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Electronically Filed  
Aug 08 2018 03:03 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S APPENDIX VOLUME IV PAGES 658-903**

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FILED IN OPEN COURT  
STEVEN D. GRIERSON  
CLERK OF THE COURT

JUL 31 2017

BY: Natalie Ortega  
NATALIE ORTEGA, DEPUTY

**MOT**  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

KEANDRE VALENTINE,  
#5090875

Defendant.

CASE NO: C-16-316081-1

DEPT NO: III

**STATE'S MOTION IN LIMINE TO LIMIT TESTIMONY OF DR. STEVEN SMITH**

DATE OF HEARING: 7/31/2017  
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through AGNES M. LEXIS, Chief Deputy District Attorney, and files this Motion In Limine To Limit Testimony Of Dr. Steven Smith.

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

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C-16-316081-1  
MLIM  
Motion In Limine  
4671886



## PROCEDURAL HISTORY

On July 29, 2016, Defendant was charged by way of Indictment with fourteen (14) felony counts to include six (6) counts of Robbery with Use of a Deadly Weapon. On July 7, 2016, Defendant entered a not guilty plea and invoked his speedy trial right. Defense counsel made an oral request for discovery at that time. Trial was set for September 6, 2016.

In the weeks following, the State continuously provided discovery to defense counsel in anticipation of the September 2016 trial date.

On August 9, 2016, the State conveyed an offer to resolve the case. Defendant presented a counter-offer, which the State rejected.

On August 19, 2016, Defendant filed a Motion for Discovery. The State filed a written response. The Motion for Discovery was set for argument on September 1, 2016, the same day as calendar call.

On September 1, 2016, Defendant made an oral motion to continue the trial. The State objected and announced ready. Defendant waived his right to a speedy trial. The court vacated the trial date, noting that it was the first trial setting. Trial was reset for February 21, 2017. The court also granted Defendant's Motion for Discovery pursuant to statute and Brady.

On January 24, 2017, the State invited defense counsel to conduct a file review. Defense counsel indicated she would be in trial and could not meet on January 27, 2017 to complete the file review. To date, defense counsel has not made an appointment to conduct the file review.

On Thursday, January 26, 2017, the State re-disclosed the paper discovery in this case, bated stamped 1-286 and advised defense counsel that a CD with jail calls would be available for pick-up at DA reception. The State attached an ROC to the January 26th email and requested that defense counsel look over the discovery the State has provided and return the signed ROC to the State in one (1) week. In that same email, the State again requested that defense counsel complete a file review. The State also advised defense counsel that it would object to a Motion to Continue Trial and requested that any request for a continuance be submitted in writing, in a timely fashion.

1 On February 7, 2017, the State requested that defense counsel return the signed ROC  
2 so it may file it with the court, in advance of the February 16th calendar call date. Defense  
3 counsel indicated she had not yet verified the items on the list and refused to sign the  
4 ROC. Defense counsel also indicated that she would not go to trial on this case on February  
5 21, 2017.

6 On February 16, 2017, at calendar call for the second trial setting, defense moved to  
7 continue the trial again, this time due to Public Defender Tegan Machnich's unavailability. At  
8 that time, this court requested that another attorney continue to work on the case to ensure that  
9 trial will be ready when Ms. Machnich returned to work. The court granted Defendant's  
10 second motion to continue.

11 On February 21, 2017, the court granted the State's Motion Outlining Discovery  
12 Compliance. The court also reset the trial date for July 24, 2017.

13 On June 6, 2017, this matter was placed on calendar to address a potential conflict with the  
14 trial date. The trial remained set for July 24, 2017.

15 On June 30, 2017, Defendant filed a Notice of Expert Witness, endorsing Jeff  
16 Fischbach and Daniel Reisberg.

17 On July 6, 2017, the State emailed defense counsels requesting discovery concerning  
18 the proffered expert testimony of Jeff Fischbach. To date, defense counsels have not provided  
19 the requested discovery. As such, the State is unsure as to the nature and content of his  
20 testimony.

21 On July 7, 2017, the State filed a Motion to Exclude the Identification Expert, Daniel  
22 Reisberg. See Exhibit 1. On July 19, 2017, Defendant filed his Opposition. See Exhibit 2. On  
23 July 14, 2017, Defendant filed a Supplemental Notice of Expert Witnesses, endorsing three  
24 (3) additional identification experts: Steven Smith, Elizabeth Loftus and Deborah Davis. See  
25 Exhibit 3. On July 17, 2017, the State filed a Motion to Strike the Supplemental Notice of  
26 Expert Witnesses, as untimely.

27 On July 24, 2017, the Honorable Judge Herndon denied the State's Motion to Exclude  
28 the Identification Expert. Judge Herndon did order Defendant to provide the State with

1 literature, articles and research authored by Dr. Steven Smith and/or relied on by Dr. Steven  
2 Smith as soon as possible.

3 It is important to note that on July 14, 2017, five (5) judicial days before trial was set  
4 to begin, Defendant noticed Dr. Steven Smith as follows:

5 He is expected to testify regarding identification procedures, eyewitness  
6 identification, and factors that can affect reliability and unreliability of those  
7 procedures and identifications. He will testify about mental processes that occur  
when making identifications and biases inherent therein.

8 Defense counsel provided the State with 3 articles, Exhibit 4, 5 and 6 via email on  
9 Thursday, July 27, 2017. The articles all pertain to show ups.

10 During Defendant's opening statements on Wednesday, July 26<sup>th</sup>, defense counsel  
11 made no mention of Dr. Smith's anticipated testimony concerning show ups. Defense counsel  
12 merely mentioned "episodic memory" and the "science behind identifications." Defense  
13 counsel mentioned "perception" and "suggestibility," but never mentioned testimony by Dr.  
14 Steven Smith concerning show ups.

15 **I. THE STATE MOVES TO PRECLUDE DR. STEVEN SMITH FROM**  
16 **PROVIDING EXPERT TESTIMONY CONCERNING SHOW UPS.**

17 The State moves to preclude Dr. Steven Smith from providing expert testimony  
18 concerning show ups for three (3) reasons. First, this topic is beyond the scope of his expertise,  
19 as a review of Dr. Smith's CV does not demonstrate an expertise in the area of show ups. See,  
20 Exhibit 7.

21 Secondly, testimony concerning show ups is not routinely included in the testimony of  
22 defense identification experts and Defendant's notice did not sufficiently place the State on  
23 notice regarding this anticipated testimony concerning show ups.

24 Lastly, the literature, articles and research authored by Dr. Steven Smith and/or relied  
25 on by Dr. Steven Smith have not been provided to the State in a timely manner and the three  
26 (3) articles provided are not the complete disclosure ordered by Judge Herndon; that is unless  
27 the Defense expects the State and this court to believe that his entire testimony will be limited  
28 to the information and data contained therein. Providing the articles which first make mention

1 of show ups during the fourth day of trial and only two (2) judicial days before the expert's  
2 anticipated testimony places the State in an unfair position.

3 Not only has the late supplemental notice of expert witnesses filed on July 14, 2017  
4 prevented the State the opportunity to research Dr. Steven Smith, but the extremely late  
5 disclosure of the articles, literature, and research concerning show ups has not given the State  
6 the time and opportunity to research, locate and/or notice a rebuttal expert in this field. This  
7 case has been in district court for one (1) year. The Defendant has had ample opportunity to  
8 notice the expert in a timely manner and should have provided this information to the State no  
9 later than twenty-one (21) days before the start of trial. The Defendant's notice initially  
10 discussed perception, memory and factors such as weapons focus that can affect a witness'  
11 ability to make a reliable identification. Now, during trial, Defendant intends to have his  
12 witness provide expert testimony relating to an area not previously noticed or discussed. To  
13 ensure fairness, this court should preclude Dr. Steven Smith from providing expert testimony  
14 concerning show ups.

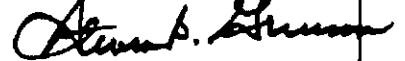
15 DATED this 31st day of July, 2017.

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

18  
19 BY /s/ AGNES M. LEXIS  
20 AGNES M. LEXIS  
Chief Deputy District Attorney  
Nevada Bar #011064

21  
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28 AML/lm/GCU

# Exhibit 1



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

7  
8 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**  
10 **Plaintiff,**

11 **-vs-**

12 **KEANDRE VALENTINE,**  
13 **#5090875**

14 **Defendant.**

**CASE NO: C-16-316081-1**

**DEPT NO: III**

15 **NOTICE OF MOTION AND MOTION TO EXCLUDE EYEWITNESS EXPERT**  
16 **TESTIMONY**

17 **DATE OF HEARING: July 20, 2017**  
18 **TIME OF HEARING: 9:00 A.M.**

19 **COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County**  
20 **District Attorney, through AGNES M. LEXIS, Chief Deputy District Attorney, and files this**  
21 **Notice Of Motion And Motion To Exclude Eyewitness Expert Testimony.**

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

25 **//**

26 **//**

27 **//**

28 **//**



1 **NOTICE OF HEARING**

2 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned  
3 will bring the foregoing motion on for setting before the above entitled Court, in Department  
4 III thereof, on Thursday, the 20th day of July, 2017, at the hour of 9:00 o'clock a.m., or as soon  
5 thereafter as counsel may be heard.

6 DATED this 7th day of July, 2017.

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

10 BY /s/ AGNES M. LEXIS  
11 AGNES M. LEXIS  
12 Chief Deputy District Attorney  
13 Nevada Bar #011064

14 **POINTS AND AUTHORITIES**

15 **STATEMENT OF THE CASE**

16 On June 30, 2017, the defense filed a Notice of Expert Witnesses. The defense listed  
17 Dr. Daniel Reisberg, and indicated that:

18 Dr. Reisberg "is expected to testify regarding identification  
19 procedures, eyewitness identification, and factors that can affect  
20 reliability and unreliability of those procedures and identification and  
21 about "mental processes that occur when making identification and  
22 biases inherent therein."

23 Dr. Reisberg's CV is attached as Exhibit 1.

24 The State now moves this honorable court to exclude the defense's proposed expert  
25 witness, Dr. Daniel Reisberg.

26 **STATEMENT OF FACTS**

27 When Defendant Keandre Valentine went on the robbery spree for which he is charged  
28 in this case, he was a fugitive from justice after being released on \$25,000 bail in Case No.  
C309398. In Case No. C309398, Defendant was then and is currently facing charges of  
Attempt Robbery with Use of a Deadly Weapon, Conspiracy to Commit Robbery, and  
Possession of Stolen Firearm. Those charges stem from a July 28, 2015 attempted robbery of

1 a woman walking in the area of Rainbow Boulevard and Washington Avenue as well as an  
2 earlier residential burglary from where the firearm used in the attempt robbery was stolen.  
3 Defendant had a calendar call in that case on May 12, 2016, during which defense counsel  
4 represented that "Defendant is on his way from California and has car trouble." (Court  
5 Minutes - 5/12/16, Case No. C309398.) At the continued calendar call on May 13, 2016,  
6 defense counsel requested another continuance, representing that "Defendant Valentine was  
7 in a car accident." (Court Minutes - 5/13/16, Case No. C309398.) On May 17, 2016, at the  
8 further continued calendar call, defense counsel advised the court that "Defendant is having  
9 issues in California," and so the court issued a no bail bench warrant. (Court Minutes -  
10 5/17/16, Case No. C309398.)

11 Just days after the no bail bench warrant was ordered, on May 26, 2016, Defendant  
12 robbed Martin Bass at gunpoint at the Rancho Discount Mall located at 2901 W. Washington  
13 Avenue. Defendant was seen fleeing in a newer-model small white four-door car with paper  
14 dealer plates. Defendant was identified as the perpetrator of the crimes against Bass by the  
15 description of the suspect, suspect vehicle, modus operandi, geographic location and the  
16 robbery series that followed. Bass also positively identified Defendant in a photo line-up.

17 On May 28, 2016 at approximately 6:53 a.m., Defendant robbed husband and wife  
18 Darrell and Deborah Faulkner at gunpoint in the garage of their home near Vegas Drive and  
19 Rancho Drive. Shortly thereafter, at approximately 7:01 a.m., Defendant robbed Jordan  
20 Alexander at gunpoint in the driveway of his home located in the neighborhood directly across  
21 Vegas Drive from the Faulkner residence. Jordan Alexander observed Defendant flee in an  
22 unregistered white Mazda car. Within minutes, at approximately 7:08 a.m., Defendant robbed  
23 Santiago Garcia at gunpoint while Garcia was working as a landscaper at a home one block  
24 away from Alexander's residence. Garcia observed Defendant fleeing in an unregistered white  
25 Mazda. Minutes later, less than a mile and a half away the Garcia robbery, Defendant robbed  
26 Lazaro Bravo-Torres and his wife Rosa Vasquez at gunpoint outside of their home near Vegas  
27 Drive and Martin Luther King Boulevard.

28 //

Shortly thereafter, less than three blocks away from the Bravo-Torres residence, police officers located an unregistered white Mazda parked at 1701 "J" Street. Officers noticed that the hood of the vehicle was still warm. Officers drove Santiago Garcia to look at the vehicle; Garcia positively identified the unregistered white Mazda as the one used by the robber. The owner of the Mazda, a female, and Defendant Valentine were found to be located in 1701 "J" Street, Building 3, Apartment 218. In an effort to conceal his identity, Defendant identified himself with the false identity of "Leonard Jones DOB 4/28/94." A subsequent search of Apartment 218 yielded a .40 Cal Glock handgun that matched the description of the one used in the series of robberies, the Nevada Identification Card and Visa debit card of victim Jordan Alexander, and the Visa debit card of victim Rosa Vasquez. Between 8:55 a.m. and 9:50 a.m., during individual show-ups with the victims, Darrell Faulkner, Alexander Jordan, Santiago Garcia, Lazaro Bravo-Torres and Rosa Vasquez all positively identified the Defendant as the person who robbed them at gunpoint.

As a result of the May 2016 events, Defendant is charged in the instant case with seven (7) counts of the non-probationable offense of Robbery With Use of a Deadly Weapon, one (1) count of Attempt Robbery With Use of a Deadly Weapon, three (3) counts Burglary While in Possession of Deadly Weapon, one (1) count of Possession Of Document or Personal Identifying Information, and two (2) counts of Possession of Credit or Debit Card Without Cardholder's Consent.

## LEGAL ARGUMENT

**I. CROSS-RACIAL IDENTIFICATION EXPERT TESTIMONY IS RARELY NECESSARY TO ASSIST THE JURY**

Although eyewitness identification expert testimony may be allowed in some cases, it is justifiably excluded in others. Echavarria v. State, 108 Nev. 734, 746, 839 P.2d 589, 597 (1992). Many courts have recognized that “[e]xpert testimony on the psychological factors affecting eyewitness testimony is often unnecessary.” Trujillo v. Lewis, 2014 U.S. Dist. LEXIS 137867 (N.D. Cal. 2014) (citing People v. Lewis and Oliver, 39 Cal. 4th 970, 995 (Cal. 2006)); see also United States v. Holloway, 971 F.2d 675 (11th Cir.1992); Johnson v. State,

1 272 Ga. 254, 526 S.E.2d 549 (Ga. 2000); State v. McClendon, 248 Conn. 572, 585-590, 730  
2 A.2d 1107, 1114-1116 (Conn. 1999); State v. Wheaton, 240 Kan. 345, 729 P.2d 1183 (1986);  
3 People v. Beaver, 725 P.2d 96 (Colo. App. 1986).<sup>1</sup>

4 This trial court has wide discretion to exclude such testimony and the decision will not  
5 be overturned unless the court clearly abuses that discretion. Mulder v. State, 116 Nev. 1, 12-  
6 13, 992 P.2d 901, 902 (1998). As Judge Tao recently explained, manifest abuse of discretion  
7 is "one of the most deferential standards that exist in appellate law. Hubbard v. State, 2016  
8 Nev. App. Unpub. LEXIS 51 (Tao, J., dissenting).

9 The following three cases are examples of trial courts in the Eighth Judicial District  
10 Court agreeing and accordingly excluding eyewitness identification experts.

11 On March 13, 2008, the Honorable Judge Stewart Bell denied a defense motion seeking  
12 to allow testimony of an eyewitness identification expert. The minutes of that decision reflect  
13 the following: "Court advised both of the eye witness experts he has had in the past had  
14 absolutely nothing to add and that was not only his view but the jurors view also . . . Court  
15 advised the testimony has to at least be helpful to the jury and these witnesses do not say  
16 anything that is not common sense to the jurors." See Minutes, March 13, 2008, State of  
17 Nevada v. Fredrick Martinez, 07C230889-1.

18 On May 4, 2011, the Honorable Judge Douglas Smith granted a State's Motion to  
19 Exclude Defense's Expert Witness based on the same arguments made herein. See Minutes,  
20 May 4, 2011, State of Nevada v. Rasheen Deloney, C-10-268024-2.

21 On January 11, 2006, the Honorable Judge Donald Mosley also granted a State's  
22 Motion to Exclude Defendant's Expert Witness where the defense was attempting to use a  
23 proposed identification expert. See Minutes, January 11, 2006, State of Nevada v. Jesus  
24 Hernandez-Quintana, C214883.

25 <sup>1</sup> See also State v. Kemp, 199 Conn. 473, 507 A.2d 1387 (1986); Taylor v. United States, 451 A.2d 859 (D.C.1982), *cert.*  
26 *denied*, 461 U.S. 936, 103 S.Ct. 2105, 77 L.Ed.2d 311 (1983); Johnson v. State, 438 So.2d 774 (Fla.1983), *cert. denied*,  
27 465 U.S. 1051, 104 S.Ct. 1329, 79 L.Ed.2d 724 (1984); State v. Hoisington, 104 Idaho 153, 657 P.2d 17 (1983); People  
28 v. Johnson, 97 Ill.App.3d 1055, 53 Ill.Dec. 402, 423 N.E.2d 1206 (1981); State v. Goldsby, 59 Or.App. 66, 650 P.2d 952  
(1982); Commonwealth v. Simmons, 541 Pa. 211, 662 A.2d 621 (1995), *cert. denied*, 516 U.S. 1128, 116 S.Ct. 945, 133  
L.Ed.2d 870 (1996); State v. Wooden, 658 S.W.2d 553 (Tenn.Crim.App.1983)

1                   **a. Expert Identification Testimony is Tantamount to Improper Commenting**  
2                   **on the Veracity of a Witness**

3                   “An expert may not comment on the veracity of a witness.” Lickey v. State, 108 Nev.  
4 191, 196, 827 P.2d 824 (1992). The United States Supreme Court held:

5                   A fundamental premise of our criminal trial system is that “the *jury* is  
6 the lie detector.” Determining the weight and credibility of witness  
7 testimony, therefore, has long been held to be the “part of every case  
8 [that] belongs to the jury, who are presumed to be fitted for it by their  
9 natural intelligence and their practical knowledge of men and the  
10 ways of men.”

11                  United States v. Scheffer, 523 U.S. 303, 313, 118 S.Ct. 1261, 1266-67 (1998) (citations  
12 omitted).

13                  In Porter v. State, 94 Nev. 142, 147, 576 P.2d 275, 278 (1978), the Nevada Supreme  
14 Court addressed the issue of eyewitness expert testimony and explained that such evidence  
15 tends to “invade the province of the jury.” In Porter, the Court noted that because the  
16 psychologist would testify about the unreliability of eyewitness accounts in general, there  
17 existed a substantial risk that this testimony would have a greater influence on the jury than  
18 the evidence presented at trial. In doing so, the Court stated:

19                  On this record, there existed a substantial risk that the potential  
20 persuasive appearance of [Dr.] Hess would have had a greater  
21 influence on the jury than the evidence presented at trial, thereby  
22 interfering with the province of the jury. United States v. Moia, 221  
23 F.2d 255 (2nd Cir. 1958).

24                  In United States v. Amaral, the court stated:

25                  The basic purpose of any proffered evidence is to facilitate the  
26 acquisition of knowledge by the triers of fact thus enabling them to  
27 reach a final determination. 488 F.2d 1148, 1152 (9th Cir. 1973).  
28 Here, there was no indication that the testimony would have aided  
the trier of fact. See NRS 50.275.

Porter, supra, 94 Nev. at 148.

Beneath the façade of “expert testimony”, the reality of eyewitness identification  
testimony is that it comments on the credibility of witnesses and constitutes vouching in the  
negative. It is nothing more than an expert witness getting on the stand and saying, “It is my  
expert opinion that the witnesses for the State should not be believed.” If the State were to

1 present its own eyewitness identification expert to testify as to the reliability of such evidence,  
2 the defense would surely jump up and call it improper witness vouching.

3 **i. Skillful Cross-examination is the Proper Tool to Attack the**  
4 **Credibility of Witness Identifications**

5 As the Ninth Circuit has explained,

6 We have repeatedly affirmed district court decisions to exclude the  
7 testimony of eyewitness-identification experts from federal criminal  
8 trials. In reaching these decisions, we have made it clear that we  
9 "adhere to the position that skillful cross examination of eyewitnesses,  
10 coupled with appeals to the experience and common sense of jurors,  
11 will sufficiently alert jurors to specific conditions that render a  
12 particular eyewitness identification unreliable." United States v.  
13 Christophe, 833 F.2d 1296, 1300 (9th Cir. 1987); *see also* United  
14 States v. Labansat, 94 F.3d 527, 530 (9th Cir. 1996); United States v.  
15 Langford, 802 F.2d 1176, 1179-80 (9th Cir. 1986); United States v.  
16 Brewer, 783 F.2d 841, 842-43 (9th Cir. 1986); United States v.  
17 Amaral, 488 F.2d 1148, 1152-54 (9th Cir. 1973)

18 Howard v. Clark, 608 F.3d 563, 574, (9th Cir. 2010).

19 In Porter v. State, 94 Nev. 142, 147, 576 P.2d 275, 278 (1978), the Nevada Supreme  
20 Court also highlighted the defense's responsibility to cross-examine,

21 Further, defense counsel had the responsibility, which he ably  
22 accepted, of cross-examining [the victim] to inquire into the  
23 witness's opportunity and capacity for observation, his attention and  
24 interest, and his capacity for retention and recollection.

25 Porter, at 148, 576 P.2d at 278.

26 **b. There is Substantial Corroborating Evidence Establishing the Defendant's**  
27 **Identity, so the Probative Value of the Identification Expert's Testimony is**  
28 **Outweighed by the Danger of Misleading the Jury**

Although eyewitness identification expert testimony may be allowed in some cases, it  
is justifiably excluded in others. Echavarria v. State, 108 Nev. 734, 746, 839 P.2d 589, 597  
(1992). The key factor in determining its admissibility is the presence (or absence) of other  
evidence linking the defendant to the crime. State v. Roscoe, 184 Ariz. 484, 495 (1996) (*citing*  
State v. Poland, 144 Ariz. 388, 399, (1985), *aff'd*, 476 U.S. 147, 106 S. Ct. 1749, 90 L. Ed. 2d

1 123 (1986)). The defense bar commonly cites to People v. McDonald, 37 Cal. 3d 351 (1984),  
2 when arguing for a court to allow such testimony. However, in McDonald, the California  
3 Supreme Court held that "[b]ecause no other evidence connected defendant with the crime,  
4 the crucial factor in the case was the accuracy of the eyewitness identifications." McDonald,  
5 at 375.

6 In the instant case, there is a substantial amount of evidence linking the defendant to  
7 the crime. This is not a case like McDonald where the State's entire case rested on unreliable  
8 eyewitness identifications. Here, in addition to the positive identifications by victims Marvin  
9 Bass (photo line-up), Darrell Faulkner (show up), Alexander Jordan (show up), Santiago  
10 Garcia (show up), Lazaro Bravo-Torres (show up) and Rosa Vasquez (show up), the  
11 Defendant is linked to the crime by the following pieces of evidence: (1) Defendant's  
12 fingerprints are found on the car matching the description of the car used by the robber 2.) the  
13 car was parked in front of the apartment where Defendant was apprehended 3.) the firearm  
14 matching the description of the gun used by the robber was recovered in the apartment  
15 Defendant was in 4.) ID cards and debit/credit cards belonging to two of the victims were also  
16 found in the apartment 5.) in jail calls, Defendant admits to taking part in the robberies and  
17 taking apart and hiding the firearm in the apartment. Thus, with this significant amount of  
18 corroborating evidence, the probative value of the identification expert's testimony is low and  
19 can only serve to unnecessarily mislead the jury.

20 **II. IN THE ALTERNATIVE, THE STATE REQUESTS DISCLOSURE OF**  
21 **LITERATURE, ARTICLES AND RESEARCH AUTHORED BY AND/OR**  
22 **RELIED ON BY THE DEFENDANT'S EYEWITNESS IDENTIFICATION**  
**EXPERT**

23 Dr. Reisberg's resume, which is attached as Exhibit 1, lists eighty-eight (88)  
24 publications and about six (6) pages of papers he has presented at meetings. Several of the  
25 listings are in rectangle boxes, though it is unclear if the boxes are meant to designate relevant  
26 information. However, it does not designate what articles, research, or papers, etc. he relied  
27 upon when forming his expert opinions on eyewitness identification.

28 //

1 The State requests the defense to disclose the actual literature, articles and research that  
2 Dr. Reisberg has conducted or authored, or will be relying on at trial.

3 **NRS 50.305 Disclosure of facts and data underlying expert**  
4 **opinion.** The expert may testify in terms of opinion or inference and  
5 give his or her reasons therefor without prior disclosure of the  
6 underlying facts or data, unless the judge requires otherwise. The  
7 expert may in any event be required to disclose the underlying facts  
8 or data on cross-examination.

9 Pursuant to NRS 50.305, the State requests the court to "require otherwise" and compel  
10 the defense to disclose the requested underlying facts or data so that the State can effectively  
11 cross examine Dr. Reisberg. This would include all literature and articles authored by Dr.  
12 Reisberg, all research conducted by Dr. Reisberg, and all literature, articles and research relied  
13 on by Dr. Reisberg. Lastly, the State also requests the case numbers and jurisdiction of all  
14 cases in which Dr. Reisberg has testified as an identification expert.

#### 14 CONCLUSION

15 For these reasons, the State respectfully requests this honorable Court to exclude Dr.  
16 Reisberg from testifying at trial and in the alternative, to compel the defense to obtain and  
17 disclose all literature, articles and research authored by and/or relied on by Dr. Reisberg.

18 DATED this 7th day of July, 2017.

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

21 BY /s//AGNES M. LEXIS  
22 AGNES M. LEXIS  
23 Chief Deputy District Attorney  
24 Nevada Bar #011064  
25  
26  
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1 **CERTIFICATE OF ELECTRONIC FILING**

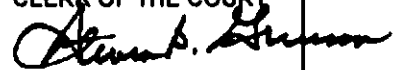
2 I hereby certify that service of State's Motion was made this 7th day of July, 2017, by  
3 Electronic Filing to:

4 TEGAN MACHNICH, Deputy Public Defender  
5 E-mail Address: [tegan.machnich@ClarkCountyNV.gov](mailto:tegan.machnich@ClarkCountyNV.gov)

6 /s/ Laura Mullinax  
7 Secretary for the District Attorney's Office  
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AML/llm/GCU

# Exhibit 2



1 PHILIP J. KOHN, PUBLIC DEFENDER  
2 NEVADA BAR NO. 0556  
3 TEGAN MACHNICH, DEPUTY PUBLIC DEFENDER  
4 NEVADA BAR NO. 11642  
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6 309 South Third Street, Suite 226  
7 Las Vegas, Nevada 89155  
8 Telephone: (702) 455-3601  
9 Facsimile: (702) 455-5112  
10 Tegan.Machnich@clarkcountynv.gov  
11 *Attorneys for Defendant*

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 THE STATE OF NEVADA, )  
10 )  
11 Plaintiff, )

12 v. )

13 KEANDRE VALENTINE, )  
14 Defendant, )

CASE NO. C-16-316081-1

DEPT. NO. III

15 **OPPOSITION TO STATE'S MOTION TO EXCLUDE EYE-WITNESS EXPERT**  
16 **TESTIMONY**

17 COMES NOW, the Defendant, KEANDRE VALENTINE, by and through TEGAN  
18 MACHNICH, Deputy Public Defender, and hereby moves this Honorable Court to deny the  
19 State's Motion to Exclude Eye-Witness Expert Testimony.

20 This Motion is made and based upon all the papers and pleadings on file herein, the  
21 attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

22 DATED this 19th day of July, 2017.

23  
24 PHILIP J. KOHN  
25 CLARK COUNTY PUBLIC DEFENDER

26 By: /s/ Tegan Machnich  
27 TEGAN MACHNICH  
28 Deputy Public Defender

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1. I am an attorney duly licensed to practice law in the State of Nevada.
2. I am a Deputy Public Defender for the Clark County Public Defender's Office.
3. I am appointed to represent the Defendant, KEANDRE VALENTINE, in the instant matter.
4. I make this Declaration in support of Defendant's Opposition to State's Motion to Exclude Eye-Witness Expert Testimony.
5. I am more than eighteen (18) years of age, and I am competent to testify as to the matters stated herein.
6. I am familiar with the facts, circumstances, and procedural history of this case.
7. I am familiar with the substantive allegations made by the State of Nevada against Defendant, KEANDRE VALENTINE.
8. I have personal knowledge pertaining to the facts stated herein, or I have been informed of these facts and believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. NRS 53.045.

EXECUTED this 19th day of July, 2017.

/s/ Tegan Machnich  
TEGAN MACHNICH

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2  
3 **I. RELEVANT FACTUAL BACKGROUND**

4 Defendant Valentine has two pending cases – the first, mentioned in the State’s Motion,  
5 is inadmissible in the instant case and not at issue here (any mention thereof meant only to taint  
6 this Court’s unbiased consideration of the law at issue). This case involves a series of robberies  
7 that allegedly took place during May 26 – 28, 2016.

8 In its motion, the State generally includes a recitation of facts they believe to be true. As  
9 stated therein, this case involves one photographic lineup (May 26, 2016 alleged victim Bass)  
10 and five show-up identifications (all named May 28, 2016 alleged victims). The Defense intends  
11 to present an alibi witness for at least one of the alleged robberies and will be contesting the eye-  
12 witness identification by all alleged victims.  
13

14 The State includes other anticipated evidence in its motion. Defendant Valentine does have a  
15 theory of defense to rebut the other evidence listed by the State, and is happy to do so outside the  
16 presence of the District Attorneys assigned to this matter. If the Court is considering striking the  
17 identification expert in this case, Defendant Valentine requests the opportunity to present his  
18 theory to this Honorable Court outside the presence of the State before an ultimate decision is  
19 made.  
20

21 **II. EXPERT EYEWITNESS IDENTIFICATION TESTIMONY IS A COMMON SCIENTIFIC AREA**  
22 **OF EXPERTISE IN THE EIGHTH JUDICIAL DISTRICT COURT**

23 Defendant Valentine’s eye-witness identification expert is anticipated to testify about an  
24 area of scientific research far beyond just “cross-racial identification.” The implementation of  
25 eyewitness identification procedures is uncontroversial across a spectrum of professional  
26 disciplines and agencies, including prosecutors and law enforcement. However, the science that  
27  
28

1 precipitated ubiquitous use of eyewitness identification procedures involves extensive, specialized  
2 knowledge of the human brain and memory; more specifically, the way the human brain acquires,  
3 perceives, interprets, organizes, processes, and stores information.

4 Understanding the science that induced law enforcement agencies and courts—federal and  
5 state—to view eyewitness identifications with skepticism, and as to adopt protective procedural  
6 measures *requires* expert scientific testimony. To that end, the Defense has noticed expert  
7 witnesses whose expertise, generally, is the scientific assessment of memory.

8  
9 The State presents three examples of cases where judges have declined to allow  
10 eyewitness identification experts testify.<sup>1</sup> None of the factual scenarios are present in the State's  
11 motion. Thus, while the defense is not certain of the factual scenarios surrounding those cases,  
12 this Court should note that the most recent cited is from Judge Smith in 2011.

13 The Eighth Judicial District Court has, on numerous occasions, allowed eyewitness  
14 identification expert witness testimony. Specifically, the Honorable Judge Adair admitted the  
15 testimony in 2007 (*State v. Jesus Meraz*, C216763 – transcript attached hereto as Exhibit A); the  
16 Honorable Judge Togliatti in 2016 (*State v. Raul Torres* – minutes attached hereto as Exhibit B);  
17 and this Honorable Court in 2016 (*State v. Emone James* – transcript attached hereto as Exhibit  
18 C). Noticeably, eyewitness identification testimony has become more common in recent years.

19  
20  
21 **III. UNDER THE PROPER ANALYSIS, EYEWITNESS IDENTIFICATION EXPERT TESTIMONY**  
22 **IS ADMISSIBLE AND PROPER**

23 An expert is competent to testify when the expert is: (1) qualified in an area of scientific,  
24 technical or other specialized knowledge (qualification requirement); (2) the knowledge assists  
25 the trier of fact in understanding the evidence or determining a fact in issue (assistance  
26

27 <sup>1</sup> Note: the Hubbard decision cited on page 5 does not involve excluding an eyewitness identification expert – it  
28 merely addresses the legal standard as applied to the Court admitting evidence of prior bad acts. Also, along with its  
unpublished status, the cited “decision” is actually a dissent. See *Hubbard v. State*, 2016 WL 1394350, \*11.

1 requirement); and (3) the testimony elicited is limited to matters within the scope of the expert's  
2 knowledge (limited scope requirement). NRS 50.275; *Hallmark v. Eldridge*, 189 P.3d 646, 650  
3 (2008). The trial court, in the exercise of its sound discretion, determines whether an expert meets  
4 the *Hallmark* requirements for admissibility. *Higgs v. State*, 222 P.3d 648, 658-59 (2010).  
5 However, the Nevada Supreme Court in *Higgs* fervently rejected the notion that the requirements  
6 outlined in NRS 50.275 were exhaustive. *Id.* at 658. Instead, the statute is a general guide to be  
7 applied according to the particularities of individual. Specifically, the Court noted that the  
8 qualification, assistance and limited scope requirements may not apply in each instance or  
9 uniformly across cases. *Id.* at 659. NRS 50.275 "ensure[s] reliability and relevance, while not  
10 imposing upon a judge a mandate to determine scientific falsifiability and error rate for each  
11 case." *Id.* at 659.

12  
13 The Nevada Supreme Court has considered NRS 50.275 in cases involving eyewitness  
14 identification testimony to determine whether an expert's testimony is admissible at trial.  
15 Specifically, in *Echavarria v. State*, eyewitness identification experts were evaluated under the  
16 following criteria: An eyewitness identification expert must be (1) a qualified expert who testifies  
17 to (2) a proper subject in (3) conformity to a generally accepted explanatory theory under  
18 circumstances in which the testimony's (4) probative value outweighs its prejudicial effect. 108  
19 Nev. 734, 746 (1992) (citing *United States v. Amaral*, 488 F.2d 1148, 1153 (9<sup>th</sup> Cir. 1973)).  
20  
21

22 While evaluation of expert testimony admissibility pursuant to the *Echavarria* factors is  
23 required to determine admissibility, the Nevada Supreme Court has cautioned trial courts not to  
24 ignore the reliability of an identification witness. 108 Nev. at 746. When specifically addressing  
25 the admissibility of expert eyewitness identification testimony, the Court in *Echavarria* found  
26 problems with the eyewitness identification evidence that, in the Court's mind, raised  
27 considerable doubt as to the identification's reliability. *Id.* at 746-47. In light of this considerable  
28

1 doubt and unreliability, the Court deemed said expert testimony both relevant and helpful to the  
2 jury. *Id.* (finding that the trial court erred in denying admission of expert eyewitness identification  
3 testimony).

4 ***A. Echavarria Factors***

5 **a. Qualified Expert**

6 The *Echavarria* court requires the expert witness to possess the qualifications and  
7 education concomitant to his/her expert designation. 108 Nev. at 746. All noticed experts (of  
8 which the defense intends to call only one), are properly qualified experts in the field of  
9 experimental psychology.  
10

11 Dr. Reisberg has earned bachelors, masters and doctoral degrees in psychology, and  
12 specializes in the scientific assessment of memory. Dr. Reisberg is a published author in the field  
13 of experimental psychology—specifically, inter alia, the science of memory—and has served as  
14 an editor for peer reviewed scientific journals. Dr. Reisberg currently serves as a Patricia &  
15 Clifford Lunneborg Professor of Psychology at Reed College in Portland, Oregon. With regard to  
16 memory and eyewitness identification in particular, Dr. Reisberg's work has been published, on  
17 dozens of occasions, in books and peer-reviewed, scientific journals. Additionally, Dr. Reisberg  
18 has testified over 150 times over the last fifteen (15) to twenty (20) years. All of his trial  
19 testimony has been in the area of scientific assessment of memory, and most of that testimony  
20 was heard in the context of criminal trials. Dr. Loftus, Dr. Smith, Dr. Davis and Dr. Copeland  
21 similarly hold bachelors, masters and doctoral degrees in psychology. They have likewise  
22 authored innumerable studies and books and are highly honored/awarded scholars.  
23  
24

25 All noticed eye-witness experts possesses stellar qualifications in their field, in keeping  
26 with NRS 50.275 as interpreted by *Hallmark*, 189 P.3d 646 (2008), and *Echevarria*, 108 Nev. 734  
27 (1992). Furthermore, their testimony will assist the trier in fact in understanding the science—  
28



1 science relating to the human brain and memory—underlying the urgent need for promulgation,  
2 implementation, and adherence to procedural protections in the context of eyewitness  
3 identifications. All CVs were previously submitted to this Court and the State.

