A Yes.

13 Q And showing you State's Exhibit 39, do you recognize
14 that to be the photograph?

15 A Yes.

16 Q Okay. Now, did you also take a photograph of any
17 specific markings that would have been specific to this
18 particular vehicle?

19 A Yes.

20 Q And what sort of marking would that have been?

21 A I took a photograph of the VIN plate, which is the
22 vehicle identification number.

23 Q And I'm showing you here State's Exhibit 7, do you
24 recognize this image, ma'am?

25 A Yes.

ROUGH DRAFT TRANSCRIPT

RA 0117

1 Q And what do you recognize that to be?

2 A That is the VIN plate that is located on the dash of
3 vehicles.

4 Q Is this the specific VIN plate that was on this
5 Dodge Stratus located in spot 58 at 265 Lamb Boulevard?

6 A Yes.

7 MR. DICKERSON: State would pass the witness.

8 THE COURT: Cross.

9 CROSS-EXAMINATION

10 BY MR. FRIZZELL:

11 Q CSA Thi, I'm Ken Frizzell. I just have a few
12 questions for you. In the picture that Mr. Dickerson showed
13 you regarding when you arrived and the glove box lid you said
14 was on the ground. Were you the one that removed that?

15 A No, I was not.

16 Q So when you arrived on scene, that was how you found
17 it?

18 A Yes, that's correct.

19 Q And do you know how it came to be off?

20 A No, I do not.

21 Q But you were the one that removed that side
22 paneling?

23 A No, I -- I had attempted to gain access to that area
24 and was unable to, and patrol officers subsequently were the
25 ones who ultimately gained access.

ROUGH DRAFT TRANSCRIPT

RA 0118

1 Q Okay. Were you there when they did it?

2 A Yes, I was.

3 Q So you saw them pry off that little plastic piece?

4 A Yes.

5 Q Okay. Before you had them pry that off and you saw
6 that little hole inside the glove box, did you attempt to
7 reach down in it?

8 A I did.

9 Q And at that time, did you feel anything?

10 A I could feel an item that felt pliable, soft to the
11 touch, but I was not able to remove it through that hole that
12 was in the picture.

13 Q So you put your hand in, but you couldn't pull the
14 items out; is that what you're saying?

15 A Yes.

16 Q Okay. And did you have an occasion to examine the
17 outer panel that you say the police removed so that you could
18 gain access?

19 A Examine in what way?

20 Q In other words, did it look like it had been pried
21 off before or did you even look?

22 A Not that I had noticed.

23 Q So to the best of your knowledge, it looked like
24 this was going to be the first time that it had been taken
25 off?

ROUGH DRAFT TRANSCRIPT

RA 0119

1 A It -- there were no obvious signs indicating that it
2 had been damaged or tampered with.

3 Q Okay. How did they take it off? Did they use
4 screwdrivers; do you recall? What did they --

5 A I don't recall them using tools, but I wouldn't be
6 able to say for certain. I was standing at the edge waiting
7 for documentation, if anything was found. There were several
8 officers in that small area that were trying to gain access.

9 Q Was that panel -- was that panel later destroyed as
10 it was being taken off or did it pop off and it was just all
11 in one piece?

12 A It came off in one piece.

13 Q Now, you were not the one -- did you have any
14 contact with Mr. Keller other than taking his photo?

15 A No, I did not.

16 Q So you did not talk with him? You did not get any
17 statements from him, anything like that?

18 A No. And if anything, it would have just been
19 providing instructions while taking the photographs.

20 Q And so maybe his response may have been yes, ma'am
21 or something to that effect?

22 A Yes.

23 Q And do you recall if he actually communicated with
24 you or did he just obey?

25 A No, I don't recall any specific communication

ROUGH DRAFT TRANSCRIPT

RA 0120

1 between us.

2 Q Okay. Other than what you said about, you know,
3 stand this way, look towards me, and that sort of thing?

4 A Yeah. Some individuals may respond, and other
5 individuals will just silently follow the instructions.

6 Q Okay. To the best of your knowledge, he just
7 silently followed instructions?

8 A I wouldn't be able to say for certain one way or the
9 other. I don't recall.

10 Q All right. That's all I have. Thank you.

11 THE COURT: Redirect?

12 MR. DICKERSON: Nothing from the State.

13 THE COURT: All right. Thank you, ma'am. You're
14 excused. You can step down. Pretty long one?

15 MR. DICKERSON: Yeah.

16 THE COURT: Okay. Ladies and gentlemen, we're
17 going to take our evening recess. Tomorrow be here by 11:30.
18 Eat lunch before you come. We're going to go through all the
19 way probably until 5:00, okay? All right. I'll give you a
20 break and everything in the middle, but plan on eating lunch
21 before you come. I'm not going to give you a lunch break
22 like I did today, okay? All right.

