

ANTONIO MIXON,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Docket 78900 Document 2019-35977

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Case No. 78900

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1 MS. SISOLAK: Okay. Let's –
2 JUROR NO. 121: My husband was driving.
3 MS. SISOLAK: -- pretend like you were. Okay, what if you
4 were driving. Let's say you were. Its kind of a hard question, huh?
5 JUROR NO. 121: It is a very difficult – I'm pretty good about
6 my speed, you know. I don't think I can prove that.
7 MS. SISOLAK: But its hard to prove; right?
8 JUROR NO. 121: It is hard to prove. But I would definitely
9 take him to court. I would be –
10 MS..SISOLAK: Okay.
11 JUROR NO. 121: like yeah. I think. Yeah.
12 MS. SISOLAK: So, --
13 JUROR NO. 121: Unless he show me a picture of it, you
14 know what I mean?
15 MS. SISOLAK: Yeah. No, I got you. Is there anyone who
16 disagrees with the idea that myself and Ms. Machnich can sit there and
17 literally ask zero questions, call zero witnesses, object zero times, and
18 prove nothing to you because the burden is with the State? Does
19 anyone have a problem with that? You made a face.
20 JUROR NO. 121: Well, --
21 JUROR NO. 120: I would think that you – I would –
22 THE COURT: We need a name and –
23 THE RECORDER: Ma'am, --
24 THE COURT: -- we need the microphone, name and badge
25 number.

1 JUROR NO. 120: Heather Booker, 120. I would think that you
2 should try to prove your case, you know, and say something and –

3 MS. SISOLAK: Okay. But its not our case. It's the State's
4 case; you understand that?

5 JUROR NO. 120: I understand it's the State but if you're
6 trying to get someone off, you need to try to prove what – you know that
7 they didn't do this, try to have witnesses and stuff like that that they
8 didn't do it.

9 MS. SISOLAK: But if we don't and we do nothing, are you still
10 willing to hold the State to their burden?

11 JUROR NO. 120: If they can prove it, yeah.

12 MS. SISOLAK: That's kind of what I'm getting at.

13 JUROR NO. 120: Yes.

14 MS. SISOLAK: Whether I do anything or not, the State has to
15 meet that bar.

16 JUROR NO. 120: Yeah, they would have to prove that he
17 physically did it, yeah --

18 MS. SISOLAK: Okay.

19 JUROR NO. 120: -- or she.

20 MS. SISOLAK: Fair. Fair.

21 Let's pass it to Ms. Warner. Sorry, your turn. Everyone is
22 getting a turn, so. Ms. Warner. You know a little bit about the case so
23 far.

24 JUROR NO. 120: Yes.

25 MS. SISOLAK: The State told you a little bit. The secret is out.

1 My client was incarcerated at the time that the alleged offense occurred.
2 Are you going to hold that against him?

3 JUROR NO. 120: No.

4 MS. SISOLAK: Okay. So you're okay with the fact that each –
5 him being incarcerated is completely separate from allegedly occurred
6 that day. Are you okay with that?

7 JUROR NO. 120: Yes, correct.

8 MS. SISOLAK: Is there anyone who is not okay with that?

9 Anyone who hears the word prisoner and is kind of feels icky
10 about it? Okay.

11 Ms. Leavitt, we haven't heard from you. Sorry; I know this is
12 awkward. It's uncomfortable for all of us. Believe or not, I still get
13 nervous doing this. Ms. Leavitt, how do you feel about my client not
14 having to testify?

15 JUROR NO. 147: Well, that's his constitutional right.

16 MS. SISOLAK: Can you think of some reasons why he
17 wouldn't want to testify?

18 JUROR NO. 147: Well, like you said, they have the burden of
19 proof so if they can't prove it why should he say anything.

20 MS. SISOLAL: That's a good reason. Is there anyone who can
21 think of another reason?

22 UNKNOWN JUROR: He could incriminate himself.

23 MS. SISOLAK: He could incriminate himself. That's correct.
24 What about maybe fear of public speaking, like we're all currently
25 having, things like that? So, is there anyone who feels sort of, I don't

1 know, any kind of way about the fact that he doesn't have to testify? Is
2 there anyone who doesn't like that? Mr. Birds, you kind of made a face;
3 sorry.

4 JUROR NO. 140: I did?

5 MS. SISOLAK: How – yeah, a little bit.

6 JUROR NO. 140: Oh.

7 MS. SISOLAK: Can you pass that on down? Thank you, Ms.
8 Leavitt.

9 JUROR NO. 140: Jonathan Birds, 140. No, I don't feel that
10 way about it at all. Its absolutely the way it should be with the burden
11 being with the State.

12 MS. SISOLAK: Okay.

13 JUROR NO. 140: There's no reason he should have to testify.

14 MS. SISOLAK: Okay. And you had talked about you're a PhD
15 at UNLV in criminal justice.

16 JUROR NO. 140: Correct.

17 MS.. SISOLAK: Awesome.

18 JUROR NO. 140: I'm working on that. I'm not a PhD yes so I
19 can't even start yet.

20 MS. SISOLAK: Coming soon to a jury box near you.

21 All right, you had mentioned you have a lot of contacts with
22 law enforcement. You can put those all aside, fair and impartial?

23 JUROR NO. 140: Yeah, I believe so. I don't believe that's
24 going to affect how I understand the justice system works.

25 MS. SISOLAK: Okay.

1 JUROR NO. 140: I believe I can keep that separate.

2 MS. SISOLAK: So would you say that because of your
3 position in life, so to speak, you have a different sort of outlook on how
4 the system works?

5 JUROR NO. 140: I believe I do compared to most police officers. I
6 have a different prospective on the justice system, not just procedurally
7 what a police officer goes through. I understand that I'm not an expert in
8 being a police officer.

9 MS. SISOLAK: Okay.

10 JUROR NO. 140: My understanding of policing is very
11 different than most police officers and like I said I'm not a police officer,
12 so I do find that my view of the justice system is – has a little bit of a
13 deviation from a lot of police officers specifically.

14 MS. SISOLAK: Okay. Will you pass that mic back to Ms.
15 Dennis? All right, Ms. Dennis, here's a tough one. If you were sitting
16 where my client is sitting, would you want you on your jury?

17 JUROR NO. 122: Yes.

18 MS. SISOLAK: Why?

19 JUROR NO. 122: Because I'm open minded and will listen to
20 everything presented and –

21 MS. SISOLAK: Okay.

22 JUROR NO. 122: -- take it from there.

23 MS. SISOLAK: All right. All right.

24 Let's pass that down 1, 2, 3, to Ms. Stahl.

25 All right, let's say this case is a race. Do you think that the

1 State and the Defense are even at the starting line right now or do you
2 think that the Defense is already at the finish line?

3 JUROR NO. 126: I think they're even right now.

4 MS. SISOLAK: Okay. So, then you believe that I would have
5 to show you something to beat the State or do you believe that it's the
6 State's race to run?

7 JUROR NO. 126: I guess it's the race to – oh, well, no.

8 MS. SISOLAK: Honesty is all we're looking for.

9 JUROR NO. 126: Yeah. Now I have to rethink that. I guess
10 what I want to say just even from the beginning is – I want to hear from
11 both sides –

12 MS. SISOLAK: And I think –

13 JUROR NO. 126 – equally.

14 MS. SISOLAK: -- that's a natural thing to want to do is hear
15 everything. What if you don't hear anything from us?

16 JUROR NO. 126: I am still very open to thinking, discussing
17 with you know your side.

18 MS. SISOLAK: You're still going to make the State prove
19 everything they need to prove to you?

20 JUROR NO. 126: I'd like to hear as much as I could.

21 MS. SISOLAK I understand that. But let's say you don't hear
22 anything from us. You get back into deliberations.

23 JUROR NO. 126: That wouldn't make me be against you. No.

24 MS. SISOLAK: Okay.

25 JUROR NO. 126: No.

1 MS. SISOLAK: Okay.

2 Ms. Crayton. I'll try to keep it brief. I just got my voice back.

3 Ms. Crayton, would you want you on your jury?

4 JUROR NO. 127: Sorry?

5 MS. SISOLAK: Would you want to be on your jury?

6 JUROR NO. 127: I would, yeah.

7 MS. SISOLAK: Because it's a new experience and I'm a

8 citizen.

9 MS. SISOLAK: All right, those are great reasons. Will you

10 pass if forward to Mr. Dowty.

11 THE COURT: Excuse me, Ms. Crayton, do you need a cup of

12 water or something?

13 JUROR NO. 127: Yes, please.

14 THE COURT: Okay, the Marshal will get that for you.

15 MS. SISOLAK: We can do that.

16 Mr. Dowty, its 5:00 o'clock tomorrow. Everybody wants to go

17 home. You're the one hold out. Are you going to be strong enough to

18 say I'm not folding because its 5:00 o'clock?

19 JUROR NO. 157: Yes, I think so.

20 MS. SISOLAK: Okay. Do you think you're a leader or a

21 follower?

22 JUROR NO. 157: A follower.

23 MS. SISOLAK: Okay. Do you think that's a good quality?

24 JUROR NO. 157: Not necessarily.

25 MS. SISOLAK: Do you think that in this situation you could

1 sort of, knowing that you tend to follow, do you think that you could be a
2 strong voice for your opinion?

3 JUROR NO. 157: I guess if I don't believe the case.

4 MS. SISOLAK: Okay. But you could stand up and you could
5 be strong?

6 JUROR NO. 157: I think so.

7 MS. SISOLAK: Okay. Pass it on down to Mr. Taylor. All right,
8 what about you, leader or a follower?

9 JUROR NO. 241: I guess it depends.

10 MS. SISOLAK: Okay. On what?

11 JUROR NO. 241: I'm going to be honest. Just the situation.

12 MS. SISOLAK: Okay.

13 JUROR NO. 241: I can both lead and follow.

14 MS. SISOLAK: Okay. Do you think that you could speak up to
15 everybody else being against you?

16 JUROR NO. 241: Yeah.

17 MS. SISOLAK: Okay. And you think you can stand on your
18 opinion and you wouldn't have trouble sharing that?

19 JUROR NO. 241: Yup.

20 MS. SISOLAK: All right.

21 Ms. Northington, are you okay with the fact that my client was
22 in prison?

23 JUROR NO. 141: Yes. I mean, yes.

24 MS. SISOLAK: You kind of hesitated.

25 JUROR NO. 141: Well, I – I mean he went to prison so I

1 assume it was a jury of his peers who elected to put him there and that
2 was for a reason, so –

3 MS. SISOLAK: Okay.

4 JUROR NO. 141: -- but I also believe that the prison system
5 is a good – not necessarily good, but I think that people can be reformed
6 and –

7 MS. SISOLAK: Okay.

8 JUROR NO. 141: -- you know choose a better path in life and
9 –

10 MS. SISOLAK: Okay.

11 JUROR NO. 141: -- make changes that way.

12 MS. SISOLAK: All right. Are you familiar with plea deals?

13 JUROR NO. 141: Yes.

14 MS. SISOLAK: So you understand – does everybody
15 understand that its like 5 percent of cases that go to trial. It's very low.
16 Now, does that change your mind that maybe it wasn't a jury of his
17 peers?

18 JUROR NO. 141: If it wasn't a jury of his peers but – I mean I
19 believe that the system works. I think that you know that plea deals do
20 happen. My sister-in-law is a lawyer and – you know, so –

21 MS. SISOLAK: Okay.

22 JUROR NO. 141: -- you know I do understand you know the
23 system so to speak a little bit and I do get that plea deals do happen and
24 you know it could be the best case scenario for an individual to choose
25 to plead instead of you know face a jury of their peers --

1 MS. SISOLAK: Okay.

2 JUROR NO. 141: -- at that time.

3 MS. SISOLAK: You said your sister-in-law is a lawyer. What

4 kind of law?

5 JUROR NO. 141: She's actually a clerk here at the

6 courthouse.

7 MS. SISOLAK: She is; do you know what department she

8 works in?

9 JUROR NO. 141: 3A I believe --

10 MS. SISOLAK: Okay.

11 JUROR NO. 141: -- with Judge Bare.

12 MS. SISOLAK: Perfect. Will you pass that mic back to Ms.

13 Warner? You shook your head a little bit. Same question, how do you

14 feel?

15 JUROR NO. 123: I had two family members who were -- oh,

16 I'm sorry -- correctional officers --

17 MS. SISOLAK: Okay.

18 JUROR NO. 123: -- and you said -- I mean she said that they

19 can be reformed.

20 MS. SISOLAK: Okay.

21 JUROR NO. 123: I don't believe that.

22 MS. SISOLAK: Okay.

23 JUROR NO. 123: Not in our prison system.

24 MS. SISOLAK: Okay.

25 JUROR NO. 123: I mean it --

1 MS. SISOLAK: Are you saying that people can't be reformed
2 or that our prison system doesn't focus on reform?

3 JUROR NO. 123: That the prison system does not focus on
4 reform.

5 MS. SISOLAK: Okay. But once guilty always guilty or –

6 JUROR NO. 123: Oh, no. I [indiscernible] –

7 MS. SISOLAK: Okay. Is there anybody that feels that way,
8 once guilty always guilty? All right.

9 Ms. Gonzalez, we haven't heard from you. Are you going to be
10 okay if my client decides not to testify?

11 JUROR NO. 138: Excuse me? What's –

12 MS. SISOLAK: If my client doesn't testify, is that okay with
13 you? If he doesn't tell his side is that okay with you?

14 JUROR NO. 138: That's okay.

15 MS. SISOLAK: Okay. All right, is there anyone who wants –
16 isn't going to be able to hold the State to their burden if my client doesn't
17 tell you anything? Okay.

18 JUROR NO. 121: [Indiscernible]. I'm sorry.

19 MS. SISOLAK: Yeah?

20 THE COURT: Let's get the –

21 JUROR NO. 121: Campbell, 121 I think. It's not that I know he
22 has a right not to. I would like to hear from him.

23 MS. SISOLAK: I understand you might want to hear.

24 JUROR NO. 121: I would like to [indiscernible] point is going
25 to be or from any other perspective that he has since I'm only going to

1 get to hear one.

2 MS. SISOLAK: But what if you –

3 JUROR NO. 121: [Indiscernible].

4 MS. SISOLAK: Oh, totally, totally. But what if you only get to
5 hear the one, are you going to be able to make the State do their job?

6 JUROR NO. 121: Oh, yeah, the State to do their job. I would
7 want them to.

8 MS. SISOLAK: And I think the difference is coming in as you
9 might want to hear from the Defendant but I'm asking if you need to? Is
10 there anybody who needs to?

11 JUROR NO. 120: I think I need to.

12 MS. SISOLAK: Okay, but you understand he has the right not
13 to testify, right?

14 JUROR NO. 120: I know that [indiscernible] constitutional
15 right.

16 MS. SISOLAK: Will you pass it down to Ms. Booker?

17 JUROR NO. 120: Booker, 120. I know that's his constitutional
18 right. It would be my constitutional right. But I – somehow in my heart
19 and soul feel that would need to hear that person's side. That way I have
20 both sides of – to factor [indiscernible].

21 MS. SISOLAK: [Indiscernible]?

22 JUROR NO. 120: I know that the State has to prove and you
23 don't have to, but its still in my heart and soul that I would think I have to
24 hear from the Defendant.

25 MS. SISOLAK: So you think you'd hold it against him if he

1 didn't testify?

2 JUROR NO. 120: Not against him as a – just – I would have
3 to – its kind of hard to say. I – it just – it's this fine line there. I'm not
4 holding it against him as a person as being – you know I just feel that I
5 need to hear that side 'cause there's two sides to each story.

6 MS. SISOLAK: I understand. And –

7 JUROR NO. 120: All right, does that kind of make sense? I'm
8 not –

9 MS. SISOLAK: It does. It does.

10 JUROR NO. 120: 'Cause his background of all that other in
11 the past doesn't make it different. Its what's happening now and what
12 happened then, what happened –

13 MS. SISOLAK: [Indiscernible] –

14 JUROR NO. 120: -- that he's getting accused of.

15 MS. SISOLAK: Okay. But basically him testifying – him not
16 testifying is something you can't consider; are you okay with that?

17 JUROR NO. 120: I would have to be okay with it. I mean it
18 still would be in the back of my mind –

19 MS. SISOLAK: Okay.

20 JUROR NO. 120: -- [indiscernible].

21 MS. SISOLAK: We talked about that. There are a lot of
22 reasons why he might not want to.

23 JUROR NO. 120: Maybe the constitution, maybe doesn't
24 want to speak, you know – you know, be scared of speaking and – but
25 its --

1 MS. SISOLAK: I mean –

2 JUROR NO. 120: -- something that would [indiscernible] – I
3 don't want to judge a person but I –

4 MS. SISOLAK: Like ever?

5 JUROR NO. 120: -- use something – yeah. I don't like to
6 judge people. I'm the type of person I don't like to judge people –

7 MS. SISOLAK: Okay.

8 JUROR NO. 120: -- so I don't want – I'm saying i don't want
9 to judge him for – because he doesn't want to talk 'cause there's a lot of
10 times I don't want to talk and I want to be back, but if I – its kind of like
11 being at work, if one person says you did something and you don't
12 speak up, then you get accused of something. You never spoke up
13 'cause that – the other – the boss is taking that person's side. So, I don't
14 know if that makes sense to you, but if I speak up you know then they
15 have both sides of the story. Then they can filter between both. And I
16 know its his constitu – I don't want to you know –

17 MS. SISOLAK: I get it.

18 JUROR NO. 120: -- go against him for that but I'm just saying
19 there might be something in the back of my head saying what if – if he
20 could have spoke about it.

21 MS. SISOLAK: Okay.

22 THE COURT: Excuse me, Ms. Sisolak, either you or our juror
23 there, potential juror, made a comment about that you would be advised
24 about someone who – about the law regarding someone not testifying.
25 And like I said before, I'm not going to give you jury instructions at this

1 time. I will tell you that a jury instruction that I could give, or if requested,
2 would state that all the jurors are not to consider whether a person has
3 testified or not in making the determination of whether or not the State
4 has met their burden of beyond a reasonable doubt. Bottom line is if they
5 don't meet that burden, no matter if its [indiscernible] or a thousand
6 witnesses are called, you must return a verdict of not guilty. The State
7 bears 100 percent burden, not 99, but 100 percent burden of proving
8 their case beyond a reasonable doubt. And at the end of the trial we
9 have a very specific legal definition of beyond a reasonable doubt. We
10 ask the jurors to apply the facts to the definition of beyond a reasonable
11 doubt. And I will give the definition at the end of the trial.

12 JUROR NO. 120: Okay.

13 MS. SISOLAK: And that's all we're asking is for you –

14 JUROR NO. 120: Okay.

15 MS. SISOLAK: -- to be honest about whether that's something
16 you can do or not.

17 JUROR NO. 120: Okay.

18 MS. SISOLAK: Is there anyone who doesn't think they can do
19 that if my client doesn't testify? Okay.

20 Let's bring it on down to Ms. Anderson. All right, 5:00 o'clock
21 on Wednesday. Can you hold up?

22 JUROR NO. 168: Yes.

23 MS. SISOLAK: Okay. Would you want you on your jury?

24 JUROR NO. 168: Yes.

25 MS. SISOLAK: Why?

1 JUROR NO. 168: 'Cause I think I can be open minded and
2 fair.

3 MS. SISOLAK: Okay. Is there anyone who feels they're
4 particularly good at following instructions? Okay.

5 Is there anyone who thinks they're bad at following
6 instructions? That's good. I think that's good.

7 Pass it two down – I'm sorry I interrupted your drink.

8 UNKNOWN JUROR: I [indiscernible] sure if I'm allowed so I'm
9 going.

10 MS. SISOLAK: Ms. Doneva. All right, let's see. Are you going
11 to hold it against my client that he was in prison?

12 JUROR NO. 210: No.

13 MS. SISOLAK: Okay. You think you can hear everything and
14 make a decision –

15 JUROR NO. 210: Sure.

16 MS. SISOLAK: -- based on what you hear? All right.

17 Ms. Abella.

18 JUROR NO. 242: Oh, shoot.

19 MS. SISOLAK: Everyone is getting a turn. The four of us are
20 like –

21 JUROR NO. 210: That's okay.

22 MS. SISOLAK: -- on an eternal turn.

23 JUROR NO. 210: That's okay.

24 MS. SISOLAK: All right, Ms. Abella, let's say the officer walks
25 in, says you were speeding. Should you have to prove you were

1 innocent?

2 JUROR NO. 210: I have to.

3 MS. SISOLAK: You'd have to?

4 JUROR NO. 210: Because I mean I don't know how to prove
5 it but –

6 MS. SISOLAK: It's a hard question, right?

7 JUROR NO. 210: Yeah, it is.

8 MS. SISOLAK: And so you understand that we don't have to
9 do anything and the State has to do all the things and that's okay with
10 you?

11 JUROR NO. 210: Sort of. Yeah.

12 MS. SISOLAK: What do you mean sort of?

13 JUROR NO. 210: There's a lot of things that we need to take
14 a look at it before we make some final decision or be a juror. We have to
15 hear a lot of things.

16 MS. SISOLAK: Okay.

17 JUROR NO. 210: So, being said that, I would rather know first
18 what is going on before I go –

19 MS. SISOLAK: Okay.

20 JUROR NO. 210: -- through and through.

21 MS. SISOLAK: Okay. All right. That's fair.

22 One down, Ullon?

23 JUROR NO. 197: Ullon.

24 MS. SISOLAK: Ullon.

25 JUROR NO. 197: Yeah.

1 MS. SISOLAK: Okay. Are you a leader or a follower?
2 JUROR NO. 197: I'm a leader as long as there's not much
3 other people trying to be leaders.
4 MS. SISOLAK: Okay. So, you're like --
5 JUROR NO. 197: I don't like to compete for it too much but --
6 MS. SISOLAK: Fair.
7 JUROR NO. 197: -- I can lead.
8 MS. SISOLAK: Fair. You can hold your ground, stand strong?
9 JUROR NO. 197: Yeah.
10 MS. SISOLAK: You're going to tell the CO's you were on a
11 jury?
12 JUROR NO. 197: Say that again?
13 MS. SISOLAK: You had mentioned earlier that --
14 JUROR NO. 197: Oh, the -- my -- [indiscernible] --
15 MS. SISOLAK: -- you might not tell people you're on a jury?
16 JUROR NO. 197: No, I would tell them.
17 MS. SISOLAK: Okay, but you'd be --
18 JUROR NO. 197: I mean I'll --
19 MS. SISOLAK: -- indiscernible] --
20 JUROR NO. 197: -- probably -- like obviously I'm not
21 supposed to tell them right now.
22 MS. SISOLAK: So not now, --
23 JUROR NO. 197: I wouldn't --
24 MS. SISOLAK: -- after tell them
25 JUROR NO. 197: -- tell them right now but --

1 MS. SISOLAK: Okay.

2 JUROR NO. 197: -- I would tell them, yeah.

3 MS. SISOLAK: You'd be okay telling them no matter what

4 verdict you return that that's what you guys did –

5 JUROR NO. 197: Oh, yeah.

6 MS. SISOLAK: -- and then you [indiscernible]?

7 JUROR NO. 197: Yeah.

8 MS. SISOLAK: Perfect.

9 Burgess. Okay, of all the questions, which one did you want

10 me to ask? We're coming up on the end.

11 JUROR NO. 203: Are you a leader or a follower.

12 MS. SISOLAK: Okay, give me an answer.

13 JUROR NO. 203: I'm a leader.

14 MS. SISOLAK: Okay. Do you think that's an important quality?

15 JUROR NO. 203: Yeah, I think so. I think you can divide the –

16 or make people listen –

17 MS. SISOLAK: Okay.

18 JUROR NO. 203: -- to one solid voice.

19 MS. SISOLAK: Okay. And you're prepared to be that voice if

20 you're asked to?

21 JUROR NO. 203: Yeah.

22 MS. SISOLAK: Would you want you on your jury?

23 JUROR NO. 203: Yes, because I would fight for what's right.

24 MS. SISOLAK: Fair.

25 Last but not least, Ms. Dufrene. All right, you had mentioned

1 you were on a civil trial as well, right, so you understand the burdens are
2 different and we kind of went over why. So, you're okay with that?

3 JUROR NO. 204: Yes.

4 MS. SISOLAK: All right. You can follow instructions?

5 JUROR NO. 204: Yes.

6 MS. SISOLAK: Any other question you really wanted me to
7 ask?

8 JUROR NO. 204: No.

9 MS. SISOLAK: All right.

10 Nothing further, Your Honor.

11 MS. SISOLAK: Oh, Court's indulgence.

12 [Colloquy between Defense Counsel]

13 MS. SISOLAK: Nothing further, Your Honor. Thank you.

14 THE COURT: All right, ladies and gentlemen, we had some
15 specific follow up questions with two of our jurors. We're going to do that
16 during the break. We're just going to take a very short recess. I need Ms.
17 Booker to stay in your seat. We just want to have some follow up with
18 you.

19 JUROR NO. 120: All right.

20 THE COURT: And then we also need Mr. Duchene just to
21 stay close to the door. We just have some follow up for you.

22 JUROR NO. 172: Can I go to the restroom first?

23 THE COURT: Oh, absolutely.

24 MS. SISOLAK: Your Honor, may we approach –

25 THE COURT: Sure.

1 MS. SISOLAK: -- very quickly.

2 THE COURT: Sure.

3 **[Bench conference begins – transcribed as follows:]**

4 THE COURT: Yes?

5 MS. SISOLAK: Your Honor, the State and I agree that we
6 should release Ms. Booker.

7 MS. KALLAS: And that's correct, Your Honor, --

8 THE COURT: It's okay? [Indiscernible] the jury?

9 MS. KALLAS: -- so then we don't have to keep --

10 THE COURT: [Indiscernible] wanted Duchene? Okay.

11 MS. SISOLAK: Just that one.

12 THE COURT: All right.

13 MS. SISOLAK: Thank you.

14 MS. KALLAS: Thank you, Your Honor.

15 **[Bench conference ends]**

16 THE COURT: Actually, Ms. Booker, what we're going to do is
17 we are going to release you from this case. Thank you very much for
18 your time today. We're going to fill up the next juror.

19 THE CLERK: Badge number 255 [sic], Iliana Rodriguez.

20 THE COURT: All right, good afternoon, Ms. Rodriguez. I'm
21 going to follow up with those questions what we've done before; okay?
22 The first question is -- we'll get the microphone to you, first off. Anyone
23 involved in law enforcement?

24 JUROR NO. 231: No.

25 THE COURT: Okay. Anyone ever been a victim of a crime?

1 JUROR NO. 231: No.

2 THE COURT: Accused of a crime?

3 JUROR NO. 231: Is child neglect one?

4 THE COURT: Yes.

5 JUROR NO. 231: My brother.

6 THE COURT: Okay, and how long ago was that?

7 JUROR NO. 231: About four years ago.

8 THE COURT: Is that here in Clark County?

9 JUROR NO. 231: Yes.

10 THE COURT: Okay. Do you know if formal charges were filed

11 against him?

12 JUROR NO. 231: It was not. There was not.

13 THE COURT: Okay. Based upon the facts and circumstances

14 of that situation that you know about, do you think he was treated fairly

15 by the system?

16 JUROR NO. 231: Yes.

17 THE COURT: Okay. Anyone else accused of a crime?

18 JUROR NO. 231: No.

19 THE COURT: Okay. Have you ever had any particularly

20 positive or negative experience, again you, family member, anyone

21 closely associated with you, particularly positive or negative experience

22 with law enforcement?

23 JUROR NO. 231: There was once that I was heading to work.

24 The light had turned green for me to make a left turn so I went for it. I

25 was the first one. The police stopped me, saying that I ran a red light.

1 And I kind of explained to him that it was green which on his side 'cause
2 he was in front of me, so when I turned he went back behind me, and I
3 was like it was green. It had turned green. And he had to think about it
4 twice and he actually caught that it was on green for me. I don't know
5 how or why he thought I was – I passed a red light. So, he apologized
6 and let me go.

7 THE COURT: Okay. Are you considering that a particularly
8 negative –

9 JUROR NO. 231: Both.

10 THE COURT: -- or positive, or both?

11 JUROR NO. 231: Both.

12 THE COURT: Okay.

13 JUROR NO. 231: 'Cause I always run -- I was running late for
14 work so that it pushed me back.

15 THE COURT: Anything else? Any – you know –

16 JUROR NO. 231: No.

17 THE COURT: -- the situations? Okay, thank you.

18 Have you ever had prior jury service?

19 JUROR NO. 231: No.

20 THE COURT: And then we'll go to the background question,
21 ma'am, as far as what do you do for a living; spouse or significant other;
22 and children.

23 JUROR NO. 231: I – I'm an office manager and I'm a certified
24 CA for a chiropractor's office, been there for 12 years. I'm married. My
25 husband is an electrician. We have three children, a one year old, a four

1 year old, and a five year old.

2 THE COURT: All right, thank you.

3 State, do you have any follow up for Ms. Gallagher [sic]?

4 MS. KALLAS: I don't, Your Honor.

5 THE COURT: Defense, any follow up for Ms. Gallagher [sic]?

6 MS. SISOLAK: Thank you, Your Honor.

7 Ms. Rodriguez, is there anything you were hoping we'd ask
8 you? You're allowed to have fun, guys. Easy questions.

9 THE COURT: Oh, did I say -- did I call you Ms. Gallagher and
10 [indiscernible] --

11 JUROR NO. 231: You did.

12 THE COURT: -- Ms. Rodriguez; I'm sorry.

13 JUROR NO. 231: Rodriguez.

14 THE COURT: Go ahead.

15 JUROR NO. 231: Go for it.

16 MS. SISOLAK: Okay. Would you want you on your jury?

17 JUROR NO. 231: Yes.

18 MS. SISOLAK: Why?

19 JUROR NO. 231: Its just a different experience and its
20 something different --

21 MS. SISOLAK: Okay.

22 JUROR NO. 231: -- opinions; I like to give out --

23 MS. SISOLAK: Sounds a little like --

24 JUROR NO. 231: -- my opinion.

25 MS. SISOLAK: -- someone's interested. We'll see. Anything

1 else you think you should share with us?

2 JUROR NO. 231: No.

3 MS. SISOLAK: Okay, perfect. Thank you.

4 Nothing further, Your Honor.

5 THE COURT: Okay. All right. Actually, then Mr. Duchene, if
6 you can just stay in the courtroom.

7 Ladies and gentlemen, we're just going to take a quick five to
8 ten minute break.

9 During this lunch recess, it is your duty not to converse among
10 yourselves or with anyone else on any subject connected with the trial,
11 or to read, watch, or listen to any report of or comment during trial by
12 any person connected to the trial, or by any medium of information,
13 including without limitation newspaper, television, radio, or the internet.
14 You are not to form or express an opinion on any subject connected with
15 this case until this matter is submitted to you. I'll see you back in ten
16 minutes. Please wait outside the courtroom until the marshal escorts you
17 back in.

18 THE MARSHAL: All rise for the exit of the jury.

19 [Outside the presence of the jury venire]

20 THE COURT: Mr. Duchene, the parties just had a couple of
21 follow up questions. That's all, so you're here by yourself but no one's in
22 trouble or anything. We just had some follow up questions for you, sir.

23 State, do did you have any follow up questions?

24 MS. KALLAS: Yes, Your Honor.

25 THE COURT: Thank you.

1 MS. KALLAS: Mr. Duchene, you said that you are currently
2 suing the Nevada Department of Corrections?

3 JUROR NO. 172: Well, we have to get a lawyer. We're trying
4 to – 172, James Duchene. My son was – his – in jail you got to have
5 paperwork to show what kind of crime you did, and my son was – they
6 jumped him because they thought he was a child molester because he
7 popped off going in. And –

8 MS. KALLAS: Sorry, what do you mean he popped off going
9 in?

10 JUROR NO. 172: Like probably to the cops because he was
11 drunk and had a gun on him and pulled his shirt up and got 2 years in
12 [indiscernible], so he really didn't think he did the crime so I'm sure he
13 mouthed off and –

14 MS. KALLAS: What was he [indiscernible] –

15 JUROR NO. 172: -- I believe they held –

16 MS. KALLAS: -- but what was he charged with? I just want to
17 kind of go bit by bit.

18 JUROR NO. 172: It was robbery of a thirteen dollar jacket –

19 MS. KALLAS: Okay.

20 JUROR NO. 172: -- after he purchased four hundred dollars'
21 worth of clothing. And they said the jacket wasn't included and he was –
22 had been drinking and he bought the gun the same day and he had put
23 it in his shirt and when he walked out, undercover security had grabbed
24 him. He just – he – and after grabbing him a few times, get the fuck off –
25 sorry – get off me. He pulled his shirt up and gave him 2 years.

1 MS. KALLAS: Okay, so –

2 JUROR NO. 172: And then they [indiscernible] – they didn't
3 give him his paperwork so he got jumped in prison 'cause they didn't
4 know if he was a molester or what. You got to show your paperwork.
5 And miraculously it shows you know a – you know a couple of days later
6 you know after he's already been life flighted to the hospital. So I just – I
7 feel a little stained. I feel good for the Defense. I don't feel good for the
8 prosecutor even if they were guilty. I'm like, what buttons were pushed.
9 And its not right to think like that but um, I feel they tried to keep him in.

10 MS. KALLAS: They tried to keep him in prison?

11 JUROR NO. 172: Yeah.

12 MS. KALLAS: And why is that?

13 JUROR NO. 172: What do you mean? Make money – for the
14 prison to make money. I feel they want him in there.

15 MS. KALLAS: And did your son did he –

16 JUROR NO. 172: [Indiscernible] buttons are pushed.

17 MS. KALLAS: Did your son did he plead guilty or was there a
18 trial?

19 JUROR NO. 172: No, it was at a trial. I paid fourteen
20 thousand dollars and lost.

21 MS. KALLAS: Okay. And do you mind me asking your son's
22 name?

23 JUROR NO. 172: Bryson Duchene.

24 MS. KALLAS: Sorry. Court's indulgence.

25 JUROR NO. 172: He's at home now. He survived it, but I just

1 feel this way all the time, tested.

2 MS. KALLAS: Do you know if anybody was ever prosecuted or
3 anything ever happen to the people that jumped him?

4 JUROR NO. 172: I don't know. They – just – I [indiscernible]
5 there trying to find out if he's alive or anything, just – never mind.

