

1 should he not show back up to court what the risks involved are, Your Honor.
2 So I'll submit it with that.

3 THE COURT: Okay. What's his background? Does he have a prior
4 criminal history?

5 MR. SCARBOROUGH: Yes, Your Honor, and I wanted to announce
6 myself on the record. My name is Jory Scarborough. I'm a student attorney at
7 the District Attorney's Office licensed to practice under Supreme Court Rule
8 49.5 and I'm under the supervision of my supervising attorney, Nicole
9 Cannizzaro.

10 THE COURT: Okay.

11 MR. SCARBOROUGH: And to address your question about the prior
12 history, the Defendant has 7 prior felonies from California. And his most recent
13 one from California is in 2012. So that demonstrates that he has significant
14 ties out of state. Furthermore, three of those are demonstrating essence of
15 noncooperation and distinct for authority because they were abetting a police
16 officer. That gives the State no confidence to assure that if he was given the
17 chance that he would cooperate with any authority figure.

18 Furthermore, he's a danger to the community and arguable his own
19 children because the underlying facts of the offense demonstrate that. He went
20 into a business in our community at a TG Max, went to multiple sections of the
21 store, picked out items at random, tried to exit the store, passed all points of
22 sale. When he was confronted by the loss prevention associate, he pulled out a
23 four inch blade knife and held it to him and said we're not doing this today.
24 And that was in the presence of his children. So him citing to his parenting, his
25 decision making regarding his parenting is very questionable at best.

So based on those reasons, Your Honor, we would submit that he is not a candidate for intensive supervision or an own recognizance release.

THE COURT: All right. The request is going to be --

MS. SPELLS: Your Honor.

THE COURT: -- no. It'll be denied.

MS. SPELLS: All I was going to say, Your Honor, is that this case is set for trial, so those facts haven't been decided as of yet, but thank you.

THE COURT: I understand. All right, we'll see you for trial on June 20th.

Thank you.

THE DEFENDANT: Does that mean no to a bail reduction?

THE COURT: What is the bail currently?

MR. SCARBOROUGH: The bail is at 40,000.

MS. SPELLS: It's set at \$40,000, Your Honor.

THE COURT: And he has how many priors?

MR. SCARBOROUGH: Seven, Your Honor.

THE COURT: The bail reduction request is denied.

PROCEEDINGS CONCLUDED AT 11:31 A.M.

* * * * *

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

Maria L. Garibay
MARIA L. GARIBAY
Court Recorder/Transcriber



1 RTRAN

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4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6
7 STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 ALFRED C. HARVEY,

11 Defendant.

CASE NO. C314260-1

DEPT. NO. XXIII

TRANSCRIPT OF PROCEEDINGS

12
13 BEFORE THE HONORABLE STEFANY A. MILEY, DISTRICT COURT JUDGE

14 WEDNESDAY, JUNE 1, 2016

15
16 BENCH WARRANT RETURN...DEFENDANT'S MOTION TO COMPEL
17 DISCOVERY

18 APPEARANCES:

19 For the Plaintiff:

MARY KAY HOLTHUS, ESQ.
Chief Deputy District Attorney

22 For the Defendant:

PANDORA L. LEVEN, ESQ.
Deputy Public Defender

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25 RECORDED BY: MARIA L. GARIBAY, COURT RECORDER

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WEDNESDAY, JUNE 1, 2016, 12:18 A.M.

THE MARSHAL: C314260, Harvey.

MS. LEVEN: My under --

THE COURT: I have it. Yeah, I don't have an opposition.

MS. LEVEN: My understanding is that the State needed an additional week to respond, so we're asking for a date of 6/8.

THE COURT: Sure.

MS. HOLTHUS: Which one is this?

MS. LEVEN: Harvey.

MS. HOLTHUS: I don't have that file, but.

THE COURT: State didn't respond.

MS. HOLTHUS: So she's saying we needed more time?

THE COURT: She wants to go 6/8.

MS. HOLTHUS: Is the Defendant present; is that him?

THE DEFENDANT: Yes.

[Defense attorney and Defendant confer]

MS. LEVEN: Your Honor, this is in addition of the discovery motion. This is also on for a bench warrant return, or a bond revocation return. He bailed out and didn't get --

MS. HOLTHUS: I don't have a file, so if we're going to argue anything beyond continuing it a week or two --

MS. LEVEN: I think I'm just --

THE COURT: It is only on a motion to compel discovery.

MS. LEVEN: Okay, then that's fine.

1 THE COURT: It's a bench warrant return. Where did he bench warrant
2 out of?

3 MS. LEVEN: My understanding is his bond was revoked and not through
4 any fault of his own but because they wanted -- the bonds company wanted
5 the title to his car.

6 THE COURT: I don't think -- I have no idea. The State probably is going
7 to want to look at this I bet on the file.

8 THE CLERK: The bench warrant was issued on sentencing on January
9 25th, 2016.

10 THE COURT: Was it because he was a no show?

11 THE CLERK: That's what it says.

12 THE COURT: No, he got a warrant because he didn't show up for
13 sentencing.

14 MS. LEVEN: In another case.

15 THE CLERK: No.

16 THE COURT: In this case.

17 THE CLERK: Oh, I'm sorry.

18 MS. HOLTHUS: When is it set for trial?

19 MS. LEVEN: This is set for trial, so I don't understand how that's --

20 THE COURT: Okay, maybe we're incorrect.

21 THE CLERK: I'm looking in the wrong case, actually. I apologize.

22 THE COURT: Okay. Hold on please.

23 [Colloquy by the Court and the Court Clerk]

24 THE COURT: Did you hear that?

25 MS. LEVEN: No, sorry. I did not.

1 THE COURT: Kathy says that he has no outstanding warrants in District
2 Court.

3 MS. LEVEN: Correct, Judge. My understanding is -- so a couple of
4 weeks ago --

5 MS. HOLTHUS: Can we just wait until I see if -- supposedly
6 Mr. Schwartz is coming down on this.

7 THE COURT: Yeah, we'll be here for a little bit longer.

8 MS. LEVEN: Okay.

9 THE COURT: Well, I want to find out why he's in custody. I don't know.

10 MS. LEVEN: I'm trying to explain that if the State [indiscernible].

11 MS. HOLTHUS: Well, if it's not -- I don't have a file.

12 THE COURT: But it's not -- what I'm saying -- what you're saying is not
13 necessary contained within the record.

14 MS. LEVEN: Right.

15 THE COURT: So I mean the State doesn't have the file.

16 MS. LEVEN: But it wouldn't be in the State's file either whether he
17 posted bond or not.

18 THE COURT: It's not in ours either.

19 MS. LEVEN: It doesn't --

20 MS. HOLTHUS: I just don't have any -- I don't know anything other than
21 what's on this calendar and someone is supposed to be coming down on it.

22 THE COURT: Look, you can wait a little bit, so we'll call him in a second.

23 MS. LEVEN: Okay. I think there's only --

24 THE COURT: Well, then you can wait until the person gets here. Okay.

25 [Matter trailed and recalled]

1 THE MARSHAL: Recalling C314260, Harvey, Alfred Harvey.

2 THE COURT: So --

3 THE MARSHAL: We trailed this one.

4 MS. HOLTHUS: Oh, Bryan just told me that as far as he knew from
5 Jasmin, it was getting kicked 'till June 8th. So I would ask that we just pass it
6 to June 8th.

7 THE COURT: The problem is we don't know why he's in custody or how
8 he got picked up.

9 MS. HOLTHUS: Well, does that matter, I mean?

10 THE COURT: Yeah, there has to be a reason that he's in custody.

11 MS. LEVEN: Your Honor, he claims to know why he's in custody.

12 THE COURT: Okay, why?

13 THE DEFENDANT: Sorry. How are you, Judge? I bailed out. It was not
14 in my contract when I bailed and my father -- I'm that author that I've been
15 telling you about. I came out here on a book tour. I cancelled that recently. I
16 recently --

17 MS. LEVEN: Focus. Why are you in custody?

18 THE DEFENDANT: Well, I went down to the bail bondsmen to check in
19 and they told me they wanted my car and I already gave them \$2000, so that's
20 going to be a civil matter. I -- they took me into custody right there with my
21 kids. I wasn't in no trouble for that whole two weeks I was out. I'm just
22 saying I didn't get in any trouble. I bailed out. They wanted my car. I have an
23 El Camino old school, 86, lifted on 22's, eye rocks, everything.

24 THE COURT: So the bail bondsman surrendered you to the jail. Is that
25 what you're telling me?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: I have to look in that further.

3 THE DEFENDANT: I didn't miss any appointments.

4 [Colloquy]

5 THE COURT: Does the State have any -- do you know if the State would
6 have any information on this? So he's right, the bail bondsman surrendered him
7 and I don't know why. I know what he's saying, but I don't know why.

8 MS. HOLTHUS: Like I said, this is Mr. Schwartz file. I asked him, are
9 you coming down? And he said, Ms. Spells -- Jasmin was supposed to pass it
10 until 6/8. That's -- I'm asking him are there any representations, anything I
11 need to know? I have -- I'm not sure what we can do if the bondsman
12 surrenders him. That's not --

13 THE COURT: Well, I mean what he's saying is basically he didn't have
14 the collateral for the bail versus him doing anything wrong.

15 MS. HOLTHUS: Well, there's a lot of people in custody who don't have
16 bail money. They don't get to get out.

17 THE DEFENDANT: It wasn't even my contract. I paid him \$2000 cash.

18 THE COURT: What I'm wondering is if it's just a collateral issue.

19 [Colloquy by the Court and Court staff]

20 THE COURT: Okay, so we'll look into it. I'm going to have to continue it
21 'till Monday. This is our last criminal hearing of the week.

22 THE DEFENDANT: Could I get -- consider for an O.R.? I have a job. The
23 case -- I mean I'm here. I paid cash for my bail. They just want --

24 MS. HOLTHUS: Judge, again, I'm going to object.

25 THE COURT: Too many people. Hold on.

1 THE CLERK: You denied the motion for an O.R. or setting reasonable bail
2 on May 4th, 2016.

3 THE COURT: Look, I need to look into it a little bit more. Can we bring
4 him over? We have a hearing tomorrow at what, 9:30?

5 THE CLERK: Mm-hmm.

6 THE COURT: Can you guys get him over tomorrow at 9:15? And then I
7 need the attorneys present, please.

8 THE CORRECTIONAL OFFICER: Yes, ma'am.

9 THE COURT: I got to look further into what you're saying. All right?

10 MS. LEVEN: Thank you, Your Honor.

11 THE CLERK: So it's June 2nd at 9:15.

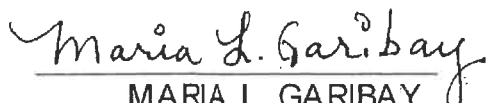
12 THE COURT: And see what you can find out.

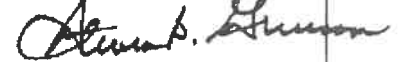
13 THE CLERK: Okay.

14 PROCEEDINGS CONCLUDED AT 12:35 A.M.

15 * * * * *

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

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19 MARIA L. GARIBAY
20 Court Recorder/Transcriber
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1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

8
9 ALFRED C. HARVEY,

10 Defendant.
11
12

CASE NO. C314260-1

DEPT. XXIII

13 BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE
14 THURSDAY, JUNE 2, 2016

15 **RECORDER'S TRANSCRIPT OF**
16 **STATUS CHECK: CUSTODY/BOND STATUS AND**
17 **DEFENDANT'S MOTION TO COMPEL DISCOVERY**

18 APPEARANCES:

19 For the State:

20 BRYAN A. SCHWARTZ, ESQ.
21 Deputy District Attorney

22 For the Defendant:

23 JASMIN D. SPELLS, ESQ.
24 Deputy Public Defender

25 RECORDED BY: MARIA GARIBAY, COURT RECORDER

1 Thursday, June 2, 2016 - 9:27 a.m.

2
3 THE CLERK: This is Case Number C314260, Harvey.

4 THE COURT: Jasmin, did you figure out -- we can't -- let me just
5 skip -- get right to the chase. I can't figure out what exactly happened. It
6 looks like he made bail, and then he is correct, it looks like his bail bondsman
7 surrendered him, but we can't figure out anything else.

8 MS. SPELLS: Yes, Your Honor. Good morning. I called his bail
9 bond -- his bailbonds company yesterday, and I spoke with an individual by the
10 name of Ernest Martinez. He stated that Alicia (phonetic), his manager, did
11 the file, but she was on vacation for a week. What he could tell me was that
12 he -- basically what he says is that Mr. Harvey paid approximately \$1600;
13 however, the total was about 4400, and so he was supposed to be making
14 payments.

15 From Mr. Martinez's standpoint, he indicated that Mr. Harvey
16 did not make a payment and that he didn't have an active address or phone
17 number, and so they needed collateral. From Mr. Harvey's standpoint, the bail
18 bondsman company got in contact with him, and Mr. Martinez said, yeah, we
19 were able to get in contact with him. He didn't tell me how he got in contact
20 with him because he said he didn't have a phone number, but he said he spoke
21 to Mr. Harvey.

22 Mr. Harvey came in, and on the day he checked in, the bail
23 bonds company surrendered him stating that they didn't have the full amount,
24 and because they didn't have the full amount, they asked him for collateral.
25 Mr. Harvey's position is that his car or collateral was not part of that contract,

1 so he did not hand over the car. And Mr. Martinez from the bail bond
2 company is indicating that Mr. Harvey may have violated the contract that
3 they had with him, so --

4 THE COURT: Well, he posted part of the premium; he just didn't pay
5 all of it, right?

6 MS. SPELLS: That's correct.

7 MR. SCHWARTZ: Sounds like it.

8 THE COURT: So does he lose that now?

9 MS. SPELLS: My understanding is that he probably does lose that.

10 THE COURT: What is your client's -- what's his past criminal record?

11 MR. SCHWARTZ: Your Honor, it looks like he has an evading from a
12 police officer, three different convictions from that, 2001, 2007, 2014 -- or
13 2012. Grand theft from a person, 2004. I believe those -- all four are from
14 California, and that would be his -- that's his criminal history.

15 THE COURT: So are all those felonies?

16 MS. SPELLS: I don't believe California has gross misdemeanors.

17 MR. SCHWARTZ: My understanding was they were -- they were all
18 felonies, yeah. It would be four prior felonies.

19 MS. SPELLS: Your Honor, we did --

20 THE COURT: What has been his attendance at the hearings? I know
21 he's been in custody for some, but he's been out of custody and attended
22 things?

23 MS. SPELLS: We haven't had a hearing --

24 MR. SCHWARTZ: We haven't --

25 MS. SPELLS: -- where he had an out of custody date. Yesterday

1 would have been the first out of custody hearing date, and he was arrested
2 right before that, but --

3 THE COURT: So -- okay. So the time -- the minimal time he was out
4 on -- how long was he out on bail between --

5 MS. SPELLS: Approximately two weeks.

6 THE COURT: Not much time. Did he stay out of trouble for at least
7 those two weeks?

8 MS. SPELLS: He did, Your Honor.

9 MR. SCHWARTZ: Your Honor, I apologize, I misspoke. It looks like
10 the intake at least shows him having seven prior felony/gross misdemeanor
11 convictions; two DUI misdemeanors; one failure to appear, but I don't have -- I
12 have no -- I don't think he got in trouble the two weeks he was out, to answer
13 your question.

14 THE COURT: Well, he was obviously found before the bail was
15 appropriate.

16 MS. SPELLS: And, Your Honor, Mr. Harvey would like the Court to
17 reconsider our prior motion for even an own reconnaissance release with
18 intensive supervision. His last felony conviction is from 2012, and as the
19 State indicated, he only had one prior failure to appear on his intake sheet.

20 He does have some ties to the community. He has his wife and
21 two kids, who are currently living here, as well as his parents, siblings and
22 cousins living in Nevada. And as we previously informed the Court, he was
23 working on doing a -- like getting his book out there and published and things
24 like that. So he understands he can't do a book tour, but he was in the midst
25 of negotiations with different companies here to be able to market that book.

1 THE COURT: 1600 is a lot of money to lose.

2 MR. SCHWARTZ: And, Your Honor, the State is obviously opposed to
3 an O.R.

4 THE COURT: What I was thinking of is -- I'm not comfortable with a
5 straight O.R. I mean, it sounds like he has some resources because he was -- I
6 mean, I want to recognize the fact that he posted the \$1600, and it sounds
7 like it was because he couldn't come up with the rest of the money, but I'm
8 just not comfortable with the O.R.

9 So do you have some resource? Because there's expenses
10 associated with house arrest.

11 THE DEFENDANT: I have -- I've got 300 or 400 bucks right now, but
12 that's like -- the bail was all we really had. I do have a job with Western Cab
13 that I was able -- within this two weeks -- to show them my valid driver's
14 license and that. I was going to have some employment. So, I mean, even if
15 it was intensive supervision, as far as O.R.'s concerned, I would definitely -- I
16 had a load case that was from -- okay.

17 MS. SPELLS: That's all right.

18 THE DEFENDANT: Okay.

19 THE COURT: I'll give him an O.R. with house arrest.

20 MS. SPELLS: Okay.

21 MR. SCHWARTZ: Your Honor, can I be heard on house arrest? I
22 mean, here's my problem with this. He's in --

23 THE COURT: Okay. Hold on. I'll let you be heard --

24 MR. SCHWARTZ: Okay.

25 THE COURT: -- but let's get this out here because I wanted -- this

1 happens a lot. You guys get a chance to talk, and when I make a decision, it
2 doesn't mean talk a little bit more. Okay? I'll let you make your record, but in
3 the future, once you're done talking, you don't get to talk again after I make a
4 decision.

5 MR. SCHWARTZ: I didn't realize that that was my --

6 THE COURT: When I said I'm going to give an O.R. with house arrest,
7 that was a decision. But, yes, what were you going to say?

8 MR. SCHWARTZ: Okay. My position was just that he's here because
9 he didn't pay the full bail.

10 THE COURT: I understand that.

11 MR. SCHWARTZ: And so my -- you know, we're giving him house
12 arrest now. I don't -- if he can afford house arrest, he should've paid the full
13 bail in the first place.

14 THE COURT: Well, I think there's a difference in having to come up
15 with money monthly versus coming up with \$4400, which is a whole lot of
16 money.

17 So you're going to get an O.R. with house arrest. Don't make us
18 come get you.

19 THE DEFENDANT: I will not, no. I've never have.

20 THE COURT: Do you have a house phone?

21 THE DEFENDANT: Yes, ma'am, I have a -- yes, I have a house phone.
22 505 -- what's the number? I'm sorry.

23 UNIDENTIFIED SPEAKER: (Indiscernible).

24 THE COURT: I guess house arrest is going to need that.

25 MS. SPELLS: He'll need to fill out the packet, and I will give him the

1 instructions on what he needs to do from there.

2 THE COURT: Sure. Sure, sure. That's fine. I was thinking of one --
3 and I don't have the calendar sheet in front of me. What's the posture of this
4 case? Are we -- do we have a trial date or do we have a sentencing date --

5 MS. SPELLS: We have a trial date. Our calendar call is June 15th, our
6 trial date is June 20th, and we continued the motion to compel discovery from
7 yesterday's calendar, so I don't know when it's on. The State filed their
8 opposition yesterday.

9 THE CLERK: Today.

10 MS. SPELLS: Is it going to be heard today?

11 THE CLERK: Yeah.

12 THE COURT: Thank you. I have it right here.

13 MR. SCHWARTZ: And, Your Honor, I apologize for not filing it sooner.
14 My understanding was we were going to pass the motion till next week. So I
15 filed it as soon as I could last -- yesterday afternoon. So I apologize for not
16 getting that in sooner to you.

17 THE COURT: And it looks like basically -- can you do it right now?

18 MR. SCHWARTZ: Sure.

19 MS. SPELLS: Yes.

20 THE COURT: Okay. So I have a motion to compel discovery. The
21 standard objections, vague, overbroad, compound. Everything looks like --
22 let's see. Witness benefits -- okay. You have to tell them that it is statutory
23 fees. So request one, granted. State's complied.

24 Request here is compliance with NRS 50.095, and the State
25 could willfully comply consistent with statute. It would be felony/gross

1 misdemeanors or anything involving truth or veracity. That's number three.

2 So number two is granted. Number three is granted. Exculpatory

3 impeachment evidence, I don't know why that's vague, but that's granted.

4 The State is to provide that.

5 Number 5, information regarding alleged accomplice who gave
6 exculpatory statements as to Defendant. What exactly do you want to know?

7 Ms. Spells.

8 MS. SPELLS: Your Honor, just if there was any accomplice. I don't
9 believe that there was here, but if there are any other individuals and they
10 made any statements, we would want a copy of those statements.

11 THE COURT: All right. Are there any?

12 MR. SCHWARTZ: There's not, to my understanding.

13 THE COURT: So then we'll say granted. The State will provide it if it
14 comes into its possession.

15 Number six, information regarding the arrest of another
16 individual or information suggesting a different suspect. The Court said -- the
17 State said unspecific, but unaware of any such information. So we'll just say
18 granted. State will provide if it comes into possession of it.

19 Seven, statements of any State witnesses or by the Defendant,
20 including inconsistent statements of any named witnesses. Overbroad, vague.
21 I don't really understand why it's overbroad, vague. Did the State give over
22 any and all statements that you have?

23 MR. SCHWARTZ: The State -- the State will certainly give over any
24 statements consistent with the statute 174.235.

25 THE COURT: All right. So that would be granted consistent with

1 statute. Number eight, other materials required to be disclosed by statute or
2 constitution. This is unspecific. Is there something specific you're looking for,
3 Ms. Spells?

4 MS. SPELLS: No, Your Honor.

5 THE COURT: So granted, consistent with Nevada statute. 911 or
6 311 calls and the CAD report as will provide once received. Is there an
7 outstanding request for that from Metro?

8 MR. SCHWARTZ: And I just checked the file, Your Honor. We do
9 have the 911 and the CAD, and I will provide those to Ms. Spells after court
10 today.

11 THE COURT: Okay. So I'll say granted. What about the police
12 reports? It says will provide once received. Are you waiting to get them from
13 Metro?

14 MR. SCHWARTZ: I believe that will be the same situation as request
15 number nine.

16 THE COURT: So granted. The next one is 11, police radio traffic and
17 police car surveillance. The State says it's not in possession. No showing of
18 materiality. Okay. So you don't have anything is what you're saying?

19 MR. SCHWARTZ: That's correct.

20 THE COURT: All right. We'll just say granted consistent with Nevada
21 statute. The State to provide if it comes into possession of it. Photographs,
22 Defense should issue its own subpoena?

23 MR. SCHWARTZ: For the photographs, Your Honor. And that's the
24 State's position, but to the extent that I do receive the photographs, I will -- I
25 will provide those over to --

1 THE COURT: Which photographs do you want, Ms. Spells?

2 MS. SPELLS: Your Honor, I would like the photographs taken by
3 Metropolitan Police Department. They should be within --

4 THE COURT: They should be within your file. All right. I'll just say --
5 the State is not obligated to go out and get any photographs; however, to the
6 extent they were contained in the investigative file provided by Metro and
7 they're in the State's file, they should be turned over to the Defense. So that
8 would be granted with some limitations.

9 Request the results of physical or biological evidence. Was
10 any -- were any tests done?

11 MR. SCHWARTZ: Not to my knowledge.

12 THE COURT: So if there are any, the State to provide. It's granted.
13 The video surveillance from T.J. Maxx concerning this incident. Was there
14 any video?

15 MR. SCHWARTZ: There was, and that is one thing that we are still
16 waiting to receive from T.J. Maxx. I'm going to -- I told -- I did talk to Ms.
17 Spells about this yesterday that I was going to get in touch with them today
18 and see if I could get a video to her today.

19 THE COURT: Okay.

20 MR. SCHWARTZ: Get a video from them today.

21 THE COURT: So --

22 MS. SPELLS: Your Honor?

23 THE COURT: Yeah.

24 MS. SPELLS: If I may be heard with that one. I was unaware when I
25 wrote this motion, but I believe there may be -- their complaining witness may

1 have taken a video on his personal cell phone. So I did speak to the State
2 about that. We're trying to obtain it as well, but I did just let them know if
3 they had it, if they could turn it over, if it's in their possession. If not,
4 obviously --

5 THE COURT: If it's in their possession, the State to turn over all
6 videos in its position. All right. So that would be granted. Names and last
7 known addresses of any percipient witness known to the State or law
8 enforcement. Granted consistent with Nevada statutes on witness disclosure.
9 And I think that's it. Are you guys going to be ready for trial in -- it looks like
10 in two weeks?

11 MS. SPELLS: I believe we will be.

12 THE COURT: Okay.

13 MR. SCHWARTZ: Your Honor, the State would also just ask pursuant
14 to the response for reciprocal discovery from the Defense.

