

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEANDRE VALENTINE,)	Electronically Filed
)	Jun 18 2018 09:55 a.m.
Appellant,)	Elizabeth A. Brown
)	Clerk of Supreme Court
vs.)	Case No. 74468
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	

**MOTION TO EXTEND TIME TO FILE OPENING BRIEF BASED
ON CHANGED CIRCUMSTANCES**

Comes Now Appellant KEANDRE VALENTINE, by and through Deputy Public Defender SHARON G. DICKINSON, and moves for an extension of time of forty-five (45) days from Friday, June 15, 2018 through and including July 30, 2018, to file the Opening Brief in this case. The grounds for this request are described in the attached Declaration.

DATED this 15 day of June, 2018.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By /s/ Sharon G. Dickinson
SHARON G. DICKINSON, #3710
Deputy Public Defender

DECLARATION OF SHARON G. DICKINSON

1. I am an attorney licensed to practice law in the State of Nevada; I am a deputy public defender assigned to handle the appeal of this matter; I am familiar with the procedural history of this case.

2. Keandre Valentine was convicted of 14 serious felonies and was sentenced to a minimum of 18 years before being eligible for parole.

3. This is my *third request* for an extension. On 03/16/18, I obtained the *first request* for an extension to file the Opening Brief pursuant to NRAP 31(b)(2), by way of 30 day stipulation, making the brief due 04/16/18. Court granted the stipulation.

4. On 04/16/18, I filed a *second request* for an extension. In my second request, I noted that one of the problems I encountered in filing the brief was that the transcripts were not prepared in a timely manner. I pointed out that the court reporters obtained extensions for the filing of their transcripts but the time for filing the Opening Brief was not simultaneously extended. Thus, I ended up using a 30 days stipulation to compensate for the delay in receiving transcripts. Although I asked the Court to allow me until 07/25/18 to file the Opening Brief (which would be a 100 day extension), the Court declined to do so, ordering the Opening Brief to be filed today, 06/15/18.

5. Since my last request for an extension, I have completed reading and outlining the 9 day trial and the appendix which currently consists of 14 volumes, 3231 pages. However, on or about 6/8/18, I began realizing I was missing portions of the record (emails sent to the court) and several proposed exhibits offered by the defense were incorrectly marked as withdrawn in the record when in fact the court ruled the proposed exhibits would not be admitted (they were not withdrawn).

6. Because of these problems and other problems I found with the record, I met with the trial attorneys on 6/13/18 and went through the appendix with them. Based on our discussions, on 06/14/18, I prepared a motion to reconstruct the district court record with is attached to this motion as *Exhibit A*. We currently have a hearing date on the issues regarding the missing emails and inaccurate portions of the district court record. The hearing is set for 07/02/18. This was the earliest date the trial court had available.

7. As noted in *Exhibit A*, one of the issues I intend to raise in the appeal is a challenge to the trial judge's decision regarding the admission of portions of Keandre's jail calls - audio tapes and written transcriptions. The district court record indicates the judge allowed the

parties to email him points and authorities over the weekend so that he could announce his decision before Monday. Over the weekend, the judge emailed the parties his decision. While the judge made his emailed part of the record, he did not make emails from the parties part of the record. When I spoke to the defense trial attorneys, they did not remember if they emailed a bench brief. However, on the record, the DA specifically said the State would email points and authorities. Thus, I am seeking any and all emails the court received.

8. Another problem I encountered, as addressed in *Exhibit A*, involved three defense proposed exhibits being incorrectly marked as having been withdrawn. The trial transcript shows the exhibits were offered, State objected, State offered a stipulation as to another exhibit, and the judge ruled that the Defense proposed exhibits would not be admitted. Yet, the court clerk marked the exhibits as withdrawn. It is important for the record to be corrected because one of the issues I am raising is that the trial court erred in rejecting the Defense offered exhibits. These proposed exhibits were pictures of the person Keandre contended committed the crimes – not him. Although the court allowed the State to introduce a picture of the alternate suspect, the pictures offered by the Defense contained a side and front view whereas the picture presented by the State was only a front view.

9. Once I receive a decision by the district court on our motion, I will need additional time to obtain the transcript from the 07/02/18 hearing in order to incorporate it into the appendix. Therefore, I am asking to be allowed to file the Opening Brief on 07/30/18.

10. Based on the above and as discussed in the motion attached as *Exhibit A*, I have demonstrated extraordinary circumstances and extreme need for an extension. The above identified problems with the court record are the type that can only be identified during a thorough study of the appendix. Accordingly, I am asking the Court to grant an extension of forty-five (45) days and allow the Opening Brief to be filed on 07/30/18.

11. This motion for an extension is not being made for the purpose of delay but for the reasons addressed in this motion.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 15 day of June, 2018

/s/ Sharon G. Dickinson
SHARON G. DICKINSON
Chief Deputy Public Defender
Bar No. 3710.

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 15 day of June, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT
STEVEN S. OWENS

SHARON G. DICKINSON
HOWARD S. BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

KEANDRE VALENTINE
NDOC No. 1187170
c/o Ely State Prison
P.O. Box 1989
Ely, NV 89301

BY /s/ Carrie M. Connolly
Employee, Clark County Public
Defender's Office

EXHIBIT A

Steven D. Grierson

MOT
PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
Tegan Machnich, Deputy Public Defender
Nevada Bar No. 11642
Tyler Gaston, Deputy Public Defender
Nevada Bar No. 13488
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4588
Facsimile: (702) 383-2849
Attorneys for Defendant

HEARING REQUIRED
DISTRICT COURT DATE: 7/2/18
CLARK COUNTY, NEVADA TIME: 9:00 AM
MH

THE STATE OF NEVADA,

Plaintiff,

v.

KEANDRE VALENTINE,

Defendant,

CASE NO. C-16-316081-1

DEPT. NO. II

DATE: July 2, 2018

TIME: 9:00 a.m.

DEFENDANT'S MOTION TO RECONSTRUCT THE RECORD

COMES NOW, the Defendant, Keandre Valentine, by and through his attorneys, TEGAN C. MACHNICH and TYLER C. GASTON, Deputy Public Defenders, and respectfully moves this Honorable Court to reconstruct the record regarding the following: 1) defense proposed Exhibits L, K, and U were incorrectly labeled in the court exhibit list and on the exhibits as "withdrawn;" the record regarding these exhibits should be changed to reflect that they were offered by the Defense, State objected, and court ruled they would not be admitted; and (2) any and all email correspondence sent to the court by the parties should be made part of the district court record as court exhibits. This Motion is made and based upon all the papers and

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1 pleadings on file herein, the attached Declarations of Counsel, and oral argument at the time set
2 for hearing this Motion.

3 DATED this 14, 2018.

4 PHILIP J. KOHN
5 CLARK COUNTY PUBLIC DEFENDER

6 By: /s/ Tegan C. Machnich
7 TEGAN C. MACHNICH, #11642
8 Deputy Public Defender

9 PHILIP J. KOHN
10 CLARK COUNTY PUBLIC DEFENDER

11 By: /s/ Tyler C. Gaston
12 TYLER C. GASTON, #13488
13 Deputy Public Defender
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POINTS AND AUTHORITIES

I.

FACTS

On August 4, 2017, a jury convicted Keandre Valentine of 14 felonies. Exhibit A. The Judgment of Conviction was filed on October 16, 2017. Exhibit B. Keandre filed a notice of appeal on November 6, 2017. Exhibit C.

During the appellate process, Appellate Counsel discovered several defense proposed exhibits that the court clerk marked as withdrawn on her list and on the back of the exhibits. Exhibit D. However, the transcript did not reflect the trial attorneys withdrew these exhibits. Exhibit E; *See Declaration of Sharon G. Dickinson*.

The trial transcript for day 8 of trial, August 2, 2017, shows the Defense offered proposed Exhibits L, K, and U. Exhibit E. State objected but agreed to stipulate to another exhibit, Exhibit 196. Exhibit E and F. After hearing argument, the court ruled the defense proposed exhibits would not be admitted. Exhibit E. Because the defense trial attorneys never sought to withdraw proposed defense exhibits L, K, and U, these exhibits should not be marked as withdrawn. *See Affidavit of Tegan Machnich*.

Keandre asks this court to correct the record to reflect proposed defense exhibits L, K, and U were offered, State objected, and court ruled they would not be admitted.

Additionally, on day 5 of the trial, on July 28, 2017, court indicated he would send the parties an email during the weekend outlining his decision on the introduction of Keandre's jail calls. Exhibit F. Court further said the parties could send him points and authorities for his consideration. Although the court made his email a court exhibit, there are no emails from the parties in the court record. Exhibit G. Therefore, Keandre asks the court to make any emails the

1 court received from the parties regarding any matters part of the record by making them court
2 exhibits.

3 II.

4 RECONSTRUCTION OR CLARIFICATION OF THE RECORD.

5 District Courts in Nevada are public courts of record. NRS 1.020; NRS 1.090. Based on
6 this mandate, at a criminal trial, the court reporter or recorder shall "take down" or record "...all
7 the testimony, the objections made, the rulings of the court, the exceptions taken..." NRS 3.320,
8 NRS 3.380. ABA standards note that: "The trial judge has the duty to see that the reporter makes
9 a true, complete, and accurate record of all the proceedings." ABA Standards for Criminal
10 Justice: Special Functions of the Trial Judge, Standard 6-17 (3rd Ed, 2000).

