

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER ROBERT KELLER,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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Case No. 73871

RESPONDENT'S APPENDIX
Volume 4

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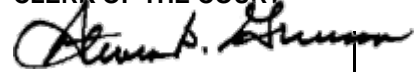
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TRAN

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 5**

FRIDAY, MARCH 10, 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 0571

1 LAS VEGAS, NEVADA, FRIDAY, MARCH 10, 2017, 10:33 A.M.

2 (Outside the presence of the jury)

3 THE COURT: All right. We're back on the record in
4 the case of State of Nevada versus Christopher Robert Keller
5 in C-312717. I've been told that we have a verdict so you
6 want to bring the jury in. I'd ask that you bring the
7 alternates in as well, okay?

8 THE MARSHAL: Yes, sir. All rise for the jury.

9 (Jury reconvened at 10:35 A.M.)

10 THE COURT: Go ahead and have a seat, everybody.

11 All right. This is the continuation of jury trial in
12 the case of State of Nevada versus Christopher Robert Keller
13 in C-312717. I'd like the record to reflect the presence of
14 the defendant, his counsel as well as State and their counsel
15 and all members of the jury. Will the parties stipulate to
16 the presence of the jury?

17 MR. DICKERSON: State stipulates.

18 MR. FRIZZELL: Defense stipulates.

19 THE COURT: Okay. I've been informed that the jury
20 has been able to reach a verdict; is that correct?

21 JUROR NO. 1: Yes.

22 THE COURT: Have you selected a foreperson?

23 JUROR NO. 1: Yes.

24 THE COURT: And who is the foreperson?

25 JUROR NO. 1: Jordan Foster.

ROUGH DRAFT TRANSCRIPT

RA 0572

1 THE COURT: Excuse me?

2 JUROR NO. 1: Jordan Foster.

3 THE COURT: Okay. Mr. Foster, could you hand the
4 verdict form to my Marshal. Okay. At this point, I'm going
5 to go ahead and have the Clerk read the verdict out loud.

6 VERDICT

7 THE CLERK: District Court, Clark County of Nevada,
8 the State of Nevada, plaintiff, versus Christopher Robert
9 Keller, defendant. Case No. C-312717, Department 19,
10 verdict.

11 We, the jury in the above-entitled case, find the
12 defendant, Christopher Robert Keller as follows:

13 Count 1, trafficking in controlled substance;
14 Guilty of trafficking in controlled substance.

15 Count 2, trafficking in controlled substance;
16 Guilty of trafficking in controlled substance.

17 Count 3, possession of controlled substance,
18 marijuana greater than one ounce; Guilty of possession of
19 controlled substance, marijuana greater than one ounce.

20 Count 4, possession of controlled substance with
21 intent to sell methamphetamine; Guilty of possession with --
22 possession of controlled substance with intent to sell.

23 Count 5, possession of controlled substance with
24 intent to sell heroin; Guilty of possession of controlled
25 substance with intent to sell.

ROUGH DRAFT TRANSCRIPT

RA 0573

1 Count 6, possession of controlled substance with
2 intent to sell cocaine; guilty of possession of controlled
3 substance with intent to sell.

4 Count 7, possession of controlled substance with
5 intent to sell marijuana; guilty of possession of controlled
6 substance with intent to sell.

7 Dated the 10th day of March, 2017. Signed,
8 foreperson, Mr. Foster. Ladies and gentlemen of the jury,
9 are these your verdicts as read? So say you one, so say you
10 all.

11 THE JURY: Yes.

12 THE COURT: Okay. Would either party like to have
13 the jury polled for this purpose?

14 MR. FRIZZELL: Yes, Your Honor, the defense would
15 like to have the jury polled.

16 THE COURT: All right.

17 THE CLERK: Juror No. 1, are these your verdicts as
18 read?

19 JUROR NO. 1: Yes.

20 THE CLERK: Juror No. 2, are these your verdicts as
21 read?

22 JUROR NO. 2: Yes.

23 THE CLERK: Juror No. 3, are these your verdicts as
24 read?

25 JUROR NO. 3: Yes.

ROUGH DRAFT TRANSCRIPT

RA 0574

1 THE CLERK: Juror No. 4, are these your verdicts as
2 read?

3 JUROR NO. 4: Yes.

4 THE CLERK: Juror No. 5, are these your verdicts as
5 read?

6 JUROR NO. 5: Yes.

7 THE CLERK: Juror No. 6, are these your verdicts as
8 read?

9 JUROR NO. 6: Yes.

10 THE CLERK: Juror No. 7, are these your verdicts as
11 read?

12 JUROR NO. 7: Yes.

13 THE CLERK: Juror No. 8, are these your verdicts as
14 read?

15 JUROR NO. 8: Yes.

16 THE CLERK: Juror No. 9, are these your verdicts as
17 read?

18 JUROR NO. 9: Yes.

19 THE CLERK: Juror No. 10, are these your verdicts
20 as read?

21 JUROR NO. 10: Yes.

22 THE CLERK: Juror No. 11, are these your verdicts
23 as read?

24 JUROR NO. 11: Yes.

25 THE CLERK: And Juror No. 12, are these your

ROUGH DRAFT TRANSCRIPT

RA 0575

1 verdicts as read?

2 JUROR NO. 12: Yes.

3 THE COURT: Okay. Ladies and gentlemen, the reason
4 why I had the case -- I had to have the alternates come back
5 to this is because there's a second portion of this trial.
6 You were not informed of that, and as soon as you hear the
7 additional counts and the arguments by the parties, you'll
8 understand why.

9 And so at this point in time, what I'm going to do
10 is ask the State if -- once again, I'm going to ask the Clerk
11 to read to the jury the -- there's two additional counts that
12 entail in this case, and I'm going to ask the Clerk to read
13 that to the jury.

14 (Pause in the proceedings)

15 (CLERK READS THIRD AMENDED INFORMATION TO THE JURY)

16 THE COURT: At this point in time, does the State
17 have any -- wish to make an opening statement with respect
18 to --

19 STATE'S OPENING STATEMENT RE: THIRD AMENDED INFORMATION

20 MR. DICKERSON: Just briefly. Ladies and
21 gentlemen, you're going to hear now that the defendant has
22 been convicted of at least five felonies as being conspiracy
23 to violate the Uniform Controlled Substances Act in 2013, and
24 attempt possession of a firearm by a ex-felon in 2013,
25 possession of a firearm by an ex-felon in 2009, burglary in

1 2003, possession of a credit card without cardholder's
2 consent in 2003.

3 The State's going to be admitting for you to see
4 certified judgments of conviction which have come down from
5 the courts showing those convictions. It's with that that
6 we'll ask you to go and deliberate once again with the
7 information that you were provided previously upon the
8 defendant's possession of those two firearms, the Ruger and
9 the Beretta. The Ruger being the 9 millimeter charged in
10 count 9. The Beretta being the .22 that was found in the car
11 charged in count 8. Thank you.

12 THE COURT: Did you wish to make an opening
13 statement?

14 MR. FRIZZELL: Just briefly also, Your Honor.

15 THE COURT: Okay.

16 DEFENDANT'S OPENING STATEMENT

17 MR. FRIZZELL: Ladies and gentlemen, I know that
18 this wasn't a part of the proceedings that you anticipated,
19 but as the judge said, you can understand now that we
20 couldn't -- that the State couldn't tell you about any prior
21 felonies or whatnot during the main portion of the trial.

