

1 DECLARATION OF MAILING

2 Carrie Connolly, an employee with the Clark County
3 Public Defender's Office, hereby declares that she is, and was
4 when the herein described mailing took place, a citizen of the
5 United States, over 21 years of age, and not a party to, nor
6 interested in, the within action; that on the 16 day of May, 2018,
7 declarant deposited in the United States mail at Las Vegas,
8 Nevada, a copy of the Notice of Appeal in the case of the State of
9 Nevada v. Alfred C. Harvey, Case No. C-16-314260-1, enclosed in a
10 sealed envelope upon which first class postage was fully prepaid,
11 addressed to Alfred C. Harvey, c/o High Desert State Prison, P.O.
12 Box 650, Indian Springs, NV 89070. That there is a regular
13 communication by mail between the place of mailing and the place
14 so addressed.

15 I declare under penalty of perjury that the foregoing is
16 true and correct.

17 EXECUTED on the 16 day of May, 2018.

18
19
20 /s/ Carrie M. Connolly
21 An employee of the Clark County
22 Public Defender's Office
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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing was made this 16 day of May, 2018, by Electronic Filing to:

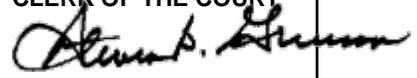
District Attorneys Office
E-Mail Address:

PDMotions@clarkcountyda.com

Jennifer.Garcia@clarkcountyda.com

Eileen.Davis@clarkcountyda.com

/s/ Carrie M. Connolly
Secretary for the
Public Defender's Office



1 **CAS**

2 PHILIP J. KOHN, PUBLIC DEFENDER
3 NEVADA BAR No. 0556
4 309 South Third Street, Suite 226
5 Las Vegas, Nevada 89155
6 (702) 455-4685
7 Attorney for Defendant

8
9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 THE STATE OF NEVADA,)
13)
14 Plaintiff,) CASE NO. C-16-314260-1
15)
16 v.) DEPT. NO. VIII
17)
18 ALFRED C. HARVEY,)
19)
20 Defendant.)
21 _____)

22 **CASE APPEAL STATEMENT**

23 1. Appellant filing this case appeal statement:
24 Alfred C. Harvey.

25 2. Judge issuing the decision, judgment, or order
26 appealed from: Douglas E. Smith.

27 3. All parties to the proceedings in the district
28 court (the use of et al. To denote parties is prohibited): The
State of Nevada, Plaintiff; Alfred C. Harvey, Defendant.

1 All parties involved in this appeal (the use of
2 et. al. to denote parties is prohibited): Alfred C. Harvey,
3 Appellant; The State of Nevada, Respondent.

1 5. Name, law firm, address, and telephone number of
2 all counsel on appeal and party or parties whom they represent:

3 PHILIP J. KOHN
4 Clark County Public Defender
5 309 South Third Street, #226
Las Vegas, Nevada 89155-2610

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

6 Attorney for Appellant

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

9 Counsel for Respondent

10 6. Whether appellant was represented by appointed or
11 retained counsel in the district court: Appointed.

12 7. Whether appellant is represented by appointed or
13 retained counsel on appeal: Appointed.

14 8. Whether appellant was granted leave to proceed in
15 forma pauperis, and the date of entry of the district court
16 order granting such leave: N/A.

17 9. Date proceedings commenced in the district court
18 (e.g., date complaint, indictment, information, or petition was
19 filed): Information filed 04/19/16.

20 DATED this 16 day of May, 2018.

21 PHILIP J. KOHN
22 CLARK COUNTY PUBLIC DEFENDER

23
24 By: /s/ Sharon G. Dickinson
25 SHARON G. DICKINSON, #3710
26 Deputy Public Defender
27
28

DEPARTMENT 8
CASE SUMMARY
CASE NO. C-16-314260-1

State of Nevada
vs
Alfred Harvey

§	Location:	Department 8
§	Judicial Officer:	Smith, Douglas E.
§	Filed on:	04/18/2016
§	Case Number History:	
§	Cross-Reference Case	C314260
§	Number:	
§	Defendant's Scope ID #:	7013098
§	ITAG Booking Number:	0
§	ITAG Case ID:	1786023
§	Lower Court Case # Root:	16F05049
§	Lower Court Case Number:	16F05049X
§	Metro Event Number:	1603303003
§	Supreme Court No.:	72829

CASE INFORMATION

Offense	Deg	Date	Case Type:	Felony/Gross Misdemeanor
Jurisdiction: District Court				
1. ROBBERY	F	03/30/2016	Case Flags:	Appealed to Supreme Court
PCN: 0025615145 ACN: 1603303003				Custody Status - Nevada
Filed As: ROBBERY WITH USE OF A DEADLY WEAPON	F	4/19/2016		Department of Corrections
Arrest: 03/30/2016 MET - Metro				Bond/Bail Surrendered
				Charge Description Updated
				JC Custody Status at Time of B/O
Statistical Closures				<i>APR 20 2016 10:00AM: IN CUSTODY</i>
03/24/2017 Guilty Plea with Sentence (before trial) (CR)				
Bonds				
Surety #IS50K-119384 \$40,000.00				
6/1/2016 Surrendered				
5/13/2016 Active				
Counts: 1				

DATE CASE ASSIGNMENT

Current Case Assignment	
Case Number	C-16-314260-1
Court	Department 8
Date Assigned	11/10/2016
Judicial Officer	Smith, Douglas E.

PARTY INFORMATION

Defendant	Harvey, Alfred C	<i>Lead Attorneys</i>
		Public Defender
		<i>Public Defender</i>
		702-455-4685(W)
Plaintiff	State of Nevada	Wolfson, Steven B
		702-671-2700(W)

DATE EVENTS & ORDERS OF THE COURT INDEX

04/18/2016	Criminal Bindover Packet Las Vegas Justice Court	
04/19/2016	Information <i>Information</i>	
04/19/2016	Amended Criminal Bindover Packet Las Vegas Justice Court	

DEPARTMENT 8
CASE SUMMARY
CASE NO. C-16-314260-1

04/19/2016  Amended Criminal Bindover Packet Las Vegas Justice Court

04/20/2016  **Initial Arraignment** (10:00 AM) (Judicial Officer: De La Garza, Melisa)

04/20/2016 **Plea** (Judicial Officer: Smith, Douglas E.)
1. ROBBERY
Not Guilty
PCN: 0025615145 Sequence:

04/21/2016  Motion
Motion For Own Recognizance Release Under Intensive Supervision

04/29/2016  Opposition
State's Opposition To Defendant's Motion For Own Recognizance Release Or For Bail Reduction

05/04/2016  **Motion for Own Recognizance Release/Setting Reasonable Bail** (9:30 AM) (Judicial Officer: Miley, Stefany)
Defendant's Motion for Own Recognizance Release Under Intensive Supervision

05/10/2016  Motion
Notice Of Motion And Motion To Compel Discovery

05/13/2016  Bail Bond
Bail Bond #IS50K-119384 \$40,000.00

05/13/2016  Bail Bond Receipt
Bail Bond Receipt

05/18/2016  Reporters Transcript
Reporter's Transcript of Preliminary Hearing 4/18/16

06/01/2016  Response
State's Response to Defendant's Motion to Compel Discovery

06/01/2016 **Motion to Compel** (9:30 AM) (Judicial Officer: Miley, Stefany)
06/01/2016-06/02/2016
Defendant's Motion To Compel Discovery

06/01/2016 **Bench Warrant Return** (9:30 AM) (Judicial Officer: Miley, Stefany)

06/01/2016  **All Pending Motions** (9:30 AM) (Judicial Officer: Miley, Stefany)
Bench Warrant Return; Def't's Motion to Compel Discovery

06/02/2016 **Status Check** (9:15 AM) (Judicial Officer: Miley, Stefany)
Status Check: Custody/Bond Status

