



1 **RTRAN**

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

5
6 **THE STATE OF NEVADA,**

7 **Plaintiff,**

8 **vs.**

9 **OSCAR GOMEZ,**

10 **Defendant.**

)
CASE NO. C-16-316959-1

DEPT. NO. XXI

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12
13 **BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE**

14 **THURSDAY, JUNE 14, 2018**

15
16 **RECORDER'S TRANSCRIPT RE:**
17 **SENTENCING**

18
19 **APPEARANCES:**

20 **For the State:**

BINU G. PALAL, ESQ.
Chief Deputy District Attorney

21
22 **For the Defendant:**

MONTI J. LEVY, ESQ..

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24 **RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER**

1 LAS VEGAS, NEVADA, THURSDAY, JUNE 14, 2018, 10:23 A.M.

2 [Hearing began at 10:23 A.M.]

3 THE COURT: All right. State versus Oscar Gomez.

4 Mr. Gomez is present in custody with Ms. Levy. We have Mr. Palal for
5 the State. This is the time for the rendition of sentence. Are both sides ready to go
6 forward?

7 MR. PALAL: Yes, Your Honor.

8 MS. LEVY: Yes, Your Honor.

9 THE COURT: And I received notification for five speakers.

10 MR. PALAL: Yes. I did – two or three are actually speaking today.

11 THE COURT: All right. And I'm assuming pursuant to statute you
12 would like to go last?

13 MR. PALAL: That's correct.

14 THE COURT: All right. State, you have retained the right to argue?

15 MR. PALAL: Yes, Your Honor. We, or what the State's going to be
16 asking for, State's going to be asking for the maximum sentence, the 10-to-Life with
17 a consecutive 8-to-20.

18 Parole and Probation recommends 10 to Life. They recommend less
19 time for the mandatory or for the consecutive portion for use of a firearm.

20 Your Honor, a little bit about the case. I know you've read the PSI, but
21 a little bit about the case was is that, you know, none of this had to happen. Shawn
22 and his friend, Johnathan Coleman, were actually coming off the shift from Wendy's
23 where they worked together. They hung out, their – they had smoked some weed,
24 they had drank some alcohol and go into the Mini Mart to buy some more alcohol.
25 Then during that time when they're at the Mini Mart, the defendant and his co-

1 defendants are already at the Mini Mart.

2 They don't know each other. There's no reason for them to interact.
3 The – Johnathan and Shawn go into the Mini Mart and while they're shopping, the
4 defendant and his co-defendant, they check out, and they decide to wait for Shawn
5 and Johnathan outside the Mini Mart. And there was no dispute about that
6 (unintelligible).

7 Then you have Shawn, or you have Shawn and Johnathan come out
8 and the defendant and his co-defendant confront the two. No dispute about that.
9 What Johnathan says happens is the defendant says, where are you from, it's not
10 your turf.

11 Then the, not this defendant but the co-defendant and the victim in this
12 case get into a fight. They get into a fist fight, fist fight lasts about two to three
13 minutes. During this time on video this defendant is seen holding a firearm. The fist
14 fight takes about two to three minutes, somebody from the Mini Mart says, hey,
15 we're going to call the police.

16 So the fist fight breaks up, Shawn and Johnathan go on their way, the
17 other, the co-defendant who is part of the fist fight, goes to his vehicle, and at that
18 point this whole thing should be over. There should be nothing else, a five minute
19 tour of the Mini Mart. Not – it started by the defendants but even then, all we leave
20 with is a couple guys and some booze.

21 But rather than leave it there, the defendant follows Johnathan, follows
22 Shawn, as they're walking off carrying the bags from the store with the gun and
23 points it at Shawn. Shawn said, put the gun down we can fight. Then Shawn kind
24 of just got up by, if you want to fight, we can fight. Defendant says, I'm not that
25 stupid.

1 The defendant, while pointing a firearm at Shawn, tells Shawn, where
2 are you going? Shawn at this point says to your mom's house. The way to try and
3 keep – 'cause he was ready. If you want to fight, we can fight. But this defendant
4 decided that he didn't want to, like, he – not only was he going to pursue these two,
5 but he was going to pursue them in a manner where he didn't have to fight, he just
6 took the quick but eternal decision to take Shawn Manymules' life. He shoots
7 Shawn in the chest and then runs off.

8 Your Honor, you know, I – you do this for a while, you've seen a lot of
9 cases. I don't know if I've seen something so pointless where after the fight he has
10 somebody just chasing them that don't know each other, there was no reason for it,
11 just somebody trying to pretend to be tough and in doing so, takes somebody else's
12 life.

13 Your Honor, I think the facts in this case are worthy of the maximum,
14 the 18-to-Life. He's the only person with a firearm in this situation, he knows he's
15 the only person with a firearm in this situation, and decided to shoot Shawn dead
16 center back, and Shawn died at the scene.

17 Your Honor, obviously we have victim speakers here. They can tell you
18 much more about who Shawn was as a person. But what I will say is that
19 somebody who isn't here, Johnathan Coleman, who was the friend that was with
20 him. I've had an opportunity to meet with him a number of times. Obviously, this
21 has affected him deeply as well.

22 He, as anyone could imagine, you're standing next to your friend gets
23 shot right in front of you, that always has a deep impact on your life, and he wanted
24 me to communicate to the Court about the deep impact it had on him
25 psychologically, having to watch his friend die in front him for no reason whatsoever.

1 Your Honor, given this callus, callus taking of life, 18-to-life is the
2 appropriate sentence. With that, I'll just reserve the [].

3 THE COURT: All right, thank you.

4 Mr. Gomez, your lawyer, Ms. Levy, will have an opportunity to speak on
5 your behalf, but what if anything would you like to say to the Court before the Court
6 pronounces sentence against you? And I would note that I did get a number of
7 letters from family members in support of the defendant, and I have to keep those.
8 Mr. Gomez.

9 THE DEFENDANT: I'd like to apologize to the family. I don't know how
10 you guys feel 'cause I never lost a loved one before. I'm sorry for it. That night I
11 was under the influence of drugs and alcohol, just watching a fight break out
12 between a friend and somebody you don't know and seeing your friend get beat on,
13 you know, I just reacted and I shouldn't of went down like that. I'm sorry for it. That
14 night shouldn't have happened.

15 To this day I pray and ask some forgiveness. I hope one day you guys
16 can forgive me. Your Honor.

17 THE COURT: All right, thank you. Ms. Levy.

18 MS. LEVY: Thank you, Your Honor.

19 Your Honor, Mr. Gomez is truly remorseful to the Court, to Shawn's
20 family, to his own family. There's two families, entire families in the courtroom today
21 that are broken and they're never going to be the same.

22 Oscar's family is here. The entire half of the courtroom over there is
23 here for Oscar and they're completely supportive of him, and they don't understand
24 what happened because this is not the Oscar that they know. One split second in a
25 20-year-old, his mind, who was under the influence of drugs and alcohol have

1 changed lives forever.

2 Mr. Gomez, prior to this, 20 years old, no record whatsoever other than
3 a misdemeanor. It was marijuana. I think he actually pled to an CT – ITS. That's it.
4 His entire criminal history, nothing juvenile, nothing anywhere else. He was 20
5 years old at the time, heavily under the influence of drugs and alcohol. He admitted
6 to the police during his statement he had taken several Xaney bars, Xanax, and was
7 drinking alcohol.

8 And I think the only thing factually that I would dispute with what Mr.
9 Palal stated was the fist fight that Oscar witnessed with his friend and Shawn. It
10 was more like five minutes. It's all on video, it's a very lengthy fist fight, and Oscar's
11 witnessing his friend get beat up.

12 After that, Oscar made a horrible decision. He did go around the
13 corner. He's admitted to Your Honor when he entered his plea that he pulled the
14 trigger one time. It was one shot. It wasn't multiple shots. Mr. Coleman was
15 standing right there, didn't shoot him, and was one split second decision, and then
16 he got scared and ran.

17 That one-second decision is not indicative of Mr. Gomez' entire life. I
18 know the Court read the letters and am hoping that this Court got a better sense of
19 who Mr. Gomez is.

20 He came from a loving home, a loving family, but it was a broken family,
21 and Mr. Gomez spent his childhood travelling between California and Las Vegas,
22 never really getting roots, never growing up with the same side of the family. Half
23 the family's with the father, half the family's with the mother. There's half-siblings,
24 step-siblings, and he never really had groups, school friends, whatnot. He would go
25 to school in one state for six months and in the other state the rest of the year, and

1 he never really found himself.

2 The letters talk about this. Mr. Gomez was essentially raised by his
3 older sister, Maria. Mr. Gomez' mother had suffered from some mental illness and
4 she attempted to kill herself, and Mr. Gomez blamed himself for that, blamed himself
5 for the family splitting up, and he never got over that.

6 And that one second when Shawn state's, going to your mom's house,
7 something just clicked in Mr. Gomez. And there's no excuse for it whatsoever and
8 he understands it, and he's completely remorseful, he takes full responsibility. That
9 one-second decision has changed his life, Shawn's family's life, his family's life,
10 forever.

11 I do want to address something with regards to the PSI, the
12 recommendation. And if the Court looks at the scoring sheet. They have a little
13 scoring sheet where it has the checkmarks in boxes, and I was trying to understand
14 this. I've had some conversations with Parole & Probation, the PSI writer as well as
15 the supervisor over there with regard to this.

16 You've got a 20-year-old kid, no prior history other than a misdemeanor
17 offense. I want to talk about some of the individual scores which I will in a minute,
18 but if you look at the sheet overall, every single A felony has only one option, and it's
19 a life. Now that's what is in the statute, and if the Court looks at – does the Court
20 have the one with the graph? It says page 2 of 2 on the bottom?

21 THE COURT: It says page what?

22 MS. LEVY: It says on the bottom here, page 2 of 2. It's the one that –

23 THE COURT: Is this what you're talking about by graph? Yes.

24 MS. LEVY: Okay. So if you look at the bottom, it starts out with the E
25 and D felonies and it goes all the way down to B felonies. All the A felonies are just

1 on the bottom row. So even if Mr. Gomez scored in the very low end, low range, the
2 recommendation would be life with possibility of parole after – it says 20. So this
3 sheet and these recommendations, they don't even reflect the sentences for a
4 second degree murder. Same with a kidnapping and all the other A felonies,
5 everything's just life.

6 THE COURT: Right.

7 MS. LEVY: So at what point does Probation and Parole say, well,
8 somebody who's charged with a category A felony is someone who would be
9 appropriate for this 10-to 25. They never would recommend it so – according to
10 their scoresheet.

11 With regard to why they have him in the medium-high range, which that
12 – the only thing that affects it because everything's going to be life, all they're going
13 to recommend is 10-to-life. But the only thing that changes is the sentence on the
14 deadly weapon enhancement, and I'm not sure why it's medium-high, so I went back
15 to the scoresheet and I had some conversations with Probation and Parole, and I
16 don't understand why the highest sentence you can get on the low range is 49
17 points.

18 So when you go to the death and the fact that a weapon was used, you
19 have to subtract 14 from there. So right off the bat, anyone charged with a second
20 degree murder with use of a deadly weapon is never going to score the low range.
21 But even if they would, the recommendation's always going to be 10-to-life.

22 They have listed for criminal pattern he's given zero points for same
23 type or increased severity. Mr. Gomez has one misdemeanor offense prior to this.
24 Nothing else, no other arrests, nothing.

25 They also have, and I didn't understand until I went to the Probation

1 Success Probability form that I printed a copy for Your Honor as well as for the
2 State.

3 THE COURT: Okay.

4 MS. LEVY: Can I approach?

5 THE COURT: Yes.

6 MS. LEVY: When you look at this form – so when you look at this form,
7 it has what the options are, and when you go to where it has financial crime in
8 packages. The bottom on the first page where it has present offense, type of
9 offense, and then the psychological or medical crime impact, and that's where we
10 get the death minus 10, and then it has financial crime impact. And they have given
11 Mr. Gomez zero instead of successive, but this wasn't a financial crime. There's
12 nothing taken from the victim, it's not a financial crime, and Probation and Parole
13 would only say, oh, it has to do with restitution which is the funeral expenses. So
14 I'm not sure why he's given zero points for that.

15 Then when you go down to employment, it has almost nonexistent.
16 Now I would ask the Court to refer back to Page 2 of the PSI, employment status,
17 defendant has been unemployed since 2016, time of arrest. He was employed at
18 the time of his arrest. In fact, the State had gotten, like, pay stubs and whatnot in
19 the search warrant.

20 Mr. Gomez had prior work experience as being a tile layer for Classic
21 Flooring from 2015 to 2016. He had worked for a full year for the tile company at 20
22 years old. So he started when he was 19 years old. Number of months employed
23 full time in 12 months prior to commission of instant offense. Twelve.

24 You've got a 20-year-old kid who's been employed at the same
25 employer for 12 months and they give him zero points and said he has an almost

1 non-existent work history. Employability, they gave him one for could be developed
2 instead of two. He is employable, he was employed.

3 Family situation he's given two points for moderately supportive. The
4 Court has received the letters and reviewed them. His family's all here in the
5 courtroom. He has a constructive support of family, so he should be given an
6 additional point there for the three points which is on page 2 of the paper that I
7 brought up to Your Honor.

8 And then attitude towards supervision, it has pre-sentence adjustment,
9 attitude toward supervision, and they put indifferent. I was there with Mr. Gomez in
10 the detention center while he was interviewed by the PSI writer, and there were no
11 contact rooms available, we're yelling between the glass because the phone wasn't
12 working. There was nothing –

13 THE COURT: It's kind of irrelevant anyway because he can't be
14 supervised for this, so.

15 MS. LEVY: Correct, he can't get supervision, so I don't understand.
16 When I contacted Parole and Probation they said, well, that's what they come up
17 with, that's so they –

18 THE COURT: Just so you know, I don't, I mean, I don't really
19 understand these – what they, you know, how they score these. That's what I
20 meant, and I don't really put a lot of weight into it.

21 MS. LEVY: Well, it's just –

22 THE COURT: And for what it's worth, I mean, I think it's a guideline,
23 but --

24 MS. LEVY: What concerns me is we have a 20-year-old kid with no
25 prior criminal history. At what point does this offense – any murder is egregious.

1 But the Legislature has provided for 10 to 25 or 10 to life. Probation and Parole has
2 indicated by their own graph, they're never going to recommend a 10-to-25.

3 Mr. Gomez has accepted responsibility, has no prior criminal history,
4 has a completely supportive family who is going to be there for him. He is someone
5 who is – should be given a minimum sentence which obviously isn't a very minimal
6 sentence. Still, 10 to 25 years plus a mandatory consecutive for the weapon.

7 Mr. Gomez is not someone who is deserving of the maximum sentence
8 as the State stated. He's not a career criminal, he has no other violence in his
9 history, he is not someone who is deserving of the maximum sentence, Your Honor.
10 He was a 20-year-old kid who really, really screwed up, and he understands that.
11 He accepts responsibility, and there's no words that will ever make it better for
12 Shawn's family or make it better for Oscar's family, but he is truly and deeply sorry
13 and remorseful, and I believe that later in life when he is given the opportunity to be
14 released on parole, his family is going to be there to make sure that he's on the right
15 track.

16 He's a young kid. He loves his animals. I'm sure the Court saw the
17 letters. His dog was his baby. His family is waiting for him, they want him to do his
18 time, they understand the severity of this offense that he needs to do his time, but
19 let's not let another life completely be ruined for a one split-second decision.

20 Thank you.

21 THE COURT: All right, thank you. We'll hear from the speakers.

22 MR. PALAL: Yes, Your Honor, the first speaker is John Grady.

23 **JOHN GRADY**

24 Having been called as a victim speaker and being first duly sworn, testified as
25 follows:

1 THE CLERK: Thank you. Please have a seat and state and spell both
2 your first and last name for the record.

3 THE SPEAKER: John Grady, J-O-H-N G-R-A-D-Y.

4 THE COURT: And, sir, what would you like to say today?

5 THE SPEAKER: I just want to talk about Shawn and how this situation
6 has affected our family. We – he was really close to his nephews and his siblings.
7 They all hung out a lot together.

8 We had to bury him on his favorite nephew's birthday. The kid's ten
9 years old. For the rest of his life he's got to remember his best buddy was buried on
10 his birthday.

11 Shawn loved his family. He was always there supporting his grandkids,
12 or his nephews and nieces. He was always loved and he always had a smile on his
13 face, and he made the decision to focus on his family. When he worked, he sent
14 money to his grand – to his nephews and nieces.

15 He was always happy. I just want to express how that is going to affect
16 him for the rest of his life. He's always got to remember that his best uncle, his
17 favorite uncle, his best friend, they lived together for most of the kid's life
18 Simeonshaw (phonetic) and he's got to remember that.

19 This, as our attorney was saying, there was no reason for this. It's
20 really hard. I had a speech prepared but it's hard to focus on it. We deal with it
21 every day. His mother was – he was close with his mother. He had just barely
22 moved out of the house. He'd only been out of the house for about five months,
23 working on his own, taking care of his own thing.

24 He never got to meet his other nephew. He was supposed to – the
25 night that this happened he was supposed to move in with his cousin and meet his

nephew and he'll never get a chance to do that.

What happened prior to that, prior to this night, I don't think has any effect on anything. What happened at that time, Shawn had a hard life. Shawn's father died before he was born. He was from a broken family as well but he didn't choose to do – he didn't carry weapons, he just stood up for himself and he shouldn't have been punished for that.

It just wasn't fair, and my wife has some things to say. I guess I – really, all I got to say is that there was no – senseless. Senseless, that's why I believe the maximum is absolutely – no reason whatsoever, and we're going to pay for it for the rest of our life. He's never going to have any kids, he's never going to get married, and his mother deserves some restitution, some kind of something.

I guess that's all I have to say.

THE COURT: Any questions?

Sir, thank you for coming in today and speaking.

THE SPEAKER: I did it for Shawn.

THE COURT: And my bailiff will escort you.

MR. PALAL: Our second victim speaker, second of three, Your Honor, will be Stephanie James.

STEPHANIE JAMES

Having been called as a victim speaker and being first duly sworn, testified as follows:

THE CLERK: Please have a seat. State and spell both your first and last names.

THE SPEAKER: Stephanie James. S-T-E-P-H-A-N-I-E J-A-M-E-S.

THE COURT: All right, thank you.

1 THE SPEAKER: Hi. My name is Stephanie. I wasn't gonna speak
2 today.

3 THE COURT: And just take your time.

4 THE SPEAKER: I'm Shawn's older sister. I was his only sister, no
5 other siblings. My brother and I were very, very close. As my father said, came
6 from a broken home. Shawn's father passed away. My mom wasn't the greatest
7 person in the world. I took care of my brother as well. Can't do that no more.

8 If they come into Vegas with me, joyful as they see it on commercials,
9 TV, very nice to come here. Can't do that; once you hit into Vegas, just cry.

10 I can't see my brother. I can't call him. I saw so much. My father
11 explained he was close with his nephews and his nieces which are my kids. My
12 son's seven on the second, very close with him. Didn't even see it but I had to
13 spend his birthday seeing his uncle buried from a distance, couldn't come.

14 My daughter's birthday yesterday, can't celebrate because we had to
15 come here. This affected not only us but our little ones, the future, the upcoming
16 future. And to be knowing my brother, just seeing him not get the full maximum
17 sentence would totally break my kids' heart because that's the future and they will
18 see is that okay to do that? I could just get away with it then. We're trying not to
19 have our kids see that.

20 I cry every time and to see our mother. My mother feel this way,
21 heartbroken every single day. I can't – I'm her only daughter, I'm trying to help her,
22 pray with her, bring her to home, back home to San Juan, to get her strength. It's
23 hard to see your mother break down like that. Very, very hard and I can't seem to
24 know when she'll ever forgive. I can't.

25 My brother came from a loving, loving family. Not just us here, there's a

1 lot of us as you can see. All of it's very painful. Grandmas, two great-grandmas,
2 grandfathers, all very traditional on our side, of our Native American side, and we
3 can't do that because he's missing.

