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Petitioner,

vs.

Respondent.

Supreme Court Case No. 17-32858
District Court Case No. 17-32858-3

JAMES J. RUGGEROLI
James J. Ruggeroli, Esq.
Nevada Bar #007891
400 South 4th Street, Suite 280
Las Vegas, Nevada 89101
(702) 258-2022
Attorney for Petitioner

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Nevada Bar #001565
Regional Justice Center
200 Lewis Avenue
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Las Vegas, Nevada 89155

ADAM PAUL LAXALT
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701
Attorneys for Respondents

INDEX

ITEM

PAGES

Indictment	PA001-PA0006
Petition for Writ of Habeas Corpus (1)	PA007-PA0018
Reporter's Transcript of Grand Jury Proceedings (1)	PA0019-PA0238
State's Return to Writ of Habeas Corpus (1)	PA0239-PA0273
Reply to State's Return to Writ of Habeas Corpus	PA0274-PA0286
Superseding Indictment	PA0287-PA0292
Reporter's Transcript of Grand Jury Proceedings (2)	PA0293-PA0319
Petition for Writ of Habeas Corpus (2)	PA0320-PA0330
State's Return to Writ of Habeas Corpus (2)	PA0331-PA0360
Reply to State's Return to Writ of Habeas Corpus (2)	PA0361-PA0376
Voluntary Statement Segments of Marcell Solomon	PA0377-PA0394
Voluntary Statement Segments of Davontae Wheeler	PA0395-PA400
State's Supplement to Return to Writ of Habeas Corpus	PA401-PA423
Reply to State's Supplement to Return to Writ of Habeas Corpus	PA0424-PA0431
Order Denying Defendant's Pretrial Petition for Writ of Habeas Corpus	PA0432-PA0433
Arrest Report	PA044-PA0437

ORIGINAL

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

DEC 14 2017

BY, Nancy Maldonado
NANCY MALDONADO, DEPUTY

IND
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #007135
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

C-17-328587-3
IND
Indictment
4706312



THE STATE OF NEVADA,

Plaintiff,

CASE NO: C-17-328587-3

-vs-

DEPT NO: III

DEMARIO LOFTON-ROBINSON, aka,
Demario Loftonrobinson, #5318925
RAEKWON SETREY ROBERTSON,
aka, Raekwon Robertson, #8252804
DAVONTAE AMARRI WHEELER,
#5909081

INDICTMENT

Defendant(s).

STATE OF NEVADA }
 } ss.
COUNTY OF CLARK }

The Defendant(s) above named, DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson, RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, DAVONTAE AMARRI WHEELER, accused by the Clark County Grand Jury of the crime(s) of BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS 205.060 - NOC 50426); CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147); ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138); ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.330, 193.165 - NOC 50145) and MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS

1 200.010, 200.030, 193.165 - NOC 50001), committed at and within the County of Clark, State
2 of Nevada, on or between August 2, 2017 and August 9, 2017, as follows:

3 COUNT 1 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

4 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
5 about August 2, 2017 willfully, unlawfully, and feloniously enter, with intent to commit a
6 felony, to wit: robbery, that certain business occupied by FIESTA DISCOUNT MARKET
7 AND SMOKE SHOP, located at 701 West Charleston Boulevard, Las Vegas, Clark County,
8 Nevada, while possessing and/or gaining possession of a handgun, a deadly weapon, during
9 the commission of the crime and/or before leaving the structure.

10 COUNT 2 - CONSPIRACY TO COMMIT ROBBERY

11 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
12 about August 2, 2017 willfully, unlawfully, and feloniously conspire with ANTONIO JONES
13 to commit a robbery, by the conspirators committing the acts as set forth in Counts 3 and 4,
14 said acts being incorporated by this reference as though fully set forth herein.

15 COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

16 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, along with
17 ANTONIO JONES, did on or about August 2, 2017 willfully, unlawfully, and feloniously take
18 personal property, to wit: a wallet, cellular telephone, and makeup case, from the person of
19 MARIAH ROMATKO, or in her presence, by means of force or violence, or fear of injury to,
20 and without the consent and against the will of MARIAH ROMATKO, with use of a deadly
21 weapon, to wit: a handgun, the Defendant being criminally liable under one or more of the
22 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
23 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
24 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
25 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
26 crime, with the intent that this crime be committed.

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1 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

2 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, along with
3 ANTONIO JONES, did on or about August 2, 2017 willfully, unlawfully, and feloniously take
4 personal property, to wit: U.S. Currency, from the person of AGNES STEIN, or in her
5 presence, by means of force or violence, or fear of injury to, and without the consent and
6 against the will of AGNES STEIN, with use of a deadly weapon, to wit: a handgun, the
7 Defendant being criminally liable under one or more of the following principles of criminal
8 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the
9 commission of this crime, with the intent that this crime be committed, by counseling,
10 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit
11 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this
12 crime be committed.

13 COUNT 5 - CONSPIRACY TO COMMIT ROBBERY

14 Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson,
15 RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI
16 WHEELER, did, on or about August 9, 2017, willfully, unlawfully, and feloniously conspire
17 with each other and/or unknown co-conspirators to commit a robbery, by the Defendants
18 and/or unknown co-conspirators committing the acts as set forth in Count 6, said acts being
19 incorporated by this reference as though fully set forth herein.

20 COUNT 6 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

21 Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson,
22 RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI
23 WHEELER, did, on or about August 9, 2017, willfully, unlawfully, and feloniously attempt to
24 take personal property, to wit: U.S. Currency and/or property, from the person of GABRIEL
25 VALENZUELA, or in his presence, by means of force or violence, or fear of injury to, and
26 without the consent and against the will of GABRIEL VALENZUELA, by pointing a firearm
27 at the said GABRIEL VALENZUELA and demanding said U.S. Currency and/or property,
28 with use of a deadly weapon, to wit: a firearm, the Defendants being criminally liable under

one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendant and/or DEMARIO LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON ROBERTSON and/or unknown co-conspirators aiding or abetting and/or conspiring by Defendant and/or DEMARIO LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON ROBERTSON and/or unknown co-conspirators acting in concert throughout.

COUNT 7 - MURDER WITH USE OF A DEADLY WEAPON

Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson, RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI WHEELER, did, on or about August 9, 2017, willfully, unlawfully, feloniously and with malice aforethought, kill GABRIEL VALENZUELA, a human being, with use of a deadly weapon, to wit: a firearm, by shooting at and into the body of the said GABRIEL VALENZUELA, the said killing having been (1) willful, deliberate, and premeditated, and/or (2) committed during the perpetration or attempted perpetration of a robbery, the Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring,

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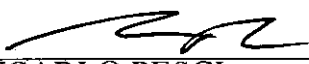
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1 commanding, inducing, and/or otherwise procuring the other to commit the crime; and/or (3)
2 pursuant to a conspiracy to commit murder and/or robbery; Defendants and/or unknown co-
3 conspirators aiding or abetting and/or conspiring by Defendants and/or unknown co-
4 conspirators acting in concert throughout.

5 DATED this 13th day of December, 2017.

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

9 BY


10 GIANCARLO PESCI
11 Chief Deputy District Attorney
12 Nevada Bar #007135

13 ENDORSEMENT: A True Bill

14 
15 Foreperson, Clark County Grand Jury
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Names of Witnesses and testifying before the Grand Jury:

CODY, LORA – LVMPD #7294

DOSCH, MITCHELL – LVMPD #7907

FLETCHER, SHAWN – LVMPD #5221

JAEGER, RYAN – LVMPD #5587

MASON, ROBERT – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

NEWMAN, JAMES – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

RELATO, JOHN – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

SIMMS, DR. LARY – ME#0002

SPAHN, NICKOLAUS – SHORT LINE EXPRESS – 7325 S. JONES BLVD, LV NV

SPEAS, WILLIAM – LVMPD #5228

STEIN, AGNES – FIESTA DISCOUNT MARKET – 7010 W. CHARLESTON BLVD, LV
NV

TAPAY, GLEZZELLE, LVMPD #15709

Additional Witnesses known to the District Attorney at time of filing the Indictment:

CHARLTON, NOREEN – LVMPD #13572

CUSTODIAN OF RECORDS - CCDC

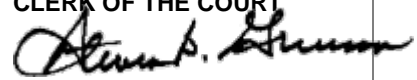
CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS - LVMPD RECORDS

CUSTODIAN OF RECORDS – SHORTLINE EXPRESS – 7325 S. JONES BLVD, LV NV

ROMATKO, MARIAH – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

17BGJ017A-C/17F14369A-C/ed - GJ
LVMPD EV#1708024571; 1708090029
(TK3)



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rugggeroli@icloud.com
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of the Application

OF DAVONTAE AMARRI WHEELER,
#5909081

For a Writ of Habeas Corpus

Case No. C-17-328587-3

Dept No. XX

DATE OF HEARING: _____

TIME OF HEARING: _____

PETITION FOR WRIT OF HABEAS CORPUS

**TO: THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK**

The Petition of DAVONTAE AMARRI WHEELER, by and through his attorney,
JAMES J. RUGGEROLI, ESQ., respectfully shows:

1. That he is a duly qualified, practicing and licensed attorney in the City of Las Vegas, County of Clark, and State of Nevada.
2. That Petitioner is the defendant in the above entitled matter.
3. Petitioner makes application on behalf of his client for a Writ of Habeas Corpus; that the place where the client of Petitioner is restrained of his liberty in the County of Clark, State of Nevada; that the officer by whom he is restrained is, JOSEPH LOMBARDO SHERIFF, Las Vegas Metropolitan Police Department, Las Vegas, Clark County, Nevada in that there was insufficient evidence presented to the grand jury to restrain the Defendant.

1 4. That Petitioner waives the sixty (60) day limitation for brining said client to trial.

2 5. That Petitioner consents that if the Petition is not decided within fifteen (15) days
3 before the date set for trial, the Court may without notice of hearing, continue the trial
4 indefinitely to a date designated by the Court.

5 6. That Petitioner consents that if any party appeals the Court's ruling and the appeal
6 is not determined before the date set for trial, the trial date be automatically vacated and the trial
7 postponed unless the Court otherwise orders.

8 7. That no other Petition for Writ of Habeas Corpus has heretofore been filed on
9 behalf of said client of Petitioner on this particular issue.

10 8. This Petition is based upon the records and pleadings on file herein, the
11 Memorandum of Points and Authorities attached hereto, and upon such other grounds and
12 evidence as may be adduced at a hearing on this Writ.

13 **WHEREFORE**, Petitioner prays that this Honorable Court make an Order directing the
14 County Clerk to issue a Writ of Habeas Corpus directed to said **SHERIFF OF CLARK**
15 **COUNTY, NEVADA**, commanding him to bring the above-mentioned client of Petitioner
16 before your Honor, and return the cause of his imprisonment.

17 Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State
18 of Nevada that the foregoing is true and correct

19 DATED this 6th day of February, 2018.

20 **JAMES J. RUGGEROLI**

21 By: */s/ James Ruggeroli*
22 James J. Ruggeroli, Esq.
23 Nevada Bar No. 7891
24 601 South 7th Street
25 Las Vegas, Nevada 89101
26 Attorneys for Defendant
27
28

NOTICE

TO: THE HONORABLE JUDGE, District Court Department XX; and
TO: STEVEN B. WOLFSON, ESQ., Attorney for Plaintiff.

PLEASE TAKE NOTICE that the Petition for Writ of Habeas Corpus will be heard in
Department XX before the District Court Judge on the 27 day of
Feb., 2018 at the hour of 8:30 a.m. or as soon thereafter as
counsel can be heard.

DATED this 6th day of February, 2018.

JAMES J. RUGGEROLI

By: /s/ James Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
601 South 7th Street
Las Vegas, Nevada 89101
Attorneys for Defendant

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

JAMES J. RUGGEROLI, ESQ., being first duly sworn, deposes and says:

That I am the attorney for Defendant in the above-entitled action; that I have read the
foregoing Petition, know the contents thereof, that the same are true and correct to the best of my
knowledge, information and belief, except for those matters therein stated on information and
belief, and as for those matters, JAMES J. RUGGEROLI believes them to be true; that the
Defendant personally authorized me to commence this Petition for Writ of Habeas Corpus.

Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State
of Nevada that the foregoing is true and correct

DATED this 6th day of February, 2018.

JAMES J. RUGGEROLI

By: /s/ James Ruggeroli
James J. Ruggeroli, Esq.
Attorneys for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

There was insufficient evidence against Mr. Wheeler presented to the grand jury to support the charges and Indictment. The Indictment must therefore be dismissed.

II. STATEMENT OF THE CASE / STATEMENT OF THE FACTS

1. The State has charged Mr. Wheeler by way of Indictment with: COUNT 5 CONSPIRACY TO COMMIT ROBBERY; COUNT 6 ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON; COUNT 7 MURDER WITH USE OF A DEADLY WEAPON. See Indictment on file herein.

2. The allegations and testimony presented to the grand jury related to Mr. Wheeler are essentially as follows:

3. Lary Simms, a forensic pathologist testified that the decedent (Gabriel Valenzuela) had four gunshot wounds (Grand Jury Transcript (“GJT”) on file herein at 13:21) that Mr. Simms determined to be the cause of death (GJT 17:21-25-18:1) and the manner of death being homicide (GJT 18:1-2).

4. Nikolaus Spahn, an employee at Short Line Express on Jones and Warm Springs (hereinafter the “Short Line Express”), testified that during the late night/early morning of August 8/9, 2017 (GJT21:13-19):

a. Four individuals that caused him concern came into his store. (GJT 21:23-25-23:14).

b. One of the customers had an open carry gun in a holster on the right side of his hip when he entered the store. (GJT 23:8-23).

c. The store was equipped with video surveillance inside and outside of the establishment. (GJT 24:8-13).

d. Mr. Spahn noticed that the care the individuals were in was a four-door white Mercury “Crown Vic.” (GJT 26:12-15).

e. The four individuals had been in the store at “about 11:20, 11:25” p.m. on

1 August 8, 2017. (GJT 27:8-11).

2 f. Police later came to the store seeking information about the four
3 individuals at about 12:15 a.m. on August 9, 2017. (GJT 27:15-16).

4 g. The Short Line Express manager later provided the video surveillance
5 from the store to police. (GJT 29:23-25).

6 5. Robert Mason, a witness that lives in Las Vegas on Zachary Street, testified that:

7 a. He had gone for a jog after returning home from work close midnight.
8 (GJT 46:5-15).

9 b. While jogging, Mr. Mason noticed four suspicious individuals in his
10 neighborhood. (GJT 46:16-20).

11 c. Mr. Mason was not able to personally identify any of the individuals,
12 however, he was able to notice that the race of the four individuals were all “dark skin,
13 black individuals.” (GJT 47:11-23).

14 d. Mr. Mason continued jogging and noticed a white “Crown Vic style
15 vehicle on ... Lindell” and took notes about the vehicle on his phone, including the
16 license plate number 473YZB. (GJT 50:1-20).

17 e. Later, while still jogging, Mr. Mason called his wife and informed her to
18 lock the house and call 311 to report “some suspicious guys in the neighborhood.” (GJT
19 51:18-25).

20 6. Shawn Fletcher, Las Vegas Metropolitan Police Department (“Metro”) senior
21 crime scene analyst testified that:

22 a. He documented the white Crown Vic’s search and took photographs on
23 August 9, 2017. (GJT 54-61).

24 b. A pair of red Air Jordan shoes were recovered. (Id.)

25 c. A box of 45 caliber ammunition head-stamped “FC” for “Federal and “N”
26 for NATO was found. (Id.).

27 7. William Speas, Metro senior crime scene analyst testified:

28 a. He had been called to assist in searching and documenting aspects of the

1 investigation relating to the crime scene at 5536 West Dewey Drive (the “Dewey Scene”)
2 and other locations (including the Short Line Express, 919 Bagpipe Court (“Bagpipe”),
3 on August 9, 2017. (GJT 65:6-10).

4 b. A number of cartridge cases were impounded at the Dewey Scene (GJT
5 68).

6 c. There were three 45 caliber cartridges with three different head stamps
7 and a 22 caliber cartridge found at the Dewey Scene. (GJT 70-71).

8 d. One of the 45 caliber cartridge cases was an R-P 45 auto. (GJT14-19).

9 8. Glezzelle Tapay, a Metro crime scene analyst testified:

10 a. On August 15, 2017, she responded to 6647 West Tropicana (the
11 “Tropicana Address”) to photograph and document a residence searched pursuant to a
12 search warrant. (GJT 77-82).

13 b. A Taurus 22 caliber firearm and 22 caliber ammunition with “C” head
14 stamp was located at the Tropicana Address. (GJT 78-79).

15 9. Mitchell Dosch, a Metro Detective, testified:

16 a. On August 9, 2017, he went to the Short Line Express and observed the
17 surveillance video. (GJT 95).

18 b. Det. Dosch obtained a search warrant for Bagpipe and found a 45 handgun
19 at that address. (GJT 97-98).

20 c. During the course of his investigation, he determined that Raekwon
21 Robertson was associated with the Tropicana Address. (GJT 98).

22 d. During the course of his investigation, he determined that Demario
23 Lofton-Robinson and DeShawn Robinson were associated with the Bagpipe Address.
24 (GJT 98-99).

25 e. During the course of his investigation, Det. Dosch was aware of a search
26 at 3300 Civic Center, apartment 2f (the “Civic Center Address”) where police recovered
27 a third firearm, a 45 caliber semi-automatic handgun. (GJT 98-99).

28 f. Police recovered 45 caliber cartridge cases with head stamp “R-P” in a 45

handgun at the Bagpipe and at the Civic Center address. (GJT 100-101).

g. Det. Dosch testified that he had information that Mr. Wheeler was associated with the Civic Center Address. (GJT 101).

h. 45 caliber cartridges with a head stamp “NFCR” and “Winchester 45 Auto” were found at the murder scene. (GJT 101-102).

i. No “Winchester 45 Auto” head stamp cartridges were found during any of the searches in this case. (GJT 101-102) (emphasis added).

j. During the investigation, Det. Dosch came in contact with Raekwon Robertson and Davontae Wheeler. (GJT 105).

k. Based on Det. Dosch’s time with Mr. Wheeler, testified that he could identify Mr. Wheeler as the individual with the open-carry firearm in the Short Line Express surveillance video. (GJT 106).

l. Det. Dosch interviewed Demario Lofton-Robinson, who admitted to being one of the shooters and that he used the 45 semi-automatic handgun found at the Bagpipe Address. (GJT 110-112).

m. A Taurus 45 caliber handgun and “RP 45 Auto” head stamped cartridges were located at the Civic Center Address. (GJT 115-116).

10. Detective Ryan Jaeger with Metro testified that:

a. During the course of his investigation he came into contact with and interviewed Mr. Wheeler. (GJT 144).

b. According to Det. Jaeger, Mr. Wheeler admitted to owning a 45 caliber handgun, to being in the vehicle (the white Grand Marquis) and to being in the Short Line Express on August 8, 2017. (GJT 145-146).

c. However, according to Det. Jaeger, ***Mr. Wheeler denied being involved in any killing*** and that Mr. Wheeler said that he had been in the vehicle “trying to negotiate to buy a Beretta handgun, he couldn’t reach a price for the gun that he liked ***so he got out of the vehicle and took a bus home.***”. (GJT146:14-17) (emphasis added).

III. LAW AND ARGUMENT

A. LEGAL STANDARD

A defendant charged with an offense may challenge the probable cause to hold him to answer through a petition for writ of habeas corpus. Gary v. Sheriff, Clark County, 96 Nev. 78, 605 P.2d 212 (1980); Cook v. State, 85 Nev. 692, 462 P.2d 523 (1969). NRS 171.206 requires the magistrate to determine if probable cause exists to believe that an offense has been committed and that the defendant has committed it. To establish probable cause to bind a defendant over for trial, the State must show that (1) a crime has been committed, and (2) there is probable cause to believe the defendant committed it. See NRS 171.206.

A suspect may not be bound over for trial unless the state demonstrates that the suspect committed the charged crime. Sheriff, Clark County v. Richardson, 103 Nev. 180, 734 P.2d 735 (1987). It is recognized that the finding of probable cause to support a criminal charge may be based on slight, even marginal, evidence because it does not involve a determination of the guilt or innocence of an accused. Sheriff, Clark County v. Richardson, 103 Nev. 180, 734 P.2d 735 (1987). However, finding of probable cause requires far more than a trace of evidence; the facts must be such as would lead a person of ordinary caution and prudence to believe and conscientiously entertain a strong suspicion that the defendant committed the crime in question. See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d 1324, 1326 (1972). Moreover, a finding of probable cause may not rest on other than “legal evidence,” See Tetrou v. Sheriff, 89 Nev. 166, 169 (1973), and “due process of law requires adherence to the adopted and recognized rules of evidence.” Goldsmith v. Sheriff, 85 Nev. 295, 303 (1969).

For the reasons set forth below, the Indictment here must be dismissed because the State failed to present sufficient evidence against Mr. Wheeler to support the Indictment.

A. INSUFFICIENT EVIDENCE

The evidence connecting Mr. Wheeler to the charged crimes presented to the grand jury essentially amounts to:

1. The white, Crown Vic/Mercury and four individuals, including Mr. Wheeler are on surveillance video from the Short Line Express on August 8, 2017 at approximately 11:20. (GJT 27).
2. The Short Line Express video shows one individual with an open carry firearm (GJT 23), later identified as Mr. Wheeler (GJT 106).
3. Mr. Mason observed four “dark skin, black individuals” near midnight. (GJT 47).
4. There were three 45 caliber cartridges with three different head stamps and a 22 caliber cartridge found at the Dewey Scene. (GJT 70-71).
5. One of the 45 caliber cartridge cases was an “R-P” 45 auto. (GJT14-19).
6. 45 caliber cartridges with a head stamp “NFCR” and “Winchester 45 Auto” were also found at the murder scene. (GJT 101-102).
7. No “Winchester 45 Auto” head stamp cartridges were found during any of the searches in this case. (GJT 101-102) (emphasis added).
8. Det. Dosch testified that he had information” that Mr. Wheeler was associated with the Civic Center Address. (GJT 101).
9. Based on Det. Dosch’s time with Mr. Wheeler, testified that he could identify Mr. Wheeler as the individual with the open-carry firearm in the Short Line Express surveillance video. (GJT 106).
10. Detective Ryan Jaeger with Metro testified that:
 - a. During the course of his investigation he came into contact with and interviewed Mr. Wheeler. (GJT 144).
 - b. According to Det. Jaeger, Mr. Wheeler admitted to owning a 45 caliber handgun, to being in the vehicle (the white Grand Marquis) and to being in the Short Line

Express on August 8, 2017. (GJT 145-146).

c. However, according to Det. Jaeger, ***Mr. Wheeler denied being involved in any killing*** and that Mr. Wheeler said that he had been in the vehicle “trying to negotiate to buy a Beretta handgun, he couldn’t reach a price for the gun that he liked ***so he got out of the vehicle and took a bus home.***”. (GJT146:14-17) (emphasis added).

It is recognized that the finding of probable cause to support a criminal charge may be based on slight, even marginal, evidence because it does not involve a determination of the guilt or innocence of an accused. Sheriff, Clark County v. Richardson, 103 Nev. 180, 734 P.2d 735 (1987). However, finding of probable cause requires far more than a trace of evidence; the facts must be such as would lead a person of ordinary caution and prudence to believe and conscientiously entertain a strong suspicion that the defendant committed the crime in question. See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d 1324, 1326 (1972). Moreover, it is respectfully submitted that a finding of probable cause may not rest on other than “legal evidence,” See Tetrou v. Sheriff, 89 Nev. 166, 169 (1973), and “due process of law requires adherence to the adopted and recognized rules of evidence.” Goldsmith v. Sheriff, 85 Nev. 295, 303 (1969).

In the case at hand, there is simply not enough evidence against Mr. Wheeler in this case to support the charges and the Indictment. Finding probable cause requires far more than the “trace of evidence” the State presented to the grand jury. Moreover, the facts here against Mr. Wheeler are not such as would lead a person of ordinary caution and prudence to believe and conscientiously entertain a strong suspicion that Mr. Wheeler committed the crimes in question. See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d 1324, 1326 (1972).

////

////

1 **IV. CONCLUSION**

2 For the reasons stated herein, it is respectfully requests that this Court dismiss the
3 Indictment against Mr. Wheeler.

4 DATED this 8th day of February, 2018.

5 **JAMES J. RUGGEROLI**

6 By: */s/ James Ruggeroli*
7 James J. Ruggeroli, Esq.
8 Nevada Bar No. 7891
9 601 South 7th Street
Las Vegas, Nevada 89101
Attorney for Defendant

10 **DECLARATION OF JAMES J. RUGGEROLI, ESQ.**

11 JAMES J. RUGGEROLI, ESQ., being first duly sworn under oath, deposes and states:

- 12 1. I am an attorney at law duly licensed to practice before this Court and make this
13 Declaration of facts from personal knowledge which is known to me, except for those matters
14 stated upon information and belief, and as to those matters, I believe same to be true.
- 15 2. I am counsel of record for the Defendant, DAVONTAE AMARRI WHEELER.
- 16 3. Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of
17 the State of Nevada that the foregoing is true and correct.

18 DATED this 8th day of February, 2018.

19 **JAMES J. RUGGEROLI**

20 By: */s/ James Ruggeroli*
21 James J. Ruggeroli, Esq.
22 Nevada Bar No. 7891

23 **CERTIFICATE OF SERVICE**

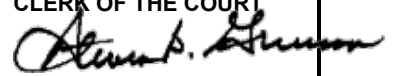
24 I hereby certify that on the 8th day of February 2018, I emailed a copy of the foregoing
25 Petition to them at the following address:

26 motions@clarkcountyda.com

27 By: */s/ James Ruggeroli*
28 James J. Ruggeroli, Esq.

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EXHIBIT A



EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.) GJ No. 17BGJ017A-C
) DC No. C328587
DEMARIO LOFTON-ROBINSON, aka)
Demario Loftonrobinson, RAEKWON)
SETREY ROBERTSON, aka Raekwon)
Robertson, DAVONTAE AMARRI)
WHEELER,)
)
Defendants.)

Taken at Las Vegas, Nevada

Wednesday, November 29, 2017

8:30 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 1

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

12:00 1 GRAND JURORS PRESENT ON NOVEMBER 29, 2017

2

3 HOWARD BASCH, Foreperson

4 CHARLES STANKOSKY, Deputy Foreperson

12:00 5 TOBIE SPERRY, Secretary

6 ANGELA MOORE, Assistant Secretary

7 RODNEY ALLISON

8 GEORGE CHEESMAN

9 LINDA COHN

12:00 10 FRANK COOMBS

11 WILLIAM DUMKE

12 LADYHAWK FREEMAN

13 VICTORIA GUY

14 CATHERINE HARABURDO

12:00 15 MARGARET LAAS

16 ROJEAN LOGAN

17 NANCY SCHERER

18 EDWARD WAGNER

19 COURTNEY WILLIAMS

12:00 20

21

22 Also present at the request of the Grand Jury:

23 Giancarlo Pesci, Chief Deputy District Attorney

24 Rachel O'Halloran, Deputy District Attorney

12:00 25

1	<u>INDEX OF WITNESSES</u>	
2		<u>Examined</u>
3		
4	LARY SIMMS	8
5	NIKOLAUS SPAHN	21
6	JAMES NEWMAN	36
7	ROBERT MASON	45
8	SHAWN FLETCHER	53
9	WILLIAM SPEAS	64
10	GLEZZELLE TAPAY	76
11	JOHN PAOLO RELATO	84
12	MITCHELL DOSCH	90
13	LORA CODY	135
14	RYAN JAEGER	142
15	AGNES STEIN	150
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	<u>INDEX OF EXHIBITS</u>	
2		
3	<u>Grand Jury Exhibits</u>	<u>Identified</u>
4	1 - PROPOSED INDICTMENT	6
5	2 - INSTRUCTIONS	6
6	3 - SURVEILLANCE VIDEO	117
7	4 - SURVEILLANCE VIDEO	30
8	5, 6 - PHOTOGRAPHS	11
9	7 - 15 - PHOTOGRAPHS	107
10	16 - PHOTOGRAPH	48
11	17 - PHOTOGRAPH	67
12	18 - PHOTOGRAPH	67
13	19 - PHOTOGRAPH	68
14	20 - PHOTOGRAPH	69
15	21 - PHOTOGRAPH	69
16	22 - PHOTOGRAPH	69
17	23 - PHOTOGRAPH	69
18	24 - PHOTOGRAPH	70
19	25 - PHOTOGRAPH	70
20	26 - PHOTOGRAPH	71
21	27 - PHOTOGRAPH	71
22	28, 29, 30 - PHOTOGRAPHS	36
23	31 - PHOTOGRAPH	57
24	32 - PHOTOGRAPH	58
25	33 - PHOTOGRAPH	59

1	34 - 37 - PHOTOGRAPHS	79
2	38 - PHOTOGRAPH	115
3	39 - 42 - PHOTOGRAPHS	79
4	43 - HANDWRITTEN VOLUNTARY STATEMENT	93
5		
6		
7		
8		
9		
10		
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12		
13		
14		
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12:00 1 LAS VEGAS, NEVADA, NOVEMBER 29, 2017

2 * * * * *

3
4 DANETTE L. ANTONACCI,

12:00 5 having been first duly sworn to faithfully
6 and accurately transcribe the following
7 proceedings to the best of her ability.
8

9 THE FOREPERSON: Let the record reflect
08:27 10 that I have canvassed the waiting area and no one has
11 appeared in response to Notice of Intent to Seek
12 Indictment.

13 MR. PESCI: Ladies and gentlemen of the
14 Grand Jury, my name is Giancarlo Pesci. I am presenting
08:30 15 Grand Jury case number, I believe it's 17BGJ017A-C. Is
16 that correct?

17 A JUROR: Uh-huh.

18 MR. PESCI: The State of Nevada versus
19 Demario Lofton-Robinson, Raekwon Setrey Robertson,
08:30 20 Davontae Amarri Wheeler. The record will reflect that
21 we have marked a copy of the proposed Indictment as
22 Exhibit 1, that all the members of the Grand Jury have a
23 copy of it. You should also have as Exhibit 2, the
24 instructions associated with these particular offenses.
08:30 25 In this particular case the defendants, not all of them

08:30 1 are charged with each one of these, but collectively the
2 defendants are charged with burglary while in possession
3 of a firearm, conspiracy to commit robbery, robbery with
4 use of a deadly weapon, attempt robbery with use of a
08:31 5 deadly weapon, and murder with use of a deadly weapon.

6 Does anybody have any questions relating to the elements
7 of the charges? Those elements are laid out in the
8 instruction packet which is Exhibit Number 2. Are there
9 any questions regarding the elements of these charges?

08:31 10 If not, my first witness is Dr. Lary Simms.

11 THE FOREPERSON: Sir, please raise your
12 right hand.

13 You do solemnly swear the testimony you are
14 about to give upon the investigation now pending before
08:31 15 this Grand Jury shall be the truth, the whole truth, and
16 nothing but the truth, so help you God?

17 THE WITNESS: Yes, I do.

18 THE FOREPERSON: Please be seated.

19 You are advised that you are here today to
08:32 20 give testimony in the investigation pertaining to the
21 offenses of burglary while in possession of a firearm,
22 conspiracy to commit robbery, robbery with use of a
23 deadly weapon, attempt robbery with use of a deadly
24 weapon, and murder with use of a deadly weapon,
08:32 25 involving Demario Robinson, Raekwon Robertson and

08:32 1 Davontae Wheeler.

2 Do you understand this advisement?

3 THE WITNESS: Yes.

4 THE FOREPERSON: Please state your first
08:32 5 and last name and spell both for the record.

6 THE WITNESS: My first name is Lary,
7 spelled L-A-R-Y, my last name is Simms, spelled
8 S-I-M-M-S.

9 LARY SIMMS,

08:32 10 having been first duly sworn by the Foreperson of the
11 Grand Jury to testify to the truth, the whole truth,
12 and nothing but the truth, testified as follows:

13

14 EXAMINATION

08:32 15

16 BY MR. PESCI:

17 Q. Sir, what do you do for a living?

18 A. I'm a forensic pathologist?

19 Q. And how long have you been doing this

08:32 20 particular work?

21 A. I did my first forensic case in '91.

22 Q. What training and experience do you have
23 that prepares you or qualifies you for this job?

24 A. I'm a licensed physician and I've been in

08:33 25 medicine, I graduated in '78 so that's, it will be 40

08:33 1 years next year. I went through specialty training in
2 pathology, Michigan State University, and then I did a
3 fellowship in forensic pathology at the Cook County
4 Medical Examiner's Office in Chicago. I stayed there
08:33 5 for a number of years and then I came out here. I'm
6 board certified in anatomic pathology, clinical
7 pathology and forensic pathology by the American Board
8 of Pathology. I've done about 10,000 cases.

9 Q. When you say cases, is that autopsies?

08:33 10 A. Correct.

11 Q. Is that your job responsibility at the
12 Clark County Coroner's Office?

13 A. Correct.

14 Q. And prior as I heard you, prior to this you
08:33 15 did this at the Cook County Coroner's office in Chicago?

16 A. Correct.

17 Q. And have you testified at the Grand Jury,
18 Justice Courts and District Courts here in the Eighth
19 Judicial District Court about forensic pathology and
08:34 20 autopsies before?

21 A. Yes.

22 Q. I want to direct your attention to August
23 the 9th of this year 2017. Were you involved in the
24 autopsy of an individual that was identified to you as
08:34 25 Gabriel Valenzuela?

08:34 1 A. Yes.

2 Q. When you perform an autopsy is there a
3 unique number assigned to that specific case that you're
4 working on?

08:34 5 A. Correct.

6 Q. And is that a number that you utilize later
7 to be able to reference reports and photographs that are
8 tied to that particular autopsy?

9 A. Yes.

08:34 10 Q. In this case was that reference number a
11 17-08259?

12 A. Yes.

13 Q. Have you prepared an autopsy report in
14 relation to this particular autopsy that you performed
08:34 15 on Gabriel Valenzuela on August the 9th?

16 A. Yes.

17 Q. And have you reviewed that in anticipation
18 of testifying?

19 A. Yes.

08:35 20 Q. When you perform an autopsy, what is it
21 that you do to be able to render opinions as far as
22 cause and manner of death?

23 A. Well, I start out with an external
24 examination from the top of the head to the bottom of
08:35 25 the feet, make incisions in the body, remove the

08:35 1 internal organs and examine them and then examine the
2 internal body surfaces.

3 Q. I'd like to show you Grand Jury Exhibits 5
4 and 6 and ask you if you recognize these exhibits.

08:35 5 A. Yes.

6 Q. Are these fair and accurate depictions of
7 photographs that were taken during the autopsy that you
8 just described?

9 A. Yes.

08:35 10 Q. And I apologize. As you perform the
11 autopsy that you just told us about, are there
12 technicians and crime scene analysts also there with you
13 during parts of the process?

14 A. Yes.

08:35 15 Q. Do they take photographs during the
16 process?

17 A. Yes.

18 Q. And do these photos reflect some of the
19 evidence as it was seen during your autopsy?

08:36 20 A. Yes.

21 Q. All right. I'm going to, over your left
22 shoulder I'm going to put Grand Jury Exhibit 5 up here
23 for the grand jurors.

24 Is this often referred to as a body bag?

08:36 25 A. Yes.

08:36 1 Q. And is this how the body comes to you
2 originally?

3 A. Yes.

4 Q. Is it closed up, zipped up?

08:36 5 A. Correct, and it has a little blue seal
6 that's shaped kind of like a lock there on the zipper.

7 Q. And is that how it is when it first starts,
8 the autopsy first begins?

9 A. Correct.

08:36 10 Q. And do you have the unique identifying
11 number utilized by your office also in the picture to be
12 able to coordinate who this particular autopsy is done
13 on?

14 A. Yes.

08:36 15 Q. And is that the number we saw earlier or we
16 spoke of earlier, the 17-08259?

17 A. Correct.

18 Q. And then it reflects that this is Gabriel
19 Valenzuela?

08:36 20 A. Yes.

21 Q. I'm going to show you Grand Jury Exhibit 6.
22 Do you recognize that individual?

23 A. That's the decedent.

24 Q. And do we have the exact same
08:37 25 identification tag utilized in this photograph to let

08:37 1 you know this is the individual you performed the
2 autopsy on?

3 A. Yes.

4 Q. And turning this slightly to the left.

08:37 5 Does this reflect some of the injuries, but does it
6 actually cover one of the specific injuries on the head?

7 A. Yes.

8 Q. Sometimes family members, I shouldn't say
9 sometimes, family members often come to help identify
08:37 10 the individual?

11 A. Correct.

12 Q. Is there an effort to try to show kind of
13 the least damaged photograph to the family to make the
14 identification?

08:37 15 A. Yes.

16 Q. Now setting aside that particular
17 photograph, what it does not show. Let's talk about
18 what you did find out during the course of your autopsy.
19 You said you do an external examination and an internal
08:37 20 examination. What were your findings?

21 A. Well, he had four gunshot wounds. One of
22 them was on the right side of the head and went through
23 the brain and exited on the left front of the head.

24 Q. Let me stop you for a second, Doc. You
08:38 25 just pointed with your left hand to the left forehead

08:38 1 area. A moment ago when we were looking at Grand Jury
2 Exhibit 6 there was a towel covering that wound; is that
3 correct?

4 A. Correct.

08:38 5 Q. Tell us about the entry and the exit of
6 that particular wound.

7 A. The entrance wound was on the right side of
8 the head and it went through the brain and exited on the
9 left side of the head.

08:38 10 Q. Now kind of in layman's terms, what it is
11 about wounds that help you to know one's an entrance
12 versus an exit?

13 A. Well, an entrance wound, because the bullet
14 is spinning and hitting, or generally if it doesn't hit,
08:38 15 if it doesn't go through an intermediate target, it's
16 spinning and it's point on and it kind of bores through
17 the skin as a fairly regular appearing hole with,
18 commonly with an abrasion collar. It's very
19 characteristic of an entrance wound. And then as the
08:38 20 bullet goes through the body it starts to tumble and the
21 exit wound is very irregular in shape.

22 Q. If you moved, if we had moved that
23 particular towel that was covering the left side of the
24 forehead, describe what we would see.

08:39 25 A. Well, there would have been an exit wound

08:39 1 that was, let's see, in the left forehead kind of in the
2 left front here.

3 Q. So do you associate, and I apologize, my
4 question should be better worded, do you associate the
08:39 5 left forehead as the exit wound from the entrance wound
6 on the right side of the head?

7 A. Correct.

8 Q. And did you ascertain that from looking
9 internally inside of his head, his brain, to see the
08:39 10 path of the bullet?

11 A. Well, for the path, for the entrance and
12 exit components, the entrance wound was a typical
13 entrance wound and the exit wound was actually about
14 three inches in diameter so it was really different.

08:39 15 Q. Pretty big hole?

16 A. Yes.

17 Q. So I heard you say four gunshot wounds;
18 correct?

19 A. Correct.

08:40 20 Q. Just for the sake of numbering, not for the
21 order of when they actually happened, looking at the one
22 on the forehead, what's the next one you reference in
23 your report?

24 A. It came in on the left abdomen.

08:40 25 Q. An entrance wound on the left abdomen?

08:40 1 A. Correct.

2 Q. In your autopsy what did you discover as
3 far as where that bullet went and what damage it caused?

4 A. It went basically straight back and
08:40 5 downward. It missed the spleen which is on that side
6 and it did go through the kidney and then I did recover
7 a bullet -- just to go back to the other wound on the
8 head, even though there was an exit wound, I did recover
9 fragments of a bullet from the head also.

08:40 10 Q. In your experience is it common for a
11 bullet to fragment when it makes entry and passes
12 through a body?

13 A. If it's a certain type of bullet.

14 Q. Not all the time, I'm just saying in your
08:40 15 experience have you seen situations where a bullet will
16 come apart in pieces and you'll find fragments inside?

17 A. Oh, definitely.

18 Q. Okay. Unlike the head shot, the shot to
19 the side, the bullet remained inside the body?

08:41 20 A. Correct.

21 Q. So there was no exit wound associated with
22 that particular wound?

23 A. Correct.

24 Q. When you recover that do you provide it to
08:41 25 the police?

08:41 1 A. Yes.

2 Q. Are there, we talked about earlier crime
3 scene analysts, are they the ones that take it or
4 impound it?

08:41 5 A. Correct.

6 Q. So if I understood correctly I have two
7 injuries. Tell us about three and four.

8 A. There was a gunshot wound on the outside of
9 the right ankle, it went through the bones and then
08:41 10 exited on the inside of the ankle.

11 Q. Okay.

12 A. And then on the opposite ankle, on the left
13 ankle, that was on the right ankle, the other one is on
14 the left ankle, you had an entrance wound more so kind
08:41 15 of toward the back of the ankle and the bullet also went
16 through the bones but I did, and it went upward in the
17 leg so I did recover a bullet.

18 Q. So the bullet had traveled upward through
19 the leg?

08:42 20 A. Correct.

21 Q. Now at the conclusion of your internal and
22 external examination did you come to an opinion as to
23 the cause of death of this individual?

24 A. Yes.

08:42 25 Q. What was that?

08:42 1 A. Multiple gunshot wounds.

2 Q. And then the manner of death?

3 A. Homicide.

4 Q. When you say homicide, what does that mean?

08:42 5 A. That's death at the hands of another

6 person.

7 Q. Is that a medical term that you utilize?

8 A. Well, it's based on a legal definition of

9 it but it's a very broad definition which is what we use

08:42 10 of a homicide.

11 Q. I guess what I'm saying is you're not

12 saying it's a first degree murder by saying it's a

13 homicide, you're saying that this individual died at the

14 hands of another human being?

08:42 15 A. Correct. You have homicides where somebody

16 kills somebody and you have legal homicides and then you

17 have illegal homicides and illegal homicides are murders

18 and legal homicides are, there's different legal terms

19 for that including judicial executions, those are legal

08:43 20 homicides.

21 Q. All right. But your opinion in essence is

22 saying that this is not a self-inflicted suicide?

23 A. Definitely.

24 Q. The injuries that you saw do not indicate

08:43 25 that this individual did this to himself?

08:43 1 A. Correct, nor was it an accidental set of
2 gunshot wounds.

3 MR. PESCI: Thank you, Doctor.

4 Grand jurors' indulgence.

08:43 5 Are there any questions from the ladies and
6 gentlemen of the Grand Jury? If not, no more questions
7 for the doctor.

8 THE FOREPERSON: By law, these proceedings
9 are secret and you are prohibited from disclosing to
08:43 10 anyone anything that has transpired before us, including
11 evidence and statements presented to the Grand Jury, any
12 event occurring or statement made in the presence of the
13 Grand Jury, and information obtained by the Grand Jury.

14 Failure to comply with this admonition is a
08:43 15 gross misdemeanor punishable up to 364 days in the Clark
16 County Detention Center and a \$2,000 fine. In addition,
17 you may be held in contempt of court punishable by an
18 additional \$500 fine and 25 days in the Clark County
19 Detention Center.

08:43 20 Do you understand this admonition?

21 THE WITNESS: Yes, I do.

22 THE FOREPERSON: Thank you and you are
23 excused.

24 THE WITNESS: Thank you.

08:44 25 MR. PESCI: State calls Nikolaus Spahn.

08:44 1 I'm not sure how he pronounces it. S-P-A-H-N.

2 THE FOREPERSON: Please raise your right

3 hand.

4 You do solemnly swear the testimony you are

08:45 5 about to give upon the investigation now pending before

6 this Grand Jury shall be the truth, the whole truth, and

7 nothing but the truth, so help you God?

8 THE WITNESS: So help me God, yes.

9 THE FOREPERSON: Please be seated.

08:45 10 You are advised that you are here today to

11 give testimony in the investigation pertaining to the

12 offenses of burglary while in possession of a firearm,

13 conspiracy to commit robbery, robbery with use of a

14 deadly weapon, attempt robbery with use of a deadly

08:45 15 weapon, and murder with use of a deadly weapon,

16 involving Demario Robinson, Raekwon Robertson and

17 Davontae Wheeler.

18 Do you understand this advisement?

19 THE WITNESS: Yes, I do.

08:45 20 THE FOREPERSON: Please state your first

21 and last name and spell both for the record.

22 THE WITNESS: My name is Nikolaus Spahn.

23 N-I-K-O-L-A-U-S, my last name is Spahn, S-P-A-H-N.

24 ///

08:45 25 ///

08:45 1 NIKOLAUS SPAHN,
2 having been first duly sworn by the Foreperson of the
3 Grand Jury to testify to the truth, the whole truth,
4 and nothing but the truth, testified as follows:

08:45 5
6 EXAMINATION

7
8 BY MR. PESCI:

9 Q. Sir, I'm going to ask you some questions
08:46 10 and then I'm going to ask you to look over your shoulder
11 in a few minutes to review some surveillance.

12 A. Okay.

13 Q. I'm going to ask you about August the 8th
14 and August the 9th of 2017. Do you remember something
08:46 15 happening that late night/early morning that brings you
16 here to testify?

17 A. They came into my store. I work at Short
18 Line Express on Jones and Warm Springs and I work
19 graveyard and so I work by myself.

08:46 20 Q. Let me slow you down for just one second.
21 This woman is incredibly talented, but if we go too fast
22 she can't take down everything that we say.

23 A. Okay. That's fine.

24 So I work graveyard, 10:00 p.m. to 6:00
08:46 25 a.m., graveyard I work. So that night I was by myself

08:46 1 and I had a few customers sitting in front of my
2 register. And I'm by myself so I'm observing everyone.
3 Well, one subject came into my store and he just looked
4 around and he seemed out of the ordinary, he wasn't my
08:46 5 regular customer, he's not a regular person. He was
6 looking around too much, he stood by the doughnut, he
7 just look very suspicions. So right then and there, I
8 had my regular customer in front of me, I dropped all my
9 money. He said why are you doing this and I pointed
08:47 10 with my eyes and I'm like over here. Well then three
11 more people came right in along with him. You know what
12 I mean. So he came in first and three more people came
13 right in. So right then and there that drew like an
14 attention to me.

08:47 15 Q. So when your attention was drawn to these
16 four individuals as I've heard, there's the first one
17 coming in and then a little bit later the other three.

18 A. Yeah.

19 Q. What did you see those four do?

08:47 20 A. Those four do, just looked, looking around,
21 looking to see who was in the store. They're just
22 looking suspicious. I work grave so I'm pretty good at
23 kind of judging people and they just looked like they
24 were up to no good. I felt like if there was no one in
08:47 25 that store they would have robbed me.

08:47 1 Q. Was there anything else about what they
2 were wearing or what they had with them that made you
3 concerned?

4 A. One gentleman had a gun on the side of his
08:47 5 hip and he used my restroom for about 15 to 20 minutes.

6 Q. So you saw one of the four walk in and had
7 a weapon?

8 A. He had a gun holster right here on the
9 right side of his hip.

08:48 10 Q. So it was open for your view?

11 A. And he asked to use the restroom key and he
12 was in there for an amount of time.

13 Q. Did that give you concern?

14 A. Yes.

08:48 15 Q. How many customers do you have that come in
16 with a weapon on their hip?

17 A. A few, a few of them. They come in, either
18 detectives or just a couple other ordinary, you know,
19 but they just seemed out of, they just seemed out of
08:48 20 punch.

21 Q. Someone coming in with a gun, does that
22 make you pause?

23 A. Yes.

24 Q. No matter if it's these four individuals --

08:48 25 A. No matter what. It all makes me pause.

08:48 1 It's my life, you know.

2 Q. Inside of that establishment, where was it
3 again, what's the address?

4 A. 7325 South Jones. Short Line Express

08:48 5 Market.

6 Q. Here in Las Vegas?

7 A. Here in Las Vegas.

8 Q. Now do you have video surveillance inside
9 and outside of your establishment?

08:48 10 A. Yes, I do.

11 Q. Is it the ordinary course of your business
12 to maintain that video surveillance?

13 A. Yes.

14 Q. Do you have cameras set up at different

08:48 15 locations throughout?

16 A. I have 32 cameras on the premises.

17 Q. Have you had cameras there all the time
18 that you've worked there?

19 A. I've worked there for three years and

08:49 20 they've been having cameras and they're actively running

21 24/7.

22 Q. Now these four individuals, did they buy
23 anything? Did they do anything inside?

24 A. They bought a water.

08:49 25 Q. One water?

08:49 1 A. One water.

2 Q. Amongst the four of them?

3 A. One water and they bought, they had a
4 gentleman, he wanted a Black and Mild, he didn't get, I
08:49 5 asked him for his ID, and another gentleman, he sent
6 another gentleman inside to get him a Black and Mild, I
7 assume because they had the same exact one he wanted and
8 he didn't have his ID.

9 Q. So let's slow down a second. What's a
08:49 10 Black and Mild?

11 A. It's a cigar.

12 Q. So are you saying one of the four tried to
13 buy a Black and Mild cigar from you?

14 A. Correct.

08:49 15 Q. Is it required to show ID?

16 A. Correct.

17 Q. Did that individual, one of those four,
18 produce ID?

19 A. No.

08:49 20 Q. So did you decline selling --

21 A. Yes, I did.

22 Q. After you declined, did those four leave
23 the store?

24 A. Yes, they were sitting outside at the
08:49 25 table.

08:49 1 Q. How did you know they were sitting at the
2 table? Can you see from surveillance that they were
3 sitting at the table?

4 A. No. Cause I go outside and I see them,
08:49 5 they were sitting at the table. Because after I was
6 done helping my customers in the store, with a raised
7 concern I go outside, I see if they're still there. So
8 that's how I got the kind of car they were in, that's
9 how I seen the kind of car they're in, that's how I seen
08:50 10 them sitting at the table. And I just, I was keep
11 watching them basically.

12 Q. Tell me about the car.

13 A. It was a white Crown Vic, well, a white
14 Mercury but it looked like a white Crown Vic. Four
08:50 15 doors.

16 Q. Okay. And then you said that after the
17 four went outside, a different individual came in and
18 bought that exact cigar?

19 A. Yeah, they bought the exact same cigar. I
08:50 20 don't know if it was for them but I put two and two
21 together and I assumed it was for him.

22 Q. But we don't know?

23 A. But we don't know, no.

24 Q. But the sequence of events was someone else
08:50 25 came in and purchased that?

08:50 1 A. Correct.

2 Q. Did the secondary individual produce some
3 identification?

4 A. Yes, he did.

08:50 5 Q. Now did you call the police? Was there
6 anything --

7 A. No. Actually the police came to my store.
8 So they're in my store about 11:20, 11:25, police came
9 in --

08:50 10 Q. Let me stop you. Is that p.m.?

11 A. P.M., yes, that's p.m.

12 Q. Was that on August the 8th?

13 A. Yes, it was.

14 Q. Thanks. Go ahead.

08:50 15 A. So then they came, police came in about
16 12:15 a.m. the 9th, that following night, and asked me
17 hey, how was your night, anything quiet, and I told them
18 the information I knew, four subjects came in my store,
19 they kind of seemed like suspicious and I told them what
08:51 20 happened, they're like we need to call your manager
21 right now, we need to obtain video surveillance because
22 it fits a homicide description. And they made me fill
23 out this --

24 Q. Let me stop you for a second because we
08:51 25 can't have you testify to what the officers said. But

08:51 1 did you have a conversation with the officers?

2 A. Yes, I did.

3 Q. You were about to talk about you filled out
4 a statement.

08:51 5 A. Correct.

6 Q. I'm showing you a document that we'll mark
7 later as the next in order. Is this the handwritten
8 voluntary statement that you used?

9 A. Yes.

08:51 10 Q. Now in this handwritten statement there are
11 portions that you fill out and portions that the officer
12 filled out; is that correct?

13 A. Yes.

14 Q. What's the portion that you filled out?

08:51 15 A. I filled out this part. I filled out
16 everything.

17 Q. So are you pointing to the portion where it
18 says details and your summary of the event and then the
19 portion that is your personal information?

08:52 20 A. Correct.

21 Q. But the parts above, that was written by
22 the officers?

23 A. Correct.

24 Q. Okay. Because a moment ago you said this

08:52 25 occurred at around eleven -- what time?

08:52 1 A. It was about 11:20, 11:25.

2 Q. Did you write actually a number of a time
3 there and circle it?

4 A. Yes, that's the time.

08:52 5 Q. Okay. So even though this particular
6 report shows a date that occurred on August the 9th and
7 it says 0012, did it in fact occur on August 8th at
8 11 -- what is that?

9 A. 11:28.

08:52 10 Q. 11:28 or 11:38?

11 A. Yes.

12 Q. P.M. on the 8th?

13 A. Correct.

14 Q. Okay. Just so it's clear from that report.

08:52 15 A. Yes. Yes.

16 Q. Okay. So I'm going to give this to the
17 grand juror and ask if they can mark that as next in
18 order please.

19 Now you said the officers came inquiring
08:52 20 about the video surveillance?

21 A. Yes.

22 Q. Was that video surveillance provided to the
23 police?

24 A. Yes, by my manager.

08:53 25 Q. Were you present however when the

08:53 1 surveillance was downloaded and handed off?

2 A. Yes.

3 Q. Are you familiar with your particular
4 surveillance?

08:53 5 A. Yes.

6 Q. So I've got here Grand Jury Exhibit 4 which
7 is a copy of that surveillance that you provided. I'm
8 going to ask you to look at it and see if you recognize
9 what we see. Tell us what we're looking at.

08:53 10 A. You're looking at them pull up right now in
11 that white car between multi other white cars. That car
12 that's backed up right next to them to the left hand
13 side is my regular customer that was sitting at the
14 counter when they first entered the store.

08:53 15 Q. So the car that pulled into the center of
16 the three is the car that you described earlier that you
17 saw these four individuals get into?

18 A. Yes.

19 Q. You didn't see this portion when they came
08:54 20 out cause you --

21 A. No, no. I seen the portion, cause after,
22 when I come outside after I got done helping all my
23 customers and I came outside to observe, see where they
24 went, what kind of car they were in, this was the only
08:54 25 car left in the parking lot.

08:54 1 Q. I'd like you to focus on the center car.

2 You talked about it being a Mercury but you thought it
3 was a Crown Vic?

4 A. It looked like a Crown Vic from inside the
08:54 5 store until I actually got a look at it.

6 Q. Does there appear to be some sort of paint
7 damage at the very top of the windshield at the
8 beginning of the roof?

9 A. Yes.

08:54 10 Q. And is that the car that you recognize from
11 this event?

12 A. Yes.

13 Q. And this video surveillance does not have
14 an internal time stamp and date; is that correct?

08:54 15 A. Correct.

16 Q. But do you recognize this as being the
17 events from August the 8th, late, late on the 8th going
18 into the 9th?

19 A. Yes.

08:54 20 Q. And that's surveillance from the outside;
21 is that correct?

22 A. Correct.

23 Q. And do you have surveillance inside?

24 A. Yes.

08:55 25 Q. What are we looking at here?

08:55 1 A. That was the first gentleman that walked
2 in. Now he went right there to the left, he was
3 standing right there by the doughnut case. Him right
4 there, he's the first one that walked in.

08:55 5 Q. Was that the one that first got your
6 attention?

7 A. Yes.

8 Q. And do you have different angles inside
9 of --

08:55 10 A. Yes.

11 Q. -- your store?

12 What do we see here?

13 A. We see the other three subjects come in.

14 Q. Now are these three together with the first
08:55 15 one we saw, those four, are those the ones you saw get
16 into that white car we described earlier?

17 A. Yes.

18 Q. And all of these angles of surveillance,
19 are these fair and accurate depictions of your
08:55 20 establishment on that date, the 8th going into the 9th?

21 A. Yes.

22 Q. In fact do we see you now in this video?

23 A. Yes.

24 Q. You're wearing khaki shorts?

08:55 25 A. Yes.

08:55 1 Q. And a black Polo?

2 A. Yes.

3 Q. Which individual had the gun on his hip, do

4 you remember?

08:56 5 A. Yeah, the gentleman right there in the

6 back.

7 Q. You say the back. Which one do you mean?

8 Like describe the clothes.

9 A. Describe the clothes. He's sitting right

08:56 10 there next to the soda machines, right there in the

11 very, very back. He's on his phone.

12 Q. So he's not really prominently depicted

13 right now?

14 A. No. He's wearing a black hoodie.

08:56 15 Q. So it's this individual here?

16 A. Correct.

17 Q. Seems to have, does he have some facial

18 hair?

19 A. A little bit.

08:56 20 Q. And you said a black hoodie?

21 A. Yes.

22 Q. Does this show an angle of these same

23 individuals from the door looking inside?

24 A. Yes.

08:56 25 Q. And the person that has their back to the

08:56 1 soda display, is that the individual who had the gun on
2 his hip?

3 A. Yes.

4 Q. And then you talked about a water being
08:57 5 purchased. Is there an individual grabbing a water --

6 A. Yes.

7 Q. -- from the area at the counter?

8 Okay. And you told the police about this
9 incident when they came in and talked to you and you
08:57 10 filled out that report?

11 A. Yes.

12 MR. PESCI: Rachel, do you have anything?

13 That concludes my questions. Are there any
14 questions from the Grand Jury?

08:57 15 THE FOREPERSON: By law, these proceedings
16 are secret and you are prohibited from disclosing to
17 anyone anything that has transpired before us, including
18 evidence and statements presented to the Grand Jury, any
19 event occurring or statement made in the presence of the
08:57 20 Grand Jury, and information obtained by the Grand Jury.

21 Failure to comply with this admonition is a
22 gross misdemeanor punishable up to 364 days in the Clark
23 County Detention Center and a \$2,000 fine. In addition,
24 you may be held in contempt of court punishable by an
08:57 25 additional \$500 fine and 25 days in the Clark County

08:57 1 Detention Center.

2 Do you understand this admonition?

3 THE WITNESS: Yes, I do.

4 THE FOREPERSON: Thank you and you are

08:58 5 excused.

6 THE WITNESS: Thank you.

7 MR. PESCI: The next witness is James
8 Newman.

9 THE FOREPERSON: Sir, please raise your

08:58 10 right hand.

11 You do solemnly swear the testimony you are
12 about to give upon the investigation now pending before
13 this Grand Jury shall be the truth, the whole truth, and
14 nothing but the truth, so help you God?

08:59 15 THE WITNESS: Yes.

16 THE FOREPERSON: Please be seated.

17 You are advised that you are here today to
18 give testimony in the investigation pertaining to the
19 offenses of burglary while in possession of a firearm,

08:59 20 conspiracy to commit robbery, robbery with use of a

21 deadly weapon, attempt robbery with use of a deadly

22 weapon, and murder with use of a deadly weapon,

23 involving Demario Robinson, Raekwon Robertson and

24 Davontae Wheeler.

08:59 25 Do you understand this advisement?

08:59 1 THE WITNESS: Yes.

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

4 THE WITNESS: James Newman. J-A-M-E-S,
08:59 5 N-E-W-M-A-N.

6 JAMES NEWMAN,
7 having been first duly sworn by the Foreperson of the
8 Grand Jury to testify to the truth, the whole truth,
9 and nothing but the truth, testified as follows:

08:59 10
11 EXAMINATION

12
13 BY MR. PESCI:

14 Q. Sir, I want to direct your attention to
08:59 15 August of this year. At that time did you have a
16 vehicle that you were selling, specifically was it a
17 Mercury?

18 A. Yes, a Mercury Grand Marquis, 2003, white.

19 Q. Sir, I want to show you Grand Jury
09:00 20 Exhibits 28, 29 and 30 and ask you if you recognize
21 what's depicted in those?

22 A. Yeah, that's my car.

23 Q. Okay. Did your car have a little bit of
24 paint damage on the --

09:00 25 A. Yeah.

09:00 1 Q. -- hood?

2 A. Yeah, the back and the front.

3 Q. And are these fair and accurate depictions
4 of your car back in August of 2017?

09:00 5 A. Yes.

6 Q. Okay. I want to show over your left
7 shoulder Grand Jury Exhibit Number 28. What do you
8 recognize that to be?

9 A. That's my car.

09:00 10 Q. All right. Is there anything about it that
11 helps you to know it's yours?

12 A. Yeah, the license plate, 473YZB. Plus the
13 chips on the paint.

14 Q. Speaking of that, in 29, Grand Jury
09:01 15 Exhibit 29, does that show kind of the left side of your
16 vehicle?

17 A. Yes.

18 Q. And then specifically in 30, does that show
19 your vehicle?

09:01 20 A. Yes.

21 Q. Is there some sort of kind of paint damage?

22 A. Yeah, on the hood, yeah.

23 Q. Like on the ceiling?

24 A. The top, yeah.

09:01 25 Q. Tell us about the sale of your vehicle.

09:01 1 What happened?

2 A. I got off work about, about, what, 6:00 and
3 I was going up the steps and a guy named G who stayed in
4 my apartment complex said he had somebody that wanted to
09:01 5 buy the car.

6 Q. So let me stop you for a second. Without
7 saying what G said, had you been trying to sell your
8 car?

9 A. Yes.

09:01 10 Q. Was G someone you knew in your apartment
11 complex?

12 A. I didn't know him but he stayed over there.
13 I didn't deal with him or nothing like that.

14 Q. Did you have a for sale sign up?

09:01 15 A. Yes.

16 Q. When you were approached by G, based on
17 what he said to you, did you then try to make contact
18 with another individual in order to sell your car?

19 A. No. G told me at the time that we had to
09:02 20 go pick up somebody from downtown at the bus station.

21 Q. Okay.

22 A. So I got my partner with me named William,
23 we got in the car, me, him and G, we went down to
24 Bonneville, I think the bus station is on Bonneville or
09:02 25 whatever, CAT bus station, so we picked up Demario

09:02 1 Lofton-Robinson at the bus station. So we stopped at
2 the gas station right there off of Main Street, the
3 Chevron, put probably \$10 worth of gas, then we headed
4 back to where I live at over there on H Street.

09:02 5 Q. Did you know Demario Lofton-Robinson before
6 this?

7 A. Never seen him in my life.

8 Q. Have you come to know that name because of
9 the case?

09:02 10 A. Yes.

11 Q. But the individual that you now associate
12 as Demario, was that the person that you sold your car
13 to?

14 A. Yes.

09:02 15 Q. Tell us about that. What was the price,
16 how did that --

17 A. Okay. When we got back to my apartment
18 complex he gave me \$2500 for the car and then he stated
19 that his grandmother stayed somewhere up on Martin

09:03 20 Luther King or something and he didn't have no tags or
21 whatever. So I told him to meet me at the DMV the next
22 day, so I kept the title to the car, he never got the
23 title or nothing, I never signed the title over to him,
24 I kept the title.

09:03 25 Q. Did you allow him to keep the license

09:03 1 plate?

2 A. Yes. He drove the car and he supposed to
3 meet me at DMV the next day. So about 2 o'clock he
4 called me and told me to meet him at DMV at 2:00. So me
09:03 5 and William, the friend that I took with me to go down
6 and meet him, we went to DMV. He called me and I told
7 him I was at DMV about maybe 2:30 and he kept calling
8 back and forth. I kept calling him, I told him I was
9 there. So about maybe 45 minutes later he said that he
09:03 10 didn't know where DMV was that was on Sahara so he never
11 showed up. So that was on, I sold the car on August the
12 4th, August the 5th, the day we went to DMV, so it was
13 the weekend, so I told William to come on and let's go.
14 I should have counseled the tags at the time but I
09:04 15 didn't cause the line was real long, it had like 200
16 people in front of me, so we left. So that was
17 Saturday. Come Sunday they were closed. Monday I got
18 off work too late to go down to DMV. Tuesday I got off
19 work too late. Come Wednesday that's when detectives
09:04 20 was at my job.

21 Q. When the detectives came to talk to you,
22 did they ask you about your vehicle?

23 A. Well, they asked me, I told them when they
24 first came in the office I told them that I had sold
09:04 25 that vehicle because I already knew what they were there

09:04 1 for, something happened in the vehicle, that was the
2 only thing to make sense.

3 Q. Did you explain to them how you had sold
4 the vehicle?

09:04 5 A. Yes.

6 Q. And what you in essence just told the grand
7 jurors you told the detectives?

8 A. Yes.

9 Q. If I understand you correctly, you received
09:05 10 \$2500. Was it cash?

11 A. Yes.

12 Q. You held onto the title?

13 A. Yes.

14 Q. And you were waiting to meet the individual
09:05 15 that you sold it to to exchange the title and get your
16 plates back?

17 A. Yes.

18 Q. But you never met up with him?

19 A. No.

09:05 20 Q. He never came to where you were supposed
21 to --

22 A. No.

23 Q. When the detectives spoke to you, did they
24 show you, did they ask you questions about the
09:05 25 individual that you sold it to?

09:05 1 A. Yes.

2 Q. And at some point did they show you some
3 still photographs from video surveillance?

4 A. Yes.

09:05 5 Q. Were you able to identify or recognize the
6 individual in the videos?

7 A. Well, yeah, Demario. I never seen the
8 other people in my life.

9 Q. That's okay.

09:05 10 A. Yeah.

11 Q. But did you recognize the person now that
12 you come to know as Demario as the person that you sold
13 the car to in the video surveillance?

14 A. Yeah.

09:05 15 Q. Was the surveillance from a convenience
16 store?

17 A. Yes.

18 Q. Indulgence of the Grand Jury.

19 Did you explain to the detectives the
09:05 20 location of where you had driven Demario or did you give
21 them an idea as to where they could find him?

22 A. Find Demario?

23 Q. Yes.

24 A. No. Well, like I said we came from
09:06 25 downtown and then we drove back to my apartment complex.

09:06 1 That's the last time I even seen him.

2 Q. Okay. Did you have the detectives or tell
3 the detectives about an address of 1327 H Street?

4 A. Yeah, that's where I stay.

09:06 5 Q. That's where you stay?

6 A. Yeah.

7 Q. That's where the original sale occurred?

8 A. Yeah, that's where we did the sale at.

9 MR. PESCI: Okay. All right. That

09:06 10 concludes my questions. Are there any questions of the
11 ladies and gentlemen of the Grand Jury?

12 THE FOREPERSON: By law, these proceedings
13 are secret and you are prohibited from disclosing to
14 anyone anything that has transpired before us, including
09:06 15 evidence and statements presented to the Grand Jury, any
16 event occurring or statement made in the presence of the
17 Grand Jury, and information obtained by the Grand Jury.

18 Failure to comply with this admonition is a
19 gross misdemeanor punishable up to 364 days in the Clark
09:06 20 County Detention Center and a \$2,000 fine. In addition,
21 you may be held in contempt of court punishable by an
22 additional \$500 fine and 25 days in the Clark County
23 Detention Center.

24 Do you understand this admonition?

09:07 25 THE WITNESS: Yes.

09:07 1 THE FOREPERSON: Thank you. You are
2 excused.

3 MR. PESCI: State calls Robert Mason.

4 A JUROR: Sir. After this can we take a
09:07 5 small break? I need to use the facilities.

6 MS. O'HALLORAN: Would you like to take the
7 break now?

8 A JUROR: I would.

9 MS. O'HALLORAN: Okay. Absolutely. Let's
09:07 10 take a break.

11 THE FOREPERSON: Ten minute break for
12 everybody.

13 (Recess.)

14 MR. PESCI: So State calls Robert Mason.

09:17 15 THE FOREPERSON: Please raise your right
16 hand.

17 You do solemnly swear the testimony you are
18 about to give upon the investigation now pending before
19 this Grand Jury shall be the truth, the whole truth, and
09:17 20 nothing but the truth, so help you God?

21 THE WITNESS: So help me God I do.

22 THE FOREPERSON: Please be seated.

23 You are advised that you are here today to
24 give testimony in the investigation pertaining to the
09:17 25 offenses of burglary while in possession of a firearm,

09:18 1 conspiracy to commit robbery, robbery with use of a
2 deadly weapon, attempt robbery with use of a deadly
3 weapon, murder with use of a deadly weapon, involving
4 Demario Robinson, Raekwon Robertson and Davontae
09:18 5 Wheeler.

6 Do you understand this advisement?

7 THE WITNESS: I do.

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

09:18 10 THE WITNESS: My name is Robert Mason.
11 R-O-B-E-R-T, M-A-S-O-N.

12 ROBERT MASON,

13 having been first duly sworn by the Foreperson of the
14 Grand Jury to testify to the truth, the whole truth,
09:18 15 and nothing but the truth, testified as follows:

16

17 EXAMINATION

18

19 BY MS. O'HALLORAN:

09:18 20 Q. Robert, I'd like to direct your attention
21 to September 8th of this year. At that time were you
22 residing here in Las Vegas on Zachary Street?

23 A. Yes.

24 Q. And is that near another street by the name
09:18 25 of Dewey Drive?

09:18 1 A. Yes, it is.

2 Q. Now in the late night hours into the early
3 morning hours of September, excuse me, August 9th, what
4 were you doing at that time?

09:19 5 A. I had just got home from work and I decided
6 to go for a jog.

7 Q. Okay. About what time of day?

8 A. Well, I usually get home from work about
9 11:45 and then I got ready to go for a jog so it was
09:19 10 just after 11:45, close to midnight when I left the
11 house, somewhere in that time frame.

12 Q. So you're talking about 11:45 p.m. on
13 August 8th is about the time you started your jog?

14 A. More toward midnight, but yeah, around that
09:19 15 time.

16 Q. As you were on your jog did you see
17 anything that caused you some concern?

18 A. Uhm, as I was jogging I just noticed four
19 suspicious individuals in my neighborhood and just
09:20 20 continued jogging past them, but yeah.

21 Q. Where did you see these four suspicious
22 individuals?

23 A. Uhm, as I rounded the corner of my street
24 Zachary, I made a left which was going east on Dewey and
09:20 25 I noticed, at a distance I noticed the four individuals

09:20 1 were standing not at the corner but more toward, against
2 the brick wall next to a house on the, I guess it would
3 be the north, northeast -- would it be north?
4 Northeastern corner of Lindell I believe.

09:20 5 Q. Okay. So the house that you're referring
6 to where you saw these four individuals standing there,
7 is this on the corner of Dewey and Lindell?

8 A. Yes, the northeastern corner I believe.

9 Q. Can you describe these four individuals
09:21 10 that you saw?

11 A. I only could, I noticed that the, they all
12 were wearing hoodies so I didn't get a very good look at
13 any of them except for one, when I jogged by I kind of
14 glanced at one of the individuals and I noticed that he
09:21 15 was young. He was, he had a, what I would call like a
16 curly short hair style. I don't know what to call it.
17 Like a curly corn row type hair style but not
18 necessarily corn rows but maybe crop top. I don't know
19 how they call it, what they call that hair style.

09:21 20 Q. Were you able to notice the race of any of
21 these four individuals?

22 A. Yeah, all of them were dark skin, black
23 individuals I guess you would say.

24 Q. So all four were --

09:21 25 A. Yeah. Yeah.

09:22 1 Q. -- black males?

2 A. Yeah, black, young males.

3 Q. I'm going to show you a photograph here and
4 this is Grand Jury Exhibit Number 16.

09:22 5 A. Okay.

6 Q. Do you recognize what is depicted in this
7 photograph?

8 A. Yeah, that's the driveway of the house that
9 I passed.

09:22 10 Q. So is this the house on the corner of Dewey
11 and Lindell?

12 A. Yes.

13 Q. Are you able in this photograph to see
14 where those four young black men were standing as you
09:22 15 jogged by?

16 A. Yeah. As a matter of fact right where the
17 headlights of whatever, I think this is headlights
18 maybe, but right against this edge of the wall here.

19 Q. And I'm going to go ahead and publish this
09:22 20 for the members of the Grand Jury.

21 Just to give some perspective, which way
22 would you have been jogging, from left to right or right
23 to left?

24 A. I would be on this side right where this
09:23 25 sidewalk is going straight, Lindell, or, I'm sorry,

09:23 1 Lindell is just ahead of the picture.

2 Q. Okay. So if we were to -- is there a
3 street that runs parallel to the bottom of this picture?

4 A. Parallel? Uh, well, there is my street
09:23 5 which is Zachary and then this is Dewey which connects
6 with Lindell, and then I was jogging from Zachary to
7 Lindell on Dewey, heading east.

8 Q. Okay. So this house that we're looking at
9 here is actually on Dewey?

09:23 10 A. Yes, it's on Dewey.

11 Q. And you mentioned earlier the area where
12 you saw the four young men is where the headlights are
13 shining in the picture. Is that on the right hand side
14 of the picture near this brick wall?

09:23 15 A. Yeah, right there.

16 Q. Did you continue jogging after that point?

17 A. Yeah. I was really leery as I jogged by so
18 I jogged really fast, I continued as fast as I could
19 jogging around the corner.

09:24 20 Q. When you say around the corner, which
21 direction did you continue to run when you went around
22 the corner?

23 A. Northbound.

24 Q. North on Lindell?

09:24 25 A. North on Lindell.

09:24 1 Q. Did you see anything at that point that
2 caused you additional concern?

3 A. Yeah. When I rounded the corner I noticed
4 that there was a white, what I would call a Crown Vic
09:24 5 style vehicle on the, on that, on Lindell facing
6 southward.

7 Q. Did you take notes about that vehicle on
8 your phone as you were running?

9 A. Yeah. The only, as I rounded the corner,
09:24 10 there's usually never any cars on Lindell, it's a no
11 parking area all up and down Lindell so nobody ever
12 parks there. So yeah, when I rounded the corner it just
13 caught me suspicious so I took the front license plate
14 and as I continued jogging I looked back at the rear
09:25 15 license plate also to confirm that it was the same
16 number.

17 Q. And you wrote that number in your phone;
18 correct?

19 A. Yes.

09:25 20 Q. Was that a Nevada license plate of 473YZB?

21 A. That is correct, yes.

22 Q. How far was that vehicle parked from where
23 the four young black males were standing?

24 A. I would say given the, maybe 20, 20 to
09:25 25 50 feet or so, yeah.

09:25 1 Q. At some point later on were you shown a
2 photograph by a detective with the Las Vegas
3 Metropolitan Police Department of a vehicle?

4 A. Yes.

09:25 5 Q. Were you asked to determine whether or not
6 the vehicle in the photo was the same vehicle that you
7 saw on scene that night?

8 A. Yes.

9 Q. And I'm showing you Grand Jury Exhibit
09:25 10 Number 28. Is that the vehicle that you saw that night
11 as you were jogging past?

12 A. That looks very much like it, yeah.

13 Q. Does it in fact have the same license plate
14 as the vehicle that you saw that night?

09:26 15 A. Yeah.

16 Q. After you continued jogging did you do
17 anything at that point?

18 A. Well, as I continued jogging I just got a
19 really bad feeling about the whole situation. Knowing
09:26 20 that my family was at home and I had actually forgot to
21 lock my house up, so I called my wife and informed her
22 to lock the house and at that point I kind of just told
23 my wife, I said you know what, if you could just call
24 311 and let them know that there's some suspicious guys
09:26 25 in the neighborhood that may be casing houses or

09:26 1 whatnot.

2 MS. O'HALLORAN: Okay. I have no further
3 questions for this witness. Do the members of the Grand
4 Jury have any questions?

09:26 5 THE FOREPERSON: By law, these proceedings
6 are secret and you are prohibited from disclosing to
7 anyone anything that has transpired before us, including
8 evidence and statements presented to the Grand Jury, any
9 event occurring or statement made in the presence of the
09:26 10 Grand Jury, and information obtained by the Grand Jury.

11 Failure to comply with this admonition is a
12 gross misdemeanor punishable up to 364 days in the Clark
13 County Detention Center and a \$2,000 fine. In addition,
14 you may be held in contempt of court punishable by an
09:26 15 additional \$500 fine and 25 days in the Clark County
16 Detention Center.

17 Do you understand this admonition?

18 THE WITNESS: Yes, I do.

19 THE FOREPERSON: Thank you and you are
09:27 20 excused.

21 THE WITNESS: Okay. Thank you.

22 MR. PESCI: State calls Shawn Fletcher.

23 THE FOREPERSON: Please raise your right
24 hand.

09:28 25 You do solemnly swear the testimony you are

09:28 1 about to give upon the investigation now pending before
2 this Grand Jury shall be the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 THE WITNESS: I do.

09:28 5 THE FOREPERSON: Please be seated.

6 You are advised that you are here today to
7 give testimony in the investigation pertaining to the
8 offenses of burglary while in possession of a firearm,
9 conspiracy to commit robbery, robbery with use of a

09:28 10 deadly weapon, attempt robbery with use of a deadly
11 weapon, murder with use of a deadly weapon, involving
12 Demario Robinson, Raekwon Robertson and Davontae
13 Wheeler.

14 Do you understand this advisement?

09:28 15 THE WITNESS: Yes.

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

18 THE WITNESS: Shawn Fletcher. S-H-A-W-N,
19 Fletcher, F-L-E-T-C-H-E-R.

09:28 20 SHAWN FLETCHER,
21 having been first duly sworn by the Foreperson of the
22 Grand Jury to testify to the truth, the whole truth,
23 and nothing but the truth, testified as follows:

24

09:28 25 ///

EXAMINATION

BY MR. PESCI:

Q. I want to direct your attention to August the 8th going into August the 9th of 2017. Were you working?

A. Yes.

Q. What's your job?

A. I'm a senior crime scene analyst with Las Vegas Metro.

Q. And how long have you been in that job?

A. Twenty-one years.

Q. And what were your responsibilities, or were you called out on August the 9th to assist homicide detectives with an investigation?

A. I was.

Q. And as a crime scene analyst what are your job duties or what were they this particular early morning?

A. On that evening they had found a vehicle that was suspected to be involved in a homicide so I went out and we do what we call sealed the vehicle. So I photographed the vehicle where it was parked and I placed evidence seals on it and I followed the tow back to our lab.

09:29 1 Q. When you say lab, so the vehicle was towed
2 to the Las Vegas Metropolitan lab?

3 A. Yes.

4 Q. Did you take photographs of that vehicle?

09:29 5 A. I did.

6 Q. And I apologize. Before the vehicle was
7 processed, are you aware that a search warrant was
8 obtained?

9 A. Yes.

09:29 10 Q. And after the search warrant was obtained
11 did you process the vehicle?

12 A. I did.

13 Q. In addition to taking photographs was there
14 also photography taken of items recovered from inside of
09:29 15 the vehicle?

16 A. Yes.

17 Q. Do you often in your job recover items and
18 take them to another part of the lab where you can lay
19 them out and take photographs?

09:30 20 A. We do, yes.

21 Q. And that particular case did you do that?

22 A. Yes.

23 Q. I should say in this particular case.

24 A. I did.

09:30 25 Q. Showing you Grand Jury Exhibits 28 through

09:30 1 33. Did you recognize those?

2 A. Yes, these are pictures of that vehicle in
3 our garage.

4 Q. And are there also items that were
09:30 5 recovered from the trunk and inside of the vehicle?

6 A. Yes.

7 Q. Are these fair and accurate depictions of
8 the vehicle and its contents?

9 A. They are.

09:30 10 Q. And now I'm going to, when you're done I'm
11 going to steal them from you and over your left shoulder
12 I'm going to display them.

