

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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**MICHAEL McNAIR**

Appellant,

vs.

**THE STATE OF NEVADA**

Respondent.

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**Docket No. 78871**

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Appeal From A Judgment of Conviction (Jury Trial)  
Eighth Judicial District Court  
The Honorable Douglas Herndon, District Judge  
District Court No. C-17-327395-1

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**APPELLANT'S APPENDIX VOLUME 1 OF 10**

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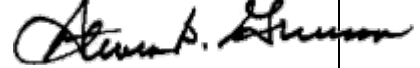
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1 CASE NO. C327395

2 DEPT. NO. 12

3  
4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

5 COUNTY OF CLARK, STATE OF NEVADA

6  
7 STATE OF NEVADA,

8 Plaintiff,

9 vs.

Case No. 17F16794X

10 MICHAEL MCNAIR,

11 Defendant.

12 -----  
13  
14 REPORTER'S TRANSCRIPT  
15 OF  
16 PRELIMINARY HEARING

17 BEFORE THE HONORABLE DIANA L. SULLIVAN  
18 JUSTICE OF THE PEACE

19 TAKEN ON MONDAY, OCTOBER 23, 2017  
20 AT 9:30 A.M.

21 APPEARANCES:

22 For the State: JEFFREY S. ROGAN and  
23 JACQUELINE BLUTH  
24 Deputy District Attorneys

25 For the Defendant: RANDALL H. PIKE  
Assistant Special Public Defender

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

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1 LAS VEGAS, NEVADA, MONDAY, OCTOBER 23, 2017

2 \* \* \* \* \*

3  
4 THE COURT: Michael McNair, 17F16794.

5 We're going to start the  
6 preliminary hearing. Miss Bluth and Mr. Rogan are  
7 present on behalf of the State. Mr. Pike is present  
8 on behalf of Mr. McNair, and Mr. McNair is present in  
9 custody.

10 There are some surveillance  
11 technology issues going on that Miss Bluth informed  
12 me of at the bench, so I think what we're going to  
13 try to do is get started, and she does have one  
14 witness that has been brought over from the jail.

15 And it's 11:00, so what we talked  
16 about at the bench is to at least call that witness  
17 and accept his testimony, take his testimony, and  
18 then we will most likely break for lunch, so then  
19 that witness can be excused, and then Mr. McNair can  
20 go back and have lunch and anybody else can grab  
21 lunch, and that will give Miss Bluth an opportunity  
22 to finalize the surveillance issue that we have and  
23 we'll be resuming with the remaining witnesses after  
24 lunch.

25 MS. BLUTH: Thank you, your Honor. And



1 then just for purposes of the preliminary hearing, a  
2 few housekeeping matters.

3 The autopsy report is still not  
4 done, so Mr. Pike and I are stippling to cause and  
5 manner of death, that being gunshot wound and  
6 homicide. We're also stippling to the identification  
7 of the deceased, which is the named victim in Count  
8 1, Gordon Phillips.

9 And then lastly, I did amend the  
10 Criminal Complaint to add different -- the following  
11 principles of the criminal liability. That would be  
12 by directly committing the crime, by aiding or  
13 betting in the commission of the crime, and then  
14 pursuant to a conspiracy to commit the crime. And so  
15 that is delineated in Count 1, and if I could please  
16 approach the clerk to have them filed.

17 THE COURT: Yes.

18 So, Mr. Pike, you were aware that  
19 the Amended Criminal Complaint was coming down?

20 MR. PIKE: Yes, your Honor.

21 THE COURT: Were those stipulations that  
22 Miss Bluth put on the record correct for the purposes  
23 of preliminary hearing?

24 MR. PIKE: Limited for the preliminary  
25 hearing only, yes.

1 THE COURT: Okay. All right. So she's  
2 filing, Miss Clerk's filing this Amended Criminal  
3 Complaint, and with that you can call your first  
4 witness.

5 MR. ROGAN: State calls Anthony Razo.

6 THE COURT: Sir, you've been subpoenaed  
7 to testify in this criminal matter. You must be in  
8 custody on something else, not on any material  
9 witness warrant or something. Okay?

10 THE WITNESS: All right.

11 THE CLERK: Go ahead and have a seat.

12 State your first and last name and  
13 spell both for the record.

14 THE WITNESS: Anthony Razo,  
15 A-n-t-h-o-n-y, R-a-z-o.

16 THE COURT: You can proceed, Mr. Rogan.

17  
18  
19 A N T H O N Y R A Z O, having been first duly sworn  
20 to testify to the truth, the whole truth, and nothing  
21 but the truth, testified as follows:

22  
23 DIRECT EXAMINATION

24 BY MR. ROGAN:

25 Q. Good morning, sir. How are you today?

1           A.       Good.

2           Q.       I have some questions about some things  
3 that you may have seen back around September 14 of  
4 this year, okay?

5                   MR. PIKE: Your Honor, before the witness  
6 begins testimony, I'm sorry, I'd like to invoke the  
7 exclusion of witnesses.

8                   THE COURT: Okay. Do you have any -- if  
9 there's anybody here subpoenaed to testify in the  
10 preliminary hearing of Michael McNair, please step  
11 outside until my marshal calls your name.

12                   Mr. Razo, it's important that you  
13 speak a little loud and into the microphone, because  
14 Miss Gerri is taking down a record, so she has to  
15 understand you, okay?

16                   THE WITNESS: Okay.

17                   THE COURT: Sometimes if you nod your  
18 head, we see it, but it doesn't come out on the  
19 record, so you have to use your words. Thank you so  
20 much.

21 BY MR. ROGAN:

22           Q.       I want to ask you some questions about  
23 some things that you saw around the 14 of September,  
24 all right?

25           A.       All right.

1 Q. Now, you spoke to the police about this  
2 before, right?

3 A. Yes.

4 Q. Basically, the same types of questions,  
5 all right?

6 A. Yes.

7 Q. Where were you living on September 14 of  
8 this year?

9 A. On the streets.

10 Q. Whereabouts?

11 A. Searles and Las Vegas Boulevard.

12 Q. How long had you been living at that  
13 location?

14 A. Just a couple days.

15 Q. Where were you before that?

16 A. I think I was in jail.

17 Q. And on the, I guess it would be the  
18 evening of the 14th, what did you see that caught  
19 your attention?

20 A. There was an argument between a couple  
21 people.

22 Q. Where was that argument taking place?

23 A. In front of like where I was camping.

24 Q. Can you tell me specifically where you  
25 were camping?

1           A.       On Searles in front of -- on the side of  
2   Flavors.

3           Q.       On the side of Flavors?

4           A.       Yes.

5           Q.       So were you north of Searles?

6           A.       I guess south of Searles, or I was on  
7   Searles.

8           Q.       You were on Searles?

9           A.       Yes.

10          Q.       Where was Flavors from where you were  
11   camping?

12          A.       In front of my campsite.

13          Q.       In front of your campsite, okay.

14                   Were you behind Flavors, behind  
15   the building?

16          A.       Like -- yes, I guess.

17          Q.       So you said you saw an altercation?

18                   THE COURT:   He said an argument.

19   BY MR. ROGAN:

20          Q.       I'm sorry, an argument between two  
21   people?

22          A.       Yes.

23          Q.       Where was that argument taking place?

24          A.       Across the street to my right.

25          Q.       Across the street to your right.   All

1 right.

2 Did you see the person -- did you  
3 see clearly the two people that were having the  
4 argument?

5 A. Yes.

6 Q. Where was specifically that argument  
7 taking place?

8 A. Across the street to my right, like  
9 50 feet probably.

10 Q. Is there a parking lot area where it was  
11 taking place?

12 A. Yes. There was a fence and a parking  
13 lot.

14 Q. I want to talk to you about that fence.  
15 How tall is that fence; do you  
16 know?

17 A. About six feet, six or seven feet.

18 Q. Where was -- where were the people  
19 standing in relation to that fence?

20 A. One person was on one side of the fence,  
21 one person was on the other side of the fence.

22 Q. The person that was on the other side of  
23 the fence further away from you, is that the parking  
24 lot for Flavors?

25 A. I believe so.

1 Q. And the person that was on the other side  
2 of the fence, the fence that was closest to you, or  
3 the person that was closest to you, is that on  
4 Searles itself, like a sidewalk area or something?

5 A. Yes.

6 Q. Do you remember the color of this fence?

7 A. I believe it was black.

8 Q. Do you know?

9 A. I'm pretty sure it was black.

10 Q. So you said that there was this argument.

11 Could you hear what was going on?

12 A. There was something about music.

13 Somebody was arguing about music and it being too  
14 loud.

15 Q. Do you know who was saying that, the  
16 person closest to you on the Searles side or the  
17 person in the parking lot?

18 A. The person closest to me.

19 Q. Did you know the person closest to you?

20 A. No.

21 Q. Was that person also living on the  
22 street?

23 A. As far as I know, yes.

24 Q. How do you know that?

25 A. Because they were saying that the music

1 was too loud and it was bothering them.

2 Q. So based upon the conversation that you  
3 overheard, you assumed that he was homeless?

4 A. Yes.

5 Q. Was it just one person or two person on  
6 that side of the street?

7 A. Just one person.

8 Q. How long do you think this argument took  
9 place?

10 A. A couple minutes.

11 Q. Was there any fight that took place that  
12 you saw?

13 A. No.

14 Q. Could you hear what the person on the  
15 other side of the fence further away from you was  
16 saying to the homeless person?

17 A. He was just saying like, you know, go get  
18 a house if you don't like the music being loud.

19 Q. Did you ever see any of them have a  
20 weapon at the time?

21 A. I saw the guy farthest away from me, he  
22 had a knife in the back of his hand.

23 Q. Was that the person that's on the Searles  
24 side of the fence?

25 A. Yes.



1 Q. The homeless person?

2 A. Yes.

3 Q. Where did you see that knife?

4 A. In his -- I believe -- I don't know. He  
5 had both of his hands clasped behind his back. I  
6 could see he had a knife blade in his hand.

7 Q. Was the -- how did you know it was a  
8 knife blade?

9 A. I could see the shininess of the blade.

10 Q. Was this at nighttime?

11 A. Yes.

12 Q. How far away were you standing?

13 A. Probably about 50 to 75 feet.

14 Q. Did the homeless man, did he ever  
15 brandish that knife at all?

16 A. No.

17 Q. Did you see any vehicles nearby?

18 A. There was a couple vehicles on the other  
19 side of the fence.

20 Q. So in the parking lot area?

21 A. Yes.

22 Q. Do you remember what they looked like?

23 A. There was a couple trucks.

24 Q. Now, at some point did the argument end?

25 A. Yes.

1 Q. Did you see where the homeless man went  
2 to?

3 A. He went back to wherever he was from on  
4 the streets.

5 Q. Did you see where he went to?

6 A. No, I didn't, but like towards Las Vegas  
7 Boulevard.

8 Q. Did you see him walk towards Las Vegas  
9 Boulevard?

10 A. Yes.

11 Q. So that would be west, correct?

12 A. Yes.

13 Q. What about the man on the other side of  
14 the street?

15 A. He just stayed behind the fence where it  
16 looked like he was working.

17 Q. What makes you say that?

18 A. It looked like he had a work uniform on.

19 Q. Can you describe that uniform?

20 A. Looked like blue pants and a blue shirt.

21 Q. Did you see anything else distinctive  
22 about that shirt?

23 A. It looked like he had a badge, like a  
24 name placard or a businesslike placard or badge.

25 Q. And as you're describing that you were

1 pointing to your left part of your chest.

2 Is that where you remember seeing  
3 it?

4 A. Yes.

5 Q. Now, at some point later did you see that  
6 same man with the blue shirt again?

7 A. Yes.

8 Q. How long after the first time you saw him  
9 did you see him again?

10 A. I saw him the whole time, like because  
11 the argument went on kind of in front of me, to the  
12 right, and then the homeless guy took off, and then  
13 the other guy was still there with somebody else.

14 Q. Somebody else was there?

15 A. Yeah. I don't know if it was a coworker  
16 or friend or something or somebody.

17 Q. So let's talk about that guy in the blue  
18 shirt for a minute, all right?

19 A. All right.

20 Q. After the homeless man left, what did you  
21 see the guy in the blue shirt do, if anything?

22 A. He got in his car or truck and took off,  
23 sped around the parking lot, and then he came back  
24 and parked his car or truck.

25 Q. In the same location that he took off

1 from?

2 A. Yes.

3 Q. Did he ever leave that parking lot?

4 A. No.

5 Q. What about the other man that you saw?

6 A. He disappeared, went back to where he was  
7 from or left.

8 Q. After the man in the blue shirt came back  
9 and parked his car, what did you see him do, if  
10 anything?

11 A. I seen him get out of his -- like leave  
12 the parking lot and then start walking across the  
13 street.

14 Q. So walk across Searles?

15 A. Yes.

16 Q. So I guess he was walking southbound?

17 A. He was walking westbound towards  
18 Las Vegas Boulevard.

19 Q. I see. Was he on the sidewalk or was he  
20 in the street?

21 A. He was in the street, crossing the  
22 street, but he looked like he was going to make it to  
23 the other side of the sidewalk.

24 Q. Do you see where he ended up?

25 A. I didn't. I left at that point.

1 Q. Where did you go?

2 A. I went north on Las Vegas Boulevard.

3 Q. The guy in the blue shirt, could you tell  
4 what race he was?

5 A. He looked to be African American.

6 Q. So that African American in the blue  
7 shirt, was he walking with anybody the last time you  
8 saw him?

9 A. No.

10 Q. Did you see anything in his hand?

11 A. No.

12 MR. ROGAN: Court's indulgence.

13 BY MR. ROGAN:

14 Q. Now, after you saw that African American  
15 man in the blue shirt head I guess west towards  
16 Las Vegas Boulevard, you said that you left.

17 Did you go very far?

18 A. I went about four or five blocks away.

19 Q. At some point did you hear something?

20 A. I heard what sounded like gunshots a  
21 couple minutes later.

22 Q. How many gunshots do you think you heard?

23 A. I counted seven.

24 Q. Why did you leave the area?

25 A. I just -- because of the altercation,

1 usually things get out of hand like that. I didn't  
2 want to be around any altercation or have anything to  
3 do with any problems that could arise from that  
4 altercation.

5 Q. So were you fearful that something was  
6 going to happen to that homeless man?

7 A. I don't know. I just got out of the area  
8 because I was like it was a pretty heated argument  
9 and I didn't want to be a part of anything.

10 Q. Now, a couple final questions.

11 That man in the blue shirt, I  
12 asked you whether you heard him say anything to the  
13 homeless guy, all right?

14 Now, later on did you hear him say  
15 anything else; that is, before he went walking  
16 towards Las Vegas Boulevard?

17 A. He just had an argument about the music  
18 that was on. The homeless guy talked to the guy,  
19 told him, you know, you need to turn this music off,  
20 it's bothering me. My old lady's trying to sleep.  
21 The guy's like, get a home, stop being homeless. And  
22 they just went bantering back and forth. That was  
23 all I heard.

24 Q. So I'm talking about now afterwards,  
25 after he drives around the parking lot and then parks

1 it, then he heads out walking down the street.

2 Did he saying anything, if you can  
3 remember?

4 A. I didn't recall anything at that time.

5 Q. Do you remember talking to the -- when  
6 you talked to the police a few days later?

7 A. Yes.

8 Q. Did you review that transcript at any  
9 point since you had that conversation?

10 A. No.

11 MR. ROGAN: May I approach the witness,  
12 your Honor?

13 THE COURT: Sure.

14 BY MR. ROGAN:

15 Q. Sir, I'm showing you what's page 19 of  
16 what appears to be a voluntary statement, right?

17 A. Yes.

18 Q. Can you start at the top of the page.  
19 Read it to yourself silently and let me know when  
20 your done, okay?

21 You done reading it?

22 A. Yes.

23 Q. My previous question is or was, do you  
24 remember him saying anything else before he went  
25 walking down the street, and you said no.

1 Do you have a memory now of what  
2 was said, if anything?

3 A. Now that I read that, I do remember him  
4 saying something else.

5 Q. What did he say?

6 A. He said, I'm going to clock out to go  
7 take care of this situation or whatever.

8 MR. ROGAN: Nothing further.

9 THE COURT: Cross-examination.

10 MR. PIKE: Thank you very much, your  
11 Honor.

12  
13 CROSS-EXAMINATION

14 BY MR. PIKE:

15 Q. Good morning, sir. I have a few  
16 questions to ask you, if I may.

17 You're present in custody; is that  
18 correct?

19 A. Yes, sir.

20 Q. Were you arrested on a material witness  
21 warrant or what are you in custody for?

22 A. I'm in custody for a domestic violence  
23 issue.

24 Q. Do you have any prior felony convictions  
25 within the past 10 years?



1           A.       No, sir.

2           Q.       You don't want to be in here testifying  
3 today, do you?

4           A.       No, sir.

5           Q.       Now, when you were there in that area on  
6 that evening, approximately how far away from the  
7 confrontation between the fence were you?

8           A.       I'd say about 50 to 75 feet.

9           Q.       Did you hear both parties raising their  
10 voices?

11          A.       Yes.

12          Q.       The person that you described as the  
13 homeless man that had the knife behind his back, was  
14 he yelling at that time?

15          A.       Yes.

16          Q.       Could you hear anything that he was  
17 saying that you would believe to be a threat?

18          A.       He was saying he was going to jump over  
19 the fence, and, I don't know, beat the other guy up  
20 or something like that.

21          Q.       So those -- and then when you described  
22 the flash or you could see a blade of a knife,  
23 approximately how big did you believe that blade of  
24 the knife to be?

25          A.       About four inches long.

1           Q.       The area that you were in and looking  
2 across, there was enough of a nightlight or  
3 streetlight so that you could see both of the  
4 parties?

5           A.       Yes.

6           Q.       The person that had the knife, about how  
7 tall was he?

8           A.       He looked like about 5-10.

9           Q.       Do you recall about a weight that he may  
10 have been?

11          A.       I'd say 180 pounds.

12          Q.       From what you heard, could you hear any  
13 slurring in his speech or any unusual -- well,  
14 anything unusual in his speech?

15          A.       He sounded highly agitated.

16          Q.       He was mad, and did you ever see where he  
17 went back to sleep when he crossed over the street?

18          A.       I did not.

19          Q.       You turned and walked away from that  
20 time.

21                   Then you indicated that the person  
22 that you saw on the other side that was on the  
23 Flavors side, had you ever been over to Flavors  
24 before while you were in that area?

25          A.       Yes.

1           Q.       And have you ever had an opportunity to  
2 talk to any of the security guards or any of the  
3 people that were there in the evening time?

4           A.       No.

5           Q.       Had you ever seen either of those two  
6 people that were on the either side of the fence  
7 before?

8           A.       No.

9           Q.       During the time that you were involved in  
10 watching this, did you see another individual come  
11 from Flavors and talk to the person you described as  
12 wearing a uniform-type clothing?

13          A.       Yes.

14          Q.       What did that person look like?

15          A.       He was African American.

16          Q.       So there were two African Americans?

17          A.       Yes.

18          Q.       Was there anybody that was Hispanic that  
19 came out?

20          A.       I don't believe so.

21          Q.       Of the two individuals that you saw that  
22 were African American that came out, was the second  
23 one also wearing what you believed to be a --  
24 consistent with a uniform?

25          A.       Yes.

1 Q. Same colored shirt?

2 A. I believe so.

3 Q. And same colored pants?

4 A. I believe so.

5 Q. So as you were walking away from this you  
6 actually did not see the shooting, did not see it,  
7 and could not identify the individual that either  
8 shot the weapon?

9 A. No, sir.

10 Q. Did you ever see the knife displayed in a  
11 threatening manner by the person you've described as  
12 the homeless man?

13 A. I mean he had it clasped behind his back.  
14 That was never brandished other than that.

15 Q. You indicated in your statement at one  
16 time that you thought that if that individual that  
17 was brandishing -- or that had the knife behind his  
18 back got shot, that that may have been something that  
19 would have been in your opinion consistent with  
20 self-defense or stand your ground, correct?

21 A. Yes.

22 Q. And what did you base that opinion upon?

23 A. Because him having a knife and verbally  
24 arguing with the guy, that's lethal force, as far as  
25 I know. I know having a knife, you know, you can

1 lethally kill somebody with a knife.

2 Q. Part of the reason why you left that area  
3 was because you saw a knife?

4 A. Yes.

5 Q. How many times did the police discuss  
6 this case with you?

7 A. Just once.

8 Q. And have you had an opportunity to read  
9 both your written statement and the transcript of  
10 your statement before you came to court today?

11 A. No.

12 MR. PIKE: Nothing further at this time.

13 THE COURT: Any redirect?

14 MR. ROGAN: Yes, please. Thank you.

15  
16 REDIRECT EXAMINATION

17 BY MR. ROGAN:

18 Q. Going back to that initial altercation,  
19 okay.

20 THE COURT: The argument you mean?

21 MR. ROGAN: Yes, I'm sorry, it just says  
22 altercation. That's my verbatim.

23 BY MR. ROGAN:

24 Q. The argument that you saw, you said the  
25 homeless man had his voice raised, right?

1           A.       Yes.

2           Q.       What about the guy on the other side?

3           A.       He raised his voice as well.

4           Q.       Did you hear what the guy on the other  
5 side, the one wearing the blue shirt, did you hear  
6 what he was saying?

7           A.       They were just arguing about the music,  
8 and one guy was like -- the homeless guy was like,  
9 I'm going to jump this fence, and the guy in the blue  
10 uniform was like, come on over, jump the fence, do  
11 what you're going to do.

12          Q.       So after that argument ended the homeless  
13 man though just walked away?

14          A.       Yes.

15          Q.       And how long after he walked away did you  
16 then see the man with the blue shirt head towards  
17 Las Vegas Boulevard?

18          A.       Probably 10 or 15 minutes later.

19               MR. ROGAN: Court's indulgence.

20 BY MR. ROGAN:

21          Q.       So when you spoke to the police, that was  
22 closer in time to when you saw the initial argument,  
23 right?

24          A.       What was that?

25          Q.       Sorry, bad question.

1                   You spoke to the police some time  
2 ago about this, right?

3           A.       Yes.

4           Q.       And that was closer in time to when the  
5 argument took place, right?

6           A.       Yes.

7           Q.       All right. Do you remember telling them  
8 that it was a bit longer than 10 or 15 minutes  
9 between the time the argument took place and the time  
10 that you saw the man in the blue shirt walk down the  
11 street?

12          A.       I don't.

13          Q.       Do you think looking at your statement  
14 again would help you remember what you initially told  
15 the police?

16          A.       Yes.

17                   MR. ROGAN: Court's indulgence.

18                   THE COURT: Mm-hmm.

19 BY MR. ROGAN:

20          Q.       I'm going to show you again page 19 and  
21 20, all right?

22          A.       All right.

23          Q.       So you've already read page 19  
24 previously. So just read that last line to yourself  
25 on page 19 and then read the first half of page 20

1 for me, all right?

2 A. All right.

3 Q. So my question was, do you remember  
4 telling the police that it was actually a bit longer  
5 than 10 or 15 minutes?

6 A. Yes.

7 Q. What did you tell the police?

8 A. It says 45 minutes.

9 Q. Actually, you say half hour to 45  
10 minutes?

11 A. Half hour to 45 minutes.

12 Q. Now, Mr. Pike asked you some questions  
13 and you talked to the police about this. You offered  
14 an opinion as to whether the person who ended up  
15 shooting the man was justified in doing that, right?

16 A. Yes.

17 Q. And so you talked to the police about  
18 stand your ground, right?

19 A. Yes.

20 Q. So is your about opinion about why the  
21 person was justified in shooting based upon your  
22 understanding of the stand your ground law?

23 A. Yes.

24 MR. ROGAN: Thank you.

25 THE COURT: Any recross?



1 MR. PIKE: Court's indulgence.

2 No further questions. Thank you.

3 THE COURT: Thank you very much,  
4 Mr. Razo. Appreciate your time today.

5  
6 (Witness excused)

7  
8 So unless you think we can get  
9 through another easy witness, maybe we'll take a  
10 recess now.

11 MS. BLUTH: If that would be okay with  
12 the Court, that would be great.

13 THE COURT: So maybe 12:45. That's an  
14 hour and 20 minutes.

15 MS. BLUTH: That should be fine.

16 Your Honor, I just ask the Court,  
17 or I'd like to make a representation and ask if  
18 there's a Bianca Reddin in the courtroom right now or  
19 was she previously.

20 THE COURT: Bianca Redding?

21 MS. BLUTH: Bianca Reddin.

22 THE COURT: Is there a Bianca Reddin in  
23 the courtroom?

24 MS. BLUTH: Has there been this morning?

25 THE COURT: I'm guessing not.

1 I don't know who Bianca Reddin is.  
2 I'm suspecting these people are observers. Maybe  
3 they know or maybe they don't.

4 Okay. All right. Thank you.  
5 We'll see you a 12:45.

6  
7 (After a luncheon recess the  
8 following proceedings were had.)  
9

10 THE COURT: Michael McNair, 17F16794.  
11 It's after our lunch break. Both Mr. Rogan and  
12 Miss Bluth are present on behalf of the State.  
13 Mr. Pike is present on behalf of Mr. McNair.  
14 Mr. McNair is present in custody, and we've already  
15 heard one witness and we're ready to proceed with the  
16 next witness. Miss Bluth.

17 MS. BLUTH: Thank you, your Honor, and I  
18 have marked as evidence State's Proposed Exhibits 2  
19 and 3. This was the video surveillance we were  
20 discussing before that the parties have stipulated to  
21 their admission.

22 Mr. Pike knew that I had a  
23 custodian of records who was going to come in, but in  
24 an effort of saving time for purposes of preliminary  
25 hearing only the defense is agreeing that this video

1 will come in.

2 THE COURT: Is that correct, Mr. Pike?

3 MR. PIKE: That's correct.

4 THE COURT: All right. Exhibits 2 and 3  
5 will be admitted. Thank you.

6  
7 (State's Exhibits 2 and 3  
8 admitted into evidence.)  
9

10 MS. BLUTH: The State's next witness,  
11 Mr. Rogan.

12 MR. ROGAN: It's going to be Ramiro  
13 Romero.

14 THE CLERK: Go ahead and have a seat.  
15 State your first and last name and  
16 spell both for the record.

17 MR. ROGAN: Ramiro Romero, R-a-m-i-r-o,  
18 R-o-m-e-r-o.

19 THE COURT: Thank you.

20 You can proceed.

21 MR. ROGAN: Thank you, your Honor.  
22  
23  
24  
25

1 R A M I R O R O M E R O, having been first duly  
2 sworn to testify to the truth, the whole truth, and  
3 nothing but the truth, testified as follows:  
4

5 DIRECT EXAMINATION

6 BY MR. ROGAN:

7 Q. Mr. Romero, how are you today?

8 A. I'm good, waiting here for three hours.

9 Q. Sorry for that.

10 Did you get some sleep last night?

11 A. Hmm-mm.

12 Q. Is that a no?

13 A. Yeah, that's a no.

14 Q. All right, thanks. Sorry. She's just  
15 taking everything down, so we have to say yes or no.

16 A. Oh, okay.

17 Q. Are you okay testifying this morning  
18 though?

19 A. Yes, sir.

20 Q. Okay. All right. Did you used to work  
21 for Unified Container?

22 A. Yeah, before I got fired.

23 Q. When did you start working there?

24 A. I don't know exact date.

25 Q. How long ago from now?

1           A.       From now it would probably be like two  
2 months, I believe, or a month.

3           Q.       How long did you work there for?

4           A.       I worked there for like a month.

5           Q.       What did you do there?

6           A.       Make containers, gallons.

7           THE COURT:   You did what?

8           THE WITNESS:   Gallons, made gallons.

9           MR. ROGAN:    I'll get into it.

10          THE COURT:   Well, but she can't  
11 understand it, so it doesn't matter if you're going  
12 to get into it, she can't understand the answer, so  
13 she needs to be able to take down the answer, and I  
14 didn't hear it either, so what was it?

15          THE WITNESS:   I make gallons.

16          THE COURT:    Make gallons.

17          THE WITNESS:   Yeah, well, like it goes  
18 through a processing machine.   It's like gallons for  
19 milk and juices.

20          THE COURT:    Okay, thanks.

21   BY MR. ROGAN:

22          Q.       All right.   Well, you got into it.

23                        So you made milk containers,  
24 right?

25          A.       Milk and juices.

1 Q. Did you have a specific job there?

2 A. No, just make them and regrind them.

3 Q. What's regrinding?

4 A. Regrinding is when I put the gallon, like  
5 any gallons that are messed up or like fall on the  
6 floor into the machine for regrind.

7 Q. Were you working -- I'm sorry, let me ask  
8 you this. What was your shift?

9 A. My shift is 7 -- or depends what time I  
10 get there, but if I get there early, I could start  
11 like at 7, 7:30, or I could start at 8, depending how  
12 the machine's running.

13 Q. 8 a.m. or 8 p.m.?

14 A. 8 p.m. like at night. I got the  
15 graveyard shift, so it's 8:00 to 4:30.

16 Q. 4:30 in the morning?

17 A. Mm-hmm.

18 Q. Is that a yes?

19 A. Yes.

20 Q. How did you get to work?

21 A. Sometimes my dad drops me off, or, if  
22 not, one of my homeboys.

23 Q. Do you have a car?

24 A. No, I don't have a car.

25 Q. Do you have a license?

1           A.       I do not have a license.

2           Q.       Do you remember at what intersection  
3 United Container is located -- sorry, Unified  
4 Container?

5           A.       I don't know the cross streets.

6           Q.       Do you know North Las Vegas Boulevard and  
7 Searles?

8           A.       Hmm-mm.

9           Q.       Is that a no?

10          A.       No. My bad.

11          Q.       Do you know whether the company is in the  
12 City and County of Las Vegas, Nevada, Clark County?

13          A.       Pretty sure it is.

14          Q.       At some point were you working with a  
15 person by the name of Michael McNair?

16          A.       Yeah.

17          Q.       Do you see Michael McNair here in court?

18          A.       Yeah.

19          Q.       Can you point to him, please.

20          A.       The man right there.

21          Q.       Could you describe something he's wearing  
22 for me right now?

23          A.       Dark blue shirt.

24               MR. ROGAN: Your Honor, could the record  
25 reflect the identification of the defendant?

1 THE COURT: Yes.

2 BY MR. ROGAN:

3 Q. What position did Mr. McNair have?

4 A. Mechanic, I believe. He would check on  
5 the machine if like it would get messed up or like  
6 gallons in there would get like real stuffed in, so  
7 he would check the machine.