4 **b. Proper Subject**

5 Eye-witness identification testimony is a proper subject for testimony at trial in the  
6 instant matter. Expert testimony involves specialized knowledge that *will assist the trier in fact*  
7 *to understand the evidence* or determine a fact in issue. NRS 50.275 (emphasis added).  
8 Scientific testimony pertaining to the chemistry and psychology of the human brain far exceeds  
9 the experience and common sense knowledge of a lay juror. In addition to the likely naiveté of  
10 lay jurors in re the intricacies of human brain science, the specialized, scientific information to  
11 which the noticed experts would testify far exceeds the scope of a lay witness's knowledge and  
12 experience. This, of course, means that the Defense, at trial, cannot elicit, through cross-  
13 examination, information to which any of the noticed experts would testify from the  
14 eyewitnesses in this case.  
15  
16

17 There is no doubt that the eyewitness identifications in this case are integral to the State's  
18 prosecution. There is also no doubt that the Defendant is entitled to a competent, vigorous  
19 Defense; but this this is especially true where, as here, the State has filed a notice of intent to  
20 seek habitual offender treatment in the event of conviction. This makes a conviction in this case  
21 punishable by up to life in prison. The noticed experts will educate the jury with regard to the  
22 human brain, memory, and the application of his specialized knowledge to the facts in this case.  
23 The testifying expert will not draw an ultimate opinion on the reliability of the eyewitness  
24 identification in this case—that is for the jury to decide. Instead, he/she will provide a scientific  
25 framework within which the jurors may consider the eyewitness identifications in this case.  
26  
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28

1 The testifying expert will neither usurp the function of the jury, nor unduly influence their  
2 determination of eyewitness identification reliability. The jury will generally understand, through  
3 common sense and experience, the factual context in which the eyewitness identifications in this  
4 case occurred. However, the testifying expert's testimony will focus on how the human brain  
5 acquires, processes, and stores information—like the factual circumstances to which other  
6 witnesses will testify—and the ways in which those factual circumstances affect memory. Cross-  
7 examination of the lay eyewitnesses in this case will not yield this kind of specialized knowledge,  
8 yet it is necessary for a jury to consider this information in making an educated, accurate  
9 determination as to the credibility of eyewitness identification testimony. As such, is undoubtedly  
10 a proper subject for trial testimony.  
11

12 **c. Conformity to a Generally Accepted Explanatory Theory**

13 The science that the defense wishes to elicit is generally accepted not only in the  
14 scientific community, but also in the law enforcement community—state and federal—and in the  
15 court system. In fact, the vast majority of United States judicial jurisdictions—forty-seven (47)  
16 of fifty (50) states—routinely allow expert testimony in re the psychology of eyewitness  
17 identification). Regarding the scientific community specifically, The National Academy of  
18 Science has endorsed the science to the defense wishes to elicit through the testifying expert's  
19 testimony. As recently as 2014, the National Academy of Science has noted a significant trend  
20 "toward greater acceptance of expert testimony regarding the factors that may affect eyewitness  
21 identification." See *ASSESSING THE CULPRIT, Chapter 3: The Legal Framework for Assessment of*  
22 *Eyewitness Identification Evidence*, p. 31-44 (attached hereto as "Exhibit D.")  
23

24 Additionally, there have been numerous scientific articles on the efficacy of eyewitness  
25 testimony published in recent years. Illustrative of this fact are the two scientific studies – The  
26 Effect of Suspect-Filler Similarity on Eyewitness Identification Decisions: A Meta-Analysis,  
27  
28

1 attached hereto as Exhibit E and The Eyewitness Post Identification Feedback Effect 15 Years  
2 Later: Theoretical and Policy Implications, attached hereto as Exhibit F.

3 Additionally, all noticed experts have a list of peer-reviewed publications in respected  
4 scientific journals, and have, on multiple occasions, been entrusted with evaluating the work of  
5 scientists in their field. Advancements in science are precipitated by professional disagreement,  
6 which, in turn, is the impetus for continued research and testing. The testifying expert will testify  
7 to the scientific processes underlying the accumulation of reliable scientific conclusions  
8 pertaining to memory and eyewitness identifications in criminal cases. They can also testify to  
9 the limitations of scientific evidence pertaining to memory and eyewitness identifications.  
10

11 It is worth mentioning that the State's argument against the admissibility of eyewitness  
12 identification expert testimony relies on cases largely dated in the 1980's and 1990's. Because  
13 only string cites are presented without factual scenarios, the exact reasoning is not evidenced.  
14 The only Nevada Supreme Court case cited in support of its contention that eyewitness  
15 identification expert testimony would improperly invade the province of the jury is *Porter v.*  
16 *State*, 94 Nev. 142 (1978), which is from nearly 40 years ago and was distinguished by  
17 *Echavarria v. State*, 108 Nev. 734 (1992).  
18

19 **d. Probative Value Versus Prejudicial Effect**

20 An expert is qualified to testify if the probative value of his testimony is not substantially  
21 outweighed by prejudicial effect. Here, the proffered expert testimony is probative of evidence  
22 central to the State's prosecution: eyewitness identification implicating Defendant Valentine. He  
23 will elucidate the circumstantial factors and scientific processes impacting perception and  
24 memory. This testimony will educate the jury, allowing it to make an appropriate, informed,  
25 accurate assessment of witness credibility as it pertains, specifically, to eyewitness identification.  
26  
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1 As noted above, the testifying expert will not draw or testify to any ultimate conclusion  
2 regarding the accuracy of the identifications in this case or the credibility of witnesses who  
3 testify thereto. Those are not determinations for an expert to make, a fact of which he/she is well  
4 aware. The Defense acknowledges that, were its expert to draw such conclusions at trial, his/her  
5 testimony in that regard would unfairly prejudice the State. Having acknowledged the same, the  
6 Defense would not elicit such testimony.

7  
8 The probative value of Dr. Reisberg's testimony is not outweighed by potential  
9 prejudicial effect to the State. In the prior-bad-acts context, the State frequently argues that the  
10 introduction of bad acts evidence is not excludable simply because it prejudices the Defendant  
11 because, after all, all inculpatory evidence prejudices the Defendant. That argument holds true in  
12 this context: expert testimony is not so prejudicial as to warrant exclusion just because there is  
13 potential for the testimony to hurt the State's case. That this testimony will aid in defending Mr.  
14 Valentine does render it inadmissible. An eyewitness identification expert's testimony is  
15 probative of the eyewitness identifications in this case, and will provide the jury with a thorough  
16 and sophisticated understanding of those factors that impact risk of error in identifications. This  
17 information is relevant, probative, and admissible because the prejudicial impact, if any, to the  
18 State would be minimal.  
19

20 ***B. Eyewitness expert testimony will assist the trier of fact in understanding eyewitness***  
21 ***identification science.***

22 The expert testimony will educate the jury far beyond the common sense and experience  
23 it brings to bear in this case. Specifically, the testifying expert will explain how the human brain  
24 acquires, interprets, processes, and stores information, and he will elucidate how this science  
25 impacts risk of error in eyewitness identifications. As mentioned above, the jury will use this  
26 information to draw its own conclusions about the accuracy of the identifications in this case,  
27  
28

1 and the credibility of the witnesses who testify thereto. This cannot be overstated: any testifying  
2 expert will neither usurp nor even marginally infringe upon the province of the jury.

3       Very simply, the jury must understand the science that explains the relationship between  
4 memory and the risk of error in eyewitness identification. This is especially true in a case where,  
5 as here, law enforcement utilized policies that are potential suspect when considered in the light  
6 of accepted scientific principles, resulting in a presumptively suggestive eyewitness  
7 identification procedure, the impact of which the identifying lay witnesses are entirely unaware.  
8 Due process and fundamental fairness dictate that Mr. Valentine be permitted to contextualize  
9 these identifications by educating the jury with expert testimony—testimony regarding the  
10 fallibility of memory and the corresponding risk, if any, of eyewitness misidentification. Mr.  
11 Valentine cannot elicit this testimony through the cross-examination of lay witnesses; this is  
12 especially true because, some of the cognitive processes that introduce risk of error occur  
13 unbeknownst to the identifying eyewitness. Expert testimony is the only way to present this  
14 information, and this information is critical to enabling the jury to accurately assess two critical,  
15 factual issues in this case: identification accuracy and witness credibility.  
16  
17

18       ***C. The facts in this case demand expert testimony as to the science of eyewitness***  
19       ***identification.***

20       The noticed eyewitness identification experts are qualified as experts under the *Hallmark*  
21 factors. Their testimony is admissible, especially in light of the questionable identifications in  
22 this case. All but one of the alleged identifications was conducted as “show-ups” and took place  
23 in front of marked police vehicles while Mr. Valentine was handcuffed. The single “six-pack”  
24 line-up was similarly improperly conducted, as the arresting detective who knew the identity of  
25 the alleged suspect conducted line-up. Additionally, the descriptions of the alleged subject are  
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1 not identical to Mr. Valentine. This case was taken to the Grand Jury, so defense counsel has not  
2 been afforded the opportunity to question the eyewitnesses on the details of their identifications.

3 The Nevada Supreme Court permits expert eyewitness identification testimony if the  
4 facts of a given case reveal considerable doubt as to the reliability of an eyewitness. *See*  
5 *Echavarria*, 108 Nev. at 746. The Court held in *Echavarria* that it was error to exclude expert  
6 eyewitness identification testimony where, as here, considerable doubt as to the reliability of an  
7 identification renders expert testimony necessary and admissible. *Id.* at 746-47.

8  
9 In this case, the police orchestrated—in violation of recommendations promulgated by  
10 both the Department of Justice and the National Academy of Science—unnecessarily suggestive  
11 environments for the identifications. Defendant Valentine’s defense is largely based upon  
12 questionable nature of the alleged identifications. In short, law enforcement actions in this case  
13 raise considerable doubt as to the reliability of the identifications in this case, rendering expert  
14 testimony necessary, relevant, and admissible. *Id.*

15  
16 If the Court wishes to know more about how the defense intends to contradict the  
17 additional evidence stated as “fact” in the State’s motion, defense counsel is more than happy to  
18 offer details outside the presence of the State.

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1                   **D. CONCLUSION**

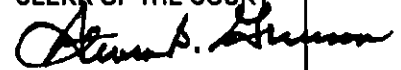
2           Given the foregoing, Defendant KEANDRE VALENTINE respectfully moves this  
3 Honorable Court to deny the State's Motion to Exclude Eyewitness Expert Testimony. If the  
4 Court is not inclined to deny the State's motion on the moving papers alone, the Defendant  
5 requests an opportunity to proffer its additional defense theories outside the presence of the  
6 State. The Defense has no issue with providing the State with articles / publications of the  
7 testifying expert in advance of the expert's testimony.

8  
9                   DATED this 19th day of July, 2017.

10  
11                                   PHILIP J. KOHN  
12                                   CLARK COUNTY PUBLIC DEFENDER  
13                                   By: /s/ Tegan Machnich  
14                                   TEGAN MACHNICH  
15                                   Deputy Public Defender  
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# Exhibit 3





1 NOTC  
2 PHILIP J. KOHN, PUBLIC DEFENDER  
3 NEVADA BAR NO. 0556  
4 TEGAN C. MACHNICH, DEPUTY PUBLIC DEFENDER  
5 NEVADA BAR NO. 11642  
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Telephone: (702) 455-4685  
Facsimile: (702) 455-5112  
Attorneys for Defendant

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

12 KEANDRE VALENTINE,

13 Defendant,

CASE NO. C-16-316081-1

DEPT. NO. III

14 DEFENDANT'S SUPPLEMENTAL NOTICE OF EXPERT WITNESSES, PURSUANT  
15 TO NRS 174.234(2)

16 TO: CLARK COUNTY DISTRICT ATTORNEY:

17 You, and each of you, will please take notice that the Defendant, KEANDRE  
18 VALENTINE, intends to call, in addition to any previously noticed expert witnesses, the  
19 following expert witnesses in his case in chief:

20 Steven Smith- Department of Psychology  
Texas A&M University

21 College Station, Texas 77843-4235

22 He is expected to testify regarding identification procedures, eyewitness identification, and  
23 factors that can affect reliability and unreliability of those procedures and identifications. He will  
24 testify about mental processes that occur when making identifications and biases inherent  
therein.

25 Elizabeth Loftus-

2393 Social Ecology II  
University of California, Irvine  
Irvine, California 92697-7080

27 She is expected to testify regarding identification procedures, eyewitness identification, and  
28 factors that can affect reliability and unreliability of those procedures and identifications. She

1 will testify about mental processes that occur when making identifications and biases inherent  
2 therein.

3 **Deborah Davis**

4 Professor, Department of Psychology/296  
University of Nevada; Reno, Nevada 89557

5 She is expected to testify regarding identification procedures, eyewitness identification, and  
6 factors that can affect reliability and unreliability of those procedures and identifications. She  
7 will testify about mental processes that occur when making identifications and biases inherent  
therein.

8 **David Copeland-**

9 University of Nevada, Las Vegas,  
Department of Psychology  
10 4505 Maryland Pkwy Box 5030  
Las Vegas, NV 89154

11 He is expected to testify regarding identification procedures, eyewitness identification, and  
12 factors that can affect reliability and unreliability of those procedures and identifications. He will  
13 testify about mental processes that occur when making identifications and biases inherent  
14 therein.

15 DATED this 14th of July, 2017.

16 PHILIP J. KOHN  
17 CLARK COUNTY PUBLIC DEFENDER

18 By: /s/ Tegan C. Machnich  
19 TEGAN C. MACHNICH, #11642  
20 Deputy Public Defender  
21  
22  
23  
24  
25

26 Case Name: Keandre Valentine

27 Case No.: CourtNum

28 Dept. No.: III

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that service of the above and forgoing NOTICE was served via electronic e-filing to the Clark County District Attorney's Office at [motions@clarkcountynyda.com](mailto:motions@clarkcountynyda.com) on this 14th day of July, 2017

By: /s/ Carolyn Gray, Legal Assistant  
Clark County Public Defender's Office

Case Name: Keandre Valentine

Case No.: CourtNum

Dept. No.: III

# Exhibit 4

# 2

## SHOWUPS

CHARLES A. GOODSSELL, STACY A. WETMORE,  
JEFFREY S. NEUSCHATZ, AND SCOTT D. GRONLUND

Ms. Winton received a phone call from her security company that her back door alarm had been triggered. She was concerned and called Mr. Fletcher, who lived close to the residence, to check on her house. He parked near the back of the residence and noticed a man in the backyard stuffing items into a bag. As Mr. Fletcher approached the house, the man heard him and took off running. Mr. Fletcher took chase, but the suspect disappeared into the woods behind a neighbor's home. Mr. Fletcher went back to Ms. Winton's house, where he met with her and police officers to discuss what happened. Later Mr. Fletcher was driving home and thought he saw the suspect again and immediately called the police. The police apprehended a man, Mr. Ellerby, who matched the description they had been given, although he was wearing a

---

This work was supported by the National Science Foundation Grants SES-1060913 to Charles A. Goodsell, SES-1060921 to Jeffrey S. Neuschatz, and SES-1060902 to Scott D. Gronlund. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the authors and do not reflect the views of the National Science Foundation. The authors thank John Wixted and H. Lloyd Perkins for their helpful comments.

DOI: 10.1037/14094-003

*Reform of Eyewitness Identification Procedures*, B. L. Cutler (Editor)

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hat and sunglasses, which was not part of the original description. Mr. Ellerby was placed in the backseat of a patrol car, and Mr. Fletcher was brought to the scene and positively identified him as the man he chased from the home. Fortunately for Mr. Ellerby, the actual perpetrator was later arrested for an unrelated crime and confessed to the burglary.

This one-person identification performed in the Ellerby case is termed a *showup*. In this chapter, we review how showups are used and discuss the relevant law regarding their use. The most important questions surrounding showups involve whether they are unduly suggestive and how they compare with lineups in that regard. Therefore, we review how showups and lineups should be compared and what factors complicate that comparison. This discussion moves into an analysis of variables likely to have a greater effect on showups than on lineups. These variables include clothing bias, expectation, and presentation mode (live vs. photographic). Finally, we conclude with suggestions for best practice guidelines for showups and policy implications regarding their use.

Apprehending a suspect near the scene of a crime and asking a witness to make an identification about that suspect are common actions. According to several sources (e.g., Dysart & Lindsay, 2007), showups are the most common form of eyewitness identification. In their archival study of the Sacramento Police Department and the surrounding metropolitan area, Behrman and Davey (2001) reported that of the 689 identifications conducted from 1987 to 1998, 271 (40%) were showup identifications. Similarly, Flowe, Ebbesen, Burke, and Chivabunditt (2001) found that showups constituted 55% of the 488 identifications from 1991 to 1995 in metropolitan areas in the western United States. The estimates of showup identifications as a percentage of all identifications range from 30% to 77% (Gonzalez, Ellsworth, & Pembroke, 1993; McQuiston & Malpass, 2001).

Showup identification procedures have advantages over traditional multiperson lineups. First, showups have the potential to be conducted hastily, relative to lineups, and therefore can help law enforcement personnel to quickly detain criminals and free innocent people of suspicion. Second, as has been well documented in the literature, memory performance decreases with time (e.g., Light, 1996). Research on eyewitness identification demonstrates that witnesses tend to perform more poorly at identifying guilty suspects as time progresses (Clark & Godfrey, 2009). Therefore, it is better to test memory (i.e., administer an eyewitness identification procedure) after a short than a long delay. Thus, if a showup can be conducted sooner than a lineup could be, better memory performance could be achieved as a result of the reduced delay between the incident and the administration of the identification procedure.

But there are potential disadvantages to showup identifications. Garrett (2011) reviewed 160 DNA exoneration cases and found that 34% (53/160)

involved misidentifications from showups. Furthermore, in a survey of eye-witness identification experts, Kassin, Tubb, Hosch, and Memon (2001) reported that 74% of the respondents endorsed the statement that showups increased the likelihood of a false identification relative to lineups. We turn next to a discussion of the factors that ostensibly enhance the suggestibility of showups.

## SHOWUPS IN THE FIELD

Showups are used in the field when the police can apprehend a suspect who matches the victim's description of the perpetrator and who is within a reasonable distance (e.g., a few blocks, miles radius) and a reasonable time frame (i.e., less than 2 hours) of the incident. Cases in which these criteria are not met typically result in a lineup (H. Lloyd Perkins,<sup>1</sup> personal communication, January 23, 2012). Although showups are typically administered within a short time after a crime, there are instances in which showups have been used much later. For example, in October 1985, a woman was attacked in her home in Alexandria, Virginia. She gave the police a description of a man wearing a gray hooded sweatshirt and red shorts. A few weeks later the police showed the witness a photo array that included a neighbor, Walter Snyder, who happened to own red shorts. She did not identify anyone. Two months later Snyder went to the police department to ask for his shorts back. Police officers brought the victim in and asked her if Snyder was her attacker. She indicated that he was, and he subsequently was convicted and sentenced to 45 years in prison. He served 7 years before DNA evidence exonerated him (Mid-Atlantic Innocence Project, 2012).

Several procedural safeguards for conducting eyewitness identification procedures have been recommended by social science researchers (e.g., U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 1999; Wells et al., 1998). Recommendations for unbiased instructions (see Chapter 3, this volume) and double-blind administration (see Chapter 6) have made their way into police departments around the United States. But because lineups typically are conducted in a controlled environment, it is easier for the officers to follow a regimented protocol in the administration of a lineup. Moreover, the nature of administering an identification procedure in the field means that officers must rely more on their training and experience when conducting a showup (H. Lloyd Perkins, personal communication, January 23, 2012). In other words, whereas a lineup can be conducted in

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a similar manner each time it is given, the conduct of a showup may fluctuate as a result of many different factors.

This variability is evident in how showups are administered. Ideally, a witness or victim will be transported to where the suspect has been detained and asked to indicate if the suspect is or is not the perpetrator (H. Lloyd Perkins, personal communication, January 23, 2012). To minimize suggestion, police try to avoid having the suspect in handcuffs, wearing identifying clothing (e.g., the witness describes the perpetrator as wearing a hooded sweatshirt, so the officer has the suspect remove the sweatshirt), standing next to a uniformed officer, or sitting in the back of a police car. However, this is not always possible. Suspects who are uncooperative can become a flight risk or violent, and they must be restrained to ensure the safety of everyone involved (H. Lloyd Perkins, personal communication, January 23, 2012). Furthermore, there are circumstances in which the witness or victim cannot be transported (e.g., when medical attention is needed) and the suspect must be brought to the witness.

What does the law have to say about the impact of these factors on showup identifications? To examine how the U.S. Supreme Court views the admissibility of showup identifications, we use the following major Court decisions: in *Stovall v. Denno* (1967), *Neil v. Biggers* (1972), and *Manson v. Brathwaite* (1977). After reviewing these criteria, we evaluate whether they achieve the purpose they were created to accomplish: preventing the admission of suggestive eyewitness procedures and unreliable eyewitness evidence in court. Wells and Quinlivan (2009) have already started this important work, and we summarize and expand on their findings.

## RELEVANT LAW REGARDING SHOWUPS

### *Stovall v. Denno*

The landmark case regarding showups is *Stovall v. Denno* (1967). In *Stovall*, the Supreme Court opined that due process forbids any pretrial identification that is suggestive and conducive to misidentification. The facts of the case were as follows: During an attack, Dr. Paul Behrendt was stabbed to death, and his wife was critically injured. A shirt and keys left at the scene led to the arrest of Theodore Stovall. Two days after the attack, Stovall was brought to Mrs. Behrendt's hospital room for a showup identification. Mrs. Behrendt identified him as her attacker. At the time of the identification, Stovall did not have any legal representation and was handcuffed to a police officer for the entire hospital confrontation. Stovall was convicted and sentenced to death. He appealed the decision, arguing that his due process rights



were violated because he was not represented by counsel during identification. In identification proceedings, due process means that the police must not use unduly suggestive procedures (*Foster v. California*, 1969). The appeal reached the U.S. Supreme Court, which affirmed the conviction, ruling that the identification procedure, although suggestive, was necessary because of the injured state of the witness. Doctors had informed the investigators that the witness had a small chance of surviving surgery. The court decision in *Stovall* was to acknowledge that showups are more suggestive than lineups and to restrict showups only to case of emergencies.

As seen in *Stovall*, just because an identification is suggestive does not mean that a defendant's due process rights have been violated or that the identification is unreliable. The Court has held that whether a due process violation has occurred should be determined by the totality of the evidence. Under this standard, the U.S. Supreme Court has ruled that showups do not violate due process in the following situations:

- The showup was held a short time after the crime was committed. The courts have upheld such showups because memory is best immediately after a crime occurs as it affords officers the chance to quickly arrest or release persons of interests.
- The witness is in critical condition and may not survive long enough to view a lineup.
- The suspect is in criminal possession of property stolen from the witness.

Shortly after the *Stovall* decision, the U.S. Supreme Court decided that reliability was the lynchpin for the admissibility of identification evidence. In the 1970s, the Court developed a two-pronged test of reliability for all identification procedures (*Manson v. Brathwaite*, 1977; *Neil v. Biggers*, 1972). In the first prong, the Court evaluated the suggestiveness of the identification procedure. In the second prong, the Court attempted to determine whether the identification was accurate in spite of any biased procedures that were used. For example, a police officer may influence an eyewitness during the showup, but if the witness was the neighbor of the defendant for 20 years, the court might recognize that the identification is still likely to be accurate and allow the testimony. The second prong was activated only if the identification procedures were suggestive or failed the first prong.

### **First Prong—Suggestiveness or Bias**

A *biased identification* is defined as one in which people who did not witness the event can choose the suspect at a rate greater than  $1/n$ , where

$n$  is the number of individuals in the identification procedure (Neuschatz & Cutler, 2008).

Preidentification instructions are one factor that bias identifications. Biased instructions imply that the perpetrator is in the lineup, whereas unbiased instructions explicitly state that the perpetrator may or may not be in the lineup. The effect of these instructions can be dramatic (see Chapter 3, this volume). Steblay (1997) meta-analyzed the studies examining the effects of lineup instructions on identification accuracy and found a clear, consistent pattern. With perpetrator-absent lineups, unbiased instructions led to fewer false identifications (35%) than did biased lineup instructions (60%). However, unbiased instructions also can lead to a decrease in correct identifications when the perpetrator is present (Clark, 2005). If the identification procedure has been determined to be highly suggestive, the evaluation process proceeds to the second prong.

### **Second Prong—Five Factors**

The U.S. Supreme Court has endorsed five factors for jurors to use in evaluating the reliability of eyewitness identifications. These factors are (a) opportunity to view, (b) attention, (c) description, (d) time to identification, and (e) certainty. The idea is that if a witness had ample opportunity to view the perpetrator, paid attention to the perpetrator as the crime was occurring, gave an accurate description of the perpetrator, and was confident that he or she had identified the correct person as the perpetrator, then the jurors can trust that the eyewitness is accurate in his or her identification. However, as Wells and Quinlivan (2009) suggested, these factors are only weakly related to identification accuracy, can be misleading as indices of identification accuracy, and therefore can be detrimental to juror decision making.

Postidentification feedback, for example, weakens the correlation between confidence, view, and attention with accuracy. *Postidentification feedback* refers to statements made to the witness from the lineup administrator regarding the accuracy of the identification. Wells and Bradfield (1998) had participants watch security footage and make an identification from a perpetrator-absent lineup. Following the identification, some of the participants were given erroneous confirming information from the experimenter (“Good, you identified the culprit”), and others were given no or negative feedback. Participants who were given confirming feedback subsequently reported that they paid more attention to the perpetrator, were more certain in their identification, and had a clearer view of perpetrator compared with participants who were not given feedback. Of course, these are the same factors that jurors are instructed to use as indicators of eyewitness accuracy.

## Conclusion

In *Stovall*, the U.S. Supreme Court argued that showups are a suggestive identification procedure and should be avoided to the extent that other means of identification are available. The Court suggested that lineups be used instead of showups whenever possible. The Court, however, acknowledged that in certain situations showups may be the only option. Although the Court's decision in *Stovall* seemed to restrict showups to only emergency situations, *Neil v. Biggers* (1972) made it clear that law enforcement officials could conduct showups even if there was no emergency as long as there was no due process violation. Therefore, because the courts have raised the issue regarding the potential bias of a showup, it seems prudent to compare the empirical evidence evaluating showups and lineups to see if one technique is superior (i.e., more correct identifications of the perpetrator and/or fewer false identifications of the innocent suspect). If identification performance is similar between lineups and showups, then they should continue to be used given their advantages (discussed previously). However, if lineups consistently outperform showups, then the U.S. Supreme Court's decision in *Stovall* (use in emergency situations only) would be preferred. In the next section, we review the psychological literature on showup and lineup identifications.

## SHOWUP VERSUS LINEUP

The scientific research regarding showups versus lineups is difficult to interpret. Although some researchers have indeed found a negative impact of showups (i.e., more false identifications than in lineups; Lindsay, Pozzulo, Craig, Lee, & Corber, 1997; Wagenaar & Veeffkind, 1992; Yarmey, Yarmey, & Yarmey, 1994; Yarmey, Yarmey, & Yarmey, 1996), others have reported more correct identifications in showups when the perpetrator is present and higher correct rejection rates when the perpetrator is absent (Beal, Schmitt, & Dekle, 1995). Meta-analyses by Steblay, Dysart, Fulero, and Lindsay (2003) and Clark and Godfrey (2009) have examined the existing data to determine which identification procedure is the best. The best identification procedure should lead to more correct identifications when the perpetrator is present and fewer false identifications when the perpetrator is absent.

### Analysis of Steblay et al. (2003)

Steblay et al. (2003) analyzed eight published articles that included 12 tests of identification performance in showups and lineups. The results from the meta-analysis revealed that the choosing rate, collapsed over

perpetrator-present and perpetrator-absent conditions, was significantly higher in lineups (54%) than in showups (27%). Despite a lower choosing rate, the laboratory data indicated that showup choices were more accurate: Correct decisions (perpetrator identifications from perpetrator-present conditions + correct rejections from perpetrator-absent conditions) were significantly higher in showups (69%) than in lineups (51%). Witnesses in showups did not choose more often, and contrary to expert opinion (Kassin et al., 2001), when witnesses did choose from showups, they made more correct decisions. In addition, the number of incorrect identifications was significantly lower in showups (15%) than in lineups (43%). Showups appear to be superior.

Before we continue, we need to make a distinction between two types of incorrect identifications. A *false identification* refers to the identification of an innocent suspect who mistakenly is thought to have committed the crime; *filler identifications* refer to identifications of people in the lineup who are known to be innocent. The former is considered a dangerous error because of the potential for an innocent person to be prosecuted. But because there are six ways to make a filler identification (in a six-person lineup without a designated innocent suspect) but only one way to make an innocent suspect identification, we estimated an innocent suspect rate by dividing the filler identification rate by the number in the lineup to make these two types of incorrect identifications comparable (Clark, Howell, & Davey, 2008).

Stebay et al. (2003) argued that comparing incorrect decisions was misleading because filler identifications from lineups were not dangerous errors. Instead, they argued that it made more sense to compare errors involving only the identification of an innocent suspect. But only five of the 12 experiments included a designated innocent suspect. When Stebay et al. focused on just those studies (Dekle, Beal, Elliott, & Honeycutt, 1996; Yarmey et al., 1994, 1996), they found that the false identification rate from showups (23%) was higher than that for lineups (10%). One issue with this conclusion is that it only takes into account correct identifications in perpetrator-present and correct rejections in perpetrator-absent lineups. Clark and Godfrey (2009) pointed out that this comparison places lineups at a disadvantage because witnesses can choose a filler in a lineup but cannot do so in a showup. For example, assume that 40% of witnesses are willing to choose the innocent suspect from a showup, which results in a 60% correct rejection rate. But in a fair lineup, some of the 60% of witnesses who would have rejected the showup may choose to select one of the lineup fillers. Every filler choice reduces the correct rejection rate of the lineup. Therefore, they argued for the use of conditional probability to compare two identifications procedures.

### Analysis of Clark and Godfrey (2009)

In their review, Clark and Godfrey (2009) included the five comparisons from Steblay et al. (2003) described previously (Dekle et al., 1996; Yarmey et al., 1994, 1996) with the addition of Dekle (1997), Lindsay et al. (1997), and Wagenaar and Veefkind (1992). The result was a total of 15 showup–lineup comparisons. Contrary to Steblay et al., Clark and Godfrey found that correct identification rates in perpetrator-present conditions and innocent suspect identifications from perpetrator-absent conditions were not significantly different between lineups and showups.

Clark and Godfrey (2009) argued that the joint consideration of correct and false identification rates was a better measure of identification performance (see also Gronlund, Carlson, Dailey, & Goodsell, 2009). Clark and Godfrey argued that a measure of probative value like the conditional probability of a suspect identification affords a more appropriate comparison between different identification procedures because it is unaffected by the filler response rate, which showups cannot have. Conditional probability is the probability of choosing the guilty suspect given that a suspect (innocent or guilty) was chosen ( $= [(\text{guilty suspect identifications from perpetrator-present lineups}) / (\text{guilty suspect identifications from perpetrator-present lineups} + \text{innocent suspect identifications from perpetrator-absent lineups})]$ ). Clark and Godfrey found that the conditional probability for lineups (.79) was significantly higher than for showups (.69), indicating that showups put an innocent suspect at greater risk of being falsely identified.

But conditional probability is not without its problems. It is influenced by response biases (see Clark, Erickson, & Breneman 2011; see also Chapter 5, this volume). That is, it covaries with the choosing rate: An identification procedure could have a higher conditional probability because it results in better performance or because it exacts a higher level of confidence (i.e., a more conservative rate of choosing). That makes conditional probability, or any measure of probative value, problematic for comparing performance across different testing procedures that differ in choosing rates. There is evidence that showups produce less conservative choosing, which would contribute to finding a lineup advantage (see Meissner, Tredoux, Parker, & MacLin, 2005). Thus, the use of measures like conditional probability may confuse, rather than inform, researchers' ability to determine which identification procedure is superior.

Wixted and Mickes (2012) supported this view. Wixted and Mickes used the simultaneous–sequential lineup debate (see Chapter 5, this volume) as the backdrop for their proposal that receiver-operating characteristic (ROC) curves should replace traditional measures like correct identification rate, false identification rate, and diagnosticity (correct or false) as well as

other probative value measures like conditional probability. ROC analyses are standard practice for testing between diagnostic procedures in the medical literature, especially radiologic decision making (e.g., Lusted, 1971; Pisano et al., 2005, compared the performance of film vs. digital mammography using ROC analysis). Their use is long overdue in the eyewitness domain. Unfortunately, ROC curves comparing showups and lineups do not yet exist.

Where does this leave us? Some might conclude that lineups appear to result in more accurate identifications. However, we believe that the evidence on that point is not definitive given the limited number of tests comparing showups and lineups and the issues raised regarding performance measures like conditional probability. This point underscores the need for more research on the topic. And if more research is needed, there are three factors that must play a role: (a) the expectation that the suspect is the perpetrator, (b) the effect of clothing on the identification, and (c) live versus photographic identifications. These factors are important to decisions regarding which identification procedure is superior because these factors likely have a greater impact on showups. In other words, to the extent that these factors confound comparisons of showups versus lineups, they could inflate the purported benefit of lineups over showups.

#### VARIABLES CONFOUNDING THE SHOWUP VERSUS LINEUP COMPARISON

##### Expectation

Quinlivan et al. (2012) examined the effect of expectations in lineups. After watching a mock video crime, participants were given biased or unbiased lineup instructions. Half of each of the instruction groups were given the expectation that the perpetrator would be in the lineup by suggesting to the witness that they would be able to pick out the "right person." All lineups were perpetrator absent so the correct choice was not to make an identification. In the no-expectation control condition, participants who received biased lineup instructions chose significantly more often than participants who received unbiased instructions (100% and 39%, respectively). This is the typical effect of unbiased instruction—a reduction in false identifications (Malpass & Devine, 1981; Neuschatz & Cutler, 2008). However, when participants were given the expectation that the perpetrator was in the lineup, the choosing rate in the unbiased condition increased to 83%, which was not significantly different from the 100% choosing in the biased condition. Given that showups typically occur shortly after a crime has been committed,

it is reasonable to assume that a witness believes there is a very strong chance that the police found the perpetrator. In fact, a victim might be brought to the location where the suspect was found or where the suspect is presented in handcuffs or sitting in the back of a police car. Thus, expectations likely are higher that a showup includes the perpetrator. That means that expectations exert a greater impact on showups than lineups. However, more research is needed to make this determination.

### Clothing Bias

Clothing bias poses a greater problem for showups than lineups. Clothing plays a bigger role in showups in that a suspect might be apprehended because he matches the description of the perpetrator, and clothing is one of the most frequent descriptors given by witnesses (Lindsay, Martin, & Webber, 1994). Thus, innocent people dressed in clothing similar to the perpetrator are at risk of being apprehended and falsely identified. On the other hand, lineups are more likely to feature individuals wearing prison scrubs or clothing different than what was worn at the time of the crime.

Clothing can bias a witness into making a false identification of an innocent suspect. The case of Arthur Carmona demonstrates the danger. The police found Carmona near the scene of a robbery and put him in a showup. Before asking the witness to make an identification decision, police had him put on a Lakers' cap linked to the crime. Largely on the basis of this identification, Carmona was convicted and spent 2 years in prison before being released (Carmona, 2007). Two studies have examined this issue. In Yarmey et al. (1996), the perpetrator approached volunteers in public places and asked for directions. After varying retention intervals the volunteers completed a showup. In one condition the perpetrator and the suspect wore the same clothing; in the other condition the suspect wore a sweater that differed in color and style from the one worn by the perpetrator. The results revealed more false identifications in the perpetrator-absent condition when the clothing matched. However, Dysart, Lindsay, and Dupuis (2006) found a clothing bias effect only when the suspect wore distinctive clothing (e.g., a Harley-Davidson t-shirt); there was no clothing bias when suspects were dressed in typical clothing (e.g., blue button-down dress shirt).

The events in the aforementioned studies took place under optimal conditions (i.e., good lighting, clear view, no weapons, etc.). Optimal viewing conditions likely mitigate the effect of clothing bias. Real crimes, however, often occur in situations that do not offer optimal viewing conditions (e.g., low light, extreme stress, disguises). In fact, according to the *outshining hypothesis* (Smith, 1988, 1994), clothing bias should have a greater effect

when typical cues like hairstyle and eyes are less salient because strong retrieval cues outshine weaker cues. Moreover, if retrieval cues that ordinarily are present are degraded, other context cues could be substituted. Facial cues are strong retrieval cues in eyewitness identification. If these cues are encoded well, contextual cues like clothing should have little impact on identification accuracy. But if the facial cues are degraded, cues like clothing may be called on to aid memory. Thus, according to the outshining hypothesis, a clothing bias should be more pronounced when the facial cues of the perpetrator are degraded, as would frequently occur in the real world. In other words, poor encoding of the face would increase reliance on clothing, which is more likely to match in a showup.

### **Photograph Versus Live**

In addition to expectation and clothing bias, the mode of presentation of the identification task (e.g. a live presentation, photo, video) may differentially influence showups and lineups. Because showups are conducted relatively soon after the crime, they are typically live. Lineups, however, are often conducted as photo arrays as a result of the fact that digital photo databases make them easier to create. It is reasonable to assume that a live identification task like a showup would provide more cues to memory compared with a static image. In addition, lineup photos often can be dated and may not necessarily match how a perpetrator looked at the time of the crime. The issue is that different modes of presentation may convey different characteristics, or cues, about the perpetrator. Valentine and Heaton (1999) examined the differences between individuals who were asked to make an identification from a live or videotaped identification task. They found that 25% of the participants were able to select the suspect from the live lineup; however, only 15% of the participants were able to select the suspect from a video lineup. Cutler and Fisher (1990) found no significant differences in correct identifications between a live lineup, a videotaped lineup, or a photo lineup. However, both the live and video format resulted in fewer false identifications (see also, Kerstholt, Koster, & van Amelsvoort, 2004). In contrast, Morgan et al., (2004) found that the live lineup resulted in fewer correct identifications. More research is needed to understand how mode of presentation may affect showup and lineup performance given the confounding in the literature.

Despite important questions remaining concerning the differential contributions of expectations, clothing bias, and mode of presentation, the police still frequently conduct showups and will continue to do so. Therefore, it behooves psychologists to make sure that best practices are being followed until a more definitive recommendation can be made regarding which iden-



tification procedure is superior. For that reason we conclude this chapter by outlining some best practice guidelines and policy implications.

