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Aug 29 2018 02:34 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**IN THE SUPREME COURT
OF THE STATE OF NEVADA**

JAVAR ERIS KETCHUM,
Appellant,

vs.

STATE OF NEVADA,
Appellee,

Supreme Court No. 75097

District Court Case No. C319714

DEFENDANT’S APPENDIX

DATED this 30th day of August, 2018.

JAVAR ERIS KETCHUM,
by his attorney,

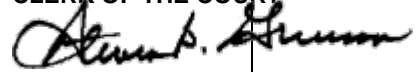
/s/ Nicholas M. Wooldridge

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JAVAR ERIS KETCHUM,

Defendant.

Case No.: C-16-319714-1

Dept. XVII

NOTICE OF APPEAL

Notice is hereby given that Javar Ketchum, the defendant in the above-captioned matter, hereby appeals to the Supreme Court of Nevada from the Final Judgment entered in this action on the February 5, 2018, and any and all orders and rulings that were adverse to him, whether or not subsumed within the February 5, 2018 Final Judgment.

DATED this 6th day of February, 2018.

JAVAR ERIS KETCHUM,
by his attorney,

/s/ Nicholas M. Wooldridge

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Wooldridge Law Ltd.

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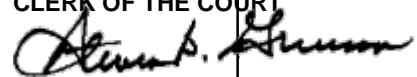
CERTIFICATE OF SERVICE

I confirm that on this 6th day of February, 2018, a copy of the foregoing Notice of Appeal was served on the below District Attorney's Office by having the same e-filed and courtesy copied to pdmotions@clarkcountyda.com, which in turn provides electronic service to:

Marc DiGiacamo, Esq.
Chief Deputy District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge, Esq.



JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAVAR ERIS KETCHUM aka
James Ketchum
#6009695

Defendant.

CASE NO. C-16-319714-1

DEPT. NO. XVII

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165, and COUNT 2 – ROBBERY WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.380, 193.165; and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165, and COUNT 2 – ROBBERY WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.380, 193.1655; thereafter,

DA-000003

1 on the 1st day of February, 2018, the Defendant was present in court for sentencing with counsel
2 NICHOLAS WOOLDRIDGE, ESQ., and good cause appearing,

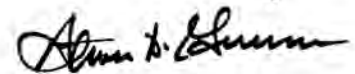
3 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition
4 to the \$25.00 Administrative Assessment Fee, \$4,750.00 Restitution to Victim of Crimes Fund
5 payable jointly and severally with Co-Defendants and \$150.00 DNA Analysis Fee including
6 testing to determine genetic markers plus \$3.00 DNA Collection Fee, the Defendant is
7 SENTENCED to the Nevada Department of Corrections (NDC) as follows: **COUNT 1** – LIFE
8 with the eligibility for parole after serving a MINIMUM of TWENTY (20) YEARS plus a
9 CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM
10 parole eligibility of NINETY-SIX (96) MONTHS for the Use of a Deadly Weapon; and
11 **COUNT 2** - a MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM
12 Parole Eligibility of FORTY-EIGHT (48) MONTHS, plus a CONSECUTIVE term of ONE
13 HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY-
14 EIGHT (48) MONTHS for the Use of a Deadly Weapon, CONCURRENT with COUNT 1;
15 with FOUR HUNDRED SEVENTY-FIVE (475) DAYS credit for time served
16
17
18

19 DATED this 5 day of February, 2018.

20
21 
22 MICHAEL VILLANI
23 DISTRICT COURT JUDGE
24
25
26
27
28

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA



CLERK OF THE COURT

THE STATE OF NEVADA,

Plaintiff,

vs.

JAVAR ERIS KETCHUM, aka James
Ketchum, ANTOINE, BERNARD, aka
Antoine Jeanpierre Bernard,
RODERICK VINCENT, aka Roderick
Regale Vincent, MARLO CHILES,

Defendants.

GJ No. 16AGJ147A-D
DC No. C319714

Taken at Las Vegas, Nevada

Tuesday, November 29, 2016

2:33 p.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Reported by: Danette L. Antonacci, C.C.R. No. 222

02:26 1 GRAND JURORS PRESENT ON NOVEMBER 29, 2016
2
3 PAUL MORTALONI, Foreperson
4 MARY ANN GOTHARD, Secretary
02:26 5 SHERRY LAYNE, Assistant Secretary
6 DAVID BAX
7 ARTHUR BYRD
8 NORMA MARTIN
9 MELVINA MISSOURI-DONOVAN
02:26 10 KATHERINE MUNIZ
11 ADRIENNE ODONOGHUE
12 JOHN ORESCHAK
13 MARRENA POUNCY
14 DELORES POWELL
02:26 15 MICHAEL TALKINGTON
16 DIANA WILSON
17 LAWRENCE WONG
18
19 Also present at the request of the Grand Jury:
02:26 20 Marc DiGiacomo, Chief's Deputy District Attorney
21 Steven Rose, Deputy District Attorney
22
23
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02:26

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INDEX OF WITNESSESExamined

CHRISTOPHER BUNN

9

02:26	1	<u>INDEX OF EXHIBITS</u>	
	2		
	3	<u>Grand Jury Exhibits</u>	<u>Identified</u>
	4	1 - PROPOSED INDICTMENT	5
02:26	5	2 - SELECT PORTIONS OF SURVEILLANCE VIDEO	21
	6	3, 4 - PHOTOGRAPHS	25
	7	5 - 14 - PHOTOGRAPHS	11
	8	15 - PHOTOGRAPH	21
	9	16, 17, 18 - PHOTOGRAPHS	18
02:26	10	19, 20 - PHOTOGRAPH	34
	11	21 - PHOTOGRAPH	35
	12	22 - VIDEO	14
	13	23 - PHOTOGRAPH	24
	14	24 - PHOTOGRAPH	23
02:26	15	25 - PHOTOGRAPH	15
	16	26 - PHOTOGRAPH	15
	17		
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	25		

02:26 1 LAS VEGAS, NEVADA, NOVEMBER 29, 2016

2 * * * * *

3 DANETTE L. ANTONACCI,

4 having been first duly sworn to faithfully

02:26 5 and accurately transcribe the following

6 proceedings to the best of her ability.

7 MR. DIGIACOMO: Good afternoon ladies and

8 gentlemen. My name is Marc DiGiacomo. I'm here with

9 Steven Rose and we are two deputy district attorneys

02:33 10 here in Clark County. We are here to present a case

11 that has been stylized in Grand Jury Exhibit Number 1

12 under Grand Jury case number 16AGJ147A- D that alleges

13 crimes against four individuals. The first individual's

14 name on the Indictment is Javar Eris Ketchum. At some

02:34 15 point if we ask you to deliberate we're going to add by

16 interlineation aka James Ketchum. The second individual

17 is Antoine Bernard, a Roderick Vincent and a Marlo

18 Chiles.

19 As it relates to Mr. Ketchum, he's charged

02:34 20 in both Counts 1 and 2 with the murder of Ezekiel Davis

21 and the robbery of Mr. Davis, although at the end of

22 this, in line 11 on page 2 of the Indictment, I do not

23 believe there's going to be evidence of a cellular phone

24 being taken from Mr. Davis.

02:34 25 Mr. Bernard is charged with both robbery

02:34 1 with use of a deadly weapon of Mr. Davis, as well as
2 accessory to murder as it relates to Mr. Davis.

3 And then Mr. Vincent and Mr. Chiles are
4 only charged in the accessory to murder counts.

02:35 5 Before we begin presenting evidence I have
6 some instructions to provide you on the elements of the
7 crimes in the Indictment. The first being murder.

8 Murder is the unlawful killing of a human
9 being with malice aforethought, either express or
02:35 10 implied. The unlawful killing may be effected by any of
11 the various means by which death may be occasioned.

12 Malice aforethought means the intentional
13 doing of a wrongful act without legal cause or excuse or
14 what the law considers adequate provocation. The
02:35 15 condition of mind described as malice aforethought may
16 arise, from anger, hatred, revenge, or from particular
17 ill will, spite or grudge toward the person killed. It
18 may also arise from any unjustifiable or unlawful motive
19 or purpose to injure another, proceeding from a heart

02:35 20 fatally bent on mischief or with reckless disregard of
21 consequences and social duty. Malice aforethought does
22 not imply deliberation or the lapse of any considerable
23 time between the malicious intention to injure another
24 and the actual execution of the intent but denotes an

02:36 25 unlawful purpose and design as opposed to accident and

02:36 1 mischance.

2 There are certain kinds of murder in the
3 first degree which carry with them conclusive evidence
4 of malice aforethought. One of these classes of first
02:36 5 degree murder is a killing committed in the perpetration
6 or attempted perpetration of robbery. Therefore, a
7 killing which is committed in the perpetration of a
8 robbery is deemed to be murder in the first degree,
9 whether the killing was intentional, unintentional or
02:36 10 accidental. This is called the Felony Murder Rule.

11 The intent to take the property must arise
12 prior to the act constituting the killing for the Felony
13 Murder Rule to apply under a robbery theory.

14 Robbery is the unlawful taking of personal
02:36 15 property from the person of another, or in her presence,
16 against her will, by means of force or violence or fear
17 of injury, immediate or future, to his or her person or
18 property. Such force or fear must be used to obtain or
19 retain possession of the property, or to prevent or
02:36 20 overcome resistance to the taking, in either of which
21 cases the degree of force is immaterial. Such taking
22 constitutes robbery whenever it appears that, although
23 the taking was fully completed without the knowledge of
24 the person from whom taken, such knowledge was prevented
02:37 25 by the use of force or fear.

02:37 1 The value of property or money taken is not
2 an element of the crime of robbery, and it is only
3 necessary that the State prove the taking of some
4 property or money.

02:37 5 Every person who is not the spouse or
6 domestic partner of the offender and who, after the
7 commission of a felony, destroys or conceals, or aids in
8 the destruction or concealment of, material evidence, or
9 harbors or conceals such offender with intent that the
02:37 10 offender may avoid or escape from arrest, trial,
11 conviction or punishment, having knowledge that such
12 offender has committed a felony or is liable to arrest,
13 is an accessory to the felony.

14 "Domestic partner" means a person who is in
02:37 15 a domestic partnership that is registered pursuant to
16 chapter 122A of NRS, and that has not been terminated
17 pursuant to that chapter.

18 That completes my instructions on the case.
19 If the Grand Jury has no questions I would call my one
02:38 20 witness. Thank you.

21 THE FOREPERSON: Please raise your right
22 hand.

23 You do solemnly swear the testimony you are
24 about to give upon the investigation now pending before
02:38 25 this Grand Jury shall be the truth, the whole truth, and

02:38 1 nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 THE FOREPERSON: Please be seated.

4 You are advised that you are here today to

02:38 5 give testimony in the investigation pertaining to the
6 offenses of murder with use of a deadly weapon, robbery
7 with use of a deadly weapon, and accessory to murder,
8 involving Javar Ketchum, Antoine Bernard, Roderick
9 Vincent and Marlo Chiles.

02:38 10 Do you understand this advisement?

11 THE WITNESS: Yes, sir.

12 THE FOREPERSON: Please state your first
13 and last name and spell both for the record.

14 THE WITNESS: Christopher Bunn.

02:39 15 C-H-R-I-S-T-O-P-H-E-R, B-U-N-N.

16 CHRISTOPHER BUNN,

17 having been first duly sworn by the Foreperson of the
18 Grand Jury to testify to the truth, the whole truth,
19 and nothing but the truth, testified as follows:

02:39 20 EXAMINATION

21

22 BY MR. DIGIACOMO:

23 Q. Detective, how are you employed?

24 A. With the Las Vegas Metropolitan Police

02:39 25 Department.

02:39 1 Q. In what capacity?

2 A. As a homicide detective.

3 Q. How long have you been with Metro?

4 A. Since 1992.

02:39 5 Q. And how long have you been in homicide?

6 A. Nine years.

7 Q. I'm going to direct your attention back to

8 September 25th of 2016. Did you become involved in the

9 investigation of a homicide that was committed against

02:39 10 an Ezekiel Davis at 4230 South Decatur Boulevard here in

11 Clark County, Las Vegas, Nevada?

12 A. Yes.

13 Q. When you received notification of the

14 incident, did you go to that scene?

02:39 15 A. I did.

16 Q. And when you arrived on scene was Mr. Davis

17 still present or had he been transported?

18 A. He had been transported.

19 Q. If you could, could you briefly describe to

02:39 20 us the scene that you arrived at on Decatur?

21 A. It's a parking lot for a strip mall. There

22 are, it's one large building but there's several

23 businesses within that building. The building that

24 seemed to be, or the business that was primarily

02:40 25 involved in this was at the very south end. The edge of

02:40 1 the building was between Decatur, it faced Decatur, so
2 the building faced to the west, and it was east of
3 Decatur. So when we arrived at that location there were
4 several cars still in the parking lot. The building was
02:40 5 closed and locked from the interior and there were
6 multiple police cars in the parking lot and then there
7 was yellow tape up around there and several police
8 officers still present at the scene.

9 Q. If I told you that your report indicates
02:40 10 that the initial call to 911 occurred about 6:22 in the
11 morning, does that seem accurate to you?

12 A. Yes, sir.

13 Q. I'm going to show you what has been marked
14 as Grand Jury Exhibit Numbers 5 through 14 and ask you
02:40 15 to just briefly flip through those and see if you
16 recognize what is depicted in those photographs.

17 A. Yes, sir.

18 Q. Do those appear to be photographs taken by
19 a crime scene analyst during the time that the scene was
02:41 20 being processed on September 25th?

21 A. Yes, sir.

22 Q. I'm going to put up some of these and just
23 ask you to describe for the ladies and gentlemen of the
24 Grand Jury what we're looking at and I'm going to start
02:41 25 with Grand Jury Exhibit Number 5.

02:41 1 A. This is the building itself and on the very
2 north end of the building that faces to the west is
3 Peters and Associates and it's an attorney law office.
4 There is another cabinetry business. And at the very
02:41 5 south end you can kind of see a sign up on the very top
6 at the very south end but on the building itself and
7 that's going to be the business that we were concerned
8 with, it says Top Knotch.

9 Q. And as I zoom into that in State's Exhibit
02:42 10 Number 6, we're talking about this location over here
11 being the business that you were most focused on?

12 A. Yes, sir.

13 Q. Looking at State's Exhibit Number 6, is
14 there an area that you believe associated with where Mr.
02:42 15 Davis wound up being injured?

16 A. The area directly behind the white car that
17 you can see, to the back of it you can see where there's
18 a pair of shoes at that location, and obviously you
19 can't tell they're shoes from here, but I know that they
02:42 20 are shoes and they were placed under his head.

21 Q. And then State's Exhibit Number 7.

22 A. These are shoes and the hat. There's a
23 chain there, glasses, cellular telephone. And we found
24 some other jewelry within the parking lot as well.

02:42 25 Q. I'm going to skip by Number 8 and jump up

02:43 1 to Number 9 here. In Number 9, do you recognize what's
2 depicted in sort of the middle of this photograph?

3 A. That's a pair of pants. They're maroon in
4 color. I think they were like corduroy type pants but
02:43 5 they're a maroon pair of pants.

6 Q. And putting up Exhibit Number 11.

7 A. And that's a closeup of the same thing.

8 Q. Now up back, if I can go back to Exhibit
9 Number 9. This black vehicle in this region there, was
02:43 10 there an item of evidence, as I put up Exhibit
11 Number 10, which was relevant to your investigation?

12 A. That's correct. And you may find it
13 difficult to see but on the left hand side of this
14 particular photograph is a cartridge case, it's a

02:44 15 9-millimeter cartridge case, and it was by the right
16 rear wheel of that particular vehicle.

17 Q. Now when you arrived on scene, you said
18 that the parking lot was locked down by law enforcement
19 officers?

02:44 20 A. That's correct.

21 Q. And that the businesses, none of them
22 appeared open to you at that point in time?

23 A. That's correct. I believe it was a Sunday
24 morning, we were there very early in the morning hours
02:44 25 so it wasn't, you know, a weekend, so none of the

02:44 1 businesses were open.

2 Q. Eventually was a witness contacted who was
3 in the area who provided a video of the last moments of
4 Mr. Davis's life?

02:44 5 A. Yes.

6 Q. Okay. And have you earlier today reviewed
7 that video and it's been marked now as Grand Jury
8 Exhibit Number 22?

9 A. I have.

02:44 10 Q. I'm going to publish for the ladies and
11 gentlemen of the Grand Jury Exhibit Number 22.

12 A. This is our victim Ezekiel Davis. You can
13 see towards the lower left of his abdomen or to the
14 right of his belly button from that vision is a bullet
02:45 15 hole and the gentleman that's checking his vital signs
16 and trying to talk to him is Deshawn Byrd, B-Y-R-D.

17 Q. And we can sort of see in this video the
18 shoes that are underneath Mr. Davis's head as well as
19 the fact that he's only got a pair of underwear on and
02:45 20 no pants.

21 A. That's correct.

22 Q. As you were processing the crime scene, did
23 there come a point in time when some individuals exited
24 the front of Top Knotch?

02:45 25 A. Yes. We actually banged on the door for, I

02:45 1 don't remember how many times, but about 11 o'clock in
2 the morning we have four individuals, maybe five
3 individuals that come to the door. I think it's four
4 individuals that come to the door. They open the door
02:45 5 from the inside and come out and talk to us.

6 Q. And putting up Exhibit Number 12. That's
7 the front door of that particular location and that
8 vehicle that's in front, was that associated with one of
9 the people that came out of Top Knotch at 11 o'clock in
02:46 10 the morning?

11 A. Yes, it was. Roderick Vincent.

12 Q. I'm going to put up for you Grand Jury
13 Exhibit Number 25 and ask you if you recognize the
14 person that's depicted in 25.

02:46 15 A. That is Roderick Vincent.

16 Q. Did another individual by the name of Marlo
17 Chiles also exit Top Knotch at that time?

18 A. Yes, and that is a picture of Marlo Chiles.

19 Q. And for the record that is Grand Jury

02:46 20 Exhibit Number 26.

21 Did you have an opportunity to speak with
22 both Mr. Vincent and Mr. Chiles?

23 A. I did.

24 Q. And let's start with Mr. Chiles. What is
02:46 25 it that you talked to Mr. Chiles about?

02:47 1 A. Mr. Chiles, I asked for his identity and
2 what his relationship was to the business. He told me
3 that he was the manager of Top Knotch Apparel, that it
4 was a new business, but they did some after hours
02:47 5 partying and that kind of stuff in the business as well.
6 When I asked him about if he was always present when the
7 business was open, he said yes, although they were not
8 open during what we would consider normal business
9 hours, he said they were a relatively new business so
02:47 10 they weren't fully as he put it open at this time.

11 Q. While you were processing the scene --
12 well, eventually do you also go inside Top Knotch as
13 well?

14 A. We did. We obtained a search warrant and
02:47 15 made entry into Top Knotch Apparel.

16 Q. When you were processing both the outside
17 and the inside, did you see something that might be of
18 interest to you in investigating the homicide of Mr.
19 Davis?

02:47 20 A. Yes. We were, and we even noticed this
21 from the outside, there are cameras that are associated
22 with Top Knotch Apparel. There are cameras at the
23 exterior, outside the front door, and interior there
24 were multiple cameras set up throughout the business.
02:48 25 We followed the cables back to where it would appear

02:48 1 they were all centrally located where the DVR recording
2 device would normally be located, all of the wires came
3 to that area but the DVR was gone.

4 Q. Did you ask Mr. Chiles about the fact that
02:48 5 there's cameras that appear to be, that there should be
6 some sort of recording device associated with it?

7 A. I did, and he told me that because they're
8 a relatively new business they had installed the cameras
9 but the DVR recording device had not yet been installed
02:48 10 so they didn't have one for it.

11 Q. So he indicated there was no recording for
12 the inside that may have occurred?

13 A. That is correct.

14 Q. I want to go back to Mr. Vincent. Did you
02:48 15 talk to Mr. Vincent as well?

16 A. Yes. Roderick Vincent said that he was
17 renting a room from the business, from Top Knotch, to
18 run a sound studio. He had a separate office that was a
19 locked area. I noticed that there were cameras on the
02:49 20 exterior of the door inside the business and again
21 cables running to those cameras and he again said that
22 there was no recording devices for any of those cameras
23 as well.

24 Q. So both Mr. Vincent and Mr. Chiles both
02:49 25 tell you there's no recording devices either for the

02:49 1 main Top Knotch area or for the recording studio that
2 Mr. Vincent had in the Top Knotch store?

3 A. That's correct.

4 Q. During the course of processing the crime
02:49 5 scene, did your warrant authorize you to enter that
6 silver Cadillac we saw sitting out front of Top Knotch?

7 A. It did.

8 Q. Were you able to identify who the owner of
9 that vehicle was?

02:49 10 A. The registered owner was Roderick Vincent.

11 Q. I'm going to put up for you -- well, let me
12 show them to you first. I'm showing you what has been
13 marked as Grand Jury Exhibits 16, 17 and 18 and ask you
14 if you recognize what's depicted in those photographs.

02:49 15 A. Yes, sir.

16 Q. And are those photographs also taken by the
17 crime scene analyst during the processing?

18 A. Yes, sir.

19 Q. I'm going to put up for you Grand Jury

02:50 20 Exhibit Number 16. What are we looking at?

21 A. This is the back seat of the Cadillac and
22 those are DVR recording devices for surveillance
23 systems.

24 Q. And then 17?

02:50 25 A. That's depicting the face of one called the

02:50 1 Night Owl and that's just the brand name of that
2 particular recording device and the other one is the
3 back of a device, the other device.

4 Q. And then 18.

02:50 5 A. And that is the, you saw the back of the
6 device on that prior picture, this is the front of it
7 and it's sitting on the top or the hood of the car at
8 this point.

9 Q. Were those items collected and impounded?

02:50 10 A. They were.

11 Q. And once you were able to access -- or were
12 you able to access both those items?

13 A. We were.

14 Q. And when you were able to access this Swann
02:50 15 device, were you able to find something relevant to your
16 investigation?

17 A. Extensive amount of video that showed
18 basically almost the entire event.

19 Q. I want to go back before I play that video
02:51 20 and ask you to identify certain photographs I'm going to
21 put up here, make sure you've looked at these, Grand
22 Jury Exhibits 13, 14 and 15, and ask you are those
23 photographs taken in areas of Top Knotch that we can see
24 from the surveillance cameras?

02:51 25 A. Yes.