8 Q. Did you know Mr. McNair very well?

9 A. No. I just started working there and he  
10 just started getting the shift, I start getting the  
11 shift.

12 Q. So how often do you think you worked  
13 together?

14 A. I don't know, like couple hours, like  
15 two, three hours.

16 Q. That's it?

17 Is that a yes?

18 A. Yes. My bad.

19 Q. Sorry. You were nodding your head.

20 A. Yeah, I know, I know. I'm used to that.

21 Q. So two to three hours in total that you  
22 work at Unified Container is how long you worked with  
23 Mr. McNair?

24 A. Yeah, or sometimes four hours. Sometimes  
25 you have to stay a little bit longer to check if the



1 machine would get like fucked up, because we're  
2 newbies, so we don't know much about the machine.

3 Q. Okay, I'm sorry. Bad question.

4 How many different shifts did you  
5 work with Mr. McNair?

6 A. Different shifts.

7 Q. How often did you work with him; every  
8 day, every other day?

9 A. Like every day.

10 Q. Did you talk to him at all while he was  
11 there?

12 A. Yeah.

13 Q. Were you friends?

14 A. I have to talk to him. No, we're not  
15 friends, but I have to talk to him though. He's like  
16 my boss.

17 Q. He's like your boss?

18 A. Yeah, because Mike Purdy is my real boss,  
19 he's the main guy right there, old dude. That's my  
20 main boss, but since he leaves at 6, he takes care of  
21 the machines.

22 Q. So Mike Purdy is the main boss, he leaves  
23 at 6 p.m.?

24 Is that a yes?

25 A. Yes.

1 Q. And then Michael McNair, who works, I  
2 guess, part of your shift that you're there, he's  
3 your boss while Mr. Purdy is not around?

4 A. Yes, sir.

5 Q. Okay, I got it, I got it.

6 So were you working on the  
7 overnight shift between September 14 and September 15  
8 of this year?

9 A. Yes, sir.

10 Q. Was Mr. McNair also working at least part  
11 of that shift?

12 A. Yes, sir.

13 Q. Now, at some point did Mr. McNair come up  
14 to you and ask you to do something?

15 A. No.

16 Q. At some point did you have a conversation  
17 with Mr. McNair after which you go outside with him?

18 A. Yeah, because there was a guy that --

19 Q. Hold on. We'll get into that in just a  
20 minute, okay?

21 Do you remember what time of night  
22 this was?

23 A. I would believe -- I think it was 10:00  
24 or 9. I don't know.

25 Q. Sometime before midnight?

1 A. Yeah.

2 Q. Is that a yes?

3 A. Yes.

4 Q. What does Mr. McNair say to you?

5 A. He said there's a guy trying to disturb  
6 the workplace, so I go outside.

7 Q. Hold on one second. We're going to take  
8 it question by question.

9 So what are you doing at the time  
10 that Mr. McNair comes inside?

11 A. Making the gallons, put them in a bag.

12 Q. What are you doing with those gallon  
13 jugs?

14 A. Put them in a bag and then put them  
15 inside of a trailer.

16 Q. After Mr. McNair comes and says what he  
17 just said to you, what do you do?

18 A. I told my coworker that I'm about to go  
19 on my 10, to watch the machine, and then I go  
20 outside.

21 Q. What is, I'm about to go on my 10 mean?

22 A. My 10 minute break.

23 Q. Do you go outside there with Mr. McNair?

24 A. Mm-hmm.

25 Q. Is that a yes?

1           A.       Yes.

2           Q.       Do you have a conversation outside with  
3 Mr. McNair about what's going?

4           A.       Yes.

5           Q.       What does he say to you, if anything?

6           A.       He told me that the guy that was in front  
7 of the gate was causing problems, and I told him,  
8 Mike, just call security.

9           Q.       Hold on one second.

10                   Did you see a man at the gate at  
11 the time that Mr. McNair was telling you this?

12          A.       Yeah.

13          Q.       Did you get a good look at him?

14          A.       No.

15          Q.       How far away from him were you?

16          A.       I don't know, like 20, 19 feet. I don't  
17 know exactly how far it was.

18          Q.       Don't guess. That's fine. Thank you.

19                   Mr. McNair tells you about the  
20 disturbance. What specifically does he say took  
21 place?

22          A.       Huh?

23          Q.       What specifically does he say is the  
24 problem?

25                   MR. PIKE: Objection, your Honor;

1 hearsay.

2 THE COURT: There's an objection for  
3 hearsay.

4 MR. ROGAN: Defendant's statement.

5 THE COURT: Defendant's statement what?

6 MR. ROGAN: About what took place.  
7 Statement of a party opponent.

8 MR. PIKE: Well, it may be a statement of  
9 a party opponent, but that doesn't mean it's an  
10 exception to the hearsay rule. If it's not offered  
11 for the truth of the matter asserted therein, then  
12 that's a different thing, but it's not inculpatory  
13 and there's not an exception that has been brought  
14 before the Court.

15 THE COURT: Is it offered for the truth  
16 of the matter asserted in it?

17 MR. ROGAN: I don't know what he's going  
18 to say, your Honor. I'm asking him. It's a  
19 statement of a party opponent, which is a hearsay  
20 exception.

21 THE COURT: Well, doesn't it have to be  
22 incriminatory or inculpatory in nature though?

23 MR. ROGAN: I don't believe so. It's  
24 just a statement of a party opponent. A statement  
25 against interest would certainly have to be

1 inculpatory.

2 THE COURT: I'm going to allow it. I  
3 don't know if I'm going to take it for the truth of  
4 the matter. Let's see where it goes.

5 BY MR. ROGAN:

6 Q. So you go outside, Mr. McNair says to you  
7 something about an altercation. I asked you -- I'm  
8 sorry, something going on.

9 I asked you if you could see that  
10 man, and you said no?

11 A. Mm-hmm.

12 Q. Is that correct?

13 A. Yes, sir.

14 Q. What does Mr. McNair say to you after  
15 that, if anything?

16 A. We walk up to the gate.

17 Q. Why did you do that?

18 A. Because he was in front of the gate, so  
19 we're asking them to leave.

20 Q. Asking them?

21 A. Asking the guy that was causing trouble  
22 to leave.

23 Q. Was there only one person or more than  
24 one person?

25 A. I saw one person, but there's multiple

1 homeless people on that sidewalk.

2 Q. I understand.

3 The person that you were directing  
4 your attention to at that time, was there just one  
5 person?

6 A. Yeah.

7 Q. So when you're talking to this person,  
8 was he on the other side of the fence from you at  
9 that time?

10 A. Yes, sir.

11 Q. At some point do you and Mr. McNair go  
12 around on the other side of the fence; in other  
13 words, on the same side of the fence that that man is  
14 standing on?

15 A. Well, I told Mike to open the gate to see  
16 if this guy really wants to fight me because he kept  
17 on talking shit. So he opens the gate for me. I  
18 walk up halfway there. He already hit the corner of  
19 the whatever, stop sign, that street, and I walked  
20 back because I seen security coming.

21 Q. We're going to take that bit by bit, all  
22 right?

23 A. Mm-hmm.

24 Q. So when you go up and you're first  
25 initially speaking through the fence, are you saying

1 anything to this man on the other side of the gate?

2 A. No.

3 Q. Is he saying anything to you?

4 A. Yeah.

5 Q. What is he saying?

6 A. He's saying, you want a problem?

7 Q. Okay. And so at that point, is that when  
8 you asked Mr. McNair to open the gate so that you can  
9 get through?

10 A. Mm-hmm.

11 Q. Is that a yes?

12 A. Yes, sir.

13 Q. And does only Mr. McNair have access to  
14 unlock this gate that you wanted to go through?

15 A. Yeah.

16 Q. Why is that?

17 A. Because he moved the trailer when it was  
18 full. When it's full of gallons, because we fill up  
19 the trailer full of gallons. When it's time to move  
20 it, he moves the trailer. So, yeah, he has access to  
21 that gate.

22 Q. Is it a locked gate with a key of some  
23 kind?

24 A. Yeah.

25 Q. Do you have a key yourself?



1 A. No.

2 Q. Does Mr. McNair have a key?

3 A. Yes.

4 Q. Does Mr. McNair unlock the gate for you?

5 A. Mm-hmm.

6 Q. Is that yes?

7 A. Yes, sir.

8 Q. And do you go out into the street at this  
9 point?

10 A. Mm-hmm.

11 Q. Is that a yes?

12 A. Yes, sir. My bad.

13 Q. That's okay.

14 What about Mr. McNair, does he go  
15 out into the street with you?

16 A. No. He stays back and waits for  
17 security.

18 Q. What was your intent in going out into  
19 the street?

20 A. Beating his ass.

21 Q. The man that you were speaking to?

22 A. Mm-hmm.

23 Q. Is that yes?

24 A. Yes.

25 Q. And did you ever make contact with the

1 man when you were on the other side of the gate?

2 A. No, sir. If there was, it would be  
3 contact. There would have been police there because  
4 he would have been out.

5 Q. Where did -- did you see where that man  
6 went?

7 A. No.

8 Q. Was he --

9 A. I saw him walk away, but I didn't see  
10 where he went.

11 Q. Did he walk towards Las Vegas Boulevard?

12 A. I don't know what street he's at, but he  
13 walked toward passing the graveyard.

14 MR. ROGAN: Your Honor, may I approach  
15 your clerk?

16 THE COURT: Yes.

17 MR. PIKE: For the record, I've had an  
18 opportunity to review the exhibit. It's an overhead  
19 view of the area from Google Maps, I assume.

20 MR. ROGAN: Do you have any objection?

21 MR. PIKE: No objection.

22 THE COURT: What's it marked as?

23 MR. ROGAN: It's marked as State's  
24 Proposed 4. I move for its admission now.

25 THE COURT: 4 will be admitted. Thank

1     you.

2  
3                     (State's Exhibit 4  
4                     admitted into evidence.)

5  
6                     MR. ROGAN:   May I approach the witness,  
7     your Honor?

8                     THE COURT:   Yes.

9                     MS. BLUTH:   Your Honor, is there a way to  
10    take the video off or is that just going to mess  
11    things up while we're --

12                    THE COURT:   I don't know.   It's just on  
13    still.

14                    MS. BLUTH:   I need to ask him something.

15                    THE COURT:   I don't know.

16                    MS. BLUTH:   I'm not going to mess with  
17    it.

18                    MR. ROGAN:   Court's indulgence.

19    BY MR. ROGAN:

20            Q.       You said you worked at the Container --

21            A.       Unified Container.

22            Q.       -- Unified Container for how long?

23            A.       For like a month.

24            Q.       Do you see Unified Container or where  
25    it's located in Exhibit 4?

1 A. Right here.

2 Q. So you're pointing now to --

3 A. The Flavors Market.

4 Q. Flavors Market.

5 Can you just mark that spot with  
6 UC, please.

7 Now, you said that there was a  
8 gate where the man was standing on the other side  
9 from you.

10 Can you please mark, using  
11 Exhibit 4, where that man was initially standing with  
12 an X, please?

13 Okay. And is that the gate that  
14 you and Mr. McNair eventually left out of?

15 A. I left out of.

16 Q. You left out of. I'm sorry, my mistake.

17 In which direction did the man  
18 that was standing on other side of the gate, which  
19 direction did he walk?

20 A. This way.

21 Q. Is that -- you just made an indication.

22 Can you just draw an arrow for me?

23 A. Yeah.

24 Q. You've just drawn an arrow towards the  
25 direction of what is marked on this map as North

1 Las Vegas Boulevard, correct?

2 Is that a yes?

3 A. Yes. My bad.

4 Q. Did you follow him?

5 A. Yeah, I followed him all the way up to  
6 half way there. I don't know where -- I guess where  
7 the light post was. Then I saw security coming so I  
8 just went back to work.

9 Q. Can you mark where you stopped with an S?

10 THE COURT: Will these help? There's a  
11 red or if you want to use a different color. These  
12 are fatter.

13 BY MR. ROGAN:

14 Q. Just put an S where you stopped or  
15 whereabouts.

16 Okay. From where you stopped did  
17 you see where that man went to?

18 A. I just told you he went this way. I  
19 don't know where, North Las Vegas Boulevard.

20 Q. You're making an indication with your  
21 hand drawing upwards; is that correct?

22 A. Mm-hmm.

23 Q. Is that yes?

24 A. Yes.

25 Q. And based upon this map, that would be in

1 the north direction?

2 A. Yes.

3 Q. Did you say anything to the man when you  
4 were essentially following him?

5 A. Nope.

6 Q. Did he say anything to you?

7 A. No. Soon as he seen me walk out the  
8 gate, he started walking off.

9 Q. What did you do after that?

10 A. I went back into the facility where I  
11 worked in.

12 Q. To go back doing your job?

13 A. Mm-hmm.

14 Q. Is that a yes?

15 A. Yes.

16 Q. What were you wearing at the time; do you  
17 remember?

18 A. Black shirt.

19 Q. Do you have any particular clothing that  
20 you had to wear for your shift, like a work uniform  
21 or anything?

22 A. Yeah, but I haven't got a uniform yet  
23 because I haven't been working there for that long.

24 Q. So what kind of uniform did other people  
25 wear?

1           A.       Other people would wear blue and -- I  
2       don't know, light blue shirt. Like a light blue  
3       shirt.

4           Q.       Did it have a name tag on it?

5           A.       It had a name tag, Unified Container, or  
6       other people would wear a burgundy shirt too.

7           Q.       Did you have to wear any protective gear  
8       or safety gear?

9           A.       A hairnet, that's all.

10          Q.       You said you went back inside to continue  
11       working, right?

12          A.       Mm-hmm.

13          Q.       Is that a yes?

14          A.       Yes. My bad.

15          Q.       Do you know where Mr. McNair went after  
16       you went back inside?

17          A.       No, sir.

18          Q.       Did you see Mr. McNair again that  
19       evening?

20          A.       No, sir, until the cops showed up.

21          Q.       Prior to the cops arriving, did you have  
22       any conversation with Mr. McNair?

23          A.       No, sir.

24          Q.       At any point did Mr. McNair show you  
25       anything?

1           A.       When he walked in he showed me a gun.

2           Q.       Was that before or after the cops  
3 arrived?

4           A.       That was before the cops arrived.

5           Q.       So you did actually see him again before  
6 the cops arrived?

7           A.       Yeah.

8           Q.       Is that a yes?

9           A.       Yes.

10          Q.       So what were you doing at the time that  
11 you saw Mr. McNair again, if you remember?

12          A.       Making gallons.

13          Q.       What, if anything, did Mr. McNair say to  
14 you when he came in and you saw him that second time?

15               MR. PIKE:  Objection; hearsay.

16               MR. ROGAN:  It's a statement of the party  
17 opponent, inculpatory.

18               THE COURT:  I think that's probably going  
19 to be allowed.  Overruled.

20       BY MS. BLUTH:

21          Q.       What, if anything, did he say to you?

22          A.       Like what he said to me when he walked  
23 in?

24          Q.       Yes.

25          A.       He said -- he told me how the machines



1 are running, because he's a mechanic, so he has to  
2 know how the machines are going.

3 Q. A moment ago you said that he showed you  
4 a gun?

5 A. Yeah.

6 Q. Can you talk about your conversation with  
7 him at that point?

8 A. Yeah, when he walked in he showed me the  
9 gun. I told him if that was the gun he was trying to  
10 sell me, because I've been trying to buy a gun prior  
11 to that week, because I had some trouble going on  
12 around my house, and I want to make sure I'm  
13 protected.

14 Q. So he just showed you a gun?

15 A. Yeah.

16 Q. Yes?

17 A. Yes.

18 Q. And you initiated a conversation with  
19 him?

20 A. Yes.

21 Q. Was it unusual that he was showing you a  
22 gun in the workplace?

23 A. No.

24 Q. That's not unusual to you?

25 A. No.

1 Q. Did he say anything to you as he  
2 displayed this gun?

3 A. No.

4 Q. Do you know where he went after he showed  
5 you that gun and you had this conversation with him  
6 about it?

7 A. Back to work, I guess, like I did.

8 Q. Did you see him later that evening prior  
9 to the cops coming?

10 A. No.

11 Q. When's the next time that you saw him?

12 A. When I went outside and the parking lot  
13 was full of cops.

14 MR. ROGAN: Court's indulgence.

15 BY MR. ROGAN:

16 Q. What kind of -- a moment ago you  
17 described that employees that had been there longer  
18 than you, I presume, were working at Unified  
19 Container, had a particular work shirt that was blue  
20 in color.

21 When you were out on the street  
22 with -- I'm sorry, in the parking lot with  
23 Mr. McNair, was he wearing that blue shirt?

24 A. Mm-hmm.

25 Q. Is that yes?

1           A.       Yes.   My bad.

2           Q.       At some point did you see him in another  
3 shirt?

4           A.       No.

5           Q.       Did you ever see him wearing any other  
6 colored shirt other than that blue shirt?

7           A.       No, sir.

8           Q.       Do you know whether Mr. McNair ever  
9 changed his clothes?

10          A.       No, sir.

11          Q.       Do you remember speaking to the police  
12 this night that all of this took place?

13          A.       Honestly, I don't remember half of that,  
14 because I was half asleep, and I still haven't eaten,  
15 so the cops would have had me out there for five  
16 hours with no food or nothing.

17          Q.       Did you have a conversation with the  
18 police officer?

19          A.       Yes, I did.

20          Q.       During that conversation, did you ever  
21 indicate to the police officer or talk about the  
22 defendant's clothing with the police officer?

23          A.       No, sir.

24          Q.       You don't remember that?

25          A.       Hmm-mm.

1 Q. Is that a no?

2 A. No, sir.

3 Q. Would taking a look at a recording or a  
4 transcript of your recorded statement help you to  
5 remember?

6 A. Mm-hmm.

7 Q. Is that a yes?

8 A. No, I'm saying, yeah. You're telling me  
9 remember what? What are you talking about?

10 Q. I'm asking you whether taking a look at a  
11 transcript of a recording that took place during that  
12 conversation would help you to remember the content  
13 of your conversation with the defendant?

14 A. Oh, yeah, yeah.

15 MR. ROGAN: May I approach the witness,  
16 your Honor?

17 THE COURT: Yes.

18 MR. ROGAN: Page 26.

19 MR. PIKE: Thank you.

20 BY MR. ROGAN:

21 Q. All right. I'm going to show you page 26  
22 of this statement. I want you to read it silently,  
23 and when you're done, just let me know.

24 A. What's highlighted?

25 Q. No, the entire page.

1 A. Oh, the entire page.

2 Q. Yes.

3 I'm also going to show him the top  
4 of page 27 too.

5 A. Yeah, I do remember now.

6 Q. Do you remember now?

7 A. Yeah.

8 Q. I won't show him page 27.

9 All right. Do you remember having  
10 a conversation with the detectives about the clothing  
11 that Mr. McNair was wearing?

12 A. Yeah.

13 Q. I asked you whether you ever saw him  
14 wearing a different colored shirt, remember?

15 A. Yes.

16 Q. What color shirt do you remember him  
17 wearing at some point that night?

18 A. Burgundy.

19 Q. Was this after he had been wearing that  
20 blue shirt with you out in the parking lot of Unified  
21 Container?

22 A. I think it was before.

23 Q. Do you know?

24 A. I don't know for sure because, like I  
25 said, that day was blurred.

1 MR. ROGAN: Court's indulgence.

2 BY MR. ROGAN:

3 Q. Do you remember at the time that you were  
4 with Mr. McNair, prior to going out into the street,  
5 do you remember whether Mr. McNair ever made any  
6 phone calls?

7 A. No, sir.

8 Q. You don't remember?

9 A. No, sir.

10 Q. I want you to take a look to your left  
11 there. Do you see what's displayed on your screen,  
12 sir?

13 A. Mm-hmm.

14 Q. Is that a yes?

15 A. Yes. My bad.

16 Q. And, for the record, this is State's  
17 Exhibit 3.

18  
19 (Video playing)

20  
21 Can you describe what we're seeing  
22 here?

23 A. The regrind, stairs, a ramp.

24 Q. Is this the exterior of the building that  
25 Unified Container used?

1           A.       Yes, sir. That's where the trailer is  
2 where we put the gallons in it.

3           Q.       Can you actually circle the grinder  
4 machine for me, please?

5                   Do you see also in this depiction,  
6 do you see the gate that the trailer went in and out  
7 of, the gate that Mr. McNair had the key to?

8           A.       Yeah.

9           Q.       Can you circle that for me, please?

10           MR. PIKE: For the record though, it's in  
11 the upper right-hand corner.

12           MR. ROGAN: Thank you very much.

13                   I'm going to play a little bit of  
14 this video, all right?

15  
16                   (Video playing)

17  
18           MS. BLUTH: For the record, I started it  
19 at 12:16:15, which is in the upper right-hand corner.

20           THE COURT: I don't see that on mine.

21           MS. BLUTH: In the very upper right.

22           THE COURT: I can't see it on mine.

23           MR. ROGAN: For the record, I don't think  
24 we've stipulated to the actual time being accurate at  
25 this point. It's just for the purposes of

1       referencing what's going on at what particular time.

2               THE COURT:   That's fine.

3               MR. ROGAN:   I'm going to back it up just  
4       a moment.

5  
6                               (Video playing)

7  
8                               I'm stopping the video at  
9       12:16:30.

10       BY MR. ROGAN:

11           Q.       On your video screen do you actually see  
12       a truck that's just come into view?

13           A.       Mm-hmm.

14           Q.       Is that a yes?

15           A.       Yes, sir.   My bad.

16           Q.       Do you know whose truck that is?

17           A.       No.   Looks like a black truck.

18           Q.       Do you know what kind of vehicle  
19       Mr. McNair drove?

20           A.       Yeah, a Dodge.

21           Q.       What color?

22           A.       Black.   Black Dodge.

23  
24                               (Video playing)



1 Q. Now at 12:16 and 45, did a person just  
2 appear on your video screen?

3 A. Yes, sir.

4 Q. Who is that person?

5 A. It looks like Michael.

6 Q. Is he wearing that blue shirt you  
7 previously described?

8 A. Yes, sir.

9 Q. Where is he going?

10 A. It looks like inside of the facility.

11 Q. We're going to fast forward a bit to  
12 12:18?

13 MS. BLUTH: 12:17:13.

14 MR. ROGAN: I'm sorry, 12:17:13.

15  
16 (Video playing)

17  
18 BY MR. ROGAN:

19 Q. Do you see two individuals in the screen  
20 now?

21 A. Yes, sir.

22 Q. Who are they?

23 A. That's me and Michael.

24 Q. Can you circle it for us, please?

25 Thanks.

1                   It looks like you're standing by  
2   what you previously described as the grinder machine,  
3   correct?

4           A.       Yeah.

5           MR. PIKE:   Before we move forward, can I  
6   ask a question for continuity's sake?

7           THE COURT:   Sure.

8           MR. PIKE:   In that photograph are you  
9   wearing the headgear and beard --

10          THE WITNESS:   Yeah, I'm wearing my  
11   hairnet.

12          MR. PIKE:   Okay.   Thank you.

13  
14                   (Video playing)

15  
16   BY MR. ROGAN:

17          Q.       So based upon what you see, are you  
18   standing in the view that's closest to us; in other  
19   words, are you closer to the video camera than  
20   Mr. McNair is?

21          A.       Yes, sir.

22          Q.       What are you guys talking about at this  
23   point?

24          A.       He's pointing the gun that was causing  
25   the disturbance.

1 Q. Is the guy, do you see him when you're  
2 standing there?

3 A. Yeah.

4 Q. Is he standing on -- you previously said  
5 he was standing on the other side of the gate.

6 Is he depicted here?

7 A. No. You can't see him. I saw him like  
8 from where I'm standing I could see him.

9 Q. But he's not actually standing behind the  
10 gate as you previously described, is he?

11 A. Yeah, he was behind the gate.

12 Q. Was he behind gate or was he behind the  
13 fence?

14 A. Behind the fence.

15 Q. Just to be clear. So he's behind the  
16 fence, right?

17 A. Mm-hmm.

18 Q. Is that a yes?

19 A. Yes, sir. My bad.

20  
21 (Video playing)

22  
23 Q. Do you see Mr. McNair now?

24 A. Yes, sir.

25 Q. What does he appear to be doing to you at

1 12:17, almost 12:18?

2 A. Telling me about the guy behind the  
3 fence.

4 Q. Let's back it up.

5  
6 (Video playing)

7  
8 Please watch Mr. McNair closely.

9  
10 (Video playing)

11  
12 Where is his left hand?

13 A. On a phone.

14 Q. Do you know who he's talking to?

15 A. Yeah.

16 Q. Who's he talking to?

17 A. The security guard.

18 Q. What is he telling the guard, if  
19 anything?

20 A. That there's a guy out here causing a  
21 disturbance.

22 Q. Where are you going to now at 12:18 and  
23 nearly 10 seconds?

24 A. Near the fence.

25 Q. Is that the gate itself?

1           A.       Yeah, the gate itself.

2  
3                    (Video playing)

4  
5                    12:18:45.   Are you now out of view  
6 of the video camera?

7           A.       No.

8  
9                    (Video playing)

10  
11                   Where are you?

12          A.       I'm more towards the fence.

13          Q.       We can't see you in this video, right?

14                   Are you still on the inside of the  
15 gate?

16          A.       Yes.

17          Q.       Inside of the fence?

18          A.       Yes.

19          Q.       Where were you two going?

20          A.       To the other side of the gate.   I was  
21 walking that direction.   We were walking that  
22 direction because he was walking away.

23  
24                    (Video playing)

1           Q.       Now, at 12:19 and 16 seconds, you're  
2 walking towards the gate again?

3           A.       Yes.

4  
5                    (Video playing)

6  
7                    What is Mr. McNair doing now?

8           A.       Opening the gate for me.

9           Q.       Did you explain to him what you intended  
10 to do?

11          A.       Yeah.

12          Q.       What did you tell him?

13          A.       I was going to beat his ass.

14  
15                   (Video playing)

16  
17          Q.       At 12:19 and 38 seconds, where are you  
18 now as depicted in State's Exhibit 3?

19          A.       On the street.

20          Q.       On the other side of the gate, right?

21          A.       Uh-huh.

22          Q.       Is that a yes?

23          A.       Yes, sir.

24          Q.       Where is Mr. McNair?

25          A.       On the other side of the gate.

1 Q. Is he in front of you, walking in front  
2 of you?

3 A. I can't really see because the camera's  
4 not --

5 Q. Do you want me to back it up for you?

6 A. Yeah, because I can't see shit.

7  
8 (Video playing)

9  
10 At 12:19 and 20 seconds, is  
11 Mr. McNair in front of you standing by the gate  
12 controls?

13 A. Yeah. He's opening the gate.

14  
15 (Video playing)

16  
17 Q. 12:19:34 seconds.

18  
19 (Video playing)

20  
21 Has Mr. McNair just opened the  
22 gate?

23 A. Yes, sir.

24 Q. Who goes out first?

25 A. Michael.

1 Q. Mr. McNair?

2 A. Yeah.

3 Q. Fair to say he's walking maybe 15,  
4 20 feet ahead of you?

5 A. Uh-huh.

6 Q. Is that a yes?

7 A. Yes, sir.

8 Q. And you're walking in the street?

9 A. On the sidewalk going to the street,  
10 yeah.

11 Q. What about him, where is he walking?

12 A. He's on the street too.

13 MR. ROGAN: Your Honor, for the record,  
14 the video that we've just seen is labeled on this  
15 disk as view 7. We're now moving, same exhibit, view  
16 8.

17

18 (Video playing)

19

20 BY MR. ROGAN:

21 Q. Sir, I'm showing you now what's view 8 on  
22 the same exhibit.

23 Do you recognize the video angle  
24 that we're seeing here?

25 A. Yeah, it's one of the cameras.



1 Q. Do you know which direction its facing?

2 A. Right.

3 Q. So towards Las Vegas Boulevard?

4 A. Yeah. Yes, sir.

5 Q. We're going to jump ahead to 12:16 and 30  
6 seconds.

7

8 (Video playing)

9

10 A moment ago I asked you  
11 whether -- what kind of vehicle Mr. McNair drove and  
12 you said a black Dodge.

13 Do you see that black Dodge  
14 depicted now?

15 A. Yes, sir.

16 Q. That's at 12:18 and 36 seconds.

17

18 (Video playing)

19

20 Who just got out of that black  
21 Dodge?

22 A. Michael.

23 Q. Mr. McNair?

24 A. Yeah, Mr. McNair.

25

(Video playing)

Q. What's he doing now at 12:18 and 46 seconds?

A. Opening the door. Going inside the building.

(Video playing)

Now, jumping ahead to 12:18 and 40 seconds. Who's that that's just entered into the scene?

A. Looks like Michael.

Q. What's he doing?

A. Going to the truck.

Q. Driver's side?

A. Yeah.

Q. Is that yes?

A. Yes, sir.

Q. Where are you?

A. In the middle of the parking lot.

(Video playing)

Q. What did Michael just retrieve from his

1 car?

2 A. The key for the gate.

3  
4 (Video playing)

5  
6 Is there an individual walking  
7 down the street towards Las Vegas Boulevard?

8 A. Yeah.

9 Q. Who's that person?

10 A. That's the guy that was talking shit.

11 Q. That's at 12:19 and 15 seconds.

12  
13 (Video playing)

14  
15 Now, you're at a view right now  
16 of 12:19 and 34 seconds, right?

17 A. Mm-hmm.

18 Q. Is that a yes?

19 A. Yes, sir. My bad.

20 Q. Is this when you and Michael are going to  
21 the gate and exiting through the gate?

22 A. Yes, sir.

23 THE COURT: Can you pause it for a  
24 minute?

25 MR. ROGAN: Yes.

1           THE COURT: Just for the record, I asked  
2     you to stop the video only because on our screens, on  
3     my clerk's -- I'm checking my clerk's, and on my  
4     screen, and I don't know about the screen you're all  
5     looking at, the top left of my screen says Courtroom  
6     7B.

7                         So where I just saw the figure  
8     that the witness said it was the guy that was talking  
9     shit, I can see him kind of walking through what I'm  
10    going to call the letters of Courtroom 7B, but I  
11    can't see really what's going on, so I'm looking at  
12    the other screens.