## BEST PRACTICE GUIDELINES

In 1999, under the leadership of U.S. Attorney General Janet Reno, the U.S. Department of Justice published a best practices guide for conducting identification procedures (U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, 1999), which included a section on showup identifications. The guide acknowledged the potential suggestive nature of showups and recommended the following procedures to avoid biasing the witness. First, the investigator should document the witness's description of the perpetrator prior to the identification procedure. Thus, viewing the suspect during the identification will not influence the witness's description. Second, if multiple witnesses are involved, the person conducting the identification should keep the witnesses separate so that they do not influence one another's identification or description. Furthermore, in the case of multiple witnesses, if one witness makes a positive identification from a showup, then the investigator should consider a different identification procedure for the remaining witnesses (e.g., lineup). Third, inform witnesses that the suspect they are about to view may or may not be the perpetrator. Unbiased instructions reduce the increase in false identifications from lineups, but the same findings have yet to be demonstrated in the showup literature (Clark, 2005; Malpass & Devine, 1981). Fourth, after an identification (or nonidentification) has been made, the investigator should record the witness's confidence assessment before it can be influenced by other events (e.g., other witness statements, the media) to preserve a record for trial. This is very important because jurors often rely on confidence as an indication of accuracy of the identification (Cutler, Penrod, & Dexter, 1990; Fox & Walters, 1986). Confidence can be influenced by a host of factors that are not related to the witness's memory of the event (see Chapter 7, this volume). We suggest one additional best practices guideline: The investigator should provide no feedback to the witness regarding the accuracy of the identification. As was mentioned earlier, feedback, both confirming (e.g., "Good, you identified the suspect") and even seemingly innocuous (e.g., "Take your time"; Clark, Marshall, & Rosenthal, 2009), can affect a witness's confidence and retrospective memory for the event (Neuschatz et al., 2005; Wells & Bradfield, 1998). If a suspect is identified from a showup identification, police should take a statement of confidence before moving the suspect, placing the suspect in handcuffs, or driving the suspect away in a police car, which would undoubtedly serve as confirming feedback.

## POLICY RECOMMENDATIONS AND CONCLUSIONS

It is clear that law enforcement, scientists, and the courts all recognize the potential biasing influence showup identifications have on a witness making an identification decision. Many law enforcement agencies realize this and take steps to avoid some of these problems. However, as pointed out in the preceding discussion, factors like expectation, clothing, and mode of presentation have the potential to negatively impact showup identification decisions to a greater extent than lineup identification decisions.

Is a showup a viable procedure compared with a lineup? From our perspective as social scientists, we believe more research is warranted before policy recommendations can be made. Showups have obvious advantages in the field; they are fast and easy to implement and can quickly get criminals off the street or free innocent suspects from suspicion. But if showups are shown to be more suggestive than lineups, then lineup techniques need to be developed for use in the field (see Cutler, Daugherty, Babu, Hodges, & Van Wallendael, 2009, for an example of computerized unbiased lineup procedures). However, what about the role of lineup composition? Gronlund et al. (2009) showed large effects of lineup composition on performance. It is possible that a showup may be more suggestive than a fair lineup, the kind of lineup that could be painstakingly constructed in the lab, but a showup may not be more suggestive than a lineup hastily constructed in the field. Conversely, if showups are shown to be better than lineups at a short delay, or no worse at a long delay, police should be encouraged to use showups given how much easier they are to administer. But more research is needed to make this determination.

Malpass et al. (2008) suggested that to provide policymakers with information regarding potential policy change, a thorough examination of a topic is necessary. In particular, they proposed a systematic exploration of the relevant study space. A study space analysis involves identifying all relevant variables, including those that have been manipulated in existing research, those that have not been, as well as combinations of these variables. Researchers must comprehensively evaluate this study space before making recommendations to policymakers. For example, Malpass and colleagues pointed out that backloading (placing additional photos at the end of a sequential lineup so that the witness does not know how many photos he or she will view) and asking questions about each lineup member is common in sequential lineup presentation but not in the simultaneous procedure. Until variables like these are properly examined (i.e., the study space explored), Malpass et al. argued, one cannot determine the true cause of one lineup format outperforming another, and policy recommendations could be based on an incomplete understanding of the phenomena of interest.

Another prerequisite to policy recommendations involves the role of theory development to support the findings. Often practical questions in the psychology and law domain become the focus of research in lieu of theory development (Bornstein & Meissner, 2008). But Lane and Meissner (2008) argued that eyewitness identification would benefit from incorporating what is known about basic social and cognitive psychological research. This is beginning to happen. For example, Goodsell, Gronlund, and Carlson (2010) made productive use of Clark's (2003) WITNESS computational model to aid understanding of the sequential lineup advantage. Clark et al. (2011) also used the WITNESS computational model to explore relative versus absolute decision processes in simultaneous lineups. A theory-driven approach will prove vital to understanding why one type of identification procedure results in better performance or why one type is better in some circumstances but not others. It may even point to new identification procedures that are an improvement over existing ones.

The importance of understanding eyewitness identification has grown dramatically in the wake of the ever-increasing number of DNA exonerations (see <http://www.innocenceproject.org>) and with the increase of psychological experts testifying in courts on the reliability of identification evidence (Pezdek, 2007). Eyewitness identification accuracy will never be perfect, but it can be improved. Psychological experts need to determine if showups are part of the solution or part of the problem.

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# Exhibit 5



## Eyewitness Accuracy Rates in Police Showup and Lineup Presentations: A Meta-Analytic Comparison<sup>1</sup>

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*Meta-analysis is used to compare identification accuracy rates in showups and lineups. Eight papers were located, providing 12 tests of the hypothesis and including 3013 participants. Results indicate that showups generate lower choosing rates than lineups. In target present conditions, showups and lineups yield approximately equal hit rates, and in target absent conditions, showups produce a significantly higher level of correct rejections. False identification rates are approximately equal in showups and lineups when lineup foil choices are excluded from analysis. Dangerous false identifications are more numerous for showups when an innocent suspect resembles the perpetrator. Function of lineup foils, assessment strategies for false identifications, and the potential impact of biases in lineup practice are suggested as additional considerations in evaluation of showup versus lineup efficacy.*

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**KEY WORDS:** eyewitness; lineup; showup; meta-analysis.

An eyewitness to a crime quickly becomes a potentially critical factor in the apprehension and conviction of the perpetrator. Subsequent to a criminal event in which the perpetrator and witness are strangers, an identification procedure provides a memory test of the witness that can aid police in ascertaining whether a suspect is in fact the perpetrator. The most common police identification test procedures (Lindsay, 1999) are multiperson photo or live displays (lineups) and presentation of a single person to the witness (showup). In recent years, eyewitness researchers have identified flaws in police identification practices and have explored corrective avenues through comparative tests of alternative procedures. This line of research has contributed to the determination of best practices for obtaining and preserving eyewitness evidence (Technical Working Group for Eyewitness Evidence, 1999). The

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importance of this applied research—and the techniques that have been developed for reducing the likelihood of false identification—is highlighted by dramatic news reports of DNA exoneration of convicted persons and the contribution of eyewitness identification errors in such cases (Wells et al., 2000).

Research to date has focused primarily on photo and live lineups, with less attention given to showup procedures despite evidence of their frequent use. Flowe, Ebbesen, Burke, and Chivabunditt (2001) report that showups were used for 55% of identifications conducted in 488 sampled cases between 1991 and 1995 in a large U.S. metropolitan area. McQuiston and Malpass (2001) document a showup use rate of 30% for identification attempts by police in El Paso County, Texas. Gonzalez, Ellsworth, and Pembroke (1993) enlisted the help of an Illinois detective to record all identifications (lineups and showups) in which he was involved over a designated period of time. Results from this field study indicated that 77% of identification tasks were showups. Thus, showups are a common and sometimes favored police identification procedure.

The small amount of research attention given to showups compared to lineups may be due to an expectation that a showup is simply an abbreviated lineup. A showup in fact may present a cognitive task quite similar to that of a lineup—and procedural recommendations for lineups (e.g., unbiased instructions) should logically be extended to showups. Alternately, a showup task may tap a slightly different cognitive strategy or set of situational influences, thus demanding a separate assessment of strengths and weaknesses. The correctness of either of these two positions is unclear at present, giving rise to the need for an empirical and evaluative comparison of showups with other identification techniques.

Researchers have empirically explored lineup formats and developed theoretical models of how lineup presentation is likely to affect witness decision-making. For example, lineups may be conducted either in simultaneous or sequential manner, and choice of format has been demonstrated to make a significant difference in level and type of ensuing errors (Stebay, Dysart, Fulero, & Lindsay, 2001; Wells et al., 1998). Simultaneous lineup presentation involves presentation of a group of photos or persons all at once to a witness, requiring the witness to decide if one of the displayed lineup members is the perpetrator. This technique allows a witness to compare lineup members and then to select the person who most closely resembles his or her memory for the culprit (i.e., a “relative judgment” strategy; see Wells, 1984). A simultaneous procedure will yield acceptable results when the perpetrator is in fact in the lineup, as the witness’s comparison of the lineup members will often lead to the choice of the perpetrator as the closest match to memory. However, when the culprit is absent from the lineup, many witnesses continue to use the relative judgment strategy, resulting in an increase in the selection of an innocent lineup member, or “false alarm” (Stebay et al., 2001; Wells et al., 1994; Wells et al., 1998).

Lindsay and Wells (1985) proposed an alternative identification procedure, designed to restrict a witness’s ability to use the relative judgment strategy. This technique, known as the sequential lineup, involves presentation of lineup members one at a time, requiring a yes/no identification decision for each member before the next one is shown. With this method, a witness must compare each lineup member to his/her memory of the culprit (i.e., the witness must make absolute judgments).

Lindsay and Wells found support for the superiority of the sequential strategy over the traditional simultaneous technique. Their results showed that the sequential and simultaneous techniques produced nearly equivalent correct identification rates in target-present lineups, yet the sequential technique produced close to a 25% lower false identification rate than the simultaneous method.

A recent meta-analysis comparing the effectiveness of the simultaneous and sequential lineup techniques confirmed what has been dubbed the “sequential superiority effect” (Steblay et al., 2001). The results support the reasoning of Lindsay and Wells (1985) that the sequential lineup forces eyewitnesses to use a more absolute judgment criterion rather than a relative judgment strategy. More specifically, participants in sequential lineup conditions were less likely to choose from the lineup, thus lowering their decision effectiveness for target present lineups but also reducing false identifications in target absent conditions. The reverse was true of the simultaneous lineup witness: An increased tendency to choose generated greater hit rates in the target present condition but also increased false identification errors by 23% in the target absent array, including a 200% increase in false identification of a designated innocent suspect. These outcomes reveal the complexity of lineup presentation issues. For example, the 15% increase in accuracy found for target-present simultaneous lineups appears desirable, but may in fact be due to calculated guesses. Also, under conditions approximating real-life, benefits of the target-present simultaneous presentation were found to diminish whereas the target-absent advantages of sequential lineups remained stable.

Given that the showup identification procedure is a one-photograph technique requiring only one “yes–no” judgment, it should logically provide the benefit of absolute judgment (i.e., fewer false alarms). This line of thinking suggests that an eyewitness faced with a showup will be less likely to choose than when viewing a lineup, thereby reducing both correct and false identifications. One might further predict that a showup would be at least as effective as a sequential lineup and superior to a simultaneous format.

However, one of the benefits of a lineup—either simultaneous or sequential—is that there is some protection for the innocent suspect in the presence of lineup foils. An unreliable eyewitness or absence of the true perpetrator in the lineup can be signaled by a witness’s selection of a foil. The showup does not offer such protection. In addition, while the eyewitness to a lineup can correctly assume that there will be more than one choice in the task, a showup is understood by the eyewitness to be a single opportunity to identify the perpetrator. The showup reveals police suspicions about the single suspect, and the witness is aware that only one person will be shown. Thus the procedure may be considered an “inherently suggestive one” (Lindsay & Wells, 1980; Phillips, McAuliff, Kovera, & Cutler, 1999). Indeed, using the same term, the United States Supreme Court (*Stovall v. Denno*, 1967; *United States v. Wade*, 1967) and many state courts (*Bradley v. State*, 1980; *Commonwealth v. Carter*, 1979; *Holden v. State*, 1979) have acknowledged that showups are suggestive. This suggestiveness may affect outcomes by generating more choosing from showups than lineups. Offering some support to this speculation, Behrman and Davey (2001) found that in actual criminal cases, 76% of witnesses in showup circumstances made identifications, whereas only 48% of witnesses in photo lineups did so. If choosing

is increased, the showup procedure may generate an increase in both correct and incorrect choices or simply make witnesses more likely to identify an innocent suspect as the perpetrator without affecting the rate of correct choices. In either case, the benefit gained by an absolute judgment strategy may be balanced or negated by pressure to choose and the fact that identification errors cannot be spread across foils (known errors). Following this logic, one might predict that a showup would be particularly dangerous for innocent suspects and thus less desirable as an identification procedure.

This project is an extension of the past work that compared sequential and simultaneous lineup formats (Stebay et al., 2001). Meta-analysis will be used to compare showup to lineup presentation strategies. Most showup researchers have tested the hypothesis that a one-person showup increases the likelihood of misidentification compared to a full lineup. A recent survey of experts (Kassin, Tubb, Hosch, & Memon, 2001) found that 74% of respondents considered that finding to be reliable, and 85% reported that their opinion was based on published, peer reviewed scientific research.

A preliminary review of past research highlights four intriguing points relevant to this survey finding. First, there is very little available research that explicitly compares showup to lineup performance. Only eight articles, with 12 tests, have been located after extensive investigation. Second, the available research on showup identifications has yielded inconsistent results. A quick tally shows four reports of the negative impact of showups (Lindsay, Pozzulo, Craig, Lee, & Corber, 1997; Wagenaar & Veefkind, 1992; Yarmey, Yarmey, & Yarmey, 1994, 1996), one that suggests that showups produce more accurate identifications (Beal, Schmitt, & Dekle, 1995), and two reports (Dekle, Beal, Elliott, & Huneycutt, 1996; Gonzalez, Ellsworth, & Pembroke, 1993;) that indicate equivocal or no difference in decision outcomes. This variability in study outcome highlights a third issue: Interpretation of outcome is somewhat a function of the dependent measure of interest—positive identifications, choosing rates, or false identifications. Outcomes of prior lineup research suggest that exploration of multiple dependent measures will provide a more complete picture of this complex phenomenon. A final point, as noted above, is that reasonable extrapolation from existing theory and empirical work may lead one to opposing predictions about eyewitness choosing and accuracy levels in showups compared to lineups. For these reasons, a summary report of showup performance is necessary.

A central purpose of meta-analysis is to search the data for any underlying pattern, a consistent display of an effect despite surrounding noise. Subsequent exploration of theoretical and methodological variables that moderate an effect often highlights and clarifies nuances of a complex phenomenon. Essential commonality of hypothesis is critical to the studies that make up a meta-analysis, yet diversity in method addressing that hypothesis typically affords access to more complete knowledge. Despite the small number of empirical studies available on the topic of showup performance, this meta-analysis is anticipated to provide useful supplementary knowledge to our growing understanding of eyewitness performance. This expectation is based on the high quality of studies available—seven of the eight are published—and the attention within these studies to relevant theoretical questions

and issues central to eyewitness identification practice. The studies present a desirable variety of approaches and samples. For example, Wegenaar and Veefkind (1992) provide two studies, the first a laboratory test utilizing a slide sequence stimulus and including 548 citizen subjects; their second experiment tapped a more realistic scenario involving a staged crime and a full week delay between crime and identification task during which the college subjects did not know that they would be called back to a lineup task. Gonzales, Ellsworth, and Pembroke (1993) in their first study staged a classroom incident that involved their participants in a cross-racial identification task. In a second study, these researchers explored variations of crime (theft in a restaurant) and modality (video) as well as a change to same-race identification in the context of lineup foils of high, medium, or low similarity to the perpetrator. Lindsay et al. (1997) explored subject sample differences (preschool, school-age, and college students) in a noncrime event with a lineup selection procedure that used every member of the target-absent lineup in the target-absent showup condition. This diversity of researchers' approaches provides the potential for meaningful exploration of the parameters of showup/lineup performance even within the small sample.

Consistent with the Kassir et al., survey of experts, this meta-analysis begins with the primary hypothesis that a showup will lead to increased false identifications compared to a lineup. Additional complexities of the showup-lineup comparison also will be explored, with expectation of less dramatic differences between showups and lineups in target-present scenarios. The research will compare showups and lineups on three primary outcomes: Rates of overall correct identification decisions; correct identifications of perpetrators from target present arrays; and misidentification errors from target absent arrays. The evaluation of misidentification errors is more complicated than at first may appear. In the case of a perpetrator-absent array, a clear comparison can be made in the laboratory between the rates of correct rejection from showups versus lineups. It is more difficult to compare false identification rates. False identification and false positive selection rates are identical for showups (only one choice is available), while in a perpetrator-absent lineup, the innocent suspect may be chosen (false identification) or a foil selection is possible. Care will be taken to distinguish between these two choices (Lindsay et al., 1997).

Additionally, the predicted tendency for false identification to occur more often with showups may depend on how the innocent suspect is selected. Many, but not all, researchers select innocent suspects based on their similarity to the confederate. The result when innocent replacements are determined by other means is not clear and there may be insufficient data at this time to test this effect. However, it is hoped that the available data allows testing of three outcomes of target-absent arrays: Correct rejection rates for showups versus lineups; false identification rates of designated innocent suspects selected on the basis of similarity to the confederate for showups versus lineups; and false identification rates of designated innocent suspects that do not resemble the confederate for showups versus lineups. The specific goals of this meta-analysis are (1) to generate a quantitative and theoretical summary of research findings that compare showup and lineup performance, (2) to ascertain the state of the research literature, and (3) to provide direction for future research efforts.

## METHOD

### Sample

A computer search of the PsycINFO database provided an initial sample of studies relevant to the hypothesis. Direct contact with lineup researchers provided access to additional tests and more complete data. In order to be included in the sample, the experimental study must have compared showup to lineup performance and provided a statistical test of the relationship between presentation format and identification accuracy. Both sequential and simultaneous lineup formats were included as lineup tests. Multiple dependent measures of accuracy were available in the sample, and the review incorporated performance frequencies of the following: (1) overall correct decisions, collapsed across target-present and target-absent presentation (correct identifications plus correct rejections); For target-present presentations, (2) correct identifications, (3) false rejections, and (4) choice of a foil (a known error); For target-absent formats, (5) correct rejections, (6) identification of any foil, and (7) identification of a designated innocent suspect or target.

Eight papers were located (seven published and one unpublished), providing 12 tests of the hypothesis. The data set included studies completed between 1977 and 2002, representing 3013 participants. Both male and female participants were included in all tests. Sample sizes ranged from 59 to 565, with a mean of 251.08. The set includes data from 1127 community residents (41%), 1320 undergraduates (44%), and 459 (15%) children.

### Study Characteristics

Methodological and theoretical variables were coded as part of the data set. Methodological variables included researcher, year of publication, source (published or unpublished), number of hypothesis tests per study, sample size, subject sex, sample makeup (children, undergraduate students, adult sample, mixed), lineup size, lineup mode (live, photo, video), design (between-subject, within-subject), type of crime (robbery, vandalism, non-criminal), event stimulus (video, live, slides), and procedural blinds (double-blind, no double-blind). Variables of more theoretical import included time of delay between event and identification task (immediate, 2 days to 1 week), number of perpetrators, race and gender of perpetrator, inclusion of a verbal description task (present, not present), instruction (biased, unbiased) lineup construction (biased, unbiased), lineup type (sequential, simultaneous), lineup construction strategy (match-to-description, match-to-target), choice of target replacement (best match to target, rotation of foils), and exposure time in seconds.

All 12 studies provided a between-subject design, a lineup of size 6, unbiased lineup instructions, and a single perpetrator. Time of exposure to the perpetrator ranged from 2 to 90 s, with a mean of 57 s. Only one test specifically reported use of a double-blind procedure (Wegenaar et al., Experiment 2, 1992); the remaining articles included no comment regarding double-blind precautions.

Two authors (JD & NS) independently recorded data from each paper, and then compared information to check for oversights. Design variables were coded by a team of student researchers. These codes were derived directly from the papers, with minimal interpretation necessary. Multiple coders were employed simply to assure that available information was recorded correctly. Thus ultimate agreement among coders was 100%.

### Statistics

Following the work of Rosenthal (1991), the Pearson correlation coefficient  $r$  was used as the measure of effect size. The mean effect size for a group of hypothesis tests is referred to in subsequent discussion simply as  $r$ . A meta-analytic  $Z$  ( $Z_{ma}$ ) was calculated by combining  $Z$ -scores of individual tests of the hypothesis using the Stouffer method (Rosenthal, 1991). This method produces an overall probability level associated with the observed pattern of results. A fail-safe  $N$  ( $N_{fs}$ ) was calculated to estimate the number of additional tests averaging null results that would be needed in order to bring the significance level attained through the meta-analysis to a value larger than .05.

## RESULTS

Twelve tests of the hypothesis were available to examine the status of the effect, that is, that lineup presentation fosters better eyewitness performance than does a showup format. Positive  $r$  and  $Z$  values denote support of this hypothesis. Negative  $r$  and  $Z$  values indicate results in the opposite direction, that is, that subjects in the showup condition performed with greater accuracy than subjects in the lineup condition. Comparisons are considered as one-tailed tests.

### Overall Frequency of Correct Decisions

The first pass through the data set was to ascertain the overall level of correct identification decisions by eyewitness subjects. These figures, from 12 tests, represent the frequency of correct identifications in target-present presentations plus correct rejections in target-absent presentations. Showup presentation produced a mean of 69% correct decisions; lineups generated 51% correct decisions, a significant difference,  $Z_{ma} = -9.31$ ,  $p < .0001$ ,  $N_{fs} = 372$ , with an effect size  $r = -.18$ , favoring the showup. This calculation, however, does not distinguish type of error committed. That analysis requires consideration of a critical moderator variable in lineup research: whether the perpetrator is present in or absent from the array (e.g., see Steblay, 1997 and Steblay et al., 2001). The next calculations attempt to assess the impact of showup versus lineup presentation for target-present and target-absent presentations separately (see Table 1).

**Table 1.** Identification Performance: Showup Versus Lineup

	<i>N</i>	Showup (%)	Lineup (%)	<i>r</i>	Seq (%) <sup>a</sup>	Sim (%) <sup>a</sup>
Overall correct decisions	12	69	51 <sup>b</sup>	-.18	56	48
Target present display						
Correct ID	12	47	45	-.02	35	50
Miss	12	53	55		65	50
False rejection	10	58	34 <sup>b</sup>	.26	46	26
Foil ID	10	—	24		19	24
Target absent display						
Correct rejection	11	85	57 <sup>b</sup>	-.32	72	49
Miss	11	15	43		28	51
Miss minus Foil IDs	5	—	16			
False identifications of innocent suspect (minus foil IDs)	3	23	17	.07	09	27

<sup>a</sup>Sequential and Simultaneous Lineups, from Steblay et al., 2001.

<sup>b</sup> $Z_{ma} > 1.65$ ,  $p < .05$ .

### Frequency of Choosing<sup>6</sup>

A primary empirical question is whether presentation format affects choosing behavior of witnesses. Collapsed across target-present and target-absent conditions, the data indicate that the witness is twice as likely to choose from a lineup as from a showup (54% vs. 27%). In target-present conditions, 71% of subjects viewing a lineup made a choice from the array (either a correct or a foil ID) and 46% of showup subjects made a choice, in this case, a correct ID. (These data are from a subset of nine tests with the necessary information.) For 11 studies with target absent displays, lineups again produced a higher choosing rate: 43% versus 15%, lineups versus showups, respectively. Accuracy of the choosers is addressed in subsequent sections.

### Decision-Making in Target-Present Conditions

For the eyewitness presented with a target-present showup or lineup, two outcomes are possible: Correct identification of the perpetrator (a "hit") or a failure to identify (a "miss"). A miss can take the form of an incorrect rejection of the display, an "I don't know" (DK) response, or in the case of a lineup, selection of a foil. The data (Table 1) demonstrate that correct identification is slightly more likely in the target-present showup presentation than in the lineup format,  $Z_{ma} = -1.38$ ,  $p = .08$ ,  $r = -.02$  (based on  $N = 12$ ), with a 2% performance advantage (47% vs. 45%, showup versus lineup, respectively). Inversely, the overall miss or error rate of showups compared to lineups is 53% versus 55%. Effect sizes for correct identifications compared between lineups and showups are displayed on Table 2.

<sup>6</sup>"Choosers" in this analysis represent those participants who select a member of the array, correctly or incorrectly. Nonchoosers are those who reject the lineup, correctly or incorrectly, or report that they "don't know." This definition differs from the Gonzales et al. (1993) "choosers" who were defined as those who were confident enough to "decide" as to the presence or absence of the perpetrator in the array. The current analysis extracted and used the Gonzales data consistent with our definition of choosers.



**Table 2.** Stem and Leaf Display of Effect Sizes  $r$ . Target Present Presentation: Correct Identifications

Stem	Leaf
.7	
.6	
.5	
.4	
.3	
.2	3,4
.1	6,8
.0	4,7
-.0	1,7,9
-.1	
-.2	2
-.3	5,7
-.4	
-.5	
-.6	
-.7	

A more precise breakdown of error type can be determined in a subset of 10 tests. False rejections when the target is present (including DKs) are significantly fewer in the lineup condition,  $Z_{ma} = 7.41$ ,  $p < .0001$ ,  $N_{fs} = 132$ ,  $r = .26$  (58% vs. 34%, showups versus lineups). Foil identifications account for the remaining misses in the lineup condition: Twenty-four percent of subjects in the target-present lineup condition chose a foil, a known error.

Another way to view this outcome is to consider only "choosers." Showup presentations generate a significantly lower rate of choosing than do lineups, 46% versus 71% in target-present conditions. In a target-present showup, just making a choice assures a hit (100% true positive identification), while lineup choices allow for distribution across foils, thus potentially reducing true positives. Target-present lineup accuracy for choosers is 64%, a significantly lower hit rate compared to showups,  $Z_{ma} = -10.18$ ,  $p < .0001$ ,  $N_{fs} = 336$ ,  $r = -.42$ ,  $N = 9$ . Thus, lineups produce higher choosing (71%) with a lower hit rate (64%), and showups produce lower levels of choosing (46%) with a higher hit rate (100%). Overall in target-present presentations, the showup and lineup will produce approximately the same results (46% vs. 45% correct identifications).

### Decision Making in Target-Absent Conditions

Two outcomes are possible for an eyewitness confronted with an identification task that does not include the perpetrator: correct rejection of the array (which may be in the form of "I don't know") or false identification. In this case, showups produced a significantly higher level of correct rejections compared to lineups (85% vs. 57%),  $Z_{ma} = 11.76$ ,  $p < .0001$ ,  $N_{fs} = 552$ ,  $N = 11$ ,  $r = -.32$ . Inversely, the showup produced 15% errors, compared to 43% in the lineup (see Table 1). Effect sizes for the comparison of correct rejections between lineups and showups are displayed in Table 3.

**Table 3.** Stem and Leaf Display of Effect Sizes  $r$ . Target Absent Presentation: Correct Rejections

Stem	Leaf
.7	
.6	
.5	
.4	
.3	
.2	
.1	
.0	
-.0	
-.1	7,9
-.2	4,6,6,9
-.3	8
-.4	1,2,5,8
-.5	
-.6	
-.7	

The 15% showup error rate represents a “dangerous” error: Identification of an innocent suspect as the perpetrator. In the case of a lineup, this same error may occur. In addition, however, a lineup may generate a foil selection—a known error. The 43% lineup error rate mentioned above includes both false identifications and foil identifications. Teasing apart these two types of error produces a more precise indicator of dangerous lineup error rate. Five tests allowed separation of foil and suspect choices (Dekle et al., 1996; Gonzales et al., 1993, Experiments 1 and 2; Yarmey et al., 1994, 1996). These five tests appear representative of the larger data set, in that showup vs. lineup error rates of the five average 15% and 41%, respectively (compared to the full sample rates of 15% and 43%).

There are two ways to consider lineup error rates in these five tests. The 41% error rate can be divided into foil (31%) and suspect (10%) identifications. Thus, 10% of lineup decisions result in “dangerous” false IDs, compared to 15% of showup decisions. An alternative procedure is to subtract foil choices from the analyses (reducing the overall number of subjects in the analysis). With foil choices excluded, lineups generate an 84% correct rejection rate and 16% “dangerous” false identification rate, virtually the same as showups (85% correct rejection, 15% false ID),  $r = -.03$ .

In this subset of five studies, the error rate of choosers from the target-absent showup is 100% (a choice is automatically a false identification), but a smaller percentage of subjects are choosers, 16%. The target-absent lineup-choosing rate is 44%, with a 25.2% false identification rate (based on five tests). The overall error rate is 11% versus 16%, showups versus lineups.

Three of the research teams (Dekle et al., 1996; Yarmey et al., 1994, 1996) have further explored the perpetrator-absent scenario by planting a suspect in the lineup or showup who closely matches the description of the perpetrator. This person becomes an “innocent suspect” in the perpetrator-absent lineup and showup. As mentioned above, overall error rates are higher in lineups (23% vs. 45%, showups vs. lineups, respectively). However, dangerous false identification in these cases is

higher in showups than lineups, 23% versus 10%. With lineup foil choices excluded from analysis, this “dangerous” false identification rate, showups to lineups, is 23% versus 17%,  $Z_{ma} = 1.57$ ,  $p = .06$ ,  $r = .07$ .

### Comparison of Showups to Sequential and Simultaneous Formats

A related question for this investigation of showup/lineup performance is the comparison of outcomes for showups versus simultaneous and sequential lineup presentations. Steblay et al., (2001) reported that participants in the sequential lineup condition are less likely to make a lineup choice. This lower choosing rate results in false rejection errors if the target is in the lineup and reduces false identification errors if the target is absent. The reverse pattern occurs with the simultaneous lineup: An increased tendency to choose favors this participant if the target is indeed present while increasing false identification errors, particularly of a designated innocent suspect, in a perpetrator absent lineup. The two right-most columns of Table 1 report figures for sequential and simultaneous lineups from the Steblay et al. meta-analysis.

Showup/lineup comparisons in this study echo some patterns seen in the sequential/simultaneous comparison. Like sequential lineups, showups produce fewer choices, and in doing so lead to more false rejections in the target-present condition and more correct rejections in the target-absent condition. An area of difference, however, is apparent for correct identifications. In the current study, showups and lineups are approximately equal in true positive identifications, while in the earlier work, simultaneous lineups produced significantly better eyewitness performance (15%) than sequential lineups. The majority of lineups represented in the current data set are of simultaneous format. Of the 12 tests included in this meta-analysis, three used the sequential lineup format for some or all of the lineup data, and two of the three were studies repeated from the Steblay et al., (2001) meta-analysis. Eliminating these three from the data set produces a lineup comparison group that consists of only simultaneous format. Effect sizes are similar to the overall group, .03 and -.32 in target-present and absent conditions, respectively.

An additional difference emerges for the showup/lineup comparison when the planted innocent suspect in a target-absent lineup is considered. Steblay et al. report that simultaneous lineups generated three times more false identifications than sequential lineups. In this data set showups produce more false identifications, 12% versus 5%, when compared to simultaneous lineups, however this outcome should be considered tentative, as it is based on only two tests.

### Moderator Variables

As the stem and leaf displays indicate, there is essential commonality in target absent performance,  $r$ s ranging from  $-.17$  to  $-.48$ . Table 4 illustrates the consistency of effect sizes in target absent conditions and suggests minimal impact of moderator factors.

The Target present column of Table 4 for the most part replicates the earlier analyses—indicating just small differences between showup and lineup performance regardless of moderator variable. However, target present performance indicates

Table 4. Effect Size Analysis by Moderator Variables

Variable	<i>r</i> ( <i>N</i> )	
	Target present: Correct identification	Target absent Correct rejection
Sample		
Preschool to kindergarten	-.36 (3) <sup>a</sup>	-.27 (2) <sup>a</sup>
Children 8–10 years	.00 (1)	-.35 (1) <sup>a</sup>
Children 11–15 years	.03 (1)	-.31 (1) <sup>a</sup>
Undergraduates	.07 (8)	-.34 (7) <sup>a</sup>
Citizens 18–65 years	-.16 (2) <sup>a</sup>	-.22 (2) <sup>a</sup>
Lineup construction		
Unbiased	-.02 (11)	-.31 (10) <sup>a</sup>
Biased toward foil	.07 (1)	-.41 (1) <sup>a</sup>
Lineup/showup type		
Photo	-.04 (11)	-.31 (10) <sup>a</sup>
Live	.23 (1)	-.48 (1) <sup>a,b</sup>
Delay between event and identification task		
Immediate (no delay)	-.03 (8)	-.33 (7) <sup>a</sup>
2 days to 1 week	.10 (3)	-.34 (3) <sup>a</sup>
Verbal description		
Yes	.00 (9)	-.31 (9) <sup>a</sup>
No	-.05 (3)	-.40 (2) <sup>a</sup>
Event stimulus mode		
Live	-.03 (6) <sup>a</sup>	-.30 (5) <sup>a</sup>
Slides or transparencies	-.04 (5)	-.36 (5) <sup>a</sup>
Video	.18 (1)	-.26 (1) <sup>a</sup>
Event		
Robbery/theft	.03 (7)	-.36 (7) <sup>a</sup>
Smashed equipment	.24 (1)	-.17 (1)
Noncriminal event	-.16 (4) <sup>a</sup>	-.28 (3) <sup>a</sup>
Perpetrator gender		
Male	.08 (6)	-.34 (5) <sup>a</sup>
Female	-.12 (6) <sup>a</sup>	-.31 (6) <sup>a</sup>
Publication status		
Published	-.03 (10) <sup>a</sup>	-.30 (9) <sup>a</sup>
Not published	.03 (2)	-.43 (2) <sup>a</sup>

<sup>a</sup>  $Z_{ma} > 1.65$ ,  $p < .05$ .

<sup>b</sup> The one test (Gonzales et al., 1993) represented in this category is also the only test involving a cross-racial identification. Thus the individual impact of these two factors cannot be separated.

lack of consistency on two levels. First, Table 4 reveals some variability across subsets within a variable, e.g., age of sample produces effect sizes ranging from  $-.36$  to  $+.07$ . Second, not evident on Table 4 is the actual variability in effect sizes that underlies average effect sizes hovering around zero. It is important to note that these average outcomes conceal tests with both negative and positive signs (sometimes lineup, sometimes showup superiority). Target present outcomes merit attention, to explore conditions under which effects are most pronounced or constrained. Unfortunately, analysis of moderator variables in this data set is limited by the small number of tests available and the uniformity of some design components across studies.

In target present conditions, showup performance is elevated for child participants, non-criminal stimulus events, and when the perpetrator was female. As these factors are confounded within studies, it is not possible to separate out their impact. There is also an increased showup superiority associated with adult (citizen)

populations. Somewhat superior levels of correct identification in lineups are associated with undergraduates, longer time delays between event and identification task, male perpetrators, and one study in which subjects saw a staged crime in their classroom ("smashed equipment"). Lineup performance is also better in the one study that used a live lineup and a cross-racial identification, factors that could not be separated for analysis.

## DISCUSSION

When overall identification decisions are tabulated, showups produce an accuracy advantage over lineups (69% vs. 51%). This initial result is qualified by subsequent analyses. As anticipated, a consideration of specific subject choices provides a more complete picture. Correct identification (hit) rate within the context of a target-present condition is nearly identical for the two types of procedures: Approximately 46% of witnesses shown either a lineup or a showup correctly identified the perpetrator when he or she was present. False suspect identification rates in a target-absent display are also approximately equal between showups and lineups, at about 16%. Analysis of error type provides a reason for the discrepancy between the initial overall showup accuracy advantage and the hit and false identification outcomes just described. Witnesses who choose from a target-absent lineup produce more errors, but also divert their erroneous choices across foils. If foil identifications are categorized as errors, the error rate of lineups increases dramatically. Alternately, when foil identifications instead are folded into the category of nonidentification of the suspect, showup and lineup outcomes converge. Overall, the results present surprising commonality in outcome between presentation formats, and—specific to target-absent displays—an apparent contradiction of the ambient knowledge that showups are more dangerous for innocent suspects than are lineups. Additional factors will also inform a comparison of showups versus lineups. These involve our understanding of the function of lineup foils, assessment of false identifications, and the potential for biases in lineup practice.

### Lineup Foils

Following the logic of the above discussion, the role of lineup foils is a first consideration. Used effectively, a lineup will serve two purposes: To determine whether a suspect is in fact the perpetrator observed by the witness and to assess the reliability of the witness. A foil selection suggests unreliable witness memory and discredits the witness rather than the suspect. The lineup witness who selects a foil may rightly be considered an unreliable source for subsequent identification evidence. Only witnesses who reject the lineup by choosing no one may be considered a credible source in a subsequent identification task. On the other hand, the showup witness has no foil options. A witness who rejects the showup retains police trust as a reliable witness, even in the case of a false rejection of a target-present showup. This is potentially dangerous in the face of a subsequent identification attempt with a new and innocent suspect. Therefore, if foil choices are considered useful indications that witnesses are

willing to identify innocent people, lineups have an advantage. (Current data show a 24% foil identification rate in target-present lineups and 31% foil identification rate in target-absent lineups.)

The use of foils to detect an unreliable witness is of particular interest when one considers very young children. A substantial amount of research literature has examined the eyewitness reporting accuracy of children compared to adults. Wells, Wright, and Bradfield (1999) summarize this literature specific to lineup performance, by pointing out that "The primary condition for concern in eyewitness identification from lineups and photospreads is the condition in which the actual perpetrator is not present . . ." (p. 60). Dekle et al., (1996) similarly report the literature as showing that while child witnesses make correct identifications from target-present lineups at the approximate level of adults, children are more likely than adults to choose someone from a target-absent lineup (a false ID), even when warned directly that the perpetrator may not be in the lineup. In this data set, children exhibit better target-absent performance for showups than lineups, as did adults. In target-present arrays young children (preschool and kindergarten) also performed significantly better on showups than lineups, a finding that deserves attention in future work. Part of that analysis must be a differentiation of target identification (choices of the target among multiple responses from an individual child) versus correct identification (a single and correct identification). Young witnesses have a tendency to make multiple choices from a lineup, thus impeaching their own testimony. As noted by Lindsay et al. (1997), the reliability of eyewitness identification is thus "seriously compromised by the tendency for children to guess" (p. 401). This impeachment through multiple choices cannot occur in a showup, thus perhaps affecting the appearance of better showup performance.

The counterargument to this framework for consideration of identification tasks—that foil choices that discredit the witness represent a problem for police and the solution of crimes—and the choice of whether such witnesses should be considered a source of identification evidence is a policy, not empirical, issue.

