

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL McNAIR

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 78871

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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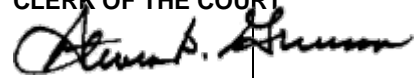
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,)	CASE NO.: C-17-327395-1
)	
Plaintiff)	DEPT. NO.: III
vs.)	
)	
MICHAEL McNAIR,)	
)	
Defendant,)	
)	

**SENTENCING MEMORANDUM AND OBJECTIONS TO THE
PRESENTENCE INVESTIGATION REPORT**

COMES NOW the Defendant, MICHAEL McNAIR, by and through his attorneys,
JONELL THOMAS, ESQ., Special Public Defender, by and through Chief Deputy Special
Public Defenders RANDALL H. PIKE, ESQ. and MELINDA E. SIMPKINS, ESQ., and hereby
submits the following Sentencing Memorandum and Objections to the Presentence Investigation
Report.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 Michael McNair is the child of a drug addict and an ex-felon who was raised by his
4 grandmother along with his brothers and sisters. Any opportunities to better himself were few
5 and far between. Michael's mother, Lenora McNair, was a drug addict who was in and out of
6 jail all of his life and never provided for his care. Despite this sad situation, Michael continued
7 to express his love for his mother and to want to live with her. However, her drug habit was out
8 of control and Michael was never able to return to her care, despite his continuing love he had
9 for his mother.
10
11

12 His mother, however, did not return his love despite Michael's repeated requests to be
13 "back home" with her. Because of his mother's drug use, his grandmother had no choice but to
14 limit Michael's interactions with his mother. Michael, being a young boy, didn't understand
15 why he couldn't see his mother – who, in addition to her drug use, was in and out of jail during
16 Michael's young life¹. During the times she was out of jail, she would refuse to visit Michael
17 and his siblings because she preferred to get high. This would cause Michael to act out.
18

19 Michael's father, on the other hand, was in prison for twenty three (23) years and was
20 only released in 2016. Michael McNair never had a father figure in his life. Michael kept in
21 touch with his father while the man was in prison and took to heart his father's promises to be a
22 better dad and a grandpa to Michael's children. Michael's father promised to "make up for lost
23 time" – a promise which turned out to be hollow.
24

25 Upon Michael's father's release from prison, he took up residence with Michael and his
26 family and Michael got his father a job, however, this didn't last long. Despite his promises
27

28

¹Lenora McNair is currently awaiting sentencing in case C-18-336526-1.

1 while incarcerated, Michael's father soon returned to the life of the street. When Michael was
2 incarcerated on the instant matter, he contacted his father – who refused to simply check on
3 Michael's family, using his "obligations" to the children of his current girlfriend as the excuse.
4 While the man did attend Michael's trial in the above entitled matter on one day, this was the
5 extent of his "support".
6

7 With the lack of parental support, it's not surprising that Michael, as well as other
8 members of his family, turned to crime. Michael's brother, Johnny Johnson and Michael's
9 cousin, My-son McNair, both currently reside in High Desert State Prison and Nevada State
10 Prison in Ely, respectively. Johnny is serving time for a Battery with a Deadly Weapon charge
11 and My-son is currently serving time for a Second Degree Murder charge.
12

13 Most notably, Michael was very close to his only sister Katie LaShawn McNair. Katie
14 McNair, however, followed in the footsteps of their mother and was a drug addict. She was
15 recently discovered by the family unconscious and, when she was rushed to the hospital, it was
16 determined that she had no brain wave activity. The family made the difficult decision to stop
17 all lifesaving efforts and it was left to Counsel to tell Michael of his sister's situation. Katie
18 passed away. Michael was devastated and he understands how Gordon Phillips' family feels
19 about the loss of their loved one.
20
21

22 Likewise, his brother Mitchell Johnson is also a drug user. Mitchell testified during
23 Michael's trial and was obviously under the influence of narcotics at the time of his testimony.
24 Mitchell was unable to sit up straight during his testimony, didn't properly answer questions
25 and admitted to smoking two blunts (marijuana laced cigars) prior to his testimony.
26

27 As a result of his upbringing, Michael's opportunities to better himself were few and far
28 between. Despite the facts of his childhood, Michael's three prior felony convictions are only
property crimes, not crimes of violence. In fact, the only violent crimes Michael has been

1 convicted of, prior to the instant matter, involve misdemeanor domestic battery, the most recent
2 of which was over seven years ago.

3 Prior to the instant matter, Michael took advantage of the scarce opportunities which
4 came his way, the most important of which is his wife, Teisha McNair. They were married in
5 2009, and it was Teisha and her family who were supportive of Michael throughout the trial in
6 the instant matter. Michael has two natural children with Teisha, a son age twelve and a
7 daughter age ten. He and his wife also adopted a child. (See Exhibit A, attached hereto).
8

9 Unlike his father, mother and brother Mitchell, Michael was able to land a good job with
10 Unified Containers, where he worked for five years prior to the instant offense. Both his
11 supervisor, Lyle Galeener, and the owner of the company testified during Michael's trial and
12 explained what a valued employee Michael had been and how important he was to the
13 company. Despite his upbringing, Michael is not a drug addict and, although he acted up at
14 school when he was younger, his family describes him as the "class clown." As he got older, he
15 "became a man" and was "always ready to give a helping hand." (See Exhibit B, attached
16 hereto). That's why his actions on the night of September 14, 2017, seem so far out of
17 character.
18

19 As this Court repeatedly heard during the trial, Michael McNair has a physical handicap
20 in the form of a severe speech impediment in that he stutters and has stuttered all of his life.
21 Further, Michael has been diagnosed with mental health issues and takes medications for his
22 depression and anxiety. It is suspected that, while awaiting trial on this case, Michael's mental
23 health issues, speech impediment and family upbringing made him vulnerable and susceptible
24 to the influence of jailhouse lawyers. As a result, Michael's faith in the advice of Counsel as
25 well as his wife was destroyed and his ability to make decisions in his own best interests was
26
27
28

1 impinged. Further, his speech impediment and mental health issues will most assuredly result
2 in making his stay in prison that much more difficult.

3 With regard to the instant matter, the Presentence Investigation Report fails to address
4 the fact that Michael McNair did not act alone. Every eye-witness who testified told the jury
5 that Gordon Phillips' death was the result of an altercation between Mr. Phillips and two other
6 individuals. As to who was the actual shooter, however, the testimony varied greatly. Anthony
7 Razo testified that Gordon Phillips was carrying a knife and had threatened to come over the
8 fence at Michael McNair. What was not revealed to the jury was that Anthony Razo told police
9 that the shooting was justified as a "stand your ground" shooting because Gordon Phillips had
10 the knife. And while Bret Lesh and Deanna Lopez both testified that the taller of the two guys
11 who approached Gordon Phillips (Michael McNair) was the shooter, Kenneth Saldana's prior
12 testimony clearly established his recollection as the shorter guy (Mitchell Johnson) being the
13 shooter. Ashley Parmley, a homeless woman who also witnessed the shooting, identified a man
14 named Alfonso Henderson as the shooter after a show up at the scene right after the shooting.²

15
16
17
18 The State's "star witness", however, was Mitchell Johnson who testified during trial that
19 he went with Michael McNair to confront Gordon Phillips and, when Gordon Phillips "got too
20 close", Mitchell Johnson started beating the man. When asked if he felt threatened by Gordon
21 Phillips, Mitchell Johnson replied "Why would I feel threatened by him?" After the shooting
22 occurs, Mitchell Johnson flees the area - not Michael McNair. And when Mitchell Johnson is
23 asked why he fled, he indicated that "A shooting happened and I was involved."

24
25 When Mitchell Johnson is finally questioned by police, he repeatedly lies to them. He
26 claims he wasn't there. That he sent his wife to Unified Containers that night. That he was at
27

28

²Despite efforts by both the Defense and the State, neither party was able to locate Ms. Parmley prior to or during trial. As a result, her statement to police was never presented to the Jury.

1 Circle K getting a soda at the time. That he actually was at Unified Containers at the time but
2 he never got out of his car. That he got out of his car but only went half way, that he didn't get
3 all the way to the corner. That he never left Searles. That he never punched Gordon Phillips.
4

5 Mitchell Johnson testified at trial that he fled because "I might be charged". However,
6 despite Mitchell Johnson's clear involvement in the crime and Kenneth Saldana's sworn
7 testimony that Mitchell Johnson was the shooter, the State never charged Mitchell Johnson with
8 any crime. In fact, despite his admitted beating of Gordon Phillips just prior to the murder,
9 Mitchell Johnson isn't mentioned in the information and it was alleged that Michael McNair
10 committed this murder either directly or through aiding and abetting or being in a conspiracy
11 with an "unknown person". There was no "unknown person". Mitchell Johnson was involved
12 and Mitchell Johnson was never charged.
13

14 None of this, however, should be construed as Michael McNair having a lack of
15 empathy for the family of Gordon Phillips. Michael McNair understands that Gordon Phillips'
16 family has suffered a great loss that nothing can repair. He was someone's son, someone's
17 brother, someone's uncle, and he will never be replaced. This was a senseless act of violence
18 that removed a good man from the world. The fact that Michael McNair maintains his
19 innocence does not detract from that fact.
20

21 Michael McNair's family is suffering as well. While the older children may have some
22 understanding of what is going on with regard to their father, his youngest boy does not. All
23 they know is that Dad is no longer at home; he's not at soccer games or birthday parties or
24 teaching them to ride bikes, or holding them when they're ill. And while Gordon Phillips'
25 family will no longer have their loved one with them for him to do those things with, Michael
26 McNair's family has the same fate.
27
28

ARGUMENT

1. Sentencing Memorandum

Michael McNair is asking this Honorable Court to take into consideration his background, his mental and physical vulnerability, the effect his incarceration will have on his family and the State's complete disregard of Mitchell Johnson's actions in the death of Gordon Phillips when sentencing Mr. McNair. Specifically, NRS §175.552(3) states:

During the hearing, evidence may be presented concerning aggravating and mitigating circumstances relative to the offense, defendant or victim and ***on any other matter which the court deems relevant to the sentence***, whether or not the evidence is ordinarily admissible. Evidence may be offered to refute hearsay matters. No evidence which was secured in violation of the constitution of the United States or the constitution of the State of Nevada may be introduced. The State may introduce evidence of additional aggravating circumstances as set forth in NRS 200.033, other than the aggravated nature of the offense itself, only if it has been disclosed to the defendant before the commencement of the penalty hearing.

(emphasis added).

Nevada law provides the court with broad discretion in sentencing, so long as the penalty comports with the sentencing range delineated by NRS 176.033(1)(b). However, in utilizing this broad discretion, the court has a duty to assign penalties that are fair in order to maintain the dignity of the law. In Nevada, the court is charged with making its determination based on "the gravity of the particular offense and of the character of the individual defendant." See NRS 176.033(1)(b). Persuasively, the Federal sentencing guidelines advocate considerations such as the seriousness of the offense, respect for the law, just punishment, deterrence and protecting the public. 18 USC §3553(a)(2). Further, this Court may also consider evidence of a co-defendant's sentence when sentencing a defendant. *Harte v. State*, 373 P.3d 98, 132 Nev. Adv. Op. 40 (2016), citing *Flannagan v. state*, 107 Nev. 243, 247-48,

1 810 P.2d 759, 762 (1991), *vacated on other grounds by Moore v. Nevada*, 503 U.S. 930, 112
2 S.Ct. 1463, 117 L.Ed.2d 609 (1992).

3 Constitutionally, the issue of fairness in sentencing is addressed by the Eighth
4 Amendment prohibition against cruel and unusual punishment. Under this prohibition, a
5 sentence that is within statutory limits may be unconstitutional if “it is as unreasonable or
6 disproportionate to the crime as to shock the conscious.” *Allred v. State*, 120 Nev. 410, 420; 92
7 P.3d 1246, 1253 (2004), *overruled on other grounds by Knipes v. State*, 192 P.3d 1178; 124
8 Nev. Adv. Rep. 79 (2008). Furthermore, the United States Supreme Court has recognized that a
9 sentence is excessive when the sentence imposed serves no penal purpose more effectively than
10 a less severe punishment. *Fullman v. Georgia*, U.S. 238, 279; 92 S.Ct.2726, 2747 (1972).
11 Finally, in addition to fairness, the United States Supreme Court has recognized “reasonableness
12 as a component of sentencing determination. As Justice Breyer stated in *United States v.*
13 *Booker*, “we think it fair to assume judicial familiarity with a reasonableness standard.” *United*
14 *States v. Booker*, 543 U.S. 220, 262; 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005).

15 While there is not a Nevada statutory requirement of fairness or reasonableness in
16 sentencing, it is clear that the United States Supreme Court has established a minimum
17 constitutional threshold that must be adhered to. Accordingly, the court must balance the goals
18 of sentencing with protecting the defendant from excess punishment.

19 With regard to the gravity of the offense, no offense is more serious than murder.
20 However, Mr. McNair has consistently, and continues to maintain his innocence. That doesn’t
21 mean, however, that he is not empathetic to the loss suffered by Gordon Phillips’ family that
22 resulted from that night. This was a senseless crime and a senseless killing that was the result
23 of bad decisions and choices. Mr. McNair agrees that this should never have happened and he
24 would change it if he had the power to do so.

1 While Mr. McNair maintains his innocence, he realizes that he stands before this Court
2 for sentencing for a most heinous crime. As stated above, the effects of that night are not only
3 felt by Gordon Phillips' family but his own as well. The one thing that Michael McNair did not
4 want to happen was that his own children would grow up like he did – with a father in prison.
5

6 The adverse circumstances of Michael's youth were also a contributing factor. His role
7 models were a drug addicted mother and an ex-felon father who, even after Michael helped him
8 once he was released from prison, couldn't be bothered to help look after Michael's family
9 when the above entitled action was taking place. He has several family members in prison for
10 violent crimes, his brother and now deceased sister are drug addicts and he was raised by his
11 grandmother. He has mental health issues and a severe stutter which will not only make it
12 difficult for him in prison, but will also make him susceptible to influence, ridicule and harm.
13

14 In fact, it was his own drug addicted brother who testified against him at trial. To top it
15 all off, despite Mitchell Johnson's clear culpability as no less than a co-conspirator in the
16 murder³, Mitchell Johnson has never been charged. The State acknowledged during trial that
17 the "unknown person" that Michael supposedly aided and abetted or conspired with to kill
18 Gordon Phillips was, in fact, Mitchell Johnson. Mitchell Johnson himself admitted that he was
19 there with his brother at the time of the shooting of Gordon Phillips. Despite this fact, Mitchell
20 Johnson has never been charged and walks free.
21
22

23 Michael McNair, on the other hand, was a family man with three young children. He's
24 been married to the same woman for ten years. He had a job for the past five years at Unified
25 Container and was being trained as a mechanic. Michael was a supervisor. He supported
26 himself and his family, he wasn't on drugs and his criminal history was not violent - except for
27 two instances of Domestic Violence, both of which were over seven years old.
28

³ Michael McNair still maintains that the evidence indicated that Mitchell Johnson was the shooter of Gordon Phillips.

