

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAVAR ERIS KETCHUM,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

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Case No. 75097

RESPONDENT'S APPENDIX
Volume 2

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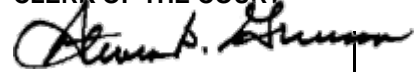
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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

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.

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RA 000242

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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, gabbed 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 MR. WOOLDRIDGE: And hearsay --

2 THE COURT: Overruled.

3 BY MR. WOOLDRIDGE:

4 Q Go ahead.

5 A She works at Larry's Gentlemen Club and her name is
6 Barry (phonetic). I met her up there at her job one time
7 for, you know, just -- just to hang out, and she came to the
8 car with a friend, Misty. They got in talking about girl
9 talk, in my phone looking at Facebook and My Time on it.
10 And as they get in, you know, she like, babe, what you think?
11 And I'm like what? She showed me the phone.

12 She was like --

13 Q Who was on the phone?

14 A -- this -- it was a picture of Zeke.

15 Q Okay.

16 A And she was like Misty want to talk to him or he's
17 trying to talk to Misty, and I'm like, who is that? She was
18 like this dude named Zeke. He -- she -- he ain't no good.
19 He known for this. He been -- so --

20 Q Known for what?

21 A He's known for robbing -- I mean, he's been in jail
22 -- he's been to jail -- in and out of jail and he's known as
23 a jack boy.

24 Q What's a jack boy?

25 MR. GIORDANI: Objection.

1 THE COURT: Overruled.

2 THE WITNESS: A jack boy is someone that's known
3 for sticking people up, robbing, you know, all the -- et
4 cetera.

5 BY MR. WOOLDRIDGE:

6 Q Okay. And so when he -- when he tried to rob you,
7 you realized it was Zeke?

8 A Yes, that when he pulled -- when he pulled me close
9 and shoved the gun in my ribs deep and that's when I realized
10 it was him because that's -- my eyes are bad so I couldn't
11 see him the whole time because it's dark in there. So when
12 we went outside and I seen -- I could see under the hat now,
13 I was close to him, face to face, that's when I seen exactly
14 who he was.

15 Q Let's go -- he goes to the ground, right?

16 A Yes.

17 Q And you indicated earlier that you were angry?

18 A Yes, very angry.

19 Q Why?

20 A I mean, because he just tried to take my life over
21 some money that, you know --

22 Q Did --

23 A I never been -- I never had nobody try to do that
24 before.

25 Q Did he -- did it hurt when he pulled you to him?

1 A Yes, because my back is -- my back is very bad so
2 when he pulled me, it's just like jerked me like this, and I,
3 you know, I kind of -- I wasn't expecting it so it just threw
4 my whole body out of place. And, you know, I was just -- I
5 was very angry.

6 Q And so what did you do when you were angry?

7 A Well, when I did --

8 Q Did you grab his belt?

9 A -- I kind of overreacted, and I -- I snatched at
10 his pants, and snatched his belt off because I wanted to take
11 something from him now. I was very angry, so I was like, you
12 know, and he was kicking them off anyway so I snatched at his
13 pants, ripped him off and then I ripped the belt, and then I
14 -- you know, I just was like -- and then I headed towards the
15 car to get in the car. And I noticed as -- while -- as I'm
16 walking to the car, I noticed I dropped my ID so I ran back,
17 grabbed my ID and I picked up -- when I'm grabbing for my ID,
18 he's reaching for his gun again, you know, like because he
19 was still alive. Like he was reaching for his gun so I
20 struck him with the belt, I guess, it hit him in the face,
21 and I grabbed the gun, put it in my waistline, put my shirt
22 over it.

23 Q Grabbed whose gun?

24 A I grabbed Zeke's gun.

25 Q What kind of gun was it?

1 A It was like a small revolver. I'm not good with
2 names and guns, but I know it was a small revolver.

3 Q And once you got in the car, what did you do?

4 A I got out of there, you know. Antoine kind of
5 looked at me like what the -- what the hell just went on, but
6 you know, kind of like -- act like I didn't know either
7 because his baby's mother in the back. I didn't want her to
8 overreact, you know. I didn't want to just say loud I shot
9 someone.

10 So he kind of pulled off because he -- he kind of
11 look and he seen me kind of, you know, very angry. He was
12 like, you know, he was like -- and I was just like man, drop
13 me off.

14 Q So why didn't you stick around?

15 A I didn't stick around because for one, I'm not from
16 Vegas. And I didn't want to have any, you know, beef with
17 anybody else coming out that club that was Zeke's friends or
18 anything, you know. So I got out of there. I felt that --
19 that was the safest thing for me to do.

20 Q Were you concerned that somebody could shoot you?

21 A Yes.

22 Q What did you do -- did you take Zeke's watch?

23 A Oh, absolutely not.

24 Q If you took Zeke's watch, would you tell us?

25 A Yes, I would.

1 Q You've already admitted to taking the belt?

2 A Yes, I -- yeah, I would have included that, no
3 problem.

4 Q Did -- what did do you with your guns, the gun that
5 you had, Zeke's gun and the belt?

6 A Once Antoine dropped me off, I just threw
7 everything in the trash.

8 Q In a dumpster?

9 A Yes.

10 Q Did you leave Las Vegas?

11 A Yes, I did.

12 Q Why?

13 A Well, I just got a call from my -- from my neighbor
14 that it was a car watching us -- watching my spot outside
15 because, you know, my apartment -- my condo's are small.
16 They individually owned. You go this way, can you go left or
17 right and meet in the back. So everyone knows everyone's car
18 in there. And so he said it was like, you know, it just
19 wasn't one day, two days. They was in there just staking out
20 the house.

21 And he noticed two rough looking black guys so I
22 called and informed me, and I said, I got to get out of here
23 and just, you know, get a lawyer to -- I retained a lawyer
24 and, you know, so I could present myself the right way.

25 Q Did you also -- so you also left to go make money

1 to hire a lawyer?

2 A Yes, because I knew it will be more than what I had
3 to retain a lawyer, especially for this kind of stuff and so
4 I just, you know, I felt that was the best thing for me to
5 do.

6 Q Now, the State talked about that you were,
7 basically, apprehended at a border.

8 A Um-h'm.

9 Q So did -- where did you get apprehended?

10 A Well, after Vegas is Arizona and it's New Mexico.
11 When you're coming out of New Mexico, it's a border -- it's a
12 border patrol stopping you checking your license going into
13 Houston, and it's a border patrol coming from Houston into
14 New Mexico. So you just run through it, you stop, you go.
15 It's just a -- it's just a like a checkpoint, I guess.

16 Q Were you in Mexico?

17 A I was driving through Mexico. I wasn't in Mexico.

18 Q And then when -- so you were actually reentering
19 the United States when you got caught?

20 A Yes, exactly.

21 Q You weren't go in --

22 THE COURT: I'm sorry, you mentioned you were in
23 the state of New Mexico. The question now was were you in
24 the country Mexico versus being in the United States?

25 THE WITNESS: Well, I was on the highway just

1 driving through New Mexico. I didn't --

2 THE COURT: New -- you were driving through New
3 Mexico?

4 THE WITNESS: Yes, New Mexico, yes.

5 THE COURT: From -- going through El Paso, going
6 through the checkpoint?

7 THE WITNESS: Yes, going through the border patrol
8 and entering Houston.

9 BY MR. WOOLDRIDGE:

10 Q Did you go into Mexico the country?

11 THE COURT: That would be Interstate 10 going from
12 El Paso to Houston and there's a checkpoint on Interstate 10?

13 THE WITNESS: Yes.

14 THE COURT: Is that what you're saying?

15 THE WITNESS: Yes, exactly.

16 THE COURT: Okay. So you weren't actually in the
17 country of Mexico?

18 THE WITNESS: No.

19 THE COURT: You were in the state of New Mexico?

20 THE WITNESS: Yes, exactly, New Mexico.

21 THE COURT: All right. Sorry, Counsel, just --

22 MR. WOOLDRIDGE: No problem.

23 THE COURT: -- he didn't clarify that.

24 MR. WOOLDRIDGE: Not a problem, Your Honor.

25 BY MR. WOOLDRIDGE:

1 Q Were you going outside the Top Notch clothing store
2 to rob Zeke Davis?

3 A No, absolutely not.

4 Q Were you going outside the Top Notch clothing store
5 to murder Zeke Davis?

6 A Absolutely not.

7 MR. WOOLDRIDGE: No further questions, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. GIORDANI:

10 Q Mr. Ketchum --

11 A Yes.

12 Q -- how many times have you rehearsed that story
13 with your lawyer? Was that a laugh? Do I sense some sarcasm
14 there, sir?

15 A No, I just -- you know, just --

16 Q How many times have you rehearsed that story?

17 A He don't come see me to rehearse so I don't -- I
18 don't -- I can't answer that. I don't know what you're
19 talking --

20 Q Estimate.

21 A I don't know what you're talking about. He comes
22 to see me to, you know, to tell me stuff about my case, not
23 to rehearse a routine with me.

24 Q How many times have you gone through that story
25 with your lawyer?

1 A He asked me and I told him the truth so he asked
2 me, that's about it. I don't --

3 Q Okay.

4 A -- I don't rehearse --

5 Q You would agree --

6 A -- a routine --

7 Q -- you would agree you've got a lot on the line
8 here, right?

9 A Um-h'm.

10 Q You're on trial for first degree murder?

11 A Yes.

12 Q Are you telling me that you never went over that
13 story with your attorney?

14 A We went over what I -- what happened. We don't --
15 he don't come to me every time and oh, let's go over this, go
16 over that, let's go over this.

17 Q Okay. How many times did you go over what
18 happened?

19 A Three times.

20 Q Okay. How long have you been in preparation for
21 this trial?

22 A How long have I been incarcerated?

23 Q In preparation for this trial?

24 A I don't know what that means.

25 Q How long have you been -- has Mr. Wooldridge been

1 your lawyer; how about that?

2 A Ever since my preliminary hearing.

3 Q Okay. And have you seen several court documents?
4 And you've seen the discovery in the case. Seen the police
5 reports against you and the witness statements against you,
6 et cetera?

7 A I only seen the discovery with Bernard on there,
8 and it had me as a Polo shirt number 3. I never seen
9 anything besides that.

10 Q And how about a video? How many times have you
11 seen video in this case?

12 A He showed it to me about twice.

13 Q You've only seen this video twice?

14 A Yes.

15 Q Okay. And --

16 A Besides here.

17 Q Okay.

18 A Five.

19 Q In court you've seen it a bunch of times, right?

20 A Yeah.

21 Q All right. You would agree with me that you are on
22 camera walking out with Zeke Davis?

23 A Yes.

24 Q You would agree with me that there's a short period
25 of time where off the camera and then you come back on a

1 camera and you have his pants and you're tugging at the belt,
2 right?

3 A Yes.

4 Q Okay. You are attempting to fill in the blanks for
5 this jury what happened off that camera, right?

6 A Yes.

7 Q Okay. I want you to go through step by step
8 exactly what happened when you went off frame.

9 A Step by step?

10 Q Yep, step by step.

11 MR. WOOLDRIDGE: Asked and answered, Your Honor.

12 THE COURT: It's cross-examination.

13 THE WITNESS: He grabbed me, pulled me to him,
14 shoved the gun in my ribs, and I looked in his eyes, seen all
15 the demons in him, closed my eyes, called on the Lord, a
16 feeling came over me, a voice came over me from my grandma, I
17 pulled out and shot.

18 BY MR. GIORDANI:

19 Q Okay. Keep going.

20 A And after that, he hit the floor, shaking, kicking
21 off the pants. I grabbed at the pants, at the legs when I
22 regained my confidence and stuff, and I snatched them, and I
23 snatched at the belt.

24 Q Okay. So before I go into further detail you've
25 now admitted to taking Zeke's force by property -- or Zeke's

1 property by force?

2 A Yes, I did.

3 Q Okay. Now, you left out some details so I want to
4 go back. And when I say step by step, I mean every single
5 step. You're saying --

6 MR. WOOLDRIDGE: Objection, Your Honor.

7 BY MR. GIORDANI:

8 Q -- when you went off the camera --

9 THE COURT: Overruled.

10 BY MR. GIORDANI:

11 Q -- that you were walking towards Zeke's car?

12 A Right.

13 Q Okay. What happened next?

14 A He grabbed me, pulled me close to him, shoved his
15 gun in my ribs and asked me -- told me bitch ass nigga tear
16 it off or I'll pop you.

17 Q Where did he take that gun from?

18 A He took it from his pocket. I don't know, I was
19 looking down at my phone.

20 Q Okay. Did he have anything else in his hands?

21 A I wasn't paying attention.

22 Q Okay. Which hand did he have the gun in?

23 A He had it right -- right, I should say.

24 Q Well, it was stuck in your ribs so you tell me.

25 Right or left?

1 A I mean, but it was the side so it was this side
2 so --

3 Q So he stuck his gun in your ribs?

4 A Um-h'm.

5 Q Touching you? Is that is a yes?

6 A Shoved it in my ribs, not stuck it.

7 Q Okay. Shoved it your ribs?

8 A Um-h'm.

9 Q Did he tug on your belt before or after that?

10 A Before.

11 Q Okay. So he pulled you close to him and stuck the
12 gun in your ribs?

13 A Yes.

14 Q Okay. Did he pull you face to face?

15 A Yes, he -- right here.

16 Q So you were checking your phone, is your story,
17 right?

18 A No, I looked in my phone, and when I looked up,
19 that's when he grabbed me, shoved it in my ribs, and I'm like
20 this to him, like -- like, you know, I wasn't expecting so
21 I'm like this to him. Gun in my ribs, he told me, tear it
22 off bitch ass nigga before I pop you.

23 Q Okay. What did do you?

24 A I'm looking him dead in his eyes, see the demons on
25 him. I could tell he's serious so I wasn't going to play

1 with him. I reached in my pocket, but as I reached in my
2 pocket, I closed my eyes and I just called on the Lord, and
3 you know, I felt the spirit come over me, and I hear a voice,
4 heard my grandma talking to me, telling me to stand up for
5 myself, so I just pulled out my gun and shot.

6 Q Okay. Divine intervention, huh? Is that your
7 story?

8 A Yeah, if that's what you want to call it.

9 Q What pocket did you pull your gun from?

10 A My gun was in my right pocket.

11 Q Okay. Where did your cell phone go?

12 A It fell, I don't know.

13 Q Oh, it fell?

14 A Yeah, I don't -- I don't --

15 Q It was -- fell to the ground?

16 A Yes, I guess.

17 Q All right. Did you pick it back up?

18 A I don't -- I don't really recall picking it back
19 up, no.

20 Q So it would have been either at the scene or --

21 A It could have been.

22 Q -- you would have picked it back up?

23 A It should have been at the scene.

24 Q Okay.

25 A I never picked it back up.

1 Q So when Mr. Davis, you've alleged that he now is
2 attempting to rob you and you reach into your pocket and you
3 grab your gun?

4 A Um-h'm.

5 Q Where is his gun when you do that?

6 A It was in his hand. When he pulled me to him, he
7 shoved it in my ribs. He had it already on deck, I should
8 say, to attempt to do what he was going to do.

9 Q Okay. So you were able to draw your gun from your
10 pocket, pull it out like a cowboy, and shoot him before he
11 shot you; is that your story?

12 A No, it was -- I was this close to him like this,
13 and I just came out like I was listening to him. I wasn't
14 going to be defiant. I was coming out like this and I just
15 came out with in hand first, and I shot.

16 Q Okay. When did you pistol whip him?

17 A H'm?

18 Q When did you pistol whip him?

19 A I didn't -- I didn't pistol whip him.

20 Q Okay. So you just shot him?

21 A Yes.

22 Q When you shot him, you said something to the effect
23 of he went down, he was shaking or something like that?

24 A Yeah, he was --

25 Q Tell me exactly what happened.

1 A He went down, he was just shaking, kicking off his
2 pants like he was -- they were already kind of down so he was
3 just shaking.

4 Q Where was his gun at that point?

5 A It was on the side of him, like right on the side
6 if --

7 Q How far away?

8 A I couldn't tell you the approximate feet, I don't
9 know. It wasn't that far. It was in reach.

10 Q Okay. I don't want you to guess so if his body is
11 on the ground -- is he -- how's he laying?

12 A He was laying flat down. I mean, I don't -- I
13 wasn't paying attention to all of that. I was trying to
14 regain my strength, you know, my -- my confidence.

15 Q Oh, okay. So you weren't paying attention to the
16 guy that you've alleged had a gun?

17 A I wasn't paying attention to the way he was laying,
18 yes, and how was he laying.

19 Q Oh, I asked where -- how far the gun was from him?

20 A Yeah, I said in arm's reach.

21 Q In arms reach?

22 A Yeah.

23 Q It was within arms reach when he was laying on the
24 ground? Is that -- are you sure?

25 A Yes.

1 Q Okay. What did you do once you regained your
2 composure or whatever you're saying there?

3 A I got angry, I snatched his pants, and I took his
4 belt out of him -- out of his pants.

5 Q Okay. Where did you -- where were you in relation
6 to his body when you did that?

7 A I was at his feet.

8 Q Like his feet are right by your feet?

9 A Yeah, I was in front of him. Like, in front of
10 him. I snatched them off.

11 Q Okay. You said something with your lawyer about he
12 was shaking and you were liking pulling down your (sic)
13 pants. How did those pants first start to come off?

14 A I never said pulling down my pants.

15 Q No, no, no, his pants.

16 A Okay, you said mine. His pants were already
17 sagging so when he hit the floor, he was kicking like a fish
18 out of water.

19 Q Okay. Kicking and -- are you saying like reacting
20 because he just got shot?

21 A Yes.

22 Q Like convulsing?

23 A Yes, like he's having a seizure.

24 Q Oh, okay. So now he's having a seizure and that's
25 how his pants started to come off?

1 A No, I said like he was having a seizure. That's --

2 Q Okay.

3 A -- how he was kicking.

4 Q Okay. So the pants are already coming off and then
5 you decide I'm pissed now I'm going to tug them off?

6 A No, I snatched them. I didn't tug. I snatched
7 them off.

8 Q Who you did you -- what is the difference, I'm
9 sorry?

10 A Well, a tug would just be like this (indicating).
11 I snatched them off like aggressively. I was angry.

12 Q Okay. You were angry?

13 A Yes.

14 Q So you went from the divine intervention, the Lord
15 and your grandma speaking to you, to angry enough to rip a
16 man's pants off as he's dying?

17 A Yes, I did.

18 Q Okay. When you pulled his pants off, what did you
19 do?

20 A I snatched his belt out of his pants.

21 Q Okay. Obviously, you've seen the video, we've all
22 seen the video, and that's on camera, right?

23 A Yes.

24 Q All right. So you're taking the belt off, and we
25 know you go back to the car. Why are you going back to the

1 car?

2 A Because I was trying to leave.

3 Q Trying to leave, why?

4 A I was trying to get away, and I was trying to
5 leave, but I noticed I dropped my ID, went back got my ID, he
6 tried to reach for his gun, I striked him with the belt and
7 grabbed his gun --

8 Q Okay.

9 A -- shoved it in my waist and covered it and got
10 back to the car.

11 Q Okay. So when you went back to the car, you got to
12 like the door, right? To the door area of the car?

13 A Yes.

14 Q And you realized then that you forgotten your ID?

15 A Um-h'm.

16 Q How did your ID come out?

17 A I don't know. It must have fell when I whipped out
18 my gun. I don't carry a wallet.

19 Q Okay. When you realized that, what did you do?

20 A I went back and grabbed it.

21 Q Okay. When you were going to your car -- to the
22 car before you realized you had dropped your ID, before you
23 realized you had dropped your ID, what were you thinking at
24 that time?

25 A I was thinking I -- I just want to get out of here,

1 you know.

2 Q Okay. Were you scared or angry?

3 A I was both, scared and angry.

4 Q Okay. Scared and angry --

5 A Yeah.

6 Q -- as you went back to your car tugging his belt,
7 right? Okay. Is that a yes?

8 A Yes.

9 Q She's taking all this down.

10 A Yes.

11 Q All right. So you get back to the car, you realize
12 you forgot your ID?

13 A No, I seen --

14 Q Or you dropped it?

15 A Yeah, I seen it.

16 Q Okay. Then you go back towards Mr. Davis?

17 A Yes.

18 Q Okay. When you go back towards Mr. Davis, tell me
19 step by step what happened.

20 A I went back towards him, grabbed my ID, he was
21 reaching for his gun, I striked him with the belt, and I
22 grabbed his gun, put it in my waistline and covered it with
23 my shirt and headed back to the car.

24 Q Okay. So you're walking back to Mr. Davis, who was
25 -- is he still convulsing or shaking?

1 A He was -- no, he was still alive. He was just, you
2 know, reaching for his gun. He was reaching for his weapon.

3 Q Okay. He was reaching for his weapon. How did you
4 describe that weapon again?

5 A It was a small revolver.

6 Q Okay. Small enough that, of course, the jury
7 wouldn't see it on the camera throughout the night, right?

8 A I don't know. It was small enough to fit in his
9 pocket.

10 Q Okay. So you're walking back towards him? Is that
11 a yes?

12 A Yes. Skipping, walking kind of.

13 Q Skipping?

14 A I mean, you know, jogging, whatever you want to
15 call it.

16 Q All right. So there's a difference, right?

17 A Yeah.

18 Q Are you walking or jogging?

19 A I mean, I kind of -- kind of jog.

20 Q All right. Because you're like I need my ID?

21 A Yeah.

22 Q Why would you need your ID so bad?

23 A Because it's my ID. It's identification.

24 Q Because leaving evidence of your identity at the
25 scene of the murder or --

1 A Yes, that would have been right, I was leaving --

2 Q Oh, okay.

3 A -- evidence.

4 Q Okay. So --

5 MR. WOOLDRIDGE: Objection as to the -- as to the
6 State's characterization.

7 THE COURT: Overruled.

8 BY MR. GIORDANI:

9 Q When you go to retrieve your ID, do you see your
10 ID?

11 A Of course, I seen it.

12 Q All right. Where was it?

13 A It was on the ground.

14 Q Where?

15 A I guess, like right in the middle like where we
16 were.

17 Q Okay. Where in relation to Mr. Davis's dying body
18 was your ID?

19 A Well, you could say the two cars are right here, he
20 was right here in the back, more in front of the white van.
21 My ID was like at the -- both of the tails of the car. It
22 was right there.

23 Q Okay. So did you have to go past his body to get
24 your ID?

25 A No.

1 Q It was before his body? It was between --

2 A It was right there, where his body was, my ID was
3 right there on the floor.

4 Q Okay. So you're going back just to get your ID?

5 A Yes.

6 Q Not to get his watch or jewelry?

7 A No.

8 Q Okay. When you're going back to get your ID, at
9 what point is it that you realize he's reaching for a gun?

10 A I mean, he's right there. I could see him. I
11 could see -- I could see him. He's moaning and (indicating),
12 and he reached for the gun. You know, I could see him. He's
13 right there.

14 Q Okay. When you saw that, how far away were you
15 from him?

16 A Inches.

17 Q Inches?

18 A Yes.

19 Q Okay. And then what do you do when you see him
20 reaching for the gun?

21 A I strike him with the belt. I swing the belt.

22 Q And so the record's clear, you took your right
23 arm, and you're -- I assume, you're facing his body, right?
24 Is that a yes?

25 A Yes.

1 Q And you whip him like a normal right arm swing,
2 right?

3 A I swung it like hard as I could.

4 Q And you whipped him in the face?

5 A Um-h'm.

6 Q Like Indiana Jones?

7 A I mean, I wasn't aiming for the -- it hit him in
8 the face.

9 Q Okay. And when you hit him in the face with the
10 belt, what did he do?

11 A He just turned and, you know, he turned. He took
12 the hit. What could he do? He just took the hit and like,
13 you know --

14 Q Okay. Where did the belt -- where did the gun go?

15 A My gun or his gun?

16 Q Yours.

17 A My gun was still in my hand.

18 Q Oh, which hand?

19 A The hand I gabbed it with my ID. The gun's -- this
20 -- I just grabbed it, I had the belt in this hand.

21 Q The gun was in your right hand?

22 A No. Yes, the gun was in my right hand. The belt
23 was in my left hand.

24 Q Oh, I thought a moment ago you said you whipped him
25 Indiana Jones style with the belt with the right hand?

1 A I never said that. You said that. You said right
2 hand.

3 Q Didn't you just display that and I put it on the
4 record? Remember that?

5 A Yeah, you said right hand. I never said right
6 hand.

7 Q Okay. So let me get it clear, then, and I'm not
8 trying to confuse you.

9 A Um-h'm.

10 Q What your story is, is that the belt is in which
11 hand? Let me just ask you that.

12 A The belt is in my left hand.

13 Q And what's in your right?

14 A My gun was in my right hand.

15 Q Okay. So this guy is reaching for his gun, which
16 you say is next to him, within arm's reach, right?

17 A Um-h'm.

18 Q And are you right-handed or left-handed?

19 A Right-handed.

20 Q Okay. So you got the belt in your left hand, your
21 gun in the right?

22 A Um-h'm.

23 Q This man that you are scared of, you think he's a
24 robber and he's a scary guy, and you take the belt and whip
25 him in the face when he's reaching for a gun? You've got

1 your gun in the right hand. You've just shot him, right?

2 A Yes.

3 Q So you don't decide to shoot. You decide to do the
4 Indiana Jones swing?

5 A Yes.

6 Q When you do that, what does he do with the gun?
7 Has he reached the gun?

8 A You mean when I strike him with the belt, what did
9 he do?

10 Q Yeah, yeah. Is he --

11 A He was reaching for it, when I struck him. It was
12 -- you know, I struck him. He was reaching for it, and you
13 know, he took the hit and he was like, you know --

14 Q Oh, it knocked him out when you hit him?

15 A No, it didn't knock him out. It just made him --
16 it made him turn his face. I hit him very kind of hard.

17 Q Okay. What happened with his gun?

18 A I grabbed it.

19 Q Which hand did you grab it with?

20 A I grabbed it with the belt -- with the hand I had
21 the belt in, stuffed it in my waistline, covered it with my
22 shirt and headed back toward the car.

23 Q What did you do with your gun?

24 A I had it in my hand still.

25 Q All right. So you got full hands. Now, you got a

1 gun in the right hand, you got a gun in the left hand and a
2 belt in the left hand; is that right?

3 A Yeah.

4 Q Okay. And then you say that you stuffed those all
5 in right before you come back into camera frame; is that
6 right?

7 A Well, I put the gun in my waistline, covered that
8 up with my shirt, I had my gun in my hand. I mean, it's not
9 like it was big or something. It's a little gun, and I had
10 the belt in this hand.

11 Q Okay. So you're saying that you stuffed all that
12 back into -- you put his gun in your belt?

13 A Yeah, in my waistline.

14 Q Okay. His gun goes into your waistline. Where
15 does your gun go?

16 A I never -- it was in my hand the whole time.

17 Q All right. So it's in your hand still until you
18 get back to the car?

19 A Yeah, when I got in the car, I put it in my pocket.

20 Q When you got in the car, you put it in your pocket?
21 Where was the belt?

22 A The belt was in my hand.

23 Q Okay. Where was Mr. Davis's watch?

24 A I don't know. I wasn't paying attention to the
25 watch.

1 Q Okay. Was there any kind of struggle? You know,
2 you said he grabbed your belt, and then you pull out and
3 shoot him. He goes down instantly, right?

4 A He grabbed my belt and pulled me toward me
5 aggressively.

6 Q Okay. There's no like -- you're not boxing, you're
7 not wrestling, nothing?

8 A I would not dare try to box or wrestle someone that
9 has a gun in my (sic) waistline.

10 Q I'm not saying you would be. I'm asking you so
11 this jury's clear. No fighting. It's just he pulls you, you
12 pull out, shoot him, he goes down?

13 A He pulled me, shoved the gun in my waistline, and
14 yes, I did pull out and shoot him.

15 Q Okay. Other than this whip with the belt, is there
16 any other time that you touch his body?

17 A I guess, you could say when I grabbed the pants,
18 but I didn't --

19 Q Okay. That's fair. So that's the only time that
20 you touch his body?

21 A Yes.

22 Q Okay. When you go back -- so you come back on
23 camera screen, and at this point you've hidden both -- or no,
24 you've hidden what in your belt?

25 A I put his gun in my waistline.

1 Q Okay. And now -- you -- and you still have the
2 belt in your left and your gun in the right? Is that
3 accurate?

4 A Yes.

5 Q Okay. What do you do from there?

6 A Get in the car and leave.

7 Q Right. There's -- there's distance, right, between
8 the body and the car? Like I'm saying, step by step. I want
9 to walk through it. So at the point where you put his gun in
10 your waist, you've got his best in your left, your gun in the
11 right --

12 A Um-h'm.

13 Q -- at that point in time, do you start walking,
14 running, jog, skipping to the car, what?

15 A Walk to the car.

16 Q Okay. At that point in time, had you ever touched
17 his neck area?

18 A No.

19 Q Okay. Had you ever touched his hands?

20 A Absolutely not.

21 Q Okay. When you say you looked in his eyes, he had
22 demons, you know, whatever. When you did that, did you
23 notice anything on his mouth?