### False Identification Rates

Experts who responded to the Kassin et al. (2001) survey expressed specific concern with false suspect identification rates of showups. This is reasonable, given that only false identifications lead to the risk of false accusation and wrongful conviction. As reported above, this meta-analysis has identified approximately equal false identification rates from showups versus lineups (16%), deriving that figure by direct tabulation of errors in target-absent lineups. Previous research teams have attempted to estimate false identification rates through two other means. First, the overall rate of false positive choices can be divided by the nominal size or number of people examined during the identification procedure to generate an expected false identification rate. This approach (Lindsay, Pozzulo, Craig, Lee, & Corber, 1997) is based on the assumption that the innocent suspect is no more likely than any other lineup member to resemble the criminal if the lineup has been constructed based on matching foils to the description of the criminal provided by the witness. The lineups in this meta-analysis had a nominal size of 6, thus the expected false

identification rate would be  $43\%/6 = 7.2\%$ . This compares to the substantially higher rate of 15% for showups. Based on the sequential lineup meta-analysis, 6-person sequential lineups have an expected false identification rate of 5.33% (Stebly et al., 2001). If this approach is accepted, then showups do represent a greater risk of false identification.

A related measure, the diagnosticity ratio, is employed by some researchers to establish utility of a lineup procedure (Wells & Lindsay, 1980). The advantage to this perspective is that police know whether or not the witness chooses someone but do not know if the identification procedure is criminal-present versus criminal-absent. For showups 42% of witnesses choose the suspect in the present condition and 15% in the absent condition, generating a diagnosticity ratio of 2.80 (Wells & Lindsay, 1980). For lineups, 42% of witnesses choose the suspect from the present lineup and 16% from the absent lineup, generating a diagnosticity ratio of 2.6.

A second approach to estimating false identification rates is to designate a specific, criminal-absent lineup member as the innocent suspect. The rate at which the designated individual is identified is considered the false identification rate. Within this tradition, two approaches have been taken. One assigns the innocent suspect role randomly (or perhaps haphazardly) to the six lineup members, while the other and more common approach assigns the role of innocent suspect to the absent lineup member deemed most similar to the criminal. In the current data set, the innocent suspect not explicitly selected based on similarity to the criminal, produced almost identical rates of false identification (15 and 16%, showups to lineups, respectively). If the innocent suspect was selected based on similarity to the criminal, showups generated more choices of that designated innocent suspect (23% vs. 17% respectively). The showup then may be equivalent in risk for an innocent suspect only to the extent that the innocent suspect does not strongly resemble the true criminal.<sup>7</sup>

### Bias

The vulnerability of an innocent suspect who matches the description of the perpetrator illustrates a third factor for consideration. It is reasonable to wonder if other means of influencing a decision criterion, for example, clothing, instruction, and foil biases (Lindsay, Wallbridge, & Drennan, 1987; Lindsay & Wells, 1980; Malpass & Devine, 1981; Steblay, 1997) may increase false identifications differentially for showups and lineups. Although foil bias will not be a factor with showups,

<sup>7</sup>Differences in practice are apparent in the studies at two points during formation of a target-absent array. At a first point, researchers identify appropriate lineup foils. Six of the hypothesis tests in this data set indicate a "match to general description" strategy for foil determination, and five tests use a "match to target" method (one test not reported). A match-to-target was typically used as a means to construct high/medium/low foil similarity for exploration of that variable. Analysis of witness error rates indicate small differences associated with construction strategy: Match-to-description produced 13% showup and, 44% lineup errors; Match-to-target produced 17% showup and 43% lineup errors.

As a second step, researchers decide on a target replacement for the target-absent showup or lineup. In four tests, the authors used a strategy that essentially rotated the lineup foils through the position of target replacement for the target-absent showup. For six tests, the target replacement was the foil most resembling the perpetrator. Again, witness error rates differed slightly based on strategy: Use of a target match produced 15% showup errors, 42% lineup errors; Rotation of foils produced 12% showup errors, 44% lineup errors.

clothing and instruction bias may be influential. All studies in this set used nonbiased instructions, thus the effect of instructional bias on showup performance remains an open question. The high rate of correct rejection for criminal-absent showups may reflect reactance to the suggestiveness of the procedure. Combining biased instructions with the showup procedure may therefore result in two distinct outcomes: biased instructions may increase reactance and thus further decrease false positive choices, or biased instructions could alleviate witness concerns that the procedure is biased and dramatically increase false identifications. Current research being conducted on this issue favors the latter explanation (Dupuis, Dysart, & Lindsay, 2001).

Clothing bias may be of particular concern with showups as the procedure is used shortly after the crime and frequently in the field rather than at police stations. Apprehension of suspects for showups is generally based on the combination of a match to the description provided by the witness and proximity to the crime. As a result, suspects will generally be wearing clothing that resembles the witness' description of clothing worn by the criminal during the crime. The fact that the showup generally occurs shortly after the crime may further convince witnesses that the suspect is unlikely to be innocent. They may ask themselves "How many people can there be in this area that look like that and are wearing clothes like that?" The less time between the crime and the showup, the stronger this intuition may be. Dysart, Dupuis, and Lindsay (2001) have recently found strong evidence of clothing bias with showups, indicating that the type of clothing worn by the perpetrator may interact with other factors, such similarity of the innocent suspect. Although the results from this study are compelling, the data did not include a lineup comparison. We are left with an incomplete picture of showup vulnerability to bias, but reason to speculate that several known lineup biases may influence showups as well.

### Theoretical and Future Research Considerations

Significantly lower levels of choosing behaviors for witnesses presented with a showup versus a lineup suggest that, even though decision outcomes may be similar, differential decision processes may be attendant to the two identification formats. Given this, it is appropriate to ascertain what we can about witness reliability and strategy from these available data.

As discussed by previous researchers (Lindsay & Wells, 1985), an absolute decision process is desirable, particularly as a means to reduce false identifications. The lower level of choices in showup conditions may be construed as an indication that subjects are in fact using, at least more so than in the lineup condition, an absolute judgment strategy. The increased rejection rates (false rejections in target present conditions and correct rejections in target-absent conditions) suggest that showup subjects have attained some benefit of absolute judgment, perhaps due to a showup's similarity to a "one-person" sequential lineup. On the other hand, it is apparent that lineup foil options provide a deflection of error away from an innocent suspect and a valuable vehicle to identify the unreliable witness. These benefits help to equalize lineup and showup performance, at least under the rather favorable conditions of these studies.



Evaluation of this data set must include concern regarding the small number of studies available. In fact, one key outcome of the investigation is to alert the research community to the paucity of data and to the need for more deliberate attention to showups. The analyses exposed performance variability yet to be explored in target-present scenarios. The small number of hypothesis tests in this data set deterred analysis of some potentially fruitful variables, as exemplified by the Gonzales et al., study. These authors included in their method two relevant and intriguing components—cross-racial identification and use of a live lineup—that could not be independently examined because they are confounded within that study and not available in other tests. Therein lies direction for future research.

Finally, the showup's potential for suggestibility—which worries legal professionals and eyewitness experts—is evidenced in this data set, although in a small number of studies. The data currently available leave us with residual concern regarding potential dangers of showups and with a strong appreciation of the need for research that will specifically address showup accuracy under realistic conditions comparing competent practice with biased procedure.

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# Exhibit 6

Effect of retention interval on showup and lineup performance<sup>☆</sup>

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## ABSTRACT

Showups – when a single suspect is presented to an eyewitness – are thought to be a more suggestive procedure than traditional lineups by the U.S. Supreme Court and social science researchers. The present experiment examined the impact of retention interval on showup identifications, because immediate showups might be no worse than, and perhaps even better than, a lineup conducted after a delay. Participants ( $N = 1584$ ) viewed a mock-crime video and then were presented with a showup or a simultaneous lineup, either immediately or a 48 h delay. Receiver operating characteristic (ROC) analyses revealed that a showup never resulted in better identification accuracy than a lineup. We conclude with a discussion of whether showups should ever be used.

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## 1. Introduction

The Supreme Court (*Stovall v. Denno*, 1967; *United States v. Wade*, 1967), state courts (*Bradley v. State*, 1980; *Commonwealth v. Carter*, 1979), and social science researchers (Gronlund et al., 2012; Steblay, Dysart, Fulero, & Lindsay, 2003) have stated that showup identifications are more suggestive than lineup identifications. Although these entities have deemed that showups may be a less accurate identification procedure than lineups, they are still a very common practice among police departments (e.g., Flowe, Ebbesen, Burke, & Chivabunditt, 2001; Garrett, 2011). Therefore, it is important to thoroughly examine this form of identification and determine under what circumstances it can assist law enforcement. In particular, police are often faced with the possibility of presenting a showup to an eyewitness shortly after the crime, or constructing a lineup after a delay. With this application in mind, we had three objectives: (a) to compare identification accuracy

between showups and lineups within a single study, (b) to compare these procedures both immediately after a mock crime as well as over a retention interval (48 h), and (c) to make these comparisons using a robust method (i.e., ROC curves) only recently applied to eyewitness identification procedures.

## 1.1. Identification procedures

Throughout this paper we utilize several terms imperative to understanding the relationship between showup and lineup identification procedures. A simultaneous lineup presents an array of six or more individuals. *Perpetrator Present* (PP) lineups contain the actual culprit; *Perpetrator Absent* (PA) lineups instead contain an individual who resembles the perpetrator – a designated innocent suspect (i.e., an innocent person who is falsely thought to have committed the crime). Correct identifications occur when a witness correctly chooses the perpetrator from a PP procedure (the guilty suspect); false identifications occur when an innocent suspect is mistakenly identified from a PA procedure. Identification of any filler (i.e., non-suspect) from a lineup is not deemed a dangerous error because these individuals are known to be innocent before being placed into a lineup.

A showup, in contrast, is an identification procedure in which a single person is presented to the witness, either live or in a photograph (Dysart & Lindsay, 2007; Valentine, Davis, Memon, & Roberts, 2012). Typically, these one-on-one confrontations occur in the field

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in close spatial and temporal proximity to the crime (Behrman & Davey, 2001; Valentine et al., 2012). The rationale behind showups is that they provide a quick means for detaining the guilty or exonerating the innocent. Just as in lineups, showups can be PP and PA, and again we classify the identifications made from showups as either correct or false identifications, respectively. Unlike lineups, however, there is no opportunity for filler identifications because no other individuals are presented with the guilty or innocent suspect. The lack of known innocents (i.e., fillers) is thought to be one of the problems with this method of identification.

### 1.2. Showups versus lineups

Given that showups are one of the most common identification techniques (Behrman & Davey, 2001; Garrett, 2011), it is surprising how little research has examined showups relative to the immense literature on lineups. It is possible that the lack of research on showups stems from the fact that legal scholars have accepted that one-person identifications are biased; consequently, researchers do not need to attempt to empirically assess its utility (Gonzalez, Ellsworth, & Pembroke, 1993). However, the limited research comparing lineups and showups has produced some conflicting results (see Goodsell, Wetmore, Neuschatz, & Gronlund, 2013). Although the majority of these studies have found that showups are less diagnostic of suspect guilt (Gronlund et al., 2012; Lindsay, Pozzulo, Craig, Lee, & Corber, 1997; Steblay et al., 2003; Wagenaar & Veeckind, 1992), others have found a showup advantage (Beal, Schmitt, & Dekle, 1995; Dekle, 1997, 2006; Dekle, Beal, Elliot, & Huneycutt, 1996; Flowe & Ebbesen, 2007), and still others found no significant difference (Valentine et al., 2012). Thus, the research remains equivocal as to which identification procedure is superior, or under which conditions showups might be favored.

Clark and Godfrey (2009) found that correct identification rates did not significantly differ between showups and lineups. The authors suggested, however, that focusing on correct identifications and correct rejections put lineups at a disadvantage. For example, a witness can choose a filler from a lineup but not from a showup. Consequently, correct rejections in PA lineups are reduced because each filler identification is no longer counted as correct rejection, but as an identification. To alleviate this issue, Clark and Godfrey (2009) calculated the Innocence Risk, which is the probability that a suspect is innocent, given that a suspect (guilty or innocent) was identified:  $\text{innocence risk} = pa/(pa + pp)$ , where  $pa$  stands for the probability of choosing the innocent suspect from the PA lineup and  $pp$  stands for the probability of choosing the guilty suspect from the PP lineup. In their innocence risk analysis, Clark and Godfrey found that, even though showups and lineups did not differ significantly with respect to correct and false identifications, showups still put innocent suspects at a greater risk of being identified falsely.

Retention interval, however, was a moderating variable in this analysis. Clark and Godfrey (2009) reported a lower Innocence Risk for showups that were conducted immediately (0.20) than lineups conducted the next day (0.30). Hence, it is possible that showups may provide an advantage over lineups when they can be conducted quickly (i.e., when eyewitness memory is still fresh). It is important to note that, according to the courts, showups are only justified when the suspect is found near the crime scene shortly after the crime occurred (see *Manson v. Braithwaite*, 1977).

Only three studies have compared showups and lineups over a retention interval (Dekle, 1997; Valentine et al., 2012; Yarmey, Yarmey, & Yarmey, 1996). Yarmey et al. presented a live mock crime followed by a showup or lineup either immediately or after a retention interval (30 min, 2 h, or 24 h later). In general, eyewitnesses were less accurate as the retention interval increased. More specifically, the rate of false identifications increased in showups

as the retention interval increased; however, showups conducted immediately provided more correct identifications relative to lineups performed at a delay. However, one potential limitation of the study was the use of two sisters as the perpetrator and innocent suspect. It is doubtful that a criminal and an innocent suspect would resemble each other that closely; therefore, these results should be interpreted with caution.

Dekle (1997) also found that identification accuracy generally declined with retention interval for both showups and lineups, but signal detection analysis revealed a  $d'$  (i.e., accuracy) advantage for showups immediately after the crime, after 2–3 days, and after 1 week. The greatest advantage was for conducting immediate showups versus delayed lineups. Valentine et al. (2012, Experiment 3) also found an advantage for immediate showups relative to delayed lineups. Moreover, they found that participants made fewer false identifications in immediate showups than from lineups. However, there was no statistical difference in false identifications of the innocent suspect from showups conducted immediately compared to lineups conducted after a retention interval.

In sum, the data are not definitive regarding a typical situation encountered by police: whether to present a showup shortly after a crime or a lineup after a delay. If in fact an immediate showup has greater probative value than a delayed lineup, then it warrants additional and more ecologically valid investigation. The current study was designed to examine this issue by comparing both identification procedures immediately after the crime and over a retention interval.

### 1.3. Lineup composition

Retention interval is not the only factor to consider when evaluating lineups and showups. Lineup composition is another factor that could differentially affect eyewitness performance as a function of lineup procedure (e.g., Carlson, Gronlund, & Clark, 2008; Gronlund, Carlson, Dailey, & Goodsell, 2009). Lineup composition refers to the degree to which the fillers in the lineup match the perpetrator. If the fillers are poor matches to the perpetrator, then the lineup is biased because there is a greater chance that the guilty or innocent suspect will be chosen even if the eyewitness has poor memory of the perpetrator. However, if the fillers are reasonable matches to the perpetrator, the lineup is fairer because an eyewitness with poor memory is equally likely to choose a filler or the perpetrator (Luus & Wells, 1991). Although Wells and Quinlivan (2009) suggested that a showup may put an innocent suspect at greater risk than a fair lineup, a showup may still be better than placing an innocent suspect in a biased lineup. To test this hypothesis, we utilized two levels of lineup fairness, biased and fair. The fair lineup contained good matches to the perpetrator; the biased lineups contained poor matches to the perpetrator.<sup>1</sup>

### 1.4. Receiver operator characteristic (ROC) analysis

Recently, it has been argued that ratio-based probative value measures (e.g., the aforementioned Innocence Risk or diagnosticity estimates like correct identifications/false identifications) are inappropriate for determining which identification procedure is superior (Mickes, Flowe, & Wixted, 2012; Gronlund & Neuschatz, 2014; for an overview see Wixted, Gronlund, & Mickes, 2014).

<sup>1</sup> A third type of lineup was constructed to simulate the way police department procedure. These data were excluded for ease of exposition. Although the data from this lineup behaved similarly to the fair lineup (correct and false identification rates and pattern of results), collapsing it with the fair lineup would be improper due to different methods of construction.

Mickes et al. (see also Clark, Erickson, & Breneman, 2011) showed that ratio-based probative value measures, which were assumed to be a measure of discriminability, are affected by response bias (a witness's willingness to make a response). Consequently, as response bias becomes more conservative, these ratio-based measures increase despite the ability of the witness to make a discrimination remaining unchanged. Therefore, ratio-based measures are inappropriate for comparing the performance of different identification procedures, especially if those procedures differ in the response bias they engender. It has been argued that showups result in a more liberal choosing rate (Meissner, Tredoux, Parker, & MacLin, 2005); therefore, it is possible that the liberal choosing may be driving lineup superiority.

Recently, researchers have demonstrated the utility of ROC curves when comparing eyewitness identification procedures (Gronlund, Wixted, & Mickes, 2014; Mickes et al., 2012; Wixted, Gronlund & Mickles 2014). Despite researchers often collecting confidence ratings at the time of an identification, these data are typically analyzed separately and presented collapsed over all levels of witness confidence. ROC curves present the correct and false identification rates at each level of witness confidence, accumulated from the highest to the lowest confidence levels. Note that filler identifications are ignored, which means that the ROC curve does not sweep over the entire range of the ROC space (0–1) because only suspect identifications are utilized when creating the curves. The identification procedure that produces the best discriminability between the guilty and the innocent suspect yields the highest ROC curve (closest to the upper left-hand corner of the space; see Fig. 1). To evaluate these differences statistically, the area under the curve or partial area under the curve (AUC or pAUC) is computed for each identification procedure. The present study utilizes ROC analyses to evaluate identification performance at varying retention intervals and differing lineup fairness.

### 1.5. Hypotheses

Given the current state of showup research several hypotheses are tested. (1) Identification procedures conducted immediately will result in better performance (greater pAUC) than procedures conducted after a delay. (2) Immediate showups, when compared to delayed lineups, will result in equivalent or perhaps better performance. (3) Based on Wells and Quinlivan (2009), showups will result in superior performance compared to biased lineups, but fair lineups will result in better performance than showups. The suspect will always stand out in a showup or biased lineup because either the suspect is the only one present or the suspect stands out because the fillers are not reasonable options. In a fair lineup, the suspect would not stand out relative to the other fillers and should provide greater protection for the innocent suspect.

## 2. Method

### 2.1. Participants

A total of 1584 participants were recruited from the University of Alabama in Huntsville ( $n = 643$ ), Canisius College ( $n = 194$ ), University of Oklahoma ( $n = 212$ ), Texas A&M University – Commerce ( $n = 152$ ), Florida Southern College ( $n = 70$ ), and SurveyMonkey ( $n = 293$ ). Twenty additional participants were recruited by other means.<sup>2</sup> There were 506 males and 1078 females with a mean age

<sup>2</sup> The UAHuntsville research laboratory recruited individuals to participate for course credit. Participants were randomly assigned to conditions in the same manner as all other participants and the results were not significantly different when excluded from analysis.

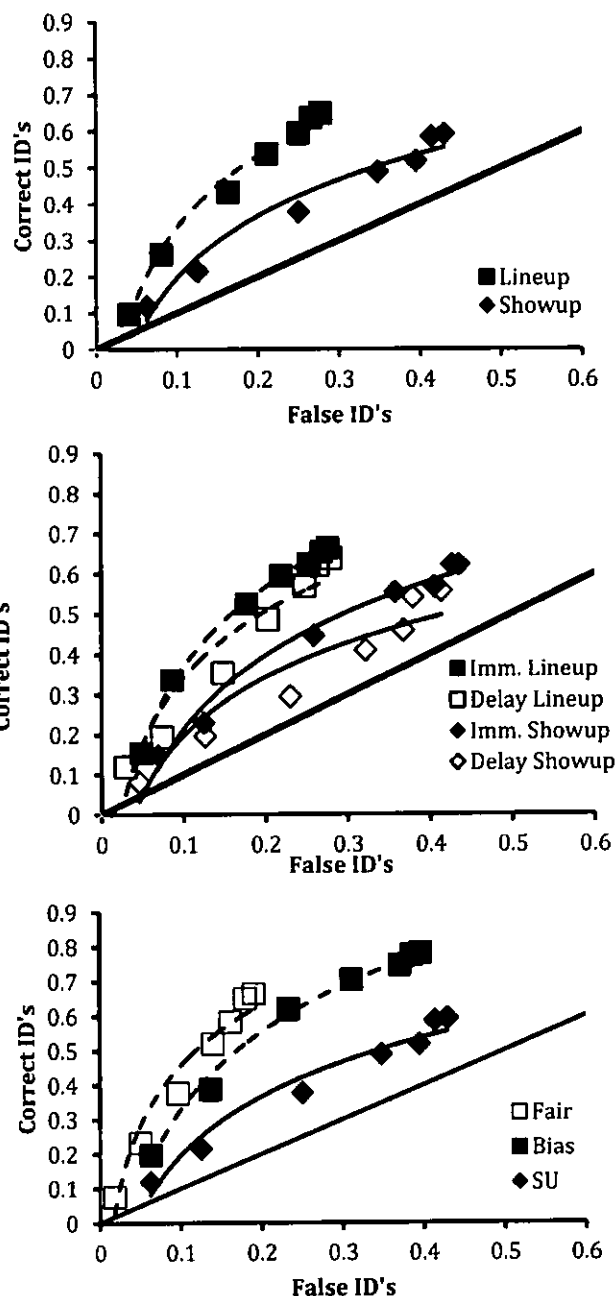


Fig. 1. ROC curves comparing showups (SU) and lineups (LU; top panel), showups and lineups at the different retention intervals (middle panel), and the lineups separated by fairness (bottom panel). The thick diagonal line in each panel indicates chance performance.

of 24.8 years. For those participants who chose to indicate their race, the majority were Caucasian (69.6%), followed by African American (14.1%), Asian (6.4%), American Indian (1.7%), or other (8.3%). The vast majority of the participants received course credit in exchange for their participation. All participants were treated in accord with the ethical guidelines of the American Psychological Association and the Institutional Review Boards of the appropriate higher education institution.

### 2.2. Design

The current experiment conforms to a 2 (retention interval: immediate or delayed)  $\times$  3 (suspect: guilty, or innocent/strong or

innocentweak, as defined below)  $\times 3$  (identification task: showup, fair lineup, or biased lineup) between-participants factorial design. The primary dependent variables are correct identifications of the guilty suspect, false identifications of the innocent suspects (innocentstrong or innocentweak), which were used in the calculation of pAUC's and confidence ratings.

### 2.3. Materials

#### 2.3.1. Video

We utilized the Gronlund et al. (2009) mock crime video, which lasts approximately 1 min 45 s. It begins with a couple walking down a sidewalk. The male actor is seen entering a theater as the woman continues walking across a street toward a parking lot. Interspersed amongst this footage are shots of a suspicious-looking man getting out of his car and hiding behind some bushes. As the woman approaches the parking lot, the suspicious man suddenly jumps out from the bushes, steals her purse, and runs off. The perpetrator's face is in view for approximately 15 s during the entirety of the video.

#### 2.3.2. The suspects

The study utilized two different innocent suspects who yielded different false identification rates in a prior study (Gronlund et al., 2009). Gronlund et al. referred to the frequently chosen innocent suspect as "innocentstrong" and the rarely chosen innocent suspect as "innocentweak", and we continue with these labels. The guilty suspect photo was taken shortly after the mock crime. The suspect wore different clothing. It was the photo Gronlund et al. referred to as "guiltystrong".

#### 2.3.3. Showups and lineups

There was a guilty suspect and two innocent suspects for each identification task resulting in nine lineups and three showups. There were three lineups created for the guilty suspect and for each of the two innocent suspects: a fair and a biased lineup that also were utilized by Gronlund et al. (2009). The three showups included a photo of guiltystrong, a photo of innocentstrong, and a photo of innocentweak. For details regarding lineup composition of the fair and biased lineups, see Gronlund et al. (2009).

### 2.4. Procedure

The procedure closely replicated Gronlund et al. (2012) and was presented using online software (www.surveymonkey.com) in the laboratory. In the laboratory, participants were randomly assigned to conditions; participants who participated outside the laboratory were assigned to conditions based on date of birth (odd or even day and month). Online presentation in the laboratory ensured that the experimenters were blind to the identification conditions. After informed consent, participants viewed the video, which they were instructed to watch closely because they would have to answer questions about it afterwards. Participants in the immediate condition proceeded to the distractor task that consisted of solving 20 anagrams of U.S. state names (e.g., AALABMA). After the distractor task, participants were read unbiased instructions (the perpetrator from the video may or may not be present in the identification procedure) while they read along on the computer screen. After the instructions, participants proceeded to the identification task. In the showup conditions, participants viewed a single photograph and were instructed to indicate if the perpetrator was present or absent. Participants in the lineup conditions viewed six photographs simultaneously (two rows of three individuals) and were asked to identify one of the six photographs as the perpetrator or indicate that the perpetrator was 'Not There'. After completing the identification task, participants rated their confidence on

**Table 1**  
Percent chosen for showup identification procedures.

	Perpetrator	Innocentweak	Innocentstrong
<i>Immediate</i>			
Suspect	62.1	42.0	53.8
Filler	N/A	N/A	N/A
Rejection	37.09	58.0	46.2
N	74	193	39
<i>Delay</i>			
Suspect	55.7	38.1	43.5
Filler	N/A	N/A	N/A
Rejection	44.3	61.9	56.5
N	61	42	46

**Table 2**  
Percentage chosen for lineup identification procedures.

	Perpetrator		Innocentweak		Innocentstrong	
	Fair	Biased	Fair	Biased	Fair	Biased
<i>Immediate</i>						
Suspect	68.3	81.4	10.2	28.1	46.3	64.9
Filler	10.0	2.90	54.2	31.6	24.4	2.70
Rejection	21.7	15.7	35.6	40.3	29.3	32.4
N	60	70	118	114	41	37
<i>Delay</i>						
Suspect	68.6	75.0	11.1	28.7	41.4	65.8
Filler	15.1	5.60	51.1	31.3	44.8	15.8
Rejection	16.3	19.4	37.7	40.0	13.8	18.4
N	86	72	90	81	29	38

a 7-point scale anchored at 1 with "not at all confident" and at 7 with "extremely confident." Following the confidence rating, participants answered three questions about the video: Did a crime occur in the video? What was the item stolen in the video? What was the last item seen in the video? These questions served as a manipulation check. No participants were excluded based on these questions. In total, the immediate procedure took approximately 5 min to complete.

Participants in the delayed condition were excused from the first session after viewing the video with a warning to not discuss what was seen in the video. The participants returned 48 h later to complete the distractor task and identification phase of the study exactly as the immediate condition participants had done. Overall only 37 participants or 6% did not return for second session.

### 3. Results

Showups and lineups were compared over different retention intervals (approximately 5 min versus 48 h), lineup fairness (fair and biased), and innocent suspect resemblance to the perpetrator (innocentstrong and innocentweak). Patterns from the data did not differ between laboratory ( $n = 1271$ ) and non-laboratory ( $n = 313$ ) samples, and we collapse across these when describing the results. Traditional methods of comparing identification procedures are examined first followed by ROC analysis.

#### 3.1. Correct and false identification rates

The suspect, foil, and rejection rates for showups and lineups can be found in Tables 1 and 2, respectively. Overall, showups yielded a correct identification rate of 59% and a false identification rate of 49% for innocentstrong and 40% for innocentweak. The correct identification rate for showups conducted immediately was 64.8% and the false identification rate was 48%; however, after the 48 h delay, both the correct identification and false identification rates dropped slightly to 55% and 41%, respectively. The correct

identification rate for the lineups collapsed across fairness was 76% with a false identification rate of 37%. In the immediate lineup condition with a correct identification rate of 75% and the false identification rate of 37%, with little change to the delayed lineup conditions (71% and 37%, respectively).

### 3.2. Logistic regression

#### 3.2.1. Correct identifications

Logistic regression was applied to correct identifications using retention interval (immediate versus delay) and identification task (showup, biased lineup, fair lineup) as predictors. All  $p$ -values were two-tailed unless otherwise noted; we adopted a 0.01 level of significance to protect against inflation of Type I error rates. These predictors reliably discriminated between correct identifications and all other decisions (rejections, foil identifications),  $\chi^2(3, N=423)=12.38, p=0.006$ . Retention interval did not affect correct identifications, and it did not interact with identification task. There was, however, an effect of presentation type,  $Wald \chi^2(2, N=423)=11.57, p=0.003$ , and individual chi-squares were conducted to break down this effect. We collapsed across retention interval because it had no effect on correct identifications. The showup never produced more correct identifications compared to either lineup type. It was equivalent to the fair lineup ( $\chi^2(1, N=281)=2.60, p=0.14, \Phi=0.096$ ), and the biased lineup produced more correct identifications ( $\chi^2(1, N=277)=11.56, p=0.001, \Phi=0.204$ ). There was no difference in correct identifications between fair and biased lineups,  $\chi^2(1, N=288)=3.44, p=0.08, \Phi=0.11$ .

#### 3.2.2. False identifications

We separately considered the false identification rates for the two innocent suspects: innocentstrong and innocentweak. As expected, innocentstrong was chosen more often (53% versus 33%),  $\chi^2(1, N=867)=47.71, p<0.001, \Phi=0.24$ . Retention interval and identification task did not discriminate between false identifications of innocentstrong and all other decisions,  $\chi^2(3, N=229)=7.79, p=0.05$ . By itself, retention interval had no effect on innocentstrong false identifications, and it did not interact with identification task,  $Wald \chi^2(2, N=229)=7.33, p=0.03$ . Consequently, we will not consider these data further. We also will not construct ROC curves because we have insufficient data involving innocentstrong.

A different pattern of results emerged for the innocentweak suspect. Retention interval and identification task together discriminated between false identifications and all other decisions,  $\chi^2(3, N=638)=52.45, p<0.001$ . Retention interval, again, had no effect on its own, nor did it interact with identification task. But there was an effect of identification task,  $Wald \chi^2(2, N=638)=44.85, p<0.001$ . After collapsing over retention interval, individual chi-squares by identification task revealed that showups yielded more false identifications than both fair ( $\chi^2(1, N=443)=52.93, p<0.001, \Phi=0.35$ ) and biased lineups ( $\chi^2(1, N=430)=6.73, p=0.01, \Phi=0.13$ ). Not surprisingly, there were more false identifications from the biased compared to the fair lineup,  $\chi^2(1, N=403)=22.22, p<0.001, \Phi=0.24$ .

Showups do not compare favorably with lineups. The showup never resulted in eyewitnesses choosing the guilty suspect more often. As for the protection of innocent suspects, the showup also was not preferred, as it yielded more false identifications than either lineup type. However, as mentioned earlier, separately assessing the correct and false identifications rates can be problematic (Wixted & Mickes, 2012), which is why ROC analyses are conducted to evaluate these identification procedures.

### 3.3. ROC analysis

ROC curves comparing showups and lineups overall, as a function of retention interval, and as a function of lineup fairness, are all presented in Fig. 1. Each ROC curve is derived from the correct and false identification rates at each confidence level and summarized by a trendline to better depict each curve. Each graph also includes the diagonal line where the correct identification rate equals the false identification rate, which represents chance performance. Note, as previously mentioned, that the x-axis extends from 0 to 0.60 because lineup ROC's are not traced out over the full range from 0 to 1 because only suspect identifications are utilized when creating the ROC curves. Consequently, pAUC values were computed using a false identification rate range from 0 to  $q$ , where  $q$  is set to a value slightly greater than the maximum false identification rate for the ROC's used in a comparison (see Wixted & Mickes, 2012).

The top panel of Fig. 1 displays the ROC curves for the two identification procedures collapsed over retention interval and lineup fairness. There are two important points to highlight. First, it is clear that both lineups and showups produce discriminability above chance. Second, there is a significant difference in pAUC between showups (0.16) and lineups (0.29),  $D=-5.84, p<0.001$ .<sup>3</sup> This pattern of results demonstrates that lineups result in better discriminability than showups, in replication of Gronlund et al. (2012).

Most interesting forensically, participants' performance in the delayed lineup conditions exceeded the performance of participants in the immediate showup condition (middle panel of Fig. 1). The immediate showup (pAUC=0.18) was significantly worse than the delayed lineup (pAUC=0.27),  $D=-3.31, p<0.001$ . Contrary to what some researchers and the criminal justice system may have anticipated, these data indicate that an immediate showup did not result in better performance than conducting a lineup later, even when the lineup is delayed 48 h. In fact, performance in the lineup conditions always exceeded performance in the showup conditions. The immediate lineup (pAUC=0.30) was significantly better than the immediate showup (pAUC=0.18),  $D=-4.30, p<0.001$ , the delayed lineup (pAUC=0.27) was significantly better than the delayed showup (pAUC=0.14),  $D=-3.68, p<0.001$ , and the delayed showup was significantly worse than the immediate lineup pAUC,  $D=4.31, p<0.001$ . In sum, a lineup identification, either immediately or at a delay, was more diagnostic than a showup. Neither of the lineup conditions were significantly different from one another as a function of retention interval,  $D=1.05, p=0.29$ , nor were the showup conditions,  $D=1.03, p=0.30$ .

The bottom panel of Fig. 1 displays the ROC curves for the fair lineup, biased lineup, and showup. The fair lineup (pAUC=0.31) and biased lineup (pAUC=0.28) were significantly better than the showup (pAUC=0.17),  $D=-6.13, p<0.001$  and  $D=-4.51, p<0.001$ , respectively. Contrary to our hypothesis, there was no significant difference between the fair and biased lineup pAUC's,  $D=1.22, p=0.22$  (for a similar result see Gonzalez et al., 1993, Experiment 2). However, false identifications for the fair lineup only extend to 0.11, whereas the biased lineup false identifications continue out to 0.26. That means that participants were more willing to make identifications at lower levels of confidence when the lineup was biased. Moreover, if limited to a forensically relevant range (i.e., highest confidence decisions), the fair lineup ROC exceeds the biased lineup ROC. If we set  $q$  equal to 0.10, pAUC for fair was 0.04 and pAUC for

<sup>3</sup>  $D$  is defined as  $(AUC1 - AUC2)/s$ , where  $s$  is the standard error of the difference between the two pAUCs. The standard error is estimated by the bootstrap method using 10,000 bootstraps (see Mickes et al., 2012; for a tutorial, see Gronlund et al., 2014).



biased is 0.03. The difference was not significant ( $D = 1.25, p = 0.21$ ), but if replicated, would signal that fair lineups are preferred for a confidence range that includes confident, accurate eyewitnesses from actual criminal cases.

#### 4. Discussion

The present research resulted in a number of interesting and important findings. Most importantly, lineups were more diagnostic than showups. This was true when showups were compared to lineups immediately and after a 48 h delay. These results replicate previous work comparing these identification procedures (Gronlund et al., 2012), and extend the findings to a longer retention interval. Although there was not a significant effect of retention interval over our 48 h retention interval, the means did fall in the predicted direction. Additionally, an effect of retention interval may have been found given a longer interval (e.g., a week). It also was true that both fair and biased lineups resulted in better diagnostic accuracy than showups, contrary to the predictions of Wells and Quinlivan (2009).

There are several possible explanations for why lineups are a more diagnostic procedure than showups. One explanation involves the number of options at test, which could induce participants to adopt a different decision criterion across procedures (Gonzalez et al., 1993; Meissner et al., 2005). If presenting only one option created a more liberal criterion, increased choosing would lead to more correct and false identifications in the showup conditions. However, the results from the present experiment are inconsistent with this explanation, as showups yielded the lowest correct identification rate and the highest false identification (less diagnostic decisions). The ROC analyses, in this study and in Gronlund et al. (2012), demonstrate that a more liberal criterion in showups fails to explain the data.

An alternative explanation is that showups and lineups engage different decision processes. Gonzalez et al. (1993) argued that participants might invoke a two-stage process in a lineup. Participants first discover which person is the “best match,” and then decide if that best match is the perpetrator. In showups, however, participants need only engage this second stage because there is only one option from which to choose. This idea is similar to the relative and absolute distinction proposed by Wells (1984) and others (Cutler & Penrod, 1988; Lindsay & Wells, 1985). One problem with this explanation is that the processes involved in relative and absolute processing are not well specified (see Clark and Gronlund, *in press*). Gonzalez et al. (1993) also argued that a showup could be interpreted as a lineup with a functional size of one (i.e., a biased lineup). When there is only one viable option in a lineup, participants do not need to decide which option is the best match to the perpetrator. Consequently, the processing strategy would be similar for showups and biased lineups. However, the Gonzalez et al. results were not consistent with this explanation, nor were the present data.

Wixted and Mickes (2014) recently proposed a diagnostic-feature signal-detection-based theory that provides an explanation of why lineup performance should be superior to showup performance. When lineup foils are selected based on the characteristics of the perpetrator or suspect (see Clark, 2012), then all the foils should contain those characteristics. However, some features that are specific to the perpetrator will remain unique, as they were not used in the creation of the lineup. These unique features then become the diagnostic features when the faces are compared in a lineup. The theory proposes that better discriminability occurs in lineups because multiple lineup members can be compared. This allows diagnostic and non-diagnostic features to be distinguished, and the diagnostic features to subsequently receive more

attention. A showup does not allow this comparison, and consequently, diagnostic features may never become apparent.

#### 4.1. Limitations

Other factors undoubtedly affect the performance differences between these two identification procedures. For example, the current study employed unbiased instructions. Dysart and Lindsay (2007) suggested that the demand to choose from a showup is greater in the field shortly after the crime, more so than when a lineup is conducted later. This could hamper showup performance. Conversely, showups in the field are likely to be performed live (see Valentine et al., 2012), and live showups may provide more retrieval cues at the time of identification. Research on lineups has shown that more realistic modes of presentation (videotape versus live) result in improved performance (Cutler, Berman, Penrod, & Fisher, 1994; Shapiro & Penrod, 1986). Melara, Dewitt-Rickards, and O'Brien (1989) found that correct identifications were higher when voices were added to the photographic lineup procedures. Consequently, because a live showup provides more retrieval cues to the witness, it could improve performance relative to a photographic lineup.

The lack of a significant effect of retention interval within identification type was unexpected, however, research on the effect of delay on identification performance has been inconsistent (see Dysart & Lindsay, 2007). Valentine et al. (2012) found a trend for participants to choose more from lineups when they were conducted after seven versus 28 days but retention interval had no effect on correct and false identification rates. In addition, Dysart and Lindsay (2007) concluded that the small body of literature on showups conducted after a delay failed to indicate a clear detrimental effect of delay on showup performance. The current data do not demonstrate a significant detrimental effect of delay within identification procedure at a 48 h delay but at a further delay (e.g., 1 week) it is likely that this difference would be significantly greater given the pAUC's were greater for the immediate conditions than the delayed. Furthermore, ROC's allowed for the examination of discriminability differences between identification procedures at a delay. Future research should continue to examine the effects of retention interval on identification techniques using ROC analysis.

