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Electronically Filed  
Aug 08 2018 03:07 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT'S APPENDIX VOLUME XV PAGES 3230-3344**

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Clark County District Attorney  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
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Counsel for Respondent

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**KEANDRE VALENTINE**  
**Case No. 74468**

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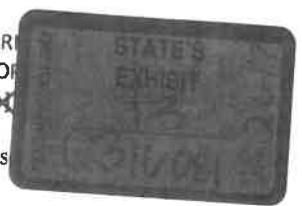
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LAS VEGAS METROPOLITAN POLICE DEPARTMENT  
**PHOTO LINE-UP WITNESS INSTRUCTIONS**

NAME: MARVIN BASS  
ADDRESS: 6512 SILVER BLVD STREET NW, NV 89131  
PHONE NUMBER: (702) 742-6985

EVENT #: 160526-2109  
INTERVIEWED BY: N. MAJORE 7089  
LOCATION: 5515 CANINO BL NORTH  
DATE & TIME: 6-1-16 0959 AM, NV

"In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. The fact that the photos are being shown to you should not cause you to believe or guess that the guilty person has been caught. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as it is to identify those who are guilty. Please keep in mind that hair styles, beards, and mustaches are easily changed. Also, photographs do not always depict the true complexion of a person - it may be lighter or darker than shown in the photo. You should pay no attention to any markings or numbers that may appear on the photos. Also, pay no attention to whether the photos are in color or black and white, or any other difference in the type or style of the photographs. You should study only the person shown in each photograph. Please do not talk to anyone other than Police Officers while viewing the photos. You must make up your own mind and not be influenced by other witnesses, if any. When you have completed viewing all the photos, please tell me whether or not you can make an identification. If you can, tell me in your own words how sure you are of your identification. Please do not indicate in any way to other witnesses that you have or have not made an identification. Thank you."

SIGNED: Marvin Bass

DATE & TIME: 6-1-16 1000

**STATEMENT:**

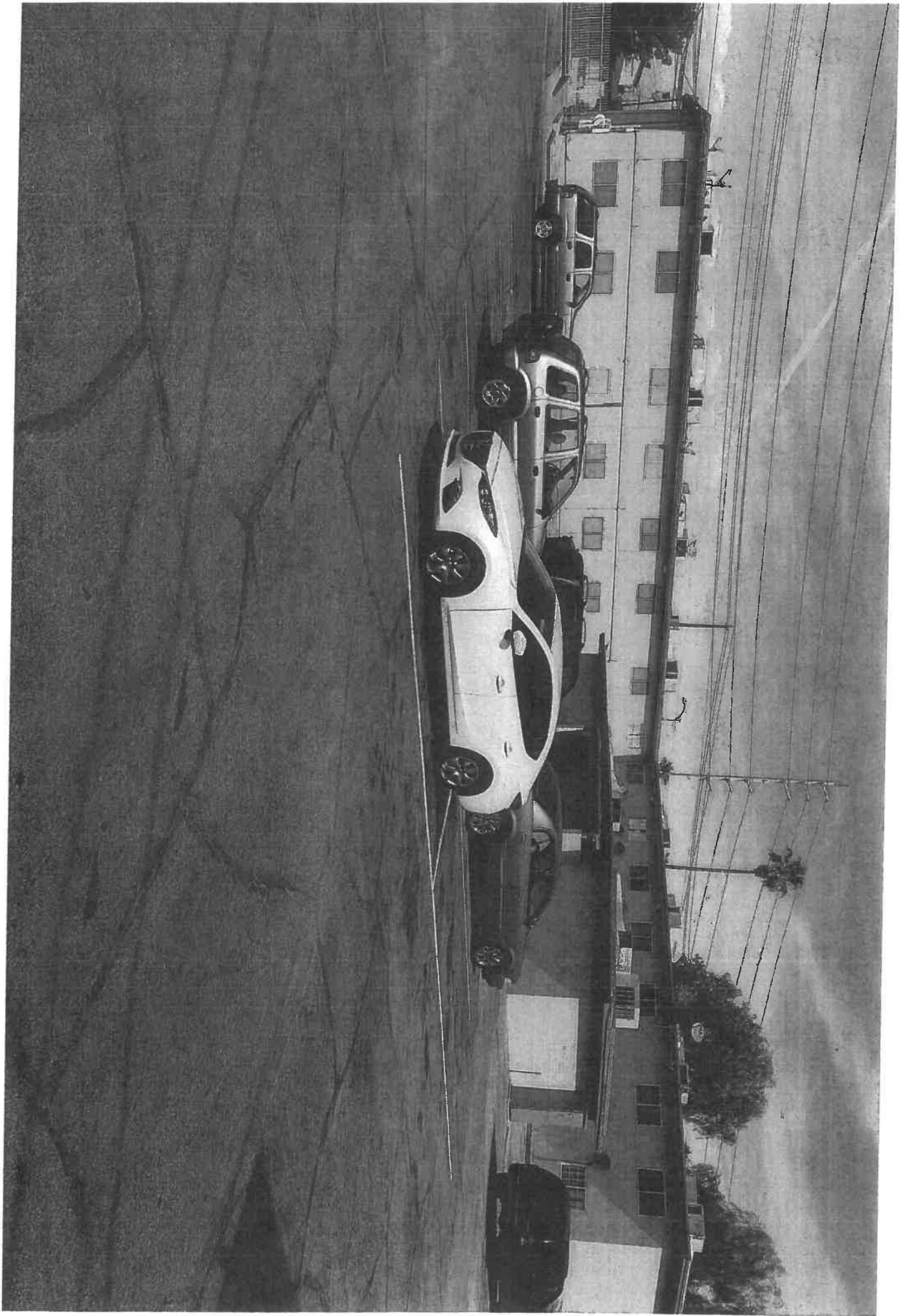
I'm VERY SURE the suspect I identified in the Photo  
LINE up is him 100% he was VERY CLOSE to ME when  
he Robbed ME at gun point.

SIGNED: Marvin Bass

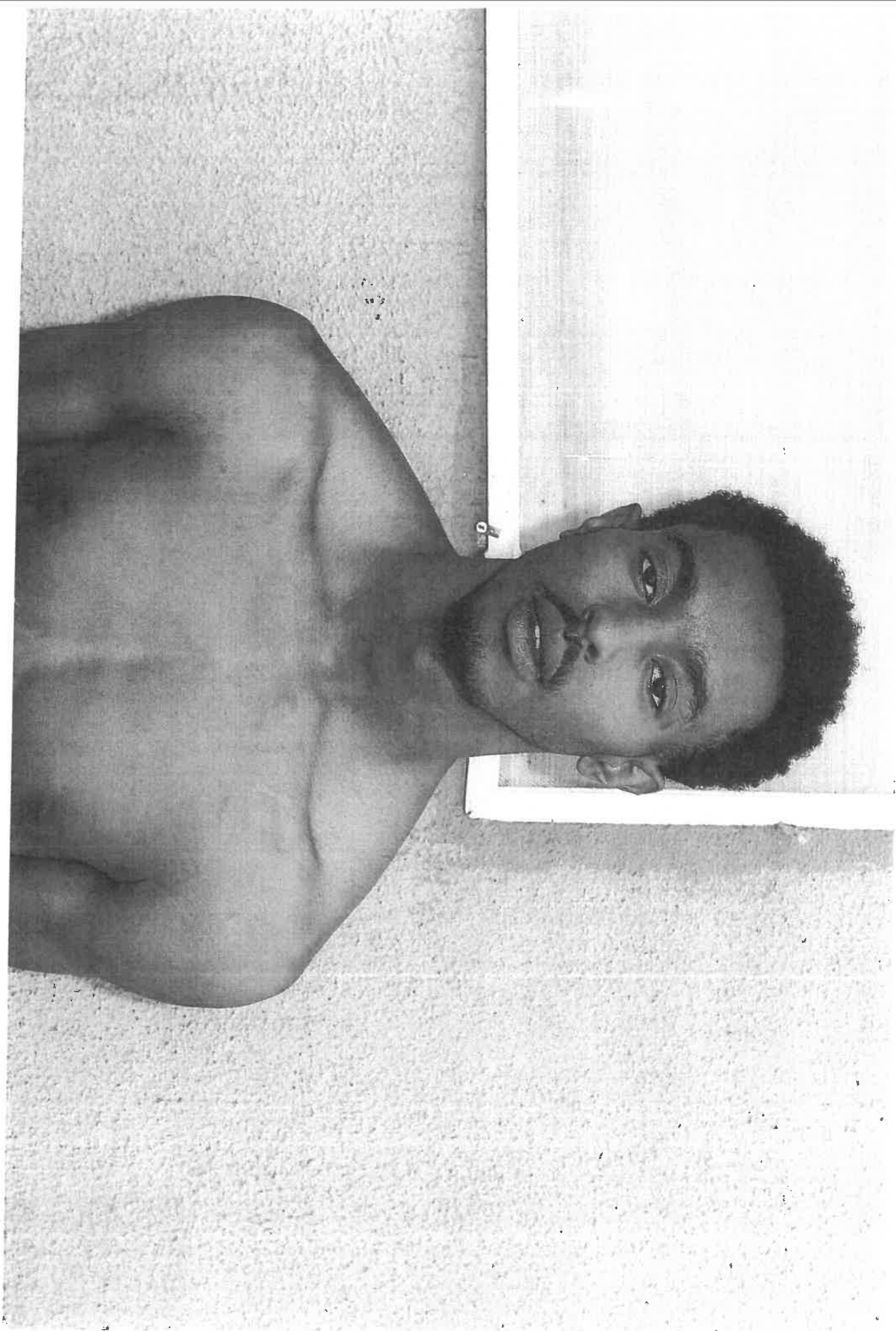
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OFFICER'S NAME & PR: N. MAJORE 7089