24 A Yes, he had gold teeth.

25 Q Gold teeth?

1 A Yes.

2 Q Is that known as a grill?

3 A Yeah, it's a grill.

4 Q Okay. When -- so when you looked in his eyes and
5 he tried to rob you, he had that gold grill in, right?

6 A Um-h'm.

7 Q I want to be clear about what the Judge kind of
8 asked you about because I was a little confused. What your
9 lawyer said, he was asking you were you in the state of
10 Mexico and I believe the Judge asked you and you said no?

11 A No, I -- no, not Mexico, New Mexico.

12 Q Okay. But the state of New Mexico, not the country
13 of Mexico?

14 A Well, whatever the highway contains, I don't know
15 if it's state or the country, but I know I was going from
16 Vegas, Arizona, New Mexico. I was entering Texas.

17 Q Vegas, Arizona, New Mexico, entering Texas. So
18 four -- you're four states away when you were apprehended by
19 police?

20 A Um-h'm.

21 Q Yes?

22 A Yes.

23 Q Okay. During the two weeks between the murder and
24 your arrest, what were you doing in that time?

25 MR. WOOLDRIDGE: Objection.

1 THE COURT: Overruled.

2 MR. WOOLDRIDGE: Exceeds the scope of direct.

3 THE WITNESS: I was --

4 THE COURT: Cross-examination, Counsel.

5 THE WITNESS: -- gathering money to retain a
6 lawyer.

7 BY MR. GIORDANI:

8 Q Oh, okay. So you were working to retain a lawyer?

9 A No, I was gathering money to retain a lawyer. I
10 wasn't working.

11 Q How were you gathering money?

12 A Well, I was just, you know, calling friends, asking
13 for, you know, money.

14 Q Okay. Is that something you did often?

15 A No.

16 Q That evening when you were -- before this whole
17 robbery and murder occurred --

18 A Um-h'm.

19 Q -- inside the club, you described with your lawyer
20 some rap song. I'm not sorry, I'm not familiar with the
21 artist. I might have written it down, but you mow what I'm
22 talking about?

23 A Yes, Lil Boosie.

24 Q Lil Boosie? When Lil Boosie came on --

25 MR. WOOLDRIDGE: Boosie, actually.

1 MR. GIORDANI: Excuse me?

2 MR. WOOLDRIDGE: Boosie.

3 BY MR. GIORDANI:

4 Q Lil Boosie. When Lil Boosie came on, you took your
5 gun out, right? I mean, we've all seen that. You're not
6 hiding that, right?

7 A Yes.

8 Q Okay. And you were -- you like kind of danced with
9 it or kissed it, whatever you did, right?

10 A Yes.

11 Q Okay. And you just did that because the song came
12 on and you weren't doing anything else, talking about
13 anything else with that gun?

14 A No.

15 Q Did you -- is that the only time you should have --
16 you would have pulled your gun out that night, other than
17 when the --

18 A Yes, that was the only time.

19 Q That was the only time?

20 A Yes.

21 Q Because other -- I mean, you're saying, you had
22 that gun on you for protection --

23 A Um-h'm.

24 Q -- that time, you know, the song came on, you were
25 just into it. Other than that, you wouldn't have pulled it

1 out because you had no need to, right?

2 A Right.

3 Q All right. And when Mr. Wooldridge asked you about
4 your prior conviction, you gave some details, right? You
5 said something like I got pulled over, I had an ID, I lied to
6 police about it or something?

7 A I never said I had an ID. I said I used my
8 cousin's name.

9 Q Okay, okay. And that was it?

10 A Because he had a license and I didn't.

11 Q All right. So Mr. Wooldridge failed to mention
12 this. The crime you were actually convicted of is a felony,
13 right?

14 A Yes, it was.

15 Q You're telling this jury you got convicted of a
16 felony for just having your cousin's ID?

17 A Yes, it's false impersonation.

18 Q All right. When Mr. Wooldridge asked you about
19 Mr. Davis, I thought initially you had said -- let me get
20 your words. I don't want to twist your words But you said
21 never -- you had first saw Zeke at a tripper pole, made it
22 rain, he bumped you --

23 A Um-h'm.

24 Q -- is that right?

25 A Yes.

1 Q So that's the first time you saw Zeke ever?

2 A That's the first time we had encounters. I
3 couldn't see him because it was dark in there.

4 Q Oh, okay. So you --

5 A He had his hat low.

6 Q He had his hat on?

7 A He had his hat low, yeah.

8 Q Low, okay.

9 A It was on.

10 Q So you've never met Zeke before that night?

11 A No.

12 Q You don't know his family? You don't know his mom?
13 You don't know his aunt? No?

14 MR. WOOLDRIDGE: Objection, Your Honor.

15 MR. GIORDANI: I'm asking if he knew them.

16 THE COURT: Overruled.

17 MR. GIORDANI: He just got into that on direct
18 exam.

19 THE COURT: I overruled it.

20 MR. GIORDANI: Thank you.

21 BY MR. GIORDANI:

22 Q You say that you met -- or you had heard of him
23 from some girl?

24 A Yes.

25 Q When was that?

1 A Like three months before this happened.

2 Q Three months, okay.

3 A Yeah, three months prior.

4 Q Okay. I want to go back to when we're outside.

5 A Um-h'm.

6 Q Would you admit that Bernard, who testified earlier

7 this week, he was going to be your ride that night?

8 A Yes.

9 Q Okay. Would you admit that you knew several people

10 there at the Top Notch (inaudible)?

11 A No, I didn't.

12 Q How many people did you know?

13 A I really didn't know anyone. I just knew them

14 through Bernard.

15 Q You really didn't know anyone that was there that

16 night?

17 A Not really.

18 Q So you -- but Bernard?

19 A Yeah, I -- I met him there.

20 Q Okay. Do you want some water?

21 A No, thank you. I'll get some down there, thanks.

22 Q You didn't know anyone there but Bernard?

23 A Yeah.

24 Q Had you met anyone there but Bernard?

25 A Not really. I just seen their faces before with

1 him, said what's up, just, you know, saying hi and bye, like
2 a meet and greet thing.

3 Q Okay. Would you know who that person was on the
4 screen that your lawyer talked about with some of the
5 witnesses that ran off the screen after the murder or after
6 the shooting?

7 A No, I would not, no.

8 Q Okay. Don't know that person?

9 A No.

10 Q When you were in the car with Bernard, after this
11 just went down --

12 A Um-h'm.

13 Q -- what were you talking about?

14 A I wasn't talking about nothing. He just, you know,
15 kept quiet. We didn't want his baby mama to freak out and he
16 just dropped me off.

17 Q Okay. Where did he drop you off?

18 A At the gas station.

19 Q Who was waiting at the gas station?

20 A A friend.

21 Q How did you get in touch with that friend?

22 A I have two phones.

23 Q Did you call him, then? How did you get in touch
24 with that friend is the question?

25 A I texted him. I told him meet at the gas station

1 on Tropicana and I believe, Rainbow, Chevron.

2 Q Okay. So you texted him from the car? Is that
3 right?

4 A Yes.

5 Q Okay. So I want to be clear here, you're saying
6 you had two phones.

7 A Um-h'm.

8 Q So the one you dropped at the scene; is that right?

9 A Yes.

10 Q And then the one you texted your friend to meet you
11 there?

12 A Yes.

13 Q You obviously didn't go to the police?

14 A No, I did not.

15 Q What did you do with your gun?

16 A Threw it away with all the other stuff.

17 Q Oh, you threw away your gun, too?

18 A Threw away everything.

19 Q So where did you do that?

20 A At the gas station.

21 MR. GIORDANI: Court's brief indulgence. Sorry.

22 Court's brief indulgence.

23 BY MR. GIORDANI:

24 Q When your attorney was questioning you, he talked
25 about your, I guess, car accident, right?

1 A Yes.

2 Q What kind of disability do you have?

3 A Like I said, I'm not good with the medical terms.

4 I just know something like lumbar -- lumbar spine or

5 something. I don't --

6 Q All right. Did you have surgery?

7 A No, not surgery.

8 Q Okay. Did that prevent you from doing everyday

9 activities?

10 A Yes, of course.

11 Q Like what?

12 A A lot of things.

13 Q Give me some examples.

14 A Bending over tying my shoes, just I couldn't do too

15 much of anything, really.

16 Q So you couldn't bend over to tie your shoes?

17 A No, not at all.

18 Q And we're talking -- I'm talking about like the

19 time frame we've been talking about this whole time.

20 A Oh, you -- you thought you was talking about when

21 the accident occurred.

22 Q No, no, no.

23 A It's just -- you know, it's just --

24 Q September 25th --

25 A -- back pains. I could --

1 Q -- 2016.

2 A I could sit in this chair for over too long and my
3 back hurts.

4 Q All right. It hurts?

5 A Yes.

6 Q September 25th, 2016, did your injury prevent you
7 from doing normal things like we've been talking about?

8 A No, I mean, I do a little two-step, but I can't --
9 like, that's what you seen me in the club doing little, you
10 know, dance.

11 Q Okay.

12 A But far as anything else, I'm not active like that.

13 Q All right. Something your lawyer said in opening
14 statement.

15 MR. WOOLDRIDGE: Objection, Your Honor.

16 BY MR. GIORDANI:

17 Q Your words aren't hit --

18 MR. GIORDANI: What's the basis of the objection?

19 MR. WOOLDRIDGE: Openings aren't evidence.

20 THE COURT: Overruled.

21 MR. GIORDANI: Not -- thank you.

22 BY MR. GIORDANI:

23 Q Your lawyer said Zeke wasn't in the back when you
24 were showing your gun off, and I assume that would be
25 referring to this like rap song incident.

1 A Are you saying he wasn't in the back? Yeah, he
2 wasn't.

3 Q Okay. Did you take any illicit substances that
4 night?

5 A What do you mean, like --

6 Q Drugs?

7 A Oh, yeah, I smoked some weed. I smoked a blunt,
8 that's it.

9 Q All right. Were you drinking?

10 A I had a mixed drink before I left the house, that's
11 all.

12 Q Okay. So you had a mixed drink before you left the
13 house.

14 A Yes.

15 Q You weren't drinking at the club?

16 A No.

17 Q Not at all?

18 A Not at all.

19 Q Okay. And you smoked a little weed. Weed's legal.
20 I mean, no one's judging you for that.

21 A Um-h'm.

22 Q How much weed are we talking about just --

23 A I just --

24 Q -- a blunt?

25 A -- smoked a blunt when I got there.

1 Q Okay. Who did you smoke it with?

2 A I passed it to a couple people. I don't -- I don't
3 really know their names. I don't --

4 Q All right. You didn't know anybody there but
5 Bernard, right?

6 A Yeah.

7 MR. GIORDANI: I'll pass the witness, Your Honor.
8 Thank you.

9 THE COURT: All right, thank you. We've got five
10 minutes to noon.

11 MR. WOOLDRIDGE: No further questions, Your Honor.

12 THE COURT: Okay. All right. Thank you,
13 Mr. Ketchum. You may step down.

14 THE WITNESS: Thank you.

15 THE MARSHAL: Your Honor, the jury has some
16 questions.

17 THE COURT: Oh, we have a couple jurors with
18 questions. So hang on just one minute.

19 (Off-record bench conference)

20 REDIRECT EXAMINATION

21 BY MR. WOOLDRIDGE:

22 Q Mr. Ketchum, you indicated that you weren't from
23 Las Vegas?

24 A No.

25 Q Where are you from?

1 A Sacramento, California.

2 Q Thank you.

3 THE COURT: I'm sorry, Counsel, I think we also
4 need to clarify -- the question was, Mr. Ketchum said he's
5 not from Vegas, where is he from, where does he live. So --

6 MR. WOOLDRIDGE: Oh.

7 THE COURT: -- at the time of the incident, he's
8 not -- he wasn't from Vegas, but where was he living at the
9 time.

10 BY MR. WOOLDRIDGE:

11 Q Oh, where were you living at the time of the
12 incident?

13 A Las Vegas, Nevada.

14 Q Okay.

15 THE COURT: And at that time, how long had you been
16 living here?

17 THE WITNESS: For about three years.

18 THE COURT: All right, thank you.

19 MR. WOOLDRIDGE: Thank you.

20 THE COURT: All right. And State, you were going
21 to ask the other question.

22 MR. GIORDANI: And if I could just see that. Thank
23 you, Your Honor.

24 RECROSS-EXAMINATION

25 BY MR. GIORDANI:

1 Q For clarification, what side of your body were you
2 grabbed from?

3 A I was grabbed from the -- my belt buckle, the
4 middle. He grabbed it just -- he grabbed it and -- and
5 gripped like my pants. He almost grabbed my private area,
6 and he just grabbed me and pulled me toward him very
7 aggressively.

8 Q Okay.

9 A So I could stand up and show you guys, but, you
10 know, it was like he grabbed all of this right here. Just
11 grabbed -- put his hands and grabbed all of this.

12 Q All right.

13 A Had a tight grip on me.

14 Q Okay. So the record reflects, you went -- so he
15 grabbed it like this, like over your belt, right?

16 A Yeah.

17 THE COURT: With his right hand, correct?

18 THE WITNESS: Yes.

19 MR. GIORDANI: All right.

20 THE WITNESS: I mean, well, left hand really, yeah,
21 and had the gun.

22 THE COURT: Correct.

23 MR. GIORDANI: Okay.

24 THE COURT: That's what we need clarified is which
25 hand did he grab you with, and which hand did he have the gun

1 in?

2 MR. GIORDANI: Go ahead.

3 THE WITNESS: He grabbed me with his left, yanked
4 me towards him, jammed a gun in my ribs with his right.

5 THE COURT: Okay. All right. Any further
6 questions?

7 MR. WOOLDRIDGE: No further questions, Your Honor.

8 THE COURT: All right. And could we have the piece
9 of paper with the question back? As to the questions
10 regarding the watch and the gun, I think counsel will cover
11 that with you -- they'll review the evidence with you during
12 closing arguments, and so I'm not going to ask those
13 questions. Anything else? All right. It is the noon hour.
14 Thank you, Mr. Ketchum, you may step down.

15 THE DEFENDANT: Thank you, Judge.

16 THE COURT: We're going to break for the noon hour.
17 I'll remind the jury -- what's -- I'm sorry, you had your
18 hand up?

19 UNIDENTIFIED JUROR: No.

20 THE COURT: Okay. I remind the jury, once again,
21 not to discuss this case, don't form and express any opinions
22 about it. Don't read, watch or listen to any report or
23 commentary or do any investigation or research about it.
24 With that, I'll see you back here at 1:30.

25 THE MARSHAL: Rise for the jurors.

1 (Court recessed at 12:01 p.m. until 1:42 p.m.)

2 (Outside the presence of the jury)

3 (Pause in the proceedings)

4 THE MARSHAL: Court come to order. Department 17
5 is back in session.

6 MR. GIORDANI: Mr. Wooldridge literally just
7 stepped out. I apologize, Your Honor.

8 THE COURT: That's okay. We'll settle jury
9 instructions after we finish with all the witness testimony
10 because he should only have three witnesses, right?

11 MR. GIORDANI: He should only have three and then
12 we have the two rebuttal.

13 THE COURT: Okay. So let's get the testimony done.
14 We'll see what time it is and from there we'll work it.

15 MR. GIORDANI: Okay.

16 MR. ROSE: Yes, Your Honor. Thank you.

17 (Pause in the proceedings)

18 (Off the record at 1:44 p.m. until 1:45 p.m.)

19 (Outside the presence of the jury)

20 (Pause in the proceedings)

21 THE MARSHAL: Court come to order. Department 17
22 is back in session.

23 THE COURT: All right, we're back on the record.
24 We're outside the presence of the jury. Counsel for both
25 sides are present, defendant's present.

1 MR. ROSE: Your Honor, I believe, there was one
2 issue that defense counsel wanted to raise before bringing in
3 the jury.

4 THE COURT: Okay. And that would be?

5 MR. WOOLDRIDGE: There is, Your Honor. I'm going
6 to make a quick record. Your Honor can rule however she
7 wants. I've brought up this issue before to Judge Villani
8 and was essentially, I'd have to make a showing. I believe,
9 I've made that showing with Mr. Ketchum testifying. It would
10 be under NRS 48.045. I believe that prior bad acts of the
11 decedent should come in under that 48.045, subdivision (2) as
12 not for it to show propensity evidence or to show that he
13 acted in conformity therewith, but for other admissible
14 purposes such as common plan or scheme and intent.

15 These other prior bad acts of the decedent occurred
16 in very similar circumstances as to what happened to Javar
17 Ketchum. This decedent had robbed people at gunpoint in
18 parking lots on two prior occasions.

19 THE COURT: In what year?

20 MR. WOOLDRIDGE: 2008, and then he was convicted in
21 2010. He went to prison for three years, according to the
22 judgments of conviction.

23 THE COURT: Okay. I think you've already had your
24 rulings on it. It's denied.

25 MR. WOOLDRIDGE: Okay.

1 MR. ROSE: I believe that was the only for outside
2 the presence of the.

3 THE COURT: Okay.

4 MR. WOOLDRIDGE: Thank you, Your Honor.

5 THE COURT: We'll bring in the jury now.

6 THE MARSHAL: Yes.

7 THE COURT: Finish your testimony, and then we'll
8 finish settling jury instructions. I've looked over defense
9 jury instructions and I'm really not finding anything that
10 isn't covered by the State's stocks.

11 THE MARSHAL: Rise for the jury.

12 MR. WOOLDRIDGE: Okay.

13 THE COURT: We'll deal with it.

14 (In the presence of the jury)

15 THE MARSHAL: Panel is present, Your Honor.

16 THE COURT: All right. We're back in the presence
17 of the jury panel. I'll members of the panel are present.
18 Please be seated. Counsel for both sides are present,
19 defendant is present. You may call your next witness.

20 MR. WOOLDRIDGE: Yes, Your Honor. The defense
21 calls Tracy Smith.

22 THE COURT: All right, please state your name,
23 spell your last name. Oh, and I'd remind you, you've already
24 been sworn.

25 THE WITNESS: Yes.

1 THE COURT: And you remain under oath so --

2 THE WITNESS: Right.

3 THE COURT: -- please state your name, spell your
4 last name for the jury.

5 THE WITNESS: Tracy Smith, S-m-i-t-h.

6 THE COURT: All right. You may proceed, Counsel.

7 MR. WOOLDRIDGE: Thank you.

8 TRACY SMITH, DEFENDANT'S WITNESS, PREVIOUSLY SWORN

9 DIRECT EXAMINATION

10 BY MR. WOOLDRIDGE:

11 Q Mr. Smith, what do you do for a living?

12 A I am head of marketing for a consumer electronics
13 accessories company.

14 Q And where are you employed?

15 A I'm employed with STM Brands, which is a company
16 out of San Diego, and I live near Salt Lake in a city called
17 Loram (phonetic).

18 Q Did you come all the way out here for this?

19 A I did.

20 Q Are you familiar with a person by the name of
21 Ezekiel Davis?

22 A I am.

23 Q And have you had any personal interaction with this
24 person?

25 A I have.

1 Q And based on that personal interaction is your
2 opinion of him that he is violent?

3 A Yes.

4 Q Thank you.

5 THE COURT: Okay. State.

6 MR. ROSE: Very briefly, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. ROSE:

9 Q Mr. Smith, do you recognize the individual sitting
10 at the table to my right wearing the white shirt but no
11 jacket?

12 A I do not.

13 Q Have you ever spoken with that individual?

14 A No.

15 Q Okay.

16 MR. ROSE: I have no further questions, Your Honor.

17 THE COURT: All right, thank you. Any further
18 questions?

19 MR. WOOLDRIDGE: No, Your Honor.

20 THE COURT: All right, thank you. You may step
21 down.

22 THE WITNESS: Thanks.

23 THE COURT:

24 MR. WOOLDRIDGE: Bear with me one --

25 THE COURT: Call your next witness.

1 MR. WOOLDRIDGE: Yep. Can I please call Houston
2 MacGyver.

3 THE COURT: Okay, Mr. MacGyver, you've been
4 previously sworn outside the presence of the jury. I'll just
5 remind you you're still under oath. Please state your full
6 name for the jury.

7 THE WITNESS: MacGyver Gale.

8 THE COURT: Okay. You may proceed.

9 MACGYVER GALE, DEFENDANT'S WITNESS, PREVIOUSLY SWORN
10 DIRECT EXAMINATION

11 BY MR. WOOLDRIDGE:

12 Q Mr. MacGyver --

13 THE COURT: MacGyver Gale, so last name's Gale.

14 THE WITNESS: Last name Gale, yes.

15 BY MR. WOOLDRIDGE:

16 Q Oh, I'm sorry.

17 THE COURT: I know, I made the same mistake.

18 MR. WOOLDRIDGE: All right.

19 BY MR. WOOLDRIDGE:

20 Q Mr. Gale, what do you do for a living?

21 A I own a clothing line.

22 Q Do you know a person by the name of Ezekiel Davis?

23 A Yes.

24 Q Have you had any personal interaction with
25 Mr. Davis?

1 A Yes.

2 Q Based on that personal interaction that you had
3 with Mr. Davis, is your opinion of him that he is a violent
4 person?

5 A Yes.

6 Q Thank you.

7 MR. WOOLDRIDGE: No further questions.

8 THE COURT: State.

9 MR. ROSE: Very briefly, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. ROSE:

12 Q Mr. Gale?

13 A Yes.

14 Q Do you know the individual sitting at the table to
15 my right wearing the white shirt but no jacket?

16 A No.

17 Q Have you ever spoken with that individual?

18 A No.

19 Q Now, you said that you owned a clothing line?

20 A Yes.

21 Q Is that clothing line sold at Top Notch Apparel?

22 A No. We're just online right now. It's completely
23 individual. We're not involved with anybody.

24 Q Okay.

25 MR. ROSE: No further questions, Your Honor.

1 THE COURT: All right. Anything further?

2 MR. WOOLDRIDGE: Nothing.

3 THE COURT: All right. Thank you, sir.

4 THE WITNESS: Thank you.

5 THE COURT: You may step down. You may call your
6 next witness.

7 MR. WOOLDRIDGE: The next witness I would call is
8 Giovanni Amoroso.

9 MR. GIORDANI: Can we approach?

10 THE COURT: You may.

11 (Off-record bench conference)

12 GIOVANNI AMOROSO, DEFENDANT'S WITNESS, SWORN

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

15 THE WITNESS: Giovanni Amoroso.

16 THE CLERK: Can you spell your name?

17 THE WITNESS: G-i-o-v-a-n-n-i. Last name is
18 A-m-o-r-o-s-o.

19 DIRECT EXAMINATION

20 BY MR. WOOLDRIDGE:

21 Q Mr. Amoroso, what do you do for a living?

22 A I'm a busboy at Batista's Hole in the Wall.

23 Q At Batista's Hole in the Wall?

24 A Yes.

25 Q And how long you been doing that for?

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.

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JULIE LORD, INDEPENDENT TRANSCRIBER


CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO: **C-16-319714-1**
C-16-319714-3
C-16-319714-4

JAVAR ERIS KETCHUM, aka,
James Ketchum, #6009695,
RODERICK VINCENT, aka,
Roderick Regale Vincent, #3054006,
MARLO CHILES, #2631208

DEPT NO: XVII

Defendants.

**NOTICE OF MOTION AND MOTION IN LIMINE REFERENCE PRIOR ACTS
OF THE VICTIM**

DATE OF HEARING:
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN J. ROSE, Deputy District Attorney, and files this Notice of Motion and Motion in Limine Reference Prior Acts of the Victim.

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

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DATED this 9 day of May, 2017.

BY 
STEVEN J. ROSE
Deputy District Attorney
Nevada Bar #13575

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Detectives learned that there was a clothing apparel store, Top Knotch, that doubled as an after-hours club, in the strip mall. Sometime after approximately 0300 hours, Mr. Davis arrived at the club, but there was no indication that anything had happened in the club which led to any sort of confrontation.

² A video of Mr. Davis dying on a cellular phone video was presented to the Grand Jury as exhibit 22.

1 After the shooting, the store closed its door and appeared to not be open when police
2 arrived. At approximately 1100 hours, as detectives and crime scene analysts were
3 documenting the scene, Marlo Chiles, Roderick Vincent, Martin Earnest and Samantha
4 Cordero exited Top Knotch. Chiles was the owner of Top Knotch, and Vincent owned a studio
5 inside of Top Knotch. Both Chiles and Vincent denied that there were any DVR's of the
6 surveillance video for Top Knotch or the recording studio. A subsequent search warrant on
7 the vehicles in the parking lot located two (2) DVR's of the surveillance footage from Top
8 Knotch and the studio in Vincent's car.

9 A review of that video demonstrated that at approximately 0325 hours, Chiles, Vincent,
10 Antoine Bernard and several other people were in the back area of the business when a person
11 in a number 3 jersey, later identified as Defendant Ketchum, produced a semi-automatic
12 handgun from his pants and showed it to the group.

13 At approximately 0614, Defendant and the victim, Mr. Davis, exited arm and arm out
14 the front of Top Knotch.³ The two walked to the front of Defendant Bernard's black vehicle
15 and appeared to converse for a short time, then walked by the driver's side of Bernard's
16 vehicle, where they left camera view. At approximately the same time, Bernard and an
17 African-American female got into Bernard's car. At approximately 0616 hours, the people on
18 video all appeared to have their attention drawn to the area where Defendant and Mr. Davis
19 were; Bernard backed his vehicle out of the spot and Defendant entered the view of the camera,
20 removing a belt from a pair of pants while holding the gun in his other hand. Defendant
21 thereafter approached Bernard's car, opened the passenger door, placed the belt on the front
22 seat, and returned to the area of Davis' body. Defendant returned to Bernard's vehicle, entered
23 the passenger seat of the vehicle and the vehicle fled the area.

24 Despite having contact with several witnesses in the parking lot as well as Chiles and
25 Vincent, the police had no information on the identity of the shooter. Eventually the shooter
26 was identified as Defendant Javar Ketchum and a warrant for his arrest was issued. Once he
27

28

³ The time on the recording is approximately an hour behind the actual time of the events.

1 was arrested, police viewed Defendant in person and were easily able to establish his identity
2 as the shooter.

3 POINTS AND AUTHORITIES

4 Defendant may assert the prior conduct of the victim is admissible to establish who the
5 initial aggressor was on the night of the killing. On March 8, 2017, Defendant filed a Motion
6 to Admit Character Evidence of the victim, Ezekiel Davis. In part, Defendant asserted that this
7 evidence was necessary to present a theory of self-defense. If he is asserting self-defense, the
8 law is quite clear what may be admissible in his trial.

9 NRS 48.045(1) states, in relevant part:

10 1. Evidence of a person's character or a trait of his character is not admissible
11 for the purpose of proving that he acted in conformity therewith on a particular
occasion, except:

12 (b) Evidence of the character or a trait of character of the victim of the crime
13 offered by an accused, subject to the procedural requirements of NRS 48.069
14 where applicable, and similar evidence offered by the prosecution to rebut such
evidence. . .

15 However, NRS 48.055 limits the method in which character evidence may be proved:

16 1. In all cases in which evidence of character or a trait of character of a person
17 is admissible, proof may be made by testimony as to reputation or in the form of
18 an opinion. On cross-examination, inquiry may be made into specific instances
of conduct.

19 In Daniel v. State, 119 Nev. 498, 78 P.3d 890 (2003), the Nevada Supreme Court held that the
20 victim's propensity for violence is not an essential element of a claim of self-defense, and,
21 therefore, NRS 48.055(1) applies. The Court did recognize a narrow exception to the rule:

22 However, this court has held that evidence of specific acts showing that the
23 victim was a violent person is admissible if a defendant seeks to establish self-
24 defense *and was aware of those acts*. This evidence is relevant to the defendant's
state of mind, i.e., whether the defendant's belief in the need to use force in self-
defense was reasonable.

25 Id at 902 (internal footnotes omitted) (emphasis in original). As such, a specific act to which
26 Defendant was aware would be admissible within reason:

27 We also agree that the admission of evidence of a victim's specific acts,
28 regardless of its source, is within the sound and reasonable discretion of the trial
court and is limited to the purpose of establishing what the defendant believed

about the character of the victim. The trial court “should exercise care that the evidence of specific violent acts of the victim not be allowed to extend to the point that it is being offered to prove that the victim acted in conformity with his violent tendencies.”

Id. (internal footnotes omitted). Thus, only acts to which the Defendant is aware would be admissible in trial. See id.; Burgeon v. State, 102 Nev. 43, 46, 714 P.2d 576, 578 (1986) (“In the present case, appellant concedes that the specific acts of violence of the victim were not previously known to him. Since appellant did not have knowledge of the acts, evidence of the victim's specific acts of violence were therefore not admissible to establish the reasonableness of appellant's fear or his state of mind.”).

Defendant has made no showing he was aware of any specific act of violence. Indeed, Defendant has made no showing that he was familiar with the victim. Rather, the evidence shows that Defendant and the victim arrive at different times, in different cars, and with different people. Defendant has not demonstrated that he was aware of any specific acts of violence committed by the victim. Thus, although character evidence may be admissible, “[e]vidence of specific instances of conduct is generally not admissible because “it possesses the greatest capacity to arouse prejudice, to confuse, to surprise, and to consume time.” *Id.* at 514, 78 P.3d at 901.