22 And so only after your verdict can these things
23 come in at this point. However, we're still back to the same
24 -- we're back to the same situation in that you still have to
25 find that he was in possession of these weapons or they were

ROUGH DRAFT TRANSCRIPT

RA 0577

1 under his custody or control just like what was read to you
2 before you can find him guilty on these counts 8 and 9.

3 And so without belaboring the point, and I'm sure
4 that you recall all of the argument that I made yesterday
5 afternoon regarding possession versus mere presence that I
6 will just ask you to consider that when you're looking at
7 whether or not he was actually in possession of these two
8 firearms, the Ruger and the Beretta that you had access to
9 look at this morning. And so with that I'll submit it to the
10 group.

11 THE COURT: Thank you, Mr. Frizzell. State, did
12 you have any witnesses?

13 MR. BUNNETT: No additional witnesses, Your Honor;
14 however --

15 THE COURT: Are you presenting any evidence then?

16 MR. BUNNETT: We do have some exhibits that have
17 been marked.

18 THE COURT: Okay.

19 MR. BUNNETT: And Your Honor, I have in my hand
20 what's been marked as State's Proposed 1. It looks like a
21 Certified Judgment of Conviction that was filed in the Eighth
22 Judicial District Court on June 29th, 2004. Seal's affixed
23 on the second page. And that case is C-189805-B. I'm
24 showing it to Mr. Frizzell.

25 (Pause in the proceedings)

ROUGH DRAFT TRANSCRIPT

RA 0578

1 MR. BUNNETT: I have a second one in Case C-192923.
2 Appears to be a Certified Judgment of Conviction filed in the
3 Eighth Judicial District Court on June 21st, 2004. That was
4 State's Proposed 2.

5 State's Proposed 3, I have another copy of a
6 Certified Judgment of Conviction in Case C-252394 filed in
7 the Eighth Judicial District Court on February 12th, 2010.

8 (Pause in the proceedings)

9 MR. BUNNETT: And Your Honor, I also have State's
10 Proposed 4. It appears to be a Certified Judgment of
11 Conviction filed in the Eighth Judicial District Court on
12 November 7th, 2013 in Case C-287724.

13 And finally, I have State's Proposed 5, which
14 appears to be a Certified Judgment of Conviction filed in
15 Case C-279904 on November 13th, 2013, and that is certified
16 as well. State would move for admission of State's Proposed
17 1 through 5.

18 THE COURT: Any objections?

19 MR. FRIZZELL: No, Your Honor, and the State had
20 showed me all of these yesterday afternoon so I have no
21 objection.

22 THE COURT: As they all being certified, they'll be
23 admitted. Okay.

24 (State's Exhibits 1 through 5 admitted)

25 THE COURT: Let me see them. Okay. Anything

1 further, Mr. Bunnett?

2 MR. BUNNETT: No, Your Honor. State rests.

3 THE COURT: State has rested, Mr. Frizzell.

4 Mr. Frizzell, do you intend to present any witnesses or
5 evidence at this time?

6 MR. FRIZZELL: I do not, Your Honor. The defense
7 rests.

8 THE COURT: Okay. Ladies and gentlemen, you're
9 going to be handed another copy of jury instructions. You
10 have those now or I think -- okay. The instructions that are
11 from the previous section of this trial are also applicable.
12 If there are any of them that are duplicated, it's not
13 intended to put any emphasis on them. It's just a matter of
14 that they were duplicated.

15 I believe, the first two may be duplicated and then
16 the last one. So do you have -- let me know when ya'll have
17 them, okay? Okay. Does everybody have one?

18 UNIDENTIFIED JUROR: Yes.

19 THE COURT: All right.

20 (COURT READS SECOND SET OF JURY INSTRUCTIONS TO JURY)

21 THE COURT: Once again with regards to that
22 instruction, I'm going to provide you with a copy of the
23 original instructions, okay?

24 (COURT READS SECOND SET OF JURY INSTRUCTIONS TO JURY)

25 MR. FRIZZELL: Your Honor, before we continue, and

1 I don't normally interrupt --

2 THE COURT: Okay.

3 MR. FRIZZELL: -- but the State had made me aware
4 of a typo in the Information, which was then copied to
5 instruction 3.

6 THE COURT: Okay.

7 MR. FRIZZELL: In the conviction --

8 THE COURT: Let me see it.

9 MR. FRIZZELL: -- in 2004, I believe, was
10 ultimately -- it was actually in 2003, it was a companion
11 case with the other 2003 case.

12 THE COURT: So it should read and/or having in
13 2003?

14 MR. DICKERSON: Been convicted of burglary.

15 THE COURT: Hold on, let me see the convictions.

16 MR. DICKERSON: That's correct, Your Honor. The
17 date of the conviction signed by the judge was June 21st,
18 2004. Okay?

19 MR. FRIZZELL: What I was informed -- I apologize,
20 Your Honor.

21 THE COURT: Let me look at the 805.

22 MR. DICKERSON: If we may approach?

23 THE COURT: 805, that one was on the 25th day of
24 2004.

25 MR. FRIZZELL: Okay, so the --

ROUGH DRAFT TRANSCRIPT

RA 0581

1 THE COURT: It's the last one.

2 MR. FRIZZELL: -- 2003 should actually be 2004,
3 then?

4 THE COURT: 2004.

5 MR. FRIZZELL: Okay.

6 MR. DICKERSON: May we approach real quickly, Your
7 Honor?

8 THE COURT: Sure.

9 (Off-record bench conference)

10 THE COURT: Okay. All right, so instruction number
11 four.

12 (COURT READS SECOND SET OF JURY INSTRUCTIONS TO JURY)

13 THE COURT: Mr. Bunnett, did you want to address
14 the jury in closing?

15 MR. BUNNETT: Yes, Your Honor.

16 THE COURT: Okay.

17 STATE'S CLOSING ARGUMENT

18 MR. BUNNETT: Members of the jury, we've proven
19 counts 8 and 9 beyond a reasonable doubt. You heard the
20 testimony previously about where the guns were recovered.
21 The Beretta .22 caliber gun was recovered in that secret
22 compartment in the defendant's car. We've established that
23 that was the defendant's car. The Ruger 9 millimeter, well,
24 that's recovered from the defendant's house. Ammunition for
25 the .22 caliber is found in the house -- or in the shed of

ROUGH DRAFT TRANSCRIPT

RA 0582

1 the house that is immediately adjacent to the defendant's
2 apartment. And ammunition for the Ruger was found inside the
3 house.

4 And a couple things I just want to touch on with
5 you. Those same principles of possession that we previously
6 talked about, those all apply now. Actual or constructive
7 possession, we can prove either. We have to prove possession
8 (inaudible), but we can look to the circumstances of the
9 crime and how everything happened to determine whether or not
10 possession was knowing.

11 Possession can be sole or possession can be joined.
12 So all those principles apply now, and as you consider counts
13 8 and 9, you need to use those principles as you consider
14 your verdict. Now, there is an instruction, and that's
15 instruction, I believe, 5 that instructs you about what a
16 firearm is. You can take the gun, the can examine the gun,
17 you can determine for yourself whether there's a firearm.

18 There's no reasonable question that these are
19 firearms. Stephanie Thi explained to you how the firearms
20 are operated. She told you that in the Beretta .22 caliber
21 there were metal projectiles inside. It's clear from the
22 evidence that both of these weapons were designed to expel
23 metal projectiles and that they are, according to the
24 definition, firearms.

25 Now, the one last thing I want to touch on -- well,

1 before I do, you've heard the instruction that defendant's
2 not allowed to own firearms because of these felony judgments
3 of conviction. You'll have those in the back. You can look
4 at them. You'll see they're authentic copies of the
5 judgments of convictions and that defendant is, in fact, a
6 convicted felon.