15 THE COURT: Ms. Spells?

16 MS. SPELLS: We have no objection to following the statute regarding
17 reciprocal discovery.

18 THE COURT: All right. Thank you. Make sure you show a --

19 THE DEFENDANT: I was going to ask you, as far -- it took a lot for us
20 to come up with the 1600. How much is the --

21 THE COURT: How much is house arrest?

22 MR. SCHWARTZ: I'm not sure.

23 THE COURT: I don't know.

24 MS. SPELLS: A daily or weekly fee, so -- I believe he may just have to
25 pay to get started, and that's a minimal amount, maybe less than \$100, and

1 then --

2 THE COURT: Yeah. And, you know, you have trial coming up.

3 THE DEFENDANT: Work -- will I be able to work, like --

4 MS. SPELLS: Yeah.

5 THE DEFENDANT: -- putting my book on the Strip and stuff like that?

6 MS. SPELLS: I'll talk to you about it.

7 THE DEFENDANT: All right.

8 MR. SCHWARTZ: Thank Your Honor.

9 MS. SPELLS: Thank Your Honor. So is our next court date June 15th?

10 THE COURT: Yes.

11 MS. SPELLS: Okay.

12 MR. SCHWARTZ: That's the calendar call?

13 THE COURT: Uh-huh.

14 MS. SPELLS: Okay. Thank you.

15 THE COURT: You have to be here at June 15th at 9:30 in the
16 morning.

17 THE DEFENDANT: Yes, ma'am.

18 MS. SPELLS: Thank Your Honor.

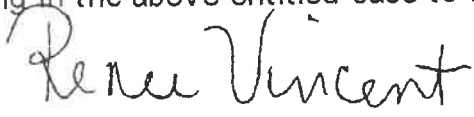
19 [Proceedings concluded at 9:29 a.m.]

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

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Renee Vincent, Court Recorder/Transcriber



1 RTRAN

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4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6
7 STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 ALFRED C. HARVEY,

11 Defendant.

CASE NO. C314260-1

DEPT. NO. XXIII

TRANSCRIPT OF PROCEEDINGS

12
13 BEFORE THE HONORABLE STEFANY A. MILEY, DISTRICT COURT JUDGE

14 WEDNESDAY, JUNE 15, 2016

15
16 CALENDAR CALL

17
18 APPEARANCES:

19
20 For the Plaintiff:

BRYAN A. SCHWARTZ, ESQ.
Deputy District Attorney

21
22 For the Defendant:

JASMIN D. SPELLS, ESQ.
Deputy Public Defender

23
24
25 RECORDED BY: MARIA L. GARIBAY, COURT RECORDER

1 WEDNESDAY, JUNE 15, 2016, 11:06 A.M.

2
3 THE MARSHAL: Page 6, C314260, Harvey.

4 MS. SPELLS: Good morning, Your Honor, Jasmin Spells on his behalf.
5 Can I just grab him?

6 THE COURT: Mm-hmm.

7 MS. SPELLS: Good morning, Jasmin Spells on his behalf.

8 THE COURT: All right, so it's calendar call.

9 MS. SPELLS: It is calendar call, Your Honor. I am going to ask that
10 Mr. Harvey waive his right to a speedy trial. He's prepared to do that this
11 morning. We're also going to ask for a status check in approximately two to
12 three weeks. He has looked into Mr. Almase and wants to look into whether or
13 not he can hire him to do the trial.

14 THE COURT: Okay, so status check on resetting trial in two to three
15 weeks?

16 MS. SPELLS: Yes.

17 THE COURT: And what, confirmation of counsel?

18 MS. SPELLS: Potentially, yes.

19 THE COURT: Okay.

20 THE CLERK: June 29th, 9:30.

21 MR. SCHWARTZ: Just for the record, Your Honor, the State was
22 prepared to go forward with the trial today.

23 THE COURT: All right. Thank you.

24 THE MARSHAL: Top of 16.

25 MS. SPELLS: And, I apologize, Your Honor. Because he was invoked, I

1 think we do have to have him waive.

2 THE COURT: Hmm, is he invoked?

3 Are you waiving your right to a speedy trial?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Thank you.

6 MS. SPELLS: You're welcome.

7 THE DEFENDANT: And, Your Honor.

8 THE COURT: Yeah.

9 THE DEFENDANT: You had said that, when you put me on the ankle
10 monitor, that I'd be able to work. They haven't allowed me to work. I can't go
11 anywhere near --

12 THE COURT: You got to take that up with them.

13 MR. SCHWARTZ: Yeah.

14 THE COURT: They handle it from this point forward.

15 THE DEFENDANT: They said to possibly come to court and maybe you'll
16 take it off so I can work.

17 THE COURT: You can talk to Ms. Spells about that.

18 THE DEFENDANT: Okay.

19 THE COURT: Okay.

20 THE DEFENDANT: Yes, ma'am.

21 Sorry about that, sir, Mr. Dean.

22 THE COURT: If I were you I wouldn't push it too much.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Talk to them, house arrest, about needing to go to work
25 and everything else, but you know, you're out of custody.

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THE DEFENDANT: Okay.

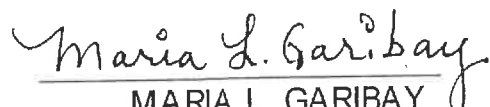
THE COURT: All right, much the State's dismay. Thank you.

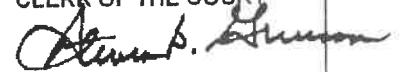
MR. SCHWARTZ: Thank you, Your Honor

PROCEEDINGS CONCLUDED AT 11:08 A.M.

* * * * *

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


MARIA L. GARIBAY
Court Recorder/Transcriber



1 RTRAN

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4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6
7 STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 ALFRED C. HARVEY,

11 Defendant.

CASE NO. C314260-1

DEPT. NO. XXIII

TRANSCRIPT OF PROCEEDINGS

12
13 BEFORE THE HONORABLE STEFANY A. MILEY, DISTRICT COURT JUDGE

14 WEDNESDAY, JUNE 29, 2016

15
16 STATUS CHECK: RESETTING OF TRIAL / NEW COUNSEL

17
18 APPEARANCES:

19
20 For the Plaintiff:

BRYAN A. SCHWARTZ, ESQ.
STEVEN J. ROSE, ESQ.
Deputy District Attorneys

21
22 For the Defendant:

JASMIN D. SPELLS, ESQ.
Deputy Public Defender

23
24
25 RECORDED BY: MARIA L. GARIBAY, COURT RECORDER

1 WEDNESDAY, JUNE 29, 2016, 9:52 A.M.

2
3 THE MARSHAL: Top of page 5, C314260, Harvey.

4 MR. SCHWARTZ: Good morning, Your Honor, Bryan Schwartz and
5 Steven Rose for the State.

6 THE COURT: Hi.

7 MS. SPELLS: Good morning, Your Honor, Jasmin Spells on behalf of
8 Mr. Harvey who is present at liberty.

9 THE COURT: I have resetting of trial, possible new counsel.

10 MS. SPELLS: Your Honor, he was not able to secure private counsel. We
11 would ask what the Court's ordinary course is.

12 THE COURT: For trial?

13 MS. SPELLS: Yes.

14 THE COURT: Okay.

15 THE CLERK: Do you have any dates in mind?

16 MS. SPELLS: What is the ordinary course as far as like the month?

17 THE CLERK: Ordinary course is November 7th.

18 [Defense counsel and District Attorney confer]

19 MS. SPELLS: Can we do the week after November 7th?

20 THE CLERK: That's the last week of our stack.

21 MS. SPELLS: Oh, we'll take the November 7th.

22 THE CLERK: Calendar call November 2nd at 9:30; jury trial November 7th,
23 at 1:00 p.m.

24 MS. SPELLS: Thank you.

25 MR. SCHWARTZ: And, Your Honor, just for the record. I do believe all

1 of the discovery has been provided to Ms. Spells at this point. So if there's
2 anything else outstanding, she'll just let me know, I'll get it to her.

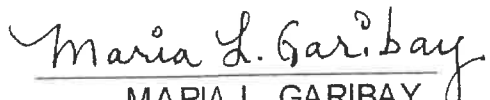
3 THE COURT: Okay. See you then. Thank you.

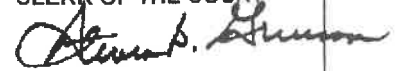
4 MS. SPELLS: Thank you.

5 PROCEEDINGS CONCLUDED AT 9:54 A.M.

6 * * * * *

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

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1 RTRAN

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4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
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7 STATE OF NEVADA,

8 Plaintiff,

9 vs.
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11 ALFRED C. HARVEY,

12 Defendant.

CASE NO. C314260-1

DEPT. NO. XXIII

TRANSCRIPT OF PROCEEDINGS

13 BEFORE THE HONORABLE STEFANY A. MILEY, DISTRICT COURT JUDGE
14

15 WEDNESDAY, AUGUST 3, 2016

16 **DEFENDANT'S MOTION FOR OWN RECOGNIZANCE RELEASE UNDER**
17 **INTENSIVE SUPERVISION OR ON HOUSE ARREST**

18 APPEARANCES:

19 For the Plaintiff:

BRYAN A. SCHWARTZ, ESQ.
STEVEN J. ROSE, ESQ.
MICHELLE SUDANO, ESQ.
Deputy District Attorneys

22 For the Defendant:

JASMIN D. SPELLS, ESQ.
Deputy Public Defender

24
25 RECORDED BY: MARIA L. GARIBAY, COURT RECORDER

1 WEDNESDAY, AUGUST 3, 2016, 9:38 A.M.

2
3 THE MARSHAL: Bottom of page 14, C314260, Harvey.

4 THE COURT: All right, good morning, sir.

5 MS. SPELLS: Good morning, Your Honor, Jasmin Spells on behalf of
6 Mr. Harvey. This is our motion for an additional own recognizance release
7 under either intensive supervision or under house arrest.

8 THE COURT: Okay.

9 MS. SPELLS: I understand that --

10 MS. SUDANO: Your Honor, I apologize. I don't mean to interrupt. I
11 don't have this file. My notes indicate that Mr. Schwartz is going to be coming
12 down on it.

13 MS. SPELLS: Oh, okay.

14 THE COURT: Someone filed an opposition. Mr. Schwartz filed an
15 opposition. Okay.

16 MS. SPELLS: He did.

17 THE COURT: Could we trail it?

18 MS. SUDANO: Yes, if we could, Your Honor.

19 [Matter trailed and recalled]

20 THE MARSHAL: Recalling bottom of page 14, C314260, Harvey.

21 MS. SPELLS: Good morning, Your Honor, Jasmin Spells on his behalf.
22 He's present in custody.

23 THE COURT: Hi.

24 MR. SCHWARTZ: Good morning, Your Honor, Bryan Schwartz for the
25 State and Steve Rose.

1 THE COURT: All right, so this is a motion for O.R. release under intensive
2 supervision or under house arrest and I have an opposition by the State. So,
3 Ms. Spells, anything you want to add?

4 MS. SPELLS: Your Honor, Mr. Harvey just wants the Court to know --
5 and you have been present. He has been present at all of the scheduled court
6 dates that he was out of custody on. I know that this Court so graciously gave
7 him an opportunity at house arrest, and I did receive a report from house arrest.
8 I tried to make contact with the officer from house arrest. He was just not in
9 the office on the day that I called. I spoke with another officer and I was
10 curious about whether or not they had any specific resources to have him
11 maybe attend some counseling or treatment while he is out of custody.

12 I think the issue more so was that there was a dirty drug test. So
13 he is willing to go to NA. And if there are any other programs that he can do,
14 he would be able to do that. He is the sole supporter of his family at this time.
15 And I have had contact with his fiancée who has informed me of that as well.
16 So he is asking the Court for another opportunity at house arrest and/or
17 intensive supervision.

18 THE COURT: Okay.

19 MR. SCHWARTZ: And, Your Honor, as of the initial time he asked for
20 house arrest I objected. Again, the State's opposed to that. He's made it clear
21 he's not going to follow the rules of house arrest. The motion that I -- the
22 opposition I submitted, just in brief, as you know, he's got 7 prior felonies. That
23 was the State's concern last time. Additionally, those felonies consist of him
24 evading police officers. Again, not following the rules of authority figure. So at
25 this time, the State does believe it would be inappropriate for house arrest.

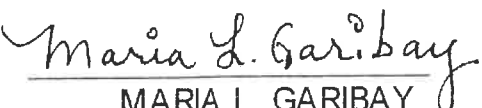
1 THE COURT: All right. The request is going to be denied. We've given
2 you a couple opportunities. So you will remain in custody until your trial date
3 which is currently November 7th, 2016. Thank you.

4 MR. SCHWARTZ: Thank you, Your Honor.

5 PROCEEDINGS CONCLUDED AT 10:16 A.M.

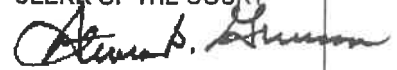
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7 ATTEST: I do hereby certify that I have truly and correctly transcribed the
8 audio/video recording in the above-entitled case to the best of my ability.

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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

ALFRED C. HARVEY,

Defendant.

CASE NO. C314260-1

DEPT. NO. XXIII

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE STEFANY A. MILEY, DISTRICT COURT JUDGE

MONDAY, OCTOBER 31, 2016

**DEFENDANT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE, FOR A
CURATIVE JURY INSTRUCTION ON THE STATE'S FAILURE TO GATHER OR
PRESERVE MATERIAL EVIDENCE**

APPEARANCES:

For the Plaintiff:

MICHELLE SUDANO, ESQ.
Deputy District Attorney

For the Defendant:

JASMIN D. SPELLS, ESQ.
Deputy Public Defender

RECORDED BY: MARIA L. GARIBAY, COURT RECORDER

1 MONDAY, OCTOBER 31, 2016, 10:33 A.M.

2
3 THE MARSHAL: Bottom of page 5, C314260, Harvey.

4 THE COURT: Hi, Mr. Harvey, good morning.

5 THE DEFENDANT: Good morning, ma'am.

6 MS. SPELLS: Good morning, Your Honor, Jasmin Spells on his behalf.

7 THE COURT: Okay. So good morning. So is the State going to oppose?

8 MS. SUDANO: We are, Your Honor. This is Mr. Schwartz's case. He
9 indicated that he had either filed oppositions or would be getting oppositions
10 filed to everything by no later than today. So it was his request to just pass the
11 calendar call until Wednesday with the motions.

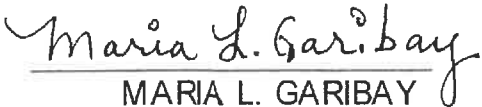
12 THE COURT: I would need that opposition immediately so I can read it.
13 So we're going to have to continue it to Wednesday.

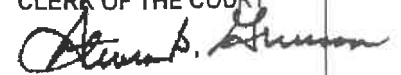
14 THE CLERK: November 2nd, 9:30.

15 PROCEEDINGS CONCLUDED AT 10:36 A.M.

16 * * * * *

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

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21 MARIA L. GARIBAY
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4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6
7 STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 ALFRED C. HARVEY,

11 Defendant.

CASE NO. C314260-1

DEPT. NO. XXIII

TRANSCRIPT OF PROCEEDINGS

12
13 BEFORE THE HONORABLE STEFANY A. MILEY, DISTRICT COURT JUDGE

14 WEDNESDAY, NOVEMBER 2, 2016

15
16 **DEFENDANT'S MOTION TO SUPPRESS SHOW-UP IDENTIFICATION AND**
17 **SUBSEQUENT IN-COURT IDENTIFICATION...DEFENDANT'S MOTION TO**
18 **ALLOW DEFENDANT TO COVER HIS FACE TATTOOS...DEFENDANT'S**
19 **MOTION TO DISMISS, OR IN THE ALTERNATIVE, FOR A CURATIVE JURY**
20 **INSTRUCTION ON THE STATE'S FAILURE TO GATHER OR PRESERVE**
21 **MATERIAL EVIDENCE...CALENDAR CALL**

22 APPEARANCES:

23 For the Plaintiff:

BRYAN A. SCHWARTZ, ESQ.
STEVEN J. ROSE, ESQ.
Deputy District Attorneys

24 For the Defendant:

JASMIN D. SPELLS, ESQ.
Deputy Public Defender

25 RECORDED BY: MARIA L. GARIBAY, COURT RECORDER

1 WEDNESDAY, NOVEMBER 2, 2016, 10:54 A.M.

2
3 THE MARSHAL: Page 2, C314260, Harvey.

4 THE COURT: I think this is Ms. Spells.

5 MS. SPELLS: Good morning, Your Honor.

6 THE COURT: Hi, good morning. Okay, so we have a couple of motions
7 on today. And let's start with the first question. Are you guys going to be
8 ready for trial?

9 MR. SCHWARTZ: The State's not, Your Honor. I just got set in an
10 invoked case for next week so I was going to be requesting a continuance. I
11 know the defense has had a couple prior continuances. That was going to be
12 my request. As the State, I did inform Ms. Spells of that earlier.

13 THE COURT: Are you ready?

14 MS. SPELLS: Yes.

15 THE COURT: How long are you going to be in your other trial?

16 MR. SCHWARTZ: Given that it's a short week next week, I had thought
17 about maybe trying to get two trials next week but I think it would probably be
18 three days next week. We did talk. Ms. Spells and I did talk about a short
19 continuance to maybe starting the trial on the week of the 14th, I believe is the
20 date.

21 THE COURT: Well, I'm in civil, but --

22 MR. SCHWARTZ: Okay.

23 THE COURT: -- I don't have a problem putting you there. I'd have to --
24 you want to go ask Carmen if we have a civil trial the 14th? [The Court
25 addressed the Law Clerk].

1 The problem is is the next week is Thanksgiving and I'm gone.

2 MR. SCHWARTZ: Correct.

3 [Colloquy by the Court and Court Clerk]

4 MR. SCHWARTZ: The week of the 14th would also be -- wait, I
5 apologize.

6 THE COURT: You would only have 5 days. I don't even know if I could
7 do it. I have to see if I have civil trial that's going.

8 MR. SCHWARTZ: And --

9 MS. SPELLS: And I have -- hold on one moment, I have --

10 MR. SCHWARTZ: -- from the State's perspective it would be three to
11 four --

12 MS. SPELLS: Your Honor, when is the last week of this stack that we're
13 in?

14 THE COURT: Next week.

15 THE CLERK: Next week.

16 MS. SPELLS: Oh, okay.

17 THE COURT: It's only one count of robbery with use. How many
18 witnesses do you have?

19 MR. SCHWARTZ: I anticipate 4 to 5 witnesses, Your Honor.

20 THE COURT: It's one week.

21 MR. SCHWARTZ: Yeah, definitely.

22 THE COURT: I don't think we have anything until the beginning of
23 December.

24 [Colloquy by the Court and Court staff]

25 THE COURT: So we can do it the week of the 14th as long as you are

1 finished by the 18th.

2 MR. SCHWARTZ: We will, Your Honor.

3 MS. SPELLS: We should be finished. Court's brief indulgence.

4 I think that should be fine. I have two set that week, but I don't
5 believe either of those are invoked, so.

6 THE COURT: Okay.

7 [Colloquy by the Court and Court staff]

8 THE CLERK: So calendar call November 9th at 9:30; jury trial
9 November 14th at 1:00 p.m.

10 THE COURT: Okay, so let's go through the defense's motion. The first
11 one I have is Defendant's motion to dismiss or, in the alternative, for a curative
12 jury instruction on State's failure to gather or preserve material evidence. And
13 it looks like you're referencing any cellphone photos or video that may exist. Is
14 that correct?

15 MS. SPELLS: That's correct, Your Honor. And our understanding is that
16 there were two individuals with their cellphones out either recording or taking
17 photographs of what happened. In our investigation, we did confirm that at
18 least one of those individuals did have their cellphone out and take something,
19 either pictures or --

20 THE COURT: How did you confirm it? Did you talk to that witness or did
21 you talk to someone else to find out the information?

22 MS. SPELLS: My investigator spoke with the witness.

23 THE COURT: Okay.

24 MS. SPELLS: I personally did not.

25 THE COURT: And so when your investigator spoke with the witness did

1 your investigator ask for copies of that footage?

2 MS. SPELLS: That's correct. And we were informed that that had been
3 deleted. Our understanding is that those were potentially pictures.

4 THE COURT: Okay.

5 MS. SPELLS: Possibly videos, but definitely pictures and that it would've
6 been of the individual who committed the offense.

7 THE COURT: So did that witness indicate whether or not they had given
8 a copy of that video to anyone by law enforcement, the State or anyone else?

9 MS. SPELLS: That I'm unclear of. I don't believe so. My understanding
10 is that they were deleted after the show-up identifications.

11 THE COURT: Do you -- did your -- did that witness indicate whether or
12 not the video was made known to anyone in this case such as law enforcement
13 when they were doing their investigation?

14 MS. SPELLS: That answer I don't know.

15 THE COURT: Okay. And do you have any indication what was on that
16 video or photograph?

17 MS. SPELLS: Yes, it would've been of the individual. So I know the
18 State in their opposition states that it was a vehicle or of the U-Haul truck, but
19 that's not our understanding that it had taken place right in front of the store
20 where the allegations are that the encounter happened. So our position would
21 be that it should definitely be if indeed Mr. Harvey a picture of him or the
22 individual who was there and photographs as to what was in his hands if
23 anything. If there was a weapon, this case is a robbery with use.

24 THE COURT: And are you going --

25 MS. SPELLS: And possibly video.

1 THE COURT: Are you going to call that witness to testify regarding their
2 observations at the time of the events? Are you going to call them as a
3 witness? It sounds like you're saying their testimony could be favorable to your
4 position.

5 MS. SPELLS: I believe the State actually has that witness noticed and
6 would be calling them at trial and should the Court grant an evidentiary hearing
7 with regard to this then we would definitely reach out or coordinate with the
8 State to have that witness testify because I think that there are some things
9 that need to be clarified there. But our position is that it's definitely material
10 based upon what we believe would've been on the photographs and/or the
11 video. It's obviously no longer in existence.

12 THE COURT: So how did you get the name of this witness? Was it -- is
13 that individual on the police report?

14 MS. SPELLS: Yes.

15 THE COURT: Did that -- and I'm sorry, I think I asked this already, but did
16 that individual -- did that witness indicate they had told the police that they had
17 video or photographic footage of the event in question?

18 MS. SPELLS: I am not sure if they communicated that to law
19 enforcement.

20 THE COURT: So how do you believe -- is there anything to indicate that
21 the police knew or should have known or the State knew or should have known
22 of the existence of the video and/or photographs?

23 MS. SPELLS: At this time period, I think that we would need a hearing to
24 flush that out. At the preliminary hearing it was only the security officer,
25 Mr. Munoz who testified. We subsequently did make contact with the

1 employees at TJ Maxx, one being Mr. Munoz. And I believe we made contact
2 with another employee. The officer was never at the preliminary hearing. They
3 don't typically communicate with us prior to the trial so we have not had an
4 opportunity to speak with the officers with regard to that information or
5 question the officers because they weren't present at -- they weren't called at
6 preliminary hearing.

7 THE COURT: Okay. Anything on this issue?

8 MS. SPELLS: Additionally, Your Honor, I mean we do need to meet the
9 standard of whether or not it's bad faith or gross negligence. I would submit to
10 the Court that at a minimum it is gross negligence. That's the fine when an
11 officer acts directly contrary to the standard policies and investigative
12 procedures.

13 THE COURT: Why do you think it's gross negligence because right now
14 there is no -- there is nothing we have so far indicating that the officer knew or
15 had any reason to reasonably believe that there was something material or
16 probative on either -- on that cellphone?

17 MS. SPELLS: There was conversations about video here obviously
18 because the officers did impound the video from the TJ Maxx surveillance. The
19 description that the witness Mr. Munoz gave was to avoid any type of physical
20 characteristics. He only speaks of black male adults with some different
21 clothing descriptions. There's nothing with regard to anything as far as what
22 does this person actually look like. If I say well, white female adult in white
23 shirt, blue pants, that could be a lot of different individuals and so --

24 THE COURT: Are you getting into the show-up issue or are you
25 discussing -- I'm trying to figure out. I mean it's more than, you know, it's a

1 higher standard. I mean gross negligence is, you know, a fairly significant
2 showing. But why would the officer -- what evidence is there that the officer
3 knew or reasonably should've known? Or maybe ask it a different way, why
4 they felt below their standard of care in conducting their investigation by not
5 obtaining any cellphone footage?

6 MS. SPELLS: And what I'm getting to is the fact that when we spoke
7 with the TJ Maxx employees, our understanding -- or my understanding in
8 speaking with our investigator is that they had kept video and/or photograph to
9 make sure that it is the same person, should the cops find them. And so if
10 that's the case, then it would make sense that some conversation would've
11 come up especially if there was communication about other video surveillance,
12 that being with TJ Maxx surveillance from the store.

13 So here I think that, you know, it was pertinent especially given the
14 fact that there's a lack of physical descriptors as to whether or not that witness
15 -- to verify who that person was and what conversations which again is a
16 second issue, but what conversations occurred in the show-up identification,
17 that conversation could've very well come up. So we did not have an
18 opportunity to speak with the officers, but I don't believe that the lack of
19 having the ability to speak with them, I think the best thing to do would be to
20 have an evidentiary hearing if the Court is concerned that they were unaware.
21 And if unaware, then they could not have not met an office standard or an
22 office policy. But I do think that impounding a video here is standard. And
23 they obviously did impound some video here, so I believe that this is gross
24 negligence because it falls outside of just mere negligence.

25 And additionally, it's described as manifestly a smaller amount of

1 watchfulness in circumspection than the circumstances required of a prudent
2 man. I think that that definitely fits the situation here, prudent officer or
3 prudent man would have definitely looked into that and gotten a copy of that
4 when they got a copy of the video surveillance from their retail establishment.

5 THE COURT: Okay.

6 So by the State. It's obviously the officers knew about these
7 witnesses, so why didn't they ask for video or anything else?

8 MR. ROSE: Well, Your Honor, I think for the first part we don't know if
9 the officers ever found out from this particular witness that he had taken
10 photographs or any video footage of that. And you have multiple officers on
11 the scene were trying to find multiple things.