CONCLUSION

Based upon the foregoing, the State respectfully requests this Court order that Defendant be precluded from discussing or introducing any specific acts of the victim's, absent proof of personal knowledge at the time of the killing.

DATED this 9 day of May, 2017.

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

BY

STEVEN J. ROSE
Deputy District Attorney
Nevada Bar #13575

11

11

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above, was made this 8th day of May, 2017, by


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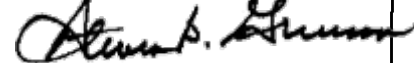
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAVAR ERIS KETCHUM, aka,
James Ketchum, #6009695,
RODERICK VINCENT, aka,
Roderick Regale Vincent, #3054006,
MARLO CHILES, #2631208

Defendants.

CASE NO: C-16-319714-1
C-16-319714-3
C-16-319714-4

DEPT NO: XVII

SUPPLEMENT TO STATE'S MOTION IN LIMINE REFERENCE PRIOR
ACTS OF THE VICTIM

DATE OF HEARING: May 19, 2017
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN J. ROSE, Deputy District Attorney, and files this Supplement to the State's Motion in Limine Reference Prior Acts of the Victim.

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

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1 At approximately 0614, Defendant and the victim, Mr. Davis, exited arm and arm out
2 the front of Top Knotch.³ The two walked to the front of Defendant Bernard's black vehicle
3 and appeared to converse for a short time, then walked by the driver's side of Bernard's
4 vehicle, where they left camera view. At approximately the same time, Bernard and an
5 African-American female got into Bernard's car. At approximately 0616 hours, the people on
6 video all appeared to have their attention drawn to the area where Defendant and Mr. Davis
7 were; Bernard backed his vehicle out of the spot and Defendant entered the view of the camera,
8 removing a belt from a pair of pants while holding the gun in his other hand. Defendant
9 thereafter approached Bernard's car, opened the passenger door, placed the belt on the front
10 seat, and returned to the area of Davis' body. Defendant returned to Bernard's vehicle, entered
11 the passenger seat of the vehicle and the vehicle fled the area.

12 Despite having contact with several witnesses in the parking lot as well as Chiles and
13 Vincent, the police had no information on the identity of the shooter. Eventually the shooter
14 was identified as Defendant Javar Ketchum and a warrant for his arrest was issued. Once he
15 was arrested, police viewed Defendant in person and were easily able to establish his identity
16 as the shooter.

17 POINTS AND AUTHORITIES

18 *A. The Specific Acts of the Victim were Unknown to Defendant and are Inadmissible*

19 Defendant may assert the prior conduct of the victim is admissible to establish who the
20 initial aggressor was on the night of the killing. On March 8, 2017, Defendant filed a Motion
21 to Admit Character Evidence of the victim, Ezekiel Davis. In part, Defendant asserted that this
22 evidence was necessary to present a theory of self-defense. If he is asserting self-defense, the
23 law is quite clear what may be admissible in his trial.

24 NRS 48.045(1) states, in relevant part:

25 1. Evidence of a person's character or a trait of his character is not admissible
26 for the purpose of proving that he acted in conformity therewith on a particular
27 occasion, except:

28 ...

³ The time on the recording is approximately an hour behind the actual time of the events.

1 (b) Evidence of the character or a trait of character of the victim of the crime
2 offered by an accused, subject to the procedural requirements of NRS 48.069
3 where applicable, and similar evidence offered by the prosecution to rebut such
4 evidence. . .

5 However, NRS 48.055 limits the method in which character evidence may be proved:

6 1. In all cases in which evidence of character or a trait of character of a person
7 is admissible, proof may be made by testimony as to reputation or in the form of
8 an opinion. On cross-examination, inquiry may be made into specific instances
9 of conduct.

10 In Daniel v. State, 119 Nev. 498, 78 P.3d 890 (2003), the Nevada Supreme Court held that the
11 victim's propensity for violence is not an essential element of a claim of self-defense, and,
12 therefore, NRS 48.055(1) applies. The Court did recognize a narrow exception to the rule:

13 However, this court has held that evidence of specific acts showing that the
14 victim was a violent person is admissible if a defendant seeks to establish self-
15 defense *and was aware of those acts*. This evidence is relevant to the defendant's
16 state of mind, i.e., whether the defendant's belief in the need to use force in self-
17 defense was reasonable.

18 Id at 902 (internal footnotes omitted) (emphasis in original). As such, a specific act to which
19 Defendant was aware would be admissible within reason:

20 We also agree that the admission of evidence of a victim's specific acts,
21 regardless of its source, is within the sound and reasonable discretion of the trial
22 court and is limited to the purpose of establishing what the defendant believed
23 about the character of the victim. The trial court "should exercise care that the
24 evidence of specific violent acts of the victim not be allowed to extend to the
25 point that it is being offered to prove that the victim acted in conformity with his
26 violent tendencies."

27 Id. (internal footnotes omitted). Thus, only acts to which the Defendant is aware would be
28 admissible in trial. See id.; Burgeon v. State, 102 Nev. 43, 46, 714 P.2d 576, 578 (1986) ("In
the present case, appellant concedes that the specific acts of violence of the victim were not
previously known to him. Since appellant did not have knowledge of the acts, evidence of the
victim's specific acts of violence were therefore not admissible to establish the reasonableness
of appellant's fear or his state of mind.").

Defendant has made no showing he was aware of any specific act of violence. Indeed,
Defendant has made no showing that he was familiar with the victim. Rather, the evidence
shows that Defendant and the victim arrive at different times, in different cars, and with

1 different people. Defendant has not demonstrated that he was aware of any specific acts of
2 violence committed by the victim. Thus, although character evidence may be admissible,
3 “[e]vidence of specific instances of conduct is generally not admissible because “it possesses
4 the greatest capacity to arouse prejudice, to confuse, to surprise, and to consume time.”” *Id.* at
5 514, 78 P.3d at 901.

6 *B. NRS 48.045 Prohibits Introduction of the Specific Acts of the Victim*

7 Defense counsel has recently indicated that he may attempt to introduce the specific
8 acts of the victim under one of the exceptions listed within NRS 48.045—specifically the
9 common scheme or plan exception. The common scheme or plan requires that the plan or
10 scheme exist both at the time of the other bad acts sought to be introduced, and the acts for
11 which the defendant is on trial. Because Defendant cannot show such a plan, he cannot show
12 entitlement to use the common scheme or plan exception under NRS 48.045.

13 As stated above, NRS 48.045 prohibits the use of propensity evidence in the vast
14 majority of instances. Relevant to this argument, the law states,

15 Evidence of other crimes, wrongs or acts is not admissible to
16 prove the character of a person in order to show that the person
17 acted in conformity therewith. It may, however, be admissible
18 for other purposes, such as proof of motive, opportunity, intent,
19 preparation, plan, knowledge, identity, or absence of mistake
20 or accident

21 NRS 48.045(2). In order to make otherwise inadmissible evidence admissible as proof of a
22 common scheme or plan, certain things are required. First and foremost, there must be a plan—
23 not just any plan, but a plan which was conceived *before* the first of the acts to be introduced,
24 and which encompasses all of the acts to be introduced. *Rosky v. State*, 121 Nev. 184, 196,
25 111 P.3d 690, 698 (2005). There, the Nevada Supreme Court was explicit in its requirement
26 for the common scheme or plan, holding

27 The common scheme or plan exception of NRS 48.045(2) is
28 applicable when both the prior act evidence and the crime
charged constitute an “integral part of an overarching plan
explicitly conceived and executed by the defendant.” “The test
is not whether the other offense has certain elements in

1 common with the crime charged, but whether it tends to
2 establish a *preconceived plan* which resulted in the
commission of that crime.”

3 Id. (emphasis in original) quoting Richmond v. State, 118 Nev. 924, 933, 59 P.3d 1249, 1255
4 (2002) and Nester v. State, 75 Nev. 41, 47, 334 P.2d 524, 527 (1959). The Nevada Supreme
5 Court reaffirmed this requirement in Ledbetter v. State, 122 Nev. 252, 260–61, 129 P.3d 671,
6 677–78 (2006).

7 In Rosky, the Nevada Supreme Court held that two acts, eight years apart, were not part
8 of one common scheme or plan, when it appeared that each act was a crime of opportunity.
9 Rosky, 121 Nev. at 196, 111 P.3d at 698. Because the crimes could not have been planned in
10 advance, and simply occurred when the defendant got close enough to the victims, the Court
11 ruled that they could not belong to one overarching plan. Id. Similarly, in Richmond, the
12 Nevada Supreme Court held that where a defendant “appeared simply to drift from one
13 location to another, taking advantage of whichever potential victims came his way,” he could
14 not use the common scheme or plan exception. 118 Nev. at 934, 59 P.3d at 1259 Rather, the
15 defendant’s “crimes were not part of a single overarching plan, but independent crimes, which
16 [he] did not plan until each victim was within reach.” Id.

17 All of the evidence in this case suggests that Defendant’s murder of Davis was a crime
18 conceived of, and executed all within a few hours on September 25, 2016. Defendant cannot
19 show that robberies which occurred seven or eight years earlier were also part of a singular
20 overarching scheme, which somehow encompassed both those acts and a confrontation with
21 Defendant, whom was not known to Davis during the prior incidents. Accordingly, the
22 presumptive inadmissibility of those acts pursuant to NRS 48.045 prohibits their introduction.

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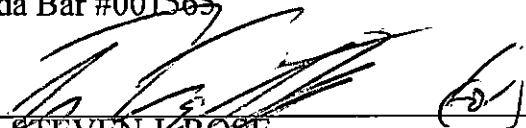
1 CONCLUSION

2 Based upon the foregoing, the State respectfully requests this Court order that
3 Defendant be precluded from discussing or introducing any of the victim's specific acts.

4 DATED this 18th day of May, 2017.

5 STEVEN B. WOLFSON
6 Clark County District Attorney
7 Nevada Bar #001565

8 BY


9 STEVEN L. ROSE
10 Deputy District Attorney
11 Nevada Bar #13575

12
13 CERTIFICATE OF ELECTRONIC FILING

14 I hereby certify that service of the above, was made this 18 day of May, 2017, by
15 Electronic Filing to:

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25 MARTIN HART, ESQ.
26 E-Mail: mh@martinhartlaw.com
27 *Attorney for Defendant Chiles*

28 
T. Driver
Secretary for the District Attorney's Office

SR/tgd/MVU

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 19, 2017

C-16-319714-1 State of Nevada
 vs
 Javar Ketchum

May 19, 2017 9:00 AM All Pending Motions

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Alice Jacobson

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:	Di Giacomo, Marc P.	Attorney
	Ketchum, Javar Eris	Defendant
	Rose, Steven	Attorney
	State of Nevada	Plaintiff
	Wooldridge, Nicholas	Attorney

JOURNAL ENTRIES

- STATE'S Motion in Limine Reference Prior Acts of the Victim

Petrocelli Hearing

Defendant Ketchum, present. Defendants Vincent and Chiles presence is waived. State argued to preclude references of the victims prior bad acts during trial. Mr. Wooldridge stated he wanted to bring in testimony in form of an opinion through witnesses of the victims violent character. State argued NRS 48.045. COURT ORDERED, Defense may bring in testimony of an opinion through a witness but the witness is limited to how they formed that opinion or specifics; Statements by counsel that references "scheme or plan" is precluded from openings statements. Court instructed counsel to admonish the witnesses before trial not to elaborate as to their opinion of the victim. Court further advised counsel that trial will start promptly each day and to be ready.

PRINT DATE: 05/19/2017

Page 1 of 2

Minutes Date: May 19, 2017

RA 000361

C-16-319714-1

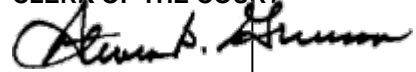
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PRINT DATE: 05/19/2017

Page 2 of 2

Minutes Date: May 19, 201

RA 000362



NICHOLAS M. WOOLDRIDGE
Nevada State Bar No. 8732
WOOLDRIDGE LAW, LTD.
400 South 7th Street, 4th Floor
Las Vegas, NV 89101
Telephone: (702) 330-4645
nicholas@wooldridgelawlv.com
Attorney for Javar Eris Ketchum

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 FOR NEW TRIAL

COMES NOW the Petitioner, JAVAR ERIS KETCHUM (hereinafter, “Mr. Ketchum”), by and through his undersigned counsel, Nicholas M. Wooldridge, of the law firm of Wooldridge Law Ltd., and pursuant to and pursuant to N.R.S. § 176.515(4) requests that this Court grant him a new trial.

This Motion is made pursuant to NRS § 176.515(4), and is based upon all the papers and pleadings on file herein, and the following Memorandum of Points and Authorities.

1 DATED this 2nd of June, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

3
4 /s/ Nicholas M. Wooldridge

5 Nicholas M. Wooldridge, Esq.
6 Wooldridge Law Ltd.
7 400 South 7th Street, 4th Floor
8 Las Vegas, NV 89101
9 nicholas@wooldridgelawlv.com
(702) 330-4645 Tel.
(702) 359-8494 Fax.

10 **NOTICE OF MOTION**

11 TO: STATE OF NEVADA, Plaintiff; and

12
13 TO: DISTRICT ATTORNEY, its attorneys:

14 **PLEASE TAKE NOTICE** that the undersigned will bring the foregoing Motion for
15 New Trial for hearing in the above-entitled Court on (day) 13th of (month) June,
16 2017 in Department XVII at (time) 8:30 a m.

17 Dated this 2nd day June, 2017.

18 JAVAR ERIS KETCHUM,
19 by his attorney,

20
21 /s/ Nicholas M. Wooldridge

22 Nicholas M. Wooldridge, Esq.
23 Wooldridge Law Ltd.
24 400 South 7th Street, 4th Floor
25 Las Vegas, NV 89101
26 nicholas@wooldridgelawlv.com
27 (702) 330-4645 Tel.
28 (702) 359-8494 Fax.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

The charges alleged in the Indictment arise from the September 25, 2016 shooting of Ezekiel F. Davis outside the Top Knotch Apparel on the 4200 block of South Decatur Boulevard. The State of Nevada charged Mr. Ketchum in a five (5) count Indictment together with co-defendants Antoine Bernard, Roderick Vincent, and Marlo Chiles as follows: (1) one count of murder with a deadly weapon; (2) one count of robbery with use of a deadly weapon; and (3) three counts of accessory to murder. Mr. Ketchum was only charged in the first two counts of the Indictment. Jury trial began on May 23, 2017 and the jury returned a verdict of guilty on both counts on May 26, 2017.

This motion pursuant to N.R.S. § 176.515 is the result of the Court's evidentiary rulings regarding the admissibility of Ezekiel Davis' prior bad acts and the ability of Mr. Ketchum to present his theory of the case, namely, self-defense.¹

This Court precluded the defendant from offering evidence of Ezekiel Davis' prior robbery convictions and robbery related offenses. These offences involved a similar factual scenarios and *modus operandi* where Ezekiel Davis accosted his robbery victims outside in parking lots and eventually robbed or attempted to rob them; this was similar to the facts as alleged by Mr. Ketchum when he took the stand. Specifically, Mr. Ketchum testified that he was aware Mr. Davis was known as a "Jack Boy" and had gone to prison for robbery. This was true and supported by Mr. Davis' record conviction for robbery and related offenses, as well as victims of Mr. Davis who were ready and willing to testify concerning the robberies. Copies of

¹ This motion is filed to meet the seven (7) day deadline in N.R.S. 176.515 and to preserve Mr. Ketchum's rights. Mr. Ketchum intends to supplement this motion upon receipt of the trial transcript.

1 the conviction records evidencing Mr. Davis' previous criminal convictions are attached hereto
2 as **Exhibits A through C**.

3 Also the nature of Mr. Davis' prior robbery conviction occurred under similar
4 circumstances to what Mr. Ketchum testified and supported his theory of self-defense.
5 Specifically, Mr. Ketchum testified that Mr. Davis attempted to rob him at gunpoint. In two of
6 Mr. Davis' prior bad acts, Mr. Davis had attempted to rob victims at gunpoint in a parking lot.
7

8 Finally, during the State's rebuttal, the State called Mr. Davis' fiancée to the stand. She
9 testified that she knew Mr. Davis intimately and had his children. During direct examination, the
10 State asked the fiancée the following question: in the past three (3) years have you known
11 Ezekiel Davis to carry a gun? She responded "no." During cross examination, defense counsel
12 asked whether she knew that Mr. Davis had, in fact, previously been convicted of ex-felon
13 possession of a firearm in 2010. The State objected and the District Court admonished defense
14 counsel and referred to its prior rulings precluding the defense from asking about Mr. Davis'
15 criminal history. The District Court's asymmetrical interpretation of the rules of evidence
16 deprived Mr. Ketchum of a fair trial because once the State opened the door, it could not limit
17 Mr. Davis' fiancée's testimony.
18
19

20 **II. ARGUMENT**

21 As detailed below, Mr. Ketchum should be granted a new trial because the District
22 Court's evidentiary rulings deprived him of a fair trial. Specifically, Mr. Ketchum should have
23 been permitted to present prior bad acts and related evidence of the victim for any of four
24 reasons. First, the evidence was relevant and admissible to support Mr. Ketchum's theory that
25 the victim was the initial aggressor. Second, the evidence relating to Mr. Davis relevant and
26 admissible to show a common plan or scheme by Mr. Davis, namely, corroborating Mr. Davis'
27
28

1 violent past, including, his robbery of previous victims in a similar manner by taking them
2 outside, pointing a gun, and robbing them. Third, the evidence relating to Mr. Davis was
3 relevant and admissible to corroborate the fact that he took Mr. Ketchum outside to rob him, it
4 went to show motive on why Mr. Davis was taking him outside. Finally, in precluding defense
5 counsel from questioning Mr. Davis' fiancée about Mr. Davis' previous conviction for ex-felon
6 in possession of a firearm, the District Court's asymmetrical interpretation of the rules of
7 evidence deprived Mr. Ketchum of a fair trial because once the State opened the door, it could
8 not limit Mr. Davis' fiancée's testimony.
9

10 **The Prior Bad Acts Evidence Was Admissible**

11 1. Self-Defense and Where Victim is Likely Aggressor

12
13 In a homicide or assault and battery case, evidence of the victim's character, including
14 evidence of specific prior acts of violence by the victim, is admissible when the defendant is
15 aware of those prior bad acts. *See* N.R.S. 48.045(1)(b). N.R.S. 48.045(1)(b) provides in relevant
16 part:
17

18 1. Evidence of a person's character or a trait of his character is not
19 admissible for the purpose of proving that he acted in conformity
20 therewith on a particular occasion, except: ... (b) Evidence of the character
21 or a trait of character of the victim of the crime offered by an accused ...
22 and similar evidence offered by the prosecution to rebut such evidence[.]

23 As Mr. Ketchum testified at trial, he was aware in a general sense that Mr. Davis has committed
24 prior robberies and gone to prison as a result. *See Petty v. State*, 116 Nev. 321, 326 (2000) (citing
25 *Burgeon v. State*, 102 Nev. 43, 46, 714 P.2d 576, 578 (1986)). Thus, testimony regarding the
26 character of the victim was admissible under NRS 48.045(1)(b) regardless of whether Mr.
27 Ketchum was aware of the details and dates of Mr. Davis' prior bad acts.
28

1 In *Petty*, the Nevada Supreme Court also held that it was reversible error for the district
2 court to exclude evidence of the victim's criminal conviction where the defendant had general
3 knowledge of the offense:

4 the accused may present evidence of specific acts to show the accused's
5 state of mind at the time of the commission of the crime only if the
6 accused had knowledge of the specific prior acts to show the accused's
7 state of mind at the time of the commission of the crime only if the
8 accused had knowledge of the specific act. The record reveals that Petty
9 was aware that Watts had committed robberies. Although Petty's
10 testimony does not explicitly mention the 1990 robbery, we hold that the
evidence is admissible for purposes of showing the reasonableness of the
appellant's state of mind according to NRS 48.055(2) and our reasoning in
Burgeon.

11 *See Petty*, 116 Nev. at 326 (internal citations omitted).

12 The Declaration of Arrest and Judgment of Conviction for Mr. Davis' attempted robbery
13 conviction document his violent and aggressive character:

14 The victim, Tracy Smith, told Officer Wall the following: at about 2045
15 hours, he walked out of the Port of Subs located at 1306 West Craig road
16 toward his vehicle, a black Hummer H3, which was parked in front of the
17 Port of Subs. Smith noticed a black male walking east bound on the
18 sidewalk toward him. Smith opened his driver's door and heard footsteps
19 approaching quickly from behind. Smith got inside the car, shut and
20 locked the door just as the black male grabbed his exterior driver side door
21 handle. The black male grabbed the handle with his right hand and began
22 banging on the driver's side window with his left first. The black male
23 yelled "give me all your fucking money!" The black male appeared to be
24 standing on the driver's side foot rail and continued banging and yelling at
25 Smith. The black male saw Smith reach his keys toward the ignition and
26 yelled "if you start this car, I'll fucking kill you!" Smith could not see the
27 suspect's right hand and feared for his own safety.

28 Here, the evidence strongly supported Mr. Ketchum's allegation that Mr. Davis was the
initial aggressor. Consequently, the District Court's evidentiary rulings precluding Mr. Ketchum
from introducing the relevant portions of Mr. Davis' prior robbery and theft convictions,
deprived him of a fair trial.

2. Prior Bad Acts Evidence Showed Common Plan, Scheme or Motive

In addition to supporting Mr. Ketchum's theory of the case, the evidence should have been admitted to prove the victim's [Mr. Davis], the initial aggressor's motive and common plan or scheme. Specifically, Mr. Davis *modus operandi* was to violently target unsuspecting victims in parking lots and proceed to rob them. On at least two occasions, Mr. Davis has used a gun to carry out his robberies. For instance, the offense synopsis section of his PSI for his conspiracy to commit robbery and robbery conviction states as follows:

At 9:30 P.M. on August 5, victims Houston MacGyver, Shane Velez and Luke Jaykins were in the Craig's Discount Mall parking lot and were approached by suspect 1 who asked them for a cigarette. One of the victim's gave suspect 1 a cigarette and the suspect stated he would give him a dollar. The suspect 1 reached into his waistband area and produced a small silver handgun and pointed it at the victims and demanded money. Initially the victim's refused until suspect 2 walked up behind them and produced a black semi-automatic hand gun and racked the slide. Mr. MacGyver was afraid of being shot and gave suspects \$700.00 in US currency.

See Presentence Investigation Report (PSI) prepared in *State of Nevada v. Ezekiel Davis*, Case No. C258227.

This evidence tended to show that Mr. Davis had a motive to bring Mr. Ketchum outside. Since the State's theory of the case was that Mr. Ketchum robbed Mr. Davis, the prior bad acts evidence would have discounted or called into doubt the State's theory of the case. Specifically, it showed that luring and/or distracting his victims outside was Mr. Davis' "m.o." and, therefore, would have supported Mr. Ketchum's theory of self-defense at trial.

1 3. A New Trial Is Warranted Because the District Court's Preclusion of Questioning of
2 the State's Rebuttal Witness Deprived Mr. Ketchum of a Fair Trial

3
4 During the State's rebuttal, the State called Mr. Davis' fiancée to the stand. She testified
5 that she knew Mr. Davis intimately and she had Mr. Davis' children. During direct examination,
6 the State asked the fiancée the following question: in the past three (3) years have you known
7 Ezekiel Davis to carry a gun? She responded "no." During cross examination, defense counsel
8 attempted to rebut the fiancée's character evidence and asked whether she knew that Mr. Davis
9 had, in fact, previously been convicted of ex-felon possession of a firearm in 2010. The State
10 objected and the District Court admonished defense counsel and referred to its prior rulings
11 precluding the defense from asking about Mr. Davis' criminal history.
12

13 The District Court attempt to limit the defense's ability to cross-examine Ms. Davis'
14 fiancée was in error. Specifically, once the State opened the door to evidence of Mr. Davis'
15 character or a trait of his character, the defense should have been entitled to offer similar
16 evidence. For instance, in a counter-factual scenario, in *Daniel v. State*, 119 Nev. 498 (2003),
17 the Nevada Supreme Court held that the "Statute which prohibits the admission of evidence of
18 other crimes, wrongs, or acts to prove a person's character was not applicable because defendant
19 placed his character in issue on direct examination, and instead, statute providing that, once a
20 criminal defendant presents evidence of his character or a trait of his character, the prosecution
21 may offer similar evidence in rebuttal governed whether prosecutor's cross-examination of
22 defendant regarding his prior arrests was proper." *Id.* If the State is permitted to present
23 character evidence where the defendant has presented evidence of his character or a trait of his
24 character, the reverse should be true too. "After all, in the law, what is sauce for the goose is
25 normally sauce for the gander." *Heffernan v. City of Paterson*, 136 S. Ct. 1412, 1418 (2016).
26
27
28

1 Here, once the State opened the door, Mr. Ketchum should have been entitled to present
2 evidence or elicit testimony regarding Mr. Davis' character, namely, Mr. Davis previous
3 conviction of ex-felon in possession of a firearm. *See also Jezdik v. State*, 121 Nev. 129 (2005)
4 (where defendant placed his character at issue through testimony that he had never been
5 "accused of anything prior to these current charges" the rules of evidence do not prohibit a party
6 from introducing extrinsic evidence specifically rebutting the adversary's proffered evidence of
7 good character).

9
10 **III. CONCLUSION**

11 **WHEREFORE**, for all the foregoing reasons, Mr. Ketchum's motion for a new trial
12 should be granted.

13 DATED this 2nd of June, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge, Esq.
Wooldridge Law Ltd.
400 South 7th Street, 4th Floor
Las Vegas, NV 89101
nicholas@wooldridgelawlv.com
(702) 330-4645 Tel.
(702) 359-8494 Fax.

CERTIFICATE OF SERVICE

I confirm that on this 2nd day of June, 2017, a copy of the foregoing Motion for New Trial and Memorandum of Points and Authorities 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.

EXHIBIT A

JOCP

ORIGINAL

FILED

JAN 19 2010

Alma L. Johnson
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

EXHIBIT A

THE STATE OF NEVADA,

Plaintiff,

-vs-

DAVIS, EZEKIEL
Aka Davis, Ezekiel F
#2677543

Defendant.

CASE NO. C258227

DEPT. NO. IV

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

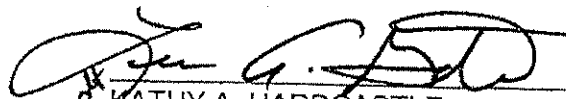
The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category B Felony) in violation of NRS 200.380, 199.480, and COUNT 2 – ROBBERY (Category B Felony) in violation of NRS 200.380; thereafter, on the 5th day of January, 2010, the Defendant was present in court for sentencing with his counsel Leslie Pena, Deputy Public Defender, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the \$25.00 Administrative Assessment Fee and \$150.00 DNA Analysis Fee including testing to determine genetic markers, the Defendant is sentenced to the


RA 000374

1 Nevada Department of Corrections (NDC) as follows: as to COUNT 1 -to a MAXIMUM
2 of SIXTY (60) MONTHS with a MINIMUM parole eligibility of THIRTEEN (13) MONTHS;
3 and as to COUNT 2 - to a MAXIMUM of ONE HUNDRED FIFTY-SIX (156) MONTHS
4 with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS CONCURRENT with
5 C243460 and C248776; with Zero (0) DAYS credit for time served.
6

7
8 DATED this 13 day of January, 2010.
9

10
11 
12 KATHY A. HARDCASTLE
13 DISTRICT JUDGE
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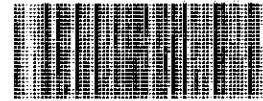
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CLERK OF THE COURT

FEB 28 2017

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS
(N.R.S. 171.106) **FILED**
(N.R.S. 53 amended 07/13/93)

09F17710X
274694



Aug 27 8 58 AM '93

090805-3569

STATE OF NEVADA)

Ezekiel Davis ID# 267543

) ss:

BY _____
DEPUTY

COUNTY OF CLARK)

Jeffrey P. Guyer, being first duly sworn, deposes and says:

That he is a police officer with the Las Vegas Metropolitan Police Department, being so employed for a period of 8 years, assigned to investigate the crime(s) of Robbery With Deadly Weapon, Conspiracy Robbery committed on or about 08-05-09, which investigation has developed EZEKIEL DAVIS as the perpetrator thereof.

THAT DECLARANT DEVELOPED THE FOLLOWING FACTS IN THE COURSE OF THE INVESTIGATION OF SAID CRIME TO WIT:

LVMPD Personnel:

Detective	JP Guyer P#7430	Case Agent
Detective	L. Turner P#6015	Interviewed Victim
Officer	J. Larosa P#13448	Completed Crime Report
Officer	D. Garris P#5968	Located Suspect Vehicle
CSA	T. Kruse P#9975	Process Suspect Vehicle

Suspect Vehicle:

1997 Ford Thunderbird 2dr, NV 767-WBL, VIN 1FALP6240VH115370

Joshua Griffin
1124 Echo Beach Av.
North Las Vegas, NV 89086

Details:

At approximately 2130 hours on 08-05-09 Houston MacGyver, Shane Velez and Luke Jaykins were in the parking lot of Craig's Discount Mall located at 4821 W. Craig. They were approached by a Black male (Suspect #1) who asked them for a cigarette. One of the victims supplied the cigarette and the Black male stated he would give him a dollar. The Black male reached into his waistband area and produced a small silver semi-automatic handgun. He pointed it at the victims and demanded money. Initially the victims refused but an additional Black male suspect (Suspect #2) walked up behind the trio, produced a large black semi auto handgun and racked the slide. Houston MacGyver, who was afraid of being shot, handed Suspect #1 \$700 in US currency.