13           MR. ROGAN: I can shift that screen, if  
14    you'd like.

15           THE COURT: This is totally unobstructed.

16                         Go ahead.

17  
18                         (Video playing)

19  
20    BY MR. ROGAN:

21           Q.        So, sir, I stopped it at 12:20 exactly.

22                         Do you see yourself again in the  
23    view of this video camera?

24           A.        Yes, sir.

25           Q.        Do you see Mr. McNair?

1 A. Yes, sir.

2 Q. Who's walking in front of you?

3 A. Mr. McNair.

4 Q. Is there also a white truck that's  
5 also --

6 A. That's the security guard.

7 Q. The security guard that patrols the area?

8 A. Yes, sir.

9 Q. Is there more than one or just one  
10 security guard?

11 A. I believe there's just one.

12 Q. What about the man that you said was  
13 talking shit, where is he?

14 A. I can't see him. I think by that time he  
15 already left.

16 Q. He's already crossed --

17 A. He already crossed.

18

19 (Video playing)

20

21 Q. 12:20 and 20 seconds.

22 Are you now on the south side of  
23 what is called Searles Avenue?

24 A. Yes, sir.

25 Q. Heading towards Las Vegas Boulevard?

1           A.       Yes, sir.

2  
3                   (Video playing)

4  
5           Q.       Are you standing on the corner now with  
6 Mr. McNair that's the southeast corner of Searles and  
7 Las Vegas, Nevada?

8           A.       Yes, sir.

9           Q.       What are you talking about?

10          A.       Talking about the guy that he left.  
11 Talking about how he left.

12  
13                   (Video playing)

14  
15          Q.       Now, at 12:21, what's going on, what are  
16 you and Mr. McNair doing now?

17          A.       Walking back.

18          Q.       Walking back toward your work?

19          A.       Mm-hmm.

20          Q.       Is that yes?

21          A.       Yes, sir. My bad.

22          Q.       We're going to switch to Exhibit 2, and  
23 this is the video clip that's marked U5 on Exhibit 2.

24  
25                   (Video playing)

1                   Looking at the video marked as U5,  
2   what are we seeing here?

3           A.       Me putting in work.

4           Q.       I'm sorry, you what?

5           A.       Me putting in work.

6           Q.       You working?

7           A.       Yeah.

8           Q.       Are you inside Unified Container at this  
9   point?

10          A.       Yes, sir.

11          Q.       Is this what you were describing earlier  
12   where you're loading up gallon jugs for delivery  
13   somewhere else?

14          A.       No, putting inside the little thing right  
15   here where the trailer is.

16          Q.       I'm sorry, putting it inside the plastic  
17   containers; is that what you mean?

18          A.       No, putting the gallons inside the  
19   plastic bag and inside the trailer where I marked it.

20          Q.       Where is the trailer?

21          A.       Right here. I marked it.

22          Q.       Can you mark it for me?

23          A.       I just did.

24          Q.       Oh, I see it, yes. Sorry.

25                   We're going to fast forward this

1 to 12:16:50.

2  
3 (Video playing)

4  
5 Do you see yourself here again?

6 A. Yes, sir.

7  
8 (Video playing)

9  
10 Q. What are you doing right now at 12:16:58?

11 A. Going outside the door with Michael.

12 Q. Mr. McNair?

13 A. Yes, sir.

14 Q. We're going to move it now ahead to  
15 12:22:08.

16  
17 (Video playing)

18  
19 At 12:22:10, what's just happened?

20 A. Me walking back into the work place.

21 Q. Are you with Mr. McNair?

22 A. No, I'm with my coworker, Ryan.

23 Q. What's Ryan last name?

24 A. I don't know.

25 Q. Are you having a conversation with him



1 right now?

2 A. Yeah.

3 Q. What are you telling him?

4 A. I'm telling him about the guy that was  
5 outside talking shit.

6  
7 (Video playing)

8  
9 You seem pretty animated, don't  
10 you?

11 A. Yeah, because I was -- all that  
12 adrenaline rush for no reason.

13 Q. What do you mean?

14 A. I was ready to fight him and he walked  
15 away so I just had built-up adrenaline.

16 Q. We're going to fast forward to 12:26.

17  
18 (Video playing)

19  
20 Are you back to work now off your  
21 10 minute break?

22 A. Mm-hmm.

23 Q. Is that a yes.

24 A. Yes, sir.

(Video playing)

12:26 and 44 seconds. Where are you?

A. I'm in the trailer, putting in the bags.

Q. Who has just come to the end of the trailer?

A. Michael.

(Video playing)

Where are you two walking?

A. To the machine over here. It's called the -- I don't know what's it's called. It's called the unpacker, because this packs the jugs, the machine next to it, it unpacks them.

Q. Why did you walk with him towards the unpacker?

A. Because he was talking to me.

Q. About what?

A. About the machine, to see how it was running.

(Video playing)

1                   Backing it up.

2  
3                   (Video playing)

4  
5           Q.       Can you see at 12:26 and 43 seconds if  
6 Mr. McNair is carrying anything?

7           A.       I just seen the video playing. Yeah.

8           Q.       What's he got in his hand?

9           A.       I don't know, looks like a gun.

10          Q.       Is this when you were talking earlier,  
11 testifying earlier, talking about that gun; do you  
12 remember that?

13          A.       Yeah.

14          Q.       Now, when you were going forwards the  
15 unpacker, is that when you had the conversation about  
16 the firearm?

17          A.       Yes, sir.

18          Q.       Now we're in view 6. We're going to jump  
19 head to 12:26 and 26 seconds. Same exhibit.

20  
21                   (Video playing)

22  
23                   12:26:33. Is that when you enter  
24 into that trailer?

25          A.       Uh-huh.

1 Q. What did you just do?

2 A. Punched the cardboard.

3 Q. Why did you do that?

4 A. Because I was ready -- I told you I had  
5 adrenaline in my body and I was ready to fight and I  
6 didn't get to fight.

7

8 (Video playing)

9

10 Q. Now, 12:26 and it looks like 42.

11 Did Mr. McNair -- is that when  
12 Mr. McNair called you out of the trailer?

13 A. Yeah.

14 Q. Did you see the gun from this  
15 perspective?

16 A. Yes, you could see it.

17

18 (Video playing)

19

20 Before showing you the video, let  
21 me ask you this. Have you ever seen this video  
22 before?

23 A. No.

24 Q. Police didn't show it to you?

25 A. They didn't show me shit. They had me

1 outside waiting for five hours.

2 Q. Did I ever show it to you?

3 A. No. Till right now, yeah.

4 Q. So previously, before showing you all of  
5 these videos, you said that you were the only one who  
6 walked down the street to confront the bum, right?

7 A. Mm-hmm.

8 Q. Is that a yes?

9 A. Yes, sir. My bad.

10 Q. The video shows something different,  
11 doesn't it?

12 A. Yeah.

13 Q. Why did you originally testify that you  
14 were the only one to walk down the street?

15 A. Like I said, I don't remember that day.  
16 It was a blur.

17 MR. ROGAN: Court's indulgence.

18 Pass the witness.

19 THE COURT: All right. Before Mr. Pike  
20 cross-examines we're going to take about a three to  
21 five minute recess. Let's say five.

22 If you have to go to the bathroom,  
23 get a drink, don't talk to anybody about your  
24 testimony because you're in the middle of testimony.

25 If you just want to sit right

1 there. Literally, I just got to talk to my JEA and  
2 somebody else might need to use the restroom, text or  
3 something.

4  
5 (After a recess the following  
6 proceedings were had.)

7  
8 We're back on the record.

9  
10 (Side bar discussion)

11  
12 So I think while we were on a  
13 really brief recess, something happened. I think  
14 maybe a picture or video was taken of your  
15 surveillance.

16 Mark, can you tell me what you  
17 know?

18 THE BAILIFF: I just saw this gentleman  
19 take a picture of the screen, and he deleted the  
20 picture in front of me.

21 THE COURT: So after you asked him to  
22 delete it?

23 THE BAILIFF: Yeah, I asked him to delete  
24 it. He deleted it.

25 THE COURT: Okay. Which gentleman?

1 THE BAILIFF: The one in the red shirt.

2 THE COURT: Obviously, I shouldn't say  
3 obviously, but there usually are signs. I can't  
4 attest to what's outside Judge Goodman's department,  
5 but there are signs that you can't videotape or take  
6 pictures in the courtroom without the Court's  
7 permission.

8 Mr. Rogan.

9 MR. ROGAN: State's concern is obviously  
10 witness intimidation, your Honor. Whenever anyone is  
11 taking a photograph of any evidence that's displayed  
12 in the courtroom while the courtroom is open, it  
13 causes the State concern that there is going to be --  
14 that the picture or video is going to be utilized in  
15 a way that is inappropriate or illegal subsequent to  
16 the testimony.

17 So based upon that, your Honor,  
18 we're asking the courtroom to be closed because of  
19 the conduct displayed by this individual. I know  
20 there's two other men that are here also with the  
21 person who took the photograph, and I certainly think  
22 that all three should be excused from the courtroom  
23 at this point.

24 THE COURT: Mr. Pike.

25 MR. PIKE: It is a public hearing.

1 Certainly, there are restrictions for any photography  
2 by statute. And, in fact, anybody who wants to take  
3 any photographs, they have to apply to the Court and  
4 get permission prior to that time. So there is  
5 constructive knowledge that there are no photographs  
6 to be taken in any courtroom without the Judge's  
7 permission.

8 So as far as the removal of the  
9 one spectator that took the photograph, who as yet  
10 remains unidentified, that can be resolved by having  
11 him removed from the courtroom. The other  
12 individuals weren't involved in it, at least not the  
13 observations of the marshal, and so I request that  
14 they be allowed to remain in the courtroom.

15 THE COURT: Well, obviously, just for the  
16 record, I didn't see what happened because we took  
17 about a two minute recess, but I'm going to have the  
18 gentleman in the red shirt removed for violation of  
19 the rules. So he'll need to -- he can't stay,  
20 frankly. You can't stay.

21 As for the other two individuals,  
22 I'm going to allow them to stay. They haven't done  
23 anything that the Court has seen or heard about  
24 through my marshal or through my court staff.

25 I'm just going to give you this



1 reminder of caution, that you heard the District  
2 Attorney's motion to remove everybody, so, if you  
3 would, just keep your poker faces on, don't make  
4 facial expressions or anything like that, because  
5 that will give me cause to remove somebody else from  
6 the courtroom.

7 And I don't know who this woman is  
8 but kind of came in at the very last moment, but same  
9 thing with her. Ma'am, it's an open courtroom. I  
10 see that you're observing. I don't know who you're  
11 here to see or what you're here to see, if anything,  
12 but if you could make sure you don't nod your head,  
13 shake your head, roll your eyes, anything like that  
14 that could be construed as nonverbal contact or  
15 communication with either any witnesses or the  
16 defendant, okay? Thank you.

17 All right. Cross-examination,  
18 Mr. Pike.

19 MR. PIKE: Thank you very much, your  
20 Honor.

21  
22 CROSS-EXAMINATION

23 BY MR. PIKE:

24 Q. Mr. Romero, at the time that you were  
25 working, you had the night shift, approximately how

1 many trailers were going out each night shift, if you  
2 can remember?

3 A. Two or three.

4 Q. And you were loading approximately how  
5 many gallons of containers into --

6 A. I don't know exact how many gallons.

7 Q. Roughly, looked like --

8 A. A lot.

9 Q. How many were in each one of those  
10 plastic bags that you load onto the trailer?

11 A. It would be like 16, 15.

12 Q. Now, as you went out you walked all the  
13 way up to Las Vegas Boulevard before you turned  
14 around and came back; is that correct?

15 A. Mm-hmm.

16 Q. When you walked out and came back from  
17 Las Vegas Boulevard, then Michael was with you?

18 A. Mm-hmm.

19 Q. Is that yes?

20 A. Yes, sir. My bad.

21 Q. And when you and Michael came back into  
22 the warehouse or construction area that you were  
23 working on, you went right back to work and Michael  
24 left where you were at?

25 A. Yes, sir.

1 Q. Did you see where he went to?

2 A. No, sir.

3 Q. And when you were walking down Searles  
4 towards Las Vegas Boulevard North, there was a white  
5 security truck that was kind of parallel to you, but  
6 inside of the fence; is that right?

7 A. Yes, sir.

8 Q. And that accurately described what you  
9 saw in the video that was just played?

10 A. Yes, sir.

11 Q. How many security guards were in that  
12 truck, if you know?

13 A. I believe there's only one.

14 Q. Do you know what his name is?

15 A. No, sir, I don't know his name.

16 Q. Do you know if he was wearing a maroon  
17 shirt?

18 A. I don't know what kind of shirt he was  
19 wearing. I didn't pay attention. I just saw the  
20 security guard and went back to work.

21 Q. The clothing that you would wear at work,  
22 was that clothing that you would have to launder  
23 yourself or was it clothing that was laundered by  
24 your employer?

25 A. I wouldn't know because I wear my own

1 clothes to work. I haven't got no uniform. I don't  
2 know how the uniforms work.

3 Q. The people that were wearing uniforms,  
4 they wore either light blue shirts or --

5 A. Burgundy.

6 Q. Burgundy.

7 Was there different emblems on the  
8 burgundy shirt from the light blue one?

9 A. Yes.

10 Q. What was on the burgundy shirt, if you  
11 recall?

12 A. It just had a gold wheat.

13 Q. Golden wheat?

14 A. Yeah.

15 Q. And then on the blue shirts, what did  
16 that contain?

17 A. Unified Container.

18 Q. When you were talking to Mike and looking  
19 at the gun, was the gun that you were looking at, was  
20 it a revolver or was it --

21 A. I don't know about guns. I don't know  
22 what kind of gun was it. It was black.

23 Q. It was black, okay.

24 Did it have a cylinder kind of  
25 like the guns you see in the westerns?

1           A.       A cylinder? I don't know what kind of  
2 gun it was.

3           Q.       Did you discuss what caliber it was?

4           A.       No. We just discussed the price because  
5 I've been wanting to buy a gun all week.

6           Q.       And you've been asking other people  
7 besides Michael if they had any guns that were for  
8 sale?

9           A.       Yes, sir.

10           MR. PIKE: Nothing further. Thank you.

11           THE COURT: Any redirect on that?

12  
13                   REDIRECT EXAMINATION

14           BY MR. ROGAN:

15           Q.       Sir, who did you ask to buy a gun from?

16           A.       Hmm?

17           Q.       Who previously did you ask to buy a gun  
18 from?

19           A.       No one.

20           Q.       What stores did you go to?

21           A.       I didn't check no stores.

22           MR. ROGAN: Court's indulgence.

23           THE COURT: Sure.

24           MR. ROGAN: State would like to reopen  
25 direct examination based upon about what happened

1 during the break for a few brief questions.

2 THE COURT: Okay, I'll allow it.

3  
4 DIRECT EXAMINATION

5 (Continued)

6 BY MR. ROGAN:

7 Q. Sir, do you remember when you first spoke  
8 with the detective at Unified Container, he implored  
9 you to tell the truth in your statement?

10 A. I don't remember much about that day,  
11 like I said. I was running on two hours sleep and I  
12 haven't eaten all day. They kept me outside like a  
13 dog waiting for five hours.

14 Q. As you said.

15 Now, do you remember discussing  
16 with him or him discussing with you the importance of  
17 telling the truth?

18 A. Yes, sir.

19 Q. Do you remember discussing or telling him  
20 that you were concerned about testifying in court?

21 A. No, sir.

22 Q. Would it refresh your memory to take a  
23 look at a transcript of your statement from that  
24 evening?

25 Do you think it would help you to

1 remember what happened if you took a look at the  
2 transcript?

3 A. Remember what happened that day, yeah.

4 MR. ROGAN: May I approach with page 38?

5 May I please, your Honor?

6 THE COURT: Yes.

7 BY MR. ROGAN:

8 Q. I want you to start about a third of the  
9 way down, page 38, read it to yourself and tell me  
10 when you're done.

11 It says:

12 ANSWER: Because either way, if I  
13 did testify, I'd have to go to court.

14 So read from that point down to  
15 the bottom of the page to yourself.

16 A. No.

17 Q. No what?

18 A. I don't remember.

19 Q. Do you not remember the detective or  
20 you --

21 A. I remember me talking to a detective, but  
22 I don't know what I said to him. I don't remember  
23 what I said to him.

24 Q. You have no memory of what you said to  
25 him?

1 A. Hmm-mm.

2 Q. Is that a no?

3 A. No, sir. My bad.

4 Q. So you don't remember ever saying --

5 A. I don't remember much about what happened  
6 that day or when I was talking to the detective.

7 Q. Do you remember saying to the detective  
8 that, if I did testify, I would have to go to court?

9 A. No, sir.

10 Q. Do you remember saying to the detective  
11 or the detective asking, is that so bad?

12 A. No, sir.

13 Q. Do you remember saying, yeah, because  
14 this man, I don't know this man very well, so I don't  
15 know what he's capable of or what or who he know?

16 A. No, sir.

17 MR. ROGAN: Nothing further.

18 THE COURT: Any cross on that, Mr. Pike?

19 MR. PIKE: Not on that, but on the  
20 questions that they asked on redirect.

21 THE COURT: Sure, no worries.

22

23 RECROSS-EXAMINATION

24 BY MR. PIKE:

25 Q. When you were at work there you saw those



1 cameras and you saw the video of that, and you knew  
2 that those cameras were all over the --

3 A. I know exactly where each camera is, yes.

4 Q. And so there was everything that you were  
5 going to do inside of there was going to be seen on  
6 camera?

7 A. Yes, sir.

8 Q. And you didn't think there was anything  
9 wrong with buying a gun from another -- somebody that  
10 worked with you or --

11 A. He's an ex-marine, so -- and I know he  
12 has a gun license, so all I have to do is buy the gun  
13 off him and get a license, because I have a clean  
14 record. I don't have nothing on my record. I'm able  
15 to buy a gun.

16 MR. PIKE: Nothing further.

17 THE COURT: Anything on that?

18 MR. ROGAN: No.

19 THE COURT: Thank you very much, sir.  
20 Appreciate your time today.

21  
22 (Witness excused)

23  
24 MS. BLUTH: The State calls Kenneth  
25 Saldana.

1 THE CLERK: Go ahead and have a seat.

2 State your first and last name and  
3 spell both for the record.

4 THE WITNESS: Kenneth Saldana,  
5 K-e-n-n-e-t-h, S-a-l-d-a-n-a.

6 THE COURT: That's a microphone in front  
7 of you. You're speaking pretty loud, but if you  
8 could just move a little closer, we'd appreciate it.

9 Everything we're saying is being  
10 taken down by our court reporter, so it's kind of  
11 important not to interrupt each other or speak over  
12 each other, because she can only take down one person  
13 at a time, and to at least try to articulate your  
14 words.

15 THE WITNESS: Okay.

16 THE COURT: Okay, thank you.

17 MS. BLUTH: May I proceed?

18 THE COURT: Yes.

19 MS. BLUTH: Thank you.  
20  
21  
22  
23  
24  
25

1 K E N N E T H S A L D A N A, having been first duly  
2 sworn to testify to the truth, the whole truth, and  
3 nothing but the truth, testified as follows:  
4

5 DIRECT EXAMINATION

6 BY MS. BLUTH:

7 Q. Good afternoon, Mr. Saldana. I have a  
8 few questions for you.

9 I would like to turn your  
10 attention to September 14 of 2017.

11 During that time period where were  
12 you staying?

13 A. Homeless in front of Flavors ice cream.

14 Q. And there's an individual that we're  
15 going to talk about in a moment, and that's someone  
16 by the name of Gordon Phillips.

17 Now, on September 14 you didn't  
18 know Gordon by his name; is that correct?

19 A. Correct.

20 Q. But you would see him coming and going  
21 like in the mornings or night; is that fair?

22 A. Yes.

23 Q. And so would you refer to him as a friend  
24 or an acquaintance; how would you explain --

25 A. Acquaintance.

1 Q. An acquaintance. Okay.

2 So in a moment, I know that you  
3 see some video in front of you, and in a moment I'm  
4 going to ask you some questions about that video, but  
5 before we get there I have some kind of  
6 pre-questions, if that's okay with you, sir?

7 A. Okay.

8 Q. So can you give me an idea in the Las  
9 Vegas Valley where Flavors is located?

10 A. Between Foremaster and Washington on Las  
11 Vegas Boulevard.

12 Q. Here in Clark County, Las Vegas, Nevada?

13 A. Yes.

14 Q. Now, in the early evening somewhere  
15 around 9 at night, is something happening in the  
16 Flavors parking lot that's causing quite a bit of  
17 disruption in the area?

18 A. Yes.

19 Q. Could you explain what that is?

20 A. Loud music.

21 Q. Where was the loud music coming from?

22 A. A truck on property at Flavors.

23 Q. And so in the parking lot of Flavors?

24 A. Yes.

25 Q. Could you see, was it coming from an

1        automobile?

2            A.        It was coming out of a vehicle, yes.

3            Q.        What did that vehicle look like, if you  
4        know?

5            A.        Burgundy truck.

6            Q.        And was there an individual in the  
7        parking lot you could see that was in control of the  
8        truck, playing the music?

9            A.        He was inside. The truck door was wide  
10       open.

11          Q.        At some point did he get outside of the  
12       truck?

13          A.        Yes.

14          Q.        And could you explain to me, was he  
15       African American, White, Asian?

16          A.        African American.

17          Q.        And do you remember anything about his  
18       clothing?

19          A.        Dark.

20          Q.        And so you can hear this music from where  
21       you were located; is that correct?

22          A.        Yes.

23          Q.        Do you see the screen in front of you?

24          A.        Yes.

25                MS. BLUTH: And, your Honor, for the

1 record, in front of the witness is State's Exhibit  
2 No. 3, and I'm on 008, view 008.

3 BY MS. BLUTH:

4 Q. Can you -- that screen in front of you  
5 that you can actually mark on, could you show me  
6 where you were when this music kind of altercation is  
7 going on?

8 A. Right behind this tree right here.

9 Q. And are you on this street of Las Vegas  
10 Boulevard or are you on the further --

11 A. I'm on the farther side.

12 Q. Thank you so much.

13 That's the tree that's in front of  
14 the, I don't know if that's a white Jeep or a white  
15 SUV, right?

16 A. Yes.

17 Q. Thank you.

18 So explain to me what you see  
19 happen after that music's going on?

20 A. Gordon walked up to the truck, had words  
21 with the person inside the truck. They both started  
22 going back and forth, words were exchanged.

23 Q. Could you hear any of the words that were  
24 being said?

25 A. Not really.

1           Q.       When you say not really, could you  
2 hear --

3           A.       I just heard yelling, this, that, and the  
4 other. I couldn't be specific to exactly what was  
5 said.

6           Q.       Now, did Gordon ever cross over into the  
7 parking lot or did he stay on the other side of the  
8 fence?

9           A.       On the other side of the fence.

10          Q.       And so at some point did the two  
11 individuals stop yelling at each other?

12          A.       When the person in the truck walked  
13 inside, when he walked away and went inside the  
14 building, Flavors.

15          Q.       Did he ever get inside his truck at any  
16 point and drive off?

17          A.       Yes.

18          Q.       So before he goes inside, is that when he  
19 gets in his truck?

20          A.       After he went inside then he came back  
21 out.

22          Q.       And so when he comes back out does he  
23 have anybody with him?

24          A.       Yes.

25          Q.       What does that person look like?

1           A.       I couldn't tell if he was Mexican, White,  
2       Black, but he was a worker through Flavors.

3           Q.       Was he tall or short, skinny, fat?

4           A.       Chunky, about 5-10, 5-11.

5           Q.       And then tell me what you see those two  
6       individuals do.

7           A.       They come off property off of Flavors,  
8       come to the street sign right there on Las Vegas  
9       Boulevard, did not cross the street, and went to get  
10      conversing with Gordon, yelling this, that, and the  
11      other back and forth.

12          Q.       So by that time Gordon had walked back  
13      over --

14          A.       Yes.

15          Q.       -- across the street?

16          A.       Where he was sleeping at, yes.

17          Q.       And is that also on the other side of  
18      Las Vegas Boulevard?

19          A.       Yes.

20          Q.       How far is where you were staying and  
21      where Gordon's bedroll was?

22          A.       From me to the officer right there.

23          Q.       Is that like 20 feet, 25 feet?

24                THE COURT:   This isn't my courtroom so I  
25      don't know.



1 MS. BLUTH: I'll actually figure it out  
2 with just walking with my feet.

3 One, two, three, four, five, six,  
4 seven, eight, nine, 10, 11, 12, 13, 14, 15.

5 THE COURT: And then probably another  
6 three or four to the actual witness because you  
7 started at the end of the witness box.

8 MS. BLUTH: Sure.

9 BY MS. BLUTH:

10 Q. Okay, so somewhere between 15 and 20 of  
11 my feet?

12 A. Yes.

13 Q. So that's how far where you're staying is  
14 from where Gordon's situated; is that correct?

15 A. Yes.

16 Q. When those two individuals, so the  
17 individual who started out with the loud music, and  
18 you believed the person he was with to be like a  
19 coworker; is that right?

20 A. Yes.

21 Q. Do they ever cross Las Vegas Boulevard to  
22 go confront Gordon?

23 A. No.

24 Q. So do they just stand on the corner?

25 A. Yes.

1 Q. And can you hear what they're saying?

2 A. Just back and forth, cussing, shut up,  
3 this, that, and the other, wah, wah, wah, what are  
4 you going to do? What are you going to do?

5 Q. So everybody's just mouthing off?

6 A. Yes.

7 Q. At some point do those two individuals,  
8 the coworkers, walk back to Flavors?

9 A. Yes.

10 Q. What's the next thing you remember  
11 seeing?

12 A. Coworker that came outside of Flavors  
13 goes back in Flavors. The other guy gets in his  
14 truck and leaves, comes back. He doesn't leave  
15 property, but he drives somewhere on property of  
16 Flavors. He drives back right in front of the white  
17 Jeep that's parked right there on the screen, parks  
18 his truck, then another truck shows up.

19 Q. What kind of truck is that?

20 A. That was a white Suburban.

21 Q. What happens then?

22 A. He gets out of the car. He gets out of  
23 his truck. They both come across the street. Worker  
24 said again. The guy that was in the white Suburban  
25 truck starts hitting Gordon, punching him in his face

1 five, 10 times, steps back three feet, pulls a gun  
2 and shoots Gordon.

3 Q. So I want to break it up a little bit,  
4 okay?

5 A. Mm-hmm.

6 Q. So the two original coworkers, they go  
7 back towards the building?

8 A. At first, yes.

9 Q. The individual whose truck it is --

10 A. The burgundy truck.

11 Q. He gets back into his vehicle and drives  
12 around the property?

13 A. Yes.

14 Q. You then see him again and a white  
15 Suburban drives up?

16 A. Yes.

17 Q. Was there any damage to that Suburban?

18 A. Yes, on the passenger side.

19 Q. And, now, another person gets out of that  
20 Suburban, correct?

21 A. Out of the white truck, yes.

22 Q. Was that person African American, White,  
23 Asian, Mexican?

24 A. African American.

25 Q. Was he shorter or taller than the driver

1 of the burgundy truck?

2 A. Shorter.

3 Q. Was he thin build or more stocky?

4 A. Thin.

5 Q. Now, the original coworker of the  
6 burgundy truck and this new person from the Suburban,  
7 now they walk towards Gordon, correct?

8 A. Yes.

9 Q. Now, you're saying the person from the  
10 Suburban approaches Gordon and punches him five to 10  
11 punches?

12 A. Yes.

13 Q. Approximately?

14 A. Yes.

15 Q. Does Gordon ever punch back?

16 A. No.

17 Q. Did you ever see the Gordon with any  
18 weapon?

19 A. No.

20 Q. After the punching you stated that the  
21 shorter of the men stepped back three feet and shoots  
22 Gordon?

23 A. Yes.

24 Q. How many times do you believe the gun was  
25 fired?

1 A. At least five times.

2 Q. What was the taller of the individual  
3 doing?

4 A. Standing there, watching.

5 Q. What was the taller of the individual  
6 doing when the shorter one was punching him?

7 A. Watching.

8 Q. Was he yelling, was he talking, or just  
9 standing there?

10 A. Just standing there.

11 Q. Did he ever attempt to stop the shooter?

12 A. No.

13 Q. When the shooting happened, did the  
14 taller individual to you, did he look stunned or  
15 surprised?

16 A. No.

17 Q. What did the individuals then do?

18 A. Leave.

19 Q. Where did they walk?

20 A. Back to Flavors.

21 Q. And did they get in any vehicle or did  
22 one of them get in any vehicle?

23 A. One of them got in the vehicle, I  
24 believe. I'm not sure if both did or not.

25 Q. When this is going on, when you're

1 watching this, are you the same distance that I  
2 counted out, is that how far you are?

3 A. No, I was closer.

4 Q. And why had you gotten closer?

5 A. Because I knew Gordon, and I knew  
6 something was going to happen. I was going to -- two  
7 guys are walking up on him. I was going to help him  
8 out just in case he need help, but he didn't look  
9 like he needed help. He was handling it himself, but  
10 he did not swing back, he just took the punches, and  
11 what happened next I didn't expect to happen.

12 Q. You say you were closer when the actual  
13 punching and shooting took place. How much closer  
14 would you say?

15 A. About five feet away.

16 Q. Did you see the -- could you see the gun?

17 A. It happened really fast. I seen him when  
18 he started shooting.

19 Q. And, if you could, could you tell whether  
20 it was a revolver or a semiautomatic?

21 A. Like a Glock.

22 Q. So tell me then when Gordon's obviously  
23 shot, what do you do?

24 A. Turn around and went and told people to  
25 call the police and went and got security from the

1 project homeless, from the water shelter, so they can  
2 get on the phone and call the police.

3 Q. I'm going to play some video, and I'm  
4 still on the same exhibit, same view.

5 So I'm going to start it at 12:00  
6 and two seconds.

7  
8 (Video playing)

9  
10 And we can see in the top left  
11 part of the computer, do you see an individual in a  
12 blue shirt?

13 A. Yes, next to the security guard.

14 Q. And then that vehicle, that  
15 darker-colored vehicle that's behind the individual  
16 in the blue shirt, is that the vehicle you've been  
17 discussing that was playing the music?

18 A. Yes, the burgundy truck.

19 Q. I'm going to fast forward now to 12:13  
20 and 44 seconds for the record.

21  
22 (Video playing)

23  
24 Now, we see an individual coming  
25 up from -- up Searles. Do you see that individual?