06/02/2016  **All Pending Motions** (9:15 AM) (Judicial Officer: Miley, Stefany)
Defendant's Motion To Compel Discovery; Status Check: Custody /Bond Status

06/10/2016  Notice
Notice of Intent to Seek Punishment as a Habitual Criminal

DEPARTMENT 8
CASE SUMMARY
CASE NO. C-16-314260-1

06/13/2016	 Notice of Witnesses and/or Expert Witnesses <i>Notice of Witnesses</i>
06/14/2016	 Notice <i>Defendant's Notice Of Witnesses, Pursuant To NRS 174.234</i>
06/15/2016	 Calendar Call (9:30 AM) (Judicial Officer: Miley, Stefany)
06/20/2016	CANCELED Jury Trial (1:00 PM) (Judicial Officer: Miley, Stefany) <i>Vacated</i>
06/29/2016	 Status Check (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Status Check: Resetting of Trial / New Counsel</i>
07/28/2016	 Motion <i>Motion For Own Recognizance Release Under Intensive Supervision Or On House Arrest</i>
08/02/2016	 Opposition <i>State's Opposition to Defendant's Motion for O.R. Release or for Bail Reduction</i>
08/03/2016	 Motion for Own Recognizance Release/Setting Reasonable Bail (9:30 AM) (Judicial Officer: Miley, Stefany) <i>Def't's Motion For Own Recognizance Release Under Intensive Supervision Or On House Arrest</i>
10/17/2016	 Notice of Witnesses and/or Expert Witnesses <i>Supplemental Notice of Witnesses</i>
10/19/2016	 Motion <i>Motion to Dismiss or, in the Alternative, for a Curative Jury Instruction on the State's Failure to Gather or Preserve Material Evidence</i>
10/21/2016	 Motion to Suppress <i>Motion To Suppress Show-Up Identification And Subsequent In-Court Identification</i>
10/21/2016	 Addendum <i>Addendum To Motion To Dismiss, OR In The Alternative, For A Curative Jury Instruction On The State's Failure To Gather OR Preserve Material Evidence</i>
10/25/2016	 Motion <i>Motion To Allow Defendant To Cover His Face Tattoo</i>
10/31/2016	 Opposition <i>State's Opposition to Defendant's Motion to Allow Defendant to Cover His Face Tattoos</i>
10/31/2016	 Motion to Dismiss (9:30 AM) (Judicial Officer: Miley, Stefany) 10/31/2016, 11/02/2016, 11/09/2016 <i>Defendant's Motion To Dismiss, Or In The Alternative, For A Curative Jury Instruction On The State's Failure To Gather Or Preserve Material Evidence</i>
10/31/2016	 Opposition <i>State's Opposition to Defendant's Motion to Suppress Show-Up Identification and Subsequent In-Court Identification</i>

DEPARTMENT 8
CASE SUMMARY
CASE NO. C-16-314260-1

11/01/2016  **Response**
State's Response to Defendant's Motion to Dismiss and/or Sanborn Instruction

11/02/2016 **Calendar Call (9:30 AM)** (Judicial Officer: Miley, Stefany)
11/02/2016, 11/09/2016

11/02/2016 **Motion (9:30 AM)** (Judicial Officer: Miley, Stefany)
Defendant's Motion To Suppress Show-Up Identification And Subsequent In-Court Identification

11/02/2016 **Motion (9:30 AM)** (Judicial Officer: Miley, Stefany)
Def't's Motion To Allow Defendant To Cover His Face Tattoo

11/02/2016  **All Pending Motions (9:30 AM)** (Judicial Officer: Miley, Stefany)
Calendar Call; Defendant's Motion To Dismiss, Or In The Alternative, For A Curative Jury Instruction On The State's Failure To Gather Or Preserve Material Evidence; Defendant's Motion To Suppress Show-Up Identification And Subsequent In-Court Identification; Def't's Motion To Allow Defendant To Cover His Face Tattoo

11/04/2016  **Notice of Witnesses and/or Expert Witnesses**
Second Supplemental Notice of Witnesses

11/07/2016 **CANCELED Jury Trial (1:00 PM)** (Judicial Officer: Miley, Stefany)
Vacated

11/08/2016  **Motion in Limine**
Motion in Limine

11/09/2016 **Evidentiary Hearing (11:00 AM)** (Judicial Officer: Miley, Stefany)

11/09/2016 **Motion in Limine (11:00 AM)** (Judicial Officer: Miley, Stefany)

11/09/2016  **All Pending Motions (11:00 AM)** (Judicial Officer: Miley, Stefany)
Calendar Call; Evidentiary Hearing; Defendant's Motion To Dismiss, Or In The Alternative, For A Curative Jury Instruction On The State's Failure To Gather Or Preserve Material Evidence; Def't's Motion in Limine

11/10/2016  **Overflow (8:30 AM)** (Judicial Officer: Barker, David)
OVERFLOW (23) - S. ROSE/KOHN - J. SPELLS/3-4 DAYS/7-8 WITNESSES/NO OUT OF STATE

11/14/2016 **CANCELED Jury Trial (1:00 PM)** (Judicial Officer: Miley, Stefany)
Vacated

11/15/2016  **Jury Trial (9:30 AM)** (Judicial Officer: Bixler, James)
11/15/2016-11/18/2016
Jury Trial - Overflow

11/15/2016  **Jury List**

11/16/2016  **Miscellaneous Filing**
Defendant's Proposed Jury Instructions And Verdict Form

11/16/2016  **Amended Information**
Amended Information

DEPARTMENT 8
CASE SUMMARY
CASE NO. C-16-314260-1

11/17/2016	 Instructions to the Jury
11/17/2016	 Proposed Jury Instructions Not Used At Trial
11/17/2016	 Proposed Jury Instructions Not Used At Trial
11/18/2016	 Verdict
12/15/2016	 PSI
01/04/2017	 Sentencing (8:00 AM) (Judicial Officer: Bixler, James) 01/04/2017, 03/08/2017
02/17/2017	 PSI - Letters
02/24/2017	 PSI - Letters
03/06/2017	 Memorandum <i>Sentencing Memorandum</i>
03/08/2017	Disposition (Judicial Officer: Smith, Douglas E.) 1. ROBBERY Guilty PCN: 0025615145 Sequence:
03/08/2017	Sentence (Judicial Officer: Smith, Douglas E.) 1. ROBBERY Adult Adjudication Sentenced to Nevada Dept. of Corrections Term: Minimum:36 Months, Maximum:144 Months Credit for Time Served: 344 Days Fee Totals: Administrative Assessment Fee 25.00 \$25 DNA Analysis Fee 150.00 \$150 Genetic Marker Analysis AA Fee 3.00 \$3 Indigent Defense Civil Assessment 250.00 Fee - ASK Fee Totals \$ 428.00
03/17/2017	 Judgment of Conviction <i>JUDGMENT OF CONVICTION (PLEA OF GUILTY)</i>
04/10/2017	 Notice of Appeal (criminal) <i>Notice of Appeal</i>
04/10/2017	 Case Appeal Statement <i>Case Appeal Statement</i>