After obtaining the victim's money, both suspects ran through the parking lot where Suspect #2 got into a newer, silver, SUV/Sedan mixed vehicle (possibly a Dodge). Suspect #1 got into an older blue two door sedan. The victims called 911 while they pursued the suspect vehicles. The silver car turned off on a side street but the victims were able to continue pursuing the blue car. Both Houston MacGyver and

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS
Page 2

EVENT: 090805-3569

Shane Velez observed the blue two door vehicle had Nevada plate 767WBL. Velez even stored the suspect vehicle's licence plate into his phone to ensure the information would not be lost.

During the victim's pursuit of the suspect vehicle, the blue car ultimately turned around and turned onto the same side street as the silver car (Rancho Rea in North Las Vegas). While eastbound on Rancho Rea the victims heard two gun shots and terminated their pursuit of the suspects.

LVMPD Officer J. Larosa P# 13448 responded to the scene and documented the incident under LVMPD event # 090805-3569. MacGyver, Velez and Jaykins completed voluntary statements on scene. The victims described suspect #1 as a Black male wearing a white tank top, white doo-rag and tan shorts armed with a small silver handgun. Suspect #2 was described as a Black male wearing a white t-shirt and blue jeans armed with a large black handgun.

Investigation:

A Nevada registration check on NV 767-WBL returned to a 1997 Ford 2dr sedan with VIN 1FALP6240VH115370. The vehicle registration was consistent with the suspect vehicle description given by all three victims. The 1997 Ford bearing NV 767-WBL was currently registered to Joshua Griffin ID# 2586170. The vehicle was entered into the Wanted Vehicle System as an Armed and Dangerous vehicle used in a Robbery with Deadly Weapon.

Detective J. Guyer, L. Turner and D. Miller responded to the scene to interview the three victims. Detectives showed the victims a photo line up which consisted of Griffin's photo. None of the victims identified Griffin as a suspect involved in the robbery.

On 08-06-09 Officer Garris P#5985 conducted a vehicle stop on a 1997 blue 2dr sedan with NV license plate 767-WBL in the area of the Meadows Mall. Officer Garris noted the suspect vehicle matched the exact description of the vehicle driven by Suspect #1 while fleeing the scene of the robbery. Officer Garris' traffic stop was conducted less than 24 hours after the robbery and approximately 5 miles from the robbery location. Officer Garris identified the driver of the vehicle as Ezekiel Davis ID# 2677543. The passenger was identified as Robby Warren ID# 2698782. Davis was arrested for No Driver's License. Warren was released at the scene. The vehicle was sealed and towed to the Quality Towing Seizure pending a Search Warrant.

On 08-07-09 Detective Guyer authored a Search Warrant for the 1997 blue Ford Thunderbird 2dr with NV license plate 767-WBL. The search warrant was signed by Judge Timothy Williams and subsequently served at 1730 hours on 08-07-09. During the execution of the Search Warrant Detective Guyer located a pawn ticket in the name of Ezekiel Davis. Further investigation showed Ezekiel Davis matched the description of one of armed robbers.

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RA 000377

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF WARRANT/SUMMONS
Page 3

EVENT: 090805-3569

On 08-12-09 Ezekiel Davis called LVMPD and advised he was the legal owner of the the 1997 blue Ford Thunderbird 2dr with NV license plate 767-WBL. Davis requested the police hold be removed so he could pick up his vehicle. Detective Guyer constructed a photo line up using Davis' most current booking photo. On 08-12-09 Detective Turner conducted a photo line up with victim Houston MacGyver. Upon looking at the photo line-up MacGyver immediately picked Davis out as the suspect who initially approached with a gun and demanded money. MacGyver was 100% certain of his identification. After the photo line-up was conducted Detectives were unable to contact Davis for an interview.

Summary:

All three robbery victims described the suspect's vehicle as blue, 1997 Ford 2dr with NV license plate 767-WBL. The robbery suspect was described as a Black male 5'10", 180. Less that 24 hours after the robbery Officer D. Garris P# 5968 conducted a traffic stop on a blue, 1997 Ford 2dr with NV license plate 767-WBL. The traffic stop conducted less that 5 miles from the original robbery location. Officer Garris identified the driver as Ezekiel Davis ID# 2677543. Davis matched the suspect description given by the three victims.

On 08-12-09 Detective Guyer complied a photo line up using Ezekiel Davis's recent photo. Detective Turner met with MacGyver Gale and showed the photo line. Gale immediately picked Davis out as the suspect who initially pointed a gun and him while demanding money. Davis was 100% certain of his identification.

Wherefore, declarant prays that a Warrant of Arrest be issued for suspect EZEKIEL DAVIS on a charge(s) of Robbery With Deadly Weapon, Conspiracy Robbery.

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

Executed on this 20th day of August, 2009.

DECLARANT: 

WITNESS:  1131

DATE: 08/20/09

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RA 000378

CASE NO. C258227

DEPT. NO. 11

ORIGINAL

FILED

DEC - 7 2009

Don J. P.
CLERK OF COURT

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

EZEKIEL DAVIS,

Defendant.

Case No. 09F17710X

REPORTER'S TRANSCRIPT
OF
UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE THE HONORABLE ERIC A. GOODMAN
JUSTICE OF THE PEACE

Monday, September 21, 2009, 9:00 a.m.

APPEARANCES:

For the State:

JOSHUA TOMSHECK, ESQ.
Deputy District Attorney

For the Defendant:

LESLEY PENA, ESQ.
MICHAEL FELICIANO, ESQ.
Deputies Public Defender

Reported by: RENEE SILVAGGIO, C.C.R. NO. 122

RA 000379

CASE NO. C258227

LEPT. NO. 11

IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

Case No. 09F17710X

-vs-

EZEKIEL DAVIS,

Defendant.

REPORTER'S TRANSCRIPT
 OF
UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE THE HONORABLE ERIC A. GOODMAN
 JUSTICE OF THE PEACE

Monday, September 21, 2009, 9:00 a.m.

APPEARANCES:

For the State:

JOSHUA TOMSHECK, ESQ.,
 Deputy District Attorney

For the Defendant:

LESLEY PENA, ESQ.,
 MICHAEL FELICIANO, ESQ.,
 Deputies Public Defender

Reported by: REBEK SILVAGGIO, C.C.R. NO. 122

MR. TOMSHECK: Judge, that is all correct.

One thing I wanted to add to the record, the robbery
 count that the defendant pleads to in District Court will comprise
 all three of the stated victims, which are currently in the
 Criminal Complaint.

And for the record, that's Shane Velez, Luke Jaylins and
 there is actually a typographical error as to the victim in
 Count II. It reads Gale MacGyver. The victim's actually --
 actually the first name is MacGyver, last name is Gale. The names
 have been transposed.

THE COURT: Okay.

MR. FELICIANO: That's correct.

(Sotto voce at this time.)

THE COURT: Sir, do you understand that negotiation this
 morning, because it sounds like you didn't?

Do you have some questions about that?

THE DEFENDANT: Yeah, I have some questions about it.
 I'm not all the way understanding it.

THE COURT: You are not understanding the naming of the
 three victims under one count?

THE DEFENDANT: Yeah. That's pretty much saying at
 first --

THE COURT: Well, let's -- what -- you said you talked to

Las Vegas, Clark County, Nevada

Monday, September 21, 2009, 9:00 a.m.

PROCEEDINGS

THE COURT: Ezekiel Davis, 09F17710X.

This is the time and date set for the Preliminary
 Hearing.

I understand this may be negotiated.

MR. FELICIANO: Yeah. Your Honor, today this case is
 resolved.

THE COURT: Today, Mr. Davis will unconditionally waive
 his Preliminary Hearing.

In District Court he will plead guilty to one count of:

Conspiracy to commit robbery and one count of: Robbery, no use of
 a deadly weapon.

The State will have no opposition to those counts running
 concurrent.

And the State will have no opposition to those -- this
 case running concurrent with two other cases, which Mr. Davis was
 just revoked on, and those case numbers are C248776X and C243460X.

Also at the time of sentencing the State will make no
 recommendation as to the amount of time to be imposed in this
 case.

you Public Defender. Let's have you talk to your Public Defender,
 okay, let's have you talk to your Public Defender and see if you
 can get this straightened out. Okay?

(Sotto voce at this time.)

MS. PENA: I think we have solved that, Judge.

THE COURT: Sir, do you understand the negotiation?

THE DEFENDANT: Yes.

THE COURT: Okay. Have you had a chance to talk to your
 attorney about the negotiation?

THE DEFENDANT: Yes.

THE COURT: Is it a negotiation you wish to accept?

THE DEFENDANT: Yes.

THE COURT: Is that a yes?

THE DEFENDANT: Yes.

THE COURT: Okay. Is anybody forcing you to take this
 negotiation?

THE DEFENDANT: No.

THE COURT: Is anybody threatening you or members of your
 family to take this negotiation?

THE DEFENDANT: Yes.

THE COURT: Okay. And you do want to accept it; is that
 correct?

THE DEFENDANT: Yes.

1 THE COURT: Okay. I just have some concerns because you
2 are hesitating. I just want to make sure are doing this freely
3 and voluntarily.

4 THE DEFENDANT: I'm -- there is no -- is there any way we
5 could hold this off the prelim?

6 Can we hold the Preliminary Hearing off a week?

7 THE COURT: They're ready to go. So the State has their
8 witnesses here.

9 It's the time set for the preliminary hearing. It's
10 going to be put on today.

11 THE DEFENDANT: Well --

12 THE COURT: Are you telling me you don't want to accept
13 the offer or are you telling me you do want to accept the offer?

14 Like, I have to make sure, as a judge, that you are doing
15 this freely and voluntarily.

16 I can't bind you up unless you are doing this freely.

17 THE DEFENDANT: I can't have any more time to figure this
18 out? That's what I'm saying. I can't have no more time?

19 MR. FELICIANO: I think the issue, Judge, as -- speaking
20 with Mr. Tomscheck --

21 THE DEFENDANT: I'm not trying to prolong anything. I
22 would just like a little bit more time, please.

23 MR. FELICIANO: Well, Mr. Tomscheck has his witnesses
24 here, and I believe he wants to proceed if it's not resolved.

25 And if we do proceed, it's my understanding Mr. Tomscheck

1 will resend any offers in this case.

2 THE COURT: You are an adult. You understand the
3 position you are in.

4 If they put the prelim on, the deal goes away.

5 I'm willi- -- I'm not willing to give you additional time.

6 They're here. They're ready to go.

7 So what I will do is I will put the prelim on. You are
8 going to lose the offer. That's the only thing I can do.

9 I mean, I can't extend this. I can't give you additional
10 time to think about it. Either you accept the deal today or we
11 put the prelim on today.

12 THE DEFENDANT: All right. I'll accept the deal.

13 THE COURT: All right. Sir, you have the right to a
14 Preliminary Hearing.

15 You have the right to confront and cross-examine the
16 witnesses against you; the right to take the stand and present
17 evidence on your own behalf.

18 By unconditionally waiving your Preliminary Hearing today
19 you are giving up these rights.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: When you get to District Court you may enter
23 your plea pursuant to the offer.

24 If you should change your mind you will go directly to
25 trial District Court. You will not come back to Justice Court for

1 a Preliminary Hearing.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: It appearing to me from the Complaint on file
5 herein the following crimes have been committed: Count I,
6 conspiracy to commit robbery; Count II, robbery with use of a
7 deadly weapon; Counts III and IV, attempt robbery with use of a
8 deadly weapon.

9 And the defendant having unconditionally waived his right
10 to a Preliminary Hearing, I hereby --

11 THE DEFENDANT: Hold on. They -- they added something
12 right there.

13 THE COURT: No, no, no. You get bound up on all the
14 charges. You are only pleading to a certain count. However, when
15 you get bound up to the District Court you get bound up on all the
16 counts.

17 Do you understand that?

18 MR. FELICIANO: The counts will be dismissed after you
19 are sentenced in the other case.

20 You are going to plead to the two and then the other ones
21 are going to stay there until you are sentenced and they will be
22 dismissed, so --

23 THE DEFENDANT: Plead to the two and the other ones will
24 be dropped?

25 MR. FELICIANO: Yes.

1 THE COURT: You are going to get a copy of the Guilty
2 Plea Agreement when you sign it. You actually enter your plea in
3 the District Court. You don't understand it down here.

4 Do you understand that?

5 THE DEFENDANT: Right.

6 THE COURT: So today you are not entering a plea on the
7 record. You are going to do that in District Court.

8 So today I'm going to bind you up on all the charges that
9 you have in the District Court.

10 Once you are in the District Court you are going to sign
11 a Guilty Plea Agreement and it's going to go on the record at that
12 point. Okay?

13 So today I have to bind you up on all the counts.

14 Do you understand that?

15 MR. FELICIANO: And then when we got to District Court
16 everything will be in writing as to what you are pleading to and
17 the whole negotiation. Everything I just stated will be in
18 writing at that point.

19 THE DEFENDANT: Yes.

20 THE COURT: All right. I will state that again.

21 Count I, conspiracy to commit robbery; Count II, robbery
22 with use of a deadly weapon; Counts III and IV, attempt robbery
23 with use of a deadly weapon.

24 And the defendant, having unconditionally waived his
25 right to a Preliminary Hearing, I hereby order said defendant to

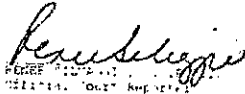
1 to said answer to said charges in the Eighth Judicial District
2 Court, State of Nevada, County of Clark, on the following date and
3 time --

4 THE CLERK: September 29th, 10:30, lower level
5 arraignment, District Court Track V.

6 MR. FELICIADO: Thank you, Judge.

7
8
9 Proceedings concluded.)
10
11
12

13 ATTEST: Full, true and accurate transcript of proceedings.
14
15
16
17
18
19
20
21
22
23
24
25


DISTRICT COURT REPORTER

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

STATE OF NEVADA,
Plaintiff,

vs.

DAVIS, EZEKIEL,
Defendant(s)

FILED

SEP 23 2009

[Signature]
CLERK OF COURT

) District Court Case No.: *C259227*

) Justice Court Case No.: 09F17710X

9/29/09
1030

IV

CERTIFICATE

I hereby certify the foregoing to be a full, true and correct copy of the proceedings as the same appear in the above case.

Dated this September 21, 2009

[Signature]

Justice of the Peace, Las Vegas Township

RECEIVED

SEP 23 2009

CLERK OF THE COURT

EXHIBIT B

1 AJOC

FILED

SEP 30 2009

John L. Blum
CLERK OF COURT

2
3 ORIGINAL

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6 EXHIBIT B

7 Part 1

8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO. C243460

10 -vs-

DEPT. NO. XX

11 EZEKIEL F. DAVIS

12 #2677543

13 Defendant.

14
15 ORDER FOR REVOCATION OF PROBATION AND
16 AMENDED JUDGMENT OF CONVICTION
17

18
19 The Defendant previously appeared before the Court with counsel and entered a
20 plea of guilty to the crime of ATTEMPT LARCENY FROM THE PERSON (Category D
21 Felony/Gross Misdemeanor) in violation of NRS 193.330, 205.270; thereafter, on the
22 16th day of June 2008, the Defendant was present in Court for sentencing with his
23 counsel, wherein the Court adjudged the Defendant guilty under the felony statute of
24 said offense, suspended the execution of the sentence imposed and granted probation
25 to the Defendant.
26


27 THEREAFTER, a parole and probation officer provided the Court with a written
28 statement setting forth that the Defendant has, in the judgment of the parole and

RA 000385


1 probation officer, violated the conditions of probation; and on the 16th day of September,
2 2009, the Defendant appeared in court with his counsel, MICHAEL WILFONG, Deputy
3 Public Defender, and pursuant to a probation violation hearing/proceeding, and good
4 cause appearing to amend the Judgment of Conviction; now therefore,
5

6 IT IS HEREBY ORDERED that the probation previously granted to the Defendant
7 is revoked; and IT IS FURTHER ORDERED that the original sentence is MODIFIED to
8 a MAXIMUM of THIRTY (30) MONTHS with a MINIMUM Parole Eligibility in TWELVE
9 (12) MONTHS in the Nevada Department of Corrections (NDC); with SEVENTY-EIGHT
10 (78) DAYS credit for time served.
11

12
13 DATED this 28 day of September, 2009
14

15 
16 DAVID T. WALL
17 DISTRICT JUDGE
18
19
20

21 CERTIFIED COPY
22 DOCUMENT ATTACHED IS A
23 TRUE AND CORRECT COPY
24 OF THE ORIGINAL ON FILE
25
26
27
28


CLERK OF THE COURT
FEB 28 2017

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST

ID#: NEW-

EVENT: 080315-3896

TRUE NAME:	DATE OF ARREST:	TIME OF ARREST:
DAVIS, EZEKIEL F.	03-15-08	2330

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

Possession of Narcotics Paraphernalia

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATION SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with the Las Vegas Metropolitan Police Department, Clark County, Nevada, being so employed for a period of 2.6 years.

That I learned the following facts and circumstances which lead me to believe that DAVIS, EZEKIEL F. committed (or was committing) the offense of Larceny from a Person (Victim over 60) and PCS-Marijuana with intent to sell at the location of 3900 S. LV Blvd LV, NV 89109.

That the offense occurred at approximately 2300 hours on the 15 day of March, 2008.

On 03-15-08, at 2304 hrs, I Officer R. Rundell, P#8719, marked unit, 1M12, was dispatched to the Luxor Hotel and Casino, located at 3900 S. Las Vegas Blvd for a Larceny from a person call. Details stated that in the parking garage on the westside of the Luxor, an unknown BMA had taken a wallet from the PR and ran away. While enroute details were updated that Security had found the suspect and had taken him into custody.

Upon my arrival, I made contact with Security Officer David Wheeler, of the Luxor. Wheeler had the BMA suspect in-custody on the lower level of the west parking garage. The BMA was identified through a NV-ID card as Ezekiel Davis, DOB 04-28-89. I then took custody of Davis and escorted him to the front of my patrol vehicle. While escorting Davis, he stated, "Lets get this over. Just book me." I then asked Davis if I could search him. Davis stated, "Yeah, you can." While searching Davis I located in his left front pant pocket a clear sandwich baggy containing an unknown green leafy substance. This substance is known to me through my training and experience as marijuana. In Davis left front key hole pant pocket, I located 16 clear orange baggies, that were placed inside of a slightly larger clear baggy. These type of baggies are commonly used for the sells of illegal narcotics. Inside of Davis wallet, which was located in his right rear pocket, I located a clear orange baggy containing a green leafy substance that appeared to be marijuana. The baggy inside of his wallet is identical to the 16 that I had located in his other pocket. In Davis right front pocket I located \$408.00. Three \$100.00 bills, three \$20.00 bills, one \$10.00 bill, five \$5.00 bills, and thirteen \$1.00 bills. All of these bills appeared as if they had been shoved in his pocket and were crumpled up. The bills were in no numerical order. Some of the bills were almost falling out of Davis pocket. It should also be noted that there was no money in Davis wallet.

I read Davis his Miranda rights, from an LVMPD Miranda card at 2320 hrs. Post Miranda I asked Davis, "What's going on tonight?" Without stating anything about the Larceny call, Davis replied, "I had found a wallet on the ground. And the lady wasn't anywhere near it. I just picked it up and she started yelling." Later after Davis was told of his charges, he went on to state he new nothing about any old lady. He also stated he new nothing about what was going on.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST CONTINUATION
Page 2

ID#: NEW-

EVENT: 080315-3896

Shortly after questioning Davis, Security brought the PR to my location. The PR was identified as Banjank Balzer, DOB 12-12-46. Balzer is 62 yoa. Balzer stated that she was leaving work at the Luxor and waiting for her husband to pick her up. Balzer was waiting on the walk way to the westside parking garage on the second level. While rummaging through her purse for her phone, she had pulled out her wallet. Balzer was holding on to her wallet when Davis, who is unknown to her, approached her, grabbed her wallet and ran. Balzer then began screaming for help and running after Davis. Unknown citizens gave chase. While Davis was running he discarded the wallet, which was found by Balzer. Balzer stated that after finding the wallet she noticed the cash from the wallet was missing. Balzer stated that she had three \$100.00 bills, three \$20.00 bills, and some 10's, 5's and 1's. Balzer stated she believed the total amount to be around \$400.00.

I then spoke with Security Officer Wheeler. Wheeler stated he responded to the west parking garage. There he was advised by a citizen that Davis was hiding underneath a car on the lower level of the garage. Shortly thereafter Wheeler located Davis hiding underneath a Blue Kia, NV plate 983UZR, parked in Row 2-C. Wheeler advised Davis to come from under the vehicle. Wheeler then placed him in handcuffs. I arrived shortly after.

Security was able to get video of the incident. Security stated the video shows Davis taking the wallet from Balzer and then running away. It also shows him with two other BMA's, but not able to tell if they were involved. Security burned a copy of the incident and released it to me. Later when I asked Davis who the other two BMA's were, he stated he had no idea what I was talking about. Davis did seem concerned about the other two. Davis asked, "So the other two going to be booked too?". I asked Davis if he did not know the two, then why was he so concerned about what happens to them. Davis did not reply.

Due to the fact that Davis did admit to being there during the commission of the crime, Balzer being over 60, the fact that he had the same amount of money that was stolen and bill count, and that the video shows Davis taking the wallet and running, he was placed under arrest for Larceny from a Person (Victim over 60). Davis was also charged with PCS-Marijuana due to all of the narcotic related items I located on his person. The combination of all of those items together are common in the sell of narcotics. I then transported Davis to CCDC where he was booked accordingly.

At CCDC the Green leafy substance was tested ODV positive for a total of 4.1 grams of Marijuana. The cash was released to Balzer. The Marijuana and Video were impounded at SCAC.

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are misdemeanor).

Declarant


R. RUNDELL P#8719

ARREST REPORT

08F05705X/6

☐ City☒ County☒ Adult☐ Juvenile

Sector/Boat M4

ID/EVENT# 2677543	ARRESTEE'S NAME DAVIS, EZEKIEL F. (Last, First, Middle)		S.S.# 530-45-3710	
ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code) 4912 CINNAMON SPIKE NLV, NV 89031				
CHARGES: LARCENY FROM PERSON, VICTIM OVER 60 NRS: 205.270 PCS MARIJUANA WITH INTENT TO SELL NRS: 453.337				
OCCURRED:	DATE 031508	DAY OF WEEK SAT	TIME 2330	LOCATION OF ARREST (Number, Street, City, State, Zip Code) 3900 S LAS VEGAS BLVD LAS VEGAS, NV 89109
RACE B	SEX M	D.O.B. 042889	HT 601	WT 190
HAIR BRO		EYES BRO		PLACE OF BIRTH LAS VEGAS, NV

CIRCUMSTANCES OF ARREST

OFFICER INVOLVED:

R. Rundell, P#8719, call sign 1M12

VICTIM:

Balzer, Banjank

DOB: 12/12/46

Contact phone: (702) 369-5355

CONTACT:

Wheeler, David

DOB: 01/21/54

Ph: 457-5131

PROPERTY IMPOUNDED and
RECOVERED:

Pkg 1, Item 1, Owner 1
 Quantity of 1: \$408 dollars in cash
 (3)- three one hundred dollar bills
 (3)- three twenty dollar bills
 (1)- one ten dollar bill
 (5)- five, five dollar bills
 (13)- thirteen one dollar bills

The cash was recovered from Davis and
 released to Balzer

Pkg 2, Item 2, Owner 2
 Quantity 1: one clear baggy containing 16
 clear orange baggies

Pkg 2, Item 3, Owner 2
 (1) one clear orange baggy containing
 0.9 grams of ODV positive marijuana

CONFIDENTIAL

ARRESTING OFFICER(S)	P#	APPROVED BY	CONNECTING RPTS. (Type or Event Number)
RUNDELL	8719	Approved 03/16/08 2300 Hours Lt. D. Cavalieri P#3876	080315-3896, TCR, DOA, RFP, Witness List, ICR A pg and B pg, Property report, marijuana checklist, 2 Voluntary Statements

RA 000389

CONTINUATION REPORT

ID/Event Number: 2677543

Page 2 of

PROPERTY IMPOUNDED:

Pkg 2, Item 4, Owner 1

(1) one clear sandwich baggy containing
3.9 grams of ODV positive marijuana

Pkg 3, Item 5

(1) one DVD video of incident

All property except for cash was
impounded at SCAC

DETAILS:

On 03/15/08 at 2304 hours, I, Officer R. Rundell, P#8719, marked unit 1M12, was dispatched to the Luxor Hotel and Casino located at 3900 S. Las Vegas Blvd., for a larceny from a person call. Details stated that in the parking garage on the west side of the Luxor, an unknown BMA had taken a wallet from the P/R and ran away. While en route, details were updated that security had found the suspect and had taken him into custody.

Upon my arrival, I made contact with the Security Officer David Wheeler of the Luxor. Wheeler had the BMA suspect in custody on the lower level of the west parking garage. The BMA was identified through a Nevada ID card as Ezekial Davis, DOB 04/28/89. I then took custody of Davis and escorted him to the front of my patrol vehicle. While escorting Davis, he stated, "Let's get this over, just book me". I then asked Davis if I could search him. Davis stated, "yeah, you can". While searching Davis, I located in his left front pant pocket, a clear sandwich baggy containing unknown green leafy substance. This substance is known to me through my training and experience as marijuana.

In Davis' left front keyhole pant pocket, I located 16 clear orange baggies that were placed inside of a slightly larger clear baggy. These type of baggies are commonly used for the sales of illegal narcotics. Inside of Davis' wallet which was located in his right rear pocket, I located a clear orange baggy containing a green leafy substance that appeared to be marijuana. The baggy inside of his wallet was identical to the 16 that I located in his other pocket. In Davis' right front pocket, I located \$408.00, three hundred bills, three twenty dollar bills, one ten dollar bill, five five dollar bills and thirteen one dollar bills. All of these bills appeared as if they had been shoved in his pocket and were crumpled up. The bills were in no numerical order; some of the bills were almost falling out of Davis' pocket. It should also be noted that there was no money in Davis' wallet.

I read Davis his Miranda rights from a LVMPD Miranda card at 2320 hours. Post Miranda, I asked Davis, "What's going on tonight?". Without stating anything about the larceny call, Davis replied, "I had found a wallet on the ground and the lady wasn't anywhere near it, I just picked it up and she started yelling". Later after, Davis was told of his charges. He went onto state he knew nothing about any old lady. He also stated he knew nothing about what was going on. Shortly after questioning Davis, security brought the P/R to my location. The P/R was identified as Banjank Balzer, DOB 12/12/46. Balzer is 62 years of age.

RA 000390

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
CONTINUATION REPORT

ID/Event Number: 2677543

Page 3 of

Balzer stated that she was leaving work at the Luxor and waiting for her husband to pick her up. Balzer was waiting on the walkway to the west side of the parking garage on the second level. While rummaging through her purse for her phone, she had pulled out her wallet. Balzer was holding her wallet in her hand when Davis, who is unknown to her, approached her, grabbed her wallet and then ran. Balzer then began screaming for help and running after Davis. Unknown citizens then gave chase. While Davis was running, he discarded the wallet which was found by Balzer. Balzer stated that after finding the wallet, she noticed the cash from the wallet was missing. Balzer stated that she had three one hundred dollar bills, three twenty dollar bills and some tens, fives and ones. Balzer stated she believed the total amount to be around \$400.00.

I then spoke with Security Officer Wheeler. Wheeler stated he responded to the west parking garage after receiving the call from his dispatch of the larceny. Upon his arrival, he was advised by a citizen that Davis was hiding underneath a car on the lower level of the garage. Shortly thereafter, Wheeler located Davis hiding underneath a blue Kia, Nevada plate 983UZR, which was parked in row 2C. Wheeler advised Davis to come from under the vehicle. Wheeler then placed him in handcuffs; I arrived shortly after.

Security was able to get video of the incident. Security stated the video shows Davis taking the wallet from Balzer and then running away. It also shows him with two other BMA's, but not able to tell if they were involved. Security burned a copy of the incident and released it to me on DVD. Later when I asked Davis who the other two BMA's were, he stated he had no idea what I was talking about. Davis then seemed to be concerned about the other two, asking, "so, are the other two going to be booked to?". I asked Davis if he did not know the other two, then why was he so concerned about what happens to them. Davis did not reply.

Due to the fact that Davis did admit to being there during the commission of the crime, Balzer being over 60 years of age, the fact he had the same amount of money that was stolen and bill count and that the video shows Davis taking the wallet and running, he was placed under arrest for Larceny From a Person, Victim over 60. Davis was also charged with PCS marijuana, due to all of the narcotic related items I located on his person. The combination of those items together are commonly used for the sales of narcotics. I then transported Davis to CCDC where he was booked.

While at CCDC, the green leafy substance was tested by me and showed positive for a total of 4.1 grams of marijuana. The cash that I recovered from Davis' right front pocket was released to Balzer at the scene. The marijuana and video were impounded at SCAC. Both Balzer and Wheeler completed voluntary statements.