1 A. Yes.

2 Q. Who's that?

3 A. Gordon.

4

5 (Video playing)

6

7 Do you see the individual in the  
8 blue shirt get out of the vehicle?

9 A. Yes. Right now?

10 Q. Yep.

11

12 (Video playing)

13

14 And so what's going on right now?

15 A. Talking back and forth, turn the music  
16 down, this, that, and the other. Words were  
17 exchanged.

18

19 (Video playing)

20

21 Is it pretty heated during this  
22 period?

23 A. Yeah.

24

25 (Video playing)



1                   So they pulled behind there, just  
2 yelling at each other?

3           A.       Yes.

4  
5                   (Video playing)

6  
7                   Now, I paused it at 12:15:17.

8                   What's going on right now?

9           A.       He's driving away. I don't know where he  
10 went. He comes back and that's when he just -- the  
11 first coworker from Flavors.

12  
13                   (Video playing)

14  
15                   Which way is Gordon walking?

16           A.       He's still in the middle of the street,  
17 standing right there on Searles.

18           Q.       Now I'm going to fast forward to  
19 12:16:30.

20  
21                   (Video playing)

22  
23                   Same view.

24  
25                   (Video playing)

1 I paused it at 12:16:31.

2 Is that the same vehicle that had  
3 now come back to the property?

4 A. Yes.

5

6 (Video playing)

7

8 Q. Now, the male that we see get out of the  
9 video, is that the same male in the blue shirt that  
10 was in the argument with Gordon beforehand?

11 A. Yes.

12 Q. Do you see in the area that he's  
13 pointing?

14 A. Yeah, toward Gordon.

15 Q. That's where Gordon's located?

16 A. That's where Gordon's at at that time.

17

18 (Video playing)

19

20 Q. I'm going to fast forward it just a  
21 little bit.

22

23 (Video playing)

24

25 Now, at 12:18:41, is that the same

1 individual in the blue shirt?

2 A. Yes.

3 Q. Now, in the upper left-hand corner we see  
4 two people. There's one person that's inside the  
5 same area of the fence as the blue shirt.

6 Is that -- do you recognize that  
7 individual?

8 A. That's his coworker he went and got.

9 Q. Then on the other side of the fence who's  
10 that?

11 A. I believe that's Gordon.

12 Q. And which direction is Gordon walking?

13 A. Walking back to where he sleeps at.

14 Q. Now, I'm going to --

15  
16 (Video playing)

17  
18 Right now we're at 12:19:15.

19 Is Gordon still walking in the  
20 direction of his bedroll?

21 A. Yes.

22  
23 (Video playing)

24  
25 At 12:19:40, is Gordon at the

1 cross street?

2 A. Yes.

3  
4 (Video playing)

5  
6 Q. Now, we see in the top left-hand corner  
7 two individuals walking towards Gordon?

8 A. Right.

9 Q. Are those -- is that the driver of the  
10 black vehicle and the coworker?

11 A. Yes.

12  
13 (Video playing)

14  
15 Q. Now, does the individual in the blue  
16 shirt and the coworker, do they ever cross the street  
17 at this point in time?

18 A. No.

19 Q. Is this where you were discussing that  
20 the screaming is going back and forth?

21 A. Yes.

22 THE COURT: Can you just pause it for a  
23 minute. I want to ask him a question.

24 So right here, where are you? Are  
25 you over by that -- on the other side of the fence on

1 Las Vegas Boulevard by where that little white truck  
2 is way over there?

3 Where are you?

4 Go ahead and touch it.

5 THE WITNESS: I'm right behind this tree.

6 THE COURT: On Las Vegas Boulevard?

7 THE WITNESS: On Las Vegas Boulevard,  
8 yes.

9 THE COURT: So the same place you  
10 mentioned earlier?

11 THE WITNESS: Yes.

12 THE COURT: Go ahead.

13 BY MS. BLUTH:

14 Q. I'm going to fast forward to 12:20:08.

15  
16 (Video playing)

17  
18 12:21:02.

19  
20 (Video playing)

21  
22 Now, those same two individuals  
23 are walking back towards the property, correct?

24 A. Yes.

25 Q. Now I'm going to fast forward to

1 12:22:39.

2  
3 (Video playing)

4  
5 Now we see a white vehicle pull  
6 up. Is that the white Suburban you were discussing  
7 earlier?

8 A. Yes.

9 Q. And is that the damage on the passenger  
10 door you were discussing?

11 A. Yes.

12 Q. Now I'm going to move to view 8.

13  
14 (Video playing)

15  
16 Now I'm going to view 7.

17 12:22:32.

18  
19 (Video playing)

20  
21 So you see the two individuals  
22 walking back into the property?

23 A. Yes.

24 Q. Is that the coworker going back in?

25 A. Yes.

1 Q. And then do you see the male in the blue  
2 shirt at the top of your screen?

3 A. Yes.

4  
5 (Video playing)

6  
7 You just saw a vehicle pull up; is  
8 that correct?

9 A. Yes.

10 Q. That's a 12:22:29.

11  
12 (Video playing)

13  
14 Is this the Suburban you've been  
15 discussing?

16 A. Yes.

17  
18 (Video playing)

19  
20 Q. Now we see an individual with a shirt  
21 off, correct?

22 A. Yes.

23 Q. Get out of the driver's side of the  
24 Suburban?

25 A. Yes.

1           Q.       Do you see the individual in the blue  
2 shirt walking in front of him?

3           A.       Yes.

4  
5                    (Video playing)

6  
7           Q.       Which direction are they walking now?

8           A.       Towards Las Vegas Boulevard.

9           Q.       Now I'm going to go back to view 8.

10  
11                   (Video playing)

12  
13                   Now, I'm going to ask you to look  
14 up at Searles Avenue, walking towards the Boulevard  
15 in a moment.

16  
17                   (Video playing)

18  
19                   Do you see those two individuals?

20           A.       Yes.

21  
22                   (Video playing)

23  
24           Q.       Now, we see the one in the blue shirt and  
25 then we see the individual, it looks like he's now



1 put his shirt on, and a black shirt?

2 A. Yes. They just crossed the street.

3 Q. Which one of those individuals is the  
4 shooter?

5 A. The smaller guy in the black shirt just  
6 put his shirt on.

7  
8 (Video playing)

9  
10 Q. The individuals are now crossing the  
11 street; is that correct?

12 A. Yes.

13 Q. With the one in the blue shirt in the  
14 lead?

15 A. Yes.

16  
17 (Video playing)

18  
19 So at what point are you getting  
20 closer to Gordon's bedroll?

21 A. When they were walking up towards him,  
22 before they cross Las Vegas Boulevard.

23 Q. These two individuals?

24 A. Yes.

(Video playing)

THE COURT: Are you on the other side of  
Las Vegas Boulevard or this side?

THE WITNESS: I'm on the opposite side.

BY MS. BLUTH:

Q. Same side as Gordon, right?

A. Yes.

(Video playing)

Q. Now we see two individuals running around  
the corner; is that right?

A. Yes.

Q. Would those be the same two individuals  
that you have been previously describing?

A. Yes.

Q. Where are they going to go?

A. Back on Flavors property.

Q. All right. So now the last time I'm  
going to switch back over to view 7.

I'm going to fast forward to about  
12:25:45.

(Video playing)

1 I ask you to look and keep your  
2 eye on the front.

3 Do you see an individual in the  
4 back seat of the Suburban now getting out of the  
5 passenger?

6 A. Yes.

7  
8 (Video playing)

9  
10 Q. Now getting in the driver's side; is that  
11 right?

12 A. Yes.

13  
14 (Video playing)

15  
16 Q. Then who do you see walking up from the  
17 gate?

18 A. Both individuals.

19 Q. The same two we've been discussing?

20 A. Yes.

21  
22 (Video playing)

23  
24 Q. Who just closed the gate?

25 A. What was that?

1 Q. I apologize. I said, who just closed the  
2 gate, and we're seeing this person walk towards us?

3 A. In the blue shirt that drove the burgundy  
4 truck.

5 Q. The guy who started or had been involved  
6 from the beginning?

7 A. Yes.

8 MS. BLUTH: Thank you so much,  
9 Mr. Saldana.

10 Pass the witness, your Honor.

11 THE COURT: Cross-examination by  
12 Mr. Pike.

13 MR. PIKE: Court's indulgence.

14  
15 CROSS-EXAMINATION

16 BY MR. PIKE:

17 Q. I just have a few questions.

18 Now, sir, at the time that this  
19 happened, it was after midnight?

20 A. Okay.

21 Q. Was it?

22 THE COURT: I think that's a question.

23 THE WITNESS: Yes. I don't know what  
24 time it was. I didn't have a watch on me. I wasn't  
25 looking at the time.

1 BY MR. PIKE:

2 Q. You just know it was late?

3 A. Yes.

4 Q. But it looked like the area there was  
5 pretty well-lit?

6 A. Yes.

7 Q. In particular the parking lot of Flavors?

8 A. Yes.

9 Q. And so you were on the west side of  
10 Las Vegas Boulevard North, looking in towards the  
11 lights?

12 A. Yes.

13 Q. So you had a pretty good unobstructed  
14 view of and could identify the different people that  
15 were involved?

16 A. Yes.

17 Q. You saw a white truck come up and kind of  
18 follow the first two people that were walking?

19 A. Yes.

20 Q. And that truck, do you know what kind of  
21 truck that was?

22 A. I'd say GMC. The security truck that  
23 works on property.

24 Q. Did that have any markings that were on  
25 it, like a name or anything, or was it just a white

1 GMC truck?

2 A. Just a white truck.

3 Q. And the SUV that came around, that was  
4 just a white SUV?

5 A. The first truck? Which truck are you  
6 talking about?

7 Q. The first truck you saw that you said  
8 that was a white GMC?

9 A. Yes.

10 Q. And you saw that truck kind of pull all  
11 the way up to Las Vegas Boulevard North in the  
12 parking lot, wait there, and then come back around  
13 and follow the two individuals that were walking back  
14 through the gate into Flavors?

15 A. Yes.

16 Q. And you saw that and you remember seeing  
17 that?

18 A. Yes.

19 Q. On the night that you were observing all  
20 this, did you have anything to drink that night?

21 A. Nope.

22 Q. Consume any drugs?

23 A. Don't take them.

24 Q. Don't take them. Okay, good.

25 Had you been working that day?

1           A.       Nope. Besides volunteering.

2           Q.       You were there, you were watching what  
3 was going on, and the two people came back.

4                   Of the two people that came back,  
5 was one of them wearing anything peculiar on his head  
6 or on his beard?

7           A.       His hairnet.

8           Q.       Then when the second two came back, the  
9 white truck wasn't shadowing them at that time, was  
10 it?

11          A.       No.

12                   MS. BLUTH: I apologize --

13                   THE COURT: Yeah, which second two?

14                   MS. BLUTH: Which white truck?

15                   THE COURT: I think he's distinguished --  
16 I think I'm using his words, that he described one as  
17 a security truck, and then he described one as a  
18 Suburban.

19                   Isn't that what you said?

20                   THE WITNESS: Yes.

21                   THE COURT: Didn't you call it a  
22 Suburban?

23                   THE WITNESS: Yes.

24                   THE COURT: So let's distinguish them  
25 between, instead of just calling them white, let's

1 call it a security truck and a Suburban.

2 MR. PIKE: Got it.

3 BY MR. PIKE:

4 Q. The truck, the white truck, not the  
5 Suburban, but the white truck, had gone around back  
6 behind where the lights were on the parking lot and  
7 had presumably parked somewhere else?

8 A. Okay. Yes.

9 Q. Did you see where it was parked?

10 A. No.

11 Q. You didn't see where the black truck or  
12 the burgundy truck was parked at that time either,  
13 did you?

14 A. No.

15 Q. Then you saw the first two people, the  
16 one with the net and the other person in the blue  
17 shirt, walk back, come back onto the property, and  
18 then the guy that was wearing the hairnet, he went  
19 back into the building, correct?

20 A. Yes.

21 Q. In fact, they both did?

22 A. Yes.

23 Q. Then an individual came out with a blue  
24 shirt and one came out with a burgundy shirt or dark  
25 shirt?



1           A.       I did not see no one else come out. The  
2       guy in the blue shirt that went inside with the  
3       hairnet came out. The guy that owns the burgundy  
4       truck came out.

5           Q.       And then was the same guy that came out  
6       with the hairnet, did that look like the same guy  
7       that came out the second time and came up on Gordon  
8       the second time?

9           A.       No.

10          Q.       The individual that -- the second  
11       individual, we had two people, one was wearing a blue  
12       shirt, and what was the other person wearing?

13          A.       A dark-colored shirt.

14          Q.       And they were the ones that walked  
15       towards them?

16          A.       Yes, the one that got out of the white  
17       Suburban truck.

18          Q.       And the individual that got out of the  
19       white Suburban truck, you saw him get out.

20                   Did you see him go into the  
21       building?

22          A.       No. He did not go in the building. He  
23       got out of the truck and came across the street.

24          Q.       Almost immediately?

25          A.       Yes.

1           Q.       Did the individual in the blue shirt meet  
2 up with him right there?

3           A.       Yes.

4           Q.       And the person with the dark shirt, he  
5 was the one carrying a gun, right?

6           A.       The smaller guy, yes.

7           Q.       The smaller guy.

8                   All right. Now, back in the area  
9 where you were at, was that a darker area and it  
10 didn't have any lights on that side?

11          A.       No. A light right in front of me, and  
12 the light where Gordon's at too, street lights.

13          Q.       So you were looking for a place that had  
14 lighting?

15          A.       No, I wasn't looking for a place that had  
16 lighting. That's where I ended sleeping at had  
17 light.

18          Q.       Oh, it did?

19          A.       I watched if they turn them off, but they  
20 didn't.

21                   MR. PIKE: I don't have any further  
22 questions. Thank you very much.

23                   THE COURT: Redirect.

24                   MS. BLUTH: Nothing, your Honor. Thank  
25 you.

1           THE COURT: Thank you very much.  
2       Appreciate your time today.

3  
4                       (Witness excused)

5  
6           Next witness.

7           MS. BLUTH: That was the last witness.

8                       With the filing of the Amended,  
9       the State would rest.

10          THE COURT: State has rested with the  
11       filing of the Amended Criminal Complaint with  
12       language changes to Count 1, and I don't believe any  
13       changes to Count 2.

14          MS. BLUTH: Correct, your Honor.

15          THE COURT: So any witnesses or evidence  
16       on behalf of the defense?

17          MR. PIKE: No, your Honor. I've met with  
18       Mr. McNair and advised him of his right to testify or  
19       not testify at the time of the preliminary hearing,  
20       and upon advice of counsel, he will not be testifying  
21       at this time.

22          THE COURT: Argument by the State.

23          MS. BLUTH: Reserve for rebuttal.

24          THE COURT: Argument by the defense.

25          MR. PIKE: Your Honor, first of all, the

1 defense would argue against the first theory of  
2 criminal liability by directly committing the crime  
3 and believe there has been insufficient evidence to  
4 support that allegation.

5 As far as the remainder of the  
6 counts, the defense will argue that the State has  
7 failed to prove by preponderance -- excuse me, by  
8 even the slight or marginal evidence required at  
9 preliminary hearing that Mr. McNair was involved in  
10 the homicide of Mr. Phillips.

11 THE COURT: Miss Bluth.

12 MS. BLUTH: In regards to the direct, so  
13 in regards to the theories of liability, for the  
14 direct theory, still believe it's appropriate because  
15 of Mr. -- and I apologize because I don't know if he  
16 was saying Rizzo or Razo.

17 THE COURT: Razo.

18 MS. BLUTH: Mr. Razo's testimony in  
19 regards to following the individual with the  
20 lighter-colored shirt, he thought that something was  
21 going to happen and that was the only individual he  
22 saw. Shortly after that he heard the gunshot. So I  
23 believe direct liability is proper.

24 In regards to the co-conspirator  
25 or the aiding and abetting theories, it's clear that

1 the defendant had this altercation with the victim.  
2 He then goes inside, gets his coworker. They go  
3 towards the victim and get into some altercation.

4 It's clear he then is on the phone  
5 with someone. White Suburban pulls up. That  
6 individual who's driving the white Suburban, a short  
7 African American male, and the defendant then walked  
8 towards the victim. Pursuant to Ken Saldana's  
9 testimony the shorter of the two shoots the victim  
10 five times.

11 The male in the light blue shirt,  
12 which is the defendant, doesn't seem shocked, doesn't  
13 seem like anything that he didn't know was going to  
14 happen was going to happen. They both run away, and  
15 then the defendant within minutes walks in with the  
16 weapon, with a gun.

17 So I think that that clearly meets  
18 the slight or marginal evidentiary standard in  
19 regards to this case and in regards to the theories  
20 of criminal liability.

21 I think the case has a very strong  
22 case, if not for direct, between co-conspirator and  
23 aiding and abetting liability for the murder of the  
24 victim. Also, theories of liability are not matters  
25 for the preliminary hearing, just the elements of the

1 charge.

2 THE COURT: Well, Miss Bluth is correct  
3 in that based on Mr. Razo's testimony, I mean  
4 certainly Mr. Razo's testimony seems to be  
5 inconsistent in some fashions with Mr. Saldana's  
6 testimony.

7 It's not surprising. I don't know  
8 that anybody was making things up. It's just what  
9 people perceive and what people recollect. But I do  
10 agree with Miss Bluth that based upon Mr. Razo's  
11 testimony and then based upon Mr. Saldana's  
12 testimony, that there has been slight or marginal  
13 evidence for any of the alternative theories to  
14 apply, and Count 2 is depicted on the surveillance.

15 Based upon the Complaint on file  
16 herein and the testimony adduced at the hearing  
17 today, I believe there is slight or marginal evidence  
18 to believe that Count 1, murder with use of a deadly  
19 weapon under the various theories of liability as  
20 outlined in the Amended Criminal Complaint, and  
21 Count 2, carrying a concealed firearm or other deadly  
22 weapon, as I saw in the surveillance, have both been  
23 committed, and that the named defendant herein,  
24 Michael McNair, committed said crimes.

25 I hereby order Mr. McNair to

1 answer to these charges in the Eighth Judicial  
2 District Court on the day my clerk gives you.

3 MR. PIKE: Before you give the date, the  
4 Court had indicated earlier that based -- after the  
5 presentation before your Honor at the time of the  
6 preliminary hearing, the Court may consider arguments  
7 regarding bail setting. I think that should be done  
8 before a District Court date.

9 THE COURT: You may be heard.

10 MR. PIKE: Thank you very much, your  
11 Honor.

12 The Court has had the opportunity  
13 now to hear the witnesses that are involved in this,  
14 number of employees, what was going on, how  
15 everything occurred, and based upon the alteration  
16 and addition regarding the theories of liability, it  
17 would be appropriate to set a bail at this time.

18 The witness, the one witness that  
19 was a percipient witness has identified somebody else  
20 other than the defendant as being the shooter, and  
21 the person that brought the gun, and the person that  
22 discharged the weapon.

23 Now, if there's other theories and  
24 the Court has felt that there's enough to bind it  
25 over for purposes of a trial, then the Court now has

1 within its grasp and canon knowledge whether or not  
2 the defendant is a threat to the community and  
3 whether or not there cannot be conditions that would  
4 ensure the protection of the community and ensure  
5 that he would appear.

6 And based upon those two aspects  
7 of it, house arrest would ensure that he would appear  
8 and would not be a threat to the community because he  
9 would be locked into the house. His family is here.  
10 His wife is present, has been here throughout the  
11 preliminary hearing. And, also, if the family's able  
12 to muster sufficient funds to post the bond, we  
13 believe that a bond in addition to that of 25,  
14 \$50,000, would be appropriate in this case.

15 THE COURT: Miss Bluth.

16 So, Miss Bluth, before you  
17 respond, just because -- not that you're going to  
18 make this argument, but I just don't want to hear the  
19 argument. I've heard the argument.

20 MS. BLUTH: Tell me what argument you  
21 want to hear.

22 THE COURT: I'll tell you what I don't  
23 want to hear. You know, you held him on no bail  
24 before, now nothing's changed, you found probable  
25 cause, because I've been saying ever since the



1 beginning of the case, I want to hear the evidence, I  
2 want to see the evidence.

3 I realize that you didn't probably  
4 give me all your evidence. I mean I remember that,  
5 but I did -- Mr. Pike especially coming in late, I  
6 said, look, I will entertain bail argument or any  
7 custody argument, what have you, after I hear the  
8 evidence and see the evidence.

9 I did not have the benefit of the  
10 surveillance video when I think Mr. Westbrook was  
11 involved and showed me some other -- you both showed  
12 me some other things, but, certainly, you can address  
13 Mr. Pike's argument.

14 MS. BLUTH: Sure.

15 In regards to, I think, I mean,  
16 obviously, we met the evidentiary standard, which  
17 your Honor already found. I think the issue here  
18 that we have, like I discussed before, is we have to  
19 balance flight risk with safety of the community.

20 His family has been here every  
21 step of the way. I don't have any reason to believe  
22 he would be a flight risk. I believe that they're  
23 locals. I don't know whether now you see all the  
24 evidence, so that changes like I got to get out of  
25 here.

1 I think my bigger concern is  
2 safety of the community. That is because this  
3 defendant was on probation at the time, had a  
4 probation officer at the time. He has a probation  
5 hold right now. I think we go either this week or  
6 next week to discuss with the Judge what happened  
7 here, and we'll probably have this same type of  
8 argument.

9 But I think we have the defendant  
10 with a gun on video. I'm going to respectfully  
11 disagree with Mr. Pike. We don't know who brought  
12 the gun. I don't think there was any evidence to  
13 show that the defendant already had the gun or that  
14 this individual in the white Suburban brought the  
15 gun.

16 So I don't think we can make the  
17 leap that it was the individual in the Suburban, but  
18 what I can tell you is that, obviously, his DNA and  
19 his fingerprints wouldn't be surprising if it's on  
20 the gun because he's on the video with the gun.

21 So we have an individual who's on  
22 probation, who was clearly getting agitated and in  
23 some way, I don't want to use the term violent,  
24 because what the witnesses are saying is that he was  
25 more of the kind of the person getting the first

1     coworker there, now getting the second individual  
2     there and partaking in a murder.

3                 I think that that is the safety to  
4     the community issue. I will, as an officer of the  
5     court, let your Honor know, and I can bring in my  
6     investigator, is that several witnesses have refused  
7     the come to court because of fear of retaliation and  
8     threats that have been made towards them. And so it  
9     was very difficult to get these witnesses here, and I  
10    think that if the defendant were to be let out of  
11    custody, we would be in even deeper water in trying  
12    to get witnesses here.

13                I think there's a safety to the  
14    community standard and I think that that's what this  
15    Court should consider. I think no bail is  
16    appropriate considering he was on probation and now  
17    he's charged and you've seen the evidence and I'll  
18    submit it with that.

19                THE COURT: The Court wants to weigh the  
20    weight of the evidence in making custody decisions,  
21    and before what I knew when I had decided to hold him  
22    on no bail was kind of all over the board, and may  
23    still be all over the board with the other witnesses  
24    that I didn't hear from.

25                Because, if I recall, I reviewed,

1 I don't even remember what it was, I think it was,  
2 Miss Bluth, your memo or something, but there were  
3 like eight or nine different witness statements and  
4 they were kind of all over the board and it was hard  
5 for the Court to track.

6 Despite what those eight or nine  
7 witnesses might say at trial, if you can get them,  
8 the surveillance does depict some information that  
9 the Court didn't have before, and Mr. Saldana's  
10 testimony, the Court didn't have before either, and  
11 if the Court did, it probably did through your memo,  
12 but it was most likely had some inconsistencies with  
13 some of the other statements contained in your memo.

14 I do note that he, what we've  
15 discussed this before, that he was on a probation  
16 hold. We discussed before that even if I were to  
17 release him under any conditions or if you were to be  
18 able to bail out, he was being held on that probation  
19 hold, but I understand how Mr. Pike wants me to  
20 address the custody independent of the probation  
21 hold.

22 I think at this point, based upon  
23 what I've seen, I believe Mr. McNair is entitled to  
24 bail. I do believe that in looking, he's born here,  
25 on his TCR, he's 30 years old, born in Las Vegas. As

1 Miss Bluth said, she doesn't know if he has much of a  
2 flight risk.

3 I don't know if he has much of a  
4 flight risk; however, I think inherent, no matter if  
5 the person is born here and has never left here, I  
6 think there is some inherent flight risk when charged  
7 with A felony offense of murder with use of a deadly  
8 weapon; certainly, in light of the penalties that  
9 come by way of a conviction.

10 So I do believe there is some  
11 flight risk, and I'm also looking at his pretrial  
12 service sheet, which shows 10 failure to appears.  
13 So, obviously, he's missed some court appearances in  
14 the past.

15 I'm going to set his bail at a  
16 hundred thousand dollars, and to address the safety  
17 of the community, which I do believe, based upon his  
18 criminal record, and based upon what I've seen, needs  
19 to be addressed, because, obviously, bail at any  
20 amount, whether it be \$2 million, whether it be  
21 \$2.00, in the Court's view, does not protect the  
22 community at all.

23 So if he's able to post the  
24 hundred thousand dollars bail to assure his future  
25 court appearance, and to basically track him down if

1 he were to flee, to protect the community, I'm adding  
2 a condition of house arrest.

3 So the only thing I would say to  
4 you, Mr. Pike, and I think I may have said this to  
5 Mr. Westbrook, I don't know if he will be able to  
6 come up with that bail money or not, but due to the  
7 nature of the charge, if he can come up with the bail  
8 or post the bond, I would highly suggest to you and  
9 Mr. McNair and his family, that you, before posting  
10 it, you run this release on house arrest by house  
11 arrest, because what has happened in the past is they  
12 have posted a significant amount of bail and then  
13 house arrest refuses to release him for whatever  
14 reason they gave me at the time, and then you have an  
15 issue with the bond.

16 So if he can come up with the  
17 bond, which I don't know if he can, I would  
18 certainly, before you actually post that with the  
19 court, talk with house arrest and see if they will  
20 comply with Court's order that he be released on  
21 house arrest as a condition of the bond.

22 MR. PIKE: Thank you. I will, your  
23 Honor.

24 THE COURT: Okay. Here's a lower level  
25 date to enter the plea.

1                   THE CLERK:   October 25, 10 a.m. lower  
2   level arraignment A.

3                   ---o0o---

4   ATTEST:   Full, true and accurate transcript of  
5   proceedings.

6                               /s/GERRI DE LUCCA  
7                               GERRI DE LUCCA, C.C.R. NO. 82

1 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

2 COUNTY OF CLARK, STATE OF NEVADA

3  
4 STATE OF NEVADA,

5 Plaintiff,

6 vs.

7 MICHAEL MCNAIR,

8 Defendant.

Case No. 17F16794X

ATTEST RE: NRS 239B.030

9 -----  
10  
11 STATE OF NEVADA )  
12 ) SS  
13 COUNTY OF CLARK )

14 I, Gerri De Lucca, a Certified Shorthand  
15 Reporter within and for the County of Clark and the  
16 State of Nevada, do hereby certify:

17 That REPORTER'S TRANSCRIPT OF PROCEEDINGS  
18 was reported in open court pursuant to NRS 3.360  
19 regarding the above proceedings in Las Vegas Justice  
20 Court, 200 Lewis Avenue, Las Vegas, Nevada.

21 That said TRANSCRIPT:  
22 \_\_X\_\_ Does not contain the Social Security  
23 number of any person.

24 \_\_\_\_\_ Contains the Social Security number  
25 of a person.