7 Now, the one last thing I want to touch on is the
8 firearm in the bedroom. That's that Ruger 9 millimeter.
9 It's in defendant's bedroom. It's a one bedroom apartment.
10 We've heard some testimony about women's clothes being found
11 in the apartment. But there's really no suggestion that any
12 other man is living in the house. And Rubino, she told that
13 when she profiled that gun, there was a male profile on the
14 DNA -- or male DNA profile on the gun. She was able to
15 determine that. She couldn't conclude else, but it was at
16 least two people, one of them a male.

17 Based on all this, members of the jury, this is an
18 easy question. Defendant's guilty of count 8. That's the
19 Beretta in the secret compartment of the car. And count 9,
20 the Ruger in the house. Thank you.

21 THE COURT: Thank you, Mr. Bunnett. Mr. Frizzell,
22 did you want to address the jury any further?

23 MR. FRIZZELL: Yeah, just briefly, Judge.

24 THE COURT: Okay.

25 DEFENDANT'S CLOSING ARGUMENT

ROUGH DRAFT TRANSCRIPT

RA 0584

1 MR. FRIZZELL: Ladies and gentlemen, as I said a
2 few minutes ago, you still have to make the same findings
3 regarding possession versus that these weapons were merely
4 present. The Beretta, the smaller gun, the .22, that was
5 found, as you heard, with the drugs that were in the hole and
6 -- in the hole in the car there in that little compartment.

7 But you need to remember now when we're talking
8 about DNA is that just because it's a male, again, it doesn't
9 say that it was Mr. Keller. It could have been any male. We
10 don't know the history of those guns. There was no testimony
11 about the history of those weapons at all. And so when we're
12 talking also about the Ruger 9 millimeter, it was in the
13 closet that I showed you the picture of the women's clothes,
14 and it was found in an area that was not near any of the
15 scales or the drugs or in the fridge or anything like that.
16 It was in a closet that also contained girl's clothes.

17 And again, the DNA just showed that it was -- at
18 least one the samples was a male. But again, it doesn't who
19 it was. And like I say, we don't know the history of these
20 guns. And so we can't say -- there was no evidence, no
21 testimony that we can say for sure that it was Mr. Keller's
22 DNA that was on those weapons.

23 And so with that being said, then have you to go
24 back once again to, I believe, was instruction 16 from
25 yesterday on the mere presence. Were those -- were those

1 weapons merely present? And if they were just merely present
2 -- because there was no testimony even of ownership, who
3 actually owned those weapons, as you'll recall. And so
4 you're going to have to weigh out those facts and see and
5 determine whether or not those weapons actually -- were
6 actually in the actual or constructive possession of
7 Mr. Keller.

8 And if you can't, then you must come back with a
9 not guilty verdict on what is now counts 8 and 9. And with
10 that thank you so much.

11 THE COURT: Thank you, Mr. Frizzell.
12 Mr. Dickerson.

13 STATE'S REBUTTAL CLOSING ARGUMENT

14 MR. DICKERSON: Yes, Your Honor. Thank you, ladies
15 and gentlemen. With all this, once again, like we talked
16 about previously, tools of the trade, guns. For a drug
17 dealer tools of the trade. That's what we have here.
18 Mr. Keller has guns with his drugs because you need to
19 protect yourself and protect your drugs when this is the
20 business you're in.

21 So we know that because one's in his car and one's
22 in his bedroom. The stuff Mr. Frizzell said about the
23 clothing being in the same closet, I believe that's
24 inaccurate. You can take a look at the photos, if you feel
25 the need to. I think that was the other closet that those

1 shirts were in. Nonetheless, that gun still came back with
2 the male DNA. Only male that we have any evidence on in this
3 case is Mr. Keller himself.

4 Also remember for the .22 caliber firearm that was
5 found in the vehicle, it contained Remington ammunition, the
6 same exact kind of ammunition that was found in the
7 defendant's storage shed in his house. So there's a link to
8 that, too. It goes right back to the home. Both guns were
9 loaded. They had bullets with them in full magazines. Shows
10 they're ready to go. It's something to consider just in how
11 they're stored. It isn't something that's just sitting there
12 and somebody doesn't know about. These are guns that are
13 there for a purpose. You have bullets in a gun. You know
14 where that gun's going to be. You have to.

15 All right, ladies and gentlemen, thank you very
16 much. Please find the defendant guilty of both counts 8 and
17 9 based on his actual and constructive possession of those
18 two firearms.

19 THE COURT: Thank you, Mr. Dickerson. Okay, once
20 again, ladies and gentlemen, I'm going to ask that you return
21 to the jury room for purposes of deliberating on counts 8 and
22 9. At this point in time, I'm going to allow Ms. Johnson and
23 Ms. Cruz, I'm going to allow you to be excused to go home.

24 We'll contact you once we get a verdict or if we
25 need you. But you are not released from your service here

1 because in the event that I need you, I might need to bring
2 you back. But I'm going to allow you to go ahead and go
3 home. So just leave your information that you can provide to
4 us so we can contact you immediately, okay? All right.

5 And Ed, here, give these two Ms. Johnson and Ms.
6 Cruz, okay? All right. So we'll be at ease while the jury
7 exits the room.

8 (Jury retired to deliberate at 11:05 A.M.)

9 THE COURT: Okay. We're outside the presence of
10 the jury, as they're deliberating on the second portion of
11 this. Is there anything that needs to be put on the record
12 by either State or defense at this point?

13 MR. FRIZZELL: No, Your Honor, not by the --

14 MR. DICKERSON: We'll just --

15 THE COURT: All right, defense.

16 MR. DICKERSON: -- save our record for afterwards,
17 Your Honor.

18 THE COURT: Okay. All right. Okay, so don't take
19 them very far, officers, all right?

20 THE MARSHAL: We'll just take him downstairs.

21 THE COURT: Okay. All right. We'll let you know
22 if we --

23 CORRECTIONS OFFICER: You've got the number
24 downstairs, right?

25 THE COURT: Okay. We're off the record.

ROUGH DRAFT TRANSCRIPT

RA 0588

1 (Court recessed at 11:07 a.m. until 11:21 a.m.)

2 (Outside the presence of the jury.)

3 THE COURT: Go ahead and bring the jury in.

4 MR. FRIZZELL: And Your Honor, not that I need it
5 right now, but for some reason I misplaced or I didn't
6 receive the second set of verdict -- the verdict form for
7 this.

8 THE COURT: Oh.

9 MR. FRIZZELL: I know I saw it, but I don't know
10 if --

11 THE CLERK: (Inaudible).

12 (Pause in the proceedings)

13 MR. FRIZZELL: Thanks.

14 THE CLERK: Uh-huh.

15 THE COURT: Okay. We're back on the record in the
16 case of State of Nevada versus Christopher Keller. Go ahead
17 and have a seat, everyone. This is Case No. C-312717. I'd
18 like the record to reflect the presence of the defendant, his
19 counsel, State and their counsel, all members of the jury.
20 Will the parties stipulate to the presence of the jury?

21 MR. DICKERSON: State stimulate, Your Honor.

22 MR. FRIZZELL: Defense stipulates, Your Honor.

23 THE COURT: Okay. We're here with the exception of
24 the alternates. This is the second phase. Mr. Forester
25 (sic), are you still the foreman?