RR/sj7000 Records

Job #97381

Date and time of dictation: 03/16/08 @ 0817 hrs

Date and time transcribed: 03/16/08 @ 2227 hrs

cc: R. Rundell / SCAC

RA 000391

1 16

1 CASE NO.: C243460

2 DEPT NO.: 6

FILED

MAY 29 1 56 PM '08

3
4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
5 COUNTY OF CLARK, STATE OF NEVADA
6
7

[Signature]
CLERK OF THE COURT

-oOo-

ORIGINAL

8 THE STATE OF NEVADA,)
9 Plaintiff,)
10 vs.)
11 EZEKIEL F. DAVIS,)
12 Defendant.)
13

CASE NO. 08F05705X

14 REPORTER'S TRANSCRIPT
15 OF
16 UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

17 BEFORE THE HONORABLE NANCY OESTERLE
18 JUSTICE OF THE PEACE

19 Thursday, April 17, 2008
20 10:15 a.m.

21 APPEARANCES:

22 For the State: ALEXANDER CHEN, ESQ.
23 Deputy District Attorney

24 For the Defendant: MICHAEL WILFONG, ESQ.
25 Deputy Public Defender

Reported by: KRISTINE A. FLUKER, CCR NO. 403

RECEIVED
MAY 29 2008
CLERK OF THE COURT

1 LAS VEGAS, CLARK COUNTY, NV., THURS., APRIL 17, 2008
10:15 A.M.

2 -oOo-
P R O C E E D I N G S

3
4 THE COURT: Ezekiel Davis. That's
5 E-z-e-k-i-e-l, Davis, 08F05705X.

6 MR. WILFONG: Yes. And there's also going to
7 be -- there's actually three. My apologies. Lisa Hurt
8 and Franklin McDaniel.

9 THE COURT: Okay. Franklin McDaniel. Where
10 is Franklin? That's 08F06684X.

11 And the last one is Lisa Hurt, H-u-r-t.
12 That's 08F06712X. Where is Lisa?

13 Okay. Let's start first with Franklin. What
14 are we doing on Franklin's case?

15 MR. WILFONG: Yes, Your Honor. Today
16 Mr. Franklin is going to be unconditionally waiving his
17 right to a preliminary hearing. In District Court he
18 will be pleading guilty to one count of attempted grand
19 larceny. The parties have stipulated to a gross
20 misdemeanor and have stipulated to six months flat time
21 concurrent with any other cases.

22 MR. CHEN: That's correct, Your Honor.

23 THE COURT: Okay. What are we doing on
24 Ezekiel Davis?

25 MR. WILFONG: Yes, Your Honor, today

1 Mr. Davis will be unconditionally waiving his right to
2 a preliminary hearing. In District Court he's going to
3 plead guilty to one count of attempted larceny from the
4 person, a wobbler. The parties have agreed to
5 stipulate to felony treatment. The Government will not
6 oppose probation. If he is successful, he will be
7 allowed to withdraw his plea and plead guilty to the
8 gross misdemeanor with credit for time served.

9 MR. CHEN: That is correct, Your Honor. And
10 also the State retains the right to argue for terms and
11 conditions of probation.

12 MR. WILFONG: Yes, Your Honor.

13 THE COURT: Okay. And what are we doing on
14 Lisa Hurt's case?

15 MR. WILFONG: Yes, today Ms. Hurt will be
16 unconditionally waiving her right to a preliminary
17 hearing. In District Court she will be pleading guilty
18 to one count of possession of a controlled substance.
19 If she has no prior felonies, the State will not oppose
20 3363 treatment.

21 MR. CHEN: That's correct, Judge.

22 THE COURT: Okay. Franklin, did you hear the
23 negotiations?

24 DEFENDANT MCDANIEL: Yes, ma'am.

25 THE COURT: And is that what you'd like to

1 do?

2 DEFENDANT MCDANIEL: Yes, ma'am.

3 THE COURT: Ezekiel, can you pronounce your
4 name. Do you have a nickname?

5 DEFENDANT DAVIS: Ezekiel.

6 THE COURT: Is that your nickname?

7 DEFENDANT DAVIS: Zeek.

8 THE COURT: Great. We're going by that.

9 Zeek, did you hear the negotiations?

10 DEFENDANT DAVIS: Yes, ma'am.

11 THE COURT: And is that what you'd like to
12 do?

13 DEFENDANT DAVIS: Yes, ma'am.

14 THE COURT: Lisa, did you hear the
15 negotiations?

16 DEFENDANT HURT: Yes.

17 THE COURT: And is that what you'd like to
18 do?

19 DEFENDANT HURT: Yes.

20 THE COURT: Do all three of you understand
21 that by entering into these negotiations you are
22 waiving, by that I mean you're giving up, your right to
23 have a preliminary hearing scheduled for today, which
24 means you're giving up your right to cross-examine the
25 witnesses the State can call against you and challenge

1 their evidence, you're also giving up your right to
2 subpoena witnesses to testify for you, and you're
3 giving up your right to testify on your own behalf for
4 the purpose of your preliminary hearing only?

5 Franklin, is that right?

6 DEFENDANT MCDANIEL: Yes.

7 THE COURT: What about you, Zeek?

8 DEFENDANT DAVIS: Yes, ma'am.

9 THE COURT: What about you, Lisa?

10 DEFENDANT HURT: Yes.

11 THE COURT: Do each of you understand it's an
12 unconditional waiver, which means it's a permanent
13 waiver of your right to have that preliminary hearing?

14 So if you go to District Court and you change
15 your mind and decide you don't wish to go forward with
16 your plea bargain, you'd then go directly to jury trial
17 on the original charges. You would not come back to
18 Justice Court to appear before me for the purpose of
19 having your preliminary hearing on this case.

20 Do you understand that, Franklin?

21 DEFENDANT MCDANIEL: Yes, ma'am.

22 THE COURT: What about you, Zeek?

23 DEFENDANT DAVIS: Yes, ma'am.

24 THE COURT: What about you, Lisa?

25 DEFENDANT HURT: Yes.

1 THE COURT: And knowing all of that, you
2 still want the plea bargain, Franklin?

3 DEFENDANT MCDANIEL: Yes, ma'am.

4 THE COURT: What about you, Zeek?

5 DEFENDANT DAVIS: Yes, ma'am.

6 THE COURT: What about you, Lisa?

7 DEFENDANT HURT: Yes.

8 THE COURT: It appears to me from the
9 Complaint on file herein that crimes have been
10 committed. As to Franklin: one count of burglary.

11 As to Zeek: one count of larceny from the
12 person; one count of possession of a controlled
13 substance with intent to sell.

14 As to Lisa: one count of trafficking a
15 controlled substance.

16 Each defendant has unconditionally waived
17 their right to a preliminary hearing. I hereby order
18 the said defendants be held to answer to said charges
19 in the Eighth Judicial District Court, State of Nevada,
20 in and for the County of Clark.

21 Your next court date, Franklin, is --

22 THE CLERK: April 23rd, 9:00 a.m., District
23 Court 1, initial appearance, lower level.

24 THE COURT: And it's the same exact date for
25 Zeek.

1 And then, Lisa, your date is different. Your
2 date is --

3 THE CLERK: April 30th, 9:00 a.m., District
4 Court 24, initial appearance, lower level.

5 THE COURT: Wait for all your paperwork.

6 MR. WILFONG: Your Honor, one last matter as
7 to Mr. Davis. He is on house arrest right now. I
8 believe he needs the paperwork to get that lifted.

9 THE COURT: Was that part of the negotiation
10 or is that a request now?

11 MR. WILFONG: That is our request at this
12 time, Your Honor.

13 THE COURT: I don't have reports from house
14 arrest as to how he's doing or if he's been making his
15 payments or anything. And I show --

16 MR. WILFONG: Well, he's here, Your Honor.

17 THE COURT: I see that.

18 DEFENDANT DAVIS: I have receipts.

19 THE COURT: I'm sorry, what? I can't hear
20 you.

21 DEFENDANT DAVIS: I have receipts for my
22 payments for house arrest. I have my receipts.

23 THE COURT: I gave him an in-custody bindover
24 date. Without a report and since Intake recommended
25 against a release, I did not follow that. I gave him

1 'house arrest. I'm inclined to leave him on there until
2 he shows up on the next court date and enters his plea,
3 and then the State probably won't oppose it then
4 anyway.

5 Is that right, Mr. Chen?

6 MR. CHEN: That's correct, Judge.

7 THE COURT: Okay. He has in-custody date for
8 the 23rd, next Wednesday.

9 MR. WILFONG: Okay. Thank you, Your Honor.

10

11 -oOo-

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13 ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF
14 PROCEEDINGS.

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18 KRISTINE A. FLUKER, CCR NO. 403

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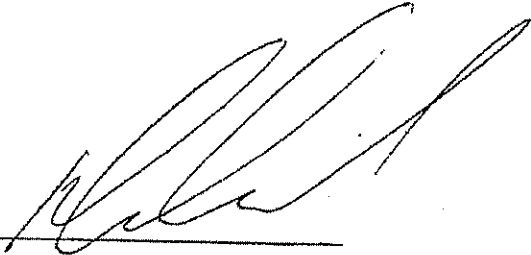
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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the
preceding bindover filed in District Court Case
No. C243460 does not contain the Social Security Number
of any person.

Dated this 20th day of May, 2008.


KRISTINE A. FLUKER, CCR. NO. 403

1 JOCP

FILED

MAY 07 2010

Agnes L. Johnson
CLERK OF COURT

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

EXHIBIT B
Part 2

7
8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO. C262058

10 -vs-

DEPT. NO. XII

11 EZEKIEL F. DAVIS
12 #2677543

13 Defendant.

14
15 JUDGMENT OF CONVICTION
16 (PLEA OF GUILTY)

17
18 The Defendant previously appeared before the Court with counsel and entered
19 a plea of guilty to the crime of POSSESSION OF FIREARM BY EX-FELON
20 (Category B Felony) in violation of NRS 202.360; thereafter, on the 27TH day of April,
21 2010, the Defendant was present in court for sentencing with his counsel R. ROGER
22 HILLMAN, Deputy Public Defender, and good cause appearing,

23
24 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in
25 addition to the \$25.00 Administrative Assessment Fee and a \$150.00 DNA Analysis
26 Fee including testing to determine genetic markers, the Defendant is sentenced as
27 follows: TO A MAXIMUM of THIRTY-SIX (36) MONTHS with a MINIMUM parole
28

RA 000401

1 eligibility of TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC),
2 to run CONCURRENT with case C243460; with ZERO (0) DAYS credit for time
3 served.
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6 DATED this 10 day of May, 2010.

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9 MICHELLE LEAVITT
10 DISTRICT JUDGE
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[Signature]
CLERK OF THE COURT

FEB 28 2017

09PCH 1278

Henderson Police Department

223 Lead St. Henderson, NV 89015

Page 1 of 2

Declaration of Arrest

DR# 09-16672

FH# 09

Arrestee's Name: Davis, Ezekiel F

Date of Arrest: 08/13/2009

Time of Arrest: 1411

Charge	Degree	NRS/HMC
Poss Stolen Property/Firearm-F	Felony	205.275.2C
Convicted Person-possess Firearm-F	Felony	202.360

THE UNDERSIGNED MAKE THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I, Clinton Campbell am a peace officer with the Henderson PD, Clark County, Nevada, being so employed since 06/18/2007. That I learned the following facts and circumstances which led me to believe that the above named subject committed (or was committing) the above offense/offenses at the location of 6200 South Eastern Avenue Las Vegas Nevada 89044, and that the offense occurred at approximately 1411 hours on 08/13/2009.

Details of Probable Cause

On 08/13/09 at about 1300 hours I, Officer C. Campbell (#1543), was dispatched to the Big Lots located at the corner of Eastern Avenue and Windmill, in Las Vegas, to assist Lieutenant M. Cassell (#632) and Acting Sergeant Z. Simpson (#689) in reference to a suspicious vehicle.

Lt. Cassell advised that at about 1300 hours he saw two black males in the parking lot that matched the description of a suspect of a drive-by shooting that occurred in Henderson (see DR# 09-16660 for further details). Lt. Cassell advised that both subjects were next to a white sedan that matched the vehicle description used in the drive-by shooting. He advised that they went to another vehicle (a black Saturn sedan bearing NV 817VSS) and were doing something under the hood of the Saturn. He said that both subjects then left in the Saturn going north on Eastern.

Sgt. Simpson arrived to assist Lt. Cassell as they observed the vehicle stop in the Davis Cemetery located at 6200 South Eastern Avenue, in Las Vegas. contact was made with both subjects, Ezekiel Davis (DOB 04/28/89) and Sean Rose (DOB 01/04/89) who identified themselves by means of thier NV identification.

Lt. Cassell and Sgt. Simpson advised that both Ezekiel and Sean advised that they did not know about any drive-by shooting, but Ezekiel admitted that he had a gun hidden in the Saturn and that it was his and that his finger prints would be found on the gun. Ezekiel also stated that Sean had nothing to do with the gun. Sean advised that the gun was hidden near the battery under the hood of the Saturn. Sean also stated that he was the registered owner of the Saturn and gave consent to Officers to search the vehicle.

A routine records check of Ezekiel revealed that he was a convicted felon and on probation for Attempted Theft.

Upon my arrival at the Saturn I located the handgun, a black Semi-Automatic Smith & Wesson MP.45 with serial # MPY8157, wedged between the battery and the air filter under the hood of the vehicle. Digital photos were taken of the vehicle and the location of the handgun and later downloaded into digital evidence.

A routine records check of the Handgun revealed that it was stolen, as confirmed by dispatch. I entered the gun's information in this report to have it removed from the NCIC system as stolen.

It should be noted that there was no round in the chamber of the handgun and there was a magazine inside the gun that had 5 .45 caliber rounds inside of it. The handgun, the magazine, and the rounds were later impounded as evidence at the West Substation.

Clinton Campbell

Declarant's Name

RA 000403

Henderson Police Department

223 Lead St. Henderson, NV 89015

Page 2 of 2

Declaration of Arrest Continuation Page

DR# 09-16672

FH# 09

Arrestee's Name: Davis, Ezekiel F

Details of Probable Cause (Continued)

Due to the fact that Ezekiel admitted the stolen handgun was his, he was placed under arrest for Possession of Stolen Firearm (NRS 205.275-2C), and Convicted Person-Possess Firearm (NRS 202.360).

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are a misdemeanor).

Clinton Campbell

Declarant's Name

RA 000404

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TRAN

CASE NO. C262058

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IN THE JUSTICE'S COURT OF HENDERSON TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,
vs.

EZEKIEL F. DAVIS,

Defendant.

CASE NO. 09FH1597X

REPORTER'S TRANSCRIPT

OF

UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE THE HONORABLE STEPHEN L. GEORGE
JUSTICE OF THE PEACE

WEDNESDAY, FEBRUARY 10, 2010

APPEARANCES:

For the State: AGNES BOTELHO, ESQ.
Deputy District Attorney

For the Defendant: BITA KHAMSI, ESQ.
Deputy Public Defender

Reported by: Lisa Brenske, CCR #186

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MAR 04 2010

CLERK OF THE COURT

1 HENDERSON, NEVADA, FEBRUARY 10, 2010, 9:30 a.m.

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3 * * * * *

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5 THE COURT: Ezekiel Davis, case number
6 09FH1597X.

7 MS. KHAMSI: This matter is negotiated,
8 Your Honor. Mr. Davis is going to be unconditionally
9 waiving his right to a preliminary hearing. He is
10 going to be pleading guilty to the charge of possession
11 of firearm by ex-felon. State is recommending 12 to 36
12 months and will not oppose concurrent time with the
13 time he is serving concurrently.

14 MS. BOTELHO: We also ask he forfeit the
15 weapon.

16 THE COURT: I'm sorry?

17 MS. KHAMSI: He is going to be forfeiting
18 the weapon as part of the negotiations.

19 THE COURT: Oh, okay.

20 Is that your understanding of the
21 negotiations here this morning, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand that by
24 accepting those negotiations you will be
25 unconditionally waiving or giving up that right to a

1 preliminary hearing?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: That means you'll be giving up
4 the right to confront and cross-examine any witnesses,
5 the right to present any evidence in your own behalf,
6 the right to testify or not testify, it would be your
7 choice. Do you understand those rights?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand should you
10 change your mind about these negotiations this matter
11 would simply be set for a trial, it would not be sent
12 back here for a preliminary hearing due to the fact
13 you're unconditionally waiving or giving up your right
14 to a preliminary hearing this morning.

15 Knowing all that do you still wish to
16 unconditionally waive your right to a preliminary
17 hearing this morning?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Therefore it appearing to me
20 from the complaint on file herein that a crime has been
21 committed, to wit: Ex-felon in possession of a
22 firearm, and the defendant named herein, Ezekiel Davis,
23 having unconditionally waived his right to a
24 preliminary hearing. I hereby order said defendant be
25 held to appear to said charges in the Eighth Judicial

1 District Court, State of Nevada, County of Clark.

2 Mr. Davis, you're scheduled to appear in
3 District Court for your initial arraignment on --

4 THE CLERK: February 25th, 10:30 a.m.,
5 lower level, this case is tracked to Department 12.

6
7 (The proceedings concluded.)

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9 * * * * *

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11 ATTEST: Full, true and accurate
12 transcript of proceedings.

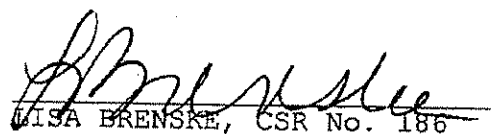
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15 LISA BRENSKE, CSR No. 186

EXHIBIT C

1 AJOC

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CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

EXHIBIT C

THE STATE OF NEVADA,

Plaintiff,

-vs-

EZEKIEL DAVIS
aka Ezekiel F. Davis
#2677543

Defendant.

CASE NO. C248776

DEPT. NO. V

ORDER FOR REVOCATION OF PROBATION AND
AMENDED JUDGMENT OF CONVICTION

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of ATTEMPT TO COMMIT THEFT (Category D Felony/Gross Misdemeanor) in violation of NRS 193.330, 205.0832, 205.0835; thereafter, on the 20th day of November 2008, the Defendant was present in Court for sentencing with his counsel, thereupon using the presentence report from C243460; wherein the Court adjudged the Defendant guilty under the felony statute of said offense, suspended the execution of the sentence imposed and granted probation to the Defendant.


RA 000410


1 THEREAFTER, a parole and probation officer provided the Court with a written
2 statement setting forth that the Defendant has, in the judgment of the parole and
3 probation officer, violated the conditions of probation; and on the 17th day of September,
4 2009, the Defendant appeared in court with his counsel, JOSIE T. BAYUDAN, Deputy
5 Public Defender, and pursuant to a probation violation hearing/proceeding, and good
6 cause appearing to amend the Judgment of Conviction; now therefore,
7

8 IT IS HEREBY ORDERED that the probation previously granted to the Defendant
9 is revoked; and IT IS FURTHER ORDERED that the original sentence is MODIFIED to
10 a MAXIMUM of THIRTY (30) MONTHS with a MINIMUM Parole Eligibility in
11 TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC), to run
12 CONCURRENT with case C243460; with NINETY-THREE (93) DAYS credit for time
13 served.
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17 DATED this 24 day of September, 2009

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21 JACKIE GLASS
22 DISTRICT JUDGE
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CLERK OF THE COURT

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DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

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E. J. Smith
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

EZEKIEL DAVIS, aka
Ezekiel F. Davis,
#2677543

Defendant.

Case No: C248776

Dept No: III

JUDGMENT OF CONVICTION
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime(s) of ATTEMPT TO COMMIT THEFT (Category D Felony/Gross Misdemeanor), in violation of NRS 193.330, 205.0832, 205.0835; thereafter, on the 20th day of November, 2008, the Defendant was present in court for sentencing with his counsel, MISTI ASHTON, Deputy Public Defender, and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense(s) ATTEMPT TO COMMIT THEFT (Category D Felony) and, COURT ORDERED: in addition to the \$25.00 Administrative Assessment Fee and a \$150.00 DNA Analysis fee including testing to determine genetic markers, Defendant SENTENCED to a MAXIMUM of THIRTY-SIX (36) MONTHS and a MINIMUM of TWELVE (12) MONTHS in the Nevada Department of Corrections (NDC); sentence SUSPENDED; placed on PROBATION for an indeterminate period not to exceed THREE (3) YEARS with the following CONDITIONS:

1. Abide by any curfew imposed by the Division of Parole and Probation

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CLERK OF THE COURT

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RA 000412

- 1 2. Enter and complete the Drug Court program
- 2 3. Enter and complete any counseling programs deemed necessary.
- 3 4. Maintain full-time employment or full-time student status
- 4 5. Complete ten (10) hours of community service work per month
- 5 6. Submit to random urinalysis

6 DATED this 21st day of December, 2008.

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8 AWH
DISTRICT JUDGE CS

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John S. Johnson
CLERK OF THE COURT

FEB 28 2017

jr

AFFIDAVIT

08-6853

1 State of NEVADA }

2 County of Clark }

ss:

3 A. Antoniewicz, being first duly sworn, deposes and says:

4 That he is a Police Detective with the North Las Vegas Police Department, City of North
5 Las Vegas, County of Clark, State of Nevada, being so employed for a period of 6 years,
6 assigned to investigate the crime(s) of **Attempt Robbery**, committed on or about April 15, 2008,
7 which investigation has developed **Ezekiel Davis** as the perpetrator(s) thereof.

8 That Affiant developed the following facts in the course of the investigation of said crime,
9 to wit: On March 15, 2008, at about 2100 hours, Officer Wall (p#1951), responded to 3512 Chaps
10 Ranch in reference to a report of an attempt robbery. The victim, Tracy Smith, told Officer Wall the
11 following: at about 2045 hours, he walked out of the Port of Subs located at 1306 West Craig road
12 toward his vehicle, a black Hummer H3, which was parked in front of the Port of Subs. Smith noticed
13 a black male walking east bound on the sidewalk toward him. Smith opened his driver's door and
14 heard footsteps approaching quickly from behind. Smith got inside the car, shut and locked the door
15 just as the black male grabbed his exterior driver side door handle. The black male grabbed the
16 handle with his right hand and began banging on the driver's side window with his left fist. The black
17 male yelled "give me all your fucking money!" The black male appeared to be standing on the driver's
18 side foot rail and continued banging and yelling at Smith. The black male saw Smith reach his keys
19 toward the ignition and yelled "if you start this car, I'll fucking kill you!" Smith could not see the
20 suspect's right hand and feared for his own safety. Smith started the car's engine, quickly backed out
21 of the parking space and sped west bound through the shopping center. Smith saw the suspect run
22 toward a dark-colored small sports car and then lost sight of him. Smith described the black male as
23 being about 17 or 18 years of age with braided hair hanging down to his chin. The black male wore
24 a black, white, and purple baseball cap and jacket with dark colored pants. Smith told Officer Wall
25 that he would be able to identify the black male if he saw him again.

26 Affiant went to the Port of Subs and checked the area for video surveillance. There was no video
27 surveillance available at the Port of Subs. However, Affiant went to the Lucky's grocery store, 1324
28

1 West Craig road, which is at the west end of the Port of Subs shopping center. Affiant spoke with
2 Lucky's Organized Retail Crime Specialist Thomas Andersson. He showed Affiant video surveillance
3 that covered the time of the crime. On the video, Affiant noticed the following: a black male entered
4 the store on March 15, 2008, at about 2035 hours. The male was wearing a black, white and purple,
5 baseball cap and jacket and he appeared to have braided hair. The black male was preceded in
6 entering the store (about five seconds) by another black male who was wearing blue jeans and a
7 white shirt. Both black males walked toward the restroom area where the black male with the white
8 shirt entered the bathroom and the black male with the baseball cap waited nearby. When the black
9 male exited the bathroom, both black males exited the store together (about 2045 hours). Upon
10 exiting the store, the black male with the baseball cap walked east bound (out of the camera's view)
11 toward the area of the Port of Subs and the black male with the white shirt walked south toward the
12 parking lot and eventually got into a black four door vehicle. Minutes later, at about 2047 hours, the
13 black male with the baseball cap ran back into the camera's view and got into the same black vehicle.
14 The vehicle then went east bound through the parking lot and exited the camera's view.
15 On the video surveillance, Affiant noticed that the black, white and purple colored jacket worn by the
16 suspect had a picture of "Marvin the Martian" (cartoon character) on the back. Andersson made
17 Affiant a copy of the surveillance video which included still photos and Affiant later booked it into
18 evidence at the North Las Vegas Police Department.
19 Due to the unique design on the black male's jacket, Affiant printed still photos from the video
20 surveillance and visited the local high schools in the northern part of North Las Vegas. No one was
21 able to positively identify any of the black males on the pictures. However, on April 4, 2008, Detective
22 Freeman (p#1570) was contacted by Cheyenne High School (3200 West Alexander) personnel, as
23 Affiant was unavailable, and advised that a student matching the description of the suspect was at
24 school and wearing a "Marvin the Martian" jacket. Detective Freeman went to the school and made
25 contact with the student, Darvell Washington. Detective Freeman did not speak to Washington about
26 the incident as he only photographed him for identification purposes. The pictures showed that
27 Washington had braided hair and the jacket matched the jacket on the video surveillance.
28 On April 17, 2008, Affiant met with Smith (victim) and showed him a photo lineup that Affiant

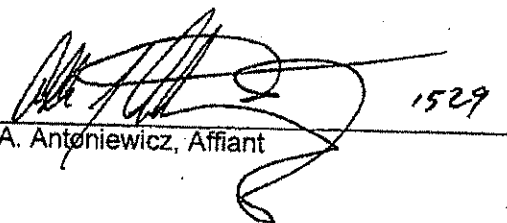
1 obtained from Clark County Juvenile Hall. The photo lineup contained Washington in the lower left
2 hand corner. Smith looked at the lineup and eventually picked the person pictured in the middle of
3 the right hand side.

4 On May 22, 2008, Affiant went to Cheyenne High School to speak with Washington. Before
5 requesting Washington's presence, Affiant showed the still photos to Clark County School District
6 Police Officer Grimes. Affiant asked him if he believed the person in the photo was Washington.
7 Officer Grimes said it was not Washington, but he recognized the black male in the white shirt. Officer
8 Grimes did not remember the black male's name, but later advised Affiant it was Joseph Preston,
9 who previously attended the school. Officer Grimes provided Affiant with Preston's personal
10 information that showed his birth date was 04/17/1988 and his residence address was 5438 Forsythia
11 Court in North Las Vegas. A records check through the Nevada Department of Motor Vehicles
12 database revealed a driver license in the name of Joseph Preston (#1402292801). The license
13 showed Preston with the same birth date and address as that provided by Officer Grimes. The picture
14 on the driver license closely resembled that of the black male wearing the white shirt on the video
15 surveillance.

16 On May 29, 2008, Affiant went to 5438 Forsythia Court. As Affiant approached the residence, Affiant
17 noticed a black four door Mercury Marquis (NV/672use) parked on the driveway. A records check on
18 the plate showed it was registered to Joseph Preston with a birth date of 04/17/1988. Affiant
19 eventually made contact with and spoke to Preston in the presence of Detective Owens (p#1173).
20 Detective Owens recorded this conversation with a digital audio recorder. Affiant later had the
21 conversation copied to a compact disc and Affiant booked the disc into evidence at the North Las
22 Vegas Police Department. Preston told Affiant the following: he was at the Lucky's store with his
23 friend Ezekiel Davis, who was drunk. When they exited the store, Davis told him to go to his
24 (Preston's) vehicle. Davis then approached the Hummer (Smith's vehicle) and jumped on it. However,
25 the vehicle drove away. Davis then got back into Preston's vehicle and started to say "off the wall"
26 stuff. Preston and Davis then left the area. Preston said Davis did not have a gun and did not get any
27 money from the incident. Preston said Davis got arrested later that same day because he robbed
28 someone at the Luxor casino. Preston said Davis was about 18 years of age and his birthday was

1 April 28. Preston said he knew Davis from school, but did not know where he lived.
2 Affiant went to Cheyenne High School and received the latest information they had on an Ezekiel
3 Davis. The information provided showed an Ezekiel F. Davis with a birth date of 04/28/1989.
4 A records check on Davis using the date of birth showed he had an identification card through
5 Nevada Department of Motor Vehicles (#1402503578). Further records showed Davis was arrested
6 on March 15, 2008, for larceny from person (victim over 65) and possession of controlled substance
7 with intent to sell through Las Vegas Metropolitan Police Department's jurisdiction.
8 A photo lineup was created using Davis' identification card picture and five other pictures of persons
9 with similar facial and hair features. Davis was in the number two position. Affiant showed this photo
10 lineup to Smith (victim) and he immediately pointed to Davis and said this was definitely the person
11 that attempted to rob him. Affiant had Smith complete and sign the photo lineup and Affiant later
12 booked it into evidence at the North Las Vegas Police Department. On July 23, 2008, at about 0930
13 hours, Detective Lettieri (p#1522) and Affiant went to Davis' last known address, 4912 Cinnamon
14 Spice Court in North Las Vegas. Affiant attempted to make contact with Davis with negative results.

15 WHEREFORE, Affiant prays that a Warrant of Arrest be issued for **Ezekiel Davis** on the
16 charge of **Attempt Robbery**.