12 When something is missing from the record, the parties have an obligation to reconstruct
13 or clarify the record. If an objection or argument or exhibit is not recorded or not made part of
14 the record or if the transcript is incomplete, the Nevada Supreme Court allows for reconstruction
15 of the record. See *Lopez v. State*, 105 Nev. 68, 769 P.2d 1276 (1989) (reconstruction when a
16 portion of the testimony was missing). Reconstruction not only applies to what is said during the
17 trial but may also be used to describe what was viewed in the courtroom. Accordingly, in
18 *Philips v. State*, 105 Nev. 631, 782 P.2d 381 (1989), the court suggested that appellate counsel
19 could put together a statement regarding the race of the prospective jurors when there was an
20 issue regarding a *Batson* claim but the record did not include any reference to the race of the
21 prospective jurors. Additionally, in *Quangbengboune v. State*, 220 P.3d 1122 (Nev. 2009), the
22 Court held that the trial record could be modified or corrected when inaccuracies in the
23 interpreter's translations of the defendant's testimony were verified during the appellate process.
24 The *Quangbengboune* Court held that the defendant could bring a motion in district court pursuant
25 to NRAP 10 (c) to correct the record.
26
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1 The basis for a motion for reconstruction as found within NRAP 10(c) provides that:

2 if any difference arises as to whether the trial court record truly
3 discloses what occurred in the district court, the difference shall
4 be submitted to and settled by that court and the trial court record
5 made to conform to the truth. (Emphasis added)

6 In view of this, the district court has the authority to reconstruct off the record discussions or
7 missing objections and arguments and to clarify the rulings in order to protect Keandre's right to
8 due process on appeal and to ensure that he is given the correct standard of review on appeal.

9 In this case, the trial record incorrectly indicates Defense proposed exhibits K, L, and U
10 were withdrawn. Because Keandre plans to argue on appeal that the trial court erred by rejecting
11 his proposed exhibits, the error in the marking of the exhibits needs to be corrected. Likewise,
12 Keandre plans to challenge the court's ruling on the jail recordings and therefore needs any and
13 all emails not currently part of the record to be included.
14

15 III. CONCLUSION

16 In view of the above, Keandre Valentine asks this court to grant his motion and
17 reconstruct the record of his trial so that: (1) defense proposed Exhibits L, K, and U are recorded
18 as being offered by the Defense, State objected, and court ruled they would not be admitted; and
19 (2) any and all email correspondence sent to the court by the parties are made part of the record
20 as court exhibits.
21

22 DATED this 14th day of June, 2018.

23 PHILIP J. KOHN
24 CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

25 By: /s/ Tegan C. Machnich
26 TEGAN C. MACHNICH, #11642
27 Deputy Public Defender

By: /s/ Tyler C. Gaston
TYLER C. GASTON, #13488
Deputy Public Defender

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YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Defendant's Motion to Reconstruct the Record on for hearing on the 2nd day of July, 2018 at 9:00 a.m. in Department 2 of the District Court.

DATED this 5th day of April, 2018.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER.

By: /s/ Tegan C. Machnich
TEGAN C. MACHNICH, #11642
Deputy Public Defender

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Tyler C. Gaston
 TYLER C. GASTON, #13488
 Chief Deputy Public Defender

I hereby certify that service of the above and forgoing Defendant's Motion to Reconstruct the Record was served via electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountynyda.com on this 14th day of June, 2018.

By: /s/ Annie McMahan
An employee of the
Clark County Public Defender's Office

AFFIDAVIT

1 STATE OF NEVADA)
2) ss:
3 COUNTY OF CLARK)

4 Tegan C. Machnich, having been first duly sworn, deposes and states the following:

5 1. I was the trial attorney assigned to handle the defense of Keandre Valentine in the
6 case of State v. Valentine, C-16-316081-1, which went to trial in July/August 2017. During trial, the
7 defense proffered booking photos of alternate suspect Bobby McCoy, depicted in Defense Exhibits
8 K, L and U. Exhibit D. On the eighth day of trial, on August 2, 2017, the Court addressed these
9 photographs outside the presence of the jury prior to defense witness testimony. Exhibit E.

11 3. After hearing argument, the Court agreed with the State that only one front facing
12 individual photo of Mr. McCoy should be admitted. The State's version of the Bobby McCoy photo
13 with only his front facial view was ultimately admitted on August 2, 2017 as State's Exhibit 196 by
14 stipulation of the parties. Exhibit F. The Defense did not have an independent objection to State's
15 Exhibit 196.
16

17 4. On the official Defense Exhibit List prepared by the Court Clerk, Defense Exhibits
18 K, L and U are marked as "withdrawn" – this notation is, to my memory, improper. Exhibit D. I did
19 not withdraw them, they were disallowed.
20

21 5. After reviewing the trial transcripts and arguments made contemporaneously, the
22 record shows that the Court ruled against the Defense. Exhibit E. Thus it is true that Defense
23 Exhibits K, L and U were never admitted, but they were also never withdrawn.

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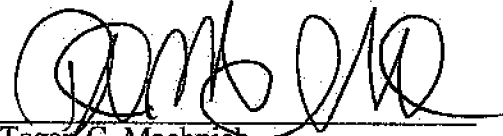
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1 6. For purposes of appeal, we are requesting that the Court remedy this erroneous
2 notation on the Defense Exhibit List and on the exhibits. I ask that the exhibits and the exhibit list
3 reflect that the proposed defense exhibits L, K, and U were offered, State objected, and court ruled
4 they would not be admitted.
5

6
7 I declare under penalty of perjury that the foregoing is true and correct.

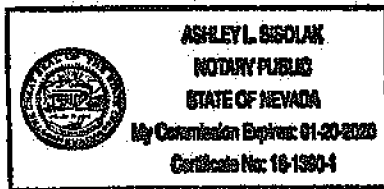
8 EXECUTED on June 14th, 2018.

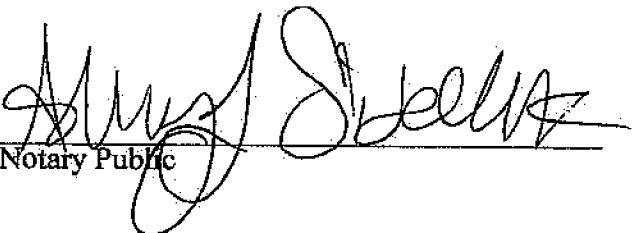
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10 
11 Tegan C. Machnich

12
13 **ACKNOWLEDGMENT**

14 STATE OF Nevada
15 COUNTY OF Clark) ss.

16
17 On the 14 day of June, 2018, personally appeared before me, a Notary Public in
18 and for the said County and State, Tegan Machnich, who acknowledged to me that the
19 foregoing Affidavit was executed freely and voluntarily.




Notary Public

DECLARATION OF SHARON G. DICKINSON

1. I am an attorney licensed to practice law in the State of Nevada; I am a deputy public defender assigned to handle the appeal of this matter; I am familiar with the procedural history of this case.

2. During the appellate process, I discovered several defense proposed exhibits that the court clerk marked as withdrawn on her list and on the back of the exhibits. Exhibit D. However, the transcript on August 2, 2017, did not reflect the trial attorneys withdrew these exhibits. Exhibit E.

3. I also noted that on day 5 of the trial, on July 28, 2017, the trial court indicated he would send the parties an email during the weekend outlining his decision as to whether or not he would allow the State to introduce all or part or none of Keandre's jail calls. Exhibit F. Court further said the parties could send him points and authorities for his consideration. Although the court made his email to the parties a court exhibit, there are no emails from the parties in the court record. Exhibit G.

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4. On or about June 11, 2018, I began discussing these issues with the trial attorneys and went through the record with them on June 13, 2018. As a result of our discussions I assisted the trial attorneys prepare this motion to reconstruct the record.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on the 14th day of June, 2017.

/s/ Sharon G. Dickinson
SHARON G. DICKINSON
Chief Deputy Public Defender
Bar No. 3710
702-455-4588

EXHIBIT A

AUG 04 2017

BY Natalie Ortega
NATALIE ORTEGA, DEPUTY

VER

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

KEANDRE VALENTINE,

Defendant.