12 THE COURT: Mm-hmm.

13 MR. ROSE: You have an air unit which is actively responding to the U-
14 Haul.

15 THE COURT: Okay.

16 MR. ROSE: We have other officers who may have been impounding the
17 video from TJ Maxx. Those may have been different officers from the officers
18 that actually were speaking with this particular witness, with a different
19 witness than the one who actually went out. The victim actually went out and
20 did the show-up. But you do have, you know, a number of different people
21 involved and what they believe this person may have told them during that
22 interaction. That person doesn't initially tell them that hey, I was also taking
23 pictures. The officers may have no reason to believe that the person actually
24 did that.

25 THE COURT: The problem is it's all speculation. I just don't know.

1 MR. ROSE: That's correct, Your Honor. I think that the burden at this
2 time is on the defense to make that initial showing. So I think just based on
3 what we have before Your Honor today you would be justified in denying the
4 motion. However, if Your Honor wanted to have an evidentiary hearing on it
5 where we could have the individual or individuals who may or may not have
6 taken these photographs come in and testify to what they took, what it
7 showed, when they deleted it, who they spoke to if anybody about it. That
8 would be a more appropriate response than granting the motion. But I think
9 just based on the pleadings that we have and the burdens of the various parties
10 I do think it could be denied today.

11 THE COURT: I don't think I have adequate information from either side in
12 order to make a finding one way or the other whether or not there was gross
13 negligence or that the officers may or may have not acted in bad faith. I mean
14 as I said we're all speculating as to what transpired on the time -- at the time in
15 question. So I think that we're just going to need a very brief hearing to know
16 what went down with respect to the officer in his discussions with the witness
17 at issue. And also, if the witness is available, did the witness inform the officer
18 that he had photographs or video evidence or something because if the witness
19 never told the officer, I don't know that the officer would have a reason to
20 obtain it. So again, we're just speculating. We would just need an hour max
21 with those two people before trial.

22 If you're going to trial on -- I don't know if we can put you on the
23 14th. Could we do it like -- when do you want to do it? Do you want to do it?
24 Well, I don't want to do it right before the trial. What if we did like Wednesday
25 the 9th at 11:00; can we try to get that officer and that witness in at that time?

1 MR. SCHWARTZ: That's fine.

2 MR. ROSE: That's fine.

3 THE COURT: Okay. Can we do that at 11:00? Do you have anything
4 else at 11:00 on the 9th?

5 THE CLERK: No.

6 THE COURT: Okay, let's do November 9th at 11:00 o'clock, a brief
7 evidentiary hearing on Defendant's motion to dismiss, or in the alternative, for a
8 curative jury instruction on the State's failure to gather or preserve material
9 evidence, okay?

10 THE CLERK: And put the calendar call at 11:00 as well?

11 THE COURT: Yeah, and we'll move the calendar call on that date as well
12 at 11:00 o'clock. That way you only have to come in once. Let's discuss
13 some of the other motions you have. The next one is the motion to suppress
14 the show-up identification and subsequent in-court identification. I think that
15 the defense was pretty distinct as far as why they think the show-up was a
16 necessarily suggestive. The greater question I would have is on the in-court ID,
17 you know, as far as like the in-court ID, you want to suppress that one as well?

18 You know, it's a little bit different circumstance. I understand that
19 he's probably the only person walking over to the defense table, which is the
20 case all the time. But, you know, it's also a different situation that you don't
21 have, I don't know, I'd like to say all the adrenaline that all goes on with
22 everything happening so fast. It's obviously bright light. You can see someone
23 a lot better versus, you know, maybe how he's able to see the individual from
24 several feet away sitting in a patrol car. So why do you think the in-court
25 identification likewise or should also be suppressed?

1 MS. SPELLS: Because there is not any articulable facts that that
2 identification is reliable on its own. The problem is is that once you have seen
3 an individual so many times, that face can be familiar. Like for instance, if you
4 just are in a store or something and you see someone it's like oh, that's a
5 familiar face, I know that person. Immediately you may not place where you
6 know that person from; but here, what you have is seeing the same individual
7 face numerous times and so your brain in an essence you would identify that
8 person because it's a familiar face, someone that you have seen on a number of
9 different occasions. But that by itself is not evidence that that identification is
10 reliable in and of itself and that it's not dependent upon the other times that
11 you've seen this person, especially the one where it was inherently suggestive
12 where you have the two cops and the bright light shining. And so I think that
13 there needs to be some type of independent indicia that that identification is not
14 reliant on the prior identifications, but it's kind of on its own reliable.

15 THE COURT: Okay. Well, obviously at trial that's always the question
16 the State ask of every witness. It would have to be some foundation laid prior
17 to asking that question. But let me hear from the State, please.

18 MR. SCHWARTZ: And, Your Honor, just in reference to the subsequent
19 in-court identification, I mean it's a different standard from a motion to suppress
20 like a pretrial identification. It's a little higher standard. And I think one thing
21 that the Courts have looked at that I referenced in the motion is if there's other
22 evidence to tie this Defendant to the scene to support the identification which,
23 you know, makes it less concerning that we have a misidentification issue. And
24 the surveillance video in this case has the Defendant. You can tell that it's him.
25 It zooms in on him on his face and that supports what the victim is saying that

1 he's the one that was in the store and commits the crime. So I think -- I don't
2 think the defense has met that higher burden to show that, you know, a
3 subsequent in-court identification should be suppressed or denied. And I think
4 there's this additional evidence, a surveillance that supports or bolsters that it's
5 not a misidentification.

6 THE COURT: Okay. Anything you want to add on the show-up ID?

7 MR. SCHWARTZ: I'll submit it on the motion.

8 THE COURT: Okay, so I'm going to grant in part and deny in part. I'm
9 going to deny the request to suppress the in-court identification. I don't think
10 that it's a necessarily suggestive. Again, it is a totally different situation. It's
11 bright lights. I think that the individual could clearly look at the individual. I
12 mean it's also a shorter distance and determine whether or not that is the
13 individual in question. As far as the show-up identification, I am going to grant
14 that. I do think that the way it was done in this particular case is unnecessarily
15 suggestive and unreliable. And the way it was done would also lead to
16 mistaken identification.

17 In this particular case, there was only one individual shown to the
18 victim. At that point, the Defendant was handcuffed, surrounded by police
19 officers. I believe the individual was also in the police car at that same time.
20 There wasn't really any exigent circumstances that I could see that would
21 warrant doing a one-on-one, especially in custody in handcuffs in a police car
22 versus doing, you know, a six pack or another lineup of individuals. And as far
23 as -- I do understand there's some similarities as to what the victim described
24 as far as the clothing of the Defendant. And there were similarities as to what
25 he was found versus to what the victim described. That really is the only real

1 description given by the victim. The other description given by the victim was
2 that he's a black male. And I would think that would describe at least eight
3 percent of our population here in Las Vegas. So I am going to suppress that.

4 Let's talk about the next one which is the request to cover the
5 facial tattoos. This is kind of becoming a big issue nowadays.

6 MS. SPELLS: Just briefly with regard to that, Your Honor. I would note
7 that the State indicates in their opposition, and we don't dispute that the
8 witness faded on the show-up, he writes in that statement that he recognized
9 the individual by the neck tattoos which was the first time that we had been
10 given any information with regard to the individual having tattoos. But I do
11 want to make very clear that our motion did not request to cover up any of the
12 neck tattoos. We only requested to cover up the face tattoos, so nothing else,
13 not the arms or the neck.

14 THE COURT: Let me ask this. I've had cases where I've granted, I've
15 had cases where I've denied. I mean in this particular case -- and this is the
16 State's argument, identity and that issue. And I understand that they identified
17 maybe the neck tattoos but they didn't identify the facial tattoos. But, you
18 know, identity is obviously at issue. And his overall appearance would be
19 relevant. The other thing is based upon the crime he's charges with, if you look
20 at the definition of robbery, the victim's perception or the victim -- what the
21 victim is perceiving in whether there's a fear of injury, you know, all that stuff
22 is relevant. So presumably how they're viewing that individual at the time
23 would likewise be relevant whether to determine whether or not the statute or
24 the burden of proof by the State is met. Do you follow what I'm saying?

25 MS. SPELLS: I do.

1 THE COURT: So I mean yeah, in some cases it's not really an element
2 what the victim is perceiving, but in this particular case it is.

3 MR. SPELLS: Well, I believe that definitely the victim's perception is
4 important, but whether or not the victim fell in apprehension of fear or
5 immediately bodily injury that was going to be significant or that in its own
6 belief that, you know, whether or not someone has a tattoo is necessarily --
7 should be something that puts you in fear of whether or not you're going to be
8 harmed that it should be something other than that.

9 THE COURT: But isn't the reality everyone perceives people differently in
10 that, you know, rightly or wrongly they gauge their response according to what
11 they see, whether it's what a person look like, what a person's wearing, the
12 way they're acting out in public. I mean it would seem all those things go into
13 whether or not the individual, you know, believes there's a fear of injury
14 [indiscernible] to your person or property.

15 MS. SPELLS: I would agree with the Court that unfortunately that's how
16 humans are, that we do judge people based upon those outside appearances.
17 But I would argue that that is --

18 THE COURT: And actions.

19 MS. SPELLS: -- the very reason why we are filing this motion so that we
20 can get a fair trial and that off the first bat people are not judging Mr. Harvey by
21 saying oh, you have a face tattoo, you must be a criminal, you must have
22 committed these actions. And that at the very least, the evidence should be
23 weighed, the evidence presented by the State as well as the defense's to
24 whether or not he's guilty of crimes as charged. And I do believe that people
25 who are potential jurors are going to have that same reaction and may not be

1 able to put those feelings aside and be impartial until they've heard all of the
2 evidence in closing arguments. So that is definitely our concern. And I don't
3 try to taper it like I said. Only requesting that we do the face tattoos and
4 nothing else and that would still leave the witness the ability to say I recognize
5 the neck tattoo, which was the only thing he stated in any of the discovery that
6 we've seen thus far.

7 THE COURT: Okay.

8 By the State.

9 MR. SCHWARTZ: Yeah, I think on top of the Court's concern with the
10 identification issue, any juror that gets seated is going to have to agree that
11 they're going to be fair and impartial to the Defendant, they have no bias
12 against tattoos or anything of that nature. I think that's going to satisfy the
13 defense's concern that they're not going to get a fair trial.

14 THE COURT: Is there anything else?

15 MR. ROSE: Just one other thing, Your Honor, very briefly. It's that not
16 only do we have the identifications by the individuals, but we also have the
17 video from inside the store which as Mr. Schwartz indicated in fact if you zoom
18 in on the Defendant, you can see him there. So I mean anything which would
19 change his appearance, but we're going to be showing that video to the jurors
20 is going to be in a way misleading them because the appearance that they'll be
21 seeing of the person sitting at the table is going to be different than what they'll
22 be seeing on the video. And then we're simply creating doubts and questions
23 in their minds that we have no reason to put there. And that I'm sure that
24 Ms. Spells would be able to, as Mr. Schwartz said, bring out in voir dire and
25 make sure that the people who are on the jury can be fair and impartial. And if

1 there is a juror who expresses reservations based upon the tattoos, that juror
2 can be -- the potential juror can be excused and a new juror sat. Now, either
3 that would be a more appropriate way to go about it than to give the jurors an
4 altered vision of the individual that they're going to see on video.

5 THE COURT: Okay, I --

6 MS. SPELLS: Court's brief indulgence, please.

7 THE COURT: YEAH.

8 [Defense counsel and District Attorneys confer]

9 MS. SPELLS: And, Your Honor, Mr. Harvey actually indicates that on that
10 date he did not have face tattoos because they were covered. So that is kind
11 of contrary to the State's position that we would [indiscernible]. I mean I
12 definitely wouldn't be arguing that if they're --

13 THE COURT: Well, can you prove it?

14 MS. SPELLS: I haven't looked at that close-up of the video recently.

15 THE COURT: Well, hold on a second. Was he arrested subsequent,
16 immediately after this event?

17 MR. SCHWARTZ: Yes.

18 MS. SPELLS: Within an hour.

19 THE COURT: Okay.

20 MR. SCHWARTZ: Within an hour.

21 THE COURT: Has he remained in custody since the event?

22 MR. ROSE: No.

23 MR. SCHWARTZ: No.

24 THE COURT: Okay. So he's been out of custody for how long?

25 MS. SPELLS: I'm sorry, I'm not indicating that the tattoos were done

1 subsequently. I'm indicating that he stated he had covered them on that day
2 with like makeup or something else.

3 THE DEFENDANT: I covered them sometime for work.

4 MS. SPELL: So that they weren't visible, not that they weren't done.
5 And I was inquiring with the State whether or not when they most recently
6 viewed the video if they saw the tattoos on the close-up.

7 THE COURT: Okay.

8 MS. SPELLS: But we wouldn't be arguing that the lack of tattoos or the
9 tattoos is some sort of misidentification. That's disingenuous after filing such
10 motion, so that would not be part of our argument at all.

11 THE COURT: Okay, I'm going to do this. As far as the motion to cover
12 the tattoos, at this point it's going to be denied for the reasons I kind of alluded
13 to. I think that it is relevant with respect to identification. And given the
14 nature of the charge against the Defendant, I think it's relevant to the elements
15 of the crime that the State has to prove. Now, if what Ms. Spells is saying is --
16 I mean, but this assumes that the Defendant looks the same as he did on the
17 day in question. So assuming that what Ms. Spells is saying is true that he had
18 those -- at least some of those tattoos covered up on the date in question,
19 you'd have to provide some kind of proof. 'Cause other than that, it's kind of
20 self-serving at this point.

21 MS. SPELLS: Sure.

22 THE COURT: Whether it's by way of video that it was taken, I don't
23 know, whatever you can think off.

24 MR. ROSE: Thank you.

25 THE COURT: Okay.

1 And I don't -- just so I know how many jurors I'm going to have to
2 get, what tattoos do you have on your face?

3 THE DEFENDANT: I have like a dream catcher and God lives.

4 THE COURT: Is that it?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: You don't have any other; nothing else?

7 THE DEFENDANT: On my face?

8 THE COURT: Yeah.

9 THE DEFENDANT: No, that's it. I just had them covered up sometime for
10 work on the street and I had them covered up that day.

11 THE COURT: Okay. I just need to know what they are 'cause some of
12 them can be a little bit more offensive to potential jurors than others, so I need
13 to know how big of a panel I needed to get. Okay. All right, so let's see, I've
14 covered I believe --

15 THE DEFENDANT: Your Honor, may I ask a question?

16 THE COURT: No. Hold on. I think I've covered all the motions; correct?

17 MS. SPELLS: That's correct.

18 THE COURT: And we have an evidentiary hearing next week. And I
19 think -- is it a question for me or your attorney?

20 THE DEFENDANT: You took my bail last time I was here. I was just
21 trying to see if maybe I could get my bail back.

22 THE COURT: You have to discuss that with Ms. Spells, okay?

23 Anything else?

24 MS. SCHWARTZ: No, not from the State.

25 THE COURT: I've got to call my next case. Thank you.

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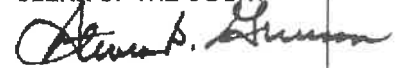
MR. SCHWARTZ: Thank you.

PROCEEDINGS CONCLUDED AT 11:22 A.M.

* * * * *

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


MARIA L. GARIBAY
Court Recorder/Transcriber



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ALFRED C. HARVEY,

Defendant.

CASE NO. C-16-314260-1

DEPT. XXIII

BEFORE THE HONORABLE STEFANY MILEY, DISTRICT COURT JUDGE

WEDNESDAY, NOVEMBER 9, 2016

**TRANSCRIPT OF PROCEEDINGS
EVIDENTIARY HEARING**

APPEARANCES:

For the State:

STEVEN J. ROSE, ESQ.
Deputy District Attorney

For the Defendant:

JASMIN D. SPELLS, ESQ.
KELLEY R. JONES, ESQ.
Deputy Public Defenders

RECORDED BY: MARIA GARIBAY, COURT RECORDER

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GAL FRIDAY REPORTING & TRANSCRIPTION
10180 W. Altadena Drive, Casa Grande, AZ 85194 (623) 293-0249

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Wednesday, November 9, 2016 at 11:24 a.m.

THE MARSHAL: Page 17, C314260, Harvey.

THE COURT: Alfred Harvey. Good morning, Mr. Harvey.

THE DEFENDANT: Good morning. Ooh. What the --

MR. ROSE: You okay?

THE DEFENDANT: Sorry.

THE COURT: Are you okay, Mr. Harvey?

THE MARSHAL: Easy.

UNIDENTIFIED SPEAKER: You all right?

THE MARSHAL: Easy.

THE DEFENDANT: Celebrating all night, Your Honor, sorry.

THE MARSHAL: Kind -- kind of that yoga thing, huh?

THE DEFENDANT: That yoga, yeah --

THE COURT: What were you celebrating, sir?

THE DEFENDANT: Oh, the election --

THE MARSHAL: He's in the incentive unit.

THE DEFENDANT: -- the direction the country's going.

THE COURT: The which unit?

THE MARSHAL: He's in the incentive unit. He had a smoothie this morning
to get over here.

THE DEFENDANT: Yes, ma'am.

THE COURT: Incentive unit?

THE MARSHAL: Yeah.

THE DEFENDANT: Yes, ma'am.

1 THE MARSHAL: Gets to do yoga and all kinds --
2 THE DEFENDANT: Yoga, meditation --
3 THE COURT: Really?
4 THE DEFENDANT: -- creative writing. Yes.
5 THE MARSHAL: Yeah.
6 THE DEFENDANT: But I was happy --
7 THE COURT: So I've got to be incarcerated to get time to myself?
8 THE MARSHAL: Yes.
9 THE DEFENDANT: I was happy with the --
10 THE COURT: Well that's interesting.
11 THE DEFENDANT: -- way the election went last night.
12 THE COURT: Okay. I've never heard of that. Okay.
13 THE MARSHAL: It's a new thing over at the jail, Judge.
14 THE COURT: Does it make you feel more peaceful?
15 THE DEFENDANT: Makes me feel great. A leave (sic) actually came into the
16 meditation a couple days ago just out of nowhere where, you know, it's closed in so
17 a leaf comes floating in.
18 THE COURT: Floated down --
19 THE DEFENDANT: I was like -- 45 of us meditating.
20 THE COURT: Wow.
21 THE DEFENDANT: Yeah.
22 THE COURT: Okay. Okay, Ms. Spells --
23 MS. SPELLS: Yes, Your Honor.
24 THE COURT: -- so we're here on defendant's motion to dismiss or in the
25 alternative for a curative jury instruction on State's failure to gather or preserve

1 material evidence. Okay, so we set this for an evidentiary hearing because we --
2 when this was heard for oral argument, the Court's concern that we're all kind of
3 having to speculate what the police did or did not know. So we set it for a brief
4 hearing to have the police or whoever is the appropriate witness testify. Probably
5 the person who owned the cell phone. Let's put that on hold for a moment.

6 MR. ROSE: Yes, Your Honor.

7 THE COURT: I did receive a motion in limine and I just got it this morning so
8 I don't know if the State's even had a chance to look at -- my biggest concern with
9 the motions limine is Mr. Harvey is set for trial next week.

10 MS. SPELLS: Yes.

11 THE COURT: You guys would have to go to overflow because I have an
12 invoked case also set for next week. I can't send you to overflow unless all the
13 issues in the case are resolved. So that would be a problem with you guys going to
14 trial next week.

15 MS. SPELLS: I did speak to the State last week when we reset this calendar
16 call about trying to negotiate one of these issues listed in the motion in limine. We
17 were not amenable to an agreement and that's why it was filed. So they were
18 informed of that. I spoke with Mr. Schwartz last night and let him know that it had
19 been filed. I don't believe he was able to access it. He had just gotten out of trial. I
20 do have a copy I can show to the State.

21 I don't know, it's -- we can try to discuss maybe the other two issues. I
22 believe that they -- the conversation that we had, they were not in agreement with
23 request number 1, which is testimony that Mr. Harvey's kids were with him at the
24 time of the incident.

25 THE COURT: I haven't had really a chance to read all this. I just -- I literally

1 received it as I was walking into court.

2 MS. SPELLS: Okay.

3 THE COURT: And here's the problem, overflow calendar would be tomorrow
4 because Friday's a holiday. So I don't know what we're going to do with this
5 because it would preclude you from going to trial next week.

6 Are you trial counsel?

7 MR. ROSE: I am, Your Honor, along with Mr. Schwartz. We did receive
8 notice from Ms. Spells last night about this motion. I believe at that point it was not
9 on Odyssey; we were not able to actually read it. I apologize, I did not have the
10 chance to -- to get a copy of it this morning.

11 THE COURT: Why don't you sit down. We're going to be here a while.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Thank you.

14 MS. SPELLS: Would it be possible maybe to speak to the judges and see if
15 they can hear this motion because sometimes the motion in limines are made orally.
16 So I understand the rule that we can't be sent to overflow with the pending motion,
17 but maybe given the nature of the motion, it would be something that the Court
18 would --

19 THE COURT: Well can we -- I -- I think the State at least needs to resolve it.
20 I mean read -- at least needs to read it. Some of it seems straightforward.
21 Testimony that Mr. Harvey's kids with him at the time of the incident. I mean I guess
22 the first question would be what is the relevance. I don't know if the State's had
23 chance to even think about it or get ready for it.

24 MR. ROSE: Well, so when we spoke at the calendar call previously, Ms.
25 Spells did inform us that that would be one issue that she might be raising in a

1 motion in limine. The other --

2 THE COURT: So let's stay with that one.

3 MR. ROSE: Yes, Your Honor.

4 THE COURT: And I don't know again if you can -- if you need to read it to be
5 able to argue any of this, tell me and I'll -- we'll go ahead and trail this. But as far as
6 the testimony that Mr. Harvey's kids were with him at the time of the incident,
7 sounds like you guys have already had some discussions. What do the children add
8 to this case?

9 MR. ROSE: Your Honor, I don't think the --the State's intent would be even to
10 -- to highlight the presence of the children. The State's position is, you know, it's
11 simply part of the entirety of the -- the case. I believe in fact there's testimony
12 regarding or there's statements from the victim in the case who indicated that when
13 he was outside with the defendant, he said something to the effect of, you know, hey
14 let's take this inside and not do it in front of your kids. And then in response to that
15 is when the -- the knife was drawn.

16 THE COURT: Does the -- do the children have anything to do with what
17 transpired because here's the concern and I'm sure this is what Ms. Spells' concern
18 is. I understand that somehow they're involved in the facts of this case, but it
19 doesn't sound like they are; they're just kind of present. You know, the concern is
20 always that it would be prejudicial to a jury, you know, they -- why is this guy, dad
21 doing whatever he's doing in front of his children, which the children don't really
22 seem to have any relevance so I'm asking you what do the children add other than
23 just mere presence?

24 MR. ROSE: Well, mean they add in part the -- it adds to the interaction
25 between the victim and the Defendant. There was statements that were made

-7-

1 previously about --

2 THE COURT: Did they start talking because of the kids being there?

3 MR. ROSE: Well I think the statement was made, you know, why don't we
4 take this inside and not do it in front of your kids. We also have the video which
5 shows the Defendant going through the store with his kids, handing items to the
6 kids, taking items back from the kids, leaving, you know, from the store with the kids,
7 running to the car, the kids running along behind him. I mean I -- I think -- you know,
8 first I don't know why this is being brought now when we -- this case has been going
9 on for as long as it has.

10 Second, I don't think that, you know, to have -- this is not your typical
11 situation where there's obvious other bad act. Right, this is not something where,
12 you know, the jury is going to look at this and instinctively know that, you know, oh
13 well the State might have been able to add, you know, a -- you know, with the use or
14 aid of a child in the commission of a crime. I don't actually know if it could have
15 been because the kids were not actually used in the commission of the robbery
16 itself. He didn't use the kids in any way to help commit the robbery.

17 I think based upon the fact that, you know, it is -- a part of the crime
18 involves and it impacts the interactions between the victim and the Defendant, I
19 think it can go to the mindset of the victim because the victim -- you know, his
20 interaction, his intent, his mindset was hey let's take this thing inside, let's not do it in
21 front of your kids and then the response to that is, you know, to have a knife pulled
22 on him. I think that that is important to show kind of his mindset and the use of force
23 or fear of force or violence and why he didn't pursue him, you know, as it goes to the
24 robbery itself.

25 So I think it is relevant to the robbery. I think it's not unduly prejudicial

1 because I don't think it's something that's obvious to the jurors that oh, hey this is
2 another, you know, crime or this guy's an inherently bad guy. You know, there's
3 nothing about it which -- which imports unfair prejudice. There's nothing about it
4 which would encourage the jurors to find him guilty on the basis of anything other
5 than the evidence that's actually presented. So I don't think that there is an actual
6 basis to keep it out.

7 Moreover it would also involve having to go and redact significant
8 portions of the video itself, because otherwise we'll have the Defendant wandering
9 around with these two young children next to him and then we just kind of leave it
10 out there like oh no, there are no kids involved. We're not going to talk about
11 children, you know, so --

12 THE COURT: Okay. Well hold on a second --

13 MS. SPELLS: May I respond?

14 THE COURT: -- let me ask Ms. -- what -- what were you attempting to
15 preclude?

16 MS. SPELLS: Mostly the statement from the security officer that the reason
17 he wanted Mr. Harvey to go back to the security office room is because the children
18 were present. I did not ask and I -- I clarified in the motion.