ROUGH DRAFT TRANSCRIPT

RA 0589

1 JUROR NO. 1: Yes.

2 THE COURT: Okay. And have you -- were you able to
3 reach a verdict as to the second phase?

4 JUROR NO. 1: Yes.

5 THE COURT: Could you provide that verdict form to
6 my Marshal, then? All right. I'd ask the Clerk, then, to
7 read the verdict.

8 VERDICT RE: THIRD AMENDED INFORMATION

9 THE CLERK: District Court, Clark County of Nevada,
10 State of Nevada, plaintiff versus Christopher Robert Keller,
11 defendant. Case No. C-312717, Department 19, verdict.

12 We the jury in the above-entitled case find the
13 defendant, Christopher Robert Keller, as follows:

14 Count 8, ownership or possession of firearm by
15 prohibited person; guilty of ownership or possession of
16 firearm by prohibited person.

17 Count 9, ownership or possess of firearm by
18 prohibited person; guilty of ownership or possession of
19 firearm by prohibited person.

20 Dated the 10th day of March, 2017. Signed
21 foreperson, Jordan Forester (sic). Ladies and gentlemen of
22 the jury, is this your verdicts as read? So say you one, so
23 say you all.

24 THE JURY: Yes.

25 THE COURT: Would you like to have the --

ROUGH DRAFT TRANSCRIPT

RA 0590

1 MR. FRIZZELL: Yes, please, Your Honor.

2 THE COURT: -- jury -- okay.

3 MR. FRIZZELL: Just for the record.

4 THE CLERK: Juror No. 1, are these your verdicts as
5 read?

6 JUROR NO. 1: Yes.

7 THE CLERK: Juror No. 2, are these your verdicts as
8 read?

9 JUROR NO. 2: Yes.

10 THE CLERK: Juror No. 3, are these your verdicts as
11 read?

12 JUROR NO. 3: Yes.

13 THE CLERK: Juror No. 4, are these your verdicts as
14 read?

15 JUROR NO. 4: Yes.

16 THE CLERK: Juror No. 5, are these your verdicts as
17 read?

18 JUROR NO. 5: Yes.

19 THE CLERK: Juror No. 6, are these your verdicts as
20 read?

21 JUROR NO. 6: Yes.

22 THE CLERK: Juror No. 7, are these your verdicts as
23 read?

24 JUROR NO. 7: Yes.

25 THE CLERK: Juror No. 8, are these your verdicts as

ROUGH DRAFT TRANSCRIPT

RA 0591

1 read?

2 JUROR NO. 8: Yes.

3 THE CLERK: Juror No. 9, are these your verdicts as
4 read?

5 JUROR NO. 9: Yes.

6 THE CLERK: Juror No. 10: Are these your verdicts
7 as read?

8 JUROR NO. 10: Yes.

9 THE CLERK: Juror No. 11, are these your verdicts
10 as read?

11 JUROR NO. 11: Yes.

12 THE CLERK: And Juror No. 12, are these your
13 verdicts as read?

14 JUROR NO. 12: Yes.

15 THE COURT: Okay. I'll go ahead and have the Clerk
16 record the verdict and the minutes of the court.

17 Ladies and gentlemen, when we first started the
18 jury selection, I believe I represented to you that the I
19 believe that the jury system is probably one of our most
20 important fundamental rights that we have in our system and
21 our constitutional guarantees.

22 I firmly believe in this right. For those of you
23 that have not served as a juror before, I'm hoping that this
24 was a good experience for you to understand exactly what
25 truly happens in the courthouse down here. You know,

ROUGH DRAFT TRANSCRIPT

RA 0592

1 unfortunately, there are certain people, and you probably saw
2 them, and you may have been one of these individuals that
3 have done what they could to try to shirk this
4 responsibility, and I believe it is a responsibility to
5 everybody that lives in our community to take part in the
6 Civic duties and Civic responsibilities here in the
7 community.

8 You know, for that reason I want to tell you I
9 truly appreciate that your time and consideration. I want to
10 apologize to you, though, because it went a little longer
11 than I had anticipated. Some things come up in the trial. I
12 also want you to know that while you're not in this
13 courtroom, things are going on with this case in the
14 courtroom.

15 On behalf of counsel and on the parties in the
16 Eighth Judicial District Court here in the County of Clark, I
17 want to thank you for your careful deliberate in this matter.
18 You may also at this point have a question as to whether or
19 not you can discuss this case with anyone. You can. I'm
20 going to release you from your obligation any further.

21 So anyone that questions you about what you were
22 doing, what the case was about, you have a right to do so and
23 you could, if you want to, you can discuss it. If you do not
24 want to, you also do not have to discuss it.

25 The parties oftentimes will wait around because

1 they want to talk to you to see what it is that you think
2 maybe could have helped them, could have bolstered their
3 case, could have presented something to present them -- or
4 prevent them from worsening their case or just seeing what it
5 is that you liked about the case and how it was presented or
6 how it was defended.

7 You do not have to talk to parties, if you do not
8 wish to. However, if you do not wish to and they continue to
9 press you, contact my Marshal and I'll put a stop to that.
10 I'm going to have you go back into the jury room because I
11 come back and have a discussion with you one on one to thank
12 you personally. But at this point in time, I want to thank
13 you as well. Could you please well, exit out the back into
14 the courtroom, and I'll see you real shortly, okay? I'll be
15 right there.

16 (Jury excused at 11:28 A.M.)

17 THE COURT: Okay. We're outside the presence of
18 the jury. At this point in time, I remand the defendant in
19 custody without bail and set a sentencing date, refer him to
20 the Department of Parole & Probation for preparation of
21 presentence investigation report. Give us the date.

22 THE CLERK: (Inaudible) 8th at 8:30 for sentencing.

23 THE COURT: Anything further?

24 MR. DICKERSON: No, Your Honor. Thank you.

25 THE COURT: You wanted --

ROUGH DRAFT TRANSCRIPT

RA 0594

1 MR. DICKERSON: We just --

2 THE COURT: -- to put something on the record.

3 MR. DICKERSON: We just want to make it -- a brief
4 record about the steps that Your Honor took to accommodate
5 defense counsel yesterday in trying to get their defense
6 together and accommodate witnesses coming in. Defense
7 counsel, though they didn't notice any witnesses, was
8 permitted to call every witness that they asked to call,
9 including bringing Officer Henry in to testify as well as
10 Mary Silva (phonetic) that they had made representations they
11 were going to call.

12 Mary Silva ultimately was not outside the courtroom
13 when defense went to call her, and they made steps to call
14 her throughout the day. Your Honor even gave them an
15 additional hour after we were supposed to start trial to
16 accommodate calling her in or bringing her back to court.
17 Despite representations she may have made to defense counsel,
18 she never showed back up.

19 But I just wanted to make a record of all those
20 steps that were taken on Your Honor's part.

21 THE COURT: Mr. Frizzell, did you want to add
22 anything to that?

23 THE DEFENDANT: (Inaudible) leave.

24 THE COURT: Mr. Frizzell?

25 MR. FRIZZELL: I'm sorry?

ROUGH DRAFT TRANSCRIPT

RA 0595

1 THE COURT: Did you want to add anything to the
2 State's?

3 MR. FRIZZELL: I just wanted to say that yes, I
4 followed up, I followed up with his mother, who was likewise
5 here, as well as Ms. Silva never actually got back to me.
6 So --

7 THE COURT: You represented that you called her and
8 told her and she said she could be here in 45 minutes, but
9 then you called her back and she never got back to you; is
10 that right?