13 A moment ago, showing you Grand Jury
14 Exhibit 28, you spoke of sealing the vehicle; is that
09:30 15 correct?

16 A. Yes. This is the vehicle and if you can
17 see the orange sticker that's up on the top of the hood
18 there, that's one of our seals.

19 Q. And speaking of that orange seal, looking
09:30 20 at State's 29, is there more evidence of that seal?

21 A. Yes, the doors, we seal the hood, the doors
22 and the trunk.

23 Q. What's the purpose?

24 A. The purpose is just to maintain the
09:31 25 integrity of the evidence. If you open the door the

09:31 1 seals will break because they're just paper.

2 Q. So the photographs that we had looked at,
3 and now showing you State's Exhibit 30, that's before
4 entry was made into the vehicle?

09:31 5 A. Correct.

6 Q. Because the seal is still in place?

7 A. Yes.

8 Q. Now after making entry, including the
9 trunk, is that where certain items were photographed?

09:31 10 A. Yes.

11 Q. State's 31. Is this items taken from the
12 trunk?

13 A. Yes.

14 Q. In fact I think it's still in the trunk.

09:31 15 Is the spare tire in the top of the photograph?

16 A. Yeah, that's, they're still in the trunk.

17 Q. A moment ago I think you said, was it
18 homicide detectives that had obtained the search
19 warrant?

09:31 20 A. Yes, that's correct.

21 Q. You work in conjunction with them?

22 A. Yes.

23 Q. And did they, based on them having gone to
24 the actual murder scene and spoken with some witnesses

09:31 25 have information that sometimes you don't necessarily

09:32 1 have?

2 A. Yes. Usually when we work search warrants
3 like that, they will kind of let us know what we're
4 looking for.

09:32 5 Q. So that's based on their investigation and
6 then you try to see if you can find some of those items?

7 A. Correct.

8 Q. Were red shoes something of interest to the
9 detectives?

09:32 10 A. Yes, they were.

11 Q. And then also was firearms evidence
12 something also of interest?

13 A. Yes, it was.

14 Q. So in the exhibit that we're looking at,

09:32 15 State's 31 I believe, do we have some red Air Jordan
16 shoes?

17 A. Yes.

18 Q. Showing you State's 32, what are we looking
19 at here?

09:32 20 A. This is a box of 45 caliber ammunition that
21 we found.

22 Q. Now is this box taken out of the vehicle
23 and then photographed in another location in the lab?

24 A. Yes, it's laid on a piece of butcher paper.

09:32 25 Q. Does that show you that in fact this is no

09:32 1 longer in the vehicle, it's from outside the vehicle?

2 A. Correct.

3 Q. But was that item recovered from inside the
4 vehicle?

09:32 5 A. It was.

6 Q. And then in State's 33, do you do a closeup
7 of those particular cartridges?

8 A. Yes.

9 Q. How much experience do you have with
09:33 10 firearms?

11 A. Quite a bit.

12 Q. Okay. When we talk about a cartridge,
13 layman's terms sometimes people say a bullet?

14 A. Correct.

09:33 15 Q. What is a cartridge? The definition from
16 your experience.

17 A. This is an example of a cartridge. So the
18 cartridge is the entire, it involves the cartridge case
19 which houses the bullet, the gunpowder and everything
09:33 20 else. So the cartridge is the whole thing. It's the
21 cartridge case, the bullet is in there. Those have not
22 been fired yet.

23 Q. And then are there various manufacturers
24 that stamp their cartridges with their particular
09:33 25 company?

09:33 1 A. Yes.

2 Q. Now what brand are we looking at here?

3 A. I believe that's going to be Federal. You
4 can see the FC in the middle and the F is for Federal,
09:33 5 the N and the R is for NATO round and then the 45 auto
6 is the caliber.

7 Q. Again based on conversations with the
8 homicide detectives that had been at the actual murder
9 scene, was this particular head stamp of interest?

09:34 10 A. I don't recall but probably. I know
11 45 caliber was of interest.

12 Q. And that's why you were asked to take
13 photographs?

14 A. That's correct.

09:34 15 Q. And then in addition did you collect other
16 items from inside of the car including some receipts and
17 also a cell phone?

18 A. Yes. Detective Merrick I believe took the
19 cell phone.

09:34 20 Q. Is it common for crime scene analysts to
21 impound most of the items?

22 A. Yes.

23 Q. But sometimes, especially cell phones, do
24 you hand them off to the detectives?

09:34 25 A. Yes, a lot of times they'll take the cell

09:34 1 phones.

2 Q. Is that because later on a subsequent
3 search warrant is obtained to get inside the cell phone?

4 A. Yes.

09:34 5 Q. So you give it to them so they can process
6 it?

7 A. That's correct.

8 Q. The other items, do you impound them?

9 A. Yes.

09:34 10 Q. Just briefly explain. What does that mean?

11 A. When we impound something we'll do like
12 you've seen already, we take the photographs. When we
13 impound something sometimes we fingerprint process
14 things first. Sometimes we swab them for DNA first.

09:34 15 And then basically they get placed in an evidence bag
16 after all of that processing, whatever is deemed
17 necessary is done, they get placed into an evidence bag,
18 the evidence bag gets fold over or tied depending on
19 what kind we're using, it's sealed with a red seal, it's

09:35 20 different than the ones you saw, but it's sealed with an
21 evidence seal that I would initial and date at that time
22 and then you can also tell that that seal hasn't been
23 broken, and then we put a label on the front of the
24 package that's going to have the case number, it's going

09:35 25 to have the location where I was recovering the

09:35 1 evidence, so in this case it's going to say either the
2 CSI garage or where I originally towed the vehicle from
3 since I towed the vehicle. It's going to have a
4 description, very detailed, of exactly what is in that
09:35 5 bag and then again I'm going to sign that and it's going
6 to have my P number and a package number.

7 Q. And is that so that if later on further
8 forensic testing is done we all know what item this is,
9 what event it's associated with?

09:35 10 A. Yes. And there's a chain of custody at the
11 bottom of that label too. So if that package is opened
12 for firearms or anything like that, they will cut
13 through that, cut it and then they'll sign the chain of
14 custody and they will reseal it.

09:36 15 MR. PESCI: Thank you very much.

16 That concludes our questions. Any
17 questions from the ladies and gentlemen of the Grand
18 Jury?

19 THE FOREPERSON: By law, these proceedings
09:36 20 are secret and you are prohibited from disclosing to
21 anyone anything that has transpired before us, including
22 evidence and statements presented to the Grand Jury, any
23 event occurring or statement made in the presence of the
24 Grand Jury, and information obtained by the Grand Jury.

09:36 25 Failure to comply with this admonition is a

09:36 1 gross misdemeanor punishable up to 364 days in the Clark
2 County Detention Center and a \$2,000 fine. In addition,
3 you may be held in contempt of court punishable by an
4 additional \$500 fine and 25 days in the Clark County
09:36 5 Detention Center.

6 Do you understand this admonition?

7 THE WITNESS: Yes.

8 THE FOREPERSON: Thank you. You are
9 excused.

09:36 10 THE WITNESS: Thank you.

11 MR. PESCI: The State calls William Speas.

12 THE FOREPERSON: Please raise your right
13 hand.

14 You do solemnly swear the testimony you are
09:37 15 about to give upon the investigation now pending before
16 this Grand Jury shall be the truth, the whole truth, and
17 nothing but the truth, so help you God?

18 THE WITNESS: I do.

19 THE FOREPERSON: Please be seated.

09:37 20 You are advised that you are here today to
21 give testimony in the investigation pertaining to the
22 offenses of burglary while in possession of a firearm,
23 conspiracy to commit robbery, robbery with use of a
24 deadly weapon, attempt robbery with use of a deadly
09:37 25 weapon, murder with use of a deadly weapon, involving

09:37 1 Demario Robinson, Raekwon Robertson and Davontae
2 Wheeler.

3 Do you understand this advisement?

4 THE WITNESS: I do.

09:38 5 THE FOREPERSON: Please state your first
6 and last name and spell both for the record.

7 THE WITNESS: My name is William Speas.

8 William, W-I-L-L-I-A-M, Speas, S-P-E-A-S.

9 WILLIAM SPEAS,

09:38 10 having been first duly sworn by the Foreperson of the
11 Grand Jury to testify to the truth, the whole truth,
12 and nothing but the truth, testified as follows:

13

14 EXAMINATION

09:38 15

16 BY MR. PESCI:

17 Q. Sir, what do you do for a living?

18 A. I'm a senior crime scene analyst with Las
19 Vegas Metro CSI.

09:38 20 Q. How long have you been in that position?

21 A. Just over 18 years.

22 Q. What do you do in that position?

23 A. In this position what we'll do is we'll
24 assist detectives, we'll assist officers at a scene.

09:38 25 Basically we document, we collect evidence, we protect

09:38 1 evidence, we'll process for fingerprints and we'll --

2 Q. When you document do you sometimes take
3 photographs?

4 A. I take, usually every time I'll take
09:38 5 photographs.

6 Q. I want to direct your attention to August
7 the 9th of 2017. Were you called out to assist with
8 documentation at a scene at 5536 West Dewey Drive here
9 in Las Vegas, Nevada?

09:39 10 A. I was.

11 Q. And did you as a part of your duties there
12 take photographs?

13 A. I did.

14 Q. May I show you Grand Jury Exhibits 16
09:39 15 through 27. If you could take a moment to review those
16 please.

17 Do you recognize those?

18 A. I do. These were not all at that same
19 address. Some were at a later address also.

09:39 20 Q. Good point. The second address, were you
21 also at that one?

22 A. I was.

23 Q. Were you also part of the process of
24 documenting that scene?

09:39 25 A. Yes, I was there to assist in the search

09:39 1 warrant by documentation.

2 Q. And are these all fair and accurate
3 depictions of those two scenes?

4 A. Yes, they are.

09:39 5 Q. Over your left shoulder I'm going to
6 display these. The first scene that we're focusing on
7 is the Dewey Avenue. Looking at State's 16, do you
8 recognize that?

9 A. Yes, that's a residence there on Dewey.

09:40 10 Q. And what time did you get there, about what
11 time?

12 A. I work graveyard shift. This was I believe
13 just before midnight.

14 Q. Is that why we still have the sky being
09:40 15 dark?

16 A. Yes. These are timed exposures. It was
17 actually probably a little bit darker than that.

18 Q. When you say timed exposures, what does
19 that mean?

09:40 20 A. It means I set the camera on a tripod and
21 then I did timed exposures to allow for starlight,
22 moonlight, any available light out there to expose the
23 whole area. As you can see under the garage awning and
24 stuff where they have like light bulbs and stuff set up,
09:40 25 it's kind of burnt out a little bit because it got a

09:40 1 little bit overexposed under there.

2 Q. Focusing in now, we were just looking at
3 State's 16, but looking at State's 17, is that a closeup
4 of, is that a retaining wall? What would you call that?

09:41 5 A. That's what I refer to it as a retaining
6 wall.

7 Q. And what are you trying to document there?

8 A. That's what I have is, I have blood that's
9 out there on the, it's like an RV pad, that flat area,
09:41 10 that driveway that's right there in front of the
11 retaining wall, and we have what's apparent blood on
12 there.

13 Q. When you arrived at the scene was the
14 victim present?

09:42 15 A. No, the victim had been transported prior
16 to my arrival.

17 Q. Do you take photographs before you put any
18 placards in to notate specific locations and pieces of
19 evidence?

09:42 20 A. Yes, I photograph the scene as it appears
21 when I arrive.

22 Q. Later on to document specific pieces of
23 evidence do you utilize numbered placards?

24 A. Yes, I do.

09:42 25 Q. Looking at State's 18. What are we looking

09:42 1 at?

2 A. These are numbered placards that are set
3 out to show the location of, in this case it would have
4 been cartridge cases.

09:42 5 Q. And cartridge cases, were those impounded?

6 A. Yes, they were.

7 Q. And then are they, did you impound them
8 or --

9 A. No, that was Ebony Stevens did those.

09:42 10 Q. And Ebony Stevens, is she another crime
11 scene analyst?

12 A. Yes. She worked the scene with me.

13 Q. Now we talked about this scene. This is
14 the murder scene. Were you also involved with the
09:43 15 homicide detectives of taking some photographs at the
16 Short Line Market at 7325 South Jones?

17 A. I took one right at the end cause I heard
18 that was a follow-up area just as I was, just before I
19 went back to the lab.

09:43 20 Q. Did you also assist homicide with
21 documenting a scene at 919 Bagpipe Court in North Las
22 Vegas?

23 A. Yes, I did that the next evening.

24 Q. Showing you Grand Jury Exhibit 19. Do you
09:43 25 recognize that?

09:43 1 A. Yes, that's the residence on Bagpipe.

2 Q. And was a search warrant obtained by
3 homicide detectives prior to making entry and searching
4 inside the home?

09:43 5 A. Yes.

6 Q. And then did you work with homicide as far
7 as gathering information from them as to what they might
8 be looking for?

9 A. They will do the search. I documented the
09:43 10 location, overalls and interiors and then the location
11 and view of items that they found on their search
12 warrant.

13 Q. So you're working in tandem in essence?

14 A. Yes, I do.

09:44 15 Q. An item of interest, State's 20, do you
16 recognize that?

17 A. Yes, that was a pink backpack that was
18 found up in one of the bedrooms.

19 Q. And then inside of the backpack, in 21,
09:44 20 what are we looking at?

21 A. Inside was a semi-automatic handgun.

22 Q. And then State's 22?

23 A. That's the handgun outside of the bag.

24 Q. And then did you photograph it outside of
09:44 25 the holster in State's 23?

09:44 1 A. Yes, I did. In fact there's my scale with
2 my name and P number on it.

3 Q. And P number, is that personnel number?

4 A. That's my personnel number.

09:44 5 Q. And then were photographs taken of the
6 magazine in State's 24?

7 A. Yes, that's where it's downloaded. This
8 shows the magazine out, it shows the number of
9 cartridges that were inside the magazine and because I
09:44 10 don't have a cartridge at the top by the chamber, it had
11 an empty chamber in this case.

12 Q. And then State's 25, did you show, is that
13 referred to often as the head stamp of the cartridge?

14 A. Yes, it is.

09:45 15 Q. And what particular brand are we looking
16 at?

17 A. That is R-P 45 auto.

18 Q. And then based on your experience out at
19 the scene, were 45 caliber cartridge cases found at the
09:45 20 murder scene?

21 A. Yes.

22 Q. Were there different brands, so different
23 head stamps on those three 45 caliber cartridges?

24 A. There were three 45 caliber cartridges,
09:45 25 three different head stamps.

09:45 1 Q. I apologize. Was there also another
2 cartridge but not a 45?

3 A. Yes, sir, there was also a 22 caliber
4 cartridge.

09:45 5 Q. And also still at the same location we
6 spoke of earlier, State's 26, what are we looking at?

7 A. A pair of red shoes.

8 Q. And then I kind of went out of order, I
9 apologize. Do you normally do State's 27, an overall
09:45 10 and then State's 26, a closeup?

11 A. Yeah, this was the location of the shoes.
12 They were behind a desk in the same room that the pink
13 bag was in.

14 MR. PESCI: All right. Thank you. That
09:46 15 concludes my questions. Are there any questions from
16 the ladies and gentlemen of the Grand Jury?

17 BY A JUROR:

18 Q. How many rounds does that magazine hold?

19 A. That particular magazine I am not sure.
09:46 20 Normally -- if I can refer to my notes, I may have put
21 the capacity in there.

22 BY MR. PESCI:

23 Q. Would that refresh your recollection?

24 A. Yes, it would.

09:46 25 Q. Please do.

09:46 1 A. No, sir, that does not say the number of
2 rounds in there. Since I did not load it, I unloaded
3 it, I don't know exactly what the capacity was. It is a
4 smaller one and normal 45 of that caliber or of that
09:47 5 design, which would be like a 1911, would hold like I
6 believe something like seven or eight.

7 Q. But did you indicate that one, there was
8 one empty space in the magazine?

9 A. Yes. There may have well have been. I'm
09:47 10 not sure exactly. A lot of times they'll have a
11 numbering on the edge of the magazine or in the back
12 will indicate how many go in, but this one did not.

13 BY A JUROR:

14 Q. You indicated that three casings were found
09:47 15 at the scene. Did one of the casings head stamp match
16 the casings that were on the cartridges found in the
17 weapon?

18 A. Yes, one of the 45 caliber cartridge cases
19 was an R-P 45 auto.

09:47 20 BY MR. PESCI:

21 Q. So I can clarify. Thank you very much. So
22 there are three 45 caliber cartridges at the murder
23 scene?

24 A. And one 22 caliber cartridge.

09:47 25 Q. And one 22. And the grand juror's question

09:48 1 is that one of the 45's at the murder scene matched the
2 caliber that we just showed in our recent photograph?

3 A. Yes, it did.

4 MR. PESCI: Does that answer your question?

09:48 5 A JUROR: Yes.

6 MR. PESCI: Are there any other questions?

7 BY A JUROR:

8 Q. You said caliber. Was it caliber, was it
9 head stamp that matched? What was --

09:48 10 A. Okay. The caliber that's put on the head
11 stamp is usually the caliber of the weapon. On the 22
12 it's because it's such a small cartridge case, usually
13 like in this one it only had a C on it and we just know
14 from looking at the size of it that that's a small 22.

09:48 15 It doesn't say 22 on it but the 45 caliber ones do.

16 BY MR. PESCI:

17 Q. So focusing in on State's 25. On the head
18 stamp does it show in fact the number 45 for the
19 caliber?

09:48 20 A. Yes.

21 Q. And does it also have the R&P auto?

22 A. Yes, it's R-P 45 auto, yes.

23 Q. So a particular company head stamps their
24 cartridge that way?

09:49 25 A. They, some of them do. A lot -- they'll be

09:49 1 varying. But that's normally, like for the 45 caliber
2 they'll have that. So you'll be able to pick it up,
3 look at it and you'll know what caliber that is and
4 that's the right caliber for your weapon.

09:49 5 Q. But one of the cartridge cases at the
6 murder scene matched this particular head stamp?

7 A. Yes, it did.

8 Q. Thank you.

9 BY A JUROR:

09:49 10 Q. And that's the head stamp that was found in
11 the weapon?

12 A. In the handgun that I recovered at the
13 search warrant, yes.

14 THE FOREPERSON: By law, these proceedings
09:49 15 are secret and you are prohibited from disclosing to
16 anyone anything that has transpired before us, including
17 evidence and statements presented to the Grand Jury, any
18 event occurring or statement made in the presence of the
19 Grand Jury, and information obtained by the Grand Jury.

09:49 20 Failure to comply with this admonition is a
21 gross misdemeanor punishable up to 364 days in the Clark
22 County Detention Center and a \$2,000 fine. In addition,
23 you may be held in contempt of court punishable by an
24 additional \$500 fine and 25 days in the Clark County
09:49 25 Detention Center.

09:49 1 Do you understand this admonition?

2 THE WITNESS: I do.

3 THE FOREPERSON: Thank you and you are

4 excused.

09:50 5 THE WITNESS: Thank you.

6 MR. PESCI: Thank you.

7 MS. O'HALLORAN: State's next witness is

8 Glezzelle Tapay.

9 THE FOREPERSON: Please raise your right

09:50 10 hand.

11 You do solemnly swear the testimony you are

12 about to give upon the investigation now pending before

13 this Grand Jury shall be the truth, the whole truth, and

14 nothing but the truth, so help you God?

09:51 15 THE WITNESS: I do.

16 THE FOREPERSON: Please be seated.

17 You are advised that you are here today to

18 give testimony in the investigation pertaining to the

19 offenses of burglary while in possession of a firearm,

09:51 20 conspiracy to commit robbery, robbery with use of a

21 deadly weapon, attempt robbery with use of a deadly

22 weapon, and murder with use of a deadly weapon,

23 involving Demario Robinson, Raekwon Robertson and

24 Davontae Wheeler.

09:51 25 Do you understand this advisement?

09:51 1 THE WITNESS: I do.

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

4 THE WITNESS: Glezzelle Tapay.

09:51 5 G-L-E-Z-Z-E-L-L-E, last name Tapay, T-A-P-A-Y.

6 GLEZZELLE TAPAY,

7 having been first duly sworn by the Foreperson of the
8 Grand Jury to testify to the truth, the whole truth,
9 and nothing but the truth, testified as follows:

09:51 10

11 EXAMINATION

12

13 BY MS. O'HALLORAN:

14 Q. Miss Tapay, what do you do for a living?

09:51 15 A. I'm a crime scene analyst.

16 Q. How long have you been a crime scene
17 analyst?

18 A. Just under two years.

19 Q. What are some of your job responsibilities

09:51 20 as a crime scene analyst?

21 A. As a crime scene analyst we are supposed to
22 report to a scene, we document the scene in its original
23 condition through photography, notes and sometimes
24 diagrams.

09:52 25 Q. I'm going to direct your attention to

09:52 1 August 15th of 2017. Did you respond to an address at
2 6647 West Tropicana?

3 A. Yes.

4 Q. What was the purpose of responding to that
09:52 5 address?

6 A. We were there for a search warrant.

7 Q. And did you help to process that apartment?

8 A. I did.

9 Q. What specifically did you do while you were
09:52 10 there?

11 A. My part in that was to collect the
12 evidence. We photographed the scene and collected the
13 evidence.

14 Q. When you go to a scene to process it, do
09:52 15 you often work in conjunction with other crime scene
16 analysts?

17 A. Yes.

18 Q. Was there another crime scene analyst at
19 this particular apartment on that day?

09:53 20 A. There was.

21 Q. And was it you or that crime scene analyst
22 who took the photographs?

23 A. The other crime scene analyst took the
24 photos.

09:53 25 Q. But were you present to view all of the

09:53 1 items that you impounded before they were actually
2 impounded and where they were impounded from?

3 A. Yes.

4 Q. Was there anything of note that you
09:53 5 impounded from that particular address?

6 A. We impounded a firearm, some ammunition and
7 clothing.

8 Q. Do you recall what type of firearm it was
9 that you located?

09:53 10 A. The firearm was a Taurus PT 22.

11 Q. 22 caliber firearm?

12 A. Yes.

13 Q. Was it a handgun?

14 A. Yes.

09:54 15 Q. And would that have been a semi-automatic
16 handgun?

17 A. Semi-automatic.

18 Q. Where did you locate that firearm inside
19 the apartment?

09:54 20 A. The firearm was located in the south closet
21 underneath the bottom drawer of a dresser.

22 Q. You mentioned the south closet. Was that
23 inside a bedroom?

24 A. Yes.

09:54 25 Q. And how many bedrooms are in this

09:54 1 apartment?

2 A. The apartment was a two bedroom apartment.

3 Q. Which bedroom would the firearm have been
4 found in?

09:54 5 A. The northeast bedroom.

6 Q. Was there anything else found in that
7 bedroom that you impounded?

8 A. Ammunition and clothing.

9 Q. Do you recall what type of ammunition you
09:54 10 impounded?

11 A. There was a box of 22 caliber ammunition
12 and there was miscellaneous other caliber stamped with
13 different head stamps also.

14 Q. Regarding the 22 caliber ammunition, do you
09:55 15 recall the head stamp on that ammunition that you found
16 in that bedroom?

17 A. There was a C on the head stamp.

18 Q. Now I'm going to show you a packet of
19 photos. It's going to be Grand Jury Exhibit Number 34
09:55 20 through 37 and then 39 through 42. Can you tell me if
21 you recognize what's depicted in those photographs?

22 A. I recognize these three.

23 Q. So you recognize the first three?

24 A. Yes.

09:56 25 Q. So you recognize Exhibits 34, 35 and 36.

09:56 1 And we've been talking about your work at 6647 West
2 Tropicana. Was that an apartment number 104?

3 A. Correct.

4 Q. Publish Grand Jury Exhibit Number 34. Is
09:56 5 that the outside of the apartment?

6 A. Yes.

7 Q. And Grand Jury Exhibit Number 35, is that
8 just a photograph of the address of that apartment?

9 A. Yes.

09:56 10 Q. And then Exhibit Number 36, what are we
11 looking at here?

12 A. We are looking at the dresser that was
13 located in the closet with the bottom drawer pulled out,
14 that way you can see the weapon and ammunition.

09:56 15 Q. So you mentioned a Taurus 22 caliber
16 firearm that you found in the bedroom. Is that depicted
17 in this photograph?

18 A. Yes.

19 Q. Okay. And then there appears to be three
09:57 20 boxes of ammunition. Is that the ammunition that you
21 spoke of?

22 A. Yes.

23 Q. Are you able to see the 22 caliber
24 ammunition that you mentioned?

09:57 25 A. Yes, it is in one of those boxes.

09:57 1 Q. Did you find any clothing or did you
2 impound any clothing?

3 A. Yes.

4 Q. From that bedroom or from somewhere else in
09:57 5 the apartment?

6 A. In the same closet.

7 Q. Okay. What items of clothing did you
8 impound?

9 A. We recovered one black jacket, one black
09:57 10 sweater. There was also a green handkerchief.
11 Elsewhere in the bedroom there was a scarf that was blue
12 and brown and also in the same closet there was shoes.

13 Q. Do you recall did you impound any hoodies?

14 A. Yes.

09:58 15 Q. What color was that hoodie that you
16 impounded?

17 A. A black hoodie.

18 Q. Was it found in that same closet?

19 A. Yes.

09:58 20 MS. O'HALLORAN: I have no further
21 questions of this witness.

22 THE FOREPERSON: By law, these proceedings
23 are secret and you are prohibited from disclosing to
24 anyone anything that has transpired before us,
09:58 25 including -- oh, I'm sorry.

09:58 1 BY MR. PESCI:

2 Q. So Grand Jury Exhibit 42, do you recognize
3 that?

4 A. I do.

09:58 5 Q. And what do you recognize that to be?

6 A. The 22 cartridges that have the head stamp
7 with the C on them.

8 Q. I'm going to have you look over your left
9 shoulder. As we zoom in, does this indicate the caliber
09:59 10 here on the box?

11 A. Yes.

12 Q. And then as we zoom in, is that the head
13 stamp with the C?

14 A. That is the head stamp with the C.

09:59 15 MR. PESCI: All right. Thank you. Nothing
16 further.

17 THE FOREPERSON: No questions?

18 By law, these proceedings are secret and
19 you are prohibited from disclosing to anyone anything
09:59 20 that has transpired before us, including evidence and
21 statements presented to the Grand Jury, any event
22 occurring or statement made in the presence of the Grand
23 Jury, and information obtained by the Grand Jury.

24 Failure to comply with this admonition is a
09:59 25 gross misdemeanor punishable up to 364 days in the Clark

09:59 1 County Detention Center and a \$2,000 fine. In addition,
2 you may be held in contempt of court punishable by an
3 additional \$500 fine and 25 days in the Clark County
4 Detention Center.

09:59 5 Do you understand this admonition?

6 THE WITNESS: Yes.

7 THE FOREPERSON: Thank you and you are
8 excused.

9 THE WITNESS: Thank you.

10:00 10 MS. O'HALLORAN: State's next witness is
11 going to be John Relato.

12 THE FOREPERSON: Please raise your right
13 hand.

14 You do solemnly swear the testimony you are
10:00 15 about to give upon the investigation now pending before
16 this Grand Jury shall be the truth, the whole truth, and
17 nothing but the truth, so help you God?

18 THE WITNESS: I swear.

19 THE FOREPERSON: Please be seated.

10:01 20 You are advised that you are here today to
21 give testimony in the investigation pertaining to the
22 offenses of burglary while in possession of a firearm,
23 conspiracy to commit robbery, robbery with use of a
24 deadly weapon, attempted robbery with use of a deadly
10:01 25 weapon, and murder with use of a deadly weapon,

10:01 1 involving Demario Robinson, Raekwon Robertson, Davontae
2 Wheeler.

3 Do you understand this advisement?

4 THE WITNESS: Yes, sir.

10:01 5 THE FOREPERSON: Please state your first
6 and last name and spell both for the record.

7 THE WITNESS: First name John Paolo, last
8 name Relato. J-O-H-N, space, P-A-O-L-O, as for last
9 name, it's R-E-L-A-T-O, Relato.

10:01 10 JOHN PAOLO RELATO,
11 having been first duly sworn by the Foreperson of the
12 Grand Jury to testify to the truth, the whole truth,
13 and nothing but the truth, testified as follows:

14

10:01 15 EXAMINATION

16

17 BY MS. O'HALLORAN:

18 Q. Mr. Relato, I'd like to direct your
19 attention to August 9th of this year. Where were you
10:01 20 living on that date?

21 A. I was at my residence at 5536 West Dewey
22 Drive, Las Vegas, Nevada, 89118.

23 Q. And who did you live with at that time?

24 A. There was my stepdad or ex-stepdad, mother,
10:02 25 sister and my cousin.

10:02 1 Q. What was the name of your cousin?

2 A. Gabriel George Valenzuela. But the family
3 refers to him as Kevin most of the time.

4 Q. So he, on that day he lived with you at
10:02 5 5536 West Dewey?

6 A. Yes, ma'am.

7 Q. In the early morning hours of August 9th
8 did something happen that caused you to call the police?

9 A. Yes, I found him laying on the floor, he
10:02 10 had, of the driveway in front of the house. There was a
11 wound on his left, yeah his left I guess cranium, head,
12 and there was like, there was bleeding. I just saw
13 him -- well, before that I heard gunshots and, yeah, I
14 didn't, I didn't really want to like, I was not sure
10:03 15 whether or not to check but I saw like, so I went
16 upstairs, looked out through the window, I found, I
17 found something like shining but it turned out to be the
18 blood so. And then I went out like, well, I didn't know
19 it was blood when I checked upstairs so I kind of went
10:03 20 out through the front door and I saw him laying there.

21 Q. So you heard gunshots, you were inside your
22 house at the time you heard gunshots?

23 A. Yes, ma'am.

24 Q. And then you looked outside and decided to
10:03 25 go outside?

10:03 1 A. Yeah.

2 Q. When you saw your cousin laying on the
3 ground?

4 A. Yes.

10:03 5 Q. When you went outside, what happened at
6 that point?

7 A. I, all I saw, well, first of all like, like
8 I use the front door because at the time the front door
9 was jammed and it did, it sounded like gunshots so I was
10:04 10 kind of cautious and, you know, when I use the front
11 door it's really hard to open from the outside so if the
12 worse were to happen, if I were to, you know, if I were
13 to get shot or whatever, like anyone won't just be like
14 able to barge in through the front door. Anyways I saw
10:04 15 him laying there, I turned on the flashlight on my
16 phone. I first looked around, looked around, cause the
17 front door, there was like, just kind of like a little
18 dip in the house where someone could be hiding. So I
19 was looking around, I looked behind the wall into the
10:04 20 street and then there was like no one and then I, while
21 I was doing that with the flashlight I was calling 911
22 to get emergency responders.

23 Q. At any point while you were doing that did
24 you see anybody in the area?

10:04 25 A. I did not.

10:04 1 Q. Did you ever see who shot your cousin?

2 A. No, I did not. This was, well, I heard the
3 gunshots like two minutes before I went outside and I
4 made the call I guess, so between the whole two minute
10:05 5 gap I checked upstairs, went -- yeah, I checked
6 upstairs, went out and found him and called 911.

7 Q. I'm going to show you a photograph. It's
8 Grand Jury Exhibit Number 16. Is that your home?

9 A. Yes, ma'am.

10:05 10 Q. 5536 West Dewey?

11 A. Yes.

12 Q. Can you see on this photograph where your
13 cousin was laying when you went outside?

14 A. Can I get up?

10:05 15 Q. If you want to, sure, that's fine.

16 A. Around right here where the blood was.

17 Q. So you're pointing to the middle of the
18 picture just to the right of that retaining wall; is
19 that correct?

10:06 20 A. Yes. Because that is his car right there
21 and usually he gets the mail which is over here, comes
22 back, sits on that little structure there and opens up
23 the mail and I found him on the floor there.

24 Q. Okay. You can have a seat. So the mailbox
10:06 25 that you're referring to, it's not depicted in this

10:06 1 photograph?

2 A. No, it's not.

3 Q. But it would be to the bottom left of this
4 picture?

10:06 5 A. Yes, it's just down the street.

6 Q. Okay. Now I'm going to show you a
7 photograph, and I apologize in advance because it is
8 going to be sensitive, but I need you to tell me, this
9 is Grand Jury Number 6, if you recognize the person in

10:06 10 that photograph?

11 A. That is my cousin.

12 Q. That is your cousin Gabriel Valenzuela?

13 A. Yes, ma'am.

14 MS. O'HALLORAN: I have no further

10:06 15 questions for this witness. Do the members of the Grand
16 Jury have any questions?

17 THE FOREPERSON: By law, these proceedings
18 are secret and you are prohibited from disclosing to
19 anyone anything that has transpired before us, including
10:06 20 evidence and statements presented to the Grand Jury, any
21 event occurring or statement made in the presence of the
22 Grand Jury, and information obtained by the Grand Jury.

23 Failure to comply with this admonition is a
24 gross misdemeanor punishable up to 364 days in the Clark
10:06 25 County Detention Center and a \$2,000 fine. In addition,

10:06 1 you may be held in contempt of court punishable by an
2 additional \$500 fine and 25 days in the Clark County
3 Detention Center.

4 Do you understand this admonition?

10:07 5 THE WITNESS: I understand.

6 THE FOREPERSON: Thank you very much and
7 you are excused.

8 MR. PESCI: State calls Detective Mitch
9 Dosch.

10:08 10 THE FOREPERSON: Please raise your right
11 hand.

12 You do solemnly swear the testimony you are
13 about to give upon the investigation now pending before
14 this Grand Jury shall be the truth, the whole truth, and
15 nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE FOREPERSON: Please be seated.

18 THE WITNESS: Thank you.

19 THE FOREPERSON: You are advised that you
10:08 20 are here today to give testimony in the investigation
21 pertaining to the offenses of burglary while in
22 possession of a firearm, conspiracy to commit robbery,
23 robbery with use of a deadly weapon, attempt robbery
24 with use of a deadly weapon, and murder with use of a
10:08 25 deadly weapon, involving Demario Robinson, Raekwon

10:08 1 Robertson and Davontae Wheeler.

2 Do you understand this advisement?

3 THE WITNESS: I do.

4 THE FOREPERSON: Please state your first

10:08 5 and last name and spell both for the record.

6 THE WITNESS: My name is Mitchell,

7 M-I-T-C-H-E-L-L, Dosch, D-O-S-C-H.

8 MITCHELL DOSCH,

9 having been first duly sworn by the Foreperson of the

10:08 10 Grand Jury to testify to the truth, the whole truth,

11 and nothing but the truth, testified as follows:

12

13 EXAMINATION

14

10:08 15 BY MR. PESCI:

16 Q. Sir, what do you do for a living?

17 A. I'm a detective with the Las Vegas

18 Metropolitan Police Department currently assigned to the

19 homicide section.

10:08 20 Q. Did you catch a homicide last night and

21 early this morning?

22 A. I did.

23 Q. You and your squad?

24 A. It was.

10:09 25 Q. Do you work together with Detective Ryan

10:09 1 Jaeger?

2 A. He is my partner.

3 Q. And then also with a Detective Lora Cody?

4 A. Yes, she is on my squad.

10:09 5 Q. Did the three of you and other members of
6 your squad work a homicide that occurred early in the
7 morning hours of August the 9th here at 5536 West Dewey
8 Drive?

9 A. Yes, we did.

10:09 10 Q. Do you know when the first call came in for
11 service to that location?

12 A. At 12 minutes after midnight, otherwise
13 known as 0012 hours.

14 Q. In the course of investigations do you,
10:09 15 meaning the Metropolitan Police Department, assign a
16 unique event number to a particular investigation?

17 A. We do.

18 Q. And what was the event number or do you
19 recall the event number in this case?

10:09 20 A. I do. The first portion, if you think of
21 the event number in two halves, is your first half is
22 essentially the date. This particular event number was
23 170809-0029. If you'll look at those first six digits,
24 it's the year, followed by the month, 08, and the date,
10:10 25 09. As far as the other half, the second half, the 0029

10:10 1 is basically interactions by law enforcement, whether
2 proactive or reactive with respect to our department.
3 So if our officers are conducting a traffic stop, that
4 could be 0001, if somebody is calling in an incident
10:10 5 that could be 0200 and so on and so forth through the
6 course of the entire day, however many numbers we're
7 going to get to.

8 Q. Speaking of an event number, in the course
9 of your investigation do sometimes other incidents
10:10 10 become involved in your investigation of your original
11 murder?

12 A. Absolutely.

13 Q. In this particular case did you receive
14 information from a briefing in relation to individuals
10:10 15 that might have fit the description given by the jogger
16 being at a convenience store somewhat nearby?

17 A. We did.

18 Q. And did you and your team follow-up on that
19 convenience store incident?

10:11 20 A. We did.

21 Q. And was an individuals by the name of
22 Nikolaus Spahn spoken to?

23 A. He was.

24 Q. Did he fill out a handwritten voluntary
10:11 25 statement?

10:11 1 A. What is otherwise known as a handwritten
2 voluntary statement.

3 Q. Showing you Grand Jury Exhibit 43, do you
4 recognize that?

10:11 5 A. I do.

6 Q. And what do you recognize that to be?

7 A. It is the Las Vegas Metropolitan Police
8 Department voluntary statement.

9 Q. What's the event number?

10:11 10 A. 170809-0029.

11 Q. Now I want to display over your left
12 shoulder so the Grand Jury can see Exhibit 43. We had
13 testimony from the actual individual who filled out this
14 portion, the details, and also his personal information.

10:11 15 Is it customary for the top information to be filed out
16 by a Metropolitan Police officer, a patrol officer?

17 A. It is.

18 Q. Does the event number at the top of this
19 voluntary statement, does it relate to the murder

10:12 20 investigation?

21 A. It does.

22 Q. Okay. And then it has a time as far as
23 when it occurred. Is this referring to the murder or is
24 it referring to Mr. Spahn's incident on a different
10:12 25 time?

10:12 1 A. It's referring to the murder.

2 Q. Okay. So when we see this date and time,
3 that's associated with your murder investigation, and
4 the details that Mr. Spahn gave was about 11:30 p.m. on
10:12 5 August the 8th?

6 A. That's correct.

7 Q. Okay. Just so it's clear as to why we have
8 those numbers on the same piece of paper.

9 A. Yes.

10:12 10 Q. Okay. Now in the course of your
11 investigation did you first go out to the murder scene?

12 A. We did.

13 Q. And did you work the scene as far as --
14 what's the division of labor at the scene? I apologize.

10:12 15 A. Well, it's just that, because we
16 essentially approach these investigations almost in a
17 wolf pack mentality. What I mean by that is we will
18 roll out as many available detectives from our squad who
19 is the squad assigned to investigate this particular
10:13 20 incident. So we could have as many as six detectives
21 that will come out and obviously six detectives don't
22 perform the same singular task, there is a division of
23 labor that occurs. In this case, my partner, Detective
24 Jaeger, he was assigned to document the scene with the
10:13 25 crime scene analyst while I perform ancillary tasks such

10:13 1 as locating video surveillance, speaking with witnesses
2 and conducting whatever follow-up needs to be related
3 outside of the crime scene itself.

4 Q. And then in that investigation outside of
10:13 5 the crime scene itself, because you said Detective
6 Jaeger did that, was there recovery of surveillance from
7 the location where Mr. Spahn was working?

8 A. There was.

9 Q. And do you remember the name of that store
10:13 10 and where it was located?

11 A. The Short Line Express. And as far as the
12 distance from the actual crime scene, it's close but I
13 can't tell you that distance.

14 Q. Is it something where you could get to by
10:14 15 car in a matter of minutes?

16 A. Matter of minutes, absolutely.

17 Q. Showing you Grand Jury Exhibit 4. Have you
18 reviewed the surveillance from the Short Line Express?

19 A. I am intimately familiar with this video,
10:14 20 yes.

21 Q. And then this video depicts events from
22 August the 8th of 2017; correct?

23 A. Correct.

24 Q. In the course of your investigation, you
10:14 25 being your collective team, did you have information

10:14 1 about a white vehicle that looked like a Crown Vic?

2 A. Or a, kind of the sister vehicle to that of
3 a Grand Marquis which is manufactured by Mercury.

4 Q. And did the jogger relay information about
10:14 5 four individuals being in that vehicle?

6 A. Yes, he did.

7 Q. Did it match the surveillance that we
8 looked at, did it match the color and the type of
9 vehicle described?

10:15 10 A. Yes.

11 Q. And in fact did you receive a plate number
12 from the jogger?

13 A. We did.

14 Q. And does that plate show up in this
10:15 15 surveillance footage?

16 A. Not in its entirety, but if you'll notice
17 the front license plate of the vehicle, that is a Grand
18 Marquis and it's depicted in the middle of the other two
19 white vehicles. There's some folds to it, some bending,
10:15 20 and by the placement of the camera angle with that bend
21 in the license plate you can actually see the numbers,
22 the first three numbers of the license plate, 473.

23 Q. And then based on this surveillance did you
24 and your team obtain copies of this surveillance from
10:15 25 the Short Line Express?

10:15 1 A. We did.

2 Q. And then based on the information gathered
3 during the course of your investigation did you try to
4 ascertain who these individuals were?

10:15 5 A. Without question.

6 Q. And then in the process of figuring out who
7 they were, did you also try to find specific items of
8 clothing that was unique to the individuals depicted in
9 the surveillance?

10:16 10 A. We did.

11 Q. Did you receive information from the
12 gentleman working the convenience store, Mr. Spahn,
13 about one of the individuals carrying a firearm on his
14 hip?

10:16 15 A. Yeah, what is otherwise known as open
16 carry, meaning that firearm is visible to other people
17 and is not concealed in any manner.

18 Q. And based on the course of your
19 investigation, the reviewing of surveillance and talking
10:16 20 to witnesses, were search warrants obtained to try to
21 find evidence associated with this incident?

22 A. Correct.

23 Q. Specifically was there a search warrant
24 obtained for a Bagpipe address?

10:16 25 A. Yes, there was.

10:16 1 Q. Do you remember the address?

2 A. 919 Bagpipe. It's in North Las Vegas.

3 Q. Was a 45 handgun found during the execution
4 of that warrant?

10:16 5 A. Yes, there was.

6 Q. When we speak of a warrant, that's when you
7 get permission from the court to search a location?

8 A. That's correct.

9 Q. Did you obtain permission from a court by
10:16 10 way of a search warrant to also search the area of West
11 Tropicana, a specific address?

12 A. 6647 West Tropicana, unit 104, I did.

13 Q. And in the course of your investigation who
14 did you have associated with that location?

10:17 15 A. An individual by the name of Raekwon
16 Robertson.

17 Q. And was a firearm found at that location?

18 A. Yes, a 22 caliber semi-automatic firearm
19 was in fact recovered from that residence.

10:17 20 Q. And backing up to the residence on Bagpipe.
21 What information from the course of your investigation
22 did you have as far as who was associated with that
23 address?

24 A. There were two individuals of particular
10:17 25 concern to us that were associated with that address,

10:17 1 that being Demario Lofton-Robinson and his younger
2 brother.

3 Q. Do you know his younger brother's name?

4 A. Yes, it is DeShawn Robinson. So there is
10:17 5 no Lofton hyphen portion to his last name.

6 Q. Is his younger brother a juvenile thus we
7 don't have him in this proceeding?

8 A. That is correct.

9 Q. But he was a part of your investigation?

10:18 10 A. Yes, he was.

11 Q. Now we talked about two addresses. I want
12 to switch to an address on Civic Center. Can you tell
13 us about that?

14 A. Yes, it's 3300 Civic Center, apartment 2F
10:18 15 as in Frank.

16 Q. And was a firearm found at that location?

17 A. Yes, a third firearm was recovered in
18 addition to the first two which was a 45 caliber
19 semi-automatic handgun.

10:18 20 Q. All right. And then why were a 45 and a 22
21 of interest to you and your team?

22 A. They were important to us because of the
23 physical evidence that's left at the crime scene, that
24 being 5536 Dewey. Specifically when a firearm is
10:18 25 discharged and ammunition has been discharged with a

10:18 1 semi-automatic handgun the cartridge case, that being
2 the, basically the body of a bullet is discharged out of
3 the firearm, the projectile is shot forward or in the
4 direction of wherever the firearm is being pointed,
10:18 5 those are known as cartridge cases, what's essentially
6 left over after a bullet has been fired, and at the
7 scene we had three 45 caliber cartridge cases and a
8 22 caliber cartridge case.

9 Q. Did those specific cases have unique head
10:19 10 stamps as far as the type of 45 caliber and the type of
11 22 caliber?

12 A. That's correct.

13 Q. Specifically on the 22, did it have a head
14 stamp of C?

10:19 15 A. C as in Charlie, yes, it did.

16 Q. In the course of the search warrant you've
17 just spoken of, did you find or recover ammunition in
18 one of those locations with the head stamp C type?

19 A. Going back to the 6647 West Tropicana
10:19 20 address, next to the gun there was a box of ammunition,
21 22 caliber ammunition with a head stamp of C as in
22 Charlie.

23 Q. At the murder scene was there a 45 caliber
24 cartridge case head stamped with R-P?

10:19 25 A. One of, there are three different head

10:19 1 stamps on the 45 cart cases, yes.

2 Q. And in the course of the search warrants
3 you've spoken of, did you recover firearm evidence for a
4 RP 45 head stamp cartridge?

10:20 5 A. Yes.

6 Q. Where was that?

7 A. I believe that's found in both of the
8 45 caliber handguns, the RP 45 auto.

9 Q. Do you remember which location that was?

10:20 10 A. Yes. I apologize. The first one is going
11 to be at 919 Bagpipe and the second one is at the last
12 address which is 3300 Civic Center, apartment 2F as in
13 Frank.

14 Q. What was your information as far as who was
10:20 15 associated with the Civic Center address?

16 A. The Civic Center was an individual by the
17 name of Davontae Wheeler.

18 Q. And then did you also find at the murder
19 scene a 45 caliber cartridge case with a head stamp

10:20 20 NFCR?

21 A. Correct.

22 Q. Did you find any of that evidence in your
23 searches?

24 A. Yes, I believe that particular, a cartridge
10:20 25 with that same head stamp had come up in the process of

10:20 1 all the searches that were performed.

2 Q. And then at the murder scene was there also
3 a 45 head stamp Winchester 45 auto?

4 A. That's the final 45 caliber cartridge case.

10:21 5 Q. Were you able to find any cartridge case
6 head stamped like that in any of your other searches?

7 A. I was not.

8 Q. Now let's make it clear. Do you have
9 training and experience with firearms?

10:21 10 A. Yes.

11 Q. And based on your training and experience,
12 if I have a 45 caliber handgun, can I load multiple 45
13 cartridges that have different head stamps?

14 A. Absolutely.

10:21 15 Q. So can one firearm shoot all three of
16 those?

17 A. It can.

18 Q. It could also, one 45 shoot one type and
19 another 45 shoot a different type?

10:21 20 A. Based on the preference of the gun owner.

21 Q. Speaking of firearms evidence, have you
22 submitted the cartridge cases that were found at the
23 murder scene to be analyzed with the firearms that have
24 been recovered from these various search warrants?

10:21 25 A. We have.

10:21 1 Q. Has that analysis been completed?

2 A. It has not.

3 Q. And to date we don't know if they match up
4 yet?

10:21 5 A. No, we do not.

6 Q. But you do know that the calibers match up
7 and then the head stamps match up?

8 A. Correct.

9 Q. Speaking of some other forensic evidence,
10:22 10 in the course of the search warrants we spoke of, we
11 also had a search warrant, or did you have a search
12 warrant for the vehicle that's been depicted in the
13 surveillance?

14 A. We did.

10:22 15 Q. And in the course of that were there items
16 of evidence recovered from inside the vehicle?

17 A. There were.

18 Q. Did you make requests as far as certain
19 pieces of evidence inside that vehicle to be tested for
10:22 20 DNA?

21 A. I did, a limited amount of items.

22 Q. And is there a limit based on how much you
23 can ask to be done by the lab?

24 A. There is. Because these investigations are
10:22 25 lengthy, but understand at the same time there are lots

10:22 1 of investigations going on simultaneous in this valley
2 as it relates to the investigations performed by LVMPD
3 members and as a result there's been a limit placed on
4 the amount of evidence that can be analyzed and/or
10:22 5 compared relative to the crime that it is. Meaning the
6 more serious crime the more items, but even in the cases
7 of murder there is a limit to how much evidence that can
8 be submitted and then there are a few exceptions to
9 those limits as well. So yes.

10:23 10 Q. Based on that limit, did you look at some
11 of the items and say okay, this could be our best
12 opportunity to maybe find DNA evidence?

13 A. We did.

14 Q. And submit some items?

10:23 15 A. Correct.

16 Q. And later on potentially you can ask to
17 have other items checked; is that correct?

18 A. We can.

19 Q. Now results from the DNA, your experience
10:23 20 with DNA, do they have to have the known DNA of a
21 particular individual to compare to whatever could be
22 recovered from a piece of evidence?

23 A. Absolutely. It's like a fingerprint.

24 Q. All right. And in this particular case
10:23 25 have the results come back as to some of the items that

10:23 1 were found inside of that vehicle?

2 A. Yes, based on the limited number of items
3 that were submitted for analysis.

4 Q. Now when those limited numbers were
10:23 5 submitted, did you get or have the known DNA samples of
6 Demario Lofton-Robinson and Davontae Wheeler and Raekwon
7 Robertson?

8 A. Yes.

9 Q. Did any of the items that you requested
10:24 10 from the vehicle come back to those three individuals?

11 A. They did not.

12 Q. Kind of jumping around, I apologize, we're
13 kind of going all over the place. But at some point
14 with these locations that you searched, did you come
10:24 15 into contact with suspects in the case?

16 A. Yes.

17 Q. And throughout your investigation did you
18 come into contact with suspects that we've spoken of
19 here today, specifically Demario Lofton-Robinson?

10:24 20 A. Yes.

21 Q. Raekwon Robertson?

22 A. Yes.

23 Q. And Davontae Wheeler?

24 A. Yes.

10:24 25 Q. Did you see photographs of them?

10:24 1 A. I have.

2 Q. Have you seen them in person?

3 A. I have.

4 Q. Have you spent time with them?

10:24 5 A. I have.

6 Q. Okay. Based on having spent time with
7 these individuals and spoken with these individuals,
8 have you reviewed some of the surveillance video from
9 the location of, at the Short Line Express?

10:24 10 A. I have.

11 Q. Did you also review, or in the course of
12 your investigation did you also find out about an
13 incident that occurred earlier on August the 2nd?

14 A. Yes, specifically an armed robbery.

10:25 15 Q. And did you recover or were you a part of
16 the process of recovering some surveillance from that
17 incident?

18 A. The video surveillance was actually
19 recovered by the robbery detectives who had the
10:25 20 investigation initially and then once that case was
21 transferred to me and my partner Detective Jaeger, then
22 we received said video surveillance from the detective.

23 Q. Now we a moment ago reviewed surveillance
24 from Grand Jury Exhibit 4. Was that surveillance from
10:25 25 the Short Line Express?

10:25 1 A. It was.

2 Q. And from reviewing that surveillance and
3 still footage, did you recognize individuals from that
4 surveillance to individuals from your investigation?

10:25 5 A. Without question.

6 Q. Okay. And specifically I want to show you
7 Grand Jury Exhibits 7 through 15. Take a moment to
8 review those.

9 A. I am familiar with these stills.

10:26 10 Q. Are these fair and accurate depictions of
11 the video surveillance and the stills from that
12 surveillance?

13 A. Yes, they are.

14 Q. When we say still, is that like a little
10:26 15 snapshot of the video?

16 A. Essentially a still frame from the video.

17 Q. Okay. Showing you Grand Jury Exhibit 7.
18 Do you recognize that -- oh, that's not going to be
19 recognizable is it. Sorry about that.

10:26 20 Do you recognize that?

21 A. I do.

22 Q. What do you recognize that to be?

23 A. That is the parking lot of the Short Line
24 Express.

10:26 25 Q. And then showing you Grand Jury Exhibit 8,

10:27 1 what do you recognize that to be?

2 A. That is just inside the front door to the
3 Short Line Express.

4 Q. And then do you see an individual with some
10:27 5 red shoes on?

6 A. I do.

7 Q. In the course of your investigation were
8 red shoes something that you were looking for?

9 A. We were.

10:27 10 Q. Did you find them in the various search
11 warrants executed at the locations we mentioned earlier?

12 A. We actually found two pair of red shoes.

13 Q. Now this is just a still, not the greatest
14 quality, but when you look at the video itself is it a
10:27 15 better quality?

16 A. Yes.

17 Q. And the individual depicted in State's 8,
18 do you recognize that individual?

19 A. The one in the foreground or in the
10:27 20 background?

21 Q. In the foreground, the one drinking a
22 bottle of some liquid.

23 A. I do. The individual that's in the
24 foreground as he's depicted in red shoes, blue jeans and
10:27 25 what appears to be a long sleeve green shirt, that is

10:27 1 Demario Lofton-Robinson.

2 Q. Showing you Grand Jury Exhibit 14. Do you
3 recognize that individual?

4 A. I do.

10:28 5 Q. Who is that?

6 A. That is Demario Lofton-Robinson.

7 Q. And he is the individual shown in Grand
8 Jury Exhibit 8 drinking from that bottle?

9 A. He is.

10:28 10 Q. Now let me ask you, did you actually make
11 contact with Demario Lofton-Robinson?

12 A. I did.

13 Q. Did you talk to him?

14 A. I did.

10:28 15 Q. Did you provide him his Miranda warnings
16 before speaking to him?

17 A. Yes, I did.

18 Q. Did he indicate that he understood those
19 warnings and wished to speak to you?

10:28 20 A. And was willing to speak with us, yes, he
21 did.

22 Q. Did you talk to him about what happened?

23 A. Indeed.

24 Q. What did he tell you?

10:28 25 A. There was a couple variations of his

10:28 1 statement. Do you want the first variation or the final
2 one?

3 Q. Go with the first.

4 A. The first version was he is, that is him
10:28 5 depicted in those stills from the convenience store.

6 Q. Let me stop you. So did you have the
7 surveillance to show him?

8 A. Absolutely.

9 Q. And did you ask him if he recognized
10:29 10 himself in this photograph?

11 A. He did, he identified himself from the
12 still frames.

13 Q. Okay. Now just as far as him identifying
14 just himself, what else did he say that he did?

10:29 15 A. He was there. They left that location in a
16 vehicle that he was driving. He had just purchased a
17 white Mercury Grand Marquis only days before this
18 incident. They went to a nearby neighborhood and other
19 occupants within the vehicle told him to stop as they
10:29 20 were driving down a residential street, those
21 individuals got out, got into a confrontation with an
22 individual and ended up shooting him.

23 Q. So in his first version did he say he did
24 not get out of the car?

10:29 25 A. Yes, he stated he remained in the car in

10:29 1 the driver's seat.

2 Q. And speaking of the car while on this
3 little tangent, did you utilize that surveillance from
4 that car and show it to James Newman, the person who
10:29 5 sold the car to Demario, and ask him if he recognized
6 the person in the surveillance?

7 A. Absolutely.

8 Q. Did he indicate that he did recognize?

9 A. Yes.

10:30 10 Q. That being Demario who you're speaking of?

11 A. He referred to him as DJ which is Demario
12 Lofton-Robinson's moniker.

13 Q. Is a moniker a nickname?

14 A. Yes.

10:30 15 Q. Now you said that there was a subsequent
16 rendition of facts from Mr. Demario. What was that?

17 A. Yes. The final version of what happened
18 that night was they left the convenience store, they
19 responded to that nearby neighborhood, he along with
10:30 20 three other occupants from the vehicle exited the
21 vehicle, confronted the victim in an attempted robbery
22 and the victim fought back and during that process he
23 was shot.

24 Q. So does Demario indicate whether he shot?

10:30 25 A. Yes. Demario indicated that he was one of

10:30 1 the shooters.

2 Q. Did he indicate what kind of weapon he had?

3 A. He had a 45 semi-automatic handgun and he

4 told us that that firearm would be found at his

10:30 5 residence which was 919 Bagpipe.

6 Q. Did you find a 45 caliber handgun at that
7 residence?

8 A. We did.

9 Q. A moment ago you said this was an attempted

10:31 10 robbery. Was that something that Demario told you as

11 far as the purpose of stopping the individual?

12 A. Yes, it was.

13 Q. What did he say?

14 A. That they attempted to rob the individual

10:31 15 in front of the house for whatever property and/or money

16 he may have had.

17 Q. Now going back to Grand Jury Exhibit 8th,
18 do you recognize what's depicted there?

19 A. Yes. In this particular photograph there's

10:31 20 two other individuals that have now come into the

21 foreground and I recognize both of those individuals.

22 Q. I want to show you Grand Jury Exhibit 13.

23 Who do you recognize that individual to be?

24 A. Davontae Wheeler.

10:31 25 Q. And did you recognize him based on your

10:31 1 interactions with him as being depicted in Grand Jury
2 Exhibit 9?

3 A. Yes. Specifically he is the individual in
4 the foreground wearing what appears to be a white and
10:31 5 black cap, a maroon top, black pants and maroon shoes.

6 Q. Speaking of that hat, did that hat get your
7 attention?

8 A. Yes.

9 Q. Why?

10:32 10 A. Because it's going to be one of those
11 notable items of evidence that we are going to search
12 for when granted permission through a judge.

13 Q. Showing you Grand Jury Exhibits 34 through
14 42. Do you recognize those?

10:32 15 A. I do.

16 Q. Okay. Are they fair and accurate
17 depictions of that evidence?

18 A. Yes.

19 Q. And looking at Grand Jury Exhibit 35, what
10:32 20 are we looking at?

21 A. This is an exterior photo of 6647 West
22 Rainbow, excuse me, West Tropicana, I apologize,
23 apartment, or excuse me, unit 104.

24 Q. And State's 36, was a firearm found at that
10:32 25 location?

10:32 1 A. Yes.

2 Q. A moment ago in the video surveillance from
3 the Short Line Express you were talking about a hat;
4 correct?

10:33 5 A. Correct.

6 Q. Showing you Exhibit 37. What do we have
7 there?

8 A. That is a ball cap that is affiliated with
9 one of the NHL teams.

10:33 10 Q. Going back to the actual surveillance and
11 zooming in, does the brim appear to be, well, what color
12 does the brim appear to be?

13 A. The brim appears to be black but it has a
14 circular sticker that is viewable from the camera angle.

10:33 15 Q. And what about the, not the brim but the
16 remainder of the hat?

17 A. It almost looks like white but it's clear
18 in the actual real time video as opposed to the rather
19 pixilated stills.

10:33 20 Q. State's 37, does that appear to match the
21 hat on the individual inside the Short Line Express?

22 A. Yes, it does.

23 Q. As far as the brim being black, the cap
24 being a white or gray, and then that sticker still on
10:34 25 the center of the brim?

10:34 1 A. Correct.

2 Q. Also in that same location, was it 6647?

3 A. Well, it should be noted that this hat was
4 recovered at 3300 Civic Center, apartment 2F. The

10:34 5 previous photo was at 6647 West Tropicana, unit 104. We
6 served search warrants at both of those locations on the
7 same day but one after the other.

8 Q. Okay. So looking at State's 38, what are
9 we looking at?

10:34 10 A. That's in the interior home of 3300 Civic
11 center, apartment 2F.

12 Q. And what did you gather from there?

13 A. Down in the lower left hand corner of that
14 photograph you'll notice a pair of, I guess it could be
10:34 15 described as red, I've described them as maroon tennis
16 shoes which closely resemble the shoes worn by
17 Mr. Wheeler in the video surveillance.

18 Q. Showing you State's 39. What is that?

19 A. That is a 45 caliber semi-automatic

10:35 20 handgun.

21 Q. Where was that located?

22 A. The Taurus was recovered from the living
23 room area of 3300 Civic Center.

24 Q. Showing you State's 40. Were the

10:35 25 cartridges removed from the magazine from that firearm?

10:35 1 A. Yes, that photo depicts the magazine and
2 then the bullets retrieved or recovered from the
3 magazine.

4 Q. And that firearm was a 45 caliber?

10:35 5 A. Correct.

6 Q. Showing you State's 41. What are we
7 looking at?

8 A. These are going to be different, or a
9 different angle on those photographs, or, excuse me, on
10:35 10 the ammunition, but it depicts the head stamp which we
11 had covered previously.

12 Q. Does this match a head stamp from the
13 murder scene?

14 A. Yes, RP 45 auto.

10:35 15 Q. And showing you State's 42, ask you if you
16 recognize that.

17 A. Now we are going back to 6647 West
18 Tropicana where the 22 caliber semi-automatic handgun is
19 found. Next to it is a box of ammunition which is that
10:35 20 ammunition that's depicted in that picture right there
21 which has a head stamp of C as in Charlie.

22 Q. Okay. And then I believe, just to be sure,
23 State's 13, did you indicate who that was?

24 A. Yes, that is Davontae Wheeler.

10:36 25 Q. And that is the individual that you believe

10:36 1 you recognize as the one with the ball cap?

2 A. Correct.

3 Q. Shifting over to State's 10. Do you
4 recognize that?

10:36 5 A. Yes. Again the interior of the Short Line
6 Express. The two individuals which were in that
7 previous photo of coming in are a little bit closer to
8 where the camera is located within the business and the
9 trailing individual I do recognize.

10:36 10 Q. Who do you recognize that to be?

11 A. That is Raekwon Robertson.

12 Q. Showing you State's 15. What is that?

13 A. It's a picture of Raekwon Robertson.

14 Q. And did you review some surveillance from
10:37 15 the convenience store incident from August the 2nd?

16 A. Yes, located at 7010 West Charleston.

17 Q. And from reviewing that did you recognize
18 an individual in that surveillance?

19 A. Yes.

10:37 20 Q. Showing you Grand Jury Exhibit 3. Are you
21 aware of video surveillance being obtained from the
22 incident on August the 2nd at the location -- what was
23 the name of it?

24 A. The name of it is the Fiesta Discount
10:37 25 Market and Smoke Shop.

10:37 1 Q. And where was it located?

2 A. 7010 West Charleston.

3 Q. And then from reviewing this surveillance,

4 and you said this was a robbery investigation that you

10:38 5 picked up from the robbery detail; is that correct?

6 A. That's correct.

7 Q. Within Metro that is.

8 A. Yes.

9 Q. Because you felt that it was connected to

10:38 10 this incident?

11 A. Yes.

12 Q. And then are there stills from the video of
13 the incident outside and inside the location?

14 A. Yes. This particular business had cameras

10:38 15 set up both inside the store and inside the store

16 looking toward the front door out into the parking lot

17 area and there's a unique process that occurs as the

18 individuals go from outside to inside the business.

19 Q. Showing you the outside. Does the outside

10:38 20 depict video where the face of the individuals is still

21 uncovered?

22 A. Correct.

23 Q. Inside had the individuals covered their

24 faces?

10:39 25 A. Yes, as they entered the store and gone in,

10:39 1 the particular individuals involved in this particular
2 robbery cover their faces to conceal their identity.

3 Q. And now switching back to Grand Jury
4 Exhibit 15. Who do you recognize that to be?

10:39 5 A. Raekwon Robertson.

6 Q. And when we switch back over to the video,
7 who do you recognize that to be in the still?

8 A. Raekwon Robertson.

9 Q. And showing you the actual surveillance
10:39 10 from inside, are there multiple camera angles inside of
11 this location?

12 A. Yes, there were.

13 Q. And then in the course of your
14 investigation did you come to find out -- let me stop
10:39 15 it -- who the individual is that's working there?

16 A. Yes.

17 Q. What's her name?

18 A. Agnes -- is it Stein I believe is her last
19 name. But I know her first name is Agnes. She was the
10:40 20 clerk on duty that particular night.

21 Q. And is there a stamp to this particular
22 video?

23 A. Yes.

24 Q. What date is that?

10:40 25 A. If I can draw your attention to the top

10:40 1 left corner of that video, it's dated August 2nd, 2017
2 and there is a military time of 23:50 hours and 44
3 seconds.

4 Q. And based on your investigation and
10:40 5 reviewing the statement from Agnes, does that fit as far
6 as the time frame?

7 A. Yes.

8 Q. And a moment ago we just saw an individual
9 come in and did they have something in their hand?

10:40 10 A. Yes. As they moved from right to left in
11 this particular video clip they produce a firearm.

12 Q. The person that's producing the firearm, is
13 that the individual with the black hoodie?

14 A. Yes.

10:40 15 Q. A moment ago we looked at surveillance from
16 outside. Was the person coming in from the outside that
17 you identified as Raekwon wearing a black hoodie?

18 A. He was.

19 Q. Is this location, or is the till of the
10:41 20 register opened and money given to the individual?

21 A. Yes.

22 Q. And was an item taken from the display
23 case?

24 A. To the left there was a particular item of
10:41 25 property that was stolen.

10:41 1 Q. Was there also another individual in this
2 video?

3 A. Yes.

4 Q. And I apologize. For a moment there we
10:41 5 were able to see, was the person's face masked, the one
6 with the black hoodie?

7 A. Yes, and that's the difference that occurs.
8 Outside of the store the individual's face is revealed,
9 but as he crosses into the business that's when there is
10:41 10 an attempt to conceal his identity that occurs and then
11 how Agnes would be viewing that individual is his face
12 is partially covered.

13 Q. So the approach of the store, there was a
14 camera fixed to see outside that appears to have been
10:41 15 unknown to the individuals as they walked in?

16 A. Yes, I would believe that they did not know
17 that cameras was going to be there.

18 Q. Do we see a second individual?

19 A. Yes.

10:41 20 Q. Do you know who that is?

21 A. Yes. On the right hand side there was
22 another individual, she happened to be a customer, her
23 name is Mariah. She was seated in the gaming area and
24 is not connected to the store as an employee in the case
10:42 25 of Agnes.

10:42 1 Q. And you just spoke of a gaming area; is
2 that correct?

3 A. That is correct.

4 Q. I'm showing you what's referred to as
10:42 5 channel 15 and then the last four digits are 5016; is
6 that correct?

7 A. Correct.

8 Q. There's an internal stamping that the video
9 footage has?

10:42 10 A. Yes. And then you'll also notice in the
11 lower right corner it says camera 15, but in the top
12 left corner in white numbering is 5016 is the last four
13 numbers. It might not be visible all the way back
14 there.

10:42 15 Q. Is there an individual seated at the gaming
16 machines?

17 A. Yes. If I can draw your attention to the
18 upper right hand corner of the monitor, you'll see an
19 individual at a gaming machine, appears to be gambling.

10:42 20 Q. Okay. Showing you channel 16 or camera 16.
21 Is that another angle of the gaming area?

22 A. Yes.

23 Q. Can we actually see a better view of, you
24 said that's Mariah?

10:43 25 A. Yes. I can't pronounce her last name. I

10:43 1 apologize.

2 Q. What did you think it was?

3 A. I -- I'm not sure on the pronunciation of
4 her last name.

10:43 5 Q. Does it still have the same date and time
6 stamp?

7 A. Correct. And on the left hand side of this
8 particular camera angle it's just a clear view or a
9 different view of the same gaming area and you can see

10:43 10 Mariah at the machine.

11 Q. Does the last name of Romatko ring a bell?

12 A. Yes, that is her last name.

13 Q. Detective, is the surveillance still moving
14 forward?

10:44 15 A. It is.

16 Q. Doe Mariah look over her right shoulder?

17 A. She does, which would be back toward the
18 interior of the business, the other area where the clerk
19 would be located.

10:44 20 Q. And what occurred there?

21 A. And from her possession, her purse, which
22 consisted of a cell phone and a wallet and other
23 miscellaneous items, was taken against her, she is now a
24 victim of an armed robbery akin to the victim who is
10:44 25 behind the counter, the clerk.

10:44 1 Q. The person that took that, was that the
2 person dressed in the black hoodie or was it a person
3 dressed differently?

4 A. No, there is a second individual, a second
10:44 5 suspect that enters the store trailing the first
6 individual who acts as a lookout, somebody that's going
7 to monitor the door while the main robbery is occurring
8 at the clerk's station, that particular lookout moves to
9 the gaming area and takes the property against her will.

10:45 10 Q. And do you have information as to a name
11 associated with that second individual, the one that
12 took the purse from --

13 A. Who was acting as the lookout?

14 Q. Yes.

10:45 15 A. Yes. Antonio Jones.

16 Q. That took the actual purse from Mariah?

17 A. Correct.

18 Q. Indulgence for a moment.

19 I'm checking my notes really fast,

10:45 20 Detective, before we're done.

21 Were other detectives involved with the
22 interview of some of the other individuals?

23 A. Some of the other individuals?

24 Q. Some of the other suspects.

10:46 25 A. Yes.

10:46 1 Q. And specifically did Detective Jaeger speak
2 with Davontae Wheeler?

3 A. He did.

4 Q. Were you part of that interview?

10:46 5 A. I was not part of that interview until the
6 very end. So the bulk of that interview was performed
7 by Detective Jaeger.

8 MR. PESCI: That concludes the questioning
9 of this witness. Does anybody from the Grand Jury have
10:46 10 any questions?

11 BY A JUROR:

12 Q. Were any of these guns recovered registered
13 to anybody?

14 A. We no longer, Las Vegas Metropolitan Police
10:46 15 Department no longer keeps registrations on firearms so
16 if they were once registered that's unknown to me.

17 BY MR. PESCI:

18 Q. Is the blue card requirement no longer a
19 requirement?

10:46 20 A. It's no longer in effect.

21 MR. PESCI: Ma'am.

22 BY A JUROR:

23 Q. In several of the earlier questions that
24 you addressed to the officer you referred to a jogger.
10:46 25 In particular in one of them you said a jogger saw four

10:47 1 individuals in what's come to be known as the suspect
2 vehicle. Who is that person? Who is that jogger?
3 MR. PESCI: Detective.
4 THE WITNESS: I apologize. His name just
10:47 5 escapes me. I forget -- he's the person --
6 BY MR. PESCI:
7 Q. Is his name Robert Mason?
8 A. Robert Mason. Thank you. Sorry.
9 Q. Let me ask you this way. Have you seen
10:47 10 that person here today in the halls outside of the Grand
11 Jury room?
12 A. Yes, we chatted briefly before he
13 testified.
14 MR. PESCI: All right. Does that answer
10:47 15 your question?
16 BY A JUROR:
17 Q. A follow-up. So Robert Mason testified
18 that he saw the four individuals depicted in the video
19 inside the white suspect vehicle?
10:47 20 A. I do not know what he testified to.
21 Q. Okay.
22 BY MR. PESCI:
23 Q. Let me ask you this.
24 I'll try to follow-up.
10:47 25 Did you have information from Robert Mason

10:47 1 about four individuals being associated with a white
2 vehicle in the area of the murder scene?

3 A. Absolutely.

4 Q. Have you done any identifications by Robert
10:48 5 Mason with any surveillance footage or stills from the
6 surveillance?

7 A. There was a still frame of the vehicle that
8 was shown to Mr. Mason. I did not perform that. It was
9 performed by a different detective.

10:48 10 Q. So you're not aware of Robert Mason making
11 any identification of any of the four individuals?

12 A. Absolutely not.

13 Q. However did you utilize the information you
14 received from Robert Mason for a general description in
10:48 15 the course of your investigation?

16 A. Yes, we did.

17 Q. And then specifically he gave you a license
18 plate to a particular car?

19 A. That's correct.

10:48 20 MR. PESCI: Are there any further
21 follow-up?

22 A JUROR: No.

23 MR. PESCI: Thank you. I think there's
24 some more questions.

25

10:48 1 BY A JUROR:

2 Q. You testified that a limited number of
3 items were submitted for analysis to the labs and they
4 came back, they yielded negative results. What was
10:48 5 submitted that returned negative results?

6 BY MR. PESCI:

7 Q. Detective, would reviewing the actual
8 report assist you?

9 A. Please.

10:49 10 So on the limited number of items that were
11 submitted for analysis and comparison to the known DNA
12 samples from the aforementioned individuals, there were
13 two cigarette butts that were recovered from the
14 vehicle, they were submitted for comparison. Excuse me.
10:49 15 The first firearm that was recovered at 919 Bagpipe was
16 also swabbed for potential DNA and compared. And then
17 finally there are stains, there are stains, one of which
18 was consistent with apparent blood within the vehicle
19 that were submitted for comparison. And then finally
10:49 20 the decedent's fingernails were swabbed for potential
21 DNA, meaning a transfer, in the event there was a
22 physical confrontation with another human being we would
23 have foreign DNA. So those are the limited items that
24 were compared.

10:49 25 A JUROR: Thank you. That answers my

10:49 1 question.

2 MR. PESCI: Kind of follow up on that.

3 Q. Was there an actual identification of an
4 individual on some of these items?

10:50 5 A. Yes.

6 Q. Who was that?

7 A. That was DeShawn Robinson.

8 Q. Is he the juvenile that is not part of this
9 proceeding?

10:50 10 A. Yes, and the younger brother of Demario.

11 Q. So some of that DNA was found in the
12 vehicle?

13 A. Yes.

14 MR. PESCI: Does that answer --

10:50 15 A JUROR: Yes. Thank you.

16 BY A JUROR:

17 Q. Just to keep that question going. Did you
18 test the clothing that you took out of the apartment or
19 home for gunshot residue at all?

10:50 20 A. No.

21 BY MR. PESCI:

22 Q. What would be some of the rationale as far
23 as gunshot residue and why you would or would not
24 test -- first before you go there. Does the
10:50 25 Metropolitan Police Department have the capacity

10:50 1 internally to do gunshot residue testing?

2 A. Yes.

3 Q. And when they do it, do they send it off
4 somewhere to have it analyzed?

10:50 5 A. Yes. The crime scene analyst will perform
6 the testing, but the actual results are then sent away
7 for another company, a lab, to perform the analysis.

8 Q. And when you say testing, is that really
9 the recovery of trying to see if an area has it and then
10:50 10 the item that's recovered is sent off for someone in a
11 lab to test?

12 A. Potentially, because there's not an
13 immediate indication that there is the presence of
14 gunshot residue, also known as GSR, or not. Basically
10:51 15 the test is conducted and then it's sent off and then
16 whatever results are made known to us later on.

17 Q. From your training and experience is there
18 a time frame, a window frame as to when you need to get
19 something tested in relation to the shooting in order to
10:51 20 have it be effective?

21 A. Yes. And if I could just draw a quick
22 distinction. There is gunshot residue testing that can
23 be performed on garments and then there's also testing
24 that can be performed on the hands of an individual.
10:51 25 There are a great deal of restrictions regarding hands

10:51 1 because there are some false positives in the world and
2 through police work that will occur just as a natural
3 occurrence.

4 Q. And so was there a reason why you didn't
10:51 5 use gunshot or haven't yet submitted for gunshot residue
6 on some of these items?

7 A. In the particular case of their hands or on
8 items of clothing?

9 Q. I'm not sure --

10:52 10 A JUROR: Clothing.

11 THE WITNESS: Items of clothing. It just
12 hasn't been submitted for analysis. We do believe that
13 there was firearms discharged, but as far as do we have
14 all of the clothes the men were wearing at the
10:52 15 particular time, it's unclear. Because somebody might
16 be in the area of where a gunshot or a gun is fired,
17 they may not have the residue on them, but in fact if
18 there was a camera over them filming it we would say
19 yeah, he shot. It's just one of the those circumstances
10:52 20 that it's just not known.

21 BY MR. PESCI:

22 Q. As far as the hands though, is there a time
23 requirement as far as how soon after shooting a firearm
24 you're supposed to get a sample?

10:52 25 A. Yes.

10:52 1 Q. What time frame?

2 A. I believe it's either two or four hours.

3 The crime scene analyst section, they're the ones that
4 are responsible for making that determination if they're
10:52 5 within the window.

6 Q. The call for service was at 0012?

7 A. Correct.

8 Q. And then your contact with these various
9 individuals that you identified, how long after 0012 was
10:53 10 that on August 9th?

11 A. Almost 24 hours later.

12 Q. Can that also explain why testing or
13 non-testing was done in this case?

14 A. Without questioning because that individual
10:53 15 will go throughout the day and there could be the
16 transfers occurring and that residue maybe was on the
17 garment could be now lost. Those are possibilities.

18 MR. PESCI: Any further questions?

19 BY A JUROR:

10:53 20 Q. You said at one point that Demario in the
21 interview did confess to shooting or firing a weapon at
22 the Dewey residence.

23 A. Yes.

24 Q. Did he mention any other names of persons
10:53 25 that may or may not have been there or had --

10:53 1 MR. PESCI: I apologize. I have to
2 interrupt. Unfortunately you're not allowed to hear
3 testimony from one suspect about what another suspect
4 said, so it's not admissible evidence. So whether he
10:54 5 may or may not have said that, it's not something we can
6 present to you.

7 Any other questions?

8 THE FOREPERSON: By law, these proceedings
9 are secret and you are prohibited from disclosing to
10:54 10 anyone anything that has transpired before us, including
11 evidence and statements presented to the Grand Jury, any
12 event occurring or statement made in the presence of the
13 Grand Jury, and information obtained by the Grand Jury.

14 Failure to comply with this admonition is a
10:54 15 gross misdemeanor punishable up to 364 days in the Clark
16 County Detention Center and a \$2,000 fine. In addition,
17 you may be held in contempt of court punishable by an
18 additional \$500 fine and 25 days in the Clark County
19 Detention Center.

10:54 20 Do you understand this admonition?

21 THE WITNESS: I do.

22 THE FOREPERSON: Thank you very much and
23 you are excused.

24 A JUROR: Thank you for your time.

10:54 25 MR. PESCI: Ladies and gentlemen, we have

10:54 1 two or three more witnesses. Does anyone need a break
2 at this point?

3 THE FOREPERSON: Yes. You want to take a
4 ten minute break?

10:54 5 (Recess.)

6 MR. PESCI: State call Detective Lora Cody.

7 THE FOREPERSON: Please raise your right
8 hand.

9 You do solemnly swear the testimony you are
11:07 10 about to give upon the investigation now pending before
11 this Grand Jury shall be the truth, the whole truth, and
12 nothing but the truth, so help you God?

13 THE WITNESS: I do.

14 THE FOREPERSON: Please be seated.

11:07 15 You are advised that you are here today to
16 give testimony in the investigation pertaining to the
17 offenses of burglary while in possession of a firearm,
18 conspiracy to commit robbery, robbery with use of a
19 deadly, attempt robbery with use of a deadly weapon,
11:07 20 murder with use of a deadly weapon, involving Demario
21 Robinson, Raekwon Robertson, Davontae Wheeler.

22 Do you understand this advisement?

23 THE WITNESS: I do.

24 THE FOREPERSON: Please state your first
11:08 25 and last name and spell both for the record.

11:08 1 THE WITNESS: It's Lora Cody. L-O-R-A,
2 C-O-D-Y.

3 LORA CODY,
4 having been first duly sworn by the Foreperson of the
11:08 5 Grand Jury to testify to the truth, the whole truth,
6 and nothing but the truth, testified as follows:

7
8 EXAMINATION

9
11:08 10 BY MR. PESCI:

11 Q. What do you for a living?

12 A. I'm a detective.

13 Q. Is there a particular detail within Metro
14 that you work for?

11:08 15 A. Yes, I'm currently assigned to the homicide
16 section.