23 So during this overnight recess, ladies and
24 gentlemen, you're admonished not to converse amongst yourself
25 or with anyone else on any subject connected with this trial

1 or read, watch or listen to any report of or commentary on
2 the trial by any person connected with this case or by any
3 medium of information, including without limitation, to
4 newspapers, television, Internet or radio.

5 You're further admonished not to form or express
6 any opinion on any subject connected with this case until the
7 case is finally submitted to you for deliberation. You are
8 directed to return tomorrow right outside the courtroom.
9 Don't come in the courtroom. My marshal will get you by
10 11:30. Okay? All right. We'll be at ease while the jury
11 exits the courtroom.

12 (Jury recessed at 4:04 P.M.)

13 THE COURT: All right. We're outside the presence
14 of the jury. Mr. Dickerson, I don't know whether or not you
15 neglected or you just chose not to do it. My understanding
16 of the record right now is that you moved to admit 6 through
17 37, 39, State's Exhibit 81-D and E and then 81-F, but you
18 didn't ask to move in 81-F.

19 MR. DICKERSON: Okay. I think that by stipulation
20 we're moving in --

21 MR. FRIZZELL: Well --

22 THE COURT: What did you agree to?

23 MR. FRIZZELL: That one's not going to be by
24 stipulation, but I have no objection to it.

25 THE COURT: To what? I don't know what -- what are

ROUGH DRAFT TRANSCRIPT

RA 0122

1 you asking for.

2 MR. DICKERSON: To F.

3 THE COURT: D and E's in. 81-D and E. 81-F.

4 MR. DICKERSON: 38-F (sic). So State, yeah --

5 THE CLERK: 81-F.

6 MR. DICKERSON: Okay, 81-F, State moves for the
7 admission.

8 THE COURT: Any objection to that?

9 MR. FRIZZELL: And I don't have an objection.

10 THE COURT: Okay, that's --

11 MR. FRIZZELL: That's just not one that we --

12 THE COURT: All right.

13 MR. FRIZZELL: -- talked about to physically
14 stipulate to so --

15 THE COURT: Okay. You have no objection to it
16 being admitted?

17 MR. FRIZZELL: No.

18 THE COURT: Okay, I'll admit that then tomorrow.
19 And then D and E?

20 THE CLERK: D and E he moved to admit, but B is the
21 actual Beretta. Are you moving to -- are you moving that in?

22 MR. DICKERSON: State's moving to admit that as
23 well.

24 THE COURT: Was that something you agreed to?

25 MR. FRIZZELL: Yes, and I do think that he said

ROUGH DRAFT TRANSCRIPT

RA 0123

1 that, but I could be wrong, but we did agree to those.

2 THE COURT: Okay. Are you talk being B through E?
3 B, C, D and E?

4 MR. DICKERSON: At this point in time, State would
5 move to admit 86 and all its --

6 THE COURT: 86, you haven't even gotten --

7 THE CLERK: You mean 81.

8 MR. DICKERSON: 81 --

9 THE COURT: 81?

10 MR. DICKERSON: -- and all its subparts.

11 THE COURT: 81-A through F?

12 MR. DICKERSON: A through F.

13 MR. FRIZZELL: And no objection.

14 THE COURT: All right. Okay.

15 MR. FRIZZELL: Some of it was stipulated, some of
16 it is no objection.

17 THE COURT: All right. So I'll admit that on the
18 record tomorrow. All right. So be ready to get started by
19 11:30 tomorrow. We have a pretty good morning calendar.

20 MR. FRIZZELL: I'm going to be here for a morning
21 one so --

22 THE COURT: Okay.

23 THE COURT: All right. Okay. So anything else
24 need to be put on the record before we leave?

25 MR. DICKERSON: No, Your Honor.

ROUGH DRAFT TRANSCRIPT

RA 0124

1 THE COURT: All right.

2 MR. FRIZZELL: Not at this time, Judge.

3 THE COURT: Okay, we'll see you tomorrow, then.

4 MR. DICKERSON: All right.

5 THE COURT: Okay.

6 (Court recessed at 4:07 P.M., until Wednesday,

7 March 8, 2017, at 11:54 A.M.

8 * * * * *

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RA 0125

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WITNESSES

<u>NAME</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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STATE'S WITNESSES:

Stephanie Thi	34	58		
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EXHIBITS

<u>DESCRIPTION</u>	
<u>ADMITTED</u>	

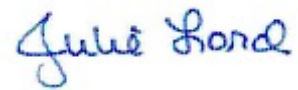
STATE'S EXHIBITS:

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



JULIE LORD, INDEPENDENT TRANSCRIBER

ROUGH DRAFT TRANSCRIPT

RA 0127