1 Michael McNair has redeeming qualities and has shown himself to be a contributing
2 member of society in the past. While he understands that this Court will be sentencing him for
3 first degree murder, he requests that a sentence of twenty (20) to fifty (50) years be imposed
4 with a consecutive sentence of one (1) to four (4) years for the deadly weapon enhancement and
5 one (1) to four (4) years, concurrent to Count One for the Carrying a Concealed Firearm crime.
6 He would like the opportunity to return to his family sometime in the future.
7

8 **2. Objections to the Presentence Investigation Report**

9 A Presentence Investigation Report (PSI) is a recommendation made by the Department
10 of Parole and Probation to aid the Court in determining a defendant's sentence. In order to
11 make this recommendation, the Chief Parole and Probation Officer is required by NRS
12 213.10988 to adopt standards, which are based upon objective criteria, to aid the Department in
13 determining "a person's probability of success on parole or probation." *Id.* To aid in this
14 determination, the Department adopted NAC 213.590, which sets forth twenty seven (27)
15 factors that should be considered.
16
17

18 A Probation Success Probability Form (PSP) must be accurate for a number of reasons
19 and is not just related to whether a convicted person will violate the law if granted probation.
20 Most importantly to the instant matter, the PSP must be correct due to the fact that the
21 recommendation may later be considered by the Pardons Board or may have an effect on a
22 defendant's classification in prison. *See Blankenship v. State*, 132 Nev. Adv. Op. 50, 375 P.3d
23 407, n. 6 (2016).
24

25 In Nevada, a defendant "has a right to object to his PSI, including any factual or
26 methodological errors in sentencing forms, and the district court will make a determination on
27 the PSI information, so long as the defendant objects to it at the time of sentencing." *Sasser v.*
28 *State*, 130 Nev. Adv. Op. 41, 324 P.3d 1221, 1223 (2014), citing *Stockmeier v. State Bd. Of*

1 *Parole Comm'rs*, 127 Nev. ___, 255 P.3d 209, 213-14 (2012); *Blankenship v. State*, 132 Nev.
2 Adv. Op. 50, 375 P.3d 407, 412 (2016). Further, a PSI cannot be based on impalpable or highly
3 suspect evidence:

4
5 A defendant's "PSI must not include information based on 'impalpable or highly
6 suspect evidence.'" *Stockmeier*, 127 Nev. at ___, 255 P.3d at 213 (quoting
7 *Goodson v. State*, 98 Nev. 493, 496, 654 P.2d 1006, 1007 (1982)); *see also*
8 *Goodson*, 98 Nev. At 496, 654 P.2d at 1007. (holding that information in a PSI
9 indicating that the defendant was a drug trafficker was impalpable and highly
10 suspect because it was merely a "bald assertion" and "unsupported by any
11 evidence whatsoever"). However, this court will not interfere with the district
12 court's sentence if the defendant was not prejudiced by the consideration of this
13 impalpable or highly suspect evidence. *Chavez v. State*, 125 Nev. 328, 348, 213
14 P.3d 476, 490 (2009).

15 The higher the criminal history and social scores, the more likely the Department is to
16 recommend probation – although this may not be an issue in the instant matter, these scores are
17 important to Mr. McNair during his parole hearings. Pursuant to NRS 176.145(2), the
18 Department must include the score sheets and scales used in making their recommendations to
19 the Court in the PSI. This PSI and attendant score sheets and scales follow a defendant to
20 prison, see NRS 176.159, and are used in classification. Thus, incorrect information contained
21 in the PSI, score sheets or scales can have an adverse effect on a defendant's classification if
22 they are sentenced to prison.

23 Mr. McNair objects to the following scores on the Probation Success Probability
24 assessment:

25 **A. Present Offense**

26 **1. Sophistication/Premeditation** - Mr. McNair received only **one point** for this factor
27 due to the Department's assessment of "moderate". Mr. McNair asserts that he should have
28 been given **two points** for this factor as there was no sophistication and the fact that any
premeditation is already accounted for in the statutorily mandated sentence. This incident was

1 the result of a verbal altercation which took place between Gordon Phillips and Michael
2 McNair. There was no sophistication involved.

3 **2. Financial Impact** - Mr. McNair received **zero points** due to the classification of the
4 financial impact as excessive. Mr. McNair asserts that he should have received **one point**
5 because the financial impact was moderate. The Department recommends that Mr. McNair
6 repay Victim Witness for the funeral expenses, however, they do not recommend any further
7 restitution. In a murder prosecution, it is expected that, where a defendant is convicted, funeral
8 expenses will be paid as part of restitution. If the Department bases this financial impact on the
9 amount of funeral expenses (here, \$5,000), it is not “excessive”.
10
11

12 **3. CoOffender** - Mr. McNair received **zero points** because the Department has alleged
13 he was a leader or coerced others. However, Mr. McNair asserts that he should receive **one**
14 **point** for being equally responsible. The evidence adduced at trial was that Mitchell Johnson
15 and Michael McNair murdered Gordon Phillips⁴. Mitchell Johnson admittedly beat the man and
16 also admitted that he was involved in the shooting. Despite the fact that Mitchell Johnson was
17 never charged, the State acknowledged during closing arguments that Mitchell Johnson was the
18 “unknown person” Michael allegedly aided and abetted or conspired with.
19
20

21 **4. Motive** - Mr. McNair received **zero points** for this factor because the motive was
22 deliberate. Mr. McNair asserts he should have received **three points** because the motive was
23 situational. Again, the evidence adduced at trial indicated that this shooting was the result of a
24 verbal altercation between Michael McNair and Gordon Phillips. Michael McNair was a
25 contributing member of the community prior to this incident. He is married, has a family he
26 supported, had a good job, was a supervisor, was well respected by his co-workers and
27 employers. This incident was out of character for Michael McNair.
28

⁴ Mr. McNair is making no admissions and maintains his innocence. This statement is made for the sake of argument only.

1 **B. Social History**

2 **1. Financial** - Mr. McNair received **two points** - could be developed for this factor.
3
4 Mr. McNair asserts that he should have received **four points** for adequate. Mr. McNair had a
5 good paying job for five years, he was being trained as a mechanic and had been promoted to
6 supervisor. He was able to support himself and his family and his brother, Mitchell Johnson,
7 testified that Michael also gave him money so that Mitchell could purchase weed.

8 **C. Pre Sentence Adjustment**

9 **1. Attitude / Supervision** - Mr. McNair received **one point** for an “indifferent”
10 attitude. It is asserted that Mr. McNair should have received **two points** for having a positive
11 attitude. Michael McNair has maintained, and continues to maintain his innocence. According
12 to the PSI, he did not submit a statement to the interviewing officer. Accordingly, the
13 perception of his attitude as “indifferent” is based solely on subjective factors in violation of
14 NRS 213.10988.
15

16 **2. Attitude / Offense** - Mr. McNair received **one point** for an “indifferent” attitude for
17 this factor as well. Mr. McNair should have received **two points** for having a contrite attitude.
18 Mr. McNair understands that Mr. Phillips’ family lost an important part of their lives. He is
19 sorry for their loss. He, however, maintains his innocence. Like the last factor, he did not
20 submit a statement to the interviewing officer and, accordingly, this factor is based solely on an
21 objective assessment by the interviewing officer, in violation of NRS 213.10988.
22

23 **D. Total Scores**

24 Based upon the scoring outlined above, Mr. McNair’s Offense Score should be **five**
25 **points**, not the **negative one** point assessed by the Department. Further, his Social Score should
26 be **thirty seven**, not the **thirty three** assessed by the Department. His PSP total score should be
27 **forty two**, not the **thirty two** assessed by the Department.
28

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Dated this 23rd day of April, 2019.

RANDALL H. PIKE, ESQ.
MELINDA E. SIMPKINS, ESQ.

I hereby certify that service of the above and foregoing was made pursuant to EDCR 7.26 on the attorney for the named parties by means of electronic mail to the email address provided to the court's electronic filing system for this case. Proof of Service is the date service is made by the court's electronic filing system by email to the parties and contains a link to the file stamped document.

EMAIL

DISTRICT ATTORNEY'S OFFICE email:

/s/Elizabeth (Lisa) Araiza

Legal Secretary for the Special Public Defender's Office

EXHIBIT A

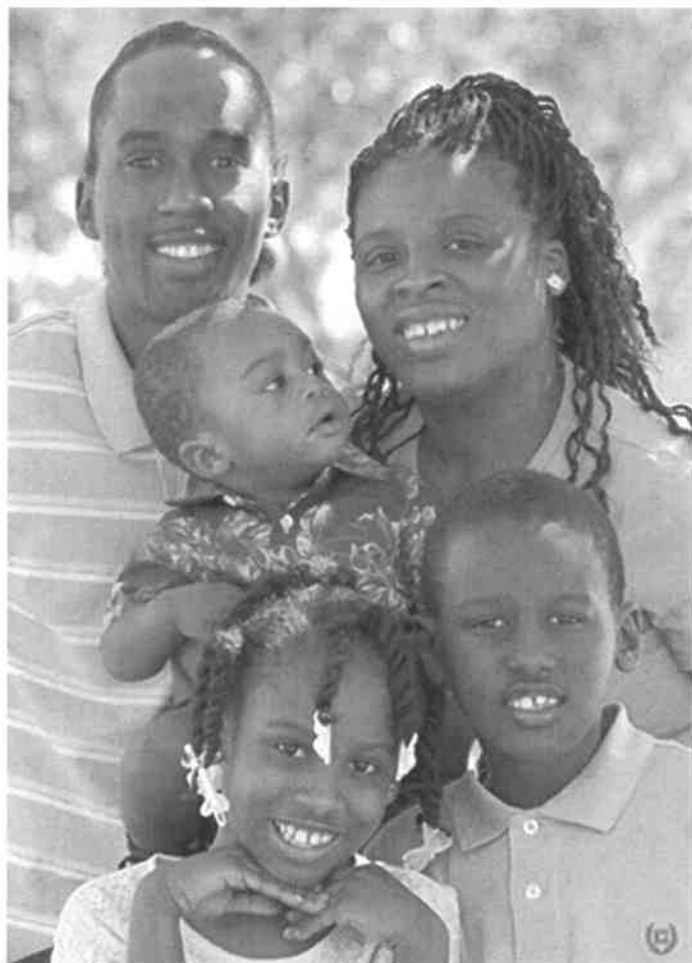




EXHIBIT B

Randy Pike

From: Dee Jones <tanaisha7@gmail.com>
Sent: Wednesday, April 17, 2019 11:20 PM
To: Randy Pike
Subject: Michael McNair Case Number C-17-327395-1

Good afternoon Judge Douglas W. Herndon,

I am writing you on behalf of Michael McNair case number C-17-327395-1.

Michael is a good person he just had some bad trial's and tribulations growing up.

I am his oldest cousin Nareyonda Jones, my grandmother raised all of us together, she ended up with me because my mother committed suicide when I was 11. Shortly after that she found out that Michael's mother was on drugs and she took all 4 of her children away from her. Now she did let her come see them and spend time with them but after she left the kids would act out, so my grandmother began to limit her visitation. Michael was more of a mommy's boy he was her favorite child, so he took it the hardest, he didn't understand why she wasn't around and why she just stopped coming to see them. She would rather do drugs then take care of her children, which eventually led her into prison, then back on the streets and right back to drugs. As a child Michael was calm, easygoing, as he got older he came out of his shell and became the class clown, making jokes out of every situation, everyone wanted to be around him. The school was always calling my grandma about him being disruptive in class until one day my grandma said no more, he got his butt whooped so bad, he didnt act up in class no more, only on lunch or on the bus. Once he became a father I seen a side of him that I never knew existed he became a man. He finally understood what it was like to make a decision that not only was for him but for his family.

With his only sister passing away on March 22, 2019 I think that has broken him in some way. Him and Kattie were really close growing up and even in adulthood, you didnt see one without the other. I would also like to thank you for allowing him to attend his sister's Memorial Service our entire family appreciates you.

I'm not sure how we got to where we are today with Michael being where he is but I believe that Michael if he is given the opportunity to do right, he will by the law and his family.

Thank you for taking the time to read this letter.

Thank you,
Nareyonda D. Jones
702-937-1400

3571 Desert Cliff St. #104
Las Vegas, NV 89129
April 17, 2019

The Honorable Judge Douglas W. Hendon
Eighth Judicial District Court
200 Lewis Ave. Las Vegas, NV 89101

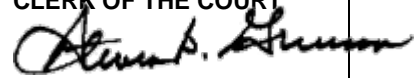
I am the aunt of the defendant's children.

I am asking that you please have mercy and give leniency when sentencing the defendant Michael McNair (01959573). I in no way condone MR. McNairs action. I do know everybody makes mistakes. I am asking you when you sentence him can you find it in your heart to do it with the same consideration you would give to one of your loved ones. I am also asking on behalf of his children who have been traumatized by the situation. They are in pain and miss their dad, as I am in disbelief due to Mr. McNair was the type of person that was always willing to give a helping hand. I can recall when a vehicle hit his and broke his neck, my vechicle was disabled and he still came and got my car back on the road with a broken neck risking further injury to his self. I can write a book on the selfless acts of Mr. McNair.

You can reach me at (702)415-8750.

Respectfully,


Nadine Diaz



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 WEDNESDAY, MAY 1, 2019

15 **RECORDER'S TRANSCRIPT OF HEARING**
16 **SENTENCING**

17 APPEARANCES:

18 For the State:

JEFFREY ROGAN, ESQ.
Chief Deputy District Attorney

19
20 For the Defendant:

RANDALL H. PIKE, ESQ.
Senior Deputy Special Public Defender
MELINDA SIMPKINS, ESQ.
Deputy Special Public Defender

21
22
23
24
25 RECORDED BY: JILL JACOBY, COURT RECORDER

1 Wednesday - May 1, 2019 – Las Vegas, Nevada

2 [Proceedings begin at 11:15 a.m.]

3
4 MR. ROGAN: Your Honor, just a few minutes. Apparently, there's an
5 evacuation downstairs on the lowers levels.

6 THE COURT: Oh.

7 MR. ROGAN: And so our victim's family is apparently --

8 THE COURT: Stuck down there?

9 MR. ROGAN: -- stuck down there.

10 THE COURT: Okay.

11 MR. ROGAN: They were on their way. They should've been here between
12 11:00 and 11:15. We haven't had any communication with them since that time,
13 but we presume it's because of that evacuation.

14 THE COURT: Okay.

15 MR. ROGAN: If you could just give us a few minutes while we try to grab
16 them.

17 THE COURT: We will -- we will be in recess for a few minutes so we can
18 get everybody up here.

19 MR. ROGAN: Thank you.

20 [Matter trailed at 11:16 a.m.]

21 [Recess taken]

22 [Matter recalled at 11:32 a.m.]

23 THE COURT: We will be back on the record in Mr. McNair's matter. He is
24 present in custody with his attorneys, Ms. Simpkins and Mr. Pike; Mr. Rogan for
25 the State. This is the time set for sentencing. Any legal cause or reason why

1 sentencing should not go forward?

2 MS. SIMPKINS: No, Your Honor.

3 MR. ROGAN: No, Your Honor.

4 THE COURT: All right. And do you want to address the issues raised in
5 the sentencing memorandum about the PSI before we start?

6 MS. SIMPKINS: That's fine, Judge. I can go into the -- you're talking
7 about the scoring?

8 THE COURT: Yeah.

9 MS. SIMPKINS: Yeah. Okay.

10 THE COURT: Just to the extent I'm making orders on any changes to
11 anything, I want to do that before we formally get through sentencing and
12 adjudication.

13 MS. SIMPKINS: Okay. That's fine, Your Honor.

14 THE COURT: Okay.

15 MS. SIMPKINS: With regard to the present offense score under
16 sophistication and pre-mediation, he received only one point for this factor. The
17 Department assessed him as moderate. He was given two points because there
18 was no sophistication with regard to the incident here. It was -- it was a result of a
19 verbal altercation. It wasn't -- you know, it didn't take a lot of planning is what --
20 and it's not a sophisticated crime, so we would object to that.

21 With regard to financial impact, he received zero points due to the
22 classification of the financial impact as excessive. We argue that he should
23 receive one point because it was moderate. Anytime you've had this type of case,
24 Judge, we understand that there is going to be a financial impact, but it wasn't the
25 only thing -- the only expenses that he's been asked to reimburse would be the

1 funeral expenses, and so -- that was \$5,000. I don't think, especially given the
2 seriousness of this, that that is -- that can be classified as excessive.

3 With regard to the co-offender, he received zero points because the
4 Department alleged he was a leader toward others, and we are saying that he
5 should receive one point for that for being equally responsible.

6 Your Honor heard all the evidence. You know that the State admitted
7 that Mitchell Johnson was involved in this during closing arguments, even though
8 he was initially charged as an unknown person -- well, not charged, but he was
9 listed in the indictment -- the information as an unknown person, so -- and we do
10 know that there were two people. So we would submit that he would -- Michael is,
11 you quoted him, responsible on that or he should receive those points and, again,
12 not making any -- any admissions here.

13 The motive, Mr. McNair received zero points for this factor because the
14 motive was deliberate. We submit that it should be three points for that because
15 the motive was situational. Again, this was a result of a verbal altercation
16 according to the evidence, and so it wasn't -- it wasn't -- to the point that it was
17 deliberate, according to the evidence. Again, it was a result of a verbal altercation
18 over a course of time that that happened.

19 So with regard to his social history, the financial, we -- he received two
20 points that could be developed, but I believe all the evidence showed that he had a
21 job; he had a good paying job for five years. You heard his supervisor. You heard
22 the owner of the company. He was -- he was being trained as a mechanic. He
23 was a supervisor of other individuals, so he was able to support his family. And the
24 evidence was that Mitchell Johnson was asking him for money. So we were
25 saying -- we were saying that he should receive four points because his financial

1 social history would be adequate.