4 They have a chance to come and see him, they have a chance to see
5 him. I can't. We can't see my brother again. We cannot bring him back. I would
6 ask you to see – had to see from our side because I would hate for another family to
7 come in to feel what we're feeling if he's to get released – him go do the same thing
8 if someone says one little – one thing about his mother. Yeah, someone say
9 something bad about my mother but I would think before it. You hurt your mother so
10 bad like that you would think he wants to say you'll be by your mother's side. My
11 brother did that.

12 As a man, as a grown man, he wanted to leave and make himself a
13 living out there. My mother letting him go, she regrets that still to this day. To this
14 day, she regrets sending him out here due to this one reason, my brother working.
15 He was a good guy, very loving guy.

16 I ask you, please, from the bottom of my heart, give us this at least this
17 comfort in us to what we could now have peace in our hearts to where we know this
18 individual won't do this to another, so we don't have to see or hear another family go
19 through this, I ask you.

20 THE COURT: Thank you for coming in. Obviously, it's very difficult.

21 THE SPEAKER: Thank you.

22 THE COURT: Thank you for bringing this in.

23 MR. PALAL: And, Your Honor, the State's last witness is Shawn's
24 mother, Lucinda James.

25 THE COURT: All right. Ms. James. And, ma'am, just remain standing

1 and face that lady right there.

2 **LUCINDA JAMES**

3 Having been called as a victim speaker and being first duly sworn, testified as
4 follows:

5 THE CLERK: Please have a seat and state and spell your first and last
6 names.

7 THE SPEAKER: Lucinda James, L-U-C-I-N-D-A J-A-M-E-S.

8 THE COURT: All right. Thank you, ma'am. Just take your time. Did
9 you prepare a statement that you'd like to read today?

10 THE SPEAKER: Good morning, Your Honor. [Speaking Native
11 American], that means good morning in my language.

12 THE COURT: Is that Navajo?

13 THE SPEAKER: Yes, it's Navajo, Native American, Northern Arizona.

14 I made this collage so you can have a glimpse through how my son was
15 to us. I don't have very good picture of him when he was in high school. He never
16 liked to get his picture taken.

17 Sorry.

18 THE COURT: Just take your time. Would you like some water? And
19 just take your time.

20 THE SPEAKER: We all miss Shawn so much. From the bottom of our
21 hearts, there's not a day that cry for him, especially this month. This is horrible for
22 me what happened to my son.

23 Like what my daughter said, when we come to Vegas, this is sad for
24 me. This is not a fun city for us. I'm now supposed to be taking medication. I quit
25 taking medication because I couldn't react to it. I'm still taking counseling in

1 Albuquerque, New Mexico. I'm not supposed to do that.

2 Shawn's murder, life has been surreal. We repeatedly relive the events
3 of his murder as we look for answers. How did this take place? Why? Did he
4 suffer? No answer is enough. Shawn's murder involves more than his death. The
5 dimension of cruelty and loss has compounded our sorrows and lost acute feeling
6 of adjustment. I trust in hopelessness.

7 Shawn was a full-blooded Native American Indian from Navajo
8 Reservation. He was born in Chinle, Arizona. I'm Lucinda James, the mother. My
9 husband's deceased, Darrell Manyules. He had a sister, only sister he had,
10 Stephanie James Shaeza (phonetic), and is my baby. He has grandparents, Kio
11 and Pricillas Gott. This one is my mom. My father's deceased, [Unintelligible]
12 James, and grandparents on his father's side, [unintelligible].

13 Shawn's education was taking place in Pinon, Arizona, and Flagstaff,
14 Arizona, and Las Vegas, Nevada. I played two roles as a parent. He had a lot of
15 respect and love for me [unintelligible]. I have no control over it.

16 A man came out and a gentleman came out from him. He wanted to be
17 on his own. That's what led him back to Las Vegas. He had plans with his cousin,
18 Russell and his family, but that didn't happen. His life was cut short for no reason at
19 all.

20 Your Honor, look at me. Part of me died that day when my son died.
21 Here on earth I'm suffering to find the day I see my baby again. I'm not supposed to
22 bury my son. Nobody should bury their son. [Unintelligible] I don't want anybody,
23 parents, to have to know what I'm going through.

24 His trade was in construction. [Unintelligible] This was very hard to put
25 this together. I took me at least almost a month to put this together, taking out

1 pictures, and have so much baby pictures. Shawn was full of was funny. He always
2 tries to scare people. He popped up out of nowhere, teasing my step-father a lot.
3 [Unintelligible] I remember Shawn did this, Shawn said this, remember this, they're
4 forever gone, Your Honor. We can't have no more birthday parties, no more family
5 events to share. They say the opportunity [unintelligible] families and friends are
6 broken forever.

7 THE COURT: Just take your time, it's all right.

8 THE SPEAKER: I wanted to come up here as a mother and speak for
9 him, try to show Shawn through this book, my baby. I'm a constant level of
10 weeping. I try to stay strong and continue with my life but I feel guilty because he's
11 not here. I feel guilty not having this is mine here. I hope you understand what I'm
12 trying to say. I had everything here. But, Your Honor, [unintelligible]. He's a danger
13 to society. I don't want anybody to go through this of what I'm going through.

14 We travelled a long ways to be here. I had a Navajo Tribe person that
15 was supposed to represent me from our tribe. He didn't show because it was –
16 court was cancelled. But most of all, our family members –

17 THE COURT: Oh, I guess Mr. Palal had a conflict, I'm sorry.

18 THE SPEAKER: -- most of my main family are here. Some of the
19 family didn't show. I like to wear this shirt today. Thank you, Your Honor.

20 THE COURT: Thank you for coming in and for bringing this. And
21 Kenny, Officer Hawkes, will help you back to your seat.

22 Is that it for the speakers? And I see there are a number of other family
23 members. All right.

24 All right, Mr. Gomez, by virtue of your plea of guilty, you are hereby
25 adjudged guilty of the felony crime of murder in the second degree with use of a

1 deadly weapon.

2 In addition to the \$25 administrative assessment, the \$150 DNA
3 analysis fee, the fact that you must submit to a test for genetic markers, and the \$3
4 administrative assessment, on the murder, you're sentenced to life with the
5 possibility of parole beginning after a minimum of ten years has been served. I think
6 it's important to have a life tail given the completely senseless and really
7 inexplicable to me nature of this crime.

8 You're also sentenced for the weapons enhancement to a consecutive
9 term of 96 months on the minimum, and 240 months on the maximum, and you're
10 entitled to –

11 MR. PALAL: Seven Hundred Six—

12 THE COURT: How many?

13 MR. PALAL: Seven Hundred Sixteen.

14 THE COURT: Seven Hundred and Sixteen days of credit for time
15 served. You are also ordered to pay restitution in the amount of \$18,800.00. And,
16 Mr. Palal, that's payable to whom? Lucinda James, and that should be reflected in
17 the JOC. All right, thank you.

18 [Hearing concluded at 11:09 A.M.]

19
20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual proceedings in the above-entitled case to the best of my ability.
23

24 SUSAN SCHOFIELD
25 Court Recorder/Transcriber

SUPREME COURT OF THE STATE OF NEVADA

OSCAR GOMEZ, JR.,

)

Electronically Filed
Nov 15 2018 04:03 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

)

Supreme Court No: 76487

Appellant,

)

D.C. case no.: C-16-316959-1

)

Dept.: XXI

v.

)

STATE OF NEVADA,

)

E-filed

)

Respondent.

)

)

MOTION TO STAY APPELLATE PROCEEDINGS AND REMAND TO

DISTRICT COURT FOR MOTION TO WITHDRAW GUILTY PLEA

Comes now the Defendant, Oscar Gomez, Jr., and moves this Honorable Court to Stay Appeal pending in case number 76487 and remand his case to District Court so he can file a Motion to Withdraw Plea of Guilty.

As grounds for this Motion, Defendant submits Oscar Gomez, Jr., has advised him in a letter post-marked November 7, 2018, that his plea of guilty was involuntary and unintelligent. Counsel believes there are sufficient allegations in the Defendant's

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letter (Exhibit A) that if true his plea should be withdrawn.

Wherefore, Defendant respectfully requests his case be remanded forthwith to the District Court. Counsel will file an appropriate Motion seeking withdrawal of plea within thirty days. Defendant further requests the briefing schedule in case number 76487 be stayed pending resolution of any Motion to Withdraw in case number C-16-316959-1.

CERTIFICATE OF SERVICE

I certify that on the 15th day of November, 2018, I served a copy of this Motion to Stay Appellate Proceeding and Remand to District Court for Withdrawal of Guilty Plea upon all counsel of record:

[X] Via Electronic Service (eFlex) to the Nevada Supreme Court;

[X] and by United States first class mail with postage affixed to the Nevada Attorney General and to the Defendant as follows:

STEVEN B. WOLFSON
Clark County District Attorney
steven.wolfson@clarkcountynyda.com

STEVEN S. OWENS
Chief Deputy D.A. - Criminal
APPELLATE DIVISION
steven.owens@clarkcountynyda.com

OSCAR GOMEZ, JR., ID#1200302
HDSP - P.O. Box 650
Indian Springs, NV 89070-0650

ADAM P. LAXALT
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701

By: /s/ Ila C. Wills
Assistant to T. M. Jackson, Esq.

SUPREME COURT OF THE STATE OF NEVADA

Supreme Court No: **76487**

EXHIBIT 'A'

Hi this is Oscar Gomez. Just letting you know I have been transfered to Arizona.

I have been thinking long and hard, and came to the decision to withdrawl my plea agreement deal. I feel like I could have recieved a manslaughter charge.

In court when I signed the deal I had only less than 5 minutes to go through the plea agreement. I felt ~~pressured~~ presured to sign the deal. That day only two people in court, me and somebody else. My attorney was telling me to ~~make~~ hurry and make my decision because we were going to be called next. she said "Hurry this is your last chance" "your life is on the line". I didnt know what to do she scared me saying that. So i signed which now I regret.

So can you please file a motion for me to withdraw plea.

Thank you.

Oscar Gomez
#1200302

[Signature]

Oscar Gomez #12003021
1252 E. Arica RD
Elroy, AZ 85131

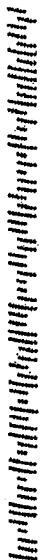
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PHOENIX AZ 852



Terrence M. Jackson, ESQ.
624 South Ninth Street
Las Vegas, NV 89101-7013



IN THE SUPREME COURT OF THE STATE OF NEVADA

OSCAR GOMEZ, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76487

FILED

NOV 26 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING MOTION

This is an appeal from a judgment of conviction. Appellant has filed a motion to “stay” this appeal and remand his case to the district court so that he may file a motion to withdraw his guilty plea.

“The statutory remedy of a post-sentence motion to withdraw a guilty plea . . . was eliminated.” *Harris v. State*, 130 Nev. 435, 448, 329 P.3d 619, 628 (2014). After sentence has been imposed, the postconviction petition for a writ of habeas corpus is the exclusive means to challenge the validity of a guilty plea for a person in custody on the conviction challenged. *Id.* Accordingly, appellant’s motion to remand this appeal so that he may file a postconviction motion to withdraw his guilty plea is denied. Appellant’s request to “stay” briefing of this appeal is also denied. We remind appellant that the opening brief and appendix are due to be filed by November 26, 2018.

It is so ORDERED.

Dryden, C.J.

cc: Terrence M. Jackson
Attorney General/Carson City
Clark County District Attorney



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C316959-1
DEPT. XXI

10 vs.

11 OSCAR GOMEZ, JR.,
12 aka OSCAR GOMEZ,
13 Defendant.

14 BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE
15 MONDAY, OCTOBER 2, 2017

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **EVIDENTIARY HEARING**

18 APPEARANCES:

19 For the State:

BINU G. PALAL, ESQ.
Chief Deputy District Attorney

20
21 For the Defendant:

MONTI J. LEVY, ESQ.

22
23
24
25 RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 Las Vegas, Nevada, Monday, October 2, 2017

2
3 [Hearing began at 9:04 a.m.]

4 THE COURT: I'm assuming we're not going forward?

5 MR. PALAL: That's correct, Your Honor. At about a 6:00 this
6 morning I got a text from Detective Long saying that they are otherwise
7 occupied.

8 THE COURT: I was assuming every available Metro officer is
9 otherwise utilized, --

10 MR. PALAL: Yes.

11 THE COURT: -- whatever. All right, fair enough. What --
12 should we just reschedule then?

13 MR. PALAL: Sure.

14 MS. LEVY: Can we do it next Monday? Is the Court available
15 next Monday?

16 THE COURT: I think we're available next Monday.

17 MR. PALAL: That's fine with the State, Your Honor.

18 THE COURT: I don't know.

19 MS. LEVY: It'll be very quick, the hearing when we have it.

20 THE COURT: Okay.

21 [Colloquy between the Judge and the Clerk]

22 THE COURT: When is this set for trial, Mr. Palal?

23 THE CLERK: This is on for the 6th, November 6th.

24 THE COURT: Can we do -- oh it doesn't give us a lot of time.

25 [Colloquy between the Judge and the Clerk]

1 THE COURT: It's just quicker for me to look at Phyllis' screen
2 than to pull it up myself.

3 [Colloquy between the Court and the court staff]

4 THE COURT: Let's go ahead and set it right now for 9:00 on
5 Monday.

6 MR. PALAL: Okay.

7 THE COURT: And then if we need to move it we'll just contact
8 you guys.

9 MR. PALAL: Perfect.

10 MS. LEVY: That's fine.

11 THE COURT: Okay.

12 THE CLERK: So you want to do -- set it for nine?

13 THE COURT: Yeah, let's just set it for 9:00.

14 THE CLERK: Okay so October 9th, at 9:00 a.m.

15 MS. LEVY: Okay.

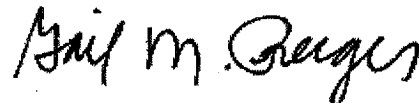
16 THE COURT: All right. Thank you.

17 MR. PALAL: Thank you., Your Honor,

18 [Hearing concluded at 9:06 a.m.]

19 * * * * *

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

24 

25 Gail M. Reiger
Court Recorder/Transcriber



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C316959-1
DEPT. XXI

10 vs.

11 OSCAR GOMEZ, JR.,
12 aka OSCAR GOMEZ,
13 Defendant.

14 BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE
15 THURSDAY, APRIL 19, 2018

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **CALENDAR CALL**

18 APPEARANCES:

19 For the State:

BINU PALAL, ESQ.
ERIKA MENDOZA, ESQ.
Chief Deputy District Attorneys

21 For the Defendants:
22 Oscar Gomez

MONTI J. LEVY, ESQ.
RUSSELL E. MARSH, ESQ.

24
25 RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

062

1 Las Vegas, Nevada, Thursday, April 19, 2018

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3 [Hearing began at 9:38 a.m.]

4 THE COURT: Next up is State versus Oscar Gomez and --
5 well we'll start with Oscar Gomez. You need to stand up.

6 Since there's on three people I know who you are, but if it was
7 a full group we would need you to stand up so I -- we could make sure
8 we see that you're here.

9 All right. This is the time set for calendar call. I'm assuming
10 both sides are announcing ready.

11 MS. LEVY: Your Honor, Monti Levy along with Russell Marsh
12 from my office --

13 MR. MARSH: Good morning.

14 MS. LEVY: -- appearing with Mr. Gomez. My understanding
15 after talking with Mr. Gomez at this time he is willing to accept the offer.

16 THE COURT: All right. And the offer is?

17 MR. PALAL: Second degree murder with use of a deadly
18 weapon. The State retains the right to argue. The offer was going to
19 expire today so if -- we don't have a GPA, because we were not
20 expecting this, so --

21 THE COURT: Right.

22 MR. PALAL: -- is there a way that we can get a GPA done
23 and --

24 THE COURT: Well --

25 MR. PALAL: -- take a plea today?

1 MS. LEVY: We have no problem waiting.

2 THE COURT: Well --

3 MR. PALAL: I know the Court's -- I imagine the reason why
4 this calendar is the way it is, is because maybe the Court has something
5 else today.

6 THE COURT: Right. Because it's the District Judge's
7 Conference.

8 MR. PALAL: Just, yeah, right.

9 THE COURT: So that's why I'm only doing the calendar calls.

10 MR. PALAL: Okay.

11 MS. LEVY: Okay.

12 THE COURT: How long would it take you to get a Guilty Plea
13 Agreement?

14 MR. PALAL: Thirty minutes.

15 THE COURT: Okay. We're moving this to Monday. If for
16 some reason Mr. Gomez does not accept the negotiation and enter his
17 plea of guilty on Monday at 9:00 a.m. then we won't have a jury -- we
18 won't call a jury for that day because that's -- all those people that would
19 have to come in unnecessarily. We will begin trial in that case Tuesday
20 at 11:00 a.m.

21 MS. LEVY: Is that in this department?

22 THE COURT: Yes.

23 MS. LEVY: Oh, okay.

24 THE COURT: It's in this department. So again, Monday
25 they're going to bring you in here. You can plead guilty or not plead

1 guilty.

2 DEFENDANT GOMEZ: Yes.

3 THE COURT: If you don't plead guilty, like I said, I don't want
4 to order 65 people for Monday. So we would have to pass it over for
5 Tuesday. Yes?

6 MR. PALAL: Your Honor, the issue for us obviously -- is this
7 Court's aware having tried cases, is you know, we have to -- if we're
8 relying on this case being dealt. We have to still have all the work done
9 over the weekend to get --

10 THE COURT: Well here's the thing, Mr. Palal.

11 MR. PALAL: If you can give me 15 minutes I'll get it if I have
12 to type it myself. I'll get one done in 15 minutes.

13 THE COURT: Why don't you just email one to us and we'll
14 print it out and you can go in the back and make the changes?

15 MR. PALAL: Okay.

16 THE COURT: That would be faster than you running across
17 the street --

18 MS. MENDOZA: Well we can just go to the 9th floor.

19 THE COURT: Oh.

20 MR. PALAL: Yes, that's -- Ms. Mendoza has given me that
21 idea.

22 THE COURT: All right. Otherwise if he doesn't -- and it's up
23 to you, Mr. Gomez. The Court's not trying to convince you to take the
24 deal or not take the deal. I'm completely indifferent to whether you take
25 it or not. If you don't take the deal that's fine, we'll start Monday at 9:00

1 a.m. All right.

2 So what is she doing?

3 MR. PALAL: She's getting the GPA ready. She says she --

4 THE COURT: All right.

5 So, Mr. Gomez, is that your desire to enter a plea of guilty to
6 second degree murder with use of a deadly weapon here today?

7 DEFENDANT GOMEZ: I'm have to say yes.

8 THE COURT: I'm sorry.

9 DEFENDANT GOMEZ: I'm have to say yes.

10 MS. LEVY: He said he's going to have to say yes.

11 THE COURT: Okay. It's up to you, I mean.

12 MS. LEVY: Canvass.

13 THE COURT: We can -- the Court's available, your lawyers
14 are ready.

15 MS. LEVY: We're ready.

16 THE COURT: The State is ready, so we can proceed to trial
17 on Monday. It's entirely up to you if you want to accept the negotiation
18 or take your chances at trial.

19 MS. LEVY: And, Your Honor, if I could just for the record.
20 And Mr. Gomez understands that it -- our advice to him was to take it.
21 We're not certainly coercing him or anything else.

22 THE COURT: Right.

23 MS. LEVY: But --

24 MR. MARSH: No.

25 MS. LEVY: -- after -- we've had so many discussions about

1 the same offer and I believe that his desire based on our
2 recommendation would be to take it. So I'm sure the Court will canvass
3 him on that.

4 He seems unsure because he's shaky, he's a young kid. So --

5 THE COURT: Right.

6 MS. LEVY: -- he just might need a few minutes to go through
7 the Guilty Plea Agreement --

8 THE COURT: Right.

9 MS. LEVY: -- and enter that plea.

10 THE COURT: And, I mean, obviously nobody wants to plead
11 guilty to second degree murder. And its full right to argue, is that right?