#### 4.2. Practical application

These data indicate that lineups are a more diagnostic procedure than showups. However, it is likely that at longer retention intervals (>48 h), lineup performance would eventually decline below that of showups conducted shortly after a crime. More research will be needed to determine just how long police have to create a lineup before the benefits of doing so are exhausted. Nevertheless, our point is that if the police have a suspect and want to conduct a showup, it may be preferable – from a memory perspective – to conduct a lineup even if it requires some additional time (up to 48 h in the present study) to create it. The memorial benefits of immediate testing with a showup do not outweigh the potential costs of potentially prosecuting an innocent suspect. It is important to note that with technology today, police can create photographic lineups quickly. Given the unreliable nature of showups, we suggest that creating a lineup that follows best practice guidelines offers the most diagnostic procedure, and the best chance at protecting the innocent and implicating the guilty.

#### Conflict of interest statement

The authors declare that they have no conflict of interest.

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# Exhibit 7

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107. Smith, S. M., and Handy, J. D. (2015). The crutch of context-dependency: Effects of contextual support and constancy on acquisition and retention. *Memory*, 24 (8), 1134-1141, doi:10.1080/09658211.2015.1071852.
108. Shahabuddin, S. S., and Smith, S. M. (2016). Asymmetric reinstatement effects in recognition. *The Journal of General Psychology*, 143 (4), 267-280, doi:10.1080/00221309.2016.1214100.
109. Barnhardt, T. M., Manzano, I., Brito, M., Myrick, M., & Smith, S. M. (2016). The effects of product placement in fictitious literature on consumer purchase intention. *Psychology & Marketing*, 33 (11), 883-898, doi: 10.1002/mar.20926.
110. Smith, S. M. (2017). Those insidious proxies and other comments on De Houwer et al.'s "Psychological Engineering: A Functional-Cognitive Perspective on Applied Psychology." *Journal of Applied Research in Memory and Cognition*, 6(1), 40-42, DOI 10.1016/j.jarmac.2016.11.003.

#### Convention Papers and Invited Addresses:

1. Smith, S. M. (November, 1976). Effects of environmental context on recall and recognition. Paper presented at the meeting of the Psychonomic Society, St. Louis, MO.
2. Smith, S. M. (May, 1979). Remembering context. Paper presented at the meeting of the Midwestern Psychological Association, Chicago, IL.
3. Smith, S. M., & Glenberg, A.M. (May, 1980). Recognition memory and environmental context. Midwestern Psychological Association, St. Louis, MO.
4. Smith, S. M. (May, 1982). Reduction of contextual memory dependence using multiple learning contexts. Paper presented at the meeting of the Midwestern Psychological Association, Minneapolis, MN.
5. Smith, S. M., & Rothkopf, E.Z. (March, 1982). Varying environmental context of lessons to compensate for massed teaching. Paper presented at the meeting of American Educational Research Association, New York, NY.
6. Smith, S. M. (May, 1982). Context-dependent memory: Effects of test type and cognitive style. Paper presented at the meeting of the Psychonomic Society, Minneapolis, MN.
7. Smith, S. M. (May, 1983). Cognitive style and context-dependent memory. Paper

presented at the meeting of the Midwestern Psychological Association, Chicago, IL.

8. Smith, S. M. (April, 1984). Contextual enrichment of memory as a function of learning instructions. Paper presented at the meeting of the Southwestern Psychological Association, New Orleans, LA.
9. Smith, S. M. (March, 1984). Context-dependent memory. Invited address, Trinity University, San Antonio, TX.
10. Smith, S. M. (May, 1984). Use of background music to induce context-dependent memory. Paper presented at the meeting of the Midwestern Psychological Association, Chicago, IL.
11. Smith, S. M. (November, 1984). More evidence of context-dependent recognition memory. Paper presented at the meeting of the Psychonomic Society, San Antonio, TX.
12. Smith, S. M. (April, 1985). Memory and cognition in a flotation tank. Paper presented at the meeting of the Southwestern Psychological Association, Austin, TX.
13. Smith, S. M., & Blankenship, S.E. (November, 1985). Forgetting as a means of release from fixation in problem solving. Paper presented at the meeting of the Psychonomics Society, Boston, MA.
14. Smith, S. M., & Vela, E. (April, 1986). Effects of inter-test duration and activity on hypermnnesia. Paper presented at the meeting of the Southwestern Psychological Association, Fort Worth, TX.
15. Smith, S. M., & Heath, F.R. (April, 1986). Conscious and unconscious effects of environmental context-dependent memory. Paper presented at the meeting of the Southwestern Psychological Association, Fort Worth, TX.
16. Smith, S. M., & Vela, E. (May, 1986). Context-dependent eyewitness recognition. Paper presented at the meeting of the Midwestern Psychological Association, Chicago, IL.
17. Smith, S. M., & Vela, E. (November, 1986). Outshining: The relative effectiveness of cues. Paper presented at the meeting of the Psychonomic Society, New Orleans, LA.
18. Smith, S. M., Vela, E., & Williamson, J. (April, 1987). Effects of level of processing on accuracy and latency measures of context-dependent memory. Paper presented at the meeting of the Southwestern Psychological Association, New Orleans, LA.
19. Smith, S. M., & Vela, E. (May, 1987). Effects of imagined, videotaped, and physical environmental reinstatement on eyewitness recognition. Paper presented at the meeting of the Midwestern Psychological Association, Chicago, IL.

20. Smith, S. M., & Vela, E. (November, 1987). Hypermnesia: Output interference and forgetting. Paper presented at the meeting of the Psychonomic Society, Seattle, WA.
21. Smith, S. M. (April 1988). Fixation, incubation, and insight. Invited address, University of Arkansas, Fayetteville, AK.
22. Smith, S. M., Blankenship, S.E., & Vela, E. (April, 1988). Diversion, forgetting, and insight. Paper presented at the meeting of the Midwestern Psychological Association, Chicago, IL.
23. Smith, S. M., & Blankenship, S.E. (November, 1988). An accessibility interpretation of fixation and incubation. Paper presented at the meeting of the Psychonomic Society, Chicago, IL.
24. Jansson, D.G., & Smith, S. M. (June, 1989). Design fixation. Paper presented at the proceedings of the NSF Engineering Design Research Conference, Amherst, MA.
25. Smith, S. M., & Vela, E. (November, 1989). Cue outshining: An explanation of subadditive composite cuing. Paper presented at the meeting of the Psychonomic Society, Atlanta, GA.
26. Smith, S. M., Brown, J.M., & Balfour, S.P. (June, 1990). TOTimals. Presented at annual Texas Cognition Conference (ARMADILLO), Trinity University, San Antonio, TX.
27. Smith, S. M., Brown, J.M., & Balfour, S.P. (November, 1990). TOTimals: A controlled method for observing TOT states. Paper presented at the meeting of the Psychonomic Society, New Orleans, LA.
28. Smith, S. M. (March, 1991). New approaches to the tip-of-the-tongue phenomenon. University of Texas-Austin Department of Psychology invited colloquium.
29. Smith, S. M. (March, 1991). Meta-cognitive research on the tip-of-the-tongue phenomenon. Baylor University Department of Psychology invited colloquium.
30. Smith, S. M. (April, 1991). A new method for observing TOT states. Rice University Dept. of Psychology invited talk.
31. Smith, S. M., Brown, J.M., & Balfour, S.P. (May, 1991). Effects of name practice on tip-of-the-tongue states. Paper presented at the meeting of the Midwestern Psychological Association, Chicago, IL.
32. Smith, S. M., Ward, T.B., & Schumacher, J.S. (May, 1991). Constraining effects of examples in a creative generation task. Paper presented at the 2nd annual Texas Cognition Conference (ARMADILLO), College Station, TX.



33. Brown, J.M., & Smith, S. M. (May, 1991). Reduction of output interference following part-list cuing inhibition. Paper presented at the second annual Texas Cognition Conference (ARMADILLO), College Station, TX.
34. Smith, S. M. (July, 1991). The TOTimals method: Effects of acquisition & retention factors on tip-of-the-tongue experiences. Presented at the proceedings of the first International Conference on Memory, Lancaster, England.
35. Smith, S. M. (November, 1991). Tip-of-the-tongue states and blockers with imaginary animals as targets. Presented at the meeting of the Psychonomic Society, San Francisco, CA.
36. Dennehy, E.B., Bulow, P., Wong, F., Smith, S. M., & Aronoff, J.B. (April, 1992). A test of cognitive fixation in brainstorming groups. Paper presented at the meeting of the Eastern Psychological Association, Boston, MA.
37. Smith, S. M., & Schumacher, J.S. (April, 1992). A test of transfer-appropriate fixation in problem solving. Paper presented at the meeting of the Midwestern Psychological Association, Chicago, IL.
38. Brown, J.M., & Smith, S. M. (April, 1992). Recovery from part-list cuing inhibition. Paper presented at the meeting of the Midwestern Psychological Association, Chicago, IL.
39. Smith, S. M. (May, 1992). Tip-of-the-tongue states and incubation. Paper presented at the third annual Texas Area Cognition Conference (ARMADILLO), Houston, TX.
40. Finke, R.A., Ward, T.B., & Smith, S. M. (May, 1992). Creative cognition. Paper presented at the third annual Texas Area Cognition Conference (ARMADILLO), Houston, TX.
41. Smith, S. M., Ward, T.B. & Finke, R.A. (November, 1992). A cognitive approach to creativity. Paper presented at the meeting of the Psychonomic Society, St. Louis, MO.
42. Smith, S. M. (April, 1993). Fixation in memory and problem solving. Invited address presented at the Weiskrantz Symposium on memory, Baylor University, Waco, TX.
43. Smith, S. M., Carr, J.A., & Tindell, D.R. (April, 1993). Fixation and incubation in word fragment completion. Paper presented at the meeting of the Midwestern Psychological Association, Chicago, IL.
44. Balfour, S.P., & Smith, S. M. (April, 1993). A demonstration of meaning-related blocking in the tip-of-the-tongue phenomenon. Paper presented at the meeting of the Midwestern Psychological Association, Chicago, IL.

45. Widner, R.L., Jr., & Smith, S. M. (May, 1993). Effects of demand characteristics on metamemory judgments. Paper presented at the third annual Texas Area Cognition Conference (ARMADILLO), Arlington, TX.
46. Balfour, S.P., & Smith, S. M. (June, 1993). Semantic blocking in TOT states. Paper presented at the meeting of the American Psychological Society, Chicago, IL.
47. Smith, S. M. (June, 1993). Creative cognition. Invited address for "Thinking and Reading: The Mind at Work in the Classroom," Fordham University, New York, NY.
48. Smith, S. M. (November, 1993). Natural stupidity: Everyday patterns of maladaptive cognition. Nebraska Wesleyan University Forum Series, Lincoln, NE.
49. Widner, R.L., & Smith, S. M. (November, 1993). Imminence and familiarity in tip-of-the-tongue and feeling-of-knowing judgments. Paper presented at the meeting of the Psychonomic Society, Washington, D.C.
50. Widner, R.L., & Smith, S. M. (May, 1994). Does lexical spread mediate the generation effect? Paper presented at the Midwestern Psychological Association, Chicago, IL.
51. Widner, R.L., & Smith, S. M. (May, 1994). A perceptual enhancement explanation of generation effects. Paper presented at the Midwestern Psychological Association, Chicago, IL.
52. Widner, R.L., & Smith, S. M. (May, 1994). How do subjects interpret an experimenter-provided definition of a feeling-of-knowing state? Paper presented at the Midwestern Psychological Association, Chicago, IL.
53. Smith, S. M. (May, 1994). Everyday patterns of maladaptive cognition. Paper presented at the fourth annual Texas Area Cognition Conference (ARMADILLO), Trinity University, San Antonio, TX.
54. Norris, M., Widner, R. L., Jr., & Smith, S. M. (November, 1994). The Effects of Age on Tip-of-the-Tongue Judgments. Presented at the Annual Meeting of the Gerontological Society of America, Atlanta, GA.
55. Vaid, J., Widner, R. L., Jr., & Smith, S. M. (July, 1994). The Effect of Switching Languages on Tip-of-the-Tongue Resolution Rates. Presented at the Seventh Annual Meeting of the American Psychological Society, Washington D.C.
56. Smith, S. M., & Tindell, D.R. (November, 1994). Transfer appropriate patterns of blocking. Paper presented at the meeting of the Psychonomic Society, St. Louis, MO.
57. Smith, S. M. (April, 1995). Empirical Evidence of Memory Blocking and Recovery.

Invited address, Department of Psychology, University of Texas, Austin, TX.

58. Smith, S. M., Tindell, D.R. & Balfour, S.P. (May, 1995). Blocking, Tip-of-the-Tongue Reports, & Incubation in Word Retrieval. Paper presented at the meeting of the Midwestern Psychological Association, Chicago, IL.
59. Widner, R. L., Jr., Smith, S. M., & Vaid, J. (May, 1995). The Effects of Context Changes on Retrieval Blocks. Presented at the Sixty-Seventh Annual Meeting of the Midwestern Psychological Association, Chicago, IL.
60. Widner, R. L., Jr., Smith, S. M., & Vaid, J. (May, 1995). Paraphrasing as a Means of Resolving TOT States. Paper presented at the Sixty-Seventh Annual Meeting of the Midwestern Psychological Association, Chicago, IL.
61. Widner, R. L., Jr., & Smith, S. M. (May, 1995). Generation Effects with Numbers: An Associative Spread Interpretation. Presented at the Sixty-Seventh Annual Meeting of the Midwestern Psychological Association, Chicago, IL.
62. Vaid, J., Widner, R. L., Jr., & Smith, S. M. (June, 1995). Paraphrasing Material Results in Increased Tip-of-the-Tongue Resolution Rates. Presented at the Eighth Annual Meeting of the American Psychological Science Meeting.
63. Tindell, D.R., Wilkenfeld, M.J., Sifonis, C.M. & Smith, S. M. (May, 1995). Effects of Knowledge on Creativity in a Conceptual Combination task. Poster presented at the Creative Concepts Conference, College Station, TX.
64. Smith, S. M., Tindell, D.R. & Balfour, S.P. (May, 1995). Memory Blocking, TOTs, & Incubation. Poster Presented at the Annual Meeting of the Psychonomic Society, Los Angeles, CA.
65. Smith, S. M. (April, 1996). Issues in eyewitness memory. Presented at the Sigma Xi Interdisciplinary Research Forum on Contemporary Science and Technology Issues in Forensics, Texas A&M University, College Station, TX.
66. Smith, S. M., Ward, T.B., Gleaves, D.H., Pierce, B.H., Sifonis, C.M., Tindell, D.R. & Wilkenfeld, M.J. (May, 1996). Category structure in created memories. Paper presented at the meeting of the Midwestern Psychological Association, Chicago, IL.
67. Tindell, D.R. & Smith, S. M. (May, 1996). Blocking in word fragment completion: Automatic or intentional. Paper presented at the meeting of the Midwestern Psychological Association, Chicago, IL.
68. Balfour, S.P., Cohen, A.L. & Smith, S. M. (May, 1996). A demonstration and computational model of overcoming interference effects with environmental contextual

- changes. Paper presented at the meeting of the Midwestern Psychological Association, Chicago, IL.
69. Smith, S. M. (May, 1996). Undermining the unconscious activation theory of incubation and intuition. Paper presented at the Texas Area Conference on Cognition (ARMADILLO), Austin, TX.
  70. Sifonis, C.M., Smith, S. M., Ward, T.B., Tindell, D.R., & Wilkenfeld, M.J. (May, 1996). Category structure and priming in created memories. Poster presented at the Texas Area Conference on Cognition (ARMADILLO), Austin, TX.
  71. Smith, S. M. & Ward, T.B. (September, 1996). The evolution of creativity. Paper presented at the Evolution of the Psyche Conference, Texas A&M University, College Station, TX.
  72. Gleaves, D.H., Smith, S. M., Pierce, B.F. & Williams, T.L. (November, 1996). Discriminating false and recovered memories in the laboratory. Poster presented at the 1996 meeting of the International Society for Traumatic Stress Studies.
  73. Smith, S. M., Ward, T.B., Sifonis, C.M., Tindell, D.R., Wilkenfeld, M.J. & Pierce, B. (November, 1996). Priming and category structure in created memories. Paper presented at the meeting of the Psychonomic Society, Chicago, IL.
  74. Smith, S. M., Gilliland, T.R., Tindell, D.R., & Pierce, B.H. (May, 1997). Directed forgetting and recognition failure in primed false cued recall. Paper presented at the meeting of the Midwestern Psychological Association, Chicago, IL.
  75. Smith, S. M., Gilliland, T.R., Tindell, D.R., & Pierce, B.H. (May, 1997). Recognizing your own false recall. Paper presented at the meeting of the Texas Area Conference on Cognition (ARMADILLO), Dallas, TX.
  76. Smith, S. M. (June, 1997). Incubation and recovery from mental blocks. Invited address at the International Conference on Neural Networks (ICNN'97), Houston, Texas, USA.
  77. Smith, S. M. (September, 1997). On created and recovered memories. Invited address, Department of Psychology, University of Wisconsin, Madison, WI.
  78. Smith, S. M. (September, 1997). Research in creative cognition. Invited address, Department of Educational Psychology, University of Wisconsin, Madison, WI.
  79. Smith, S. M. (October, 1997). On memory blocking. Invited address, Department of Psychology, Stanford University, Stanford, CA.
  80. Smith, S. M. (October, 1997). Source Monitoring Failures in False Memory. Invited

address, Dept. of Psychology, NSC Program Series, Baylor University, Waco, TX.

81. Smith, Steven M., Tindell, Deborah R., Pierce, Benton H., Gilliland, Todd R., Sifonis, Cynthia M., & Wilkenfeld, Meryll J. (November, 1997). Source memory failure in primed false recall. Presented at the meeting of the Psychonomic Society, Philadelphia, PA.
82. Pierce, B. H., Tindell, D. R., Gilliland, T. R., Gerkens, D. P., & Smith, S. M. (May, 1998). Effects of source-monitoring instructions on episodic confusion errors. Poster presented at the meeting of the Texas Area Conference on Cognition (ARMADILLO), Houston, TX.
83. Levy, W.B., Smith, S. M., & Sifonis, C.M. (1998). Internally generated reminders and hippocampal recapitulations. Presented at the Twentieth Annual Meeting of the Cognitive Science Society, Madison, WI.
84. Smith, S. M., Sifonis, C.M., & Tindell, D.R. (1998). Hints do not evoke solutions via passive spreading activation. Presented at the Twentieth Annual Meeting of the Cognitive Science Society, Madison, WI.
85. Allen, C.F., Sifonis, C.M., & Smith, S. M. (1998). Tests of Remote Association. Presented at the 20<sup>th</sup> Annual Meeting of the Cognitive Science Society, Madison, WI.
86. Smith, S. M., Gilliland, T.R., Gerkens, D.P., Pierce, B.H., and Tindell, D.R. (November, 1998). Dissociations of False Memory Measures: Cued Recall vs. Stem Completion. Presented at the annual convention of the Psychonomic Society, Dallas, TX.
87. Smith, S. M., Pierce, B.H., Gilliland, T.R., & Gerkens, D.R. (April, 1999). Source Confusion and Misleading Implications in False Recall. Presented at the annual convention of the Midwestern Psychological Association, Chicago, IL.
88. Smith, S. M. (July, 1999) Research in Creative Cognition. Invited address. Department of Psychology, Dartmouth College.
89. Smith, S. M. (October, 1999) Plausibility in False Recall. Presented at the annual convention of ARMADILLO, Trinity University, San Antonio, TX.
90. Smith, S. M., Gerkens, D.R., Sifonis, C.M., Wilkenfeld, M.J., Tindell, D.R., and Pierce, B.H. (November, 1999). Category and list structure in primed false recall. Presented at the annual convention of the Psychonomic Society, Los Angeles, CA.
91. Smith, S. M. (June, 2000). Creativity in design. Presented at the Gordon Research Conference on Theoretical Foundations for Product Design and Manufacturing, Plymouth State College, Plymouth, NH.

92. Pierce, B. H., Smith, S. M., & Bartlett, J. C. (April, 2000). Reversing age-related increases in tip-of-the-tongue states: The effect of novel stimuli. Poster presented at the Cognitive Aging Conference, Atlanta, GA.
93. Smith, S. M. (2000, November). Did that really happen, or was it just a dream? Paper presented at the Annual Meeting of the Psychonomic Society, New Orleans, LA.
94. Smith, S. M. & Choi, H. (2001, August). Incubation in Memory, Problem Solving, and Idea Generation: Autonomous Unconscious Processing vs. Contextually Influenced Restructuring. Presented at the Third International Conference on Memory, Valencia, Spain.
95. Smith, S. M., Choi, H., Gerkens, D.R., Pierce, B.H., and Flesch, M.H. (November, 2001). Clue Insensitivity in Memory Recovery. Presented at the annual meeting of the Psychonomic Society, Orlando, FL.
96. Smith, S. M., Choi, H., Gerkens, D.R., and Pierce, B.H. (June, 2002). Incubation and Recovery from Tip-Of-the-Tongue States. Presented at the annual convention of the American Psychological Society, New Orleans, LA.
97. Smith, S. M., & Gerkens, D.R. (October, 2002). Recovering memories from what? Presented at the annual meeting of ARMADILLO, Trinity University, San Antonio, Texas.
98. Smith, S. M., Choi, H., Gerkens, D. R., & Hull, R. G. (November, 2002). Resolving memory blocks. Presented at the annual meeting of the Psychonomic Society, Kansas City, Missouri.
99. Smith, S. M. (2003). Empirical Studies of Creative Cognition in Idea Generation. Invited speaker at the KTAG conference on creativity and innovation. Northwestern University, Evanston, IL.
100. Bortfeld, H., Smith, S. M., Hull, R.M., & Ledlie, J. (June, 2003). Putting Conceptual Combination in Context. Presented at the Annual Meeting of the American Psychological Society, Atlanta, Georgia.
101. Moynan, S. & Smith, S. M. (October, 2003). Forgetting emotional events: Poster presented at the annual meeting of ARMADILLO, College Station, Texas.
102. Smith, S. M., Gerkens, D. R., Choi, H., & Hull, R. G. (November, 2003). Forgetting and recovery without inhibition. Poster presented at the annual meeting of the Psychonomic Society, Vancouver, B.C.
103. Bortfeld, H., Smith, S. M., Hull, R. G., & Ledlie, J. (November, 2003). Conceptual combination in context. Poster presented at the annual meeting of the Psychonomic

Society, Vancouver, B.C.

104. Wilson, C. L., Simpson, J. A., & Smith, S. M. (January, 2004). Avoidance and False Memories of Attachment Word Lists: A Category Structure Approach. Presented at the annual conference for the Society of Personality and Social Psychology, Austin, Texas.
105. Smith, S. M. (April, 2004). The science of creative cognition. Invited address, British Psychological Society, Imperial College, London, UK.
106. Smith, S. M. (April, 2004). Clue insensitivity in memory and problem solving. Symposium speaker, British Psychological Society, Imperial College, London, England.
107. Smith, S. M. (April, 2004). Context-dependent memory, Invited colloquium, Keele University, Keele, England.
108. Smith, S. M. (April, 2004). Blocked and recovered memories, Invited colloquium, University of Hartfordshire, Hatfield, England.
109. Bortfeld, H., Sappington, R., Smith, S. M., & Hull, R. M. (August, 2004). Sense retention in conceptual combination. Poster presented at the Annual Convention of the Cognitive Science Society, Chicago, IL.
110. Smith, S. M., & Moynan, S. C. (November, 2004). Forgetting lists of \*\$%#! words. Presented at the annual meeting of the Psychonomic Society, Minneapolis, MN.
111. Barnhardt, T. M., Choi, H., Gerkens, D. R., Corbisier, B., & Smith, S. M. (November, 2004). Output position for veridical and false memories for words. Presented at the annual meeting of the Psychonomic Society, Minneapolis, MN.
112. Smith, S. M. (September, 2005). Context-dependent memory. Presented at the Science of Memory conference, Palisades, New York, NY.
113. Smith, S. M. (September, 2005). Research in creative cognition. Presented at the Cognitive Forum, University of California, Los Angeles, CA.
114. Kerne, A., Smith, S. M., Choi, H., Graeber, R., Caruso, D. (2005). Evaluating Navigational Surrogate Formats with Divergent Browsing Tasks, Presented at Proc ACM CHI, Portland, OR.
115. Smith, S. M. (April, 2006). The neuroscience of creative cognition. Presented to the Center for the Biology of Creativity and the Tennenbaum Family Creativity Initiative at UCLA, Los Angeles, CA.
116. Storm, B. C., Smith, S. M., Bjork, E. L., & Bjork, R. A. (May, 2006). The Effects of delay and context on retrieval-induced forgetting. Presented at the Annual Meeting of the

Western Psychological Association, Palm Springs, CA.

117. Kerne, A., Koh, E., Choj, H., Dworaczyk, B., Smith, S. M., Hill, R., Albea, J. (2006).
118. Supporting Creative Learning Experience with Compositions of Image and Text Surrogates. Presented at the Annual Meeting of the Association for the Advancement for Computers in Education, Orlando, FL.
119. Kerne, A., Koh, E., Dworaczyk, B., Mistrot, J.M., Choi, H., Smith, S. M., Graeber, R., Caruso, D., Webb, A., Hill, R., Albea, J., (2006). A Mixed-Initiative System for Representing Collections as Compositions of Image and Text Surrogates. Presented at the Joint ACM/IEEE Conference on Digital Libraries, Chapel Hill, NC.
120. Hill, R., Koh, E., & Smith, S. M. (2006). "CombinFormation" and the Future of Knowledge Creation. Presented to the Annual Meeting of the World Future Society, Toronto, ON, Canada.
121. Smith, S. M. (May, 2006). Alignment of Research on Creative Cognition Across Levels of Complexity and Ecological Validity. NSF Workshop on the Science of Discovery and Innovation, Washington, D.C.
122. Smith, S. M. (September, 2006). How Creative Cognition Can Be Studied. Presented at the Department of Psychology, University of Texas, Austin, TX.
123. Smith, S. M., Manzano, I., Williams, J., & Kohn, N. (November, 2006). Recovering Experimentally Blocked Memories: Effects of Context Cues & Recall Instructions. Presented at the annual meeting of the Psychonomic Society, Houston, TX.
124. Smith, S. M. (November, 2006). Creativity & Innovation in Expertise: The Role of Context. NSF Workshop on the Multidisciplinary Perspectives on Transfer, Expertise, and Innovation, Washington, D.C.
125. Smith, S. M., Kerne, A., & Koh, E. (December, 2006). Promoting Emergent Combinations in Information Discovery. NSF & IC<sup>2</sup> Workshop on Tools for Innovation, Austin, TX.
126. Smith S. M., & Barnhardt, T. (June, 2007). Output position in true & false memories: cognitive triage in the recall of presented and nonpresented critical words. Presented at the annual meeting of the Association for Psychological Science (APS), Washington, D.C.
127. Smith S. M., & Manzano, I. (October, 2007). Movie mediated memory. Presented at the annual meeting of ARMADILLO, Trinity University, San Antonio, Texas.
128. Smith, S. M. (October, 2007). Invisible assumptions and the unintentional use of



- knowledge & experiences in creative cognition. Presented at the Thirteenth Annual Lewis & Clark Business Law Forum: Nonobviousness – The Shape of Things to Come, Lewis & Clark Law School, Portland, Oregon.
129. Smith, S. M. (October, 2007). Principles and paradoxes of the creative mind. Keynote address at the Annual Symposium on the built and virtual environment, College of Architecture, Texas A&M University, College Station, Texas.
130. Smith, S. M. (November, 2007). Context fluctuation and time-dependent memory phenomena. Presented at the annual convention of the Psychonomic Society, Long Beach, CA.
131. Smith, S. M. (March, 2008). What you see is what you get: Effects of provocative stimuli in creative invention. Presented at the National Science Foundation Workshop on Creative Engineering Design, University of Provence, Aix-en-Provence, France.
132. Smith, S. M. (July, 2008). The science of creative cognition. Presented at the International Centre for Innovation in Education, Paris, France.
133. Smith, S. M. (August, 2008). Human Cognition: Illusions, Decisions, & Procedures. Presented to the United States Patent & Trademark Office and the Patent Public Advisory Committee, Washington, D. C.
134. Smith, S. M. (October, 2008). Nonobviousness in U.S. Patent Law. Presented at the annual meeting of ARMADILLO, University of Texas-El Paso, El Paso, Texas.
135. Smith, S. M. (January, 2009). Blocking Out Blocks: Adaptive Forgetting of Fixation in Memory, Problem Solving, and Creative Ideation. Presented at Successful Remembering and Successful Forgetting: A Festschrift in Honor of Robert A. Bjork, UCLA, Los Angeles, CA.
136. Shah, J. J., Smith, S. M., and Woodward, J. (August, 2009). Development of standardized tests for design skills. International Conference on Engineering Design (ICED), Stanford University, Stanford, CA.
137. Smith, S. M., & Manzano, I. (October, 2009). Effects of Context Similarity on Contextual Cuing. Presented at ARMADILLO, Rice University, Houston, TX.
138. Shahabuddin, S., & Smith, S. M. (October, 2009). Context-Dependent Recognition Memory. Presented at ARMADILLO, Rice University, Houston, TX.
139. Smith, S. M., & Manzano, I. (November, 2009). Effects of Context Similarity on Contextual Cuing. Presented at the 50th Meeting of the Psychonomic Society, Boston, MA.

140. Smith, S. M. (February, 2010). The benefits and costs of implicit knowledge. Presented at the NSF Workshop for Engineered Systems Design, Washington, D.C.
141. Mulvenna, C. M., & Smith, S. M. (April, 2010). Conceptual combination and novel ideas: How properties of the task and taught behavioral strategies influence levels of emergence in new ideas. Presented at the annual meeting of the Society for Personality and Social Psychology, Las Vegas, Nevada.
142. Smith, S. M., & Linsey, J. (April, 2010). A three-pronged approach for overcoming design fixation. Presented at International Symposium on Creative Design Processes: Fixation or Inspiration? The Role of Internal and External Sources on Idea Generation. Delft University of Technology, Delft, The Netherlands.
143. Smith, S. M., Handy, J., & Angello, G. (November, 2010). Video context-dependent memory for Swahili-English word pairs. Presented at the meeting of the Psychonomic Society, St. Louis, MO.
144. Hays, M. J., Smith, S. M., Wilson, P. D., & Lansky, C. A. (November, 2010). Imaginal preinstatement of test context during study improves recall. Presented at the meeting of the Psychonomic Society, St. Louis, MO.
145. Miller, T. M., Geraci, L., Smith, S. M., & Antony, A. (November, 2010). Study time is influenced by students' understanding of probability information. Presented at the meeting of the Psychonomic Society, St. Louis, MO.
146. Smith, S. M., Linsey, J., & Kerne, A. (December, 2010). Using evolved analogies to overcome creative design fixation. Presented at the 1<sup>st</sup> International Conference on Design Creativity (ICDC 2010), Kobe, Japan.
147. Handy, J., & Smith, S. M. (October, 2011). Forgotten but not gone: Recovering memories of stories. Presented at the meeting of ARMADILLO, Commerce, TX.
148. Nichols, J. H., & Smith, S. M. (October, 2011). Inflating judgments of learning with video context reinstatement. Presented at the meeting of ARMADILLO, Commerce, TX.
149. Angello, G., & Smith, S. M. (October, 2011). Are mental blocks forgotten during creative problem solving due to inhibitory control? Presented at the meeting of ARMADILLO, Commerce, TX.
150. Handy, J., Angello, G., Nichols, J. H., & Smith, S. M. (November, 2011). Forgotten but not gone: Recovering memories of stories. Presented at the meeting of the Psychonomic Society, Seattle, WA.
151. Nichols, J. H., & Smith, S. M. (November, 2011). Inflating judgments of learning with

- video context reinstatement. Presented at the meeting of the Psychonomic Society, Seattle, WA.
152. Angello, G., Storm, B. C., Bjork, E. L., Smith, S. M., & Yamauchi, T. (November, 2011). Are mental blocks forgotten during creative problem-solving due to inhibitory control? Presented at the meeting of the Psychonomic Society, Seattle, WA.
153. Smith, S. M. (May, 2012). Mechanisms of creative cognition: Theory and research *Keynote Address* at the *International Conference for Computational Creativity (ICCC)*, Dublin, Ireland.
154. Smith, S. M. (June, 2012). Design fixation: Effects of examples on creative ideation. *Keynote Address* at the *International Conference for Design, Computation and Cognition (DCC'12)*, College Station, Texas.
155. Smith, S. M. (September, 2012). Design fixation: Experimental cognitive studies of creative ideation. *Keynote Address* for the International "Bienal" (Biennial) Conference on Design, *Internacional Tadeista de Diseño Industrial*, Bogotá, Colombia.
156. Smith, S. M. (September, 2012). Conceptual knowledge in creative design. *Student Conference* for the International "Bienal" (Biennial) Conference on Design, *Internacional Tadeista de Diseño Industrial*, Bogotá, Colombia.
157. Smith, S. M. (September, 2012). Aids to creative design. *Student Address* for the International "Bienal" (Biennial) Conference on Design, *Internacional Tadeista de Diseño Industrial*, Bogotá, Colombia.
158. Smith, S. M. (September, 2012). Design exercises. *Student Workshop* for the International "Bienal" (Biennial) Conference on Design, *Internacional Tadeista de Diseño Industrial*, Bogotá, Colombia.
159. Smith, S. M. (September, 2012). Design metrics. *Faculty Workshop* for the International "Bienal" (Biennial) Conference on Design, *Internacional Tadeista de Diseño Industrial*, Bogotá, Colombia.
160. Smith, S. M., Handy, J. D., Nichols, J. H., & Angello, G. (October, 2012). Contextually-enhanced learning. Presented at the annual meeting of ARMADILLO, Texas A&M International University, Laredo, TX.
161. Smith, S. M., Handy, J. D., Nichols, J. H., & Angello, G. (November, 2012). Training wheels and desirable difficulties: Effects of contextual constancy & variation on acquisition & retention. Presented at the annual meeting of the Psychonomic Society, Minneapolis, MN.

162. Smith, S. M., & Nichols, J. H. (November, 2012). Contextually-inflated judgments of learning. Presented at the meeting of the International Association for Metacognition, Minneapolis, MN.
163. Smith, S. M. (December, 2012). Eyewitness identification. Invited talk presented at the meeting of the Texas Criminal Defense Lawyer's Association (TCDLA), Houston, TX.
164. Smith, S. M. (May, 2013). Using digital contexts to increase the duration & efficacy of study time. Invited address, presented at the annual meeting of the Midwestern Psychological Association, Chicago, IL.
165. Cagan, Dinar, Shah J, Leifer, Linsey, Smith, & Hernandez (August, 2013). Empirical studies of design thinking: Past, present, future, ASME Design Theory & Methods Conference, Portland, Aug 2013. Paper#13302.
166. Smith, S. M., Handy, J. D., & Angello, G. (November, 2013). Decontextualization of new knowledge. Presented at the annual meeting of the Psychonomic Society, Toronto, CA.
167. Angello, G., Storm, B. C., & Smith, S. M. (November, 2013). Alleviating fixation with suppression-induced forgetting of blockers. Presented at the annual meeting of the Psychonomic Society, Toronto, CA.
168. Smith, S.M. (January, 2014). Mechanisms of Creative Cognition. Invited lecture at the University of Illinois-Chicago, Chicago, IL.
169. Smith, S. M. (July, 2014). Eyewitness Identification: How Bad Is Our Memory. Invited address at the Mental Health Seminar: A Program For The Defense, The Center for American and International Law, Plano, TX.
170. Smith, S. M. (September, 2014). The crutch of contextual-dependency. Invited colloquium, presented at the Cognitive Seminar, Washington University Department of Psychology.
171. Smith, S. M. (October, 2014). The crutch of contextual-dependency. Invited colloquium, presented at the Cognitive Seminar, University of Missouri Department of Psychology.
172. Handy, J. D., & Smith, S. M. (November, 2014). Dropout-Induced Forgetting and Recovery of Autobiographical Memories. Presented at the annual meeting of the Psychonomic Society, Long Beach, CA.
173. Angello, G., Smith, S. M., & Storm, B. (November, 2014). Does impossible retrieval practice support divergent thinking? Presented at the annual meeting of the Psychonomic Society, Long Beach, CA.

174. Smith, S.M. (September, 2015). Cognitive Mechanisms in Creative Design, Keynote Address at the International Meeting of Creación: Developing Pedagogical Models for Interdisciplinary Creation and Research Processes, Bogota, Colombia.
175. Smith, S.M. (September, 2015). Interdisciplinary Research on the Creative Mind, Workshop at the International Meeting of Creación: Developing Pedagogical Models for Interdisciplinary Creation and Research Processes, Bogota, Colombia.
176. Smith, S.M., & Hernandez, A. (October, 2015). Contextually cued automatic retrieval. Presented at the annual meeting of ARMADILLO, Baylor University, Waco, TX.
177. Smith, S.M., Handy, J.D., & Jacoby, L. (November, 2015). Contextually cued involuntary retrieval. Presented at the annual meeting of the Psychonomic Society, Chicago, IL.
178. Smith, S.M., & Hernandez, A. (October, 2016). Contextually cued automatic retrieval. Presented at the annual meeting of ARMADILLO, University of Texas-El Paso, El Paso, TX.
179. Smith, S.M., Handy, J.D., Hernandez, A., & Jacoby, L. (November, 2016). Is Automatic Retrieval Context-Dependent? Presented at the annual meeting of the Psychonomic Society, Boston, MA.
180. Hernandez, A., & Smith, S.M. (November, 2016). A Conceptually-Driven Oppositional Indirect Memory Test. Presented at the annual meeting of the Psychonomic Society, Boston, MA.

#### Grants:

*Effects of contextual and temporal variability in the instruction of a minicourse.* Consultant for Bell Laboratories, Learning and Instruction Research Department with Ernst Rothkopf, 1980-1982.

National Institute of Mental Health, *Contextual Activation of Event Memory* (Grant No. 1 R01 MH39977-01), September, 1985-May, 1987.

National Institute of Mental Health, *Inducing and Reducing Cognitive Fixation* (Grant No. 1 R01 MH447030), September, 1989- May, 1993).

American Psychological Association Scientific Conferences Program, *Conceptual Structures and Processes: Emergence, Discovery, and Change* (with Thomas Ward and Jyotsna Vaid, 1996).