CASE NO: C-16-316081-1

DEPT NO: II

VERDICT

We, the jury in the above entitled case, find the Defendant KEANDRE VALENTINE,
as follows:

COUNT 1 - ROBBERY WITH USE OF A DEADLY WEAPON

(Please check the appropriate box, select only one)

☒ Guilty of Robbery With Use Of A Deadly Weapon

☐ Guilty of Robbery

☐ Not Guilty

COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

(Please check the appropriate box, select only one)

☒ Guilty of Burglary While In Possession Of A Deadly Weapon

☐ Guilty of Burglary

☐ Not Guilty

COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

(Please check the appropriate box, select only one)

☒ Guilty of Robbery With Use Of A Deadly Weapon

☐ Guilty of Robbery

☐ Not Guilty

C-16-316081-1

VER
Verdict
4871590



1 **COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON**

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

3 ☒ Guilty of Robbery With Use Of A Deadly Weapon

4 ☐ Guilty of Robbery

5 ☐ Not Guilty

6 **COUNT 5 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON**

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

8 ☒ Guilty of Burglary While In Possession Of A Deadly Weapon

9 ☐ Guilty of Burglary

10 ☐ Not Guilty

11 **COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON**

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

13 ☒ Guilty of Robbery With Use Of A Deadly Weapon

14 ☐ Guilty of Robbery

15 ☐ Not Guilty

16 **COUNT 7 - ROBBERY WITH USE OF A DEADLY WEAPON**

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

18 ☒ Guilty of Robbery With Use Of A Deadly Weapon

19 ☐ Guilty of Robbery

20 ☐ Not Guilty

21 **COUNT 8 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON**

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

23 ☒ Guilty of Attempt Robbery With Use Of A Deadly Weapon

24 ☐ Guilty of Attempt Robbery

25 ☐ Not Guilty

1 **COUNT 9 - ROBBERY WITH USE OF A DEADLY WEAPON**

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

- 3 ☒ Guilty of Robbery With Use Of A Deadly Weapon
4 ☐ Guilty of Robbery
5 ☐ Not Guilty

6 **COUNT 10 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON**

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

- 8 ☒ Guilty of Burglary While In Possession Of A Deadly Weapon
9 ☐ Guilty of Burglary
10 ☐ Not Guilty

11 **COUNT 11 - ROBBERY WITH USE OF A DEADLY WEAPON**

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

- 13 ☒ Guilty of Robbery With Use Of A Deadly Weapon
14 ☐ Guilty of Robbery
15 ☐ Not Guilty

16 **COUNT 12 - POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING**
17 **INFORMATION**

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

- 19 ☒ Guilty of Possession Of Document Or Personal Identifying Information
20 ☐ Possession of Stolen Property
21 ☐ Not Guilty

22 **COUNT 13 - POSSESSION OF CREDIT OR DEBIT CARD WITHOUT**
23 **CARDHOLDER'S CONSENT**

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

- 25 ☒ Guilty of Possession Of Credit Or Debit Card Without Cardholder's
26 ☐ Possession of Stolen Property
27 ☐ Not Guilty
28

1 COUNT 14 - POSSESSION OF CREDIT OR DEBIT CARD WITHOUT
2 CARDHOLDER'S CONSENT

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

4 ☒ Guilty of Possession Of Credit Or Debit Card Without Cardholder's
5 Consent

6 ☐ Possession of Stolen Property

7 ☐ Not Guilty

8 DATED this 4 day of August, 2017

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10 Kenny L. Day
11 FOREPERSON
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EXHIBIT B

Steven D. Grierson

JOC

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C-16-316081-1

-vs-

KEANDRE VALENTINE
#5090875

DEPT. NO. II

Defendant.

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165, COUNT 2 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060, COUNT 3 – ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165, COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165, COUNT 5 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 7 - ROBBERY WITH USE OF

1 A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165;
2 COUNT 8 – ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B
3 Felony) in violation of NRS 200.380, 193.330, 193.165; COUNT 9 - ROBBERY WITH
4 USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380,
5 193.165; COUNT 10 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON
6 (Category B Felony) in violation of NRS 205.060; COUNT 11 - ROBBERY WITH USE
7 OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165;
8 COUNT 12 – POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING
9 INFORMATION (Category E Felony) in violation of NRS 205.465; COUNT 13 –
10 POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT
11 (Category D Felony) in violation of NRS 205.690 and COUNT 14 - POSSESSION OF
12 CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (Category D
13 Felony) in violation of NRS 205.690; and the matter having been tried before a jury and
14 the Defendant having been found guilty of the crimes of COUNT 1 – ROBBERY WITH
15 USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380,
16 193.165, COUNT 2 – BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON
17 (Category B Felony) in violation of NRS 205.060, COUNT 3 – ROBBERY WITH USE
18 OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165,
19 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in
20 violation of NRS 200.380, 193.165, COUNT 5 – BURGLARY WHILE IN POSSESSION
21 OF A DEADLY WEAPON (Category B Felony) in violation of NRS 205.060; COUNT 6 -
22 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of
23 NRS 200.380, 193.165; COUNT 7 - ROBBERY WITH USE OF A DEADLY WEAPON
24 (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 8 – ATTEMPT

1 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of
2 NRS 200.380, 193.330, 193.165; COUNT 9 - ROBBERY WITH USE OF A DEADLY
3 WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 10 -
4 BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony)
5 in violation of NRS 205.060; COUNT 11 - ROBBERY WITH USE OF A DEADLY
6 WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 12 -
7 POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION
8 (Category E Felony) in violation of NRS 205.465; COUNT 13 - POSSESSION OF
9 CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (Category D
10 Felony) in violation of NRS 205.690 and COUNT 14 - POSSESSION OF CREDIT OR
11 DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (Category D Felony) in violation
12 of NRS 205.690; thereafter, on the 28th day of September, 2017, the Defendant was
13 present in court for sentencing with counsel Tegan Machnich, Deputy Public Defender,
14 and good cause appearing,
15
16

17
18 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in
19 addition to the \$25.00 Administrative Assessment Fee, \$1,000.00 Restitution and
20 \$150.00 DNA Analysis Fee including testing to determine genetic markers plus \$3.00
21 DNA Collection Fee, the Defendant is SENTENCED to the Nevada Department of
22 Corrections (NDC) as follows: **COUNT 1** - a MAXIMUM of FIVE (5) YEARS with a
23 MINIMUM Parole Eligibility of TWO (2) YEARS, plus a CONSECUTIVE term of THREE
24 (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly
25 Weapon, total 3-8 years; **COUNT 2** - a MAXIMUM of EIGHT (8) YEARS with a
26 MINIMUM parole eligibility of THREE (3) YEARS, to run CONCURRENT with COUNT
27 1; and **COUNT 3** - a MAXIMUM of FIVE (5) YEARS with a MINIMUM Parole Eligibility
28

1 of TWO (2) YEARS, plus a CONSECUTIVE term of THREE (3) YEARS with a
2 MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, to run
3 CONSECUTIVE to Count 1, total 3-8 years; **COUNT 4** - a MAXIMUM of FIVE (5)
4 YEARS with a MINIMUM Parole Eligibility of TWO (2) YEARS, plus a CONSECUTIVE
5 term of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the
6 Use of a Deadly Weapon, to run CONSECUTIVE to Count 1 and 3, total 3-8 years;
7 **COUNT 5** - a MAXIMUM of EIGHT (8) YEARS with a MINIMUM parole eligibility of
8 THREE (3) YEARS, to run CONCURRENT with Counts 1, 2, 3 and 4; **COUNT 6** - a
9 MAXIMUM of FIVE (5) YEARS with a MINIMUM Parole Eligibility of TWO (2) YEARS,
10 plus a CONSECUTIVE term of THREE (3) YEARS with a MINIMUM parole eligibility of
11 ONE (1) YEAR for the Use of a Deadly Weapon, to run CONSECUTIVE to Count 1, 3
12 and 4, total 3-8 years; **COUNT 7** - a MAXIMUM of FIVE (5) YEARS with a MINIMUM
13 Parole Eligibility of TWO (2) YEARS, plus a CONSECUTIVE term of THREE (3) YEARS
14 with a MINIMUM parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, to
15 run CONSECUTIVE to Counts 1, 3, 4, and 6; total 3-8 years; **COUNT 8** - a MAXIMUM
16 of EIGHT (8) YEARS with a MINIMUM parole eligibility of THREE (3) YEARS, to run
17 CONCURRENT with Counts 1, 2, 3, 4, 5, 6 and 7; **COUNT 9** - a MAXIMUM of FIVE (5)
18 YEARS with a MINIMUM Parole Eligibility of TWO (2) YEARS, plus a CONSECUTIVE
19 term of THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR for the
20 Use of a Deadly Weapon, to run CONSECUTIVE to Count 1, 3, 4, 6 AND 7, total 3-8
21 years; **COUNT 10** a MAXIMUM of EIGHT (8) YEARS with a MINIMUM parole eligibility
22 of THREE (3) YEARS, to run CONCURRENT with Counts 1, 2, 3, 4, 5, 6, 7, 8 and 9;
23 **COUNT 11** - a MAXIMUM of FIVE (5) YEARS with a MINIMUM Parole Eligibility of
24 TWO (2) YEARS, plus a CONSECUTIVE term of THREE (3) YEARS with a MINIMUM
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1 parole eligibility of ONE (1) YEAR for the Use of a Deadly Weapon, total 3-8 years, to
2 run CONCURRENT with Counts 1, 3, 4, 6 7, 8, 9 and 10,; **COUNT 12** – a MAXIMUM
3 OF THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR, to run
4 concurrent WITH Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11; **COUNT 13** - a MAXIMUM
5 OF THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR, to run
6 concurrent WITH Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12; **COUNT 14** - a
7 MAXIMUM OF THREE (3) YEARS with a MINIMUM parole eligibility of ONE (1) YEAR,
8 to run concurrent WITH Counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 11, 12 and 13; with FOUR
9 HUNDRED AND EIGHTY-NINE (489) DAYS credit for time served. The AGGREGATE
10 TOTAL sentence is FORTY-EIGHT (48) YEARS MAXIMUM with a MINIMUM PAROLE
11 ELIGIBILITY OF EIGHTEEN (18) YEARS.
12
13

14 DATED this 16th day of October, 2017.
15
16

17
18 
19 RICHARD SCOTTI
20 DISTRICT COURT JUDGE
21
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EXHIBIT C



1 NOAS
2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR No. 0556
4 309 South Third Street, Suite 226
5 Las Vegas, Nevada 89155
6 (702) 455-4685
7 Attorney for Defendant

8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA
11

12 THE STATE OF NEVADA,)

13 Plaintiff,)

14 v.)