19 Now with regard to I believe the State is correct that there is one small
20 incident where Mr. Harvey may have handed a box to a juvenile male and then that
21 juvenile male puts that box back down on a shelf at a later time period. Outside of
22 that, the children are just in the store. I'm not requesting that they go and redact the
23 entirety of the video where the children are in the store. I would ask that, you know,
24 the portion where he's handing something to the male not be shown. It's not
25 relevant. That juvenile does later put something down.

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1 And there were no allegations of Mr. Harvey committing this crime with
2 the assistance of children which is what the enhancement statute specifies. And so
3 I don't believe it's res gestae. The security officer can testify that he asked Mr.
4 Harvey to go into the security room. That is something that is common in many
5 situations even when there are not children present so really it's just that statement
6 because we don't need to do this in front of your kids or that's the reason I wanted
7 you to go into the security room.

8 THE COURT: Okay. It doesn't sound like you really need the testimony
9 about going into the security room because of the kids and they don't have an issue
10 with it being a child depicted in the video.

11 MR. ROSE: Your Honor, I still think that it is relevant to the mindset of the
12 victim and his interactions with the Defendant. I think it shows, you know, not only
13 that he's going and -- and saying, you know, hey well let's go back inside, you know,
14 I think you still have things that, you know, belong to the store, but it goes -- you
15 know, it goes to how his approach is to the Defendant, his mindset which I think is
16 then relevant to his testimony about the Defendant's actions in response to that and
17 the mindset that that puts the victim in.

18 There were indications in a number of the motions that there's going to
19 be a challenge to what, you know, the mindset was of the victim, whether or not
20 there was actually, you know, the use of force or fear of force or violence and I think
21 that the entirety of the interaction between them up until the point in time when the
22 knife is drawn is relevant to that fact.

23 THE COURT: I don't see the relevance -- okay, so I -- I think that the
24 videotape is however the videotape is whether it depicts the children. I just don't
25 see the relevance of any discussion regarding his children because I -- there's -- the

1 State concedes that the children were not utilized in the commission of this offense.

2 MR. ROSE: Well, in -- in that case if there is no use of the children the
3 commission of the offense, then it's not an uncharged act. If we couldn't have add it
4 as an uncharged act, then it's not an uncharged act.

5 THE COURT: It just --

6 MR. ROSE: Your Honor, if --

7 THE COURT: I mean what -- what are you really leaving out? You're leaving
8 out testimony from -- like what is it, a sentence from a security guard that well let's
9 do this inside because your kids are here? Is that all you're leaving out really?

10 MR. ROSE: We would be leaving that out, but I think that there is an
11 importance to that. And I -- I -- if Your Honor wants, I'd be happy to brief it. I know
12 that that might delay things, but we are also not the ones who brought this motion
13 and this case has been going on for months --

14 THE COURT: I would have to honestly look at how it comes up in the context
15 of the sentence because -- is it just in a police report?

16 MR. ROSE: I believe it was.

17 MS. SPELLS: It is in the police report.

18 THE COURT: Like I said, I haven't even had a chance to look at it because I
19 just got -- let's go ahead and do the evidentiary hearing since we have people
20 waiting and we'll figure out what to do with this next. This really should have been
21 filed a long time ago.

22 MS. SPELLS: And Your Honor, just to briefly address that, the reason why
23 we don't ever file motion in limines really early is because it does just put the State
24 on notice, give them an opportunity to file a bad acts motion. The statute specifically
25 says --

1 THE COURT: Hold on.

2 MS. SPELLS: -- that --

3 THE COURT: Hold -- I'm just going to stop you there. I get all the -- the -- the
4 strategy because it's not the first time someone that's been standing at the table
5 said the same thing. But think about this: Trial is Monday. Today is Wednesday.
6 We have one more day left in the week. You haven't even served the State. So you
7 made this just an impossibility in order for the Court to get ready -- I mean you
8 served me this morning. So you made it impossible for the Court to get ready, for
9 the State to have any notice of what you're doing and then although you don't have
10 to give them your trial strategy, they are entitled to have notice of the motion and
11 you did it at a time where you just made it impossible to be able to get this on for
12 hearing before the -- the start date of the trial. So --

13 MS. SPELLS: Your Honor, I had a conversation with them last week about all
14 of this. They were put on notice.

15 THE COURT: But I don't have any of that information. I -- I mean I have to
16 have a chance to read -- I'm not smart enough where I can just, you know, get it by
17 osmosis. I actually have to read these things.

18 So let's deal with the evidentiary hearing so we can get some people
19 out of here and then we'll figure out what we're going to do with the motion in limine
20 next.

21 MR. ROSE: The State would call Shaun Bramble.

22 THE COURT: Okay.

23 THE MARSHAL: To the executive stand.

24 THE COURT RECORDER: Jason, can you put the mic --

25 THE MARSHAL: I will.

1 MS. SPELLS: Your Honor, the defense would invoke the exclusionary rule,
2 please.

3 THE COURT: Sure.

4 THE MARSHAL: Sir, can you just --

5 THE COURT: Are you a witness? Is this gentleman a witness?

6 MR. ROSE: Yeah. Can you stay outside real quick?

7 MR. MUNOZ: Yes.

8 MR. ROSE: Thank you.

9 THE COURT: Okay.

10 THE MARSHAL: Remain standing. Please raise your right hand be sworn in
11 by our clerk.

12 SHAUN BRAMBLE

13 [having been called as a witness and being first duly sworn, testified as follows:]

14 THE CLERK: Please be seated. Would you please state and spell your first
15 and last name for the record?

16 THE WITNESS: Shaun Bramble. First name is S-h-a-u-n. Last name is B as
17 in boy, r-a-m-b-l-e.

18 THE COURT: Okay. Please start.

19 MR. ROSE: Yes, Your Honor.

20 DIRECT EXAMINATION OF SHAUN BRAMBLE

21 BY MR. ROSE:

22 Q Good morning, Mr. Bramble. March 30th of this year, 2016, where
23 were you working?

24 A T.J. Maxx, Sahara Decatur.

25 Q And what was your position at that point in time?

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1 A My position as far as my --

2 Q Your title.

3 A -- job, my job title? National Task Force Area Loss Prevention
4 Investigator.

5 Q So fair to say that you work in a kind of security or loss prevention type
6 role?

7 A Yes, sir.

8 Q On that day on March 30th, 2016, did something happen which brings
9 you to court today?

10 A Yes.

11 Q And just kind of to get us focused on what we're dealing with, was that
12 in reference to a robbery that occurred at the store?

13 A Yes, sir.

14 Q Did you actually see the robbery itself?

15 A No, sir.

16 Q At some point did you go outside of the store that morning?

17 A Yes, sir.

18 Q When you got outside, did you see any other loss prevention officers
19 there?

20 A Yes, sir.

21 Q And who -- what loss prevention officers did you see?

22 A Julian Munoz.

23 Q Was that the gentleman who just left the room?

24 A Yes, sir.

25 Q Okay. And at that point can you just briefly describe what you saw

1 occurring?

2 A What I saw?

3 Q Yes.

4 A Suspect was running towards vehicle, a U-Haul rental truck.

5 Q And did you end up taking pictures of the Defendant?

6 A Yes.

7 Q And if you remember, what did those pictures show?

8 A Just the vehicle, the suspect and the vehicle.

9 Q So not the actual robbery itself?

10 A No.

11 Q Were you still inside when the -- the alleged --

12 A Yes.

13 Q -- robbery occurred?

14 A Yes.

15 Q Did you take any video?

16 A No.

17 Q What did you take these pictures with?

18 A iPhone.

19 Q A personal iPhone?

20 A Yeah.

21 Q Okay.

22 A Well, work --

23 Q Work iPhone?

24 A -- given iPhone. Yeah.

25 Q Okay. But that's an an iPhone under your control?

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1 A Yes.

2 Q Okay. Did you later review the photos?

3 A I'm sure I did.

4 Q Okay. And you said those photos were of the Defendant getting into

5 the -- the U-Haul and of the U-Haul itself?

6 A Yes.

7 Q What was the purpose of taking the photos? What were you trying to

8 depict?

9 A Just the suspect, the vehicle and license plate, if I could get that.

10 Q Okay. Did police end up arriving?

11 A Yes.

12 Q Did you write out a voluntary statement?

13 A No.

14 Q Did you spend much time talking with the police?

15 A No.

16 Q Do you remember ever telling the police that you took photos?

17 A I don't recall that I did.

18 Q Do you remember the police ever asking you if you took photos?

19 A No, they didn't ask.

20 Q At some point in time did you end up deleting those photographs?

21 A Yes.

22 Q And do you remember approximately when you ended up deleting

23 them?

24 A Probably within 45 minutes of everything happening.

25 Q Okay.

1 THE COURT: Hold on a second, I'm sorry. Did -- did he ask -- I'm sorry. Did
2 the police -- did you tell the police you had the -- the photos?

3 THE WITNESS: No. I don't -- I didn't -- I didn't have much interaction with
4 the police officers when they arrived.

5 THE COURT: And did you say you deleted them 45 minutes later?

6 THE WITNESS: That would be a guestimate at this point, yeah, but it was --
7 it was pretty soon after.

8 THE COURT: So why'd you delete them 45 minutes later?

9 THE WITNESS: Didn't really feel like there would be any need for them after
10 I'd gotten confirmation that the suspect had been apprehended. I really just --
11 personal decision didn't think they were relevant at that point. I just --

12 THE COURT: Okay.

13 THE WITNESS: -- deleted them off my phone.

14 THE COURT: Did you tell anyone or show anyone else the -- tell anyone else
15 about the pictures or show anyone else the pictures?

16 THE WITNESS: Just myself really.

17 THE COURT: Do you know how the State found out that there was -- that
18 you had taken pictures? Did they come speak with you?

19 THE WITNESS: I think I mentioned it at one point early on in the investigation
20 and -- yeah, I -- would have come from me mentioning it, otherwise nobody probably
21 would have known.

22 THE COURT: Do you know who you told that you had the pictures?

23 THE WITNESS: I don't recall who it was.

24 THE COURT: Was -- when you mentioned the pictures, was it before or after
25 you had deleted them?

1 THE WITNESS: It was after I deleted them.

2 THE COURT: Okay. Thank you.

3 THE WITNESS: Yeah.

4 MR. ROSE: State has no further questions at this point in time, Your Honor.

5 THE COURT: All right. By the defense?

6 MS. SPELLS: Yes, Your Honor, thank you.

7 CROSS-EXAMINATION

8 BY MS. SPELLS:

9 Q You indicated this is a cell phone issued to you by T.J. Maxx?

10 A Yes, ma'am.

11 Q And is the purpose of the cell phone to document evidence when for
12 instance like if you apprehend merchandise that belongs to T.J. Maxx?

13 A That's not the purpose of it. It can be used, but that's not the main
14 purpose of the phone.

15 Q So what would you say the main purpose of the phone is?

16 A To have a line that I don't have to pay for because I field a lot more
17 phone calls, text messages. I can gather my work email through that phone and it's
18 not going to an unsecured personal cell phone.

19 Q Okay. So you were given a phone basically to have more effective
20 communication with --

21 A Yes.

22 Q -- individuals at your employment?

23 A Yes, ma'am

24 Q How long have you been employed with T.J. Maxx?

25 A Oh, about eight years now I guess.

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1 Q And is there a specific policy with regard to documenting either
2 suspects who you believe have stolen merchandise from the store or documenting
3 merchandise that has been returned or apprehended after an incident?

4 A You know really the -- the company's only policy is -- at least for people
5 in my role is that any photo evidence that we have isn't made accessible to really
6 anybody else with the exception to law enforcement and the courts obviously but,
7 you know, I guess the LP detectives, when they make an apprehension on a
8 suspect, catalog I guess some of the stores have cameras to -- store given
9 cameras, not cell phones but like digital cameras to snap photos of just
10 merchandise. We don't take photos of suspects in custody or anything like that.

11 Q And do you yourself have a digital camera for that purpose?

12 A No, ma'am, I don't.

13 Q At any time period did you show Mr. Munoz the photos that you'd taken
14 on the cell phone?

15 A I don't recall that I did.

16 Q This happened quite some time ago, right?

17 A Yeah.

18 Q And did you make an internal report with regard to your role in this
19 incident?

20 A No, ma'am.

21 Q So you didn't document your actions or anything?

22 A No.

23 [Colloquy between counsel]

24 BY MS. SPELLS:

25 Q Does T.J. Maxx have a policy for completing internal reports --

1 MR. ROSE: Your Honor, I'm going to object at this point. I don't understand
2 what T.J. Maxx's policies have to do with whether or not Metro failed to obtain or
3 preserve evidence when the -- the witness has already testified that he didn't tell
4 Metro about it, that he doesn't remember Metro ever asking about it, that they're
5 deleted 45 minutes later, he didn't tell anybody about it. I don't understand how T.J.
6 Maxx's policies have any bearing on that.

7 MS. SPELLS: I'll withdraw the question.

8 THE COURT: Okay.

9 BY MS. SPELLS:

10 Q Mr. Bramble, are you familiar with the name of an individual by the
11 name of Douglas Hinkey (phonetic)?

12 A Yeah. Yes.

13 Q Yes?

14 A Yes.

15 Q And how are you familiar with him?

16 A Called me a few times.

17 Q Did he identify himself as being an -- an investigator with the defense in
18 this case?

19 A Yes.

20 Q And have you spoken to him within the last week or so?

21 A I think so, yeah. I think it was day or two ago.

22 Q Do you recall at any point telling him that you don't remember the type
23 of pictures that you took on the date in question?

24 A Like -- I guess if I did, I did. I don't recall what the pictures specifically
25 look like if that's what you're asking.

-20-

1 Q Okay. So in your conversation with him you were explaining that you
2 don't recall what the specific pictures look like?

3 A Right, I didn't really --

4 Q Okay.

5 A -- go over them or anything. Again like I said, I didn't -- I didn't think
6 they were relevant so -- I apologize.

7 Q But you did recall actually taking pictures of Mr. Harvey and the
8 vehicle?

9 A Yes, I was -- that's where I was aiming the camera.

10 Q And at any point do you -- did you mention in that conversation with Mr.
11 Hinkey that this happened a while ago, you didn't recall many of the events, you
12 didn't want to be locked into any statement?

13 A Yeah, I don't -- I didn't want to say anything to anybody really prior to
14 being here because I don't -- I didn't really recall a lot of what happened. My -- you
15 know, my involvement was pretty minimal and like I said, I deleted the photos
16 which --

17 Q Okay.

18 A I haven't really thought about it much since then to be honest with you.

19 Q So are you sure that you only took pictures of the individual in the car?

20 A Yeah, the whole vehicle.

21 Q Okay. Did you take any pictures outside of the front of the store?

22 A Well that's where the vehicle was. I mean like -- so I was -- I was
23 outside in front of the store is where I was at when that happened.

24 Q Sure, let me get a little bit more specific.

25 A Okay.

1 Q So this car was parked in the parking lot?

2 A Yes, ma'am.

3 Q And when you're speaking of taking pictures of the vehicle, you would
4 have been taking them in the parking lot?

5 A Yeah, I -- I never left the sidewalk at the front of the store. I was kind of
6 -- it was pretty close. It was right there.

7 Q Okay. So did you take any pictures of the suspect being in front of the
8 store?

9 A No.

10 Q Okay. So these --

11 A Not that I -- not that I recall. I don't -- again I -- I wasn't out there when it
12 -- the interaction happened so I wasn't snapping photos, nor would I thought to snap
13 photos at that time either.

14 Q At what point did you arrive outside? What was the first thing that you
15 saw?

16 A The suspect running towards the vehicle.

17 Q And this iPhone that you use, do you back it up to a computer or to
18 iCloud at all?

19 A No, I don't.

20 Q So once you deleted these pictures from your phone, there was no
21 digital copy?

22 A No, ma'am.

23 Q And you indicated that you deleted these photos after the suspect was
24 identified by Mr. Munoz?

25 A I -- I deleted them once -- once he got back to the store, I was -- you

-22-

1 know, was confirmed that the suspect was apprehended so --

2 Q Once who got back to the store?

3 A Munoz.

4 Q Okay. Did you review the photos after you took them?

5 A I'm sure I did. I -- it happened so long ago I didn't scrutinize over them
6 or anything, you know, so I don't -- I can't tell you exactly what every single photo
7 was.

8 Q Okay.

9 [Colloquy between counsel]

10 MS. SPELLS: I'll pass the witness. Thank you.

11 MR. ROSE: No further questions.

12 THE COURT: All right, Mr. Bramble, thank you for your time.

13 THE WITNESS: Thank you, ma'am.

14 THE COURT: Go -- feel free to leave.

15 Next witness.

16 MR. ROSE: The State would call Officer Nelson.

17 THE MARSHAL: Officer, remain standing.

18 MR. NELSON: Yes.

19 THE MARSHAL: Please raise your right hand be sworn in by our clerk.

20 RICHARD NELSON

21 [having been called as a witness and being first duly sworn, testified as follows:]

22 THE CLERK: Please be seated. Would you please state and spell your first
23 and last name for the record?

24 THE WITNESS: Richard Nelson, R-i-c-h-a-r-d N-e-l-s-o-n.

25 THE COURT: Whenever you want to start.

-23-

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DIRECT EXAMINATION OF RICHARD NELSON

BY MR. ROSE:

Q Good morning, Officer Nelson.

A Morning.

Q I see you're wearing uniform. Are you currently employed with Metro?

A I am.

Q And how long have you been with Metro?

A Seven years.

Q Were you working with Metro on March 30th of this year, 2016?

A I was.

Q And on that date did you have occasion to respond to a T.J. Maxx location?

A Yes.

Q Specifically at 4640 West Sahara?

A That's correct.

Q Was the nature of that a robbery call?

A It was.

Q When you responded there, who -- who if anybody did you speak with?

A The loss prevention officer.

Q Okay. Now would that be the -- the victim, purported victim in the case?

A It would.

Q Was that a Mr. Munoz if you remember?

A I -- if -- I believe that is his name, yes.

Q Okay. Do you remember -- does the name Shaun Bramble sound

1 familiar to you?

2 A No.

3 Q When you were at the T.J. Maxx, you said you spoke with the victim.
4 Do you remember asking any loss prevention officers there if they had pictures of
5 the event?

6 A No.

7 Q If you had asked and if they'd answered you saying yes, what would
8 you have done?

9 A If they had yes (sic) and if it's evidence that I couldn't obtain or they
10 couldn't burn a copy or anything like that, then I would have to get a detective
11 involved.

12 Q Okay. Would you have noted in your report if a witness told you that
13 they had photographic evidence?

14 A I would have.

15 Q And did you write a report in this case?

16 A I did.

17 Q Do you know whether or not you noted in your report if anybody had
18 photographic evidence?

19 A I didn't know (sic) anything in the report of that nature.

20 Q You -- you did not note anything?

21 A I did not, no.

22 Q And the absence of that from your report, does that tell you anything?
23 Does the fact that there -- that you did not mention any photographic evidence in
24 your report, does that make any indication to you?

25 A That I didn't have any.

1 Q Okay. Or at least that you were not aware that any existed?

2 A Correct.

3 Q Okay. And if you had indication that there was photographic evidence
4 that you were not able to get at that point, you said that you'd get a detective
5 involved?

6 A Yes.

7 Q Did you get a detective involved in this case?

8 A Not for that.

9 Q Okay. What did you get the detective involved for?

10 A It was for other evidence found at the in-custody location.

11 Q Okay. So you didn't have the detective come out to the store at all?

12 A No.

13 Q Okay. Did -- did you have anybody write out a voluntary statement?

14 A The victim.

15 Q Okay. Do you remember having anybody else write out a voluntary
16 statement?

17 A I don't recall if his partner did or not.

18 Q Okay. So is it fair to say that nobody at the scene when you arrived out
19 at that T.J. Maxx showed or told you of any photographic evidence that they had?

20 A Not to my knowledge.

21 MR. ROSE: State has no further questions at this point in time.

22 THE COURT: Anything else?

23 [Colloquy between counsel]

24 THE COURT: Anything else?

25 MS. JONES: Yes, Your Honor.

1 Did you -- did he pass the witness? Did you pass the witness?

2 MR. ROSE: I --

3 MS. JONES: Oh I'm sorry, Your Honor. I did not hear Mr. Rose.

4 CROSS-EXAMINATION

5 BY MS. JONES:

6 Q Good morning, Officer.

7 A Good morning.

8 Q Just wanted to ask you a few questions about that day and a little bit
9 about your background. You said that you've been an officer for the past seven
10 years, correct?

11 A That's correct.

12 Q Have you always been working patrol?

13 A That's correct.

14 Q And prior to you becoming a Metro officer you went to the academy,
15 correct?

16 A That's correct.

17 Q And they taught you how to take reports, correct?

18 A Yes.

19 Q Write reports. And conduct investigations?

20 A That's correct.

21 Q And during your training on investigations, you were taught to get all the
22 details or at least all the important details in a case, correct?

23 A That's correct.

24 Q That would be interviewing all witnesses, correct?

25 A Yes.

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1 Q And you mentioned that you did speak to Security Officer Munoz,
2 correct?

3 A Yes, the victim, yes.

4 Q But you didn't speak to his partner --

5 A I'm --

6 Q -- is that correct?

7 A I'm sure I spoke to him, yes.

8 MS. JONES: Court's indulgence.

9 [Pause]

10 BY MS. JONES:

11 Q You mentioned that you -- if you had actually talked to someone, it
12 would be mentioned in your report, correct?

13 A If I talked to somebody?

14 Q I'm sorry, if you had interviewed a person, it would be in your report,
15 correct?

16 A If -- if it needed to be, yes.

17 Q Well you'd want your reports to be accurate, correct?

18 A It is, yes.

19 Q Detailed?

20 A It is, yes.

21 Q Interviewing all the witnesses wouldn't be an important detail? It's --

22 A I did.

23 Q -- it's question.

24 A Yes.

25 Q Okay. So you think you spoke to Security Officer Bramble?

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1 A He was there. I'm sure I -- I spoke to him, yes.

2 [Colloquy between counsel]

3 MS. JONES: May I approach?

4 THE COURT: Yeah.

5 [Colloquy between counsel]

6 BY MS. JONES:

7 Q Officer, if you take an opportunity to just review your report. Just read it
8 to yourself.

9 A Okay. I read it out there. I'm familiar with it.

10 Q Oh, okay. So can you tell me where you spoke to Security Officer
11 Bramble?

12 A No.

13 Q But it is usual to speak to all the witnesses at a scene, correct?

14 MR. ROSE: Your Honor, I think we've asked and answered this particular
15 question a few times.

16 THE COURT: Go ahead and answer it please and then move on.

17 THE WITNESS: Yes.

18 MS. JONES: Court's indulgence.

19 [Colloquy between counsel]

20 MS. JONES: Thank you, Your Honor.

21 BY MS. JONES:

22 Q I'm sorry, Officer, thank you. So is it common during an investigation
23 that people would have cell phones?

24 A It varies, yeah. Yes.

25 Q And is it part of your procedure to ask people who have cell phones if

1 they may have captured something on their cell phones regarding a investigation?

2 A It depends. Every investigation varies.

3 Q If you're speaking to a witness during an investigation, would you ask
4 what they saw?

5 A It's part of investigation, yes.

6 Q Okay. Would you ask how they saw it, such as where they were
7 standing or what location? How did they actually view the incident --

8 A If I didn't have that information already, then yes.

9 Q Okay. Would you ask them to document like through a voluntary
10 statement how they saw the incident?

11 A Yes, if they -- if they were a witness, then yes.

12 [Colloquy between counsel]

13 BY MS. JONES:

14 Q In this particular case, when you asked for the video surveillance from
15 the store, did you ask if there was any other surveillance available?

16 A I -- not to my knowledge, I don't know.

17 Q Officer Nelson, would a -- someone with seven years of experience
18 normally ask someone whether or not there was additional information regarding an
19 incident?

20 A Depends on the situation.

21 Q If there are two individuals, would you not talk to both individuals that
22 were involved in a incident as witnesses?

23 A Yes.

24 Q And in this case you only spoke to the victim, Mr. Munoz?

25 A No, his --

1 MR. ROSE: Your Honor, I believe that actually misstates the testimony. I
2 think he said that he believes that he spoke to Mr. Bramble as well.

3 THE WITNESS: I just don't recall what the -- what was said, but he was there
4 also.

5 [Colloquy between counsel]

6 BY MS. JONES:

7 Q During your investigation, Officer, did you look for physical descriptors
8 of the alleged assailant?

9 MR. ROSE: Your Honor, I would object at this point as being beyond the
10 scope of this hearing.

11 THE COURT: I believe that is beyond the scope.

12 [Colloquy between counsel]

13 BY MS. JONES:

14 Q Based on the information that you had gathered during the
15 investigation, do you believe that that was enough to identify the assailant or the
16 suspect?

17 MR. ROSE: Your Honor, again, I think that's beyond the scope of this
18 hearing.

19 THE COURT: It is. We just need to determine whether or not the police were
20 grossly negligent or acted in bad faith and not obtain the videos.

21 [Colloquy between counsel]

22 MS. JONES: Your Honor, and I apologize. What I'm trying to really get from
23 the officer is whether or not his actions were that of a reasonable officer in the case
24 of this investigation, which then does pose to your question about it being grossly
25 negligent --

1 THE COURT: Okay --

2 MS. JONES: -- or negligence.

3 THE COURT: So are you -- just ask him whether there -- I think I know where
4 you're going as far as I mean is a part of their training on conducting investigation to
5 talk to everyone to ask them whether or not there's cell phone videos, right?