6 MS. KALLAS: Does he know the people who jumped him?

7 JUROR NO. 172: No. It was – he got told – the guy got told
8 by other people to jump him. My son is a UFC fighter, very tough. And
9 the waited till he was asleep and the guy pounded him in the head with
10 his television set and they had to life flight him to the hospital.

11 MS. KALLAS: Okay, so I understand that the – it was another
12 prisoner that attacked him but --

13 JUROR NO. 172: Yes.

14 MS. KALLAS: -- do you all have any blame to the correction
15 officers?

16 JUROR NO. 172: I think it could have been handled way
17 different. I don't see – they know that paperwork is important. You can't
18 go in there with the people thinking you're a molester or not knowing
19 your crime –an abuser – I'm not sure all what they'll attack you for but I
20 raised him on my own.

21 MS. KALLAS: So, really what the purpose of our questioning
22 is trying to decide whether or not you can be fair and impartial. Do you
23 think you can be?

24 JUROR NO. 172: That's why I told you at first I don't think I
25 could be fair.

1 MS. KALLAS: Okay.

2 JUROR NO. 172: To be honest with you I do not like the
3 correction officers in the prison. I have a nephew who in a Nevada one
4 who is a correction officer.

5 MS. KALLAS: Okay.

6 JUROR NO. 172: And him and I have some heated
7 arguments, you know, saying his facts and stating his. I understand it's a
8 hard job, but –

9 MS. KALLAS: Do you know what prison he works at?

10 JUROR NO. 172: Its in Nevada as well. I'm not sure which
11 one.

12 MS. KALLAS: And you said your son was at Indian Springs,
13 correct?

14 JUROR NO. 172: He was at Indian Springs and then they
15 transferred him to Nevada – don't know why – he got transferred up to
16 Nevada prison. I'm not sure what it is, up in Reno. And then that's when
17 the attack came when – all his paperwork transferred fine and that's
18 when the attack happened.

19 [Colloquy between State Counsel]

20 MS. KALLAS: Your Honor, can we approach briefly, or I don't
21 know if you need us to?

22 THE COURT: No. I [indiscernible] Defense yet. Are you done
23 with – any follow up questions, State?

24 MS. KALLAS: We'll pass, Your Honor. We can approach after.

25 MS. SISOLAK: Mr. Duchene –

1 JUROR NO. 172: Duchene.

2 MS. SISOLAK: Duchene; I am sorry for what happened to
3 your son. I understand these things are real. I'm sorry for what
4 happened to him.

5 Your Honor, I'd submit on the State's motion.

6 THE COURT: Okay.

7 All right, sir, thank you very much. Just have a – just go
8 outside and take your break with everybody else and do not discuss
9 these questions with your fellow jurors, sir.

10 All right. Thank you, sir.

11 JUROR NO. 172: Can I say one thing to you, Your Honor? I
12 had –

13 THE COURT: Sir, you have to – you need to have the
14 microphone; okay?

15 JUROR NO. 172? I had surgery, okay, and I have to go to the
16 bathroom like every – or is there any way I can just clean or do
17 something else that I cannot sit down? I had colon surgery and I'm just
18 uncomfortable.

19 THE COURT: Okay. All right, we'll take everything into
20 consideration, sir. Thank you. Just have a seat out front with your – or
21 take a break, whatever.

22 [Pause in proceedings as Juror 172 exits courtroom]

23 THE COURT: All right, we have a State's challenge,
24 argument on Mr. Duchene –

25 MS. SISOLAK: Your Honor, --

1 THE COURT: -- or is the State -- is the Defense, are you
2 going to contest it?

3 MS. MACHNICH: No, we're going to submit, Your Honor.

4 THE COURT: I think its clear to the Court that he has a very
5 deep seated bias against law enforcement, in particular correction
6 officers that work in the prison system. He says, I don't think I can be
7 fair, I don't like correction officers. He argues with a friend or -- I think he
8 said either a friend or relative who is a correction officer. He's thinking
9 about suing the Department of Corrections. He thinks corrections
10 officers keep people in prison so the prison system can make money.
11 And he even used a phrase, my son survived the prison system. So, its
12 clear to me that he cannot meaningfully deliberate or be fair in this case.
13 So, the challenge is accepted.

14 MS. KALLAS: And, Your Honor, just for the record as well,
15 obviously the Attorney General has jurisdiction over all the prison
16 crimes, and Mr. Gunnell, my co-counsel seems to believe that we're
17 possibly prosecuting the offenders in his son's attack. So, I would just
18 like that to be on the record as well so we [indiscernible] that entire
19 motion as well.

20 THE COURT: There was a motion by the Defense for Mr.
21 Birds, 140.

22 MS. SISOLAK: We withdraw our motion, Your Honor.

23 THE COURT: Okay. So, all we need to do is fill in Mr.
24 Duchene's place and we have our jury panel.

25 MS. KALLAS: Well, Your Honor, I just wanted to address -- I

1 [indiscernible] a chance to speak with Counsel, juror number 138,
2 Gonzalez, I don't know if they agree to move her. She was late. She
3 wasn't here. I think she might have been sleeping.

4 MS. SISOLAK: Why would you think that?

5 MS. KALLAS: Her eyes were closed.

6 MS. SISOLAK: Oh, sleeping here. I thought you meant --

7 MS. KALLAS: Yeah. Oh, no, no.

8 MS. SISOLAK: -- like sleeping somewhere.

9 MS. KALLAS: She came I think you know later. You had
10 already started and I believe I saw her eyes close. I don't know if that
11 was just me.

12 MS. MACHNICH: We would have no problem.

13 MS. SISOLAK: We'd have no problem, Your Honor.

14 THE COURT: No problem, what?

15 MS. MACHNICH: With striking her.

16 MS. SISOLAK: Striking her if Your Honor is so inclined.

17 THE COURT: Mr. Marshal, did she tell you why she was late?

18 THE MARSHAL: She said she got lost.

19 THE COURT: I didn't see that she was sleeping and --

20 MS. KALLAS: Maybe I just caught her right where her eyes
21 were --

22 THE COURT: Yeah. And then --

23 MS. KALLAS: -- a little tired.

24 THE COURT: -- throughout the trial I'm always watching and I
25 see if we need to take a break, so I'm not going to release her at this

1 point. So, we just need to fill Mr. Duchene's spot and then we'll have our
2 – we'll have enough for the peremptory challenges; okay?

3 MS. SISOLAK: Thank you, Your Honor.

4 THE COURT: So, as soon as they're ready bring them on in.

5 MS. KALLAS: Your Honor, sorry, can I just –

6 THE COURT: Sure.

7 MS. KALLAS: -- double check.

8 [Colloquy between State Counsel]

9 THE CLERK: We can release Duchene?

10 THE COURT: Duchene can be released.

11 MS. SISOLAK: Okay.

12 THE COURT: Were we just told –

13 MS. KALLAS: How does Your Honor work, I guess, when
14 someone's released? Do you go – does this person then –

15 THE COURT: I'm sorry? We're going to pull them from the
16 gallery.

17 [Colloquy between Marshal and Clerk]

18 MS. KALLAS: Okay, but as far as right here.

19 MS. SISOLAK: No, --

20 MS. MACHNICH: Strikes – it's the last 12 –

21 MS. SISOLAK: 12.

22 MS. KALLAS: Oh, okay, [indiscernible].

23 MS. MACHNICH: -- are in the jury and the 13th is the alternate.

24 THE COURT: Right.

25 MS. KALLAS: Can I not count [indiscernible]. Oh, okay. Never

1 mind, Your Honor.

2 MS. SISOLAK: And, Your Honor, I don't believe we inquired
3 about the alternate. Is it random or do they know?

4 THE COURT: No, 13.

5 MS. SISOLAK: Okay.

6 THE COURT: And then just for the record, I met with Counsel
7 in chambers and both sides wanted to exercise 5 peremptory
8 challenges.

9 MS. MACHNICH: Yes, Your Honor.

10 MS. SISOLAK: Thank you, Your Honor.

11 THE COURT: Is that correct, Defense? Is that correct, --

12 MS. MACHNICH: Correct.

13 THE COURT: -- State?

14 MR. GUNNELL: That's correct, Your Honor.

15 THE COURT: Okay. All right. Counsel, take your break if you
16 need one. If not, the jury can come back in or -- is he getting them now?

17 THE MARSHAL: There's one in the restroom.

18 THE COURT: Okay.

19 [Court in short recess]

20 THE COURT: All right, let's get our jury. So we just need to fill
21 Duchene's spot.

22 THE CLERK: Yes.

23 [Colloquy]

24 [In the presence of the jury venire]

25 THE MARSHAL: All rise for the entry of the jury.

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[Colloquy between Court and Clerk]

THE COURT: All right, welcome back, ladies and gentlemen.
And we need to call another potential juror for our seat, our empty seat.

THE CLERK: Badge number 256, Kerri Sweeney.

THE COURT: Good afternoon, Ms. Sweeney.

JUROR NO. 256: Good afternoon.

THE COURT: I'm going to ask you the same questions that
you've heard all morning and afternoon. And again, these questions
relate to yourself, a close family member, and anyone closely associated
with you. Anyone involved in law enforcement?

JUROR NO. 256: Yes. I'm a former marine so I have several
marine friends that are law enforcement all over the country.

THE COURT: Is that military police or law – actually like
police officers, correctional officers?

JUROR NO. 256: Law enforcement.

THE COURT: Okay, and can you tell us a little bit about that,
who you know or who you're affiliated with?

JUROR NO. 256: I know one in Phoenix, St. Louis, one in
California, don't know where exactly.

THE COURT: And are the police officers, correctional
officers, highway patrol?

JUROR NO. 256: Police officers.

THE COURT: All three?

JUROR NO. 256: Yes.

THE COURT: Okay. And how often do you stay in touch with

1 those individuals?

2 JUROR NO. 256: Maybe communicate a couple of times a
3 year just saying hi, catching up of it.

4 THE COURT: Did you ever discuss with them their job
5 duties?

6 JUROR NO. 256: No.

7 THE COURT: Okay. And you heard that we may have some
8 law enforcement officers testifying in this case.

9 JUROR NO. 256: Yes, sir.

10 THE COURT: The fact that your friends with various police
11 officers throughout the – actually throughout the country, is that going to
12 impact your ability to be a fair juror in this case?

13 JUROR NO. 256: No, sir.

14 THE COURT: Okay. And if you are selected, will you hold the
15 State to their burden of beyond a reasonable doubt?

16 JUROR NO. 256: Yes.

17 THE COURT: Okay. The next question is ever been a victim
18 of crime?

19 JUROR NO. 256: No.

20 THE COURT: Accused of a crime?

21 JUROR NO. 256: No.

22 THE COURT: A particularly positive or negative experience
23 with law enforcement?

24 JUROR NO. 256: All positive. With being in the Marines we
25 did a lot of charity work with a local station in Hawaii and so I just worked

1 with her so I've only had a positive experience.

2 THE COURT: Okay. And have you had prior jury service?

3 JUROR NO. 256: No.

4 THE COURT: And what I call the background question as far
5 as what is your employment, spouse or significant, and any children
6 [indiscernible].

7 JUROR NO. 256: I'm a design consultant, single, and no kids.

8 THE COURT: Okay.

9 State, do you have any follow up questions for Ms. Sweeney?

10 MS. KALLAS: Ms. Sweeney, you said you were excited to be
11 here?

12 JUROR NO. 256: Yes.

13 MS. KALLAS: Was that you? Okay, I just want to double
14 check.

15 That's all my questions, Your Honor.

16 THE COURT: All right; Defense.

17 MS. SISOLAK: Briefly, Your Honor.

18 All right, Ms. Sweeney, you did say you were excited to be
19 here.

20 JUROR NO. 256: Yes.

21 MS. SISOLAK: Why?

22 JUROR NO. 256: Well, my little sister actually does mock trial
23 for the University of Georgia so she's actually applying to law school
24 right now, so I've been to plenty of her mock trials. I know it's a mock
25 trial but at the same time its interesting. It's seeing both sides and just all

1 of the information its –

2 MS. SISOLAK: All right.

3 JUROR NO. 256: -- yeah, the different side of it I guess.

4 MS. SISOLAK: Interesting. I haven't heard of that one before.

5 Was there any question you wanted me to ask you?

6 JUROR NO. 256: No, ask away. Whatever you want.

7 MS. SISOLAK: [Indiscernible] you wanted me to ask, like a
8 favor?

9 JUROR NO. 256: Follower or leader.

10 MS. SISOLAK: Which are you?

11 JUROR NO. 256: I think a little bit of both because as being a
12 marine you have to be, one, a good follower to be a good leader, so you
13 have to be a little bit of both in order to then help the followers then tow
14 the line.

15 MS. SISOLAK: Okay. Would you want you on your jury?

16 JUROR NO. 256: Yes.

17 MS. SISOLAK: Why?

18 JUROR NO. 256: Fair, open minded, like knowing all the
19 information before making an educated decision.

20 MS. SISOLAK: All right. Anything else you think we should
21 know?

22 JUROR NO. 256: No.

23 MS. SISOLAK: Nothing further, Your Honor. Thank you.

24 THE COURT: Do you pass for cause?

25 MS. SISOLAK: Yes, Your Honor.

1 THE COURT: And the State passed for cause for – all right.
2 MS. KALLAS: Yes, Your Honor.
3 THE COURT: May I have Counsel approach, please?
4 **[Bench conference begins – transcribed as follows:]**
5 THE COURT: Okay, that gives us our 23. She's going to print
6 out the sheet and –
7 MS. KALLAS: Okay.
8 THE COURT: -- [indiscernible] back and forth and –
9 MS. SISOLAK: Okay.
10 MS. MACHNICH: Sounds like a plan.
11 MS. SISOLAK: Thanks.
12 MS. KALLAS: Thank you, Your Honor.
13 THE COURT: Okay, go ahead and print it out.
14 THE CLERK: Huh?
15 THE COURT: Go ahead and print out the sheet for
16 everybody.
17 THE CLERK: Yes.
18 THE COURT: Make an original and copies for everybody.
19 [Colloquy between Court and Clerk]
20 [Colloquy between Defense Counsel]
21 THE COURT: You have some witnesses today?
22 UNKNOWN SPEAKER: We do. They're [indiscernible] right
23 here, so they should be pretty fast, though. We're going to try and knock
24 them out.
25 THE COURT: I'll give the [indiscernible] instruction and

1 [indiscernible] --

2 MS. KALLAS: And we do have just the one housekeeping
3 matter with the stipulations just because we'd like that read to them prior
4 to opening statements.

5 MR. GUNNELL: [Indiscernible] read that [indiscernible].

6 MS. MACHNICH: [Indiscernible].

7 MS. KALLAS: Oh, well that -- we're just going to -- we're
8 calling [indiscernible] about like two minutes to take a look at it.

9 THE COURT: I'm sorry?

10 MS. KALLAS: We just need to talk about the stipulation I think
11 for probably another two minutes.

12 MS. MACHNICH: We can go do that. Do you --

13 THE COURT: What I'll do is --

14 MS. MACHNICH: -- want to go do that?

15 THE COURT: -- I'll give my permanent instructions and then
16 I'll just tell the jurors that you want to organize your notes for the opening
17 and take a short break.

18 MS. KALLAS: Okay.

19 MS. SISOLAK: Thank you.

20 MS. MACHNICH: Sounds good.

21 **[Bench conference ends]**

22 [Colloquy between Court and Clerk]

23 THE COURT: Marshal, can you hand the originals to the
24 attorneys?

25 Ladies and gentlemen, you may have noticed either the Court

1 or the attorneys have a packet of materials in front of us. This is the
2 information that we've received from the jury commissioner. When you
3 received your jury summons you were asked to call or go online and
4 provide certain information. That's all been printed out for myself as well
5 as the attorneys.

6 Based upon this information from the jury commissioner, all of
7 my questions of the parties, of the – excuse me, of the potential jurors,
8 and the questions of the attorneys, they feel they have sufficient
9 information to select those jurors to hear this case.

10 In this particular case, each side has the right to exercise what
11 we call peremptory challenges. Each side has a right to exercise five
12 peremptory challenges which means they can strike off five names
13 without setting forth any reason whatsoever. And we're going to start this
14 process now.

15 State, would you please exercise your first.

16 MS. KALLAS: Thank you, Your Honor.

17 THE COURT: And we do this by secret ballot. They're just
18 going to hand a paper back and forth with the names stricken off.

19 [Peremptory challenge begins at 3:10 p.m. and ends at 3:19 p.m.]

20 THE COURT: All right, ladies and gentlemen, it appears to
21 the Court that the parties have either exercised or waived their five
22 peremptory challenges. In just a moment the court clerk will call the roll
23 call of those individuals who have been selected to hear this case.

24 Those individuals in the jury box please grab all your items
25 and just have a seat in the gallery to my left.

1 THE COURT: All right, ladies and gentlemen, the court clerk
2 is going to call the roll call of those individuals. Please when your name
3 is called please approach the jury box. The marshal will escort you to
4 your seat and we'll start with the second seat in on – from both rows one
5 and two and you'll have – and he'll give you a badge and a notepad and
6 a pen for you.

7 THE COURT: Go ahead, Ms. Clerk.

8 THE CLERK: Badge number 255, Iliana Rodriguez; badge
9 number 122, Tonya Dennis; badge number 123, Okeama Warner;
10 badge number 126, Linzy Stahl; badge number 140, Jonathan Birds;
11 badge 241, Zachary Taylor; badge number 147, Linda Leavitt.

12 THE COURT: We'll need to fill that last spot there in the back
13 row.

14 THE CLERK: 162, Scott Nix; 168, Suzanne Anderson; 210,
15 Silviya Doneva; 242, Leonila Abella; 203, Shaun Burgess; 204, Heather
16 Dufrene.

17 THE COURT: Ladies and gentlemen, those of you who are
18 not seated in the jury box you do have my thanks and the thanks of the
19 attorneys for your time today. It is important that we go through this
20 process and so we really appreciate your service here. You are excused
21 from this case. The marshal will pick up your plastic cardholders. They
22 need to be turned in. You can keep the little card in there as a memento
23 of your day today or you can throw it away, its up to you. But again,
24 thank you for your service today. We appreciate it.

25 THE COURT: All right, ladies and gentlemen, those of you in

1 the jury box we're going to swear you in to hear this case. Please stand
2 up, raise your right hand.

3 [Jury sworn in]

4 THE COURT: All right, have a seat. Thank you.

5 Ladies and gentlemen, as I had mentioned before I'm going to
6 read to you jury instructions which are the laws that apply to this
7 particular case. However, at this time, I'm going to read to you some
8 preliminary instructions to give you a better idea as what to expect
9 during the trial.

10 As you know this is a criminal case brought by the State of
11 Nevada against the Defendant. This case is based upon an Information.
12 The clerk will now read to you the Information and state the Defendant's
13 plea.

14 [Clerk reads Information]

15 THE COURT: Ladies and gentlemen, you should distinctly
16 understand that the Information just read to you is simply a description of
17 the charges by the State against the Defendant. It is not evidence of
18 anything. It does not prove anything. Therefore, the Defendant starts out
19 with a clean slate. The Defendant has pled not guilty and is presumed
20 innocent.

21 In a criminal case there are two basic rules to keep in mind.
22 One, the Defendant is presumed innocent unless proven guilty beyond a
23 reasonable doubt. The Defendant is not required to present any
24 evidence or prove his innocence. The law never imposes upon a
25 Defendant in a criminal case the burden of calling any witnesses or

1 introducing any evidence. Two, to convict, the State must prove beyond
2 a reasonable doubt the crimes were committed and the Defendant is the
3 person who committed them.

4 Certain things are not evidence and you must not consider
5 them as evidence in deciding the facts of this case; statements and
6 arguments by the attorneys, questions and objections of the attorneys,
7 testimony I instruct you to disregard, and anything that you see or hear
8 when court is not in session, even if it comes from one of the parties or
9 witnesses. Remember, evidence is sworn testimony by a witness while
10 court is in session and documents and other things received into
11 evidence as exhibits.

12 There are rules of law which control what can be received into
13 evidence. When a lawyer asks a question or offers an exhibit into
14 evidence and the lawyer on the other side thinks that it is not permitted
15 by the rules, that lawyer may object. If I overrule the objection, the
16 question may be answered or the exhibit received. If I sustain the
17 objection, the question cannot be answered and the exhibit cannot be
18 received. Whenever I sustain an objection, ignore the question and do
19 not guess what the answer might have been. Sometimes I may order
20 evidence stricken from the record and tell you to disregard or ignore
21 such evidence. This means that you cannot consider this evidence when
22 you are deciding the case. It is the duty of a lawyer to object when they
23 believe that the admission of evidence would violate the rules. You
24 should not be prejudiced in any way against the lawyer who makes
25 objections on behalf of the party the lawyer represents. Also, I may find it

1 necessary to admonish a lawyer. If I do, you should not be prejudiced
2 towards the lawyer or client because I have found it necessary to
3 admonish the lawyer.

4 In deciding the facts of this case you may decide which
5 witnesses to believe and which witnesses not to believe. You may
6 believe everything a witness says or only part of it or none of it. In
7 considering the weight or value of the testimony of any witness you may
8 consider the appearance, attitude, and behavior of the witness when
9 testifying and a number of other things including the witness' ability to
10 see, hear, or know of the things the witness testifies to. The quality of
11 the witness' memory, the inclination of the witness to speak truthfully,
12 whether or not a witness has any interest in the outcome of the case or
13 any motive, bias, or prejudice, whether the witness is contradicted by
14 anything the witness said or wrote before trial, and how reasonable is
15 the witness' testimony when considered with other evidence which you
16 believe. Deciding whether or not to believe a witness, keep in mind that
17 people sometimes forget things. You need to consider whether the
18 contradiction was due to an innocent lapse of memory or an intentional
19 falsehood and that may depend on whether it has to do with an
20 important fact or only a small detail. The weight and value of evidence
21 does not necessarily depend on the number of witnesses testifying for
22 one side. You must consider all the evidence and you may decide the
23 testimony of a smaller number of witnesses on one side has more
24 weight or value than that presented by a larger number of witnesses on
25 the other side.

1 During this trial you will be given the opportunity to ask written
2 questions of any of the witnesses called to testify in this case. You are
3 not encouraged to ask a large number of questions because that is the
4 primary responsibility of the attorneys. Once the attorneys have finished
5 their questions, I will ask whether any of the jurors have any questions. If
6 you do have a question, please write it down on a piece of paper that's
7 been provided with your juror number and raise your hand. The marshal
8 will then collect the question. Questions must be factual in nature,
9 designed to clarify information already presented and addressed to the
10 witness. Jurors must not place undue influence – excuse me, undue weight
11 on the responses to their questions. After consulting with the attorneys,
12 the Court will determine whether your question is legally proper. No
13 adverse inference should be drawn if the Court does not ask a particular
14 question.

15 Until this case is submitted to you do not talk to each other
16 about the case or anyone who has anything to do with it until the end of
17 the case when you go to the jury room to decide your verdict. Do not talk
18 with anyone else about the case or anyone that has anything to do with
19 it until the trial has ended and you have been discharged as jurors. This
20 includes members of your family and your friends. You may tell them
21 that you are a juror in a criminal case but that is all. Do not let anyone
22 talk to you about the case or about anyone who has anything to do with
23 it. If someone should try to talk to you about the case please report it
24 immediately to the marshal. Do not read any news stories, listen to any
25 radio broadcast, watch any television reports about the case or about

1 anyone who has any – involved with it. Do not do any research or make
2 any investigation about the case on your own. You may be tempted to
3 visit a particular location. Please do not do so. During this trial do not
4 make up your mind about what the verdict should be until after you have
5 gone to the jury room to decide the case and you and your fellow jurors
6 have discussed the evidence. It is important to keep an open mind
7 throughout the trial.

8 At the end of the trial you will have to make your decision
9 based upon what you recall of the evidence. You will not have a written
10 transcript to consult. Please pay close attention to the testimony as it is
11 very difficult and time consuming for the court recorder to play back
12 lengthy testimony. If you wish you may take notes to help you remember
13 what a witness said. If you do take notes, please keep them to yourself
14 until you and your fellow jurors go to the jury room to decide the case.
15 Do not allow notetaking to distract you from what the witness is saying.
16 You should rely upon your own memory of what was said and not be
17 overly influenced by the notes of the other jurors.

18 As I had mentioned before, during the course of the trial the
19 attorneys for both sides and all court personnel, other than the marshal,
20 are not permitted to converse with members of the jury. These
21 individuals are not trying to be antisocial or rude. They are bound by
22 ethics and the law not to talk to you. To do so might contaminate your
23 verdict.

24 There are two types of evidence that can be presented in this
25 case: direct and circumstantial evidence. Direct evidence is what a

1 person personally saw, heard, or did. Circumstantial evidence is a chain
2 of facts which tend to prove another fact. For example, if you wake up in
3 the morning and you see the ground is wet, water is running down the
4 gutters you may infer from those facts that it rained during the night. It is
5 proof of one or more facts which you can find another fact. If you are
6 awake during the night and actually saw the rain fall, that would be direct
7 evidence which is something you personally saw or did. The law allows
8 you to provide – or – allows you to consider both direct and
9 circumstantial evidence and weigh them the same.

10 Ladies and gentlemen, the trial will proceed in the following
11 manner. One of the Deputy Attorney General's will make an opening
12 statement which will outline what the State expects to prove. Then the
13 Defense attorney may make an opening statement. However, this is not
14 required. Opening statements serve as an introduction to the evidence.
15 The State will then present its evidence and Counsel for the Defendant
16 may cross-examine the witnesses. Following the State's case, the
17 Defense may present evidence and the Deputy Attorney General may
18 cross-examine the witnesses. However, as I've said, the Defendant is
19 not obligated to present any evidence.

20 After all the evidence has been presented I will instruct you on
21 the law. After the instructions of the law have been read to you each side
22 has the opportunity to present oral argument. What is said in closing
23 argument is not evidence. The arguments are designed to summarize
24 and interpret the evidence. Since the State has the burden of proving the
25 Defendant guilty beyond a reasonable doubt, the State has the right to

1 open and close the arguments. After the arguments have been
2 completed you will retire to deliberate your verdict.

3 Ladies and gentlemen, the attorneys are going to get their
4 notes together and present their opening – or the State will present their
5 opening statement to you. They're just going to take a few minutes here
6 to get their notes and presentation ready for you. So, we're just going to
7 take a very short recess.

8 And during this recess, Ladies and gentlemen, it is your duty
9 not to converse among yourselves or with anyone else on any subject
10 connected with this case, or to read, watch, or listen to any report of or
11 comment during trial by any person connected to the trial, or by any
12 medium of information, including without limitation newspaper,
13 television, radio, or the internet. You are not to form or express an
14 opinion on any subject connected with this case until this matter is
15 submitted to you. See you back in five or ten minutes. Please leave your
16 notepads and your pens on the chair and from now on you'll wear your
17 blue name badge.

18 THE MARSHAL: All rise for the exit of the jury.

19 [Outside the presence of the jury]

20 THE COURT: Defense, do you envision making your opening
21 at this time, and if so, would you be including what you believe that
22 these witnesses may testify as far as you've subpoenaed warden, the
23 associate warden and some other individuals?

24 MS. SISOLAK: Court's indulgence.

25 [Colloquy between Defense Counsel]

1 MS. MACHNICH: Your Honor, depending on what comes out
2 in the State's opening, 'cause again, we don't have a full idea of what
3 that might be at this point. We may reserve.

4 THE COURT: All right, State, do you have any objection to
5 the Defense in-camera providing me with their proffer of testimony of
6 these individuals?

7 MR. GUNNELL: Your Honor, we object to it. I don't think its
8 necessary to have in-camera. I mean these individuals weren't there. I
9 don't even see the relevance. Like, the first standard is relevance and I
10 don't – unless they – something's crazy I've never heard of before they
11 pull it out which maybe they are, we do just object to it. But you know
12 let's get this thing going, so if you want to do the in-camera
13 [indiscernible] we're fine with that.

14 MS. SISOLAK: Your Honor, I'm not willing to give away my
15 theory of defense.

16 THE COURT: I'm sorry?

17 MS. SISOLAK: I'm simply not willing to turn my theory of
18 defense over to the State knowing that we break in an hour and a half
19 for the day.

20 THE COURT: Right. Well, why don't we do this. If the State, --
21 I know they said they don't have any objection, why don't we – why don't
22 you just have – stand in the hallway in the back. We'll close both doors
23 and, Cynthia, this portion here when the State leaves the courtroom will
24 be – the transcript will be under seal.

25 THE RECORDER: Okay.

1 THE COURT: Okay?

2 MS. SISOLAK: Thank you.

3 THE COURT: Just make sure that door closed. Is that one

4 propped open or is it closed?

5 THE CLERK: It's closed.

6 THE COURT: Now, if there is any witnesses in this case,

7 you're –

8 MS. SISOLAK: They're not witnesses, Your Honor.

9 MS. MACHNICH: Just a second.

10 MS. SISOLAK: They're employees.

11 MS. MACHNICH: Are you guys – you're with the AG's office,

12 right?

13 UNKNOWN SPEAKER: I am.

14 MS. MACHNICH: Can you please step outside then?

15 UNKNOWN SPEAKER: Sure.

16 MS. KALLAS: Sorry.

17 MS. MACHNICH: If that's okay –

18 MS. KALLAS: Yeah, sorry, Your Honor.

19 MS. MACHNICH: -- with Your Honor, I just –

20 THE COURT: Sure. Absolutely.

21 MS. MACHNICH: Sorry. We thought you might be and we

22 don't want to like – okay, thank you.

23 THE COURT: Are all the doors – those doors are shut?

24 MS. SISOLAK: Yup.

25 THE COURT: Okay; all doors are shut.

1 All right, Ms. Sisolak.

2 [The following portion of hearing sealed - 3:40 to 3:53 p.m.]

3 THE COURT: If you can get the AG's and then you get the
4 jury in.

5 All right, State, I – obviously I met with Defense Counsel in a
6 closed hearing. The transcript of the hearing is going to be sealed upon
7 order – by order of the Court. At this time if they're going to have –
8 they're going to reserve their opening so we can have your opening and
9 call any witnesses that are available today.

10 MS. KALLAS: Okay, Your Honor. Thank you.

11 MS. SISOLAK: Your Honor, we did need maybe five minutes
12 to speak with the Attorney General about the stipulation, make sure the
13 wording is correct.

14 THE COURT: Can you do that now or –

15 MS. MACHNICH: We can do it right now.

16 MS. SISOLAK: Absolutely.

17 THE COURT: -- is it something you can just do with your first
18 witness perhaps or – I mean do you already have the stip – the
19 framework of your stipulation?

20 MS. MACHNICH: We do.

21 MS. KALLAS: We already have it, Your Honor. We're fine with
22 it.

23 [Colloquy]

24 MS. KALLAS: And we also have an instruction we would like
25 to [indiscernible].

1 MS. MACHNICH: Well, we'll deal with that with jury
2 instructions.

3 THE COURT: Right, but do you have –

4 MS. KALLAS: We would like an instruction read to them prior
5 to openings.

6 MR. GUNNELL: Or – Your Honor, that instruction -- the case
7 law we provided to you before is Tavares v. State. Its 11 – or excuse
8 me, 117 Nev. 725. And in that instruction it says – or excuse me, in that
9 case it says it's the burden of the State and the conclusion of that case
10 that: The burden of the State, that limiting instruction be given both at
11 the time of the evidence introduction and the final charge to the jury. So
12 we just like when that stip is read that that instruction be provided as well
13 and then at the time –

14 MS. SISOLAK: And we would have no objection, Your Honor.

15 MR. GUNNELL: -- of jury instruction.

16 THE COURT: Okay, do you have – my instruction may be on
17 my desk. Do you have an extra copy somewhere?

18 MR. GUNNELL: I do, Your Honor.

19 UNKNOWN SPEAKER: We have one.

20 [Colloquy]

21 THE COURT: So, just tell me when this – the witness will
22 testify regarding these issues and I will chime in with this instruction.

23 MR. GUNNELL: Its part of the stipulation, I believe.

24 THE COURT: Okay.

25 MR. GUNNELL: Its part – it all comes out of the stipulation

1 there, so.

2 THE COURT: Okay.

3 MS. MACHNICH: And, yeah, based upon the stipulation that
4 we've now discussed with the State and we have no objection to the
5 instruction.

6 THE COURT: Do you believe that I need to read this one as a
7 stipulation or – the parties can read, either one I don't care, but then I
8 need to read this as far as the witness testify because it's the exact
9 same thing. Its not really talking about evidence of other crimes or acts.

10 MS. MACHNICH: Your Honor, I believe what the State was
11 getting at and what we would agree to as well is the State will go forward
12 with their opening and then the opening of their evidence, they would
13 like and we all agree, it would be appropriate to read both the stipulation
14 and this instruction at that time, and that they then also be included with
15 the jury instruction packet when we settle instructions

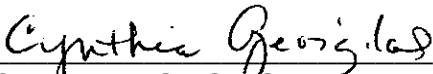
16 THE COURT: Okay. All right, let's get the jury in.

17 THE MARSHAL: All rise for the entry of the jury.

18 [Hearing concludes at 3:57 p.m.]

19 * * * * *

20
21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
22 Procedure, I acknowledge that this is a rough draft transcript, expeditiously
23 prepared, not proofread, corrected, or certified to be an accurate transcript.

24 
25 CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

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THE STATE OF NEVADA,
Plaintiff,
vs.
ANTONIO LEE MIXON,
Defendant.

VS.