15 KEANDRE VALENTINE,)

16 Defendant.)

CASE NO. C-16-316081-1

DEPT. NO. II

17 NOTICE OF APPEAL

18 TO: THE STATE OF NEVADA

19 STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY,
20 NEVADA and DEPARTMENT NO. II OF THE EIGHTH JUDICIAL
21 DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE
22 COUNTY OF CLARK.

23 NOTICE is hereby given that Defendant, Keandre
24 Valentine, presently incarcerated in the Nevada State Prison,
25 appeals to the Supreme Court of the State of Nevada from the
26 judgment entered against said Defendant on the 16th day of October,
27 2017, whereby he was convicted of Ct. 1 - Robbery With Use of a
28 Deadly Weapon; Ct. 2 - Burglary While in Possession of a Deadly
Weapon; Ct. 3 - Robbery With Use of a Deadly Weapon; Ct. 4 -
Robbery With Use of a Deadly Weapon; Ct. 5 - Burglary While in
Possession of Deadly Weapon; Ct. 6 - Robbery With Use of a Deadly
Weapon; Ct. 7 - Robbery With Use of a Deadly Weapon; Ct. 8 -
Attempt Robbery With Use of a Deadly Weapon; Ct. 9 - Robbery With
Use of a Deadly Weapon; Ct. 10 - Burglary While in Possession of a

1 Deadly Weapon; Ct. 11 - Robbery With Use of a Deadly Weapon; Ct.
2 12 - Possession of Document or Personal Identifying Information;
3 Ct. 13 - Possession of Credit or Debit Card Without Cardholder's
4 Consent; Ct. 14 - Possession of Credit or Debit Card Without
5 Cardholder's Consent and sentenced to \$25 Admin. Fee; \$1,000
6 restitution and \$150 DNA analysis fee; genetic markers plus \$3 DNA
7 collection fee; Ct. 1 - 2-5 years, plus a consecutive term of 1-3
8 years for the Use of a Deadly Weapon, total 3-8 years; Ct. 2 - 3-8
9 years to run concurrent with Ct. 1 and Ct. 3 - 2-5 years plus a
10 consecutive term of 1-3 years for Use of a Deadly Weapon to run
11 consecutive to Ct. 1, total 3-8 years. Ct. 4 - 2-5 years plus a
12 consecutive term of 1-3 years for Use of a Deadly Weapon to run
13 consecutive to Ct. 1 and 3, total 3-8 years; Ct. 5 - 3-8 years to
14 run concurrent with Cts. 1, 2, 3, and 4; Ct. 6 - 2-5 years plus a
15 consecutive term of 1-3 years for the Use of a Deadly Weapon; Ct.
16 7 - 2-5 years plus a consecutive term of 1-3 years for the Use of
17 a Deadly Weapon to run consecutive to Cts. 1, 3, 4, and 6, total
18 3-8 years; Ct. 8 - 3-8 years to run concurrent with Cts. 1, 2, 3,
19 4, 5, 6, and 7; Ct. 9 - 2-5 years plus a consecutive term of 1-3
20 years for the Use of a Deadly Weapon to run consecutive to Cts. 1,
21 3, 4, 6 and 7; total 3-8 years; Ct. 10 - 3-8 years to run
22 concurrent with Cts. 1, 2, 3, 4, 5, 6, 7, 8 and 9; Ct. 11 - 2-5
23 years plus a consecutive term of 1-3 years for the Use of a Deadly
24 Weapon, total 3-8 years to run concurrent with Cts. 1, 3, 4, 6, 7,
25 8, 9 and 10; Ct. 12 - 1-3 years to run concurrent with Cts. 1, 2,
26 3, 4, 5, 6, 7, 8, 9, 10 and 11; Ct. 13 - 1-3 years to run
27 concurrent with Cts. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12; Ct.
28 14 - 1-3 years to run concurrent with Cts. 1, 2, 3, 4, 5, 6, 7, 8,

1 9, 10, 11, 12, and 13 with 489 days CTS. The aggregate total
2 sentence is 18-48 years.

3 DATED this 6th day of November, 2017.

4 PHILIP J. KOHN
5 CLARK COUNTY PUBLIC DEFENDER

6
7 By: /s/ Howard S. Brooks
8 HOWARD S. BROOKS, #3374
9 Deputy Public Defender
309 S. Third Street, Ste. 226
Las Vegas, Nevada 89155
(702) 455-4685

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing
was made this 6th day of November, 2017 by Electronic Filing to:

District Attorneys Office

E-Mail Address:

PDMotions@clarkcountydade.com

Jennifer.Garcia@clarkcountydade.com

Eileen.Davis@clarkcountydade.com

/s/ Carrie M. Connolly

Secretary for the
Public Defender's Office

EXHIBIT D

DEFENSE

EXHIBIT(S) LIST

Case No.: C316081

Dept. No.: 2

Plaintiff:

State of Nevada

vs.

Defendant:

KEANDRE VALENTINE

Hearing Date: 7/24/17

Judge: R. Scotti

Court Clerk: Natalie Ortega

Recorder: Dalyn Easley

Counsel for Plaintiff: AGNES LEXIS / MICHAEL DICKERSON

Counsel for Defendant: TYLER GASTON / TEGAN MACHNICH

TRIAL BEFORE THE COURT

DEFT'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
A.	Photo	7/27/17	NO	7/27/17
B.	Photo - HTC	7/27/17	NO	7/27/17
C.	Photo - black cell phone	7/27/17	NO	7/27/17
D.	Photo - blanket + phone	7/27/17	NO	7/27/17
E.	DVD - body cam	7/27/17	NO	7/27/17
F.	Set prints - McCoy, Bobby	7/31/17	NO	7/31/17
G.	Prints - McCoy - LP 16 - 01601.2	7/31/17	NO	7/31/17
H.	Print excluded	7/31/17	NO	7/31/17
I.	right mid. Finger print - LVMPD	7/31/17	NO	7/31/17
J.	Line up - 6 pack	7/31/17	NO	7/31/17
K.	Photo WITHDRAWN 8-1-17	8-1-17	NOT ADMITTED	
L.	photo WITHDRAWN 8-1-17	8-1-17	NOT ADMITTED	
M.	Dr. Smith - VITA "CV"	8-1-17	NO	8-1-17
N.	DOC - NOW A COURT	8-1-17		

EXHIBIT # 22

Enter Case No. C316081

Enter Plaintiff

vs.