02:51 1 Q. So let's start with Grand Jury Exhibit
2 Number 13.

3 A. Thirteen, this is the front of the store.
4 You're standing basically inside the front room and
02:51 5 you're looking out towards the parking lot to the west
6 and you're looking at the southwest corner. They have a
7 like display cabinet set there with some hats and stuff
8 in it, the cash register is set there, but that's the
9 front of the store and you can kind of see, you're
02:52 10 looking out the front window and you can see the
11 Cadillac, Roderick Vincent's Cadillac outside the front
12 doors.

13 Q. As to I pan to the right of this picture in
14 Grand Jury Exhibit Number 14.

02:52 15 A. This is the actual front room, what would
16 be the normal display area of the store. And you can
17 see that there's almost no items for sale within the
18 store other than a few along the edges of it.

19 Q. Now other than this main area that you
02:52 20 would see when you come in, was there sort of a
21 nightlife area with couches and a dancer pole sort of
22 behind this somewhere?

23 A. Yes. To the east of this there was a
24 complete set up, it had a bar, a pool table, a platform,
02:52 25 a stripper pole, couches, entire platform set up that

02:52 1 was just to the east of this location.

2 Q. And then as you go in behind the business,
3 and this is Grand Jury Exhibit Number 15, what are we
4 looking at in 15?

02:52 5 A. This is the back of Top Knotch Apparel.
6 This is on the east side of the building itself. The
7 doors that you see open there are entry into what would
8 have been that bar area, pool table, and this is
9 completely enclosed and fenced area to the back of the
02:53 10 Top Knotch.

11 Q. Now earlier today did you come down and
12 review Grand Jury Exhibit Number 2 which are select
13 portions of the surveillance video that was collected
14 off that Swann device we saw earlier?

02:53 15 A. Yes.

16 Q. And that particular Swann device, how much
17 information is contained on there?

18 A. I think it's like several gigs, like 45
19 gigs of some sort of information, you know, contained
02:53 20 within it. It's quite a bit.

21 Q. More than one day's worth of four different
22 camera angles?

23 A. Yes.

24 Q. And when you're using the actual Swann
02:53 25 device, can you do something with it that we're not

02:53 1 going to be able to do here in this room with the video?

2 A. Yeah. The control system within that
3 device allows you to zoom in on the video itself. So
4 you can actually pan all the way in and you can actually
02:54 5 zoom images up to like four times greater than what
6 we'll be able to see.

7 Q. Now there's a clock that's maintained with
8 these as well?

9 A. There is.

02:54 10 Q. And that particular clock, was it off local
11 time?

12 A. It was.

13 Q. Approximately how far?

14 A. Approximately an hour.

02:54 15 Q. So is it an hour earlier on the recording
16 than it is local time?

17 A. Correct.

18 Q. So I'm going to start with, on Grand Jury
19 Exhibit Number 2, the first camera angle, and ask you
02:54 20 what are we looking at here?

21 A. This is the back lot of Top Knotch and it
22 was the fenced-in area that we saw earlier in the
23 photograph. You can see the door that's propped open
24 there, that's the door we were looking at, there's six
02:54 25 individuals depicted here. Several of them are the

02:55 1 people that we are here reference to.

2 Q. So let's talk about is Mr. Chiles in this
3 video?

4 A. He is. He's in the scooter.

02:55 5 Q. So this individual who is sitting down here
6 is Marlo Chiles?

7 A. That's correct.

8 Q. And if you were to play this video, the
9 video is of the kind of quality where you can look at

02:55 10 Marlo and go yeah, that's him on the video?

11 A. Yeah.

12 Q. What about Mr. Vincent, can we identify
13 Mr. Vincent from this video?

14 A. Yes. Roderick Vincent has on a baseball
02:55 15 cap. You can see the writing across the front of his
16 shirt and he's basically facing the camera.

17 Q. Now there are two other individuals that
18 are in white, one with the number 3 and another
19 individual in just a white shirt. Were you eventually
02:55 20 able to identify those two individuals?

21 A. Yes. The gentleman in the just white is
22 Antoine Bernard and the individual with the 3 on the
23 back of his shirt is Javar Ketchum.

24 Q. So let's start with Grand Jury Exhibit

02:56 25 Number 24. Do you recognize the person depicted in that

02:56 1 photograph?

2 A. Yeah, Antoine Bernard.

3 Q. And have you personally met Mr. Bernard?

4 A. I have.

02:56 5 Q. And you've said you met Mr. Chiles, you

6 said you've met Mr. Vincent. Did you have a

7 conversation with Mr. Bernard at some point?

8 A. I have.

9 Q. And at that time did he acknowledge that

02:56 10 the person that you've identified on this video is in

11 fact him and that that's who he would be?

12 A. Yes.

13 Q. And I will get to the rest of what he told

14 you later.

02:56 15 But there's a person that you saw there in

16 a number 3 jersey. And I'm going to put up for you

17 Grand Jury Exhibit Number 23. Do you recognize the

18 person that's depicted in Grand Jury Exhibit Number 23?

19 A. Javar Ketchum.

02:56 20 Q. Now is there a point in time when you

21 learned, at least your agency had an alias for this

22 particular individual?

23 A. Also James. He does have the name James

24 Ketchum.

02:57 25 Q. But during the course of your investigation

02:57 1 his true name you were able to identify was Javar
2 Ketchum?

3 A. That is correct.

4 Q. Now initially you were provided his
02:57 5 identity before you met him; is that correct?

6 A. Yes.

7 Q. Eventually do you come into contact with
8 Mr. Ketchum?

9 A. Yes.

02:57 10 Q. And are you able to, after you view
11 Mr. Ketchum, confirm that he's the individual that's
12 depicted on the video from the Swann device?

13 A. Yes.

14 Q. Now in order to identify him, were there
02:57 15 certain pictures put out into the media to see if
16 anybody recognized him?

17 A. Yes, there were.

18 Q. And I'm going to show you now what's been
19 marked as Grand Jury Exhibits 3 and fire. What are we
02:57 20 looking at?

21 A. These are photographs of Javar Ketchum at
22 the front door of Top Knotch from the night of the
23 murder, or the morning, early morning hours of the
24 murder.

02:57 25 Q. And I am going to show these to the ladies

02:58 1 and gentlemen of the jury. So let me start with Grand
2 Jury Exhibit Number 3. In Grand Jury Exhibit Number 3,
3 one you can see some tattoos on his arms. When you
4 actually saw Mr. Ketchum does he have the same tattoo?

02:58 5 A. He does indeed.

6 Q. And his facial features in the video is of
7 fairly high quality; is that correct?

8 A. Yes, it is.

9 Q. And this kind of pull out box there, how
02:58 10 was that done or who did that?

11 A. That was done by our public information
12 officer simply to bring out just the video. It was just
13 to zoom in type snippet that they took from the same
14 video.

02:58 15 Q. So this is what was released in order to
16 identify who that individual was and at some point you
17 received information as to who he was and then once you
18 came into contact with him you realized he's in fact the
19 same guy that people have been identifying as Javar
02:58 20 Ketchum?

21 A. Yes.

22 Q. The date and time up here, you had said
23 it's an hour off, so is this actual time he's at the
24 front door 5:08 a.m.?

02:59 25 A. That's correct.

02:59 1 Q. And then Grand Jury Exhibit Number 4, sort
2 of another picture from that same sort of location?

3 A. Yes, sir.

4 Q. So now I want to jump back to Grand Jury
02:59 5 Exhibit Number 2 and the first video here and I'm going
6 to stop it here. The time up there, and it's a little
7 cut off for the ladies and gentlemen of the Grand Jury,
8 it's 2:25 on the date in question. So that would be
9 3:25 local time?

02:59 10 A. That's correct.

11 Q. And you had previously indicated that this
12 person is who?

13 A. That is Marlo Chiles. That's Roderick
14 Vincent. That is going to be Javar Ketchum. And that's
02:59 15 going to be Antoine Bernard.

16 Q. Have you ever been able to conclusively
17 establish the identity of these two individuals?

18 A. No.

19 Q. I'm going to hit play. But what is it the
02:59 20 Grand Jury should be looking at while we show about a
21 minute and a half of this particular video?

22 A. If you watch the gentleman with the number
23 3 on the back, that's Javar Ketchum, you're going to see
24 him remove a gun from his right front pocket area in his
03:00 25 right hand and he's going to display it to all of the

03:00 1 individuals that are there. And it's going to be in
2 front of him but you can see, it's a little bit
3 difficult to see because the background you have is the
4 front of Roderick Vincent's shirt which is dark in color
03:00 5 and the gun's dark in color. But that's what's going to
6 happen here. And then you'll see him place it back in
7 his pocket.

8 Q. We're going to be able to see that on this
9 video. But were you able to zoom in and confirm that
03:00 10 that appeared to be a weapon within his hand?

11 A. That's correct. Because within the Swann
12 playing system we were actually able to use that. We
13 were able to zoom in and see it clearer. But you can
14 see it here, just a little more difficult because of the
03:00 15 distance.

16 Q. Can you describe the gun we're going to
17 see?

18 A. It's a semi-automatic handgun. It's very
19 dark in color. So like I said it becomes very
03:00 20 difficult. It's probably got a four, four and a half
21 inch barrel on it I would guess.

22 Q. So now I'm going to hit play on this. And
23 if you could, could you tell us when you see Mr. Ketchum
24 draw the weapon.

03:01 25 A. He's removing it. It's going to be his

03:01 1 right hand. And his hand's in the pocket with the gun
2 at this point. And he's going to...

3 And there goes the gun. It's in his hand.
4 There's a slight flash. And you may have to step closer
03:01 5 to the monitor to be able to actually see that happen.

6 Q. I'm going to, if I can here in just a
7 second, I'm going to try and back it up for the ladies
8 and gentlemen of the Grand Jury.

9 That zoomed in it. So hold on a second. I
03:02 10 want to back it out to what it is I wanted to go to.

11 Darn it.

12 There we go. And I'm going to back it up
13 here until we get to the right point.

14 A. He should have it in his hand at this
03:03 15 point.

16 Q. Do you want to come up here and look for
17 us? I can hit play if you want to watch it.

18 A. No. It's in his hand. You can just barely
19 see it.

03:03 20 And there it is. He's twisting his hand
21 back and forth and he's now placing it back in his right
22 front pocket.

23 Q. You can stay up there as we do the other
24 videos.

03:03 25 Now I'm going to jump forward onto the

03:03 1 front door. So at some point in time after 3:30 in the
2 morning, does Mr. Ketchum wind up in front of the
3 business and coming back in at 5:08 when we saw those
4 still photographs?

03:04 5 A. That's correct. This is the 5:08 time
6 frame that we actually see him. That's the clip of the
7 video that we released to the media. He enters.

8 Q. And then what are we looking at here?

9 A. This is the front area of the interior of
03:04 10 the store itself. This is the front counter where the
11 cash register is. These are the front doors. This is
12 our victim Ezekiel Davis and you'll notice the number 3
13 on the back of Javar Ketchum's shirt as they walk out
14 the door together.

03:04 15 Q. And at least Mr. Davis appears to be
16 wearing pants at this point?

17 A. That's correct.

18 And this is Antoine Bernard here and
19 Roderick Vincent is the gentleman standing here at the
03:05 20 door.

21 Q. I'm going to move it to the front camera
22 angle.

23 A. This is Roderick Vincent, Javar Ketchum and
24 our victim Ezekiel Davis and you'll notice the big watch
03:05 25 on his left arm there.

03:05 1 Q. Now was that watch ever recovered at the
2 scene?

3 A. It was not.

4 Q. Can you describe basically what you see
03:05 5 going on there?

6 A. Both Javar and Ezekiel Davis are walking
7 northbound along the front of the building. They were,
8 as you saw, had, Davis had his arm around him. You can
9 see the lower portion of their legs here as they're
03:05 10 going -- this is going to be Antoine Bernard walking
11 around to the vehicle that's right here. You can just
12 see the wheel of it. These two seem to be talking to
13 each other but there doesn't seem to be an issue between
14 them, but clearly they're back and forth. Ezekiel has
03:05 15 walked off of the sidewalk and is now stepping back up
16 onto the sidewalk. You can see his hands movement
17 slightly there. And then the two of them eventually
18 walk off of there and walk outside of the frame. You
19 can see the bottom of the legs for Javar Ketchum still
03:06 20 standing there.

21 Q. And this is, on this 5:14, so about 6:14 in
22 the morning or about eight minutes before the 911 call?

23 A. Correct.

24 Q. This is going to roll forward for just a
03:06 25 minutes. Eventually you're going to see Mr. Chiles come

03:06 1 out that front door?

2 A. Yes, you will.

3 And you can see Javar Ketchum is still
4 standing around towards the front. He's now walked out
03:06 5 of the camera view and he's on the north side of this
6 car that's sitting right here.

7 This is going to be Marlo Chiles walking
8 out the door. He's going to sit on the hood of the
9 Cadillac and he's going to be looking in the direction
03:07 10 of where Ketchum and Ezekiel Davis are.

11 In a moment Marlo is going to come back
12 inside the building.

13 Q. And that's going to take me to...

14 A. This is the interior of the business. You
03:07 15 see Marlo coming in just from sitting on the hood. This
16 is Roderick Vincent. You can see the lady that was
17 holding open the door is now walking out here to speak
18 to this person driving this car. Over here you'll see
19 one of the men had walked out that we weren't able to
03:07 20 identify that was walking around the back of the car,
21 that was the wheel of the car, that was the back of the
22 car that you were able to see that they were standing in
23 front of.

24 This man moves over here to this vehicle,
03:07 25 appears to tell them to move. You see the vehicle back

03:08 1 out. Now this is being driven by the guy in the white
2 T-shirt which is the white only T-shirt. You can see
3 Marlo running to the back of the business. The shooting
4 has already occurred. You can see this guy dragging a
03:08 5 belt out of a pair of pants. And if you were able to
6 zoom with this feature, you can see in his right hand he
7 is currently holding a gun. And Antoine Bernard is
8 driving this black BMW 6. He goes back, still holding
9 the belt and the gun, to the body area, and you can see
03:08 10 Antoine Bernard goes over the curb, pulls forward just a
11 little bit waiting for him to get in the car. Javar
12 gets in the car and leaves. This is Marlo Chiles
13 running back into the business. This is Roderick
14 Vincent. And the video that we saw earlier where you
03:09 15 saw the man slapping the guy's face and see him laying
16 on the ground, Deshawn Byrd, he is out in the parking
17 lot already. Here's Roderick Vincent coming back in the
18 business helping everybody get out. And during the time
19 I talked to both Chiles and to Roderick Vincent he told
03:09 20 me that they hadn't seen anything, had no idea what
21 happened in the front of the business.
22 You can see this woman was one of the
23 people that was left in the business. This is a DJ that
24 was in the back. And you saw Marlo Chiles run back here
03:09 25 and you also saw Roderick Vincent move back here. And

03:09 1 what's going to happen pretty quickly here is the video
2 is going to go dead and that's when they disconnect it
3 from the back.

4 Q. And then those two DVRs get placed in
03:10 5 Vincent's car and both Vincent and Chiles tell you we
6 don't have any surveillance video and we have no idea
7 what happened out in front of our business?

8 A. Correct.

9 Q. Do you go to the autopsy of Mr. Davis?

03:10 10 A. I do.

11 Q. I'm going to show you State's Exhibit
12 Number, or Grand Jury Exhibits 19 and 20. Do you
13 recognize those?

14 A. Yes. The first, yes, I do.

03:10 15 Q. What are they?

16 A. These are pictures from the autopsy. One
17 is the face of Ezekiel Davis, the other is the body
18 showing his injury.

19 Q. State's Exhibit Number 19. That's an
03:10 20 identifying photograph of Mr. Davis?

21 A. That is Mr. Davis.

22 Q. And State's Exhibit Number 20?

23 A. To the left is the gunshot wound, to the
24 right is medical intervention in an attempt to
03:11 25 resuscitate him.

03:11 1 Q. Now on the video that we just saw, we saw
2 Mr. Bernard back up a vehicle. When you were on the
3 Swann device, could you even zoom in far enough to see
4 that that was Mr. Bernard driving that vehicle?

03:11 5 A. Yes.

6 Q. And were you able to zoom in on, I think
7 you mentioned this, when Mr. Ketchum walks back and he's
8 pulling the belt out of the pants, did you ever recover
9 that belt?

03:11 10 A. No, the belt was not recovered nor was the
11 watch we saw earlier in the other piece of it.

12 Q. So he takes the belt, he goes back to the
13 car, then he walks back to the area where Mr. Davis
14 would be lying, and then he comes back to the car and
03:11 15 that car leaves?

16 A. That's correct.

17 Q. Eventually are you able to locate that
18 vehicle? And I'm going to show you Grand Jury Exhibit
19 Number 21.

03:11 20 A. Yes.

21 Q. And what is it?

22 A. That's a photograph of a BMW 6 series. And
23 that's the vehicle that was driven away by Antoine
24 Bernard. With Javar Ketchum.

03:12 25 Q. You said earlier eventually you have a

03:12 1 conversation with Mr. Bernard?

2 A. Yes.

3 Q. And where did that conversation take place?

4 A. At his attorney's office.

03:12 5 Q. And did you record that conversation?

6 A. Yes.

7 Q. And generally did he describe for you the
8 circumstances of the evening/early morning hours of
9 September 25th?

03:12 10 A. He did.

11 Q. And what did he tell you?

12 A. Basically he said that he was there, he
13 knew that Javar was there. He calls him J. He only
14 referred to him as J, he did not have a complete name
03:12 15 for him. He said he showed him the gun. He said at
16 that time he claimed that he could be a security guard
17 for the Top Knotch because he had his license. He
18 wasn't sure what that meant, whether he got a private
19 investigator's license or concealed carry permit, he
03:12 20 said he wasn't sure. He said that his ride had left so
21 he had asked, so Ketchum asked Antoine Bernard for a
22 ride away from the premise that morning. When they
23 walked out together he had gotten in a car, he was
24 waiting for him, he didn't leave because he was his
03:13 25 ride. So we asked specifically once you see him shoot,

03:13 1 he claims he never hears the gunshot, but he backs up
2 and he stops and he waits and he says once he opens the
3 door, Ketchum tells him that he thinks he dropped his ID
4 near the body and goes back to the body to pick up his
03:13 5 ID, but he sits there and waits for him to go back to
6 the body and then return to the car a second time. We
7 asked him why didn't he just drive away and he said
8 because I was his ride.

9 Q. Now ladies and gentlemen, as it relates to
03:13 10 any statements made by Mr. Vincent, Mr. Chiles initially
11 to this detective during the course of the interview, if
12 you find that there is slight evidence of a conspiracy
13 and those are statements of co-conspirators during the
14 course of and in furtherance of the conspiracy, you can
03:13 15 consider that against all the conspirators. If you do
16 not find that those are, that there is a conspiracy
17 among the conspirators, then those statements may only
18 be used against Mr. Roderick for the statements he made
19 and Mr. Chiles for the statements he made. Likewise
03:14 20 this statement as it relates to Mr. Bernard can only be
21 used for purposes of probable cause against Mr. Bernard
22 himself.

23 Detective, after reviewing all of the
24 evidence and seeing that Mr. Ketchum, or the person you
03:14 25 identified in the video as Mr. Ketchum, having the

03:14 1 weapon, being with Mr. Davis and then removing the belt
2 from those pants and then obviously the watch is
3 missing, did you issue a warrant for his arrest?

4 A. We did.

03:14 5 Q. And for what crimes?

6 A. For murder. For murder and robbery,
7 robbery with weapon.

8 Q. Obviously the murder is somewhat
9 explanatory, killing of another human being. Why do you
03:14 10 charge Mr. Ketchum with robbery? What items did you
11 believe he took?

12 A. We see him actually steal the belt. We
13 believe he took the watch as well when he returned to
14 the body but we clearly see him take the belt from him.

03:15 15 Q. As it relates to Mr. Bernard, eventually do
16 you decide -- well, is there some sort of agreement with
17 him when you have this conversation with Mr. Bernard at
18 his lawyer's office?

19 A. We agreed at that time not to take him into
03:15 20 custody at that moment but that was the only agreement
21 we had with him.

22 Q. Eventually do you submit a charge as it
23 relates to Mr. Bernard?

24 A. Yes, we do.

03:15 25 Q. And what charge is that?

03:15 1 A. That was for robbery and accessory to the
2 murder.

3 Q. And then obviously do you arrest Mr. Chiles
4 and Mr. Roderick for anything?

03:15 5 A. Yes, we have them, they were arrested for
6 accessory to the murder for concealing the evidence.

7 MR. DIGIACOMO: That concludes my questions
8 for this witness if the Grand Jury has any questions.

9 BY A JUROR:

03:15 10 Q. How many shots were fired?

11 A. Just the one.

12 Q. Just one shot. Okay.

13 THE FOREPERSON: By law, these proceedings
14 are secret and you are prohibited from disclosing to

03:16 15 anyone anything that has transpired before us, including
16 evidence and statements presented to the Grand Jury, any
17 event occurring or statement made in the presence of the
18 Grand Jury, and information obtained by the Grand Jury.

19 Failure to comply with this admonition is a
03:16 20 gross misdemeanor punishable up to 364 days in the Clark
21 County Detention Center and a \$2,000 fine. In addition,
22 you may be held in contempt of court punishable by an
23 additional \$500 fine and 25 days in the Clark County
24 Detention Center.

03:16 25 Do you understand this admonition?

03:16 1 THE WITNESS: Yes, sir.

2 THE FOREPERSON: Thank you. You're
3 excused.

4 MR. DIGIACOMO: Ladies and gentlemen, that
03:16 5 completes the presentation of the evidence in this case.
6 I'd ask you to deliberate. Thank you.

7 (At this time, all persons, other than
8 members of the Grand Jury, exit the room at 3:16 p.m.
9 and return at 3:19 p.m.)

03:19 10 THE FOREPERSON: Mr. District Attorney, by
11 a vote of 12 or more grand jurors a true bill has been
12 returned against defendants Javar Ketchum, Antoine
13 Bernard, Robert Vincent and Marlo Chiles, charging the
14 crimes of murder with use of a deadly weapon, robbery
03:19 15 with use of a deadly weapon, accessory to murder, in
16 Grand Jury case number 16AGJ147A-D. We instruct you to
17 prepare an Indictment in conformance with the proposed
18 Indictment previously submitted to us.

19 MR. DIGIACOMO: With the interlineations as
03:19 20 suggested earlier on James Ketchum and to strike the
21 cellular phone?