TUESDAY, JANUARY 2, 2018

[STATE'S OPENING; DIRECT AND CROSS-EXAMINATION OF DEAN ONTIVEROS]

For the State:

For the Defendant:

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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1 Las Vegas, Nevada, Tuesday, January 2, 2018
2 [Jury trial began at 11:20 a.m.- not transcribed]
3 [State's opening statement begins at 3:57 p.m.]
4 [Inside the presence of the jury]
5 THE COURT: All right, welcome back ladies and gentlemen.
6 State, are you ready for your opening?
7 MS. KALLAS: Court's indulgence, Your Honor.
8 THE COURT: Sure.
9 MS. KALLAS: I apologize.
10 [Colloquy between State and Defense Counsel]
11 MS. SISOLAK: Thank you, Your Honor.
12 THE COURT: Go ahead, State.
13 **[STATE OPENING STATEMENT]**
14 MR. GUNNELL: Good afternoon, ladies and gentlemen.
15 On December 4th, 2015 it started out as an average day for
16 Officer Ontiveros and Officer Mcaninch. Officer Mcaninch had just came
17 on board at NDOC. It was his third day on his job. He hadn't even gone
18 to training. Officer Ontiveros had a little more experience and you'll see
19 him testify today. He's now a sergeant with Nevada Department of
20 Corrections. At the time, he was kind of the trainee training Officer
21 Mcaninch.
22 They're up at High Desert State Prison. They're out on the
23 yard, the exercise place for the inmates up there, and they notice
24 something kind of -- something going along with the Defendant sitting at
25 the table. And as they approached him, the Defendant picked up one of

1 the rocks that's on the yard -- southern Nevada there was a lot of rocks
2 everywhere -- picked up one of the rocks and threw it and it struck Officer
3 Ontiveros. After that, he pulled out what we call is a shank or weapon, a
4 homemade weapon, a prison weapon out of his shoe. He brandished
5 that. At that time, and you'll hear the testimony of the two corrections
6 officers who were involved in that, their discussions with these individuals
7 -- they told him to get on the ground. Certain things happened not that
8 long in time and then he actually went to the ground. He dropped the
9 shank and they actually put him in custody.

10 Ladies and gentlemen, this is a simple case. That's it. That's
11 what happened and that's why we're here today. It's not complex and
12 you're not going to hear from the State a bunch of craziness occurring.
13 You're not going to see crazy CSI what you -- on TV or anything like that.
14 It's a simple case.

15 A correction officer was struck by a rock and then the
16 Defendant had in his possession a shank, a tool, you know, used to stick
17 -- you know stab people or things like that in prison and --

18 MS. MACHNICK: Your Honor, I'm going --

19 MR. GUNNELL: -- that's it.

20 MS. MACHNICK: -- to object to argumentative at this point. I don't
21 know if what if this is within --

22 THE COURT: Sustained.

23 MS. MACHNICK: Thank you.

24 THE COURT: Okay.

25 MR. GUNNELL: Ladies and gentlemen, the evidence will show, and

1 you'll hear testimony of that today, the evidence will show through three
2 witnesses that we're going to call, the two corrections officers and a third
3 who was there at the scene and overheard some statements, and he'll
4 discuss those statements. Ladies and gentlemen, we'll just ask you at the
5 end of the evidence that you find the Defendant guilty.

6 Thank you.

7 THE COURT: All right, thank you, Counsel.

8 Does the Defense wish to exercise their right for an opening at
9 this time?

10 MS. MACHNICK: Your Honor, at this time, the Defense will be
11 reserving the right for an opening statement to the opening of the
12 Defense case.

13 THE COURT: All right.

14 MS. MACHNICK: Thank you.

15 THE COURT: Thank you.

16 State, call your first witness, please.

17 MS. KALLAS: The state's first witness is Dean Ontiveros. Oh, Your
18 Honor, did you want to do the stipulations first --

19 THE COURT: Yes, we can -- go ahead and do the stipulation.

20 [Colloquy between State and Defense counsel]

21 The Defense and the State have stipulated that on December
22 4, 2015, Defendant Antonio Lee Mixon was in lawful custody at the
23 Nevada Department of Corrections and was incarcerated at the
24 Henderson -- or High Desert State Prison as a prisoner.

25 THE COURT: Is that correct, Defense Counsel? You are entering

1 into that stipulation?

2 MS. SISOLAK: That is correct, Your Honor.

3 THE COURT: Ladies and gentlemen, I had previously advised you
4 that the evidence in this case comes from the witness testimony and any
5 exhibits admitted into evidence, and also stipulated facts. The stipulation
6 just read to you by the Deputy Attorney General is a stipulated fact by
7 both sides. You are to consider that fact as proof for this case.

8 **DEAN ONTIVEROS**

9 [Having been called as a witness and first being duly sworn testified as
10 follows:]

11 THE CLERK: Please state and spell your first and last name for the
12 record.

13 THE WITNESS: First name Dean Ontiveros.

14 THE CLERK: Spell your name, please?

15 THE WITNESS: Last name, O-N-T-I-V as in Victor-E-R-O-S.

16 THE COURT: Go ahead, Counsel.

17 MS. KALLAS: Court's indulgence.

18 Your Honor, may we approach?

19 THE COURT: All right.

20 [Bench conference begins]

21 MS. KALLAS: Are you going to read the instruction not --

22 THE COURT: I'm sorry?

23 MS. KALLAS: Were you going to read the instruction that Jason
24 gave regarding the stipulation?

25 MR. GUNNELL: Yeah; we just need that read 'cause it's a --

1 THE COURT: Okay, I'll read it now.

2 MR. GUNNELL: Yeah.

3 THE COURT: Okay.

4 MS. SISOLAK: Thank you.

5 [Bench conference ends]

6 THE COURT: Ladies and gentlemen, as I had mentioned before,
7 the parties have stipulated to the fact that the Defendant is an inmate, or
8 was at the time of the alleged offense -- was an inmate in lawful custody
9 in the Nevada Department of Corrections as a prisoner and he was
10 incarcerated at High Desert State Prison at the time of the incident. You
11 should not guess or speculate as to the reason why the Defendant was in
12 the custody of the Nevada Department of Corrections. You cannot use
13 the fact the Defendant was incarcerated or any fact that resulted in his
14 incarceration for any purpose other than to establish the Defendant was
15 in fact incarcerated at the time of the alleged -- that the events alleged.
16 You may not convict a person simply because you believe he may have
17 committed some other act at another time. Keep in mind that the
18 Defendant is on trial for the crimes charged in this case and for these
19 crimes only.

20 Go ahead, Counsel.

21 **DIRECT EXAMINATION**

22 BY MS. KALLAS:

23 Q Sir, how are you employed?

24 A [Indiscernible]

25 Q How are you employed?

1 A How? I don't understand the question.

2 Q What do you do for a living?

3 A Oh, what I do. Oh, my bad. I'm a correctional officer at the
4 High Desert State Prison.

5 Q And how long have you been a correction officer with the
6 prison?

7 A 12 years and some change, coming up on 13 in October.

8 Q As a correction officer, do you work at the Nevada Department
9 of Corrections?

10 A Yes, ma'am.

11 Q Specifically, what are your job responsibilities as a corrections
12 officer?

13 A Public safety, inmate safety, staff safety.

14 Q Could you take me through a typical day what you do exactly?

15 A Oh, if we're talking about the incident at hand, when I was --

16 Q Not at hand, just in general.

17 A Just in general --

18 Q Just your general specific responsibilities.

19 A As a sergeant for the Department of Corrections I'm
20 responsible for about approximately 10 to 11 officers right now in the
21 section that I work at. We prepare close to 4000 meals -- well, more than
22 -- about 4000 meals a day for the incarcerated inmates. A typical day we
23 just do what we do, you know, feed, get things ready, you know, um feed
24 the inmates and go home.

25 Q And in December 2015 were you employed in that capacity?

1 A No; at that time I was a senior correctional officer.

2 Q And what were your job responsibilities at that time?

3 A I was basically a, like a junior sergeant within the unit. There
4 was approximately -- we had approximately 168 inmates. I was in charge
5 of training young officers, security of the officers and inmates, shake
6 down, you know, searches, looking for whatever we had to do, walk
7 medical personnel around when they do their pill calls and stuff like that.
8 So, basically just oversee the whole unit of 168 inmates on a normal day,
9 just make sure they're safe.

10 Q Mr. Ontiveros, are you familiar with the person by the name of
11 Antonio Mixon?

12 A Yes, ma'am.

13 Q How is it that you're familiar with Mr. Mixon?

14 A Mr. Mixon was a inmate in my unit.

15 Q And do you see Mr. Mixon in the courtroom today?

16 A Yes, ma'am.

17 Q Could you please point to him and identify an article of
18 clothing he's wearing?

19 A Tie and a, looks like a gray shirt or something. I can't --

20 MS. KALLAS: Your Honor, may the record reflect the witness has
21 identified the Defendant?

22 THE COURT: Yes, it will.

23 BY MS. KALLAS:

24 Q Directing your attention to December 4th, 2015, were you
25 working your capacity as a corrections officer on that day?

1 A Yes.

2 Q And what shift were you working?

3 A Working day shift.

4 Q And what hours does that entail?

5 A I was working twelves. I -- it was 5 to 5, 5:00 a.m. to 5:00 p.m.

6 Q And was that your normal shift?

7 A Yes, ma'am.

8 Q And which prison facility were you working at?

9 A High Desert State Prison.

10 Q Is High Desert State Prison located in Clark County, Nevada?

11 A Yes.

12 Q And could you just take me through the beginning of your day,
13 how the day started?

14 A It starts every day we relieve the off going shift. We get a brief
15 in what's been happening, you know, throughout the night. We end up
16 feeding -- you know we have to feed the inmates. And basically, like I
17 said, when they bring new officers in my job is to train them, ensure that I
18 go through the operational procedures and everything else. And then we
19 have different schedules like tier schedules for inmates to go out on tier
20 or inmates to go out on yard. We have to ensure and, you know, make
21 sure that we're watching them, you know, for any type of illegal activities
22 that they might be doing, gambling or whatever the case may be. And it
23 goes on all day with one hundred -- you got an officer upstairs and you
24 got two on the floor.

25 Q And would you classify that as part of your normal routine?

1 A Yes.

2 Q And specifically on December 4, 2015, where in the prison
3 were you working around 9:00 a.m. that morning?

4 A We had just -- I was -- we just let a group of inmates go out to
5 the inner quad -- or inner yard for their yard time.

6 Q Could you describe what the, what did you say, the inner yard
7 is?

8 A Yes, ma'am. It's a -- High Desert State Prison you have a --
9 you have quads. You have a unit called 5AB, 5CD, 6AB and 6CD. And
10 the inner quad is where we let the inmates go out to get their exercise,
11 handball, and do push-ups or whatever they want to do for recreation.

12 Q Could you describe, I guess, what it looks like, what the rec
13 yard looks like?

14 A It's basically you have pull up bars on one side, cement slabs
15 here in front of like 6AB, a cement slab in front of 5CD, cement slab in my
16 unit which is 6CD where the inmates play handball. You got walkways
17 and a lot of dirt and rocks.

18 Q And when you're out on the yard, did you see the Defendant
19 at that time?

20 A Yes.

21 Q And was he alone or was he by himself?

22 A He was by himself.

23 Q And what, if anything, unusual happen when you saw the
24 Defendant that morning?

25 A Well, it's just-- like I said, it was just like a real normal day. I

1 had an officer with me, his third day on the yard and I was teaching him
2 the -- you know, the lay of the land --

3 Q And what was this --

4 A -- so to speak.

5 Q I apologize for interrupting; what was this--

6 A Right.

7 Q -- officer's name?

8 A Officer Macinnich.

9 Q Okay, I apologize. So, what if anything unusual happen?

10 A So, you know I was showing him the lay of the land of what
11 inmates do what and just something about Mr. Mixon pacing back and
12 forth. I said -- you know, it seemed like a red flag to me and I told him
13 that's -- this is the kind of behavior you need to watch because when
14 you're out there you'll see a routine of officers -- oh, excuse me, inmates
15 doing their thing, handball, exercising, pull ups. One group always walks
16 around in a, you know, clockwise circle and he was just by himself just
17 pacing.

18 Q And what if anything happened next?

19 A Well, he just approached me. So like if we're standing in front
20 of my unit when inmates want to go in to use the bathroom or anything
21 like that they walk up to you and say, hey, oh, I need to go to the
22 bathroom. I yell up at my officer upstairs to open up the door, let him in.
23 And I thought that's what Mr. Mixon was going to do but he came up,
24 stopped within I don't know 10 - 15 feet from me, reached down, picked
25 up a rock and just threw it at me.

1 Q And when Mr. Mixon threw that rock, did he say anything to
2 you?

3 A Nothing.

4 Q Had you said anything -- prior to him throwing that rock, had
5 you said anything --

6 A No, ma'am.

7 Q -- to him? Okay, so he throws a rock at you. How big is that
8 rock?

9 A About that big [witness demonstrates with his hands]. I
10 couldn't even tell you. I don't know how big would that be; a little more
11 than a golf ball.

12 Q And what happened after that?

13 A I was in shock. I never had that happen to me before. So, I
14 took a couple of steps towards him and when I did that he reached down
15 picked up another rock. And at this time I was like, what is he going to do
16 with this rock and I started doing that dodge ball kind of thing. And when
17 he just chucked it again, I kind of like twisted this way to -- you know,
18 'cause he hit me once in the abdomen, I was able to twist enough to
19 where he hit my left thigh with the rock.

20 Q Okay, so you said that he hit you once in the abdomen and
21 then he hit you once in the thigh?

22 A Yes, ma'am.

23 Q Okay, and how far away was the Defendant while he was
24 throwing those rocks?

25 A I'd say anywhere between 10 to 15 feet away from me.

1 Q And at any time did you consent to the Defendant hitting you
2 with those rocks?

3 A No, ma'am.

4 Q And prior to him -- the Defendant hitting you with the rocks,
5 had you ever spoken to him?

6 A No, ma'am.

7 Q Had you ever met him?

8 A Nah, I --

9 Q And to your knowledge, did you and the Defendant have any
10 issues?

11 A No, ma'am. I had no knowledge.

12 Q So at any time during this incident or prior to this incident, had
13 you ever consented to the Defendant hitting you with rocks?

14 A No.

15 Q And did the Defendant say anything to you at all while he was
16 throwing rocks at you?

17 A Nothing.

18 Q And did you say anything to the Defendant?

19 A When he hit me I said you -- I -- all I could do was react and I
20 started walking towards him. Then when I started walking towards him
21 he -- I quickened the pace after the second rock. Then he reached down
22 before he hit the -- there's a sidewalk that leads to unit 5AB, right before
23 he hit -- he had reached that sidewalk, he reached down, picked up
24 another handful of dirt and rock and threw it in my direction again.

25 Q And did any of those rocks hit you?

1 A Yes, ma'am.

2 Q Where?

3 A Just all over the -- all over my body. It's just like -- it was like
4 picking up a handful of dirt and rock. So when he did it I shield myself
5 and when I went to pursue him again that's when I noticed him taking off
6 his shoe and brandished that prison made weapon.

7 MS. SISOLAK: Your Honor, I'd object. May we approach?

8 THE COURT: Okay.

9 [Bench conference begins]

10 MS. SISOLAK: Your Honor, he's not charged with brand --

11 THE COURT: I'm sorry?

12 MS. SISOLAK: He's not charged with brandishing the shank. He's
13 charged with having the shank. I would ask that this witness not be able
14 to testify to something he's not charged with.

15 MS. KALLAS: It's his perception why he does it --

16 THE COURT: I'm sorry?

17 MS. KALLAS: -- brandishing -- it's his perception of what the
18 Defendant was doing with that, how he was holding it, but [indiscernible]
19 it's just a descriptive word of how he was holding a shank. I think its --

20 MS. SISOLAK: It's also a crime.

21 MS. KALLAS: It's a crime he's not charged with. It's called
22 [indiscernible] possession which it also entails holding a shank. It's the
23 same thing as brandishing.

24 MS. SISOLAK: But possession doesn't necessarily [indiscernible]
25 than holding a shank though.

1 MS. KALLAS: I don't think the jury is going to be misled in regards
2 to another bad act and the decision based on the fact that he's using the
3 word brandishing.

4 MS. SISOLAK: [Indiscernible].

5 THE COURT: I'm sorry?

6 MS. SISOLAK: [Indiscernible] that the word brandishing is
7 prejudicial.

8 THE COURT: I can't hear you. Say --

9 MS. SISOLAK: That the word brandishing is prejudicial. Holding is a
10 different word than brandishing. Brandishing in and of itself is another
11 bad act that they could have been charged.

12 THE COURT: Are you asking for a cautionary instruction at this time
13 or just for me to direct him to -- walk him through that he just had, you
14 know, [indiscernible] he's not using the word brandishing. [Indiscernible]
15 request it.

16 MS. KALLAS: I mean I have a feeling he's going to say it again if we
17 don't advise him not to obviously. I mean that's his way he described the
18 -- it's his perception of the act.

19 MS. MACHNICH: [Indiscernible].

20 THE COURT: I'm sorry?

21 MS. MACHNICH: [Indiscernible] that we [indiscernible] to you,
22 disregard that and want him to go [indiscernible].

23 THE COURT: Can you say was he [indiscernible] it, where was it?
24 You can get around it. Just -- okay?

25 MS. KALLAS: Okay.

1 THE COURT: I'll instruct the jury to disregard the [indiscernible].

2 MS. SISOLAK: Thank you.

3 [Bench conference ends]

4 THE COURT: Ladies and gentlemen, the witness used the word
5 brandishing. I am instructing you to disregard that answer.

6 Go ahead.

7 MS. KALLAS: May I proceed, Your Honor?

8 THE COURT: Yes.

9 BY MS. KALLAS:

10 Q So, you said the Defendant he hit you with a bunch of rocks
11 and then you're walking towards him -- and you start walking towards
12 him, what happened after that?

13 A He took off his shoe and reached into one of them. I was
14 going to tell you exactly what shoe he picked up and pulled out a knife, a
15 prison made weapon.

16 MS. KALLAS: Court's indulgence.

17 BY MS. KALLAS:

18 Q Could you describe what that item looked like?

19 A It's a shiny object to a point wrapped up with something so he
20 wouldn't -- I don't know, just like -- I couldn't even explain what a prison
21 made weapon is. It's just folded metal sharpened up to a point with this --
22 that's all I could see in his hand, just something shiny.

23 Q And where did you say he pulled that item out of?

24 A One of his shoes.

25 Q And is there a common term used to describe a prison made

1 weapon like this?

2 A Just a shank.

3 MS. KALLAS: Your Honor, may I approach the witness?

4 THE COURT: Yes.

5 BY MS. KALLAS:

6 Q I'm showing what's been previously marked State's proposed
7 Exhibit number 2; will you take a look at that?

8 THE COURT: Defense, have you seen this?

9 MS. SISOLAK: Yes, Your Honor.

10 THE COURT: Okay.

11 MS. KALLAS: I provided them [indiscernible], Your Honor.

12 BY MS. KALLAS:

13 Q Do you recognize what's in that picture?

14 A It looks like the shiny object he had.

15 Q And is -- and again, what did you refer to this object as?

16 A A shank.

17 Q And is that a fair and accurate depiction of the shank you saw
18 the Defendant holding?

19 A Yes, ma'am

20 MS. KALLAS: Your Honor, I'd move to admit this picture into
21 evidence.

22 THE COURT: Defense?

23 MS. MACHNICH: No, objection.

24 MS. SISOLAK: No, objection, Your Honor.

25 THE COURT: It will be admitted.

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[State Exhibit 2 admitted]

BY MS. KALLAS:

Q Now, did the Defendant say anything as he pulled the shank from his shoe?

A Nothing.

Q Were you saying anything to the Defendant?

A I tell you it happened so fast I probably could have said something but I think I said something like, that's it. I don't know.

Q And what did you mean by that's it?

A I -- when you start -- something like that happens, your adrenaline goes so high because now you're talking -- you know we have this thing -- use of force thing, a use of force to contain your men. When you start talking a weapon, its --

MS. MACHNICH: Objection, --

THE WITNESS: -- life or limb --

MS. MACHNICH: -- Your Honor, may we --

THE WITNESS: -- kind of stuff.

MS. MACHNICH: -- approach?

THE COURT: There is an objection?

MS. MACHNICH: Yes, Your Honor.

MS. SISOLAK: Yes, Your Honor.

THE COURT: What is the objection?

MS. MACHNICH: Relevance.

THE COURT: Overruled.

Go ahead; next question.

1 BY MS. KALLAS:

2 Q You can finish, --

3 A Oh, so --

4 Q -- Mr. Ontiveros.

5 A -- anyway, it was just -- it happened so quick and stuff like
6 that. We just react. What I meant by what I said you're -- that's it, I was
7 going to do everything possible to actually protect myself and probably
8 him too just because there was a weapon involved, part of my training
9 and job that I need to do.

10 Q All right. So, after the Defendant pulled a shank out of his
11 shoe, what happened next?

12 A Apparent -- I heard other officers -- okay, I don't even know if
13 it's true or not or what happened 'cause it happened so fast.

14 Q I need --

15 A Go ahead.

16 Q -- you to testify to what you do know to your knowledge.

17 A Okay, what I do know --

18 Q What you remember.

19 A -- is I heard somebody yell, get down on the ground. Then
20 that's when the Defendant went ahead and threw himself to the ground
21 and that's when I approached him. I -- per protocol, put my knee to hold
22 him down and put him in a wrist lock until restraints can be put on him. I
23 held him there because -- in that wrist lock because there's still a weapon
24 in the area.

25 Q Okay, I just want to go back actually a little bit when the

1 Defendant pulls the shank out of his shoe; how is he holding it?

2 A Like this [witness demonstrates with his hands] -- in his right
3 hand and just looking at me like -- you know.

4 Q Okay. So, after you said that he drop -- he eventually drops it?

5 A When he heard the responding officer say get on the ground.

6 Q Okay, and then after you put your knee on him, what
7 happened?

8 A I just grabbed his right hand, put it in a wrist lock until other
9 officers come by and one of my other officers said, I got this, and then he
10 -- I let him go. He -- I gave control over to the other officer. They
11 restrained him and that was the end of it, you know.

12 Q When you say restrained him, what do you mean?

13 A Put the wrist restraints, handcuffs on him.

14 Q And did you see where that -- the Defendant threw the shank?

15 A It was just in the area. I couldn't tell you exactly where it was
16 but it was in front of him while he was on the ground.

17 Q And was there anyone else around while this was happening,
18 any other inmates?

19 A We had a yard full of inmates. Well, I couldn't give you an
20 exact amount, but there were inmates -- yes, they were out -- inmates
21 around us.

22 Q How far away was the closest inmate to the Defendant while
23 this was happening?

24 A I'd say maybe from here to that wall, the corner.

25 Q About how many feet would you estimate? I'm not good at it.

1 A I couldn't even tell you.

2 UNKNOWN SPEAKER: 30?

3 BY MS. KALLAS:

4 Q About 30 feet?

5 A Maybe 25 yards.

6 Q And that -- and so as this was going on was the Defendant
7 saying anything to you?

8 A Once we put restraints on him and I stood up and the other
9 officers were holding him down, he said something to the point that
10 you're lucky my friends were here.

11 MS. SISOLAK: Objection, Your Honor.

12 THE COURT: He said what?

13 MS. SISOLAK: May we approach?

14 THE WITNESS: You're lucky my friends are here.

15 THE COURT: Approach.

16 [Bench conference begins]

17 MR. GUNNELL: [Indiscernible].

18 THE COURT: Who's going to argue? Come closer to the mic.

19 MS. MACHNICH: Okay, um, Your Honor, we're going to object as to
20 one discovery violation. This was not provided us. Something like this
21 was mentioned this morning in passing by the AG and actually a different
22 version of the statement was told to us right before they started their case
23 so we didn't know that this happened. All this threat-ish statement was
24 not in the officer's report and it was not provided to us as a statement of
25 the Defendant at any point and an incorrect version of it was provided to

1 us earlier today, and so we would object pursuant to *Brady*, pursuant to
2 the discovery law and --

3 MS. SISOLAK: Your order.

4 MS. KALLAS: And, Your Honor, I did tell them almost specifically
5 [indiscernible] that you did say that you're lucky your friends were around,
6 so I don't understand it.

7 THE COURT: I'm sorry; say --

8 MS. SISOLAK: That's not --

9 MS. KALLAS: I did let them know this morning that he did say that
10 you're lucky your friends are around, so I don't think that was provided to
11 them this morning.

12 UNKNOWN SPEAKER: [Indiscernible] --

13 MS. KALLAS: As far as *Brady*, I don't think its exculpatory
14 whatsoever and it goes -- but there[s also a statement that have been
15 provided to them that you're lucky -- along the lines of you're lucky I had
16 that shank or I would have stuck your [indiscernible]. I think this is
17 essentially in accordance with that same type of behavior. It's not a bad
18 act. It's not a threat.

19 MS. MACHNICH: Well, he --

20 MS. KALLAS: He's talking trash.

21 MS. MACHNICH: What that officer just testified to is not the same
22 thing she just said. He said you're lucky my friends aren't around.

23 MR. GUNNELL: [Indiscernible].

24 MS. MACHNICH: Those are two different things.

25 THE COURT: You [indiscernible two people -- who's handling the

1 witness?

2 MS. MACHNICH: What?

3 THE COURT: You're handing the witness and you're handling the
4 witness?

5 MS. MACHNICH: You handle this.

6 MS. SISOLAK: I'm handling this, Your Honor.

7 THE COURT: Okay. [Indiscernible] --

8 MS. SISOLAK: I understand.

9 THE COURT: The parties who handle the witness argue the motion.

10 MS. SISOLAK: I understand. The issue I have, Your Honor, is that
11 we were -- [indiscernible] Ms. Kallas [indiscernible] similar understanding
12 this morning. It is in none of the reports and it is not in any of the
13 discovery provided per your order. I have never heard it until this morning
14 and it's a violation. If it was disclosed to me this morning it's a violation.

15 MS. KALLAS: And, Your Honor, I do [indiscernible] was disclosed. I
16 -- Mr. Ontiveros acknowledged to me that he didn't put it in his report and
17 he didn't think -- I think he thought it was [indiscernible] whatever his
18 reasons [indiscernible] when I found out about it. I disclosed it to them
19 this morning. I don't think it's prejudicial in any way. She can discuss it --
20 with him during cross-examination. And, again, he made that same
21 statement, you're lucky, you know I would have stuck you in the
22 [indiscernible] if you didn't have that knee.

23 THE COURT: Okay, [indiscernible]--

24 MS. SISOLAK: And

25 MS. KALLAS: He's making threat and talking --

1 THE COURT: -- you turned over --

2 MS. KALLAS: -- trash.

3 THE COURT: -- all reports this morning, its not in any of your
4 reports?

5 MS. KALLAS: No.

6 MS. SISOLAK: And, Your Honor, I do want to clarify. If the statement
7 is you're lucky your friends were around are referring to the officers, co-
8 officers, we have a completely different story then if the statement is
9 you're lucky my friends weren't around, as in my client's friends.

10 MS. KALLAS: I can ask him. I'm not sure which one is --

11 MS. SISOLAK: The violation is the same but one is obviously more
12 prejudicial than the other.

13 MS. KALLAS: I have --

14 MS. SISOLAK: And we can inquire which it was.

15 THE COURT: How does he remember this after a year and a half to
16 two years?

17 MS. KALLAS: I'm sorry, what?

18 THE COURT: How does he remember this if it's not in any report?

19 MS. KALLAS: [Indiscernible], not sure, Your Honor. I can ask him
20 again. I'm not sure if he said my friend. I can ask him to explain what he
21 meant by my friends, if he was talking about --

22 MS. SISOLAK: It's still a *Brady* violation.

23 MR. GUNNELL: Again, it's not *Brady*.

24 MS. KALLAS: It's *Brady*; it's not exculpatory.

25 MR. GUNNELL: It's exculpatory.

1 MS. SISOLAK: All [indiscernible] -- discovery.
2 MR. GUNNELL: That -- it [indiscernible].
3 MS. SISOLAK: *Brady* is not exculpatory.
4 MR. GUNNELL: It's not *Brady*. It's a different rule -- discovery --
5 MS. SISOLAK: It is a --
6 MS. KALLAS: And its --
7 MS. SISOLAK: -- statement --
8 MS. KALLAS: -- not prejudicial --
9 MS. SISOLAK: -- by my client --
10 MS. KALLAS: -- [indiscernible].
11 MS. SISOLAK: -- that I am entitled to --
12 THE COURT: Okay.
13 MS. SISOLAK: -- that you ordered me to have.
14 THE COURT: So what are you requesting?
15 MS. KALLAS: And, Your Honor, I did find out about it after when I
16 did my witness prep after your order.
17 MS. SISOLAK: I would ask that it be stricken and that he not be
18 able to -- that the State may not be allowed to inquire any further into that
19 statement in any way.
20 MS. MACHNICH: [Indiscernible].
21 MS. SISOLAK: And that the jury disregard it.
22 THE COURT: Does this go to any other issues by the Defense?
23 MS. SISOLAK: Not that I can [indiscernible] at this point, Your
24 Honor.
25 THE COURT: No, I'm going to allow it, okay.

1 MS. KALLAS: Okay, thank you, Your Honor.

2 MS. SISOLAK: Thank you, Your Honor.

3 [Bench conference ends]

4 THE COURT: Objection overruled.

5 MS. KALLAS: Okay, and, Your Honor, may I approach the witness?

6 THE COURT: Yes.

7 BY MS. KALLAS:

8 Q Mr. Ontiveros, I'm showing what's previously marked State's
9 proposed Exhibit number 1. Can you take a look at that picture; do you
10 recognize what's in that picture?

11 A Yes.

12 Q And what is that?

13 A An officer pointing at the shank. He put a pen there to see how
14 long -- you know, to verify the length of it more or less.

15 Q And is that the shank that you saw the Defendant holding?

16 A Yes.

17 Q Okay. And what else do you recognize in that picture?

18 A Mr. Mixon.

19 Q And do you -- is that a fair and accurate depiction of the
20 Defendant and the shank he was holding after he was placed in those
21 restraints?

22 A Yes.

23 MS. KALLAS: Your Honor, I move to admit State's Exhibit 1.

24 MS. SISOLAK: No, objection, Your Honor.

25 THE COURT: It will be admitted.

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[State's Exhibit 1 admitted]

MS. KALLAS: Court's indulgence.

[Colloquy between State Counsel]

MS. KALLAS: I'll pass the witness, Your Honor.

THE COURT: Any cross-examination?

MS. SISOLAK: Yes, Your Honor. Court's indulgence.

CROSS-EXAMINATION

BY MS. SISOLAK:

Q Mr. Ontiveros, so in talking about that day, after Mr. Mixom was cuffed, what was your next action?

A Waiting for the -- waiting for people to come and you know like the incident commander and whoever. Medical was called so I can get assessed at the scene.

Q Did you have any injuries?

A Just a sore stomach and a sore thigh.

Q Were any pictures taken of those injuries?

A No, but I was sent to Concentra.

Q What does that mean?

A Concentra is like if anything that happens within the prison and you get hurt, injured, slip, fall, whatever, it's a protocol that we use with a C-1 packet that we have to go to see to Concentra to ensure that you know there's no injuries.

Q And you took part in a C-1 packet interview or you filled out a C-1 packet?

A Yes.

1 Q Did you provide that to the State?

2 A No.

3 Q Do you have a copy of that?

4 A No, ma'am.

5 Q Does the prison keep a copy of that?

6 A They should.

7 MS. SISOLAK: Your Honor, may we approach?

8 THE COURT: Okay.

9 [Bench conference begins]

10 THE COURT: The C-1 forms are a worker's comp form, just so
11 [Indiscernible] familiar with that; that's what it is.

12 MS. SISOLAK: Your Honor, but its directly related to any injuries
13 that the victim had in this case.

14 THE COURT: [Indiscernible].

15 MS. SISOLAK: But the statement of --

16 MR. GUNNELL: It's a what?

17 MS. SISOLAK: -- it's directly --

18 MS. KALLAS: We can't hear.

19 MS. SISOLAK: -- related to the incident. I mean I've had -- I filed a
20 workman's comp claim. I had to write a statement of what happened. And
21 the witness testified that he provided a statement in the C-1 packet and
22 conducted a -- potentially an interview and a C-1 packet.

23 THE COURT: So in the C-1 form you have to write down what
24 happened.

25 MR. GUNNELL: I think he already did that as [indiscernible].

1 MS. SISOLAK: That's our client's medical record.

2 MR. GUNNELL: Yeah, but our guy didn't get any injuries.

3 MS. SISOLAK: But he still filed a workman's comp claim.

4 THE COURT: No, but the C-1 form --

5 MS. KALLAS: And that's the [indiscernible] that we're hearing
6 about, that he filed a [indiscernible] because it was our understanding
7 that he didn't have any injuries and we spoke to the prison and we asked
8 if there was any medical records in regards to this happening --

9 THE COURT: Well, --

10 MS. KALLAS: -- but [indiscernible] not had any treatment. He didn't,
11 so --

12 THE COURT: I'm not concerned about the injury. In the C-1 form it
13 says what do you injuries or how did it happen. So he would have wrote
14 down whatever, and his take of how it happened.

15 MS. SISOLAK: It's an additional statement [indiscernible].

16 MS. KALLAS: I understand. That's -- it's just our first, to be honest,
17 ever hearing about the fact that he ever filed the claim and that he would
18 ever had any kind of [indiscernible].

19 MR. GUNNELL: Who filed the worker's comp?

20 MS. SISOLAK: He did.

21 THE COURT: [Indiscernible] but I know he [indiscernible] false. He's
22 has a, you know, a bruised ego --

23 MS. SISOLAK: I was --

24 THE COURT: -- he fell on the ground.

25 MR. GUNNELL: Well, my understanding --

1 THE COURT: It's tough to fill out the C-1 form. He says he filled one
2 out.

3 MR. GUNNELL: My understanding of this, Your Honor, the form he
4 filled out wasn't -- it was the -- it was for the Defendant. It wasn't for
5 [indiscernible]. That's --

6 MS. MACHNICH: No, you're thinking of a medical form
7 [indiscernible] because [indiscernible] separate from a worker's comp.

8 MR. GUNNELL: But he just testified that that was scrapes and
9 bruises and --

10 MS. SISOLAK: He testified to his sores to make his sore thigh. And
11 he said what did you do next; he said I went to Concentra --

12 MR. GUNNELL: Okay.

13 MS. SISOLAK: -- and filled out a C-1.

14 THE COURT: A C-1 form.

15 MR. GUNNELL: Okay.

16 MS. SISOLAK: I'd ask that the witness' testimony be stricken.

17 THE COURT: On his entire testimony or --

18 MS. SISOLAK: Any testimony as to what occurred. He filled out a
19 statement that we don't have.

20 THE COURT: Regarding the C-1 form?

21 MS. SISOLAK: He shouldn't be able to testify to anything included
22 in that statement which was the entire event.

23 THE COURT: Okay, I'm not sure, are you asking just that the
24 testimony regarding him going to the office and filling out a C-1 form be
25 stricken or what?

1 MS. SISOLAK: I'm asking that his testimony as to the incident that
2 was memorialized in the C-1, so the entire event be stricken. I don't have
3 it.

4 THE COURT: So all of his testimony?

5 MS. SISOLAK: Yes.

6 MS. KALLAS: And, Your Honor, I object to that. She can obviously
7 cross [indiscernible] what he wrote and what he stated in -- on that form
8 [indiscernible] but I don't think his entire testimony needs to be stricken.

9 MS. SISOLAK: We don't know what's in that statement.

10 THE COURT: All right.

11 MS. SISOLAK: Chances are, quite frankly, Your Honor, two years
12 later [indiscernible].

13 THE COURT: Are you seeking a mistrial?

14 MS. MACHNICH: Potentially with prejudice [indiscernible].

15 THE COURT: I mean potentially, yes or no? I --

16 MS. SISOLAK: With --

17 MS. MACHNICH: It would be [indiscernible] --

18 MS. SISOLAK: It would be --

19 MS. MACHNICH: -- prejudice, --

20 MS. SISOLAK: -- prejudice.

21 MS. MACHNICH: -- not without prejudice. [Indiscernible] direct
22 violation and the [indiscernible], something [indiscernible]. This case is
23 going on for two years. The State's known about it and they didn't turn
24 this over in a timely manner and this is their complaining witness.

25 MS. KALLAS: And, Your Honor, since this is our first time that we've

1 ever heard about him [indiscernible] making a worker's comp claim or
2 anything like that, it was our understanding he didn't have any injuries
3 from it so why would we look into whether or not he needed a --

4 MS. MACHNICH: It's --

5 MS. KALLAS: -- worker's comp if he didn't have any --

6 MS. MACHNICH: -- Your Honor, its --

7 MR. GUNNELL: Why would he --

8 THE COURT: Okay, wait, wait. Who's talking?

9 UNKNOWN SPEAKER: [Indiscernible].

10 THE COURT: The point is it's not the injuries because he wrote a
11 witness -- he may not have written a statement. [Indiscernible] typically
12 what happened. That's what --

13 MS. KALLAS: But I don't think its --

14 THE COURT: -- I've seen them.

15 MS. KALLAS: -- our duty to investigate every single thing that -- how
16 would we have known that he ever did a worker's comp?

17 THE COURT: I'm not making any statement right now that it was
18 intentionally withheld by your office.

19 MS. SISOLAK: No, Your Honor, --

20 THE COURT: I'm not making that.

21 MS. SISOLAK: -- I'm not making the accusation that it was
22 intentionally withheld. I making the accusation that for whatever reason
23 nobody inquired what happened next because what happened next was
24 he went to a place where he filled out a statement that we know now. It
25 absolutely is the State's responsibility to inquire into is there anything

1 else that you wrote down in your version of the story.

2 MS. KALLAS: And, Your Honor, even if somehow -- obviously, we
3 don't think that his testimony should be stricken and I don't think there
4 needs to be a mistrial yet. Other witnesses who've witnessed the event
5 can still testify as to what happened.

6 THE COURT: But they don't have his statement. So, --

7 MS. KALLAS: I understand.

8 MS. SISOLAK: And, quite --

9 MS. KALLAS: But, Your Honor, I'd like --

10 THE COURT: -- it's a motion for --

11 MS. SISOLAK: -- frankly, Your Honor, --

12 THE COURT: -- discovery.

13 MS. KALLAS: -- to ask him about [indiscernible]. We don't know
14 anything about this [indiscernible] and so I'd ask --

15 MS. SISOLAK: Quite frankly, Your Honor, the next witness they're
16 calling -- I don't have a statement from either. I have no statement from
17 this officer. My --

18 MR. GUNNELL: He didn't make a statement.

19 MS. SISOLAK: But my entire line of --

20 THE COURT: Okay, hang on, hang on.

21 MS. KALLAS: He didn't make a statement because --

22 THE COURT: But the problem is the injuries [indiscernible].

23 MR. GUNNELL: Yeah.

24 THE COURT: Okay. No, but in the C-1 form that asks what did
25 you -- what happened and he would have wrote down what happened

1 which is a statement by him. You had a motion for discovery in this case?

2 MS. SISOLAK: We did and you granted the order. I prepared --

3 THE COURT: Okay.

4 MS. SISOLAK: -- the order and the State signed off on it and its
5 been filed.

6 THE COURT: You know, this may say -- this may be 100%
7 consistent with what he's testified to, okay? It may be. But it was
8 supposed to be turned over. I'm not saying you guys were [indiscernible].
9 I'm not saying it was intentional. I'm not making that finding now, okay?
10 But it was supposed to have been turned over. If you're on their side you
11 would say, hey, you didn't turn over the statement you would have been
12 making the same motion.

13 MS. KALLAS: Well, did he even testify that he made a statement?
14 Didn't he just say that he filled out a form?

15 MS. SISOLAK: He said he completed --

16 MS. KALLAS: Do we know that --

17 MS. SISOLAK: -- an interview --

18 MS. KALLAS: -- he actually --

19 MS. SISOLAK: -- and filled out a statement. I'll ask him again.

20 THE COURT: Why don't you ask to clarify; okay?

21 MS. SISOLAK: Thank you.

22 [Bench conference ends]

23 THE COURT: All right, next question, Counsel.

24 BY MS. SISOLAK:

25 Q Mr. Ontiveros, when you proceeded to, I think you said it was

1 Concentra --

2 A Yes.

3 Q -- and you began the C-1 proceedings, did you fill out a
4 statement?

5 A Yeah. We have to do our reports before we leave the
6 institution.

7 Q So, when you got to Concentra, did you fill out a C-1 packet?

8 A You fill it out before you go.

9 Q So, at some point you wrote down on a C-1 form various
10 information pertaining to this incident?

11 A The C-1 packet -- for me to explain what that is, it's a --
12 basically, it's an injury report as -- you know 'cause -- I don't know, you
13 slam your finger, you slip and fall, you have to fill out a C-1 form.

14 Q So, if you are injured in any matter -- in any manner, you fill
15 out a document as to how you were injured?

16 A Yes.

17 Q Do you, in that document, give any sort of narrative as to how
18 the injury occurred? For instance, would you say I was exiting my car
19 door and as I slammed the door my finger got caught; is that something
20 that you would include in the report?

21 A Sure.

22 MS. SISIOLAK: Your Honor, may we approach?

23 THE COURT: Okay; both Counsel.

24 [Bench conference begins]

25 MS. SISOLAK: I would ask if Your Honor is not inclined to grant a

1 mistrial with prejudice or dismiss the entire -- the witness' entire
2 testimony, I'd ask for a curative instruction and that the jury be --

3 THE COURT: I'm not going to strike his testimony. I have to grant a
4 mistrial and I don't want to but there's a report that was ordered. It's not --
5 I'm sure it's not in your packet.

6 MS. KALLAS: It's absolutely not. We --

7 THE COURT: No, I'm not --

8 MS. KALLAS: -- reached out to the Inspector General's Office.

9 THE COURT: Your office has never had a reputation --

10 MS. KALLAS: This is literally the first we've ever --

11 THE COURT: -- of withholding evidence. I'm not aware of any, but
12 this form, he just testified [indiscernible] as to how it occurred. It was not
13 turned over --

14 MS. SISOLAK: And --

15 THE COURT: -- to you which in turn was not turned over to them.

16 MS. SISOLAK: -- I'm not insinuating that Ms. Kallas or Mr.

17 Gunnell --

18 THE COURT: I know. I'm not making any finding.

19 MS. SISOLAK: I'm just [indiscernible] --

20 MS. KALLAS: Is there any way we can just strike his testimony --

21 MS. SISOLAK: -- it was grossly --

22 MS. KALLAS: -- and then have --

23 MS. SISOLAK: -- negligent.

24 MS. KALLAS: -- another witness testify?

25 MR. GUNNELL: There could be an issue with [indiscernible] turning

1 over because if it's his medical records --

2 MS. SISOLAK: It can be --

3 MR. GUNNELL: -- that could be HIPAA.

4 THE COURT: No, it's not a --

5 MS. SISOLAK: It can be turned over, redacted.

6 THE COURT: -- medical form. It's a form that you fill out. It says I
7 hurt my knee, I slipped on a banana.

8 MS. SISOLAK: I only know about this because I was exposed to
9 measles at trial and I had to fill it out but I didn't get measles but I had to
10 say my client breathed on me.

11 MS. KALLAS: Your Honor, if you do [indiscernible], I was just asking
12 if -- I'd rather his testimony be stricken. We do have other witnesses that
13 could come testify in --

14 MS. SISOLAK: Your Honor, --

15 MS. KALLAS: -- regards to this event. I think a curative instruction
16 would cure any type of prejudice that the jury possibly -- is possibly
17 hearing his testimony. There was another witness to this event.

18 MS. MACHNICH: The [indiscernible].

19 MS. KALLAS: Defense is aware of that.

20 THE COURT: Is there other witnesses who would say they saw him
21 throw rocks and hit him?

22 MS. KALLAS: Absolutely; there's a person who testified that there
23 was someone standing right next to him.

24 MS. SISOLAK: Your Honor, this person --

25 MS. KALLAS: I think that he's not -- they're not going to be

1 prejudiced. I think the curative instruction -- essentially, his testimony is
2 going to be the exact same [indiscernible] so I think if you strike his
3 testimony and give a curative instruction he's not going to be prejudiced
4 by --

5 MS. SISOLAK: Your Honor, I'm still asking --

6 MS. KALLAS: -- and -- all --

7 MS. SISOLAK: -- for --

8 THE COURT: Hang on. Let her finish.

9 MS. SISOLAK: Go ahead; I'm sorry.

10 MS. KALLAS: And not only that, obviously I don't feel that this -- we
11 don't feel that these statements are exculpatory and [indiscernible] made.
12 I don't think the Defendant's prejudiced -- I mean I don't think that --

13 THE COURT: Well --

14 MS. KALLAS: -- the jury is going to -- [indiscernible] the jury
15 [indiscernible] file a curative instruction. I think that, again, they're going
16 to hear the same testimony from someone else. There's nothing that they
17 heard that they're not going to hear from Officer Mcannich. We have
18 [indiscernible] making a statement inconsistent with what he has already
19 testified to.

20 THE COURT: But we don't know what he said.

21 MS. SISOLAK: But, Your Honor, --

22 THE COURT: That's the problem and I ordered the State to
23 [indiscernible] any statements --

24 MS. SISOLAK: And --

25 THE COURT: -- to be turned over.

1 MS. SISOLAK: But, Your Honor --

2 MS. KALLAS: And strike his testimony but I don't think we need a
3 mistrial based on that fact, Your Honor.

4 MS. SISOLAK: But, Your Honor, then they're asking you to move
5 forward with the trial with no victim.

6 THE COURT: Well, they can --

7 MS. KALLAS: We absolutely still have a victim. You don't need --

8 THE COURT: They can still --

9 MS. KALLAS: -- a victim to testify just to --

10 MS. SISOLAK: I -- understand that they can have this other witness
11 testify to what he believes is [indiscernible] -- [indiscernible], I'm still
12 asking for a mistrial with prejudice. They didn't turn over a statement. At
13 very best, it's grossly negligent.

14 MS. KALLAS: And its -- but it's not exculpatory [indiscernible].

15 THE COURT: Well, we don't -- see, the --

16 MS. KALLAS: -- and I think its --

17 THE COURT: -- problem is I ordered all statements to be turned
18 over. You were not aware of this. This is not -- I don't find it intentional
19 but the bottom line is if the roles were reversed and you have a witness
20 who probably filled out statements and lo and behold they didn't turn
21 them over to you, you would scream bloody murder because they're
22 ordering reciprocal discovery to turn over documents to you.

23 MS. KALLAS: Well then, Your Honor, I'd ask that a curative
24 instruction be given and I would ask that his -- I'd rather his testimony be
25 stricken.

1 MS. SISOLAK: It's not a problem we can cure.
2 THE COURT: Right. Right.
3 MS. KALLAS: I think it's absolutely a problem --
4 THE COURT: I'm going to --
5 MS. KALLAS: -- we can cure.
6 THE COURT: -- declare it a mistrial; okay?
7 MS. SISOLAK: Is that going to be with prejudice, Your Honor?
8 THE COURT: No. You can file a motion later on that I didn't find
9 any intentional act of bad faith or outrageous conduct on behalf of the
10 Attorney General's Office.
11 MS. SISOLAK: But --
12 MS. KALLAS: Are we going to pick the next jury tomorrow?
13 THE COURT: We'll do it in --
14 MS. KALLAS: And, Your Honor, as a [indiscernible] finding --
15 MS. MACHNICH: Can we -- are we going [indiscernible] and pick
16 the jury tomorrow?
17 MS. SISOLAK: Another jury?
18 THE COURT: What?
19 MS. MACHNICH: Are we going to try this case again tomorrow? I
20 mean can we start over again [indiscernible] --
21 MS. KALLAS: We'll look into the statement [indiscernible] --
22 THE COURT: I don't know.
23 MS. SISOLAK: I mean --
24 MS. KALLAS: It's still a day and a half --
25 THE COURT: I doubt it because you know the jury commissioner

1 [indiscernible] tomorrow is Wednesday. Normally, we [indiscernible]
2 Tuesday for the --

3 MS. SISOLAK: I understand, Your Honor. But the issue --

4 THE COURT: I'll set a short trial date --

5 MS. SISOLAK: -- but Your Honor, --

6 THE COURT: -- if you can put this together in two weeks.

7 MS. SISOLAK: Part of the issue is --

8 THE COURT: You can file any motions for dismissal.

9 MS. SISOLAK: Your Honor, I'm set in your department every week
10 from now till kingdom come. Like, I have a trial set every week until
11 March.

12 MS. KALLAS: We can get the statement. We can look into it
13 [indiscernible] statements today hopefully if we get out of here and --

14 MS. SISOLAK: Your Honor, --

15 MS. KALLAS: -- get [indiscernible] them, get it done.

16 THE COURT: We're just -- I'm going to put this on calendar for
17 Thursday for resetting a trial date.

18 MS. SISOLAK: Your Honor, can we get on the record that you're
19 considering the conduct grossly negligent?

20 THE COURT: I'm sorry?

21 MS. SISOLAK: That we're considering the --

22 THE COURT: I'm saying there's nothing in front of me at this time to
23 show intentional [indiscernible].

24 MS. KALLAS: And then that's --

25 MS. SISOLAK: Not intentional. I'm asking if you would deem it

1 grossly negligent which is unintentional negligence.

2 THE COURT: No, I'm not making any finding on that. You can file a
3 motion [indiscernible] you have other information, but right now I don't
4 have enough evidence to make that finding.

5 MS. KALLAS: And, Your Honor, I would --

6 MS. SISOLAK: Thank you, Your Honor.

7 MS. KALLAS: -- ask that since you are going to grant a mistrial that
8 it be on the record why the jury is somehow so prejudiced that a mistrial
9 was necessary --

10 THE COURT: I'm just going to advise --

11 MS. KALLAS: -- and a curative instruction.

12 THE COURT: -- then there's a legal issue to grant a mistrial.

13 MS. SISOLAK: Thank you, Your Honor.

14 MS. KALLAS: Thank you.

15 [Bench conference ends]

16 THE COURT: Ladies and gentlemen, during trials legal -- various
17 legal issues arise and in this case a legal issue has arisen which is
18 requiring me to declare a mistrial. It's not something that I do lightly. And
19 unfortunately, I feel it's to protect everyone's constitutional rights in this
20 matter that I do declare a mistrial. I do find it a manifest necessity that I
21 do declare a mistrial. I apologize to all of you. You were here ready,
22 willing, and able to serve and unfortunately we can't go forward.

23 So, you are discharged with my thanks for being here today. I
24 hope this doesn't sour, you know, sour you for future jury service. I have
25 been advised by the Jury Commissioner, after someone's been

1 empaneled, you are out of the computer for about 18 months so you
2 should not be receiving another jury summons either in federal court or
3 state court and we welcome you back when you get your next jury
4 summons.

5 So, again, thank you very much for your time today. The
6 marshal will pick up your badges.

7 [Colloquy between Court and clerk]

8 THE COURT: Okay, what we're going to do, ladies and gentlemen,
9 the marshal's just going to escort you to the jury room and he'll give you
10 further information; if you could just follow the marshal. Leave your
11 notepads, your badges, and your pens on your chair and just follow the
12 marshal, please.

13 THE MARSHAL: All rise for the exiting of the jury.

14 [Outside the presence of the jury]

15 MS. KALLAS: Your Honor, may we make a brief record on this?

16 THE COURT: Yes, that's why we're going to do that -- the --
17 everything is recorded in my courtroom. However, the recording system
18 at the bench is not the best --

19 MS. SISOLAK: Understood.

20 THE COURT: -- and so that's why I was going to have the officer
21 leave and then I'll put it on the record.

22 Ms. Sisolak, you made a motion for a mistrial which I granted.
23 Would you please put it on the record the basis for that motion?

24 MS. SISOLAK: Your Honor, I did ask Your Honor to grant us a
25 mistrial based on the fact that there is a statement in a C-1 form that was

1 filled out by Officer Ontiveros that would have been required to be turned
2 over in discovery. The Defense would allege that because it is protected
3 by the order and we did not receive the statement, we are entitled to the
4 mistrial. We did ask Your Honor to issue that mistrial with prejudice, and I
5 believe we discussed that I would file a motion and we would determine
6 that at another time.

7 THE COURT: All right, State.

8 MS. KALLAS: And, Your Honor, we're obviously going to be
9 objecting to the declaration of a mistrial. As I stated at the bench, the very
10 first time we ever heard about any type of workers comp claim was today
11 when Officer Ontiveros made that statement on the stand. It's the first
12 time I've ever heard it. We reached out to the Inspector General's Office
13 which is the investigators on this case. We've asked for every and
14 anything that they have in relation to this case and they told us that we
15 had everything. In Mr. -- in Officer Ontiveros' report and any statements
16 he's ever made to me I don't -- he didn't write about any injuries. He -- I
17 mean he essentially was hit by a rock. We didn't have any reason to
18 believe that he would then have to make a workers comp claim about
19 this, that he wasn't working anymore, anything like that. So obviously it
20 wasn't intentional whatsoever.

21 Also, we obviously don't think that it was anything exculpatory
22 and we don't believe it was a *Brady* violation. He didn't make any
23 comments that were inconsistent with the statements that he has
24 previously made.

25 So, I would be objecting to a mistrial based on that. I think that

1 a curative instruction could have cured any type of prejudice in regards to
2 Officer Ontiveros' testimony. And -- Court's indulgence.

3 [Colloquy between State Counsel]

4 MS. KALLAS: Just brief indulgence, Your Honor. We're just looking
5 at the discovery motion.

6 THE COURT: Sure.

7 [Colloquy between Court, recorder, and clerk]

8 MS. KALLAS: And again, Your Honor, I just want to emphasize the
9 fact this wasn't a statement that we had that was in our possession that
10 we just decided not to turn over. We were absolutely unaware of it.
11 Officer Ontiveros, I've spoken with him a couple of times, has never once
12 mentioned it. The Inspector General's Office has never mentioned it. No
13 one in relation to this case ever has. So, again, it wasn't an intentional
14 violation.

15 THE COURT: Well, at this point I don't find any intentional act on
16 behalf of the State, nor do I find any -- actually, I don't find any egregious
17 conduct or recklessness on behalf of the State because it wasn't part --
18 I'm assuming -- well, I know the C-i [sic] form is strictly a worker's comp
19 slap in the face, a trip and fall, or a broken leg. Its -- I'm sure it -- unless
20 I've been proven otherwise, it's not part of the investigation files. It's more
21 of an administrative file, something internal. However, the Court did order
22 that all statements by the witnesses be turned over and this is a
23 statement by the witness that was not turned over. I don't believe at this
24 point that the State was aware that there was a C-i [sic] form, and so I'm
25 not dismissing this case with prejudice. And so, that's my ruling. We'll

1 come back on Thursday for resetting of new trial date.

2 THE CLERK: January 4th, at 8:30.

3 MS. MACHNICH: Your Honor,

4 MS. SISOLAK: Your Honor, --

5 MS. MACHNICH: -- just to clarify that your ruling that the State has
6 not acted with bad faith or gross negligence at this time and you're not
7 granting a mistrial with prejudice; is that a ruling without prejudice
8 allowing us to brief the matter and potentially file a motion?

9 THE COURT: Well, if you can -- if you have any evidence that they
10 were aware of this, that it's intentional or gross negligence, then file the
11 appropriate motion.

12 MS. SISOLAK: Will do, Your Honor.

13 MS. KALLAS: Thank you.

14 THE COURT: Thank you, everybody.

15 THE MARSHAL: All rise. Department 17 is now adjourned.

16 [Proceedings concluded at 4:46 p.m.]

17 * * * * *

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

20 
21 CYNTHIA GEORGILAS
22 Court Recorder/Transcriber
23 District Court Dept. XVII
24
25



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,

7
8 Plaintiff,

9 vs.

10 ANTONIO LEE MIXON,

11 Defendant.

CASE: C-17-327439-1

DEPT. XVII

12
13 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
14 THURSDAY, JANUARY 4, 2018

15 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:**
16 **STATUS CHECK: RESET TRIAL**

17
18 APPEARANCES:

19
20 For the State:

CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

21
22 For the Defendant:

ASHLEY SISOLAK, ESQ.
Deputy Public Defender

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25 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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Las Vegas, Nevada, Thursday, January 4, 2018

[Hearing begins at 9:54 a.m.]

THE COURT: Do you have anything else, anybody?

MS. SISOLAK: Yeah, Your Honor, we can go on Mr. Mixon.

THE COURT: Which page?

MS. SISOLAK: Mr. Mixon.

THE COURT: All right, status check to reset trial date.

MS. SISOLAK: Good morning, Your Honor, Ashley Sisolak present on behalf of Mr. Mixon. I'm sure you remember from Tuesday we're resetting this trial date.

For the record, I did receive a C-1 form on a disc today. In addition to that, Your Honor, I did want to make it clear that the State has offered negotiations. I believe the most current negotiation was for a category B felony with 12 to 30 months consecutive or a category C felony with 19 to 48 months consecutive. My client is not inclined to negotiate in any manner.

THE COURT: All right. Is that correct, sir?

THE DEFENDANT: Correct.

THE COURT: All right, we'll get you a trial date. How about March 12th? Is that good for you, Ms. – you said you had some other trials March/April.

MS. SISOLAK: I have two going March 12th, Your Honor. I have another one going – oh, I lied. I do not have another one in March. I'm available either the week following March 12th or the week of March 26th.

1 MS. KALLAS: And both of those are fine with the State, Your
2 Honor.

3 THE COURT: The 26th; is that good for you?

4 MS. KALLAS: The 26th works.

5 THE COURT: The 26th?

6 MS. SISOLAK: That's perfect, Your Honor.

7 THE COURT: All right.

8 THE CLERK: Calendar call will be March 20th, 8:30 a.m. Trial
9 date will be March 26th, 9:00 a.m.

10 MS. KALLAS: Thank you, Your Honor.

11 THE COURT: All right, thank you.

12 MS. SISOLAK: Thank you, Your Honor.

13 [Hearing concludes at 9:56 a.m.]

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21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
22 Procedure, I acknowledge that this is a rough draft transcript, expeditiously
23 prepared, not proofread, corrected, or certified to be an accurate transcript.

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CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,

7
8 Plaintiff,

9 vs.

10 ANTONIO LEE MIXON,

11 Defendant.

CASE: C-17-327439-1

DEPT. XVII

12
13 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
14 THURSDAY, FEBRUARY 8, 2018

15 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:**
16 **STATUS CHECK: PRE-TRIAL MOTIONS**

17
18 APPEARANCES:

19
20 For the State:

ROBERT B. TURNER, ESQ.
Chief Deputy District Attorney
ALISSA ENGLER, ESQ.
Deputy Attorney General

21
22
23 For the Defendant:

ASHLEY SISOLAK, ESQ.
Deputy Public Defender

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25 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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Las Vegas, Nevada, Thursday, February 8, 2018

[Hearing begins at 10:04 a.m.]

THE COURT: Antonio Mixon.

MS. SISOLAK: Your Honor, Ms. Engler from the Attorney General was here earlier. She did have another courtroom to appear in. I'm not sure what Your Honor would like to do. I don't have a means by which to get a hold of her. I can make representations as to my half.

THE COURT: Okay.

MS. SISOLAK: I also have spoken with her about what they plan to file, but she is not here.

THE COURT: Mr. Turner, could you be so kind to stand in for the AG on a procedural matter? Are you allowed – I don't want you to get in trouble.

MR. TURNER: Well, Judge, if –

THE COURT: If you think it will get you in – its just not a procedural matter, if you think it will get you in trouble then we'll set this for another day.

MR. TURNER: I would – since I know nothing about it, Judge, and I don't know if there's representations that she would want to make; I would ask the Court to pass it. I apologize.

MS. SISOLAK: And, Your Honor, --

THE COURT: That's fine.

MS. SISOLAK: -- it's sort of –

MR. TURNER: I know she was here.

MS. SISOLAK: I know she – she's coming back.

1 THE COURT: Is she – oh, she is coming back?
2 MS. SISOLAK: Yeah.
3 THE COURT: I thought she left. Oh.
4 MS. SISOLAK: No, no, she's coming –
5 THE COURT: Oh, oh.
6 MS. SISOLAK: -- back. I just don't want Your Honor to have to
7 wait.
8 THE COURT: No, I misunderstood. I'll call it – I'll recall it.
9 [Matter trailed at 10:04 a.m.]
10 [Matter recalled at 10:20 a.m.]
11 THE MARSHAL: All rise, Department 17 is back in session.
12 THE COURT: We'll recall Mixon matter on page 3.
13 THE MARSHAL: Please be seated and come back to order.
14 MS. SISOLAK: Good morning, Your Honor, Ashley Sisolak,
15 present on behalf of Mr. Mixon. He is present and in custody at this time.
16 MS. ENGLER: Good morning, Your Honor, Alissa Engler for
17 the Attorney General.
18 THE COURT: All right, can I have Counsel approach, please?
19 MS. SISOLAK: Sure.
20 [Bench conference begins – transcribed as follows:]
21 THE COURT: At the time of the trial we had things out of the
22 presence of the AG's office, and issue on a potential defense. My
23 research on that is that needs to be – you need to file a pre-trial motion
24 on that theory of –
25 MS. SISOLAK: Okay.

1 THE COURT: -- defense because --

2 MS. SISOLAK: Okay.

3 THE COURT: -- they can't rebut any showing that you make
4 you know without advance notice and we don't even get there unless
5 you have a pre-trial motion.

6 MS. SISOLAK: Okay.

7 THE COURT: All right? So, okay I' just going to -- I'll just say
8 status check on trial readiness.

9 [Bench conference ends]

10 THE COURT: All right, Counsel, we do have a calendar call
11 March 20th, trial date March 26, and there was some issue of some
12 perhaps missing reports or discovery. Ms. Sisolak, have you had an
13 opportunity to obtain those?

14 MS. SISOLAK: I have Your Honor. I do have that C-1 form
15 now.

16 THE COURT: Okay. All right. I'm assuming this case is either
17 going to negotiate or go to trial so we'll see everybody on March 20th. If
18 there's any other motions that need to be filed, please do so in plenty
19 enough time if we need to have any evidentiary hearings on that before
20 this March 26th date.

21 MS. SISOLAK: Your Honor, in complete candor with the
22 Court, my special litigation department is currently briefing the mistrial
23 and we did intend to file briefing on it. I wanted to give your court a
24 heads up that it is coming. I anticipate it can all be dealt with prior to the
25 end of March however.

1 THE COURT: If there's any other motions that would require
2 an evidentiary hearing –

3 MS. SISOLAK: Understood.

4 THE COURT: -- please file that well in advance; --

5 MS.SISOLAK: Thank you, Your Honor.

6 THE COURT: -- okay?


7 MS. ENGLER: Thank you, Your Honor.

8 THE COURT: Thank you.

9 [Hearing concludes at 10:21 a.m.]

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21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
22 Procedure, I acknowledge that this is a rough draft transcript, expeditiously
23 prepared, not proofread, corrected, or certified to be an accurate transcript.

24 
25 CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,

7
8 Plaintiff,

9 vs.

10 ANTONIO LEE MIXON,

11 Defendant.

CASE: C-17-327439-1

DEPT. XVII

12
13 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
14 THURSDAY, MARCH 15, 2018

15 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:**
16 **DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE**
17 **DEFENDANT'S MOTION TO DISQUALIFY THE ATTORNEY**
18 **GENERAL'S OFFICE**
19 **DEFENDANT'S MOTION TO DISMISS BASED UPON VINDICTIVE**
20 **PROSECUTION**

21 APPEARANCES:

22 For the State:

CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

23 For the Defendant:

ASHLEY SISOLAK, ESQ.
Deputy Public Defender

24
25 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

1 Las Vegas, Nevada, Thursday, March 15, 2018

2 [Hearing begins at 9:59 a.m.]

3 THE COURT: Antonio Mixon.

4 MS. SISOLAK: Good morning, Your Honor, Ashley Sisolak for
5 Mr. Mixon. He is present and in custody at this time. We're ready to
6 move forward.

7 MS. KALLAS: And, Your Honor, Chelsea Kallas for the
8 Attorney General's Office.

9 THE COURT: All right, and you have three motions on
10 calendar: motion to dismiss with prejudice, motion to disqualify the AG's
11 Office, motion to dismiss based upon vindictive prosecution. The first
12 question I have for both parties is the document in question is the C-2
13 [sic] form, the worker's comp form; have you received that, Ms. Sisolak,
14 and what did it say?

15 MS. SISOLAK: Your Honor, I did receive the C-1 form. It was
16 relatively standard. I received that 2 to 3 days after the mistrial. I do
17 unfortunately have to bring to Your Honor's attention; two days ago I
18 received another form that has exculpatory information in it.

19 THE COURT: Can I see it?

20 MS. SISOLAK: Absolutely, Your Honor. I also have the e-mail
21 sent by the Attorney General's Office that I can pick it up. And if you
22 would note it was given to the Nevada Department of Corrections in
23 2015. It has an expressly exculpatory statement about a belt.

24 MS. KALLAS: And, Your Honor, we've made all efforts to get
25 discovery in this case. I've requested it from NDOC multiple times and

1 I'm not in control of how – or how soon they get it to us. I've given her
2 everything right after we've received it. And I've also informed Ms.
3 Sisolak too that we are – since she did bring the – his disciplinary
4 proceedings up in her motions, we've requested those documents from
5 NDOC. I just received part of them yesterday and apparently they're still
6 looking through them 'cause there's apparently – there's some
7 recordings from Mr. Mixon's proceedings, so we're waiting on that as
8 well.

9 I do have the e-mails to [indiscernible] requested them and e-
10 mail document. I sent the discovery order to the investigator asking him
11 to give me everything back in February. He – I'm not claiming that he
12 should win employee of the month. Obviously, he's taking a long time,
13 but I'm not in control of that, Your Honor. We've – the prosecutors in this
14 case have done everything we can to get them discovery.

15 THE COURT: Ms. Sisolak, you said about a belt? Where am I
16 supposed to look?

17 MS. SISOLAK: I can point it out to you, Your Honor.

18 MS. KALLAS: And can I approach, Your Honor, too, just to be
19 sure?

20 THE COURT: Sure.

21 MS. SISOLAK: That's the one I am specifically referencing.

22 THE COURT: Okay. All right. Any – obviously, you're familiar
23 with –

24 MS. KALLAS: Can I see it just to see which line?

25 THE COURT: So, at this point you – Ms. Sisolak, you believe

1 that there's other documents or there might be some more documents
2 forthcoming?

3 MS. KALLAS: [Indiscernible], I don't see his disciplinary
4 proceedings as relevant at all, Your Honor. Obviously what happens –
5 how he's punished in the prison doesn't necessarily impact us bringing
6 criminal charges against him, but since they have raised it as an issue
7 we've kind of gone above and beyond to get these documents, anything
8 that has to do with them. So, I am still waiting on the recordings from
9 that case.

10 THE COURT: Why don't we do this so we have –

11 MS. SISOLAK: Your Honor, may I respond?

12 THE COURT: Yes. Sure.

13 MS. SISOLAK: I understand Ms. Mixon – Ms. – excuse me,
14 Ms. Kallas has requested the documents. That's not the standard. I also
15 understand that Ms. Kallas doesn't believe they're relevant but that's
16 also not the standard. The standard is I'm supposed to have everything,
17 particularly exculpatory things, 30 days before trial. Not only did I have –
18 not have them 30 days before the previous trial, I didn't have them 30
19 days before the second trial.

20 THE COURT: Well, the issue was that there was the worker's
21 comp form and that was – that's an administrative form that's required to
22 submit the form. And I'm looking at where you highlighted exculpatory
23 evidence, the best to my recollection the prison guard said he hit me
24 with two rocks, I think maybe chest or stomach area or something similar
25 to that –

1 MS. KALLAS: Correct, and he's – he said the same thing to
2 me anytime I've ever spoke with –

3 THE COURT: Right. And the report here it says: Patient
4 reports at work an inmate threw a rock at him twice -- it's consistent --

5 MS. SISOLAK: That's consistent.

6 THE COURT: -- hitting him in the left abdomen. He thinks it
7 hits him in the belt which absorbed most of the impact.

8 MS.SISOLAK: That – Your Honor, if I may, that's the first time
9 I've ever heard that. In addition that, in prior testimony, the witness
10 stated that a rock hit him also in the thigh and there's no recollection of
11 that in the report. My bone to pick, so to speak, with this report is it was
12 clearly in possession of the Nevada Department of Corrections. It was
13 cc'd to them on December 9th of 2015, blatantly on the front of the
14 document.

15 MS. KALLAS: And, Your Honor, he did testify that multiple
16 rocks were thrown at him so I think that's something she could have
17 addressed with him during cross-examination maybe one –

18 MS. SISOLAK: Had we not mistried.

19 MS. KALLAS: -- may –

20 THE COURT: One at a time, please.

21 MS. KALLAS: Maybe one hit him on the thigh, maybe one hit
22 him in the stomach. And also he said there were multiple; he could have
23 hit him on his belt as well. He doesn't say none – he didn't say that any
24 rocks didn't hit him on his thigh or stomach. They're not – so they're not
25 necessarily inconsistent.

1 THE COURT: All right. No, and I don't see this as
2 exculpatory. I mean its something you can confront him with that –

3 MS. KALLAS: He's still throwing –

4 THE COURT: Right.

5 MS. KALLAS: He's still throwing rocks. It's still a –

6 THE COURT: And it doesn't matter –

7 MS. KALLAS: -- battery.

8 THE COURT: -- the extent of the injury. It's strictly the –

9 MS. KALLAS: Correct, Your Honor.

10 THE COURT: -- harmful or offensive touching and throwing a
11 rock at someone, whether it's in the belt, the chest, stomach area, it's
12 you know it's still a crime. I mean this is something you can use for
13 cross-examination that he's mistaken –

14 MS. SISOLAK: I –

15 THE COURT: -- where on the body it hit him, but I don't see
16 this as exculpatory.

17 MS.. SISOLAK: I under -- I would disagree, Your Honor, but I
18 understand the Court's ruling. My issue is that I was supposed to have it
19 30 days before the trial that was set for January 2nd. I understand that
20 Ms. Kallas has requested it. It's not her – it's not my fault that the prison
21 didn't turn anything over. It's not – it's certainly not my client's fault that
22 the prison didn't turn anything over, but the prison had it.

23 THE COURT: Okay, let's argue the motion. Go ahead.
24 Anything else?

25 MS. SISOLAK: I -- which motion?

1 THE COURT: You have three.

2 MS. KALLAS: I think we weren't starting the motions. I think
3 we were just talking about the discovery since we have a trial –

4 THE COURT: The first thing on calendar –

5 MS. KALLAS: -- coming up.

6 THE COURT: -- is a motion to dismiss with prejudice; second,
7 disqualify the AG; third is dismiss based upon vindictive prosecution. Go
8 ahead.

9 MS. SISOLAK: Your Honor, as far as dismissing this case with
10 prejudice, I would submit on my motion asking you to also consider the
11 fact that now not only did we have one discovery violation, we have a
12 second discovery violation and Ms. Kallas has admitted that we're going
13 to have continued discovery violations 'cause there's more things
14 coming.

15 You ruled on a discovery order. You told them to give me what
16 I was entitled to and it didn't happen for whatever reason. That is not my
17 fault, its not my client's fault.

18 MS. KALLAS: And, Your Honor, I would submit it on the
19 motion as well, but just in response to that, obviously, I don't think this is
20 necessarily the second discovery violation. Obviously, I don't think it's a
21 violation, has anything to do with what happened at the first trial. I don't
22 really see it as relevant to her motion, but I would submit it.

23 THE COURT: Okay, well –

24 MS. KALLAS: And I'm sorry, Your Honor, I apologize, but I
25 have made every single effort I can. I think I've included the e-mail as

1 part of our motion. I also have additional e-mails too if Your Honor would
2 like to see that. I have done everything I can. I can't physically go into
3 NDOC and look through all of their files. I have to get it as they give it to
4 me. I've e-mailed them multiple and multiple times to get this discovery.

5 MS. SISOLAK: Your Honor, my contention is, while I
6 appreciate that Ms. Kallas has e-mailed [indiscernible], the standard is
7 not e-mail and ask about potential discovery and when it gets to you turn
8 it over. The standard is give the Defense what they're entitled to 30 days
9 before trial.

10 MS. KALLAS: But that doesn't have anything to do with this
11 motion. That's not the standard in the motion. The standard in the
12 motion is intentional conduct, that second prong of Thomas and we
13 weren't intentionally withholding anything. I think that's what this motion
14 comes down to. So the discovery violation I think is a separate issue.

15 THE COURT: Okay, the discovery order by the Court was to
16 turn over all reports, I guess that's its generally Brady material, Giglio
17 material. This report does not explain away the charges so I don't find a
18 violation that would warrant dismiss the case with prejudice. The
19 unfortunate aspect of the case was there's a criminal file, if you want to
20 call it that, and then there's just the worker's comp file, and they just –
21 they're just these two separate files, they're never together because one
22 is administrative and it goes to the medical clinic and follows him through
23 worker's comp proceedings, so I don't find anything in the records, the
24 pleadings or at trial that there is anything on behalf of the Attorney
25 General's Office of withholding discovery, any bad faith on their part, or

1 even gross negligence on [indiscernible] part. In retrospect, maybe some
2 negligence, but I mean we just don't think of going to worker's comp
3 when -- under the circumstances of this case, so I'm not going to dismiss
4 the case with prejudice.

5 I don't find any basis to disqualify the Attorney General's
6 Office from prosecuting this case.

7 Now, on the third motion, can the --

8 MS. KALLAS: So, that motion is denied, the second motion
9 then, Your Honor?

10 THE COURT: Yes. On the third motion, when did he file his
11 federal action --

12 MS. SISOLAK: Court's indulgence, Your Honor.

13 THE COURT: -- and then in relationship to filing the charges
14 here?

15 MS.SISOLAK: His federal actions were filed prior to this. Your
16 Honor, this --

17 THE COURT: Do we have a date?

18 MS. KALLAS: They were filed prior to the investigator ever
19 giving our office even the report. I think I included that in our motion is
20 that we received the investigative report from Dick Daniels who is the
21 criminal investigator --

22 THE DEFENDANT: Your Honor, may I say something --

23 MS. KALLAS: -- on this case --

24 MS. SISOLAK: Stop.

25 THE DEFENDANT: -- [indiscernible] finish?

1 MS. SISOLAK: No. Stop.

2 MS. KALLAS: -- in December I believe. I believe the date was

3 December 19th and that's attached to the motion for prosecutorial

4 vindictiveness, Your Honor. So, I couldn't have even -- I couldn't have

5 even brought charges before that point.

6 THE DEFENDANT: [Indiscernible].

7 MS. SISOLAK: Your Honor, if I'm -- I believe I'm answering

8 your question correctly; the charges were filed August 9th, 2017. This

9 incident happened August 18th.

10 MS. KALLAS: I think that's --

11 MS. SISOLAK: Correction, August 18th, 2017 these charges

12 were filed by the Attorney General's Office. Attached to the motion are

13 the filings. I have one filing from October of 2016 and --

14 THE DEFENDANT: [Indiscernible].

15 THE COURT: Sir, please be quiet.

16 THE DEFENDANT: [Indiscernible].

17 THE COURT: Sir, please be quiet.

18 THE DEFENDANT: Article [indiscernible] --

19 THE COURT: Okay, sir, --

20 THE DEFENDANT: [Indiscernible] --

21 MS. SISOLAK: Stop.

22 THE DEFENDANT: -- [indiscernible] Article 'cause --

23 THE COURT: Right now we're talking --

24 THE DEFENDANT: -- I got a right to be heard --

25 MS. SISOLAK: Stop.

1 THE DEFENDANT: -- but I can't be heard?
2 THE COURT: Okay, Counsel, --
3 THE DEFENDANT: [Indiscernible] grabbing me for?
4 THE COURT: -- I'm going to continue the hearing if he says --
5 THE DEFENDANT: [Indiscernible] keep grabbing me for?
6 THE COURT: -- another word.
7 MS. SISOLAK: Stop. Stop. Please, let me do my job.
8 THE DEFENDANT: Well, do your job --
9 MS. SISOLAK: Please, shhh.
10 THE DEFENDANT: -- then. Do your --
11 MS.. SISOLAK: Just nothing, --
12 THE DEFENDANT: -- job then.
13 THE COURT: Okay.
14 MS. SISOLAK: -- nothing. Thanks.
15 THE COURT: All right, two -- okay, two weeks from now we'll
16 -- trial date vacated -- two weeks from now for a continuation of the
17 hearing.
18 [Defendant escorted out of the courtroom]
19 THE CLERK: March 29th.
20 MS. SISOLAK: Your Honor, my client's invoked his right to a
21 speedy trial.
22 THE COURT: Well, he's just -- well, I can't hear this motion
23 now because of his misconduct in court.
24 MS. KALLAS: And, I'm sorry, what was the new date, Your
25 Honor?

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THE CLERK: March 29th.

MS. KALLAS: And is that just to hear the motions, we'll reset trial at that point?

THE COURT: For the record, I told him at least four times to be quiet; he refused the Court's directive. He was disrupting the court. I cannot go forward with the hearing.

MS. KALLAS: And, Your Honor, is the March 29 date is to hear the motions but then will we be –

THE COURT: I'm sorry?

MS. KALLAS: For the March 29th date we're going to hear the motions and then are we going to be setting a trial date from there?

THE COURT: Yes.


MS. KALLAS: Thank you, Your Honor.

MS. SISOLAK: Thank you, Your Honor.

[Hearing concludes at 10:11 a.m.]

* * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.


CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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6 THE STATE OF NEVADA,

7
8 Plaintiff,

9 vs.

10 ANTONIO LEE MIXON,

11 Defendant.

CASE: C-17-327439-1

DEPT. XVII

12
13 BEFORE THE HONORABLE NANCY BECKER, SENIOR DISTRICT COURT
14 JUDGE

15 THURSDAY, MARCH 29, 2018

16 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:**
17 **STATUS CHECK: TRIAL SETTING**
18 **DEFENDANT'S MOTION TO DISMISS BASE UPON VINDICTIVE**
19 **PROSECUTION**

20 APPEARANCES:

21 For the State:

CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

22 For the Defendant:

23 ASHLEY SISOLAK, ESQ.
24 TEGAN MACHNICH, ESQ.
Deputy Public Defenders

25 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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Las Vegas, Nevada, Thursday, March 29, 2018

[Hearing begins at 9:05 a.m.]

THE COURT: State of Nevada versus Antonio Mixon.

MS. SISOLAK: Good morning, Your Honor, Ashley Sisolak and Tegan Machnich here on behalf of Mr. Mixon.

MS. KALLAS: Good morning, Your Honor, Chelsea Kallas, with the Attorney General's Office.

THE COURT: And Mr. Mixon is present in custody.

MS. KALLAS: And, Your Honor, I was going to be asking, because there's somewhat of a tortured history with this case –

THE COURT: I've read the tortured history. The only –

MS. KALLAS: Oh, you have.

THE COURT: -- thing that's –

MS. KALLAS: Okay.

THE COURT: -- left here is Judge Villani decided the other two motions before he discontinued the hearing the last time.

MS. SISOLAK: That's correct, Your Honor.

THE COURT: So the only motion left is the vindictive prosecution.

MS. KALLAS: And that's correct. The only reason I was going to be asking to continue it is that during trial Defense gave an in-camera review where they gave a proffer of their defense. There was a mistrial for an unrelated issue. But after that Judge Villani specifically instructed them to file this motion so obviously he was aware of something during that discussion that both you and I are not aware of, so that's why I

1 prefer him to hear it but obviously I'd leave that to the Court's discretion.

2 THE COURT: That's a decent reason to continue it to the
3 sitting judge. I'll allow that.

4 MS. KALLAS: Thank you, Your Honor.

5 MS. SISOLAK: Thank you, Your Honor.

6 THE COURT: He did –

7 MS. KALLAS: We –

8 THE COURT: -- contemplate whether he wanted it continued
9 and he said no, Judge Becker can go ahead and read it and make an
10 ultimate decision, but that representation is a little bit different, so –

11 MS. KALLAS: Can we still set this trial date or would you
12 rather us wait for Judge Villani?

13 THE COURT: No, I think I'd rather let Judge Villani hear the
14 motion first because he'll have to decide whether he wants to set an
15 evidentiary hearing or not.

16 MS. SISOLAK: Thank you, Your Honor.

17 MS. KALLAS: Thank you, Your Honor.

18 THE CLERK: April 5th, 8:30.

19 MS. SISOLAK: And, Your Honor, the State will prepare a
20 transport order.

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MS. KALLAS: We will.

MS. SISOLAK: Thank you, Your Honor.

[Hearing concludes at 9:08 a.m.]

* * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.


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Court Recorder/Transcriber
District Court Dept. XVII



1 RTRAN

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
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6 THE STATE OF NEVADA,)
7)

8 Plaintiff,)

9 vs.)

10 ANTONIO LEE MIXON,)

11 Defendant.)
12

CASE: C-17-327439-1

DEPT. XVII

13 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
14 THURSDAY, APRIL 5, 2018

15 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:**
16 **STATUS CHECK: TRIAL SETTING**
17 **DEFENDANT'S MOTION TO DISMISS BASED UPON VINDICTIVE**
18 **PROSECUTION**

19 APPEARANCES:

20 For the State:

CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

22 For the Defendant:

ASHLEY SISOLAK, ESQ.
Deputy Public Defender

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25 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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Las Vegas, Nevada, Thursday, April 5, 2018

[Hearing begins at 8:59 a.m.]

THE COURT: Antonio Mixon.

MS. SISOLAK: Good morning, Your Honor, Ashley Sisolak present on behalf of the Public Defender’s Office and Mr. Mixon. Your Honor, I do have a special request this morning. There is a motion set next week – or a week and a half from now on the 17th. I’m going to be in a three week-long trial. If we could hear the motion to dismiss me today I would appreciate it.

MS. KALLAS: I haven’t had a chance to review it so if we could just trail the matters I can take a look at it, Your Honor.

THE COURT: Sure. We’ll recall it.

MS. SISOLAK: Thank you, Your Honor.

[Matter trailed at 9:00 a.m.]

[Matter recalled at 9:29 a.m.]

THE COURT: All right, Mixon.

MS. SISOLAK: Good morning, Your Honor, Ashley Sisolak present on behalf of the Public Defender’s Office and Mr. Mixon. He is present

MS. KALLAS: Good morning –

MS. SISOLAK: -- and in custody, Your Honor.

MS. KALLAS: Good morning, Your Honor, Chelsea Kallas for the Attorney General’s Office.

THE COURT: All right, it seems like March 15th –

MS. SISOLAK: If Your Honor wants me to refresh your

1 recollection I can. We were here on a motion to dismiss for vindictive
2 prosecution. Things got out of hand. Your Honor ceased the hearing and
3 rescheduled it for last week. Unfortunately, at that time, Judge Becker
4 was here and she was not willing to make a ruling; she continued it for
5 Your Honor. Since then, Mr. Mixon has filed another motion to fire me
6 and represent himself.

7 MS. KALLAS: And that's all correct, Your Honor.

8 THE COURT: Sir, why do you want a new – well, first off, can
9 you afford to hire your own attorney?

10 THE DEFENDANT: If I could I would.

11 THE COURT: And what is your issue with Ms. Sisolak who
12 has filed motions to dismiss your case, obtained a mistrial on your
13 behalf, and has been fighting every issue on this case as possible?

14 MS. SISOLAK: Your Honor, I don't think it has much to do with
15 me as much as it is Mr. Mixon would like to represent himself. He can
16 make representations as to his distrust and dislike of me, but I believe it
17 comes down to Mr. Mixon's always wanted to represent himself on this
18 matter.

19 MS. KALLAS: And that's --

20 THE COURT: And you wish --

21 MS. KALLAS: -- correct, Your Honor. But just for the record,
22 he's already been given a private canvass in justice court by Bennett
23 Haron.

24 MS. SISOLAK: He was farettaed in justice court, Your Honor. I
25 did file a motion, basically for lack of a better term, appealing that ruling.

1 Mr. Mixon has –

2 MS. KALLAS: [Indiscernible].

3 MS. SISOALK: -- an affirmative right to represent himself. It's
4 his constitutional right to do so.

5 THE COURT: Is he the one, on one of the prior occasions,
6 wanted to represent himself but came in at calendar call and he said he
7 would not be ready, and as you know there's a legal basis –

8 MS. SISOLAK: Yes.

9 THE COURT: -- for me to deny that.

10 MS. SISOLAK: That –

11 THE COURT: It would cause a continuance.

12 MS. SISOLAK: -- is correct, Your Honor. But at this time, since
13 we don't have a trial set, I don't see a reason why Mr. Mixon wouldn't be
14 entitled to represent himself.

15 THE COURT: Do I have a –

16 MS. SISOLAK: I can have his file sent to NDOC asap.

17 [Colloquy between Court and Clerk]

18 THE COURT: I'll give you a Faretta canvass tomorrow at 9:00
19 o'clock.

20 MS. SISOLAK: Your Honor, would you like me to be present
21 for that?

22 THE COURT: Sure, because right –

23 MS. SISOLAK: Thank you, Your Honor.

24 THE COURT: -- you're still his attorney of record until
25 tomorrow.

1 MS. SISOLAK: Thank you, Your Honor.

2 THE COURT: All the motions will be heard at that time either
3 by Ms. Sisolak arguing them or Mr. Mixon.

4 MS. SISOLAK: Your Honor, that being said, I – Ms. Kallas and
5 I have already argued the motion to dismiss for vindictive prosecution.
6 We were just waiting for a ruling, so I wouldn't have further argument
7 tomorrow.

8 THE COURT: All right. I'll ask the both – I'll ask if – if Mr.
9 Mixon's representing himself I'll ask him if he has any additional
10 arguments on the motion so, State, be ready for any additional
11 argument.

12 MS. KALLAS: I will be, Your Honor.

13 MS. SISOLAK: Thank you, Your Honor.

14 THE COURT: Okay? All right, sir?

15 So, sir, do you understand I'm going to give you a Faretta
16 canvass tomorrow at 9:00?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Okay, because you wish to represent yourself;
19 is that correct?

20 THE DEFENDANT: Correct.

21 MS. SISOLAK: Your Honor, if I may briefly on the record ask
22 Mr. Mixon if he would like another copy of Faretta and a questionnaire?

23 THE DEFENDANT: I got it with me.

24 MS. SISOLAK: Okay; he has a –

25 THE COURT: All right.

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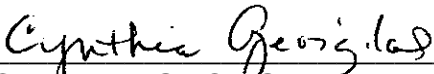
MS. SISOLAK: -- copy I've provided to him.

THE COURT: All right, I'll see everybody tomorrow at 9:00.

[Hearing concludes at 9:33 a.m.]

* * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.


CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



1 RTRAN

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
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6 THE STATE OF NEVADA,

7
8 Plaintiff,

9 vs.

10 ANTONIO LEE MIXON,

11 Defendant.
12

CASE: C-17-327439-1

DEPT. XVII

13 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
14 FRIDAY, APRIL 6, 2018

15 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:**
16 **DEFENDANT'S PRO PER MOTION FOR WITHDRAWAL OF**
17 **ATTORNEY OF RECORD, REQUEST TO OBTAIN COPY OF**
18 **DEFENDANT'S FILE, AND REQUEST FOR SELF-REPRESENTATION**
19 **DEFENDANT'S MOTION TO DISMISS BASED UPON VINDICTIVE**
20 **PROSECUTION**
21 **STATUS CHECK: TRIAL SETTING**
22 **FARETTA CANVASS**

23 APPEARANCES:

24 For the State:

CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

25 APPEARANCES CONTINUED ON PAGE 2

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For the Defendant:

ASHLEY SISOLAK, ESQ.
Deputy Public Defender

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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Las Vegas, Nevada, Friday, April 6, 2018

[Hearing begins at 9:38 a.m.]

THE COURT: All right, Mr. Mixon –

MS. SISOLAK: Good morning, Your Honor, --

THE COURT: -- I was advised last court appearance that you wished to represent yourself. Is that correct, sir?

THE DEFENDANT: Represent myself.

THE COURT: I'm sorry?

THE DEFENDANT: Represent myself and have Ms. Sisolak as stand-by counsel.

MS. SISOLAK: Your Honor, I would object being stand-by counsel. I'm not going to prep for a case that I'm not on and I'm not going to not prep for a trial.

THE COURT: Sir, I'm not going to – these charges here are not overly complex or sophisticated, strictly the allegation that you threw a rock, a couple of rocks at a correction officer in the prison system. If you're going to represent yourself you represent yourself. If you want Ms. Sisolak to represent you then you're going to have her.

THE DEFENDANT: I work with myself. I work with myself.

THE COURT: Okay. Sir, I have been doing this for 11 years and I've had a couple of people represent themselves and there's not single individual has won their trial. You still have that right to do that and I'm sure there's people out there that perhaps have won the trial representing themselves but I'm just going to advise you it's probably not in your best interest, but I'm going to go through your rights with you and

1 if you still insist on representing yourself then I'm going to grant you that
2 right. Do you understand that, sir?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right.

5 Under the Sixth Amendment of the United States Constitution,
6 you are entitled to the assistance of an attorney at all stages of the
7 criminal proceedings; do you understand that, sir?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: You have the right to represent yourself and
10 conduct your own defense. I cannot force a lawyer upon you should you
11 insist that you want to conduct your own defense. You are given the
12 rights under the United States Supreme Court decision of Faretta v.
13 California, but you must first knowingly, voluntarily, and intelligently
14 waive and give up your right to the assistance of an attorney before you
15 can represent yourself. Do you understand that, sir?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Sir, do you understand you have the right to
18 the assistance of an attorney at all proceedings?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Do you understand that you have the right to
21 the assistance of an attorney at no cost if you are unable to afford an
22 attorney?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: What is your age, sir?

25 THE DEFENDANT: 27.

1 THE COURT: What is your level of education?
2 THE DEFENDANT: Community College of Southern Nevada.
3 THE COURT: I'm sorry?
4 THE DEFENDANT: Community College of Southern Nevada.
5 THE COURT: All right. And do you read and write the English
6 language?
7 THE DEFENDANT: Yes, Your Honor.
8 MS. KALLAS: Your Honor, I apologize for interrupting, but I
9 reviewed his previous PSI and I do not think he went to college, that's
10 from my understanding. I can find it while you're canvassing him.
11 THE COURT: Do you have a college degree, sir?
12 THE DEFENDANT: If I can get the transcripts. I was at High
13 Desert. I asked High Desert if they could give me –
14 THE COURT: I'm just asking you, did you go to college, did
15 you get a college degree?
16 THE DEFENDANT: Yeah, I went to college for my – I was
17 management, business management but I never finished college in that I
18 was incarcerated for –
19 THE COURT: Okay, did you receive your high school diploma
20 or your GED?
21 THE DEFENDANT: I received a GED.
22 THE COURT: All right, thank you.
23 Sir, do you presently have any health issues?
24 THE DEFENDANT: As far as that Shingles that's probably it,
25 but it –

1 THE COURT: I'm sorry?

2 THE DEFENDANT: As far as the Shingles but it come and
3 go.

4 THE COURT: Okay, anything that would prevent you –
5 anything that would affect your mental abilities, sir?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Sir, are you presently taking any medication?

8 THE DEFENDANT: Aspirin.

9 THE COURT: Okay. Are you under the influence of any
10 alcohol or any illicit drugs?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Sir, have you been coerced or threatened in
13 any way for you to waive your right to an attorney?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Sir, why have you decided to represent
16 yourself?

17 THE DEFENDANT: I been trying to put this motion in about
18 State having lack of jurisdiction to charge me with this offense for 7
19 months now. I still haven't got that motion. I even asked Ms. Sisolak to
20 put a motion in with the evidence I had to support it. I never got nowhere
21 so I guess I had to – well, I believe I have to represent myself to put this
22 motion on calendar and get evidence –

23 THE COURT: And what motion do you want, sir?

24 THE DEFENDANT: That's the motion about the State having
25 lack of jurisdiction to charge with me this offense and that Nevada

1 Department of Corrections kept jurisdiction over these allegations.

2 MS. SISOLAK: Your Honor, if I may respond?

3 THE COURT: Sure.

4 MS. SISOLAK: Mr. Mixon has brought to my attention this
5 motion. I have looked into it fully. It is my duty not to file frivolous
6 motions with the Court. There's no basis for the motion.

7 THE COURT: Sir, I've handled numerous cases involving
8 batteries and offenses in the prison system and I don't recall I've ever
9 dismissed a case saying that I don't have jurisdiction to hear this case.

10 MS. SISOLAK: Your Honor, the issue is that Mr. Mixon was
11 punished administratively for this offense. As Your Honor knows, that
12 was my defense. --

13 THE COURT: And, sir, I've also --

14 MS. SISOLAK: -- quite frankly.

15 THE COURT: -- handled cases where someone was
16 administratively punished as well as criminal charges were filed against
17 them.

18 THE DEFENDANT: Well, I have this memorandum right here
19 and --

20 THE COURT: I understand that, sir, but I'm just telling you
21 that a similar motion has been filed in front of me before; I've denied it.
22 Now, I haven't read your motion. You may have new law or you know
23 different facts because I'm always open-minded to look at any pleadings,
24 I'm just telling you in the past a similar motion has been denied by this
25 Court. Do you understand that, sir?

1 THE DEFENDANT: Um –
2 THE COURT: All I'm asking – you don't --
3 THE DEFENDANT: I'm sure you had a lot of those motions
4 come here --
5 THE COURT: Okay, all I'm asking you, sir, do you –
6 THE DEFENDANT: -- without evidence –
7 THE COURT: -- understand what I --
8 THE DEFENDANT: -- to support it.
9 THE COURT: -- just told you?
10 THE DEFENDANT: Yeah, I understand it.
11 THE COURT: Okay.
12 THE DEFENDANT: I totally understand it.
13 THE COURT: And do you feel that you can better present
14 your case than a trained attorney?
15 THE DEFENDANT: I sure do.
16 THE COURT: All right.
17 Sir, criminal law is a complex area of the law where
18 experienced professional training is both required and desirable. Do you
19 have any prior experience or familiarity with the legal proceedings?
20 THE DEFENDANT: As far as studying Chapter 175 and going
21 to trial here, that's -- and going to the law library, that's probably the
22 farthest of [indiscernible] my -- how – me knowing about the law I guess.
23 THE COURT: Do you have any formal legal training, sir?
24 THE DEFENDANT: Never took the Nevada bar exam in my
25 life.

1 THE COURT: Or any other form of legal training?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Do you know the difference between an
4 opening statement and a closing argument?

5 THE DEFENDANT: Um, opening statement at trial – I give an
6 opening statement and then at the end of trial closing arguments.

7 THE COURT: It doesn't really appear that you do understand
8 that, sir, but that's your right.

9 Do you know how to object to a question that you believe may
10 be improper?

11 THE DEFENDANT: Um, yup.

12 THE COURT: Okay. Do you understand that you have 30
13 days within which to file an appeal from the entry of an order denying –
14 or excuse me, if – excuse me, 30 days within which to file an appeal
15 from the entry of a judgment of conviction? Do you understand that, sir?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Do you understand that if you have an
18 attorney, they are trained in the law and they have the skill and
19 experience [indiscernible] conduct a defense on your case. Do you
20 understand that, sir?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Sir, an attorney knows the elements of the
23 offense that you have been charged with and the possible defenses that
24 may be presented on your behalf; do you understand that, sir?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Sir, criminal trials present difficult choices as to
2 strategy and tactics, and even attorneys can differ as to the proper
3 defense to make in a case. You are not trained to make those decisions,
4 sir. An attorney knows the degree of proof that the State must meet to
5 prove you guilty beyond a reasonable doubt, and by investigation and
6 review of the State's evidence, it may be determined that the State
7 cannot prove its case. Sir, you must be aware of dangers and
8 disadvantages and consequences of self-representation. You must
9 realize that you are required to [indiscernible] the same procedural rules
10 as lawyers; do you understand that, sir?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: I cannot help you or advise you of these rules
13 of procedure; do you understand that, sir?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: You must follow all legal rules even though you
16 may not know them.

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: You will not be allowed to complain, later on
19 appeal, about the competency of your own effectiveness; do you
20 understand that, sir?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Do you understand either in the prison system
23 or if you're down here in jail you will not be given special library
24 privileges?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Sir, do you understand the effectiveness of
2 your defense may be diminished by your dual role as an attorney and as
3 the accused?

4 THE DEFENDANT: Yes, Your Honor, I understand.

5 THE COURT: Sir, once you decide on self-representation,
6 you may not change your mind in the middle of proceedings and request
7 an attorney; do you understand that, sir?

8 THE DEFENDANT: Yes, Your Honor.

9 MS. KALLAS: Your Honor, may I approach before you make
10 your decision? It can be after the canvass.

11 THE COURT: Sure.

12 MS. KALLAS: Now?

13 THE COURT: Yes, with Ms. Sisolak.

14 MS. SISOLAK: Thank you, Your Honor.

15 **[Bench conference begins – transcribed as follows]**

16 MS. KALLAS: I know its up to Your Honor's discretion, my
17 only concern is that you're almost essentially giving him the answer –

18 THE COURT: I'm sorry?

19 MS. KALLAS: My concern is he's just answering yes to
20 everything asked. You asked, do you know you have 30 days to appeal,
21 and you just told me that – and [indiscernible] do you know that you –
22 how to object to a question? Yes. Well, how?

23 THE COURT: Well, I don't have to ask him that.

24 MS. KALLAS: You don't?

25 THE COURT: I have to advise him – no, I just –

1 MS. KALLAS: Okay. It's just --
2 THE COURT: -- have to advise here's the law --
3 MS. KALLAS: -- that I'm just nervous --
4 THE COURT: -- [indiscernible] your understanding.
5 MS. KALLAS: -- about his competency because he was
6 already canvassed and he didn't know those things in justice court.
7 THE COURT: All right.
8 MS. SISOLAK: That being said, --
9 MS. KALLAS: That was my only concern.
10 MS. SISOLAK: -- I --
11 THE COURT: [Indiscernible] the advisement of his rights --
12 MS. SISOLAK: I understand.
13 THE COURT: -- and that a bad decision he's making.
14 MS. SISOLAK: As far as him being canvassed in justice
15 court, I believe I have a copy of the transcript in my file. Judge Bennett
16 never grants a [indiscernible]. That's just not her [indiscernible].
17 MS. KALLAS: And I wouldn't know that yes or no. But yeah, I
18 just know that he --
19 MS. SISOLAK: She didn't --
20 MS. KALLAS: -- didn't know certain things then and I don't
21 know how [indiscernible] competent now.
22 MS. SISOLAK: Because he answered her -- all of
23 [indiscernible] the questions and she said, well, I don't think you've
24 [indiscernible] legal training and she's never --
25 THE COURT: You don't need it.

1 MS. SISOLAK: I know.

2 THE COURT: You don't need it.

3 MS. SISOLAK: I know.

4 THE COURT: That's not the law.

5 MS. KALLAS: Your Honor, and again, it's up to Your Honor's
6 discretion.

7 MS. SISOLAK: And, Your Honor, –

8 MS. KALLAS: I just wanted to raise my concerns.

9 MS. SISOLAK: -- while we're here, if Your Honor does grant
10 Mr. Mixon's request, all of the discovery is on discs.

11 THE COURT: You'll have to have it – print them out.

12 MS. SISOLAK: I'll have to print it and I'll have to –

13 THE COURT: And send it to him.

14 MS. SISOLAK: -- send them to him so I'll just need the time.
15 And then do you want my office to keep the discs? I – given the nature
16 of the charges I don't know if they're going to let him have a CD.

17 MS. KALLAS: Well, one of the things is a recording on his
18 disciplinary hearings. I don't know how he's going to be able to listen to
19 that.

20 MS. SISOLAK: That's not my problem.

21 THE COURT: Is there a transcript –

22 MS. SISOLAK: No.

23 THE COURT: -- of it? Okay. All right, I'll just do that. You
24 know –

25 MS. SISOLAK: Well, I can send him that disc. I'll just let the

1 prison – I'll call the prison [indiscernible] --

2 THE COURT: Yeah, because they'll probably stop it.

3 MS. KALLAS: [Indiscernible].

4 MS. SISOLAK: Thank you, Your Honor.

5 MS. KALLAS: Thank you, Your Honor.

6 **[Bench conference ends]**

7 THE COURT: Sir, you understand that someone being
8 unfamiliar with the legal procedures inadvertently allow a prosecutor an
9 advantage. You may not make effective use of your rights and you may
10 make tactical decisions with unintended consequences; do you
11 understand that, sir?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Sir, do you know how to subpoena witnesses
14 to testify on your behalf?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: All right.

17 Sir, I must advise you an attorney is trained to observe jurors
18 and select the ones most favorable to their case. Do you know how to
19 disqualify a juror?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right.

22 Do you know the consequences if you decide to testify on your
23 own behalf?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Sir, do you understand that nature of the

1 charges against you?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Sir, do you understand what a lesser included
4 offense means?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you know what the possible defenses are to
7 these charges, sir?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you understand what mitigating facts you
10 may be able to assert in this case?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Sir, an attorney can research the law in similar
13 cases and present possible defenses. Do you know how to research the
14 law?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Do you know the range of punishment for these
17 two charges?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Does the Defendant have more than two prior
20 felony convictions?

21 MS. SISOLAK: I believe --

22 MS. KALLAS: You know -- Court's indulgence.

23 THE COURT: Would he be eligible for habitual?

24 MS. KALLAS: I don't think he's habitual eligible, Your Honor.

25 MS. SISOLAK: I don't believe he's habitual eligible.

1 MS. KALLAS: And we wouldn't be seeking any [indiscernible].

2 THE COURT: Okay.

3 MS. SISOLAK: I believe he has one prior felony outside of this
4 department on voluntary manslaughter.

5 MS. KALLAS: He also has a '06 conspiracy to commit
6 robbery.

7 THE COURT: All right.

8 MS. KALLAS: So, he would be, but we wouldn't be seeking it,
9 Your Honor.

10 THE COURT: Sir, are you waiving your right to counsel freely,
11 knowingly, voluntarily and intelligently?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Sir, as I mentioned before, you have a
14 constitutional right to represent yourself in this matter. I don't think a lot
15 of people have been successful in representing themselves but that's
16 your choice. Do you understand that, sir?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: The Court does find that the Defendant's
19 decision to represent himself is freely, knowingly, voluntarily, and
20 intelligently made, that he does have a full appreciation and
21 understanding of the consequences of your [sic] actions.

22 All right, sir, how – Ms. Sisolak is going to copy all of the
23 discovery all for you and send it to you. She has them on a disc but she
24 needs to send them in paper form to you in the prison system. It may
25 take a couple of weeks to do that. How long do you need to prepare for

1 your trial, sir? Assuming she gets these to you in a couple of weeks, how
2 long will you need, after receipt of all the paperwork, do you need to
3 prepare for your trial?

4 THE DEFENDANT: I invoked my right for a speedy trial from
5 the beginning so I'll be invoking my right to a speedy trial again after I
6 get --

7 THE COURT: Sir, listen to me. We already had a trial. There
8 was a mistrial. Okay, you're going to get some -- you're going to get --
9 was it a couple of hundred pages? Do you know how many pages there
10 are?

11 MS. SISOLAK: It's a couple of hundred.

12 THE COURT: Okay, you're probably going to get a couple of
13 hundred pages in 2 to 3 weeks, how long will it take you to review all that
14 and prepare for your case so you can go to trial?

15 MS. SISOLAK: In candor with the Court, Your Honor, Mr.
16 Mixon has the vast majority of the discovery that I've already given him
17 prior to his first trial. In addition, we've -- as you know, we've prepped
18 this case up with Mr. Mixon's help.

19 THE COURT: I'm just asking you, how much time do you
20 need, sir?

21 THE DEFENDANT: Um, I don't have no discovery at all, but
22 um, like 120 days I guess.

23 THE COURT: I'm sorry?

24 THE DEFENDANT: 120 days if you don't mind, but --

25 THE COURT: All right, that's fine. Here we are --

1 THE DEFENDANT: After she send the whole discovery –

2 THE COURT: I'm sorry?

3 THE DEFENDANT: After she send the whole discovery, 120
4 days after –

5 THE COURT: Okay.

6 THE DEFENDANT: -- I receive it?

7 MS. SISOLAK: And, Your Honor, I'll have the discovery sent
8 by next Thursday. If you'd like a status check I could – I'm happy to
9 appear for that.

10 THE COURT: Okay, how about August 27th? That would give
11 you your – basically your 120 days.

12 THE DEFENDANT: Sure.

13 THE COURT: Okay, here is –

14 THE DEFENDANT: Thank you.

15 THE COURT: -- your calendar call date.

16 THE CLERK: That will be August 21st at 8:30 a.m.

17 THE COURT: And, sir, on the 21st I'm going to hear any
18 further argument on the motions that have been filed. You can file any
19 supplements you deem appropriate. You should be prepared to argue
20 those motions. Make sure the mailings that you give him, Ms. Sisolak,
21 include the motions that you filed.

22 MS. SISOLAK: Absolutely, Your Honor.

23 THE COURT: All right, see you back at that time. Thank you.

24 MS. KALLAS: Thank you, Your Honor.

25 [Hearing concludes at 9:53 a.m.]

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[Case recalled at 9:54 a.m.]

THE COURT: Well, I did put on the record that we had this
Faretta canvassing here. Sir, your request to represent yourself is
granted; all right?

THE DEFENDANT: Thank you, Your Honor.

MS. SISOLAK: Thank you, Your Honor


THE COURT: Good luck to you, sir. Good luck to you.

MS. KALLAS: Thank you, Your Honor.

[Hearing concludes at 9:54 a.m.]

* * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
Procedure, I acknowledge that this is a rough draft transcript, expeditiously
prepared, not proofread, corrected, or certified to be an accurate transcript.


CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,

7
8 Plaintiff,

9 vs.

10 ANTONIO LEE MIXON,

11 Defendant.

CASE: C-17-327439-1

DEPT. XVII

12
13 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
14 TUESDAY, JUNE 5, 2018

15 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:**
16 **DEFENDANT'S PRO PER MOTION FOR EXPERT**
17 **WITNESSES/TRANSPORT ORDER**

18
19 APPEARANCES:

20 For the State:

JASON GUNNELL, ESQ.
Sr. Deputy Attorney General

22 For the Defendant:

PRO SE

23 Also appearing:

MARTIN HART, ESQ.

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25 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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Las Vegas, Nevada, Tuesday, June 5, 2018

[Hearing begins at 8:58 a.m.]

THE MARSHAL: 8 bottom.

THE COURT: And that is Antonio Mixon.

Good morning, sir. This is your pro per motion for expert witness. What type of expert do you need, sir, since you're representing yourself?

THE DEFENDANT: Probably an investigator and a paralegal is what I put in the motion, Your Honor.

THE COURT: Do you have an investigator in mind that you wish to retain?

THE DEFENDANT: Whomever the Court appoints. It wouldn't matter.

THE COURT: Okay. Well, sir, I'm not going to – I can't pick one for you. Mr. Hart, are you familiar with one or Mr. Wood or –

MR. HART: I know that Drew has a couple that he tends to use on pro pers. Mark – just a second. Let me –

THE COURT: Sure.

MR. HART: If I – I apologize.

[Pause in proceedings]

THE COURT: Sir, you can use whatever private investigator you want. Mr. Hart, who is a criminal defense attorney, he's – apparently he's familiar with a private investigator. You can use him or her, or you can pick one of your own, but I need to have a name. So, Mr. Hart, do you have a name?

1 MR. HART: Mark – and I’m sorry, I don’t have his last name. I
2 have his phone number, 328-2464. I know when I’ve done standby he’s
3 the one that I ended up using. And I can pass the information on. I know
4 he does court-appointed work. He does – it’s a \$50.00 an hour rate.

5 THE COURT: Mr. Hart, I would appreciate it if you could be
6 so kind, contact my chambers and just give us the name.

7 MR. HART: I’ll call you – I’m going to step out in the hall and
8 try to get a hold of him.

9 THE COURT: Okay. And we’ll get that name for you, sir, and
10 we’ll give him your contact information so he can you know, he’ll
11 probably go and see you; okay? So, your motion for a private
12 investigator is granted and we’ll get that specific name for you, sir.

13 THE DEFENDANT: And a paralegal? The motion --

14 THE COURT: Well, sir, you’re representing yourself; okay?

15 THE DEFENDANT: Right.

16 THE COURT: And that was one of your decisions; --

17 THE DEFENDANT: Right.

18 THE COURT: -- all right? Because you didn’t want an
19 attorney –

20 THE DEFENDANT: Okay.

21 THE COURT: -- and so –

22 THE DEFENDANT: Would the law –

23 THE COURT: And I explained before that I can’t help you file
24 motions and you wouldn’t be given any extra library –

25 THE DEFENDANT: Correct.

1 THE COURT: -- privileges.

2 THE DEFENDANT: Right. But I'm being denied access to the
3 law library. I been contacting the law library's supervisor so I can you
4 know try and put the memorandum of law together for these motions.
5 When they come to my door –

6 THE COURT: Have you filled out any request forms and they
7 have to send it back to you saying that they're not granting you library
8 privileges?

9 THE DEFENDANT: I did you know the State of Nevada um –
10 this is the exhibit that I went to the law library with the request for my
11 stuff like that.

12 THE COURT: I don't have anything attached to your motion,
13 sir.

14 THE DEFENDANT: I have it right here. I did send a copy to
15 the State. I didn't attach it to the motion. I apologize but I do have it right
16 here. The marshal can hand it to you.

17 THE COURT: State, do you have any information regarding
18 library privileges?

19 MR. GUNNELL: We just have what was in the – his motion
20 that he filed.

21 THE COURT: It wasn't attached to my motion. What does it
22 say?

23 MR. GUNNELL: It was just his representations that he wasn't
24 allowed to go in to the library.

25 THE COURT: State, if you can be so kind to follow up with

1 the prison system and then find out what the –

2 MR. STORMS: We can do that, Your Honor.

3 THE COURT: -- if there's any issues as far as their denying
4 his right to go to the library?

5 And, sir, what we're going to – is two weeks enough time,
6 Counsel?

7 MR. GUNNELL: That would be. We could check on that, Your
8 Honor.

9 THE COURT: Okay.

10 Sir, what we're going to do is we'll go out two weeks. We're
11 going to order you to come back in two weeks. We're going to find out
12 what the issue is with your library privileges.

13 THE DEFENDANT: I did send the State what the problem
14 was about the law library privileges. I didn't attach it to the motion but I
15 did send the State a copy. I do have a copy for the Court right here. I
16 didn't attach it.

17 THE COURT: All right, give it to the marshal. But also I'm
18 going to have him check with the prison system to find out what the
19 issue is; all right? I want to hear from both sides.

20 THE DEFENDANT: Right.

21 THE COURT: Okay?

22 So, I am ordering you that you be returned in two weeks on
23 the following day -- and State, so you'll follow up. I'm going to look at
24 what Mr. Mixon has and I'll review this before the next court appearance.
25 And, State, you have a copy of this?

1 MR. GUNNELL: I believe – may I approach, Your Honor.

2 THE COURT: Sure.

3 MR. GUNNELL: I'm not sure we have a copy of that.

4 MR. HART: And, Your Honor, I do have the name of the
5 potential investigator. And his company is licensed number.

6 THE COURT: All right go ahead and put it on the record
7 please, Mr. Hart.

8 MR. HART: Global Reliance is his company, 1898 and its
9 March Perusch.

10 THE COURT: All right, we'll contact him, his office to see if
11 he's willing to take this appointment so we'll have all this resolved in the
12 two week status check.

13 THE CLERK: June 19th, 8:30 a.m.

14 THE COURT: All right, anything else, sir?

15 THE DEFENDANT: No; thank you.

16 THE COURT: All right; next case.

17 [Hearing concludes at 9:03 a.m.]

18 * * * * *

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21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
22 Procedure, I acknowledge that this is a rough draft transcript, expeditiously
23 prepared, not proofread, corrected, or certified to be an accurate transcript.

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CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,

7
8 Plaintiff,

9 vs.

10 ANTONIO LEE MIXON,

11 Defendant.

CASE: C-17-327439-1

DEPT. XVII

12
13 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
14 TUESDAY, JUNE 19, 2018

15 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:**
16 **STATUS CHECK: LIBRARY PRIVILEGE**

17
18 APPEARANCES:

19
20 For the State:

JASON GUNNELL, ESQ.
Sr. Deputy Attorney General

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22 For the Defendant:

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25 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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Las Vegas, Nevada, Tuesday, June 19, 2018

[Hearing begins at 9:20 a.m.]

THE COURT: Okay, we'll handle the bottom of 3, Antonio
Mixon.

MR. ALBRIGHT: That's an AG case so I'm not sure –

THE DEFENDANT: And, Your Honor, the State – the AG
hasn't arrived yet.

THE COURT: All right, because he was supposed to – it was
Mr. Gunnell, Jason Gunnell, the AG's office to check the library issue.
Marshal, can you see if Mr. Gunnell, Jason Gunnell, G-U-N-N-E-L-L, see
if you can call his office. So, we'll recall this matter, sir, okay?

THE DEFENDANT: All right.

[Matter trailed at 9:20 a.m.]

[Matter recalled at 9:24 a.m.]

THE COURT: Marshal, can you call that AG?

THE MARSHAL: I did.

THE COURT: Oh, you did. Is he enroute?

THE MARSHAL: I left him a message.

THE COURT: Oh. All right, we'll wait. Call me when someone
shows up.

THE MARSHAL: All rise. Department 17 is in a short recess.

[Matter trailed at 9:25 a.m.]

[Matter recalled at 9:51 a.m.]

THE MARSHAL: Department 17 is back in session. Please be
seated and come to order; 3 bottom.

1 THE COURT: Which is Antonio Nixon.

2 THE DEFENDANT: Present.

3 MR. GUNNELL: Good morning, Your Honor, Jason Gunnell
4 with the Attorney General's Office for the State.

5 THE COURT: All right, Counsel, last time we were here there
6 was an issue on the library and then also –which is – which I asked you
7 to check into, but also the issue on the investigator which was not your
8 responsibility. But on the issue of the library privileges, can you
9 enlighten us?

10 MR. GUNNELL: I can. I actually – we contacted High Desert
11 and I actually received an e-mail from the library – law library supervisor,
12 and part of that is that Mr. Nixon is – his housing – the housing is now
13 he can't – actually can't go to the library but they can bring things to him
14 from the library. And he just has to fill out a form. They actually provided
15 me with the form. On May 18th, 2018, he requested a number of
16 documents but he actually refused those documents on that date. So, he
17 does have access to the library through this system. He just can't go to
18 the library. He can request documents be –

19 THE COURT: So, you're saying he did request them on
20 occasion and they were going to give him their documents and then he
21 refused?

22 MR. GUNNELL: Correct.

23 THE COURT: Mr. Nixon.

24 THE DEFENDANT: I did request the documents. When they
25 came to my door, I inspected it at the door. I seen it was incomplete so I

1 refused to sign it. And I did submit that in a declaration to this Court I
2 believe and I sent that –

3 THE COURT: Sir, probably the better course would have
4 been to sign it and say I'm missing items 1 through 3 and you're
5 accepting items, for example, 4, 5 and 6 instead of just saying if I don't
6 get them all I don't want any because then you can at least prepare the
7 3 or 4 documents you are getting. That just seems to me would have
8 been the better course of conduct. And how do they know which ones
9 you're missing? So, you could sign and say receipt of documents 1
10 through 3, did not receive documents 5, 6, and 7 or whatever it may be.

11 THE DEFENDANT: When they come to the door with the
12 request you know I could have received – well, I inspected at the door
13 and I seen that it was incomplete and I could have take it and um signed
14 it but there's nowhere on their document to know that the request is
15 incomplete so I let the law library – librarian know that it was incomplete
16 right there and that I wouldn't sign it 'cause it was incomplete. But that's
17 not the first time I requested from their law library and they gave me
18 something that was incomplete. And they continue to –

19 THE COURT: Well, sir, like put in another request and in your
20 written request you can say I had previously requested these items. I
21 only received half of them and these are the ones that are missing plus I
22 want the following additional items. That way there's a paper trail; okay?
23 That way you're not agreeing that you've received everything because
24 you're putting in writing that you – that some of the documents were
25 missing; okay? So, it seems like – I'm not going to order that they have

1 special transportation for you. It seems like there is an avenue for you to
2 get these documents. And so, I'm satisfied that that issue is resolved.
3 Put in your request and they'll drop off these documents and if you find
4 some of them are missing then make another request for the missing
5 documents; okay?

6 As you will recall when you decided to represent yourself I told
7 you you would not get any special library privileges. If you're housed in a
8 certain location where they can – they will not transport you to the
9 library, and basically they're going to transport the library to you, then
10 that's the situation. I told you when you represent yourself, you know
11 there's certain things that you're not going to have access to; okay? So,
12 that's resolved as far as I'm concerned.

13 And then did a private investigator contact you, sir?

14 THE DEFENDANT: I didn't even get his first and last name.
15 They trailed it for me [indiscernible] –

16 [Colloquy between Court and Clerk]

17 THE COURT: Did you receive the minutes from the Court,
18 sir?

19 THE DEFENDANT: No, I didn't. No, I did not. I didn't get his
20 contact information.

21 [Colloquy between Court and Clerk]

22 THE COURT: Where are you being housed now, sir?

23 THE DEFENDANT: I'm currently housed in Hall 23
24 [indiscernible].

25 THE COURT: I'm sorry?

1 THE DEFENDANT: I'm in the hole right now.

2 THE COURT: Where?

3 THE DEFENDANT: I'm in administrative segregation; in the
4 shoe. I guess they call it the hole.

5 THE COURT: No, I mean are you in the jail here, are you in
6 the –

7 THE DEFENDANT: Oh, I'm in High Desert State Prison.

8 THE COURT: Okay. All right, my clerk will resend the minutes
9 to you with the private investigator's name on that. So, she'll put it in the
10 mail today or tomorrow, assuming you'll get that information the next
11 couple of days through the mail.

12 THE DEFENDANT: And can I get a order so the prison will
13 allow these contact visits from the private investigator?

14 THE COURT: How do they handle that, Counsel?

15 MR. GUNNELL: They – Your Honor, typically attorneys have
16 access. Its just the day they go up for visitations like any other – I mean
17 there are visitations that attorneys have and the investigators are a part
18 of that as well.

19 THE COURT: Okay.

20 MR. GUNNELL: So its just they have to schedule by
21 alphabetical order, your day of the week, and the time that you can
22 have.

23 THE COURT: And it sounds like this investigator should know
24 the proper procedure.

25 THE DEFENDANT: Also, Your Honor, um –

1 THE COURT: Yes, sir.

2 THE DEFENDANT: Since I'm on calendar right now, if the AG
3 doesn't mind, I got trial – there's a trial date in August and I'm not gonna
4 probably be ready by August, so if we can get a status check to get a –
5 to reset the trial date?

6 THE COURT: Okay, how much time do you need, sir?

7 THE DEFENDANT: Um, probably like 120 days give or take.

8 [Colloquy between the Court and Clerk]

9 THE DEFENDANT: Unless you want to set it in January of
10 next year.

11 THE COURT: This trial won't take that long, so we'll go –
12 Counsel, are you available October 29?

13 MR. GUNNELL: I should be, Your Honor.

14 THE COURT: Because that will give you from that part of
15 June here, July, August, September, and the end of October so that's –
16 should give you enough time, sir.

17 THE DEFENDANT: Very well. So, thank you.

18 THE COURT: All right. You're welcome, sir.

19 MR. GUNNELL: And, Your Honor, we'll try to contact the
20 investigator again and get him a copy of the discovery as well –

21 THE COURT: Okay.

22 MR. GUNNELL: -- so it's easier just to – on everybody.

23 THE COURT: Appreciate it. Thank you.

24 All right. Thank you, Mr. Mixon.

25 THE MARSHAL: Page 11.

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THE CLERK: Calendar call –

THE COURT: Wait. Hang on.

THE CLERK: Calendar call date October 23rd, 8:30. And the trial date is October 29th, at 9:00 a.m.

THE COURT: And we'll need Mr. Mixon to be returned on that date for calendar call.

THE DEFENDANT: And what's the date?


THE CORRECTIONS OFFICER: I already got it for you.

THE DEFENDANT: All right, thank you.

[Hearing concludes at 9:59 a.m.]

* * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.


CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,

7
8 Plaintiff,

9 vs.

10 ANTONIO LEE MIXON,

11 Defendant.

CASE: C-17-327439-1

DEPT. XVII

12
13 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
14 THURSDAY, AUGUST 30, 2018

15 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:**
16 **DEFENDANT'S PRO PER MOTION FOR STATUS CHECK; TRIAL**
17 **READINESS; DISCOVERY ISSUE; TRANSPORTATION ORDER;**
18 **ORAL AGREEMENT REQUESTED**

19 APPEARANCES:

20 For the State:

JASON GUNNELL, ESQ.
Sr. Deputy Attorney General

22 For the Defendant:

PRO SE

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25 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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Las Vegas, Nevada, Thursday, August 30, 2018

[Hearing begins at 8:40 a.m.]

THE COURT: Antonio Mixon.

THE DEFENDANT: Present.

THE COURT: Good morning, sir.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: This is your motion – well, we have a status check for trial readiness and discovery issues.

THE DEFENDANT: And, Your Honor, I amended that motion. I don't know if you have a copy of that yet.

THE RECORDER: I'm sorry, I can't –

THE COURT: All right, hang on. Repeat it, sir.

THE DEFENDANT: I amended that motion right there. I haven't got a copy yet. You got a copy of the amended one? I [indiscernible] –

THE COURT: When did you file that, sir, because I don't look like I have an amended one?

THE DEFENDANT: I filed it on the -- around or about on the 23rd I believe.

THE COURT: The motion for – on discovery issues was -- the one I have, sir, is August 8.

THE DEFENDANT: Yeah, I amended that one. I amended that one and I sent it – I mailed it around like the 23rd I believe, around or about that time.

THE CLERK: Judge, there's another motion set for September

1 18th.

2 THE COURT: Apparently, it's set for – I don't know if you
3 heard, September 18.

4 THE DEFENDANT: Can we put it on calendar today or can
5 we trail this so I can – 'cause I'm – unless you're gonna let me amend it?

6 THE COURT: Well, I don't know if the State has a copy of it
7 and they've had an opportunity to reply.

8 MR. GUNNELL: We don't have a copy of it, Your Honor.

9 THE DEFENDANT: I sent them a copy.

10 MR. GUNNELL: Well, we don't have a [indiscernible].

11 THE COURT: But, sir, listen. It's okay for you to represent
12 yourself but you're under the same rules and that motion to amend is set
13 for the 18th, and so we can resolve the motions today that are on
14 calendar for today or we can continue everything to the 18th.

15 THE DEFENDANT: We can't get a date before the 18th to
16 resolve both of the motions? I mean its just amended. It's – I just
17 amended that one.

18 THE COURT: What's the difference?

19 THE DEFENDANT: I want you to hear the amended one
20 besides that one. If they want to write a opposition to it, if they want a
21 chance to do that they –

22 THE COURT: Sir, what's the difference in the amended from
23 the original?

24 THE DEFENDANT: The difference between that one and the
25 amended, the amended is – has case law in there and some Nevada

1 revised statutes I want you to consider when you adjudicate it. That's the
2 difference.

3 THE COURT: All right. State, how long will it take you to
4 respond?

5 MR. GUNNELL: I don't know how long, Your Honor, because
6 we actually we have a copy but we can't read it because the writing is so
7 light on it. And I know with this motion we provided him discovery
8 already that contains the statements. I mean if that's the issue I can
9 provide him additional copies of the statements of the witnesses.

10 THE COURT: Sir, I think when I read your motion you wanted
11 to know what these witnesses were going to testify to and it sounds like
12 that there was witness statements from these individuals. Do you have
13 copies of those? We can make copies right now, sir, if you don't have
14 those copies.

15 THE DEFENDANT: I don't have copies at all, but if you got
16 copies I'll totally take those copies.

17 MR. GUNNELL: Yeah, they – and they're pretty [indiscernible]
18 discovery, that's bates Exhibit 7 and bates Exhibit number – or excuse
19 me, page number 9 –

20 THE COURT: All right. Can you just hand them to the
21 marshal and the marshal will hand to Mr. Mixon.

22 THE DEFENDANT: Can I affirm that these are the witnesses
23 on this [indiscernible]?

24 THE COURT: Sure, why don't you look at them.

25 [Pause in proceedings]

1 THE DEFENDANT: Okay. That settles that discovery issue.
2 As far as the trial readiness goes –

3 THE COURT: I'm sorry?

4 THE DEFENDANT: I said that – this – these two reports
5 settles that discovery issue as far as that part of that motion goes. And
6 then there's – as far as the trial readiness go -- the motion to reset the
7 trial –

8 THE COURT: Okay, that – we can handle that one today, sir.
9 And how much more time do you need?

10 THE DEFENDANT: I – if you could set it to a date in January
11 if they don't mind 'cause my private investigator still gather evidence of
12 witnesses in this case so can put my case in chief together and stuff like
13 that. And I got to file pretrial motions and stuff.

14 MR. GUNNELL: Your Honor, we'd just like to get this thing
15 going. I mean it was previously set when he was represented by the PD
16 and I don't think – its not a difficult case to prepare for. I don't know what
17 evidence he's looking for. We'd just like to go to trial, but I mean we're
18 not going to strenuously oppose any new trial setting.

19 THE COURT: Okay, sir, I'm going to grant your –

20 THE DEFENDANT: [Indiscernible] –

21 THE COURT: Sir, listen. I'm – you know what, I'm ruling in
22 your favor, really not much more to say, okay, I'm going to grant –

23 THE DEFENDANT: I know but I want to seem like I'm
24 delaying time –

25 THE COURT: Sir, I –

1 THE DEFENDANT: I'm trying to [indiscernible] know where
2 I'm exactly at right now with everything.

3 THE COURT: Sir, I am going to grant your motion; --

4 THE DEFENDANT: Okay.

5 THE COURT: -- okay? We will set the trial January 7th; okay?
6 And here is your calendar call date. This will give you September,
7 October, November, December. That's four months; okay? That's plenty
8 of time.

9 THE DEFENDANT: I appreciate it.

10 THE COURT: So, we're going to go to trial January 7th, and
11 here is your calendar call date.

12 THE CLERK: January 3rd, at 8:30.

13 THE COURT: Okay, and we do need -- do we need another
14 transport order or is that sufficient --

15 THE DEFENDANT: Can I get a transport order? Do I got
16 [indiscernible]?

17 MR. GUNNELL: We can -- we'll prepare one, Your Honor.

18 THE COURT: Okay.

19 MR. GUNNELL: We always prepare --

20 THE COURT: All right, we'll make sure you're here, sir, and if
21 you have any motions to file please do so in a timely fashion.

22 THE DEFENDANT: I appreciate --

23 THE COURT: You'll be under the same rules as an attorney;
24 okay?

25 THE DEFENDANT: When I file a motion it take me 30 days to

1 get on calendar [indiscernible]. I just want the -- to let the Court know
2 that. [Indiscernible] --

3 THE COURT: It shouldn't take that long, sir. We'll hear -- I'm
4 going to vacate the September 18th motion because we resolved it
5 today. All right, so we'll wait for any other motions, sir; okay? We'll hear
6 those in due course.

7 THE DEFENDANT: All right. I appreciate it.

8 THE COURT: Thank you.


9 THE CLERK: And the State, can I please have your name and
10 bar number?

11 MR. GUNNELL: Jason Gunnell, 13997.

12 [Hearing concludes at 9:45 a.m.]

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21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
22 Procedure, I acknowledge that this is a rough draft transcript, expeditiously
23 prepared, not proofread, corrected, or certified to be an accurate transcript.

24 
25 CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6 THE STATE OF NEVADA,)
7)

8 Plaintiff,)

9 vs.)

10 ANTONIO LEE MIXON,)

11 Defendant.)
12

CASE: C-17-327439-1

DEPT. XVII

13 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
14 THURSDAY, OCTOBER 11, 2018

15 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:**
16 **DEFENDANT'S PRO PER MOTION FOR EXPERT WITNESS**
17 **DEFENDANT'S PRO PER MOTION TO SUPPRESS AND OR**
18 **PURSUANT TO NRS 47.090**

19 APPEARANCES:

20 For the State:

JASON GUNNELL, ESQ.
Sr. Deputy Attorney General

22 For the Defendant:

PRO SE

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25 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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Las Vegas, Nevada, Thursday, October 11, 2018

[Hearing begins at 8:54 a.m.]

THE COURT: Antonio Mixon.

THE MARSHAL: I'll grab him.

[Pause in proceedings as defendant is led into courtroom]

THE COURT: All right Mr. Mixon is present at liberty – I mean in custody, excuse me.

Mr. Mixon, you filed two motions, one is for the Court to appoint an expert witness for you on the fingerprint analysis and the second one is to suppress the evidence. Did you receive – on the fingerprint expert, did you receive the opposition filed by the State which sets forth that they are – they do not have a fingerprint expert and they are not going to present a fingerprint expert?

THE DEFENDANT: I did not receive that.

THE COURT: Okay. Does that now make your motion moot because they are stipulating that they are not going to have a fingerprint expert testify in your case?

THE DEFENDANT: I'm requesting a expert witness --

THE COURT: Okay.

THE DEFENDANT: -- a fingerprint expert.

THE COURT: And why would you need that, sir?

THE DEFENDANT: My fingerprints is not on that weapon and the expert witness is gonna come testify and give an expert opinion as why my – first they're gonna do the test. Then after that they're gonna give an opinion why they believe my fingerprints in not on that weapon.

1 THE COURT: All right. Well, actually even though the State is
2 not going to have a fingerprint expert, if I recall the State has some
3 witnesses who will say they saw the Defendant with a shiver, the knife,
4 whatever you want to call it and this could go to his argument to rebut
5 that so I'm going to grant your motion, sir. Consider this a Widdis motion.
6 Do you know what expert you wish to retain?

7 THE DEFENDANT: No. I'm talking to my private investigator
8 right now.

9 THE COURT: Okay.

10 THE DEFENDANT: He's been busy, so.

11 THE COURT: All right. Just submit the appropriate order to
12 me and I'll sign off on that; okay?

13 Now, the second motion you have is a motion to suppress and
14 this is regarding the statement that you made. Any further argument on
15 the motion, sir? I have reviewed your brief and the State -- did you get
16 the State's opposition?

17 THE DEFENDANT: I did receive an opposition.

18 THE COURT: Okay. Any argument, sir?

19 THE DEFENDANT: I'll submit it without the motions -- the
20 arguments of the motion.

21 THE COURT: All right, State, do you have any argument?

22 MR. GUNNELL: Yes, Your Honor. As to -- the statement's
23 relevant as to the fact that we charged that he had possession of a
24 shank or a shiver, an instrument, and he said essentially, you're lucky
25 you had that mace or else I would have stuck your bitch ass, or

1 something along those lines. That goes just to show that he had a
2 weapon on him. It goes to show it's relevant to the case. It's a statement
3 of party/opponent interest. And we'll just submit on that, Your Honor.

4 THE COURT: All right, sir, I'm going to deny your motion. At
5 least according to your brief and the State's brief, although you were in
6 custody and obviously you were in the prison system, it was – its alleged
7 and it appears from even your own argument that it's something that you
8 had blurted out. It wasn't based upon any questioning by the State so we
9 don't have a custodial interrogation. And for that reason, I'm going to
10 deny your motion to suppress. That statement will come in with the
11 proper foundation.

12 All right, State, would you please prepare the appropriate
13 order for that motion?

14 And we do have a calendar call January 3rd, the trial date
15 January 7th. Mr. Mixon, will you be prepared to go forward on those
16 dates?

17 THE DEFENDANT: I don't believe so.

18 THE COURT: You don't or do?

19 THE DEFENDANT: I don't believe so, but I put a motion in for
20 extended time.

21 THE COURT: I'm sorry?

22 THE DEFENDANT: I said I don't believe I'm gonna be ready
23 but I'm in the process of putting the motion in to extend the time. --

24 THE COURT: All right, well, you need --

25 THE DEFENDANT: -- 'cause I'm not gonna be --


1 THE COURT: -- to file that as soon as possible. I'm not ruling
2 on that today; okay? I do want to get this matter moving forward and
3 that's one of the issues of you representing yourself, there are delays
4 here but that's something that you need to consider or you should have
5 considered when you requested to represent yourself. I don't know what
6 your motion is going to state and we'll deal with it in due course; all
7 right? Thank you, sir.

8 THE DEFENDANT: Thank you.

9 [Hearing concludes at 8:58 a.m.]

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21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
22 Procedure, I acknowledge that this is a rough draft transcript, expeditiously
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24 
25 CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,

7
8 Plaintiff,

9 vs.

10 ANTONIO LEE MIXON,

11 Defendant.

CASE: C-17-327439-1

DEPT. XVII

12
13 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
14 THURSDAY, OCTOBER 25, 2018

15 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:**
16 **DEFENDANT'S PRO PER MOTION FOR LEAVE TO FILE AN**
17 **AMENDED MOTION TO SUPPORT AND MOTION FOR EXPERT**
18 **WITNESSES**

19 APPEARANCES:

20 For the State: CHELSEA N. KALLAS, ESQ.
21 Deputy Attorney General

22 For the Defendant: PRO SE
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25 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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Las Vegas, Nevada, Thursday, October 25, 2018

[Hearing begins at 9:03 a.m.]

THE MARSHAL: Page 10.

THE COURT: Antonio Mixon.

MS. KALLAS: Good morning, Your Honor, Chelsea Kallas for the Attorney General's Office.

THE COURT: This is Defendant's motion to file an amended motion to suppress and motion for expert witness. I've already granted his – sir, we already granted your motion for expert witness the last time we were here. I –

THE DEFENDANT: This motion was filed after that initial motion.

THE COURT: Okay. All right, so that motion is off calendar as being moot.

And then you have a motion, an amended motion – actually, it should be a motion for reconsideration, sir.

Anything new to add to your original motion regarding the suppression?

MS. KALLAS: I'm sorry; I don't think I received that, Your Honor.

THE DEFENDANT: Can you repeat that, Judge?

THE COURT: I have here a motion – to file an amended motion to suppress and motion for expert witness.

MS. KALLAS: I received that, and it was my understanding it was just for if he wanted fix a typo in his original motion.

1 THE COURT: Is that correct, sir?

2 THE DEFENDANT: And add some citations to that motion.

3 THE COURT: All right, sir, I – the last time we were here, the
4 law is very clear on this particular matter and that’s why I denied your
5 motion to suppress. There’s nothing new here. This Court was not under
6 any mistake of fact or of law when I originally ruled on your motion. So,
7 I’m denying your motion to amend your motion to suppress. And so, you
8 do have your expert witness. I’ve ruled in your favor. I’ve denied your
9 motion to suppress. And I think we’re done – and then we have a
10 calendar call January 3rd and trial date January 7th; all right?

11 MS. KALLAS: I believe we also have a date on November 6th
12 as well. There was another motion filed.

13 THE COURT: And what is that motion for, does anyone
14 know?

15 MS. KALLAS: It was a motion for extension of time. He’s
16 asking for a year.

17 THE COURT: For what?

18 MS. KALLAS: A year to extend trial.

19 THE DEFENDANT: And, Your Honor, I amended that motion
20 too.

21 THE COURT: I’m sorry?

22 THE DEFENDANT: I amended that motion too so I just sent it
23 yesterday the motion for November 8 to extend – motion to extend
24 time --

25 THE COURT: Okay, why do you need –

1 THE DEFENDANT: -- for time.

2 THE COURT: -- a year to --

3 THE DEFENDANT: 'Cause I'm preparing a writ of
4 [indiscernible] and a – from a – in a case from the Ninth Circuit. I'm
5 preparing a federal habeas writ from a judgment in this courtroom.

6 THE COURT: Sir, if you need to file those files I'm not
7 continuing the trial. This was the whole situation you representing
8 yourself. We gave you more time. The trial was set quite some time ago
9 and I'm denying – I'm going to rule on that motion right now to extend –
10 basically the motion to continue trial is denied. We are going forward on
11 January – January 3rd is your calendar call so we'll need him back here
12 on January 3rd for calendar call; and your trial is January 7th.

13 MS. KALLAS: So is the November 6th date vacated, Your
14 Honor?

15 THE COURT: That is correct, yes.

16 MS. KALLAS: Thank you.

17 THE COURT: Thank you.

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

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21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
22 Procedure, I acknowledge that this is a rough draft transcript, expeditiously
23 prepared, not proofread, corrected, or certified to be an accurate transcript.

24 
25 CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,

7
8 Plaintiff,

9 vs.

10 ANTONIO LEE MIXON,

11 Defendant.

CASE: C-17-327439-1

DEPT. XVII

12
13 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
14 TUESDAY, NOVEMBER 20, 2018

15 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:**
16 **DEFENDANT'S AMENDED MOTION FOR EXTENSION OF TIME**
17 **DEFENDANT'S NOTICE OF MOTION**

18
19 APPEARANCES:

20 For the State:

CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

22 For the Defendant:

PRO SE

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25 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, November 20, 2018

2 [Hearing begins at 8:56 a.m.]

3 THE COURT: Antonio Mixon.

4 THE DEFENDANT: Good morning, Court.

5 THE COURT: Good morning, sir.

6 MS. KALLAS: Good morning, Your Honor, Chelsea Kallas for
7 the Attorney General's Office.

8 THE COURT: And Mr. Mixon, this is your motion.

9 THE DEFENDANT: [Indiscernible] marshal [indiscernible]?

10 THE COURT: I'm sorry?

11 THE DEFENDANT: [Indiscernible].

12 THE CLERK: Counsel, can I get your bar number?

13 MS. KALLAS: 13902.

14 THE COURT: This is a motion for extension of time. Is that for
15 the trial, sir?

16 THE DEFENDANT: Your Honor, this motion is for an
17 extension of time to prepare for trial. I've been trying to contact my
18 private investigator. I sent him two correspondences [phonetic]. He got a
19 busy schedule. He hasn't got back with me yet. I just have him get the
20 evidence to cross-examine the State's witnesses. I'm waiting for him to
21 contact me. I just spoke to him – its been like almost 60 days. He came
22 to see me twice. He got other clients. He's very busy. And then um, I
23 need him to get like three witnesses for me, a sergeant escort officer, a
24 [indiscernible] officer, and the nurse, and then one officer that made a
25 report about the evidence in this case. And then – oh, I – and then you

1 granted the motion for the forensic expert and I asked him can he, you
2 know what I'm saying, find me someone – find a forensic expert. If not,
3 I'm gonna request to be my own forensic expert in this case if the Court
4 allows and the State wouldn't mind.

5 THE COURT: I'm sorry, say that again, you –

6 THE DEFENDANT: I said if I cannot locate a forensic expert
7 with my private investigator or if the Court didn't want to appoint me one
8 or the State doesn't have anybody in mind, I will request to be my own
9 forensic expert, but that's gonna take 6 months to get that diploma and
10 its gonna cost the State \$3,200.00. And [indiscernible], its gonna cost –

11 THE COURT: Okay, what is the forensic expert – for what?

12 THE DEFENDANT: It was – you granted it for a fingerprint
13 expert and a –

14 THE COURT: For fingerprint?

15 THE DEFENDANT: -- forensic linguist so it was either gonna
16 be one forensic expert that has training in both of those areas.

17 THE COURT: Okay, well I understand, sir, and Counsel for
18 the State correct me if I'm wrong that the shank and – the alleged shank
19 was not tested for fingerprints; is that correct?

20 MS. KALLAS: No, Your Honor, but it was – someone – there's
21 an eyewitness that sees it in his hand. It was found – there's pictures of
22 it right next to him.

23 THE COURT: So, sir, is the forensic expert determine
24 fingerprints because they're saying they don't have fingerprint evidence?

25 THE DEFENDANT: My fingerprints is not on that shank and

1 the witness that the State alleges seeing I had it in my hand made other
2 reports that's inconsistent with the report that she's referencing here
3 today, and said there's no witnesses that witnessed what happened. The
4 other witnesses they were part of a wrongful death and a prison official
5 couldn't –

6 THE COURT: Okay, so sir, I want to talk about the expert;
7 okay?

8 THE DEFENDANT: Oh, let's talk about the expert.

9 THE COURT: It sounds like –

10 THE DEFENDANT: I'm having problems locating one
11 [indiscernible].

12 THE COURT: Okay, well they don't have evidence that your
13 fingerprints are on it.

14 THE DEFENDANT: At the last trial they tried to – the victim
15 got on the stand, tried to testify and explain without him being an expert
16 and give an expert opinion why my fingerprints wasn't on that weapon. A
17 forensic expert is gonna come and say my fingerprints is not on that
18 weapon and my fingerprints is not on that weapon 'cause I didn't have it
19 in my hand.

20 THE COURT: Okay. Well, a fingerprint expert cannot state
21 that second part.

22 THE DEFENDANT: I mean I will be – that will be my theory
23 but he'll be –

24 MS. KALLAS: Your Honor, we don't intend to bring a
25 fingerprint expert. All we're going to have is a witness testifying that they

1 saw the shank in his hand.

2 THE DEFENDANT: And my witness is gonna testify that my
3 fingerprints isn't on that weapon and my theory to the jury is gonna be I
4 didn't have it in my hand.

5 THE COURT: Okay. Why is it –

6 THE DEFENDANT: Your Honor, you already granted a
7 forensic expert.

8 THE COURT: I understand. I'm just trying to understand this
9 a little bit better; okay? I am not going to continue this for 6 months, sir.
10 It doesn't – you don't need that much time.

11 THE DEFENDANT: I'm just trying to get a forensic expert. I
12 said 6 months but if I have to be the forensic expert it's going to take me
13 time to get the diploma.

14 THE COURT: All right, we're going to – Counsel, I'm going to
15 reset the trial date March 11 at 9:00 o'clock and here is your calendar
16 call date. You need to get everything done by then. Its plenty of time.

17 THE DEFENDANT: Oh, can I ask you one more thing? Can I
18 get a whole transcript of this from the procedures in this case, please,
19 'cause –

20 THE COURT: You need to file the appropriate request.

21 THE DEFENDANT: Okay.

22 THE COURT: Okay?

23 THE DEFENDANT: Thank you all. I appreciate it. God bless. I
24 sure need it.

25 THE COURT: Now sir, we have some motions on for –

1 THE DEFENDANT: It's the 27, can it wait till the 27th?
2 THE COURT: Okay, hang on. Okay, what are they for? It
3 says motion for jury instructions. I'm not sure, what's that –
4 THE DEFENDANT: It's the 27, Your Honor. Can we wait till
5 the 27th?
6 THE COURT: No, tell me about –
7 THE DEFENDANT: I wasn't prepared for [indiscernible] –
8 THE COURT: -- them because I don't need to have you keep
9 coming –
10 THE DEFENDANT: -- I want to have – I'm not prepared for --
11 THE COURT: Sir, are –
12 THE DEFENDANT: -- the 27th –
13 THE COURT: -- you refusing to answer my question?
14 THE DEFENDANT: What's your question, Your Honor? I'm
15 gonna answer you.
16 THE COURT: You do that one more time –
17 THE DEFENDANT: I'm gonna answer your question.
18 THE COURT: No, be quiet. You do that one more time,
19 playing games, and you won't be representing yourself. Do you
20 understand me?
21 THE DEFENDANT: I sure do.
22 THE COURT: Because the whole basis for you – a Faretta
23 canvass is to advise you –
24 THE DEFENDANT: I'm listening to you.
25 THE COURT: Well, you look at me when I talk to you. I look

1 at you because I show the courtesy to you and I show the courtesy to
2 everybody else in this courtroom and I expect the same courtesy from
3 you as well as everybody else.

4 THE DEFENDANT: You got it.

5 THE COURT: November 27th is request for jury instructions. I
6 don't want to have you keep coming back and forth if we don't need to.
7 What is that motion?

8 THE DEFENDANT: The motion for November 27th, Your
9 Honor, is three motions. One is a motion to dismiss this –

10 THE COURT: No, one – I'm talk --

11 THE DEFENDANT: -- entire case.

12 THE COURT: Listen to me. I asked about jury instructions.

13 THE DEFENDANT: Oh, the jury instructions. There was --
14 one of the jury instructions was the victim in this case reported that I
15 unlawfully attempted to injure him 'cause I had the [indiscernible] to do
16 something 'cause I was on the yard and since he made that report I
17 asked for the jury instruction since that's what he reported and they
18 didn't charge me with assault or attempt battery that the jury should
19 render a not –

20 THE COURT: Okay, sir, we –

21 THE DEFENDANT: -- guilty verdict.

22 THE COURT: -- resolved the jury instructions after all the
23 evidence has been presented in the case; okay? And since we're having
24 trial in March, no evidence has been presented; okay? The second one
25 is for *voir dire* and what is that request?

1 THE DEFENDANT: *Voir dire*? The *voir dire* was when I asked
2 the jury 6 questions if you allow me and –

3 THE COURT: Okay, we'll resolve that on the day that we're
4 picking the jury.

5 THE DEFENDANT: Your Honor, the only reason why I filed
6 these motions 'cause when I did my legal research, it said I have to file it
7 before trial so I filed it.

8 THE COURT: Okay. Jury instructions are resolved if you,
9 again, if you had an attorney, they would tell you at the end of the trial
10 we resolve the jury instructions. We don't resolve them now because we
11 don't know what the evidence is going to be. On the *voir dire*, before we
12 start I will go over the procedures with both sides and then you ask your
13 questions; all right? So, those two motions are off.

14 The motion to dismiss; specifically, what's that?

15 THE DEFENDANT: Can I – can we go back real fast to the
16 motions you just took off calendar real fast?

17 THE COURT: Okay.

18 THE DEFENDANT: You just said that the *voir dire*, without
19 granting or denying that motion that we're gonna wait till trial 'cause I
20 read the –

21 THE COURT: *Voir dire* is when the jury is the – when the
22 potential juror is in the box and you – and we ask them questions. We
23 don't have a jury yet.

24 THE DEFENDANT: No, but it says a request – to make that
25 request before trial so the only reason why I made that request – if it

1 said make that request at trial I would have made it at trial.

2 THE COURT: Its automatic, sir. Both sides will be allowed to
3 question the jury; okay?

4 THE DEFENDANT: Is the motion to dismiss, you want to wait
5 till the 27th?

6 THE COURT: Well, what is that regarding?

7 THE DEFENDANT: The motion to dismiss I filed that. I didn't
8 receive an opposition from the State and the rules of this courtroom if
9 they don't file an opposition –

10 THE COURT: What is the –

11 THE DEFENDANT: -- with the 7 days –

12 THE COURT: -- basis for it?

13 THE DEFENDANT: -- you're supposed to dismiss the case.

14 THE COURT: What is the basis?

15 THE DEFENDANT: The basis is that um the sergeant – oh,
16 excuse me, the victim, alleged [indiscernible] admitted these allegations,
17 wrote a report you know and the sergeant held a hearing. I went to the
18 hearing. The sergeant made a decision and gave some sanctions. I had
19 a 10 day grace period to put in an appeal to appeal the sergeant's
20 decision and sanctions. I put that grievance in. A superior of the
21 sergeant was [indiscernible] that was acting warden issued a
22 memorandum and said that um I would be free from this criminal
23 prosecution and that the High Desert State Prison wouldn't file a referral
24 for criminal prosecution and give it to the Attorney General Office.
25 Twenty months later, I issued – I was issued a motion for an initial

1 arraignment from the State and um –

2 THE COURT: I will hear that motion on the calendar call date.

3 THE DEFENDANT: On calendar call date?

4 THE COURT: Yes.

5 MS. KALLAS: And, Your Honor, the one issue with the motion
6 to dismiss, my co-counsel and I were kind of having a difficult time
7 understanding it. That kind of better clarified what he was saying, but the
8 issue is that I don't have that memorandum. He said in his motion to
9 dismiss he would bring it to court. I – it's difficult for me to respond if I
10 don't have what memo he's talking about.

11 THE DEFENDANT: And the State does have that
12 memorandum. It's sequenced from –

13 THE COURT: Sir, if you are referencing any exhibits in your –
14 if your referencing any documents in your motions you should attach
15 them as exhibits. I will allow you to supplement the motion with any
16 exhibits you want me to consider; okay? Same with the State; if they
17 have any exhibits they want me to consider they'll have to attach it to the
18 motion.

19 THE DEFENDANT: The reason why I didn't attached a
20 memorandum to the motion 'cause I was scared to send it to – 'cause I
21 was – everybody – I – like they don't have the memorandum, they never
22 seen it, you know the AG's office didn't give it to the [indiscernible] to
23 give to the Attorney General, the wardens don't have it. I'm the only
24 person to have it. My [indiscernible] don't have it [indiscernible] last
25 representing me in this case, so the only reason why I didn't attach it, I

1 said the motion I was gonna bring down here because when I send it to
2 the law library, give to the law library supervisor, I'm having problems
3 with receiving my legal mail back, you know what I'm saying. So I don't
4 want it – I didn't want it to get tampered with. I didn't want it to – you
5 know what I'm saying, I wanted it to be no problems with that. When I
6 came – when I was here for trial, you know what I'm saying, my lawyer
7 had it. When I got it back it had a paper in there that I never even
8 received so I'm having problems with the [indiscernible] so –

9 THE COURT: All right, that --

10 THE DEFENDANT: -- I was scared and I kept it so –

11 THE COURT: Okay, sir –

12 THE DEFENDANT: -- it [indiscernible] my intention –

13 THE COURT: -- you can submit whatever you want, but I'm
14 telling you if it's not submitted to the Court then I cannot consider an
15 exhibit; okay?

16 THE DEFENDANT: So you're gonna let me --

17 THE COURT: That's up to you what you want to do. Again,
18 it's the same rules as an attorney. If she wanted to reference something
19 that she didn't submit, I'm not going to consider it; okay? You're under
20 the same rules as an attorney; all right? So, --

21 THE DEFENDANT: So since the 27th is coming, how much –
22 how long you're gonna let me –

23 THE COURT: Okay, I just told you.

24 THE DEFENDANT: -- attach an [indiscernible]. I'll give it to
25 you right now. I got it right now if you want it.

1 THE COURT: Listen. The jury instructions and *voir dire*
2 motion is off calendar.

3 THE DEFENDANT: [Indiscernible] calendar call.

4 THE COURT: The motion to dismiss I said we'll hear on the
5 calendar call date.

6 THE DEFENDANT: And then you said you wanted me to do
7 what to this motion, to add – to attach this memorandum?

8 THE COURT: If you want me to consider any documents as
9 part of your motion you need to submit them with your motion. You can
10 file a supplement to the motion attaching whatever documents you want
11 me to consider.

12 THE DEFENDANT: You want me to rewrite the entire
13 motion?

14 THE COURT: No. No. You can just do a supplement and say
15 here's exhibits 1 and 2, or whatever it may – A and B because the
16 defendant's is by alphabet if you want me to consider them. It's up to
17 you. I'm not telling you to file it or not file it; okay? So, we'll hear the
18 motion on the calendar call date.

19 THE CLERK: Okay, jury trial date is March 11th at 9:00 a.m.;
20 calendar call date is March 5th at 8:30 a.m., 2019.

21 THE DEFENDANT: Thank you.

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MS. KALLAS: Thank you, Your Honor.

THE COURT: You're welcome.

[Hearing concludes at 9:08 a.m.]

* * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.


CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,

7
8 Plaintiff,

9 vs.

10 ANTONIO LEE MIXON,

11 Defendant.

CASE: C-17-327439-1

DEPT. XVII

12
13 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
14 TUESDAY, DECEMBER 11, 2018

15 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:**
16 **MOTION FOR STAY OF TRIAL SETTING AND OR MOTION FOR**
17 **TIME EXTENSION**

18
19 APPEARANCES:

20 For the State:

CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

22 For the Defendant:

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24
25 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, December 11, 2018

2 [Hearing begins at 9:10 a.m.]

3 THE MARSHAL: Page 12.

4 THE COURT: Antonio Mixon.

5 THE DEFENDANT: Good morning, [indiscernible].

6 THE COURT: Good morning, sir.

7 MS. KALLAS: Good morning, Your Honor, Chelsea Kallas, for
8 the Attorney General's Office.

9 THE DEFENDANT: And I don't even know why I'm here, sir.

10 THE COURT: Okay. Sir, you had filed a motion for stay of the
11 trial setting and motion for time extension. I think we did resolve that a
12 couple of weeks ago.

13 MS. KALLAS: We did. I think you set it to March, Your Honor. I
14 think the main issue that he was having, from my reading of his motion,
15 was the forensic expert. I don't know if he's had contact with him.

16 THE COURT: Sir, last time we were here there was an issue
17 with your handwriting expert and you were going to try to re-contact the
18 private investigator that we appointed for you. Have you had any
19 success with the investigator?

20 THE DEFENDANT: I haven't had any success with the
21 investigator but I did file a stipulation with the Court to – about that
22 forensic expert if you got it or not.

23 THE COURT: I'm sorry?

24 THE DEFENDANT: I did file a stipulation about that forensic
25 expert. I don't know if you got it or not.

1 MS. KALLAS: I think he says in his motion he wants us to sign
2 him up for a class so he can become the expert.

3 THE COURT: Is that correct, sir?

4 THE DEFENDANT: I didn't even hear her.

5 THE COURT: She said that she interpreted one of your
6 motions that you wanted to take classes so that you can become
7 educated in the area of fingerprints and testify as an expert in your case.
8 Is that correct?

9 THE DEFENDANT: That's correct.

10 THE COURT: Okay, sir, I'm going to deny that request if
11 that's your request.

12 We – and we've already set the trial date for March 11th so
13 you have four months to be ready; okay? And if there's any other
14 motions to go forward we'll hear them in due course; okay? I would
15 suggest that you contact – send a letter to your investigator and have
16 him contact you; okay, sir?

17 THE DEFENDANT: Thank you.

18 THE COURT: Thank you.

19 MS. KALLAS: Thank you, Your Honor.

20 THE CLERK: State, can I have your bar number?

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MS. KALLAS: 13902.

THE CLERK: Thank you.

[Hearing concludes at 9:12 a.m.]

* * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.


CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,

7
8 Plaintiff,

9 vs.

10 ANTONIO LEE MIXON,

11 Defendant.

CASE: C-17-327439-1

DEPT. XVII

12
13 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
14 TUESDAY, JANUARY 8, 2019

15 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:**
16 **MOTION FOR LEAVE TO AMEND**
17 **MOTION TO CONTINUE TRIAL**

18
19 APPEARANCES:

20 For the State:

JASON GUNNELL, ESQ.
Sr. Deputy Attorney General

22
23 For the Defendant:

PRO SE

24
25 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, January 8, 2019

2 [Hearing begins at 9:15 a.m.]

3 THE MARSHAL: Page 17.

4 THE COURT: Antonio Mixon. This is motion to continue trial
5 setting.

6 THE DEFENDANT: If I can – can I approach the marshal
7 please? [Indiscernible].

8 THE COURT: You can hand – what do you have there, sir?

9 THE DEFENDANT: This is subject to my argument to –

10 THE COURT: You have to show the State.

11 THE DEFENDANT: -- pursuant to NRS 530.45. This is a
12 motion to continue trial and is events in this case that I was unaware of, I
13 just became aware of on like I forget the 26th of December and I've been
14 litigating -- I've been believing I've been litigating from the complete files
15 but now I've learned that I'm missing like 37 articles, so to speak, and –

16 THE COURT: Newspaper articles?

17 THE DEFENDANT: Excuse – no, excuse me, no like I have –
18 there was an Information filed in this case with a list of witnesses and
19 then like around or about December 26th of last year I believe I was – I
20 received a case summary from the Clerk of the Court and I noticed that
21 there was a notice of witnesses and/or expert witnesses so I guess that
22 led me to believe that there's additional witnesses additional to that
23 witness list. I [indiscernible] I'm unaware of and that there was an
24 unsworn declaration in this case that I'm unaware of and like 35 other
25 things that was filed in this case that I'm unaware of. Some hearings I

1 wasn't even present in and there was ruled – [indiscernible] was made of
2 this Court and I'm – I don't have any of those documents or things like
3 that. And I'm – I was – I prepared a motion to compel but I'll file it when I
4 get back to High Desert State Prison. And um also I've just spoken to my
5 private investigator. He lets me know his investigation is ongoing and his
6 presence has been excused by his sickness. He says he's been sick
7 and he informed me that he'll be coming to see me on or about in a
8 week or so. And also –

9 THE COURT: Sir, do you know what specifically you're
10 missing? I know you said there's a witness list.

11 State, did you file any supplemental witness list in the month
12 of December?

13 MR. GUNNELL: We have not, Your Honor. I have no idea
14 what he's talking about.

15 THE DEFENDANT: Specifically, I'm missing 10/24/2017
16 criminal bindover packet, Las Vegas, Justice Court; 10/24/17 criminal
17 bindover, confidential; 11/14/2017 motion to compel, motion to compel
18 production of discovery and Brady material.

19 THE COURT: Well, sir, I granted that motion so that should –
20 the items that were requested should have been in the file from the
21 Public Defender – I think it was the Public Defender's Office had the
22 case.

23 THE DEFENDANT: That motion to compel?

24 THE COURT: You're right. Well --

25 THE DEFENDANT: Were you able –

1 THE COURT: -- I granted --
2 THE DEFENDANT: -- to grant it?
3 THE COURT: -- it so whatever items they wanted they were
4 turned over by the State, and so they should have been -- that would
5 have been in the file that was turned over to you.
6 THE DEFENDANT: No, I just don't have the motion I
7 [indiscernible].
8 THE COURT: Okay, you don't need that to go to trial, sir.
9 THE DEFENDANT: All right. Okay, the opposition to the -- I
10 guess -- okay, I don't need that since -- notice of witnesses and expert
11 witnesses, I believe I need that for trial. There's a notice of intent to use
12 a COR affidavit or unsworn declaration so that's a statement I'm
13 unaware of. I think I'm going to need that at trial too.
14 THE COURT: Okay, one at a time. So the notice of witness;
15 do you have an extra copy in your file?
16 MR. GUNNELL: I don't have --
17 THE COURT: We're going to print one out right not for you,
18 sir, for --
19 THE DEFENDANT: Right now?
20 THE COURT: -- the notice of witnesses.
21 THE DEFENDANT: I appreciate [indiscernible].
22 THE COURT: Okay? And --
23 THE CLERK: What's that, Judge?
24 THE COURT: -- an unsworn declaration is not evidence in
25 this case because I will not allow that in evidence against you.

1 THE DEFENDANT: Thank you.

2 THE COURT: All right, --

3 THE DEFENDANT: All right, um --

4 THE COURT: -- because they have to have live witnesses
5 here.

6 THE DEFENDANT: And there was a Defense prepared by
7 prior counsel. I don't know if some of these motions were present. Some
8 of the motions I filed 'cause some of them will be kind of the same and
9 we know multiple applications is prohibited so I don't know how that's
10 going to work.

11 THE COURT: Okay, we're getting you the witness list right
12 now, sir. What else are you missing? And the State did not file any
13 supplemental witness list in December -- actually, its December -- yes, its
14 December 15th, Counsel.

15 THE DEFENDANT: Well, I kind of just wanted the prior
16 counsel's entire defense and [indiscernible] the State's oppositions to
17 prior counsel's defense.

18 MR. GUNNELL: You know what, in order to facilitate this, we
19 can provide the investigator a complete copy of everything we have
20 again, and then when he goes up and visits him in NDOC he can
21 provide that to him.

22 THE COURT: What I would do is -- do you understand that,
23 sir? Just have your investigator contact Counsel here. He'll make a
24 whole new set, a copy of everything for you. What I suggest that you do
25 is you do an index of everything that's being turned over.

1 THE DEFENDANT: Can I mention one more thing before –

2 THE COURT: Yes, sir.

3 THE DEFENDANT: There's motions – 'cause we're on
4 calendar for two motions, a motion to continue trial today and the motion
5 to amend [indiscernible] to motion to dismiss, the motion to dismiss are
6 pending but they're not denied and I'm –

7 THE COURT: Hang on, sir. Your motion to dismiss is set for
8 March 5th.

9 THE DEFENDANT: I want to um, I want to ask – request of
10 this Court that the motions to – there was a motion to dismiss that was
11 put on calendar that was argued by prior counsel that hasn't been
12 adjudicated on, but then there was another motion to dismiss filed after
13 counsel was substituted for me and I don't want them to you know
14 prejudice each other but – and there was a supplement too so I don't
15 want to confuse the Court that that supplement is supplemented either
16 the counsel's – prior counsel's motion to dismiss or my motion to dismiss
17 so I wanted to vacate my motion to dismiss and supplemented – and
18 supplemental to that motion to dismiss only if the Court grant me the
19 right to refile it as an entire supplement to what prior counsel – prior
20 counsel's motion to dismiss that was filed that was argued but it wasn't
21 adjudicated on. And it's the same stuff that's gonna be in the motion to
22 dismiss – I mean supplement to the motion to dismiss is gonna be in the
23 supplemental to dismiss that I want to refile because I want the exhibit to
24 be constitution and considerable given that the witness that issued that
25 memorandum is now deceased. He had a heart attack or something so

1 I've been informed by corrections officers at the prison. This is what
2 they're telling me so due to his unavailability and you know I believe
3 there's a procedure to go through to make that constitutionally
4 considerable when you make a [indiscernible] on whether or not this
5 case would be dismissed so I wanted the motion to dismiss
6 [indiscernible] and supplement to that motion to be vacated and I can
7 just refile the supplement to prior counsel's motion to dismiss but –

8 THE COURT: All right, sir, so you have a motion to dismiss
9 March 5th so what I'm understanding from you is you want to make it a
10 brand new one, make it clean, and start over; is that correct?

11 THE DEFENDANT: It's gonna be the same. It's gonna be the
12 same. It's gonna be the same stuff that's in there but I just want to –

13 THE COURT: Redo it basically.

14 THE DEFENDANT: I want the exhibit to be authenticated,
15 Your Honor, and I want to verify the contents –

16 THE COURT: Okay.

17 THE DEFENDANT: -- of the motion.

18 THE COURT: What I can do, sir, is if you want we can just
19 have you – I can order that that motion to dismiss pending for March 5th
20 is withdrawn so you can redo it and put everything in there that you
21 want. Do you want me to do that, sir? This way you can refile a brand
22 new one and put everything – all the arguments you want, any exhibits
23 you want.

24 THE DEFENDANT: Can I get a copy of those motions so I
25 can remember what was in them?

1 THE COURT: It's your – it's the motion you filed. It's your own
2 motion, sir.

3 THE DEFENDANT: Yeah. That – I never got a – I believe I
4 have a – the motion to – the initial motion to dismiss and I'm not 100
5 percent positive whether or not I have it but I was just wondering If the
6 Court could just send me a copy of what I'm withdrawing to, refile it so I
7 can just look at for – as notes so I can put it back together.

8 [Colloquy between Court and Clerk]

9 THE COURT: Sir, we're not showing that your previous
10 counsel filed a motion to dismiss. It probably would have been a writ of
11 habeas corpus and if it was argued I guarantee you I would have ruled
12 on it. You filed a previous motion to dismiss –

13 THE DEFENDANT: Your Honor, I was removed from the
14 courtroom. I was removed out of this courtroom. There was three
15 motions that prior counsel filed after the mistrial in this case. One was
16 for, I believe, double jeopardy. That was denied. And one was for
17 vindictive prosecution which prior counsel –

18 [Colloquy between Court and Clerk]

19 THE COURT: We're going to print those out for you right now,
20 sir.

21 THE DEFENDANT: All right. I got one more. One more.
22 Excuse me, my bad. Um, and I was wondering if I can have the Las
23 Vegas marshals subpoena -- our process [indiscernible] to serve my
24 subpoenas if –

25 THE COURT: Sir, you represent yourself. I cannot order them

1 to do the subpoenas. You have an investigator that I appointed on your
2 behalf and you can speak with your investigator or with anyone you
3 need to subpoena.

4 THE DEFENDANT: So I have to find a different corporation or
5 company? I can't go through the Las Vegas marshals to process serve
6 the subpoenas?

7 THE COURT: No. Use your investigator, sir. That's why we –
8 the State's paying for it.

9 THE DEFENDANT: All right.

10 THE COURT: Okay? We're going to give you those motions
11 right now, sir. Your motion to continue trial, which is on calendar here,
12 there is no good cause I'm finding at this point. I'm denying that motion.
13 And you want us to withdraw that motion set for March 5th, sir, the
14 motion to dismiss?

15 THE DEFENDANT: I don't think I'm gonna have enough time
16 to file it. If I was to get all the copies today and start today with that
17 motion which you're saying give to my private investigator to put it all
18 together which I filed a subpoena in this courtroom already to subpoena
19 you know what I'm saying the – excuse me, of this unavailable witness
20 to attach it to the memorandum. Just say, just like hypothetically
21 speaking that there was a speedy trial invoked right now and this motion
22 was filed, it wouldn't be able to be heard until after 3 days of what the
23 day is for trial right now, so I would at least need 3 days right from –

24 THE COURT: Sir, you're not listening. Do you want me to
25 vacate that motion or not? If not, we'll keep it on the day.

1 THE DEFENDANT: I need time to prepare for that motion,
2 that's what I'm saying. The motion –

3 THE COURT: Okay, so just keep it March 5th?

4 THE DEFENDANT: If I leave it on March 5th you're not gonna
5 consider it. You ain't gonna just dismiss if for jurisdictional defects. I'm
6 trying to get it together.

7 THE COURT: Why is there –

8 THE DEFENDANT: I mean I don't – I mean the 90 day
9 request doesn't have to be 90 days. You know, 30 days –

10 THE COURT: I'm going to keep it. It's on March 5th. It's been
11 filed, set by the Clerk's Office, and we'll hear it March 5th. Do you want to
12 file any supplements? I'm not saying you have the authority to do that.
13 File whatever you think is appropriate and the State will respond; okay?

14 THE DEFENDANT: Can I get like 15 days, 20 days extension
15 from March?

16 THE COURT: Sir, just – I can't advise you of the time frame
17 to file things. That's one of the downfalls of you representing yourself;
18 okay? File whatever you think is appropriate.

19 THE DEFENDANT: Well, Your Honor, this is a big case. I'm
20 facing life.

21 THE COURT: Okay, this –

22 THE DEFENDANT: I'm not facing –

23 THE COURT: -- is not a life term, –

24 THE DEFENDANT: -- life without.

25 THE COURT: -- sir. Listen to me carefully. I can't tell you

1 what to file, when to file it, what deadlines you have. I gave you a Faretta
2 canvassing and I went over it very thoroughly, advised you this is the
3 pitfalls –

4 THE DEFENDANT: Your Honor, you originally told me you're
5 not giving me no more [indiscernible].

6 THE COURT: You interrupt me again, we're done. You were
7 taken out of the courtroom before. Do you remember that?

8 THE DEFENDANT: I sure do.

9 THE COURT: Okay. Listen to me carefully. You have an
10 investigator. You got rid of your attorneys. You thought you knew more
11 than they did. Clearly, you don't. But that's your right to represent
12 yourself. You file whatever you think is appropriate, the State will file
13 whatever response they think is appropriate, and I rule accordingly; all
14 right?

15 THE DEFENDANT: All right, thank you. I appreciate it.

16 THE COURT: Everything stands.

17 [Colloquy between Court and Clerk]

18 THE COURT: Okay, motion to leave on calendar is denied.
19 Motion to continue trial is denied. And here are your former pleadings,
20 sir. The marshal will hand these to you.

21 THE DEFENDANT: Thank you.

22 [Colloquy between Court and Clerk]

23 THE COURT: We'll get those to you in just a moment, all of
24 them.

25 [Colloquy between Court and Clerk]

1 THE COURT: Okay, apparently there's another motion on for
2 this Thursday; that's off calendar, okay? Now let's wait for any new
3 motions or the calendar call which is set for March 5th.

4 THE DEFENDANT: We'll be ready.

5 THE COURT: And the marshal will hand you copies of all the
6 pleadings.

7 THE CLERK: Here's three motions that were filed previous to
8 dismiss.

9 THE COURT: All right. Thank you.


10 THE MARSHAL: Page 37.

11 MR. GUNNELL: All right. Thank you, Your Honor.

12 [Hearing concludes at 9:28 a.m.]

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21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
22 Procedure, I acknowledge that this is a rough draft transcript, expeditiously
23 prepared, not proofread, corrected, or certified to be an accurate transcript.

24 
25 CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
5

6 THE STATE OF NEVADA,)
7)

8 Plaintiff,)

9 vs.)

10 ANTONIO LEE MIXON,)

11 Defendant.)
12

CASE: C-17-327439-1

DEPT. XVII

13 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
14 TUESDAY, MARCH 5, 2019

15 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:**
16 **MOTION TO DISMISS**
17 **STATE'S NOTICE OF MOTION AND MOTION TO PLACE ON**
18 **CALENDAR**
CALENDAR CALL

19 APPEARANCES:

20 For the State:

CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

22 For the Defendant:

PRO SE

24 APPEARANCES CONTINUED ON PAGE 2.
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Also appearing:

ASHLEY SISOLAK, ESQ.
Deputy Public Defender

MARK PERUSCH
Investigator

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

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Las Vegas, Nevada, Tuesday, March 5, 2019

[Hearing begins at 8:46 a.m.]

THE MARSHAL: Page 6.

THE COURT: Antonio Nixon.

MS. KALLAS: And, Your Honor, when he gets out here could we approach and I have Ms. Sisolak here as a friend of the Court.

MS. SISOLAK: I'd be happy to stand in, Your Honor.

THE COURT: Any objection, Mr. Nixon --

THE DEFENDANT: For [indiscernible] --

THE COURT: -- to Ms. --

THE CLERK: He just got here.

THE COURT: Why don't you restate it because I don't know if the Defendant heard you?

MS. KALLAS: I would just like to approach and Ms. Sisolak here is a friend of the Court.

THE DEFENDANT: No objection.

THE COURT: All right.

MS. SISOLAK: Thank you.

[Bench conference begins -- transcribed as follows]

MS. KALLAS: There is just a couple of things I want to make the Court aware of with him; one, -- so, he has been appointed an investigator so he was able to meet with him. And Mr. Nixon basically said that what he wants is, I'm trying to think of the best way to explain it, he invented an App for Apple and had the patent for that and that the CO's stole it from him, like this is a conspiracy against him and are

1 collecting royalty checks for him. So, that's one issue the investigator's
2 office [indiscernible] having to [indiscernible] through it.

3 I've been receiving like love letters from him which – I mean
4 Defense counsel [indiscernible] to me would be inappropriate and its still
5 inappropriate. And then I've been getting these letters, like he wants to
6 plead guilty to habitual, then he doesn't want to plead, and so I guess
7 my main concern I just want to make you aware of that. I don't know if
8 he's incompetent. I don't know his ability to represent himself, especially
9 in some of his pleadings as far as his notice of defense is civil – I don't
10 even remember what it was. It was like Ensuria [phonetic] some – I
11 forget because I've never had to deal with it, so –

12 THE COURT: Well, sometimes you know [indiscernible] –
13 someone [indiscernible] –

14 MS. KALLAS: Files it.

15 THE COURT: -- [indiscernible] –

16 MS. KALLAS: Exactly.

17 MS. SISOLAK: Oh, that's not Mr. Mixon.

18 MS. KALLAS: But as far as like the other stuff, you know, the
19 conspiracy against him and letters, I just want to make sure the Court
20 was aware. I asked him just now, I said do you want to you know make –
21 have an offer, take a deal; he doesn't want anything at all.

22 THE COURT: Okay.

23 MS. KALLAS: I was trying to resolve it. Its not like I enjoy –
24 like, I just can't make sense of anything that he writes me. I try my best
25 to respond but its been really difficult.

1 MS. SISOLAK: I don't know if Your Honor remembers this. I
2 used to represent Mr. Nixon.

3 MS. KALLAS: That's why I dragged her here.

4 MS. SISOLAK: Mr. Nixon has kind of always been off for lack
5 of a better term. He never wanted to deal. Then we went to trial, he
6 wanted to deal. Then it was – I was getting these very intense relatively
7 creepy and offense love letters. Then I stopped getting letters because
8 Ms. Kallas is now getting the letters.

9 MS. KALLAS: [Indiscernible].

10 THE COURT: I mean are they specific? I mean are they –

11 MS. KALLAS: I have [indiscernible] –

12 MS. SISOLAK: Mine –

13 MS. KALLAS: -- like he said [indiscernible] we're going to go
14 to Italy, me and my daughter are Italian, if I can't have you I don't want
15 anybody else. He accused me of fooling around with my co-counsel.

16 THE COURT: Okay.

17 MS. KALLAS: I just want to make – I wasn't really sure what to
18 do. I just want to make sure the Court was aware of it.

19 THE COURT: All right.

20 MS. KALLAS: And I'm not really sure what to –

21 MS. SISOLAK: Ms. Kallas and I will have to fight it out about
22 that child because I'm also having one of Mr. [indiscernible], at least one.

23 THE COURT: Okay. All right. Okay.

24 MS. KALLAS: And then also, I can put this [indiscernible] on
25 the record. He – you had ordered him his fingerprint expert – and his

1 investigator is here too if you want to speak with him, they haven't been
2 able to do that yet and so I told him you know that's not – Mr. Mixon that
3 that's not going to be ready. So, if he still wants that he's going to have
4 to ask for a continuance today. And we're going to answer ready, but –

5 THE COURT: Okay.

6 MS. KALLAS: -- I think he's going to want that done. There's
7 like a whole process that it I guess takes, so.

8 THE COURT: Okay. All right. Thank you.

9 MS. KALLAS: All right.

10 MS. SISOLAK: Thanks, Your Honor.

11 [Bench conference ends]

12 THE COURT: All right, first up on the calendar is a motion to
13 dismiss that Mr. Mixon that you had filed. Do you wish to add anything to
14 your motion, any oral argument for me to consider, sir?

15 THE DEFENDANT: Is that the notice of the motion on? I filed
16 a notice, that's a notice of [indiscernible] motion.

17 THE COURT: All right, I have the motion. I'm saying – and I
18 read it. I'm asking you if you want to make any oral argument, anything
19 to add because – did you receive the State's – you did receive the
20 State's opposition because you filed a reply brief, so I'm just asking you
21 if you want to have anything to add?

22 THE DEFENDANT: I don't got nothing to add to it.

23 THE COURT: No? All right, State.

24 MS. KALLAS: Your Honor, as expressed last time, I did have
25 difficulty kind of making out exactly what Mr. Mixon's arguments were.

1 To the extent I understood them, it was that there is a piece of paper out
2 there that says we can't charge him. I don't even see that piece of paper
3 attached and I elaborate that on – in my motion. So, I would submit it on
4 that.

5 THE COURT: All right, I'm denying the motion, Mr. Mixon.
6 There's no legal basis that you have set forth to dismiss the case.

7 Mr. Mixon, I've been advised that you have been sending the
8 prosecutor what might be considered love letters. That is most
9 inappropriate. I'm assuming that its not going to assist you in getting a
10 better deal or the State agreeing to dismiss the case. Sometimes that
11 just gets someone more convinced to prosecute to the full extent or and
12 there may be a potential of adding new charges. So, if you're doing that,
13 I would suggest that you stop. That could have an impact on whatever
14 freedoms you have at the prison system; okay? So there's no motion
15 right now but just – if you're doing it, I suggest you stop.

16 All right, and we do have – this is time set for calendar call.

17 MS. KALLAS: Your Honor, there was one other matter –

18 THE COURT: Sure.

19 MS. KALLAS: -- and I expressed that with your clerk. I think,
20 and this was way back when Ms. Sisolak was on the case, there was
21 one motion that I think we've argued, I forget, but the motion for
22 prosecutorial vindictiveness that I don't think was ever – [indiscernible]
23 made a ruling on, I think Mr. – at that time Mr. Mixon got taken out of the
24 courtroom.

25 THE COURT: I haven't reviewed that recently. I'll have to look

1 at that.

2 MS. KALLAS: Okay.

3 THE COURT: But I will address that before the trial starts.

4 MS. KALLAS: No problem.

5 THE COURT: Okay.

6 Mr. Mixon, the Court did authorize you to retain a private
7 investigator and I understand one has been retained and has been – has
8 contacted you. Are you going to be ready to go to trial next week?

9 THE DEFENDANT: Well, he just let me know that.

10 THE COURT: I'm sorry?

11 THE DEFENDANT: I just spoke to him right now and I was
12 requesting for an extension so we can [indiscernible] and he advised me
13 that it would be \$1,600.00 and we can get a court order for that and then
14 a court order for the Nevada Department of Corrections to send him the
15 knife so he can send it out of state to get a forensic scientist. And, um,
16 yeah, that's –

17 MS. KALLAS: And I have –

18 THE COURT: Okay.

19 MS. KALLAS: -- no objection to continuing it. I would just ask –
20 I think its kind of a lengthy process. They have to pay for it first, then I
21 think its shipped out to South Carolina or somewhere, so I would just ask
22 that we set a status check date so we don't have to keep coming here
23 prepping for this. This is the third time the State's prepped and been
24 ready for trial.

25 THE COURT: Do we have your investigator here, Mr. Mixon?

1 MS. KALLAS: He's here, Your Honor.

2 THE COURT: Sir, can you come up; Your name for the
3 record.

4 MR. PREUSCH: Certainly, my name is Mark Preusch,
5 P-R-E-U-S-C-H.

6 THE COURT: And sir, were you the individual who was able
7 to locate a lab that will fingerprint the knife in question?

8 MR. PREUSCH: Yes, sir. It's out of state.

9 THE COURT: All right; have they given you an indication as
10 to how long it will take upon receipt of the knife and of the funds?
11 Apparently, that's the most important thing, but –

12 MR. PREUSHCH: Yeah, the funds most importantly; \$1600.00
13 is their flat lab fee. It takes about 8 hours is what they told me. It
14 shouldn't take that long. Their turnaround time would probably be
15 around 2 weeks but he wasn't very specific with me on that.

16 THE COURT: And what's the name of the expert?

17 MR. PERUSCH: Ron Smith and Associates, and its Ron
18 Smith is the principal.

19 THE COURT: Okay.

20 All right, I am going to order – I guess there is a oral Widdis
21 motion, order to pay for the expert fees of \$1600.00. We'll advise Drew
22 Christiansen's office of that today. And, sir, if you could please contact
23 his office probably tomorrow –

24 MR. PERUSCH: Absolutely.

25 THE COURT: -- and find out the process of getting a check

1 through his office; okay?

2 Counsel, if you can prepare a stipulation that it will be
3 retested, chain of custody issues, I'm sure you're going to want a chain
4 of custody to be confirmed on this even though its being sent out of state
5 and back.

6 MS. KALLAS: Yes, Your Honor.

7 THE COURT: Now, Mr. Mixon, Counsel here is going to
8 prepare a stipulation for your signature; okay? You're going to need to
9 sign it – you're going to review it, you're going to need to sign it because
10 basically we talked about sending it out of state, get it retested, coming
11 back you need a report; okay? And also we want to make sure the
12 chain of custody is protected. Failure on your part to sign the stipulation,
13 okay, then that's going to prevent you from bringing any evidence
14 forward regarding the knife as far as fingerprints go. Do you understand?

15 THE DEFENDANT: Its' going to be sent to [indiscernible]?

16 THE COURT: I'm sorry?

17 THE DEFENDANT: It's going to be sent to me from –

18 THE COURT: They're going to send – they'll either –
19 someone might hand deliver it to you or they're going to send it to you –

20 MS. KALLAS: We usually just mail it, yeah.

21 THE COURT: Okay. They'll mail it to you. They'll give you a
22 return envelope with postage paid; okay? You need to sign it and then
23 return it to them because not until that is signed and filed with the Court
24 can we send the knife out of state; okay? So, you will be the one that will
25 be holding up if you don't immediately review it, sign it, and return it. Do

1 you understand, sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right, what I'm going to do is we'll set a 30
4 day status check from today. Like I said, we'll contact Drew
5 Christiansen's office today, and sir, if you can contact his office
6 tomorrow about the payment and the check.

7 MR. PERUSCH: Absolutely.

8 THE COURT: And then, Counsel, you'll get over a – you'll
9 get a stipulation order over to Mr. Mixon.

10 MS. KALLAS: I will, Your Honor.

11 THE COURT: All right.

12 THE CLERK: April 4th --

13 MS. KALLAS: And that is just – I apologize, just as to the
14 chain of custody?

15 THE COURT: Well, I mean that's going to be sent to this
16 organization. They're going to – you're going to send it from the
17 evidence vault and [indiscernible] be returned – I don't know if you want
18 to write certified mail, whatever, that Mr. Mixon is waiving any chain of
19 custody issues on the knife.

20 MS. KALLAS: Okay. Thank you, Your Honor.

21 THE COURT: All right, thank you.

22 THE CLERK: April 4th, 8:30 a.m.

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THE COURT: We'll see everybody back at that time.


MS. KALLAS: Thank you, Your Honor.

THE COURT: Thank you.

[Hearing concludes at 8:57 a.m.]

* * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.


CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,

7
8 Plaintiff,

9 vs.

10 ANTONIO LEE MIXON,

11 Defendant.

CASE: C-17-327439-1

DEPT. XVII

12
13 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
14 TUESDAY, MARCH 26, 2019

15 **RECORDER'S TRANSCRIPT OF HEARING:**
16 **STATE'S MOTION TO INCREASE BAIL**

17
18
19 APPEARANCES:

20 For the State:

CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

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22 For the Defendant:

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24 RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER
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Las Vegas, Nevada, Tuesday, March 26, 2019

[Hearing begins at 8:56 a.m.]

THE MARSHAL: Page 25.

THE COURT: Antonio Mixon.

THE DEFENDANT: Good morning.

THE COURT: Good morning, sir.

MS. KALLAS: Good morning, Your Honor, Chelsea Kallas of the Attorney Generals. If I may approach? I have a Guilty Plea Agreement. This matter is negotiated.

THE COURT: All right.

[Colloquy]

THE COURT: And what are the negotiations?

MS. KALLAS: And, Your Honor, the Defendant will be pleading guilty to one count of attempt possession or control of a dangerous weapon by an incarcerated person, a category C felony. The State and the Defendant would recommend a sentence of 12 to 30 months of incarceration and that will run consecutive to any sentence he's currently serving.

THE COURT: Is that correct, Mr. Mixon?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. As you know, you went through a Faretta canvass. You represent yourself. I just want to make sure that you've had an opportunity to review the Guilty Plea Agreement and you're in agreement with the negotiations and everything set forth in the agreement; is that correct?

1 THE DEFENDANT: Correct.

2 THE COURT: All right.

3 For the record, what is your true name?

4 THE DEFENDANT: Antonio Lee Mixon, Junior.

5 THE COURT: How old are you?

6 THE DEFENDANT: 28.

7 THE COURT: How far did you go in school?

8 THE DEFENDANT: Community College of Southern Nevada

9 semester.

10 THE COURT: All right. Do you read, write, and understand

11 the English language?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And, sir, are you entering a guilty plea to the

14 charge of attempt possession or control of dangerous weapon or

15 facsimile by an incarcerated person?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Before I can accept your plea of guilty I must

18 make sure it's freely and voluntarily given. Is anyone forcing you to plead

19 guilty?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Has anyone threatened anyone closely

22 associated with you in order to get you to plead guilty?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Sir, do you understand that the potential

25 sentencing range of this charge is a maximum term of 5 years, a

1 minimum term of 1 year in the Nevada Department of Corrections and
2 you can also be fined to \$10,000.00?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Do you understand that sentencing is strictly up
5 to the Court, no one can promise you probation, leniency, or any special
6 treatment?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Now, you understand that there's an
9 agreement between you and the State that both of you are going to
10 recommend to me that you be sentenced to the minimums which is a
11 maximum term of 30 months, a minimum term of 12 months. Do you
12 understand that, sir?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: However, the Court is free to sentence as it
15 sees fit. Do you understand that, sir?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Sir, is one of the reasons you're guilty –
18 pleading guilty to this charge is in truth and fact you are guilty of this
19 charge?

20 THE DEFENDANT: I'm guilty, Your Honor.

21 THE COURT: All right.

22 Sir, I have a copy of the Guilty Plea Agreement in front of me.
23 Is this your signature on page 5 of the agreement?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Did you read it and understand everything

1 contained within the agreement?

2 THE DEFENDANT: Everything.

3 THE COURT: All right. If you had any questions were they
4 answered – I know she's not your attorney, but did you ask the Deputy
5 Attorney General if you had any questions?

6 THE DEFENDANT: I don't have any questions.

7 THE COURT: All right. And, sir, are you a U.S. citizen?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Sir, did you on or about December 4th, 2015,
10 here in Clark County, Nevada, while incarcerated at High Desert State
11 Prison, did attempt to possess or have in your custody or control any
12 dirk, dagger, switchblade knife, or sharp instrument to wit: Defendant did
13 attempt to possess or have in his custody a – in your custody or control
14 a sharp instrument commonly referred to as a shank. Did you do those
15 things, sir?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Are you entering your plea freely and
18 voluntarily?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And I just want to – I'm going to ask you again,
21 sir, are you sure you want to go through with these negotiations?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right; Court finds the plea is freely and
24 voluntarily entered.

25 MS. KALLAS: And, Your Honor, I apologize, may I just note

1 one thing? On page 4 of the plea, it's kind of our standard language
2 regarding the voluntariness and I think you already kind of addressed it
3 that its says he's discussed this element – these elements with his
4 attorney, that he's waiving those because we've already had the Faretta
5 canvass and he's representing himself.

6 THE COURT: Right. Okay.

7 All right, I'm going to set the sentencing on the following day,
8 sir.

9 THE CLERK: Do you want a new PSI?

10 THE DEFENDANT: Tomorrow?

11 THE COURT: Sir, we have to have a Presentence
12 Investigation Report prepared. They will probably do this over the phone.
13 So someone –

14 THE DEFENDANT: Can I waive it?

15 THE COURT: -- from the Probation Department will interview
16 you.

17 THE DEFENDANT: Can I waive the Presentence
18 Investigation?

19 THE COURT: No. On a felony we have to have a
20 Presentence Report.

21 THE DEFENDANT: All right.

22 THE COURT: Okay?

23 THE CLERK: It's going to be May 21st, at 8:30.

24 And can we vacate the April 4th status check date?

25 THE COURT: The April 4th date is vacated. We'll see you

1 back on that day, sir.

2 THE DEFENDANT: Thank you, Your Honor.

3 MS. KALLAS: Thank you, Your Honor.

4 THE COURT: Thank you.

5 [Hearing concludes at 9:00 a.m.]

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

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CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,

7
8 Plaintiff,

9 vs.

10 ANTONIO LEE MIXON,

11 Defendant.

CASE: C-17-327439-1

DEPT. XVII

12
13 BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
14 TUESDAY, APRIL 30, 2019

15 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:**
16 **STATE'S MOTION FOR AN EXTENSION OF TIME**
17 **MOTION TO WITHDRAW GUILTY PLEA**

18
19 APPEARANCES:

20 For the State:

CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

22 For the Defendant:

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24 RECORDED BY: SANDRA PRUCHNIC, COURT RECORDER
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Las Vegas, Nevada, Tuesday, April 30, 2019

[Hearing begins at 8:49 a.m.]

THE MARSHAL: Page 4.

THE COURT: Antonio Mixon. This is motion to withdraw guilty plea filed by Mr. Mixon who is in proper person.

MS. KALLAS: And good morning, Your Honor, Chelsea Kallas for the Attorney General. I did just speak with Mr. Mixon. He didn't receive our opposition yet. We filed it Thursday but it takes a little time because he's in prison. I have a copy here I can give him but I didn't know if he was going to want to reply or not.

THE COURT: Mr. Mixon, would you want an opportunity to file a reply brief?

THE DEFENDANT: Yes.

THE COURT: Okay. Counsel, if you can just hand your opposition to the Marshal; hand it to Mr. Mixon.

We'll continue – Mr. Mixon, we're going to continue this out for two weeks for argument on the motion. So, you're going to get the motion today, file your reply brief, and then we'll see you in two weeks. Actually, let's go three weeks out.

THE CLERK: May 21st, 8:30 a.m.

THE MARSHAL: Page 10

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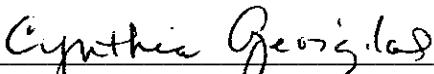
MS. KALLAS: Thank you, Your Honor.

THE COURT: Thank you.

[Hearing concludes at 8:51 a.m.]

* * * * *

ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.


CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



1 RTRAN

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 THE STATE OF NEVADA,

7
8 Plaintiff,

9 vs.

10 ANTONIO LEE MIXON,

11 Defendant.

CASE: C-17-327439-1

DEPT. XVII

12
13 BEFORE THE HONORABLE LINDA MARIE BELL, CHIEF DISTRICT COURT
14 JUDGE

15 TUESDAY, MAY 21, 2019

16 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF HEARING:**
17 **MOTION TO WITHDRAW GUILTY PLEA**
18 **SENTENCING**

19 APPEARANCES:

20 For the State:

CHELSEA N. KALLAS, ESQ.
Deputy Attorney General

21 For the Defendant:

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23 Also appearing:

ERIKA D. BALLOU, ESQ.
Deputy Public Defender

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25 RECORDED BY: RENEE VINCENT, COURT RECORDER

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Las Vegas, Nevada, Tuesday, May 21, 2019

[Hearing begins at 8:44 a.m.]

THE COURT: All right, we're ready on 8 on Mixon.

MS. KALLAS: Yes, Your Honor.

THE COURT: Okay, page 8, State of Nevada versus Antonio Mixon, case number C327439.

MS. KALLAS: Good morning, Your Honor, Chelsea Kallas for the Attorney General's Office.

THE COURT: All right, and Mr. Mixon is present in custody. He's representing himself.

All right, so this is on for motion to withdraw guilty plea. It is also on for sentencing.

[Colloquy between Court and Clerk]

THE COURT: So, let's start with the motion to withdraw guilty plea. Mr. Mixon, it's your motion.

THE DEFENDANT: You said that this was on for sentencing also?

THE COURT: I have it on for both today but I don't -- if you're not prepared to go forward we can reset the sentencing to another date, depending on how it goes --

THE DEFENDANT: I'm not prepared to go.

THE COURT: -- with the motion.

THE DEFENDANT: I wasn't even aware there was going to be sentencing today.

THE COURT: It may be just so that didn't get lost so don't

1 worry about that. Let's just hear the motion and then we can set a
2 sentencing date if that's appropriate after I hear your motion.

3 THE DEFENDANT: In regards to these motions; you read
4 them already?

5 THE COURT: The motion to withdraw guilty plea? Yes, sir.

6 THE DEFENDANT: Okay, so we're gonna address this first?

7 THE COURT: That's the only motion I have. Did you have
8 another motion besides that?

9 THE DEFENDANT: No.

10 THE COURT: Okay.

11 THE DEFENDANT: Well, I have – you said sentencing; you're
12 gonna throw that off, right?

13 THE COURT: Yes.

14 THE DEFENDANT: Okay.

15 THE COURT: So did you – is there anything you wanted to
16 say about your motion?

17 THE DEFENDANT: Yes. Yes. Sure. I filed this motion to
18 withdraw guilty plea. The State was ordered by this Court to prepare
19 chains of custody of a weapon in this case from where it was held to my
20 private investigator. And to prepare a stipulation order, the chain of
21 custody and send the stipulation to me so I could sign it and send it back
22 to Counsel and to this Court. Basically, there was negotiations in this
23 case and prior to those negotiations I was supposed to receive a
24 stipulation from the State in regards to –

25 THE COURT: All right, but sir you didn't have it when you

1 pled guilty; right?

2 THE DEFENDANT: I didn't have what?

3 THE COURT: I mean you knew you didn't have that from the
4 State when you pled guilty.

5 THE DEFENDANT: I didn't have what?

6 THE COURT: The stipulation.

7 THE DEFENDANT: I was supposed to receive it. Instead of
8 me receiving a stipulation, I received a motion to increase bail from the
9 State with two alleged supporting facts. One of them was 12 months old
10 and another one was 7 months old. That day I called the State and from
11 there negotiations commenced. This evidence shows that my DNA is not
12 on that weapon and doesn't belong to me. I didn't possess it. That's
13 what actually occurred. That's the evidence. And it's the State's job, prior
14 to negotiations, during negotiations to – and that's Nevada Revised
15 Statutes, they're supposed to go over the status of – that chain of
16 custody, the stipulation, that's not my job. We asked this Court, well, let
17 it be my job. Let me go through the Nevada Department of Corrections
18 to do the chain of custody to get the stipulation so I can get this evidence
19 in this courtroom. The Judge --

20 THE COURT: All right, but sir, -- so the standard for
21 withdrawing a guilty plea, I have to look at whether you – it was knowing
22 and voluntary. And it isn't about what the evidence was in the case. It's
23 whether you made a decision to plead guilty –

24 THE DEFENDANT: Voluntarily, right?

25 THE COURT: -- voluntarily.

1 THE DEFENDANT: Why would this plea be considered
2 voluntarily entered into if there's evidence showing that I'm not guilty of
3 the offense that --

4 THE COURT: All right, --

5 THE DEFENDANT: -- is on this Guilty Plea Agreement? That
6 evidence shows I'm innocent of this attempt possession. Their State's
7 theory of this case was involuntary [indiscernible]. They said I had this
8 weapon, ran, made a dispossession of it, and was then apprehended
9 approximating this weapon. That didn't occur, you know what I'm
10 saying? This weapon was abandoned by someone else, I don't know
11 who, and I was apprehended in the proximity of this weapon. I never had
12 it. I didn't possess it. The victim in this case warned me thoroughly,
13 coming out of his unit --

14 THE COURT: Okay, but --

15 THE DEFENDANT: -- with a metal detector.

16 THE COURT: Sir, I have on -- in the transcripts, when you
17 plead guilty, Judge Villani asked you: Sir, is one of the reasons you are
18 guilty -- pleading guilty to this charge is in truth and in fact you're guilty of
19 the charge? And you said, I'm guilty, Your Honor.

20 THE DEFENDANT: Your Honor, that -- those answers are
21 [indiscernible] to the questions of the courtroom are incredible. Okay, the
22 Defendant had not guilty and I was at the time those answers was given
23 to the Judge. There's no way you can say that those answers to those
24 questions are credible without this evidence being on the record. Those
25 answers are totally incredible.

1 THE COURT: And when Judge Villani asked you if you
2 possessed, attempt to possess or have in your control dirk, dagger,
3 switchblade, knife, or sharp instrument, –

4 THE DEFENDANT: That answer to that question was
5 incredible also.

6 THE COURT: -- you said – he said, did you do those things,
7 and you said, yes, Your Honor.

8 THE DEFENDANT: That answer was incredible also. This
9 plea is totally involuntarily, unknowingly answered – unintelligently
10 answered. There was not guilty knowledge that I had at the time of those
11 answers being given to the questions of this courtroom that was
12 prevented from being in this courtroom because the State didn't do their
13 job. I can't do their job for them. The Court ordered them to do their job. I
14 asked them to do their job. They were supposed to do that stipulation. In
15 lieu of them supposed to do that, they sent the motion to increase bail. I
16 called them that – I called the State that exact date, like, what's going on
17 with this stipulation, what is this chain of custody. They didn't have an
18 offer. They just brung me down here 4 days later and shoved an offer in
19 my face. Now I have the grisly choice of going to trial without this
20 evidence, being subject to being found guilty, punished to 5 and a half,
21 12 years in prison versus a 1 to 3, a 12 to 30 months. And then I get a
22 PSI today, the P&P didn't even come interview me. I'm going to allow
23 that as due process. This plea is totally involuntary. She – the State
24 cannot prove beyond a reasonable doubt that I possessed that weapon
25 in no courtroom in the world – or attempt to possess that weapon given

1 that evidence. That I was granted a private – I mean I was granted a
2 forensic scientist. The -- \$1,600.00 – a check was coming from the
3 Public Defender Office to give to the private investigator so he can go
4 send it to Ron Smith out of state. It was only gonna take 2 weeks – be
5 returned in 2 weeks and it was only going to be 8 hours. She's known
6 that 3 weeks prior – excuse me, 3 weeks following that order, she just
7 sent a motion to increase bail. All she had to do was call to – and in this
8 PSI it says they keep on contacting Nevada corrections. They're not
9 getting any response. They're not getting any response. So, I don't know
10 what steps she took to contact the Nevada Department of Corrections
11 about the chain of custody of this weapon so it can be fingerprinted.

12 THE COURT: All right. Okay. Thank you, sir.

13 So, I'm going to deny the motion. It appears from the plea
14 canvass that the plea was knowing and voluntary and freely entered.
15 And it also appears that Mr. Mixon was aware of whatever evidentiary
16 concern there was prior to entering the plea. So, the motion is denied; if
17 the State could prepare the order, please?

18 MS. KALLAS: Yes, Your Honor.

19 THE COURT: And then – sir, so you had a stipulated
20 sentence of 12 to 30. Do you want to do that today or do you want me to
21 – or do you want some more time?

22 THE DEFENDANT: You gonna give me probation?

23 THE COURT: No; it's a 12 – it's a stipulated sentence of –

24 THE DEFENDANT: The probation –

25 THE COURT: -- 12 to – it was a stipulated sentence of 12 to

1 30. That was the negotiation.

2 THE DEFENDANT: That was the recommended negotiation?
3 It was [indiscernible] probation.

4 THE COURT: Well, sir, what you agreed to was 12 to 30
5 consecutive to the other charges.

6 THE DEFENDANT: And I was eligible for probation?

7 THE COURT: All right, so are you ready to move forward with
8 sentencing today or do you want me to continue it?

9 THE DEFENDANT: You might as well. Your Honor denied the
10 motion.

11 THE COURT: Okay.

12 MS. KALLAS: Your Honor, my only concern was, and I'm not
13 sure, in regards to the PSI, I just – I gave him a copy of it today; he
14 never got one. P&P never went out and interviewed them. I'm not sure if
15 that's their normal practice when they're already incarcerated, but I know
16 he had mentioned that was an issue earlier.

17 THE COURT: All right so, sir, is there anything that you see
18 that's incorrect in the PSI? Have you had a chance to look at it?

19 THE DEFENDANT: You want me to go over all this –

20 THE COURT: Okay, well we'll just continue it so that you
21 have a chance to look over it, sir, because if there's any error –

22 THE DEFENDANT: No, I've already looked at it before you
23 got on the bench.

24 THE COURT: If there's any errors in it they have to be fixed
25 before you get sentenced.

1 THE DEFENDANT: There's no – there's – only errors is this
2 will be constitutional [indiscernible] ready for the appeal.

3 THE COURT: Okay.

4 THE DEFENDANT: And I do want to go along with
5 sentencing today and I want ask you if I can get penalty counsel in this
6 case so I can appeal this guilty plea all the way to wherever we got to
7 go.

8 THE COURT: Okay.

9 THE DEFENDANT: Or, grant my application to proceed
10 *informa pauperis* so I can start my appellate process and I can be
11 [indiscernible].

12 THE COURT: Well, I mean, sir, so which one would you like
13 to do? Would you – I mean do you want to represent --

14 THE DEFENDANT: I would like to get sentenced, you grant
15 my application to proceed *informa pauperis* so I can start the appellate --

16 THE COURT: Okay.

17 THE DEFENDANT: -- process and give me appellate counsel
18 if you can so I can start the appellate process. I want the appellate
19 counsel.

20 THE COURT: Okay. All right, so is there any legal cause or
21 reason we should not go forward with sentencing today?

22 MS. KALLAS: No, Your Honor.

23 THE DEFENDANT: And can I say one more thing before you
24 pass sentence?

25 [Colloquy between Court and Clerk]

1 THE COURT: Yeah.

2 THE DEFENDANT: Can I say one thing?

3 THE COURT: Sure.

4 THE DEFENDANT: Um, in this PSI it has all of my prior
5 convictions. I've already did time for it. I've already been punished for it. I
6 been in prison – 7 years, going on 8 year. In 3 months it will be 8 years.
7 This prison facility already says they wasn't even gonna charge me in
8 the courtroom for this case I'm being down here for. They already gave
9 me 7 months – excuse me, 6 months just for being accused of this in the
10 prison, then brung down here and sentenced me again. Now you
11 [indiscernible] give me another whatever you're gonna give me. So, I've
12 been punished twice for this here. Then this PSI has every allegation I
13 ever been sentenced for or accused of and I think just considering this is
14 just totally be biased and prejudiced. I gave my time for these things that
15 I've been convicted of, you know what I'm saying? These things has
16 been dismissed. Obviously, I didn't do them. What I'm currently in prison
17 for – I'm to go to parole board. I was going home in 3 months and now
18 I'm down here facing now. With this I'll be – it will be 6 years I go home
19 from now [indiscernible] this case if I don't want [indiscernible] this. And
20 I'm just asking that you don't consider any of these priors. I think it would
21 be biased. I think that's against my Fifth Amendment right to consider
22 you know priors in this case, priors bad acts, prior [indiscernible], prior
23 convictions. The Fifth Amendment says you can't be subjected to be
24 punished twice for the same offense and I'm just – [indiscernible]. I don't
25 know what [indiscernible] you guys are going by. I don't know what

1 jurisdiction you're going by. I don't know what you all adopting. But I'm
2 going by the Fifth Amendment and it totally sounds like you shouldn't
3 consider none –

4 THE COURT: Okay.

5 THE DEFENDANT: -- of these priors in this PSI and just
6 consider --

7 THE COURT: Hang on.

8 THE DEFENDANT: -- the facts [indiscernible] –

9 THE COURT: Hang on. Just –

10 THE DEFENDANT: -- of this offense.

11 THE COURT: Okay. So, sir, by virtue of your plea of guilty to
12 attempt possession or control of a dangerous weapon or facsimile by an
13 incarcerated person, a felony, a category C felony, I adjudicate you
14 guilty of that offense. Does the State submit it on the negotiations?

15 MS. KALLAS: Yes, Your Honor. And I would –

16 THE COURT: All right.

17 MS. KALLAS: -- just like to make one thing for the record clear
18 that he discussed in his motion. Defendant called us asking for a
19 negotiation. We didn't force anything down his throat. I know you've
20 already ruled on that, but he called us and I'm not sure if that's because
21 he was up for parole and wanted it –

22 THE DEFENDANT: I have a [indiscernible] of evidence.

23 THE COURT: All right.

24 MS. KALLAS: -- figured out but he had called my office asking
25 for the negotiation and then the next day we report is when he pled

1 guilty. And he had agreed and stipulated to the sentence. I would just
2 ask that you follow that, Your Honor.

3 THE COURT: All right.

4 Okay, so is there anything else that you would like to say?

5 THE DEFENDANT: No. I appreciate your time.

6 THE COURT: Okay. So, -- sir, and what I'm considering here
7 is --

8 THE DEFENDANT: Probation.

9 THE COURT: -- not your record but the negotiation that you
10 agreed to with the Attorney General And I know that you're not agreeing
11 now, but when you pled guilty what you agreed to was a sentence of 12
12 to 30 months. So, in accordance with the laws of the State of Nevada, I
13 sentence you to a minimum of 12 and a maximum of 30 months in the
14 Nevada Department of Corrections that will run consecutively to
15 C277977. You will not get any credit for time served on this one. And
16 you will also be required to pay a \$25.00 administrative assessment fee;
17 DNA was previously taken so it won't be ordered but there is a \$3.00
18 DNA administrative assessment. And I think that's it.

19 THE DEFENDANT: Can I -- what about the appellate
20 counsel? Can I get appellate counsel [indiscernible]?

21 THE COURT: Oh. Yup, and --

22 THE DEFENDANT: Can someone follow an order around
23 here that you ordered them to do something?

24 [Colloquy between Court and Clerk]

25 THE COURT: Sir, who was your attorney previously? You

1 had the –

2 THE DEFENDANT: I don't even remember.

3 THE COURT: -- it looks like Ms.—

4 THE DEFENDANT: I don't even remember.

5 THE COURT: You had the Public –

6 MS. KALLAS: It was Ashley Sisolak from the Public

7 Defenders.

8 THE COURT: You had the Public Defender's Office so I will
9 reappoint the Public Defender's Office to pursue the appeal.

10 THE DEFENDANT: Thank you.

11 THE COURT: All right.

12 MS. BALLOU: Your Honor, I'm not sure our office takes those
13 kinds of appointments.

14 THE DEFENDANT: [Indiscernible].

15 THE COURT: He was your client and then he was
16 representing himself.

17 MS. BALLOU: Right, but I don't know that we do, though. I
18 think that –

19 THE DEFENDANT: If they don't want to get on the case
20 [indiscernible] do you have –

21 MS. BALLOU: I'm just not sure, so.

22 THE DEFENDANT: -- appointed counsel –

23 THE COURT: Ms. Ballou, why would you –

24 THE DEFENDANT: -- prior appointed counsel or something
25 like that?

1 THE COURT: It's not a post-conviction. It's just a straight
2 appeal --

3 MS. BALLOU: Okay.

4 THE COURT: -- on a guilty plea.

5 THE COURT: All right.

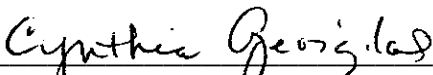
6 THE MARSHAL: Page 24.

7 THE DEFENDANT: Thank you for the 6 years.

8 [Hearing concludes at 8:59 a.m.]

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21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
22 Procedure, I acknowledge that this is a rough draft transcript, expeditiously
23 prepared, not proofread, corrected, or certified to be an accurate transcript.

24 
25 CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTONIO MIXON,)	No. 78900
)	
Appellant,)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	

APPELLANT’S APPENDIX – VOL. IV – PAGES 736 - 980

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 28 day of August, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT
STEVEN S. OWENS

HOWARD S BROOKS

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:
ANTONIO MIXON, NDOC No. 1019828, c/o High Desert State Prison,
P.O. Box 650, Indian Springs, NV 89018.

BY /s/ Carrie M. Connolly
Employee, Clark County Public Defender’s Office