12 MR. PALAL: That's right.

13 THE COURT: And state the penalty --

14 MR. PALAL: With a deadly weapon, yeah.

15 THE COURT: -- state the range of penalty on the record,
16 please.

17 MR. PALAL: Yes, Your Honor. It would be either 10 to 25 or
18 10 to life on the underlying sentence with a consecutive 2 to 20 for the
19 deadly weapon enhancement.

20 MS. LEVY: One to 20.

21 MR. PALAL: One to 20.

22 THE COURT: So --

23 MS. LEVY: One to 20 on the weapon enhancement.

24 THE COURT: One to 20?

25 They keep changing everything all the time.

1 MS. LEVY: I believe it's 1 to 20.

2 THE COURT: So you understand it's up to the Court. The
3 least amount of time the very least amount of time I could give you on
4 the bottom end is 11 years. Do you understand that?

5 DEFENDANT GOMEZ: I -- I understand.

6 THE COURT: The most amount of time I could give you on
7 the bottom end is 18 years. Do you understand that?

8 DEFENDANT GOMEZ: I understand.

9 THE COURT: And I could give you -- the most amount of time
10 on the top end I could give you is life plus 20 years. All right.

11 DEFENDANT GOMEZ: Okay.

12 THE COURT: The least amount of time I could give you on
13 the bottom end is 25 years plus 30 months.

14 DEFENDANT GOMEZ: Okay.

15 THE COURT: Do you understand that?

16 DEFENDANT GOMEZ: Yes.

17 THE COURT: That's the least amount of time.

18 Now Mr. Palal can argue for the maximum time, which is a 10
19 to life and a consecutive 8 to 20. And obviously your lawyers are going
20 to argue for the least amount of time. And then it's going to be up to me
21 to look at everything and determine what, in my opinion, a fair sentence
22 is. Do you understand that?

23 DEFENDANT GOMEZ: I understand.

24 THE COURT: So you understand that those are the ranges?

25 DEFENDANT GOMEZ: Yes.

1 THE COURT: All right. And obviously it's not an easy thing to
2 look at a plea where the least -- the best you're going to do is 11 years.
3 That's the very best you can do. You understand that?

4 DEFENDANT GOMEZ: I understand.

5 THE COURT: And there's no guarantee of that. All right.

6 MS. LEVY: And he understands because we went through
7 the penalties also if we were to go to trial and it was a first degree with
8 use of a deadly weapon.

9 THE COURT: Right.

10 MS. LEVY: It's significantly more than --

11 THE COURT: Right.

12 MS. LEVY: -- it's double on the underlying charge.

13 THE COURT: Right. Well --

14 MR. MARSH: At least.

15 THE COURT: Right. Well and then in that case Mr. Palal
16 knows that was their intent, to seek life without the possibility of parole.

17 MR. PALAL: That would be our intent.

18 THE COURT: And he -- and you the penalty phase hadn't
19 been waived, so that would be up to the jury.

20 MS. LEVY: He did sign one today --

21 THE COURT: Oh.

22 MS. LEVY: -- that we were going to enter if --

23 THE COURT: Okay.

24 MS. LEVY: -- so we still -- we have that if, you know.

25 THE COURT: All right. Do you have any questions for me so

1 far --

2 DEFENDANT GOMEZ: No questions.

3 THE COURT: -- about the plea or about anything?

4 DEFENDANT GOMEZ: No.

5 THE COURT: All right. And we'll go over this in more detail in
6 a Guilty Plea Agreement is, but you had a full and ample opportunity to
7 discuss your plea of guilty and the charge of second degree murder with
8 use of a deadly weapon that you're going to be pleading guilty to. Is that
9 right?

10 DEFENDANT GOMEZ: That's right.

11 THE COURT: Okay. And did your lawyers answer all your
12 questions to your satisfaction?

13 DEFENDANT GOMEZ: They did.

14 THE COURT: Okay. Do you feel like Ms. Levy and her co-
15 counsel have spent enough time with you explaining the discovery and
16 going over the evidence and everything like that in this case?

17 DEFENDANT GOMEZ: Yeah.

18 THE COURT: Okay.

19 MS. LEVY: And also my investigator who's here, Mr. Retke
20 has spent --

21 THE COURT: I thought he looked familiar.

22 MS. LEVY: Yes, yes.

23 THE COURT: All right.

24 MS. LEVY: Mr. Retke and I went over there numerous times,
25 yes.

1 THE COURT: Okay.

2 MR. PALAL: Thank you, Your Honor.

3 [Colloquy between the State and Defense counsel]

4 THE COURT: So we're just --

5 MR. PALAL: I appreciate your patience, Your Honor, --

6 MS. LEVY: Thank you, Your Honor.

7 MR. PALAL: -- we'll have one up shortly.

8 THE COURT: What's that?

9 MR. PALAL: I appreciate your patience; we'll have a GPA up

10 very shortly.

11 [Hearing trailed at 9:46 a.m.]

12 [Hearing resumed at 10:09 a.m.]

13 MS. LEVY: Your Honor, may I approach the Clerk?

14 THE COURT: Sure.

15 MS. LEVY: Or do you want to go on the record first, either

16 way.

17 THE COURT: Oh. We're on the record, right?

18 THE COURT RECORDER: Yes.

19 THE COURT: All right. And for the record an Amended

20 Information has been filed in open court this morning charging the crime

21 of second degree murder with use of a deadly weapon. And a written

22 Plea of Guilty has also been filed in open court this morning.

23 Mr. Gomez the Court is in possession of a written Plea of

24 Guilty which was signed by you. Is this your signature here on page 5 of

25 the written Plea of Guilty?

1 DEFENDANT GOMEZ: Yes, it is.

2 THE COURT: All right. Before the Court may accept your
3 plea of guilty the Court must be satisfied that your plea is freely and
4 voluntarily given. Are you making this plea freely and voluntarily?

5 DEFENDANT GOMEZ: Yes.

6 THE COURT: Other than what's contained in the written Plea
7 of Guilty, have any promises or threats been made to induce you or to
8 get you to plead guilty in this case?

9 DEFENDANT GOMEZ: No.

10 THE COURT: All right. Before you signed the written Plea of
11 Guilty did you read it?

12 DEFENDANT GOMEZ: Yes, I did.

13 THE COURT: Did you understand everything contained in the
14 written Plea of Guilty?

15 DEFENDANT GOMEZ: Yes, I did.

16 THE COURT: Did you also read the Amended Information
17 that's been filed and is attached as an Exhibit to your written Plea of
18 Guilty charging you with the felony crime of second degree murder with
19 use of a deadly weapon?

20 DEFENDANT GOMEZ: Yes.

21 THE COURT: And do you understand what's set forth in that
22 charging document?

23 DEFENDANT GOMEZ: I understand.

24 THE COURT: All right. Did you have a full and ample
25 opportunity to discuss your plea of guilty as well as the charge to which

1 you are pleading guilty with your attorneys?

2 DEFENDANT GOMEZ: I did.

3 THE COURT: All right. And we've already discussed that
4 your counsel, Ms. Levy, has answered all your questions to your
5 satisfaction, is that right?

6 DEFENDANT GOMEZ: That's right.

7 THE COURT: All right. And is it your desire today to waive
8 and give up your right to go to trial next week and plead guilty to the
9 amended charge of second degree murder with use of a deadly
10 weapon?

11 DEFENDANT GOMEZ: Yes.

12 THE COURT: All right. Now before I proceed with your plea
13 do you have any questions you would like to ask me the Court?

14 DEFENDANT GOMEZ: No, no questions.

15 THE COURT: All right. Let's turn to the charging document.
16 Tell me in your own words what you did on or about June 24th, 2016,
17 here in Clark County, Nevada that causes you to plead guilty to second
18 degree murder with use of a deadly weapon.

19 DEFENDANT GOMEZ: Can you repeat that? I didn't
20 understand you.

21 THE COURT: Oh, I'm sorry. I may have lost my train of
22 thought.

23 Tell me in your own words what you did here in Clark County,
24 Nevada, on the date of June 24th, 2016, that causes you to plead guilty
25 to the felony crime of murder in the second degree with use of a deadly

1 weapon. What did you do?

2 DEFENDANT GOMEZ: I shot Many. I shot Manymules,
3 Manymules.

4 THE COURT: That was an individual by the name of Shawn
5 Manymules, is that right?

6 DEFENDANT GOMEZ: That's right.

7 THE COURT: All right. And you shot into his body with a
8 handgun, is that true?

9 DEFENDANT GOMEZ: That's true.

10 THE COURT: And do you acknowledge that as a result of you
11 shooting him he passed -- he died?

12 DEFENDANT GOMEZ: Yes.

13 THE COURT: Is that true?

14 DEFENDANT GOMEZ: Yes.

15 THE COURT: And that was from the gunshot wound or was it
16 a single wound?

17 MS. LEVY: Yes.

18 MR. PALAL: Yes, Your Honor.

19 THE COURT: That was as a result of the gunshot wound, is
20 that true?

21 DEFENDANT GOMEZ: That's true.

22 THE COURT: And do you acknowledge that at the time you
23 did it, you did it on purpose and with malice of forethought?

24 DEFENDANT GOMEZ: Not on purpose.

25 THE COURT: You did it intentionally, right? You shot --

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1 DEFENDANT GOMEZ: Not --
2 THE COURT: -- at him intentionally?
3 DEFENDANT GOMEZ: -- intentionally, it was the heat of the
4 moment.
5 THE COURT: I'm sorry?
6 DEFENDANT GOMEZ: It was -- at the moment it was, a how
7 do you say it, like passion. I was -- it was in the moment. I was in the
8 moment.
9 THE COURT: All right. Well heat of passion killing is -- is
10 different -- you were mad at him, but you acknowledge that it wasn't of
11 a --
12 DEFENDANT GOMEZ: It wasn't intentional.
13 MS. LEVY: Court's indulgence.
14 THE COURT: Well you intentionally shot him, true? I mean,
15 you intentionally pointed your gun at him and shot into his body, is that
16 right?
17 DEFENDANT GOMEZ: You could say that, yeah.
18 THE COURT: I'm sorry?
19 DEFENDANT GOMEZ: Yeah.
20 THE COURT: Okay. And you knew as the result of you
21 shooting into his body it was likely that he would either sustain serious
22 bodily injury or possibly die, isn't that right?
23 DEFENDANT GOMEZ: Yes.
24 THE COURT: All right. State would you like the Defendant to
25 acknowledge anything else?

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MR. PALAL: No, Your Honor. That's fine.

THE COURT: All right. Is that acceptable with the State?

MR. PALAL: Yes, Your Honor.

THE COURT: All right. So Mr. Gomez, the Court finds that your plea of guilty has been freely and voluntarily given. Your plea is hereby accepted and the matter is referred to the Department of Parole and Probation. And we'll give you an in custody sentencing date.

THE CLERK: June 7th, 9:30.

MS. LEVY: Thank you, Your Honor.

THE COURT: All right. Thank you.

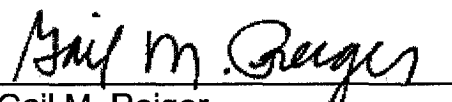
MR. MARSH: Thank you.

MR. PALAL: Thank you.

[Hearing concluded at 10:14 a.m.]

* * * * *

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


Gail M. Reiger
Court Recorder/Transcriber

Steven D. Grierson

1 RTRAN

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA

6
7 THE STATE OF NEVADA,
8 Plaintiff,

CASE#: C316959-1
C316959-2

DEPT. XXI

9 vs.

10 OSCAR GOMEZ, JR.,
11 aka OSCAR GOMEZ, and
12 GUSTAVO ERNESTO DELACRUZ,
aka GUSTAVO ERNESTO
DELACRUZCORTEZ,

13 Defendant.

14 BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE
15 TUESDAY, NOVEMBER 7, 2017

16 **RECORDER'S TRANSCRIPT OF HEARING:**
17 **STATUS CHECK: NEGOTIATIONS/TRIAL SETTING AND**
18 **DEFENDANT'S MOTION FOR REASONABLE BAIL SETTING**

19 APPEARANCES:

20 For the State:

BINU G. PALAL, ESQ.
Chief Deputy District Attorney

21
22 For the Defendants:
Oscar Gomez

MONTI J. LEVY, ESQ.

23 Gustavo Ernesto Delacruz

JESS Y. MATSUDA, ESQ.

24
25 RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, November 7, 2017

2
3 [Hearing began at 10:13 a.m.]

4 MR. PALAL: Can you call Oscar Gomez, on top of page 4 and
5 it looks like Gustavo Delacruz on bottom of 14.

6 THE COURT: All right. State versus Oscar Gomez who,
7 which ones Oscar Gomez?

8 MS. LEVY: Oscar's right there with the glasses, Your Honor.

9 THE COURT: All right. And then Delacruz is either not on
10 calendar is on calendar in a -- on a different --

11 THE CLERK: Page 14.

12 THE COURT: On page 14, I don't know why they keep doing
13 that.

14 All right. And Ernesto Delacruz and Mr. Delacruz is present in
15 custody with Mr. Matsuda. And Mr. Gomez is present in custody with
16 Ms. Levy. And this is on for status check negotiations, trial setting, and
17 then also -- well it should be trial setting, because I know everybody's
18 going to be ready on --

19 MR. PALAL: About that, Your Honor.

20 THE COURT: What's that?

21 MR. PALAL: About that issue, I reached out to defense
22 counsel on Thursday of this week. Detective Mogg, who's the case
23 agent on this case, communicated with me saying he has an injury that
24 requires surgery, and as a result he won't be available.

25 Now obviously him being the case agent, the lead Detective

1 on the case he's an essential witness to the State. I communicated this
2 as soon as I found out with defense counsel. My understanding is they
3 have no objection to a continuance.

4 MS. LEVY: That's correct, Your Honor. Mr. Palal did reach
5 out to me on -- I had spoken to my client and we don't have any
6 opposition to continuing the trial.

7 THE COURT: Is Detective Mogg really an essential witness?

8 MR. PALAL: Uh --

9 THE COURT: I mean, I know sometimes, you know, other
10 detectives were present when Detective Mogg did whatever he did.

11 MR. PALAL: Right. I mean, Your Honor, I think you know, I
12 tried to figure a way to work around it. But I think Detective Mogg is
13 essential because frequently in these types of cases people will ask, well
14 was this done, was that done, was this done, well who's responsibility
15 was it to get, you know, X, Y, and Z done? And the response is going to
16 be Detective Mogg, and then we're going to have an empty witness seat
17 for Detective Mogg, who ran the -- ran the case.

18 THE COURT: All right. Mr. Matsuda, on behalf of your
19 client --

20 MR. MATSUDA: We have no objection, Your Honor.

21 THE COURT: All right. So when is Detective Mogg going to
22 be available?

23 MR. PALAL: He said --

24 THE COURT: Because as you know this was a firm setting
25 from last time --

1 MS. LEVY: Uh --

2 THE COURT: -- we continued this.

3 MS. LEVY: And I understand that, Your Honor, the issue --
4 the case is not that old.

5 THE COURT: Right.

6 MS. LEVY: It's only a year --

7 THE COURT: And it's not defense counsel's fault

8 MS. LEVY: -- and a few months.

9 THE COURT: -- that Detective Mogg is having surgery.

10 MS. LEVY: Right. And we -- we ourselves have had
11 continuances previously in this matter, but it's not like a stale case, it's
12 only a year and four months old. So we've looked at our calendar, and, I
13 mean, it's not just whether -- when Mr. Mogg or Detective Mogg is going
14 to be ready, it's also you know, we have to fit it in around our other --

15 MR. PALAL: And I'll just go along with whatever date they're
16 free and we'll be available.

17 THE COURT: All right. Ms. Levy, what have you determined,
18 when --

19 MS. LEVY: In looking at my calendar with other cases that
20 need preparation work done, I would ask for April.

21 THE COURT: Mr. Matsuda?

22 MR. MATSUDA: That's fine, Your Honor.

23 THE COURT: Mr. Palal, you'd be available?

24 MR. PALAL: Either myself or another deputy, Your Honor.

25 THE COURT: All right.

1 MS. LEVY: We also had a bail motion on today as well.
2 THE COURT: Right.
3 MS. LEVY: Okay.
4 THE JUDICIAL EXECUTIVE ASSISTANT: How about April
5 23rd?

6 MS. LEVY: Court's indulgence. That's after spring break,
7 correct?

8 Or no that's the week of -- no spring break's at the end of
9 March. I'm sorry, I believe. That should be fine.

10 MR. MATSUDA: That's good for me.

11 THE CLERK: So is it -- okay?

12 THE COURT: So does that work?

13 MS. LEVY: It does.

14 MR. MATSUDA: That's good for me.

15 THE JUDICIAL EXECUTIVE ASSISTANT: Okay. April 23rd
16 for the jury trial at 9:00 a.m. and April 19th for the calendar call at 9:30.

17 THE COURT: All right. And last time we discussed the offer.
18 Has an offer been made?

19 MR. PALAL: Yes, Your Honor. An offer was made some time
20 ago. It was a second with use with right to argue for Ms. Levy's client.
21 And I believe the last offer for the B Defendant was a battery with
22 substantial -- battery resulting in substantial bodily, stip 12 to 30 months,
23 which would essentially be credit for time -- or be close to a lot of the
24 credit time served.

25 THE COURT: And was the B Defendant's negotiation

1 dependent on the A Defendant accepting it?

2 MR. PALAL: No.

3 THE COURT: All right.

4 So, Ms. Levy, you've had an opportunity to discuss that with
5 your client?

6 MS. LEVY: I have, Your Honor, at this point he's made a
7 counteroffer to the State that I relayed. The State rejected his
8 counteroffer. I would assume though if we're continuing it until April that
9 talks will be -- I mean, it's not --

10 MR. PALAL: It's --

11 MS. LEVY: -- going to be completely off the table at this point.

12 MR. PALAL: State's leaving the offer open, Your Honor.

13 THE COURT: All right. And Mr. Gomez, at this point it's your
14 desire to reject the offer of second degree murder with use of a deadly
15 weapon, is that right?

16 DEFENDANT GOMEZ: Yes, that's right.

17 THE COURT: All right. And Mr. Matsuda, have you had an
18 opportunity to discuss the offer with your client?

19 MR. MATSUDA: I have, Your Honor.

20 THE COURT: And he doesn't wish to accept that?

21 MR. MATSUDA: At this time, no. He -- it's not a total
22 rejection, there are some stuff we have to go through, but I don't think at
23 this point, and I spoke to the State about that. I don't think he's outright
24 rejecting that offer at this point. If he does want to accept it, I told the
25 State I would put it back on calendar.

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THE COURT: All right. And is that correct?

DEFENDANT DELACRUZ: Yes.

THE COURT: You don't want to accept the offer at this time?

DEFENDANT DELACRUZ: Well, I -- I just wanted to ask him
a little more questions.

THE COURT: Okay. So you may want to --

DEFENDANT DELACRUZ: Yeah.

THE COURT: -- but you have to discuss it further with him --

DEFENDANT DELACRUZ: Yeah.

THE COURT: -- is that --

DEFENDANT DELACRUZ: Yeah, just --

THE COURT: -- essentially where we are?

All right. And my understanding was, there was no additional
preparation work that needed to be done, everybody's ready to go. Is
that correct, Ms. Levy?

MS. LEVY: Yes. There's still -- there are witnesses that I
think both sides were looking for that neither side has been able to
locate.

THE COURT: Right.

MS. LEVY: So, I mean that's,

THE COURT: Okay, so you'll just --

MS. LEVY: -- other than that, yes we're ready.

MR. PALAL: I don't imagine that changes over the next five
months.

MS. LEVY: We've tried, but other than that we've done file

1 reviews, we've done -- I think we're good to go.

2 THE COURT: All right. I'm just going to set it out for another
3 status check in 120 days just to make -- and your trial date is firm.