11 MR. FRIZZELL: Well, I texted her back because --

12 THE COURT: Okay.

13 MR. FRIZZELL: -- she said I think I can be there
14 in 20 minutes.

15 THE COURT: Okay.

16 MR. FRIZZELL: And so that was my last
17 communication with either her or Mr. Keller's mother, and
18 otherwise, I'd like to thank Your Honor for even allowing us
19 to have the opportunity to call those witnesses at such a
20 late date. As you know, there was definitely some
21 cooperation issues prior to this trial starting so.

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

23 MR. DICKERSON: Thank you, Your Honor.

24 MR. FRIZZELL: Thank you very much, Your Honor.

25 THE COURT: We're off the record, yep.

26 (Court adjourned at 11:30 a.m.)

INDEX

VERDICT. 3

RE: THIRD AMENDED INFORMATION

STATE'S OPENING STATEMENT BY MR. DICKERSON. 6

DEFENDANT'S OPENING STATEMENT BY MR. FRIZZEL. 7

STATE'S CLOSING ARGUMENT BY MR. MR. BUNNETT.. . . . 12

DEFENDANT'S CLOSING ARGUMENT BY MR. FRIZZELL. 15

STATE'S REBUTTAL CLOSING ARGUMENT BY MR. DICKERSON. . . . 16

VERDICT RE: THIRD AMENDED INFORMATION.. . . . 20

EXHIBITS

STATE'S EXHIBITS:

Exhibits 1 through 5. 9

* * * * *

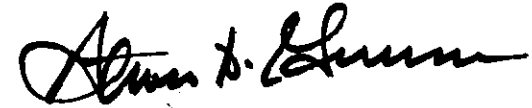
ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.



JULIE LORD, INDEPENDENT TRANSCRIBER

1 SUBST
2 AMY A. FELICIANO, ESQ.
3 FELICIANO LAW OFFICE, LLC
4 Nevada Bar No. 9596
5 2421 Tech Center Ct, #100
6 Las Vegas, Nevada 89128
7 Tel: (702) 848-4869
8 Fax: (702) 977-8262
9 Email: amy@felicianolawoffice.com
10 Counsel for Defendant Christopher Keller

Electronically Filed
04/29/2017 08:06:30 PM



CLERK OF THE COURT

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 STATE OF NEVADA,

10 Plaintiff,

CASE NO.: C-16-312717-1

11 vs.

DEPT. NO.: XIX

12 CHRISTOPHER KELLER,

13 Defendant.
14

15 DEFENDANT KELLER'S SUBSTITUTION OF ATTORNEY AND AMY A.
16 FELICIANO, ESQ.'S NOTICE OF APPEARANCE AS COUNSEL OF RECORD

17 COMES NOW, Defendant CHRISTOPHER KELLER through his attorney Amy A. Feliciano,
18 Esq. and hereby substitutes AMY A. FELICIANO, ESQ., Bar# 9596, Feliciano Law Office, LLC,
19 2421 Tech Center Ct, #100, Las Vegas, Nevada 89128, (702) 848-4869,
20 amy@felicianolawoffice.com, as attorney of record in place and stead of court-appointed counsel
21 KENNETH FRIZZELL, ESQ. in the instant matter.
22

23 DATED: 4-24-17

24 BY: [Signature]
(Defendant's Signature)

25
26 PRINT NAME: Christopher Keller
27
28

1 I, KENNETH FRIZZELL, ESQ., am in receipt of Defendant Keller's Substitution of Attorney. I
2 hereby acknowledge that I no longer represent Defendant Keller in the instant matter. I also affirm
3 that I have given Keller's entire criminal file to his new counsel, AMY A. FELICIANO, ESQ.
4

5
6 DATED: 4-18-17

7 BY: 
(Signature)

8
9 **NOTICE OF APPEARANCE AS COUNSEL OF RECORD**

10 COMES NOW AMY A. FELICIANO, ESQ. and provides Notice of Appearance as Counsel of
11 Record for Defendant Christopher Keller in the instant matter. Counsel consents to electronic
12 service. Counsel's contact information is as follows:
13

14 AMY A. FELICIANO, ESQ.
15 Bar No. 9596
16 Feliciano Law Office, LLC
2421 Tech Center Ct., #100
Las Vegas, Nevada 89128
17 (702) 848-4869 (office); (702) 977-8262 (facsimile)
18 amy@felicianolawoffice.com
www.felicianolawoffice.com

19
20 FELICIANO LAW OFFICE, LLC

21
22 DATED: 4/19/17

23 BY: 
(Signature)

24 AMY A. FELICIANO, ESQ.
25
26
27
28

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Service this 24th day of April 2017, to:

CLARK COUNTY DISTRICT ATTORNEY
200 Lewis Avenue, Second Floor
Las Vegas, Nevada 89101

Kenneth G. Frizzell, Esq.
Law Offices of Kenneth G. Frizzell, III
619 South Sixth Street
Las Vegas, Nevada 89101

/s/ Amy A. Feliciano, Esq.
AMY A. FELICIANO, ESQ.
FELICIANO LAW OFFICE, LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 08, 2017

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

May 08, 2017 8:30 AM Sentencing

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

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

PARTIES

PRESENT:	Bunnett, Matthew T.	Deputy District Attorney
	Dickerson, Michael	Deputy District Attorney
	Feliciano, Amy A.	Attorney for Defendant
	Keller, Christopher Robert	Defendant

JOURNAL ENTRIES

- Ms. Feliciano advised she was recently retained as counsel and requested matter be continued in order to prepare for sentencing and prepare a sentencing memorandum for the Court. COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 6/05/2017 8:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 05, 2017

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

June 05, 2017 8:30 AM Sentencing

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

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

PARTIES

PRESENT: Almase, Caesar V. Attorney for Defendant
 Dickerson, Michael Deputy District Attorney
 Keller, Christopher Robert Defendant

JOURNAL ENTRIES

- Court noted Ms. Feliciano previously requested matter be continued in order to submit a sentencing memorandum; however, the Court received notice this morning Ms. Feliciano is requesting matter be continued two (2) weeks. Mr. Almase advised Ms. Feliciano is requesting to continue due to a family emergency. COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 6/19/2017 8:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 19, 2017

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

June 19, 2017 8:30 AM Sentencing

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

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

PARTIES

PRESENT: Almase, Caesar V. Attorney for Defendant
 Clowers, Shanon Deputy District Attorney
 Keller, Christopher Robert Defendant

JOURNAL ENTRIES

- Mr. Almase advised Ms. Feliciano is requesting matter be continued one week and the sentencing memorandum will be filed today. COURT ORDERED, matter CONTINUED one week and sentencing will go forward on the next date.

CUSTODY

CONTINUED TO: 7/24/2017 8:30 AM

CLERK'S NOTE: following sentencing parties stipulated to continue matter for 6/26/2017 to 7/24/2017 as counsel will be out of the jurisdiction. te

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 24, 2017

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

July 24, 2017	8:30 AM	Sentencing
----------------------	----------------	-------------------

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

COURT CLERK: Tia Everett/te
Haly Pannullo

RECORDER: Christine Erickson

PARTIES

PRESENT:	Baharav, Colleen	Deputy District Attorney
	Hart, Martin W	Attorney for Defendant
	Keller, Christopher Robert	Defendant

JOURNAL ENTRIES

- Ms. Baharav advised Mr. Dickerson was present for the State; however, he was not certain if Ms. Feliciano would be present. Mr. Hart advised Ms. Feliciano is requesting to continue matter. Defendant advised he has not spoken or met with counsel and she has done nothing on the case. CONFERENCE AT THE BENCH. Court noted matter has been continued a number of times for retained counsel to address the Court, COURT ORDERED, Defendant's request to dismiss counsel GRANTED; Kenneth Frizzell APPOINTED and matter CONTINUED.