2 With regard to the presentence adjustment, attitude, supervision, he --
3 they gave him one point for being indifferent. We submit that he had two points --
4 he should've had two points for having a caustic attitude. He's maintained and
5 continues to maintain his innocence, and so -- and he did not give a statement to
6 the interviewing officer, so we're stating that this assessment would be based on
7 subjective factors and in violation of NRS 213.10988. So we're requesting that he
8 receive two points.

9 Again, same on the attitude or offense, one point for indifferent. We're
10 saying that he should have two points for having a contrite attitude. He's not
11 accepting responsibility in staying -- that he's guilty. He is maintaining his
12 innocence, but he understands Gordon Phillips lost his life. He understands that
13 the family lost a vital member of their family, and he understands this, and he
14 empathizes with them on that, so, again -- although it says objective. I meant
15 subjective. This is, again, a subjective assessment by the interviewing officer. He
16 didn't give a statement, so we're asking for two points on that.

17 And so with those corrections that we're requesting, the total offense
18 score should be 5 points instead of the negative one, and the social score should
19 be 37 instead of 33, with a total score of 42, not the 32 assessed by the
20 Department.

21 THE COURT: Okay. Mr. Rogan?

22 MR. ROGAN: Your Honor, just in terms of some of the -- some of the
23 recommendations that the Defense counsel is making, I would have no input on
24 with regards to the attitude or supervision. For example, I don't know how he
25 presented to P&P, so I can't respond to those types of arguments since I wasn't

1 there. I'm not quite sure if Defense counsel was there as well.

2 With regard to his financial ability, again, I don't know what the
3 circumstances are of his -- I know that -- we know that he was employed since this
4 happened at his place of employment, but the impact that the offense had on his
5 financial ability in regards to himself and his family, I cannot comment on. I can
6 say, however, that with regard to the co-offender's score, he was the leader.

7 I think the evidence did show that it was he that was recruiting at least
8 two individuals to go and confront Mr. Phillips, the decedent in this case, and it was
9 him, according to the jury, believed, that concluded that he was the shooter based
10 upon all the circumstances. So the zero, I believe, is appropriate.

11 And I think also with regard to the financial impact, I mean, a man lost
12 his life. There was \$5,000 in damages. I'm not quite sure how P&P scores the
13 financial impact, but I think \$5,000 for an indigent person, an indigent family is
14 significant. It is excessive.

15 And as far as the sophistication of pre-mediation, I agree with P&P, this
16 was moderate. This was not a spur-of-the-moment first degree murder case where
17 there is a fraction of a moment where a person decides to kill. The evidence, I
18 think, shows that this was something that developed over the course of -- I think it
19 was about 15 minutes. So I believe that a moderate score for the sophistication
20 and pre-mediation is appropriate. I don't think any of the arguments made by
21 counsel justify a change in the score whatsoever, and I think the total -- PSP total
22 score of 32 is appropriate.

23 MS. SIMPKINS: I'll just briefly respond.

24 THE COURT: Yes.

25 MS. SIMPKINS: Your Honor heard the evidence. The evidence was all

1 over the place as to who actually was the shooter, and I would submit that -- that
2 Mitchell Johnson was involved. There's no question. He admitted on the stand,
3 there was a shooting, and I was involved. So I would submit, Judge, that my
4 client -- there was at least a co-offender. My client was not per se the leader.
5 There were two people involved, and so I would submit it on that as far as those
6 are concerned.

7 THE COURT: Well, for the most part, I'm going to deny the request to
8 make any changes. There is one thing that I agree with, and I'll make a change to.
9 But just working through what's been brought out, one of my first comments would
10 be, a lot of things, I think, are discretionary with the Division on how they're
11 assessing the information that they've received and how that -- you know, it's
12 different than saying it's purely subjective, but it is discretionary because they've
13 got a lot of information they've got to work through to come up with certain points.

14 Calling the sophistication, pre-mediation moderate I don't think is at all
15 in appropriate. You know, you can say there's no sophistication to something, but,
16 on other the hand, we're talking about a situation here where there's, you know, an
17 original argument, and there's multiple attempts by -- or not even attempts, multiple
18 incidences of Mr. McNair taking that argument back out to where this gentleman is
19 at his, you know, homeless encampment on a couple of different occasions. So I
20 think moderate is a fair classification of that.

21 I don't think it's inappropriate to refer to the financial impact as
22 excessive. I don't think that P&P just takes into consideration restitution when they
23 consider the financial impact of things. I mean, you're talking about a homicide
24 investigation, which is a very large investigation; that there are, you know, hospital
25 involvement and fees, which they don't ever ask for, obviously, but there's a

1 financial impact from that.

2 In addition to the funeral expenses, in addition to, you know, looking at
3 a case where the business got shut down for a number of hours while the police
4 were doing their investigation there, so characterizing financial impact as excessive
5 is appropriate in mind. I would also disagree with the idea that Mr. Phillips and Mr.
6 McNair should be looked at as equally responsible. I think by the very nature --

7 MS. SIMPKINS: Mr. Johnson, Judge.

8 THE COURT: Pardon?

9 MS. SIMPKINS: Mr. Phillips is the deceased. Mr. Johnson. Yeah.

10 THE COURT: Oh, excuse me, Mr. Johnson and Mr. McNair. I apologize.
11 You're absolutely right. As being equally responsible. I think Mr. McNair was
12 clearly in my mind, having listened to all the evidence, the most responsible
13 individual and the one that forced the issue on separate occasions with separate
14 other, you know, cohorts, if you will, going back into the gentleman's homeless
15 encampment. And so looking at him as a leader or one that involved others and
16 giving him zero points for that is appropriate.

17 I think that trying to assert motive as situational, it would refer in
18 homicide litigation to more of the heat of passion kind of scenario as opposed to
19 when a jury finds somebody has pre-mediated and deliberately killed somebody, I
20 think, giving him zero points for that is appropriate.

21 I agree with your assessment on financial impact. Mr. McNair was
22 employed, he'd been employed for some period of time, and I think he should
23 receive four points for the adequate financial, social history.

24 Attitude supervision in the two categories under presentence
25 adjustment, quite honestly, I'm not sure how P&P could say anything other than,

1 you know, alleging it as indifferent or nothing when you have somebody that's not
2 going to give them an interview. And I respect his right not to give them an
3 interview and maintain his innocence, but you can't really say, oh, he's got a
4 contrite and positive attitude if he's not going to admit any responsibility or give
5 them any type of an interview.

6 So I don't know -- off the top of my head, I can't recall what different
7 options are available to them under that, but I think it's only if you've got a positive
8 attitude or you don't have a positive attitude. I thought there might have been like a
9 zero that was available to them on that, but I don't recall.

10 MS. SIMPKINS: Court's indulgence. I've got --

11 THE COURT: Getting one point for indifference is obviously better than
12 getting zero points saying you have a negative attitude about it, but my sense is
13 that there are very limited options to what they can chose there --

14 MS. SIMPKINS: Yeah, it's negative, indifferent and positive, Judge.
15 Those are the three options.

16 THE COURT: Negative, indifferent and positive. So clearly, they're not
17 saying he had a negative attitude, but the fact that he doesn't have anything to say
18 to them or admit any responsibility for anything, I don't know that they can really
19 address his attitude and say he has a positive attitude, accepts responsibility, et
20 cetera, et cetera. So I think characterizing it as indifferent is a fair characterization
21 there.

22 So all in all, I will grant the request for the adjustment for two extra
23 points for the financial, social history aspect --

24 MS. SIMPKINS: And Judge --

25 THE COURT: -- and then you all can prepare the order on that.

1 MS. SIMPKINS: And, Your Honor, since this is going up on appeal, I just
2 want to make the record clear. We do not have the definitions that the Department
3 of Parole and Probation uses for this. In the other cases I've subpoenaed this
4 information, I've been ignored, so I don't --

5 THE COURT: Right.

6 MS. SIMPKINS: We're -- basically. we're speculating as to what they
7 would have looked. I'm doing the same thing. So I just do not -- and I'm not able
8 to get this information.

9 THE COURT: Okay. All right. That being said, Mr. McNair, I'm going to go
10 ahead and adjudicate you guilty of Count 1 pursuant to the jury verdict of first
11 degree murder with use of a deadly weapon, and Count 2 pursuant to the jury
12 verdict of felony, carrying concealed firearm or other deadly weapon. Mr. Rogan.

13 MR. ROGAN: Thank you. Your Honor, while we're on the subject of the
14 PSI, I do want to note on page 7, the credit for time served was calculated at 594
15 days. I believe it should be 530 given that the Defendant was on probation at the
16 time he committed the offense and was dishonorably discharged on November
17 29th of 2017 from that probation. So the credit should only accrue from November
18 29th of 2017. If you look back at page 5 on the PSI, it's clearly referenced
19 November 29th, 2017, for that DV. So I calculate 530 rather than 594.

20 THE COURT: Okay.

21 MR. ROGAN: With regard to the appropriate punishment, I've thoroughly
22 considered this case and the facts and circumstances of the offense. I recognize
23 what P&P is recommending. I am actually recommending 30 years to life under
24 these circumstances presented by this case.

25 Your Honor heard the facts and circumstances of it. I won't belabor

1 those points. What I want to bring up with the Court, though, that justifies, I think,
2 the 30 years to life, it's not only the Defendant's criminal history, which is -- dates
3 back to at least 2005 as an adult, which includes act of violence, battery domestic
4 violence, which is usually an indicator of future dangerousness, but he also has
5 those property crimes as well and was on probation at the time that he committed
6 this offense and yet, as we saw from those videos, clearly was in possession of a
7 firearm, which is prohibited.

8 So we have someone here who not only commits crime after crime,
9 although they were minor in comparison to the instant case, but it's flouting the
10 rules of probation by possessing that firearm.

11 And then we get to this instant case where he's at work, where he is
12 outside enjoying music at a loud level and disturbs Gordon Phillips and the other
13 homeless persons around him. And as a result of Mr. Phillips coming and asking
14 him to turn down that music, he decides or engages in a course of behavior that
15 results in him killing Mr. Phillips. To me, that is a frivolous loss of life. It's not a
16 senseless loss of life, it's a frivolous loss of life because there's absolutely no
17 purpose behind it.

18 Your Honor sees murderers every day and sees all the facts and
19 circumstances of those cases. We see people that come in here that have
20 committed a murder because of a -- it was in the course of a robbery. We've seen
21 domestic violence murders. I have yet to see -- this is my first time seeing a
22 murder over someone coming and asking them to turn down the music and then
23 engaging in a verbal altercation that leads to a murder.

24 And I know that sometimes we have these frivolous losses of life, but to
25 me, over something so insignificant, we have this terrible impact not only on the

1 Defendant's family, but on the family members that are here -- and they're going to
2 speak to you later on today -- over something so insignificant as loud music, and I
3 think that deserves special credit in the determination of your punishment today.

4 Mr. Phillips himself you did not hear a lot about during the course of this
5 trial because he's the victim. We don't know his facts and circumstances of the
6 case, what we're dealt with, and the trial itself is the fact that he was killed. But in
7 speaking with the family, and they'll speak in greater detail about Mr. Phillips and
8 his life and the impact this crime had on their family, he was a brilliant man.

9 He wasn't a typical homeless man that was living off the street because
10 of struggles with alcoholism or drug abuse or mental illness. It wasn't anything like
11 that. This man spent his entire adult life working with homeless people. He was
12 the director of a homeless clinic or multiple homeless clinics for 17 years.

13 He also was so brilliant, Your Honor, that he taught himself musical
14 instruments on his own without instruction. This is a man who was, I think,
15 operating on a different intelligence level than the rest of us, and, of course, that
16 brings its own challenges, which I believe is how he ended up where he was when
17 Mr. McNair shot and killed him back in September of 2017.

18 But even when we reviewed the autopsy report, there were no drugs,
19 there were no alcohol problems -- no alcohol substances in his system at all. This
20 is not a person that we should consider as a stereotypical homeless person as
21 much as that factors into the sentence that anyone would recommend. He was a
22 brilliant man who shouldn't have lost his life on that day, and his loss of life has
23 affected so many different people who are here today to speak to you about that.

24 I think that in consideration of the jury's verdict, the facts of this case
25 where he is -- the Defendant multiple times -- or at least on two occasions recruits

1 someone else to go and confront Mr. Phillips. The use of a deadly weapon under
2 the factors presented in the statute, as well as the fact that he has this deadly
3 weapon while he's on probation as a three-time felon he's on probation and has
4 this offense, justify an 8 to 20 on the use of a deadly weapon.

5 So my recommendation for Count 1, that murder with use of a deadly
6 weapon, is 20 to life, plus a consecutive 8 to 20. And then for the fact that he
7 carried that concealed firearm or deadly weapon while he was on probation,
8 shouldn't have had it, I think a consecutive special punishment is deserved for that
9 reason, and I think 2 to 5 consecutive to Count 1 is appropriate, for a total of 30 to
10 life.

11 THE COURT: All right. Thank you. Mr. McNair, is there anything you want
12 to say before your attorneys speak on your behalf?

13 THE DEFENDANT: Yes. I would like to apologize towards the family of
14 Mr. Gordon Phillips. I am so sorry that this had to happen. I also -- well, I know
15 how you guys are in mindset, just -- last month my sister pass away also, so I know
16 exactly how you guys feel when it comes to someone losing someone, you know,
17 as -- you know, as a [indiscernible] member, as a friend, who would know that, and
18 I apologize for my actions.

19 If I could, I will turn back the hands of time and things will be different,
20 you know, but on that very day, you know, I -- Mr. Phillips, I gave him that
21 Gatorade that -- that was in the picture. I gave him that, you know, so it wasn't like
22 I was out there just looking for people to harm at all. No, no, at all, and I'm -- I
23 salute you guys for your loss.

24 I have (indiscernible) of my own family, you know, my own children, you
25 know. I have children that I might not ever be able to see again outside of a wall,

1 you know. It's hard trying to be a parent from -- in a wall or on a phone. How can
2 you contain your kids on the telephone? You know. You can have two hour visits
3 every week. That's -- that's not enough to raise them, you know.

4 I never got married to have to go through this, and -- like I said, if I
5 could, I would turn back the hands of time, I really, really would. You know, but
6 things happen, and I am so, so sorry for you guys for your loss. I'm not saying
7 Gordon was a bad guy at all. The day that I gave him that Gatorade, he was
8 running up and down Sirius. He exercises. He run up and down.

9 I sit there and went to Smith, and I got some Gatorades because they
10 were three for \$5, and he was running up and he was sweating. I gave him the
11 purple one. If you guys look at any of the crime scene pictures where his bed is,
12 the Gatorade right there, I gave him that. I was never looking to just go out and
13 harm anyone, anyone that night.

14 Yes, my music was on, me and him got into a little verbal altercation, but
15 never, never in a million years would I take a life from someone. As you guys also
16 learned, there's more to this story. There's other people involved that the State
17 refused to charge. But, no, I'm not this kind of person. If you ask anyone that
18 knows me, I'm not this kind of person. I have a 12-year-old. I have teen-year-old --
19 I have four-year-old that looks up to me. I've always been a hero. I always lend a
20 helping hand to whoever.

21 I started up at the bottom of job, the bottom, but then a year -- nine
22 months to a year, I climbed to the top as one of the head supervisors. I used to
23 deal with the homeless all the time. I fed them pizza, sandwiches, you know,
24 whatever that -- that had to go in the trash. When my supervisor left, I used to give
25 it out to them, Gordon included in all of this. I didn't pick and choose who I gave

1 anything to. Before it goes to the trash, I'd rather give it away.

2 I'm not this guy that this paperwork make me out to be. I know all you
3 guys see is the paperwork. All you guys see is, oh, he's a bad guy, he's a bad
4 guy. I'm really not, and anyone that knows me -- you can ask any of those
5 homeless guys out there right now, the guy with the green truck, the guy with the
6 black truck, they all know, all of them know, I lend a helping hand. All of them.

7 I'm not out here to just commit crimes, and, yes, yes, I have a history,
8 yes I do, but I've learned. From when I got out of prison in 2012, I've had nothing
9 but had a job and stayed positive. Been positive all of this time. Yes, they see me
10 with a weapon. You guys don't understand the kind of area where I worked at. If
11 Gordon was here today, he'd tell you, that's not like a nice area when you have to
12 go to a dark yard and park a trailer. There's numerous things have happened.

13 Homeless people carry knives, everything. So, yes, the firearm I did have, yes, I
14 did have a firearm to protect myself, not to go out and look for trouble at all, at all.

15 And I would just ask the Court, you know, to just -- just, please, Your --
16 Your Honor, when you hand down the sentence, please, please, you know, just
17 give me -- give me some chance back at life, some chance where I'll be able to
18 raise my children. I was raised without a father because the same -- the same
19 exact incident, the same exact thing, you know. But as my father got out of there,
20 he supposed to have been this changed guy, supposed to been -- he's still not
21 there for me or my -- or my children, his grandchildren. He'd rather do other things.

22 My mom was never in my life. The only mom I know is my wife mom,
23 Ms. Joanne Dearwood. That's the only mom I know. My parents' brothers do
24 drugs and do other things as you've seen on the stand. My brother testified on me.
25 He was high. My sister just passed away. She does drugs. I don't do drugs. I

1 choose to live the right to life. All I want to do is work and take care of my family.
2 That's it.

3 My wife is my high school sweetheart. This is my wife. She's sitting
4 here today. She's been through with me through thick and thin, from when I went
5 to prison to when I got out. She's never left my side. And I feel like -- I feel the
6 shame to have to keep depending on her. Now I have to depend on her even
7 more. I can't do anything for her out there. I can't take her to -- we can't
8 anniversaries. We can't go cruising. We can't do family vacations, family picnics
9 because of one night incident, one night.

10 And the fact still remains that, yes, I was there. Yes, I was. I had no
11 involvement with the death. I can't stop a person from doing what they want to do.
12 I can't, sorry, but neither can these cops. You know, you have someone with a
13 firearm, you can't stop them. You can't.

14 So I'm just asking you guys, you know, if you'd please, please find
15 leniency when you sentence me today, Your Honor, please. And back to the
16 family, I apologize for you guys. I'm sorry -- so sorry for your loss. My family, also,
17 I'm sorry, Baby, I'm so sorry. So sorry. I'll submit to that. Thank Your Honor.

18 THE COURT: Okay. Ms. Simpkins or Mr. Pike?

19 MS. SIMPKINS: Thank you, Your Honor. Obviously, we submitted our
20 sentencing memo, and I'm just going to hit a few highlights. We have never
21 referred through the trial to Mr. Phillips as a stereotypical homeless person. He did
22 not deserve this.

23 As I set out in the sentencing memo, you can see that as far as Michael
24 is concerned, this is really a nature versus nurture. He had a drug addict mom; his
25 father was in prison; a drug addict brother. Mitchell Johnson, again, you saw him

1 testify. Brother in prison for a violent crime; a cousin in prison for a violent crime; a
2 drug addict sister who passed away.

3 So you add to that -- you heard when he was talking, he's got the stutter.
4 You heard -- I don't know that you know, but he does have the mental health
5 issues as well, so it's really not surprising on one hand that he stands where he is
6 before you today being sentenced for a violent crime. We're not using that as an
7 excuse, Your Honor, but, as you know, the background is important, and it
8 contributed to the situation that we find ourselves in.

9 The question, I guess, is, does Michael have redeeming factors? And I
10 would submit, yes, he does. We know that from the evidence that he had a job; he
11 had a family. He has a family. He's well thought of by the owner, as Supervisor
12 Lyle Galeener testified. They miss him at work. He's married. And the support
13 that he received during trial, as the Court was aware -- he had a lot of people in the
14 audience -- that was mostly from his wife's family, and they're the ones that are
15 here today.

16 So despite his upbringing, I would submit, Your Honor, Michael has
17 made the most of the opportunities that he has. So on the other -- one hand it's not
18 surprising, but on the other hand, he does have the ability to get -- to get -- to rise
19 above the situation. So that's why this, I believe, is out of character for him.

20 Also, he expressed to me, does express, continues to express empathy
21 for Gordon Phillips and his family. My client, as he told you, it's fresh for him, his
22 sister passing. He understands how they feel, and this shouldn't have happened,
23 but he's maintaining his innocence.

24 Then the evidence, you heard it, it's all over the place. We had Anthony
25 Razo who had told the police this was a stand your ground issue, although that

1 didn't come up to the jury. He did tell the police that Mr. Phillips had a knife, and
2 he, in his opinion, was a stand your ground self-defense.

3 Bret Lesh and Deanna Lopez, they testified the taller guy shot.
4 Kenneth Saldana, who we had his prelim testimony, he testified that the shorter
5 guy shot. We know that alleged Michael was the taller guy, and Mitchell was the
6 shorter guy. But what we didn't hear from was Ashley Parmley, and we couldn't
7 find her. Again, these were homeless witnesses, but we couldn't find Ms. Parmley
8 and she was the only witness, only witness to do an on-scene identification, and
9 she picked out Alfonzo Henderson as the shooter.

10 And if you look at the CAD logs, Your Honor, it's with 100 percent
11 certainty that she picked out Alfonzo Henderson as the shooter, so there's a lot
12 stuff, A, that the jury didn't see, but all a lot of things that indicate that Michael has
13 a reason for maintaining innocence.

14 Mitchell Johnson, however, a drug addict, we know he was high on the
15 stand, the shooting happened. He said, A shooting happened, and I was involved.
16 And Michael was charged on a theory of aiding and abetting and conspiracy with
17 an unknown person, and the State admitted during closing that Mitchell Johnson is
18 the unknown person.

19 So if you follow the State's reasoning to its logical conclusion, Mitchell
20 Johnson aided and abetted and conspired to murder Gordon Phillips, but he's the
21 one that walks free, and Your Honor you can consider that. This, in my opinion, is
22 the most egregious factor. And he's never been charged. The State, I don't think,
23 has any intention to charge him, and at least one witness indicates that he was the
24 shooter.

25 So a man died. Gordon Phillips died. A man -- Mitchell Johnson

1 admitted to beating because he got too close. That's the kind of hair-trigger
2 response. And Mitchell Johnson walks free and received a huge benefit from the
3 State in never having been charged. So, Your Honor, I think that's appropriate that
4 we consider that when we are sentencing Michael. Michael's the kid who clawed
5 his way out of his upbringing and he stands before you for sentencing. Gordon
6 Phillips should never have died, Your Honor, Mitchell Johnson shouldn't be walking
7 free, and Michael is redeemable.

8 And just as an -- there's an effect on Gordon Phillips' family; there's an
9 effect on Michael Johnson's family. He has the skills, we know, to become a
10 contributing member of society. That's what he was doing. He was -- he was --
11 he's got family support from his wife's family, and he has children who love him.

12 We're just asking you for the opportunity for him to get out of prison at
13 some point in time. So what we are requesting, Your Honor, is the minimums of 20
14 to 50 on Count 1, 1 to 4 on the -- consecutive on the deadly weapon, and 1 to 4 for
15 the carrying concealed weapon concurrent to Count 1. So -- and I'd remind
16 everyone, and I know I don't really have to, but 20 years you'll be eligible for
17 parole, not that he's going to automatically get parole. So 20 to 50 -- it
18 encompasses the 30 that the State is requesting.

19 And the evidence here was all over the place. He has redeeming
20 qualities. He has family support. And as far as his criminal history is concerned,
21 again, non-violent felonies. He's got domestic violence misdemeanors that are
22 over seven years old, and, Your Honor, we would submit that the minimums are
23 adequate to any -- to -- to punish Michael. So, thank you, Judge.

24 THE COURT: Thank you. All right. Mr. Rogan, who would like to speak?

25 MR. ROGAN: Let's start with Eboni Phillips, Your Honor.

1 THE COURT: Thank you. Can I have you raise your right hand for me,
2 please.

3 **EBONI PHILLIPS**

4 [being first duly sworn as a victim impact witness, testified as follows:]

5 THE CLERK: Thank you. If you could state and spell your name for the
6 record, please.

7 MS. EBONI PHILLIPS My name is Eboni Phillips.

8 THE COURT: You can put your hand down. How do you spell your first
9 name, Eboni?

10 MS. EBONI PHILLIPS: I'm so sorry.

11 THE COURT: That's okay. Do you sit down or do you want to stand?

12 MS. EBONI PHILLIPS: I'm fine. I can stand.

13 THE COURT: Okay. How do you spell your first --

14 MS. EBONI PHILLIPS: It's E-B-O-N-I.

15 THE COURT: And how do you spell your last name?

16 MS. EBONI PHILLIPS: Last name, P-H-I-L-L-I-P-S.

17 THE COURT: Okay. Why don't you take a big deep breath for me, okay?
18 Take as much time as you need. If you need to sit down, if you need a drink of
19 water or anything, that's okay. If you have something to read, you can do that or if
20 you just want to chat with me and tell me a little bit about Gordon, that's fine as
21 well. Okay?

22 MS. EBONI PHILLIPS: I would just first like to thank you. I appreciate you
23 yourself, Your Honor, clerks and everyone, prosecutors, everyone involved. I think
24 I speak on behalf of my family when I say we really, really appreciate your due
25 diligence in this matter. My siblings weren't able to stand before you guys because

1 they didn't think that they were able to, bottom line.

2 THE COURT: Okay.

3 MS. EBONI PHILLIPS: I'm not sure that I'm able to, but we're going to
4 move forward.

5 THE COURT: Okay.

6 MS. EBONI PHILLIPS: I am the second oldest. I am Gordon's older sister.
7 We were very close growing up.

8 THE COURT: Where did y'all live when you were growing up?

9 MS. EBONI PHILLIPS: We grew up in the Ella Valley, California.

10 THE COURT: Okay.

11 MS. EBONI PHILLIPS: Our parents really wanted to set us apart from
12 most, to try to get us to understand the spirituality and the morality over -- I'm
13 having a very hard time articulating --

14 THE COURT: It's okay.

15 MS. EBONI PHILLIPS: -- how I feel or how my family feels. My brother, as
16 most people think their family members are unique, he was very unique. I'm just at
17 a loss for words because I'm just too devastated to be able to speak and articulate
18 what I don't even know what I want to say. I hope I don't disappoint my parents,
19 not being strong, not to be able to represent our family.

20 THE COURT: Hey, Eboni --

21 MS. EBONI PHILLIPS: I do apologize.

22 THE COURT: -- you're -- you're doing great, okay? You're doing great.
23 This is an incredibly difficult thing to be involved in, sitting through a trial, difficult
24 thing for family members to be involved in. Come into court, standing up here
25 talking about your brother, who I know you loved incredibly much is a very difficult

1 thing. And it's hard sometimes to put two words together, much less a sentence
2 and a paragraph, right?

3 MS. EBONI PHILLIPS: Absolutely.

4 THE COURT: You're obviously a very intelligent and articulate woman --

5 MS. EBONI PHILLIPS: Thank you.

6 THE COURT: -- but motions, you know -- I talk about my kids. I blubber
7 and can't, you know, get halfway out of my mouth what I want to say sometimes,
8 so I get it, which is why I said take that big deep breath. When was -- when was
9 the last time you chatted with your brother before he passed?

10 MS. EBONI PHILLIPS: It was in December right before he decided to be
11 more proactive with homeless.

12 THE COURT: Okay.

13 MS. EBONI PHILLIPS: He decided that in order to better serve the people
14 and understand and to put himself in that place, he needed to be in that place.

15 THE COURT: Okay.

16 MS. EBONI PHILLIPS: I lived in Las Vegas for two years by what I call
17 happenstance. It was not the most pleasurable place. People often come here
18 and have a great time, and they say what happens here, stays here, but the two
19 years that I lived here, I saw the most sickest people. It was almost like I could see
20 what my brother saw before he even got here.

21 THE COURT: Okay.

22 MS. EBONI PHILLIPS: When I found out my brother was coming here, I
23 wanted to warn him with everything, I mean, not to come to this place because in
24 my heart of heart, I knew my brother would die here. My brother is his own man,
25 with his own mission, his own journey from God as we all are. He was a wonderful

person. He was also flawed. None of us can stand here and say that we are in anyway perfect, deserving or non-deserving of anything but the Lord sees fit.

Whatever the verdict is today, Your Honor, whatever decision you make is God's will. I accept it. My family accepts it. We one day will see our brother again, but, more importantly, we would rather hear the Lord say, good job, my faithful servants, and when we hear that, we'll see him and be able to hug him again. That is all I can say right now.

THE COURT: All right. Thank you for coming. I appreciate it and appreciate you getting up here and giving me some of your thoughts. Okay?

MS. EBONI PHILLIPS: Thank you, Your Honor.

THE COURT: Who else would like to speak, Mr. Rogan?

MR. ROGAN: Sundra Phillips.

THE COURT: Thank you. Would you raise your right hand for me, please.

SUNDRA PHILLIPS

[being first duly sworn as a victim impact witness, testified as follows:]

THE CLERK: Thank you. If you could state and spell your name for the record, please.

MS. SUNDRA PHILLIPS: Sundra Phillips, spelled, S-U-N-D-R-A,
P-H-I-L-L-I-P-S.

THE COURT: All right. Ms. Phillips, what would you like to tell me today?

MS. SUNDRA PHILLIPS: Well, Your Honor, I was going to go by a statement, but I wanted to speak from my heart.

THE COURT: Okay.

MS. SUNDRA PHILLIPS: When the coroner's office called me 2:45 in the morning, it was on a Sunday, I was on my way to work, happy to get overtime, and

1 Cory's [phonetic] not aware, but my dad passed in 2008, my mom in 2011, and she
2 just didn't want to live without my dad -- they'd been married 50 years -- and then
3 my brother in 2014 and my son 2017. That -- those people were the heart of me.

4 When the coroner's office called me and told me about my son being
5 gone, it trumped everything. I never felt so much grief all at once. And I wanted to
6 say that night, that moment, no one was there but me. He has four other siblings
7 and my husband that I was there. I yelled, God, why would you take my baby
8 away? My mother's going to [indiscernible]. He called him mom. But I right away
9 forgave the Defendant. I had to. Jesus forgives me, and I forgave him right then
10 and there. That's speaking from me, not my family. Excuse me.

11 He was unusual, my son. He had a spiritual connection with God.
12 Nothing I would give him is what -- it's between him and God. Seventeen years of
13 being directors of different organizations, he decided, I have to kick ground zero to
14 cut the red tape for these people. We as a family will continue his work.

15 He was unusual. The first three are older. They're set apart from the
16 middle into the others. Lakisha's 45, Eboni's 43, and Gordon would've been 41
17 had he lived. Then we have another one who's 34. That's Crystal. Then we have
18 Cameron who's 22. It has affected all of our lives. Crystal is having a hard time
19 with depression.

20 Cameron, who's 22, excellent kid, the most modest kid out of the five.
21 Since my son died, has gotten two DUIs, he never drank, and now he's got issues.
22 He's got issues, and we're going to get him through it. Jesus is [indiscernible] to
23 give him, too, because what he had to do with Cameron who say, I'll be there for
24 you when you're mature to get passed this. So I said to Cameron, I'm sure, but we
25 want to keep you alive.

1 And the three older were really close because I raised them that way. I
2 had to work. I couldn't spend the time I needed to as a mother. So I gave them all
3 I could real quick when I was home on the weekends and whenever I was home.
4 And they feel like a part of their soul is missing, those three olders and -- but I
5 forgave Michael McNair because my son would want me to. He would. I gave
6 him -- I forgave him as Jesus would want me to.

7 And what I want to say is, regardless to what the Court decides to
8 entertain as a sentence, God loves you, Michael, Jesus loves you. This is a
9 lose-lose situation. We don't have a son, an uncle. You don't have you -- your
10 children don't have a father that they can be with on a daily. And I ask that the
11 Court takes that into consideration; that these are future lives that need their dad
12 and they need their mom, and especially in a black community. They need their
13 dad, they need their mom extremely for social manners I don't even have to go
14 into.

15 My son was gifted. He took Eboni's fifth grade Spanish book and taught
16 himself Spanish. He got a master's in Spanish. He taught him how to play by ear.
17 He played for Michigan State University. He was -- but he was gifted with
18 humbleness. He was humble. And I can stand before you today and say that he
19 would ask that the Court, because my family doesn't want to hear, has leniency
20 with Michael is concerned for his children, for his wife.

21 I know God loves them. He told me, he loves us all. And that's all I
22 want to say, Your Honor. I did -- I wanted to prepare a statement. I just had to
23 speak from my heart.

24 THE COURT: Look, I -- I --

25 MS. SUNDRA PHILLIPS: But I appreciate the Court's time. I also want to

1 apologize for us being late this morning. I'm so sorry.

2 THE COURT: No, no, no, no, no. No, no, no. You --

3 MS. SUNDRA PHILLIPS: I am so sorry. I didn't want to take up the
4 Court's time. I feel terrible.

5 THE COURT: You have nothing to apologize for.

6 MS. SUNDRA PHILLIPS: Thank you.

7 THE COURT: And one of the things, I will tell you, I've got a daughter in
8 college and a daughter that's a senior in high school.

9 MS. SUNDRA PHILLIPS: Un-huh.

10 THE COURT: And one of the things I've taught them since they were very
11 little is that when you have the opportunity to speak to people, you speak without
12 notes, right?

13 MS. SUNDRA PHILLIPS: Yeah.

14 THE COURT: We don't sit there and read things, you know. We talk. We
15 engage. We make eye contact.

16 MS. SUNDRA PHILLIPS: Right.

17 THE COURT: We find what it is that's meaningful to talk about it with
18 somebody. You should be able to grasp that whether it's completely from the heart
19 or sometimes from the head as well.

20 MS. SUNDRA PHILLIPS: Uh-huh.

21 THE COURT: But it's good to write things down and organize your thoughts,
22 but you've spoken wonderfully, and I hope you're --

23 MS. SUNDRA PHILLIPS: Oh, I hope so. Thank you.

24 THE COURT: I hope you're -- I hope you're proud of Eboni as well.
25 She's concerned about you being proud --

1 MS. SUNDRA PHILLIPS: Oh, great.

2 THE COURT: -- but she did a wonderful job.

3 MS. SUNDRA PHILLIPS: I know. She's very, very -- they're all so great. I
4 mean, they're my children, but they're all great, and I love them and --

5 THE COURT: Okay. You've done a --

6 MS. SUNDRA PHILLIPS: You know, God's getting us through. We're
7 not -- and Christ -- I just want to say this to everyone. When I think about my son
8 being gone, I look at Christ on the cross, how God gave his son for us, and we're
9 not worthy. So it keeps things in perspective where it comes to my son, and for all
10 of my family, if it brings us close to God, then he had to go because we're all closer
11 to God. So I want to say thank you --

12 THE COURT: Thank you.

13 MS. SUNDRA PHILLIPS: -- for your time. I appreciate it.

14 THE COURT: All right. And who else, Mr. Rogan?

15 MR. ROGAN: No one else, Your Honor. Thank you.

16 THE COURT: Okay. Well, my gosh, these are always incredibly difficult
17 cases, and Mr. Rogan is right in that, you know, the Court evaluates homicide
18 cases every day, and it never gets any easier to see the things that families go
19 through. And Ms. Phillips is right, and it's families on both sides.

20 I mean, there's -- I was talking to the high school students that are here
21 with me this week, you know. Sometimes people live in this moment of something
22 that happened, and when you come to court, you see it all play out, you realize the
23 ripple effects of things that happen and the strings that are attached to that and
24 how they affect families, you know, over and over again.

25 And, look, Mr. McNair, I'll tell you, I very much respect your right to

1 maintain your innocence in the matter. I will also tell you that I think there was
2 overwhelming evidence in my mind of your guilt, but I respect the right to maintain
3 your innocence.

4 But issues regarding, you know, your inability to be around your children
5 moving forward for what is going to be very lengthy period of time are issues of
6 your own making, and we have to take responsibility for that. We can't, you know,
7 point to throughout our adult lives and say, you know, I had a problem growing up
8 because my father wasn't there or my wasn't there. I mean, at some point we
9 make the choices, right?

10 THE DEFENDANT: Yes.

11 THE COURT: You and I were not any different in that regard. I wouldn't try
12 and compare my upbringing to yours in any fashion, but there are things, you
13 know, lessons I learned about how I was treated, you know, whether it was belts or
14 tree limbs or things like that were mine because I grew up in the South where my
15 grandfather said, Go pick your tree limb, and you're about to get disciplined. So I
16 knew moving forward with my kids, I was never going to take a belt to my child or a
17 tree limb to my child or anything like that.

18 But it's just -- you've got to know and recognize that I don't like the
19 things that happened to me or what was around when I was child, and you try and
20 make sure you don't repeat that moving forward and do a little better with your own
21 kids. And I'm not saying that you're doing -- you're trying to present to me any kind
22 of poor me situation. I'm not saying that at all. I think you're sincere in saying, I
23 want to be better for my kids. But one thing you did say that I will say that I
24 disagree with, which is, you're not that kind of person. You are that kind of person.
25 And that's just part of owning responsibility, right?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: I mean, you're the person that escalated a situation with
3 Gordon Phillips and resulted in his death, so that's just what the evidence shows.
4 When you say, you know, I learned my lesson from everything, I got a series of
5 crimes, felony convictions in 2008, 2009, 2011, 2012, 2016 and failures on parole
6 and probation every time. So there's kind of something that I look at there and say,
7 maybe you're not learning that lesson.

8 THE DEFENDANT: Right.

9 THE COURT: Now, are they a bunch of violent crimes? No. Were they
10 things that are going to predict this? Probably not. But on the other hand, if you're
11 true in saying, I want to be better for my kids, then you can't keep committing
12 crimes and failing probations and paroles over and over again and expect that
13 somebody's going to say, oh, yeah, he absolutely is sincere in wanting to do all
14 these other things. I mean, at some point you've got to say, hey, I got to look at
15 myself and own my luggage.

16 THE DEFENDANT: Yes.

17 THE COURT: I'm not doing a very good job, and I haven't really got to that
18 point in my life where I need to really be doing a good job and recognize that
19 mentally.

20 THE DEFENDANT: Right.

21 THE COURT: Because this is just, you know, incredibly tragic. Every life
22 has value. Whether it's you, me or Gordon Phillips, every single life has value.
23 And sometimes it's not the fact as we all know it that every single person has the
24 ability to cure cancer or solve the world's problems, but everybody by their flaws
25 and failings also has the ability to teach us great lessons.

1 I learned lessons from people like yourself that are in custody every day.
2 I learn lessons from families that grieve and mourn their loved ones and have the
3 ability to come in here with compassion in their heart and say, I forgive the person
4 that murdered my child, and if that's what needed to happen to bring me closer to
5 God, then that's what needed to happen. I don't know that I could do that --

6 THE DEFENDANT: Right.

7 THE COURT: -- quite honestly. And that's incredibly impactful to me. The
8 amount of time my kids have spent working with homeless people and autistic
9 children and anybody else within charitable organizations and the lessons they
10 learn from that, every single person is impactful. And to waste a life on this
11 situation is mindboggling to me. It's just mind boggling to me.

12 And I agree with Mr. Rogan, it's not just the never seen a case where
13 music resulted in something like this happened -- happening, it's just the trivial little
14 things that happen in our society these days that result in homicide. Trivial, trivial
15 little things, I mean, where people just can't say count to ten and walk away, right?

16 I mean, this guy comes over and says, turn your music down, and
17 maybe you don't like it while you're on your break or whatever, but -- you know,
18 maybe you bad mouth him a little bit, and then you go back to work. That's it. But
19 to cross the street and go after and then Mitchell gets involved and go back over
20 there after him again, people -- there's just this desire to assert some kind of
21 control and authority and let me show you who's boss kind of thing and every day
22 with younger and younger men and homicide cases and people dead and people
23 going to prison. It's just -- it is so incredibly tragic.

24 But I appreciate not only the compassion of Mr. Phillips' family, but the
25 concession of the State to say, we're not going to argue for life without parole or

1 just as importantly, to seek to habitually criminalize you because you've got the
2 requisite number of felony convictions, and when somebody gets involved in a
3 homicide, it wouldn't be unusual for the State to say, we want to habitualize you
4 and sentence you to life without the possibility of parole and say, you know, we're
5 done. On the other hand, I don't believe that the absolute minimum sentence
6 applies either.

7 So having considered everything, including the factors under
8 NRS 193.165 regarding the weapon enhancement, your sentence will be as
9 follows: There's a \$25 administrative fee; \$150 DNA fee. That will be waived if it
10 was collected previously. \$750 for trial; indigent attorney's fees; \$3 DNA collection
11 fee; 250 fine. I will order the \$5,000 in restitution as well payable to victims of
12 crime.

13 On Count 1, for the first degree murder portion of the charge, I'm going
14 to sentence you to life in the Nevada Department of Prisons with a minimum 20
15 years before parole eligibility. For the weapon enhancement, it's going to be a
16 maximum 240 months. Minimum parole eligibility of 60 months. So that's 5 to 20
17 consecutive. So that aggregate term for that charge is life in prison with a
18 minimum of 25 years before parole eligibility.

19 On Count 2, the carrying concealed firearm charge, I'm going to
20 sentence you to 24 to 60 months. That will run concurrent to Count 1. And I
21 believe Mr. Rogan's right that there was some credit that was credited towards
22 when he was in on the parole hold.

23 MR. PIKE: That is correct, Your Honor.

24 THE COURT: Okay.

25 MR. PIKE: I appeared before Judge Delaney when this case was pending

1 and --

2 THE COURT: So do you agree with the 530 number?

3 MS. SIMPKINS: Yes, Your Honor.

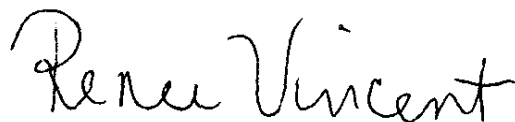
4 THE COURT: Okay. So 530 days credit for time served. All right.

5 Thank you all very much. And please, again, don't apologize for being late. The
6 Court runs for a really long period of time, so if you're here before we're done,
7 you're right on time. Don't worry, okay? Thank you for coming to court very much.

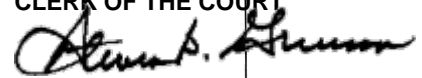
8 MR. ROGAN: Thank Your Honor.

9 [Proceedings concluded 12:25 p.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



JOCP

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

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165; and COUNT 2 – CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON (Category C Felony) in violation of NRS 202.350(1)(d)(3); and the matter having been tried before a jury and the Defendant having been found guilty of the crimes of COUNT 1 – FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (Category A Felony) in violation of NRS 200.010, 200.030, 193.165; and COUNT 2 – CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON (Category C

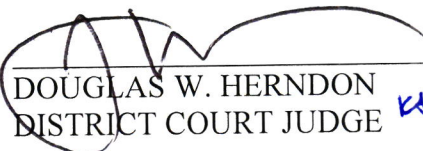
001964

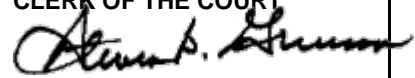
1 Felony) in violation of NRS 202.350(1)(d)(3); thereafter, on the 1st day of May, 2019, the
2 Defendant was present in court for sentencing with counsel MELINDA SIMPKINS and
3 RANDALL PIKE, Chief Deputy Special Public Defenders, and good cause appearing,
4

5 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition
6 to the \$25.00 Administrative Assessment Fee, \$750.00 Indigent Defense Civil Assessment Fee,
7 \$250.00 Fine, \$5,000.00 Restitution to Victims of Crime and \$150.00 DNA Analysis Fee
8 including testing to determine genetic markers (waived if previously collected) plus \$3.00 DNA
9 Collection Fee, the Defendant is sentenced to the Nevada Department of Corrections as follows:
10

11 **COUNT 1** – LIFE with the eligibility for parole after serving a MINIMUM of TWENTY (20)
12 YEARS plus a CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS with a
13 MINIMUM parole eligibility of SIXTY (60) MONTHS for the Use of a Deadly Weapon,
14 Aggregate Total is LIFE with a MINIMUM PAROLE ELIGIBILITY OF THREE HUNDRED
15 (300) MONTHS; and **COUNT 2** - a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM
16 parole eligibility of TWENTY-FOUR (24) MONTHS, CONCURRENT with COUNT 1; with
17 FIVE HUNDRED THIRTY (530) DAYS credit for time served
18

19 DATED this 15th day of May, 2019.
20

21
22 
23 DOUGLAS W. HERNDON
24 DISTRICT COURT JUDGE *lt*
25
26
27
28



NOAS
JONELL THOMAS
SPECIAL PUBLIC DEFENDER
NSB No. 4771
NAVID AFSHAR
Deputy Special Public Defender
NSB No. 14465
330 South Third Street, 8th Floor
Las Vegas, NV 89155
(702) 455-6265
Fax No. 702-455-6273
thomasjn@clarkcountynv.gov
navid.afshar@clarkcountynv.gov

Attorneys for McNair

DISTRICT COURT
COUNTY OF CLARK, STATE OF NEVADA

THE STATE OF NEVADA,)	CASE NO. C-17-327395-1
)	DEPT. NO. 3
Plaintiff,)	
)	
vs.)	
)	
MICHAEL McNAIR,)	
)	
Defendant,)	

NOTICE OF APPEAL

TO: THE STATE OF NEVADA, Plaintiff;
TO: CLARK COUNTY DISTRICT ATTORNEY, Plaintiff's attorney; and
TO: DEPARTMENT 3 OF THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK:

NOTICE is hereby given that Michael McNair hereby appeals to the Nevada Supreme

...
...

1 Court from the Judgment of Conviction (Jury Trial) filed May 3, 2019

2 DATED May 22, 2019

3 SUBMITTED BY:

4 /s/ NAVID AFSHAR

5
6 BY _____
7 NAVID AFSHAR
8 JONELL THOMAS
9 Attorneys for McNair

10 **CERTIFICATE OF MAILING**

11 The undersigned does hereby certify that on 5/22/19, I deposited in the United States Post Office
12 at Las Vegas, Nevada, a copy of the Notice of Appeal, postage prepaid, addressed to the following:

13 District Attorney's Office
14 200 Lewis Ave., 3rd Floor
15 Las Vegas NV 89155

16 Nevada Attorney General
17 100 N. Carson
18 Carson City, NV 89701-4717

19 Michael McNair, ID 1082775
20 High Desert State Prison
21 P.O. Box 650
22 Indian Springs NV 89070

23 Dated: 5/22/19

24 /s/ KATHLEEN FITZGERALD

25 _____
26 KATHLEEN FITZGERALD
27 An employee of The Special Public
28 Defender's Office

EXHIBIT(S) LIST

Case No.: **c-17-327395-1**

Trial Date:

FEB 26 2019

Dept. No.: **III**

Judge:

DOUGLAS W. HERNDON

Court Clerk:

KORY SCHLITZ

Plaintiff: **STATE OF NEVADA**

Recorder:

SARA RICHARDSON

Counsel for Plaintiff:

J. Bluth &

vs.

J. Rogan

Defendant: **MICHAEL MCNAIR**

Counsel for Defendant:

R. Pike &

M. Simpkins

TRIAL BEFORE THE COURT

STATE'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
1	CD - entire video	2/28/19	Stip	2/28/19
2	Photo - Aerial View	2/28/19	Stip	2/28/19
3	Photo - Aerial View			
4	Photo - CSA			
5	Photo - Street view			
6	Photo - Sidewalk view			
7	Photo - sidewalk view			
8	Photo - Street view			
9	Photo - street orange cones			
10	Photo - street orange cone/bullet			
11	Photo - close up bullet casing			
12	Photo - street view with cones			
13	Photo - bullet casing			
14	Photo - bullet casing			
15	Photo - street bullet casing			
16	Photo - bullet casing			
17	Photo - bullet - close up	2/28/19	Stip	2/28/19

EXHIBIT(S) LIST

c-17-327395-1

STATE OF NEVADA

VS.

MICHAEL MCNAIR

STATE'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
18	Photo - street bullet casing	2/28/19	Stip	2/28/19
19	Photo - top of bullet			
20	Photo - Rocks with blanket			
21	Photo - shoe & blanket			
22	Photo - bullet casing			
23	Photo - bullet on cone			
24	Photo - shoe & blanket & blood			
25	Photo - shoe, blanket & Blood			
26	Photo - bullet casing			
27	Photo - bullet on cone			
28	Photo - blanket & blood			
29	Photo - blanket & blood			
30	Photo - mat & shoe			
31	Photo - Shoe & blood drops			
32	Photo - Street view			
33	Photo - street view			
34	Photo - bullet			
35	Photo - lighter			
36	Photo - packaging			
37	Photo - packaging plant			
38	Photo - packaging plant-truck			
39	Photo - Red & Blue Shirt rack			
40	Photo - green laundry basket			
41	Photo - green laundry, basket-shirt			
42	Photo - Romero - full Body	2/28/19	Stip	2/28/19

EXHIBIT(S) LIST

c-17-327395-1

STATE OF NEVADA

VS.

MICHAEL MCNAIR

STATE'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
43	Photo Romero - Face	2/28/19	Stip	2/28/19
44	Photo - Romero - Hands - top			
45	Photo - Ramiro Romero - Hands - bot			
46	Photo - Deft - full Body			
47	Photo - Deft. Head Shot			
48	Photo - Deft. Full Body side			
49	Photo - Deft. full Body/Hands			
50	Photo - Deft. Hands			
51	Photo - Parking lot			
52	Photo - Black truck			
53	Photo - Black truck			
54	Photo - NV Registration			
55	Photo - Plant / Ladder			
56	Photo - Plant / Ladder			
57	Photo - Plant - boxes			
58	Photo - Desk			
59	Photo - Red backpack			
60	Photo - Red backpack (opened)			
61	Photo - Glock handgun			
62	Photo - Glock handgun/mag/bullets			
63	Photo - Glock - loaded			
64	Photo - Street view (daylight)			
65	Photo - Street view (daylight)			
66	Photo - Sidewalk view (daylight)	↓	↓	↓
67	Photo - Sidewalk view - shove + rake	2/28/19	Stip	2/28/19

EXHIBIT(S) LIST

c-17-327395-1

STATE OF NEVADA

VS.

MICHAEL MCNAIR

STATE'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
68	Photo - bullet in rocks	2/28/19	Stip	2/28/19
69	Photo - bullet	↓	↓	↓
70	Photo - Deft. work shirt	↓	↓	↓
71	Photo - Deft. keys.	2/28/19	Stip	2/28/19
72	Photo	3/1/19	Stip	3/1/19
73	Photo - green lockers + hallway	↓	↓	↓
74	Photo	↓	↓	↓
75	Photo - green lockers	↓	↓	↓
76	Photo - contents inside green locker	↓	↓	↓
77	Photo - magazine front cover	↓	↓	↓
78	Photo - magazine address	↓	↓	↓
79	Photo - evidence Bag w/bullets	↓	↓	↓
80	Photo	↓	↓	↓
81	Photo - gun Serial #	↓	↓	↓
82	Photo - glock magazine	↓	↓	↓
83	Photo - bullet head	↓	↓	↓
84	Photo	↓	↓	↓
85	Photo	↓	↓	↓
86	Photo	↓	↓	↓
87	Photo	3/1/19	Stip	3/1/19
88	Autopsy Photo	3/5/19	Stip	3/5/19
89	Autopsy Photo	↓	↓	↓
90	Autopsy Photo	↓	↓	↓
91	Autopsy Photo	↓	↓	↓
92	Autopsy Photo	3/5/19	Stip	3/5/19

EXHIBIT(S) LIST

c-17-327395-1

STATE OF NEVADA

VS.

MICHAEL MCNAIR

STATE'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
93	Autopsy Photo	3/5/19	stip	3/5/19
94	Autopsy Photo	↓	↓	↓
95	Autopsy Photo	3/5/19	stip	3/5/19
96	Autopsy Photo - withdrawn	_____	_____	_____
97	Autopsy Photo	3/5/19	stip	3/5/19
98	Autopsy Photo	↓	↓	↓
99	Autopsy Photo	↓	↓	↓
100	Autopsy Photo	↓	↓	↓
101	Autopsy Photo	↓	↓	↓
102	Autopsy Photo	↓	↓	↓
103	Autopsy Photo	↓	↓	↓
104	Autopsy Photo	↓	↓	↓
105	Autopsy Photo	↓	↓	↓
106	Autopsy Photo	↓	↓	↓
107	Autopsy Photo	↓	↓	↓
108	Autopsy Photo	↓	↓	↓
109	Autopsy Photo	↓	↓	↓
110	Autopsy Photo	↓	↓	↓
111	Autopsy Photo	↓	↓	↓
112	Autopsy Photo	↓	↓	↓
113	Autopsy Photo	3/5/19	stip	3/5/19
114	Autopsy Photo withdrawn	_____	_____	_____
115	Autopsy Photo	3/5/19	stip	3/5/19
116	Autopsy Photo	3/5/19	stip	3/5/19
117	Autopsy Photo withdrawn	_____	_____	_____

EXHIBIT(S) LIST

c-17-327395-1

STATE OF NEVADA

VS.

MICHAEL MCNAIR

STATE'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
118	Autopsy Photo	3/5/19	stip	3/5/19
119	Autopsy Photo	↓	↓	↓
120	Autopsy Photo	3/5/19	stip	3/5/19
121	Floor Plan with highlighter	3/1/19	stip	3/1/19
122	Employee Incident Report	3/1/19	no	3/1/19
123	Photo - Red Shirt "Joe"	3/4/19	no	3/4/19
124	Photo - Red Shirt "golden wheat"	3/4/19	no	3/4/19
125	CD- Romero Comp	3/4/19	no	3/4/19
126	Surreptitious Recording	3/4/19	yes	—
127	McNair Comp Video- CD	3/5/19	stip	3/5/19
128	McNair original video - CD	3/5/19	stip	3/5/19
129	CD's (14 total)	3/6/19	stip	3/6/19
130				
131				
132				
133				
134				
135				
136				
137				
138				
139				
140				
141				
142				

EXHIBIT(S) LIST

Case No.: **C-17-327395-1**

Trial Date:

FEB 26 2019

Dept. No.: **III**

Judge:

DOUGLAS W. HERNDON

Court Clerk:

KORY SCHLITZ

Plaintiff: **STATE OF NEVADA**

Recorder:

SARA RICHARDSON

Counsel for Plaintiff:

J. Bluth &

vs.

Defendant: **MICHAEL MCNAIR**

Counsel for Defendant:

J. Rogan

R. Pike &

M. Simpkins

TRIAL BEFORE THE COURT

COURT'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
1	Race & Ethnicity Report	2/26/19		
2	Transcript from C-293029	2/26/19		
3	2018 Census Stats	2/26/19		
4	Peremptory Challenges/Jury List	2/27/19		
5	Juror Question	2/28/19		
6	Juror Question	2/28/19		
7	Juror Question	2/28/19		
8	Juror Question	2/28/19		
9	Juror Question	3/1/19		
10	Juror Question	3/1/19		
11	Juror Question	3/1/19		
12	Juror Question	3/1/19		
13	Juror Question	3/1/19		
14	Juror Question	3/1/19		
15	Juror Question	3/1/19		
16	Juror Question	3/4/19		
17	Juror Question	3/4/19		

EXHIBIT(S) LIST

c-17-327395-1

STATE OF NEVADA

VS.

MICHAEL MCNAIR

COURT'S EXHIBITS

[illegible]

EXHIBIT(S) LIST

Case No.: **C-17-327395-1**

Trial Date:

FEB 26 2019

Dept. No.: **III**

Judge:

DOUGLAS W. HERNDON

Court Clerk:

KORY SCHLITZ

Plaintiff: **STATE OF NEVADA**

Recorder:

SARA RICHARDSON

Counsel for Plaintiff:

J. Bluth +

vs.

J. Rogan

Defendant: **MICHAEL MCNAIR**

Counsel for Defendant:

R. Pike +

M. Simpkins

TRIAL BEFORE THE COURT

DEFENDANT'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
A	gun with magazine clip/bullets	3/1/19	stip	3/1/19
B	Red backpack with gun	↓	↓	↓
C	Spoon & Black Box	↓	↓	↓
D	Contents from Red Backpack	↓	↓	↓
E	DNA Swabs - gun	↓	↓	↓
F	DNA Swabs - gun	↓	↓	↓
G	Picture of Mitchell Johnson	3/1/19	Stip	3/1/19
H	Golden Wheat Claim	3/1/19	no	3/1/19
I	Notice of Claim Acceptance	3/1/19	no	3/1/19

Amended EXHIBIT(S) LIST

Case No.: C-17-327395-1

Trial Date: _____

FEB 26 2019

Dept. No.: III

Judge: _____

DOUGLAS W. HERNDON

Court Clerk: _____

KORY SCHLITZ

Plaintiff: STATE OF NEVADA

Recorder: _____

SARA RICHARDSON

Counsel for Plaintiff: _____

J. Bluth &

vs.

Defendant: MICHAEL MCNAIR

J. Rogan

Counsel for Defendant: _____

R. Pike &

M. Simpkins

TRIAL BEFORE THE COURT

COURT'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
1	Race + Ethnicity Report	2/26/19	_____	_____
2	Transcript from C-293029	2/26/19	_____	_____
3	2018 Census Stats	2/26/19	_____	_____
4	Peremptory Challenges/Jury List	2/27/19	_____	_____
5	Juror Question	2/28/19	_____	_____
6	Juror Question	2/28/19	_____	_____
7	Juror Question	2/28/19	_____	_____
8	Juror Question	2/28/19	_____	_____
9	Juror Question	3/1/19	_____	_____
10	Juror Question	3/1/19	_____	_____
11	Juror Question	3/1/19	_____	_____
12	Juror Question	3/1/19	_____	_____
13	Juror Question	3/1/19	_____	_____
14	Juror Question	3/1/19	_____	_____
15	Juror Question	3/1/19	_____	_____
16	Juror Question	3/4/19	_____	_____
17	Juror Question	3/4/19	_____	_____

EXHIBIT(S) LIST

c-17-327395-1

STATE OF NEVADA

VS.

MICHAEL MCNAIR

COURT'S EXHIBITS

[illegible]

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 25, 2017

C-17-327395-1 State of Nevada
 vs
 Michael McNair

October 25, 2017 10:00 AM Initial Arraignment

HEARD BY: De La Garza, Melisa

COURTROOM: RJC Lower Level Arraignment

COURT CLERK: Kristen Brown
 Christopher Darling/cd
 Madalyn Kearney

RECORDER: Kiara Schmidt

PARTIES

PRESENT:	McNair, Michael	Defendant
	Merback, William J.	Attorney for State
	Pike, Randall H.	Attorney for Deft.
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT. MCNAIR ARRAIGNED, PLED NOT GUILTY, and WAIVED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT ORDERED, pursuant to Statute, Counsel has 21 days from today for the filing of any Writs; if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript.

CUSTODY (COC)

10/31/17 9:00 AM STATUS CHECK: TRIAL SETTING (DEPT 3)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 31, 2017

C-17-327395-1 State of Nevada
 vs
 Michael McNair

October 31, 2017 8:30 AM Status Check: Trial Setting

HEARD BY: Herndon, Douglas W.

COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

PARTIES

PRESENT:	Bluth, Jacqueline	Attorney for State
	Luong, Vivian	Attorney for State
	McNair, Michael	Defendant
	Pike, Randall H.	Attorney for Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

Mr. Pike advised case is assigned to Ms. Bluth. Matter TRAILED and RECALLED. All parties present. Mr. Pike advised defendant waived his right to a speedy trial previously. COURT ORDERED, counsel has 21 days from the receipt of copy of transcripts to file any Writs. Upon Court's inquiry, Ms. Bluth advised matter will not be going in front of the Death Review Committee. Pursuant to EDCR 1.30 and 1.31 this court ORDERS the case REASSIGNED to Department 3. Discussion regarding trial date. COURT ORDERED, matter SET for trial and Status Check.

CUSTODY (COC)

1/10/18 9:00 AM STATUS CHECK: TRIAL READINESS

7/12/18 9:00 AM CALENDAR CALL

7/23/18 10:00 AM JURY TRIAL

PRINT DATE: 12/04/2017

Page 1 of 1

Minutes Date: October 31, 2017

001980

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****January 09, 2018**

C-17-327395-1 State of Nevada
 vs
 Michael McNair

January 09, 2018 09:00 AM Petition for Pre-Trial Writ of Habeas Corpus

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Darling, Christopher; Kearney, Madalyn; Kidd, Lauren; Miller, Deborah; Naumec-Miller, Anntoinette; Tapia, Michaela; Williams, Chante

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Jacqueline Bluth	Attorney for Plaintiff
Michael McNair	Defendant
Randall H. Pike	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES**PETITION FOR PRE-TRIAL WRIT OF HABEAS CORPUS**

Arguments by counsel. Court clarified with Mr. Pike that Defendant is not charged with conspiracy. COURT ORDERED, petition DENIED. COURT FINDS evidence is sufficient for an indictment to stand; noting the video indicates enough for a Jury to reasonably decide. Upon Court's inquiry, Ms. Bluth informed him parties will hold a file review at 2:00 p.m. Ms. Bluth stated she will review her computer for files from homicide and forward them to Mr. Pike. Mr. Pike advised he is prepared for the trial date. COURT FURTHER ORDERED, Status Check VACATED and RESET. Upon Court s inquiry, parties indicated they are waiting on the forensics prior to any discussion relating to a negotiation.

CUSTODY

2/7/18 9:00 AM STATUS CHECK: TRIAL READINESS

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 07, 2018

C-17-327395-1 State of Nevada
 vs
 Michael McNair

February 07, 2018 09:00 AM Status Check: Trial Readiness

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Miller, Deborah

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Jeffrey Rogan	Attorney for Plaintiff
Michael McNair	Defendant
Randall H. Pike	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Mr. Pike advised most of the witnesses are homeless and they are attempting to locate them, as well as, the defense is waiting on forensics on a gun. Mr. Rogan stated he believes the request has been submitted. COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 3/07/18 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 20, 2018

C-17-327395-1 State of Nevada
vs
Michael McNair

March 20, 2018 9:00 AM All Pending Motions

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: April Watkins

RECORDER: Sara Richardson

PARTIES

PRESENT:	Bluth, Jacqueline	Attorney for Pltf.
	McNair, Michael	Defendant
	Pike, Randall H.	Attorney for Deft.
	State of Nevada	Plaintiff

JOURNAL ENTRIES

- DEFT'S MOTION FOR DISCLOSURE OF EVIDENCE AND MOTION TO HAVE THE HANDGUN THAT WAS RECOVERED TESTED FOR DNA...STATUS CHECK: TRIAL READINESS

Court noted Deft's counsel wants gun tested forensically which is being done and no report has been done yet. Ms. Bluth confirmed testing is being done on the gun. Court stated as to NCIC, not an obligation to NCIC everyone in case unless there is a scintilla of something there. Mr. Pike argued potential witness for the State identified at time of Preliminary Hearing as the actual shooter in the case. Further, counsel located witness, interviewed him and he was less than forthcoming. Additionally, counsel stated two individuals were interviewed in ELY based on information received by them looking for as to that witness. Colloquy. Mr. Pike requested LRMS be checked as to what cases he was involved in or if he has been a confidential informant. Ms. Bluth stated she has no objection looking up case as to confidential informant and working witness. COURT ORDERED, State to do LRMS check and run check on confidential informant. Mr. Pike stated if those things done, counsel is working on video to be enhanced. FURTHER ORDERED, status check CONTINUED.

PRINT DATE: 04/10/2018

Page 1 of 2

Minutes Date: March 20, 2018

001983

C-17-327395-1

CUSTODY

4/17/18 9:00 AM STATUS CHECK: TRIAL READINESS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 10, 2018

C-17-327395-1 State of Nevada
 vs
 Michael McNair

April 10, 2018 9:00 AM Motion to Clarify Bail

HEARD BY: Herndon, Douglas W.

COURTROOM: RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

PARTIES

PRESENT:	Bluth, Jacqueline	Attorney for State
	McNair, Michael	Defendant
	Pike, Randall H.	Attorney for Defendant
	State of Nevada	Plaintiff

JOURNAL ENTRIES

Mr. Pike advised matter is on calendar for Court to clarify if the District Court's order regarding bail is the same as Justice Court's order. Conference at the Bench. COURT ORDERED, bail STANDS at \$100,000 with HOUSE ARREST. Court noted that the State may be filing a bail motion and requested Ms. Bluth place on calendar with the status check. COURT FURTHER ORDERED, Status Check VACATED and RESET. Mr. Pike stated he received the LRMS items that the defense requested, noting they are still waiting on the DNA.

CUSTODY

4/18/19 9:00 AM STATUS CHECK: TRIAL READINESS...STATE'S BAIL MOTION

PRINT DATE: 04/16/2018

Page 1 of 1

Minutes Date: April 10, 2018

001985

Felony/Gross Misdemeanor

COURT MINUTES

April 19, 2018

C-17-327395-1 State of Nevada
 vs
 Michael McNair

April 19, 2018 09:00 AM All Pending Motions

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Miller, Deborah

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Jacqueline Bluth	Attorney for Plaintiff
Jeffrey Rogan	Attorney for Plaintiff
Michael McNair	Defendant
Randall H. Pike	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

STATE'S MOTION TO ADDRESS BAIL...STATUS CHECK: TRIAL READINESS

COURT ORDERED, State's Motion to Increase Bail FILED IN OPEN COURT UNDER SEAL, noting motion is being filed under seal due to the nature of information included in the motion. Arguments by counsel. COURT ORDERED, motion GRANTED, bail RESET to \$250,000 with House Arrest, trial date STANDS. COURT FURTHER ORDERED, matter SET for Status Check. Mr Pike advised he is still waiting on the forensics. Ms. Bluth advised she contacted the lab.

CUSTODY

5/23/18 9:00 AM STATUS CHECK: TRIAL READINESS

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

May 23, 2018

C-17-327395-1 State of Nevada
 vs
 Michael McNair

May 23, 2018 09:30 AM Status Check: Trial Readiness

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Miller, Deborah

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Jeffrey Rogan	Attorney for Plaintiff
Michael McNair	Defendant
Randall H. Pike	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Mr. Pike advised the final forensics have come in, noting an offer of second degree murder with use, right to argue was extended and the defense countered with an offer of second with use, term of 12/30 years. Counsel stated Ms. Bluth is currently in trial, therefore, they need to discuss offer further. Upon Court's inquiry, Mr. Pike stated he is waiting to receive the video with enhancements, however, he anticipates being ready for trial. Mr. Rogan requested the defense provide a copy of the enhanced video.

CUSTODY

CONTINUED TO: 6/20/18 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

June 20, 2018

C-17-327395-1 State of Nevada
 vs
 Michael McNair

June 20, 2018 9:30 AM Status Check: Trial Readiness

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Deborah Miller

RECORDER: Sara Richardson

PARTIES

PRESENT: McNair, Michael Defendant
 Pike, Randall H. Attorney for Defendant

JOURNAL ENTRIES

Also present: Giancarlo Pesci, Deputy District Attorney, appearing for Jacqueline Bluth, Deputy District Attorney.

Mr. Pike noted the State offered a Second Degree Murder with Use of a Deadly Weapon, stipulated sentence of 15/40 years. The defense counter-offered with a Second Degree with Use of a Deadly Weapon, stipulated sentence of 11/28 years. Further, parties are discussing other stipulations regarding the trial. Mr. Pike noted parties anticipate being ready for trial, noting he will be filing motions relating to witnesses. Court requested counsel use the calendar call date of July 12, 2018 if he files any motions. Trial is expected to last one and one-half weeks. COURT ORDERED, calendar call date STANDS.

OR

7/12/18 9:00 AM CALENDAR CALL...ARGUMENT: MOTIONS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 12, 2018

C-17-327395-1 State of Nevada
 vs
 Michael McNair

July 12, 2018 9:00 AM All Pending Motions

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Deborah Miller/dm
 Lauren Kidd

RECORDER: Sara Richardson

PARTIES

PRESENT:	McNair, Michael	Defendant
	Pike, Randall H.	Attorney for Defendant
	Rogan, Jeffrey	Attorney for State
	Simpkins, Melinda E.	Attorney

JOURNAL ENTRIES

ARGUMENT: MOTIONS...CALENDAR CALL

Court noted matter has a trial date set for July 23, 2018. Mr. Rogan advised the State is ready, however, the State has requested confirmatory testing be done on the firearm as the State just became aware of an earlier shooting that involved the same firearm used in the instant case. Defense may have further investigation depending on the results. Mr. Pike concurred, noting the two main witnesses are homeless and the defense will be requesting Material Witness warrants. COURT ORDERED, material witness WARRANTS TO ISSUE on Anthony Raza and Ryan Prost are the witnesses. Court requested parties contact the Court after the results have been obtained to inform whether or not parties will be ready. Mr. Pike noted the State extended an offer until Friday, July 13, 2018. Upon Court's inquiry, Mr. Pike noted the offer of Second Degree with Use, stipulate to 14/35 years, and State would not refer to Federal authorities.

CUSTODY

PRINT DATE: 07/16/2018

Page 1 of 1

Minutes Date: July 12, 2018

001989

C-17-327395-1

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 18, 2018

C-17-327395-1 State of Nevada
 vs
 Michael McNair

July 18, 2018 09:30 AM Status Check: Trial Readiness

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Miller, Deborah; Schlitz, Kory

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Jacqueline Bluth	Attorney for Plaintiff
Melinda E. Simpkins	Attorney for Defendant
Michael McNair	Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Ms. Simpkins requested the trial date be vacated and reset. Colloquy regarding forensic evidence testing and resetting of trial dates. COURT ORDERED, trial date VACATED and RESET; status check CONTINUED.

CUSTODY

10/24/18 9:30 A.M. STATUS CHECK: TRIAL READINESS

2/14/19 9:00 A.M. CALENDAR CALL

2/25/19 10:00 A.M. JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

October 24, 2018

C-17-327395-1 State of Nevada
 vs
 Michael McNair

October 24, 2018 09:30 AM Status Check: Trial Readiness

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Schlitz, Kory

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Jacqueline Bluth	Attorney for Plaintiff
Jeffrey Rogan	Attorney for Plaintiff
Melinda E. Simpkins	Attorney for Defendant
Michael McNair	Defendant
Randall H. Pike	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Mr. Pike stated the weapon that was alleged to be used in this case, was not in fact used in another homicide, which had been represented at the time of the calendar call. Ms. Bluth stated the casing found in the area was attributed to that weapon, but not related to any other case. Mr. Pike indicated the State has provided Discovery, and he has provided a copy to the Defendant and everything is moving forward. Upon Court's inquiry, Mr. Pike stated there is nothing more from the ballistics aspect that could delay the trial, however they might file another Motion.

CUSTODY

CONTINUED TO: 11/21/18 9:30 A.M.

2/14/19 9:00 A.M. CALENDAR CALL

2/25/19 10:00 A.M. JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

December 05, 2018

C-17-327395-1 State of Nevada
 vs
 Michael McNair

December 05, 2018 09:30 AM Status Check: Trial Readiness

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Schlitz, Kory

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Jacqueline Bluth	Attorney for Plaintiff
Melinda E. Simpkins	Attorney for Defendant
Michael McNair	Defendant
Randall H. Pike	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Mr. Pike indicate the State has provided a possible source of the guy, the name of the individual, adding there was a GSR swabs that were taken and not tested. Ms. Bluth confirmed the representations, there were GSR swabs that were not tested, and therefore no report to turn over. Ms. Bluth further stated parties have completed a file review and there are no issues with experts. COURT ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 1/9/19 9:30 A.M.

2/14/19 9:00 A.M. CALENDAR CALL

2/25/19 10:00 A.M. JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

January 09, 2019

C-17-327395-1 State of Nevada
 vs
 Michael McNair

January 09, 2019 01:00 PM Status Check: Trial Readiness

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Schlitz, Kory

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Jacqueline Bluth

Attorney for Plaintiff

Melinda E. Simpkins

Attorney for Defendant

Michael McNair

Defendant

State of Nevada

Plaintiff

JOURNAL ENTRIES

Ms. Simpkins indicated Mr. Pike is in trial and requested his appearance be waived. Ms. Simpkins announced ready to go, however at recent hearings, the State made representations that the gun involved in this case was connected to another homicide, which resulted in the Defense requesting the matter be continued. Ms. Simpkins further stated that since the continuance the State has discovered additional evidence, and Mr. Pike intends to file a written motion to preclude the State from using the evidence. Colloquy regarding offers made. Upon Court's inquiry, Ms Bluth stated parties are still negotiating and the State is ready to proceed with trial.

CUSTODY

2/14/19 9:00 A.M. CALENDAR CALL

2/25/19 10:00 A.M. JURY TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 14, 2019

C-17-327395-1 State of Nevada
 vs
 Michael McNair

February 14, 2019 09:00 AM All Pending Motions

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Packer, Nylasia; Schlitz, Kory

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Jacqueline Bluth	Attorney for Plaintiff
Melinda E. Simpkins	Attorney for Defendant
Randall H. Pike	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

DEFENDANT'S MCNAIR'S MOTION IN LIMINE TO INTRODUCE PRELIMINARY HEARING TESTIMONY OF ANTHONY RAZO AND KENNETH SALDANA. DEFENDANT'S MOTION TO HAVE APPOINTED COUNSEL AVAILABLE FOR MITCHELL JOHNSON IF HE IS CALLED AS A STATE'S WITNESS... CALENDAR CALL...

Mr. Pike announced ready, adding he filed a Motion to publish Preliminary Hearing testimony, and the State has located one of the witnesses's, and the Defense is still unable to locate Kenneth Saldana. Upon Court's inquiry, Ms. Bluth stated no objection to the Motion regarding witness Kenneth Saldana. Mr. Pike indicated the State agrees there should be stand by counsel for Mitchell Johnson. COURT ORDERED, Motion GRANTED, and DIRECTED the State to provide the contact information of Anthony Razo to the Defense; the Court will contact the Office of Appointed Counsel to have an attorney appear when needed on behalf of Mitchell Johnson. Mr. Pike stated he issued a Subpoena for the telephone jail calls for the Defendant, and he served that on Metro with a Court date, and no one is present to comply with the Subpoena, adding he does not have access to the phone calls. Mr. Bluth stated it would not be an issue requesting the jail phone calls and she can provide a copy to Defense. Mr. Pike requested the calls by Wednesday February 20. COURT ADVISED if the Defense needs an order for the calls they can submit one. CONFERENCE AT BENCH. COURT ORDERED, trial date set for a Tuesday start.

CUSTODY

2/26/19 10:30 A.M. JURY TRIAL

Felony/Gross Misdemeanor

COURT MINUTES

February 26, 2019

C-17-327395-1 State of Nevada
 vs
 Michael McNair

February 26, 2019 10:30 AM All Pending Motions

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Schlitz, Kory

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Jacqueline Bluth	Attorney for Plaintiff
Jeffrey Rogan	Attorney for Plaintiff
Melinda E. Simpkins	Attorney for Defendant
Michael McNair	Defendant
Randall H. Pike	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS

DEFENDANT'S MOTION TO PRECLUDE THE STATE FROM USING ANY CCDC TELEPHONE RECORDS IN THE CASE IN CHIEF OR REBUTTAL... JURY TRIAL

Deputy Public Defender Navid Afshar present on behalf of Defendant

COURT ADVISED there is a pending Defense Motion to Preclude that will be ADVANCED and HEARD today. Ms. Bluth stated she did not file an Opposition, and she informed Mr. Pike she has reviewed several phone calls and there is nothing of significance, adding she reached out to Martina Rojas from LVMPD and provided a copy of the Subpoena, and requested LVMPD provide the calls to the Defense. Ms. Bluth further stated she forwarded the e-mail from Ms. Rojas that stated pursuant to NRS, it is not their process of how they provide calls. Mr. Pike stated he put a date on the subpoena for LVMPD to appear, which they did not, and he received a letter stating LVMPD would not provide the calls without a court's order. Mr. Pike stated he did the Ex-Parte Order and requested the calls from the State who informed him they will not have the calls available until this Friday. Ms. Bluth stated she cannot stipulate to the motion, since if the Defendant were to say something during the trial, the State would be bound by the stipulations. COURT STATED ITS FINDINGS, and ORDERED Defendant's Motion to Preclude is GRANTED; adding the Motion pertains to any phone calls that exist prior to today, if something arises during trial, then those calls were not Discoverable beforehand. COURT ORDERED, any phone calls that occurred prior to today can not be utilized during the case, any phone calls that occur moving forward is fair game, adding the State is required to turn that information over to the Defense.

Ms. Bluth stated Mitchell Johnson is outside the Courtroom, adding he is the Defendant's brother, and Drew Christensen's Office appointed Joshua Tomsheck Esq. as his counsel of record. COURT ADVISED, they did not know the witness was going to be present, therefore the Court did not notify Mr. Tomsheck.

Mitchell Johnson present. COURT ADVISED Mr. Johnson that Mr. Tomsheck has been appointed as his counsel of record on this case, if either party calls on him to testify. COURT REMINDED Mr. Johnson he is still under COURT ORDER to be available to testify, adding the State will provide contact information for Mr. Tomsheck.

Mr. Afshar requested Court's exhibits be marked, the race and ethnicity reports, and the census data, also the transcript of testimony from the Jury Commissioner from the Arenas trial. COURT SO ORDERED, exhibits marked. Mr. Afshar argued there is a comparative disparity between 57% and 58% from this Jury Venire. COURT ADVISED, their number was 58.4%. Mr. Afshar argued in the case of Morgan, the Supreme Court said anything over 50% is strong evidence of under representations. Mr. Afshar further argued lack of compliance with the Statute, for whatever reason, is systematic. Mr. Rogan argued the Jury poll has to be drawn from a fair cross representation of the community, and what we have present in Court's Exhibit 1, is the people who actually showed up to Court today. Mr. Rogan argued nothing informs the state whether the sources of the DMV, Nevada Energy, and the Voting rolls actually encompass a fair cross representation that would more appropriately mirror the Census Bureau statistics, which is what the parties would need in order to challenge the Jury Venire. Mr. Rogan requested the Defense's Motion be denied. COURT STATED ITS FINDINGS, and ORDERED Defendant's request to strike the Jury Venire is DENIED.

Upon Court's inquiry, Ms. Blurth stated nothing has changed with regards to the offers, the State offered a Second Degree Murder with Use, and the Defense rebuttal with Voluntary Manslaughter. Ms. Simpkins confirmed the representations.

PROSPECTIVE JURORS PRESENT

Introductions by Court and Counsel. Clerk called roll. Voir dire commenced. Challenges for cause placed on the record. Voir dire continued.

Court recessed for the evening and directed Prospective Jurors to return tomorrow.

CUSTODY

CONTINUED TO: 2/27/19 10:00 A.M.

C-17-327395-1 State of Nevada
 vs
 Michael McNair

February 27, 2019 10:00 AM Jury Trial

HEARD BY: Herndon, Douglas W. **COURTROOM:** RJC Courtroom 16C

COURT CLERK: Schlitz, Kory

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Jacqueline Bluth	Attorney for Plaintiff
Jeffrey Rogan	Attorney for Plaintiff
Melinda E. Simpkins	Attorney for Defendant
Michael McNair	Defendant
Randall H. Pike	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Deputy Public Defender Navid Afshar present on behalf of Defendant.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS

Mr. Pike stated the gun used in this case, was previously miss as a gun in another homicide, however is no more. Mr. Pike additionally informed the Court the owner of the gun is the cousin of the Defendant's wife, and the Defense anticipates he will be testifying, and per the gun owners oral statement, he suggested the Defendant may have take it from him, however there has been on Petrocelli Hearing to indicate that the Defendant stole the gun. Ms. Bluth stated it is Mr. House's legally owned the gun, and his position that the Defendant was not given permission to take it, and the State would not be addressing any bad acts.

PROSPECTIVE JURORS PRESENT

Continued Voir Dire.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS

Juror #20 Anthony Aguirre present and individually Voir Dire.

PROSPECTIVE JURORS PRESENT

Challenges for Cause placed on the record. Peremptory Challenges.

OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURORS

Mr. Afshar argued a Batson Challenge, regarding three Jurors the State peremptory challenged. Ms. Bluth argued the cases that Mr. Afshar stated are not just towards the State. COURT STATED ITS FINDINGS, and ORDERED Batson Challenge DENIED.

PROSPECTIVE JURORS PRESENT

Twelve jurors and two alternates selected.

Printed Date: 3/1/2019

Page 1 of 2

Minutes Date:

February 27, 2019

Prepared by: Kory Schlitz

001997

COURT recessed for the evening and directed Jurors to return tomorrow, and ORDERED matter CONTINUED.

CUSTODY

CONTINUED TO: 2/28/19 10:30 A.M.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

February 28, 2019

C-17-327395-1 State of Nevada
 vs
 Michael McNair

February 28, 2019 10:30 AM Jury Trial

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Packer, Nylasia; Schlitz, Kory

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Jacqueline Bluth	Attorney for Plaintiff
Jeffrey Rogan	Attorney for Plaintiff
Melinda E. Simpkins	Attorney for Defendant
Michael McNair	Defendant
Randall H. Pike	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Deputy Public Defender Navid Afshar present on behalf of Defendant.