1                    ---o0o---

2        ATTEST:   I further certify that I am not interested  
3        in the events of this action.

4                    /s/GERRI DE LUCCA  
5                    GERRI DE LUCCA, C.C.R. NO. 82

<b>\$</b>	<b>19 feet [1]</b> 39/16	44/14 52/6 53/6 54/21 55/9
<b>\$2 [1]</b> 136/20	<b>2</b>	56/10 61/22 63/2 67/11 71/4
<b>\$2 million [1]</b> 136/20	<b>20 [7]</b> 26/21 26/25 28/14 39/16	72/12 73/9 73/10 73/11 76/4
<b>\$2.00 [1]</b> 136/21	66/10 72/21 100/10	77/20 77/21 78/11 78/15 80/20
<b>\$50,000 [1]</b> 131/14	<b>20 feet [2]</b> 67/4 99/23	80/23 83/17 83/23 87/21 88/25
<b>-</b>	<b>200 [1]</b> 139/20	89/10 89/20 90/8 91/5 94/15
<b>---o0o [2]</b> 138/3 140/1	<b>2017 [3]</b> 1/18 3/1 94/10	95/4 96/17 99/4 105/15 117/22
<b>/</b>	<b>23 [2]</b> 1/18 3/1	121/6
<b>/s/GERRI [2]</b> 138/6 140/4	<b>239B.030 [1]</b> 139/6	<b>above [1]</b> 139/19
<b>0</b>	<b>24 [1]</b> 2/7	<b>accept [1]</b> 3/17
<b>008 [2]</b> 97/2 97/2	<b>25 [2]</b> 131/13 138/1	<b>access [2]</b> 43/13 43/20
<b>1</b>	<b>25 feet [1]</b> 99/23	<b>accurate [2]</b> 58/24 138/4
<b>10 [15]</b> 19/25 21/8 25/18 26/8	<b>26 [3]</b> 55/18 55/21 78/19	<b>accurately [1]</b> 86/8
27/5 38/19 38/21 38/22 63/23	<b>27 [2]</b> 56/4 56/8	<b>acquaintance [3]</b> 94/24 94/25
76/21 99/4 100/4 102/1 103/10	<b>3</b>	95/1
136/12	<b>3.360 [1]</b> 139/18	<b>across [9]</b> 8/24 8/25 9/8 15/12
<b>10 a.m [1]</b> 138/1	<b>30 [3]</b> 2/22 68/5 135/25	15/14 21/2 99/15 101/23 124/23
<b>10:00 [1]</b> 37/23	<b>31 [1]</b> 2/9	<b>action [1]</b> 140/3
<b>11 [2]</b> 99/4 100/4	<b>34 [1]</b> 70/16	<b>actual [3]</b> 58/24 100/6 105/12
<b>119 [1]</b> 2/16	<b>36 [1]</b> 68/16	<b>actually [10]</b> 23/6 27/4 27/9
<b>11:00 [1]</b> 3/15	<b>38 [3]</b> 65/17 90/4 90/9	51/5 58/3 59/11 62/9 97/5 100/1
<b>12 [2]</b> 1/2 100/4	<b>4</b>	137/18
<b>12:00 [1]</b> 106/5	<b>40 [1]</b> 69/10	<b>add [1]</b> 4/10
<b>12:13 [1]</b> 106/19	<b>42 [1]</b> 79/10	<b>adding [1]</b> 137/1
<b>12:15:17 [1]</b> 108/7	<b>43 [1]</b> 78/5	<b>addition [2]</b> 130/16 131/13
<b>12:16 [2]</b> 60/1 68/5	<b>44 [2]</b> 77/3 106/20	<b>address [3]</b> 132/12 135/20
<b>12:16:15 [1]</b> 58/19	<b>45 [4]</b> 27/8 27/9 27/11 60/1	136/16
<b>12:16:30 [2]</b> 59/9 108/19	<b>46 [2]</b> 2/23 69/3	<b>addressed [1]</b> 136/19
<b>12:16:31 [1]</b> 109/1	<b>4:30 [2]</b> 33/15 33/16	<b>adduced [1]</b> 129/16
<b>12:16:50 [1]</b> 75/1	<b>5</b>	<b>admission [2]</b> 29/21 45/24
<b>12:16:58 [1]</b> 75/10	<b>5-10 [2]</b> 21/8 99/4	<b>admitted [5]</b> 2/21 30/5 30/8
<b>12:17 [1]</b> 63/1	<b>5-11 [1]</b> 99/4	45/25 46/4
<b>12:17:13 [2]</b> 60/13 60/14	<b>50 [2]</b> 12/13 20/8	<b>adrenaline [3]</b> 76/12 76/15 79/5
<b>12:18 [6]</b> 60/12 63/1 63/22	<b>50 feet [1]</b> 9/9	<b>advice [1]</b> 126/20
68/16 69/3 69/10	<b>6</b>	<b>advised [1]</b> 126/18
<b>12:18:41 [1]</b> 109/25	<b>6 p.m [1]</b> 36/23	<b>African [11]</b> 16/5 16/6 16/14
<b>12:18:45 [1]</b> 64/5	<b>7</b>	22/15 22/16 22/22 96/15 96/16
<b>12:19 [5]</b> 65/1 65/17 66/10	<b>75 feet [2]</b> 12/13 20/8	102/22 102/24 128/7
70/11 70/16	<b>7:30 [1]</b> 33/11	<b>after [27]</b> 3/23 14/8 14/20 15/8
<b>12:19:15 [1]</b> 110/18	<b>7B [2]</b> 71/6 71/10	16/14 17/25 25/12 25/15 29/7
<b>12:19:34 [1]</b> 66/17	<b>8</b>	29/11 37/17 38/16 41/14 49/9
<b>12:19:40 [1]</b> 110/25	<b>8 p.m [2]</b> 33/13 33/14	50/15 51/2 53/4 56/19 81/5
<b>12:20 [2]</b> 71/21 72/21	<b>82 [3]</b> 1/24 138/7 140/5	81/21 97/19 98/20 103/20 119/19
<b>12:20:08 [1]</b> 112/14	<b>84 [1]</b> 2/10	127/22 130/4 132/7
<b>12:21 [1]</b> 73/15	<b>88 [1]</b> 2/11	<b>afternoon [1]</b> 94/7
<b>12:21:02 [1]</b> 112/18	<b>89 [1]</b> 2/9	<b>afterwards [1]</b> 17/24
<b>12:22:08 [1]</b> 75/15	<b>8:00 [1]</b> 33/15	<b>again [12]</b> 14/6 14/9 26/14
<b>12:22:10 [1]</b> 75/19	<b>9</b>	26/20 50/18 51/5 51/11 65/2
<b>12:22:29 [1]</b> 114/10	<b>91 [1]</b> 2/12	71/22 75/5 101/24 102/14
<b>12:22:32 [1]</b> 113/17	<b>94 [1]</b> 2/15	<b>against [2]</b> 40/25 127/1
<b>12:22:39 [1]</b> 113/1	<b>9:30 [1]</b> 1/18	<b>agitated [2]</b> 21/15 133/22
<b>12:25:45 [1]</b> 117/23	<b>A</b>	<b>ago [5]</b> 26/2 31/25 52/3 53/16
<b>12:26 [5]</b> 76/16 77/3 78/5 78/19	<b>A-n-t-h-o-n-y [1]</b> 5/15	68/10
79/10	<b>a.m [3]</b> 1/18 33/13 138/1	<b>agree [1]</b> 129/10
<b>12:26:33 [1]</b> 78/23	<b>abetting [2]</b> 127/25 128/23	<b>agreeing [1]</b> 29/25
<b>12:45 [2]</b> 28/13 29/5	<b>able [6]</b> 32/13 92/14 131/11	<b>ahead [10]</b> 5/11 30/14 67/4 68/5
<b>13 [1]</b> 100/4	135/18 136/23 137/5	69/10 71/16 75/14 93/1 112/4
<b>14 [7]</b> 6/3 6/23 7/7 37/7 94/10	<b>about [71]</b> 3/16 6/2 6/22 7/1	112/12
94/17 100/4	9/14 9/17 10/12 10/13 12/13	<b>aiding [3]</b> 4/12 127/25 128/23
<b>14th [1]</b> 7/18	13/13 13/22 14/17 15/5 16/18	<b>all [51]</b> 5/1 5/10 6/24 6/25 7/5
<b>15 [9]</b> 25/18 26/8 27/5 37/7	17/17 17/24 20/8 20/25 21/6	8/25 12/15 14/18 14/19 17/13
67/3 70/11 85/11 100/4 100/10	21/8 21/9 25/2 25/7 26/2 27/13	17/23 26/7 26/21 26/22 27/1
<b>16 [2]</b> 65/1 85/11	27/17 27/20 27/20 36/2 38/18	27/2 29/4 30/4 31/14 31/20
<b>17F16794 [2]</b> 3/4 29/10	38/21 39/3 39/19 40/6 41/7	32/22 36/10 42/21 48/5 50/9
<b>17F16794X [2]</b> 1/9 139/5		54/12 55/21 56/9 58/14 71/4
<b>180 pounds [1]</b> 21/11		76/11 80/4 80/19 82/22 84/17
<b>19 [5]</b> 2/6 18/15 26/20 26/23		85/12 88/5 89/12 92/2 92/12
26/25		117/20 121/10 121/19 125/8
		126/25 132/4 132/23 134/22
		134/23 135/4 136/22
		<b>allegation [1]</b> 127/4
		<b>allow [3]</b> 41/2 83/22 89/2

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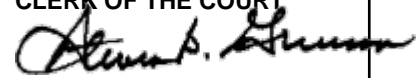
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12/12 13/25 17/5 19/20 20/5 20/7 21/1 21/24 22/3 22/6 22/9 22/16 22/22 23/5 25/7 29/8 29/19 33/7 34/14 35/19 36/13 37/6 39/15 42/3 44/21 45/1 49/4 49/16 51/10 53/18 53/21 57/3 64/19 64/21 74/11 78/10 78/14 80/5 80/14 81/6 81/12 84/24 85/1 85/4 85/9 85/22 85/24 86/3 86/11 87/3 87/18 87/19 88/7 89/20 91/25 92/2 92/4 94/11 96/21 97/6 97/22 97/23 99/20 105/12 107/16 111/19 113/6 113/10 116/21 120/9 120/15 120/18 120/24 121/13 121/19 122/2 122/2 123/6 124/14 125/9 125/13 134/10 135/2 135/4 135/16 135/17 137/1</p> <p><b>weren't</b> [1] 83/12</p> <p><b>west</b> [3] 13/11 16/15 120/9</p> <p><b>westbound</b> [1] 15/17</p> <p><b>Westbrook</b> [2] 132/10 137/5</p> <p><b>westerns</b> [1] 87/25</p> <p><b>what</b> [156]</p> <p><b>what's</b> [20] 18/15 33/3 39/3 45/22 55/24 57/11 59/1 67/21 69/3 69/14 71/11 73/15 75/19 75/23 77/14 78/8 82/4 101/10 107/14 108/8</p> <p><b>whatever</b> [3] 19/7 42/19 137/13</p> <p><b>wheat</b> [2] 87/12 87/13</p> <p><b>when</b> [60] 18/5 18/19 20/5 20/21 21/17 25/21 25/22 26/4 31/23 33/4 42/7 42/24 43/7 43/17 43/18 43/19 45/1 49/3 51/1 51/14 51/22 52/8 53/12 53/21 55/23 62/1 70/20 78/10 78/14 78/15 78/23 79/11 85/16 85/21</p>	<p>86/3 87/18 89/7 90/10 91/6 91/25 97/6 98/1 98/12 98/13 98/18 98/22 100/16 104/6 104/13 104/25 104/25 105/12 105/17 105/22 108/10 116/21 122/8 132/10 134/21 136/6</p> <p><b>When's</b> [1] 53/11</p> <p><b>Whenever</b> [1] 82/10</p> <p><b>where</b> [87] 7/7 7/15 7/22 7/23 7/24 8/10 8/10 8/23 9/6 9/10 9/18 9/18 12/3 13/1 13/5 13/15 14/2 15/6 15/24 16/1 21/16 41/4 45/5 45/5 45/10 46/24 47/8 47/11 48/6 48/6 48/9 48/14 48/16 48/17 48/19 49/10 50/15 53/4 58/1 58/2 60/9 62/8 63/12 63/22 64/11 64/19 65/17 65/24 67/11 69/20 71/7 72/13 74/12 74/15 74/19 74/20 77/3 77/12 85/24 86/1 92/3 94/11 95/9 95/21 96/20 97/6 99/16 99/20 99/21 100/13 100/14 104/19 108/9 109/15 109/16 110/13 111/19 111/24 112/1 112/3 117/18 123/6 123/9 123/11 125/9 125/12 125/16</p> <p><b>whereabouts</b> [2] 7/10 48/15</p> <p><b>wherever</b> [1] 13/3</p> <p><b>whether</b> [14] 17/12 27/14 34/11 54/8 55/10 56/13 57/5 68/11 105/19 131/1 131/3 132/23 136/20 136/20</p> <p><b>which</b> [20] 4/7 37/17 40/19 47/17 47/18 58/19 68/1 81/25 108/15 110/12 115/7 116/3 121/5 122/13 122/14 128/12 132/16 136/12 136/17 137/17</p> <p><b>while</b> [6] 21/24 36/10 37/3 46/11 81/12 82/12</p> <p><b>white</b> [30] 72/4 86/4 96/15 97/14 97/14 99/1 101/16 101/20 101/24 102/14 102/21 102/22 112/1 113/5 113/6 120/17 120/25 121/2 121/4 121/8 122/9 122/14 122/25 123/4 123/5 124/16 124/19 128/5 128/6 133/14</p> <p><b>who</b> [27] 10/15 27/14 29/1 29/23 37/1 60/4 60/22 63/14 66/24 68/20 77/6 80/5 82/21 83/2 83/9 84/7 84/10 88/15 88/17 91/15 100/17 118/16 118/24 119/1 119/5 133/11 133/22</p> <p><b>who's</b> [8] 63/16 69/11 70/9 72/2 107/2 110/9 128/6 133/21</p> <p><b>whole</b> [4] 5/20 14/10 31/2 94/2</p> <p><b>whose</b> [2] 59/16 102/9</p> <p><b>why</b> [9] 16/24 24/2 27/20 41/17 43/16 77/17 79/3 80/13 105/4</p> <p><b>wide</b> [1] 96/9</p> <p><b>wife</b> [1] 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74/6 84/25 85/23 121/25</p> <p><b>workplace</b> [2] 38/6 52/22</p> <p><b>works</b> [2] 37/1 120/23</p> <p><b>worries</b> [1] 91/21</p> <p><b>would</b> [54] 4/11 7/17 13/11 20/17 23/19 26/14 28/11 28/12 32/1 35/4 35/5 35/6 35/7 36/1 37/23 40/25 45/2 45/3 45/4 48/25 50/1 50/6 54/15 55/3 55/12 84/3 85/11 86/21 86/22 88/24 89/22 89/25 91/8 94/9 94/20 94/23 94/24 105/14 117/15 126/9 127/1 130/17 131/3 131/5 131/7 131/7 131/8 131/9 131/14 132/22 134/11 137/3 137/8 137/17</p> <p><b>wouldn't</b> [2] 86/25 133/19</p> <p><b>wound</b> [1] 4/5</p> <p><b>written</b> [1] 24/9</p> <p><b>wrong</b> [1] 92/9</p> <tr> <td colspan="3" data-bbox="131 1115 597 1157"><b>Y</b></td></tr> <tr> <td data-bbox="131 1157 597 2001"></td><td data-bbox="597 1157 1063 2001"></td><td data-bbox="1063 1157 1534 2001"> <p><b>yeah</b> [64] 14/15 31/13 31/22 32/17 34/16 34/18 35/20 35/24 36/12 36/18 37/18 38/1 39/12 42/6 43/4 43/15 43/20 43/24 47/23 48/5 49/22 51/7 52/5 52/8 52/15 55/8 55/14 55/14 56/5 56/7 56/12 58/8 59/20 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INFM  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JACQUELINE BLUTH  
Chief Deputy District Attorney  
Nevada Bar #010625  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

I.A. 10/25/17  
10:00 AM.  
RANDALL PIKE

THE STATE OF NEVADA,  
Plaintiff,

-vs-

MICHAEL MCNAIR, aka,  
Michael Deangelo Mcnair, #1959573  
Defendant.

CASE NO: C-17-327395-1

DEPT NO: III

INFORMATION

STATE OF NEVADA )  
COUNTY OF CLARK ) ss.

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

That MICHAEL MCNAIR, aka, Michael Deangelo Mcnair, the Defendant(s) above named, having committed the crimes of **MURDER WITH USE OF A DEADLY WEAPON (Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001) and CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON (Category C Felony - NRS 202.350 (1)(d)(3) - NOC 51459)**, on or about the 14th day of September, 2017, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,  
**COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON**

did willfully, unlawfully, feloniously and with malice aforethought, kill GORDON PHILLIPS, a human being, with use of a deadly weapon, to wit: a firearm, by shooting into

1 the body of the said GORDON PHILLIPS with said firearm, the said killing having been  
2 willful, deliberate and premeditated. Defendant being criminally liable under one or more of  
3 the following principles of criminal liability, to wit: (1) by directly committing this crime;  
4 and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime  
5 be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise  
6 procuring the other unknown person to commit the crime; and/or (3) pursuant to a conspiracy  
7 to commit this crime, with the intent that this crime be committed, Defendant and unknown  
8 person aiding or abetting and/or conspiring by acting in concert throughout.

9 COUNT 2 - CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON

10 did then and there willfully, intentionally, unlawfully and feloniously carry concealed  
11 upon his person, a firearm or other deadly weapon, to wit: a firearm.

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

15 BY /s/ Jacqueline Bluth  
16 JACQUELINE BLUTH  
17 Chief Deputy District Attorney  
18 Nevada Bar #010625

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

<u>NAME</u>	<u>ADDRESS</u>
21 ASBERY, Courtney	Unified Containers 1300 N. Las Vegas Blvd., Las Vegas, NV
23 BRENNAN, Joshua	Palm Mortuary Security
24 COON, Tyler	Unified Containers 1300 N. Las Vegas Blvd., Las Vegas, NV
26 CUSTODIAN OF RECORDS 27 OR DESIGNEE	Clark County Detention Center, 330 S. Casino Center Blvd., Las Vegas, NV

28 ///

1	CUSTODIAN OF RECORDS	Clark County Detention Center, Communications
2	OR DESIGNEE	330 S. Casino Center Blvd., Las Vegas, NV
3	CUSTODIAN OF RECORDS	LVMPD Communications,
4	OR DESIGNEE	400 S. Martin L. King Blvd., Las Vegas, NV
5	CUSTODIAN OF RECORDS	LVMPD Records
6	OR DESIGNEE	400 S. Martin L. King Blvd., Las Vegas, NV
7	GARDNER, Ashley	1200 N. Las Vegas Blvd., Las Vegas, NV
8	HOFFMAN, John	LVMPD # 9001
9	HONAKER, Jamie	INVESTIGATOR
10	OR DESIGNEE	C.C. DISTRICT ATTORNEY
11	KOWALSKI, Brian	LVMPD # 8550
12	LESH, Bret	Transient
13	LOPEZ, Deanna	18 W. Owens Ave., #13, Las Vegas, NV
14	PHILLIPS, Sundra	C/O District Attorney's Office
15	RAMIRO, Romero	4646 Drake Cir., Las Vegas, NV
16	RAZZO, Anthony	2300 Olive St., #38, Las Vegas, NV
17	SALDANA, Kenneth	Transient
18		
19		
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21		
22		
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25		
26		
27	17F16794X/saj/MVU	
28	LVMPD EV#1709143919	
	(TK12)	



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA  
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 MICHAEL MCNAIR,

12 Defendant.

CASE#: C-17-327395-1

DEPT. III

Heard In Lower  
Level Arraignment

13  
14 BEFORE THE HONORABLE MELISA DE LA GARZA, DISTRICT COURT  
15 JUDGE

16 WEDNESDAY, OCTOBER 25, 2017

17 **RECORDER'S TRANSCRIPT OF HEARING:**  
18 **INITIAL ARRAIGNMENT**  
19

20 APPEARANCES:

21 For the State:

WILLIAM J. MERBACK, ESQ  
Chief Deputy District Attorney

22  
23 For the Defendant:

RANDALL H. PIKE, ESQ.  
Assistant Special Public Defender

24 RECORDED BY: KIARA SCHMIDT, COURT RECORDER  
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Las Vegas, Nevada, Wednesday, October 25, 2017

[Hearing began at 10:42 a.m.]

THE COURT: Page 54, State of Nevada versus Michael McNair, C327395. He is present, in custody, Mr. Pike is here on his behalf; counsel?

MR. PIKE: Thank you, Your Honor. This is an entry of a plea of not guilty, be referred up for trial setting. I don't know if the State intends on taking it to the death review committee or not. So --

THE COURT: All right. Sir, you received a copy of the Information stating the charges against you?

THE DEFENDANT: Yes.

THE COURT: You read through it and understood it?

THE DEFENDANT: Yes.

THE COURT: You want to waive a formal reading of the charges?

THE DEFENDANT: Yes.

THE COURT: How do you plead?

THE DEFENDANT: Not guilty.

THE COURT: You do have a right to a trial within 60 days. Do you want to waive or invoke that right?

MR. PIKE: This time, Your Honor, we're going to waive it to determine -- to find out whether or not there's going to be a determination made by the death review committee.

THE COURT: Is that true, sir? You want to waive your right



1 to a speedy trial?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: All right. So we're going to put it in front of  
4 Judge Herndon next Tuesday for trial setting noting that he has waived  
5 his right to a speedy trial.

6 THE CLERK: So that would be October 31<sup>st</sup>, 9 a.m. in  
7 Department 3.

8 THE COURT: And, Counsel, pursuant to statute you have 21  
9 days from today for the filing of any writs. If the transcript has not been  
10 filed as of today, you have 21 days from the filing.

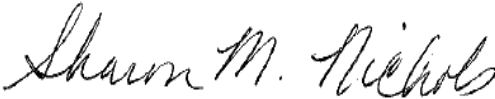
11 MR. PIKE: Thank you very much, Your Honor.

12 THE COURT: Thank you.

13 [Hearing concluded at 10:43 a.m.]

14 \* \* \* \* \*

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

23   
24 \_\_\_\_\_

25 Court Recorder/Transcriber



1 RTRAN

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 MICHAEL MCNAIR,

9 Defendant.  
10  
11

CASE NO. C-17-327395-1

DEPT. III

12  
13 BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE  
14 TUESDAY, OCTOBER 31, 2017

15 **RECORDER'S TRANSCRIPT OF HEARING**  
16 **STATUS CHECK: TRIAL SETTING**

17 APPEARANCES:

18 For the State:

JACQUELINE M. BLUTH, ESQ.  
Chief Deputy District Attorney  
VIVIAN LUONG, ESQ.  
Deputy District Attorney

21 For the Defendant:

RANDALL H. PIKE, ESQ.  
Senior Deputy Special Public Defender

22  
23  
24  
25 RECORDED BY: SARAH RICHARDSON, COURT RECORDER

1 Tuesday, October 31, 2017 – Las Vegas, Nevada

2 [Proceedings begin at 8:58 a.m.]

3  
4 COURT: All right. Anybody else?

5 MR. PIKE: Yes, Your Honor. Page 14, Mr. McNair.

6 THE COURT: Mr. McNair's matter is 327395. The gentleman is present in  
7 custody. This is -- just came up from Lower Level. Right, Randy?

8 MR. PIKE: That's correct, Your Honor. It's Ms. Bluth's case. I didn't  
9 know --

10 MS. LUONG: That's correct, and I don't have a file.

11 THE COURT: Let me pass it for a second till she comes in.

12 MR. PIKE: Thank you.

13 [Matter trailed at 9:04 a.m.]

14 [Off record]

15 [Matter recalled at 9:24 a.m.]

16 THE COURT: All right. Wait. What page is it?

17 THE MARSHAL: 14.

18 THE COURT: 14. I'm sorry. All right. Mr. McNair is present. This matter  
19 came up from Lower Level arraignment. I'm assuming -- did he enter a plea there?

20 MR. PIKE: He did, Your Honor. He waived his right to a speedy trial.

21 THE COURT: Okay.

22 MR. PIKE: We've consulted and believe that late July into early August is  
23 a good trial date --

24 THE COURT: It would be your best trial date. Okay. Did it waive up or  
25 did it go through a hearing.

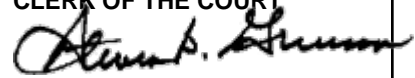
1 MR. PIKE: No, it went through a preliminary hearing.  
2 THE COURT: Any transcripts available from the Lower Level yet?  
3 MS. BLUTH: Not yet.  
4 THE COURT: Okay. 21 days after receipt of copy to file any transcripts. Is  
5 the matter going to the death review committee?  
6 MS. BLUTH: It is not.  
7 THE COURT: All right. The matter is going to be assigned to -- yeah, it's  
8 assigned to me, actually. All right. It's going to be assigned to Department 3. We  
9 will go ahead and set a trial date. You said, I'm sorry, Randy, late July?  
10 MR. PIKE: Yes.  
11 THE COURT: Okay. You can go ahead, Debbie.  
12 [Court and Clerk confer]  
13 THE CLERK: Jury trial will be July 23rd at 10:00 a.m. Calendar call,  
14 July 12th at 9:00 a.m.  
15 THE COURT: All right. And we will set a status check in 60 days just on  
16 moving forward with trial, discovery issues and whatnot. So that will be our first  
17 status check, and that will be January 2nd.  
18 THE CLERK: Hold on, Your Honor.  
19 THE COURT: Sure.  
20 THE CLERK: January 9th at 9:00 a.m.  
21 MS. BLUTH: Sounds good.  
22 THE COURT: All right. Thank you.  
23 MR. PIKE: Thank you very much, Your Honor.  
24 THE CLERK: Oh, I'm sorry, it's the 10th, February 10th.  
25 ///

1 THE COURT: February 10th.

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3 [Proceedings concluded at 9:31 a.m.]  
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22 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-  
23 visual recording of the proceeding in the above entitled case to the  
24 best of my ability.

25   
\_\_\_\_\_  
Renee Vincent, Court Recorder/Transcriber



PET  
RANDALL H. PIKE  
ASST. SPECIAL PUBLIC DEFENDER  
NSB No. 1940  
330 South Third Street, 8th Floor  
Las Vegas, NV 89155  
(702) 455-6265  
Fax No. 702-455-6273  
[RPIKE@CLARKCOUNTYNV.GOV](mailto:RPIKE@CLARKCOUNTYNV.GOV)  
Attorneys for McNAIR

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,	)	CASE NO. C-17-327395-1
	)	DEPT. 3
Plaintiff,	)	
	)	
vs.	)	
	)	
MICHAEL McNAIR,	)	
	)	
Defendant.	)	

---

**PETITION FOR PRE-TRIAL WRIT OF HABEAS CORPUS**

DATE: 01/09/18  
TIME: 9:00 AM

TO: The Honorable Eighth Judicial District Court of the State of Nevada, in and for the County  
of Clark:

The Petition of Defendant Michael McNair, by and through his attorney Randall H. Pike,  
Assistant Special Public Defender, respectfully shows:

1. Petitioner is duly qualified, practicing and licensed attorney and court-appointed  
counsel for Defendant.

1           2.       That Petitioner makes application herein for a Writ of Habeas Corpus; that the place  
2 where Petitioner is restrained of his liberty is the Clark County Detention Center; that the officer  
3 by whom he is restrained is Joseph Lombardo, Sheriff.

4           3.       That the imprisonment and restraint of Petitioner is unlawful in that the evidence  
5 presented at the Preliminary Hearing to the Justice of the Peace was insufficient to sustain the  
6 charges and the State presented improper and/or insufficient testimony.

7           4.       That client of Petitioner waives the 60-day limitation for bringing the charges to  
8 trial.  
9

10          5.       That client of Petitioner consents that if any party appeals the Court's rulings and  
11 the appeal is not determined before the date set for trial, the trial date is automatically vacated and  
12 the trial postponed unless the Court otherwise orders.

13          6.       That no other Petition for Writ of Habeas Corpus has heretofore been filed on  
14 behalf of defendant on this particular issue.  
15

16          7.       That this Writ is filed within 21 days of the receipt of the transcript, which was filed on  
17 December 3, 2017.

18               WHEREFORE, Petitioner prays that the Honorable Court issue an order directing the Clark  
19 County Clerk to issue a Writ of Habeas Corpus directed to the said Sheriff, commanding him to  
20 bring the above-captioned defendant before your Honor, and return the cause of imprisonment.  
21

22               Dated: December 14, 2017

23                               SUBMITTED BY:

24                               /s/ RANDALL H. PIKE

25                               \_\_\_\_\_  
26                               RANDALL H. PIKE  
27  
28

**STATEMENT OF THE CASE**

The State presented this case to the Justice of the Peace and the defendant was bound over after the hearing on October 23, 2017 upon the charges of Murder with use of a deadly weapon and carrying a concealed weapon. The transcript was filed 12/3/17.

**STATEMENT OF FACTS**

The nature and cause of death of Gordon Phillips, as well as his identity was stipulated to by the parties. The cause of death was a gunshot wound, the manner was homicide. (PHT 4). There were surveillance videos along with an in custody witness, Anthony Razo.

The first witness called to the stand was Anthony Razo who was an inmate at the CCDC. He was living "on the streets" on September 14, 2017 around Searles and Las Vegas Boulevard. (PHT 7). On that evening, he heard an argument between a couple of people in front of his campsite about 50 feet to his right. (PHT 8-9).

Mr. Razo saw the person who was on the Searles side of the fence and he testified that "he had a knife in the back of his hand." (PHT 11-12). This person was identified as the deceased, Mr. Gordon. Mr. Razo identified someone in a blue shirt being involved in the argument, who looked to be African American. (PHT 16).

Both of the parties were arguing, and Mr. Razo recalled the homeless man with the knife saying "he was going to jump over the fence, and, I don't know, beat the other guy up or something like that." (PHT 20). The knife was about 4 inches long and he "sounded highly agitated". (PHT 21). Mr. Razo described his belief of the deceased's actions as "lethal force" because "him having a knife and verbally arguing with the guy". (PHT 21).

The second witness called by the State was Ramiro Romero. Mr. Romero was also an employee of the plant. Mr. Romero identifies Mr. McNair as wearing a blue shirt. (PHT 60). Mr. Romero testifies that Mr. McNair told him "about the guy behind the fence." (PHT 63). He sees



1 Mr. McNair talking to the security guard. Afterwards, Mr. Romero and Mr. McNair leave the  
2 property and walk to the southeast corner of Searles and Las Vegas Blvd. They remain there for a  
3 short time and then walk back to the factory. (PHT 73). There was no physical contact at that  
4 time by either Mr. McNair or Mr. Romero. (PHT 76).

5 The last witness called to the stand was Kenneth Saldana. (PHT 93) Mr. Saldana was an  
6 acquaintance of the deceased. (PHT 94). He observed two individuals consistent with the  
7 testimony of Mr. Romero walk up to Las Vegas Boulevard and yelling with Gordon and then  
8 leave. (PHT 101). Mr. Saldana then sees one of the co-workers go back into "Flavors" and the  
9 other get into his truck and park it next to a white Jeep on the property. (PHT 101). A white  
10 suburban shows up, and a male occupant gets out of the Suburban and walks with the Worker.  
11

12 Mr. Saldana then describes what happens next:

13 The guy that was in the white Suburban truck starts hitting Gordon,  
14 punching him in his face five, 10 times, steps back three feet, pulls a gun and shoots  
15 Gordon. (PHT 102)

16 . . .

17 Q. And, now, another person gets out of that Suburban, correct?

18 A. Out of the white truck, yes.

19 Q. Was that person African American, White, Asian, Mexican?

20 A. African American.

21 Q. Was he shorter or taller than the driver of the burgundy truck?

22 A. Shorter.

23 Q. Was he thin build or more stocky?

24 A. Thin.

25 Q. Now, the original coworker of the burgundy truck and this new person from  
26 the Suburban, now they walk toward Gordon, correct?  
27

28 A. Yes.

1 Q. Now, you're saying the person from the Suburban approaches Gordon and  
2 punches him five to 10 punches?

3 A. Yes.

4 Q. Approximately?

5 A. Yes.

6 Q. Does Gordon ever punch back?

7 A. No.

8 Q. Did you ever see Gordon with any weapon?

9 A. No.

10 Q. After the punching you stated that the shorter of the men stepped back three  
11 feet and shoots Gordon?

12 A. Yes.

13 Q. How many times do you believe the gun was fired?

14 A. At least five times.

15 Q. What was the taller of the individual doing?

16 A. Standing there, watching.

17 Q. What was the taller of the individual doing when the shorter one was  
18 punching him?

19 A. Watching.

20 Q. Was he yelling, was he talking, or just standing there?

21 A. Just standing there. (PHT 105)

22  
23 The State then goes through the surveillance videos with the witness, who identifies  
24 someone other than the defendant as the person who shot Gordon.  
25  
26  
27  
28

## ARGUMENT

### **I. THE EVIDENCE PRESENTED TO THE JUSTICE OF THE PEACE WAS INSUFFICIENT TO SUSTAIN THE CHARGES**

A defendant may object to the sufficiency of the evidence to sustain an information only by application for a writ of habeas corpus. N.R.S. 172.155(2). For an information or indictment to withstand a challenge by habeas corpus, the District Court judge must determine that the State has met its burden to show that there is probable cause to believe that a crime has been committed and that the person charged committed the crime. Tertrou v. Sheriff, Clark County, 89 Nev. 166, 509 P.2d 970 (1973); Azbill v. State, 84 Nev. 345, 440 P.2d 1014 (1968). 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 v. Hodes, 96 Nev. 184, 186, 606 P.2d 178, 180 (1980). “To commit an accused for trial, the State is not required to negate all inferences which might explain his conduct, but only to present enough evidence to support a reasonable inference that the accused committed the offense.” Kinsey v. Sheriff, 87 Nev. 361, 363, 487 P.2d 340, 341 (1971).

Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. NRS 200.010(1). Express malice is a deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof. NRS 200.020(2). Malice shall be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. NRS 200.020(2). For murder to be in the first degree, in addition to requiring malice aforethought, it must also be willful, deliberate, and premeditated. NRS 200.030(1)(a).

In this case, there is insufficient evidence to support an inference that Mr. McNair personally committed the instant offense. In fact, the State’s witness directly testified contrary to this.

1       **II.     THERE IS NO COMPETENT EVIDENCE THAT MR. McNAIR COMMITTED A**  
2       **MURDER OR WAS PART OF A CONSPIRACY TO COMMIT MURDER**

3       A conspiracy is an agreement between two or more persons for an unlawful purpose.  
4       Myatt v. State, 101 Nev. 761, 763, 710 P.2d 720, 722 (1985) (citing Sheriff v. Blasko, 98 Nev.  
5       327, 647 P.2d 371 (1982)). Mere association is insufficient to support a charge of conspiracy.  
6       Peterson v. Sheriff, 95 Nev. 522, 525, 598 P.2d 623, 625 (1979) (citing State v. Sullivan, 68 Ariz.  
7       81, 200 P.2d 346 (1948)). “[T]o sustain a conviction of conspiracy, the prosecution is required to  
8       present proof, independent of the defendant's own admissions that the defendant entered into an  
9       agreement with at least one other person.” Doyle v. State, 112 Nev. 879, 894, 921 P.2d 901, 911  
10      (1996) (overruled on other grounds by Kaczmarek v. State, 120 Nev. 314, 91 P.3d 16 (2004) and  
11      Nika v. State, 124 Nev. 1272, 1286 (Nev. 2008)).  
12

13                               **CONCLUSION**

14      This Court should dismiss the information insofar as the murder count was charged against  
15      Mr. McNair. There was no evidence to establish that the gun Mr. McNair allegedly showed to his  
16      co-employee was the murder weapon, or that the person who actually shot the deceased did so as  
17      part of any conspiracy. In this case, the properly admitted evidence is not sufficient to support  
18      probable cause to believe that Mr. McNair is legally responsible for the actions of the shooter,  
19      whom the witness identified as not being Mr. McNair.  
20

21               Dated: December 14, 2017

22   SUBMITTED BY:

23   /s/ Randall H. Pike

24   \_\_\_\_\_  
25   RANDALL H. PIKE  
26   Attorney for Defendant  
27  
28

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the Petition for Pre-Trial Writ of Habeas Corpus was made  
on 12/14/17, by Electronic Filing to:

DISTRICT ATTORNEY'S OFFICE  
email: [motions@clarkcountyda.com](mailto:motions@clarkcountyda.com)

/s/Elizabeth Araiza

---


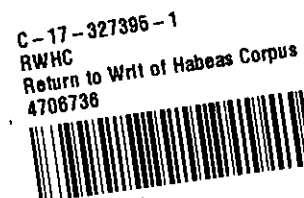
An employee of the Special Public Defender

1 RET

2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #0015655 JACQUELINE BLUTH  
6 Chief Deputy District Attorney7 Nevada Bar #10625  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 State of Nevada

FILED

DEC 21 2017

  
CLERK OF COURTDISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of Application,

of

MICHAEL MCNAIR, aka  
Michael Deangelo Mcnair, #1959573,

CASE NO: C-17-327395-1

DEPT NO: III

for a Writ of Habeas Corpus.

## STATE'S RETURN TO WRIT OF HABEAS CORPUS

DATE OF HEARING: 1/9/2018  
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 JACQUELINE BLUTH, 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 15th day of December, 2017, and made returnable on the 9th day of January, 2018, at the 9:00 A.M., before the above-entitled Court, and states as follows:

1. Respondent admits the allegations of Paragraph(s) one and two.
2. Respondent denies the allegations of Paragraph three.
3. Paragraph(s) four, five, and six do not require admission or denial.
4. The Petitioner is in the actual or constructive custody of JOE LOMBARDO, Clark County Sheriff, Respondent herein, pursuant to a Criminal Information, a copy of which is attached hereto as *Exhibit 1* and incorporated by reference herein.

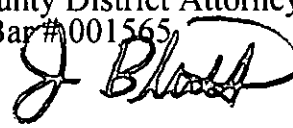
1 Wherefore, Respondent prays that the Writ of Habeas Corpus be discharged and the  
2 Petition be dismissed.

3 DATED this 20th day of December, 2017.

4 Respectfully submitted,

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

8 BY

  
9 JACQUELINE BLUTH  
10 Chief Deputy District Attorney  
11 Nevada Bar #10625

12 POINTS AND AUTHORITIES

13 STATEMENT OF FACTS

14 Ramiro Romero worked at Unified Containers (Flavors) for about a month in  
15 September of 2017. (PHT p. 32) Michael McNair (hereinafter Defendant) was an individual  
16 that worked at United Containers with Mr. Romero. (PHT pp. 34-36)

17 On September 14, 2017, around 9 or 10 o'clock at night, Defendant came into the area  
18 where Mr. Romero was working and stated there was a guy causing a disturbance. (PHT p.  
19 38). The two then walked out to the parking lot and Defendant pointed out the guy that was  
20 causing the problems. (PHT p. 39) Mr. Romero and Defendant walked up to the fence  
21 because Mr. Romero wanted to see if the individual wanted to fight him because the individual  
22 was "talking shit." (PHT p. 42) Mr. Romero then left the property and followed the Victim,  
23 but according to Mr. Romero's testimony, Defendant stayed on property. (PHT p. 44) Mr.  
24 Romero followed the individual, but once the individual crossed Las Vegas Boulevard, Mr.  
25 Romero returned back to the Flavors property. Originally, Mr. Romero stated that he did not  
26 see Defendant again that evening. (PHT p. 50) Mr. Romero then changed his story and stated  
27 that when Defendant walked back into Flavors, Defendant showed him a gun because  
28 according to Mr. Romero he had been asking Defendant to get him a gun because he wanted  
to buy one. (PHT pp. 51-52) He did not see Defendant again that evening until the police

1 showed up. According to Mr. Romero, that night, Defendant was wearing a light blue  
2 employee shirt and he never saw Defendant change his clothes. Mr. Romero was then  
3 impeached with his statement to police where he tells police that after returning to the property  
4 Defendant changed into a burgundy shirt. (PHT pp. 54-56)

5 Mr. Romero was asked whether or not he remembered Defendant being on the phone  
6 while they were standing outside watching the Victim, Mr. Romero's answer was no. Mr.  
7 Romero was then shown video that illustrates the following<sup>1</sup>: (For the purposes of preliminary  
8 hearing, defense did not object to the State bringing in video surveillance from Unified  
9 Containers/Flavors. Those exhibits were admitted as States two and three.)<sup>2</sup>

10  
11 Preliminary Hearing Exhibit 3, Video, View 7 (Attached to this motion as Exhibit 3)

12  
13 12:17:13: Defendant and Mr. Romero are standing outside of Flavors and Defendant is  
14 talking on the phone. Per, Mr. Romero, Defendant is talking on the phone to a security  
15 guard telling them about the disturbance.

16  
17 12:19:34: Defendant opens up the gate and he walks out towards Victim, Mr. Romero  
18 follows. Defendant is walking 15 to 20 feet ahead of Mr. Romero.

19  
20 Exhibit 3, Video, View 8 (Attached to this motion as Exhibit 3)

21  
22 12:20:20: Defendant and Mr. Romero are walking towards Las Vegas Boulevard and stop  
23 at the corner before crossing over to where the Victim is located.

24  
25 12:21: Defendant and Mr. Romero then walk back to Flavors.

26  
27 Exhibit 2, video U5 (Attached to this motion as Exhibit 2)

28  

---

<sup>1</sup> Testimony proffered during the showing of this video is on pages 63-78.

<sup>2</sup> These videos are attached as Exhibits Two and Three for the court's viewing.



1 12:22:10: Mr. Romero returns inside to work.

2  
3 12:26:44: Defendant returns to work and shows Mr. Romero a gun.  
4

5 At the conclusion of Mr. Romero's testimony he was impeached with his statement to  
6 police where he said, "If I did testify, I would have to go to court. Yeah, because, this man, I  
7 don't know this man very well, so I don't know what he's capable of or what or who he  
8 knows." (PHT p. 91)

9 On September 14, 2017, Kenneth Saldana was homeless and his camp was located in  
10 front of Flavors ice cream which is located between Foremaster and Washington on Las Vegas  
11 Boulevard. Also living in that area was another homeless individual by the name of Gordon  
12 Phillips. The two were not friends but were more acquaintances. (PHT pp. 94-95) Around 9  
13 pm there was a Flavors employee (Defendant) in the Flavors parking lot playing their music  
14 very loudly from the truck. Defendant was standing outside of his truck and Mr. Saldana  
15 could see that he was an African American male. The Victim walked up to Defendant and it  
16 was clear that the two began yelling at one another. The Victim never crossed the fence of  
17 Flavors, but instead, stood on the other side while yelling at Defendant. (PHT pp. 97,98)  
18 After the two were done yelling at one another, Defendant got in his truck and drove off, then  
19 came back, parked his truck, and walked inside Flavors.

20 Mr. Saldana then saw Defendant walk back out of Flavors with another male that  
21 worked at Flavors. They walked out of the parking lot and came to Las Vegas Boulevard, but  
22 did not cross the street. The two males then began yelling at the Victim who had moved back  
23 to his camp located on the other side of Las Vegas Boulevard. (PHT pp. 98, 99) After a short  
24 period of yelling at the Victim, the two individuals then returned back to Flavors (PHT p.  
25 101). Defendant got back in his truck, drove off, and his co-worker went back inside of  
26 Flavors. Shortly after, Defendant's truck came back into Mr. Saldana's view and then a white  
27 suburban showed up in the parking lot. A short, African American male got out of the  
28 suburban and he and Defendant walked over to where the Victim was. The male with

1 Defendant began punching the Victim multiple times to the face, stepped back a few feet, and  
2 shot the Victim. (PHT pp. 101-102) According to Mr. Saldana, when the unidentified male  
3 shot the Victim, the taller of the two (Defendant) stood there and watched. At no point during  
4 the shooting did Defendant attempt to stop it or seem shocked or stunned that the shooting had  
5 taken place. The two men then walked back to Flavors. (PHT pp. 102-104)

6  
7 Video at time of preliminary hearing showed the following:

8  
9 Exhibit 3, Video, View 8 (Attached to this motion as Exhibit 3)

10  
11 At 12:13:44, the Victim can be seen walking up Searles Street towards an individual sitting  
12 in a burgundy truck. An individual in a blue shirt (Defendant) then gets out of the blue truck.  
13 The two exchange words.

14  
15 At 12:15:17, Defendant gets inside of his truck and drives away. The Victim walks into the  
16 middle of the street.

17  
18 12:16:31, Defendant comes back onto the property in his truck.

19  
20 12:18:41, Defendant is now outside of Flavors standing with a coworker, he can be seen  
21 pointing in the Victim's direction. Victim can be seen walking back in the direction of his  
22 homeless camp.

23  
24 12:19:40, Defendant and his co-worker walk towards where Victim is walking. They never  
25 cross the street to where Victim is located but instead just yell at him from the opposite side  
26 of Las Vegas Boulevard.

27  
28 12:21:02, Defendant and co-worker walk back towards Flavors.

1 12:22:39, A white suburban enters the Flavors parking lot. African American Male gets out  
2 without a shirt on and follows Defendant. Defendant walks in the lead all the way up Searles  
3 Avenue and crosses Las Vegas Boulevard with the other male.

4  
5 Exhibit 3, Video, View Seven (Attached to this motion as Exhibit 3)

6  
7 12:22:29, An individual with no shirt on gets out of the White suburban. Defendant is  
8 walking in front of him towards the area of the victim. Defendant and the other individual  
9 cross the street towards Victim. Shortly thereafter, you see Defendant and the other  
10 individual running back onto the Flavors property.

## 11 12 ARGUMENT

13 The State presented sufficient evidence to show that Defendant committed the crime  
14 with which he is charged. NRS 171.206 requires the magistrate to hold a defendant to answer  
15 in the district court if it appears from the evidence adduced at the preliminary examination that  
16 there is probable cause to believe that an offense has been committed and that the defendant  
17 has committed it. Marcum v. Sheriff, 85 Nev. 175, 451 P.2d 845 (1969); *citing* Beasley v.  
18 Lamb, 79 Nev. 78, 378 P.2d 524 (1963). A preliminary hearing is not a trial. Whitley v.  
19 Sheriff, 87 Nev. 614, 491 P.2d 1282 (1971); *see also* Goldsmith v. Sheriff, 85 Nev. 295, 454  
20 P.2d 86 (1969). In a preliminary hearing, the State is only required to present enough evidence  
21 to support a reasonable inference that the accused committed the offense. LaPena v. Sheriff,  
22 91 Nev. 692, 696, 541 P.2d 907, 910 (1975); *citing* Kinsey v. Sheriff, 87 Nev. 361, 487 P.2d  
23 340 (1971).

24 Furthermore, the State is not required to negate all inferences but need only present  
25 enough proof to support a reasonable inference that the accused committed the offense.  
26 Whitley, 87 Nev. 614; *see also* Lamb v. Holsten, 85 Nev. 566, 459 P.2d 771 (1969). The  
27 same standard of proof applies to proof of the corpus delicti. Sheriff v. Middleton, 112 Nev.  
28 956, 921 P.2d 282 (1996).

1 The Nevada Supreme Court has also held:

2 [E]ven on a murder charge the quantum of proof necessary in order  
3 to hold an accused to answer in the district court is only that it appear  
4 to the magistrate, from substantial and competent evidence, that an  
5 offense had been committed and that the defendant committed it.  
6 When the evidence is in conflict at the preliminary examination it is  
7 the function of the magistrate to determine the weight to be accorded  
8 the testimony of the witnesses, and so long as an inference of criminal  
9 agency can be drawn from the evidence it is proper for the magistrate  
10 to draw it, thereby leaving to the jury at the trial the ultimate  
11 determination of which of the witnesses are more credible.

12 Ricci v. Sheriff, 88 Nev. 662, 663, 503 P.2d 1222 (1972).

13 This was a probable cause hearing where the State showed that Defendant was part of  
14 a conspiracy to murder the Victim. A conspiracy is an agreement between two or more persons  
15 for an unlawful purpose. To be guilty of conspiracy, a defendant must intend to commit the  
16 specific crime agreed to. The crime is the agreement to do something unlawful; it does not  
17 matter whether it was successful or not.

18 Mere knowledge or approval of, or acquiescence in, the object and purpose of a  
19 conspiracy without an agreement to cooperate in achieving such object or purpose does not  
20 make one a party to conspiracy. Conspiracy is seldom susceptible of direct proof and is usually  
21 established by inference from the conduct of the parties. In particular, a conspiracy may be  
22 supported by a coordinated series of acts, in furtherance of the underlying offense, sufficient  
23 to infer the existence of an agreement. Doyle v. State, 112 Nev. 879, 894 (1996)

24 It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators  
25 or the making of an express or formal agreement. The formation and existence of a conspiracy  
26 may be inferred from all circumstances tending to show the common intent and may be proved  
27 in the same way as any other fact may be proved, either by direct testimony of the fact or by  
28 circumstantial evidence, or by both direct and circumstantial evidence. Id.

Here, it is clear from testimony and the video that Defendant got in a verbal altercation  
with Victim over Defendant playing his music too loud. Defendant then went and got his co-  
worker, Romiro Romero, in an attempt to intimidate or cause harm to Victim. While outside  
with Mr. Romero, Defendant can be seen on the phone. Also, while Defendant and Mr.

1 Romero are outside standing, Defendant can be seen on video pointing a gun in the direction  
2 of Victim. Defendant and Mr. Romero then walk up the street toward the direction of the  
3 Victim where they stop and yell across the street where Victim is. The two then walk back to  
4 Flavors. Shortly thereafter, Mr. Romero walks back into Flavors and Defendant meets  
5 someone in the parking lot in a white suburban. The two then walk together out of the Flavors  
6 parking lot towards Victim. Mr. Saldana testified that was when the smaller of the two  
7 punched the Victim multiple times, stepped back three feet, and shot the Victim. Defendant  
8 did not attempt to stop it and did not seem shocked or surprised. The two then ran back to the  
9 parking lot where Defendant returned to work with the gun. These facts are a very clear cut  
10 conspiracy that are illustrated not only through testimony but also through video. At any point  
11 Defendant could have attempted to stop what was going on, could have walked away, and  
12 most importantly could have gotten the Victim help. The Defendant did none of those things  
13 because he was the facilitator of the murder.

14 Due to this being a probable cause hearing and the state of the law as it relates to  
15 conspiracy, the State met its burden at preliminary hearing.

16 **CONCLUSION**


17 For the reasons discussed, the State respectfully requests that Defendant's Petition for  
18 Writ of Habeas Corpus be denied.

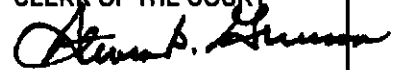
19 DATED this 20th day of December, 2017.

20 Respectfully submitted,

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

24 BY

  
25 JACQUELINE BLUTH  
26 Chief Deputy District Attorney  
27 Nevada Bar #10625  
28



1 INFM  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JACQUELINE BLUTH  
6 Chief Deputy District Attorney  
7 Nevada Bar #010625  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

12 I.A. 10/25/17  
13 10:00 AM.  
14 RANDALL PIKE

DISTRICT COURT  
CLARK COUNTY, NEVADA

15 THE STATE OF NEVADA,  
16 Plaintiff,

CASE NO: C-17-327395-1

17 -vs-

DEPT NO: III

18 MICHAEL MCNAIR, aka,  
19 Michael Deangelo McNair, #1959573  
20 Defendant.

INFORMATION

21 STATE OF NEVADA }  
22 COUNTY OF CLARK } ss.

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

25 That MICHAEL MCNAIR, aka, Michael Deangelo McNair, the Defendant(s) above  
26 named, having committed the crimes of **MURDER WITH USE OF A DEADLY WEAPON**  
27 **(Category A Felony - NRS 200.010, 200.030, 193.165 - NOC 50001) and CARRYING**  
28 **CONCEALED FIREARM OR OTHER DEADLY WEAPON (Category C Felony - NRS**  
**202.350 (1)(d)(3) - NOC 51459)**, on or about the 14th day of September, 2017, within the  
County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such  
cases made and provided, and against the peace and dignity of the State of Nevada,  
COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON

did willfully, unlawfully, feloniously and with malice aforethought, kill GORDON  
PHILLIPS, a human being, with use of a deadly weapon, to wit: a firearm, by shooting into

W:\2017\2017F\167\94\17F16794-INFM-(MCNAIR\_\_MICHAEL)-001.DOCX

**EXHIBIT 1**

Case Number: C-17-327395-1

000185

1 the body of the said GORDON PHILLIPS with said firearm, the said killing having been  
2 willful, deliberate and premeditated. Defendant being criminally liable under one or more of  
3 the following principles of criminal liability, to wit: (1) by directly committing this crime;  
4 and/or (2) by aiding or abetting in the commission of this crime, with the intent that this crime  
5 be committed, by counseling, encouraging, hiring, commanding, inducing and/or otherwise  
6 procuring the other unknown person to commit the crime; and/or (3) pursuant to a conspiracy  
7 to commit this crime, with the intent that this crime be committed, Defendant and unknown  
8 person aiding or abetting and/or conspiring by acting in concert throughout.

9 COUNT 2 - CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON

10 did then and there willfully, intentionally, unlawfully and feloniously carry concealed  
11 upon his person, a firearm or other deadly weapon, to wit: a firearm.

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

15 BY /s/ Jacqueline Bluth  
16 JACQUELINE BLUTH  
17 Chief Deputy District Attorney  
18 Nevada Bar #010625

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

21 <u>NAME</u>	22 <u>ADDRESS</u>
23 ASBERY, Courtney	24 Unified Containers 25 1300 N. Las Vegas Blvd., Las Vegas, NV
26 BRENNAN, Joshua	27 Palm Mortuary Security
28 COON, Tyler	29 Unified Containers 30 1300 N. Las Vegas Blvd., Las Vegas, NV
31 CUSTODIAN OF RECORDS 32 OR DESIGNEE	33 Clark County Detention Center, 34 330 S. Casino Center Blvd., Las Vegas, NV

35 ///

1	CUSTODIAN OF RECORDS	Clark County Detention Center, Communications
2	OR DESIGNEE	330 S. Casino Center Blvd., Las Vegas, NV
3	CUSTODIAN OF RECORDS	LVMPD Communications,
4	OR DESIGNEE	400 S. Martin L. King Blvd., Las Vegas, NV
5	CUSTODIAN OF RECORDS	LVMPD Records
6	OR DESIGNEE	400 S. Martin L. King Blvd., Las Vegas, NV
7	GARDNER, Ashley	1200 N. Las Vegas Blvd., Las Vegas, NV
8	HOFFMAN, John	LVMPD # 9001
9	HONAKER, Jamie	INVESTIGATOR
10	OR DESIGNEE	C.C. DISTRICT ATTORNEY
11	KOWALSKI, Brian	LVMPD # 8550
12	LESH, Bret	Transient
13	LOPEZ, Deanna	18 W. Owens Ave., #13, Las Vegas, NV
14	PHILLIPS, Sundra	C/O District Attorney's Office
15	RAMIRO, Romero	4646 Drake Cir., Las Vegas, NV
16	RAZZO, Anthony	2300 Olive St., #38, Las Vegas, NV
17	SALDANA, Kenneth	Transient
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28	LVMPD EV#1709143919	
	(TK12)	





EXHIBIT 2



**EXHIBIT 3**



1 RTRAN

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 MICHAEL MCNAIR,

9 Defendant.  
10  
11

CASE NO. C-17-327395-1

DEPT. III

12  
13 BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE  
14 TUESDAY, JANUARY 9, 2018

15 **RECORDER'S TRANSCRIPT OF HEARING**  
16 ***PETITION FOR PRETRIAL WRIT OF HABEAS CORPUS***

17 APPEARANCES:

18 For the State:

JACQUELINE M. BLUTH, ESQ.  
Chief Deputy District Attorney

19  
20 For the Defendant:

RANDALL H. PIKE, ESQ.  
Senior Deputy Special Public Defender

21  
22  
23  
24  
25 RECORDED BY: SARAH RICHARDSON, COURT RECORDER

1 Tuesday, January 9, 2018 – Las Vegas, Nevada

2 [Proceedings begin at 9:51 a.m.]

3  
4 THE COURT: Ready?

5 MR. PIKE: We are, Your Honor.

6 THE COURT: Which one is it, Randy?

7 MR. PIKE: Page 13, Michael McNair.

8 THE COURT: Got it. 327395. This is on for a petition for writ of habeas  
9 corpus. We also have a status check set for tomorrow on trial readiness. We have  
10 a trial date pending in July, so I'll vacate tomorrow's date since you guys are here  
11 today. Okay. As to your petition?

12 MR. PIKE: Thank Your Honor. This is one of those rare circumstances in  
13 which the only eyewitness called to testify at the time of the preliminary hearing  
14 identified an individual who is not my client as having shot and killed the deceased  
15 in this case.

16 The State attempts to build a conspiracy count around this by way of  
17 introduction of video -- surveillance videos -- where my client was a security guard  
18 over on Searles and Las Vegas Boulevard North. There was words -- there was  
19 an exchange between the deceased and my client, and then the videos -- and let  
20 me step back for a second.

21 There were a number of stipulations that were entered into this, nature  
22 and cause of death, the identification because those weren't issues.

23 THE COURT: Right.

24 MR. PIKE: And, similarly, the introduction of the video -- surveillance  
25 videos without calling the custodian of record. We didn't need those.

1 THE COURT: Okay.

2 MR. PIKE: So what you see is is my client going over and exchanging --  
3 or exchanging words with somebody, presumably the deceased, with a co-  
4 employee. Another individual comes over. My client goes over there -- again, over  
5 to the same area where the deceased was sleeping or was over against the -- a  
6 homeless camp -- encampment, and it was there where the other individual shot  
7 and killed the deceased according to the eyewitness.

8 Going back and forth does not indicate that there's anything more than a  
9 "let's go tell this guy to stay away from the premises; let's go tell him to calm down;  
10 let's go tell him to do whatever is going to happen." There's no indication that there  
11 was anything bad that was going to happen, anything illegal that was going to  
12 happen.

13 The State attempts to demonstrate that by the progressions of going  
14 outside of the perimeter of the premises and then going over there and then finally  
15 saying, well, there -- at some point in time my client got out of his car, came in and  
16 pointed what the State is saying is a gun. Well, the State can't testify to that. The  
17 video -- the Justice of the Peace made no finding that there was a pointing of a gun  
18 that was done in concomitant with that or that it was a gun and -- instead of just  
19 relying just upon this --

20 THE COURT: Well, let me back you up a minute because implicitly the  
21 Justice of the Peace did find that there was a gun because he bound him over on  
22 the carrying concealed firearm count -- or charge.

23 MR. PIKE: But that was on a different situation. That was based upon the  
24 testimony of a co-employee that said that my client was taking -- took a gun into  
25 him to sell it to him.

1 THE COURT: No -- no, I realize that, but I'm just saying that in terms of  
2 arguing what's on the videotape is a gun or not a gun, I mean, a full  
3 characterization of that is there is evidence that he had a gun. Whether the  
4 argument is that the video wasn't clear, if that's the gun he was pointing around at  
5 that time, there was testimony from other people that he had a gun with him.

6 MR. PIKE: Or if -- there was no testimony that that a gun that was a  
7 death-producing weapon.

8 THE COURT: No, I agree with you on that.

9 MR. PIKE: Now, and if you look at the video and finish looking at that, it is  
10 equally consistent with Michael going in, just pointing over towards the individual  
11 and then turning around, coming to the door and then turning towards his truck in  
12 both hands and pushing a remote control lock because on the video, you will see  
13 the lights come on on the truck when it automatically locks when he does that.

14 So that -- without those findings and without that -- any eyewitness that  
15 indicates that my client was involved in the shooting or that there was a conspiracy  
16 or that there was any mal intent or evil intent when they went over there, there's  
17 insufficient evidence to bind it over on the murder charge.

18 THE COURT: Okay. Ms. Bluth.

19 MS. BLUTH: I have a few points that I'd like to add, Judge, but before I get  
20 started, do you have any specific questions for me?

21 THE COURT: No, no, you can go ahead.

22 MS. BLUTH: Okay. So the reason why I attached the exhibits is because  
23 I think that the proof of the conspiracy pretty much lays in those videos. I mean, if  
24 you look at the Defendant having the altercation with the victim beforehand about  
25 his music being too loud, which is what witnesses discussed at the preliminary

1 hearing, he then goes in and gets Ramiro Romero, they go over and intimidate the  
2 victim.

3 Before they go over there, it's the State's position you can clearly see  
4 the firearm being presented when the Defendant is looking over at the victim who's  
5 across the street, and he holds up the firearm. So that's our first basic snapshot of  
6 him with the firearm.

7 You also see him on the telephone. After they go back from intimidating  
8 the victim, you see Ramiro Romero go back inside. You see the white Suburban  
9 pull up. The Defendant's not surprised at the white Suburban. He's not surprised  
10 at the occupants of the white Suburban. They then get in, they walk towards the  
11 victim. Obviously, the murder happens off camera. Both of them run together  
12 back towards this Suburban. The smaller individual gets in the Suburban with a  
13 female. They drive off.

14 The Defendant closes the gate -- let's them out, closes the gate, walks  
15 back in, and, again, you can clearly see that that's a firearm. He goes back to  
16 Ramiro Romero talking to him. He's animated, shows him the gun, and they walk  
17 back together. That is more than enough for a slight or marginal evidentiary  
18 standard.

19 I think that we met the elements. I think that the conspiracy is there. It's  
20 not a close call whether or not that is the gun. We provided snapshots as well as  
21 the video, and so I think for the probable cause hearing -- I mean, we went to  
22 preliminary hearing; we didn't go to Grand Jury, as you know -- we definitely met  
23 our burden, and so I think that the points that Mr. Pike makes up, there are good  
24 points, but I think that they're better left for a jury because at this point we've met  
25 our burden.

1 THE COURT: Mr. Pike.

2 MR. PIKE: Yes. Without any -- the mere fact that he was going out and  
3 went with these two individuals to either tell the deceased stay away, stay off --  
4 don't come on -- don't come near our property, that's equally consistent with his  
5 functions as a security guard going over to do -- to stop people from accosting  
6 people on the property without any conversation, without any physical evidence to  
7 indicate they had an intent to commit a criminal act or that Mr. McNair knew that  
8 there was going to be a criminal act committed or that there was going to be  
9 anything else that occurred in relationship to that and without the eyewitness  
10 testimony that there was anything consistent with a conspiracy to commit a criminal  
11 act, and during the course of that, the shorter individual pulled out a gun and shot  
12 the deceased. There's no evidence of a conspiracy.

13 And if the Court has any questions -- I'd ask the Court to just review the  
14 videos, look at that and make a determination. They're not that long.

15 THE COURT: Well, I did get the videos, so I've reviewed all that. One of  
16 the things I wanted to go back and correct was, when you referenced earlier, said a  
17 count of conspiracy, there isn't a conspiracy charge --

18 MR. PIKE: I understand, yes.

19 THE COURT: -- one of the theories that's in the murder count, which are  
20 the three general theories that are always there, that either directly committed the  
21 acts or he was an aider and/or abettor by counseling and encouraging, procuring,  
22 those type of things, with somebody else that committed the acts or that he was  
23 involved in a conspiracy to commit the crime.