DEPARTMENT 8
CASE SUMMARY
CASE NO. C-16-314260-1

- 05/01/2017  Request
Appellant's Request for Certified Transcript of Proceedings
- 05/24/2017  Recorders Transcript of Hearing
Recorders Transcript of Hearing Re: Initial Arraignment April 20, 2016
- 06/02/2017  Recorders Transcript of Hearing
Transcript of Proceedings: Evidentiary Hearing November 9, 2016
- 06/08/2017  Recorders Transcript of Hearing
Transcript of Proceedings: Defendant s Motion for Own Recognizance Release Under Intensive Supervision May 4, 2016
- 06/08/2017  Recorders Transcript of Hearing
Transcript of Proceedings: Bench Warrant Return Defendant s Motion to Compel Discovery June 1, 2016
- 06/08/2017  Recorders Transcript of Hearing
Recorders Transcript of Status Check: Custody/Bond Status And Defendant s Motion to Compel Discovery June 2, 2016
- 06/08/2017  Recorders Transcript of Hearing
Transcript of Proceedings: Calendar Call June 15, 2016
- 06/08/2017  Recorders Transcript of Hearing
Transcript of Proceedings: Status Check: Resetting of Trial / New Counsel June 29, 2016
- 06/08/2017  Recorders Transcript of Hearing
Transcript of Proceedings: Defendant s Motion for Own Recognizance Release Under Intensive Supervision or on House Arrest August 3, 2016
- 06/08/2017  Recorders Transcript of Hearing
Transcript of Proceedings: Defendant s Motion to Dismiss, or in the Alternative, for a Curative Jury Instruction on the State s Failure to Gather or Preserve Material Evidence October 31, 2016
- 06/08/2017  Recorders Transcript of Hearing
Transcript of Proceedings: Defendant s Motion to Suppress Show-up Identification and Subsequent In-Court Identification Defendant s Motion to Allow Defendant to Cover His Face Tattoos Defendant s Motion to Dismiss, or in the Alternative, for a Curative Jury Instruction on the State s Failure to Gather or Preserve Material Evidence Calendar Call November 2, 2016
- 07/21/2017  Recorders Transcript of Hearing
Recorder's Transcript of Sentencing. Heard on March 8, 2017
- 07/21/2017  Recorders Transcript of Hearing
Recorder's Transcript of Sentencing. Heard on January 4, 2017
- 07/21/2017  Recorders Transcript of Hearing
Recorder's Transcript of Jury Trial Day 1. Heard on November 15, 2016
- 07/21/2017

DEPARTMENT 8
CASE SUMMARY
CASE NO. C-16-314260-1

-  **Recorders Transcript of Hearing**
Recorder's Transcript of Jury Trial Day 2. Heard on November 16, 2016
- 07/21/2017  **Recorders Transcript of Hearing**
Recorder's Transcript of Jury Trial Day 3. Heard on November 17, 2016
- 07/21/2017  **Recorders Transcript of Hearing**
Recorder's Transcript of Jury Trial Day 4. Heard on November 18, 2016
- 02/07/2018  **Status Check (8:00 AM)** (Judicial Officer: Smith, Douglas E.)
Status Check: Supreme Court Order Granting Motion to Withdraw and Remanding to Secure Counsel
- 02/14/2018  **Status Check (8:00 AM)** (Judicial Officer: Smith, Douglas E.)
Status Check : Confirmation of Public Defender as Appellate Counsel
- 04/05/2018  **Motion for New Trial**
Filed By: Defendant Harvey, Alfred C
Motion For New Trial Pursuant to NRS 176.515 Based on Grounds of Newly Discovered Evidence and Motion for Evidentiary Hearing and Decision by Trial Judge
- 04/05/2018  **Motion**
Filed By: Defendant Harvey, Alfred C
Defendant's Motion to Reconstruct The Records and Motion Asking Trial Judge to Make a Decision in this Matter
- 04/16/2018 **Motion for New Trial (8:00 AM)** (Judicial Officer: Smith, Douglas E.)
04/16/2018, 04/30/2018
Deft.'s Motion for New Trial Pursuant to NRS 176.515 Based on Grounds of Newly Discovered Evidence and Motion for Evidentiary Hearing and Decision by Trial Judge
- 04/16/2018 **Motion (8:00 AM)** (Judicial Officer: Smith, Douglas E.)
04/16/2018, 04/30/2018
Deft.'s Motion to Reconstruct the Records and Motion Asking Trial Judge to Make a Decision in this Matter
- 04/16/2018  **All Pending Motions (8:00 AM)** (Judicial Officer: Smith, Douglas E.)
*Deft.'s Motion for New Trial Pursuant to NRS 176.515 Based on Grounds of Newly Discovered Evidence and Motion for Evidentiary Hearing and Decision by Trial Judge . . .
Deft.'s Motion to Reconstruct the Records and Motion Asking Trial Judge to Make a Decision in this Matter*
- 04/17/2018  **Opposition**
Filed By: Plaintiff State of Nevada
State's Opposition to Defendant's Motion to Reconstruct the Record
- 04/17/2018  **Opposition**
Filed By: Plaintiff State of Nevada
State's Opposition to Defendant's Motion for New Trial and Evidentiary Hearing
- 04/23/2018  **Ex Parte Order**
Ex Parte Order for Expedited Transcript
- 04/23/2018  **Reply to Opposition**
Defendant's Reply to State's Opposition to Defendant's Motion to Reconstruct the Record and

DEPARTMENT 8
CASE SUMMARY
CASE NO. C-16-314260-1

Motion Asking for Trial Judge to Make a Decision in this Matter

04/23/2018	 Reply to Opposition <i>Defendant's Reply to State's Opposition to Defendant's Motion for a New Trial and Motion for Evidentiary Hearing and Decision by Trial Judge</i>
04/25/2018	 Recorders Transcript of Hearing <i>Recorder's Transcript of Proceedings: Defendant's Motion for New Trial Pursuant to NRS 176.515 Based on Grounds of Newly Discovered Evidence and Motion for Evidentiary Hearing and Decision by Trial Judge Defendant's Motion to Reconstruct the Records and Motion Asking Trial Judge to make a Decision in this Matter April 16, 2018</i>
04/27/2018	 Supplement <i>Supplement to Defendant's Reply to State's Opposition to Defendant's Motion to Reconstruct the Record and For Judge to Make a Decision</i>
04/27/2018	 Supplement <i>Supplement to Defendant's Reply to State's Opposition to Defendant's Motion for a New Trial and Motino for Evidentiary Hearing and Dec by Trial Judge</i>
04/30/2018	 All Pending Motions (8:00 AM) (Judicial Officer: Smith, Douglas E.) <i>Deft.'s Motion for New Trial Pursuant to NRS 176.515 Based on Grounds of Newly Discovered Evidence and Motion for Evidentiary Hearing and Decision by Trial Judge . . . Deft.'s Motion to Reconstruct the Records and Motion Asking Trial Judge to Make a Decision in this Matter</i>
05/02/2018	 Opposition Filed By: Plaintiff State of Nevada <i>State's Opposition to Defendant's Motion to Reconstruct the Record</i>
05/04/2018	 Order <i>Order Denying Defendant's Motion fo rNew Trial and Defendant's Motion to Reconstruct the Record</i>
05/07/2018	 Ex Parte Order Filed By: Defendant Harvey, Alfred C <i>Ex Parte Order for Expedited Transcript</i>
05/10/2018	 Recorders Transcript of Hearing <i>RECORDER'S TRANSCRIPT OF PROCEEDINGS: DEFENDANT'S MOTION FOR NEW TRIAL PURSUANT TO NRS 176.515 BASED ON GROUNDS OF NEWLY DISCOVERED EVIDENCE AND MOTION FOR EVIDENTIARY HEARING AND DECISION BY TRIAL JUDGE. DEFENDANT'S MOTION TO RECONSTRUCT THE RECORDS AND MOTION ASKING TRIAL JUDGE TO MAKE A DECISION IN THIS MATTER. HEARD ON APRIL 30, 2018</i>
05/16/2018	 Notice of Appeal (criminal) <i>Notice of Appeal</i>
05/16/2018	 Case Appeal Statement <i>Case Appeal Statement</i>