22 THE FOREPERSON: Yes, correct.

23 MR. DIGIACOMO: Thank you. I will.

24 (Proceedings concluded.)

03:20 25 --oo0oo--

REPORTER'S CERTIFICATE

STATE OF NEVADA)
 :
COUNTY OF CLARK)

ss

I, Danette L. Antonacci, C.C.R. 222, do
hereby certify that I took down in Shorthand (Stenotype)
all of the proceedings had in the before-entitled matter
at the time and place indicated and thereafter said
shorthand notes were transcribed at and under my
direction and supervision and that the foregoing
transcript constitutes a full, true, and accurate record
of the proceedings had.

Dated at Las Vegas, Nevada,
December 11, 2016.

/s/ Danette L. Antonacci

Danette L. Antonacci, C.C.R. 222

03:20

1

AFFIRMATION

2

Pursuant to NRS 239B.030

3

4

The undersigned does hereby affirm that the
preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER
16AGJ147A-D:

03:20

5

6

7

8

X Does not contain the social security number of any
person,

9

03:20

10

-OR-

11

___ Contains the social security number of a person as
required by:

12

13

A. A specific state or federal law, to-
wit: NRS 656.250.

14

-OR-

03:20

15

16

B. For the administration of a public program
or for an application for a federal or
state grant.

17

18

/s/ Danette L. Antonacci

19

Signature

12-11-16

Date

03:20

20

21

Danette L. Antonacci
Print Name

22

23

Official Court Reporter
Title

24

25

1 COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON

2 Defendant JAVAR ERIS KETCHUM, aka James Ketchum did willfully, unlawfully,
3 feloniously and with malice aforethought, kill EZEKIEL DAVIS, a human being, with use of
4 a deadly weapon, to-wit: a firearm, by shooting at and into the body of the said EZEKIEL
5 DAVIS, the defendant being liable under one or more of the following theories of criminal
6 liability, to-wit: 1) the killing being willful, deliberate and premeditated and/or 2) committed
7 in the perpetration or attempted perpetration of a robbery.

8 COUNT 2 - ROBBERY WITH USE OF A DEADLY WEAPON

9 Defendant JAVAR ERIS KETCHUM, aka James Ketchum did willfully, unlawfully,
10 and feloniously take personal property, to-wit: a belt and/or watch, from the person of
11 EZEKIEL DAVIS, or in his presence, by means of force or violence, or fear of injury to, and
12 without the consent and against the will of EZEKIEL DAVIS, with use of a deadly weapon,
13 to-wit: a firearm.

14 DATED this ^{24th} day of May, 2017.

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

17
18 BY


19 JOHN GIORDANI
20 Chief Deputy District Attorney
Nevada Bar #012381

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1 Here, pursuant to the authorities and statutes discussed above, the specific discovery
2 requests are material, relevant and are discoverable as either exculpatory or impeachment
3 evidence, and are necessary to protect Mr. Ketchum's right to due process and right to a fair trial.
4

5
6 **IV. CONCLUSION**

7 **WHEREFORE**, in light of the points and authorities discussed in this memorandum, Mr.
8 Ketchum's motion to compel discovery should be granted.

9 DATED this 27 day of February, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

12 /s/ Nicholas M. Wooldridge

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1
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3 **CERTIFICATE OF SERVICE**

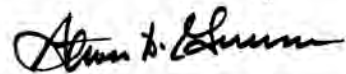
4 I confirm that on this 27th day of February, 2017, a copy of the foregoing
5 Motion to Compel was served on the below District Attorney's Office by having the same e-filed
6 and courtesy copied to pdmotions@clarkcountyda.com, which in turn provides electronic service
7 to:
8

9 Marc DiGiacamo, Esq.
10 Chief Deputy District Attorney
11 200 Lewis Ave.
12 Las Vegas, NV 89155-2212

13 /s/ Nicholas M. Wooldridge

14

Nicholas M. Wooldridge, Esq.
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CLERK OF THE COURT

Nicholas Wooldridge, Esq.
Nevada Bar # 8732
Wooldridge Law Ltd.,
400 South 7th St. 4th Floor
Las Vegas, NV 89101
Phone: (702) 330-4645
Fax: (702) 359-8494
Attorney for Defendant

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

vs.

JAVAR ERIS KETCHUM,

Defendant.

Case No.: C-16-319714-1

Dept. XVII

MOTION TO ADMIT CHARACTER EVIDENCE OF EZEKIEL DAVIS

COMES NOW, JAVAR ERIS KETCHUM, by and through its attorney, Nicholas M. Wooldridge, Wooldridge Law Ltd., and respectfully requests an Order permitting him to admit character evidence of the victim, Ezekiel Davis, at trial. This Motion is accompanied by the attached Memorandum of Points and Authorities, all papers and documents on file, as well as any oral argument, which the Court deems appropriate.

Counsel hereby moves this Court for an order permitting him to admit character evidence of Mr. Ezekiel Davis so Mr. Ketchum can pursue his theory of self-defense at trial.

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3
4 **ARGUMENT**

5 Mr. Ketchum is charged in connection with the September 25, 2016 shooting of Ezekiel
6 F. Davis outside the Top Knotch Apparel on the 4200 block of South Decatur Boulevard. The
7 State of Nevada has charged Mr. Ketchum in a five (5) count Indictment together with co-
8 defendants Antoine Bernard, Roderick Vincent, and Marlo Chiles as follows: (1) one count of
9 murder with a deadly weapon; (2) one count of robbery with use of a deadly weapon; and (3)
10 three counts of accessory to murder. Mr. Ketchum is only charged in the first two counts of the
11 Indictment.
12

13 Calendar call is set for March 7, 2017 and trial is scheduled to begin on March 13, 2017.
14 Pursuant to N.R.S. 48.045 and 48.055, Mr. Ketchum requests permission to admit character
15 evidence relating to the victim, Mr. Ezekiel Davis at trial under a number of different theories.
16 Some of these theories defense counsel does not wish to disclose at this time, unless the Court
17 wants to hear the basis, in which case defense counsel would request to do so in camera.
18 Disclosure of the said theories at this juncture would unnecessarily disclose defense strategy.
19 Counsel does not believe that this motion is even necessary under N.R.S. 48.045 and 48.055;
20 however, he is filing this motion in an abundance of caution.
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3 **CONCLUSION**
4

5 **WHEREFORE**, in light of the points and authorities discussed in this memorandum, Mr.
6 Ketchum's motion to admit character evidence of Mr. Ezekiel Davis should be granted.

7 DATED this 8th day of March, 2017.

JAVAR ERIS KETCHUM
by his attorney,

8
9 /s/ Nicholas M. Wooldridge

10 Nicholas M. Wooldridge, Esq.
11 Wooldridge Law Ltd.
12 400 South 7th Street, 4th Floor
13 Las Vegas, NV 89101
14 nicholas@wooldridgelawlv.com
15 (702) 330-4645 Tel.
16 (702) 359-8494 Fax.
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3 **CERTIFICATE OF SERVICE**

4 I confirm that on this 8th day of March, 2017, a copy of the foregoing Motion to Admit
5 was served on the below District Attorney's Office by having the same e-filed and courtesy
6 copied to pdmotions@clarkcountyda.com, which in turn provides electronic service to:
7

8 Marc DiGiacamo, Esq.
9 Chief Deputy District Attorney
10 200 Lewis Ave.
11 Las Vegas, NV 89155-2212

12 /s/ Nicholas M. Wooldridge

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Nicholas M. Wooldridge, Esq.

1 INST

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

2 ORIGINAL

MAY 26 2017

3
4 BY Olivia Black
OLIVIA BLACK, DEPUTY

5
6 DISTRICT COURT
CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO: C-16-319714-1

10 -vs-

DEPT NO: XVII

11 JAVAR ERIS KETCHUM,
12 aka James Ketchum

13 Defendant.

14 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

15 MEMBERS OF THE JURY:

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

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

23
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26
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28 C-16-319714-1
INST
Instructions to the Jury
4853911



INSTRUCTION NO. 2

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

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

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

In this case, it is charged in a Third Amended Indictment that on or about the 25th day of September, 2016, the Defendant committed the offenses of MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001); and ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138); at and within the County of Clark, State of Nevada, as follows:

COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON

Defendant JAVAR ERIS KETCHUM, aka James Ketchum did willfully, unlawfully, feloniously and with malice aforethought, kill EZEKIEL DAVIS, a human being, with use of a deadly weapon, to-wit: a firearm, by shooting at and into the body of the said EZEKIEL DAVIS, the defendant being liable under one or more of the following theories of criminal liability, to-wit: 1) the killing being willful, deliberate and premeditated and/or 2) committed in the perpetration or attempted perpetration of a robbery.

COUNT 2 - ROBBERY WITH USE OF A DEADLY WEAPON

Defendant JAVAR ERIS KETCHUM, aka James Ketchum did willfully, unlawfully, and feloniously take personal property, to-wit: a belt and/or watch, from the person of EZEKIEL DAVIS, or in his presence, by means of force or violence, or fear of injury to, and without the consent and against the will of EZEKIEL DAVIS, with use of a deadly weapon, to-wit: a firearm.

Each charge and the evidence pertaining to it should be considered separately. The fact that you may find a defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other defendant or offense charged.

It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the defendant is guilty of one or more of the offenses charged.

INSTRUCTION NO. 4

In this case the defendant is accused in a Third Amended Indictment alleging an open charge of murder. This charge may include murder of the first degree or murder of the second degree.

The jury must decide if the defendant is guilty of any offense and, if so, of which offense.

INSTRUCTION NO. 5

Specific intent is the intent to accomplish the precise act which the law prohibits. General intent is the intent to do that which the law prohibits. It is not necessary for the prosecution to prove that the defendant intended the precise harm or the precise result which eventuated if a crime is a general intent crime. Murder in the First Degree is a specific intent crime. Murder in the Second Degree and Robbery are general intent crimes.

INSTRUCTION NO. 6

Murder is the unlawful killing of a human being with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

INSTRUCTION NO. 7

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

INSTRUCTION NO. 8

Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

INSTRUCTION NO. 9

Murder of the first degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements -- willfulness, deliberation, and premeditation -- must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the actions.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the jury believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

INSTRUCTION NO. 1D

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

INSTRUCTION NO. 11

There are certain kinds of Murder in the First Degree which carry with them conclusive evidence of malice aforethought. One of these classes of First Degree Murder is a killing committed in the perpetration or attempted perpetration of a Robbery. Therefore, a killing which is committed in the perpetration or attempted perpetration of a Robbery is deemed to be Murder in the First Degree, whether the killing was intentional, unintentional, or accidental. This is called the Felony-Murder Rule.

The intent to perpetrate or attempt to perpetrate a Robbery must be proven beyond a reasonable doubt. In order for the Felony-Murder Rule to apply, under a robbery theory, the intent to take the property must be formed prior to the act constituting the killing.

INSTRUCTION NO. 12

Although your verdict must be unanimous as to the charge, you do not have to agree on the theory of guilt or liability. Therefore, even if you cannot agree on whether the facts establish the defendant is guilty of Premeditated and Deliberate Murder or Felony Murder, so long as all of you agree that the evidence establishes the defendant's guilt of murder in the first degree, your verdict shall be Murder of the First Degree.

INSTRUCTION NO. 13

You are instructed that if you find that the State has established that the defendant has committed First Degree Murder you shall select First Degree Murder as your verdict. The crime of First Degree Murder includes the crime of Second Degree Murder. You may find the defendant guilty of Second Degree Murder if:

1. You have not found, beyond a reasonable doubt, that the defendant is guilty of murder of the first degree, and

2. All twelve of you are convinced beyond a reasonable doubt the defendant is guilty of the crime of second degree murder.

If you are convinced beyond a reasonable doubt that the crime of murder has been committed by the defendant, but you have a reasonable doubt whether such murder was of the first or of the second degree, you must give the defendant the benefit of that doubt and return a verdict of murder of the second degree.

1 LAS VEGAS, NEVADA, MONDAY, MAY 22, 2017, 10:23 A.M.

2 (Outside the presence of the jury)

3 THE COURT: All right. This will be in C-319714.
4 State of Nevada versus Javar Ketchum, Roderick Vincent and
5 Marlo Chiles. We have a plea on one of the defendants?

6 MR. HART: Marty Hart appearing with Mr. Chiles.
7 Please stand up. Along with Alissa Cooley.

8 THE COURT: All right. Marlo Chiles, is that your
9 true name in.

10 DEFENDANT CHILES: Yes.

11 THE COURT: Mr. Chiles, how old are you?

12 DEFENDANT CHILES: 30.

13 THE COURT: How far did you go in school?

14 DEFENDANT CHILES: 12th grade.

15 THE COURT: So you read, write and understand the
16 English language?

17 DEFENDANT CHILES: Yes.

18 THE COURT: You have been provided a copy of the
19 Amended Indictment, wherein you're charged with performance
20 of act or neglect of duty and willful or wanton disregard of
21 safety of persons or property, gross misdemeanor. Do you
22 understand this charge?

23 DEFENDANT CHILES: Yes.

24 THE COURT: To this charge how do you plead?

25 DEFENDANT CHILES: Guilty.

1 THE COURT: Is anyone forcing you to plead guilty?

2 DEFENDANT CHILES: No.

3 THE COURT: Are you entering this plea, then, of
4 your own free will?

5 DEFENDANT CHILES: Yes.

6 THE COURT: And I have here a copy of a Guilty Plea
7 Agreement. Is this your signature here on page 5 of this
8 agreement?

9 DEFENDANT CHILES: Yes.

10 THE COURT: Before you signed this agreement, did
11 you read it?

12 DEFENDANT CHILES: Yes.

13 THE COURT: Do you understand everything in it?

14 DEFENDANT CHILES: Yes.

15 THE COURT: Did you have a chance to discuss this
16 Guilty Plea Agreement and the charge in the Amended
17 Indictment with your attorney?

18 DEFENDANT CHILES: Yes.

19 THE COURT: And you discussed your case with your
20 attorney, correct?

21 DEFENDANT CHILES: Yes.

22 THE COURT: Did he answer all your questions?

23 DEFENDANT CHILES: Yes.

24 THE COURT: Do you have any further questions?

25 DEFENDANT CHILES: No.

1 THE COURT: Did you understand the constitutional
2 rights that are listed on page 4 of this agreement?

3 DEFENDANT CHILES: Yes.

4 THE COURT: You understand you're giving up these
5 rights this morning by entering this plea of guilty?

6 DEFENDANT CHILES: Yes.

7 THE COURT: And you understand pursuant to your
8 plea that you could be looking at, what is it, 365 days --

9 MR. GIORDANI: 64.

10 MR. HART: 364.

11 THE COURT: I'm sorry?

12 MR. HART: Up to 346 days jail.

13 THE COURT: 364 days.

14 MR. HART: And a fine of 2,000.

15 THE COURT: Clark County Detention Center and a
16 fine of up to \$2,000?

17 DEFENDANT CHILES: Yes.

18 THE COURT: And you understand sentencing is up to
19 the Court?

20 DEFENDANT CHILES: Yes.

21 THE COURT: And while the negotiation calls for the
22 State to stipulate to probation, not to exceed 18 months,
23 sentencing is still up to the Court; do you understand that?

24 DEFENDANT CHILES: Yes.

25 THE COURT: And are you pleading guilty,

1 Mr. Chiles, because you did on or about the 25th day of
2 September, 2016, within the County of Clark, State of Nevada,
3 willfully and unlawfully remove a DVR system known to contain
4 footage of a robbery and murder, and providing access to
5 those systems to one of the co-defendants, Roderick Vincent
6 and/or an unknown person, to have that system concealed from
7 the police?

8 MR. HART: I believe, he provided the access so
9 that it could be removed.

10 THE COURT: So you provided access to it so it
11 could be removed so that it would cover up what had occurred
12 as far as the robbery and murder?

13 MR. HART: Did you provide access to it so it could
14 be removed?

15 DEFENDANT CHILES: Yes.

16 THE COURT: Okay. And you knew what you were
17 doing?

18 DEFENDANT CHILES: No.

19 THE COURT: Okay. You knew that there was footage
20 that may have shown the robbery and the murder, correct?

21 DEFENDANT CHILES: I knew it was possible, but I
22 didn't know it was --

23 THE COURT: Okay. And someone asked to be able to
24 remove that, and you gave them access so they could remove so
25 it could --

1 MR. HART: Well, he left the door open that was --

2 DEFENDANT CHILES: I was drinking and drunk and
3 then the door was open.

4 MR. HART: He left the door open.

5 DEFENDANT CHILES: Yeah, I left the door open.

6 THE COURT: You left the door open purposely so
7 someone could remove the footage, correct?

8 DEFENDANT CHILES: No.

9 THE COURT: Well, I can't take the plea. You need
10 to talk to your client.

11 MR. HART: Okay.

12 (Off the record at 10:27 a.m. until 10:32 a.m.)

13 (Outside the presence of the jury.)

14 THE COURT: All right. We'll be back on the record.
15 All right, Mr. Chiles, do you wish to change your plea from a
16 guilty plea to guilty plea pursuant to the Alford decision;
17 is that correct?

18 DEFENDANT CHILES: Yes.

19 THE COURT: And you've made this determination
20 after discussion with your attorney?

21 DEFENDANT CHILES: Yes.

22 THE COURT: All right. And I've already gone
23 through the canvass on the other stuff. You think that
24 entering this plea pursuant to the Alford decision is in your
25 best interest?

1 DEFENDANT CHILES: Yes.

2 THE COURT: And is one of the reasons you're
3 entering this plea pursuant to Alford is to avoid trial and
4 the original charges, which could, if you were convicted,
5 result in a harsher penalty?

6 DEFENDANT CHILES: Yes.

7 THE COURT: And, State?

8 MR. GIORDANI: If I may, Your Honor. Mr. Chiles,
9 pursuant to discussions with your attorney, it was
10 represented to us, the State, that you did not observe or in
11 any way see, hear or have any information regarding any
12 attempted robbery, robbery, murder or shooting that occurred
13 in the early morning hours of September 25th, 2016; is that
14 accurate?

15 DEFENDANT CHILES: Yes.

16 MR. GIORDANI: Would you be prepared to say that
17 under oath?

18 DEFENDANT CHILES: Yes.

19 MR. GIORDANI: Your Honor, if I may have the clerk
20 swear him in.

21 THE COURT: All right.

22 MARLO CHILES, STATE'S WITNESS, SWORN

23 THE CLERK: State and spell your name for the
24 record.

25 DEFENDANT CHILES: I'm Marlo Chiles, M-a-r-l-o,

1 C-h-i-l-e-s.

2 MR. GIORDANI: Thank you, Your Honor. Now that you
3 are under oath, I need to ask you specifically did you see,
4 hear or otherwise observe in any way any robbery, shooting,
5 attempted robbery or theft or attempted theft by any person
6 or against any person on the morning of September 25th, 2016?

7 DEFENDANT CHILES: No.

8 MR. GIORDANI: Did you see that or observe anything
9 similarly, not just in person, but on any videotape with
10 regard to any robbery, shooting, attempted robbery, theft or
11 attempted theft by any person or against any person on the
12 early morning hours of September 25th, 2016, at or around the
13 Top Notch clothing store?

14 DEFENDANT CHILES: No.

15 MR. GIORDANI: Now, that you've testified to that
16 under oath, do you understand that if you were to say
17 anything to the contrary in the future, meaning opposite of
18 what you just said, that you could potentially be subject to
19 criminal prosecution for the crime of perjury or lying under
20 oath?

21 DEFENDANT CHILES: Yes.

22 MR. GIORDANI: That's sufficient, Your Honor.

23 DEFENDANT CHILES: All right. And the factual
24 basis, what would the State be able to prove if this case
25 went to trial?

1 MR. GIORDANI: Had this case proceeded to trial,
2 the State would have proven that on or about September 25th,
3 2016, defendant, Marlo Chiles -- excuse me.

4 MR. HART: Informed Detective Dunn --

5 MR. GIORDANI: Hold on, I've got it. Did willfully
6 or unlawfully and feloniously, after the commission of a
7 murder, which is a felony, conceal and/or destroy and/or
8 aided in the destruction or concealment video surveillance
9 and/or DVRs and/or recordings, which are material evidence,
10 with the intent that defendant, Javar Eris Ketchum, might
11 avoid or escape arrest, trial, conviction and/or punishment,
12 having knowledge that defendant Javar Eris Ketchum had
13 committed the murder of Ezekiel Davis and/or was liable to
14 arrest therefore. That would have been proven to have
15 occurred at Clark County -- or in the County of Clark, State
16 of Nevada on or about September 25th, 2016.

17 THE COURT: And this was accomplished by him
18 leaving the door open so somebody would have access to remove
19 the DVR in order to destroy evidence; is that correct?

20 MR. GIORDANI: Yes, Your Honor.

21 THE COURT: And that's what you would be able to
22 prove at trial?

23 MR. GIORDANI: Yes.

24 THE COURT: All right. Mr. Chiles, I have to have
25 some reason to believe that you are guilty of the crime to

1 which you have just entered the guilty plea pursuant to
2 Alford. So I'm going to rely upon the statement just made by
3 State in making that determination. Have you had a chance to
4 discuss that with your attorney?

5 DEFENDANT CHILES: Yes.

6 THE COURT: All right. And you understand,
7 correct?

8 DEFENDANT CHILES: Um-h'm.

9 THE COURT: Is that a yes?

10 DEFENDANT CHILES: Yes. I'm sorry.

11 THE COURT: Okay. Court does find there's a
12 factual basis for the plea. Further finds that the plea is
13 being entered freely and voluntarily, understands the nature
14 of the offense, consequences of his plea, therefore accepts
15 his plea. We'll set the matter over for sentencing on --

16 THE CLERK: September --

17 THE COURT: Well, it's a gross misdemeanor so we
18 can just do a worksheet, right?

19 MR. GIORDANI: Sure, yeah.

20 THE COURT: Okay.

21 THE CLERK: September 12th, 8:30 a.m.

22 MR. GIORDANI: Thank you, Your Honor.

23 MR. HART: Do you want to wait that long or do you
24 want to --

25 THE COURT: We can set -- set it within 30 days

1 because it's just a gross misdemeanor worksheet. I don't
2 need a PSI.