6 MS. JONES: Correct, Your Honor.

7 THE COURT: Officer, as part of your investigation -- well when you're trained
8 in order to investigate a crime, what exactly are you told? Are you told to speak with
9 all the witnesses?

10 THE WITNESS: Yeah, you would speak to all the witnesses if you have
11 information and you would obviously gather it if you had it or had knowledge of it.

12 THE COURT: Okay. And obviously nowadays most people have cell
13 phones. Is it part of what you're suppose when you -- when you speak with
14 witnesses as a matter of course, do you ask them whether or not they captured any
15 photographs, videos or any other type of evidence on their cell phones?

16 THE WITNESS: Besides surveillance on this type of call, I've honestly never
17 had anybody with the cell phone.

18 THE COURT: Okay. And if someone had indicated --

19 THE WITNESS: That wasn't -- sorry, that wasn't involved with it directly.

20 THE COURT: You mean the -- the person who allegedly committed the
21 offense?

22 THE WITNESS: Either the victim or somebody that was there, it's very rare
23 that it would -- they would actually have cell phone of it.

24 THE COURT: Okay. Anything -- what else -- anything else?

25 BY MS. JONES:

1 Q And I'm sorry, if -- if you could just repeat that last answer, I -- I heard
2 part of it, I'm sorry. So you would ask someone about additional information if they
3 were a witness to the actual incident?

4 A I would ask them about what -- anybody that what -- what they saw or
5 about the incident, yes.

6 Q And about whether or not they had any cell phone information or data?

7 A If -- if needed be, yes.

8 Q Could you explain the situation that it would need be to ask about the
9 cell phone or photos on a cell phone?

10 A Like I said just previous, it's uncommon for something like this call to --
11 for someone to have that additional cell phone and -- and besides maybe some type
12 of surveillance or something like that.

13 Q Would it be unusual for another security officer to have that kind of
14 information?

15 A I personally have never had that before.

16 Q Do you ask that question in every call that you make or that you're
17 dispatched?

18 A Every call's different. Investigates different.

19 Q So is that no, you don't ask that in every --

20 A No, I don't ask that in every call.

21 [Colloquy between counsel]

22 MS. JONES: No further questions. Pass the witness.

23 MR. ROSE: Very briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. ROSE:

1 Q Officer, while you were -- while you were at the scene for this particular
2 case, were you informed that a potential suspect was in custody?

3 A Yes.

4 Q Did you end up taking the victim out to go try to ID the suspect?

5 A Yes.

6 Q Did you do that shortly after you found out that you had a suspect in
7 custody?

8 A Yes.

9 Q Is it fair to say that your primary --

10 MS. JONES: Objection, Your Honor. This is outside the scope, which is what
11 counsel --

12 MR. ROSE: I believe actually it goes to the reasonableness of his actions in
13 dealing with the two witnesses. We had number of questions about the time he
14 spent and the documentation of any interactions that he had with Mr. Bramble --

15 THE COURT: Does it go to whether or not he asked them about the cell
16 phone video, or whether or not he should have asked them to the cell phone --

17 MR. ROSE: I think it goes to whether or not he should have asked him about
18 it because it goes --

19 THE COURT: Okay, if it goes to whether he should have asked them, then
20 yes. For that purpose you can ask the question.

21 MR. ROSE: Okay. I think he answered that he took the witness or the victim
22 out there shortly after he found out --

23 BY MR. ROSE:

24 Q Is it correct to say you testified that you took the -- the victim out to the
25 location where the suspect was in custody shortly after you found out there was a

1 suspect in custody?

2 A Yes.

3 Q Is it also fair to say that your primary interactions in this case were with
4 the victim?

5 A Yes.

6 MR. ROSE: No further questions at this point in time, Your Honor.

7 THE COURT: Anything else before this gentleman's free to go?

8 MR. ROSE: Not by the State.

9 MS. JONES: Yes, Your Honor.

10 THE COURT: Sure.

11 RECROSS EXAMINATION

12 BY MS. JONES:

13 Q Just to kind of streamline a little bit more of what the State was asking,
14 you do want to make sure that you have the right defendant in custody, correct?

15 A Yes.

16 Q And you want to make sure by doing a complete investigation that you
17 have the right defendant, correct?

18 A Yes.

19 Q And part of a complete investigation would be to talk to all the
20 witnesses and find out all the information they have, correct?

21 A Correct.

22 MS. JONES: Thank you.

23 THE COURT: Anything else?

24 MR. ROSE: Not by the State, Your Honor.

25 THE COURT: All right. Officer, thank you for your time. You're free to go.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: All right. Any other witnesses?

3 MR. ROSE: Not by the State.

4 THE COURT: All right. Anything before I make a decision?

5 MS. SPELLS: Your Honor, there are just a couple of witnesses that we
6 wanted to call.

7 THE COURT: Okay.

8 MS. SPELLS: The defense would call Mr. Munoz. I believe it's Julian Munoz.

9 THE MARSHAL: Who?

10 MS. SPELLS: Mr. Munoz. Julian Munoz.

11 [Pause]

12 MR. THOMPSON: Please remain standing and raise your right hand be
13 sworn in by our clerk.

14 JULIAN MUNOZ

15 [having been called as a witness and being first duly sworn, testified as follows:]

16 THE CLERK: Please be seated. Would you please state and spell your first
17 and last name for the record?

18 THE WITNESS: Julian Munoz, J-u-l-i-a-n, Munoz, M-u-n-o-z.

19 THE COURT: Whenever you're ready.

20 DIRECT EXAMINATION OF JULIAN MUNOZ

21 BY MS. SPELLS:

22 Q Good morning, Mr. Munoz. How are you employed?

23 A I'm sorry?

24 Q How are you employed, sir?

25 A T.J. Maxx. I'm a loss prevention detective.

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1 Q Were you so employed on March 30th, 2016?

2 A Yes.

3 Q Okay. And you're familiar with the case that you were called here to
4 testify for?

5 A Yes.

6 Q Okay. In the instant case on March 30th, 2016, did you have an
7 interaction with an individual outside of T.J. Maxx?

8 A Yes.

9 Q And on that date in question did you have your cell phone on your
10 person?

11 A I did.

12 Q Okay. At any point during that interaction did you take your cell phone
13 out?

14 A Yes.

15 Q Did you take any photographs on that date with regard to this case?

16 A No.

17 Q Did you take any video surveillance?

18 A No.

19 Q What was the purpose of having your phone out?

20 A To make a 911 call.

21 Q Okay. And at what point did you take out your phone; was it after the
22 suspect had left or was it in the middle of the interaction?

23 A Yeah, it was --

24 Q Just briefly.

25 A -- after the suspect pulled out his knife.

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1 Q And was the suspect still in front of you at that time?

2 A Yes.

3 Q And did you continue to follow the suspect at all?

4 A No, I discontinued to follow him.

5 Q So after you made the 911 phone call, did you stay outside or go back
6 into the store?

7 A I stayed outside.

8 Q Did you see Mr. Bramble come outside?

9 A Yes.

10 Q And did you see him take any photographs?

11 A I'd say no, I was kind of preoccupied with the call and answering all the
12 questions on there.

13 Q Okay. And you testified at the preliminary hearing on April 18th, 2016?

14 A Yes.

15 Q On that date were you looking at photos in your phone to verify who the
16 Defendant was?

17 A No.

18 Q No? Did you -- were you looking at photos in your phone on that date
19 in court at all?

20 A No.

21 MS. SPELLS: Pass the witness.

22 MR. ROSE: No questions.

23 THE COURT: All right, any other questions for Mr. Munoz?

24 MS. SPELLS: No, Your Honor.

25 THE COURT: All right. Thank you for your time, Mr. Munoz. Have a good

1 day.

2 THE WITNESS: Thank you.

3 MS. SPELLS: And just one last witness, Your Honor. The defense would call
4 Tara Harvey.

5 [Colloquy between counsel]

6 THE MARSHAL: Ma'am, remain standing, please raise your right hand be
7 sworn in by our clerk.

8 MS. HARVEY: Okay.

9 TARA HARVEY

10 [having been called as a witness and being first duly sworn, testified as follows:]

11 THE CLERK: Please be seated. Would you please state and spell your first
12 and last name for the record?

13 THE WITNESS: Tara Jefferson Harvey, T-a-r-a, Jefferson, J-e-f-f-e-r-s-o-n,
14 Harvey, H-a-r-v-e-y.

15 THE COURT: Okay.

16 MS. SPELLS: Thank you, Your Honor.

17 DIRECT EXAMINATION OF TARA HARVEY

18 BY MS. SPELLS:

19 Q Ms. Harvey, do you know an individual by the name of Alfred Harvey?

20 A Yes.

21 Q How do you know him?

22 A He's my husband.

23 Q Okay. And do you --

24 MR. ROSE: Your Honor, could we approach briefly?

25 THE COURT: Uh-huh.

1 [Bench conference at 12:17 p.m. - not transcribed]

2 BY MS. SPELLS:

3 Q Ms. Harvey, were you at a T.J. Maxx on March 30th, 2016?

4 A Yes.

5 Q Okay, and did you see the two individuals who just left the courtroom?

6 A Yes.

7 Q Is today the first time you've seen them?

8 A No.

9 Q Did you see them on March 30th, 2016?

10 A Yes.

11 Q Where did you see them at?

12 A They were in front the U-Haul truck that I was in.

13 Q Okay. And did you see either of those individuals have a cell phone at
14 all?

15 A Yes, both had cell phones.

16 Q And were you able to tell what they were doing with their cell phones?

17 A Yes, they were taking pictures.

18 Q How was it that you were able to tell that they were taking pictures?

19 A One flashed.

20 Q I didn't hear you?

21 A A cell phone picture flashed.

22 Q Okay, so you saw the --

23 A The flash from cell phone.

24 Q -- cell phone pictures flash?

25 A Yeah.

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1 Q Okay. And you indicated that both of them had cell phones?

2 A Yes.

3 MS. SPELLS: I'll pass the witness.

4 CROSS-EXAMINATION

5 BY MR. ROSE:

6 Q This was during the day, wasn't it?

7 A Yes.

8 Q And you're saying that you saw flashes from both phones?

9 A Yeah, you could see the flash and the -- from the -- a flash on the -- on
10 the cell phone.

11 Q From both cell phones?

12 A No, just one. The taller -- the taller guy I saw his flash but the -- the old
13 one.

14 Q The guy with the kind of bigger beard?

15 A Yeah, yeah, him. Yeah.

16 Q Okay. So you didn't see any flashes from the other cell phone?

17 A No, I saw him -- the cell phone out pointed towards the U-Haul, but I
18 didn't see a flash come from -- I saw flash from the -- the older -- the taller
19 gentleman.

20 Q Okay. And then you weren't there when the police were speaking with
21 people, were you?

22 A Yes, I was.

23 Q Were you able to hear the conversations?

24 A No.

25 MR. ROSE: Okay. No further questions.

1 THE COURT: Anything else?

2 MS. SPELLS: Nothing further.

3 THE COURT: Thanks, ma'am. If you want to step down. Make yourself
4 comfortable.

5 All right, anything else before I make a decision, any more witnesses?

6 MS. SPELLS: No, Your Honor.

7 THE COURT: Okay. All right, so the motion to dismiss or for a curative jury
8 instruction is going to be denied for the following reasons:

9 The Court finds there's been no evidence presented that police were
10 grossly negligent or acted in bad faith. And the Court did take into consideration the
11 testimony of the individuals called as witnesses today.

12 The Court did find Shaun Bramble to be credible in that Mr. Bramble
13 has no real interest in the outcome of this litigation and the Court thought his
14 testimony was credible. Mr. Bramble did indicate to the Court that while he did take
15 photographs of the Defendant and the Defendant's vehicle on the night in question,
16 he testified that he never told the police about the photos. He did in fact delete the
17 photos 45 minutes after he took them because he did not believe they had any
18 relevance to the event.

19 With respect to Officer Richard Nelson, the Court likewise finds this
20 individual to be credible. His testimony is, you know, basically consistent with Mr.
21 Bramble's testimony in that he was -- it was never brought to his attention that any
22 photographs had or had not been taken or any videos had or had not been taken.
23 The Court does not think it's unreasonable that he didn't ask for any photographs
24 because there was nothing to indicate that a photograph or video could have been
25 taken on the night in question.

1 With respect to the Defendant's wife, her testimony is also somewhat
2 credible to the testimony of Mr. Bramble in that she testifies that one individual, the
3 taller of the two, the one with more facial hair which would be identified in court as
4 Mr. Bramble, did in fact have a phone out and that she did see a flash go off.
5 However, notwithstanding there's no evidence presented by her that the photograph
6 wasn't ultimately deleted as testified to by Mr. Bramble.

7 So the motion's going to be denied in its entirety. Let's go back to the
8 motions in limine because I did sit and look at the police report --

9 MS. SPELLS: Your Honor, would the Court allow us to make just a brief
10 record with regard to the -- the motion, the prior motion?

11 THE COURT: What motion would you like to -- which one? The prior --

12 MS. SPELLS: The one that the Court just denied.

13 THE COURT: Well --

14 MS. SPELLS: We understand the ruling. I just wanted to make a record for --

15 THE COURT: I think that it's improper at this point to make a record because
16 I gave you guys a chance to argue it. I set it for an evidentiary hearing. I'm not
17 really sure what record you'd make other than you disagree. I mean I've given you
18 guys ample opportunity to make a record.

19 MS. SPELLS: Well we didn't have argument on the testimony that went forth
20 today. So that would be --

21 THE COURT: Sure, go ahead, but in the future please do it prior.

22 MS. SPELLS: My apologies.

23 THE COURT: No worries.

24 MS. SPELLS: Your Honor, we understand the Court's ruling and we're not
25 trying to persuade the Court from its ruling at all. We just wanted to make a brief

1 record that the defense position here would be that the officer, Officer Nelson, was
2 grossly negligent in that he did not do a thorough enough investigation in trying to
3 see if there was additional evidence here. He indicated that it's uncommon to have
4 additional maybe cell phone evidence here, but the statement that it's uncommon
5 needs to be looked at in the light of the fact that he stated that he doesn't routinely
6 ask if any individual has additional information, video surveillance, photographs, and
7 he also indicated that, you know, it's very common we all know that most people
8 have cell phones on them.

9 So when you're trying to investigate especially given in this case where
10 he did not have a lot of physical characteristics of the alleged assailant, really only
11 had some clothing and some characteristics of a vehicle, I think that it would have
12 been more required of him to ask additional questions to try and ensure that he had
13 the right defendant. Based upon that, I do believe that his actions fell below what a
14 prudent officer would have done and the training that should have been done.

15 He indicated that he spoke to both witnesses, but he didn't document
16 that but that all relevant information would have been document (sic) in the police
17 report, yet there was no documentation about speaking to the other witness, that
18 being Mr. Bramble, and maybe or maybe not that did occur, if that did occur, or if
19 there had been more -- more of a fuller investigation or conversation with him, Mr.
20 Bramble indicated that conversation was brief, then he should have likely learned
21 about these photographs and the same way that we learned about it just by asking
22 the very simple question.

23 So that being said, we do believe that this officer's conduct was not that
24 of a prudent officer and therefore should have been considered grossly negligent.
25 I'll submit it with that.

1 THE COURT: Anything the State would like to add? I'm not changing my
2 ruling, but anything the State would like to add?

3 MR. ROSE: Just very briefly, Your Honor. I think -- the testimony indicated
4 that the actions of the officer here were not grossly negligent. He indicated that he
5 -- his primary interaction was with the victim in the case, that it's been very rare for
6 him to have anybody else with any kind of footage or photographs in cases like this.
7 He is then also the same officer who shortly after finding out that the suspect was --
8 that there was a suspect in custody took the victim out to go view that suspect which
9 I believe would be a portion of why perhaps his interactions with Mr. Bramble were
10 more limited. With that we'll submit it.

11 THE COURT: Okay. Let's move on to the motion in limine.

12 MS. SPELLS: Sure.

13 THE COURT: We've already talked a little bit -- I -- I took -- I took a moment
14 to read the arrest report which is attached. Looking at numbers 2 and 3 which are a
15 request to exclude testimony that at the time of the request Mr. Harvey was in
16 possession of two counterfeit hundred dollar bills, credit card numbers and credit
17 card PIN numbers.

18 Was the State even going to try and introduce that? It seems like a
19 prior bad act and it doesn't appear to be related to the offense he's charged with.

20 MR. ROSE: I -- I don't believe the State had any intent to offer that evidence,
21 Your Honor.

22 THE COURT: Okay, so I think we could say that would be granted by way of
23 stipulation. The next one is probably going to be the same. The third request by the
24 defense is to exclude testimony the officers found credit cards with multiple names
25 on them inside the driver door the U-Haul. Again that would arguably be a prior --

1 well, another bad act.

2 MR. ROSE: Again I -- I don't believe the State had any intention of admitting
3 that evidence, Your Honor.

4 THE COURT: All right, so that request is going to be granted. And that
5 leaves us with something we've already discussed for a bit, which is the request that
6 Mr. -- the testimony that Mr. Harvey's kids with him the scene the incident be
7 excluded from the testimony presented at trial. I did receive the -- I did look at the
8 arrest report.

9 MR. ROSE: Your Honor, the statement about the kids is actually in Mr.
10 Munoz's voluntary statement. I don't know if it is copied --

11 THE COURT: There's a --

12 MR. ROSE: -- into the arrest report or not.

13 MS. SPELLS: It is.

14 THE COURT: I don't have -- well I have a two-page arrest report. That's all I
15 have.

16 MS. SPELLS: It's detailed in the --

17 THE COURT: I take that back. It is -- is this his voluntary statement?

18 MS. SPELLS: No, it's detailed in the arrest report with basically the specific
19 language that is listed in the voluntary statement just that he wanted to go back to
20 the security office to not be in front of the kids is the -- the gist of it. That's not the
21 exact quote but --

22 THE COURT: Is there anything else on this? Is there anything else I need to
23 look at before issuing a decision?

24 All right. I -- I'm going to reconsider my prior order. I -- I do think that
25 it's -- it's not really prejudicial the fact that Mr. Harvey's kids with him at the time the

1 incident and reading the -- the narrative set forth in the arrest report I think it -- I
2 think it kind of goes along with everything that was occurring on the date in question.
3 You know, he started out it looks like in the children's department and when the
4 officer approached him and said let's go back to the -- the room because the kids
5 are here, according to the police report that's when Harvey pulled out a knife handle
6 -- let's see, a knife with a black handle and a blade approximately four inches long,
7 held the knife over his head in threatening manner and stated to Munoz we're not
8 doing this today. I think that those facts again are not overly prejudicial and I think
9 they kind of go into the tenor of everything that was occurring on -- on the date in
10 question. So I'll allow those to come in just as they are indicated in the reports.

11 With that being said, I think we've covered everything, haven't we?

12 MS. SPELLS: Yes.

13 MR. ROSE: I believe we have.

14 THE COURT: Okay, well then let's give you -- you guys are going to have to
15 go to overflow.

16 THE CLERK: One second, counsel, sorry. Okay, so overflow will be
17 November 10th at 8:30 and it's Courtroom 15D.

18 MR. ROSE: B as in boy?

19 THE CLERK: D as in --

20 MR. ROSE: D --

21 THE CLERK: -- dog.

22 MR. ROSE: Thank you. Sorry.

23 MS. SPELLS: Which judge is it?

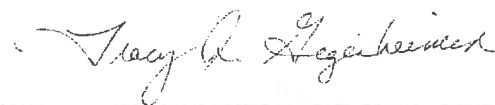
24 THE COURT: Okay. See you guys next week. Have a nice weekend.

25 MS. SPELLS: You too.

1 THE CLERK: First of all I need -- how many witnesses?
2 MR. ROSE: The State would expect six to seven witnesses.
3 THE CLERK: And so three, four days?
4 THE DEFENDANT: Thank you, Your Honor.
5 MR. ROSE: I think three -- I think four days max, probably closer to three.
6 But the last case I had was four witnesses in four days so -- I'll try to be cautious.
7 THE CLERK: Great.
8 MS. SPELLS: Thank you.
9 MR. ROSE: Thank you.
10 MS. SPELLS: What judge is --
11 THE CLERK: Do you have witnesses you're going to call as well?
12 MS. SPELLS: Maybe one or two. Maybe.
13 THE CLERK: So I'll put seven or eight.
14 MS. SPELLS: Sure.
15 THE CLERK: Okay.
16 THE COURT: All right, thank you. You guys have a good weekend.
17 MS. SPELLS: Thank you.
18 THE COURT: That's good as it can be getting ready for trial.

19 [Proceedings concluded at 12:28 p.m.]

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

22 

23 Tracy A. Gegenheimer, CER-282, CET-282
24 Court Recorder/Transcriber
25

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STEVE WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155

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ADAM LAXALT
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

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SHARON G. DICKINSON
HOWARD S. BROOKS

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Respondent.

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Oct 23 2018 08:45 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Counsel for Respondent

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ALFRED C. HARVEY
Case No. 72829

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ALFRED C. HARVEY
Case No. 75911
(Second Appeal)

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ORIGINAL

1 INST

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
NOV 17 2016

BY Carol Donahoe
CAROL DONAHOO, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,

8 Plaintiff,

9 -vs-

10 ALFRED C. HARVEY,

11 Defendant.

CASE NO: C-16-314260-1

DEPT NO: VIII

12 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

13 MEMBERS OF THE JURY:

14
15 It is now my duty as judge to instruct you in the law that applies to this case. It is
16 your duty as jurors to follow these instructions and to apply the rules of law to the facts as
17 you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it
20 would be a violation of your oath to base a verdict upon any other view of the law than that
21 given in the instructions of the Court.
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C-16-314260-1
INST
Instructions to the Jury
4800987



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

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

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

In this case, it is charged in an Information that on or about the 30th day of March, 2016, the Defendant committed the offense of ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138).

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

COUNT 1 - ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138), on or about the 30th day of March, 2016, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, ALFRED C. HARVEY did willfully, unlawfully, and feloniously take personal property, to-wit: miscellaneous clothing items, from the person of JULIAN MUNOZ, or in his presence, by means of force or violence, or fear of injury to, and without the consent and against the will of JULIAN MUNOZ, with use of a deadly weapon, to-wit: a knife, defendant using force or fear to obtain or retain possession of the property, to prevent or overcome resistance to the taking of the property, and/or to facilitate escape.

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

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

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

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

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

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

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

If you are not convinced beyond a reasonable doubt that the defendant used a deadly weapon in the commission of an unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property and that such force was used to:

(1) Obtain or retain possession of the property,

(2) To prevent or overcome resistance to the taking of the property, or

(3) To facilitate escape with the property,

you must find the defendant not guilty of Robbery with use of a Deadly Weapon.

1 You are here to determine whether the defendant is not guilty or guilty from the evidence
2
3 in the case. You are not called upon to return a verdict as to the guilt of any other person. So, if
4 the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant,
5 you should so find, even though you may believe one or more persons are also guilty.
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The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

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

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

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

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

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

1
2 Before you may rely on circumstantial evidence to conclude that fact necessary to find
3 the defendant guilty has been proved, you must be convinced that the State has proved each fact
4 essential to that conclusion beyond a reasonable doubt.

5 Also before you may rely on circumstantial evidence to find the defendant guilty, you
6 must be convinced that the only reasonable conclusion supported by the circumstantial evidence
7 is that the defendant is guilty. If you can draw two or more reasonable conclusions from the
8 circumstantial evidence and one of those reasonable conclusions points to innocence and another
9 to guilt, you must accept the one that points to innocence. However, when considering
10 circumstantial evidence, you must accept only reasonable conclusions and reject any that are
11 unreasonable.
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The credibility or believability of a witness should be determined by his or her manner upon the stand, his or her relationship to the parties, his or her fears, motives, interests or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements and the strength or weakness of his or her recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his or her testimony which is not proved by other evidence.

Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property. Such force or fear must be used to:

- (1) Obtain or retain possession of the property,
- (2) To prevent or overcome resistance to the taking of the property, or
- (3) To facilitate escape with the property.

In any case the degree of force is immaterial if used to compel acquiescence to the taking of or escaping with the property.

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

1
2 It is unnecessary to prove both violence and intimidation. If the fact be attended with
3 circumstances of terror, such threatening word or gesture as in common experience is likely to
4 create an apprehension of danger and induce a man to part with his property for the safety of his
5 person, it is robbery. It is not necessary to prove actual fear, as the law will presume it in such
6 case.

7
8 In order to constitute robbery, the taking must be accomplished either by force or
9 intimidation, this element being the gist and distinguishing characteristic of the offense; but there
10 need not be force and intimidation, either being sufficient without the other.

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

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

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

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

As used in these instructions, a "deadly weapon" means:

(1) Any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death;

OR

(2) Any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

As used in these instructions, "substantial bodily harm" means:

1. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or
2. Prolonged physical pain.

INSTRUCTION NO. 16

The State is not required to have recovered the deadly weapon used in an alleged crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon was used in the commission of the crime.

However, you must still find beyond a reasonable doubt that a deadly weapon was used in the commission of the robbery.

In order to "use" a deadly weapon, there need not be conduct which actually produces harm but only conduct which produces a fear of harm or force by means or display of the deadly weapon in aiding the commission of the crime.

The flight of a person after the commission of a crime is not sufficient in itself to establish guilt; however, if flight is proved, it is circumstantial evidence in determining guilt or innocence.

The essence of flight embodies the idea of deliberately going away with consciousness of guilt and for the purpose of avoiding apprehension or prosecution. The weight to which such circumstance is entitled is a matter for the jury to determine.