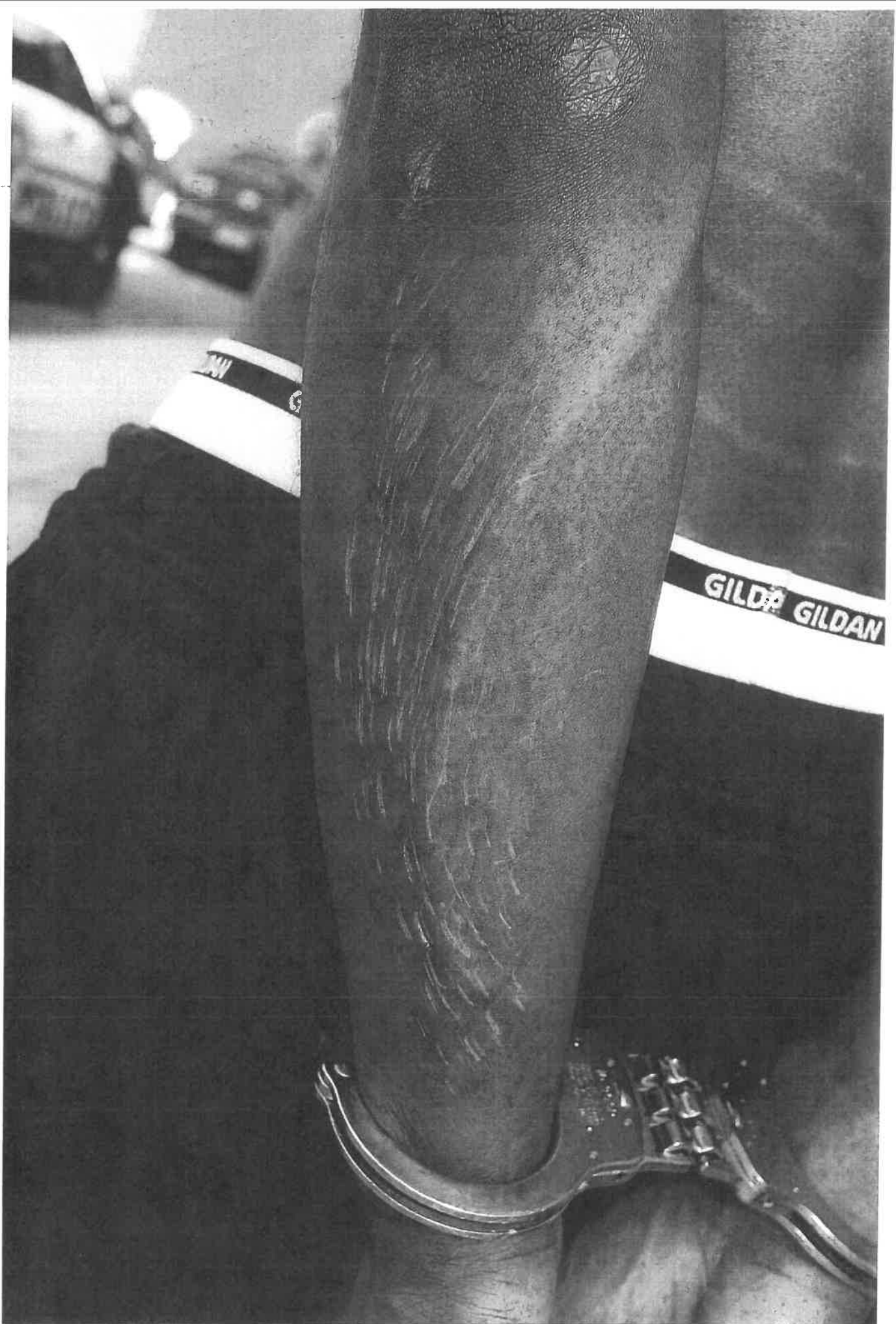












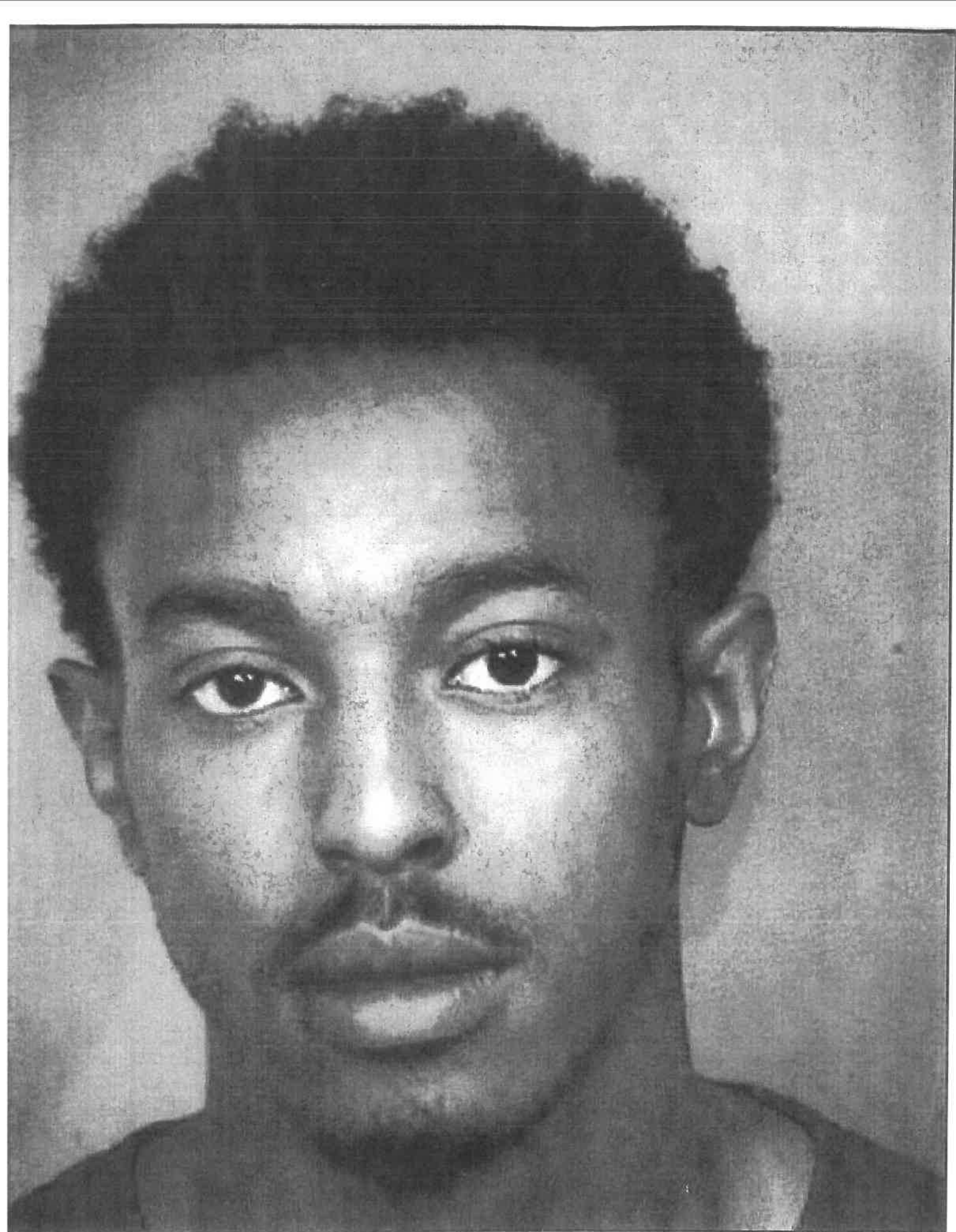
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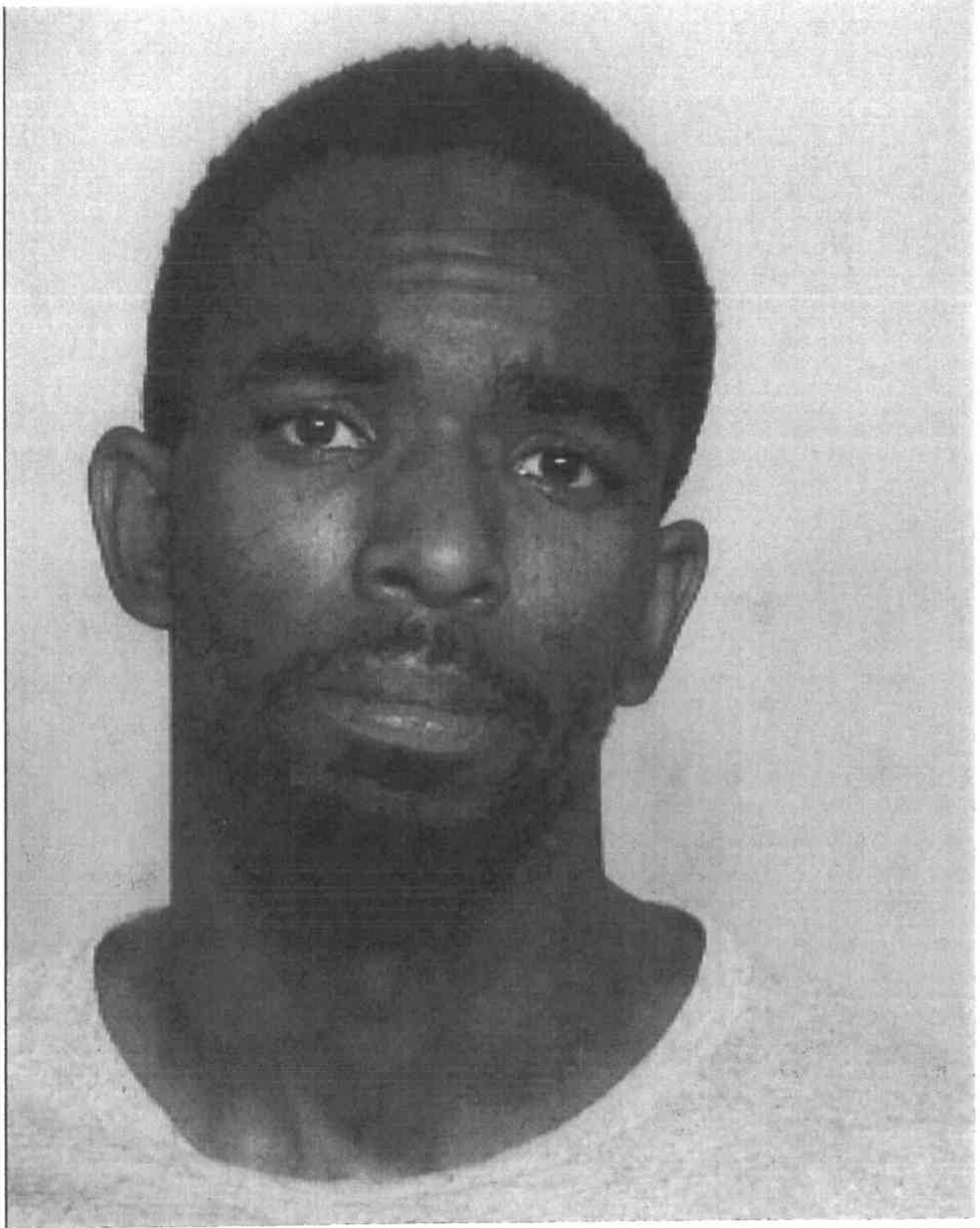








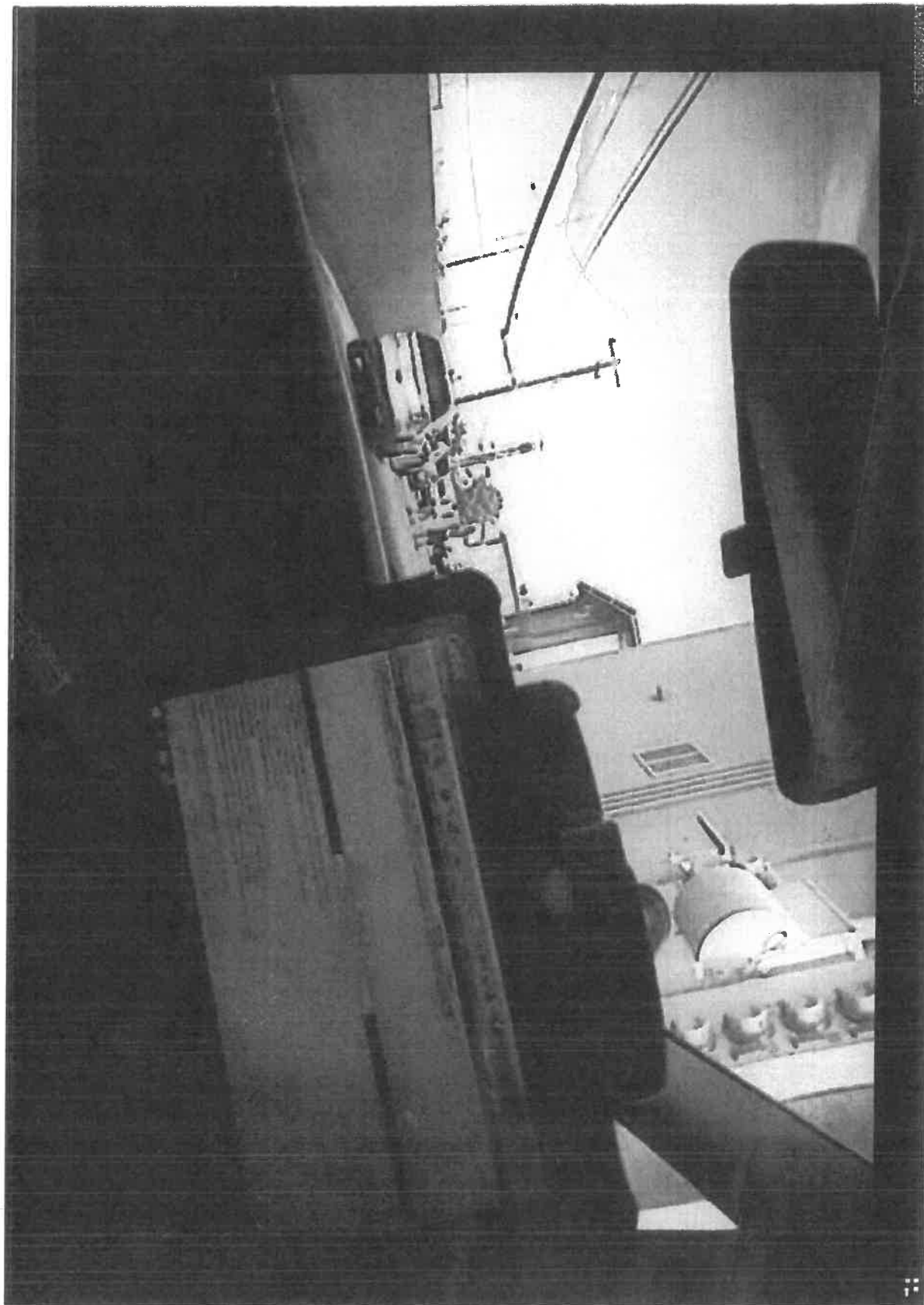




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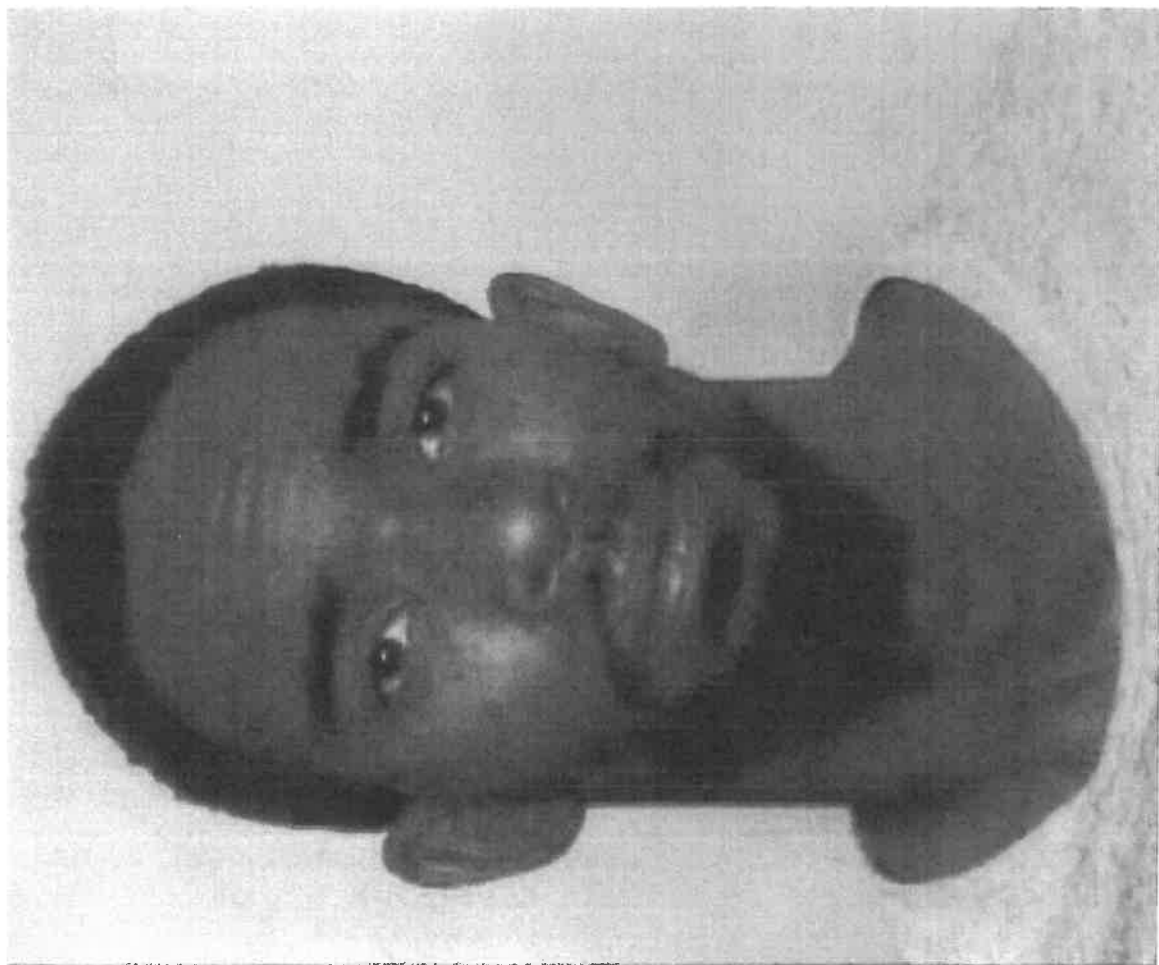
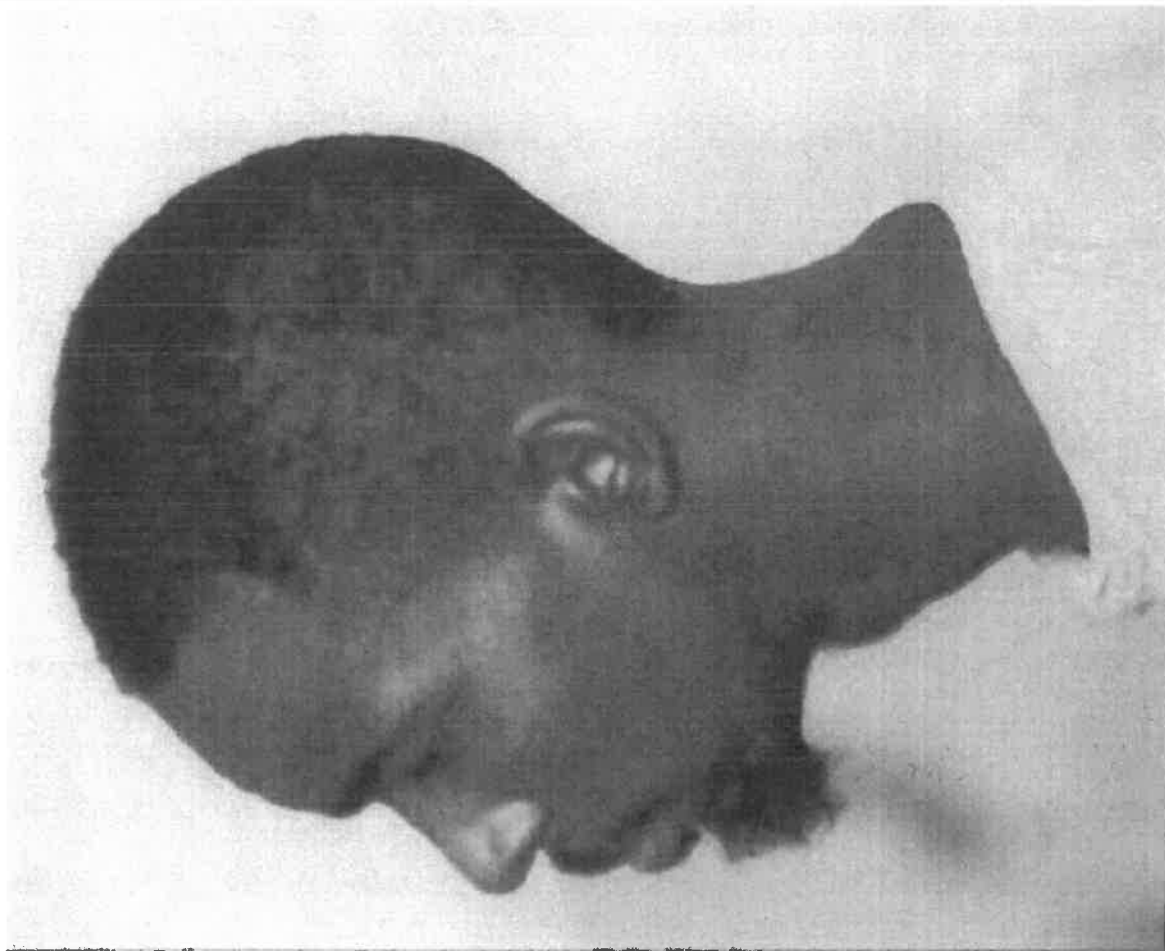
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Proposed Exhibit # 1

*Withdrawn*





Marked for Identification  
Case # 0316081  
Proposed Exhibit # L

*Withdrawn*



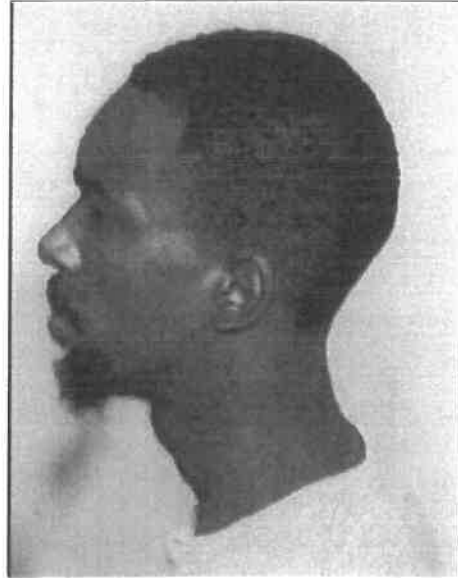
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PROPOSED EXHIBIT U  
[ ] Plaintiff [X] Defendant  
Case No. 031608

*Withdrawn*

# Las Vegas Metropolitan Police Department

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FOR LAW ENFORCEMENT USE ONLY

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

---

July 02, 2018      09:00 AM      Defendant's Motion to Reconstruct the Record

HEARD BY:      Scotti, Richard F.      COURTROOM: RJC Courtroom 03B

COURT CLERK: Jacobson, Alice

RECORDER:      Easley, Dalayne

REPORTER:

PARTIES PRESENT:

Michael Dickerson      Attorney for Plaintiff

State of Nevada      Plaintiff

Tegan Machnich      Attorney for Defendant

#### JOURNAL ENTRIES

Colloquy between the Court and counsel regarding photos L,K,U, offered at trial. There being no objection, COURT ORDERED, motion GRANTED. Defense exhibits L,K,U were incorrectly labeled as "withdrawn". Furthermore, e-mail correspondence by the parties to be made as a Court exhibit if recoverable.

*Steven D. Grierson*

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

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

MH

THE STATE OF NEVADA,

Plaintiff,

v.

KEANDRE VALENTINE,

Defendant,

CASE NO. C-16-316081-1

DEPT. NO. II

DATE: July 2, 2018

TIME: 9:00 a.m.

**DEFENDANT'S MOTION TO RECONSTRUCT THE RECORD**

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

/ / / /

/ / / /

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

3 DATED this 14, 2018.

4 PHILIP J. KOHN  
5 CLARK COUNTY PUBLIC DEFENDER

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

9 PHILIP J. KOHN  
10 CLARK COUNTY PUBLIC DEFENDER

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

### I.

#### FACTS

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

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

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

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

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

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

## 3 II.

### 4 RECONSTRUCTION OR CLARIFICATION OF THE RECORD.

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

12 When something is missing from the record, the parties have an obligation to reconstruct  
13 or clarify the record. If an objection or argument or exhibit is not recorded or not made part of  
14 the record or if the transcript is incomplete, the Nevada Supreme Court allows for reconstruction  
15 of the record. See *Lopez v. State*, 105 Nev. 68, 769 P.2d 1276 (1989) (reconstruction when a  
16 portion of the testimony was missing). Reconstruction not only applies to what is said during the  
17 trial but may also be used to describe what was viewed in the courtroom. Accordingly, in  
18 *Philips v. State*, 105 Nev. 631, 782 P.2d 381 (1989), the court suggested that appellate counsel  
19 could put together a statement regarding the race of the prospective jurors when there was an  
20 issue regarding a *Batson* claim but the record did not include any reference to the race of the  
21 prospective jurors. Additionally, in *Quangbengboune v. State*, 220 P.3d 1122 (Nev. 2009), the  
22 Court held that the trial record could be modified or corrected when inaccuracies in the  
23 interpreter's translations of the defendant's testimony were verified during the appellate process.  
24 The *Quangbengboune* Court held that the defendant could bring a motion in district court pursuant  
25 to NRAP 10 (c) to correct the record.  
26  
27  
28

1 The basis for a motion for reconstruction as found within NRAP 10( c) provides that:

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

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

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

### 15 III. CONCLUSION

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

22 DATED this 14<sup>th</sup> day of June, 2018.

23 PHILIP J. KOHN  
24 CLARK COUNTY PUBLIC DEFENDER

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

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

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

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

DATED this 5th day of April, 2018.

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

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

PHILIP J. KOHN  
CLARK COUNTY PUBLIC DEFENDER

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

I hereby certify that service of the above and forgoing Defendant's Motion to Reconstruct the Record was served via electronic e-filing to the Clark County District Attorney's Office at [motions@clarkcountvda.com](mailto:motions@clarkcountvda.com) on this 14<sup>th</sup> day of June, 2018.

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

**AFFIDAVIT**

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

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

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

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

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

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

24 ///

25 ///

26 ///

27 ///

28 ///

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

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

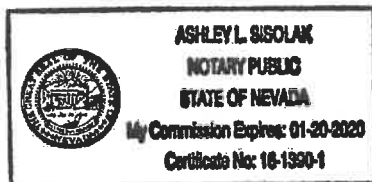
8 EXECUTED on June 14<sup>th</sup>, 2018.

9  
10  
11   
Tegan C. Machnich

12  
13 **ACKNOWLEDGMENT**

14 STATE OF Nevada  
15 COUNTY OF Clark ) ss.  
16

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



  
Notary Public

### DECLARATION OF SHARON G. DICKINSON

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

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

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

///

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///

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

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

EXECUTED on the 14<sup>th</sup> day of June, 2017.

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



## **EXHIBIT A**

AUG 04 2017

1:26  
8 4.17

1 VER

2  
3 BY Natalie Ortega  
4 NATALIE ORTEGA, DEPUTY

5  
6 DISTRICT COURT  
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 VERDICT

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

15 COUNT 1 - ROBBERY WITH USE OF A DEADLY WEAPON

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

17 ☒ Guilty of Robbery With Use Of A Deadly Weapon

18 ☐ Guilty of Robbery

19 ☐ Not Guilty

20 COUNT 2 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

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

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

23 ☐ Guilty of Burglary

24 ☐ Not Guilty

25 COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

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

27 ☒ Guilty of Robbery With Use Of A Deadly Weapon

28 ☐ Guilty of Robbery

☐ Not Guilty

C-16-316081-1  
VER  
Verdict  
4871880



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  
26  
27  
28

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

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

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

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

☐ Possession of Stolen Property

☐ Not Guilty

DATED this 4 day of August, 2017

  
FOREPERSON

## **EXHIBIT B**

*Steven D. Grierson*

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C-16-316081-1

-vs-

KEANDRE VALENTINE  
#5090875

DEPT. NO. II

Defendant.

JUDGMENT OF CONVICTION

(JURY TRIAL)

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

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




1 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of  
2 NRS 200.380, 193.330, 193.165; COUNT 9 - ROBBERY WITH USE OF A DEADLY  
3 WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 10 -  
4 BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (Category B Felony)  
5 in violation of NRS 205.060; COUNT 11 - ROBBERY WITH USE OF A DEADLY  
6 WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; COUNT 12 -  
7 POSSESSION OF DOCUMENT OR PERSONAL IDENTIFYING INFORMATION  
8 (Category E Felony) in violation of NRS 205.465; COUNT 13 - POSSESSION OF  
9 CREDIT OR DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (Category D  
10 Felony) in violation of NRS 205.690 and COUNT 14 - POSSESSION OF CREDIT OR  
11 DEBIT CARD WITHOUT CARDHOLDER'S CONSENT (Category D Felony) in violation  
12 of NRS 205.690; thereafter, on the 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,  
15  
16  
17

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

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

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

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

*Steven D. Grierson*

1 NOAS

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

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 v.

13 KEANDRE VALENTINE,

14 Defendant.

CASE NO. C-16-316081-1

DEPT. NO. II

NOTICE OF APPEAL

15 TO: THE STATE OF NEVADA

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

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

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

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

3 DATED this 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  
10 309 S. Third Street, Ste. 226  
11 Las Vegas, Nevada 89155  
12 (702) 455-4685  
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CERTIFICATE OF ELECTRONIC FILING

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

District Attorneys Office  
E-Mail Address:

PDmotions@clarkcountydade.com

Jennifer.Garcia@clarkcountydade.com

Eileen.Davis@clarkcountydade.com

/s/ Carrie M. Connolly  
Secretary for the  
Public Defender's Office

## **EXHIBIT D**

# DEFENSE

## EXHIBIT(S) LIST

Case No.: C316081

Dept. No.: 2

Plaintiff:

State of Nevada

vs.

Defendant:

KEANDRE VALENTINE

Hearing Date: 7/24/17

Judge: R. Scotti

Court Clerk: Natalie Ortega

Recorder: Dalayne Easley

Counsel for Plaintiff: AGNES LEXIS / MICHAEL DICKERSON

Counsel for Defendant: TYLER GASTON / TEGAN MACHNICH

### TRIAL BEFORE THE COURT

#### DEFT'S EXHIBITS

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

EXHIBIT # 22

**Enter Case No.**

**Enter Plaintiff**

**VS.**

**Enter Defendant**

**DEFENDANT'S EXHIBITS**

The State of Nevada

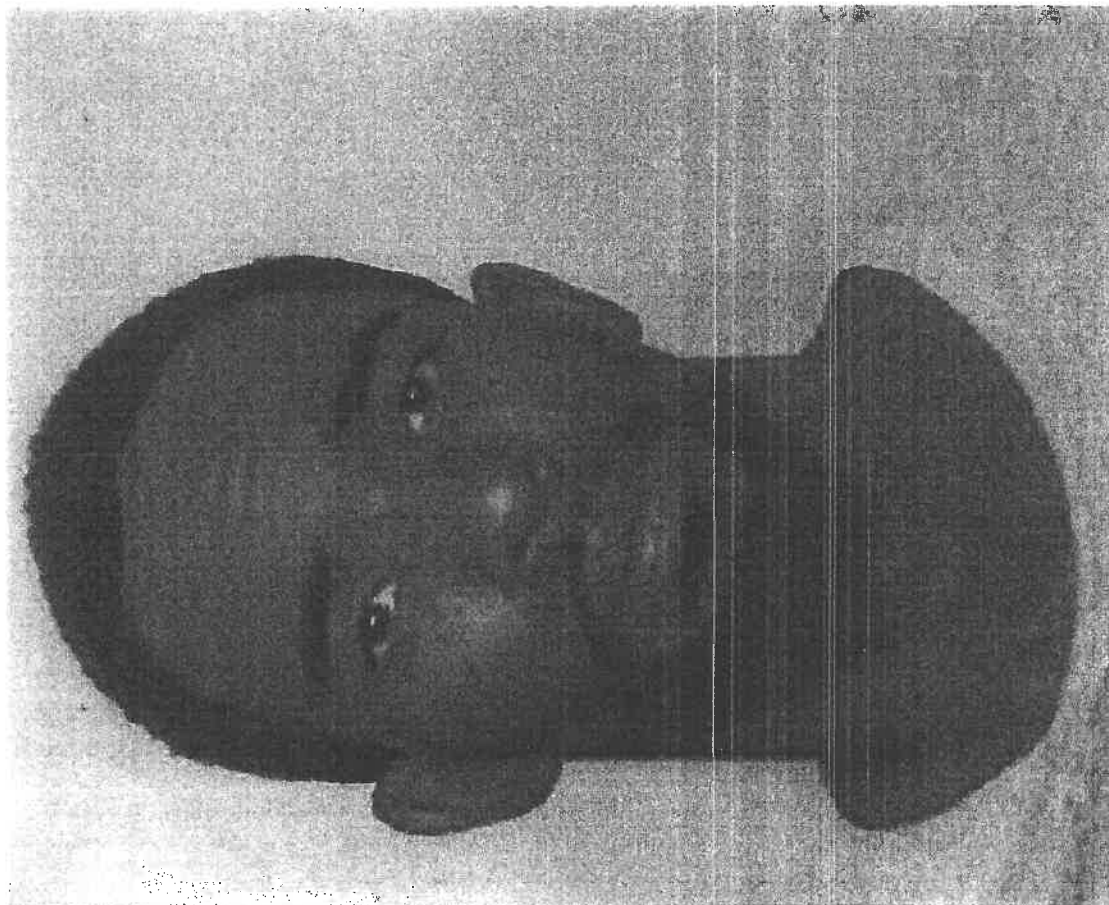
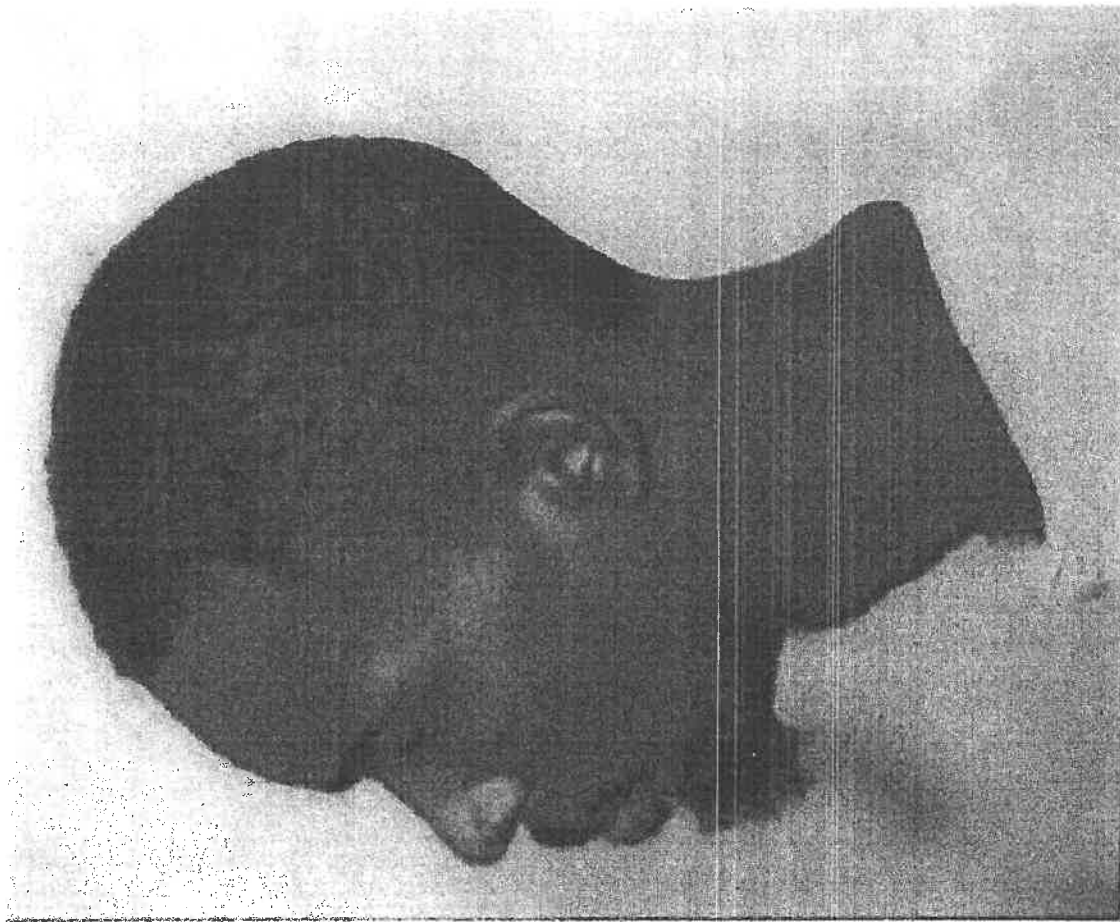
Keandre Valentine

WITHDRAWN

3282

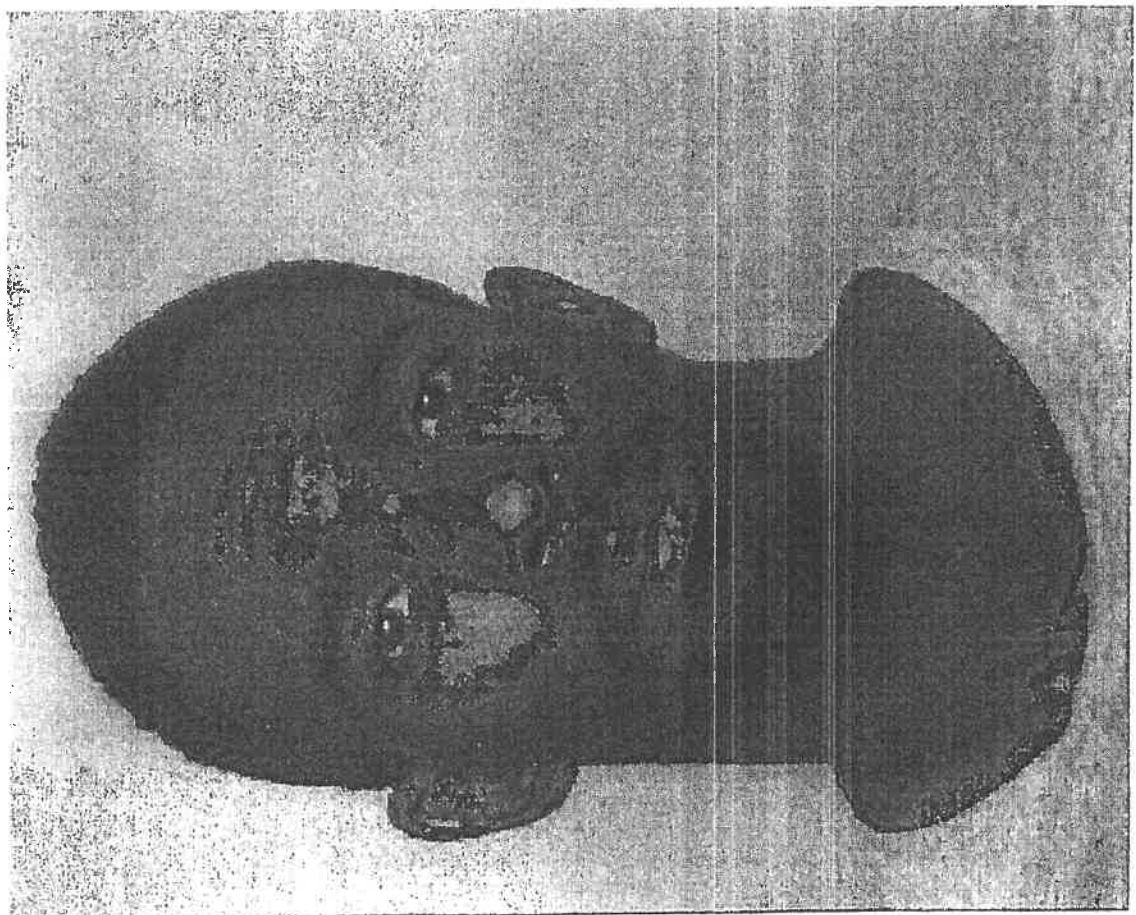
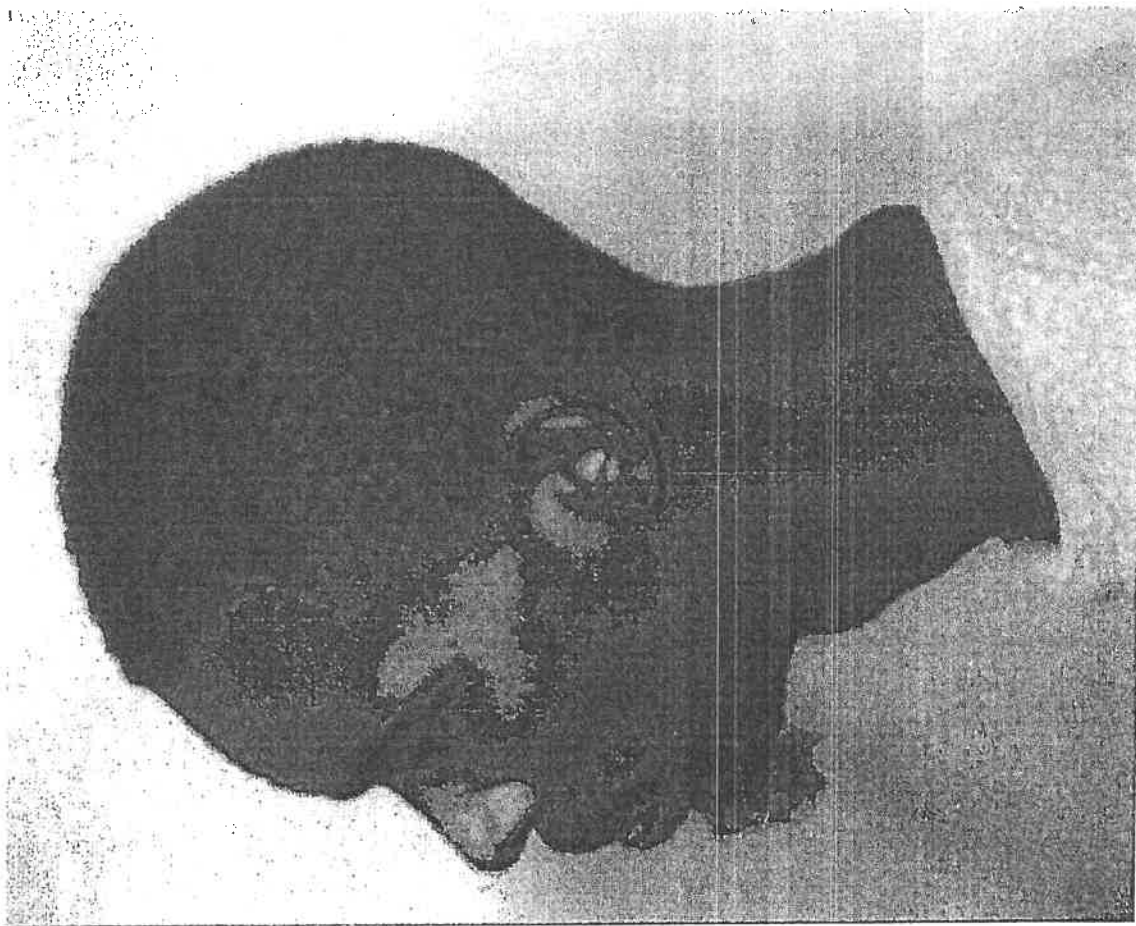
Marked for Identification  
Case # C310081  
Proposed Exhibit # 1

*Withdrawn*



Marked for identification  
Case # 0316-081  
Proposed Exhibit # L

*Withdrawn*





MARKED FOR IDENTIFICATION  
PROPOSED EXHIBIT U  
[ ] Plaintiff [X] Defendant  
Case No. 031608

*Withdrawn*

# Las Vegas Metropolitan Police Department

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MCCOY, BOBBY EUGENE



7037886 12/13/2016

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FOR LAW ENFORCEMENT USE ONLY

## **EXHIBIT E**

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

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

3 [Outside the presence of the jury.]

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

7 THE COURT: Ms. Lexis what?

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

10 THE COURT: Okay.

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

14 THE COURT: Okay. Sure.

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

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

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

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

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The State of Nevada, Plaintiff, vs. Keandre Valentine, Defendant.  
Case No. C-16-316081-1 [Jury Trial Day 8 of 10]

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

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

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

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

23 THE COURT: All right.

24 MS. LEXIS: Your Honor --

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

1 McCoy booking photo?

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

4 THE COURT: You may.

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

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

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

9 MS. MACHNICH: Actually not.

10 MS. LEXIS: -- [indiscernible.]

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

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

15 MS. MACHNICH: This, yes.

16 THE COURT: Which -- which photo?

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

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

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

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

22 MS. MACHNICH: Okay.

23 THE COURT: Thank you.

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

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

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

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

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

17 THE COURT: Okay.

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

24 THE COURT: Thank you.

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

1 I decide what to do?

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

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

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

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

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

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

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



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

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

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

18           No -- no more --

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

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

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

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

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

2 MS. MACHNICH: Okay.

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

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

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

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

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

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

14 MS. MACHNICH: No --

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

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

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

20 THE COURT: All right. Thank you.

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

23 THE COURT: That's fine.

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

25 MS. MACHNICH: Okay.

1 MS. LEXIS: Just a -- just a photo.

2 MS. MACHNICH: Okay. Yeah.

3 THE COURT: So let the officer go back to do his job.

4 MS. MACHNICH: And it's -- it's a staff worker. It's not an officer.

5 THE COURT: All right.

6 MS. MACHNICH: But, of course.

7 You can go release the custodian from Metro for the photograph.

8 Yeah. Okay.

9 We'll release that witness.

10 THE COURT: All right.

11 MS. MACHNICH: Our next piece of evidence that we intend to  
12 introduce is a --

13 THE COURT: You say the SCOPE. It's the -- the prior convictions of  
14 McCoy.

15 MS. MACHNICH: No. Actually not.

16 THE COURT: No. Then what do you want?

17 MS. MACHNICH: I want the identifiers, because as --

18 THE COURT: The what? What's identifiers?

19 MS. MACHNICH: His height and weight.

20 THE COURT: Oh.

21 MS. MACHNICH: It's -- it is a part of the SCOPE. That's the only way  
22 we can get into it. But it -- it specifically does not go into --

23 THE COURT: Was there any witness that testified that saw McCoy  
24 who can testify to his characteristics?

25 MS. MACHNICH: Not specifically his height. They're not going to

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The State of Nevada, Plaintiff, vs. Keandre Valentino, Defendant.  
Case No. C-16-316081-1 [Jury Trial Day 8 of 10]

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## **EXHIBIT E**

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## **EXHIBIT F**



1 **RTRAN**

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

4  
5 **THE STATE OF NEVADA,**

6 **Plaintiff,**

7 **vs.**

8 **KEANDRE VALENTINE,**

9 **Defendant.**

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

**DEPT. NO. II**

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

12 **FRIDAY, JULY 28, 2017**

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

15 **\*\*\*\*\***

16  
17 **APPEARANCES:**

18 **For the Plaintiff:**

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

19  
20  
21 **For the Defendant:**

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

22  
23  
24 **RECORDED BY: DALYNE EASLEY, COURT RECORDER**



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

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

5 MR. DICKERSON: On Monday, Your Honor?

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

7 MS. MACHNICH: Okay.

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

13 MS. MACHNICH: Okay.

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

16 MS. MACHNICH: That's fine.

17 THE COURT: So I have time to argue?

18 MR. DICKERSON: Sounds great, Your Honor.

19 MS. MACHNICH: Yep. That sounds good.

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

21 MR. DICKERSON: Sounds great.

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

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

24 THE COURT: Yes, sir.

25 MR. GASTON: -- on Tuesday.

1 THE COURT: Yes, sir.

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

4 THE COURT: 11:15.

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

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

11 THE COURT: Okay.

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

13 THE COURT: Anything else, guys?

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

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

18 MS. LEXIS: Okay.

19 THE COURT: All right?

20 MS. LEXIS: Okay.

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

23 MS. LEXIS: Yes, Your Honor.

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

25 MS. LEXIS: Yes, Your Honor.

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The State of Nevada, Plaintiff, vs. Keandre Valentine, Defendant.  
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1 THE COURT: On -- on any of these points we discussed, sure.

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

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

7 MS. MACHNICH: So --

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

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

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

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

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

18 MS. LEXIS: Yes.

19 MS. MACHNICH: Yes.

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

21 MS. LEXIS: Yes, Your Honor.

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

23 MS. LEXIS: Yes, Your Honor.

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

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The State of Nevada, Plaintiff, vs. Keandre Valentino, Defendant.  
Case No. C-16-316081-1 [Jury Trial Day 5 of 10]

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## **EXHIBIT G**

State v. Keandre Valentine

Case No. C-16-316081-1

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

**General Comments About the Court's Analysis**

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

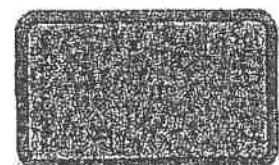
If a statement has at least slight relevance, then the Court proceeds to consider whether any rule of evidence calls for the exclusion of such evidence. For instance, the rules of evidence generally prohibit the admission of uncharged bad act evidence that is offered to show the Defendant has a bad character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

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

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

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

**TENTATIVE: ADMITTED**



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

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

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

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

**TENTATIVE RE PART ONE: EXCLUDED**

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

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

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

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

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

**TENTATIVE RE PART THREE: EXCLUDED**

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

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

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

**TENTATIVE RE PART ONE: EXCLUDED**

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

**TENTATIVE RE PART TWO: EXCLUDED**

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

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

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

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

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

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



*Steven D. Grierson*

ORDR  
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Telephone: (702) 455-4685  
Facsimile: (702) 455-5112  
Tegan.Machnich@clarkcountynv.gov  
*Attorneys for Defendant*

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

THE STATE OF NEVADA,  
  
Plaintiff,  
  
v.  
KEANDRE VALENTINE,  
  
Defendant,

CASE NO. C-16-316081-1  
DEPT. NO. II

**ORDER**

THIS MATTER having come before the Court on July 2, 2018, and good cause appearing therefore, Defendant's Motion to Reconstruct the Record is hereby granted;

IT IS HEREBY ORDERED that Defense Proposed Exhibits L, K and U shall be listed as Defense trial exhibits that were offered by the Defense, objected to by the State, and indicate that the Court ruled they would not be admitted. The label "withdrawn" currently describing these exhibits on the Defense Exhibit List is erroneous.

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JUL 12 2018

1 IT IS FURTHER ORDERED that any email correspondence between the Parties and the  
2 Court that exists as of July 2, 2018 in the Court's email system, was sent/received during the  
3 course of the Jury Trial in this matter and that pertains to substantive legal matters addressed at  
4 trial will be marked as a Court Exhibit as part of the trial record in this case.

5 DATED 16 day of July, 2018.

6  
7   
8 \_\_\_\_\_  
DISTRICT COURT JUDGE (MN)

9 Submitted by:

10 PHILIP J. KOHN  
11 CLARK COUNTY PUBLIC DEFENDER

12  
13 By /s/ Tegan C. Machnich  
14 TEGAN C. MACHNICH, #11642  
Chief Deputy Public Defender

**CERTIFICATE OF ELECTRONIC SERVICE**

I hereby certify that service of the above and forgoing Order was served via electronic e-filing to the Clark County District Attorney's Office on this 25 day of July, 2018.

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

Case Name: Keandre Valentine  
Case No.: C-16-316081-1  
Dept. No.: II



1 NOTC

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 STATE OF NEVADA,

7 Plaintiff,

8 vs.

9 KEANDRE VALENTINE,

10 Defendants.

Case No.: C-16-316081-1

Dept. No.: II

**NOTICE OF COURT EXHIBITS  
ADDED TO THE TRIAL RECORD**

11  
12 PLEASE TAKE NOTICE that the following Court Exhibits are added to the trial  
13 record as follows:

14 A. Email re State's Bench Memo Re: Admissibility of Jail Calls; and

15 B. Email re Defense Brief Memo on Jail Calls.

16 Dated this 10<sup>th</sup> day of July, 2018.

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19 RICHARD F. SCOTTI  
20 DISTRICT COURT JUDGE

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Richard F. Scotti  
District Judge

Department Two  
Las Vegas, NV 89155

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**CERTIFICATE OF SERVICE**

I hereby certify that on or about the date signed, a copy of this Order was electronically served and/or placed in the attorney's folder maintained by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper parties as follows:

Michael Dickerson, Esq.  
Michael.dickerson@clarkcountyda.com

Agnes Lexis, Esq.  
Agnes.Lexis@clarkcountyda.com

Tegan C. Machnich, Esq.  
Tegan.machnich@clarkcountynv.gov

*/s/ Melody Howard*

Melody Howard  
Judicial Executive Assistant

# **EXHIBIT A**

State's Bench Memo Re: Admissibility of Jail Calls

**From:** Agnes Lexis

**Sent:** 7/30/2017 7:51

**To:** Scotti, Richard

**Cc:** Michael Dickerson; Machnich, Tegan; Gaston, Tyler

 **Message**  Valentine - Bench Memo Jail Call.docx (38 KB)

Your Honor,

Attached is the State's Bench Memo, for your review.

Thank you,  
Agnes & Mike

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

KEANDRE VALENTINE,  
Defendant.

CASE NO: C-16-316081-1

DEPT NO: II

**STATE'S BENCH MEMO RE: ADMISSION OF JAIL CALLS**  
**POINTS AND AUTHORITIES**

An appellate court reviews a district court's decision to admit evidence for abuse of discretion. An appellate court will not reverse a district court's decision regarding the admission evidence absent an abuse of discretion. Edwards v. State, 2016 Nev. Unpub. LEXIS 132, \*1, 2016 WL 2870170 (Nev. May 12, 2016).

Relevant evidence is that tending to make a fact that is of consequence more or less probable. NRS 48.015. Relevant evidence is admissible unless otherwise precluded by the law. NRS 48.025. However, even where relevant, evidence may be excluded if the probative value is substantially outweighed by the danger of unfair prejudice. NRS 48.035(1).

"Declarations made after the commission of the crime which indicate consciousness of guilt, or are inconsistent with innocence, or tend to establish intent may be admissible." Abram v. State, 95 Nev. 352, 356, 594 P.2d 1143, 1145 (1979). Defendant's statements, including those made in jail calls, are not hearsay. Marshall v. State, No. 70634, 2017 Nev. Unpub. LEXIS 569, at \*7 (July 11, 2017) (detective's testimony regarding Defendant's statements in jail calls was not hearsay pursuant to NRS 51.035(3)(a)); NRS 51.035(3)(a). Additionally, statements made by other persons speaking to Defendant that accuse or implicate Defendant in a crime and which Defendant fails to speak, makes an evasive or equivocal reply, or accepts the statement as true are properly admitted as adoptive



1 admissions. Maginnis v. State, 93 Nev. 173, 175, 561 P.2d 922, 923 (1977); NRS  
2 51.035(3)(b).

3 Defendant insists the calls are highly prejudicial due in most part to the fact “[t]hey  
4 repeatedly include street slang, profanity (although largely in a “friendly” manner).”  
5 Specifically, Defendant insists that while “[t]he calls also discuss the car and gun, both of  
6 which Mr. Valentine has not contested being associated with—so while relevant and  
7 minutely probative, are highly prejudicial because of the language used.” However, foul  
8 language—if prejudicial at all— does not outweigh the probative value of the Defendant’s  
9 calls. United States v. McAtee, 481 F.3d 1099, 1104 (8th Cir. 2007) (citing United States v.  
10 Pirani, 406 F.3d 543, 555 (8th Cir. 2005) (en banc), cert. denied, 546 U.S. 909, 126 S. Ct.  
11 266, 163 L. Ed. 2d 239 (2005) (holding that admission of profanity was not unduly  
12 prejudicial)); Commonwealth v. Medlen, 141 A.3d 587 (Pa. Super. Ct. 2016) (recognizing  
13 lack of support for argument that the presence of foul language is grounds for excluding  
14 evidence as unduly prejudicial); State v. Johnson, 212 Ariz. 425, 436, 133 P.3d 735, 746  
15 (2006) (limiting instruction sufficient to admission of relevant evidence that also contains  
16 profanity); State v. Hunt, No. 18113-8-III, 1999 Wash. App. LEXIS 2156, at \*7 (Ct. App.  
17 Dec. 21, 1999) (“[t]he profanity arguably was mildly prejudicial, although it hardly could  
18 have been shocking to the average modern juror.”); People v. Merriman, 60 Cal. 4th 1, 48,  
19 177 Cal. Rptr. 3d 1, 46, 332 P.3d 1187, 1226 (2014) (regarding letters from inmate,  
20 “defendant’s suggestive drawings and use of profanity and vulgarity, although distasteful,  
21 would not have unduly inflamed the jury.”); In re BankAtlantic Bancorp, Sec. Litig., No. 07-  
22 61542-CIV, 2011 U.S. Dist. LEXIS 48057, at \*98 (S.D. Fla. Apr. 25, 2011) (“colorful and  
23 sometimes profane language . . . did not render the statements unduly prejudicial or  
24 confusing to the Jury.”); Hopkins v. AMTRAK, No. 08-CV-2965 (NGG) (RML), 2016 U.S.  
25 Dist. LEXIS 57236, at \*48 (E.D.N.Y. Apr. 29, 2016) (text messages with foul language not  
26 unfairly prejudicial).

27 To the extent Defendant alleges a blanket objection to the calls claiming such are  
28 generally “prejudicial,” evidence that is probative to the State’s case is inherently going to be

1 prejudicial to the defense case. However, prejudicial evidence is only inadmissible where the  
2 danger of *unfair* prejudice *substantially* outweighs the probative value. NRS 48.035(1); see  
3 also, United States v. Parker, 549 F.2d 1217, 1222 (9th Cir. 1977) (holding evidence of the  
4 defendant's prior drug use was admissible in the robbery trial because it tended to show  
5 motive noting that "evidence relevant to defendant's motive is not rendered inadmissible  
6 merely because of its highly prejudicial nature . . . The best evidence often is!"). In the  
7 instant case, Defendant's phone calls are highly probative and minimally prejudicial as the  
8 statements relate to the instant offense. The calls at issue, which were made almost  
9 immediately after the Defendant was booked into the Clark County Detention Center,  
10 discuss topics which are material facts at issue in the instant case and rebut certain claims  
11 made by the Defendant during opening statements. Any prejudice to Defendant is not *unfair*  
12 and does not *substantially* outweigh the probative value of such evidence.

13  
14 DATED this 30th day of July, 2018.

15 Respectfully submitted,

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

18  
19 BY

AGNES M. LEXIS  
Chief Deputy District Attorney  
Nevada Bar #11064

# **EXHIBIT B**

Fw: Defense brief memo on jail calls



**From:** Tegan Machnich

**Sent:** 7/30/2017 9:41

**To:** Scotti, Richard

Your Honor:

I sent this on Friday afternoon but could not get your direct email to come up. After seeing the State's motion, I now have it. Sorry for the delay.

Regards,  
Tegan

---

**From:** Tegan Machnich  
**Sent:** Friday, July 28, 2017 7:14:57 PM  
**To:** Howard, Melody; dept02LC@clarkcountycourts.us  
**Cc:** Agnes Lexis; Michael Dickerson; Tyler Gaston  
**Subject:** Defense brief memo on jail calls

Please see below:

The State is attempting to introduce jail calls placed by Defendant Valentine as hearsay exception(s) under NRS 51.035(3) (a), (b). The moving party must first establish relevance. NRS 48.025 Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be with the evidence." NRS 48.015. In this case, the vast majority of the jail calls in question are not relevant to any consequential fact. The jail calls are mostly casual interactions between Mr. Valentine and his family/friends/girlfriend. They generally discuss his charges (without discussing culpability), conditions/classification in jail, what is going on outside, and money being placed on his "books" so he can buy things in CCDC. They also discuss putting part of welfare checks on his books and his choice to pay for one car over another (to the great distaste of the female he is speaking with at the time). All of the above are irrelevant to the proceedings. Insofar as specific sections of the calls discuss the narrative of Mr. Valentine's arrest, police involvement, search of the apartment, cellphones, the gun, and the car, relevance is likely present.

If a call, or part of a call, is deemed relevant, the Court must then consider whether the calls are more probative or prejudicial. "Evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice." See *Fondo v. State*, 2016 WL 207611 (unpublished disposition), citing NRS 48.035(1). There are few published cases on the topic of jail calls – many are unpublished and discuss the specific facts of each case. Here, the defense opposes all of the calls because they are highly prejudicial. They repeatedly include street slang, profanity (although largely in a "friendly" manner), and recitations of facts conveyed by police to Mr. Valentine. Mr. Valentine does not concede to the charges at any point, but apparently knows details of the alleged offenses. However, the calls do not include context of how he obtained that knowledge even though the Parties are aware that detectives interviewed him at length prior to the subject calls. It is currently unknown whether the State intends to introduce the Defendant's statement. The calls also discuss the car and gun, both of which Mr. Valentine has not contested being associated with – so while relevant and minutely probative, are highly prejudicial because of the language used.

The Defense has reviewed the calls in depth and will be prepared to make specific objections and suggested redactions at on Monday. The above is submitted with an eye toward an even playing field, as the State has already provided their suggested redactions. Thank you for your consideration.



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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,  
9 Plaintiff,

CASE#: C-16-316081-1  
DEPT. 2

10 vs.

11 KEANDRE VALENTINE,  
12 Defendant.

13  
14 BEFORE THE HONORABLE RICHARD SCOTTI, DISTRICT COURT JUDGE  
15 MONDAY, JULY 2, 2018

16 **RECORDER'S TRANSCRIPT OF HEARING:**  
17 **DEFENDANT'S MOTION TO RECONSTRUCT THE RECORD**

18  
19 APPEARANCES:

20 For the State:

MICHAEL DICKERSON, ESQ.  
Deputy District Attorney

21  
22 For the Defendant:

TEGAN C. MACHNICH, ESQ.  
Deputy Public Defender

23  
24  
25 RECORDED BY: DALYNE EASLEY, COURT RECORDER

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Las Vegas, Nevada, Monday, July 2, 2018

[Hearing began at 9:20 a.m.]

MS. MACHNICH: Good morning, Your Honor.

THE COURT: Hi, Counsel.

MR. DICKERSON: Good morning, Your Honor, Mike  
Dickerson on behalf of the State.

MS. MACHNICH: Tegan Machnich on behalf of Mr.  
Valentine.

THE COURT: Great. I don't know why this got set before  
me because this case was transferred to Judge Bailus back on  
August 21 of last year so I don't have jurisdiction over it anymore;  
unless you know something different.

MS. MACHNICH: Your Honor, we called and we were told  
that it had stayed with you because of the trial issues and the fact  
that we're just trying to address a couple issues with the trial record.  
And that's why we ended up filing it.

THE COURT: Who'd you call?

MS. MACHNICH: I thought we called your department but  
it appears we may not have; so. I thought my secretary called your  
department and we were told it should go before you because it's a  
trial record issue.

THE COURT: Well, I would think so. Normally what  
happens in these cases where -- let me just tell you, it looks like the  
record on Odyssey shows that on August 21, 2017 it went to

1 Department 18.

2 MS. MACHNICH: Yes.

3 THE COURT: And then Bailus, starting today I think, is not  
4 doing criminal anymore so this case would have been transferred to  
5 someone else. And I don't know who that is yet.

6 MS. MACHNICH: So, I --

7 THE COURT: So normally what happens is when there's a  
8 trial judge that heard some matter and the case got transferred to  
9 somebody else, that judge who now has jurisdiction can make a  
10 limited reference back to the trial judge so the trial judge can rule on  
11 whatever is the matter that he would have personal knowledge of.  
12 But that has to be a written reference.

13 MS. MACHNICH: And, Your Honor, I'm certainly willing to  
14 do that. I know that our continuance for our appeal was only until  
15 July 30<sup>th</sup>. And I do believe now, if I'm remembering correctly, the  
16 reason why we were told that your department was keeping it was  
17 because we were an overflow case as opposed to a track case.

18 THE COURT: Well, let me check. My Clerk is trying to tell  
19 me something.

20 Okay. It looks like it was referred back to me.

21 MS. MACHNICH: Okay.

22 THE COURT: So, I didn't realize that. This case has  
23 bounced around a little bit.

24 MS. MACHNICH: It has.

25 THE COURT: Alright, so, let's go ahead and try to resolve



1 it then.

2 MR. DICKERSON: The State's, obviously, just submitting.  
3 We didn't file a written opposition with this case.

4 THE COURT: Great. Yeah, I didn't see an opposition.

5 Here's why I was a little bit confused, Ms. Machnich, and  
6 maybe you can help me untangle this.

7 MS. MACHNICH: Okay.

8 THE COURT: Because I want your record to be correct but  
9 I also want to make sure that we're consistent with the transcript.

10 Looks like you had three things that you were concerned  
11 about back at the hearing on August 2, 2017: some booking photos  
12 and then some, there might have been two booking photos, then a  
13 side photo.

14 MS. MACHNICH: Yes.

15 THE COURT: In the transcript -- oh, and you reference  
16 those as L, K and U.

17 MS. MACHNICH: Yes.

18 THE COURT: Alright? So the Court Clerk's records for L  
19 and K show that those were offered on August 1, alright? And yet  
20 in the transcript when you are talking about the exhibits that I think  
21 are the subject of this motion --

22 MS. MACHNICH: Yes.

23 THE COURT: -- you say you're going to be offering them,  
24 so they haven't been offered yet. So what I think happened is the  
25 August 2 transcript is referring to something that I objected to but

1 it's not L and K because, like I said, L and K were already offered.  
2 And what you're complaining about August 2<sup>nd</sup> is something that  
3 wasn't offered yet. So, you might have your numbers wrong; it's  
4 not L and K.

5 MS. MACHNICH: I believe it is L, K and U, Your Honor.  
6 And I think what happened was we had them marked and to be  
7 offered into evidence and marked as Defense Exhibits, and then we  
8 took the issue outside the presence of the jury because we had had  
9 prior to this date, and obviously Mr. Dickerson can clarify if he  
10 remembers things differently, but my recollection was we had,  
11 initially, we had informed the State that we were going to be trying  
12 to introduce the booking photos of what we deemed as the alternate  
13 suspect, which is Bobby McCoy, which is the photographs that are  
14 in question with L, K and U. And at that point the State had  
15 objected to those and we subpoenaed the personnel necessary to  
16 get them in through booking and had those people waiting in the  
17 hall.

18 This was sort of a compound issue with this and SCOPE so  
19 we had several different witnesses waiting in the hall because of  
20 some authentication issues that we had anticipated would come up  
21 because the State was not inclined to stipulate to their admission  
22 and authenticity; which is fine.

23 Before we brought in the jury that day we brought it to  
24 Your Honor's attention that these were disputed between the parties  
25 and that the State had offered to stipulate to just the front view of

1 Mr. McCoy in lieu of these. We had said that we were not inclined  
2 to not introduce these but we did not have an opposition to the  
3 stipulation because obviously that picture, we did think, was  
4 appropriately in. We just thought these were, additionally,  
5 appropriately in.

6 THE COURT: Right.

7 MS. MACHNICH: And then we addressed the issue  
8 outside the presence of the jury that morning and Your Honor was  
9 disinclined to allow us to go down that path. And because of that  
10 we did not call the witness to bring those in.

11 THE COURT: In looking at the transcript again there was a  
12 black and white photo that I allowed but apparently it was the color  
13 photo that I disallowed. So, that's based on the transcript here. So,  
14 I'm assuming the booking photo was in color and it was the other  
15 black and white photo that was the subject of the stipulation?

16 MS. MACHNICH: The one front view was the subject of  
17 the stipulation between the parties.

18 THE COURT: Do you have a copy of the booking photo  
19 because --

20 MS. MACHNICH: I have copies of the ones of the three  
21 exhibits that we believe that we offered but were not -- Your Honor  
22 did not allow them in and did not allow that witness to testify as to  
23 those items. And those were the pictures with the front and side  
24 view. And my understanding, and honestly, because of the  
25 photocopies associated with the motion I am not one hundred

1 percent certain which one's which but I believe that K, from viewing  
2 these photographs, K was likely the black and white.

3 THE COURT: The side photo I kept out. I know that.

4 MS. MACHNICH: You did. And we had a color version of  
5 the front and side, a black and white version of the front and side  
6 and U, which is the booking photo with the actual arrest date of the  
7 suspect with the Las Vegas Metropolitan Police Department, so  
8 that's U, and we wanted -- we were requesting all of those. And  
9 those were all defense exhibits and none of them were allowed by  
10 Your Honor and so they were not introduced at trial.

11 THE COURT: Okay.

12 MS. MACHNICH: And we just --

13 THE COURT: Can you show me the one that was  
14 allowed? The McCoy photo that was allowed, do you have it?

15 MS. MACHNICH: I honestly don't have it --

16 THE COURT: Okay.

17 MS. MACHNICH: -- in my briefing. It's one front photo of  
18 Mr. McCoy.

19 THE COURT: Was it -- okay, give me one second. So that  
20 must have been T, it says black and white photo, McCoy. And that  
21 one shows as withdrawn too. Perhaps that one was not withdrawn?

22 MS. MACHNICH: Ultimately, the version of that was  
23 offered into evidence in lieu of T was, let me see here, it was a  
24 State's exhibit. The State brought in --

25 THE COURT: I understand.

1 MS. MACHNICH: -- a separate State's exhibit of the exact  
2 same thing and we brought it in -- we were not able to bring it in.  
3 They brought it in. We had no problem with that coming in and we  
4 did stipulate to the admission of that exhibit.

5 THE COURT: Thanks for your patience, Mr. Dickerson.  
6 I'm just trying to double check this.

7 MR. DICKERSON: Absolutely, Your Honor, I wish I had  
8 more to add here.

9 THE COURT: Alright Ms. Machnich, you appear to be  
10 correct. Alright, I'll grant your Motion to Reconstruct the Record to  
11 reflect that L, K and U were not withdrawn but they were moved for  
12 admission, objected to by the State and the objection was sustained  
13 by the Court. So the record is hereby reconstructed to reflect that.

14 MS. MACHNICH: Thank you, Your Honor.

15 THE COURT: You can prepare a proposed order for that.

16 Now as to the other issue, you had mentioned the email  
17 that I had sent --

18 MS. MACHNICH: Yes.

19 THE COURT: -- which was the culmination of emails that I  
20 had received from the parties.

21 MS. MACHNICH: Correct.

22 THE COURT: And I issued a temporary -- by the way, so  
23 this wasn't an actual order. As you know, it was just a tentative  
24 order. I mean, it does say tentative all throughout there but you still  
25 want the emails that the parties sent me?

1 MS. MACHNICH: Yes, Your Honor.

2 THE COURT: To say -- there's been a lot of changes to  
3 the server and it might be that it doesn't exist anymore. We can  
4 look for it but it would be a lot easier if each of the parties could  
5 just, if you could just attach it to your proposed order. Find what  
6 the parties submitted to me?

7 MS. MACHNICH: So, Your Honor, here's the issues for --

8 THE COURT: Because I don't know if I can find them.

9 MS. MACHNICH: Your Honor, here's my understanding,  
10 our email -- we tried to, from the defense's side, we tried to. We did  
11 not reach out to the State too so they haven't said that they won't.  
12 However, our email retention policy in our office deletes our emails.  
13 So, I do not have anything that goes -- that dates back that far so  
14 we would only request Your Honor if they exist.

15 THE COURT: I'll search for it. I just haven't had a chance  
16 to search for it yet.

17 MS. MACHNICH: Thank you.

18 THE COURT: And if we find it, Brandonn, could you call  
19 Ms. Machnich up and let her know so she can attach them to her  
20 proposed order; alright? We're looking for an email from the State  
21 and an email from the defense, probably right around August, what  
22 would it have been? August 5<sup>th</sup>, sometime around August 5<sup>th</sup>, would  
23 you think?

24 MS. MACHNICH: I think that it might be just a little before  
25 that only because we would have gotten to the jail calls slightly

1 earlier in the trial but it would have been during the trial period.

2 THE COURT: Oh, right, right, right; I'm sorry. It's around  
3 August 2<sup>nd</sup>.

4 MS. MACHNICH: Yes.

5 THE COURT: Alright, we'll look for it and we'll let you  
6 know.

7 MS. MACHNICH: Thank you, and --

8 THE COURT: Thank you. Thanks for your patience.

9 MS. MACHNICH: -- Your Honor, would you mind signing  
10 an ex parte order for expedited transcripts for this hearing?

11 THE COURT: I don't mind. Thank you.

12 MS. MACHNICH: Thank you, Your Honor.

13 MR. DICKERSON: Thank you, Your Honor.

14 THE COURT: Alright and stay in touch with Brandonn and  
15 he'll help you finalize that.

16 MS. MACHNICH: Okay, thank you so much, Your Honor.

17 THE COURT: Thank you.

18 MS. MACHNICH: Bye.

19 [Hearing concluded at 9:31 a.m.]

20 \* \* \* \* \*

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

24   
25 DALYNE EASLEY  
Court Recorder/Transcriber

Felony/Gross Misdemeanor

COURT MINUTES

July 02, 2018

---

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

---

July 02, 2018      09:00 AM      Defendant's Motion to Reconstruct the Record

HEARD BY:      Scotti, Richard F.      COURTROOM: RJC Courtroom 03B

COURT CLERK: Jacobson, Alice

RECORDER:      Easley, Dalayne

REPORTER:

PARTIES PRESENT:

Michael Dickerson

Attorney for Plaintiff

State of Nevada

Plaintiff

Tegan Machnich

Attorney for Defendant

**JOURNAL ENTRIES**

Colloquy between the Court and counsel regarding photos L,K,U, offered at trial. There being no objection, COURT ORDERED, motion GRANTED. Defense exhibits L,K,U were incorrectly labeled as "withdrawn". Furthermore, e-mail correspondence by the parties to be made as a Court exhibit if recoverable.



Marke  
Case #  
Propo



3335

# LVPD Forensic Lab

Lab#: 16-04801

## Identifiler-PLUS Allele Table

NOTE: Unless otherwise noted, profile abnormalities containing asterisks are a reflection of the original data as analyzed in GeneMapper ID-X and may not reflect the final interpretation

Project(s): BV-081716-HOB

Red - single source allele(s) below 200rfu suitable for comparison

\* - allele(s) below 200rfu, unsuitable for comparison

[ ] - less than 60% of largest peak

NR - no activity above 400rfu

OL - off-ladder allele

INC - inconclusive for comparison

### Item 2 (2T)

Swab - handgun

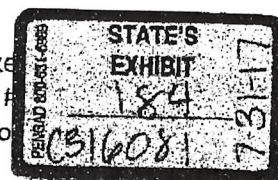
### Item 3 (31T)

Buccal - K. Valentine

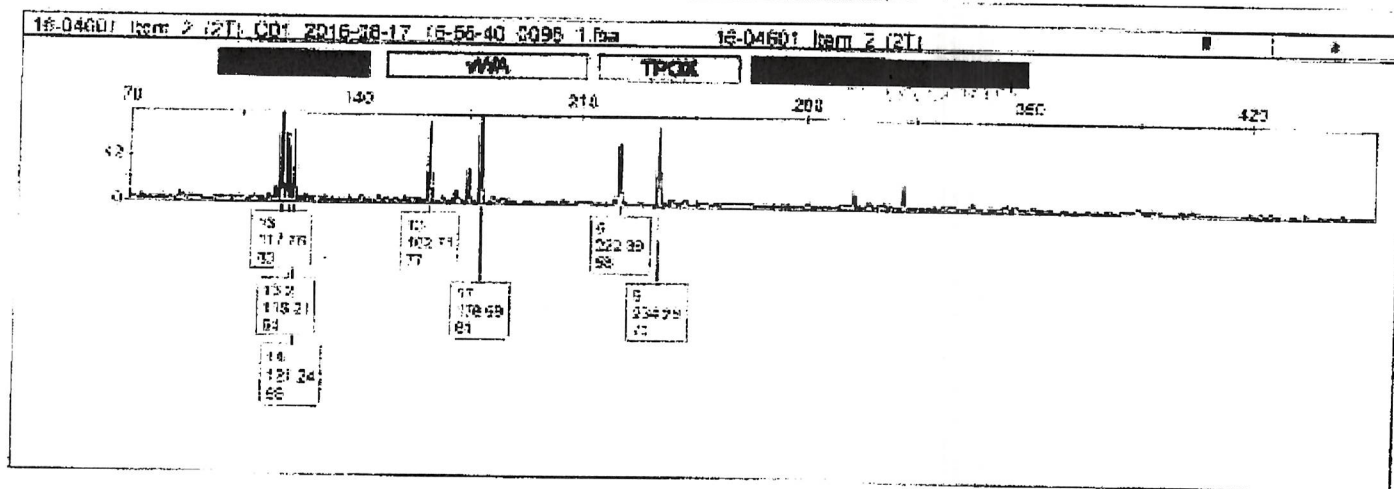
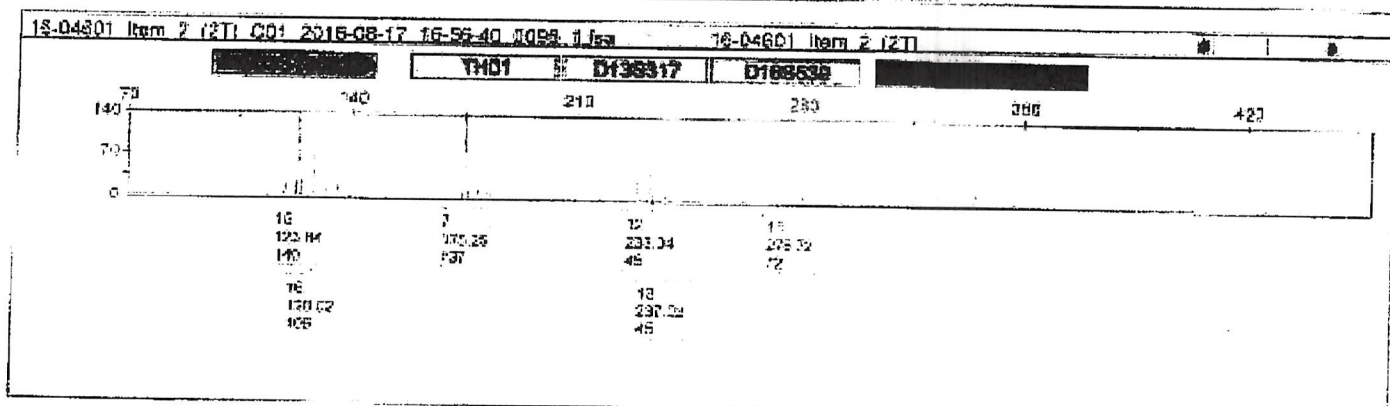
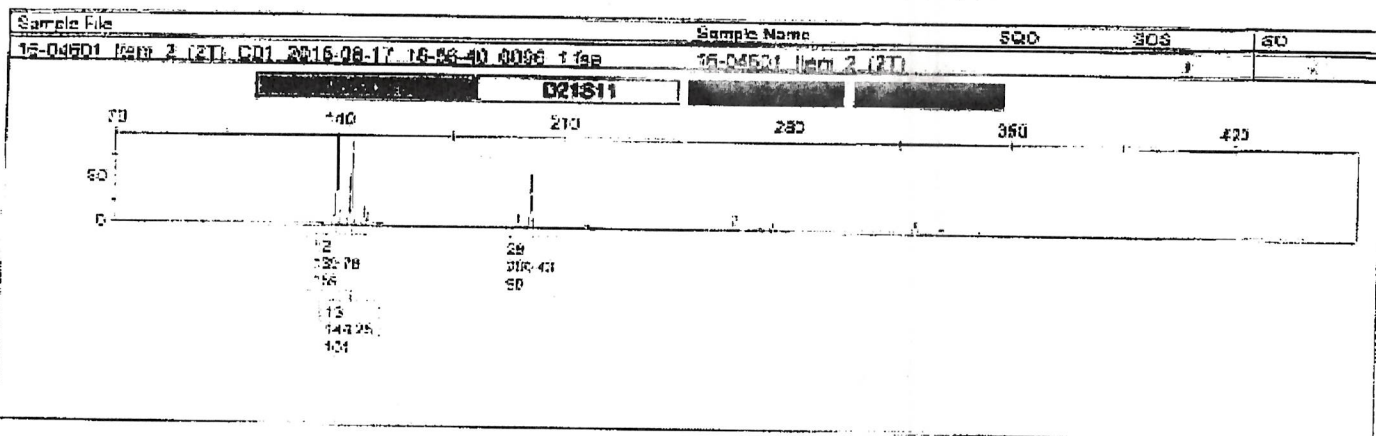
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D13S318	*	12, 13
D16S933	*	11
D18S51	NR	22, 23
D19S433	*	13, 13.2
VWA	*	13, 17
TPOX	*	6, 9
D18S51	NR	17, 19
	X, Y	X, Y
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	*	24, 25

D1S1168  
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D13S318  
D16S933  
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D18S51

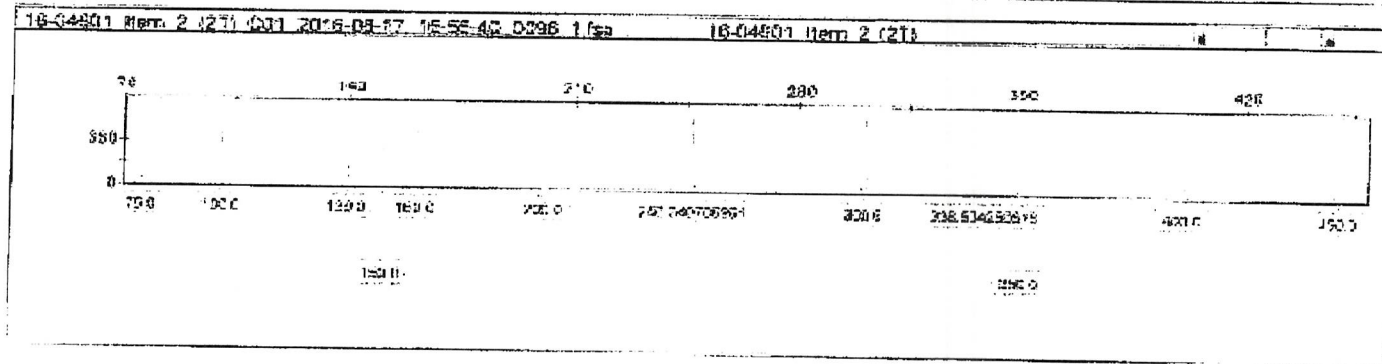
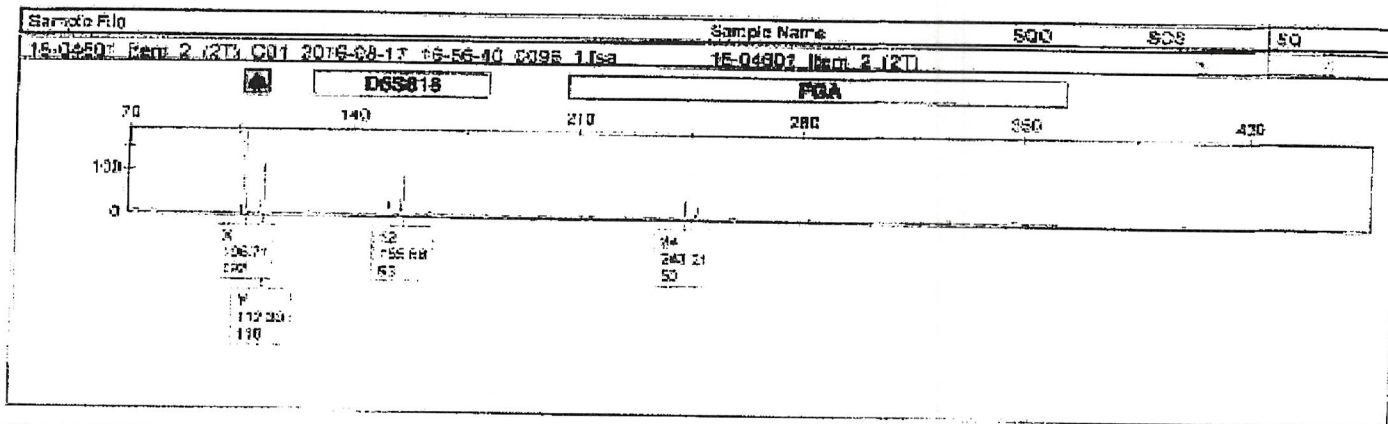
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- partial  
- mixture of at least  
2 w/ male  
- conclusive mixture  
due to limited data

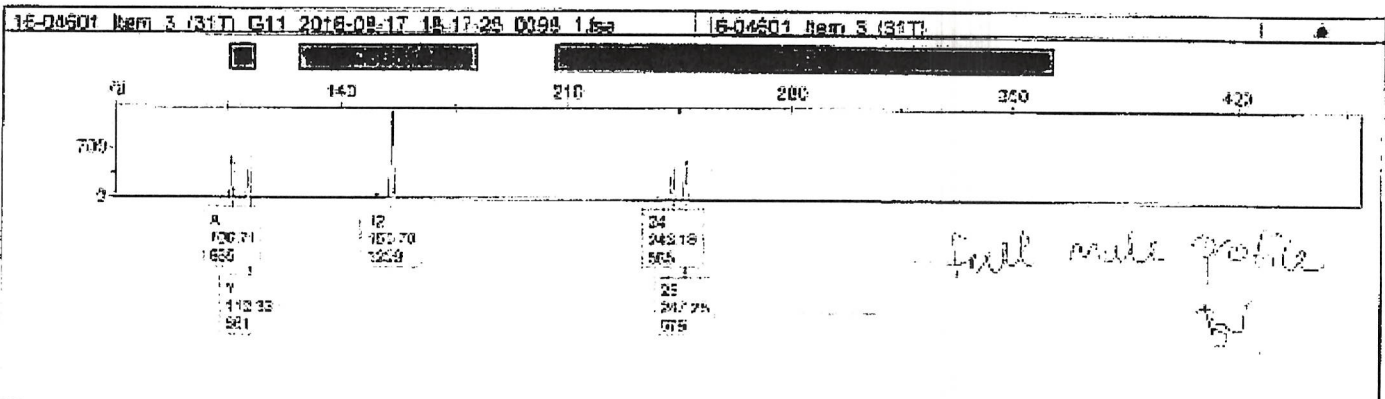
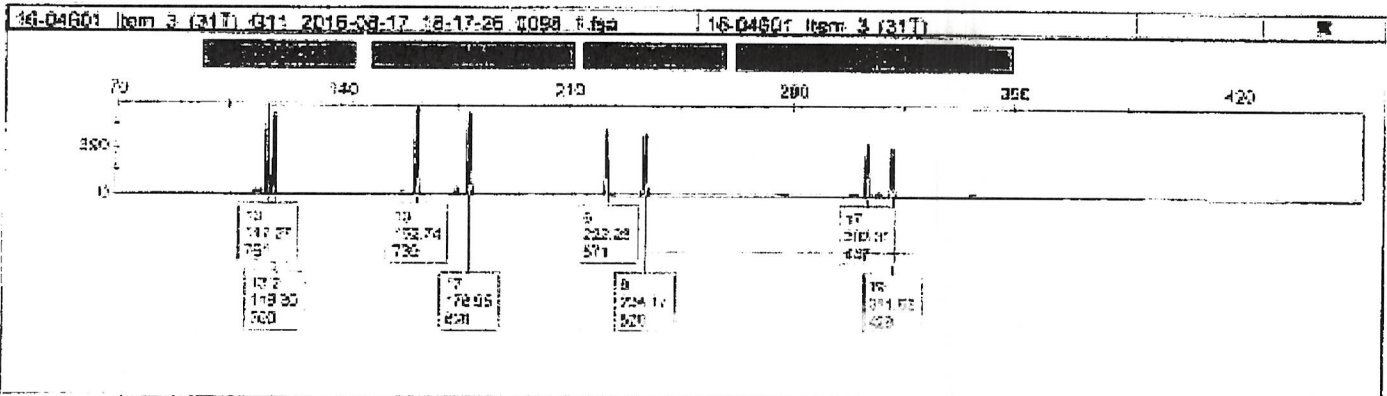
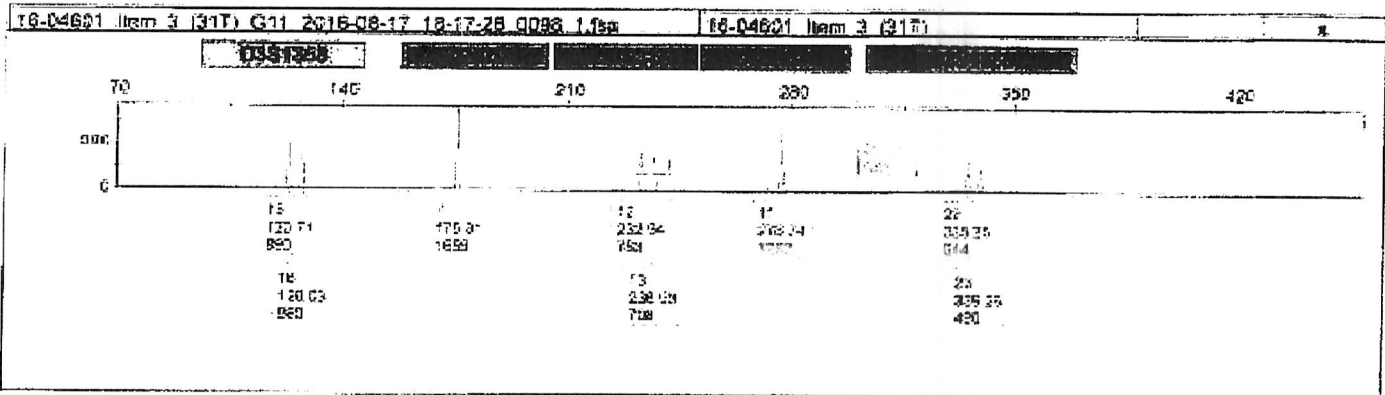
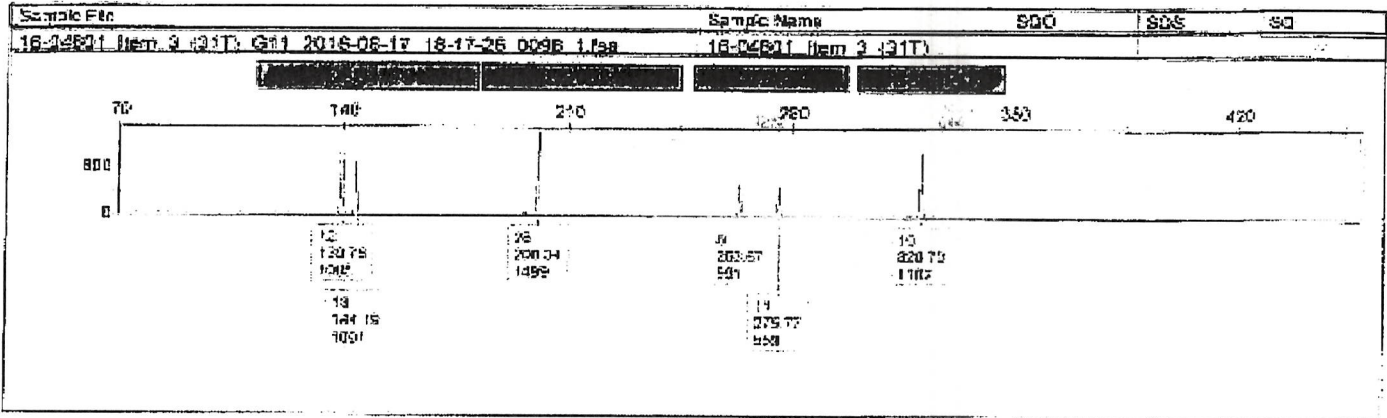


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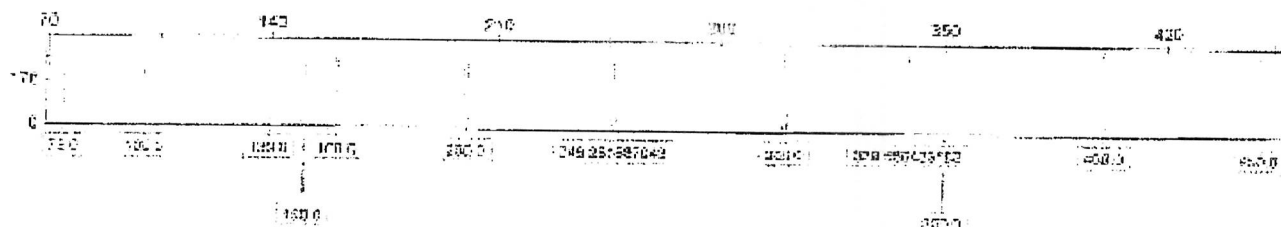


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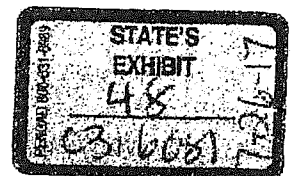


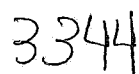
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KEANDRE VALENTINE, ) No. 74468  
)  
Appellant, )  
)  
vi. )  
)  
THE STATE OF NEVADA, )  
)  
Respondent. )  
\_\_\_\_\_)

<p><b>PHILIP J. KOHN</b> Clark County Public Defender 309 South Third Street Las Vegas, Nevada 89155-2610</p> <p>Attorney for Appellant</p>	<p><b>STEVE WOLFSON</b> Clark County District Attorney 200 Lewis Avenue, 3<sup>rd</sup> Floor Las Vegas, Nevada 89155</p> <p><b>ADAM LAXALT</b> Attorney General 100 North Carson Street Carson City, Nevada 89701-4717 (702) 687-3538</p> <p>Counsel for Respondent</p>
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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 2 day of August, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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