CUSTODY

CONTINUED TO: 7/31/2017 8:30 AM

CLERK'S NOTE: following hearing Mr. Frizzell advised of appointment via e-mail. te

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 31, 2017

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

July 31, 2017 8:30 AM Sentencing

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

COURT CLERK: Tia Everett

RECORDER: Christine Erickson

PARTIES

PRESENT: Demonte, Noreen C. Deputy District Attorney
 Frizzell, Kenneth G. Attorney for Defendant
 Keller, Christopher Robert Defendant

JOURNAL ENTRIES

- Mr. Frizzell advised he has a meeting with Ms. Feliciano today to obtain the file and requested matter be continued one week. COURT SO ORDERED.

CUSTODY

CONTINUED TO: 8/07/2017 8:30 AM



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8)
9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 vs.)

12 CHRISTOPHER ROBERT KELLER,)

13 Defendant.)

CASE#: C-16-312717-1

DEPT. XIX

14 BEFORE THE HONORABLE WILLIAM D. KEPHART, DISTRICT COURT JUDGE
15 MONDAY, AUGUST 7, 2017

16 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF PROCEEDING**
17 **SENTENCING**

18 APPEARANCES:

19 For the State:

MICHAEL R. DICKERSON, ESQ.
Deputy District Attorney

20 For the Defendant:

KENNETH G. FRIZZELL, ESQ.

21
22
23
24
25 RECORDED BY: PATTI SLATTERY, COURT RECORDER

1 MONDAY, AUGUST 7, 2017, AT 9:46 A.M.

2
3 THE COURT: Page seven, State of Nevada versus Christopher Robert Keller
4 in C312717. This is the time set for sentencing. The Defendant is present in
5 custody. He's represented by Mr. Frizzell. Is there any legal reason why we can't
6 go forward with sentencing today, Mr. Frizzell?

7 MR. FRIZZELL: No, Your Honor. I would like to put just briefly on the record
8 that while I've spoken with Ms. Feliciano, she was unable to get me back the file I
9 gave to her, but I printed off duplicates of what I had given her that I actually needed
10 back so I'm fine with going forward.

11 THE COURT: Mr. Frizzell -- Mr. Keller, I received a number of letters from
12 family and friends of yours. I have -- let me just for the record count, one, two,
13 three, four, five, six, seven, eight, nine, roughly ten letters. Have you looked at
14 those as well?

15 THE DEFENDANT: I know what they contain, Your Honor.

16 THE COURT: Okay. So, do you want the Court to consider those?

17 THE DEFENDANT: Please, Your Honor.

18 THE COURT: I know there's a note here saying that a copy was sent to the
19 DA and a copy was sent to Mr. Frizzell.

20 MR. FRIZZELL: And I got my copy, as well as the originals and the --

21 THE COURT: Okay.

22 MR. FRIZZELL: -- State just confirmed to me that they got their copy as well.

23 THE COURT: Okay.

24 MR. DICKERSON: I have. I've reviewed them all, Your Honor. Mike
25 Dickerson on behalf of the State.

1 THE COURT: Thank you, Mike. All right. So, is there anything other than
2 what you just told me, Mr. Frizzell, that we can't go forward with this?

3 MR. FRIZZELL: No, Your Honor.

4 THE COURT: All right. So, Mr. Keller, I received a copy of the Presentence
5 Investigation Report dated April 14th, 2017. Did you receive that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Did you take a look at it?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Is there anything in the report that you think is incorrect?

10 THE DEFENDANT: No, Your Honor.

11 MR. FRIZZELL: I think he had a couple things he wanted to add, Your Honor,
12 that he saw that weren't in there that he wanted to --

13 THE COURT: Okay. He can --

14 MR. FRIZZELL: -- add, but I'll wait for that.

15 THE COURT: All right. So, I'll hear from the State and then I'll hear from you
16 and your attorney, all right, Mr. Keller?

17 THE DEFENDANT: Yeah.

18 THE COURT: All right. Mr. Dickerson.

19 MR. DICKERSON: Thank you, Your Honor. Your Honor, you heard all the
20 evidence against Mr. Keller in the jury trial showing that without a doubt Mr. Keller's
21 in fact a drug -- he's a drug dealer not a drug addict. What he's addicted to is
22 money; you heard it from his own mouth in those jail calls that were played during
23 trial. Though maybe at some point in time he did start off with a drug problem which
24 eventually led him to crime which eventually led him into the Court system, he's
25 come a long way since then and we see that with his criminal record. That's why

1 today the State is seeking habitual criminal treatment. I have five Judgements of
2 Conviction here in my hand. If I may approach your clerk, Your Honor.

3 THE COURT: Yes.

4 MR. FRIZZELL: And I've already seen them, Judge.

5 THE COURT: Okay.

6 MR. DICKERSON: I've numbered them in correlation to my notice of habitual
7 criminal. Now, what we see in the Defendant's history is five prior felonies, five prior
8 prison sentences, and three prior probation revocations. That's not to say that he
9 hasn't had the opportunity for treatment; it's far from that. And in fact, the
10 sentencing that he's gotten has been quite light, especially given the fact that he's a
11 five time felon. What we see in his history is directly opposite of what we see in all
12 those letters talking about all the help he needs and he needs another chance, that
13 he's just a drug addict.

14 What we see in his history and the facts of this case is that he's had
15 opportunity after opportunity for help starting when he was convicted in 2003 of
16 possession of credit card without card holder's consent. He was initially sentenced
17 to drug court. He had three probation violations. He's ultimately then sent to boot
18 camp where he has another violation. He's terminated from both boot camp and
19 drug court. That goes in correlation with his 2003 burglary conviction where he had
20 drug court concurrently and ultimately, boot camp concurrently with that conviction.
21 So, he's picked up two felony convictions. He's had the opportunity in both of those
22 for drug court. When he fails that, he then has the opportunity for boot camp; as yet
23 he fails that.

24 I think it's incredibly telling the institutional adjustment that you see in
25 his PSI. Rarely do we see the institutional adjustments being this long and having

1 this much to them. It just goes to show that Mr. Keller has had every opportunity
2 that we could give him to try to get things right. And I submit to you it's likely due to
3 the fact that, I mean, Mr. Keller comes from a good family. He's had opportunity; yet
4 he's rebuked it.

5 And that continues to take us on to after he paroles and he gets out, he
6 later commits another crime, possession of firearm by an ex-felon. In 2009, he's
7 convicted of that. It's his first firearm offense as a felon. He's again sentenced to
8 drug court. Again, he fails to complete it. He's had another opportunity for help.
9 When do we see that, Your Honor, how often do we see somebody after getting two
10 opportunities at drug court and then boot camp, who'd get back into drug court after
11 two prior felonies; yet Mr. Keller had that opportunity.

12 Once again, he paroles and a few years later he has yet another
13 firearms offense as a felon. He's convicted in 2013 of attempt possession of a
14 firearm by an ex-felon; he's sent to prison on that case. Also, in 2013, he's
15 convicted of conspiracy to violate The Uniform Controlled Substances Act, an
16 offense which shows that he's a drug dealer back then. He's running from the
17 police. He has trafficking amounts of controlled substance on him. As you can see,
18 he was originally charged with trafficking in that case and so he's sent to prison
19 there.