DATE

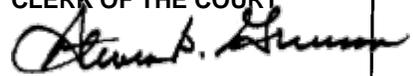
FINANCIAL INFORMATION

Defendant Harvey, Alfred C	
Total Charges	431.50
Total Payments and Credits	3.50

DEPARTMENT 8
CASE SUMMARY
CASE NO. C-16-314260-1

Balance Due as of 5/17/2018

428.00



1 **ORDR**
2 Judge Douglas E. Smith
3 Eighth Judicial District Court
4 Department VIII
5 Regional Justice Center
6 200 Lewis Avenue
7 Las Vegas, Nevada 89155
8 (702)671-4338

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 ALFRED HARVEY,
12 #7013098

13 Defendant.

CASE NO: C-16-314260-1

DEPT NO: VIII

14 **ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL AND**
15 **DEFENDANT'S MOTION TO RECONSTRUCT THE RECORD**

16 DATE OF HEARING: April 30, 2018
17 TIME OF HEARING: 8:00 A.M.

18 THIS MATTER, having come on for hearing before the above entitled Court on the
19 30th day of April, 2018, the Defendant not being present, represented by JASMIN SPELLS
20 and SHARON DICKINSON, Deputy Public Defenders, the Plaintiff being represented by
21 STEVEN B. WOLFSON, District Attorney, through BRYAN SCHWARTZ, Deputy District
22 Attorney, and the Court having heard the arguments of counsel and good cause appearing
23 therefor,

24 THIS COURT FOUND the allegations presented by Defendant did not constitute new
25 "evidence," the Court having found that Judge Bixler does not recall the jury question.

26 THIS COURT HAVING FURTHER FOUND that in response to the discovered jury
27 question, Judge Bixler did not remember whether or not the question was presented to
28 attorneys.

///

1 THIS COURT HAVING FURTHER FOUND that even if the question was presented
2 to the attorneys, the question held the notation "The Court is not at liberty to supplement the
3 evidence" would have been the proper and legal response to respond to the jury inquiry,
4 attached as Exhibit A.

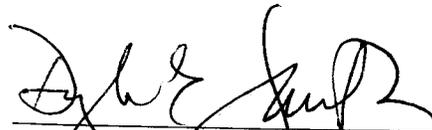
5 THIS COURT HAVING FURTHER FOUND that the Defendant failed to show that a
6 different outcome would have been probable;

7 IT IS HEREBY ORDERED that the Defendant's Motion for New Trial shall be and it
8 is Denied.

9 THIS COURT HAVING FOUND that the Defendant failed to show that it was
10 necessary to reconstruct the record, and that it would be unfair to allow the Defendant to
11 reconstruct the record using the juror affidavits;

12 IT IS HEREBY ORDERED that the Defendant's Motion to Reconstruct the Record
13 shall be and it is Denied.

14 DATED this 4th day of May 2018.

15
16 

17 DOUGLAS E. SMITH
18 DISTRICT COURT JUDGE

19
20 **CERTIFICATE OF SERVICE**

21 I hereby certify that on the 4th day of May 2018, a copy of this Order was
22 electronically served to all registered parties in the Eighth Judicial District Court
23 Electronic Filing Program and/or placed in the attorney's folder maintained by the
24 Clerk of the Court and/or transmitted via facsimile and/or mailed, postage prepaid,
by United States mail to the proper parties or per the attached list as follows:

25 Bryan Schwartz, bryan.schwartz@clarkcountyda.com

26 DA motions, Motions@clarkcountyda.com

27 Jasmin Spells, lillyjd@clarkcountynv.gov

28 Sharon Dickinson, dickinsg@clarkcountynv.gov



Jill Jacoby, Judicial Executive Assistant

The Court is not at liberty to supplement the evidence.

Can we have
elaboration on the
definition, by
means of force or
violence or fear of
injury.

Michelle Moline



**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 20, 2016

C-16-314260-1 State of Nevada
vs
Alfred Harvey

April 20, 2016 10:00 AM Initial Arraignment

HEARD BY: De La Garza, Melisa **COURTROOM:** RJC Lower Level Arraignment

COURT CLERK: Roshonda Mayfield

RECORDER: Kiara Schmidt

REPORTER:

PARTIES

PRESENT:	Bunnett, Matthew T.	Attorney
	HARVEY, ALFRED C	Defendant
	Hillman, Ralph R.	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT. HARVEY ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT FURTHER ORDERED, counsel has 21 days from the filing of the preliminary transcript to file any writs. COURT FURTHER ORDERED, the discovery motion requested by defense is GRANTED pursuant to NRS 174.235.

CUSTODY

6/15/16 9:30 A.M. CALENDAR CALL (DEPT. 23)

6/20/16 1:00 P.M. JURY TRIAL (DEPT. 23)

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

May 04, 2016

C-16-314260-1 State of Nevada
vs
Alfred Harvey

May 04, 2016	9:30 AM	Motion for Own Recognizance Release/Setting Reasonable Bail	Defendant's Motion for Own Recognizance Release Under Intensive Supervision
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HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	HARVEY, ALFRED C	Defendant
	Spells, Jasmin	Attorney

JOURNAL ENTRIES

- Licensed Deputy District Attorney Jory Scarborough present. Statement by Deft. Argument by counsel. Argument by the State. Further argument by counsel. COURT ORDERED, motion DENIED. FURTHER, request for bail reduction DENIED. Trial date STANDS.

CUSTODY

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

June 01, 2016

C-16-314260-1 State of Nevada
vs
Alfred Harvey

June 01, 2016 9:30 AM All Pending Motions Bench Warrant
Return; Deft's
Motion to Compel
Discovery

HEARD BY: Miley, Stefany COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT: HARVEY, ALFRED C Defendant
Holthus, Mary Kay Attorney
Leven, Pandora L. Attorney
State of Nevada Plaintiff

JOURNAL ENTRIES

- Deft. present in custody on the returned warrant. Counsel noted State requested additional time to file Response. Matter recalled. COURT ORDERED, motion CONTINUED and matter SET for status check.

CUSTODY

06-02-16 9:15 AM DEFT'S MOTION TO COMPEL DISCOVERY; STATUS CHECK:
CUSTODY/BOND STATUS

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

June 02, 2016

C-16-314260-1 State of Nevada
vs
Alfred Harvey

June 02, 2016	9:15 AM	All Pending Motions	Defendant's Motion To Compel Discovery; Status Check: Custody /Bond Status
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HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	HARVEY, ALFRED C	Defendant
	Schwartz, Bryan A.	Attorney
	Spells, Jasmin	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Counsel advised she had spoken with bail bond company, noted she was told Deft. paid \$1,600, however, total bond was \$4,400.00 and stated Deft. was to make payments. Counsel then noted Deft. did not have any collateral as he would not put his vehicle as collateral, therefore, he was take into custody on a bail bond surrender. Colloquy regarding premium. Counsel advised Deft. lost \$1,600.00. Argument by the State noting Deft's criminal history. Upon Court's inquiry regarding Deft's attendance, counsel advised Deft. had no court appearances while out of custody and noted Deft. stayed out of trouble. Further argument by the State. Argument by counsel. State opposed own recognizance release. Argument by counsel. Statement by Deft. COURT ORDERED, Deft. to be RELEASED on his Own Recognizance (O.R.) with House Arrest. Argument by counsel. Court admonished the State. Colloquy regarding Deft's Motion to Compel Discovery. COURT ORDERED, motion GRANTED under Brady. Colloquy regarding reciprocal discovery. Counsel advised they

C-16-314260-1

would comply.

O.R./H.A.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 15, 2016

C-16-314260-1 State of Nevada
vs
Alfred Harvey

June 15, 2016 9:30 AM Calendar Call

HEARD BY: Miley, Stefany **COURTROOM:** RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	HARVEY, ALFRED C	Defendant
	Schwartz, Bryan A.	Attorney
	Spells, Jasmin	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Counsel advised Deft. will waive speedy trial right and noted Deft. wanted to retain Caesar Almase Esq. State advised they were prepared for trial. Deft. WAIVED speedy trial right. COURT ORDERED, trial date VACATED and matter SET for status check.