4 MS. LEVY: Okay. One other request. We had the
5 evidentiary hearing with Detective Mogg's testimony.

6 THE COURT: Right.

7 MS. LEVY: Could I get transcripts of that hearing so I can
8 utilize those for the trial?

9 THE COURT: Certainly. Susie, you are ordered.

10 MS. LEVY: I'm sorry.

11 THE COURT: I'm saving you the difficulty of submitting a
12 written order.

13 MS. LEVY: I appreciate it. And it is Court appointed.

14 THE COURT: Susie, you are ordered to prepare those
15 transcripts. All right.

16 MS. LEVY: Thank you.

17 THE COURT: So just a -- she'll let you know when they're
18 done.

19 MS. LEVY: Okay, perfect.

20 THE COURT: All right.

21 THE CLERK: Our 20 days is March 6th at 9:30.

22 THE COURT: Well you know, let's do February that's -- like
23 end of February.

24 THE CLERK: How about February 6th? Oh, you want to do
25 the end?

1 THE COURT: It doesn't really matter.

2 THE CLERK: How about February 23rd. Do you want 8:30?

3 THE COURT: All right. And then returning to the bail motion.

4 Mr. Palal, we did not receive a written opposition?

5 MR. PALAL: I apologize, Your Honor. If I may respond
6 orally?

7 THE COURT: Sure.

8 MR. PALAL: Your Honor, in this case you have somebody
9 who did not flee to Panama, but fled nonetheless after committing a
10 murder. The murder is caught -- the minutes leading right up to the
11 murder are caught on video. The actual murder is not caught on video,
12 but essentially what you see is the Defendant with a firearm in his hand.
13 He racks the firearm; you see the victim and the percipient witness walk
14 off screen. You see the Defendant follow him off screen and then you
15 see him run away into a car. And the percipient witness says during
16 those ten seconds the victim -- the Defendant shoots the victim
17 ultimately killing him, which is supported by the forensic evidence given
18 the timing of the 911 call and the video.

19 So, Your Honor, the State's position is, proof is evident,
20 presumption is great, that no bail is appropriate here.

21 THE COURT: Ms. Levy?

22 MS. LEVY: Thank you, Your Honor. Your Honor, I believe
23 that Mr. Gomez is entitled to bail. He did not flee, and I'm not sure why
24 the State is indicating he fled. Mr. Gomez has been in the State. He
25 was arrested four days after the offense was committed by somebody.

1 And, you know, he's not -- he's definitely entitled to the presumption of
2 innocence. I know the State thinks this is a clear cut he definitely did it,
3 but as the State said the murder is not on video. The State indicates
4 that there's a firearm in his hand, but that you can see on the video and
5 that's going to be up to a jury to determine.

6 So with regard to bail, he is not a flight risk. He is not a
7 danger to the community. He was employed at the time of this offense;
8 he was working at a floor company, Classic Floors and Interiors, where
9 he had worked for three years. He has extensive ties to the community
10 including several aunts, uncles, cousins that live here. He went to high
11 school here. He didn't graduate, but he did go to high school here. He's
12 local. The only other place he's ever lived is San Bernardino, where he
13 was born. He -- his criminal history exists is just one misdemeanor
14 citation for marijuana, that's it. No other criminal history whatsoever, so I
15 don't believe that he is a flight risk nor a danger to the community. He is
16 entitled to bail. He's not fled to any other country nor does he intend to.

17 THE COURT: Yeah, I mean, as to the other Defendant that
18 was just argued that you both keep --

19 MS. LEVY: Right.

20 THE COURT: -- well referencing. You know, Mr. Gentile
21 made a strong argument before this Court as to another theory that
22 didn't involve first degree murder.

23 MR. PALAL: Right.

24 THE COURT: That the evidence could, you know, prove a
25 voluntary manslaughter, so just to distinguish between --

1 MR. PALAL: Sure.

2 THE COURT: -- that defendant and this Defendant in terms of
3 why the Court set bail.

4 MR. PALAL: Yes.

5 THE COURT: You know, it wasn't just about fleeing the
6 country, although that was the focus of the argument today based on
7 repeated status checks. So you know that, but again that was --

8 MR. PALAL: Yes.

9 THE COURT: -- you know.

10 MR. PALAL: Yes, Your Honor. I guess, not to be flippant
11 then, I think here I guess, Ms. Levy's argument isn't so much that the
12 Defendant was otherwise impaired, it was that he didn't do it. And I think
13 that's -- that is I think the video evidence strongly rebuts that.

14 MS. LEVY: And with regard to the Court indicating that Mr.
15 Gentile made an argument for, I mean, in this case the same kind of
16 situation. I don't know the whole facts of that case, but in this case there
17 is prior to this offense the murder taking place, there is a five minute fist
18 fight between the co-Defendant and the victim, who then becomes the
19 victim of the murder. So there's a five minute argument, there's words
20 going back and forth. It's a heated exchange, it's not like Mr. Gomez
21 just went out and killed somebody. It was a five minute all on video. I'm
22 sure Mr. Palal's watched it where there's a heated exchange between
23 these individuals, there's four total individuals.

24 So I think we could make that argument as well in this case,
25 that it's not a first degree murder, that it is a voluntary. So I would ask

1 for bail to be set.

2 THE COURT: All right. Let me think about it and consider it
3 further. Leave it out two weeks for status check regarding decision.

4 MR. PALAL: Thank you, Your Honor.

5 THE COURT: All right. Do any of you have anything else?

6 MR. MATSUDA: I have something quick on the top of 9, Your
7 Honor. Oh, I'm sorry.

8 THE COURT: And then Mr. Mueller's up.

9 MS. LEVY: Okay. So we're just going to have a writ -- a
10 minute order decision or do you need me back?

11 THE COURT: We're coming back.

12 MS. LEVY: On the two week date? Okay

13 THE CLERK: That's well three weeks --

14 THE COURT: Okay, whenever.

15 THE CLERK: November 28th.

16 MS. LEVY: November 28th, I'm sure I can make it work.

17 Okay.

18 THE COURT: If Mr. -- you know, Palal left, but you know, he
19 doesn't really need to be here.

20 MS. LEVY: I will let him know.

21 THE COURT: We worry about the defense attorneys
22 being here but in terms of the State, you know, as long as there's a
23 pulse standing at the table.

24 ///

25 ///

088

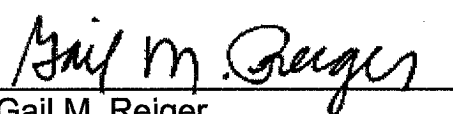
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MS. LEVY: I will text Mr. Palal and let him know November
25th at 9:30. Thank you, Your Honor.

THE COURT: All right. Thank you.

[Hearing concluded at 10:26 a.m.]

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


Gail M. Reiger
Court Recorder/Transcriber

089

Steven D. Grierson

JOCP

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO. C-16-316959-1

DEPT. NO. XXI

OSCAR GOMEZ, JR. aka
Oscar Gomez
#5990519

Defendant.

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030.2, 193.165; thereafter, on the 14th day of June, 2018, the Defendant was present in court for sentencing with counsel MONTI LEVY, ESQ., and good cause appearing,

1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in addition to
2 the \$25.00 Administrative Assessment Fee, \$18,800.00 Restitution to Lucina James and \$150.00
3 DNA Analysis Fee including testing to determine genetic markers plus \$3.00 DNA Collection
4 Fee, the Defendant is sentenced to the Nevada Department of Corrections (NDC) as follows:
5 LIFE with the Eligibility for parole after serving a MINIMUM of TEN (10) YEARS plus a
6 CONSECUTIVE term of a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a
7 MINIMUM parole eligibility of NINETY-SIX (96) MONTHS for the Use of a Deadly Weapon;
8 with SEVEN HUNDRED SIXTEEN (716) DAYS credit for time served.
9

10 DATED this 19th day of June, 2018.
11
12

13 Valerie P. Adair
14 VALERIE P. ADAIR
15 DISTRICT COURT JUDGE *ky*
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1 **NOASC**
2 **TERRENCE M. JACKSON, ESQ.**
3 Nevada Bar No. 00854
4 Law Office of Terrence M. Jackson
5 624 South Ninth Street
6 Las Vegas, NV 89101
7 T: 702-386-0001 / F: 702-386-0085
8 Terry.jackson.esq@gmail.com
9 *Counsel for Oscar Gomez, Jr.*

10
11
12 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**
14

15	THE STATE OF NEVADA,)	District Case No.: C-16-316959-1
16)	
17	Plaintiff,)	Dept.: XXI
18	v.)	
19)	
20	OSCAR GOMEZ, JR.,)	NOTICE OF APPEAL
21	#1200302,)	
22	Defendant.)	
23)	

24
25 NOTICE is hereby given that the Defendant, OSCAR GOMEZ, JR., by and through his
26 attorney, TERRENCE M. JACKSON, ESQ., hereby appeals to the Nevada Supreme Court, from the
27 Judgment of Conviction, file-stamped June 22, 2018.

28
29 Defendant, OSCAR GOMEZ, JR., further states he is indigent and requests that the filing
30 fees be waived.

31
32 Respectfully submitted this 17th day of JULY, 2018.

33
34 /s/ Terrence M. Jackson
35 Terrence M. Jackson, Esquire
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42 *Counsel for Oscar Gomez, Jr.*

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify I am an assistant to Terrence M. Jackson, Esq., not a party to this action, and
3 on the 17th day of July, 2018, I served a true, correct and e-filed stamped copy of the foregoing:
4 Defendant, Oscar Gomez's, NOTICE OF APPEAL as follows:
5

6 [X] Via Odyssey eFile and Serve to the Eighth Judicial District Court;

7 [X] Via the NSC Drop Box on the 1st floor of the Nevada Court of Appeals, located at 408 E.
8 Clark Avenue in Las Vegas, Nevada;

9 [X] and by United States first class mail to the Nevada Attorney General and the Defendant as
10 follows:
11

12
13 STEVEN B. WOLFSON
14 Clark County District Attorney
15 steven.wolfson@clarkcountyda.com
16

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22 By: /s/ Ila C. Wills
23 Assistant to T. M. Jackson, Esq.
24
25
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27
28



1 **RTRAN**

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

5
6 **THE STATE OF NEVADA,**

7 **Plaintiff,**

8 **vs.**

9 **OSCAR GOMEZ,**

10 **Defendant.**

CASE NO. C-16-316959-1

DEPT. NO. XXI

11
12
13 **BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE**

14 **TUESDAY, JANUARY 16, 2018**

15
16 **RECORDER'S TRANSCRIPT RE:**
17 **DEFENDANT'S MOTION TO PLACE ON CALENDAR TO ADDRESS TRIAL**
18 **READINESS**

19 **APPEARANCES:**

20 **For the State:**

BINU G. PALAL, ESQ.
Chief Deputy District Attorney

21
22
23 **For the Defendant:**

MONTI J. LEVY, ESQ..

24
25 **RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER**

1 LAS VEGAS, NEVADA, TUESDAY, JANUARY 16, 2018, 10:22 A.M.

2 * * * * *

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4 THE COURT: State versus Oscar Gomez. And Mr. Gomez is present
5 in custody with Ms. Levy.

6 This was placed on calendar by the defense.

7 MS. LEVY: Yes, Your Honor. Can we approach?

8 THE COURT: Sure.

9 **[Bench Conference – Not Recorded]**

10 THE COURT: All right. Mr. Gomez, as you know, you have filed with
11 the Court essentially a motion or a letter complaining about your counsel, Ms. Levy,
12 and asking essentially, I think, that Ms. Levy be removed. Is that right?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And then you accused her of unethical behavior and
15 failing to pursue defense strategy. Is that right?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Here's the deal. I don't know what you think Ms. Levy
18 has done that's unethical. Obviously, if there were something the Court would be
19 concerned and, you know, could sanction her, or refer her to the State Bar, things
20 like that.

21 In terms of Ms. Levy pursuing defense strategy, you know, Ms. Levy's
22 obligations are to listen to you, but she is not obligated to pursue the defense
23 strategy that you want. It is entirely up to defense counsel as to what trial tactics to
24 implement. And one of the obvious reasons for that is Ms. Levy is trained in the law
25 and has a lot of experience as a lawyer which you do not have.

1 So you may think something like filing a motion is a good idea or doing
2 something else. But Ms. Levy, based on her experience and training, may know
3 that it's not a good idea. So decisions regarding trial strategy are completely up to
4 defense counsel.

5 Now, for example, you may think a motion is a good idea. But Ms.
6 Levy, as a licensed attorney, is bound by various ethical rules, and she cannot file a
7 motion that is frivolous in either law or fact. So, you know, you might think
8 something's a good idea. Ms. Levy may know that it's frivolous, and for that reason
9 she may say, no, you know what, that's not a good idea. Or it could open the door
10 to a waiver of attorney-client privilege, or something like that, that you maybe aren't
11 thinking about. And Ms. Levy may say, wow, you know, that's not a great idea to file
12 that motion.

13 So, Ms. Levy, have you had an opportunity to review the motion –

14 MS. LEVY: I have.

15 THE COURT: -- essentially complaining about you?

16 MS. LEVY: Yes, Your Honor.

17 THE COURT: And are there any factual allegations that you would like
18 to address at this time?

19 MS. LEVY: There are but perhaps not in the presence of the open
20 court. But, yes, I mean, it's not true what's in here. My investigator is here as well
21 and can address those matters.

22 We attempted to go see Mr. Gomez to discuss these issues with him.
23 He's refusing our visits and so, obviously, with this type of charge and this type of
24 trial coming up, we need to be able to prepare for that and we're not able to, which
25 is why it's on calendar for Your Honor.

1 THE COURT: Okay. Mr. Gomez, unless there is an actual conflict or
2 counsel has been derelict in their duties, or is pursuing some kind of ethical tactic,
3 and that would be something like trying to offer perjured testimony or something of
4 that nature -- that's just an example that immediately pops into my head -- or
5 dissuading witnesses from coming to court and testifying, doing things like that, I
6 don't remove appointed counsel.

7 So when you have appointed counsel, you can't pick and choose
8 because you may not like Ms. Levy, somebody else may not like Mr. Saxe or Mr.
9 Pitaro, and it would be chaos if defendants got to pick and choose among appointed
10 counsel. So unless, you know, one of those things is going on: A) there's an actual
11 conflict; B) defense counsel is derelict in their duties; or C) they're actually pursuing
12 an unethical strategy such as dissuading witnesses or offered perjured testimony or
13 something of that nature, I don't remove counsel.

14 So, basically, your options are to proceed with Ms. Levy or to represent
15 yourself, because at this point based on what you've -- I don't have anything that
16 would justify removing Ms. Levy as your counsel.

17 MS. LEVY: Your Honor, could I just --

18 THE COURT: Now, we can have a hearing out of the presence, out of
19 open court, at a later date, including without having the State here if you want to
20 give me more specific information on what it is you want Ms. Levy to do that Ms.
21 Levy has refused to do.

22 But like I said, you know, trial strategy is left up to counsel and there
23 may be various reasons she isn't pursuing a strategy that you want including, you
24 know, the filing of motions that Ms. Levy may know to be frivolous. So, you know,
25 that's kind of where we are on this.

1 And if I don't remove Ms. Levy, she's going to represent you at the date
2 we have set whether or not you cooperate with her or not. So, basically, what we do
3 is we make a record of the times Ms. Levy and/or her investigator have gone to the
4 jail to visit with you and if you refuse to visit with you, guess what, that's on you.
5 That's not on Ms. Levy and that's not on Mr. Palal.

6 So we're going forward. If you refuse to meet with Ms. Levy and allow
7 her to prepare, she's going to go forward with what she has, and down the road if
8 you file a petition for ineffective assistance of counsel and it's your fault, I'm not
9 going to grant that petition.

10 So Ms. Levy can only do what you allow her to do in terms of her
11 preparation so if you're refusing to meet with her, again, that's on you.

12 THE DEFENDANT: Okay.

13 THE COURT: Do you understand?

14 THE DEFENDANT: Yeah, I understand.

15 THE COURT: And they have, I'm sure, a log at the jail of how many
16 times Ms. Levy or her investigator have gone over to try to see you. And, like I said,
17 you know, if the fault it yours, you're not going to get a petition granted down the
18 road if you're convicted and you start thinking, wow, I really should have met with
19 Ms. Levy. Gee, I really should have met with her investigator.

20 THE DEFENDANT: Can I say something?

21 THE COURT: Sure.

22 THE DEFENDANT: The last time she came, the last time she tried to
23 come see me was before the last court date we had, and there's this officer that
24 came into my room, told me -- asking for a Franklin, that he had a visit for a -- so that
25 -- from counsel, and they didn't ask for me so I got confused. He was asking for the

1 wrong person.

2 THE COURT: Okay, so you're saying that the Corrections Officer
3 asked for the wrong inmate?

4 THE DEFENDANT: He was asking for a Franklin.

5 THE COURT: Okay.

6 MS. LEVY: Your Honor, Mr. Gomez that's prior to our last court date.
7 He was present. We went over there on December 28th to the jail, the officer called
8 the unit and they checked, and Mr. Gomez was refusing our visit. So that was way
9 after the last court date, so I don't think that's accurate.

10 And one thing that I would address in this is that Mr. Gomez has stated
11 that we're, Craig and I are attempting to coerce him to take a deal. We were
12 prepared to go to trial last time. It was put on the record that he's rejected the
13 negotiations. We did counter offer to the State, the State rejected that. I was – I
14 announced ready, the State needed to continue and so the case was continued.

15 We were ready to go to trial last time so I know Mr. Gomez has rejected
16 the offer. There's nothing coercive, there's no – Mr. Retke and I, when we
17 contacted Mr. Gomez' family, it was to get clothing for trial and negotiations weren't
18 discussed whatsoever. So, and that's one thing that he said in here that we were
19 attempting to get his family to coerce him to take a deal. Well, we didn't even
20 mention negotiations. It was only to get clothing for trial and some addresses. That
21 was the only thing that was discussed.

22 So we know we're – that he's not going to accept the deal but we have
23 to be able to talk to him to prepare for trial, so.

24 THE COURT: Right. I mean, look, even if Ms. Levy thinks the offer
25 isn't a good offer from the State, she is ethically required to communicate the offer to

1 you. She can then give you her input on whether or not you should take the offer,
2 but even if it's a bad offer, she still ethically has to tell you about it.

3 THE DEFENDANT: Yes. But by having –

4 THE COURT: So, you know, in terms of trying to force you to take a
5 deal, Ms. Levy says she didn't. You've indicated you don't want the negotiation so
6 we're proceeding to trial and Ms. Levy is trying to get ready.

7 So all I'm telling you is, you know, as long as Ms. Levy is your counsel,
8 it would behoove you to, meaning it would be in your best interest, to be available to
9 meet with Ms. Levy and her investigator so they can be ready. Because, like I said,
10 you know, down the road, if you're convicted and it turns out that you were refusing
11 visits from Ms. Levy or her investigator, and she didn't do as good of a job as she
12 could have done, I'm going to hold that against you. I'm not going to hold that
13 against Ms. Levy.

14 All right. So as of right now, counsel is still Ms. Levy and let's see, we
15 have a status check set for –

16 MS. LEVY: February 22nd?

17 THE COURT: -- February 22nd. That status check date stands, and if
18 there is other issues, something more specific, you can bring that before the Court,
19 but right now I just don't have anything to justify removal.

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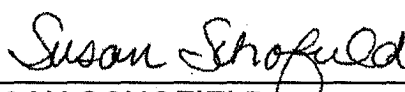
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All right, thank you.

THE DEFENDANT: Thank you.

[Hearing concluded at 10:33 A.M.]

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



SUSAN SCHOFIELD
Court Recorder/Transcriber

SUPREME COURT OF THE STATE OF NEVADA

OSCAR GOMEZ, JR.,

)

Electronically Filed
Aug 28 2018 01:09 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

)

Supreme Court No: 76487

Appellant,

)

D.C. case no.: C-16-316959-1

)

Dept.: XXI

v.

)

STATE OF NEVADA,

)

E-filed

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Respondent.