3 MR. GIORDANI: Correct.

4 THE CLERK: Court's indulgence. June 22nd, 8:30
5 a.m.

6 MR. HART: Thank you very much.

7 THE COURT: Okay. Thank you, Counsel.

8 MR. HART: Pleasure seeing you, Your Honor. Have a
9 great day. Please come again.

10 THE COURT: You may be excused. All right. We're
11 going to have the jury panel brought in so we can start jury
12 selection. So, anything else we need to address before we
13 bring in the panel?

14 MR. GIORDANI: Just the one thing, Your Honor.
15 When you read the pleading document that was filed this
16 morning. It is an Amended Indictment that was filed prior to
17 Mr. Chiles entering his plea. And the reason for that
18 initial Amended Indictment was to remove another fourth
19 defendant.

20 Now that Mr. Chiles has entered his plea, I
21 believe, your Clerk has interlineated the amended I filed
22 this morning just to remove defendant Chiles from the
23 pleading document.

24 THE COURT: All right.

25 THE CLERK: (Inaudible).

1 THE COURT: Okay. So you'll have time to give us a
2 clean copy after this afternoon?

3 MR. GIORDANI: Yes, Your Honor.

4 THE COURT: All right, thank you. All right, then
5 I'll be in recess until they bring in the jury panel.

6 (Portion concluded at 10:39 A.M.)

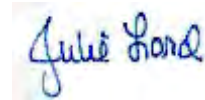
7 (Jury Voir Dire not transcribed)

8 * * * * *

9 ATTEST: I hereby certify that I have truly and correctly
10 transcribed the audio/visual proceedings in the above-
11 entitled case to the best of my ability.

12

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JULIE LORD, INDEPENDENT TRANSCRIBER

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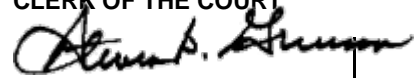
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-16-319714-1
	.	CASE NO. C-16-319714-3
Plaintiff,	.	
	.	DEPT. NO. XVII
	.	
vs.	.	TRANSCRIPT OF
	.	PROCEEDINGS
JAVAR ERIS KETCHUM,	.	
and RODERICK VINCENT,	.	
	.	
Defendants.	.	
.	

BEFORE THE HONORABLE KATHY HARDCASTLE
SENIOR DISTRICT COURT JUDGE

JURY TRIAL - DAY 2

**PARTIAL TRANSCRIPT
(EXCLUDES JURY VOIR DIRE AND OPENING STATEMENTS)**

TUESDAY, MAY 23, 2017

APPEARANCES:

FOR THE STATE:	JOHN L. GIORDANI, III., ESQ. STEVEN ROSE, ESQ. <i>Deputy District Attorneys</i>
FOR DEFENDANT KETCHUM:	NICHOLAS M. WOOLDRIDGE, ESQ.
FOR DEFENDANT VINCENT:	CARL E. ARNOLD, ESQ.

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

DA-000078

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* * * * *

EXHIBITS

DESCRIPTION

ADMITTED

STATE'S EXHIBITS:

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 Exhibit 131. 77
 Exhibits 141 through 151. 46

1 LAS VEGAS, NEVADA, TUESDAY, MAY 23, 2017, 1:35 P.M.

2 (Prior proceedings not transcribed)

3 (Inside the presence of the jury)

4 THE COURT: All right. You may be seated. Back on
5 the record. We're back in the presence of the jury and
6 members of the panel are present, counsel for both sides are
7 present, defendants are present. State, you may make your
8 opening statement.

9 (Opening Statements not transcribed)

10 THE COURT: We're going to take a short recess,
11 about ten minutes. So if the jury will step out, please.

12 THE MARSHAL: Rise for the jurors.

13 (Outside the presence of the jury)

14 THE COURT: All right. Outside the presence of the
15 jury. Counsel, you may make your record.

16 MR. GIORDANI: Your Honor, there's been extensive
17 pretrial litigation regarding the victim's history. The
18 defense attempted to elicit specific acts committed by the
19 victim in order to show he was violent. That is obviously
20 precluded by law unless for some reason the State opens the
21 door to that evidence.

22 We litigated this on Friday in front of Judge
23 Villani. He made a -- I don't know how he could be more
24 specific that anything with regard to the victim's prior
25 robberies is not admissible. The only thing the defense can

1 do when he presents his witnesses, which we understand he was
2 going to, is ask them do you know who Zeke Davis is? In your
3 opinion, is he violent?

4 He was specifically ordered when I asked the judge
5 to make this record so Your Honor would be aware of it, that
6 he could go no further. What the defense just did is grounds
7 for a mistrial and completely violates the Court's order. I
8 mean, at this point, I hate to waste the Court's time and
9 jury selection for a day-and-a-half, but that's ridiculous.
10 There is no coming -- there's no unringing that bell.

11 I don't know if the Court has the minutes at this
12 point, but I believe I printed them out and I can pull them
13 up from Friday. I don't know what else to say to that.

14 THE COURT: All right, thank you.

15 MR. WOOLDRIDGE: Sure, Your Honor.

16 THE COURT: Counsel.

17 MR. WOOLDRIDGE: First of all, Ezekiel Davis, I
18 didn't refer to prior booed acts. What I referred to was his
19 reputation, right? And his reputation is that he does have a
20 reputation for sticking people up at gunpoint. At the
21 appropriate time, if I'm really going to get into those prior
22 bad acts, which I don't want to forecast my entire defense to
23 the State, but if Mr. Ketchum takes the stand and says
24 something, well, then that's all going to come in.

25 But right now I referred to reputation. And he

1 does have a reputation for sticking people up at the
2 gunpoint.

3 MR. ROSE: And Judge, here's the issue with this,
4 is you can't simply get around the prohibition on bringing in
5 specific acts of the victim unless they're known to the
6 defendant by simply saying, well, he was a reputation for
7 doing these specific acts.

8 What the case law says is a reputation for
9 violence. And what Judge Villani's ruling, specific ruling
10 on Friday was, is that you could ask about if the person had
11 a reputation or an opinion that Mr. Davis was violent. He
12 was told specifically that he could not go farther than that.
13 He could not get into any of these specific acts.

14 And with regard to the argument that's been made
15 more than once in front of Judge Villani that, you know, he
16 doesn't have to forecast everything, Petrocelli applies to
17 everybody. 48.045 applies to everybody. And in fact,
18 Mitchell v. State indicated that -- it involved a scenario
19 where the Court, in fact, held a Petrocelli hearing prior to
20 the defense in that case bringing in other bad acts of one of
21 the witnesses.

22 This is not something that you can simply get
23 around by saying well, I don't want to show you that
24 beforehand. If we're going to have some kind of proof that
25 the defendant knew about these specific acts, I think we

1 should have that hearing beforehand, before it's brought up
2 here, which is why we filed the motion in limine. We filed
3 the motion in limine specific to address this particular
4 issue where it comes up in opening when it shouldn't, and
5 then you simply unring that bell.

6 This is exactly why we had this issue litigated on
7 Friday before the trial started.

8 THE COURT: All right. Reputation evidence with
9 the character of the victim in this type of case is
10 admissible, if you have the proper witnesses. And in order
11 for it to constitute self-defense, your client's going to
12 have to testify he knew or --

13 MR. WOOLDRIDGE: I understand that.

14 THE COURT: -- somebody's going to have to provide
15 evidence that he knew what the reputation was.

16 MR. WOOLDRIDGE: That's correct.

17 THE COURT: Specific evidence as to the specific
18 bad acts or proving the bad acts is not admissible. You're
19 not going to be able to put the victim on trial to prove that
20 he had prior convictions or had prior incidences of robbing
21 people. It's what his reputation and character was.

22 So you're stuck with witnesses who can testify they
23 were aware of his reputation. You can have a reputation of
24 being violent, even if you're not.

25 MR. WOOLDRIDGE: Sure.

1 THE COURT: It's what people around him knew of his
2 reputation, maybe stories he's read or someone else read,
3 that have no basis in truth, but that's his reputation. So
4 he's going to be allowed to put on that evidence. Be careful
5 how you argue it on opening statements, though.

6 MR. WOOLDRIDGE: Okay.

7 MR. GIORDANI: And I would just add for -- seek the
8 Court for clarification. There's a difference between a
9 reputation for violence and getting into specific acts of
10 robbery, which I believe he just did, unless I misheard.

11 THE COURT: That's where I'm cautioning him.

12 MR. WOOLDRIDGE: Okay.

13 THE COURT: All right? So be careful what you
14 state in opening statement if you don't have the evidence to
15 support it, and no, you will not be able to prove specific
16 prior bad acts, only reputation and character.

17 MR. WOOLDRIDGE: At this stage, you're correct,
18 Your Honor.

19 THE COURT: All right, thank you.

20 MR. GIORDANI: And can we move to strike that
21 portion of what defense counsel said?

22 THE COURT: I think it would just emphasize it in
23 the minds of the jury at this point so let's just go from
24 there. All right.

25 THE MARSHAL: Rise for the jurors.

1 (In the presence of the jury)

2 THE MARSHAL: The panel's present, Your Honor.

3 THE COURT: All right. Please be seated. Back in
4 the presence of the jury. All members of the panel are
5 present, counsel's present, defendants are present. You may
6 continue --

7 MR. WOOLDRIDGE: Thank you.

8 THE COURT: -- with your opening statement.

9 (Opening statements resume; not transcribed herein)

10 THE COURT: Mr. Arnold?

11 MR. ARNOLD: We'll reserve for now, Your Honor.

12 THE COURT: All right, thank you. State, you may
13 call your first witness.

14 MR. GIORDANI: State will call Deshawn Byrd.

15 DESHAWN BYRD, STATE'S WITNESS, SWORN

16 THE CLERK: Please state and spell your name for
17 the court's record.

18 THE WITNESS: Deshawn Byrd, D-e-s-h-a-w-n, B-y-r-d.

19 THE CLERK: You may be seated.

20 MR. GIORDANI: May I, Your Honor?

21 THE COURT: You may.

22 MR. GIORDANI: Thank you.

23 DIRECT EXAMINATION

24 BY MR. GIORDANI:

25 Q Mr. Byrd, do you know a person by the name of

1 Ezekiel Davis?

2 A Yes.

3 Q How long have you known Ezekiel?

4 A Over ten years.

5 Q Were you there on the morning that he was shot and
6 killed?

7 A Yes.

8 Q I wanted to talk to you about that evening and ask
9 you some very specific questions. Where exactly did this
10 occur?

11 A At Top Notch clothing store.

12 Q And so it's a clothing store?

13 A Yeah.

14 Q Is there also a club or a music area related?

15 A Yeah.

16 Q Describe that, generally, what goes on at that club
17 or music area.

18 A Basically, just they sell clothes and they had a
19 little gathering that night, I guess. That's basically -- I
20 don't -- I mean, I just go there just to chill, you know, cut
21 hair.

22 Q On that particular morning, it was September 25th,
23 2016, if I'm correct. Does that sound right?

24 A Right.

25 Q On that particular evening, can you estimate how

1 many people were at the club or the store?

2 A Over ten.

3 Q So there --

4 A What I believe --

5 Q -- was a good amount of people there?

6 A Yeah.

7 Q Was there music?

8 A Yeah.

9 Q And when, if you can remember, did you arrive
10 there?

11 A Probably about 11:00, 12:00 o'clock, around that
12 time.

13 Q So -- okay. 11:00 at night to about midnight?

14 A Yeah.

15 Q When you arrive there, did you arrived with anyone?

16 A Yeah, I did.

17 Q Okay. Was that person Ezekiel Davis?

18 A No.

19 Q Did Ezekiel arrive before you or after you?

20 A After me.

21 Q Do you know when he arrived?

22 A Around 3:00 o'clock.

23 Q Up until that point, had you been hanging out there
24 partying, listening to music, et cetera?

25 A Yeah.

1 Q Were you drinking?

2 A Yeah.

3 Q Were you smoking?

4 A Yeah.

5 Q And when I say smoking, I'm talking about
6 marijuana?

7 A Yeah.

8 Q Okay. When Ezekiel arrived, do you know if he
9 arrived with anyone?

10 A No, he didn't.

11 Q So he arrived alone?

12 A Yeah.

13 Q Was this Ezekiel, did you see what he actually came
14 in?

15 A Yeah, because I was outside.

16 Q All right.

17 A We were all -- all out front talking.

18 Q Okay.

19 A And then he just pulled up.

20 Q Okay. When he pulled up, was he in a vehicle?

21 A Yes.

22 Q And do you know make or model or anything like
23 that?

24 A I think it was a black Charger.

25 Q Okay. Like a Dodge Charger?

1 A Yeah.

2 Q Was it a nice vehicle?

3 A Yeah.

4 Q When he, Ezekiel, arrives, did you have any
5 interaction with him?

6 A Yes.

7 Q And what was that interaction?

8 A He just asked me what was going on up in there?
9 And I was like, oh, it's cool. Everybody's chilling,
10 listening to music, just kicking back. And he was like, all
11 right, well, let's go in there, and I told him to come on,
12 let's go.

13 Q When you had --

14 A Walked in there with him.

15 Q -- this initial interaction with him, did you
16 notice anything out of the ordinary about him?

17 A No. I could tell that he had been drinking.
18 That's about it.

19 Q Okay. Did you notice any big dilated pupils or
20 anything --

21 A No.

22 Q -- extreme?

23 A No.

24 Q Okay.

25 A I wasn't looking for that.

1 Q Fair enough. Was your interaction a positive one?

2 A Yeah.

3 Q Okay.

4 A Definitely.

5 Q I mean, he's your friend, right?

6 A Yeah.

7 Q So after this interaction, does he or do both of
8 you go inside? What happens next?

9 A We went inside, and everybody just basically
10 started talking to everybody, you know, just interacting with
11 others.

12 Q Were there girls there?

13 A Yeah.

14 Q Any girls dancing?

15 A Yeah.

16 Q Okay. Did there -- at any point in the night once
17 Zeke entered the club, did you see him act crazy, erratic or
18 anything like that?

19 A He was just dancing --

20 Q Okay.

21 A -- for the most part.

22 Q Did he seem like he was having a good time?

23 A Oh, yeah, definitely.

24 Q Did you ever observe him bobbing his head to the
25 music?

1 A Um-h'm.

2 Q At some point in the evening, did it -- or in the
3 morning, I guess -- we're into the morning hours now, right?

4 A Right.

5 Q At some point in the morning, did you decide you
6 were going to wrap it up and go home?

7 A Yeah.

8 Q Was Zeke still there when you did that?

9 A Yes, he was.

10 Q Okay. Did you have an interaction with him at that
11 point?

12 A Yes, I did.

13 Q And describe that for the ladies and gentlemen of
14 the jury.

15 A Basically, just I went up to him, asked him was he
16 okay? I grabbed him, I hugged him two times. And I asked
17 him is he sure he's okay because I'm about to leave. And you
18 know, when you got friends at a party, you want to make sure
19 they okay to drive or if they settled down from whatever they
20 was -- they were on, i. If they need any help home or
21 whatever. So I offered, you know, did he need my help with
22 anything. And he said no, he was fine.

23 So I went to the bathroom, and then when I went to
24 the bathroom, this happened within five minutes. Not even
25 five minutes, probably. He was out of the door, and I came

1 out of the bathroom, and I see people running in the hallway.

2 Q All right, let me stop you. I'm going to get to
3 that in a moment.

4 A Okay.

5 Q That interaction you just described with Ezekiel,
6 is that the last interaction you had with him before he was
7 shot?

8 A Yes.

9 Q During that interaction, was his demeanor positive
10 or still the same way he was earlier or was it different?

11 A He -- he was having fun. He had calmed down. You
12 could tell he had calmed down a lot. He was just having fun
13 for the most part. I didn't --

14 Q All right. We're getting around 6:00 a.m.; is that
15 about right?

16 A Probably like 5:00 something.

17 Q Okay.

18 A Yeah.

19 Q So when you had this interaction, I think you
20 described you hugged him?

21 A Yeah.

22 Q Is that right?

23 A Yeah.

24 Q When you hugged him, did you feel anything at all
25 that would indicate to you he had a weapon on him of any

1 kind?

2 A No.

3 Q When you hugged him and went to the bathroom, did
4 he stay where he was or do you know --

5 A No, he did --

6 Q -- (inaudible)?

7 A -- stay where he was.

8 Q Okay. Was he still dancing or doing whatever?

9 A No. By that time, we were all standing around.

10 Q Standing around?

11 A Yeah.

12 Q Okay. So you described, you go to the bathroom and
13 then you come out?

14 A Go to the bathroom, come out, see the people
15 running in the hallway. I run to the front door. I see a
16 car skirt off and then I see my boy laying on the ground.

17 Q Your boy being Ezekiel?

18 A Yeah.

19 Q What did you do when you saw him laying on the
20 ground?

21 A I ran over to him, grabbed him, tried to wake him
22 up. He was unconscious. And finally, when I got him to wake
23 up, he couldn't talk to me. I just kept trying to wake him
24 up, and I called the police.

25 Q Have you up until today's date heard any 911 calls

1 that were potentially made on that night?

2 A No. I -- I was the only one that called, from what
3 I know of.

4 Q Okay. So you had an actual interaction with a
5 dispatcher or somebody?

6 A Yes.

7 Q All right.

8 MR. GIORDANI: Court's brief indulgence. Thank you
9 very much, sir. And I have no further questions. I'll pass
10 the witness.

11 THE COURT: Thank you. Counsel.

12 MR. WOOLDRIDGE: Sure.

13 CROSS-EXAMINATION

14 BY MR. WOOLDRIDGE:

15 Q Mr. Byrd, do you have any prior felony convictions?

16 A I do.

17 Q What do you got?

18 A Burglary.

19 Q Anything else?

20 A Nothing I got convicted of.

21 Q You don't have a conviction for attempt possession
22 of stolen property as a felony in 2010?

23 A That's -- that's the burglary.

24 Q And a burglary in 2013?

25 A They all the same thing.

1 Q One in 2010 and one in 2013, you're saying they're
2 two separate cases?

3 A No, I didn't get convicted for no felony in 2010.

4 Q You indicated you had known Zeke for approximately,
5 ten years?

6 A Yeah.

7 Q Do you remember speaking to police about this case?

8 A Yes, I do.

9 Q Remember telling police that you grew up with him?

10 A Yep.

11 Q He's like a brother to you?

12 A Yes, I do.

13 Q I want to -- do you remember telling police that
14 what you observed when you observed Zeke that night that he
15 was super hyper?

16 A Probably.

17 Q Remember telling police that he was super hyper
18 that night?

19 A I don't recall, but I probably did say it. It was
20 a lot going on.

21 Q Do you want to see your transcript of your --

22 A I don't care to see it.

23 Q Let me just show you since you're not sure. Maybe
24 it will refresh your recollection.

25 MR. WOOLDRIDGE: Bear with me, Your Honor.

1 BY MR. WOOLDRIDGE:

2 Q Okay. I'm going to hand you --

3 THE COURT: Counsel, will you show opposing
4 counsel, please?

5 MR. WOOLDRIDGE: Of course.

6 THE COURT: Thank you.

7 BY MR. WOOLDRIDGE:

8 Q Just take a look at this document. That area.
9 Don't read it out loud or anything. And then just set it
10 down when you're done reading. (Witness reading). Are you
11 done?

12 A Yeah.

13 Q Okay. Does that refresh your recollection?

14 A Um-h'm.

15 Q Remember telling police that he was super hyper
16 that night?

17 A Um-h'm.

18 Q Yes?

19 THE COURT: Okay, sir, I'm sorry, I need "yes" or
20 "no's".

21 THE WITNESS: Yes.

22 THE COURT: Okay, thank you.

23 BY MR. WOOLDRIDGE:

24 Q Sir, he was super hyper that night, and I think you
25 also told the police that one of the things that there was

1 something telling you to ask him, are you okay? Are you
2 straight, right? Isn't that what you told the police?

3 A Yes.

4 MR. WOOLDRIDGE: No further questions.

5 THE COURT: Mr. Arnold?

6 MR. ARNOLD: No questions for this witness, Your
7 Honor.

8 THE COURT: Thank you. Any further questions?

9 MR. GIORDANI: No, Your Honor. Thank you.

10 THE COURT: All right. Mr. Byrd, thank you. You
11 may step down. You're excused.

12 THE WITNESS: All right.

13 THE COURT: You may call your next witness.

14 MR. ROSE: State would call Officer Torres.

15 OFFICER BRENNAN CHILDERS, STATE'S WITNESS, SWORN

16 THE CLERK: You may be seated. Please state and
17 spell your name for the record.

18 THE WITNESS: Officer Brennan Childers,
19 B-r-e-n-n-a-n, C-h-i-l-d-e-r-s.

20 DIRECT EXAMINATION

21 BY MR. GIORDANI:

22 Q Good afternoon, sir.

23 A Good afternoon.

24 Q How are you employed?

25 A I'm a patrol officer with the Las Vegas

1 A Two, \$300.

2 Q Okay. Did he mention being short on rent or some
3 kind of eviction or something?

4 A Previously, yes.

5 Q Okay. So you knew he was short on money. You gave
6 him 2 to \$300 as the best of your recollection?

7 A Yes.

8 Q At some point in time, did you become aware that
9 there was a person at this party that you did not know? Let
10 me ask that -- that was a poor question. At some point in
11 time, did you see a person who ultimately was shot and killed
12 at the club?

13 A Yes, later in the night.

14 Q Did you know that person at all?

15 A No.

16 Q To your knowledge, did anyone in the club know him?

17 MR. WOOLDRIDGE: Objection, Your Honor. How --

18 THE COURT: To his knowledge. If he doesn't know,
19 he doesn't know.

20 THE WITNESS: There was a lot of people there.
21 Someone knew him.

22 BY MR. GIORDANI:

23 Q Okay. To your knowledge, did the defendant know
24 him?

25 A Probably seen each other --

1 Q Okay.

2 A -- before.

3 Q When you saw this individual, was he -- did he
4 appear to be in any kind of agitated or crazy state? And I'm
5 not talking about the defendant, I'm talking about the other
6 individual. All right, let me ask it this way. Was he
7 dancing and doing what everyone else at the club was doing?