17 Q. Do you work together with Mitch Dosch and
18 Ryan Jaeger?

19 A. Yes, I do.

11:08 20 Q. Did you and your squad work a homicide that
21 occurred on August the 9th, 2017 at the location of 5536
22 West Dewey Drive?

23 A. Yes, we did.

24 Q. What was your responsibility in this
11:08 25 investigation as far as the division of labor?

11:08 1 A. I was assigned to go and get surveillance
2 video from that particular event.

3 Q. Where did that bring you to?

4 A. To the Short Line Express. It's the 7000
11:08 5 block of South Jones.

6 Q. Is that close or somewhat close to 5536
7 West Dewey?

8 A. Yes, sir.

9 Q. And when you went there, was that based on
11:08 10 information that you had received in the briefing from
11 patrol officers?

12 A. Yes.

13 Q. And did you also have information from
14 witnesses that gave you specific things that you were
11:09 15 looking for in the surveillance?

16 A. Yes.

17 Q. When you got to that location were you able
18 to obtain the surveillance?

19 A. Yes, I did.

11:09 20 Q. Is that the surveillance that we have and
21 we've shown to the Grand Jury?

22 A. Yes.

23 Q. And what were you looking for and what did
24 you find?

11:09 25 A. We were specifically looking for a white in

11:09 1 color Grand Marquis that may have been occupied by four
2 black male adults and we also knew that the license
3 plate, at least the first three letters of that license
4 plate of that Grand Marquis was 473.

11:09 5 Q. Did you obtain copies of that surveillance
6 so you could utilize it in your investigation?

7 A. Yes, I did.

8 Q. And then subsequently did you figure out
9 the registration of that vehicle?

11:09 10 A. Yes.

11 Q. And did your investigation eventually lead
12 you to a 919 Bagpipe in North Las Vegas?

13 A. Yes.

14 Q. What happened there?

11:09 15 A. I responded out to 919 Bagpipe Court in
16 order to conduct surveillance and at that point I saw
17 that specific vehicle, the white Grand Marquis, with the
18 first four of the license plate 473 parked in the
19 driveway of 919 Bagpipe Court.

11:10 20 Q. Did you see anyone get into that vehicle
21 from that location, that address you just mentioned?

22 A. Yes.

23 Q. What did you and other officers do based on
24 seeing that?

11:10 25 A. I observed two black male adults that kind

11:10 1 of resembled similar physical features from the previous
2 surveillance video get into that Grand Marquis and at
3 that point they actually left in a southbound direction
4 from 919 Bagpipe Court, so I conducted basically rolling
11:10 5 surveillance until we could get that vehicle stopped.

6 Q. When it was stopped were the occupants of
7 the vehicle removed from the car?

8 A. Yes, they were.

9 Q. Who were the occupants?

11:10 10 A. One was Demario Robinson and an Anthony or
11 Tony Robinson.

12 Q. And later on did Demario Robinson give a
13 statement to the officers?

14 A. Yes.

11:10 15 Q. Were you involved with Detective Mitch
16 Dosch in the interview of Demario?

17 A. Yes, I was.

18 Q. Separate from what you've just described,
19 were you also involved in the searches of certain areas
11:11 20 of interest in this case?

21 A. Yes, sir.

22 Q. Particularly did you find or were you
23 involved in the finding of a 22 caliber handgun?

24 A. Yes, I was.

11:11 25 Q. Tell us about where that was found, the

11:11 1 address and then where within the location?

2 A. We had a search warrant for 6647 West
3 Tropicana and I believe it was apartment 104. We
4 conducted the search warrant and I located in the
11:11 5 northeast bedroom, kind of hidden underneath a chest of
6 drawers if you will, someone had hollowed out a
7 compartment kind of close to the carpet area underneath
8 this chest of drawers and in that little hollowed out
9 area I located a 22 caliber firearm as well as various
11:11 10 ammunition.

11 Q. Was the 22 and the ammunition of interest
12 to you based on your investigation?

13 A. Yes, sir.

14 Q. Why was that?

11:11 15 A. We knew that our victim in this case or the
16 decedent had been shot possibly with a 22 caliber,
17 specifically with a specific head stamp that was
18 recovered from the actual cartridge cases from the
19 initial scene.

11:12 20 Q. When you say the initial scene, is that the
21 murder scene?

22 A. Yes, it is.

23 Q. Is there anything that you found in your
24 search of that location other than a 22 that was of
11:12 25 interest based on identification of individuals?

11:12 1 A. Yes.

2 Q. What was that?

3 A. We found a lot of paperwork in the name of,
4 I believe it's Raeqeem, and I'm sorry, I forgot his last
11:12 5 name, but kind of like an upper shelf area in that
6 northeast area.

7 Q. Does the name Raekwon --

8 A. Raekwon.

9 Q. -- ring a bell? Okay. And then that 22
11:12 10 that was found, was that impounded by a crime scene
11 analyst?

12 A. Yes, sir, it was.

13 MR. PESCI: Grand Jury's indulgence.

14 That concludes the questions that I have do
11:12 15 the grand jurors have any questions for this witness?

16 THE FOREPERSON: By law, these proceedings
17 are secret and you are prohibited from disclosing to
18 anyone anything that has transpired before us, including
19 evidence and statements presented to the Grand Jury, any
11:12 20 event occurring or statement made in the presence of the
21 Grand Jury, and information obtained by the Grand Jury.

22 Failure to comply with this admonition is a
23 gross misdemeanor punishable up to 364 days in the Clark
24 County Detention Center and a \$2,000 fine. In addition,
11:12 25 you may be held in contempt of court punishable by an

11:12 1 additional \$500 fine and 25 days in the Clark County
2 Detention Center.

3 Do you understand this admonition?

4 THE WITNESS: Yes, sir.

11:13 5 THE FOREPERSON: Thank you very much and
6 you are excused.

7 MR. PESCI: State calls Detective Ryan
8 Jaeger.

9 THE FOREPERSON: Please raise your right
11:13 10 hand.

11 You do solemnly swear the testimony you are
12 about to give upon the investigation now pending before
13 this Grand Jury shall be the truth, the whole truth, and
14 nothing but the truth, so help you God?

11:14 15 THE WITNESS: Yes.

16 THE FOREPERSON: Please be seated.

17 You are advised that you are here today to
18 give testimony in the investigation pertaining to the
19 offenses of burglary while in possession of a firearm,
11:14 20 conspiracy to commit robbery, robbery with use of a
21 deadly weapon, attempt robbery with use of a deadly
22 weapon, and murder with use of a deadly weapon,
23 involving Demario Robinson, Raekwon Robertson and
24 Davontae Wheeler.

11:14 25 Do you understand this advisement?

11:14 1 THE WITNESS: Yes, I do.

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

4 THE WITNESS: First name is Ryan, R-Y-A-N
11:14 5 last name of Jaeger, J-A-E-G-E-R.

6 RYAN JAEGER,
7 having been first duly sworn by the Foreperson of the
8 Grand Jury to testify to the truth, the whole truth,
9 and nothing but the truth, testified as follows:

11:14 10
11 EXAMINATION

12
13 BY MR. PESCI:

14 Q. Sir, are you a detective with homicide?

11:14 15 A. I am.

16 Q. Did you work with Detectives Cody and Dosch
17 on an investigation from August the 9th of this year on
18 Dewey address?

19 A. Yes, I did.

11:15 20 Q. And were you assigned specifically to the
21 crime scene itself as far as your responsibilities at
22 the scene of the murder?

23 A. Yes, I was.

24 Q. Showing you Grand Jury Exhibit 16. Do you
11:15 25 recognize that?

11:15 1 A. Yes, I do.

2 Q. What do you recognize that to be?

3 A. That is the address where the murder
4 occurred.

11:15 5 Q. And then specifically looking at Grand Jury
6 Exhibit 17. What items of evidence are depicted there?

7 A. We have the large blood pool where our
8 victim was picked up by medical staff and there's a
9 bunch of mail that is spread out on the ground.

11:15 10 Q. And then looking at State's Exhibit 18.
11 What do we have depicted by the placards?

12 A. Next to the placards are spent cartridge
13 cases.

14 Q. Were these cartridge cases of note to you
11:15 15 and your subsequent investigation?

16 A. They were.

17 Q. There has been testimony already, but did
18 you find in various searches of other locations
19 cartridge cases that were of the same make as some of
11:16 20 these at the scene?

21 A. Yes. At the scene there was 45 caliber
22 cartridge cases and 22 caliber cartridge cases.

23 Q. Was there one 22 caliber?

24 A. That's correct.

11:16 25 Q. And three 45 caliber?

11:16 1 A. That's correct.

2 Q. Did you find at these different locations
3 things that matched those, the 22 and the 45?

4 A. We did.

11:16 5 Q. And speaking of these other searches, were
6 you a part of the process of actually authorizing and
7 drafting the search warrants and asking the court for
8 permission to search those locations?

9 A. Yes, I was.

11:16 10 Q. And in the process of doing that were you
11 involved in the search warrant for 1327 H Street?

12 A. I was.

13 Q. And also a Mercury Grand Marquis vehicle?

14 A. I was.

11:16 15 Q. And 919 Bagpipe Court in North Las Vegas?

16 A. I was.

17 Q. And in the process of those things, of
18 those locations being searched, were there items of
19 evidentiary value that were recovered?

11:17 20 A. There was.

21 Q. And we've already heard about that so we
22 won't go through all of that. In the course of your
23 investigation did you come into contact with an
24 individual by the name of Davontae Wheeler?

11:17 25 A. I did.

11:17 1 Q. Showing you Exhibit 13. Who is that?

2 A. That's Davontae Wheeler.

3 Q. And when you came into contact with him,
4 did you deal with him personally?

11:17 5 A. I did.

6 Q. Did you conduct an interview with him?

7 A. I did.

8 Q. Did you provide him with his Miranda
9 warnings prior to that interview?

11:17 10 A. I did.

11 Q. Did he indicate that he understood those
12 warnings and that he was going to speak with you?

13 A. Yes, he did.

14 Q. Did you ask him questions about the events
11:17 15 of the night of the 9th and some other events as well?

16 A. I did.

17 Q. And what did he tell you after you gave him
18 his Miranda warnings?

19 A. He admitted to owning a 45 caliber handgun.

11:17 20 He admitted to being in the vehicle but he stated he was
21 not involved in any murder.

22 Q. And when you say a vehicle, specifically
23 did you show him or was he shown still photographs of
24 the Grand Marquis?

11:18 25 A. He was shown still photographs collected

11:18 1 from the surveillance system of the Short Line Express
2 that depicted the Grand Marquis.

3 Q. Did he admit that he had been in the
4 vehicle?

11:18 5 A. Yes, he did.

6 Q. Did he deny that he was involved in any
7 sort of killing?

8 A. Yes.

9 Q. Okay. And did you ask him about what his
11:18 10 comings and goings were of August the 8th and August the
11 9th?

12 A. I did.

13 Q. What did he say he had done?

14 A. He said that he was in the vehicle, he was
11:18 15 trying to negotiate to buy a Beretta handgun, he
16 couldn't reach a price for the gun that he liked so he
17 got out of the vehicle and took a bus home.

18 Q. And then you just talked about the purchase
19 or attempt to purchase a Beretta. Did he indicate
11:19 20 whether or not he had a firearm or firearms or how he
21 would carry them?

22 A. He said he did have a firearm and he said
23 that any time he didn't feel safe he carried the firearm
24 on his right hip in an open carry fashion.

11:19 25 Q. Was he, or did you show him any of the

11:19 1 surveillance footage from inside of the Express --

2 A. I did.

3 Q. Did he indicate that was him or not?

4 A. He denied that that was him inside the

11:19 5 Short Line Express.

6 Q. However in the course of your investigation

7 did you find pieces of evidence that were similar or

8 appeared to be similar to the clothing, the shoes, of

9 the people inside the surveillance of that Short Line

11:19 10 Express?

11 A. We did.

12 Q. And also involving a hat?

13 A. I don't know if they've seen the picture.

14 Q. Yes. You're speaking of the hat. Was

11:20 15 there something you were focusing on with the hat?

16 A. The hat in the surveillance pictures, it's

17 a white baseball hat with a black bill and there's a

18 holographic sticker that can be seen on the bill of the

19 cap.

11:20 20 Q. Did you ask him about that?

21 A. I did and he said he does not have any

22 clothing that would resemble the person seen in the

23 surveillance footage. If you see the hat that's there,

24 that's actually a Chicago Blackhawks hat with the same

11:20 25 sticker that was found in his apartment.

11:20 1 Q. All right. That's the next question I was
2 going to ask you. You were involved with the search
3 when this hat was found. Where was it found?

4 A. I did not search his apartment. I was with
11:20 5 him doing the interview when his apartment was searched.

6 Q. Are you aware that this was found in his
7 apartment?

8 A. Yes.

9 Q. Was there information in your investigation
11:21 10 that associated Mr. Wheeler with that apartment?

11 A. Yes.

12 Q. Do you know offhand what some of that
13 information was?

14 A. He lived in apartment F and his sister
11:21 15 lived in apartment G. That was verified by the complex
16 security.

17 MR. PESCI: Indulgence for a moment.

18 That concludes the questions for this
19 detective. Do the ladies and gentlemen of the jury have
11:21 20 any questions?

21 THE FOREPERSON: By law, these proceedings
22 are secret and you are prohibited from disclosing to
23 anyone anything that has transpired before us, including
24 evidence and statements presented to the Grand Jury, any
11:21 25 event occurring or statement made in the presence of the

11:21 1 Grand Jury, and information obtained by the Grand Jury.
2 Failure to comply with this admonition is a
3 gross misdemeanor punishable up to 364 days in the Clark
4 County Detention Center and a \$2,000 fine. In addition,
11:21 5 you may be held in contempt of court punishable by an
6 additional \$500 fine and 25 days in the Clark County
7 Detention Center.
8 Do you understand this admonition?
9 THE WITNESS: I do.
11:22 10 THE FOREPERSON: Thank you and you are
11 excused.
12 THE WITNESS: Thank you.
13 MR. PESCI: Ladies and gentlemen, we're
14 going to ask you to just give us a couple minutes and
11:22 15 then we'll come right back in. Okay?
16 A JUROR: Cool.
17 (Recess.)
18 THE FOREPERSON: Please raise your right
19 hand.
11:26 20 Please raise your right hand. Thank you.
21 You do solemnly swear the testimony you are
22 about to give upon the investigation now pending before
23 this Grand Jury shall be the truth, the whole truth, and
24 nothing but the truth, so help you God?
11:26 25 THE WITNESS: Yes.

11:26 1 THE FOREPERSON: You are advised that you
2 are here today to give testimony in the investigation
3 pertaining to the offenses of burglary while in
4 possession of a firearm, conspiracy to commit robbery,
11:26 5 robbery with use of a deadly weapon, attempted robbery
6 with use of a deadly weapon, murder with use of a deadly
7 weapon, involving Demario Robinson --

8 THE WITNESS: Correct, yes.

9 THE FOREPERSON: -- Raekwon Robertson and
11:27 10 Davontae Wheeler.

11 Do you understand this advisement?

12 THE WITNESS: Yes.

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

11:27 15 THE WITNESS: Agnes Stein. A-G-N-E-S,
16 S-T-E-I-N.

17 AGNES STEIN,

18 having been first duly sworn by the Foreperson of the
19 Grand Jury to testify to the truth, the whole truth,

11:27 20 and nothing but the truth, testified as follows:

21

22 EXAMINATION

23

24 BY MR. PESCI:

11:27 25 Q. Ma'am, I want to direct your attention to

11:27 1 August the 2nd of 2017. Were you working late that
2 evening?

3 A. Yes.

4 Q. And where did you work?

11:27 5 A. Fiesta Discount Market.

6 Q. Where is that located?

7 A. 7010 West Charleston, Las Vegas, Nevada.

8 Q. Does your location have video surveillance?

9 A. Yes, it does.

11:27 10 Q. Showing you Grand Jury Exhibit 3. Do you
11 recognize this location?

12 A. Yes.

13 Q. Do you recognize someone in this video?

14 A. Yes.

11:27 15 Q. Who is it?

16 A. Me.

17 Q. All right. Is it the ordinary course of
18 your business to have your video surveillance set up?

19 A. Yes.

11:28 20 Q. Is it something that's been in place before
21 you started working there?

22 A. Yes.

23 Q. And it's still in place now?

24 A. Yes.

11:28 25 Q. There is an incident that occurred on this

11:28 1 day that brings you here to court; correct?

2 A. Correct.

3 Q. Was it captured on the video surveillance?

4 A. Yes.

11:28 5 Q. Was that surveillance then provided to
6 police?

7 A. Yes.

8 Q. Is that a fair and accurate copy of that
9 surveillance?

11:28 10 A. Yes.

11 Q. Tell the Grand Jury what happened to you.

12 A. I was sitting there watching TV. I just,
13 we just did the shift change. About five to 12:00 these
14 two came in and the guy that came behind the counter

11:28 15 told me to get the money out of the cash register and he
16 was yelling at me to hurry up, hurry up, waving the gun
17 at me, and then they took the money and they left.

18 Q. Were there two individuals?

19 A. There was two individuals, yes, but I

11:28 20 didn't see what the other guy was doing because I was
21 behind the counter.

22 Q. Were you focused on the one with the gun?

23 A. Yes.

24 Q. Was there a customer in the store?

11:29 25 A. Yes.

11:29 1 Q. Do you know that customer?

2 A. Yes.

3 Q. What's the customer's name?

4 A. Mariah.

11:29 5 Q. And I'm going to play this video and ask
6 you if this is what occurred to you that day. It's
7 going to take a minute.

8 It's playing. While it's playing, is
9 Mariah in the gaming area of your store?

11:29 10 A. Yes.

11 Q. Is she seated at the -- what kind of game
12 was it, do you know?

13 A. It's multiple choice of games that we have.

14 Q. Is she seated at the one furthest to the
11:29 15 left?

16 A. Yes.

17 Q. Is the door located on the left hand side
18 of the video that's dated August 2, 2017?

19 A. Yes.

11:30 20 Q. Is this at 2350, is that when the
21 individuals walk in?

22 A. Yes.

23 Q. What's occurring now, is that what you just
24 described to the ladies and gentlemen of the Grand Jury?

11:30 25 A. Yes.

11:30 1 Q. Did you provide the money to the individual
2 because there was a gun pointed at you?

3 A. Yes.

4 Q. Were you, it sounds silly, but were you
11:30 5 concerned?

6 A. Yes.

7 Q. Were you scared?

8 A. Yes.

9 Q. Did you comply with his demands?

11:30 10 A. Yes, I did.

11 Q. All right. What are you doing right there?
12 You're leaning down under the counter.

13 A. Right -- uhm --

14 Q. Is there an alarm?

11:30 15 A. Yes.

16 Q. And then did Mariah come over to you after?

17 A. Yes, and she told me that --

18 Q. You can't say what she said. I apologize.

19 Did you see anything happen to her when all
11:30 20 of this happened?

21 A. Did I what?

22 Q. Did you see anything happen to her while
23 all of this happened?

24 A. No.

11:30 25 Q. But she did come and speak to you?

11:31 1 A. Yes.

2 Q. And then the surveillance, we just looked
3 at one, there are multiple angles that was provided to
4 the police?

11:31 5 A. Correct.

6 MR. PESCI: Rachel?

7 Any questions from the ladies and gentlemen
8 of the Grand Jury?

9 That concludes the testimony.

11:31 10 THE FOREPERSON: By law, these proceedings
11 are secret and you are prohibited from disclosing to
12 anyone anything that has transpired before us, including
13 evidence and statements presented to the Grand Jury, any
14 event occurring or statement made in the presence of the
11:31 15 Grand Jury, and information obtained by the Grand Jury.

16 Failure to comply with this admonition is a
17 gross misdemeanor punishable up to 364 days in the Clark
18 County Detention Center and a \$2,000 fine. In addition,
19 you may be held in contempt of court punishable by an
11:31 20 additional \$500 fine and 25 days in the Clark County
21 Detention Center.

22 Do you understand this admonition?

23 THE WITNESS: Yes.

24 THE FOREPERSON: Thank you. You are
11:31 25 excused.

11:31 1 THE WITNESS: Thank you.

2 MR. PESCI: Thank you.

3 THE WITNESS: Sorry about being late.

4 MR. PESCI: It's okay. Thank you.

11:32 5 Ladies and gentlemen, we're going to ask
6 you to stay these proceedings and to not deliberate at
7 this time. And that concludes our presentation today.

8 (Proceedings adjourned, to reconvene at a later,
9 undetermined time.)

11:32 10 --oo0oo--

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REPORTER'S CERTIFICATE

STATE OF NEVADA)
 : ss
COUNTY OF CLARK)

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

Dated at Las Vegas, Nevada,
December 30, 2017.

/s/ Danette L. Antonacci

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

11:32

1

AFFIRMATION

2

Pursuant to NRS 239B.030

3

4

The undersigned does hereby affirm that the
preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER
17BGJ017A-C:

11:32

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6

7

8

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

9

11:32

10

-OR-

11

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

12

13

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

14

-OR-

11:32

15

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

16

17

18

/s/ Danette L. Antonacci

19

Signature

12-30-17

Date

11:32

20

21

Danette L. Antonacci

Print Name

22

23

Official Court Reporter

Title

24

25

<p>A JUROR: [10] 6/16 44/3 44/7 73/4 127/21 128/24 129/14 131/9 133/23 149/15 BY A JUROR: [10] 71/16 72/12 73/6 74/8 125/10 125/21 126/15 127/24 129/15 132/18 BY MR. PESCI: [19] 8/14 21/6 36/11 54/1 64/14 71/21 72/19 73/15 81/25 90/13 125/16 126/5 126/21 128/5 129/20 131/20 135/8 142/11 150/22 BY MS. O'HALLORAN: [3] 45/17 76/11 84/15 MR. PESCI: [37] 6/12 6/17 19/2 19/24 34/11 35/6 43/8 44/2 44/13 52/21 62/14 63/10 71/13 73/3 73/5 75/5 82/14 89/7 125/7 125/20 126/2 126/13 127/19 127/22 129/1 129/13 132/17 132/25 133/24 134/5 140/12 141/6 148/16 149/12</p>	<p>155/5 156/1 156/3 MS. O'HALLORAN: [7] 44/5 44/8 52/1 75/6 81/19 83/9 88/13 THE FOREPERSON: [66] THE WITNESS: [61]</p> <hr/> <p>\$</p> <hr/> <p>\$10 [1] 39/3 \$2,000 [12] 19/16 34/23 43/20 52/13 63/2 74/22 83/1 88/25 133/16 140/24 149/4 155/18 \$2500 [2] 39/18 41/10 \$500 [12] 19/18 34/25 43/22 52/15 63/4 74/24 83/3 89/2 133/18 141/1 149/6 155/20</p> <hr/> <p>'</p> <hr/> <p>'78 [1] 8/25 '91 [1] 8/21</p> <hr/> <p>-</p> <hr/> <p>--oo0oo [1] 156/10 -OR [2] 158/10 158/14</p> <hr/> <p>/</p> <hr/> <p>/s [2] 157/17 158/18</p> <hr/> <p>0</p> <hr/> <p>0001 [1] 92/4 0012 [4] 29/7</p>	<p>91/13 132/6 132/9 0029 [3] 91/23 91/25 93/10 0200 [1] 92/5 08 [1] 91/24 08259 [2] 10/11 12/16 09 [1] 91/25</p> <hr/> <p>1</p> <hr/> <p>10 [1] 117/3 10,000 [1] 9/8 104 [5] 80/2 98/12 113/23 115/5 139/3 10:00 [1] 21/24 11 [1] 29/8 11:20 [2] 27/8 29/1 11:25 [2] 27/8 29/1 11:28 [2] 29/9 29/10 11:30 p.m [1] 94/4 11:38 [1] 29/10 11:45 [2] 46/10 46/12 11:45 and [1] 46/9 12 [1] 91/12 12-30-17 [1] 158/18 12:00 [1] 152/13 12:15 a.m [1] 27/16 13 [3] 112/22 116/23 145/1 1327 [2] 43/3 144/11 14 [1] 109/2</p>
--	---	---

1	139/11 139/24 140/9 143/22 144/3	120/1 151/1
15 [6] 23/5 107/7 117/12 119/4 122/5 122/11	22 caliber [16] 71/3 72/24 78/11 79/11 79/14 80/15 80/23 98/18 100/8 100/11 100/21 116/18 138/23 139/9 139/16 143/23	3
15th [1] 77/1	222 [3] 1/25 157/6 157/18	30 [4] 36/20 37/18 57/3 157/15
16 [8] 48/4 65/14 66/7 67/3 87/8 122/20 122/20 142/24	23 [1] 69/25	31 [2] 57/11 58/15
17 [3] 67/3 143/6 158/18	2350 [1] 153/20	311 [1] 51/24
17-08259 [2] 10/11 12/16	239B.030 [1] 158/2	32 [2] 24/16 58/18
170809-0029 [2] 91/23 93/10	23:50 [1] 120/2	33 [2] 56/1 59/6
17BGJ017A-C [3] 1/7 6/15 158/5	24 [2] 70/6 132/11	3300 [5] 99/14 101/12 115/4 115/10 115/23
18 [3] 64/21 67/25 143/10	24/7 [1] 24/21	34 [4] 79/19 79/25 80/4 113/13
19 [1] 68/24	25 [14] 19/18 34/25 43/22 52/15 63/4 70/12 73/17 74/24 83/3 89/2 133/18 141/1 149/6 155/20	35 [3] 79/25 80/7 113/19
1911 [1] 72/5	26 [2] 71/6 71/10	36 [3] 79/25 80/10 113/24
2	27 [2] 65/15 71/9	364 [12] 19/15 34/22 43/19 52/12 63/1 74/21 82/25 88/24 133/15 140/23 149/3 155/17
2 o'clock [1] 40/3	28 [5] 36/20 37/7 51/10 55/25 56/14	37 [3] 79/20 114/6 114/20
20 [4] 23/5 50/24 50/24 69/15	29 [7] 1/15 2/1 6/1 36/20 37/14 37/15 56/20	38 [1] 115/8
200 [1] 40/15	2:00 [1] 40/4	39 [2] 79/20 115/18
2003 [1] 36/18	2:30 and [1] 40/7	4
2017 [15] 1/15 2/1 6/1 9/23 21/14 37/4 54/5 65/7 77/1 95/22 120/1 135/21 151/1 153/18 157/15	2F [4] 99/14 101/12 115/4 115/11	40 [2] 8/25 115/24
21 [1] 69/19	2nd [5] 106/13 117/15 117/22	41 [1] 116/6
22 [14] 69/22 72/25 73/11 73/14 73/15 78/10 82/6 99/20 100/13		42 [4] 79/20 82/2 113/14 116/15
		43 [2] 93/3 93/12
		44 [1] 120/2
		45 [23] 40/9 60/5 70/17 71/2 72/4

4	6647 [9] 77/2 80/1 98/12 100/19 113/21 115/2 115/5 116/17 139/2 6:00 [2] 21/24 38/2	A
45... [18] 72/19 73/15 73/18 73/22 98/3 99/20 101/1 101/4 101/8 102/3 102/3 102/12 102/12 102/18 102/19 115/19 116/14 144/3	7	A-G-N-E-S [1] 150/15 a.m [3] 1/16 21/25 27/16 abdomen [2] 15/24 15/25 ability [1] 6/7 able [12] 10/7 10/21 12/12 42/5 47/20 48/13 74/2 80/23 86/14 102/5 121/5 136/17
45 caliber [20] 58/20 60/11 70/19 70/23 70/24 72/18 72/22 74/1 99/18 100/7 100/10 100/23 101/8 101/19 102/4 112/6 116/4 143/21 143/25 145/19	7000 [1] 136/4 7010 [3] 117/16 118/2 151/7 7325 [2] 24/4 68/16	about [76] above [1] 28/21 abrasion [1] 14/18 absolutely [9] 44/9 92/12 95/16 102/14 104/23 110/8 111/7 127/3 127/12
45 semi-automatic [1] 112/3	8	accidental [1] 19/1
45's [1] 73/1	89118 [1] 84/22 8:30 [1] 1/16 8th [14] 21/13 27/12 29/7 29/12 31/17 31/17 32/20 45/21 46/13 54/5 94/5 95/22 112/17 146/10	accurate [9] 11/6 32/19 37/3 56/7 66/2 107/10 113/16 152/8 157/12
473 [3] 96/22 137/4 137/18	9	accurately [1] 6/6
473YZB [2] 37/12 50/20	911 [2] 86/21 87/6	acting [1] 124/13
4th [1] 40/12	919 [10] 68/21 98/2 101/11 112/5 128/15 137/12 137/15 137/19 138/4 144/15	actively [1] 24/20
5	9th [19] 9/23 10/15 21/14 27/16 29/6 31/18 32/20 46/3 54/5 54/14 65/7 84/19 85/7 91/7 132/10 135/21 142/17 145/15 146/11	acts [1] 124/6
50 feet [1] 50/25		actual [12] 57/24 60/8 93/13 95/12 114/10 114/18 119/9 124/16 128/7 129/3 130/6 139/18
5016 [2] 122/5 122/12		
5536 [8] 65/8 84/21 85/5 87/10 91/7 99/24 135/21 136/6		
5th [1] 40/12		
6		
656.250 [1] 158/13		

A	133/4	100/6 115/7
actually [18]	admit [1] 146/3	131/23 132/9
13/6 15/13 15/21	admitted [2]	145/17 154/16
27/7 29/2 31/5	145/19 145/20	again [4] 24/3
49/9 51/20 66/17	admonition [24]	60/7 62/5 117/5
78/1 96/21 106/18	19/14 19/20 34/21	against [4] 47/1
108/12 109/10	35/2 43/18 43/24	48/18 123/23
122/23 138/3	52/11 52/17 62/25	124/9
144/6 147/24	63/6 74/20 75/1	Agnes [7] 119/18
addition [15]	82/24 83/5 88/23	119/19 120/5
19/16 34/23 43/20	89/4 133/14	121/11 121/25
52/13 55/13 60/15	133/20 140/22	150/15 150/17
63/2 74/22 83/1	141/3 149/2 149/8	ago [9] 14/1
88/25 99/18	155/16 155/22	28/24 56/13 57/17
133/16 140/24	adults [2] 137/2	106/23 112/9
149/4 155/18	137/25	114/2 120/8
additional [13]	advance [1] 88/7	120/15
19/18 34/25 43/22	advised [12] 7/19	ahead [3] 27/14
50/2 52/15 63/4	20/10 35/17 44/23	48/19 49/1
74/24 83/3 89/2	53/6 63/20 75/17	Air [1] 58/15
133/18 141/1	83/20 89/19	aka [2] 1/8 1/9
149/6 155/20	134/15 141/17	akin [1] 123/24
address [22] 24/3	150/1	alarm [1] 154/14
43/3 65/19 65/19	advisement [12]	all [41] 6/22
65/20 77/1 77/5	8/2 20/18 35/25	6/25 11/21 16/14
78/5 80/8 97/24	45/6 53/14 64/3	18/21 22/8 23/25
98/1 98/11 98/23	75/25 84/3 90/2	24/17 30/22 32/18
98/25 99/12	134/22 141/25	37/10 43/9 47/11
100/20 101/12	150/11	47/22 47/24 50/11
101/15 137/21	affiliated [1]	61/16 62/8 65/18
139/1 142/18	114/8	66/2 71/14 77/25
143/3	affirm [1] 158/4	82/15 86/7 86/7
addressed [1]	AFFIRMATION [1]	99/20 102/1
125/24	158/1	102/15 104/24
addresses [1]	aforementioned [1]	105/13 122/13
99/11	128/12	126/14 129/19
adjourned [1]	after [19] 25/22	131/14 144/22
156/8	26/5 26/16 30/21	148/1 151/17
administration [1]	30/22 44/4 46/10	154/11 154/19
158/15	49/16 51/16 55/10	154/23 157/8
admissible [1]	57/8 61/16 91/12	ALLISON [1] 2/7

A	80/20 80/24 99/25	18/14 25/5 25/6
allow [2] 39/25	100/17 100/20	38/18 45/24 55/18
66/21	100/21 116/10	58/23 68/10 71/1
allowed [1] 133/2	116/19 116/20	77/18 102/19
almost [3] 94/16	139/10 139/11	121/1 121/22
114/17 132/11	Amongst [1] 25/2	122/21 128/22
along [2] 22/11	amount [3] 23/12	130/7 133/3
111/19	103/21 104/4	answer [3] 73/4
already [4] 40/25	analysis [6]	126/14 129/14
61/12 143/17	103/1 105/3 128/3	answers [1]
144/21	128/11 130/7	128/25
also [47] 2/22	131/12	Anthony [1]
6/23 11/12 12/11	analyst [15] 54/9	138/10
16/9 17/15 50/15	54/17 64/18 68/11	anticipation [1]
55/14 56/4 58/11	76/15 76/17 76/20	10/17
58/12 60/17 61/22	76/21 77/18 77/21	Antonacci [7]
65/19 65/21 65/23	77/23 94/25 130/5	1/25 6/4 157/6
68/14 68/20 71/1	132/3 140/11	157/17 157/18
71/3 71/5 73/21	analysts [4]	158/18 158/21
79/13 81/10 81/12	11/12 17/3 60/20	Antonio [1]
91/3 93/14 97/7	77/16	124/15
98/10 101/18	analyzed [3]	any [55]
102/2 102/18	102/23 104/4	anybody [4] 7/6
103/11 106/11	130/4	86/24 125/9
106/12 115/2	anatomic [1] 9/6	125/13
121/1 122/10	ancillary [1]	anyone [16] 19/10
128/16 130/14	94/25	34/17 43/14 52/7
130/23 132/12	and/or [2] 104/4	62/21 74/16 81/24
136/13 137/2	112/15	82/19 86/13 88/19
138/19 144/13	ANGELA [1] 2/6	133/10 134/1
147/12	angle [6] 33/22	137/20 140/18
am [5] 6/14 71/19	96/20 114/14	148/23 155/12
95/19 107/9	116/9 122/21	anything [29]
142/15	123/8	19/10 23/1 24/23
AMARRI [2] 1/9	angles [4] 32/8	24/23 27/6 27/17
6/20	32/18 119/10	34/12 34/17 37/10
American [1] 9/7	155/3	43/14 46/17 50/1
ammunition [20]	ankle [7] 17/9	51/17 52/7 62/12
58/20 78/6 79/8	17/10 17/12 17/13	62/21 74/16 78/4
79/9 79/11 79/14	17/13 17/14 17/15	79/6 81/24 82/19
79/15 80/14 80/20	another [18] 18/5	88/19 133/10

A anything... [6] 139/23 140/18 148/23 154/19 154/22 155/12 Anyways [1] 86/14 apart [1] 16/16 apartment [28] 38/4 38/10 39/17 42/25 77/7 77/19 78/19 79/1 79/2 79/2 80/2 80/5 80/8 81/5 99/14 101/12 113/23 115/4 115/11 129/18 139/3 147/25 148/4 148/5 148/7 148/10 148/14 148/15 apologize [15] 11/10 15/3 55/6 71/1 71/9 88/7 94/14 101/10 105/12 113/22 121/4 123/1 126/4 133/1 154/18 apparent [2] 67/11 128/18 appear [4] 31/6 114/11 114/12 114/20 appeared [2] 6/11 147/8 appearing [1] 14/17 appears [7] 67/20 80/19 108/25 113/4 114/13 121/14 122/19 application [1]	158/15 approach [2] 94/16 121/13 approached [1] 38/16 are [166] area [26] 6/10 14/1 34/7 49/11 50/11 66/23 67/9 68/18 86/24 98/10 115/23 118/17 121/23 122/1 122/21 123/9 123/18 124/9 127/2 130/9 131/16 139/7 139/9 140/5 140/6 153/9 areas [1] 138/19 armed [2] 106/14 123/24 around [13] 22/4 22/6 22/20 28/25 46/14 49/19 49/20 49/21 86/16 86/16 86/19 87/16 105/12 arrival [1] 67/16 arrive [1] 67/21 arrived [1] 67/13 as [147] ascertain [2] 15/8 97/4 aside [1] 13/16 ask [24] 11/4 21/9 21/10 21/13 29/17 30/8 36/20 40/22 41/24 103/23 104/16 109/10 110/9 111/5 116/15	126/9 126/23 145/14 146/9 147/20 148/2 149/14 153/5 156/5 asked [6] 23/11 25/5 27/16 40/23 51/5 60/12 asking [1] 144/7 assign [1] 91/15 assigned [7] 10/3 90/18 94/19 94/24 135/15 136/1 142/20 assist [7] 54/14 64/24 64/24 65/7 65/25 68/20 128/8 Assistant [1] 2/6 associate [3] 15/3 15/4 39/11 associated [12] 6/24 16/21 62/9 94/3 97/21 98/14 98/22 98/25 101/15 124/11 127/1 148/10 assume [1] 25/7 assumed [1] 26/21 attempt [13] 7/4 7/23 20/14 35/21 45/2 53/10 63/24 75/21 89/23 121/10 134/19 141/21 146/19 attempted [5] 83/24 111/21 112/9 112/14 150/5 attention [14] 9/22 22/14 22/15 32/6 36/14 45/20
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<p>A</p> <p>attention... [8] 54/4 65/6 76/25 84/19 113/7 119/25 122/17 150/25</p> <p>Attorney [2] 2/23 2/24</p> <p>August [35] 9/22 10/15 21/13 21/14 27/12 29/6 29/7 31/17 36/15 37/4 40/11 40/12 46/3 46/13 54/4 54/5 54/14 65/6 77/1 84/19 85/7 91/7 94/5 95/22 106/13 117/15 117/22 120/1 132/10 135/21 142/17 146/10 146/10 151/1 153/18</p> <p>August 15th [1] 77/1</p> <p>August 2 [1] 153/18</p> <p>August 2nd [1] 120/1</p> <p>August 8th [2] 29/7 46/13</p> <p>August 9th [4] 46/3 84/19 85/7 132/10</p> <p>authorizing [1] 144/6</p> <p>auto [8] 60/5 70/17 72/19 73/21 73/22 101/8 102/3 116/14</p> <p>automatic [9] 69/21 78/15 78/17</p>	<p>98/18 99/19 100/1 112/3 115/19 116/18</p> <p>autopsies [2] 9/9 9/20</p> <p>autopsy [14] 9/24 10/2 10/8 10/13 10/14 10/20 11/7 11/11 11/19 12/8 12/12 13/2 13/18 16/2</p> <p>available [2] 66/22 94/18</p> <p>Avenue [1] 66/7</p> <p>aware [4] 55/7 117/21 127/10 148/6</p> <p>away [1] 130/6</p> <p>awning [1] 66/23</p> <p>B</p> <p>back [32] 16/4 16/7 17/15 33/6 33/7 33/11 33/25 37/2 37/4 39/4 39/17 40/8 41/16 42/25 50/14 54/24 68/19 72/11 87/22 100/19 104/25 105/10 111/22 112/17 114/10 116/17 119/3 119/6 122/13 123/17 128/4 149/15</p> <p>backed [1] 30/12</p> <p>background [1] 108/20</p> <p>backing [1] 98/20</p> <p>backpack [2] 69/17 69/19</p>	<p>bad [1] 51/19</p> <p>bag [7] 11/24 61/15 61/17 61/18 62/5 69/23 71/13</p> <p>Bagpipe [13] 68/21 69/1 97/24 98/2 98/20 101/11 112/5 128/15 137/12 137/15 137/19 138/4 144/15</p> <p>ball [2] 114/8 117/1</p> <p>barge [1] 86/14</p> <p>BASCH [1] 2/3</p> <p>baseball [1] 147/17</p> <p>based [21] 18/8 38/16 57/23 58/5 60/7 70/18 96/23 97/2 97/18 102/11 102/20 103/22 104/10 105/2 106/6 112/25 120/4 136/9 137/23 139/12 139/25</p> <p>basically [8] 16/4 26/11 61/15 64/25 92/1 100/2 130/14 138/4</p> <p>be [110]</p> <p>because [29] 14/13 25/7 26/5 27/21 27/24 28/24 39/8 40/25 57/1 57/6 61/2 66/25 70/9 73/12 86/8 87/20 88/7 94/15 95/5 99/22 103/24 113/10 118/9</p>
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B	87/3 88/19 89/13	104/11
because... [6]	109/16 110/17	better [3] 15/4
130/12 131/1	124/20 126/12	108/15 122/23
131/15 132/14	129/24 133/10	between [2] 30/11
152/20 154/2	134/10 140/18	87/4
become [1] 92/10	141/12 148/23	big [1] 15/15
bedroom [10]	149/22 151/20	bill [2] 147/17
78/23 79/2 79/3	155/12 157/8	147/18
79/5 79/7 79/16	before-entitled	bit [8] 22/17
80/16 81/4 81/11	[1] 157/8	33/19 36/23 59/11
139/5	beginning [1]	66/17 66/25 67/1
bedrooms [2]	31/8	117/7
69/18 78/25	begins [1] 12/8	black [26] 25/4
been [45] 6/5	behind [5] 71/12	25/6 25/10 25/13
8/10 8/19 8/24	86/19 123/25	33/1 33/14 33/20
14/25 21/2 24/20	152/14 152/21	47/22 48/1 48/2
36/7 38/7 45/13	being [22] 18/14	48/14 50/23 81/9
48/22 53/21 54/11	31/2 31/16 34/4	81/9 81/17 113/5
59/22 60/8 61/22	66/14 92/16 95/25	113/5 114/13
64/10 64/20 67/15	96/5 99/1 99/24	114/23 120/13
68/4 72/9 76/7	100/1 100/4	120/17 121/6
76/16 78/15 79/3	111/10 113/1	124/2 137/2
80/1 84/11 90/9	114/23 114/24	137/25 147/17
99/25 100/6	117/21 127/1	Blackhawks [1]
102/24 103/1	128/22 144/18	147/24
103/12 104/3	145/20 156/3	bleeding [1]
121/14 131/12	believe [18] 6/15	85/12
132/25 135/4	47/4 47/8 58/15	block [1] 136/5
137/1 139/16	60/3 60/18 66/12	blood [7] 67/8
142/7 143/17	72/6 101/7 101/24	67/11 85/18 85/19
146/3 150/18	116/22 116/25	87/16 128/18
151/20	119/18 121/16	143/7
before [42] 7/14	131/12 132/2	blue [4] 12/5
9/20 19/10 20/5	139/3 140/4	81/11 108/24
34/17 35/12 39/5	bell [2] 123/11	125/18
43/14 44/18 52/7	140/9	board [2] 9/6 9/7
53/1 55/6 57/3	bend [1] 96/20	body [8] 10/25
62/21 63/15 66/13	bending [1] 96/19	11/2 11/24 12/1
67/17 68/18 74/16	Beretta [2]	14/20 16/12 16/19
75/12 78/1 81/24	146/15 146/19	100/2
82/20 83/15 85/13	best [2] 6/7	bones [2] 17/9

B	114/15 114/23 114/25	25/13 38/5 146/15
bones... [1] 17/16	bring [1] 136/3	C
Bonneville [2] 38/24 38/24	brings [2] 21/15 152/1	C-O-D-Y [1] 135/2
bores [1] 14/16	broad [1] 18/9	C.C.R [3] 1/25 157/6 157/18
both [16] 8/5 20/21 36/3 45/9 53/17 64/6 76/3 84/6 90/5 101/7 112/21 115/6 118/15 134/25 142/3 150/14	broken [1] 61/23	C328587 [1] 1/7
bottle [2] 108/22 109/8	brother [3] 99/2 99/6 129/10	caliber [52] 58/20 60/6 60/11 70/19 70/23 70/24 71/3 72/4 72/18 72/22 72/24 73/2 73/8 73/8 73/10 73/11 73/15 73/19 74/1 74/3 74/4 78/11 79/11 79/12 79/14 80/15 80/23 82/9 98/18 99/18 100/7 100/8 100/10 100/11 100/21 100/23 101/8 101/19 102/4 102/12 112/6 115/19 116/4 116/18 138/23 139/9 139/16 143/21 143/22 143/23 143/25 145/19
bottom [6] 10/24 49/3 62/11 78/21 80/13 88/3	brother's [1] 99/3	calibers [1] 103/6
bought [4] 24/24 25/3 26/18 26/19	brown [1] 81/12	call [15] 27/5 27/20 47/15 47/16 47/19 47/19 50/4 51/23 54/22 67/4 85/8 87/4 91/10 132/6 134/6
box [6] 58/20 58/22 79/11 82/10 100/20 116/19	bulbs [1] 66/24	called [6] 40/4 40/6 51/21 54/14 65/7 87/6
boxes [2] 80/20 80/25	bulk [1] 125/6	calling [4] 40/7
brain [3] 13/23 14/8 15/9	bullet [18] 14/13 14/20 15/10 16/3 16/7 16/9 16/11 16/13 16/15 16/19 17/15 17/17 17/18 59/13 59/19 59/21 100/2 100/6	
brand [2] 60/2 70/15	bullets [1] 116/2	
brands [1] 70/22	bunch [1] 143/9	
break [7] 44/5 44/7 44/10 44/11 57/1 134/1 134/4	burglary [13] 7/2 7/21 20/12 35/19 44/25 53/8 63/22 75/19 83/22 89/21 134/17 141/19 150/3	
brick [2] 47/2 49/14	burnt [1] 66/25	
briefing [2] 92/14 136/10	bus [5] 38/20 38/24 38/25 39/1 146/17	
briefly [2] 61/10 126/12	business [7] 24/11 117/8 118/14 118/18 121/9 123/18 151/18	
brim [6] 114/11 114/12 114/13	butcher [1] 58/24	
	butts [1] 128/13	
	buy [4] 24/22	

C	147/18	59/21 68/4 68/5
calling... [3]	can't [5] 21/22	70/10 70/13 70/19
40/8 86/21 92/4	27/25 95/13	71/2 71/4 72/18
calls [7] 19/25	122/25 154/18	72/24 73/12 73/24
44/3 44/14 52/22	canvassed [1]	74/5 100/1 100/5
63/11 89/8 141/7	6/10	100/7 100/8
came [27] 9/5	cap [5] 113/5	100/24 101/4
15/24 21/17 22/3	114/8 114/23	101/19 101/24
22/11 22/12 22/12	117/1 147/19	102/4 102/5
26/17 26/25 27/7	capacity [3]	102/22 139/18
27/8 27/15 27/15	71/21 72/3 129/25	143/12 143/14
27/18 29/19 30/19	captured [1]	143/19 143/22
30/23 34/9 40/21	152/3	143/22
40/24 41/20 42/24	car [36] 26/8	cartridges [10]
91/10 128/4 145/3	26/9 26/12 30/11	59/7 59/24 70/9
152/14 152/14	30/11 30/15 30/16	70/23 70/24 72/16
camera [10] 66/20	30/24 30/25 31/1	72/22 82/6 102/13
96/20 114/14	31/10 32/16 36/22	115/25
117/8 119/10	36/23 37/4 37/9	case [35] 6/15
121/14 122/11	38/5 38/8 38/18	6/25 8/21 10/3
122/20 123/8	38/23 39/12 39/18	10/10 32/3 39/9
131/18	39/22 40/2 40/11	55/21 55/23 59/18
cameras [6] 24/14	42/13 60/16 87/20	59/21 61/24 62/1
24/16 24/17 24/20	95/15 110/24	68/3 70/11 73/12
118/14 121/17	110/25 111/2	91/19 92/13 94/23
can [38] 26/2	111/4 111/5	100/1 100/8
29/17 44/4 47/9	127/18 138/7	100/24 101/19
55/18 56/16 58/6	card [1] 125/18	102/4 102/5
60/4 61/5 61/22	carpet [1] 139/7	104/24 105/15
66/23 71/20 72/21	carried [1]	106/20 120/23
79/20 80/14 87/12	146/23	121/24 131/7
87/14 87/24 93/12	carry [3] 97/16	132/13 138/20
96/21 99/12	146/21 146/24	139/15 158/4
102/12 102/15	carrying [1]	cases [19] 9/8
102/17 103/23	97/13	9/9 68/4 68/5
104/4 104/7	cars [2] 30/11	70/19 72/18 74/5
104/16 104/18	50/10	100/5 100/7 100/9
119/25 122/17	cart [1] 101/1	101/1 102/22
122/23 123/9	cartridge [36]	104/6 139/18
130/22 130/24	59/12 59/15 59/17	143/13 143/14
132/12 133/5	59/18 59/18 59/20	143/19 143/22

C	57/9 103/18 138/19	choice [1] 153/13
cases... [1] 143/22	CERTIFICATE [1] 157/1	cigar [4] 25/11 25/13 26/18 26/19
cash [2] 41/10 152/15	certified [1] 9/6	cigarette [1] 128/13
casing [1] 51/25	certify [1] 157/7	circle [1] 29/3
casings [3] 72/14 72/15 72/16	chain [2] 62/10 62/13	circular [1] 114/14
CAT [1] 38/25	chamber [2] 70/10 70/11	circumstances [1] 131/19
catch [1] 90/20	change [1] 152/13	Civic [8] 99/12 99/14 101/12 101/15 101/16 115/4 115/10 115/23
CATHERINE [1] 2/14	channel [2] 122/5 122/20	clarify [1] 72/21
caught [1] 50/13	characteristic [1] 14/19	CLARK [27] 1/2 9/12 19/15 19/18 34/22 34/25 43/19 43/22 52/12 52/15 63/1 63/4 74/21 74/24 82/25 83/3 88/24 89/2 133/15 133/18 140/23 141/1 149/3 149/6 155/17 155/20 157/4
cause [8] 10/22 17/23 26/4 30/20 30/21 40/15 68/17 86/16	charged [2] 7/1 7/2	clear [5] 29/14 94/7 102/8 114/17 123/8
caused [4] 16/3 46/17 50/2 85/8	charges [2] 7/7 7/9	clerk [3] 119/20 123/18 123/25
cautious [1] 86/10	CHARLES [1] 2/4	clerk's [1] 124/8
ceiling [1] 37/23	Charleston [3] 117/16 118/2 151/7	clinical [1] 9/6
cell [6] 60/17 60/19 60/23 60/25 61/3 123/22	Charlie [3] 100/15 100/22 116/21	clip [1] 120/11
center [35] 19/16 19/19 30/15 31/1 34/23 35/1 43/20 43/23 52/13 52/16 63/2 63/5 74/22 74/25 83/1 83/4 88/25 89/3 99/12 99/14 101/12 101/15 101/16 114/25 115/4 115/11 115/23 133/16 133/19 140/24 141/2 149/4 149/7 155/18 155/21	chatted [1] 126/12	close [5] 46/10 95/12 136/6 136/6 139/7
certain [4] 16/13	check [1] 85/15 checked [4] 85/19 87/5 87/5 104/17 checking [1] 124/19	closed [2] 12/4 40/17
	CHEESMAN [1] 2/8	closely [1]
	chest [2] 139/5 139/8	
	Chevron [1] 39/3	
	Chicago [3] 9/4 9/15 147/24	
	Chief [1] 2/23	
	chips [1] 37/13	

C	126/1 144/23 149/15 154/16 154/25	140/22 149/2 154/9 155/16
closely... [1] 115/16	comes [2] 12/1 87/21	components [1] 15/12
closer [1] 117/7	coming [4] 22/17 23/21 117/7 120/16	conceal [2] 119/2 121/10
closet [6] 78/20 78/22 80/13 81/6 81/12 81/18	comings [1] 146/10	concealed [1] 97/17
closeup [3] 59/6 67/3 71/10	commit [13] 7/3 7/22 20/13 35/20 45/1 53/9 63/23 75/20 83/23 89/22 134/18 141/20 150/4	concern [5] 23/13 26/7 46/17 50/2 98/25
clothes [3] 33/8 33/9 131/14	common [2] 16/10 60/20	concerned [2] 23/3 154/5
clothing [12] 78/7 79/8 81/1 81/2 81/7 97/8 129/18 131/8 131/10 131/11 147/8 147/22	commonly [1] 14/18	concludes [9] 34/13 43/10 62/16 71/15 125/8 140/14 148/18 155/9 156/7
Cody [5] 91/3 134/6 135/1 135/3 142/16	company [3] 59/25 73/23 130/7	conclusion [1] 17/21
COHN [1] 2/9	compare [1] 104/21	condition [1] 76/23
collar [1] 14/18	compared [3] 104/5 128/16 128/24	conduct [2] 137/16 145/6
collect [3] 60/15 64/25 77/11	comparison [3] 128/11 128/14 128/19	conducted [3] 130/15 138/4 139/4
collected [2] 77/12 145/25	compartment [1] 139/7	conducting [2] 92/3 95/2
collective [1] 95/25	completed [1] 103/1	confess [1] 132/21
collectively [1] 7/1	complex [5] 38/4 38/11 39/18 42/25 148/15	confirm [1] 50/15
color [4] 81/15 96/8 114/11 137/1	comply [13] 19/14 34/21 43/18 52/11 62/25 74/20 82/24 88/23 133/14	confrontation [2] 110/21 128/22
come [26] 13/9 16/16 17/22 23/15 23/17 30/22 32/13 39/8 40/13 40/17 40/19 42/12 94/21 101/25 104/25 105/10 105/14 105/18 112/20 119/14 120/9		confronted [1] 111/21
		conjunction [2] 57/21 77/15
		connected [2] 118/9 121/24
		connects [1] 49/5

C	Cool [1] 149/16	19/16 19/18 34/23
consisted [1] 123/22	COOMBS [1] 2/10	34/25 43/20 43/22
consistent [1] 128/18	coordinate [1] 12/12	52/13 52/15 63/2
conspiracy [13] 7/3 7/22 20/13 35/20 45/1 53/9 63/23 75/20 83/23 89/22 134/18 141/20 150/4	copies [2] 96/24 137/5	63/4 74/22 74/24 83/1 83/3 88/25 89/2 133/16 133/18 140/24 141/1 149/4 149/6 155/18 155/20 157/4
constitutes [1] 157/12	copy [4] 6/21 6/23 30/7 152/8	couple [3] 23/18 109/25 149/14
contact [7] 38/17 105/15 105/18 109/11 132/8 144/23 145/3	corn [2] 47/17 47/18	course [22] 13/18 24/11 91/14 92/6 92/8 94/10 95/24 97/3 97/18 98/13 98/21 100/16 101/2 103/10 103/15 106/11 108/7 119/13 127/15 144/22 147/6 151/17
contain [1] 158/8	corner [17] 46/23 47/1 47/4 47/7 47/8 48/10 49/19 49/20 49/22 50/3 50/9 50/12 115/13 120/1 122/11 122/12 122/18	court [24] 1/1 9/19 19/17 34/24 43/21 52/14 63/3 68/21 74/23 83/2 89/1 98/7 98/9 133/17 137/15 137/19 138/4 140/25 144/7 144/15 149/5 152/1 155/19 158/23
Contains [1] 158/11	Coroner's [2] 9/12 9/15	COURTNEY [1] 2/19
contempt [12] 19/17 34/24 43/21 52/14 63/3 74/23 83/2 89/1 133/17 140/25 149/5 155/19	correct [79] correctly [2] 17/6 41/9	Courts [2] 9/18 9/18
contents [1] 56/8	could [19] 42/21 47/11 49/18 51/23 65/15 86/18 92/4 92/5 94/20 95/14 102/18 104/11 104/21 115/14 130/21 132/15 132/17 137/6 138/5	cousin [7] 84/25 85/1 86/2 87/1 87/13 88/11 88/12
continue [2] 49/16 49/21	couldn't [1] 146/16	cover [2] 13/6 119/2
continued [5] 46/20 49/18 50/14 51/16 51/18	counseled [1] 40/14	
convenience [7] 42/15 92/16 92/19 97/12 110/5 111/18 117/15	counter [6] 30/14 34/7 123/25 152/14 152/21 154/12	
conversation [1] 28/1	COUNTY [29] 1/2 9/3 9/12 9/15	
conversations [1] 60/7		
Cook [2] 9/3 9/15		

C	62/13	74/21 74/24 82/25
covered [3] 116/11 118/23 121/12	D	83/3 88/24 89/2
covering [2] 14/2 14/23	D-O-S-C-H [1] 90/7	110/17 133/15
cranium [1] 85/11	damage [4] 16/3 31/7 36/24 37/21	133/18 140/23
crime [26] 11/12	damaged [1] 13/13	141/1 149/3 149/6
17/2 54/9 54/17	Danette [7] 1/25	155/17 155/20
60/20 64/18 68/10	6/4 157/6 157/17	DC [1] 1/7
76/15 76/16 76/20	157/18 158/18	deadly [39] 7/4
76/21 77/15 77/18	158/21	7/5 7/5 7/23 7/23
77/21 77/23 94/25	dark [2] 47/22	7/24 20/14 20/14
95/3 95/5 95/12	66/15	20/15 35/21 35/21
99/23 104/5 104/6	darker [1] 66/17	35/22 45/2 45/2
130/5 132/3	date [12] 29/6	45/3 53/10 53/10
140/10 142/21	31/14 32/20 61/21	53/11 63/24 63/24
crop [1] 47/18	84/20 91/22 91/24	63/25 75/21 75/21
crosses [1] 121/9	94/2 103/3 119/24	75/22 83/24 83/24
Crown [6] 26/13	123/5 158/19	83/25 89/23 89/24
26/14 31/3 31/4	dated [3] 120/1	89/25 134/19
50/4 96/1	153/18 157/14	134/19 134/20
CSI [2] 62/2	DAVONTAE [22] 1/9	141/21 141/21
64/19	6/20 8/1 20/17	141/22 150/5
curly [2] 47/16	35/24 45/4 53/12	150/6 150/6
47/17	64/1 75/24 84/1	deal [3] 38/13
currently [2]	90/1 101/17 105/6	130/25 145/4
90/18 135/15	105/23 112/24	death [4] 10/22
custody [2] 62/10	116/24 125/2	17/23 18/2 18/5
62/14	134/21 141/24	decedent [2]
customary [1]	144/24 145/2	12/23 139/16
93/15	150/10	decedent's [1]
customer [6] 22/5	day [11] 39/22	128/20
22/8 30/13 121/22	40/3 40/12 46/7	December [1]
152/24 153/1	77/19 85/4 92/6	157/15
customer's [1]	115/7 132/15	decided [2] 46/5
153/3	152/1 153/6	85/24
customers [4]	days [25] 19/15	decline [1] 25/20
22/1 23/15 26/6	19/18 34/22 34/25	declined [1]
30/23	43/19 43/22 52/12	25/22
cut [2] 62/12	52/15 63/1 63/4	deemed [1] 61/16
		defendants [3]
		1/11 6/25 7/2
		definitely [2]

D	113/1 116/20 126/18 143/6 143/11 146/2	148/19
definitely... [2] 16/17 18/23		detectives [22] 23/18 40/19 40/21 41/7 41/23 42/19 43/2 43/3 54/15 57/18 58/9 60/8 60/24 64/24 68/15 69/3 94/18 94/20 94/21 106/19 124/21 142/16
definition [3] 18/8 18/9 59/15	depictions [7] 11/6 32/19 37/3 56/7 66/3 107/10 113/17	Detention [24] 19/16 19/19 34/23 35/1 43/20 43/23 52/13 52/16 63/2 63/5 74/22 74/25 83/1 83/4 88/25 89/3 133/16 133/19 140/24 141/2 149/4 149/7 155/18 155/21
degree [1] 18/12	depicts [3] 95/21 116/1 116/10	determination [1] 132/4
deliberate [1] 156/6	Deputy [3] 2/4 2/23 2/24	determine [1] 51/5
demands [1] 154/9	describe [4] 14/24 33/8 33/9 47/9	Dewey [20] 45/25 46/24 47/7 48/10 49/5 49/7 49/9 49/10 65/8 66/7 66/9 84/21 85/5 87/10 91/7 99/24 132/22 135/22 136/7 142/18
DEMARIO [40] 1/8 1/8 6/19 7/25 20/16 35/23 38/25 39/5 39/12 42/7 42/12 42/20 42/22 45/4 53/12 64/1 75/23 84/1 89/25 99/1 105/6 105/19 109/1 109/6 109/11 111/5 111/10 111/11 111/16 111/24 111/25 112/10 129/10 132/20 134/20 138/10 138/12 138/16 141/23 150/7	described [8] 11/8 30/16 32/16 96/9 115/15 115/15 138/18 153/24	diagrams [1] 76/24
denied [1] 147/4	description [4] 27/22 62/4 92/15 127/14	diameter [1] 15/14
deny [1] 146/6	DeShawn [2] 99/4 129/7	did [252]
department [7] 51/3 90/18 91/15 92/2 93/8 125/15 129/25	design [1] 72/5	didn't [15] 25/4 25/8 30/19 38/12 38/13 39/20 40/10 40/15 47/12 85/14
depending [1] 61/18	desk [1] 71/12	
depict [1] 118/20	detail [2] 118/5 135/13	
depicted [19] 33/12 36/21 48/6 79/21 80/16 87/25 96/18 97/8 103/12 108/17 108/24 110/5 112/18	detailed [1] 62/4 details [3] 28/18 93/14 94/4	
	detective [23] 51/2 60/18 89/8 90/17 90/25 91/3 94/23 95/5 106/21 106/22 123/13 124/20 125/1 125/7 126/3 127/9 128/7 134/6 135/12 138/15 141/7 142/14	

D	56/12 66/6 93/11 120/22	31/13 33/17 33/22 37/15 37/18 51/13 58/25 61/10 66/18 71/18 72/1 73/4 73/18 73/21 82/9 93/18 93/19 93/21 96/14 111/24 114/11 114/12 114/20 114/22 116/12 118/19 120/5 123/5 123/11 123/17 125/9 126/14 129/14 129/24 134/1 140/7 147/21 151/8 151/9 158/4 158/8
didn't... [5] 85/14 85/18 131/4 146/23 152/20	distance [3] 46/25 95/12 95/13	
died [1] 18/13	distinction [1] 130/22	
difference [1] 121/7	DISTRICT [5] 1/1 2/23 2/24 9/18 9/19	
different [19] 15/14 18/18 24/14 26/17 32/8 61/20 70/22 70/22 70/25 79/13 93/24 100/25 102/13 102/19 116/8 116/9 123/9 127/9 144/2	division [3] 94/14 94/22 135/25	
differently [1] 124/3	DJ [1] 111/11	
digits [2] 91/23 122/5	DMV [8] 39/21 40/3 40/4 40/6 40/7 40/10 40/12 40/18	
dip [1] 86/18	DNA [12] 61/14 103/20 104/12 104/19 104/20 104/20 105/5 128/11 128/16 128/21 128/23 129/11	doesn't [3] 14/14 14/15 73/15
direct [8] 9/22 36/14 45/20 54/4 65/6 76/25 84/18 150/25	do [201]	doing [9] 8/19 22/9 46/4 86/21 86/23 144/10 148/5 152/20 154/11
direction [4] 49/21 100/4 138/3 157/11	Doc [1] 13/24	don't [13] 26/20 26/22 26/23 47/16 47/18 57/25 60/10 70/10 72/3 94/21 99/7 103/3 147/13
discharged [4] 99/25 99/25 100/2 131/13	doctor [2] 19/3 19/7	done [12] 9/8 12/12 26/6 30/22 56/10 61/17 62/8 103/23 124/20 127/4 132/13 146/13
disclosing [13] 19/9 34/16 43/13 52/6 62/20 74/15 81/23 82/19 88/18 133/9 140/17 148/22 155/11	document [7] 28/6 64/25 65/2 67/7 67/22 76/22 94/24	door [12] 33/23 56/25 85/20 86/8 86/8 86/11 86/14 86/17 108/2 118/16 124/7 153/17
discount [2] 117/24 151/5	documentation [2] 65/8 66/1	
discover [1] 16/2	documented [1] 69/9	
display [5] 34/1	documenting [2] 65/24 68/21	
	Doe [1] 123/16	
	does [48] 7/6 13/5 13/5 13/17 18/4 23/21 31/6	

D	111/1	effect [1] 125/20
doors [3] 26/15	driveway [4] 48/8	effective [1] 130/20
56/21 56/21	67/10 85/10	effort [1] 13/12
Dosch [6] 89/9	137/19	eight [1] 72/6
90/7 90/8 135/17	driving [2]	EIGHTH [2] 1/1
138/16 142/16	110/16 110/20	9/18
doughnut [2] 22/6	dropped [1] 22/8	either [3] 23/17
32/3	drove [2] 40/2	62/1 132/2
down [12] 21/20	42/25	elements [3] 7/6
21/22 25/9 38/23	duly [13] 6/5	7/7 7/9
40/5 40/18 50/11	8/10 21/2 36/7	eleven [1] 28/25
88/5 110/20	45/13 53/21 64/10	else [6] 23/1
115/13 154/12	76/7 84/11 90/9	26/24 59/20 79/6
157/7	135/4 142/7	81/4 110/14
downloaded [2]	150/18	Elsewhere [1]
30/1 70/7	DUMKE [1] 2/11	81/11
downtown [2]	during [8] 11/7	emergency [1]
38/20 42/25	11/13 11/15 11/19	86/22
downward [1] 16/5	13/18 97/3 98/3	employee [1]
Dr [1] 7/10	111/22	121/24
drafting [1]	duties [2] 54/18	empty [2] 70/11
144/7	65/11	72/8
draw [3] 119/25	duty [1] 119/20	end [2] 68/17
122/17 130/21	E	125/6
drawer [2] 78/21	each [1] 7/1	ended [1] 110/22
80/13	earlier [10]	enforcement [1]
drawers [2] 139/6	12/15 12/16 17/2	92/1
139/8	30/16 32/16 49/11	entered [2] 30/14
drawn [1] 22/15	71/6 106/13	118/25
dressed [2] 124/2	108/11 125/23	enters [1] 124/5
124/3	early [6] 21/15	entire [2] 59/18
dresser [2] 78/21	46/2 54/18 85/7	92/6
80/12	90/21 91/6	entirety [1]
drew [1] 22/13	east [2] 46/24	96/16
drinking [2]	49/7	entitled [1]
108/21 109/8	Ebony [2] 68/9	157/8
Drive [5] 45/25	68/10	entrance [10]
65/8 84/22 91/8	edge [2] 48/18	14/7 14/11 14/13
135/22	72/11	14/19 15/5 15/11
driven [1] 42/20	EDWARD [1] 2/18	15/12 15/13 15/25
driver's [1]		

E	everything [3] 21/22 28/16 59/19	9/4
entrance... [1] 17/14	evidence [45] 11/19 19/11 34/18 43/15 52/8 54/24 56/20 56/25 58/11 61/15 61/17 61/18 61/21 62/1 62/22 64/25 65/1 67/19 67/23 74/17 77/12 77/13 82/20 88/20 97/21 99/23 101/3 101/22 102/21 103/9 103/16 103/19 104/4 104/7 104/12 104/22 113/11 113/17 133/4 133/11 140/19 143/6 147/7 148/24 155/13	example [1] 59/17 except [1] 47/13 exceptions [1] 104/8 exchange [1] 41/15 excuse [5] 46/3 113/22 113/23 116/9 128/14 excused [12] 19/23 35/5 44/2 52/20 63/9 75/4 83/8 89/7 133/23 141/6 149/11 155/25 executed [1] 108/11 execution [1] 98/3 executions [1] 18/19 exhibit [41] 6/22 6/23 7/8 11/22 12/21 14/2 30/6 37/7 37/15 48/4 51/9 56/14 57/3 58/14 68/24 79/19 80/4 80/7 80/10 82/2 87/8 93/3 93/12 95/17 106/24 107/17 107/25 109/2 109/8 112/17 112/22 113/2 113/19 114/6 117/20 119/4 142/24 143/6 143/10 145/1 151/10 Exhibit 1 [1]
entry [5] 14/5 16/11 57/4 57/8 69/3		
escapes [1] 126/5		
especially [1] 60/23		
essence [3] 18/21 41/6 69/13		
essentially [4] 91/22 94/16 100/5 107/16		
establishment [3] 24/2 24/9 32/20		
even [4] 16/8 29/5 43/1 104/6		
evening [3] 54/20 68/23 151/2		
event [25] 19/12 28/18 31/11 34/19 43/16 52/9 62/9 62/23 74/18 82/21 88/21 91/16 91/18 91/19 91/21 91/22 92/8 93/9 93/18 128/21 133/12 136/2 140/20 148/25 155/14	evidentiary [1] 144/19 ex [1] 84/24 ex-stepdad [1] 84/24 exact [4] 12/24 25/7 26/18 26/19 exactly [3] 62/4 72/3 72/10 examination [16] 8/14 10/24 13/19 13/20 17/22 21/6 36/11 45/17 54/1 64/14 76/11 84/15 90/13 135/8 142/11 150/22 examine [2] 11/1 11/1 Examined [1] 3/2 Examiner's [1]	
events [5] 26/24 31/17 95/21 145/14 145/15		
eventually [1] 137/11		
ever [2] 50/11 87/1		
every [1] 65/4		
everybody [1] 44/12		
everyone [1] 22/2		

E	36/20 55/25 65/14	face [4] 118/20
Exhibit 1... [1]	79/25 107/7	121/5 121/8
6/22	113/13	121/11
Exhibit 13 [2]	Exhibits 28 [1]	faces [2] 118/24
112/22 145/1	36/20	119/2
Exhibit 14 [1]	Exhibits 34 [1]	facial [1] 33/17
109/2	79/25	facilities [1]
Exhibit 15 [1]	exit [9] 14/5	44/5
119/4	14/12 14/21 14/25	facing [1] 50/5
Exhibit 16 [1]	15/5 15/12 15/13	fact [11] 29/7
142/24	16/8 16/21	32/22 48/16 51/13
Exhibit 17 [1]	exited [4] 13/23	57/14 58/25 70/1
143/6	14/8 17/10 111/20	73/18 96/11 98/19
Exhibit 2 [1]	experience [10]	131/17
6/23	8/22 16/10 16/15	facts [1] 111/16
Exhibit 28 [1]	59/9 59/16 70/18	Failure [12]
56/14	102/9 102/11	19/14 34/21 43/18
Exhibit 29 [1]	104/19 130/17	52/11 62/25 74/20
37/15	explain [4] 41/3	82/24 88/23
Exhibit 3 [2]	42/19 61/10	133/14 140/22
117/20 151/10	132/12	149/2 155/16
Exhibit 35 [1]	expose [1] 66/22	fair [8] 11/6
113/19	exposures [3]	32/19 37/3 56/7
Exhibit 37 [1]	66/16 66/18 66/21	66/2 107/10
114/6	Express [17]	113/16 152/8
Exhibit 4 [3]	21/18 24/4 95/11	fairly [1] 14/17
30/6 95/17 106/24	95/18 96/25 106/9	faithfully [1]
Exhibit 42 [1]	106/25 107/24	6/5
82/2	108/3 114/3	false [1] 131/1
Exhibit 43 [2]	114/21 117/6	familiar [3] 30/3
93/3 93/12	136/4 146/1 147/1	95/19 107/9
Exhibit 5 [1]	147/5 147/10	family [5] 13/8
11/22	exterior [1]	13/9 13/13 51/20
Exhibit 6 [2]	113/21	85/2
12/21 14/2	external [3]	far [22] 10/21
Exhibit 7 [1]	10/23 13/19 17/22	16/3 50/22 69/6
107/17	eyes [1] 22/10	91/25 93/22 94/13
Exhibit 8 [2]	F	95/11 98/22
107/25 109/8	F-L-E-T-C-H-E-R	100/10 101/14
exhibits [10] 4/1	[1] 53/19	103/18 110/13
4/3 11/3 11/4		112/11 114/23

F	110/1 111/17	97/16 98/17 98/18
far... [7] 120/5	finally [2]	99/16 99/17 99/24
129/22 131/13	128/17 128/19	100/3 100/4 101/3
131/22 131/23	find [22] 13/18	102/15 112/4
135/25 142/21	16/16 42/21 42/22	113/24 115/25
fashion [1]	58/6 81/1 97/7	116/4 120/11
146/24	97/21 100/17	120/12 128/15
fast [4] 21/21	101/18 101/22	131/23 134/17
49/18 49/18	102/5 104/12	139/9 141/19
124/19	106/12 108/10	146/20 146/22
FC [1] 60/4	112/6 119/14	146/23 150/4
features [1]	136/24 138/22	firearms [9]
138/1	143/18 144/2	58/11 59/10 62/12
federal [4] 60/3	147/7	102/9 102/21
60/4 158/12	finding [1]	102/23 125/15
158/15	138/23	131/13 146/20
feel [1] 146/23	findings [1]	fired [3] 59/22
feeling [1] 51/19	13/20	100/6 131/16
feet [2] 10/25	fine [26] 19/16	firing [1] 132/21
50/25	19/18 21/23 34/23	first [65]
fellowship [1]	34/25 43/20 43/22	fit [2] 92/15
9/3	52/13 52/15 63/2	120/5
felt [2] 22/24	63/4 74/22 74/24	fits [1] 27/22
118/9	83/1 83/3 87/15	five [1] 152/13
few [5] 21/11	88/25 89/2 133/16	fixed [1] 121/14
22/1 23/17 23/17	133/18 140/24	flashlight [2]
104/8	141/1 149/4 149/6	86/15 86/21
Fiesta [2] 117/24	155/18 155/20	flat [1] 67/9
151/5	fingernails [1]	Fletcher [4]
figure [1] 137/8	128/20	52/22 53/18 53/19
figuring [1] 97/6	fingerprint [2]	53/20
filed [2] 93/15	61/13 104/23	floor [2] 85/9
158/4	fingerprints [1]	87/23
fill [3] 27/22	65/1	focus [1] 31/1
28/11 92/24	firearm [44] 7/3	focused [1]
filled [7] 28/3	7/21 20/12 35/19	152/22
28/12 28/14 28/15	44/25 53/8 63/22	focusing [4] 66/6
28/15 34/10 93/13	75/19 78/6 78/8	67/2 73/17 147/15
filming [1]	78/10 78/11 78/18	fold [1] 61/18
131/18	78/20 79/3 80/16	folds [1] 96/19
final [3] 102/4	83/22 89/22 97/13	follow [7] 68/18

F	forget [1] 126/5	16/9 16/16
follow... [6] 92/18 95/2 126/17 126/24 127/21 129/2	forgot [2] 51/20 140/4	frame [7] 46/11 107/16 120/6 127/7 130/18 130/18 132/1
follow-up [6] 68/18 92/18 95/2 126/17 126/24 127/21	forth [2] 40/8 92/5	frames [1] 110/12
followed [2] 54/24 91/24	forward [2] 100/3 123/14	FRANK [3] 2/10 99/15 101/13
following [2] 6/6 27/16	fought [1] 111/22	FREEMAN [1] 2/12
follows [12] 8/12 21/4 36/9 45/15 53/23 64/12 76/9 84/13 90/11 135/6 142/9 150/20	found [37] 54/20 58/21 69/11 69/18 70/19 72/14 72/16 74/10 79/4 79/6 79/15 80/16 81/18 85/9 85/16 85/17 87/6 87/23 98/3 98/17 99/16 101/7 102/22 105/1 108/12 112/4 113/24 116/19 129/11 138/25 139/23 140/3 140/10 147/25 148/3 148/3 148/6	friend [1] 40/5
footage [6] 96/15 107/3 122/9 127/5 147/1 147/23	four [38] 13/21 15/17 17/7 22/16 22/19 22/20 23/6 23/24 24/22 25/2 25/12 25/17 25/22 26/14 26/17 27/18 30/17 32/15 46/18 46/21 46/25 47/6 47/9 47/21 47/24 48/14 49/12 50/23 96/5 122/5 122/12 125/25 126/18 127/1 127/11 132/2 137/1 137/18	front [20] 13/23 15/2 22/1 22/8 37/2 40/16 50/13 61/23 67/10 85/10 85/20 86/8 86/8 86/10 86/14 86/17 96/17 108/2 112/15 118/16
foregoing [1] 157/11		full [1] 157/12
foreground [5] 108/19 108/21 108/24 112/21 113/4		further [7] 52/2 62/7 81/20 82/16 88/14 127/20 132/18
forehead [5] 13/25 14/24 15/1 15/5 15/22		furthest [1] 153/14
foreign [1] 128/23		G
forensic [7] 8/18 8/21 9/3 9/7 9/19 62/8 103/9		G-L-E-Z-Z-E-L-L-E [1] 76/5
Foreperson [14] 2/3 2/4 8/10 21/2 36/7 45/13 53/21 64/10 76/7 84/11 90/9 135/4 142/7 150/18	fragment [1] 16/11	Gabriel [5] 9/25 10/15 12/18 85/2 88/12
	fragments [2]	gambling [1] 122/19
		game [1] 153/11
		games [1] 153/13
		gaming [8] 121/23 122/1 122/15 122/19 122/21 123/9 124/9 153/9
		gap [1] 87/5

G	138/5 152/15	going [56]
garage [3] 56/3	gets [2] 61/18	goings [1] 146/10
62/2 66/23	87/21	gone [2] 57/23
garment [1]	Giancarlo [2]	118/25
132/17	2/23 6/14	good [4] 22/22
garments [1]	give [31] 7/14	22/24 47/12 65/20
130/23	7/20 20/5 20/11	got [20] 26/8
gas [2] 39/2 39/3	23/13 29/16 35/12	30/6 30/22 31/5
gather [1] 115/12	35/18 42/20 44/18	32/5 38/2 38/22
gathered [1] 97/2	44/24 48/21 53/1	38/23 39/17 39/22
gathering [1]	53/7 61/5 63/15	40/17 40/18 46/5
69/7	63/21 75/12 75/18	46/9 51/18 66/25
gave [5] 39/18	83/15 83/21 89/13	110/21 110/21
94/4 127/17	89/20 134/10	136/17 146/17
136/14 145/17	134/16 138/12	grabbing [1] 34/5
general [1]	141/12 141/18	graduated [1]
127/14	149/14 149/22	8/25
generally [1]	150/2	grand [140]
14/14	given [3] 50/24	grandmother [1]
gentleman [7]	92/15 120/20	39/19
23/4 25/4 25/5	GJ [1] 1/7	grant [1] 158/16
25/6 32/1 33/5	glanced [1] 47/14	granted [1]
97/12	Glezzelle [3]	113/12
gentlemen [11]	75/8 76/4 76/6	grave [1] 22/22
6/13 19/6 43/11	go [24] 14/15	graveyard [4]
62/17 71/16	16/6 16/7 21/21	21/19 21/24 21/25
133/25 148/19	26/4 26/7 27/14	66/12
149/13 153/24	38/20 40/5 40/13	gray [1] 114/24
155/7 156/5	40/18 46/6 46/9	great [1] 130/25
GEORGE [2] 2/8	48/19 72/12 77/14	greatest [1]
85/2	85/25 94/11 110/3	108/13
get [27] 25/4	118/18 129/24	green [2] 81/10
25/6 30/17 32/15	132/15 136/1	108/25
41/15 46/8 47/12	144/22	gross [12] 19/15
61/3 61/15 61/17	God [14] 7/16	34/22 43/19 52/12
66/10 86/13 86/22	20/7 20/8 35/14	63/1 74/21 82/25
87/14 92/7 95/14	44/20 44/21 53/3	88/24 133/15
98/7 105/5 110/24	63/17 75/14 83/17	140/23 149/3
113/6 130/18	89/15 134/12	155/17
131/24 136/1	141/14 149/24	ground [2] 86/3
137/20 138/2	goes [1] 14/20	143/9