O.R./H.A.

06-29-16 9:30 AM STATUS CHECK: RESETTING OF TRIAL / NEW COUNSEL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

June 29, 2016

C-16-314260-1 State of Nevada
vs
Alfred Harvey

June 29, 2016 9:30 AM Status Check Status Check:
Resetting of Trial/
New Counsel

HEARD BY: Miley, Stefany COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	HARVEY, ALFRED C	Defendant
	Rose, Robert E.	Attorney
	Schwartz, Bryan A.	Attorney
	Spells, Jasmin	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Counsel advised Deft. was unable to retain private counsel and requested trial date be set. State advised all discovery had been provided. COURT ORDERED, matter SET for trial.

O.R./H.A.

11-02-16 9:30 AM CALENDAR CALL

11-07-16 1:00 PM TRIAL BY JURY

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

August 03, 2016

C-16-314260-1 State of Nevada
vs
Alfred Harvey

August 03, 2016	9:30 AM	Motion for Own Recognizance Release/Setting Reasonable Bail	Deft's Motion For Own Recognizance Release Under Intensive Supervision Or On House Arrest
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HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	HARVEY, ALFRED C	Defendant
	Rose, Robert E.	Attorney
	Schwartz, Bryan A.	Attorney
	Spells, Jasmin	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Matter recalled. Argument by counsel. Argument by the State. Court stated its findings and ORDERED, motion DENIED. trial date STANDS.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 31, 2016

C-16-314260-1 State of Nevada
vs
Alfred Harvey

October 31, 2016	9:30 AM	Motion to Dismiss	Defendant's Motion To Dismiss, OR In The Alternative, For A Curative Jury Instruction On The State's Failure To Gather Or Preserve Material Evidence
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HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	HARVEY, ALFRED C	Defendant
	Spells, Jasmin	Attorney
	State of Nevada	Plaintiff
	Sudano, Michelle L.	Attorney

JOURNAL ENTRIES

- State advised they needed to file an Opposition. COURT ORDERED, matter CONTINUED.

CUSTODY

11-02-16 9:30 AM Defendant's Motion To Dismiss, Or In The Alternative, For A Curative Jury Instruction On The State's Failure To Gather Or Preserve Material Evidence

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 02, 2016

C-16-314260-1 State of Nevada
vs
Alfred Harvey

November 02, 2016	9:30 AM	All Pending Motions	Calendar Call; Defendant's Motion To Dismiss, Or In The Alternative, For A Curative Jury Instruction On The State's Failure To Gather Or Preserve Material Evidence; Defendant's Motion To Suppress Show- Up Identification And Subsequent In- Court Identification; Deft's Motion To Allow Defendant To Cover His Face Tattoo
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HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	HARVEY, ALFRED C Rose, Robert E. Schwartz, Bryan A. Spells, Jasmin State of Nevada	Defendant Attorney Attorney Attorney Plaintiff
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JOURNAL ENTRIES

- Mr. Schwartz advised they are not ready for trial as he beginning an invoked trial next week and stated they had noticed the defense that they would be requesting a continuance. Counsel announced ready. Colloquy regarding trial setting. COURT ORDERED, trial date VACATED and RESET. As to Deft's Motion to Dismiss or In The Alternative For a Curative Jury Instruction on the State's Failure to Gather or Preserve Material Evidence: Argument by counsel noting there were two witnesses who were filming with their cellphones and noted their investigator spoke with them which they stated they were deleted. Court inquired whether individuals had provided copies to officer or the State. Argument by counsel. Court inquired whether individuals were being called as witnesses. Counsel believed a hearing was needed in order to flush out the details as it goes to either bad faith or gross negligence. Argument by the State noting they did not believe officer knew witness(es) had taken photographs or videos. Court stated it appeared to be speculation. Further argument by the State. Court stated it did not have adequate information to make proper ruling and ORDERED, matter SET for hearing; As to Deft's Motion to Suppress Show-Up Identification and Subsequent In-Court Identification: Argument by counsel. Argument by the State noting the surveillance video zooms in on Deft's face. COURT ORDERED, motion DENIED as to In-Court Identification and GRANTED as to Show-Up Identification; As to Deft's Motion to Allow Defendant to Cover His Face Tattoos: Counsel advised it would be only as to Deft's face tattoos, not any other part of his body. Court noted in this case identity is an issue and pointed out what victim might be perceiving. Argument by counsel regarding apprehension of fear. Court pointed out everyone perceives people differently. Additional argument by counsel. Argument by the State noting the jury will have to state they have no bias and pointed out surveillance video shows Deft's face. Statement by Deft. Argument by counsel. COURT ORDERED, motion DENIED as relevant to identification and relevant to elements of crime.

CUSTODY

11-09-16 11:00 AM HEARING; DEFT'S MOTION TO DISMISS OR IN THE ALTERNATIVE FOR A CURATIVE JURY INSTRUCTION ON THE STATE'S FAILURE TO GATHER OR PRESERVE MATERIAL EVIDENCE; CALENDAR CALL

11-14-16 1:00 PM TRIAL BY JURY

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

November 09, 2016

C-16-314260-1 State of Nevada
vs
Alfred Harvey

November 09, 2016	11:00 AM	All Pending Motions	Calendar Call; Evidentiary Hearing; Defendant's Motion To Dismiss, Or In The Alternative, For A Curative Jury Instruction On The State's Failure To Gather Or Preserve Material Evidence; Deft's Motion in Limine
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HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	HARVEY, ALFRED C	Defendant
	Jones, Kelley R.	Attorney
	Rose, Robert E.	Attorney
	Spells, Jasmin	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Court noted hearing was set as parties were speculating as to what happened with the officer. Court then noted Deft. had filed a Motion in Limine which had been set for November 28, 2016 and stated the motion would be addressed after the hearing. Court advised the trial would be referred to

Overflow as it had an Invoked trial which would take priority. Counsel advised they had spoken with the State in an attempt to resolve the issues contained in the motion, however, no agreement could be reached, therefore, motion was filed. Arguments by counsel regarding the presence of Deft's children at the incident. Court stated it did not see the relevance. Further arguments by counsel. Testimony and exhibits presented. (See worksheets) CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets) Arguments by counsel. Court stated its findings and ORDERED, Deft's Motion to Dismiss is DENIED. Colloquy regarding Deft's Motion in Limine. Based upon representations of the State, COURT ORDERED, requests # 2 and #3 are GRANTED. Arguments by counsel. Court advised it had reconsidered its original standing in regards to the children and ORDERED, request #1 DENIED. FURTHER, matter REFERRED to Overflow.

CUSTODY

11-10-16 8:30 AM OVERFLOW (23) - S. ROSE/KOHN - J. SPELLS/3-4 DAYS/7-8 WITNESSES/NO OUT OF STATE WITNESSES

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 10, 2016

C-16-314260-1 State of Nevada
vs
Alfred Harvey

November 10, 2016 8:30 AM Overflow

HEARD BY: Barker, David **COURTROOM:** RJC Courtroom 15D

COURT CLERK: Alan Castle

RECORDER: Michelle Ramsey

REPORTER:

PARTIES

PRESENT:	HARVEY, ALFRED C	Defendant
	Jones, Kelley R.	Attorney
	Schwartz, Bryan A.	Attorney
	Spells, Jasmin	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- Parties announced ready. COURT ORDERED, trial date set in Department VIII, Courtroom 11B and will be heard by Senior Judge Bixler. Court directed to contact Paula, the JEA in that department. Upon Court's inquiry, counsel (SCHWARTZ, BRYAN, S. ROSE / K. JONES, J. SPELLS) estimated

3 - 4 DAYS

6 WITNESSES / NO OUT-OF-STATE

CUSTODY

11/15/16 9:30 a.m. JURY TRIAL (DEPT. 8)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 15, 2016

C-16-314260-1 State of Nevada
vs
Alfred Harvey

November 15, 2016 9:30 AM Jury Trial

HEARD BY: Bixler, James **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Jill Jacoby

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Steve Rose, Dep DA, and Bryan Schwartz, Dep DA, present on behalf of the State; Jasmin Spells, Dep PD, and Kelley Jones, Dep PD, present on behalf of Deft. Harvey, who is also present.