24 And I think based on the totality, look, it's -- you know, you would love to  
25 have ten people come in and testify at a grand jury and it be much more



1 substantive that a lot of grand jury proceedings are, but there's not -- that  
2 requirement doesn't maintain. Looking through everything, I think there's enough  
3 for the indictment to stand. The testimony from the people that were involved and  
4 looking at the videos, I think all kind of indicate that there's some type of issue or  
5 altercation or interaction that occurs with the Defendant and Mr. Romero and the  
6 victim that can safely be characterized as some type of argument, him yelling,  
7 whether it's about music or anything else that evolves from that.

8           That occurs and that the Defendant has a gun. I think the Justice of the  
9 Peace found that reasonably, I think the testimony showed that, and I do think the  
10 videos are clear enough to indicate that, that somebody else shows up and they go  
11 back over to that area. And regardless of whether he's the shooter or not, there's  
12 enough inference in what was produced to -- for, I think, the Grand Jury to have  
13 reasonably decided that under one of those theories, he's liable for that murder  
14 charge.

15           MR. PIKE: I assume the Court meant the Justice of the Peace?

16           THE COURT: Well, yes. I'm sorry. In any event, so I'm going to deny the  
17 writ. In terms of the status check that we had set for tomorrow, what's going on  
18 with getting ready for our case? I mean, are there any issues?

19           MS. BLUTH: So I gave Mr. Pike, actually, I think almost all of the  
20 discovery before the preliminary hearing, but we're actually going to do a file review  
21 today at 2:00 o'clock to make sure that he has everything in my file.

22           THE COURT: Okay.

23           MS. BLUTH: I always make a point of it to go to homicide and review not  
24 only what's on their computer, but also in their binder and their case file, and so I'll  
25 be doing that and make sure Mr. Pike has everything. So I'm definitely ready for

1 the pending trial date, and I'll Mr. Pike make any representations.

2 MR. PIKE: Okay. The investigator assigned to this case and I have been  
3 out a number of occasions and have been reviewing the list of eyewitnesses that  
4 have been provided to the State in trying to locate any additional witnesses.  
5 There's some outstanding forensics that we're waiting upon, and we anticipate that  
6 we'll be ready for the July date.

7 THE COURT: Okay. Are there any offers that are outstanding in the case  
8 or have you guys had conversations about that?

9 MR. PIKE: We haven't. We are waiting until the writ was argued, and then  
10 we have the file review, and then we can start talking about those things.

11 MS. BLUTH: We also wanted to have the forensics back, Your Honor --

12 THE COURT: Okay.

13 MS. BLUTH: -- before we did a negotiation on my behalf.

14 THE COURT: Okay. All right. Then we will go ahead -- as I said, we'll  
15 vacate tomorrow's status check date. We'll reset the status check date for 30  
16 days.

17 THE CLERK: February 7th at 9:00 a.m.

18 THE COURT: All right, guys. Thank you.

19 MS. BLUTH: Thank Your Honor.

20 (Proceedings concluded at 10:02 a.m.)

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

*Renee Vincent*

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Renee Vincent, Court Recorder/Transcriber



1 RTRAN

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

9 MICHAEL MCNAIR,

10 Defendant.

CASE NO. C-17-327395-1

DEPT. III

12 BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE  
13 WEDNESDAY, FEBRUARY 7, 2018

14 **RECORDER'S TRANSCRIPT OF HEARING**  
15 **STATUS CHECK: TRIAL READINESS**

16  
17 APPEARANCES:

18 For the State:

JEFFERY S. ROGAN, ESQ.  
Chief Deputy District Attorney

20 For the Defendant:

RANDALL H. PIKE, ESQ.  
Senior Deputy Special Public Defender

22  
23  
24  
25 RECORDED BY: SARAH RICHARDSON, COURT RECORDER

1 Wednesday, February 7, 2018 – Las Vegas, Nevada

2 [Proceedings begin at 9:46 a.m.]

3  
4 THE COURT: Which one, Randy?

5 MR. PIKE: McNair.

6 THE COURT: Page 3, 327395. He's present in custody. This is on for a  
7 status check on a July 23rd trial date.

8 MR. PIKE: This is where we're at with that, Your Honor. Most of the  
9 witnesses are homeless.

10 THE COURT: Okay.

11 MR. PIKE: We've been chasing them down. The investigator and I are  
12 interviewing two witnesses that are now in Ely prison, and we're doing that next  
13 week.

14 THE COURT: Okay.

15 MR. PIKE: There is one request for forensics that is outstanding, and  
16 other than that, everything looks like it's a go for that July date.

17 THE COURT: Okay. I know we discussed last time that you all were  
18 awaiting certain forensic things before we even get to the point of having any  
19 meaningful conversations about resolution. What is the forensic thing that we're  
20 waiting on and when --

21 MR. PIKE: There is -- there is a gun that we're requesting that the DNA --  
22 a DNA test be run on that to determine if there's any errant DNA.

23 THE COURT: Okay. And is that as far as you know been submitted  
24 already or --

25 MR. PIKE: As far as I know, it's been submitted.

1 THE COURT: Okay.

2 MR. ROGAN: It's been submitted several months, so --

3 THE COURT: Okay. All right. Then we will go ahead and set our --

4 MR. PIKE: We have had the bio review and a conflict that we'll do for  
5 discovery, so --

6 THE COURT: Okay. Let's set another status check then in 30 days.

7 THE CLERK: March 7th at 9:00 a.m.

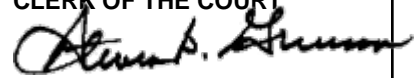
8 MR. PIKE: Thank you very much.

9 MR. ROGAN: Thank Your Honor.

10 (Proceedings concluded at 9:49 a.m.)

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

25   
\_\_\_\_\_  
Renee Vincent, Court Recorder/Transcriber



MDIS  
JONELL THOMAS  
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NSB No. 4771  
RANDALL H. PIKE  
CHIEF DEPUTY SPECIAL PUBLIC DEFENDER  
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Attorneys for McNair

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,	)	CASE NO. C-17-327395-1
	)	DEPT. 3
Plaintiff,	)	
	)	
vs.	)	
	)	
MICHAEL McNAIR, ID 1959573	)	
	)	
Defendant.	)	
_____	)	

**MOTION FOR DISCLOSURE OF EVIDENCE AND MOTION TO HAVE THE  
HANDGUN THAT WAS RECOVERED TESTED FOR ANY DNA**

**DATE:** \_\_\_\_\_

**TIME:** \_\_\_\_\_

COMES NOW, the Defendant, MICHAEL McNAIR, by and through Randall H. Pike,  
Chief Deputy Special Public Defender and hereby requests pursuant to Brady v. Maryland, 373  
U.S. 83, 83 S.Ct. 1194 (1963), the Due Process Clause to the Fourteenth Amendment to the United  
States Constitution and the Nevada Constitution Article 1 § 8, this Court order the State to produce  
any and all relevant evidence in its actual or constructive possession

This Motion is made and based upon all the papers and pleadings on file herein, the  
attached Declaration of Counsel, and oral argument at the time set for hearing this Motion.

000202

**NOTICE OF MOTION**

TO: STATE OF NEVADA, Plaintiff; and

TO: District Attorney, Attorney for Plaintiff

YOU WILL PLEASE TAKE NOTICE that Defendant's Motion is placed on the Court's calendar for hearing on March 8, 2018 at the hour of 9:00 a.m., or as soon thereafter as counsel may be heard.

**FACTUAL ALLEGATIONS**

The Defendant in this case, according to at least one of the State's theories of liability involves allegations of a Conspiracy to commit a murder or another criminal act. Based upon the information provided by the State, the second person with him was MITCHELL JOHNSON, the defendant's half-brother. Mitchell Johnson has not been charged by the State, although according to the testimony presented at the time of the Preliminary Hearing, the eyewitness identifies Mr. Johnson as being the individual that shot the deceased. (Defendant herein incorporates the Writ that was previously filed in the instant case). Metro detectives recovered a weapon at the scene, however, as of the present date, no DNA testing has been requested on the gun.

During the secondary disclosure of discovery from the State, the Chief Deputy provided the identity of Mr. Johnson and a recorded statement by him. As a result of the investigation in this matter, Mitchell Johnson has been identified by the State as a witness in other cases. Most notably in the case of State v. Johnson, C-12-285924-1, an attempt murder case. The State has removed from the defense access of witness information via LRMS, preventing the defense from accessing all cases in which Mr. Johnson has testified, been a person of interest, been a confidential informant or witness for the state, and/or received any compensation or benefit from his working with the police.



## ARGUMENT

### **I. FAILURE BY THE STATE TO PROVIDE DISCOVERY IS A VIOLATION OF THE DUE PROCESS CLAUSE UNDER THE U.S. CONSTITUTION AND THE NEVADA CONSTITUTION**

In the present case, the State and the defense have met for a file review. The Chief Deputy District Attorney provided to the defense copies of all evidence within her possession. This included information and a statement from Mitchell Johnson. Investigation by the defense has led to information that the witness has testified in other cases, and that the witness has been previously identified as a confidential informant in other prosecutions. The defense has confirmed what is available via interviews and public records, however the defense cannot confirm all information that may be used to impeach and/or properly cross examine the witness, it is necessary to obtain any and all exculpatory evidence that the State has in its actual or constructive possession prior to trial. Failure to do so results in a violation of the Due Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution. Brady v. Maryland, 373 U.S. 83 (1963); Kyles v. Whitley, 514 U.S. 419, (1995). The rule applies regardless of how the State has chosen to structure its overall discovery process. Strickler v. Greene, 527 U.S. 263, (1999).

Article 1, Section 8 of the Nevada Constitution also guarantees every defendant a right to due process. “It is a violation of due process for the prosecutor to withhold exculpatory evidence, and his motive for doing so is immaterial....The prosecutor represents the state and has a duty to see that justice is done in criminal prosecution.” Jimenez v. State, 112 Nev. 610, 618 (1996). The United State Supreme Court has held that a defendant has a right to have otherwise confidential records reviewed by the trial court to determine if they contain material evidence. Pennsylvania v. Ritchie, 480 U.S. 39, 60 (1987).

The purpose of Brady is to ensure that criminal trials are fair. Brady, 373 U.S. at 87. To ensure “that a miscarriage of justice does not occur,” United States v. Bagley, 473 U.S. 667, 675

1 (1985). The prosecution's duty to divulge relevant information is a "broad duty of disclosure."  
2 Strickler, 527 U.S. at 281; cf. United States v. Agurs, 427 U.S. 97, 108 (1976) (finding that "the  
3 prudent prosecutor will resolve doubtful questions in favor of disclosure.

4 Favorable evidence, under Federal precedent, clearly includes both exculpatory  
5 information and impeachment information. In Giglio, the government's case rested entirely on the  
6 testimony of one witness, yet the defense was not informed that the witness testified in exchange  
7 for a promise not to be prosecuted. The Supreme Court held that the prosecution was required to  
8 divulge this information because "evidence of any understanding or agreement as to a future  
9 prosecution would be relevant to [the witness's] credibility and the jury was entitled to know of  
10 it," accordingly, the conviction was reversed. Giglio v. United States, 405 U.S. 150, 154 (1972).  
11 The Supreme Court has made clear that the prosecution must disclose all impeachment evidence,  
12 not just evidence relating to cooperation agreements. Youngblood v. West Virginia, 547 U.S. 867  
13 (U.S. 2006); United States v. Bagley, 473 U.S. 667, 676 (1985). In the present case, the presence  
14 of Mr. Johnson, his activities as demonstrated at the time of the preliminary hearing, the sole  
15 eyewitness's testimony that Mr. Johnson was the only person who fired the gun – along with the  
16 fact that he has not been charged by the State, necessitates the instant motion.

17  
18 The defense recognizes that there are specific instances in which the defense is obligated to  
19 identify and make a specific request for Brady material when "there exists a reasonable possibility  
20 that the claimed evidence would have affected the judgment of the trier of fact." Roberts v. State,  
21 110 Nev. 1121 (1994). See, also, Jimenez v. State, *supra*; State v. Bennett, 119 Nev. 589 (2003).  
22 The Nevada Supreme Court has defined "material evidence" as evidence that is logically  
23 connected with the facts of consequences or the issues in the case. Wyman v. State, 217 P.3d 572,  
24 583 (Nev. 2009).  
25  
26  
27  
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1                   **A. THE STATE MUST RUN CRIMINAL BACKGROUND CHECKS ON LAY**  
2                   **WITNESSES AND THE DECEASED, DISCLOSING *BRADY* MATERIAL,**  
3                   **INCLUDING IMPEACHMENT INFORMATION.**

4                   The State should provide the defense with any Brady information that is accessible to it by  
5 performing a search of the NCIC database. The Supreme Court has made clear that the  
6 prosecution must disclose all impeachment evidence, not just evidence relating to cooperation  
7 agreements. Youngblood v. West Virginia, 547 U.S. 867 (U.S. 2006); United States v. Bagley,  
8 473 U.S. 667, 676 (1985). The Ninth Circuit Court of Appeals has also specifically addressed the  
9 prosecutor's duties regarding impeachment evidence in Carriger v. Stewart, 132 F.3d 463, 479-82  
10 (9<sup>th</sup> Cir. 1997).

11                  The Court in Odle v. United States, 65 F. Supp. 2d 1065 (N.D. Cal. 1999), rev'd on other  
12 grounds by Odle v. Woodford, 238 F.3d 1084 (9<sup>th</sup> Cir. 2001), similarly recognized that "[t]he cases  
13 variously describe the prosecutor's duty in terms of a duty to search for favorable evidence or in  
14 terms of constructive or imputed knowledge." Id. at 1071 (citing Carriger, 132 F.3d at 479-80;  
15 Kyles, 514 U.S. at 437). Further, the Court stated that "*knowledge may be imputed to the*  
16 *prosecutor, or a duty to search may be imposed, in cases where a search for readily available*  
17 *background information is routinely performed, such as routine criminal background checks of*  
18 *witnesses.*" Id. at 1072 (citing United States v. Perdomo, 929 F.2d 967 (3<sup>rd</sup> Cir. 1991) (emphasis  
19 added); Carriger, 132 F.3d 463; United States v. Auten, 632 F.2d 478 (5<sup>th</sup> Cir. 1980); United States  
20 v. Strifler, 851 F.2d 1197, 1202-02 (9<sup>th</sup> Cir. 1988); United States v. Cadet, 727 F.2d 1453, 1467  
21 (9<sup>th</sup> Cir. 1984); United States v. Jennings, 960 F.2d 1488, 1490-91 (9<sup>th</sup> Cir. 1992) (emphasis  
22 added). The disclosure of criminal history information to defense counsel appears to be routinely  
23 done in criminal cases in order to comply with Brady.

24                  The defense requests that the NCIC information be provided to defense counsel. If there is  
25 no NCIC record for a particular witness, the State can make that representation. If there is a  
26  
27  
28

1 record, the defense will stipulate to accept the ability to review the record and make notes as being  
2 sufficient to satisfy its request. The defense is not insisting that NCICs be run on the State's  
3 experts or law enforcement witnesses.

4 **II. THE STATE HAS THE ALLEGED GUN THAT WAS USED IN THIS CASE**  
5 **WITHIN ITS POSSESSION. CURRENTLY THE RESULTS OF ANY FORENSIC**  
6 **TESTING IS PENDING. THE DEFENDANT RESPECTFULLY REQUESTS**  
7 **THAT THE SEIZED WEAPON BE TESTED FOR ANY DNA EVIDENCE THAT**  
8 **MAY BE OBTAINED THEREBY.**

9 The Defense acknowledges that Metro's lab has a large amount of evidence from the cases  
10 pending that is subject to DNA examination, and that may be the reason that the gun has not been  
11 processed, or if processed the report has not yet reached the office of the District Attorney.  
12 However, given the pending trial date in July of this year, it is requested that this processing occur  
13 sooner rather than later, and that the following forensic reports be provided.

14 Request, results and/or reports of any and all crime scene analysis, evidence  
15 collection and/or forensic testing performed in this case, including, but not  
16 limited to, any and all photographs, the results of any fingerprint collection  
17 and comparison, AFIS (Automated Fingerprint Identification System)  
18 searches and/or results, DNA testing, CODIS (Combined DNA Index System)  
19 searches and/or results, toxicological analyses, footwear impressions, trace  
20 evidence analyses, any forensic analysis of cellular telephones, any requests  
21 for forensic analysis regardless of the outcome of such request.

22 Wherefore, Defendant respectfully requests the above discovery be provided in the instant  
23 case.

24 Dated: February 23, 2018

25 SUBMITTED BY:

26 /s/ Randall H. Pike

27 

---

RANDALL H. PIKE  
28 Attorney for Defendant

CERTIFICATE OF ELECTRONIC FILING

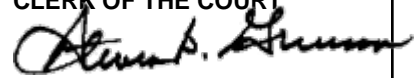
I hereby certify that service of the Motion For Disclosure Of Evidence And Motion To Have The Handgun That Was Recovered Tested For Any DNA was made on 2/23/18, by Electronic Filing to:

DISTRICT ATTORNEY'S OFFICE  
email: [motions@clarkcountyda.com](mailto:motions@clarkcountyda.com)

/s/Elizabeth (Lisa) Araiza

---

An employee of the Special Public Defender



**RESP**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
JEFFREY S. ROGAN  
Chief Deputy District Attorney  
Nevada Bar #10734  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

MICHAEL MCNAIR, aka,  
Michael Deangelo McNair, #1959573  
  
Defendant.

CASE NO: C-17-327395-1

DEPT NO: III

**STATE'S RESPONSE TO DEFENDANT'S MOTION FOR DISCLOSURE OF  
EVIDENCE AND MOTION TO HAVE THE HANDGUN THAT WAS RECOVERED  
TESTED FOR DNA**

DATE OF HEARING: 3/20/2018  
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JEFFREY S. ROGAN, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's *Motion for Disclosure of Evidence and Motion to Have the Handgun That Was Recovered Tested for DNA*.

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

//

//

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 Ramiro Romero worked at Unified Containers (Flavors) for about a month in  
4 September of 2017. (PHT p. 32) Michael McNair (hereinafter, "Defendant") also worked at  
5 United Containers with Mr. Romero. (PHT pp. 34-36)

6 On September 14, 2017, around 9 or 10 o'clock at night, Defendant came into the area  
7 where Mr. Romero was working and stated there was a guy causing a disturbance. (PHT p.  
8 38). The two then walked out to the parking lot and Defendant pointed out the guy that was  
9 causing the problems. (PHT p. 39) Mr. Romero and Defendant walked up to the fence because  
10 Mr. Romero wanted to see if the individual wanted to fight him because the individual was  
11 "talking shit." (PHT p. 42) Mr. Romero then left the property and followed the Victim, but  
12 according to Mr. Romero's testimony, Defendant stayed on property. (PHT p. 44) Mr.  
13 Romero followed the individual, but once the individual crossed Las Vegas Boulevard, Mr.  
14 Romero returned back to the Flavors property. Originally, Mr. Romero stated that he did not  
15 see Defendant again that evening. (PHT p. 50) Mr. Romero then changed his story and  
16 stated that when Defendant walked back into Flavors, Defendant showed him a gun because  
17 according to Mr. Romero he had been asking Defendant to get him a gun because he wanted  
18 to buy one. (PHT pp. 51-52) He did not see Defendant again that evening until the police  
19 showed up. According to Mr. Romero, that night, Defendant was wearing a light blue  
20 employee shirt and he never saw Defendant change his clothes. Mr. Romero was then  
21 impeached with his statement to police where he tells police that after returning to the property  
22 Defendant changed into a burgundy shirt. (PHT pp. 54-56)

23 Mr. Romero was asked whether or not he remembered Defendant being on the phone  
24 while they were standing outside watching the Victim, Mr. Romero's answer was no. Mr.  
25 Romero was then shown video that illustrates the following<sup>1</sup>:

26 ///

27 \_\_\_\_\_  
28 <sup>1</sup> For the purposes of preliminary hearing, defense did not object to the State bringing in video surveillance from Unified Containers/Flavors. Those exhibits were admitted as States two and three. Testimony proffered during the showing of this video is on pages 63-78, and was attached to the State's previously filed *Return to Writ of Habeas Corpus*.

1 Preliminary Hearing Exhibit 3, Video, View 7

2 12:17:13 Defendant and Mr. Romero are standing outside of Flavors and Defendant is  
3 talking on the phone. Per, Mr. Romero, Defendant is talking on the phone to a  
security guard telling them about the disturbance.

4 12:19:34 Defendant opens up the gate and he walks out towards Victim, Mr. Romero  
5 follows. Defendant is walking 15 to 20 feet ahead of Mr. Romero.

6 Preliminary Hearing Exhibit 3, Video, View 8

7 12:20:20 Defendant and Mr. Romero are walking towards Las Vegas Boulevard and stop  
8 at the corner before crossing over to where the Victim is located.

9 12:21 Defendant and Mr. Romero then walk back to Flavors.

10 Preliminary Hearing Exhibit 2, video U5

11 12:22:10 Mr. Romero returns inside to work.

12 12:26:44 Defendant returns to work and shows Mr. Romero a gun.

13  
14 At the conclusion of Mr. Romero's testimony he was impeached with his statement to  
15 police where he said, "If I did testify, I would have to go to court. Yeah, because, this man, I  
16 don't know this man very well, so I don't know what he's capable of or what or who he  
17 knows." (PHT p. 91)

18 On September 14, 2017, Kenneth Saldana was homeless and his camp was located in  
19 front of Flavors ice cream which is located between Foremaster and Washington on Las Vegas  
20 Boulevard. Also living in that area was another homeless individual by the name of Gordon  
21 Phillips. The two were not friends but were more acquaintances. (PHT pp. 94-95) Around 9  
22 pm there was a Flavors employee (Defendant) in the Flavors parking lot playing their music  
23 very loudly from the truck. Defendant was standing outside of his truck and Mr. Saldana  
24 could see that he was an African American male. The Victim walked up to Defendant and it  
25 was clear that the two began yelling at one another. The Victim never crossed the fence of  
26 Flavors, but instead, stood on the other side while yelling at Defendant. (PHT pp. 97,98)  
27 After the two were done yelling at one another, Defendant got in his truck and drove off, then  
28 came back, parked his truck, and walked inside Flavors.



1 Mr. Saldana then saw Defendant walk back out of Flavors with another male that  
2 worked at Flavors. They walked out of the parking lot and came to Las Vegas Boulevard, but  
3 did not cross the street. The two males then began yelling at the Victim who had moved back  
4 to his camp located on the other side of Las Vegas Boulevard. (PHT pp. 98, 99) After a short  
5 period of yelling at the Victim, the two individuals then returned back to Flavors (PHT p.  
6 101). Defendant got back in his truck, drove off, and his co-worker went back inside of  
7 Flavors. Shortly after, Defendant's truck came back into Mr. Saldana's view and then a white  
8 suburban showed up in the parking lot. A short, African American male got out of the  
9 suburban and he and Defendant walked over to where the Victim was. The male with  
10 Defendant began punching the Victim multiple times to the face, stepped back a few feet, and  
11 shot the Victim. (PHT pp. 101-102) According to Mr. Saldana, when the unidentified male  
12 shot the Victim, the taller of the two (Defendant) stood there and watched. At no point during  
13 the shooting did Defendant attempt to stop it or seem shocked or stunned that the shooting had  
14 taken place. The two men then walked back to Flavors. (PHT pp. 102-104)

15 Video at time of preliminary hearing showed the following:

16 Preliminary Hearing Exhibit 3, Video, View 8

17 12:13:44 the Victim can be seen walking up Searles Street towards an individual sitting  
18 in a burgundy truck. An individual in a blue shirt (Defendant) then gets out of  
the blue truck. The two exchange words.  
19 12:15:17 Defendant gets inside of his truck and drives away. The Victim walks into the  
20 middle of the street.  
21 12:16:31 Defendant comes back onto the property in his truck.  
22 12:18:41 Defendant is now outside of Flavors standing with a coworker, he can be seen  
23 pointing in the Victim's direction. Victim can be seen walking back in the  
direction of his homeless camp.  
24 12:19:40 Defendant and his co-worker walk towards where Victim is walking. They  
25 never cross the street to where Victim is located but instead just yell at him from  
the opposite side of Las Vegas Boulevard.  
26 12:21:02 Defendant and co-worker walk back towards Flavors.  
27 12:22:39 A white suburban enters the Flavors parking lot. African American Male gets  
28 out without a shirt on and follows Defendant. Defendant walks in the lead all  
the way up Searles Avenue and crosses Las Vegas Boulevard with the other  
male.

Preliminary Hearing Exhibit 3, Video, View Seven

12:22:29 An individual with no shirt on gets out of the White suburban. Defendant is walking in front of him towards the area of the victim. Defendant and the other individual cross the street towards Victim. Shortly thereafter, you see Defendant and the other individual running back onto the Flavors property.

**ARGUMENT**

*1. Federal Law Prohibits the State from Providing any Criminal History Information to the Defendant.*

The defendant requests that the State “perform a search of the [National Crime Information Center (NCIC)] database” on all lay witnesses and the victim. Deft.’s Mot. at 5. However, as a user of the NCIC database, the State is prohibited from disseminating criminal history information to non-criminal justice agencies as defined by Title 28 Code of Federal Regulations (CFR) §20.3. That regulation describes a criminal justice agency as: (1) Courts; and (2) a government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Unless specifically authorized by federal law, access to the NCIC/III for non-criminal justice purposes is prohibited.

A 1989 United States Supreme Court case looked at this issue from the standpoint of an invasion of privacy and ruled accordingly:

Accordingly, we hold as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy, and that when the request seeks no "official information" about a Government agency, but merely records that the Government happens to be storing, the invasion of privacy is "unwarranted."

United States Department of Justice v. the Reporters Committee for Freedom of the Press, 109 S.Ct. 1468, 1485 (1989).

Criminal defense attorneys, public or private, are not within the definition of “criminal justice agency,” nor is the criminal defense function considered a “criminal justice purpose.” Therefore, Defendant is not entitled to the criminal history information he seeks.

1 However, if the State learns that any witness the State intends to call at trial has a prior  
2 felony conviction within the last ten (10) years, which would be admissible for impeachment  
3 purposes under NRS 50.095, or convictions for offenses pertaining to moral turpitude, the  
4 State will disclose that information to the defense immediately.

5  
6 *2. The DNA Results on the Handgun are Pending.*

7 On March 5, 2018, the DNA manager of the LVMPD Forensic Laboratory prioritized  
8 the examination of the handgun and assured the State that the DNA analysis will be completed  
9 before the trial date.

10  
11 DATED this 13th day of March, 2018.

12 Respectfully submitted,

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

15 BY s/ Jeffrey S. Rogan  
16 JEFFREY S. ROGAN  
17 Chief Deputy District Attorney  
Nevada Bar #10734

18  
19 **CERTIFICATE OF ELECTRONIC FILING**

20 I hereby certify that service of the foregoing Response, was made this 13th day of  
21 March, 2018, by Electronic Filing to:

22 ELIZABETH ARAIZA  
elizabeth.araiza@clarkcountynv.gov

23 RANDALL H. PIKE, ESQ.  
24 rpike@clarkcountynv.gov

25 BY s/ Jeffrey S. Rogan  
26 JEFFREY S. ROGAN  
27 Chief Deputy District Attorney  
Nevada Bar #10734

28 17F16794X/JSR/MVU



1 RTRAN

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

9 MICHAEL MCNAIR,

10 Defendant.

CASE NO. C-17-327395-1

DEPT. III

12  
13 BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE  
14 TUESDAY, MARCH 20, 2018

15 **RECORDER'S TRANSCRIPT OF HEARING**  
16 **THE DEFENDANT'S MOTION FOR DISCLOSURE OF EVIDENCE**  
17 **AND MOTION TO HAVE THE HANDGUN THAT WAS RECOVERED**  
18 **TESTED FOR ANY DNA**

19 APPEARANCES:

20 For the State:

JACQUELINE M. BLUTH, ESQ.  
Chief Deputy District Attorney

22 For the Defendant:

RANDALL H. PIKE, ESQ.  
Senior Deputy Special Public Defender

25 RECORDED BY: SARAH RICHARDSON, COURT RECORDER

1 Tuesday, March 20, 2018 – Las Vegas, Nevada

2 [Proceedings begin at 9:34 a.m.]

3  
4 THE COURT: Which one, Randy?

5 MR. PIKE: McNair.

6 THE COURT: Page 3, 327395. He's present in custody. This is on for a  
7 status check on a July 23rd trial date.

8 MR. PIKE: This is where we're at with that, Your Honor. Most of the  
9 witnesses are homeless.

10 THE COURT: Okay.

11 MR. PIKE: We've been chasing them down. The investigator and I are  
12 interviewing two witnesses that are now in Ely prison, and we're doing that next  
13 week.

14 THE COURT: Okay.

15 MR. PIKE: There is one request for forensics that is outstanding, and  
16 other than that, everything looks like it's a go for that July date.

17 THE COURT: Okay. I know we discussed last time that you all were  
18 awaiting certain forensic things before we even get to the point of having any  
19 meaningful conversations about resolution. What is the forensic thing that we're  
20 waiting on and when --

21 MR. PIKE: There is -- there is a gun that we're requesting that the DNA --  
22 a DNA test be run on that to determine if there's any errant DNA.

23 THE COURT: Okay. And is that as far as you know been submitted  
24 already or --

25 MR. PIKE: As far as I know, it's been submitted.

1 THE COURT: Okay.

2 MR. ROGAN: It's been submitted several months, so --

3 THE COURT: Okay. All right. Then we will go ahead and set our --

4 MR. PIKE: We have had the bio review and a conflict that we'll do for  
5 discovery, so --

6 THE COURT: Okay. Let's set another status check then in 30 days.

7 THE CLERK: March 7th at 9:00 a.m.

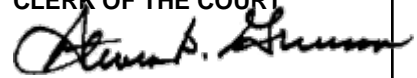
8 MR. PIKE: Thank you very much.

9 MR. ROGAN: Thank Your Honor.

10 (Proceedings concluded at 9:49 a.m.)  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21

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

25   
\_\_\_\_\_  
Renee Vincent, Court Recorder/Transcriber



MCLA  
JONELL THOMAS  
SPECIAL PUBLIC DEFENDER  
NSB No. 4771  
RANDALL H. PIKE  
CHIEF DEPUTY SPECIAL PUBLIC DEFENDER  
NSB No. 1940  
330 South Third Street, 8th Floor  
Las Vegas, NV 89155  
(702) 455-6265  
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[rpik@clarkcountynv.gov](mailto:rpik@clarkcountynv.gov)  
Attorneys for McNair

DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,	)	CASE NO. C-17-327395-1
	)	DEPT. 3
Plaintiff,	)	
	)	
vs.	)	
	)	
MICHAEL McNAIR, ID 1959573	)	
	)	
Defendant.	)	
	)	

**MOTION TO CLARIFY BAIL OBLIGATION TO INCLUDE HOUSE ARREST**

**DATE:** \_\_\_\_\_

**TIME:** \_\_\_\_\_

COMES NOW, the Defendant, MICHAEL McNAIR, by and through Randall H. Pike, Chief Deputy Special Public Defender and hereby requests that this issue an order clarifying the Bail obligation to conform with the Order issued by the Justice of the Peace that included House Arrest as a component part of any release.