National Science Foundation (PI), Engineering Education & Centers (EEC) Division of Design, Manufacture, & Industrial Innovation (DMII), (with Jami Shah, Arizona State University), *Development and validation of design ideation models for conceptual engineering design.* (2002-

2006).

National Science Foundation SGER: *Extending Working Memory Functions by Presenting Bookmark and Result Sets as Temporal Visual Compositions* (Co-PI, with A. Kerne – PI, TAMU Computer Science). (2005-2006).

Texas A&M University Faculty Development Leave Program: Scholar in Residence, Department of Psychology, UCLA (2005-2006).

National Science Foundation Major Research Instrumentation (MRI) Program: *Development of Spatially Immersive Visualization Facilities*, under the direction of Frederic I. Parke - PI, with Co-PI's Donald H. House, Peter F. Stiller, Samuel D. Brody, & Steven M. Smith (2005-2008).

National Science Foundation; *Promoting Information Discovery in Learning: Mixed-Initiative Composition of Hybrid Image-Text Surrogates*, PI Andruud Kerne - Computer Science, Steven M. Smith - Technology and Society, Project 3660C CS (2006-2008).

National Science Foundation (DMII); *Identification, Characterization & Measurement of Design Skills and Designer Profiles*, Co-PI, with Jami Shah - PI, Arizona State University (2007-2012).

National Science Foundation (IIS); *EAGER: Creativity in the Wild: Insight and Discovery with Wearable Sensors*, Co-PI, with PI Frank Shipman and Co-PI Ricardo Gutierrez-Osuna (Grant No. IIS-1049217, 2010-2013).

Texas A&M University Program to Enhance Scholarly and Creative Activities: *Nurturing Creativity in Children's Storytelling through Digital Enactment*, Co-PI with Francis Quek, Lynn Burlbaw, \$25,000.

**Miscellaneous:**

*Distinguished Teaching Award* (1997), Presented by the Texas A&M University Association of Former Students and the College of Liberal Arts.

*Texas A&M University IRB Member* since 2012

*Associate Editor: Design Science*

*Editorial Boards: Journal of Creative Behavior, International Journal of Design Creativity and Innovation*

*Program Committee Co-chair for International Interdisciplinary Conferences:*

Design Computation and Cognition (DCC)

International Conference on Design Creativity (ICDC)

International Conference on Computational Creativity (ICCC)

ACM Creativity & Cognition

ASME International Design Engineering Technical Conferences (IDETC)

**Ad Hoc Reviewer:**

Acta Psychologica

Advances in Cognitive Psychology

American Journal of Psychology

Cognition

Cognition and Emotion

Design Science

Frontiers in Psychology, section Cognition

International Journal of Design Creativity and Innovation

Journal of Abnormal Psychology

Journal of Engineering Design

Journal of Experimental Psychology: Learning, Memory & Cognition

Journal of Experimental Psychology: General

Journal of Memory and Language

Memory

Memory and Cognition

National Science Foundation

Organizational Behavior and Human Decision Processes

Quarterly Journal of Experimental Psychology

PLOS ONE

Psicologica

Psychological Bulletin

Psychonomic Bulletin and Review

Psychological Review

Psychological Science

Psychology and Aging

Teaching of Psychology

Coordinator of 2<sup>nd</sup>, 6<sup>th</sup>, 11<sup>th</sup>, and 20<sup>th</sup> annual Texas Cognition Conferences (ARMADILLO),  
College Station, TX

Co-coordinator of the Creative Concepts Conference (APA Scientific Conference), May, 1995,  
College Station, TX

Adjunct Professor & Visiting Lecturer at Southwest China Normal University, Chongqing, China

**Expert Witness on Eyewitness Memory Cases (Brief Listing of Recent Cases)**

*United States vs. Jose Luis Aviles-Luna*, Cr. No. H-04-066

Asst. Federal Public Defender Michael L. Herman, Southern District of TX

*United States vs. Robert N. Angleton*, Cr. No. H-2-0040

Defense Atty. Michael Ramsey, 176<sup>th</sup> District Court, Harris County, Texas  
*United States vs. Juan Oliva-Reyes*, Cr. No. M-07-1127  
Asst. Federal Public Defender Kyle Welch, Southern District of Texas  
*State of Texas vs. McKinley Thomas*, Cause No. 1063389  
Defense Atty. Randy Ayers, 185<sup>th</sup> District Court, Harris County, Texas  
*State of Texas vs. Bryan Lee Zimmerman*  
Defense Atty. Craig Jett, 816<sup>th</sup> District Court, Collin County, Texas  
*State of Texas vs. Edward Lee II*, Cause No. 09-07-07112-CR  
Defense Atty. Lawrence McCotter, 9<sup>th</sup> Judicial District, Montgomery County, TX  
*State of Texas vs. Herman D. Greer*, Cause No. 1332324/5  
Defense Atty. Brett Podolsky, 185<sup>th</sup> District Court, Harris County, Texas  
*State of Texas vs. Anthony Coleman*, Cause No. 1253616  
Defense Atty. Stanley Schneider, 180<sup>th</sup> District Court, Harris County, Texas  
*State of Texas vs. Gareic Hankston*, Cause No. 1326559  
Defense Atty. Brent Mayr, 178<sup>th</sup> District Court, Harris County, Texas  
*State of Texas vs. George T. Curry*, Cause No. 1223596  
Defense Atty. Douglas Durham, 209<sup>th</sup> District Court, Harris County, Texas  
*State of Texas vs. Deshaun Jackson*, Cause No. 1434297,  
Defense Atty. Paul Morgan, 183<sup>rd</sup> District Court, Harris County, Texas



AUG 03 2017

JURL

DISTRICT COURT

BY

*Natalie Ortega*  
NATALIE ORTEGA, DEPUTY

CLARK COUNTY, NEVADA

STATE OF NEVADA

Plaintiff(s),

CASE NO. C316081

-VS-

DEPT. NO. II

KEANDRE VALENTINE

Defendant(s).

**SECOND AMENDED JURY LIST**

- |                       |                          |
|-----------------------|--------------------------|
| 1. STEVE WINTERBOURNE | 8. NEKEISHA WARD         |
| 2.                    | 9. CHRISTOPHER ARMANIOUS |
| 3. COREY LEE          | 10. BENJAMIN MULSTEIN    |
| 4. KAREN SMALLWOOD    | 11. ELLEN MCGARITY       |
| 5. THOMAS VANDENBOOM  | 12. CYNTHIA JONES        |
| 6. LOUIS GRUSINSKI    | 13. SHAWN MAUER          |
| 7. KELLY DAY          |                          |

**ALTERNATE**

14. TIMOTHY DUERSON

C - 16 - 316081 - 1  
AJUR  
Amended Jury List  
4671888



AUG 04 2017

BY: Natalie Ortega  
NATALIE ORTEGA, DEPUTY

1 INST

2  
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4  
5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 KEANDRE VALENTINE,

11 Defendant.

CASE NO: C-16-316081-1

DEPT NO: II

12  
13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

14 MEMBERS OF THE JURY:

15 It is now my duty as judge to instruct you in the law that applies to this case. It is  
16 your duty as jurors to follow these instructions and to apply the rules of law to the facts as  
17 you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these  
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it  
20 would be a violation of your oath to base a verdict upon any other view of the law than that  
21 given in the instructions of the Court.

22  
23  
24  
25  
26 C-16-316081-1  
27 INST  
Instructions to the Jury  
4671889



If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

An Indictment is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Indictment that on or between the 26th day of May, 2017, and the 28th day of May, 2017, the Defendant committed the offense(s) of ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138); BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony - NRS 205.060 - NOC 50426); ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.330, 193.165 - NOC 50145); POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION (Category E Felony - NRS 205.465 - NOC 50697) and POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (Category D Felony - NRS 205.690 - NOC 50790).

It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the Defendant is guilty of one or more of the offense(s) charged.

COUNT 1 - ROBBERY WITH USE OF A DEADLY WEAPON

did on or about May 26, 2016, willfully, unlawfully, and feloniously take personal property, to-wit: gold chains, wallet and contents, from the person of MARVIN BASS, or in his presence, by means of force or violence, or fear of injury to, and without the consent and against the will of MARVIN BASS, with use of a deadly weapon, to-wit: a firearm.

COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

did on or about May 26, 2016, willfully, unlawfully, and feloniously enter, with intent to commit larceny and/or assault and/or battery and/or a felony, to-wit: robbery, that certain vehicle occupied by MARVIN BASS, located at 2901 West Washington, Las Vegas, Clark County, Nevada, while possessing and/or gaining possession of a firearm, a deadly weapon, during the commission of the crime and/or before leaving the vehicle.

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2 COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

3 did on or about May 28, 2016, willfully, unlawfully, and feloniously take personal  
4 property, to-wit: lawful money of the United States, from the person of DARRELL  
5 FAULKNER, or in his presence, by means of force or violence, or fear of injury to, and  
6 without the consent and against the will of DARRELL FAULKNER, with use of a deadly  
7 weapon, to-wit: a firearm.

8 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

9 did on or about May 28, 2016, willfully, unlawfully, and feloniously take personal  
10 property, to-wit: lawful money of the United States, from the person of DEBORAH  
11 FAULKNER, or in her presence, by means of force or violence, or fear of injury to, and  
12 without the consent and against the will of DEBORAH FAULKNER, with use of a deadly  
13 weapon, to-wit: a firearm.

14 COUNT 5 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

15 did on or about May 28, 2016 willfully, unlawfully, and feloniously enter, with intent  
16 to commit larceny and/or assault and/or battery and/or a felony, to-wit: robbery, that certain  
17 building occupied by DARRELL FAULKNER and/or DEBORAH FAULKNER, located at  
18 2605 Rising Legend, Las Vegas, Clark County, Nevada, while possessing and/or gaining  
19 possession of a firearm, a deadly weapon, during the commission of the crime and/or before  
20 leaving the structure.

21 COUNT 6 - ROBBERY WITH USE OF A DEADLY WEAPON

22 did on or about May 28, 2016, willfully, unlawfully, and feloniously take personal  
23 property, to-wit: wallet and contents, from the person of JORDAN ALEXANDER, or in his  
24 presence, by means of force or violence, or fear of injury to, and without the consent and  
25 against the will of JORDAN ALEXANDER, with use of a deadly weapon, to-wit: a firearm.

26 COUNT 7 - ROBBERY WITH USE OF A DEADLY WEAPON

27 did on or about May 28, 2016, willfully, unlawfully, and feloniously take personal  
28 property, to-wit: cellular telephone and lawful money of the United States, from the person  
of SANTIAGO GARCIA, or in his presence, by means of force or violence, or fear of injury

1 to, and without the consent and against the will of SANTIAGO GARCIA, with use of a  
2 deadly weapon, to-wit: a firearm.

3 COUNT 8 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

4 did on or about May 28, 2016 willfully, unlawfully, and feloniously attempt to take  
5 personal property, to-wit: lawful money of the United States and/or personal property, from  
6 the person of JUAN CARLOS CAMPOS TORRES, or in his presence, by means of force or  
7 violence, or fear of injury to, and without the consent and against the will of JUAN  
8 CARLOS CAMPOS TORRES, by demanding said money and/or personal property from the  
9 said JUAN CARLOS CAMPOS TORRES, with use of a deadly weapon, to-wit: a firearm.

10 COUNT 9 - ROBBERY WITH USE OF A DEADLY WEAPON

11 did on or about May 28, 2016, willfully, unlawfully, and feloniously take personal  
12 property, to-wit: wallet and cellular telephone, from the person of LAZARO BRAVO-  
13 TORRES, or in his presence, by means of force or violence, or fear of injury to, and without  
14 the consent and against the will of LAZARO BRAVO-TORRES, with use of a deadly  
15 weapon, to-wit: a handgun.

16 COUNT 10 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

17 did on or about May 28, 2016, willfully, unlawfully, and feloniously enter, with  
18 intent to commit larceny and/or assault and/or battery and/or a felony, to-wit: robbery, that  
19 certain vehicle occupied by LAZARO BRAVO-TORRES, located at 1104 Leonard, Las  
20 Vegas, Clark County, Nevada, while possessing and/or gaining possession of a firearm, a  
21 deadly weapon, during the commission of the crime and/or before leaving the structure.

22 COUNT 11 - ROBBERY WITH USE OF A DEADLY WEAPON

23 did on or about May 28, 2016 willfully, unlawfully, and feloniously take personal  
24 property, to-wit: purse and/or wallet and/or cellular telephone, from the person of ROSA  
25 VASQUEZ-RAMIREZ, or in her presence, by means of force or violence, or fear of injury  
26 to, and without the consent and against the will of ROSA VASQUEZ-RAMIREZ, with use  
27 of a deadly weapon, to-wit: a firearm.

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1 COUNT 12 - POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING  
2 INFORMATION

3 did on or about May 28, 2016, willfully, knowingly, and feloniously possess any  
4 document or personal identifying information, to-wit: Nevada driver's license with the name,  
5 date of birth and driver's license number belonging to JORDAN ALEXANDER, for the  
6 purpose of establishing a false status, occupation, membership, license or identity for himself  
7 or any other person.

8 COUNT 13 - POSSESSION OF CREDIT OR DEBIT CARD WITHOUT  
9 CARDHOLDER'S  
10 CONSENT

11 did on or about May 28, 2016, willfully, unlawfully, and feloniously, have in his  
12 possession, without the consent of the cardholder, a credit or debit card, to-wit: VISA card  
13 ending in the numbers 8220, issued in the name of JORDAN ALEXANDER, with intent to  
14 circulate, use, sell, or transfer said card, with intent to defraud the cardholder and/or the  
15 issuer of said credit or debit card.

16 COUNT 14 - POSSESSION OF CREDIT OR DEBIT CARD WITHOUT  
17 CARDHOLDER'S  
18 CONSENT

19 did on or about May 28, 2016, willfully, unlawfully, and feloniously, have in his  
20 possession, without the consent of the cardholder, a credit or debit card, to-wit: VISA card  
21 ending in the numbers 9521, issued in the name of ROSA VASQUEZ-RAMIREZ, with  
22 intent to circulate, use, sell, or transfer said card, with intent to defraud the cardholder and/or  
23 the issuer of said credit or debit card.  
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2 To constitute the crime charged, there must exist a union or joint operation of an act  
3 forbidden by law and an intent to do the act.

4 The intent with which an act is done is shown by the facts and circumstances  
5 surrounding the case.

6 Do not confuse intent with motive. Motive is what prompts a person to act. Intent  
7 refers only to the state of mind with which the act is done.

8 Motive is not an element of the crime charged and the State is not required to prove a  
9 motive on the part of the Defendant in order to convict. However, you may consider  
10 evidence of motive or lack of motive as a circumstance in the case.



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2 The Defendant is presumed innocent until the contrary is proved. This presumption  
3 places upon the State the burden of proving beyond a reasonable doubt every element of the  
4 crime charged and that the Defendant is the person who committed the offense.

5 A reasonable doubt is one based on reason. It is not mere possible doubt but is such a  
6 doubt as would govern or control a person in the more weighty affairs of life. If the minds of  
7 the jurors, after the entire comparison and consideration of all the evidence, are in such a  
8 condition that they can say they feel an abiding conviction of the truth of the charge, there is  
9 not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or  
10 speculation.

11 If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a  
12 verdict of not guilty.  
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2       You are here to determine whether the Defendant is guilty or not guilty from the  
3 evidence in the case. You are not called upon to return a verdict of any other person. So, if  
4 the evidence in the case convinces you beyond a reasonable doubt of the guilt of the  
5 Defendant, you should so find, even though you may believe one or more persons are also  
6 guilty.

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

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2       The credibility or believability of a witness should be determined by his or her  
3 manner upon the stand, his or her relationship to the parties, his or her fears, motives,  
4 interests or feelings, his or her opportunity to have observed the matter to which he or she  
5 testified, the reasonableness of his or her statements and the strength or weakness of his or  
6 her recollections.

7       If you believe that a witness has lied about any material fact in the case, you may  
8 disregard the entire testimony of that witness or any portion of his testimony which is not  
9 proved by other evidence.  
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2 A witness who has special knowledge, skill, experience, training or education in a  
3 particular science, profession or occupation is an expert witness. An expert witness may  
4 give his opinion as to any matter in which he is skilled.

5 You should consider such expert opinion and weigh the reasons, if any, given for it.  
6 You are not bound, however, by such an opinion. Give it the weight to which you deem it  
7 entitled, whether that be great or slight, and you may reject it, if, in your judgment, the  
8 reasons given for it are unsound.

The elements of an attempt to commit a crime are:

- 1) the intent to commit the crime;
- 2) performance of some act towards its commission; and
- 3) failure to consummate its commission.

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2 In determining whether or not such an act was done, it is necessary to distinguish  
3 between mere preparation, on the one hand, and the actual commencement of the doing of  
4 the criminal deed, on the other. Mere preparation, which may consist of planning the offense  
5 or of devising, obtaining or arranging the means for its commission, is not sufficient to  
6 constitute an attempt; but acts of a person who intends to commit a crime will constitute an  
7 attempt where they themselves clearly indicate a certain, unambiguous intent to commit that  
8 specific crime, and, in themselves, are an immediate step in the present execution of the  
9 criminal design, the progress of which would be completed unless interrupted by some  
10 circumstance not intended in the original design.  
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2       When a person has once done things which constitute an attempt to commit a crime,  
3 he cannot avoid responsibility by failing to proceed further to commit that crime, either by  
4 reason of voluntarily abandoning his purpose or because he was prevented or interfered with  
5 in completing the crime.  
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As used in these instructions, a "deadly weapon" means:

- (1) Any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death OR
- (2) Any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

You are instructed that a firearm, whether loaded or unloaded, operable or inoperable, is a deadly weapon.

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2       The State is not required to have recovered the deadly weapon used in an alleged  
3 crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon  
4 was used in the commission of the crime.  
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In order to "use" a deadly weapon, there need not be conduct which actually produces harm but only conduct which produces a fear of harm or force by means or display of the deadly weapon in aiding the commission of the crime.

Robbery is the unlawful taking of personal property from the person of another, or in her presence, against her will, by means of force or violence or fear of injury, immediate or future, to her person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery.

Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking, in either of which cases the degree of force is immaterial.

Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

The value of property or money taken is not an element of the crime of Robbery, and it is only necessary that the State prove the taking of some property or money.

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2       It is not necessary to prove both violence and intimidation. If the fact be attended  
3 with circumstances of threatening word or gesture as in common experience and is likely to  
4 create an apprehension of danger and induce a man to part with his property for the safety of  
5 his person, it is robbery.

6       It is not necessary to prove actual fear, as the law will presume it in such a case.  
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2       You are instructed that if you find a defendant guilty of Attempt Robbery, you must  
3 also determine whether or not a deadly weapon was used in the commission of this crime.

4       If you find beyond a reasonable doubt that a defendant committed Attempt Robbery  
5 with the use of a deadly weapon, then you are instructed that the verdict of Attempt Robbery  
6 With the Use of a Deadly Weapon is the appropriate verdict.

7       If, however, you find that a deadly weapon was not used in the commission of the  
8 Attempt Robbery, but you do find that the Attempt Robbery was committed, then you are  
9 instructed that the verdict of Attempt Robbery is the appropriate verdict.

10       You are instructed that you cannot return a verdict of both Attempt Robbery With the  
11 Use of a Deadly Weapon and Attempt Robbery.

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2       You are instructed that if you find a defendant guilty of Robbery, you must also  
3 determine whether or not a deadly weapon was used in the commission of this crime.

4       If you find beyond a reasonable doubt that a defendant committed Robbery with the  
5 use of a deadly weapon, then you are instructed that the verdict of Robbery With the Use of a  
6 Deadly Weapon is the appropriate verdict.

7       If, however, you find that a deadly weapon was not used in the commission of the  
8 Robbery, but you do find that the Robbery was committed, then you are instructed that the  
9 verdict of Robbery is the appropriate verdict.

10       You are instructed that you cannot return a verdict of both Robbery With the Use of a  
11 Deadly Weapon and Robbery.

A person who, by day or night, enters any house, vehicle or other building, with the intent to commit larceny, assault or battery on any person or any felony, is guilty of Burglary.

In the State of Nevada, the crime of Robbery is a felony.



Larceny is defined as the stealing, taking and carrying away of the personal goods or property of another with the intent to permanently deprive the owner thereof.

Assault is defined as the unlawfully attempting to use physical force against another person; or intentionally placing another person in reasonable apprehension of immediate bodily harm.

Battery is defined as the willful and unlawful use of force or violence upon the person of another.

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2 It is not necessary that the State prove the defendant actually committed a larceny  
3 and/or an assault and/or a battery and/or a felony inside the house, vehicle or other building  
4 after he entered in order for you to find him guilty of Burglary. The gist of the crime of  
5 Burglary is the unlawful entry with criminal intent. Therefore, a Burglary was committed if  
6 the defendant entered the house, vehicle or other building with the intent to commit a larceny  
7 and/or an assault and/or a battery and/or a felony regardless of whether or not that crime  
8 occurred.  
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The intention with which entry was made is a question of fact which may be inferred from the defendant's conduct and all other circumstances disclosed by the evidence.

The mere fact that a person was in conscious possession of recently stolen property is not enough to justify a conviction of Burglary. It is, however, a circumstance to be considered in connection with other evidence. To warrant a finding of guilty, there must be proof of other circumstances tending of themselves to establish guilt.

An entry is deemed complete when, however slight, any portion of the intruder's body penetrates the space within the house, vehicle or other building.

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2 To prove an entry in establishing the crime of Burglary, the State need only show an  
3 entry without the consent of the possessor of the house, vehicle or other building. Force or a  
4 breaking as such is not a necessary element of the crime.  
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Every person who commits the crime of Burglary, who has in his possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure, or upon leaving the structure, is guilty of Burglary While in Possession of a Deadly Weapon.

Any person who possesses a credit card without consent of the cardholder and with the intent to circulate, use, sell, or transfer the credit card with intent to defraud is guilty of Possession of Credit Card Without Cardholder's Consent.

A credit card includes the number or other identifying description of a credit card or credit account.

1  
2 In a criminal prosecution for Possession of a Credit Card Without Cardholder's  
3 Consent, you may infer, but are not required to do so, that any person who has in his  
4 possession or under his control two or more credit cards issued in the name of another  
5 person, obtained and possessed the credit cards with the knowledge that they have been  
6 stolen and with the intent to circulate, use, sell, or transfer them with the intent to defraud.

7 For you to draw this inference, its existence must, on all the evidence, be proved  
8 beyond a reasonable doubt.  
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A person who possesses, sells or transfers any document or personal identifying information for the purpose of establishing a false status, occupation, membership, license or identity for himself or herself or any other person is guilty of Possession of Document or Personal Identifying Information.

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2 A person commits an offense involving stolen property if the person, for his or her  
3 own gain or to prevent the owner from again possessing the owner's property, buys,  
4 receives, possesses or withholds property knowing that it is stolen property or under such  
5 circumstances as should have caused a reasonable person to know that it is stolen property.  
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If the State fails to prove beyond a reasonable doubt that the Defendant personally committed the robberies and burglaries charged in Counts 1-11, then you must find the Defendant Not Guilty of those charges.

INSTRUCTION 35

NO. \_\_\_\_\_

If the State fails to prove beyond a reasonable doubt that Defendant possessed the credit card or debit cards listed in Counts 13-14 with the intent to circulate, use, sell, or transfer said cards, and with the intent to defraud the cardholder and/or the issuer of said credit or debit cards, then you must find the Defendant Not Guilty of those charges.

INSTRUCTION 36

NO. \_\_\_\_\_

If the State fails to prove beyond a reasonable doubt that Defendant possessed the Nevada Driver's License listed in Count 12 for the purpose of establishing a false status, occupation, membership, license or identity for himself or any other person, then you must find the Defendant Not Guilty of that charge.



Portions of the Defendant's statements to police have been admitted in this case. The Court and the attorneys have all agreed that the relevant portions of the statement have been admitted.

The jury is not to consider or speculate on any of the portions of the statement that were not admitted.

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2 It is constitutional right of a defendant in a criminal trial that he may not be compelled  
3 to testify. Thus, the decision as to whether he should testify is left to the defendant on the  
4 advice and counsel of his attorney. You must not draw any inference of guilt from the fact  
5 that he does not testify, nor should this fact be discussed by you or enter into your  
6 deliberations in any way.  
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2 Although you are to consider only the evidence in the case in reaching a verdict, you  
3 must bring to the consideration of the evidence your everyday common sense and judgment  
4 as reasonable men and women. Thus, you are not limited solely to what you see and hear as  
5 the witnesses testify. You may draw reasonable inferences from the evidence which you feel  
6 are justified in the light of common experience, keeping in mind that such inferences should  
7 not be based on speculation or guess.

8 A verdict may never be influenced by sympathy, prejudice or public opinion. Your  
9 decision should be the product of sincere judgment and sound discretion in accordance with  
10 these rules of law.  
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In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether you find the defendant guilty or not guilty.

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2 When you retire to consider your verdict, you must select one of your member to act  
3 as foreperson who will preside over your deliberation and will be your spokesperson here in  
4 court.

5 During your deliberation, you will have all the exhibits which were admitted into  
6 evidence, these written instructions and forms of verdict which have been prepared for your  
7 convenience.

8 Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it  
9 signed and dated by your foreperson and then return with it to this room.  
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The Court has ordered that the jail calls presented to the jury in this case to be redacted. You are not to speculate as to the contents of the redactions.

INSTRUCTION 43

NO. \_\_\_\_\_

You have heard reference to a recent jail call that Ms. Williams had with the defendant. Absent evidence proving otherwise, you are not to assume anything the ~~jury~~ said by the Defendant during this call was wrong or that he tried to convince the witness to lie.

The parties have stipulated that the photograph of Bobby McCoy depicted in State's Exhibit 196 was taken in December 2016.

The parties have stipulated that, for purpose of public record, Mr. McCoy has once reported his height as 5'10' tall and his weight as 145 pounds. This is unverified.



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2 If, during your deliberation, you should desire to be further informed on any point of  
3 law or hear again portions of the testimony, you must reduce your request to writing signed  
4 by the foreperson. The officer will then return you to court where the information sought  
5 will be given you in the presence of, and after notice to, the district attorney and the  
6 Defendant and his/her counsel.

7 Playbacks of testimony are time-consuming and are not encouraged unless you deem  
8 it a necessity. Should you require a playback, you must carefully describe the testimony to  
9 be played back so that the court recorder can arrange his/her notes. Remember, the court is  
10 not at liberty to supplement the evidence.

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN: 

DISTRICT JUDGE

AUG 04 2017

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8417

VER

BY Natalie Ortega  
NATALIE ORTEGA, DEPUTY

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

4671890



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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  
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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 Consent  
27 ☐ Possession of Stolen Property  
28 ☐ Not Guilty

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

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

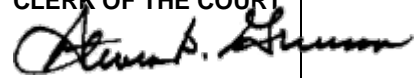
4 ☒ Guilty of Possession Of Credit Or Debit Card Without Cardholder's  
5 Consent

6 ☐ Possession of Stolen Property

7 ☐ Not Guilty

8 DATED this 4 day of August, 2017

9  
10   
11 FOREPERSON



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\* \* \* \*

STATE OF NEVADA

VS

KEANDRE VALENTINE

Case No.: C-16-316081-1

DEPARTMENT 2

**NOTICE OF DEPARTMENT REASSIGNMENT**

NOTICE IS HEREBY GIVEN that the above-entitled action has been randomly to Judge Valorie J. Vega.

☒ This reassignment is due to: Minute Order

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE RESET BY THE NEW DEPARTMENT. PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/Patricia Azucena

Patricia Azucena-Preza,  
Deputy Clerk of the Court

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**CERTIFICATE OF SERVICE**

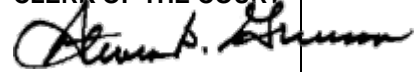
I hereby certify that this 19th day of September, 2017

- ☒ The foregoing Notice of Department Reassignment was electronically served to all registered parties for case number C-16-316081-1.
  
- ☒ I placed a copy of the foregoing Notice of Department Reassignment in the appropriate attorney folder located in the Clerk of the Court's Office:

**Steven B Wolfson**  
**Public Defender**

/s/ Patricia Azucena  
Patricia Azucena-Preza  
Deputy Clerk of the Court





DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

State of Nevada  
vs  
Keandre Valentine

Case No.: C-16-316081-1

Department 2

**AMENDED  
NOTICE OF DEPARTMENT REASSIGNMENT**

NOTICE IS HEREBY GIVEN that the above-entitled action has been reassigned to Judge Richard F. Scotti.

☒ This reassignment is due to: Minute Order.

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE RESET BY THE NEW DEPARTMENT.

Any motions or hearings presently scheduled in the FORMER department will be heard by the NEW department as set forth below.

**Sentencing, on 09/21/2017, at 11:00 AM.**

PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Patricia Azucena  
Patricia Azucena-Preza  
Deputy Clerk of the Court

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**CERTIFICATE OF SERVICE**

I hereby certify that this 20th day of September, 2017

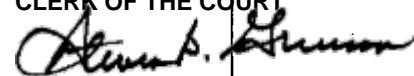
- ☒ The foregoing Notice of Department Reassignment was electronically served to all registered parties for case number C-16-316081-1.

[motions@clarkcountyda.com](mailto:motions@clarkcountyda.com)

- ☒ I placed a copy of the foregoing Notice of Department Reassignment in the appropriate attorney folder located in the Clerk of the Court's Office:

Public Defender  
Steven B Wolfson

/s/ Patricia Azucena  
Patricia Azucena-Preza  
Deputy Clerk of the Court



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 28<sup>th</sup> 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,

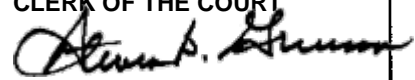
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18 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in  
19 addition to the \$25.00 Administrative Assessment Fee, \$1,000.00 Restitution and  
20 \$150.00 DNA Analysis Fee including testing to determine genetic markers plus \$3.00  
21 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.

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14 DATED this 10th day of October, 2017.

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19 RICHARD SCOTTI  
20 DISTRICT COURT JUDGE  
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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

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DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA, )  
9 )  
10 Plaintiff, ) CASE NO. C-16-316081-1  
11 v. ) DEPT. NO. II  
12 KEANDRE VALENTINE, )  
13 Defendant. )

NOTICE OF APPEAL

14 TO: THE STATE OF NEVADA

15 STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY,  
16 NEVADA and DEPARTMENT NO. II OF THE EIGHTH JUDICIAL  
17 DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE  
18 COUNTY OF CLARK.

19 NOTICE is hereby given that Defendant, Keandre  
20 Valentine, presently incarcerated in the Nevada State Prison,  
21 appeals to the Supreme Court of the State of Nevada from the  
22 judgment entered against said Defendant on the 16<sup>th</sup> day of October,  
23 2017, whereby he was convicted of Ct. 1 - Robbery With Use of a  
24 Deadly Weapon; Ct. 2 - Burglary While in Possession of a Deadly  
25 Weapon; Ct. 3 - Robbery With Use of a Deadly Weapon; Ct. 4 -  
26 Robbery With Use of a Deadly Weapon; Ct. 5 - Burglary While in  
27 Possession of Deadly Weapon; Ct. 6 - Robbery With Use of a Deadly  
28 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 6<sup>th</sup> 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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1                                    CERTIFICATE OF ELECTRONIC FILING

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

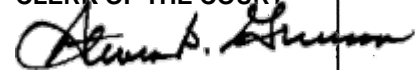
4                                    District Attorneys Office  
5                                    E-Mail Address:

6                                    PDMotions@clarkcountydacountyda.com

7                                    Jennifer.Garcia@clarkcountydacountyda.com

8                                    Eileen.Davis@clarkcountydacountyda.com

9  
10                                   /s/ Carrie M. Connolly  
11                                   Secretary for the  
12                                   Public Defender's Office



1 **EXPT**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 AGNES M. LEXIS  
6 Chief Deputy District Attorney  
7 Nevada Bar #011064  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 KEANDRE VALENTINE,  
13 #5090875

14 Defendant.

CASE NO: C-16-316081-1

DEPT NO: II

15 **EX PARTE MOTION**  
16 **AND ORDER FOR RELEASE OF EVIDENCE**

17 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
18 District Attorney, through AGNES M. LEXIS, Chief Deputy District Attorney, and moves this  
19 Honorable Court for an Order Releasing Evidence being held by the CLARK COUNTY  
20 CLERK'S OFFICE, consisting of the Black iPhone 6 belonging to SANTIAGO GARCIA,  
21 evidence regarding the above captioned case, to be released to a representative of the  
22 DISTRICT ATTORNEY'S OFFICE. Said evidence is being requested pursuant to NRS  
23 3.305, 239.110 as related in the attached notice provided by the Clerk of the Court.

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DEC 01 2017

1 IT IS HEREBY ORDERED that the evidence in the custody of the CLARK COUNTY  
2 CLERKS OFFICE, consisting of Black iPhone 6 belonging to SANTIAGO GARCIA,  
3 evidence regarding the above captioned case, to be released to a representative of the  
4 DISTRICT ATTORNEY'S OFFICE.

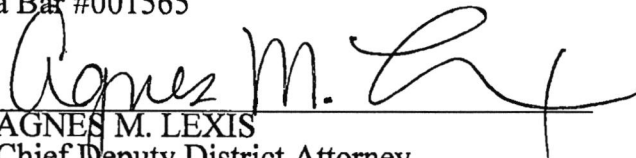
5 DATED this 1<sup>st</sup> day of ~~November~~, 2017.

6 December

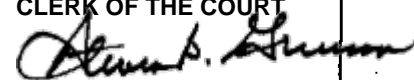
7   
8 DISTRICT JUDGE

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

12 BY

  
13 AGNES M. LEXIS  
14 Chief Deputy District Attorney  
15 Nevada Bar #011064  
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ed/GCU



1 **EXPT**  
2 **STEVEN B. WOLFSON**  
3 **Clark County District Attorney**  
4 **Nevada Bar #001565**  
5 **AGNES M. LEXIS**  
6 **Chief Deputy District Attorney**  
7 **Nevada Bar #011064**  
8 **200 Lewis Avenue**  
9 **Las Vegas, Nevada 89155-2212**  
10 **(702) 671-2500**  
11 **Attorney for Plaintiff**

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **-vs-**

CASE NO: C-16-316081-1

12 **KEANDRE VALENTINE,**  
13 **#5090875**

DEPT NO: II

14 **Defendant.**

15 **EX PARTE MOTION**  
16 **AND ORDER FOR RELEASE OF EVIDENCE**

17 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
18 District Attorney, through AGNES M. LEXIS, Chief Deputy District Attorney, and moves this  
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22 DISTRICT ATTORNEY'S OFFICE. Said evidence is being requested pursuant to NRS  
23 3.305, 239.110 as related in the attached notice provided by the Clerk of the Court.

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DEC 01 2017

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4 DISTRICT ATTORNEY'S OFFICE.

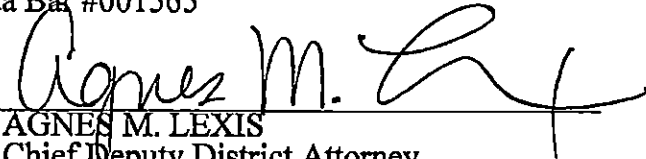
5 DATED this 1<sup>st</sup> day of ~~November~~, 2017.

6 December

7   
8 DISTRICT JUDGE

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

12 BY

13   
14 AGNES M. LEXIS  
15 Chief Deputy District Attorney  
16 Nevada Bar #011064  
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**June 29, 2016**

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C-16-316081-1      State of Nevada  
                                 vs  
                                 Keandre Valentine

---

**June 29, 2016      11:45 AM      Grand Jury Indictment**

**HEARD BY:** Barker, David      **COURTROOM:** RJC Courtroom 14C

**COURT CLERK:** Nora Pena

**RECORDER:** Cynthia Georgilas

**PARTIES**

<b>PRESENT:</b>	Cooper, Jonathan	Attorney
	Lexis, Agnes	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Wayne Cleveland, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. State presented Grand Jury Case Number 16AGJ046X to the Court. COURT ORDERED, the Indictment may be filed and is assigned Case Number C316081-1, Department 3. Ms. Lexis argued for a warrant without bail as Deft. is waiting for trial while out on bond and he picked up these offenses, therefore, Deft. is no longer entitled to bail. Ms. Lexis asked to set a date in one week and Deft. is in custody. COURT ORDERED, WARRANT ISSUED and NO BAIL; matter set for initial arraignment. FURTHER ORDERED, Exhibit(s) 1 - 19 lodged with the Clerk of District Court. At request of the State, COURT ORDERED, Las Vegas Justice Court case 16F08803X DISMISSED.

I.W. (CUSTODY)

7/07/16 9:00 AM INITIAL ARRAIGNMENT - DEPT 3 (16C)

PRINT DATE: 06/29/2016

Page 1 of 1

Minutes Date: June 29, 2016

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**July 07, 2016**

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C-16-316081-1      State of Nevada  
                                 vs  
                                 Keandre Valentine

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**July 07, 2016      9:00 AM      Initial Arraignment**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:** Sara Richardson

**PARTIES**      Agnes Lexis, Deputy District Attorney, present on behalf of the State.  
**PRESENT:**      Defendant Valentine present, in custody, represented by Tegan Machnich, Deputy  
                                 Public Defender.

**JOURNAL ENTRIES**

INITIAL ARRAIGNMENT....INDICTMENT WARRANT RETURN

DEFT. VALENTINE ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT FURTHER ORDERED, counsel has 21 days after receipt of copy of the Preliminary Hearing transcript to file a Writ. Ms. Machnich requested Discovery, pursuant to Statute. COURT SO ORDERED.

CUSTODY (COC)

9/1/16 9:00 AM CALENDAR CALL

9/6/16 10:00 AM JURY TRIAL

PRINT DATE: 07/11/2016

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Minutes Date: July 07, 2016

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 01, 2016**

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C-16-316081-1      State of Nevada  
                                 vs  
                                 Keandre Valentine

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**September 01, 2016    9:00 AM      All Pending Motions**

**HEARD BY:**   Herndon, Douglas W.

**COURTROOM:**   RJC Courtroom 16C

**COURT CLERK:**   Deborah Miller

**RECORDER:**    Sara Richardson

**PARTIES**        Michael Dickerson, Deputy District Attorney, present on behalf of the State.

**PRESENT:**      Defendant Valentine present, in custody, represented by Katrina Ross, Deputy Public Defender.

**JOURNAL ENTRIES**

**CALENDAR CALL...DEFENDANT'S MOTION FOR PRODUCTION OF DISCOVERY**

Ms. Ross submitted on the discovery motion and requested to continue the trial. Mr. Dickerson opposed continuance as State is prepared to go forward with trial, noting defendant invoked his right to a speedy trial. Ms. Ross advised the case is assigned to Ms. Machnich who is currently in trial, noting trial was set quickly. Upon Court's inquiry, Defendant will waive his right to a speedy trial. Court GRANTED request to continue trial; trial VACATED and RESET, noting this is the first trial setting.