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MOTION FOR EXTENSION OF TIME

COMES NOW the Defendant Oscar Gomez, Jr., and moves for an extension of time to file Docketing Statement.

As grounds for this Motion, Defendant states he needed additional time to complete the Docketing Statement. He was unfamiliar with the facts of the case as he was not trial counsel and he needed additional time to get necessary appellate transcripts. Counsel needed additional time to review transcripts to determine what would be the issues most likely to be raised on appeal.

040

DATED this 28th day of August, 2018.

Respectfully submitted,

/s/ Terrence M. Jackson

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Nevada Bar #00854

Law Office of Terrence M. Jackson

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Las Vegas, Nevada 89101

T: 702.386.0001 / F: 702.386.0085

Terry.jackson.esq@gmail.com

Counsel for Appellant, Oscar Gomez, Jr.

CERTIFICATE OF SERVICE

I certify that on the 28th day of August, 2018, I served a copy of this Motion for Extension of Time upon all counsel of record:

[X] Via Electronic Service (eFlex) to the Nevada Supreme Court;

[X] and by United States first class mail with postage affixed to the Nevada

Attorney General and to the Defendant as follows:

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STEVEN S. OWENS

Chief Deputy D.A. - Criminal

APPELLATE DIVISION

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Carson City, Nevada 89701

By: /s/ Ila C. Wills

Assistant to T. M. Jackson, Esq.

Steven D. Grierson

1 RTRAN

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C316959-1
C316959-2

10 vs.

DEPT. XXI

11 OSCAR GOMEZ, JR.,
12 aka OSCAR GOMEZ, and
13 GUSTAVO ERNESTO DELACRUZ,
14 aka GUSTAVO ERNESTO
15 DELACRUZCORTEZ,
16 Defendant.

17 BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE
18 THURSDAY, OCTOBER 6, 2016

19 **RECORDER'S TRANSCRIPT OF HEARING:**
20 **CALENDAR CALL**

21 **APPEARANCES:**

22 For the State:

BINU G. PALAL, ESQ.
MICHAEL J. SCHWARTZER, ESQ.
Chief Deputy District Attorneys

23 For the Defendants:
24 Oscar Gomez

MONTI J. LEVY, ESQ.

25 Gustavo Ernesto Delacruz

JESS Y. MATSUDA, ESQ.

RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 Las Vegas, Nevada, Thursday, October 6, 2016

2
3 [Hearing began at 10:34 a.m.]

4 THE COURT: How about State versus Oscar Gomez and
5 Gustavo Delacruz.

6 Mr. Matsuda, is this you?

7 MR. MATSUDA: Yes, Your Honor.

8 THE COURT: Who -- where is Mr. Gomez?

9 MS. LEVY: Stand up. He's on the end over here to the left.

10 THE COURT: All right. And you are Mr. Delacruz?

11 DEFENDANT DELACRUZ: Yes.

12 THE COURT: And neither needs and interpreter? No, okay.

13 MS. LEVY: No, my client doesn't.

14 THE COURT: And this is the time set for calendar call?

15 MS. LEVY: Yes, Your Honor.

16 THE COURT: Both Defendants had invoked?

17 MS. LEVY: Yes, Your Honor, and I've spoken to my client --
18 they're -- the defense does need more time to do further investigation.
19 I've spoken to the State and we would request a joint continuance at this
20 time. Both sides are still doing some ongoing investigation and
21 discovery.

22 THE COURT: And Mr. Matsuda, is that your position as well,
23 that you need additional time to investigate and prepare your defense?

24 MR. MATSUDA: Yes, Your Honor.

25 THE COURT: All right. Ms. --

1 MS. LEVY: And Mr. Gomez is willing to waive.

2 THE COURT: All right. Mr. Gomez?

3 DEFENDANT GOMEZ: Yes.

4 THE COURT: You had previously invoked your right to a
5 speedy trial, do you wish to now waive and give up this right to allow
6 your counsel, Ms. Levy, additional time to -- what were you doing Ms.
7 Levy, investigation and --

8 MS. LEVY: Yeah, and yes, and the State still has additional
9 discovery that they're going to be getting and giving it over to the
10 defense. We just received the Coroner's report. I think it was a week --
11 a week ago.

12 MR. PALAL: Yeah, a week or two ago, yeah.

13 DEFENDANT GOMEZ: I would like to proceed with the trial
14 date, the following --

15 MS. LEVY: I --

16 THE COURT: Well, your lawyer just said she's not ready.

17 DEFENDANT GOMEZ: Okay, I see that.

18 MS. LEVY: I spoke with him in custody about a week ago,
19 and we discussed this and he indicated he was willing to wait.

20 THE COURT: Do you want a minute to talk to him again, and
21 we'll talk with Mr. Delacruz?

22 [Colloquy between the Judge and Court Clerk]

23 THE COURT: All right. Mr. Delacruz, your lawyer indicated
24 he needs some additional time to prepare your defense. In order to give
25 him time to do that, do you now wish to waive and give up your right to a

1 speedy trial?

2 DEFENDANT DELACRUZ: Yes, Your Honor.

3 THE COURT: Okay. And then Mr. Gomez, your lawyer
4 indicated she needs more time, this is the first setting to review
5 discovery and otherwise prepare your case. Do you wish to now waive
6 and give up your right to a speedy trial in order for her to do that?

7 DEFENDANT GOMEZ: Yes, Your Honor.

8 THE COURT: All right. Realistically, I know they both want to
9 go to trial sooner rather than later. How long is it going to take defense
10 to get ready?

11 MS. LEVY: Your Honor, it shouldn't take very long. I've
12 looked at my calendar with my trial dates coming up, and the State --
13 and if the Court, I'm not sure what the Court's civil and criminal stacks
14 are, but I would like to do this sometime in March, if the Court has
15 maybe early March?

16 THE COURT: And Mr. Matsuda, would you be ready in
17 March?

18 MR. MATSUDA: I would be, Your Honor.

19 THE COURT: All right.

20 MR. MATSUDA: Yes.

21 MR. MATSUDA: I would ask for early March, Your Honor, if
22 possible just for my trial schedule.

23 MR. PALAL: Fine with the Court. What --

24 THE COURT: What about you?

25 MR. PALAL: Whatever the Court wants, Your Honor, we'll be

1 ready.

2 THE CLERK: But early March works for both sides?

3 MR. PALAL: Yeah.

4 THE JUDICIAL EXECUTIVE ASSISTANT: Okay, well we're --
5 we can do March 13th for the jury trial at 9:00 a.m., and March 9th for the
6 calendar call at 9:30.

7 MR. SCHWARTZER: Thank you, Your Honor.

8 THE COURT: All right. Thank you.

9 MS. LEVY: Thank you, Your Honor.

10 [Hearing concluded at 10:38 a.m.]

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

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Gail M. Reiger
Court Recorder/Transcriber

Steven D. Grierson

1 RTRAN

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C316959-1
C316959-2

DEPT. XXI

10 vs.

11 OSCAR GOMEZ, JR., aka OSCAR
12 GOMEZ, and GUSTAVO ERNESTO
13 DELACRUZ, aka GUSTAVO
14 ERNESTO DELACRUZCORTEZ,

Defendant.

15 BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE
16 THURSDAY, MARCH 9, 2017

17 **RECORDER'S TRANSCRIPT OF HEARING:**
18 **CALENDAR CALL**

19 APPEARANCES:

20 For the State:

BINU G. PALAL, ESQ.
Chief Deputy District Attorney
VIVIAN LUONG, ESQ.
Deputy District Attorney

21 For the Defendants:
22 Oscar Gomez

MONTI J. LEVY, ESQ.

23 Gustavo Ernesto Delacruz

JESS Y. MATSUDA, ESQ.

24
25 RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 Las Vegas, Nevada, Thursday, March 9, 2017

2
3 [Hearing began at 9:25 a.m.]

4 THE COURT: All right. The one trial I have for her, C316959,
5 Oscar Gomez. I saw Ms. Levy, where did she go?

6 MS. LUONG: Your Honor, This is Mr. Palal's case. Can we
7 trail this?

8 THE COURT: Well he better be standing next to you. This is
9 going to trial. This is number one, 9:00.

10 Where's Gomez?

11 THE CORRECTIONS OFFICER: Gomez, stand up.

12 THE COURT: All right. Number one, Monday 9:00 o'clock.

13 MS. LEVY: Judge.

14 THE COURT: What?

15 MS. LEVY: Good morning, Monti Levy appearing.

16 THE COURT: Hi.

17 MS. LEVY: Your Honor, actually the co-Defendant in this
18 matter is requesting to continue. And --

19 THE COURT: So, Delacruz?

20 MS. LEVY: Yes.

21 THE COURT: Where's Matsuda?

22 MS. LEVY: I don't know, but this is also, Binu Palal's case
23 and I guess they had discussions with regards to continuing the case,
24 because Mr. Matsuda is in Federal Court in the Bundy trial.

25 So, if the [indiscernible]

1 THE COURT: Oy vey.

2 MS. LEVY: So I would have been prepared to go forward, but
3 when I met with -- I did discovery review with the Detective and Mr. Palal
4 probably about two weeks ago. And at that time they told me that the
5 co-Defendant would be requesting a continuance.

6 THE COURT: So where is this special prosecutor?
7 How come we don't have our prosecutors here? Defense is
8 here.

9 MS. LUONG: Your Honor, I just texted Mr. Palal. He's on his
10 way right now.

11 THE COURT: That means he's looking for his keys. He
12 probably isn't even out of the shower.

13 MS. LEVY: So I mean, if the Court is covering then
14 perhaps we can --

15 THE COURT: No, we'll have to wait. Is Matsuda coming
16 today, do you know?

17 MS. LEVY: Um --

18 UNKNOWN SPEAKER: Yes Judge, he will be here today.

19 THE COURT: All right. We'll wait till he gets here.

20 MS. LEVY: Okay. All right. Thank you. I'll be waiting.

21 THE COURT: All right. Anticipating, isn't that a song?

22 [Hearing trailed at 9:27 a.m.]

23 [Hearing resumed at 10:15 a.m.]

24 THE COURT: C316959, Oscar Gomez and Gustavo
25 Delacruz.

1 MS. LEVY: Good morning, Your Honor. Monti Levy
2 appearing with Mr. Gomez, who's present in custody.
3 MR. MATSUDA: And good morning, Your Honor, Jess
4 Matsuda for Mr. Delacruz, who's also present in custody.
5 THE COURT: So when will you be done?
6 MS. LEVY: Well, he's not in that trial.
7 MR. MATSUDA: Yeah.
8 MS. LEVY: Apparently what happened was, the State -- Mr.
9 Palal told me that that's why it would be continued was because Mr.
10 Matsuda --
11 THE COURT: Well you threw him under the bus in a hurry.
12 MR. PALAL: Are we surprised? No, I --
13 THE COURT: So Monday, you guys can do this Monday,
14 9:00 o'clock.
15 MR. PALAL: I --
16 MS. LEVY: I'll be there.
17 MR. MATSUDA: Well, I would be requesting a continuance,
18 Your Honor. Just because my client is in NDOC and it's been hard for
19 me to communicate what the State is asking and his options. So I'll be
20 requesting a continuance.
21 MR. PALAL: Your Honor, I need to try both of these people at
22 the same time.
23 THE COURT: Yeah, Tuesday.
24 MS. LEVY: Well, and here's the --
25 THE COURT: He's remanded to the -- the Department of

1 Corrections here.

2 MR. PALAL: I don't --

3 THE COURT: The Clark County Detention Center.

4 MS. LEVY: And, Your Honor, --

5 THE COURT: He's remanded. You want a Tuesday start?

6 We can start on Tuesday.

7 MS. LEVY: Your Honor, here's the -- the issue that I have is
8 that I stopped preparing two weeks ago when I was told that we were
9 continuing it. I would have been ready and the State's aware of that, so
10 I didn't oppose Mr. Matsuda's request to continue. My assumption
11 was -- is because I was told that he was in the Bundy trial.

12 MR. PALAL: We can -- we can get the --

13 THE COURT: You know what happens when you make
14 assumptions?

15 MS. LEVY: Well, --

16 MR. PALAL: Your Honor, --

17 MS. LEVY: I was told that he was in the Bundy trial, so that's
18 why I thought it would be --

19 MR. PALAL: Your Honor, we can get the next date available,
20 put it a firm set. We'll be ready to go.

21 THE COURT: You know we get in trouble for not trying these
22 murder cases. They're mad at the courts. The courts are always
23 available to try these.

24 MS. LEVY: What if the --

25 THE COURT: In fact, I will clear my calendar next door. You

1 tell me when you want it on and I'll put it over there.

2 MS. LEVY: When is the next stack for Judge Adair?

3 THE COURT: Wednesday.

4 MS. LEVY: Mr. Matsuda, are you ready?

5 MR. MATSUDA: We were hoping for a little --

6 MS. LEVY: There is some additional --

7 MR. MATSUDA: -- further --

8 MS. LEVY: -- discovery as well, that the State's getting to me,

9 which is the jail calls, so that's the only thing I'm waiting on.

10 THE COURT: All right. Next -- when do you want to try --

11 give me a firm setting, because this one is going. Get a firm setting --

12 give us a firm setting.

13 MS. LEVY: This case is not that old.

14 MR. PALAL: Yeah, this is --

15 MS. LEVY: The events happened last June, so.

16 THE COURT: Here's the offense? I want a firm setting.

17 THE JUDICIAL EXECUTIVE ASSISTANT: Okay, May 30th.

18 MR. PALAL: All right. We'll do it.

19 MS. LEVY: May 30th?

20 THE COURT: May 30th. Don't schedule anything else --

21 MR. MATSUDA: I will get myself off the Bundy case.

22 THE COURT: -- for a week.

23 MS. LEVY: Please.

24 THE JUDICIAL EXECUTIVE ASSISTANT: I know because

25 the day before is a holiday. So May 30th, which is a Tuesday, at 9:30

1 a.m., and then May 25th for the calendar call.

2 MR. PALAL: It's a firm setting, Your Honor?

3 THE COURT: That's a firm setting.

4 MR. MATSUDA: Thank you, Your Honor.

5 [Hearing concluded at 10:18 a.m.]

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

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Gail M. Reiger
Court Recorder/Transcriber

Steven D. Grierson

1 RTRAN

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

CASE#: C316959-1

9

Plaintiff,

DEPT. XXI

10

vs.

11

OSCAR GOMEZ, JR.,
aka OSCAR GOMEZ,

12

Defendant.

13

14

BEFORE THE HONORABLE VALERIE P. ADAIR, DISTRICT COURT JUDGE

15

TUESDAY, JUNE 27, 2017

16

RECORDER'S TRANSCRIPT OF HEARING:

17

**DEFENDANT'S PRO PER MOTION TO COMPEL DISCOVERY OF
EXCULPATORY EVIDENCE AND DEFENDANT'S MOTION TO
SUPPRESS STATEMENT**

18

19

APPEARANCES:

20

For the State:

BINU G. PALAL, ESQ.

21

Chief Deputy District Attorney

22

For the Defendant:

MONTI J. LEVY, ESQ.

23

24

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RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, June 27, 2017

2
3 [Hearing began at 10:32 a.m.]

4 THE COURT: State versus Oscar Gomez.

5 MS. LEVY: Good morning, Your Honor, Monti Levy
6 appearing. Mr. Gomez is present in custody.

7 MR. PALAL: Binu Palal, on behalf of the State, Your Honor.

8 THE COURT: This is on for two motions, motion to compel
9 discovery and his pro per motion.

10 MS. LEVY: Right.

11 THE COURT: Which you get exculpatory evidence.

12 MR. PALAL: The State has no objection and we'll comply.

13 MS. LEVY: Yes that's going to be granted.

14 THE COURT: They have a duty. They're going to do it.

15 And the motion to suppress, we didn't get an opposition on
16 that.

17 MR. PALAL: Yeah, I spoke to Ms. Levy; I think we're just
18 going to agree to have -- with the Court's permission to have an
19 evidentiary hearing on the matter.

20 THE COURT: All right.

21 And this is one -- you're set for trial --

22 MS. LEVY: November.

23 THE COURT: -- November, so that was a firm set and we're
24 planning on going in November, right?

25 MR. PALAL: Correct.

1 MS. LEVY: Yes, Your Honor. We're still talking negotiations,
2 but yes, --
3 MR. PALAL: Sure.
4 MS. LEVY: -- we're going to try to --
5 THE COURT: That's even better if it resolves, but --
6 MS. LEVY: Yes.
7 THE COURT: All right. You want an evidentiary hearing? I
8 like to --
9 MS. LEVY: Um --
10 THE COURT: -- do these on Mondays at --
11 MS. LEVY: Oh, Mondays, okay we -- I was looking at --
12 THE COURT: -- either Mondays or Fridays at 9:00 a.m.
13 MR. PALAL: I prefer Mondays to Fridays.
14 MS. LEVY: Well, but it's --
15 MR. PALAL: But whatever -- whatever defense counsel's
16 pleasure.
17 THE COURT: So it'll --
18 MS. LEVY: Could we do -- oh sorry.
19 THE COURT: No, go ahead.
20 MS. LEVY: If it's a Monday I -- it looks like I'm -- can do
21 October. We're talking about October either October -- it looks like the
22 9th is Columbus Day. So either -- I would say the 16th --
23 THE COURT: So you want to do something --
24 MS. LEVY: I would say -- I mean the 2nd, the 2nd.
25 THE COURT: That's fine, my only comment is we can do it

1 sooner than October if that would aid in negotiations.

2 MR. PALAL: I don't think that the statement is dispositive of
3 anything.

4 MS. LEVY: Either way, I'm --

5 THE COURT: All right. So we'll reset it for October 2nd at
6 9:00 a.m. Do you have anything else on October 2nd?

7 THE CLERK: Not to knowledge. Not right now anyway.

8 THE COURT: All right.

9 MS. LEVY: Thank you.

10 MR. PALAL: Thank you, Your Honor.

11 THE COURT: Thank you.

12 [Hearing concluded at 10:33 a.m.]

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

24

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Gail M. Reiger
Court Recorder/Transcriber

IN THE SUPREME COURT OF THE STATE OF NEVADA

OSCAR GOMEZ, JR.,

Appellant,

v.

STATE OF NEVADA,

Respondent.

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Electronically Filed
Dec 07 2018 02:49 p.m.
E-File with A. Brown
Clerk of Supreme Court

CASE NO. 76487

E-FILE

D.C. Case No.: C-16-316959-1

Dept.: XXI

APPELLANT'S APPENDIX VOLUME I

**Appeal from a Judgment of Conviction
Eighth Judicial District Court, Clark County**

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Carson City, Nevada 89701

...

Counsel for Appellant

Counsel for Respondent

MASTER INDEX

Case No.: 76487

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Calendar Call [heard 3-9-2017] (<u>9/11/2018</u>)	I	048 - 054
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...

CERTIFICATE OF SERVICE

I certify I am an assistant to Terrence M. Jackson, Esquire; a person competent to serve papers, not a party to the above-entitled action and on the 7th day of December, 2018, I served a copy of the foregoing: Appellant Oscar Gomez' Appendix and Index, Volume I, as follows:

[X] Via Electronic Service to the Nevada Supreme Court, to the Eighth Judicial District Court, and by U. S. mail with first class postage affixed to the Nevada Attorney General and the Petitioner/Appellant as follows:

STEVEN B. WOLFSON
Clark County District Attorney
steven.wolfson@clarkcountyda.com
STEVEN S. OWENS
APPELLATE DIVISION
steven.owens@clarkcountyda.com

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Nevada Attorney General
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OSCAR GOMEZ, JR.
ID # 1200302
1252 E. Arica Road
Eloy, AZ. 85131

By: /s/ Ila C. Wills
Assistant to Terrence M. Jackson, Esq.