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of whether the Defendant is guilty or not guilty.

During the course of this trial, and your deliberations, you are not to:

- (1) communicate with anyone in any way regarding this case or its merits-either by phone, text, Internet, or other means;
- (2) read, watch, or listen to any news or media accounts or commentary about the case;
- (3) do any research, such as consulting dictionaries, using the Internet, or using reference materials;
- (4) make any investigation, test a theory of the case, re-create any aspect of the case, or in any other way investigate or learn about the case on your own.

1 It is a constitutional right of a defendant in a criminal trial that he may not be compelled
2
3 to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice
4 and counsel of his attorney. You must not draw any inference of guilt from the fact that he does
5 not testify, nor should this fact be discussed by you or enter into your deliberations in any way.
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2 If, during your deliberation, you should desire to be further informed on any point of
3 law or hear again portions of the testimony, you must reduce your request to writing signed
4 by the foreperson. The officer will then return you to court where the information sought
5 will be given you in the presence of, and after notice to, the district attorney and the
6 Defendant and his counsel.

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

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

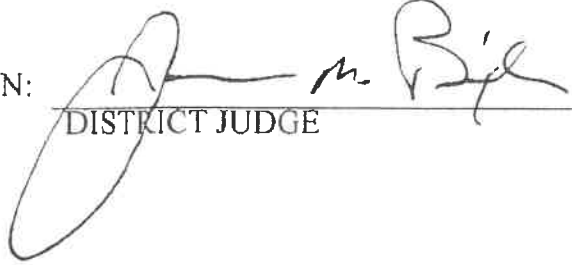
During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

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

November 17 2016

GIVEN:


DISTRICT JUDGE

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
NOV 17 2016

DISTRICT COURT
CLARK COUNTY, NEVADA

BY: Carol Donahoo
CAROL DONAHOO, DEPUTY

THE STATE OF NEVADA,

Plaintiff,

CASE NO. C314260

-vs-

DEPT. NO. VIII

ALFRED C. HARVEY,

Defendant.

PROPOSED JURY INSTRUCTION NOT USED AT TRIAL

Attached hereto is the State's Proposed Jury Instruction which was offered to the Court, but not submitted to the Jury in the above entitled action.

DATED: This 17th day of November 2016.

Steven D. Grierson, Clerk of the Court

By: Carol Donahoo
Carol Donahoo, Deputy Clerk

C - 16 - 314260 - 1
PINU
Proposed Jury Instructions Not Used At Tri:
4600988



INSTRUCTION NO. _____

“Prolonged physical pain” necessarily encompasses some physical suffering or injury that lasted longer than the pain immediately resulting from the wrongful act.

ORIGINAL

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

NOV 17 2016

DISTRICT COURT
CLARK COUNTY, NEVADA

BY Carol Donahoo
CAROL DONAHOO, DEPUTY

THE STATE OF NEVADA,

Plaintiff,

-VS-

ALFRED C. HARVEY,

Defendant.

CASE NO. C314260

DEPT. NO. VIII

PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL

Attached hereto are the Defendant's Proposed Jury Instructions which were offered to the Court, but not submitted to the Jury in the above entitled action.

DATED: This 17th day of November 2016.

Steven D. Grierson, Clerk of the Court

By: Carol Donahoo
Carol Donahoo, Deputy Clerk

C-18-314260-1
PINJ
Proposed Jury Instructions Not Used At Trial
4800989



1
2 In deciding the facts of this case you may have to decide which witnesses to believe and
3 which witnesses not to believe. You may believe everything a witness says, only part of it or
4 none of it.

5 In considering the weight or value of the testimony of any witness you may consider the
6 appearance, attitude and behavior of the witness when testifying and a number of other things
7 including:

- 8 1. The witnesses ability to see or hear or know of the things the witness testifies;
- 9 2. The quality of the witness's memory;
- 10 3. The inclination of the witness to speak truthfully;
- 11 4. Whether or not the witness has any interest in the outcome of the case or any motive,
- 12 bias or prejudice;
- 13 5. Whether the witness is contradicted by anything the witness said or wrote before trial;
- 14 and
- 15 6. How reasonable is the witness's testimony when considered with other evidence
- 16 which you believe.

17 In deciding whether or not to believe a witness, keep in mind people sometimes forget
18 things. You need to consider whether a contradiction is an innocent lapse of memory or an
19 intentional falsehood, and that may depend on whether it has to do with an important fact or with
20 only a small detail.

21 The weight or value of evidence does not necessarily depend on the number of witnesses
22 testifying for one side. You must consider all the evidence and you may decide the testimony of
23 a smaller number of witnesses on one side has more weight or value than that presented by the
24 larger number of witnesses on the other side.

1
2 Every person charged with the commission of a crime shall be presumed innocent unless
3 the contrary is proved by competent evidence beyond a reasonable doubt.

4 The burden is on the State to prove beyond a reasonable doubt that the defendant
5 committed an unlawful taking of personal property to wit: miscellaneous clothing items from the
6 person of another, or in his presence, against his will, by means of force or violence or fear of
7 injury, immediate or future, to his person or property and that such force was used to:

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9 (1) Obtain or retain possession of the property,

10 (2) To prevent or overcome resistance to the taking of the property, or

11 (3) To facilitate escape with the property.
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INSTRUCTION NO. _____

Petit larceny is the intentional stealing, taking, carrying away or driving away personal goods with a value of less than \$650, with the specific intent to permanently deprive the owner of said property.

1
2 When a person is accused of committing a particular crime and at the same time and by
3 the same conduct may have committed another offense of lesser grade or degree, the latter is
4 with respect to the former, a lesser included offense.

5 If you are not convinced beyond a reasonable doubt that the defendant is guilty of the
6 offense charged, he may, however be found guilty of any lesser included offense, if the evidence
7 is sufficient to establish guilty beyond a reasonable doubt of the lesser included offense.
8

9 The offense of Robbery necessarily includes the lesser offense of petit larceny. You are
10 instructed that if you are not convinced beyond a reasonable doubt that the defendant is guilty of
11 Robbery, you may find the defendant guilty of Robbery, if you so find beyond a reasonable
12 doubt.

13 You are instructed that you may only mark one box on the verdict form.
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VER

ORIGINAL

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

NOV 18 2016

DISTRICT COURT

BY

PHYLLIS IRBY, DEPUTY

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

Case No: C-16-314260-1

ALFRED C. HARVEY,

Defendant,

Dept No: VIII

VERDICT

We, the jury in the above entitled case, find the Defendant ALFRED C. HARVEY, as follows:

(please check the appropriate box, select only one)

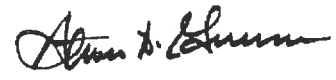
- ☐ Not Guilty
- ☒ Guilty of Robbery
- ☐ Guilty of Robbery with use of a Deadly Weapon

DATED this 18 day of November, 2016

Michelle L. Malone
FOREPERSON

C-16-314260-1
VER
Verdict
4600417




CLERK OF THE COURT

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
JASMIN D. SPELLS, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 11635
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
Lillyjd@clarkcountynv.gov
Attorneys for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

ALFRED C. HARVEY,

Defendant,

CASE NO. C-16-314260-1

DEPT. NO. VIII

DATE: March 8, 2017
TIME: 8:00 a.m.

SENTENCING MEMORANDUM

COMES NOW, the Defendant, ALFRED C. HARVEY, by and through JASMIN D. SPELLS, Deputy Public Defender and hereby submits the instant memorandum for the Court's consideration at his upcoming sentencing.

DATED this 6th day of March, 2017,

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Jasmin Spells
JASMIN D. SPELLS, #11635
Deputy Public Defender

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MEMORANDUM

Alfred Harvey, "Alfred" is a forty year old adult who has made some very bad decisions in his life. Although Alfred is no stranger to the criminal justice system, he has put his past behind him. Alfred has reached a significant milestone in his life and now has maturity of judgment. Over the last six months, Alfred has had an opportunity to be clean and reflect on his past and his future. Alfred has aspirations of a drug and criminal free lifestyle that involves the support of his family, friends and loved ones. Alfred has the willpower to finally kick his methamphetamine addiction and live a life free of the holds of illicit substances.

Getting To Know Alfred

Alfred was born and raised in Los Angeles, California. At the tender age of nine months, Alfred's father abandoned his mother and the two kids. It would be over ten years before Alfred would see his natural father again. Soon after the separation, Alfred's mother remarried a man named Reggie Parsons. Parsons was a single parent himself, and brought three children to the union. Alfred's mother would go on to have two additional children with Reggie Parsons. All in total, there were seven children in the home. Alfred and his older brother were the only two children who were not the biological kids of Reggie, and they were reminded of this daily.

Alfred's step-father is a Vietnam War Veteran. He suffered from significant drug issues and PTSD that went untreated. In the house, his parenting style mirrored that of militarization. He was a staunch disciplinarian who physically and verbally abused Alfred and his older brother. Alfred's step-father would physically abuse him during the day while his mother was at work. On one occasion, Alfred recalls that his step-father lifting him by his ears and punching him about his face. Alfred also recalls being lifted up by his ankles. Alfred suffered multiple black eyes, a broken ankle bone, and multiple bruises. There was no escaping the abuse. Alfred was even forced to stay home from school when the injuries were obvious.

Emotionally, the abuse took a toll on Alfred because it was clear that he was different than the others. Alfred did not feel loved. Alfred would beg and plead to go to work with his mom to escape the abuse, but she denied him. When she returned from work, Alfred's mother would see the bruises, but refuse to discuss Alfred's injuries. To make matters worse, Parsons

1 got into an argument with Alfred's natural father early on in his relationship with Alfred's mom.
2 Due to this friction, Alfred was kept from spending time or speaking to his biological father.

3 When Alfred was five his father promised to visit him. Alfred waited for hours on his
4 front porch, but his dad never came. Alfred finally met his dad again when he was twelve years
5 old. This would be the first and last visit with his dad as a child. Alfred wouldn't reconnect with
6 his dad until adulthood.

7 Around the age of six years old, CPS finally got involved as the neighbors called.
8 Alfred's mother took Alfred and his older brother to live in a shelter. Financially unable to
9 survive without Parsons, it wasn't long before Alfred's mother moved them back into the home.
10 Parson continued to physically abuse Alfred until he became a teenager and could defend
11 himself.

12 13 Substance Abuse

14 At the tender age of eight, Parson's brother introduced Alfred to cocaine to see how it
15 would affect an eight year old. With untethered access to cocaine, pilfering from Parson's and
16 his step-uncle's supply, Alfred's addiction quickly spiraled out of control. By the age of twelve,
17 Alfred was using cocaine and PCP. At fifteen, Alfred was a full blown addict, using
18 methamphetamine intravenously and snorting cocaine. As Alfred got older, he began to hang out
19 more and more to escape his home life. This lead to more drug use and more trouble. Alfred soon
20 found himself as a ward of the California Youth Authority.

21 Alfred was unable to tame his drug addiction. Alfred also has a mental health diagnosis
22 and he found himself self-medicating often. Alfred began to use marijuana, finding that it calmed
23 his racing thoughts and many of his mental illness symptoms. He however, still found it difficult
24 to kick the more hardcore drugs.

25 As Alfred got older, he ran the streets more and more, to escape home life. The drugs also
26 helped him escape the reality of the abuse at home. Running the streets however was par and par
27 with hanging out with the wrong crowd. Soon, Alfred found himself a ward of the California
28 Youth Authority.

Mental Health History

Alfred is diagnosed as having Schizoaffective Disorder, Bipolar Type and Polysubstance Dependence. Given that Alfred grew up in California, many of the records were difficult to obtain. Alfred was transferred to Atascadero Hospital in 2008 as a MDO (mentally disordered offender). Alfred was scheduled to be released to parole in California on June 11, 2008. Instead of releasing him, personnel at the prison decided that Alfred should be transferred to Atascadero instead.

Atascadero State Hospital Records show that Alfred had multiple acute involuntary hospitalizations to Atascadero between 2007 and 2008. He was declared 5150 on numerous occasions in Los Angeles County. Medical records describe Alfred as being paranoid, plagued with conspiracy theories and responding to internal stimuli including auditory hallucinations. Records further state that Alfred has poor insight into his mental health state with active mental illness. The records go on to highlight Alfred's past child abuse and his multiple suicide attempts by cutting and drug overdose. While at Atascadero, Alfred received intramuscular injections every two weeks as well as six other medications to treat his mental illness.

Alfred acknowledges his mental illness and understands the significance of complying with his medication regimen. He also has reached a point to where he is able to recognize how failing to be medically compliant affects his day to day actions. Currently, at Clark County Detention Center, Alfred is prescribed psychotic, mood regulating medications. Alfred is medication compliant and is doing well.

Adult Life

Alfred is now forty years old. He is married to Tara Harvey. Alfred is the father to three children whom he loves dearly: Aiden (12), Chase (10) and Ocean (4). Alfred has faced many trials and tribulations, but he has remained positive and steadfast. Alfred is a giving person and tries to help others in need.

Putting his childhood abuse aside, Alfred has tried to mend his relationship with his mother and step-father. Alfred's mom still finds it hard to acknowledge the abuse, stating only that Parsons was "tough" with Alfred because he got into trouble. Alfred's mom also states that she believes drugs ruined Alfred's life.

1 Alfred received his GED in a program called Open Doors in California. He went on to
2 study business at Chaffey Community College. Although Alfred was unable to complete the
3 course due to his difficulty managing his mental illness, he did not give up. Alfred instead went
4 on to earn his commercial driving license and obtained employment driving trucks. Alfred also
5 has work experience as a bartender and a front desk clerk at a hotel. Currently, Alfred cuts hair
6 for other inmates at the jail.

7 Alfred's passion is writing and inspiring people to move beyond their circumstances
8 towards positivity. In that endeavor, Alfred has written and published two books. He wrote the
9 book *From Ordinary Inmate to Extraordinary Entrepreneur*. Alfred also wrote the book *Stop*
10 *Playing and Trap Cash*. Alfred relocated to Las Vegas to help promote his new book. He was
11 scheduled to be at a local artist showcase. Upon moving to Las Vegas, Alfred needed to get new
12 doctors to stay current with his medication regime. As Alfred did not have medical insurance, the
13 cost of his medication became impossible to bear.

14 While being incarcerated, Alfred has continued to instill hope and positivity in others. He
15 started a creative writing session in the jail and speaks to others about writing. Alfred is
16 described as being uplifting and always looking for the positive in a situation by his fellow
17 inmates. A number of inmates submitted letters on his behalf as to how Alfred has helped them
18 deal with depression while incarcerated.

19 Significant Facts of the Instant Case

20 The jury found Alfred guilty of Robbery, not robbery with a deadly weapon. This
21 decision of the jury is respected. While Alfred has readily admitted that he stole items from the
22 store that day, he has maintained that he never drew a weapon and never utilized force against
23 anyone. It is not unimaginable that the store employee was upset that Alfred was not compliant
24 with requests to come back into the store¹.

25 Significantly, it was a very short timeline from the time the incident occurred to the time
26 of arrest and no weapon was ever found. Alfred makes no excuses for his behavior. Alfred
27 explains that this situation has made the significance of medication compliance and the need for
28 drug treatment more clear. Alfred is disappointed that after years of doing well, writing books

¹ See PSI where victim states that the defendant should go to prison to "humble" himself.

1 and finally getting somewhere with his books, that the combination of not treating his mental
2 illness and using illicit drugs can change that progress in an instant. Alfred is apologetic to all
3 who are involved in this situation.

4 It is also significant to look at the specific details of the case and as the jury rendered
5 verdict. It is clear that no one was hurt in this case. It is also clear that no one suffered any
6 injuries. The victim noted that he does not the defendant wanted to harm him. The victim went
7 on to tell Parole and Probation that this crime has not impacted his employment or his day to day
8 life. The PSI notes that at the time of the offense, Alfred was under the influence of both cocaine
9 and methamphetamine.

10 **Gang Activity/Affiliation²**

11 Alfred contests that gang affiliation/activity noted in the Presentence Investigation
12 Report. Notably, Alfred has been incarcerated in California before, but there is no indicating that
13 he was noted as being gang-affiliated in California. Moreover, the PSI states that the defendant is
14 a confirmed active member of Blood, 456 Pomona Island Piru street gang. Notably, the field
15 interview card from July 7, 2015 notes, no gang affiliation. Additionally, the inmate assessment
16 that was conducted at Clark County Detention Center on March 30, 2016 also notes, no gang
17 affiliation. Interestingly, a filed interview card from May 24, 2016 notes that Alfred admitted to
18 being a Blood with no specific set, only stating that he was from Pomona California. Counsel has
19 requested jail records and has never received a corresponding inmate assessment or any other
20 documentation supporting the May 24, 2016 interview card. Alfred denies being a member of the
21 Blood gang and states that he has only ever said that he grew up in Pomona, California.

22 **Alfred Does Not Deserve Habitual Criminal Treatment**

23 Despite a tumultuous childhood and an adult life that on paper doesn't look amazing,
24 Alfred has come a long way. He is an author, a dad, a husband, and an inspiration to those who
25 know him personally. Alfred is an individual who suffers from a mental illness and who is an
26 addict. He has never had the opportunity at formal drug treatment. Alfred has rarely had the
27 benefit of a good mental illness regimen with adequate medication.

28

² All Field Interview Cards as well as Inmate Assessment are attached as Exhibits.

1 While being incarcerated, Alfred took it upon himself to contact Hope for Prisoners and
2 the Frog Sober living house. He has been accepted into both of those programs. Additionally,
3 Alfred applied to Adult Drug Court but was denied admission. A substance abuse evaluation
4 conducted on January 24, 2017, shows that Alfred meets the criteria for level three residential
5 treatment. Alfred has been accepted into Salvation Army inpatient drug treatment. Alfred is
6 requesting an opportunity to get drug treatment and continue on his successful path.

7 The State is requesting that Alfred be treated as a habitual criminal. Alfred is not worthy
8 of the highest punishment available in Nevada law. He has not committed the most heinous
9 offense. Alfred is not a person who is not redeemable. He has very positive qualities and has
10 skillsets. Alfred has been a productive member of society. Moreover, Alfred's history shows that
11 he has never been incarcerated for a lengthy period of time.³ Alfred does not deserve habitual
12 criminal treatment.

13 Conclusion

14 Sentencing is the point in which the Court takes all things into consideration: The person.
15 before the Court, the victim, the severity of the situation. Alfred is asking the Court for an
16 opportunity at probation with drug treatment. Should the Court find that is not warranted,
17 Counsel submits to the Court that a short prison sentence of 2-5 years with a recommendation of
18 the 184-drug treatment program satisfies the goals of retribution and deterrence. This sentence is
19 just given all the above factors. Alfred is at the age where statistics show people age out of
20 crime. He is at a critical stage where he recognizes the significance of managing his mental
21 illness and his drug addiction. Counsel submits that any sentence longer than 4-10 years is unjust
22 given the circumstances of this case and all the circumstances that have been laid out here.

23
24 DATED this 3rd day of March, 2017.

25 PHILIP J. KOHN
26 CLARK COUNTY PUBLIC DEFENDER

27 By: /s/ Jasmin Spells
28 JASMIN D. SPELLS, #11635
Deputy Public Defender

³ Alfred has never been sentenced to more than two years in prison.

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that service of the above and forgoing MOTION was served via electronic e-filing to the Clark County District Attorney's Office at motions@clarkcountynvda.com on this 6th day of March, 2017

By: /s/ -Kristina Byrd

An employee of the
Clark County Public Defender's Office

EXHIBIT A

7027355211

01:58:50 p.m. 03-06-2017

1/3

UTRN,

JASME

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December 28, 2016

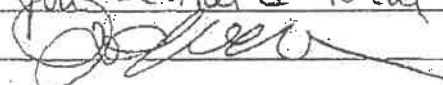
Judicial officer James Bixler
Dept 8 Courthouse 12C
Regional Justice Center
Las Vegas, Nevada 89155

Leonard Neal
Los Angeles, Ca (909) 461-0236

Dear

I am writing to you regarding Criminal
Case with Alfred Harvey vs. City of
Las Vegas, Clark County District Attorney's
office Case# C-16-314260-1

I have known Alfred Harvey for
5 years, and it has been a pleasure.
He is a great father, and inspiration
to overcome odds. I was the editor of
Alfred Harvey's book that was published
and currently in Barnes Noble / Amazon.com
I feel he deserves a chance to get on
the right track. He has family and a
positive support structure that will result
in a positive change for him.

—Thank you Leonard Neal


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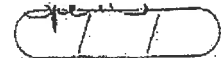
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03-06-2017

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conn:

JASLINE



2/15/2017

Dept. 8 Courthouse 12C
Regional Justice Center
Las Vegas, Nevada 89155

Wiki's Hair Salon
Bela - owner
Las Vegas, Nevada (702) 381-5710

I am writing to you regarding Criminal case
Alfred Harvey vs. City of Las Vegas Clark County
District Attorney's office case # C-16-314260-1

Alfred Harvey has employment at my salon
as a barber apprentice on release from
JCDC. He is a good worker, and father
from what I know, and happy to have
him on board.

7027355211

01:59:31 p.m. 03-06-2017 3/3
with JASMINE STEPHENS

3/6/17

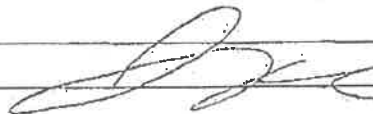
Judicial officer James Bixler
Dept 8 Courthouse 12 C
Regional Justice Center
Las Vegas, Nevada 89155

Jalen Jefferson-Kountz
Las Vegas, Nevada (909) 201-3307

Dear Judge Bixler

I am writing to you regarding criminal case Alfred Harvey
Versus city of Las Vegas Clark County District attorney's
office. Case # C-16-314260-1.

Alfred is a great father he really enjoys being with
his kids and he's also a good husband. He has
always been a hard worker despite his short comings
Alfred has been a good person throughout the years
I've known him. I believe he is capable of great things
for example he has written and published
an outstanding book and I'm sure he has more
in store.



Dec. 16, 2016

Judge Douglass Smith,

This is Tara Harvey, I am writing on behalf of my husband Alfred Harvey, he has a case coming up for sentencing January 4, 2017, I just wanted to ask for leniency in his sentencing not because I love him and me and the kids miss him a lot we came to Vegas to start a new life but Alfred getting caught up in the wrong circle his actions caught up to him. He is a good dad, husband, and he tries to do right but his underlying drug and alcohol addictions get in the way of his judgements and at times he does things outside of his character. He has never received treatment to help this issue, I believe a treatment program would help him to change and become a good, upstanding citizen because I see those qualities in him, and he has said on many occasions he wants to change and do things different and go on

the straight path. He has been
approved by Salvation Army and
Hope for Prisoners as an alternative
he needs Counseling for Childhood
Issues that he hasn't dealt with
that I feel is the main reason
he self medicates with drugs and
alcohol. I have never been
arrested myself and I try to do
right thing, but no one is
perfect and I believe in
second chances our kids need
their Dad, the Dad he was
made to be with these addiction
over his life. He is in the
incentive ward of the jail he
has attended NA there and
AA too, also has encouraged
fellow inmates to write and has
started a creative writing class
that he teaches. Alfred is an
author, husband, dad he is more
than this and he has let him-
self down and his family but I
believe people can change with
right help. Thank you Tara Hane

To The courts,

My NAME is Brandon Lush I AM serving time AT clark county detention center when I met Mr Harvey I was having a hard time kicking Drugs having withdrawals And feeling suicidal Alfred offered to give me a hair cut And From That Point on My Life took a turn. My confidence was boosted And I found new reason to live. I decided attend Alfreds creative writing class after he invited me As he does every Inmate who will listen. I have Always had a passion for writing But AT This Point in my life didnt think anyone cared. When I attended the class not only did Harvey show me he cared Him being a Published Author inspired me to do the same. As my teacher he showed me every thing I needed to know To Publish my own book, lets just say The rest is my story I am now a Published Author. With Harveys help I wrote a book called "The Real And TRUE world OF

HATERISM -

I'm extremely excited and cant wait for my release because with my families support Im planning a book tour I will be forever grateful to Mr Harvey And have given him the biggest shout out. Thank you!

EXHIBIT B

SATURDAY, FEB 27TH 5:00PM-7:00PM

THIS MONTH

ANDREA GOEGLIN

Don't Die Waiting to be Brave

ALFRED HARVEY

Stop Playing and Trap Cash

**JOHN JEFFREY
LUNDELL**

Get Beyond Your Troubled Past

VICKI A. NIGGEMEYER

Get Creative With Your Family History

EXHIBIT C



**EIGHTH JUDICIAL DISTRICT COURT
SPECIALTY COURTS DIVISION**

Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155
(702) 671-4528

STATUS OF APPLICATION FOR ENTRY INTO ADULT DRUG COURT

TO: Jasmin Spells, Esq.
Bart Pace, Esq.

FROM: Whitney Canfield, Specialty Courts Specialist
Phone: 671-3949 Fax: 388-2594
Email: CanfieldW@clarkcountycourts.us

Jaclyn Winter, Specialty Courts Specialist
Phone: 671-3319 Fax: 388-2594
Email: Winterja@clarkcountycourts.us

DATE: December 27, 2016

SUBJECT: Alfred Harvey

C314260/#7013098

- ☐ The above defendant HAS been deemed appropriate for Adult Drug Court.
- ☒ The above named defendant HAS NOT been deemed appropriate for Adult Drug Court.
- ☐ Adult Drug Court is unable to accept new referrals at this time.