8 A Yeah, he was a dancing a little more than --

9 Q Okay.

10 A -- everyone else.

11 Q Okay. Was there any interaction that you observed
12 between that man and the defendant?

13 A Yes.

14 Q Can you describe that.

15 A Kind of like a dancing towards him like saying
16 what's going on.

17 Q Okay.

18 A Like a elbow.

19 Q Did it appear to you that it was a altercation?

20 A Not really.

21 Q Okay. At some point in time, did the defendant say
22 something about that other individual?

23 A Yes.

24 Q Okay. What did he say?

25 MR. ARNOLD: Your Honor, I'm going to ask for when

1 State's instructions to the Court?

2 THE COURT: No. I'll tell you in just a minute
3 what I require in regards to instructions.

4 MR. WOOLDRIDGE: Oh, I thought you were talking to
5 me about witnesses so --

6 THE COURT: Yeah, no, I'm waiting for --

7 MR. WOOLDRIDGE: Yeah.

8 THE COURT: -- you to just give me an estimate.

9 MR. WOOLDRIDGE: Estimated amount of witnesses will
10 be between three and five.

11 THE COURT: Okay. So we might get them done before
12 lunch or shortly after lunch --

13 MR. WOOLDRIDGE: Yeah.

14 THE COURT: -- or early in the afternoon? All
15 right. What I require in regards to jury instructions is I
16 require that you exchange your proposed jury instructions and
17 you meet and confer. I then want a stack of the ones you
18 agree upon, which are usually the stock instructions. And
19 then I require a separate stack of the ones that you disagree
20 upon.

21 I will need those by noon tomorrow. If you can't
22 meet tonight regarding the instructions or early tomorrow
23 morning, then I'm going to require you to do that over the
24 lunch hour because I find that most of the time counsel can
25 agree upon the jury instructions and then we just put them

1 together or there might be only two or three that you're
2 disagreeing upon, and we can get them settled very quickly.

3 So I often like to, on closing arguments, I like to
4 try and do closings by both sides on the same day, rather
5 than break it up overnight. So it's quite probable that
6 we'll settle the jury instructions tomorrow afternoon. And
7 if you agree upon excusing the one juror, and allowing one of
8 the alternates to stand in, or if I decide that we should do
9 that, because she'll be unable to be here Friday, then we'll
10 do closing arguments on Friday, because that way we don't
11 have a break.

12 I don't like to give the State an advantage by
13 letting them argue and then --

14 MR. WOOLDRIDGE: Yeah.

15 THE COURT: -- have the jury go home on their
16 argument alone.

17 MR. WOOLDRIDGE: I agree.

18 THE COURT: I try and do it all in the same day.

19 MR. GIORDANI: Fair enough, Your Honor.

20 THE COURT: Okay?

21 MR. GIORDANI: There's one other issue. With
22 regard to the witnesses Mr. Wooldridge is intending to call
23 tomorrow, we, of course, don't know who those witnesses are.
24 If they are witnesses who have to do with the other bad acts
25 that we've somewhat discussed throughout this trial and

1 discussed at length with Judge Villani last week, we would be
2 requesting a Petrocelli hearing if those witnesses --

3 THE COURT: This won't be necessary. You can ask
4 about the reputation, if they know of his reputation and what
5 their reputation is and how they know that, but you may not
6 bring out specific prior bad acts or ask --

7 MR. WOOLDRIDGE: We can ask their opinion, though,
8 as well, Your Honor, right?

9 THE COURT: Not their opinion. Whether or not they
10 know of his reputation.

11 MR. WOOLDRIDGE: There are --

12 THE COURT: If they know of his character and how
13 they know that.

14 MR. WOOLDRIDGE: Well, if I ask them how they know
15 that, we're going to get into --

16 THE COURT: If they've known him for 20 years and
17 they've known that he's been a problem child for 20 years,
18 they can say I've known him for 20 years. I know the stuff
19 that he's done. Okay?

20 MR. WOOLDRIDGE: Okay.

21 MR. GIORDANI: And the --

22 THE COURT: And that's -- that is proper.

23 MR. GIORDANI: Right.

24 THE COURT: Trying to prove his reputation or
25 character by bringing in prior bad acts is not appropriate.

1 MR. GIORDANI: Right.

2 THE COURT: So you need reputation or character
3 witnesses, not evidence of the prior bad acts.

4 MR. GIORDANI: Right. And only reputation or
5 opinion for violence, not stick-ups or whatever --

6 THE COURT: For violence.

7 MR. GIORDANI: Right.

8 THE COURT: Whether he's a violent character.

9 MR. GIORDANI: Just --

10 MR. WOOLDRIDGE: I mean, if these witnesses come
11 and say my opinion of this person is he's violent, that --

12 MR. GIORDANI: You wouldn't --

13 MR. WOOLDRIDGE: -- that's completely admissible?

14 MR. GIORDANI: We wouldn't object to that. That's
15 okay, but the problem is, is if --

16 THE COURT: But they have to have the --

17 MR. WOOLDRIDGE: Foundation?

18 THE COURT: There has to be some reason for them to
19 have formed an opinion. If they've known him for two seconds
20 or just read about him or read something about him, that's
21 not good enough.

22 MR. GIORDANI: That's the concern we would, of
23 course, not want to do that in front of the jury. We would
24 want an offer of proof beforehand so he's not --
25 Mr. Wooldridge is not --

1 THE COURT: You can request an offer of proof
2 beforehand.

3 MR. GIORDANI: One additional layer to this. Now,
4 of course, Mr. Ketchum doesn't have an obligation to testify,
5 everyone understands that. If Mr. Ketchum, however, intends
6 to get on the witness stand and say he knows of specific
7 acts, we would yet again be requesting a Petrocelli hearing
8 because he would need to -- they would need to prove, just as
9 State would, by clear and convincing evidence, that the
10 defendant knew about those specific acts.

11 THE COURT: All he has to know is is that he knew
12 the guy before, he knew his reputation as being a violent
13 person.

14 MR. GIORDANI: Right. And I'm not referring to
15 reputation or opinion. I think that's appropriate, but we're
16 talking about specific acts. So I just want to be very
17 clear.

18 THE COURT: No, because we're not going to prove
19 the prior bad acts. It's just what he knew and it can't just
20 be something that he heard after the fact.

21 MR. GIORDANI: And it's just reputation or opinion
22 for violence and it ends there; is that --

23 THE COURT: And how -- how he knew it. He knew it
24 because he knew this guy for -- he's seen the guy around.
25 He's heard what people had to say about him. There's all

1 kinds of ways for him to have developed his opinion -- his
2 knowledge of the guy's character or reputation.

3 MR. GIORDANI: Got it.

4 MR. ROSE: And --

5 THE COURT: Whether or not the reputation was true
6 or not.

7 MR. ROSE: Right.

8 MR. WOOLDRIDGE: You guys are more than welcome to
9 ask.

10 MR. ROSE: Because I don't want to, you know,
11 object when we've already kind of had the ruling on it, but
12 it would be State's request that if the answer to how did you
13 know it was, well, I've known him for 20 years, or I've heard
14 it out in the neighborhood, that that be the end of the
15 answer and not, well, I heard in the neighborhood that he
16 stuck up three people because that's then referencing those
17 prior bad acts.

18 THE COURT: It's referencing the prior bad acts, it
19 establishes how they know, but it's not proving, and I can
20 give a cautionary instruction that simply what they've heard
21 is not proof. They're just testifying as to reputation or
22 character. And that goes to the element of intent or
23 knowledge of the defendant. Okay?

24 I can give cautionary instructions. But yes, they
25 -- I know that my neighbor has been convicted of 20 armed

1 robberies, I get into a beef with him and there's an issue, I
2 can testify. I know this guy's violent because I know he's
3 been -- he's had several armed robberies. He knows he has a
4 history of carrying a gun. That's how you establish
5 reputation and opinion or how you establish my knowledge of
6 his reputation or opinion.

7 MR. GIORDANI: Right. All we're asking is to learn
8 that outside the presence of the jury so it doesn't --

9 THE COURT: We can do that. And I -- we can limit
10 it accordingly.

11 MR. GIORDANI: Understood.

12 THE COURT: Okay? So get your jury instructions,
13 start working together to get those prepared. And Counsel, I
14 overruled your objection to --

15 MR. WOOLDRIDGE: Yes.

16 THE COURT: -- his question because I told the jury
17 several times that the questions by counsel is not evidence.
18 So his characterization of the killing as being a murder --

19 MR. WOOLDRIDGE: Okay.

20 THE COURT: -- is not evidence, but if you wish, I
21 can -- I will reiterate that during jury instructions.

22 MR. WOOLDRIDGE: I don't need to draw attention to
23 it, Judge.

24 THE COURT: Okay. Thank you.

25 MR. GIORDANI: Thank you, Your Honor.

1 MR. WOOLDRIDGE: Thank you.

2 THE COURT: All right. Anything else before we
3 break for the afternoon?

4 MR. GIORDANI: Not on behalf of the State.

5 MR. WOOLDRIDGE: No, Your Honor.

6 THE COURT: Okay.


7 (Court recessed at 3:57 P.M., until Thursday,
8 (May 25, 2017, at 10:42 A.M.)

9 * * * *

10 ATTEST: I hereby certify that I have truly and correctly
11 transcribed the audio/visual proceedings in the above-
12 entitled case to the best of my ability.

13

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JULIE LORD, INDEPENDENT TRANSCRIBER

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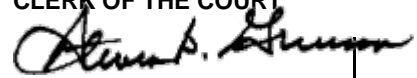
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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-16-319714-1
	.	
Plaintiff,	.	DEPT. NO. XVII
	.	
vs.	.	TRANSCRIPT OF
	.	PROCEEDINGS
JAVAR ERIS KETCHUM,	.	
	.	
Defendant.	.	
.	

BEFORE THE HONORABLE KATHY HARDCASTLE
SENIOR DISTRICT COURT JUDGE

JURY TRIAL - DAY 4

THURSDAY, MAY 25, 2017

APPEARANCES:

FOR THE STATE:	JOHN L. GIORDANI, III., ESQ. STEVEN ROSE, ESQ. <i>Deputy District Attorneys</i>
FOR DEFENDANT KETCHUM:	NICHOLAS M. WOOLDRIDGE, ESQ.

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

DA-000108

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1 LAS VEGAS, NEVADA, THURSDAY, MAY 25, 2017, 10:42 A.M.

2 (Outside the presence of the jury)

3 THE COURT: All right. Outside the presence of the
4 jury panel. Counsel for both sides are present, the
5 defendant is present.

6 MR. GIORDANI: Your Honor, I believe, we've come to
7 a stipulation regarding at least two or three lay witnesses
8 offered by the defense. The State is prepared to stipulate
9 that those witnesses may be asked two questions; have you had
10 a single interaction with Mr. Ezekiel Davis? And in your
11 opinion, is he violent? That is the stipulation the State's
12 prepared to enter into.

13 We would request and have discussed with
14 Mr. Wooldridge, bringing those witnesses in outside the
15 presence of the jury so they are very clear that they are not
16 allowed to blurt out anything in addition to that. And we
17 have a couple of cross-examination questions that we would
18 ask them that are essentially, did you convey your opinion to
19 Mr. Javar Ketchum, you know, and leave it at that.

20 And we just want to be very clear that all the
21 jurors -- I mean, witnesses understand what they need to say
22 before the jury is present.

23 THE COURT: Okay. And also, before we bring the
24 jury in, do you want me to go ahead and admonish the
25 defendant as to his right to testify or not?

1 MR. WOOLDRIDGE: Sure, Judge. And then I'd like to
2 address the issue about the juvenile convictions.

3 THE COURT: Okay. All right. Mr. Ketchum --

4 THE DEFENDANT: Yes.

5 THE COURT: -- under the Constitution of the United
6 States and under the Constitution of State of Nevada, you
7 cannot be compelled to testify in this state. Do you
8 understand this?

9 THE DEFENDANT: Yes.

10 THE COURT: You may at your own request give up
11 this right and take the witness stand and testify. If you
12 do, you will be subject to cross-examination by the District
13 Attorney, and anything you may say, be it on direct or
14 cross-examination, will be the subject of fair comment when
15 the District Attorney speaks to the jury in his final
16 argument. Do you understand that?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: If you choose not to testify, the Court
19 will not permit the District Attorney to make any comments to
20 the jury because you have not testified; do you understand
21 that?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. If you elect not to
24 testify, the Court will instruct the jury, but only if your
25 attorney specific requests as follows: The law does not

1 compel a defendant in a criminal case to take the stand and
2 testify, and no presumption may be raised and no inference of
3 any kind may be drawn from the failure of a defendant to
4 testify. Do you have any questions about any of these
5 rights?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: And you have a felony conviction within
8 the last ten years; is that correct?

9 MR. WOOLDRIDGE: Felony convictions in the last 10
10 years; you do.

11 THE DEFENDANT: Oh, yes. Yes, yes, I do, yes.
12 I --

13 THE COURT: Okay. So if you take the stand and
14 testify, the District Attorney, in the presence of the jury,
15 will be permitted to ask you if you have been convicted of a
16 felony? What was the felony? And when did it happen?
17 However, they will not be able to go into any further details
18 about it. Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Okay, thank you. All right. So do you
21 wish to bring in your --

22 MR. GIORDANI: I -- well, your -- I also want to
23 address the issue of the juvenile convictions, Your Honor.

24 THE COURT: I'm not going to allow the juvenile
25 convictions to come in. That's --

1 MR. GIORDANI: We're not offering the juvenile
2 convictions.

3 THE COURT: I know, but I'm not going to allow you
4 to ask about them either because they're too far in the past.

5 MR. GIORDANI: Well, yeah, we weren't going to ask
6 about them. All I was going to -- what I was inferring or
7 referring to is, when a defendant may offer evidence of an
8 alleged victim's pertinent trait, the prosecutor may offer
9 evidence of the defendant's same trait. That's all.

10 THE COURT: I'm finding that it's too far in the
11 past to be relevant to establish a trait. So I'm not going
12 to allow inquiry into any activity that he may or may not
13 have engaged in as a juvenile.

14 MR. GIORDANI: Okay. Can we revisit that, if the
15 defendant were to say anything to the effect of, I'm not a
16 violent person? That opens the door to --

17 THE COURT: Again, it's --

18 MR. GIORDANI: -- acts of violence.

19 THE COURT: He's 30-something now. He was 15 then.
20 It's too far in the past, and I'm going to find that it's not
21 relevant.

22 MR. GIORDANI: Okay. In addition to that, since
23 we're going to do this outside the presence, before we get
24 there, with regard to our rebuttal witnesses, I scheduled
25 them for 1:30 because I figured that would be your normal

1 break. Citing another rule it says, in a homicide case, the
2 prosecutor may offer evidence of the alleged victim's trait
3 or peacefulness to rebut evidence that the victim was the
4 first aggressor.

5 When I put those witnesses up on the stand, I just
6 want to be clear before we get there that we're offering the
7 victim's past five or so years of his life -- or two to three
8 years of his life in order to rebut what they've done so far
9 and what they're about to do with these next witnesses.

10 THE COURT: Um-hum.

11 MR. GIORDANI: And we're not going any further than
12 that. So of course, it would not open the door to any
13 specific acts, and that's exactly what, you know, the law
14 permits.

15 THE COURT: Again, specific acts are aren't allowed
16 to be brought in.

17 MR. GIORDANI: Understood.

18 MR. WOOLDRIDGE: Your Honor, but if --

19 THE COURT: Reputation and character.

20 MR. WOOLDRIDGE: I can test those witnesses'
21 knowledge about who -- if they're saying they have a
22 particular opinion or know his reputation, I can ask them
23 about those convictions?

24 MR. GIORDANI: No.

25 MR. WOOLDRIDGE: The law is pretty clear on that.

1 MR. GIORDANI: No. See, that's where --

2 THE COURT: Okay. If we get to that, we'll get to
3 it.

4 MR. GIORDANI: Okay.

5 THE COURT: But in the meantime, it is 10 minutes
6 to 11:00. We've had the jury standing out there for over an
7 hour so we will --

8 MR. WOOLDRIDGE: First witness I'll call is
9 Detective Williams.

10 MR. ROSE: You have to do that outside the
11 presence.

12 MR. WOOLDRIDGE: Detective Williams?

13 MR. GIORDANI: No, no.

14 MR. ROSE: Before we bring in the jurors, we have
15 to bring in the other two. Smith and --

16 MR. WOOLDRIDGE: Okay. Just do it, and then I can
17 call them whenever I want?

18 MR. ROSE: Yeah.

19 MR. GIORDANI: Yeah.

20 MR. WOOLDRIDGE: Okay. That's fine.

21 THE COURT: All right. Bring them in.

22 MR. WOOLDRIDGE: That's fine. I'll grab --

23 MR. GIORDANI: He'll grab him.

24 MR. WOOLDRIDGE: Grab Mr. Smith, first.

25 MR. GIORDANI: Not the jury.

1 MR. WOOLDRIDGE: I do plan on asking these
2 witnesses, basically, establishing who they are a little bit,
3 Judge.

4 THE COURT: Sure. Who they are, how they know the
5 defendant, how long they've known the defendant.

6 MR. GIORDANI: I don't think they have.

7 MR. WOOLDRIDGE: No, they don't know the defendant,
8 but in terms of, you know, what do you do for a living?

9 THE COURT: Who they are, where they live, what
10 they do for a living?

11 MR. WOOLDRIDGE: Yeah. Very, very brief.

12 THE COURT: Did you know the victim in case?

13 MR. WOOLDRIDGE: Yeah.

14 THE COURT: How long did you know the victim?

15 MR. GIORDANI: Well, the stipulation is --

16 MR. WOOLDRIDGE: The stipulation is very --

17 MR. GIORDANI: -- did you have one interaction
18 with --

19 THE COURT: Okay. So you had one interaction with
20 the victim in this case --

21 MR. WOOLDRIDGE: Yeah.

22 THE COURT: -- and based upon that one interaction,
23 do you have an opinion as to -- okay.

24 MR. WOOLDRIDGE: That's correct, Judge.

25 THE COURT: All right.

1 (Pause in the proceedings)

2 (Testimony outside the presence of the jury)

3 TRACY SMITH, DEFENDANT'S WITNESS, SWORN

4 THE CLERK: Please have a seat. Please state and
5 spell your name for court's record.

6 THE WITNESS: My name is Tracy Smith.

7 THE COURT: All right. I don't think we're going
8 to take a proper -- proffer of what he will testify to. It's
9 just simply that when you're called in to testify, you will
10 be asked some general questions about who you are and your
11 background, and then you will be asked -- the State and the
12 defense have stipulated that you will be asked two questions.

13 THE WITNESS: Okay.

14 THE COURT: One will be, did you have a single
15 incident --

16 MR. ROSE: Interaction.

17 THE COURT: -- interaction with the victim in this
18 case and --

19 MR. ROSE: Ezekiel Davis.

20 THE COURT: -- the next question was did you then
21 form an opinion as to whether or not he's violent?

22 THE WITNESS: Okay.

23 THE COURT: And that -- and your answer will be yes
24 or no.

25 THE WITNESS: Yes or no on both of them?

1 THE COURT: So --

2 THE WITNESS: Okay.

3 THE COURT: All right.

4 MR. WOOLDRIDGE: Thank you. Yeah, that's it. I
5 mean, yeah.

6 MR. GIORDANI: As long as the witness understands
7 he can't expound on be that opinion.

8 THE COURT: Yeah.

9 MR. GIORDANI: It's just "yes" or "no".

10 THE COURT: Yeah. There's not -- it's --

11 THE WITNESS: "Yes" or "no".

12 MR. WOOLDRIDGE: You can't talk about what happened
13 to him.

14 THE WITNESS: Sure.

15 MR. GIORDANI: Thank you, sir.

16 THE COURT: All right, thank you. You may step
17 down. And just remain outside until we call you in.

18 THE WITNESS: Okay.

19 THE COURT: And the other witness would be --

20 MR. GIORDANI: MacGyver.

21 MACGYVER GALE, DEFENDANT'S WITNESS, SWORN

22 THE CLERK: Please have a seat. Please state and
23 spell your name for the court's record.

24 THE WITNESS: MacGyver, Gale.

25 THE COURT: All right. Sir, the State and the

1 defense have reached a stipulation regarding testimony that
2 they're going to elicit from you. Basically, they'll ask you
3 your name, a little bit about your background and then they
4 will ask you two questions. One, whether or not you had a
5 single interaction with the victim in this case, and the
6 second question will be whether or not you have formed an
7 opinion as to -- based upon that interaction as to whether or
8 not the victim was violent.

9 THE WITNESS: Okay.

10 THE COURT: And so it will be yes or no answers to
11 those. You will not be allowed to testify as to expounding
12 on those answers. All right?

13 MR. WOOLDRIDGE: Yeah, that's right. I mean, I
14 won't use the term victim. I will use the person's --

15 THE COURT: Yeah.

16 MR. WOOLDRIDGE: -- the decedent's name.

17 THE COURT: Mr. Davis. All right?

18 THE WITNESS: Okay.

19 THE COURT: And so we just wanted to bring you in
20 to let -- to admonish you regarding that.

21 THE WITNESS: Okay.

22 THE COURT: All right. Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: Remain outside until we call you in to
25 testify.

1 MR. GIORDANI: There is one more defense witness in
2 addition to the detective that we also wanted to bring in
3 outside the presence. This doesn't have to do with any kind
4 of opinion or any violence whatsoever. It's just a offer of
5 proof that we're seeking.

6 THE COURT: Okay. And that would be?

7 MR. WOOLDRIDGE: Sure, the offer of proof, Your
8 Honor, is -- yes, witness name is Giovanni. What's
9 Giovanni's last name? Giovanni Amoroso, I believe. He's on
10 my witness list.

11 Mr. Amoroso will basically be testifying about
12 the fact that Mr. Ketchum shortly after this shooting took
13 place asked him to please watch his apartment and tell him if
14 anything fishy was happening, and that Mr. Giovanni did see
15 that there was a car basically staking out the apartment with
16 two black guys in there, and that he did tell -- he did tell
17 Mr. Ketchum's girlfriend.

18 THE COURT: And the relevance of that is?

19 MR. WOOLDRIDGE: The relevance of that is it goes
20 to the state of mind, the affect on the -- on Mr. Ketchum and
21 to why he left. I know the State is going to be talking a
22 big -- a big thing that the State is going to be hampering on
23 is the fact that Mr. Ketchum left, that he left Las Vegas,
24 that he fled.

25 MR. GIORDANI: There's no nexus whatsoever to the

1 victim and I don't know how that could ever be presented in
2 front of a jury. A random black car with two people in it.

3 MR. WOOLDRIDGE: Well --

4 THE COURT: Without more, not enough.

5 MR. WOOLDRIDGE: Well, it -- I'm not trying to
6 establish that a black car was even actually there. I'm
7 trying to establish what -- how that affected Mr. Ketchum and
8 when he heard that information, what he did. He left.