As to Motion for Production of Discovery, COURT ORDERED, motion GRANTED pursuant to Statute and Brady, noting there is an ongoing obligation to supplement items being requested.

**CUSTODY (COC)**

**2/16/17 9:00 AM CALENDAR CALL**

**2/21/17 10:00 AM JURY TRIAL**

**PRINT DATE:**    09/13/2016

**Page 1 of 1**

**Minutes Date:**    September 01, 2016

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**October 04, 2016**

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C-16-316081-1      State of Nevada  
                                 vs  
                                 Keandre Valentine

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**October 04, 2016      9:00 AM      Motion to Set Bail**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:** Sandra Pruchnic

**PARTIES**      John Giordani, Deputy District Attorney, present on behalf of the State.  
**PRESENT:**      Defendant Valentine present, in custody, represented by Tegan Machnich, Deputy  
                         Public Defender.

**JOURNAL ENTRIES**

Ms. Machnich provided representations as to why she believes there was a no bail setting. Court stated defendant had a bench warrant and picked up a new case. Ms. Machnich argued bail be set. Mr. Giordani submitted on State's opposition. COURT ORDERED, motion GRANTED; Bail SET at \$500,000.00. Ms. Machnich stated bench warrant was issued due to a California case. Statement by Defendant. Court stated ordered STANDS.

CUSTODY (COC)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 16, 2017**

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C-16-316081-1      State of Nevada  
                                 vs  
                                 Keandre Valentine

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**February 16, 2017      9:00 AM      Calendar Call**

**HEARD BY:** Herndon, Douglas W.

**COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller/dm  
                         Brynn Griffiths

**RECORDER:** Sara Richardson

**PARTIES**      Agnes Lexis, Deputy District Attorney, present on behalf of the State.  
**PRESENT:**      Defendant Valentine present, in custody, represented by Cesely Westmoreland,  
                         Deputy Public Defender, present on behalf of Tegan Machnich, Deputy Public  
                         Defender.

**JOURNAL ENTRIES**

Court stated he received the e-mail correspondence regarding Ms. Machnich being out on FMLA. Court stated he understands the need to continue, however, he would like another attorney to continue to work on case to ensure any further investigation is completed and parties will be ready for trial when Ms. Machnich returns. Ms. Lexis advised she filed a motion relating to discovery compliance due to Ms. Machnich's refusal to come in for a file review, sign the ROC, and her refusal to file a timely motion regarding continuing the trial. Discussion regarding intent of motion. Court requested Mr. O'Brien assign an attorney to continue working on case, noting motion hearing will stand and trial will be reset at that time. Upon Court's inquiry, defendant understands the need to continue trial and WAIVED his right to a speedy trial.

CUSTODY (COC)

2/21/17 9:00 AM MOTION OUTLINING STATE'S DISCOVERY COMPLIANCE...STATUS CHECK:  
TRIAL SETTING

PRINT DATE: 02/17/2017

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Minutes Date: February 16, 2017



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**February 21, 2017**

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C-16-316081-1      State of Nevada  
                                 vs  
                                 Keandre Valentine

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**February 21, 2017      9:00 AM      All Pending Motions**

**HEARD BY:** Herndon, Douglas W.      **COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller/dm  
                                 Brynn Griffiths

**RECORDER:** Sara Richardson

**PARTIES**      Michael Dickerson, Deputy District Attorney, present on behalf of the State.  
**PRESENT:**      Defendant Valentine present, in custody, represented by Justin Glasgow, Deputy  
                                 Public Defender.

**JOURNAL ENTRIES**

MOTION OUTLINING STATE'S DISCOVERY COMPLIANCE...STATUS CHECK..TRIAL SETTING

Court stated he understands after reviewing the motion that the State is requesting Court acknowledges the items requested have been provided although Ms. Machnich did not sign off. Mr. Glasgow opposed, stating law was not cited in the motion. Court FINDS discovery items were provided and ORDERED, motion GRANTED. Court stated defense may place back on calendar should there be any discrepancies. COURT FURTHER ORDERED, matter SET for trial.

CUSTODY (COC)

7/20/17 9:00 AM CALENDAR CALL

7/24/17 10:00 AM JURY TRIAL

Felony/Gross Misdemeanor

COURT MINUTES

June 06, 2017

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C-16-316081-1      State of Nevada  
                                 vs  
                                 Keandre Valentine

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June 06, 2017      09:00 AM      Defendant's Request Re: Stipulated Status Check - Trial Setting

HEARD BY:      Herndon, Douglas W.      COURTROOM: RJC Courtroom 16C

COURT CLERK: Miller, Deborah

RECORDER:      Richardson, Sara

REPORTER:

PARTIES PRESENT:

Agnes Lexis	Attorney for Plaintiff
Tegan Machnich	Attorney for Defendant
Keandre Valentine	Defendant
State of Nevada	Plaintiff

#### JOURNAL ENTRIES

Receipt of Copy of Discovery FILED IN OPEN COURT.

Discussion regarding concern as to discs. Discussion regarding trial setting. COURT ORDERED, trial date STANDS. Upon Court's inquiry, Parties believes trial will last 5 -7 days.

CUSTODY (COC)



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****July 20, 2017**

C-16-316081-1      State of Nevada  
vs  
Keandre Valentine

**July 20, 2017      9:00 AM      All Pending Motions**

**HEARD BY:** Herndon, Douglas W.**COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller  
Kory Schlitz

**RECORDER:** Sara Richardson**PARTIES**

<b>PRESENT:</b>	Dickerson, Michael	Attorney for State
	Lexis, Agnes	Attorney for State
	Machnich, Tegan	Attorney
	State of Nevada	Plaintiff
	Valentine, Keandre	Defendant

**JOURNAL ENTRIES**

**STATE'S MOTION TO EXCLUDE EYEWITNESS EXPERT TESTIMONY...CALENDAR CALL**

Mr. Glasgow requested matter be traileed for Ms. Machnich to be present. Matter TRAILED and RECALLED. Ms. Machnich now present. Ms. Machnich advised she filed an opposition to the Motion to Exclude Eyewitness Expert Testimony. Court stated he was unable to review the opposition, noting there were also a couple of motions filed that are not on calendar until August 3, 2017. Upon Court's inquiry, Ms. Machnich stated she has no legal basis to not announce ready, however, the defendant has indicated that he intends on hiring a new attorney. Further, Ms. Machnich stated the ruling on the motions could impact her being ready for trial. Ms. Lexis announced ready and anticipated 5 days for trial, with 10-15 witnesses. Court stated it is not his practice to send a matter to overflow with pending motions, however, due to him hearing Department 19's trial he is unable to rule on the motions today. COURT ORDERED, matter REFERRED and SET for Overflow. Court stated he will advise Chief Judge Gonzalez of the motions. As to Motion to Compel Discovery scheduled to be heard on August 3, 2017, COURT ORDERED,

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Minutes Date: July 20, 2017

motion GRANTED, as unopposed, hearing date VACATED.

CUSTODY (COC)

7/21/17 8:30 AM (DEPT. 11) (A.LEXIS, M. DICKERSON//T. MACHNICH//  
10-15 WITNESSES, 5 DAYS

7/21/17 8:30 AM (DEPT. 11) STATE'S MOTION TO EXCLUDE EYEWITNESS EXPERT  
TESTIMONY..MOTION TO STRIKE ALIBI NOTICE... MOTION TO STRIKE ALIBI NOTICE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****July 21, 2017**

C-16-316081-1      State of Nevada  
vs  
Keandre Valentine

**July 21, 2017      8:30 AM      All Pending Motions**

**HEARD BY:** Gonzalez, Elizabeth**COURTROOM:** RJC Courtroom 10C**COURT CLERK:** Dulce Romea**RECORDER:** Jill Hawkins**PARTIES**

<b>PRESENT:</b>	Dickerson, Michael	Deputy District Attorney
	Gaston, Tyler	Deputy Public Defender
	Lexis, Agnes	Deputy District Attorney
	Machnich, Tegan	Deputy Public Defender
	State of Nevada	Plaintiff
	Valentine, Keandre	Defendant

**JOURNAL ENTRIES**

- STATE'S MOTION TO EXCLUDE EYEWITNESS EXPERT TESTIMONY...STATE'S MOTION TO STRIKE ALIBI NOTICE...STATE'S MOTION TO STRIKE DEFENDANT'S SUPPLEMENTAL NOTICE OF EXPERT WITNESSES: Court noted it does not hear motions on the Overflow calendar and that Judge Herndon (originating Department) has agreed to hear them. COURT ORDERED, motions CONTINUED to Monday, July 24th, at 9 AM, to be heard by Judge Herndon.

OVERFLOW (03): LEXIS, A. & DICKERSON, M./ MACHNICH, T., 5 DAYS, 10-15 WITNESSES: Colloquy regarding number of hours anticipated for trial and available judges. COURT ORDERED, matter SET for trial on Monday, July 24th, at 10 AM in Department II, Judge Scotti.

Court inquired as to any offers that have been conveyed. Deft advised there was one months ago. Ms. Machnich stated that they had plea negotiations last fall and the plea was withdrawn. Mr. Gaston stated there was an offer that Deft did not want to accept, and Ms. Machnich stated it was 12 to 30 years. Ms. Lexis advised there was also a counter offer. Ms. Machnich concurred, stating it was a 6 on

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Minutes Date: July 21, 2017

the bottom, 8 on the bottom, and 10 on the bottom. Ms. Lexis confirmed all counter offers were rejected.

CUSTODY (COC)

7-24-17            9:00 AM                            STATE'S MOTION TO EXCLUDE EYEWITNESS EXPERT  
TESTIMONY...STATE'S MOTION TO STRIKE ALIBI NOTICE...STATE'S MOTION TO STRIKE  
DEFENDANT'S SUPPLEMENTAL NOTICE OF EXPERT WITNESSES    (DEPT III - Herndon)

7-24-17            10:00 AM                            JURY TRIAL    (DEPT II - Scotti)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****July 24, 2017**

C-16-316081-1      State of Nevada  
                                 vs  
                                 Keandre Valentine

**July 24, 2017                      9:00 AM                      All Pending Motions**

**HEARD BY:** Herndon, Douglas W.**COURTROOM:** RJC Courtroom 16C**COURT CLERK:** Kory Schlitz**RECORDER:** Sara Richardson**PARTIES**

<b>PRESENT:</b>	Dickerson, Michael	Attorney for State
	Gaston, Tyler	Attorney for Defendant
	Lexis, Agnes	Attorney for State
	Machnich, Tegan	Attorney for Defendant
	State of Nevada	Plaintiff
	Valentine, Keandre	Defendant

**JOURNAL ENTRIES**

- STATE'S MOTION TO EXCLUDE EYEWITNESS EXPERT TESTIMONY... STATE'S MOTION TO STRIKE ALIBI NOTICE... STATES MOTION TO STRIKE DEFENDANTS SUPPLEMENTAL NOTICE OF EXPERT WITNESS...

Ms. Lexis stated she would submit on the Motion to Strike Defendants supplemental Notice of Expert Witness and argued regarding the Notice of Alibi stating pursuant to NRS 178.476 it allowed for the enlargement of time and stated if the timing stated by the Defense is accurate then the State's rebuttal notice of witnesses's would not be due until today which is the first day of trial. Upon Court's inquiry, Ms. Lexis stated if the alibi witness is allowed to testify the State anticipates a rebuttal case and stated there are 19 witnesses scheduled to testify in the case in chief. Ms. Machnich argued the alibi was disclosed in good faith using the NRS counting statute and believes it is timely and she has also provided the alibi's contact information to the State. Upon Court's inquiry, Ms. Machnich stated the original expert is not available. COURT STATED ITS FINDINGS and ORDERED States Motion to Exclude Eyewitness Expert Testimony is DENIED; States Motion to Strike Defendants Supplemental

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Minutes Date: July 24, 2017

Notice of Expert Witness DENIED; State's Motion to Strike Alibi Notice DENIED, however rebuttal witnesses are allowed. Ms. Lexis indicated the trial may take longer than a week. COURT SO NOTED.

CUSTODY

7/24/17 10:00 A.M. JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****July 24, 2017**

C-16-316081-1

State of Nevada

vs

Keandre Valentine

**July 24, 2017****10:00 AM****Jury Trial****HEARD BY:** Scotti, Richard F.**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Natalie Ortega**RECORDER:** Dalyne Easley**PARTIES****PRESENT:**

Dickerson, Michael

Attorney for State

Gaston, Tyler

Attorney for Defendant

Lexis, Agnes

Attorney for State

Machnich, Tegan

Attorney for Defendant

Valentine, Keandre

Defendant

**JOURNAL ENTRIES****- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL:**

COURT ADVISED counsel that each side would receive five peremptory challenges, and there would be two alternates.

Mr. Gaston made an objection of the panel and argued it violated the fair cross section of the community. Argument that a right to a fair and impartial jury, chosen from the fair cross section of the community, was guaranteed by the United States Constitution, under the fourteenth amendment's due process and equal protection clause, the sixth amendment's fair-cross-section requirement, as well as by the Nevada Constitution. Furthermore, Duren v. Missouri (1979), United States Supreme Court's case established three requirements that must be met in order to establish a prima facie violation of the sixth amendment's fair-cross-section requirement. Number one (1) that the group alleged to be excluded was a distinctive group in the community; number two (2), that the representation of this group from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresented is due to systematic

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Minutes Date: July 24, 2017

exclusion of the group in the jury-selection process. Unlike the challenge of the equal protection clause, this did not require a showing that the selection procedure was susceptible of the abuse, or not race neutral, that being from US 9th Circuit *US v. Rodriguez-Lara* (2005). Additionally, he did not have to show any racial animus on the part of the State, nor show that the Defendant was African American. Further argument, each distinctive group, African Americans, and Hispanics, were excluded. There was a statistically significant difference, and not just random variance, that they were not represented. Colloquy between Court and Mr. Gaston regarding the 2013 Clark County Census, and the jury representation percentage of African Americans and Hispanics. COURT NOTED there was a general presumption that the venires did not represent a fair cross-section of the community if the comparative percentage was more than 50% percent. Mr. Gaston noted socio-economic status was being excluded; African Americans and Hispanics had lower socio-economic status than Caucasians and Asians on average. Caucasians and Asians were continually over-represented compared to African-Americans and Asian. Mr. Gaston requested a hearing with Jury Commissioner if the Court denied his motion. Furthermore, Jury pool candidates were selected based on utility, DMV, and voting records. The issue with utility records, being by a house, people of lower socio-economic status shared residences. Additionally, in one of his past trials, Judge Johnson proposed that possibly everyone was receiving the right jury summons, however, poor people were perhaps not responding, and it was being not enforced. Mr. Gaston noted he argued that jury service should be compulsory and individuals should be arrested if they were not responding if that meant depriving his client the right to a fair trial. Further, it was requested that the Jury Commissioner provide data of the summonses that went out and the response data. The Court, the judicial system, and law enforcement systems failure to enforce compulsory jury service was the issue, and that was the systematic problem. Moreover, he was told by other attorneys in his office, that according to a hearing where the Jury Commission testified, the way jury summonses were sent out was in equal number to each zip code. Argument that every zip code did not represent an equal percentage of the population of Clark County. Lastly, if it were to be split it up by zip code it should be by what percentage that zip code population contained.

Ms. Lexis argued for the defense to successfully challenge the jury of venire, they must make a prima facie showing of a violation of the fair-cross-section requirements based on all three factors. Further, in Nevada Supreme Court case, *Battle v. State*, Judge Herndon used a transcript from the Jury Commissioner of her testimony to find there was no systemic exclusion in the jury selection process. At that time, *Battle v State*, the only sources for the juror names and addresses were from DMV and NV Energy records. Additionally, Judge Barker signed an administrative order adding registered voters in Clark County as a source of the jury master list. Ms. Lexis further noted, Assembly Bill 207, passed June 12, 2017, and became effective July 2, 2017, proffered by Congressman Steve Yeager, which added welfare recipients to the jury selection process.

Court noted it was not discriminatory if the system allows proper representation, and it may be people failing to comply.



Mr. Gaston argued it was the system's refusal to enforce the law. It is a crime to not appear for jury service, and refusing to appear was causing an unfair trial and the failure to enforce it caused an unfair system. Lastly, it was potentially the way the summonses were issued.

COURT FINDS it seemed Supreme Court, published and non-published opinion had not found any systematic exclusion, therefore, Mr. Gaston's motion DENIED; FINDS distinct groups had been excluded, African Americans and Hispanics. As to the second factor, have three African Americans, could be a statistical anomaly, FINDS fair and reasonable number on the prospective jury panel, but not respect to Hispanics, more than statistical anomaly, Hispanics were not fairly represented on this panel, however, It was not due to systematic exclusion; Battle v State and the other cases the Court had seen that the system in place the best system that could be come with to date. Court noted it would incorporate Mariah Witt's testimony regarding the procedures employed in up until the legislative changes. COURT EXHIBIT ADMITTED (see worksheet). COURT FURTHER FINDS, Nevada Supreme Court had not found systematic exclusion. COURT FURTHER ORDERED, Defense's request to obtain data from the Jury Commissioner DENIED.

PROSPECTIVE JURY PANEL PRESENT: Prospective jury panel SWORN IN. Roll call. Introductions by counsel. Voir Dire begins. COURT EXCUSED and ADMONISHED prospective jury panel for lunch recess.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Challenges placed on the record.

PROSPECTIVE JURY PANEL PRESENT: Jury selection continued.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Arguments regarding prospective juror 001 ability to serve based on medical conditions. Further challenges for cause.

PROSPECTIVE JURY PANEL PRESENT: Voir dire continued. COURT ADMONISHED and EXCUSED prospective jury panel for evening recess.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Challenges for cause placed on the record. COURT ORDERED, trial CONTINUED.

CONTINUED TO: 7/25/17 11:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**July 25, 2017**

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C-16-316081-1      State of Nevada  
                                 vs  
                                 Keandre Valentine

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**July 25, 2017      11:00 AM      Jury Trial**

**HEARD BY:** Scotti, Richard F.      **COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Natalie Ortega

**RECORDER:** Dalayne Easley

**PARTIES**

<b>PRESENT:</b>	Dickerson, Michael	Attorney for State
	Gaston, Tyler	Attorney for Deft.
	Lexis, Agnes	Attorney for State
	Machnich, Tegan	Attorney for Deft.
	Valentine, Keandre	Defendant

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Arguments by counsel regarding expert witness report, custodian of gang intelligence.

INSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Voir dire continued.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Colloquy regarding general questions to jury.

INSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Voir dire continued.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Challenges for cause.

INSIDE THE PRESENCE OF THE PROSPECTIVE JURY: Voir dire continued. Jury SELECTED and SWORN. Indictment read. COURT ORDERED, trial CONTINUED.

PRINT DATE: 11/07/2017

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Minutes Date: July 25, 2017

**C-16-316081-1**

EVENING RECESS

CONTINUED TO: 7/26/17 10:30 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**July 26, 2017**

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C-16-316081-1      State of Nevada  
                                 vs  
                                 Keandre Valentine

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**July 26, 2017      10:30 AM      Jury Trial**

**HEARD BY:** Scotti, Richard F.      **COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Natalie Ortega

**RECORDER:** Dalayne Easley

**PARTIES**

<b>PRESENT:</b>	Dickerson, Michael	Attorney for State
	Gaston, Tyler	Attorney for Deft.
	Lexis, Agnes	Attorney for State
	Machnich, Tegan	Attorney for Deft.
	Valentine, Keandre	Defendant

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY: Arguments regarding Defendant's statement to police officer.

INSIDE THE PRESENCE OF THE JURY: Opening statements by counsel. COURT ADMONISHED jury for lunch recess.

OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding a juror that does not have his hearing aid headphones.

INSIDE THE PRESENCE OF JUROR MARVIN BASS: Discussions regarding Mr. Bass wearing his hearing aid headphones.

OUTSIDE THE PRESENCE OF THE JURY: Arguments regarding grand jury transcripts.

INSIDE THE PRESENCE OF THE JURY: Testimony presented (see worksheet). COURT

PRINT DATE: 11/07/2017

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Minutes Date: July 26, 2017

ADMONISHED the jury for EVENING RECESS. COURT ORDERED, trial CONTINUED.

CONTINUED TO: 7/26/17 11:15 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**July 27, 2017**

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C-16-316081-1      State of Nevada  
                                 vs  
                                 Keandre Valentine

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**July 27, 2017      11:15 AM      Jury Trial**

**HEARD BY:** Scotti, Richard F.

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Elizabeth Vargas

**RECORDER:** Dalyne Easley

<b>PARTIES</b>	Dickerson, Michael	Attorney for State
<b>PRESENT:</b>	Gaston, Tyler	Attorney for Defendant
	Lexis, Agnes	Attorney for State
	Machnich, Tegan	Attorney for Defendant
	State of Nevada	Plaintiff
	Valentine, Keandre	Defendant

**JOURNAL ENTRIES**

- 11:50 AM OUTSIDE PRESENCE OF JURY: Court stated jury would go to lunch at 12:00 PM. Ms. Machnich stated she wanted to give formal notice that a witness would be appearing and testifying remotely from Texas due to the cost to fly him to Las Vegas. State objected stating there was a need to be able to confront the witness and show his demeanor to the jury. Colloquy regarding necessity for witness to appear remotely. Court read the rule aloud on the record and ORDERED, Defense request DENIED. Court advised parties that they could file a motion for reconsideration if needed.

1:48 PM JURY PRESENT: Witness Jordan Alexander, sworn and testified. 2:11 PM JURY PRESENT: Spanish interpreter, Noelle Tatton, present to assist witness. Witness Santiago Garcia sworn and testified. 3:34 PM BREAK. 3:40 PM arguments by counsel regarding reenactment of scene. Court advised, reenactment would be allowed for the purpose to show distance of the victim to the gun. 5:30 PM EVENING RECESS.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**July 28, 2017**

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C-16-316081-1      State of Nevada  
                                 vs  
                                 Keandre Valentine

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**July 28, 2017                      9:00 AM                      Jury Trial**

**HEARD BY:** Scotti, Richard F.                      **COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Natalie Ortega

**RECORDER:** Dalyne Easley

**PARTIES**

<b>PRESENT:</b>	Dickerson, Michael	Attorney for State
	Gaston, Tyler	Attorney for Deft.
	Lexis, Agnes	Attorney for State
	Machnich, Tegan	Attorney for Deft.
	Valentine, Keandre	Defendant

**JOURNAL ENTRIES**

- Spanish Interpreter Tania King present.

INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits presented (see worksheet).

INSIDE THE PRESENCE OF JUROR NO. 2 : Juror number two (2) advised Court and the parties she knew a witness.

OUTSIDE THE PRESENCE OF THE JURY: Defense counsel moved to strike and excuse juror number 2. State submitted. COURT ORDERED, juror Mirna Hermasillo EXCUSED and NOTED juror number 14 was now a deliberate juror.

INSIDE THE PRESENCE OF THE JURY: Testimony presented (see worksheet).

OUTSIDE THE PRESENCE OF THE JURY: Voir dire of witness Rosa Vasquez regarding

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identification of Defendant. OUTSIDE PRESENCE OF WITNESS: State requested to recall the witness. Defense objected. COURT ORDERED, State's request GRANTED; witness indicated she would like to clarify, counsel could explore during cross, and take the matter on appeal.

INSIDE THE PRESENCE OF THE JURY: Testimony continued. COURT ADMONISHED the jury for LUNCH RECESS.

OUTSIDE THE PRESENCE OF THE JURY: Arguments regarding witness identification of Defendant. COURT ADMONISHED witness Rosa Vasquez to not discuss the subject or testimony with her husband.

INSIDE THE PRESENCE OF THE JURY:: Testimony presented (see worksheet). COURT ADMONISHED witness not to discuss the testimony or events presented with her husband.

INSIDE THE PRESENCE OF THE JURY: Testimony presented (see worksheet). COURT ADMONISHED jury for EVENING RECESS. COURT ORDERED trial CONTINUED.

OUTSIDE THE PRESENCE OF THE JURY: Arguments by counsel regarding jail phones calls, and jail transcript. Further arguments regarding redaction of the inaudible sections of the jail phone calls.

CONTINUED TO: 7/31/17 9:00 AM



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**July 31, 2017**

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C-16-316081-1      State of Nevada  
                                 vs  
                                 Keandre Valentine

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**July 31, 2017                      9:00 AM                      Jury Trial**

**HEARD BY:**   Scotti, Richard F.    **COURTROOM:**   RJC Courtroom 11D

**COURT CLERK:**   Natalie Ortega

**RECORDER:**   Dalyne Easley

**PARTIES**

<b>PRESENT:</b>	Dickerson, Michael	Attorney for State
	Gaston, Tyler	Attorney for Defendant
	Lexis, Agnes	Attorney for State
	Machnich, Tegan	Attorney for Defendant
	Valentine, Keandre	Defendant

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY: Arguments regarding jail phone calls. Further arguments regarding Judge Herndon's ruling.

INSIDE THE PRESENCE OF THE JURY: Testimony presented (see worksheet). COURT ADMONISHED the jury for brief recess.

INSIDE THE PRESENCE OF THE JURY: Testimony and exhibits presented (see worksheet). COURT ADMONISHED the jury for lunch recess.

OUTSIDE THE PRESENCE OF THE JURY: COURT NOTED it reviewed the State's Motion in Limine, the minutes, and stated FINDINGS.

INSIDE THE PRESENCE OF THE JURY: Testimony presented (see worksheet). COURT ADMONISHED jury for brief recess.

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Minutes Date:    July 31, 2017

OUTSIDE THE PRESENCE OF THE JURY: Arguments regarding missing "show up" form and negligence, and Mr. Faulkner. Further arguments regarding discovery violation and jury instructions. Mr. Gaston requested and evidentiary hearing to probe the missing document issue. COURT FINDS defense brought the issue up late, therefore waived their right to an evidentiary and could examine at trial, and ruling on Sanborn motion reserved.

INSIDE THE PRESENCE OF THE JURY: Testimony presented (see worksheet). Exhibits admitted (see worksheet). COURT ADMONISHED the jury for EVENING RECESS. COURT ORDERED, trial CONTINUED.

CONTINUED TO: 8/1/17 11:15 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****August 01, 2017**

C-16-316081-1      State of Nevada  
vs  
Keandre Valentine

**August 01, 2017      11:15 AM      Jury Trial**

**HEARD BY:** Scotti, Richard F.**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Natalie Ortega**RECORDER:** Dalayne Easley**PARTIES**

<b>PRESENT:</b>	Dickerson, Michael	Attorney for State
	Gaston, Tyler	Attorney for Deft.
	Lexis, Agnes	Attorney for State
	Machnich, Tegan	Attorney for Deft.
	Valentine, Keandre	Defendant

**JOURNAL ENTRIES**

- INSIDE THE PRESENCE OF THE JURY: Testimony presented (see worksheet). State rested. COURT ADMONISHED JURORS FOR RECESS.

INSIDE THE PRESENCE OF THE JURY: Testimony continued. EXCLUSIONARY RULE INVOKED.

OUTSIDE THE PRESENCE OF THE JURY: Arguments by counsel regarding Defense's expert witness. COURT stated FINDINGS and ORDERED, State's Motion to Strike DENIED.

INSIDE THE PRESENCE OF THE JURY: Testimony continued. Exhibited presented (see worksheet). COURT ADMONISHED the jury for EVENING RECESS.

OUTSIDE THE PRESENCE OF THE JURY: Arguments by counsel regarding form of the affidavit. COURT ORDERED, affidavit ALLOWED to come in as there was reasonable inference. COURT FURTHER ORDERED, trial CONTINUED.

PRINT DATE: { DATE \@ "MM/dd/yyyy" }      Page { PAGE } of { NUMPAGES }      Minutes Date: August 01, 2017

EVENING RECESS.

CONTINUED TO: 8/2/17 10:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****August 02, 2017**

C-16-316081-1      State of Nevada  
vs  
Keandre Valentine

**August 02, 2017      10:00 AM      Jury Trial**

**HEARD BY:** Scotti, Richard F.**COURTROOM:** RJC Courtroom 11D**COURT CLERK:** Natalie Ortega**RECORDER:** Dalyne Easley**PARTIES**

<b>PRESENT:</b>	Dickerson, Michael	Attorney for State
	Gaston, Tyler	Attorney for Deft.
	Lexis, Agnes	Attorney for State
	Machnich, Tegan	Attorney for Deft.
	Valentine, Keandre	Defendant

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY: Arguments regarding introducing Bobby McCoy's booking photo and scope. COURT stated its FINDINGS and ORDERED the State would not be allowed to introduce the booking photo. Further arguments regarding Scope, custodian of records, and identification of Bobby McCoy. COURT NOTED it appeared the State argued this was a business record under NRS 51.135. COURT FINDS it needed to explore the circumstances under which the document was created, from whom, and the source of the information. Additionally, if the process of collecting the information trustworthy. Furthermore, the custodian would be voir dire outside the presence of the jury so the Court may determine if NRS 51.135 applied. Lisa Kennedy SWORN and TESTIFIED. Court EXCUSED witness. Additional arguments regarding introduction of height evidence to the jury. COURT FINDS there was inherent reliability, as to whether the scope information should be introduced, and there was concern about potential prejudice to the State in the event the jury found out Mr. McCoy was arrested for alleged criminal activity in December 2016. COURT FINDS the Defense made a compelling case and that this was so crucial to their case, that any concerns about trustworthiness of data should go to weight rather than admissibility, it should allow some mechanism to introduce into evidence regarding Mr. McCoy's height. Additionally, the Court

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Minutes Date: August 02, 2017

would allow the scope information, subject to the State's cross examination of the custodian, as to the inherent reliability or unreliability of the data or a possible stipulation for purposes of public record that Mr. McCoy once self-reported his height to be 5'10 and weight to be 145, this information, however, was unverified. Ms. Lexis noted the State would agree to option two. COURT NOTED, for purposes of public record, Mr. McCoy had once self-reported his height to be 5'10" and his weight to be 145 and this information was unverified.

OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding Court's ruling of testimony of Santiago Garcia.

INSIDE THE PRESENCE OF THE JURY: Testimony presented (see worksheet). COURT ADMONISHED jury for lunch recess.

OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding settling jury instructions. Defense WAIVED Defendant's presence for settling the jury instructions.

OUTSIDE THE PRESENCE OF THE JURY: Court noted Defense indicated they wanted to make a record of their objection, and possibly a motion related to an allegation that the State put on evidence of a jail call, which Defense had some issue. Further, as to not take additional time, the Court would allow Defense to make their record at the next recess. Additionally, the record the Defense may need to make, and possibly relief sought, would not affect the testimony of the upcoming witness. Ms. Machnich concurred.

INSIDE THE PRESENCE OF THE JURY: Testimony presented (see worksheet). COURT ADMONISHED the jury for brief recess.

OUTSIDE THE PRESENCE OF THE JURY: Court advised Defendant of his right not to testify. Arguments by counsel regarding Defendant's statements and jail calls. COURT NOTED it had directed the State to turn over any jail calls that they may intend to use. Further arguments regarding the State introduction of Defendant's jail call with witness. COURT FINDS an instruction the jury was warranted. Further, the jury would be instructed that "you have heard reference to a recent jail call that Ms. Williams had with the Defendant. Absent evidence proving otherwise, you are not to assume that anything said by the Defendant was wrong, or that he tried to convince the witness to lie." Upon Court's inquiry, counsel indicated no objection to the proposed instruction. Mr. Gaston requested relief given the State's violation of the order, and the way, in which the manner was presented to the jury in violation of the order, it was warranted a mistrial with prejudice. COURT stated FINDINGS and ORDERED, Defense's Motion for Mistrial with Prejudice DENIED.

INSIDE THE PRESENCE OF THE JURY: Court read the stipulations of facts to the jury. Defense rests. State presents rebuttal case. Testimony presented (see worksheet). COURT ADMONISHED jury for recess.

OUTSIDE THE PRESENCE OF THE JURY: Arguments regarding introduction of State's proposed exhibits 197-200 and State exercising due diligence.

INSIDE THE PRESENCE OF THE JURY: Testimony continued. COURT ADMONISHED and EXCUSED jury for EVENING RECESS.

OUTSIDE THE PRESENCE OF THE JURY: Arguments by counsel regarding Judge Herndon's order, rebuttal witnesses, hearsay, and disclosing materials. COURT ORDERED, motion for mistrial DENIED. COURT FINDS the Court properly admitted the evidence. The evidence admitted during the rebuttal stage of the State's case was within the proper scope of rebuttal. Further, the evidence was properly admitted as a business record, and the Court properly considered the probative value versus prejudicial impact and allowed evidence to come in. Additionally, it did not violate the hearsay rule, and the evidence did not violate the confrontation clause. Moreover, the proposed evidence was not testimonial in nature. The Defense had not demonstrated anything in bad faith motive by the part of the State. Further, the Court FINDS that the State did not violate any duty or timely disclose the pawn shop evidence. Ms. Machnich noted the Defense would not waive any idea or argument the State acted in bad faith. Jury instructions settled on the record. COURT FURTHER ORDERED, trial CONTINUED.

EVENING RECESS

CONTINUED TO: 8/3/17 1:00 P.M.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 03, 2017**

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C-16-316081-1	State of Nevada
	vs
	Keandre Valentine

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**August 03, 2017      1:00 PM      Jury Trial**

**HEARD BY:** Scotti, Richard F.      **COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Natalie Ortega

**RECORDER:** Dalyne Easley

**PARTIES**

<b>PRESENT:</b>	Dickerson, Michael	Attorney for State
	Gaston, Tyler	Attorney for Deft.
	Lexis, Agnes	Attorney for State
	Machnich, Tegan	Attorney for Deft.
	Valentine, Keandre	Defendant

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY: Jury instructions settled on the record. RECESS.

OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding a rebuttal witness and jail phone call transcripts.

INSIDE THE PRESENCE OF THE JURY: Court instructed the jury. Closing arguments. Court ADMONISHED the juror alternate. At the hour of 5:17 p.m. the jury returned to deliberate.

OUTSIDE THE PRESENCE OF THE JURY: Arguments by counsel regarding burden shifting during closing arguments. COURT FINDS there was no burden shifting.

EVENING RECESS.

CONTINUED TO: 8/4/17 11:00 AM

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"MM/dd/yyyy" }

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NUMPAGES }

Minutes Date: August 03, 2017





**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**August 04, 2017**

C-16-316081-1      State of Nevada  
vs  
Keandre Valentine

**August 04, 2017      11:00 AM      Jury Trial**

**HEARD BY:** Wiese, Jerry A.

**COURTROOM:** RJC Courtroom 11D

**COURT CLERK:** Natalie Ortega

**RECORDER:** Dalyne Easley

**PARTIES**

<b>PRESENT:</b>	Dickerson, Michael	Attorney for State
	Gaston, Tyler	Attorney for Defendant
	Lexis, Agnes	Attorney for State
	Machnich, Tegan	Attorney for Defendant
	Valentine, Keandre	Defendant

**JOURNAL ENTRIES**

- Verdict FILED IN OPEN COURT.

JURY PRESENT: At the hour of 1:26 p.m. the Jury returned with the verdict as follows:

COUNT 1 - Robbery With Use Of A Deadly Weapon - GUILTY

COUNT 2 - Burglary While In Possession Of A Deadly Weapon - GUILTY

COUNT 3 - Robbery With Use Of A Deadly Weapon - GUILTY

COUNT 4 - Robbery With Use Of A Deadly Weapon - GUILTY

COUNT 5 - Burglary While In Possession Of A Deadly Weapon - GUILTY

COUNT 6 - Robbery With Use Of A Deadly Weapon - GUILTY

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COUNT 7 - Robbery With Use Of A Deadly Weapon - GUILTY

COUNT 8 - Attempt Robbery With Use Of A Deadly Weapon - GUILTY

COUNT 9 - Robbery With Use Of A Deadly Weapon - GUILTY

COUNT 10 - Burglary While In Possession Of A Deadly Weapon - GUILTY

COUNT 11 - Robbery With Use Of A Deadly Weapon - GUILTY

COUNT 12 - Possession Of Document Or Personal Identifying Information - GUILTY

COUNT 13 - Possession Of Credit Or Debit Card Without Cardholder's Consent - GUILTY

COUNT 14 - Possession of Credit Or Debit Card Without Cardholder's Consent - GUILTY

Jury polled.

OUTSIDE THE PRESENCE OF THE JURY: Ms. Lexis requested Defendant be remanded without bail. Argument that Defendant was a three time convicted felon, and had been convicted of several counts, many being robbery with use of a deadly weapon. Mr. Gaston argued Defendant had been in custody for sixteen months with a half a million dollar bail which was more than appropriate given his young age and financial circumstances. COURT FINDS, now that Defendant had been convicted of fourteen charges, this may give him an incentive to bail out, therefore, COURT ORDERED, State's request GRANTED; Defendant remanded without bail. COURT FURTHER ORDERED, sentencing SET.

CUSTODY

9/21/17 9:00 AM SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor****COURT MINUTES****September 18, 2017**

C-16-316081-1      State of Nevada  
                                 vs  
                                 Keandre Valentine

**September 18, 2017      3:00 AM      Minute Order**

**HEARD BY:** Herndon, Douglas W.

**COURTROOM:** RJC Courtroom 16C

**COURT CLERK:** Deborah Miller

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

The instant case was assigned to District Court Department 18 after a recent caseload reassignment occasioned by the previous department, District Court Department 2, moving to an all civil caseload. However, District Court Department 2 presided over the jury trial in the matter and the parties are all in agreement in their desire to have the trial judge preside over the sentencing hearing. Sentencing is currently set for Thursday, September 21, 2017.

EDCR 1.30 (15) gives the Chief Judge of the Eighth Judicial District Court the authority to reassign cases between departments as convenience or necessity requires. EDCR 1.30 (11) also states that the Chief Judge must appoint a Judge to preside over the Criminal Division of the Court. EDCR 1.31 gives the Criminal Presiding Judge the authority to reassign pending criminal cases from one department to another. As with EDCR 1.30(15), the Presiding Criminal Judge's decision on reassigning pending criminal cases should be done as convenience and necessity require.