G GSR [1] 130/14 guess [6] 18/11 47/2 47/23 85/11 87/4 115/14 gun [12] 23/4 23/8 23/21 33/3 34/1 100/20 102/20 131/16 146/16 152/16 152/22 154/2 gunpowder [1] 59/19 guns [1] 125/12 gunshot [13] 13/21 15/17 17/8 18/1 19/2 129/19 129/23 130/1 130/14 130/22 131/5 131/5 131/16 gunshots [5] 85/13 85/21 85/22 86/9 87/3 guy [4] 2/13 38/3 152/14 152/20 guys [1] 51/24	115/13 120/9 121/21 122/18 123/7 134/8 141/10 149/19 149/20 153/17 handed [1] 30/1 handgun [16] 69/21 69/23 74/12 78/13 78/16 98/3 99/19 100/1 102/12 112/3 112/6 115/20 116/18 138/23 145/19 146/15 handguns [1] 101/8 handkerchief [1] 81/10 hands [6] 18/5 18/14 130/24 130/25 131/7 131/22 handwritten [5] 5/4 28/7 28/10 92/24 93/1 happen [4] 85/8 86/12 154/19 154/22	34/17 43/14 52/7 62/21 74/16 81/24 82/20 88/19 93/22 99/25 100/6 103/1 103/2 114/13 116/21 122/9 130/9 133/10 140/18 143/17 148/23 155/12 hasn't [2] 61/22 131/12 hat [14] 113/6 113/6 114/3 114/16 114/21 115/3 147/12 147/14 147/15 147/16 147/17 147/23 147/24 148/3 have [141] haven't [1] 131/5 having [16] 6/5 8/10 21/2 24/20 36/7 45/13 53/21 57/23 64/10 76/7 84/11 90/9 106/6 135/4 142/7 150/18
H had [55] hair [4] 33/18 47/16 47/17 47/19 half [3] 91/21 91/25 91/25 halfs [1] 91/21 halls [1] 126/10 hand [23] 7/12 13/25 20/3 30/12 35/10 44/16 49/13 52/24 60/24 63/13 75/10 83/13 89/11	happened [12] 15/21 27/20 38/1 41/1 86/5 109/22 111/17 121/22 137/14 152/11 154/20 154/23 happening [1] 21/15 HARABURDO [1] 2/14 hard [1] 86/11 has [26] 6/10 12/5 19/10 33/25	he [137] he's [8] 22/5 32/4 33/9 33/11 33/12 33/14 108/24 126/5 head [46] 10/24 13/6 13/22 13/23 14/8 14/9 15/6 15/9 16/8 16/9 16/18 60/9 70/13 70/23 70/25 72/15 73/9 73/10 73/17 73/23 74/6 74/10

H	121/22 122/25	110/23 112/4
head... [24]	123/4 123/12	121/10 121/11
79/13 79/15 79/17	123/16 123/21	126/4 126/7 140/4
82/6 82/12 82/14	123/21 123/23	145/8 145/18
85/11 100/9	124/9 154/19	146/9 146/24
100/13 100/18	154/22	147/25 148/4
100/21 100/24	here [40] 7/19	148/5 148/6
100/25 101/4	9/5 9/18 11/22	148/14 154/9
101/19 101/25	15/2 20/10 21/16	hit [1] 14/14
102/3 102/6	22/10 23/8 24/6	hitting [1] 14/14
102/13 103/7	24/7 30/6 31/25	hold [2] 71/18
116/10 116/12	32/12 33/15 35/17	72/5
116/21 139/17	44/23 45/22 48/3	hole [2] 14/17
headed [1] 39/3	48/18 49/9 53/6	15/15
heading [1] 49/7	58/19 60/2 63/20	hollowed [2]
headlights [3]	65/8 75/17 80/11	139/6 139/8
48/17 48/17 49/12	82/10 83/20 87/16	holographic [1]
hear [1] 133/2	87/21 89/20 91/7	147/18
heard [9] 9/14	105/19 126/10	holster [2] 23/8
15/17 22/16 68/17	134/15 141/17	69/25
85/13 85/21 85/22	150/2 152/1	home [8] 46/5
87/2 144/21	hereby [2] 157/7	46/8 51/20 69/4
held [13] 19/17	158/4	87/8 115/10
34/24 41/12 43/21	hey [1] 27/17	129/19 146/17
52/14 63/3 74/23	hidden [1] 139/5	homicide [19]
83/2 89/1 133/17	hiding [1] 86/18	18/3 18/4 18/10
140/25 149/5	him [55]	18/13 27/22 54/14
155/19	himself [4] 18/25	54/21 57/18 60/8
help [17] 7/16	110/10 110/11	68/15 68/20 69/3
13/9 14/11 20/7	110/14	69/6 90/19 90/20
20/8 35/14 44/20	hip [7] 23/5 23/9	91/6 135/15
44/21 53/3 63/17	23/16 33/3 34/2	135/20 142/14
75/14 77/7 83/17	97/14 146/24	homicides [6]
89/15 134/12	his [38] 15/9	18/15 18/16 18/17
141/14 149/24	15/9 23/4 23/9	18/17 18/18 18/20
helping [2] 26/6	25/5 25/8 33/3	hood [4] 37/1
30/22	33/11 34/2 39/19	37/22 56/17 56/21
helps [1] 37/11	85/11 85/11 87/20	hoodie [8] 33/14
her [16] 6/7	93/14 97/13 99/1	33/20 81/15 81/17
51/21 119/17	99/3 99/5 99/6	120/13 120/17
119/18 119/19	109/15 109/25	121/6 124/2

H	8/24 9/5 11/21	130/13
hoodies [2] 47/12	11/22 12/21 16/14	important [1]
81/13	18/11 20/1 21/9	99/22
hours [8] 46/2	21/10 21/13 22/2	impound [9] 17/4
46/3 85/7 91/7	22/2 22/10 22/22	60/21 61/8 61/11
91/13 120/2 132/2	28/6 29/16 30/7	61/13 68/7 81/2
132/11	48/3 48/19 48/25	81/8 81/13
house [12] 46/11	51/9 54/9 56/10	impounded [10]
47/2 47/5 48/8	56/10 56/12 62/5	68/5 78/1 78/2
48/10 49/8 51/21	64/18 66/5 72/9	78/2 78/5 78/6
51/22 85/10 85/22	76/15 76/25 79/18	79/7 79/10 81/16
86/18 112/15	81/25 82/8 87/7	140/10
houses [2] 51/25	88/6 90/17 122/4	inches [1] 15/14
59/19	123/3 124/19	incident [14]
how [27] 8/19	131/9 135/12	34/9 92/4 92/19
12/1 12/7 20/1	135/15 140/4	93/24 94/20 97/21
23/15 26/1 26/8	153/5	106/13 106/17
26/9 26/9 27/17	I've [6] 8/24 9/8	110/18 117/15
39/16 41/3 47/19	22/16 24/19 30/6	117/22 118/10
50/22 54/11 59/9	115/15	118/13 151/25
64/20 71/18 72/12	ID [4] 25/5 25/8	incidents [1]
76/16 78/25	25/15 25/18	92/9
103/22 104/7	idea [1] 42/21	incisions [1]
121/11 131/23	identification [6]	10/25
132/9 146/20	12/25 13/14 27/3	including [16]
HOWARD [1] 2/3	127/11 129/3	18/19 19/10 34/17
however [4] 29/25	139/25	43/14 52/7 57/8
92/6 127/13 147/6	identifications	60/16 62/21 74/16
huh [1] 6/17	[1] 127/4	81/25 82/20 88/19
human [2] 18/14	identified [5]	133/10 140/18
128/22	4/3 9/24 110/11	148/23 155/12
hurry [2] 152/16	120/17 132/9	incredibly [1]
152/16	identify [2] 13/9	21/21
hypen [1] 99/5	42/5	Indeed [1] 109/23
I	identifying [2]	INDEX [2] 3/1 4/1
I'd [4] 11/3 31/1	12/10 110/13	indicate [12]
45/20 84/18	identity [2]	18/24 72/7 72/12
I'll [2] 65/4	119/2 121/10	82/9 109/18 111/8
126/24	illegal [2] 18/17	111/24 112/2
I'm [47] 8/18	18/17	116/23 145/11
	immediate [1]	146/19 147/3

I	74/19 82/23 88/22	integrity [1]
indicated [3]	92/14 93/14 93/15	56/25
72/14 111/25	95/25 96/4 97/2	Intent [1] 6/11
157/9	97/11 98/21	interactions [2]
indication [1]	101/14 124/10	92/1 113/1
130/13	126/25 127/13	interest [9] 58/8
INDICTMENT [3]	133/13 136/10	58/12 60/9 60/11
4/4 6/12 6/21	136/13 140/21	69/15 99/21
individual [56]	148/9 148/13	138/20 139/11
individual's [1]	149/1 155/15	139/25
121/8	informed [1]	interior [3]
individuals [46]	51/21	115/10 117/5
22/16 23/24 24/22	initial [3] 61/21	123/18
30/17 33/23 46/19	139/19 139/20	interiors [1]
46/22 46/25 47/6	initially [1]	69/10
47/9 47/14 47/21	106/20	intermediate [1]
47/23 92/14 92/21	injuries [4] 13/5	14/15
96/5 97/4 97/8	13/6 17/7 18/24	internal [6] 11/1
97/13 98/24	inquiring [1]	11/2 13/19 17/21
105/10 106/7	29/19	31/14 122/8
106/7 107/3 107/4	inside [40] 15/9	internally [2]
110/21 112/20	16/16 16/19 17/10	15/9 130/1
112/21 117/6	24/2 24/8 24/23	interrupt [1]
118/18 118/20	25/6 31/4 31/23	133/2
118/23 119/1	32/8 33/23 55/14	interview [9]
121/15 124/22	56/5 59/3 60/16	124/22 125/4
124/23 126/1	61/3 69/4 69/19	125/5 125/6
126/18 127/1	69/21 70/9 78/18	132/21 138/16
127/11 128/12	78/23 85/21	145/6 145/9 148/5
132/9 139/25	103/16 103/19	intimately [1]
152/18 152/19	105/1 108/2	95/19
153/21	114/21 118/13	investigate [1]
indulgence [5]	118/15 118/15	94/19
19/4 42/18 124/18	118/18 118/23	investigation [57]
140/13 148/17	119/10 119/10	
inflicted [1]	126/19 147/1	investigations [5]
18/22	147/4 147/9	91/14 94/16
information [32]	instruction [1]	103/24 104/1
19/13 27/18 28/19	7/8	104/2
34/20 43/17 52/10	instructions [2]	involved [13]
57/25 62/24 69/7	4/5 6/24	9/23 54/21 68/14

I involved... [10] 92/10 119/1 124/21 138/15 138/19 138/23 144/11 145/21 146/6 148/2 involves [1] 59/18 involving [13] 7/25 20/16 35/23 45/3 53/11 63/25 75/23 84/1 89/25 134/20 141/23 147/12 150/7 irregular [1] 14/21 is [292] it [191] it's [74] item [6] 59/3 62/8 69/15 120/22 120/24 130/10 items [33] 55/14 55/17 56/4 57/9 57/11 58/6 60/16 60/21 61/8 69/11 78/1 81/7 97/7 103/15 103/21 104/6 104/11 104/14 104/17 104/25 105/2 105/9 113/11 123/23 128/3 128/10 128/23 129/4 131/6 131/8 131/11 143/6 144/18 its [3] 56/8 76/22 96/16 itself [4] 95/3	95/5 108/14 142/21 J J-A-E-G-E-R [1] 142/5 J-A-M-E-S [1] 36/4 J-O-H-N [1] 84/8 jacket [1] 81/9 Jaeger [10] 91/1 94/24 95/6 106/21 125/1 125/7 135/18 141/8 142/5 142/6 James [4] 35/7 36/4 36/6 111/4 jammed [1] 86/9 jeans [1] 108/24 job [8] 8/23 9/11 40/20 54/8 54/11 54/18 55/17 76/19 jog [4] 46/6 46/9 46/13 46/16 jogged [4] 47/13 48/15 49/17 49/18 jogger [6] 92/15 96/4 96/12 125/24 125/25 126/2 jogging [10] 46/18 46/20 48/22 49/6 49/16 49/19 50/14 51/11 51/16 51/18 John [3] 83/11 84/7 84/10 Jones [5] 21/18 24/4 68/16 124/15 136/5 Jordan [1] 58/15 judge [1] 113/12	judging [1] 22/23 judicial [3] 1/1 9/19 18/19 jumping [1] 105/12 juror [1] 29/17 juror's [1] 72/25 jurors [4] 2/1 11/23 41/7 140/15 jurors' [1] 19/4 jury [122] Jury's [1] 140/13 just [72] Justice [1] 9/18 juvenile [2] 99/6 129/8 K keep [3] 26/10 39/25 129/17 keeps [1] 125/15 kept [4] 39/22 39/24 40/7 40/8 Kevin [1] 85/3 key [1] 23/11 khaki [1] 32/24 kidney [1] 16/6 killing [1] 146/7 kills [1] 18/16 kind [32] 12/6 13/12 14/10 14/16 15/1 17/14 22/23 26/8 26/9 27/19 30/24 37/15 37/21 47/13 51/22 58/3 61/19 66/25 71/8 85/19 86/10 86/17 96/2 105/12 105/13 112/2 129/2 137/25 139/5 139/7 140/5
---	---	---

K	62/11	later [14] 10/6
kind... [1]	labor [3] 94/14	22/17 28/7 40/9
153/11	94/23 135/25	51/1 61/2 62/7
King [1] 39/20	labs [1] 128/3	65/19 67/22
knew [5] 27/18	ladies [11] 6/13	104/16 130/16
38/10 40/25 137/2	19/5 43/11 62/17	132/11 138/12
139/15	71/16 133/25	156/8
know [40] 13/1	148/19 149/13	law [15] 19/8
14/11 22/11 23/18	153/24 155/7	34/15 43/12 52/5
24/1 26/1 26/20	156/5	62/19 74/14 81/22
26/22 26/23 37/11	LADYHAWK [1] 2/12	82/18 88/17 92/1
38/12 39/5 39/8	laid [2] 7/7	133/8 140/16
40/10 42/12 47/16	58/24	148/21 155/10
47/18 51/23 51/24	large [1] 143/7	158/12
58/3 60/10 62/8	Lary [3] 7/10 8/6	lay [1] 55/18
72/3 73/13 74/3	8/9	laying [5] 85/9
85/18 86/10 86/12	Las [20] 1/14 6/1	85/20 86/2 86/15
91/10 99/3 103/3	24/6 24/7 45/22	87/13
103/6 119/19	51/2 54/9 55/2	layman's [2]
121/16 121/20	64/18 65/9 68/21	14/10 59/13
126/20 147/13	84/22 90/17 93/7	lead [1] 137/11
148/12 153/1	98/2 125/14	leaning [1]
153/12	137/12 144/15	154/12
Knowing [1] 51/19	151/7 157/14	least [2] 13/13
known [11] 91/13	last [30] 8/5 8/7	137/3
93/1 97/15 100/5	20/21 20/23 36/3	leave [1] 25/22
104/20 105/5	43/1 45/9 53/17	leery [1] 49/17
126/1 128/11	64/6 76/3 76/5	left [45] 11/21
130/14 130/16	84/6 84/7 84/8	13/4 13/23 13/25
131/20	90/5 90/20 99/5	13/25 14/9 14/23
L	101/11 119/18	15/1 15/2 15/5
L-A-R-Y [1] 8/7	122/5 122/12	15/24 15/25 17/12
L-O-R-A [1] 135/1	122/25 123/4	17/14 30/12 30/25
LAAS [1] 2/15	123/11 123/12	32/2 37/6 37/15
lab [9] 54/25	134/25 140/4	40/16 46/10 46/24
55/1 55/2 55/18	142/3 142/5	48/22 48/23 56/11
58/23 68/19	150/14	66/5 82/8 85/11
103/23 130/7	late [8] 21/15	85/11 88/3 93/11
130/11	31/17 31/17 40/18	99/23 100/6
label [2] 61/23	40/19 46/2 151/1	110/15 111/18
	156/3	115/13 120/1

L	47/17 51/12 58/3	117/7 139/8
left... [8]	61/11 62/12 66/24	live [2] 39/4
120/10 120/24	67/9 72/5 72/5	84/23
122/12 123/7	72/6 73/13 74/1	lived [3] 85/4
138/3 152/17	84/18 85/12 85/14	148/14 148/15
153/15 153/17	85/15 85/17 85/18	living [7] 8/17
leg [2] 17/17	86/7 86/7 86/9	64/17 76/14 84/20
17/19	86/13 86/13 86/17	90/16 115/22
legal [5] 18/8	86/17 86/20 87/3	135/11
18/16 18/18 18/18	96/1 102/6 104/23	load [2] 72/2
18/19	107/14 114/17	102/12
lengthy [1]	140/5	locate [1] 78/18
103/25	liked [1] 146/16	located [13] 78/9
let [14] 6/9	limit [4] 103/22	78/20 80/13 95/10
12/25 13/24 21/20	104/3 104/7	115/21 117/8
27/10 27/24 38/6	104/10	117/16 118/1
51/24 58/3 109/10	limited [6]	123/19 139/4
110/6 119/14	103/21 105/2	139/9 151/6
126/9 126/23	105/4 128/2	153/17
let's [6] 13/17	128/10 128/23	locating [1] 95/1
15/1 25/9 40/13	limits [1] 104/9	location [30]
44/9 102/8	LINDA [1] 2/9	42/20 58/23 61/25
letters [1] 137/3	Lindell [12] 47/4	68/3 69/10 69/10
license [13]	47/7 48/11 48/25	71/5 71/11 91/11
37/12 39/25 50/13	49/1 49/6 49/7	95/7 98/7 98/14
50/15 50/20 51/13	49/24 49/25 50/5	98/17 99/16 101/9
96/17 96/21 96/22	50/10 50/11	106/9 110/15
127/17 137/2	line [18] 21/18	113/25 115/2
137/3 137/18	24/4 40/15 68/16	117/22 118/13
licensed [1] 8/24	95/11 95/18 96/25	119/11 120/19
life [3] 24/1	106/9 106/25	135/21 136/17
39/7 42/8	107/23 108/3	137/21 139/1
light [2] 66/22	114/3 114/21	139/24 151/8
66/24	117/5 136/4 146/1	151/11
like [52] 11/3	147/5 147/9	locations [10]
12/6 22/10 22/13	liquid [1] 108/22	24/15 67/18
22/23 22/24 26/14	little [13] 12/5	100/18 105/14
27/19 27/20 31/1	22/17 33/19 36/23	108/11 115/6
31/4 33/8 37/23	66/17 66/25 67/1	143/18 144/2
38/13 40/15 42/24	86/17 87/22	144/8 144/18
44/6 45/20 47/15	107/14 111/3	lock [3] 12/6

L	30/9 30/10 31/25	33/10 122/16
lock... [2] 51/21	33/23 49/8 56/19	made [18] 19/12
51/22	58/4 58/14 58/18	23/2 27/22 34/19
LOFTON [12] 1/8	60/2 66/7 67/2	43/16 46/24 52/9
6/19 39/1 39/5	67/3 67/25 67/25	57/4 62/23 74/18
99/1 99/5 105/6	69/8 69/20 70/15	82/22 87/4 88/21
105/19 109/1	71/6 73/14 80/11	130/16 133/12
109/6 109/11	80/12 86/19 108/8	140/20 148/25
111/12	113/19 113/20	155/14
LOFTON-ROBINSON	115/8 115/9 116/7	magazine [10]
[10] 1/8 6/19	118/16 136/15	70/6 70/8 70/9
39/1 39/5 99/1	136/23 136/25	71/18 71/19 72/8
105/6 105/19	143/5 143/10	72/11 115/25
109/1 109/6	lookout [3] 124/6	116/1 116/3
109/11	124/8 124/13	mail [3] 87/21
Lofton-Robinson's	looks [2] 51/12	87/23 143/9
[1] 111/12	114/17	mailbox [1] 87/24
Loftonrobinson [1]	Lora [4] 91/3	main [2] 39/2
1/8	134/6 135/1 135/3	124/7
LOGAN [1] 2/16	lost [1] 132/17	maintain [2]
long [7] 8/19	lot [7] 30/25	24/12 56/24
40/15 54/11 64/20	60/25 72/10 73/25	make [9] 10/25
76/16 108/25	107/23 118/16	13/13 23/22 38/17
132/9	140/3	41/2 102/8 103/18
longer [5] 59/1	lots [1] 103/25	109/10 143/19
125/14 125/15	lower [2] 115/13	makes [2] 16/11
125/18 125/20	122/11	23/25
look [11] 21/10	Luther [1] 39/20	making [4] 57/8
22/7 30/8 31/5	LVMPD [1] 104/2	69/3 127/10 132/4
47/12 74/3 82/8		male [2] 137/2
91/23 104/10	M	137/25
108/14 123/16	M-A-S-O-N [1]	males [3] 48/1
looked [16] 22/3	45/11	48/2 50/23
22/20 22/23 26/14	M-I-T-C-H-E-L-L	manager [2] 27/20
31/4 50/14 57/2	[1] 90/7	29/24
85/16 85/24 86/16	ma'am [6] 85/6	manner [3] 10/22
86/16 86/19 96/1	85/23 87/9 88/13	18/2 97/17
96/8 120/15 155/2	125/21 150/25	manufactured [1]
looking [42] 14/1	machine [2]	96/3
15/8 15/21 22/6	122/19 123/10	manufacturers [1]
22/20 22/21 22/22	machines [2]	59/23

M	may [23] 19/17	medical [3] 9/4
many [7] 23/15	34/24 43/21 51/25	18/7 143/8
71/18 72/12 78/25	52/14 63/3 65/14	medicine [1] 8/25
92/6 94/18 94/20	71/20 72/9 74/23	meet [5] 39/21
MARGARET [1] 2/15	83/2 89/1 112/16	40/3 40/4 40/6
Mariah [8] 121/23	131/17 132/25	41/14
122/24 123/10	132/25 133/5	members [8] 6/22
123/16 124/16	133/5 133/17	13/8 13/9 48/20
153/4 153/9	137/1 140/25	52/3 88/15 91/5
154/16	149/5 155/19	104/3
mark [2] 28/6	maybe [7] 40/7	men [3] 48/14
29/17	40/9 47/18 48/18	49/12 131/14
marked [1] 6/21	50/24 104/12	mentality [1]
Market [4] 24/5	132/16	94/17
68/16 117/25	me [49] 13/24	mention [1]
151/5	20/8 21/20 22/8	132/24
maroon [3] 113/5	22/14 22/25 23/25	mentioned [6]
113/5 115/15	26/12 27/10 27/16	49/11 78/22 80/15
Marquis [11]	27/22 27/24 38/6	80/24 108/11
36/18 96/3 96/18	38/19 38/22 38/23	137/21
110/17 137/1	39/18 39/21 40/3	Mercury [7] 26/14
137/4 137/17	40/4 40/4 40/4	31/2 36/17 36/18
138/2 144/13	40/5 40/6 40/16	96/3 110/17
145/24 146/2	40/23 44/21 46/3	144/13
Martin [1] 39/19	50/13 68/12 79/20	Merrick [1] 60/18
masked [1] 121/5	88/8 106/21	met [1] 41/18
Mason [12] 44/3	109/10 110/6	Metro [4] 54/10
44/14 45/10 45/12	113/22 113/23	64/19 118/7
126/7 126/8	116/9 119/14	135/13
126/17 126/25	125/16 126/5	Metropolitan [8]
127/5 127/8	126/9 126/23	51/3 55/2 90/18
127/10 127/14	128/14 151/16	91/15 93/7 93/16
match [8] 72/15	152/15 152/16	125/14 129/25
96/7 96/8 103/3	152/17 154/17	Michigan [1] 9/2
103/6 103/7	mean [6] 18/4	middle [3] 60/4
114/20 116/12	22/12 33/7 61/10	87/17 96/18
matched [4] 73/1	66/19 94/17	midnight [4]
73/9 74/6 144/3	meaning [4] 91/15	46/10 46/14 66/13
matter [6] 23/24	97/16 104/5	91/12
23/25 48/16 95/15	128/21	might [4] 69/7
95/16 157/8	means [1] 66/20	92/15 122/13

M	112/15 120/20 152/15 152/17 154/1	much [10] 22/6 51/12 59/9 62/15 72/21 89/6 103/22 104/7 133/22 141/5
might... [1] 131/15	moniker [2] 111/12 111/13	multi [1] 30/11
Mild [4] 25/4 25/6 25/10 25/13	monitor [2] 122/18 124/7	multiple [5] 18/1 102/12 119/10 153/13 155/3
military [1] 120/2	month [1] 91/24	murder [38] 7/5 7/24 18/12 20/15 35/22 45/3 53/11 57/24 60/8 63/25 68/14 70/20 72/22 73/1 74/6 75/22 83/25 89/24 92/11 93/19 93/23 94/1 94/3 94/11 100/23 101/18 102/2 102/23 104/7 116/13 127/2 134/20 139/21 141/22 142/22 143/3 145/21 150/6
minute [4] 44/11 87/4 134/4 153/7	moonlight [1] 66/22	murders [1] 18/17
minutes [8] 21/11 23/5 40/9 87/3 91/12 95/15 95/16 149/14	MOORE [1] 2/6	my [65]
Miranda [3] 109/15 145/8 145/18	more [11] 17/14 19/6 22/11 22/12 46/14 47/1 56/20 104/6 104/6 127/24 134/1	myself [3] 21/19 21/25 22/2
miscellaneous [2] 79/12 123/23	morning [6] 21/15 46/3 54/19 85/7 90/21 91/7	N
misdemeanor [12] 19/15 34/22 43/19 52/12 63/1 74/21 82/25 88/24 133/15 140/23 149/3 155/17	most [2] 60/21 85/3	N-E-W-M-A-N [1] 36/5
Miss [1] 76/14	mother [1] 84/24	N-I-K-O-L-A-U-S [1] 20/23
Miss Tapay [1] 76/14	moved [3] 14/22 14/22 120/10	name [55]
missed [1] 16/5	moves [1] 124/8	named [2] 38/3 38/22
Mitch [3] 89/8 135/17 138/15	moving [1] 123/13	names [1] 132/24
Mitchell [2] 90/6 90/8	Mr [1] 127/8	NANCY [1] 2/17
moment [14] 14/1 28/24 56/13 57/17 65/15 106/23 107/7 112/9 114/2 120/8 120/15 121/4 124/18 148/17	Mr. [8] 84/18 93/24 94/4 95/7 97/12 111/16 115/17 148/10	NATO [1] 60/5
Monday [1] 40/17	Mr. Demario [1] 111/16	
money [6] 22/9	Mr. Relato [1] 84/18	
	Mr. Spahn [3] 94/4 95/7 97/12	
	Mr. Spahn's [1] 93/24	
	Mr. Wheeler [2] 115/17 148/10	

N	nickname [1] 111/13	Northbound [1] 49/23
natural [1] 131/2	night [12] 21/15 21/25 27/16 27/17	northeast [4] 47/3 79/5 139/5
near [2] 45/24 49/14	46/2 51/7 51/10	140/6
nearby [3] 92/16 110/18 111/19	51/14 90/20	northeastern [2] 47/4 47/8
necessarily [2] 47/18 57/25	111/18 119/20	not [68]
necessary [1] 61/17	145/15	notable [1] 113/11
need [6] 27/20 27/21 44/5 88/8	night/early [1] 21/15	notate [1] 67/18
130/18 134/1	Nikolaus [4] 19/25 20/22 21/1	note [2] 78/4 143/14
needs [1] 95/2	92/22	noted [1] 115/3
negative [2] 128/4 128/5	no [44] 1/7 1/7 1/25 6/10 16/21	notes [5] 50/7 71/20 76/23
negotiate [1] 146/15	19/6 22/24 22/24	124/19 157/10
neighborhood [4] 46/19 51/25	23/24 23/25 25/19	nothing [27] 7/16 8/12 20/7 21/4
110/18 111/19	26/4 26/23 27/7	35/14 36/9 38/13
NEVADA [11] 1/2	30/21 30/21 33/14	39/23 44/20 45/15
1/5 1/14 6/1 6/18	38/19 39/20 41/19	53/3 53/23 63/17
50/20 65/9 84/22	41/22 42/24 50/10	64/12 75/14 76/9
151/7 157/3	52/2 58/25 67/15	82/15 83/17 84/13
157/14	68/9 72/1 81/20	89/15 90/11
never [8] 39/7	82/17 86/20 87/2	134/12 135/6
39/22 39/23 40/10	88/2 88/14 99/5	141/14 142/9
41/18 41/20 42/7	103/5 124/4	149/24 150/20
50/10	125/14 125/15	notice [5] 6/11 47/20 96/16
Newman [4] 35/8	125/18 125/20	115/14 122/10
36/4 36/6 111/4	127/22 129/20	noticed [6] 46/18 46/25 46/25 47/11
next [17] 9/1	154/24	47/14 50/3
15/22 28/7 29/17	nobody [1] 50/11	November [3] 1/15 2/1 6/1
30/12 33/10 35/7	non [1] 132/13	now [58]
39/21 40/3 47/2	non-testing [1] 132/13	NRS [2] 158/2 158/13
68/23 75/7 83/10	normal [1] 72/4	number [46] 6/15 7/8 9/5 10/3 10/6
100/20 116/19	normally [3] 71/9 71/20 74/1	
143/12 148/1	north [8] 47/3 47/3 49/24 49/25	
NFCR [1] 101/20	68/21 98/2 137/12	
NHL [1] 114/9	144/15	

N	O'Halloran [1]	140/20 148/25
number... [41]	2/24	153/23 155/14
10/10 12/11 12/15	observe [1] 30/23	occurs [4] 94/23
29/2 37/7 48/4	observed [1]	118/17 121/7
50/16 50/17 51/10	137/25	121/10
61/24 62/6 62/6	observing [1]	off [9] 30/1 38/2
70/2 70/3 70/3	22/2	39/2 40/18 40/18
70/4 70/8 72/1	obtain [5] 27/21	60/24 130/3
73/18 79/19 80/2	96/24 98/9 136/18	130/10 130/15
80/4 80/7 80/10	137/5	offenses [13]
87/8 88/9 91/16	obtained [20]	6/24 7/21 20/12
91/18 91/19 91/21	19/13 34/20 43/17	35/19 44/25 53/8
91/22 92/8 93/9	52/10 55/8 55/10	63/22 75/19 83/22
93/18 96/11 105/2	57/18 61/3 62/24	89/21 134/17
128/2 128/10	69/2 74/19 82/23	141/19 150/3
158/4 158/8	88/22 97/20 97/24	offhand [1]
158/11	117/21 133/13	148/12
number 104 [1]	140/21 149/1	office [5] 9/4
80/2	155/15	9/12 9/15 12/11
Number 16 [2]	obviously [1]	40/24
48/4 87/8	94/21	officer [4] 28/11
Number 2 [1] 7/8	occupants [4]	93/16 93/16
Number 28 [2]	110/19 111/20	125/24
37/7 51/10	138/6 138/9	officers [9]
Number 34 [2]	occupied [1]	27/25 28/1 28/22
79/19 80/4	137/1	29/19 64/24 92/3
Number 35 [1]	occur [2] 29/7	136/11 137/23
80/7	131/2	138/13
Number 36 [1]	occurred [11]	Official [1]
80/10	28/25 29/6 43/7	158/23
numbered [2]	91/6 93/23 106/13	often [5] 11/24
67/23 68/2	123/20 135/21	13/9 55/17 70/13
numbering [3]	143/4 151/25	77/15
15/20 72/11	153/6	oh [3] 16/17
122/12	occurrence [1]	81/25 107/18
numbers [6] 92/6	131/3	okay [49] 16/18
94/8 96/21 96/22	occurring [15]	17/11 21/12 21/23
105/4 122/13	19/12 34/19 43/16	26/16 28/24 29/5
	52/9 62/23 74/18	29/14 29/16 34/8
O	82/22 88/21 124/7	36/23 37/6 38/21
o'clock [1] 40/3	132/16 133/12	39/17 42/9 43/2

<p>O</p> <p>okay... [33] 43/9 44/9 46/7 47/5 48/5 49/2 49/8 52/2 52/21 59/12 73/10 80/19 81/7 87/24 88/6 93/22 94/2 94/7 94/10 104/11 106/6 107/6 107/17 110/13 113/16 115/8 116/22 122/20 126/21 140/9 146/9 149/15 156/4</p> <p>once [2] 106/20 125/16</p> <p>one [73]</p> <p>one's [1] 14/11</p> <p>ones [5] 17/3 32/15 61/20 73/15 132/3</p> <p>only [6] 30/24 41/2 47/11 50/9 73/13 110/17</p> <p>oo0oo [1] 156/10</p> <p>open [5] 23/10 56/25 86/11 97/15 146/24</p> <p>opened [2] 62/11 120/20</p> <p>opens [1] 87/22</p> <p>opinion [2] 17/22 18/21</p> <p>opinions [1] 10/21</p> <p>opportunity [1] 104/12</p> <p>opposed [1] 114/18</p> <p>opposite [1]</p>	<p>17/12</p> <p>orange [2] 56/17 56/19</p> <p>order [7] 15/21 28/7 29/18 38/18 71/8 130/19 137/16</p> <p>ordinary [4] 22/4 23/18 24/11 151/17</p> <p>organs [1] 11/1</p> <p>original [3] 43/7 76/22 92/10</p> <p>originally [2] 12/2 62/2</p> <p>other [39] 16/7 17/13 22/17 23/18 30/11 32/13 42/8 60/15 61/8 73/6 77/15 77/23 79/12 91/5 91/25 92/9 96/18 97/16 102/6 103/9 104/17 110/18 111/20 112/20 115/7 123/18 123/22 124/21 124/22 124/23 124/24 132/24 133/7 137/23 139/24 143/18 144/5 145/15 152/20</p> <p>otherwise [3] 91/12 93/1 97/15</p> <p>our [12] 54/25 56/3 56/18 62/16 73/2 92/2 92/3 94/18 104/11 139/15 143/7 156/7</p> <p>out [55]</p>	<p>outside [30] 17/8 24/9 25/24 26/4 26/7 26/17 30/22 30/23 31/20 59/1 69/23 69/24 80/5 85/24 85/25 86/5 86/11 87/3 87/13 95/3 95/4 118/13 118/18 118/19 118/19 120/16 120/16 121/8 121/14 126/10</p> <p>over [21] 11/21 21/10 22/10 37/6 38/12 39/4 39/23 56/11 61/18 64/21 66/5 82/8 87/21 93/11 100/6 105/13 117/3 119/6 123/16 131/18 154/16</p> <p>overall [1] 71/9</p> <p>overalls [1] 69/10</p> <p>overexposed [1] 67/1</p> <p>owner [1] 102/20</p> <p>owning [1] 145/19</p> <hr/> <p>P</p> <hr/> <p>P-A-O-L-O [1] 84/8</p> <p>p.m [7] 21/24 27/10 27/11 27/11 29/12 46/12 94/4</p> <p>pack [1] 94/17</p> <p>package [3] 61/24 62/6 62/11</p> <p>packet [2] 7/8 79/18</p> <p>pad [1] 67/9</p>
---	---	--

P	119/1 119/20 119/21 120/11 120/24 123/8 124/8 125/25 127/18 131/7 131/15 135/13 136/2	130/7
paint [4] 31/6 36/24 37/13 37/21		performed [8] 10/14 13/1 102/1 104/2 125/6 127/9 130/23 130/24
pair [3] 71/7 108/12 115/14		permission [4] 98/7 98/9 113/12 144/8
pants [1] 113/5	Particularly [1] 138/22	person [21] 18/6 22/5 33/25 39/12 42/11 42/12 88/9 106/2 111/4 111/6 120/12 120/16 124/1 124/2 124/2 126/2 126/5 126/10 147/22 158/8 158/11
Paolo [2] 84/7 84/10	partner [4] 38/22 91/2 94/23 106/21	person's [1] 121/5
paper [3] 57/1 58/24 94/8	parts [2] 11/13 28/21	personal [2] 28/19 93/14
paperwork [1] 140/3	passed [1] 48/9	personally [1] 145/4
parallel [2] 49/3 49/4	passes [1] 16/11	personnel [2] 70/3 70/4
parked [3] 50/22 54/23 137/18	past [2] 46/20 51/11	persons [1] 132/24
parking [4] 30/25 50/11 107/23 118/16	path [2] 15/10 15/11	perspective [1] 48/21
parks [1] 50/12	pathologist [1] 8/18	pertaining [12] 7/20 20/11 35/18 44/24 53/7 63/21 75/18 83/21 89/21 134/16 141/18 150/3
part [11] 28/15 55/18 65/11 65/23 77/11 99/9 106/15 125/4 125/5 129/8 144/6	pathology [7] 9/2 9/3 9/6 9/7 9/7 9/8 9/19	Pesci [2] 2/23 6/14
partially [1] 121/12	patrol [2] 93/16 136/11	phone [8] 33/11 50/8 50/17 60/17 60/19 61/3 86/16 123/22
particular [48] 6/24 6/25 8/20 10/8 10/14 12/12 13/16 14/6 14/23 16/22 29/5 30/3 54/18 55/21 55/23 59/7 59/24 60/9 70/15 71/19 73/23 74/6 77/19 78/5 91/16 91/22 92/13 94/19 98/24 101/24 104/21 104/24 112/19 118/14 119/1	pause [2] 23/22 23/25	
	pending [12] 7/14 20/5 35/12 44/18 53/1 63/15 75/12 83/15 89/13 134/10 141/12 149/22	
	people [8] 22/11 22/12 22/23 40/16 42/8 59/13 97/16 147/9	
	perform [8] 10/2 10/20 11/10 94/22 94/25 127/8 130/5	

P	physician [1] 8/24	play [1] 153/5
phones [2] 60/23 61/1	pick [2] 38/20 74/2	playing [2] 153/8 153/8
photo [5] 51/6 113/21 115/5 116/1 117/7	picked [3] 38/25 118/5 143/8	please [40] 7/11 7/18 8/4 20/2 20/9 20/20 29/18 35/9 35/16 36/2 44/15 44/22 45/8 52/23 53/5 53/16 63/12 63/19 64/5 65/16 71/25 75/9 75/16 76/2 83/12 83/19 84/5 89/10 89/17 90/4 128/9 134/7 134/14 134/24 141/9 141/16 142/2 149/18 149/20 150/13
photograph [37] 4/10 4/11 4/12 4/13 4/14 4/15 4/16 4/17 4/18 4/19 4/20 4/21 4/23 4/24 4/25 5/2 12/25 13/13 13/17 48/3 48/7 48/13 51/2 57/15 67/20 69/24 73/2 80/8 80/17 87/7 87/12 88/1 88/7 88/10 110/10 112/19 115/14	picture [10] 12/11 49/1 49/3 49/13 49/14 87/18 88/4 116/20 117/13 147/13	Plus [1] 37/12
photographed [4] 54/23 57/9 58/23 77/12	pictures [2] 56/2 147/16	point [15] 14/16 42/2 49/16 50/1 51/1 51/17 51/22 65/20 86/6 86/23 105/13 132/20 134/2 137/16 138/3
photographs [27] 4/8 4/9 4/22 5/1 5/3 10/7 11/7 11/15 42/3 55/4 55/13 55/19 57/2 60/13 61/12 65/3 65/5 65/12 67/17 68/15 70/5 77/22 79/21 105/25 116/9 145/23 145/25	piece [3] 58/24 94/8 104/22	pointed [4] 13/25 22/9 100/4 154/2
photography [2] 55/14 76/23	pieces [5] 16/16 67/18 67/22 103/19 147/7	pointing [2] 28/17 87/17
photos [3] 11/18 77/24 79/19	pink [2] 69/17 71/12	police [18] 16/25 27/5 27/7 27/8 27/15 29/23 34/8 51/3 85/8 90/18 91/15 93/7 93/16 125/14 129/25 131/2 152/6 155/4
physical [3] 99/23 128/22 138/1	pixilated [1] 114/19	Polo [1] 33/1
	placards [5] 67/18 67/23 68/2 143/11 143/12	pool [1] 143/7
	place [5] 57/6 105/13 151/20 151/23 157/9	portion [8] 28/14
	placed [4] 54/24 61/15 61/17 104/3	
	placement [1] 96/20	
	Plaintiff [1] 1/6	
	plate [15] 37/12 40/1 50/13 50/15 50/20 51/13 96/11 96/14 96/17 96/21 96/22 127/18 137/3 137/4 137/18	
	plates [1] 41/16	

P	155/14	process [17]
portion... [7]	present [6] 2/1	11/13 11/16 55/11
28/17 28/19 30/19	2/22 29/25 67/14	61/5 61/13 65/1
30/21 91/20 93/14	77/25 133/6	65/23 77/7 77/14
99/5	presentation [1]	97/6 101/25
portions [2]	156/7	106/16 111/22
28/11 28/11	presented [12]	118/17 144/6
position [3]	19/11 34/18 43/15	144/10 144/17
64/20 64/22 64/23	52/8 62/22 74/17	processed [1]
positives [1]	82/21 88/20	55/7
131/1	133/11 140/19	processing [1]
possession [14]	148/24 155/13	61/16
7/2 7/21 20/12	presenting [1]	produce [3] 25/18
35/19 44/25 53/8	6/14	27/2 120/11
63/22 75/19 83/22	pretty [2] 15/15	producing [1]
89/22 123/21	22/22	120/12
134/17 141/19	previous [3]	program [1]
150/4	115/5 117/7 138/1	158/15
possibilities [1]	previously [1]	prohibited [13]
132/17	116/11	19/9 34/16 43/13
possibly [1]	price [2] 39/15	52/6 62/20 74/15
139/16	146/16	81/23 82/19 88/18
potential [2]	Print [1] 158/21	133/9 140/17
128/16 128/20	prior [5] 9/14	148/22 155/11
potentially [2]	9/14 67/15 69/3	projectile [1]
104/16 130/12	145/9	100/3
preceding [1]	proactive [1]	prominently [1]
158/4	92/2	33/12
preference [1]	probably [3] 39/3	pronounce [1]
102/20	60/10 66/17	122/25
premises [1]	proceeding [2]	pronounces [1]
24/16	99/7 129/9	20/1
prepared [1]	proceedings [19]	pronunciation [1]
10/13	1/20 6/7 19/8	123/3
prepares [1] 8/23	34/15 43/12 52/5	property [3]
presence [13]	62/19 74/14 81/22	112/15 120/25
19/12 34/19 43/16	82/18 88/17 133/8	124/9
52/9 62/23 74/18	140/16 148/21	proposed [2] 4/4
82/22 88/21	155/10 156/6	6/21
130/13 133/12	156/8 157/8	protect [1] 64/25
140/20 148/25	157/13	provide [4] 16/24

<p>P</p> <p>provide... [3] 109/15 145/8 154/1</p> <p>provided [4] 29/22 30/7 152/5 155/3</p> <p>PT [1] 78/10</p> <p>public [1] 158/15</p> <p>publish [2] 48/19 80/4</p> <p>pull [1] 30/10</p> <p>pulled [2] 30/15 80/13</p> <p>punch [1] 23/20</p> <p>punishable [24] 19/15 19/17 34/22 34/24 43/19 43/21 52/12 52/14 63/1 63/3 74/21 74/23 82/25 83/2 88/24 89/1 133/15 133/17 140/23 140/25 149/3 149/5 155/17 155/19</p> <p>purchase [2] 146/18 146/19</p> <p>purchased [3] 26/25 34/5 110/16</p> <p>purpose [4] 56/23 56/24 77/4 112/11</p> <p>purse [3] 123/21 124/12 124/16</p> <p>Pursuant [1] 158/2</p> <p>put [7] 11/22 26/20 39/3 61/23 67/17 71/20 73/10</p>	<p>Q</p> <p>qualifies [1] 8/23</p> <p>quality [2] 108/14 108/15</p> <p>question [9] 15/4 72/25 73/4 97/5 107/5 126/15 129/1 129/17 148/1</p> <p>questioning [2] 125/8 132/14</p> <p>questions [32] 7/6 7/9 19/5 19/6 21/9 34/13 34/14 41/24 43/10 43/10 52/3 52/4 62/16 62/17 71/15 71/15 73/6 81/21 82/17 88/15 88/16 125/10 125/23 127/24 132/18 133/7 140/14 140/15 145/14 148/18 148/20 155/7</p> <p>quick [1] 130/21</p> <p>quiet [1] 27/17</p> <p>Quite [1] 59/11</p> <p>R</p> <p>R-E-L-A-T-O [1] 84/9</p> <p>R-O-B-E-R-T [1] 45/11</p> <p>R-P [4] 70/17 72/19 73/22 100/24</p> <p>R-Y-A-N [1] 142/4</p> <p>race [1] 47/20</p> <p>Rachel [3] 2/24</p>	<p>34/12 155/6</p> <p>RAEKWON [25] 1/8 1/9 6/19 7/25 20/16 35/23 45/4 53/12 64/1 75/23 84/1 89/25 98/15 105/6 105/21 117/11 117/13 119/5 119/8 120/17 134/21 140/7 140/8 141/23 150/9</p> <p>Raeqeem [1] 140/4</p> <p>Rainbow [1] 113/22</p> <p>raise [13] 7/11 20/2 35/9 44/15 52/23 63/12 75/9 83/12 89/10 134/7 141/9 149/18 149/20</p> <p>raised [1] 26/6</p> <p>rather [1] 114/18</p> <p>rationale [1] 129/22</p> <p>reach [1] 146/16</p> <p>reactive [1] 92/2</p> <p>ready [1] 46/9</p> <p>real [2] 40/15 114/18</p> <p>really [9] 15/14 33/12 49/17 49/18 51/19 85/14 86/11 124/19 130/8</p> <p>rear [1] 50/14</p> <p>reason [1] 131/4</p> <p>recall [6] 60/10 78/8 79/9 79/15 81/13 91/19</p> <p>receipts [1] 60/16</p>
---	---	---

R	64/6 76/3 84/6 90/5 134/25 142/3 150/14 157/12	12/18
receive [3] 92/13 96/11 97/11	recover [8] 16/6 16/8 16/24 17/17 55/17 100/17 101/3 106/15	refresh [1] 71/23
received [4] 41/9 106/22 127/14 136/10	recovered [20] 55/14 56/5 59/3 74/12 81/9 98/19 99/17 102/24 103/16 104/22 106/19 115/4 115/22 116/2 125/12 128/13 128/15 130/10 139/18 144/19	regarding [3] 7/9 79/14 130/25
recent [1] 73/2		register [3] 22/2 120/20 152/15
Recess [3] 44/13 134/5 149/17		registered [2] 125/12 125/16
recognizable [1] 107/19		registration [1] 137/9
recognize [49] 11/4 12/22 30/8 31/10 31/16 36/20 37/8 42/5 42/11 48/6 56/1 65/17 66/8 68/25 69/16 79/21 79/22 79/23 79/25 82/2 82/5 88/9 93/4 93/6 107/3 107/18 107/20 107/22 108/1 108/18 109/3 111/8 112/18 112/21 112/23 112/25 113/14 116/16 117/1 117/4 117/9 117/10 117/17 119/4 119/7 142/25 143/2 151/11 151/13	recovering [2] 61/25 106/16	registrations [1] 125/15
recognized [2] 110/9 111/5	recovery [2] 95/6 130/9	regular [5] 14/17 22/5 22/5 22/8 30/13
recollection [1] 71/23	red [9] 58/8 58/15 61/19 71/7 108/5 108/8 108/12 108/24 115/15	relate [1] 93/19
reconvene [1] 156/8	refer [2] 67/5 71/20	related [1] 95/2
record [15] 6/9 6/20 8/5 20/21 36/3 45/9 53/17	reference [3] 10/7 10/10 15/22	relates [1] 104/2
	referred [5] 11/24 70/13 111/11 122/4 125/24	relating [1] 7/6
	referring [5] 47/5 87/25 93/23 93/24 94/1	relation [3] 10/14 92/14 130/19
	refers [1] 85/3	relative [1] 104/5
	reflect [4] 6/9 6/20 11/18 13/5	Relato [5] 83/11 84/8 84/9 84/10 84/18
	reflects [1]	relay [1] 96/4
		remainder [1] 114/16
		remained [2] 16/19 110/25
		remember [5] 21/14 33/4 95/9 98/1 101/9
		remove [1] 10/25
		removed [2] 115/25 138/7
		render [1] 10/21
		rendition [1] 111/16

R	111/19 137/15	right [70]
report [7] 10/13	responders [1]	ring [2] 123/11
15/23 29/6 29/14	86/22	140/9
34/10 76/22 128/8	responding [1]	rob [1] 112/14
Reported [1] 1/25	77/4	robbed [1] 22/25
Reporter [1]	response [1] 6/11	robbery [48] 7/3
158/23	responsibilities	7/3 7/4 7/22 7/22
REPORTER'S [2]	[3] 54/13 76/19	7/23 20/13 20/13
1/20 157/1	142/21	20/14 35/20 35/20
reports [1] 10/7	responsibility [2]	35/21 45/1 45/1
request [1] 2/22	9/11 135/24	45/2 53/9 53/9
requested [1]	responsible [1]	53/10 63/23 63/23
105/9	132/4	63/24 75/20 75/20
requests [1]	restrictions [1]	75/21 83/23 83/23
103/18	130/25	83/24 89/22 89/23
required [2]	restroom [2] 23/5	89/23 106/14
25/15 158/11	23/11	106/19 111/21
requirement [3]	result [1] 104/3	112/10 118/4
125/18 125/19	results [6]	118/5 119/2
131/23	104/19 104/25	123/24 124/7
reseal [1] 62/14	128/4 128/5 130/6	134/18 134/18
resemble [2]	130/16	134/19 141/20
115/16 147/22	retaining [4]	141/20 141/21
resembled [1]	67/4 67/5 67/11	150/4 150/5 150/5
138/1	87/18	Robert [12] 44/3
residence [8]	retrieved [1]	44/14 45/10 45/12
66/9 69/1 84/21	116/2	45/20 126/7 126/8
98/19 98/20 112/5	returned [1]	126/17 126/25
112/7 132/22	128/5	127/4 127/10
residential [1]	revealed [1]	127/14
110/20	121/8	ROBERTSON [22]
residing [1]	review [5] 21/11	1/9 1/9 6/19 7/25
45/22	65/15 106/11	20/16 35/23 45/4
residue [8]	107/8 117/14	53/12 64/1 75/23
129/19 129/23	reviewed [4]	84/1 90/1 98/16
130/1 130/14	10/17 95/18 106/8	105/7 105/21
130/22 131/5	106/23	117/11 117/13
131/17 132/16	reviewing [6]	119/5 119/8
respect [1] 92/2	97/19 107/2	134/21 141/23
respond [1] 77/1	117/17 118/3	150/9
responded [2]	120/5 128/7	ROBINSON [27] 1/8

R	S	Saturday [1]
ROBINSON... [26] 6/19 7/25 20/16 35/23 39/1 39/5 45/4 53/12 64/1 75/23 84/1 89/25 99/1 99/4 105/6 105/19 109/1 109/6 109/11 129/7 134/21 138/10 138/11 138/12 141/23 150/7 Robinson's [1] 111/12 RODNEY [1] 2/7 ROJEAN [1] 2/16 roll [1] 94/18 rolling [1] 138/4 Romatko [1] 123/11 roof [1] 31/8 room [3] 71/12 115/23 126/11 round [1] 60/5 rounded [4] 46/23 50/3 50/9 50/12 rounds [2] 71/18 72/2 row [1] 47/17 rows [1] 47/18 RP [3] 101/4 101/8 116/14 run [1] 49/21 running [2] 24/20 50/8 runs [1] 49/3 RV [1] 67/9 Ryan [5] 90/25 135/18 141/7 142/4 142/6	S-H-A-W-N [1] 53/18 S-I-M-M-S [1] 8/8 S-P-A-H-N [2] 20/1 20/23 S-P-E-A-S [1] 64/8 S-T-E-I-N [1] 150/16 safe [1] 146/23 Sahara [1] 40/10 said [31] 13/19 22/9 26/16 27/25 28/24 29/19 33/20 38/4 38/7 38/17 40/9 42/24 51/23 57/17 73/8 95/5 106/22 111/15 112/9 118/4 122/24 125/25 132/20 133/4 133/5 146/14 146/22 146/22 147/21 154/18 157/9 sake [1] 15/20 sale [4] 37/25 38/14 43/7 43/8 same [23] 12/24 25/7 26/19 33/22 50/15 51/6 51/13 65/18 71/5 71/12 81/6 81/12 81/18 94/8 94/22 101/25 103/25 115/2 115/7 123/5 123/9 143/19 147/24 sample [1] 131/24 samples [2] 105/5 128/12	saw [23] 12/15 18/24 23/6 30/17 32/15 32/15 47/6 47/10 49/12 51/7 51/10 51/14 61/20 85/12 85/15 85/20 86/2 86/7 86/14 120/8 125/25 126/18 137/16 sawing [1] 18/12 say [27] 9/9 13/8 15/17 18/4 21/22 33/7 47/23 49/20 50/24 55/1 55/23 59/13 62/1 66/18 72/1 73/15 104/11 107/14 110/14 110/23 112/13 130/8 131/18 139/20 145/22 146/13 154/18 saying [7] 16/14 18/11 18/12 18/13 18/22 25/12 38/7 says [3] 28/18 29/7 122/11 scale [1] 70/1 scared [1] 154/7 scarf [1] 81/11 scene [64] scenes [1] 66/3 SCHERER [1] 2/17 seal [8] 12/5 56/19 56/20 56/21 57/6 61/19 61/21 61/22 sealed [3] 54/22 61/19 61/20 sealing [1] 56/14

<p>S</p> <p>seals [3] 54/24 56/18 57/1</p> <p>search [33] 55/7 55/10 57/18 58/2 61/3 65/25 69/2 69/9 69/11 74/13 77/6 97/20 97/23 98/7 98/10 98/10 100/16 101/2 102/24 103/10 103/11 103/11 108/10 113/11 115/6 139/2 139/4 139/24 144/7 144/8 144/11 148/2 148/4</p> <p>searched [3] 105/14 144/18 148/5</p> <p>searches [6] 101/23 102/1 102/6 138/19 143/18 144/5</p> <p>searching [1] 69/3</p> <p>seat [2] 87/24 111/1</p> <p>seated [15] 7/18 20/9 35/16 44/22 53/5 63/19 75/16 83/19 89/17 121/23 122/15 134/14 141/16 153/11 153/14</p> <p>second [12] 13/24 21/20 25/9 27/24 38/6 65/20 91/25 101/11 121/18 124/4 124/4 124/11</p>	<p>secondary [1] 27/2</p> <p>seconds [1] 120/3</p> <p>secret [13] 19/9 34/16 43/13 52/6 62/20 74/15 81/23 82/18 88/18 133/9 140/17 148/22 155/11</p> <p>Secretary [2] 2/5 2/6</p> <p>section [3] 90/19 132/3 135/16</p> <p>security [3] 148/16 158/8 158/11</p> <p>see [45] 14/24 15/1 15/9 22/19 22/21 26/2 26/4 26/7 30/8 30/9 30/19 30/23 32/12 32/13 32/22 46/16 46/21 48/13 50/1 56/17 58/6 60/4 66/23 80/14 80/23 86/24 87/1 87/12 93/12 94/2 96/21 105/25 108/4 121/5 121/14 121/18 122/18 122/23 123/9 130/9 137/20 147/23 152/20 154/19 154/22</p> <p>seeing [1] 137/24</p> <p>Seek [1] 6/11</p> <p>seemed [4] 22/4 23/19 23/19 27/19</p> <p>Seems [1] 33/17</p> <p>seen [14] 11/19 16/15 26/9 26/9</p>	<p>30/21 39/7 42/7 43/1 61/12 106/2 126/9 147/13 147/18 147/22</p> <p>self [1] 18/22</p> <p>self-inflicted [1] 18/22</p> <p>sell [2] 38/7 38/18</p> <p>selling [2] 25/20 36/16</p> <p>semi [9] 69/21 78/15 78/17 98/18 99/19 100/1 112/3 115/19 116/18</p> <p>semi-automatic [8] 69/21 78/15 78/17 98/18 99/19 100/1 115/19 116/18</p> <p>send [1] 130/3</p> <p>senior [2] 54/9 64/18</p> <p>sense [1] 41/2</p> <p>sensitive [1] 88/8</p> <p>sent [4] 25/5 130/6 130/10 130/15</p> <p>Separate [1] 138/18</p> <p>September [2] 45/21 46/3</p> <p>September 8th [1] 45/21</p> <p>sequence [1] 26/24</p> <p>serious [1] 104/6</p> <p>served [1] 115/6</p> <p>service [2] 91/11 132/6</p>
---	--	--

S	115/16 147/8	87/7 88/6 96/14
set [7] 19/1	shoot [3] 102/15	107/6 110/7 111/4
24/14 66/20 66/24	102/18 102/19	112/22 145/23
68/2 118/15	shooters [1]	146/25
151/18	112/1	showed [2] 40/11
SETREY [2] 1/9	shooting [4]	73/2
6/19	110/22 130/19	showing [27] 28/6
setting [1] 13/16	131/23 132/21	51/9 55/25 56/13
seven [1] 72/6	Shop [1] 117/25	57/3 58/18 68/24
several [1]	short [18] 21/17	93/3 95/17 107/17
125/23	24/4 47/16 68/16	107/25 109/2
shall [12] 7/15	95/11 95/18 96/25	113/13 114/6
20/6 35/13 44/19	106/9 106/25	115/18 115/24
53/2 63/16 75/13	107/23 108/3	116/6 116/15
83/16 89/14	114/3 114/21	117/12 117/20
134/11 141/13	117/5 136/4 146/1	118/19 119/9
149/23	147/5 147/9	122/4 122/20
shape [1] 14/21	shorthand [2]	142/24 145/1
shaped [1] 12/6	157/7 157/10	151/10
Shawn [3] 52/22	shorts [1] 32/24	shown [6] 51/1
53/18 53/20	shot [9] 16/18	109/7 127/8
she [14] 21/22	16/18 86/13 87/1	136/21 145/23
68/10 68/12 91/4	100/3 111/23	145/25
119/19 121/22	111/24 131/19	shows [3] 29/6
121/23 123/17	139/16	70/8 70/8
123/23 153/11	should [5] 6/23	side [16] 13/22
153/14 154/17	15/4 40/14 55/23	14/7 14/9 14/23
154/18 154/25	115/3	15/6 16/5 16/19
shelf [1] 140/5	shoulder [8]	23/4 23/9 30/13
shift [2] 66/12	11/22 21/10 37/7	37/15 48/24 49/13
152/13	56/11 66/5 82/9	121/21 123/7
Shifting [1]	93/12 123/16	153/17
117/3	shouldn't [1]	sidewalk [1]
shining [2] 49/13	13/8	48/25
85/17	show [28] 11/3	sign [3] 38/14
shirt [1] 108/25	12/21 13/12 13/17	62/5 62/13
shoes [13] 58/8	25/15 33/22 36/19	Signature [1]
58/16 71/7 71/11	37/6 37/15 37/18	158/19
81/12 108/5 108/8	41/24 42/2 48/3	signed [1] 39/23
108/12 108/24	58/25 65/14 68/3	silly [1] 154/4
113/5 115/16	70/12 73/18 79/18	similar [3] 138/1

S	73/12 73/14	18/15 18/16 38/4
similar... [2]	smaller [1] 72/4	38/20 92/4 124/6
147/7 147/8	Smoke [1] 117/25	131/15
Simms [3] 7/10	snapshot [1]	someone [7] 23/21
8/7 8/9	107/15	26/24 38/10 86/18
simultaneous [1]	so [142]	130/10 139/6
104/1	social [2] 158/8	151/13
since [2] 62/3	158/11	something [18]
72/2	soda [2] 33/10	21/14 39/20 41/1
singular [1]	34/1	58/8 58/12 61/11
94/22	sold [8] 39/12	61/13 72/6 85/8
sir [18] 7/11	40/11 40/24 41/3	85/17 95/14 108/8
8/17 21/9 35/9	41/15 41/25 42/12	112/10 120/9
36/14 36/19 44/4	111/5	130/19 133/5
64/17 71/3 72/1	solemnly [12]	147/15 151/20
84/4 90/16 136/8	7/13 20/4 35/11	sometimes [10]
138/21 139/13	44/17 52/25 63/14	13/8 13/9 57/25
140/12 141/4	75/11 83/14 89/12	59/13 60/23 61/13
142/14	134/9 141/11	61/14 65/2 76/23
sister [3] 84/25	149/21	92/9
96/2 148/14	some [47] 11/18	somewhat [2]
sits [1] 87/22	13/5 21/9 21/11	92/16 136/6
sitting [9] 22/1	27/2 31/6 33/17	somewhere [4]
25/24 26/1 26/3	37/21 42/2 42/2	39/19 46/11 81/4
26/5 26/10 30/13	46/17 48/21 51/1	130/4
33/9 152/12	51/24 57/24 58/6	soon [1] 131/23
situation [1]	58/15 60/16 65/19	sorry [6] 48/25
51/19	68/15 73/25 76/19	81/25 107/19
situations [1]	78/6 96/19 96/19	126/8 140/4 156/3
16/15	103/9 104/10	sort [3] 31/6
six [3] 91/23	104/14 104/25	37/21 146/7
94/20 94/21	105/13 106/8	sounded [1] 86/9
size [1] 73/14	106/16 108/4	sounds [1] 154/4
skin [2] 14/17	108/22 117/14	south [5] 24/4
47/22	124/22 124/23	68/16 78/20 78/22
sky [1] 66/14	124/24 127/24	136/5
sleeve [1] 108/25	129/4 129/11	southbound [1]
slightly [1] 13/4	129/22 131/1	138/3
slow [2] 21/20	131/6 143/19	southward [1]
25/9	145/15 148/12	50/6
small [3] 44/5	somebody [7]	space [2] 72/8

S	spelled [2] 8/7 8/7	122/8
space... [1] 84/8	spent [3] 106/4 106/6 143/12	stamps [8] 70/23 70/25 73/23 79/13 100/10 101/1 102/13 103/7
Spahn [8] 19/25 20/22 20/23 21/1 92/22 94/4 95/7 97/12	SPERRY [1] 2/5	standing [5] 32/3 47/1 47/6 48/14 50/23
Spahn's [1] 93/24	spinning [2] 14/14 14/16	STANKOSKY [1] 2/4
spare [1] 57/15	spleen [1] 16/5	starlight [1] 66/21
speak [6] 98/6 109/19 109/20 125/1 145/12 154/25	spoke [7] 12/16 41/23 56/14 71/6 80/21 103/10 122/1	start [1] 10/23
speaking [12] 37/14 56/19 92/8 95/1 102/21 103/9 109/16 111/2 111/10 113/6 144/5 147/14	spoken [6] 57/24 92/22 100/17 101/3 105/18 106/7	started [2] 46/13 151/21
Speas [4] 63/11 64/7 64/8 64/9	spread [1] 143/9	starts [2] 12/7 14/20
specialty [1] 9/1	Springs [1] 21/18	state [26] 1/5 6/18 8/4 9/2 19/25 20/20 36/2 44/3 44/14 45/8 52/22 53/16 63/11 64/5 76/2 84/5 89/8 90/4 134/6 134/24 141/7 142/2 150/13 157/3 158/12 158/16
specific [11] 10/3 13/6 67/18 67/22 97/7 98/11 100/9 136/14 137/17 139/17 158/12	squad [6] 90/23 91/4 91/6 94/18 94/19 135/20	State's [33] 56/20 57/3 57/11 58/15 58/18 59/6 66/7 67/3 67/3 67/25 69/15 69/22 69/25 70/6 70/12 71/6 71/9 71/10 73/17 75/7 83/10 108/17 113/24 114/20 115/8 115/18 115/24 116/6 116/15 116/23 117/3 117/12 143/10
specifically [17] 36/16 37/18 77/9 97/23 99/24 100/13 105/19 106/14 107/6 113/3 125/1 127/17 136/25 139/17 142/20 143/5 145/22	ss [1] 157/3	
spell [12] 8/5 20/21 36/3 45/9 53/17 64/6 76/3 84/6 90/5 134/25 142/3 150/14	staff [1] 143/8	
	stains [2] 128/17 128/17	
	stamp [28] 31/14 59/24 60/9 70/13 72/15 73/9 73/11 73/18 74/6 74/10 79/15 79/17 82/6 82/13 82/14 100/14 100/18 100/21 101/4 101/19 101/25 102/3 116/10 116/12 116/21 119/21 123/6 139/17	
	stamped [3] 79/12 100/24 102/6	
	stamping [1]	

S	State's 42 [1] 116/15	147/18 147/25
State's 10 [1] 117/3	State's 8 [1] 108/17	still [21] 26/7 42/3 57/6 57/14 57/16 66/14 71/5 107/3 107/14 107/16 108/13 110/12 114/24 118/20 119/7 123/5 123/13 127/7 145/23 145/25 151/23
State's 15 [1] 117/12	stated [3] 39/18 110/25 145/20	stills [6] 107/9 107/11 110/5 114/19 118/12 127/5
State's 16 [2] 66/7 67/3	statement [23] 5/4 19/12 28/4 28/8 28/10 34/19 43/16 52/9 62/23 74/18 82/22 88/21 92/25 93/2 93/8 93/19 110/1 120/5 133/12 138/13 140/20 148/25 155/14	stolen [1] 120/25
State's 17 [1] 67/3	statements [12] 19/11 34/18 43/15 52/8 62/22 74/17 82/21 88/20 133/11 140/19 148/24 155/13	stood [1] 22/6
State's 18 [1] 67/25	station [6] 38/20 38/24 38/25 39/1 39/2 124/8	stop [8] 13/24 27/10 27/24 38/6 92/3 110/6 110/19 119/14
State's 20 [1] 69/15	stay [3] 43/4 43/5 156/6	stopped [3] 39/1 138/5 138/6
State's 23 [1] 69/25	stayed [4] 9/4 38/3 38/12 39/19	stopping [1] 112/11
State's 24 [1] 70/6	steal [1] 56/11	store [29] 21/17 22/3 22/21 22/25 25/23 26/6 27/7 27/8 27/18 30/14 31/5 32/11 42/16 92/16 92/19 95/9 97/12 110/5 111/18 117/15 118/15 118/15 118/25 121/8 121/13 121/24 124/5 152/24 153/9
State's 25 [1] 73/17	Stein [3] 119/18 150/15 150/17	straight [2] 16/4 48/25
State's 26 [1] 71/6	Stenotype [1] 157/7	street [12] 39/2
State's 27 [1] 71/9	stepdad [2] 84/24 84/24	
State's 29 [1] 56/20	steps [1] 38/3	
State's 31 [2] 57/11 58/15	Stevens [2] 68/9 68/10	
State's 32 [1] 58/18	sticker [5] 56/17 114/14 114/24	
State's 33 [1] 59/6		
State's 37 [1] 114/20		
State's 38 [1] 115/8		
State's 39 [1] 115/18		
State's 40 [1] 115/24		
State's 41 [1] 116/6		

<p>S</p> <p>street... [11] 39/4 43/3 45/22 45/24 46/23 49/3 49/4 86/20 88/5 110/20 144/11</p> <p>structure [1] 87/22</p> <p>stuff [2] 66/24 66/24</p> <p>style [4] 47/16 47/17 47/19 50/5</p> <p>subject [1] 22/3</p> <p>subjects [2] 27/18 32/13</p> <p>submit [1] 104/14</p> <p>submitted [11] 102/22 104/8 105/3 105/5 128/3 128/5 128/11 128/14 128/19 131/5 131/12</p> <p>subsequent [3] 61/2 111/15 143/15</p> <p>subsequently [1] 137/8</p> <p>such [2] 73/12 94/25</p> <p>suicide [1] 18/22</p> <p>summary [1] 28/18</p> <p>Sunday [1] 40/17</p> <p>supervision [1] 157/11</p> <p>supposed [4] 40/2 41/20 76/21 131/24</p> <p>sure [8] 20/1 71/19 72/10 85/14 87/15 116/22 123/3 131/9</p>	<p>surfaces [1] 11/2</p> <p>surveillance [73]</p> <p>suspect [5] 124/5 126/1 126/19 133/3 133/3</p> <p>suspected [1] 54/21</p> <p>suspects [3] 105/15 105/18 124/24</p> <p>suspensions [1] 22/7</p> <p>suspicious [6] 22/22 27/19 46/19 46/21 50/13 51/24</p> <p>swab [1] 61/14</p> <p>swabbed [2] 128/16 128/20</p> <p>swear [13] 7/13 20/4 35/11 44/17 52/25 63/14 75/11 83/14 83/18 89/12 134/9 141/11 149/21</p> <p>sweater [1] 81/10</p> <p>switch [2] 99/12 119/6</p> <p>switching [1] 119/3</p> <p>sworn [13] 6/5 8/10 21/2 36/7 45/13 53/21 64/10 76/7 84/11 90/9 135/4 142/7 150/18</p> <p>system [1] 146/1</p> <p>T</p> <p>T-A-P-A-Y [1] 76/5</p> <p>table [5] 25/25</p>	<p>26/2 26/3 26/5 26/10</p> <p>tag [1] 12/25</p> <p>tags [2] 39/20 40/14</p> <p>take [22] 11/15 17/3 21/22 44/4 44/6 44/10 50/7 55/4 55/18 55/19 60/12 60/25 61/12 65/2 65/4 65/4 65/12 65/15 67/17 107/7 134/3 153/7</p> <p>taken [8] 1/14 11/7 55/14 57/11 58/22 70/5 120/22 123/23</p> <p>takes [1] 124/9</p> <p>taking [2] 55/13 68/15</p> <p>talented [1] 21/21</p> <p>talk [6] 13/17 28/3 40/21 59/12 109/13 109/22</p> <p>talked [7] 17/2 31/2 34/4 34/9 68/13 99/11 146/18</p> <p>talking [4] 46/12 80/1 97/19 114/3</p> <p>tandem [1] 69/13</p> <p>tangent [1] 111/3</p> <p>Tapay [5] 75/8 76/4 76/5 76/6 76/14</p> <p>target [1] 14/15</p> <p>task [1] 94/22</p> <p>tasks [1] 94/25</p> <p>Taurus [3] 78/10 80/15 115/22</p>
--	--	---

T	7/13 7/20 20/4	11/1 13/22 23/2
team [4] 92/18	20/11 35/11 35/18	23/17 25/2 26/4
95/25 96/24 99/21	44/17 44/24 52/25	26/10 26/11 26/20
teams [1] 114/9	53/7 63/14 63/21	27/17 27/19 30/10
technicians [1]	75/11 75/18 83/14	30/12 40/23 40/24
11/12	83/21 89/12 89/20	41/3 42/21 46/20
tell [16] 14/5	93/13 133/3 134/9	47/13 47/22 51/24
17/7 26/12 30/9	134/16 141/11	55/18 55/19 56/11
37/25 39/15 43/2	141/18 143/17	56/12 57/21 57/23
61/22 79/20 88/8	149/21 150/2	60/24 61/5 61/8
95/13 99/12	155/9	61/14 68/7 69/7
109/24 138/25	testing [8] 62/8	73/25 82/7 105/25
145/17 152/11	130/1 130/6 130/8	106/2 106/4
ten [2] 44/11	130/22 130/23	108/10 115/15
134/4	132/12 132/13	125/25 131/17
tennis [1] 115/15	than [3] 61/20	131/18 146/21
term [1] 18/7	66/17 139/24	then [104]
terms [3] 14/10	Thank [36] 19/3	there [185]
18/18 59/13	19/22 19/24 35/4	there's [16]
test [4] 129/18	35/6 44/1 52/19	18/18 22/16 50/10
129/24 130/11	52/21 62/15 63/8	51/24 62/10 70/1
130/15	63/10 71/14 72/21	96/19 104/3
tested [2] 103/19	74/8 75/3 75/5	112/19 118/17
130/19	75/6 82/15 83/7	122/8 127/23
testified [17]	83/9 89/6 89/18	130/12 130/23
8/12 9/17 21/4	126/8 127/23	143/8 147/17
36/9 45/15 53/23	128/25 129/15	thereafter [1]
64/12 76/9 84/13	133/22 133/24	157/9
90/11 126/13	141/5 149/10	these [60]
126/17 126/20	149/12 149/20	they [98]
128/2 135/6 142/9	155/24 156/1	they'll [5] 60/25
150/20	156/2 156/4	62/13 72/10 73/25
testify [14] 8/11	Thanks [1] 27/14	74/2
21/3 21/16 27/25	that [665]	they're [10]
36/8 45/14 53/22	that's [79]	22/21 24/20 26/7
64/11 76/8 84/12	their [12] 23/16	26/9 27/8 27/20
90/10 135/5 142/8	33/25 58/5 59/24	57/1 57/16 132/3
150/19	59/24 69/11 73/23	132/4
testifying [1]	118/23 119/2	they've [2] 24/20
10/18	119/2 120/9 131/7	147/13
testimony [28]	them [45] 6/25	thing [2] 41/2

T	72/22 79/22 79/23	156/7 156/9 157/9
thing... [1]	80/19 91/5 96/22	timed [3] 66/16
59/20	100/7 100/25	66/18 66/21
things [4] 61/14	102/15 105/10	times [2] 60/25
136/14 144/3	111/20 134/1	72/10
144/17	137/3 143/25	tire [1] 57/15
think [7] 38/24	three inches [1]	title [7] 39/22
48/17 57/14 57/17	15/14	39/23 39/23 39/24
91/20 123/2	through [26] 9/1	41/12 41/15
127/23	13/22 14/8 14/15	158/23
third [1] 99/17	14/16 14/20 16/6	TOBIE [1] 2/5
this [204]	16/12 17/9 17/16	today [15] 7/19
those [48] 7/7	17/18 55/25 62/13	20/10 35/17 44/23
18/19 22/19 22/20	65/15 76/23 79/20	53/6 63/20 75/17
25/17 25/22 32/15	79/20 85/16 85/20	83/20 89/20
32/15 36/21 48/14	86/14 92/5 107/7	105/19 126/10
56/1 58/6 59/7	113/12 113/13	134/15 141/17
59/21 65/15 65/17	131/2 144/22	150/2 156/7
66/3 68/5 68/9	throughout [3]	together [4]
70/23 79/21 80/25	24/15 105/17	26/21 32/14 90/25
91/23 94/8 100/5	132/15	135/17
100/9 100/18	thus [1] 99/6	told [20] 11/11
102/16 104/9	tied [2] 10/8	27/17 27/19 34/8
105/4 105/10	61/18	38/19 39/21 40/4
107/8 109/18	till [1] 120/19	40/6 40/8 40/13
110/5 110/20	time [44] 16/14	40/23 40/24 41/6
112/21 113/10	23/12 24/17 28/25	41/7 51/22 110/19
113/14 115/6	29/2 29/4 31/14	112/4 112/10
116/9 128/23	36/15 38/19 40/14	152/15 154/17
131/19 132/17	43/1 45/21 46/4	Tony [1] 138/11
144/3 144/8	46/7 46/11 46/13	too [5] 21/21
144/17 144/18	46/15 61/21 65/4	22/6 40/18 40/19
145/11	66/10 66/11 84/23	62/11
though [3] 16/8	85/3 85/22 86/8	took [13] 40/5
29/5 131/22	93/22 93/25 94/2	50/13 60/18 68/17
thought [1] 31/2	103/25 106/4	77/22 77/23 124/1
three [27] 15/14	106/6 114/18	124/12 124/16
17/7 22/10 22/12	120/2 120/6 123/5	129/18 146/17
22/17 24/19 30/16	130/18 131/15	152/17 157/7
32/13 32/14 70/23	131/22 132/1	top [12] 10/24
70/24 70/25 72/14	133/24 146/23	31/7 37/24 47/18

T	tried [1] 25/12	typical [1] 15/12
top... [8] 56/17 57/15 70/10 93/15 93/18 113/5 119/25 122/11	tripod [1] 66/20	U
tow [1] 54/24	Tropicana [9] 77/2 80/2 98/11 98/12 100/19 113/22 115/5 116/18 139/3	Uh [2] 6/17 49/4
toward [5] 17/15 46/14 47/1 118/16 123/17	true [1] 157/12	Uh-huh [1] 6/17
towed [3] 55/1 62/2 62/3	trunk [6] 56/5 56/22 57/9 57/12 57/14 57/16	uhm [3] 46/18 46/23 154/13
towel [2] 14/2 14/23	truth [72]	unclear [1] 131/15
traffic [1] 92/3	try [7] 13/12 38/17 58/6 97/3 97/7 97/20 126/24	uncovered [1] 118/21
trailing [2] 117/9 124/5	trying [4] 38/7 67/7 130/9 146/15	under [5] 66/23 67/1 76/18 154/12 157/10
training [5] 8/22 9/1 102/9 102/11 130/17	Tuesday [1] 40/18	underneath [3] 78/21 139/5 139/7
transcribe [1] 6/6	tumble [1] 14/20	undersigned [1] 158/4
transcribed [1] 157/10	turned [2] 85/17 86/15	understand [27] 8/2 19/20 20/18 35/2 35/25 41/9 43/24 45/6 52/17 53/14 63/6 64/3 75/1 75/25 83/5 84/3 89/4 89/5 90/2 103/25 133/20 134/22 141/3 141/25 149/8 150/11 155/22
transcript [3] 1/20 157/12 158/4	turning [1] 13/4	understood [3] 17/6 109/18 145/11
transfer [1] 128/21	TV [1] 152/12	undetermined [1] 156/9
transferred [1] 106/21	Twenty [1] 54/12	Unfortunately [1] 133/2
transfers [1] 132/16	Twenty-one [1] 54/12	unique [6] 10/3 12/10 91/16 97/8 100/9 118/17
transpired [13] 19/10 34/17 43/14 52/7 62/21 74/16 81/24 82/20 88/19 133/10 140/18 148/23 155/12	two [23] 17/6 26/20 26/20 66/3 76/18 79/2 87/3 87/4 91/21 96/18 98/24 99/11 99/18 108/12 112/20 117/6 128/13 132/2 134/1 137/25 152/14 152/18 152/19	unit [3] 98/12
transported [1] 67/15	type [10] 16/13 47/17 78/8 79/9 96/8 100/10 100/10 100/18 102/18 102/19	
traveled [1] 17/18		