20 Here in this case, he had an exorbitant amount of drugs on him. Not
21 personal use by any means, 351.4 grams of methamphetamine. Doing the math,
22 Your Honor, a dose of methamphetamine is approximately 30 mg; that's 11,713
23 doses of methamphetamine. What's I think is even more personally offensive given
24 what we see in society today and that there's finally some attention coming to the
25 opioid epidemic, is the fact that he has 36.4 grams of heroin. Heroin being

1 approximately 20 mg per dose, that's 1,820 doses of heroin.

2 Mr. Keller may have got here by being a drug addict, but now he's
3 creating drug addicts. Mr. Keller's a problem. Mr. Keller needs to be sentenced to
4 at least ten to life on each of those counts. And I'm submitting to you that the meth
5 and the heroin need to run consecutive to each other because one or the other is
6 bad enough and now you have both.

7 In addition to that, he had cocaine and marijuana. He had two
8 handguns, two more firearms that he's had in his possession as a felon; one in his
9 car, one in his bedroom. I would remind you that most of this stuff was found in a
10 secret cubby hole inside his glove box specifically used for his dealings as a drug
11 dealer. And then on his person, \$2,187.00 in cash which as you also saw and you
12 heard, he was not employed to that capacity where he should be carrying around
13 that much money. In fact, I think that his -- if I recall correctly, his paystubs showed
14 about \$400.00 year-to-date.

15 So, in addition to that, he then goes to the police station and decides
16 that he has a couple more grams of methamphetamine taped to his scrotum. He
17 pulls that out and decides to try to dispose of it into his nose before he goes to jail.
18 It shows it just a complete lack of respect for the system, a complete lack of respect
19 for every opportunity he's had, a complete lack of respect for his family who's
20 obviously trying to help him and wants to see the best thing for him.

21 For that reason, Your Honor, I'm asking that he be sentenced to ten to
22 life on Count 1 and 2, have those run consecutive; to 12 to 48 on Count 3,
23 concurrent to Count 1; to large habitual treatment on the rest of the counts 4 through
24 9, that being ten to life on all of them. But the two firearms, I'm asking for those also
25 to be consecutive. So, Count 8 to be concurrent to Count 1, but Count 9 to be

1 consecutive to Count 8, that being ten to life on both for an aggregate sentence of
2 20 to life, Your Honor. I'm showing that he has 558 days credit for time served. I'll
3 submit it with that.

4 THE COURT: All right. Thank you. Mr. Frizzell.

5 MR. FRIZZELL: Well, Your Honor, I think contrary to what the State has kind
6 of brought out to you and just reading in his background of his substance abuse
7 history, quite the opposite, he has had a problem his entire life. And we also know
8 that just because someone is given an opportunity, if they're not ready in their own
9 head to do it, then they're just going to back to it. But as you can see, by his own
10 statements, his life of illegal substances started when he was 12 years old.

11 Now, his mom has been here almost every hearing that we've had, at
12 least since I've been involved in the case, and it's very evident she loves her son.
13 She was instrumental in getting a lot of these reference letters -- these character
14 letters that Your Honor has in front of you.

15 And while I understand the sentencing guidelines, I also understand
16 that essentially what's going to be happening is -- what we're saying is that a
17 33-year-old man really at this age is unredeemable. And I don't know that at this
18 stage I'm willing to concede that he's unredeemable and we just need to warehouse
19 him for however long the aggregate ends up to be.

20 Now, I understand that what he's charged with carries some
21 mandatory -- at least minimum sentencing requirements, and I think, Your
22 Honor -- and obviously, sitting here listening today, in going into what I would
23 consider maybe a bit more creative sentencing, I think that you can achieve a
24 habitual level given what he's charged with, without calling him a habitual criminal.

25 I think that over the time that I've been involved in his case -- and

1 candidly, we have butted heads a few times, but the bottom line is, is I'm back on his
2 case and, Your Honor, he has -- we know for sure he's been drug free for 558 days,
3 and that is the credit he has on the case.

4 But what I'm asking, Your Honor, is if you are inclined to adjudicate him
5 as a habitual, I'd ask that you adjudicate him as a small habitual. But if we can get
6 around the habitual and just go with trafficking, running all of that -- running the
7 trafficking the minimum requirement that you have to give him and running
8 everything concurrent to each other, I think that when Mr. Keller finally ultimately is
9 able to hit the streets again and come back home and be in street clothes -- I think
10 that he's learned his lesson and certainly his head is clear, and he's had an
11 opportunity for his head to be clear.

12 And as you'll recall, when we had our motion to suppress hearing
13 several months ago, we were basically three minutes away from this case not even
14 being remotely close to where we're at now. And, Your Honor, I would just ask that
15 you not sentence him in such a way that we would be sending him a message that
16 at 33 years old he's unredeemable.

17 All of his offenses are drug-related but, you know, possession of
18 weapons, he's not -- he's never used any of the weapons in any of his crimes from
19 what I understand, but he has been in possession of them.

20 And, Your Honor, I would just like to -- I would like to see Mr. Keller
21 have an opportunity to do some of the things that he said in his work history where
22 he was working at the meat market, he worked as a bagger, he worked at other jobs
23 until the drugs just got the better of him. And yes, Your Honor, he was using, but I
24 think that to say that what he was doing was not being done to drive his drug habit
25 would, I think, be a mischaracterization given the fact that we actually saw video in

1 the trial of while he's in custody awaiting being booked, that he does a dose of
2 methamphetamine. He's absolutely got a problem. And if -- and the fact that he's
3 now sat here for 559 days and been able to clean up is probably the only reason
4 he's not dead right now.

5 And so, Your Honor, I still think there's something redeeming about him
6 and I'd ask that you sentence him accordingly and do it in such a way that we can
7 avoid a habitual label. And I'll submit it.

8 THE COURT: Thank you, Mr. Frizzell. Mr. Keller, did you have anything you
9 wanted to say before we impose sentence here?

10 THE DEFENDANT: Yes, Your Honor. Well, I'll start by saying I do have a
11 drug problem. And first, that I have a relationship with God, and I have a close
12 relationship with him to where every time I back slide and stuff, that it just -- he gives
13 me a bigger and bigger wake-up call.

14 And then when I get high I just -- I end up in a big spiraled out of control
15 situation and I'm not -- I've never -- I want to say that I've never committed a crime
16 in my life when I was sober, Your Honor, never was.

17 And that when I got out last time it was the first time that I ever got out,
18 just didn't go get high. I was actually trying this time. I was working clean and sober
19 for a year and a half which was a big step for 'cause I had never gone more than a
20 day without going back in the same situations. And from my hard work I was
21 supervisor at a car wash and I bought a -- that condo and my car from work, from a
22 \$9.00 an hour plus tips job I -- not from any type of illegal activity.

23 And I -- Your Honor, I never had any responsibilities till now. Your
24 Honor, I just want another -- I want a chance to be out hopefully before -- while my
25 parents are still alive. Since I've been here, my stepdad has been -- he's been -- he

1 has cancer, Your Honor, and just -- I need to be there for my mom and for him, like
2 she -- he's always taking care of her. I've never had nothing to worry about. I've
3 never had to worry about nothing in life and now I do, you know, like, 'cause he's
4 always taken good care of my mother. And my mom's the most important thing to
5 me; I have nothing else except for my mom. And I don't know -- I've been tearful
6 since I've been in here because I don't know what's going to happen to my mom if
7 something happened to my stepdad, you know.

8 And I know it seems like I keep messing up and stuff, but I just want to
9 say this is the first time that I tried, you know, this is the first time I got out and I was
10 sober, you know, and I was doing good and I was involved in NA, AA, all that stuff.