9:35 a.m. Jury Trial commenced. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Court noted the State is requesting leave of Court to file an Amended Information; they want to change miscellaneous clothing items to miscellaneous items (page 1, line 24) and her to his (page 1, line 25). Argument by Ms. Spells; the Defense has no objection to the "her" to "his" change; however, there is an objection to the deletion of the word "clothing" as it is a significant change and is a change in the State's theory of prosecution which requires a change in the Deft.'s theory of defense. Additionally, the amendment came after the Calendar Call and after the Overflow Calendar Call and as soon as the Defense was informed of the amendment, they notified the State that they would be REQUESTING a CONTINUANCE. Therefore, the Defense is not ready to proceed because they need to rethink their theory of defense and re-evaluate the evidence. If the State withdraws the amendment, the Defense would then be ready to proceed. Argument by Mr. Schwartz; the State has not changed their theory of prosecution. The Deft. went into a T.J. Maxx and took three (3) items; i.e., a wallet, lotions, and some fragrances. Since these are not clothing items, the State just wanted to make that clarification to the Information; colloquy.

Ms. Spells requested to make a record without the State present. OUTSIDE THE PRESENCE OF THE STATE; discussion held with the Court as to how the change affects their theory of defense; the Deft. did not commit the offense as alleged by the State.

STATE PRESENT: Court noted that no clothing items were taken; therefore, the State has mistakenly alleged a crime which the facts do not support and are requesting to correct the charging document hours before trial. Argument by Mr. Schwartz; he suggested a solution. Mr. Rose discussed NRS 173.095 and Viray V. State. Argument by Ms. Jones; their defense is based on both the Complaint and the Information, which are the same and both are based on miscellaneous clothing items. COURT ORDERED, Ms. Spells' request is DENIED; this matter will proceed to trial on the original Complaint and Information. Although clothing items were not taken, the items taken can be bought in a clothing store.

Colloquy; if the State is adamant about changing the language in the Information, the Court will grant the Defense a continuance. Otherwise, the Court will proceed to trial at this time. Mr. Schwartz advised that the State would WITHDRAW their request to amend the Information.

Additionally, Ms. Spells advised that the Defense filed a motion to cover the Deft.'s face tattoos. Mr. Schwartz advised the State has no objection to the Defense covering the tattoos on the Deft.'s cheek and the one over his eye. COURT ORDERED, Ms. Spells' request is GRANTED.

PROSPECTIVE JURORS PRESENT: Court and counsel begin Voir Dire examination of the prospective Jurors.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS: Challenge to the Jury Venire by Ms. Spells; she does not believe it is a fair cross-section of the community for the reasons stated on the record and, therefore, she would request a new panel or the opportunity to question the Jury Commissioner as to process of how these prospective Jurors were procured. Argument by Mr. Rose; there is no requirement for the Jury Venire to match exactly the cross-section of the community, there just cannot be a systematic exclusion from the Jury selection process on the basis of race.

It is the Court's opinion that there is no need to question the Jury Commissioner with regard to the selection process as it is a generalized process which does not provide for any kind of exclusion. Therefore, COURT ORDERED, Ms. Spells' request to obtain a new panel is DENIED.

PROSPECTIVE JURORS PRESENT: Court and counsel continued Voir Dire examination of the prospective Jurors. Jury and two (2) alternate selected and sworn. Opening statement by Mr. Rose; Ms. Spells reserved her opening statement.

OUTSIDE THE PRESENCE OF THE JURY: Argument by Ms. Spells regarding the 911 calls; there are two (2) and the first issue is with regard to the named victim's 911 call where the operator references the children at the end of the call and the second issue is with regard the call made by the witness, Erral Appel, where he made hearsay statements. Argument by Mr. Rose. COURT ORDERED, Ms.

Spells' request to STRIKE the witness' statement about the incident is DENIED; however, the Court will GRANT Ms. Spells' request to STRIKE the statement by the 911 operator. The State should make the appropriate redactions.

4:16 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED.

CUSTODY

CONTINUED TO: 11/15/16 10:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 16, 2016

C-16-314260-1 State of Nevada
 vs
 Alfred Harvey

November 16, 2016 10:00 AM Jury Trial

HEARD BY: Bixler, James

COURTROOM: RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Steve Rose, Dep DA, and Bryan Schwartz, Dep DA, present on behalf of the State; Jasmin Spells, Dep PD, and Kelley Jones, Dep PD, present on behalf of Deft. Harvey, who is also present.

10:35 a.m. Jury Trial resumed. Amended Information FILED IN OPEN COURT; "her" was changed to "his" as the Court directed. Clerk read the Amended Information to the Jury and stated the Deft. s plea thereto.

Testimony and exhibits presented (see worksheets).

OUTSIDE THE PRESENCE OF THE JURY: Court canvassed Deft. with regard to his right not to testify or to testify in this case.

JURY PRESENT: Opening Statement by Ms. Jones; Testimony and exhibits presented (see worksheets).

5:30 p.m. Court ADJOURNED; COURT ORDERED, Jury Trial CONTINUED.

CUSTODY

C-16-314260-1

CONTINUED TO: 11/17/16 10:00 AM

C-16-314260-1

CONTINUED TO: 11/18/16 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

November 18, 2016

C-16-314260-1 State of Nevada
vs
Alfred Harvey

November 18, 2016 9:30 AM Jury Trial

HEARD BY: Bixler, James **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Phyllis Irby

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT:	HARVEY, ALFRED C	Defendant
	Jones, Kelley R.	Attorney
	Rose, Robert E.	Attorney
	Schwartz, Bryan A.	Attorney
	Spells, Jasmin	Attorney
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- JURY PRESENT. Verdict reached at the hour of 11:10 am. The Court thanked and excused the jury. OUTSIDE THE PRESENCE OF THE JURY. The Defense requested to have Judge Bixler do the sentencing. The State will provide PowerPoint as exhibit. COURT ORDERED, DEFT HELD WITHOUT BAIL. SENTENCING SET.

CUSTODY

1-04-17 8:00 AM SENTENCING (DEPT. VIII)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 04, 2017

C-16-314260-1 State of Nevada
vs
Alfred Harvey

January 04, 2017 8:00 AM Sentencing

HEARD BY: Bixler, James

COURTROOM: RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Jill Jacoby

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Steven Rose, Dep DA, present on behalf of the State and Jasmin Spells, Dep PD, present on behalf of Deft. Harvey, who is also present.

This is the time set for Sentencing. Ms. Spells advised that the Defense is not ready to proceed; she previously notified the Court and the State of her request for a continuance and would like to prepare a Sentencing Memorandum. There also are some issues with the Presentence Investigation (PSI) report. Specifically, on page 3, the Gang Activity/Affiliation; Ms. Spells requested and received the Field Interview (FI) Cards; colloquy.

With regard to the issues in the PSI, they are as follows:

Page 2 - Deft.'s Social Security Number in the left column as well as the Additional Social Security Number in the right column are not correct.