OUTSIDE THE PRESENCE OF THE JURY

Ms. Bluth stated neither party has been able to locate or secure the presence of Ashley Parmley, and the State is actively looking for her to use as a witness, and her family has not heard from her either. Ms. Bluth stated the reason she is bringing this to the Court's attention, is due to Ms. Parmley sees the shooting, and describes the shooter, and also sees an individual in the 1300 block and identifies someone by the name of Alfonzo Henderson as the shooter, and does not believe this information should be appropriate in opening statements, since either party does not have a good basis of the witness. Mr. Pike stated the Defense has not be able to locate Ms. Parmley as well, and she did not testify at the Preliminary Hearing, therefore she was not a part of the Motion the Defense brought before the Court. Mr. Pike additionally stated without Ms. Parmley actually being present to testify, it would be a hearsay statement as to what she told detectives.

Ms. Bluth pointed out the State's first witness Anthony Razo was also homeless at the time this crime was committed, and living in this area as well, adding Mr. Razo was just released from jail on misdemeanor charges, and the State does not find that relevant to this case. Ms. Bluth stated the bigger issue is that Mr. Razo will be testifying as to witnessing the argument between the Victim and the Defendant before the shooting happens, and Mr. Razo will state the Victim keeps his hands behind his back with a shiny object, which he believes is a knife, however will not the Victim never brandishes the knife. Ms. Bluth indicated Mr. Razo tells the police, this is a valid, stand your ground, and the State does not believe that is not relevant testimony, and it is only Mr. Razo's opinion. Mr. Pike stated Mr. Razo was observing conduct between the parties, and it is fair game to cross examine him on. COURT STATED ITS FINDINGS, and ORDERED it is inappropriate for Mr. Razo to testify to his opinion, on whether the Defendant acted in self defense and acted in a stand your ground way, and that is something for the Jury to decide. Ms. Bluth stated Mr. Razo was in custody when he testified at the Preliminary Hearing, and in custody right before the crime occurred. Ms. Bluth stated she was referencing Mr. Razo being in custody

Printed Date: 3/2/2019

Page 1 of 2

Minutes Date:

February 28, 2019

Prepared by: Kory Schlitz

001999

right before the crime, since he's references that in his statement, and she State does not believe either of those are relevant. COURT ADVISED, if there is a Misdemeanor Domestic Violence charge, there is no relevant to bring up at all.

OUTSIDE THE PRESENCE OF THE JURY

Juror Neil White present and parties conducted Voir Dire. COURT ADVISED parties based upon the Voir Dire, Mr. White will be released as a juror.

JURY PRESENT

Jury Sworn. Clerk read the Information. Opening Statement by Ms. Bluth and Mr. Pike. Testimony and Exhibits presented. (See Worksheets).

OUTSIDE THE PRESENCE OF THE JURY

Mr. Afshar renewed his previous argument, adding he has reviewed NRS 6.405(5), which calls for the Jury Commissioner and her office, to track the race of every potential juror, and if by Statute, the Defense are getting jurors who are not identified, then the Statute is not being complied with. COURT ADVISED, the Jury Commissioner asks potential jurors to identify, and there is a difference between a juror not self identifying, which they have a right to do, and not identifying at all. COURT FURTHER STATED, the juror identified, she checked the other box, and the Court does not think its in appropriate for a person to self identify as other, and this is not a situation where the Jury Commissioner is not trying to gather the data. Mr. Pike stated there was an agreement between parties that all the State's presented exhibits 1-71 have been stipulated and admitted. COURT SO NOTED.

JURY PRESENT

Testimony and Exhibits presented. (See Worksheets).

COURT recessed for the evening, and directed Jurors to return tomorrow, and ORDERED, matter CONTINUED.

CUSTODY

CONTINUED TO: 2/28/19 1:00 P.M.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

March 01, 2019

C-17-327395-1 State of Nevada
 vs
 Michael McNair

March 01, 2019 01:00 PM Jury Trial

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Schlitz, Kory

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Jacqueline Bluth	Attorney for Plaintiff
Jeffrey Rogan	Attorney for Plaintiff
Melinda E. Simpkins	Attorney for Defendant
Michael McNair	Defendant
Randall H. Pike	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

OUTSIDE THE PRESENCE OF THE JURY

Mr. Pike indicated that parties have stipulated to State's Exhibits 72-87, and Defense Exhibits A-G.
COURT SO NOTED.

JURY PRESENT

Testimony and Exhibits presented. (See Worksheets).

OUTSIDE THE PRESENCE OF THE JURY

Mr. Pike argued Mr. Brennan's testimony should be stricken, since the State showed Mr. Brennan videos, stating this is the guy they would like the witness to identify. Ms. Simpkins argued the same thing happened with Mr. Lesh, who testified the prior day, and although the Defense did not raise a contemporaneous objection, the Defense would be requesting to include that testimony as well. Ms. Bluth stated she is unaware of any legal case that would prevent the State from showing witnesses pictures, or videos. COURT ADVISED, they cannot address the testimony of Mr. Lesh since the Defense did not raise an objection at the time, and STATED with regards to Mr. Brennan, the witness did not identify the Defendant in open court, and there is nothing that prohibits the State from showing photographs to witnesses, and ORDERED objection OVERRULED.

JURY PRESENT

Testimony and Exhibits presented. (See Worksheets.)

OUTSIDE THE PRESENCE OF THE JURY

Colloquy regarding the Defendant's negative interactions with the homeless as testified by prior witnesses. Mr. Rogan stated Exhibit 122 contains social security numbers, and he will sit down with Mr. Pike to black them out. COURT SO NOTED.

Court recessed for the evening and directed Jurors to return Monday.

Printed Date: 3/5/2019

Page 1 of 2

Minutes Date:

March 01, 2019

Prepared by: Kory Schlitz

002001

CUSTODY

CONTINUED TO: 3/4/19 10:30 A.M.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

March 04, 2019

C-17-327395-1 State of Nevada
 vs
 Michael McNair

March 04, 2019 10:30 AM Jury Trial

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Schlitz, Kory

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Jacqueline Bluth	Attorney for Plaintiff
Jeffrey Rogan	Attorney for Plaintiff
Melinda E. Simpkins	Attorney for Defendant
Michael McNair	Defendant
Randall H. Pike	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES**JURY PRESENT**

Testimony and Exhibits presented. (See Worksheets).

OUTSIDE THE PRESENCE OF THE JURY

Mr. Rogan stated parties stipulated to Exhibits 123-125. Mr. Pike confirmed. COURT SO NOTED.

JURY PRESENT

Testimony and Exhibits continued. (See Worksheets).

OUTSIDE THE PRESENCE OF THE JURY

Matthew Lay Esq. present on behalf of witness Mitchell Johnson Mr. Rogan made a record of the last bench conference regarding State's Proposed Exhibit 126. COURT SO NOTED. Mr. Pike stated Mitchell Johnson has counsel that is appointed to represent him, based upon the fact there was an amendment in the pleadings with an unknown individual doing the shooting, and it is the Defense's belief that the State has not made any agreement with Mr. Johnson or with his counsel that he will not be prosecuted. Ms. Bluth indicated she has made very clear to Mr. Johnson and his counsel that the State has any evidence that Mr. Johnson was involved in this crime. Upon Court's inquiry, Mr. Lay stated that was his understand and he did speak with Mr. Johnson that there is no immunity agreement. Ms. Bluth stated she has evidence that Mr. Johnson punched the Victim, however the State does not have evidence that Mr. Johnson was involved in the shooting.

JURY PRESENT

Testimony and Exhibits continued. (See Worksheets).

OUTSIDE THE PRESENCE OF THE JURY

COURT made a record of when the objection was re-raised on the State's examination of Mr. Johnson in terms of using his Statement, adding there is a difference between impeaching, and refreshing someone's

Printed Date: 3/6/2019

Page 1 of 2

Minutes Date:

March 04, 2019

Prepared by: Kory Schlitz

002003

recollection. Colloquy regarding witnesses, and settling of jury instructions.

Court recessed for the evening and directed Jurors to return tomorrow.

CUSTODY

CONTINUED TO: 3/5/19 1:00 P.M.

DISTRICT COURT
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

March 05, 2019

C-17-327395-1 State of Nevada
 vs
 Michael McNair

March 05, 2019 01:00 PM Jury Trial

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Schlitz, Kory

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Jacqueline Bluth	Attorney for Plaintiff
Jeffrey Rogan	Attorney for Plaintiff
Melinda E. Simpkins	Attorney for Defendant
Michael McNair	Defendant
Randall H. Pike	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

JURY PRESENT

Testimony and Exhibits presented. (See Worksheets).

OUTSIDE THE PRESENCE OF THE JURY

Ms. Bluth made a record of the last objection with the Detective and why he was allowed to answer why Mitchell Johnson was not arrested.

Jury Instructions settled.

Court recessed for the evening, and directed Jurors to return tomorrow.

CUSTODY

CONTINUED TO: 3/6/19 10:30 A.M.

Felony/Gross Misdemeanor

COURT MINUTES

March 06, 2019

C-17-327395-1 State of Nevada
 vs
 Michael McNair

March 06, 2019 10:30 AM Jury Trial

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Schlitz, Kory

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Jacqueline Bluth	Attorney for Plaintiff
Jeffrey Rogan	Attorney for Plaintiff
Melinda E. Simpkins	Attorney for Defendant
Michael McNair	Defendant
Randall H. Pike	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Defendant's Proposed Instructions to the Jury FILED IN OPEN COURT...

OUTSIDE THE PRESENCE OF THE JURY

Mr. Pike indicated the State has one last question they wanted to ask the Detective, and the Defense has no objection to the State proceeding and then the Defense will start it cross examination.

JURY PRESENT

Testimony and Exhibits presented. (See Worksheets). State Rests. Jonathan Kendall read in open Court the Deposition of Kenneth Saldana.

OUTSIDE THE PRESENCE OF THE JURY

COURT ADMONISHED the Defendant of his right to testify. Jury Instructions settled on the record.

JURY PRESENT

Defense Rests. Court instructed the Jury. Closing arguments by Mr. Rogan.

OUTSIDE THE PRESENCE OF THE JURY

Deputy Public Defender Navid Afshar present on behalf of Defendant. Mr. Pike made a Motion for Mistrial, arguing to indicate that the Defense is making objections, something the Defense is obligated to do, and for the State to stay they would like to kill Mr. Pike during closing arguments is unjust. Mr. Pike further argued something that could be said between counsel informally is one thing, however in front of the Jurors who are deciding whether they are going to believe the Defense, arguing the State should not have used Mr. Pike as an example. Mr. Pike further requested the Court instruct the Jury regarding the statement. Mr. Rogan argued it was not intended as spoken, and it should not have been offered, it was clearly an example, adding the Jury is not going to take it seriously. Mr. Rogan stated he will be willing to stipulate to any corrective instruction given to the Jury. COURT STATED ITS FINDINGS, and ORDERED corrective instructions will be given to the Jury, and DENIED the Defense Request for a Mistrial.

JURY PRESENT

Court instructed the Jury regarding the Objection Mr. Pike made during Mr. Rogan's closing arguments. Closing arguments by Mr. Pike and Ms. Bluth At the hour of 5:06 p.m. the Jury retired to deliberate.

OUTSIDE THE PRESENCE OF THE JURY

Mr. Pike further made a record of Mr. Rogan's comment during his closing arguments. Mr. Afshar argued even though the State did not mean what was said, this is a situation where the bell cannot be un-rung. COURT STATED ITS FINDINGS.

Court recessed for the evening and directed Jurors to return tomorrow.

CUSTODY

CONTINUED TO: 3/7/19 9:30 A.M.

Felony/Gross Misdemeanor

COURT MINUTES

March 07, 2019

C-17-327395-1 State of Nevada
 vs
 Michael McNair

March 07, 2019 09:30 AM Jury Trial

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Packer, Nylasia; Schlitz, Kory

RECORDER: Richardson, Sara

REPORTER:

PARTIES PRESENT:

Jacqueline Bluth	Attorney for Plaintiff
Jeffrey Rogan	Attorney for Plaintiff
Melinda E. Simpkins	Attorney for Defendant
Michael McNair	Defendant
Randall H. Pike	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Stipulation and Order FILED IN OPEN COURT...

OUTSIDE THE PRESENCE OF THE JURY

Mr. Pike stated all parties have executed the Stipulation and Order, adding the Court will be handling the sentencing portion of this trial if the Verdict returns with a first degree murder. Upon Court's inquiry, Defendant confirmed he has spoken with his attorney's regarding the waiving on the penalty hearing.

JURY PRESENT

At the hour of 3:30 p.m. the Jury returned with a Verdict of GUILTY on COUNT 1 - MURDER WITH USE OF A DEADLY WEAPON (F), and COUNT 2 - CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON (F). Jury polled. Court thanked and excused the Jury.

COURT ORDERED, matter SET for sentencing.

CUSTODY

5/1/19 9:30 A.M. SENTENCING

Felony/Gross Misdemeanor

COURT MINUTES

May 01, 2019

C-17-327395-1 State of Nevada
 vs
 Michael McNair

May 01, 2019 09:30 AM Sentencing

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Schlitz, Kory

RECORDER: Jacoby, Jill

REPORTER:

PARTIES PRESENT:

Jeffrey Rogan	Attorney for Plaintiff
Melinda E. Simpkins	Attorney for Defendant
Michael McNair	Defendant
Randall H. Pike	Attorney for Defendant
State of Nevada	Plaintiff

JOURNAL ENTRIES

Ms. Simpkins argued for scoring changes within the Pre-Sentence Investigation (PSI) Report that was brought to the Court's attention in the Sentence Memorandum. Ms. Simpkins argued with regards to the Present Offense Score under Sophistication / Premeditation the Defendant only received one point for this factor, and the Defense argues the Defendant should be given two points since there was no sophistication with regard to the incident here. Ms. Simpkins argued with regards to Financial Impact the Defendant received zero points due to the classification of the financial impact as excessive, and the Defense believes the Defendant should receive one point since the impact was moderate. Ms. Simpkins stated with regards to the Co-Offender the Defendant received zero points since the Department has alleged he was a leader or coerced others, and the Defense is requesting the Defendant receive one point, since he was equally responsible. Ms. Simpkins argued with regards to Motive, the Defendant received zero points since P&P believed the motive was deliberate, and the Defense is requesting the Defendant receive three points, since the Motive was situational. Ms. Simpkins stated with regards to Social History, Financial the Defendant received two points, however with all the financial evidence the Defendant should receive four points. Ms. Simpkins further stated with regards to Pre Sentence Adjustment, as to Attitude and Supervision, the Defendant received one point, however the Defense believes the Defendant should receive two points for having a positive attitude. Ms. Simpkins stated with regards to Attitude / Offense, the Defendant received one point for indifferent attitude, and the Defense believes the Defendant should receive two points for having a contrite attitude and argued for the total score to be adjusted to 42. Mr. Rogan stated some of the allegations the Defense is requesting the State cannot respond to, for example with regards to Attitude and Supervision, the State does not know how the Defendant acted since they were not present; the same argument would apply to Financial Impact, the State does not know the Defendant's finances are. Mr. Rogan argued the total PSP score of 32 is appropriate. COURT STATED ITS FINDINGS, and GRANTED the Defense Request with regards to the Financial Impact, adding the Defendant was employed and had been employed for some time, and the Defendant should receive four points; DENIED to all the other Defense Requests. COURT DIRECTED Ms. Simpkins to prepare and submit and Order.

DEFENDANT MCNAIR ADJUDGED GUILTY PURSUANT TO THE JURY VERDICT of COUNT 1 -

FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (F), and COUNT 2 - CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON (F). Arguments by Mr. Rogan. Statement by Defendant. Argument by Ms. Simpkins. COURT ORDERED, in addition to the \$25.00 Administrative Assessment Fee, \$750.00 Indigent Defense Civil Assessment Fee, \$250.00 Fine, \$5,000.00 Restitution to Victims of Crime and \$150.00 DNA Analysis Fee including testing to determine genetic markers (waived if previously collected) plus \$3.00 DNA Collection Fee, the Defendant is sentenced to the Nevada Department of Corrections as follows: COUNT 1 LIFE with the eligibility for parole after serving a MINIMUM of TWENTY (20) YEARS plus a CONSECUTIVE term of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of SIXTY (60) MONTHS for the Use of a Deadly Weapon, Aggregate Total is LIFE with a MINIMUM PAROLE ELIGIBILITY OF THREE HUNDRED (300) MONTHS; and COUNT 2 - a MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS, CONCURRENT with COUNT 1; with FIVE HUNDRED THIRTY (530) DAYS credit for time served. BOND, if any, EXONERATED.

NDC