9 THE COURT: Not before he asked someone to keep an
10 eye on his apartment because he left.

11 MR. WOOLDRIDGE: Well, he left the state, right? I
12 mean, that's one of the things that the State is hampering
13 on, that he left the state.

14 THE COURT: Unless someone can testify that the car
15 in front -- two people in a car sitting in front had
16 something to do with something.

17 MR. WOOLDRIDGE: Well, I'm not even offering it
18 to --

19 THE COURT: So, what?

20 MR. WOOLDRIDGE: I'm not offering it to proof
21 truth, Judge. I'm just offering it to prove what Mr. Ketchum
22 did as a result of obtaining that information.

23 MR. GIORDANI: That's why we wanted to address this
24 because we wanted to strike this witness.

25 THE COURT: Unless Mr. Ketchum testifies that it

1 had something to do with what he did, it's not relevant.

2 MR. WOOLDRIDGE: Okay.

3 MR. GIORDANI: Thank you.

4 THE COURT: All right.

5 THE MARSHAL: Your Honor, Giovanni went down to pay
6 his meter about ten minutes ago.

7 THE COURT: Okay. We don't need him right now so
8 until I find some reason that it's relevant, the testimony is
9 not going to be allowed.

10 MR. WOOLDRIDGE: Understood.

11 MR. GIORDANI: Understood, Your Honor.

12 THE COURT: Okay.

13 MR. WOOLDRIDGE: All right.

14 THE COURT: All right. So are we ready to bring in
15 the jury?

16 MR. WOOLDRIDGE: We are.

17 MR. ROSE: Yes, Your Honor.

18 THE COURT: Okay.

19 THE MARSHAL: Rise for the jury.

20 (In the presence of the jury)

21 (Off-record bench conference)

22 THE COURT: All right. Back on the record. Back
23 in the presence of the jury panel. All members of the panel
24 are present, and counsel from both sides are present.
25 Defendant's present. Counsel, you may call your next

1 witness.

2 MR. WOOLDRIDGE: Sure, Your Honor. Defense calls
3 Detective Williams.

4 THE COURT: Oh, I'm sorry, you can be seated. It's
5 been a long morning already.

6 DETECTIVE TOD WILLIAMS, DEFENDANT'S WITNESS, SWORN

7 THE CLERK: Please have a seat. Please state and
8 spell your name for the court's record.

9 THE WITNESS: My name is Detective Tod, T-o-d,
10 Williams, W-i-l-l-i-a-m-s.

11 MR. WOOLDRIDGE: Bear with me, Your Honor.

12 DIRECT EXAMINATION

13 BY MR. WOOLDRIDGE:

14 Q Good morning, Detective.

15 A Good morning.

16 Q What is your current assignment as a detective?

17 A I'm assigned as a homicide detective with Metro.

18 Q How long you been doing that?

19 A Approximately, 14 years.

20 Q Okay. Did you interview any witnesses in this
21 case?

22 A I did.

23 Q Do you remember interviewing an individual by the
24 name of Harry Barto-Moran (phonetic)?

25 A Yes.

1 Q And when you interviewed Mr. Moran, were you aware
2 that the person that shot Zeke Davis had left the scene?

3 A I'm not sure who Zeke Davis is. I'm not familiar
4 with this case. I was only -- I only had a small part. Is
5 that the decedent?

6 Q Yes.

7 A Okay.

8 Q So you were aware at that time that the person who
9 had shot the decedent was gone, right?

10 A Yes.

11 Q And do you remember explaining to Mr. Moran that
12 there are --

13 MR. GIORDANI: Objection. Hearsay.

14 MR. WOOLDRIDGE: This is -- he's the declarant,
15 Your Honor. He's subject to cross-examination.

16 MR. GIORDANI: Explaining --

17 THE COURT: Overruled. Go ahead.

18 BY MR. WOOLDRIDGE:

19 Q So do you remember explaining to Mr. Moran that
20 there are self-defense situations in which a person who
21 defended themselves ran away.

22 MR. GIORDANI: Objection. This is argument.

23 THE COURT: Excuse me?

24 MR. GIORDANI: This is argument. Objection.
25 Argumentative.

1 THE COURT: Counsel, approach.

2 (Off-record bench conference)

3 BY MR. WOOLDRIDGE:

4 Q Do you remember telling Mr. Moran that for all you
5 knew, the decedent could have attempted to rob --

6 MR. GIORDANI: Objection. Same objection.

7 THE COURT: Sustained.

8 MR. WOOLDRIDGE: Okay. No further questions.

9 MR. GIORDANI: No questions, Your Honor.

10 THE COURT: All right. Thank you. Thank you. You
11 may step down. All right. You may call your next witness.

12 MR. WOOLDRIDGE: Sure. The defense calls Javar
13 Ketchum.

14 JAVAR KETCHUM, DEFENDANT'S WITNESS, SWORN

15 THE CLERK: Please be seated. Please state and
16 spell your name for the court's record.

17 THE WITNESS: Javar Ketchum, J-a-v-a-r,
18 K-e-t-c-h-u-m.

19 MR. WOOLDRIDGE: May I --

20 THE COURT: You may proceed.

21 DIRECT EXAMINATION

22 BY MR. WOOLDRIDGE:

23 Q Mr. Ketchum, I want to talk to you about a car
24 accident you were involved in. Were you ever in a car
25 accident?

1 A Yes.

2 Q When did that occur?

3 A That occurred August 2014.

4 Q And what happened to you?

5 A I was at the light on Flamingo and Paradise and
6 this truck just came out of nowhere and hit us on the
7 driver's side real hard and shook the car very bad.

8 Q Did you receive a settlement?

9 A Yes, I did.

10 Q Did you suffer any injuries?

11 A Yes.

12 Q What happened to you?

13 A I'm not too familiar with the medical terms of it,
14 but I went to the hospital, and I was there about four or
15 five days. So I don't know the correct terms for the -- for
16 the injuries, but it's all my back, my lower spinal cord.

17 Q I want to talk to you about a crime you were
18 convicted of in 2008.

19 A Um-h'm.

20 Q Were you convicted of a crime?

21 A Yes.

22 Q Do you know what that crime was?

23 A Yes.

24 Q What was it?

25 A It was lying to the police.

1 Q And what did you do wrong in that case?

2 A I got pulled over, and I used my cousin's name, and
3 I used his name because he had a license and I didn't.

4 Q Okay. And did you admit that you were wrong?

5 A Yes.

6 Q Did you plead guilty in that case?

7 A Yes, I did.

8 Q Did you get probation?

9 A Yes.

10 Q Are you telling the truth today?

11 A Yes, absolutely.

12 Q I want to talk to you about the gun that you were
13 carrying on September 25th, 2016. Did you carry a gun that
14 day?

15 A Yes, I did.

16 Q Why?

17 A Well, ever since my accident, you know, I feel very
18 vulnerable so I carry it for my protection.

19 Q Do you carry it for any other reason?

20 A No. I mean, it's -- I know it's foolish to carry
21 it, but I just -- I carry it for my protection because I'm --
22 I am vulnerable.

23 Q Were you trying to intimidate anybody that day that
24 you had the gun?

25 A No, absolutely not.

1 Q Why did you pull it out while you were at the Top
2 Notch?

3 A Well, I was just being foolish, dancing, caught up
4 in the moment and listening to the song. It was just a
5 stupid, stupid moment, I guess.

6 Q Was the song talking about a gun?

7 A Yes, it was.

8 Q Who was the artist, if you can remember?

9 A It was Lil Boosie. The song is called Lifestyle,
10 and he just referred to having a weapon as a part of his
11 outfit so I just was singing a part of the song.

12 Q I want to go next into the night of the Top Notch,
13 all right?

14 A Um-h'm.

15 Q What did you do that night?

16 A Well, that night I got dressed, and I went to Top
17 Notch around like 2:00.

18 Q And what were you dressed in?

19 A I had a white Polo shirt. It was white, red and
20 black with a Gucci belt, black True Religion jeans and black
21 and red denim shoes.

22 Q What kind of shoes were they?

23 A They were Balenciaga shoes.

24 Q Was that about one of your best outfits that you
25 had?

1 A Yes, most certainly.

2 Q Did you have on a belt?

3 A Yes. A Gucci belt.

4 Q Did you have any money on you?

5 A Yes.

6 Q How much?

7 A Around 24; \$2,500.

8 Q Why did you go around with so much money that
9 night?

10 A I mean, you know, it's a after spot, girls were
11 going to be there, and you know, I mean, just -- just have
12 fun, you know. Girls like guys with money.

13 Q Did you tell Antoine Bernard that you didn't have
14 any money that night?

15 A I absolutely did, so I can get the money that he
16 owed me.

17 Q You didn't want to tell him you had a bunch of
18 money?

19 A No, I didn't because I would have never got the
20 money he owed me.

21 Q Were you showing off that night?

22 A Yes.

23 Q Let me just show a photo. Did you actually -- did
24 you see that video of you with money in your hand when you're
25 at -- go into the Top Notch?

1 A Yes, I did.

2 Q Did you have to pay a cover or anything?

3 A No.

4 Q What was the point of pulling out your money?

5 A Just showing off, coming in, feeling myself.

6 Q What does that mean, feeling yourself?

7 A Feeling yourself is just, you know, when you fresh,
8 you feel, I guess, better -- not -- a little bit better than
9 everyone, and I was just flossing my money off, I guess, and
10 foolish.

11 Q I want to talk to you about when you first saw Zeke
12 Davis on September 25th, 2016. Would you tell me about your
13 first contact with him?

14 A Well, my first contact was -- to him was, I was
15 dancing at the stripper -- the stripper thing, the girls up
16 there dancing, and I had a couple loose ones and fives, so I
17 was just, you know, throwing it at them. We call it, make it
18 rain. And he bumped me, but I didn't -- I didn't think
19 nothing of it, you know. I didn't even pay attention to it.
20 I was in a moment with the girls, and then that's -- that's
21 -- that was my first contact with him.

22 Q Well, did you ask somebody, who is this bitch ass
23 nigga?

24 A Yes. I turned to Antoine after, and I was like,
25 you know, after I got done, I turned around was like who is

1 that bitch ass nigga, why -- you know? And he was just
2 like --

3 Q Did --

4 A -- laughed it off.

5 Q Were you upset?

6 A No, not at all. I was having a good time.

7 Q What was your next encounter with Mr. Davis?

8 A Well, Antoine said he was ready to go because his
9 girl, baby mother, was, you know, intoxicated and was ready
10 to leave, they had to get home for their babysitter. So I
11 shook a couple hands, and as I turn around, Zeke was there
12 with open arms embracing me, and was like hey, what's up,
13 bruh, my bad, and about bumping you earlier.

14 And I was like, no, bruh, I ain't trippin. He was
15 like, we shook hands. He was like you about to leave, like,
16 we about to walk outside. Let's -- let's hit this weed
17 before you go?

18 Q Who said let's hit this weed before you go?

19 A Zeke said it.

20 Q And what did that mean to you?

21 A Well, you know, I thought it just meant let's go
22 outside and hit the weed a couple times, bye, hi and bye.

23 Q Did you ever tell Antoine Bernard that you were
24 going to get at him?

25 A No, not at all.

1 Q What was -- so then the two of you, did you walk
2 outside together?

3 A Yes, we did, but --

4 Q Who walked out first, you or Zeke?

5 A Zeke.

6 Q And once you got outside, did there come a point
7 when Zeke pointed into a certain direction?

8 A Yeah, he was pointing like towards his car like,
9 let's walk over by the car.

10 Q Did you go over there with him?

11 A Yes, I did.

12 Q And what eventually happened when you got over
13 there?

14 A When we got over there, he -- he got in between the
15 cars, and you know, he reached like he was reaching for a
16 lighter. And, you know, I was looking -- pulling out my
17 phone and then when I looked up, he had a gun, he grabbed me
18 by my waistline, pulled me very hard, grabbed me by my belt,
19 pulled me very hard close to him, shoved the gun in my
20 waistline, and he -- he was like, he was like, you know, tear
21 it off, bitch ass nigga.

22 I'm like, and I was just, you know, I was very
23 shocked. And, you know, I just thought I was fixing to get
24 shot so I went in my pocket --

25 Q Hold on one second. Before you go there, tell me

1 about did you see Zeke's face when he did that? When he
2 pulled you right above your crotch --

3 A Yes.

4 Q -- and pulled you to him?

5 A When he jerked me very hard and I looked him in his
6 eyes, and you know, I could just see demons all over him.
7 His eyes was real black, black lines -- I mean, black sags up
8 under his eyes. He had white stuff right here or kind of
9 foaming at the mouth, and I could just tell he meant business
10 and he was very serious.

11 Q Were you scared?

12 A Yes, I was.

13 Q And a scale from one to ten, how scared were you?

14 A I mean, I don't want to sound, you know, weak, but
15 I was scared about like a nine, nine and a half.

16 Q Did you -- was that about the scariest time you've
17 ever had in your life?

18 A Yeah. Yes, absolutely.

19 Q Did you think that he was going to kill you?

20 A Yeah, I knew he was.

21 Q Did you think if you gave him your money he was
22 just going to let you go?

23 A No, I knew if I gave him my money, it was still --
24 I -- I knew I was going to get shot.

25 Q And as a result of that, those thoughts that you

1 had in your mind, what did you do?

2 A Well, you know, I just closed my eyes, and I just
3 was like, you no he, dear God help me. I was like, God, you
4 know, I called on him, and you know, I just got a warm
5 feeling and the spirit just came over me like a voice of my
6 grandmother's, it's like, you know, stand up for yourself.
7 And so I just came out of my pocket and I shot. And when I
8 shot, I hit him. And he rolled on the ground -- I mean, he
9 hit the ground. He was shaking, you know, kicking at the
10 pants and then when I seen him hit the ground, I -- I gained
11 my composure back, and you know, I got very, very angry.
12 And --

13 Q Hold on before we get into you being angry. Did
14 there come a time when he had that gun in your rib cage and
15 grabbing on your belt, did you recognize him?

16 A That's when I did recognize him because he had that
17 -- that hat on, a Gucci hat, but I couldn't really see under
18 there. All I could just see the hat and his gold teeth, and
19 I -- when he pulled me close to him, that's when I realized
20 who he was because I could see now.

21 Q Who was -- who did you know him to be?

22 A Zeke. I had had some girls -- I know a girl, she
23 works at Larry's, her name is --

24 MR. GIORDANI: Objection. This is calling for
25 hearsay.

1 A May 29th will be four years.

2 Q And do you know a person by the name of Javar
3 Ketchum?

4 A Yes.

5 Q And how long have you known him?

6 A Two years about.

7 Q Do you recall a time period of around September
8 25th, 2016?

9 A Yes.

10 Q And what do you remember about that time period?

11 A Around like late September, I got a call from Jay
12 saying just watch the house, you know, and so get off work,
13 go home, go upstairs and just see a weird car, black car,
14 there's two guys in it, so I'm watching out my window and
15 just, you know, go to sleep and they're gone the next day.

16 Q Let me cut you off. What did those people look
17 like?

18 A They were two African-American males.

19 Q Had you seen them around there before?

20 A No.

21 Q And how long -- for about what period of time did
22 they stick around watching Jay's place?

23 A It was three days.

24 Q Did you tell Jay?

25 A I tried to call Jay, but I called his girlfriend

1 because that was only contact I had.

2 Q During the time that you've known Jay, how many
3 phones does he carry with him?

4 A Two. A iPhone and a Blackberry.

5 Q Thank you.

6 THE COURT: Cross?

7 MR. ROSE: State has no questions.

8 THE COURT: All right. Thank you, sir. You may
9 step down. All right. Do you have anymore witnesses?

10 MR. WOOLDRIDGE: Bear with me, Judge. I do not,
11 Your Honor.

12 THE COURT: All right. So defense rests?

13 MR. WOOLDRIDGE: I have one issue. Could we
14 approach on it real quick?

15 THE COURT: You may.

16 (Off-record bench conference)

17 THE COURT: All right. With the one reservation
18 that we just discussed, the defense will rest?

19 MR. WOOLDRIDGE: Defense rests, Your Honor.

20 THE COURT: All right. State.

21 MR. GIORDANI: The State would call Bianca Hicks.

22 MR. WOOLDRIDGE: Your Honor, can we approach real
23 quick? I apologize.

24 (Off-record bench conference)

25 THE COURT: All right. You may call your witness.

1 MR. GIORDANI: Bianca Hicks.

2 (Pause in the proceedings)

3 BIANCA HICKS, STATE'S WITNESS, SWORN

4 THE CLERK: Please be seated. Please state and
5 spell your name for the court's record. Can you state and
6 spell your name for the court's record.

7 THE WITNESS: Bianca Hicks, B-i-a-n-c-a, H-i-c-k-s.

8 MR. GIORDANI: May I, Your Honor?

9 THE COURT: You may.

10 MR. GIORDANI: Thank you.

11 DIRECT EXAMINATION

12 BY MR. GIORDANI:

13 Q Ms. Hicks, when did you meet Ezekiel Davis?

14 A Three years ago.

15 Q And subsequent to that, did you get into a
16 relationship with him?

17 A Yes.

18 Q Do you, in fact, share children with Mr. Davis?

19 A Yes.

20 Q How many children do you have?

21 A Two.

22 Q How old are those children?

23 A Two and seven months.

24 Q Okay. Prior to -- well, not prior to. Since you
25 met Mr. Davis, did you live together?

1 A Yes.

2 Q And where did you live? You don't need to give the
3 address, but where did you live?

4 A Here in Las Vegas.

5 Q Okay. Did you live in an apartment?

6 A Yes.

7 Q Did -- what did you refer to Mr. Davis as? What
8 was his name to you?

9 A Ezekiel.

10 Q Okay.

11 A Zeke.

12 Q Zeke or Ezekiel?

13 A Um-h'm.

14 Q Okay. So I'm going to call him Zeke. Was Zeke
15 working throughout the three or so years that you were
16 together?

17 A Yes.

18 Q What type of work did he do?

19 A Car detailing, car -- car detailing, construction
20 and roofing and solar panel.

21 Q Okay. Was there ever a point in time while you
22 were together that he was without a job?

23 A No.

24 Q About three to four months prior to his death, did
25 he get a job somewhere not in Las Vegas?

1 A Yes.

2 Q Where was that?

3 A It was in Hawthorne.

4 Q Where is Hawthorne, if you know?

5 A Two hours away from here just about, I believe.

6 Q Okay. Did he still live with you during that time?

7 A Yes.

8 Q So how did he work two hours away? Would he
9 commute daily or what?

10 A No, he'll leave for a week and come home for the
11 weekend.

12 Q Okay. Who else lived with you in that apartment?

13 A Nobody. Just me and him.

14 Q The baby?

15 A And the babies.

16 Q Okay. So you said you have two babies. And I want
17 to draw your attention to September 25th of 2016. Is that
18 the day that you know that Zeke died?

19 A Yes.

20 Q Was there something else important that day?

21 A The due date of the baby.

22 Q Okay. Is that the due date of, I guess, Zeke's
23 second child?

24 A Yes, the seven-month-old.

25 Q Okay. As of -- the 25th was a Sunday; am I right?

1 A Um-h'm.

2 Q Is that a yes?

3 A Yes.

4 Q She's writing all this down so you got to --

5 A Sorry.

6 Q When -- did Zeke go out the night of the 24th,
7 which would be a Saturday into the 25th?

8 A Yes.

9 Q And what was he doing that night?

10 MR. WOOLDRIDGE: Objection, Your Honor --

11 THE COURT: Overruled.

12 MR. WOOLDRIDGE: -- as to foundation. How does she
13 know what he's doing that night? That hasn't been
14 established.

15 MR. GIORDANI: Well, I can -- I can clarify. Maybe
16 I was vague.

17 THE COURT: All right.

18 BY MR. GIORDANI:

19 Q Was Zeke going out to celebrate that night?

20 A Yes.

21 Q Okay. How often did Zeke go out around that time?

22 A Not that often. Very -- no. Because the baby was
23 on the way so he wasn't really going out.

24 Q Okay. On that evening, September 25th -- 4th of
25 2016, did you see him before he left to go out?

1 A Yes.

2 Q Okay.

3 MR. GIORDANI: Can I have the Court's brief
4 indulgence?

5 THE COURT: You may.

6 MR. GIORDANI: Thank you.

7 BY MR. GIORDANI:

8 Q Showing State's Exhibit 2, is that Zeke's car?

9 MR. WOOLDRIDGE: Your Honor, can we approach real
10 quick?

11 THE COURT: You may.

12 (Off-record bench conference)

13 BY MR. GIORDANI:

14 Q Whose car is this?

15 A Zeke's.

16 Q Okay. Can you see on your screen there, too? Did
17 you say you had seen Zeke before he went out that evening?

18 A Yes.

19 Q Do you know generally what he was wearing that
20 evening?

21 A He had on a green shirt, I believe, it was Polo,
22 some red corduroys, a Gucci bucket hat, he had a chain on, a
23 bracelet, a watch, an MCM belt, some Prada shoes, some
24 glasses, a grill, and some earrings.

25 Q Okay. Tell the ladies and gentlemen what a grill

1 is.

2 A It's like gold that shapes your teeth and it covers
3 your teeth. So it's like gold in your mouth, I believe.

4 Q Okay. That's okay. That's, I mean, enough. I
5 want to ask you what was Zeke's demeanor that evening, not in
6 general, that evening when he was going out?

7 A He was happy and feeling good.

8 Q Your daughter was due the next day?

9 A Yes.

10 Q Did you have a doctor's appointment the Monday
11 after Sunday?

12 A Yes.

13 Q I want to show you some photographs and see if you
14 -- State's 4. Oops, let me zoom out. Do you recognize
15 those?

16 A Yes.

17 Q What are those?

18 A His red pants he had on.

19 Q That?

20 A That's his ring.

21 Q These?

22 A Yes, his Prada shoes.

23 Q This?

24 A And his Gucci hat, bucket hat.

25 Q This?

1 A His glasses and his chain.

2 Q What is that?

3 A The phone he had that night.

4 Q Whose phone is that?

5 A Mine.

6 Q Why does he have your phone?

7 A His phone wasn't charging right, properly, it broke
8 for him, so I gave him that phone for him to keep contact
9 with him since the baby was due the next night, the next day.

10 Q Okay. Showing you 50. Is that that same phone?

11 A Yes.

12 Q I'm going to show you a few more photos in a
13 moment. You said he was going out. He was celebrating, he
14 was happy. There's been testimony that Zeke was on drugs
15 that night. I want to ask you very simply, did you ever know
16 Zeke to do drugs or did he ever do drugs in your presence?