Enter Defendant

DEFENDANT'S EXHIBITS

The State of Nevada

Keandre Valentine

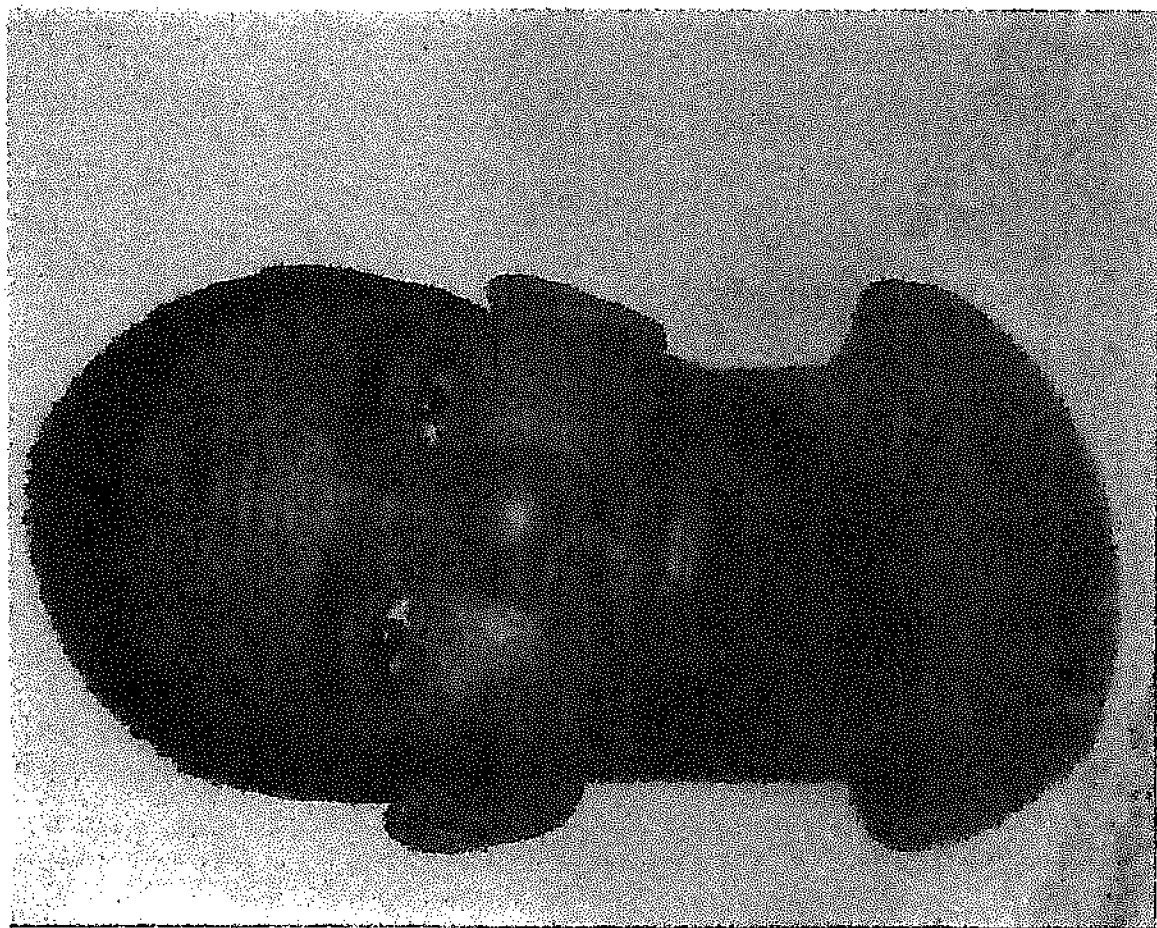
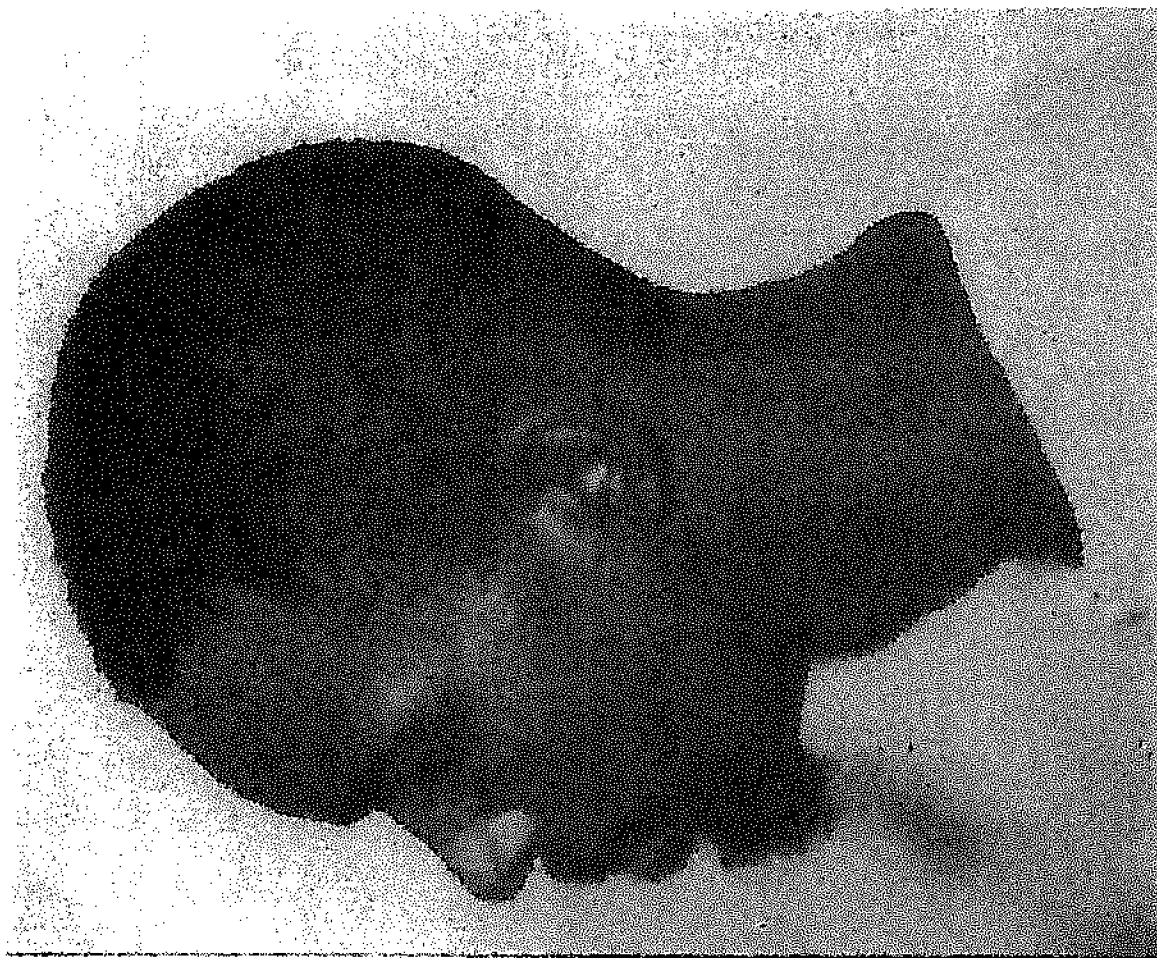
WITHDRAWN

Marked for Identification

Case # C310081

Proposed Exhibit #

Withdrawn



~~Marked for Identification~~
Case # ~~0316.081~~ *withdrawing*
Proposed Exhibit # ~~L~~

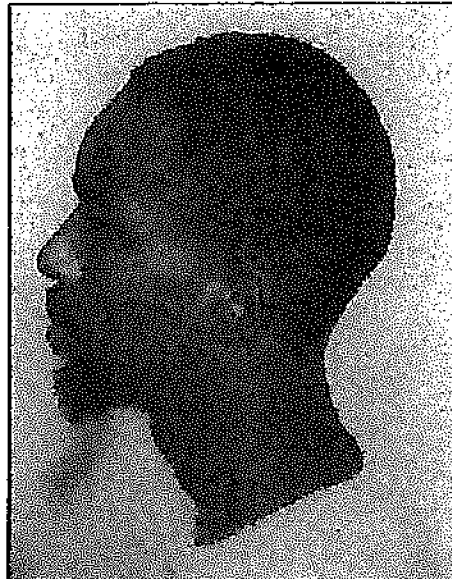
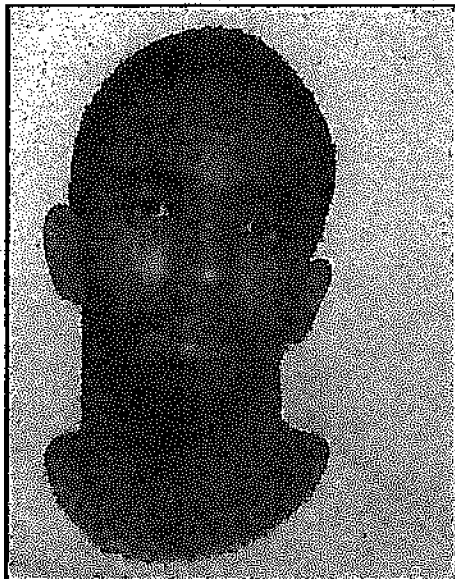


MARKED FOR IDENTIFICATION
PROPOSED EXHIBIT U
[] Plaintiff [X] Defendant
Case No. C31608

Withdrawn

Las Vegas Metropolitan Police Department

MCCOY, BOBBY EUGENE



7037886 12/13/2016

EXHIBIT E

1 LAS VEGAS, NEVADA, WEDNESDAY, AUGUST 2, 2017

2 [Case called at 10:14 a.m.]

3 [Outside the presence of the jury.]

4 MS. MACHNICH: Your Honor, would you like to address our
5 evidentiary issues now or wait for Mr. Dickerson to return? Ms. Lexis is deferring
6 to the court.

7 THE COURT: Ms. Lexis what?

8 MS. MACHNICH: I -- I have a couple evidentiary issues that are
9 going to come up with the first -- within the first 10 minutes this morning.

10 THE COURT: Okay.

11 MS. MACHNICH: And I -- instead of bringing the jury in and trying to
12 approach then, I was going to bring them up ahead of time. I would like to do that
13 now.

14 THE COURT: Okay. Sure.

15 MS. MACHNICH: Okay. Mr. Dickerson is back. Okay.

16 So, Your Honor, here are two things. It's two pieces of evidence --
17 well, there's three pieces of evidence. One, I don't have any anticipation that
18 there should be issues with, and that is the valet ticket and it has been provided to
19 the State -- or the valet printout form that's kept by the valet location.

20 I have two other witnesses who are coming. They're both Metro
21 employees. They're sitting outside. One is in relation to Bobby McCoy's booking
22 photos. And one is in relation to Bobby McCoy's SCOPE.

23 First, with the booking photo, I believe it is obviously relevant, as it is
24 our theory of defense. I will be proposing the copy that is provided to us by Metro.
25 I see that it's clearly relevant, and I don't believe that it's overly prejudicial,

1 because Bobby McCoy is not a -- he -- he's not a party to this case. Nothing
2 about why he was booked is coming into evidence, but it is a booking photo, and,
3 specifically, it also has the date on it, which is important given that appearances
4 change over time. And I will proffer to the court that the picture specifically states
5 that it was from December 2016. And that's the actual version that was provided
6 to us by Metro. I have a person here from Metro to testify to its authenticity and
7 how it's kept in business records. So I will be proffering that into evidence. I
8 anticipate the State will object to the fact that it is a booking photo and that there
9 are multiple shots. Because we've -- we've discussed this. There are multiple --
10 there's this front and a side, and that it be referred to as a booking photo.