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

2016 JUN 28 A 10:41

Plaintiff,

JUSTICE COURT
LAS VEGAS NEVADA

CASE NO: 16F10719A-B

-vs-

RY

DEPUTY DEPT NO: 12

OSCAR GOMEZ, JR., aka,
Oscar Gomez #5990519,
GUSTAVO ERNESTO DELACRUZ, aka,
Gustavo Ernesto Delacruz cortez
#2738189,

CRIMINAL COMPLAINT

Defendants.

The Defendants above named having committed the crimes of MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001) and ACCESSORY TO MURDER (Category C Felony - NRS 195.030, 195.040, 200.010, 200.030 - NOC 53090), in the manner following, to-wit: That the said Defendants, on or about the 24th day of June, 2016, at and within the County of Clark, State of Nevada,
COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON

Defendant OSCAR GOMEZ, JR., aka, Oscar Gomez did willfully, unlawfully, feloniously and with malice aforethought, kill SHAWN MANYMULES, a human being, with use of a deadly weapon, to-wit: a handgun, by shooting at and into the body of the said SHAWN MANYMULES with said handgun, the said killing having been willful, deliberate and premeditated.

COUNT 2 - ACCESSORY TO MURDER

Defendant GUSTAVO ERNESTO DELACRUZ, aka, Gustavo Ernesto Delacruz cortez did willfully, unlawfully, and feloniously, after the commission of a Murder, a felony, harbor and/or conceal OSCAR GOMEZ, JR., aka, Oscar Gomez, with the intent that OSCAR GOMEZ, JR., aka, Oscar Gomez might avoid or escape arrest, trial, conviction, and/or punishment, having knowledge that OSCAR GOMEZ, JR., aka, Oscar Gomez had committed the Murder and/or was liable to arrest therefore.

16F10719A
CRM
Criminal Complaint
6697541



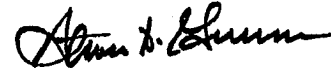
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AA 001

1 All of which is contrary to the form, force and effect of Statutes in such cases made and
2 provided and against the peace and dignity of the State of Nevada. Said Complainant makes
3 this declaration subject to the penalty of perjury.

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27 16F10719A-B/cb
28 LVMPD EV# 1606243862
(TK12)



CLERK OF THE COURT

INFM
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
BINU G. PALAL
Deputy District Attorney
Nevada Bar #010178
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

I.A. 8/4/16
10:00 AM
M. LEVY

THE STATE OF NEVADA,

Plaintiff,

-vs-

OSCAR GOMEZ, JR. aka Oscar Gomez,
#5990519

Defendant.

CASE NO: C-16-316959-1

DEPT NO: XXI

INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss.

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That OSCAR GOMEZ, JR. aka Oscar Gomez, the Defendant(s) above named, having committed the crime of **MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001)**, on or about the 24th day of June, 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, did willfully, unlawfully, feloniously and with malice aforethought, kill SHAWN MANYMULES, a human being, with use of a deadly weapon, to-wit: a handgun, by shooting

//

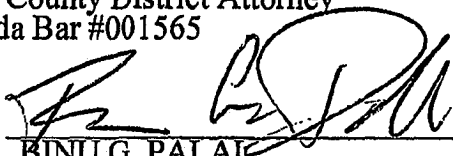
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1 at and into the body of the said SHAWN MANYMULES with said handgun, the said killing
2 having been willful, deliberate and premeditated.

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

6 BY


BINU G. PALAI
7 Deputy District Attorney
8 Nevada Bar #010178

9 Names of witnesses known to the District Attorney's Office at the time of filing this
10 Information are as follows:

11 <u>NAME</u>	<u>ADDRESS</u>
12 COLEMAN, JONATHAN	C/O DISTRICT ATTORNEY'S OFFICE
13 CUSTODIAN OF RECORDS	CCDC
14 CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS
15 CUSTODIAN OF RECORDS	LVMPD RECORDS
16 DELACRUZ, GUSTAVO	5100 E. TROPICANA AVE., LVN 89122
17 GAVIN, DR. LISA	CLARK COUNTY CORONER'S OFFICE
18 JAMES, LUCINDA	C/O DISTRICT ATTORNEY'S OFFICE
19 MOGG, C.	LVMPD P#5096
20 RAFALOVICH, MARCO or Designee	CCDA INVESTIGATOR

21
22
23
24
25
26
27 16F10719A/llm/GANG
28 LVMPD EV#1606243862
(TK12)

LAS VEGAS, NEVADA, TUESDAY, 08/14/2016 05:57:12 PM

CASE NO. C316959

DEPT. NO. 12

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

STATE OF NEVADA,

Plaintiff,

vs.

Case No. 16F10719A

OSCAR GOMEZ, JR.,

Defendant.

REPORTER'S TRANSCRIPT
OF
PRELIMINARY HEARING

BEFORE THE HONORABLE DIANA L. SULLIVAN
JUSTICE OF THE PEACE

TAKEN ON TUESDAY, AUGUST 2, 2016
AT 9:30 A.M.

APPEARANCES:

For the State:

MICHAEL J. SCHWARTZER
Deputy District Attorney

For the Defendant:

MONTI JORDANA LEVY

Reported by: Gerri De Lucca, C.C.R. #82
Official Court Reporter

THE COURT: This is the first and last time

for the preliminary hearing of Oscar Gomez, Jr.,
16F10719A.

CLERK OF THE COURT

Is the State ready to proceed?

MR. SCHWARTZER: Yes, your Honor.

THE COURT: Is the defense ready to
proceed?

MS. LEVY: Yes, your Honor. We'd invoke
the exclusionary rule.

THE COURT: Who's your first witness?

MR. SCHWARTZER: Mr. Coleman, your Honor.

THE COURT: If you're not Mr. Coleman and
you're subpoenaed to testify in the preliminary
hearing of Mr. Gomez, please step outside until my
marshal calls your name.

MR. SCHWARTZER: I don't have any
witnesses here, your Honor, besides him.

THE COURT: We're just going forward on
Count 1 because defendant B is on Count 2 who was
continued today.

MR. SCHWARTZER: Correct, your Honor.

THE CLERK: Go ahead and have a seat.

INDEXWITNESSES FOR THE STATEPAGE

JONATHAN COLEMAN

Direct Examination by Mr. Schwartz: 4

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Recross-Examination by Ms. Levy: 50

EXHIBITSADMITTED

State's Exhibits 1 and 2:

6

State your first and last name and

spell both for the record.

THE WITNESS: Jonathan Coleman,

J-o-n-a-t-h-a-n, C-o-l-e-m-a-n.

THE COURT: Thank you.

You can proceed.

JONATHAN COLEMAN, having been first
duly sworn to testify to the truth, the whole truth,
and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. SCHWARTZER:

Q. Mr. Coleman, on June 24, 2016, were you
living here in Clark County, Nevada?

A. Yes.

THE COURT: You need to speak up, sir.
Miss Gerri cannot take you down if she cannot hear
you. Thank you.

THE WITNESS: Yes.

BY MR. SCHWARTZER:

Q. Were you friends with an individual by
name of Shawn Manemules, M-a-n-e-m-u-l-e-s?

THE COURT: How do you spell Shawn?

AA 005

MR. SCHWARTZER: S-h-a-w-n.

BY MR. SCHWARTZER:

Q. Did you and Shawn used to work together?

A. Yes, we do work together.

Q. On June 24 of 2016 did you guys work together?

A. Yes.

Q. And where were you working at?

A. Wendy's.

Q. That would be here in Clark County, Nevada?

A. Yes.

Q. Now, after work on June 24, 2016, did you and Shawn leave work together?

A. Absolutely.

Q. And where did you guys decide to go after work?

A. Go to the mini-mart.

Q. Do you know where that mini-mart is located?

A. Tropicana and Nellis.

Q. And is that -- would you recognize it if I showed you a photo of it?

A. Yes.

MR. SCHWARTZER: May I approach, your

A. Yes.

Q. Do you feel like you were intoxicated?

A. A little bit.

Q. How about Shawn, was he drinking?

A. Yeah, he was drinking mine too, so . . .

Q. How many drinks did you have?

A. One.

Q. And that was -- was it a beer, a whiskey drink; what was it?

A. It was a Dad's Root Beer.

Q. Is that a beer flavored like root beer?

A. Yeah.

Q. And how many drinks did you see Shawn drink?

A. One.

Q. And what kind of drink was he drinking?

A. It was a 211 Purple Label.

Q. Is that a beer or some type of liquor?

A. It's liquor.

Q. Did he seem intoxicated?

A. To me, not really.

Q. When you went to the store, what did -- the store on Tropicana and Nellis, what did you decide to buy?

A. A Four Loko that's purple.

Honor?

THE COURT: Yes.

BY MR. SCHWARTZER:

Q. Showing you Proposed Exhibit 1.

MS. LEVY: We can stipulate to the admission of these two photographs.

MR. SCHWARTZER: Thank you.

THE COURT: Which ones?

MR. SCHWARTZER: Exhibit 1 and 2.

THE COURT: Exhibit 1 and 2 will be admitted. Thank you.

(State's Exhibits 1 and 2
admitted into evidence.)

BY MR. SCHWARTZER:

Q. So now admitted 1, do you recognize that?

A. Yeah.

Q. Is that the store that you and Shawn decided to go to after work?

A. Yes.

Q. How did you and Shawn get there?

A. By the bus.

Q. While you guys took the bus were you drinking alcohol at all?

Q. That's an alcoholic drink as well?

A. Yes.

Q. Did you and Shawn both go to the store?

A. Absolutely, we did.

Q. When you were in the store did you see anyone in the courtroom today?

A. Yes, I do.

Q. Can you point to the individual, point and pick out a piece of his clothing?

A. He was wearing a tank top.

Q. Now, I know -- not what he was wearing that day. Can you point -- is there a person in court, okay? Can you identify the person you're pointing to, what he's wearing right now?

A. Yes, I can identify him.

Q. What color shirt is he wearing?

A. Blue.

MR. SCHWARTZER: Let the record reflect identification of the defendant.

THE COURT: Yes.

BY MR. SCHWARTZER:

Q. Now, you said in the store he was wearing what did you say?

A. Tank top.

Q. Was there anything else you noticed about

1 him, about his appearance, any tattoos or anything?

2 A. He had a sleeve on his left arm.

3 Q. Did you notice -- did the defendant say
4 anything to you in the store?

5 A. No.

6 Q. Did he say -- did you personally see him
7 say anything to Shawn in the store?

8 A. Yes.

9 Q. Did you hear that conversation?

10 A. Yes.

11 Q. Was this in the store or outside the
12 store?

13 A. It was out of the store.

14 Q. Out of the store, okay.

15 I want to focus inside the store,
16 okay?

17 Did you see the defendant say
18 anything to Shawn inside the store?

19 A. No.

20 Q. You and Shawn purchased the Four Loko?

21 A. He did.

22 Q. Did he purchase anything else?

23 A. Ice cream.

24 Q. Did you guys then decide to leave the
25 store?

1 A. Yes.

2 Q. When you left the store did you see the
3 defendant --

4 A. Yes.

5 Q. -- outside the store?

6 Where was he outside the store?

7 A. By the door.

8 Q. Was anyone else with the defendant?

9 A. Yes.

10 Q. And what did he look like?

11 A. He was short and dark.

12 Q. Can you tell if he was white, Hispanic?

13 A. He was Hispanic.

14 Q. Was he shorter or taller than the
15 defendant?

16 A. Shorter.

17 Q. So we'll refer to that guy as the shorter
18 Hispanic male.

19 A. Yes.

20 Q. Now, when you went outside and so did the
21 defendant, did the defendant say anything to you
22 personally?

23 A. No.

24 Q. Did he say anything to Shawn?

25 A. Yes.

1 Q. What did he tell Shawn?

2 A. You got a nice tattoo on your face.

3 Q. Did Shawn have a tattoo on his face?

4 A. Yes.

5 Q. Can you tell the Court where the tattoos
6 on his face are?

7 A. It was an LV for Las Vegas on the left
8 and Nevada map on the right.

9 Q. Did Shawn say anything in response to
10 that?

11 A. No.

12 Q. Did the defendant say anything further to
13 Shawn?

14 A. Yeah.

15 Q. Tell the Court what he said.

16 X A. Let's go fight.

17 Q. The defendant told Shawn that he wanted
18 to fight, okay.

19 Did he mention anything about
20 where Shawn was from?

21 A. No.

22 Q. Did Shawn say anything about where he was
23 from?

24 MS. LEVY: I'm going to object as to
25 hearsay, your Honor.

1 THE WITNESS: No.

2 THE COURT: Hold on.

3 MR. SCHWARTZER: Effect upon the
4 listener, the listener being the defendant.

5 THE COURT: Not offered for the truth of
6 the matter?

7 MR. SCHWARTZER: No. It doesn't matter
8 to me where Shawn's from.

9 THE COURT: It's not offered for the
10 truth of the matter.

11 MS. LEVY: Okay. We're getting into
12 Shawn's statement, who's not here.

13 MR. SCHWARTZER: Well, he's dead.

14 THE COURT: Objection overruled. I'm not
15 going to accept it for the truth of the matter
16 asserted in it. So I don't know the answer to the
17 question.

18 MR. SCHWARTZER: I actually think the
19 answer was he didn't say anything regarding that.

20 THE WITNESS: No.

21 BY MR. SCHWARTZER:

22 Q. Did the defendant say anything else to
23 Shawn before a fight broke out?

24 A. The other guy was fighting him.

25 Q. Did Shawn -- did the defendant say

1 anything to Shawn before the shorter Hispanic male
2 started fighting with Shawn?

3 A. He was like Sureño Punto.

4 Q. Who said that?

5 A. Shawn.

6 Q. Did either the defendant or the shorter
7 male say anything in response to that?

8 A. He was like, let's get down, honey.

9 MS. LEVY: I'm going to object as to did
10 the shorter male say anything in response to that.
11 That would be hearsay, not my client's statement. If
12 my client said something in response to that, that
13 would be admissible, but not if the shorter male said
14 something in response to that.

15 THE COURT: Yeah, and I don't know who is
16 he, so you asked did he say something. You're
17 flipping back and forth between the defendant and the
18 shorter male, so we got to be clear, so start over.

19 The last note I got was that Shawn
20 said Sureño Punto.

21 Next question.

22 BY MR. SCHWARTZER:

23 Q. Did the defendant say anything in
24 response to that?

25 A. Which one?

1 A. Yes.

2 Q. Was it a semiautomatic or was it a
3 revolver?

4 A. Semiautomatic.

5 Q. Now, we've alluded to a couple times
6 there was a fight.

7 Did a fight occur shortly after
8 the gun was pulled out?

9 A. Fight happened after.

10 Q. Was it quick in time?

11 A. No, it was a short time.

12 Q. Who fought who?

13 A. The other guy and Shawn.

14 Q. By the other guy you mean the shorter
15 Hispanic male?

16 A. Yes.

17 Q. What did the defendant do during this
18 fight?

19 A. Which one?

20 Q. The person you identified today.

21 A. They were fighting, throwing punches
22 randomly.

23 Q. I mean let me start with who was throwing
24 punches? Was Shawn throwing punches?

25 A. Yes.

1 Q. The defendant, the person you pointed out
2 today.

3 A. Yeah. He just showed us a gun, and
4 that's how it went down.

5 THE COURT: The question was did he say
6 anything in response to Shawn saying Sureño Punto?

7 THE WITNESS: No, no response.

8 BY MR. SCHWARTZER:

9 Q. But you said he showed a gun?

10 A. Yes.

11 Q. Did he do that before there was a fight
12 that broke out?

13 A. This was before.

14 Q. Can you describe where the defendant got
15 the gun from?

16 A. From his pants.

17 Q. Could you describe what the gun looked
18 like?

19 A. It was black and chrome.

20 Q. Where was the black and where was the
21 chrome?

22 A. The handle was black and the gun was like
23 silver steel.

24 Q. Was it a -- do you know the difference
25 between a semiautomatic and a revolver?

1 Q. Was the shorter Hispanic male throwing
2 punches?

3 A. Yes.

4 Q. Was the defendant throwing punches?

5 A. No.

6 Q. Were you throwing punches?

7 A. No.

8 Q. What were you and the defendant doing
9 during this fight?

10 A. We were watching.

11 Q. How long did this fight go for?

12 A. Good five minutes.

13 Q. At some point the fight ended, right?

14 A. It ended because someone said somebody
15 called 911.

16 Q. So then Shawn and the shorter Hispanic
17 male stopped fighting?

18 A. Yes.

19 Q. Where did -- do you know where the
20 shorter Hispanic male went after the fight?

21 A. I'm pretty sure the car.

22 Q. Did you see it?

23 A. No.

24 Q. So you don't know where he went?

25 That's fair. I don't know is a

perfectly acceptable answer.

A. No.

Q. Did you see where the defendant went after the fight?

A. Which one?

Q. The guy who you pointed out today.

A. Oh, he followed us.

Q. Let me ask you this. Where did you and Shawn go after the fight?

A. The dark alley.

MR. SCHWARTZER: May I approach, your Honor?

THE COURT: Yes.

BY MR. SCHWARTZER:

Q. Showing on Exhibit 1 on this photograph right here, can you -- is where roughly the area where Shawn and the shooter --

A. Right here.

Q. Let me ask the question first, Mr. Coleman.

Can you point out on this picture where Shawn and the shorter Hispanic male were fighting?

A. Here.

Q. You're pointing to the parking lot in

was following you?

A. He asked me if I gang banged.

Q. How close was he when he said that to you?

A. This close right now.

Q. Like as close as I am to you?

A. Yes.

MR. SCHWARTZER: Two feet?

THE COURT: Miss Levy?

MS. LEVY: That's fine.

THE COURT: Okay.

BY MR. SCHWARTZER:

Q. Did you respond?

A. Yes.

Q. What was your response?

A. I don't gang bang.

Q. When he said that was he holding anything?

A. Yes.

Q. What was he holding?

A. A gun.

Q. Was it the same gun you saw in the parking lot?

A. Yes.

Q. Where on the sidewalk were you when this

Exhibit 1?

THE COURT: Kind of in front, outside the front of the store?

THE WITNESS: Yes. By the parking lot right here.

THE COURT: Okay.

BY MR. SCHWARTZER:

Q. So then after the fight you and Shawn left the parking lot; is that correct?

A. Yes.

Q. And could you show the Court on the exhibit where you and Shawn went?

A. There.

Q. So you're now pointing to a sidewalk in the middle of picture?

A. Here.

Q. And then you were heading this way toward like the lamppost?

A. Yes.

Q. You said that the defendant, the guy you identified today, was following you.

How did you know that?

A. Because I looked back.

Q. Did the defendant, the person you identified today, did he say anything to you while he

happened?

A. Right in the middle.

Q. Can you point to it for the Court.

So kind of where those people are right now in the photograph?

A. Yes.

MR. SCHWARTZER: Can you see that, Ms. Levy?

MS. LEVY: Yes.

BY MR. SCHWARTZER:

Q. Now, where was Shawn when --

A. He was behind me.

Q. How far was Shawn from the defendant?

A. Another feet away.

Q. So like about this?

Okay, so three and a half feet?

A. Yes.

MR. SCHWARTZER: Is that fair?

MS. LEVY: Sure.

BY MR. SCHWARTZER:

Q. Did the defendant say anything to Shawn?

A. No.

Q. Did Shawn say anything to the defendant?

A. Yes.

Q. What did Shawn tell the defendant?

MS. LEVY: Objection; hearsay.

MR. SCHWARTZER: It's going to effect upon the listener and what the listener's going to do afterwards.

THE COURT: So it's not going to be based upon the truth of the matter asserted in it?

MR. SCHWARTZER: Correct, your Honor.

THE COURT: Objection overruled. I won't take it for the truth of the matter asserted in it, but on the effect of the listener.