<p>U</p> <p>unit... [2] 113/23 115/5</p> <p>University [1] 9/2</p> <p>unknown [2] 121/15 125/16</p> <p>Unlike [1] 16/18</p> <p>unloaded [1] 72/2</p> <p>until [3] 31/5 125/5 138/5</p> <p>up [54]</p> <p>upon [12] 7/14 20/5 35/12 44/18 53/1 63/15 75/12 83/15 89/13 134/10 141/12 149/22</p> <p>upper [2] 122/18 140/5</p> <p>upstairs [4] 85/16 85/19 87/5 87/6</p> <p>upward [2] 17/16 17/18</p> <p>us [28] 11/11 14/5 17/7 19/10 30/9 34/17 37/25 39/15 43/14 52/7 58/3 62/21 74/16 81/24 82/20 88/19 98/25 99/13 99/22 109/20 112/4 130/16 133/10 138/25 140/18 148/23 149/14 155/12</p> <p>use [45] 7/4 7/4 7/5 7/22 7/23 7/24 18/9 20/13 20/14 20/15 23/11</p>	<p>35/20 35/21 35/22 44/5 45/1 45/2 45/3 53/9 53/10 53/11 63/23 63/24 63/25 75/20 75/21 75/22 83/23 83/24 83/25 86/8 86/10 89/23 89/24 89/24 131/5 134/18 134/19 134/20 141/20 141/21 141/22 150/5 150/6 150/6</p> <p>used [2] 23/5 28/8</p> <p>using [1] 61/19</p> <p>usually [7] 46/8 50/10 58/2 65/4 73/11 73/12 87/21</p> <p>utilize [6] 10/6 18/7 67/23 111/3 127/13 137/6</p> <p>utilized [2] 12/11 12/25</p> <hr/> <p>V</p> <p>Valenzuela [5] 9/25 10/15 12/19 85/2 88/12</p> <p>valley [1] 104/1</p> <p>value [1] 144/19</p> <p>variation [1] 110/1</p> <p>variations [1] 109/25</p> <p>various [6] 59/23 102/24 108/10 132/8 139/9 143/18</p> <p>varying [1] 74/1</p> <p>Vegas [20] 1/14</p>	<p>6/1 24/6 24/7 45/22 51/2 54/10 55/2 64/19 65/9 68/22 84/22 90/17 93/7 98/2 125/14 137/12 144/15 151/7 157/14</p> <p>vehicle [68]</p> <p>vehicles [1] 96/19</p> <p>verified [1] 148/15</p> <p>version [3] 110/4 110/23 111/17</p> <p>versus [2] 6/18 14/12</p> <p>very [16] 14/18 14/21 18/9 22/7 31/7 33/11 33/11 47/12 51/12 62/4 62/15 72/21 89/6 125/6 133/22 141/5</p> <p>Vic [6] 26/13 26/14 31/3 31/4 50/4 96/1</p> <p>victim [8] 67/14 67/15 111/21 111/22 123/24 123/24 139/15 143/8</p> <p>VICTORIA [1] 2/13</p> <p>video [42] 4/6 4/7 24/8 24/12 27/21 29/20 29/22 31/13 32/22 42/3 42/13 95/1 95/19 95/21 106/8 106/18 106/22 107/11 107/15 107/16 108/14</p>
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V video... [21] 114/2 114/18 115/17 117/21 118/12 118/20 119/6 119/22 120/1 120/11 121/2 122/8 126/18 136/2 138/2 151/8 151/13 151/18 152/3 153/5 153/18 videos [1] 42/6 view [6] 23/10 69/11 77/25 122/23 123/8 123/9 viewable [1] 114/14 viewing [1] 121/11 visible [2] 97/16 122/13 VOLUME [1] 1/22 voluntary [6] 5/4 28/8 92/24 93/2 93/8 93/19	67/6 67/11 86/19 87/18 wallet [1] 123/22 want [15] 9/22 36/14 36/19 37/6 54/4 65/6 85/14 87/15 93/11 99/11 107/6 110/1 112/22 134/3 150/25 wanted [3] 25/4 25/7 38/4 Warm [1] 21/18 warnings [5] 109/15 109/19 145/9 145/12 145/18 warrant [19] 55/7 55/10 57/19 61/3 66/1 69/2 69/12 74/13 77/6 97/23 98/4 98/6 98/10 100/16 103/11 103/12 139/2 139/4 144/11 warrants [8] 58/2 97/20 101/2 102/24 103/10 108/11 115/6 144/7	we [154] we'll [8] 28/6 61/11 64/23 64/23 64/24 65/1 65/1 149/15 we're [11] 30/9 49/8 58/3 58/14 61/19 66/6 92/6 105/12 124/20 149/13 156/5 we've [4] 80/1 105/18 136/21 144/21 weapon [47] 7/4 7/5 7/5 7/23 7/24 7/24 20/14 20/15 20/15 23/7 23/16 35/21 35/22 35/22 45/2 45/3 45/3 53/10 53/11 53/11 63/24 63/25 63/25 72/17 73/11 74/4 74/11 75/21 75/22 75/22 80/14 83/24 83/25 83/25 89/23 89/24 89/25 112/2 132/21 134/19 134/20 141/21 141/22 141/22 150/5 150/6 150/7
W W-I-L-L-I-A-M [1] 64/8 WAGNER [1] 2/18 waiting [2] 6/10 41/14 walk [2] 23/6 153/21 walked [3] 32/1 32/4 121/15 wall [8] 47/2 48/18 49/14 67/4	was [319] wasn't [1] 22/4 watching [2] 26/11 152/12 water [6] 24/24 24/25 25/1 25/3 34/4 34/5 waving [1] 152/16 way [6] 48/21 73/24 80/14 98/10 122/13 126/9	wearing [7] 23/2 32/24 33/14 47/12 113/4 120/17 131/14 Wednesday [2] 1/15 40/19 weekend [1] 40/13 well [26] 10/23 13/21 14/13 14/25 15/11 18/8 22/3 22/10 26/13 40/23

W	104/21 112/15 130/16	150/3 153/8 154/22
well... [16] 42/7 42/24 46/8 49/4 51/18 72/9 85/13 85/18 86/7 87/2 94/15 104/9 114/11 115/3 139/9 145/15	whatnot [1] 52/1 WHEELER [24] 1/10 6/20 8/1 20/17 35/24 45/5 53/13 64/2 75/24 84/2 90/1 101/17 105/6 105/23 112/24 115/17 116/24 125/2 134/21 141/24 144/24 145/2 148/10 150/10	white [20] 26/13 26/13 26/14 30/11 30/11 32/16 36/18 50/4 96/1 96/19 110/17 113/4 114/17 114/24 122/12 126/19 127/1 136/25 137/17 147/17
went [28] 9/1 13/22 14/8 16/3 16/4 17/9 17/15 17/16 26/17 30/24 32/2 38/23 40/6 40/12 49/21 54/22 68/19 71/8 85/15 85/18 85/19 86/5 87/3 87/5 87/6 87/13 110/18 136/9	when [68] where [55] wherever [1] 100/4 whether [6] 51/5 85/15 92/1 111/24 133/4 146/20	who [34] 12/12 22/21 34/1 38/3 77/22 84/23 87/1 93/13 94/18 97/4 97/6 98/13 98/22 101/14 106/19 109/5 111/4 111/10 112/23 116/23 117/10 119/4 119/7 119/15 121/20 123/24 124/6 124/13 126/2 126/2 129/6 138/9 145/1 151/15
were [140] West [20] 65/8 77/2 80/1 84/21 85/5 87/10 91/7 98/10 98/12 100/19 113/21 113/22 115/5 116/17 117/16 118/2 135/22 136/7 139/2 151/7	which [29] 7/8 16/5 18/9 30/6 33/3 33/7 46/24 48/21 49/5 49/5 49/20 59/19 72/5 79/3 87/21 96/3 99/18 101/9 101/12 111/11 112/5 115/16 116/10 116/19 116/21 117/6 123/17 123/21 128/17	whole [28] 7/15 8/11 20/6 21/3 35/13 36/8 44/19 45/14 51/19 53/2 53/22 59/20 63/16 64/11 66/23 75/13 76/8 83/16 84/12 87/4 89/14 90/10 134/11 135/5 141/13 142/8 149/23 150/19
what [147] what's [18] 15/22 24/3 25/9 28/14 36/21 54/8 56/23 67/11 79/21 93/9 94/14 100/5 112/18 119/17 122/4 126/1 153/3 153/23	while [21] 7/2 7/21 20/12 35/19 44/25 53/8 63/22 75/19 77/9 83/22 86/20 86/23 89/21 94/25 111/2 124/7 134/17 141/19	why [10] 22/9 60/12 66/14 94/7 99/20 113/9 129/23 131/4
whatever [9] 38/25 39/21 48/17 61/16 86/13 95/2		

<p>W</p> <p>why... [2] 132/12 139/14</p> <p>wife [2] 51/21 51/23</p> <p>will [16] 6/20 8/25 16/15 57/1 58/3 62/12 62/14 69/9 72/12 94/17 94/21 124/9 130/5 131/2 132/15 139/6</p> <p>WILLIAM [8] 2/11 38/22 40/5 40/13 63/11 64/7 64/8 64/9</p> <p>WILLIAMS [1] 2/19</p> <p>willing [1] 109/20</p> <p>Winchester [1] 102/3</p> <p>window [3] 85/16 130/18 132/5</p> <p>windshield [1] 31/7</p> <p>wished [1] 109/19</p> <p>wit [1] 158/13</p> <p>within [7] 110/19 117/8 118/7 128/18 132/5 135/13 139/1</p> <p>Without [4] 38/6 97/5 107/5 132/14</p> <p>witness [9] 7/10 35/7 52/3 75/7 81/21 83/10 88/15 125/9 140/15</p> <p>witnesses [6] 3/1 57/24 95/1 97/20 134/1 136/14</p> <p>wolf [1] 94/17</p>	<p>woman [1] 21/21</p> <p>won't [2] 86/13 144/22</p> <p>worded [1] 15/4</p> <p>work [27] 8/20 21/17 21/18 21/19 21/24 21/25 22/22 38/2 40/18 40/19 46/5 46/8 57/21 58/2 66/12 69/6 77/15 80/1 90/25 91/6 94/13 131/2 135/14 135/17 135/20 142/16 151/4</p> <p>worked [3] 24/18 24/19 68/12</p> <p>working [8] 10/4 54/6 69/13 95/7 97/12 119/15 151/1 151/21</p> <p>world [1] 131/1</p> <p>worn [1] 115/16</p> <p>worse [1] 86/12</p> <p>worth [1] 39/3</p> <p>would [36] 14/24 14/25 22/25 44/6 44/8 47/2 47/3 47/15 47/23 48/22 48/24 50/4 50/24 61/21 67/4 68/3 71/23 71/24 72/5 72/5 78/15 79/3 88/3 112/4 121/11 121/16 123/17 123/19 128/7 128/22 129/22 129/23 129/23 131/18 146/21 147/22</p> <p>wound [20] 14/2</p>	<p>14/6 14/7 14/13 14/19 14/21 14/25 15/5 15/5 15/12 15/13 15/13 15/25 16/7 16/8 16/21 16/22 17/8 17/14 85/11</p> <p>wounds [5] 13/21 14/11 15/17 18/1 19/2</p> <p>write [1] 29/2</p> <p>written [1] 28/21</p> <p>wrote [1] 50/17</p> <p>Y</p> <p>yeah [40] 22/18 26/19 33/5 36/22 36/25 37/2 37/12 37/22 37/22 37/24 42/7 42/10 42/14 43/4 43/6 43/8 46/14 46/20 47/22 47/25 47/25 48/2 48/8 48/16 49/15 49/17 50/3 50/9 50/12 50/25 51/12 51/15 57/16 71/11 85/11 85/13 86/1 87/5 97/15 131/19</p> <p>year [7] 9/1 9/23 36/15 45/21 84/19 91/24 142/17</p> <p>years [6] 9/1 9/5 24/19 54/12 64/21 76/18</p> <p>yelling [1] 152/16</p> <p>yes [330]</p> <p>yet [3] 59/22 103/4 131/5</p> <p>yielded [1] 128/4</p>
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Y**you** [755]**you'll** [8] 16/16

74/2 74/3 91/23

96/16 115/14

122/10 122/18

you're [17] 10/3

18/11 18/13 30/10

32/24 46/12 47/5

56/10 69/13 87/17

87/25 111/10

127/10 131/24

133/2 147/14

154/12

you've [5] 24/18

61/12 100/16

101/3 138/18

young [5] 47/15

48/2 48/14 49/12

50/23

younger [4] 99/1

99/3 99/6 129/10

your [151]**yours** [1] 37/11**Z****Zachary** [4] 45/22

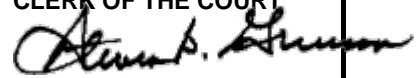
46/24 49/5 49/6

zipped [1] 12/4**zipper** [1] 12/6**zoom** [2] 82/9

82/12

zooming [1]

114/11



EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)
)
Plaintiff,)
)
vs.) GJ No. 17BGJ017A-C
) DC No. C328587
DEMARIO LOFTON-ROBINSON, aka)
Demario Loftonrobinson, RAEKWON)
SETREY ROBERTSON, aka Raekwon)
Robertson, DAVONTAE AMARRI)
WHEELER,)
)
Defendants.)

Taken at Las Vegas, Nevada

Wednesday, December 13, 2017

8:19 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

VOLUME 2

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

12:00 1 GRAND JURORS PRESENT ON DECEMBER 13, 2017

2

3 HOWARD BASCH, Foreperson

4 CHARLES STANKOSKY, Deputy Foreperson

12:00 5 TOBIE SPERRY, Secretary

6 ANGELA MOORE, Assistant Secretary

7 LINDA COHN

8 FRANK COOMBS

9 WILLIAM DUMKE

12:00 10 LADYHAWK FREEMAN

11 VICTORIA GUY

12 CATHERINE HARABURDO

13 MARGARET LAAS

14 ROJEAN LOGAN

12:00 15 NANCY SCHERER

16 EDWARD WAGNER

17 COURTNEY WILLIAMS

18

19

12:00 20 Also present at the request of the Grand Jury:

21 Giancarlo Pesci, Chief Deputy District Attorney

22

23

24

25

12:00 1 LAS VEGAS, NEVADA, DECEMBER 13, 2017

2 * * * * *

3

4 DANETTE L. ANTONACCI,

12:00 5 having been first duly sworn to faithfully
6 and accurately transcribe the following
7 proceedings to the best of her ability.
8

9 THE FOREPERSON: Let the record reflect
08:11 10 that I have canvassed the waiting area and no one has
11 appeared in response to Notice of Intent to Seek
12 Indictment.

13 MR. PESCI: Ladies and gentlemen of the
14 Grand Jury, that concludes the presentation of the
08:19 15 evidence on behalf of the State of Nevada in the case
16 against Demario Lofton-Robinson, Raekwon Robertson and
17 Davontae Wheeler. I'll submit it for your deliberation.

18 (At this time, all persons, other than
19 members of the Grand Jury, exit the room at 8:19 a.m.
08:20 20 and return at 8:29 a.m.)

21 THE FOREPERSON: Mr. District Attorney, by
22 a vote of 12 or more grand jurors a true bill has been
23 returned against Demario Lofton-Robinson, Raekwon
24 Robertson, Davontae Wheeler, the crimes of burglary
08:29 25 while in possession of a firearm, conspiracy to commit

08:29 1 robbery, robbery with use of a deadly weapon, attempt
2 robbery with use of a deadly weapon, murder with use of
3 a deadly weapon, in Grand Jury case number 17BGJ017AB&C.
4 We instruct you to prepare an Indictment in conformance
08:29 5 with the proposed Indictment previously submitted to us.

6 MR. PESCI: Thank you very much.

7 (Proceedings concluded.)

8 --oo0oo--
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08:29

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REPORTER'S CERTIFICATE

2

3

STATE OF NEVADA)

: ss

4

COUNTY OF CLARK)

08:29

5

6

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

7

hereby certify that I took down in Shorthand (Stenotype)

8

all of the proceedings had in the before-entitled matter

9

at the time and place indicated and thereafter said

08:29

10

shorthand notes were transcribed at and under my

11

direction and supervision and that the foregoing

12

transcript constitutes a full, true, and accurate record

13

of the proceedings had.

14

Dated at Las Vegas, Nevada,

08:29

15

December 31, 2017.

16

17

/s/ Danette L. Antonacci

18

19

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

08:29

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08:29

1

AFFIRMATION

2

Pursuant to NRS 239B.030

3

4

The undersigned does hereby affirm that the
preceding TRANSCRIPT filed in GRAND JURY CASE NUMBER
17BGJ017A-C:

08:29

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8

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

9

08:29

10

-OR-

11

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

12

13

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

14

-OR-

08:29

15

16

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

17

18

/s/ Danette L. Antonacci

19

Signature

12-31-17

Date

08:29

20

21

Danette L. Antonacci

Print Name

22

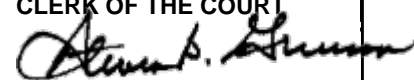
23

Official Court Reporter

Title

24

25



1 **RET**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GIANCARLO PESCI
6 Chief Deputy District Attorney
7 Nevada Bar #007135
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO: C-17-328587-3

-vs-

DEPT NO: XX

DEMARIO LOFTON-ROBINSON, aka,
Demario Loftonrobinson, #5318925
RAEKWON SETREY ROBERTSON,
aka, Raekwon Robertson, #8252804
DAVONTAE AMARRI WHEELER,
#5909081

Defendant(s).

STATE'S RETURN TO WRIT OF HABEAS CORPUS

DATE OF HEARING: March 20, 2018
TIME OF HEARING: 8:30 A.M.

COMES NOW, JOE LOMBARDO, Sheriff of Clark County, Nevada, Respondent, through his counsel, STEVEN B. WOLFSON, Clark County District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, in obedience to a writ of habeas corpus issued out of and under the seal of the above-entitled Court on the 8th day of February, 2017, and made returnable on the 27th day of February, 2017, at the hour of 8:30 A.M., before the above-entitled Court, and states as follows:

1. Respondent admits the allegations of Paragraphs 1, 2, 7.
2. Respondent denies the allegations of Paragraph 3.
3. Paragraph numbers 4, 5, 6, 8 do not require admission or denial.

1 4. The Petitioner is in the actual or constructive custody of JOE
2 LOMBARDO, Clark County Sheriff, Respondent herein, pursuant to a Criminal Information
3 or Indictment, a copy of which is attached hereto as Exhibit 1 and incorporated by reference
4 herein.

5 Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the
6 Petition be dismissed.

7 DATED this 2 day of March, 2018.

8 Respectfully submitted,

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

12 BY *Giancarlo Pesci* #12840
13 GIANCARLO PESCI
14 Chief Deputy District Attorney
15 Nevada Bar #Deputy Bar

16 **POINTS AND AUTHORITIES**

17 **I. STATEMENT OF THE CASE**

18 Defendant Devontae Wheeler ("Defendant") was arrested on August 15, 2017. On
19 August 17, 2017, Defendant was charged by way of Criminal Complaint in Justice Court
20 Department 12 as follows: COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category
21 B Felony – NRS 200.380, 199.480); COUNT 2 – ATTEMPT ROBBERY WITH USE OF A
22 DEADLY WEAPON (Category B Felony – 200.380, 193.330, 193.165); and COUNT 3 –
23 MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS 200.010,
200.030, 193.165).

24 On September 21, 2017, Defendant's case was consolidated into Justice Court
25 Department 3, Case No. 17F14369C, so that Defendant's case could be joined with that of his
26 co-defendants.

27 Prior to the preliminary hearing, the State indicted Defendant on the charges alleged in
28 the Criminal Complaint. Following the State's presentation of evidence at the Grand Jury on

1 November 29, 2017 and December 13, 2017, Defendant was held to answer on all three counts.
2 On December 14, 2017, Defendant was formally charged by way of Indictment, charging
3 Defendant as follows: COUNT 5 – CONSPIRACY TO COMMIT ROBBERY; COUNT 6 –
4 ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON; and COUNT 7 – MURDER
5 WITH USE OF A DEADLY WEAPON. On December 19, 2017, Defendant pled not guilty
6 and waived his right to a speedy trial.

7 The Grand Jury transcripts were filed on January 1, 2018. At a status check on January
8 9, 2018, the Court granted defense counsel an additional 30 days from that day to file any
9 writs. Accordingly, the instant Petition for Writ of Habeas Corpus was timely filed on
10 February 8, 2018.

11 Defendant is charged with the Murder and Attempt Robbery of Gabriel Valenzuela on
12 August 9, 2017. The State also alleges that Defendant conspired with his co-defendants to
13 commit a robbery against Mr. Valenzuela on that day.

14 II. STATEMENT OF FACTS

15 The following is a summary of the relevant portions of testimony elicited during the
16 presentation of evidence to the Grand Jury.

17 John Relato

18 On August 9, 2017, John Relato (“Mr. Relato”) resided with his cousin, Gabriel
19 Valenzuela at 5536 Dewey Drive in Las Vegas Nevada. See Preliminary Hearing Transcript
20 (Nov. 29, 2017) (“PHT”) 84:18-85:6. In the early morning hours of August 9, 2017, Mr.
21 Relato was inside his home when he heard gunshots. PHT 85:7-23. Mr. Relato looked out his
22 window and saw his cousin, Gabriel Valenzuela laying in the driveway to their home. Id. Mr.
23 Relato went outside and realized that Mr. Valenzuela was bleeding from his head. Id. As Mr.
24 Relato proceeded outside, he called 911. PHT 86:21-22, 87:6. The initial call to 911 was
25 placed at 12:11 a.m.¹ Mr. Relato did not see anyone in the area and he did not see who shot
26 his cousin. PHT 86:23-87:2. Mr. Relato testified that it was customary for his cousin to check

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¹ This fact was testified to by Detective Mitch Dosch. PHT 91:10:13

1 the mail and sit on the retaining wall in front of his home while he opened the mail. PHT
2 87:20-23.

3 **Lary Simms**

4 Larry Simms ("Dr. Simms") is a forensic pathologist with the Clark County Coroner's
5 Office. PHT 8:17-18, 9:11-13. Dr. Simms conducted the autopsy on Gabriel Valenzuela.
6 PHT 9:22-10:1. Dr. Simms determined that Mr. Valenzuela suffered four gunshot wounds.
7 One shot entered the right side of Mr. Valenzuela's head and exited on the left side of Mr.
8 Valenzuela's forehead; another shot entered Mr. Valenzuela's left abdomen and did not exit;
9 another shot entered the outside of Mr. Valenzuela's right ankle, exiting on the inside of Mr.
10 Valenzuela's right ankle; the fourth shot entered the back of Mr. Valenzuela's left ankle and
11 came to rest in his leg. PHT 13:21-23, 15:20-24, 17:6-20. Dr. Simms concluded that the cause
12 of Mr. Valenzuela's death was multiple gunshot wounds and the manner of Mr. Valenzuela's
13 death was homicide. PHT 17:21-18:6.

14 **Robert Mason**

15 At the time of Mr. Valenzuela's murder, Robert Mason lived in the same neighborhood
16 as the victim. PHT 45:20-25. At approximately midnight on the night of August 8, 2017, into
17 the morning of August 9, 2017, Mr. Mason went for a jog in his neighborhood. PHT 46:2-15.
18 During his jog, Mr. Mason saw four black males standing on the corner of Lindell and Dewey
19 in front of 5536 Dewey Drive.² PHT 46:16-48:2-18. Shortly after Mr. Mason ran past the
20 four individuals standing in front of Mr. Valenzuela's home, he saw what he described as a
21 white Crown Vic, bearing Nevada license plate number 473YZB. PHT 50:3-21. The vehicle
22 was parked approximately 20-50 feet from where the four black males were standing. PHT
23 50: 22-25. When shown Grand Jury Exhibit 28 (attached as Exhibit 5), Mr. Mason identified
24 it as the vehicle he saw when he jogged past the victim's house. PHT 51:1-15. Mr. Mason

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26
27 ² See Grand Jury Exhibit 16, attached as Exhibit 2. When shown Exhibit 16, Mr. Mason indicated that the photograph
28 captured the area where he saw the four individuals standing. PHT 48:3:18. During Mr. Relato's testimony, he
identified Exhibit 16 as a photograph of his home located at 5536 Dewey Drive. PHT 87:7-11. Exhibit 16 was also
identified by Crime Scene Analyst William Speas and Detective Ryan Jaeger as being the residence on Dewey Drive.
PHT 66:5-9, PHT 142:24-143:4.

1 felt these individuals were suspicious so he called his wife and told her to lock the doors to
2 their house and he asked her to call 311 to report the suspicious individuals. PHT 51:18-52:1.

3 **Nikolaus Spahn**

4 On the night of Mr. Valenzuela's murder (August 8, 2017 into the morning of August
5 9, 2017), Nikolaus Spahn ("Mr. Spahn") was working as a cashier at the Short Line Express
6 located at the intersection of Warm Springs Road and Jones Boulevard at 7325 South Jones
7 Boulevard. PHT 21:13-19, 24:2-7. On that night, Mr. Spahn's shift began at 10:00 p.m. PHT
8 21:24-25. Between 11:20-11:38 p.m., four individuals entered the store. PHT 22, 27:7-29:13.
9 Mr. Spahn believed these individuals were behaving suspiciously and he was concerned
10 because one of the individuals was wearing a firearm on his hip.³ PHT 22:1-23:25.

11 After the four individuals exited the store, they sat down at a table outside of the store.
12 PHT 25:22-26:11. Mr. Spahn continued to observe the individuals at which point he went
13 outside and saw the vehicle the four individuals were driving. Id. Mr. Spahn described the
14 vehicle as a white four door Mercury that looked like a Crown Victoria. PHT 26 12:15. Later
15 that night, police officers came into the store and told Mr. Spahn they were investigating a
16 murder; at that time he told officers about the four individuals he observed. PHT 27:15-23.

17 During Mr. Spahn's testimony, the State introduced surveillance footage from the
18 Shortline Express capturing the four individuals as well as the vehicle in which they arrived.
19 PHT 29:20-31:15. The surveillance footage showed that the vehicle had paint damage on the
20 roof of the car that the first three numbers on the license plate number were 473. PHT 31:6-
21 9, 96:11-22.

22 **James Newman**

23 James Newman testified that on August 4, 2017 (four days before Mr. Valenzuela was
24 murdered), he sold his white Mercury Grand Marquis to Co-Defendant Lofton-Robinson.
25 PHT 38:22-39:14. The vehicle had a Nevada license plate number of 473-YZB, the same
26 license plate observed by Mr. Mason in front of the victim's. See PHT 37:10-13, 50:3-21.
27 When Mr. Newman sold the vehicle, he allowed Co-Defendant Lofton-Robinson to keep the
28

³ Surveillance footage reveals that the individual wearing the firearm is the person Detective Dosch identified as Defendant Wheeler. Portions of the surveillance footage introduced at Grand Jury are attached hereto as Exhibit 1.

1 license plates with the understanding they would be returned at a later time. PHT 39:25-40:1,
2 41:9-17. James Newman identified the vehicle in Grand Jury Exhibits 28 and 30 (attached as
3 Exhibits 5 and 6, respectively) as the vehicle he sold to Co-Defendant Lofton-Robinson.⁴ Mr.
4 Newman was able to identify the vehicle based on its license plate number of 473-YZB which
5 was depicted in Grand Jury Exhibit 28 and because of the paint damage to the roof of the car
6 which was depicted in Grand Jury Exhibit 30. PHT 37:10-24.

7 **Lora Cody**

8 Lora Cody ("Detective Cody") is a homicide detective with the Las Vegas Metropolitan
9 Police Department. PHT 135:11-19. Detective Cody was assigned to assist in the
10 investigation of Mr. Valenzuela's murder. PHT 135:20-22. A portion of her responsibilities
11 involved obtaining surveillance footage. PHT 135:24-3. As a result, Detective Cody
12 responded to the Shortline Express convenience store located near Dewey Drive. PHT 136:3-
13 19. In viewing the surveillance, detectives observed a white Mercury Grand Marquis with a
14 NV license plate bearing the first three numbers of 473. PHT 136:25-137:13. Based on an
15 investigation into the registration of the vehicle, officers were able to locate the vehicle. PHT
16 137:11-19. Ultimately, a traffic stop was conducted, at which time Co-Defendant Lofton-
17 Robinson was inside the car. PHT 137:20-138:11.

18 **Mitch Dosch**

19 Mitch Dosch ("Detective Dosch") is a homicide detective with the Las Vegas
20 Metropolitan Police Department. PHT 90:16-19. Along with other detectives, Detective
21 Dosch was assigned to investigate Mr. Valenzuela's murder. PHT 91:5-9. Detective Dosch
22 testified that four cartridge casings were located at the scene of the murder: one .22 caliber
23 cartridge case and three .45 caliber cartridge cases. PHT 99:22-100:8. The .22 caliber
24 cartridge case bore a head stamp of "C." PHT 13:15. The .45 caliber cartridge cases bore
25 three separate head-stamps: R-P 45, NFCR, and WINCHESTER 45 AUTO. PHT 100:23-
26 101:1, 101:18-21, 102:2-7.

27
28 ⁴ Grand Jury Exhibits 28 and 30 are photographs of the white Mercury Grand Marquis taken inside LVMPD's lab after it
was towed to that location. PHT 55:25-56:3. Grand Jury Exhibit 28 was also identified by Robert Mason as the vehicle
he saw near the victim's home right before the murder occurred.

1 Additionally, Detective Dosch testified regarding the substance of the surveillance
2 video retrieved from the Shortline Express convenience store depicting the events of which
3 Nikolas Spahn testified. PHT 95:17-23. Significantly, Detective Dosch testified that if one
4 were driving a vehicle from the Short Line Express to the scene of the murder, it would only
5 take a matter of minutes. PHT 95:9-16.

6 With respect to the vehicle that the four individuals were driving, the surveillance
7 footage revealed that the first three numbers on the license plate were 473. PHT 95:24-96:22.
8 Because this information matched the description of the vehicle at the scene of the crime and
9 because the four individuals in the surveillance footage were consistent with the four
10 individuals seen at the scene of the crime, detectives attempted to identify the individuals in
11 the footage. See id., PHT 96:23-97:21.

12 Following an investigation, Detective Dosch was able to identify the four individuals
13 depicted in the surveillance footage from the Shortline Express on August 8, 2017. Based on
14 his prior interactions with each of the defendants, Detective Dosch identified one of the
15 individuals in the surveillance footage as Co-Defendant Lofton-Robinson; in the surveillance
16 footage, Lofton-Robinson was wearing red shoes, blue jeans, and a long-sleeved green shirt.
17 PHT 105:17-106:5, 108:23-109:9. Detective Dosch also identified Co-Defendant Robertson
18 as one of the individuals in the surveillance footage. PHT 117:3-11. Finally, Detective Dosch
19 identified one of the individuals as Defendant Wheeler. PHT 112:22-113. In the surveillance
20 footage, Defendant Wheeler was wearing a white and black hat; a maroon top, and maroon
21 shoes. PHT 113:3-5, see Grand Jury Exhibits 9 and 10 (attached as Exhibits 7 and 8,
22 respectively).

23 After identifying these individuals, detectives obtained multiple search warrants. Id.
24 During execution of the various search warrants, officers located multiple items of evidentiary
25 value.

26 A .22 caliber semi-automatic firearm was located at 6647 West Tropicana, an address
27 associated with Co-Defendant Raekwon Robertson. PHT 98:12-19, 100:16-22. While

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1 searching 6647 West Tropicana, officers also located ammunition bearing the headstamp "C."
2 Id. This ammunition matches the .22 caliber cartridge case found at the murder scene. Id.

3 A search warrant was also obtained for 919 Bagpipe Court, an address associated with
4 Co-Defendant Lofton-Robinson. PHT 97:23-98:2, 98:24-99:2. During the search of that
5 residence, officers located a .45 caliber firearm and ammunition bearing a headstamp of R-P
6 45, which matched one of .45 caliber cartridge cases found at the scene of the murder, PHT
7 98:3-5, PHT 100:16-22.

8 A search warrant was also obtained to search Apartment F located at 3300 Civic Center
9 Drive. PHT 99:11-15. Detective Dosch testified that Defendant was associated with this
10 address. PHT 101:14-17. At that residence, officers located a .45 caliber firearm loaded with
11 ammunition bearing a headstamp of RP-45 auto. PHT 15:18-116:14. This ammunition
12 matches one of the .45 caliber cartridge cases found at the scene of the murder. Id.
13 Additionally, officers recovered a hat and a pair of maroon shoes both of which matched the
14 items worn by the individual in the surveillance footage who Detective Dosch identified as
15 being the Defendant. PHT 114:2-115:17, see Grand Jury Exhibit 37 and 38 (attached as
16 Exhibits 9 and 10 respectively). This is the same individual who is also seen on the
17 surveillance footage wearing a firearm. See Exhibits 1, 7 and 8.

18 **Ryan Jaeger**

19 Ryan Jaeger ("Detective Jaeger") is a homicide detective with the Las Vegas
20 Metropolitan Police Department assigned to assist in investigating the murder of Mr.
21 Valenzuela. PHT 142:14-25.

22 Detective Jaeger testified that at the area where the victim was picked up by medical
23 personnel, there was mail scattered about the ground. PHT 143:5-9, see Grand Jury Exhibits
24 16-18 (attached as 2-4, respectively). Detective Jaeger also testified that he interviewed the
25 Defendant after advising him of his Miranda warnings. PHT 145:1-16. In his interview,
26 Defendant was shown a photograph of the vehicle captured in the surveillance at the Short
27 Line Express and he admitted to having been in the vehicle on August 8, 2017. PHT 145:25-
28 146:2. He also admitted that he owed a .45 caliber firearm and that he would carry the firearm

1 in open carry fashion on his right hip. PHT 145:19-21, 146:22-24. However, when shown
2 footage from inside the Shortline Express, Defendant denied that he had been present inside
3 the store. PHT 146:25-147:5.

4 LEGAL ARGUMENT

5 I. STANDARD OF REVIEW

6 It is well settled that a district court's function in reviewing a pretrial writ of habeas
7 corpus challenging the sufficiency of probable cause is to determine whether enough
8 competent evidence was presented to establish a reasonable inference that the accused
9 committed the offenses. State v. Fuchs, 78 Nev. 63 (1962). The finding of probable cause to
10 support a criminal charge may be based on "slight, even 'marginal' evidence . . . because it
11 does not involve a determination of the guilt or innocence of the accused." Sheriff v. Hodes,
12 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). "To commit an accused for trial, the State is not
13 required to negate all inferences which might explain his conduct, but only to present enough
14 evidence to support a reasonable inference that the accused committed the offense." Kinsey
15 v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971). Sheriff v. Miley, 99 Nev. 377
16 (1983). Thus, the court need not consider whether the evidence presented to a Grand Jury, or
17 presented at a preliminary hearing, may, by itself, sustain a conviction, because the State need
18 not produce the quantum of proof required to establish the guilt of the accused beyond a
19 reasonable doubt. See Hodes, 96 Nev. at 186, 606 P.2d at 180; Miller v. Sheriff, 95 Nev. 255,
20 592 P.2d 952 (1979); McDonald v. Sheriff, 87 Nev. 361, 487 P.2d 340, (1971).

21 The Nevada Supreme Court has explicitly held that a probable cause determination is
22 "not a substitute for trial," and that the "full and complete exploration of all facets of the case"
23 should be reserved for trial. Marcum v. Sheriff, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969);
24 Robertson v. Sheriff, 85 Nev. 681, 683, 462 P.2d 528, 529 (1969). If the evidence produced
25 establishes a reasonable inference that the defendant committed the crime, the probable cause
26 to order the defendant to answer in the district court has been established. Morgan v. Sheriff,
27 86 Nev. 23, 467 P.2d 600 (1970). Accordingly, the issue of guilt or innocence is not involved
28 and "the evidence need not be sufficient to support a conviction." Kinsey, 87 Nev. at 363

1 (citing Masklay v. State, 85 Nev. 111, 450 P.2d 790 (1969)); Hodes, 96 Nev. at 184, 606 P.2d
2 at 180.

3 II. ANALYSIS

4 The State presented sufficient evidence at the grand jury to hold Defendant to answer
5 to COUNT 5 - Conspiracy to Commit Robbery; COUNT 6 - Attempt Robbery with Use of a
6 Deadly Weapon; and COUNT 7 – Murder with Use of a Deadly Weapon.

7 In his Petition for Writ of Habeas Corpus, Defendant fails to address any of the specific
8 crimes alleged in the Indictment and he fails to address how the State's presentation of
9 evidence was insufficient to establish probable cause for the crimes charged. Instead,
10 Defendant makes a blanket statement that "there is simply not enough evidence against
11 [Defendant] in this case to support the charges and the Indictment." Def.'s PWHC at 10.
12 Contrary to Defendant's claim and as set for below, the State provided sufficient evidence to
13 hold Defendant to answer on all counts.

14 A. Sufficient, Legal, Evidence was Presented to the Grand Jury to Establish 15 Probable Cause that Defendant Unlawfully Killed Gabriel Valenzuela and to 16 hold Defendant to answer to the charged of Murder with Use of a Deadly 17 Weapon

18 An open murder charge includes murder in the first degree and all necessarily included
19 offenses, such as manslaughter where less than all the elements of first degree murder are
20 present. See Miner v. Lamb, 86 Nev. 54, 464 P.2d 451 (1970); Parsons v. State, 74 Nev. 302,
21 329 P.2d 1070 (1958); State v. Oschoa, 49 Nev. 194, 242 P.2d 582 (1926); NRS 175.501. First
22 degree murder and second degree murder are not separate and distinct crimes which must be
23 pleaded accordingly. See Thedford v. Sheriff, 86 Nev. 741, 476 P.2d 25 (1970); Howard v.
24 Sheriff, 83 Nev. 150, 425 P.2d 596 (1967). Thus, there need not be evidence of first degree
25 murder to support an open charge. See Wrenn v. Sheriff, 87 Nev. 85, 482 P.2d 289 (1971).

26 "[T]he presence of malice is a question of fact which bears directly on the guilt or
27 innocence of a defendant and upon the degree of the crime charged. It is not a question to be
28 determined by the magistrate at a preliminary examination--it is a question to be determined

1 by the trier of fact at the trial of the case.” Thedford v. Sheriff, 86 Nev. 741, 476 P.2d 25 (1970)
2 (citing State v. Acosta, 49 Nev. 184, 242 P.2d 316 (1926)). “Neither a preliminary hearing,
3 nor a hearing upon a petition for a writ of habeas corpus is designed as a substitute for this
4 function (a trial).” Id at 28 (quoting State v. Fuchs, 78 Nev. 63, 368 P.2d 869 (1962)).

5 Additionally, pursuant to NRS 200.030, a murder which is committed during the
6 perpetration or attempted perpetration of a robbery is murder of the first degree. Pursuant to
7 the Felony Murder Rule, if one conspires to commit a robbery, he is liable for the murder
8 perpetrated during the course of the attempted robbery. Garner v. State, 116 Nev. 770, 782
9 (2000).

10 Defendant and his co-defendants are charged alternatively with open murder and felony
11 murder. Additionally, under the felony murder, the State alleged multiple theories, i.e., that
12 Defendant directly committed the crime; that Defendant aided and abetted in the commission
13 of the crime; and/or that Defendant conspired to commit the crime of robbery and/or murder.

14 The evidence presented at Grand jury establishes that on the night of August 8, 2017
15 the Defendant was inside the Shortline Express convenience store sometime between 11:20-
16 11:38 p.m. At that time, the Defendant was captured on surveillance wearing a firearm on his
17 right hip. The convenience store where Defendant was seen wearing a firearm is only a matter
18 of minutes away from the scene of the murder. Although Defendant denied that he was inside
19 the Shortline Express on August 8, 2017, he did admit that owns a .45 caliber firearm and that
20 he wears it in an open carry fashion. Additionally, Defendant was identified by Detective
21 Dosch as the individuals wearing the firearm. This identification was corroborated by items
22 found during execution of a search warrant at 3300 Civic Center Drive (an address associated
23 with Defendant). Specifically, officers found a pair of maroon shoes and a white hat which
24 constitute an exact match to those worn by Defendant in the surveillance footage.

25 In addition, while Defendant was inside the store, he was with three other black males
26 who were all seen in a white Mercury Grand Marquis bearing a license plate beginning with
27 the numbers 473. Less than 30 minutes later, at around midnight, Mr. Mason saw four black
28 men standing in front of the victim’s home. Mr. Mason saw the four men standing near a

1 vehicle that he described as a white Crown Victoria with license plate number 473YZB. Mr.
2 Newman testified that he sold that exact car to Co-Defendant Lofton-Robinson four days
3 before Mr. Valenzuela's murder. Based on the surveillance footage from the Shortline Express
4 in conjunction with the testimony of Mr. Mason (the jogger), Mr. Spahn (the convenience store
5 clerk) and Mr. Newman (the vehicle's prior owner), there can be no dispute that the vehicle
6 seen by Mr. Mason in front of the victim's house is the same vehicle captured on surveillance
7 footage at the Shortline Express.

8 Not only does this evidence create a reasonable inference Defendant was at the scene
9 of the murder, it places him there in very close proximity to the murder. The first call to 911
10 was made at 12:11; just minutes after Mr. Mason saw four black men and the white vehicle in
11 front of the victim's home. Additionally, Defendant was seen in possession of a firearm
12 approximately 30 minutes before the killing. Furthermore, in a search warrant of 3300 Civic
13 Center Drive (an address associated with Defendant), officers located a .45 caliber firearm
14 with ammunition bearing the headstamp RP-45 auto. This headstamp matches one of the .45
15 caliber shell cases found at the scene of the murder.

16 At this stage, the State is not required to negate all possible scenarios surrounding the
17 death of Mr. Valenzuela. The State is only required to demonstrate a reasonable inference that
18 the defendant committed the crime. Based on the evidence presented, the State demonstrated
19 a reasonable inference that Defendant committed the crime or Murder with Use of a Deadly
20 Weapon.

21 **B. Sufficient Evidence was Presented to the Grand Jury to Establish Probable**
22 **Cause that Defendant committed the Crimes of Conspiracy to Commit**
23 **Robbery and Attempt Robbery with Use of a Deadly Weapon**

24 Conspiracy is "an agreement between two or more persons for an unlawful purpose."
25 Doyle v. State, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996). The conspiracy agreement may
26 be inferred by a "coordinated series of acts" in furtherance of the underlying offense. Doyle,
27 112 Nev. at 894; see also Gaitor v. State, 106 Nev. 785, 790 n.1, 801 P.2d 1372, 1376 n.1
28 (1990); overruled on other grounds by, Barone v. State, 109 Nev. 1168, 1171, 866 P.2d 291,

292 (1993). Nevada adheres to the Pinkerton theory of conspiracy liability which holds that the overt act of one is the act of all even without a specific new agreement, so long as the “partnership in crime” continues. See, State v. Wilcox, 105 Nev. 434, 436, 776 P.2d 549, 550 (1989); Pinkerton v. United States, 328 U.S. 640, 646-647, 66 S.Ct. 1180, 1183-1184 (1946); see also, Goldsmith v. Sheriff, 85 Nev. 295, 306, 454 P.2d 86, 93 (1969); citing, VanRiper v. United States, 13 F.2d 961, 967 (2nd Cir. 1926), cert. denied sub nom., Ackerson v. United States, 273 U.S. 702, 47 S.Ct. 102 (1926). Therefore, in Nevada the acts of one conspirator in furtherance of the conspiracy are the acts of all, and each and every individual will be held criminally responsible for the acts of the other.

While the standard at trial is much greater than before the Grand Jury, what the Nevada Supreme Court believes is necessary for conviction in a conspiracy is illustrative of the instant case:

[C]onspiracy is seldom susceptible of direct proof and is usually established by inference from the conduct of the parties.” Gaitor v. State, 106 Nev. 785, 790 n. 1, 801 P.2d 1372, 1376 n. 1 (1990) (quoting State v. Dressel, 85 N.M. 450, 451, 513 P.2d 187, 188 (1973)). In particular, a conspiracy conviction may be supported by “a coordinated series of acts,” in furtherance of the underlying offense, “sufficient to infer the existence of an agreement.” Id.

Doyle, 112 Nev. at 894 (overruled on other grounds by Kaczmarek v. State, 120 Nev. 314, 91 P.3d 16 (2004)).

Robbery is defined as the unlawful taking of the personal property of another by means of force or violence. NRS 200.380. An act done with intent to commit a crime, and tending but failing to accomplish it, is an attempt to commit that crime. State v. Verganadis, 50 Nev. 1, 4 (1926) (internal citation omitted). The act done must be an overt act and must go beyond mere preparation to commit the crime and tend to accomplish it. Id. at 4-5.

Accordingly, as to COUNT 5 – Conspiracy to Commit Robbery, the State must produce slight or marginal evidence that Defendant entered into an agreement with his co-conspirators to rob Mr. Valenzuela. As to COUNT 6 - Attempt Robbery with Use of a Deadly Weapon, the State to produce slight or marginal evidence that the Defendant committed an overt act with the intent to take personal property from Gabriel Valenzuela and that said act was

1 committed with a firearm. As COUNT 6 is Barren pled, the State need not prove that
2 Defendant is the person who directly committed the crime. Rather, Defendant can also be held
3 to answer if he aided and abetted in the attempted robbery of Mr. Valenzuela or if he conspired
4 to commit the crime.

5 Here, the evidence to establish that Defendant conspired to commit a robbery against
6 Mr. Valenzuela largely overlaps with the evidence that he attempted to rob Mr. Valenzuela.
7 Accordingly, the State will address these counts two together. For obvious reasons, the victim
8 in the instant case did not testify that Defendant attempted to take property from him.
9 However, the attendant circumstances indicate by slight or marginal evidence that Defendant
10 did attempt to rob Mr. Valenzuela and that he did so with using a deadly weapon. First, it is
11 undisputed that a deadly weapon was used in the commission of the crimes committed against
12 Mr. Valenzuela as he was shot and killed with a firearm. Second, as to the conspiracy and
13 attempted robbery, the evidence shows that Defendant and his co-defendants were lying in
14 wait in a residential neighborhood in the middle of the night. The most reasonable explanation
15 for this fact is that the Defendant and his co-defendants were looking for a victim to rob.
16 Especially given the time of night, there is no other logical explanation for the Defendant to
17 be standing outside the victim's home and there is absolutely no evidence that the Defendant
18 or any of the co-defendants knew Mr. Valenzuela. Additionally, Mr. Valenzuela's items were
19 strewn about the ground. This infers that the Defendant and or his co-defendant's struggled
20 with the victim in an attempt to obtain his property. Furthermore, the Defendants all arrived
21 on scene together and presumably left together as Mr. Relato did not see anyone in the area
22 after his cousin was shot. Although there may be other explanations for the evidence
23 presented, the State is not required to negate all possible inferences to explain away the
24 Defendant's behavior. The State simply must show an inference that Defendant committed
25 the crimes alleged.

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1 In Bails v. State, 92 Nev. 95, 545 P.2d 1155 (1976), the Nevada Supreme Court
2 elaborated further on circumstantial evidence in citing to Holland v. United States, 348 U.S.
3 121, 75 S. Ct. 127 (1955), a wholly circumstantial evidence case:

4 Circumstantial evidence in this respect is intrinsically no different
5 from testimonial evidence. Admittedly, circumstantial evidence
6 may in some cases point to a wholly incorrect result. Yet this is
7 equally true of testimonial evidence. In both instances, a jury is
8 asked to weigh the chances that the evidence correctly points to
9 guilt against the possibility of inaccuracy or ambiguous inference.
10 In both, the jury must use its experience with people and events in
11 weighing the probabilities. If the jury is convinced beyond a
12 reasonable doubt, we can require no more.

13 Bails, 92 Nev. at 97, 545 P.2d at 1156.

14 While the evidence as to COUNTS 5 and 6 is circumstantial, when considered in its
15 totality, it leads to an inference that the Defendant and his co-defendants attempted to rob Mr.
16 Valenzuela and that they conspired to do so in advance. Such evidence is enough to establish
17 probable cause in the instant case.

18 CONCLUSION

19 Based on the foregoing, the State respectfully requests that Defendant's Petition for
20 Writ of Habeas Corpus be DENIED in its entirety.

21 DATED this 2 day of March, 2018.

22 Respectfully submitted,

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

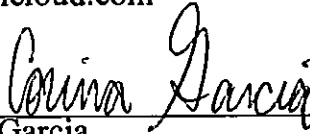
26 BY *R. J. O'Neil* #12840
27 GIANCARLO PESCI
28 Chief Deputy District Attorney
Nevada Bar #Deputy Bar

1 **CERTIFICATE OF ELECTRONIC FILING**

2 I hereby certify that service of Return to Writ of Habeas Corpus, was made this 2nd day
3 of March, 2018, by Electronic Filing to:

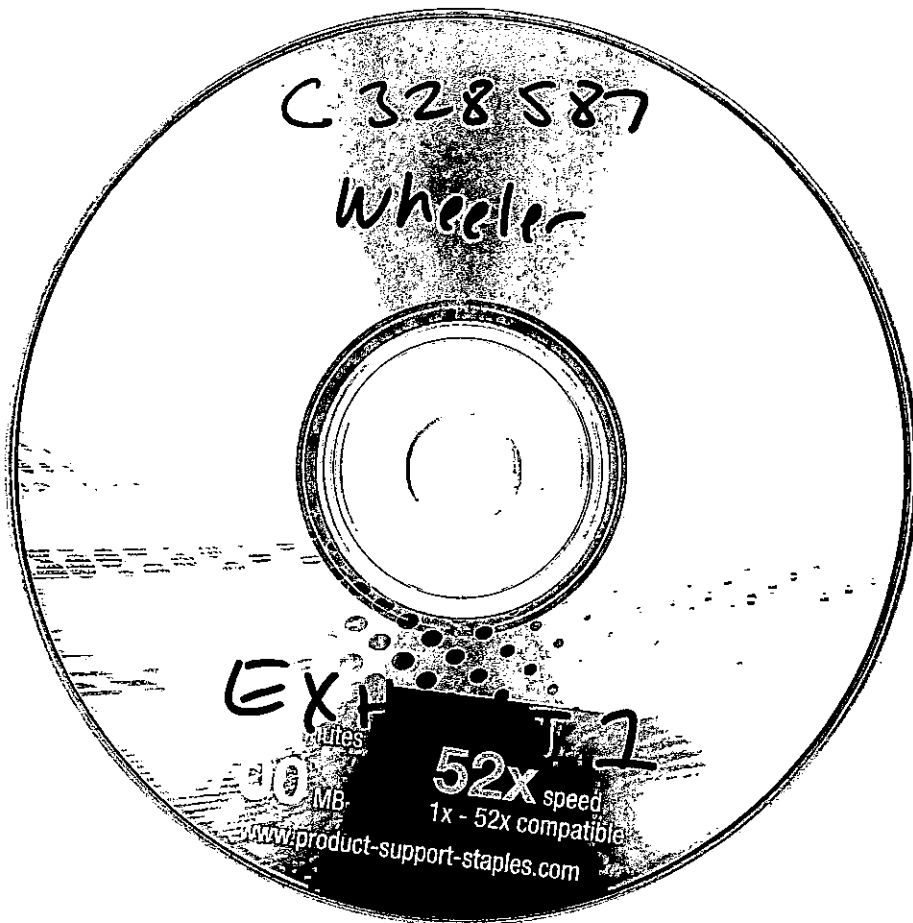
4 JAMES RUGGEROLI, ESQ.
5 ruggeroli@icloud.com

6
7 BY:



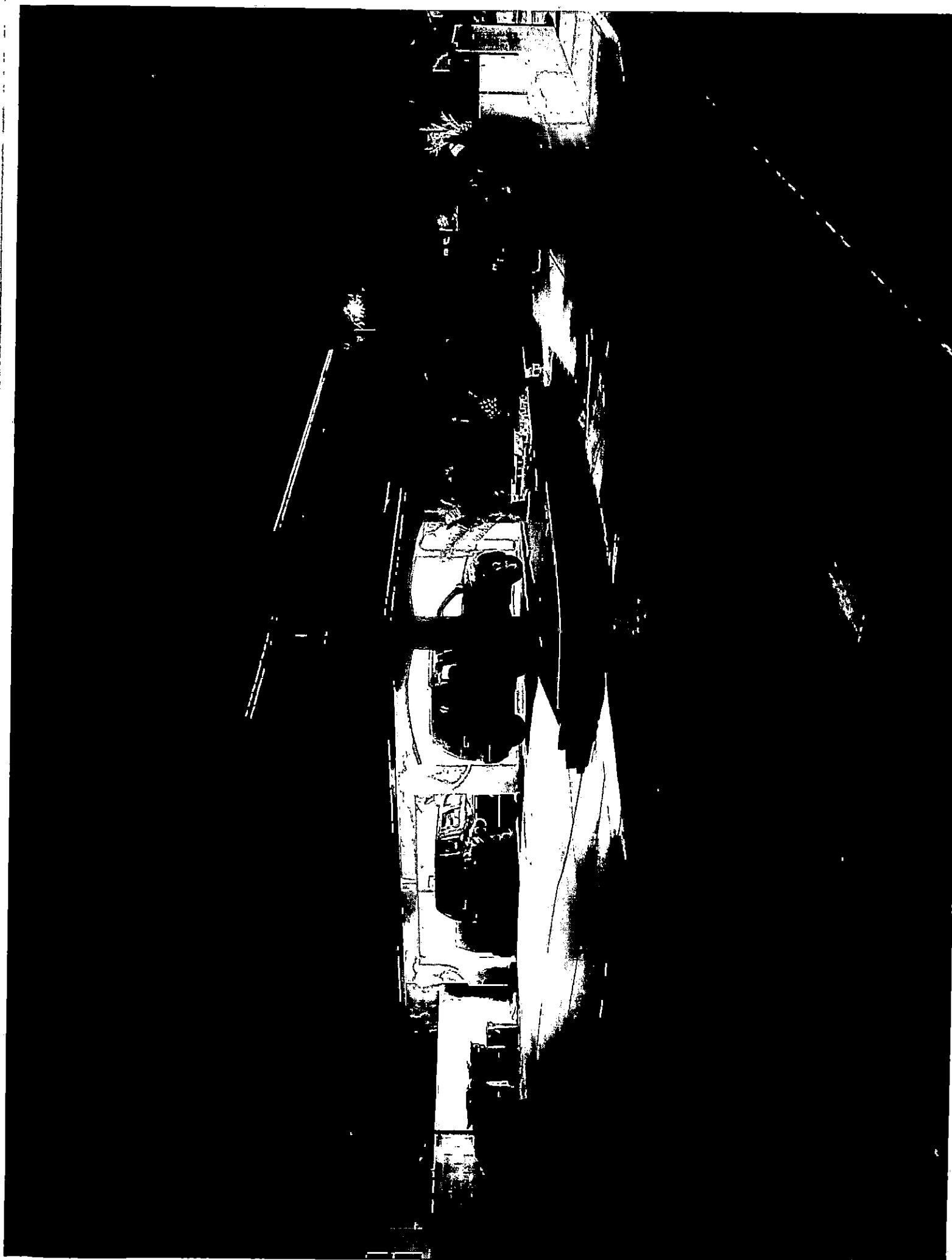
8 C. Garcia
9 Employee of the District Attorney's Office
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"EXHIBIT 1"

“EXHIBIT 2”



“EXHIBIT 3”

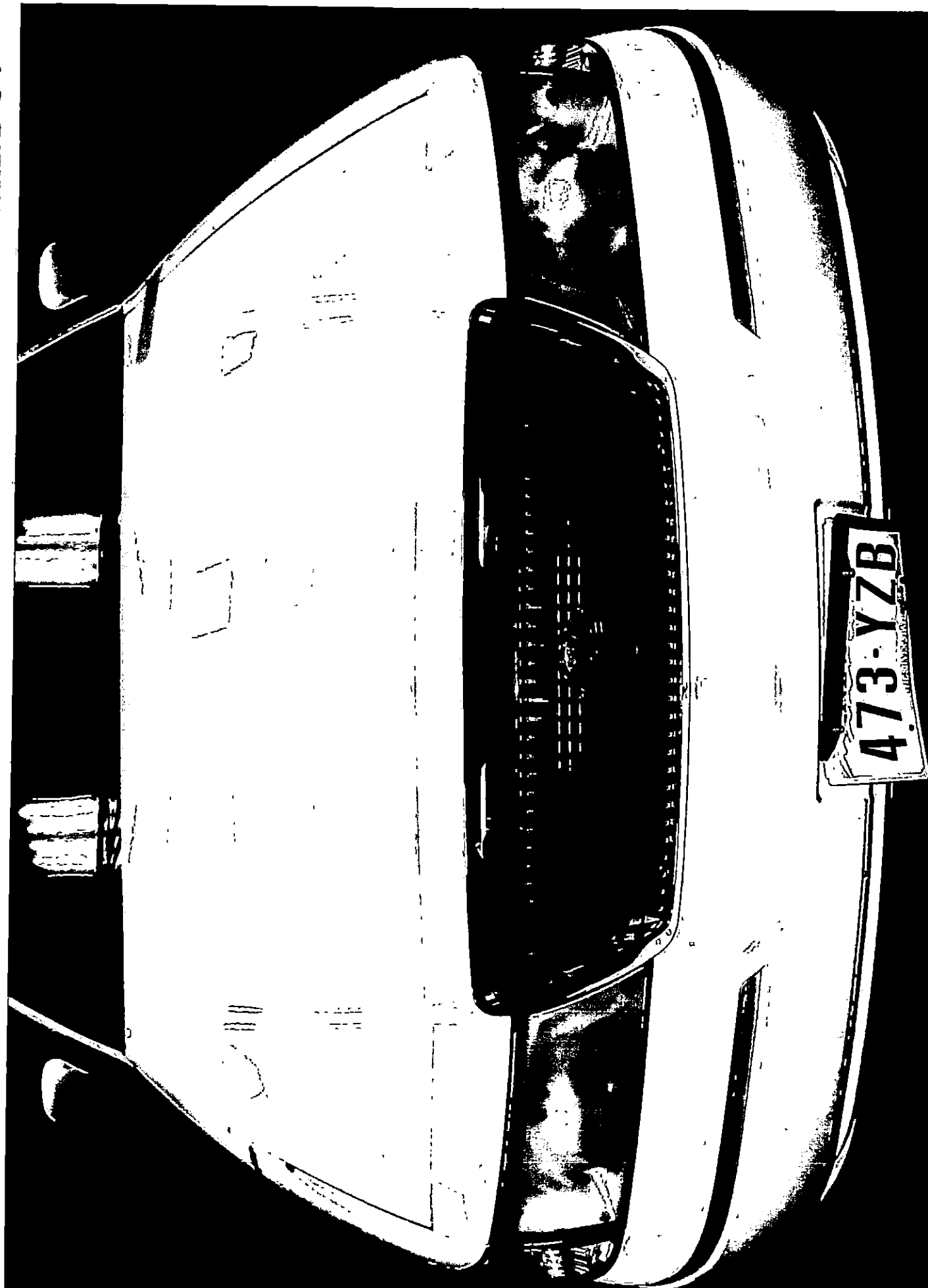


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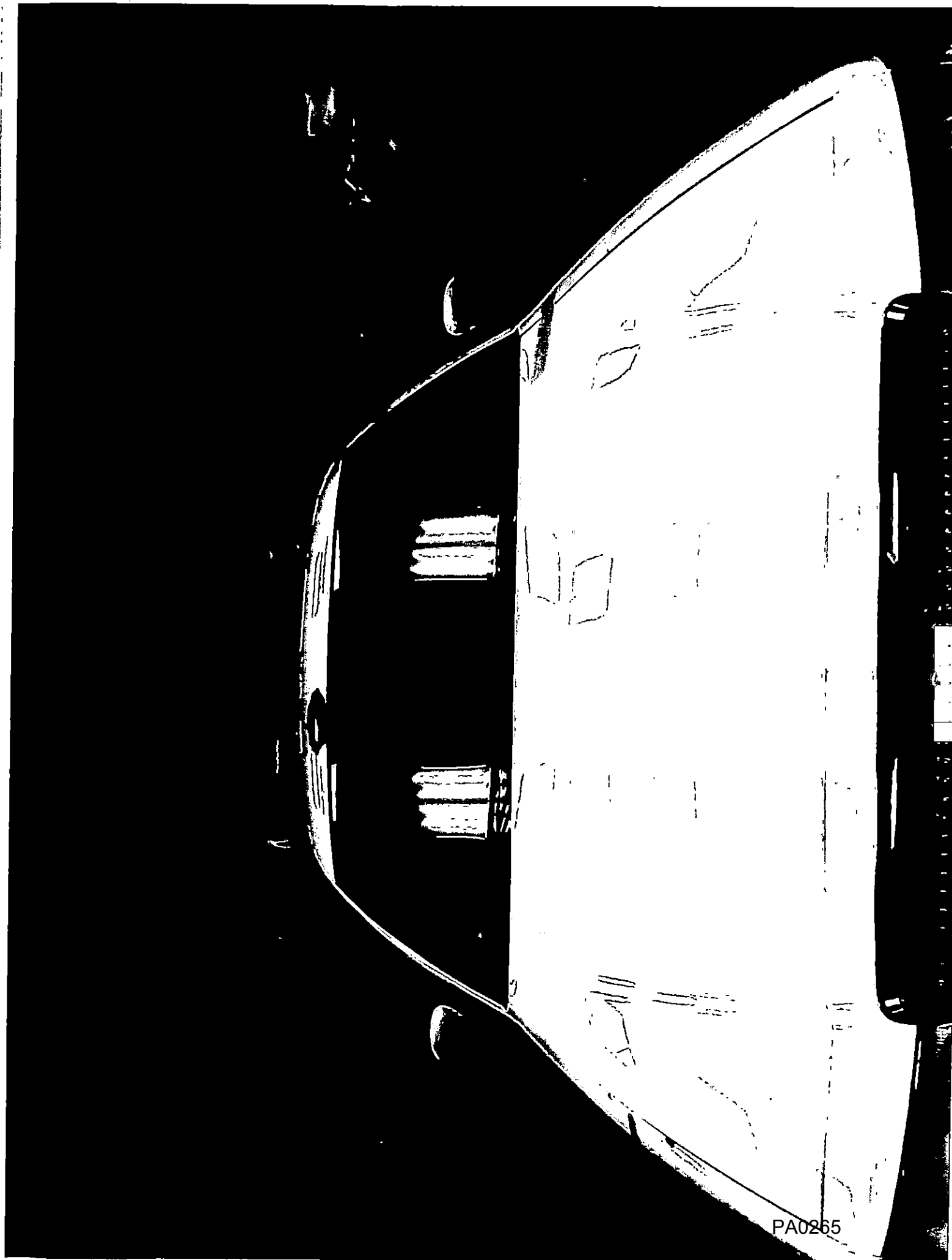
“EXHIBIT 4”



“EXHIBIT 5”

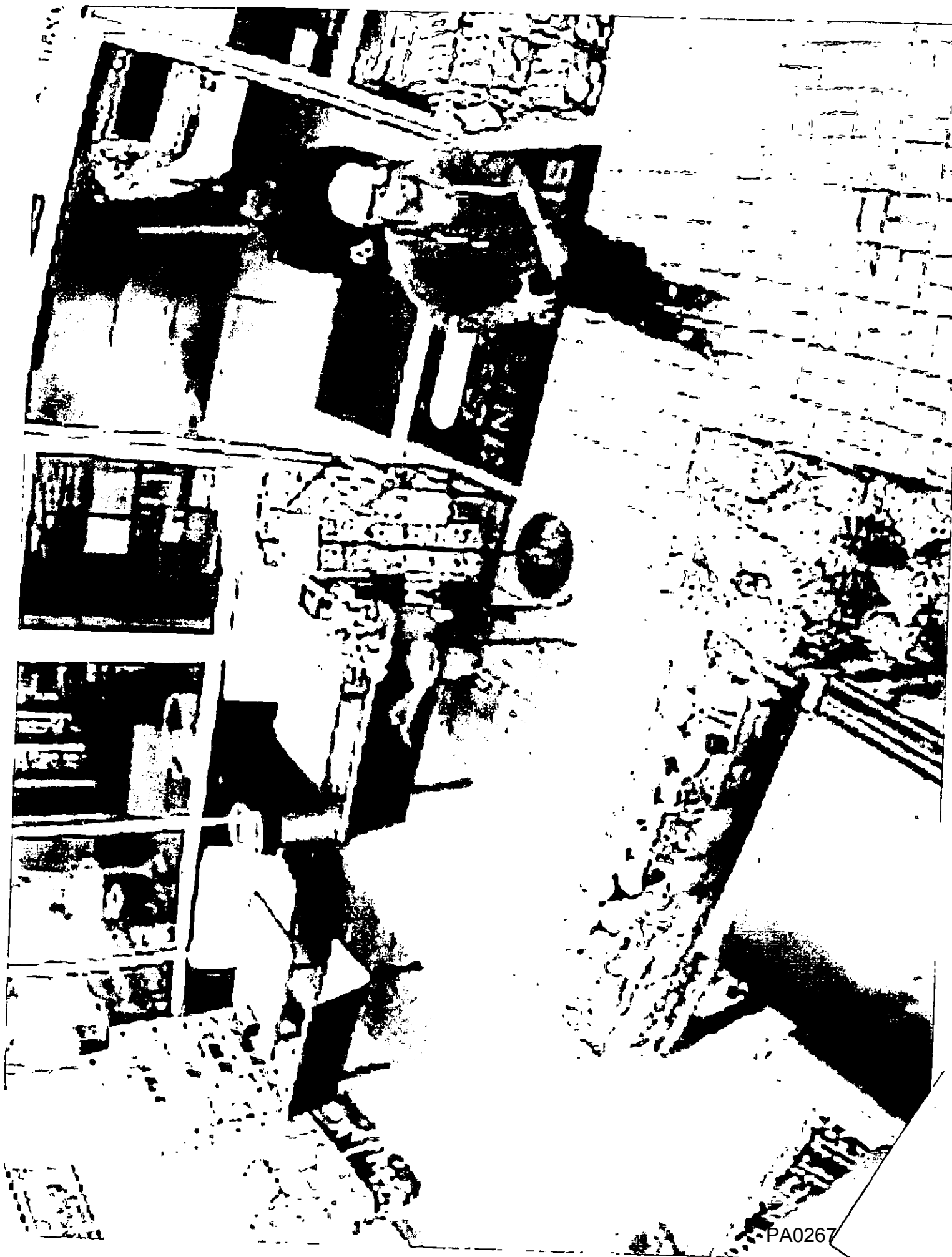


“EXHIBIT 6”



PA0265

“EXHIBIT 7”

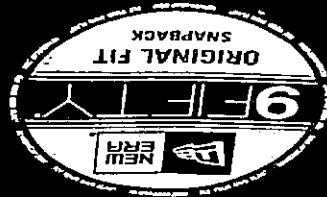


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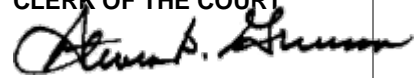
A0269

“EXHIBIT 9”



“EXHIBIT 10”





JAMES J. RUGGEROLI
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
601 South 7th Street
Las Vegas, Nevada 89101
Telephone: (702) 258-2022
Facsimile: (702) 258-2021
Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA

Case No. C-17-328587-3

Plaintiff,

Dept No. XX

vs.

DATE OF HEARING: March 20, 2018

DAVONTAE AMARRI WHEELER,
#5909081,

Defendant.

REPLY TO STATE'S RETURN TO WRIT OF HABEAS CORPUS

COMES NOW, the Defendant, DAVONTAE AMARRI WHEELER, by and through his attorney of record, JAMES J. RUGGEROLI, ESQ., and submits the following Reply to State's Return to Writ of Habeas Corpus. This supplement and reply is made and based upon the attached points and authorities and the Declaration of James J. Ruggeroli, the papers and pleadings on file herein, together with the arguments of counsel to be heard at the time of the hearing on this matter.

DATED this 8th day of March 2018.

JAMES J. RUGGEROLI

By /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
601 South 7th Street
Las Vegas, Nevada 89101
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After filing the Petition for Writ of Habeas Corpus, the State provided the defense with a Forensic Laboratory Report of Examination for Firearms & Toolmarks (the “Report”) which shows that Mr. Wheeler’s firearm was not used in this case. See a true and correct copy attached hereto as **Exhibit A**. (The Report was not available prior to the grand jury proceedings.)

In contrast to the State’s Return, there is clearly insufficient evidence against Mr. Wheeler, especially in light of the new evidence contained in the Report, to support the charges and Indictment, and the Indictment must therefore be dismissed. In the alternative, at the very minimum, because the forensic examination’s results constitute exculpatory evidence, the State must return to the grand jury to present this evidence. See NRS 172.145(2)

II. STATE’S STATEMENT OF THE FACTS SUPPORTING THE INDICTMENT

In the Return, the State makes clear that the gun found in Mr. Wheeler’s home constitutes the most important piece of “circumstantial” evidence supporting the Indictment. In the Return, the State essentially argues that the evidence amounts to the following:

1. On the night of August 8, 2017, the Defendant was inside the Shortline Express between 11:20-11:38 and was captured on surveillance wearing a firearm on his right hip. See State’s Return (“SR”) at 11:14-20.

2. The convenience store is only a matter of minutes away from the scene of the murder. Id.

3. Defendant admitted that he owns a .45 caliber firearm and that he wears it in an open carry fashion. Id.

4. During the execution of a search warrant at 3300 Civic Center Drive (an address

1 associated with Defendant.), officers found a pair of maroon shoes and a white hat which
2 constitute an exact match to those worn by Defendant in the surveillance footage. SR at 11:20-
3 24.

4 5. While Defendant was inside the store, he was with three other black males who
5 were all seen in a white Mercury Grand Marquis bearing a license plate beginning with the
6 numbers 473. SR 11:25-28.

7 6. Less than 30 minutes later, at around midnight, Mr. Mason saw four black men
8 standing in front of the victim's home, near a vehicle that he described as a white Crown Victoria
9 with license plate number 473YZB. SR 11:27-12:1.

10 7. Mr. Newman testified that he sold that exact car to Co-Defendant Lofton-
11 Robinson four days before Mr. Valenzuela's murder. SR 12:2-3.

12 8. Based on the surveillance footage from the Shortline Express in conjunction with
13 the testimony of Mr. Mason (the jogger) Mr. Spahn (the convenience store clerk) and Mr.
14 Newman (the vehicle's prior owner), there can be no dispute that the vehicle seen by Mr. Mason
15 in front of the victim's house is the same vehicle captured on surveillance footage at the
16 Shortline Express. SR 3-7.

17 9. Not only does this evidence create a reasonable inference Defendant was at the
18 scene of the murder, it places him there in very close proximity to the murder. SR 12:8-11.

19 10. The first call to 911 was made at 12:11, just minutes after Mr. Mason saw four
20 black men and the white vehicle in front of the victim's home. Id.

21 11. Additionally, Defendant was seen in possession of a firearm approximately 30
22 minutes before the killing. Id.

23 12. Furthermore, in a search warrant of 3300 Civic Center Drive officers located a .45
24 caliber firearm with ammunition bearing the headstamp RP-45 auto. This headstamp matches
25
26
27
28

one of the .45 caliber shell cases found at the scene of the murder. SR 11:14-12:7.

In conclusion, the State argues that based on these facts, “the State demonstrated a reasonable inference that Defendant committed the crime of Murder with Use of a Deadly Weapon.” SR at 12:18-20.

III. EXCULPATORY EVIDENCE

Mr. Wheeler began requesting that a forensic examination be performed on his at least as far back as November 21, 2017. The State made its presentment to the grand jury prior to the Report being issued. The Report and its findings demonstrate that Mr. Wheeler’s firearm (a Taurus 45 caliber handgun and located during the search of Mr. Wheeler’s home at the Civic Center address (GJT 115-116) had not been used in the murder in this case. See Exhibit A. The evaluation excluded Mr. Wheeler’s gun as having fired any of the bullets that killed the victim or discharged and of the cartridges found at the scene. Id.

IV. LAW AND ARGUMENT

(A) There is not probable cause establishing that Mr. Wheeler committed the crime, and, in the alternative, (B) the State must return to the grand jury to present the exculpatory evidence that Mr. Wheeler’s gun reveals no connection to the shooting.

A. INSUFFICIENT EVIDENCE

To establish probable cause to bind a defendant over for trial, the State must show that (1) a crime has been committed, and (2) there is probable cause to believe the defendant committed it. See NRS 171.206. Finding of probable cause requires far more than a trace of evidence; the facts must be such as would lead a person of ordinary caution and prudence to believe and conscientiously entertain a strong suspicion that the defendant committed the crime in question. See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d 1324, 1326 (1972).

The relevant evidence presented to the grand jury here can be summarized essentially as (1) *at least* three other individuals were at the Shortline Express approximately 30-40 minutes prior to the shooting (GJT 27); (2) Mr. Wheeler claimed to have gotten out of the car after being

1 at the Shortline Express and taken a bus home (GJT 146:14-17); (3) the jogger saw the White
2 Grand Marquis and four dark skinned individuals near the victim's home near midnight, but he
3 provided only general descriptions and there was no actual identification (GJT 47); (4) a
4 "Winchester 45 Auto" was found at the murder scene. (GJT 101-102); but, (6) no "Winchester
5 45 Auto" head stamp cartridges were found during any of the searches in this case (GJT 101-
6 102); and (7) *we now know that the*

8 *linchpin of the State's evidence against Mr. Wheeler (the .45 caliber gun found at his*
9 *residence) was not used in the shooting. See Exhibit A.*

10 The State's evidence simply does not provide enough evidence to support the charges.
11 The facts here against Mr. Wheeler are not such as would lead a person of ordinary caution and
12 prudence to believe and conscientiously entertain a strong suspicion that Mr. Wheeler committed
13 the crimes in question. See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d 1324, 1326 (1972).
14 Moreover, the State's contention that the evidence provides a reasonable inference that
15 Defendant committed the crime of Murder with Use of a Deadly Weapon (SR at 12:18-20) has
16 no support.

17 There was no proof that there were *only* four individuals present at the Shortline Express.
18 The video simply shows four individuals in the store. Additionally, the evidence demonstrates
19 that Mr. Wheeler claimed to have gotten out of the vehicle shortly after being at the convenience
20 store, and there were no identifications of any of the individuals present just before the shooting.
21 Thus, there's no evidence that Mr. Wheeler was present, and there is evidence that Mr. Wheeler
22 was not present at the time of the shooting.

23
24 This fact is based not only on Mr. Wheeler's statements, but it is also supported by the
25 Winchester shell casings recovered at the scene. No Winchester casings were found at the
26 codefendants' residences or at Mr. Wheeler's addresses. Thus, the evidence would certainly
27 demonstrate that there is another individual (*a fifth man*) that had been present at the Shortline
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Express but not seen on the video, and that individual had been the *fourth man* at the scene observed by the jogger. That fourth, unknown man would be the one that used the Winchester cartridges. Thus, on the one hand, the State failed to present evidence that Mr. Wheeler was one of the individuals actually present at the scene.

On the other hand, even if there were an inference that Mr. Wheeler may have been present, there is no evidence supporting a conspiracy to rob, lying in wait, or felony murder, nor is there any evidence that Mr. Wheeler aided or abetted the crime. There is no inference from the evidence actually presented that Mr. Wheeler was part of a preconceived plan. There are simply gaps in the evidence into which the State is creating the notion of inference but without facts to support the inference. Simply saying that “the most reasonable explanation is . . .” cannot be constituted as evidence. Again, there is no evidence or inference-supported-by-the-evidence establishing a conspiracy, a robbery or an attempt to rob, period. This court should therefore dismiss the Indictment as having insufficient evidence to support it.

B. IN THE ALTERNATIVE, THE STATE MUST PRESENT THE EXCULPATORY EVIDENCE TO THE GRAND JURY PURSUANT TO BASIC NOTIONS OF JUSTICE AND NRS 172.145(2)

Despite the fact that the district attorney was not aware of the Report at the time of the grand jury proceedings, good cause supports requiring the State to return to the grand jury and present the exculpatory evidence it is now undeniably aware of. The State has a special duty pursuant to NRS 172.145(2): “If the district attorney is aware of any evidence which will explain away the charge, the district attorney shall submit it to the grand jury.” Exculpatory evidence has been defined as that evidence “which has a tendency to explain away the charge against the target of the grand jury’s investigation.” Lane v. District Court, 104 Nev. 427, 463, 760 P.2d 1245, 1269 (1988) (Steffen, J., concurring) (citing Sheriff v. Frank, 103 Nev. 157 at 160, 734 P.2d 1241 at 1244 (1987)).

“In construing a statute, [the] primary goal is to ascertain the [L]egislature’s intent in

1 enacting it, and we presume that the statute's language reflects the [L]egislature's intent." Moore
2 v. State, 117 Nev. 659, 661, 27 P.3d 447, 449 (2001). "Generally, when the words in a statute are
3 clear on their face, they should be given their plain meaning unless such a reading violates the
4 spirit of the act." Speer v. State, 116 Nev. 677, 679, 5 P.3d 1063, 1064 (2000) (quoting Anthony
5 Lee R., A Minor v. State, 113 Nev. 1406, 1414, 952 P.2d 1, 6 (1997)). As a general rule, courts
6 are to construe inconsistencies or ambiguities in criminal provisions in the defendant's favor. See
7 Bergna v. State, 120 Nev. 869, 873, 102 P.3d 549, 551 (2004).

9 Here, Mr. Wheeler contends that since the State is now aware of the evidence (and
10 arguably either could have been aware of the evidence or should have been aware of the
11 evidence prior to the proceedings), it must now return and present this evidence to the grand jury.
12 The statute, on its face, is silent as to whether the State's obligation to present exculpatory
13 evidence ends at the time of the initial presentment to the grand jury. However, such a
14 requirement would not be inconsistent with NRS 172.145(2), and justice and fundamental
15 fairness certainly support ordering the State to present this evidence to the grand jury.
16

17 This court has jurisdiction to require resubmission.

18 Grand juries have traditionally been within the control of the courts, In re Grand
19 Jury Subpoena to Central 1252 States, 225 F. Supp. 923 (N.D.Ill. 1964); In re
20 Ormsby Grand Jury, 74 Nev. 80, 322 P.2d 1099 (1958); and the trial judge should
21 exercise his powers when appropriate. United States v. Doulin, 538 F.2d 466 (2d
22 Cir.1976), cert. denied, 429 U.S. 895 [97 S.Ct. 256, 50 L.Ed.2d 178]. Moreover,
23 our constitutional and statutory scheme contemplate reasonable judicial control of
24 our grand juries. Thus, the court presides at the impanellment of the grand jury
(Art. 6, § 5, Nev. Const.; NRS 6.110-140), receives presentments and indictments
(Art. 6, § 5, Nev. Const.; NRS 172.255, 172.285), determines when a grand jury
shall be impanelled (NRS 6.110, 6.130), charges the grand jury as to its
authorities and responsibilities (NRS 172.095), and determines when a grand jury
is to be discharged, recessed (NRS 6.145), or a juror excused (NRS 172.275).

25 In re Report Washoe Co. Grand Jury, 95 Nev. 121, 126-27, 590 P.2d 622, 625-26 (1979)
26 (emphasis added).

27 Moreover, the district court's supervisory powers over the grand jury extend beyond those
28

declared specifically by statute:

A grand jury has no existence aside from the court which calls it into existence and upon which it is attending. A grand jury does not become, after it is summoned, impaneled, and sworn, an independent planet, as it were, in the judicial system, but still remains an appendage of the court on which it is attending... It is and remains a grand jury attending on the court, and does not, after it is organized, become an independent body, functioning at its uncontrolled will, or the will of the district attorney or special assistant... A supervisory duty, not only exists, but is imposed upon the court, to see that its grand jury and its process are not abused, or used for purposes of oppression and injustice.