11 And besides that, I just wanted to say that as far as my charges -- like
12 you were saying, the first time -- my first two charges I was convicted of when I was
13 18, that was the first time I ever did methamphetamine, and somehow I ended up
14 charged with a bunch of car burglaries from that, like over a three day period, that's
15 what my conviction of my first felony was for. I got too high my first time using and I
16 just got a bunch of burglaries, you know, 'cause I was too high. That's just what
17 happens when I get high, you know. And I knew that this time, that's why I stayed
18 sober, you know, and I knew if I get high I was going to end up going to prison
19 again.

20 And I just, you know, I had some bad situations with a girlfriend, and
21 abortion, and all this stuff and then it just -- I ended up going back to that, you know,
22 and it just -- and I wasn't even telling people. They're like, oh, why don't you get
23 high anymore? 'Cause I know if I get high I'm going back to prison. And I'm not
24 like, you know, some people that they're out there and they're just always out there
25 getting high. And they're like, well, why don't you get high anymore? And I --

1 'cause I can't. I know I can't get high without going to prison, that's not possible
2 'cause it just spirals out of control.

3 You know, I probably used more meth than the average person. When
4 I do it that's -- with my charge -- with my -- the one -- the only other one where the
5 violate controlled substance act, I had ten grams of methamphetamine which was --
6 they consider that like trafficking, but that's like less than three days-worth, that's like
7 three days of meth that I was using. You know, that's not -- I mean, I understand
8 that it's not nothing to have, but it's not -- I wasn't trafficking it or selling it or
9 anything.

10 And then on my other two felonies, there -- it was a gun in someone
11 else's truck. And I was the only felon there and no one took responsibility and I
12 ended up taking the deal. And then another one was a moving truck in my name. I
13 was helping my co-defendant move and there was a gun in there.

14 So, it's like there -- I mean, I know that I'm around some stuff that is just
15 retarded, Your Honor. You know that like when I get high I just go around people
16 that sell drugs or whatever so I don't have to pay for it and then I just go off with
17 other people that are around them, and then, you know, weird stuff just happens,
18 you know, that I would never in life be around. I didn't even talk to none of these
19 people the whole year and a half in my sobriety.

20 And I just want to, you know, I just want a chance to be there for my
21 mother, you know, like, I'm worried about her and I'm worried about my stepdad. I
22 never had any responsibilities before this and now I do.

23 And I mean, I've proven I could be a man. I was a supervisor at a car
24 wash. Then I wanted to get a career, you know. Then I went and I was going to be
25 a butcher and I was trained for that, and I was going to go from Mario's Market

1 where they were training me and then I was going to go over to work at Smith's.
2 And I had -- and I was working all of it. I had just injured my hand cutting it from a --
3 and then it was like a month before I [indiscernible] and it was just like, that month
4 of, you know, that month of not working, that's all it took for the situation to happen.

5 I just wanted to say that this is not something that I want to be involved
6 with. I don't talk to anyone no more, like, I could get -- I could put phone time and I
7 could still talk to those girls and stuff like that, and I don't talk to none of those
8 people and I don't want to, Your Honor. And that's all I have to say, Your Honor.

9 THE COURT: Okay.

10 MR. FRIZZELL: And, Your, Honor, I just wanted to add also, his stepdad is
11 right here in the white shirt in the front row next to his mother.

12 THE COURT: I received a letter from him as well, I believe, as well as from
13 his mom.

14 Okay. Mr. Keller, in accordance with your -- the jury verdict in this
15 matter of March 10th, 2017, I'm adjudicating you guilty Counts 1, Counts 2,
16 trafficking a controlled substance. In addition to a \$25.00 administrative
17 assessment, \$60.00 drug analysis fee. I'm going to waive the genetic testing that
18 was ordered previously, a \$3.00 DNA administrative assessment fee.

19 On Count 1, I'm sentencing you here today under the charge of
20 trafficking a controlled substance, to life in prison with the possibility of parole after
21 ten years being served. I'm also going to order you to pay a fine of \$5,000.00.

22 On Count 2, I'm sentencing you to life in prison with the possibility of
23 parole after ten years, with a fine of \$5,000.00. That will run concurrent with
24 Count 1.

25 I'm adjudicating you guilty of Count 3, possession of controlled

1 substance, marijuana, less than an -- greater than an ounce. I'm sentencing you
2 under the sentence of 12 months minimum, 48 months maximum, Nevada
3 Department of Corrections. That will run concurrent with Count 2.

4 As to Count 4, I'm adjudicating you guilty of possession of controlled
5 substance with intent to sell.

6 Count 5, I'm adjudicating you guilty of possession of controlled
7 substance with intent to sell.

8 Count 6, I'm adjudicating you guilty of possession of controlled
9 substance with intent to sell.

10 Count 7, I'm adjudicating you guilty of possession of controlled
11 substance with intent to sell.

12 As to Count 4, I'm sentencing you under the sentence of 12 months to
13 48 months in Nevada department of prisons that will run concurrent with Count 3.

14 Count 5, 12 months minimum, 48 months maximum, Nevada
15 Department of Corrections, concurrent with Count 4.

16 Count 6, 12 months minimum, 48 months maximum, Nevada
17 Department of Corrections run concurrent with Counts 5.

18 Count 7, 12 months minimum, 48 months maximum that will run
19 concurrent with Count 6.

20 As to Count 8, for the record, I've been provided copies of -- certified
21 copies of Judgements of Conviction in this matter. I have one in C189805B out of
22 the State of Nevada from June of 2004, and it is for the charge of possession of
23 credit card without owner's consent, a felony. I've been provided with a copy of a
24 Judgement of Conviction in C192923 from June of 2004, for the charge of burglary,
25 a felony. I've been provided a copy of a Judgement of Conviction out of the State of

1 Nevada in C252394 from 2010, and it is a Judgment of Conviction in this matter for
2 the felony offense possession of firearm by ex-felon. Count -- I'm sorry. I have
3 been provided a copy of a Judgment of Conviction in C279904 out of the State of
4 Nevada for the charge of attempt possession of firearm by ex-felon, a felony. And I
5 provided a -- been provided a copy of a Judgement of Conviction in C287724 out of
6 the State of Nevada for the offense of a felony conspiracy to violate The Uniform
7 Controlled Substance Act.

8 With that being said, on Count 8, I'm adjudicating you guilty of the
9 charge of ownership or possession of a firearm by a prohibited person. I'm
10 sentencing you under the large habitual sentence of life with a minimum of ten years
11 that will run consecutive to Counts 1, 2, 3, 4, 5, 6, and 7.

12 Count 9, I'm adjudicating you guilty of ownership or possession of
13 firearm by a prohibited person. I'm adjudicating you guilty of the large habitual.
14 You'll be sentenced to life with a minimum of possibility of parole after ten years.
15 That will run concurrent to Count 8. Aggregate would be life, minimum of 20 years.
16 You'll be given in this matter -- is it --

17 MR. FRIZZELL: 558 days is what we counted, Your Honor.

18 THE COURT: -- 558 days credit -- 559 days credit for time served is what you
19 have.

20 MR. FRIZZELL: All right.

21 THE COURT: All right. Anything further from the parties?

22 . . .

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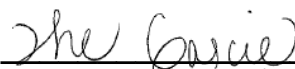
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MR. DICKERSON: No, Your Honor, thank you.

MR. FRIZZELL: No, Your Honor.

[Proceeding concluded at 10:12 a.m.]

ATTEST: Pursuant to Rule 3(c)(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.



Trisha Garcia
Court Transcriber