Thank you for your referral to Adult Drug Court.

Adult Drug Court • DUI Court • Mental Health Court • Veterans Treatment Court
Family Drug Court • Dependency Mother's Drug Court • Juvenile Drug Court
• Truancy Diversion Program • Competency Court

EXHIBIT D

Inmate Assessments						
Inmate ID : '0007013096', Start Date : '30-MAR-2016', End Date : '01-JUN-2016' 01-JUN-16						
Booking Begin Date	Booking End Date	Last Name	First Name	Offender ID	Seq	Assessment Date
24-MAY-2016		HARVEY	ALFRED	0007013098	1	125-MAY-2016
						Other than Clark County, have you ever been to Jail Or Prison?
						Yes
						If yes, for what?
						Violent Felony
						Are you a US Citizen?
						Yes
						Do you have any physical handicaps?
						No
						Do you have any tattoos?
						Yes
						Are you currently, or have you ever been associated with a Gang?
						No
						Have you ever had psychiatric treatment?
						No
						Are you having suicidal thoughts?
						No
						Have you had, or do you have a substance abuse issue?
						No
						Have you served at least 1 day in the US Military?
						No
						Do you have a high school diploma or GED?
						Yes
						What is the severity of the current charge?
						Violent Felony
						What is the worst scope offense listed?
						Violent Felony
						How many violent felony charges total in 15 years (separate offenses)?
						2 to 3
						How many in custody violations does the inmate have?
						4 to 9 informal or 2 or less, non-violent formal violations
						What is the age of the inmate?
						30-39 years of age
						Booking Behavior?
						Passive
						What is the sex of the inmate?
						Male
						Other than Clark County, have you ever been to Jail Or Prison?
						Yes
						If yes, for what?
						Violent Felony
						Are you a US Citizen?
						Yes
						Do you have any physical handicaps?
						No
						Do you have any tattoos?
						Yes

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6/1/2016

24	Have you ever been victimized in custody?	No
25	If yes, are you concerned of any future problems relating to the incident?	No
26	Are you currently, or have you ever been associated with a Gang?	No
27	Do you have any enemies in custody?	No
28	Have you ever had psychiatric treatment?	No
29	Are you having suicidal thoughts?	No
30	Have you had, or do you have a substance abuse issue?	No
31	Have you served at least 1 day in the US Military?	No
32	Do you have a high school diploma or GED?	Yes
33	Have you ever been enrolled in Special Education classes while in high school?	No
34	Are you on active parole or probation in California or been released from CA prison within a year?	No
35	Are you currently homeless?	No
36	What is the severity of the current charge?	Violent Felony
37	What is the worst scope offense listed?	Violent Felony
38	How many violent felony charges total in 15/2 to 3 years (separate offenses)?	
39	How many in custody violations does the inmate have?	None
40	What is the age of the inmate?	50 years of age or older
41	Booking Behavior?	Passive
42	What is the sex of the inmate?	Male

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6/1/2016

Incident History by Type
ID : '0007013098', Incident Type : 'VIO, CAR', Start Date : '30-MAR-2016', End Date : '01-JUN-2016' 01-JUN-16

Offender ID	Last Name	First Name	Booking Date	End Date	Incident Date	Role/Type	Incident	Incident ID	Reporting Officer Last Name	Reporting Officer First Name
1	0007013098	HARVEY	ALFRED	30-MAR-2016	13-MAY-2016	VIO	The following inmates had either extra linen or did not make their bunks prior to free time starting. All inmates will receive an end of shift lockdown.	631038	LOWERY	DEREK
2					30-APR-2016	VIO	After breakfast, I announced to the module to read, write or sleep. As always, I turned out the overhead lights which is a cue to the ones that could not hear me in the back rows. Inmates Harvey, Jones, and Potts continued to talk. They will lose their free time until 1200 Noon 1 May 2016 (131) Inmate Sawyer had two pillow cases. He will lose his free time for 24 hrs until 0900 1 May 2016 (131)	628278	LOWERY	DEREK
3					27-APR-2016	VIO	During bunk inspections this morning I found extra linen at inmate Harvey's bunk (116). A day ago I had found extra linen there as well and gave him a warning. This inmate is well aware of the amount of linen that he can have. 24 hour lock down given. Sgt. Aspiroz notified	627573	BUNKER	SPENCER
4					25-APR-2016	VIO	During bunk inspections I found some extra linen at bunks belonging to inmate Harvey and Crawford (116). Both inmates were counseled and informed. Verbal warning given to both.	627074	BUNKER	SPENCER
5					16-APR-2016	VIO	Verbal counseling was given to inmates Harvey and Bradley for having extra linen. (116)	625142	LOWERY	DEREK
6					12-APR-2016	VIO	On 4-12-16 after commissary inmate Harvey ID# 7013098 was passing commissary with Williams ID# 1583862 after the window I gave them for their exchange. I had briefed them if they passed afterwards it would result in a 24 hour lock down. Harvey was given a 24 hour lock down for violating code (134). Sergeant Ford was advised via email.	624264	LUONG	ANDY
7					12-APR-2016	VIO	On 4-12-16 during commissary inmates Lee ID# 5637468, Harvey ID# 7013098, Muro ID# 273091, Silva ID# 2692478, and Trip ID# 7030145 were talking after being briefed not to. All were given a verbal warning for violating code (131). Sergeant Ford was advised via email.	624263	LUONG	ANDY
8					08-APR-2016	VIO	On the above date at approximately 0635 hrs, I returned from break and saw inmate Harvey, Alfred ID#7013098 on the phones while serving a twenty-four hour lockdown. I told him to return to his bunk and advised him that he earned himself another lockdown ending on 04/08/2016 at 1010 hrs.	623256	ESPARZA	CESAR
9					07-APR-2016	VIO	On the above date at approximately 1010 hrs, I saw inmate Harvey, Alfred ID#7013098 leave his seat during clock. I advised him of his lockdown ending on 04/08/2016 at 1010 hrs.	623062	ESPARZA	CESAR

Harvey clearly that this is a full, true and correct copy of the original held by on the with the Los Angeles Police Department, Detention Administration Section.

[Signature]
Classification Technician

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6/1/2016

Las Vegas Metropolitan Police Department
400 S. Martin Luther King Dr.
Las Vegas, NV 89108



Field Interview No: LLV160622001121

Field Interview

Field Interview Number: LLV160622001121
Reporting Officer: 05761 - Zucker, Matthew C
Location: 330 S Casino Ctr Blvd Las Vegas NV, 89101
Reason for FI: Other
Consensual Stop: ☐ Photos: ☐
Miranda Warning: ☐ Gang Activity: Yes
Interview Start Date/Time: 05/24/2016 10:15:00 AM
Interview End Date/Time: 05/24/2016 10:30:00 AM
Assisting Officer:
Route To: Gangs
SIB: A1

Reason for Interview:
Classification Interview

Individual Information:

Name:	Harvey, Alfred	FI Association:	F/I Subject	I.D. Number:	7013098
Alias:					
DOB:	12/19/1976	Age:	39	SSN:	
Sex:	Male	Race:	Black or African American	Eye Color:	Brown
Height:	6' 1"	Weight:	180	Hair Color:	Black
Hair Style:		Hair Length:		Facial Hair:	
Build:		Speech Char:		Attire:	
Miscellaneous:		Business/School:		Occupation/Grade:	
DLN:		State/County:		Expr Date:	
Gang Involvement:	Yes	Gang Affiliates/Member:	Member	City/State of Birth:	California
How Determined:	Admitted	Gang Name:	Blood		
	Jail Interview				

Addresses

Phones

Scars, Marks and Tattoos

Subject Narrative:

Inmate claims Blood with no specific set. Inmate would not give a moniker and stated he was from Pomona, CA.

Vehicle Information:

Las Vegas Metropolitan Police Department
400 S. Martin Luther King Dr.
Las Vegas, NV 89106



Field Interview No: LLV150707000045

Field Interview

Field Interview Number: **LLV150707000045**
Reporting Officer: **07758 - Chavez, Robert V**
Location: **Maryland Pkwy/University Rd LAS VEGAS, NV**
Reason for FI: **Other**
Consensual Stop: **No**
Miranda Warning: **No**
Interview Start Date/Time: **07/07/2015 12:20:00 AM**
Assisting Officer:

Interview Date: **07/07/2015**
Unit/Squad: **SC 20 ADM**
S/B: **N3**
Route To: **Gangs**
Photos: **No**
Gang Activity: **No**
Miranda Warning Date/Time:
Interview End Date/Time: **07/07/2015 12:30:00 AM**

Reason for Interview:
SEE NARRATIVE

Individual Information:

Name: **HARVEY, ALFRED** FI Association: **F/I Subject - Driver** I.D. Number: **7013098**
Alias:
DOB: **12/19/1976** Age: **38** SSN: **550-46-9803** Sex: **Male** Race: **Black or African American**
Height: **6' 0"** Weight: **200** Hair Color: **Black** Eye Color: **Brown**
Hair Style: Hair Length: **Short** Facial Hair: **Clean Shaven** Complexion: **Medium**
Build: **Medium** Speech Char: Attire: **BLACK HEADWEAR; BEIGE SHIRT; BLACK SHORTS; BEIGE SHOES**
Miscellaneous: Business/School: Occupation/Grade:
DLN: **2105039099** State/County: Expr Date: City/State of Birth: **CA**
Gang Involvement: Gang Affiliations/Member:
How Determined: Gang Name:

Addresses

Residence: **722 N Royal Crst Cir #3 LAS VEGAS, NV 89169**

Phones

Scars, Marks and Tattoos

Tattoo: **Abdomen** **ISLANDS**
Tattoo: **Calf, right** **PLAYBOY**
Tattoo: **Shoulder, right** **MYB**

Subject Narrative:

DURING CAR STOP FOR EXPIRED PLATES I ASKED SUBJECT IF HE HAD EVER BEEN ARRESTED OR PRISON. SAID YES IN CA FOR CAR RACING. 2010 CHINO PRISON.

WHEN ASKED ABOUT GANG AFFILIATION, AND TATTOOS, HE WAS RELUCTANT TO ANSWER AND SAID NO GANG AFFILIATION.

Vehicle Information:

Year: **1988** Vehicle Make: **OLDSMOBILE** Vehicle Model: **BTM**
Type: VIN: Plate Number: **1RLE107** State: **California**
Color:

Black

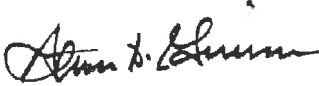
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PAGES 311-321

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ALFRED C. HARVEY
#7013098

Defendant.

CASE NO. C314260-1

DEPT. NO. VIII

JUDGMENT OF CONVICTION
(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crime of ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165; and the matter having been tried before a jury and the Defendant having been found guilty of the crime of ROBBERY (Category B Felony) in violation of NRS 200.380; thereafter, on the 8th day of March, 2017, the Defendant was present in court for sentencing with counsel JASMIN SPELLS, Deputy Public Defender, and good cause appearing,

☐ Note Proceed (before trial)	☐ Bench (Non-Jury) Trial
☐ Dismissed (before trial)	☐ Dismissed (during trial)
☐ Dismissed (after trial)	☐ Appeal
☒ Guilty Plea (before trial)	☐ Guilty Plea with Sent. (during trial)
☐ Transferred (pre-trial only)	☐ Convicted
☐ Other (specify below)	

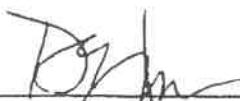
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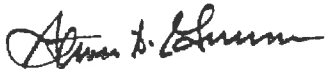
1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said crime as set forth in
2 the jury's verdict and, in addition to the \$25.00 Administrative Assessment Fee, \$250.00
3 Indigent Defense Civil Assessment Fee and \$150.00 DNA Analysis Fee including
4 testing to determine genetic markers plus \$3.00 DNA Collection Fee, the Defendant is
5 SENTENCED as follows: a MAXIMUM of ONE HUNDRED FORTY-FOUR (144)
6 MONTHS with a MINIMUM parole eligibility of THIRTY-SIX (36) MONTHS in the
7 Nevada Department of Corrections (NDC), with THREE HUNDRED FORTY-FOUR
8 (344) DAYS credit for time served.

9
10
11 Ms. Spells advised that the November 30, 2016, Presentence Investigation (PSI)
12 report indicates on page 3 that the Deft. is a confirmed active member of the "Blood,
13 456 Pomona Island Piru" street gang; however, Defendant has denied any gang
14 membership; colloquy. COURT ORDERED that the following shall be added to the
15 Judgment of Conviction and noted for the PSI.

16 **CORRECTIONS TO THE PRESENTENCE INVESTIGATION (PSI) REPORT:**
17 the Defendant, at this point, disavows any gang affiliation.

18 DATED this 17 day of March, 2017

19
20
21 
22 DOUGLAS E. SMITH
23 DISTRICT COURT JUDGE 
24
25
26
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28


CLERK OF THE COURT

1 NOAS

2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR No. 0556
4 309 South Third Street, Suite 226
5 Las Vegas, Nevada 89155
6 (702) 455-4685
7 Attorney for Defendant
8
9
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11

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,	)	
13 Plaintiff,	)	CASE NO. C-16-314260-1
14 v.	)	DEPT. NO. VIII
15 ALFRED C. HARVEY,	)	
16 Defendant.	)	
		<u>NOTICE OF APPEAL</u>

17
18 TO: THE STATE OF NEVADA

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

23 NOTICE is hereby given that Defendant, Alfred C. Harvey,
24 presently incarcerated in the Nevada State Prison, appeals to the
25 Supreme Court of the State of Nevada from the judgment entered
26 against said Defendant on the 17th day of March, 2017, whereby he
27 was convicted of Robbery and sentenced to \$25 Admin. Fee; \$250
28 Indigent Defense Civil Assessment Fee and \$150 DNA analysis fee
including genetic markers plus \$3 DNA Collection Fee; 36-144
months in prison with 344 days CTS. Correction to the Presentence

1 Investigation (PSI) Report: The Defendant at this point, disavows
2 any gang affiliation.

3 DATED this 10th day of April, 2017.

4 PHILIP J. KOHN
5 CLARK COUNTY PUBLIC DEFENDER

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

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing
was made this 10th day of April, 2017, by Electronic Filing to:

District Attorneys Office

E-Mail Address:

PDMotions@clarkcountyda.com

Jennifer.Garcia@clarkcountyda.com

Eileen.Davis@clarkcountyda.com

/s/ Carrie M. Connolly

Secretary for the

Public Defender's Office

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

April 20, 2016

C-16-314260-1 State of Nevada
vs
ALFRED HARVEY

April 20, 2016 10:00 AM Initial Arraignment

HEARD BY: De La Garza, Melisa COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Roshonda Mayfield

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT: Bunnett, Matthew Attorney for the State
 HARVEY, ALFRED Defendant
 Hillman, Ralph Attorney for the Defendant

JOURNAL ENTRIES

DEFT. HARVEY ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT FURTHER ORDERED, counsel has 21 days from the filing of the preliminary transcript to file any writs. COURT FURTHER ORDERED, the discovery motion requested by defense is GRANTED pursuant to NRS 174.235.

CUSTODY

6/15/16 9:30 A.M. CALENDAR CALL (DEPT. 23)

6/20/16 1:00 P.M. JURY TRIAL (DEPT. 23)

PRINT DATE: 04/22/2016

Page 1 of 1

Minutes Date: April 20, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 04, 2016**

C-16-314260-1 State of Nevada
vs
ALFRED HARVEY

May 04, 2016	9:30 AM	Motion for Own Recognizance Release/Setting Reasonable Bail	Defendant's Motion for Own Recognizance Release Under Intensive Supervision
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HEARD BY: Miley, Stefany**COURTROOM:** RJC Courtroom 12C**COURT CLERK:** Katherine Streuber**RECORDER:** Maria Garibay**REPORTER:****PARTIES**

PRESENT:	HARVEY, ALFRED C Spells, Jasmin	Defendant Public Defender
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JOURNAL ENTRIES

- Licensed Deputy District Attorney Jory Scarborough present. Statement by Deft. Argument by counsel. Argument by the State. Further argument by counsel. COURT ORDERED, motion DENIED. FURTHER, request for bail reduction DENIED. Trial date STANDS.

CUSTODY**PRINT DATE:** 05/16/2016**Page 1 of 1****Minutes Date:** May 04, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor	COURT MINUTES	June 01, 2016
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C-16-314260-1	State of Nevada vs ALFRED HARVEY
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June 01, 2016	9:30 AM	All Pending Motions	Bench Warrant Return; Deft's Motion to Compel Discovery
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HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	HARVEY, ALFRED C Holthus, Mary Kay Leven, Pandora L.	Defendant Attorney for the State Public Defender
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JOURNAL ENTRIES

- Deft. present in custody on the returned warrant. Counsel noted State requested additional time to file Response. Matter recalled. COURT ORDERED, motion CONTINUED and matter SET for status check.

CUSTODY

06-02-16 9:15 AM DEFT'S MOTION TO COMPEL DISCOVERY; STATUS CHECK:
CUSTODY/BOND STATUS

PRINT DATE: 06/13/2016

Page 1 of 1

Minutes Date: June 01, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 02, 2016**

C-16-314260-1 State of Nevada
vs
ALFRED HARVEY

June 02, 2016	9:15 AM	All Pending Motions	Defendant's Motion To Compel Discovery; Status Check: Custody /Bond Status
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HEARD BY: Miley, Stefany**COURTROOM:** RJC Courtroom 12C**COURT CLERK:** Katherine Streuber**RECORDER:** Maria Garibay**REPORTER:****PARTIES**

PRESENT:	HARVEY, ALFRED C	Defendant
	Schwartz, Bryan A.	Attorney for the State
	Spells, Jasmin	Public Defender

JOURNAL ENTRIES

- Counsel advised she had spoken with bail bond company, noted she was told Deft. paid \$1,600, however, total bond was \$4,400.00 and stated Deft. was to make payments. Counsel then noted Deft. did not have any collateral as he would not put his vehicle as collateral, therefore, he was take into custody on a bail bond surrender. Colloquy regarding premium. Counsel advised Deft. lost \$1,600.00. Argument by the State noting Deft's criminal history. Upon Court's inquiry regarding Deft's attendance, counsel advised Deft. had no court appearances while out of custody and noted Deft. stayed out of trouble. Further argument by the State. Argument by counsel. State opposed own recognizance release. Argument by counsel. Statement by Deft. COURT ORDERED, Deft. to be RELEASED on his Own Recognizance (O.R.) with House Arrest. Argument by counsel. Court admonished the State. Colloquy regarding Deft's Motion to Compel Discovery. COURT ORDERED,

PRINT DATE: 06/23/2016

Page 1 of 2

Minutes Date: June 02, 2016

motion GRANTED under Brady. Colloquy regarding reciprocal discovery. Counsel advised they would comply.

O.R./H.A.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor	COURT MINUTES	June 15, 2016
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C-16-314260-1	State of Nevada vs ALFRED HARVEY
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June 15, 2016	9:30 AM	Calendar Call
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HEARD BY: Miley, Stefany	COURTROOM: RJC Courtroom 12C
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COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	HARVEY, ALFRED C	Defendant
	Schwartz, Bryan A.	Attorney for the State
	Spells, Jasmin	Public Defender

JOURNAL ENTRIES

- Counsel advised Deft. will waive speedy trial right and noted Deft. wanted to retain Caesar Almase Esq. State advised they were prepared for trial. Deft. WAIVED speedy trial right. COURT ORDERED, trial date VACATED and matter SET for status check.

O.R./H.A.

06-29-16 9:30 AM STATUS CHECK: RESETTING OF TRIAL / NEW COUNSEL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****June 29, 2016**

C-16-314260-1

State of Nevada

vs

ALFRED HARVEY

June 29, 2016**9:30 AM****Status Check**

**Status Check:
Resetting of Trial /
New Counsel**

HEARD BY: Miley, Stefany**COURTROOM:** RJC Courtroom 12C**COURT CLERK:** Katherine Streuber**RECORDER:** Maria Garibay**REPORTER:****PARTIES****PRESENT:**

HARVEY, ALFRED C
Rose, Robert E.
Schwartz, Bryan A.
Spells, Jasmin

Defendant
Attorney for the State
Attorney for the State
Public Defender

JOURNAL ENTRIES

- Counsel advised Deft. was unable to retain private counsel and requested trial date be set. State advised all discovery had been provided. COURT ORDERED, matter SET for trial.

O.R./H.A.

11-02-16 9:30 AM CALENDAR CALL

11-07-16 1:00 PM TRIAL BY JURY

PRINT DATE: 07/08/2016

Page 1 of 1

Minutes Date: June 29, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor	COURT MINUTES	August 03, 2016
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C-16-314260-1	State of Nevada vs ALFRED HARVEY
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August 03, 2016	9:30 AM	Motion for Own Recognizance Release/Setting Reasonable Bail	Deft's Motion For Own Recognizance Release Under Intensive Supervision Or On House Arrest
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HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	HARVEY, ALFRED C Rose, Robert E. Schwartz, Bryan A. Spells, Jasmin	Defendant Attorney for the State Attorney for the State Public Defender
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JOURNAL ENTRIES

- Matter recalled. Argument by counsel. Argument by the State. Court stated its findings and ORDERED, motion DENIED. trial date STANDS.

CUSTODY

PRINT DATE: 08/19/2016

Page 1 of 1

Minutes Date: August 03, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 31, 2016

C-16-314260-1 State of Nevada
 vs
 ALFRED HARVEY

October 31, 2016	9:30 AM	Motion to Dismiss	Defendant's Motion To Dismiss, OR In The Alternative, For A Curative Jury Instruction On The State's Failure To Gather Or Preserve Material Evidence
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HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	HARVEY, ALFRED C	Defendant
	Spells, Jasmin	Public Defender
	Sudano, Michelle L.	Attorney for the State

JOURNAL ENTRIES

- State advised they needed to file an Opposition. COURT ORDERED, matter CONTINUED.

CUSTODY

11-02-16 9:30 AM Defendant's Motion To Dismiss, Or In The Alternative, For A Curative Jury Instruction On The State's Failure To Gather Or Preserve Material Evidence

PRINT DATE: 11/01/2016

Page 1 of 2

Minutes Date: October 31, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 02, 2016

C-16-314260-1 State of Nevada
 vs
 ALFRED HARVEY

November 02, 2016	9:30 AM	All Pending Motions	Calendar Call; Defendant's Motion To Dismiss, Or In The Alternative, For A Curative Jury Instruction On The State's Failure To Gather Or Preserve Material Evidence; Defendant's Motion To Suppress Show- Up Identification And Subsequent In- Court Identification; Deft's Motion To Allow Defendant To Cover His Face Tattoo
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HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT: HARVEY, ALFRED C
 Rose, Robert E.
 Schwartz, Bryan A.
 Spells, Jasmin

Defendant
Attorney for the State
Attorney for the State
Public Defender

PRINT DATE: 11/03/2016

Page 1 of 2

Minutes Date: November 02, 2016

JOURNAL ENTRIES

- Mr. Schwartz advised they are not ready for trial as he beginning an invoked trial next week and stated they had noticed the defense that they would be requesting a continuance. Counsel announced ready. Colloquy regarding trial setting. COURT ORDERED, trial date VACATED and RESET. As to Deft's Motion to Dismiss or In The Alternative For a Curative Jury Instruction on the State's Failure to Gather or Preserve Material Evidence: Argument by counsel noting there were two witnesses who were filming with their cellphones and noted their investigator spoke with them which they stated they were deleted. Court inquired whether individuals had provided copies to officer or the State. Argument by counsel. Court inquired whether individuals were being called as witnesses. Counsel believed a hearing was needed in order to flush out the details as it goes to either bad faith or gross negligence. Argument by the State noting they did not believe officer knew witness(es) had taken photographs or videos. Court stated it appeared to be speculation. Further argument by the State. Court stated it did not have adequate information to make proper ruling and ORDERED, matter SET for hearing; As to Deft's Motion to Suppress Show-Up Identification and Subsequent In-Court Identification: Argument by counsel. Argument by the State noting the surveillance video zooms in on Deft's face. COURT ORDERED, motion DENIED as to In-Court Identification and GRANTED as to Show-Up Identification; As to Deft's Motion to Allow Defendant to Cover His Face Tattoos: Counsel advised it would be only as to Deft's face tattoos, not any other part of his body. Court noted in this case identity is an issue and pointed out what victim might be perceiving. Argument by counsel regarding apprehension of fear. Court pointed out everyone perceives people differently. Additional argument by counsel. Argument by the State noting the jury will have to state they have no bias and pointed out surveillance video shows Deft's face. Statement by Deft. Argument by counsel. COURT ORDERED, motion DENIED as relevant to identification and relevant to elements of crime.