11 I don't believe that they even have standing to say that it's overly
12 prejudicial, as this is a nonparty to this case. It is within their purview to bring in
13 what he was arrested for if that comes up. He does not have the same rights in
14 this courtroom as this defendant, as he is not on trial here, and I do not intend to
15 elicit any testimony about whether he is -- what he was arrested for or anything
16 relating to that.

17 So I will be offering that into evidence. I do have the custodian of
18 records here, and I do have them marked as proposed exhibits, and it's
19 something that I know that the State is going to oppose, so I wanted to bring it up
20 before the jury.

21 I have another piece of evidence, but I'd like to turn it over to the State
22 on this piece of evidence right now.

23 THE COURT: All right.

24 MS. LEXIS: Your Honor --

25 THE COURT: What would the State like to say about the Bobby

1 McCoy booking photo?

2 MS. LEXIS: We did speak about this yesterday. And if I may
3 approach your clerk.

4 THE COURT: You may.

5 MS. LEXIS: I offered a stipulation to Ms. Machnich --

6 MS. MACHNICH: It's over on the other side.

7 MS. LEXIS: -- concerning this particular piece of evidence. She
8 wants to get in this -- well, actually she wants to get in this photo --

9 MS. MACHNICH: Actually not.

10 MS. LEXIS: -- [indiscernible.]

11 MS. MACHNICH: I'm actually just going to get in his actual booking
12 photos that were turned over by Metro. They're not the same.

13 THE COURT: Let's make sure we all know what you're talking about,
14 Ms. Machnich.

15 MS. MACHNICH: This, yes.

16 THE COURT: Which -- which photo?

17 MS. MACHNICH: I am proffering these. It's one of --

18 THE COURT: I can't see that far. Sorry. Okay.

19 MS. MACHNICH: Which is what we recovered both in color and then
20 we printed a black and white copy and a red market.

21 THE COURT: All right. Go sit down and let the State speak now.

22 MS. MACHNICH: Okay.

23 THE COURT: Thank you.

24 MS. LEXIS: I offered Ms. Machnich, when she told me of her intent to
25 bring in this particular photo, I said I had no objection to getting in this photo, just

1 a head shot, front-facing, of Mr. McCoy with -- I would stipulate that this is, in fact,
2 Mr. McCoy, and that this photograph was taken December of 2016. Whatever
3 date it was.

4 I indicated to her that I would not stipulate to a photograph which
5 would give the inference of it being a booking photo, thus inferring or putting a
6 false impression out that this particular individual has been a -- has been booked
7 before, has an arrest history, has -- I -- I -- that's just -- that's not relevant to this
8 particular case.

9 So I think they're trying to get out the -- I -- I also objected to the ID
10 number coming in, because that does give an inference of -- of a criminal history.
11 This is an individual that they claim is an alternate suspect. And so I don't think
12 so they get to get in otherwise inadmissible pieces of evidence on the guise of,
13 well, we need to just, you know, get in this photo and all of this information
14 concerning.

15 What I think is relevant is the actual photo. It's an identification case.
16 He is an alternate suspect. I have no objection to getting in this photo.

17 THE COURT: Okay.

18 MS. LEXIS: I think the side photo is also prejudicial. We don't take
19 side photos for DMV, let's say. You know, I mean, on TV you know for sure that
20 the various shots of the inmates as they're booked is taken. So I think it leaves
21 that false inference of a criminal history, unnecessarily so. It's improper. It's
22 inadmissible. And I think, with a stipulation, they get in what they -- what they
23 need to.

24 THE COURT: Thank you.

25 Ms. Machnich, do you want to say anything more on this issue, before

1 I decide what to do?

2 MS. MACHNICH: Your Honor, yes, just briefly.

3 Again, it is our case in chief and it is our purview what we would like to
4 introduce into evidence. We had to subpoena this person to come, because there
5 were a lot of conditions placed on the stipulation. The person is now sitting
6 outside because of these conditions. And we believe that it is relevant. It is --
7 they don't even have standing to raise the prejudicial effect, because the person is
8 not here.

9 If the main issue is the ID number, one, it ties it into other pieces of
10 evidence saying this is, in fact, the same person that's being mentioned, so it
11 does provide identification in that manner. But additionally, it -- it's the true and
12 accurate copy of the booking photo that was received.

13 I don't even know what would -- I mean, if I brought in the custodian of
14 records and provided it without, I guess we could redact it, and that's fine. But it
15 does link together pieces of evidence showing that the ID number is, in fact,
16 carried through.

17 So I think all of it is relevant. We'd be willing to give up the booking
18 number, if you believe that's inappropriate identifiers on something. But it is a
19 booking photo. And it's actually not in -- in -- an inference that's incorrect. It's an
20 inference that is correct. And it is what it is, because this photo was taken, and
21 that's how we were able to obtain it.

22 It was taken through Metro records, it was taking the booking.

23 They are free to get into if they want to, what he was booked for, if
24 that's what they want to do. But he was, in fact, booked, and that's why we're
25 seeking to introduce it.

1 There's actually another booking photo that I just saw that the witness
2 had today from an earlier -- we had just requested the most recent. She did bring
3 both of them from December. The other one, to my viewing, is more prejudicial to
4 him, because he looks kind of drugged out and his head's tipped sideways, and
5 all of that. And I'm not seeking to get in duplicative copies. But just this one. And
6 I think it is appropriate in this case. Thank you.

7 THE COURT: All right. I -- I'm not going to allow the State to
8 introduce the booking photo. It's -- it's completely irrelevant. The jury cannot
9 draw inference that just because this guy, Bobby McCoy, has been a bad person
10 in the past that he might have been booked, that he might have been arrested,
11 that he might have been in jail, that he might have a criminal history. None of that
12 is relevant to the issue on whether defendant Valentine committed the crimes in
13 question.

14 So it's completely irrelevant. It'll be completely misleading to the jury,
15 confusing to the jury, and unfairly prejudicial to the State. There's absolutely no
16 way that this booking photo thing is coming in or these photos are coming in. All
17 right.

18 No -- no more --

19 MS. MACHNICH: So I will be proffering --

20 THE COURT: No more questions, no more discussion about it. All
21 right.

22 MS. MACHNICH: I -- I wanted to clarify. So then I will be bringing in
23 the picture without the booking and the instruction from the court would be --

24 THE COURT: The picture that Ms. Lexis says that can -- that can
25 come in, the picture can come in. All right. The name has been mentioned.

1 People are entitled to know what this guy who has been mentioned looks like.

2 MS. MACHNICH: Okay.

3 THE COURT: But you're not allowed to argue to this jury that -- that
4 we know that this crime was committed by Mr. McCoy, because Mr. McCoy has
5 been a bad guy in the past. Just --

6 MS. MACHNICH: That's not what I was planning to argue about.

7 THE COURT: Well, it's kind of what you are trying to do, which --
8 which -- there's no reason why someone's criminal history in the past is relevant in
9 this case. All right.

10 MR. GASTON: So we don't need the custodian of record --

11 THE COURT: No, no more argument. Didn't I say no more
12 argument?

13 MR. GASTON: I'm not arguing --

14 MS. MACHNICH: No --

15 MR. GASTON: We don't -- we don't need the custodian of records
16 anymore, then, right? If -- if we're -- if this is coming in through stipulation, we
17 don't need to call the custodian of records as a witness then, right?

18 MS. LEXIS: That's correct. That's what I indicated --

19 MR. GASTON: That's all I was talking about.

20 THE COURT: All right. Thank you.

21 MS. MACHNICH: Okay. So that -- so it's coming in through
22 stipulation, this picture, and the fact that the picture was taken in December 2016.

23 THE COURT: That's fine.

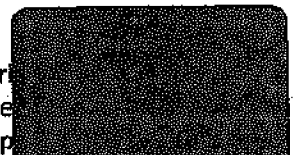
24 MS. LEXIS: Correct. Not a booking photo.