See Lane v. District Court, 104 Nev. 427, 463, 760 P.2d 1245, 1269 (1988) citing, People v. Sears, 49 Ill.2d 14, 273 N.E.2d 380, 387-88 (1971) (quoting In re National Window Glass Workers, 287 F. 219 (N.D. Ohio 1922)); see also Annotation, Power of Court to Control Evidence or Witnesses Going Before Grand Jury, 52 A.L.R.3d 1316 (1973).

In the case at hand, should this court find that sufficient evidence exists to support the Indictment, it would be a gross miscarriage of justice not to require the State to return to the grand jury and satisfy its obligations by providing the grand jury with evidence that Mr. Wheeler's gun was not used in the shooting. Despite the fact that the State did not apparently know of the evidence at the time, it does know now, and it arguably either could have known or should have known about this evidence before it went to the grand jury.

Mr. Wheeler will be irreparably prejudiced if the State is not required to return and present this evidence. The State's case is circumstantial and is supported merely by inferences and conjectures. The exculpatory evidence could have explained away the charges here. Had this evidence been presented during the proceedings, there is a reasonable probability grand jury would not have found sufficient evidence against Mr. Wheeler.

This court has jurisdiction to grant Mr. Wheeler's request. Resubmission, comports with the grand jury's function to "investigate and act as an informed body throughout the entire course of the proceedings." See Sheriff v. Frank, 103 Nev. At 165, 734 P.2d at 1244. Moreover, resubmission and presentment of this exculpatory evidence is required here in order to fulfill the

1 grand jury's "mission to clear the innocent, no less than to bring to trial those who may be
2 guilty." Id. quoting United States v. Dionisio, 410 U.S. 1, 16-17, 93 S.Ct. 764, 772-773, 35
3 L.Ed.2d 67 (1973). For these reasons, should this court find sufficient evidence without the
4 exculpatory evidence contained in the Report, Mr. Wheeler argues in the alternative that this
5 court order the State to return to the grand jury and provide proof that Mr. Wheeler's gun was
6 not used in tragic crime.
7

8 **IV. CONCLUSION**

9 For the reasons stated herein, it is respectfully requests that this Court dismiss the
10 Indictment against Mr. Wheeler or, in the alternative, require the State to return the grand jury as
11 provided above.

12 DATED this 8th day of March, 2018.

13 **JAMES J. RUGGEROLI**

14 By: /s/ James Ruggeroli
15 James J. Ruggeroli, Esq.
16 Nevada Bar No. 7891
17 601 South 7th Street
18 Las Vegas, Nevada 89101
19 *Attorney for Defendant*
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DECLARATION OF JAMES J. RUGGEROLI, ESQ.

JAMES J. RUGGEROLI, ESQ., being first duly sworn under oath, deposes and states:

1. I am an attorney at law duly licensed to practice before this Court and make this Declaration of facts from personal knowledge which is known to me, except for those matters stated upon information and belief, and as to those matters, I believe same to be true.

2. I am counsel of record for the Defendant, DAVONTAE AMARRI WHEELER.

3. Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 8th day of March, 2018.

JAMES J. RUGGEROLI

By: /s/ James Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of March, 2018, I emailed a copy of the foregoing Reply to them at the following address:

motions@clarkcountyda.com

By: /s/ James Ruggeroli
James J. Ruggeroli, Esq.

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EXHIBIT A

Las Vegas Metropolitan Police Department Forensic Laboratory Report of Examination Firearms & Toolmarks		Distribution Date: January 22, 2018 Agency: LVMPD Location: Homicide & Sex Crimes Bureau Primary Case #: 170809-0029 Incident: Robbery WDW , Homicide Requester: Ryan M Jaeger Lab Case #: 17-07217.5 Supplemental 1
Subject(s):	None Listed	

The following evidence was examined and results are reported below.

Lab Item #	Impound Pkg #	Impound Item #	Description
1*	005158-1	1	One "C" .22 Long / Long Rifle cartridge case
2*	005158-1	2	One "R-P" .45 Auto cartridge case
3*	005158-1	3	One "FC NR" .45 Auto cartridge case
4*	005158-1	4	One "WINCHESTER" .45 Auto cartridge case
11	015709-1	1	One Taurus model PT-22 .22 Long Rifle caliber semiautomatic pistol, serial number: ANC29177
12	015709-1	1A	One magazine
14	013572-1	1	One Taurus model PT145 PRO Millennium .45 Auto caliber semiautomatic pistol, serial number: NCY05584
15	013572-2	1A	One magazine
17	005158-2	5	One bullet
20	005228-1	1	One Star unknown model .45 Auto caliber semiautomatic pistol, serial number: 1949428
21	005228-1	2	One magazine
22	009618-6	12	Metal fragments
23	009618-6	13	One bullet
24	009618-6	14	One bullet

*Items previously examined; see the laboratory report generated under this event number for further information.

Results and Conclusions:

Firearms

The Taurus pistol (Lab Item 11) was examined, test fired and found to be operational with no noted malfunctions. This pistol has a barrel length of approximately 2 ¾ inches, an overall length of approximately 5 ¾ inches and a trigger pull of 7 ¾ - 8 ¼ pounds. The submitted magazine (Lab Item 12) fits and functions in this pistol and has a capacity of ten cartridges. This pistol and magazine were swabbed for DNA prior to test firing and two swabs were booked into the evidence vault.

The Taurus pistol (Lab Item 14) was examined, test fired and found to be operational with no noted malfunctions. This pistol has a barrel length of approximately 3 ¼ inches and an overall length of approximately 6 ¼ inches. It has trigger pulls of 5 – 5 ½ pounds single action and 8 – 8 ¼ pounds double action. The submitted magazine (Lab Item 15) fits and functions in this pistol has a capacity of ten cartridges.

The Star pistol was examined, test fired and found to be operational with no noted malfunctions. This pistol has a barrel length of approximately 4 inches, an overall length of approximately 7 ¼ inches and a trigger pull of 6 ¾ - 7 pounds. The submitted magazine (Lab Item 21) fits and functions in this pistol has a capacity of six cartridges.

Comparisons

The evidence cartridge cases and bullets were examined and microscopically compared to the test fired cartridge cases and bullets with the following results:

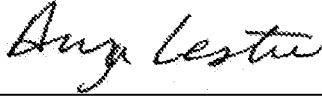
- The cartridge case (Lab Item 1) was identified as having been fired by the Taurus pistol (Lab Item 11).
- The three cartridge cases (Lab Items 2-4) were identified as having been fired by the Star pistol.
- The two bullets (Lab Items 17 and 24) were identified as having been fired by the Star pistol.
- The bullet (Lab Item 23) shared similar general rifling characteristics with the Taurus pistol (Lab Item 11). Damage to this bullet and a lack of microscopic information preclude an identification to or elimination from this pistol.
- The metal fragments are of no value for microscopic comparisons.

NIBIN

Representative images of a test fired cartridge case from the Taurus pistol (Lab Item 14) were entered into the National Integrated Ballistic Information Network (NIBIN). Associations to other events in the network will be reported separately.

The evidence is returned to secure storage.

---This report does not constitute the entire case file. The case file may be comprised of worksheets, images, analytical data and other documents.---



Anya Lester, #13771
Forensic Scientist II

- END OF REPORT -

ORIGINAL

IND

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #007135
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

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

APR 19 2018

BY

DULCE MARIE ROMEA, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO: C-17-328587-3

-vs-

DEPT NO: XX

DEMARIO LOFTON-ROBINSON, aka,
Demario Loftonrobinson, #5318925
RAEKWON SETREY ROBERTSON,
aka, Raekwon Robertson, #8252804
DAVONTAE AMARRI WHEELER,
#5909081

SUPERSEDING

INDICTMENT

Defendant(s).

STATE OF NEVADA

COUNTY OF CLARK

} ss.

The Defendant(s) above named, DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson, RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, DAVONTAE AMARRI WHEELER, accused by the Clark County Grand Jury of the crime(s) of BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS 205.060 - NOC 50426); CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS 200.380, 199.480 - NOC 50147); ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.165 - NOC 50138); ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.330, 193.165 - NOC 50145) and MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS

C-17-328587-3
SIND
Superseding Indictment
4739605



PA0287
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1 200.010, 200.030, 193.165 - NOC 50001), committed at and within the County of Clark, State
2 of Nevada, on or between August 2, 2017 and August 9, 2017, as follows:

3 COUNT 1 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

4 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
5 about August 2, 2017 willfully, unlawfully, and feloniously enter, with intent to commit a
6 felony, to wit: robbery, that certain business occupied by FIESTA DISCOUNT MARKET
7 AND SMOKE SHOP, located at 701 West Charleston Boulevard, Las Vegas, Clark County,
8 Nevada, while possessing and/or gaining possession of a handgun, a deadly weapon, during
9 the commission of the crime and/or before leaving the structure.

10 COUNT 2 - CONSPIRACY TO COMMIT ROBBERY

11 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
12 about August 2, 2017 willfully, unlawfully, and feloniously conspire with ANTONIO JONES
13 to commit a robbery, by the conspirators committing the acts as set forth in Counts 3 and 4,
14 said acts being incorporated by this reference as though fully set forth herein.

15 COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

16 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, along with
17 ANTONIO JONES, did on or about August 2, 2017 willfully, unlawfully, and feloniously take
18 personal property, to wit: a wallet, cellular telephone, and makeup case, from the person of
19 MARIAH ROMATKO, or in her presence, by means of force or violence, or fear of injury to,
20 and without the consent and against the will of MARIAH ROMATKO, with use of a deadly
21 weapon, to wit: a handgun, the Defendant being criminally liable under one or more of the
22 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
23 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
24 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
25 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
26 crime, with the intent that this crime be committed.

27 //

28 //

1 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

2 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, along with
3 ANTONIO JONES, did on or about August 2, 2017 willfully, unlawfully, and feloniously take
4 personal property, to wit: U.S. Currency, from the person of AGNES STEIN, or in her
5 presence, by means of force or violence, or fear of injury to, and without the consent and
6 against the will of AGNES STEIN, with use of a deadly weapon, to wit: a handgun, the
7 Defendant being criminally liable under one or more of the following principles of criminal
8 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the
9 commission of this crime, with the intent that this crime be committed, by counseling,
10 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit
11 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this
12 crime be committed.

13 COUNT 5 - CONSPIRACY TO COMMIT ROBBERY

14 Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson,
15 RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI
16 WHEELER, did, on or about August 9, 2017, willfully, unlawfully, and feloniously conspire
17 with each other and/or unknown co-conspirators to commit a robbery, by the Defendants
18 and/or unknown co-conspirators committing the acts as set forth in Count 6, said acts being
19 incorporated by this reference as though fully set forth herein.

20 COUNT 6 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

21 Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson,
22 RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI
23 WHEELER, did, on or about August 9, 2017, willfully, unlawfully, and feloniously attempt to
24 take personal property, to wit: U.S. Currency and/or property, from the person of GABRIEL
25 VALENZUELA, or in his presence, by means of force or violence, or fear of injury to, and
26 without the consent and against the will of GABRIEL VALENZUELA, by pointing a firearm
27 at the said GABRIEL VALENZUELA and demanding said U.S. Currency and/or property,
28 with use of a deadly weapon, to wit: a firearm, the Defendants being criminally liable under

one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendant and/or DEMARIO LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON ROBERTSON and/or unknown co-conspirators aiding or abetting and/or conspiring by Defendant and/or DEMARIO LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON ROBERTSON and/or unknown co-conspirators acting in concert throughout.

COUNT 7 - MURDER WITH USE OF A DEADLY WEAPON

Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson, RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI WHEELER, did, on or about August 9, 2017, willfully, unlawfully, feloniously and with malice aforethought, kill GABRIEL VALENZUELA, a human being, with use of a deadly weapon, to wit: a firearm, by shooting at and into the body of the said GABRIEL VALENZUELA, the said killing having been (1) willful, deliberate, and premeditated, and/or (2) committed during the perpetration or attempted perpetration of a robbery, the Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring,

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1 commanding, inducing, and/or otherwise procuring the other to commit the crime; and/or (3)
2 pursuant to a conspiracy to commit murder and/or robbery; Defendants and/or unknown co-
3 conspirators aiding or abetting and/or conspiring by Defendants and/or unknown co-
4 conspirators acting in concert throughout.

5 DATED this 18th day of April, 2018.

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

9 BY

10 GIANCARLO PESCI
11 Chief Deputy District Attorney
12 Nevada Bar #007135

13 ENDORSEMENT: A True Bill

14
15 
16 Foreperson, Clark County Grand Jury

Names of Witnesses and testifying before the Grand Jury:

CODY, LORA – LVMPD #7294

DOSCH, MITCHELL – LVMPD #7907

FLETCHER, SHAWN – LVMPD #5221

JAEGER, RYAN – LVMPD #5587

LESTER, ANYA, LVMPD

MASON, ROBERT – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

NEWMAN, JAMES – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

RELATO, JOHN – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

SIMMS, DR. LARY – ME#0002

SPAHN, NICKOLAUS – SHORT LINE EXPRESS – 7325 S. JONES BLVD, LV NV

SPEAS, WILLIAM – LVMPD #5228

STEIN, AGNES – FIESTA DISCOUNT MARKET-7010 W. CHARLESTON BLVD, LV NV

TAPAY, GLEZZELLE, LVMPD #15709

Additional Witnesses known to the District Attorney at time of filing the Indictment:

CHARLTON, NOREEN – LVMPD #13572

CUSTODIAN OF RECORDS - CCDC

CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS - LVMPD RECORDS

CUSTODIAN OF RECORDS – SHORTLINE EXPRESS – 7325 S. JONES BLVD, LV NV

ROMATKO, MARIAH – c/o CCDA, 200 Lewis Avenue, LV, NV 89101

17BGJ017A-C/17F14369A-C/mc - GJ
LVMPD EV#1708024571; 1708090029
(TK3)

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BEFORE THE GRAND JURY IMPANELED BY THE AFORESAID

DISTRICT COURT

THE STATE OF NEVADA,

Plaintiff,

VS.

DEMARIO LOFTON-ROBINSON,
aka Demario Loftonrobinson,
RAEKWON SETREY ROBERTSON,
aka Raekwon Robertson,
DAVONTAE AMARRI WHEELER,

Defendants.

GJ Case No. 17BGJ017A-C
DC Case No. C328587-3

Taken at Las Vegas, Nevada

Wednesday, April 18, 2018

11:11 a.m.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SUPERSEDING INDICTMENT

Reported by: Donna J. McCord, C.C.R. No. 337

1 GRAND JURORS PRESENT ON APRIL 18, 2018:

2
3 WILLIAM DUMKE, Foreperson

4 CHARLES STANKOSKY, Deputy Foreperson

5 TOBIE SPERRY, Secretary

6 ANGELA MOORE, Assistant Secretary

7 RODNEY ALLISON

8 GEORGE CHEESMAN

9 FRANK COOMBS

10 LADYHAWK FREEMAN

11 VICTORIA GUY

12 MARGARET LAAS

13 ROJEAN LOGAN

14 NANCY SCHERER

15 EDWARD WAGNER

16 COURTNEY WILLIAMS

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21 Also present at the request of the Grand Jury:

22 Giancarlo Pesci

23 Chief Deputy District Attorney

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INDEX OF WITNESSES

EXAMINED

ANYA LESTER

7

MITCHELL DOSCH

15

INDEX OF EXHIBITS

GRAND JURY EXHIBITS

IDENTIFIED

EXHIBIT 2 - REPORT

7

1 LAS VEGAS, NEVADA, APRIL 18, 2018

2 * * * * *

3
4 DONNA J. McCORD,

5 having been first duly sworn to faithfully
6 and accurately transcribe the following
7 proceedings to the best of her ability.
8

9 MR. PESCI: Ladies and gentlemen of the
10 Grand Jury, my name is Giancarlo Pesci. I'm here on
11 Grand Jury number 17BGJ017A through C. I'm not sure if
12 you have transcripts from your prior proceedings,
13 specifically on November 29th, 2017, and then also
14 December 13th, 2017.

15 At the conclusion of those presentations
16 you found probable cause as to all of the defendants and
17 all of the charges. Subsequent to that presentation
18 some additional evidence was processed by the forensic
19 lab. I'm now going to present witnesses associated with
20 that subsequent information and then ask you to then
21 determine if there is probable cause for the defendants
22 and those charges.

23 State calls Anya Lester.

24 THE FOREPERSON: Please raise your right
25 hand.

1 You do solemnly swear that the testimony
2 that you're about to give upon the investigation now
3 pending before this Grand Jury shall be the truth, the
4 whole truth, and nothing but the truth, so help you God?

5 THE WITNESS: I do.

6 THE FOREPERSON: Please be seated.

7 You're advised that you're here today to
8 give testimony in the investigation pertaining to the
9 offenses of burglary while in possession of a firearm,
10 conspiracy to commit robbery, robbery with use of a
11 deadly weapon, attempt robbery with the use of a deadly
12 weapon, murder with use of a deadly weapon involving
13 Demario Lofton-Robinson, Raekwon Robertson and Davontae
14 Wheeler.

15 Do you understand this advisement?

16 THE WITNESS: I do.

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

19 THE WITNESS: My name is Anya Lester,
20 A-N-Y-A, Lester, L-E-S-T-E-R.

21

22 **ANYA LESTER,**

23 having been first duly sworn by the Foreperson of the
24 Grand Jury to testify to the truth, the whole truth
25 and nothing but the truth, testified as follows:

EXAMINATION

BY MR. PESCI:

Q Ma'am, I want to show you Grand Jury Exhibit Number 2 and ask you if you recognize that?

A Yes, I do.

Q Would you mind if I sit over here?

A Not at all.

Q And how do you recognize that?

A This is a copy of a report that I wrote on this event.

Q Were you asked to examine some firearms and some firearms-related evidence in relation to the event number 170809-0029?

A Yes, I was.

Q And did you generate this report on January the 22nd of 2018?

A Yes, I did.

Q In this report did you give results of your examination?

A Yes, I did.

Q And what exactly do you do with Metro?

A I am a forensic scientist in the forensic laboratory in the firearms and toolmarks analysis unit.

Q And somewhat quickly, what's your training and experience that brings you to this position?

1 A I have a bachelor of science degree in
2 forensic science. I was hired with Metro in 2008 as a
3 forensic lab aid, and in 2009 I promoted into the
4 forensic scientist position. I performed a two-year
5 training program there when I got promoted into that
6 position, and when I successfully completed that program
7 I began my own independent case work and that was in the
8 spring of 2011.

9 Q Have you testified as a firearms expert or
10 in regards to firearms testimony here at the Grand Jury,
11 in Justice Court and in District Court?

12 A Yes, I have.

13 Q Okay. Now, directing your attention to
14 this particular report, in this particular investigation
15 did you review and look into three firearms?

16 A Yes, I did.

17 Q What were the three firearms?

18 A I was asked to examine a Taurus model PT-22
19 .22 long rifle caliber semiautomatic pistol, also one
20 Taurus model PT-145 Pro Millennium .45 auto caliber
21 semiautomatic pistol, and one Star .45 auto caliber
22 semiautomatic pistol and that one had an unknown model
23 number.

24 Q Those are the firearms; is that correct?

25 A That is correct.

1 Q Were you asked also to look at
2 firearm-related evidence being cartridge cases and
3 bullets?

4 A Yes, I was.

5 Q I'm going to retrieve State's 2. Do you
6 see over your left shoulder that particular document?
7 So now the Grand Jurors can see it.

8 A Yes.

9 Q Okay. When you reviewed those three
10 firearms, did you test fire them and see that they were
11 operable?

12 A Yes, I did.

13 Q And then did you take some cartridge cases
14 and some bullets and bullet fragments and see if they
15 came from any of these three firearms?

16 A Yes. I took the test fired cartridge cases
17 and test fired bullets that I fired from the submitted
18 firearms and performed a microscopic comparison to the
19 evidence bullets and cartridge cases to make a
20 determination as to which, if any, of those firearms
21 that those items were fired from.

22 Q When a firearm shoots a bullet, for lack of
23 a better term, are there unique characteristics or
24 markings that are left behind on the bullet and on the
25 cartridge case from a particular firearm?

1 A Yes.

2 Q And did you make those comparisons with
3 these three firearms to those cartridge cases and the
4 bullets in this case?

5 A Yes, I did.

6 Q What were your results, your
7 determinations?

8 A In my results I had one cartridge case that
9 was identified as having been fired from the Taurus
10 model PT-22 .22 long rifle caliber.

11 Q Let me stop you there for a second.

12 A Yes.

13 Q So on the actual report, for the benefit of
14 the Grand Jurors, does this correspond to what's
15 referred to as lab item number 11?

16 A Yes, that was the one I was just referring
17 to.

18 Q Okay. And then proceed, I'm sorry.

19 A Yes. So I did identify one cartridge case
20 as having been fired by that Taurus pistol, the one that
21 is lab item 11, the PT-22 .22 long rifle caliber pistol.

22 Q So it's a .22 caliber pistol?

23 A That is correct.

24 Q And that's item number 11?

25 A Yes, sir.

1 Q All right. So one of those cartridge cases
2 was fired by that particular firearm?

3 A I did identify it as so, yes.

4 Q Okay. Then moving to what's referred to as
5 number 14, tell us about that firearm and what your
6 results were.

7 A So number 14, which was the Taurus model
8 PT-145 Pro Millennium .45 auto caliber pistol, I test
9 fired that firearm as well, compared those test fired
10 bullets and cartridge cases to the bullets and cartridge
11 cases that I had received as evidence and I determined
12 that none of the evidence bullets and cartridge cases
13 were fired from that particular firearm.

14 Q Then moving to what's referred to as lab
15 item number 20, what firearm is that and what were the
16 results as far as your comparison?

17 A Yes, that was the Star .45 auto caliber
18 semiautomatic pistol. I was able to identify three
19 submitted evidence cartridge cases as having been fired
20 from that pistol as well as two submitted bullets that I
21 also identified as having been fired from that pistol.

22 Q Okay. And then did you also have some
23 metal fragments that you were looking at?

24 A I had some metal fragments, yes.

25 Q And what were your results?

1 A Those metal fragments, they were
2 inconclusive. I had the very small fragments that are
3 listed up there as lab item 22. They were just very
4 small pieces of metal and had no marks on them for me to
5 compare. I did also have the one additional bullet and
6 that bullet was item 23. And due to the damage on that
7 bullet I was able to say that it was similar to the test
8 fired bullets from the Taurus model PT-22 .22 long rifle
9 caliber pistol, but I was unable to identify it
10 conclusively due to the damage.

11 Q So the damage that the bullet receives from
12 hitting an item can make it such that you cannot make a
13 comparison?

14 A That I could not make a comparison, yes, or
15 not make a conclusion depending on the damage.

16 Q I apologize, you can make a comparison but
17 you might not necessarily be able to make a conclusion.

18 A That's correct. I would say its
19 inconclusive.

20 MR. PESCI: Are there any questions from
21 the ladies and gentlemen of the Grand Jury?

22 BY A JUROR:

23 Q You testified that you compared it to
24 bullets, shell casings and fragments which you had
25 received as evidence. You received these from where?

1 A I received the evidence from my evidence
2 technicians at our evidence vault directly in our
3 laboratory.

4 Q Thank you. The next question is the
5 firearms you were comparing them to, you received the
6 firearms from where?

7 A From that same place, our evidence
8 technicians at our evidence vault securely move those to
9 me.

10 Q Thank you.

11 A You're welcome.

12 THE FOREPERSON: Any other questions?

13 By law these proceedings are secret and you
14 are prohibited from disclosing to anyone anything that
15 transpired before us including any evidence presented to
16 the Grand Jury, any event occurring or a statement made
17 in the presence of the Grand Jury or any information
18 obtained by the Grand Jury.

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

25 Do you understand this admonition?

1 THE WITNESS: Yes, I do.

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

4 THE WITNESS: Thank you.

5 MR. PESCI: State calls Detective Dosch.

6 THE FOREPERSON: Please raise your right
7 hand.

8 You do solemnly swear that the testimony
9 that you're about to give upon the investigation now
10 pending before this Grand Jury shall be the truth, the
11 whole truth, and nothing but the truth, so help you God?

12 THE WITNESS: I do.

13 THE FOREPERSON: Please be seated.

14 THE WITNESS: Thank you.

15 THE FOREPERSON: You're advised that you're
16 here today to give testimony in the investigation
17 pertaining to the offenses of burglary while in
18 possession of a firearm, conspiracy to commit robbery,
19 robbery with use of a deadly weapon, attempt robbery
20 with use of a deadly weapon and murder with the use of a
21 deadly weapon involving Demario Lofton-Robinson, Raekwon
22 Robertson and Davontae Amarri Wheeler.

23 Do you understand this advisement?

24 THE WITNESS: I do.

25 THE FOREPERSON: Please state your first

1 and last name and spell both for the record.

2 THE WITNESS: My name is Mitchell,
3 M-I-T-C-H-E-L-L, Dosch, D-O-S-C-H.

4

5 MITCHELL DOSCH,

6 having been first duly sworn by the Foreperson of the
7 Grand Jury to testify to the truth, the whole truth
8 and nothing but the truth, testified as follows:

9

10 EXAMINATION

11 BY MR. PESCI:

12 Q Sir, are you a detective with the homicide
13 detail of the Metropolitan Police Department?

14 A Yes, I am.

15 Q Were you involved in the investigation of a
16 homicide that occurred on August 9th of 2017?

17 A Yes, I was.

18 Q Are you familiar with the event number
19 170809-0029?

20 A Yes, I am.

21 Q Over your left shoulder is Grand Jury
22 Exhibit Number 2 being displayed for the Grand Jurors to
23 see as well as you. Do you recognize that particular
24 report?

25 A Yes, I do.

1 Q Did this particular report come in after a
2 presentation had previously been done to this Grand
3 Jury?

4 A That's correct.

5 Q And this reflects firearms evidence that
6 was impounded during the course of this investigation?

7 A Yes, it does.

8 Q Do you recognize the impounding P numbers
9 or personnel numbers of the individuals that were
10 involved in this investigation?

11 A I do.

12 Q And do those indicate that these are
13 associated with this particular incident?

14 A Yes, it was.

15 Q When a piece of evidence is impounded, does
16 it get put into the Metropolitan Police Department's
17 vault?

18 A It does.

19 Q And then for a forensic analyst like Anya
20 Lester who just left, can she call that evidence up
21 which means it gets transported from your Metro vault to
22 her laboratory to examine?

23 A Yes, she can.

24 Q Are you familiar with that process?

25 A I am.

1 Q And in speaking of this particular report,
2 are you familiar with the firearms that were examined?

3 A I am.

4 Q I want you to look and see what's referred
5 to as lab item number 11. If you need to you can
6 actually retrieve that and look at it up close. It that
7 a .22 firearm that was found during the course of this
8 investigation?

9 A Yes, a .22 caliber semiautomatic pistol.

10 Q Was that recovered during an investigation
11 in this case at 6647 West Tropicana?

12 A Yes, it was.

13 Q And what individuals were associated with
14 that particular address?

15 A As far as that particular address it's Mr.
16 Robertson.

17 Q And then moving to lab item number 14, is
18 that in relation to a Taurus model .45 caliber handgun?

19 A It is.

20 Q And was that obtained during the course of
21 your investigation pursuant to a search warrant at a
22 Civic Center address?

23 A Yes, it was.

24 Q And are you familiar, as far as the
25 previous firearm, was that also pursuant to a search

1 warrant?

2 A Yes.

3 Q I apologize for not saying that earlier.

4 Then moving on to number 20, lab item number 20, is that
5 another .45 caliber handgun?

6 A It is.

7 Q Was that discovered pursuant to a search at
8 Bagpipe address?

9 A Yes, it was.

10 Q I failed to mention this earlier, the Civic
11 Center address, which individual of these was associated
12 with that Civic Center address?

13 A Mr. Wheeler.

14 Q And then as far as the Bagpipe address,
15 which individual was associated with that address?

16 A The brothers. I believe one of their last
17 names is hyphenated where as the other name is not, but
18 the brothers, Deshawn (sic) and Demario.

19 Q Now, at the particular scene itself were
20 you aware that there was .22 caliber cartridge cases?

21 A Yes.

22 Q When I say the scene, I apologize, the
23 scene of the murder where the individual was killed.

24 A Yes.

25 Q Were there also .45 caliber cartridge

1 cases?

2 A Yes, there was.

3 Q And pursuant to your investigation were you
4 looking for firearms of those calibers?

5 A Absolutely.

6 Q And is that what you found by way of the
7 search warrant?

8 A And recovered, yes.

9 Q And in your investigation in this case, did
10 you also see some video surveillance at a convenience
11 store just a few, about 30 minutes before the actual
12 murder?

13 A Yes.

14 Q In that video have you personally reviewed
15 it?

16 A Many times.

17 Q And did you see that one of the individuals
18 was open carrying a firearm on his hip?

19 A Yes, he was.

20 Q And then in your investigation was there a
21 vehicle at that convenience store that was notated as
22 far as its license plate and then a vehicle that was
23 told to you by a jogger in the area of the murder that
24 matched?

25 A It did.

1 Q Okay. Thank you very.

2 Any questions from the ladies and gentlemen
3 of the Grand Jury?

4 THE FOREPERSON: No questions.

5 By law these proceedings are secret and you
6 are prohibited from disclosing to anyone anything that
7 transpired before us including any evidence presented to
8 the Grand Jury, any event occurring or a statement made
9 in the presence of the Grand Jury or any information
10 obtained by the Grand Jury.

11 Failure to comply with this admonition is a
12 gross misdemeanor punishable up to 364 days in the Clark
13 County Detention Center and a \$2,000 fine. In addition
14 you may be held in contempt of court punishable by an
15 additional \$500 fine and 25 days in the Clark County
16 Detention Center.

17 Do you understand this admonition?

18 THE WITNESS: I do.

19 THE FOREPERSON: Thank you. You are
20 excused.

21 THE WITNESS: Thank you.

22 MR. PESCI: So ladies and gentlemen of the
23 Grand Jury, I think we need to make a record that I
24 believe George and Rodney, have you been able to read
25 these transcripts?

1 A JUROR: Yes.

2 MR. PESCI: Okay. So I'm leaving with you
3 a copy of those transcripts for your review and ask you
4 to take into consideration what you previously had given
5 to you plus this additional information and ask you if
6 you determine probable cause. Thank you.

7 (At this time, all persons, except the
8 members of the Grand Jury, exited the room at 11:27 and
9 returned at 11:30.)

10 THE FOREPERSON: Mr. District Attorney, by
11 a vote of 12 or more Grand Jurors a true bill has been
12 returned against defendants Demario Lofton-Robinson,
13 Raekwon Robertson, Davontae Amarri Wheeler, charging the
14 crimes of burglary while in possession of a firearm,
15 conspiracy to commit robbery, robbery with use of a
16 deadly weapon, attempt robbery with use of a deadly
17 weapon and murder with use of a deadly weapon in Grand
18 Jury case number 17BGJ017A.

19 We instruct you to prepare an Indictment in
20 conformance with the proposed Indictment previously
21 submitted to us.

22 MR. PESCI: Thank you very much. I'll grab
23 the transcripts. I assume you don't need them anymore.

24 (Proceedings concluded.)

25 --oo0oo--

REPORTER'S CERTIFICATE

STATE OF NEVADA)
 : ss
COUNTY OF CLARK)

I, Donna J. McCord, C.C.R. 337, do hereby
certify that I took down in Shorthand (Stenotype) all of
the proceedings had in the before-entitled matter at the
time and place indicated and thereafter said shorthand
notes were transcribed at and under my direction and
supervision and that the foregoing transcript
constitutes a full, true, and accurate record of the
proceedings had.

Dated at Las Vegas, Nevada,
April 28, 2018.

/S/DONNA J. MCCORD
Donna J. McCord, CCR 337

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding
TRANSCRIPT filed in GRAND JURY CASE NUMBER 17BGJ017A-C:

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

-OR-

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

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

-OR-

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

/S/DONNA J. MCCORD
Signature

April 28, 2018
Date

Donna J. McCord
Print Name

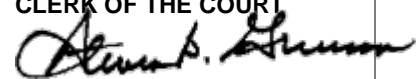
Official Court Reporter
Title

A JUROR: [1] 20/25 BY A JUROR: [1] 12/21 BY MR. PESCI: [2] 7/15/10 MR. PESCI: [6] 5/7 12/19 14/4 20/21 21/1 21/21 THE FOREPERSON: [12] 5/23 6/5 6/16 13/11 14/1 14/5 14/12 14/14 14/24 20/3 20/18 21/9 THE WITNESS: [11] 6/4 6/15 6/18 13/25 14/3 14/11 14/13 14/23 15/1 20/17 20/20 \$ \$2,000 [2] 13/21 20/13 \$500 [2] 13/23 20/15 - --oo0oo [1] 21/25 -OR [2] 23/10 23/14 . .22 [8] 8/19 10/10 10/21 10/22 12/8 17/7 17/9 18/20 .45 [7] 8/20 8/21 11/8 11/17 17/18 18/5 18/25 / /S/DONNA [2] 22/17 23/18 0 0029 [2] 7/13 15/19 1 11 [4] 10/15 10/21 10/24 17/5 11:11 [1] 1/17 11:27 [1] 21/8 11:30 [1] 21/9 12 [1] 21/11 13th [1] 5/14 14 [3] 11/5 11/7 17/17 145 [2] 8/20 11/8 15 [1] 3/4 170809-0029 [2] 7/13 15/19 17BGJ017A [2] 5/11 21/18 17BGJ017A-C [2] 1/9 23/5 18 [3] 1/16 2/1 5/1 2 20 [3] 11/15 18/4 18/4 2008 [1] 8/2 2009 [1] 8/3 2011 [1] 8/8 2017 [3] 5/13 5/14 15/16 2018 [6] 1/16 2/1 5/1	7/16 22/15 23/18 22 [5] 8/18 10/10 10/21 12/3 12/8 22nd [1] 7/16 23 [1] 12/6 239B.030 [1] 23/2 25 [2] 13/23 20/15 28 [2] 22/15 23/18 29th [1] 5/13 3 30 [1] 19/11 337 [3] 1/25 22/6 22/18 364 [2] 13/20 20/12 6 656.250 [1] 23/13 6647 [1] 17/11 9 9th [1] 15/16 A A-N-Y-A [1] 6/20 a.m [1] 1/17 ability [1] 5/7 able [4] 11/18 12/7 12/17 20/24 about [4] 6/2 11/5 14/9 19/11 Absolutely [1] 19/5 accurate [1] 22/12 accurately [1] 5/6 actual [2] 10/13 19/11 actually [1] 17/6 addition [2] 13/21 20/13 additional [5] 5/18 12/5 13/23 20/15 21/5 address [8] 17/14 17/15 17/22 18/8 18/11 18/12 18/14 18/15 administration [1] 23/15 admonition [4] 13/19 13/25 20/11 20/17 advised [2] 6/7 14/15 advisement [2] 6/15 14/23 affirm [1] 23/4 AFFIRMATION [1] 23/1 AFORESAID [1] 1/4 after [1] 16/1 against [1] 21/12 aid [1] 8/3 aka [2] 1/10 1/11 all [6] 5/16 5/17 7/7 11/1 21/7 22/7 ALLISON [1] 2/7 also [10] 2/21 5/13 8/19 9/1 11/21 11/22 12/5 17/25 18/25 19/10 am [5] 7/22 15/14 15/20 16/25 17/3 AMARRI [3] 1/12 14/22 21/13 analysis [1] 7/23 analyst [1] 16/19	ANGELA [1] 2/6 another [1] 18/5 any [12] 9/15 9/20 12/20 13/12 13/15 13/16 13/17 20/2 20/7 20/8 20/9 23/8 ANYA [5] 3/3 5/23 6/19 6/22 16/19 anymore [1] 21/23 anyone [2] 13/14 20/6 anything [2] 13/14 20/6 apologize [3] 12/16 18/3 18/22 application [1] 23/15 April [5] 1/16 2/1 5/1 22/15 23/18 are [16] 8/24 9/23 9/24 12/2 12/20 13/13 13/14 15/12 15/18 16/12 16/24 17/2 17/24 20/5 20/6 20/19 area [1] 19/23 as [35] ask [4] 5/20 7/4 21/3 21/5 asked [3] 7/11 8/18 9/1 Assistant [1] 2/6 associated [5] 5/19 16/13 17/13 18/11 18/15 assume [1] 21/23 attempt [3] 6/11 14/19 21/16 attention [1] 8/13 Attorney [2] 2/22 21/10 August [1] 15/16 auto [4] 8/20 8/21 11/8 11/17 aware [1] 18/20 B bachelor [1] 8/1 Bagpipe [2] 18/8 18/14 be [7] 6/3 6/6 12/17 13/22 14/10 14/13 20/14 been [10] 5/5 6/23 10/9 10/20 11/19 11/21 15/6 16/2 20/24 21/11 before [7] 1/4 6/3 13/15 14/10 19/11 20/7 22/8 before-entitled [1] 22/8 began [1] 8/7 behind [1] 9/24 being [2] 9/2 15/22 believe [2] 18/16 20/24 benefit [1] 10/13 best [1] 5/7 better [1] 9/23 bill [1] 21/11 both [2] 6/18 15/1 brings [1] 7/25 brothers [2] 18/16 18/18 bullet [7] 9/14 9/22	9/24 12/5 12/6 12/7 12/11 bullets [11] 9/3 9/14 9/17 9/19 10/4 11/10 11/10 11/12 11/20 12/8 12/24 burglary [3] 6/9 14/17 21/14 C C.C.R [2] 1/25 22/6 C328587 [1] 1/9 caliber [14] 8/19 8/20 8/21 10/10 10/21 10/22 11/8 11/17 12/9 17/9 17/18 18/5 18/20 18/25 calibers [1] 19/4 call [1] 16/20 calls [2] 5/23 14/5 came [1] 9/15 can [6] 9/7 12/12 12/16 16/20 16/23 17/5 cannot [1] 12/12 carrying [1] 19/18 cartridge [15] 9/2 9/13 9/16 9/19 9/25 10/3 10/8 10/19 11/1 11/10 11/10 11/12 11/19 18/20 18/25 case [11] 1/9 1/9 8/7 9/25 10/4 10/8 10/19 17/11 19/9 21/18 23/5 cases [12] 9/2 9/13 9/16 9/19 10/3 11/1 11/10 11/11 11/12 11/19 18/20 19/1 casings [1] 12/24 cause [3] 5/16 5/21 21/6 CCR [1] 22/18 Center [7] 13/21 13/24 17/22 18/11 18/12 20/13 20/16 CERTIFICATE [1] 22/1 certify [1] 22/7 characteristics [1] 9/23 charges [2] 5/17 5/22 charging [1] 21/13 CHARLES [1] 2/4 CHEESMAN [1] 2/8 Chief [1] 2/22 Civic [3] 17/22 18/10 18/12 CLARK [6] 1/2 13/20 13/23 20/12 20/15 22/4 close [1] 17/6 come [1] 16/1 commit [3] 6/10 14/18 21/15 compare [1] 12/5 compared [2] 11/9 12/23 comparing [1] 13/5 comparison [5] 9/18 11/16 12/13 12/14 12/16 comparisons [1] 10/2	completed [1] 8/6 comply [2] 13/19 20/11 concluded [1] 21/24 conclusion [3] 5/15 12/15 12/17 conclusively [1] 12/10 conformance [1] 21/20 consideration [1] 21/4 conspiracy [3] 6/10 14/18 21/15 constitutes [1] 22/12 contain [1] 23/8 Contains [1] 23/11 contempt [2] 13/22 20/14 convenience [2] 19/10 19/21 COOMBS [1] 2/9 copy [2] 7/9 21/3 correct [5] 8/24 8/25 10/23 12/18 16/4 correspond [1] 10/14 could [1] 12/14 COUNTY [6] 1/2 13/21 13/23 20/13 20/15 22/4 course [3] 16/6 17/7 17/20 court [7] 1/1 1/5 8/11 8/11 13/22 20/14 23/22 COURTNEY [1] 2/16 crimes [1] 21/14 D D-O-S-C-H [1] 15/3 damage [4] 12/6 12/10 12/11 12/15 Date [1] 23/18 Dated [1] 22/14 DAVONTAE [4] 1/12 6/13 14/22 21/13 days [4] 13/20 13/23 20/12 20/15 DC [1] 1/9 deadly [9] 6/11 6/11 6/12 14/19 14/20 14/21 21/16 21/16 21/17 December [1] 5/14 December 13th [1] 5/14 defendants [4] 1/13 5/16 5/21 21/12 degree [1] 8/1 DEMARIO [6] 1/10 1/10 6/13 14/21 18/18 21/12 Department [1] 15/13 Department's [1] 16/16 depending [1] 12/15 Deputy [2] 2/4 2/22 Deshawn [1] 18/18 detail [1] 15/13 detective [2] 14/5 15/12 Detention [4] 13/21 13/24 20/13 20/16 determination [1] 9/20 determinations [1] 10/7 PA0316
---	---	--	---	---

<div>D</div> <div>determine [2] 5/21 21/6</div> <div>determined [1] 11/11</div> <div>did [19] 7/15 7/17 7/18 7/20 8/15 8/16 9/10 9/12 9/13 10/2 10/5 10/19 11/3 11/22 12/5 16/1 19/9 19/17 19/25</div> <div>directing [1] 8/13</div> <div>direction [1] 22/10</div> <div>directly [1] 13/2</div> <div>disclosing [2] 13/14 20/6</div> <div>discovered [1] 18/7</div> <div>displayed [1] 15/22</div> <div>DISTRICT [5] 1/1 1/5 2/22 8/11 21/10</div> <div>do [23] 6/1 6/5 6/15 6/16 7/5 7/8 7/21 7/21 9/5 13/25 14/1 14/8 14/12 14/23 14/24 15/23 15/25 16/8 16/11 16/12 20/17 20/18 22/6</div> <div>document [1] 9/6</div> <div>does [6] 10/14 16/7 16/15 16/18 23/4 23/8</div> <div>don't [1] 21/23</div> <div>done [1] 16/2</div> <div>Donna [7] 1/25 5/4 22/6 22/17 22/18 23/18 23/20</div> <div>DOSCH [4] 3/4 14/5 15/3 15/5</div> <div>down [1] 22/7</div> <div>due [2] 12/6 12/10</div> <div>duly [3] 5/5 6/23 15/6</div> <div>DUMKE [1] 2/3</div> <div>during [4] 16/6 17/7 17/10 17/20</div> <div>E</div> <div>earlier [2] 18/3 18/10</div> <div>EDWARD [1] 2/15</div> <div>EIGHTH [1] 1/1</div> <div>entitled [1] 22/8</div> <div>event [5] 7/10 7/12 13/16 15/18 20/8</div> <div>evidence [18] 5/18 7/12 9/2 9/19 11/11 11/12 11/19 12/25 13/1 13/1 13/2 13/7 13/8 13/15 16/5 16/15 16/20 20/7</div> <div>exactly [1] 7/21</div> <div>examination [3] 7/1 7/19 15/10</div> <div>examine [3] 7/11 8/18 16/22</div> <div>examined [2] 3/2 17/2</div> <div>except [1] 21/7</div> <div>excused [2] 14/3 20/20</div> <div>EXHIBIT [3] 4/4 7/4 15/22</div> <div>EXHIBITS [2] 4/1 4/3</div> <div>exited [1] 21/8</div> <div>experience [1] 7/25</div> <div>expert [1] 8/9</div>	<div>F</div> <div>failed [1] 18/10</div> <div>Failure [2] 13/19 20/11</div> <div>faithfully [1] 5/5</div> <div>familiar [4] 15/18 16/24 17/2 17/24</div> <div>far [5] 11/16 17/15 17/24 18/14 19/22</div> <div>federal [2] 23/13 23/15</div> <div>few [1] 19/11</div> <div>filed [1] 23/5</div> <div>fine [4] 13/21 13/23 20/13 20/15</div> <div>fire [1] 9/10</div> <div>firearm [14] 6/9 9/2 9/22 9/25 11/2 11/5 11/9 11/13 11/15 14/18 17/7 17/25 19/18 21/14</div> <div>firearm-related [1] 9/2</div> <div>firearms [18] 7/11 7/12 7/23 8/9 8/10 8/15 8/17 8/24 9/10 9/15 9/18 9/20 10/3 13/5 13/6 16/5 17/2 19/4</div> <div>firearms-related [1] 7/12</div> <div>fired [13] 9/16 9/17 9/17 9/21 10/9 10/20 11/2 11/9 11/9 11/13 11/19 11/21 12/8</div> <div>first [5] 5/5 6/17 6/23 14/25 15/6</div> <div>following [1] 5/6</div> <div>follows [2] 6/25 15/8</div> <div>foregoing [1] 22/11</div> <div>forensic [7] 5/18 7/22 7/22 8/2 8/3 8/4 16/19</div> <div>Foreperson [4] 2/3 2/4 6/23 15/6</div> <div>found [3] 5/16 17/7 19/6</div> <div>fragments [6] 9/14 11/23 11/24 12/1 12/2 12/24</div> <div>FRANK [1] 2/9</div> <div>FREEMAN [1] 2/10</div> <div>full [1] 22/12</div> <div>G</div> <div>generate [1] 7/15</div> <div>gentlemen [4] 5/9 12/21 20/2 20/22</div> <div>GEORGE [2] 2/8 20/24</div> <div>get [1] 16/16</div> <div>gets [1] 16/21</div> <div>Giancarlo [2] 2/21 5/10</div> <div>give [5] 6/2 6/8 7/18 14/9 14/16</div> <div>given [1] 21/4</div> <div>GJ [1] 1/9</div> <div>God [2] 6/4 14/11</div> <div>going [2] 5/19 9/5</div> <div>got [1] 8/5</div> <div>grab [1] 21/22</div> <div>GRAND [30]</div> <div>grant [1] 23/16</div> <div>gross [2] 13/20 20/12</div> <div>GUY [1] 2/11</div>	<div>H</div> <div>had [11] 8/22 10/8 11/11 11/24 12/2 12/4 12/24 16/2 21/4 22/8 22/13</div> <div>hand [2] 5/25 14/7</div> <div>handgun [2] 17/18 18/5</div> <div>has [1] 21/11</div> <div>have [8] 5/12 8/1 8/9 8/12 11/22 12/5 19/14 20/24</div> <div>having [7] 5/5 6/23 10/9 10/20 11/19 11/21 15/6</div> <div>he [1] 19/19</div> <div>held [2] 13/22 20/14</div> <div>help [2] 6/4 14/11</div> <div>her [2] 5/7 16/22</div> <div>here [5] 5/10 6/7 7/6 8/10 14/16</div> <div>hereby [2] 22/6 23/4</div> <div>hip [1] 19/18</div> <div>hired [1] 8/2</div> <div>his [1] 19/18</div> <div>hitting [1] 12/12</div> <div>homicide [2] 15/12 15/16</div> <div>how [1] 7/8</div> <div>hyphenated [1] 18/17</div> <div>I</div> <div>I'll [1] 21/22</div> <div>I'm [6] 5/10 5/11 5/19 9/5 10/18 21/2</div> <div>identified [3] 4/3 10/9 11/21</div> <div>identify [4] 10/19 11/3 11/18 12/9</div> <div>IMPANELED [1] 1/4</div> <div>impounded [2] 16/6 16/15</div> <div>impounding [1] 16/8</div> <div>incident [1] 16/13</div> <div>including [2] 13/15 20/7</div> <div>inconclusive [2] 12/2 12/19</div> <div>independent [1] 8/7</div> <div>INDEX [2] 3/1 4/1</div> <div>indicate [1] 16/12</div> <div>indicated [1] 22/9</div> <div>INDICTMENT [3] 1/22 21/19 21/20</div> <div>individual [3] 18/11 18/15 18/23</div> <div>individuals [3] 16/9 17/13 19/17</div> <div>information [4] 5/20 13/17 20/9 21/5</div> <div>instruct [1] 21/19</div> <div>investigation [14] 6/2 6/8 8/14 14/9 14/16 15/15 16/6 16/10 17/8 17/10 17/21 19/3 19/9 19/20</div> <div>involved [2] 15/15 16/10</div>	<div>involving [2] 6/12 14/21</div> <div>is [22] 5/10 5/21 6/19 7/9 8/24 8/25 10/21 10/23 11/15 13/4 13/19 15/2 15/21 16/15 17/17 17/19 18/4 18/6 18/17 18/17 19/6 20/11</div> <div>it [20] 9/7 11/3 12/7 12/9 12/12 12/23 16/7 16/14 16/16 16/18 16/21 17/6 17/6 17/12 17/19 17/23 18/6 18/9 19/15 19/25</div> <div>it's [2] 10/22 17/15</div> <div>item [10] 10/15 10/21 10/24 11/15 12/3 12/6 12/12 17/5 17/17 18/4</div> <div>items [1] 9/21</div> <div>its [2] 12/18 19/22</div> <div>itself [1] 18/19</div> <div>J</div> <div>J.MCCORD [1] 22/17</div> <div>January [1] 7/15</div> <div>jogger [1] 19/23</div> <div>JUDICIAL [1] 1/1</div> <div>JURORS [5] 2/1 9/7 10/14 15/22 21/11</div> <div>JURY [25]</div> <div>just [4] 10/16 12/3 16/20 19/11</div> <div>Justice [1] 8/11</div> <div>K</div> <div>killed [1] 18/23</div> <div>L</div> <div>L-E-S-T-E-R [1] 6/20</div> <div>LAAS [1] 2/12</div> <div>lab [9] 5/19 8/3 10/15 10/21 11/14 12/3 17/5 17/17 18/4</div> <div>laboratory [3] 7/23 13/3 16/22</div> <div>lack [1] 9/22</div> <div>ladies [4] 5/9 12/21 20/2 20/22</div> <div>LADYHAWK [1] 2/10</div> <div>Las [3] 1/15 5/1 22/14</div> <div>last [3] 6/18 15/1 18/16</div> <div>law [3] 13/13 20/5 23/13</div> <div>leaving [1] 21/2</div> <div>left [4] 9/6 9/24 15/21 16/20</div> <div>LESTER [6] 3/3 5/23 6/19 6/20 6/22 16/20</div> <div>Let [1] 10/11</div> <div>license [1] 19/22</div> <div>like [1] 16/19</div> <div>listed [1] 12/3</div> <div>LOFTON [4] 1/10 6/13 14/21 21/12</div> <div>LOFTON-ROBINSON [4] 1/10 6/13 14/21 21/12</div> <div>Loftonrobinson [1]</div>	<div>1/10</div> <div>LOGAN [1] 2/13</div> <div>long [4] 8/19 10/10 10/21 12/8</div> <div>look [4] 8/15 9/1 17/4 17/6</div> <div>looking [2] 11/23 19/4</div> <div>M</div> <div>M-I-T-C-H-E-L-L [1] 15/3</div> <div>Ma'am [1] 7/3</div> <div>made [2] 13/16 20/8</div> <div>make [9] 9/19 10/2 12/12 12/12 12/14 12/15 12/16 12/17 20/23</div> <div>Many [1] 19/16</div> <div>MARGARET [1] 2/12</div> <div>markings [1] 9/24</div> <div>marks [1] 12/4</div> <div>matched [1] 19/24</div> <div>matter [1] 22/8</div> <div>may [2] 13/22 20/14</div> <div>McCord [6] 1/25 5/4 22/6 22/18 23/18 23/20</div> <div>me [3] 10/11 12/4 13/9</div> <div>means [1] 16/21</div> <div>members [1] 21/8</div> <div>mention [1] 18/10</div> <div>metal [4] 11/23 11/24 12/1 12/4</div> <div>Metro [3] 7/21 8/2 16/21</div> <div>Metropolitan [2] 15/13 16/16</div> <div>microscopic [1] 9/18</div> <div>might [1] 12/17</div> <div>Millennium [2] 8/20 11/8</div> <div>mind [1] 7/6</div> <div>minutes [1] 19/11</div> <div>misdemeanor [2] 13/20 20/12</div> <div>MITCHELL [3] 3/4 15/2 15/5</div> <div>model [7] 8/18 8/20 8/22 10/10 11/7 12/8 17/18</div> <div>MOORE [1] 2/6</div> <div>more [1] 21/11</div> <div>move [1] 13/8</div> <div>moving [4] 11/4 11/14 17/17 18/4</div> <div>Mr [1] 17/15</div> <div>Mr. [2] 18/13 21/10</div> <div>Mr. District [1] 21/10</div> <div>Mr. Wheeler [1] 18/13</div> <div>much [1] 21/22</div> <div>murder [6] 6/12 14/20 18/23 19/12 19/23 21/17</div> <div>my [7] 5/10 6/19 8/7 10/8 13/1 15/2 22/10</div> <div>N</div> <div>name [7] 5/10 6/18 6/19 15/1 15/2 18/17</div> <div>PA0317</div>
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Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of the Application

OF DAVONTAE AMARRI WHEELER,
#5909081

For a Writ of Habeas Corpus

Case No. C-17-328587-3

Dept No. XX

DATE OF HEARING: _____

TIME OF HEARING: _____

PETITION FOR WRIT OF HABEAS CORPUS

**TO: THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK**

The Petition of DAVONTAE AMARRI WHEELER, by and through his attorney,
JAMES J. RUGGEROLI, ESQ., respectfully shows:

1. That he is a duly qualified, practicing and licensed attorney in the City of Las Vegas, County of Clark, and State of Nevada.
2. That Petitioner is the defendant in the above entitled matter.
3. Petitioner makes application on behalf of his client for a Writ of Habeas Corpus; that the place where the client of Petitioner is restrained of his liberty in the County of Clark, State of Nevada; that the officer by whom he is restrained is, JOSEPH LOMBARDO SHERIFF, Las Vegas Metropolitan Police Department, Las Vegas, Clark County, Nevada in that there was insufficient evidence presented to the grand jury to restrain the Defendant.

1 4. That Petitioner waives the sixty (60) day limitation for brining said client to trial.

2 5. That Petitioner consents that if the Petition is not decided within fifteen (15) days
3 before the date set for trial, the Court may without notice of hearing, continue the trial
4 indefinitely to a date designated by the Court.

5 6. That Petitioner consents that if any party appeals the Court's ruling and the appeal
6 is not determined before the date set for trial, the trial date be automatically vacated and the trial
7 postponed unless the Court otherwise orders.

8 7. That no other Petition for Writ of Habeas Corpus has heretofore been filed on
9 behalf of said client of Petitioner on this particular issue.

10 8. This Petition is based upon the records and pleadings on file herein, the
11 Memorandum of Points and Authorities attached hereto, and upon such other grounds and
12 evidence as may be adduced at a hearing on this Writ.

13 **WHEREFORE**, Petitioner prays that this Honorable Court make an Order directing the
14 County Clerk to issue a Writ of Habeas Corpus directed to said **SHERIFF OF CLARK**
15 **COUNTY, NEVADA**, commanding him to bring the above-mentioned client of Petitioner
16 before your Honor, and return the cause of his imprisonment.

17 Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State
18 of Nevada that the foregoing is true and correct

19 DATED this 17th day of May, 2018.

20 **JAMES J. RUGGEROLI**

21 By: /s/ James Ruggeroli
22 James J. Ruggeroli, Esq.
23 Nevada Bar No. 7891
24 601 South 7th Street
25 Las Vegas, Nevada 89101
26 Attorneys for Defendant
27
28

NOTICE

TO: THE HONORABLE JUDGE, District Court Department XX; and
TO: STEVEN B. WOLFSON, ESQ., Attorney for Plaintiff.

PLEASE TAKE NOTICE that the Petition for Writ of Habeas Corpus will be heard in
Department XX before the District Court Judge on the **31** day of
May, 2018 at the hour of **9:00 am**.m. or as soon thereafter as
counsel can be heard.

DATED this 17th day of May, 2018.

JAMES J. RUGGEROLI

By: */s/ James Ruggeroli*
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
601 South 7th Street
Las Vegas, Nevada 89101
Attorneys for Defendant

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

JAMES J. RUGGEROLI, ESQ., being first duly sworn, deposes and says:

That I am the attorney for Defendant in the above-entitled action; that I have read the
foregoing Petition, know the contents thereof, that the same are true and correct to the best of my
knowledge, information and belief, except for those matters therein stated on information and
belief, and as for those matters, JAMES J. RUGGEROLI believes them to be true; that the
Defendant personally authorized me to commence this Petition for Writ of Habeas Corpus.

Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State
of Nevada that the foregoing is true and correct

DATED this 17th day of May, 2018.

JAMES J. RUGGEROLI

By: */s/ James Ruggeroli*
James J. Ruggeroli, Esq.
Attorneys for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

There was insufficient evidence against Mr. Wheeler presented to the grand jury to support the charges and the Superseding Indictment (the “Indictment”). The Indictment must therefore be dismissed.

II. STATEMENT OF THE CASE

1. The State initially presented its case against Mr. Wheeler to the grand jury on November 29, 2017. See Grand Jury Transcript on file herein.

2. After the grand jury issued a true bill, the State charged Mr. Wheeler by way of Indictment with: COUNT 5 CONSPIRACY TO COMMIT ROBBERY; COUNT 6 ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON; COUNT 7 MURDER WITH USE OF A DEADLY WEAPON. See Indictment on file herein.

3. The State subsequently provided the defense with a Forensic Laboratory Report of Examination for Firearms & Toolmarks (the “Report”) which shows that Mr. Wheeler’s firearm was not used in this case.

4. After hearing argument on a petition for writ of habeas corpus, this court ordered the State to return to the grand jury in order to present the forensic examination’s results to the grand jury because said evidence constituted exculpatory evidence pursuant NRS 172.145(2)

5. The State returned to the grand jury and presented the forensic examination results on April 18, 2018, and the grand jury issued a true bill. See Grand Jury Transcript of April 18, 2018 on file herein.

6. The State filed the Superseding Indictment (the “Indictment”) against Mr. Wheeler on April 19, 2018.

7. The Indictment specifically charges Mr. Wheeler as follows:

a. **COUNT 5- CONSPIRACY TO COMMIT ROBBERY**

Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson, RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE

AMARRI WHEELER, did, or on about August 9, 2017, willfully, unlawfully, and feloniously conspire with each other and/or unknown co-conspirators to commit robbery, by the Defendants and/or unknown co-conspirators committing the acts as set forth in Count 6, said acts being incorporated by this reference as though fully set forth herein.

b. COUNT 6- ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson, RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI WHEELER, did, or on about August 9, 2017, willfully, unlawfully, and feloniously attempt to take personal property, to wit: U.S. Currency and/or property, from the person of GABRIEL VALENZUELA, or in his presence, by means of force or violence, or fear of injury to, and without the consent and against the will of GABRIEL VALENZUELA, by pointing a firearm at the said GABRIEL VALENZUALA and demanding said U.S. Currency and/or property, with use of a deadly weapon, to wit: a firearm, the Defendant being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this crime be committed, Defendant and/or DEMARIO LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON ROBERTSON and/or unknown co-conspirators acting in concert throughout.

c. COUNT 7- MURDER WITH USE OF A DEADLY WEAPON

Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson, RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI WHEELER, did, or on about August 9, 2017, willfully, unlawfully, and feloniously and with malice of aforethought, kill GABRIEL VALENZUELA, a human being, with use of a deadly weapon, to wit: a firearm, by shooting at and into the body of

said GABRIEL VALENZUELA, the said killing having been (1) willful, deliberate, and premeditated, and/or (2) committed during the perpetration or attempted perpetration of a robbery, the Defendants being criminally liable under one or more of the following principles of criminal liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring, commanding, inducing, and/or otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit murder and/or robbery; Defendant and/or unknown co-conspirators aiding or abetting and/or conspiring by Defendants and/or unknown co-conspirators acting in concert throughout.

III. STATEMENT OF PERTINENT FACTS

The pertinent facts presented to the grand jury on November 29, 2017 and on April 18, 2018 against Mr. Wheeler are as follows:

1. On the night of August 8, 2017, the Defendant was inside the Shortline Express and was captured on surveillance wearing a firearm on his right hip. See Grand Jury Transcript of proceedings from November 29, 2017 (“GJT1”) at 110-112.
2. *At least* three other individuals were at the Shortline Express approximately 30-40 minutes prior to the shooting. GJT1 27.
3. However, the evidence showed that Mr. Wheeler claimed to have gotten out of the car after being at the Shortline Express and taken a bus home. GJT1 146:14-17.
4. Mr. Mason, the jogger, saw the White Grand Marquis and four dark skinned individuals near the victim’s home near midnight, but he provided only general descriptions and there was no actual identification. GJT1 47.
5. A “Winchester 45 Auto” was found at the murder scene. GJT1 101-102.
6. However, no “Winchester 45 Auto” head stamp cartridges were found during any of the searches in this case GJT1 101-102.

1 7. Moreover, the evidence presented to the grand jury on April 18, 2018 established
2 that the .45 caliber gun found at Mr. Wheeler’s residence was not used in the shooting.

3 8. Mitchell Dosche, a detective with the homicide detail of the Las Vegas
4 Metropolitan Police Department (“Metro”) testified that impounded lab item number 14, a
5 Taurus model .45 caliber handgun had been obtained during the course of the investigation
6 pursuant to a search warrant at Mr. Wheeler’s residence at Civic Center Drive. See Grand Jury
7 Transcript of the proceedings held on April 18, 2018 (“GJT2”) at 17-18.

8 9. Anya Lester, forensic scientist in the forensic laboratory in the firearms and
9 toolmarks analysis unit for Metro generated a report dated January 22, 2018 specifically
10 indicating that item number 14 (the .45 found at Mr. Wheeler’s address) fired none of the
11 evidence bullets and cartridge cases. GJT2 11:7-13.

12
13 **IV. LAW AND ARGUMENT**

14 It is expected that the State will argue that based on these facts, the State demonstrated a
15 reasonable inference that Defendant committed the crime of Murder with Use of a Deadly
16 Weapon. Such is not the case. The State presented insufficient evidence to the grand jury,
17 especially in light of Mr. Wheeler’s statements and the exculpatory evidence demonstrating that
18 Mr. Wheeler’s gun was not used in the crime.

19
20 **A. LEGAL STANDARD**

21 A defendant charged with an offense may challenge the probable cause to hold him to
22 answer through a petition for writ of habeas corpus. Gary v. Sheriff, Clark County, 96 Nev. 78,
23 605 P.2d 212 (1980); Cook v. State, 85 Nev. 692, 462 P.2d 523 (1969). NRS 171.206 requires
24 the magistrate to determine if probable cause exists to believe that an offense has been
25 committed and that the defendant has committed it. To establish probable cause to bind a
26 defendant over for trial, the State must show that (1) a crime has been committed, and (2) there is
27 probable cause to believe the defendant committed it. See NRS 171.206.

1 A suspect may not be bound over for trial unless the state demonstrates that the suspect
2 committed the charged crime. Sheriff, Clark County v. Richardson, 103 Nev. 180, 734 P.2d 735
3 (1987). It is recognized that the finding of probable cause to support a criminal charge may be
4 based on slight, even marginal, evidence because it does not involve a determination of the guilt
5 or innocence of an accused. Sheriff, Clark County v. Richardson, 103 Nev. 180, 734 P.2d 735
6 (1987). However, finding of probable cause requires far more than a trace of evidence; the facts
7 must be such as would lead a person of ordinary caution and prudence to believe and
8 conscientiously entertain a strong suspicion that the defendant committed the crime in question.
9 See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d 1324, 1326 (1972). Moreover, a finding of
10 probable cause may not rest on other than “legal evidence,” See Tetrou v. Sheriff, 89 Nev. 166,
11 169 (1973), and “due process of law requires adherence to the adopted and recognized rules of
12 evidence.” Goldsmith v. Sheriff, 85 Nev. 295, 303 (1969).

13
14
15 For the reasons set forth below, the Indictment here must be dismissed because the State
16 failed to present sufficient evidence against Mr. Wheeler to support the Indictment.

17 **A. INSUFFICIENT EVIDENCE**

18 It is recognized that the finding of probable cause to support a criminal charge may be
19 based on slight, even marginal, evidence because it does not involve a determination of the guilt
20 or innocence of an accused. Sheriff, Clark County v. Richardson, 103 Nev. 180, 734 P.2d 735
21 (1987). However, finding of probable cause requires far more than a trace of evidence; the facts
22 must be such as would lead a person of ordinary caution and prudence to believe and
23 conscientiously entertain a strong suspicion that the defendant committed the crime in question.
24 See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d 1324, 1326 (1972). Moreover, it is
25 respectfully submitted that a finding of probable cause may not rest on other than “legal
26 evidence,” See Tetrou v. Sheriff, 89 Nev. 166, 169 (1973), and “due process of law requires
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1 adherence to the adopted and recognized rules of evidence.” Goldsmith v. Sheriff, 85 Nev. 295,
2 303 (1969).

3 In the case at hand, the State’s evidence simply does not provide enough evidence to
4 support the charges. The facts against Mr. Wheeler are not such as would lead a person of
5 ordinary caution and prudence to believe and conscientiously entertain a strong suspicion that
6 Mr. Wheeler committed the crimes in question. See Graves v. Sheriff, 88 Nev. 436, 438, 498
7 P.2d 1324, 1326 (1972). Moreover, the State’s likely contention that the evidence provides a
8 reasonable inference that Defendant committed the crime of Murder with Use of a Deadly
9 Weapon contains no factual or legal support.
10

11 There was no proof that there were *only* four individuals present at the Shortline Express.
12 The video simply shows four individuals in the store. Additionally, the evidence demonstrates
13 that Mr. Wheeler claimed to have gotten out of the vehicle shortly *after being at the convenience*
14 *store*, and there were no identifications of any of the individuals present just before the shooting.
15 Thus, there’s no evidence that Mr. Wheeler was present at the scene of the shooting, but there is
16 evidence that Mr. Wheeler was not present at the time of the shooting.
17

18 This fact is based not only on Mr. Wheeler’s statements, but it is also supported by the
19 Winchester shell casings recovered at the scene. No Winchester casings were found at the
20 codefendants’ residences or at Mr. Wheeler’s addresses. Thus, the evidence would logically
21 demonstrate that there is another individual (**a *fifth man***) that had been present at the Shortline
22 Express (not seen on the video), and that individual had been the ***fourth man*** at the scene of the
23 shooting observed by the jogger. That fourth, unknown man would most likely be the one that
24 fired the gun containing the Winchester cartridges.
25

26 Thus, one the one hand, the State failed to present any evidence that Mr. Wheeler was
27 one of the individuals actually present at the scene. On the other hand, even if there were an
28

1 inference that Mr. Wheeler may have been present, there is no evidence supporting a conspiracy
2 to rob, lying in wait, or felony murder, nor is there any evidence that Mr. Wheeler aided or
3 abetted the crime. There is no inference from the evidence actually presented that Mr. Wheeler
4 was part of a preconceived plan. There are simply gaps in the evidence into which the State is
5 creating the notion of inference by *fiat* and without facts or evidence to support that inference.
6

7 Simply saying that “the most reasonable explanation is . . .” cannot be constituted as
8 evidence. The State presented no evidence or inference-supported-by-the-evidence establishing a
9 conspiracy, a robbery or an attempt to rob, period. Finding probable cause requires far more than
10 the “trace of evidence” the State presented to the grand jury. The facts against Mr. Wheeler are
11 not such as would lead a person of ordinary caution and prudence to believe and conscientiously
12 entertain a strong suspicion that Mr. Wheeler committed the crimes in question, and the
13 Indictment should therefore be dismissed. See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d
14 1324, 1326 (1972).
15

16 **V. CONCLUSION**

17 For the reasons stated herein, it is respectfully requests that this Court dismiss the
18 Indictment against Mr. Wheeler.

19 DATED this 17th day of May, 2018.

20 **JAMES J. RUGGEROLI**

21 By: /s/ James Ruggeroli
22 James J. Ruggeroli, Esq.
23 Nevada Bar No. 7891
24 601 South 7th Street
25 Las Vegas, Nevada 89101
26 *Attorney for Defendant*
27
28

DECLARATION OF JAMES J. RUGGEROLI, ESQ.

JAMES J. RUGGEROLI, ESQ., being first duly sworn under oath, deposes and states:

1. I am an attorney at law duly licensed to practice before this Court and make this Declaration of facts from personal knowledge which is known to me, except for those matters stated upon information and belief, and as to those matters, I believe same to be true.

2. I am counsel of record for the Defendant, DAVONTAE AMARRI WHEELER.

3. Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 17th day of May, 2018.

JAMES J. RUGGEROLI

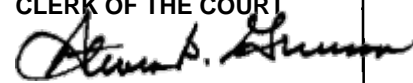
By: /s/ James Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of May 2018, I emailed a copy of the foregoing Petition to them at the following address:

motions@clarkcountyda.com

By: /s/ James Ruggeroli
James J. Ruggeroli, Esq.



RET
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #007135
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO: C-17-328587-3

-vs-

DEPT NO: XX

DAVONTAE AMARRI WHEELER,
#5909081

Defendant(s).

STATE'S RETURN WRIT OF HABEAS CORPUS

DATE OF HEARING: May 31, 2018
TIME OF HEARING: 8:30 A.M.

COMES NOW, JOE LOMBARDO, Sheriff of Clark County, Nevada, Respondent, through his counsel, STEVEN B. WOLFSON, Clark County District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, in obedience to a writ of habeas corpus issued out of and under the seal of the above-entitled Court on the 17th day of May, 2018, and made returnable on the 31st day of May, 2018, at the hour of 8:30 A.M., before the above-entitled Court, and states as follows:

1. Respondent admits the allegations of Paragraphs 1, 2, 7.
2. Respondent denies the allegations of Paragraph 3.
3. Paragraph numbers 4, 5, 6, 8 do not require admission or denial.

1 4. The Petitioner is in the actual or constructive custody of JOE
2 LOMBARDO, Clark County Sheriff, Respondent herein, pursuant to a Superseding
3 Indictment, a copy of which is attached hereto as Exhibit 1 and incorporated by reference
4 herein.

5 Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the
6 Petition be dismissed.

7 DATED this 29th day of May, 2018.

8 Respectfully submitted,

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

11 BY /s/GIANCARLO PESCI
12 GIANCARLO PESCI
13 Chief Deputy District Attorney
 Nevada Bar #007135

14
15 **POINTS AND AUTHORITIES**

16 **I. STATEMENT OF THE CASE**

17 Defendant Devontae Wheeler (“Defendant”) was arrested on August 15, 2017. On
18 August 17, 2017, Defendant was charged by way of Criminal Complaint in Justice Court
19 Department 12 as follows: COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category
20 B Felony – NRS 200.380, 199.480); COUNT 2 – ATTEMPT ROBBERY WITH USE OF A
21 DEADLY WEAPON (Category B Felony – 200.380, 193.330, 193.165); and COUNT 3 –
22 MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS 200.010,
23 200.030, 193.165).

24 On September 21, 2017, Defendant’s case was consolidated into Justice Court
25 Department 3, Case No. 17F14369C, so that Defendant’s case could be joined with those of
26 his co-defendants.

27 Prior to the preliminary hearing, the State indicted Defendant on the charges alleged in
28 the Criminal Complaint. Following the State’s presentation of evidence at the Grand Jury on

1 November 29, 2017 and December 13, 2017, Defendant was held to answer on all three counts.
2 On December 14, 2017, Defendant was formally charged by way of Indictment, as follows:
3 COUNT 5 – CONSPIRACY TO COMMIT ROBBERY; COUNT 6 – ATTEMPT ROBBERY
4 WITH USE OF A DEADLY WEAPON; and COUNT 7 – MURDER WITH USE OF A
5 DEADLY WEAPON. On December 19, 2017, Defendant pled not guilty and waived his right
6 to a speedy trial.

7 The Grand Jury transcripts were filed on January 1, 2018. At a status check on January
8 9, 2018, the Court granted defense counsel an additional 30 days from that day to file any
9 writs. On February 8, 2018, Defendant filed a Petition for Writ of Habeas Corpus. On March
10 2, 2018, the State filed a Return to Defendant's Petition for Writ of Habeas Corpus and on
11 March 8, 2018, Defendant filed a Reply to the State's Return.

12 On March 22, 2018, oral argument was held as to Defendant's Petition. Following
13 argument by both parties, the Court ordered the State to return to the Grand Jury to present
14 additional evidence regarding ballistic testing that was performed after the State's initial
15 presentation to the Grand Jury.

16 On April 18, 2018, the State presented additional evidence to the Grand Jury.
17 Specifically, the State presented testimony from Anya Lester, a forensic scientist in the
18 firearms/toolmark analysis unit of the Las Vegas Metropolitan Police Department
19 ("LVMPD"). The State also presented additional testimony from LVMPD Detective Mitch
20 Dosch. After presentation of the additional evidence, the Grand Jury returned a true bill on
21 the same three counts alleged in the original Indictment. On April 19, 2018, a Superseding
22 Indictment was filed charging Defendant with the same three counts alleged in the original
23 Indictment.

24 Defendant is charged with the Murder and Attempt Robbery of Gabriel Valenzuela on
25 August 9, 2017. The State also alleges that Defendant conspired with his co-defendants to
26 commit a robbery against Mr. Valenzuela on that day.

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1 **II. STATEMENT OF FACTS**

2 **A. Testimony from November 29, 2017**

3 The following is a summary of the relevant portions of testimony elicited during the
4 presentation of evidence to the Grand Jury on November 29, 2017.

5 **John Relato**

6 On August 9, 2017, John Relato ("Mr. Relato") resided with his cousin, Gabriel
7 Valenzuela at 5536 Dewey Drive in Las Vegas Nevada. See Grand Jury Transcript (Nov. 29,
8 2017) ("GJT") 84:18-85:6. In the early morning hours of August 9, 2017, Mr. Relato was
9 inside his home when he heard gunshots. GJT 85:7-23. Mr. Relato looked out his window
10 and saw his cousin, Gabriel Valenzuela laying in the driveway to their home. Id. Mr. Relato
11 went outside and realized that Mr. Valenzuela was bleeding from his head. Id. As Mr. Relato
12 proceeded outside, he called 911. GJT 86:21-22, 87:6. The initial call to 911 was placed at
13 12:11 a.m.¹ Mr. Relato did not see anyone in the area and he did not see who shot his cousin.
14 GJT 86:23-87:2. Mr. Relato testified that it was customary for his cousin to check the mail
15 and sit on the retaining wall in front of his home while he opened the mail. GJT 87:20-23.

16 **Lary Simms**

17 Larry Simms ("Dr. Simms") is a forensic pathologist with the Clark County Coroner's
18 Office. GJT 8:17-18, 9:11-13. Dr. Simms conducted the autopsy on Gabriel Valenzuela. GJT
19 9:22-10:1. Dr. Simms determined that Mr. Valenzuela suffered four gunshot wounds. One
20 shot entered the right side of Mr. Valenzuela's head and exited on the left side of Mr.
21 Valenzuela's forehead; another shot entered Mr. Valenzuela's left abdomen and did not exit;
22 another shot entered the outside of Mr. Valenzuela's right ankle, exiting on the inside of Mr.
23 Valenzuela's right ankle; the fourth shot entered the back of Mr. Valenzuela's left ankle and
24 came to rest in his leg. GJT 13:21-23, 15:20-24, 17:6-20. Dr. Simms concluded that the cause
25 of Mr. Valenzuela's death was multiple gunshot wounds and the manner of Mr. Valenzuela's
26 death was homicide. GJT 17:21-18:6.

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¹ This fact was testified to by Detective Mitch Dosch. GJT 91:10:13

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1 After the four individuals exited the store, they sat down at a table outside of the store.
2 GJT 25:22-26:11. Mr. Spahn continued to observe the individuals at which point he went
3 outside and saw the vehicle the four individuals were driving. Id. Mr. Spahn described the
4 vehicle as a white four door Mercury that looked like a Crown Victoria. GJT 26:12-15. Later
5 that night, police officers came into the store and told Mr. Spahn they were investigating a
6 murder; at that time, he told officers about the four individuals he observed. GJT 27:15-23.

7 During Mr. Spahn's testimony, the State introduced surveillance footage from the
8 Shortline Express capturing the four individuals as well as the vehicle in which they arrived.
9 GJT 29:20-31:15. The surveillance footage showed that the vehicle had paint damage on the
10 roof of the car that the first three numbers on the license plate number were 473. GJT 31:6-9,
11 96:11-22.

12 **James Newman**

13 James Newman testified that on August 4, 2017 (four days before Mr. Valenzuela was
14 murdered), he sold his white Mercury Grand Marquis to Co-Defendant Lofton-Robinson. GJT
15 38:22-39:14. The vehicle had a Nevada license plate number of 473-YZB, the same license
16 plate observed by Mr. Mason in front of the victim's home. See GJT 37:10-13, 50:3-21. When
17 Mr. Newman sold the vehicle, he allowed Co-Defendant Lofton-Robinson to keep the license
18 plates with the understanding they would be returned at a later time. GJT 39:25-40:1, 41:9-
19 17. James Newman identified the vehicle in Grand Jury Exhibits 28 and 30 (attached as
20 Exhibits 5 and 6, respectively to the State's Return to Writ of Habeas Corpus filed on Mar. 2,
21 2018) as the vehicle he sold to Co-Defendant Lofton-Robinson.⁴ Mr. Newman was able to
22 identify the vehicle based on its license plate number of 473-YZB which was depicted in Grand
23 Jury Exhibit 28 and because of the paint damage to the roof of the car which was depicted in
24 Grand Jury Exhibit 30. GJT 37:10-24.

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28 ⁴ Grand Jury Exhibits 28 and 30 are photographs of the white Mercury Grand Marquis taken inside LVMPD's lab after it was towed to that location. GJT 55:25-56:3. Grand Jury Exhibit 28 was also identified by Robert Mason as the vehicle he saw near the victim's home right before the murder occurred.

1 **Lora Cody**

2 Lora Cody ("Detective Cody") is a homicide detective with the Las Vegas Metropolitan
3 Police Department. GJT 135:11-19. Detective Cody was assigned to assist in the investigation
4 of Mr. Valenzuela's murder. GJT 135:20-22. A portion of her responsibilities involved
5 obtaining surveillance footage. GJT 135:24-3. As a result, Detective Cody responded to the
6 Shortline Express convenience store located near Dewey Drive. GJT 136:3-19. In viewing the
7 surveillance, detectives observed a white Mercury Grand Marquis with a NV license plate
8 bearing the first three numbers of 473. GJT 136:25-137:13. Based on an investigation into the
9 registration of the vehicle, officers were able to locate the vehicle. GJT 137:11-19. Ultimately,
10 a traffic stop was conducted, at which time Co-Defendant Lofton-Robinson was inside the car.
11 GJT 137:20-138:11.