This court finds that convenience and necessity justify the reassignment of the instant matter for sentencing since Department 2 was the presiding trial court, is most familiar with the facts and issues involved in the case and would logically be the more appropriate department to hear the sentencing. Therefore, based on the totality of circumstances present, this Court, as Criminal Presiding Judge,

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Minutes Date: September 18, 2017

ORDERS, pursuant to EDCR 1.31, the reassignment of the instant case for sentencing to Department 2. The matter will proceed to sentencing as scheduled on Thursday, September 21, 2017. The parties are directed to contact the JEA in Department 2 for further instructions regarding the time the matter will be heard.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 21, 2017**

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C-16-316081-1      State of Nevada  
                                 vs  
                                 Keandre Valentine

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**September 21, 2017    11:00 AM      Sentencing**

**HEARD BY:**   Scotti, Richard F.

**COURTROOM:**   RJC Courtroom 11D

**COURT CLERK:**   Katrina Hernandez

**JOURNAL ENTRIES**

This matter originally scheduled for Thursday, September 21 is hereby CONTINUED to Thursday, September 28 at 11:00AM.

9/28/17 11:00 AM SENTENCING

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**September 28, 2017**

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C-16-316081-1      State of Nevada  
                                 vs  
                                 Keandre Valentine

---

**September 28, 2017      11:00 AM      Sentencing**

**HEARD BY:**   Scotti, Richard F.

**COURTROOM:**   RJC Courtroom 11D

**COURT CLERK:**   Louisa Garcia

**RECORDER:**    Dalyne Easley

**PARTIES**

<b>PRESENT:</b>	Lexis, Agnes	Attorney
	Machnich, Tegan	Attorney
	State of Nevada	Plaintiff
	Valentine, Keandre	Defendant

**JOURNAL ENTRIES**

- Matter argued and submitted. By virtue of jury verdict, DEFT VALENTINE ADJUDGED GUILTY of COUNTS 1, 3, 4, 6, 7, 9, 11 - ROBBERY WITH USE OF A DEADLY WEAPON (F); COUNTS 2, 5, 10 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (F); COUNT 8 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON; (F); COUNT 12 - POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION (F); COUNTS 13-14 - POSSESSION OF CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, \$1,000.00 restitution, a \$150.00 DNA analysis fee, including testing to determine genetic markers and \$3.00 DNA Collection fee, Defendant SENTENCED AS FOLLOWS:

COUNT 1 - a MAXIMUM of FIVE (5) YEARS and a MINIMUM of TWO (2) YEARS in the Nevada Department of Corrections (NDC), PLUS A CONSECUTIVE TERM OF A MINIMUM OF ONE (1) YEAR and a MAXIMUM of THREE (3) YEARS in the Nevada Department of Corrections (NDC) for USE of DEADLY WEAPON ENHANCEMENT, for an AGGREGATE TOTAL OF THREE (3) to EIGHT (8) YEARS.

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Minutes Date:    September 28, 2017

COUNT 2 - a MAXIMUM of EIGHT (8) YEARS and a MINIMUM of THREE (3) YEARS in the Nevada Department of Corrections (NDC), to run CONCURRENT with COUNT 1.

COUNT 3 - a MAXIMUM of FIVE (5) YEARS and a MINIMUM of TWO (2) YEARS in the Nevada Department of Corrections (NDC), PLUS A CONSECUTIVE TERM OF A MINIMUM OF ONE (1) YEAR and a MAXIMUM of THREE (3) YEARS in the Nevada Department of Corrections (NDC) for USE of DEADLY WEAPON ENHANCEMENT, for an AGGREGATE TOTAL OF THREE (3) to EIGHT (8) YEARS, CONSECUTIVE to COUNT 1.

COUNT 4 - a MAXIMUM of FIVE (5) YEARS and a MINIMUM of TWO (2) YEARS in the Nevada Department of Corrections (NDC), PLUS A CONSECUTIVE TERM OF A MINIMUM OF ONE (1) YEAR and a MAXIMUM of THREE (3) YEARS in the Nevada Department of Corrections (NDC) for USE of DEADLY WEAPON ENHANCEMENT, for an AGGREGATE TOTAL OF THREE (3) to EIGHT (8) YEARS, CONSECUTIVE to COUNTS 1 and 3.

COUNT 5 - a MAXIMUM of EIGHT (8) YEARS and a MINIMUM of THREE (3) YEARS in the Nevada Department of Corrections (NDC), CONCURRENT with COUNTS 1, 2, 3 and 4.

COUNT 6 - a MAXIMUM of FIVE (5) YEARS and a MINIMUM of TWO (2) YEARS in the Nevada Department of Corrections (NDC), PLUS A CONSECUTIVE TERM OF A MINIMUM OF ONE (1) YEAR and a MAXIMUM of THREE (3) YEARS in the Nevada Department of Corrections (NDC) for USE of DEADLY WEAPON ENHANCEMENT, for an AGGREGATE TOTAL OF THREE (3) to EIGHT (8) YEARS, CONSECUTIVE to COUNTS 1, 3 and 4.

COUNT 7 - a MAXIMUM of FIVE (5) YEARS and a MINIMUM of TWO (2) YEARS in the Nevada Department of Corrections (NDC), PLUS A CONSECUTIVE TERM OF A MINIMUM OF ONE (1) YEAR and a MAXIMUM of THREE (3) YEARS in the Nevada Department of Corrections (NDC) for USE of DEADLY WEAPON ENHANCEMENT, for an AGGREGATE TOTAL OF THREE (3) to EIGHT (8) YEARS, CONSECUTIVE to COUNTS 1, 3, 4 and 6.

COUNT 8 - a MAXIMUM of EIGHT (8) YEARS and a MINIMUM of THREE (3) YEARS in the Nevada Department of Corrections (NDC), CONCURRENT with COUNTS 1, 2, 3, 4, 5, 6, and 7.

COUNT 9 - a MAXIMUM of FIVE (5) YEARS and a MINIMUM of TWO (2) YEARS in the Nevada Department of Corrections (NDC), PLUS A CONSECUTIVE TERM OF A MINIMUM OF ONE (1) YEAR and a MAXIMUM of THREE (3) YEARS in the Nevada Department of Corrections (NDC) for USE of DEADLY WEAPON ENHANCEMENT, for an AGGREGATE TOTAL OF THREE (3) to EIGHT (8) YEARS, CONSECUTIVE to COUNTS 1, 3, 4, 6 and 7.

COUNT 10 - a MAXIMUM of EIGHT (8) YEARS and a MINIMUM of THREE (3) YEARS in the Nevada Department of Corrections (NDC), CONCURRENT with COUNTS 1, 2, 3, 4, 5, 6, 7, 8 and 9.



COUNT 11 - a MAXIMUM of FIVE (5) YEARS and a MINIMUM of TWO (2) YEARS in the Nevada Department of Corrections (NDC), for an AGGREGATE TOTAL OF THREE (3) to EIGHT (8) YEARS, CONCURRENT with COUNTS 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10.

COUNT 12 - a MAXIMUM of THREE (3) YEARS and a MINIMUM of ONE (1) YEAR in the Nevada Department of Corrections (NDC), CONCURRENT with COUNTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11.

COUNT 13 - a MAXIMUM of THREE (3) YEARS and a MINIMUM of ONE (1) YEAR in the Nevada Department of Corrections (NDC), CONCURRENT with COUNTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12.

COUNT 14 - a MAXIMUM of THREE (3) YEARS and a MINIMUM of ONE (1) YEAR in the Nevada Department of Corrections (NDC), CONCURRENT with COUNTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13.

The total aggregate sentence as to COUNTS 1, 3, 4, 6, 7, and 9 (SIX INCIDENTS) is a MAXIMUM of EIGHT (8) YEARS and a MINIMUM of THREE (3) YEARS in the Nevada Department of Corrections. Defendant's AGGREGATE TOTAL SENTENCE is FORTY EIGHT (48) YEARS MAXIMUM with a MINIMUM OF EIGHTEEN (18) YEARS in the Nevada Department of Corrections with FOUR HUNDRED EIGHTY NINE (489) DAYS credit for time served.

Court advised it considered the factors in NRS 193.165 as to the deadly weapon enhancement.

NDC

CLERK'S NOTE: Minute Order amended to reflect 1-3 years consecutive time as to Count 1. /lg 10-2-17



1 RTRAN

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4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA  
6

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.  
10

11 KEANDRE VALENTINE,

12 Defendant.

)  
)  
) CASE NO. C-16-316081-1  
)  
)  
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) DEPT. XVIII  
)  
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)  
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13 BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE  
14

15 **WEDNESDAY, JUNE 29, 2016**

16 **TRANSCRIPT OF PROCEEDINGS RE:**

17 ***GRAND JURY RETURN***

18 APPEARANCES:

19 For the State:

JONATHAN COOPER, ESQ.

Deputy District Attorney

20 AGNES M. LEXIS, ESQ.

21 Chief Deputy District Attorney

22 For the Grand Jury:

23 WAYNE CLEVELAND, FOREPERSON  
24

25 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

1 **LAS VEGAS, NEVADA; JUNE 29, 2016**

2 [Proceeding commenced at 11:45 a.m.]

3  
4 MR. COOPER: Yesterday, the Grand Jury met in Grand Jury Case Number  
5 16AGJ046X, the case is The State of Nevada versus Keandre Valentine and by an  
6 order of 12 or more returned a true bill against Keandre Valentine on the charges of  
7 seven counts of robbery with use of a deadly weapon; three counts of burglary while  
8 in possession of a deadly weapon; one count of attempt robbery with use of a  
9 deadly weapon; one count of possession of document or personal identifying  
10 information; and two counts of possession of credit card or debit card without  
11 cardholder's consent.

12 THE COURT: Deputy Foreman, did 12 or more members of the Grand Jury concur  
13 in the finding of a true bill as to each count on this defendant?

14 MR. CLEVELAND: Yes, Your Honor.

15 THE COURT: Very well. It'll be assigned Case Number 316081, tracking is to  
16 District Court Department Number 3. What is the request, warrant or summons?

17 MS. LEXIS: Your Honor, Agnes Lexis for the State, bar number 11064. Your Honor,  
18 the State is requesting a warrant with no bail pursuant to NRS 178.487. The Defendant  
19 was on bench-warrant status in C309398 before Judge Togliatti, awaiting trial on a  
20 conspiracy robbery; attempt robbery with use of a deadly weapon; and possession of stolen  
21 property. He was out on bond in that case awaiting trial when he bench-warranted and  
22 picked up the offenses that you just heard about. So I think pursuant to statute, he is no  
23 longer entitled to bail.

24 THE COURT: And it's a no-bail bench warrant in that case, as well?

25 MS. LEXIS: I looked at the minutes in Judge Togliatti's; they set a status check

1 global negotiations for July 21<sup>st</sup> and it said, custody other charges, so I'm not sure what the  
2 custody status is before Judge Togliatti, but initially it was bench warrant no bail which was  
3 issued on May 17<sup>th</sup>.

4 THE COURT: All right. Then a bench warrant we'll issue here. No bail set. Is there  
5 a case to be dis -- and let me give you a one-week return in front of Judge Herndon.

6 THE CLERK: July 7<sup>th</sup> at 9:00 a.m.

7 MS. LEXIS: And there is a Justice Court date or, excuse me, the Justice Court Case  
8 Number which is 16F08803X, that's up for preliminary hearing tomorrow in Justice Court  
9 11.

10 THE COURT: That case will be dismissed. Exhibits 1 through 19 are to be lodged  
11 with the Clerk of the Court.

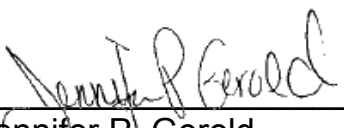
12 MS. LEXIS: Thank you, Your Honor.

13 THE COURT: Thank you.

14 [Proceeding concluded at 11:47 a.m.]

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

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24 \_\_\_\_\_  
25 Jennifer P. Gerold  
Court Recorder/Transcriber



DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

KEANDRE VALENTINE,

Defendant.

CASE NO. C-16-316081-1

DEPT. NO. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE

THURSDAY, JULY 7, 2016

**RECORDER'S TRANSCRIPT OF PROCEEDINGS**  
**INITIAL ARRAIGNMENT AND INDICTMENT WARRANT RETURN**

APPEARANCES:

For the State:

AGNES M. LEXIS  
Chief Deputy District Attorney

For the Defendant:

TEGAN C. MACHNICH  
Deputy Public Defender

RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 LAS VEGAS, NEVADA, THURSDAY, JULY 7, 2016, 9:32 A.M.

2 \* \* \* \* \*

3 THE COURT: State of Nevada versus -- is it Valentine Keandre or  
4 Keandre Valentine?

5 MS. MACHNICH: Keandre Valentine.

6 THE COURT: Okay. Thank you.

7 316081, he's present in custody. The calendar's got those flipped  
8 around, that's why I asked. This is on for an initial arraignment from an  
9 indictment return. Do you all have a copy of the indictment?

10 MS. MACHNICH: We do, Your Honor.

11 THE COURT: Okay. And was the indictment, did it originate in justice  
12 court?

13 MS. MACHNICH: Yep.

14 THE COURT: So were there these same charges in justice court or they  
15 been added to or anything or --

16 MS. LEXIS: It was the exact same case from justice court. I just indicted  
17 it.

18 THE COURT: Okay. Got it.

19 All right, Mr. Valentine, is Keandre Valentine your true name, sir?

20 THE DEFENDANT: Yeah.

21 THE COURT: And you read, write, and understand the English language?

22 THE DEFENDANT: Yeah.

23 THE COURT: How old are you, sir?

24 THE DEFENDANT: Twenty-two.

25 THE COURT: I'm sorry?

1 THE DEFENDANT: Twenty-two.

2 THE COURT: Okay. And how far did you go in school?

3 THE DEFENDANT: I went to the 12<sup>th</sup>.

4 THE COURT: Okay. You've received a copy of the indictment in this  
5 case, correct?

6 THE DEFENDANT: Yeah.

7 THE COURT: And you've had a chance to discuss the charges, not  
8 discuss everything about the case, but discuss the charges with your attorney,  
9 both at the time they were originally filed in justice court and now that they've  
10 been indicted?

11 THE DEFENDANT: Yeah.

12 THE COURT: And you understand the nature and elements of the  
13 charges that have been filed against you?

14 THE DEFENDANT: Yeah.

15 THE COURT: Okay. There are, let's see, one, two -- Counts 1, 3, 4, 6,  
16 7, 9, and 11, robbery with use of a deadly weapon; Counts 2, 5, and 10,  
17 Burglary while in possession of a deadly weapon; Count 8, attempt robbery  
18 with use of a deadly weapon; Count 12, possession of document or personal  
19 identifying information; Counts 13, and 14, possession of credit or debit card  
20 without cardholder's consent; those are all felonies. How do you plead to those  
21 14 charges?

22 THE DEFENDANT: Not guilty.

23 THE COURT: Are you guys going to invoke or waive your right to speedy  
24 trial?

25 MS. MACHNICH: We're going to invoke our right for a speedy trial and

1 waive the reading of the full indictment.

2 THE COURT: Okay. We will set our trial date for?

3 THE CLERK: Jury trial will be September 6<sup>th</sup> at 10:00 a.m., calendar call  
4 September 1<sup>st</sup> at 9:00 a.m.

5 THE COURT: Okay. And do we have --

6 MS. MACHNICH: Thank you, Your Honor.

7 THE COURT: -- transcripts filed yet or no?

8 MS. MACHNICH: Not that I know of, not as of the last time I checked.

9 Do you know if they're filed?

10 THE COURT: Okay, 21 days from receipt of copy of the transcripts to  
11 get any writs filed.

12 MS. MACHNICH: And, Your Honor, I'd also request discovery pursuant  
13 to the statute.

14 THE COURT: Okay.

15 MS. MACHNICH: Thank you.

16 THE COURT: Was discovery provided in justice court? Was there some  
17 discovery provided?

18 MS. LEXIS: It was.

19 THE COURT: Okay.

20 MS. LEXIS: And I've been e-mailing Ms. Machnich as it comes.

21 THE COURT: Okay.

22 MS. MACHNICH: Yeah.

23 THE COURT: But I will grant it here in district court pursuant to statute  
24 as well.

25 MS. MACHNICH: Thank you, Your Honor.



1 THE COURT: Thank you, guys.

2 MS. LEXIS: Thank you.

3 MS. MACHNICH: Thank you.

4 PROCEEDING CONCLUDED AT 9:35 A.M.

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio-video recording of this proceeding in the above-entitled case.

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SARA RICHARDSON  
Court Recorder/Transcriber



DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

KEANDRE VALENTINE,

Defendant.

CASE NO. C-16-316081-1

DEPT. NO. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE

THURSDAY, SEPTEMBER 1, 2016

**RECORDER'S TRANSCRIPT OF PROCEEDINGS**  
**CALENDAR CALL AND DEFENDANT'S MOTION FOR PRODUCTION OF**  
**DISCOVERY**

APPEARANCES:

For the State:

MICHAEL DICKERSON  
Deputy District Attorney

For the Defendant:

KATRINA M. ROSS  
Deputy Public Defender

RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 LAS VEGAS, NEVADA, THURSDAY, SEPTEMBER 1, 2016, 9:53 A.M.

2 \* \* \* \* \*

3 THE COURT: Valentine, 316081, present in custody.

4 MR. DICKERSON: Mike Dickerson on behalf of the State.

5 THE COURT: Thank you. This is on --

6 MS. ROSS: Thank you, Your Honor.

7 THE COURT: -- for calendar call and a discovery motion.

8 MS. ROSS: It is, Your Honor. This morning we'll just submit on the  
9 discovery motion. However, I believe that there's a request to continue the  
10 case to some time in March and I believe that the -- there's no objection to the  
11 State having more time to file any needed documents.

12 MR. DICKERSON: The State is actually objecting to the continuance of  
13 the trial at this time just given the fact that defendant invoked his speedy trial  
14 right and the State's prepared to go at this point.

15 THE COURT: Okay. So, I'm sorry, you are objecting or you're not?

16 MR. DICKERSON: We are objecting, Your Honor.

17 THE COURT: Okay. So you're objecting on his behalf?

18 MR. DICKERSON: On our behalf.

19 THE COURT: Because he invoked?

20 MR. DICKERSON: No, no, because we've prepared, he knew when he  
21 invoked that it was going to be a short setting. State's prepared to go forward.

22 THE COURT: Okay.

23 MR. DICKERSON: We have 15 to 20 witnesses and are preparing for a  
24 week-long trial.

25 THE COURT: Okay. And the defense then is requesting to continue,

1 correct?

2 MS. ROSS: Correct, Your Honor, to some time in March. This is  
3 Ms. Machnich's case that she is in trial currently. It does look like it's a very  
4 short setting that we had. At this time he would be waiving his right to a  
5 speedy and this would be the first opportunity at a calendar call to request a  
6 continuance.

7 THE COURT: All right. Well, I agree, it is one that came out and because  
8 of the five-week stack situations, it got set very quickly.

9 Mr. Valentine, do you understand the need for your attorney to  
10 continue your trial?

11 THE DEFENDANT: Yeah.

12 THE COURT: And you're willing to waive your right to a speedy trial at  
13 this point?

14 THE DEFENDANT: Yeah.

15 THE COURT: Okay. I will, over the State's objection, go ahead and grant  
16 the continuance, the first continuance. We'll reset the trial. The Court's stack  
17 is February through the first week of March and then back, starts up, like, the  
18 middle of April.

19 MS. ROSS: Any time in that stack, I'm sure, will be fine.

20 THE COURT: Okay. The February-March stack?

21 MS. ROSS: Yes, please.

22 THE COURT: Okay.

23 THE CLERK: Jury trial will be February 21<sup>st</sup> at 10:00 a.m., calendar call,  
24 February 18<sup>th</sup> at 9:00 a.m.

25 MS. ROSS: I'm sorry, was that the 18<sup>th</sup>?

1 THE CLERK: Yes.

2 MS. ROSS: Thank you.

3 THE CLERK: Or, I'm sorry, the 16<sup>th</sup> was the calendar call.

4 MS. ROSS: 16<sup>th</sup>, got it.

5 THE COURT: All right, and as to the discovery motion, I get that most of  
6 these things are prophylactic, but I will grant the motion to the extent that the  
7 requested items are covered by the statutory discovery obligations as well as  
8 any *Brady* issues that come up with potentially exculpatory evidence and  
9 there's an ongoing obligation to supplement any discovery in those regards as  
10 well.

11 MS. ROSS: Thank you, Your Honor.

12 THE COURT: Thank you.

13 MR. DICKERSON: Thank you, Your Honor.

14 PROCEEDING CONCLUDED AT 9:56 A.M.

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio-video recording of this proceeding in the above-entitled case.

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SARA RICHARDSON  
Court Recorder/Transcriber



DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

KEANDRE VALENTINE,

Defendant.

CASE NO. C-16-316081-1

DEPT. NO. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE

TUESDAY, OCTOBER 4, 2016

**RECORDER'S TRANSCRIPT OF PROCEEDINGS**  
**DEFENDANT'S MOTION FOR SETTING OF REASONABLE BAIL**

APPEARANCES:

For the State:

JOHN L. GIORDANI, III  
Chief Deputy District Attorney

For the Defendant:

TEGAN MACHNICH  
Deputy Public Defender

RECORDED BY: SANDRA PRUCHNIC, COURT RECORDER

1 LAS VEGAS, NEVADA, TUESDAY, OCTOBER 4, 2016, 10:13 A.M.

2 \* \* \* \* \*

3 THE COURT: Is Valentine, 316081, present in custody. This is on for  
4 request for setting of bail. Is he -- is there a no-bail hold right now?

5 MS. MACHNICH: There is, Your Honor.

6 THE COURT: Okay.

7 MS. MACHNICH: And I think I have an explanation of why that I'd like to  
8 offer to the Court.

9 THE COURT: Okay.

10 MS. MACHNICH: So my understanding of why he's being held without  
11 bail right now is because, on our case, is because he was in justice court and  
12 this was set for preliminary hearing, that's when I was originally assigned the  
13 case.

14 THE COURT: Okay.

15 MS. MACHNICH: Between the setting, I believe we continued the  
16 preliminary hearing one time to get additional discovery and during that time he  
17 was indicted. When he was charged in district court, or charged in justice  
18 court, he was -- there was a kidnapping listed as one of the charges, a first  
19 degree kidnapping, which Judge Goodman held him on without bail.

20 THE COURT: Okay.

21 MS. MACHNICH: I was going to contest that vehemently at preliminary  
22 hearing. That being said, when they went to the grand jury, they did not indict  
23 him on kidnapping, so that charge is gone. And that's why I be -- and then  
24 everybody just kept the bail the same, which was no bail in our case. So I  
25 believe that it is proper at this point to set some bail in this case and we'd

1 certainly be requesting we do that. We're not requesting an own recognizance  
2 release, but just a reasonable bail setting based on the charges that were  
3 indicted.

4 THE COURT: Okay.

5 MR. GIORDANI: Your Honor, Ms. Lexis from our office filed a written  
6 opposition, I can't make any representations as to why there was a no bail  
7 setting previously, but I would be --

8 THE COURT: Well, I was trying to -- one thing I hadn't looked at and I  
9 forgot to pull it up was what they did at the grand jury return because  
10 obviously, I mean, Judge Barker's going to set bail or whatever on whatever  
11 charges are provided at the indictment.

12 MR. GIORDANI: Right.

13 THE COURT: Let's see here.

14 MS. MACHNICH: Let me see if I have anything. Indictment return.

15 THE COURT: Yeah, Judge Barker, here's what the minutes say,  
16 Ms. Lexis argued for a warrant without bail as defendant is waiting for trial  
17 while out on bond when he picked up these offenses, therefore, no longer  
18 entitled to bail, Court issued warrant, no bail. So which is what I got out of  
19 reading the opposition that there was apparently another case that he went into  
20 bench warrant on and then these offenses occurred and he got picked up. Is  
21 that --

22 MS. MACHNICH: Yes.

23 THE COURT: -- kind of --

24 MS. MACHNICH: That is accurate.

25 THE COURT: All right.



1 MS. MACHNICH: But my understanding was the reason why  
2 Judge Goodman hadn't put bail in place was because of the A felony.

3 THE COURT: The kidnapping. Okay.

4 MS. MACHNICH: That isn't being held, and so I guess at this time,  
5 Your Honor, we would like to formally request a setting of some bail in this  
6 case acknowledging that my client is indigent and unlikely to be able to post, at  
7 the same time we'd like the opportunity to have it set in this case.

8 THE COURT: Okay. Mr. Giordani, anything to add?

9 MR. GIORDANI: I would just submit it on Ms. Lexis's opposition.

10 THE COURT: All right. Well, Mr. Valentine, I'm going to set bail, but  
11 you're probably not going to like it because I'm going to set bail in the amount  
12 of \$500,000.00. It's incredibly troubling to me that we have robbery charges  
13 pending from 2015 that you go into a no bail warrant status on and then pick  
14 up a series of events that have occurred in this case which involves, if I read  
15 everything correctly, armed robbery on May 26<sup>th</sup>, followed by four armed  
16 robberies on May 28<sup>th</sup>.

17 And I understand these are allegations, but I have great concerns  
18 about both aspects of why you set bail, A, whether you're going to come back  
19 to court, and, B, the danger that you would propose to the community if you're  
20 out on bail yet again engaging in this kind of conduct. So that'll be the Court's  
21 order.

22 MR. GIORDANI: Thank you, Your Honor.

23 MS. MACHNICH: Your Honor, he'd just like me to make the  
24 representation that the reason that he is bench -- or was bench warranted in the  
25 other case was because he was detained in California at the time and was

1 unable to come out. His understanding was that Judge Togliatti was made  
2 aware of that, the bench warrant was still issued to get him taken --

3 THE COURT: Wait.

4 MS. MACHNICH: -- into custody out here --

5 THE COURT: So you had another case in California as well?

6 MR. GIORDANI: Right.

7 THE DEFENDANT: No, I got -- I was on my way to Las Vegas for the  
8 court date, I was like two hours away --

9 THE COURT: They continued that court date three different times. The  
10 first time was the def --

11 THE DEFENDANT: Oh, I didn't --

12 THE COURT: Listen to me, the first time the minutes reflect the -- your  
13 attorney told the Court he's on his way, he's -- he's in the car, so they  
14 continued it. The next time it was he had car trouble, there were problems, he  
15 couldn't be here. The next time it was he actually got in a car accident, he  
16 can't be here. And ultimately, Judge Togliatti was like we're done, bench  
17 warrant, no bail. So you got detained in California for what?

18 THE DEFENDANT: I got detained on my way out here, I was like by  
19 Primm and they took me back for a restitution warrant.

20 THE COURT: So there was problems in -- well --

21 THE DEFENDANT: You can even look in the records and check that, I  
22 was in jail for, like, a week, ten days.

23 THE COURT: I'm going to -- I'm going to leave my decision as-is. Bail  
24 will stay at 500,000.

25 MS. MACHNICH: Thank you, Your Honor.


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THE COURT: All right. Thank you.

PROCEEDING CONCLUDED AT 10:18 A.M.

\* \* \* \* \*

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording of this proceeding in the above-entitled case.

  
SARA RICHARDSON  
Court Recorder/Transcriber



DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

KEANDRE VALENTINE,

Defendant.

CASE NO. C-16-316081-1

DEPT. NO. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE

THURSDAY, FEBRUARY 16, 2017

**RECORDER'S TRANSCRIPT OF PROCEEDINGS  
CALENDAR CALL**

APPEARANCES:

For the State:

AGNES M. LEXIS  
Chief Deputy District Attorney

For the Defendant:

CESELY WESTMORELAND  
Deputy Public Defender

RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 LAS VEGAS, NEVADA, THURSDAY, FEBRUARY 16, 2017, 9:32 A.M.

2 \* \* \* \* \*

3 MS. LEXIS: Hi, good morning, Your Honor. Agnes Lexis for the State. I  
4 have Valentine on page 3, it's a calendar call.

5 THE COURT: 316081, he's present in custody. This is on for calendar  
6 call. I did see the e-mail correspondence that had gone back and forth a little  
7 bit. So I know that, Ms. Westmoreland, that you-all had requested a  
8 continuance because this was Ms. Machnich's case and she's now out on  
9 F.M.L.A.; correct?

10 MS. WESTMORELAND: Yes, Your Honor, it was a little earlier than  
11 expected, obviously.

12 THE COURT: Okay. So here's the reality, I get what your concern was if  
13 there was some other aspect of it regarding, you know, trial preparedness, that  
14 you wanted them to make a record of that. I would continue it just on the  
15 F.M.L.A. issue because I know she's been here up and through a couple of days  
16 ago and is now gone and it isn't anybody else's trial. So I'll grant the  
17 continuance based on that reason which kind of gives you more time to do  
18 whatever investigation maybe wasn't done, but what I want to make sure is  
19 that somebody monitors the file and does all that while she's out so we don't  
20 have a trial setting where she comes back and says, well, I've been gone for  
21 three months and this stuff wasn't done and now I need another continuance.

22 MS. WESTMORELAND: So, I don't know, Your Honor, if you want to  
23 status check it for late April for trial setting when she gets back -- I'm not sure  
24 when she's getting back or if we could set it in the next -- in the summer stack,  
25 the July stack.

1 THE COURT: Yeah, I mean, I'll set it out far enough.

2 MS. WESTMORELAND: Okay.

3 THE COURT: That we would anticipate that she would be back and just  
4 ask Robert to kind of maybe assign somebody the second chair type thing --

5 MS. WESTMORELAND: Will do.

6 THE COURT: -- to be monitoring it in the time being.

7 MS. WESTMORELAND: Definitely, Your Honor.

8 THE COURT: Okay.

9 MS. LEXIS: Your Honor, I also, I did file a notice of motion and motion  
10 outlining the State's discovery compliance which kind of dealt with the issue of  
11 the continuance. I understand, of course, it's going to get continued because  
12 of the F.M.L.A. issue, but my other issue is that Ms. Machnich had up until this  
13 point, refused to sign and verify discovery, she refused to come and do a file  
14 review. I sent her an R.O.C., asked her to sign it, verify discovery --

15 THE COURT: Okay.

16 MS. LEXIS: -- so that we wouldn't have this issue, and she refused. So I  
17 have -- I had no other choice but to file this motion.

18 THE COURT: What -- what -- maybe I'm not understanding, because  
19 obviously, the motion's not on calendar today. So maybe I'm not  
20 understanding, what's the motion -- what's the relief sought in the motion?

21 MS. LEXIS: I -- I -- the motion was filed before she went out on maternity  
22 leave.

23 THE COURT: Okay.

24 MS. LEXIS: So before she had her baby.

25 THE COURT: But I mean, it sounds like the motion is just kind of a

1 statement of everything you-all have done.

2 MS. LEXIS: It is a statement, but also it was a refusal to sign the R.O.C.,  
3 it was a refusal to come in and do a file -- a file discovery or a file review.

4 THE COURT: Okay.

5 MS. LEXIS: And it was also her refusal to file a timely motion to continue  
6 pursuant to the rules.

7 THE COURT: No, but -- and I'm sorry, maybe I'm not clear. I get all that,  
8 but that's really just kind of a statement of things as opposed to a motion that's  
9 asking the Court to do something. So is there -- are you guys asking in your  
10 motion to make her do what, I guess?

11 MS. LEXIS: I guess, I mean, my -- my concern is the motion was served  
12 on Ms. Machnich, she's now on leave. I'm asking the Court to have  
13 Mr. O'Brien or whoever's going to be co-counsel, look at what's listed in that  
14 motion, we can take it off calendar, it's on calendar on the 20 -- 21<sup>st</sup>.

15 THE COURT: I don't -- I don't think you're understanding me, I don't  
16 have any problem with you filing a motion and leaving it on calendar, I'm just  
17 asking what are you seeking in the motion?

18 MS. LEXIS: Someone who, other than Ms. Machnich, who will actually  
19 be at work.

20 THE COURT: Okay.

21 MS. LEXIS: Working this case up and verifying receipt of discovery.

22 THE COURT: Okay. Got it. All right. So we'll leave that on for the 21<sup>st</sup>  
23 and just refer the file over to Robert, Cesely, so he can take a look at it.

24 MS. WESTMORELAND: I will, Your Honor.

25 THE COURT: Okay. I get it now. All right. And we will go ahead, you

1 know what, we'll just reset the trial on the 21<sup>st</sup> and maybe Robert can get some  
2 information about when he thinks she's going to be back and what a good date  
3 would be to reset it for.

4 MS. WESTMORELAND: Perfect, Your Honor.

5 THE COURT: Okay?

6 MS. LEXIS: Thank you.

7 THE COURT: All right, ladies, thank you.

8 Oh, you know what, before we move on, however, Mr. Valentine,  
9 did you understand the need for your attorney to continue the trial?

10 THE DEFENDANT: Yeah.

11 THE COURT: And were you in agreement in that and were willing to  
12 waive your right to have the trial within 60 days?

13 THE DEFENDANT: Yeah.

14 THE COURT: Okay. Thank you.

15 MS. LEXIS: Thank you.

16 PROCEEDING CONCLUDED AT 9:36 A.M.

17 \* \* \* \* \*

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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
22 audio-video recording of this proceeding in the above-entitled case.

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24 SARA RICHARDSON  
25 Court Recorder/Transcriber





DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

KEANDRE VALENTINE,

Defendant.

CASE NO. C-16-316081-1

DEPT. NO. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE

TUESDAY, FEBRUARY 21, 2017

**RECORDER'S TRANSCRIPT OF PROCEEDINGS**  
**MOTION OUTLINING STATE'S DISCOVERY COMPLIANCE AND STATUS**  
**CHECK: TRIAL SETTING**

APPEARANCES:

For the State:

MICHAEL DICKERSON  
Deputy District Attorney

For the Defendant:

JUSTIN R. GLASGOW  
Deputy Public Defender

RECORDED BY: SARA RICHARDSON, COURT RECORDER

1 LAS VEGAS, NEVADA, TUESDAY, FEBRUARY 21, 2017, 9:48 A.M.

2 \* \* \* \* \*

3 MR. GLASGOW: We can call Mr. Valentine and that is on page 4.

4 THE COURT: Bless you.

5 Keandre Valentine, 316081.

6 Bless you.

7 He's present in custody. This is on for -- well, this is the motion  
8 that Ms. Lexis filed.

9 MR. DICKERSON: Correct. Mike Dickerson on behalf of the State,  
10 Your Honor.

11 THE COURT: And after discussing it with her last week, and I was trying  
12 to get to exactly what it was that she was wanting me to rule on. Now that  
13 I've seen the motion, I kind of get it that they're basically just saying we want  
14 you to essentially find as a court that we've provided these items of discovery  
15 even though Ms. Machnich would not sign off on the receipt of copy and then  
16 left before she could sign off on the receipt of copy. So they just want a record  
17 having been made that this is what we provided over there, correct?

18 MR. DICKERSON: That's correct. And there was no opposition filed to  
19 this motion, Your Honor.

20 THE COURT: All right. Justin.

21 MR. GLASGOW: I believe there was.

22 THE COURT: I didn't get anything.

23 MR. GLASGOW: I had it -- I thought I had it in my file. Regardless, I  
24 think that the essence of the opposition was essentially that there's no law  
25 cited in their motion under E.D.C. -- E.D.C.R., I don't remember the exact

1 statute that was cited to or the exact rule, but it was saying that there's no  
2 case law cited, thus there is nothing that the Court -- for the Court to rule on,  
3 thus it should just be summarily dismissed.

4 THE COURT: Well, but, I mean, how is it any different than, you know, if  
5 you guys file a discovery motion and they say, okay, we provided that CD of  
6 the 9-1-1 calls and I say, okay, that's been provided, let's go on to something  
7 else?

8 MR. GLASGOW: Sure.

9 THE COURT: I mean, it's -- that's essentially what this is. So if there's  
10 any discrepancy to anything where you-all feel no, no, no, no, that Bate stamp  
11 number actually wasn't provided, I would be happy to have done that.

12 MR. GLASGOW: Uh-huh.

13 THE COURT: But I think, look, we are just continuing down this rabbit  
14 hole of discovery things. So --

15 MR. GLASGOW: Correct. And if that is the case --

16 THE COURT: I certainly don't want to have, look, I don't like dealing with  
17 their 69-page motions, and I certainly don't want to have to have motions now  
18 from the State where we want you to go through and declare everything's, you  
19 know, 70 items have been provided as well. But, look, this thing got -- got filed  
20 and I will find that these things were provided. And that's without prejudice for  
21 you to re-raise any issues, Justin, if you guys feel like there's something in here  
22 that you discover as somebody takes over the case for Ms. Machnich, okay?

23 MR. GLASGOW: Thank you, Your Honor. Yes, and -- and since she has  
24 been gone on F.M.L.A., I don't know the accuracy of that list. I think it's -- I'm  
25 not sure. So if there is a problem we'll absolutely put it back before

1 Your Honor.

2 THE COURT: Okay.

3 MR. GLASGOW: But at this point in time I have nothing to report --

4 THE COURT: Okay.

5 MR. GLASGOW: -- in regards to its authenticity.

6 THE COURT: All right.

7 MR. DICKERSON: I think the only other thing we need to do is reset the  
8 trial date.

9 THE COURT: Yeah, we've got to set a trial.

10 MR. DICKERSON: We would just ask for any date not in May.

11 THE COURT: Okay.

12 MR. GLASGOW: And Ms. Machnich will be back, ready to go for trial late  
13 July is what she's asking for.

14 THE COURT: Okay.

15 MR. GLASGOW: If the Court's amenable to that, that or after.

16 THE COURT: I can set it as late as the 17<sup>th</sup> or the 24<sup>th</sup> of July.

17 MR. GLASGOW: 24<sup>th</sup> should be fine, if that's okay with the Court.

18 THE COURT: Okay. Is that okay with the State?

19 MR. DICKERSON: That's fine with the State.

20 MR. GLASGOW: Yeah.

21 THE COURT: All right. So we'll set it for the week of July 24<sup>th</sup>, with  
22 calendar call July 20<sup>th</sup>. All right, guys, thank you.

23 MR. DICKERSON: Thank you, Your Honor.

24 MR. GLASGOW: Thank you.

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1 PROCEEDING CONCLUDED AT 9:52 A.M.

2 \* \* \* \* \*

3 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
4 audio-video recording of this proceeding in the above-entitled case.

5 

6 SARA RICHARDSON  
7 Court Recorder/Transcriber