25 MS. MACHNICH: Okay.

1 MS. LEXIS: Just a -- just a photo.
2 MS. MACHNICH: Okay. Yeah.
3 THE COURT: So let the officer go back to do his job.
4 MS. MACHNICH: And it's -- it's a staff worker. It's not an officer.
5 THE COURT: All right.
6 MS. MACHNICH: But, of course.
7 You can go release the custodian from Metro for the photograph.
8 Yeah. Okay.
9 We'll release that witness.
10 THE COURT: All right.
11 MS. MACHNICH: Our next piece of evidence that we intend to
12 introduce is a --
13 THE COURT: You say the SCOPE. It's the -- the prior convictions of
14 McCoy.
15 MS. MACHNICH: No. Actually not.
16 THE COURT: No. Then what do you want?
17 MS. MACHNICH: I want the identifiers, because as --
18 THE COURT: The what? What's identifiers?
19 MS. MACHNICH: His height and weight.
20 THE COURT: Oh.
21 MS. MACHNICH: It's -- it is a part of the SCOPE. That's the only way
22 we can get into it. But it -- it specifically does not go into --
23 THE COURT: Was there any witness that testified that saw McCoy
24 who can testify to his characteristics?
25 MS. MACHNICH: Not specifically his height. They're not going to

EXHIBIT E

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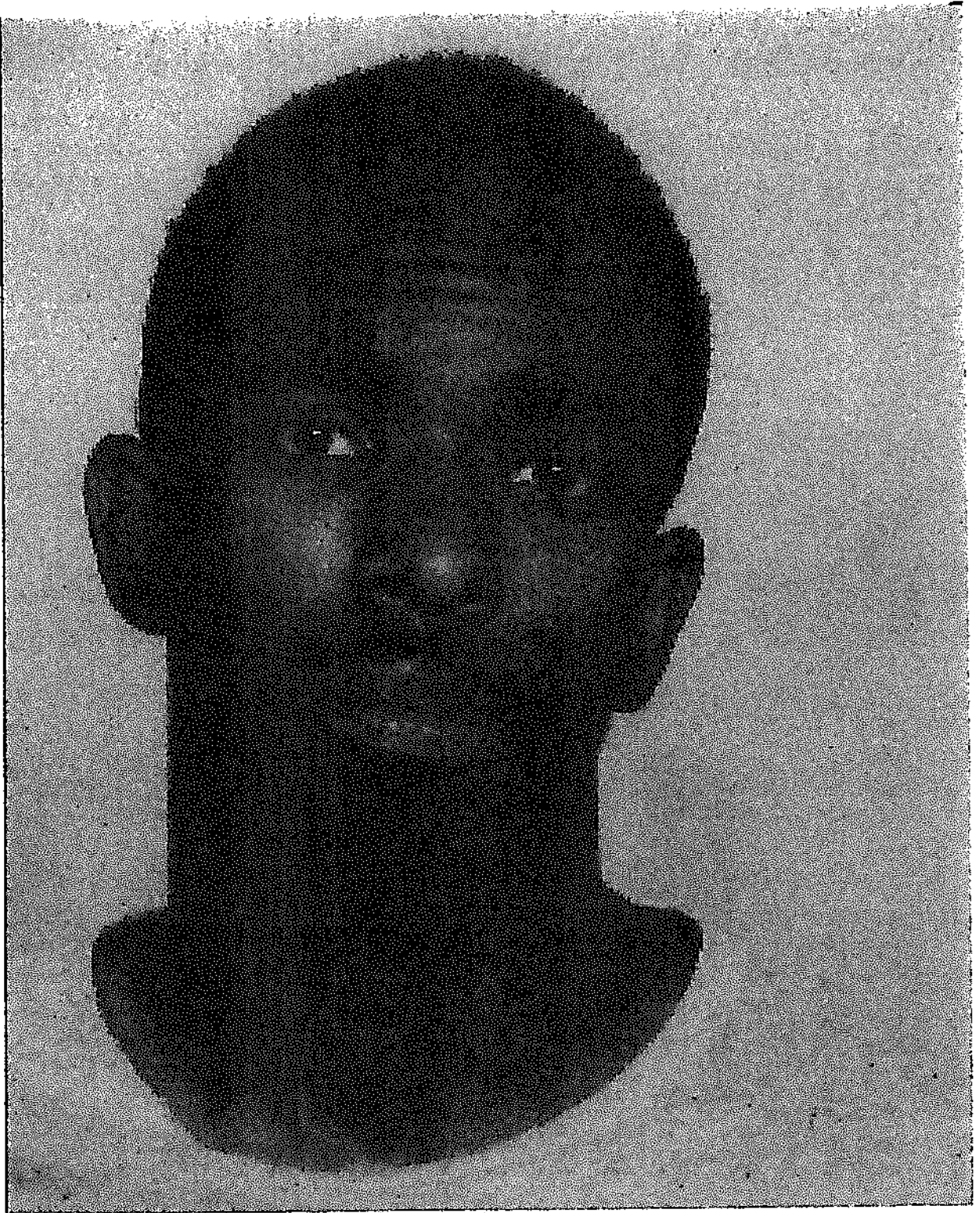



EXHIBIT F



1 **RTRAN**

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4
5 **THE STATE OF NEVADA,**

6 **Plaintiff,**

7 **vs.**

8 **KEANDRE VALENTINE,**

9 **Defendant.**

CASE NO. C-16-316081-1

DEPT. NO. II

10
11 **BEFORE THE HONORABLE RICHARD SCOTTI, DISTRICT COURT JUDGE**

12 **FRIDAY, JULY 28, 2017**

13 **TRANSCRIPT OF PROCEEDINGS RE:**
14 **JURY TRIAL - DAY 5**

15 *********

16
17 **APPEARANCES:**

18 **For the Plaintiff:**

AGNES M. LEXIS, ESQ.
Chief Deputy District Attorney
MICHAEL DICKERSON, ESQ.
Deputy District Attorney

19
20
21 **For the Defendant:**

TEGAN C. MACHNICH, ESQ.
Deputy Public Defender
TYLER GASTON, ESQ.
Deputy Public Defender

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23
24 **RECORDED BY: DALYNE EASLEY, COURT RECORDER**

1 MS. MACHNICH: So we need to do it in advance of them wanting to
2 proffer it so that we can --

3 THE COURT: Tell you what, why don't I do, like, a tentative ruling on
4 Tuesday, so you guys know where I'm leaning. And I'll, like --

5 MR. DICKERSON: On Monday, Your Honor?

6 THE COURT: I'm sorry. I'm sorry. Sunday.

7 MS. MACHNICH: Okay.

8 THE COURT: On Sunday I'll just send an e-mail to both of you. Can
9 you make sure you leave your e-mail addresses with my clerk, I'll give you my
10 tentative. There will be some -- some issues where I'm going to be -- have a firm
11 opinion, some where I just have a tentative. And -- and some of the tentatives you
12 might just want to accept, others you might want to argue.

13 MS. MACHNICH: Okay.

14 THE COURT: I'll give you guys each 10 minutes. Should we argue --
15 do you guys want to get here at 830, then, Monday?

16 MS. MACHNICH: That's fine.

17 THE COURT: So I have time to argue?

18 MR. DICKERSON: Sounds great, Your Honor.

19 MS. MACHNICH: Yep. That sounds good.

20 THE COURT: So 8:30 Monday then? Does that --

21 MR. DICKERSON: Sounds great.

22 THE COURT: -- does that work for the staff?

23 MR. GASTON: Your Honor, I have a question for scheduling --

24 THE COURT: Yes, sir.

25 MR. GASTON: -- on Tuesday.

1 THE COURT: Yes, sir.

2 MR. GASTON: I -- just curious -- when -- I guess, step 1, when are
3 you planning on us starting on Tuesday?

4 THE COURT: 11:15.

5 MR. GASTON: Okay. I have a child -- I have a child abuse prelim to
6 do in North Las Vegas, which has been continued now for about four months. I
7 don't think Judge Lee is going to allow me to continue it again, but I can start the
8 prelim at 9:00, so 11:15, I'll be -- that works. Perfect. That's why I was asking.

9 MS. MACHNICH: And our expert has to testify that afternoon,
10 because that's the one afternoon he's going to be here.

11 THE COURT: Okay.

12 MS. MACHNICH: But hopefully the State will be done on Monday.

13 THE COURT: Anything else, guys?

14 MS. LEXIS: Your Honor, would the court be amenable to us e-mailing
15 authority to the court over the weekend, so long as we CC the other party?

16 THE COURT: Yeah. If you want to submit anything to me, I'll treat it
17 as a -- as, like, a brief.

18 MS. LEXIS: Okay.

19 THE COURT: All right?

20 MS. LEXIS: Okay.

21 THE COURT: Just submit it as, like, points and authorities or trial brief
22 or bench brief.

23 MS. LEXIS: Yes, Your Honor.

24 THE COURT: Whatever you want to call it, I don't care.

25 MS. LEXIS: Yes, Your Honor.

1 THE COURT: On -- on any of these points we discussed, sure.

2 MS. MACHNICH: Okay. So you are going to consider that, because
3 now we can't go home to our families this weekend. We need to submit this
4 because we have to be equal.

5 MS. LEXIS: You know, Your Honor, this should have really been
6 raised --

7 MS. MACHNICH: So --

8 MS. LEXIS: -- had they had objections to these transcripts and
9 these -- these calls that they've had for over a year. This should have been raised
10 in a Motion in Limine .

11 MS. MACHNICH: Well, they didn't raise --

12 MS. LEXIS: However, they failed to do that.

13 MS. MACHNICH: -- a Motion in Limine to bring them in. So we didn't
14 know if they were going to use them.

15 THE COURT: Well, but you know what? It's discretionary. You don't
16 have to do it. Just keep it -- whatever you submit to me, can you keep it under
17 three pages, please?

18 MS. LEXIS: Yes.

19 MS. MACHNICH: Yes.

20 THE COURT: I -- I insist, under three pages.

21 MS. LEXIS: Yes, Your Honor.

22 THE COURT: All right. And that means a double-spaced three pages.

23 MS. LEXIS: Yes, Your Honor.

24 THE COURT: All right. And -- and you don't have to do anything to
25 get it to me by -- whenever you want to get it to me, get it to me by 10:00 a.m.