This Motion is made and based upon all the papers and pleadings on file herein, the attached Exhibit, and oral argument at the time set for hearing this Motion.

000218

**NOTICE OF MOTION**

TO: STATE OF NEVADA, Plaintiff; and

TO: District Attorney, Attorney for Plaintiff

YOU WILL PLEASE TAKE NOTICE that Defendant's Motion is placed on the Court's calendar for hearing on 4-10-18 at the hour of 9AM a.m., or as soon thereafter as counsel may be heard.

**FACTUAL ALLEGATIONS**

The Defendant in this case, after the preliminary hearing, the Justice of the Peace set bail in the amount of \$100,000.00 **and** house arrest. See Exhibit A. During inquiries with the pre-trial services, this second requirement is in question. So that there is no confusion, the Defense is requesting that this Court clarify the record and issue an Order that Bail, if posted, is also subject to acceptance into the house arrest program.

**THE DEFENSE IS NOT REQUESTING ANY CHANGE IN THE ORDERS HERETOFORE ISSUED BY THE JUSTICE OF THE PEACE AND MERELY REQUESTS THAT THE DISTRICT COURT ACKNOWLEDGE THAT BOTH PREREQUISITS REQUIRED BY THE JUSTICE OF THE PEACE CONTINUE TO CARRY FULL FORCE AND EFFECT.**

Wherefore, the defendant acknowledges the prior order of the Justice of the Peace and requests that this Honorable Court order the same requirements in the event bond is posted.

Dated: March 30, 2018

SUBMITTED BY:

/s/ Randall H. Pike

\_\_\_\_\_  
RANDALL H. PIKE  
Attorney for Defendant



CERTIFICATE OF ELECTRONIC FILING

1 I hereby certify that service of the Motion To Clarify Bail Obligation To Include House

2 Arrest was made on 3/30/18, by Electronic Filing to:

3 DISTRICT ATTORNEY'S OFFICE  
email: [motions@clarkcountyda.com](mailto:motions@clarkcountyda.com)

4  
/s/Elizabeth (Lisa) Araiza

5  
\_\_\_\_\_  
An employee of the Special Public Defender

6

7

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--

# **EXHIBIT A**

  
CLERK OF THE COURT

**JUSTICE COURT, LAS VEGAS TOWNSHIP**  
**CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

vs.

Michael McNair,

Defendant

District Court Case No.: C-17-327395-1  
Dept.: III

Justice Court Case No.: 17F16794X

**CERTIFICATE**

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

Dated this 23rd day of October, 2017



Justice of the Peace, Las Vegas Township

1  
2 **JUSTICE COURT, LAS VEGAS TOWNSHIP**  
3 **CLARK COUNTY, NEVADA**

4 STATE OF NEVADA,

5 Plaintiff,

6 vs.

7 Michael McNair

8 Defendant  
9

District Court Case No.:

Justice Court Case No.: 17F16794X

10 **BINDOVER and ORDER TO APPEAR**

11 An Order having been made this day by me that **Michael McNair** be held to answer  
12 before the Eighth Judicial District Court, upon the charge(s) of **Open murder, e/dw**  
13 **[50001]; Carry conceal expl/gun/dang weap w/o prmt [51459]** committed in said  
Township and County, on September 14, 2017 .

14 **IT IS FURTHER ORDERED** that said defendant is commanded to appear in the  
15 Eighth Judicial District Court, Regional Justice Center, Lower Level Arraignment  
16 Courtroom "A", Las Vegas, Nevada on October 25, 2017 at 10:00 AM for arraignment  
17 and further proceedings on the within charge(s).

18 **IT IS FURTHER ORDERED** that the Sheriff of the County of Clark is hereby  
19 commanded to receive the above named defendant(s) into custody, and detain said  
20 defendant(s) until he/she can be legally discharged, and be committed to the custody of the  
Sheriff of said County, until bail is given in the sum of \$100,000 AND House Arrest.

21 Dated this 23rd day of October, 2017

22   
23

24 Justice of the Peace, Las Vegas Township  
25  
26  
27  
28

000223



1 RTRAN

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 MICHAEL MCNAIR,

9 Defendant.  
10  
11

CASE NO. C-17-327395-1

DEPT. III  
12

13 BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE  
14 TUESDAY, APRIL 10, 2018

15 **RECORDER'S TRANSCRIPT OF HEARING**  
16 **DEFENDANT'S MOTION TO CLARIFY BAIL OBLIGATION**  
17 **TO INCLUDE HOUSE ARREST**

18 **APPEARANCES:**

19 For the State:

JACQUELINE M. BLUTH, ESQ.  
Chief Deputy District Attorney

21 For the Defendant:

RANDALL H. PIKE, ESQ.  
Senior Deputy Special Public Defender

23  
24  
25 RECORDED BY: SARAH RICHARDSON, COURT RECORDER

1 Tuesday, April 10, 2018 – Las Vegas, Nevada

2 [Proceedings begin at 9:30 a.m.]

3  
4 MS. BLUTH: Judge, I also have Michael McNair on page 4, please.

5 THE COURT: Get closer to that microphone.

6 UNIDENTIFIED STUDENT: Page 4, Case C327395, State of Nevada  
7 versus Michael McNair.

8 THE COURT: All right. Mr. McNair is present in custody. Mr. Pike is here  
9 on his behalf. This is on for a motion to clarify -- well, you tell me what the problem  
10 is, Randy.

11 MR. PIKE: Your Honor, he was requested to -- he requested an  
12 opportunity to fill out the opportunity for house arrest because posting bond is  
13 independent of house arrest. There was a question whether or not how the house  
14 arrest component had been informed or followed up the orders on the Court. The  
15 bail was set at \$100,000 plus a house arrest.

16 THE COURT: Right.

17 MR. PIKE: And so just to clarify it, to make sure that the District Court  
18 order complied with -- or was the same as the Justice Court jail -- or bail setting, I  
19 request that that be confirmed.

20 THE COURT: Okay.

21 MR. PIKE: I'm not asking -- I'm not asking to change anything, just to  
22 verify.

23 THE COURT: So did he post the bail and they're not letting him out --

24 MR. PIKE: The bail has not been posted.

25 THE COURT: -- because of house arrest? Okay.

1 MS. BLUTH: And then, Judge, may we approach for a quick second?

2 THE COURT: Sure.

3 [Bench conference begins]

4 THE COURT: This happens a lot.

5 MS. BLUTH: I just wanted to give you a heads up as well because I gave  
6 Randy a heads up. I'm going to be doing a motion in regards to the bail setting  
7 just because I think some things were -- whatever. When bail was originally set,  
8 we're not clear.

9 THE COURT: Okay.

10 MS. BLUTH: So I just wanted you to know that and I wanted Randy to  
11 know that so that today when I get back to my office, you guys are like, why did  
12 you -- because I don't --

13 THE COURT: Okay.

14 MS. BLUTH: First I was going to do it orally, but I feel like I need to do it in  
15 a little bit more detail.

16 THE COURT: Okay.

17 MS. BLUTH: And so I'm just letting you guys know that. I don't have any  
18 issue with what Randy is discussing right now.

19 THE COURT: Do you -- do you think you'll file the motion before the status  
20 check that we already had set for April 17?

21 MS. BLUTH: I was going to file it this afternoon.

22 THE COURT: Okay. Because we can -- we can have a quick discussion  
23 about the status check and just vacate that date.

24 MS. BLUTH: Uh-huh.

25 THE COURT: And then have the motion get on calendar when it normally

1 does. I can give you a date for the motion today. Whatever you want to do.

2 MS. BLUTH: If we could get back here -- today's Tuesday, right?

3 THE COURT: Okay.

4 MS. BLUTH: We could -- and they will want time to respond, right?

5 MR. PIKE: One of -- in this next week is the status check, so we can just  
6 set for that.

7 MS. BLUTH: Oh.

8 THE COURT: Can you -- can you respond by then?

9 MR. PIKE: Yeah.

10 THE COURT: Okay.

11 MS. BLUTH: Okay.

12 THE COURT: Then why I don't just move it to the 18th instead of the 17th  
13 on a Wednesday when there's less on calendar.

14 MS. BLUTH: Sounds great.

15 THE COURT: Okay.

16 [Bench conference concludes]

17 THE COURT: Okay. So I will clarify that for purposes currently, Mr. McNair  
18 had bail set at \$100,000. There was a condition -- bless you -- that house arrest  
19 would be applied if and when he makes the bail as well. Correct?

20 MR. PIKE: Right.

21 THE COURT: Okay. So that will stand in place right now. The State  
22 indicated that they may be filing a motion to have some discussion further about  
23 that. So when you file it, Jackie, just use the date of April 18th.

24 MS. BLUTH: Yes, Judge.

25 THE COURT: We're going to vacate the 17th status check date and just



1 move that to Wednesday, the 18th, instead. So that will be a status check and  
2 motion regarding bail.

3 MS. BLUTH: Yes, Judge.

4 THE COURT: All right.

5 MR. PIKE: In reference to the last discovery motion that was brought, the  
6 State did respond and provided me the LRMS items that I had requested.

7 THE COURT: Oh, okay.

8 MR. PIKE: So that has been accomplished, and we're still awaiting the  
9 DNA on -- on the weapon.

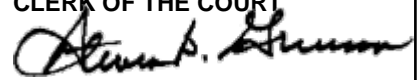
10 MS. BLUTH: That's all correct, Judge.

11 THE COURT: Okay. All right. I'll see you next week, guys. Thank you.

12 (Proceedings concluded at 9:33 a.m.)  
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22 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-  
23 visual recording of the proceeding in the above entitled case to the  
24 best of my ability.

25   
\_\_\_\_\_  
Renee Vincent, Court Recorder/Transcriber



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6 Attorneys for McNair

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 STATE OF NEVADA, ) CASE NO. C-17-327395-1  
) DEPT. 3  
10 Plaintiff, )  
)  
11 vs. )  
)  
12 MICHAEL McNAIR, ID 1959573 )  
)  
Defendant. )  
\_\_\_\_\_ )

13 **OBJECTION TO STATE'S MOTION TO INCREASE BAIL**

14 **DATE: 4/19/18**

**TIME: 9:00**

15 COMES NOW, the Defendant, MICHAEL McNAIR, by and through Randall H. Pike,  
16 Chief Deputy Special Public Defender and hereby opposes the State's motion to increase bail.

17 This Motion is made and based upon all the papers and pleadings on file herein, the  
18 attached Exhibit, and oral argument at the time set for hearing this Motion.

19 **FACTUAL ALLEGATIONS**

20 The Defendant in this case appeared at the time of the preliminary hearing, wherein  
evidence was elicited. Two notable things occurred at the time of the preliminary hearing – the

000229

1 State filed an amended complaint which included language that Mr. McNair was not the shooter  
2 and that he may be liable under different theories of liability for the death of Mr. Gordon; and,  
3 the presentation of an eyewitness to the shooting of the deceased identifying someone other  
4 than the defendant as being the person who shot the deceased.

5 The last witness called to the stand was Kenneth Saldana. (PHT 93) Mr. Saldana was  
6 an acquaintance of the deceased. (PHT 94). He observed two individuals consistent with the  
7 testimony of Mr. Romero walk up to Las Vegas Boulevard and yelling with Gordon and then  
8 leave. (PHT 101). Mr. Saldana then sees one of the co-workers go back into "Flavors" and the  
9 other get into his truck and park it next to a white Jeep on the property. (PHT 101). A white  
suburban shows up, and a male occupant gets out of the Suburban and walks with the worker.

Mr. Saldana then describes what happens next:

The guy that was in the white Suburban truck starts hitting Gordon,  
punching him in his face five, 10 times, steps back three feet, pulls a gun and  
shoots Gordon. (PHT 102)

...

Q. And, now, another person gets out of that Suburban, correct?

A. Out of the white truck, yes.

Q. Was that person African American, White, Asian, Mexican?

A. African American.

Q. Was he shorter or taller than the driver of the burgundy truck?

A. Shorter.

Q. Was he thin build or more stocky?

A. Thin.

Q. Now, the original coworker of the burgundy truck and this new person  
from the Suburban, now they walk toward Gordon, correct?

A. Yes.

Q. Now, you're saying the person from the Suburban approaches Gordon  
and punches him five to 10 punches?

A. Yes.

Q. Approximately?

A. Yes.

Q. Does Gordon ever punch back?

A. No.

Q. Did you ever see Gordon with any weapon?

A. No.

Q. After the punching you stated that the shorter of the men stepped back  
three feet and shoots Gordon?

1 A. Yes.  
Q. How many times do you believe the gun was fired?  
2 A. At least five times.  
Q. What was the taller of the individual doing?  
3 A. Standing there, watching.  
Q. What was the taller of the individual doing when the shorter one was  
punching him?  
4 A. Watching.  
Q. Was he yelling, was he talking, or just standing there?  
5 A. Just standing there. (PHT 105)

6 The State then goes through the surveillance videos with the witness, who identifies  
someone other than the defendant as the person who shot Gordon.

7 It was only after this testimony that the Justice of the Peace set forth the acceptable  
8 terms of release.

9 The State alleges that there is new information that was obtained after the preliminary  
10 hearing that warrants the raising of bail. Respectfully, the defense disagrees.

11 **THE COURT CONSIDERED MANY ASPECTS OF THE CASE IN MAKING  
HIS DECISION REGARDING THE APPROPRIATE AMOUNT OF BAIL**

12 The Court noted that in considering bail, it was “[the State’s] memo or something, but  
there were like eight or nine different witness statements and they were kind of all over the  
13 board and it was hard for the Court to track.” The Court cautioned counsel and the defendant  
14 regarding the two part requirement of house arrest and the posting of “a significant amount of  
15 bail” – indicating that would “assure his future court appearance, and to basically track him  
16 down if he were to flee, to protect the community...” (PHT 137) Upon information and belief,  
the defense believes that the “memo” was the State’s Memorandum filed October 6, 2017 in the  
17 Justice Court case in which the State indicated that “Ashley Parmley, a witness to the event,  
18 positively identified [Alfonso] Henderson as one of the suspects.”

19 The person identified by the State’s witness, Kenneth Saldana, as the shooter is Mitchell  
20 Johnson. He was interviewed prior to the preliminary hearing, as was the mother of his child,

1 Bianca Redden, in that same memo was identified as driving Mitchell Johnson to the scene and  
2 leaving the scene. Despite all of the evidence against Mitchell Johnson, and the State pursuing  
3 a number of vicarious liability theories against Michael McNair, Mitchell remains uncharged.  
4 Mr. McNair, did not leave the scene.

5 Anthony Razo, identified within the above referenced memo was represented to have  
6 "observed the Victim in possession of a silver bladed knife, which he held behind his back."  
(p.5).

7 **THE JUSTICE OF THE PEACE WAS AWARE OF THE PROBATION HOLD**

8 As the Court is aware, the pretrial services workup would have contained such  
9 information.

10 **THE DEFENSE CONFIRMED THE ORDER OF THE JUSTICE COURT**

11 Rather than attempt to obtain a release without being in complete compliance with the  
12 Justice Court requirements, it was the defendant that brought the issue to the Court's attention.  
13 He was arrested at the place of his employment, has two children, a wife and has every  
14 intention of remaining in Clark County to answer these charges.

15 Dated: April 17, 2018

16 SUBMITTED BY:

17 /s/ Randall H. Pike

18 \_\_\_\_\_  
19 RANDALL H. PIKE  
20 Attorney for Defendant

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CERTIFICATE OF ELECTRONIC FILING

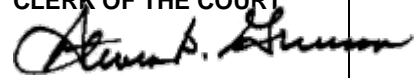
I hereby certify that service of the Objection To State's Motion To Increase Bail was made on 4/17/18, by Electronic Filing to:

DISTRICT ATTORNEY'S OFFICE  
email: [motions@clarkcountyda.com](mailto:motions@clarkcountyda.com)

/s/Elizabeth (Lisa) Araiza

---

An employee of the Special Public Defender



1 RTRAN

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

8 MICHAEL MCNAIR,

9 Defendant.  
10  
11

CASE NO. C-17-327395-1

DEPT. III

12  
13 BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE  
14 TUESDAY, APRIL 19, 2018

15 **RECORDER'S TRANSCRIPT OF HEARING**  
16 **STATE'S MOTION TO ADDRESS BAIL**  
17 **STATUS CHECK: TRIAL READINESS**

18 **APPEARANCES:**

19 For the State:

JACQUELINE M. BLUTH, ESQ.  
Chief Deputy District Attorney

21 For the Defendant:

22 RANDALL H. PIKE, ESQ.  
Senior Deputy Special Public Defender

23  
24  
25 RECORDED BY: SARAH RICHARDSON, COURT RECORDER

1 Tuesday, April 19, 2018 – Las Vegas, Nevada

2 [Proceedings begin at 9:45 a.m.]

3  
4 MS. BLUTH: 16, Michael McNair.

5 THE COURT: Thank you. 327395. McNair is present. This is on for the  
6 State's motion to -- oh, okay. The State's motion to increase bail. The motion was  
7 provided to the Court. The motion and accompanying documents were provided,  
8 as I understand it, last week to Mr. Pike. Correct?

9 MR. PIKE: That's correct, Your Honor.

10 THE COURT: And based upon the nature of some of what's in the motion  
11 and the personal information in there, the motion is going to be filed under seal  
12 today. All right. Ms. Bluth.

13 MS. BLUTH: Thank Your Honor.

14 MR. PIKE: I did file an opposition.

15 THE COURT: I got that as well.

16 MR. PIKE: You got that as well. Okay.

17 THE COURT: Okay.

18 MS. BLUTH: Thank you, Judge. So a couple of things. In response to Mr.  
19 Pike's motion, he -- or opposition, excuse me, he discussed the memo that I had  
20 filed in Justice Court, and so I kind of just want to discuss really quickly. In Justice  
21 Court, Mr. McNair was represented by Mr. Westbrook, who had filed this motion for  
22 an OR based on actual innocence and that the picture of the Defendant holding the  
23 gun walking back in was actually him holding a cell phone. And so as part of his  
24 reasoning of why the Defendant should be let out, he talks about this identification  
25 of an Alfonzo Henderson as the actual shooter.



1 THE COURT: Okay.

2 MS. BLUTH: So Judge Sullivan said, look, you guys, I only have like a  
3 two-page arrest report. I need to have a better understanding of what's going on in  
4 this case. So that's when I went back, I wrote a memo of all of the witnesses  
5 because I -- you know, and having candor to the Court, I didn't feel like it was  
6 verified, just put the information that was good for me. So I wrote a memo  
7 describing each of the witnesses and what they had said because that was kind of  
8 what Judge Sullivan was requesting of us.

9 So then as you can see, this is kind of had somewhat of a troubled past  
10 from the State's perspective as it wasn't until after the probable cause hearing  
11 where we meet with detectives and we go through the video still by still that we find  
12 the Defendant has the firearm before the murder takes place, which was always  
13 confusing to both the detectives and the State because it's like where did this  
14 firearm come from, which led everyone to think, okay, maybe the brother, Mitchell  
15 Johnson, brought it to the place of employment.

16 So then after prelim, after, you know, painstakingly hour after hour we  
17 look at these stills, we see that very quick still of the gun that the Defendant is  
18 pointing towards the victim as the victim is walking back up Searles Avenue to  
19 where the homeless camp is.

20 THE COURT: All right.

21 MS. BLUTH: So then we go into a probation revocation where he's in front  
22 of Judge Delaney. I mean, no one thinks that he's going to be reinstated and then  
23 dishonorably discharged. Obviously, our argument was he should be revoked.  
24 He's on probation at the time. This is his past criminal history. He's on probation  
25 when he commits the murder. The murder has been bound up, and Judge

1 Delaney disagrees. She reinstates him and dishonorably discharges him.

2 I never made any request to increase the bail only because the  
3 Defendant never showed, you know, that he was ever going to be able to make the  
4 bail, and so I believe that our concerns in regards to ties to the community or flight  
5 risk or danger to the community, I didn't think those were at issue. When Mr. Pike  
6 filed his motion in the -- with the clarification for house arrest last week is when I  
7 started realizing, okay, this is something that we should probably be concerned  
8 about, and that's why I wrote the lengthy motion -- the lengthy motion to Your  
9 Honor.

10 I mean, here's the deal. Whether or not he's a flight risk, I'm not sure.  
11 He does have a lot of failure to appears. In fact, that was discussed in his PSI.  
12 But this is someone who cannot stay out of trouble. I mean, if you look at his  
13 history in the last PSI that I attached and I went through my motion, that's  
14 something that I think should bring this Court concern.

15 But most concerning of all is the facts of this case -- I'm not going to go  
16 into them in detail because I know Your Honor read my motion, but, I mean, this is  
17 just a homeless guy yelling at the Defendant to turn down his music, you know,  
18 and it angers the Defendant to a point where he goes and gets a firearm, calls his  
19 brother for backup. They go up there, the murder takes place. He runs back and  
20 then hides the gun.

21 So, I mean, I don't think that these facts, if you look at the criminal  
22 history of the Defendant, his failure to appear in court, his danger to the community  
23 and just -- I mean, obviously, his wire is very short because those facts to a murder  
24 just don't make sense of why someone would want to go shoot and kill someone  
25 because they tell you to turn down your music.

1           So that was why I filed the motion to increase bail, and like Your Honor  
2 said, I appreciate you being able to file it under seal because I did include  
3 information that I think he has a right to privacy about.

4           THE COURT: All right. Mr. Pike?

5           MR. PIKE: Thank Your Honor. In all confidence to the Court, the State  
6 filed an indication that a Mr. Henderson had been identified as the shooter.

7           THE COURT: Right.

8           MR. PIKE: That was pre-preliminary hearing. Prior to the preliminary  
9 hearing, they had -- the State had interviewed and had a recorded statement from  
10 Mitchell, our alternate suspect, and, in fact, it was Mitchell that was identified by the  
11 civilian witness that was there. He was identified as the person that was the  
12 shooter.

13           The State filed an amended information offering a different theory of  
14 culpability, which was, somebody else shot him, but you either conspired with him,  
15 helped him or did something like that. Maybe you didn't tell the police who it was.  
16 Maybe you just invoked your right and you didn't want to talk to the police, which is  
17 perfectly fine.

18           We've already argued, and I filed the writ of habeas corpus. Your Honor  
19 heard all of these arguments before, but there were some additional aspects of it,  
20 the Henderson statement. The Court at that time -- or the Justice of the Peace at  
21 that time having reviewed the pretrial motion for bail and having reviewed the  
22 motion filed by previous counsel and the evidence that was presented based upon  
23 that evidence and knowing full -- the contents of the pretrial workup, that there was  
24 a moderate risk that he would not reappear, and the Court set a large bail,  
25 \$100,000 for a family of limited means and house arrest. And the Court went

1 through and said, this -- this is enough to provide assurances that he'll appear.  
2 This is -- I believe he has enough ties to the community.

3 His wife, who is present in court today and has been present at every  
4 hearing, is here to support him. Offer him a place to live. He was employed at the  
5 time that this happened. At least he's not employed back there at that location, but  
6 also has three children. So there are a lot of ties to the community, including  
7 extended family, and that includes his half-brother Mitchell, who we have invested  
8 and have found him to have been involved in testifying in other cases. And I  
9 brought that motion before the Court. The Court took that into consideration. The  
10 State gave us all the LRMS information on that pursuant to the order immediately.

11 We have been working this case, and there is no reason for him to flee.  
12 There is every reason for him to allow him to spend time with his family if he is  
13 approved for house arrest and if he can meet \$100,000 bail. Just because the  
14 family can put together -- scrape together enough money to potentially pay a  
15 premium on bail and have assurances that he will appear means that it's a  
16 reasonable bail.

17 There's a lot of people involved in the family trying to get this money  
18 together, and there's every incentive for him to reappear. And it's not that we  
19 should go beyond a reasonable bail that could possibly be made by this family with  
20 assurances of house arrest. You can honor -- or you could order electronic  
21 monitoring during a period of time that he's out to further ensure his appearances.  
22 Could change it to an unreasonable bail that he could never make and his family  
23 could ever make. So it's our desire at this point in time that Your Honor keep the  
24 bail at the amount that it's set.

25 Regarding the gun issue, we argued that before. We're still waiting for

1 ballistics and other forensics in reference to the gun, not necessarily a gun  
2 because we don't know whether or not it was the gun that was fired at that time  
3 and that -- we talked about the video and how if you take the still photograph that  
4 they have, which is a turning -- turning around at that point in time, as I argued  
5 before, if you put that into context with the entire video as he turns around and  
6 does that, around that same time, the lights click off on his car as though a remote  
7 control is locking the truck that he had that was parked behind him.

8           So there has been no additional evidence that's been brought before the  
9 Court today to justify an increase of bail.

10           THE COURT: All right. Ms. Bluth?

11           MS. BLUTH: I disagree with that part because the issue is that he had the  
12 weapon before the murder took place, which is additional evidence.

13           THE COURT: Well, and to be clear, this is the first time I'm really  
14 addressing this. So I understand you're talking about things that were produced in  
15 front of the Justice Court at the time that they set that bail. But the only thing I  
16 think I've been asked so far, really, is to reaffirm what we talked about earlier with  
17 the -- last week on the house arrest. But go ahead.

18           MS. BLUTH: So that's the main thing that is new, but for anybody. I  
19 mean, I understand it's all new for you, but any bail argument, the fact that we now  
20 have the gun in his hand, clearly pointing the weapon at the victim as the victim's  
21 walking back, that is a huge piece to the puzzle like I already stated. Because  
22 before the whole question was, how did this gun get to the scene? And everyone  
23 thought, oh, okay, it's the brother.

24           He calls the brother for backup. The brother brings a gun. Once we go  
25 through it slide by slide, then we realize, oh, no, he had the gun from the

1 beginning, and he clearly has it at the end when he walks back in. We have an  
2 employee that says he walks back with the gun, and then you have his brother who  
3 said, yeah, we went up this street, we went up to the victim, the homeless man,  
4 and as the brother says, as he's walking away, he sees his brother and he hears  
5 pow, pow, pow, and then he looks back and he sees the homeless man fall to the  
6 ground. I mean, that's really good evidence in the case against the Defendant that  
7 we didn't have from the beginning.

8 And, look, I understand Mr. Pike's situation. It's not like I'm -- we're not  
9 trying -- I'm not trying to purposely jam somebody up just because I see they're  
10 about to, you know, get bail. We never believed that he could make that bail, and  
11 I'm not going to seek to get blood from a turnip. I wasn't coming in here, you know,  
12 and asking for more when I didn't believe that the family could make it in the first  
13 place. I'm coming here because there is new evidence for the Court to consider,  
14 and I do think that there's a danger to community that the Court should consider in  
15 regards to this case.

16 MR. PIKE: Respectfully, Your Honor, just if I may.

17 THE COURT: Yes.

18 MR. PIKE: The State had interviewed -- the police officers had interviewed  
19 Mitchell, the brother, before the preliminary hearing. He was not called to the  
20 preliminary hearing.

21 THE COURT: Well, here's -- here's what I'll say about the potential facts.  
22 You know, when the potential facts look really good but for the State, you argue a  
23 lot about the potential facts. If the potential facts look better for the Defense, we  
24 argue a lot about the potential facts, which is kind of why, I think, the Supreme  
25 Court and people with any wisdom of this say, really what the facts may or may not

1 be isn't the primary concern when you're trying to deal with setting bail.

2           You're looking at all the other things that give you some kind of idea of  
3 Mr. McNair -- and I'll speak to you because this is who it applies to -- about danger  
4 to the community and whether somebody is likely to come back. I'll be honest with  
5 you, I never would've set bail in the amount of \$100,000 if I was setting it right  
6 away.

7           On this case, based on what I know about it and having three felony  
8 convictions and two gross misdemeanors, 2008, 2011, 2012, 2012, 2016, failed  
9 probation, failed paroles, not even close, to be quite honest. I mean, I have a lot of  
10 concerns about criminal activity and the ability to come back to court if you can't  
11 even comply with being in structured probation or paroles, particularly when you're  
12 looking at this kind of case.

13           And, look, you know, I look at what's been provided and issues about  
14 the weapon. Even if you're not the shooter, you shouldn't have a gun anyway  
15 because you got three prior felony convictions and was on probation, I think, at the  
16 time this offense occurred. Correct?

17           MS. BLUTH: Correct.

18           THE COURT: So I am going to raise the bail. I'm going to reset the bail at  
19 the amount of \$250,000. House arrest will continue to apply if the bail is made.

20           MR. PIKE: Thank Your Honor.

21           MS. BLUTH: Thank you.

22           THE COURT: The trial date, calendar call date stand. We do need to set  
23 another status check as we move forward getting ready for our trial. So that will be  
24 in 30 days.

25           THE CLERK: May 23rd, 9:00 a.m.

1 THE COURT: Is there anything in that regard to report today? Today was  
2 kind of a status check in addition to the motion day. Any updated issues on  
3 anything related to forensic testing or anything?

4 MR. PIKE: That's a -- there hasn't been. That's still outstanding with  
5 Metro.

6 THE COURT: Okay.

7 MR. PIKE: But other than that, as I indicated before, the last motion  
8 includes [indiscernible], I received that that day --

9 THE COURT: Okay.

10 MR. PIKE: -- from counsel, and we've -- we've processed all of that, and  
11 we've done all of the out-of-county interviews that we -- that were necessary to do.

12 THE COURT: Okay.

13 MS. BLUTH: I did call the lab, Your Honor, and let them, you know, about  
14 our trial date and the forensics needed to be sped up, and they told me that they  
15 would.

16 THE COURT: Okay. Then we'll see you back in 30 days. Thank you.

17 MR. PIKE: Thank you, Your Honor.

18 MS. BLUTH: Sounds good. Thank you.

19 [Proceedings concluded at 10:01 a.m.]

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

25   
\_\_\_\_\_  
Renee Vincent, Court Recorder/Transcriber