12 **Mitch Dosch**

13 Mitch Dosch ("Detective Dosch") is a homicide detective with the Las Vegas
14 Metropolitan Police Department. GJT 90:16-19. Along with other detectives, Detective
15 Dosch was assigned to investigate Mr. Valenzuela's murder. GJT 91:5-9. Detective Dosch
16 testified that four cartridge casings were located at the scene of the murder: one .22 caliber
17 cartridge case and three .45 caliber cartridge cases. GJT 99:22-100:8. The .22 caliber cartridge
18 case bore a head stamp of "C." GJT 13:15. The .45 caliber cartridge cases bore three separate
19 head-stamps: R-P 45, NFCR, and WINCHESTER 45 AUTO. GJT 100:23-101:1, 101:18-21,
20 102:2-7.

21 Additionally, Detective Dosch testified regarding the substance of the surveillance
22 video retrieved from the Shortline Express convenience store depicting the events of which
23 Nikolas Spahn testified. GJT 95:17-23. Significantly, Detective Dosch testified that if one
24 were driving a vehicle from the Short Line Express to the scene of the murder, it would only
25 take a matter of minutes. GJT 95:9-16.

26 With respect to the vehicle that the four individuals were driving, the surveillance
27 footage revealed that the first three numbers on the license plate were 473. GJT 95:24-96:22.
28 Because this information matched the description of the vehicle at the scene of the crime and

1 because the four individuals in the surveillance footage were consistent with the four
2 individuals seen at the scene of the crime, detectives attempted to identify the individuals in
3 the footage. See id., GJT 96:23-97:21.

4 Following an investigation, Detective Dosch was able to identify the four individuals
5 depicted in the surveillance footage from the Shortline Express on August 8, 2017. Based on
6 his prior interactions with each of the defendants, Detective Dosch identified one of the
7 individuals in the surveillance footage as Co-Defendant Lofton-Robinson; in the surveillance
8 footage, Lofton-Robinson was wearing red shoes, blue jeans, and a long-sleeved green shirt.
9 GJT 105:17-106:5, 108:23-109:9. Detective Dosch also identified Co-Defendant Robertson
10 as one of the individuals in the surveillance footage. GJT 117:3-11. Finally, Detective Dosch
11 identified one of the individuals as Defendant Wheeler. GJT 112:22-113. In the surveillance
12 footage, Defendant Wheeler was wearing a white and black hat; a maroon top, and maroon
13 shoes. GJT 113:3-5, see Grand Jury Exhibits 9 and 10 (attached as Exhibits 7 and 8,
14 respectively, to the State's Return to Writ of Habeas Corpus filed on Mar. 2, 2018).

15 After identifying these individuals, detectives obtained multiple search warrants. Id.
16 During execution of the various search warrants, officers located multiple items of evidentiary
17 value.

18 A .22 caliber semi-automatic firearm was located at 6647 West Tropicana, an address
19 associated with Co-Defendant Raekwon Robertson. GJT 98:12-19, 100:16-22. While
20 searching 6647 West Tropicana, officers also located ammunition bearing the headstamp "C."
21 Id. This ammunition matches the .22 caliber cartridge case found at the murder scene. Id.

22 A search warrant was also obtained for 919 Bagpipe Court, an address associated with
23 Co-Defendant Lofton-Robinson. GJT 97:23-98:2, 98:24-99:2. During the search of that
24 residence, officers located a .45 caliber firearm and ammunition bearing a headstamp of R:P
25 45, which matched one of .45 caliber cartridge cases found at the scene of the murder, GJT
26 98:3-5, GJT 100:16-22.

27 A search warrant was also obtained to search Apartment F located at 3300 Civic Center
28 Drive. GJT 99:11-15. Detective Dosch testified that Defendant was associated with this

1 address. GJT 101:14-17. At that residence, officers located a .45 caliber firearm loaded with
2 ammunition bearing a headstamp of RP-45 auto. GJT 99:14-19, 101:2-17, 115:18-116:14.
3 This ammunition matches one of the .45 caliber cartridge cases found at the scene of the
4 murder. Id. Additionally, officers recovered a hat and a pair of maroon shoes both of which
5 matched the items worn by the individual in the surveillance footage who Detective Dosch
6 identified as being the Defendant. GJT 114:2-115:17, see Grand Jury Exhibit 37 and 38
7 (attached as Exhibits 9 and 10 respectively to the State's Return to Writ of Habeas Corpus
8 filed on Mar. 2, 2018). This is the same individual who is also seen on the surveillance footage
9 wearing a firearm. See Exhibits 1, 7 and 8, attached to the State's Return to Writ of Habeas
10 Corpus filed on Mar. 2, 2018.

11 **Ryan Jaeger**

12 Ryan Jaeger ("Detective Jaeger") is a homicide detective with the Las Vegas
13 Metropolitan Police Department assigned to assist in investigating the murder of Mr.
14 Valenzuela. GJT 142:14-25.

15 Detective Jaeger testified that at the area where the victim was picked up by medical
16 personnel, there was mail scattered about the ground. GJT 143:5-9, see Grand Jury Exhibits
17 16-18 (attached as 2-4, respectively to the State's Return to Writ of Habeas Corpus filed on
18 Mar. 2, 2018). Detective Jaeger also testified that he interviewed the Defendant after advising
19 him of his Miranda warnings. GJT 145:1-16. In his interview, Defendant was shown a
20 photograph of the vehicle captured in the surveillance at the Short Line Express and he
21 admitted to having been in the vehicle on August 8, 2017. GJT 145:25-146:2. He also
22 admitted that he owed a .45 caliber firearm and that he would carry the firearm in open carry
23 fashion on his right hip. GJT 145:19-21, 146:22-24. However, when shown footage from
24 inside the Shortline Express, Defendant denied that he had been present inside the store. GJT
25 146:25-147:5.

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1 **B. Testimony from April 18, 2018**

2 The following is a summary of the relevant portions of testimony elicited during the
3 presentation of evidence to the Grand Jury on April 18, 2018.

4 **Anya Lester**

5 Anya Lester is a forensic scientist with the firearms/toolmark analysis unit of the Las
6 Vegas Metropolitan Police Department. See Grand Jury Transcript (Apr. 18, 2018) ("GJT2")
7 7:21-23. In conjunction with the instant case, Ms. Lester analyzed various firearms and
8 firearms-related evidence, the results of which she compiled into a report. GJT2 7:11-20 (Ms.
9 Lester's report was introduced as Exhibit 2 at the Grand Jury Proceedings and is attached
10 hereto as Exhibit 2). Ms. Lester tested the following firearms: 1) a .22 long rifle caliber
11 semiautomatic pistol; 2) a Taurus model PT-145 Pro Millennium .45 caliber semiautomatic
12 pistol; and 3) a Star .45 auto caliber semiautomatic pistol. GJT2 8:13-23. Ms. Lester test fired
13 all three firearms and determined that they were all operable. GJT2 9:9-12. She also compared
14 the cartridge cases, bullets and bullet fragments fired from those three firearms to the cartridge
15 cases and bullets located at the crime scene. GJT2 9:13-21.

16 Following her analysis, Ms. Lester concluded that the .22 caliber cartridge case found
17 at the murder scene was fired from the .22 caliber pistol she tested. GJT2 9:13-21. The .22
18 caliber handgun tested by Ms. Lester was located, pursuant to a search warrant, at 6647 West
19 Tropicana, an address associated with Co-Defendant Raekwon Robertson. GJT 98:12-19,
20 100:16-22, GJT2 17:1-16.

21 Ms. Lester further concluded all three .45 caliber cartridge cases found at the murder
22 scene were fired by the Star .45 auto caliber semiautomatic pistol she tested. GJT2 11:14-21.
23 The Star .45 caliber firearm tested by Ms. Lester was located, pursuant to a search warrant, at
24 919 Bagpipe Court, an address associated with Co-Defendant Lofton-Robinson. GJT 97:23-
25 98:2, 98:3-99:2, 100:16-22, GJT2 18:3-18.

26 Finally, after testing the Taurus model PT-145 Pro Millennium .45 caliber
27 semiautomatic pistol, Ms. Lester determined that none of the evidence bullets or cartridge
28 cases she tested from the murder scene were fired from that particular gun. GJT2 11:4-13.

1 The Taurus firearm was located, pursuant to a search warrant, at 3300 Civic Center Avenue,
2 an address associated with Defendant. GJT 99:14-19, 101:2-17, 115:18-116:14, GJT2 17:17-
3 18:13.

4 LEGAL ARGUMENT

5 **I. STANDARD OF REVIEW**

6 It is well settled that a district court's function in reviewing a pretrial writ of habeas
7 corpus challenging the sufficiency of probable cause is to determine whether enough
8 competent evidence was presented to establish a reasonable inference that the accused
9 committed the offenses. State v. Fuchs, 78 Nev. 63 (1962). The finding of probable cause to
10 support a criminal charge may be based on "slight, even 'marginal' evidence . . . because it
11 does not involve a determination of the guilt or innocence of the accused." Sheriff v. Hodes,
12 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). "To commit an accused for trial, the State is not
13 required to negate all inferences which might explain his conduct, but only to present enough
14 evidence to support a reasonable inference that the accused committed the offense." Kinsey
15 v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971). Sheriff v. Miley, 99 Nev. 377
16 (1983). Thus, the court need not consider whether the evidence presented to a Grand Jury, or
17 presented at a preliminary hearing, may, by itself, sustain a conviction, because the State need
18 not produce the quantum of proof required to establish the guilt of the accused beyond a
19 reasonable doubt. See Hodes, 96 Nev. at 186, 606 P.2d at 180; Miller v. Sheriff, 95 Nev. 255,
20 592 P.2d 952 (1979); McDonald v. Sheriff, 87 Nev. 361, 487 P.2d 340, (1971).

21 The Nevada Supreme Court has explicitly held that a probable cause determination is
22 "not a substitute for trial," and that the "full and complete exploration of all facets of the case"
23 should be reserved for trial. Marcum v. Sheriff, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969);
24 Robertson v. Sheriff, 85 Nev. 681, 683, 462 P.2d 528, 529 (1969). If the evidence produced
25 establishes a reasonable inference that the defendant committed the crime, the probable cause
26 to order the defendant to answer in the district court has been established. Morgan v. Sheriff,
27 86 Nev. 23, 467 P.2d 600 (1970). Accordingly, the issue of guilt or innocence is not involved
28 and "the evidence need not be sufficient to support a conviction." Kinsey, 87 Nev. at 363

1 (citing Masklay v. State, 85 Nev. 111, 450 P.2d 790 (1969)); Hodes, 96 Nev. at 184, 606 P.2d
2 at 180.

3 II. ANALYSIS

4 The State presented sufficient evidence at the grand jury to hold Defendant to answer
5 to COUNT 5 - Conspiracy to Commit Robbery; COUNT 6 - Attempt Robbery with Use of a
6 Deadly Weapon; and COUNT 7 – Murder with Use of a Deadly Weapon.

7 In his Petition for Writ of Habeas Corpus, Defendant fails to address any of the specific
8 crimes alleged in the Indictment. Instead, Defendant makes a blanket statement that “the
9 State’s evidence simply does not provide enough evidence to support the charges.” Def.’s
10 PWHC at 9:3-5. Contrary to Defendant’s claim and as set for below, the State provided
11 sufficient evidence to hold Defendant to answer on all counts.

12 A. Sufficient, Legal, Evidence was Presented to the Grand Jury to Establish 13 Probable Cause that Defendant Unlawfully Killed Gabriel Valenzuela and to 14 hold Defendant to answer to the charged of Murder with Use of a Deadly 15 Weapon

16 An open murder charge includes murder in the first degree and all necessarily included
17 offenses, such as manslaughter where less than all the elements of first degree murder are
18 present. See Miner v. Lamb, 86 Nev. 54, 464 P.2d 451 (1970); Parsons v. State, 74 Nev. 302,
19 329 P.2d 1070 (1958); State v. Oschoa, 49 Nev. 194, 242 P.2d 582 (1926); NRS 175.501.
20 First-degree murder and Second-degree murder are not separate and distinct crimes which
21 must be pleaded accordingly. See Thedford v. Sheriff, 86 Nev. 741, 476 P.2d 25 (1970);
22 Howard v. Sheriff, 83 Nev. 150, 425 P.2d 596 (1967). Thus, there need not be evidence of
23 first degree murder to support an open charge. See Wrenn v. Sheriff, 87 Nev. 85, 482 P.2d
24 289 (1971).

25 “[T]he presence of malice is a question of fact which bears directly on the guilt or
26 innocence of a defendant and upon the degree of the crime charged. It is not a question to be
27 determined by the magistrate at a preliminary examination--it is a question to be determined
28 by the trier of fact at the trial of the case.” Thedford v. Sheriff, 86 Nev. 741, 476 P.2d 25 (1970)

(citing State v. Acosta, 49 Nev. 184, 242 P.2d 316 (1926)). “Neither a preliminary hearing, nor a hearing upon a petition for a writ of habeas corpus is designed as a substitute for this function (a trial).” Id. at 28 (quoting State v. Fuchs, 78 Nev. 63, 368 P.2d 869 (1962)).

Additionally, pursuant to NRS 200.030, a murder which is committed during the perpetration or attempted perpetration of a robbery is murder of the first degree. Pursuant to the Felony Murder Rule, if one conspires to commit a robbery, he is liable for the murder perpetrated during the course of the attempted robbery. Garner v. State, 116 Nev. 770, 782 (2000).

Defendant and his co-defendants are charged alternatively with open murder and felony murder. Additionally, under the felony murder, the State alleged multiple theories, i.e., that Defendant directly committed the crime; that Defendant aided and abetted in the commission of the crime; and/or that Defendant conspired to commit the crime of robbery and/or murder.

The evidence presented at Grand jury establishes that on the night of August 8, 2017 the Defendant was inside the Shortline Express convenience store sometime between 11:20-11:38 p.m. At that time, the Defendant was captured on surveillance wearing a firearm on his right hip. The convenience store where Defendant was seen wearing a firearm is only a matter of minutes away from the scene of the murder. Although Defendant denied that he was inside the Shortline Express on August 8, 2017, he did admit that owns a .45 caliber firearm and that he wears it in an open carry fashion. Additionally, Defendant was identified by Detective Dosch as the individual wearing the firearm. This identification was corroborated by items found during execution of a search warrant at 3300 Civic Center Drive (an address associated with Defendant). Specifically, officers found a pair of maroon shoes and a white hat which constitute an exact match to those worn by Defendant in the surveillance footage.

In addition, while Defendant was inside the store, he was with three other black males who were all seen in a white Mercury Grand Marquis bearing a license plate beginning with the numbers 473. Less than 30 minutes later, at around midnight, Mr. Mason saw four black men standing in front of the victim's home. Mr. Mason saw the four men standing near a vehicle that he described as a white Crown Victoria with license plate number 473YZB. Mr.

1 Newman testified that he sold that exact car to Co-Defendant Lofton-Robinson four days
2 before Mr. Valenzuela's murder. Based on the surveillance footage from the Shortline Express
3 in conjunction with the testimony of Mr. Mason (the jogger), Mr. Spahn (the convenience store
4 clerk) and Mr. Newman (the vehicle's prior owner), there can be no dispute that the vehicle
5 seen by Mr. Mason in front of the victim's house is the same vehicle captured on surveillance
6 footage at the Shortline Express.

7 Not only does this evidence create a reasonable inference Defendant was at the scene
8 of the murder, it places him there in very close proximity to the murder. The first call to 911
9 was made at 12:11; just minutes after Mr. Mason saw four black men and the white vehicle in
10 front of the victim's home. Additionally, Defendant was seen in possession of a firearm
11 approximately 30 minutes before the killing. Furthermore, in a search warrant of 3300 Civic
12 Center Drive (an address associated with Defendant), officers located a .45 caliber firearm
13 with ammunition bearing the headstamp RP-45 auto. This headstamp matches one of the .45
14 caliber shell cases found at the scene of the murder. Just because the State presented evidence
15 that the .45 caliber cartridge cases found at the scene were fired from a different .45 caliber
16 firearm, i.e., the .45 caliber firearm found at the residence associated with Co-Defendant
17 Lofton-Robinson, does not absolve Defendant of guilt in the instant case. In fact, given that
18 the same ammunition was located at Defendant's house and in Defendant's firearm supports
19 an inference that he provided the ammunition to Co-Defendant Lofton-Robinson.

20 In his PWHC, Defendant argues the Defendant was not present at the murder scene and
21 that a fifth mystery person was one of the four individuals seen by Mr. Mason as he jogged
22 through the neighborhood. Def.'s PWHC at 9. Defendant's argument as to the existence of a
23 fifth mystery man is wholly unsupported by the evidence. In fact, the surveillance footage
24 admitted at the State's first presentation directly contradicts Defendant's argument regarding
25 the existence of a fifth individual. A view of the surveillance footage shows that the vehicle
26 in question arrived at the Shortline Express, at which time four individuals exited the vehicle
27 and entered the convenience store. See Exhibit 1 attached to the State's Return to Writ of
28 Habeas Corpus filed on Mar. 2, 2018. These individuals were identified by Detective Dosch

as being Defendant and his co-defendants. GJT 105:17-106:5, 108:23-109:9, 117:3-11, 112:22-113. While inside the convenience store, the Defendant and his co-defendants are observed together and are not actively communicating with anyone else. See Exhibit 1 attached to the State's Return to Writ of Habeas Corpus filed on Mar. 2, 2018. At no time is a fifth person visible in the vehicle or seen associating with the defendants inside the store. Id. The surveillance footage later shows all four individuals (including Defendant) getting back into the vehicle. Id. At no point does the footage show Defendant getting back out of the vehicle or anyone else getting into the vehicle. Id. The only evidence that Defendant left the convenience store (after denying that he was in the surveillance footage) is his own self-serving statement that he took the bus home.

Defendant further argues the existence of a fifth mystery man based on the fact police located a cartridge case at the scene of the murder bearing a headstamp of “WINCHESTER 45 AUTO” but did not locate any such ammunition at any of the defendant’s homes. Def.’s PWHC at 9:18-25. This argument is completely illogical given Ms. Lester’s testimony that all three .45 caliber cartridge cases found at the murder scene were fired from the same firearm, i.e., the firearm located at the address associated with Co-Defendant Lofton-Robinson. GJT2 11:14-21.

At this stage, the State is not required to negate all possible scenarios surrounding the death of Mr. Valenzuela. The State is only required to demonstrate a reasonable inference that the defendant committed the crime. Based on the evidence presented, the State demonstrated a reasonable inference that Defendant committed the crime of Murder with Use of a Deadly Weapon.

B. Sufficient Evidence was Presented to the Grand Jury to Establish Probable Cause that Defendant committed the Crimes of Conspiracy to Commit Robbery and Attempt Robbery with Use of a Deadly Weapon

Conspiracy is “an agreement between two or more persons for an unlawful purpose.” Doyle v. State, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996). The conspiracy agreement may be inferred by a “coordinated series of acts” in furtherance of the underlying offense. Doyle,

1 112 Nev. at 894; see also Gaitor v. State, 106 Nev. 785, 790 n.1, 801 P.2d 1372, 1376 n.1
2 (1990); overruled on other grounds by, Barone v. State, 109 Nev. 1168, 1171, 866 P.2d 291,
3 292 (1993). Nevada adheres to the Pinkerton theory of conspiracy liability which holds that
4 the overt act of one is the act of all even without a specific new agreement, so long as the
5 "partnership in crime" continues. See, State v. Wilcox, 105 Nev. 434, 436, 776 P.2d 549, 550
6 (1989); Pinkerton v. United States, 328 U.S. 640, 646-647, 66 S.Ct. 1180, 1183-1184 (1946);
7 see also, Goldsmith v. Sheriff, 85 Nev. 295, 306, 454 P.2d 86, 93 (1969); citing, VanRiper v.
8 United States, 13 F.2d 961, 967 (2nd Cir. 1926), cert. denied sub nom., Ackerson v. United
9 States, 273 U.S. 702, 47 S.Ct. 102 (1926). Therefore, in Nevada the acts of one conspirator in
10 furtherance of the conspiracy are the acts of all, and each and every individual will be held
11 criminally responsible for the acts of the other.

12 While the standard at trial is much greater than before the Grand Jury, what the Nevada
13 Supreme Court believes is necessary for conviction in a conspiracy is illustrative of the instant
14 case:

15 [C]onspiracy is seldom susceptible of direct proof and is usually
16 established by inference from the conduct of the parties." Gaitor v.
17 State, 106 Nev. 785, 790 n. 1, 801 P.2d 1372, 1376 n. 1 (1990)
18 (quoting State v. Dressel, 85 N.M. 450, 451, 513 P.2d 187, 188
19 (1973)). In particular, a conspiracy conviction may be supported by
20 "a coordinated series of acts," in furtherance of the underlying
21 offense, "sufficient to infer the existence of an agreement." Id.

22 Doyle, 112 Nev. at 894 (overruled on other grounds by Kaczmarek v. State, 120 Nev. 314,
23 91 P.3d 16 (2004)).

24 Similarly, the Supreme Court of Nevada has recognized that "intent can rarely be
25 proven by direct evidence of a defendant's state of mind, but instead is inferred by the jury
26 from the individualized, external circumstances of the crime..." Sharma v. State, 118 Nev.
27 648, 659, 56 P.3d 868, 874 (2002), see also Hernandez v. State, 118 Nev. 513, 531, 50 P.3d
28 1100, 1112 (2002) ("[C]ircumstantial evidence alone may support a conviction.").

1 Robbery is defined as the unlawful taking of the personal property of another by means
2 of force or violence. NRS 200.380. An act done with intent to commit a crime, and tending
3 but failing to accomplish it, is an attempt to commit that crime. State v. Verganadis, 50 Nev.
4 1, 4 (1926) (internal citation omitted). The act done must be an overt act and must go beyond
5 mere preparation to commit the crime and tend to accomplish it. Id. at 4-5.

6 Accordingly, as to COUNT 5 – Conspiracy to Commit Robbery, the State must produce
7 slight or marginal evidence that Defendant entered into an agreement with his co-conspirators
8 to rob Mr. Valenzuela. As to COUNT 6 - Attempt Robbery with Use of a Deadly Weapon,
9 the State to produce slight or marginal evidence that the Defendant committed an overt act
10 with the intent to take personal property from Gabriel Valenzuela and that said act was
11 committed with a firearm. As COUNT 6 is Barren pled, the State need not prove that
12 Defendant is the person who directly committed the crime. Rather, Defendant can also be held
13 to answer if he aided and abetted in the attempted robbery of Mr. Valenzuela or if he conspired
14 to commit the crime.

15 Here, the evidence to establish that Defendant conspired to commit a robbery against
16 Mr. Valenzuela largely overlaps with the evidence that he attempted to rob Mr. Valenzuela.
17 Accordingly, the State will address these counts two together. For obvious reasons, the victim
18 in the instant case did not testify that Defendant attempted to take property from him.
19 However, the attendant circumstances indicate by slight or marginal evidence that Defendant
20 did attempt to rob Mr. Valenzuela and that he did so using a deadly weapon. First, it is
21 undisputed that a deadly weapon was used in the commission of the crimes committed against
22 Mr. Valenzuela as he was shot and killed with a firearm. Second, as to the conspiracy and
23 attempted robbery, the evidence shows that Defendant and his co-defendants were lying in
24 wait in a residential neighborhood in the middle of the night. The most reasonable explanation
25 for this fact is that the Defendant and his co-defendants were looking for a victim to rob.
26 Especially given the time of night, there is no other logical explanation for the Defendant to
27 be standing outside the victim's home and there is absolutely no evidence that the Defendant
28 or any of the co-defendants knew Mr. Valenzuela. This theory is further corroborated by Mr.

1 Mason's testimony that the four individuals he saw were so suspicious that he felt compelled
2 to call his wife to advise her to lock the door and call the police. GJT 51:18-52:1.

3 Additionally, Mr. Valenzuela's items were strewn about the ground. This supports an
4 inference that the Defendant and/or his co-defendants struggled with the victim and that these
5 items fell to the ground as they attempted to obtain Mr. Valenzuela's property.

6 Furthermore, the Defendant and his co-defendants all left the gas station together and
7 drove to the scene of the murder in the same vehicle. After the crime was committed, all four
8 individuals presumably left together in the same vehicle, given that Mr. Relato did not see
9 anyone in the area after his cousin was shot. Additionally, none of the offenders were present
10 on scene when police arrived in order to explain what happened.

11 This evidence clearly demonstrates probable cause to show a coordinated series of acts
12 sufficient to infer the existence of an agreement between the defendants and to support the
13 existence of a conspiracy. Defendant was not an innocent bystander simply along for the ride.
14 Defendant was present at the murder scene and had a gun in his possession. Defendant could
15 have exited the vehicle prior to the crime or he could have removed himself from the situation
16 after the murder. However, Defendant remained with his co-conspirators throughout the
17 entirety of the crime. Finally, the fact that Defendant denies being inside the Shortline Express
18 with his co-defendants, despite clear evidence to the contrary, demonstrates consciousness of
19 guilt.

20 Although there may be other explanations for the evidence presented, the State is not
21 required to negate all possible inferences to explain away the Defendant's behavior. The State
22 simply must show an inference that Defendant committed the crimes alleged.

23 In Bails v. State, 92 Nev. 95, 545 P.2d 1155 (1976), the Nevada Supreme Court
24 elaborated further on circumstantial evidence in citing to Holland v. United States, 348 U.S.
25 121, 75 S. Ct. 127 (1955), a wholly circumstantial evidence case:

26 Circumstantial evidence in this respect is intrinsically no different
27 from testimonial evidence. Admittedly, circumstantial evidence
28 may in some cases point to a wholly incorrect result. Yet this is
equally true of testimonial evidence. In both instances, a jury is
asked to weigh the chances that the evidence correctly points to
guilt against the possibility of inaccuracy or ambiguous inference.

1 In both, the jury must use its experience with people and events in
2 weighing the probabilities. If the jury is convinced beyond a
reasonable doubt, we can require no more.

3 Bails, 92 Nev. at 97, 545 P.2d at 1156.

4 While the evidence as to COUNTS 5 and 6 is circumstantial, when considered in its
5 totality, it leads to an inference that the Defendant and his co-defendants attempted to rob Mr.
6 Valenzuela and that they conspired to do so in advance. Such evidence is enough to establish
7 probable cause in the instant case.

8 **CONCLUSION**

9 Based on the foregoing, the State respectfully requests that Defendant's Petition for
10 Writ of Habeas Corpus be DENIED in its entirety.

11 DATED this 29TH day of May, 2018.

12 Respectfully submitted,

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

15 BY /s/GIANCARLO PESCI
16 GIANCARLO PESCI
17 Chief Deputy District Attorney
18 Nevada Bar #7135
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing, was made this 29th day of
May, 2018 by Electronic Filing to:

JAMES RUGGEROLI, ESQ.
Email: ruggeroli@icloud.com

BY: /s/ Deana Daniels
Secretary for the District Attorney's Office

EXHIBIT '1'

ORIGINAL

1 IND

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 GIANCARLO PESCI
6 Chief Deputy District Attorney
7 Nevada Bar #007135
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

APR 19 2018

BY 
DULCE MARIE ROMEA, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

CASE NO: C-17-328587-3

11 -vs-

DEPT NO: XX

12 DEMARIO LOFTON-ROBINSON, aka,
13 Demario Loftonrobinson, #5318925
14 RAEKWON SETREY ROBERTSON,
15 aka, Raekwon Robertson, #8252804
16 DAVONTAE AMARRI WHEELER,
17 #5909081

SUPERSEDING
INDICTMENT

18 Defendant(s).

17 STATE OF NEVADA }
18 COUNTY OF CLARK } ss.

19 The Defendant(s) above named, DEMARIO LOFTON-ROBINSON, aka, Demario
20 Loftonrobinson, RAEKWON SETREY ROBERTSON, aka, Rackwon Robertson,
21 DAVONTAE AMARRI WHEELER, accused by the Clark County Grand Jury of the crime(s)
22 of BURGLARY WHILE IN POSSESSION OF A FIREARM (Category B Felony - NRS
23 205.060 - NOC 50426); CONSPIRACY TO COMMIT ROBBERY (Category B Felony - NRS
24 200.380, 199.480 - NOC 50147); ROBBERY WITH USE OF A DEADLY WEAPON
25 (Category B Felony - NRS 200.380, 193.165 - NOC 50138); ATTEMPT ROBBERY WITH
26 USE OF A DEADLY WEAPON (Category B Felony - NRS 200.380, 193.330, 193.165 - NOC
27 50145) and MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS
28

C-17-328587-3
SIND
Superseding Indictment
4739805



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PA0352

1 200.010, 200.030, 193.165 - NOC 50001), committed at and within the County of Clark, State
2 of Nevada, on or between August 2, 2017 and August 9, 2017, as follows:

3 COUNT 1 - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON

4 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
5 about August 2, 2017 willfully, unlawfully, and feloniously enter, with intent to commit a
6 felony, to wit: robbery, that certain business occupied by FIESTA DISCOUNT MARKET
7 AND SMOKE SHOP, located at 701 West Charleston Boulevard, Las Vegas, Clark County,
8 Nevada, while possessing and/or gaining possession of a handgun, a deadly weapon, during
9 the commission of the crime and/or before leaving the structure.

10 COUNT 2 - CONSPIRACY TO COMMIT ROBBERY

11 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, did on or
12 about August 2, 2017 willfully, unlawfully, and feloniously conspire with ANTONIO JONES
13 to commit a robbery, by the conspirators committing the acts as set forth in Counts 3 and 4,
14 said acts being incorporated by this reference as though fully set forth herein.

15 COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

16 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, along with
17 ANTONIO JONES, did on or about August 2, 2017 willfully, unlawfully, and feloniously take
18 personal property, to wit: a wallet, cellular telephone, and makeup case, from the person of
19 MARIAH ROMATKO, or in her presence, by means of force or violence, or fear of injury to,
20 and without the consent and against the will of MARIAH ROMATKO, with use of a deadly
21 weapon, to wit: a handgun, the Defendant being criminally liable under one or more of the
22 following principles of criminal liability, to wit: (1) by directly committing this crime; and/or
23 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
24 committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise
25 procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to commit this
26 crime, with the intent that this crime be committed.

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1 COUNT 4 - ROBBERY WITH USE OF A DEADLY WEAPON

2 Defendant RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, along with
3 ANTONIO JONES, did on or about August 2, 2017 willfully, unlawfully, and feloniously take
4 personal property, to wit: U.S. Currency, from the person of AGNES STEIN, or in her
5 presence, by means of force or violence, or fear of injury to, and without the consent and
6 against the will of AGNES STEIN, with use of a deadly weapon, to wit: a handgun, the
7 Defendant being criminally liable under one or more of the following principles of criminal
8 liability, to wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the
9 commission of this crime, with the intent that this crime be committed, by counseling,
10 encouraging, hiring, commanding, inducing and/or otherwise procuring the other to commit
11 the crime; and/or (3) pursuant to a conspiracy to commit this crime, with the intent that this
12 crime be committed.

13 COUNT 5 - CONSPIRACY TO COMMIT ROBBERY

14 Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson,
15 RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI
16 WHEELER, did, on or about August 9, 2017, willfully, unlawfully, and feloniously conspire
17 with each other and/or unknown co-conspirators to commit a robbery, by the Defendants
18 and/or unknown co-conspirators committing the acts as set forth in Count 6, said acts being
19 incorporated by this reference as though fully set forth herein.

20 COUNT 6 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON

21 Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson,
22 RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI
23 WHEELER, did, on or about August 9, 2017, willfully, unlawfully, and feloniously attempt to
24 take personal property, to wit: U.S. Currency and/or property, from the person of GABRIEL
25 VALENZUELA, or in his presence, by means of force or violence, or fear of injury to, and
26 without the consent and against the will of GABRIEL VALENZUELA, by pointing a firearm
27 at the said GABRIEL VALENZUELA and demanding said U.S. Currency and/or property,
28 with use of a deadly weapon, to wit: a firearm, the Defendants being criminally liable under

1 one or more of the following principles of criminal liability, to wit: (1) by directly committing
2 this crime; and/or (2) by aiding or abetting in the commission of this crime, with the intent that
3 this crime be committed, by counseling, encouraging, hiring, commanding, inducing and/or
4 otherwise procuring the other to commit the crime; and/or (3) pursuant to a conspiracy to
5 commit this crime, with the intent that this crime be committed, Defendant and/or DEMARIO
6 LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON ROBERTSON
7 and/or unknown co-conspirators aiding or abetting and/or conspiring by Defendant and/or
8 DEMARIO LOFTON-ROBINSON and/or DESHAWN ROBINSON and/or RAEKWON
9 ROBERTSON and/or unknown co-conspirators acting in concert throughout.

10 COUNT 7 - MURDER WITH USE OF A DEADLY WEAPON

11 Defendants DEMARIO LOFTON-ROBINSON, aka, Demario Loftonrobinson,
12 RAEKWON SETREY ROBERTSON, aka, Raekwon Robertson, and DAVONTAE AMARRI
13 WHEELER, did, on or about August 9, 2017, willfully, unlawfully, feloniously and with
14 malice aforethought, kill GABRIEL VALENZUELA, a human being, with use of a deadly
15 weapon, to wit: a firearm, by shooting at and into the body of the said GABRIEL
16 VALENZUELA, the said killing having been (1) willful, deliberate, and premeditated, and/or
17 (2) committed during the perpetration or attempted perpetration of a robbery, the Defendants
18 being criminally liable under one or more of the following principles of criminal liability, to
19 wit: (1) by directly committing this crime; and/or (2) by aiding or abetting in the commission
20 of this crime, with the intent that this crime be committed, by counseling, encouraging, hiring,

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1 commanding, inducing, and/or otherwise procuring the other to commit the crime; and/or (3)
2 pursuant to a conspiracy to commit murder and/or robbery; Defendants and/or unknown co-
3 conspirators aiding or abetting and/or conspiring by Defendants and/or unknown co-
4 conspirators acting in concert throughout.

5 DATED this 18th day of April, 2018.

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

9 BY

10 GIANCARLO PESCI
11 Chief Deputy District Attorney
12 Nevada Bar #007135

13 ENDORSEMENT: A True Bill
14

15 
16 Foreperson, Clark County Grand Jury
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Names of Witnesses and testifying before the Grand Jury:

CODY, LORA - LVMPD #7294

DOSCH, MITCHELL - LVMPD #7907

FLETCHER, SHAWN - LVMPD #5221

JAEGER, RYAN - LVMPD #5587

LESTER, ANYA, LVMPD

MASON, ROBERT - c/o CCDA, 200 Lewis Avenue, LV, NV 89101

NEWMAN, JAMES - c/o CCDA, 200 Lewis Avenue, LV, NV 89101

RELATO, JOHN - c/o CCDA, 200 Lewis Avenue, LV, NV 89101

SIMMS, DR. LARY - ME#0002

SPAHN, NICKOLAUS - SHORT LINE EXPRESS - 7325 S. JONES BLVD, LV NV

SPEAS, WILLIAM - LVMPD #5228

STEIN, AGNES - FIESTA DISCOUNT MARKET-7010 W. CHARLESTON BLVD, LV NV

TAPAY, GLEZZELLE, LVMPD #15709

Additional Witnesses known to the District Attorney at time of filing the Indictment:

CHARLTON, NOREEN - LVMPD #13572

CUSTODIAN OF RECORDS - CCDC

CUSTODIAN OF RECORDS - LVMPD COMMUNICATIONS

CUSTODIAN OF RECORDS - LVMPD RECORDS

CUSTODIAN OF RECORDS - SHORTLINE EXPRESS - 7325 S. JONES BLVD, LV NV

ROMATKO, MARIAH - c/o CCDA, 200 Lewis Avenue, LV, NV 89101

17BGJ017A-C/17F14369A-C/mc - GJ
LVMPD EV#1708024571; 1708090029
(TK3)

EXHIBIT '2'

Las Vegas Metropolitan Police Department Forensic Laboratory Report of Examination Firearms & Toolmarks		Distribution Date: January 22, 2018 Agency: LVMPD Location: Homicide & Sex Crimes Bureau Primary Case #: 170809-0029 Incident: Robbery WDW , Homicide Requester: Ryan M Jaeger Lab Case #: 17-07217.5 Supplemental 1
Subject(s):	None Listed	

The following evidence was examined and results are reported below.

Lab Item #	Impound Pkg #	Impound Item #	Description
1*	005158-1	1	One "C" .22 Long / Long Rifle cartridge case
2*	005158-1	2	One "R-P" .45 Auto cartridge case
3*	005158-1	3	One "FC NR" .45 Auto cartridge case
4*	005158-1	4	One "WINCHESTER" .45 Auto cartridge case
11	015709-1	1	One Taurus model PT-22 .22 Long Rifle caliber semiautomatic pistol, serial number: ANC29177
12	015709-1	1A	One magazine
14	013572-1	1	One Taurus model PT145 PRO Millennium .45 Auto caliber semiautomatic pistol, serial number: NCY05584
15	013572-2	1A	One magazine
17	005158-2	5	One bullet
20	005228-1	1	One Star unknown model .45 Auto caliber semiautomatic pistol, serial number: 1949428
21	005228-1	2	One magazine
22	009618-6	12	Metal fragments
23	009618-6	13	One bullet
24	009618-6	14	One bullet

*Items previously examined; see the laboratory report generated under this event number for further information.

Results and Conclusions:

Firearms

The Taurus pistol (Lab Item 11) was examined, test fired and found to be operational with no noted malfunctions. This pistol has a barrel length of approximately 2 ¾ inches, an overall length of approximately 5 ¾ inches and a trigger pull of 7 ¾ - 8 ¼ pounds. The submitted magazine (Lab Item 12) fits and functions in this pistol and has a capacity of ten cartridges. This pistol and magazine were swabbed for DNA prior to test firing and two swabs were booked into the evidence vault.

The Taurus pistol (Lab Item 14) was examined, test fired and found to be operational with no noted malfunctions. This pistol has a barrel length of approximately 3 ¼ inches and an overall length of approximately 6 ¼ inches. It has trigger pulls of 5 – 5 ½ pounds single action and 8 – 8 ¼ pounds double action. The submitted magazine (Lab Item 15) fits and functions in this pistol has a capacity of ten cartridges.

The Star pistol was examined, test fired and found to be operational with no noted malfunctions. This pistol has a barrel length of approximately 4 inches, an overall length of approximately 7 ¼ inches and a trigger pull of 6 ¾ - 7 pounds. The submitted magazine (Lab Item 21) fits and functions in this pistol has a capacity of six cartridges.

Comparisons

The evidence cartridge cases and bullets were examined and microscopically compared to the test fired cartridge cases and bullets with the following results:

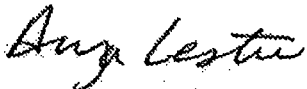
- The cartridge case (Lab Item 1) was identified as having been fired by the Taurus pistol (Lab Item 11).
- The three cartridge cases (Lab Items 2-4) were identified as having been fired by the Star pistol.
- The two bullets (Lab Items 17 and 24) were identified as having been fired by the Star pistol.
- The bullet (Lab Item 23) shared similar general rifling characteristics with the Taurus pistol (Lab Item 11). Damage to this bullet and a lack of microscopic information preclude an identification to or elimination from this pistol.
- The metal fragments are of no value for microscopic comparisons.

NIBIN

Representative images of a test fired cartridge case from the Taurus pistol (Lab Item 14) were entered into the National Integrated Ballistic Information Network (NIBIN). Associations to other events in the network will be reported separately.

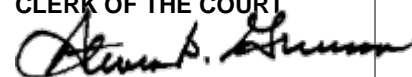
The evidence is returned to secure storage.

---This report does not constitute the entire case file. The case file may be comprised of worksheets, images, analytical data and other documents.---



Anya Lester, #13771
Forensic Scientist II

- END OF REPORT -



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Attorney for Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA

Plaintiff,

vs.

DAVONTAE AMARRI WHEELER,
#5909081,

Defendant.

Case No. C-17-328587-3

Dept No. XX

DATE OF HEARING: March 20, 2018

REPLY TO STATE'S RETURN TO WRIT OF HABEAS CORPUS

COMES NOW, the Defendant, DAVONTAE AMARRI WHEELER, by and through his attorney of record, JAMES J. RUGGEROLI, ESQ., and submits the following Reply to State's Return to Writ of Habeas Corpus. This supplement and reply is made and based upon the attached points and authorities and the Declaration of James J. Ruggeroli, the papers and pleadings on file herein, together with the arguments of counsel to be heard at the time of the hearing on this matter.

DATED this 8th day of June, 2018.

JAMES J. RUGGEROLI

By /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
601 South 7th Street
Las Vegas, Nevada 89101
Attorney for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

In contrast to the State's Return, (1) there is clearly insufficient evidence against Mr. Wheeler ("Wheeler") because the evidence does not support a reasonable inference that (A) Wheeler killed Gabriel Valenzuela or that (B) Wheeler conspired to rob or attempted to rob Mr. Valenzuela. Due to the presentation of insufficient evidence, and in absence of a *reasonable* inference based on the evidence presented, therefore, (C) probable cause does not establish that Wheeler committed and of the crimes charged. (2) The State failed to present exculpatory evidence to the grand jury that there was a fifth person connected to case, so the Indictment must be dismissed.

II. THE STATE'S RETURN AND DEFENDANT'S REPLY**STATE'S ALLEGED FACTS****WHEELER'S REPLY AND FACTS**

A. SUFFICIENT EVIDENCE THAT DEFENDANT UNLAWFULLY KILLED GABRIEL VALENZUELA: There is a reasonable inference of guilt because:	A. NO <i>REASONABLE INFERENCE</i> DEFENDANT KILLED GABRIEL VALENZUELA CAN BE MADE BASED ON THE FACTS PRESENTED HERE
1. The Defendant was in the Shortline Express between 11:20-11:38 p.m. State's Return ("RS") 13:13-15.	1. The evidence showed that the time was only an estimate. GJT 29:1. Moreover, the evidence showed that Wheeler claimed he got out of the car and took a bus home before the car would have gone to the scene of the shooting. GJT 146:13-17.
2. The Defendant was on video at the Shortline Express wearing a firearm. RS	2. Yet, the gun was not used in the shooting. GJT 2 at 11:7-13; 17-18.

13:15-16.	
3. Shortline Express is minutes away from murder scene. RS 13:16-17.	3. The evidence did not show the actual distance. GJT 95: 11-13. However, there was more than enough time to drop Wheeler off near a bus stop prior to the shooting, as Wheeler claimed.
4. The Defendant denied being inside Shortline Express, but admitted owning .45 caliber firearm and that he wears it open carry fashion. RS 13:17-19.	4. Wheeler admitted owning .45 caliber hand gun; he admitted to being in the vehicle, but he stated he was not involved in any murder (GJT 145:19-21), and he claimed that he had got out of the vehicle and took a bus home without going to the murder scene. GJT 146 14-17.
5. While in the store, Defendant was with three other black males who were all seen in the white Mercury Grand Marquis. RS 13:24-26.	5. There were FIVE individuals at the Shortline Express. There were four individuals in the store, but there was another individual in the car outside, unobservable on the surveillance video, inside the Grand Marquis. Strangely this evidence was not presented to the grand jury. <u>See</u> below.
6. Less than 30 minutes later, at around midnight, Mr. Mason (the jogger) saw four black men standing in front of the victim's	6. 30 minutes amounts to more than enough time for Wheeler to have gotten out of the car and taken a bus home.

home near a vehicle he described as a white Crown Victoria. RS13:26-28.	Moreover, Mason’s testimony was that “...all of them were dark skin, black individuals . . . , black, young males.” GJT 47:22-25-48:2. Simply because Wheeler is a young, black male that had been with four other individuals is not a reasonable inference that Wheeler was one of the four at the scene, since: Wheeler’s gun was not used in the shooting, Wheeler has light skin and claimed to have gotten out of the car and taken a bus home, and because there was a fifth individual.
7. Based on the surveillance footage from Shortline Express in conjunction with the testimony of Mr. Mason, Mr. Spahn (the convenience store clerk) and Mr. Newman (the vehicle’s prior owner), there can be no dispute that the vehicle seen by Mr. Mason in front of the victim’s house is the same vehicle on the surveillance footage. RS 14:1-6.	7. Wheeler was not one of the four, young, dark skinned black men at the crime scene, so the fact that it was the same vehicle cannot be a reasonable inference that Wheeler was with the other four individuals at the scene of the shooting.
8. The search warrant of 3300 Civic Center Drive (address associated with the Defendant), officers located a .45 caliber firearm with ammunition bearing headstamp	8. The evidence showed Wheeler’s gun was not used in the shooting, which negates the State’s attempt to opine that there is a reasonable inference that he was at the scene.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	RP-45 auto. 14:11-13.	GJT 2 at 11:7-13; 17-18.
	9. Just because the State presented evidence that the .45 caliber cartridge cases found at the scene were fired from a different .45 caliber firearm does not absolve Defendant of guilty in the instant case. RS 14:14-17.	9. The State's argument operates as an opinion, conjecture, and or speculation. The argument is not evidence, and there was no evidence or reasonable inference that Wheeler was at the shooting.
	10. Given the same ammunition was located at Defendant's house and in Defendant's firearm supports an inference that he provided the ammunition to Co-Defendant Lofton-Robinson. RS 14:17-19.	There is no reasonable inference that Wheeler provided Lofton-Robinson the ammunition. There is NO evidence that occurred, period.
	11. "Defendant's argument as to the existence of a fifth mystery man is wholly unsupported by the evidence." RS 14:22-23.	11. That there was a fifth individual, the fourth person at the shooting (that was not Wheeler), is fully supported by the evidence; strangely, the State did not provide all of the evidence to the grand jury.
	The State is only required to demonstrate a reasonable inference that the defendant committed the crime. 15:18-21. These facts create a "reasonable inference" the Defendant was at the scene of the murder. RS 14:7-8.	The state has not demonstrated a reasonable inference from the facts presented in this case that Wheeler was present at the scene. There is no reasonable inference because the evidence showed that Wheeler's gun was not used, Wheeler claimed he took the bus home, and because the evidence that should have

	been presented would have shown there was a fifth man.
B. DEFENDANT COMMITTED CONSPIRACY TO COMMIT ROBBERY AND ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON	B. THERE IS NO EVIDENCE, NOT EVEN A REASONABLE INFERENCE, THAT D CONSPIRED TO COMMIT A ROBBERY OR ATTEMPTED TO ROB THE VICTIM
1. It is undisputed that a deadly weapon was used when Mr. Valenzuela was shot and killed. RS 17:20-22.	1. It is undisputed that Wheeler's weapon was not used in the shooting and there is no identification of Wheeler at the crime scene.
2. Defendant and his co-defendants were "lying in wait" in a residential neighborhood in the middle of the night. The most reasonable explanation for this fact is that the Defendant and his co-defendants were looking for a victim to rob." RS 17:22-25.	If true, why not rob Mr. Mason? He was alone and went right past them. He would have been an easy target if they were looking for a victim to rob.
3. "There's no other logical explanation for the Defendant to be standing outside the victim's home and there is absolutely no evidence that the Defendant or any of the co-defendants knew Mr. Valenzuela." RS 17:26-28.	Unlike the facts in <u>Kinsey</u> and <u>Morgan</u> , where no one else could logically or reasonably have been involve, there was a fifth person here, and there are many other explanations as to why those four individuals were at the scene of the crime.
4. Mr. Valenzuela's items were strewn about	The mail, not his items, were spread out on

the ground. RS 18:3-5.	the ground. GJT 143:7-9. There was no evidence the victim's wallet, cell phone, watch or any other personal effects were strewn, attempted to be taken, or actually missing.
5. The Defendant and his co-defendants all left the gas station together AND drove to the scene of the murder in the same vehicle. RS18:6-7.	The five individuals may have left gas station, but: the evidence showed, Wheeler claimed he got on a bus and was not at murder scene. There was no evidence Wheeler drove to the scene of the murder in the vehicle with the FOUR other individuals.
6. None of the offenders were present on scene when police arrived in order to explain what happened. RS 18:9-10.	There is no reasonable inference Wheeler was present at the crime scene.
This evidence clearly demonstrates probable cause to show a coordinated series of acts sufficient to infer the existence of an agreement between the defendants and to support the existence of a conspiracy. RS18:11-13.	There is no reasonable inference, and no evidence, PERIOD, establishing conspiracy/attempt to murder.

III. EXCULPATORY EVIDENCE NOT PRESENTED

That there was a fifth individual, the fourth person at the shooting (that was not Wheeler), is fully supported by the evidence. Strangely, the State did not provide this evidence to the grand jury.

At the grand jury, Mr. Spahn (the convenient store clerk) testified that he would not sell a Black and Mild cigar to the four individuals in the store because of lack of ID, so another individual that had ID came in the store later and bought the same Black and Mild cigar. GJT 25-27. Through investigation, police obtained the identity of that individual and questioned him.

Marcell Solomon was the individual in the store that bought the Black and Mild cigar for the individuals that had been in the store. See a true and accurate copy of the relevant portion of Mr. Solomon's Voluntary Statement ("Solomon VS") attached hereto as **Exhibit A**. Det. Dosche found Mr. Solomon through his credit card purchase and because of the surveillance video from the convenience store. Solomon VS at 2. When asked about how many people he had seen in the white car in front of the Shortline Express, Mr. Solomon answered:

A: I wanna say **five**. I'd say two in the front and three in the back."

Q1: And you believe there was five in the car.

A: I believe – I wanna say there was **five of 'em**.

Id. at 4.

Moreover, Wheeler had told detectives that there had been four other individuals, but the State did not include his statement to the grand jury. Wheeler told detectives that there were five people beside himself that went to the convenience store. See a true and accurate portion of Wheeler's Voluntary Statement ("Wheeler's VS") attached hereto as **Exhibit B** at pages 21-23, 96, 99.

IV. LAW AND ARGUMENT

There is clearly insufficient evidence against Mr. Wheeler ("Wheeler") because the evidence does not support a reasonable inference that (A) Wheeler killed Gabriel Valenzuela or that (B) Wheeler conspired to rob or attempted to rob Mr. Valenzuela. Due to the presentation of insufficient evidence, and in absence of a *reasonable* inference based on the evidence presented, therefore (C) probable cause does not establish that Wheeler committed and of the crimes charged. (D) The Indictment must be dismissed because the State failed to present exculpatory evidence that there was a fifth person connected to case to the grand jury.

A. NO REASONABLE INFERENCE WHEELER COMMITTED MURDER

1. The State's Argument

Pursuant to Morgan v. Sheriff, 86 Nev. 23, 467 P.2d 600 (1970) and Kinsey v. Sheriff, 87 Nev. 361, 487 P.2d 340 (1971), the State claims that the evidence establishes a reasonable inference that Wheeler committed murder, apparently, based on notions of *identity*, *proximity*, *opportunity*, and *exclusivity*: “Defendant’s argument as to the existence of a fifth mystery man is wholly unsupported by the evidence.” (RS 14:22-23).

The State claims that it is only required to demonstrate a reasonable inference that the defendant committed the crime. (RS 15:18-21). Based on the State’s facts presented above, the State claims that a “reasonable inference” exists that the Defendant was at the scene of the murder. Therefore, *arguendo*, the State suggests that sufficient evidence supports the murder charge. (RS 14:7-8). Such is not the case.

2. Reply: No Reasonable Inference for Murder Because no Exclusivity

There is no *reasonable* inference drawn from the evidence presented to the grand jury that Wheeler committed murder. Despite the alternative theories advanced by the State underlying the murder count, the facts presented here do not comport to the facts present in Kinsey or Morgan. The facts in Kinsey and Morgan are far more compelling, are not analogous or fairly applied to Wheeler’s case, and require *exclusivity*, which is not present in this case. As such there is no probable cause supporting the charge.

In Kinsey v. Sheriff, 87 Nev. 361, 487 P.2d 340 (1971), the Court found that the inferences *reasonably* drawn there from the evidence constituted probable cause. However, the evidence in that case was different than the evidence here. According to the court, the evidence presented to the grand jury showed that Kinsey had been:

1 a registered guest at the motel. As such he was the *sole known occupant of the*
2 *motel room*. That occupancy continued for more than a month. Upon nonpayment
3 of rent, the management locked the room. The testimony shows that *no one else*
4 *could have gained entrance*. Two days after the appellant's room was locked,
5 marijuana was found in one of the dresser drawers inside the room.

6 Id. at 343. (Emphasis added). Thus, the fact that there was *no other known occupant* and that *no*
7 *one else could have gained entrance* justifiably and logically led to a "reasonable inference" that
8 appellant possessed the narcotics found in his room. This is not so in the case at hand.

9 In Morgan v. Sheriff, 86 Nev. 23, 467 P.2d 600 (1970), this notion of exclusivity or no
10 other possible suspect similarly lead to a reasonable inference that the appellant had committed
11 the crime. In Morgan, the facts established that:

12 The victim testified that after her car ran out of gas on March 15, 1969, she began
13 walking on Carey Street in Las Vegas. At 5:30 a.m. a person grabbed her purse and
14 took it without her consent. She had no opportunity to see her assailant's face except
15 to note that he was a male Negro. She did note that he wore a pink suit or pink
16 pants. *There were no other persons on Carey Street at that time*. Thereafter, a
17 police car approached and the victim got into it. The police officer observed
18 appellant at approximately 5:33 a.m. in an area about 50 to 75 feet from the victim
19 and he *observed no other persons in the area*. The police officer identified
20 appellant as the person who was in the area at that time. Appellant is a male Negro
21 who was wearing a pink jacket and pink pants at the time. Later, the victim's purse
22 was found about 30 feet from where she was first seen by the police officer and at
23 a point between the victim and where appellant was first seen.

24 Id. (Ephasis added).

25 In Morgan, there was a "reasonable inference that the defendant committed the crime"
26 because (1) the victim had given a specific description of the suspect beyond just race (the pink
27 clothing), (2) Appellant had been apprehended within feet (50 to 75 feet away) and mere minutes
28 (3 minutes) of the crime, AND (3) **there had been "no other individuals in the area at the**
29 **time."** Id. Such is not the case here.

30 In analyzing Kinsey and Morgan, the "formula" for a "reasonable inference" that the
31 defendant committed the crime obviously requires identity, proximity, opportunity AND
32 **exclusivity**. Here, the State's argument about the inferences surmised from the evidence is NOT
33 reasonable, and it is not analogous to the facts in Kinsey or Morgan. The State's claims here

1 operate much more as opinion testimony¹ rather than a recitation of the facts that have actually
2 been established.

3 In particular, Kinsey and Morgan do not fit the inadequate evidence presented here
4 because there was a fifth individual present at the Shortline Express. As provided above,
5 although the State failed to present this evidence, it was certainly aware of Mr. Solomon and
6 Wheeler's statements about a fifth person. The State's entire argument supporting its reasonable
7 inference is contingent upon its suggestion that "Defendant's argument as to the existence of a
8 fifth mystery man is wholly unsupported by the evidence." (RS 14:22-23). Yet, the State had
9 knowledge of evidence of the fifth person but did not present this evidence.

10 To establish probable cause to bind a defendant over for trial, the State must show that
11 (1) a crime has been committed, and (2) there is probable cause to believe the defendant
12 committed it. See NRS 171.206. Finding of probable cause requires far more than a trace of
13 evidence; the facts must be such as would lead a person of ordinary caution and prudence to
14 believe and conscientiously entertain a strong suspicion that the defendant committed the crime
15 in question. See Graves v. Sheriff, 88 Nev. 436, 438, 498 P.2d 1324, 1326 (1972).

16 The State's presentation to the grand jury simply does not provide enough evidence to
17 support the charges. The facts here against Mr. Wheeler are not such as would lead a person of
18 ordinary caution and prudence to believe and conscientiously entertain a strong suspicion that
19 Mr. Wheeler committed the crimes in question. See Graves v. Sheriff, 88 Nev. 436, 438, 498
20 P.2d 1324, 1326 (1972). Moreover, the State's contention, pursuant to Morgan v. Sheriff, 86
21 Nev. 23, 467 P.2d 600 (1970) and Kinsey v. Sheriff, 87 Nev. 361, 487 P.2d 340 (1971), that the
22 evidence provides a reasonable inference that Defendant committed the crime of Murder with
23

24
25
26 ¹ See NRS 48.265 detailing the limitation to opinion testimony by lay witnesses: "If the witnesses is not
27 testifying as an expert, the witness's testimony in the *form of opinions or inferences* is limited to those
28 opinions or inferences which are: (1) rationaly based on the perception of the witness; and (2) helpful to a
29 clear understanding of the testimony of the witness or the determination of a fact in issue."

1 Use of a Deadly Weapon (SR at 12:18-20), is not applicable or analagous and has no support.

2 **B. NO REASONABLE INFERENCE WHEELER CONSPIRED TO COMMIT**
3 **A ROBBERY OR ATTEMPTED TO ROB THE VICTIM**

4 The State further argues that the evidence clearly demonstrates probable cause to show a
5 coordinated series of acts sufficient to infer the existence of an agreement between the
6 defendants and to support the existence of a conspiracy and attempted robbery because: (1) It is
7 undisputed that a deadly weapon was used when Mr. Valenzuela was shot and killed (RS 17:20-
8 22); (2) Defendant and his co-defendants were “lying in wait in a residential neighborhood in the
9 middle. The most reasonable explanation for this fact is that the Defendant and his co-defendants
10 were looking for a victim to rob;” (RS 17:22-25); (3) There’s no other logical explanation for the
11 Defendant to be standing outside the victim’s home, and there is absolutely no evidence that the
12 Defendant or any of the co-defendants knew Mr. Valenzuela. (RS 17:26-28); (4) Mr.
13 Valenzuela’s items were strewn about the ground; (RS 18:3-5); (5) The Defendant and his co-
14 defendants all left the gas station together AND drove to the scene of the murder in the same
15 vehicle; (RS 18:6-7); and (6) none of the offenders were present on scene when police arrived in
16 order to explain what happened. (RS 18:9-10).

17 In contrast to the State’s claim, there is no evidence here supporting a conspiracy to rob,
18 lying in wait, or felony murder, nor is there any evidence that Mr. Wheeler aided or abetted the
19 crime. There is no inference from the evidence actually presented that Mr. Wheeler was part of a
20 preconceived plan. There are simply gaps in the evidence into which the State is creating the
21 notion of inference but without facts to support the inference.
22

23 It is undisputed that Wheeler’s weapon was not used in the shooting, and there was no
24 identification that Wheeler was at the scene of the crime. The State asserts that “the most
25 reasonable explanation” of the four individuals at the scene is that the co-defendants were
26 looking for a victim to rob. Yet, this assertion begs the question, “why would they not attempt to
27 rob Mr. Mason?” Mr. Mason was jogging alone, and traveled right past them. If the individuals
28

1 were only there to rob someone, they would have robbed him.

2
3 Moreover, there are many other explanations as to why the individuals were outside of
4 the home. Unlike Kinsey and Morgan, where no one else could logically or reasonably have been
5 involved, there was a fifth individual here, which excludes Mr. Wheeler based on the evidence.
6 Moreover, there are many other reasons why the four individuals may have been present.
7 However, there is no reasonable evidence that Wheeler was one of the four individuals.

8 Although the State claims Mr. Valenzuela's items were strewn about the ground, the
9 "items" were the mail, and there is no evidence that his property had been strewn about. There
10 was no evidence of a wallet, cell phone, watch or any other personal effects were strewn,
11 attempted to be taken, or actually missing.

12 The State claims that the Defendant and co-defendants left the gas station together AND
13 drove to the scene of the murder in the same vehicle. However, the evidence showed that
14 Wheeler claimed to have gotten out of the car and onto a bus and was not at the murder scene.

15
16 Finally, the State alludes to flight in explaining that none of the offenders were present on
17 the scene when police arrived. However, no evidence showed that Wheeler had been present at
18 the murder scene in the first place, and there are no reasonable inferences to suggest otherwise.

19
20 Simply saying that "the most reasonable explanation is . . ." cannot be constituted as
21 "evidence." Again, there is no evidence or inference-supported-by-the-evidence establishing a
22 conspiracy, a robbery or an attempt to rob, period. This court should therefore dismiss the
23 Indictment as having insufficient evidence to support it.

24 **C. THE STATE VIOLATED NRS 172.145(2)**

25 The State has a special duty pursuant to NRS 172.145(2): "If the district attorney is aware
26 of any evidence which will explain away the charge, the district attorney shall submit it to the
27 grand jury." Exculpatory evidence has been defined as that evidence "which has a tendency to
28

1 explain away the charge against the target of the grand jury's investigation." Lane v. District
2 Court, 104 Nev. 427, 463, 760 P.2d 1245, 1269 (1988) (Steffen, J., concurring) (citing Sheriff v.
3 Frank, 103 Nev. 157 at 160, 734 P.2d 1241 at 1244 (1987)).

4 In Frank, the Court concluded that a deputy district attorney who failed to submit
5 evidence that had a tendency to explain away the charge against a defendant violated his duty as
6 dictated by the language of NRS 172.145(2). Frank, 103 Nev. at 164-65, 734 P.2d at 1244. The
7 respondent in Frank, a sexual assault case, argued that the deputy district attorney violated
8 his duty under NRS 172.145(2) by failing to present to the grand jury conclusive proof that the
9 victim made deliberately false accusations of sexual misconduct against other individuals at the
10 same time that she was making similar accusations against her father (the respondent). The
11 Supreme Court agreed and held that the evidence regarding the victim-daughter's prior false
12 accusations, made at the same time she also accused her father, had a tendency to explain away
13 the charge against the respondent. The Court held that by failing to submit this evidence to the
14 grand jury, the district attorney violated his duty dictated by the plain, unambiguous language of
15 NRS 172.145(2). Frank, 103 Nev. at 164-65, 734 P.2d at 1244.

16
17
18 In the case at hand, the State could have explained away the charges due to specific,
19 known evidence of a fifth person in the car at the convenience store. The State violated NRS
20 172.145(2). Here, as in Frank, the State failed to submit evidence that had "a tendency to explain
21 away the charges against the defendant," and the State violated its duty under the clear language
22 of the statute. The Indictment should therefore be dismissed.

23
24 **V. CONCLUSION**

25 For the reasons stated herein, it is respectfully requests that this Court dismiss the
26 Indictment against Mr. Wheeler.

DATED this 8th day of June, 2018.

JAMES J. RUGGEROLI

By: /s/ James Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
601 South 7th Street
Las Vegas, Nevada 89101
Attorney for Defendant

DECLARATION OF JAMES J. RUGGEROLI, ESQ.

JAMES J. RUGGEROLI, ESQ., being first duly sworn under oath, deposes and states:

1. I am an attorney at law duly licensed to practice before this Court and make this Declaration of facts from personal knowledge which is known to me, except for those matters stated upon information and belief, and as to those matters, I believe same to be true.

2. I am counsel of record for the Defendant, DAVONTAE AMARRI WHEELER.

3. Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 8th day of June, 2018.

JAMES J. RUGGEROLI

By: /s/ James Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of June, 2018, I emailed a copy of the foregoing Reply to them at the following address:

motions@clarkcountyda.com

By: /s/ James Ruggeroli
James J. Ruggeroli, Esq.

JAMES J. RUGGEROLI, ESQ.

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EXHIBIT A

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 1

EVENT #: 170809-0029

SPECIFIC CRIME: MURDER WDW

DATE OCCURRED:

TIME OCCURRED:

LOCATION OF OCCURRENCE:

CITY OF LAS VEGAS

CLARK COUNTY

NAME OF PERSON GIVING STATEMENT: MARCELL SOLOMON

DOB: 10/17/1987

SOCIAL SECURITY #: 611-52-7916

RACE:

SEX:

HEIGHT:

WEIGHT:

HAIR:

EYES:

HOME ADDRESS: 2043 SOMBRERO DRIVE
LAS VEGAS, NV 89169

PHONE 1: 702-353-1420

WORK ADDRESS:

PHONE 2:

The following is the transcription of a tape-recorded interview conducted by DETECTIVE M. DOSCH, P# 7907, LVMPD HOMICIDE SECTION, on September 7, 2017 at 1000 hours. Also present is DETECTIVE R. JAEGER, P# 5587, LVMPD HOMICIDE SECTION.

A: Do you want me to turn the light on?

Q: No, that's fine. Do you have an extra chair? Here's my card.

A: Uh, (unintelligible).

Q: Thank you. I'm just gonna take some notes if you don't mind.

Q1: Yeah. So (unintelligible) here?

A: (Unintelligible).

Q1: Okay. So on the 9th - right, or the...

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 2

EVENT #: 170809-0029
STATEMENT OF: MARCELL SOLOMON

Q: The 9th.

Q1: So on the 9th, right, or the 8th?

Q: The 9th.

Q1: On the 9th we pick up a, uh, murder. So basically what happened was we have a nursing student sittin' in his driveway.

A: Okay.

Q1: He's checkin' his mail. Um, four guys they go to rob him. Um, the robbery kinda goes south 'cause he fights back. Three or four guys end up shooting him, killin' him, and we start, uh, workin' the investigation. We trace the guys back, the whole group, to, uh, it's a Short Line Express at Warm Springs and Jones.

A: Mm-hm.

Q1: ...and we're watchin' the video on there. Um, on the video this handsome gentleman right here appears.

A: That is me.

Q1: Uh, they - we talk to the cashier and the cashier gives us a story that they tried to buy, I don't know, some Grape, Swisher Sweets or somethin', some Cigarillos, and they didn't have ID on 'em so there was someone else in the store that showed his ID, bought 'em, uh, paid for with a credit card. We did check your credit card number. It says to you. Um, our concern is just your interactions, um, with them while they were in the gas station. Um, if you knew 'em from anywhere or if - if they were friends of yours or just kind of random.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 3

EVENT #: 170809-0029
STATEMENT OF: MARCELL SOLOMON

A: Uh, no. I - I just recently got out. I mean I got out the car and they, uh, asked me. They didn't have any ID and they just wanted to see if I could, uh, get that for 'em.

Q1: Okay.

A: So then I went inside. I was doin' Uber at the time, uh, so I went inside and came back out, got it for 'em and they left. It was a real quick interaction but I - I - I do remember that because I remember tellin' my, uh, one of my friends about them bein' out there and it was just weird how they were in the car and there was five of 'em and - there was like four or five of 'em in the car.

Q1: Well, one of 'em had a gun on him, like, was open carry with a gun?

A: Oh, wow. I didn't see that. No, I didn't see that.

Q1: Um, just showin' ya the first picture. You got, like, a red t-shirt...

A: Uh-huh.

Q1: ...and, uh, jean shorts, flip-flops, whatever they are but that's for sure you, right?

A: That's me.

Q1: Um, and do you remember what - in -in this picture here, uh, which one of the kids asked you to buy?

A: Um, it's hard to see that in pictures. It was, uh, all - all I know is, uh, two in the front, two in the back or - no, I couldn't tell ya which one asked me. I wanna say he had long hair but all of them, you know, have long hair, so...

Q1: So do you remember how many - do you remember what kinda car they were in?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 4

EVENT #: 170809-0029
STATEMENT OF: MARCELL SOLOMON

A: It was a - it was a old Cadillac, old Oldsmobile maybe, white one, white car.

Q1: Did it look like that? Did it kinda look like an old cop car?

A: Yeah, somethin' like that. No, that was more of a Cadi - it was more of a, um, no, it was actually like a real - yeah, like that.

Q1: I think it's a - it's a Mercury Grand Marquis.

A: Okay.

Q1: It kinda looks like, you know, an older police car. Do you remember how many people were in the car or...

A: I wanna say five. I'd say two in the front and three in the back.

Q1: Um, was everyone that was in the car going to the store or did one remain in the car? Do you know?

A: Uh, they all were in the car and they were drinkin'.

Q1: Oh, when you talked to 'em they were all in the car?

A: Yeah.

Q1: And you believe there was five in the car?

A: I believe - I wanna say there was five of 'em.

Q1: So they were sittin' in the car. Um, is your car showin'? Is it one of these...

A: No.

Q1: ...cars yours? Um, where - where did you park?

A: I parked right in the front so, um, my car like, um, I wanna say, like, right here...

Q1: And...

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 5

EVENT #: 170809-0029
STATEMENT OF: MARCELL SOLOMON

A: ...in front of the store.

Q1: And as - as you were walkin' in did they just say, "Can you go buy us some"?

A: You know, "I for - we forgot our ID can you get it for us?" It was like - it was, uh, Swish, uh, not Swisher, (unintelligible), Black and Mild.

Q1: Okay. And then, um, did they give ya money for it or did you just buy it for 'em then?

A: Uh, no. I had it. Um, I mean he had came down. He gave me some change, I think for it. Coulda been a dollar or somethin' like that.

Q1: Do you remember how much it...

A: Like a dollar.

Q1: Like a dollar?

A: He gave me change for it.

Q1: And then...

A: And that was pretty much it, and then - and then they was like, "Appreciate it, man," and they were drinkin'. I seen 'em drinkin' some alcohol, and the next thing ya know I thought, "Wow, they gonna smoke weed and drive," so I'm thinkin' they're doin' that, but other than that...

Q1: Were you a little bit apprehensive of seein' 'em?

A: Yeah. When I first got out of the car, um, they caught me by surprise. Um, I went, like, "Oh, hey bro," and then, you know, it was a regular kid, so...

Q1: What - I mean what did you think they were up to, like?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 6

EVENT #: 170809-0029
STATEMENT OF: MARCELL SOLOMON

A: Uh, I thought they were just boneheads, you know. I thought they was just havin' fun.

Q1: Okay.

A: They were just sittin' - sit in the car and not, uh, I seen 'em drinkin' and stuff like that so I was, like, they'll wind up gettin' pulled over and goin' to jail, man, if they keep drinkin' and drivin', you know, with all the stuff in the car but...

Q1: And you didn't see any guns on any of 'em?

A: I didn't see anything, no.

Q1: When we print these pictures out they kinda get expanded so when you look at this on a computer screen it's a lot better but, um, the guy here in the maroon he's actually got his hand - he's open carry. He's got, like, a handgun...

A: Oh, wow.

Q1: ...right on his hip and I believe he's comin' from the driver's side - the front passenger side of the vehicle. Is he who you would have talked to or...

A: You know what? Uh, does he, uh, you know, it does show his hair but I know he's light skinned too. Yeah, it could have been him.

Q1: I mean is it something you just don't remember? I don't want to put words...

A: You know, it's, uh, um, I wanna say he had long hair and he was light skinned and, uh, it coulda been him 'cause I know two of the guys were in the backseat so I'm just goin' off the hue of his color and where'd I'd be.

Q1: You mean he was light - he was light skinned?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 7

EVENT #: 170809-0029
STATEMENT OF: MARCELL SOLOMON

- A: Light skinned and had long hair, unnaturally long hair. I don't know why I remember hair but I do.
- Q1: All right. Um, and when you - when you talked to him did he have, like, an accent? Was he - did he swear or was he polite?
- A: Um, you know, just talked, like, you know, I guess slang. Like, "What's up bro?" You know, "How's everything?" You know, just describin' how, "I left my ID at the house," you know, and all that shit. Blah, blah, blah, that's it. (Unintelligible).
- Q1: All right. He didn't...
- A: Real fast.
- Q1: He didn't threaten you in any way?
- A: Mm-mm.
- Q1: He didn't point a gun at ya or anything?
- A: Mm-mm.
- Q1: You were - you weren't afraid of him?
- A: No.
- Q1: Did you...
- A: Yeah. You know, I - I...
- Q: You're a pretty big guy.
- A: I'm from, uh, Compton, California though so it just reminded me of kids back home actually.
- Q1: Okay.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 8

EVENT #: 170809-0029
STATEMENT OF: MARCELL SOLOMON

A: But I - I could see that they were probably up to no good though. You know, seein' them there. You know, seein' them in the car they were all just, like, hangin' out, gettin' ripped, like, pretty much either drinking, smoking, like that, so...

Q1: Okay. Is there anything else that you think is important from your - in your short interaction that you had with 'em...

A: Um...

Q1: ...that you think we need to know?

A: No.

Q1: All right.

Q: It's - is it Marcell?

A: Yes.

Q: M-A-R-C-E-L-L?

A: Yes.

Q: And then what - it's Solomon, right?

A: Yeah, Solomon, S-O-L-O-M-O-N.

Q: What's your date of birth?

A: October 17, '87.

Q: And then Social Security Number?

A: 611 52 7916.

Q: Uh, and you live at 2043 Sombrero Drive, which is where we're at right now?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 9

EVENT #: 170809-0029
STATEMENT OF: MARCELL SOLOMON

A: Yes.

Q: And what's your cell phone number?

A: 702 353 1420.

Q: And do you have any other phone numbers?

A: Uh, no, that's it.

Q: Is that a cell, not a landline?

A: That's my cell. Yeah.

Q: And did I hear correctly that you're a Uber driver?

A: Yes.

Q: Do you driver for Lyft as well?

A: Yes.

Q: Okay. And, uh, the only reason that I ask is - and I, uh, really do appreciate the time, Marcell, 'cause you're not in any trouble. We're just tryin' to clear this up.

A: Mm-hm.

Q: As you might imagine, um, because while there might be video, which you've seen, it doesn't say what the relationship is. It just looks like there's kids and then there's an older gentleman...

A: Mm-hm.

Q: ...and then - then - then those snapshot in time everyone goes away.

A: Yeah.

Q: That particular convenience store do you remember it that night?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 10

EVENT #: 170809-0029
STATEMENT OF: MARCELL SOLOMON

A: Yeah, I do.

Q: Way down in the southwest part of town.

A: Yeah.

Q: Um, were you just finishing a drive or what were you doin'?

A: I was goin' to my friend, Gabrielle's house.

Q: Okay. So you weren't working?

A: No. I just stopped, took a break and then went to her house.

Q: And I - I think I heard Detective Jaeger already ask ya this, but you do not know them?

A: I don't, not at all.

Q: Never seen 'em before that?

A: Nope.

Q: Okay. Didn't trade phone numbers or anything like that that night? Perfect, and when - when you were coming in the store are - is - are they already in the store or are they out?

A: They're out. They're in the car sitting down.

Q: Because I know there's, like, a little park bench out in front of the - the, um, store and then there's the parking lot. I - I don't know if that one photo depicted...

A: Yes.

Q: ...it but...

A: I had pulled in.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 11

EVENT #: 170809-0029
STATEMENT OF: MARCELL SOLOMON

Q: Mm-hm.

A: I was drivin' in for a Red Bull, somethin' like that. I pulled in. Literally there wasn't - there wasn't any car there.

Q: Okay.

A: I pulled in right there, I believe. I can't see where the entrance of the store is, but I pulled right in front. There was - there was no parking spaces. I got out the car. They were just sittin' in the vehicle.

Q: All right. And then up here on the sidewalk they actually have, like, a park bench.

A: Right.

Q: I just didn't know if you encountered 'em there but they're all in the car?

A: They're all in the car, yes, sir.

Q: Um, what kinda car were you driving?

A: Blue Chevy coupe.

Q: The one that's in the front?

A: Yes.

Q: Blue Chevy, and were you with anybody?

A: No.

Q: Uh, so they hit ya up?

A: Yeah.

Q: They don't, uh, they don't - do they offer to give ya anything or is their explanation, "We just don't have ID?"

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 12

EVENT #: 170809-0029
STATEMENT OF: MARCELL SOLOMON

A: Uh, just that "We don't have ID." That's pretty much it.

Q: And you bought them a what?

A: I wanna say a Black and Mild.

Q: A Black and Mild.

A: It could be a Black and Mild or a Swisher.

Q: Swisher, okay.

A: One of the two.

Q: Do - but you don't buy 'em any alcohol though?

A: No. I didn't buy 'em alcohol.

Q: And when you - after you make the purchase do you go out and then hand it through the window or they...

A: Yeah.

Q: ...or do they...

A: Handed it through the window, passenger side.

Q: I know that he - you first said that you - I mean it was anywhere from four to five people so the car is full?

A: Mm-hm.

Q: Um, did you see any girls?

A: No, no girls.

Q: Did you hear them arguing or have any type of conflict, either in your initial contact with 'em or when you hand them the cigarettes or the - the tobacco

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 13

EVENT #: 170809-0029
STATEMENT OF: MARCELL SOLOMON

product and then leave?

A: It was all laughs and giggles.

Q: They didn't appear to be fighting?

A: Nah, mm-mm.

Q: They didn't appear to be involved in any, uh, altercations? Uh, I mean with one another?

A: Yeah. No, not at all.

Q: And, um, I know that Detective Jaeger was showin' ya photos. At one point they're all four of 'em - before you come in the store they're all gathered by the - the register...

A: Mm-hm.

Q: ...and, uh - uh, obviously this is a quick snapshot in time, but which of those - see these four gentlemen right here? Um, all Black males...

A: Yeah.

Q: ...of course they're all younger gentlemen, but, uh, which one did you think that you actually handed the - the tobacco to?

A: Uh, you know, that, uh...

Q: I know that they all have dark colored tops...

A: I wanna say...

Q: ...but one of the kids actually has a dark green top, um, so there's one guy in a maroon top, one guy with a black top, another kid with a black top, blue jeans,

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 14

EVENT #: 170809-0029
STATEMENT OF: MARCELL SOLOMON

red shoes, and then I thought that there was a photo of, uh, and his is blue jeans with a green top...

A: Yeah.

Q: ...but he kinda has the twists?

A: That - yeah.

Q: If you don't know or you don't remember...

A: Yeah, you know, I don't wanna say he had a - a hat on, so, you know, and I remember the hair...

Q: Okay.

A: ...so I would have to go with the guy in the green.

Q: So may - he looks like he's drinkin', uh, something...

A: Yeah.

Q: ...right when he's comin' in?

A: Mm-hm, yeah.

Q: But where was - which window of the four windows did you pass it through?

A: Uh, the passenger side front.

Q: All right. And from there do they have - do you guys have any more contact?

A: None after that.

Q: You get in your car and drive away?

A: I'm on my way, yeah.

Q: Do they - are they still there when you drove away?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 15

EVENT #: 170809-0029
STATEMENT OF: MARCELL SOLOMON

A: Yeah, they're still there, and one of 'em's breakin' down a Swisher in the back.

Q: And it looks like they were drinking alcohol in the car?

A: Yeah, definitely, 'cause I remember callin' and tellin' Gabby about it 'cause I was tellin Gabby. I'm like, "There's four guys in a car. They want - they is fuckin' trouble." I mean she...

Q: I'm sorry, Gabby, who is that?

A: Uh, my - one of my home girls. She does (unintelligible) with us. She does Uber as well. She's like, "There's always some hoodlums, it's the term she used, in this neighborhood. I don't know where they come from," so I was actually talkin' about them and so it's so funny that these guys were...

Q: Well, on those photos, um, you're actually on the phone or you appear to be on the phone?

A: Yeah.

Q: You got your wallet in your right hand. That's probably that very same wallet?

A: And that's who I'm probably talkin' to.

Q: And you're on the phone and you bought - I mean I'm just - I'm gonna go out on a limb here. Is Gabby, uh, a love interest?

A: No. She actually a friend. She...

Q: Because I think you bought some jimmies that night too, right?

A: Uh, I probably could've.

Q: Yeah. I think you buy condoms 'cause we have the...

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 16

EVENT #: 170809-0029
STATEMENT OF: MARCELL SOLOMON

A: Yeah.

Q: 'Cause we have the whole receipt, so...

A: Yep, I could've. But, you know, she - she is a friend of mine. You know, we did have one little hook up.