BY MR. SCHWARTZER:

Q. You can say what Shawn said to the defendant.

A. You're not going to use it.

Q. And at this point the defendant's holding the gun?

A. Yes.

Q. What happened after Shawn said that?

A. He shot him.

Q. Who shot who?

A. Him.

Q. The defendant?

A. Yes.

Q. Shot Shawn?

A. Yes.

Q. Explain.

A. I grabbed his phone, trying to call 911.

Q. Did you have a cellphone?

A. No, I didn't.

Q. Shawn has a cellphone?

A. Yes.

Q. You tried calling from his phone?

A. I tried, but I couldn't.

Q. What did you do next?

A. I ran back to the store and told them to call 911.

Q. Did the police come?

A. They did.

Q. Did you end up talking to the police?

A. Yeah, cooperating.

Q. And you gave a statement?

THE COURT: What did you say after -- what did you say?

THE WITNESS: I cooperated with them.

THE COURT: Oh, okay.

BY MR. SCHWARTZER:

Q. Did they show you a photographic -- what we call a photographic lineup?

A. When?

Q. Later on, not the same night, but later?

Q. Where did he shoot Shawn?

A. In the stomach.

Q. What happened after the defendant shot Shawn?

A. He ran.

Q. Shawn ran?

A. Yes.

Q. Did you run with him?

A. Yes.

Q. How far did Shawn get?

A. To the pole by the pay phone.

Q. So the pole in the photograph right here?

A. Yes.

Q. So just a few feet?

A. Yes.

Q. What happened once he got to the pole?

A. He fell down.

Q. Did you go to him?

A. Yes.

Q. Did you try talking to him?

A. Yes.

Q. Was he able to talk to you?

A. No.

Q. Did you call 911?

A. Yes. Tried to.

A. Yeah, they did.

Q. And that's six pictures?

A. Yeah, they showed me two of them.

Q. Two separate lineups?

A. Yes.

Q. And they wanted you to identify the shorter Hispanic male that was fighting with Shawn?

A. Yes.

Q. And see if you could identify the shooter?

A. Yes.

Q. Did you believe you were able to pick those two people out of the lineups?

A. Yes.

MR. SCHWARTZER: Your Honor, may I approach again?

THE COURT: Yes.

BY MR. SCHWARTZER:

Q. Showing you admitted Exhibit 2.

This is a video still. Do you recognize what you're looking at here?

A. Yes.

Q. Is this the parking lot of that?

A. That night.

Q. And this is kind of right after the

1 fight?

2 A. Yes.

3 Q. Could you point to who everyone is for
4 the Court?

5 A. Shawn, shooter, and me.

6 Q. And by shooter, is that the person that's
7 hear in court today?

8 A. Yes.

9 MR. SCHWARTZER: I'll pass the witness.

10 THE COURT: Cross-examination.

11 MS. LEVY: Thank you, your Honor.

12 CROSS-EXAMINATION

13 BY MS. LEVY:

14 Q. Mr. Coleman, I'm just going to ask you a
15 few questions. My name is Monti Levy and I represent
16 the defendant. You understand that?

17 I'm just going to ask a few
18 questions. So I understand that you don't want to be
19 here and it's going to be very quick, okay?

20 When you took the bus, you took
21 the bus from Wendy's to the mini-mart?

22 A. Yes.

23 Q. Where exactly is the bus stop? I know
24 the mini-mart is at Trop and Nellis. Where is --
25

1 Q. And you said it was some kind of liquor?

2 A. It was malt liquor.

3 Q. Malt liquor.

4 How big was that?

5 A. 24 ounce.

6 Q. And Shawn drank the whole thing before
7 getting to the mini-mart?

8 A. Yes.

9 Q. How large was your drink?

10 A. 16 ounce.

11 Q. And how often had gone out with Shawn
12 drinking?

13 A. That was the second time.

14 Q. So you didn't hang out with him all the
15 time to see what he would act like if he were
16 intoxicated?

17 He's not someone that you hung out
18 with all the time, correct?

19 A. No.

20 Q. So you -- had you ever seen Shawn
21 intoxicated before?

22 A. No.

23 Q. How long had you worked with Shawn?

24 A. Three months.

25 Q. Have you had an opportunity to look at

1 A. Right next to Little Caesar's.

2 Q. How far is that from the mini-mart?

3 A. Quarter of a mile.

4 Q. Now, you said that you and Shawn had been
5 drinking prior to getting to the mini-mart.

6 Where did you get that alcohol?

7 A. What was that again?

8 Q. You testified that you and Shawn had
9 already been drinking prior to getting to the
10 mini-mart?

11 A. Yes.

12 Q. Where did you get that alcohol that you
13 were drinking?

14 A. Right next to our job.

15 Q. So before you got on the bus?

16 A. Yes. We were drinking already.

17 Q. And you said that you drank one Dad's
18 Root Beer and you were a little intoxicated?

19 A. A little bit.

20 Q. Was that the only thing that you had
21 ingested that evening?

22 A. Yep.

23 Q. And Shawn had, I think you called it, a
24 211 Purple Label?

25 A. Yeah.

1 any of the video, the surveillance video from the
2 mini-mart?

3 A. No.

4 Q. Did you and/or Shawn have any bags with
5 you that evening?

6 A. Yes.

7 Q. What did you have?

8 A. 24 bottles of water.

9 Q. Was that in like a case, was it in a bag,
10 or how was that carried?

11 A. I had it in a bag and he had some in his
12 backpack to help me go home.

13 Q. So you had a 24 case of water, and
14 then -- so was Shawn carrying a backpack or were you
15 carrying a backpack?

16 A. I was.

17 Q. You were carrying the backpack?

18 A. Yes.

19 Q. So besides water was there anything else
20 in the backpack?

21 A. Food and the drinks we had in the store.

22 Q. And then in the store when you purchased
23 items, did you have it like in a plastic bag?

24 A. Yes.

25 Q. Who was carrying that, you or Shawn?

1 A. I was.

2 Q. And I think you said that there was the
3 alcohol and then some ice cream?

4 A. Yes.

5 Q. And you said that you purchased Four
6 Loko. Can you tell me what that is?

7 A. He bought the Purple Four Loko.

8 Q. Is that like one bottle or --

9 A. No, one can.

10 Q. A can. And how large is that?

11 A. 24 ounce.

12 Q. Was that the only alcohol that you guys
13 purchased at the mini-mart?

14 A. Yes.

15 Q. Is this a mini-mart that you went to
16 frequently?

17 A. I always go there every day.

18 Q. Every day.

19 Do you know whether or not Shawn
20 had ever been there before?

21 A. He told me that was his favorite store.

22 Q. Had you been there before with Shawn?

23 A. No.

24 Q. Had you ever seen Shawn there?

25 A. No.

1 Q. And the fight that broke out, that was
2 between Shawn and the other individual, correct?

3 It wasn't my client that was in
4 the fistfight, right?

5 A. No.

6 Q. It was the shorter guy?

7 A. Yes.

8 Q. And you testified before that inside the
9 store Mr. Gomez, my client, the gentleman next to me,
10 did not say anything to either you or Shawn; is that
11 correct?

12 A. He did say something to us.

13 Q. Inside the store?

14 A. Outside the store.

15 Q. Inside the store, before outside the
16 store, when you're inside the store, did -- my client
17 did not say anything to you or Shawn, correct?

18 A. No.

19 Q. That's not correct?

20 Did he say something inside the
21 store?

22 A. No.

23 Q. So just outside the store.

24 And you testified that the first
25 thing that was said outside the store was, let's

1 Q. Had you ever seen my client, Mr. Gomez,
2 there?

3 A. No.

4 Q. Have you ever, prior to June 24, 2015,
5 have you ever seen my client, the individual right
6 here, Mr. Gomez?

7 A. Yes.

8 Q. And where was that?

9 A. Outside the mini-mart.

10 Q. So you've seen him before outside that
11 same mini-mart?

12 A. No, only that day.

13 Q. Prior to, before that day --

14 A. No.

15 Q. -- have you ever seen --

16 A. No.

17 Q. -- in your life?

18 A. No.

19 Q. -- Mr. Gomez?

20 What about the other individual
21 that Mr. Schwartzer was referring to as the shorter
22 individual?

23 A. No.

24 Q. You had never seen him before?

25 A. Never.

1 fight, or, nice tattoos. Which was first?

2 A. The nice tattoo.

3 Q. And then you testified that someone
4 stated outside the store, let's go fight, those were
5 the words that you testified to; do you remember
6 that?

7 A. Yes.

8 Q. Who said the words, let's go fight?

9 A. Shawn.

10 Q. Shawn said the words, let's go fight?

11 And who did Shawn say those words
12 to?

13 A. The shorter guy.

14 Q. So I just want to get everything really
15 clear. So this individual right here next to me
16 said, nice tattoos?

17 A. Yes.

18 Q. To Shawn?

19 A. Yes.

20 Q. Shawn didn't say anything in response to
21 the tattoos remark, and Shawn says to the other
22 individual, let's go fight; is that how it happened?

23 A. No.

24 Q. Okay. Well, did Shawn first say Sureño
25 Punto before he said, let's go fight?

1 A. No.

2 Q. Who said Sureño Punto?

3 And if I'm saying that wrong, I
4 apologize.

5 A. Shawn.

6 Q. Shawn said Sureño Punto.

7 Was that before or after he said,
8 let's go fight?

9 A. Before.

10 Q. And who did he say Sureño Punto to?

11 A. The shorter guy.

12 Q. So Shawn said Sureño Punto to the shorter
13 guy, and he said, let's go fight, to the shorter guy?

14 A. Yes.

15 Q. Was that before or after a gun was shown?

16 A. Before.

17 Q. So at that point my client, Mr. Gomez, is
18 not talking; is that correct?

19 A. Nope.

20 Q. What is my client saying then at that
21 time?

22 A. He was showing the gun.

23 Q. But first Sureño Punto and let's go fight
24 was said, and then the gun was shown?

25 A. Yes.

1 A. No.

2 Q. Can you tell from this picture whether or
3 not this is before, after, or during the fight?

4 A. This is after.

5 Q. And how can you tell that?

6 A. Because he already took off his shirt
7 trying to wipe his blood.

8 Q. So Shawn took his shirt off during the
9 fight or after the fight?

10 A. After the fight.

11 Q. So after the fight Shawn takes his shirt
12 off, and your testimony is that he did that to wipe
13 his blood?

14 A. Yes.

15 Q. And at this point you're carrying a
16 backpack, and it looks like a couple of bags and
17 possibly a bottle of water; is that correct?

18 A. Yes.

19 Q. And during the five minute fight, what
20 were you and Mr. Gomez doing?

21 A. Watching them fight.

22 Q. How close were you standing to Mr. Gomez?

23 A. Two feet away.

24 Q. So using Mr. Schwartz's prior two feet
25 measurement was approximately here?

1 Q. And then the fight breaks out?

2 A. Yes.

3 Q. And the fight breaks out between Shawn
4 and the shorter guy?

5 A. Yes.

6 Q. And you testified that the fight lasted
7 for a good five minutes, correct?

8 A. Yes.

9 Q. You and Mr. Gomez are not involved in the
10 fistfight, correct?

11 A. Yes.

12 Q. I'm going to show you, if I may approach
13 the witness, State's admitted Exhibit 2.

14 MS. LEVY: May I approach?

15 THE COURT: Mm-hmm.

16 BY MS. LEVY:

17 Q. I'm going to have you take a look at
18 this.

19 Can you tell me again who the
20 gentleman is carrying the bags?

21 A. That's me.

22 Q. And who is this individual?

23 A. Shawn.

24 Q. Okay. Is Shawn wearing a shirt in this
25 picture?

1 A. Yes.

2 Q. So you and Mr. Gomez are this close to
3 each other during this fistfight?

4 A. Yes.

5 Q. And this fistfight went on for five
6 minutes?

7 A. Yes.

8 Q. Was there any communication whatsoever
9 between you and Mr. Gomez during this five minutes?

10 A. No.

11 Q. Did Mr. Gomez have the gun out this
12 entire five minutes?

13 A. Yes.

14 Q. Did he point it at you?

15 A. No.

16 Q. So the entire five minutes he's holding a
17 gun and the other two are fistfighting and you two
18 are just standing there watching this fight?

19 A. Yes.

20 Q. Okay. Now, did you see Mr. Gomez
21 actually take the gun from somewhere?

22 A. From his pants.

23 Q. So you actually saw him take the gun out
24 of his pants?

25 A. Yes.

Q. And where in his pants?

A. By the beltline.

Q. His beltline?

Okay. What side?

A. Left side.

Q. Now, you remember you gave a statement, you testified earlier that you gave a statement to the police, correct?

A. Yes.

Q. And you cooperated with the police when you gave a statement, correct?

A. Yes.

Q. And that statement was recorded; do you remember that?

A. Yes.

Q. And the detectives told you that they were recording your statement; do you remember that?

A. Yes.

Q. And do you remember during that statement that you told the police that the gun was out of his right-side waistband?

A. Yes.

Q. So your testimony today, you said that he took it out of his left-side waistband; is that what you said?

Q. But your testimony today is that he shot him with his left hand?

A. Yes.

Q. And you testified that he shot Shawn in the stomach, correct?

A. Yes.

Q. How many shots?

A. One.

Q. Did he shoot anything else?

A. Nope.

Q. Now, you testified that the five minute fight ended because someone said that someone called 911 and police were coming?

A. Yes.

Q. Who said that?

A. Somebody from the store.

Q. Somebody that worked in the store or was it --

A. It was a customer.

Q. A customer came out and said that someone called 911?

A. Yeah.

Q. But did you see the police come before you called them?

A. No.

A. Yes.

Q. But when you gave your statement on the day of the incident, which was June 24, on the actual night, you told the police that it was the right side; is that correct?

A. Yes.

Q. Are you remembering it differently now?

A. Yes.

Q. So you sure that it was the left side?

A. Yes.

Q. And when he shot at Shawn was it the left hand or the right hand?

A. Left.

Q. Do you remember telling the police it was the right hand?

A. Yes.

Q. So are you remembering it differently now?

A. Yes.

Q. So you do remember though on June 24, right after the incident when you gave your recorded statement, you did tell the police that Mr. Gomez shot Shawn with his right hand; you remember that that, right?

A. Yes.

MS. LEVY: Court's indulgence.

BY MS. LEVY:

Q. Now, you said that you went to the store every day, correct?

A. Yes.

Q. Did you know the gentleman that worked in the store that day?

A. Yes.

Q. Did you know him by name?

A. No.

Q. Did you happen to recognize any of the other customers there?

A. Nope.

Q. Now, when you said that Shawn said Sureño Punto, what does that mean?

A. South side bitch.

Q. That means south side bitch?

Did Shawn say that in response to something?

A. No.

Q. When you testified that Shawn ran from -- Court's brief indulgence.

Approach with State's admitted 1?

THE COURT: Yes.

BY MS. LEVY:

1 Q. You testified that Shawn ran from right
2 here to -- can you show me which pole it was?

3 A. From here to here to that pole.

4 Q. To the first pole right here?

5 A. Yes, that one right here.

6 Q. How long was it that it took from Shawn
7 to run to that pole?

8 A. A few seconds.

9 Q. And then how long after that -- you said
10 that you were trying to talk to Shawn. How long was
11 that?

12 A. Two minutes.

13 Q. So you stayed with Shawn for two minutes,
14 trying to talk to him?

15 A. Yeah.

16 Q. And then you took his phone?

17 A. Yes.

18 Q. Where was Shawn's phone?

19 A. It was in his pocket.

20 Q. So you took it out of his pocket, and why
21 couldn't you dial 911?

22 A. He had a password.

23 Q. And there was no like emergency --

24 A. No.

25 Q. -- dial?

1 A. No.

2 Q. Did you tell -- do you remember telling
3 the police that you wanted to leave, you and Shawn
4 wanted to leave before they came?

5 A. We wanted to leave.

6 Q. Before the police came?

7 Do you remember telling the police
8 that?

9 A. Yes.

10 Q. Do you remember telling the police that
11 you -- that somebody said they went to Sonic's?

12 A. Yes.

13 Q. Did you see somebody go to Sonic?

14 A. No.

15 Q. But you told the police that someone went
16 to Sonic?

17 A. Yes.

18 Q. So when you gave your statement to the
19 police, were you a little bit confused about what was
20 happening?

21 A. Yes.

22 Q. So some of what you said to the police
23 might not be completely accurate?

24 A. No.

25 MS. LEVY: Court's indulgence.

1 And so how long did it take you
2 then to go back to the store?

3 A. Five seconds.

4 Q. So from here you're at the pole. Is this
5 is where Shawn collapsed, and then you ran back to
6 the store in just a few seconds?

7 A. Yeah.

8 Q. How long did it take for the police to
9 come?

10 A. Five minutes.

11 Q. So Shawn is shot and then the two of you
12 try to run away?

13 A. Yes.

14 Q. And where did Mr. Gomez go after that?

15 A. Back to the parking lot.

16 Q. Did you see specifically where he went?

17 A. He just ran.

18 Q. Did you see if he got in any vehicles
19 or --

20 A. Nope.

21 Q. And when the fight ended and you and
22 Shawn went to leave, why were you leaving?

23 A. Because somebody said 911.

24 Q. Did you want to leave before the police
25 came?

1 THE COURT: Mm-hmm.

2 MS. LEVY: Your Honor, at this time we're
3 going to pass the witness.

4 THE COURT: Redirect.

5 MR. SCHWARTZER: Yes, your Honor.

REDIRECT EXAMINATION

8 BY MR. SCHWARTZER:

9 Q. Did Shawn have any weapons on him that
10 you saw?

11 A. No.

12 MS. LEVY: Objection; speculation.

13 THE COURT: He followed it up with that
14 you saw.

15 BY MR. SCHWARTZER:

16 Q. Is that no?

17 A. No.

18 Q. Did you have any weapons on you?

19 A. No.

20 Q. Now, we got a little bit into that police
21 statement that you gave.

22 You remember Ms. Levy going
23 through it a little bit with you? You gave a
24 statement there with the detectives?

25 And a couple of questions Ms. Levy

1 actually asked you a few times, were there any --
2 when you said Sureño, was that in response to
3 anything?

4 Do you remember when she asked you
5 about that?

6 A. Yes.

7 Q. And you were actually asked about these
8 statements by the police detectives; is that correct?

9 A. Yes.

10 Q. And you knew that was being recorded?

11 A. Yes.

12 Q. So I just want to set up the scene again.

13 You and Shawn are leaving the
14 store?

15 A. Yes.

16 Q. Defendant and the shorter Hispanic male
17 were outside the store?

18 A. Yes.

19 Q. Who says -- what group speaks first; do
20 you and Shawn say something to them first or do they
21 say anything to you first?

22 A. They said something to us first.

23 Q. And you said earlier today it was about
24 the like nice tattoos?

25 A. Yes.

1 Q. So who said, you're not from around here,
2 the defendant?

3 A. Yes.

4 Q. Who did he say that to?

5 A. Shawn.

6 Q. And then also on page 4 you say they
7 said, where you from, what city you from.

8 Who said that?

9 A. He did.

10 Q. Defendant said that?

11 THE COURT: Who is he?

12 MR. SCHWARTZER: He's pointing to the
13 defendant.

14 THE COURT: I know, but the record
15 doesn't show that.

16 MR. SCHWARTZER: I understand, your
17 Honor.

18 BY MR. SCHWARTZER:

19 Q. You're pointing to the defendant; is that
20 correct?

21 A. Yes.

22 Q. So the defendant said those words?

23 A. Yes.

24 Q. It was Shawn responded; is that correct?

25 A. Yes.

1 Q. Was it in like, oh, hey, nice tattoos, in
2 like a chummy way, or was it --

3 A. It was an instigating way.

4 Q. An instigating way. Okay.

5 Do you also recall that you said
6 that they said several other things to you right
7 outside the store, that you told the detectives that
8 the defendant and the shorter Hispanic male said
9 other things to you as well?