EXHIBIT G

Tentative Ruling on Defendant's Objection To State's Proposed Admission of Audio Recording and Transcript of Certain CCDC Phone Calls By Defendant

General Comments About the Court's Analysis

In considering the admissibility of each of the statements from the jail calls, the Court must first determine whether the statements are relevant. Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be with the evidence." NRS 48.015. Relevant evidence is admissible unless otherwise precluded by the law. NRS 48.025. The jail calls contains numerous relevant and irrelevant statements. The Court cannot make a blanket order that entire calls are admissible or inadmissible, but must carefully consider separately each statement, or grouping of statements.

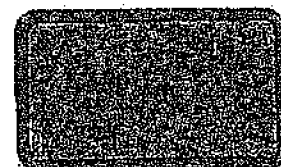
If a statement has at least slight relevance, then the Court proceeds to consider whether any rule of evidence calls for the exclusion of such evidence. For instance, the rules of evidence generally prohibit the admission of uncharged bad act evidence that is offered to show the Defendant has a bad character and propensity to commit the crimes charged. NRS 48.045. NRS 48.055. Some statements in the jail calls from persons other than the Defendant seem to contain inadmissible hearsay. NRS 51.065.

The next phase in the Court's analysis is to determine whether the probative value of the evidence is substantially outweighed by the danger of unfair prejudice caused by the evidence. NRS 48.035. As part of this analysis, the Court also considers whether the evidence would be confusing or misleading to the jury. Evidence is not unfairly prejudicial merely because it tends to prove that the defendant may be guilty. See, e.g., *United States v. Parker*, 549 F.2d 1217, 1222 (9th Cir. 1977) (holding evidence of the defendant's prior drug use was admissible in the robbery trial because it tended to show motive noting that "evidence relevant to defendant's motive is not rendered inadmissible merely because of its highly prejudicial nature . . . The best evidence often is!").

A. Phone Call on 5/28/16 at 6:16 P.M.

This phone call seems relevant because the Defendant makes an admission of his belief that he should have gone to "Mad Dog's" house (instead of Shaneese's house) on the day he was arrested. This discussion supports an inference that the Defendant knew he committed a crime, and was trying to evade arrest. Such inference is relevant to both the issue whether the Defendant committed a wrongful act, and the Defendant's state of mind in committing the act. *Abram v. State*, 95 Nev. 352, 356, 594 P.2d 1143, 1145 (1979). The relevance of the admission is high, and is not substantially outweighed by any risk of unfair prejudice, confusion, or misleading of the jury. NRS 48.035(1).

TENTATIVE: ADMITTED



B. Phone Call on 5/28/16 at 11:23 P.M.

This phone call can be divided into three main parts. Part One contains mainly a discussion of Defendant's frustration in being charged with 11 felony counts; reference to another incarcerated defendant named "Mike" that the Defendant appears to know; and discussion about being moved from the "bull pen" to a "unit." Part Two contains mainly a discussion about the police handling of the various phones found at the time of the arrest, and the Defendant's comment about "Don't give um the code to my phone." Part Three contains mainly a discussion about the Defendant needing money on his books.

The Court does not believe that Part One is relevant. Part One begins after the Operator states "You may begin speaking now," and ends about three pages later, after the State's proposed redaction, with the word's "No, what." The Court is concerned that this part of the call is very unfairly prejudicial to the Defendant because it depicts the Defendant using slang words, using curse words, using urban speech, and demonstrating an inside knowledge of the jail processes. The Court understands that foul language is not an automatic or necessary reason to exclude evidence. See, e.g., *United States v. McAtee*, 481 F.3d 1099, 1104 (8th Cir. 2007) (citing *United States v. Pirani*, 406 F.3d 543, 555 (8th Cir. 2005) (*en banc*), cert. denied, 546 U.S. 909, 126 S. Ct. 266, 163 L. Ed. 2d 239 (2005) (holding that admission of profanity was not unduly prejudicial)). But the Court does believe that foul language that puts the Defendant in a bad light is unduly prejudicial where the evidence constituting the foul language is not introduced for some probative purpose, and is not needed to provide context for other probative evidence.

Any relevance to the jail conversation seems to be slight, at best, and is substantially outweighed by the risk of unfair prejudice to the Defendant. NRS 48:035(1).

TENTATIVE RE PART ONE: EXCLUDED

The Court believes that there is moderate relevance to Part Two because the Court believes there is some confusion about what phones were allegedly taken from the alleged victims during the robberies, which phone belonged to the Defendant, which phones were confiscated by the police; and which phones are now in evidence. This jail phone call assists to some extent in providing information about the phones, which assists the jury in completing the story. Part Two begins with the words spoken by the Defendant "You got my, you got my phone right?", and ends with Defendant's statement: "Don't give um the code to my phone, they think they slick, they (inaudible) look at my pictures (inaudible) get in there."

With the exception of the last statement by the Defendant in this section, the relevance of the evidence is not substantially outweighed by the risk of unfair prejudice, confusion, or misleading the jury. The last statement, however, is a problem. This statement presents the Defendant as obstructing justice -- an uncharged bad act. It is not necessary for the State to discuss this uncharged bad act to "present a full and accurate account of the circumstances surrounding the commission of [the] crime." *Bracken v. State*, 104 Nev. 547 (1988). Finally, in this Part Two, there seems to be about one page of some irrelevant extraneous discussion beginning with "you talking hella sleepy," through "I said you going get

you some tea of something." This irrelevant extraneous discussion should be excluded because it has no probative value and depicts the Defendant using curse words, saying "shit happens."

TENTATIVE RE PART TWO: ADMITTED (Except, last statement by Defendant about "Don't give um the code" etc. is EXCLUDED; and the "shit happens" section is EXCLUDED).

As for Part Three (which begins with "Oh yea (inaudible)," about putting money on the defendant's account, there seems to be no probative value to this evidence. Any slight relevance is substantially outweighed by the risk of unfair prejudice because it shows the Defendant's familiarity with the jail processes, and leads the jury to believe he has been in jail before, and must be a bad person generally. NRS 48.035(1).

TENTATIVE RE PART THREE: EXCLUDED

C. Phone Call on 5/29/16 at 12:02 A.M.

This phone call can be divided into four main parts. Part One contains a discussion of the Defendant stating he is "angry at myself right now" and that he "tried" to stay out of trouble. Part Two contains various alleged bad acts, and begins with Defendant's statement "running his smart ass mouth," and goes through "she's a little sensitive." Part Three is a discussion of the victim identifications, and begins with "They talked to them," and runs through "I've heard pretty much of everything (inaudible)." Part Four is a discussion of the Defendant's phone and hiding of the gun parts.

Part One seems somewhat relevant in that it shows the Defendant has a guilty state of mind. The Defendant's admission that he is angry at himself is not excluded by the hearsay rule. It is not clear to the Court why the Defendant is angry with himself, or why he feels he only "tried" to stay out of trouble. A reasonable person could possibly draw a reasonable inference that the Defendant was angry at himself because he did not stay out of trouble, and felt guilty for the crimes charged. An alternative reasonable inference is that the Defendant felt guilty and angry because, despite following the law, he still got arrested for something he didn't do. In any event, the Defendant has not been found guilty for anything yet. So it is too speculative to try to determine what the Defendant meant by his statements. The moderate relevance of the statements are outweighed by the great risk of unfair prejudice to the Defendant. NRS 48.035(1).

TENTATIVE RE PART ONE: EXCLUDED

Part Two contains a series of uncharged bad acts that may be relevant in demonstrating the defendant's bad character. There is discussion about making his sister cry. There is also discussion about the need to "keep white bitch looking plain," and "out nigger fuck that snow Bunny" -- suggesting possibly some sort of pimping/pandering/prostitution activity. Any relevance does not matter because this uncharged bad act evidence is inadmissible. It is also highly unfairly prejudicial. NRS 48.035(1).

TENTATIVE RE PART TWO: EXCLUDED

may have been involved in some criminal activity with others; suggesting some other bad acts; and some possible conspiracy. Second, there is discussion about the Defendant not sending his friend money. This discussion runs from the statement "Wow" until the statements "Who ever car it is. Your bitch car, ya'll car, who ever."

TENTATIVE: ADMISSIBLE (except discussion about "the only one in jail," and not sending friend money).

Tentative Ruling On Defendant's Objection To Jury Receiving Evidence Of Such Calls By Way of Audio and Transcript

With respect to those portions of the phone calls that are admissible into evidence, the Court will permit the State to introduce the redacted audio recordings into evidence during trial. To assist the jury in comprehending the audio evidence, the State may provide the jury with the redacted transcripts of the audio recordings to follow along during the playing of the audio. The properly redacted transcripts may be introduced into evidence. The transcripts may be provided to the jury in the jury room during deliberations. The audio recording shall not go back to the jury room; instead, the audio recordings shall be treated as any other trial testimony, and may be re-played in Court if the jury requests a play-back.

The Court agrees that the introductory portions of the jail calls are admissible to identify to the jury what they are listening to, from the point of the Operator beginning to speak, to when the Operator says "You may begin speaking now."

THE STATE IS DIRECTED TO REDACT THE TRANSCRIPTS AND AUDIO RECORDINGS IN ACCORDANCE WITH THIS TENTATIVE RULING, UNLESS THE COURT ORDERS OTHERWISE.