Q: Okay. Okay. I just didn't know if you were gettin' ready to go back over to her house...

A: Uh...

Q: ...and bang her, um, and then that's - you know, I mean that's a good time.

A: Yeah.

Q: That's a good night. Uh...

A: Yeah, No, but, uh, nothin' again happened, but I - I did go that night and I stopped by her house, but that's where I was goin'.

Q: Perfect.

A: She lives right down the street here.

Q: And what's Gabby's last name?

A: Popovici.

Q: A White girl? Hispanic girl?

A: Yeah, she says she's a Mexican-White girl.

Q: But she actually lives down in that part of town?

A: Yeah, she lives there, probably about a mile down from there.

Q: And is that who you'd gone down to see?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 17

EVENT #: 170809-0029
STATEMENT OF: MARCELL SOLOMON

A: Yeah.

Q: And that would, of course, explain why you were - if you're not Ubering why you're way down there, right?

A: Exactly.

Q: I - I - I apologize for taking...

A: Oh, no worries.

Q: ...some of your time. We just wanted to go over all this, and then you obviously recognize yourself in the video. Right?

A: Yeah, that's me.

Q: Okay. That's all I got.

Q1: All right. Well, we appreciate it.

A: All right.

Q1: We just wanted to figure that out.

A: Yeah.

Q1: We'll let ya get back to your Sports Center.

A: Yeah, it's pickin' up. I think I'll go get some Uber now.

Q: Hey, well, you know, you can turn it on right now while you're sittin' in this neighborhood at your house and who knows you'll probably find what you're lookin' for.

A: Yeah, that's what I usually do.

Q: Which do you prefer, Lyft or Uber?

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 18

EVENT #: 170809-0029
STATEMENT OF: MARCELL SOLOMON

A: Uh, Uber is a lot busier. Uber - I like Uber.

Q: Thanks, man. If you have any questions you've got my card. Okay?

A: Yeah.

Q: We appreciate all the help.

A: Thank you.

Q1: It's not at all what I expected.

Q: All right. This will conclude the interview. It's approximately 1013 hours. This interview started at 1000 hours on September 7, 2017. The interview took place at 2043 Sombrero Drive, Las Vegas, Nevada, 89169 and it's reference Event 170809-0029. Also present for the interview is Detective Jaeger.

THIS VOLUNTARY STATEMENT WAS COMPLETED AT 2043 SOMBRERO DR LAS VEGAS, NV ON THE 7TH DAY OF SEPTEMBER, 2017 AT 1013 HOURS.

MD:NETTRANSCRIPTS
MD087

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13
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15
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21
22
23
24
25
26
27
28

EXHIBIT B

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 21

EVENT #:170809-0029
STATEMENT OF: DAVONTE WHEELER

gonna keep it 1,000. Now, real life, we can keep it all 100, since we talking about, um, murder type shit, niggas gettin' murdered, yes, he did come try to buy a gun from me - I mean, try to - yes, try to - when I sold him my - me looking for a gun, he tried to sell me a gun. It was a Beretta. Had a long - it just had a long barrel. And I was - I was like, oh, you trying to sell it? He said it was for \$200. I said, okay. I only had, uh, 150. Then he said, oh, you can give me an eighth of weed. I said, no. Honestly, they would - it was all - we only talked through our interaction over business. There was never nothing - no, I don't know him as a mutual, as a chillin' buddy, none of that. No. And that's the honest truth.

Q: Okay. But you hit him up on Facebook, right?

A: Y- yes, I hit him up on Facebook.

Q: So somebody would've - someone would've had to introduce you, right? I mean...

A: No. It's like with Facebook, it's your - whoever send you likes. You feel me? Like when my Facebook - my Facebook got tons of - I'd say over 390 people is trying to request me. What I do is honestly, like, every now and again, because it get packed where people can't add you. I just add certain people. Just add, just like the - and they - I'm not lying about that. That - this is real live shit that you - that's all you do. I posted on there. He hit me up. I'm gonna keep it 1,000. When I looked at him, he seemed like a normal person, like somebody that's not trying to rob me. Somebody that's not trying to be on some scandalous shit, so I

VOLUNTARY STATEMENT

PAGE 22

EVENT #:170809-0029

STATEMENT OF: DAVONTE WHEELER

was like, all right, cool. It felt sketchy. When I walked up and he was with four other peop- four - it was like four, five, I don't know how many people. I think it was like four, five people. It was a female and four other people. So I was like, all right, cool. But at the same time, it felt weird. But at the same time, he told me he's all about his business. He not none of that fishy shit. We went to the store. He gave me change, then that was the end of it.

Q: So did you buy the gun from him?

A: No. I ended up - I ended up just telling him that honestly I was like, it just don't feel right. It just - just don't feel right. .45 going for 200. Like, it don't feel right. I'm gonna keep it 1,000. And then at the same time, it went lower, to all the way - 'cause I'm - like I said, I do business. Somebody that goes from weed - I mean, a - a gun and cash to the weed. Like, I'm like, no, this - this don't sound right. You feel me? Why you trying to sell me a gun for weed? That don't make sense. And that's the honest truth. So I was like - by that time, it was just mainly like, all right, I'm gonna just catch back up with. You feel me?

Q: All right. So did he bring you back home?

A: He - no, he ended up dropping me off - he said that they all had to end up doin' something. I don't know. But he didn't - he ended up dropping me off halfway, like at the bus stop.

Q: And this was a few weeks ago?

A: Yes, like...

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 23

EVENT #:170809-0029
STATEMENT OF: DAVONTE WHEELER

Q: Like 15 days ago, a few weeks ago? Like to - today is...

A: I'm - I'm - what I'm thinkin' - well, I don't - I don't know how long. I mean, it don't really stick to my head like that, honestly. Because, like I said, it was just a business transaction. Other than that, it was nothing else to my knowledge. I'm gonna keep it 1,000, so...

Q: So - so the gun that you have that you don't know the caliber of...

A: Uh, it's - it's a - it's probably a .40. .40 or 9.

Q: A .40 or 9, um, where did you buy that gun from?

A: Mine, I bought mine's off of Craigslist.

Q: It - was it like a legit...

A: Yes. Off - from a - I got a bills of sales and all that.

Q: Okay. And when did you buy your gun?

A: I bought my gun, um, January, February, March, April, May, June, Ju- I'd say May.

Q: So you've had it a while, then?

A: Yeah. Yeah.

Q: A few months. Um, have you ever shot it?

A: Uh, no. I haven't. It was no need for me to.

Q: Okay. Have you ever loaded it?

A: Uh-uh.

Q: Uh, when you bought it, was there ammo that came with it?

VOLUNTARY STATEMENT

PAGE 96

EVENT #:170809-0029

STATEMENT OF: DAVONTE WHEELER

Q3: No. No, no...

A: ...clothes.

Q3: ...no, no, no. Let's start over. Credi...

A: Completely over?

Q3: Credibility.

A: Completely over?

Q3: Yes.

A: This is...

Q3: Who...

A: This is how - this is completely over.

Q3: Okay.

A: How do you know these guys?

Q3: Because I booked them.

A: No. My question: "How do I know these guys?" "I don't know them."

Q3: Mm-hm.

A: "Do you remember going to a gas station?" "Yes I do." But is that me? I don't got no clothes like that.

Q3: Okay.

A: But do I n- do I know him? That's a for sure.

Q3: Mm-hm.

A: Did I see other people in the car? Yes. Four other people to be exact.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
VOLUNTARY STATEMENT
PAGE 99

EVENT #:170809-0029
STATEMENT OF: DAVONTE WHEELER

house.

Q3: Mm-hm.

A: But then he hopped on the highway...

Q3: Okay.

A: ...because he said the police was at the...

Q3: So in...

A: ...- at the store.

Q3: At this point, stop. Who was in the car at this time? Ru- run down the lineup.

A: It - I don't know. I just know it - it was four - it was three in the back. It was w-
uh, it was me, plus two more in the back, one in the front, and one more in the
front.

Q3: So there's five people in the car?

A: All together, at this moment.

Q3: Who is driving? DJ. Okay? And looking at these other two individuals, do you
see them in the car as depicted in this video?

A: Like, what you mean?

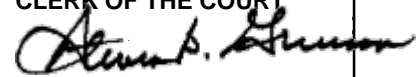
Q3: Well I'm just saying that here's some other photos...

A: The thing is is it's...

Q3: And this guy right here - um, where is the rest of the photos?

A: It's...

Q: I got them (unintelligible) - I'll go get them.



RET
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

CASE NO: C-17-328587-3

-vs-

DEPT NO: XX

DAVONTAE AMARRI WHEELER,
#5909081

Defendant(s).

STATE'S SUPPLEMENT TO RETURN WRIT OF HABEAS CORPUS

DATE OF HEARING: August 15, 2018
TIME OF HEARING: 9:00 A.M.

COMES NOW, JOE LOMBARDO, Sheriff of Clark County, Nevada, Respondent, through his counsel, STEVEN B. WOLFSON, Clark County District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, in obedience to a writ of habeas corpus issued out of and under the seal of the above-entitled Court on the 17th day of May, 2018, and made returnable on the 31st day of May, 2018, at the hour of 8:30 A.M., before the above-entitled Court, and states as follows:

1. Respondent admits the allegations of Paragraphs 1, 2, 7.
2. Respondent denies the allegations of Paragraph 3.
3. Paragraph numbers 4, 5, 6, 8 do not require admission or denial.

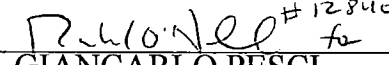
1 4. The Petitioner is in the actual or constructive custody of JOE
2 LOMBARDO, Clark County Sheriff, Respondent herein, pursuant to a Superseding
3 Indictment, a copy of which is attached hereto as Exhibit 1 and incorporated by reference
4 herein.

5 Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the
6 Petition be dismissed.

7 DATED this 28 day of June, 2018.

8 Respectfully submitted,

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

11 BY  #128410
12 GIANCARLO PESCI
13 Chief Deputy District Attorney
 Nevada Bar #007135

14
15 **POINTS AND AUTHORITIES**

16 **I. STATEMENT OF THE CASE**

17 Defendant Devontae Wheeler (“Defendant”) was arrested on August 15, 2017. On
18 August 17, 2017, Defendant was charged by way of Criminal Complaint in Justice Court
19 Department 12 as follows: COUNT 1 – CONSPIRACY TO COMMIT ROBBERY (Category
20 B Felony – NRS 200.380, 199.480); COUNT 2 – ATTEMPT ROBBERY WITH USE OF A
21 DEADLY WEAPON (Category B Felony – 200.380, 193.330, 193.165); and COUNT 3 –
22 MURDER WITH USE OF A DEADLY WEAPON (Category A Felony – NRS 200.010,
23 200.030, 193.165).

24 On September 21, 2017, Defendant’s case was consolidated into Justice Court
25 Department 3, Case No. 17F14369C, so that Defendant’s case could be joined with those of
26 his co-defendants.

27 Prior to the preliminary hearing, the State indicted Defendant on the charges alleged in
28 the Criminal Complaint. Following the State’s presentation of evidence at the Grand Jury on

1 November 29, 2017 and December 13, 2017, Defendant was held to answer on all three counts.
2 On December 14, 2017, Defendant was formally charged by way of Indictment, as follows:
3 COUNT 5 – CONSPIRACY TO COMMIT ROBBERY; COUNT 6 – ATTEMPT ROBBERY
4 WITH USE OF A DEADLY WEAPON; and COUNT 7 – MURDER WITH USE OF A
5 DEADLY WEAPON. On December 19, 2017, Defendant pled not guilty and waived his right
6 to a speedy trial.

7 The Grand Jury transcripts were filed on January 1, 2018. At a status check on January
8 9, 2018, the Court granted defense counsel an additional 30 days from that day to file any
9 writs. On February 8, 2018, Defendant filed a Petition for Writ of Habeas Corpus. On March
10 2, 2018, the State filed a Return to Defendant's Petition for Writ of Habeas Corpus and on
11 March 8, 2018, Defendant filed a Reply to the State's Return.

12 On March 22, 2018, oral argument was held as to Defendant's Petition. Following
13 argument by both parties, the Court ordered the State to return to the Grand Jury to present
14 additional evidence regarding ballistic testing that was performed after the State's initial
15 presentation to the Grand Jury.

16 On April 18, 2018, the State presented additional evidence to the Grand Jury.
17 Specifically, the State presented testimony from Anya Lester, a forensic scientist in the
18 firearms/toolmark analysis unit of the Las Vegas Metropolitan Police Department
19 ("LVMPD"). The State also presented additional testimony from LVMPD Detective Mitch
20 Dosch. After presentation of the additional evidence, the Grand Jury returned a true bill on
21 the same three counts alleged in the original Indictment. On April 19, 2018, a Superseding
22 Indictment was filed charging Defendant with the same three counts alleged in the original
23 Indictment.

24 Defendant is charged with the Murder and Attempt Robbery of Gabriel Valenzuela on
25 August 9, 2017. The State also alleges that Defendant conspired with his co-defendants to
26 commit a robbery against Mr. Valenzuela on that day.

27 ///

28 ///

1 On June 14, 2018, the Court heard arguments on Defendant's second pre-trial Writ of
2 Habeas Corpus. The Court issued the following minutes:

3 MATTER RECALLED: Ms. O'Halloran now present. Arguments by
4 Mr. Ruggeroli and Ms. O'Halloran in support of their respective
5 positions. Following, COURT ORDERED, most issues are DENIED,
6 however, counsel can supplement the issue of Marcel Soloman's
7 statement not being presented to the Grand Jury with the following
8 schedule: State to reply by 6/28; Mr. Ruggeorli to respond by 7/5 and
9 matter CONTINUED for argument. CUSTODY 8/15/18 9:00 AM
DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

The State hereby supplements the issue.

10 II. STATEMENT OF FACTS

11 A. Testimony from November 29, 2017

12 The following is a summary of the relevant portions of testimony elicited during the
13 presentation of evidence to the Grand Jury on November 29, 2017.

14 John Relato

15 On August 9, 2017, John Relato ("Mr. Relato") resided with his cousin, Gabriel
16 Valenzuela at 5536 Dewey Drive in Las Vegas Nevada. See Grand Jury Transcript (Nov. 29,
17 2017) ("GJT") 84:18-85:6. In the early morning hours of August 9, 2017, Mr. Relato was
18 inside his home when he heard gunshots. GJT 85:7-23. Mr. Relato looked out his window
19 and saw his cousin, Gabriel Valenzuela laying in the driveway to their home. Id. Mr. Relato
20 went outside and realized that Mr. Valenzuela was bleeding from his head. Id. As Mr. Relato
21 proceeded outside, he called 911. GJT 86:21-22, 87:6. The initial call to 911 was placed at
22 12:11 a.m.¹ Mr. Relato did not see anyone in the area and he did not see who shot his cousin.
23 GJT 86:23-87:2. Mr. Relato testified that it was customary for his cousin to check the mail
24 and sit on the retaining wall in front of his home while he opened the mail. GJT 87:20-23.

25 Lary Simms

26 Larry Simms ("Dr. Simms") is a forensic pathologist with the Clark County Coroner's
27 Office. GJT 8:17-18, 9:11-13. Dr. Simms conducted the autopsy on Gabriel Valenzuela. GJT
28

¹ This fact was testified to by Detective Mitch Dosch. GJT 91:10:13

1 9:22-10:1. Dr. Simms determined that Mr. Valenzuela suffered four gunshot wounds. One
2 shot entered the right side of Mr. Valenzuela's head and exited on the left side of Mr.
3 Valenzuela's forehead; another shot entered Mr. Valenzuela's left abdomen and did not exit;
4 another shot entered the outside of Mr. Valenzuela's right ankle, exiting on the inside of Mr.
5 Valenzuela's right ankle; the fourth shot entered the back of Mr. Valenzuela's left ankle and
6 came to rest in his leg. GJT 13:21-23, 15:20-24, 17:6-20. Dr. Simms concluded that the cause
7 of Mr. Valenzuela's death was multiple gunshot wounds and the manner of Mr. Valenzuela's
8 death was homicide. GJT 17:21-18:6.

9 **Robert Mason**

10 At the time of Mr. Valenzuela's murder, Robert Mason lived in the same neighborhood
11 as the victim. GJT 45:20-25. At approximately midnight on the night of August 8, 2017, into
12 the morning of August 9, 2017, Mr. Mason went for a jog in his neighborhood. GJT 46:2-15.
13 During his jog, Mr. Mason saw four young black males standing on the corner of Lindell and
14 Dewey in front of 5536 Dewey Drive.² GJT 46:16-48:2-18. Shortly after Mr. Mason ran past
15 the four individuals standing in front of Mr. Valenzuela's home, he saw what he described as
16 a white Crown Vic, bearing Nevada license plate number 473YZB. GJT 50:3-21. The vehicle
17 was parked approximately 20-50 feet from where the four black males were standing. GJT
18 50: 22-25. When shown Grand Jury Exhibit 28 (attached as Exhibit 5 to the State's Return to
19 Writ of Habeas Corpus filed on March 2, 2018), Mr. Mason identified it as the vehicle he saw
20 when he jogged past the victim's house. GJT 51:1-15. Mr. Mason felt these individuals were
21 suspicious so he called his wife and told her to lock the doors to their house and he asked her
22 to call 311 to report the suspicious individuals. GJT 51:18-52:1.

23 **Nikolaus Spahn**

24 On the night of Mr. Valenzuela's murder (August 8, 2017 into the morning of August
25 9, 2017), Nikolaus Spahn ("Mr. Spahn") was working as a cashier at the Short Line Express
26

27 ² See Grand Jury Exhibit 16, attached as Exhibit 2 to the State's Return to Writ of Habeas Corpus filed on Mar. 2, 2018.
28 When shown Exhibit 16, Mr. Mason indicated that the photograph captured the area where he saw the four individuals
standing. GJT 48:3-18. During Mr. Relato's testimony, he identified Exhibit 16 as a photograph of his home located at
5536 Dewey Drive. GJT 87:7-11. Exhibit 16 was also identified by Crime Scene Analyst William Speas and Detective
Ryan Jaeger as being the residence on Dewey Drive. GJT 66:5-9, GJT 142:24-143:4.

1 convenience store, located at the intersection of Warm Springs Road and Jones Boulevard at
2 7325 South Jones Boulevard. GJT 21:13-19, 24:2-7. On that night, Mr. Spahn's shift began
3 at 10:00 p.m. GJT 21: 24-25. Between 11:20-11:38 p.m., four individuals entered the store.
4 GJT 22; 27:7-29:13. Mr. Spahn believed these individuals were behaving suspiciously and he
5 was concerned because one of the individuals was wearing a firearm on his hip.³ GJT 22:1-
6 23:25.

7 After the four individuals exited the store, they sat down at a table outside of the store.
8 GJT 25:22-26:11. Mr. Spahn continued to observe the individuals at which point he went
9 outside and saw the vehicle the four individuals were driving. Id. Mr. Spahn described the
10 vehicle as a white four door Mercury that looked like a Crown Victoria. GJT 26:12-15. Later
11 that night, police officers came into the store and told Mr. Spahn they were investigating a
12 murder; at that time, he told officers about the four individuals he observed. GJT 27:15-23.

13 During Mr. Spahn's testimony, the State introduced surveillance footage from the
14 Shortline Express capturing the four individuals as well as the vehicle in which they arrived.
15 GJT 29:20-31:15. The surveillance footage showed that the vehicle had paint damage on the
16 roof of the car that the first three numbers on the license plate number were 473. GJT 31:6-9,
17 96:11-22.

18 **James Newman**

19 James Newman testified that on August 4, 2017 (four days before Mr. Valenzuela was
20 murdered), he sold his white Mercury Grand Marquis to Co-Defendant Lofton-Robinson. GJT
21 38:22-39:14. The vehicle had a Nevada license plate number of 473-YZB, the same license
22 plate observed by Mr. Mason in front of the victim's home. See GJT 37:10-13, 50:3-21. When
23 Mr. Newman sold the vehicle, he allowed Co-Defendant Lofton-Robinson to keep the license
24 plates with the understanding they would be returned at a later time. GJT 39:25-40:1, 41:9-
25 17. James Newman identified the vehicle in Grand Jury Exhibits 28 and 30 (attached as
26 Exhibits 5 and 6, respectively to the State's Return to Writ of Habeas Corpus filed on Mar. 2,

27
28 ³ Surveillance footage reveals that the individual wearing the firearm is the person Detective Dosch identified as Defendant Wheeler. The portions of the surveillance footage introduced at Grand Jury are attached as Exhibit 1 to the State's Return to Writ of Habeas Corpus filed on Mar. 2, 2018.

1 2018) as the vehicle he sold to Co-Defendant Lofton-Robinson.⁴ Mr. Newman was able to
2 identify the vehicle based on its license plate number of 473-YZB which was depicted in Grand
3 Jury Exhibit 28 and because of the paint damage to the roof of the car which was depicted in
4 Grand Jury Exhibit 30. GJT 37:10-24.

5 **Lora Cody**

6 Lora Cody ("Detective Cody") is a homicide detective with the Las Vegas Metropolitan
7 Police Department. GJT 135:11-19. Detective Cody was assigned to assist in the investigation
8 of Mr. Valenzuela's murder. GJT 135:20-22. A portion of her responsibilities involved
9 obtaining surveillance footage. GJT 135:24-3. As a result, Detective Cody responded to the
10 Shortline Express convenience store located near Dewey Drive. GJT 136:3-19. In viewing the
11 surveillance, detectives observed a white Mercury Grand Marquis with a NV license plate
12 bearing the first three numbers of 473. GJT 136:25-137:13. Based on an investigation into the
13 registration of the vehicle, officers were able to locate the vehicle. GJT 137:11-19. Ultimately,
14 a traffic stop was conducted, at which time Co-Defendant Lofton-Robinson was inside the car.
15 GJT 137:20-138:11.

16 **Mitch Dosch**

17 Mitch Dosch ("Detective Dosch") is a homicide detective with the Las Vegas
18 Metropolitan Police Department. GJT 90:16-19. Along with other detectives, Detective
19 Dosch was assigned to investigate Mr. Valenzuela's murder. GJT 91:5-9. Detective Dosch
20 testified that four cartridge casings were located at the scene of the murder: one .22 caliber
21 cartridge case and three .45 caliber cartridge cases. GJT 99:22-100:8. The .22 caliber cartridge
22 case bore a head stamp of "C." GJT 13:15. The .45 caliber cartridge cases bore three separate
23 head-stamps: R-P 45, NFCR, and WINCHESTER 45 AUTO. GJT 100:23-101:1, 101:18-21,
24 102:2-7.

25 Additionally, Detective Dosch testified regarding the substance of the surveillance
26 video retrieved from the Shortline Express convenience store depicting the events of which

27
28 ⁴ Grand Jury Exhibits 28 and 30 are photographs of the white Mercury Grand Marquis taken inside LVMPD's lab after it
was towed to that location. GJT 55:25-56:3. Grand Jury Exhibit 28 was also identified by Robert Mason as the vehicle
he saw near the victim's home right before the murder occurred.

1 Nikolas Spahn testified. GJT 95:17-23. Significantly, Detective Dosch testified that if one
2 were driving a vehicle from the Short Line Express to the scene of the murder, it would only
3 take a matter of minutes. GJT 95:9-16.

4 With respect to the vehicle that the four individuals were driving, the surveillance
5 footage revealed that the first three numbers on the license plate were 473. GJT 95:24-96:22.
6 Because this information matched the description of the vehicle at the scene of the crime and
7 because the four individuals in the surveillance footage were consistent with the four
8 individuals seen at the scene of the crime, detectives attempted to identify the individuals in
9 the footage. See id., GJT 96:23-97:21.

10 Following an investigation, Detective Dosch was able to identify the four individuals
11 depicted in the surveillance footage from the Shortline Express on August 8, 2017. Based on
12 his prior interactions with each of the defendants, Detective Dosch identified one of the
13 individuals in the surveillance footage as Co-Defendant Lofton-Robinson; in the surveillance
14 footage, Lofton-Robinson was wearing red shoes, blue jeans, and a long-sleeved green shirt.
15 GJT 105:17-106:5, 108:23-109:9. Detective Dosch also identified Co-Defendant Robertson
16 as one of the individuals in the surveillance footage. GJT 117:3-11. Finally, Detective Dosch
17 identified one of the individuals as Defendant Wheeler. GJT 112:22-113. In the surveillance
18 footage, Defendant Wheeler was wearing a white and black hat; a maroon top, and maroon
19 shoes. GJT 113:3-5, see Grand Jury Exhibits 9 and 10 (attached as Exhibits 7 and 8,
20 respectively, to the State's Return to Writ of Habeas Corpus filed on Mar. 2, 2018).

21 After identifying these individuals, detectives obtained multiple search warrants. Id.
22 During execution of the various search warrants, officers located multiple items of evidentiary
23 value.

24 A .22 caliber semi-automatic firearm was located at 6647 West Tropicana, an address
25 associated with Co-Defendant Raekwon Robertson. GJT 98:12-19, 100:16-22. While
26 searching 6647 West Tropicana, officers also located ammunition bearing the headstamp "C."
27 Id. This ammunition matches the .22 caliber cartridge case found at the murder scene. Id.
28

1 A search warrant was also obtained for 919 Bagpipe Court, an address associated with
2 Co-Defendant Lofton-Robinson. GJT 97:23-98:2, 98:24-99:2. During the search of that
3 residence, officers located a .45 caliber firearm and ammunition bearing a headstamp of R-P
4 45, which matched one of .45 caliber cartridge cases found at the scene of the murder, GJT
5 98:3-5, GJT 100:16-22.

6 A search warrant was also obtained to search Apartment F located at 3300 Civic Center
7 Drive. GJT 99:11-15. Detective Dosch testified that Defendant was associated with this
8 address. GJT 101:14-17. At that residence, officers located a .45 caliber firearm loaded with
9 ammunition bearing a headstamp of RP-45 auto. GJT 99:14-19, 101:2-17, 115:18-116:14.
10 This ammunition matches one of the .45 caliber cartridge cases found at the scene of the
11 murder. Id. Additionally, officers recovered a hat and a pair of maroon shoes both of which
12 matched the items worn by the individual in the surveillance footage who Detective Dosch
13 identified as being the Defendant. GJT 114:2-115:17, see Grand Jury Exhibit 37 and 38
14 (attached as Exhibits 9 and 10 respectively to the State's Return to Writ of Habeas Corpus
15 filed on Mar. 2, 2018). This is the same individual who is also seen on the surveillance footage
16 wearing a firearm. See Exhibits 1, 7 and 8, attached to the State's Return to Writ of Habeas
17 Corpus filed on Mar. 2, 2018.

18 **Ryan Jaeger**

19 Ryan Jaeger ("Detective Jaeger") is a homicide detective with the Las Vegas
20 Metropolitan Police Department assigned to assist in investigating the murder of Mr.
21 Valenzuela. GJT 142:14-25.

22 Detective Jaeger testified that at the area where the victim was picked up by medical
23 personnel, there was mail scattered about the ground. GJT 143:5-9, see Grand Jury Exhibits
24 16-18 (attached as 2-4, respectively to the State's Return to Writ of Habeas Corpus filed on
25 Mar. 2, 2018). Detective Jaeger also testified that he interviewed the Defendant after advising
26 him of his Miranda warnings. GJT 145:1-16. In his interview, Defendant was shown a
27 photograph of the vehicle captured in the surveillance at the Short Line Express and he
28 admitted to having been in the vehicle on August 8, 2017. GJT 145:25-146:2. He also

1 admitted that he owed a .45 caliber firearm and that he would carry the firearm in open carry
2 fashion on his right hip. GJT 145:19-21, 146:22-24. However, when shown footage from
3 inside the Shortline Express, Defendant denied that he had been present inside the store. GJT
4 146:25-147:5.

5 **B. Testimony from April 18, 2018**

6 The following is a summary of the relevant portions of testimony elicited during the
7 presentation of evidence to the Grand Jury on April 18, 2018.

8 **Anya Lester**

9 Anya Lester is a forensic scientist with the firearms/toolmark analysis unit of the Las
10 Vegas Metropolitan Police Department. See Grand Jury Transcript (Apr. 18, 2018) ("GJT2")
11 7:21-23. In conjunction with the instant case, Ms. Lester analyzed various firearms and
12 firearms-related evidence, the results of which she compiled into a report. GJT2 7:11-20 (Ms.
13 Lester's report was introduced as Exhibit 2 at the Grand Jury Proceedings and is attached
14 hereto as Exhibit 2). Ms. Lester tested the following firearms: 1) a .22 long rifle caliber
15 semiautomatic pistol; 2) a Taurus model PT-145 Pro Millennium .45 caliber semiautomatic
16 pistol; and 3) a Star .45 auto caliber semiautomatic pistol. GJT2 8:13-23. Ms. Lester test fired
17 all three firearms and determined that they were all operable. GJT2 9:9-12. She also compared
18 the cartridge cases, bullets and bullet fragments fired from those three firearms to the cartridge
19 cases and bullets located at the crime scene. GJT2 9:13-21.

20 Following her analysis, Ms. Lester concluded that the .22 caliber cartridge case found
21 at the murder scene was fired from the .22 caliber pistol she tested. GJT2 9:13-21. The .22
22 caliber handgun tested by Ms. Lester was located, pursuant to a search warrant, at 6647 West
23 Tropicana, an address associated with Co-Defendant Raekwon Robertson. GJT 98:12-19,
24 100:16-22, GJT2 17:1-16.

25 Ms. Lester further concluded all three .45 caliber cartridge cases found at the murder
26 scene were fired by the Star .45 auto caliber semiautomatic pistol she tested. GJT2 11:14-21.
27 The Star .45 caliber firearm tested by Ms. Lester was located, pursuant to a search warrant, at
28

1 919 Bagpipe Court, an address associated with Co-Defendant Lofton-Robinson. GJT 97:23-
2 98:2, 98:3-99:2, 100:16-22, GJT2 18:3-18.

3 Finally, after testing the Taurus model PT-145 Pro Millennium .45 caliber
4 semiautomatic pistol, Ms. Lester determined that none of the evidence bullets or cartridge
5 cases she tested from the murder scene were fired from that particular gun. GJT2 11:4-13.
6 The Taurus firearm was located, pursuant to a search warrant, at 3300 Civic Center Avenue,
7 an address associated with Defendant. GJT 99:14-19, 101:2-17, 115:18-116:14, GJT2 17:17-
8 18:13.

9 LEGAL ARGUMENT

10 **I. STANDARD OF REVIEW**

11 It is well settled that a district court's function in reviewing a pretrial writ of habeas
12 corpus challenging the sufficiency of probable cause is to determine whether enough
13 competent evidence was presented to establish a reasonable inference that the accused
14 committed the offenses. State v. Fuchs, 78 Nev. 63 (1962). The finding of probable cause to
15 support a criminal charge may be based on "slight, even 'marginal' evidence . . . because it
16 does not involve a determination of the guilt or innocence of the accused." Sheriff v. Hodes,
17 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). "To commit an accused for trial, the State is not
18 required to negate all inferences which might explain his conduct, but only to present enough
19 evidence to support a reasonable inference that the accused committed the offense." Kinsey
20 v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971). Sheriff v. Miley, 99 Nev. 377
21 (1983). Thus, the court need not consider whether the evidence presented to a Grand Jury, or
22 presented at a preliminary hearing, may, by itself, sustain a conviction, because the State need
23 not produce the quantum of proof required to establish the guilt of the accused beyond a
24 reasonable doubt. See Hodes, 96 Nev. at 186, 606 P.2d at 180; Miller v. Sheriff, 95 Nev. 255,
25 592 P.2d 952 (1979); McDonald v. Sheriff, 87 Nev. 361, 487 P.2d 340, (1971).

26 The Nevada Supreme Court has explicitly held that a probable cause determination is
27 "not a substitute for trial," and that the "full and complete exploration of all facets of the case"
28 should be reserved for trial. Marcum v. Sheriff, 85 Nev. 175, 178, 451 P.2d 845, 847 (1969);

1 Robertson v. Sheriff, 85 Nev. 681, 683, 462 P.2d 528, 529 (1969). If the evidence produced
2 establishes a reasonable inference that the defendant committed the crime, the probable cause
3 to order the defendant to answer in the district court has been established. Morgan v. Sheriff,
4 86 Nev. 23, 467 P.2d 600 (1970). Accordingly, the issue of guilt or innocence is not involved
5 and "the evidence need not be sufficient to support a conviction." Kinsey, 87 Nev. at 363
6 (citing Masklay v. State, 85 Nev. 111, 450 P.2d 790 (1969)); Hodes, 96 Nev. at 184, 606 P.2d
7 at 180.

8 **II. ANALYSIS**

9 In the Court Minutes from June 14, 2018, the Court indicated that most issues were
10 denied but the issue of Marcell Solomon's statement not being presented could be
11 supplemented with briefing. As such, the State hereby incorporates by reference the entirety
12 of the arguments made in the State's Return Writ of Habeas Corpus filed on May 29, 2018 and
13 focuses solely on the Defendant's erroneous allegation of an alleged violation of NRS
14 172.145(2).

15 **A. Defendant's Argument that the State failed to Present Exculpatory** 16 **Evidence is Untimely and should not be Considered**

17 In Defendant's Reply to the State's Return to Writ of Habeas Corpus, Defendant argues,
18 for the very first time, that the State failed to present exculpatory evidence at the Grand Jury.
19 Defendant could have raised this argument in his initial Petition for Writ of Habeas Corpus
20 filed on February 8, 2018 or in his second Petition for Writ of Habeas Corpus filed on May
21 17, 2018. However, Defendant did not raise this issue until June 8, 2018 when he filed his
22 reply brief. Defendant's assertion that the State failed to present exculpatory evidence is a
23 substantive claim that should have been raised in his Petition for Writ of Habeas Corpus.
24 Because he failed to do so, this Court should not consider Defendant's argument. See NRAP
25 28(c) (providing that reply briefs "must be limited to answering any new matter set forth in
26 the opposing brief"); Elvik v. State, 114 Nev. 883, 888, 965 P.2d 281, 284 (1998) (explaining
27 that arguments made for the first time in a reply brief prevent the respondent from responding
28 to appellant's contentions with specificity); Weaver v. State, Dep't of Motor Vehicles, 121

1 Nev. 494, 502, 117 P.3d, 198-99 (2005) (arguments raised for the first time in an
2 appellant's reply brief need not be considered); City of Elko v. Zillich, 100 Nev. 366, 371, 683
3 P.2d 5, 8 (1984) (the Court need not consider arguments raised in a reply brief).

4 Additionally, as this argument was not raised until June 8, 2018, it was not timely raised
5 pursuant to NRS 34.700. NRS 34.700 states:

6 1. Except as provided in subsection 3, **a pretrial petition for**
7 **a writ of habeas corpus** based on alleged lack of probable cause
8 or otherwise challenging the court's right or jurisdiction to proceed
9 to the trial of a criminal charge **may not be considered unless:**

10 (a) **The petition and all supporting documents are filed**
11 **within 21 days after the first appearance of the accused in the**
12 **district court; and**

13 (b) The petition contains a statement that the accused:

14 (1) Waives the 60-day limitation for bringing an
15 accused to trial; or

16 (2) If the petition is not decided within 15 days
17 before the date set for trial, consents that the court may,
18 without notice or hearing, continue the trial indefinitely or
19 to a date designated by the court.

20 2. The arraignment and entry of a plea by the accused must
21 not be continued to avoid the requirement that a pretrial petition
22 be filed within the period specified in subsection 1.

23 3. The court may extend, for good cause, the time to file a petition.
24 Good cause shall be deemed to exist if the transcript of the
25 preliminary hearing or of the proceedings before the grand jury is
26 not available within 14 days after the accused's initial appearance
27 and the court shall grant an ex parte application to extend the time
28 for filing a petition. All other applications may be made only after
appropriate notice has been given to the prosecuting attorney.

EDCR 3.40(c) further requires that "[a]ll points and authorities in support of the petition
for writ of habeas corpus must be served and filed at the time of the filing of the petition."
Neither statute nor Eighth Judicial Court Rules allow a Defendant to raise new arguments
outside of the 21-day timeframe.

Nevada Law is clear that the timing requirements are mandatory and that where the
requirements are not complied with, the petition is neither cognizable in District Court nor
reviewable in the Supreme Court. Sheriff, Clark County v. Jensen, 95 Nev. 595, 600 P.2d 222

1 (Nev. 1979); see also Sheriff v. Toston, 93 Nev. 394, 566 P.2d 411 (1977) (holding that a
2 pretrial writ of habeas corpus that did not meet the requirements imposed on habeas petitioners
3 by the NRS was not cognizable in the District Court).

4 In the instant case, following the filing of the Superseding Indictment, Defendant's first
5 appearance in District Court was on May 3, 2018. Defendant was arraigned on the same day
6 and waived his right to a speedy trial. Accordingly, Defendant had 21 days from May 3, 2018,
7 to file his writ. The 21-day deadline for Defendant to file a writ was May 24, 2018. While
8 the Defendant filed his Petition for Writ of Habeas Corpus within the 21-day deadline, his
9 reply brief was not filed until June 8, 2018, well outside of the 21-day deadline. This is
10 significant in that Defendant's present argument was not raised until 36 days after Defendant's
11 first appearance following the Superseding Indictment.

12 These statutory requirements set forth in NRS 34.700 do not contain suggestions;
13 rather, they contain mandates. As Defendant's argument was not raised within 21-days of
14 Defendant's first appearance in District Court, said argument should not be considered by this
15 Court. Any other determination is not supported by law.

16 **B. The State did not fail to Present Exculpatory Evidence to the Grand Jury**

17 NRS 172.145(2) provides: If the district attorney is aware of any evidence which will
18 explain away the charge, he shall submit it to the grand jury. A district attorney violates NRS
19 172.145(2) if he fails to present to the grand jury evidence which has a tendency to explain
20 away the charge. Ostman v. Eighth Judicial Dist. Court, 107 Nev. 563, 564, 816 P.2d 458,
21 459, (1991). The determination of whether particular evidence is exculpatory is generally left
22 to the discretion of the district court. Id.

23 The Defendant argued in his second writ that, "The State failed to present exculpatory
24 evidence to the grand jury that there was a fifth person connected to [the] case, so the
25 Indictment must be dismissed. (Defendant's Second Writ, Page 2, Lines 8-10). The
26 Defendant's argument is that the State should have presented the statement of Marcell
27 Solomon who was present in the parking lot of the Short Line Express convenience store at
28 Warm Springs and Jones prior to the murder because he said in his statement to police that

1 there were five people in the car in the parking lot. While the State acknowledges that Mr.
2 Solomon referenced five people in parts of his statement, it is the Defendant who failed to
3 point out that Mr. Solomon also indicated there were four people in other parts of his statement.

4 On page 3 of his statement, Mr. Solomon stated:

5 So then I went inside. I was doin' Uber at the time, uh, so I went inside
6 and came back out, got it for 'em and they left. It was a real quick
7 interaction but I - I - I do remember that because I remember tellin'
8 my, uh, one of my friends about them bein' out there and it was just
9 weird how they were in the car and there was five of 'em and - there
10 was like four or five of 'em in the car.

11 Later on the same page Mr. Solomon stated:

12 Um, it's hard to see that in pictures. It was, uh, all - all I know is, uh,
13 two in the front, two in the back or - no, I couldn't tell ya which one
14 asked me. I wanna say he had long hair but all of them, you know,
15 have long hair, so... (adding up to only 4).

16 Later on page 15 Mr. Solomon stated:

17 Yeah, definitely, 'cause I remember callin' and tellin' Gabby about it
18 'cause I was tellin Gabby. I'm like, "There's four guys in a car. They
19 want - they is fuckin' trouble."

20 Thus, it is not all together definitive from Mr. Solomon's statement if he believed there
21 were four or five people in the car as he references four in some parts of his statement and five
22 in other parts of his statement. It can hardly be argued that this evidence explains away the
23 charges when the statement makes refence to four individuals in some parts and five
24 individuals in other parts. Moreover, the fact that there were four or five people in the car in
25 the parking lot of the Short Line convenience store does nothing to explain away the evidence
26 of four people being seen at the actual murder scene that was not located at the convenience
27 store.

28 As explained above in the Statement of Facts section, Robert Mason lived in the same
neighborhood as the victim. GJT 45:20-25. At approximately midnight on the night of August
8, 2017, into the morning of August 9, 2017, Mr. Mason went for a jog in his neighborhood.

1 GJT 46:2-15. During his jog, Mr. Mason saw four young black males standing on the corner
2 of Lindell and Dewey in front of 5536 Dewey Drive. GJT 46:16-48:2-18. Shortly after Mr.
3 Mason ran past the four individuals standing in front of Mr. Valenzuela's home, he saw what
4 he described as a white Crown Vic, bearing Nevada license plate number 473YZB. GJT 50:3-
5 21. The vehicle was parked approximately 20-50 feet from where the four black males were
6 standing. GJT 50: 22-25. When shown Grand Jury Exhibit 28 (attached as Exhibit 5 to the
7 State's Return to Writ of Habeas Corpus filed on March 2, 2018), Mr. Mason identified it as
8 the vehicle he saw when he jogged past the victim's house. GJT 51:1-15. Mr. Mason felt
9 these individuals were suspicious so he called his wife and told her to lock the doors to their
10 house and he asked her to call 311 to report the suspicious individuals. GJT 51:18-52:1. This
11 evidence shows that four black males were seen at the murder location. The fact that there
12 may have been five in the car at the convenience store does nothing to explain away the charges
13 and is thus no cause for dismissal.

14 Additionally, the State introduced video surveillance from the convenience store that
15 shows the four (not five) suspects inside the store. As the Statement of Facts explained above,
16 on the night of Mr. Valenzuela's murder (August 8, 2017 into the morning of August 9, 2017),
17 Nikolaus Spahn ("Mr. Spahn") was working as a cashier at the Short Line Express convenience
18 store, located at the intersection of Warm Springs Road and Jones Boulevard at 7325 South
19 Jones Boulevard. GJT 21:13-19, 24:2-7. On that night, Mr. Spahn's shift began at 10:00 p.m.
20 GJT 21: 24-25. Between 11:20-11:38 p.m., four individuals entered the store. GJT 22, 27:7-
21 29:13. Mr. Spahn believed these individuals were behaving suspiciously and he was
22 concerned because one of the individuals was wearing a firearm on his hip.⁵ GJT 22:1-23:25.

23 After the four individuals exited the store, they sat down at a table outside of the store.
24 GJT 25:22-26:11. Mr. Spahn continued to observe the individuals at which point he went
25 outside and saw the vehicle the four individuals were driving. Id. Mr. Spahn described the
26 vehicle as a white four door Mercury that looked like a Crown Victoria. GJT 26:12-15. Later

27
28 ⁵ Surveillance footage reveals that the individual wearing the firearm is the person Detective Dosch identified as Defendant Wheeler. The portions of the surveillance footage introduced at Grand Jury are attached as Exhibit 1 to the State's Return to Writ of Habeas Corpus filed on Mar. 2, 2018.

1 that night, police officers came into the store and told Mr. Spahn they were investigating a
2 murder; at that time, he told officers about the four individuals he observed. GJT 27:15-23.

3 During Mr. Spahn's testimony, the State introduced surveillance footage from the
4 Shortline Express capturing the four individuals as well as the vehicle in which they arrived.
5 GJT 29:20-31:15. The surveillance footage showed that the vehicle had paint damage on the
6 roof of the car that the first three numbers on the license plate number were 473. GJT 31:6-9,
7 96:11-22.

8 Moreover, the surveillance footage admitted at the State's first presentation directly
9 contradicts Defendant's argument regarding the existence of a fifth individual. A view of the
10 surveillance footage shows that the vehicle in question arrived at the Shortline Express, at
11 which time four individuals exited the vehicle and entered the convenience store. See Exhibit
12 1 attached to the State's Return to Writ of Habeas Corpus filed on Mar. 2, 2018. These
13 individuals were identified by Detective Dosch as being Defendant and his co-defendants.
14 GJT 105:17-106:5, 108:23-109:9, 117:3-11, 112:22-113.

15 While inside the convenience store, the Defendant and his co-defendants are observed
16 together and are not actively communicating with anyone else. See id. At no time is a fifth
17 person visible in the vehicle or seen associating with the defendants inside the store. Id. The
18 surveillance footage later shows all four individuals (including Defendant) getting back into
19 the vehicle. Id. At no point does the footage show Defendant getting back out of the vehicle
20 or anyone else getting into the vehicle. Id.

21 Thus, evidence was introduced by Mr. Spahn and from surveillance video of Defendant
22 and his co-defendants being together in the convenience store and associated with the vehicle
23 that was later seen and identified by Robert Mason as being in the area of the murder with four
24 individuals. The fact that Marcell Solomon referred to four individuals in some instances in
25 his statement and five individuals in other parts of his statement as being present in the car at
26 the convenience store does not explain away the charges and is not exculpatory.

27 But the Defendant further argued, "Moreover, Wheeler had told detectives that there
28 had been four other individuals, but that State did not include his statement to the grand jury.

1 (Defendant's Second Writ, Page 8, Lines 15-16). This assertion is completely belied by the
2 record. The following portion of the transcripts shows that the State did introduce evidence
3 of the Defendant's statement to police, comprising pages 145 through 148 of the transcripts
4 from November 29, 2017.

5 Q. Showing you Exhibit 13. Who is that?

6 A. That's Davontae Wheeler.

7 Q. And when you came into contact with him, did you deal with him personally?

8 A. I did.

9 Q. Did you conduct an interview with him?

10 A. I did.

11 Q. Did you provide him with his Miranda warnings prior to that interview?

12 A. I did.

13 Q. Did he indicate that he understood those warnings and that he was going to speak
14 with you?

15 A. Yes, he did.

16 Q. Did you ask him questions about the events of the night of the 9th and some
17 other events as well?

18 A. I did.

19 Q. And what did he tell you after you gave him his Miranda warnings?

20 A. He admitted to owning a 45 caliber handgun. He admitted to being in the vehicle
21 but he stated he was not involved in any murder.

22 Q. And when you say a vehicle, specifically did you show him or was he shown
23 still photographs of the Grand Marquis?

24 A. He was shown still photographs collected from the surveillance system of the
25 Short Line Express that depicted the Grand Marquis.

26 Q. Did he admit that he had been in the vehicle?

27 A. Yes, he did.

28 Q. Did he deny that he was involved in any sort of killing?

1 A. Yes.

2 Q. Okay. And did you ask him about what his comings and goings were of August
3 the 8th and August the 9th?

4 A. I did.

5 Q. What did he say he had done?

6 A. He said that he was in the vehicle, he was trying to negotiate to buy a Beretta
7 handgun, he couldn't reach a price for the gun that he liked so he got out of the
8 vehicle and took a bus home.

9 Q. And then you just talked about the purchase or attempt to purchase a Beretta.
10 Did he indicate whether or not he had a firearm or firearms or how he would
11 carry them?

12 A. He said he did have a firearm and he said that any time he didn't feel safe he
13 carried the firearm on his right hip in an open carry fashion.

14 Q. Was he, or did you show him any of the surveillance footage from inside of the
15 Express –

16 A. I did.

17 Q. Did he indicate that was him or not?

18 A. He denied that that was him inside the Short Line Express.

19 Q. However in the course of your investigation did you find pieces of evidence that
20 were similar or appeared to be similar to the clothing, the shoes, of the people
21 inside the surveillance of that Short Line Express?

22 A. We did.

23 Q. And also involving a hat?

24 A. I don't know if they've seen the picture.

25 Q. Yes. You're speaking of the hat. Was there something you were focusing on
26 with the hat?

27 A. The hat in the surveillance pictures, it's a white baseball hat with a black bill and
28 there's a holographic sticker that can be seen on the bill of the cap.

1 Q. Did you ask him about that?

2 A. I did and he said he does not have any clothing that would resemble the person
3 seen in the surveillance footage. If you see the hat that's there, that's actually a
4 Chicago Blackhawks hat with the same sticker that was found in his apartment.

5 Q. All right. That's the next question I was going to ask you. You were involved
6 with the search when this hat was found. Where was it found?

7 A. I did not search his apartment. I was with him doing the interview when his
8 apartment was searched.

9 Q. Are you aware that this was found in his apartment?

10 A. Yes.

11 Q. Was there information in your investigation that associated Mr. Wheeler with
12 that apartment?

13 A. Yes.

14 Q. Do you know offhand what some of that information was?

15 A. He lived in apartment F and his sister lived in apartment G. That was verified
16 by the complex security.

17 GJT, 145:1-148:16.

18 This clearly belies the Defendant's argument completely. The State did, in fact,
19 introduce the Defendant's statement, including his self-serving denial of involvement in the
20 crime and his allegation that he left the convenience store and took a bus home. Curiously,
21 the Defendant failed to mention that in his second writ. What is also curious is the argument
22 that the State violated NRS 172.145(2) because those statements were not even required to be
23 presented to the grand jury under the case law.

24 The Nevada Supreme Court rejected a similar argument by a defendant in Indico v.
25 Eighth Judicial Dist. Court, 2014 Nev. Unpub. LEXIS 994 *; 2014 WL 2751205, (June 16,
26 2014). In that case the State presented the murder case to the grand jury and the defendant
27 was indicted. The defendant filed a writ in District Court alleging that the State violated NRS
28 172.145(2) by failing to introduce "exculpatory" evidence. The District Court denied the writ

1 and the defendant appealed the denial to the Nevada Supreme Court. The defendant alleged
2 that the prosecution improperly excluded from the grand jurors' consideration evidence
3 showing self-defense, specifically, (1) her statement in a 911 call that the victim had stabbed
4 her, (2) her statement to a neighbor that the victim stabbed her, and (3) medical evidence that
5 the stab wounds to her abdomen (a shallow stab wound and a nick to her intestine) and a stab
6 wound to her thumb were consistent with her claims of self-defense, and (4) her multiple
7 statements to the police that the victim stabbed her and she acted in self-defense. In denying
8 the defendant's writ, the Nevada Supreme Court stated the following:

9 Petitioner argues that statements in her 911 call and to a neighbor that
10 the victim stabbed her satisfy the excited-utterance exception to the
11 hearsay rule, see NRS 51.095 (providing that "[a] statement relating
12 to a startling event or condition made while the declarant was under
13 the stress of excitement caused by the event or condition is not
14 inadmissible under the hearsay rule"), and therefore could be
15 considered by the grand jury. Even accepting that premise, we
16 conclude that those statements are not exculpatory under NRS
17 172.145(2), as they do not explain away the charges. Neither does
18 medical evidence regarding petitioner's injuries. Moreover, the grand
19 jury was presented with evidence that she sustained stab wounds to
20 her abdomen and thumb. Petitioner's statements in a 911 call and to a
21 neighbor do not in and of themselves explain away or negate the slight
22 or marginal evidence supporting the elements of the charge. Evidence
23 that the victim stabbed petitioner, alone, would not preclude a
24 probable cause determination that petitioner committed first-degree
25 murder. See NRS 200.030(1) (defining first-degree murder, in
26 relevant part, as a "willful, deliberate and premeditated killing").
27 Further, petitioner's non-life-threatening stab wounds do not explain
28 away the charge as those wounds could have been inflicted by means
 other than self-defense. Finally, self-exculpating statements are
 inherently suspect in their trustworthiness, see Williamson v. United
States, 512 U.S. 594, 600, 114 S. Ct. 2431, 129 L. Ed. 2d 476 (1994)
(observing that "[s]elf-exculpatory statements are exactly the ones
which people are most likely to make even when they are false").

 Regarding petitioner's statements to the police that the victim stabbed
her and that she acted in self-defense, those statements are not
exculpatory for the reasons explained above. See United States v.
Camacho, 163 F. Supp. 2d 287, 308 (S.D.N.Y. 2001) ("Statements to
police and prosecutors by criminal suspects or defendants are not

1 considered to be reliable, because the declarant generally wants to
2 obtain favorable treatment; [defendant's] statements to the police were
especially unreliable because they were self-exculpatory.")

3 Thus, United States Supreme Court case law, Federal Circuit case law, and Nevada
4 state case law clearly establishes that the State does not have to present the grand jury with a
5 defendant's self-exculpating statements. Notwithstanding the State not being required to
6 present the evidence under this case law, the State did present it and it was considered by the
7 grand jury. The State had no duty to present evidence of a witness who spoke of four or five
8 people being in the car, as that does not explain away the charges. Moreover, the State did
9 present the non-required statement by the Defendant that he was not involved in the murder
10 and that he left the car at the convenience store and went home on a bus. Consequently, the
11 Defendant's petition should be denied.

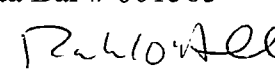
12 **CONCLUSION**

13 Based on the foregoing, the State respectfully requests that Defendant's Petition for
14 Writ of Habeas Corpus be DENIED in its entirety.

15 DATED this 28 day of June, 2018.

16 Respectfully submitted,

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

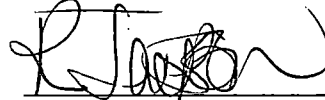
19 BY  ^{to 128410}
20 GIANCARLO PESCI
21 Chief Deputy District Attorney
22 Nevada Bar #7135
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing, was made this 28th day of June, 2018 by Electronic Filing to:

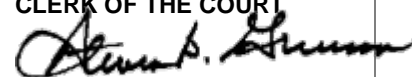
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Secretary for the District Attorney's Office

17F14369A/GP/rmj/L-3

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA

Case No. C-17-328587-3

Plaintiff,

Dept No. XX

vs.

DAVONTAE AMARRI WHEELER,
#5909081,

Defendant.

**REPLY TO STATE'S SUPPLEMENT TO RETURN TO WRIT OF HABEAS CORPUS
AND, IF NECESSARY, MOTION TO AMEND PETITION TO INCLUDE A MOTION
TO DISMISS, IN THE ALTERNATIVE**

COMES NOW, the Defendant, DAVONTAE AMARRI WHEELER, by and through his attorney of record, JAMES J. RUGGEROLI, ESQ., and submits the following Reply to State's Supplement Return to Writ of Habeas Corpus. This supplement and reply is made and based upon the attached points and authorities and the Declaration of James J. Ruggeroli, the papers and pleadings on file herein, together with the arguments of counsel to be heard at the time of the hearing on this matter.

DATED this 5th day of July, 2018.**JAMES J. RUGGEROLI**

By /s/ James J. Ruggeroli
James J. Ruggeroli, Esq.
Nevada Bar No. 7891
601 South 7th Street
Las Vegas, Nevada 89101

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The arguable untimeliness of Wheeler's contention that the State's violated NRS 172.145(2) for failing to present exculpatory evidence to the grand jury operates as excusable delay pursuant to NRS 34.700(3). In the alternative, Wheeler's argument may unquestionably be considered by this court through a motion to amend that portion of his petition to a *motion to dismiss*, which does not contain any applicable time constraint. Moreover, evidence of the potential fifth person present at the convenient store certainly amounts to evidence which could explain away the charges against Wheeler, therefore, the State violated NRS 172.145(2) and the Indictment must be dismissed.

II. EXCUSABLE DELAY OR MOTION TO AMEND ARGUMENT TO A MOTION TO DISMISS

A. GOOD CAUSE EXCUSES THE DELAY

The State has suggested that Wheeler's argument concerning its failure to present exculpatory evidence to the grand jury is entirely inapplicable to the case at hand. NRS 34.700(3) enables this court to permit untimely filed petitions for good cause: "[t]he court may extend, for good cause, the time to file a petition." In the case at hand, Wheeler has been provided with voluminous discovery. The information concerning the Marcell Solomon had not been included in the arrest report. Moreover, counsel had been operating under the belief that no evidence, other than Wheeler's own statement, existed. The State even boldly asserted "**[t]he only evidence that the Defendant left the convenience store (after denying that he was in the surveillance footage) is his own self-serving statement that he took the bus home.**"

Counsel had taken the State at its word until further review of the discovery in this matter revealed that Marcell Solomon, an independent, objective witness had been interviewed by Metro detectives and informed them that:

A: I wanna say **five**. I'd say two in the front and three in the back."

1 Q1: And you believe there was five in the car.

2 A: I believe – I wanna say there was **five of ‘em**.

3 See Marcell Solomon’s Voluntary Statement at p. 4.

4 The very purpose of the 21-day time limit applies to the time it would take to review the
5 transcripts from the grand jury proceedings and then file a petition. The exception contained in
6 NRS 34.700(3) perfectly applies to the facts at issue here. Wheeler had relied on the State’s
7 representations that no other evidence existed that a fifth person had been present. Moreover,
8 Wheeler relied on NRS 172.145(2)’s clear mandate that any exculpatory evidence would be
9 provided to the grand jury by the State. Any delay in raising this argument may clearly be
10 excused as good cause for the delay, and the merits of the argument must justly be heard.

11 **B. MOTION TO AMEND ARGUMENT TO A MOTION TO DISMISS**

12 Should this court hold that good cause does not excuse the delay for the purposes of
13 petitions for writ of habeas corpus pursuant to NRS 34.700, Wheeler respectfully and justifiably
14 requests that this court permit the petition’s argument to be amended to and heard as a motion to
15 dismiss, which is subject to no applicable time constraint. NRS 172.145(2) is not a trivial dictate
16 upon the State’s obligations. Providing exculpatory evidence to the grand jury, especially in a
17 murder case in which the State’s evidence against Wheeler amounts to circumstantial evidence at
18 best, must be viewed as paramount. Justice demands that this court entertain this argument,
19 whether through the name of a petition or through a motion to dismiss. For the reasons provided
20 below, the exculpatory evidence was unjustifiably not presented to the grand jury, and the
21 Indictment must therefore be dismissed.

22 ////

23 ////

1 **III. EXCULPATORY EVIDENCE NOT PRESENTED IN VIOLATION OF NRS**
2 **172.145(2)**

3 Evidence that there was a fifth individual present at the convenience store is fully
4 supported by independent evidence, but the State violated NRS 172.145(2) by not providing this
5 evidence to the grand jury.

6 At the grand jury, Mr. Spahn (the convenient store clerk) testified that he would not sell a
7 Black and Mild cigar to the four individuals in the store because of lack of ID, so another
8 individual that had ID came in the store later and bought the same Black and Mild cigar. GJT 25-
9 27. Through investigation, police obtained the identity of that individual and questioned him.

10 Marcell Solomon was the individual in the store that bought the Black and Mild cigar for
11 the individuals that had been in the store. See a true and accurate copy of the relevant portion of
12 Mr. Solomon's Voluntary Statement ("Solomon VS"). Det. Dosche found Mr. Solomon through
13 his credit card purchase and because of the surveillance video from the convenience store.
14 Solomon VS at 2. When asked about how many people he had seen in the white car in front of
15 the Shortline Express, Mr. Solomon answered:

16 A: I wanna say **five**. I'd say two in the front and three in the back."

17 Q1: And you believe there was five in the car.

18 A: I believe – I wanna say there was **five of 'em**.

19 Id. at 4.

20 Moreover, Wheeler had told detectives that there had been four other individuals, but the
21 State did not include his statement to the grand jury. Wheeler told detectives that there were five
22 people beside himself that went to the convenience store. See a true and accurate portion of
23 Wheeler's Voluntary Statement ("Wheeler's VS") at pages 21-23, 96, 99.

24 Although the State accurately provides that Mr. Solomon eventually waived in his
25 certainty as to the exact number of individuals, Mr. Solomon unquestionably indicated, in the
26 first instance, that he thought there were five. It was only after the detective continued to press
27 Mr. Solomon did he waiver. Nevertheless, even if he said four individuals were present at certain
28 points of his statement, he undoubtedly indicated that there were five present at the begin and at

1 different points during his statement. This evidence was exculpatory because it corroborated
2 Wheeler's statement to the police that there had been four others present before he left the car,
3 got on a bus, and did not go with the others to the scene of any shooting.

4 In its supplement, the State argues that it did not fail to present exculpatory evidence to
5 the grand jury. This court must not agree with this contention. Exculpatory evidence has been
6 defined as that evidence "which has a tendency to explain away the charge against the target of
7 the grand jury's investigation." Lane v. District Court, 104 Nev. 427, 463, 760 P.2d 1245, 1269
8 (1988) (Steffen, J., concurring). When a prosecutor has abused NRS 172.145 (2) by withholding
9 known exculpatory evidence and engaging in conduct that impairs the function of an
10 independent and informed grand jury, the courts of this state have not stood silently by. Mayo v.
11 Eighth Jud. Dist. Ct., 384 P.3d 486, 491 (2016).

12 Though not required by the federal constitution or as a matter of the federal courts'
13 supervisory authority, see United States v. Williams, 504 U.S. 36, 51-53, 112 S.Ct. 1735, 118
14 L.Ed.2d 352 (1992), in a number of states and in the District of Columbia, "there are statutes or
15 judicial decisions that require prosecutors to inform the grand jury of exculpatory evidence in
16 some circumstances," 1 Sara Sun Beale et al., *supra*, § 4:17, as do the ABA Standards for
17 Criminal Justice, § 3-4.6(e) (4th ed. 2015).

18 In Nevada, our Supreme Court has determined that a deputy district attorney who failed
19 to submit evidence that had a tendency to explain away the charge against a defendant violated
20 his duty as dictated by the language of NRS 172.145(2). See Sheriff v. Frank, 103 Nev. 157 at
21 160, 734 P.2d 1241 at 1244 (1987)).

22 The respondent in Frank, a sexual assault case, argued that the deputy district attorney
23 violated his duty under NRS 172.145(2) by failing to present to the grand jury conclusive proof
24 that the victim made deliberately false accusations of sexual misconduct against other individuals
25 at the same time that she was making similar accusations against her father (the respondent).
26 The Supreme Court agreed and held that the evidence regarding the victim-daughter's prior false
27 accusations, made at the same time she also accused her father, had a tendency to explain away

1 the charge against the respondent. The Court held that by failing to submit this evidence to the
2 grand jury, the district attorney violated his duty dictated by the plain, unambiguous language of
3 NRS 172.145(2). Frank, 103 Nev. at 164-65, 734 P.2d at 1244.

4 In State v. Babayan, 787 P.2d 805, 817 (1990) the district court found that substantial
5 exculpatory evidence was known to the District Attorney's Office, but that the prosecutors failed
6 to present it to the grand jury. The prosecution presented evidence to the grand jury that
7 numerous children were sexually assaulted, either vaginally or anally. The testimony presented
8 indicated that complete penetration had occurred and, in some instances, occurred more than
9 once. At the time of its presentations, the prosecution possessed reports submitted by physicians
10 who had examined the children. None of the physicians found any indicia of sexual penetration.
11 The prosecution did not present these reports to the grand jury.

12 On appeal, the Supreme Court agreed and held that the prosecution's failure to present
13 such evidence added to an overall foundation supportive of the district court's decision to dismiss
14 the indictments. Id. The Court importantly noted that *while not entirely dispositive* of whether
15 the children were sexually assaulted, "evidence that there were no physical findings of
16 penetration would tend to explain away the charges against the defendants, or, at the very least,
17 would suggest that any sexual abuse that might have occurred did not happen as recounted by
18 some of the alleged victims. The grand jury should have had this information before it in order
19 for it to make an informed determination." Id. The Court further noted that:

20
21 the prosecution received statements by preschool teachers and staff. These
22 statements indicated that there were normally at least four teachers or assistants
23 supervising the children at each preschool, that the shuttle buses between the
24 preschools usually traveled in tandem, and that the children were not normally out
25 of an adult supervisor's presence. None of the teachers or staff who provided
26 statements indicated that they observed any activity or heard any statements that
27 would suggest that child abuse was or had been occurring. The District Attorney's
28 Office, however, never called any of the teachers or staff, the majority of whom
29 were women and some of whom had children attending the preschools, to testify
30 before the grand jury at any of its proceedings. This evidence was of an exculpatory
nature and the district attorney should have presented it.

The prosecutors also failed to present certain other evidence which when
considered separately may not have explained away the charges, but when viewed
in its totality was exculpatory, i.e., the schools' open floor plans, the irregular flow

of persons, including parents, in and out of the schools, and the presence of a tutorial service that rented space at the Hash Lane preschool. When considered against the allegations of continuous and ongoing sexual abuse, some of which was alleged to have occurred in open areas, *this evidence would have had a tendency to explain away the charges and it should have been presented.*

Id. (Emphasis added).

When a prosecutor has abused NRS 172.145(2) by withholding known exculpatory evidence and engaging in conduct that impairs the function of an independent and informed grand jury, the courts of this state have not stood silently by. State v. Babayan, 106 Nev. 155, 169-70, 787 P.2d 805, 816-17 (1990). See also Ostman v. Eighth Judicial Dist. Court, 816 P.2d 458, 107 Nev. 563 (1991) in which a statement that the Defendant gave to the police, which generally acknowledged the alleged events occurred but claimed that the victim voluntarily participated in the charged sexual activity, was exculpatory and prosecutor was therefore obliged to present it to grand jury.

In the case at hand, the State could have explained away the charges due to specific, known evidence of a fifth person in the car at the convenience store. The State knew that Wheeler had claimed that there were five people present at the convenient store. Moreover, despite the State's interesting description of the surveillance video, the video footage does not reveal inside the car. Another occupant could easily have been present in the car and not seen on the video surveillance.

Moreover, as discussed in Babayan, it does not matter that the evidence of a fifth individual would not have been dispositive, that evidence was exculpatory. It could have explained away the charges as to Wheeler. If there had been a fifth person present at the convenience store and Wheeler left the other four individuals prior to the shooting, his involvement in the murder would have been explained away.

The State violated NRS 172.145(2). Here, as in Frank and Babayan, the State failed to submit evidence that had "a tendency to explain away the charges against the defendant," and the State violated its duty under the clear language of the statute. The Indictment must be dismissed.

1 **V. CONCLUSION**

2 For the reasons stated herein, it is respectfully requests that this Court dismiss the
3 Indictment against Mr. Wheeler.

4 DATED this 5th day of July, 2018.

5 **JAMES J. RUGGEROLI**

6 By: /s/ James Ruggeroli
7 James J. Ruggeroli, Esq.
8 Nevada Bar No. 7891
9 601 South 7th Street
10 Las Vegas, Nevada 89101
11 Attorney for Defendant

12 **DECLARATION OF JAMES J. RUGGEROLI, ESQ.**

13 JAMES J. RUGGEROLI, ESQ., being first duly sworn under oath, deposes and states:

14 1. I am an attorney at law duly licensed to practice before this Court and make this
15 Declaration of facts from personal knowledge which is known to me, except for those matters
16 stated upon information and belief, and as to those matters, I believe same to be true.

17 2. I am counsel of record for the Defendant, DAVONTAE AMARRI WHEELER.

18 3. Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the
19 State of Nevada that the foregoing is true and correct.

20 DATED this 5th day of June, 2018.

21 **JAMES J. RUGGEROLI**

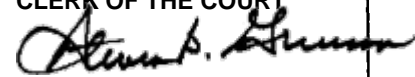
22 By: /s/ James Ruggeroli
23 James J. Ruggeroli, Esq.
24 Nevada Bar No. 7891

25 **CERTIFICATE OF SERVICE**

26 I hereby certify that on the 5th day of July, 2018, I emailed a copy of the foregoing
27 Supplemental Reply to them at the following address:

28 motions@clarkcountyda.com

29 By: /s/ James Ruggeroli
30 James J. Ruggeroli, Esq.



ORDR
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #7135
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

DAVONTAE AMARRI WHEELER,
#5909081

Defendant.

CASE NO: C-17-328587-3

DEPT NO: XII

**ORDER DENYING DEFENDANT'S PRETRIAL PETITION FOR WRIT OF
HABEAS CORPUS**

DATE OF HEARING: 8/2/18
TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the
2nd day of August, 2018, the Defendant being present, REPRESENTED BY JAMES
RUGGEROLI, ESQ., the Plaintiff being represented by STEVEN B. WOLFSON, District
Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and the Court
having heard the arguments of counsel and good cause appearing therefor,

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RECEIVED

AUG 03 2018

DEPT. 12

1 IT IS HEREBY ORDERED that the Defendant's Pretrial Petition for Writ of Habeas
2 Corpus, shall be, and it is Denied.

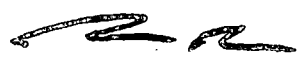
3 DATED this 7th day of August, 2018.

4
5
6 STEVEN B. WOLFSON
7 Clark County District Attorney
8 Nevada Bar #001565


DISTRICT JUDGE

TIERRA JONES

9 BY


GIANCARLO PESCI
Chief Deputy District Attorney
Nevada Bar #7135

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LAS VEGAS METROPOLITAN POLICE DEPARTMENT

ARREST REPORT

☐ City☒ County☐ Adult☐ JuvenileSector/Beat S5

ID/EVENT# 05909081	ARRESTEE'S NAME (Last) (First) (Middle) Wheeler Davontae Amarri			S.S.# 275-89-8303
ARRESTEE'S ADDRESS (Number, Street, City, State, Zip Code) 3300 Civic Center Drive #2F N. Las Vegas 89030				
CHARGES Attempt Robbery with a Deadly Weapon, Conspiracy to Commit Robbery with a Deadly Weapon, Murder with a Deadly Weapon				
OCCURRED DATE 08-09-17		DAY OF WEEK Wednesday	TIME 0012	LOCATION OF ARREST (Number, Street, City, State, Zip Code) 220 Civic Center Drive #2F N. Las Vegas, Nevada 89030
RACE B	SEX M	D.O.B. 04/27/95	HT. 5'8"	WT. 136
HAIR BLK		EYES BRN	PLACE OF BIRTH Dayton Ohio	
ARRESTING OFFICER #1: R. Jaeger		P#: 5587	ARRESTING OFFICER #2: M. Dosch	
P#: 7907				
CONNECTING REPORTS (Type or Event Number) 170809-0029				

APPROVED BY (PRINTED NAME): Lieutenant D. McGrath #4349

CIRCUMSTANCES OF ARREST:

On 08-09-2017 the Las Vegas Metropolitan Police Department (LVMPD) dispatch received a 911 call from John Relato. Relato reported his cousin, Gabriel Valenzuela, had been shot in the driveway of 5536 West Dewey Dr. Patrol officers and Medical personnel responded to the scene and discovered Gabriel Valenzuela lying on the ground suffering from gunshot wounds. Gabriel was transported via ambulance to UMC Trauma and patrol officer secured the scene and contacted witnesses. One of the witnesses was Robert Mason. Mason told the officers that he was jogging in the neighborhood right before the shooting. Mason saw four black males wearing dark colored clothing and standing in front of the Valenzuela's residence. The males were acting suspiciously. When Mason ran past the males and turned north on Lindell Rd. he saw an unoccupied white Mercury Grand Marquis bearing Nevada registration 473YZB. Mason called his wife, Lucy Mendoza, and asked her to call the police and report the suspicious circumstances. Mendoza's 3-1-1 call to the LVMPD Communications Center was at approximately 0011 hours, which was documented under LVMPD event 170809-0027.

At approximately 0055 hours UMC Dr. Saquib pronounced Valenzuela dead. Patrol detectives determined further investigation from the Homicide Section was warranted. Detectives Jaeger and Dosch responded to the scene and assumed investigatory responsibility. Evidence at the scene consisted of three .45 caliber cartridge cases, a .22 caliber cartridge case and apparent blood. Detectives Jaeger and Dosch received a briefing from patrol detectives and learned a patrol officers had stopped in at a nearby convenience store, which was located at 7325 S. Jones Boulevard. The clerk told the officer that around 2230 hours (August 8th), right before midnight, four black males entered the store. One of the males was open-carry with a black handgun. The males arrived in white sedan and the clerk was fearful he was going to get robbed. The males made a couple purchases and eventually left without incident.

PA0434

CONTINUATION REPORTID/EVENT #: 170809-0029

Detective Cody responded to the convenience store and viewed the video surveillance. The males arrived at approximately 2325 hours in a white Mercury Grand Marquis. The video was clear enough to determine the front license plate matched the license plate information from the Mason. The four black males entered the store, made a couple purchases and stayed for approximately 20 minutes. One of the males depicted in the video surveillance appeared to have a handgun visible on the right side of his waistband. A description of the occupants of the vehicle were as follows:

The driver was a black male wearing a green hoodie type shirt with a circular insignia on the front, blue jeans, and red shoes. He was approximately 5'7", thin build and noticeably shorter than the rest of the group.

The right front passenger was a black male wearing a red hoodie type shirt, white baseball hat with an unknown symbol, torn black jeans, and red high tops shoes. He was approximately 5'10", thin build and carrying a handgun in a holster on right hip (open carry).

The left rear passenger was a black male wearing a black hoodie, dark blue or black jeans, and black and white shoes. He was approximately 5'10" with a thin build.

The right rear passenger was a black male wearing black short sleeved-shirt, dark blue or black jeans, and red high top shoes. He was approximately 5'10" with a thin build.

Over the next 24 hours detectives subsequently identified as Demario "DJ" Lofton-Robinson and his younger brother, Deshawn Robinson. Lofton-Robinson and Robinson were transported to LVMPD Headquarters where they were interviewed in connection with the murder.

In summary and post-Miranda Lofton-Robinson confessed to his involvement in the crime. The original plan was to rob the victim but the victim fought back and was shot multiple times. Lofton-Robinson was armed with a .45 caliber handgun and admitted to shooting at Valenzuela one time. Lofton-Robinson confirmed his brother was there but had limited information regarding the identities of the other two suspects. Lofton-Robinson said one of the suspects went by the name "Rae" and the other suspect was known only by the moniker of "Light Skin." Lofton-Robinson said Rae's cell phone number would be in Lofton-Robinson's cell phone and the number started out as 702-934. Lofton-Robinson said the other suspect's number might be connected to the contact name "Sace," which was also in his cell phone. Lofton-Robinson said he picked up Rae in a white colored apartment complex near the intersection of Jones Blvd. and Tropicana Ave. After the murder, he dropped the suspect off at the same complex.

In summary and post-Miranda Robinson confessed to his involvement in the murder. The original plan was to rob the victim and Robinson said everyone was armed with the exception of him. Robinson claimed as the four males moved toward the victim, he became afraid and turned around. That was when he heard multiple gunshots. Other than his brother, Robinson said he was unable to identify the other two suspects but claimed information which could lead to their identities might be in his cell phone. Trough follow up investigation the third suspect involved in the murder was identified as Raekwon Robertson.

Detective Dosch obtained a search warrant for the cell phones recovered from Lofton-Robinson's and Robinson's person at the time of their arrests. The search warrant was signed by District Court Judge Elizabeth Gonzalez. On August 12th Detective Dosch released custody of the cell phones to Computer Forensics Lab (CFL) Detectives Tomaino and Flink, who conducted a forensic examination of the electronic storage devices. During the examination of Robinson's cell phone, CFL

CONTINUATION REPORTID/EVENT #: 170809-0029

detectives located a Facebook Messenger thread between Robinson's Facebook account and the Ray Logan account. On August 8th at approximately 1140 hours, which was about 12 hours before the murder, Robertson contacted Robinson via Facebook Messenger and asked Robinson if "DJ" (Lofton-Robinson) was "trying to hit ahouse (SIC) tonight." Robertson added, "me u sace and him sace already said yeah." It appeared Robertson was identifying all the would-be participants in what sounded like the planning of a burglary. Robinson responded and then at approximately 1227 hours Robertson said, "tell him to kall (SIC) me 934-4851."

Lofton-Robinson's cell phone was examined and there was recent text messaging between Lofton-Robinson and the contact name "Sace." The corresponding phone number for the Sace contact name was 702-801-0516. A records check of Robertson's Facebook account showed he was friends with an account named "Young Sace Versace." Detective Dosch viewed the photos in the "Young Sace Versace" account and compared them to the open carry suspect. The suspect depicted in the video surveillance bore a strong resemblance to the photos of the black male depicted in the Facebook account Young Sace Versace. Through follow-up investigation the name associated with the account was identified as Davontae Wheeler. Wheeler had tattoos on his arm and chest and it appeared in some of his accessible Facebook photos.

On August 14th a pen register was obtained for Wheeler's phone number of 702-801-0516. Subscriber information for the phone confirmed it was in Wheeler's name. Detective Jaeger reviewed Wheeler's CDR and discovered he had a lot of contact with Robertson. Detective Dosch compared Wheeler CDRs to Robertson's CDRs and it appeared the two phone numbers were associated with each on the on August 8th at 2212 hours. The cell towers the cell phones connected to were located less than a half mile from one another in the area of Decatur Blvd. and Desert Inn Rd. Detective Dosch conducted a more thorough review of Wheeler's CDRs and it showed a lot of interaction with cell towers showed located near Civic Center Dr. and Cheyenne Ave., which meant his residence was possibly in that general area of town. This was consistent with Lofton-Robinson's claim he picked up Wheeler at the 7-Eleven near Civic Center Dr. and Cheyenne Ave.

On August 15th personnel from the LVMPD Criminal Apprehension Team (CAT) arrested Robertson at his residence. The CAT team then went to 3300 Civic Center Dr. apartment 2F and took Wheeler into custody. In plain view the detectives saw what appeared to be a .45 caliber black semi-automatic handgun. Wheeler was transported to the LVMPD Headquarters to be interviewed and his apartment was frozen in anticipation of the search warrant. While at Wheeler's residence, detectives determined the neighboring apartment, 2G, belonged to Wheeler's sister. Not only were the two apartments adjacent to one another, but the apartments both shared a patio. Furthermore, detectives noticed phone activity from Wheeler's cell phone was in contact with his sister's apartment and security for the complex confirmed there is constant activity back and forth between the two apartments. This means it is highly likely Wheeler keeps property or possibly evidence at apartment 2G in addition to his own. Search warrant were granted allowing Detectives to search apartments 2G and 2F.

In apartment 2F a semi-automatic Taurus .45 handgun and a holster was located. The magazine was removed from the handgun located in Wheeler's apartment and it was loaded with live ammo bearing head stamp R-P 45 AUTO which matched one of the cartridge recovered from the crime scene. A pair of red in color shoes, and a black and white baseball cap were also collected.

CONTINUATION REPORTID/EVENT #: 170809-0029

The red shoes and black and white baseball cap appeared to be the same items worn by Wheeler while he was captured on surveillance footage in the gas station just prior to the murder. Detectives at the Wheeler's apartment contacted Wheeler's sister and his fiancée, Janessa Justice. Both women were shown the surveillance still from the gas station and they identified the subject in the maroon shirt as Wheeler.

Wheeler was transported to LVMPD Headquarters where he was advised of his Miranda rights which he acknowledged and stated he would answer questions. Wheeler was shown the still photos collected from the surveillance footage at the gas station. Wheeler denied he was depicted in the stills. Wheeler was able to identify "DJ" (Lofton-Robinson) in the stills. Wheeler claimed that he was going to purchase a Beretta handgun from DJ. Wheeler admitted he was in DJ's vehicle and they drove to a gas station so he could get some change. After they left the gas station Wheeler became involved in an argument over the price of the gun she he exited the vehicle and took the bus home. Wheeler was not able to describe where the gas station was, or what bus he took home, or the clothes he wore that night. Wheeler did admit to owning a .45 caliber handgun which he open carried whenever he felt unsafe. Throughout the interview Wheeler denied shooting anyone, or being present when anyone was shot.