10 A. The other guy?

11 Q. No, both, the defendant and the shorter
12 Hispanic male?

13 A. No, they didn't say nothing to me.

14 Q. Okay. Well, they said stuff to Shawn; is
15 that correct?

16 A. Yes.

17 Q. In fact, in the statement you said that
18 they said, you guys are not from around here?

19 MS. LEVY: What page?

20 MR. SCHWARTZER: Page 4.

21 BY MR. SCHWARTZER:

22 Q. You're not from around here.

23 Do you remember telling the police
24 that?

25 A. Yes.

1 Q. And that's when you said Shawn said the
2 Sureño word?

3 A. Yes.

4 Q. You also mentioned -- I'm going to
5 page 9.

6 You also say that in the statement
7 on page 9 he was claiming Las Vegas, quote, this is
8 my town, end quote, and then, quote, you're on the
9 wrong turf, end quote.

10 Who said that? The defendant said
11 that?

12 A. Yes.

13 Q. Who did the defendant say that to?

14 A. Shawn.

15 Q. Is this before the fight?

16 A. Before.

17 Q. And then is that when Shawn said Sureño?

18 A. Yes.

19 Q. And a fight broke out between him and the
20 shorter Hispanic male?

21 A. Yes.

22 Q. The fight occurs -- after the fight
23 ended, did you hear Shawn say anything to the
24 defendant?

25 A. No.

1 Q. The next time you run into the defendant
2 is when he is on that sidewalk asking if you bang?

3 A. That was in the alley.

4 Q. In the alley.

5 That's the next time you have any
6 communication with the defendant?

7 That's unclear.

8 There was this exchange right
9 outside the store that we just talked about, correct?

10 A. Yes.

11 Q. There was a fight that occurred, correct?

12 A. Yes.

13 Q. Were there words said after the fight by
14 the defendant?

15
16 (Overlapping speakers)

17 A. Yes.

18 Q. What did the defendant say?

19 A. He asked me if I bang.

20 Q. That was when you were on the
21 alley/sidewalk?

22 A. Yes.

23 Q. And then after that is when he shot
24 Shawn?
25

1 Q. Do you remember Shawn telling Mr. Gomez
2 that he was going to his mother's house, to
3 Mr. Gomez' mother's house?

4 A. No.

5 Q. Do you remember telling the police that?

6 A. Yes.

7 Q. So you told the police that Mr. Gomez
8 asked, where you going, and Shawn said, to your mom's
9 house; do you remember telling the police that?

10 A. Yes.

11 Q. So now you're saying that didn't happen?
12 I'm sorry, can you say it out
13 loud?

14 A. No.

15 Q. It's no, it didn't happen? No?

16 You have to answer out loud.

17 A. No.

18 Q. So nothing was said about going to your
19 mom's house?

20 Is that a no?

21 A. No.

22 Q. So the statements in the alley, and when
23 you say the alley, does this -- is this like a dead
24 end on State's Exhibit 1 -- may I approach?
25

THE COURT: Yes.

1 A. Yes.

2 MR. SCHWARTZER: Court's indulgence.

3 THE COURT: Mm-hmm.

4 MR. SCHWARTZER: Pass the witness.

5 THE COURT: Any recross?

6 MS. LEVY: Just briefly.

7
8 RECCROSS-EXAMINATION

9 BY MS. LEVY:

10 Q. So, Mr. Coleman, earlier when I asked you
11 whether or not Mr. Gomez said anything to Shawn
12 before the fight broke out and before Shawn said
13 Sureño Punto you said no, and now you're going back
14 to what your statement said to the police, correct?

15 A. Yes.

16 Q. So you said your statement to the police
17 is inaccurate in some points, correct?

18 A. Yes.

19 Q. So you remember some things now that are
20 different than your statement?

21 A. Yes.

22 Q. And your testimony a few minutes ago was
23 different than what it is now about the statements
24 that were made by Mr. Gomez?
25

A. Yes.

1 BY MS. LEVY:

2 Q. -- you're calling an alley?

3 Can you point to me and show me
4 where you're calling the alley?

5 A. This.

6 Q. This right here is a street, correct?

7 A. Yes.

8 Q. So the alley is behind the store?

9 A. Yes.

10 Q. Right here is an alley?

11 A. Yeah.

12 Q. But this is an actual street?

13 A. That is a street.

14 Q. Do you know what street that is?

15 A. Nellis and Tropicana.

16 Q. Okay. So it's the sidewalk on --

17 A. Yeah.

18 Q. -- Nellis, or is that on Tropicana?

19 A. That's the Tropicana.

20 Q. That's the Tropicana, okay.

21 And do you know whether or not
22 this is east or west, going like from here, is this
23 going --

24 A. Going that way is east.

25 Q. That's going east.

1 So when you and Shawn were
2 walking -- can you see, guys?

3 When you and Shawn were walking,
4 you're walking east?

5 A. Yes.

6 Q. So you're calling this the alley?

7 A. Yes.

8 Q. The sidewalk here, okay.

9 So your testimony is that when you
10 guys went down the alley and Mr. Gomez followed, the
11 only statements to you were, do you bang?

12 A. Yes.

13 Q. And you said no?

14 A. Yes.

15 Q. And then what was said to Shawn?

16 A. The gun was just pointed to Shawn.

17 Q. So the gun was just pointed at Shawn and
18 he was just shot?

19 A. Shawn said, you're not going to use it.

20 Q. That's the only thing that was said?

21 A. Yes.

22 Q. Did Mr. Gomez say anything?

23 A. No.

24 Q. And how was it that Mr. Gomez held the
25 gun? Can you show me with your hand?

1 were to you, do you bang, and then Shawn just -- he
2 pointed the gun, and Shawn just said, you're not
3 going to use it, and then he shot; there was no other
4 statements made?

5 A. No.

6 MS. LEVY: Pass the witness.

7 THE COURT: Anything else?

8 MR. SCHWARTZER: Nothing further, your
9 Honor.

10 THE COURT: Thank you very much,
11 Mr. Coleman. Appreciate your time today.

12 (Witness excused)

13
14
15 MR. SCHWARTZER: Your Honor, a few
16 stipulations, but besides that the State's going to
17 rest.

18 THE COURT: So the State's not going to
19 have any further witnesses or evidence?

20 MR. SCHWARTZER: Correct.

21 THE COURT: What are the stipulations?

22 MR. SCHWARTZER: There's going to be a
23 stipulation that we should read into the record.

24 THE COURT: Yes.

25 MR. SCHWARTZER: Thank you.

1 So like this with his left hand,
2 like this --

3 A. Yes.

4 Q. -- over?

5 And you said that Shawn was hit in
6 the stomach?

7 A. Yes.

8 Q. Can you show me where on your body?

9 So on his left side?

10 And then did my client -- which
11 direction did my client go, back towards the store?

12 A. Yes.

13 Q. And then you and Shawn turned and ran
14 towards the pole?

15 A. Yes.

16 Q. Which is still going east?

17 A. Yes.

18 Q. So the opposite direction that my client
19 went?

20 A. Yes.

21 Q. So you didn't see exactly where my client
22 went?

23 A. No. He went to the parking lot.

24 Q. To the parking lot.

25 And so the only statements made

1 We have stipulated for the purpose
2 of preliminary hearing only to the cause and manner
3 of death and the identity of the individual that is
4 deceased. That would be Shawn Manemules. That's the
5 name that's been read into the record. The cause and
6 manner would be gunshot wound and homicide.

7 THE COURT: Is that correct, Miss Levy?

8 MS. LEVY: That is all correct. For
9 purposes of preliminary hearing only we are
10 stipulating to cause and manner of death and identity
11 of the decedent.

12 And if I may consult with my
13 client briefly.

14 THE COURT: Sure.

15 State rest?

16 MR. SCHWARTZER: State will rest, your
17 Honor.

18 MS. LEVY: Your Honor, at this time I've
19 consulted with Mr. Gomez. He does understand that he
20 does have a constitutional right to testify at these
21 proceedings. He is not going to. Pursuant to my
22 advice he is not going to testify at these
23 proceedings. We do not have any witnesses or
24 evidence to present at this time. We'll rest.

25 THE COURT: Argument by the State.

MR. SCHWARTZER: I'll save for rebuttal,
your Honor.

THE COURT: Argument by the defense.

MS. LEVY: We're submitting, your Honor.

THE COURT: Based upon the Complaint on
file herein and the testimony adduced at the hearing
today, I believe there is probable cause to believe
that Count 1, murder with use of a deadly weapon, has
been committed, and that the named defendant herein,
Oscar Gomez, Jr., committed said crime.

I hereby order Mr. Gomez, Jr. to
answer to this charge in the Eighth Judicial District
Court on the day my clerk gives you.

THE CLERK: August 4, 10 a.m. lower level
arraignment A.

MR. SCHWARTZER: Thank you, your Honor.

THE COURT: Thank you have a nice day.

---000---

ATTEST: Full, true and accurate transcript of
proceedings.

/s/GERRI DE LUCCA
GERRI DE LUCCA, C.C.R. NO. 82

---000---

ATTEST: I further certify that I am not interested
in the events of this action.

/s/GERRI DE LUCCA
GERRI DE LUCCA, C.C.R. NO. 82

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

STATE OF NEVADA,
Plaintiff,

vs.

OSCAR GOMEZ, JR.,
Defendant.

Case No. 16F10719A

ATTEST RE: NRS 239B.030

STATE OF NEVADA }
COUNTY OF CLARK } SS

I, Gerri De Lucca, a Certified Shorthand
Reporter within and for the County of Clark and the
State of Nevada, do hereby certify:

That REPORTER'S TRANSCRIPT OF PROCEEDINGS
was reported in open court pursuant to NRS 3.360
regarding the above proceedings in Las Vegas Justice
Court, 200 Lewis Avenue, Las Vegas, Nevada.

That said TRANSCRIPT:

X Does not contain the Social Security
number of any person.

Contains the Social Security number
of a person.

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

APR 19 2018

AINF
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ERIKA MENDOZA
Chief Deputy District Attorney
Nevada Bar #012520
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

BY, _____
JILL M CHAMBERS, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

OSCAR GOMEZ, JR., aka, Oscar Gomez,
#5990519

Defendant.

CASE NO. C-16-316959-1

DEPT NO. XXI

AMENDED
INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss:

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That OSCAR GOMEZ, JR., aka, Oscar Gomez, the Defendant(s) above named, having committed the crime of MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010. 200.030.2, 193.165 - NOC 50011), on or about the 24th day of June, 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, did willfully, unlawfully, feloniously, and with malice aforethought,

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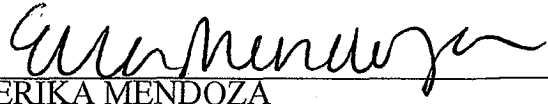
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AA020

1 kill SHAWN MANYMULES, a human being, with use of a deadly weapon, to wit: a handgun,
2 by shooting at and into the body of the said SHAWN MANYMULES with said handgun.

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

6 BY


7 ERIKA MENDOZA
8 Chief Deputy District Attorney
9 Nevada Bar #012520
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27 DA#16F10719X /cmj/L2
28 LVMPD EV#1606243862
(TK12)

4-7-18
9:30
FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

APR 19 2018

BY JILL M CHAMBERS, DEPUTY

1 GPA
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 ERIKA MENDOZA
6 Chief Deputy District Attorney
7 Nevada Bar #012520
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 OSCAR GOMEZ, JR., aka, Oscar Gomez,
13 #5990519

14 Defendant.

CASE NO: C-16-316959-1

DEPT NO: XXI

15 GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty to: MURDER (SECOND DEGREE) WITH USE OF A
17 DEADLY WEAPON (Category A Felony - NRS 200.010. 200.030.2, 193.165 - NOC 50011),
18 as more fully alleged in the charging document attached hereto as Exhibit "1".

19 My decision to plead guilty is based upon the plea agreement in this case which is as
20 follows:

21 The State will retain the full right to argue.

22 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
23 and/or impounded in connection with the instant case and/or any other case negotiated in
24 whole or in part in conjunction with this plea agreement.

25 I understand and agree that, if I fail to interview with the Department of Parole and
26 Probation, fail to appear at any subsequent hearings in this case, or an independent magistrate,
27 by affidavit review, confirms probable cause against me for new criminal charges including
28 reckless driving or DUI, but excluding minor traffic violations, the State will have the

AA 022

1 unqualified right to argue for any legal sentence and term of confinement allowable for the
2 crime(s) to which I am pleading guilty, including the use of any prior convictions I may have
3 to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life without
4 the possibility of parole, life with the possibility of parole after ten (10) years, or a definite
5 twenty-five (25) year term with the possibility of parole after ten (10) years.

6 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
7 plea agreement.

8 CONSEQUENCES OF THE PLEA

9 I understand that by pleading guilty I admit the facts which support all the elements of
10 the offense(s) to which I now plead as set forth in Exhibit "1".

11 I understand that as a consequence of my plea of guilty the Court must sentence me to
12 imprisonment in the Nevada State Prison for Life with the possibility of parole with eligibility
13 for parole beginning at ten (10) years; OR a definite term of twenty-five (25) years with
14 eligibility for parole beginning at ten (10) years, plus a consecutive one (1) to twenty (20) for
15 the deadly weapon enhancement. I understand that the law requires me to pay an
16 Administrative Assessment Fee.

17 I understand that, if appropriate, I will be ordered to make restitution to the victim of
18 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
19 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
20 reimburse the State of Nevada for any expenses related to my extradition, if any.

21 I understand that I am not eligible for probation for the offense to which I am pleading
22 guilty.

23 I understand that I must submit to blood and/or saliva tests under the Direction of the
24 Division of Parole and Probation to determine genetic markers and/or secretor status.

25 I understand that if I am pleading guilty to charges of Burglary, Invasion of the Home,
26 Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled Substance, or
27 Gaming Crimes, for which I have prior felony conviction(s), I will not be eligible for probation
28 and may receive a higher sentencing range.

1 I understand that if more than one sentence of imprisonment is imposed and I am
2 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
3 the sentences served concurrently or consecutively.

4 I understand that information regarding charges not filed, dismissed charges, or charges
5 to be dismissed pursuant to this agreement may be considered by the judge at sentencing.

6 I have not been promised or guaranteed any particular sentence by anyone. I know that
7 my sentence is to be determined by the Court within the limits prescribed by statute.

8 I understand that if my attorney or the State of Nevada or both recommend any specific
9 punishment to the Court, the Court is not obligated to accept the recommendation.

10 I understand that if the offense(s) to which I am pleading guilty was committed while I
11 was incarcerated on another charge or while I was on probation or parole that I am not eligible
12 for credit for time served toward the instant offense(s).

13 I understand that if I am not a United States citizen, any criminal conviction will likely
14 result in serious negative immigration consequences including but not limited to:

- 15 1. The removal from the United States through deportation;
- 16 2. An inability to reenter the United States;
- 17 3. The inability to gain United States citizenship or legal residency;
- 18 4. An inability to renew and/or retain any legal residency status; and/or
- 19 5. An indeterminate term of confinement, with the United States Federal
20 Government based on my conviction and immigration status.

21 Regardless of what I have been told by any attorney, no one can promise me that this
22 conviction will not result in negative immigration consequences and/or impact my ability to
23 become a United States citizen and/or a legal resident.

24 I understand that the Division of Parole and Probation will prepare a report for the
25 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
26 sentencing, including my criminal history. This report may contain hearsay information
27 regarding my background and criminal history. My attorney and I will each have the
28 opportunity to comment on the information contained in the report at the time of sentencing.

1 Unless the District Attorney has specifically agreed otherwise, the District Attorney may also
2 comment on this report.

3 WAIVER OF RIGHTS

4 By entering my plea of guilty, I understand that I am waiving and forever giving up the
5 following rights and privileges:

- 6 1. The constitutional privilege against self-incrimination, including the right
7 to refuse to testify at trial, in which event the prosecution would not be
8 allowed to comment to the jury about my refusal to testify.
- 9 2. The constitutional right to a speedy and public trial by an impartial jury,
10 free of excessive pretrial publicity prejudicial to the defense, at which
11 trial I would be entitled to the assistance of an attorney, either appointed
12 or retained. At trial the State would bear the burden of proving beyond
13 a reasonable doubt each element of the offense(s) charged.
- 14 3. The constitutional right to confront and cross-examine any witnesses who
15 would testify against me.
- 16 4. The constitutional right to subpoena witnesses to testify on my behalf.
- 17 5. The constitutional right to testify in my own defense.
- 18 6. The right to appeal the conviction with the assistance of an attorney,
19 either appointed or retained, unless specifically reserved in writing and
20 agreed upon as provided in NRS 174.035(3). I understand this means I
21 am unconditionally waiving my right to a direct appeal of this conviction,
22 including any challenge based upon reasonable constitutional,
23 jurisdictional or other grounds that challenge the legality of the
24 proceedings as stated in NRS 177.015(4). However, I remain free to
25 challenge my conviction through other post-conviction remedies
26 including a habeas corpus petition pursuant to NRS Chapter 34.

20 VOLUNTARINESS OF PLEA

21 I have discussed the elements of all of the original charge(s) against me with my
22 attorney and I understand the nature of the charge(s) against me.

23 I understand that the State would have to prove each element of the charge(s) against
24 me at trial.

25 I have discussed with my attorney any possible defenses, defense strategies and
26 circumstances which might be in my favor.

27 All of the foregoing elements, consequences, rights, and waiver of rights have been
28 thoroughly explained to me by my attorney.

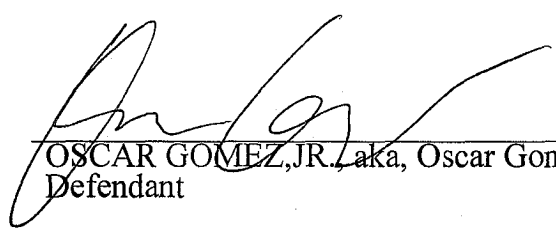
1 I believe that pleading guilty and accepting this plea bargain is in my best interest, and
2 that a trial would be contrary to my best interest.

3 I am signing this agreement voluntarily, after consultation with my attorney, and I am
4 not acting under duress or coercion or by virtue of any promises of leniency, except for those
5 set forth in this agreement.


6 I am not now under the influence of any intoxicating liquor, a controlled substance or
7 other drug which would in any manner impair my ability to comprehend or understand this
8 agreement or the proceedings surrounding my entry of this plea.

9 My attorney has answered all my questions regarding this guilty plea agreement and its
10 consequences to my satisfaction and I am satisfied with the services provided by my attorney.

11 DATED this 19th day of April, 2018.

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14 
OSCAR GOMEZ, JR., aka, Oscar Gomez
Defendant

15 AGREED TO BY:

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18 ERIKA MENDOZA
19 Chief Deputy District Attorney
20 Nevada Bar #012520
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1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of the court
3 hereby certify that:

- 4 1. I have fully explained to the Defendant the allegations contained in the
5 charge(s) to which guilty pleas are being entered.
6 2. I have advised the Defendant of the penalties for each charge and the restitution
7 that the Defendant may be ordered to pay.
8 3. I have inquired of Defendant facts concerning Defendant's immigration status
9 and explained to Defendant that if Defendant is not a United States citizen any
10 criminal conviction will most likely result in serious negative immigration
11 consequences including but not limited to:
12 a. The removal from the United States through deportation;
13 b. An inability to reenter the United States;
14 c. The inability to gain United States citizenship or legal residency;
15 d. An inability to renew and/or retain any legal residency status; and/or
16 e. An indeterminate term of confinement, by with United States Federal
17 Government based on the conviction and immigration status.

18 Moreover, I have explained that regardless of what Defendant may have been
19 told by any attorney, no one can promise Defendant that this conviction will not
20 result in negative immigration consequences and/or impact Defendant's ability
21 to become a United States citizen and/or legal resident.

- 22 4. All pleas of guilty offered by the Defendant pursuant to this agreement are
23 consistent with the facts known to me and are made with my advice to the
24 Defendant.
25 5. To the best of my knowledge and belief, the Defendant:
26 a. Is competent and understands the charges and the consequences of
27 pleading guilty as provided in this agreement,
28 b. Executed this agreement and will enter all guilty pleas pursuant hereto
voluntarily, and
c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant as
certified in paragraphs 1 and 2 above.

29 Dated: This 19th day of April, 2018.

30 
31 ATTORNEY FOR DEFENDANT

32 cmj/L2