Page 3 - The Mental Health History and the Gang Activity/Affiliation are not correct. Ms. Spells is challenging both; however, she did receive the FI Cards from the State and the Deft. has signed several releases so she can obtain his Mental Health records from California. With regard to the FI Cards, one Card indicated that there was no gang affiliation and the other one indicated that the gang

affiliation came through an interview at the Clark County Detention Center (CCDC). Ms. Spells' investigator pulled the jail interviews and there is no indication in those interviews of any gang affiliation so she would like to do some further research on this issue.

Page 6 - There are issues with the August 6, 2006, and June 17, 2012, arrest dates and dispositions. The Deft. was under the impression that he only had Misdemeanors on his record and the Felonies had been cleared due to a particular proposition in California. Ms. Spells advised that she has not had an opportunity to review these issues.

Page 7 - Ms. Spells would request that the Court order that Parole and Probation (P&P) change the Offense Synopsis with regard to the weapon. Although the original charge was Robbery with use of a Deadly Weapon, the Jury did not find, beyond a reasonable doubt, that there was a weapon used so Ms. Spells would like that to be reflected in the Offense Synopsis.

Argument by Mr. Rose; SCOPE reflects the initial Social Security Number but not the additional one; the PSI stated that the Deft. reported no significant mental health concerns so he has no knowledge of any, unless Deft. reported some to his counsel; the State provided Ms. Spells with the FI Cards; P&P can look into the issues with the prior arrests, the State will make copies of those and provide them to the Defense; and with regard to the Offense Synopsis, although the verdict returned by the Jury shows that they did not find, beyond a reasonable doubt, that a weapon was used, it is what the testimony showed and the PSI reflects the offense as a Robbery and not a Robbery with use. If Ms. Spells wants to have a specific notation that the Deft. was convicted of Robbery and not Robbery with use of a Deadly Weapon, the State has no objection.

Court advised that the testimony that came out at trial did, in fact, indicate that the Deft. pulled out a knife, waived it, and then held it by his side; however, the Jury did not feel as though the testimony was sufficient to convict the Deft. of Robbery with use of a Deadly Weapon. For the reasons stated on the record, the Court will not STRIKE out the part of the synopsis that says the Deft. pulled a knife out but it is clear in the PSI that the Deft. was convicted of Robbery and not Robbery with use of a Deadly Weapon. If counsel believes that a special notation is necessary, the Court has no objection.

Colloquy as to how long it may take to supplement the PSI; Ms. Spells advised there are substantial Mental Health records that she needs to procure from California; although there are no competency issues, the records are relevant to show Deft.'s history of mental health issues and may also be relevant with regard to the Specialty Court programs that Deft. has applied to, which will be more fully explained in her Sentencing Memorandum.

COURT ORDERED, Sentencing CONTINUED for sixty (60) days for a Supplemental PSI; the sentencing will go forward next date whether Ms. Spells has been able to obtain the Deft.'s Mental Health records from California or not. Further, the Court noted that the Deft. has six (6) Felony convictions along with others so his chances of getting probation are slim.

CUSTODY

C-16-314260-1

CONTINUED TO: 03/08/17 8:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 08, 2017

C-16-314260-1 State of Nevada
vs
Alfred Harvey

March 08, 2017 8:00 AM Sentencing

HEARD BY: Bixler, James **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Steven Rose, Dep DA, present on behalf of the State and Jasmin Spells, Dep PD, present on behalf of Deft. Harvey, who is also present.

Ms. Spells advised that the November 30, 2016, Presentence Investigation (PSI) report indicates on page 3 that the Deft. is a confirmed active member of the "Blood, 456 Pomona Island Piru" street gang; however, Deft. has denied any gang membership; colloquy. COURT ORDERED, that the following shall be added to the Judgment of Conviction and noted for the PSI.

CORRECTIONS TO THE PRESENTENCE INVESTIGATION (PSI) REPORT: the Deft., at this point, disavows any gang affiliation.

Pursuant to the Jury's verdict, DEFT. HARVEY ADJUDGED GUILTY of ROBBERY (F). Mr. Rose is requesting that the Deft. be adjudicated as an habitual criminal; he provided six (6) certified copies of the Deft.'s Judgments of Conviction, which were marked collectively as State's Exhibit 1 and ADMITTED. For the reasons stated on the record the State is requesting a sentence of eight (8) to twenty (20) years; there is no restitution. Ms. Spells filed a Sentencing Memorandum on March 6, 2017, which she would like the Court to review, which it did. The Defense is requesting a sentence of two (2) to five (5) or three (3) to eight (8) years; argument. The Court will NOT adjudicate the Deft. as

an habitual criminal.

COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, the \$150.00 DNA Analysis fee including testing to determine genetic markers, the \$3.00 DNA Collection fee, and an Indigent Defense Civil Assessment fee in the amount of \$250.00, Deft. SENTENCED to a MAXIMUM of ONE HUNDRED FORTY-FOUR (144) MONTHS and a MINIMUM of THIRTY-SIX (36) MONTHS in the Nevada Department of Corrections (NDC), with THREE HUNDRED FORTY-FOUR (344) DAYS credit for time served. The Court has no opposition to the Deft. being referred to the 184 program.

BOND, if any, EXONERATED

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 07, 2018

C-16-314260-1 State of Nevada
vs
Alfred Harvey

February 07, 2018	8:00 AM	Status Check	Supreme Court Order Granting Motion to Withdraw and Remanding to Secure Counsel
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HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Jonathan Cooper, Chf Dep DA, present on behalf of the State and Kelli DeVaney-Sauter, Dep PD, present on behalf of Deft. Harvey, who is not present. Deft. is incarcerated in the Nevada Department of Corrections (NDC).

This is the time set for the Status Check regarding the Supreme Court Order Granting Motion to Withdraw and Remanding to Secure Counsel. Court noted that Timothy Treffinger, Esq., was appellate counsel for the Deft.; however, he has withdrawn as counsel of record so the Supreme Court has remanded the appeal for the limited purpose of securing new counsel for appellate. This Court's staff contacted the Office of Appointed Counsel and was told that the Public Defender could be appointed as counsel for the Deft. Therefore, COURT ORDERED, matter set for status check: the Public Defender's office is to perform a conflict check and confirm, if possible, next date.

NDC

C-16-314260-1

02/14/18 8:00 AM STATUS CHECK: CONFIRMATION OF PUBLIC DEFENDER AS APPELLATE
COUNSEL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 16, 2018

C-16-314260-1 State of Nevada
vs
Alfred Harvey

April 16, 2018 8:00 AM All Pending Motions

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- DEFT.'S MOTION FOR NEW TRIAL PURSUANT TO NRS 176.515 BASED ON GROUNDS OF NEWLY DISCOVERED EVIDENCE AND MOTION FOR EVIDENTIARY HEARING AND DECISION BY TRIAL JUDGE . . . DEFT.'S MOTION TO RECONSTRUCT THE RECORDS AND MOTION ASKING TRIAL JUDGE TO MAKE A DECISION IN THIS MATTER

Brian Schwartz, Dep DA, present on behalf of the State; Sharon Dickinson, Chf Dep PD, and Jasmin Spell, Dep PD, present on behalf of Deft. Harvey, who is not present. Deft. is incarcerated in the Nevada Department of Corrections (NDC). Ms. Spells requested that the Deft.'s presence be WAIVED.

This is the time set for hearing on the above-named motions; Mr. Schwartz advised that the State has not had an opportunity to respond to the motions but will get their Oppositions filed today. With regard to the trial judge hearing the motions, the State submits.

Ms. Spells advised that the Defense is requesting that this Court set this matter at a time when Judge Bixler would be available to hear it; she understands that Judge Bixler is a Senior Judge but he is the Judge who presided over the trial. This case was heavily litigated; the matter was originally assigned to Judge Miley, who heard and decided most of the motions. The matter was then sent to Overflow,

picked up by this Department, and heard by Judge Bixler. The issue that the parties are dealing with occurred during the trial and that is why they believe Judge Bixler should be the one to decide it because he is the one who is most familiar with the facts and circumstances of the underlying issue.