17 A No.

18 Q Showing you 58, what's that?

19 A That's the ring that he proposed to me with.

20 Q Showing you State's 55. Do you know or can you
21 tell what that is?

22 A His pendent.

23 Q His pendent?

24 A A pendent to a chain.

25 Q State's 53?

1 A His earrings.

2 Q State's 49. Is that a bracelet or a chain?

3 A It's a chain.

4 Q Like a neck chain?

5 A Um-h'm.

6 Q Is that a yes?

7 A Yes.

8 Q One more. State's 123. Do you see that? Do you

9 know what that is?

10 A Bracelet.

11 Q Whose?

12 A His.

13 Q Down here?

14 A His earring.

15 Q Okay. Did you get the black Charger vehicle back

16 after Zeke's death?

17 A Yes.

18 Q When did you get it back?

19 A That day on the scene.

20 Q Okay. So detectives released it to you directly?

21 A Yes.

22 Q And did you have it for a few weeks thereafter?

23 A Um-h'm.

24 Q Is that a yes?

25 A Yes.

1 Q Okay.

2 A I'm sorry again.

3 Q One final -- did you ever see Zeke with a gun
4 during the three years that you knew him?

5 A No.

6 Q Did you own a gun or have one at your home?

7 A No.

8 MR. GIORDANI: Court's brief -- oh, I'm sorry. I
9 was going to propose some exhibits, I believe, there's an
10 objection.

11 THE COURT: All right.

12 (Off-record bench conference)

13 MR. GIORDANI: May I approach?

14 THE COURT: You may.

15 MR. GIORDANI: Thank you.

16 BY MR. GIORDANI:

17 Q I'm showing you State's Proposed Exhibit 154. What
18 is that?

19 A His daughter.

20 Q Is that a photo of him with his daughter?

21 A Him, yes.

22 Q What's on his left wrist there?

23 A His watch.

24 THE COURT: Can the jury hear because your voice a
25 little low? All right. I just wanted to make sure.

1 BY MR. GIORDANI:

2 Q Showing you State's 153. What are we looking at
3 there?

4 A With his daughter and his watch and the family.

5 Q Okay.

6 A And his earrings.

7 Q Okay.

8 MR. GIORDANI: State would move for the admission
9 of 153 and 154.

10 THE COURT: Your objection's noted.

11 MR. WOOLDRIDGE: Thank you.

12 THE COURT: They'll be admitted.

13 (State's Exhibits 153 and 154 admitted)

14 BY MR. GIORDANI:

15 Q When did he get this watch?

16 A I would say about three months before.

17 Q Those earrings, did he commonly wear those?

18 A Yes.

19 Q Showing you 154. Same watch?

20 A Yes.

21 Q What was around his waist here?

22 A His belt, his MCM belt.

23 Q Is it a big like M logo?

24 A Yes.

25 Q Okay. Showing you State's 130. Is that the same

1 belt and watch that we were talking about?

2 A Yes.

3 Q Did you send this photo to detectives at their
4 request or to someone official?

5 A Yes.

6 MR. GIORDANI: Pass the witness.

7 CROSS-EXAMINATION

8 BY MR. WOOLDRIDGE:

9 Q I'm very sorry for your loss. I take it you didn't
10 know everything about Zeke Davis?

11 A Yes.

12 Q And did you know he would go to strip clubs?

13 MR. GIORDANI: Objection. That's not relevant.
14 Did you know he would go to strip clubs?

15 THE COURT: There's no testimony that this was a
16 strip club. Objection's sustained.

17 BY MR. WOOLDRIDGE:

18 Q The night that you -- you were going to have a baby
19 the following day, you said?

20 A Um-h'm.

21 Q And that night he went to an after-hours club?

22 A Yes.

23 Q And you had never seen him do methamphetamine?

24 A No.

25 Q Would you be surprised if he was intoxicated

1 under --

2 A Yes.

3 Q Had done methamphetamine that night?

4 A Yes.

5 Q And how long had you known Zeke for?

6 A A little over three years.

7 Q Do you know where he was before those three years?

8 MR. GIORDANI: Objection. I believe the question
9 was do you know where he was before those three years. I --
10 relevance.

11 THE COURT: The answer is yes or no.

12 MR. WOOLDRIDGE: Yes?

13 THE WITNESS: Yes.

14 BY MR. WOOLDRIDGE:

15 Q And where was he?

16 MR. GIORDANI: Objection.

17 THE COURT: Approach.

18 (Off-record bench conference)

19 BY MR. WOOLDRIDGE:

20 Q You indicated that he did not carry a gun?

21 A Yes.

22 Q Were you aware that he had been convicted --

23 MR. GIORDANI: Objection.

24 BY MR. WOOLDRIDGE:

25 Q -- of --

1 MR. GIORDANI: Objection.

2 BY MR. WOOLDRIDGE:

3 Q -- possession of a firearm by an ex-felon.

4 THE COURT: Counsel. Jury will take a five-minute
5 recess.

6 THE MARSHAL: Rise for the jurors.

7 (Off-record bench conference)

8 (Outside the presence of the jury)

9 (Court recessed at 2:17 p.m. until 2:22 p.m.)

10 (Outside the presence of the jury)

11 THE COURT: All right. We'll be back on the
12 record. Counsel for State is present. Counsel for the
13 defense is present. Defendant is present. We're outside the
14 presence of the jury panel.

15 Counsel, you have been told time and time and time
16 again by not only myself but Judge Villani who made the
17 original ruling, you were not to ask regarding the prior
18 convictions of the victim in this case. You specifically
19 violated the ruling of the Court, and you did it deliberately
20 and with intent. So you are found in contempt of court. I'm
21 going to leave it to Judge Villani to determine the sanction.
22 The question is, where do we go from here?

23 I am not inclined to give a mistrial in this case.
24 However, I think the door has been opened. I think that the
25 best way to resolve this would be for both sides to stipulate

1 to the fact that the victim was convicted in 2008, in 2010
2 and we'll state what the convictions were for.

3 MR. WOOLDRIDGE: Your Honor --

4 THE COURT: And that can be the only information
5 that will be presented to them.

6 MR. WOOLDRIDGE: -- one of the -- just to be heard.
7 So the State brought a witness who testified. They opened
8 the door about whether the -- about the fact that Ezekiel
9 Davis doesn't carry a gun. I didn't even bring in the
10 conviction about the robberies. That was not the question I
11 had. The question I had, and I tested this witness'
12 knowledge --

13 THE COURT: You asked specifically, so are you
14 aware that he was convicted of --

15 MR. WOOLDRIDGE: Of ex-felon in possession of a
16 firearm? Her testimony --

17 THE COURT: I specifically told you, you were not
18 to mention the convictions. If you wanted to draw and bring
19 them in at that point, it was your obligation to ask to
20 approach the bench and request that the Judge the prior
21 ruling.

22 MR. WOOLDRIDGE: Judge --

23 THE COURT: You don't just get to blurt it out in
24 court in front of he have been in contravention of a Court's
25 earlier ruling. You violated your duties as an attorney when

1 you did so.

2 MR. WOOLDRIDGE: Judge, I don't think I violated my
3 duties. They opened the door, I cross-examined her. I
4 did --

5 THE COURT: I just explained to you the
6 circumstances under which you had an obligation to this Court
7 to approach the bench first. When you have a specific order
8 from a Judge that you may not bring up prior convictions, it
9 is your obligation to ask the Judge to change the ruling
10 before you ask the question. Look up any case law on it.
11 Educate yourself, Counsel, before you do stupid things in
12 court.

13 MR. WOOLDRIDGE: Judge, I'm not trying to upset
14 you, but I will tell you that when we approached and I did
15 say if they opened up the door, I would be cross-examining
16 this witness on any prior bad acts. I did not -- I did not
17 cross-examine the witness --

18 THE COURT: Counsel, you were wrong.

19 MR. WOOLDRIDGE: I did not --

20 THE COURT: I don't need any further explanation.
21 I'm going to leave it up to Judge Villani. If it were me,
22 you might be going to jail this afternoon. I'm going to hold
23 a off on that. I'm going to let Judge Villani determine
24 whether or not he's going to impose some type of sanction,
25 whether it be monetary sanctions, referral to the bar, or

1 some other type of sanction. It will be up to him.

2 MR. WOOLDRIDGE: I understand. I just want to -- I
3 just want to make a record, that's all, Judge. I'm not
4 trying to upset you.

5 THE COURT: You made your record.

6 MR. WOOLDRIDGE: I'm not trying to upset you at
7 all.

8 MR. GIORDANI: Briefly, Your Honor. As to the
9 remedy proposed by the Court, the State certainly doesn't
10 want anything about a robbery conviction coming in, and I
11 don't believe he blurted that out. The one he did blurt out,
12 I believe --

13 THE COURT: You know, at this point --

14 MR. GIORDANI: I know, but Judge, it's --

15 THE COURT: -- so they know it was in 2008 or 2010.
16 So what?

17 MR. GIORDANI: Well, the title's never been said so
18 I don't want us to be punished, and now they're going to know
19 he has a robbery conviction because of what he did. All I'm
20 asking is tell the jury that they're to disregard what he
21 just said and we'll leave it at that and not draw anymore
22 attention to it.

23 THE COURT: All right, that's fine.

24 MR. GIORDANI: Thank you. Should I bring the
25 witness back on the stand?

1 THE COURT: You may. Bring the jury back in.
2 We're going to finish it this afternoon and then we're going
3 to settle jury instructions. Do you have any further
4 witnesses after this one?

5 THE MARSHAL: Rise for the jurors.

6 (In the presence of the jury)

7 THE MARSHAL: The panel's present, Your Honor.

8 THE COURT: All right. All members of the panel
9 are present. Please be seated. Back on the record. Back in
10 the presence of counsel. Defendant is present and jury will
11 disregard the last question by counsel. You are not to take
12 it into consideration in any way whatsoever nor are you to
13 discuss it during deliberations. Counsel, you may continue
14 with your examination.

15 MR. WOOLDRIDGE: Thank you. Can we approach real
16 quick, Judge?

17 THE COURT: You may.

18 (Off-record bench conference)

19 MR. WOOLDRIDGE: I'll pass this witness, Your
20 Honor.

21 THE COURT: Thank you.

22 MR. WOOLDRIDGE: Thank you.

23 MR. GIORDANI: And I have no further questions,
24 Your Honor. Thank you.

25 THE COURT: Thank you. All right, thank you. You

1 may step down. State have any further witnesses?

2 MR. GIORDANI: Not at this time, Your Honor. The
3 State would rest its case.

4 THE COURT: Okay. And it is 2:30. The -- we have
5 some housekeeping matters to take care of. One of those
6 would be to settle jury instructions. We may have one
7 additional witness. I need to confer with counsel to
8 determine whether or not there may be one -- may be probably
9 just one?

10 MR. WOOLDRIDGE: Just one, Your Honor, if we
11 have --

12 THE COURT: One additional witness. So we need to
13 confer with counsel on that. I need to confer with them on
14 finalizing the jury instructions, which we have prepared.
15 That's probably going to take us at least an hour, it has
16 been my experience in settling jury instructions.

17 I know we have the issue regarding the one juror
18 who cannot come back tomorrow. Is there anybody else who
19 cannot come back tomorrow, on Friday? Because we would go
20 right into closing arguments and submit the case to the jury
21 tomorrow. All right.

22 With that, then counsel approach.

23 (Off-record bench conference)

24 THE COURT: All right. In order to preserve
25 judicial economy and to also, since we've got a long weekend

1 coming up, and if we don't do closing arguments tomorrow, we
2 would have to come back -- you wouldn't be able to come back
3 until next Wednesday and -- to finish up this trial, so I
4 think that at this point, we're going to thank and excuse
5 Juror No. 2, Ms. -- I'm sorry, madam, your name was?

6 JUROR NO. 2: Erika Aguilar.

7 THE COURT: Aguilar. And I want to thank you for
8 your service here today. We appreciate you having spent the
9 time giving this case a lot of attention, and appreciate your
10 service. With that, please check out with the Jury Service
11 Commissioner before leaving the building, and we will replace
12 you with the first alternate juror, which will be Wendy
13 Brizuela.

14 JUROR NO. 13: Brizuela.

15 THE COURT: Okay. So, if you'll -- you can go
16 ahead and leave, Ms. Aguilar, and if you'll take the seat up
17 there. Now, I could keep you waiting around for an hour and
18 then read you the jury instructions this afternoon, but I
19 could do the same thing tomorrow morning. It doesn't take me
20 that long to read the jury instructions tomorrow morning, and
21 then we can go right into closing arguments.

22 So I think it would be best if I go ahead and
23 excuse the jury panel. Counsel, was there anything else we
24 need it address before I excuse the jury panel for the
25 afternoon?

1 MR. WOOLDRIDGE: No, Your Honor.

2 MR. GIORDANI: No, Your Honor.

3 MR. ROSE: No, Your Honor.

4 THE COURT: Okay. Before I release you, I'll
5 advise you once again, you're not to discuss this case among
6 yourselves or with anyone else. You're not communicate with
7 anyone in any ways regarding this case or its merit, either
8 by phone, text, Internet or other means. You're not to read,
9 watch or listen to any news or media accounts or commentary,
10 excuse me, about the case.

11 Do not do any research such as consulting
12 dictionaries, using the Internet, or using reference
13 materials and do not make any investigation, test the theory
14 of the case, recreate any aspect of the case or in any other
15 way investigate or learn about the case on your own.

16 With that, we'll be in recess until tomorrow at
17 9:30.

18 THE MARSHAL: All rise for the jury.

19 (Outside the presence of the jury)

20 THE COURT: Okay. We need to make some records.
21 Outside the presence of the jury panel. Everybody take a
22 seat. All right. State, anything you wish to make a record
23 on?

24 MR. GIORDANI: I believe we've put everything on
25 the record that needed to be outside the presence prior to

1 the jury coming in so --

2 THE COURT: Okay. Anything regarding replacing the
3 jury with the alternate?

4 MR. WOOLDRIDGE: Your Honor, I would object, but,
5 you know, I think you did that over my objection.

6 THE COURT: And the basis for your objection being?

7 MR. WOOLDRIDGE: I think that we could -- we had a
8 jury that was empaneled. We had the 12. I liked the jury --
9 the panel that we had. I think we could have held them over
10 if necessary. And Your Honor made a ruling, so with that I
11 submit it.

12 THE COURT: Okay. Anything else State wants to add
13 to that?

14 MR. GIORDANI: The alternate was just as qualified
15 to be a juror as Juror No. 2. No one knows, obviously, which
16 direction she was going or anything to that nature, and in
17 the nature of judicial economy, I believe the Court's
18 decision was appropriate.

19 THE COURT: And the Court would note that when we
20 began the trial, there were two defendants, that the
21 co-defendant's counsel had informed the Court that he had
22 suffered a death in the family, and that he needed to leave
23 on Friday in order to be able to attend and funeral in South
24 Carolina on Saturday. That the Court had announced -- as a
25 result, had announced to the jury that we would be going dark

1 on Friday, which is the Friday before the long Memorial Day
2 weekend, and did not explain to the jury why, but it was
3 necessitated by circumstances.

4 Subsequently, the co-defendant pled. Therefore, it
5 took away the reason that the Court had -- or for going dark
6 on Friday, but because the Court had already announced to the
7 jury panel we'd be dark on Friday, I inquired of the panel
8 whether any of them had now made changes in their plans where
9 that they could not change back. And Juror No. 2, Ms.
10 Aguilar indicated that she would not be able to return on
11 Friday, and for that reason, since we're now going forward on
12 Friday, we've replaced her with the alternate. All right.
13 Anything else we need to make a record on?

14 MR. GIORDANI: Not on behalf of State.

15 MR. WOOLDRIDGE: No, Your Honor.

16 THE COURT: All right.

17 MR. WOOLDRIDGE: Actually, I think we -- I had some
18 objections to the rebuttal witness. I thought that that
19 witness went beyond the scope.

20 THE COURT: All right. Make your record.

21 MR. WOOLDRIDGE: Yeah. And I had made it at the
22 bench, Your Honor, but the objection was that her testimony
23 went beyond the scope of a rebuttal witness. Most of that
24 stuff in issues of items of clothing and who the stuff
25 belonged to, that stuff should have been brought up on the

1 State's case-in-chief. I had made numerous objections at the
2 bench. And then we had the long discussion about
3 cross-examining her about the specific bad act of ex-felon in
4 possession of a firearm.

5 I made that inquiry as a result of the witness's
6 testimony when she said she did not know him to carry a gun.

7 MR. GIORDANI: And may I, Your Honor?

8 THE COURT: You may.

9 MR. GIORDANI: With regard to her not being a
10 rebuttal witness, she absolutely was a rebuttal witness.
11 When the defendant took the stand, he put at issue the items
12 that were on scene. Specifically, indicated that he had two
13 cell phones. The jury would have been left with a major
14 question in their mind as to whose cell phone was on the
15 scene, and the defense could have argued that it supported
16 their theory of the case that cell phone was Bianca Hicks.
17 She was absolutely a relevant witness for that purpose.

18 And in addition, when Counsel blurted out the prior
19 conviction, I object strenuously. The Court brought us to
20 the bench and there was some discussion about
21 Mr. Wooldridge's belief that that came in for some reason
22 because State opened the door.

23 The State on direct examination simply inquired
24 into Ms. Hicks regarding the last three years and the last
25 three years alone because she could have no knowledge of what

1 happened prior to that, she didn't know Mr. Davis. So that
2 was the purpose of State's inquiry regarding it a gun and it
3 had nothing to do with a prior conviction for any crime,
4 including possession of a gun. And with that, State has
5 nothing else.

6 THE COURT: All right.

7 MR. WOOLDRIDGE: And then, Your Honor, I just -- a
8 quick rebuttal on that. She testified that this is
9 basically, some type of fiancé relationship. She has a
10 couple kids with him. The State cannot just come and say, in
11 the last three years, did you know him to carry a gun and not
12 open up the door to his past. And it's not like I inquired
13 about a conviction that was over ten years ago. I inquired
14 about a conviction from 2010.

15 THE COURT: All right. You've had your previous
16 rulings. All right. We'll take a short recess. We're going
17 to settle jury instructions. I've got -- I've gone through
18 the instructions. I've got them in the order that we're
19 going to go through them. I'm going to have copies made so
20 we're all operating off of. I've got the separate jury
21 questions presented by the defense counsel that I will not
22 give or that we will discuss.

23 MR. WOOLDRIDGE: Okay.

24 THE COURT: And then we'll decide if there's any
25 additional ones from your stack that we need to add to this.

1 And then there is one additional jury instruction that I have
2 sitting on my desk. That's the one that's now being required
3 by the Supreme Court. It's referred to as the Bowman
4 (phonetic) instruction. You need to make it part of your
5 stock --

6 MR. GIORDANI: Will do.

7 THE COURT: -- and stuff. It's regarding the text
8 -- we're admonishing the jury about texting and tweeting and
9 all that stuff.

10 MR. ROSE: Oh, the testing a theory?

11 THE COURT: Well, I've got it on my desk. I'll add
12 it to this. Let me make copies. Then we'll all sit down
13 together and go through these.

14 MR. WOOLDRIDGE: Thank you.

15 MR. ROSE: Yes, Your Honor.

16 (Court recessed at 2:43 P.M., until Friday,
17 May 26, 2017, at 9:40 A.M.)

18 * * * * *

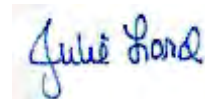
19 ATTEST: I hereby certify that I have truly and correctly
20 transcribed the audio/visual proceedings in the above-
21 entitled case to the best of my ability.

22

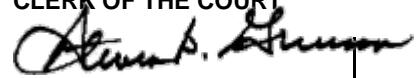
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JULIE LORD, INDEPENDENT TRANSCRIBER



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

THE STATE OF NEVADA,	.	CASE NO. C-16-319714-1
	.	
Plaintiff,	.	DEPT. NO. XVII
	.	
vs.	.	TRANSCRIPT OF
	.	PROCEEDINGS
JAVAR ERIS KETCHUM,	.	
	.	
Defendant.	.	
.	

BEFORE THE HONORABLE KATHY HARDCASTLE
SENIOR DISTRICT COURT JUDGE

JURY TRIAL - DAY 5

**PARTIAL TRANSCRIPT
(EXCLUDES CLOSING ARGUMENTS)**

FRIDAY, MAY 26, 2017

APPEARANCES:

FOR THE STATE:	JOHN L. GIORDANI, III., ESQ. STEVEN ROSE, ESQ. <i>Deputy District Attorneys</i>
FOR DEFENDANT KETCHUM:	NICHOLAS M. WOOLDRIDGE, ESQ.

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER
TRANSCRIBED BY: VERBATIM DIGITAL REPORTING, LLC

DA-000162

1 LAS VEGAS, NEVADA, FRIDAY, MAY 26, 2017, 9:40 A.M.

2 (Outside the presence of the jury)

3 THE COURT: All right. We're back on the record
4 outside the presence of the jury panel. Counsel for both
5 sides are present, defendant is present. You may take a seat.
6 We're making a record.

7 MR. WOOLDRIDGE: Sure.

8 THE COURT: Did you get the issue regarding the
9 testimony worked out?

10 MR. GIORDANI: I believe.

11 MR. WOOLDRIDGE: In terms of probation, Your Honor?

12 THE COURT: Yes.

13 MR. WOOLDRIDGE: Your Honor, I'm looking at the
14 court minutes, and what I see is that the case is getting
15 status checked for revocation of probation hearing since 4/13.
16 I don't like the stipulation that he's just on some type of
17 informal probation. I think it negates the seriousness of
18 what's going on with him, and makes it sound like in the mind
19 of the jurors that he's just like, that this is no big deal.

20 The fact that he's on some type of informal
21 probation, it's not necessarily -- it's still probation.
22 He's --

23 THE COURT: Well, either you've worked out a
24 stipulation or you haven't. If you haven't, what is your
25 request?

1 MR. WOOLDRIDGE: My request is to let the jury know
2 he is on probation, period.

3 MR. GIORDANI: And we're okay with that. We just
4 want it accurate. On December 21st, 2015, nine months before
5 the murder, he was OR'ed with house arrest on that probation
6 case. So his release on that was not -- had nothing to do
7 with this case. On 1/13/16, again, eight months before the
8 murder, he was taken off of supervised probation and placed on
9 informal probation.

10 After the murder, a VR, Violation Report was filed
11 three days, so right when he turned himself into his attorney
12 and the police. So he is on informal probation and there is a
13 violation pending. I mean, we're fine with that.

14 THE COURT: Based upon this case.

15 MR. GIORDANI: That's accurate. Yeah, that's
16 accurate.

17 THE COURT: All right. So --

18 MR. GIORDANI: So we're not disputing what you're
19 saying.

20 THE COURT: -- he was -- he previously testified
21 that he was on probation. That he was removed from formal
22 probation on 4/13 --

23 MR. GIORDANI: 1/13.

24 THE COURT: 1/13 of --

25 MR. GIORDANI: '16.

1 THE COURT: -- '16. That after he was charged in
2 this case, a Violation Report was filed.

3 MR. WOOLDRIDGE: Was it in this case that the
4 Violation Report was filed or was it in his other case?

5 MR. GIORDANI: No, it was in the case you're talking
6 about.

7 THE COURT: Okay. In the other case --

8 MR. WOOLDRIDGE: It was in the Henderson case.

9 MR. GIORDANI: This was the basis, this murder,
10 accessory and robbery.

11 MR. WOOLDRIDGE: I don't think so. I think he --
12 bear with me.

13 THE COURT: Well, we don't have so say what the
14 Violation Report was.

15 MR. GIORDANI: No.

16 THE COURT: He was released from formal supervised
17 probation -- all right, he was placed on informal probation,
18 not required to report to a probation officer beginning
19 January 13th of 2016.

20 MR. GIORDANI: Correct.

21 THE COURT: That three days after his arrest in this
22 case, a Violation Report was filed.

23 MR. GIORDANI: Three days after this crime occurred.

24 THE COURT: Three days after this --

25 MR. GIORDANI: Because this was --

1 THE COURT: -- incident occurred.

2 MR. GIORDANI: Yes, this incident was the 25th, and
3 the Violation Report was filed the 28th. And then since then,
4 they've status checked it out to see what happened in a
5 sentencing in this case, and there's a violation -- or a
6 revocation pending on whatever date Mr. Wooldridge said.

7 MR. WOOLDRIDGE: Let me see. I can pull it up.

8 MR. GIORDANI: Which I presume will happen after the
9 sentencing in this case because this is more serious stakes,
10 obviously.

11 MR. WOOLDRIDGE: Bear with me, Your Honor.

12 THE COURT: And when is the status check set?

13 MR. GIORDANI: Mr. Wooldridge will have to tell you
14 that. I don't have that date.

15 MR. WOOLDRIDGE: Judge, the issue that I have when
16 we're talking about all this informal probation stuff is that,
17 I believe that the jury's going to think that he's -- like his
18 probation is not that serious when really, what's going on is
19 the reason why he's on informal probation --

20 THE COURT: The only thing that's important is that
21 they know that he has a prior conviction. The --

22 MR. WOOLDRIDGE: Well, it's --

23 THE COURT: -- probation is not important unless you
24 think that has something to do with the plea deal, and if we
25 can't work out -- if you don't want to work out a stipulation

1 this morning, that's fine. I'll bring the jury back on
2 Wednesday and you can recall the witness and ask your
3 questions.

4 MR. WOOLDRIDGE: The issue, Judge --

5 THE COURT: So what do you want?

6 MR. WOOLDRIDGE: That's what I want to do.

7 THE COURT: Which?

8 MR. WOOLDRIDGE: Recall the witness.

9 THE COURT: Okay.

10 MR. GIORDANI: Well, and there is no witness,
11 because he doesn't have a probation officer. So what do you
12 want in the stipulation. We can discuss it.

13 MR. WOOLDRIDGE: I want it to be known that he's on
14 probation. If we're going to get into all the stuff that he's
15 on, informal probation, I don't --

16 THE COURT: The stipulation is, is that he was
17 incorrect, he is on probation.

18 MR. GIORDANI: Fine.

19 MR. WOOLDRIDGE: Okay.

20 THE COURT: All right.

21 MR. WOOLDRIDGE: Thank you.

22 THE COURT: So the stipulation will be that Antoine
23 -- was it --

24 MR. ROSE: Antoine Bernard.

25 THE COURT: -- Bernard testified that he was not on

1 probation from his prior case. Both sides stipulate that he
2 was incorrect, and that he is on probation.

3 MR. GIORDANI: As of -- it preexist this case.

4 THE COURT: From that prior case?

5 MR. GIORDANI: Yes.

6 THE COURT: Yes.

7 MR. GIORDANI: Yeah, fine.

8 MR. WOOLDRIDGE: That's correct.

9 MR. GIORDANI: Fine with us.

10 THE COURT: All right.

11 MR. WOOLDRIDGE: I don't know if it's incorrect. I
12 don't know if I like that kind of language, though. It makes
13 it sound like he's making an innocent mistake.

14 MR. ROSE: Well, he very well might have.

15 THE COURT: You're stipulating that he was
16 incorrect.

17 MR. WOOLDRIDGE: Was he incorrect or was he lying?

18 THE COURT: That's for you to argue to the jury on
19 closings.

20 MR. WOOLDRIDGE: All right.

21 THE COURT: I'm not going to say he was lying.

22 MR. WOOLDRIDGE: Well, why do we have to say
23 anything about incorrect? Just he's on probation.

24 THE COURT: All right.

25 MR. WOOLDRIDGE: That's what I want.

1 THE COURT: He testified that he was not on
2 probation from a prior case. Both State and defense stipulate
3 that Antoine Bernard was on probation from the prior case.

4 MR. GIORDANI: Sure. Sure.

5 MR. WOOLDRIDGE: That's fine. Thank you.

6 THE COURT: How's that work?

7 MR. WOOLDRIDGE: That's good.

8 THE COURT: All right. Now, sir instructions.
9 We've got the jury instructions as proposed. Any other jury
10 instructions requested by either side?

11 MR. GIORDANI: Not on behalf of the State.

12 MR. WOOLDRIDGE: Yes, Your Honor.

13 THE COURT: All right.

14 MR. WOOLDRIDGE: It's my page 40. I think that the
15 State called their last witness, their rebuttal witness. I
16 think it really played into the jury's sympathy. I think we
17 need a separate instruction specifically on sympathy, and that
18 would be my number 40.

19 MR. GIORDANI: And our position is, is it -- the
20 common sense instruction, the stock instruction, says a
21 verdict may never be influenced by sympathy, prejudice or
22 public opinion. Your decision should be the product of
23 sincere judgment and sound discretion in accordance with these
24 rules of law and that covers it.

25 THE COURT: Yeah, I think that covers it, and your

1 request for the additional instruction would be cumulative.
2 So therefore, I will not give it. All right. Any other --

3 MR. WOOLDRIDGE: That's fine, Judge.

4 THE COURT: Any objections to the ones that are to
5 be given?

6 MR. WOOLDRIDGE: No.

7 MR. GIORDANI: Nope.

8 THE COURT: All right. And you've received the
9 verdict form?

10 MR. GIORDANI: Yes.

11 MR. WOOLDRIDGE: Yes.

12 THE COURT: Any objection to the verdict form?

13 MR. GIORDANI: No.

14 MR. WOOLDRIDGE: No.

15 THE COURT: All right. Then let's bring the -- take
16 a couple minutes. We'll bring the jury in. I will read the
17 stipulation to them, and then I will do closing -- I'll do the
18 jury instructions, and then we'll go right into closing
19 arguments. All right?

20 MR. GIORDANI: Yes, Your Honor.

21 THE COURT: Okay.

22 MR. WOOLDRIDGE: Your Honor, will we take a break
23 before closing or will we just go right into it?

24 THE COURT: No, we're going to take a break right
25 now --

1 MR. WOOLDRIDGE: Yep.

2 THE COURT: -- and yes, we'll go right from jury
3 instructions right into closing.

4 MR. WOOLDRIDGE: Okay.

5 (Court recessed at 9:50 a.m. until 9:57 a.m.)

6 THE MARSHAL: All rise for the jurors.

7 (In the presence of the jury)

8 THE MARSHAL: Court come to order. Department 17
9 is now in session. The Honorable Senior Judge Cathy
10 Hardcastle, presiding.

11 THE COURT: All right. Thank you. You may have a
12 seat. We're missing one juror.

13 MR. ROSE: Your Honor, we excused one juror
14 yesterday.

15 THE COURT: Oh, that's right. That was the
16 alternate that's moved over. Okay. I'm sorry. I saw the
17 empty seat and got confused for a second. All right. So all
18 members of panel are present, counsel for both sides are
19 present.

20 Ladies and gentlemen, the parties have reached a
21 stipulation regarding a fact. The parties have stipulated
22 that witness Antoine Barron (sic) testified that he was not
23 on probation from a prior case. Both the State and the
24 defense stipulate that Antoine Barron was on probation from a
25 prior case.

1 MR. GIORDANI: It's Antoine Bernard.

2 MR. WOOLDRIDGE: Your Honor, it's Antoine Bernard,
3 just for clarification.

4 THE COURT: Oh, Bernard.

5 MR. GIORDANI: Yes.

6 THE COURT: I said Barron.

7 MR. GIORDANI: Yes.

8 THE COURT: Bernard. Antoine Bernard. All right.
9 Anything else?

10 MR. GIORDANI: No, Your Honor.

11 THE COURT: Both sides have rested?

12 MR. WOOLDRIDGE: Yes.

13 MR. GIORDANI: Yes.

14 THE COURT: All right. Ladies and gentlemen, we've
15 reached that point in the case where both sides have rested.
16 You've heard all the evidence that's going to be presented to
17 you. It is now my time to read you the instructions on the
18 law.

19 As I read the instructions, pay attention, but
20 don't be overly concerned if there's some that seem to be a
21 little confusing because you'll have copies of this to take
22 with you. We'll make you six copies. If you want more, just
23 let us know. If each of you wants your own separate copy,
24 we'll be happy to make additional copies. So just let us
25 know about that.

1 (Court reads Jury instructions to the Jury)

2 THE COURT: State.

3 MR. ROSE: Thank you, Your Honor.

4 (State's closing argument; not transcribed)

5 THE COURT: Counsel.

6 MR. WOOLDRIDGE: Can we approach real quick, Your
7 Honor?

8 (Off-record bench conference)

9 THE COURT: Ladies and gentlemen, it's my policy, I
10 like to give the attorneys the right to start their argument
11 and finish their argument without interruption. So we're
12 going to take an early lunch, and I'll bring you back here at
13 12:30. And at 12:30, we'll hear the defense closing argument
14 and then State will give their final closing argument and
15 then the case will go to the jury.

16 So before I release you for your lunch, just remind
17 you again, not to discuss the case among yourselves or with
18 anyone else. Don't form or express any opinion. Don't do
19 any research, do any Internet search, don't text, don't tweet
20 about the case. We'll you back here at 12:30.

21 THE MARSHAL: Rise for the jurors.

22 (Outside the presence of the jury)

23 THE COURT: All right. We're outside the presence
24 of the jury. Anything else we need to make a record on?

25 MR. WOOLDRIDGE: No, Your Honor.

1 MR. GIORDANI: Not from the State.

2 THE COURT: All right. Thank you. I'll see you at
3 12:30.

4 (Court recessed at 11:11 a.m. until 12:36 p.m.)

5 (In the presence of the jury)

6 THE MARSHAL: Court will come to order. Department
7 17 is back in session.

8 THE COURT: All right. We're back on the record.
9 Have a seat. All members of the jury panel are present.
10 Counsel for both sides are present. Defendant is present.
11 Just to make a quick record, over the lunch hour I was
12 approached by one of the jurors downstairs. I was asked a
13 question, and I didn't mean to be rude or anything, but again,
14 the rules are we can't talk to the jury. And yes, my portrait
15 is in the building. It's up on one of the upper floors, but
16 thank you. All right.

17 MR. WOOLDRIDGE: Bear with me, Your Honor.

18 (Defendant's Closing Argument; not transcribed).

19 (State's Rebuttal Closing Argument; not transcribed)

20 THE COURT: All right. The Clerk will swear in the
21 bailiff or the marshal to take charge of the jury.

22 (Marshal is sworn)

23 THE MARSHAL: Jurors?

24 THE COURT: All right. And we will swear in the
25 clerk to take charge of the alternates.

1 (Clerk is sworn)

2 THE COURT: All right. On the alternates, I'm going
3 to go ahead and let you go this afternoon. Before you leave,
4 we're going to get your phone numbers. If something happens
5 where we need for you to come back and fill in on the jury, we
6 will give you a call. And once the case is over, and I
7 release the jury, we will call you and let you know so that
8 you can come in and pick up your checks.

9 THE MARSHAL: All right, jurors, follow me.

10 THE COURT: If the alternates want to go ahead and
11 file out with the jury, we'll come out and get your phone
12 numbers in just a minute and send you home. Go ahead and
13 follow them out.

14 (Outside the presence of the jury.)

15 THE COURT: Hang on just a sec.

16 (Pause in the proceedings)

17 THE COURT: All right. We're outside the presence
18 of the jury. Anything else that we need to cover?

19 MR. GIORDANI: Not on behalf of State.

20 MR. WOOLDRIDGE: Not -- nothing, Your Honor.

21 THE COURT: All right, thank you. Make sure that we
22 have your phone numbers, and so we can get ahold of you. And
23 counsel approach for a minute.

24 (Off-record bench conference.)

25 THE COURT RECORDER: Are we off the record now,

1 Judge?

2 THE COURT: Yeah.

3 THE COURT RECORDER: Okay.

4 (Court recessed at 1:43 p.m. until 3:26 p.m.)

5 (Outside the presence of the jury.)

6 (Pause in the proceedings)

7 THE MARSHAL: Court will come to order. Department
8 17 is back in session.

9 THE COURT: Okay. We've been informed that have a
10 verdict so we'll go ahead and bring the jury in. I thought he
11 was ready to bring in the jury.

12 (Pause in the proceedings)

13 THE MARSHAL: Rise for the jurors.

14 (In the presence of the jury.)

15 THE MARSHAL: Panel's present, Your Honor.

16 THE COURT: All right, thank you. We'll be back on
17 the record. We're back in the presence of the jury. You may
18 be seated. All members of the jury are present. The two
19 alternates are not present. Counsel for both sides are
20 present. Defendant is present. Will the foreperson of the
21 jury please stand. Has the jury reached a verdict?

22 JUROR NO. 1: Yes.

23 THE COURT: And would you please hand the verdict
24 forms to the Marshal. All right. The Clerk will read the
25 verdict.

1 THE CLERK: District Court, Clark County, Nevada.
2 State of Nevada, plaintiff, versus Javar Eris Ketchum,
3 defendant. Case No. C-3-16-319714. Department 17, Verdict.

4 We the jury in the above-titled case find the
5 defendant, Javar Eris Ketchum, as follows:

6 Count 1, murder with the use of a deadly weapon;
7 Guilty of first degree murder with use of a deadly weapon.

8 Count 2, robbery with use of a deadly weapon;
9 Guilty of robbery with use of a deadly weapon.

10 Signed by the foreperson, Caroline Benton. This
11 26th day of May, 2016 (sic).

12 THE COURT: All right. Would either side like to
13 have the jury polled?

14 MR. GIORDANI: No, Your Honor.

15 MR. WOOLDRIDGE: Yes.

16 THE COURT: All right. Clerk will poll the jury.

17 THE CLERK: Juror No. 1, is this your verdict as
18 read?

19 JUROR NO. 1: Yes.

20 THE CLERK: Juror No. 2, is this your verdict as
21 read?

22 JUROR NO. 2: Yes, ma'am.

23 THE CLERK: Juror No. 3, is this your verdict as
24 read?

25 JUROR NO. 3: Yes.

1 THE CLERK: Juror No. 4, is this your verdict as
2 read?

3 JUROR NO. 4: Yes.

4 THE CLERK: Juror No. 5, is this your verdict as
5 read?

6 JUROR NO. 5: Yes.

7 THE CLERK: Juror No. 6, is this your verdict as
8 read?

9 JUROR NO. 6: Yes.

10 THE CLERK: Juror No. 7, is this your verdict as
11 read?

12 JUROR NO. 7: Yes.

13 THE CLERK: Juror No. 8, is this your verdict as
14 read?

15 JUROR NO. 8: Yes.

16 THE CLERK: Juror No. 9, is this your verdict as
17 read?

18 JUROR NO. 9: Yes.

19 THE CLERK: Juror No. 10, is this your verdict as
20 read?

21 JUROR NO. 10: Yes.

22 THE CLERK: Juror No. 11, is this your verdict as
23 read?

24 JUROR NO. 11: Yes.

25 THE CLERK: Juror No. 12, is this your verdict as

1 read?

2 JUROR NO. 12: Yes.

3 THE COURT: All right, thank you. The jury has been
4 polled. Counsel approach.

5 (Off-record bench conference)

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, we have just a few housekeeping matters to handle. Now
8 that we have your verdicts, there will be a necessity of a
9 penalty phase that will -- I'm going to discuss the schedule
10 of that and how long it's going to take with counsel and then
11 I'll bring you back in, give you the time to return and then
12 we'll recess for the day. So if you'll go ahead and step back
13 to the jury room for a few minutes, give us a chance to work
14 out the housekeeping matters.

15 THE MARSHAL: Go ahead and rise for the jurors.

16 (Outside the presence of the jury)

17 THE COURT: Okay, counsel. When you're ready, just
18 let me know and I'll --

19 MR. WOOLDRIDGE: Thank you, Your Honor.

20 THE COURT: -- come back.

21 MR. GIORDANI: Yes, Judge.

22 (Court recessed at 3:37 p.m. until 4:07 p.m.)

23 (Outside the presence of the jury)

24 THE MARSHAL: Come to order. Department 17's back
25 in session.

1 THE COURT: All right. Back on record. Back in the
2 presence of counsel. Counsel of both sides are present.
3 Defendant's present. The jury panel is not present. Have we
4 worked anything out regarding the penalty phase?

5 MR. WOOLDRIDGE: We have, Your Honor.

6 THE COURT: All right. And what is it?

7 MR. WOOLDRIDGE: The parties have stipulated to a
8 sentence of 20 to life on the murder charge.

9 MR. GIORDANI: Correct. And the parties will retain
10 the right to argue for the enhancements and the other robbery
11 charge, any lawful sentence.

12 THE COURT: All right. And so we'll just set
13 sentencing and an in-custody sentencing date and get our
14 pre-sentence investigation report?

15 MR. GIORDANI: Yes, Your Honor. Did you receive the
16 signed copies and I believe --

17 THE COURT: I do have the written stipulation and
18 order waiving the separate penalty phase.

19 MR. GIORDANI: I just want to verify on the record
20 that Mr. Ketchum signed those and agrees.

21 THE COURT: Mr. Ketchum, you're agreeing to this?

22 THE DEFENDANT: Yes.

23 THE COURT: And is this your signature here in the
24 stipulation?

25 THE DEFENDANT: Yes.

1 THE COURT: And you signed this freely and
2 voluntarily?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: After consultation with your attorney?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. I will accept the stipulations.
7 I will sign the order now waiving the separate penalty
8 hearing. And we'll give you a date.

9 THE CLERK: July 18th, 8:30 a.m.

10 THE COURT: And then let's bring the jury in so I
11 can thank and excuse the jury.

12 MR. WOOLDRIDGE: Your Honor, you'll let us ask
13 questions of the jurors later if they --

14 THE COURT: I always encourage them to talk to you.

15 MR. WOOLDRIDGE: Okay.

16 (Pause in the proceedings)

17 THE MARSHAL: Go ahead and rise for the jurors.

18 (In the presence of the jury)

19 THE COURT: All right.

20 THE MARSHAL: Panel's present, Your Honor.

21 THE COURT: Back on the record. Back in the
22 presence of the jury. You may be seated. All right. Ladies
23 and gentlemen of the jury, the State and the defense has
24 reached an agreement regarding the sentence on the -- your
25 verdict of the first degree murder charge. So there will be

1 no necessity to have a separate hearing phase. So I'm going
2 to go ahead and dismiss you as jurors in this case.

3 I want to thank you for your time, your attention,
4 your service here. You're very, very much a part of what
5 makes our system here in the United States, our criminal
6 justice system, one of best in the world. So I also know it
7 can be tough serving as a juror. You're required to take a
8 lot of time out of your day, out of your life to come in here.

9 It can be very tough sometimes listening to evidence
10 that's presented. It's tough sometimes to judge the case and
11 judge what the facts of the case are. But I think that -- I
12 hope that you've learned something from your service here.
13 That you enjoyed your participation in our system. And again,
14 I want to thank you for your time and your attention.

15 What this means now since I have now dismissed you
16 as jurors in this case. One, we've notified Jury Services so
17 hopefully your checks will be ready before you leave the
18 building and you can pick them up downstairs. It also means
19 that you may now discuss this case among yourselves or with
20 anyone else. This includes your friends and family. In fact,
21 I encourage you to be willing to talk about the case and about
22 your service on -- as a juror in this case.

23 But you are not required to talk about the case. I
24 encourage to talk to the attorneys. Quite often they can
25 learn a lot about how to conduct jury trials in the future,

1 how they can make themselves better professionals by being
2 able to talk to the jurors. They really do learn a lot. So I
3 encourage you, if you're willing, to talk to the attorneys in
4 this case. However, you're not required to talk to anyone.

5 If someone should persist in trying to talk to you
6 after you've let them know that you don't want to be -- you
7 don't want to discuss this case, please let me know so I can
8 do something about it. With that, again, thank you for your
9 service, and you may go -- be released to go back to the Jury
10 Service Commissioner to pick up your checks.

11 THE MARSHAL: All rise for the jurors.

12 THE COURT: And I want to thank counsel.

13 MR. WOOLDRIDGE: Thank you, Your Honor.

14 MR. ROSE: Thank you, Your Honor.

15 MR. GIORDANI: Thank you very much, Your Honor.

16 THE COURT: We're in recess.

17 (Court adjourned at 4:17 P.M.)

18 * * * * *

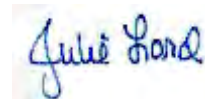
19 ATTEST: I hereby certify that I have truly and correctly
20 transcribed the audio/visual proceedings in the above-entitled
21 case to the best of my ability.

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25



JULIE LORD, INDEPENDENT TRANSCRIBER

CERTIFICATE OF SERVICE

A COPY of the foregoing DEFENDANT'S APPENDIX was mailed
postage prepaid on this 28th day of August 2018 addressed as follows:

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