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A. Antoniewicz, Affiant

22 SIGNED and SWORN to before me by
23 A. Antoniewicz this 24 day of July, 2008.

24
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26 Notary Public In and For Said County and State



DEPARTMENT 2
CASE NO. C248776

FILED ORIGINAL

IN THE JUSTICE'S COURT OF NORTH LAS VEGAS TOWNSHIP
COUNTY OF CLARK, STATE OF NEVADA

Nov 16 3 20 PM '08

-000-

E. J. [Signature]
CLERK OF THE COURT

THE STATE OF NEVADA,
Plaintiff,
vs.
EZEKIEL DAVIS,
Defendant.

Case No. 08FN1680X

REPORTER'S TRANSCRIPT OF
UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

BEFORE RICHARD GLASSON,
JUSTICE OF THE PEACE PRO TEM

WEDNESDAY, OCTOBER 15, 2008
9:30 A.M.

APPEARANCES:

For the State: Amy Ferreira, Esq.
Deputy District Attorney

For the Defendant: Travis Raymond, Esq.
Deputy Public Defender

Reported by: Norma Jean Silverman, RPR, RMR
NV. C.C.R. No. 572

NORMA JEAN SILVERMAN CCR 572 (702) 451-5007

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NORTH LAS VEGAS, CLARK COUNTY, NEVADA
WEDNESDAY, OCTOBER 15, 2008, 9:30 A.M.

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P R O C E E D I N G S

THE COURT: State of Nevada versus
Ezekiel Davis, Case No. 08FN1680X.

Mr. Davis is present in custody.

MR. RAYMOND: He is, judge.

Travis Raymond on his behalf.

This matter has been resolved.

Today Mr. Davis will unconditionally
waive his right to a preliminary hearing.

In district court he will be pleading
guilty to one count of attempt theft. That is a
wobbler.

The State will retain the right to argue
at rendition of sentence.

THE COURT: Okay. Ms. Ferreira, that's
your understanding of the negotiations as well?

MS. FERREIRA: Yes, your Honor, that's
correct.

THE COURT: Thank you.

Mr. Davis, did you understand the
negotiations that have been stated on the record

1 MR. RAYMOND: No.

2 THE COURT: Sounds like it's either a
3 felony or a gross.

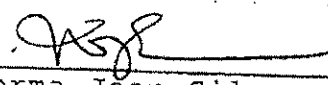
4 MR. RAYMOND: It's the judge's decision
5 like we talked about.

6 THE DEFENDANT: Okay.

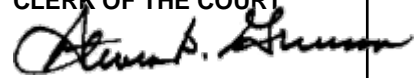
7 THE COURT: Thank you, sir. Go ahead
8 and have a seat.

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10 * * * * *

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12 ATTEST: Full, true, and accurate transcript of
13 proceedings.

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21 Norma Jean Silverman, RPR, RMR
22 NV. C.C.R. No. 572
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24
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OPPS
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JAVAR ERIS KETCHUM,
#6009695
Defendant.

CASE NO: C-16-319714-1

DEPT NO: XVII

STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL

DATE OF HEARING: SEPTEMBER 7, 2017
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through STEVEN J. ROSE, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion For New Trial.

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

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1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On November 30, 2016, the State charged Javar Ketchum (Defendant) by way of
4 Indictment with one count each of Murder with a Deadly Weapon, and Robbery with a Deadly
5 Weapon. On March 8, 2017, Defendant filed a Motion in Limine, seeking to admit character
6 evidence of the victim, Ezekiel Davis. In that Motion, Defendant declined to articulate what
7 character evidence he sought to admit, or the basis upon which he premised the motion. On
8 May 9, 2017, the State filed a Motion in Limine, addressing prior specific acts of violence by
9 the murder victim. In that motion, the State requested that Defendant not be allowed to present
10 evidence of the murder victim's prior convictions, at least without some proof that Defendant
11 was aware of those events. At that time, there had been no evidence to suggest that Defendant
12 had met his victim before the night and morning when he murdered Ezekiel. The State
13 concluded its motion by, "respectfully request[ing] this Court order that Defendant be
14 precluded from discussing or introducing any specific acts of the victim's, *absent proof of*
15 *personal knowledge at the time of the killing.*" (emphasis added).

16 On May 18, 2017, the State filed a Supplement to its Motion in Limine. In that
17 supplement, the State again argued that Defendant should not be allowed to introduce the prior
18 crimes of the murder victim, given that there had been no showing that Defendant knew the
19 victim. As the State mentioned in its supplement,

20 Defendant has made no showing he was aware of any specific
21 act of violence. Indeed, Defendant has made no showing that
22 he was familiar with the victim. Rather, the evidence shows
23 that Defendant and the victim arrive at different times, in
24 different cars, and with different people. Defendant has not
25 demonstrated that he was aware of any specific acts of violence
26 committed by the victim. Thus, although character evidence
27 may be admissible, "[e]vidence of specific instances of
28 conduct is generally not admissible because "it possesses the
greatest capacity to arouse prejudice, to confuse, to surprise,
and to consume time.'" Id. at 514, 78 P.3d at 901.

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1 Supplement to State's Motion in Limine Reference Prior Acts of the Victim, filed May 18,
2 2017, at 4–5. In that supplement, the State also responded to an argument by Defendant at a
3 prior hearing, regarding the use of the specific acts of the victim to show a common scheme
4 or plan. Id. at 5–6. At the hearing on the motions, held on May 19, 2017, Defendant indicated
5 that he wanted to bring in testimony in the form of opinions about the victim. The Court
6 allowed Defendant to bring in such opinion testimony, but precluded the witnesses from
7 expanding on those opinions to introduce the specific underlying facts. At no time did
8 Defendant indicate that he knew of the prior acts.

9 On May 22, 2017, Defendant's jury trial began. During Defendant's opening statement,
10 he indicated that the murder victim had a reputation for sticking people up at gun-point. The
11 State objected to this statement, given the Court's prior rulings. During argument on the point,
12 the Court ruled that the reputation or opinion testimony could be admissible as a reputation or
13 opinion for violence, but not for the underlying facts. Defendant indicated that although he did
14 not want to forecast his defense, the time may come when given his testimony, the prior acts
15 may be admissible. On the third day of the trial, Antoine Bernard testified. Bernard testified
16 that Defendant asked who the victim was. Reporter's Transcript, May 24, 2017, at 9, 10. At
17 the end of the third day of trial, the Court held a colloquy regarding the testimony of the
18 defendant's anticipated witnesses. During that colloquy, the State requested that if Defendant
19 intended to testify of knowledge of specific prior acts of his victim, that a Petrocelli hearing
20 be held. Id. at 139.

21 Defendant testified on the fourth day of trial, May 25, 2017. Defendant testified that his
22 first interaction with the man he would later kill was when he bumped into Ezekiel Davis near
23 the dancing pole. Reporter's Transcript, May 25, 2017, at 23. Defendant asked who Davis was.
24 Id. at 23–24. Defendant swore that the next time he encountered Davis was shortly before they
25 all left the building, when Davis embraced him and apologized for bumping into him earlier.
26 Id. at 24. Defendant claimed that Davis lured him off to the side of the parking lot, grabbed
27 Defendant by the belt, and put a gun against his waist. Id. at 25. Defendant testified that he
28 was afraid, and that he

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

10 Id. at 27. Defendant was specifically asked, and testified that he had not recognized Davis
11 earlier, because in the sole prior interaction, Davis' hat was too low down over his head. Id.

12 Defendant then testified that a woman, Barry, he met previously at Larry's Gentlemen's
13 Club, showed him a picture on her phone, of Davis. Id. at 28. This was the first testimony, and
14 indeed the first indication of any kind, that Defendant had ever seen Davis prior to the events
15 leading to Defendant murdering him. This "Barry" then said that Davis was known for
16 robbing, and that he had been in jail in the past. Id. Defendant did *not* claim that he knew Davis
17 to have gone to jail for any robberies. Id. Defendant reiterated that he recognized Davis for the
18 first time when face to face with him in front of the building, because Defendant's eyes were
19 bad, and he had only ever been inside the club with Davis, where he could not see Davis' face.
20 Id. at 29. On cross-examination, Defendant reiterated that the first time he ever encountered
21 Davis was in the night-club, but he could not see Davis' face. Id. at 61–61.

22 When the Court returned from the lunch-recess, Defendant made a record regarding the
23 prior acts of the victim. Id. at 73. At that time, Defendant argued that the prior acts should be
24 admitted pursuant to NRS 48.045 (2), as evidence of common plan or scheme or intent. Id.
25 Defendant did not argue or request to admit the prior judgments of conviction, based upon the
26 stunning revelation that "Barry" had known of and revealed Davis' past to Defendant three
27 months prior. Id. Defendant called two witnesses, who gave their opinions that Davis was a
28 violent person. Id. at 75–76, 77–78.

Following the last of Defendant's witnesses, and him resting his case, the State called
a single rebuttal witness. Id. at 81–82. Bianca Hicks testified that she was living with Davis,
and the two shared a pair of children. Id. at 82. Hicks testified that in the three years she knew

1 him, she had not seen Davis with a gun. Id. at 90. Hicks did not testify about any time periods
2 prior to the three years she knew him. Id. On cross-examination, Defendant began to ask, based
3 on the fact that Hicks testified she had not seen Davis with a gun in three years, whether she
4 knew about one of his prior convictions. Id. at 93. Despite repeated objections, mid-questions,
5 Defendant did not allow the Court a chance to rule on the objection, and asked whether Hicks
6 was aware that Davis was convicted of possession of a firearm by an ex-felon. Id. at 93–94.
7 The State objected to the reference which not only implied one prior felony but two, and the
8 Court struck the question from the record. Id. at 94, 98.

9 At the end of the fifth day of trial, Defendant was found guilty by the jury. Following
10 the verdict, Defendant entered into a stipulation and order, waiving the penalty phase, and
11 agreeing to a sentence of life in prison with parole eligibility after twenty years, with the
12 sentences for the deadly weapon enhancement and the count of robbery with use of a deadly
13 weapon to be argued by both parties.

14 Seven days after the verdict, Defendant filed the instant Motion for New Trial pursuant
15 to NRS 176.515 (4). Defendant’s Motion is based solely upon his disagreement with the
16 Court’s rulings on admissibility of evidence. The State hereby responds, and respectfully
17 requests this Court order the Motion be DENIED.

18 ARGUMENT

19 Defendant’s motion is an improper attempt to relitigate the Court’s evidentiary rulings,
20 and is without merit. As such, it must be denied. In the pre-trial litigation, and in the State’s
21 requests during trial, the State made clear that if Defendant was going to testify that he had
22 knowledge of Davis’ past, the State wished to conduct an evidentiary hearing pursuant to
23 Petrocelli v. State, 101 Nev. 46, 51–52, 692 P.2d 503, 507–08 (1985). After Defendant
24 testified, he never then sought to introduce the prior Judgments of Conviction, never requested
25 the Petrocelli hearing, and never sought the Court’s permission to re-raise the issue. Instead,
26 Defendant entered the evidence regarding witness’s opinions of Davis, and then blurted out
27 another prior bad act. Accordingly, Defendant deprived the Court of the ability to rule on the
28 admissibility of the evidence, now that there was finally some showing, however incredible,

1 that Defendant was aware of Davis' past. Similarly, as raised pre-trial, Davis' prior history
2 was inadmissible as a prior scheme or plan, because it was not part of one overarching plan
3 spanning both the prior events and the events surrounding his death. Finally, Hicks' testimony
4 that in the three years she was with Davis, the entire time she knew him, she never saw him
5 with a gun did not open the door for Defendant to blurt out his prior conviction.

6 **A. Defendant's Arguments Are Not Properly Raised In a Motion for New Trial**

7 Defendant's arguments are based solely upon his disagreements with the Court's
8 evidentiary rulings. These arguments are not properly raised in such a motion, but are to be
9 raised on appeal. The Court's ability to grant a motion for a new trial stems from NRS 176.515.
10 That statute reads, in pertinent part,

11 176.515. Court may grant new trial or motion to vacate
12 judgment in certain circumstances.

13 1. The court may grant a new trial to a defendant if required as
14 a matter of law or on the ground of newly discovered evidence.

15 2. If trial was by the court without a jury, the court may vacate
16 the judgment if entered, take additional testimony and direct
17 the entry of a new judgment.

18 3. Except as otherwise provided in NRS 176.09187, a motion
19 for a new trial based on the ground of newly discovered
20 evidence may be made only within 2 years after the verdict or
finding of guilt.

21 4. A motion for a new trial based on any other grounds must
22 be made within 7 days after the verdict or finding of guilt or
23 within such further time as the court may fix during the 7-day
period.

24 NRS 176.515. As the arguments show, and Defendant acknowledges in his Motion, he is not
25 seeking a new trial based on "newly discovered evidence." NRS 176.515 (1), (3). Thus, the
26 motion is based upon "any other grounds." Id. at §§ 4.

27 The Nevada Supreme Court has defined what is meant by "any other grounds." The
28 Court held "that such 'other grounds' exist when the district judge disagrees with the jury's
verdict after an independent evaluation of the evidence." Washington v. State, 98 Nev. 601,
603, 655 P.2d 531, 532 (1982). The Nevada Supreme Court reaffirmed this definition in Evans
v. State, 112 Nev. 1172, 926 P.2d 265 (1996) overruled on other grounds by Nika v. State, 124

1 Nev. 1272, 198 P.3d 839 (2008) (overruling Evans on the basis of the wording of the
2 premeditation murder instructions); see State v. Purcell, 110 Nev. 1389, 887 P.2d 276 (1994).

3 Here, Defendant does not argue that the Court should make an independent evaluation
4 of the evidence and come to a conclusion contrary to the jury verdict. Moreover, given the
5 overwhelming evidence, such a request would be meritless. Defendant's arguments are based
6 entirely on evidentiary rulings. Such arguments do not constitute "other grounds" as defined
7 by the Nevada Supreme Court. Evans, 112 Nev. 1172, 926 P.2d 265. Accordingly this Motion
8 should be denied.

9 **B. Defendant Waived These Arguments When he Failed to Request to Admit the**
10 **Judgments of Conviction Following his Testimony**

11 The State's position prior to, and during trial did not change. The State's position, in
12 accordance with the law, was that absent some proof that Defendant knew about the prior
13 events, they were inadmissible to support his claim of self-defense. Burgeon v. State, 102 Nev.
14 43, 46, 714 P.2d 576, 578 (1986) ("In the present case, appellant concedes that the specific
15 acts of violence of the victim were not previously known to him. Since appellant did not have
16 knowledge of the acts, evidence of the victim's specific acts of violence were therefore not
17 admissible to establish the reasonableness of appellant's fear or his state of mind.").

18 NRS 48.045(1) states, in relevant part:

19 1. Evidence of a person's character or a trait of his character is not admissible for
20 the purpose of proving that he acted in conformity therewith on a particular
occasion, except:

21 (b) Evidence of the character or a trait of character of the victim of the crime
22 offered by an accused, subject to the procedural requirements of NRS 48.069
where applicable, and similar evidence offered by the prosecution to rebut such
evidence. . .

23 However, NRS 48.055 limits the method in which character evidence may be proved:

24 1. In all cases in which evidence of character or a trait of
25 character of a person is admissible, proof may be made by
26 testimony as to reputation or in the form of an opinion. On
27 cross-examination, inquiry may be made into specific
instances of conduct.

1 In Daniel v. State, 119 Nev. 498, 78 P.3d 890 (2003), the Nevada Supreme Court held that the
2 victim's propensity for violence is not an essential element of a claim of self-defense, and,
3 therefore, NRS 48.055(1) applies. The Court did recognize a narrow exception to the rule:

4 However, this court has held that evidence of specific acts
5 showing that the victim was a violent person is admissible if a
6 defendant seeks to establish self-defense *and was aware of*
7 *those acts*. This evidence is relevant to the defendant's state of
8 mind, i.e., whether the defendant's belief in the need to use
9 force in self-defense was reasonable.

10 Id at 902 (internal footnotes omitted) (emphasis in original). As such, a specific act to which
11 Defendant was aware would be admissible within reason:

12 We also agree that the admission of evidence of a victim's
13 specific acts, regardless of its source, is within the sound and
14 reasonable discretion of the trial court and is limited to the
15 purpose of establishing what the defendant believed about the
16 character of the victim. The trial court "should exercise care
17 that the evidence of specific violent acts of the victim not be
18 allowed to extend to the point that it is being offered to prove
19 that the victim acted in conformity with his violent tendencies."

20 Id. (internal footnotes omitted). Thus, only acts of which the Defendant is aware would be
21 admissible in trial. See id.

22 In the pre-trial litigation, the State specifically requested that Davis' priors be excluded,
23 *absent proof that Defendant was aware of them*. See Motion in Limine Reference Prior Acts
24 of the Victim, filed May 9, 2017. Again at trial, the State was not of the position that the priors
25 were *per se* excluded, but instead requested an opportunity to examine their admissibility, *if*
26 *Defendant claimed knowledge thereof*. Reporter's Transcript, May 24, 2017, at 139. At trial,
27 Defendant did testify, however incredibly, about hearing that a person whose picture he saw
28 briefly on a phone, had committed robberies. Reporter's Transcript, May 25, 2017, at 28.
However, following this testimony, Defendant never requested to address the Court regarding
Davis' priors, in light of the brand-new claim of knowledge. Instead, when Defendant
requested a renewed ruling on Davis' priors, he did so by arguing under NRS 48.045, and the

1 common scheme or plan exception. Id. at 73. The State would have responded differently, and
2 requested the Petrocelli hearing, as the State did prior to trial, had Defendant attempted to
3 admit Davis' prior robbery convictions due to his knowledge thereof. Defendant precluded
4 that from occurring, however, and cannot now change the basis of his claim for admissibility.

5 **C. Davis' Priors Were Inadmissible Under a Common Scheme or Plan Exception**

6 NRS 48.045 precludes the use of propensity evidence, subject to certain limited
7 exceptions. One such exception is to prove common scheme or plan. The common scheme or
8 plan requires that the plan or scheme exist both at the time of the other bad acts sought to be
9 introduced, and the acts for which the defendant is on trial. Because Defendant could not show
10 such a plan, he could not show entitlement to use the common scheme or plan exception under
11 NRS 48.045.

12 As stated above, NRS 48.045 prohibits the use of propensity evidence in the vast
13 majority of instances. Relevant to this argument, the law states,

14 Evidence of other crimes, wrongs or acts is not admissible to
15 prove the character of a person in order to show that the person
16 acted in conformity therewith. It may, however, be admissible
17 for other purposes, such as proof of motive, opportunity, intent,
18 preparation, plan, knowledge, identity, or absence of mistake
19 or accident

20 NRS 48.045(2). In order to make otherwise inadmissible evidence admissible as proof of a
21 common scheme or plan, certain things are required. First and foremost, there must be a plan—
22 not just any plan, but a plan which was conceived *before* the first of the acts to be introduced,
23 and which encompasses all of the acts to be introduced. Rosky v. State, 121 Nev. 184, 196,
24 111 P.3d 690, 698 (2005). There, the Nevada Supreme Court was explicit in its requirement
25 for the common scheme or plan, holding

26 The common scheme or plan exception of NRS 48.045(2) is
27 applicable when both the prior act evidence and the crime
28 charged constitute an “integral part of an overarching plan
explicitly conceived and executed by the defendant.” “The test
is not whether the other offense has certain elements in
common with the crime charged, but whether it tends to

establish a *preconceived plan* which resulted in the commission of that crime.”

Id. (emphasis in original) quoting Richmond v. State, 118 Nev. 924, 933, 59 P.3d 1249, 1255 (2002) and Nester v. State, 75 Nev. 41, 47, 334 P.2d 524, 527 (1959). The Nevada Supreme Court reaffirmed this requirement in Ledbetter v. State, 122 Nev. 252, 260–61, 129 P.3d 671, 677–78 (2006).

In Rosky, the Nevada Supreme Court held that two acts, eight years apart, were not part of one common scheme or plan, when it appeared that each act was a crime of opportunity. Rosky, 121 Nev. at 196, 111 P.3d at 698. Because the crimes could not have been planned in advance, and simply occurred when the defendant got close enough to the victims, the Court ruled that they could not belong to one overarching plan. Id. Similarly, in Richmond, the Nevada Supreme Court held that where a defendant “appeared simply to drift from one location to another, taking advantage of whichever potential victims came his way,” he could not use the common scheme or plan exception. 118 Nev. at 934, 59 P.3d at 1259. Rather, the defendant’s “crimes were not part of a single overarching plan, but independent crimes, which [he] did not plan until each victim was within reach.” Id.

All of the evidence in this case proved that Defendant's murder of Davis was a crime conceived of, and executed all within a few hours on September 25, 2016. Defendant could not, and did not show that robberies which occurred seven or eight years earlier were also part of a singular overarching scheme, which somehow encompassed both those acts and a confrontation with Defendant.

Defendant in his Motion does nothing but point to the “similarities” between the events, equating two instances years prior where Davis used a firearm to rob people in isolated parking lots away from anyone else to an alleged brazen robbery in broad daylight with dozens of people milling around. However, “[t]he test is not whether the other offense has certain elements in common with the crime charged, but whether it tends to establish a preconceived plan which resulted in the commission of that crime.” Rosky, 121 Nev. at 196, 111 P.3d at 698. Without proving a common plan or scheme which lasted nearly a decade, Davis’ priors were inadmissible under this exception.

D. Hicks's Testimony Did Not Open the Door to Inadmissible Acts that Defendant Later Referenced

In his final claim, once again an argument properly raised on appeal, and not in this type of motion, Defendant claims that the State somehow opened the door to questioning Davis' fiancée, Hicks, about his prior convictions. Motion at 8. This claim bears no more merit than it does propriety in a motion for new trial based on other grounds.

The first flaw in Defendant's argument is that Hicks did not testify to any character traits of Davis. Instead, Hicks testified that she met Davis three years prior to his death at Defendant's hands. Reporter's Transcript, May 25, 2017, at 82. She then testified to a simple fact—that in the three years he knew him, she did not see him with a gun. Id. at 83. Such a statement is not evidence of an individual's character. Davis' prior felony for possession a firearm as a prohibited person resulted in a Judgment of Conviction filed in 2010. This is far more remote than the three year time that Hicks new Davis. This scenario is entirely distinct from that presented in Jezdik v. State, 121 Nev. 129, 110 P.3d 1058 (2005). In Jezdik, the defendant claimed "he had never been 'accused of anything prior to these current charges.'" 121 Nev. at 136, 110 P.3d at 1063. Such a statement is a blanket statement with no temporal component, and is an attempt to establish a good character. Id. Here, however, all that was testified to was that for the last three years, Hicks had not seen Davis with a gun. Such testimony is not an attempt to establish character, and thus cannot allow for rebuttal in the form of contradictory evidence. It is also worth noting, that Defendant cannot demonstrate that Hicks was incorrect. There was no showing that Davis was found with a gun in the prior three years, and the only person to claim to see Davis with a gun on the last morning of his life, was Defendant. Finally, the State would note that although the jury was instructed to disregard it, and is presumed to follow the instructions, they did hear from Defendant, over the State's objection, that Davis had this precise prior conviction. Accordingly, no relief can be afforded.

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1 **E. Any Error Was Harmless Given the Overwhelming Evidence Contradicting**
2 **Defendant's Theory**

3 Even if the Court erred in its rulings, and those rulings were addressable in this motion,
4 that error was harmless. At trial, Defendant's theory was that Davis attempted to rob him,
5 because Davis did not know that Defendant had a gun, and that Defendant was simply faster
6 on the trigger. Defendant further testified that he did not recognize Davis until Davis pulled a
7 gun and they were face to face, because the only prior interaction was in the darkened club.
8 Both the theory, and Defendant's claims were thoroughly disproven through the evidence.

9 The evidence showed that throughout the night, Defendant and Davis had multiple
10 interactions in the paved area behind the business. One at least one of those occasions, Davis
11 and the Defendant engaged in an apparent rap-battle. During this encounter, Davis and
12 Defendant were face to face for several minutes, in a well-lit area. Indeed on one occasion
13 during this rap-battle, Davis removed his hat, and continued in the conversation face to face
14 with Defendant. This alone is sufficient to disprove Defendant's claim that he had not
15 recognized Davis while inside the club, and thus the jury properly discounted his claim of self-
16 defense. Defendant simply cannot square the evidence—that Davis and Defendant engaged in
17 this rap-battle, face to face, and the two were seen walking through the club arm-in-arm mere
18 minutes before Defendant murdered and robbed Davis—with his claim that he had not
19 recognized Davis until mere moments before he shot Davis. Similarly, Defendant's premise
20 that Davis tried to rob him because he did not know Defendant had a gun, was belied by the
21 evidence. As highlighted for the jury, the same video showing the rap-battle between
22 Defendant and Davis reveals another critical moment. The moment where Defendant and
23 Davis pose for a picture together, and with Davis standing next to him, Defendant pulls out a
24 gun and extends it toward the camera—directly in Davis' line of sight.

25 Given the overwhelming evidence to contradict Defendant's claims, any error was
26 harmless.

27 ///

28 ///

1 **CONCLUSION**

2 Based upon the foregoing, the State respectfully requests this Court order the Motion
3 for New Trial be DENIED.

4 DATED this 5th day of September, 2017.

5 Respectfully submitted,

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

9 BY /s/ Steven J. Rose
10 STEVEN J. ROSE
11 Deputy District Attorney
12 Nevada Bar #13575

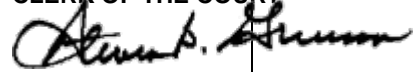
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14 **CERTIFICATE OF ELECTRONIC FILING**

15 I hereby certify that service of State's Opposition to Defendant's Motion for New Trial,
16 was made this 5th day of September, 2017, by Electronic Filing to:

17 NICHOLAS WOOLDRIDGE, ESQ.
18 nicholas@wooldridgelawlv.com

19
20 BY: /s/ Stephanie Johnson
21 Employee of the District Attorney's Office

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Attorney for Javar Eris Ketchum

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

REPLY MEMORANDUM TO STATE OF NEVADA'S OPPOSITION TO
DEFENDANT'S MOTION FOR NEW TRIAL

COMES NOW the Defendant, JAVAR ERIS KETCHUM (hereinafter, "Mr. Ketchum"), by and through his undersigned counsel, Nicholas M. Wooldridge, of the law firm of Wooldridge Law Ltd., and hereby files this Reply Memorandum of Points and Authorities to the State of Nevada's Opposition to Defendant's Motion for New Trial.

This Reply is based upon all the papers and pleadings on file herein, and the following Memorandum of Points and Authorities.

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convictions, the victim's modus operandi in robbing similarly situated individuals, and/or permitted Mr. Ketchum to cross examine the victim's fiancée, there is a high probability that a rational jury would have returned a different verdict.

This was a close case requiring the jury to make a judgment call on whose theory of the case was more believable and this Court's evidentiary rulings unfairly skewed the outcome in favor of the State. Further, the evidence presented by the Defendant at trial and in his submissions to the Court clearly presents a "conflict of evidence" scenario, which clearly falls within the scope of N.R.S 176.515(4). Accordingly, Mr. Ketchum's motion for new trial should be granted.

B. Defendant Did Not Waive Any Arguments; Defendant Filed Timely Motions Seeking to Admit the Judgments of Conviction And Repeated His Requests for Admission of the Contested Evidence and Testimony.

The State's main argument in its Opposition at pages 9-10 is that Mr. Ketchum waived his arguments in his motion for new trial when he precluded the State from requesting a Petrocelli hearing. See Opposition at 7-9. This argument is not support by the record and lacks merit. On or about March 8, 2017, Mr. Ketchum filed a Motion to Admit Character Evidence. The Defendant's request was renewed through the course of trial. See Transcript of Proceedings, Day 2 at p. 7. And repeatedly required the district court to discuss with counsel on the record whether the contested evidence would be admissible. See Tr. Vol. II at 6-7; Tr. Vol. III at 137-138, 140-141; Tr. Vol. IV at 7. There was no need for Mr. Ketchum to repeat his request when he had already filed a motion seeking the same and raised the identical arguments during the course of trial. *Id.*

Therefore, Mr. Ketchum did not waive these arguments and did not preclude the State from requesting a Petrocelli hearing.

1. Self-Defense and Where Victim is Likely Aggressor

The State's Opposition does not dispute let alone respond to Mr. Ketchum's arguments that Mr. Ezekiel Davis' prior bad acts are admissible per N.R.S. 48.045(1)(b). N.R.S. 48.045(1)(b) provides in relevant part:

1. Evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except: ... (b) Evidence of the character or a trait of character of the victim of the crime offered by an accused ... and similar evidence offered by the prosecution to rebut such evidence[.]

Here, the State was arguing that the victim was shot and killed by Mr. Ketchum. This Court's evidentiary ruling prohibiting Mr. Ketchum from introducing evidence of Mr. Davis' character and prior bad acts precluded Mr. Ketchum from introducing evidence to rebut the State's theory of the case. As Mr. Ketchum testified at trial, he was aware, in a general sense, that Mr. Davis has committed prior robberies and gone to prison as a result. *See Petty v. State*, 116 Nev. 321, 326 (2000) (citing *Burgeon v. State*, 102 Nev. 43, 46, 714 P.2d 576, 578 (1986)). Thus, testimony regarding the character of the victim was admissible under NRS 48.045(1)(b) regardless of whether Mr. Ketchum was aware of the minute details and dates of Mr. Davis' prior bad acts. *See Petty*, 116 Nev. at 326 (internal citations omitted).

Here, the evidence strongly supported Mr. Ketchum's allegation that Mr. Davis was the initial aggressor. Consequently, the District Court's evidentiary rulings precluding Mr. Ketchum from introducing the relevant portions of Mr. Davis' prior robbery and theft convictions, deprived him of a fair trial.

2. Prior Bad Acts Evidence Showed Common Plan, Scheme or Motive

The State argues that without showing a “common scheme or plan” between the victim’s prior bad acts and Mr. Ketchum’s theory of the case, i.e. that Mr. Davis was the initial aggressor, Mr. Ketchum was not permitted to introduce prior bad acts evidence. See Opposition at 9. The State relies on *Rosky v. State*, 121 Nev. 184, 196, 111 P.3d 690, 698 (2005); however, *Rosky* discussed “common plan or scheme,” it did not discuss or elaborate on admission of evidence to prove motive. Here, Mr. Ketchum argued that the evidence should have been admitted to prove the victim’s [Mr. Davis] motive; Mr. Davis *modus operandi* was to violently target unsuspecting victims in parking lots and proceed to rob them. On at least two previous occasions, Mr. Davis has used a gun to carry out his robberies. For instance, the offense synopsis section of his PSI for his conspiracy to commit robbery and robbery conviction states as follows:

At 9:30 P.M. on August 5, victims Houston MacGyver, Shane Velez and Luke Jaykins were in the Craig’s Discount Mall parking lot and were approached by suspect 1 who asked them for a cigarette. One of the victim’s gave suspect 1 a cigarette and the suspect stated he would give him a dollar. The suspect 1 reached into his waistband area and produced a small silver handgun and pointed it at the victims and demanded money. Initially the victim’s refused until suspect 2 walked up behind them and produced a black semi-automatic hand gun and racked the slide. Mr. MacGyver was afraid of being shot and gave suspects \$700.00 in US currency.

See Presentence Investigation Report (PSI) prepared in *State of Nevada v. Ezekiel Davis*, Case No. C258227.

This evidence tended to show that Mr. Davis had a motive to bring Mr. Ketchum outside. Since the State’s theory of the case was that Mr. Ketchum robbed Mr. Davis, the prior bad acts evidence would have discounted or called into doubt the State’s theory of the case. Specifically, it showed that luring and/or distracting his victims outside was Mr. Davis’ “m.o.” and, therefore,

1 would have supported Mr. Ketchum's theory of self-defense at trial. In a close case such as this,
2 where there was a conflict of evidence, requiring the jury to make a judgment call on whose
3 theory of the case was more believable, this evidence would have strongly favored Mr.
4 Ketchum's theory of the case and should have been admitted.

5
6 **C. Ezekiel Davis' Fiancee (Hicks) Testimony Opened the Door to Inadmissible Acts**
7 **that Defendant Later Referenced And A New Trial Is Warranted Because the**
8 **District Court's Preclusion of Questioning of the State's Rebuttal Witness Deprived**
9 **Mr. Ketchum of a Fair Trial**

10 The State argues that it did not open the door to prior bad act evidence when it elicited
11 testimony from Ms. Hicks as to whether she saw the victim with a gun over the previous three
12 years. This argument is misleading. The purpose of the question by the State was to elicit
13 testimony from Ms. Hicks to convince the jury that Mr. Davis was not a violent or aggressive
14 man. Otherwise, there would have been no other purpose for the State to ask the question it did.

15
16 This Court's attempt to limit the defense's ability to cross-examine Ms. Davis' fiancée
17 was in error. Specifically, once the State opened the door to evidence of Mr. Davis' character or
18 a trait of his character, the defense should have been entitled to offer similar evidence. The
19 State's Opposition fails to discuss the counter-factual scenario discussed in his motion for new
20 trial. For example, in *Daniel v. State*, 119 Nev. 498 (2003), the Nevada Supreme Court held that
21 the "Statute which prohibits the admission of evidence of other crimes, wrongs, or acts to prove a
22 person's character was not applicable because defendant placed his character in issue on direct
23 examination, and instead, statute providing that, once a criminal defendant presents evidence of
24 his character or a trait of his character, the prosecution may offer similar evidence in rebuttal
25 governed whether prosecutor's cross-examination of defendant regarding his prior arrests was
26 proper." *Id.* If the State is permitted to present character evidence where the defendant has
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presented evidence of his character or a trait of his character, the reverse should be true too. “After all, in the law, what is sauce for the goose is normally sauce for the gander.” *Heffernan v. City of Paterson*, 136 S. Ct. 1412, 1418 (2016). Here, Mr. Ketchum should have been permitted to present evidence regarding Mr. Davis’ character and it was error for this Court to limit the defense’s ability to cross-examine Ms. Davis’ fiancée.

Finally, the State attempts to distinguish *Jezdik v. State*, 121 Nev. 129, 110 P.3d 1058 (2005) based on the temporal scope of his question to Ms. Hicks. However, the State’s argument boils down to semantics. Here, the State opened the door and Mr. Ketchum should have been entitled to present evidence or elicit testimony regarding Mr. Davis’ character, namely, Mr. Davis previous conviction of ex-felon in possession of a firearm. *See also Jezdik v. State*, 121 Nev. 129 (2005) (where defendant placed his character at issue through testimony that he had never been “accused of anything prior to these current charges” the rules of evidence do not prohibit a party from introducing extrinsic evidence specifically rebutting the adversary’s proffered evidence of good character).

D. The Cumulative Effect of the Errors Was Not Harmless

The State argues that the evidence was “overwhelming” and that any errors were harmless. However, this argument is entirely speculative. This was a close case. The jury had to make a judgment call between conflicting theories of the case and conflicting evidence. The excluded evidence strongly favored Mr. Ketchum’s theory of the case and should have been admitted. A defendant’s right to present a complete defense “a primary interest secured by [which] is the right of cross-examination,” is well established. *Davis v. Alaska*, 415 U.S. 308, 315 (1974) (quoting *Douglas v. Alabama*, 380 U.S. 415, 418 (1965)); *see also Delaware v. Van*

1 *Arsdall*, 475 U.S. 673, 679 (1986). Here, this right was unfairly limited and went to the heart of
2 the case: whether Mr. Ketchum acted in self-defense.

3 Mr. Ketchum was prejudiced by this Court's evidentiary rulings. The evidentiary rulings
4 undercut and limited Mr. Ketchum's ability to present evidence and contest the State's theory of
5 the case and, therefore, the cumulative effect of the errors rendered the trial fundamentally unfair
6 and skewed heavily in favor of the prosecution.
7

8 **II. CONCLUSION**

9
10 **WHEREFORE**, for all the foregoing reasons, Mr. Ketchum's motion for a new trial
11 should be granted.

12 DATED this 27th day of September, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

13
14
15 /s/ Nicholas M. Wooldridge

16 Nicholas M. Wooldridge, Esq.
17 Wooldridge Law Ltd.
18 400 South 7th Street, 4th Floor
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CERTIFICATE OF SERVICE

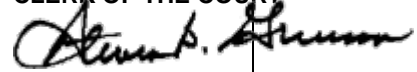
I confirm that on this 27th day of September, 2017, a copy of the foregoing Reply Memorandum of Points and Authorities was served on the below District Attorney's Office by having the same e-filed and courtesy copied to pdmotions@clarkcountyda.com, which in turn provides electronic service to:

Steven J. Rose, Esq.
Chief Deputy District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

John Giordani, Esq.
Deputy District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge, Esq.



NICHOLAS M. WOOLDRIDGE
Nevada State Bar No. 8732
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Telephone: (702) 330-4645
nicholas@wooldridgelawlv.com
Attorney for Javar Eris Ketchum

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

SUPPLEMENT TO DEFENDANT'S MOTION FOR NEW TRIAL

COMES NOW the Defendant, JAVAR ERIS KETCHUM (hereinafter, "Mr. Ketchum"), by and through his undersigned counsel, Nicholas M. Wooldridge, of the law firm of Wooldridge Law Ltd., and submits this supplemental Memorandum of Points and Authorities to his previously filed Motion for New Trial.

DATED this 28th day of September, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge, Esq.
Wooldridge Law Ltd.

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Las Vegas, NV 89101
nicholas@wooldridgelawlv.com
(702) 330-4645 Tel.
(702) 359-8494 Fax.

NOTICE OF MOTION

TO: STATE OF NEVADA, Plaintiff; and

TO: DISTRICT ATTORNEY, its attorneys:

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Supplement to Motion for New Trial for hearing in the above-entitled Court on (day) **10** of (month) **Oct.**, 2017 in Department **XVII** at (time) **8:30** **a** m.

Dated this 28th day of September, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge, Esq.
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MEMORANDUM OF POINTS AND AUTHORITIES

**STATE'S LATE DISCLOSURE OF INCUHPATORY EVIDENCE NOT SHOWN
DURING THE SWAN VIDEO VIEWING RENDERED THE TRIAL
FUNDAMENTALLY UNFAIR AND VIOLATED DEFENDANT'S DUE PROCESS
RIGHTS**

I. BRIEF PROCEDURAL BACKGROUND AND STATEMENT OF FACTS

The charges alleged in the Indictment arise from the September 25, 2016 shooting of Ezekiel F. Davis outside the Top Knotch Apparel on the 4200 block of South Decatur Boulevard. The State of Nevada charged Mr. Ketchum in a five (5) count Indictment together with co-defendants Antoine Bernard, Roderick Vincent, and Marlo Chiles as follows: (1) one count of murder with a deadly weapon; (2) one count of robbery with use of a deadly weapon; and (3) three counts of accessory to murder. Mr. Ketchum was only charged in the first two counts of the Indictment. Jury trial began on May 23, 2017 and the jury returned a verdict of guilty on both counts on May 26, 2017.

On June 2, 2017, Mr. Ketchum filed a motion for a new trial. Mr. Ketchum now supplements his motion for new trial with the following additional facts and arguments.

II. DISCUSSION

A. Applicable Standard

Although criminal defendants have no general right to discovery, “[n]evertheless, under certain circumstances the late disclosure even of inculpatory evidence could render a trial so fundamentally unfair as to violate due process.” *Lindsey v. Smith*, 820 F.2d 1137, 1151 (11th Cir. 1987). In fact, the example posited by the Eleventh Circuit is directly on point, as the court noted “a trial could be rendered fundamentally unfair if a defendant justifiably relies on a prosecutor's assurances that certain inculpatory evidence does not exist and, as a consequence, is unable to effectively counter that evidence upon its subsequent introduction at trial.” *Id.* It is also

1 well established that district courts have a duty to “protect the defendant's right to a fair trial [.]”
2 *Rudin v. State*, 120 Nev. 121, 140, 86 P.3d 572, 584 (2004); *see also United States v. Evanston*,
3 651 F.3d 1080, 1091 (9th Cir. 2011) (stating that the district court is to manage the trial so as to
4 avoid “a significant risk of undermining the defendant's due process rights to a fair trial”); *Valdez*
5 *v. State*, 124 Nev. 1172, 1183 n.5, 196 P.3d 465, 473 n.5 (2008) (“[T]he district court had a *sua*
6 *sponte* duty to protect the defendant's right to a fair trial.”).

7
8 **B. The State’s Failure to Disclose the Inculpatory Evidence (The Segments of**
9 **the Video) during the evidence viewing and not Until Its Closing Argument**
10 **Rendered the Trial Fundamentally Unfair and Violated Mr. Ketchum’s**
11 **Right to Due Process**

12 As the Court may recall the defense filed a Writ of Habeas Corpus on the issue of the of
13 the actual SWAN video played to the Grand Jury being different from the copy played to the to
14 the Grand Jury. In fact, because of the difference between the copy and the actual SWAN video,
15 Detective Bunn testified to facts that were not visible on the copy of the video played to the
16 Grand Jury.

17 To illustrate, during the Grand Jury proceedings, the State presented the testimony of
18 Detective Christopher Bunn and a copy of the video recovered from the SWAN device to the
19 grand jury. The relevant portions of Detective Bunn’s testimony during the Grand Jury is
20 summarized below:
21

22 Q. And when you were able to access this Swann device, were you able to
23 find something relevant to your investigation?

24 A. Extensive amount of video that showed basically almost the entire
25 event.

26 *See* GJT at 19.

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

1 A. I think it's like several gigs, like 45 gigs of some sort of information,
2 you know, contained within it. It's quite a bit.

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

4 A. Yes.

5 Q. And when you're using the actual Swann device, can you do
6 something with it that we're not going to be able to do here in this
7 room with the video?

8 A. Yeah. The control system within that device allows you to zoom in on
9 the video itself. So you can actually pan all the way in and you can
10 actually zoom images up to like four times greater than what we'll be able
11 to see.

12 GJT at 21.

13 As a result of the differences in the videos, the copy and the actual SWAN, defense
14 counsel requested to view the actual SWAN Video during the discovery phase of the case. On
15 or about February 16, 2017, defense counsel viewed the original SWAN Video surveillance in
16 possession of law enforcement. The original surveillance was in evidence at the evidence vault
17 and could only be accessed with law enforcement. At the time and date set for the review,
18 Detective Bunn along with Chief Deputy District Attorney Marc DiGiacomo presented the video
19 to counsel in the Grand Jury room. Counsel had no control of the video while it was played,
20 and law enforcement controlled the surveillance.

21 During trial, and when the SWAN surveillance was placed into evidence, portions of the
22 video that were played for the jury appeared to be the same portions counsel reviewed with law
23 enforcement and the State in the Grand Jury Room. However, crucially, in the State's closing
24 argument, the State presented two alleged segments of the SWAN undersigned counsel did not
25 previously view when the actual SWAN video was shown to him. This included video
26 surveillance of the defendant purportedly having a lengthy rap battle outside the Top Notch with
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1 “victim”, and another video of defendant showing off his firearm in the presence of the “victim.”
2 These two segments that were not previously shown to defense counsel when he saw the actual
3 SWAN video with the State, substantially undercut the defense theory.

4 The State’s failure to disclose this inculpatory evidence during the viewing of the actual
5 SWAN evidence viewing, had a serious detrimental effect on Mr. Ketchum’s intended defense
6 similar to what happens when a party is confronted with surprise detrimental evidence. *See*
7 *Bubak v. State*, No. 69096, Court of Appeals of Nevada, Slip Copy 2017 WL570931 at *5 (Feb.
8 8, 2017) (citing *Land Baron Inv., Inc. v. Bonnie Springs Family Ltd. P’ship*, 131 Nev.____, ____
9 n.14, 356 P.3d 511, 522 n.14 (2015) (emphasis added) (stating that “[t]rial by ambush
10 traditionally occurs where a party withholds discoverable information and then later presents this
11 information at trial, effectively ambushing the opposing party through gaining an advantage by
12 the surprise attack[.]” and observing that although the appellants were “already aware of” the
13 arguments and evidence respondents raised, “[t]he trial judge ...took steps necessary to mitigate
14 any damage”). Here, the defense’s strategy was undermined by the State’s use of the
15 undisclosed evidence (the portions played during closing).

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19 This was a difficult case for the jury, one that required them to consider Mr. Ketchum’s
20 theory of self-defense. The never before seen and never previously shown video clips presented
21 to the jury substantially undercut the defense theory.

22 Consequently, Mr. Ketchum suffered clear prejudice: the introduction of the evidence
23 served to directly undermine counsel's opening statement, trial strategy, and credibility.
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III. CONCLUSION

WHEREFORE, for all the foregoing reasons, Mr. Ketchum's motion for a new trial should be granted.

DATED this 28th day of September, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge, Esq.
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Steven J. Rose, Esq.
Chief Deputy District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

Nicholas M. Wooldridge, Esq.

Felony/Gross Misdemeanor

COURT MINUTES

October 17, 2017

C-16-319714-1 State of Nevada
 vs
 Javar Ketchum

October 17, 2017 08:30 AM All Pending Motions

HEARD BY: Villani, Michael COURTROOM: RJC Courtroom 11A

COURT CLERK: Black, Olivia

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Nicholas Wooldridge Attorney for Defendant

Steven Rose Attorney for Plaintiff

Javar Eris Ketchum Defendant

State of Nevada Plaintiff

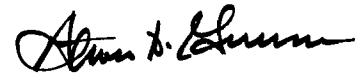
JOURNAL ENTRIES

DEFENDANT'S MOTION FOR NEW TRIAL...SENTENCING

Counsel submitted. Exhibits presented (see worksheet). Court stated the motion was based upon the disagreement with the Court's evidentiary ruling on this matter and that was more of an issue for appeal. COURT FINDS no new bases to grant a new trial and ORDERED, motion DENIED. DEFT KETCHUM ADJUDGED GUILTY of COUNT 1 - FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (F) and COUNT 2 - ROBBERY WITH USE OF A DEADLY WEAPON (F). Arguments by counsel and statement by Defendant. CONFERENCE AT BENCH. Mr. Wooldridge advised he conferred with Defendant and he would like to withdraw the stipulation to twenty years to life on the murder charge. Upon Court's inquiry, Defendant concurred and stated he signed the stipulation under emotional distress. Defendant further stated it had nothing to do with his attorney. Court stated it would give Mr. Wooldridge the appropriate time to file his motion and FURTHER ORDERED, Briefing Schedule SET as follows: Defendant's motion due by October 31, 2017; State's reply due by November 14, 2017 and hearing SET.

CUSTODY

12/01/17 9:00 AM MOTION TO WITHDRAW STIPULATED SENTENCE...SENTENCING



CLERK OF THE COURT

NICHOLAS M. WOOLDRIDGE
Nevada State Bar No. 8732
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Attorney for Javar Eris Ketchum

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

Date: 01/17/17

Time: 8:30 AM

PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO DISMISS

TO: The Honorable Judge Michael Villani of the Eighth Judicial District Court of

The State of Nevada, in and for the County of Clark

The Petition of Javar Eris Ketchum (hereinafter the "Petitioner" or "Mr. Ketchum"),
submitted by Nicholas M. Wooldridge, Esq., of the law firm of Wooldridge Law Ltd., attorneys
for the above-captioned individual, respectfully affirms:

1. That Mr. Wooldridge is a duly qualified, practicing and licensed attorney in the
City of Las Vegas, County of Clark, State of Nevada.

2. That Petitioner makes this application for a Writ of Habeas Corpus because he is

1 constructively imprisoned and restrained by the pendency of the Indictment in this matter.

2 3. That the constructive imprisonment and restraint of said Petitioner is unlawful in that:

3 a. All counts in the indictment should be dismissed because the State of
4 Nevada presented hearsay or secondary evidence to the Grand Jury that
5 returned the indictment;
6

7 5. That Petitioner has waived his right to be brought to trial within 60 days.

8 6. That Petitioner consents that if the Petition is not decided within 15 days before
9 the date set for trial, the Court may, without notice of hearing, continue the trial indefinitely to a
10 date designated by the Court.

11 7. That Petitioner personally authorized his aforementioned attorney to commence
12 this action.
13

14 **WHEREFORE**, Petitioner prays that this Honorable Court order the dismissal of the
15 indictment.

16 DATED this 30 day of December, 2016.

JAVAR ERIS KETCHUM,
by his attorney,

18
19 /s/ Nicholas M. Wooldridge

20
21 Nicholas M. Wooldridge, Esq.
22 Wooldridge Law Ltd.
23 400 South 7th Street, 4th Floor
24 Las Vegas, NV 89101
25 nicholas@wooldridgelawlv.com
26 (702) 330-4645 Tel.
27 (702) 359-8494 Fax.
28

DECLARATION

NICHOLAS M. WOOLDRIDGE makes the following declaration:

I. I am an attorney duly licensed to practice law in the State of Nevada. I am an attorney engaged to represent the Defendant, JAVAR ERIS KETCHUM, in the instant matter, and I am familiar with the facts and circumstances of this case.

2. I am the attorney of record for Petitioner in the above matter. I have read the foregoing Petition, know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as to those matters, I believe them to be true.

3. Petitioner, JAVAR ERIS KETCHUM, personally authorizes me to commence this Writ of Habeas Corpus action.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. (N.R.S. § 53.045).

EXECUTED this 30 day of December, 2016.

/s/ Nicholas M. Wooldridge

Nicholas M. Wooldridge

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MEMORANDUM OF POINTS AND AUTHORITIES

COMES NOW the Petitioner, JAVAR ERIS KETCHUM (hereinafter, "Mr. Ketchum"), by and through his undersigned counsel, Nicholas M. Wooldridge, of the law firm of Wooldridge Law Ltd., and submits the following Points and Authorities in Support of Defendant's Petition for a Pretrial Writ of Habeas Corpus and Motion to Dismiss the Indictment.

I. INTRODUCTION

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

Mr. Ketchum now petitions for a writ of habeas corpus on the grounds that the Indictment was returned based on impermissible hearsay or secondary evidence. The State presented the testimony of Detective Christopher Bunn and a video to the grand jury. *See* Grand Jury Transcript ("GJT") at 19. Before the Grand Jury Detective Bunn provided a running narrative while playing surveillance video from "the Swann device," which purportedly showed the entire incident. *See* GJT at 19. However, the video played to the Grand Jury is actually different from the one that Detective Bunn testified to. In fact, because of the difference between the two videos, Detective Bunn testified to facts that are not visible on the video played to the Grand Jury. *Id.* Consequently, the Indictment should be dismissed as it was based on impermissible

1 hearsay or secondary evidence contrary to N.R.S. § 172.260(2). For the foregoing reasons, as
2 more fully explained below, the Indictment should be dismissed.

3 **II. STATEMENT OF FACTS**

4 On or about September 25, 2016 Ezekiel F. Davis was shot outside the Top Knotch
5 Apparel on the 4200 block of South Decatur Boulevard. On or about October 16, 2016, as a
6 result of anonymous phone calls, surveillance video from a Swann recording device, law
7 enforcement arrested Mr. Ketchum on charges of murder with a deadly weapon and robbery with
8 use of a deadly weapon. On or about November 29, 2016, the State of Nevada obtained a five
9 (5) count Indictment against Mr. Ketchum together with his co-defendants charging, (1) one
10 count of murder with a deadly weapon; (2) one count of robbery with use of a deadly weapon;
11 and (3) three counts of accessory to murder. Mr. Ketchum is only charged in the first two counts
12 of the Indictment.
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15 As relevant to the instant motion, the State presented the testimony of Detective
16 Christopher Bunn and a surveillance video recovered from the Swann device to the grand jury.
17 The relevant portions of Detective Bunn's testimony is summarized below:
18

19 Q. And when you were able to access this Swann device, were you able to
20 find something relevant to your investigation?

21 A. Extensive amount of video that showed basically almost the entire
22 event.

23 *See* GJT at 19.

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

26 A. I think it's like several gigs, like 45 gigs of some sort of information,
27 you know, contained within it. It's quite a bit.

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

1 A. Yes.

2 Q. And when you're using the actual Swann device, can you do
3 something with it that we're not going to be able to do here in this
4 room with the video?

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

9 GJT at 21.

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

12 A. If you watch the gentleman with the number 3 on the back, that's Javar
13 Ketchum, you're going to see him remove a gun from his right front pocket area
14 in his right hand and he's going to display it to all of the individuals that are there.
15 And it's going to be in front of him but you can see, it's a little bit difficult to see
16 because the background you have is the front of Roderick Vincent's shirt which is
17 dark in color and the gun's dark in color. But that's what's going to happen here.
18 And then you'll see him place it back in his pocket.

19 Q. We're [not] going to be able to see that on this video. But were you able to
20 zoom in and confirm that that appeared to be a weapon within his hand?

21 A. That's correct. Because within the Swann playing system we were actually able
22 to use that. We were able to zoom in and see it clearer. But you can see it here,
23 just a little more difficult because of the distance.

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

25 A. It's a semi-automatic handgun. It's very dark in color. So like I said it becomes
26 very difficult. It's probably got a four, four and a half 21 inch barrel on it I would
27 guess.

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

A. He's removing it. It's going to be his right hand. And his hand's in the pocket
with the gun at this point. And he's going to ... And there goes the gun. It's in his
hand. There's a slight flash. And you may have to step closer to the monitor to be
able to actually see that happen.

1 Q. I'm going to, if I can here in just a second, I'm going to try and back it up for
2 the ladies and gentlemen of the Grand Jury. That zoomed in it. So hold on a
3 second. I want to back it out to what it is I wanted to go to. Darn it. There we go.
4 And I'm going to back it up here until we get to the right point.

5 A. He should have it in his hand at this point.

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

8 A. No. It's in his hand. You can just barely see it. And there it is. He's twisting his
9 hand back and forth and he's now placing it back in his right front pocket.

10 *See* Grand Jury Transcript ("GJT") at 19, 21-29.

11 It is undisputed that Detective Bunn testified to facts that are not visible on the video that
12 was played and narrated by him to the Grand Jury. *Id.* In other words, the video played to the
13 Grand Jury is not the same video that Detective Bunn was testifying to before the Grand Jury
14 because the version Detective Bunn is testifying to is a zoomed in and/or altered (i.e. blown up)
15 version that differs from the version showed to the Grand Jury. *Id.* Consequently, Detective
16 Bunn's testimony constitutes impermissible hearsay or secondary evidence contrary to N.R.S. §
17 172.2135(2) and, therefore, the Indictment should be dismissed.

18 **III. LEGAL STANDARD GOVERNING PRE-TRIAL WRIT OF HABEAS CORPUS**

19 Under Nevada law, a pretrial writ of habeas corpus must issue "[w]here the petitioner has
20 been committed or indicted on a criminal charge ... without reasonable or probable cause." *See*
21 N.R.S. § 34.500(7). N.R.S. § 34.500(7) explicitly authorizes discharge from custody or restraint
22 if one is not committed upon a criminal charge with reasonable or probable cause. *See Shelby v.*
23 *Sixth Judicial District*, 82 Nev. 204, 207, 414 P.2d 942, 944 (1966). "It is fundamentally unfair
24 to require one to stand trial unless he is committed upon a criminal charge with reasonable or
25 probable cause, No one would suggest that an accused person should be tried for a public offense
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1 if there exists no reasonable or probable cause for trial." *Id.* Probable cause exists only when the
2 evidence presented to the grand jury "support[s] a reasonable inference that the defendant
3 committed the crime charged." *See Sheriff, Clark County v. Burcham*, 124 Nev. 1247, 1258, 198
4 P.3d 326, 328 (2008) (en banc) (quotations omitted).

5 It is well settled that the District Court's function in reviewing a pretrial writ of habeas
6 corpus challenging the sufficiency of probable cause is to determine whether enough competent
7 evidence was presented to the Grand Jury to establish a reasonable inference that the accused
8 committed the offense(s). *State v. Fuchs*, 78 Nev. 63, 368 P.2d 869 (1962). A petition for a writ
9 of habeas corpus is the proper vehicle to test the legal sufficiency of the evidence supporting the
10 grand jury indictment as to whether it was in fact "the best evidence" rather than mere "hearsay
11 or secondary evidence." *See Shelby v. Sixth Judicial Dist. Court In and For Pershing County*, 82
12 Nev. 213, 418 P.2d 132 (1966).

13 14 15 IV. ARGUMENT

16 17 THE INDICTMENT MUST BE DISMISSED BECAUSE THE STATE PRESENTED 18 HEARSAY AND/OR SECONDARY EVIDENCE CONTRARY TO N.R.S. 172.135(2)

19 To secure an indictment, the State must present sufficient evidence showing probable
20 cause that the accused committed the alleged offense. *Sheriff v. Burcham*, 124 Nev. 1247, 1258,
21 198 P.3d 326, 333 (2008). That probable cause determination "may be based on slight, even
22 'marginal' evidence." *Sheriff v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). If the
23 grand jury is to fulfill its purpose of acting as a bulwark between those sought to be charged with
24 crimes and their accusers, it must be permitted to investigate and act as an informed body
25 throughout the entire course of the proceedings. *See Sheriff v. Frank*, 103 Nev. at 165, 734 P.2d
26 at 1244. At the same time, the grand jury, by statute, "can receive none but legal evidence, and
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1 the best evidence in degree, to the exclusion of hearsay or secondary evidence." N.R.S. §
2 172.135. Therefore, if the integrity of an indictment is to be preserved, grand jurors must, when
3 appropriate, be steered away from certain areas of inquiry. "The grand jury's mission is to clear
4 the innocent, no less than to bring to trial those who may be guilty." *Sheriff v. Frank*, 103 Nev.
5 160, 165, 734 P.2d 1241, 1244 (1987) (quoting *United States v. Dionisio*, 410 U.S. 1, 16-17, 93
6 S. Ct. 764, 772-773, 35 L. Ed. 2d 67 (1973)).

8 N.R.S. § 172.135(2) provides in relevant part as follows:

9 The Grand Jury can receive none but legal evidence, and the best evidence in
10 degree, to the exclusion of hearsay or secondary evidence.

11 See N.R.S. § 172.135(2).

12 Here, it is undisputed that the State presented the testimony of Detective Christopher
13 Bunn as a running commentary and narrative to a video that was played to the grand jury. See
14 GJT at 19-29. Yet, the video played to the Grand Jury from the Swann Recording device is not
15 the same video that Detective Bunn was testifying to before the grand jury. *Id.* The video that
16 Detective Bunn was testifying about was a zoomed in, i.e. altered version that displays facts,
17 events and/or occurrences that were not visible or seen on the version presented to the Grand
18 Jury. Consequently, Detective Bunn testified to facts, events and occurrences from a video—a
19 video that was not played to the Grand Jury and where the same facts, events or occurrences
20 were not visible—and his testimony constitutes impermissible hearsay. *Id.*

23 The Nevada Legislature has chosen to preclude a grand jury from considering hearsay
24 evidence. Under Nevada law, a "grand jury can receive none but legal evidence ... to the
25 exclusion of hearsay or secondary evidence." N.R.S. § 172.135(2). The "definition of hearsay as
26 used in N.R.S. § 172.135(2) is the same as that found in N.R.S. § 51.035." *Gordon v. Eighth*
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1 *Judicial Dist. Court*, 112 Nev. 216, 223, 913 P.2d 240, 245 (1996). N.R.S. § 51.035 defines
2 hearsay as an out-of-court statement offered to prove the truth of the matter asserted.

3 By presenting Detective Bunn testimony as to facts, events and occurrences, *i.e.* as a
4 narration of the surveillance video recovered from the Swann device from a video—a video that
5 was not played to the Grand Jury and where the same facts, events or occurrences were not
6 visible to the Grand Jury—the District Attorney's Office ran afoul of N.R.S. § 172.135(2) and
7 undermined the purpose and function of the grand jury which is to assure "that persons will not
8 be charged with crimes simply because of the zeal, malice, partiality or other prejudice of the
9 prosecutor, the government or private persons." *United States v. Gold*, 470 F. Supp. 1336, 1346
10 (N.D.Ill. 1979) (quoting *United States v. DiGrazia*, 213 F. Supp. 232, 235 (N.D.Ill. 1963)).
11 Finally, none of the statutory hearsay exceptions apply. *See* N.R.S. § 51.035.
12

13
14 Accordingly, Detective Bunn's testimony constitutes hearsay and the Indictment should
15 be dismissed as it was based on impermissible hearsay or secondary evidence contrary to N.R.S.
16 § 172.135(2).
17

18 V. CONCLUSION

19 **WHEREFORE**, for all the foregoing reasons, Mr. Ketchum's petition for a pre-trial writ
20 of habeas corpus and motion to dismiss should be granted and the Indictment should be
21 dismissed.
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1
2 DATED this 30 day of December, 2016.

JAVAR ERIS KETCHUM,
by his attorney,

3
4
5 /s/ Nicholas M. Wooldridge

6 Nicholas M. Wooldridge, Esq.
7 Wooldridge Law Ltd.
8 400 South 7th Street, 4th Floor
9 Las Vegas, NV 89101
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11 (702) 330-4645 Tel.
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CERTIFICATE OF SERVICE

I confirm that on this 30 day of December, 2016, a copy of the foregoing Petition for Writ of Habeas Corpus and Motion to Dismiss and Memorandum of Points and Authorities 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.


CLERK OF THE COURT

1 **RET**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **MARC DIGIACOMO**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #6955**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **State of Nevada**

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

9 In the Matter of Application,

10 of

11 **JAVAR ERIS KETCHUM, aka,**
12 **James Ketchum,**
13 **#6009695**

CASE NO: C-16-319714-1

DEPT NO: XVII

13 for a Writ of Habeas Corpus.

14 **RETURN TO WRIT OF HABEAS CORPUS**

15 **DATE OF HEARING: 1/17/17**
16 **TIME OF HEARING: 8:30 A.M.**

17 COMES NOW, JOE LOMBARDO, Sheriff of Clark County, Nevada, Respondent,
18 through his counsel, STEVEN B. WOLFSON, Clark County District Attorney, through
19 MARC DIGIACOMO, Chief Deputy District Attorney, in obedience to a writ of habeas corpus
20 issued out of and under the seal of the above-entitled Court on the 30th day of December,
21 2016, and made returnable on the 17th day of January, 2017, at the hour of 8:30 o'clock A.M.,
22 before the above-entitled Court, and states as follows:

23 1. Respondent admits the allegations of Paragraphs 1, 2, 4 and 6 of the
24 Petitioner's Petition for Writ of Habeas Corpus.

25 2. Respondent denies the allegations of Paragraph 3 of the Petitioner's
26 Petition for Writ of Habeas Corpus.

27 3. Paragraph 5 does not require admission or denial.
28

1 4. The Petitioner is in the actual custody of JOE LOMBARDO, Clark
2 County Sheriff, Respondent herein, pursuant to a Criminal Indictment, a copy of which is
3 attached hereto as Exhibit 1 and incorporated by reference herein.

4 Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the
5 Petition be dismissed.

6 DATED this 4th day of January, 2017.

7 Respectfully submitted,

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

10 BY


11 MARC DIGIACOMO
12 Chief Deputy District Attorney
13 Nevada Bar #6955

14 **STATEMENT OF FACTS**

15 At approximately 0622 hours on September 25, 2016, 9-1-1 dispatch was called to
16 report an individual, later identified as Ezekiel Davis, was shot in the parking lot located at
17 4230 S. Decatur Blvd, a strip mall with several businesses.¹ When police arrived, they found
18 Mr. Davis being tended to by his friend, Deshawn Byrd, and several other people in the parking
19 lot.² None of the businesses appeared opened. Mr. Davis was transported to the hospital but
20 did not survive a single gunshot wound to the abdomen. Missing from Davis' person was a
21 belt which had a gold "M" buckle and a gold watch.

22 Detectives learned that there was a clothing apparel store, Top Knotch, that doubled as
23 an after-hours club, in the strip mall. Sometime after approximately 0300 hours, Mr. Davis
24 arrived at the club, but there was no indication that anything had happened in the club which
25 led to any sort of confrontation.

26
27 _____
28 ¹ While the Court is more than welcome to read the Grand Jury Transcript, the entire crime was captured on video surveillance which was admitted as Grand Jury Exhibit 2. An entire copy of the grand jury exhibits are attached hereto on a DVD as exhibit 2.

² A video of Mr. Davis dying on a cellular phone video was presented to the Grand Jury as exhibit 22.

1 After the shooting, the store closed its door and appeared to not be open when police
2 arrived. At approximately 1100 hours, as detectives and crime scene analysts were
3 documenting the scene, Marlo Chiles, Roderick Vincent, Martin Earnest and Samantha
4 Cordero exited Top Knotch. Chiles was the owner of Top Knotch, and Vincent owned a studio
5 inside of Top Knotch. Both Chiles and Vincent denied that there were any DVR's of the
6 surveillance video for Top Knotch or the recording studio. A subsequent search warrant on
7 the vehicles in the parking lot located two (2) DVR's of the surveillance footage from Top
8 Knotch and the studio in Vincent's car.

9 A review of that video demonstrated that at approximately 0325 hours, Chiles, Vincent,
10 Antoine Bernard and several other people were in the back area of the business when a person
11 in a number 3 jersey, later identified as Defendant Ketchum, produced a semi-automatic
12 handgun from his pants and showed it to the group.

13 At approximately 0614, Defendant and the victim, Mr. Davis, exited arm and arm out
14 the front of Top Knotch.³ The two walked to the front of Defendant Bernard's black vehicle
15 and appeared to converse for a short time, then walked by the driver's side of Bernard's
16 vehicle, where they left camera view. At approximately the same time, Bernard and an
17 African-American female got into Bernard's car. At approximately 0616 hours, the people on
18 video all appeared to have their attention drawn to the area where Defendant and Mr. Davis
19 were; Bernard backed his vehicle out of the spot and Defendant entered the view of the camera,
20 removing a belt from a pair of pants while holding the gun in his other hand. Defendant
21 thereafter approached Bernard's car, opened the passenger door, placed the belt on the front
22 seat, and returned to the area of Davis' body. Defendant returned to Bernard's vehicle, entered
23 the passenger seat of the vehicle and the vehicle fled the area.

24 Despite having contact with several witnesses in the parking lot as well as Chiles and
25 Vincent, the police had no information on the identity of the shooter. Eventually the shooter
26 was identified as Defendant Javar Ketchum and a warrant for his arrest was issued. Once he
27
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³ The time on the recording is approximately an hour behind the actual time of the events.

1 was arrested, police viewed Defendant in person and were easily able to establish his identity
2 as the shooter.

3 POINTS AND AUTHORITIES

4 At a preliminary hearing or a grand jury, the State need only show that a crime has been
5 committed and that the accused probably committed it. The finding of probable cause to
6 support a criminal charge may be based on "slight, even 'marginal' evidence . . . because it
7 does not involve a determination of the guilt or innocence of the accused." Sheriff v. Hodges,
8 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). *See also*, Sheriff v. Potter, 99 Nev. 389, 391
9 (1983).

10 "To commit an accused for trial, the State is not required to negate all inferences which
11 might explain his conduct, but only to present enough evidence to support a reasonable
12 inference that the accused committed the offense." Kinsey v. Sheriff, 87 Nev. 361, 363, 487
13 P.2d 340, 341 (1971). Sheriff v. Miley, 99 Nev. 377 (1983). This Court need not consider
14 whether the evidence presented at the grand jury may, by itself, sustain a conviction, since at
15 the grand jury the State need not produce the quantum of proof required to establish the guilt
16 of accused beyond a reasonable doubt. *See* Hodges, 96 Nev. at 186, 606 P.2d at 180; Miller
17 v. Sheriff, 95 Nev. 255, 592 P.2d 952 (1979); McDonald v. Sheriff, 87 Nev. 361, 487 P.2d
18 340, (1971). In the case at bar, to hold Defendant to answer to the charges, the State is not
19 required to negate all inferences which might be drawn from a certain set of facts, State v.
20 VonBrincken, 86 Nev. 769, 476 P.2d 733, (1970); Johnson v. State, 82 Nev. 338, 418 P.2d
21 495 (1966), but only to present enough evidence to support a reasonable inference that
22 Defendant committed the crimes charged.

23 An open murder charge includes murder in the first degree and all necessarily included
24 offenses, such as manslaughter where less than all the elements of first degree murder are
25 present. *See* Miner v. Lamb, 86 Nev. 54, 464 P.2d 451 (1970); Parsons v. State, 74 Nev. 302,
26 329 P.2d 1070 (1958); State v. Oschoa, 49 Nev. 194, 242 P.2d 582 (1926); NRS 175.501. First
27 degree murder and second degree murder are not separate and distinct crimes which must be
28 pleaded accordingly. *See* Thedford v. Sheriff, 86 Nev. 741, 476 P.2d 25 (1970); Howard v.

1 Sheriff, 83 Nev. 150, 425 P.2d 596 (1967). Thus, there need not be evidence of first degree
2 murder to support an open charge. See Wrenn v. Sheriff, 87 Nev. 85, 482 P.2d 289 (1971).

3 The accused explanation for the homicide, being in the nature of a defense, whether
4 true or false, reasonable or unreasonable, is for the trier of fact to consider at trial; and the
5 preliminary examination is not designed as a substitute for that function. Ricci v. Sheriff,
6 Washoe County, 503 P.2d 1222, 1223, 88 Nev. 662, 663 (1972) (*quoting* State v. Fuchs, 78
7 Nev. 63, 368 P.2d 869 (1962)) *see also* Hearne v. Sheriff, Clark County, 547 P.2d 322, 322,
8 92 Nev. 174, 175 (1976). “[T]he presence of malice is a question of fact which bears directly
9 on the guilt or innocence of a defendant and upon the degree of the crime charged. It is not a
10 question to be determined by the magistrate at a preliminary examination--it is a question to
11 be determined by the trier of fact at the trial of the case.” Thedford v. Sheriff, 86 Nev. 741,
12 476 P.2d 25 (1970)(*citing* State v. Acosta, 49 Nev. 184, 242 P.2d 316 (1926)); “Neither a
13 preliminary hearing, nor a hearing upon a petition for a writ of habeas corpus is designed as a
14 substitute for this function (a trial).” Id at 28 (*quoting* State v. Fuchs, 78 Nev. 63, 368 P.2d
15 869 (1962)).

16 Defendant’s asserts that the original video was not displayed to the jury. Defendant is
17 confused by the testimony. The original video was shown to the grand jury. What was not
18 present in the grand jury was the original player for the video. That player had the capacity to
19 zoom in on individual sections of the same video that was displayed to the grand jury. In fact,
20 exhibits 3 and 4 in front of the grand jury were zoomed in still photographs from the video
21 which established identity. The narration of surveillance videos is proper if it assists the jury
22 in making sense of the images depicted in the videos. See Burnside v. State, 352 P.3d 627
23 (2015). Moreover, as the Defendant was not present, and Detective Bunn had familiarity with
24 Defendant by viewing him after arrest, Detective Bunn’s identification of Defendant was
25 proper. Id (*citing* Rossana v. State, 113 Nev. 375, 380, 934 P.2d 1045, 1048 (1997)).

26 All of the facts in front of the jury were readily identifiable at the grand jury. Defendant
27 complains that at one point, Detective Bunn testified that he zoomed in the video to confirm
28 to that the black, metallic firearm like object in Defendant’s hand when he is removing the belt

1 from Davis's pants was in fact a firearm. The black, metallic firearm like object is visible on
2 the version played for the grand jury. Only a limitation in technology precluded the zooming
3 function of the "swan" device. The other portion where Defendant displayed the firearm at
4 3:30 a.m. is more than easily seen on the video displayed to the grand jury. A review of the
5 video clearly establishes more than sufficient evidence to convict Defendant of the crimes
6 alleged. Certainly, sufficient evidence to indict Defendant was provided.

7 **CONCLUSION**


8 Based on the foregoing, Defendant's pre-trial writ of habeas corpus should be denied.

9 DATED this 4th day of January, 2017.

10 Respectfully submitted,

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

13 BY


14 ~~MARC DIGIACOMA~~
15 Chief Deputy District Attorney
16 Nevada Bar #6955

17
18
19 **CERTIFICATE OF ELECTRONIC FILING**

20 I hereby certify that service of the above, was made this 4 day of January, 2017,

21 by Electronic Filing to:

22 NICHOLAS WOOLDRIDGE, ESQ.
23 E-mail: nicholas@wooldridgelawlv.com

24
25 
26 Secretary for the District Attorney's Office

27
28 MD/tgd/MVU

ORIGINAL

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

NOV 30 2016

BY: Alan Paul Castle, Sr.
ALAN PAUL CASTLE, SR, DEPUTY

1 IND
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MARC DIGIACOMO
6 Chief Deputy District Attorney
7 Nevada Bar #006955
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

CASE NO: C-16-319714-1

DEPT NO: XVII

12 JAVAR ERIS KETCHUM, aka,
13 James Ketchum #6009695
14 ANTOINE BERNARD, aka,
15 Antoine Jeanpierre Bernard #2781728
16 RODERICK VINCENT, aka,
17 Roderick Regale Vincent #3054006
18 MARLO CHILES #2631208

Defendant(s).

INDICTMENT

17 STATE OF NEVADA }
18 COUNTY OF CLARK } ss.

19 The Defendant(s) above named, JAVAR ERIS KETCHUM, aka, James Ketchum,
20 ANTOINE BERNARD, aka, Antoine Jeanpierre Bernard, RODERICK VINCENT, aka,
21 Roderick Regale Vincent and MARLO CHILES, accused by the Clark County Grand Jury of
22 the crime(s) of MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS
23 200.010, 200.030, 193.165 - NOC 50001); ROBBERY WITH USE OF A DEADLY
24 WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138) and ACCESSORY
25 TO MURDER (Category C Felony - NRS 195.030, 195.040, 200.010, 200.030.1 - NOC
26 53090), committed at and within the County of Clark, State of Nevada, on or about the 25th
27 day of September, 2016, as follows:

28 ///

EXHIBIT " / "

C-16-319714-1
IND
Indictment
4802683



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RA 000470

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 wilfull, deliberate and premeditation 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 Defendants JAVAR ERIS KETCHUM, aka, James Ketchum and ANTOINE
10 BERNARD, aka, Antoine Jeanpierre Bernard did willfully, unlawfully, and feloniously take
11 personal property, to-wit: a belt and/or watch, from the person of EZEKIEL DAVIS, or in his
12 presence, by means of force or violence, or fear of injury to, and without the consent and
13 against the will of EZEKIEL DAVIS, with use of a deadly weapon, to-wit: a firearm, the
14 Defendant(s) being criminally liable under one or more of the following principles of criminal
15 liability, to-wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the
16 commission of this crime, with the intent that this crime be committed, by counseling,
17 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit
18 the crime by Defendant JAVAR ERIS KETCHUM shooting EZEKIEL DAVIS as Defendant
19 ANTOINE BERNARD was waiting in BERNARD's vehicle for KETCHUM; after shooting
20 EZEKIEL DAVIS, Defendant JAVAR ERIS KETCHUM removing the pants of EZEKIEL
21 DAVIS and taking DAVIS'S belt while BERNARD had backed up his vehicle and waited for
22 KETCHUM to get into the vehicle to drive KETCHUM from the scene; thereafter,
23 KETCHUM placing the belt in the vehicle and returning the location of EZEKIEL DAVIS
24 while BERNARD waited for KETCHUM, thereafter, KETCHUM entering BERNARD'S
25 vehicle and driving him from the scene; and/or (3) pursuant to a conspiracy to commit this
26 crime.

27 ///

28 ///

1 COUNT 3 - ACCESSORY TO MURDER

2 Defendant ANTOINE BERNARD, aka, Antoine Jeanpierre Bernard did unlawfully,
3 and feloniously, after the commission of a Murder, a felony, harbored, concealed or aided
4 Defendant JAVAR ERIS KETCHUM, to-wit: by driving Defendant JAVAR ERIS
5 KETCHUM from the scene of the crime, with the intent that Defendant JAVAR ERIS
6 KETCHUM might avoid or escape arrest, trial, conviction, and/or punishment, having
7 knowledge that Defendant JAVAR ERIS KETCHUM had committed the Murder of EZEKIEL
8 DAVIS and/or was liable to arrest therefore.

9 COUNT 4 - ACCESSORY TO MURDER

10 Defendant RODERICK VINCENT, aka, Roderick Regale Vincent did unlawfully, and
11 feloniously, after the commission of a Murder, a felony, conceal and/or destroy and/or aided
12 in the destruction or concealment of video surveillance and/or DVR's and/or recordings,
13 material evidence, with the intent that Defendant JAVAR ERIS KETCHUM might avoid or
14 escape arrest, trial, conviction, and/or punishment, having knowledge that Defendant JAVAR
15 ERIS KETCHUM had committed the Murder of EZEKIEL DAVIS and/or was liable to arrest
16 therefore.

17 COUNT 5 - ACCESSORY TO MURDER

18 Defendant MARLO CHILES did unlawfully, and feloniously, after the commission of
19 a Murder, a felony, conceal and/or destroy and/or aided in the destruction or concealment of
20 video surveillance and/or DVR's and/or recordings, material evidence, with the intent that

21 ///

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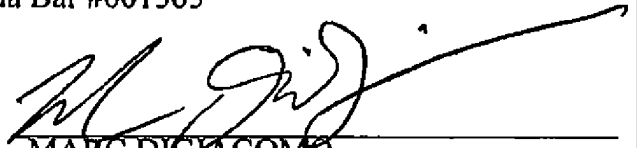
28 ///

1 Defendant JAVAR ERIS KETCHUM might avoid or escape arrest, trial, conviction, and/or
2 punishment, having knowledge that Defendant JAVAR ERIS KETCHUM had committed the
3 Murder of EZEKIEL DAVIS and/or was liable to arrest therefore.

4 DATED this 29th day of November, 2016.

5 STEVEN B. WOLFSON
6 Clark County District Attorney
7 Nevada Bar #001565

8 BY


9 MARC DIGIACOMO
10 Chief Deputy District Attorney
11 Nevada Bar #006955

12
13 ENDORSEMENT: A True Bill

14
15 
16 Foreperson, Clark County Grand Jury

Names of Witnesses and testifying before the Grand Jury:

DUNN, CHRISTOPHER, LVMPD

Additional Witnesses known to the District Attorney at time of filing the Indictment:

CUSTODIAN OF RECORDS, CCDC

CUSTODIAN OF RECORDS, LVMPD COMMUNICATIONS

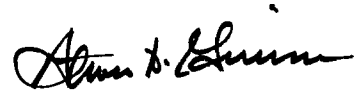
CUSTODIAN OF RECORDS, LVMPD RECORDS

DAVIS, DUANYIE, c/o CCDA, 200 Lewis Avenue, Las Vegas, NV

16AGJ147A-D/16F16375A-D/mc-GJ
LVMPD EV# 1609250932
(TK7)



EXHIBIT " 2 "



CLERK OF THE COURT

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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

**REPLY MEMORANDUM OF LAW IN RESPONSE TO STATE OF NEVADA'S
RETURN TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS AND
MOTION TO DISMISS**

COMES NOW the Petitioner, JAVAR ERIS KETCHUM (hereinafter, "Mr. Ketchum"), by and through his undersigned counsel, Nicholas M. Wooldridge, of the law firm of Wooldridge Law Ltd., and submits this Reply Memorandum of Points and Authorities in response to the State of Nevada's Return to his Petition for Writ of Habeas Corpus and Motion to Dismiss ("State's Response").

1 This reply memorandum is based on the following Memorandum of Points and Authorities,
2 all other papers and pleadings on file with the Court, and any oral argument or evidentiary hearing
3 the Court may permit.

4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 **I. INTRODUCTION**

6 The majority of the State of Nevada's Return to Petitioner's Writ of Habeas Corpus
7 ("State's Response") recounts the State's version of events or focuses on the standard of review
8 applicable to determining Petitions for Writ of Habeas Corpus. With the exception of two
9 paragraphs on pages 5-6, the State's Return makes no attempt to apply the law to the facts.
10 Therefore, this Reply is focused solely on responding to the misstatement of facts and law
11 contained in the State's Response on pages 5-6.
12
13

14 **II. ARGUMENT**

15 **THE TESTIMONIAL NARRATION OF A DIFFERENT VERSION OF THE** 16 **SURVEILLANCE FOOTAGE THAN THAT SHOWED TO THE GRAND JURY** 17 **REQUIRES DISMISSAL**

18 First, the State claims that "[t]he original video was shown to the grand jury." State's
19 Response at 5. In the next sentence, the State states that "[w]hat was not present in the grand jury
20 was the original player for the video." *Id.* Yet, as conceded by the State: what was seen by and
21 visible to Detective Christopher Bunn through the zoomed in version is not the same as the regular
22 (not zoomed in) version viewed by the grand jury. *See* State's Response at 5.¹ This is a critical
23 difference that the State brushes off as a non-event because the State treats the two versions as
24 identical. This is clearly not the case. Common sense and logic hold that there is clearly a
25
26
27

28 ¹ State's Response at 5 ("What was not present in the grand jury was the original player for the video. That player had the capacity to zoom in on individual sections of the same video that was displayed to the grand jury.")

1 difference between a video and a zoomed in version of the same video: events, facts, occurrences
2 and other specifics that would be visible on a zoomed in version may not be visible to the former.

3 Second, the State's claim that "[a]ll of the facts in front of the jury were readily identifiable
4 at the grand jury," is belied by the State's admission (*see* State's Response 5-6), that technological
5 limitations prevented from the grand jurors viewing the version of the video narrated by Detective
6 Bunn. As a result, the version of the video played to the grand jurors materially differed from the
7 version viewed and narrated by Detective Bunn because he viewed (and narrated) the zoomed in
8 version, while the grand jurors who returned the Indictment did not.

9
10 As a result, Detective Bunn testified to facts, events and occurrences from a video—a video that
11 was not played to the Grand Jury and where the same facts, events or occurrences were not
12 visible—therefore, his testimony constitutes impermissible hearsay.

13
14 The Nevada Legislature has chosen to preclude a grand jury from considering hearsay
15 evidence. Under Nevada law, a "grand jury can receive none but legal evidence ... to the exclusion
16 of hearsay or secondary evidence." N.R.S. § 172.135(2). The "definition of hearsay as used in
17 N.R.S. § 172.135(2) is the same as that found in N.R.S. § 51.035." *Gordon v. Eighth Judicial Dist.*
18 *Court*, 112 Nev. 216, 223, 913 P.2d 240, 245 (1996). N.R.S. § 51.035 defines hearsay as an out-
19 of-court statement offered to prove the truth of the matter asserted.

20
21 By presenting Detective Bunn's testimony as to facts, events and occurrences, *i.e.* a
22 narration of a zoomed in version of the surveillance video recovered from the Swann device
23 (surveillance device), while contemporaneously playing a different (not zoomed in version) of the
24 video, Detective Bunn's testimony constituted hearsay. The State has not identified and makes
25 no effort in its Response to identify, which, if any, one of the statutory hearsay exceptions in N.R.S.
26 § 51.035 applies.
27
28

1 In the video that was played to the Grand Jury, the same facts, events or occurrences visible
2 to Detective Bunn and narrated in his Grand Jury testimony were not visible. Otherwise, there
3 would not have been any need for Detective Bunn to testify regarding the zoomed in version he
4 viewed.

5 Accordingly, Detective Bunn's testimony constitutes hearsay and the Indictment should be
6 dismissed as it was based on impermissible hearsay or secondary evidence contrary to N.R.S. §
7 172.135(2).
8

9 **III. CONCLUSION**

10 **WHEREFORE**, for all the foregoing reasons, Mr. Ketchum's petition for a pre-trial writ
11 of habeas corpus and motion to dismiss should be granted and the Indictment should be dismissed
12 without prejudice.
13

14 DATED this 9th day of January, 2017.

JAVAR ERIS KETCHUM,
by his attorney,

17 /s/ Nicholas M. Wooldridge

18 _____
19 Nicholas M. Wooldridge, Esq.
20 Wooldridge Law Ltd.
21 400 South 7th Street, 4th Floor
22 Las Vegas, NV 89101
23 nicholas@wooldridgelawlv.com
24 (702) 330-4645 Tel.
25 (702) 359-8494 Fax.
26

27 **CERTIFICATE OF SERVICE**
28

1 I confirm that on this 9th day of January, 2017, a copy of the foregoing Reply Memorandum
2 of Points and Authorities was served on the below District Attorney's Office by having the same
3 e-filed and courtesy copied to pdmotions@clarkcountyda.com, which in turn provides electronic
4 service to:

5 Marc DiGiacamo, Esq.
6 Chief Deputy District Attorney
7 200 Lewis Ave.
8 Las Vegas, NV 89155-2212

9
10 /s/ Nicholas M. Wooldridge

11 _____
12 Nicholas M. Wooldridge, Esq.
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**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 17, 2017**

C-16-319714-1 State of Nevada
 vs
 Javar Ketchum

February 17, 2017 9:00 AM Argument: Petition For Writ of Habeas Corpus

HEARD BY: Villani, Michael **COURTROOM:** RJC Courtroom 11A

COURT CLERK: Olivia Black

RECORDER: Patti Slattery

PARTIES

PRESENT:	Ketchum, Javar Eris	Defendant
	State of Nevada	Plaintiff
	Turner, Robert B.	Attorney for State
	Wooldridge, Nicholas	Attorney for Defendant

JOURNAL ENTRIES

- Mr. Turner advised the argument was originally scheduled for March 6, 2016 and Mr. Di Giacomo was aware of that date and prepared to go forward; however, Mr. Turner further advised the matter was rescheduled and the new date was not forward to Mr. Di Giacomo. Colloquy regarding the Petition and the matter being reset. Court noted the Petition was a legal issue and provided Mr. Turner with the Burnside vs. State case for review. Upon Court's inquiry, Mr. Turner advised he reviewed the case. Court summarized the Petition and noted that a video was played for the Grand Jury and the Detective testified that on a different electronic system he was able to zoom in and freeze frame certain things and from his observation it was Defendant that had a gun. Court stated the video played in front of the Grand Jury did not have the capability of zooming in and freeze framing. Upon Court's inquiry, Mr. Wooldridge concurred with the Court's summarization. Mr. Wooldridge argued that what was testified to in front of the Grand Jury was inadmissible hearsay and the Petition for Writ of Habeas Corpus should be granted. Mr. Turner argued that the video itself was admitted and the Officer testified to what he did and observed thereafter the jurors were able to review the video and weigh the Officer's testimony and make a decision. Mr. Turner further argued it goes to weight of the evidence and not to whether the Officer's testimony was admissible. Court stated it did not see it was a hearsay situation and the Officer testified to what he observed. Court further stated

PRINT DATE: 02/17/2017

Page 1 of 2

Minutes Date: February 17, 2017

RA 000481

under Burnside the Officer was entitled to give duration of the video that was being shown to the Grand Jurors. COURT ORDERED, Petition DENIED. COURT FURTHER ORDERED, Trial date STANDS. Colloquy regarding Defendant's Motion regarding medical treatment calendared for February 21, 2016. Court suggested Defendant schedule an appointment through the medical clinic. Following representations by counsel, COURT ORDERED, Defendant's Motion for Medical Treatment VACATED.

CUSTODY

CLERK'S NOTE: Subsequent to court, Officer P. Travis notified the Court that an Order was needed for Defendant's medical treatment. COURT FURTHER ORDERED, Defendant's Motion for Medical Treatment placed back on calendar.//ob/2/17/17.