CUSTODY

11-09-16 11:00 AM HEARING; DEFT'S MOTION TO DISMISS OR IN THE ALTERNATIVE FOR A CURATIVE JURY INSTRUCTION ON THE STATE'S FAILURE TO GATHER OR PRESERVE MATERIAL EVIDENCE; CALENDAR CALL

11-14-16 1:00 PM TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 09, 2016

C-16-314260-1 State of Nevada
 vs
 ALFRED HARVEY

November 09, 2016	11:00 AM	All Pending Motions	Calendar Call; Evidentiary Hearing; Defendant's Motion To Dismiss, Or In The Alternative, For A Curative Jury Instruction On The State's Failure To Gather Or Preserve Material Evidence; Deft's Motion in Limine
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HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	HARVEY, ALFRED C Jones, Kelley R. Rose, Robert E. Spells, Jasmin	Defendant Public Defender Attorney for the State Public Defender
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JOURNAL ENTRIES

- Court noted hearing was set as parties were speculating as to what happened with the officer.
Court then noted Deft. had filed a Motion in Limine which had been set for November 28, 2016 and

PRINT DATE: 11/09/2016

Page 1 of 2

Minutes Date: November 09, 2016

stated the motion would be addressed after the hearing. Court advised the trial would be referred to Overflow as it had an Invoked trial which would take priority. Counsel advised they had spoken with the State in an attempt to resolve the issues contained in the motion, however, no agreement could be reached, therefore, motion was filed. Arguments by counsel regarding the presence of Deft's children at the incident. Court stated it did not see the relevance. Further arguments by counsel. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) Arguments by counsel. Court stated its findings and ORDERED, Deft's Motion to Dismiss is DENIED. Colloquy regarding Deft's Motion in Limine. Based upon representations of the State, COURT ORDERED, requests # 2 and #3 are GRANTED. Arguments by counsel. Court advised it had reconsidered its original standing in regards to the children and ORDERED, request #1 DENIED. FURTHER, matter REFERRED to Overflow.

CUSTODY

11-10-16 8:30 AM OVERFLOW (23) - S. ROSE/KOHN - J. SPELLS/3-4 DAYS/7-8 WITNESSES/NO OUT OF STATE WITNESSES

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 10, 2016

C-16-314260-1 State of Nevada
vs
ALFRED HARVEY

November 10, 2016 8:30 AM Overflow

HEARD BY: COURTROOM: RJC Courtroom 15D

COURT CLERK: Alan Castle

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT:	HARVEY, ALFRED C	Defendant
	Jones, Kelley R.	Attorney
	Schwartz, Bryan A.	Attorney
	Spells, Jasmin	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Parties announced ready. COURT ORDERED, trial date set in Department VIII, Courtroom 11B and will be heard by Senior Judge Bixler. Court directed to contact Paula, the JEA in that department. Upon Court's inquiry, counsel (SCHWARTZ, BRYAN, S. ROSE / K. JONES, J. SPELLS) estimated

3 - 4 DAYS

6 WITNESSES / NO OUT-OF-STATE

CUSTODY

11/15/16 9:30 a.m. JURY TRIAL (DEPT. 8)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****November 15, 2016**

C-16-314260-1 State of Nevada
 vs
 Alfred Harvey

November 15, 2016 9:30 AM Jury Trial

HEARD BY: Bixler, James

COURTROOM: RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Steve Rose, Dep DA, and Bryan Schwartz, Dep DA, present on behalf of the State; Jasmin Spells, Dep PD, and Kelley Jones, Dep PD, present on behalf of Deft. Harvey, who is also present.

9:35 a.m. Jury Trial commenced. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Court noted the State is requesting leave of Court to file an Amended Information; they want to change miscellaneous clothing items to miscellaneous items (page 1, line 24) and her to his (page 1, line 25). Argument by Ms. Spells; the Defense has no objection to the "her" to "his" change; however, there is an objection to the deletion of the word "clothing" as it is a significant change and is a change in the State's theory of prosecution which requires a change in the Deft.'s theory of defense. Additionally, the amendment came after the Calendar Call and after the Overflow Calendar Call and as soon as the Defense was informed of the amendment, they notified the State that they would be REQUESTING a CONTINUANCE. Therefore, the Defense is not ready to proceed because they need to rethink their theory of defense and re-evaluate the evidence. If the State withdraws the amendment, the Defense would then be ready to proceed. Argument by Mr. Schwartz; the State has not changed their theory of prosecution. The Deft. went into a T.J. Maxx and took three (3) items; i.e., a wallet, lotions, and some fragrances. Since these are not clothing items, the State just wanted to make that clarification to the Information; colloquy.

PRINT DATE: 12/20/2016

Page 1 of 3

Minutes Date: November 15, 2016

Ms. Spells requested to make a record without the State present. OUTSIDE THE PRESENCE OF THE STATE; discussion held with the Court as to how the change affects their theory of defense; the Deft. did not commit the offense as alleged by the State.

STATE PRESENT: Court noted that no clothing items were taken; therefore, the State has mistakenly alleged a crime which the facts do not support and are requesting to correct the charging document hours before trial. Argument by Mr. Schwartz; he suggested a solution. Mr. Rose discussed NRS 173.095 and Viray V. State. Argument by Ms. Jones; their defense is based on both the Complaint and the Information, which are the same and both are based on miscellaneous clothing items. COURT ORDERED, Ms. Spells' request is DENIED; this matter will proceed to trial on the original Complaint and Information. Although clothing items were not taken, the items taken can be bought in a clothing store.

Colloquy; if the State is adamant about changing the language in the Information, the Court will grant the Defense a continuance. Otherwise, the Court will proceed to trial at this time. Mr. Schwartz advised that the State would WITHDRAW their request to amend the Information.

Additionally, Ms. Spells advised that the Defense filed a motion to cover the Deft.'s face tattoos. Mr. Schwartz advised the State has no objection to the Defense covering the tattoos on the Deft.'s cheek and the one over his eye. COURT ORDERED, Ms. Spells' request is GRANTED.

PROSPECTIVE JURORS PRESENT: Court and counsel begin Voir Dire examination of the prospective Jurors.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Challenge to the Jury Venire by Ms. Spells; she does not believe it is a fair cross-section of the community for the reasons stated on the record and, therefore, she would request a new panel or the opportunity to question the Jury Commissioner as to process of how these prospective Jurors were procured. Argument by Mr. Rose; there is no requirement for the Jury Venire to match exactly the cross-section of the community, there just cannot be a systematic exclusion from the Jury selection process on the basis of race.

It is the Court's opinion that there is no need to question the Jury Commissioner with regard to the selection process as it is a generalized process which does not provide for any kind of exclusion. Therefore, COURT ORDERED, Ms. Spells' request to obtain a new panel is DENIED.

PROSPECTIVE JURORS PRESENT: Court and counsel continued Voir Dire examination of the prospective Jurors. Jury and two (2) alternate selected and sworn. Opening statement by Mr. Rose; Ms. Spells reserved her opening statement.

OUTSIDE THE PRESENCE OF THE JURY: Argument by Ms. Spells regarding the 911 calls; there are two (2) and the first issue is with regard to the named victim's 911 call where the operator references the children at the end of the call and the second issue is with regard the call made by the witness, Erral Appel, where he made hearsay statements. Argument by Mr. Rose. COURT ORDERED, Ms. Spells' request to STRIKE the witness' statement about the incident is DENIED; however, the Court will GRANT Ms. Spells' request to STRIKE the statement by the 911 operator. The State should make the appropriate redactions.

4:16 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED.

CUSTODY

CONTINUED TO: 11/15/16 10:00 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 16, 2016

C-16-314260-1 State of Nevada
 vs
 Alfred Harvey

November 16, 2016 10:00 AM Jury Trial

HEARD BY: Bixler, James

COURTROOM: RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Steve Rose, Dep DA, and Bryan Schwartz, Dep DA, present on behalf of the State; Jasmin Spells, Dep PD, and Kelley Jones, Dep PD, present on behalf of Deft. Harvey, who is also present.

10:35 a.m. Jury Trial resumed. Amended Information FILED IN OPEN COURT; "her" was changed to "his" as the Court directed. Clerk read the Amended Information to the Jury and stated the Deft. s plea thereto.

Testimony and exhibits presented (see worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Court canvassed Deft. with regard to his right not to testify or to testify in this case.

JURY PRESENT: Opening Statement by Ms. Jones; Testimony and exhibits presented (see worksheets).

PRINT DATE: 12/20/2016

Page 1 of 2

Minutes Date: November 16, 2016

C-16-314260-1

5:30 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED.

CUSTODY

CONTINUED TO: 11/17/16 10:00 AM

PRINT DATE: 12/20/2016

Page 2 of 2

Minutes Date: November 16, 2016

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 17, 2016

C-16-314260-1 State of Nevada
 vs
 Alfred Harvey

November 17, 2016 10:00 AM Jury Trial

HEARD BY: Bixler, James

COURTROOM: RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Steve Rose, Dep DA, and Bryan Schwartz, Dep DA, present on behalf of the State; Jasmin Spells, Dep PD, and Kelley Jones, Dep PD, present on behalf of Deft. Harvey, who is also present.

10:00 a.m. OUTSIDE THE PRESENCE OF JURY: Jury Instructions and Verdict form settled on the record.

JURY PRESENT: Court instructed the Jury. Closing arguments by Mr. Rose and Ms. Spells; rebuttal by Mr. Schwartz. At the hour of 12:42 p.m., the Jury retired to deliberate; Court thanked and excused the alternates.

For the record, Court noted that if the Jury has not reached a Verdict by 5:00 p.m., the Court will ask the Marshall to inquire as to whether the Jury is making progress or would prefer to take a break and return in the morning.

/ / /

PRINT DATE: 12/20/2016

Page 1 of 2

Minutes Date: November 17, 2016

5:00 p.m. The Jury elected to recess and return in the morning at 9:30 a.m. to continue their deliberations. Therefore, COURT ORDERED, Jury Trial CONTINUED.

CUSTODY

CONTINUED TO: 11/18/16 9:30 AM

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 18, 2016

C-16-314260-1 State of Nevada
 vs
 ALFRED HARVEY

November 18, 2016 9:30 AM Jury Trial

HEARD BY: Bixler, James

COURTROOM: RJC Courtroom 11B

COURT CLERK: Phyllis Irby

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT:	HARVEY, ALFRED C	Defendant
	Jones, Kelley R.	Attorney for the Deft
	Rose, Robert E.	Attorney for the State
	Schwartz, Bryan A.	Attorney for the State
	Spells, Jasmin	Attorney for the Deft
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- JURY PRESENT. Verdict reached at the hour of 11:10 am. The Court thanked and excused the jury. OUTSIDE THE PRESENCE OF THE JURY. The Defense requested to have Judge Bixler do the sentencing. The State will provide PowerPoint as exhibit.
COURT ORDERED, DEFT HELD WITHOUT BAIL. SENTENCING SET.

CUSTODY

1-04-17 8:00 AM SENTENCING (DEPT. VIII)

PRINT DATE: 12/02/2016

Page 1 of 1

Minutes Date: November 18, 2016

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****January 04, 2017**

C-16-314260-1 State of Nevada
 vs
 Alfred Harvey

January 04, 2017 8:00 AM Sentencing

HEARD BY: Bixler, James**COURTROOM:** RJC Courtroom 11B**COURT CLERK:** Carol Donahoo**RECORDER:** Jill Jacoby**PARTIES****PRESENT:**

JOURNAL ENTRIES

- Steven Rose, Dep DA, present on behalf of the State and Jasmin Spells, Dep PD, present on behalf of Deft. Harvey, who is also present.

This is the time set for Sentencing. Ms. Spells advised that the Defense is not ready to proceed; she previously notified the Court and the State of her request for a continuance and would like to prepare a Sentencing Memorandum. There also are some issues with the Presentence Investigation (PSI) report. Specifically, on page 3, the Gang Activity/Affiliation; Ms. Spells requested and received the Field Interview (FI) Cards; colloquy.

With regard to the issues in the PSI, they are as follows:

Page 2 - Deft.'s Social Security Number in the left column as well as the Additional Social Security Number in the right column are not correct.

Page 3 - The Mental Health History and the Gang Activity/Affiliation are not correct. Ms. Spells is challenging both; however, she did receive the FI Cards from the State and the Deft. has signed several releases so she can obtain his Mental Health records from California. With regard to the FI Cards, one Card indicated that there was no gang affiliation and the other one indicated that the gang affiliation came through an interview at the Clark County Detention Center (CCDC). Ms. Spells' investigator pulled the jail interviews and there is no indication in those interviews of any gang affiliation so she would like to do some further research on this issue.

PRINT DATE: 01/10/2017**Page 1 of 2****Minutes Date:** January 04, 2017

Page 6 - There are issues with the August 6, 2006, and June 17, 2012, arrest dates and dispositions. The Deft. was under the impression that he only had Misdemeanors on his record and the Felonies had been cleared due to a particular proposition in California. Ms. Spells advised that she has not had an opportunity to review these issues.

Page 7 - Ms. Spells would request that the Court order that Parole and Probation (P&P) change the Offense Synopsis with regard to the weapon. Although the original charge was Robbery with use of a Deadly Weapon, the Jury did not find, beyond a reasonable doubt, that there was a weapon used so Ms. Spells would like that to be reflected in the Offense Synopsis.

Argument by Mr. Rose; SCOPE reflects the initial Social Security Number but not the additional one; the PSI stated that the Deft. reported no significant mental health concerns so he has no knowledge of any, unless Deft. reported some to his counsel; the State provided Ms. Spells with the FI Cards; P&P can look into the issues with the prior arrests, the State will make copies of those and provide them to the Defense; and with regard to the Offense Synopsis, although the verdict returned by the Jury shows that they did not find, beyond a reasonable doubt, that a weapon was used, it is what the testimony showed and the PSI reflects the offense as a Robbery and not a Robbery with use. If Ms. Spells wants to have a specific notation that the Deft. was convicted of Robbery and not Robbery with use of a Deadly Weapon, the State has no objection.

Court advised that the testimony that came out at trial did, in fact, indicate that the Deft. pulled out a knife, waived it, and then held it by his side; however, the Jury did not feel as though the testimony was sufficient to convict the Deft. of Robbery with use of a Deadly Weapon. For the reasons stated on the record, the Court will not STRIKE out the part of the synopsis that says the Deft. pulled a knife out but it is clear in the PSI that the Deft. was convicted of Robbery and not Robbery with use of a Deadly Weapon. If counsel believes that a special notation is necessary, the Court has no objection.

Colloquy as to how long it may take to supplement the PSI; Ms. Spells advised there are substantial Mental Health records that she needs to procure from California; although there are no competency issues, the records are relevant to show Deft.'s history of mental health issues and may also be relevant with regard to the Specialty Court programs that Deft. has applied to, which will be more fully explained in her Sentencing Memorandum.

COURT ORDERED, Sentencing CONTINUED for sixty (60) days for a Supplemental PSI; the sentencing will go forward next date whether Ms. Spells has been able to obtain the Deft.'s Mental Health records from California or not. Further, the Court noted that the Deft. has six (6) Felony convictions along with others so his chances of getting probation are slim.

CUSTODY

CONTINUED TO: 03/08/17 8:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****March 08, 2017**

C-16-314260-1 State of Nevada
 vs
 Alfred Harvey

March 08, 2017 8:00 AM Sentencing

HEARD BY: Bixler, James

COURTROOM: RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

PARTIES

PRESENT:

JOURNAL ENTRIES

- Steven Rose, Dep DA, present on behalf of the State and Jasmin Spells, Dep PD, present on behalf of Deft. Harvey, who is also present.

Ms. Spells advised that the November 30, 2016, Presentence Investigation (PSI) report indicates on page 3 that the Deft. is a confirmed active member of the "Blood, 456 Pomona Island Piru" street gang; however, Deft. has denied any gang membership; colloquy. COURT ORDERED, that the following shall be added to the Judgment of Conviction and noted for the PSI.

CORRECTIONS TO THE PRESENTENCE INVESTIGATION (PSI) REPORT: the Deft., at this point, disavows any gang affiliation.

Pursuant to the Jury's verdict, DEFT. HARVEY ADJUDGED GUILTY of ROBBERY (F). Mr. Rose is requesting that the Deft. be adjudicated as an habitual criminal; he provided six (6) certified copies of the Deft.'s Judgments of Conviction, which were marked collectively as State's Exhibit 1 and ADMITTED. For the reasons stated on the record the State is requesting a sentence of eight (8) to twenty (20) years; there is no restitution. Ms. Spells filed a Sentencing Memorandum on March 6, 2017, which she would like the Court to review, which it did. The Defense is requesting a sentence of two (2) to five (5) or three (3) to eight (8) years; argument. The Court will NOT adjudicate the Deft. as an habitual criminal.

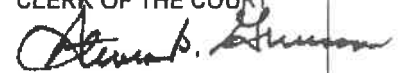
PRINT DATE: 03/15/2017

Page 1 of 2

Minutes Date: March 08, 2017

COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, the \$150.00 DNA Analysis fee including testing to determine genetic markers, the \$3.00 DNA Collection fee, and an Indigent Defense Civil Assessment fee in the amount of \$250.00, Deft. SENTENCED to a MAXIMUM of ONE HUNDRED FORTY-FOUR (144) MONTHS and a MINIMUM of THIRTY-SIX (36) MONTHS in the Nevada Department of Corrections (NDC), with THREE HUNDRED FORTY-FOUR (344) DAYS credit for time served. The Court has no opposition to the Deft. being referred to the 184 program.

BOND, if any, EXONERATED



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ALFRED C. HARVEY,

Defendant.

) CASE NO. C-16-314260-1

) DEPT. VIII

) (ARRAIGNMENT HELD IN DEPT. LLA)

BEFORE THE HONORABLE MELISA DE LA GARZA, HEARING MASTER
WEDNESDAY, APRIL 20, 2016

**RECORDER'S TRANSCRIPT OF HEARING RE:
INITIAL ARRAIGNMENT**

APPEARANCES:

For the State:

MATTHEW BUNNETT, ESQ.,
Deputized Law Clerk

For the Defendant:

R. ROGER HILLMAN, ESQ.,
Deputy Public Defender

RECORDED BY: KIARA SCHMIDT, COURT RECORDER

1 WEDNESDAY, APRIL 20, 2016

2 * * * * *

3 P R O C E E D I N G S

4
5 THE COURT: State of Nevada versus Alfred Harvey, C314260. Is
6 this a not-guilty?

7 MR. HILLMAN: Yes, it is.

8 THE COURT: Sir, you received a copy of the Information stating the
9 charges against you?

10 THE DEFENDANT: Yes, I have, your Honor.

11 THE COURT: You read through it and understood it?

12 THE DEFENDANT: Yes, I have, your Honor.

13 THE COURT: Do you want to waive a formal reading of the
14 charges?

15 THE DEFENDANT: Yes. I'd just like to state a few things if I can.

16 THE COURT: How do you plead, sir?

17 THE DEFENDANT: Not guilty.

18 THE COURT: You do have a right to a trial within 60 days. Do you
19 want to waive or invoke that right?

20 THE DEFENDANT: Invoke.

21 THE COURT: Speedy trial.

22 THE CLERK: We have a calendar call date of June 15th, 2016, 9:30
23 a.m.

24 THE DEFENDANT: May I say a few things, your Honor?

25 THE CLERK: Jury trial date, June 20th, 2016, 1:00 p.m.,

1 Department 23.

2 THE COURT: All right. And, counsel, pursuant to statute you
3 have 21 days from today for the filing of any writs. If the transcript has not been
4 filed as of today, you have 21 days from the filing.

5 MR. HILLMAN: We'd request statutory discovery, Judge.

6 THE COURT: Discover is granted pursuant to NRS 174.235.

7 Now, sir, here's what I'm going to tell you.

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: You do not want to talk about the facts of your case
10 on the record.

11 THE DEFENDANT: Thank you.

12 THE COURT: Okay? Go ahead.

13 THE DEFENDANT: Okay. I was -- just brought to my attention that I
14 was being arraigned this morning. Ms. Spellman [sic] had brought it to my
15 attention that she would be filing a motion for a bail reduction. I'm an author and
16 an artist --

17 THE COURT: She's going to do that in front of the department --

18 THE DEFENDANT: -- on the street.

19 THE COURT: -- where you're going to have your trial.

20 THE DEFENDANT: When is it?

21 THE COURT: She will file the motion. It will be on before, way in
22 advance of, your trial date.

23 THE DEFENDANT: I'm scheduled for book signings like all over the
24 city. I'm the Writer's Block featured published author for February. I'm --

25 THE COURT: Sir, she'll file her motion for you. I'm sure Mr. Hillman

1 also put a note in the file.

2 THE DEFENDANT: Thank you.

3 THE COURT: Correct, Mr. Hillman?

4 THE DEFENDANT: Thank you.

5 MR. HILLMAN: That's correct.

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

7 (Whereupon, the proceedings concluded.)

8 * * * * *

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

11 

12 Kiara Schmidt, Court Recorder/Transcriber

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1 RTRAN

2
3
4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6
7 STATE OF NEVADA,

8 Plaintiff,

9 vs.

10 ALFRED C. HARVEY,

11 Defendant.

CASE NO. C314260-1

DEPT. NO. XXIII

TRANSCRIPT OF PROCEEDINGS

12
13 BEFORE THE HONORABLE STEFANY A. MILEY, DISTRICT COURT JUDGE

14 WEDNESDAY, MAY 4, 2016

15
16 **DEFENDANT'S MOTION FOR OWN RECOGNIZANCE RELEASE UNDER**
17 **INTENSIVE SUPERVISION**

18 **APPEARANCES:**

19 For the Plaintiff:

NICOLE J. CANNIZZARO, ESQ.
Deputy District Attorney
JORY SCARBOUROGH
Licensed Deputy District Attorney

20
21
22 For the Defendant:

JASMIN D. SPELLS, ESQ.
Deputy Public Defender

23
24
25 RECORDED BY: MARIA L. GARIBAY, COURT RECORDER

1 WEDNESDAY, MAY 4, 2016, 11:24 A.M.

2
3 THE MARSHAL: Top of page 7, C314260, Harvey.

4 MS. SPELLS: Jasmin Spells on behalf of Mr. Harvey who is present in
5 custody. Your Honor, Mr. Harvey would like to address you first before I do the
6 motion, please.

7 THE COURT: Yes, sir.

8 THE DEFENDANT: How are you, ma'am?

9 THE COURT: Hi. Good.

10 THE DEFENDANT: I'm so sorry that this is this whole job you have here
11 is [indiscernible]. I hope you're having a wonderful day. My name is Alfred
12 Harvey, Your Honor. I come today not only as published author trying to meet
13 its editorial deadlines and contractual obligations, including my agent and my
14 publishers have been fully supportive and kind and understanding through this
15 whole ordeal. I doubt I would ever be able to repay them in full for all the time
16 and non-refundable money they have invested in booking and promoting my
17 venues since I took residence here in Las Vegas, Nevada.

18 I would have to give a huge thank you to my beautiful wife in
19 assisting and believing in my vision, quit her job and up grew our children and
20 make roots here in Nevada and to assist me in shining as an example of true
21 change that is possible. Now I understand the seriousness of this charge in
22 question and being sentenced to a lifetime community service is probably out of
23 the question and never been done.

24 Your Honor, I come to you as a humble man and a father who is
25 willing to accept full responsibility for the charge in question and the District

1 Attorney can't come to a lesser plea agreement because of the violent -- I
2 would never -- I had never had any violence in my job. Again, never will be
3 violent. And if fact, I'm the complete opposite. If you aren't familiar with me
4 work, in the Honest House, though, I promote non-stop compassion for helping
5 others in how to succeed in anything using the power of consideration. I'm a
6 much anticipated part to a [indiscernible] a typewriter at home, but I plan to
7 release this year here in Nevada and [indiscernible] volunteer in any and all
8 outreach centers, such as Street Teens, Salvation Army, Straight from the
9 Streets, the Parole and Probation units, Help of Southern Nevada, Metro Help
10 Teams and the Trevor Project for using crisis between the ages of 11 and 24,
11 the Cambridge Center.

12 I have three brothers and a mother who are here also in law
13 enforcement and casino security here in Las Vegas, and one working for the
14 federal government. My ailing father was retired from the feds, sits in your
15 UMC hospital and insists I need to write a book on midlife crisis. You see, Your
16 Honor, I turned 40 this year and my community service didn't start because I'm
17 locked up. I was already volunteering in parts and at the Boys and Girls Club
18 and assisting Metro in any way I could with consulting in gang intervention. I
19 brought pictures of me wearing a badge and also in the community with Metro,
20 promoting my work and assisting in any possible way I can.

21 As I turned 40, I go into the second half of my life and I plan to do
22 only good whether behind these walls or in the community. I have -- it's
23 verifiable I'm the future published author for February and April of The Writer's
24 Block downtown for my recent and anticipated project Stop Playing and Trap
25 Cash which has been on the local news. My family, my kids [indiscernible] as

1 we speak up in a way is because I have to abide by contractual agreements like
2 appearances. I have signs at Harrah's, signs at the Mirage.

3 THE COURT: So basically you have all of those prior to now and the time
4 to your trial. Is that what you're telling me, sir?

5 THE DEFENDANT: I couldn't understand what you just said.

6 THE COURT: Basically, you're saying you have obligations between now
7 and the time of trial related to your job, right?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay.

10 THE DEFENDANT: I have pictures and --

11 THE COURT: So thank you for all this.

12 THE DEFENDANT: -- all the proof.

13 THE COURT: I appreciate it, but I just -- right now I need to determine
14 whether or not you're a risk to flee prior to your trial date. So Ms. Spells is
15 there any additional information I don't have? It sounds like he has family here
16 in the community.

17 MS. SPELLS: Yes, Your Honor. Just briefly, he indicates that his wife
18 and his two kids live here as well as his family and all the other individuals that
19 he listed. As he stated, Your Honor, he does have pictures showing that he is
20 an author. His book appears to be published and he is currently selling the
21 book, Your Honor. He does understand the significance of the court dates here.
22 We are set for trial coming up soon, Your Honor. He's requesting an own
23 recognizance release, Your Honor, to be able to continue with those contractual
24 agreements and comply here, Your Honor. Given his ties to the community, I
25 would submit, Your Honor, that he is not a flight risk. And he does understand