Court noted that the newly discovered evidence is the note from the Jury, which reads as follows: "Can we have elaboration on the definition, by means of force or violence or fear of injury." To which the Court responded, "The Court is not at liberty to supplement the evidence." Defense claims that they never saw the question and were not consulted on a possible answer to the question.

Colloquy as to whether or not the Court is at liberty to supplement the Jury Instructions; Ms. Spells believes there are numerous arguments she could make in support of the Jury's question but she would like an opportunity to see the State's Oppositions and respond before this Court makes a final determination. COURT ORDERED, Motions CONTINUED.

NDC

CONTINUED TO: 04/30/18 8:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 30, 2018

C-16-314260-1 State of Nevada
vs
Alfred Harvey

April 30, 2018 8:00 AM All Pending Motions

HEARD BY: Smith, Douglas E. **COURTROOM:** RJC Courtroom 11B

COURT CLERK: Carol Donahoo

RECORDER: Gina Villani

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- DEFT.'S MOTION FOR NEW TRIAL PURSUANT TO NRS 176.515 BASED ON GROUNDS OF NEWLY DISCOVERED EVIDENCE AND MOTION FOR EVIDENTIARY HEARING AND DECISION BY TRIAL JUDGE . . . DEFT.'S MOTION TO RECONSTRUCT THE RECORDS AND MOTION ASKING TRIAL JUDGE TO MAKE A DECISION IN THIS MATTER

Brian Schwartz, Dep DA, present on behalf of the State; Sharon Dickinson, Chf Dep PD, and Jasmin Spells, Dep PD, present on behalf of Deft. Harvey, who is not present. Deft. is incarcerated in the Nevada Department of Corrections (NDC).

This is the time set for hearing on Deft.'s Motion for New Trial and Motion to Reconstruct the Record. Upon Court's inquiry, Ms. Spells advised that the newly the newly discovered evidence is the note from the Jury that was marked as an exhibit. Counsel found the note during the appellate process and the parties were not notified at the time the Jury was deliberating that there was a question. The noted said, "Can we have elaboration on the definition, by means of force or violence or fear of injury," which is one of the elements of a robbery charge. At the top of the note the Court's response was as follows: "The Court is not at liberty to supplement the evidence."

Ms. Dickinson advised that in the note, the Jury was asking for a legal definition but the response had

to do with evidence so that is not what they were asking for. Ms. Dickinson believes the Court should have brought the trial attorneys back into court to look at the instruction, formulate an answer, and decide what to do; she discussed NRS 175.451, Gonzales v. State, and Jeffries v. State. When the parties were last present, the Court indicated that Judge Bixler did not remember this case so Defense Counsel spoke with a few of the Jurors; Supplemental Points and Authorities were submitted. The Jurors remember giving the note and one of the Jurors made comments about the response given by the Court's Marshal, which brings up further concern because the trial attorneys were not made aware of any of this because none if it is a part of the record. Therefore, Ms. Dickinson believes an Evidentiary Hearing is necessary to ascertain why the procedures were not correctly followed and what happened with the note.

Colloquy; the Court believes that "The Court is not at liberty to supplement the evidence" is the appropriate response to the question and that it is not new evidence; the appropriate evidence and arguments were presented at the time of trial, there is no new evidence. Although a mistake may have occurred, what difference would it have made because if the trial attorneys would have been brought back into court, the response the Court gave would have been the response of the trial attorneys.

Ms. Spells advised that the note is not evidence but a clarification on what the law is. The Jury is the trier of fact and the Court informs the Jury on what the law is. Ms. Spells believes that the Jury was confused as to what the law was. If Defense counsel would have had the opportunity, they would have objected to the Court's response to the note, directed the Jurors to the appropriate Jury Instruction, or proffered new ones. Court noted that the Jury Instructions cannot be supplemented once the Jury begins their deliberations. COURT ORDERED, the Motion is DENIED.

Ms. Spells advised that there is an additional argument; Defense counsel believes there was possible misconduct because the Deft. was aware that there was a holdout Juror prior to the Jury coming back with a verdict. Additionally, in speaking with the some of the Jurors, they indicated that there were additional conversations between the Jurors and the Court's Marshal about procedural aspects and he may have provided them with his cell phone number. Defense Counsel was not made aware of the conversations; they should have been done in writing or placed on the record, neither occurred and the cell phone issue also needs to be explored. Therefore, Ms. Spells is requesting that the Court set an Evidentiary Hearing. COURT FURTHER ORDERED, the prior ruling STANDS, the Motion is DENIED. State to prepare Findings of Fact and Conclusions of Law consistent with their Opposition.

With regard to the Motion to Reconstruct the Records, Ms. Dickinson advised that Defense Counsel needs to have the record reconstructed to determine how the note ended up in the District Court's evidence vault; there is nothing in the record which explains that; colloquy. COURT ORDERED, Ms. Dickinson is free to file a reconstruction; however, her request to use the Declarations from the Jurors is DENIED. State to prepare the Order.

NDC

EXHIBIT(S) LIST

Case No.: C314260

Jury Trial Date: 11/15/16

Dept. No.: VIII

Judge: James Bixler

Court Clerk: Carol Donahoo

Plaintiff: The State of Nevada

Recorder / Reporter: Jill Jacoby

Counsel for Plaintiff: Steve Rose/Bryan Schwartz

vs.

Defendant: Alfred C. Harvey

Counsel for Defendant: Jasmin Spells/Kelley Jones

JURY TRIAL BEFORE THE COURT

STATE'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
1.	Photograph	11/16/16	NO	11/16/16
2.	Photograph	11/16/16	NO	11/16/16
3.	Photograph	11/16/16	NO	11/16/16
4.	Photograph			
5.	Photograph			
6.	Photograph			
7.	Photograph			
8.	Photograph	11/16/16	NO	11/16/16
9.	Photograph			
10.	Photograph			
11.	Photograph			
12.	Photograph			
13.	Photograph			
14.	Photograph			
15.	Photograph			
16.	Photograph			
17.	Photograph	11/16/16	NO	11/16/16

EXHIBIT(S) LIST

Case No: C314260

The State of Nevada

VS.

Alfred C. Harvey

STATE'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
18.	Photograph	11/16/16	NO	11/16/16
19.	Photograph			
20.	Photograph			
21.	Photograph			
22.	Photograph			
23.	Photograph			
24.	Photograph			
25.	Photograph			
26.	Photograph			
27.	Photograph			
28.	Photograph			
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33.	Photograph			
34.	Photograph			
35.	Photograph			
36.	Photograph			
37.	Photograph			
38.	Photograph			
39.	CD – Fist and Second Calls	11/16/16	NO	11/16/16
40.	CD – TJ Maxx	11/16/16	NO	11/16/16
41.	Photograph	11/16/16	NO	11/16/16



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

PHILIP J. KOHN, PUBLIC DEFENDER
309 S. THIRD ST., SUITE 226
LAS VEGAS, NV 89155

DATE: May 17, 2018
CASE: C-16-314260-1

RE CASE: STATE OF NEVADA vs. ALFRED C. HARVEY

NOTICE OF APPEAL FILED: May 16, 2018

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- Case Appeal Statement
- NRAP 3 (a)(1), Form 2
- Order
- Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

“The district court clerk must file appellant’s notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12.”

Please refer to Rule 3 for an explanation of any possible deficiencies.

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; ORDER DENYING DEFENDANT’S MOTION FOR NEW TRIAL AND DEFENDANT’S MOTION TO RECONSTRUCT THE RECORD; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

STATE OF NEVADA,

Plaintiff(s),

vs.

ALFRED C. HARVEY,

Defendant(s).

Case No: C-16-314260-1
Dept No: VIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 17 day of May 2018.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk